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Stikeman

Income Tax Act
ANNOTATED

2005 • 38th Edition

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Income Tax Act

ANNOTATED

2005 • 38th Edition

The Income Tax Act, Income Tax Application Rules,
Income Tax Conventions Interpretation Act, Canada-U.S.
and Canada-U.K. Tax Treaties, Interpretation Act
Consolidated as of August 17, 2005
(*including* Bills C-33 (*Budget Implementation Act, 2004, No. 2*),
C-38 (*Civil Marriage Act*), and
C-43 (*Budget Implementation Act, 2005*) as enacted,
Bills C-45 (*Canadian Forces Members and Veterans Re-establishment and Compensation Act*), C-23 (*Department of Human Resources and Skills Development Act*), and
C-22 (*Department of Social Development Act*) not yet in force, and
Bills C-26 (*Canada Border Services Agency Act*) and
C-55 (*Wage Earner Protection, etc Act*));
Press Releases and other tax proposals;
Income Tax Regulations and Draft Regulations to August 17, 2005

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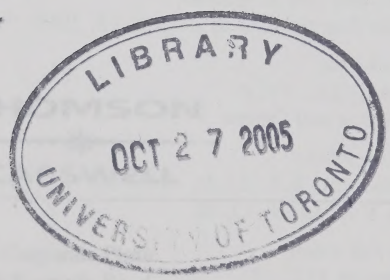
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INTRODUCTION

The thirty-eighth edition of the *Stikeman Income Tax Act, Annotated* publishes the Act as consolidated under the R.S.C. 1985 5th Supplement, effective March 1, 1994. This edition is current to August 17, 2005.

A complete list of amending statutes included in this edition is provided in the Table of Amending Acts following this Introduction.

All proposed changes released to August 17, including draft legislation, Notices of Ways and Means Motions and changes announced by means of press releases, are incorporated in context with the relevant provisions of the Act.

This edition is updated and expanded to include all developments since the last edition including:

- **August 15, 2005 Federal Budget** measures re adoption expense credit, disability and agricultural cooperatives
- **July 18, 2005 draft legislation** (revising the October 30, 2003 proposals re non-resident trusts and foreign investment entities in Part 1; the February 27, 2004 technical amendments in Part 2; and adding amendments related to bijuralism in Part 3)
- Bill C-38, ***Civil Marriage Act***, (S.C. 2005, c. 33, Royal Assent July 20, 2005), containing amendments to the *Income Tax Act* to replace existing references to "natural parent" with "legal parent". It also removes the reference to an individual "of the opposite sex" from a provision related to the extended meaning of "spouse" and "former spouse"
- Bill C-43, ***Budget Implementation Act, 2005*** (S.C. 2005, c. 30, Royal Assent June 29, 2005), to implement measures tabled in the February 23, 2005 Federal Budget
- Bill C-33, ***Budget Implementation Act, 2004, No. 2*** (S.C. 2005, c. 19, Royal Assent May 13, 2005), to implement the remaining March 23, 2004 Federal Budget measures
- Bill C-45, ***Canadian Forces Members and Veterans Re-Establishment and Compensation Act*** (S.C. 2005, c. 21, Royal Assent May 13, 2005, to be proclaimed in force), to make consequential amendments to the *Income Tax Act* to include income replacement benefits for Canadian Forces members and veterans in income from employment
- **Draft regulations**: July 18, 2005 re status of corporations and trusts; June 27, 2005 re introduction of CCA classes 45 and 46; June 6, 2005 re 2004 drought regions; May 16, 2005 re deferred income plans; May 2, 2005 re motor vehicle expenses and benefits for 2005; May 2, 2005 re electronic filing of information returns; and April 4, 2005 re test wind turbines
- Updated tax rates and credits tables
- New comfort letters released by the Department of Finance
- New Selected Cases annotations prepared by Richard Pound have been added to reflect significant jurisprudence since the last edition.

A complete list of pending amendments included in this edition is provided in the Table of Proposed Amendments following this Introduction.

To take fullest advantage of the information in this volume, the reader should refer both to the annotations following the provision under consideration and to the annotations at the end of sections. Occasionally annotations will also appear at the end of a group of related sections or at the beginning or end of a Part of the Act. The categories of annotations, and other features of this Act, are discussed below.

Readers will note that the Government has not yet completely revised the Regulations to reflect changed references to the Act made by the Fifth Supplement. We have, therefore, added the correct references in square brackets throughout the Regulations.

At the end of the book, readers will find a comprehensive Topical Index that includes many terms not explicitly found in the legislation, as well as acronyms. The index and the annotations reflect draft legislation and draft regulations where necessary.

Related Provisions

Where other sections of the Act are relevant to the interpretation or application of a particular provision, these are noted. Note that there are occasional Related Provisions within the "shaded boxes", tying proposed legislation to other parts of the Act.

History/Origin

Due to the ever increasing volume of information in each subsequent edition of the *Stikeman Income Tax Act, Annotated* and in an effort to retain a single volume portable comprehensive Act and related statutory material, the pre-1985 R.S.C. History annotations were removed beginning with the 30th edition. The full History annotations for all changes to provisions of the Act prior to the enactment of the R.S.C. 1985, Fifth Supplement including any special transitional rules, however, can be found in a variety of sources including the following Carswell products: the CD-ROM version

of the *Stikeman Income Tax Act, Annotated*, the *Canada Tax Service*, editions of the *Stikeman Income Tax Act, Annotated* prior to the 30th edition, *TaxPartner* CD-ROM, and Carswell's online tax product *taxnet.pro*.

Care should be exercised by tax practitioners in interpreting the Act to consider whether prior amendments of a provision, in particular, readings prior to the enactment of the 1985 R.S.C. and application rules, may still be relevant. For example, the attribution rules in ss. 74 and 75 and the stock option rules in s. 7 may still have relevance today and reference should be made to the full History annotations and application rules contained in the sources listed above.

Whereas the Origin notes in pre-RSC editions of the *Stikeman Income Tax Act, Annotated* referred to the pre-1972 Act, the Origin notes in this edition are attached to provisions in the Act that were added by the Fifth Supplement.

Selected Cases

Leading cases that are most central to the point at issue follow the provisions of the Act. Each style of cause is followed by a case citation and a succinct one- or two-sentence digest of the case. The cases are selected, and the digests written, by Stikeman Elliott LLP lawyer, Richard W. Pound, Q.C., F.C.A.

Department of Finance "Comfort Letters"

Numerous Department of Finance "comfort letters" obtained under the *Access to Information Act* are included in the Act and Regulations in context. The letters represent intended amendments that Finance has promised in private letters and that will likely be included in future technical bills or budget measures.

A list of comfort letters, issued for amendments that have not yet appeared as draft legislation, is provided in the Table of Department of Finance Comfort Letters following this Introduction.

Definitions

The Definitions annotations follow each section of the Act (except for certain Parts where the annotation falls at the end of the Part), and consist of an alphabetical list of the words and phrases in the section that are defined elsewhere in the Act, or in other applicable legislation. The Definitions annotations for the Regulations and the *Income Tax Application Rules* (ITARs) are also found at the end of each section.

Income Tax Regulations/ Income Tax Application Rules

Cross-references are provided where relevant. References to Draft Regulations are also provided where applicable.

Forms/ Interpretation Bulletins/ Information Circulars/ I.T. Technical News/ Advance Tax Rulings/ Application Policies/ Registered Plans Directorate Newsletters/ Charities Policies/ Charities Newsletters/ CRA Transfer Pricing Memoranda/ Income Tax Info Sheets

References to Forms, Bulletins, Circulars, Technical News, Advance Tax Rulings, SR&ED Application Policies, Registered Plans Directorate Newsletters, Charities Policies, Charities Newsletters, CRA Transfer Pricing Memoranda and Income Tax Info Sheets are listed following the provisions to which they relate. To save valuable research time, the *Stikeman Income Tax Act, Annotated* provides the full title of these documents.

R.S.C. 1985, Fifth Supplement

The Act is now properly cited as R.S.C. 1985, c. 1 (5th Supp.) and the *Income Tax Act Application Rules* are cited as R.S.C. 1985, c. 2 (5th Supp.). The Fifth Supplement, as amended by the *Income Tax Amendments Revision Act* (Bill C-15), is deemed to have come into force on March 1, 1994. Furthermore it is deemed to be of retroactive effect to December 1, 1991.

Although the sections of the Act have not been renumbered in the consolidation, there is considerable renumbering within sections. As the explanatory note to the Fifth Supplement states about the *Income Tax Act* and the *Income Tax Application Rules*:

> As a general rule, the existing provisions of both Acts have not been renumbered. As a result, provisions repealed after 1971 or omitted from the revision because they were spent may have left gaps in the numbering. The only structural changes made in the present revision concern certain definitions and some application and transitional provisions.
>
> Where one provision contained definitions that also applied to other Parts or provisions, especially if these were not in the immediate vicinity of the definition provision, the references to those other Parts or provisions were deleted in the existing definition provisions and new reference provisions inserted where they could be found easily. Where a definition applicable to the whole Act was found in a provision other than sections 248 to 260, it was made to apply only to its own provision or Part and a definition by reference was added to subsection 248(1).
>
> The *Income Tax Act* . . . was practically the only important Act that continued to contain some series of definitions arranged in lettered paragraphs rather than being listed alphabetically in each official language. This situation was corrected in the present revision, and in the definitions that had to be rearranged, algebraic formulae were inserted where advisable.

In addition to these more substantial changes there are hundreds of minor changes in wording to substitute "the taxpayer" for "he", and "total" for "aggregate", and the like.

As always, we welcome comments and suggestions for future editions.

Tax, Finance & Accounting Market Group
Carswell
August 2005

TABLE OF AMENDING ACTS

Year (S.C.)	Chapter	Royal Assent	Bill
1970-71-72	63	December 23, 1971	C-259
1970-71-72	64	December 23, 1971	C-275
1972	9	March 29, 1972	C-169
1973-74	14	April 18, 1973	C-170
1973-74	29	July 27, 1973	C-192
1973-74	30	July 27, 1973	C-193
1973-74 (Family Allowances Act, 1973)	44	December 12, 1973	C-211
1973-74 (Federal-Provincial Fiscal Arrangements Act, 1972, Federal-Provincial Fiscal Revision Act, 1974 and Income Tax Act)	45	December 12, 1973	C-233
1973-74 (Residential Mortgage Financing Act)	49	December 21, 1973	C-135
1973-74 (Election Expenses Act)	51	January 14, 1974	C-203
1974-75-76	26	March 13, 1975	C-49
1974-75-76 (Cultural Property Export and Import Act)	50	June 19, 1975	C-33
1974-75-76 (Old Age Security Act)	58	June 26, 1975	C-62
1974-75-76	71	December 2, 1975	C-65
1974-75-76 (Western Grain Stabilization Act)	87	February 25, 1976	C-41
1974-75-76 (Halifax Relief Commission Pension Continuation Act)	88	February 25, 1976	C-78
1974-75-76 (Compensation for Former Prisoners of War Act)	95	May 5, 1976	C-92
1974-75-76	106	July 16, 1976	C-58
1976-77	4	February 24, 1977	C-22
1976-77 (Federal-Provincial Fiscal Arrangements and Established Programs Financing Act)	10	March 31, 1977	C-37
1977-78	1	December 15, 1977	C-11
1977-78 (Employment Tax Credit Act)	4	February 2, 1978	C-23
1977-78	32	June 30, 1978	C-56
1977-78 (Maritime Code)	41	June 30, 1978	C-54
1977-78	42	June 30, 1978	C-59
1978-79 (Child tax credit)	5	December 12, 1978	C-10
1979	5	December 6, 1979	C-17
1980-81-82-83 (Bank Act)	40	November 26, 1980	C-6
1980-81-82-83 (Misc. Statute Law Amend. Act)	47	February 19, 1981	C-56
1980-81-82-83	48	February 26, 1981	C-54
1980-81-82-83 (Petroleum and Gas Revenue Tax)	68	July 8, 1981	C-57
1980-81-82-83 (Retention of Records)	102	June 22, 1982	C-118
1980-81-82-83 (Statute Law Relating to Taxes)	104	June 29, 1982	C-112
1980-81-82-83 (National Training Act)	109	July 7, 1982	C-115
1980-81-82-83	140	March 30, 1983	C-139
1980-81-82-83 (Tax Court of Canada)	158	June 29, 1983	C-167
1980-81-82-83 (Athletic Contests and Events Pools Act)	161	June 19, 1983	C-95
1980-81-82-83 (Government Organization Act, 1983)	167	November 17, 1983	C-152
1984	1	January 19, 1984	C-2
1984 (Canada Health Act)	6	April 17, 1984	C-3
1984 (War Veterans Allowance)	19	June 14, 1984	C-39
1984 (Canada-Nova Scotia Oil and Gas Agreement Act)	29	June 29, 1984	C-43
1984 (Financial Administration Act)	31	June 29, 1984	C-24
1984	45	December 20, 1984	C-7
1985 (Sports Pool and Loto Canada Winding-Up Act)	22	June 20, 1985	C-2
1985 (Aeronautics Act Amendment Act)	28	June 28, 1985	C-36
1985	45	October 29, 1985	C-72
1986	2	February 13, 1986	C-82
1986	6	February 13, 1986	C-84
1986	24	June 17, 1986	C-109
1986 (Pension Benefits Standards Act, 1986)	40	June 27, 1986	C-90
1986	44	November 5, 1986	C-11
1986	55	December 19, 1986	C-23
1986 (Petroleum and Gas Revenue Tax)	58	December 19, 1986	C-17
1987 (Canada-Newfoundland Atlantic Accord Implementation Act)	3	March 25, 1987	C-6
1987 (Financial Institutions and Deposit Insurance System Amendment Act)	23	June 30, 1987 (proclaimed July 2, 1987)	C-42
1987 (National Transportation Act, 1987)	34	August 28, 1987 (proclaimed January 1, 1988)	C-18
1987 (Pension Act etc. Amendment Act)	45	December 17, 1987 (proclaimed February 1, 1988)	C-100
1987	46	December 17, 1987	C-64
1988 (Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act)	28	July 21, 1988 (in force December 22, 1989)	C-75

Table of Amending Acts

Year (S.C.)	Chapter	Royal Assent	Bill
1988 (Criminal Code)	51	September 13, 1988 (proclaimed January 1, 1989)	C-61
1988	55	September 13, 1988	C-139
1988 (Tax Court of Canada Amendment Act)	61	September 22, 1988	C-146
1988 (Canada-U.S. Free Trade Agreement Implementation Act)	65	December 30, 1988 (proclaimed January 1, 1989)	C-2
1990 (Department of Industry, Science and Technology Act)	1	January 30, 1990 (in force February 23, 1990)	C-3
1990 (Garnishment/Collection restrictions)	34	June 27, 1990	C-51
1990 (Pension/Retirement Savings)	35	June 27, 1990	C-52
1990	39	October 23, 1990	C-28
1990 (Child tax credit)	42	November 8, 1990	C-86
1990 (Goods and services tax)	45	December 17, 1990 (in force January 1, 1991)	C-62
1991 (Farm Income Protection Act)	22	April 11, 1991 (in force April 1, 1991)	C-98
1991 (An Act respecting insurance companies and fraternal benefit societies)	47	December 17, 1991	C-28
(1994: Income Tax Amendments Revision Act, Sch. I)	7	May 12, 1994 (deemed in force March 1, 1994)	C-15
1991	49	December 17, 1991	C-18
(1994: Income Tax Amendments Revision Act, Sch. II)	7	May 12, 1994 (deemed in force March 1, 1994)	C-15
1992 (Miscellaneous Statute Law Amendment Act)	1	February 28, 1992	C-35
(1994: Income Tax Amendments Revision Act, Sch. III)	7	May 12, 1994 (deemed in force March 1, 1994)	C-15
1992 (An Act to amend the Civilian War Pensions and Allowances Act etc.)	24	June 18, 1992 (in force July 1, 1992)	C-84
(1994: Income Tax Amendments Revision Act, Sch. IV)	7	May 12, 1994 (deemed in force March 1, 1994)	C-15
1992 (An Act to amend the Bankruptcy Act and the Income Tax Act)	27	June 23, 1992 (in force November 30, 1992)	C-22
(1994: Income Tax Amendments Revision Act, Sch. V)	7	May 12, 1994 (deemed in force March 1, 1994)	C-15
1992 (An Act to amend the Excise Tax Act and the Income Tax Act)	29	June 23, 1992	C-75
(1994: Income Tax Amendments Revision Act, Sch. VI)	7	May 12, 1994 (deemed in force March 1, 1994)	C-15
1992 (Child Tax Benefit)	48	October 15, 1992	C-80
(1994: Income Tax Amendments Revision Act, Sch. VII)	7	May 12, 1994 (deemed in force March 1, 1994)	C-15
1993	24	June 10, 1993	C-92
(1994: Income Tax Amendments Revision Act, Sch. VIII)	7	May 12, 1994 (deemed in force March 1, 1994)	C-15
1993 (An Act to amend the Excise Tax Act and other Acts)	27	June 10, 1993	C-112
(1994: Income Tax Amendments Revision Act, Sch. IX)	7	May 12, 1994 (deemed in force March 1, 1994)	C-15
1994	8	May 12, 1994	C-9
1994 (Dept. of National Revenue Reorganization Act)	13	May 12, 1994	C-2
1994	21	June 15, 1994	C-27
1994	28	June 23, 1994	C-28
1994	29	June 23, 1994	C-32
1994 (Dept. of Agriculture Amendment Act)	38	November 24, 1994	C-49
1994 (Dept. of Natural Resources Act)	41	December 15, 1994	C-48
1995 (Dept. of Industry Act)	1	March 16, 1995	C-46
1995	3	March 26, 1995	C-59
1995	11	June 15, 1995 (proclaimed in force July 12, 1996)	C-53
1995 (Budget Implementation Act, 1995)	17	June 22, 1995	C-76
1995	18	June 22, 1995	C-67
1995	21	June 22, 1995	C-70
1995 (Cultural Property Act)	38	December 5, 1995 (proclaimed in force July 12, 1996)	C-93
1995 (Excise Tax Act)	46	December 15, 1995	C-103
1996 (Act to amend, enact and repeal certain laws relating to financial institutions)	6	May 29, 1996 (proclaimed in force June 28, 1996)	C-15
1996 (Department of Human Resources Development Act)	11	May 29, 1996 (proclaimed in force July 12, 1996)	C-11
1996	21	June 20, 1996	C-36
1996 (Department of Employment Insurance Act)	23	June 20, 1996	C-12
1997 (Excise Tax Act — GST Amendments)	10	March 20, 1997	C-70
1997 (Bankruptcy and Insolvency Act)	12	April 25, 1997	C-5
1997 (1996 Budget)	25	April 25, 1997	C-92
1997 (1997 Budget)	26	April 25, 1997	C-93
1998	19	June 18, 1998	C-28
1998 (1998 Budget — partial)	21	June 18, 1998	C-36
1998 (Corruption of Foreign Public Officials Act)	34	December 10, 1998	S-21
1999 (An Act to amend the War Veterans Allowance Act ...)	10	March 25, 1999	C-61
1999 (Canada Customs and Revenue Agency Act)	17	April 29, 1999 (proclaimed in force November 1, 1999)	C-43
1999 (1998 Budget)	22	June 17, 1999	C-72
1999 (Budget Implementation Act, 1999)	26	June 17, 1999	C-71
1999 (Miscellaneous Statute Law Amendment Act, 1999)	31	June 17, 1999	C-84
2000 (Canada Elections Act)	9	May 31, 2000 (proclaimed in force September 1, 2000)	C-2
2000 (Modernization of Benefits and Obligations Act)	12	June 29, 2000 (proclaimed in force July 31, 2000)	C-23
2000 (Budget Implementation, 2000)	14	June 29, 2000	C-32
2000 (Income Tax Amendments Act, 1999)	19	June 29, 2000	C-25

Year (S.C.)	Chapter	Royal Assent	Bill
2001 (Tobacco Tax Amendments Act, 2001)	16	June 14, 2001	C-26
2001 (Income Tax Amendments Act, 2000)	17	June 14, 2001	C-22
2001 (Immigration and Refugee Protection Act)	27	November 1, 2001 (proclaimed in force June 28, 2002)	C-11
2001 (Part 6: *Charities Registration (Security Information) Act*)	41	December 18, 2001 (proclaimed in force December 24, 2001)	C-36
2002 (Courts Administration Service Act)	8	March 27, 2002 (proclaimed in force July 2, 2003)	C-30
2002 (Budget Implementation Act, 2001)	9	March 27, 2002	C-49
2003 (Budget Implementation Act, 2003)	15	June 19, 2003	C-28
2003 (Political Financing Act)	19	June 19, 2003	C-24
2003 (An Act to amend the Income Tax Act (natural resources))	28	November 7, 2003	C-48
2004 (Library and Archives of Canada Act)	11	April 22, 2004 (proclaimed in force May 21, 2004)	C-8
2004 (Budget Implementation Act, 2004)	22	May 14, 2004	C-30
2004 (An Act to amend the Canada Elections Act and the Income Tax Act)	24	May 14, 2004	C-3
2004 (Federal Law–Civil Law Harmonization Act, No. 2)	25	December 15, 2004	S-10
2004 (Canada Education Savings Act)	26	December 15, 2004	C-5
2005 (Budget Implementation Act, 2004, No. 2)	19	May 13, 2005	C-33
2005 (Canadian Forces Members and Veterans Re-Establishment and Compensation Act)	21	May 13, 2005 (not yet in force)	C-45
2005 (Budget Implementation Act, 2005)	30	June 29, 2005	C-43
2005 (Civil Marriage Act)	33	July 20, 2005	C-38
2005 (Department of Human Resources and Skills Development Act)	34	July 20, 2005 (not yet in force)	C-23
2005 (Department of Social Development Act)	35	July 20, 2005 (not yet in force)	C-22

Commencement of Acts

The *Interpretation Act*, RSC 1985, c. I-21, subsections 5(1) and (2) provide as follows:

5. (1) Royal assent — The Clerk of the Parliaments shall endorse on every Act, immediately after its title, the day, month and year when the Act was assented to in Her Majesty's name and the endorsement shall be a part of the Act.

(2) Date of commencement — If no date of commencement is provided for in an Act, the date of commencement of that Act is the date of assent to the Act.

Application of Amendments

In a "History" or "Application" note, the phrase "applicable to 19 — *et seq.*", used in connection with the application of an amendment, indicates that the amendment is applicable to the 19 — and subsequent taxation years.

Citation of Statutes

In 1983 and previous years, federal statutes were cited by the date of the parliamentary session. Commencing in 1984, statutes have been cited by the date of the calendar year in which Royal Assent was granted.

R.S.C. 1985 (5th Supp.)

The Income Tax Act and *Income Tax Application Rules* were consolidated in the 5th Supplement of the Revised Statutes of Canada, 1985 (as cc. 1 and 2 respectively). The cut-off date for the 5th Supplement was November 30, 1991; the coming-into-force date was March 1, 1994. The income tax amending bills that were passed between these two dates were re-drafted to conform to the R.S.C. version of the Act. These re-drafted bills were issued as Schedules I to IX of the *Income Tax Amendments Revision Act*, 1994, c. 7 (Bill C-15), which received Royal Assent on May 12, 1994. In the list of amending bills above, those Schedules are listed along with the original amending Bill. The relationship of those Bills and Schedules is as follows:

1991, c. 47	—	Sch. I
c. 49	—	Sch. II
1992, c. 1	—	Sch. III
c. 24	—	Sch. IV
c. 27	—	Sch. V
c. 29	—	Sch. VI
c. 48	—	Sch. VII
1993, c. 24	—	Sch. VIII
c. 27	—	Sch. IX

Sections 4 to 7 of the *Income Tax Amendments Revision Act* read as follows:

Interpretation of Schedules

4. Schedules assimilated to R.S.C. 1985 — A schedule shall be interpreted as if it were an amending Act contained in one of the supplements to the Revised Statutes of Canada, 1985 and enacted under the authority of the *Statute Revision Act* and the *Revised Statutes of Canada, 1985 Act.*

5. Application of R.S., S-20, c. 40 (3rd Supp.) and c. 2 (5th Supp.) — For greater certainty, the *Statute Revision Act*, the *Revised Statutes of Canada, 1985 Act* and sections 69 and 74 to 78 of the *Income Tax Application Rules* apply to a schedule, with such modifications as the circumstances require.

Coming into Force

6. (1) Coming into force of Act — Subject to subsection (2), this Act comes into force, or is deemed to have come into force, on March 1, 1994.

(2) Coming into force of schedules — Subject to any provision to the contrary in the schedules, each schedule is deemed to have come into force on the day the Act referred to in the heading of the schedule was assented to.

TABLE OF PROPOSED AMENDMENTS

The following table will assist readers in finding, in the shaded boxes throughout the Act and Regulations, the proposed amendments announced at various times. If you know the subject-matter of announced changes but cannot find them in the legislation, scan the "Subject" column (or consult the Topical Index). If you know the date on which the changes were announced, use the first column, which lists the proposals in chronological order. A separate Table of Comfort Letters appears following this table.

Where proposals do not include (and have not been superseded by) draft legislation, the relevant portions of the announcement or press release are reproduced in shaded boxes under the provisions of the Act or Regulations that are expected to be amended.

Except where indicated, all press releases and draft legislation emanate from the federal Department of Finance, www.fin.gc.ca. See the various Special Releases of Carswell's *Canada Tax Service*, *Tax Times*, *TaxPartner* and taxnet.pro.

Bill no. or date of Public Statement	**Subject**	**Reproduced at section no.**
Draft legislation, December 20, 1991	Interest deductibility	20(1)(c), (qq) [*sic*]; 20(3.1), (3.2); 20.1 [*sic*], 20.2 [*sic*]
Press releases, March 2, 1993; Oct. 1, 1993 . . . Dec. 16, 2004	Limit on deductibility of provincial payroll and capital taxes	18 [end]
Bill C-70 (First Reading February 16, 1995)	Part LIV no longer relevant	Reg. Part LIV
Draft legislation and regulations, June 1, 1995	Securities held by financial institutions (legislation enacted in 1998; regulations still pending)	Reg. 304(1)(c)(ii), 2402, 2405(3)"Canadian business property", "gross Canadian ...", (5), 2411(4), (5), 6201(5), (5.1), 6209(b), 8102–8105, 9000–9002, 9003, 9100–9104, 9200–9204
Notice of Ways and Means Motion, December 12, 1995	Interference with remittance (on hold)	227(5.2)–(5.4)
Press release, December 19, 1996	Segregated fund policies and other annuity contracts	Reg. 304(1)
Draft legislation and regulations, November 14, 1997	Impaired loans	(legislation enacted in 1998); Reg. 9103(2)
Draft legislation and regulations, October 27, 1998 (legislation enacted in 1999)	Branch tax (corporate immigration)	Reg. 808(1.1)
	Prescribed expenditures	Reg. 2902(e)
Federal budget, February 16, 1999 (most legislation enacted in 2000)	Non-resident trusts	94 (see now July 18, 2005 draft legislation)
	Foreign-based investment funds	94.1–94.4 (see now July 18, 2005 draft legislation)
	RRSP withdrawals under HBP and LLP	Part X.3
December 17, 1999 draft legislation and regulations	Taxpayer migration	(see March 16, 2001 draft regulations)
Federal budget, February 28, 2000 (most legislation enacted in 2001)	Simplified film tax incentives	(see November 14, 2003 draft legislation)
	Extension of s. 161.1 to individuals	161.1
Draft regulations, August 8, 2000	Authorized foreign banks	(see February 13, 2003 draft regulations)
	Other incidental changes	Reg. 9204(2.1), (5)(a), (5.1)

Bill no. or date of Public Statement	Subject	Reproduced at section no.
Federal Economic Statement, October 18, 2000 (most measures enacted in 2001)	Cross-border share-for-share exchange	86.1 (and see now Federal budgets, February 18, 2003, March 23, 2004 and February 23, 2005)
Draft regulations, March 16, 2001 (Appendices A to I to the Explanatory Notes to the March 16, 2001 Notice of Ways and Means Motion)	Taxpayer migration (previously released December 17, 1999)	Reg. 2606(1), (2)
	Capital cost allowance (new consequential amendments)	Reg. 1100(1)(z.1c); 1101(5d.1), (5d.2), (5q), (5s), (5t); 1103(2g), (2i); 1104(15); 4600(2)(k), Sch. II, Cls. 1(q); 7(h), (i); 8, 17(a.1), 43.1
	Foreign affiliates: partnerships (previously released November 30, 1999, and see Appendix C of the February 27, 2004 draft regulations)	Reg. 5900(2), (3); 5902(5); 5905(14), (15)
	Foreign affiliates: FAPI (previously released November 30, 1999, and see Appendix C of the February 27, 2004 draft regulations)	Reg. 5903, 5907(1.3), (1.4)
	Capital gains deferral: eligible small business investments (previously released December 21, 2000)	Reg. 6204(1)
Notice of Ways and Means Motion, September 18, 2001	Matchable expenditures: film shelters shut down	(see now July 18, 2005 draft legislation)
Press release, December 17, 2001	Update on proposals for the taxation of non-resident trusts and foreign investment funds	94, 94.1–94.4 (see now July 18, 2005 draft legislation)
Draft regulations, February 5, 2002 (Appendix B to the Explanatory Notes to January 29, 2002 NWMM)	Capital cost allowance: Energy conservation property	(see now December 13, 2004 draft regulations)
Draft regulations, July 26, 2002	Canadian Renewable and Conservation Expenses (CRCE)	(see now April 4, 2005 draft regulations)
Notice of Ways and Means Motion, October 11, 2002	Non-resident trusts and foreign investment entities	(see now July 18, 2005 draft legislation)
Draft legislation, December 20, 2002	Technical amendments	throughout the Act (see now July 18, 2005 draft legislation, Part 2)
	Separate classes: franchises, etc.	(see now July 18, 2005 technical notes)
	Political contribution receipts	(see now July 18, 2005 technical notes)
Draft regulations, December 20, 2002 (Appendices A to J to the Explanatory Notes to draft legislation)	Authorized foreign banks	(see February 13, 2003 draft regulations)
	Excluded property of non-resident persons	(see February 13, 2003 draft regulations)
	Capital cost allowance: vessels	Reg. 1101(2c), Sch. II, Cl. 41(b)
	Foreign affiliates	(see Appendix C of the February 27, 2004 draft regulations)
	Foreign oil and gas business	Reg. 5910
	Flow-through shares: prescribed right	Reg. 6202.1(1), (1.1), (2.1)–(5)
	Prescribed venture capital corporations	Reg. 6700(e.1), 6704(e)
	Deferred profit sharing plans	Reg. 8301(2), (2.1), (15)

Bill no. or date of Public Statement	Subject	Reproduced at section no.
	Tax on large corporations	Reg. 8604
Draft regulations, February 13, 2003	Authorized foreign banks	Reg. 105(2), 404(1), 413(3), 800–803, 805, 808(1), (2), (5)(j)(ii), (6)(a), (8), 810, 5301(1)(b), (4)(a)(i)(B), (8), (10), 7900
Federal budget, February 18, 2003 (most legislation enacted in 2003)	Overturning *Ludco* decision	20(1)(c)
	Cross-border share-for-share exchanges	86.1
	Tax pre-paid savings plans	146
	Tax shelter information returns	Reg. 231(6)(b)
	"qualified limited partnership"	Reg. 5000(1.4)(a), (7)"qualified limited partnership"
	Past service pension adjustments	(see Appendix A of the February 27, 2004 draft regulations)
	Benefits from money purchase RPPs	(see Appendix A of the February 27, 2004 draft regulations)
	Class 43.1: extensions	Reg. Sch. II, Cl. 43.1
Draft legislation, March 11, 2003 comfort letter	Exclusion for guarantee provided to subsidiary	247(7.1)
Draft regulations, June 9, 2003 (included in Explanatory Notes to NWMM for Bill C-48, S.C. 2003, c. 28)	Natural resources	Reg. 1100(1)(w)(i), (x)(i), (y)(i), (ya)(i), 1104(8.1), 1204(3)(b), (4), (5), 1206(1)"exempt partnership", "production royalty", "specified royalty", 1206(8.1), (9), 1210, 1210.1, 1211, 3900(2)"minerals", 5203(1)"adjusted business income"(d), 5203(2)(a), (4)
Press release, June 20, 2003	Reduction in penalty for brief failure to remit amount withheld	227(9)
CCRA Registered Plans Directorate newsletter, June 27, 2003	New participating pension supervisory authority	Reg. 8409(2)
Notice of Ways and Means Motion, October 30, 2003	Non-resident trusts	(see now July 18, 2005 draft legislation)
	Foreign investment entities	(see now July 18, 2005 draft legislation)
Draft legislation, October 31, 2003	Deductibility of interest and other expenses (REOP requirement)	3(d), 3.1, 9(3), 111(8)"non-capital loss"E (to be changed)
Draft legislation, November 14, 2003	Canadian film or video production tax credit	125.4 (see now July 18, 2005 draft legislation)
CRA RPP consultation session, December 3, 2003	Lump sum benefit under Quebec SPPA	Reg. 8502(d)
Draft legislation, December 5, 2003	Charitable donation shelters: limit on valuation of donated property	(see now July 18, 2005 draft legislation)
Press release, December 23, 2003	2004 automobile deduction limits	(see now May 2, 2005 draft regulations)
Draft legislation, February 27, 2004 (formerly December 20, 2002)	Part 1: Technical amendments	throughout the Act (see now July 18, 2005 draft legislation, Part 2)
	Part 2: Foreign affiliates	17(8.1), (8.2), 17(15)"controlled foreign affiliate", 42, 88(1)(d.4), (3), 93 (throughout), 95 (throughout), 248(1)"qualifying member"

Bill no. or date of Public Statement	Subject	Reproduced at section no.
Draft regulations, February 27, 2004 (Appendices A to D to the Explanatory Notes to draft legislation)	Pensions and qualified limited partnerships; insurers; foreign affiliates; prescribed properties and permanent establishments	throughout the Regulations
Federal budget, March 23, 2004 (most legislation enacted in 2004 and 2005)	Deductibility of interest and other expenses (REOP requirement)	3.1
	Cross-border share-for-share exchanges	86.1
	Tax pre-paid savings plans	146
	Tax on pension funds holding income trusts	Part XI.1 (likely to be 207.21)
	CRA name and web site on receipts	Reg. 3501(1)
	Talking textbooks: medical expense credit	Reg. 5700(w)
CRA press release, April 29, 2004	International tax convention on mutual administrative assistance	List of tax treaties after Canada-U.K. treaty
CRA press release, May 3, 2004	International tax shelter information centre	237.1(1)"tax shelter"
CRA letter, May 5, 2004	Administrative policy: extension of mutual fund filing deadlines after merger	132.2
Press release, May 18, 2004	Pension fund investment in business income trusts	207.2
Information Circular 93-3R, June 30, 2004	EAP for occupational skills program	146.1(2)(g.1)
Draft legislation, September 16, 2004	2004 budget measures (on hold)	131(8.1), 132(4)"specified property", (7)
Draft regulations, September 16, 2004 (Appendices A to D to the Explanatory Notes to draft legislation)	Capital cost allowance	(see now June 27, 2005 draft regulations)
	Medical devices and equipment	Reg. 5700(w)
	Prescribed amounts re fines and penalties	Reg. 7309
	Prescribed high-risk foreign missions	Reg. 7400
Press release and backgrounder, September 17, 2004	Royalty reimbursement rule	80.2 (see now July 18, 2005 draft legislation)
CRA Charities announcement, September 30, 2004	Public benefit test for charity registration	248(1)"registered charity"
Bill C-26, First Reading November 16, 2004; Second Senate Reading June 29, 2005	*Canada Border Services Agency Act*	165(2), 166.1(3), 166.2(3), 170(1), (2), 220(1), 231.4(1), 231.5(1), 232(5), (6), (7), 237.1(5)(c), 244(1), (5)–(11), (13), (19)
Agriculture and Agri-Food Canada press releases, November 25, 2004	Prescribed drought regions for 2004 (Alberta, British Columbia)	Reg. 7305(i)
CRA Fact Sheet, November 26, 2004	Administrative change: 2D bar coding	150.1(2)
Draft regulations, December 13, 2004	Capital cost allowance: Energy conservation property and alternative energy sources	Reg. 1104(13)"basic oxygen furnace gas", "bio-oil", "blast furnace gas", "fossil fuel", "plant residue", Sch. II, Cl. 43.1(a)(ii), (ii.1), (iv), (c)(i)(A), (d)(i), (ii)(A), (iii), (iii.1), (ix), (xi), (xii)
Press release, December 17, 2004	2005 automobile deduction limits	(see now May 2, 2005 draft regulations)
Draft legislation, December 21, 2004	Crown charge reimbursements	(see now July 18, 2005 draft legislation)

Bill no. or date of Public Statement	Subject	Reproduced at section no.
Draft regulations, December 21, 2004	Mining taxes	Reg. 3900
CRA Q&A, January 18, 2005	CRA name and web site on receipts	Reg. 3501
Agriculture and Agri-Food Canada press release, February 18, 2005	Prescribed drought regions for 2004: additional areas of Alberta	Reg. 7305(i)
Federal Budget, February 23, 2005 (other items were enacted by S.C. 2005, c. 30)	Deductibility of interest and other expenses (REOP requirement)	3.1
	RRSPs and RRIFs	60(l)(ii)(A)
	Expansion of disability supports deduction	64
	Cross-border share-for-share exchanges	86.1
	Caregiver expenses: medical credit increased	118.2(1)
	Medical expense tax credit	118.2(2)
	Adoption expense tax credit	after 118.2
	Disability tax credit	118.3(1)
	Corporate tax rate reduction (Bill C-43 proposals on hold)	123.4(1)"full rate taxable income", "general rate reduction percentage", 125.1(1), (2)
	Deferral of income where shares received as patronage dividends	135(7)
	Income trusts	207.2
	International tax audits	231.6(2)
	Adjustments to CCA rates	Reg. 1100(1)(a)
	"Specified energy property" rules	Reg. 1100(25)
	Pension benefits: defined benefit limit increased	Reg. 8503(2)
	Transmission pipelines and related equipment	Reg. Sch. II:Cl. 1
	Electricity transmission and distribution assets	Reg. Sch. II, Cl. 1
	Telecommunications cable	Reg. Sch. II, Cl. 3(j)
	Combustion turbines generating electricity	Reg. Sch. II, Cl. 17(a.1)
	High-efficiency and renewable energy generation equipment	Reg. Sch. II, Cl. 43.1
	Distribution equipment used in district energy systems; Biogas production equipment	Reg. Sch. II, Cl. 43.1
Bill C-44, First Reading March 24, 2005	VIA Rail Canada	Reg. 7100(j)
Draft regulations, April 4, 2005	Canadian Renewable and Conservation Expenses (CRCE): test wind turbines	Reg. 1219
Draft regulations, May 2, 2005	2005 automobile deduction limits	Regs. 7305.1(a), (b), 7306(a)
Draft regulations, May 2, 2005	Electronic filing of information returns	Reg. 205.1
S.C. 2005, c. 21 (Bill C-45, Royal Assent May 13, 2005; not yet proclaimed in force)	*Canadian Forces Members and Veterans Re-establishment and Compensation Act*	6(1)(f.1), 81(1)(d.1), 241(4)(d)(viii)
Draft regulations, May 16, 2005	Deferred income plans	various (throughout the Regulations)
Bill C-55, First Reading June 3, 2005	*Wage Earner Protection Program Act*	224(1.2) opening words
Draft regulations, June 6, 2005	Prescribed drought regions for 2004 (Alberta, British Columbia)	Reg. 7305(h)(i), 7305(i)

Bill no. or date of Public Statement	Subject	Reproduced at section no.
CRA erratum, June 23, 2005	Inadvertent deletions when regulations amended	Reg. 600(b), (c)
Draft regulations, June 27, 2005	Capital cost allowance	Reg. 1100(1)(a), 1100(1.13)(a)(i.1), 1101(5p), 1104(2)"data network infrastructure equipment", 4600(2)(k), Sch. II, Cls. 10(f), 45, 46
Draft legislation, July 18, 2005	Technical amendments	throughout the Act
	Non-resident trusts	94 and others
	Foreign investment entities	94.1–94.4 and others
	Bijuralism	throughout the Act
	Crown charge reimbursements	80.2
	Application to ITA 94.2(11)	Reg. 304(1)
	Separate classes: franchises, etc.	Reg. 1101(1ag)
	Reported reserves	Reg. 1408(1)"reported reserve"(c)
	Political contribution receipts	Reg. 2000(1), (6)
	Application to ITA 94.1(1)	Reg. 8202
Draft regulations, July 18, 2005 (Appendix A to the Explanatory Notes to draft legislation)	Status of corporations and trusts	Reg. 4800.1, 4801, 4801.001
Press release, July 19, 2005	QPIP treated like Employment Insurance	56(1)(a)(iv)
S.C. 2005, c. 35 (Bill C-22, Royal Assent July 20, 2005; not yet proclaimed in force)	Terminology changes, *Department of Social Development Act*	122.64(1), (2)(b)
S.C. 2005, c. 34 (Bill C-23, Royal Assent July 20, 2005; not yet proclaimed in force)	*Department of Human Resources and Skills Development Act*	110(1)(g)(i), 118.5(1)(a)(ii), 118.6(1)"designated educational institution"(a)(ii), "qualifying educational program", 146.1(14)(a), 237(1), 241(4)(d)(x)
CRA press release, August 9, 2005	International tax audits	231.6(2)
Draft legislation, August 15, 2005	Implementation of 2005 budget proposals re adoption expense credit, disability and agricultural cooperatives	64, 87(2)(s), 117.1, 118.01, 118.2, 118.3, 118.4, 118.92–118.94, 118.95, 128(2)(e)(iii)(A), 135, 135.1, 136(2), 227, 227.1

TABLE OF DEPARTMENT OF FINANCE COMFORT LETTERS

The following table will assist readers in finding, in the shaded boxes throughout the Act and Regulations, Department of Finance "comfort letters" issued for amendments that have not yet appeared as draft legislation. The Department of Finance comfort letters are selected and annotated by David Sherman, and are released under the *Access to Information Act*.

Reproduced at section no.	Subject	Date
7(9)(d)(ii)	Deferral available for qualifying acquisition	December 12, 2003
17(1)(b)(iii)	Deemed interest income	September 3, 2002
20(1)(l.1)	Reserve on premium received on reopening bond issue	October 24, 2001
40(3.1)	Limited liability partnerships	July 11, 2003
53(1)(e)(i)(A)	Adjustment to cost base of partnership interest	January 29, 2004
53(1)(e)	Partnership disposing of foreign resource property	July 16, 2004
53(1)(r)	Application to employee trusts	June 13, 2003
55(3.01)	Application to winding-up and amalgamation	April 21, 2005
55(3.1)(c) and (d)	Application of paras. 55(3.1)(c) and (d)	June 8, 2005
55(3.1)(a)	Distribution by specified corporation	November 26, 2004
66.8(1)	Resource expenditures of commercial trust	October 18, 2004
81(1)(h)	Foster care payments	January 31, 2002
81(1) (end)	Recontribution of income from employees' leave of absence plan	June 30, 2000
84(7)	Inadvertent prior amendment	April 8, 2003
88(1)(c.2)	Excluding right to acquire shares	August 13, 2004
88(1)(c.3)	Bump denial rules	April 22, 2002
88(1)(c.4)	Bump denial rules	May 2, 2002
	Substituted property rules	June 24, 2003
	Specified property rules	May 31, 2004
	Substituted property and specified property	April 15, 2005
88(1)(e.2)	Reference to para. 87(2)(l.21)	March 6, 2003
107(2.11)	Distribution of property by a mutual fund trust	March 15, 2002
108(2)(b)(iv)	Interaction of 108(2)(b) and 39(2)	March 7, 2003
110.6(1)"qualified farm property"(a)(ii)	Beneficiary of a trust	August 20, 2004
110.6(1)"share of the capital stock of a family farm corporation"	Related corporation	July 29, 2002
115.2(2)(c)	Application of s. 115.2 to non-resident partners	June 4, 2002
115.2(2)	Application of s. 115.2 for corporate filing purposes (s. 150)	November 26, 2002
119	Interaction of s. 119 and Alternative Minimum Tax	September 9, 2004
126(2)	Foreign tax credit administrative practices	February 21, 2003
127(9)"pre-production mining expenditure"	Possible allowance of those renounced under a flow-through share agreement	December 8, 2004

Reproduced at section no.	Subject	Date
127.4(1)"original acquisition"	Convertible LSVCC shares	May 13, 2004
128.3	Deferral of deemed disposition on taxpayer emigration	June 2, 2003
130(3) [History annotation]	Application of earlier amendment	March 12, 2003
132(7)	Saving provision for non-resident owned trust	November 26, 2004
132.11(4)	Subsec. to apply for the purpose of 248(1)"disposition" in limited circumstances	March 7, 2003
142.2(1)"mark-to-market property"	Exemption where control is being acquired	July 25, 2002146(8.1)
	Deemed disposition on losing prescribed-property status	August 14, 2002
146(8.1)	Rollover of deceased's RRSP to acquire annuity	April 20, 2005
147.2(2)	Regulatory exception re fixed-cost-shared plan	August 19, 2002
149(1)(d.5)	Tax-exempt status of amalgamated corporation	May 5, 2004
149(1.11)	Application of 149(1.11) on amalgamation	December 6, 2004
163.2(10)	Penalty re third-party misrepresentations: prescribed percentages for valuation errors	July 11, 2000
181.2(3)	Application of Large Corporations Tax to joint debt	August 6, 1997
181.2(4)(d.1)	Debt of "eligible partnerships"	May 25, 2004
186.1(b)(vii)	Part IV tax and registered securities dealers	January 18, 2002
212(13.3)	Property held by authorized foreign bank	July 13, 2001
216(4)	Requirement for non-resident to post security	June 17, 1996
241(4)	Transfer of SIN and business numbers to nominee	March 17, 1999
	Information used in administering *Children's Special Allowances Act*	October 12, 2004
248(1)"short-term preferred share"	Exclusion of certain shares	May 11, 2005
248(1)"subsidiary wholly-owned corporation"	Interaction with 138(11.94)	November 5, 2004
Reg. 301(1)	Life annuity contracts	September 12, 2002
Reg. 304(1)(c)(iv)(B)(II)	Eligibility of *alter ego* trust	July 29, 2002
Reg. 304(1)(c)(iv)(B)	Last survivor annuity contracts	June 27, 2003
Reg. 1403(8)	Tax reserves for life insurance policies	December 1, 1999
Reg. 2411(4)A(a)	Exclusion of taxable dividends	February 11, 2003
Reg. 4802(1)(c.2)	Additional prescribed investor	October 30, 2002; October 16, 2003
Reg. 5907(1)"earnings"(a)(iii)	To be read without reference to ITA 18(4)	May 16, 2005
Reg. 6204(2)	Prescribed shares	March 30, 2005
Reg. 9002	Prescribed property	July 29, 2002
	Shares of stock exchanges	March 21, 2001; October 30, 2000; September 14, 2000; August 21, 2000

TAX RATES AND CREDITS

These tables provided by KPMG LLP[1]

INDIVIDUALS

FEDERAL AND PROVINCIAL/TERRITORIAL INCOME TAX RATES AND BRACKETS FOR 2005 AND 2006[a]

	Tax Rates	Tax Brackets	Surtax Rate	Surtax Threshold
Federal[b]	16.0%	Up to $35,595		
	22.0	35,596–71,190		
	26.0	71,191–115,739		
	29.0	115,740 and over		
British Columbia[c]	6.05%	Up to $33,061		
	9.15	33,062–66,123		
	11.7	66,124–75,917		
	13.7	75,918–92,185		
	14.7	92,186 and over		
Alberta	10.0%	All income		
Saskatchewan[d]	11.0%	Up to $36,770		
	13.0	36,771–105,056		
	15.0	105,057 and over		
Manitoba[e]	10.9%	Up to $30,544		
	14.0	30,545–65,000		
	17.4	65,001 and over		
Ontario[f]	6.05%	Up to $34,009		
	9.15	34,010–68,020	20%	$3,929
	11.16	68,021 and over	36	4,957
Québec[g]	16.0%	Up to $28,030		
	20.0	28,031–56,070		
	24.0	56,071 and over		
New Brunswick[h]	9.68%	Up to $32,731		
	14.82	32,732–65,462		
	16.52	65,463–106,427		
	17.84	106,428 and over		
Nova Scotia[i]	8.79%	Up to $29,590		
	14.95	29,591–59,180		
	16.67	59,181–93,000		
	17.50	93,001 and over	10%	$10,000
Prince Edward Island[i]	9.8%	Up to $30,754		
	13.8	30,755–61,509		
	16.7	61,510 and over	10%	$5,200
Newfoundland[i]	10.57%	Up to $29,590		
	16.16	29,591–59,180		
	18.02	59,181 and over	9%	$7,032
Northwest Territories	5.90%	Up to $33,811		
	8.60	33,812–67,622		
	12.20	67,623–109,939		
	14.05	109,940 and over		

[1]Yukon, NWT and Nunavut information was obtained through the territorial government websites.

	Tax Rates	Tax Brackets	Surtax Rate	Surtax Threshold
Nunavut	4.0%	Up to $35,595		
	7.0	35,596–71,190		
	9.0	71,191–115,739		
	11.5	115,740 and over		
Yukon	7.04%	Up to $35,595		
	9.68	35,596–71,190		
	11.44	71,191–115,739	5%	$6,000
	12.76	115,740 and over		

Notes:

a The tax and surtax rates indicated in the table apply to both 2005 and 2006, with the exception of Manitoba's middle tax rate which will decrease for 2006 as outlined in note (e) below. The tax brackets and surtax thresholds indicated in the table are those that apply for 2005. Indexation of these amounts will take place for 2006 as outlined in the notes below.

b The 2006 federal tax brackets will be indexed for inflation once the inflation factor for the year is determined. The inflation factor is based on the change in the average federal inflation rate over the 12-month period ending September 30 of the previous year compared to the change in the rate for the same period of the year prior to that. The federal inflation factor is 1.7% for 2005.

c British Columbia indexes its tax brackets using the same formula as that used federally, but uses the applicable provincial inflation rate rather than the federal rate in the calculation. The province's inflation factor is 1.8% for 2005.

d Saskatchewan indexes its tax brackets using the same formula as that used federally. Starting in 2005, the indexation factor to be used in the formula will be set by the province each fall.

e Manitoba's middle tax rate will decrease from 14% in 2005 to 13.5% in 2006. The province does not index its tax brackets.

f Ontario's tax brackets and surtax thresholds are indexed for inflation based on the federal formula, but using the provincial inflation rate rather than the federal rate in the calculation. The province's inflation factor is 1.9% for 2005.

Ontario-resident individuals with taxable income over $20,000 are also required to pay a Health Premium. The premium levels are graduated based on taxable income, with the maximum premium of $900 being reached at approximately $200,000 of taxable income.

g Québec indexes its tax brackets using the same formula as that used federally, but uses the applicable provincial inflation rate, calculated excluding changes in liquor and tobacco taxes, rather than the federal rate in the calculation. The province's inflation factor is 1.427% for 2005.

h Although New Brunswick did not index its tax brackets for 2004, it is reinstating its indexation formula for 2005, which is based on the federal formula and inflation rate. The province's inflation factor is therefore 1.7% for 2005.

i Nova Scotia, Prince Edward Island and Newfoundland do not index their tax brackets or surtax thresholds.

2005 FEDERAL AND PROVINCIAL/TERRITORIAL NON-REFUNDABLE TAX CREDIT RATES AND AMOUNTS[a]

	Federal[b]	B.C.[c]	Alta.[d]	Sask.[e]	Man.[f]
Tax rate applicable to credits	16.00%	6.05%	10.00%	11.00%	10.90%
Basic personal	$8,149	$8,676	$14,523	$8,404	$7,634
Spousal/partner and wholly dependent person[j]	6,920	7,429	14,523	8,404	6,483
Income threshold	*692*	*743*	—	*840*	*648*
Age 65 and over[k]	3,979	3,890	4,074	3,979	3,728
Income threshold	*29,619*	*28,962*	*30,331*	*29,619*	*27,749*
Age supplement	—	—	—	1,051	—
Disability[k]	6,596	6,507	6,755	6,596	6,180
Dependants:					
18 and under	—	—	—	2,626	—
Under 18 and infirm[l]	3,848	3,796	3,940	3,848	3,605
18 and over and infirm	3,848	3,796	3,940	3,848	3,605
Income threshold	*5,460*	*6,047*	*5,591*	*5,460*	*5,115*
Caregiver[m]	3,848	3,796	3,940	3,848	3,605
Income threshold	*13,141*	*12,849*	*13,457*	*13,141*	*12,312*
Pension[k]	1,000	1,000	1,126	1,000	1,000
Medical threshold[n]	1,844	1,804	1,889	1,844	1,728
Canada Pension Plan (max)[o]	1,861	1,861	1,861	1,861	1,861
Employment Insurance (max)	761	761	761	761	761
Education[p]					
Full time — per month	400	200	450	400	400
Part time — per month	120	60	135	120	120
Tuition fees and interest on student loans[p]					
Charitable donations[q]					
Credit rate on first $200	16.00%	6.05%	10.00%	11.00%	10.90%
Credit rate on balance	29.00	14.70	12.75	15.00	17.40

	Ont.[g]	N.B.[h]	N.S.[i]	P.E.I.[i]	Nfld.[i]
Tax rate applicable to credits	6.05%	9.68%	8.79%	9.80%	10.57%
Basic personal	$8,196	$7,888	$7,231	$7,412	$7,410
Spousal/partner and wholly dependent person[j]	6,960	6,698	6,140	6,294	6,055
Income threshold	*696*	*670*	*614*	*629*	*606*
Age 65 and over[k]	4,002	3,852	3,531	3,619	3,482
Income threshold	*29,793*	*28,672*	*26,284*	*26,941*	*25,921*
Age supplement	—	—	—	—	—
Disability[k]	6,622	6,386	4,293	5,400	5,000
Dependants:					
18 and under	—	—	—	—	—
Under 18 and infirm[l]	3,863	3,725	2,941	3,015	2,353
18 and over and infirm	3,863	3,725	2,386	2,446	2,353
Income threshold	*5,492*	*5,285*	*4,845*	*4,966*	*5,057*
Caregiver[m]	3,863	3,725	4,176	2,446	2,353
Income threshold	*13,218*	*12,721*	*11,661*	*11,953*	*11,500*
Pension[k]	1,133	1,000	1,000	1,000	1,000
Medical threshold[n]	1,855	1,785	1,637	1,678	1,614
Canada Pension Plan (max)[o]	1,861	1,861	1,861	1,861	1,861
Employment Insurance (max)	761	761	761	761	761
Education[p]					
Full time — per month	441	400	200	200	200
Part time — per month	132	120	60	60	60
Tuition fees and interest on student loans[p]					
Charitable donations[q]					
Credit rate on first $200	6.05%	9.68%	8.79%	9.80%	10.57%
Credit rate on balance	11.16	17.84	17.50	16.70	18.02

2005 FEDERAL AND PROVINCIAL/TERRITORIAL NON-REFUNDABLE TAX CREDIT RATES AND AMOUNTS[a] (cont'd)

	NWT	Nunavut	Yukon
Tax rate applicable to credits	5.90%	4.00%	7.04%
Basic personal	$11,609	$10,674	$8,148
Spousal/partner and wholly dependent person[j]	11,609	10,674	6,919
Income threshold			*692*
Age 65 and over[k]	5,678	8,005	3,979
Income threshold	*29,619*	*29,619*	*29,619*
Age supplement	—	—	—
Disability[k]	9,414	10,674	6,596
Dependants:			
18 and under	—	—	—
Under 18 and infirm[l]	3,848	3,848	3,848
18 and over and infirm	3,848	3,848	3,848
Income threshold	*5,460*	*5,460*	*5,460*
Caregiver[m]	3,848	3,848	3,848
Income threshold	*13,141*	*13,141*	*13,141*
Pension[k]	1,000	1,000	1,000
Medical threshold[n]	1,844	1,844	1,844
Canada Pension Plan (max)[o]	1,861	1,861	1,861
Employment Insurance (max)	761	761	761
Education[p]			
Full time — per month	400	400	400
Part time — per month	120	120	120
Tuition fees and interest on student loans[p]			
Charitable donations[q]			
Credit rate on first $200	5.90%	4.00%	7.04%
Credit rate on balance	14.05	11.50	12.76

Notes:

a The table shows the dollar amounts of all federal and provincial non-refundable credits for 2005 (except for Québec's, which are outlined in the next table). In order to determine the credit value, each dollar amount must be multiplied by the tax rate indicated, which is the lowest tax rate applicable in the particular jurisdiction. For example, the federal basic personal credit amount of $8,149 is multiplied by 16% to determine the credit value of $1,304.

Income earned by the taxpayer or dependant, as applicable, in excess of the income thresholds shown in the table serves to reduce the availability of the credit on a dollar-for-dollar basis. The only exception to this is the age credit, which is reduced by 15% of the taxpayer's income in excess of the threshold.

b The federal tax credits, with the exception of the pension and education amounts, are indexed using the inflation factor used to index the federal tax brackets. The federal inflation factor is based on the change in the average inflation rate over the 12-month period ending September 30 of the previous year compared to the change in the rate for the same period of the year prior to that. The federal inflation factor is 1.7% for 2005.

The 2005 federal budget introduced a new credit for up to $10,000 per child of eligible adoption expenses, effective for the 2005 taxation year. However, this measure has not yet been included in a federal bill.

In addition to the indexation increases in the federal basic personal credit and the spousal/partner and wholly dependent person credit that will be applicable for 2006 and future years, these credits will also be increased each year by the following amounts:

Basic Personal Credit			Spousal/Partner Credit		
2006	$100		2006	$85	
2007	100		2007	85	
2008	400		2008	340	
2009	600	(or a greater amount needed to bring credit balance to $10,000)	2009	510	(or a greater amount needed to bring credit balance to $8,500)

c British Columbia's tax credits, with the exception of the pension and education amounts, are indexed based on the same formula as that used federally, but using the provincial inflation rate rather than the federal rate in the calculation. The province's inflation factor is 1.8% for 2005.

d Alberta's tax credits are indexed based on the same formula as that used federally, but using the provincial inflation rate rather than the federal inflation rate in the calculation. The province's inflation factor is 1.3% for 2005.

e Saskatchewan's tax credits equal the federal amounts, except for its basic and spousal/partner credits. These credits were previously set by the province and have been indexed based on the federal inflation factor of 1.7% for 2005. Saskatchewan has also instituted two additional credits: one for seniors age 65 and over and one for dependent children 18 years of age and under. These tax credits are also indexed using the federal inflation factor of 1.7% for 2005. Starting in 2005, the indexation factor to be used in the formula will be set by the province each fall and will not necessarily equal the factor that is used federally.

f Manitoba does not index its credits, therefore the 2005 credit amounts remain the same as those applicable in 2004. However, the basic personal credit will be increased by $100 in 2006.

g Ontario's tax credits are indexed based on the federal formula, but using the provincial inflation rate rather than the federal rate in the calculation. The province's inflation factor is 1.9% for 2005.

h New Brunswick did not index its credits for 2004, but the province is reinstating its indexation formula for 2005, which is based on the federal formula and inflation rate. The province's inflation factor is therefore 1.7% for 2005.

i Nova Scotia, Prince Edward Island and Newfoundland do not index their credit amounts.

j The spousal/partner credit may be claimed for a common-law partner as well as for a spouse. Taxpayers who are single, divorced or separated, and who support a dependant in their home may claim the wholly dependent person credit. The credit can be claimed for dependants under the age of 18 who are related to the taxpayer, for the taxpayer's parents or grandparents, or for any other infirm person who is related to the taxpayer.

k The age, disability and pension credits are transferable to a spouse or partner. The amounts available for transfer are reduced by the excess of the spouse's or partner's income over the basic personal credit amount. The disability credit is also transferable to a supporting person other than a spouse or partner; however, in this case, the amount of the credit is reduced by the excess of the disabled person's income over the basic personal credit amount.

l The tax credit for a disabled dependant under the age of 18 is reduced by certain child and attendant care expenses claimed in respect of the dependant.

m The caregiver credit is available to taxpayers who care for a related dependant in their home. The dependant must be over the age of 18 and infirm, or, in the case of a parent or grandparent, over the age of 65.

n The medical credit is calculated based on qualified medical expenses exceeding 3% of net income or the threshold shown in the table, whichever is less. Medical expenses incurred by both spouses/partners and by their children under the age of 18 may be totalled and claimed by either spouse/partner. A taxpayer may also claim up to $5,000 of medical expenses in respect of a dependant who is 18 or older, but the expenses must be reduced by the lesser of 3% of the dependant's net income or the medical threshold. The 2005 budget proposes to increase the $5,000 limit to $10,000 for 2005 and subseqeuent years; however, this increase has not yet been included in a federal bill. A number of the provinces have indicated that they will also increase their limit to $10,000.

o Self-employed taxpayers can deduct 50% of their Canada or Québec Pension Plan premiums in calculating net income. The balance is claimed as a non-refundable tax credit.

p Amounts paid for tuition and mandatory ancillary fees in respect of the calendar year are eligible for a federal and provincial tax credit. Both the tuition and education credits are transferable to a spouse or common-law partner, parent or grandparent. The maximum amount transferable is $5,000 (indexed for some provinces) less the excess of the student's income over the basic personal credit amount. Any amounts not transferred may be carried forward indefinitely by the student.

Interest paid on student loans is eligible for both a federal and provincial credit. The credit must be claimed by the student, but can be carried forward for five years.

q Charitable donations made by both spouses/partners may be totalled and claimed by either person. The maximum amount of donations that may be claimed in a year is 75% of net income. However, all donations may be carried forward for five years if they are not claimed in the year made.

2005 QUÉBEC PERSONAL TAX CREDIT RATE AND AMOUNTS

Tax rate applied to credits[a]	20.0%
Basic amount	
Amount of recognized essential needs[b]	$6,365
Minimum amount used to calculate the complementary amount[b]	2,965
Amounts for dependants	
Child engaged in full-time professional training or post-secondary studies[c]	1,780
Child over 17 who is a full-time student[d]:	
• Child designated as the 1st dependent child	2,805
• Other children	2,585
• Single-parent family	1,400
Other dependants over 17[e]	2,585
Infirm dependants over 17[e, q]	6,365
Person living alone or with a dependant[f]	1,130
Age 65 and over[f]	2,200
Disability[g, q]	2,200
Pension[f, h]	1,000
Québec Pension Plan[i] (max)	1,861
Employment Insurance (max)	761
Health Services Fund (max)	1,000
Union and professional dues[j]	
Tuition fees and interest paid on student loans[k]	
Medical expenses[l]	
Charitable donations[m]	
Credit rate on first $2,000	20%
Credit rate on balance	24
Refundable credits:	
Treatment of infertility[n]	
Child care expenses[o]	
Home support of elderly persons living alone[p]	
Housing for live-in parents[q]	
Adoption expenses[r]	

Notes:

a Québec's credit rate is applied to the dollar amounts shown in the table to determine the credit value. For example, the person living alone amount of $1,130 is multiplied by 20% to determine the credit value of $226. The Québec credits, with the exception of the age, disability and pension amounts, are indexed using the inflation factor used to index the province's tax brackets. The inflation factor for 2005 is 1.427%.

Many of these credits are income-tested. "Family income" means the total income of both spouses/partners. "Net family income" means the total income of both spouses/partners minus $28,030.

The unused portion of all non-refundable credits may be transferred from one spouse/partner to another, but only after all credits have been taken into account in the calculation of the individual's income tax otherwise payable.

b To maintain the advantages of the flat amount that was previously available under the simplified system, which was eliminated as of 2005, a complementary amount is now added to the amount of recognized essential needs to form the basic amount. For 2005, the new complementary amount is calculated as the greater of $2,965 and the total of the employee's QPP contributions, employment insurance premiums and contributions to the Health Services Fund.

c The amount for a dependent child engaged in full-time professional training or post-secondary studies is available for up to two semesters per year per dependant. It is also available for infirm dependants who are engaged in such activities on a part-time basis. This amount must be reduced by the child's income for the year.

d As of 2005, the credits for dependants apply only to those who are 18 and older and who are full-time students. The credits for dependent children under the age of 18 are replaced with the new child assistance payment.

The amount for the child designated as the first dependant, which can be for any child regardless of the order in which he or she was born, can be claimed only if the taxpayer has no children under the age of 18. The additional amount of $2,585 can then be claimed for each other eligible child. As well, the credit amount of $1,780 for a child engaged in professional training or post-secondary studies may be added to the credits available for children over 17 who are full-time students. If applicable, the single-parent family amount may be added to the amount for the child who is designated as the first dependant. All credit amounts must be reduced by the dependant's income.

e These credits are available if the dependant is related to the taxpayer by blood, marriage or adoption and ordinarily lives with the taxpayer. These amounts must be reduced by the dependant's income.

f The amounts for a person living alone, age 65 and over, and pension income are added together and reduced by 15% of net family income (see note (a)).

g The disability credit is transferable to a supporting person. The amount available for transfer is reduced by any income tax payable by the dependant.

The 2005 budget proposes to increase the amount of the credit to $2,250 for 2006, and to index this amount starting in 2007.

h The pension credit is calculated based on the lesser of eligible pension income and $1,000.

i Self-employed taxpayers can deduct 50% of their Québec or *Canada Pension Plan* contributions in calculating net income. The balance is claimed as a credit.

j The credit for union and professional dues is calculated based on the annual fees paid in the year. The portion of professional dues relating to liability insurance is allowed as a deduction and is not included in calculating the credit.

k The tuition credit is calculated based on tuition, professional examination and mandatory ancillary fees paid for the calendar year. The credit is not transferable, but may be carried forward to future years by the student.

Interest paid on student loans but unclaimed in a particular year may be carried forward indefinitely.

l The medical credit is calculated based on qualified medical expenses in excess of 3% of family income (see note (a)).

m Charitable donations made by both spouses/partners may be totalled and claimed by either person. The maximum amount of donations that may be claimed in a year is 75% of net income. However, all donations may be carried forward for five years if they are not claimed in the year made.

n The costs associated with artificial insemination and *in vitro* fertilization paid during the year by an individual or his or her spouse/partner will give rise to a refundable credit of 30% of all eligible expenses to a maximum annual credit of $6,000 per couple.

o Child care expenses paid in the year are eligible for a refundable tax credit at a rate that varies from 26% to 75%. The rate of credit falls as net family income rises (see note (a)).

p The refundable credit for home support of persons age 70 and over living alone is equal to 23% of eligible expenses paid to obtain certain home support services. The credit is capped at $2,760. If the expense also qualifies for the medical expense credit, it cannot be claimed for this credit as well.

q The refundable tax credit with respect to housing of a parent is $550 for each live-in parent aged 70 or over at the end of the year. Starting in 2006, this credit, along with the non-refundable credit for infirm dependants over the age of 17 and the transferable portion of the disability credit, will all be replaced by one refundable credit for natural caregivers of related adults. This new refundable credit of up to $1,000 per adult will consist of a basic amount of $550 and a supplement of $450, reduced by the eligible relative's income. The reduction rate will be 16% for every dollar of income over $20,000.

r A refundable credit is available equal to 30% of specified adoption expenses, to a maximum credit of $6,000.

CORPORATIONS

2005 FEDERAL AND PROVINCIAL/TERRITORIAL TAX RATES FOR INCOME EARNED BY A NON-CANADIAN CONTROLLED PRIVATE CORPORATION (CCPC) EFFECTIVE JANUARY 1, 2005[a]

	General M&P Income	General Active Business Income[b]	Investment Income[c]
Federal rates			
General corporate rate	38.0%	38.0%	38.0%
Federal abatement	(10.0)	(10.0)	(10.0)
	28.0	28.0	28.0
Surtax[d]	1.1	1.1	1.1
	29.1	29.1	29.1
Rate reductions[e]	(7.0)	(7.0)	(7.0)
	22.1	22.1	22.1
Provincial rates			
British Columbia	13.5%	13.5%	13.5%
Alberta	11.5	11.5	11.5
Saskatchewan	10.0	17.0	17.0
Manitoba[f]	15.0	15.0	15.0
Ontario[g]	12.0	14.0	14.0
Québec[h]	8.9	8.9	16.2
New Brunswick	13.0	13.0	13.0
Nova Scotia	16.0	16.0	16.0
Prince Edward Island[i]	7.5/16.0	16.0	16.0
Newfoundland	5.0	14.0	14.0
Northwest Territories	14.0	14.0	14.0
Nunavut	12.0	12.0	12.0
Yukon	2.5	15.0	15.0

See the Notes on p. xxviii for the actual dates on which these rates and other rate changes are effective.
All rates must be prorated for taxation years that straddle the effective date of the changes.

2005 COMBINED FEDERAL AND PROVINCIAL/TERRITORIAL TAX RATES FOR INCOME EARNED BY A NON-CANADIAN CONTROLLED PRIVATE CORPORATION (CCPC) EFFECTIVE JANUARY 1, 2005[a]

	General M&P Income	General Active Business Income[b]	Investment Income[c]
British Columbia	35.6%	35.6%	35.6%
Alberta	33.6	33.6	33.6
Saskatchewan	32.1	39.1	39.1
Manitoba[f]	37.1	37.1	37.1
Ontario[g]	34.1	36.1	36.1
Québec[h]	31.0	31.0	38.3
New Brunswick	35.1	35.1	35.1
Nova Scotia	38.1	38.1	38.1
Prince Edward Island[i]	29.6/38.1	38.1	38.1
Newfoundland	27.1	36.1	36.1
Northwest Territories	36.1	36.1	36.1
Nunavut	34.1	34.1	34.1
Yukon	24.6	37.1	37.1

See the Notes on p. xxviii for the actual dates on which these rates and other rate changes are effective.
All rates must be prorated for taxation years that straddle the effective date of the changes.

2006 FEDERAL AND PROVINCIAL/TERRITORIAL TAX RATES FOR INCOME EARNED BY A NON-CANADIAN CONTROLLED PRIVATE CORPORATION (CCPC) EFFECTIVE JANUARY 1, 2006[a]

	General M&P Income	General Active Business Income[b]	Investment Income[c]
Federal rates			
General corporate rate	38.0%	38.0%	38.0%
Less federal abatement	(10.0)	(10.0)	(10.0)
	28.0	28.0	28.0
Surtax[d]	1.1	1.1	1.1
	29.1	29.1	29.1
Rate reductions[e]	(7.0)	(7.0)	(7.0)
	22.1	22.1	22.1
Provincial rates			
British Columbia	13.5%	13.5%	13.5%
Alberta	11.5	11.5	11.5
Saskatchewan	10.0	17.0	17.0
Manitoba[f]	15.0/14.5	15.0/14.5	15.0/14.5
Ontario[g]	12.0	14.0	14.0
Québec[h]	9.9	9.9	16.2
New Brunswick	13.0	13.0	13.0
Nova Scotia	16.0	16.0	16.0
Prince Edward Island[i]	16.0	16.0	16.0
Newfoundland	5.0	14.0	14.0
Northwest Territories	14.0	14.0	14.0
Nunuavut	12.0	12.0	12.0
Yukon	2.5	15.0	15.0

See the Notes on p. xxviii for the actual dates on which these rates and other rate changes are effective.
All rates must be prorated for taxation years that straddle the effective date of the changes.

2006 COMBINED FEDERAL AND PROVINCIAL/TERRITORIAL TAX RATES FOR INCOME EARNED BY A NON-CANADIAN CONTROLLED PRIVATE CORPORATION (CCPC) EFFECTIVE JANUARY 1, 2006[a]

	General M&P Income	General Active Business Income	Investment Income[b]
British Columbia	35.6%	35.6%	35.6%
Alberta	33.6	33.6	33.6
Saskatchewan	32.1	39.1	39.1
Manitoba[f]	37.1/36.6	37.1/36.6	37.1/36.6
Ontario[g]	34.1	36.1	36.1
Québec[h]	32.0	32.0	38.3
New Brunswick	35.1	35.1	35.1
Nova Scotia	38.1	38.1	38.1
Prince Edward Island[i]	38.1	38.1	38.1
Newfoundland	27.1	36.1	36.1
Northwest Territories	36.1	36.1	36.1
Nunavut	34.1	34.1	34.1
Yukon	24.6	37.1	37.1

See the following Notes for the actual dates on which these rates and other rate changes are effective.
All rates must be prorated for taxation years that straddle the effective date of the changes.

Notes:

a The federal and provincial/territorial tax rates shown in the tables apply to income earned by corporations other than Canadian-controlled private corporations (CCPCs). In general, this includes public companies, and their subsidiaries, that are resident in Canada, and Canadian-resident private companies that are controlled by non-residents. For tax rates applicable to CCPCs, see the following tables and their related Notes.

b The 2005 federal budget announced that the general corporate rate (prior to the application of the surtax) would gradually be reduced from 21% to 19%, with the first reduction to 20.5% applying January 1, 2008, the next reduction to 20% applying January 1, 2009 and the final reduction to 19% applying January 1, 2010. However, the government subsequently announced that this planned reduction will not in fact take place, and will therefore remove the applicable provisions from the budget legislation.

c The federal and provincial/territorial tax rates shown in the tables apply to investment income earned by non-CCPCs other than capital gains and dividends received from Canadian corporations. The rates that apply to capital gains are one-half of the rates shown in the tables. Dividends received from Canadian corporations are deductible in computing regular Part I tax, but may be subject to Part IV tax, calculated at a rate of $33^{1/3}\%$.

d A 4% corporate surtax is levied on the 28% federal tax before applying any other rate reductions or credits.

The 2005 federal budget announced that the surtax would be eliminated for all corporations effective January 1, 2008. However, the government subsequently announced that this planned elimination will only apply to small and medium-sized corporations, based on the corporation's (and all associated corporations') taxable capital calculated for Large Corporations Tax purposes. Corporations with taxable capital of $50 million or less will no longer be subject to the surtax effective January 1, 2008. Corporations with taxable capital of $75 million or more will continue to pay the surtax. The surtax rate will gradually increase from 0% up to 4% for corporations with taxable capital between $50 and $75 million.

e The federal rate reduction applicable to general active business income is 7% for 2004 and subsequent years. Income that is eligible for other reductions or credits, such as manufacturing and processing (M&P) income, is not eligible for this rate reduction.

Income from resource activities is also eligible for rate reductions over a five-year period commencing in 2003. For 2005, the general corporate rate applicable to such income decreased from 26% to 25%. It will further decrease to 23% for 2006 and to 21% for 2007.

f Manitoba's general corporate rate decreased from 15.5% to 15% on January 1, 2005. The province's 2005 budget announced that the general rate would further decrease to 14.5% on July 1, 2006 and to 14% on July 1, 2007.

g Ontario's general corporate rate was previously legislated to decrease from 11% to 9.5% for 2005 and to 8% for 2006. However, these rate reductions were cancelled, and the general rate was increased to 14% for 2004 and subsequent years.

Ontario's M&P rate was legislated to decrease from 10% to 9% for 2005 and to 8% for 2006. However, these rate reductions were also cancelled, and the M&P rate was increased to 12% for 2004 and subsequent years.

h Québec's 2005 budget announced that the province's general corporate tax rate applicable to active business income would increase from 8.9% to 9.9% on January 1, 2006. It will remain at this rate until January 1, 2008, at which time it will further increase to 11.4%. It will then increase to 11.9% on January 1, 2009.

i Prince Edward Island's 2005 budget announced that the province's rate reduction applicable to M&P income would be eliminated on April 1, 2005.

2005 FEDERAL AND PROVINCIAL/TERRITORIAL INCOME TAX RATES FOR INCOME EARNED BY A CANADIAN-CONTROLLED PRIVATE CORPORATION (CCPC) EFFECTIVE JANUARY 1, 2005[a]

	Small Business Income up to $300,000[b]	General Active Business Income[c]	Investment Income[d]
Federal rates			
General corporate rate	38.0%	38.0%	38.0%
Less federal abatement	(10.0)	(10.0)	(10.0)
	28.0	28.0	28.0
Surtax[e]	1.1	1.1	1.1
	29.1	29.1	29.1
Rate reductions[f]	(16.0)	(7.0)	0.0
Refundable tax[g]	0.0	0.0	6.7
	13.1	22.1	35.8
Provincial rates			
British Columbia	4.5%	13.5%	13.5%
Alberta	3.0	11.5	11.5
Saskatchewan[h]	5.0	17.0	17.0
Manitoba[i]	5.0	15.0	15.0
Ontario[j]	5.5	14.0	14.0
Québec[k]	8.9	8.9	16.2
New Brunswick[l]	2.5/2.0	13.0	13.0
Nova Scotia	5.0	16.0	16.0
Prince Edward Island[m]	7.5/6.5	16.0	16.0
Newfoundland	5.0	14.0	14.0
Northwest Territories	4.0	14.0	14.0
Nunavut	4.0	12.0	12.0
Yukon	4.0	15.0	15.0

See the Notes on p. xxxi for the actual dates on which these rates and other rate changes are effective.
All rates must be prorated for taxation years that straddle the effective date of the changes.

2005 COMBINED FEDERAL AND PROVINCIAL/TERRITORIAL TAX RATES FOR INCOME EARNED BY A CANADIAN-CONTROLLED PRIVATE CORPORATION (CCPC) EFFECTIVE JANUARY 1, 2005[a]

	Small Business Income up to $300,000[b]	General Active Business Income[c]	Investment Income[d]
British Columbia	17.6%	35.6%	49.3%
Alberta	16.1	33.6	47.3
Saskatchewan[h]	18.1	39.1	52.8
Manitoba[i]	18.1	37.1	50.8
Ontario[j]	18.6	36.1	49.8
Québec[k]	22.0	31.0	52.0
New Brunswick[l]	15.6/15.1	35.1	48.8
Nova Scotia	18.1	38.1	51.8
Prince Edward Island[m]	20.6/19.6	38.1	51.8
Newfoundland	18.1	36.1	49.8
Northwest Territories	17.1	36.1	49.8
Nunavut	17.1	34.1	47.8
Yukon	17.1	37.1	50.8

See the Notes on p. xxxi for the actual dates on which these rates and other rate changes are effective.
All rates must be prorated for taxation years that straddle the effective date of the changes.

2006 FEDERAL AND PROVINCIAL/TERRITORIAL INCOME TAX RATES FOR INCOME EARNED BY A CANADIAN-CONTROLLED PRIVATE CORPORATION (CCPC) EFFECTIVE JANUARY 1, 2006[a]

	Small Business Income up to $300,000[b]	General Active Business Income[c]	Investment Income[d]
Federal rates			
General corporate rate	38.0%	38.0%	38.0%
Less federal abatement	(10.0)	(10.0)	(10.0)
	28.0	28.0	28.0
Surtax[e]	1.1	1.1	1.1
	29.1	29.1	29.1
Rate reductions[f]	(16.0)	(7.0)	0.0
Refundable tax[g]	0.0	0.0	6.7
	13.1	22.1	35.8
Provincial rates			
British Columbia	4.5%	13.5%	13.5%
Alberta	3.0	11.5	11.5
Saskatchewan[h]	5.0	17.0	17.0
Manitoba[i]	4.5	15.0/14.5	15.0/14.5
Ontario[j]	5.5	14.0	14.0
Québec[k]	8.5	9.9	16.2
New Brunswick[l]	2.0/1.5	13.0	13.0
Nova Scotia	5.0	16.0	16.0
Prince Edward Island[m]	6.5	16.0	16.0
Newfoundland	5.0	14.0	14.0
Northwest Territories	4.0	14.0	14.0
Nunavut	4.0	12.0	12.0
Yukon	4.0	15.0	15.0

See the Notes on p. xxxi for the actual dates on which these rates and other rate changes are effective.
All rates must be prorated for taxation years that straddle the effective date of the changes.

2006 COMBINED FEDERAL AND PROVINCIAL/TERRITORIAL TAX RATES FOR INCOME EARNED BY A CANADIAN-CONTROLLED PRIVATE CORPORATION (CCPC) EFFECTIVE JANUARY 1, 2006[a]

	Small Business Income up to $300,000[b]	General Active Business Income[c]	Investment Income[d]
British Columbia	17.6%	35.6%	49.3%
Alberta	16.1	33.6	47.3
Saskatchewan[h]	18.1	39.1	52.8
Manitoba[i]	17.6	37.1/36.6	50.8/50.3
Ontario[j]	18.6	36.1	49.8
Québec[k]	21.6	32.0	52.0
New Brunswick[l]	15.1/14.6	35.1	48.8
Nova Scotia	18.1	38.1	51.8
Prince Edward Island[m]	19.6	38.1	51.8
Newfoundland	18.1	36.1	49.8
Northwest Territories	17.1	36.1	49.8
Nunavut	17.1	34.1	47.8
Yukon	17.1	37.1	50.8

See the following Notes for the actual dates on which these rates and other rate changes are effective.
All rates must be prorated for taxation years that straddle the effective date of the changes.

Notes:

a The federal and provincial/territorial tax rates shown in the tables apply to income earned by a Canadian-controlled private corporation (CCPC). For tax rates applicable to non-CCPCs, see the four tables beginning on p. xxvi and their related Notes.

b See the table entitled "Federal and Provincial/Territorial Small Business Income Thresholds for 2003 to 2007" for changes in the federal and provincial/territorial small business income thresholds during this period.

For those provinces that have small business income thresholds in excess of $300,000 (British Columbia, Alberta, Manitoba, Ontario, Québec, New Brunswick and Nova Scotia), the combined federal and provincial rates for small business income up to $300,000 will also apply to active business income earned between $300,000 and the provincial threshold.

c For federal purposes, the general corporate tax rate applies to active business income earned in excess of $300,000, and for provincial/territorial purposes the general rates apply to income in excess of the applicable small business income threshold.

The 2005 federal budget announced that the general corporate rate (prior to the application of the surtax) would gradually be reduced from 21% to 19%, with the first reduction to 20.5% applying January 1, 2008, the next reduction to 20% applying January 1, 2009 and the final reduction to 19% applying January 1, 2010. However, the government subsequently announced that this planned reduction will not in fact take place, and therefore removed the applicable provisions from the budget legislation.

CCPCs that earn income from manufacturing and processing (M&P) activities are subject to the same rates as those that apply to non-CCPCs (see the four tables beginning on p. xxvi and their related Notes).

d The federal and provincial/territorial tax rates shown in the table apply to investment income earned by a CCPC other than capital gains and dividends received from Canadian corporations. The rates that apply to capital gains are one-half of the rates shown in the table. Dividends received from Canadian corporations are deductible in computing regular Part I tax, but may be subject to Part IV tax, calculated at a rate of $33^{1/3}$%.

e A 4% corporate surtax is levied on the 28% federal tax before applying any other rate reductions or credits.

The 2005 federal budget announced that the surtax would be eliminated for all corporations effective January 1, 2008. However, the government subsequently announced that this planned elimination will only apply to small and medium-sized corporations, based on the corporation's (and all associated corporations') taxable capital calculated for Large Corporations Tax purposes. Corporations with taxable capital of $50 million or less will no longer be subject to the surtax effective January 1, 2008. Corporations with taxable capital of $75 million or more will continue to pay the surtax. The surtax rate will gradually increase from 0% up to 4% for corporations with taxable capital between $50 and $75 million.

f Active business income earned by a CCPC up to the applicable small business income threshold of $300,000 is eligible for the 16% small business deduction.

The federal rate reduction applicable to general active business income is 7% for 2004 and subsequent years. Income that is eligible for other reductions or credits, such as M&P and investment income, is not eligible for this rate reduction. For 2004 and subsequent years, the federal tax rate applicable to all active business income over the small business threshold is 22.1%.

Income from resource activities is also eligible for rate reductions over a five-year period commencing in 2003. For 2005, the general corporate rate applicable to such income decreased from 26% to 25%. It will further decrease to 23% for 2006 and to 21% for 2007.

g The refundable tax of $6^{2/3}$% of a CCPC's investment income and capital gains, as well as 20% of such income that is subject to regular Part I tax, is included in the corporation's Refundable Dividend Tax on Hand (RDTOH) account. When taxable dividends are paid out to shareholders, a dividend refund equal to the lesser of $33^{1/3}$% of the dividends paid or the balance in the RDTOH account is refunded to the corporation.

h Saskatchewan's 2003 budget announced that the province's small business rate will decrease from 5.5% to 5% on January 1, 2005.

i Manitoba's 2005 budget announced that the province's small business rate would decrease from 5% to 4.5% on January 1, 2006 and to 4% on January 1, 2007.

Manitoba's general corporate rate decreased from 15.5% to 15% on January 1, 2005. The province's 2005 budget announced that the general rate would further decrease to 14.5% on July 1, 2006 and to 14% on July 1, 2007.

j Ontario's general corporate rate was previously legislated to decrease from 11% to 9.5% for 2005 and to 8% for 2006. However, these rate reductions were cancelled, and the general rate was increased to 14% for 2004 and subsequent years.

Ontario's small business rate was legislated to decrease from 5% to 4% for 2005. The small business rate reductions were also cancelled, and the 2003 rate of 5.5% is maintained for 2004 and subsequent years.

Ontario levies a surtax at a rate of 4.667% on CCPCs claiming the Ontario small business deduction in order to gradually reduce the benefit of the deduction where taxable income exceeds the small business income threshold. With the increase in the small business limit to $400,000 applicable to 2004 and subsequent years, the phase-out range for the application of the surtax is also increased to between $400,000 and approximately $1,128,000.

k Québec's 2005 budget announced that the province's general corporate tax rate applicable to active business income would increase from 8.9% to 9.9% on January 1, 2006. It will remain at this rate until January 1, 2008, at which time it will further increase to 11.4%. It will then increase to 11.9% on January 1, 2009.

In order to ensure that these rate increases do not impact small businesses, the province also announced that it would introduce a small business deduction starting January 1, 2006 such that the small business rate is maintained at 8.5%. The deduction is therefore equal to 1.4% for 2006 and 2007, 2.9% for 2008, and 3.4% for 2009.

l New Brunswick's 2005 budget announced that the province would decrease its small business rate from 2.5% to 2% on July 1, 2005, and will further reduce it to 1.5% on July 1, 2006 and to 1% on July 1, 2007.

m Prince Edward Island announced in its 2005 budget that its small business rate would decrease from 7.5% to 6.5% on April 1, 2005.

FEDERAL AND PROVINCIAL/TERRITORIAL SMALL BUSINESS INCOME THRESHOLDS FOR THE YEARS 2003 TO 2007[a]

	2003 ($000)	2004 ($000)	2005 ($000)	2006 ($000)	2007 ($000)
Federal[b]	225	250	300	300	300
British Columbia[c]	300	300	400	400	400
Alberta[d]	350/400	400	400	400	400
Saskatchewan	300	300	300	300	300
Manitoba	320	360	400	400	400
Ontario[e]	320	400	400	400	400
Québec[f]	—	—	—	400	400
New Brunswick[g]	400	400/425	425/450	450/475	475/500
Nova Scotia[h]	225	250	300/350	350/400	400
Prince Edward Island[i]	225	250	300	300	300
Newfoundland[i]	225	250	300	300	300
Northwest Territories[i]	225	250	300	300	300
Nunavut[i]	225	250	300	300	300
Yukon[j]	225	250	300	300	400

Notes:

a The small business income thresholds shown in the table apply to active business income earned by a Canadian-controlled private corporation (CCPC) that is eligible for the small business rate of tax (see the four tables beginning on p. xxix). All thresholds must be prorated for taxation years that straddle the effective date of the changes indicated, and must be shared by associated corporations.

b The 2004 federal budget announced that the previously scheduled increase to $300,000 that was to be effective for 2006 would be accelerated to 2005. The 2005 federal budget announced no new changes to the small business limit. The threshold is reduced on a straight-line basis when the associated group's taxable capital (computed for Large Corporations Tax purposes) employed in Canada in the preceding year is between $10 million and $15 million. This clawback applies to all provinces, with the exception of Ontario, which has its own clawback mechanism (see note (e) below).

c British Columbia's 2005 budget announced that the threshold would be increased from $300,000 to $400,000 on January 1, 2005.

d Alberta's threshold increased from $350,000 to $400,000 on April 1, 2003.

e Ontario's small business threshold was originally legislated to increase to $360,000 for 2004 and to $400,000 for 2005. It instead increased from $320,000 to $400,000 effective January 1, 2004.

Ontario levies a surtax at a rate of 4.667% on CCPCs claiming the Ontario small business deduction in order to gradually reduce the benefit of the deduction where taxable income exceeds the small business income threshold. With the increase in the small business limit to $400,000 applicable to 2004 and subsequent years, the phase-out range for the application of the surtax is also being increased to between $400,000 and approximately $1,128,000.

f Québec's 2005 budget introduced a new provincial small business deduction that will apply to active business income up to $400,000 starting January 1, 2006. The deduction will be available to CCPCs with paid-up capital (on an associated basis) of less than $10 million, and will be phased out for CCPCs with paid-up capital between $10 and $15 million.

g New Brunswick increased its threshold from $350,000 to $400,000 on January 1, 2003. The 2004 provincial budget announced a further increase in the threshold to $425,000 on July 1, 2004. The province's 2005 budget also announced further increases in the threshold to $450,000 on July 1, 2005, to $475,000 on July 1, 2006, and to $500,000 on July 1, 2007.

h Nova Scotia has previously followed the federal increases in the threshold as the small business provisions in its corporate tax legislation were tied to the federal provisions. However, the province's 2005 budget announced that it would be increasing the threshold over and above the federal limits to $350,000 on April 1, 2005 and to $400,000 on April 1, 2006.

i Prince Edward Island, Newfoundland, Northwest Territories and Nunavut all follow the federal increases in the threshold as the small business provisions in their corporate tax legislation are tied to the federal provisions.

j Yukon has previously followed the federal increases in the threshold as the small business provisions in its corporate tax legislation were tied to the federal provisions. However, the territory's 2004 budget announced that it would be increasing the threshold over and above the federal limits to $400,000 on January 1, 2007.

TABLE OF CONCORDANCE

The Revised Statutes of Canada, 1985, Fifth Supplement was proclaimed in force as of March 1, 1994. Although there was no general renumbering of the provisions of the *Income Tax Act*, a substantial number of structural changes were made. The table relates the provisions of the former Act to the corresponding provisions of the Fifth Supplement, as amended by 1994, c. 7 (Bill C-15), the *Income Tax Amendments Revision Act*. Note that only those provisions that have underwent structural changes are included in the table.

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
8	*8*
(1.1)	—
12	*12*
(11)	(11)
(a)	"investment contract"
(i)-(xi)	(a)-(k)
(b)	"anniversary day"
(i)-(iii)	(a)-(c)
12.2	*12.2*
(11)	(11)
(a)	"exempt policy"
(b)	"anniversary day"
(i), (ii)	(a), (b)
—	(12)
—	(13)
13	*13*
(15)	(15)
(b)	(b)
—	(i), (ii)
(21)	(21)
—	"appropriate minister"
(a)	"conversion" and "conversion cost"
(b)	"depreciable property"
(c)	"disposition of property"
(d)	"proceeds of disposition"
(i)-(viii)	(a)-(h)
(d.1)	"timber resource property"
(i)	(a)
(A)	(i)
(B)	(ii)
(I), (II)	(A), (B)
(ii)	(b)
(A)	(i)
(B)	(ii)
(e)	"total depreciation"

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(f)	"undepreciated capital cost"
(i), (ii)	A, B
(ii.1)	C
(ii.2)	D
(iii)	E
(iv)	F
(A), (B)	(a), (b)
(v)-(viii)	G-J
(g)	"vessel"
—	(23.1)
14	*14*
(5)	(5)
(a)	"cumulative eligible capital"
(i)-(iii)	A-C
(iii.1)	D
(A), (B)	(a), (b)
(iii.2)	D.1
(iv)	E
(A), (B)	(a), (b)
(v)	F
(A)	P
(B)	Q
(I), (II)	(a), (b)
(C)	R
(b)	"eligible capital expenditure"
(i), (ii)	(a), (b)
(iii)	(c)
(A)-(D)	(i)-(iv)
(iv)	(d)
(v)	(e)
(vi)	(f)
(A)-(D)	(i)-(iv)
(c)	"adjustment time"
(i)-(iii)	(a)-(c)
15.1	*15.1*
(3)	(3)
(a)	"eligible small business corporation"
(i), (ii)	(a), (b)

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(b)	"qualifying debt obligation"
(i), (ii)	(a), (b)
(ii.1)	(c)
(iii)	—
(iv)	—
(A)-(C)	(d)-(f)
(c)	"small business development bond"
(i), (ii)	(a), (b)
(d)	"joint election"
(i)	—
(ii)	—
(e)	"property used for specified purposes"
(i)	(a)
(A), (B)	(i), (ii)
(ii)	(b)
(f)	"specified property"
(i)-(iv)	(a)-(d)
15.2	*15.2*
(3)	(3)
(a)	"qualifying debt obligation"
(i), (ii)	(a), (b)
(ii.1)	(c)
(iii)	(d)
(A)-(C)	(i)-(iii)
(b)	"small business bond"
(c)	"joint election"
(i), (ii)	(a), (b)
(d)	"eligible issuer"
(i), (ii)	(a), (b)
18	*18*
(3)	(3)
(a)	"land"
(i)-(iii)	(a)-(c)
(b)	"interest on debt relating to the acquisition of land"
(i)	(a)
(ii)	(b)
(A)-(C)	(i)-(iii)
(5)	(5)
(a)	"outstanding debts to specified non-residents"
(i)	(a)
(A)	(i)
(I), (II)	(A), (B)
(B)	(ii)
(ii)	(b)
(b)	"specified non-resident shareholder"

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(c)	"specified shareholder"
(i)-(iv)	(a)-(d)
19	*19*
(5)	(5)
(a)	"Canadian issue"
(i)	(a)
(A)-(D)	(i)-(iv)
(ii)	(b)
(A)-(F)	(i)-(vi)
(b)	"Canadian newspaper or periodical"
(i)	(a)
(ii)	(b)
(A), (B)	(i), (ii)
(iii), (iv)	(c), (d)
(v)	(e)
(A), (B)	(i), (ii)
(C)	(iii)
(I)-(VI)	(A)-(F)
(d)	"substantially the same"
(e)	"United States"
(i), (ii)	(a), (b)
20	*20*
—	(1.1)
—	(1.2)
—	(16.2)
—	(16.3)
(18)	(18)
(a)	"qualifying inventory"
(b)	"specified transaction"
(i)-(iii)	(a)-(c)
—	(27.1)
35	*35*
(2)	(2)
(a)	"mining property"
(b)	"prospector"
37	*37*
(7)	(7)
(a)	"approved"
(b)	"scientific research and experimental development"
(c)	(8)(a)
(d)-(f)	(b)-(d)
37.1	*37.1*
(5)	(5)
(a)	"base period"
(i), (ii)	(a), (b)
(b)	"expenditure base"
(i)	(a)
(ii)	(b)

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(A)	(i)
(I), (II)	(A), (B)
(B)	(ii)
(C)	(iii)
(c)	"qualified expenditure"
(i)-(iii)	(a)-(c)
(d)	"research property"
(e)	"scientific research and experimental development"
—	*37.2*
—	*37.3*
40	*40*
—	(8)
44	*44*
—	(8)
47.1	*47.1*
—	(26.1)
54	*54*
(a)	"adjusted cost base"
(i)-(iv)	(a)-(d)
(b)	"capital property"
(i), (ii)	(a), (b)
(c)	"disposition"
(i)	(a)
(ii)	(b)
(A)-(D)	(i)-(iv)
(iii), (iv)	(c), (d)
(v)	(e)
(A)-(D)	(i)-(iv)
(vi), (vii)	(f), (g)
(d)	"eligible capital property"
(e)	"listed personal property"
(i)-(v)	(a)-(e)
(f)	"personal-use property"
(i)	(a)
(A)-(C)	(i)-(iii)
(ii)	(b)
(iii)	(c)
(g)	"principal residence"
(i)	(a)
(i.1)	(a.1)
(ii)	(b)
(A), (B)	(i), (ii)
(iii)	(c)
(A), (B)	(i), (ii)
(iii.1)	(c.1)
(A)	(i)
(B)	(ii)
(I), (II)	(A), (B)
(C)	(iii)
(D)	(iv)
(I), (II)	(A), (B)
(iv)-(vi)	(d)-(f)
(h)	"proceeds of disposition"
(i)-(xi)	(a)-(k)
(i)	"superficial loss"
(i)-(v)	(a)-(e)
56	*56*
—	(1.1)
59	*59*
(3.4)	(3.4)
(a)	"successor corporation"
(b)	"stated percentage"
(i)	(a)
(A)-(C)	(i)-(iii)
(ii)	(b)
(A)-(C)	(i)-(iii)
(c)	"specified predecessor"
(i), (ii)	(a), (b)
—	*60.001*
—	*60.02*
—	*60.11*
61	*61*
(4)	(4)
(a)	"annual annuity amount"
(b)	"income-averaging annuity contract"
(i)	(a)
(A)	(i)
(I), (II)	(A), (B)
(B)	(ii)
(ii)-(iv)	(b)-(d)
(c)	"qualifying payment"
63	*63*
(3)	(3)
(a)	"child care expense"
(i)	(a)
(A)-(D)	(i)-(iv)
(ii)	(b)
(A)-(C)	(i)-(iii)
(iii)	(c)
(A)	(i)
(I), (II)	(A), (B)

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(B)	(ii)
(iv)	(d)
(b)	"earned income"
(i)-(iv)	(a)-(d)
(c)	"eligible child"
(i)-(iv)	(a)-(d)
(d)	"supporting person"
(i)-(iii)	(a)-(c)
66	*66*
(15)	(15)
(a)	"agreed portion"
(i), (ii)	(a), (b)
(a.1)	"assistance"
(b)	"Canadian exploration and development expenses"
(i)-(iv)	(a)-(d)
(v)	(e)
(A)-(C)	(i)-(iii)
(v.1)	(f)
(vi), (vii)	(g), (h)
(c)	"Canadian resource property"
(i)	(a)
(ii)	(b)
(A), (B)	(i), (ii)
(iii)-(vii)	(c)-(g)
(d)	"drilling or exploration expense"
(i)-(iii)	(a)-(c)
(g.2), (g.3)	"expense"
(d.1)	"flow-through share"
(i), (ii)	(a), (b)
(e)	"foreign exploration and development expenses"
(i)-(v)	(a)-(e)
(f)	"foreign resource property"
(g)	"joint exploration corporation"
(g.11)	"original owner"
(i), (ii)	(a), (b)
(g.2), (g.3)	"outlay"
(g.4)	"predecessor owner"
(i)-(iii)	(a)-(c)
(h)	"principal-business corporation"
(i)-(iii)	(a)-(c)
(iv)	(d)
(A), (B)	(i), (ii)
(v)-(vii)	(e)-(g)
(h.01)	"production"
(i)-(vi)	(a)-(f)

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(h.02)	"reserve amount"
(i), (ii)	A
after (ii)	(a), (b)
(h.1)	B
(i)	"selling instrument"
	"shareholder corporation"
(i), (ii)	(a), (b)
—	(15.1)
66.1	*66.1*
(6)	(6)
(a)	"Canadian exploration expense"
(i)	(a)
(i.1)	(b)
(A), (B)	(i), (ii)
(ii)	(c)
(A)-(D)	(i)-(iv)
(ii.1)	(d)
(A)-(C)	(i)-(iii)
(D)	(iv)
(I), (II)	(A), (B)
(ii.2)	(e)
(iii)	(f)
(A)-(F)	(i)-(vi)
(iii.1)	(g)
(A), (B)	(i), (ii)
(iv)-(vi)	(h)-(j)
(vii)	(k)
(A)-(C)	(i)-(iii)
(b)	"cumulative Canadian exploration expense"
(i)-(iv)	A-D
(iv.1), (iv. 2)	E, E.1
(v), (vi)	F, G
(vii)	H
(A), (B)	(a), (b)
(viii)-(xii)	I-M
(c)	"restricted expense"
(i)-(vi)	(a)-(f)
(d)	"specified purpose"
(i)-(iii)	(a)-(c)
—	(6.1)
66.2	*66.2*
(5)	(5)
(a)	"Canadian development expense"
(i)	(a)
(A)-(E)	(i)-(v)
(i.1)	(b)

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(ii)	(c)
(A), (B)	(i), (ii)
(ii.1)	(d)
(A), (B)	(i), (ii)
(iii)-(vi)	(e)-(h)
(vii)	(i)
(A)-(C)	(i)-(iii)
(b)	"cumulative Canadian development expense"
	A-C
(i)-(iii)	D, D.1
(iii.1), (iii.2)	E
(iv)	F
(v)	(a)
(A)	(b)
(B)	(i), (ii)
(I), (II)	(c)
(C)	G, H
(vi), (vii)	I
(vii.1)	J
(viii)	K
(ix)	(a), (b)
(A), (B)	L
(x)	(a), (b)
(A), (B)	M-O
(xi)-(xiii)	
—	(5.1)
66.4	*66.4*
(5)	(5)
(a)	"Canadian oil and gas property expense"
	(a)-(d)
(i)-(iv)	(e)
(v)	(i)-(iii)
(A)-(C)	"cumulative Canadian oil and gas property expense"
(b)	A-C
	D, D.1
(i)-(iii)	E
(iii.1), (iii.2)	F
(iv)	(a)
(v)	(b)
(A)	(i), (ii)
(B)	(c)
(I), (II)	G
(C)	H-J
(vi)	"disposition" and "proceeds of disposition"
(vii)-(ix)	
(c)	(5.1)
—	

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
66.7	*66.7*
(4)	(4)
(b)	(b)
(i)	—
(A)	(i)
(I), (II)	(A), (B)
(B)	after (B)
(5)	(5)
(b)	(b)
(i)	—
(A)	(i)
(I), (II)	(A), (B)
(B)	after (B)
—	(18)
69	*69*
—	(12.1)
—	(12.2)
70	*70*
(10)	(10)
(a)	"child"
(i)-(iii)	(a)-(c)
(b)	"share of the capital stock of a family farm corporation"
(i)	(a)
(A)-(D)	(i)-(iv)
(ii), (iii)	(b), (c)
(c)	"interest in a family farm partnership"
(i)	(a)
(A)-(D)	(i)-(iv)
(ii), (iii)	(b), (c)
—	(11)
(11)	(12)
73	*73*
—	(6)
74.3	*74.3*
—	(2)
74.4	*74.4*
(1)	(1)
—	"designated person"
80.4	*80.4*
(7)	(7)
(a)	"home purchase loan"
(i)-(iii)	(a)-(c)
(b)	"prescribed rate"
(i)-(iii)	(a)-(c)
82	*82*
—	(1.1)
87	*87*
—	(2.01)
88	*88*
—	(1.41)
89	*89*

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(1)	(1)
(a)	"Canadian corporation"
(i), (ii)	(a), (b)
(b)	"capital dividend account"
(i)	(a)
(A)	(i)
(I), (II)	(A), (B)
(III)	(C)
1.-3.	(I)-(III)
(B)	(ii)
(I), (II)	(A), (B)
(III)	(C)
1.-3.	(I)-(III)
(ii)	(b)
(iii)	(c)
(A)	(i)
(I)-(III)	(A)-(C)
(B)-(G)	(ii)-(vii)
(iv)	(d)
(A), (B)	(i), (ii)
(v)	(e)
(b.1)	"designated property"
(i)	(a)
(A), (B)	(i), (ii)
(ii)-(iv)	(b)-(d)
(c)	"paid-up capital"
(i)	(a)
(ii)	(b)
(A)-(E)	(i)-(v)
(iii)	(c)
(f)	"private corporation"
(i), (ii)	(a), (b)
(g)	"public corporation"
(i)	(a)
(ii)	(b)
(A), (B)	(i), (ii)
(iii)	(c)
(A), (B)	(i), (ii)
(i)	"taxable Canadian corporation"
(i), (ii)	(a), (b)
(j)	"taxable dividend"
(i), (ii)	(a), (b)
--	(1.01)

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
94.1	*94.1*
(2)	(2)
(a)	"designated cost"
(i)-(iv)	A-D
(b)	"non-resident entity"
—	(3)
95	*95*
(1)	(1)
(a)	"controlled foreign affiliate"
(i)-(v)	(a)-(e)
(a.1)	"excluded property"
(i)-(iv)	(a)-(d)
(v)	(e)
(A), (B)	(i), (ii)
(b)	"foreign accrual property income"
(i)	A
(A)-(D)	(a)-(d)
(ii)	B
(ii.1)	C
(A), (B)	(a), (b)
(iii)-(v)	D-F
(c)	"foreign accrual tax"
(i)	(a)
(A), (B)	(i), (ii)
(ii)	(b)
(d)	"foreign affiliate"
(e)	"participating percentage"
(i)	(a)
(ii)	(b)
(A), (B)	(i), (ii)
(f)	"relevant tax factor"
(i), (ii)	(a), (b)
(f.1)	"surplus entitlement percentage"
(g)	"taxation year"
(4)	(4)
(a)	"direct equity percentage"
(i), (ii)	(a), (b)
(b)	"equity percentage"
(i), (ii)	(a), (b)
(c)	"relevant cost base"
—	(4.1)
102	*102*
(a), (b)	(1), (2)

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
108	*108*
(1)	(1)
(a)	"accumulating income"
(i)	(a)
(ii)	(b)
(A)-(C)	(i)-(iii)
(iii)	(c)
(b)	"beneficiary"
(c)	"capital interest"
(i), (ii)	(a), (b)
(d)	"cost amount"
(i)	(a)
(A)-(C)	(i)-(iii)
(ii)	(b)
A	A
(I)-(III)	(i)-(iii)
B-D	B-D
(d.1)	"eligible real property gain"
(d.11)	"eligible real property loss"
(d.12)	"excluded property"
(d.2)	"eligible taxable capital gains"
(i)	(a)
(ii)	(b)
(A), (B)	A, B
(e)	"income interest"
(f)	"inter vivos trust"
(f.1)	"non-qualifying real property"
(i), (ii)	(a), (b)
(f.2)	"pre-1972 spousal trust"
(i), (ii)	(a), (b)
(g)	"preferred beneficiary"
(i)-(iii)	(a)-(c)
(g.1)	"qualified farm property"
(g.2)	"qualified small business corporation share"
(h)	"settlor"
(i)	(a)
(ii)	(b)
(A), (B)	(i), (ii)
(i)	"testamentary trust"
(i), (ii)	(a), (b)
(iii)	(c)
(A), (B)	(i), (ii)
(j)	"trust"
pre (i)	pre (f)
(i)	(f)
(i.1)	(g)
after (i.1)	pre (a)
(ii)-(vi)	(a)-(e)
111	*111*
—	(7.11)
(8)	(8)
(a)	"net capital loss"
(i)	(a)
(A), (B)	A, B
(ii)	(b)
(A), (B)	(i), (ii)
(b)	"non-capital loss"
(i)	A
(A), (B)	E, F
(ii)-(iv)	B-D
(v)	D.1
(b.1)	"farm loss"
(i)	A
(A), (B)	(a)
(ii)	(i), (ii)
(iii)	(b)
(b.2)	B
(i)	"pre-1986 capital loss balance"
(A), (B)	A
(ii)	F, G
(A), (B)	B
(C)	H
(iii)-(v)	(a), (b)
(c)	I
(i), (ii)	C-E
(9), (10)	(9)
113	(a), (b)
(3)	(10), (11)
(a)	*113*
(b)	(3)
115	"relevant tax factor"
—	"non-business-income tax"
116	*115*
—	(6)
	116
	(7)

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
118.1	*118.1*
(1)	(1)
"total cultural gifts"	"total cultural gifts"
(d), (e)	(c), (d)
120	*120*
(4)	(4)
(a)	"income earned in the year in a province"
(c)	"tax otherwise payable under this Part"
(i)	(a)
(A), (B)	(i), (ii)
(ii)	(b)
122.3	*122.3*
(2)	(2)
(a)	"specified employer"
(i)-(iii)	(a)-(c)
(b)	"tax otherwise payable under this Part for the year"
124	*124*
(4)	(4)
(a)	"taxable income earned in the year in a province"
(b)	"province"
125	*125*
(7)	(7)
(a)	"active business carried on by a corporation"
(b)	"Canadian-controlled private corporation"
(c)	"income of the corporation for the year from an active business"
(i), (ii)	(a), (b)
(d)	"personal services business"
(i)-(iv)	(a)-(d)
(e)	"specified investment business"
(i), (ii)	(a), (b)
(f)	"specified partnership income"
(i)	A
(A)	(a)
(I), (II)	G, H
(B)	(b)
	M
(I), (II)	(i), (ii)
(III), (IV)	K, L
(ii)	B
(A)	(a)
(B)	(b)
(I), (II)	N, O
(g)	"specified partnership loss"
(i), (ii)	A, B
125.1	*125.1*
(3)	(3)
(a)	"Canadian manufacturing and processing profits"
(b)	"manufacturing or processing"
(i)-(vi)	(a)-(f)
(vi.1), (vi.2)	(g), (h)
(vii)-(ix)	(i)-(k)
(x)	(l)
(A), (B)	(i), (ii)
126	*126*
(7)	(7)
(a)	"business-income tax"
(i), (ii)	(a), (b)
(c)	"non-business-income tax"
(i)-(ix)	(a)-(i)
(d)	"tax for the year otherwise payable under this Part"
(i)	(a)
(A), (B)	A, B
(ii), (iii)	(b), (c)
(e)	"unused foreign tax credit"
(i)-(iii)	A-C
127	*127*
(2)	(2)
(a)	"income for the year from logging operations in the province"
(b)	"logging tax"
127.1	*127.1*
—	(2.1)
127.2	*127.2*
(6)	(6)

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(a)	
(i)-(iii)	
(b)	
(i)-(iii)	
127.3	*127.3*
(2)	(2)
(a)	
—	
(i)-(v)	
—	
(b)	
(i)-(iii)	
	"share-purchase tax credit"
	A-C
	"unused share-purchase tax credit"
	A-C
	"scientific research and experimental development tax credit"
	A
	(a)-(e)
	B
	"unused scientific research and experimental development tax credit"
	A-C
129	*129*
(4)	(4)
(a)	
(i)	
(A)	
(I), (II)	
(B)	
(I), (II)	
(ii), (iii)	
(b)	
	"Canadian investment income"
	—
	A
	K, L
	—
	M, N
	B, C
	"foreign investment income"
130.1	*130.1*
(9)	(9)
(a)	"liabilities"
(b)	"non-qualifying taxed capital gains"
(i)-(iv)	(a)-(d)
(c)	"qualifying taxed capital gains"
(i)-(v)	(a)-(e)
(d)	"non-qualifying real property"
131	*131*
(6)	(6)
(a)	
(i)	
(A)	
(B)	
	"capital gains redemptions"
	C
	D

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
	K-N
(ii), (iii)	A, B
(b)	"capital gains dividend account"
(i)-(vii)	(a)-(g)
(c)	"non-qualifying real property capital gains dividend account"
(i)-(iv)	(a)-(d)
(c.1)	"non-qualifying real property"
(i)	(a)
(ii)	(b)
(A), (B)	(i), (ii)
(iii)	(c)
(A), (B)	(i), (ii)
(iv)-(vi)	(d)-(f)
(d)	"refundable capital gains tax on hand"
(i)	A
(A)-(C)	(a)-(c)
(ii)	B
132	*132*
(4)	(4)
(a)	"capital gains redemptions"
(i)	
(A)	C
(B)	D
	K-N
(ii), (iii)	A, B
(b)	"refundable capital gains tax on hand"
(i)	A
(A)-(C)	(a)-(c)
(ii)	B
133	*133*
(8)	(8)
(a)	"allowable refund"
pre. (i)	C
(i), (ii)	A, B
(b)	"Canadian property"
(i), (ii)	(a), (b)
(c)	"capital gains dividend account"
pre. (i)	A

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(i), (ii)	(a), (b)
	B
(iii)	(a)
(iv)	(c)
	M, N
(v)	(b)
(d)	"non-resident-owned investment corporation"
(i)	(a)
(A)-(C)	(i)-(iii)
(ii)	(b)
(A)-(E)	(i)-(v)
(iii)	(c)
(iv)	(d)
(A), (B)	(i), (ii)
(v), (vi)	(e), (f)
(e)	"taxable dividend"
(9)	(9)
(a)	"allowable refundable tax on hand"
(i), (ii)	A, B
(ii.1)	C
(iii)	D
(A)	M
(B)	L
—	N
(iv), (v)	E, F
(b)	"cumulative taxable income"
(i)	A
(ii)	B
—	L
(A), (B)	M, N
(iii)	C
—	P
(A), (B)	Q, R
(iv), (v)	D, E
135	*135*
(4)	(4)
(a)	"allocation in proportion to patronage"
(i)	(a)
(A), (B)	(i), (ii)
(ii)	(b)
(b)	
(c)	
(d)	
(e)	
(f)	
(g)	
(i)-(iii)	
137	*137*
(6)	(6)
(a)	"allocation in proportion to borrowing"
(i), (ii)	(a), (b)
(a.1)	"bonus interest payment"
(i), (ii)	(a), (b)
(b)	"credit union"
(i)	(a)
(A)-(G)	(i)-(vii)
(ii)	(b)
(A)-(C)	(i)-(iii)
(iii)	(c)
(c)	"maximum cumulative reserve"
(i), (ii)	A, B
(d)	"member"
137.1	*137.1*
(5)	(5)
(a)	"deposit insurance corporation"
(i)	(a)
(A)	(i)
(I), (II)	(A), (B)
(B)	(ii)
(I), (II)	(A), (B)
(ii)	(b)
(b)	"member institution"
(i), (ii)	(a), (b)
(c)	"investment property"
(i)	(a)
(A)-(E)	(i)-(v)
(ii)	(b)
(A)-(C)	(i)-(iii)
(iii)	(c)
(iv)	(d)
—	*137.2*
	"consumer goods or services"
	"customer"
	"income of the taxpayer attributable to business done with members"
	"member"
	"non-member customer"
	"payment"
	(a)-(c)

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
138	*138*
(12)	(12)
(a)	"accumulated 1968 deficit"
(i)	(a)
(ii)	(b)
(A)-(C)	(i)-(iii)
(b.1)	"amount payable"
(c)	"Canada security"
(d)	"cost"
(e)	"gross investment revenue"
(i)-(vi)	A-F
(e.1)	"interest"
(f)	"life insurance policy"
(g)	"life insurance policy in Canada"
(h)	"maximum tax actuarial reserve"
(j)	"non-segregated property"
(k)	"participating life insurance policy"
(k.1)	"policy loan"
(l)	"property used by it in the year in, or held by it in the year in the course of"
(l.1)	"qualified related corporation"
(m)	"relevant authority"
(i), (ii)	(a), (b)
(n)	"segregated fund"
(o)	"surplus funds derived from operations"
(i)	A
(i.1)	B
(ii)-(vi)	C-G
(vii)	H
	M, N
(p)	(15)
(q)	(12)
	"1975 branch accounting election deficiency"
(i)	A
(A), (B)	(a), (b)
(ii), (iii)	B, C
(iv)	D
(A), (B)	(a), (b)
(v)	E
	P
(A), (B)	(a), (b)
after cl. (B)	Q
(vi), (vii)	F, G
(r)	"1975–76 excess policy dividend deduction"
(i)	A
(A), (B)	P, Q
(ii)	B
(A), (B)	R, S
(iii)	C
(A), (B)	T, U
(s)	"1975–76 excess policy dividend reserve"
(i)	A
(A)-(E)	(a)-(e)
(ii)	B
(t)	"1975–76 excess investment reserve"
(i), (ii)	A, B
(u)	"1975–76 excess capital cost allowance"
(i)	A
(A)	P
(I), (II)	(a), (b)
(B)	Q
(ii)	B
(A), (B)	R, S
(iii)	C
(A), (B)	T, U
(v)	"1975–76 excess policy reserves"
(i), (ii)	A, B
(ii)	B
(w)	"1975–76 excess additional group term reserve"
(i), (ii)	A, B
(ii)	B

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
—	*142.1*
143	*143*
(4)	(4)
(a)	"adult"
(b)	"congregation"
(c)	"family"
(i), (ii)	(a), (b)
(d)	"member of a congregation"
(i), (ii)	(a), (b)
(e)	"religious organization"
(f)	"total charitable gifts", "total Crown gifts", "total cultural gifts"
145	*145*
(1)	(1)
(a)	"registered supplementary unemployment benefit plan"
(b)	"supplementary unemployment benefit plan"
146	*146*
(1)	(1)
(a)	"annuitant"
(i), (ii)	(a), (b)
(b)	"benefit"
(i)-(vi)	(a)-(f)
(c)	"earned income"
(i)	(a)
(A)-(C)	(i)-(iii)
(ii)	(b)
(ii.1)	(b.1)
(iii)	(c)
(A), (B)	(i), (ii)
(iv)	(d)
(A), (B)	(i), (ii)
(v)	(e)
(A), (B)	(i), (ii)
(vi), (vii)	(f), (g)
(c.1)	"issuer"
(d)	"maturity"
(d.1)	"net past service pension adjustment"
(e)	"non-qualified investment"
(f)	"premium"
(i), (ii)	(a), (b)
(g)	"qualified investment"
(i)-(iv)	(a)-(d)
(g.1)	"RRSP deduction limit"
(g.2)	"RRSP dollar limit"
(h)	"refund of premiums"
(i), (ii)	(a), (b)
(i)	"registered retirement savings plan"
(i.1)	"retirement income"
(i)	(a)
(A), (B)	(i), (ii)
(ii)	(b)
(A), (B)	(i), (ii)
(j)	"retirement savings plan"
(i)	(a)
(ii)	(b)
(A), (B)	(i), (ii)
(C)	(iii)
(I), (II)	(A), (B)
(k)	"spousal plan"
(i)	(a)
(A), (B)	(i), (ii)
(ii)	(b)
(l)	"unused RRSP deduction room"
(i)	(a)
(ii)	(b)
(A)	(i)
(B)	(ii)
(I), (II)	(A), (B)
146.1	*146.1*
(1)	(1)
(a)	"beneficiary"
(b)	"educational assistance payment"
(c)	"education savings plan"
(c.1)	"post-secondary educational institution"
(i), (ii)	(a), (b)
(d)	"pre-1972 income"
(d.1)	"qualifying educational program"
(e)	"refund of payments"
(f)	"registered education savings plan"
(g)	"tax-paid-income"

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(i)	A
(ii)	—
(A),	B,
(B)	C
(h)	"trust"
(i)-(v)	(a)-(e)
146.2	*146.2*
—	(23)
146.3	*146.3*
(1)	(1)
(a)	"annuitant"
(i)-(iii)	(a)-(c)
(b)	"carrier"
(i)-(iv)	(a)-(d)
(b.1)	"minimum amount"
(i)-(iii)	(a)-(c)
(c)	"property held"
(d)	"qualified investment"
(i)-(iii)	(a)-(c)
(e)	"registered retirement income fund"
(f)	"retirement income fund"
(i), (ii)	(a), (b)
148	*148*
(9)	(9)
(a)	"adjusted cost basis"
(i)-(iii)	A-
	C
(iii.1)	D
(iv), (v)	E,
	F
(v.1), (v.2)	G,
	G.1
(vi)-	H-
(viii)	K
—	L
(ix)-(xi)	(a)-
	(c)
(a.1)	"amount payable"
(b)	"cash surrender value"
(b.1)	"child"
(c)	"disposition"
(i)-(d)	(a)-(d)
(iv.1)	(e)
(v)-(viii)	(f)-(i)
(ix)	(j)
(A),	(i), (ii)
(B)	
(x)	(k)
(c.1)	"interest"
(e)	"policy loan"
(e.1)	"premium"

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(i), (ii)	(a), (b)
(iii)	(c)
(A)-(G)	(i)-(vii)
(e.2)	"proceeds of the disposition"
	(a)
(i)	A
(A)	B
—	C
(B)	(i)-
(I)-(III)	(iii)
(ii)	(b)
(A),	(i), (ii)
(B)	
(iii)	(c)
(iv)	(d)
(A),	(i), (ii)
(B)	
(e.3)	"relevant authority"
(f)	"tax anniversary date"
	"value"
(g)	(a), (b)
(i), (ii)	(9.1)
—	*149.1*
149.1	(1)
(1)	"charitable foundation"
(a)	"charitable organization"
(b)	(a)-(d)
(i)-(iv)	"charitable purposes"
(c)	"charity"
(d)	"disbursement quota"
(e)	A
(i)	(a)-
(A)-(C)	(c)
—	B
(ii), (iii)	(a),
	(b)
(iii)	(b)
(iv)	C
(A),	D,
(B)	E
—	F
(C),	(a),
(D)	(b)
(v)	G
(A),	(a),
(B)	(b)
(e.1)	"non-qualified investment"
	(a)
(i)	(i)
(A)	

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(I)-(III)	(A)-(C)
(B)	(ii)
(ii)-(vi)	(b)-(f)
(f)	"private foundation"
(g)	"public foundation"
(i)	(a)
(A), (B)	(i), (ii)
(ii)	(b)
(A), (B)	(i), (ii)
(h)	"qualified donee"
(j)	"related business"
(k)	"specified gift"
(l)	"taxation year"
152	*152*
—	(1.111)
172	*172*
—	(6)
—	*187.7*
188	*188*
(5)	(5)
(a)	"net asset amount"
—	A, B
(b)	"net value"
—	A, B
194	*194*
(3)	(3)
—	"debt obligation"
204	*204*
(a)	"equity share"
(i)	(a)
(A), (B)	(i), (ii)
(ii)	(b)
(A), (B)	(i), (ii)
(a.1)	"excluded share"
(i)	(a)
(ii)	(b)
(A), (B)	(i), (ii)
(a.2)	"non-participating share"
(i)	(a)
(A), (B)	(i), (ii)
(ii)	(b)
(a.3)	"paid-up capital value"
—	A, B
(b)	"initial base"
(i), (ii)	(a), (b)

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(c)	"initial non-qualified investment"
(i), (ii)	(a), (b)
(d)	"non-qualified investment"
(e)	"qualified investment"
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(B)	(ii)
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—	(1.1)
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(1)	(1)
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	"policy loan"
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219	*219*
(7)	(7)
(a)	"attributed surplus for the year"
	"Canadian investment fund"
(b)	"accumulated 1968 deficit"
(b.1)	"maximum tax actuarial reserves"
(b.2)	"surplus funds derived from operations"
(c)	"tax deferred account"
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—	223.1
—	(1), (2)
230.1	*230.1*
—	(7)
232	*232*
(1)	(1)
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(b)	"custodian"
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(d)	"officer"
(e)	"solicitor-client privilege"
—	*237.2*
248	*248*

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(1)	(1)
"corporation"	"corporation"
	"corporation incorporated in Canada"
"insurance corporation"	"insurance corporation"
or "insurer"	"insurer"
"life insurance corporation"	"life insurance corporation"
or "life insurer"	"life insurer"
—	"Part VII refund"
—	"Part VIII refund"
—	"qualifying share"
—	"refundable Part VII tax on hand"
—	"refundable Part VIII tax on hand"

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
—	"scientific research and experimental development financing contract"
—	"scientific research and experimental development tax credit"
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—	"unused scientific research and experimental development tax credit"
—	"unused share-purchase tax credit"
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[2][should be (t) — ed.]

[3][should be (u) — ed.]

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SCHEDULE — [PROPOSED] : LISTED CORPORATIONS

INCOME TAX ACT

An Act Respecting Income Taxes

REVISED STATUTES OF CANADA 1985, c. 1 (5TH SUPPLEMENT), AS AMENDED BY 1994, cc. 7, 8, 13, 21, 28, 29, 38, 41; 1995, cc. 1, 3, 11, 17, 18, 21, 38, 46; 1996, cc. 6, 11, 21, 23; 1997, cc. 10, 12, 25, 26; 1998, cc. 19, 21, 34; 1999, cc. 10, 17, 22, 26, 31; 2000, cc. 9, 12, 14, 19, 30; 2001, cc. 16, 17, 27, 41; 2002, cc. 8, 9; 2003, cc. 15, 19, 28; 2004, cc. 11, 22, 24, 25, 26; 2005, cc. 19, 21 [not yet proclaimed in force], 30, 33, 34 [not yet proclaimed in force], 35 [not yet proclaimed in force].

REVISED STATUTES OF CANADA 1952, c. 148, PARTS I TO IIIA, V TO VII WERE REPEALED BY 1970-71-72, c. 63, s. 1 (PART I) AND NEW PARTS I TO XVII WERE SUBSTITUTED (THE "AMENDED ACT"), APPLICABLE BY s. 9 TO THE 1972 AND SUBSEQUENT TAXATION YEARS. THE AMENDED ACT HAS BEEN AMENDED BY 1972, c. 9; 1973-74, cc. 14, 29, 30, 44, 45, 49, 51; 1974-75-76, cc. 26, 50, 58, 71, 87, 88, 95, 106; 1976-77, c. 4, 10; 1977-78, cc. 1, 4, 32, 41, 42; 1978-79, c. 5; 1979, c. 5; 1980-81-82-83, cc. 40, 47, 48, 68, 102, 104, 109, 140, 158, 161, 167; 1984, c. 1; 1984, cc. 6, 19, 29, 31, 45; 1985, cc. 22, 45; 1986, cc. 2, 6, 24, 40, 44, 55, 58; 1987, cc. 3, 23, 34, 45, 46; 1988, cc. 28, 55, 65; 1990, cc. 1, 34, 35, 39, 42, 45; 1991, cc. 22, 47, 49; 1992, cc. 1, 24, 27, 29, 48; 1993, cc. 24, 27.

REVISED STATUTES OF CANADA 1952, c. 148, APPLICABLE TO THE 1953 AND SUBSEQUENT TAXATION YEARS (THE "FORMER ACT"), WAS AMENDED BY 1952-53, c. 40; 1953-54, c. 57; 1955, cc. 54, 55; 1956, c. 39; 1957, c. 29; 1957-58, c. 17; 1958, c. 32; 1959, c. 45; 1960, c. 43; 1960-61, cc. 17, 49; 1962-63, c. 8; 1963, cc. 21, 41; 1964-65, cc. 13, 26, 54; 1965, cc. 12, 18; 1966-67, cc. 25, 47, 69, 82, 84, 91, 96, 97; 1967-68, c. 38; 1968-69, cc. 28, 33, 44; 1969-70, c. 8; 1970-71-72, cc. 1, 11, 30, 48, 63, 64.

1. Short title — This Act may be cited as the *Income Tax Act*.

PART I — INCOME TAX

DIVISION A — LIABILITY FOR TAX

2. (1) Tax payable by persons resident in Canada — An income tax shall be paid, as required by this Act, on the taxable income for each taxation year of every person resident in Canada at any time in the year.

Related Provisions: 2(2) — Calculation of taxable income; 94(3)(a)(i) [proposed] — Application to trust deemed resident in Canada; 96 — Partnerships and their members; 104 — Trusts and estates; 114 — Residence for part of year; 126 — Foreign tax credit; 127.5 — Alternative minimum tax; 149 — Exempt persons; 250 — Extended meaning of resident.

Selected Cases [subsec. 2(1)]: *Harris-Eze v. R.*, [2002] 1 C.T.C. 2174 (TCC) (Indicia of taxpayer's attachments to Canada insufficient to result in being "ordinarily resident"); *Kadrie v. R.*, [2001] 4 C.T.C. 2551 (TCC) (OECD concept of "centre of vital interests" rejected in determination of residence); *Fischer v. R.*, [1995] 1 C.T.C. 2011 (TCC) (Factors considered where connections with both Japan and Canada); *Wassick v. R.*, [1994] 2 C.T.C. 2235 (TCC) (Factors considered by Court in determination of residence); *R. v. Bergelt*, [1986] 1 C.T.C. 212 (FCTD) (Taxpayer severed residential ties by taking permanent job in U.S.); *R. v. Gurd's Products Co. Ltd.*, [1985] 2 C.T.C. 85 (FCA); leave to appeal to SCC refused (1985), 64 N.R. 156 (note), (sub nom. *Gurd's Products v. MNR*) (Wholly owned Canadian subsidiary carrying on business in Canada deemed to be resident despite central management and control in U.S.); *Thibodeau Family Trust v. R.*, [1978] C.T.C. 539 (FCTD) (Trust non-resident where majority of trustees reside in Bermuda; trust cannot be resident in two places); *MNR v. Stickel*, [1974] C.T.C. 416 (SCC) (Retention of U.S. residence for purposes of treaty exemption from Canadian tax related to period of employment as teacher, not to length of visit); *Zehnder & Co. v. MNR*, [1970] C.T.C. 85 (Exch.) (Taxpayer company resident when authority vested in Canadian directors despite non-resident shareholders); *Bedford Overseas Freighters Ltd. v. MNR*, [1970] C.T.C. 69 (Exch.) (Taxpayer company resident when authority vested in Canadian directors); *MNR v. Crossley Carpets (Canada) Ltd.*, [1968] C.T.C. 570 (Exch.) (Where central management and control exercised in two countries, corporation had dual residence); *Schujahn v. MNR*, [1962] C.T.C. 364 (Exch.) (Intention not relevant; residence is question of fact).

Interpretation Bulletins: IT-106R3: Crown corporation employees abroad; IT-221R3: Determination of an individual's residence status; IT-447: Residence of a trust or estate.

(2) Taxable income — The taxable income of a taxpayer for a taxation year is the taxpayer's income for the year plus the additions and minus the deductions permitted by Division C.

Related Provisions: 3 — Income for taxation year; 15.1(2)(c) — Issuer of small business development bond; 33.1 — Calculation of income for international banking centre; 110.5 — Additions for foreign tax deductions; 248(1) — "Taxable income" may not be less than nil.

(3) Tax payable by non-resident persons — Where a person who is not taxable under subsection (1) for a taxation year

(a) was employed in Canada,

(b) carried on a business in Canada, or

(c) disposed of a taxable Canadian property,

at any time in the year or a previous year, an income tax shall be paid, as required by this Act, on the person's taxable income earned in Canada for the year determined in accordance with Division D.

Related Provisions [subsec. 2(3)]: 94(3)(a)(i) [proposed] — Application to trust deemed resident in Canada; 96(1.6) — Members of partnership deemed carrying on business in Canada; 114 — Residence for part of year; 115(2)(d) — Non-resident deemed employed in Canada; 120(1) — Federal surtax on non-resident's income not earned in a province; 150(1)(a), 150(1.1)(b) — Requirements for non-residents to file returns; 212–219 — Tax on non-residents; 217(3)(a) — Non-resident making election is deemed employed in Canada; 250.1(a) — Taxation year of non-resident person; 253 — Extended meaning of carrying on business in Canada; Canada-U.S. Tax Treaty:Art. VII — Business profits of U.S. resident.

Selected Cases [subsec. 2(3)]: *Beame v. R.*, [2004] 2 C.T.C. 265 (FCA); rev'g [2003] 2 C.T.C. 2140 (TCC) ("Capital gain" in Canada-U.K. Agreement refers to "taxable capital gain"); *Hertel (M.) v. MNR*, [1993] 2 C.T.C. 2050 (TCC) (Dual resident was German resident under treaty); *Placrefid Ltd. v. MNR*, [1992] 2 C.T.C. 198 (FCTD) (Payment to cancel settlement agreement not proceeds of disposition of option); *Randall v. R.*, [1985] 1 C.T.C. 268 (FCTD) (Inactive non-resident partner taxable on profit participation); *Pullman v. R.*, [1983] C.T.C. 52 (FCTD) (Non-resident not taxable if not carrying on business in Canada); *Loeck v. R.*, [1982] C.T.C. 64 (FCA) (Real estate transactions carried out by agent for non-resident constitute adventure in nature of trade); *Rutenberg v. MNR*,

[1979] C.T.C. 459 (FCA) (U.S. resident's transactions through Canadian broker not sheltered by Canada-U.S. Tax Convention); *Abed v. MNR*, [1978] C.T.C. 5 (FCTD) (Non-resident taxable when carrying on business in Canada despite no permanent establishment); *Masri v. MNR*, [1973] C.T.C. 448 (FCTD) (U.S. resident carrying on business in Canada exempt under Canada-U.S. Tax Convention where no permanent establishment in Canada); *Tara Exploration and Development Co. Ltd. v. MNR*, [1972] C.T.C. 328 (SCC) (Adventure in the nature of trade taxable despite no permanent establishment in Canada).

Interpretation Bulletins [subsec. 2(3)]: IT-113R4: Benefits to employees — stock options; IT-168R3: Athletes and players employed by football, hockey and similar clubs; IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits (archived); IT-176R2: Taxable Canadian property — Interests in and options on real property and shares; IT-221R3: Determination of an individual's residence status; IT-262R2: Losses of non-residents and part-year residents; IT-298: Canada-U.S. Tax Convention — number of days "present" in Canada (archived); IT-379R: Employees profit sharing plans — allocations to beneficiaries; IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-420R3: Non-residents — income earned in Canada; IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt; IT-434R: Rental of real property by individual.

Forms [subsec. 2(3)]: NR73: Determination of residency status (leaving Canada); NR74: Determination of residency status (entering Canada); T1248: Information about your residency status; T4058: Non-residents and temporary residents of Canada [guide].

Definitions [s. 2]: "business" — 248(1); "carried on a business in Canada" — 253; "employed" — 248(1); "employed in Canada" — 115(2)(d); "non-resident", "person", "property" — 248(1); "resident in Canada" — 94(3)(a), 250; "taxable Canadian property" — 248(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 249, 250.1(a); "taxpayer" — 248(1).

DIVISION B — COMPUTATION OF INCOME

Basic Rules

3. Income for taxation year — The income of a taxpayer for a taxation year for the purposes of this Part is the taxpayer's income for the year determined by the following rules:

(a) determine the total of all amounts each of which is the taxpayer's income for the year (other than a taxable capital gain from the disposition of a property) from a source inside or outside Canada, including, without restricting the generality of the foregoing, the taxpayer's income for the year from each office, employment, business and property,

(b) determine the amount, if any, by which

(i) the total of

(A) all of the taxpayer's taxable capital gains for the year from dispositions of property other than listed personal property, and

(B) the taxpayer's taxable net gain for the year from dispositions of listed personal property,

exceeds

(ii) the amount, if any, by which the taxpayer's allowable capital losses for the year from dispositions of property other than listed personal property exceed the taxpayer's allowable business investment losses for the year,

(c) determine the amount, if any, by which the total determined under paragraph (a) plus the amount determined under paragraph (b) exceeds the total of the deductions permitted by subdivision e in computing the taxpayer's income for the year (except to the extent that those deductions, if any, have been taken into account in determining the total referred to in paragraph (a)), and

(d) determine the amount, if any, by which the amount determined under paragraph (c) exceeds the total of all amounts each of which is the taxpayer's loss for the year from an office, employment, business or property or the taxpayer's allowable business investment loss for the year,

Proposed Amendment — 3(d)

(d) determine the amount, if any, by which the amount determined under paragraph (c) exceeds the total of all amounts each of which is the taxpayer's loss for the year from a source that is an office, employment, business or property or the taxpayer's allowable business investment loss for the year,

Application: The October 31, 2003 draft legislation (REOP), s. 1, will amend para. 3(d) to read as above, applicable to taxation years that begin after 2004 (but see Application note to 3.1).

Technical Notes: Both of these changes [see also 111(8)"non-capital loss"E — ed.] are consequential amendments to proposed new subsection 3.1(1), and clarify that it is only losses that are from a source that may be deducted in computing a taxpayer's income or considered to be non-capital losses under subsection 111(8).

and for the purposes of this Part,

(e) where an amount is determined under paragraph (d) for the year in respect of the taxpayer, the taxpayer's income for the year is the amount so determined, and

(f) in any other case, the taxpayer shall be deemed to have income for the year in an amount equal to zero.

Related Provisions: 3.1 — Reasonable expectation of profit required for taxpayer to have loss from business or property; 66(14) — Amount deductible under ITAR 29 deemed deductible under subdivision e; 94(3)(a)(ii) [proposed] — Application to trust deemed resident in Canada; 115(1)(b), (b.1), (c) — Application of s. 3 to a non-resident.

History: That portion of s. 3 following para. (d) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 1, applicable to 1990 *et seq.* That portion formerly read:

> and the amount, if any, determined under paragraph (d) is the taxpayer's income for the year for the purposes of this Part.

Selected Cases [s. 3]: *Dumas v. R.*, [2001] 1 C.T.C. 2490 (TCC) (Underlying nature of claim will determine taxability; courts free to examine pleadings in relevant court proceedings); *Fortino v. R.*, [2000] 1 C.T.C. 349 (FCA); aff'g [1997] 2 C.T.C. 2184 (TCC) (Non-competition agreements not a source of income); *Kennedy v. R.*, [2000] 1 C.T.C. 2475 (TCC) (Characterization of income is made under Canadian, not foreign, law); *R. v. Robson*, [1999] 2 C.T.C. 171 (Ont CA); leave to appeal to SCC refused (1999), 243 N.R. 394 (note) (Secret commissions are income); *Endres v. R.*, [1998] 1 C.T.C. 2259 (TCC) (Absence of visa and maintenance of Canadian medicare coverage did not affect non-resident status); *Boston v. R.*, [1998] 1 C.T.C. 2217 (TCC) (Residence outside Canada even though wife remained in Canada); *Mastri v. R.*, [1997] 3 C.T.C. 234 (FCA) (No "source" of income if no reasonable expectation of profit); *Schwartz v. Canada*, [1996] 1 C.T.C. 303 (SCC) (Provision contemplates taxability of income from unenumerated sources); *Bellingham v. Canada*, [1996] 1 C.T.C. 187 (FCA) ("Additional" interest in expropriation not income property nor income from a "source" and not taxable); *R. v. Fries*, [1990] 2 C.T.C. 439 (SCC) (Strike pay from union defence fund not income); *Beïque v. R.*, [1981] C.T.C. 75 (FCA) (Attempt to split income between husband and wife under Quebec law not allowed).

Definitions [s. 3]: "allowable business investment loss", "allowable capital loss" — 38(b), 248(1); "amount", "business" — 248(1); "Canada" — 255; "employment" — 248(1); "foreign resource property" — 66(15), 248(1); "listed personal property" — 54, 248(1); "office", "property" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxable net gain" — 41(1), 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

I.T. Application Rules: 20(3)(c), 20(5)(c).

Interpretation Bulletins: IT-98R2: Investment corporations (archived); IT-169: Price adjustment clauses; IT-206R: Separate businesses; IT-

232R3: Losses — their deductibility in the loss year or other years; IT-256R: Gains from theft, defalcation or embezzlement; IT-262R2: Losses of non-residents and part-year residents; IT-270R3: Foreign tax credit; IT-334R2: Miscellaneous receipts; IT-365R2: Damages, settlements and similar receipts; IT-377R: Director's, executor's or juror's fees (archived); IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-395R2: Foreign tax credit — foreign-source capital gains and losses; IT-420R3: Non-residents — income earned in Canada; IT-434R: Rental of real property by individual; IT-484R2: Business investment losses; IT-490: Barter transactions; IT-495R3: Child care expenses.

Advance Tax Rulings: ATR-40: Taxability of receipts under a structured settlement; ATR-50: Structured settlement; ATR-68: Structured settlement.

Forms: T776: Statement of real estate rentals.

Proposed Addition — 3.1 — Reasonable Expectation of Profit required [to be changed]

3.1 (1) Limit on loss [REOP required] — A taxpayer has a loss for a taxation year from a source that is a business or property only if, in the year, it is reasonable to expect that the taxpayer will realize a cumulative profit from that business or property for the period in which the taxpayer has carried on, and can reasonably be expected to carry on, that business or has held, and can reasonably be expected to hold, that property.

(2) Determination of profit — For the purpose of subsection (1), profit is determined without reference to capital gains or capital losses.

Related Provisions: 9(3) — Same rule in determining business profit or loss.

Application: The October 31, 2003 draft legislation (REOP), s. 2, would add s. 3.1, applicable to taxation years that begin after 2004. [See however the comments in the March 23, 2004 Budget Supplementary Information, reproduced below.]

Technical Notes: The following notes have been prepared to help taxpayers and tax professionals understand the attached legislative proposals. The notes are not an official interpretation of either the existing law or the proposals they describe.

Since the attached proposals are intended to be the subject of extensive consultation, these notes have been drafted in a relatively informal style and include several examples.

The Department of Finance invites readers to provide written comments on the attached proposals. Submissions may be made to: Tax Legislation Division, Department of Finance, 140 O'Connor St. Ottawa, Ontario K1A 0G5

Proposed new subsection 3.1(1) provides that a taxpayer will be considered to have a loss from a source that is a business or property for a taxation year only if, in that year, it is reasonable to assume that taxpayer will realize a cumulative profit from the business or property,

- in the case of a business, during the time that the taxpayer has carried on, or can reasonably be expected to carry on, the business, or
- in the case of a property, during the time that the taxpayer has held, or can reasonably be expected to hold, the property.

Proposed new subsection 3.1(2) makes clear that profit, in the context of subsection 3.1(1), does not include capital gains or capital losses.

The commentary that follows elaborates on key features of these provisions and illustrates their application through the use of examples.

Timing

There are two key timing elements in this provision: the time at which an assessment is required regarding the reasonable expectation of profit from the business or property, and the time period (referred to below as the "profitability time period") over which the profitability expectations of the business or property will be measured.

Annual Evaluation

Regard must be had to subsection 3.1(1) in each year that a taxpayer seeks to report a loss from a business or property. For example, assume that a taxpayer starts a business ("Business X") in 2005 and — before applying new subsection 3.1(1) — is considered to realize losses from the business in the taxpayer's 2005, 2006, 2007 and 2008 taxation years. For each of those years, an application of subsection 3.1(1) will be required. For the 2005 taxation year, the test under the subsection is whether it is reasonable *in that same 2005 taxation year* to expect that the taxpayer will realize a cumulative profit from Business X over the whole of the profitability time period. For 2006 the test is whether it is reasonable *in the 2006 taxation year* to expect a cumulative profit, again over the whole of the profitability time period. And for each successive year, the same test will be applied: is it reasonable in that year to expect the taxpayer to profit from the business over the entire profitability time period?

Assume further that in each of the taxpayer's 2005 to 2007 taxation years it is determined that it is indeed reasonable to expect that the taxpayer will profit from Business X over the profitability time period. The taxpayer will therefore have a loss, for each of those years, from the source that is Business X. However, if by 2008 it is no longer reasonable to expect that the taxpayer will realize a profit over the period that the taxpayer has, or can reasonably be expected to, carry on Business X, the test in new subsection 3.1(1) will not be met for the 2008 taxation year. The loss in 2008 will not be considered to be from a source and will not be deductible by the taxpayer. However, this determination in 2008 will not affect the previous conclusions reached in years 2005 through 2007: the losses for each of those years remain deductible.

Profitability Time Period

In determining whether it is reasonable to expect a taxpayer to realize a profit from a business or property, new subsection 3.1(1) has regard to the entire period over which the taxpayer holds the property or carries on the business. The beginning of that "profitability time period" will usually be uncontroversial: it is the time at which the taxpayer acquired the property or commenced carrying on the business. There may occasionally be cases where that starting point is not obvious, but it is expected that the existing law and practice will be able to resolve those.

Determining the end of the profitability time period, on the other hand, will often be more an exercise of reasonable expectation. The period runs, in principle, until the taxpayer disposes of the property or ceases to carry on the business. In most instances, however, this will not have happened before the end of the taxation year to which subsection 3.1(1) is being applied. Rather, the taxpayer will be seeking to deduct a loss from a property or business that the taxpayer still plans to hold or to carry on for some time to come. Subsection 3.1(1) therefore includes in its scope the entire period in which the taxpayer "can reasonably be expected" to carry on the business or to hold the property.

Cumulative Profit

Proposed subsection 3.1(1) requires an evaluation of expectations for cumulative profit and losses, by which is meant the aggregate profit or loss over the entire profitability time period. It is thus not necessary that the taxpayer demonstrate an expectation of profit — let alone an actual profit — in respect of any particular taxation year in order to be considered to have a reasonable expectation of profit. For instance, taxpayers will often realize a start-up loss from a business or property for one or more years before the business or property begins to generate a profit. The opposite can also happen: a taxpayer may realize a profit in one year and a loss in a subsequent year. In each instance, the relevant test is the expectation of cumulative profit over the whole of the profitability time period, and a taxpayer would be able to claim a loss provided their expectations for a cumulative profit over the entire relevant time period were reasonable.

Fact-Specific

Proposed subsection 3.1(1) requires that it must be reasonable in the circumstances of *the particular taxpayer* to expect to profit from the property or business. A specific taxpayer would not necessarily have a reasonable expectation of profit from a particular property solely because it might be reasonable, in other circumstances, for that property to yield a profit. For example, a rental property that produces rental revenue in excess of directly related rental expenses might on those facts alone be viewed as a property that should provide a taxpayer with a reasonable expectation of profit. However, if a particular taxpayer incurs a large amount of debt in order to purchase the property, such that the amount of interest expense associated with the property means that the particular taxpayer cannot realize a profit from the rental activity, then that taxpayer would not have a reasonable expectation of profit in respect of that rental activity. Note that in such circumstances, the taxpayer may intend to profit by reselling the property itself at a gain. If that were the taxpayer's intention, the gain would presumably be considered on income account and could be included in the determination of profit for

the purposes of subsection 3.1(1). See the commentary to proposed subsection 3.1(2).

Objective Determination

By requiring that the profit expectation be reasonable, it is intended that the determination be made on an objective, and not a subjective, basis. This will very often make no difference to the result of the determination as most taxpayers are expected to act on a commercially rational basis. However, where a taxpayer has — or purports to have — expectations of profit that are objectively unreasonable, subjective beliefs will not suffice. For example, consider a taxpayer who borrows funds at an annual fixed rate of 8%, and uses those funds (and no others) to make an investment that has a fixed annual return of 5%. Further assume that the investment itself cannot increase in value. In this case, there is no reasonable expectation of profit, regardless of whether, on a subjective basis, the misinformed investor intended to profit. With no reasonable expectation of profit, the taxpayer will not be considered to have realized a loss from a source that is the investment. On the other hand, given that the taxpayer has expenses that exceed the revenue generated by the investment, it would be inappropriate to tax any amount of that revenue.

The above example also highlights that the test in proposed subsection 3.1(1) will not necessarily be met solely because there is no personal element to the carrying on of a business or the holding of a property.

Not Every Business Is a Source

The distinction between a business and a source of income or loss is important to understanding proposed section 3.1. The Act recognizes, and taxes, income only if it is income from a source. Similarly, a loss is deductible only if it is a loss from a source. Section 3.1 is intended to clarify that, in respect of businesses, it is only those losses from businesses that taxpayers carry on with a reasonable expectation of profit that are to be considered as losses from a source. This implies that a taxpayer may be conducting a business without the taxpayer having a reasonable expectation of profit from that business. This implication is deliberate, and is consistent with the description of "business" in subsection 248(1) and the general understanding that a business may exist whenever a taxpayer has the subjective intention to make a profit, whether or not there is objectively a reasonable expectation of profit.

That is to say that the fact that a taxpayer is carrying on a business, and incurs expenses that exceed revenues, does not by itself mean that the business is a source, such that the taxpayer may deduct the excess. Rather, as proposed section 3.1 makes clear, the taxpayer has a loss from a source that is that business only if the taxpayer has a reasonable expectation of profit from that business.

Asymmetrical: No Rule on Income

Proposed subsection 3.1(1) is not symmetrical, in that it does not address the circumstances under which income will be considered to be from a source. This is intentional, and the provision should not be construed as suggesting that a taxpayer has a source of income only where the taxpayer has a reasonable expectation of profit from that source. A system that allowed taxpayers to prove the unreasonableness of their profit expectations in an effort to have, on that basis, untaxed income, would be inappropriate.

Profit and Subsection 3.1(2)

The reference to "profit" in proposed subsection 3.1(1) is intended to mean profit determined in accordance with generally accepted commercial principles. This is consistent with case law and the meaning of "profit" for the purposes of subsection 9(1).

Personal expenses are generally not incurred for the purpose of earning profit from a business or property. Therefore, in assessing the profitability expectations of a property or business personal expenses would first need to be eliminated.

Proposed subsection 3.1(2) makes clear that profit, in the context of subsection 3.1(1), does not include capital gains or capital losses. For example, consider a taxpayer who purchases a rental property for the purpose of leasing it to non-arm's-length persons. The taxpayer estimates that the expenses of financing and maintaining the property will exceed the revenue from the rental activity. Nonetheless, despite what appears to be a money-losing venture, the taxpayer chooses to purchase the property with the expectation that a gain on the sale of the property will make up for the losses from the rental activity. In a sense, the rental activity could be viewed as a cost-defraying activity for what is really a property purchased with the intention to profit from its resale. In determining whether the taxpayer has a reasonable expectation of profit from this property, the expected gain on the sale of the rental property would be included in the determination of "profit" only if it would be taxed not as a capital gain, but rather as ordinary income.

Federal budget, Supplementary Information, February 18, 2003: *Deductibility of Interest and Other Expenses*

[See under 20(1)(c) — ed.]

Department of Finance news release, October 31, 2003: *Proposed Amendments to the* Income Tax Act *Related to the Deductibility of Interest and Other Expenses Related to a Source*

The Department of Finance today released for public comment draft proposals regarding the deductibility of interest and other expenses for income tax purposes. These proposals, along with income tax interpretation bulletin IT-533, Interest Deductibility and Related Issues, released today by the Canada Customs and Revenue Agency, form a coordinated Government response on the deductibility of interest and other expenses.

This announcement follows up on a statement in the February 18, 2003, budget that the Department of Finance would propose measures to provide continuity in this important area of the law.

The proposed legislative amendments and draft interpretation bulletin are aimed at clarifying how the income tax system links the deductibility of certain expenses and losses to a taxpayer's prospects for profit, objectively determined. The proposals include specific *Income Tax Act* rules that require that there be a "reasonable expectation of profit" from a business or property for a taxpayer to realize a loss from the business or property, and that make clear that profit in this sense does not include capital gains. These measures will reaffirm many current practices that support the deductibility of interest, including those relating to the deductibility of interest on money borrowed to purchase common shares.

The package released today includes legislative proposals and explanatory notes with examples. These proposals are intended to have effect for taxation years beginning after 2004. The Department invites the public and tax professionals to comment on the proposals by December 31, 2003.

For further information: Andrée Houde, Public Affairs and Operations Division, (613) 996-8080; Mike Scandiffio, Communications Advisor, Office of the Deputy Prime Minister and Minister of Finance, (613) 996-7861; Tax Legislation Division, (613) 943-9412.

Federal budget, Supplementary Information, March 23, 2004: *Deductibility of Interest and Other Expenses*

Interest and other expenses are generally deductible in computing income from a business or property only if the expense is incurred "for the purpose of earning income." As the 2003 Budget noted, the meaning of this phrase has become unclear, and in some respects it has been interpreted in a manner that could lead to inappropriate results. In particular, whether "income" is a gross or net concept, and whether "purpose" is subjective or objective, are questions that need to be addressed.

On October 31, 2003, the Department of Finance released for public consultation a package of legislative proposals respecting the deductibility of interest and other expenses. The proposal focused not on the deductibility of a particular expense, but rather on the ability of a taxpayer to claim a loss from a business or a property. In doing so, the proposals adopted the concept of the reasonable expectation of profit — one that is already used several times in the Act and that has been extensively considered in court decisions.

In its release, the Department emphasized that the sole intent of the proposals is to restore the law and related administrative practices to what they were generally understood to be in the past. Some commentators have nonetheless expressed concern that the proposals could have more far-reaching effects. While this is not the intention behind these proposals, a number of significant issues have been raised that deserve further consideration.

It is important to ensure that there is an adequate opportunity for taxpayers to comment on the proposals, and for the Department to consider those comments. Accordingly, the Department intends to extend the period for making written submissions on these proposals until the end of August of this year.

Federal budget, Supplementary Information, February 23, 2005: *Deductibility of Interest and Other Expenses*

In October 2003, the Department of Finance released for public consultation a package of legislative proposals regarding the deductibility, for income tax purposes, of interest and other expenses. The proposals responded to certain court decisions that departed significantly from what had been the accepted understanding of the law in this area [notably *Ludco Enterprises Ltd.*, [2002] 1 C.T.C. 95 (SCC) — ed.]

In computing income from a business or property, a taxpayer can deduct many kinds of expenses, provided they were incurred in order to earn the income. A familiar example is interest on borrowed money, which is

deductible only if the borrowed money is used for the purpose of earning income from a business or property.

In this context, "income" had been understood to be a net amount comparable to profit, and to exclude capital gains. The court decisions, however, took a different view: income was read as the equivalent of gross revenue, and the distinction between income and capital gains was blurred.

The 2003 proposals were intended to restore the law on these points to its more familiar and more appropriate state.

An extended period of public consultation on the proposals ended in August 2004. Many commentators expressed concerns with the proposals' structure: in particular, that the proposals' codification of an objective "reasonable expectation of profit" test might inadvertently limit the deductibility of a wide variety of ordinary commercial expenses. The Department of Finance has sought to respond by developing a more modest legislative initiative that would respond to those concerns while still achieving the Government's objectives. The Department will, at an early opportunity, release that alternative proposal for comment. This will be combined with a Canada Revenue Agency publication that addresses, in the context of the alternative proposal, certain administrative questions relating to deductibility.

Definitions [s. 3.1]: "business" — 248(1); "capital gain" — 39(1)(a), 248(1); "capital loss" — 39(1)(b), 248(1); "profit" — 3.1(2); "property" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

4. (1) Income or loss from a source or from sources in a place — For the purposes of this Act,

(a) a taxpayer's income or loss for a taxation year from an office, employment, business, property or other source, or from sources in a particular place, is the taxpayer's income or loss, as the case may be, computed in accordance with this Act on the assumption that the taxpayer had during the taxation year no income or loss except from that source or no income or loss except from those sources, as the case may be, and was allowed no deductions in computing the taxpayer's income for the taxation year except such deductions as may reasonably be regarded as wholly applicable to that source or to those sources, as the case may be, and except such part of any other deductions as may reasonably be regarded as applicable thereto; and

(b) where the business carried on by a taxpayer or the duties of the office or employment performed by the taxpayer was carried on or were performed, as the case may be, partly in one place and partly in another place, the taxpayer's income or loss for the taxation year from the business carried on, or the duties performed, by the taxpayer in a particular place is the taxpayer's income or loss, as the case may be, computed in accordance with this Act on the assumption that the taxpayer had during the taxation year no income or loss except from the part of the business that was carried on in that particular place or no income or loss except from the part of those duties that were performed in that particular place, as the case may be, and was allowed no deductions in computing the taxpayer's income for the taxation year except such deductions as may reasonably be regarded as wholly applicable to that part of the business or to those duties, as the case may be, and except such part of any other deductions as may reasonably be regarded as applicable thereto.

Related Provisions: 96(1)(f) — Source of income preserved when flows through partnership; 108(5) — Source of income lost when flows through trust.

Selected Cases [subsec. 4(1)]: *Interprovincial Pipe Line Co. v. MNR*, [1968] C.T.C. 156 (SCC) (To determine income from a source, taxpayer required to deduct interest paid to Canadian lenders from interest received from U.S. subsidiary).

Interpretation Bulletins: IT-362R: Patronage dividends.

(2) Idem — Subject to subsection (3), in applying subsection (1) for the purposes of this Part, no deductions permitted by sections 60 to 64 apply either wholly or in part to a particular source or to sources in a particular place.

History: Subsec. 4(2) substituted by 1994, c. 21, subsec. 1(1), applicable to 1989 *et seq.* That subsec. formerly read:

(2) Subject to subsection (3), in applying subsection (1) for the purposes of this Part, no deductions permitted by sections 60 to 63 are applicable either wholly or in part to a particular source or to sources in a particular place, as the case may be.

(3) Deductions applicable — In applying subsection (1) for the purposes of subsections 104(22) and (22.1) and sections 115 and 126,

(a) subject to paragraph (b), all deductions permitted in computing a taxpayer's income for a taxation year for the purposes of this Part, except any deduction permitted by any of paragraphs 60(b) to (o), (p), (r) and (v) to (w), shall apply either wholly or in part to a particular source or to sources in a particular place; and

Proposed Amendment — 4(3)(a)

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 47, will amend para. 4(3)(a) to substitute "(v) to (x)" for "(v) to (w)", applicable to 2002 *et seq.*

Technical Notes: Subsection 4(2) provides that, in determining the income or loss from a source, no deductions are permitted under sections 60 to 64. Subsection 4(3) provides that this rule does not apply, with the exception of certain deductions, in determining the foreign source income designated by a trust to a beneficiary under subsections 104(22) and 104(22.1), in determining a taxpayer's taxable income earned in Canada under section 115 and in determining a taxpayer's foreign tax credit under section 126. The exceptions are for deductions permitted by paragraphs 60(b) to (o), (p), (r) and (v) to (w).

Paragraph 4(3)(a) is amended to expand the list of exceptions to include deductions permitted by paragraph 60(x) (e.g., repayment of Canada Education Savings Grants).

(b) any deduction permitted by subsection 104(6) or (12) shall not apply either wholly or in part to a source in a country other than Canada.

History: Subsec. 4(3) substituted by 1994, c. 21, subsec. 1(2), applicable to taxation years ending after November 12, 1981, except that for taxation years that begin before 1993, the subsec. shall be read as follows:

(3) The following rules apply for the purposes of this Act:

(a) in applying paragraph (1)(b) for the purposes of sections 115 and 126, subject to paragraph (b), all deductions permitted in computing a taxpayer's income for a taxation year for the purposes of this Part shall apply either wholly or in part to a particular source or to sources in a particular place; and

(b) in applying subsection (1) for the purposes of subsections 104(22) and (22.1) and sections 115 and 126,

(i) any deduction permitted by any of paragraphs 60(b) to (o), (p), (r) and (v) to (w) shall not apply either wholly or in part to a particular source or to sources in a particular place, and

(ii) any deduction permitted by subsection 104(6) or (12) shall not apply either wholly or in part to a source in a country other than Canada.

Subsec. 4(3) formerly read:

(3) Deductions applicable — In applying paragraph (1)(b) for the purposes of sections 115 and 126, all deductions allowed in computing the income of a taxpayer for a taxation year for the purposes of this Part, except any deduction permitted by paragraph 60(b), (c), (d) or (i), shall be deemed to be applicable either wholly or in part to a particular source or to sources in a particular place, as the case may be.

Interpretation Bulletins: IT-270R3: Foreign tax credit.

(4) [Repealed]

History: Subsec. 4(4) repealed by 1996, c. 21, s. 2, applicable to taxation years that end after July 19, 1995. The subsec. formerly read:

> (4) Limitation respecting inclusions and deductions — Unless a contrary intention is evident, no provision of this Part shall be read or construed to require the inclusion or to permit the deduction, either directly or indirectly, in computing a taxpayer's income for a taxation year or the taxpayer's income or loss for a taxation year from a particular source or from sources in a particular place, of any amount to the extent that that amount has been directly or indirectly included or deducted, as the case may be, in computing such income or loss for the year or any preceding taxation year under, in accordance with or because of any other provision of this Part.

Subsec. 4(4) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 2, to add "either directly or indirectly," and "directly or indirectly", and "for the year or any preceding taxation year", applicable to 1990 *et seq.*

Definitions [s. 4]: "amount", "business" — 248(1); "Canada" — 255; "employment", "office", "property" — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 4]: IT-256R: Gains from theft, defalcation or embezzlement; IT-377R: Director's, executor's or juror's fees (archived); IT-420R3: Non-residents — income earned in Canada.

Subdivision a — Income or Loss from an Office or Employment

Basic Rules

5. (1) Income from office or employment — Subject to this Part, a taxpayer's income for a taxation year from an office or employment is the salary, wages and other remuneration, including gratuities, received by the taxpayer in the year.

Related Provisions: 4(1) — Income or loss from a source or from sources in a place; 6 — Amounts included as income from office or employment; 8(1)(n) — Reimbursement of salary for periods when not employed; 56.4(4)(a) — Amount paid by purchaser for non-compete agreement deemed to be wages paid to employee; 87(2)(k) — Amalgamations — Amount received by employee from new corporation; 110(1)(f)(v) — Deduction for Canadian Forces personnel and police on high-risk missions; 110.2(1)"qualifying amount" — Retroactive spreading of certain lump-sum payments over prior years; 115(1)(a)(i) — Non-resident's taxable income earned in Canada; 149(1)(a), (b) — Exempt individuals; 153(1)(a) — Withholding; 248(7) — Payment to employee deemed received when mailed; Canada-U.S. Tax Treaty:Art. XV, XVI — Taxation of dependent personal services.

Selected Cases [subsec. 5(1)]: *Dhillon v. R.*, [2002] 4 C.T.C. 2648 (FCA) (Net amount of allowance after mandatory training expenses taxable); *Bure v. R.*, [2000] 1 C.T.C. 2407 (TCC) (Payment by club of agent's fees was taxable benefit to player); *Romeril v. R.*, [1999] 1 C.T.C. 2535 (TCC) (Predominant purpose of trip governs); *Gernhart v. R.*, [1998] 2 C.T.C. 102 (FCA); aff'd [1996] 3 C.T.C. 2369 (TCC) (Tax equalization payments part of remuneration for services); *Shultz v. Canada* (October 15, 1996), Court File No. 96-29098 (TCC) (unreported) (Bonus payment received in respect of period when taxpayer was non-resident was taxable. Compare *Hewitt*); *Placer Dome Inc. v. Canada*, [1992] 2 C.T.C. 99 (FCA); leave to appeal to SCC refused (1993), 151 N.R. 392 (note) (Payments by employer into employees' stock purchase plan governed by subsec. 7(3); not deductible remuneration); *Canada v. G.R. Chrapko*, [1988] 2 C.T.C. 342 (FCA) (Cashier required to include cash shortages withheld from wages); *McNeill v. R.*, [1986] 2 C.T.C. 352 (FCTD) (Relocation allowance is not income when unrelated to contract of employment and services rendered); *Nowegijick v. R.*, [1983] C.T.C. 20 (SCC) (Income from services performed by Indian off reserve for corporation with head office on reserve was not taxable); *Lawson v. R.*, [1982] C.T.C. 368 (FCTD) (Payment for settlement of wrongful dismissal claim taxable); *Dauphinée v. R.*, [1980] C.T.C. 332 (FCTD) (Award for inventions made in the course of employment taxable); *Loeb v. R.*, [1978] C.T.C. 460 (FCA) (Payment for picketing during strike was income from employment); *Morin v. R.*, [1975] C.T.C. 106 (FCTD) (Provincial income taxes deducted from salary included in income).

Interpretation Bulletins: IT-75R4: Scholarships, fellowships, bursaries, prizes, research grants and financial assistance; IT-113R4: Benefits to employees — stock options; IT-167R6: Registered pension plans — employee's contributions; IT-196R2: Payments by employer to employee; IT-202R2: Employees' or workers' compensation; IT-213R: Prizes from lottery schemes and giveaway contests; IT-257R: Canada Council grants; IT-266: Taxation of members of provincial legislative assemblies (archived); IT-292: Taxation of elected municipal officers; IT-316: Awards for employees' suggestions and inventions (archived); IT-334R2: Miscellaneous receipts; IT-365R2: Damages, settlements and similar receipts; IT-389R: Vacation-with-pay plans established under collective agreements; IT-470R: Employees' fringe benefits; IT-515R2: Education tax credit.

Advance Tax Rulings: ATR-21: Pension benefit from an unregistered pension plan; ATR-45: Share appreciation rights plan; ATR-64: Phantom stock award plan.

(2) Loss from office or employment — A taxpayer's loss for a taxation year from an office or employment is the amount of the taxpayer's loss, if any, for the taxation year from that source computed by applying, with such modifications as the circumstances require, the provisions of this Act respecting the computation of income from that source.

Related Provisions: 4(1) — Income or loss from a source or from sources in a place; 8(13) — Loss from home office disallowed; 111(1)(a), 111(8)"non-capital loss" — Carryover of loss from employment to prior or later years.

Selected Cases [subsec. 5(2)]: *McIlhargey v. Canada*, [1991] 2 C.T.C. 52 (FCTD) (Forgiveness of loan to employee for share purchase taxable; subsequent loss on sale not deductible from employment income).

Selected Cases [s. 5]: *Whitney v. R.*, [2002] 3 C.T.C. 476 (FCA) (Amounts received pursuant to collective agreement are income from employment, not compensation received under compensation law).

Definitions [s. 5]: "amount", "employment", "office", "salary or wages" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Inclusions

6. (1) Amounts to be included as income from office or employment — There shall be included in computing the income of a taxpayer for a taxation year as income from an office or employment such of the following amounts as are applicable:

(a) **value of benefits** — the value of board, lodging and other benefits of any kind whatever received or enjoyed by the taxpayer in the year in respect of, in the course of, or by virtue of an office or employment, except any benefit

(i) derived from the contributions of the taxpayer's employer to or under a registered pension plan, group sickness or accident insurance plan, private health services plan, supplementary unemployment benefit plan, deferred profit sharing plan or group term life insurance policy,

(ii) under a retirement compensation arrangement, an employee benefit plan or an employee trust,

(iii) that was a benefit in respect of the use of an automobile,

(iv) derived from counselling services in respect of

(A) the mental or physical health of the taxpayer or an individual related to the taxpayer, other than a benefit attributable to an outlay or expense to which paragraph 18(1)(l) applies, or

(B) the re-employment or retirement of the taxpayer, or

(v) under a salary deferral arrangement, except to the extent that the benefit is included under this paragraph because of subsection (11);

Related Provisions: 6(1)(e) — Standby charge for automobile; 6(1)(e.1) — Additional 7% for GST; 6(1)(f) — Insurance benefits received by employer; 6(1)(g) — Employment benefit plan; 6(1)(i) — Sal-

ary deferral arrangement payments; 6(1)(k), (l) — Automobile operating expense benefits; 6(1.1) — Parking costs are taxable benefits; 6(4) — Group term life insurance — taxable benefit; 6(6) — Employment at special work site or remote location; 6(7) — Cost of property or service includes taxes; 6(11)–(14) — Salary deferral arrangement; 6(15), (15.1) — Forgiveness of employee debt; 6(16) — Disability-related employment benefits; 6(18)(a) — No benefit from top-up disability payments where insurer insolvent; 6(19)–(22) — Benefit from reimbursement for loss in value of housing; 6(23) — Benefit from housing subsidy; 7(3) — No benefit from stock option agreement except as provided under s. 7; 15(5) — Automobile benefit to shareholder; 20.01 — Deduction to self-employed person for private health services plan premiums; 56(1)(a) — Amounts included in income; 56(1)(w) — Salary deferral arrangement; 56(1)(x)–(z) — Retirement compensation arrangement; 81(3.1) — No tax on allowance or reimbursement for part-time employee's travel expenses; 153(1)(a) — Withholding of tax by employer; 248(1) — "retiring allowance" excludes counselling services.

History: Subpara. 6(1)(a)(iii) substituted by 1994, c. 21, subsec. 2(1), applicable to 1993 *et seq.* That subpara. formerly read:

> (iii) that was a benefit in relation to the use of an automobile, except to the extent that the benefit related to the operation of the automobile,

Subpara. 6(1)(a)(v) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 3(1), applicable to 1986 *et seq.*

Selected Cases [para. 6(1)(a)]: *Tsiaprailis v. R.*, [2005] 2 C.T.C. 1 (SCC) (Surrogatum principle applied to tax arrears portion of disability insurance receipts); *Stauffer v. R.*, [2002] 4 C.T.C. 2608 (TCC) (Costs to provide parking spaces equal to charges; no benefit); *Siftar v. R.*, [2002] 1 C.T.C. 2071 (TCC) (Damages were non-taxable general damages, not paid pursuant to contract of insurance); *Fry v. R.*, [2001] 4 C.T.C. 2388 (TCC) (Para. 6(1)(a) not applicable if disability benefits escape taxation under para. 6(1)(f)); *Dumas v. R.*, [2001] 1 C.T.C. 2490 (TCC) (Underlying nature of claim will determine taxability; courts free to examine pleadings in relevant court proceedings); *Bure v. R.*, [2000] 1 C.T.C. 2407 (TCC) (Payment by club of agent's fees was taxable benefit to player); *Romeril v. R.*, [1999] 1 C.T.C. 2535 (TCC) (Predominant purpose of trip governs); *Gernhart v. R.*, [1998] 2 C.T.C. 102 (FCA); aff'd [1996] 3 C.T.C. 2369 (TCC) (Tax equalization payments part of remuneration for services); *Guay v. R.*, [1997] 3 C.T.C. 276 (FCA); rev'g [1996] 3 C.T.C. 2385 (TCC) (Relationship of expenses reimbursed to employment led to non-taxability of reimbursement payments); *Shultz v. Canada* (October 15, 1996), Court File No. 96-29098 (TCC) (unreported) (Bonus payment received in respect of period when taxpayer was non-resident was taxable. Compare *Hewitt*); *Lowe v. Canada*, [1996] 2 C.T.C. 33 (FCA) (No benefit if pleasure portion of business trip is incidental); *Leduc (succession de) v. Canada*, [1996] 1 C.T.C. 2873 (TCC) (Costs of transporting food to remote location were taxable benefits); *Detchon v. Canada*, [1996] 1 C.T.C. 2475 (TCC) (Amount of benefit for free schooling was average cost to school of educating student); *Krull et al. v. Canada (A.-G.)*, [1996] 1 C.T.C. 131 (FCA) (Mortgage differential payment for limited time not a taxable benefit); *Mommersteeg and Griffin v. Canada*, [1995] 2 C.T.C. 2767 (TCC) (Airline mileage travel was taxable benefit where tickets giving rise to mileage paid by employer); *Blanchard v. Canada*, [1995] 2 C.T.C. 262 (FCA) (Source of payment of benefit not relevant so long as there is connection with employment); *Klein v. Canada*, [1995] 1 C.T.C. 2980 (TCC) (Loan forgiveness was part of single severance package); *Oster v. Canada*, [1995] 1 C.T.C. 2224 (TCC) (Transfer allowances equal to one month's pay were taxable benefits and not moving expenses); *Hoefele v. Canada*, [1995] 1 C.T.C. 2177 (TCC) (Interest subsidy on increased portion of mortgage over ten year period was reimbursement of expense, not increase in employee's remuneration); *Clemiss v. MNR*, [1992] 2 C.T.C. 232 (FCTD) (Reimbursement of legal fees incurred in defence of criminal prosecution for alleged conspiracy to defraud company was income); *McIlhargey v. Canada*, [1991] 2 C.T.C. 52 (FCTD) (Forgiveness of loan to employee for share purchase taxable; subsequent loss on sale not deductible from employment income); *Huffman v. Canada*, [1990] 2 C.T.C. 132 (FCA) (Undercover police officer's reimbursement for cost of special clothes not benefit); *Splane v. Canada*, [1990] 2 C.T.C. 199 (FCTD); aff'd 92 D.T.C. 6021 (FCA) (Mortgage interest differential paid to relocated employee not benefit); *Robertson v. R.*, [1988] 1 C.T.C. 111 (FCTD); aff'd [1990] 1 C.T.C. 114 (FCA); leave to appeal to SCC refused (1990), 113 N.R. 319 (note), (sub nom. *Robertson v. MNR*) (Profit from exercise of option was benefit from employment); *McNeill v. R.*, [1986] 2 C.T.C. 352 (FCTD) (Without evidence of uncompensated losses suffered, "social disruption allowance" for relocation was a benefit from employment); *Dauphinée v. R.*, [1980] C.T.C. 332 (FCTD) (National Research Council of Canada award for invention was employment income); *R. v. Harman*, [1980] C.T.C. 83 (FCA) (Where automobile used for business and personal purposes, benefit from employment only to extent of personal use; no standby charge); *Phaneuf Estate v. R.*, [1978] C.T.C. 21 (FCTD) (Difference between par value and market value of shares was gift, not taxable benefit); *Philp et al. v. MNR*, [1970] C.T.C. 330 (Exch.) (Trip with expenses paid by supplier for employment performance resulted in taxable benefit of 50%); *Waffle v. MNR*, [1968] C.T.C. 572 (Exch.) (Cruise for employee and wife paid for by supplier was fully taxable benefit).

Regulations: 200(2)(g), 200(3) (information returns).

Remission Orders: *Ice Storm Employee Benefits Remission Order*, P.C. 1998-2047.

Interpretation Bulletins: IT-54: Wage loss replacement plans — changes in plans established before June 19, 1971 (archived); IT-63R5: Benefits, including standby charge for an automobile, from the personal use of a motor vehicle supplied by an employer — after 1992; IT-75R4: Scholarships, fellowships, bursaries, prizes, research grants and financial assistance; IT-85R2: Health and welfare trusts; IT-113R4: Benefits to employees — stock options; IT-160R3: Personal use of aircraft (archived); IT-167R6: Registered pension plans — employee's contributions; IT-168R3: Athletes and players employed by football, hockey and similar clubs; IT-196R2: Payments by employer to employee; IT-334R2: Miscellaneous receipts; IT-339R2: Meaning of "private health services plan"; IT-357R2: Expenses of training; IT-365R2: Damages, settlements and similar receipts; IT-389R: Vacation-with-pay plans established under collective agreements; IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt; IT-428: Wage loss replacement plans; IT-432R2: Benefits conferred on shareholders; IT-470R: Employees' fringe benefits; IT-502: Employee benefit plans and employee trusts; IT-529: Flexible employee benefit programs.

I.T. Technical News: 6 (payment of mortgage interest subsidy by employer); 12 (1998 deduction limits and benefit rates for automobiles); 13 (employer-paid educational costs); 15 (Christmas parties and employer-paid special events; employer payment of professional membership fees); 22 (employee benefits); 25 (health and welfare trusts).

Advance Tax Rulings: ATR-8: Self-insured health and welfare trust fund; ATR-21: Pension benefit from an unregistered pension plan; ATR-23: Private health services plan; ATR-45: Share appreciation rights plan.

Forms: T4130: Employer's guide to payroll deductions — taxable benefits.

(b) **personal or living expenses** — all amounts received by the taxpayer in the year as an allowance for personal or living expenses or as an allowance for any other purpose, except

(i) travel, personal or living expense allowances

(A) expressly fixed in an Act of Parliament, or

(B) paid under the authority of the Treasury Board to a person who was appointed or whose services were engaged pursuant to the *Inquiries Act*, in respect of the discharge of the person's duties relating to the appointment or engagement,

(ii) travel and separation allowances received under service regulations as a member of the Canadian Forces,

(iii) representation or other special allowances received in respect of a period of absence from Canada as a person described in paragraph 250(1)(b), (c), (d) or (d.1),

(iv) representation or other special allowances received by a person who is an agent-general of a province in respect of a period while the person was in Ottawa as the agent-general of the province,

(v) reasonable allowances for travel expenses received by an employee from the employee's employer in respect of a period when the employee was employed in connection with the selling of property or negotiating of contracts for the employee's employer,

(vi) reasonable allowances received by a minister or clergyman in charge of or ministering to a dio-

cese, parish or congregation for expenses for transportation incident to the discharge of the duties of that office or employment,

(vii) reasonable allowances for travel expenses (other than allowances for the use of a motor vehicle) received by an employee (other than an employee employed in connection with the selling of property or the negotiating of contracts for the employer) from the employer for travelling away from

(A) the municipality where the employer's establishment at which the employee ordinarily worked or to which the employee ordinarily reported was located, and

(B) the metropolitan area, if there is one, where that establishment was located,

in the performance of the duties of the employee's office or employment,

(vii.1) reasonable allowances for the use of a motor vehicle received by an employee (other than an employee employed in connection with the selling of property or the negotiating of contracts for the employer) from the employer for travelling in the performance of the duties of the office or employment,

(viii) [Repealed]

(ix) allowances (not in excess of reasonable amounts) received by an employee from the employee's employer in respect of any child of the employee living away from the employee's domestic establishment in the place where the employee is required by reason of the employee's employment to live and in full-time attendance at a school in which the language primarily used for instruction is the official language of Canada primarily used by the employee if

(A) a school suitable for that child primarily using that language of instruction is not available in the place where the employee is so required to live, and

(B) the school the child attends primarily uses that language for instruction and is not farther from that place than the community nearest to that place in which there is such a school having suitable boarding facilities;

and, for the purposes of subparagraphs (v), (vi) and (vii.1), an allowance received in a taxation year by a taxpayer for the use of a motor vehicle in connection with or in the course of the taxpayer's office or employment shall be deemed not to be a reasonable allowance

(x) where the measurement of the use of the vehicle for the purpose of the allowance is not based solely on the number of kilometres for which the vehicle is used in connection with or in the course of the office or employment, or

(xi) where the taxpayer both receives an allowance in respect of that use and is reimbursed in whole or in part for expenses in respect of that use (except where the reimbursement is in respect of supplementary business insurance or toll or ferry charges and the amount of the allowance was determined without reference to those reimbursed expenses);

Related Provisions: 6(6) — Employment at special work site or remote location; 6(16) — Disability-related employment benefits; 8(1) — Deductions allowed; 8(1)(c) — Clergyman's residence; 8(1)(f) — Salesman's expenses; 8(1)(g) — Transport employee's expenses; 8(1)(h), (h.1) — Travelling expenses; 8(11) — GST rebate deemed not a reimbursement; 18(1)(r) — Limitation on employer deductibility — automobile expenses; 81(3.1) — No tax on allowance or reimbursement for part-time employee's travel expenses; 81(4) — Exemption for payment to volunteer firefighter or emergency worker; 153(1)(a) — Withholding of tax by employer.

History: Subpara. 6(1)(b)(viii) repealed by 1999, c. 22, subsec. 2(1), applicable to 1998 *et seq.* The subpara. formerly read:

(viii) such part of the total of allowances received by a person who is a volunteer fireman from a government, municipality or other public authority for expenses incurred by the person in respect of, in the course of, or by virtue of the discharge of the person's duties as a volunteer fireman, as does not exceed $500, or

Subpara. 6(1)(b)(xi) substituted by 1994, c. 21, subsec. 2(2), applicable to 1993 *et seq.* That subpara. formerly read:

(xi) where the taxpayer both receives an allowance in respect of that use and is reimbursed in whole or in part for expenses in respect of that use (except where the reimbursement is in respect of supplementary business insurance or parking, toll or ferry charges and the amount of the allowance is determined without reference to those reimbursed expenses);

That portion of subpara. 6(1)(b)(vii) preceding cl. (A), and subpara. (vii.1), amended by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 3(2), (3), to substitute, in each, "reasonable allowances" for "allowances (not in excess of reasonable amounts)", and "the negotiating" for "negotiating", applicable to 1990 *et seq.*

That portion of para. 6(1)(b) following cl. (ix)(B) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 3(4), that portion between cl. (ix)(B) and subpara. (x) applicable to 1990 *et seq.*, and subparas. (x) and (xi) applicable to 1988 *et seq.*, except that those subparas. are not applicable to the 1988 and 1989 taxation years of an individual who so elects by notifying the Minister of National Revenue in writing. That portion formerly read:

and, for the purposes of subparagraphs (v), (vi) and (vii.1), an allowance received in the year by the taxpayer for use of a motor vehicle in connection with or in the course of the taxpayer's office or employment shall be deemed to be in excess of a reasonable amount

(x) where the measurement of the use of the vehicle for the purpose of the allowance is not based solely on the number of kilometres for which the vehicle is used in connection with or in the course of the office or employment, or

(xi) where the taxpayer both receives an allowance in respect of the use of the vehicle in connection with or in the course of the office or employment and is reimbursed in whole or in part for expenses in respect of the same use;

Selected Cases [para. 6(1)(b)]: *MacDonald v. Canada*, [1994] 2 C.T.C. 48 (FCA) (Monthly housing subsidy for RCMP officer was taxable allowance); *R. v. Eggert*, [1985] 2 C.T.C. 343 (FCTD) (Fixed monthly allowance for expenses, not determined according to time spent travelling, nor in connection with selling or negotiating, was taxable benefit); *R. v. Paradis*, [1985] 2 C.T.C. 3 (FCTD) (Lump sum for meals, not determined according to time spent travelling, was taxable); *R. v. Demers*, [1981] C.T.C. 282 (FCTD) (Allowance intended to compensate employee for working in another country was taxable benefit); *R. v. Lavers*, [1978] C.T.C. 341 (FCTD) (Fixed mileage allowance for use of own car, not determined directly according to time spent travelling, was taxable benefit).

Remission Orders: *Ice Storm Employee Benefits Remission Order*, P.C. 1998-2047.

Interpretation Bulletins: IT-168R3: Athletes and players employed by football, hockey and similar clubs; IT-470R: Employees' fringe benefits; IT-516R2: Tuition tax credit; IT-518R: Food, beverages and entertainment expenses; IT-522R: Vehicle, travel and sales expenses of employees.

Forms: T4130: Employer's guide to payroll deductions — taxable benefits.

(c) **director's or other fees** — director's or other fees received by the taxpayer in the year in respect of, in the course of, or by virtue of an office or employment;

Related Provisions: 153(1)(a) — Withholding of tax by employer.

Interpretation Bulletins: IT-168R3: Athletes and players employed by football, hockey and similar clubs; IT-377R: Director's, executor's or juror's fees (archived); IT-468R: Management or administration fees paid to

non-residents; IT-470R: Employees' fringe benefits; IT-518R: Food, beverages and entertainment expenses.

Forms: T4001: Employers' guide — payroll deductions — basic information; T4061: Non-resident withholding tax guide.

(d) **allocations, etc., under [employees] profit sharing plan** — amounts allocated to the taxpayer in the year by a trustee under an employees profit sharing plan as provided by section 144 except subsection 144(4), and amounts required by subsection 144(7) to be included in computing the taxpayer's income for the year;

Related Provisions: 8(1)(o.1) — Deduction for forfeited amounts; 12(1)(n) — Income inclusion — amount received from EPSP; 128.1(10)"excluded right or interest"(a)(v) — No deemed disposition of rights on emigration; 144(9) — Deductions for forfeited amounts; 153(1)(a) — Withholding of tax at source.

Interpretation Bulletins: IT-379R: Employees profit sharing plans — allocations to beneficiaries.

(e) **standby charge for automobile** — where the taxpayer's employer or a person related to the employer made an automobile available to the taxpayer, or to a person related to the taxpayer, in the year, the amount, if any, by which

(i) an amount that is a reasonable standby charge for the automobile for the total number of days in the year during which it was made so available

exceeds

(ii) the total of all amounts, each of which is an amount (other than an expense related to the operation of the automobile) paid in the year to the employer or the person related to the employer by the taxpayer or the person related to the taxpayer for the use of the automobile;

Related Provisions: 6(1)(a)(iii) — Automobile benefits excluded from general inclusion of benefits; 6(1)(e.1) — 7% added to benefit before 1996 to reflect GST; 6(1)(k), (l) — Operating expense benefit; 6(2) — Calculation of reasonable standby charge; 6(2.1) — Reduced standby charge for automobile salesman; 6(7) — Cost of automobile includes GST effective 1996; 8(1)(f)(vii) — Salesman's expenses; 12(1)(y) — Partnerships — auto provided to partner or employee of partner; 15(5) — Automobile benefit to shareholder; 153(1)(a) — Withholding of tax by employer.

Selected Cases [para. 6(1)(e)]: *Bouchard v. R.*, [1983] C.T.C. 173 (FCTD) (Rolls Royce used by president of company was benefit to extent of personal use); *R. v. Harman*, [1980] C.T.C. 83 (FCA) (Automobile for business and personal use was benefit from employment to extent of personal use; no standby charge).

Regulations: 200(2)(g), 200(3) (information returns).

Interpretation Bulletins: IT-63R5: Benefits, including standby charge for an automobile, from the personal use of a motor vehicle supplied by an employer — after 1992; IT-168R3: Athletes and players employed by football, hockey and similar clubs.

I.T. Technical News: 12 (1998 deduction limits and benefit rates for automobiles).

(e.1) [Repealed]

History: Para. 6(1)(e.1) repealed by 1997, c. 10, subsec. 267(1), applicable to 1996 *et seq.* Para. (e.1) formerly read:

(e.1) goods and services tax — the total of all amounts each of which is 7% of the amount, if any, by which

(i) an amount (in this paragraph referred to as the "benefit amount") that would be required under paragraph (a) or (e) to be included in computing the taxpayer's income for the year in respect of a supply, other than a zero-rated supply or an exempt supply, (within the meanings assigned by Part IX of the *Excise Tax Act*) of property or a service if no amount were paid to the employer or to a person related to the employer in respect of the amount that would be so required to be included

exceeds

(ii) the amount, if any, included in the benefit amount that can reasonably be attributed to tax imposed under an Act of the legislature of a province that is a prescribed tax for the purposes of section 154 of the *Excise Tax Act*;

Para. 6(1)(e.1) substituted by 1994, c. 7, Sch. VIII (1993, c. 24), s. 1, applicable to 1991 *et seq.*, except that in its application to the 1991 taxation year the para. shall be read as follows:

(e.1) the total of all amounts each of which is 7% of the amount, if any, by which

(i) an amount required under paragraph (a) or (e) to be included in computing the income of the taxpayer for the year in respect of a supply, other than a zero-rated supply or an exempt supply, (within the meanings assigned by Part IX of the *Excise Tax Act*) of property or a service

exceeds

(ii) the amount, if any, included in the amount that is required to be so included under paragraph (a) or (e), as the case may be, that can reasonably be attributed to tax imposed under an Act of the legislature of a province that is a prescribed tax for the purposes of section 154 of the *Excise Tax Act*;

Para. 6(1)(e.1) formerly read:

(e.1) goods and services tax — the total of all amounts, each of which is 7% of the amount, if any, by which

(i) an amount required under paragraph (a) or (e) to be included in computing the income of the taxpayer for the year in respect of a supply, other than a zero-rated supply or an exempt supply (within the meanings assigned by Part IX of the *Excise Tax Act*), of property or a service in respect of which section 173 of that Act applies

exceeds

(ii) the amount, if any, included in the amount that is required to be so included under paragraph (a) or (e), as the case may be, that may reasonably be attributed to tax imposed under an Act of the legislature of a province that is a prescribed tax for the purposes of section 154 of the *Excise Tax Act*;

Selected Cases [para. 6(1)(e.1)]: *Hewitt v. Canada*, [1996] 1 C.T.C. 2675 (TCC) (Automobile without insurance and registration not "available" to employee).

(f) **[private] employment insurance [plan] benefits** — the total of all amounts received by the taxpayer in the year that were payable to the taxpayer on a periodic basis in respect of the loss of all or any part of the taxpayer's income from an office or employment, pursuant to

(i) a sickness or accident insurance plan,

(ii) a disability insurance plan, or

(iii) an income maintenance insurance plan

to or under which the taxpayer's employer has made a contribution, not exceeding the amount, if any, by which

(iv) the total of all such amounts received by the taxpayer pursuant to the plan before the end of the year and

(A) where there was a preceding taxation year ending after 1971 in which any such amount was, by virtue of this paragraph, included in computing the taxpayer's income, after the last such year, and

(B) in any other case, after 1971,

exceeds

(v) the total of the contributions made by the taxpayer under the plan before the end of the year and

(A) where there was a preceding taxation year described in clause (iv)(A), after the last such year, and

(B) in any other case, after 1967;

Related Provisions: 6(18) — No taxable benefit on top-up disability payments where insurer insolvent; 8(1)(b) — Deduction for legal expenses to obtain benefits; 8(1)(n.1)(iii) — Deduction for certain amounts reim-

bursed to employer; 56(1)(a)(iv) — Income inclusion for benefit under *Employment Insurance Act*; 110.2(1)"qualifying amount" — Retroactive spreading of lump-sum payment over prior years; 139.1(13) — Effect of demutualization of insurance corporation on group insurance policy; 153(1)(a) — Withholding of tax at source.

Selected Cases [para. 6(1)(f)]: *Tsiaprailis v. R.*, [2005] 2 C.T.C. 1 (SCC); aff'g [2003] 3 C.T.C. 171 (FCA); rev'g in part [2002] 1 C.T.C. 2858 (TCC) (Surrogatum principle applied to tax arrears portion of disability insurance receipts); *Farrow v. R.*, [2002] 1 C.T.C. 2153 (TCC) (Nature of plan could not be retroactively changed to make receipts non-taxable); *Siftar v. R.*, [2002] 1 C.T.C. 2071 (TCC) (Damages were non-taxable general damages, not paid pursuant to contract of insurance); *Fry v. R.*, [2001] 4 C.T.C. 2388 (TCC) (Para. 6(1)(a) not applicable if disability benefits escape taxation under para. 6(1)(f)); *Leonard v. Canada*, [1996] 3 C.T.C. 265 (FCTD) (Sickness benefits obtained under plan paid by employer; no "trust" arrangement); *Dagenais v. Canada*, [1995] 2 C.T.C. 100 (FCTD) (Accepting lower wages as part of labour negatiations not equivalent to taxpayers' paying premium on wage loss protection plan. Receipts taxable).

Regulations: 200(2)(f) (information return).

Remission Orders: *Janet Hall Remission Order*, P.C. 2004-1336 (remission where CPP lump sum disability repaid to wage loss replacement provider).

I.T. Application Rules: 19 (where plan established before June 19, 1971).

Interpretation Bulletins: IT-54: Wage loss replacement plans (archived); IT-85R2: Health and welfare trusts for employees; IT-99R5: Legal and accounting fees; IT-428: Wage loss replacement plans; IT-529: Flexible employee benefit programs.

Advance Tax Rulings: ATR-8: Self-insured health and welfare trust fund.

I.T. Technical News: 25 (health and welfare trusts).

Forms: T4E: Statement of employment insurance benefits; T4130: Employer's guide to payroll deductions — taxable benefits.

Proposed Addition — 6(1)(f.1)

(f.1) **Canadian Forces members and veterans income replacement benefits** — the total of all amounts received by the taxpayer in the year on account of an earnings loss benefit, a supplementary retirement benefit or a permanent impairment allowance payable to the taxpayer under Part 2 of the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*;

Application: S.C. 2005, c. 21 (Bill C-45, Royal Assent May 13, 2005), s. 101, added para. 6(1)(f.1), in force on a day to be proclaimed by the Governor in Council.

Related Provisions: 81(1)(d.1) — Exemption for certain other payments under CFMVRCA.

(g) **employee benefit plan benefits** — the total of all amounts each of which is an amount received by the taxpayer in the year out of or under an employee benefit plan or from the disposition of any interest in any such plan, other than the portion thereof that is

(i) a death benefit or an amount that would, but for the deduction provided in the definition of that term in subsection 248(1), be a death benefit,

(ii) a return of amounts contributed to the plan by the taxpayer or a deceased employee of whom the taxpayer is an heir or legal representative, or

(iii) a superannuation or pension benefit attributable to services rendered by a person in a period throughout which the person was not resident in Canada;

Related Provisions: 6(10) — Contributions; 6(14) — Salary deferral arrangement — part of benefit plan; 12(1)(n) — Employees profit sharing plan; 12(1)(n.1) — Employee benefit plan; 18(1)(o) — Employee benefit plan contributions; 32.1 — Employee benefit plan deductions; 56(1)(a) — Benefits — pension and employee; 104(13)(b) — Trusts — income payable to beneficiary; 107.1 — Distribution by employee benefit plan; 128.1(10)"excluded right or interest"(a)(vi), (b) — No deemed disposition of rights on emigration; 153(1)(a) — Withholding of tax by employer; 212(17) — No non-resident withholding tax.

Selected Cases [para. 6(1)(g)]: *Canada v. Chrysler Canada Ltd. (No. 3)*, [1992] 2 C.T.C. 95 (FCTD) (Employee stock ownership plan was "stock option" under s. 7, not "employee benefit plan"); *Canada v. Chrysler Canada Ltd.*, [1991] 2 C.T.C. 156 (FCTD); additional reasons at [1992] 1 C.T.C. 61, (sub nom. *Canada v. Chrysler Canada Ltd. (No. 2)*) (FCTD) (Employee stock ownership plan both agreement to issue shares to employees (taxable pursuant to s. 7) and employee benefit plan (taxable pursuant to para. 6(1)(g))).

Interpretation Bulletins: IT-499R: Superannuation or pension benefits; IT-502: Employee benefit plans and employee trusts; IT-529: Flexible employee benefit programs.

I.T. Technical News: 11 (reporting of amounts paid out of an employee benefit plan).

Advance Tax Rulings: ATR-17: Employee benefit plan — purchase of company shares; ATR-39: Self-funded leave of absence.

(h) **employee trust** — amounts allocated to the taxpayer for the year by a trustee under an employee trust;

Related Provisions: 12(1)(n) — Employees profit sharing plan; 12(1)(n.1) — Employee benefit plan; 32.1 — Employee benefit plan deductions; 107.1 — Distribution by employee trust; 128.1(10)"excluded right or interest"(e)(i) — No deemed disposition of rights on emigration; 153(1)(a) — Withholding of tax by employer; 212(17) — No non-resident withholding tax.

Regulations: 200(2)(g) (information return).

Interpretation Bulletins: IT-502: Employee benefit plans and employee trusts; IT-529: Flexible employee benefit programs.

(i) **salary deferral arrangement payments** — the amount, if any, by which the total of all amounts received by any person as benefits (other than amounts received by or from a trust governed by a salary deferral arrangement) in the year out of or under a salary deferral arrangement in respect of the taxpayer exceeds the amount, if any, by which

(i) the total of all deferred amounts under the arrangement that were included under paragraph (a) as benefits in computing the taxpayer's income for preceding taxation years

exceeds

(ii) the total of

(A) all deferred amounts received by any person in preceding taxation years out of or under the arrangement, and

(B) all deferred amounts under the arrangement that were deducted under paragraph 8(1)(o) in computing the taxpayer's income for the year or preceding taxation years;

Related Provisions: 6(11) — Salary deferral arrangement; 20(1)(oo), (pp) — SDA — deductions; 56(1)(w) — Benefits from SDA; 128.1(10)"excluded right or interest"(a)(vii), (b) — No deemed disposition of rights on emigration; 153(1)(a) — Withholding of tax by employer.

Interpretation Bulletins: IT-529: Flexible employee benefit programs.

(j) **reimbursements and awards** — amounts received by the taxpayer in the year as an award or reimbursement in respect of an amount that would, if the taxpayer were entitled to no reimbursements or awards, be deductible under subsection 8(1) in computing the income of the taxpayer, except to the extent that the amounts so received

(i) are otherwise included in computing the income of the taxpayer for the year, or

(ii) are taken into account in computing the amount that is claimed under subsection 8(1) by the taxpayer for the year or a preceding taxation year;

Related Provisions: 153(1)(a) — Withholding of tax by employer.

Interpretation Bulletins: IT-99R5: Legal and accounting fees.

(k) **automobile operating expense benefit** — where

(i) an amount is determined under subparagraph (e)(i) in respect of an automobile in computing the taxpayer's income for the year,

(ii) amounts related to the operation (otherwise than in connection with or in the course of the taxpayer's office or employment) of the automobile for the period or periods in the year during which the automobile was made available to the taxpayer or a person related to the taxpayer are paid or payable by the taxpayer's employer or a person related to the taxpayer's employer (each of whom is in this paragraph referred to as the "payor"), and

(iii) the total of the amounts so paid or payable is not paid in the year or within 45 days after the end of the year to the payor by the taxpayer or by the person related to the taxpayer,

the amount in respect of the operation of the automobile determined by the formula

$$A - B$$

where

A is

(iv) where the automobile is used primarily in the performance of the duties of the taxpayer's office or employment during the period or periods referred to in subparagraph (ii) and the taxpayer notifies the employer in writing before the end of the year of the taxpayer's intention to have this subparagraph apply, ½ of the amount determined under subparagraph (e)(i) in respect of the automobile in computing the taxpayer's income for the year, and

(v) in any other case, the amount equal to the product obtained when the amount prescribed for the year is multiplied by the total number of kilometres that the automobile is driven (otherwise than in connection with or in the course of the taxpayer's office or employment) during the period or periods referred to in subparagraph (ii), and

B is the total of all amounts in respect of the operation of the automobile in the year paid in the year or within 45 days after the end of the year to the payor by the taxpayer or by the person related to the taxpayer; and

Related Provisions: 6(1)(a)(iii) — Automobile benefits excluded from general inclusion of benefits; 6(1.1) — Parking is not an operating cost; 6(2.2) — Optional calculation of operating benefits; 12(1)(y) — Automobile benefit to partner or employee of partner; 15(5) — Automobile benefit to shareholder; 153(1)(a) — Withholding of tax by employer; 257 — Formula cannot calculate to less than zero.

History: Para. 6(1)(k) added by 1994, c. 21, subsec. 2(3), applicable to 1993 *et seq.*

Regulations: 7305.1 (amount prescribed for 6(1)(k)(v)).

Interpretation Bulletins: IT-63R5: Benefits, including standby charge for an automobile, from the personal use of a motor vehicle supplied by an employer — after 1992.

I.T. Technical News: 10 (1997 deduction limits and benefit rates for automobiles); 12 (1998 deduction limits and benefit rates for automobiles).

(l) **idem** — the value of a benefit in respect of the operation of an automobile (other than a benefit to which paragraph (k) applies or would apply but for subparagraph (k)(iii)) received or enjoyed by the taxpayer in the year in respect of, in the course of or because of, the taxpayer's office or employment.

Related Provisions: 6(1)(a)(iii) — Automobile benefits excluded from general inclusion of benefits; 15(5) — Automobile benefit to shareholder; 153(1)(a) — Withholding of tax by employer.

History: Para. 6(1)(l) added by 1994, c. 21, subsec. 2(3), applicable to 1993 *et seq.*

Interpretation Bulletins: IT-63R5: Benefits, including standby charge for an automobile, from the personal use of a motor vehicle supplied by an employer — after 1992.

I.T. Technical News: 12 (1998 deduction limits and benefit rates for automobiles).

Selected Cases [subsec. 6(1)]: *Buccini v. R.*, [2001] 1 C.T.C. 103 (FCA) (Payment was for fundamental breach of contract by employer and was not employment income); *R. v. Lao*, [1993] 2 C.T.C. 25 (FCTD) (Relocation payment in respect of higher housing costs not employment income); *Blanchard v. Canada*, [1992] 2 C.T.C. 403 (FCTD); appealed to FCA (Nov. 20, 1992), File A-1532-92 (Amount paid to employee on termination of participation in housing program representing possible realtor's fees on future sale not taxable as employee benefit); *Thompson v. MNR*, [1989] 2 C.T.C. 226 (FCTD) (Expenses for office in home owned by taxpayer disallowed except for portion of utilities); *Cooper v. MNR*, [1989] 1 C.T.C. 66 (FCTD) (Interest-free loan by estate to executor was not taxable benefit).

(1.1) Parking cost — For the purposes of this section, an amount or a benefit in respect of the use of a motor vehicle by a taxpayer does not include any amount or benefit related to the parking of the vehicle.

Related Provisions: 6(1)(a)(iii), 6(1)(e), (k) — Benefit in respect of the use of an automobile; 6(16)(a) — Parking costs are non-taxable benefit for disabled employee; 15(5) — Automobile benefit to shareholder.

History: Subsec. 6(1.1) added by 1994, c. 21, subsec. 2(4), applicable to 1993 *et seq.*

Interpretation Bulletins: IT-63R5: Benefits, including standby charge for an automobile, from the personal use of a motor vehicle supplied by an employer — after 1992.

I.T. Technical News: 12 (1998 deduction limits and benefit rates for automobiles).

(2) Reasonable standby charge — For the purposes of paragraph (1)(e), a reasonable standby charge for an automobile for the total number of days (in this subsection referred to as the "total available days") in a taxation year during which the automobile is made available to a taxpayer or to a person related to the taxpayer by the employer of the taxpayer or by a person related to the employer (both of whom are in this subsection referred to as the "employer") shall be deemed to be the amount determined by the formula

$$\frac{A}{B} \times [2\% \times (C \times D) + \frac{2}{3} \times (E - F)]$$

where

A is

(a) the lesser of the total kilometres that the automobile is driven (otherwise than in connection with or in the course of the taxpayer's office or employment) during the total available days and the value determined for the description of B for the year in respect of the standby charge for the automobile during the total available days, if

(i) the taxpayer is required by the employer to use the automobile in connection with or in the course of the office or employment, and

(ii) the distance travelled by the automobile in the total available days is primarily in connec-

tion with or in the course of the office or employment, and

(b) the value determined for the description of B for the year in respect of the standby charge for the automobile during the total available days, in any other case;

B is the product obtained when 1,667 is multiplied by the quotient obtained by dividing the total available days by 30 and, if the quotient so obtained is not a whole number and exceeds one, by rounding it to the nearest whole number or, where that quotient is equidistant from two consecutive whole numbers, by rounding it to the lower of those two numbers;

C is the cost of the automobile to the employer where the employer owns the vehicle at any time in the year;

D is the number obtained by dividing such of the total available days as are days when the employer owns the automobile by 30 and, if the quotient so obtained is not a whole number and exceeds one, by rounding it to the nearest whole number or, where that quotient is equidistant from two consecutive whole numbers, by rounding it to the lower of those two numbers;

E is the total of all amounts that may reasonably be regarded as having been payable by the employer to a lessor for the purpose of leasing the automobile during such of the total available days as are days when the automobile is leased to the employer; and

F is the part of the amount determined for E that may reasonably be regarded as having been payable to the lessor in respect of all or part of the cost to the lessor of insuring against

(a) loss of, or damage to, the automobile, or

(b) liability resulting from the use or operation of the automobile.

Related Provisions: 6(2.1) — Reduced benefit for automobile salesperson; 12(1)(y) — Automobile benefit to partner or employee of partner; 15(5) — Rule applies to calculate automobile benefit to shareholder; 85(1)(e.4) — Transfer of passenger vehicle to corporation by shareholder.

History: The descriptions of A and B in subsec. 6(2) amended by 2003, c. 15, s. 69, applicable to 2003 *et seq.* They formerly read:

A is the lesser of

(a) the total number of kilometres that the automobile is driven (otherwise than in connection with or in the course of the taxpayer's office or employment) during the total available days, and

(b) the value determined for B for the year under this subsection in respect of the standby charge for the automobile during the total available days,

except that the amount determined under paragraph (a) shall be deemed to be equal to the amount determined under paragraph (b) unless

(c) the taxpayer is required by the employer to use the automobile in connection with or in the course of the office or employment, and

(d) all or substantially all of the distance travelled by the automobile in the total available days is in connection with or in the course of the office or employment;

B is the product obtained when 1,000 is multiplied by the quotient obtained by dividing the total available days by 30 and, if the quotient so obtained is not a whole number and exceeds one, by rounding it to the nearest whole number or, where that quotient is equidistant from two consecutive whole numbers, by rounding it to the lower of those two numbers;

Selected Cases [subsec. 6(2)]: *Gill v. R.*, [2005] 2 C.T.C. 2473 (TCC) (Rigid formula not applicable, as it would render "reasonable" meaningless); *Keefe v. R.*, [2004] 1 C.T.C. 3028 (TCC) ("All or substantially all" did not necessarily mean 90% and court accepted 81%); *McDonald v. R.*, [1998] 4 C.T.C. 2569 (TCC) (85 per cent of distance was "substantially all"); *Adams (R.O.) v. R.*, [1998] 2 C.T.C. 353 (FCA) (Fair market rental charge does not necessarily replace standby charge); *Meeuse v. Canada*, [1995] 1 C.T.C. 21 (FCTD) (Full standby charge to be included in income unless presumption rebutted in prescribed form).

Regulations: 200(3) (information return).

Interpretation Bulletins: IT-63R5: Benefits, including standby charge for an automobile, from the personal use of a motor vehicle supplied by an employer — after 1992; IT-291R3: Transfer of property to a corporation under subsection 85(1).

I.T. Technical News: 12 (1998 deduction limits and benefit rates for automobiles).

Forms: T4130: Employer's guide to payroll deductions — taxable benefits.

(2.1) Automobile salesman — Where in a taxation year

(a) a taxpayer was employed principally in selling or leasing automobiles,

(b) an automobile owned by the taxpayer's employer was made available by the employer to the taxpayer or to a person related to the taxpayer, and

(c) the employer has acquired one or more automobiles,

the amount that would otherwise be determined under subsection (2) as a reasonable standby charge shall, at the option of the employer, be computed as if

(d) the reference in the formula in subsection (2) to "2%" were read as a reference to "1½%", and

(e) the cost to the employer of the automobile were the greater of

(i) the quotient obtained by dividing

(A) the cost to the employer of all new automobiles acquired by the employer in the year for sale or lease in the course of the employer's business

by

(B) the number of automobiles described in clause (A), and

(ii) the quotient obtained by dividing

(A) the cost to the employer of all automobiles acquired by the employer in the year for sale or lease in the course of the employer's business

by

(B) the number of automobiles described in clause (A).

Interpretation Bulletins: IT-63R5: Benefits, including standby charge for an automobile, from the personal use of a motor vehicle supplied by an employer — after 1992.

I.T. Technical News: 12 (1998 deduction limits and benefit rates for automobiles).

(2.2) [Repealed]

History: Subsec. 6(2.2) repealed by 1994, c. 21, subsec. 2(5), applicable to 1993 *et seq.* That subsec. formerly read:

(2.2) Benefit re auto operation — Where

(a) an amount is determined under subparagraph (1)(e)(i) for an automobile in computing the income of a taxpayer for a taxation year,

(b) the automobile is used primarily in the performance of the duties of the taxpayer's office or employment, and

(c) the taxpayer notifies the taxpayer's employer in writing before the end of the year that the amount of the benefit relating to the operation of the automobile for the period in the year during which it was made available is to be determined under this subsection,

the amount of the benefit relating to the operation of the automobile shall, for the purposes of paragraph (1)(a), be deemed to be the amount, if any, by which

(d) one-half of the amount determined for the automobile under subparagraph (1)(e)(i) in respect of the taxpayer for the year

exceeds

(e) the total of all amounts related to the operation of the automobile paid in the year, by the taxpayer or by a person related to the taxpayer, to the employer or to the person who made the automobile available.

(3) Payments by employer to employee — An amount received by one person from another

(a) during a period while the payee was an officer of, or in the employment of, the payer, or

(b) on account, in lieu of payment or in satisfaction of an obligation arising out of an agreement made by the payer with the payee immediately prior to, during or immediately after a period that the payee was an officer of, or in the employment of, the payer,

shall be deemed, for the purposes of section 5, to be remuneration for the payee's services rendered as an officer or during the period of employment, unless it is established that, irrespective of when the agreement, if any, under which the amount was received was made or the form or legal effect thereof, it cannot reasonably be regarded as having been received

(c) as consideration or partial consideration for accepting the office or entering into the contract of employment,

(d) as remuneration or partial remuneration for services as an officer or under the contract of employment, or

(e) in consideration or partial consideration for a covenant with reference to what the officer or employee is, or is not, to do before or after the termination of the employment.

Related Provisions: 6(3.1) — Timing of income inclusion from non-compete agreement; 56.4(4)(a) — Amount paid by purchaser for non-compete agreement deemed to be wages paid to employee; 87(2)(k) — Amalgamation — Amount received by employee from new corporation; 153(1)(a) — Withholding of tax by employer.

Selected Cases [subsec. 6(3)]: *Ward v. R.*, [1998] 4 C.T.C. 2129 (TCC) (Taxpayer failed to establish employment relationship to enable access to stock option rules); *Blanchard v. Canada*, [1995] 2 C.T.C. 262 (FCA) (Source of payment of benefit not relevant so long as there is connection with employment); *McNeill v. R.*, [1986] 2 C.T.C. 352 (FCTD) (Without evidence of uncompensated losses suffered, "social disruption allowance" for relocation was benefit from employment); *Greiner v. R.*, [1984] C.T.C. 92 (FCA) (Payment by new employer (after acquisition of former company) to compensate employee for termination of employment contract was income, not capital for surrender of rights under a contract); *Girouard v. R.*, [1980] C.T.C. 284 (FCA) (Liquidated damages for wrongful dismissal pursuant to contract were not taxable); *MNR v. Beaupré Estate*, [1973] C.T.C. 316 (FCTD) (Fixed salary and other benefits under consulting contract entered in consideration for sale of shares to major shareholder were part of price, not taxable benefits).

Interpretation Bulletins: IT-75R4: Scholarships, fellowships, bursaries, prizes, research grants and financial assistance; IT-168R3: Athletes and players employed by football, hockey and similar clubs; IT-196R2: Payments by employer to employee; IT-247: Employer's contributions to pensioners' premiums under provincial medical and hospital services plans (archived); IT-334R2: Miscellaneous receipts; IT-337R4: Retiring allowances; IT-365R2: Damages, settlements and similar receipts; IT-470R: Employees' fringe benefits; IT-515R2: Education tax credit; IT-529: Flexible employee benefit programs.

Proposed Addition — 6(3.1)

(3.1) Amount receivable for covenant — If an amount (other than an amount to which paragraph (1)(a) applies because of subsection (11)) is receivable at the end of a taxation year by a taxpayer in respect of a covenant, agreed to by the taxpayer more than 36 months before the end of that taxation year, with reference to what the taxpayer is, or is not, to do, and the amount would be included in the taxpayer's income for the year under this subdivision if it were received by the taxpayer in the year, the amount

(a) is deemed to be received by the taxpayer at the end of the taxation year for services rendered as an officer or during the period of employment; and

(b) is deemed not to be received at any other time.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 48(1), will add subsec. 6(3.1), applicable to amounts receivable in respect of a covenant agreed to after October 7, 2003.

Technical Notes: New subsection 6(3.1) provides that an employee is — if certain circumstances exist — required to include in the employee's income from employment for a taxation year an amount that is receivable at the end of a taxation year in respect of a covenant as to what the employee is, or is not, to do. Subsection 6(3.1) is added consequential to new section 56.4 which concerns the tax treatment of amounts received or receivable in respect of a restrictive covenant (additional commentary is provided in the explanatory notes accompanying new section 56.4). In contrast, amounts related to covenants made in the context of an office or employment are generally included in income on a "received" basis.

New subsection 6(3.1) applies to a receivable of an employee in respect of a covenant if

- the amount is not receivable under a salary deferral arrangement to which paragraph 6(1)(a) applies because of subsection 6(11) (in such cases, the amount is currently taxable as employment income even though it is receivable),
- the employee agreed to the covenant more than 36 months before the end of the taxation year, and
- the amount would be included in the taxpayer's income, as income from an office or employment, if it were received by the taxpayer in the year.

If applicable, subsection 6(3.1) provides that the amount receivable is deemed to be received by the taxpayer at the end of the taxation year for services rendered as an officer or during the period of employment, and that the amount is deemed not to be received at any other time (thereby precluding an inclusion because of the receipt).

In cases where subsection 6(3.1) deems an amount that is receivable to be received, new paragraph 60(f) provides a deduction in a subsequent year if the amount becomes a bad debt.

Related Provisions: 6(3), 56.4(2) — Income inclusion from non-compete agreement; 60(f) — Deduction for bad debt.

(4) Group term life insurance — Where at any time in a taxation year a taxpayer's life is insured under a group term life insurance policy, there shall be included in computing the taxpayer's income for the year from an office or employment the amount, if any, prescribed for the year in respect of the insurance.

Related Provisions: 18(9)(a)(iii), 18(9.01) — Limitation on deduction for premiums paid; 139.1(15) — Effect of demutualization of insurance corporation; 139.1(16), (17) — Flow-through of demutualization benefits by employer to employee; 153(1)(a) — Withholding of tax by employer.

History: Subsec. 6(4) amended by 1995, c. 3, subsec. 1(2), applicable to insurance provided in respect of periods that are after June 1994. For insurance provided in respect of periods that are in 1994 and before July 1994, subsec. 6(4) should be read as follows:

(4) Notwithstanding any exception provided for in paragraph (1)(a), there shall be included in computing a taxpayer's income for a taxation year as income from an office or employment the premium in respect of any period in the year before July 1994 for any excess over $25,000 of the amount of life insurance (other than prescribed insurance) in effect on the taxpayer's life during that period under a group term life insurance policy under which any life insurance was effected on the taxpayer's life in respect of, in the course of or be-

cause of, the taxpayer's office or employment or former office or employment, determined as the remainder obtained by

(a) dividing that proportion of the total premium (other than a prescribed premium) payable on account of life insurance under the policy in respect of the policy year that ends in the year, minus the amount of any dividend or experience rating refund payable on account of life insurance under the policy in respect of the policy year, that the number of days in that period is of the number of days in the policy year, by the mean of the total amount of life insurance (other than prescribed insurance) in effect under the policy at the beginning of the policy year and the total amount of life insurance (other than prescribed insurance) so in effect at the end of the policy year,

(b) multiplying the quotient obtained under paragraph (a) by the excess over $25,000 of the amount of life insurance (other than prescribed insurance) in effect on the taxpayer's life during that period under the policy, and

(c) subtracting from the product obtained under paragraph (b) any amount that the taxpayer has reimbursed to the taxpayer's employer, or has paid, in respect of the amount of life insurance (other than prescribed insurance) in excess of $25,000 in effect on the taxpayer's life during that period under the policy,

and in the case of a taxpayer on whose life any life insurance was in effect during any period in the year before July 1994 under more than one such group insurance policy,

(d) this subsection shall be read as requiring a separate determination of the amount or amounts, if any, to be included in computing the taxpayer's income for the year in respect of each particular policy, and

(e) the expression "$25,000" in this subsection shall be read as referring, in respect of a particular policy, to that proportion of $25,000 that the amount of life insurance (other than prescribed insurance) in effect on the taxpayer's life during that period under the policy is of the total amount of life insurance (other than prescribed insurance) in effect on the taxpayer's life during that period under all of the policies.

Subsec. 6(4) formerly read:

(4) Portion of premium under certain group insurance policies — Notwithstanding any exception provided for in paragraph (1)(a), there shall be included in computing the income of a taxpayer for a taxation year as income from an office or employment the premium in respect of any period in the year for any excess over $25,000 of the amount of life insurance in effect on the life of the taxpayer during that period under a group term life insurance policy under which any life insurance was effected on the life of the taxpayer in respect of, in the course of, or by virtue of the taxpayer's office or employment or former office or employment, determined as the remainder obtained by

(a) dividing that proportion of the total premium payable on account of life insurance under the policy in respect of the policy year ending in the year, minus the amount of any dividend or experience rating refund payable on account of life insurance under the policy in respect of the policy year, that the number of days in that period is of the number of days in the policy year, by the mean of the total amount of life insurance in effect under the policy at the commencement of the policy year and the total amount of life insurance so in effect at the end of the policy year,

(b) multiplying the quotient obtained under paragraph (a) by the excess over $25,000 of the amount of life insurance in effect on the life of the taxpayer during that period under the policy, and

(c) subtracting from the product obtained under paragraph (b) any amount that the taxpayer has reimbursed to the taxpayer's employer, or has paid, in respect of the portion of the premium attributable to the amount of life insurance in excess of $25,000 in effect on the taxpayer's life under the policy,

and in the case of a taxpayer on whose life any life insurance was in effect during any period in the year under more than one such group insurance policy,

(d) this subsection shall be read as requiring a separate determination of the amount or amounts, if any, to be included in computing the taxpayer's income for the year in respect of each particular policy, and

(e) the expression "$25,000" in this subsection shall be read as referring, in respect of a particular policy, to that proportion of $25,000 that the amount of life insurance in effect on the life of the taxpayer during that period under the policy is of the total amount of life insurance in effect on the taxpayer's life during that period under all of the policies.

Regulations: 2700–2704 (prescribed amount).

Interpretation Bulletins: IT-85R2: Health and welfare trusts for employees [out of date re 6(4)]; IT-529: Flexible employee benefit programs.

I.T. Technical News: 25 (health and welfare trusts).

(5) [Repealed]

History: Subsec. 6(5) repealed by 1995, c. 3, subsec. 1(3), applicable to 1995 *et seq.* Subsec. (5) formerly read:

(5) Reference to policy year ending in taxation year — A reference in subsection (4) to "the policy year" ending in a taxation year shall, where there is no such year ending in the taxation year, be construed as a reference to the period commencing on the anniversary in the immediately preceding taxation year of the date of issue of the policy, or where there is no such anniversary, on the date of issue of the policy, and ending on the last day in the taxation year on which the policy was in effect.

(6) Employment at special work site or remote location — Notwithstanding subsection (1), in computing the income of a taxpayer for a taxation year from an office or employment, there shall not be included any amount received or enjoyed by the taxpayer in respect of, in the course or by virtue of the office or employment that is the value of, or an allowance (not in excess of a reasonable amount) in respect of expenses the taxpayer has incurred for,

(a) the taxpayer's board and lodging for a period at

(i) a special work site, being a location at which the duties performed by the taxpayer were of a temporary nature, if the taxpayer maintained at another location a self-contained domestic establishment as the taxpayer's principal place of residence

(A) that was, throughout the period, available for the taxpayer's occupancy and not rented by the taxpayer to any other person, and

(B) to which, by reason of distance, the taxpayer could not reasonably be expected to have returned daily from the special work site, or

(ii) a location at which, by virtue of its remoteness from any established community, the taxpayer could not reasonably be expected to establish and maintain a self-contained domestic establishment,

if the period during which the taxpayer was required by the taxpayer's duties to be away from the taxpayer's principal place of residence, or to be at the special work site or location, was not less than 36 hours; or

(b) transportation between

(i) the principal place of residence and the special work site referred to in subparagraph (a)(i), or

(ii) the location referred to in subparagraph (a)(ii) and a location in Canada or a location in the country in which the taxpayer is employed,

in respect of a period described in paragraph (a) during which the taxpayer received board and lodging, or a reasonable allowance in respect of board and lodging, from the taxpayer's employer.

Related Provisions: 67.1(2)(e.1) — Construction work camp — meals fully deductible; 110.7 — Deduction for residents of northern Canada.

Selected Cases [subsec. 6(6)]: *Jaffar v. R.*, [2002] 1 C.T.C. 2204 (TCC) (Special work site can be anywhere, including large city, entitling taxpayer to board and lodging); *Truemner v. Canada*, [1989] 1 C.T.C. 356 (FCTD) (Where no evidence produced to show unavailability of "self con-

tained domestic establishment" in various locations, no deduction for value of board and lodging received).

Interpretation Bulletins: IT-91R4: Employment at special work sites or remote work locations; IT-168R3: Athletes and players employed by football, hockey and similar clubs; IT-254R2: Fishermen — employees and seafarers — value of rations and quarters (archived); IT-470R: Employees' fringe benefits; IT-518R: Food, beverages and entertainment expenses; IT-522R: Vehicle, travel and sales expenses of employees.

Forms: RC 4054: Ceiling amounts for housing benefits paid in prescribed zones; TD4: Declaration of exemption — Employment at special work site; T4039: Northern residents deductions — places in prescribed zones [guide]; T4130: Employer's guide to payroll deductions — taxable benefits.

(7) Cost of property or service [includes GST, etc.] — To the extent that the cost to a person of purchasing a property or service or an amount payable by a person for the purpose of leasing property is taken into account in determining an amount required under this section to be included in computing a taxpayer's income for a taxation year, that cost or amount payable, as the case may be, shall include any tax that was payable by the person in respect of the property or service or that would have been so payable if the person were not exempt from the payment of that tax because of the nature of the person or the use to which the property or service is to be put.

Related Provisions: 6(1)(e.1) — Benefit of 7% added before 1996 in place of including GST.

History: Subsec. 6(7) amended by 1997, c. 10, subsec. 267(2), applicable to 1996 *et seq.* Subsec. (7) formerly read:

> (7) Goods and services tax — To the extent that an amount required to be included in computing the income of a taxpayer for a taxation year under paragraph (1)(a) or (e) is determined by reference to the cost to a person of any property or service, that cost shall, for the purposes of those paragraphs, be determined without reference to any goods and services tax payable by that person in respect of the property or service.

Interpretation Bulletins: IT-63R5: Benefits, including standby charge for an automobile, from the personal use of a motor vehicle supplied by an employer — after 1992.

I.T. Technical News: 12 (1998 deduction limits and benefit rates for automobiles).

(8) GST rebates re costs of property or service — If

> (a) an amount in respect of an outlay or expense is deducted under section 8 in computing the income of a taxpayer for a taxation year from an office or employment, or
>
> (b) an amount is included in the capital cost to a taxpayer of a property described in subparagraph 8(1)(j)(ii) or 8(1)(p)(ii),

and a particular amount is paid to the taxpayer in a particular taxation year as a rebate under the *Excise Tax Act* in respect of any goods and services tax included in the amount of the outlay or expense, or the capital cost of the property, as the case may be, the particular amount

> (c) to the extent that it relates to an outlay or expense referred to in paragraph (a), shall be included in computing the taxpayer's income from an office or employment for the particular taxation year, and
>
> (d) to the extent that it relates to the capital cost of property referred to in paragraph (b), is deemed, for the purposes of subsection 13(7.1), to have been received by the taxpayer in the particular taxation year as assistance from a government for the acquisition of the property.

Related Provisions: 8(11) — GST rebate deemed not to be reimbursement.

History: Subsec. 6(8) amended by 2002, c. 9, s. 20, applicable to 2002 *et seq.* Subsec. (8) formerly read:

> (8) Idem [GST rebate] — Where
>
> (a) an amount in respect of an expense is deducted under section 8 in computing the income of a taxpayer for a taxation year from an office or employment, or
>
> (b) an amount is included in the capital cost to a taxpayer of a property described in subparagraph 8(1)(j)(ii) or (p)(ii),
>
> and a particular amount is paid to the taxpayer in a particular taxation year as a rebate under the *Excise Tax Act* in respect of any goods and services tax included in the amount of the expense, or the capital cost of the property, as the case may be, the particular amount
>
> (c) to the extent that it relates to an expense referred to in paragraph (a), shall be included in computing the taxpayer's income from an office or employment for the particular year, and
>
> (d) to the extent that it relates to the capital cost of property referred to in paragraph (b), shall be deemed, for the purposes of subsection 13(7.1), to have been received by the taxpayer in the particular year as assistance from a government for the acquisition of the property.

(9) Amount in respect of interest on employee debt — Where an amount in respect of a loan or debt is deemed by subsection 80.4(1) to be a benefit received in a taxation year by an individual, the amount of the benefit shall be included in computing the income of the individual for the year as income from an office or employment.

Related Provisions: 6(23) — Taxable benefit from employer-provided housing subsidy; 15(9) — Deemed benefit to shareholder.

Regulations: 200(2)(g) (information return).

Remission Orders: *Ice Storm Employee Benefits Remission Order*, P.C. 1998-2047.

Interpretation Bulletins: IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits (archived); IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt.

I.T. Technical News: 6 (payment of mortgage interest subsidy by employer).

(10) Contributions to an employee benefit plan — For the purposes of subparagraph (1)(g)(ii),

> (a) an amount included in the income of an individual in respect of an employee benefit plan for a taxation year preceding the year in which it was paid out of the plan shall be deemed to be an amount contributed to the plan by the individual; and
>
> (b) where an amount is received in a taxation year by an individual from an employee benefit plan that was in a preceding year an employee trust, such portion of the amount so received by the individual as does not exceed the amount, if any, by which the lesser of
>
> (i) the amount, if any, by which
>
> (A) the total of all amounts allocated to the individual or a deceased person of whom the individual is an heir or legal representative by the trustee of the plan at a time when it was an employee trust
>
> exceeds
>
> (B) the total of all amounts previously paid out of the plan to or for the benefit of the individual or the deceased person at a time when the plan was an employee trust, and
>
> (ii) the portion of the amount, if any, by which the cost amount to the plan of its property immediately

before it ceased to be an employee trust exceeds its liabilities at that time that

(A) the amount determined under subparagraph (i) in respect of the individual

is of

(B) the total of amounts determined under subparagraph (i) in respect of all individuals who were beneficiaries under the plan immediately before it ceased to be an employee trust

exceeds

(iii) the total of all amounts previously received out of the plan by the individual or a deceased person of whom the individual is an heir or legal representative at a time when the plan was an employee benefit plan to the extent that the amounts were deemed by this paragraph to be a return of amounts contributed to the plan

shall be deemed to be the return of an amount contributed to the plan by the individual.

Interpretation Bulletins: IT-498: The deductibility of interest on money borrowed to reloan to employees or shareholders (archived); IT-502: Employee benefit plans and employee trusts.

(11) Salary deferral arrangement — Where at the end of a taxation year any person has a right under a salary deferral arrangement in respect of a taxpayer to receive a deferred amount, an amount equal to the deferred amount shall be deemed, for the purposes only of paragraph (1)(a), to have been received by the taxpayer as a benefit in the year, to the extent that the amount was not otherwise included in computing the taxpayer's income for the year or any preceding taxation year.

Related Provisions: 6(1)(a)(v) — Taxable benefit income inclusion; 6(1)(i) — SDA payment taxed; 6(12)–(14) — SDA — Rules; 8(1)(o) — Forfeited amounts; 20(1)(oo), (pp) — SDA — deduction to employer; 56(1)(w) — Benefit from SDA — included in income.

Advance Tax Rulings: ATR-39: Self-funded leave of absence; ATR-45: Share appreciation rights plan; ATR-64: Phantom stock award plan.

(12) Idem — Where at the end of a taxation year any person has a right under a salary deferral arrangement (other than a trust governed by a salary deferral arrangement) in respect of a taxpayer to receive a deferred amount, an amount equal to any interest or other additional amount that accrued to, or for the benefit of, that person to the end of the year in respect of the deferred amount shall be deemed at the end of the year, for the purposes only of subsection (11), to be a deferred amount that the person has a right to receive under the arrangement.

(13) Application — Subsection (11) does not apply in respect of a deferred amount under a salary deferral arrangement in respect of a taxpayer that was established primarily for the benefit of one or more non-resident employees in respect of services to be rendered in a country other than Canada, to the extent that the deferred amount

(a) was in respect of services rendered by an employee who

(i) was not resident in Canada at the time the services were rendered, or

(ii) was resident in Canada for a period (in this subsection referred to as an "excluded period") of not more than 36 of the 72 months preceding the time the services were rendered and was an employee to whom the arrangement applied before the employee became resident in Canada; and

(b) cannot reasonably be regarded as being in respect of services rendered or to be rendered during a period (other than an excluded period) when the employee was resident in Canada.

Related Provisions: 18(1)(o.1) — Salary deferral arrangement — no deduction of outlays for non-residents.

(14) Part of plan or arrangement — Where deferred amounts under a salary deferral arrangement in respect of a taxpayer (in this subsection referred to as "that arrangement") are required to be included as benefits under paragraph (1)(a) in computing the taxpayer's income and that arrangement is part of a plan or arrangement (in this subsection referred to as the "plan") under which amounts or benefits not related to the deferred amounts are payable or provided, for the purposes of this Act, other than this subsection,

(a) that arrangement shall be deemed to be a separate arrangement independent of other parts of the plan of which it is a part; and

(b) where any person has a right to a deferred amount under that arrangement, an amount received by the person as a benefit at any time out of or under the plan shall be deemed to have been received out of or under that arrangement except to the extent that it exceeds the amount, if any, by which

(i) the total of all deferred amounts under that arrangement that were included under paragraph (1)(a) as benefits in computing the taxpayer's income for taxation years ending before that time

exceeds

(ii) the total of

(A) all deferred amounts received by any person before that time out of or under the plan that were deemed by this paragraph to have been received out of or under that arrangement, and

(B) all deferred amounts under that arrangement that were deducted under paragraph 8(1)(o) in computing the taxpayer's income for the year or preceding taxation years.

Related Provisions: 6(1)(g) — Employee benefit plan benefits; 56(10) — Severability of retirement compensation arrangement.

(15) Forgiveness of employee debt — For the purpose of paragraph (1)(a),

(a) a benefit shall be deemed to have been enjoyed by a taxpayer at any time an obligation issued by any debtor (including the taxpayer) is settled or extinguished; and

(b) the value of that benefit shall be deemed to be the forgiven amount at that time in respect of the obligation.

Related Provisions: 6(15.1) — Meaning of "forgiven amount"; 15(1.2) — Forgiveness of shareholder loans; 79(3)F(b)(i) — Where property surrendered to creditor; 80(1)"forgiven amount"B(b) — Debt forgiveness rules do not apply to amount of benefit; 80.01 — Deemed settlement of debts.

History: Subsec. 6(15) amended by 1995, c. 21, s. 1, applicable to taxation years that end after February 21, 1994. Subsec. 6(15) formerly read:

(15) Forgiven employee loans — For the purposes of paragraph (1)(a), the value of the benefit received or enjoyed by a taxpayer, in circumstances where a loan or other obligation to pay an amount is settled or extinguished at any time without any payment by the taxpayer or by payment by the taxpayer of an amount that is less than the amount of the obligation outstanding at that time, shall be deemed to be the amount, if any, by which the amount of the obligation outstanding at that time exceeds the amount so paid, if any.

Interpretation Bulletins: IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt.

(15.1) Forgiven amount — For the purpose of subsection (15), the "forgiven amount" at any time in respect of an obligation issued by a debtor has the meaning that would be assigned by subsection 80(1) if

(a) the obligation were a commercial obligation (within the meaning assigned by subsection 80(1)) issued by the debtor;

(b) no amount included in computing income because of the obligation being settled or extinguished at that time were taken into account;

(c) the definition "forgiven amount" in subsection 80(1) were read without reference to paragraphs (f) and (h) of the description of B in that definition; and

(d) section 80 were read without reference to paragraphs (2)(b) and (q) of that section.

Related Provisions: 80.01(1)"forgiven amount" — Application of definition for purposes of s. 80.01; 248(26) — Liability deemed to be obligation issued by debtor; 248(27) — Partial settlement of debt obligation.

History: Subsec. 6(15.1) added by 1995, c. 21, s. 1, applicable to taxation years that end after February 21, 1994.

(16) Disability-related employment benefits [transportation, parking, attendant] — Notwithstanding subsection (1), in computing an individual's income for a taxation year from an office or employment, there shall not be included any amount received or enjoyed by the individual in respect of, in the course of or because of the individual's office or employment that is the value of a benefit relating to, or an allowance (not in excess of a reasonable amount) in respect of expenses incurred by the individual for,

(a) the transportation of the individual between the individual's ordinary place of residence and the individual's work location (including parking near that location) if the individual is blind or is a person in respect of whom an amount is deductible, or would but for paragraph 118.3(1)(c) be deductible, because of the individual's mobility impairment, under section 118.3 in computing a taxpayer's tax payable under this Part for the year; or

(b) an attendant to assist the individual in the performance of the individual's duties if the individual is a person in respect of whom an amount is deductible, or would but for paragraph 118.3(1)(c) be deductible, under section 118.3 in computing a taxpayer's tax payable under this Part for the year.

Related Provisions: 6(1.1) — Parking normally a taxable benefit; 64 — Disability supports deduction for attendant care and other expenses ; 118.4(1) — Nature of impairment.

History: Subsec. 6(16) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 3(5), applicable to 1991 *et seq.*

Interpretation Bulletins: IT-519R2: Medical expense and disability tax credits and attendant care expense deduction.

(17) Definitions — The definitions in this subsection apply in this subsection and subsection (18).

"disability policy" means a group disability insurance policy that provides for periodic payments to individuals in respect of the loss of remuneration from an office or employment.

"employer" of an individual includes a former employer of the individual.

"top-up disability payment" in respect of an individual means a payment made by an employer of the individual as a consequence of the insolvency of an insurer that was obligated to make payments to the individual under a disability policy where

(a) the payment is made to an insurer so that periodic payments made to the individual under the policy will not be reduced because of the insolvency, or will be reduced by a lesser amount, or

(b) the following conditions are satisfied:

(i) the payment is made to the individual to replace, in whole or in part, periodic payments that would have been made under the policy to the individual but for the insolvency, and

(ii) the payment is made under an arrangement by which the individual is required to reimburse the payment to the extent that the individual subsequently receives an amount from an insurer in respect of the portion of the periodic payments that the payment was intended to replace.

For the purposes of paragraphs (a) and (b), an insurance policy that replaces a disability policy is deemed to be the same policy as, and a continuation of, the disability policy that was replaced.

Related Provisions: 8(1)(n) — Reimbursement under (b)(ii) not deductible as salary reimbursement; 8(1)(n.1) — Limited deduction for reimbursements under (b)(ii).

History: Subsec. 6(17) added by 1998, c. 19, s. 68, applicable to payments made after August 10, 1994.

(18) Group disability benefits — insolvent insurer — Where an employer of an individual makes a top-up disability payment in respect of the individual,

(a) the payment is, for the purpose of paragraph (1)(a), deemed not to be a benefit received or enjoyed by the individual;

(b) the payment is, for the purpose of paragraph (1)(f), deemed not to be a contribution made by the employer to or under the disability insurance plan of which the disability policy in respect of which the payment is made is or was a part; and

(c) if the payment is made to the individual, it is, for the purpose of paragraph (1)(f), deemed to be an amount payable to the individual pursuant to the plan.

Related Provisions: 6(17) — Definitions; 8(1)(n.1) — Reimbursement to employer.

History: Subsec. 6(18) added by 1998, c. 19, s. 68, applicable to payments made after August 10, 1994.

(19) Benefit re housing loss — For the purpose of paragraph (1)(a), an amount paid at any time in respect of a housing loss (other than an eligible housing loss) to or on behalf of a taxpayer or a person who does not deal at arm's length with the taxpayer in respect of, in the course of or because of, an office or employment is deemed to be a benefit received by the taxpayer at that time because of the office or employment.

Related Provisions: 6(20) — Eligible housing loss only partly taxed; 6(21) — Meaning of "housing loss"; 6(23) — Employer-provided housing subsidy is taxable.

History: Subsec. 6(19) added by 1999, c. 22, subsec. 2(2), applicable

(a) to 2001 *et seq.*, in respect of an eligible relocation of an individual in connection with which the individual begins employment at a new work location before October 1998; and

(b) in any other case, after February 23, 1998.

Interpretation Bulletins: IT-470R: Employees' fringe benefits.

(20) Benefit re eligible housing loss — For the purpose of paragraph (1)(a), an amount paid at any time in a

taxation year in respect of an eligible housing loss to or on behalf of a taxpayer or a person who does not deal at arm's length with the taxpayer in respect of, in the course of or because of, an office or employment is deemed to be a benefit received by the taxpayer at that time because of the office or employment to the extent of the amount, if any, by which

(a) one half of the amount, if any, by which the total of all amounts each of which is so paid in the year or in a preceding taxation year exceeds $15,000

exceeds

(b) the total of all amounts each of which is an amount included in computing the taxpayer's income because of this subsection for a preceding taxation year in respect of the loss.

History: Subsec. 6(20) added by 1999, c. 22, subsec. 2(2), applicable

(a) to 2001 *et seq.*, in respect of an eligible relocation of an individual in connection with which the individual begins employment at a new work location before October 1998; and

(b) in any other case, after February 23, 1998.

Interpretation Bulletins: IT-470R: Employees' fringe benefits.

(21) Housing loss — In this section, "housing loss" at any time in respect of a residence of a taxpayer means the amount, if any, by which the greater of

(a) the adjusted cost base of the residence at that time to the taxpayer or to another person who does not deal at arm's length with the taxpayer, and

(b) the highest fair market value of the residence within the six-month period that ends at that time

exceeds

(c) if the residence is disposed of by the taxpayer or the other person before the end of the first taxation year that begins after that time, the lesser of

(i) the proceeds of disposition of the residence, and

(ii) the fair market value of the residence at that time, and

(d) in any other case, the fair market value of the residence at that time.

Related Provisions: 6(22) — Meaning of "eligible housing loss".

History: Subsec. 6(21) added by 1999, c. 22, subsec. 2(2), applicable

(a) to 2001 *et seq.*, in respect of an eligible relocation of an individual in connection with which the individual begins employment at a new work location before October 1998; and

(b) in any other case, after February 23, 1998.

Interpretation Bulletins: IT-470R: Employees' fringe benefits.

(22) Eligible housing loss — In this section, "eligible housing loss" in respect of a residence designated by a taxpayer means a housing loss in respect of an eligible relocation of the taxpayer or a person who does not deal at arm's length with the taxpayer and, for these purposes, no more than one residence may be so designated in respect of an eligible relocation.

Related Provisions: 248(1) — Definition of "eligible relocation".

History: Subsec. 6(22) added by 1999, c. 22, subsec. 2(2), applicable

(a) to 2001 *et seq.*, in respect of an eligible relocation of an individual in connection with which the individual begins employment at a new work location before October 1998; and

(b) in any other case, after February 23, 1998.

Interpretation Bulletins: IT-470R: Employees' fringe benefits.

(23) Employer-provided housing subsidies — For greater certainty, an amount paid or the value of assistance provided by any person in respect of, in the course of or because of, an individual's office or employment in respect of the cost of, the financing of, the use of or the right to use, a residence is, for the purposes of this section, a benefit received by the individual because of the office or employment.

Related Provisions: 80.4(1), (1.1) — Taxable benefit on loan to employee.

History: Subsec. 6(23) added by 1999, c. 22, subsec. 2(2), applicable

(a) to 2001 *et seq.*, in respect of an eligible relocation of an individual in connection with which the individual begins employment at a new work location before October 1998; and

(b) in any other case, after February 23, 1998.

Definitions [s. 6]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "arm's length" — 251(1); "automobile" — 248(1); "benefit" — 6(18)(a); "benefit amount" — 6(1)(e.1)(i); "business" — 248(1); "Canada" — 255; "contribution" — 6(18)(b); "cost" — 6(7); "cost amount", "death benefit", "deferred amount" — 248(1); "deferred payment" — 8(1)(n.1)(i); "deferred profit sharing plan" — 147(1), 248(1); "disability policy" — 6(17); "dividend" — 248(1); "eligible housing loss" — 6(22); "eligible relocation" — 248(1); "employed", "employee", "employee benefit plan", "employee trust" — 248(1); "employees profit sharing plan" — 144(1), 248(1); "employer" — 6(2), (17), 248(1); "employment" — 248(1); "forgiven amount" — 6(15.1); "goods and services tax", "group term life insurance policy" — 248(1); "housing loss" — 6(21); "individual", "insurance policy", "life insurance policy", "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "motor vehicle", "non-resident" — 248(1); "obligation" — 248(26); "office", "officer" — 248(1); "Parliament" — *Interpretation Act* 35(1); "payor" — 6(1)(k)(ii); "person", "personal or living expenses" — 248(1); "policy year" — 6(5); "prescribed", "private health services plan" — 248(1); "proceeds of disposition" — 54 [technically does not apply to 6(21)(c)(i)]; "profit sharing plan" — 147(1), 248(1); "property" — 248(1); "province" — *Interpretation Act* 35(1); "registered pension plan", "regulation" — 248(1); "related" — 251(2); "resident in Canada" — 250; "retirement compensation arrangement", "salary deferral arrangement", "self-contained domestic establishment" — 248(1); "standby charge" — 6(2), (2.1); "superannuation or pension benefit" — 248(1); "supplementary unemployment benefit plan" — 145(1), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "top-up disability payment" — 6(17); "Treasury Board" — 248(1); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-495R3: Child care expenses.

7. (1) Agreement to issue securities to employees [stock options] — Subject to subsections (1.1) and (8), where a particular qualifying person has agreed to sell or issue securities of the particular qualifying person (or of a qualifying person with which it does not deal at arm's length) to an employee of the particular qualifying person (or of a qualifying person with which the particular qualifying person does not deal at arm's length),

(a) if the employee has acquired securities under the agreement, a benefit equal to the amount, if any, by which

(i) the value of the securities at the time the employee acquired them

exceeds the total of

(ii) the amount paid or to be paid to the particular qualifying person by the employee for the securities, and

(iii) the amount, if any, paid by the employee to acquire the right to acquire the securities

is deemed to have been received, in the taxation year in which the employee acquired the securities, by the employee because of the employee's employment;

(b) if the employee has transferred or otherwise disposed of rights under the agreement in respect of some or all of the securities to a person with whom the employee was dealing at arm's length, a benefit equal to the amount, if any, by which

(i) the value of the consideration for the disposition

exceeds

(ii) the amount, if any, paid by the employee to acquire those rights

shall be deemed to have been received, in the taxation year in which the employee made the disposition, by the employee because of the employee's employment;

Selected Cases [para. 7(1)(b)]: *Buccini v. R.*, [2001] 1 C.T.C. 103 (FCA); rev'g [1999] 1 C.T.C. 2001 (TCC) (Payment was for fundamental breach of contract by employer and was not employment income); *Bernier v. R.*, [2000] 1 C.T.C. 347 (FCA) (Payment was settlement, not transfer of rights under stock option plan); *Dundas v. Canada*, [1995] 1 C.T.C. 184 (FCA) (Court of Appeal reluctant to interfere with inference drawn by trial judge from agreed statement of facts); *Dundas v. MNR*, [1993] 1 C.T.C. 398 (FCTD) (Amounts received for cancellation of stock option rights on amalgamation of corporation were proceeds of disposition, not damages).

(c) if rights of the employee under the agreement have, by one or more transactions between persons not dealing at arm's length, become vested in a person who has acquired securities under the agreement, a benefit equal to the amount, if any, by which

(i) the value of the securities at the time the person acquired them

exceeds the total of

(ii) the amount paid or to be paid to the particular qualifying person by the person for the securities, and

(iii) the amount, if any, paid by the employee to acquire the right to acquire the securities,

is deemed to have been received, in the taxation year in which the person acquired the securities, by the employee because of the employee's employment, unless at the time the person acquired the securities the employee was deceased, in which case such a benefit is deemed to have been received by the person in that year as income from the duties of an employment performed by the person in that year in the country in which the employee primarily performed the duties of the employee's employment;

(d) if rights of the employee under the agreement have, by one or more transactions between persons not dealing at arm's length, become vested in a particular person who has transferred or otherwise disposed of rights under the agreement to another person with whom the particular person was dealing at arm's length, a benefit equal to the amount, if any, by which

(i) the value of the consideration for the disposition

exceeds

(ii) the amount, if any, paid by the employee to acquire those rights

shall be deemed to have been received, in the taxation year in which the particular person made the disposition, by the employee because of the employee's employment, unless at the time the other person acquired the rights the employee was deceased, in which case such a benefit shall be deemed to have been received by the particular person in that year as income from the duties of an employment performed by the particular person in that year in the country in which the employee primarily performed the duties of the employee's employment; and

(e) if the employee has died and immediately before death owned a right to acquire securities under the agreement, a benefit equal to the amount, if any, by which

(i) the value of the right immediately after the death

exceeds

(ii) the amount, if any, paid by the employee to acquire the right

shall be deemed to have been received, in the taxation year in which the employee died, by the employee because of the employee's employment, and paragraphs (b), (c) and (d) do not apply.

Related Provisions: 7(1.1) — Stock option granted by CCPC; 7(1.4) — Exchange of options; 7(1.5) — Where shares exchanged; 7(1.7) — Deemed disposition where rights cease to be exercisable; 7(2) — Shares held by trustee; 7(8) — Deferral re non-CCPC options; 8(1)(b) — Deduction for legal expenses to enforce stock option benefits; 8(12) — Return of employee shares by trustee; 53(1)(j) — Addition to ACB of share; 94.1(1)"exempt interest"(c) [proposed] — Stock option excluded from non-resident trust rules; 104(1), (2) — Employee of trustee deemed to be employee of mutual fund trust; 110(1)(d) — Deduction of ½ of taxable benefit; 110(1.7), (1.8) — Reduction in exercise price of stock option; 110.6(19)(a)(i)(A)B — Election to trigger capital gains exemption — no income inclusion; 128.1(10)"excluded right or interest"(c) — Stock options excluded from deemed disposition on immigration or emigration; 153(1)(a) — Withholding of tax by employer; 164(6.1) — Exercise or disposition of employee stock option by legal representative of deceased employee.

History: The opening words of subsec. 7(1) amended by 2001, c. 17, subsec. 2(1), applicable to 2000 *et seq.*, except that a share acquired in 2000 under an agreement referred to in the subsec., as amended, is deemed to comply with the requirements of para. 7(9)(d), as amended, if, at all times during the period beginning at the time the agreement was made (determined without reference to subsec. 7(1.4), as amended) and ending at the time the share was acquired, the class of shares to which the share belongs was listed on a prescribed stock exchange. The opening words formerly read:

7. (1) Subject to subsection (1.1), where a particular qualifying person has agreed to sell or issue securities of the particular qualifying person, or of a qualifying person with which it does not deal at arm's length, to an employee of the particular qualifying person or of a qualifying person with which it does not deal at arm's length,

The portion of subsec. 7(1) before para. (d) and the opening words of para. (e) amended by 1999, c. 22, subsecs. 3(1) and (2), applicable to 1998 *et seq.* That portion and the opening words of para. (e) formerly read:

7. (1) Agreement to issue shares to employees — Subject to subsection (1.1), where a corporation has agreed to sell or issue shares of the capital stock of the corporation or of a corporation with which it does not deal at arm's length to an employee of the corporation or of a corporation with which it does not deal at arm's length,

(a) if the employee has acquired shares under the agreement, a benefit equal to the amount, if any, by which

(i) the value of the shares at the time the employee acquired them

exceeds

(ii) the total of the amount paid or to be paid to the corporation by the employee for the shares and any amount paid by the employee to acquire the right to acquire the shares

shall be deemed to have been received, in the taxation year in which the employee acquired the shares, by the employee because of the employee's employment;

(b) if the employee has transferred or otherwise disposed of rights under the agreement in respect of some or all of the shares to a person with whom the employee was dealing at arm's length, a benefit equal to the amount, if any, by which

(i) the value of the consideration for the disposition

exceeds

(ii) the amount, if any, paid by the employee to acquire those rights

shall be deemed to have been received, in the taxation year in which the employee made the disposition, by the employee because of the employee's employment;

(c) if rights of the employee under the agreement have, by one or more transactions between persons not dealing at arm's length, become vested in a person who has acquired shares under the agreement, a benefit equal to the amount, if any, by which

(i) the value of the shares at the time that person acquired them

exceeds

(ii) the total of the amount paid or to be paid to the corporation by that person for the shares and any amount paid by the employee to acquire the right to acquire the shares

shall be deemed to have been received, in the taxation year in which the person acquired the shares, by the employee because of the employee's employment, unless at the time the person acquired the shares the employee was deceased, in which case such a benefit shall be deemed to have been received by the person in that year as income from the duties of an employment performed by the person in that year in the country in which the employee primarily performed the duties of the employee's employment;

. . . . .

(e) if the employee has died and immediately before the death the employee owned a right to acquire shares under the agreement, a benefit equal to the amount, if any, by which

Paras. 7(1)(a) to (d) substituted and para. 7(1)(e) added by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 4(1) and (2), paras. 7(1)(a) to (d) applicable to 1988 *et seq.*, and (e) applicable with respect to deaths occurring after July 13, 1990. Paras. (a) to (d) formerly read:

(a) if the employee has acquired shares under the agreement, a benefit equal to the amount by which the value of the shares at the time the employee acquired them exceeds the amount paid or to be paid to the corporation therefor by the employee shall be deemed to have been received by the employee by virtue of the employee's employment in the taxation year in which the employee acquired the shares;

(b) if the employee has transferred or otherwise disposed of rights under the agreement in respect of some or all of the shares to a person with whom the employee was dealing at arm's length, a benefit equal to the value of the consideration for the disposition shall be deemed to have been received by the employee by virtue of the employee's employment in the taxation year in which the employee made the disposition;

(c) if rights of the employee under the agreement have, by one or more transactions between persons not dealing at arm's length, become vested in a person who has acquired shares under the agreement, a benefit equal to the amount by which the value of the shares at the time that person acquired them exceeds the amount paid or to be paid to the corporation therefor by that person shall be deemed to have been received by the employee by virtue of the employee's employment in the taxation year in which that person acquired the shares; and

(d) if rights of the employee under the agreement have, by one or more transactions between persons not dealing at arm's length, become vested in a person who has transferred or otherwise disposed of rights under the agreement to a person with whom the transferor was dealing at arm's length, a benefit equal to the value of the consideration for the disposition shall be deemed to have been received by the employee by virtue of the employee's employment in the taxation year in which made the disposition was made.

Selected Cases [subsec. 7(1)]: *Buccini v. R.*, [2001] 1 C.T.C. 103 (FCA) (Payment was for fundamental breach of contract by employer and was not employment income); *Del Grande (E.) v. Canada*, [1993] 1 C.T.C. 2096 (TCC) (Stock option benefit received as director or officer when rights acquired, not when subsequently exercised); *Ball (D.J.) v. MNR*, [1992] 2 C.T.C. 2770 (TCC) (Benefit under stock option agreement commensurate with number of shares issued and acquired on full payment of consideration in accordance with corporation law, not number of shares employee entitled to acquire under option); *Hale v. Canada*, [1992] 2 C.T.C. 379 (FCA); leave to appeal to SCC refused (1993), 151 N.R. 159 (note) (Benefit from exercising options while resident in UK and after Canadian employment terminated taxable; subsec. 7(4) not inconsistent with Article 15(1) of *Canada-UK Convention*); *Clemiss v. MNR*, [1992] 2 C.T.C. 232 (FCTD) (Benefit taxable in year shares paid for and registered, not in year option purportedly exercised); *Placer Dome Inc. v. Canada*, [1992] 2 C.T.C. 99 (FCA); leave to appeal to SCC refused (1993), 151 N.R. 392 (note) (Payments into employees' stock purchase plan governed by subsec. 7(3), not deductible remuneration); *Canada v. Chrysler Canada Ltd. (No. 3)*, [1992] 2 C.T.C. 95 (FCTD) (Employee stock ownership plan was "stock option", not "employee benefit plan" under para. 6(1)(g)); *Gesser (N.) Estate v. MNR*, [1992] 2 C.T.C. 26 (FCA); leave to appeal to SCC refused (1992), 143 N.R. 394 (note) ("Pseudo-transfer" of shares executed in 1970 resulted in taxable benefit in later year); *Ingram v. MNR*, [1991] 2 C.T.C. 2259 (TCC) (Taxpayer not taxable on gains from stock options taken as agent for others legally barred from taking them); *Canada v. Chrysler Canada Ltd.*, [1991] 2 C.T.C. 156 (FCTD); additional reasons at [1992] 1 C.T.C. 61, (sub nom. *Canada v. Chrysler Canada Ltd. (No. 2)*) (FCTD) (Employee stock ownership plan both agreement to issue shares to employees (taxable pursuant to s. 7) and employee benefit plan (taxable pursuant to para. 6(1)(g))); *Hale v. Canada*, [1990] 2 C.T.C. 247 (FCTD); aff'd [1992] 2 C.T.C. 377 (FCA); leave to appeal to SCC refused (March 11, 1993), Doc. 23193 (Director's fees received by non-resident were 50% taxable. Article 15 of Canada-U.K. Tax Convention interpreted); *Pollock v. Canada*, [1990] 1 C.T.C. 196 (FCTD); appealed to FCA (Jan. 19, 1990), File A-75/76-90 (Shares acquired under employee stock option may be object of adventure in nature of trade); *Grohne v. Canada*, [1989] 1 C.T.C. 434 (FCTD) (Shares acquired by director/shareholder pursuant to rights offering were not benefit received by virtue of office); *R. v. Beaumont*, [1988] 2 C.T.C. 365 (FCA) (Whether or not a transaction is at arm's length is question of fact); *Steen v. R.*, [1988] 1 C.T.C. 256 (FCA) (Shares valued at date option exercised); *Busby v. R.*, [1986] 1 C.T.C. 147 (FCTD) (Profit from disposition of shares in company associated to employer company was not benefit from employment); *Mansfield v. R.*, [1984] C.T.C. 547 (FCA); leave to appeal to SCC refused (1985), 58 N.R. 237 (Difference between cost of convertible debenture and value of shares was both taxable benefit and addition to adjusted cost base); *Grant v. R.*, [1974] C.T.C. 332 (FCTD) (Profit from disposition of shares acquired at market value was not benefit).

Interpretation Bulletins: IT-96R6: Options granted by corporations to acquire shares, bonds, or debentures and by trusts to acquire trust units; IT-113R4: Benefits to employees — stock options; IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits (archived).

Information Circulars: 89-3: Policy statement on business equity valuations.

I.T. Technical News: 1 (convertible preferred shares); No. 7 (stock options plans — receipt of cash in lieu of shares); 19 (Securities option plan — disposal of securities option rights for shares; Disposition of identical properties acquired under a section 7 securities option; Change in position in respect of GAAR — section 7).

Advance Tax Rulings: ATR-15: Employee stock option plan; ATR-64: Phantom stock award plan.

(1.1) Employee stock options [in CCPC] — Where after March 31, 1977 a Canadian-controlled private corporation (in this subsection referred to as "the corporation") has agreed to sell or issue a share of the capital stock of the corporation or of a Canadian-controlled private corporation with which it does not deal at arm's length to an employee of the corporation or of a Canadian-controlled private corporation with which it does not deal at arm's length and at the time immediately after the agreement was made the employee was dealing at arm's length with

(a) the corporation,

(b) the Canadian-controlled private corporation, the share of the capital stock of which has been agreed to be sold by the corporation, and

(c) the Canadian-controlled private corporation that is the employer of the employee,

in applying paragraph (1)(a) in respect of the employee's acquisition of the share, the reference in that paragraph to "the taxation year in which the employee acquired the securities" shall be read as a reference to "the taxation year in which the employee disposed of or exchanged the securities".

Related Provisions: 7(1.3) — Order of disposition of securities; 7(1.5) — Exchange of shares; 7(1.6) — Emigration does not trigger benefit from deemed disposition; 7(8) — Parallel rule for non-CCPCs where qualifying acquisition; 47(3)(a) — No averaging of cost on disposition of securities; 128.1(1)(4)(d.1) — Emigration of taxpayer — calculation of gain; 110(1)(d), (d.1) — Deduction of ¼ of the taxable benefit.

History: The portion of subsec. 7(1.1) after para. (c) amended by 1999, c. 22, subsec. 3(3), applicable to 1998 *et seq.* That portion formerly read:

> in applying paragraph (1)(a) in respect of the employee's acquisition of the share, the reference in that paragraph to "the taxation year in which the employee acquired the shares" shall be read as a reference to "the taxation year in which the employee disposed of or exchanged the shares".

That portion of subsec. 7(1.1) following para. (c) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 4(3), to substitute "read as a reference to" for "read as", applicable to 1988 *et seq.*

Selected Cases [subsec. 7(1.1)]: *Ward v. R.*, [1998] 4 C.T.C. 2129 (TCC) (Taxpayer failed to establish employment relationship to enable access to stock option rules); *Aylward v. R.*, [1997] 2 C.T.C. 2748 (TCC) (Section 7, when applicable, overrides subsec. 84(1)); *Wiebe et al. v. R.*, [1987] 1 C.T.C. 145 (FCA) (Provision inapplicable to shares acquired in 1978 pursuant to option agreement entered before March 31, 1977 where agreement was radically changed at time of share purchase).

Interpretation Bulletins: IT-96R6: Options granted by corporations to acquire shares, bonds, or debentures and by trusts to acquire trust units; IT-113R4: Benefits to employees — stock options; IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits (archived).

I.T. Technical News: 19 (Change in position in respect of GAAR — section 7).

Advance Tax Rulings: ATR-15: Employee stock option plan.

(1.11) Non-arm's length relationship with trusts — For the purposes of this section, a mutual fund trust is deemed not to deal at arm's length with a corporation only if the trust controls the corporation.

History: Subsec. 7(1.11) added by 1999, c. 22, subsec. 3(4), applicable to 1998 *et seq.*

(1.2) [Repealed under former Act]

(1.3) Order of disposition of securities — For the purposes of this subsection, subsections (1.1) and (8), subdivision c, paragraph 110(1)(d.01), subparagraph 110(1)(d.1)(ii) and subsections 110(2.1) and 147(10.4), and subject to subsection (1.31) and paragraph (14)(c), a taxpayer is deemed to dispose of securities that are identical properties in the order in which the taxpayer acquired them and, for this purpose,

(a) where a taxpayer acquires a particular security (other than under circumstances to which subsection (1.1) or (8) or 147(10.1) applies) at a time when the taxpayer also acquires or holds one or more other securities that are identical to the particular security and are, or were, acquired under circumstances to which any of subsections (1.1), (8) or 147(10.1) applied, the taxpayer is deemed to have acquired the particular security at the time immediately preceding the earliest of the times at which the taxpayer acquired those other securities; and

(b) where a taxpayer acquires, at the same time, two or more identical securities under circumstances to which either subsection (1.1) or (8) applied, the taxpayer is deemed to have acquired the securities in the order in which the agreements under which the taxpayer acquired the rights to acquire the securities were made.

Related Provisions: 7(1.31) — Disposition of newly-acquired security; 47(3) — No cost averaging for securities for which deferral provided; 248(12) — Identical properties.

History: Subsec. 7(1.3) amended by 2001, c. 17, subsec. 2(2), applicable to securities acquired, but not disposed of, before February 28, 2000 and to securities acquired after February 27, 2000. The subsec. formerly read:

> (1.3) For the purpose of subsection (1.1), a taxpayer shall be deemed to dispose of shares that are identical properties in the order in which the taxpayer acquired them.

I.T. Technical News: 19 (Disposition of identical properties acquired under a s. 7 securities option).

(1.31) Disposition of newly-acquired security — Where a taxpayer acquires, at a particular time, a particular security under an agreement referred to in subsection (1) and, on a day that is no later than 30 days after the day that includes the particular time, the taxpayer disposes of a security that is identical to the particular security, the particular security is deemed to be the security that is so disposed of if

(a) no other securities that are identical to the particular security are acquired, or disposed of, by the taxpayer after the particular time and before the disposition;

(b) the taxpayer identifies the particular security as the security so disposed of in the taxpayer's return of income under this Part for the year in which the disposition occurs; and

(c) the taxpayer has not so identified the particular security, in accordance with this subsection, in connection with the disposition of any other security.

Related Provisions: 47(3)(b) — No averaging of cost on disposition of securities; 248(12) — Identical properties.

History: Subsec. 7(1.31) added by 2001, c. 17, subsec. 2(2), applicable to securities acquired, but not disposed of, before February 28, 2000 and to securities acquired after February 27, 2000.

(1.4) Exchange of options — Where

(a) a taxpayer disposes of rights under an agreement referred to in subsection (1) to acquire securities of a particular qualifying person that made the agreement or of a qualifying person with which it does not deal at arm's length (which rights and securities are referred to in this subsection as the "exchanged option" and the "old securities", respectively),

(b) the taxpayer receives no consideration for the disposition of the exchanged option other than rights under an agreement with a person (in this subsection referred to as the "designated person") that is

(i) the particular person,

(ii) a qualifying person with which the particular person does not deal at arm's length immediately after the disposition,

(iii) a corporation formed on the amalgamation or merger of the particular person and one or more other corporations,

(iv) a mutual fund trust to which the particular person has transferred property in circumstances to which subsection 132.2(1) applied, or

(v) a qualifying person with which the corporation referred to in subparagraph (iii) does not deal at arm's length immediately after the disposition

to acquire securities of the designated person or a qualifying person with which the designated person does not deal at arm's length (which rights and securities are referred to in this subsection as the "new option" and the "new securities", respectively), and

(c) the amount, if any, by which

(i) the total value of the new securities immediately after the disposition

exceeds

(ii) the total amount payable by the taxpayer to acquire the new securities under the new option

does not exceed the amount, if any, by which

(iii) the total value of the old securities immediately before the disposition

exceeds

(iv) the amount payable by the taxpayer to acquire the old securities under the exchanged option,

for the purposes of this section,

(d) the taxpayer is deemed (other than for the purposes of subparagraph (9)(d)(ii)) not to have disposed of the exchanged option and not to have acquired the new option,

(e) the new option is deemed to be the same option as, and a continuation of, the exchanged option, and

(f) if the designated person is not the particular person, the designated person is deemed to be the same person as, and a continuation of, the particular person.

Related Provisions: 110(1.7), (1.8) — Reduction in exercise price of option.

History: Paras. 7(1.4)(a) and (d) amended by 2001, c. 17, subsecs. 2(3) and (4), the amendment to para. (a) applicable to 1998 *et seq.* and the amendment to para. (d) applicable to 2000 *et seq.* The paras. formerly read:

(a) a taxpayer disposes of rights under an agreement referred to in subsection (1) or (1.1) to acquire securities of a particular qualifying person that made the agreement or of a qualifying person with which it does not deal at arm's length (which rights and securities are referred to in this subsection and paragraph 110(1)(d) as the "exchanged option" and the "old securities", respectively),

. . . . .

(d) the taxpayer is deemed not to have disposed of the exchanged option and not to have acquired the new option,

Subsec. 7(1.4) amended by 1999, c. 22, subsec. 3(5), applicable to 1998 *et seq.* The subsec. formerly read:

(1.4) For the purposes of this section and paragraph 110(1)(d), where

(a) a taxpayer disposes of rights under an agreement referred to in subsection (1) or (1.1) to acquire shares of the capital stock of a particular corporation that made the agreement or of a corporation with which the particular corporation does not deal at arm's length (which rights and shares are referred to in this subsection and paragraph 110(1)(d) as the "exchanged option" and the "old shares", respectively),

(b) the taxpayer receives no consideration for the disposition of the exchanged option other than rights under an agreement with

(i) the particular corporation,

(ii) a corporation with which the particular corporation does not deal at arm's length immediately after the disposition,

(iii) a corporation formed on the amalgamation or merger of the particular corporation and one or more other corporations, or

(iv) a corporation with which the corporation referred to in subparagraph (iii) does not deal at arm's length immediately after the disposition

to acquire shares of its capital stock or of the capital stock of a corporation with which it does not deal at arm's length (which rights and shares are referred to in this subsection and paragraph 110(1)(d) as the "new option" and the "new shares", respectively), and

(c) the amount, if any, by which

(i) the total value of the new shares immediately after the disposition

exceeds

(ii) the total amount payable by the taxpayer to acquire the new shares under the new option

does not exceed the amount, if any, by which

(iii) the total value of the old shares immediately before the disposition

exceeds

(iv) the amount payable by the taxpayer to acquire the old shares under the exchanged option,

the following rules apply:

(d) the taxpayer shall be deemed not to have disposed of the exchanged option and not to have acquired the new option,

(e) the new option shall be deemed to be the same option as, and a continuation of, the exchanged option, and

(f) the corporation referred to in subparagraph (b)(ii), (iii) or (iv), as the case may be, shall be deemed to be the same corporation as, and a continuation of, the particular corporation.

Subsec. 7(1.4) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 4(4), applicable to 1988 *et seq.* except that where a taxpayer so elects by notifying the Minister of National Revenue in writing, the subsec. is not applicable with respect to dispositions of property by the taxpayer before July 14, 1990. Subsec. 7(1.4) formerly read:

(1.4) **Rules where options exchanged** — For the purposes of this section and paragraph 110(1)(d), where a taxpayer exchanges rights that the taxpayer has acquired under an agreement referred to in this section (in this subsection referred to as an "exchanged option") on an amalgamation or merger of two or more corporations and receives no consideration for the disposition of the exchanged option other than rights under an agreement of the corporation resulting from the amalgamation or merger to issue or sell to the taxpayer shares of its capital stock or of the capital stock of a corporation with which it does not deal at arm's length (in this subsection referred to as a "new option"), the following rules apply:

(a) the taxpayer shall be deemed not to have disposed of the exchanged option and not to have acquired the new option;

(b) the new option shall be deemed to be the same option as, and a continuation of, the exchanged option; and

(c) the amalgamated or merged corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation.

Interpretation Bulletins: IT-96R6: Options granted by corporations to acquire shares, bonds, or debentures and by trusts to acquire trust units; IT-113R4: Benefits to employees — stock options.

(1.5) Rules where securities exchanged — For the purposes of this section and paragraphs 110(1)(d) to (d.1), where

(a) a taxpayer disposes of or exchanges securities of a particular qualifying person that were acquired by the taxpayer under circumstances to which either subsection (1.1) or (8) applied (in this subsection referred to as the "exchanged securities"),

(b) the taxpayer receives no consideration for the disposition or exchange of the exchanged securities other than securities (in this subsection referred to as the "new securities") of

(i) the particular qualifying person,

(ii) a qualifying person with which the particular qualifying person does not deal at arm's length immediately after the disposition or exchange,

(iii) a corporation formed on the amalgamation or merger of the particular qualifying person and one or more other corporations,

(iv) a mutual fund trust to which the particular qualifying person has transferred property in circumstances to which subsection 132.2(1) applied, or

(v) a qualifying person with which the corporation referred to in subparagraph (iii) does not deal at

arm's length immediately after the disposition or exchange, and

(c) the total value of the new securities immediately after the disposition or exchange does not exceed the total value of the old securities immediately before the disposition or exchange,

the following rules apply:

(d) the taxpayer is deemed not to have disposed of or exchanged the exchanged securities and not to have acquired the new securities,

(e) the new securities are deemed to be the same securities as, and a continuation of, the exchanged securities, except for the purpose of determining if the new securities are identical to any other securities,

(f) the qualifying person that issued the new securities is deemed to be the same person as, and a continuation of, the qualifying person that issued the exchanged securities, and

(g) where the exchanged securities were issued under an agreement, the new securities are deemed to have been issued under that agreement.

Related Provisions: 47(3)(a) — No averaging of cost on disposition of securities; 110(1)(d) — Employee stock options.

History: Subsec. 7(1.5) amended by 2001, c. 17, subsec. 2(5), applicable to dispositions and exchanges of securities by a taxpayer that occur after February 27, 2000. The subsec. formerly read:

(1.5) Rules where shares exchanged — For the purposes of this section and paragraph 110(1)(d.1), where

(a) a taxpayer disposes of or exchanges shares of a Canadian corporation that were acquired by the taxpayer under an agreement referred to in subsection (1.1) (in this subsection referred to as the "exchanged shares"),

(b) the taxpayer receives no consideration for the disposition or exchange of the exchanged shares other than shares (in this subsection referred to as the "new shares") of

(i) the corporation,

(ii) a corporation with which the corporation does not deal at arm's length immediately after the disposition or exchange,

(iii) a corporation formed on the amalgamation or merger of the corporation and one or more other corporations, or

(iv) a corporation with which the corporation referred to in subparagraph (iii) does not deal at arm's length immediately after the disposition or exchange, and

(c) the total value of the new shares immediately after the disposition or exchange does not exceed the total value of the old shares immediately before the disposition or exchange,

the following rules apply:

(d) the taxpayer shall be deemed not to have disposed of or exchanged the exchanged shares and not to have acquired the new shares,

(e) the new shares shall be deemed to be the same shares as, and a continuation of, the exchanged shares,

(f) the corporation that issued the new shares shall be deemed to be the same corporation as, and a continuation of, the corporation that issued the exchanged shares, and

(g) where the exchanged shares were issued under an agreement, the new shares shall be deemed to have been issued under that agreement.

The opening words of subsec. 7(1.5) substituted by 1994, c. 21, s. 3, applicable to 1992 *et seq.* The opening words of that subsec. formerly read:

(1.5) Exchange of shares — For the purposes of subsection (1.1) and paragraph 110(1)(d.1), where

Subsec. 7(1.5) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 4(4), applicable to 1988 *et seq.* except that where a taxpayer so elects by notifying the Minister of National Revenue in writing, the subsec. is not applicable to dispositions of property by the taxpayer before July 14, 1990. Subsec. 7(1.5) formerly read:

(1.5) Rules where shares exchanged — For the purposes of subsection (1.1) and paragraph 110(1)(d.1), where, in circumstances where subsection 85.1(1) or 87(4) apply, a taxpayer acquires shares of a Canadian corporation (in this subsection referred to as "new shares") in exchange for shares of a Canadian corporation acquired under an agreement referred to in subsection (1.1) (in this subsection referred to as "exchanged shares"), the following rules apply:

(a) the taxpayer shall be deemed not to have disposed of or exchanged the exchanged shares and not to have acquired the new shares;

(b) the new shares shall be deemed to be the same shares as, and a continuation of, the exchanged shares;

(c) the purchaser (within the meaning assigned by section 85.1) or the new corporation (within the meaning assigned by section 87), as the case may be, shall be deemed to be the same corporation as, and a continuation of, the corporation that issued the exchanged shares; and

(d) where the exchanged shares were issued under an agreement, the new shares shall be deemed to have been issued under that agreement.

Interpretation Bulletins: IT-96R6: Options granted by corporations to acquire shares, bonds, or debentures and by trusts to acquire trust units; IT-113R4: Benefits to employees — stock options.

(1.6) Emigrant — For the purposes of this section and paragraph 110(1)(d.1), a taxpayer is deemed not to have disposed of a share acquired under circumstances to which subsection (1.1) applied solely because of subsection 128.1(4).

Related Provisions: 128.1(4)(d.1) — Calculation of gain from deemed disposition on emigration.

History: Subsec. 7(1.6) added by 2001, c. 17, subsec. 2(5), applicable after 1992.

(1.7) Rights ceasing to be exercisable — For the purposes of paragraphs (1)(b) and 110(1)(d), where a taxpayer receives at a particular time one or more particular amounts in respect of rights of the taxpayer to acquire securities under an agreement referred to in subsection (1) ceasing to be exercisable in accordance with the terms of the agreement, and the cessation would not, if this Act were read without reference to this subsection, constitute a transfer or disposition of those rights by the taxpayer,

(a) the taxpayer is deemed to have disposed of those rights at the particular time to a person with whom the taxpayer was dealing at arm's length and to have received the particular amounts as consideration for the disposition; and

(b) for the purpose of determining the amount, if any, of the benefit that the taxpayer is deemed by paragraph (1)(b) to have received as a consequence of the disposition referred to in paragraph (a), the taxpayer is deemed to have paid an amount to acquire those rights equal to the amount, if any, by which

(i) the amount paid by the taxpayer to acquire those rights (determined without reference to this subsection)

exceeds

(ii) the total of all amounts each of which is an amount received by the taxpayer before the particular time in respect of the cessation.

History: Subsec. 7(1.7) added by 2001, c. 17, subsec. 2(5), applicable to amounts received on or after March 16, 2001, other than amounts received on or after that day

(a) pursuant to an agreement in writing made before that day in settlement of claims arising as a result of a cessation occurring before that day; or

(b) pursuant to an order or judgment issued before that day in respect of claims arising as a result of a cessation occurring before that day.

(2) Securities held by trustee [deemed held by employee] — If a security is held by a trustee in trust or otherwise, whether absolutely, conditionally or contingently, for an employee, the employee is deemed, for the purposes of this section and paragraphs 110(1)(d) to (d.1),

(a) to have acquired the security at the time the trust began to so hold it; and

(b) to have exchanged or disposed of the security at the time the trust exchanged it or disposed of it to any person other than the employee.

Related Provisions: 8(12) — Forfeiture of securities by employee; 104(21.2) — Capital gains exemption flowed through trust; 110.6(16) — Personal trust.

History: The opening words of subsec. 7(2) amended by 2001, c. 17, subsec. 2(6), applicable to 2000 *et seq.* The opening words formerly read:

(2) If a security is held by a trustee in trust or otherwise, whether absolutely, conditionally or contingently, for an employee, the employee is deemed, for the purposes of this section and paragraphs 110(1)(d) and (d.1),

Subsec. 7(2) amended by 1999, c. 22, subsec. 3(6), applicable to 1998 *et seq.* The subsec. formerly read:

(2) Shares held by trustee — Where a share is held by a trustee in trust or otherwise, whether absolutely, conditionally or contingently, for an employee, the employee shall be deemed, for the purposes of this section and paragraphs 110(1)(d) and (d.1),

(a) to have acquired the share at the time the trust commenced so to hold it; and

(b) to have exchanged or disposed of the share at the time the trust exchanged it or disposed of it to any person other than the employee.

Interpretation Bulletins: IT-113R4: Benefits to employees — stock options.

(3) Special provision [taxable benefit is under s. 7 only] — If a particular qualifying person has agreed to sell or issue securities of the particular person, or of a qualifying person with which it does not deal at arm's length, to an employee of the particular person or of a qualifying person with which it does not deal at arm's length,

(a) except as provided by this section, the employee is deemed to have neither received nor enjoyed any benefit under or because of the agreement; and

(b) the income for a taxation year of any person is deemed to be not less than its income for the year would have been if a benefit had not been conferred on the employee by the sale or issue of the securities.

History: Subsec. 7(3) amended by 1999, c. 22, subsec. 3(6), applicable to 1995 *et seq.*, except that the reference in para. 7(3)(b) to "person" shall be read as "corporation" in respect of benefits conferred before March 1998. The subsec. formerly read:

(3) Where a corporation has agreed to sell or issue shares of the capital stock of the corporation or of a corporation with which it does not deal at arm's length to an employee of the corporation or of a corporation with which it does not deal at arm's length

(a) no benefit shall be deemed to have been received or enjoyed by the employee under or by virtue of the agreement for the purpose of this Part except as provided by this section; and

(b) the income for a taxation year of the corporation or of a corporation with which it does not deal at arm's length shall be deemed to be not less than its income for the year would have been if a benefit had not been conferred on the employee by the sale or issue of the shares to the employee or to a person in whom the employee's rights under the agreement have become vested.

Selected Cases [subsec. 7(3)]: *Placer Dome Inc. v. Canada*, [1992] 2 C.T.C. 99 (FCA); leave to appeal to SCC refused (March 18, 1993), Doc. 23247 [unreported] (Payments by taxpayer into employees' stock purchase plan not deductible); *Kaiser Petroleum Ltd. v. Canada*, [1990] 2 C.T.C. 439 (FCA); leave to appeal to SCC refused (1991), 136 N.R. 407 (note) (Compensation paid to employees to terminate employees' stock option was non-deductible capital outlay).

Interpretation Bulletins: IT-96R6: Options granted by corporations to acquire shares, bonds, or debentures and by trusts to acquire trust units; IT-113R4: Benefits to employees — stock options.

I.T. Technical News: 7 (stock options plans — receipt of cash in lieu of shares).

Advance Tax Rulings: ATR-64: Phantom stock award plan.

(4) Application of subsec. (1) — For greater certainty it is hereby declared that, where a person to whom any provision of subsection (1) would otherwise apply has ceased to be an employee before all things have happened that would make that provision applicable, subsection (1) shall continue to apply as though the person were still an employee and as though the employment were still in existence.

Selected Cases [subsec. 7(4)]: *Grohne v. Canada*, [1989] 1 C.T.C. 434 (FCTD) (Shares acquired by director/shareholder pursuant to rights offering were not benefit received by virtue of office); *Hurd v. R.*, [1981] C.T.C. 209 (FCA) (Benefit from exercise of option taxable where U.S. resident performed duties in Canada in year of exercise. No treaty exemption).

Interpretation Bulletins: IT-113R4: Benefits to employees — stock options.

(5) Non-application of this section — This section does not apply if the benefit conferred by the agreement was not received in respect of, in the course of, or by virtue of, the employment.

Selected Cases [subsec. 7(5)]: *Grohne v. Canada*, [1989] 1 C.T.C. 434 (FCTD) (Shares acquired by director/shareholder pursuant to rights offering were not benefit received by virtue of office).

(6) Sale to trustee for employees — If a particular qualifying person has entered into an arrangement under which securities of the particular person, or of a qualifying person with which it does not deal at arm's length, are sold or issued by either person to a trustee to be held by the trustee in trust for sale to an employee of the particular person or of a qualifying person with which it does not deal at arm's length,

(a) for the purposes of this section (other than subsection (2)) and paragraphs 110(1)(d) to (d.1),

(i) any particular rights of the employee under the arrangement in respect of those securities are deemed to be rights under a particular agreement with the particular person under which the particular person has agreed to sell or issue securities to the employee,

(ii) any securities acquired under the arrangement by the employee or by a person in whom the particular rights have become vested are deemed to be securities acquired under the particular agreement, and

(iii) any amounts paid or agreed to be paid to the trustee for any securities acquired under the arrangement by the employee or by a person in whom the particular rights have become vested are deemed to be amounts paid or agreed to be paid to the particular person for securities acquired under the particular agreement; and

(b) subsection (2) does not apply in respect of securities held by the trustee under the arrangement.

History: The opening words of para. 7(6)(a) amended to replace "110(1)(d) and (d.1)" with "110(1)(d) to (d.1)" by 2001, c. 17, subsec. 2(7), applicable to 2000 *et seq.*

Subsec. 7(6) amended by 1999, c. 22, subsec. 3(7), applicable to 1998 *et seq.* The subsec. formerly read:

(6) Where a corporation has entered into an arrangement under which shares of the capital stock of the corporation or of a corporation with which it does not deal at arm's length are sold or issued by either corporation to a trustee to be held by the trustee in trust for sale to an employee of the corporation or of a corporation with which it does not deal at arm's length,

(a) for the purposes of this section (except subsection (2)) and paragraphs 110(1)(d) and (d.1), any rights of the employee under the arrangement in respect of those shares, any shares acquired thereunder by the employee or by a person in whom those rights have become vested, and any amounts paid or agreed to be paid to the trustee for any shares acquired thereunder by the employee or any such person, shall be deemed to be, respectively, rights under, shares acquired under, and amounts paid or agreed to be paid to the corporation for shares acquired under, an agreement with the corporation under which the corporation has agreed to sell or issue shares to the employee; and

(b) subsection (2) does not apply in respect of shares held by the trustee under the arrangement.

All that portion of subsec. 7(6) preceding para. (b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 4(5), applicable to 1988 *et seq.* That portion formerly read:

(6) Shares purchased by trustee for employees — Where a corporation has entered into an arrangement whereby shares of the corporation or of a corporation with which it does not deal at arm's length are purchased by a trustee to be held by the trustee in trust for sale to an employee of the corporation or of a corporation with whom it does not deal at arm's length,

(a) for the purposes of this section except subsection (2), any rights of the employee under the arrangement in respect of those shares, any shares acquired thereunder by the employee or by a person in whom rights of the employee thereunder in respect of those shares have become vested, and any amounts paid or agreed to be paid to the trustee for any shares acquired thereunder by the employee or any such person, shall be deemed to be, respectively, rights under, shares acquired under, and amounts paid or agreed to be paid to the corporation for shares acquired under, an agreement with the corporation whereby the corporation has agreed to sell or issue shares to the employee; and

Advance Tax Rulings: ATR-15: Employee stock option plan.

(7) Definitions — The definitions in this subsection apply in this section and in subsection 47(3), paragraphs 53(1)(j) and 110(1)(d) and (d.01) and subsections 110(1.5), (1.6) and (2.1).

Proposed Amendment — 7(7) opening words

(7) Definitions — The following definitions apply in this section and in subsection 47(3), paragraphs 53(1)(j), 110(1)(d) and (d.01) and subsections 110(1.5) to (1.8) and (2.1).

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 49, will amend the opening words of subsec. 7(7) to read as above, applicable after 1998, except that they do not apply to a right under an agreement to which subsec. 7(7) does not (except for the purpose of applying para. 7(3)(b)) apply; and before 2000, the opening words are to be read as follows:

(7) The definitions in this subsection apply in this section and in paragraph 110(1)(d) and subsections 110(1.5) to (1.8).

Technical Notes: Subsection 7(7) defines the expressions "qualifying person" and "security" for the purposes of section 7 and certain other provisions of the Act relating to those agreements. "Qualifying person" is defined as a corporation or a mutual fund trust. "Security" is defined as a share issued by a corporation or a unit of a mutual fund trust.

Subsection 7(7) is amended to have these definitions also apply for the purposes of new subsections 110(1.7) and (1.8). New subsection 110(1.7) ensures that a reduction in the exercise price under an employee security option will not disqualify the employee from claiming the security option deduction under paragraph 110(1)(d), provided certain conditions are met. New subsection 110(1.8) sets out the conditions that must be met in order for new subsection 110(1.7) to apply.

This amendment, which applies after 1998, is consequential to the enactment of new subsections 110(1.7) and (1.8). For additional information, see the commentary to those subsections.

"qualifying person" means a corporation or a mutual fund trust.

"security" of a qualifying person means

(a) if the person is a corporation, a share of the capital stock of the corporation; and

(b) if the person is a mutual fund trust, a unit of the trust.

History: The opening words of subsec. 7(7) amended by 2001, c. 17, subsec. 2(8), applicable after 1997, except that

(a) it does not apply to a right under an agreement to which the subsec. as enacted by S.C. 1999, c. 22, s. 3(7), does not (except for the purpose of applying para. 7(3)(b)) apply; and

(b) before 2000, the opening words of the subsec., as amended, shall be read as:

"(7) The definitions in this subsection apply in this section and in paragraph 110(1)(d) and subsections 110(1.5) and (1.6)."

The opening words formerly read:

(7) The definitions in this subsection apply in this section and in paragraph 110(1)(d).

Subsec. 7(7) added by 1999, c. 22, subsec. 3(7), applicable after 1994 but, except for the purpose of applying para. 7(3)(b), it does not apply to a right under an agreement made before March 1998 to sell or issue trust units to an individual unless

(a) the right was outstanding at the end of February 1998 and was not disposed of before March 1998 in circumstances to which para. 7(1)(b), as amended, applies; and

(b) the individual so elects in writing filed with the Minister of National Revenue on or before the later of

(i) the filing-due date for the individual's taxation year that includes the earlier of

(A) the time of the individual's death, and

(B) the time that the right was first disposed of after February 1998, and

(ii) January 1, 2000.

(8) Deferral in respect of non-CCPC employee options — Where a particular qualifying person (other than a Canadian-controlled private corporation) has agreed to sell or issue securities of the particular qualifying person (or of a qualifying person with which it does not deal at arm's length) to a taxpayer who is an employee of the particular qualifying person (or of a qualifying person with which the particular qualifying person does not deal at arm's length), in applying paragraph (1)(a) in respect of the taxpayer's acquisition of a security under the agreement, the reference in that paragraph to "the taxation year in which the employee acquired the securities" shall be read as a reference to "the taxation year in which the employee disposed of or exchanged the securities" if

(a) the acquisition is a qualifying acquisition; and

(b) the taxpayer elects, in accordance with subsection (10), to have this subsection apply in respect of the acquisition.

Related Provisions: 7(1.3) — Order of disposition of securities; 7(9) — Meaning of "qualifying acquisition"; 7(10) — Election for the purpose of subsec. (8); 7(13) — Revocation of election; 7(14) — Deferral deemed valid at CCRA's discretion; 7(15) — No source withholding required when deferred benefit included; 7(16) — Prescribed form required while security held; 47(3)(a) — No averaging of cost on disposition of securities.

History: Subsec. 7(8) added by 2001, c. 17, subsec. 2(9), applicable to 2000 *et seq.*

Regulations: 200(5) (information return).

(9) Meaning of "qualifying acquisition" — For the purpose of subsection (8), a taxpayer's acquisition of a security under an agreement made by a particular qualifying person is a qualifying acquisition if

(a) the acquisition occurs after February 27, 2000;

(b) the taxpayer would, if this Act were read without reference to subsection (8), be entitled to deduct an amount under paragraph 110(1)(d) in respect of the acquisition in computing income for the taxation year in which the security is acquired;

(c) where the particular qualifying person is a corporation, the taxpayer was not, at the time immediately after the agreement was made, a person who would, if the references in the portion of the definition "specified shareholder" in subsection 248(1) before paragraph (a) to "in a taxation year" and "at any time in the year" were read as references to "at any time" and "at that time", respectively, be a specified shareholder of any of

(i) the particular qualifying person,

(ii) any qualifying person that, at that time, was an employer of the taxpayer and was not dealing at arm's length with the particular qualifying person, and

(iii) the qualifying person of which the taxpayer had, under the agreement, a right to acquire a security; and

(d) where the security is a share,

(i) it is of a class of shares that, at the time the acquisition occurs, is listed on a prescribed stock exchange, and

(ii) where rights under the agreement were acquired by the taxpayer as a result of one or more dispositions to which subsection (1.4) applied, none of the rights that were the subject of any of the dispositions included a right to acquire a share of a class of shares that, at the time the rights were disposed of, was not listed on any prescribed stock exchange.

Proposed Amendment — 7(9)(d)(ii)

Letter from Dept. of Finance, December 12, 2003:

Monsieur,

La présente vient compléter la lettre que vous avez reçue du Ministre des finances en réponse à votre lettre du 14 avril 2003 et fait également suite à plusieurs conversations téléphoniques entre des agents de ce ministère et des représentants de votre firme.

Dans votre lettre du 14 avril 2003, vous nous demandiez d'apporter une modification à la *Loi de l'impôt sur le revenu* (LIR). Cette demande avait pour but de permettre aux détenteurs d'options d'achat d'action de pouvoir continuer à bénéficier des avantages du report du paragraphe 7(8) LIR dans un contexte d'une réorganisation papillon par dérivation d'une société dont les actions sont cotées à une bourse de valeur prescrite (« Bourse ») ce qui, dans le présent cas, est impossible en raison du sous-alinéa 7(9)(d)(ii) LIR.

Voici notre compréhension des événements pertinents que vous nous avez présentés :

- Une société (« Cédante »), dont toutes les actions sont des actions ordinaires cotées à une Bourse, voudrait effectuer un papillon par dérivation afin d'isoler les activités de l'une de ses filiales (« Cédée »), dont les actions ne sont pas cotées à une Bourse. Cédante détient 100% des actions ordinaires de Cédée.
- Cédante va procéder à un remaniement de son capital-actions par lequel, chaque action ordinaire de Cédante sera échangée contre une nouvelle action ordinaire et une action privilégiée de réorganisation (« Action de réorganisation »). La valeur des Actions de réorganisation correspondra à la valeur des actions de Cédée. Le paragraphe 86(1) LIR s'appliquera à cette transaction.
- Concurremment, les employés (« Détenteurs ») qui détiennent des options pouvant être exercées sur les anciennes actions ordinaires de Cédante obtiendront, pour chacune de leurs options, une option pouvant être exercée sur les nouvelles actions ordinaires de Cédante ainsi qu'une option pouvant être exercée sur les actions ordinaires de Cédée. Cet échange répondra aux règles établies au paragraphe 7(1.4) LIR.
- Une nouvelle société (« Nouco ») sera créée. Les actionnaires de Cédante céderont, en faveur de Nouco, leurs Actions de réorganisation de Cédante et, en contrepartie, Nouco leur émettra des actions ordinaires de Nouco. Cet échange s'effectuera en conformité avec les règles établies au paragraphe 85(1) ou 85(1.1) LIR, et constituera un « échange autorisé » au sens du paragraphe 55(1) LIR, répondant notamment à la condition prévue au sous-alinéa b)(i) de cette définition.
- Cédante transférera les actions de Cédée en faveur de Nouco et, en contrepartie, Nouco émettra en faveur de Cédante des actions privilégiées de Nouco (« Actions de roulement »). Cette attribution respectera les règles prévues à la définition du terme « attribution » au paragraphe 55(1) LIR.
- Cédante et Nouco rachèteront, respectivement, les Actions de réorganisation et les Actions de roulement. En contrepartie, chacune émettra des billets à demande sans intérêts, qui seront ensuite compensés.
- Nouco sera fusionnée avec Cédée pour former Cessionnaire, dont les actions seront inscrites à la Bourse. Cette fusion sera en conformité avec les règles édictées aux paragraphes 87(1) et suivants de la LIR.
- Les actions ordinaires de Cédée seront annulées. Suite à cette annulation, les Détenteurs auront, en contrepartie de chaque option sur une action ordinaire de Cédée, une option pouvant être exercée sur une action ordinaire de Cessionnaire. Cet échange répondra aux règles établies au paragraphe 7(1.4) LIR.
- Les raisons pour lesquels les Détenteurs vont obtenir des options sur les actions de Cédée, et par la suite sur les actions de Cessionnaire sont :
  - pour satisfaire l'obligation contractuelle de Cédante de traiter les Détenteurs de la même manière que les actionnaires lorsque des réorganisations due capital-actions ont lieu;
  - de permettre aux Détenteurs de ne pas perdre le potentiel de croissance de chacune des entreprises qui seront séparées par la réorganisation.

Selon le paragraphe 7(1) LIR, un employé qui acquiert une action à la suite de la levée d'une option, doit inclure dans son revenu, à titre d'avantage imposable en raison de son emploi, la différence entre la valeur de l'action au moment de l'acquisition de cette dernière et le prix payé pour l'obtenir. Généralement, cet avantage doit être ajouté au revenu de l'employé dans l'année de l'acquisition de l'action.

Cependant, lorsque certaines conditions sont rencontrées, le paragraphe 7(8) LIR permet un report d'imposition jusqu'au moment où l'employé disposera des actions. L'une de ces conditions exige que l'action sous-jacente à l'option soit inscrite à une Bourse. De plus, en vertu du sous-alinéa 7(9)d)(ii) LIR, lorsque l'option ayant servi à acquérir l'action a été acquise par suite d'une ou de plusieurs dispositions auxquelles le paragraphe 7(1.4) LIR s'est appliqué, une exigence supplémentaire doit être respectée: aucune option qui n'a été disposée pouvait être exercée, à ce moment, sur une action qui n'était pas inscrite à une Bourse.

Dans la réorganisation que vous nous avez soumise, cette dernière exigence ne sera pas satisfaite car, au moment de la disposition des options pouvant être exercées sur les actions ordinaires de Cédée, ces actions ne seront pas inscrites à une Bourse. Donc, une telle réorganisation de Cédante vient mettre fin à la possibilité, pour les Détenteurs, de reporter l'imposition de l'avantage relié à l'acquisition des actions tel que permis par le paragraphe 7(8) LIR.

Toutefois, prenant en considération que les options originales (de Cédante) et les options finales (de Cessionnaire) seront sur des actions cotées à une Bourse, et que dans les faits, les Détenteurs n'auront jamais la possibilité d'exercer leurs droits sur une société dont les actions n'appartiennent pas à une catégorie d'actions cotée à la Bourse, vous croyez que cette conséquence ne devrait pas résulter de ce genre de réorganisation.

Dans ces circonstances, nous sommes d'accord que la détention temporaire des options visant des actions qui ne sont pas coté à une Bourse, c'est-à-dire, les options sur les actions de Cédée, ne devrait pas empêcher les Détenteurs de pouvoir bénéficier du report autorisé au paragraphe 7(8) LIR. Donc, nous sommes prêts à recommander, au Ministre des Finances, une modification à la LIR qui ferait en sorte qu'une telle

conséquence ne résulterait pas de la réorganisation que vous nous avez présentée.

En vous remerciant pour votre collaboration et en espérant que la présente lettre saura vous être utile, veuillez agréer, Monsieur Drouin, l'expression de nos sentiments distingués.

Directeur, Division de la législation de l'impôt, Direction de la politique de l'impôt
Brian Ernewein

History: Subsec. 7(9) added by 2001, c. 17, subsec. 2(9), applicable to 2000 *et seq.*

Regulations: 3200, 3201 (prescribed stock exchange).

(10) Election for the purpose of subsection (8) — For the purpose of subsection (8), a taxpayer's election to have that subsection apply in respect of the taxpayer's acquisition of a particular security under an agreement referred to in subsection (1) is in accordance with this subsection if

(a) the election is filed, in prescribed form and manner at a particular time that is before January 16 of the year following the year in which the acquisition occurs, with a person who would be required to file an information return in respect of the acquisition if subsection (8) were read without reference to paragraph (8)(b);

(b) the taxpayer is resident in Canada at the time the acquisition occurs; and

(c) the specified value of the particular security does not exceed the amount by which

(i) $100,000

exceeds

(ii) the total of all amounts each of which is the specified value of another security acquired by the taxpayer at or before the particular time under an agreement referred to in subsection (1), where

(A) the taxpayer's right to acquire that other security first became exercisable in the year that the taxpayer's right to acquire the particular security first became exercisable, and

(B) at or before the particular time, the taxpayer has elected in accordance with this subsection to have subsection (8) apply in respect of the acquisition of that other security.

Related Provisions: 7(11) — Meaning of "specified value"; 7(12) — Order of exercise of identical options; 7(13) — Revocation of election.

History: Subsec. 7(10) added by 2001, c. 17, subsec. 2(9), applicable to 2000 *et seq.* An election under subsec. 7(10) to have subsec. 7(8) apply in respect of a security acquired in 2000 is deemed to have been filed in a timely manner if it is filed before August 14, 2001.

Forms: T1212: Statement of deferred stock option benefits.

(11) Meaning of "specified value" — For the purpose of paragraph (10)(c), the specified value of a particular security acquired by a taxpayer under an agreement referred to in subsection (1) is the amount determined by the formula

A/B

where

A is the fair market value, determined at the time the agreement was made, of a security that was the subject of the agreement at the time the agreement was made; and

B is

(a) except where paragraph (b) applies, 1, and

(b) where the number or type of securities that are the subject of the agreement has been modified in any way after the time the agreement was made, the number of securities (including any fraction of a security) that it is reasonable to consider the taxpayer would, at the time the particular security was acquired, have a right to acquire under the agreement in lieu of one of the securities that was the subject of the agreement at the time the agreement was made.

History: Subsec. 7(11) added by 2001, c. 17, subsec. 2(9), applicable to 2000 *et seq.*

(12) Identical options — order of exercise — Unless the context otherwise requires, a taxpayer is deemed to exercise identical rights to acquire securities under agreements referred to in subsection (1)

(a) where the taxpayer has designated an order, in the order so designated; and

(b) in any other case, in the order in which those rights first became exercisable and, in the case of identical rights that first became exercisable at the same time, in the order in which the agreements under which those rights were acquired were made.

Related Provisions: 248(12) — Identical properties.

History: Subsec. 7(12) added by 2001, c. 17, subsec. 2(9), applicable to 2000 *et seq.*

(13) Revoked election — For the purposes of this section (other than this subsection), an election filed by a taxpayer to have subsection (8) apply to the taxpayer's acquisition of a security is deemed never to have been filed if, before January 16 of the year following the year in which the acquisition occurs, the taxpayer files with the person with whom the election was filed a written revocation of the election.

History: Subsec. 7(13) added by 2001, c. 17, subsec. 2(9), applicable to 2000 *et seq.* A written request under subsec. 7(13) to revoke an election in respect of a security acquired in 2000 is deemed to have been filed in a timely manner if it is filed before August 14, 2001.

(14) Deferral deemed valid — For the purposes of this section and paragraph 110(1)(d), where a taxpayer files an election to have subsection (8) apply in respect of the taxpayer's acquisition of a particular security and subsection (8) would not apply to the acquisition if this section were read without reference to this subsection, the following rules apply if the Minister so notifies the taxpayer in writing:

(a) the acquisition is deemed, for the purpose of subsection (8), to be a qualifying acquisition;

(b) the taxpayer is deemed to have elected, in accordance with subsection (10), at the time of the acquisition, to have subsection (8) apply in respect of the acquisition; and

(c) if, at the time the Minister sends the notice, the taxpayer has not disposed of the security, the taxpayer is deemed (other than for the purpose of subsection (1.5)) to have disposed of the security at that time and to have acquired the security immediately after that time other than under an agreement referred to in subsection (1).

History: Subsec. 7(14) added by 2001, c. 17, subsec. 2(9), applicable to 2000 *et seq.*

(15) Withholding — Where, because of subsection (8), a taxpayer is deemed by paragraph (1)(a) to have received a benefit from employment in a taxation year, the benefit is deemed to be nil for the purpose of subsection 153(1).

History: Subsec. 7(15) added by 2001, c. 17, subsec. 2(9), applicable to 2000 *et seq.*

(16) Prescribed form for deferral — Where, at any time in a taxation year, a taxpayer holds a security that was acquired under circumstances to which subsection (8) applied, the taxpayer shall file with the Minister, with the taxpayer's return of income for the year, a prescribed form containing prescribed information relating to the taxpayer's acquisition and disposition of securities under agreements referred to in subsection (1).

History: Subsec. 7(16) added by 2001, c. 17, subsec. 2(9), applicable to 2000 *et seq.*

Forms: T1212: Statement of deferred stock option benefits.

Selected Cases [s. 7]: *Panini v. R.*, [2005] 2 C.T.C. 2252 (TCC) (Assessments allowed beyond statutory delay where taxpayer ignored stock option benefits); *Alcatel Canada Inc. v. R.*, [2005] 2 C.T.C. 2001 (TCC) ("Expenditure" for company was value forgone on treasury shares issued at less than FMV).

Definitions [s. 7]: "amount" — 248(1); "arm's length" — 7(1.11), 251(1); "Canadian-controlled private corporation" — 125(7), 248(1); "Canadian corporation" — 89(1), 248(1); "class of shares" — 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "designated person" — 7(1.4)(b); "disposed", "disposition" — 7(1.6), 248(1); "employee", "employer", "employment" — 248(1); "exchanged option" — 7(1.4)(a); "exchanged securities", "exchanged shares" — 7(1.5)(a); "identical" — 248(12); "Minister" — 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q) [to be repealed], 132.2(3)(n) [draft], 248(1); "new option" — 7(1.4)(b); "new securities", "new shares" — 7(1.4)(b); "old securities", "old shares" — 7(1.4)(a); "person", "prescribed" — 248(1); "prescribed stock exchange" — 248(29), Reg. 3200, 3201; "property" — 248(1); "qualifying acquisition" — 7(9); "qualifying person" — 7(7); "resident in Canada" — 250; "securities", "security" — 7(7); "share", "specified shareholder" — 248(1); "specified value" — 7(11); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "written" — *Interpretation Act* 35(1)"writing".

Interpretation Bulletins: IT-495R3: Child care expenses.

Deductions

8. (1) Deductions allowed — In computing a taxpayer's income for a taxation year from an office or employment, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts as may reasonably be regarded as applicable thereto:

(a) [Repealed]

History: Para. 8(1)(a) repealed by 2001, c. 17, subsec. 3(1), applicable to 1998 *et seq.* The para. formerly read:

> (a) volunteers' [emergency workers'] deduction — in respect of each employer of the taxpayer that is a government, municipality or public authority, the lesser of $1,000 and the total of all amounts received in the year by the taxpayer from the employer that are
>
> (i) included in the taxpayer's income for the year from an office or employment, and
>
> (ii) from the performance, as a volunteer, of the taxpayer's duties as
>
> (A) an ambulance technician,
>
> (B) a firefighter, or
>
> (C) a person who assists in the search or rescue of individuals or in other emergency situations,
>
> except that no amount may be so deducted in respect of an employer if the taxpayer is employed in the year, otherwise than as a volunteer, by the employer in connection with the performance of any of the duties referred to in subparagraph (ii) or of similar duties;

Para. 8(1)(a) added by 1999, c. 22, subsec. 4(1), applicable to 1998 *et seq.*

(b) **legal expenses of employee** — amounts paid by the taxpayer in the year as or on account of legal expenses incurred by the taxpayer to collect or establish a right to salary or wages owed to the taxpayer by the employer or former employer of the taxpayer;

Proposed Amendment — 8(1)(b)

(b) **legal expenses of employee** — amounts paid by the taxpayer in the year as or on account of legal expenses incurred by the taxpayer to collect, or to establish a right to, an amount owed to the taxpayer that, if received by the taxpayer, would be required by this subdivision to be included in computing the taxpayer's income;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 50(1), will amend para. 8(1)(b) to read as above, applicable to amounts paid in 2001 *et seq.*

Technical Notes: Paragraph 8(1)(b) allows the deduction of amounts paid by the taxpayer to collect or establish a right to salary or wages owed to the taxpayer by the taxpayer's employer or former employer.

Concern has been expressed that where an amount is not owed to the employee directly by the employer, any legal expenses incurred by the taxpayer would not be deductible under paragraph 8(1)(b), even though the amount, when received, would be taxable as employment income. This would be the case, for example, with respect to legal fees incurred by a taxpayer to collect insurance benefits under a sickness or accident insurance policy provided through an employer.

Paragraph 8(1)(b) is amended to allow a deduction for legal expenses incurred by a taxpayer to collect, or establish a right to collect, an amount that, if received, would be included in computing the taxpayer's employment income.

Related Provisions: 6(1)(j) — Reimbursements and awards; 6(8) — GST rebate included in income; 60(o.1)(i)(B) — Legal expenses re retiring allowance.

Selected Cases [para. 8(1)(b)]: *Loo v. R.*, [2004] 4 C.T.C. 247 (FCA) (Provision applies where taxpayer attempting to establish entitlement to more than had been paid); *Wilson v. Canada*, [1990] 2 C.T.C. 169 (FCTD); aff'd [1991] 2 C.T.C. 69 (FCA) (Legal expenses for defending criminal charges, not deductible).

Interpretation Bulletins: IT-99R5: Legal and accounting fees.

Forms: T777: Statement of employment expenses; T4044: Employment expenses [guide].

(c) **clergy residence** — where, in the year, the taxpayer

(i) is a member of the clergy or of a religious order or a regular minister of a religious denomination, and

(ii) is

(A) in charge of a diocese, parish or congregation,

(B) ministering to a diocese, parish or congregation, or

(C) engaged exclusively in full-time administrative service by appointment of a religious order or religious denomination,

the amount, not exceeding the taxpayer's remuneration for the year from the office or employment, equal to

(iii) the total of all amounts including amounts in respect of utilities, included in computing the taxpayer's income for the year under section 6 in respect of the residence or other living accommodation occupied by the taxpayer in the course of, or because of, the taxpayer's office or employment as such a member or minister so in charge of or ministering to a diocese, parish or congregation, or so engaged in such administrative service, or

(iv) rent and utilities paid by the taxpayer for the taxpayer's principal place of residence (or other principal living accommodation), ordinarily occupied during the year by the taxpayer, or the fair rental value of such a residence (or other living accommodation), including utilities, owned by the

taxpayer or the taxpayer's spouse or common-law partner, not exceeding the lesser of

(A) the greater of

(I) $1,000 multiplied by the number of months (to a maximum of ten) in the year, during which the taxpayer is a person described in subparagraphs (i) and (ii), and

(II) one-third of the taxpayer's remuneration for the year from the office or employment, and

(B) the amount, if any, by which

(I) the rent paid or the fair rental value of the residence or living accommodation, including utilities

exceeds

(II) the total of all amounts each of which is an amount deducted, in connection with the same accommodation or residence, in computing an individual's income for the year from an office or employment or from a business (other than an amount deducted under this paragraph by the taxpayer), to the extent that the amount can reasonably be considered to relate to the period, or a portion of the period, in respect of which an amount is claimed by the taxpayer under this paragraph;

Related Provisions: 8(10) — Employer's certificate required; 146(1)"earned income"(a)(i) — Earned income for RRSP purposes includes value of residence.

History: Para. 8(1)(c) amended by 2001, c. 17, subsec. 3(2), applicable to 2001 *et seq.* The para. formerly read:

(c) clergyman's residence — where the taxpayer is a member of the clergy or of a religious order or a regular minister of a religious denomination, and is in charge of or ministering to a diocese, parish or congregation, or engaged exclusively in full-time administrative service by appointment of a religious order or religious denomination, an amount equal to

(i) the value of the residence or other living accommodation occupied by the taxpayer in the course of or by virtue of the taxpayer's office or employment as such a member or minister so in charge of or ministering to a diocese, parish or congregation, or so engaged in such administrative service, to the extent that that value is included in computing the taxpayer's income for the year by virtue of section 6, or

(ii) rent paid by the taxpayer for a residence or other living accommodation rented and occupied by the taxpayer, or the fair rental value of a residence or other living accommodation owned and occupied by the taxpayer, during the year but not, in either case, exceeding the taxpayer's remuneration from the taxpayer's office or employment as described in subparagraph (i);

Selected Cases: *Canadian Council of Christian Charities v. Canada (Minister of Finance)*, [1999] 3 C.T.C. 123 (FCTD) (Access to tax policy documents restricted); *Fitch v. R.*, [1999] 2 C.T.C. 2419 (TCC) (Mere teaching falls short of ministering to congregation); *Austin v. R.*, [1999] 2 C.T.C. 2270 (TCC) (Role of taxpayer in context of particular denomination is factor); *Zylstra v. MNR*, [1997] 2 C.T.C. 203 (FCA) (Deduction denied where no "religious order" involved.

Interpretation Bulletins: IT-99R5: Legal and accounting fees; IT-141R: Clergy residence deduction.

Registered Charities Newsletters: 23 (did you know? clergy residence deduction).

Forms: T1223: Clergy residence deduction; T2200: Declaration of conditions of employment.

(d) **teachers' exchange fund contribution** — a single amount, in respect of all employments of the taxpayer as a teacher, not exceeding $250 paid by the taxpayer in the year to a fund established by the Canadian Education Association for the benefit of teachers from Commonwealth countries present in Canada under a teachers' exchange arrangement;

(e) **expenses of railway employees** — amounts disbursed by the taxpayer in the year for meals and lodging while employed by a railway company

(i) away from the taxpayer's ordinary place of residence as a relieving telegrapher or station agent or on maintenance and repair work, or

(ii) away from the municipality and the metropolitan area, if there is one, where the taxpayer's home terminal was located, and at a location from which, by reason of distance from the place where the taxpayer maintained a self-contained domestic establishment in which the taxpayer resided and actually supported a spouse or common-law partner or a person dependent upon the taxpayer for support and connected with the taxpayer by blood relationship, marriage or common-law partnership or adoption, the taxpayer could not reasonably be expected to return daily to that place,

to the extent that the taxpayer has not been reimbursed and is not entitled to be reimbursed in respect thereof;

Related Provisions: 6(6) — Employment — remote and special work sites; 6(8) — GST rebate included in income; 8(1)(h) — Travelling expenses; 8(11) — GST; 67.1 — Expenses for food, etc..

History: Subpara. 8(1)(e)(ii) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", and by Sch. 2, s. 10, to replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Interpretation Bulletins: IT-518R: Food, beverages and entertainment expenses.

Information Circulars: 73-21R8: Claims for meals and lodging expenses of transport employees.

Forms: TL2: Claim for meals and lodging expenses.

(f) **sales expenses [of commission employee]** — where the taxpayer was employed in the year in connection with the selling of property or negotiating of contracts for the taxpayer's employer, and

(i) under the contract of employment was required to pay the taxpayer's own expenses,

(ii) was ordinarily required to carry on the duties of the employment away from the employer's place of business,

(iii) was remunerated in whole or part by commissions or other similar amounts fixed by reference to the volume of the sales made or the contracts negotiated, and

(iv) was not in receipt of an allowance for travel expenses in respect of the taxation year that was, by virtue of subparagraph 6(1)(b)(v), not included in computing the taxpayer's income,

amounts expended by the taxpayer in the year for the purpose of earning the income from the employment (not exceeding the commissions or other similar amounts referred to in subparagraph (iii) and received by the taxpayer in the year) to the extent that such amounts were not

(v) outlays, losses or replacements of capital or payments on account of capital, except as described in paragraph (j),

(vi) outlays or expenses that would, by virtue of paragraph 18(1)(l), not be deductible in computing

the taxpayer's income for the year if the employment were a business carried on by the taxpayer, or

(vii) amounts the payment of which reduced the amount that would otherwise be included in computing the taxpayer's income for the year because of paragraph 6(1)(e);

Related Provisions: 6(1)(b)(v) — Allowance for travelling expenses; 6(8) — GST rebate included in income; 8(1)(h) — Travelling expenses; 8(1)(h.1) — Motor vehicle travelling expenses; 8(1)(j) — Auto and aircraft costs; 8(4) — Limitation — meals; 8(9) — Limitation — aircraft expenses; 8(10) — Employer's certificate; 8(13) — Work space in home; 18(1)(h) — Personal or living expenses; 18(1)(l) — Use of recreational facilities and club dues; 18(1)(r) — Limitation on employer deductibility; 67.1 — 50% limitation on expenses for meals and entertainment; 67.3 — Limitation re cost of leasing passenger vehicle; Reg. 102(2)(d)(i) — Effect of deduction on source withholdings.

History: Subpara. 8(1)(f)(vii) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 5(1), applicable to 1990 *et seq.*

Selected Cases [para. 8(1)(f)]: *Gifford v. R.*, [2004] 2 C.T.C. 1 (SCC) (Interest on borrowed funds used to acquire client list was "on account of capital" and not deductible); *Gilling v. MNR*, [1990] 1 C.T.C. 392 (FCTD) (Taxpayer paid salary for principal management function and commissions for secondary sales function ordinarily required to carry on duties away from place of business); *Verrier v. R.*, [1990] 1 C.T.C. 313 (FCA); leave to appeal to SCC refused (1990), 120 N.R. 80 (note) (Gas and other expenses deductible where automobile salesperson required, by implied term of contract, to perform duties away from employer's location); *Malik v. MNR*, [1989] 1 C.T.C. 316 (FCTD) (Term of employment contract requiring real estate salesperson each year to show he was in good financial standing did not result in deductibility of interest payments on personal loan. Insufficient connection with employment); *Thompson v. MNR*, [1989] 2 C.T.C. 226 (FCTD) (Expenses for office in home owned by taxpayer disallowed except for portion of utilities).

Interpretation Bulletins: IT-352R2: Employee's expenses, including work space in home expenses; IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt; IT-518R: Food, beverages and entertainment expenses; IT-522R: Vehicle, travel and sales expenses of employees.

I.T. Technical News: 12 (1998 deduction limits and benefit rates for automobiles).

Forms: T777: Statement of employment expenses; T2200: Declaration of conditions of employment; TD1X: Statement of commission income and expenses for payroll tax deductions; T4044: Employment expenses [guide].

(g) **transport employee's expenses** — where the taxpayer was an employee of a person whose principal business was passenger, goods, or passenger and goods transport and the duties of the employment required the taxpayer, regularly,

(i) to travel, away from the municipality where the employer's establishment to which the taxpayer reported for work was located and away from the metropolitan area, if there is one, where it was located, on vehicles used by the employer to transport the goods or passengers, and

(ii) while so away from that municipality and metropolitan area, to make disbursements for meals and lodging,

amounts so disbursed by the taxpayer in the year to the extent that the taxpayer has not been reimbursed and is not entitled to be reimbursed in respect thereof;

Related Provisions: 6(1)(b)(vii) — Allowance for travelling expenses; 6(8) — GST rebate included in income; 8(1)(h) — Travelling expenses; 8(11) — GST rebate deemed not to be reimbursement; 67.1 — Expenses for food, etc.

Selected Cases [para. 8(1)(g)]: *Crawford v. R.*, [2003] 4 C.T.C. 8 (FCA) ("Meals and lodging" to be read conjunctively); *Hiscoe v. R.*, [2002] 4 C.T.C. 2438 (TCC) (Conjunctive nature of provision not considered); *R. v. Creamer*, [1976] C.T.C. 676 (FCTD) (Expenses for meals not deductible where employer not principally in transportation); *R. v. Deimert*, [1976] C.T.C. 301 (FCTD) (Costs of travelling home for weekends not incurred in course of employment).

Interpretation Bulletins: IT-254R2: Fishermen — employees and seafarers — value of rations and quarters (archived); IT-518R: Food, beverages and entertainment expenses.

Information Circulars: 73-21R8: Claims for meals and lodging expenses of transport employees.

Forms: TL2: Claim for meals and lodging expenses.

(h) **travel expenses** — where the taxpayer, in the year,

(i) was ordinarily required to carry on the duties of the office or employment away from the employer's place of business or in different places, and

(ii) was required under the contract of employment to pay the travel expenses incurred by the taxpayer in the performance of the duties of the office or employment,

amounts expended by the taxpayer in the year (other than motor vehicle expenses) for travelling in the course of the office or employment, except where the taxpayer

(iii) received an allowance for travel expenses that was, because of subparagraph 6(1)(b)(v), (vi) or (vii), not included in computing the taxpayer's income for the year, or

(iv) claims a deduction for the year under paragraph (e), (f) or (g);

Related Provisions: 6(8) — GST rebate included in income; 8(1)(h.1) — Motor vehicle travel expenses; 8(1)(j) — Auto and aircraft costs; 8(4) — Limitation — meals; 8(9) — Limitation — aircraft expenses; 8(10) — Employer's certificate; 67.1 — 50% limitation on expenses for meals; 81(3.1) — No tax on allowance or reimbursement for part-time employee's travel expenses; Reg. 102(2)(d)(i) — Effect of deduction on source withholdings.

History: Para. 8(1)(h) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 5(2), applicable to 1988 *et seq.* Para. (h) formerly read:

(h) where the taxpayer, in the year,

(i) was ordinarily required to carry on the duties of the employment away from the employer's place of business or in different places,

(ii) under the contract of employment was required to pay the travel expenses incurred by the taxpayer in the performance of the duties of the office or employment, and

(iii) was not in receipt of an allowance for travel expenses that was, by virtue of subparagraph 6(1)(b)(v), (vi), (vii) or (vii.1), not included in computing the taxpayer's income and did not claim any deduction for the year under paragraph (e), (f) or (g),

amounts expended by the taxpayer in the year for travelling in the course of the employment;

Selected Cases [para. 8(1)(h)]: *Imray v. R.*, [1998] 4 C.T.C. 221 (FCTD) ("Ordinarily" can accommodate situation which occurs only once per year); *Merten v. MNR*, [1990] 2 C.T.C. 444 (FCTD) (Travel expenses between home and worksites away from usual place of work deductible); *Moore v. R.*, [1990] 1 C.T.C. 311 (FCA); leave to appeal to SCC refused (1990), 121 N.R. 322 (note) (Expenses for travelling pursuant to implied term of employment contract deductible. Expenses for travelling between work and home outside regular work hours not deductible); *R. v. Chrapko*, [1988] 2 C.T.C. 342 (FCA) (Travelling expenses to place other than place where taxpayer ordinarily worked were deductible); *R. v. Mina et al.*, [1988] 1 C.T.C. 380 (FCTD) (Insufficient allowance from employer does not preclude deduction of expenses in excess of allowance); *Hoedel v. R.*, [1986] 2 C.T.C. 419 (FCA) (Expenses of police officer for transporting police dog deductible); *R. v. Jeromel*, [1986] 2 C.T.C. 207 (FCTD) (Expenses not deductible where contract permits, but does not require, travelling); *Rozen v. R.*, [1986] 1 C.T.C. 50 (FCTD); appealed to FCA (Dec. 3, 1985), File A-929-85 (Automobile expenses deductible where travelling required by implied term of contract); *R. v. Patterson*, [1982] C.T.C. 371 (FCTD) (Expenses deductible where travelling ordinarily required).

Interpretation Bulletins: IT-266: Taxation of members of provincial legislative assemblies (archived); IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt; IT-518R: Food, beverages and entertainment expenses; IT-522R: Vehicle, travel and sales expenses of employees.

Information Circulars: 73-21R8: Claims for meals and lodging expenses of transport employees; 74-6R2: Power saw expenses.

I.T. Technical News: 12 (1998 deduction limits and benefit rates for automobiles).

Forms: T777: Statement of employment expenses; T2200: Declaration of conditions of employment; TD1X: Statement of commission income and expenses for payroll tax deductions; T4044: Employment expenses [guide].

(h.1) **motor vehicle travel expenses** — where the taxpayer, in the year,

(i) was ordinarily required to carry on the duties of the office or employment away from the employer's place of business or in different places, and

(ii) was required under the contract of employment to pay motor vehicle expenses incurred in the performance of the duties of the office or employment,

amounts expended by the taxpayer in the year in respect of motor vehicle expenses incurred for travelling in the course of the office or employment, except where the taxpayer

(iii) received an allowance for motor vehicle expenses that was, because of paragraph 6(1)(b), not included in computing the taxpayer's income for the year, or

(iv) claims a deduction for the year under paragraph (f);

Related Provisions: 6(8) — GST rebate included in income; 8(1)(j) — Motor vehicle and aircraft costs; 8(10) — Certificate of employer; 18(1)(r) — Limitation on employer deductibility; 67.3 — Limitation re cost of leasing passenger vehicle; 81(3.1) — No tax on allowance or reimbursement for part-time employee's travel expenses; Reg. 102(2)(d)(i) — Effect of deduction on source withholdings.

History: Para. 8(1)(h.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 5(3), applicable to 1988 *et seq.*

Interpretation Bulletins: IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt; IT-522R: Vehicle, travel and sales expenses of employees.

I.T. Technical News: 12 (1998 deduction limits and benefit rates for automobiles).

Forms: TD1X: Statement of commission income and expenses for payroll tax deductions; T777: Statement of employment expenses; T2200: Declaration of conditions of employment; T4044: Employment expenses [guide].

(i) **dues and other expenses of performing duties** — amounts paid by the taxpayer in the year as

Proposed Amendment — 8(1)(i) opening words

(i) **dues and other expenses of performing duties** — an amount paid by the taxpayer in the year, or on behalf of the taxpayer in the year if the amount paid on behalf of the taxpayer is required to be included in the taxpayer's income for the year, as

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 50(2), will amend the opening words of para. 8(1)(i) to read as above, in force on Royal Assent.

Technical Notes: Paragraph 8(1)(i) permits an employee to deduct certain dues and other employment expenses that are paid by the employee. Paragraph 8(1)(i) is amended, applicable on Royal Assent, to clarify that an expense described in that paragraph that is paid [normally by the employer — ed.] on an employee's behalf is deductible by the employee if the amount paid is required to be included in computing the employee's income.

(i) annual professional membership dues the payment of which was necessary to maintain a professional status recognized by statute,

(ii) office rent, or salary to an assistant or substitute, the payment of which by the officer or employee was required by the contract of employment,

(iii) the cost of supplies that were consumed directly in the performance of the duties of the office or employment and that the officer or employee was required by the contract of employment to supply and pay for,

(iv) annual dues to maintain membership in a trade union as defined

(A) by section 3 of the *Canada Labour Code*, or

(B) in any provincial statute providing for the investigation, conciliation or settlement of industrial disputes,

or to maintain membership in an association of public servants the primary object of which is to promote the improvement of the members' conditions of employment or work,

(v) annual dues that were, pursuant to the provisions of a collective agreement, retained by the taxpayer's employer from the taxpayer's remuneration and paid to a trade union or association designated in subparagraph (iv) of which the taxpayer was not a member,

(vi) dues to a parity or advisory committee or similar body, the payment of which was required under the laws of a province in respect of the employment for the year, and

(vii) dues to a professions board, the payment of which was required under the laws of a province,

to the extent that the taxpayer has not been reimbursed, and is not entitled to be reimbursed in respect thereof;

Related Provisions: 6(8) — GST rebate included in income; 8(1)(l.1) — Employer's portion of UI/EI premiums and CPP contributions deductible; 8(1)(r) — Deduction for tools of apprentice auto mechanic; 8(5) — Certain dues not deductible; 8(10) — Employer's certificate; 8(11) — GST rebate deemed not to be reimbursement; 8(13) — Limitation on home office expenses; Reg. 102(2)(d)(i) — Effect of deduction on source withholdings.

History: Subpara. 8(1)(i)(vii) added by 1998, c. 19, subsec. 69(1), applicable to 1996 *et seq.*

Selected Cases [para. 8(1)(i)]: *Crowe v. R.*, [2003] 3 C.T.C. 271 (FCA) (Judiciary not included in "public servants"); *Montgomery v. MNR*, [1999] 2 C.T.C. 196 (FCA); rev'g [1998] 1 C.T.C. 58 (FCTD); rev'g [1996] 1 C.T.C. 2796 (TCC) ("Recognized by statute" did not mean profession had to be fully regulated); *Petrin v. Canada*, [1991] 1 C.T.C. 94 (FCTD) (No deduction for dues to association not recognized by statute); *Thompson v. MNR*, [1989] 2 C.T.C. 226 (FCTD) (Expenses for home office required under contract not deductible as "office rent" where no rent paid); *Lucas v. R.*, [1987] 2 C.T.C. 23 (FCTD) (Special increase in association dues due to strike deductible as "annual" dues).

Regulations: 100(3)(b) (deduction of dues by employer reduces source withholding).

Interpretation Bulletins: IT-103R: Dues paid to a union or to a parity or advisory committee; IT-158R2: Employees' professional membership dues; IT-352R2: Employees' expenses, including work space in home expenses.

Information Circulars: 74-6R2: Power saw expenses.

Charities Policies: CPC-008: Gift — Payment to a registered charity instead of paying union dues.

Forms: T1 General — Line 212; T777: Statement of employment expenses; T2200: Declaration of conditions of employment; TD1X: Statement of commission income and expenses for payroll tax deductions; T4044: Employment expenses [guide].

(j) **motor vehicle and aircraft costs** — where a deduction may be made under paragraph (f), (h) or (h.1) in computing the taxpayer's income from an office or employment for a taxation year,

(i) any interest paid by the taxpayer in the year on borrowed money used for the purpose of acquiring, or on an amount payable for the acquisition of, property that is

(A) a motor vehicle that is used, or

(B) an aircraft that is required for use

in the performance of the duties of the taxpayer's office or employment, and

(ii) such part, if any, of the capital cost to the taxpayer of

(A) a motor vehicle that is used, or

(B) an aircraft that is required for use

in the performance of the duties of the office or employment as is allowed by regulation;

Related Provisions: 6(8) — GST rebate included in income or reduces capital cost of vehicle or aircraft; 8(1)(f) — Salesman's expenses; 8(1)(q) — Artists' employment expenses; 8(9) — Limitation — aircraft expenses; 13(7) — Capital cost allowance — rules applicable; 13(7.1) — Deemed capital cost of certain property; 13(11) — Deductions under 8(1)(j)(ii) deemed claimed as CCA; 67.2 — Interest on money borrowed for passenger vehicle; 67.3 — Limitation re cost of leasing passenger vehicle; 80(9)(c) — Reduction of capital cost on debt forgiveness ignored for purposes of para. 8(1)(j); 80.4 — Loans; Reg. 102(2)(d)(i) — Effect of deduction on source withholdings.

History: All that portion of para. 8(1)(j) preceding cl. (i)(B) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 5(4), applicable to 1988 *et seq.* That portion formerly read:

(j) automobile and aircraft costs — where a deduction may be made under paragraph (f) or (h) in computing the taxpayer's income from an office or employment for a taxation year,

(i) any interest paid by the taxpayer in the year on borrowed money used for the purpose of acquiring

(A) an automobile that is used, or

Cl. 8(1)(j)(ii)(A) amended to substitute "a motor vehicle" for "an automobile" by 1994, c. 7, Sch. II (1991, c. 49), subsec. 5(5), applicable to 1988 *et seq.*

Selected Cases [para. 8(1)(j)]: *Maguire v. Canada*, [1995] 2 C.T.C. 2048 (TCC) (Motor-driven boat is not a motor vehicle).

Regulations: 1100(1)(a)(x), (x.1) (CCA rate is 30% on declining balance).

Interpretation Bulletins: IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt; IT-478R2: CCA — recapture and terminal loss; IT-504R2: Visual artists and writers; IT-522R: Vehicle, travel and sales expenses of employees; IT-525R: Performing artists.

I.T. Technical News: 12 (1998 deduction limits and benefit rates for automobiles).

Forms: T777: Statement of employment expenses; TD1X: Statement of commission income and expenses for payroll tax deductions; T4044: Employment expenses [guide].

(k), (l) [Repealed under former Act]

(l.1) **C.P.P. contributions and U.I.A. [E.I.] premiums** — any amount payable by the taxpayer in the year

(i) as an employer's premium under the *Employment Insurance Act*, or

(ii) as an employer's contribution under the *Canada Pension Plan* or under a provincial pension plan as defined in section 3 of the *Canada Pension Plan*,

in respect of salary, wages or other remuneration, including gratuities, paid to an individual employed by the taxpayer as an assistant or substitute to perform the duties of the taxpayer's office or employment if an amount is deductible by the taxpayer for the year under subparagraph (i)(ii) in respect of that individual;

Proposed Amendment — QPIP treated like Employment Insurance

Department of Finance news release, July 19, 2005: See under 56(1)(a)(iv).

Related Provisions: 8(1)(i) — Expenses of performing duties; 60(e) — Deduction for ½ of self-employed person's CPP contributions; 118.7 — Credit for taxpayer's own CPP contributions.

History: Subpara. 8(1)(l.1)(i) amended by 1996, c. 23, s. 171, to substitute "*Employment Insurance Act*" for "*Unemployment Insurance Act*", in force June 30, 1996.

Interpretation Bulletins: IT-352R2: Employee's expenses, including work space in home expenses.

(m) **employee's registered pension plan contributions** — the amount in respect of contributions to registered pension plans that, by reason of subsection 147.2(4), is deductible in computing the taxpayer's income for the year;

Related Provisions: 20(1)(q) — Employer's contribution to registered pension plan; 60(j) — Transfer of superannuation benefits; 60(j.01) — Transfer of surplus; 60(j.02) — Payment to registered pension plan; 60(j.03) — Repayments of pre-1990 pension benefits; 60(j.04) — Repayments of post-1989 pension benefits; 60.2(1) — Refund of undeducted past service AVCs; 127.52(1)(a) — Limitation on deduction for minimum tax purposes; 146(1)"earned income"(a)(i), 146(1)"earned income"(c)(i) — Earned income for RRSP counted before deduction under 8(1)(m); 146(5) — Amount of RRSP premium deductible; 146(16) — RRSP — deduction on transfer of funds; 149 — Exemptions.

Regulations: 100(3)(a) (deduction of RPP contributions from payroll reduces source withholding).

Interpretation Bulletins: IT-167R6: Registered pension plans — employee's contributions.

Information Circulars: 72-13R8: Employee's pension plans.

Advance Tax Rulings: ATR-2: Contribution to pension plan for past service.

(m.1) [Repealed under former Act]

(m.2) **employee RCA contributions** — an amount contributed by the taxpayer in the year to a pension plan in respect of services rendered by the taxpayer where the plan is a prescribed plan established by an enactment of Canada or a province or where

(i) the plan is a retirement compensation arrangement,

(ii) the amount was paid to a custodian (within the meaning assigned by the definition "retirement compensation arrangement" in subsection 248(1)) of the arrangement who is resident in Canada, and

(iii) either

(A) the taxpayer was required, by the terms of the taxpayer's office or employment, to contribute the amount, and the total of the amounts contributed to the plan in the year by the taxpayer does not exceed the total of the amounts contributed to the plan in the year by any other person in respect of the taxpayer, or

(B) the plan is a pension plan the registration of which under this Act was revoked (other than a plan the registration of which was revoked as of the effective date of its registration) and the amount was contributed in accordance with the terms of the plan as last registered;

(C) [Repealed]

Related Provisions: 18(11)(e) — No deduction for interest on money borrowed to make deductible contribution; 60(t)(ii) — Amount included under para. 56(1)(x) or (z) or subsec. 70(2); 60(u)(ii) — Deduction where amount included under para. 56(1)(y); 146(1)"earned income"(a)(i), 146(1)"earned income"(c)(i) — Earned income for RRSP counted before deduction for 8(1)(m.2); 207.6(6) — Rules re prescribed plan or arrangement.

History: The opening words of para. 8(1)(m.2) substituted by 1994, c. 21, subsec. 4(1), applicable to 1992 *et seq.* The opening words of that para. formerly read:

(m.2) employee RCA contributions — an amount contributed by the taxpayer in the year to a pension plan in respect of services rendered by the taxpayer where

Cl. 8(1)(m.2)(iii)(C) repealed by 1994, c. 21, subsec. 4(2), applicable to 1992 *et seq.* That cl. formerly read:

(C) the plan is a prescribed plan or arrangement;

Cl. 8(1)(m.2)(iii)(C) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 2, applicable to 1992 *et seq.*

Regulations: 100(3)(b.1) (payroll deduction of employee contribution reduces source withholding); 6802, 6802.1(1) (prescribed plans).

Forms: T4041: Retirement compensation arrangements [guide].

(n) **salary reimbursement** — an amount paid by or on behalf of the taxpayer in the year pursuant to an arrangement (other than an arrangement described in subparagraph (b)(ii) of the definition "top-up disability payment" in subsection 6(17)) under which the taxpayer is required to reimburse any amount paid to the taxpayer for a period throughout which the taxpayer did not perform the duties of the office or employment, to the extent that

(i) the amount so paid to the taxpayer for the period was included in computing the taxpayer's income from an office or employment, and

(ii) the total of amounts so reimbursed does not exceed the total of amounts received by the taxpayer for the period throughout which the taxpayer did not perform the duties of the office or employment;

Related Provisions: 8(1)(n.1) — Reimbursement of top-up disability payments.

History: The opening words of para. 8(1)(n) amended by 1998, c. 19, subsec. 69(2), applicable to arrangements entered into after August 10, 1994. The opening words formerly read:

(n) an amount paid by or on behalf of the taxpayer in the year pursuant to an arrangement under which the taxpayer is required to reimburse any amount paid to the taxpayer for a period throughout which the taxpayer did not perform the duties of the office or employment, to the extent that

(n.1) **reimbursement of disability payments** — where,

(i) as a consequence of the receipt of a payment (in this paragraph referred to as the "deferred payment") from an insurer, a payment (in this paragraph referred to as the "reimbursement payment") is made by or on behalf of an individual to an employer or former employer of the individual pursuant to an arrangement described in subparagraph (b)(ii) of the definition "top-up disability payment" in subsection 6(17), and

(ii) the reimbursement payment is made

(A) in the year, other than within the first 60 days of the year if the deferred payment was received in the immediately preceding taxation year, or

(B) within 60 days after the end of the year, if the deferred payment was received in the year,

an amount equal to the lesser of

(iii) the amount included under paragraph 6(1)(f) in respect of the deferred payment in computing the individual's income for any taxation year, and

(iv) the amount of the reimbursement payment;

History: Para. 8(1)(n.1) added by 1998, c. 19, subsec. 69(3), applicable to reimbursement payments made after August 10, 1994.

(o) **forfeited amounts [salary deferral arrangement]** — where at the end of the year the rights of any person to receive benefits under a salary deferral arrangement in respect of the taxpayer have been extinguished or no person has any further right to receive any amount under the arrangement, the amount, if any, by which the total of all deferred amounts under the arrangement included in computing the taxpayer's income for the year and preceding taxation years as benefits under paragraph 6(1)(a) exceeds the total of

(i) all such deferred amounts received by any person in that year or preceding taxation years out of or under the arrangement,

(ii) all such deferred amounts receivable by any person in subsequent taxation years out of or under the arrangement, and

(iii) all amounts deducted under this paragraph in computing the taxpayer's income for preceding taxation years in respect of deferred amounts under the arrangement;

Related Provisions: 12(1)(n.2) — Inclusions — forfeited salary deferral amounts.

(o.1) **idem [employees profit sharing plan]** — an amount that is deductible in computing the taxpayer's income for the year because of subsection 144(9);

Related Provisions: 6(1)(d) — Income inclusion from allocations under employees profit sharing plan.

History: Para. 8(1)(o.1) added by 1994, c. 21, subsec. 4(3), applicable to 1992 *et seq.*

Interpretation Bulletins: IT-379R: Employees profit sharing plans — allocations to beneficiaries.

(p) **musical instrument costs** — where the taxpayer was employed in the year as a musician and as a term of the employment was required to provide a musical instrument for a period in the year, an amount (not exceeding the taxpayer's income for the year from the employment, computed without reference to this paragraph) equal to the total of

(i) amounts expended by the taxpayer before the end of the year for the maintenance, rental and insurance of the instrument for that period, except to the extent that the amounts are otherwise deducted in computing the taxpayer's income for any taxation year, and

(ii) such part, if any, of the capital cost to the taxpayer of the instrument as is allowed by regulation;

Related Provisions: 6(8) — GST rebate included in income or reduces capital cost of instrument; 8(1)(q) — Artists' employment expenses deduction; 13(7), (7.1) — Capital cost allowance — rules applicable; 13(11) — Deduction under 8(1)(p)(ii) deemed claimed as CCA; 80(9)(c) — Reduction of capital cost on debt forgiveness ignored for purposes of 8(1)(p).

Regulations: IT-379R: Employees profit sharing plans — allocations to beneficiaries; 1100(1)(a)(viii); Sch. II:Cl. 8(i) (CCA rate is 20%).

Interpretation Bulletins: IT-257R: Canada Council grants; IT-478R2: CCA — recapture and terminal loss; IT-525R: Performing artists.

(q) **artists' employment expenses** — where the taxpayer's income for the year from the office or employment includes income from an artistic activity

(i) that was the creation by the taxpayer of, but did not include the reproduction of, paintings, prints, etchings, drawings, sculptures or similar works of art,

(ii) that was the composition by the taxpayer of a dramatic, musical or literary work,

(iii) that was the performance by the taxpayer of a dramatic or musical work as an actor, dancer, singer or musician, or

(iv) in respect of which the taxpayer was a member of a professional artists' association that is certified by the Minister of Communications,

amounts paid by the taxpayer before the end of the year in respect of expenses incurred for the purpose of earning the income from those activities to the extent that they were not deductible in computing the taxpayer's income for a preceding taxation year, but not exceeding a single amount in respect of all such offices and employments of the taxpayer equal to the amount, if any, by which

(v) the lesser of $1,000 and 20% of the total of all amounts each of which is the taxpayer's income from an office or employment for the year, before deducting any amount under this section, that was income from an artistic activity described in any of subparagraphs (i) to (iv),

exceeds

(vi) the total of all amounts deducted by the taxpayer for the year under paragraph (j) or (p) in respect of costs or expenses incurred for the purpose of earning the income from such an activity for the year; and

History: Para. 8(1)(q) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 5(6), applicable with respect to amounts paid after 1990.

1995, c. 11: S. 46 of 1995, c. 11, in force July 12, 1996, provides as follows:

46. Other references — Every reference made to the Minister of Communications, the Minister of Multiculturalism and Citizenship and the Secretary of State of Canada in relation to any matter to which the powers, duties and functions of the Minister of Canadian Heritage extend by virtue of this Act, in any other Act of Parliament or in any order, regulation or other instrument made under any Act of Parliament shall, unless the context otherwise requires, be read as a reference to the Minister of Canadian Heritage.

Interpretation Bulletins: IT-257R: Canada Council grants; IT-504R2: Visual artists and writers; IT-525R: Performing artists.

Forms: T777: Statement of employment expenses; T4044: Employment expenses [guide].

(r) **apprentice mechanics' tool costs** — if the taxpayer was an eligible apprentice mechanic at any time after 2001 and before the end of the taxation year, the amount claimed by the taxpayer for the taxation year under this paragraph not exceeding the lesser of

(i) the taxpayer's income for the taxation year computed without reference to this paragraph, and

(ii) the amount determined by the formula

$$(A - B) + C$$

where

A is the total of all amounts each of which is the cost to the taxpayer of an eligible tool acquired in the taxation year by the taxpayer or, if the taxpayer first becomes employed as an eligible apprentice mechanic in the taxation year, the cost to the taxpayer of an eligible tool acquired by the taxpayer in the last three months of the preceding taxation year,

B is the lesser of

(A) the value of A for the taxation year in respect of the taxpayer, and

(B) the greater of $1,000 and 5% of the total of all amounts, each of which is the taxpayer's income from employment for the taxation year as an eligible apprentice mechanic, computed without reference to this paragraph, and

C is the amount by which the amount determined under this subparagraph for the preceding taxation year in respect of the taxpayer exceeds the amount deducted under this paragraph for that preceding taxation year by the taxpayer.

Related Provisions: 6(8) — GST rebate included in income or reduces capital cost of tools; 8(6) — Eligible apprentice mechanic and eligible tool; 8(7) — Cost of tools; 53(2)(m) — Deduction does not reduce adjusted cost base of tools; 56(1)(k) — Income inclusion on sale of tools; 85(5.1), 97(5) — Rollover of tools to corporation or partnership.

History: Para. 8(1)(r) added by 2002, c. 9, subsec. 21(1), applicable to eligible tools acquired after 2001.

Interpretation Bulletins: IT-291R3: Transfer of property to a corporation under subsection 85(1).

Selected Cases [subsec. 8(1)]: *Furman v. R.*, [2003] 4 C.T.C. 2228 (TCC) (Lawyers are not in "sales," but rendering of legal services); *Ontario Public Service Employees Union v. Nat'l Citizens' Coalition*, [1990] 2 C.T.C. 163 (Ont CA) (Different taxation of business and employment incomes does not violate *Charter*).

(1.1) [Not included in R.S.C. 1985]

(2) General limitation — Except as permitted by this section, no deductions shall be made in computing a taxpayer's income for a taxation year from an office or employment.

Selected Cases [subsec. 8(2)]: *Horbay v. R.*, [2003] 2 C.T.C. 2248 (TCC) (Mortgage interest not equivalent to rent).

Interpretation Bulletins: IT-352R2: Employee's expenses, including work space in home expenses; IT-377R: Director's, executor's or juror's fees (archived); IT-478R2: CCA — recapture and terminal loss.

(3) [Repealed under former Act]

(4) Meals — An amount expended in respect of a meal consumed by a taxpayer who is an officer or employee shall not be included in computing the amount of a deduction under paragraph (1)(f) or (h) unless the meal was consumed during a period while the taxpayer was required by the taxpayer's duties to be away, for a period of not less than twelve hours, from the municipality where the employer's establishment to which the taxpayer ordinarily reported for work was located and away from the metropolitan area, if there is one, where it was located.

Related Provisions: 67.1 — 50% limitation on expenses for meals.

Selected Cases [subsec. 8(4)]: *Verrier v. R.*, [1990] 1 C.T.C. 313 (FCA); leave to appeal to SCC refused (1990), 120 N.R. 80 (note) (Gas and other expenses deductible where automobile salesperson required, by implied term of contract, to perform duties away from employer's location); *Healy v. R.*, [1979] C.T.C. 44 (FCA) (Expenses while at place where required to work one-third of year deductible).

Interpretation Bulletins: IT-522R: Vehicle, travel and sales expenses of employees.

Information Circulars: 73-21R8: Claims for meals and lodging expenses of transport employees.

Forms: T777: Statement of employment expenses; TD1X: Statement of commission income and expenses for payroll tax deductions; T4044: Employment expenses [guide].

(5) Dues not deductible — Notwithstanding subparagraphs (1)(i)(i), (iv), (vi) and (vii), dues are not deductible under those subparagraphs in computing a taxpayer's income from an office or employment to the extent that they are, in effect, levied

(a) for or under a superannuation fund or plan;

(b) for or under a fund or plan for annuities, insurance (other than professional or malpractice liability insurance that is necessary to maintain a professional status recognized by statute) or similar benefits; or

(c) for any other purpose not directly related to the ordinary operating expenses of the committee or similar body, association, board or trade union, as the case may be.

Related Provisions: 8(1)(i)(i), (iv) — Professional and union dues deductible.

History: The opening words of subsec. 8(5) and para. (c) amended by 1998, c. 19, subsec. 69(4), applicable to 1996 *et seq.* The opening words and para. formerly read:

(5) Notwithstanding subparagraphs (1)(i)(i), (iv) and (vi), dues are not deductible under those subparagraphs in computing a taxpayer's income from an office or employment to the extent that they are, in effect, levied

. . . . .

(c) for any other purpose not directly related to the ordinary operating expenses of the committee or similar body, association or trade union to which they were paid.

Interpretation Bulletins: IT-103R: Dues paid to a union or to a parity or advisory committee; IT-158R2: Employees' professional membership dues.

(6) Apprentice mechanics — For the purpose of paragraph (1)(r),

(a) a taxpayer is an eligible apprentice mechanic in a taxation year if, at any time in the taxation year, the taxpayer

(i) is registered in a program established in accordance with the laws of a province that leads to designation under those laws as a mechanic licensed to repair self-propelled motorized vehicles, and

(ii) is employed as an apprentice mechanic;

(b) an eligible tool is a tool (including ancillary equipment) that

(i) is acquired by a taxpayer for use in connection with the taxpayer's employment as an eligible apprentice mechanic,

(ii) has not been used for any purpose before it is acquired by the taxpayer, and

(iii) is certified in prescribed form by the taxpayer's employer to be required to be provided by the taxpayer as a condition of, and for use in, the taxpayer's employment as an eligible apprentice mechanic; and

(c) a taxpayer who, for a taxation year, is not an eligible apprentice mechanic and has an excess amount determined under the description of C in subparagraph (1)(r)(ii) is, for the taxation year, entitled to claim a deduction under that paragraph as if that excess amount were wholly applicable to an employment of the taxpayer.

Related Provisions: 8(7) — Cost of eligible tool; 85(5.1), 97(5) — Rollover of tools to corporation or partnership.

History: Subsec. 8(6) added by 2002, c. 9, subsec. 21(2), applicable to eligible tools acquired after 2001.

(7) Cost of tools of an apprentice mechanic — Except for the purpose of the description of A in subparagraph (1)(r)(ii), the cost to a taxpayer of an eligible tool the cost of which was included in determining the value of that description in respect of the taxpayer for a taxation year is the amount determined by the formula

$$K - (K \times \frac{L}{M})$$

where

K is the cost to the taxpayer of the tool determined without reference to this subsection;

L is the amount that would be determined under subparagraph (1)(r)(ii) in respect of the taxpayer for the taxation year if the value of C in that subparagraph were nil; and

M is the value of A determined under subparagraph (1)(r)(ii) in respect of the taxpayer for the taxation year.

Related Provisions: 85(5.1), 97(5) — Rollover of tools to corporation or partnership; 257 — Formula cannot calculate to less than zero.

History: Subsec. 8(7) added by 2002, c. 9, subsec. 21(2), applicable to eligible tools acquired after 2001.

Interpretation Bulletins: IT-291R3: Transfer of property to a corporation under subsection 85(1).

(8) [Repealed under former Act]

(9) Presumption — Notwithstanding any other provision of this Act, the total of all amounts that would otherwise be deductible by a taxpayer pursuant to paragraph (1)(f), (h) or (j) for travelling in the course of the taxpayer's employment in an aircraft that is owned or rented by the taxpayer, may not exceed an amount that is reasonable in the circumstances having regard to the relative cost and availability of other modes of transportation.

Related Provisions: 67 — General requirement that expenses be reasonable.

Interpretation Bulletins: IT-522R: Vehicle, travel and sales expenses of employees.

(10) Certificate of employer — An amount otherwise deductible for a taxation year under paragraph (1)(c), (f), (h) or (h.1) or subparagraph (1)(i)(ii) or (iii) by a taxpayer shall not be deducted unless a prescribed form, signed by the taxpayer's employer certifying that the conditions set out in the applicable provision were met in the year in respect of the taxpayer, is filed with the taxpayer's return of income for the year.

Related Provisions: 8(6)(b)(iii) — Employer's certificate required for apprentice mechanic's tools deduction; 67 — General requirement that expenses be reasonable; 81(4)(b) — Certification re exemption for volunteer emergency worker.

History: Subsec. 8(10) amended by 2001, c. 17, subsec. 3(3), applicable to 1998 *et seq.*, except that in its application to the 1998 to 2000 taxation years, the reference to "paragraph (1)(c), (f)" shall be read as a reference to "paragraph (1)(f)". The subsec. formerly read:

(10) An amount otherwise deductible for a taxation year under paragraph (1)(a), (f), (h) or (h.1) or subparagraph (1)(i)(ii) or (iii) by a taxpayer shall not be deducted unless a prescribed form signed by the taxpayer's employer certifying that the conditions set out in that paragraph or subparagraph, as the case may be, were met in the year in respect of the taxpayer is filed with the taxpayer's return of income for the year.

Subsec. 8(10) amended by 1999, c. 22, subsec. 4(2), applicable to 1998 *et seq.* The subsec. formerly read:

> (10) An amount otherwise deductible for a taxation year under paragraph (1)(f), (h) or (h.1) or subparagraph (1)(i)(ii) or (iii) by a taxpayer shall not be deducted unless a prescribed form signed by the taxpayer's employer certifying that the conditions set out in that provision were met in the year in respect of the taxpayer is filed with the taxpayer's return of income for the year under this Part.

Subsec. 8(10) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 5(7), applicable to 1988 *et seq.* Subsec. 8(10) formerly read:

> (10) Certificate — An amount otherwise deductible for a taxation year under paragraph (1)(f) or (h) or subparagraph (1)(i)(ii) or (iii) by a taxpayer shall not be deducted unless the taxpayer files with the taxpayer's return of income for the year a prescribed form signed by the taxpayer's employer certifying that the conditions set out in that provision were met in the year in respect of the taxpayer.

Selected Cases [subsec. 8(10)]: *Baptist v. R.*, [2000] 2 C.T.C. 2829 (TCC) (Expenses not deductible where off-duty police officer performed extra services).

Interpretation Bulletins: IT-141R: Clergy residence deduction; IT-352R2: Employees' expenses, including work space in home expenses; IT-522R: Vehicle, travel and sales expenses of employees.

Information Circulars: 73-21R8: Claims for meals and lodging expenses of transport employees; 74-6R2: Power saw expenses.

Forms: T1223: Clergy residence deduction; T2200: Declaration of conditions of employment; T4044: Employment expenses [guide].

(11) Goods and services tax — For the purposes of this section and section 6, the amount of any rebate paid or payable to a taxpayer under the *Excise Tax Act* in respect of the goods and services tax shall be deemed not to be an amount that is reimbursed to the taxpayer or to which the taxpayer is entitled.

Related Provisions: 6(8) — GST rebate included in income.

(12) Forfeiture of securities by employee — If, in a taxation year,

> (a) an employee is deemed by subsection 7(2) to have disposed of a security (as defined in subsection 7(7)) held by a trust,
>
> (b) the trust disposed of the security to the person that issued the security,
>
> (c) the disposition occurred as a result of the employee not meeting the conditions necessary for title to the security to vest in the employee, and
>
> (d) the amount paid by the person to acquire the security from the trust or to redeem or cancel the security did not exceed the amount paid to the person for the security,

the following rules apply:

> (e) there may be deducted in computing the employee's income for the year from employment the amount, if any, by which
>
> > (i) the amount of the benefit deemed by subsection 7(1) to have been received by the employee in the year or a preceding taxation year in respect of the security
>
> exceeds
>
> > (ii) any amount deducted under paragraph 110(1)(d) or (d.1) in computing the employee's taxable income for the year or a preceding taxation year in respect of that benefit, and
>
> (f) notwithstanding any other provision of this Act, the employee's gain or loss from the disposition of the security is deemed to be nil and section 84 does not apply to deem a dividend to have been received in respect of the disposition.

History: Subsec. 8(12) amended by 1999, c. 22, subsec. 4(3), applicable to 1998 *et seq.* The subsec. formerly read:

> (12) Return of employee shares by trustee — Where, in a taxation year,
>
> > (a) an employee is deemed by subsection 7(2) to have disposed of a share held by a trust,
> >
> > (b) the trust disposed of the share to the corporation that issued the share,
> >
> > (c) the disposition occurred as a result of the employee not meeting the conditions necessary for title to the share to vest in the employee, and
> >
> > (d) the amount paid by the corporation to acquire the share from the trust or to redeem or cancel the share did not exceed the amount paid to the corporation for the share,
>
> the following rules apply:
>
> > (e) there may be deducted in computing the employee's income for the year from employment the amount, if any, by which
> >
> > > (i) the amount of the benefit deemed by subsection 7(1) to have been received by the employee in the year or a preceding taxation year in respect of the share
> >
> > exceeds
> >
> > > (ii) any amount deducted under paragraph 110(1)(d) or (d.1) in computing the employee's taxable income for the year or a preceding taxation year in respect of that benefit, and
> >
> > (f) notwithstanding any other provision of this Act, any gain or loss of the employee otherwise determined from the disposition of the share shall be deemed to be nil and section 84 does not apply to deem a dividend to have been received in respect of the disposition.

Subsec. 8(12) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 5(8), applicable to 1988 *et seq.*

Interpretation Bulletins: IT-113R4: Benefits to employees — stock options.

(13) Work space in home — Notwithstanding paragraphs (1)(f) and (i),

> (a) no amount is deductible in computing an individual's income for a taxation year from an office or employment in respect of any part (in this subsection referred to as the "work space") of a self-contained domestic establishment in which the individual resides, except to the extent that the work space is either
>
> > (i) the place where the individual principally performs the duties of the office or employment, or
> >
> > (ii) used exclusively during the period in respect of which the amount relates for the purpose of earning income from the office or employment and used on a regular and continuous basis for meeting customers or other persons in the ordinary course of performing the duties of the office or employment;
>
> (b) where the conditions set out in subparagraph (a)(i) or (ii) are met, the amount in respect of the work space that is deductible in computing the individual's income for the year from the office or employment shall not exceed the individual's income for the year from the office or employment, computed without reference to any deduction in respect of the work space; and
>
> (c) any amount in respect of a work space that was, solely because of paragraph (b), not deductible in computing the individual's income for the immediately preceding taxation year from the office or employment shall be deemed to be an amount in respect of a work space that is otherwise deductible in computing the individual's income for the year from that office or employment and that, subject to paragraph (b), may be deducted in computing the individual's income for the year from the office or employment.

Related Provisions: 18(12) — Parallel rule for self-employed individual.

History: Subsec. 8(13) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 5(8), applicable to 1991 *et seq.*

Interpretation Bulletins: IT-352R2: Employee's expenses, including work space in home expenses.

Forms: T777: Statement of employment expenses; T4044: Employment expenses [guide].

Definitions [s. 8]: "additional voluntary contribution", "amount", "annuity", "automobile", "borrowed money", "business" — 248(1); "Canada" — 255; "capital cost" — 13(7)–(7.4), 128.1(1)(c), 128.1(4)(c); "common-law partner", "common-law partnership" — 248(1); "Commonwealth" — *Interpretation Act* 35(1); "connected" — 251(6); "custodian" — 248(1)"retirement compensation arrangement"; "deferred amount" — 248(1); "eligible apprentice mechanic" — 8(6)(a); "eligible tool" — 8(6)(b); "employed", "employee", "employer", "employment", "goods and services tax", "individual", "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "motor vehicle", "office", "person", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "registered pension plan", "regulation" — 248(1); "reimbursement payment" — 8(1)(n.1)(i); "resident" — 250; "retirement compensation arrangement", "salary deferral arrangement", "salary or wages" — 248(1); "security" — 7(7); "self-contained domestic establishment", "share" — 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

Interpretation Bulletins [s. 8]: IT-168R3: Athletes and players employed by football, hockey and similar clubs.

Subdivision b — Income or Loss from a Business or Property

Basic Rules

9. (1) Income — Subject to this Part, a taxpayer's income for a taxation year from a business or property is the taxpayer's profit from that business or property for the year.

Related Provisions: 9(3) — Capital gains and losses not included; 18 — Limitations on various deductions; 18.1 — Limitation on deduction for matchable expenditure; 19, 19.01, 19.1 — Limitations on deductions for advertising expenses; 23 — Sale of inventory after ceasing to carry on business; 80(13) — Income inclusion on forgiveness of debt; 95(1) — Extended definition of "income from property" for FAPI purposes; 112(4)–(5.6) — Restrictions on losses on shares held as inventory; 115(1)(a)(ii) — Non-resident's taxable income earned in Canada; 142.5(1) — Mark-to-market rules for securities held by financial institutions; 143.2(6) — Reduction in expenditure allowed for tax shelter investment; 247 — Calculation of profit on transactions with non-residents; 248(24) — Equity and consolidation methods of accounting not to be used; Canada-U.S. Tax Treaty:Art. VII — Business profits of U.S. resident; Art. XIV — Independent personal services; Art. XVI — Artistes and athletes; Art. XVII — Withholding re personal services.

Selected Cases [subsec. 9(1)]

Method of reporting income: *BP Canada Energy Resources Co. v. R.*, [2003] 1 C.T.C. 2497 (TCC) (Receipts following major restructuring of gas supply contracts held to be capital); *International Colin Energy Corp. v. R.*, [2003] 1 C.T.C. 2406 (TCC) (Advisor's fees deductible where purpose was to gain or produce income through merger); *Suncor Energy Inc. v. R.*, [2003] 1 C.T.C. 34 (FCA); aff'g [2001] 4 C.T.C. 2144 (TCC) (Dealing with tailings in mining operation part of income-earning process); *Canadian Pacific Ltd. v. Ontario (Min. of Revenue)*, [2000] 2 C.T.C. 331 (Ont CA) (Capitalized value of future disability payments deductible as current expense); *Sauvé v. R.*, [2000] 2 C.T.C. 2483 (TCC) (Taxability not affected by reciprocal deductibility by payor); *Urbandale Realty Corp. v. MNR*, [2000] 2 C.T.C. 250 (FCTD); rev'g [1997] 3 C.T.C. 6 (FCTD) (Matching principle not applied); *General Motors Acceptance Corp. of Canada*, [2000] 2 C.T.C. 2061 (TCC) (Expenses of program to support sales were deductible); *Buck Consultants Ltd. v. Canada*, [2000] 1 C.T.C. 93 (FCA); aff'g [1996] 3 C.T.C. 2016 (TCC) (Notional rent was neither paid nor payable); *Minet Inc. v. R.*, [1998] 3 C.T.C. 352 (FCA); rev'g [1996] 3 C.T.C. 2108 (TCC) (Income not income where no legal entitlement or control); *Huang & Danczkay Ltd. v. MNR*, [1998] 3 C.T.C. 337 (FCTD) (Receivables brought into income only when income-earning process virtually complete); *Ikea Ltd. v. R.*, [1998] 2 C.T.C. 61 (SCC) (Amount not income merely because it is not capital. Tax "symmetry" not a requirement, even in respect of same property); *Toronto College Park Ltd. v. R.*, [1998] 2 C.T.C. 78 (SCC); rev'g [1996] 3 C.T.C. 94 (FCA) (Matching principle not necessarily applicable. Only issue is accuracy of income picture); *Canderel Ltd. v. R.*, [1998] 2 C.T.C. 35 (SCC); rev'g [1995] 2 C.T.C. 22 (FCA) (Tax accounting not necessarily the same as financial accounting for purposes of legal definition of profit); *Denthor Developments Ltd. v. Canada*, [1997] 1 C.T.C. 2075 (TCC) (No proceeds of disposition of land until land is sold); *Consoltex Inc. v. Canada*, [1996] 1 C.T.C. 2752 (TCC) (Change of inventory valuation method and reversal following utilization of losses distorted income by anticipating profits); *228262 Alberta Ltd. v. MNR*, [1996] 1 C.T.C. 2416 (TCC) (Price rectification was eligible capital expenditure, not current expense or cost of borrowing); *Fleur de Lys Warehousing Ltd. v. Canada*, [1992] 2 C.T.C. 2158 (TCC) (Municipal tax refund included in income for year in which refund ordered by tribunal, not year in which upheld by higher court); *Johnson & Johnson Inc. v. Canada*, [1994] 1 C.T.C. 244 (FCA) (Refund of federal sales tax taxable as income); *Maritime Telegraph and Telephone Co. v. Canada*, [1992] 1 C.T.C. 264 (FCA) (Taxpayer could not change from accrual method to billed method of reporting income for tax purposes); *R. v. Zoel Chicoine Inc.*, [1987] 2 C.T.C. 240 (FCA) (Sum received as an advance on final amount not determined and not payable until taxation year-end not included in calculating income); *Kozan v. MNR*, [1987] 1 C.T.C. 2258 (TCC) (Disposal of property in taxation year when vendor, unable to "close" sale transaction on set date, agreed to purchaser taking possession of property, receiving rents, and holding balance due in trust until transfer of title in subsequent year); *Finochio v. R.*, [1987] 1 C.T.C. 313 (FCTD) (Sale of real property "closed" in year of registration of sale documents, even though funds held in trust by solicitor until next taxation year); *McCullough v. MNR*, [1986] 2 C.T.C. 2132 (TCC) (Amount of cheque payable to taxpayer's deceased husband entitled to DPSP not included in taxpayer's income when counsel not acting directly or indirectly as agent or solicitor of taxpayer); *Kowalczyk v. MNR*, [1986] 2 C.T.C. 2092 (TCC) (Cheques received upon dismissal from employment equivalent to payment in cash if amounts not conditional on acceptance and honoured on presentation for payment included in income in year of receipt); *Rodgers, A.G., Real Estate Ltd. v. MNR*, [1984] C.T.C. 2051 (TCC) (Determined portion of commissions representing percentage of sale price of land taxable when receivable in year of transaction; remainder of commissions dependent upon completion of buildings taxable when receivable in that year); *Commonwealth Construction Co. Ltd. v. R.*, [1984] C.T.C. 338 (FCA) (Adverse judgment on appeal requiring full or partial repayment of costs of action does not alter taxable income in the year of receipt); *R. v. Terra Mining & Exploration Ltd. (NPL)*, [1984] C.T.C. 176 (FCTD) (GAAP dictates that interest expense be accounted for on accrual basis); *Noël-Fortin et al. v. MNR*, [1982] C.T.C. 2543 (T.R.B.) (Assessments adding unreported income, interest and penalties referred back to Minister when taxpayers sharing tips in team system with other waiters); *Graham v. R.*, [1980] C.T.C. 212 (FCTD) (Interest received on trust certificate is income in year of receipt; utility payments deductible in year of payment); *Maple Leaf Mills Ltd. v. MNR*, [1976] C.T.C. 324 (SCC) (Debt owed to taxpayer from net revenue deficiency accruing over the course of years taxed in year to which each part of debt is attributable); *High Level Hotel Ltd. v. MNR*, [1970] Tax ABC 1166 (T.A.B.) (Income earned from rental of rooms taxable in hands of taxpayer despite agreement to pay part of rentals to contractor for completion of buildings); *MNR v. Colford (John) Contracting Co. Ltd.*, [1962] C.T.C. 546 (SCC) (Holdback amounts not qualified as "receivables" are to be included in income in the year in which architect's or engineer's final certificate issued).

Assignment of income: *Range Grain Co. v. R.*, [1997] 2 C.T.C. 227 (FCTD) (Gross revenues of commission agent do not include funds provided by principal to carry out contracts); *Dominion Bridge Co. Ltd. v. R.*, [1977] C.T.C. 554 (FCA) (Inflated cost of steel purchased by parent company must be computed by reference to cost incurred by foreign subsidiary not carrying on separate business); *R. v. Wipf et al.*, [1976] C.T.C. 57 (SCC) (Farm colonies holding all property in common; profits not attributable to individual members of Hutterian Brethren Church working in communal farming operations in return for subsistence benefits).

Discounts and bonuses: *Hall et al. v. R.*, [1986] 1 C.T.C. 399 (FCTD) (Gain realized on discount purchase of promissory note conferred benefit on shareholders); *Specht v. MNR*, [1981] C.T.C. 2463 (T.R.B.) (Bonuses earned from pre-payouts were capital gains where taxpayer used own funds to purchase mortgages and was not carrying on business); *Solomon Estate v. MNR*, [1970] Tax ABC 1244 (T.A.B.) (Bonus received from a venturesome loan arising in adventure in nature of trade taxable in year of receipt).

Business and adventure in the nature of trade: *Wright v. R.*, [2003] 1 C.T.C. 2726 (TCC) (Sale of tree lots not adventure in nature of trade); *Roseland Farms Ltd. v. MNR*, [1986] 1 C.T.C. 2163 (TCC) (Purchase and sale of farms not adventure in nature of trade when no equipment and no capital to conduct proper farming business); *Diamond Developments Ltd. v. MNR*, [1984] C.T.C. 2992 (TCC) (Profit on sale of building business income when not held as a capital asset and realized in course of ordinary business operations); *Western Union Insurance Co. v. R.*, [1983] C.T.C. 363 (FCTD) (Bonus paid to lender for making loan earned in the course of business when creating a gainful use of monetary assets); *Schlamp v. R.*, [1982] C.T.C. 304 (FCTD) (Majority shareholder in construction company, acquiring property, building houses, residing in them with family, selling the house at profit and repeating these events, taxable as profits from adventure in nature of trade); *Walton v. R.*, [1982] C.T.C. 228 (FCTD) (Proceeds from adventure in nature of trade despite unsolicited offer when city planner has knowledge of real estate potential and speculative intent); *Anderson v. MNR*, [1980] C.T.C. 2588 (T.R.B.) (Adventure in the nature of trade where syndication of stallion represents efficient method of grouping investors in business); *Fawcett v. MNR*, [1980] C.T.C. 2064 (T.R.B.) (Compensation paid for withdrawing from further negotiations to acquire company shares taxable as income from adventure in nature of trade; loss of executive position and right to purchase shares not taxable when representing receipt on account of capital); *Mills v. MNR*, [1978] C.T.C. 3166 (T.R.B.) (Voluntary contributions from followers of philosopher to defray various costs to attend meetings income from business); *R. v. Audet*, [1978] C.T.C. 788 (FCTD) (Amounts received as commission for guaranteeing loan constitute business income when not merely engaging in hobby but in deliberate economic action in search of gain); *MNR v. Taylor*, [1956] C.T.C. 189 (Exch.) (Profit arising from transaction is adventure in nature of trade even though transaction itself is not trade or business).

Business purpose: *Thiele Drywall Inc. v. Canada*, [1996] 3 C.T.C. 2208 (TCC) (Nature of participation in tax evasion scheme was such that legal expenses to defend were not deductible); *Sabo Brothers Construction Ltd. v. Canada*, [1996] 2 C.T.C. 2073 (TCC) (Business loss disallowed where no possibility of profit; tax benefits did not arise solely from operation of Act); *Tonn et al. v. Canada*, [1996] 2 C.T.C. 205 (FCA) (Objective test in *Moldowan* is to prevent inappropriate reductions in tax, not to second-guess business judgments); *Levy v. MNR*, [1985] 2 C.T.C. 2107 (TCC); aff'd [1990] 2 C.T.C. 83 (FCTD) (Horses acquired and used for the purpose of racing are farming activity, investments in horse racing syndicates and corresponding losses constitute business of farming).

Change in use: *Hayes v. MNR*, [1989] 2 C.T.C. 2008 (TCC) (Gain on sale of lots capital in nature; filing subdivision plan not converting loan into inventory when no evidence of business plan); *MacKinnon v. MNR*, [1988] 2 C.T.C. 2262 (TCC) (Land sold did not change character from capital to inventory; mere creation of subdivision plan does not constitute the carrying on of business in absence of other circumstances); *Hyman v. MNR*, [1988] 1 C.T.C. 2516 (TCC) (Business income applicable after change in use arising from change in intention regarding property from income-producing asset to wanting to sell for a profit); *Magilb Development Corp. Ltd. v. R.*, [1987] 1 C.T.C. 66 (FCTD) (No change of character in respect of homestead property from capital to trading asset when absence of corporate intent to subdivide); *Schneider Ltd. et al. v. R.*, [1986] 2 C.T.C. 89 (FCA) (Expropriation rendering profit from sale of land by joint venture income; insufficient evidence of change of intention when trust on behalf of members of consortium held property for disposition); *Jacobsen Holdings Ltd. v. R.*, [1986] 1 C.T.C. 87 (FCTD) (Presumption that land acquired for sale at profit retains character of inventory even when personal and farming use of tract of land until receipt of acceptable offer).

Damages: *Prince Rupert Hotel (1957) Ltd. v. Canada*, [1995] 2 C.T.C. 212 (FCA) (Capital nature of partnership interest not relevant in characterizing settlement for damages relating to amount of such interest); *Poulin v. Canada*, [1995] 1 C.T.C. 2075 (TCC) (Damages payable as result of damage suit for fraudulent activities as real estate broker deductible in computing income); *St-Romuald Construction Ltée v. Canada*, [1989] 1 C.T.C. 205 (FCTD) (Payment for cancellation of contract pursuant to provision annulling contract held not to be damages when obtained to compensate for loss in partial execution of contract made in normal course of business); *Wise et al. v. R.*, [1986] 1 C.T.C. 169 (FCA) (Amount received on forfeiture of deposit held to constitute damages for loss of sale); *Société d'Ingénierie Cartier Ltée v. R.*, [1986] 1 C.T.C. 166 (FCTD) (Payment received from insurer in settlement of claims by and against taxpayer income where compensation would be so treated if received directly in course of business); *R. v. Manley*, [1985] 1 C.T.C. 186 (FCA); leave to appeal to SCC refused (1986), 67 N.R. 400 (note), (sub nom. *Manley v. MNR)* (Damages for breach of warranty of authority included in income when corresponding to what would have been realized in profit from adventure in nature of trade); *Vinette v. MNR*, [1984] C.T.C. 2257 (TCC) (Payments received during period covered by notice of termination and arising from employment contract not damages, but taxable); *Cox v. R.*, [1982] C.T.C. 322 (FCTD) (Payment from settlement upon contested will taxable, not damages, where claim is for payment of services); *Hillsdale Shopping Centre Ltd. v. R.*, [1981] C.T.C. 322 (FCA) (Gain from expropriation of land acquired with primary purpose of developing shopping centre for deriving rental income and with secondary purpose of reselling at profit is business income); *Roberts, H.A., Ltd., v. MNR*, [1969] C.T.C. 369 (SCC) (Payments of compensation capital sum in respect of business separate from main agency).

Business vs employment: *Wiebe Door Services Ltd. v. MNR*, [1986] 2 C.T.C. 200 (FCA) (Inadequacy of "control" test; whole relationship of the parties must be examined through the "integration" test from employee's point of view rather than employer's); *Marotta v. R.*, [1986] 1 C.T.C. 393 (FCTD) (Remuneration received by physician forming partnership and arranging for payments from university to be treated as partnership income were employment income from university upon evidence of employment relationship and taxable in calendar year of receipt); *Gagné v. MNR*, [1983] C.T.C. 2502 (T.R.B.) (Lawyer's office expenses not deductible upon evidence of employment contract not providing for expenses); *Rochette v. MNR*, [1981] C.T.C. 2508 (T.R.B.) (Flat monthly fee not salary; related expenses deductible in respect of self-employment).

Foreign exchange profits: *ISE Canadian Finance Ltd. v. MNR*, [1986] 1 C.T.C. 2473 (TCC) (Foreign exchange gains and losses in respect of funds loaned to Canadian affiliates realized in the course of business were on income account); *Ethicon Sutures Ltd. v. R.*, [1985] 2 C.T.C. 6 (FCTD) (Gains realized due to changes in foreign exchange rates by subsidiary of U.S. corporation held to be income where intention was to have funds available for inventory payments); *Weatherhead Co. of Canada Ltd. v. MNR*, [1982] C.T.C. 2839 (T.R.B.) (Trade receipts used to purchase U.S. term deposits; resulting foreign exchange gain was business income when arising from normal business operations); *Alberta Gas Trunk Line Co. Ltd. v. MNR*, [1971] C.T.C. 723 (SCC) (Foreign exchange loss on loan is capital loss; premium received on monthly payments were business income when received as part of payment for services); *Tip Top Tailors Ltd. v. MNR*, [1957] C.T.C. 309 (SCC) (Foreign exchange profit taxable when made in necessary part of company's trading operations).

Income attributable to another: *Barnes v. MNR*, [1986] 2 C.T.C. 2079 (TCC) (True nature of transaction was that money not borrowed in trust relationship, but by taxpayer himself, shares registered in his name, and sold on own account); *Turner v. MNR*, [1984] C.T.C. 3026 (TCC) (Taxpayer accountant receiving sum of money for services rendered in arranging for purchase of shares of company did not act as agent for corporation when not treating fee as corporation's property); *Horvath v. MNR*, [1979] C.T.C. 2059 (T.R.B.) (Principal shareholder of corporation acting in trust for corporation; profits belong to corporation).

Intention: *Queenswood Land Associates Ltd. v. R.*, [2000] 1 C.T.C. 352 (FCA); rev'g [1997] 2 C.T.C. 2688 (TCC) (Court cannot, absent sham, recharacterize legal relationships); *Johnstone v. R.*, [1988] 1 C.T.C. 48 (FCTD) (Profit on sale of real estate included in income where intention to subdivide and sell at profit, regardless of initial intention to use property as principal residence); *Wise v. MNR*, [1987] 1 C.T.C. 2319 (TCC) (Taxpayer entering real estate joint venture with experienced traders is bound by intentions and actions of other investors reporting profits as income); *Brown v. MNR*, [1987] 1 C.T.C. 2133 (TCC) (Parcel of land jointly owned by taxpayer and other individual; intention of taxpayer governed by the intention of the majority owner under agreement to sell on the same terms); *Happy Valley Farms Ltd. v. R.*, [1986] 2 C.T.C. 259 (FCTD) (Profit on land sales was business income when taxpayer acquired property for resale at profit and was more knowledgeable in land transactions than farming); *Armstrong v. R.*, [1985] 2 C.T.C. 179 (FCTD) (Trading in horses by corporation does not necessarily imply business venture with intention of eventual profitable sale); *Harms v. MNR*, [1984] C.T.C. 2714 (TCC) (Profit on sale was capital gain when gold investment capital preserving and not speculative); *Wilderton Shopping Centre Inc. v. MNR*, [1972] C.T.C. 319 (FCTD) (Profits on real estate transactions income from adventure in nature of trade where secondary or alternative intention to sell part of land); *Regal Heights Ltd. v. MNR*, [1960] C.T.C. 384 (SCC) (Profits on real estate transactions income where alternative intention to turn asset to account if primary purpose not realized).

Inventory or capital: *Molstad Development Co. v. Canada*, [1997] 2 C.T.C. 2360 (TCC) (Borrowed funds were capital, even if proceeds used to acquire inventory); *Greatti v. MNR*, [1983] C.T.C. 2541 (T.R.B.) (Real estate not inventory of estate, but partnership profits from real estate included in income where properties acquired for development purposes prior to death); *Arnold v. MNR*, [1983] C.T.C. 405 (FCTD) (Proceeds

from sales of timber cutting rights based upon yearly sales to a company operated by vendor were income); *Algoma Central & Hudson Bay Railway Co. v. MNR*, [1961] C.T.C. 9 (Exch.) (Original nature of rights received changed by manner of dealing with them; proceeds arising therefrom were income).

Involuntary disposition: *Bellingham v. Canada*, [1996] 1 C.T.C. 187 (FCA) ("Additional" interest in expropriation not income property nor income from a "source" and not taxable); *Blok-Anderson v. MNR*, [1972] C.T.C. 338 (FCTD) (Shares transferred in consolidation of holdings was alternative disposition method for traders in real estate).

Leases: *French Shoes Ltd. v. R.*, [1986] 2 C.T.C. 132 (FCTD) (Tenant inducement income when received as part of normal business operations); *Zehr's Markets Ltd. v. R.*, [1975] C.T.C. 190 (FCTD) (Profit from real estate transactions capital gain when selling buildings and taking back long-term leasebacks where properties not acquired for speculative purposes); *Chibougamau Lumber Ltée v. MNR*, [1973] C.T.C. 2174 (T.R.B.) (Term leases with monthly payments with option to purchase equipment for $1 at end of term not true leases, but purchases on time-payment plans); *Imperial Oil Ltd. v. MNR*, [1972] C.T.C. 455 (FCTD) (Profit from sale of natural gas storage leases not business income when company not trading in such leases but intending to operate them for revenue).

Sale or liquidation of business: *Pepsi-Cola Canada Ltd. v. R.*, [1979] C.T.C. 454 (FCA) (Amount received on termination of contract held to be capital payment for goodwill; receipt not containing terms of termination agreement); *Hanalene Investments Ltd. v. MNR*, [1965] Tax ABC 385 (T.A.B.) (Losses during sell-off of partnership land deductible as trading losses when partners still carrying on business); *Frankel Corp. Ltd. v. MNR*, [1959] C.T.C. 244 (SCC) (Amount received for inventory when part of sale of business, not made in course of business, not taxable).

Mineral leases and rights: *Mel-Bar Ranches Ltd. v. MNR*, [1987] 2 C.T.C. 2146 (TCC) (Amounts received from log-purchase agreement in one-time operation capital when necessary to improve ranch land in anticipation of renewed cattle operation); *Corlite Petroleums Ltd. v. R.*, [1976] C.T.C. 766 (FCTD) (Profit from sale of mining claims taxable when realized from adventure in nature of trade and property acquired for purpose of making profit); *Bonlie v. MNR*, [1970] Tax ABC 1235 (T.A.B.) (Owner of half-interest in mining claims engaged in adventure in nature of trade when selling claims with intention of making profit); *Settler Oils Ltd. v. MNR*, [1968] C.T.C. 252 (Exch.) (Lump sum and royalty payments under oil leases taxable income when property acquired in hope of profit; cost of mineral rights not deductible).

Options: *Cook v. R.*, [1987] 1 C.T.C. 377 (FCTD) (Amount received from unsolicited offer to grant option to purchase land was capital receipt; selling land not operating motivation); *Airway Acceptance Corp. Ltd. v. MNR*, [1986] 1 C.T.C. 2259 (TCC) (Time for ascertainment of intention is moment of purchase, which was moment option exercised; taxpayer not buying for purposes of acquiring business assets, but for speculation); *Algonquin Enterprises Ltd. et al. v. R.*, [1986] 1 C.T.C. 493 (FCTD) (Exercise of options to purchase during lease of building lots produced business income).

Partnerships: *Travica v. MNR*, [1988] 1 C.T.C. 2359 (TCC) (No business partnership where community of interests created by marriage; assets owned by taxpayer at time of sale); *Sedelnick Estate v. MNR*, [1986] 2 C.T.C. 2102 (TCC) (Where no evidence of express partnership agreement, existence of partnership cannot be inferred when conduct of parties consistent with community of interests created by marriage).

Penalties: *McNeill v. R.*, [2000] 2 C.T.C. 304 (FCA) (Damages incurred in process of earning income deductible); *65302 British Columbia Ltd. v. R.*, [2000] 1 C.T.C. 57 (SCC); rev'g [1998] 1 C.T.C. 131 (FCA); rev'g [1995] 2 C.T.C. 2294 (TCC) (Penalties incurred during income-earning process deductible); *Port Colbourne Poultry Ltd. v. R.*, [1997] 2 C.T.C. 2480 (TCC) (Penalty for pollution not deductible).

Interpretation Bulletins: IT-75R4: Scholarships, fellowships, bursaries, prizes, research grants and financial assistance; IT-92R2: Income of contractors; IT-95R: Foreign exchange gains and losses; IT-99R5: Legal and accounting fees; IT-102R2: Conversion of property, other than real property, from or to inventory; IT-104R2 and draft IT-104R3: Deductibility of fines or penalties; IT-189R2: Corporations used by practising members of professions; IT-129R: Lawyers' trust accounts and disbursements; IT-200: Surface rentals and farming operations; IT-213R: Prizes from lottery schemes and giveaway contests; IT-216: Corporation holding property as agent for shareholder (archived); IT-218R: Profit, capital gains and losses from the sale of real estate, including farmland and inherited land and conversion of real estate from capital property to inventory and vice versa; IT-223: Overhead expense insurance vs. income insurance (archived); IT-233R: Lease-option agreements; sale-leaseback agreements (archived); IT-257R: Canada Council grants; IT-261R: Prepayment of rents; IT-273R2: Government assistance — general comments; IT-293R: Debtor's gain on settlement of debt; IT-297R2: Gifts in kind to charity and others; IT-314: Income of dealers in oil and gas leases (archived); IT-346R: Commodity futures and certain commodities; IT-359R2: Premiums and other amounts re leases; IT-365R2: Damages, settlements and similar receipts; IT-373R2: Woodlots; IT-403R: Options on real estate; IT-404R: Payments to lottery ticket vendors; IT-417R2: Prepaid expenses and deferred charges; IT-423: Sale of sand, gravel or topsoil (archived); IT-425: Miscellaneous farm income; IT-434R: Rental of real property by individual; IT-446R: Legacies; IT-454: Business transactions prior to incorporation; IT-459: Adventure or concern in the nature of trade; IT-461: Forfeited deposits (archived); IT-479R: Transactions in securities; IT-490: Barter transactions; IT-493: Agency cooperative corporations (archived).; IT-504R2: Visual artists and writers; IT-533: Interest deductibility and related issues.

Information Circulars: 77-11: Sales tax reassessments — deductibility in computing income.

I.T. Technical News: 1 (sales commission expenses of mutual-fund limited partnerships); 5 (lease agreements); 8 (proceeds of sale of a condominium — first closing date or second closing date; treatment of United States unitary state taxes); 12 ("millennium bug" expenditures); 16 (*Canderel*, *Toronto College Park* and *Ikea* cases; *Continental Bank* case); 21 (cancellation of Interpretation Bulletin IT-233R); 22 (commission income transferred to corporation); 25 (reasonable expectation of profit); 30 (prepaid income — whether 9(1) or 12(1)(a) applies).

Registered Charities Newsletters: 18 (can businesses receive receipts for donations made out of their inventory?).

Info Sheets: TI-001: Sale of a residence by an owner builder.

Advance Tax Rulings: ATR-4: Exchange of interest rates; ATR-15: Employee stock option plan; ATR-20: Redemption premium on debentures; ATR-23: Private health services plan; ATR-45: Share appreciation rights plan; ATR-50: Structured settlement; ATR-62: Mutual fund distribution limited partnership — amortization of selling commissions.

Application Policies: SR&ED 2004-02: Filing requirements for claiming SR&ED carried out in Canada; SR&ED 2004-03: Prototypes, pilot plants/commercial plants, custom products and commercial assets.

Forms: T2 SCH 14: Miscellaneous payments to residents; T776: Statement of real estate rentals; T2032: Statement of professional activities; T2042: Statement of farming activities; T2121: Statement of fishing activities; T2124: Statement of business activities; T4002: Business and professional income [guide]; T4036: Rental income [guide].

(2) Loss — Subject to section 31, a taxpayer's loss for a taxation year from a business or property is the amount of the taxpayer's loss, if any, for the taxation year from that source computed by applying the provisions of this Act respecting computation of income from that source with such modifications as the circumstances require.

Related Provisions: 3.1 — Reasonable expectation of profit required for taxpayer to deduct loss; 18 — Limitations on various deductions; 18.1 — Limitation on deduction for matchable expenditure; 96(8)(b), (c) — Business loss of partnership that previously had only non-resident partners; 103(2) — Meaning of "losses" in subsec. 103(1); 111(1)(a) — Carryover of loss to prior or later year; 111(8) — "non-capital loss"; 112(4)–(4.3) — Loss on share held as inventory.

Selected Cases [subsec. 9(2)]: *Tonn et al. v. Canada*, [1996] 2 C.T.C. 205 (FCA) (Objective test in *Moldowan* is to prevent inappropriate reductions in tax, not to second-guess business judgments).

Interpretation Bulletins: IT-328R3: Losses on shares on which dividends have been received. See also list under 9(1).

I.T. Technical News: 16 (*Tonn*, *Mastri*, *Mohammad* and *Kaye* cases); 25 (reasonable expectation of profit).

Advance Tax Rulings: See under 9(1).

(3) Gains and losses not included — In this Act, "income from a property" does not include any capital gain from the disposition of that property and "loss from a property" does not include any capital loss from the disposition of that property.

Proposed Amendment — 9(3)

(3) Gains and losses not included — In this Act, income or loss from a business or property does not include any capital gain or capital loss.

Application: The October 31, 2003 draft legislation, REOPs s. 5, will amend subsec. 9(3) to read as above, applicable to taxation years that begin after 2000.

Technical Notes: Subsection 9(3) provides that "income from a property" and "loss from a property" do not include, respectively, any capital gain from the disposition of that property or any capital loss from the disposition of that property.

Subsection 9(3) is amended to clarify that income or loss from a business does not include any capital gains or losses. Income and capital gains (and loss and capital loss) have always been viewed as two different items for tax purposes; therefore, the amendment simply makes clear what was always the case under the law.

Related Provisions: 3.1(2) — Same rule in determining whether REOP exists; 40(1)(a) — Expenses deducted in determining capital gain.

Selected Cases [subsec. 9(3)]: *Arnold v. R.*, [1983] C.T.C. 405 (FCTD) (Proceeds from sale of rights to cut timber were income).

Selected Cases [s. 9]: *Stewart v. R.*, [2002] 3 C.T.C. 439 (SCC) (Activity becomes a "source" of income where no personal element and activity is clearly commercial); *Walls v. R.*, [2002] 3 C.T.C. 421 (SCC) (Where no personal element and activities are commercial, principle of reasonable expectation of profit not applicable); *Friesen (J.) v. Canada*, [1995] 2 C.T.C. 369 (SCC) (Profit to be determined according to principles of commercial or accounting practice unless inconsistent with specific provisions of Act); *Millford Development Ltd. v. MNR*, [1993] 1 C.T.C. 169 (FCTD) (Discount on sale of mortgage deductible where mortgage taken back on earlier sale of land on income account); *Fleur de Lys Warehousing Ltd. v. MNR*, [1992] 2 C.T.C. 2158 (TCC) (Refund of municipal taxes incorrectly paid and deducted in previous year included in year amount of refund ascertained by court, despite subsequent appeal); *Johnson & Johnson Inc. v. Canada* (Dec. 13, 1993), Doc. A-1074-92 (FCA) (Refund of federal sales tax improperly paid and deducted in prior year was not income when the right to it crystallized or when received but deduction in prior year should have been disallowed by reassessment if year was not statute barred); *Westar Mining Ltd. v. Canada*, [1992] 2 C.T.C. 11 (FCA) (Business interruption insurance proceeds were income from business of operating a mine).

Definitions [s. 9]: "amount" — 248(1); "business" — 248(1); "capital gain" — 39(1)(a), 248(1); "capital loss" — 39(1)(b), 248(1); "property" — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

10. (1) Valuation of inventory — For the purpose of computing a taxpayer's income for a taxation year from a business that is not an adventure or concern in the nature of trade, property described in an inventory shall be valued at the end of the year at the cost at which the taxpayer acquired the property or its fair market value at the end of the year, whichever is lower, or in a prescribed manner.

Related Provisions: 10(1.01) — Adventure in the nature of trade — no writedown until sale; 10(1.1) — Certain expenses included in cost; 10(2) — Valuation of inventory property; 10(6) — Inventory of artists; 12(1)(r) — Income inclusion — inventory adjustment; 28(1.1), (1.2) — Inventory of farming or fishing business; 86.1(4) — Value of shares in inventory after foreign spin-off; 87(2)(b) — Amalgamations — inventory; 96(8)(b) — Cost of inventory of partnership that previously had only non-resident partners; 107(1.2) — fair market value of interest in trust held as inventory; 112(4.1) — Fair market value of share held as inventory; 142.5(1) — Mark-to-market rules for securities held by financial institutions.

History: Subsec. 10(1) amended by 1998, c. 19, subsec. 70(1), applicable

(a) to taxation years that end after December 20, 1995;

(b) in respect of a business that is an adventure or concern in the nature of trade, to taxation years of a taxpayer that end before December 21, 1995, except where

(i) the taxpayer's filing-due date for the year is after December 20, 1995, or

(ii) the taxpayer has valued the inventory of the business for the purpose of computing income for the year from the business at an amount that is less than the cost at which the taxpayer acquired the property, which valuation is reflected in a return of income, notice of objection or notice of appeal filed or served under the Act before December 21, 1995; and

(c) in respect of a business that is an adventure or concern in the nature of trade, to fiscal periods of a partnership that end before December 21, 1995, except where

(i) the filing-due dates of all of the members of the partnership for their taxation years that include the end of the fiscal period are after December 20, 1995, or

(ii) the partnership has valued the inventory of the business for the purpose of computing income for the fiscal period from the business at an amount that is less than the cost at which the partnership acquired the property, which valuation is reflected in a return of income, notice of objection or notice of appeal filed or served under the Act before December 21, 1995 by any member of the partnership.

The subsec. formerly read:

(1) For the purpose of computing income from a business, inventory shall be valued at its cost to the taxpayer or its fair market value, whichever is lower, or in such other manner as may be permitted by regulation.

Selected Cases [subsec. 10(1)]: *Canadian Imperial Bank of Commerce v. R.*, [2000] 2 C.T.C. 269 (FCA) (Bullion and foreign currency were inventory of bank); *Stremler v. R.*, [2000] 2 C.T.C. 2172 (TCC) (Condominium units acquired in adventure in nature of trade were inventory); *Consoltex Inc. v. Canada*, [1996] 1 C.T.C. 2752 (TCC) (Change of inventory valuation method and reversal following utilization of losses distorted income by anticipating profits); *Friesen (J.) v. Canada*, [1993] 2 C.T.C. 113 (FCA); reconsideration refused (Sept. 9, 1993), Doc. A-449-92 (FCA); rev'd [1995] 2 C.T.C. 369 (SCC) (Inventory valuation method applies to asset of adventure in nature of trade); *West Hill Redevelopment Co. v. MNR*, [1991] 2 C.T.C. 83 (FCTD) (Plaintiff who sold condominiums and took back mortgages at below-market interest rates in business of selling condominiums, not trading in mortgages; mortgages not inventory); *Van Dongen v. Canada*, [1991] 1 C.T.C. 86 (FCTD) (Real property received in lieu of repayment of loan not inventory where no intention to resell); *Cyprus Anvil Mining Corp. v. Canada*, [1990] 1 C.T.C. 153 (FCA); leave to appeal to SCC refused (1990), 115 N.R. 320 (note), (sub nom. *Cyprus Anvil Mining Corp. v. MNR*) (Changing valuation method during tax exempt period unacceptable departure from consistency principle); *R. v. Boehringer Ingelheim (Canada) Ltd.*, [1987] 2 C.T.C. 245 (FCA) (Goods purchased January 1 considered opening inventory where no closing inventory previous year); *Rudolph Furniture Ltd. v. R.*, [1982] C.T.C. 211 (FCTD) (Crown's valuation prevailed where consistent method not used by taxpayer); *R. v. Jawl Industries Ltd.*, [1974] C.T.C. 147 (FCTD) (Loss on value of inventory purchased in 1969 not deductible that year where delivery taken and fixed price paid in 1970); *Handy & Harman of Canada Ltd. v. MNR*, [1973] C.T.C. 507 (FCTD) (Lowest cost per ounce rejected in favour of average cost per ounce).

Regulations: 1102(1)(b) (no capital cost allowance for property described in inventory); 1801 (inventory generally may be valued at fair market value); 1802 (valuation of animals).

Interpretation Bulletins: IT-51R2: Supplies on hand at end of a fiscal period; IT-102R2: Conversion of property, other than real property, from or to inventory; IT-142R3: Settlement of debts on the winding-up of a corporation; IT-153R3: Land developers — subdivision and development costs and carrying charges on land; IT-165R: Returnable containers (archived); IT-328R3: Losses on shares on which dividends have been received; IT-459: Adventure or concern in the nature of trade; IT-482R: Pipelines; IT-504R2: Visual artists and writers. See also list at end of s. 9.

Registered Charities Newsletters: 18 (can businesses receive receipts for donations made out of their inventory?).

(1.01) Adventures in the nature of trade — For the purpose of computing a taxpayer's income from a business that is an adventure or concern in the nature of trade, property described in an inventory shall be valued at the cost at which the taxpayer acquired the property.

Related Provisions: 10(9) — Grandfathering of writedown taken before 10(1.01) applies; 10(10) — Writedown required before change in control of corporation; 18(14)–(16) — Superficial loss rule for property held as adventure in the nature of trade.

History: Subsec. 10(1.01) added by 1998, c. 19, subsec. 70(1), applicable

(a) to taxation years that end after December 20, 1995;

(b) in respect of a business that is an adventure or concern in the nature of trade, to taxation years of a taxpayer that end before December 21, 1995, except where

(i) the taxpayer's filing-due date for the year is after December 20, 1995, or

(ii) the taxpayer has valued the inventory of the business for the purpose of computing income for the year from the business at an amount that is less than the cost at which the taxpayer acquired the property, which valuation is reflected in a return of income, notice of objection or notice of appeal filed or served under the Act before December 21, 1995; and

(c) in respect of a business that is an adventure or concern in the nature of trade, to fiscal periods of a partnership that end before December 21, 1995, except where

(i) the filing-due dates of all of the members of the partnership for their taxation years that include the end of the fiscal period are after December 20, 1995, or

(ii) the partnership has valued the inventory of the business for the purpose of computing income for the fiscal period from the business at an amount that is less than the cost at which the partnership acquired the property, which valuation is reflected in a return of income, notice of objection or notice of appeal filed or served under the Act before December 21, 1995 by any member of the partnership.

Interpretation Bulletins: IT-459: Adventure or concern in the nature of trade.

(1.1) Certain expenses included in cost — For the purposes of subsections (1), (1.01) and (10), where land is described in an inventory of a business of a taxpayer, the cost at which the taxpayer acquired the land shall include each amount that is

(a) described in paragraph 18(2)(a) or (b) in respect of the land and for which no deduction is permitted to the taxpayer, or to another person or partnership that is

(i) a person or partnership with whom the taxpayer does not deal at arm's length,

(ii) if the taxpayer is a corporation, a person or partnership that is a specified shareholder of the taxpayer, or

(iii) if the taxpayer is a partnership, a person or partnership whose share of any income or loss of the taxpayer is 10% or more; and

(b) not included in or added to the cost to that other person or partnership of any property otherwise than because of paragraph 53(1)(d.3) or subparagraph 53(1)(e)(xi).

History: Subsec. 10(1.1) amended by 1998, c. 19, subsec. 70(1), applicable

(a) to taxation years that end after December 20, 1995;

(b) in respect of a business that is an adventure or concern in the nature of trade, to taxation years of a taxpayer that end before December 21, 1995, except where

(i) the taxpayer's filing-due date for the year is after December 20, 1995, or

(ii) the taxpayer has valued the inventory of the business for the purpose of computing income for the year from the business at an amount that is less than the cost at which the taxpayer acquired the property, which valuation is reflected in a return of income, notice of objection or notice of appeal filed or served under the Act before December 21, 1995; and

(c) in respect of a business that is an adventure or concern in the nature of trade, to fiscal periods of a partnership that end before December 21, 1995, except where

(i) the filing-due dates of all of the members of the partnership for their taxation years that include the end of the fiscal period are after December 20, 1995, or

(ii) the partnership has valued the inventory of the business for the purpose of computing income for the fiscal period from the business at an amount that is less than the cost at which the partnership acquired the property, which valuation is reflected in a return of income, notice of objection or notice of appeal filed or served under the Act before December 21, 1995 by any member of the partnership.

The subsec. formerly read:

(1.1) For the purpose of subsection (1), the cost to a particular taxpayer of land that is described in the inventory of a business carried on by the taxpayer shall include each amount described in paragraph 18(2)(a) or (b) in respect of that land for which no deduction is permitted to the taxpayer or to another person in respect of whom the taxpayer was a person, corporation or partnership described in subparagraph (b)(i), (ii) or (iii) of the definition "interest on debt relating to the acquisition of land" in subsection 18(3), where that amount was not included in or added to the cost to that other person of any property otherwise than because of paragraph 53(1)(d.3) or subparagraph 53(1)(e)(xi).

Subsec. 10(1.1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 6(1), applicable to 1988 *et seq*. Subsec. 10(1.1) formerly read:

(1.1) Non-deductible expenses — For the purposes of subsection (1), the cost to a particular taxpayer of land that is included in the inventory of a business carried on by the taxpayer shall include all amounts described in paragraph 18(2)(a) or (b) in respect of that land for which no deduction is permitted to the taxpayer or, by reason of subsection 18(3), to another taxpayer in respect of whom the particular taxpayer was a person, corporation or partnership described in subparagraph (b)(i), (ii) or (iii) of the definition "interest on debt relating to the acquisition of land" in subsection 18(3), where the amounts were not included in the cost to that other taxpayer of property.

Selected Cases [subsec. 10(1.1)]: *Stremler v. R.*, [2000] 2 C.T.C. 2172 (TCC) (Condominium units acquired in adventure in nature of trade were inventory).

Interpretation Bulletins: IT-153R3: Land developers — subdivision and development costs and carrying charges on land. See also list at end of s. 10.

(2) Continuation of valuation — Notwithstanding subsection (1), for the purpose of computing income for a taxation year from a business, the inventory at the commencement of the year shall be valued at the same amount as the amount at which it was valued at the end of the preceding taxation year for the purpose of computing income for that preceding year.

Related Provisions: 10(2.1) — Methods of valuation to be the same from year to year.

Interpretation Bulletins: See list at end of s. 10.

(2.1) Methods of valuation to be same — Where property described in an inventory of a taxpayer's business that is not an adventure or concern in the nature of trade is valued at the end of a taxation year in accordance with a method permitted under this section, that method shall, subject to subsection (6), be used in the valuation of property described in the inventory at the end of the following taxation year for the purpose of computing the taxpayer's income from the business unless the taxpayer, with the concurrence of the Minister and on any terms and conditions that are specified by the Minister, adopts another method permitted under this section.

History: Subsec. 10(2.1) amended by 1998, c. 19, subsec. 70(2), applicable

(a) to taxation years that end after December 20, 1995;

(b) in respect of a business that is an adventure or concern in the nature of trade, to taxation years of a taxpayer that end before December 21, 1995, except where

(i) the taxpayer's filing-due date for the year is after December 20, 1995, or

(ii) the taxpayer has valued the inventory of the business for the purpose of computing income for the year from the business at an amount that is less than the cost at which the taxpayer acquired the property, which valuation is reflected in a return of income, notice of objection or notice of appeal filed or served under the Act before December 21, 1995; and

(c) in respect of a business that is an adventure or concern in the nature of trade, to fiscal periods of a partnership that end before December 21, 1995, except where

(i) the filing-due dates of all of the members of the partnership for their taxation years that include the end of the fiscal period are after December 20, 1995, or

(ii) the partnership has valued the inventory of the business for the purpose of computing income for the fiscal period from the business at an amount that is less than the cost at which the partnership acquired the property, which valuation is reflected in a return of income, notice of objection or notice of appeal filed or served under the Act before December 21, 1995 by any member of the partnership.

The subsec. formerly read:

(2.1) Where property described in the inventory of a business of a taxpayer at the end of a taxation year is valued in accordance with a method provided for under this section, that method shall, subject to subsection (6), be used in the valuation of property described in the inventory of that business at the end of the following taxation year for the purpose of computing the taxpayer's income from that business unless the taxpayer, with the concurrence of the Minister and on such terms and conditions as are specified by the Minister, adopts another method provided for under this section.

Subsec. 10(2.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 6(2), applicable with respect to computations of income for 1990 *et seq.*

Interpretation Bulletins: IT-459: Adventure or concern in the nature of trade.

(3) Incorrect valuation — Where the inventory of a business at the commencement of a taxation year has, according to the method adopted by the taxpayer for computing income from the business for that year, not been valued as required by subsection (1), the inventory at the commencement of that year shall, if the Minister so directs, be deemed to have been valued as required by that subsection.

Interpretation Bulletins: See list at end of s. 10.

(4) Fair market value — For the purpose of subsection (1), the fair market value of property (other than property that is obsolete, damaged or defective or that is held for sale or lease or for the purpose of being processed, fabricated, manufactured, incorporated into, attached to, or otherwise converted into property for sale or lease) that is

(a) work in progress at the end of a taxation year of a business that is a profession means the amount that can reasonably be expected to become receivable in respect thereof after the end of the year; and

(b) advertising or packaging material, parts, supplies or other property (other than work in progress of a business that is a profession) that is included in inventory means the replacement cost of the property.

Related Provisions: 10(5) — Property deemed to be inventory; 34 — Election to exclude work in progress from professional income; 107(1.2) — fair market value of interest in trust held as inventory.

Interpretation Bulletins: IT-51R2: Supplies on hand at end of fiscal period. See also list at end of s. 10.

(5) [Meaning of] Inventory — Without restricting the generality of this section,

(a) property (other than capital property) of a taxpayer that is advertising or packaging material, parts or supplies or work in progress of a business that is a profession is, for greater certainty, inventory of the taxpayer;

Selected Cases [para. 10(5)(a)]: *Stearns Catalytic Ltd. v. Canada*, [1990] 1 C.T.C. 398 (FCTD) (Spare parts capable of causing lengthy termination of production if damaged are "major parts" of capital property, not inventory).

(b) anything used primarily for the purpose of advertising or packaging property that is included in the inventory of a taxpayer shall be deemed not to be property held for sale or lease or for any of the purposes referred to in subsection (4); and

(c) property of a taxpayer, the cost of which to the taxpayer was deductible by virtue of paragraph 20(1)(mm), is, for greater certainty, inventory of the taxpayer having a cost to the taxpayer, except for the purposes of that paragraph, of nil.

Related Provisions: 10(4) — Fair market value of work in progress, advertising or packaging materials, parts and supplies; 34 — Election to exclude work in progress from professional income.

I.T. Application Rules: 23(3), (4).

Interpretation Bulletins: IT-51R2: Supplies on hand at end of fiscal period; IT-457R: Election by professionals to exclude work in progress from income. See also list at end of s. 10.

(6) Artistic endeavour — Notwithstanding subsection (1), for the purpose of computing the income of an individual other than a trust for a taxation year from a business that is the individual's artistic endeavour, the value of the inventory of the business for that year shall, if the individual so elects in the individual's return of income under this Part for the year, be deemed to be nil.

Related Provisions: 10(7) — Effect of election; 10(8) — Artistic endeavour.

Interpretation Bulletins: IT-212R3: Income of deceased persons — rights or things; IT-504R2: Visual artists and writers. See also list at end of s. 10.

(7) Value in later years — Where an individual has made an election pursuant to subsection (6) for a taxation year, the value of the inventory of a business that is the individual's artistic endeavour shall, for each subsequent taxation year, be deemed to be nil unless the individual, with the concurrence of the Minister and on such terms and conditions as are specified by the Minister, revokes the election.

Interpretation Bulletins: IT-504R2: Visual artists and writers. See also list at end of s. 10.

(8) Definition of "business that is an individual's artistic endeavour" — For the purpose of this section, "business that is an individual's artistic endeavour" means the business of creating paintings, prints, etchings, drawings, sculptures or similar works of art, where such works of art are created by the individual, but does not include a business of reproducing works of art.

Interpretation Bulletins [subsec. 10(8)]: IT-504R2: Visual artists and writers. See also list at end of s. 10.

(9) Transition — Where, at the end of a taxpayer's last taxation year at the end of which property described in an inventory of a business that is an adventure or concern in the nature of trade was valued under subsection (1), the property was valued at an amount that is less than the cost at which the taxpayer acquired the property, after that time the cost to the taxpayer at which the property was acquired is, subject to subsection (10), deemed to be that amount.

History: Subsec. 10(9) added by 1998, c. 19, subsec. 70(3), applicable

(a) to taxation years that end after December 20, 1995;

(b) in respect of a business that is an adventure or concern in the nature of trade, to taxation years of a taxpayer that end before December 21, 1995, except where

(i) the taxpayer's filing-due date for the year is after December 20, 1995, or

(ii) the taxpayer has valued the inventory of the business for the purpose of computing income for the year from the business at an amount that is less than the cost at which the taxpayer acquired the property, which valuation is reflected in a return of income,

notice of objection or notice of appeal filed or served under the Act before December 21, 1995; and

(c) in respect of a business that is an adventure or concern in the nature of trade, to fiscal periods of a partnership that end before December 21, 1995, except where

(i) the filing-due dates of all of the members of the partnership for their taxation years that include the end of the fiscal period are after December 20, 1995, or

(ii) the partnership has valued the inventory of the business for the purpose of computing income for the fiscal period from the business at an amount that is less than the cost at which the partnership acquired the property, which valuation is reflected in a return of income, notice of objection or notice of appeal filed or served under the Act before December 21, 1995 by any member of the partnership.

Interpretation Bulletins: IT-459: Adventure or concern in the nature of trade.

(10) Acquisition of control — Notwithstanding subsection (1.01), property described in an inventory of a corporation's business that is an adventure or concern in the nature of trade at the end of the corporation's taxation year that ends immediately before the time at which control of the corporation is acquired by a person or group of persons shall be valued at the cost at which the corporation acquired the property, or its fair market value at the end of the year, whichever is lower, and, after that time, the cost at which the corporation acquired the property is, subject to a subsequent application of this subsection, deemed to be that lower amount.

Related Provisions: 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 249(4) — Year-end triggered on change of control; 256(6)–(9) — Whether control acquired.

History: Subsec. 10(10) added by 1998, c. 19, subsec. 70(3), applicable

(a) to taxation years that end after December 20, 1995;

(b) in respect of a business that is an adventure or concern in the nature of trade, to taxation years of a taxpayer that end before December 21, 1995, except where

(i) the taxpayer's filing-due date for the year is after December 20, 1995, or

(ii) the taxpayer has valued the inventory of the business for the purpose of computing income for the year from the business at an amount that is less than the cost at which the taxpayer acquired the property, which valuation is reflected in a return of income, notice of objection or notice of appeal filed or served under the Act before December 21, 1995; and

(c) in respect of a business that is an adventure or concern in the nature of trade, to fiscal periods of a partnership that end before December 21, 1995, except where

(i) the filing-due dates of all of the members of the partnership for their taxation years that include the end of the fiscal period are after December 20, 1995, or

(ii) the partnership has valued the inventory of the business for the purpose of computing income for the fiscal period from the business at an amount that is less than the cost at which the partnership acquired the property, which valuation is reflected in a return of income, notice of objection or notice of appeal filed or served under the Act before December 21, 1995 by any member of the partnership.

Interpretation Bulletins: IT-459: Adventure or concern in the nature of trade.

(11) Acquisition of control — For the purposes of subsections 88(1.1) and 111(5), a corporation's business that is at any time an adventure or concern in the nature of trade is deemed to be a business carried on at that time by the corporation.

History: Subsec. 10(11) added by 1998, c. 19, subsec. 70(3), applicable

(a) to taxation years that end after December 20, 1995;

(b) in respect of a business that is an adventure or concern in the nature of trade, to taxation years of a taxpayer that end before December 21, 1995, except where

(i) the taxpayer's filing-due date for the year is after December 20, 1995, or

(ii) the taxpayer has valued the inventory of the business for the purpose of computing income for the year from the business at an amount that is less than the cost at which the taxpayer acquired the property, which valuation is reflected in a return of income, notice of objection or notice of appeal filed or served under the Act before December 21, 1995; and

(c) in respect of a business that is an adventure or concern in the nature of trade, to fiscal periods of a partnership that end before December 21, 1995, except where

(i) the filing-due dates of all of the members of the partnership for their taxation years that include the end of the fiscal period are after December 20, 1995, or

(ii) the partnership has valued the inventory of the business for the purpose of computing income for the fiscal period from the business at an amount that is less than the cost at which the partnership acquired the property, which valuation is reflected in a return of income, notice of objection or notice of appeal filed or served under the Act before December 21, 1995 by any member of the partnership.

Interpretation Bulletins: IT-459: Adventure or concern in the nature of trade.

(12) Removing property from [Canadian] inventory [of non-resident] — If at any time a non-resident taxpayer ceases to use, in connection with a business or part of a business carried on by the taxpayer in Canada immediately before that time, a property that was immediately before that time described in the inventory of the business or the part of the business, as the case may be, (other than a property that was disposed of by the taxpayer at that time), the taxpayer is deemed

(a) to have disposed of the property immediately before that time for proceeds of disposition equal to its fair market value at that time; and

(b) to have received those proceeds immediately before that time in the course of carrying on the business or the part of the business, as the case may be.

Related Provisions: 10(14) — Inventory includes work in progress of a professional; 14(14) — Parallel rule for eligible capital property; 142.6(1.1) — Parallel rule for non-resident financial institution.

History: Subsec. 10(12) added by 2001, c. 17, s. 4, applicable after December 23, 1998.

(13) Adding property to [Canadian] inventory [of non-resident] — If at any time a property becomes included in the inventory of a business or part of a business that a non-resident taxpayer carries on in Canada after that time (other than a property that was, otherwise than because of this subsection, acquired by the taxpayer at that time), the taxpayer is deemed to have acquired the property at that time at a cost equal to its fair market value at that time.

Related Provisions: 10(14) — Inventory includes work in progress of a professional.

History: Subsec. 10(13) added by 2001, c. 17, s. 4, applicable after December 23, 1998.

(14) Work in progress — For the purposes of subsections (12) and (13), property that is included in the inventory of a business includes property that would be so included if paragraph 34(a) did not apply.

Related Provisions: 14(15) — Parallel rule for eligible capital property; 142.6(1.2) — Parallel rule for non-resident financial institution.

History: Subsec. 10(14) added by 2001, c. 17, s. 4, applicable after December 23, 1998.

Selected Cases [s. 10]: *Ruland Realty Ltd. v. R.*, [1998] 4 C.T.C. 2313 (TCC) (Obligations to acquire land were choses in action, which qualified as property and as inventory); *Consoltex Inc. v. Canada*, [1996] 1 C.T.C. 2752 (TCC) (Change of inventory valuation method and reversal following utilization of losses distorted income by anticipating profits).

Definitions [s. 10]: "amount" — 248(1); "artistic endeavour" — 10(8); "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "capital property" — 54, 248(1); "control" — 256(6)–(9); "corporation" — 248(1), *Interpretation Act* 35(1); "cost" — 10(9); "fair market value" — 10(4), 107(1.2); "filing-due date" — 248(1); "fiscal period" — 249.1; "individual" — 248(1); "inventory" — 10(5), 248(1); "Minister", "non-resident" — 248(1); "person", "prescribed", "property", "regulation" — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

Interpretation Bulletins [s. 10]: IT-98R2: Investment corporations (archived); IT-189R2: Corporations used by practising members of professions; IT-283R2: CCA — video tapes, videotape cassettes, films, computer software and master recording tapes (archived); IT-452: Utility service connections (archived); IT-473R: Inventory valuation.

11. (1) Proprietor of business — Subject to sections 34.1 and 34.2, where an individual is a proprietor of a business, the individual's income from the business for a taxation year is deemed to be the individual's income from the business for the fiscal periods of the business that end in the year.

History: Subsec. 11(1) amended by 1996, c. 21, s. 3, applicable to 1995 *et seq.* The subsec. formerly read:

> (1) Where an individual is a proprietor of a business, the individual's income from the business for a taxation year shall be deemed to be the individual's income from the business for the fiscal period or periods ending in the year.

Selected Cases [subsec. 11(1)]: *Northern Sales (1963) Ltd. v. MNR*, [1973] C.T.C. 239 (FCTD) (Independent companies held to be partners where profits and losses divided pursuant to marketing agreement).

(2) Reference to "taxation year" — Where an individual's income for a taxation year includes income from a business the fiscal period of which does not coincide with the calendar year, unless the context otherwise requires, a reference in this subdivision or section 80.3 to a "taxation year" or "year" shall, in respect of the business, be read as a reference to a fiscal period of the business ending in the year.

History: Subsec. 11(2) substituted by 1994, c. 21, s. 5, applicable to 1988 *et seq.* That subsec. formerly read:

> (2) Reference to "taxation year" or "year" — Where an individual's income for a taxation year includes income from a business the fiscal period of which does not coincide with the calendar year, unless the context otherwise requires, a reference in this Division to a "taxation year" or "year" shall, in respect of the business, be read as a reference to a fiscal period of the business ending in the year.

Selected Cases [subsec. 11(2)]: *Bishay v. MNR*, [1996] 1 C.T.C. 2286 (FCTD) (Unilateral change of year-end by taxpayer prohibited).

Related Provisions [s. 11]: 14(4) — Eligible capital property rules — references to "taxation year" or "year"; 20(16.2) — Terminal loss rules — reference to "taxation year" and "year"; 34.1 — Additional income adjustment where fiscal year is not calendar year; 34.2 — Reserve for 1995 stub-period income; 96(1)(f) — Income inclusion from partnership in taxation year in which partnership's year ends; 25(1) — Fiscal period for individual proprietor of business disposed of; 249(2)(b) — Where end of fiscal period coincides with end of taxation year.

Definitions [s. 11]: "business" — 248(1), 249.1; "calendar year" — *Interpretation Act* 37(1)(a); "fiscal period" — 248(1), 249.1; "individual" — 248(1); "taxation year" — 249.

Regulations [s. 11]: 1104(1) (taxation year of individual for capital cost allowance purposes).

Interpretation Bulletins [s. 11]: IT-151R5: Scientific research and experimental development expenditures; IT-184R: Deferred cash purchase tickets issued by Canadian Wheat Board.

Inclusions

12. (1) Income inclusions — There shall be included in computing the income of a taxpayer for a taxation year as income from a business or property such of the following amounts as are applicable:

(a) **services, etc., to be rendered [or goods to be delivered]** — any amount received by the taxpayer in the year in the course of a business

> (i) that is on account of services not rendered or goods not delivered before the end of the year or that, for any other reason, may be regarded as not having been earned in the year or a previous year, or
>
> (ii) under an arrangement or understanding that it is repayable in whole or in part on the return or resale to the taxpayer of articles in or by means of which goods were delivered to a customer;

Related Provisions: 12(1)(x) — Inducements, reimbursements, etc. included in income; 12(2) — Rule is for greater certainty only; 20(1)(m) — Deductions — reserve for goods and services; 20(1)(m.1) — Deductions — manufacturer's warranty reserve; 20(1)(m.2) — Deductions — repayment of amount previously included in income; 20(24) — Amounts paid for undertaking future obligations; 68 — Allocation of amounts paid for combination of services and property.

Selected Cases [para. 12(1)(a)]: *Foothills Pipe Lines (Yukon) Ltd. v. R.*, [1990] 2 C.T.C. 448 (FCA); leave to appeal to SCC refused (1991), 134 N.R. 238 (note), (sub nom. *Foothills Pipe Lines (South Yukon) Ltd. v. MNR)* (Special charges made by taxpayer responsible for pipeline construction to shippers, to be refunded upon completion of the project, were liabilities not income); *Burrard Yarrows Corp. v. R.*, [1986] 2 C.T.C. 313 (FCTD); rev'd in part [1988] 2 C.T.C. 90 (FCA) (Progress payments received were "earned" amounts; reserve not permitted); *Anderson v. MNR*, [1972] C.T.C. 2318 (T.R.B.) (Advance payment pursuant to *Prairie Grain Advance Payments Act* was income, not interest-free loan).

Interpretation Bulletins: IT-154R: Special reserves; IT-165R: Returnable containers (archived); IT-321R: Insurance agents and brokers — unearned commissions (archived); IT-457R: Election by professionals to exclude work in progress from income; IT-531: Eligible funeral arrangements.

I.T. Technical News: 18 (*Oerlikon Aérospatiale* case); 30 (prepaid income — whether 9(1) or 12(1)(a) applies).

Forms: T2124: Statement of business activities.

(b) **amounts receivable** — any amount receivable by the taxpayer in respect of property sold or services rendered in the course of a business in the year, notwithstanding that the amount or any part thereof is not due until a subsequent year, unless the method adopted by the taxpayer for computing income from the business and accepted for the purpose of this Part does not require the taxpayer to include any amount receivable in computing the taxpayer's income for a taxation year unless it has been received in the year, and for the purposes of this paragraph, an amount shall be deemed to have become receivable in respect of services rendered in the course of a business on the day that is the earlier of

> (i) the day on which the account in respect of the services was rendered, and
>
> (ii) the day on which the account in respect of those services would have been rendered had there been no undue delay in rendering the account in respect of the services;

Related Provisions: 12(2) — Rule is for greater certainty only; 34 — Professional business; 68 — Allocation of amounts in consideration for disposition of property; 78 — Unpaid amounts; 138(11.5)(k) — Transfer of business by non-resident insurer.

Selected Cases [para. 12(1)(b)]: *Huang & Danczkay Ltd. v. MNR*, [1998] 3 C.T.C. 337 (FCTD) (Receivables brought into income only when

income-earning process virtually complete); *Stevenson & Hunt Insurance Brokers Ltd. v. Canada*, [1993] 1 C.T.C. 383 (FCTD) (Contingent commissions "earned" or "receivable" by insurance broker income when amount ascertained); *Maritime Telegraph and Telephone Co. v. Canada*, [1992] 1 C.T.C. 264 (FCA) (Taxpayer not permitted to change method of reporting income for tax purposes); *West Kootenay Power and Light Co. v. Canada*, [1992] 1 C.T.C. 15 (FCA) (In calculating income for tax purposes, taxpayer may use different method from that used for accounting purposes); *West Hill Redevelopment Co. v. MNR*, [1991] 2 C.T.C. 83 (FCTD) (Taxpayer who sold condominiums and took back mortgages at below-market interest rates must include full price expressed in sale, not price reduced by difference between face value of mortgage and lesser market value); *Dominion Construction Co. (Niagara) Ltd. v. MNR*, [1974] C.T.C. 2006 (T.R.B.) (Holdback taxable in year receivable).

Interpretation Bulletins: IT-92R2: Income of contractors; IT-129R: Lawyers' trust accounts and disbursements; IT-170R: Sale of property — when included in income computation.

(c) **interest** — subject to subsections (3) and (4.1), any amount received or receivable by the taxpayer in the year (depending on the method regularly followed by the taxpayer in computing the taxpayer's income) as, on account of, in lieu of payment of or in satisfaction of, interest to the extent that the interest was not included in computing the taxpayer's income for a preceding taxation year;

Related Provisions: 12(3) — Accrued interest taxable to corporation, partnership and certain trusts; 12(4) — Annual accrual of interest even if unpaid; 12(4.1) — Impaired debt obligations; 12(9.1) — Exception for certain interests in prescribed debt obligations; 12.1 — Cash bonus on Canada Savings Bonds; 16 — Income and capital combined; 16(3) — Bonds purchased at a discount; 16(6) — Indexed debt obligations — amount deemed received as interest; 17 — Interest deemed received on loan to non-resident; 18(9.1) — Penalties, bonuses and rate reduction payments; 20(1)(c) — Deduction for interest paid; 20(14) — Accrued bond interest; 20(14.1) — Interest on debt obligation; 81(1)(m) — Interest on certain obligations exempt; 137(4.1) — Interest deemed received on certain reductions of capital by credit union; 142.5(3)(a), (b) — Mark-to-market debt obligation; 218 — Loan to wholly-owned subsidiary; 258(3) — Certain dividends on preferred shares deemed to be interest; 258(5) — Deemed interest on certain shares; Canada-U.S. Tax Treaty:Art. XI — Taxation of interest.

History: Para. 12(1)(c) amended by 2001, c. 17, subsec. 5(1), applicable to taxation years that end after September 1997. The para. formerly read:

(c) subject to subsections (3) and (5) [should be (4.1) — ed.], any amount received or receivable by the taxpayer in the year (depending on the method regularly followed by the taxpayer in computing the taxpayer's income) as, on account of, in lieu of payment of or in satisfaction of, interest to the extent that the interest was not included in computing the taxpayer's income for a preceding taxation year;

Para. 12(1)(c) amended by 1998, c. 19, subsec. 71(1), applicable

(a) to taxation years that end after September 1997; and

(b) to a taxpayer's taxation years that end after 1995 and before October 1997 where the taxpayer files an election in accordance with para. 81(11)(b).

The para. formerly read:

(c) any amount received or receivable by the taxpayer in the year (depending on the method regularly followed by the taxpayer in computing the taxpayer's profit) as, on account or in lieu of payment of, or in satisfaction of, interest to the extent that the interest was not included in computing the taxpayer's income for a preceding taxation year;

Selected Cases [para. 12(1)(c)]: *Ahmad v. R.*, [2002] 4 C.T.C. 2497 (TCC) (Pre-judgment interest was part of damages); *Coughlan v. R.*, [2001] 4 C.T.C. 2004 (TCC) (Pre-judgment interest was "interest" and not incremental damages); *Shaw (J.M.) v. MNR*, [1993] 1 C.T.C. 221 (FCA); leave to appeal to SCC refused (1993), 158 N.R. 399 (note) (Amount paid as "interest" on additional compensation awarded for expropriation was interest income, not proceeds of disposition); *Praxair Canada Inc. v. MNR*, [1993] 1 C.T.C. 130 (FCTD) (Creditor accepting shares of debtor in satisfaction of unpaid interest received "amount" equal to market value of shares, not par value); *Fisher, E.R., Ltd. v. R.*, [1986] 2 C.T.C. 114 (FCTD) (Interest penalty paid on expropriation was added to proceeds of disposition, and was not a windfall); *Miller v. R.*, [1985] 2 C.T.C. 139 (FCTD) (Interest on retroactive salary increase not employment income); *Freeway Properties Inc. v. R.*, [1985] 1 C.T.C. 222 (FCTD) (Prepaid interest on mortgage included in year received); *Perini Estate v. R.*, [1982] C.T.C. 74 (FCA) (Interest on proceeds of disposition, determined retroactively and paid at later date, taxable); *R. v. Henuset Bros. Ltd. (No. 2)*, [1977] C.T.C. 228 (FCTD) (Prepaid interest was income, not down payment).

Regulations: 201(1)(b) (information return).

Interpretation Bulletins: IT-265R3: Payments of income and capital combined (archived); IT-396R: Interest income.

I.T. Technical News: 30 (pre-judgment interest).

Advance Tax Rulings: ATR-61: Interest accrual rules.

Forms: T5: Statement of investment income; T5 Summ: Return of investment income.

(d) **reserve for doubtful debts** — any amount deducted under paragraph 20(1)(l) as a reserve in computing the taxpayer's income for the immediately preceding taxation year;

Related Provisions: 87(2.2) — Amalgamation of insurance corporations; 88(1)(g) — Winding-up of subsidiary insurance corporations; 138(11.5)(k) — Transfer of business by non-resident insurer; 138(11.91)(d) — Computation of income of non-resident insurer; 142.3(1)(c) — Amount deductible in respect of specified debt obligation; Reg. 2405(3)"gross Canadian life investment income"(d) — Inclusion in life insurer's income.

Selected Cases [para. 12(1)(d)]: *92735 Canada Ltd. v. R.*, [1999] 2 C.T.C. 2661 (TCC) (Debt becomes doubtful when collection doubtful on objective basis).

Interpretation Bulletins: IT-442R: Bad debts and reserve for doubtful debts.

Forms: T2 SCH 13: Continuity of reserves.

(d.1) **reserve for guarantees, etc.** — any amount deducted under paragraph 20(1)(l.1) as a reserve in computing the taxpayer's income for the immediately preceding taxation year;

(e) **reserves for certain goods and services, etc.** — any amount

(i) deducted under paragraph 20(1)(m) (including any amount substituted by virtue of subsection 20(6) for any amount deducted under that paragraph), paragraph 20(1)(m.1) or subsection 20(7), or

(ii) deducted under paragraph 20(1)(n),

in computing the taxpayer's income from a business for the immediately preceding year;

Related Provisions: 66.2(2)(b)(ii)(B), 66.4(2)(a)(ii)(B) — Deductions for resource expenses; 87(2.2) — Amalgamation of insurance corporations; 88(1)(g) — Winding-up of subsidiary insurance corporations; 138(11.91)(d) — Computation of income of non-resident insurer.

Selected Cases [para. 12(1)(e)]: *Regina Shoppers Mall Ltd. v. Canada*, [1991] 1 C.T.C. 297 (FCA) (Taxpayer entitled to file return inconsistent with Minister's assessment for previous year); *Sears Canada Inc. v. Canada*, [1989] 1 C.T.C. 127 (FCA); leave to appeal to SCC refused (1989), 100 N.R. 160 (note), (sub nom. *Sears Canada Inc. v. MNR*) (Reserve improperly deducted nevertheless required to be included in subsequent year).

Interpretation Bulletins: IT-73R6: The small business deduction; IT-154R: Special reserves.

I.T. Technical News: 30 (prepaid income — whether 9(1) or 12(1)(a) applies).

Forms: T2 SCH 13: Continuity of reserves.

(e.1) **[insurer's] negative reserves** — where the taxpayer is an insurer, the amount prescribed in respect of the insurer for the year;

Related Provisions: 20(22) — Deduction in following year; 87(2.2) — Amalgamation of insurance corporations; 88(1)(g)(i) — Windup of subsidiary insurance corporation; 138(11.5)(j.1) — Transfer of business by non-resident insurer; 138(11.91)(d.1)(ii) — Computation of income for non-resident insurer.

History: Para. 12(1)(e.1) added by 1997, c. 25, subsec. 2(1), applicable to 1996 *et seq.*

Regulations: 1400(2) (amount prescribed).

(f) **insurance proceeds expended** — such part of any amount payable to the taxpayer as compensation for damage to, or under a policy of insurance in respect of damage to, property that is depreciable property of the taxpayer as has been expended by the taxpayer

(i) within the year, and

(ii) within a reasonable time after the damage,

on repairing the damage;

Related Provisions: 13(21)"proceeds of disposition"(c) — Depreciable property — proceeds of disposition.

(g) **payments based on production or use** — any amount received by the taxpayer in the year that was dependent on the use of or production from property whether or not that amount was an instalment of the sale price of the property, except that an instalment of the sale price of agricultural land is not included by virtue of this paragraph;

Related Provisions: 12(2.01) — No deferral of amounts taxable anyway under s. 9.

Selected Cases [para. 12(1)(g)]: *Wright v. R.*, [2003] 1 C.T.C. 2726 (TCC) (Payments for sale of trees were capital, not subject to provision); *Larsen v. R.*, [2000] 1 C.T.C. 209 (FCA) (Timber stand may be farm property); *Lackie v. R.*, [1979] C.T.C. 389 (FCA) (Proceeds from sale of gravel, paid in yearly instalments, was income from property); *MNR v. Bartlett*, [1972] C.T.C. 333 (FCA) (No special prospector treatment for vendor of mining rights on terms varying with production); *Mel-Bar Ranches Ltd. v. MNR (No. 2)*, [1989] 1 C.T.C. 360 (FCTD) (Sale of timber cut to clear land for grazing not income from business).

Interpretation Bulletins: IT-373R2: Woodlots; IT-423: Sale of sand, gravel or topsoil (archived); IT-426R: Shares sold subject to an earnout agreement; IT-462: Payment based on production or use.

(g.1) **proceeds of disposition of right to receive production** — any proceeds of disposition to which subsection 18.1(6) applies;

History: Para. 12(1)(g.1) added by 1998, c. 19, subsec. 71(2), applicable to dispositions that occur after November 17, 1996.

(h) **previous reserve for quadrennial survey** — any amount deducted as a reserve under paragraph 20(1)(o) in computing the taxpayer's income for the immediately preceding year;

(i) **bad debts recovered** — any amount, other than an amount referred to in paragraph (i.1), received in the year on account of a debt or a loan or lending asset in respect of which a deduction for bad debts or uncollectable loans or lending assets had been made in computing the taxpayer's income for a preceding taxation year;

Related Provisions: 12.4 — Bad debt inclusion; 20(1)(p) — Bad debts; 22(1) — Sale of accounts receivable; 26(3) — Banks — write-offs and recoveries; 87(2.2) — Amalgamation of insurance corporations; 88(1)(g) — Winding-up of subsidiary insurance corporations; 111(5.3) — Doubtful debts and bad debts; 138(11.5)(k) — Transfer of business by non-resident insurer; 142.3(1)(c), (g) — Amount deductible in respect of specified debt obligation; 142.5(8)(d)(iv) — First deemed disposition of mark-to-market debt obligation.

Interpretation Bulletins: IT-109R2: Unpaid amounts; IT-220R2: CCA — proceeds of disposition of depreciable property; IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987; IT-442R: Bad debts and reserve for doubtful debts.

(i.1) **bad debts recovered** — where an amount is received in the year on account of a debt in respect of which a deduction for bad debts was made under subsection 20(4.2) in computing the taxpayer's income for a preceding taxation year, the amount determined by the formula

$$A \times B/C$$

where

A is ½ of the amount so received,

B is the amount that was deducted under subsection 20(4.2) in respect of the debt, and

C is the total of the amount that was so deducted under subsection 20(4.2) and the amount that was deemed by that subsection or subsection 20(4.3) to be an allowable capital loss in respect of the debt;

Related Provisions: 39(11) — Bad debt recovery; 89(1)"capital dividend account"(c) — Capital dividend account.

History: Para. 12(1)(i.1) amended by 2001, c. 17, subsec. 5(2), applicable to taxation years that end after February 27, 2000 except that, for taxation years that ended after February 27, 2000 and before October 18, 2000, the reference to the fraction "1/2" in the description of A in the para. shall be read as a reference to the fraction "2/3". The para. formerly read:

(i.1) idem — where an amount is received in the year on account of a debt in respect of which a deduction for bad debts under subsection 20(4.2) was made in computing the taxpayer's income for a preceding taxation year, that proportion of ¾ of the amount that

(i) the amount that was deducted under subsection 20(4.2) in respect of that debt

is of

(ii) the total of the amount that was so deducted under subsection 20(4.2) and the amount that was deemed to be an allowable capital loss under subsection 20(4.2) in respect of the debt;

Interpretation Bulletins: IT-442R: Bad debts and reserve for doubtful debts.

(j) **dividends from resident corporations** — any amount required by subdivision h to be included in computing the taxpayer's income for the year in respect of a dividend paid by a corporation resident in Canada on a share of its capital stock;

Related Provisions: 82(1) — Taxable dividends received; 84, 84.1(1)(b) — Deemed dividends; 139.1(4)(f), (g) — Deemed dividend on demutualization of insurance corporation; 139.2 — Deemed dividend on distribution by mutual holding corporation.

Interpretation Bulletins: IT-67R3: Taxable dividends from corporations resident in Canada; IT-269R3: Part IV tax on taxable dividends received by a private corporation or a subject corporation.

Advance Tax Rulings: ATR-15: Employee stock option plan.

(k) **dividends from other corporations** — any amount required by subdivision i to be included in computing the taxpayer's income for the year in respect of a dividend paid by a corporation not resident in Canada on a share of its capital stock or in respect of a share owned by the taxpayer of the capital stock of a foreign affiliate of the taxpayer;

Proposed Amendment — 12(1)(k)

(k) **foreign corporations, trusts and investment entities [dividends, etc.]** — any amount required by subdivision i to be included in computing the taxpayer's income for the year;

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), s. 2, will amend para. 12(1)(k) to read as above, applicable to taxation years that begin after 2002.

Technical Notes: Section 12 provides for the inclusion of various amounts in computing a taxpayer's income for a taxation year from business or property. Paragraph 12(1)(k) refers to certain dividends required by existing sections 90 to 95 to be so added.

Paragraph 12(1)(k) is amended so that it refers to all amounts required to be added in computing income under amended sections 90 to 95, including new sections 94.1 to 94.3 relating to foreign investment entities. For more information, see the commentary on those new sections.

Related Provisions: 90 — Dividends received from non-resident corporation; 91(1), (3) — FAPI inclusions; 94.1(4) — Foreign investment entity — income inclusion; 94.2(4) — FIE income inclusion — mark-to-market regime; 94.3(4) — FIE income inclusion — accrual method; 115(1)(a)(vii)(B) — Authorized foreign bank's taxable income earned in Canada; 258(3) — Certain dividends on preferred shares deemed to be interest; 258(5) — Deemed interest on certain shares.

Selected Cases [para. 12(1)(k)]: *Terrador Investments Ltd. v. R.*, [1999] 3 C.T.C. 520 (FCA); leave to appeal to SCC refused (May 18, 2000), File 27499 (No bad debt possible where statute deemed amount to have been received).

Interpretation Bulletins: IT-269R3: Part IV tax on taxable dividends received by a private corporation or a subject corporation.

(l) **partnership income** — any amount that is, by virtue of subdivision j, income of the taxpayer for the year from a business or property;

Related Provisions: 96(1)(c)(ii) — Partner taxed on share of partnership's income from business or property; 96(1.1)(b), 96(1.2) — Income inclusion for retired partner.

Selected Cases [para. 12(1)(l)]: *Cornforth v. R.*, [1982] C.T.C. 45 (FCTD) (All income from business with wife assessed to taxpayer where partnership requirements not met).

Interpretation Bulletins: IT-278R2: Death of a partner or of a retired partner.

Forms: T2032: Statement of professional activities.

(m) **benefits from trusts** — any amount required by subdivision k or subsection 132.1(1) to be included in computing the taxpayer's income for the year, except

(i) any amount deemed by that subdivision to be a taxable capital gain of the taxpayer, and

(ii) any amount paid or payable to the taxpayer out of or under an RCA trust (within the meaning assigned by subsection 207.5(1));

Related Provisions: 12(1)(n.3) — Retirement compensation arrangement — refund of contributions; 56(1)(x), (z) — Retirement compensation arrangement; 104(7.2) — Income inclusion re capital interest in trust; 104(13), (14) — Income from trusts; 105(1) — Value of benefits from trust; 106(2) — Disposition of income interest in trust — income inclusion; 208 — Tax payable by exempt person.

History: The opening words of para. 12(1)(m) substituted by 1994, c. 21, subsec. 6(1), applicable to 1988 *et seq.* The opening words formerly read:

(m) any amount required by subdivision k to be included in computing the income of the taxpayer for the year, except

(n) **employees profit sharing plan** — any amount received by the taxpayer in the year out of or under

(i) an employees profit sharing plan, or

(ii) an employee trust

established for the benefit of employees of the taxpayer or of a person with whom the taxpayer does not deal at arm's length;

Related Provisions: 6(1)(d) — Inclusions — allocations etc. under profit sharing plan; 6(1)(g) — Inclusions — employee benefit plan benefits; 20(1)(w) — Deduction to employer; 32.1 — Employee benefit plan deductions; 107.1 — Distribution by employee trust or employee benefit plan; 144(1) — "Employees profit sharing plan" defined; 144(6), (7) — Beneficiary's receipts.

Interpretation Bulletins: IT-502: Employee benefit plans and employee trusts.

(n.1) **employee benefit plan** — the amount, if any, by which the total of amounts received by the taxpayer in the year out of or under an employee benefit plan to which the taxpayer has contributed as an employer (other than amounts included in the income of the taxpayer by virtue of paragraph (m)) exceeds the amount, if any, by which the total of all amounts

(i) so contributed by the taxpayer to the plan, or

(ii) included in computing the taxpayer's income for any preceding taxation year by virtue of this paragraph

exceeds the total of all amounts

(iii) deducted by the taxpayer in respect of the taxpayer's contributions to the plan in computing the taxpayer's income for the year or any preceding taxation year, or

(iv) received by the taxpayer out of or under the plan in any preceding taxation year (other than an amount included in the taxpayer's income by virtue of paragraph (m));

Related Provisions: 6(1)(a) — Inclusions — value of benefits; 6(1)(g) — EBP benefits; 6(10) — Contributions to an EBP; 18(1)(o) — No deduction for EBP contributions; 32.1 — EBP deductions; 87(2)(j.3) — Amalgamation — continuation of corporation; 107.1 — Distribution by employee trust or EBP.

Interpretation Bulletins: IT-502: Employee benefit plans and employee trusts.

(n.2) **forfeited salary deferral amounts** — where deferred amounts under a salary deferral arrangement in respect of another person have been deducted under paragraph 20(1)(oo) in computing the taxpayer's income for preceding taxation years, any amount in respect of the deferred amounts that was deductible under paragraph 8(1)(o) in computing the income of the person for a taxation year ending in the year;

Related Provisions: 6(1)(a) — Inclusions — value of benefits; 6(1)(i) — Salary deferral arrangement payments; 6(11) — Salary deferral arrangement; 87(2)(j.3) — Amalgamations — continuing corporation.

(n.3) **retirement compensation arrangement** — the total of all amounts received by the taxpayer in the year in the course of a business out of or under a retirement compensation arrangement to which the taxpayer, another person who carried on a business that was acquired by the taxpayer, or any person with whom the taxpayer or that other person does not deal at arm's length, has contributed an amount that was deductible under paragraph 20(1)(r) in computing the contributor's income for a taxation year;

Related Provisions: 56(1)(x)–(z) — Employee's income inclusion — amounts received from RCA; 87(2)(j.3) — Amalgamation — continuing corporation; 207.5–207.7 — Tax in respect of retirement compensation arrangements.

Forms: T4A-RCA: Statement of amounts paid from an RCA.

(o) **royalties, etc.** — [Phased out 2003-06 and repealed effective 2007 — see below] any amount (other than a prescribed amount and an amount referred to in paragraph 18(1)(m))

(i) that became receivable in the year by

(A) Her Majesty in right of Canada or of a province,

(B) an agent of Her Majesty in right of Canada or of a province, or

(C) a corporation, a commission or an association that is controlled by Her Majesty in right of Canada or of a province or by an agent of Her Majesty in right of Canada or of a province, and

(ii) that can reasonably be considered to be a royalty, tax (other than a tax or portion of a tax that can reasonably be considered to be a municipal or school tax), lease rental or bonus, however de-

scribed, or to be in respect of the late receipt or non-receipt of any of those amounts, in relation to

(A) the acquisition, development or ownership of a Canadian resource property of the taxpayer, or

(B) the production in Canada

(I) of petroleum, natural gas or related hydrocarbons from a natural accumulation of petroleum or natural gas (other than a mineral resource) located in Canada, or from an oil or gas well located in Canada, in respect of which the taxpayer had an interest,

(II) of sulphur from a natural accumulation of petroleum or natural gas located in Canada, from an oil or gas well located in Canada or from a mineral resource located in Canada, in respect of which the taxpayer had an interest,

(III) to any stage that is not beyond the prime metal stage or its equivalent, of metal, minerals (other than iron or petroleum or related hydrocarbons) or coal from a mineral resource located in Canada in respect of which the taxpayer had an interest,

(IV) to any stage that is not beyond the pellet stage or its equivalent, of iron from a mineral resource located in Canada in respect of which the taxpayer had an interest, or

(V) to any stage that is not beyond the crude oil stage or its equivalent, of petroleum or related hydrocarbons from a deposit located in Canada of bituminous sands or oil shales in respect of which the taxpayer had an interest;

Proposed Amendment — 12(1)(o)(ii)(B)(I)–(V)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 200(1), will amend subcls. 12(1)(o)(ii)(B)(I)–(V) by adding "or for civil law a right" to the end of each, to come into force on Royal Assent.

Technical Notes: See under 12(4).

Repeal [effective 2007] — 12(1)(o)

Application: S.C. 2003, c. 28 (Bill C-48, Royal Assent November 7, 2003), subsec. 1(2), repeals para. 12(1)(o), applicable to taxation years that begin after 2006. For each taxation year that ends after 2002 and begins before 2007, para. 12(1)(o) applies only to the percentage of each amount described by that paragraph that is the total of

(a) that proportion of 100% that the number of days in the taxation year that are before 2003 is of the number of days in the taxation year,

(b) that proportion of 90% that the number of days in the taxation year that are in 2003 is of the number of days in the taxation year,

(c) that proportion of 75% that the number of days in the taxation year that are in 2004 is of the number of days in the taxation year,

(d) that proportion of 65% that the number of days in the taxation year that are in 2005 is of the number of days in the taxation year, and

(e) that proportion of 35% that the number of days in the taxation year that are in 2006 is of the number of days in the taxation year.

The above does not apply for the purpose of applying any provision of Part XII of the *Income Tax Regulations* that makes reference to the income of a taxpayer.

Related Provisions: 18(1)(m) — Deductions — limitations — royalties; 65 — Allowance for oil or gas well, mine or timber limit; 66 — Exploration and development expenses of principal-business corporations; 69(6), (7) — Unreasonable consideration; 80.2 — Royalty reimbursements; 104(29) — Flow-through from trust to beneficiaries; 208 — Tax on certain royalties payable by tax-exempt person; 219(1)(k) — Reduction in branch tax; *Interpretation Act* 8(2.1), (2.2) — Application to exclusive economic zone and continental shelf.

History: Para. 12(1)(o) amended by 2003, c. 28, subsec. 1(1), applicable to amounts that become receivable after December 20, 2002. The para. formerly read:

any amount (other than an amount referred to in paragraph 18(1)(m), paid or payable by the taxpayer, or a prescribed amount) that, because of an obligation imposed by statute or a contractual obligation substituted for an obligation imposed by statute, became receivable in the year by

(i) Her Majesty in right of Canada or a province,

(ii) an agent of Her Majesty in right of Canada or a province, or

(iii) a corporation, commission or association that is controlled by Her Majesty in right of Canada or a province or by an agent of Her Majesty in right of Canada or a province

as a royalty, tax (other than a tax or portion of a tax that can reasonably be considered to be a municipal or school tax), lease rental or bonus or as an amount, however described, that can reasonably be regarded as being in lieu of any such amount, or in respect of the late receipt or non-receipt of any such amount, and that can reasonably be regarded as being in relation to

(iv) the acquisition, development or ownership of a Canadian resource property of the taxpayer in respect of which the obligation imposed by statute or the contractual obligation, as the case may be, applied, or

(v) the production in Canada

(A) of petroleum, natural gas or related hydrocarbons from a natural accumulation of petroleum or natural gas (other than a mineral resource) located in Canada or from an oil or gas well located in Canada,

(B) of sulphur from a natural accumulation of petroleum or natural gas located in Canada, from an oil or gas well located in Canada or from a mineral resource located in Canada,

(C) to any stage that is not beyond the prime metal stage or its equivalent, of metal, minerals (other than iron or petroleum or related hydrocarbons) or coal from a mineral resource located in Canada,

(D) to any stage that is not beyond the pellet stage or its equivalent, of iron from a mineral resource located in Canada, or

(E) to any stage that is not beyond the crude oil stage or its equivalent, of petroleum or related hydrocarbons from tar sands from a mineral resource located in Canada,

in respect of which the taxpayer had an interest to which the obligation imposed by statute or the contractual obligation, as the case may be, applied;

The portion of para. 12(1)(o) after subpara. (iii) amended by 1997, c. 25, subsec. 2(2), applicable to taxation years that begin after 1996. That portion formerly read:

as a royalty, tax (other than a tax or portion thereof that may reasonably be considered to be a municipal or school tax), lease rental or bonus or as an amount, however described, that may reasonably be regarded as being in lieu of any such amount, and that may reasonably be regarded as being in relation to

(iv) the acquisition, development or ownership of a Canadian resource property, or

(v) the production in Canada

(A) of petroleum, natural gas or related hydrocarbons from a natural accumulation of petroleum or natural gas (other than a mineral resource) or from an oil or gas well,

(B) to any stage that is not beyond the prime metal stage or its equivalent, of metal, minerals (other than iron or petroleum or related hydrocarbons) or coal from a mineral resource,

(C) to any stage that is not beyond the pellet stage or its equivalent, of iron from a mineral resource, or

(D) to any stage that is not beyond the crude oil stage or its equivalent, of petroleum or related hydrocarbons from tar sands from a mineral resource,

situated on property in Canada in which the taxpayer had an interest with respect to which the obligation imposed by statute or the contractual obligation, as the case may be, applied;

Cl. 12(1)(o)(v)(B) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 7(1), applicable with respect to amounts that become receivable after July 13, 1990. That cl. formerly read:

(B) to any stage that is not beyond the prime metal stage or its equivalent, of metal or minerals (other than iron or petroleum or related hydrocarbons) from a mineral resource,

Selected Cases [para. 12(1)(o)]: *French Shoes Ltd. v. R.*, [1986] 2 C.T.C. 132 (FCTD) (Tenant inducement paid to franchise included in income); *Midwest Oil Production Ltd. v. R.*, [1983] C.T.C. 338 (FCA) (Royalty was "amount receivable" despite interposition of marketing board).

Regulations: 1211 (prescribed amount).

Remission Orders: *Syncrude Remission Order*, P.C. 1976-1026 (remission of tax on royalties etc. relating to the Syncrude Project).

Interpretation Bulletins: IT-438R2: Crown charges — resource properties in Canada.

Information Circulars: 86-3: Alberta Royalty Tax Credit — Individuals.

Forms: T2 SCH 14: Miscellaneous payments to residents; T2 SCH 400: Saskatchewan royalty tax rebate calculation; T2 SCH 420: B.C. royalty and deemed income rebate calculation and application; T81 (IND), T81 (CORP): B.C. royalty and deemed income rebate calculation and application; T82: Saskatchewan royalty tax rebate.

(o.1) **foreign oil and gas production taxes** — the total of all amounts, each of which is the taxpayer's production tax amount for a foreign oil and gas business of the taxpayer for the year, within the meaning assigned by subsection 126(7);

History: Para. 12(1)(o.1) added by 2001, c. 17, subsec. 5(3), applicable to taxation years of a taxpayer that begin after the earlier of

(a) December 31, 1999; and

(b) where, for the purposes of subsec. 117(26), a date is designated in writing by the taxpayer and the designation is filed with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes June 14, 2001, the later of

(i) the date so designated, and

(ii) December 31, 1994.

(p) **certain payments to farmers** — any amount received by the taxpayer in the year as a stabilization payment, or as a refund of a levy, under the *Western Grain Stabilization Act* or as a payment, or a refund of a premium, in respect of the gross revenue insurance program established under the *Farm Income Protection Act*;

Related Provisions: 20(1)(ff) — Deductions — payments by farmers.

History: Para. 12(1)(p) substituted by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 3(1), applicable to 1991 *et seq.* Para. 12(1)(p) formerly read:

(p) any amount received by the taxpayer as a stabilization payment or as a refund of levy under the *Western Grain Stabilization Act*;

Regulations: 234–236 (information slips for farm support payments).

Remission Orders: *Farmers' Income Taxes Remission Order*, P.C. 1993-1647 (remission of tax on certain income under 12(1)(p) for 1992, where taxpayer repays insurance payments in later year).

(q) **employment tax deduction** — any amount deducted under subsection 127(13) or (14) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, by the taxpayer for the year;

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

(r) **inventory adjustment [depreciation, etc.]** — the total of all amounts each of which, in respect of a property described in the taxpayer's inventory at the end of the year and valued at its cost amount to the taxpayer for the purposes of computing the taxpayer's income for the year, is an allowance in respect of depreciation, obsolescence or depletion included in that cost amount;

Related Provisions: 10(1) — Inventory valuation; 20(1)(ii) — Deduction allowed in next year; 87(2)(j.1) — Amalgamations — inventory adjustment.

(s) **reinsurance commission** — the total of all amounts each of which is the maximum amount that an insurer may claim in the year in respect of a reserve for a reinsurance commission for a policy as allowed by regulations made under paragraph 20(7)(c) in respect of a risk the reinsurance of which is assumed by the taxpayer;

Related Provisions: 18.1(15) — Reinsurer's sales commissions excluded from matchable expenditure rules; 20(1)(jj) — Reinsurance commission — deduction; 87(2.2) — Amalgamation of insurance corporations; 88(1)(g) — winding-up of subsidiary insurance corporations; 138(11.5)(k) — Transfer of business by non-resident insurer.

(t) **investment tax credit** — the amount deducted under subsection 127(5) or (6) in respect of a property acquired or an expenditure made in a preceding taxation year in computing the taxpayer's tax payable for a preceding taxation year to the extent that it was not included in computing the taxpayer's income for a preceding taxation year under this paragraph or is not included in an amount determined under paragraph 13(7.1)(e) or 37(1)(e), subparagraph 53(2)(c)(vi) or (h)(ii) or for I in the definition "undepreciated capital cost" in subsection 13(21) or L in the definition "cumulative Canadian exploration expense" in subsection 66.1(6);

Related Provisions: 12(1)(x) — Other government assistance; 70(1) — Death of a taxpayer; 87(2)(j.6) — Amalgamations — continuing corporation; 88(2)(c) — Winding-up of a Canadian corporation.

Interpretation Bulletins: IT-210R2: Income of deceased persons — periodic payments and investment tax credit; IT-273R2: Government assistance — general comments.

Information Circulars: 78-4R3: Investment tax credit rates.

(u) **home insulation or energy conversion grants** — the amount of any grant received by the taxpayer in the year under a prescribed program of the Government of Canada relating to home insulation or energy conversion in respect of a property used by the taxpayer principally for the purpose of gaining or producing income from a business or property;

Related Provisions: 13(7.1) — Deemed capital cost of certain property; 53(2)(k) — Adjustments to cost base; 56(1)(s) — Amounts to be included in income for year — grants under prescribed programs.

Regulations: 224 (information return); 5500, 5501 (prescribed program).

(v) **research and development deductions** — the amount, if any, by which the total of amounts determined at the end of the year in respect of the taxpayer under paragraphs 37(1)(d) to (h) exceeds the total of amounts determined at the end of the year in respect of the taxpayer under paragraphs 37(1)(a) to (c.1);

Related Provisions: 37(1)(c.1) — Deduction allowed in later year.

Interpretation Bulletins: IT-151R5: Scientific research and experimental development expenditures.

Forms: T2 SCH 14: Miscellaneous payments to residents.

(w) **subsec. 80.4(1) benefit** — where the taxpayer is a corporation that carried on a personal services business at any time in the year or a preceding taxation year, the amount deemed by subsection 80.4(1) to be a benefit received by it in the year from carrying on a personal services business;

Interpretation Bulletins: IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt.

(x) **inducement, reimbursement, [refund] etc.** — any particular amount (other than a prescribed amount) received by the taxpayer in the year, in the course of earning income from a business or property, from

(i) a person or partnership (in this paragraph referred to as the "payer") who pays the particular amount

(A) in the course of earning income from a business or property,

(B) in order to achieve a benefit or advantage for the payer or for persons with whom the payer does not deal at arm's length, or

(C) in circumstances where it is reasonable to conclude that the payer would not have paid the amount but for the receipt by the payer of amounts from a payer, government, municipality or public authority described in this subparagraph or in subparagraph (ii), or

(ii) a government, municipality or other public authority,

where the particular amount can reasonably be considered to have been received

(iii) as an inducement, whether as a grant, subsidy, forgivable loan, deduction from tax, allowance or any other form of inducement, or

(iv) as a refund, reimbursement, contribution or allowance or as assistance, whether as a grant, subsidy, forgivable loan, deduction from tax, allowance or any other form of assistance, in respect of

(A) an amount included in, or deducted as, the cost of property, or

(B) an outlay or expense,

Selected Cases [subpara. 12(1)(x)(iv)]: *Hudson Bay Mining & Smelting Co. v. R.*, [2003] 2 C.T.C. 2608 (TCC) (Specific provision re CEE applied over general language of para. 12(1)(x)); *Canada Safeway Ltd. v. R.*, [1998] 1 C.T.C. 120 (FCA) ("Reimbursement" does not include refund of tax).

to the extent that the particular amount

(v) was not otherwise included in computing the taxpayer's income, or deducted in computing, for the purposes of this Act, any balance of undeducted outlays, expenses or other amounts, for the year or a preceding taxation year,

Proposed Addition — 12(1)(x)(v.1)

(v.1) is not an amount received by the taxpayer in respect of a restrictive covenant, as defined by subsection 56.4(1), that was included, under subsection 56.4(2), in computing the income of a person related to the taxpayer,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 51(1), will add subpara. 12(1)(x)(v.1), applicable after October 7, 2003.

Technical Notes: Paragraph 12(1)(x) provides that certain inducements, reimbursements, contributions, allowances and assistance received by a taxpayer in the course of earning income from a business or property must be included in income "to the extent that" the particular amounts have not otherwise been included in income or reduced the cost of a property or the amount of an outlay or expense. Paragraph 12(1)(x) is amended consequential to the restrictive covenant rules in new section 56.4 (additional commentary is provided in the explanatory notes accompanying new section 56.4).

New subparagraph 12(x)(v.1) provides that the income inclusion referred to in paragraph (x) does not apply to the extent the amount in respect of a restrictive covenant (as defined by new subsection 56.4(1)) was included under subsection 56.4(2) in computing the income of a person related to the taxpayer. In other words, to the extent that a taxpayer receives an amount for a restrictive covenant that a person related to the taxpayer is required under subsection 56.4(2) to include in computing income, paragraph 12(1)(x) will not apply to require the taxpayer to include the amount in computing the taxpayer's income.

(vi) except as provided by subsection 127(11.1), (11.5) or (11.6), does not reduce, for the purpose of an assessment made or that may be made under this Act, the cost or capital cost of the property or the amount of the outlay or expense, as the case may be,

(vii) does not reduce, under subsection (2.2) or 13(7.4) or paragraph 53(2)(s), the cost or capital cost of the property or the amount of the outlay or expense, as the case may be, and

(viii) may not reasonably be considered to be a payment made in respect of the acquisition by the payer or the public authority of an interest in the taxpayer or the taxpayer's business or property;

Proposed Amendment — 12(1)(x)(viii)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 200(2), will amend subpara. 12(1)(x)(viii) by substituting ", an interest in, or for civil law a right in, the taxpayer's business or an interest in, or for civil law a real right in, the taxpayer's property" for "or the taxpayer's business or property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

Related Provisions: 12(1)(t) — Investment tax credits; 12(1)(x.2) — Crown royalty refund — income inclusion; 12(2.1) — Receipt of inducement, reimbursement, etc.; 12(2.2) — Election to exclude amount from income; 13(7.4) — Deemed capital cost of certain property; 20(1)(hh) — Repayments of inducements, etc.; 37(1)(d.1) — Reduction of R&D pool for provincial super R&D allowance; 53(2)(k) — Reduction in ACB — assistance; 53(2.1) — Election; 80(1)"excluded obligation"(a)(i) — Debt forgiveness rules do not apply where amount included under 12(1)(x); 80.2 — Royalty reimbursements; 80.3(2) — Deferral of income from assistance to farmers for destroying livestock; 87(2)(j.6) — Amalgamations — continuing corporation; 125.4(5) — Canadian film/video credit deemed to be assistance; 125.5(5) — Film/video production services credit deemed to be assistance; 127(9) — Meaning of "non-government assistance" for ITC purposes; 127(18) — Reduction of qualified expenditures for ITC to reflect assistance; 248(16), (16.1), (18), (18.1) — GST and QST input tax credit, refund and rebate deemed to be government assistance.

History: Subpara. 12(1)(x)(i) amended by 1999, c. 22, subsec. 5(1), applicable to amounts received after February 23, 1998 other than amounts received before 1999 pursuant to an agreement in writing made before February 24, 1998. The subpara. formerly read:

(i) a person (in this paragraph referred to as the "payer") who pays the particular amount in the course of earning income from a business or property or in order to achieve a benefit or advantage for the payer or for persons with whom the payer does not deal at arm's length, or

The portion of para. 12(1)(x) before subpara. (vii) amended by 1998, c. 19, subsec. 71(3), applicable to amounts received after 1990 except that, for taxation years that began before 1996, subpara. 12(1)(x)(vi) shall be read without reference to "(11.5) or (11.6),". That portion formerly read:

(x) inducement, reimbursement, etc. — any amount (other than a prescribed amount) received by the taxpayer in the year, in the course of earning income from a business or property, from

(i) a person who pays the amount (in this paragraph referred to as "the payer") in the course of earning income from a business or property or in order to achieve a benefit or advantage for the payer or for persons with whom the payer does not deal at arm's length, or

(ii) a government, municipality or other public authority

where the amount can reasonably be considered to have been received

(iii) as an inducement, whether as a grant, subsidy, forgivable loan, deduction from tax, allowance or any other form of inducement, or

(iv) as a reimbursement, contribution or allowance or as assistance, whether as a grant, subsidy, forgivable loan, deduction from tax, allowance or any other form of assistance, in respect of the cost of property or in respect of an outlay or expense

to the extent that the amount

(v) was not otherwise included in computing the taxpayer's income, or deducted in computing, for the purposes of this Act, any balance of undeducted outlays, expenses or other amounts, for the year or a preceding taxation year,

(vi) except as provided by subsection 127(11.1), (11.5) or (11.6), does not reduce, for the purpose of an assessment made or that may be made under this Act, the cost or capital cost of the property or the amount of the outlay or expense, as the case may be,

Subsec. 4(4) of the *Western Grain Transition Payments Act* (1995, c. 17, Sch. II), as amended by 1998, c. 19, s. 303, provides, effective for payments made after June 22, 1995:

4. (4) *Tax treatment* — For the purposes of the *Income Tax Act*,

. . . . .

(b) a transition payment received in respect of farmland that was, immediately before its disposition by the applicant, capital property of the applicant shall, where the farmland is disposed of before the payment is received, be considered to be an amount required by subsection 53(2) of that Act to be deducted in computing the adjusted cost base of the farmland to the applicant immediately before the disposition;

(c) a transition payment to which neither paragraph (a) nor (b) applies, received by the applicant, shall be considered to be assistance received in the course of earning income from a business or property in respect of the cost of the property or in respect of an outlay or an expense; and

(d) where, pursuant to an equitable arrangement referred to in paragraph 6(c), a portion of a transition payment received by an applicant is paid to a person or partnership that is leasing farmland from the applicant, that portion paid to the person or partnership is required to be included in computing the income of the person or partnership from a business for the taxation year of the person or partnership in which it is received and the amount so paid is deemed not to be a transition payment received by the applicant for the purposes of paragraphs (a) to (c).

Subpara. 12(1)(x)(vi) amended by 1996, c. 21, s. 4, applicable to taxation years that begin after 1995. The subpara. formerly read:

(vi) except as provided by subsection 127(11.1), does not reduce, for the purposes of this Act, the cost or capital cost of the property or the amount of the outlay or expense, as the case may be,

Selected Cases [para. 12(1)(x)]: *Hudson Bay Mining & Smelting Co. v. R.*, [2003] 2 C.T.C. 2608 (TCC) (Specific provision re CEE applied over general language of para. 12(1)(x)); *Coughlan v. R.*, [2001] 4 C.T.C. 2004 (TCC) (Damages for loss of indemnity and insurance benefits not taxable); *Iron Ore Co. of Canada v. R.*, [2001] 3 C.T.C. 281 (FCA); aff'g [2000] 2 C.T.C. 2402 (TCC) (Extra "or" in enumeration interrupts possibility that all words to be within same category); *Bois Aisé de Roberval Inc. v. R.*, [1999] 4 C.T.C. 2161 (TCC) (Refunds taxable in year of receipt, regardless of year improper expense incurred); *Supermarché Ste-Croix Inc. v. Canada*, [1996] 1 C.T.C. 2506 (TCC) (Purchase quotas and first refusal not "interest" in a business; exception inapplicable. Compare *Supermarché Dubuc & Frère Inc.*); *CCLC Technologies Inc. v. Canada*, [1996] 1 C.T.C. 7 (FCTD) (Payments in ordinary course of business are not government "assistance"); *RSI Research Ltd. v. Canada*, [1993] 2 C.T.C. 2378 (TCC) (Amount received in consideration of grant of right to portion of taxpayer's revenues not "non-governmental assistance"); *Canada v. Westcoast Energy Inc.*, [1992] 1 C.T.C. 261 (FCA) (Damage settlement in negligence action not a "reimbursement" within meaning of provision); *Woodward Stores Ltd. v. Canada*, [1991] 1 C.T.C. 233 (FCTD) ("Fixturing allowance" (inducement) was capital receipt).

Regulations: 234–236 (information slips for farm support payments); 7300 (prescribed amount).

Interpretation Bulletins: IT-151R5: Scientific research and experimental development expenditures; IT-232R3: Losses — their deductibility in the loss year or in other years; IT-273R2: Government assistance — general comments.

I.T. Technical News: 5 (western grain transition payments); 7 (lease inducement payments — renewal term); 16 (*Canderel*, *Toronto College Park* and *Ikea* cases); 29 (application of paragraph 12(1)(x)).

(x.1) **fuel tax rebates** — the total of all amounts each of which is

(i) a fuel tax rebate received in the year by the taxpayer under subsection 68.4(3) [of] the *Excise Tax Act*, or

(ii) the amount determined by the formula

$$10 (A - B) - C$$

where

A is the total of all fuel tax rebates under subsections 68.4(2) and (3.1) of that Act received in the year by the taxpayer,

B is the total of all amounts, in respect of fuel tax rebates under section 68.4 of that Act received in the year by the taxpayer, repaid by the taxpayer under subsection 68.4(7) of that Act, and

C is the total of all amounts, in respect of fuel tax rebates under section 68.4 of that Act received in the year, deducted under subsection 111(10) in computing the taxpayer's non-capital losses for other taxation years;

Related Provisions: 87(2)(uu) — Fuel tax rebates; 88(1)(e.2) — Winding-up; 111(10) — Fuel tax rebate — loss abatement; 111(11) — Fuel tax rebate — partnerships; 161(7)(a)(viii) — Effect of carry-back of loss, etc.; 164(5)(a) — Effect of carry-back of loss, etc.; 164(5.1)(a) — Effect of carry-back of loss, etc.; 257 — Formula cannot calculate to less than zero.

History: Subpara. 12(1)(x.1)(ii) amended by 1997, c. 26, s. 82, applicable to 1997 *et seq.* Subpara. (xi.1)(ii) formerly read:

(ii) the amount, if any, by which

(A) 10 times the amount, if any, by which

(I) the total of all fuel tax rebates under subsection 68.4(2) of that Act received in the year by the taxpayer

exceeds

(II) the total of all amounts, in respect of fuel tax rebates under subsection 68.4(2) of that Act received in the year by the taxpayer, repaid by the taxpayer under subsection 68.4(7) of that Act

exceeds

(B) the total of all amounts, in respect of fuel tax rebates under subsection 68.4(2) of that Act received in the year, deducted under subsection 111(10) in computing the taxpayer's non-capital loss for a year;

Para. 12(1)(x.1) added by 1994, c. 7, Sch. VI (1992, c. 29), s. 2, applicable to 1992 *et seq.*

(x.2) **Crown charge [royalty] rebates** — [Phased in until 2012 — see below] the total of all amounts each of which is an amount that

(i) was received by the taxpayer, including by way of a deduction from tax, in the year as a refund, reimbursement, contribution or allowance, in respect of an amount that was at any time receivable, directly or indirectly in any manner whatever, by Her Majesty in right of Canada or of a province in respect of

(A) the acquisition, development or ownership of a Canadian resource property, or

(B) the production in Canada from a mineral resource, a natural accumulation of petroleum or natural gas, or an oil or a gas well, and

(ii) was not otherwise included in computing the taxpayer's income for the year or a preceding taxation year;

Related Provisions: 12(1)(x)(iii), (iv) — Alternative income inclusion.

History: Para. 12(1)(x.2) added by 2003, c. 28, subsec. 1(3), applicable to taxation years that end after 2002, except that for each taxation year that begins before 2012 para. 12(1)(x.2) applies to the amount determined in respect of that taxation year by the formula

$$[A - (B \times C \times D)] \times E$$

where

A is the amount to which that paragraph would apply but for this subsection;

B is the total of all amounts each of which was received by the taxpayer in the taxation year under Division 1 of Part 6 or Part 11 of the *Alberta Corporate Tax Act*, R.S.A. 2000, c. A-15;

C is

(a) in the case of an individual, 1,

(b) in the case of a taxable Canadian corporation, the greater of 0 and the fraction determined by the formula

$$1 - (F/\$3 \text{ million})$$

where

F is the amount by which the Alberta crown royalty, within the meaning assigned by Division 1 of Part 6 of the *Alberta Corporate Tax Act*, of the corporation for the taxation year exceeds $2 million, and

(c) in any other case, 0;

D is the percentage that is the total of

(a) that proportion of 50% that the number of days in the taxation year that are before 2008 is of the number of days in the taxation year,

(b) that proportion of 40% that the number of days in the taxation year that are in 2008 is of the number of days in the taxation year,

(c) that proportion of 30% that the number of days in the taxation year that are in 2009 is of the number of days in the taxation year,

(d) that proportion of 20% that the number of days in the taxation year that are in 2010 is of the number of days in the taxation year, and

(e) that proportion of 10% that the number of days in the taxation year that are in 2011 is of the number of days in the taxation year; and

E is

(a) for the purpose of applying any provision of Part XII of the *Income Tax Regulations*, nil, and

(b) for any other purpose, the percentage that is the total of

(i) that proportion of 10% that the number of days in the taxation year that are in 2003 is of the number of days in the taxation year,

(ii) that proportion of 25% that the number of days in the taxation year that are in 2004 is of the number of days in the taxation year,

(iii) that proportion of 35% that the number of days in the taxation year that are in 2005 is of the number of days in the taxation year,

(iv) that proportion of 65% that the number of days in the taxation year that are in 2006 is of the number of days in the taxation year, and

(v) that proportion of 100% that the number of days in the taxation year that are after 2006 is of the number of days in the taxation year.

(y) **automobile provided to partner** — where the taxpayer is an individual who is a member of a partnership or an employee of a member of a partnership and the partnership makes an automobile available in the year to the taxpayer or to a person related to the taxpayer, the amounts that would be included by reason of paragraph 6(1)(e) in the income of the taxpayer for the year if the taxpayer were employed by the partnership;

History: Para. 12(1)(y) amended by 1997, c. 10, s. 268, applicable to 1996 *et seq.* Para. (y) formerly read:

(y) where the taxpayer is an individual who is a member of a partnership or an employee of a member of the partnership and the partnership makes an automobile available in the year to the taxpayer or to a person related to the taxpayer, the amounts that would be included, by reason of paragraph 6(1)(e) or by reason of paragraph 6(1)(e.1) if that paragraph were read without reference to paragraph 6(1)(a), in the income of the taxpayer for the year if the taxpayer were employed by the partnership;

Interpretation Bulletins: IT-63R5: Benefits, including standby charge for an automobile, from the personal use of a motor vehicle supplied by an employer — after 1992.

(z) **amateur athlete trust payments** — any amount in respect of an amateur athlete trust required by section 143.1 to be included in computing the taxpayer's income for the year;

Related Provisions: 143.1(2) — Amounts included in beneficiary's income.

History: Para. 12(1)(z) added by 1994, c. 7, Sch VIII (1993, c. 24), subsec. 3(2), applicable to 1988 *et seq.*

Forms: T1061: Canadian amateur athletic trust group information return.

(z.1) **qualifying environmental trusts** — the total of all amounts received by the taxpayer in the year as a beneficiary under a qualifying environmental trust, whether or not the amounts are included because of subsection 107.3(1) in computing the taxpayer's income for any taxation year;

Related Provisions: 20(1)(ss) — Deduction for contribution to qualifying environmental trust; 87(2)(j.93) — Amalgamations — continuing corporation; 107.3(2) — Where property of qualifying environmental trust transferred to beneficiary; 107.3(3) — Income where trust ceases to be qualifying environmental trust; 107.3(4) — No income inclusion under 104(13) for amounts payable by trust.

History: Para. 12(1)(z.1) amended by 1998, c. 19, s. 2, applicable to taxation years that end after February 18, 1997. The para. formerly read:

(z.1) mining reclamation trusts — the total of all amounts received by the taxpayer in the year as a beneficiary under a mining reclamation trust, whether or not such amounts are included because of subsection 107.3(1) in computing the taxpayer's income for any taxation year;

Para. 12(1)(z.1) added by 1995, c. 3, s. 2, applicable to taxation years that end after February 22, 1994.

(z.2) **dispositions of interests in qualifying environmental trusts** — the total of all amounts each of which is the consideration received by the taxpayer in the year for the disposition to another person or partnership of all or part of the taxpayer's interest as a beneficiary under a qualifying environmental trust, other than consideration that is the assumption of a reclamation obligation in respect of the trust;

Related Provisions: 20(1)(tt) — Deduction for acquisition of interest in qualifying environmental trust; 39(1)(a)(v) — No capital gain on disposition of interest; 50(1) — Conditions for business investment loss where shares or debt still owned; 87(2)(j.93) — Amalgamations — continuing corporation; 107.3(1)(b) — Where beneficiary not resident in Canada.

History: Para. 12(1)(z.2) amended by 1998, c. 19, s. 2, applicable to taxation years that end after February 18, 1997. The para. formerly read:

(z.2) dispositions of interests in mining reclamation trusts — the total of all amounts each of which is the consideration received by the taxpayer in the year for the disposition to another person or partnership of all or part of the taxpayer's interest as a beneficiary under a mining reclamation trust, other than consideration that is the assumption of a mining reclamation obligation in respect of the trust;

Para. 12(1)(z.2) added by 1995, c. 3, s. 2, applicable to taxation years that end after February 22, 1994.

(z.3) **debt forgiveness** — any amount required because of subsection 80(13) or (17) to be included in computing the taxpayer's income for the year;

History: Para. 12(1)(z.3) added by 1995, c. 21, s. 76, applicable to taxation years that end after February 21, 1994.

(z.4) **eligible funeral arrangements** — any amount required because of subsection 148.1(3) to be included in computing the taxpayer's income for the year;

History: Para. 12(1)(z.4) added by 1995, c. 21, s. 76, applicable to 1993 *et seq.*

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

(z.5) **resource loss** — 25% of the taxpayer's prescribed resource loss for the year; and

Repeal [effective 2007] — 12(1)(z.5)

Application: S.C. 2003, c. 28 (Bill C-48, Royal Assent November 7, 2003), subsec. 1(4), repeals para. 12(1)(z.5), applicable to taxation years that begin after 2006. For each taxation year that ends after 2002 and begins before 2007, the reference to "25%" in para. 12(1)(z.5) is to be read as a reference to the percentage that is the total of

(a) that proportion of 25% that the number of days in the taxation year that are before 2003 is of the number of days in the taxation year,

(b) that proportion of 22.5% that the number of days in the taxation year that are in 2003 is of the number of days in the taxation year,

(c) that proportion of 18.75% that the number of days in the taxation year that are in 2004 is of the number of days in the taxation year,

(d) that proportion of 16.25% that the number of days in the taxation year that are in 2005 is of the number of days in the taxation year, and

(e) that proportion of 8.75% that the number of days in the taxation year that are in 2006 is of the number of days in the taxation year.

Related Provisions: 20(1)(v.1) — Deduction for resource allowance; 53(1)(e)(i)(B), 53(2)(c)(i)(B) — Para. 12(1)(z.5) ignored for partnership ACB adjustment; 96(1)(d) — Para. 12(1)(z.5) ignored for allocating income at partnership level to partners; Reg. 1204(3)(b) — Amounts under 12(1)(z.5) excluded from resource allowance.

History: Para. 12(1)(z.5) repealed by 2003, c. 28, subsec. 1(4), applicable to taxation years that begin after 2006. For each taxation year that ends after 2002 and begins before 2007, the reference to "25%" in para. 12(1)(z.5) is to be read as a reference to the percentage that is the total of

(a) that proportion of 25% that the number of days in the taxation year that are before 2003 is of the number of days in the taxation year,

(b) that proportion of 22.5% that the number of days in the taxation year that are in 2003 is of the number of days in the taxation year,

(c) that proportion of 18.75% that the number of days in the taxation year that are in 2004 is of the number of days in the taxation year,

(d) that proportion of 16.25% that the number of days in the taxation year that are in 2005 is of the number of days in the taxation year, and

(e) that proportion of 8.75% that the number of days in the taxation year that are in 2006 is of the number of days in the taxation year.

Para. 12(1)(z.5) formerly read:

(z.5) resource loss — 25% of the taxpayer's prescribed resource loss for the year; and

Para. 12(1)(z.5) added by 1997, c. 25, subsec. 2(3), applicable to taxation years that begin after 1996.

Regulations: 1210.1 (prescribed resource loss).

(z.6) **refunds [of countervailing or anti-dumping duties]** — any amount received by the taxpayer in the year in respect of a refund of an amount that was deducted under paragraph 20(1)(vv) in computing income for any taxation year.

Related Provisions: 13(21)"undepreciated capital cost"K — Deduction of refund from u.c.c. of depreciable property.

History: Para. 12(1)(z.6) added by 1999, c. 22, subsec. 5(2), applicable to amounts received after February 23, 1998.

(2) Interpretation — Paragraphs (1)(a) and (b) are enacted for greater certainty and shall not be construed as implying that any amount not referred to in those paragraphs is not to be included in computing income from a business for a taxation year whether it is received or receivable in the year or not.

Selected Cases [subsec. 12(2)]: *Maritime Telegraph and Telephone Co. v. Canada*, [1991] 1 C.T.C. 28 (FCTD); aff'd [1992] 1 C.T.C. 264 (FCA) (The principle that amounts not referred to in para. 12(1)(b) may still be included in computing income precludes taxpayer from changing method of reporting income for tax purposes).

Proposed Addition — 12(2.01)

(2.01) No deferral of s. 9 income under para. (1)(g) — Paragraph (1)(g) does not defer the inclusion in income of any amount that would, if this section were read without reference to that paragraph, be included in computing the taxpayer's income in accordance with section 9.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 51(3), will add subsec. 12(2.01), in force on Royal Assent.

Technical Notes: New subsection 12(2.01) provides that paragraph 12(1)(g) does not defer the inclusion in a taxpayer's income of an amount that would otherwise be so included at an earlier time in accordance with section 9. Accordingly, where an amount based on production or use would be included in computing a taxpayer's income from a business or property (if section 12 were read without reference to paragraph 12(1)(g)) at a time when the amount is accrued but not yet received, subsection 12(2.01) clarifies that paragraph 12(1)(g) does not apply to defer the inclusion of the amount in income until the time of receipt.

(2.1) Receipt of inducement, reimbursement, etc. — For the purposes of paragraph (1)(x), where at a particular time a taxpayer who is a beneficiary of a trust or a member of a partnership has received an amount as an inducement, whether as a grant, subsidy, forgivable loan, deduction from tax, allowance or any other form of inducement, in respect of the activities of the trust or partnership, or as a reimbursement, contribution, allowance or as assistance, whether as a grant, subsidy, forgivable loan, deduction from tax, allowance or any other form of assistance, in respect of the cost of property or in respect of an expense of the trust or partnership, the amount shall be deemed to have been received at that time by the trust or partnership, as the case may be, as such an inducement, reimbursement, contribution, allowance or assistance.

Interpretation Bulletins: IT-273R2: Government assistance — general comments.

(2.2) Deemed outlay or expense — Where

(a) in a taxation year a taxpayer receives an amount that would, but for this subsection, be included under paragraph (1)(x) in computing the taxpayer's income for the year in respect of an outlay or expense (other than an outlay or expense in respect of the cost of property of the taxpayer) made or incurred by the taxpayer before the end of the following taxation year, and

(b) the taxpayer elects under this subsection on or before the day on or before which the taxpayer's return of income under this Part for the year is required to be filed, or would be required to be filed if tax under this Part were payable by the taxpayer for the year or, where the outlay or expense is made or incurred in the following taxation year, for that following year,

the amount of the outlay or expense shall be deemed for the purpose of computing the taxpayer's income, other

than for the purposes of this subsection and paragraphs (1)(x) and 20(1)(hh), to have always been the amount, if any, by which

(c) the amount of the outlay or expense

exceeds

(d) the lesser of the amount elected by the taxpayer under this subsection and the amount so received by the taxpayer,

and, notwithstanding subsections 152(4) to (5), such assessment or reassessment of the taxpayer's tax, interest and penalties under this Act for any taxation year shall be made as is necessary to give effect to the election.

Related Provisions: 20(1)(hh) — Repayments of inducements, etc.; 80.2 — Royalty reimbursements; 87(2)(j.6) — Amalgamations — Continuing corporation.

History: Subsec. 12(2.2) substituted by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 3(3), applicable with respect to amounts received after January 1990. Subsec. 12(2.2) formerly read:

(2.2) Where a taxpayer has in a taxation year received an amount that would, but for this subsection, be included in computing the taxpayer's income for the year by reason of paragraph (1)(x) in respect of an outlay or expense made or incurred by the taxpayer in the year, in any of the 3 taxation years immediately preceding the year or in the taxation year immediately following the year (other than an outlay or expense in respect of the cost of property of the taxpayer) and the taxpayer elects under this subsection on or before the day on or before which the taxpayer's return of income under this Part is required to be filed, or would be required to be filed if the taxpayer had tax payable, for the year, or, where the outlay or expense is made or incurred in the taxation year immediately following the year, for that following year, the amount of the outlay or expense shall be deemed, for the purposes of computing the income of the taxpayer, other than for the purposes of this subsection and subparagraphs (1)(x)(iv) and 20(1)(hh)(ii), to have always been the amount, if any, by which

(a) the amount of the outlay or expense

exceeds

(b) the lesser of the amount elected by the taxpayer under this subsection and the amount so received by the taxpayer,

and, notwithstanding subsections 152(4) and (5), such assessment or reassessment of the taxpayer's tax, interest and penalties under this Act for any taxation year shall be made as is necessary to give effect to the election.

Interpretation Bulletins: IT-273R2: Government assistance — general comments.

(3) Interest income [accrual to year-end] — Subject to subsection (4.1), in computing the income for a taxation year of a corporation, partnership, unit trust or any trust of which a corporation or a partnership is a beneficiary, there shall be included any interest on a debt obligation (other than interest in respect of an income bond, an income debenture, a small business bond, a small business development bond, a net income stabilization account or an indexed debt obligation) that accrues to it to the end of the year, or becomes receivable or is received by it before the end of the year, to the extent that the interest was not included in computing its income for a preceding taxation year.

Related Provisions: 12(4) — Annual accrual for individuals and trusts; 12(4.1) — Impaired debt obligations; 12(9) — Deemed accrual; 12.2(8) — Deemed acquisition of interest in annuity; 16(1) — Blended payments; 20(1)(l) — Reserve for doubtful debts; 20(14.1) — Interest on debt obligation; 20(19) — Annuity contract; 87(2)(j.4) — Amalgamations — continuing corporation; 138(11.5)(k) — Transfer of business by non-resident insurer; 138(12)"gross investment revenue"E(b) — Inclusion in gross investment revenue of insurer; 142.3(1)(c) — No income accrual from specified debt obligation; 142.4(1)"tax basis"(b) — Disposition of specified debt obligation by financial institution; 142.5(3)(a) — Mark-to-market debt obligation; 148(9)"adjusted cost basis"D — Inclusion in "adjusted cost basis".

History: Subsec. 12(3) amended by 1998, c. 19, subsec. 71(4), applicable

(a) to taxation years that end after September 1997; and

(b) to a taxpayer's taxation years that end after 1995 and before October 1997 where the taxpayer files an election in accordance with para. 81(11)(b).

The subsec. formerly read:

(3) Notwithstanding paragraph (1)(c), in computing the income for a taxation year of a corporation, partnership, unit trust or any trust of which a corporation or a partnership is a beneficiary, there shall be included any interest on a debt obligation (other than interest in respect of an income bond, an income debenture, a small business development bond, a small business bond, a net income stabilization account or an indexed debt obligation) that accrues to it to the end of the year, or becomes receivable or is received by it before the end of the year, to the extent that the interest was not included in computing its income for a preceding taxation year.

Subsec. 12(3) substituted by 1994, c. 21, subsec. 6(2), applicable to debt obligations issued after October 16, 1991. That subsec. formerly read:

(3) Interest income — Notwithstanding paragraph (1)(c), in computing the income for a taxation year of a corporation, partnership, unit trust or any trust of which a corporation or a partnership is a beneficiary, there shall be included any interest on a debt obligation (other than interest in respect of an income bond, an income debenture, a small business development bond, a small business bond or a net income stabilization account) that accrues to it to the end of the year, or becomes receivable or is received by it before the end of the year, to the extent that the interest was not included in computing its income for a preceding taxation year.

Subsec. 12(3) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 3(4), to substitute "a small business bond or a net income stabilization account" for "or a small business bond", applicable to 1991 *et seq.*

Regulations: 303 (amount deductible under subsec. 20(19)).

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies; IT-142R3: Settlement of debts on the winding-up of a corporation; IT-265R3: Payments of income and capital combined (archived); IT-396R: Interest income.

(4) Interest from investment contract [annual accrual] — Subject to subsection (4.1), where in a taxation year a taxpayer (other than a taxpayer to whom subsection (3) applies) holds an interest in an investment contract on any anniversary day of the contract, there shall be included in computing the taxpayer's income for the year the interest that accrued to the taxpayer to the end of that day with respect to the investment contract, to the extent that the interest was not otherwise included in computing the taxpayer's income for the year or any preceding taxation year.

Proposed Amendment — 12(4)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 200(3), will amend subsec. 12(4) by substituting "an interest in, or for civil law a right in," for "an interest in", to come into force on Royal Assent.

Technical Notes: As part of the harmonization of federal legislation, the Government has undertaken to review all its legislation where provincial private law concepts are found in order to reflect appropriately the common law and the civil law, in both official languages.

As part of this harmonization initiative, federal tax legislation is being reviewed. Several changes to the legislation have already been implemented, namely by way of the *Income Tax Amendments Act, 2000*, S.C. 2001, c. 17. The proposed amendments continue this harmonization initiative.

This Part proposes amendments to the *Income Tax Act* concerning the concepts of "joint and several liability" / "solidary liability", "tangible property" / "corporeal property", "intangible property" / "incorporeal property", "personal property" / "movable property", "real property" / "immovable property", "interest" / "right" which are further described below. The proposed amendments are not intended to change the current application of the amended provisions; they purport to reflect the concepts and terminology of the common law and the civil law in both official languages. They will come into force on Royal Assent to this Bill.

Joint and Several Liability and Solidary Liability

The French version of the current tax legislation uses the term "*solidairement*", which is appropriate for both civil law and common law. Therefore, the French version does not need to be amended.

In the English version of the current tax legislation, only the term "jointly and severally" is used. This term is maintained for common law purposes. The term "jointly and severally" is no longer adequate in civil law in English and has been replaced with the term "solidarily". Therefore, it is appropriate to add the term "solidarily" in the English version in order to reflect the civil law.

Tangible and Corporeal Property

In the French version of the current tax legislation, only the civil law terminology "*bien corporel*" is used. In the English version, only the common law term "tangible property" is used.

In the French version of the legislation, it is appropriate to add the term "*bien tangible*" in order to reflect the common law.

In the English version of the legislation, it is appropriate to add the term "corporeal property" in order to reflect the civil law.

Intangible and Incorporeal Property

In the French version of the current tax legislation, only the civil law terminology "*bien incorporel*" is used. In the English version, only the common law term "intangible property" is used.

In the French version of the legislation, it is appropriate to add the term "*bien intangible*" in order to reflect the common law. Where it is appropriate to do so, the shared elements of the relevant terms are combined in the phrase "*bien incorporel ou intangible*", which refers to both systems of law.

In the English version of the legislation, it is appropriate to add the term "incorporeal property" in order to reflect the civil law. Where it is appropriate to do so, the shared elements of the relevant terms are combined in the phrase "intangible or incorporeal property", which refers to both systems of law.

Personal Property and Movable Property

In the French version of the current tax legislation, only the civil law terminology "*bien meuble*" is used. In the English version, the terms "personal property" and "chattels" are used to reflect the common law.

It is therefore appropriate to add in the French version a reference to the term "*bien personnel*" in order to reflect the common law. Where it is appropriate to do so, the shared elements of the relevant terms are combined in the phrase "*bien meuble ou personnel*", which refers to both systems of law.

In the English version of the legislation, the term "movable" is added in order to reflect the civil law. Where it is appropriate to do so, the shared elements are combined in the phrase "personal or movable property", which refers to both systems of law.

Real Property and Immovable Property

In the French version of the current tax legislation, only the civil law terminology "*bien immeuble*" is used. In the English version, only the common law concept of "real property" is used.

It is therefore appropriate to add a reference, in the French version, to the term "*bien réel*" in order to reflect the common law. Where it is appropriate to do so, the shared elements of the relevant terms are combined in the phrase "*bien immeuble ou réel*", which refers to both systems of law.

In the English version of the legislation, the term "immovable" is added in order to reflect the civil law. Where it is appropriate to do so, the shared elements of the relevant terms are combined in the phrase "real or immovable property", which refers to both systems of law.

Interest and Right

Generally, in the current tax legislation, the common law term "interest" and the civil law term "*droit*" are used to refer to the relationship that exists between a person and property. At common law, it is possible to have a right or an interest in property; an interest in property necessarily involves rights in property while the reverse is not always true.

For purposes of the civil law, it is appropriate to limit the application of the term "*droit*" in the French version to the civil law, unless otherwise provided. In the English version, it is appropriate to add a reference to the concept of "right" in order to address the civil law audience and to similarly limit the application of this term to the civil law, unless otherwise provided.

The term "interest" is a common law concept that is translated into French by the term "*intérêt*". It is therefore appropriate to add a reference to the concept of "*intérêt*" in the French version in order to address the common law audience.

Related Provisions: 12(4.1) — Impaired debt obligations; 12(9) — Deemed accrual; 12(11) — Investment contract; 20(14.1) — Interest on debt obligation.

History: Subsec. 12(4) amended by 1998, c. 19, subsec. 71(4), applicable

(a) to taxation years that end after September 1997; and

(b) to a taxpayer's taxation years that end after 1995 and before October 1997 where the taxpayer files an election in accordance with para. 81(11)(b).

The subsec. formerly read:

(4) Idem [annual accrual] — Where in a taxation year a taxpayer (other than a taxpayer to whom subsection (3) applies) holds an interest in an investment contract on any anniversary day of the contract, there shall be included in computing the taxpayer's income for the year the interest that accrued to the taxpayer to the end of that day with respect to the investment contract, to the extent that the interest was not otherwise included in computing the taxpayer's income for the taxation year or any preceding taxation year.

Regulations: 201(4) (information return).

Interpretation Bulletins: IT-265R3: Payments of income and capital combined (archived); IT-415R2: Deregistration of RRSPs (archived).

Advance Tax Rulings: ATR-61: Interest accrual rules.

(4.1) Impaired debt obligations — Paragraph (1)(c) and subsections (3) and (4) do not apply to a taxpayer in respect of a debt obligation for the part of a taxation year throughout which the obligation is impaired where an amount in respect of the obligation is deductible because of subparagraph 20(1)(l)(ii) in computing the taxpayer's income for the year.

History: Subsec. 12(4.1) added by 1998, c. 19, subsec. 71(4), applicable

(a) to taxation years that end after September 1997; and

(b) to a taxpayer's taxation years that end after 1995 and before October 1997 where the taxpayer files an election in accordance with para. 81(11)(b).

(5)–(8) [Repealed under former Act]

(9) Deemed accrual — For the purposes of subsections (3), (4) and (11) and 20(14) and (21), where a taxpayer acquires an interest in a prescribed debt obligation, an amount determined in prescribed manner shall be deemed to accrue to the taxpayer as interest on the obligation in each taxation year during which the taxpayer holds the interest in the obligation.

Proposed Amendment — 12(9)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 200(4), will amend subsec. 12(9) by substituting "an interest in, or for civil law a right in," for "an interest in", and "interest or the right" for "interest", to come into force on Royal Assent.

Technical Notes: See under 12(4).

Related Provisions: 16(3) — Obligation issued at discount; 18.1(14) — Right to receive production deemed to be debt obligation; 87(2)(j.4) — Amalgamations — accrual rules; 142.3(1)(c) — No income accrual from specified debt obligation.

History: Subsec. 12(9) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 7(2), to add reference to subsection (11) and to substitute "acquires" for "has at any time acquired", applicable with respect to investment contracts last acquired after 1989.

Regulations: 7000 (prescribed debt obligation, prescribed manner).

Interpretation Bulletins: IT-396R: Interest income; IT-410R: Debt obligations — accrued interest on transfer (archived).

Advance Tax Rulings: ATR-61: Interest accrual rules.

(9.1) Exclusion of proceeds of disposition — Where a taxpayer disposes of an interest in a debt obligation that is a debt obligation in respect of which the proportion of the payments of principal to which the taxpayer is entitled is not equal to the proportion of the payments of interest to which the taxpayer is entitled, such portion of the proceeds of disposition received by the taxpayer as

can reasonably be considered to represent a recovery of the cost to the taxpayer of the interest in the debt obligation shall, notwithstanding any other provision of this Act, not be included in computing the income of the taxpayer, and for the purpose of this subsection, a debt obligation includes, for greater certainty, all of the issuer's obligations to pay principal and interest under that obligation.

Proposed Amendment — 12(9.1)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 200(4), will amend subsec. 12(9.1) by substituting "an interest in, or for civil law a right in," for "an interest in", and "interest or the right" for "interest", to come into force on Royal Assent.

Technical Notes: See under 12(4).

History: Subsec. 12(9.1) substituted by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 3(5), applicable with respect to dispositions of debt obligations occurring after October 16, 1991. Subsec. 12(9.1) formerly read:

> (9.1) Exception — Where a taxpayer disposes of an interest in a debt obligation that, by virtue of paragraph 7000(1)(b) of the *Income Tax Regulations*, is a prescribed debt obligation for the purposes of subsection (9), such portion of the proceeds of the disposition received by the taxpayer as may reasonably be considered to represent a recovery of the cost to the taxpayer of the debt obligation shall, notwithstanding any other provision of this Act, not be included in computing the taxpayer's income under this Part.

Interpretation Bulletins: IT-396R: Interest income.

(10) [Repealed under former Act]

(10.1) Income from RHOSP — Notwithstanding any other provision of this Act, where an individual was at the end of 1985 a beneficiary under a registered home ownership savings plan (within the meanings assigned by paragraphs 146.2(1)(a) and (h) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as they read in their application to the 1985 taxation year), that portion of the income that can reasonably be considered to have accrued under the plan before 1986 (other than the portion thereof that can reasonably be considered to be attributable to amounts contributed after May 22, 1985 to or under the plan) shall not be included in computing the income of the individual or of any other person.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-396R: Interest income.

(10.2) NISA receipts — There shall be included in computing a taxpayer's income for a taxation year from a property the total of all amounts each of which is the amount determined by the formula

A – B

where

A is an amount paid at a particular time in the year out of the taxpayer's NISA Fund No. 2; and

B is the amount, if any, by which

> (a) the total of all amounts each of which is deemed by subsection 104(5.1) or (14.1) to have been paid out of the taxpayer's NISA Fund No. 2 before the particular time, or is deemed by subsection 70(5.4) or 73(5) to have been paid out of another person's NISA Fund No. 2 on being transferred to the taxpayer's NISA Fund No. 2 before the particular time,

exceeds

> (b) the total of all amounts each of which is the amount by which an amount otherwise determined under this subsection in respect of a payment out of the taxpayer's NISA Fund No. 2 before the particular time was reduced because of this description.

Related Provisions: 104(6)(b)(ii.1), (iii) — Limitation on deduction by trust for amount payable to beneficiaries; 104(14.1) — NISA election; 108(1) — "accumulating income"; 125(7)"income of the corporation for the year from an active business"(b) — "Income of the corporation for the year from an active business"; 129(4)"aggregate investment income"(b)(ii) — Exclusion from calculation of refundable dividend tax on hand; 212(1)(t) — NISA Fund No. 2 payments to non-residents; 214(3)(l) — Non-resident withholding tax; 248(9.1) — Whether trust created by taxpayer's will.

History: Subsec. 12(10.2) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 3(6), applicable to 1991 *et seq.*

Regulations: 201(1)(e) (information return).

Interpretation Bulletins: IT-212R3: Income of deceased persons — rights or things; IT-243R4: Dividend refund to private corporations; IT-305R4: Testamentary spouse trusts.

(10.3) Amount credited or added not included in income — Notwithstanding any other provision of this Act, an amount credited or added to a taxpayer's NISA Fund No. 2 shall not be included in computing the taxpayer's income solely because of that crediting or adding.

History: Subsec. 12(10.3) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 3(6), applicable to 1991 *et seq.*

Forms: T1163: Statement A — CAIS program information and statement of farming activities for individuals; T1164: Statement B — CAIS program information and statement of farming activities for additional farming operations; T1165: Statement of farming activities for Ontario self directed risk management (SDRM); T1175: Calculation of CCA and business-use-of-home expenses.

(11) Definitions — In this section,

"anniversary day" of an investment contract means

> (a) the day that is one year after the day immediately preceding the date of issue of the contract,
>
> (b) the day that occurs at every successive one year interval from the day determined under paragraph (a), and
>
> (c) the day on which the contract was disposed of;

"investment contract", in relation to a taxpayer, means any debt obligation other than

> (a) a salary deferral arrangement or a plan or arrangement that, but for any of paragraphs (a), (b) and (d) to (l) of the definition "salary deferral arrangement" in subsection 248(1), would be a salary deferral arrangement,
>
> (b) a retirement compensation arrangement or a plan or arrangement that, but for any of paragraphs (a), (b), (d) and (f) to (n) of the definition "retirement compensation arrangement" in subsection 248(1), would be a retirement compensation arrangement,
>
> (c) an employee benefit plan or a plan or arrangement that, but for any of paragraphs (a) to (e) of the definition "employee benefit plan" in subsection 248(1), would be an employee benefit plan,
>
> (d) a foreign retirement arrangement,
>
> (e) an income bond,
>
> (f) an income debenture,
>
> (g) a small business development bond,
>
> (h) a small business bond,
>
> (i) an obligation in respect of which the taxpayer has (otherwise than because of subsection (4)) at periodic intervals of not more than one year, included, in computing the taxpayer's income throughout the period in

which the taxpayer held an interest in the obligation, the income accrued thereon for such intervals,

Proposed Amendment — 12(11)"investment contract"(i)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 200(5), will amend para. (i) of the definition "investment contract" in subsec. 12(11) by substituting "an interest in, or for civil law a right in," for "an interest in", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(j) an obligation in respect of a net income stabilization account,

(k) an indexed debt obligation, and

(l) a prescribed contract.

Related Provisions: 12(9) — Deemed accrual.

History: Para. (k) of the definition "investment contract" in subsec. 12(11) redesignated as (l), and para. (k) added, by 1994, c. 21, subsec. 6(3), applicable to debt obligations issued after October 16, 1991.

Para. (j) of "investment contract" in subsec. 12(11) added (and former para. (j) redesignated as (k)) by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 3(7), applicable to 1991 *et seq.*

"Investment contract" in subsec. 12(11) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 7(3), applicable to 1985 *et seq.* except that

(a) in its application to the 1985 taxation year, the definition shall be read without reference to paras. (a) and (b);

(b) in its application to the 1985 to 1989 taxation years, the definition shall be read without reference to para. (d); and

(c) in applying para. (i) in respect of debt obligations acquired before 1990, the reference in that para. to "not more than one year" shall be read as a reference to "not more than 3 years".

The definition formerly read:

"investment contract", in relation to a taxpayer, means any debt obligation (other than a salary deferral arrangement, an income bond, an income debenture, a small business development bond, a small business bond, an obligation in respect of which the taxpayer has, at periodic intervals of not more than one year, included, in computing the taxpayer's income throughout the period in which the taxpayer held an interest in the obligation, the income accrued thereon for such intervals, or a prescribed contract).

Regulations: 7000(6) (prescribed contract).

Interpretation Bulletins [subsec. 12(11)]: IT-396R: Interest income; IT-415R2: Deregistration of RRSPs (archived).

Definitions [s. 12]: "allowable capital loss" — 38(b), 248(1); "amateur athlete trust" — 143.1(1)(a), 248(1); "amount" — 248(1); "anniversary day" — 12(11); "arm's length" — 251(1); "assessment" — 248(1); "assistance" — 79(4), 125.4(5), 248(16), (16.1), (18), (18.1); "automobile", "bankrupt", "business" — 248(1); "Canada" — 255; "Canadian resource property" — 66(15), 248(1); "controlled" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "credit union" — 137(6), 248(1); "deferred amount", "dividend", "employee", "employee benefit plan", "employee trust" — 248(1); "employees profit sharing plan" — 144(1), 248(1); "employer" — 248(1); "foreign affiliate" — 95(1), 248(1); "foreign oil and gas business" — 126(7); "foreign retirement arrangement" — 248(1); "Her Majesty" — *Interpretation Act* 35(1); "income from property" — 9(1), 9(3); "income bond", "income debenture", "indexed debt obligation", "individual", "insurance corporation", "insurer" — 248(1); "investment contract" — 12(11); "investment corporation" — 130(3), 248(1); "lending asset", "life insurance corporation" — 248(1); "life insurance policy" — 138(12), 248(1); "mineral resource", "mineral" — 248(1); "mortgage investment corporation" — 130.1(6), 248(1); "mutual fund corporation" — 131(8), 248(1); "net income stabilization account", "NISA Fund No. 2" — 248(1); "payer" — 12(1)(x)(i); "person" — 248(1); "personal services business" — 125(7), 248(1); "prescribed" — 248(1); "prescribed debt obligation" — Reg. 7000; "prescribed resource loss" — Reg. 1210.1; "production tax amount" — 126(7); "property" — 248(1); "province" — *Interpretation Act* 35(1); "qualifying environmental trust — 248(1); "related" — 251(2); "resident in Canada" — 94(3)(a)(viii), 250; "restrictive covenant" — 56.4(1); "retirement compensation arrangement", "salary deferral arrangement", "share" — 248(1); "small business bond" — 15.2, 248(1); "small business development bond" — 15.1, 248(1); "tar sands" — 248(1); "tax payable" — 248(2); "taxable capital gain" — 38(a), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "unit trust" — 108(2), 248(1).

12.1 Cash bonus on Canada Savings Bonds — Notwithstanding any other provision of this Act, where in a taxation year a taxpayer receives an amount from the Government of Canada in respect of a Canada Savings Bond as a cash bonus that the Government of Canada has undertaken to pay (other than any amount of interest, bonus or principal agreed to be paid at the time of the issue of the bond under the terms of the bond), the taxpayer shall, in computing the taxpayer's income for the year, include as interest in respect of the Canada Savings Bond ½ of the cash bonus so received.

Related Provisions: 12(1)(c) — Interest.

Definitions [s. 12.1]: "amount" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Regulations: 220 (information return).

12.2 (1) Amount to be included [annually from life insurance policy] — Where in a taxation year a taxpayer holds an interest, last acquired after 1989, in a life insurance policy that is not

(a) an exempt policy,

(b) a prescribed annuity contract, and

(c) a contract under which the policyholder has, under the terms and conditions of a life insurance policy that was not an annuity contract and that was last acquired before December 2, 1982, received the proceeds therefrom in the form of an annuity contract,

on any anniversary day of the policy, there shall be included in computing the taxpayer's income for the taxation year the amount, if any, by which the accumulating fund on that day in respect of the interest in the policy, as determined in prescribed manner, exceeds the adjusted cost basis to the taxpayer of the interest in the policy on that day.

Proposed Amendment — Life annuity contracts

Letter from Dept. of Finance, September 12, 2002: See under Reg. 301(1).

Related Provisions: 12.2(5) — Amounts to be included; 12.2(8)–(11) — Rules and definitions; 20(1)(c)(iv) — Interest deductibility; 20(20) — Disposal of life insurance policy or annuity contract; 56(1)(d.1) — Annuity payments included in income; 87(2)(j.4) — Amalgamation — accrual rules; 94.2(11)(b), (c) — No application to foreign insurance policy of foreign investment entity; 148(9)"adjusted cost basis"G, 148(9)"adjusted cost basis"L(b) — Adjusted cost basis; 148(10) — Life annuity contracts.

History: Subsec. 12.2(1) repealed and former subsec. 12.2(3) renumbered as 12.2(1) and that portion preceding para. (a) amended to substitute "a taxpayer" for "a taxpayer (other than a taxpayer to whom subsection (1) applies)" by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 8(1), (2), applicable with respect to life insurance policies last acquired after 1989. Subsec. 12.2(1) formerly read:

12.2 (1) Amount to be included — In computing the income for a taxation year of a corporation, partnership, unit trust or any trust of which a corporation or partnership is a beneficiary that holds

(a) an interest, last acquired after December 1, 1982, in a life insurance policy , or

(b) an interest, last acquired after December 19, 1980 and before December 2, 1982 in an annuity contract under which annuity payments did not commence before December 2, 1982,

that is not

(c) an interest in an exempt policy, or

(d) an interest, last acquired before December 2, 1982, in a contract under which the policyholder has, under the terms and

conditions of a life insurance policy that was not an annuity contract, received the proceeds therefrom in the form of an annuity contract,

there shall be included the amount by which the accumulating fund at the end of the calendar year ending in the taxation year, as determined in prescribed manner, in respect of the interest exceeds the adjusted cost basis of the interest to the corporation, partnership, unit trust or trust at the end of that calendar year.

Regulations [subsec. 12.2(1)]: 201(5) (information return); 304 (prescribed annuity contract); 307 (accumulating fund).

Interpretation Bulletins [subsec. 12.2(1)]: IT-87R2: Policyholders' income from life insurance policies; IT-355R2: Interest on loans to buy life insurance policies and annuity contracts, and interest on policy loans (archived); IT-365R2: Damages, settlements and similar receipts; IT-415R2: Deregistration of RRSPs (archived).

Advance Tax Rulings: ATR-50: Structured settlement; ATR-68: Structured settlement.

(2)–(4.1) [Repealed under former Act]

Related Provisions: 87(2)(j.4) — Amalgamation — accrual rules; 94.2(11)(b), (c) — No application to foreign insurance policy of foreign investment entity; 220(3.2), Reg. 600(b) — Late filing or revocation of election under 12.2(4); Reg. 1408(5) — Similar rule for policy reserves.

Regulations: 304(1) (prescribed annuity contract).

(5) Idem — Where in a taxation year subsection (1) applies with respect to a taxpayer's interest in an annuity contract (or would apply if the contract had an anniversary day in the year at a time when the taxpayer held the interest), there shall be included in computing the taxpayer's income for the year the amount, if any, by which

(a) the total of all amounts each of which is an amount determined at the end of the year, in respect of the interest, for any of H to L in the definition "adjusted cost basis" in subsection 148(9)

exceeds

(b) the total of all amounts each of which is an amount determined at the end of the year, in respect of the interest, for any of A to G in the definition referred to in paragraph (a).

History: That portion of subsec. 12.2(5) preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 8(3), applicable with respect to life insurance policies last acquired after 1989. That portion formerly read:

(5) Where in a taxation year subsection (1) or (3) applies with respect to a taxpayer's interest in an annuity contract, there shall be included in computing the taxpayer's income for the year the amount, if any, by which

Regulations: 201(5) (information return).

Interpretation Bulletins: IT-355R2: Interest on loans to buy life insurance policies and annuity contracts, and interest on policy loans (archived).

(6), (7) [Repealed under former Act]

(8) Deemed acquisition of interest in annuity — For the purposes of this section, the first premium that was not fixed before 1990 and that was paid after 1989 by or on behalf of a taxpayer under an annuity contract, other than a contract described in paragraph (1)(d) of this section, or paragraph 12.2(3)(e) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, or to which subsection (1) of this section or subsection 12.2(4) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, applies (as those paragraphs and subsections, the numbers of which are those in force immediately before December 17, 1991, read in their application to life insurance policies last acquired before 1990) or to which subsection 12(3) applies, last acquired by the taxpayer before 1990 (in this subsection referred to as the "original contract") shall be deemed to have been paid to acquire, at the time the premium was paid, an interest in a separate annuity contract issued at that time, to the extent that the amount of the premium was not fixed before 1990, and each subsequent premium paid under the original contract shall be deemed to have been paid under that separate contract to the extent that the amount of that subsequent premium was not fixed before 1990.

History: Subsec. 12.2(8) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 8(4), applicable with respect to premiums paid after 1989. Subsec. 12.2(8) formerly read:

(8) For the purposes of this section, the first premium that was not fixed before 1990 and that was paid after 1989 by or on behalf of a taxpayer under an annuity contract (other than a contract described in paragraph (1)(d) or (3)(c) or a contract to which subsection (1) or (3) or 12(3) applies) last acquired by the taxpayer before 1990 (in this subsection referred to as the "original contract") shall be deemed to have been paid to acquire, at the time the premium was paid, an interest in a separate annuity contract issued at that time and each subsequent premium paid under the original contract shall be deemed to have been paid under that separate contract.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-355R2: Interest on loans to buy life insurance policies and annuity contracts, and interest on policy loans (archived).

(9) [Repealed under former Act]

Regulations: 309 (prescribed premium, prescribed increase).

(10) Riders — For the purposes of this Act, a rider added at any time after 1989 to a life insurance policy last acquired before 1990 that provides additional life insurance is deemed to be a separate life insurance policy issued at that time unless

(a) the policy is an exempt policy last acquired after December 1, 1982 or an annuity contract; or

(b) the only additional life insurance provided by the rider is an accidental death benefit.

Related Provisions: 87(2)(j.4) — Amalgamation — accrual rules; 94.2(11)(b), (c) — No application to foreign insurance policy of foreign investment entity; Reg. 1408(5) — Similar rule for policy reserves.

History: Subsec. 12.2(10) amended by 1998, c. 19, s. 72, applicable to riders added after 1989. The subsec. formerly read:

(10) For the purposes of this Act, any rider added at any time after 1989 to a life insurance policy (other than an annuity contract) last acquired before 1990 that provides for additional life insurance (other than an accidental death benefit) shall be deemed to be a separate life insurance policy issued at that time.

(11) Definitions — In this section and paragraph 56(1)(d.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952,

Proposed Amendment — 12.2(11) opening words

(11) Definitions — The following definitions apply in this section and in clause 94.2(11)(c)(iii)(A), and in paragraph 56(1)(d.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952.

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), s. 3, will amend the opening words of subsec. 12.2(11) to read as above, applicable after 2002.

Technical Notes: Subsection 12.2(11) provides the definitions "anniversary day" and "exempt policy" for the purposes of section 12.2 and paragraph 56(1)(d.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952.

Subsection 12.2(11) is amended so that it also applies for the purpose of subsection 94.2(11). As a result, references to the expressions "anniversary day" and "exempt policy" in subsection 94.2(11) will carry the same meaning as that used in section 12.2.

For more detail on subsection 94.2(11), see the commentary on that provision.

Related Provisions: 20(1.2) — Definitions in 12.2(11) apply to 20(1)(c).

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

"anniversary day" of a life insurance policy means

(a) the day that is one year after the day immediately preceding the day on which the policy was issued, and

(b) each day that occurs at each successive one-year interval after the day determined under paragraph (a);

History: "Anniversary day" in subsec. 12.2(11) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 8(5), applicable with respect to life insurance policies last acquired after 1989. That definition formerly read:

"anniversary day" of a life insurance policy means the last day of each calendar year ending after the policy was issued;

"exempt policy" has the meaning prescribed by regulation.

Related Provisions: 148(9)"adjusted cost basis".

Regulations: 306 (meaning of "exempt policy").

(12) Application of subsecs. 138(12) and 148(9) — The definitions in subsections 138(12) and 148(9) apply to this section.

Origin of subsec. 12.2(12): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsecs. 138(12) and 148(9)).

(13) Application of subsec. 148(10) — Subsection 148(10) applies to this section.

Origin of subsec. 12.2(13): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsec. 148(10)).

Definitions [s. 12.2]: "acquired" — 12.2(13), 148(10)(c), (e); "adjusted cost basis" — 148(9), 248(1); "amount" — 12.2(12), 148(9), 248(1); "anniversary day" — 12.2(11); "annuity" — 248(1); "cash surrender value" — 12.2(12), 148(9); "corporation" — 248(1), *Interpretation Act* 35(1); "exempt policy" — 12.2(11), Reg. 306; "insurer" — 12.2(13), 148(10)(a); "life insurance policy" — 138(12), 248(1); "life insurer" — 12.2(13), 148(10)(a), 248(1); "person" — 248(1); "person whose life was insured" — 12.2(13), 148(10)(b); "premium" — 12.2(12), 148(9); "prescribed" — 248(1); "prescribed annuity contract" — Reg. 304; "regulation" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "unit trust" — 108(2), 248(1).

Interpretation Bulletins [s. 12.2]: IT-355R2: Interest on loans to buy life insurance policies and annuity contracts, and interest on policy loans (archived); IT-363R2: Deferred profit sharing plans — deductibility of employer contributions and taxation of amounts received by a beneficiary (archived); IT-415R2: Deregistration of RRSPs (archived).

12.3 Transition inclusion re unpaid claims reserve — Where an amount has been deducted under subsection 20(26) in computing the income of an insurer for its taxation year that includes February 23, 1994, there shall be included in computing the insurer's income for that taxation year and each subsequent taxation year that begins before 2004, the prescribed portion for the year of the amount so deducted.

Related Provisions: 87(2)(g.1) — Amalgamation — continuing corporation; 138(11.5)(k) — Transfer of business by non-resident insurer.

History: S. 12.3 amended by 1995, c. 3, s. 3, applicable to taxation years that end after February 22, 1994. S. 12.3 formerly read:

12.3 Net reserve inclusion — Where a taxpayer has deducted an amount under subsection 20(26) in computing the taxpayer's income for the taxpayer's first taxation year that commences after June 17, 1987 and ends after 1987, there shall be included in computing the taxpayer's income for each of the taxation years ending after 1988 and commencing before 1993, the prescribed amount of the taxpayer's net reserve inclusion for that year.

Definitions [s. 12.3]: "amount", "insurer", "prescribed" — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

Regulations: 8100(1) (prescribed amount of net reserve inclusion for former 12.3); 8101(2) (draft) (prescibed amount).

12.4 Bad debt inclusion — Where, in a taxation year, a taxpayer disposes of a property that was a property described in an inventory of the taxpayer and in the year or a preceding taxation year an amount has been deducted under paragraph 20(1)(p) in computing the taxpayer's income in respect of the property, there shall be included in computing the taxpayer's income for the year from the business in which the property was used or held, the amount, if any, by which

(a) the total of all amounts deducted under paragraph 20(1)(p) by the taxpayer in respect of the property in computing the taxpayer's income for the year or a preceding taxation year

exceeds

(b) the total of all amounts included under paragraph 12(1)(i) by the taxpayer in respect of the property in computing the taxpayer's income for the year or a preceding taxation year.

Related Provisions: 26(3) — Banks — write-offs and recoveries; 87(2)(g.1) — Amalgamations; 138(11.5)(k) — Transfer of business by non-resident insurer; 142.5(8)(d)(ii) — First deemed disposition of mark-to-market debt obligation.

Definitions [s. 12.4]: "amount", "business", "inventory", "property" — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

Interpretation Bulletins: IT-442R: Bad debts and reserves for doubtful debts.

13. (1) Recaptured depreciation — Where, at the end of a taxation year, the total of the amounts determined for E to J in the definition "undepreciated capital cost" in subsection (21) in respect of a taxpayer's depreciable property of a particular prescribed class exceeds the total of the amounts determined for A to D in that definition in respect thereof, the excess shall be included in computing the taxpayer's income for the year.

Proposed Amendment — 13(1)

13. (1) Recaptured depreciation — If, at the end of a taxation year, the total of the amounts determined for E to K in the definition "undepreciated capital cost" in subsection (21) in respect of a taxpayer's depreciable property of a particular prescribed class exceeds the total of the amounts determined for A to D.1 in that definition in respect of that property, the excess shall be included in computing the taxpayer's income of the year.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 52(1), will amend subsec. 13(1) to read as above, applicable to taxation years that end after February 23, 1998.

Technical Notes: Section 13 provides a number of special rules related to the treatment of depreciable property. Generally, these rules apply for the purposes of sections 13 and 20 and the capital cost allowance regulations.

Subsection 13(1) provides for the inclusion in a taxpayer's income of recaptured capital cost allowance when the taxpayer's proceeds of disposition of depreciable property of a prescribed class exceeds the undepreciated capital cost (UCC) of the property.

Subsection 13(1) is amended to add a reference to new descriptions D.1 and K of the definition "undepreciated capital cost" in subsection 13(21). Those descriptions provide for an addition to the UCC of a class of certain countervailing duties paid in respect of property of the class ("D.1") and a corresponding reduction for any refunds of those amounts ("K").

This amendment applies to taxation years that end after February 23, 1998, and corrects a technical deficiency.

Related Provisions: 13(3) — Interpretation where taxpayer is an individual; 13(5.2) — Where taxpayer paid rent for property before acquiring it; 13(5.3) — Rules applicable; 13(8) — Property disposed of after ceasing business; 13(13) — Deductions; 13(15) — Vessel disposed of before

1974; 20(16) — Terminal loss where A to D exceed E to J and no property left in class; 28(1)(d) — Inclusion in farming or fishing income when using cash method; 104(5)(b), (c) — Trusts — 21-year deemed disposition rule; 110.1(3)(b)(i), 118.1(6)(b)(i) — Reduced recapture on certain donations of property; 110.6(1) — "investment income"; 115(1)(a)(iii.2) — Non-resident's taxable income earned in Canada; 216(6) — Non-residents. See additional Related Provisions at end of s. 13.

Selected Cases [subsec. 13(1)]: *Odyssey Industries Inc. v. Canada*, [1996] 2 C.T.C. 2401 (TCC) (Recaptured CCA is not profit from sale of assets; no reserve applicable where proceeds of disposition paid over time); *Olympia and York Developments Ltd. v. R.*, [1980] C.T.C. 265 (FCTD) (Conditional sale under suspensive condition was disposition for recapture purposes); *R. v. Moulds*, [1978] C.T.C. 146 (FCA) (Despite not having disputed reassessment eight years earlier, vendor not estopped from claiming no part of purchase price allocated to buildings where purchaser destroyed them upon closing; terminal loss permitted); *R. v. Baziuk*, [1976] C.T.C. 787 (FCTD) (Purchase price allocated to building destroyed before closing pursuant to contract constituted proceeds of disposition for recapture purposes); *Zeal and Gold Ltd. v. MNR*, [1973] C.T.C. 129 (FCTD) (Compensation resulting in recapture attributed to year claim acknowledged by insurer, not year paid); *Stanley v. MNR*, [1972] C.T.C. 34 (SCC) (Value greater than undepreciated capital cost allocated to building even though purchaser desired only land); *Lea-Don Canada Ltd. v. MNR*, [1970] C.T.C. 346 (SCC) (In non-arm's length sale of asset to parent company, proceeds deemed to be fair market value).

I.T. Application Rules: 20(2) (income from farming or fishing — property acquired before 1972).

Interpretation Bulletins: IT-121R3: Election to capitalize cost of borrowed money (archived); IT-267R2: CCA — vessels; IT-288R2: Gifts of capital properties to a charity and others; IT-418: Partial dispositions of property; IT-478R2: CCA — recapture and terminal loss; IT-481: Timber resource property and timber limits.

I.T. Technical News: 12 (1998 deduction limits and benefit rates for automobiles); 16 (*Continental Bank* case).

(2) Idem [luxury automobile] — Notwithstanding subsection (1), where an excess amount is determined under that subsection at the end of a taxation year in respect of a passenger vehicle having a cost to a taxpayer in excess of $20,000 or such other amount as may be prescribed, that excess amount shall not be included in computing the taxpayer's income for the year but shall be deemed, for the purposes of B in the definition "undepreciated capital cost" in subsection (21), to be an amount included in the taxpayer's income for the year by reason of this section.

Related Provisions: 13(3) — Interpretation where taxpayer is an individual; 13(7)(g) — Limitation on capital cost of automobile; 13(8) — Disposition after ceasing business; 20(16.1)(a) — Terminal loss — vehicles; 67.2 — Interest on money borrowed for passenger vehicle; Reg. 1100(2.5) — 50% CCA in year of disposition. See also at end of s. 13.

Regulations: 7307(1) (prescribed amount).

Interpretation Bulletins: IT-478R2: CCA — recapture and terminal loss; IT-521R: Motor vehicle expenses claimed by self-employed individuals; IT-522R: Vehicle, travel and sales expenses of employees.

I.T. Technical News: 10 (1997 deduction limits and benefit rates for automobiles).

(3) "Taxation year", "year" and "income" of individual — Where a taxpayer is an individual whose income for a taxation year includes income from a business the fiscal period of which does not coincide with the calendar year and depreciable property acquired for the purpose of gaining or producing income from the business has been disposed of,

(a) for greater certainty, each reference in subsections (1) and (2) to a "taxation year" and "year" shall be read as a reference to a "fiscal period"; and

(b) a reference in subsection (1) to "the income" shall be read as a reference to "the income from the business".

Related Provisions: 13(8) — Property disposed of after ceasing business; 20(16.2) — Same rule applies for purposes of subsecs. 20(16) and (16.1). See also at end of s. 13.

Interpretation Bulletins: IT-478R2: CCA — recapture and terminal loss.

(4) Exchanges of [depreciable] property — Where an amount in respect of the disposition in a taxation year (in this subsection referred to as the "initial year") of depreciable property (in this section referred to as the "former property") of a prescribed class of a taxpayer would, but for this subsection, be the amount determined for F or G in the definition "undepreciated capital cost" in subsection (21) in respect of the disposition of the former property that is either

(a) property the proceeds of disposition of which were proceeds referred to in paragraph (b), (c) or (d) of the definition "proceeds of disposition" in subsection (21), or

(b) a property that was, immediately before the disposition, a former business property of the taxpayer,

and the taxpayer so elects under this subsection in the taxpayer's return of income for the taxation year in which the taxpayer acquires a depreciable property of a prescribed class of the taxpayer that is a replacement property for the taxpayer's former property,

(c) the amount otherwise determined for F or G in the definition "undepreciated capital cost" in subsection (21) in respect of the disposition of the former property shall be reduced by the lesser of

(i) the amount, if any, by which the amount otherwise determined for F or G in that definition exceeds the undepreciated capital cost to the taxpayer of property of the prescribed class to which the former property belonged at the time immediately before the time that the former property was disposed of, and

(ii) the amount that has been used by the taxpayer to acquire

(A) where the former property is referred to in paragraph (a), before the end of the second taxation year following the initial year, or

(B) in any other case, before the end of the first taxation year following the initial year,

a replacement property of a prescribed class that has not been disposed of by the taxpayer before the time at which the taxpayer disposed of the former property, and

Proposed Amendment — 13(4)(c)(ii)

(ii) the amount that has been used by the taxpayer to acquire

(A) if the former property is described in paragraph (a), before the later of the end of the second taxation year following the initial year and 24 months after the end of the initial year, or

(B) in any other case, before the later of the end of the first taxation year following the initial year and 12 months after the end of the initial year,

a replacement property of a prescribed class that has not been disposed of by the taxpayer before the time at which the taxpayer disposed of the former property, and

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 52(2), will amend subpara. 13(4)(c)(ii) to read as above, applicable in respect of dispositions that occur in taxation years that end after December 19, 2000, except that for those dispositions that occur in taxation years that end before December 20, 2001, cl. 13(4)(c)(ii)(B) is to be read as follows:

> (B) in any other case, before the end of the first taxation year following the initial year,

Technical Notes: Subsection 13(4) allows a taxpayer, who is required under subsection 13(1) to include in income recaptured depreciation resulting from the disposition of certain depreciable property, to elect to defer tax on the recapture to the extent that the taxpayer reinvests the proceeds of disposition in a replacement property within a certain period of time, namely

- in the case of certain involuntary dispositions, e.g., theft or expropriation, before the end of the taxpayer's second taxation year that begins after the property was disposed of, or
- in other situations, before the end of the taxpayer's first taxation year that begins after the property was disposed of.

Subparagraph 13(4)(c)(ii) is amended to accommodate taxation years that are shorter than 12 months, by providing that the periods for acquiring replacement property end at the later of the times mentioned above and

- in the case of involuntary dispositions, within 24 months after the end of the taxation year in which the property was disposed of, or
- in other situations, within 12 months after the end of the taxation year in which the property was disposed of.

> (d) the amount of the reduction determined under paragraph (c) shall be deemed to be proceeds of disposition of a depreciable property of the taxpayer that had a capital cost equal to that amount and that was property of the same class as the replacement property, from a disposition made on the later of
>
> (i) the time the replacement property was acquired by the taxpayer, and
>
> (ii) the time the former property was disposed of by the taxpayer.

Related Provisions: 13(4.1) — Replacement property for a former property; 13(4.2), (4.3) — Exchange of franchise, concession or licence; 87(2)(g.5) — Amalgamation — continuing corporation; 13(18) — Reassessments; 14(6) — Parallel rule for eligible capital property; 44(1) — Parallel rule for capital gains purposes; 44(4) — Deemed election; 44(6) — Deemed proceeds of disposition; 87(2)(g.5) — Amalgamation — continuing corporation; 87(2)(l.3) — Amalgamations — replacement property; 96(3) — Election by members of partnership; 220(3.2), Reg. 600(b) — Late filing or revocation of election. See also at end of s. 13.

History: The portion of subsec. 13(4) between paras. (b) and (c) amended by 1998, c. 19, subsec. 73(1), applicable to dispositions of former properties that occur after the 1993 taxation year. That portion formerly read:

> and the taxpayer so elects under this subsection in the taxpayer's return of income under this Part for the year in which the taxpayer acquires, as a replacement for the former property, a property (in this subsection referred to as a "replacement property"),

Selected Cases [subsec. 13(4)]: *Posno v. R.*, [1989] 2 C.T.C. 234 (FCTD) (Aircraft acquired for personal use replacing one previously used in business within scope of provision).

Remission Orders: *Telesat Canada Remission Order*, P.C. 1999-1335.

Interpretation Bulletins: IT-259R4: Exchanges of property; IT-267R2: CCA — vessels; IT-271R: Expropriations — time and proceeds of disposition (archived).

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

(4.1) Replacement for a former property — For the purposes of subsection (4), a particular depreciable property of a prescribed class of a taxpayer is a replacement for a former property of the taxpayer if

> (a) it is reasonable to conclude that the property was acquired by the taxpayer to replace the former property;
>
> (a.1) it was acquired by the taxpayer and used by the taxpayer or a person related to the taxpayer for a use that is the same as or similar to the use to which the taxpayer or a person related to the taxpayer put the former property;
>
> (b) where the former property was used by the taxpayer or a person related to the taxpayer for the purpose of gaining or producing income from a business, the particular depreciable property was acquired for the purpose of gaining or producing income from that or a similar business or for use by a person related to the taxpayer for such a purpose;
>
> (c) where the former property was a taxable Canadian property of the taxpayer, the particular depreciable property is a taxable Canadian property of the taxpayer; and
>
> (d) where the former property was a taxable Canadian property (other than treaty-protected property) of the taxpayer, the particular depreciable property is a taxable Canadian property (other than treaty-protected property) of the taxpayer.

Related Provisions: See at end of s. 13.

History: Para. 13(4.1)(c) amended and para. (d) added by 1999, c. 22, subsec. 6(1), applicable to any disposition that occurs in a taxation year that ends after 1997. Para. (c) formerly read:

> (c) where the former property was taxable Canadian property (or would have been taxable Canadian property if the taxpayer were non-resident throughout the year in which the former property was disposed of and the former property were used in a business carried on by the taxpayer), the particular depreciable property was taxable Canadian property (or would have been taxable Canadian property if the taxpayer were non-resident throughout the year in which the particular property was acquired and the particular property were used in a business carried on by the taxpayer).

Para. 13(4.1)(a) amended and para. (a.1) added by 1998, c. 19, subsec. 73(2), applicable to dispositions of former properties that occur after the 1993 taxation year except that, where a taxpayer so elects in respect of a former property that was disposed of before June 18, 1998 by notifying the Minister of National Revenue in writing on or before the filing-due date for the taxpayer's first taxation year that ends after June 18, 1998, para. 13(4.1)(a.1) shall, for the purpose of determining whether a property is a replacement property of the former property, be read as follows:

> (a.1) it was acquired by the taxpayer for a use that is the same as or similar to the use to which the taxpayer or a person related to the taxpayer put the former property;

Para. (a) formerly read:

> (a) it was acquired by the taxpayer for the same or a similar use as the use to which the taxpayer or a person related to the taxpayer put the former property;

Paras. 13(4.1)(a) to (c) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 9(1), paras. (4.1)(a), (b) applicable to dispositions of former properties occurring after July 13, 1990, and para. (c) applicable to property acquired as a replacement for a former property disposed of after April 2, 1990, other than a former property disposed of

> (a) under an agreement in writing entered into before April 3, 1990; or
>
> (b) pursuant to a written notice of an intention to take the property under statutory authority given before April 3, 1990 or for the sale price of the property sold to a person by whom such a notice was given before April 3, 1990.

Paras. (a) to (c) formerly read:

> (a) it was acquired by the taxpayer for the same or a similar use as the use to which the taxpayer put the former property;
>
> (b) where the former property was used by the taxpayer for the purpose of gaining or producing income from a business, the particular depreciable property was acquired for the purpose of gaining or producing income from that or a similar business; and
>
> (c) where the taxpayer was not resident in Canada at the time the taxpayer acquired the particular depreciable property, in addition to the requirements in paragraphs (a) and (b), the particular depreciable property was taxable Canadian property.

Interpretation Bulletins: IT-259R4: Exchanges of property.

Proposed Addition — 13(4.2), (4.3)

(4.2) Election — limited period franchise, concession or license — Subsection (4.3) applies in circumstances where

(a) a taxpayer (in this subsection and subsection (4.3) referred to as the "transferor") has, pursuant to a written agreement with a person or partnership (in this subsection and subsection (4.3) referred to as the "transferee"), at any time disposed of or terminated a former property that is a franchise, concession or licence for a limited period that is wholly attributable to the carrying on of a business at a fixed place;

(b) the transferee acquired the former property from the transferor or, on the termination, acquired a similar property in respect of the same fixed place from another person or partnership; and

(c) the transferor and the transferee jointly elect in their returns of income for their taxation years that include that time to have subsection (4.3) apply in respect of the acquisition and the disposition or termination.

Related Provisions: 96(3) — Election by members of partnership. 248(1)"former business property" — Property that is the subject of election under 13(4.2).

(4.3) Effect of election — Where this subsection applies in respect of an acquisition and a disposition or termination,

(a) if the transferee acquired a similar property referred to in paragraph (4.2)(b), the transferee is deemed to have also acquired the former property at the time that the former property was terminated and to own the former property until the transferee no longer owns the similar property;

(b) if the transferee acquired the former property referred to in paragraph (4.2)(b), the transferee is deemed to own the former property until such time as the transferee owns neither the former property nor a similar property in respect of the same fixed place to which the former property related;

(c) for the purpose of calculating the amount deductible under paragraph 20(1)(a) in respect of the former property in computing the transferee's income, the life of the former property remaining on its acquisition by the transferee is deemed to be equal to the period that was the life of the former property remaining on its acquisition by the transferor; and

(d) any amount that would, if this Act were read without reference to this subsection, be an eligible capital amount to the transferor or an eligible capital expenditure to the transferee in respect of the disposition or termination of the former property by the transferor is deemed to be

(i) neither an eligible capital amount nor an eligible capital expenditure,

(ii) an amount required to be included in computing the capital cost to the transferee of the former property, and

(iii) an amount required to be included in computing the proceeds of disposition to the transferor in respect of a disposition of the former property.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 52(3), will add subsecs. 13(4.2) and (4.3), applicable in respect of dispositions and terminations that occur after December 20, 2002.

Technical Notes: Subsection 14(6) permits a taxpayer to defer tax otherwise arising on the disposition of an eligible capital property, to the extent that the taxpayer reinvests the proceeds of disposition in a replacement property within a certain period of time. A franchise, concession or license with an indefinite term may be such an eligible capital property. However, such a property with a defined term will generally be a depreciable property included in Class 14 of Schedule II of the Regulations and will not be eligible for similar replacement treatment under subsection 13(4) because such a property is not a "former business property" as defined in subsection 248(1). Further, the replacement property provisions for depreciable property generally apply only to immoveable property.

New subsections 13(4.2) and (4.3) are added, concurrent with the amendment of the definition "former business property", to allow a taxpayer (the "transferor") to use the replacement property rules under subsection 13(4) in respect of the disposition or termination of a property that is the subject of a joint election with the purchaser (the "transferee") of the property.

New subsection 13(4.2) describes the circumstances under which the transferor and the transferee may make a joint election. Property eligible for the election is a "former property" described in subsection 13(4) that is a franchise, concession or license for a limited period that is wholly attributable to the carrying on of a business at a fixed place. The election may be made where the property is disposed of directly by the transferor to the transferee or where the property of the transferor is terminated and the transferee acquires a similar property in respect of the same fixed place from another person. Both parties must elect in their returns of income for their respective taxation years that include the year of the disposition or termination.

New subsection 13(4.3) provides rules that apply when an election has been made under subsection 13(4.2). If the transferee acquires the property disposed of by the transferor (the "former property"), the transferee is deemed to own that property until such time as the transferee owns neither the former property nor a similar property in respect of the same fixed place to which the former property related. If the transferee instead acquires a similar property in respect of the same fixed place (i.e., the life of the former property was terminated), the transferee is deemed to have also acquired the former property and to continue to own it until the transferee no longer owns the similar property.

In either case, for the purpose of claiming a deduction by the transferee under paragraph 20(1)(a), the life of the former property in the hands of the transferee is deemed to be the term remaining at the time the transferor originally acquired the property. For instance, a license with a 20-year life when it was originally acquired by the transferor, but with 5 years remaining at the time of the transfer, would be considered to have a 20 year life in the hands of the transferee for the purposes of claiming a deduction under paragraph 20(1)(a).

There may be circumstances where, but for an election under subsection 13(4.2), a portion of the consideration given by a transferee upon the sale of a limited period franchise, license or concession might reasonably be considered to be an eligible capital amount to the transferor and an eligible capital expenditure to the transferee. For instance, a portion of the consideration may reasonably relate to the preferred status that the transferee may receive in obtaining a new property at the end of the term. Where an election under subsection 13(4.2) is made, subsection 13(4.3) provides that such an amount will be neither an eligible capital amount to the transferor, nor an eligible capital expenditure to the transferee, but will instead be included in the cost to the transferee and proceeds of disposition of the transferor of the former property.

In this regard, it is also proposed that section 1101 of the Regulations be amended, applicable after December 20, 2002, by adding the following after subsection (1af):

(1ag) If more than one property of a taxpayer is described in the same class in Schedule II, and one or more of the properties is a property in respect of which the taxpayer is a transferee that has elected under subsection 13(4.2) of the Act, a separate class is prescribed for each such property of the taxpayer that would otherwise be included in the same class.

If, subsequent to the acquisition of the former property by the transferee, the life of the former property expires and a similar property in respect of the same fixed place is not acquired by the transferee, the transferee may, under subsection 20(16), be entitled to a terminal loss in respect of the former property. Refer to the commentary to new paragraph

20(16.1)(b) regarding limitations in respect of the deduction of such a terminal loss.

New subsections 13(4.2) and (4.3) apply in respect of dispositions and terminations that occur after December 20, 2002.

Example 1

Ms. Mubarak is a franchisee with 5 years remaining of a 20-year agreement. The original cost was $60,000, and the undepreciated capital cost ("UCC") is $15,000. The agreement is transferable, so she agrees to sell the franchise to Mr. Grando at its fair market value of $85,000. Ms. Mubarak will, in the same taxation year, purchase from Ms. Vincent a replacement franchise that has 15 years remaining of a 20-year term, for $100,000.

But for the making of an election under subsection 13(4.2), Ms. Mubarak would have a capital gain of $25,000 (i.e., $85,000 - $60,000) and a UCC balance of $55,000 (i.e., $15,000 + $100,000 - $60,000) before deducting any capital cost allowance for the year. The adjusted cost base ("ACB") of her replacement franchise would be $100,000. Mr. Grando would have acquired a Class 14 property with an ACB and capital cost of $85,000, depreciable over 5 years.

If Ms. Mubarak and Mr. Grando jointly elect under subsection 13(4.2), Ms. Mubarak may elect under subsections 13(4) and 44(1) to defer the capital gain, such that the ACB and capital cost of the replacement franchise will be deemed to be $75,000 (i.e., $100,000 less the $25,000 deferred capital gain). Furthermore, Ms. Mubarak's UCC balance for Class 14 will be $30,000 (i.e., an increase equivalent to the $100,000 cost of the replacement franchise less the $85,000 proceeds from the former property), to be amortized over the remaining 15-year term. In this regard, note that the term for amortizing Ms. Mubarak's replacement franchise is unaffected by her and Mr. Grando's joint election in respect of the former property. Mr. Grando, on the other hand, will be required to amortize his $85,000 cost of the former property over 20 years, which was the term of the former property when it was first acquired by Ms. Mubarak.

If Mr. Grando does not enter into a new agreement with the franchisor after the 5-year period, he will be eligible for a terminal loss (even if there are other Class 14 assets, because the $85,000 property will be in a "separate class"). However, a terminal loss will not be available if a person dealing non-arm's length with Mr. Grando, at any time before the time that is 24 months after the expiry of the old agreement, enters into a new franchise agreement in respect of the same fixed place.

Example 2

Consider the same example, except that the original franchise agreement of Ms. Mubarak (the former property) is not transferable, but instead must be terminated and renewed with the franchisor. Suppose that it is renewed by Mr. Grando for a period of 12 years, with an additional amount of $120,000 paid by Mr. Grando to the franchisor for the new agreement.

In this case it is arguable that, for Mr. Grando, the $85,000 payment to Ms. Mubarak is, absent an election under subsection 13(4.2), an eligible capital expenditure by Mr. Grando. That is, Mr. Grando will pay a separate amount of $120,000 to the franchisor for a Class 14 asset, but the $85,000 payment to Ms. Mubarak is, in effect, incurred to acquire the right to renew the franchise, not to acquire a Class 14 property. Ms. Mubarak has likewise received proceeds of disposition of an eligible capital property (i.e., an "eligible capital amount", ¾ of which would reduce her CEC balance), not proceeds of disposition of a Class 14 property. Absent an election under subsection 13(4.2), Ms. Mubarak would not be entitled to acquire a replacement eligible capital property, but could be entitled to claim a terminal loss on the terminaton of the original franchise agreement (if she had no other Class 14 assets on hand at the end of the taxation year of disposition). Subsection 14(1) would apply to the eligible capital amount received by Ms. Mubarak.

The $120,000 cost of the new agreement to Mr. Grando, paid to the franchisor, could be written off by Mr. Grando over its 12-year term.

If Ms. Mubarak and Mr. Grando jointly elect under subsection 13(4.2), no part of the proceeds of disposition for the former property will be an eligible capital amount or an eligible capital expenditure. The results are the same as in Example 1, except that Mr. Grando will now have two Class 14 properties:

- *the new franchise agreement, the $120,000 cost of which may be written off by him over its 12-year term; and*
- *the former property, deemed to have been acquired by him and included in a separate class, the $85,000 cost of which may be written off by him over its deemed 20-year term.*

Example 3

Consider again Example 1, but suppose that the replacement franchise, purchased by Ms. Mubarak from Ms. Vincent, is itself the subject of a joint election by them under subsection 13(4.2). Ms. Mubarak is required to amortize her $30,000 UCC (see Example 1) over the original 20-year term of Ms. Vincent, not over its remaining 15 years.

Related Provisions: 20(16.1)(b) — Restriction on terminal loss.

(5) Reclassification of property — Where one or more depreciable properties of a taxpayer that were included in a prescribed class (in this subsection referred to as the "old class") become included at any time (in this subsection referred to as the "transfer time") in another prescribed class (in this subsection referred to as the "new class"), for the purpose of determining at any subsequent time the undepreciated capital cost to the taxpayer of depreciable property of the old class and the new class

(a) the value of A in the definition "undepreciated capital cost" in subsection (21) shall be determined as if each of those depreciable properties were

(i) properties of the new class acquired before the subsequent time, and

(ii) never included in the old class; and

(b) there shall be deducted in computing the total depreciation allowed to the taxpayer for property of the old class before the subsequent time, and added in computing the total depreciation allowed to the taxpayer for property of the new class before the subsequent time, the greater of

(i) the amount determined by the formula

$$A - B$$

where

A is the total of all amounts each of which is the capital cost to the taxpayer of each of those depreciable properties, and

B is the undepreciated capital cost to the taxpayer of depreciable property of the old class at the transfer time, and

(ii) the total of all amounts each of which is an amount that would have been deducted under paragraph 20(1)(a) in respect of a depreciable property that is one of those properties in computing the taxpayer's income for a taxation year that ended before the transfer time and at the end of which the property was included in the old class if

(A) the property had been the only property included in a separate prescribed class, and

(B) the rate allowed by the regulations made for the purpose of paragraph 20(1)(a) in respect of that separate class had been the effective rate that was used by the taxpayer to calculate a deduction under that paragraph in respect of the old class for the year.

Related Provisions: 87(2)(d)(ii)(C) — Amalgamations — depreciable property; 257 — Formula cannot calculate to less than zero. See also at end of s. 13.

History: Subsec. 13(5) amended by 1997, c. 25, subsec. 3(1), applicable to properties of a prescribed class that, after 1996, become included in property of another prescribed class. Subsec. (5) formerly read:

(5) Transferred property — Where depreciable property of a taxpayer that was included in a prescribed class (in this subsection referred to as the "former class") has been transferred to another pre-

scribed class (in this subsection referred to as the "other class"), for purposes of determining the undepreciated capital cost to the taxpayer of depreciable property of the former class and of the other class at any time after the transfer

(a) the transferred property shall be deemed to be depreciable property of the other class acquired before that time and not depreciable property of the former class acquired before that time; and

(b) an amount equal to the greater of

(i) the amount, if any, by which the capital cost to the taxpayer of the transferred property exceeds the undepreciated capital cost to the taxpayer of depreciable property of the former class immediately before the transfer, and

(ii) the total of all amounts that would have been deducted by the taxpayer in respect of the transferred property under paragraph 20(1)(a) in computing the taxpayer's income for taxation years ending before the transfer had that property been the only property included in a separate prescribed class and had the rate allowed by the regulations made under paragraph 20(1)(a) in respect of that separate class been the effective rate that was used by the taxpayer to calculate a deduction under that paragraph in respect of the former class for taxation years at the end of which the transferred property was included in the former class

shall be included in computing the total depreciation allowed to the taxpayer for property of the other class before that time and not included in computing the total depreciation allowed to the taxpayer for property of the former class before that time.

Interpretation Bulletins: IT-190R2: CCA — transferred and misclassified property.

Information Circulars: 84-1: Revision of capital cost allowance claims and other permissive deductions.

(5.1) Rules applicable [leasehold interest] — Where at any time in a taxation year a taxpayer acquires a particular property in respect of which, immediately before that time, the taxpayer had a leasehold interest that was included in a prescribed class, for the purposes of this section, section 20 and any regulations made under paragraph 20(1)(a), the following rules apply:

(a) the leasehold interest shall be deemed to have been disposed of by the taxpayer at that time for proceeds of disposition equal to the amount, if any, by which

(i) the capital cost immediately before that time of the leasehold interest

exceeds

(ii) the total of all amounts claimed by the taxpayer in respect of the leasehold interest and deductible under paragraph 20(1)(a) in computing the taxpayer's income in previous taxation years;

(b) the particular property shall be deemed to be depreciable property of a prescribed class of the taxpayer acquired by the taxpayer at that time and there shall be added to the capital cost to the taxpayer of the property an amount equal to the capital cost referred to in subparagraph (a)(i); and

(c) the total referred to in subparagraph (a)(ii) shall be added to the total depreciation allowed to the taxpayer before that time in respect of the class to which the particular property belongs.

Related Provisions: See at end of s. 13.

Interpretation Bulletins: IT-464R: CCA — leasehold interests.

(5.2) Idem [rent deemed to be CCA] — Where, at any time, a taxpayer has acquired a capital property that is depreciable property or real property in respect of which, before that time, the taxpayer or any person with whom the taxpayer was not dealing at arm's length was entitled to a deduction in computing income in respect of any amount paid or payable for the use of, or the right to use, the depreciable property or real property and the cost or the capital cost (determined without reference to this subsection) at that time of the property to the taxpayer is less than the fair market value thereof at that time determined without reference to any option with respect to that property, for the purposes of this section, section 20 and any regulations made under paragraph 20(1)(a), the following rules apply:

Proposed Amendment — 13(5.2) opening words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 201(1), will amend the opening words of subsec. 13(5.2) by substituting "depreciable property or real or immovable property" for the first instance of "depreciable property or real property", and "property" for the second instance, to come into force on Royal Assent.

Technical Notes: See under 12(4).

(a) the property shall be deemed to have been acquired by the taxpayer at that time at a cost equal to the lesser of

(i) the fair market value of the property at that time determined without reference to any option with respect to that property, and

(ii) the total of the cost or the capital cost (determined without reference to this subsection) of the property to the taxpayer and all amounts (other than amounts paid or payable to a person with whom the taxpayer was not dealing at arm's length) each of which is an outlay or expense made or incurred by the taxpayer or by a person with whom the taxpayer was not dealing at arm's length at any time for the use of, or the right to use, the property,

and for the purposes of this paragraph and subsection (5.3), where a particular corporation has been incorporated or otherwise formed after the time any other corporation with which the particular corporation would not have been dealing at arm's length had the particular corporation been in existence before that time, the particular corporation shall be deemed to have been in existence from the time of the formation of the other corporation and to have been not dealing at arm's length with the other corporation;

(b) the amount by which the cost to the taxpayer of the property determined under paragraph (a) exceeds the cost or the capital cost thereof (determined without reference to this subsection) shall be added to the total depreciation allowed to the taxpayer before that time in respect of the prescribed class to which the property belongs; and

(c) where the property would, but for this paragraph, not be depreciable property of the taxpayer, it shall be deemed to be depreciable property of a separate prescribed class of the taxpayer.

Related Provisions: See at end of s. 13.

Regulations: 1101(5g) and Sch. II:Cl. 36 (property under 13(5.2)(c) deemed to be a separate class).

Interpretation Bulletins: IT-233R: Lease-option agreements; sale-leaseback agreements (archived).

I.T. Technical News: 21 (cancellation of Interpretation Bulletin IT-233R).

Forms: T776: Statement of real estate rentals.

(5.3) Idem [disposition of option] — Where, at any time in a taxation year, a taxpayer has disposed of a capital property that is an option with respect to depreciable property or real property in respect of which the taxpayer

or any person with whom the taxpayer was not dealing at arm's length was entitled to a deduction in computing income in respect of any amount paid for the use of, or the right to use, the depreciable property or real property, for the purposes of this section, the amount, if any, by which the proceeds of disposition to the taxpayer of the option exceed the taxpayer's cost in respect thereof shall be deemed to be an excess referred to in subsection (1) in respect of the taxpayer for the year.

Proposed Amendment — 13(5.3)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 201(2), will amend subsec. 13(5.3) by substituting "depreciable property or real or immovable property" for the first instance of "depreciable property or real property", and "property" for the second instance, to come into force on Royal Assent.

Technical Notes: See under 12(4).

Related Provisions: 49 — Options. See also at end of s. 13.

Interpretation Bulletins: IT-233R: Lease-option agreements; sale-leaseback agreements (archived).

I.T. Technical News: 21 (cancellation of Interpretation Bulletin IT-233R).

Forms: T776: Statement of real estate rentals.

(5.4) Idem — Where, before the time of disposition of a capital property that was depreciable property of a taxpayer, the taxpayer, or any person with whom the taxpayer was not dealing at arm's length, was entitled to a deduction in computing income in respect of any outlay or expense made or incurred for the use of, or the right to use, during a period of time, that capital property (other than an outlay or expense made or incurred by the taxpayer or a person with whom the taxpayer was not dealing at arm's length before the acquisition of the property), except where the taxpayer disposed of the property to a person with whom the taxpayer was not dealing at arm's length and that person was subject to the provisions of subsection (5.2) with respect to the acquisition by that person of the property, the following rules apply:

(a) an amount equal to the lesser of

(i) the total of all amounts (other than amounts paid or payable to the taxpayer or a person with whom the taxpayer was not dealing at arm's length) each of which was a deductible outlay or expense made or incurred before the time of disposition by the taxpayer, or by a person with whom the taxpayer was not dealing at arm's length, for the use of, or the right to use, during the period of time, the property, and

(ii) the amount, if any, by which the fair market value of the property at the earlier of

(A) the expiration of the last period of time in respect of which the deductible outlay or expense referred to in subparagraph (i) was made or incurred, and

(B) the time of the disposition

exceeds the capital cost to the taxpayer of the property immediately before that time

shall, immediately before the time of the disposition, be added to the capital cost of the property to the person who owned the property at that time; and

(b) the amount added to the capital cost to the taxpayer of the property pursuant to paragraph (a) shall be added immediately before the time of the disposition to the total depreciation allowed to the taxpayer before that time in respect of the prescribed class to which the property belongs.

Related Provisions: 13(5.5) — Lease cancellation payment deemed not to be made for the use of property. See additional Related Provisions and Definitions at end of s. 13.

(5.5) Lease cancellation payment — For the purposes of subsection (5.4), an amount deductible by a taxpayer under paragraph 20(1)(z) or (z.1) in respect of a cancellation of a lease of property shall, for greater certainty, be deemed not to be an outlay or expense that was made or incurred by the taxpayer for the use of, or the right to use, the property.

Related Provisions: See at end of s. 13.

(6) Misclassified property — Where, in calculating the amount of a deduction allowed to a taxpayer under subsection 20(16) or regulations made for the purposes of paragraph 20(1)(a) in respect of depreciable property of the taxpayer of a prescribed class (in this subsection referred to as the "particular class"), there has been added to the capital cost to the taxpayer of depreciable property of the particular class the capital cost of depreciable property (in this subsection referred to as "added property") of another prescribed class, for the purposes of this section, section 20 and any regulations made for the purposes of paragraph 20(1)(a), the added property shall, if the Minister so directs with respect to any taxation year for which, under subsection 152(4), the Minister may make any reassessment or additional assessment or assess tax, interest or penalties under this Part, be deemed to have been property of the particular class and not of the other class at all times before the beginning of the year and, except to the extent that the added property or any part thereof has been disposed of by the taxpayer before the beginning of the year, to have been transferred from the particular class to the other class at the beginning of the year.

Related Provisions: See at end of s. 13.

History: Subsec. 13(6) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 9(2), applicable after April 19, 1983. Subsec. (6) formerly read:

> (6) Where, in calculating the amount of a deduction allowed to a taxpayer under subsection 20(16) or regulations made under paragraph 20(1)(a) in respect of depreciable property of the taxpayer of a prescribed class, there has been added to the capital cost to the taxpayer of depreciable property of that class the capital cost of depreciable property (in this subsection referred to as "added property") of another prescribed class, for the purposes of this section, section 20 and any regulations made under paragraph 20(1)(a) the added property shall, if the Minister so directs with reference to any taxation year for which, within the time specified in paragraph 152(4)(a) or (b), the Minister may make any reassessment or additional assessment or assess tax, interest or penalties under this Part as the circumstances require, be deemed to have been property of the first-mentioned class and not of the other class at all times before the commencement of that year and, except to the extent that that property or any part thereof has been disposed of by the taxpayer before the commencement of that year, to have been transferred from the first-mentioned class to the other class at the commencement of that year.

Interpretation Bulletins: IT-190R2: CCA — transferred and misclassified property.

Information Circulars: 84-1: Revision of capital cost allowance claims and other permissive deductions.

(7) Rules applicable — Subject to subsection 70(13), for the purposes of paragraphs 8(1)(j) and (p), this section, section 20 and any regulations made for the purpose of paragraph 20(1)(a),

History: The opening words of subsec. 13(7) substituted by 1994, c. 21, subsec. 7(1), applicable after 1992. The opening words formerly read:

> (7) For the purposes of paragraphs 8(1)(j) and (p), this section, section 20 and any regulations made under paragraph 20(1)(a), the following rules apply:

(a) **[change in use from income-producing]** — where a taxpayer, having acquired property for the purpose of gaining or producing income, has begun at a later time to use it for some other purpose, the taxpayer shall be deemed to have disposed of it at that later time for proceeds of disposition equal to its fair market value at that time and to have reacquired it immediately thereafter at a cost equal to that fair market value;

Related Provisions: 13(9) — Gaining or producing income; 45 — Change in use rules — capital property. See also at end of s. 13.

History: Para. 13(7)(a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 9(3), applicable to changes in use occurring after May 22, 1985, except that in applying para. (a) to changes in use occurring before May 1988, it shall be read as follows:

(a) where a taxpayer, having acquired property for the purpose of gaining or producing income therefrom or for the purpose of gaining or producing income from a business, has begun at a later time to use it for some other purpose, the taxpayer shall be deemed to have disposed of it at that later time for proceeds of disposition equal to its fair market value at that time and to have reacquired it immediately thereafter at a cost equal to that fair market value;

Para. (a) formerly read:

(a) where a taxpayer, having acquired property for the purpose of gaining or producing income, has commenced at a later time to use it for some other purpose, the taxpayer shall be deemed to have disposed of it at that later time at its fair market value at that later time;

Interpretation Bulletins: IT-525R: Performing artists.

(b) **[change in use to income-producing]** — where a taxpayer, having acquired property for some other purpose, has begun at a later time to use it for the purpose of gaining or producing income, the taxpayer shall be deemed to have acquired it at that later time at a capital cost to the taxpayer equal to the lesser of

(i) the fair market value of the property at that later time, and

(ii) the total of

(A) the cost to the taxpayer of the property at that later time determined without reference to this paragraph, paragraph (a) and subparagraph (d)(ii), and

(B) ½ of the amount, if any, by which

(I) the fair market value of the property at that later time

exceeds the total of

(II) the cost to the taxpayer of the property as determined under clause (A), and

(III) twice the amount deducted by the taxpayer under section 110.6 in respect of the amount, if any, by which the fair market value of the property at that later time exceeds the cost to the taxpayer of the property as determined under clause (A);

Related Provisions: 13(7)(e) — Rules applicable; 13(9) — Gaining or producing income; 45 — Change in use rules — capital property; 70(12) — Capital cost of depreciable property on death; 248(1) — "cost amount"(a). See additional also at end of s. 13.

History: Cl. 13(7)(b)(ii)(B) amended by replacing the reference to the fraction "¾" with a reference to the fraction "½" and by replacing the reference to the expression "⅔ of" with a reference to the word "twice" by 2001, c. 17, subsec. 6(1), applicable to changes in use of property that occur in taxation years that end after February 27, 2000 except that, for changes in use of property that occur in a taxpayer's taxation year that includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, the reference to the fraction "½" shall be read as a reference to the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the taxpayer for the year and the reference to the word "twice" shall be read as a reference to the expression "the fraction that is the reciprocal of the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the taxpayer for the year, multiplied by".

Para. 13(7)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 9(3), applicable to changes in use occurring after May 22, 1985, except that in applying cl. 13(7)(b)(ii)(B),

(i) to changes in use of property by a person or partnership in taxation years and fiscal periods ending before 1988, the references therein to "¾" and "⅔ of" shall be read as references to "½" and "2 times", respectively,

(ii) to changes in use of property by an individual or a partnership in taxation years and fiscal periods ending after 1987 and before 1990, the references therein to "¾" and "⅔" shall be read as references to "⅔" and "½", respectively,

(iii) to changes in use of property by a corporation in taxation years ending after 1987 and beginning before 1990 throughout which the corporation was a Canadian-controlled private corporation, the reference therein to "¾" shall, in respect of the corporation for the year, be read as a reference to the fraction determined as the total of

(A) the proportion of ½ that the number of days in the year that are before 1988 is of the number of days in the year,

(B) the proportion of ⅔ that the number of days in the year that are after 1987 and before 1990 is of the number of days in the year, and

(C) the proportion of ¾ that the number of days in the year that are after 1989 is of the number of days in the year,

and

(iv) to changes in use of property by a corporation in taxation years ending after 1987 and beginning before 1990 where throughout the year the corporation was not a Canadian-controlled private corporation, the reference therein to "¾" shall, in respect of the corporation for the year, be read as a reference to the fraction determined as the total of

(A) the proportion of ½ that the number of days in the year that are before July 1988 is of the number of days in the year,

(B) the proportion of ⅔ that the number of days in the year that are after June 1988 and before 1990 is of the number of days in the year, and

(C) the proportion of ¾ that the number of days in the year that are after 1989 is of the number of days in the year.

Para. (b) formerly read:

(b) where a taxpayer, having acquired property for some other purpose, has commenced at a later time to use it for the purpose of gaining or producing income, the taxpayer shall be deemed to have acquired it at that later time at a capital cost to the taxpayer equal to the lesser of

(i) its fair market value at that later time, and

(ii) the total of

(A) its cost to the taxpayer at that later time determined without reference to this paragraph, paragraph (a) and subparagraph (d)(ii), and

(B) ¾ of the amount, if any, by which

(I) the fair market value of the property at that later time

exceeds the total of

(II) the cost to the taxpayer of the property immediately before that later time, and

(III) ⅔ of the amount deducted by the taxpayer under section 110.6 in respect of the amount, if any, by which the fair market value of the property at that later time exceeds the cost to the taxpayer of the property immediately before that later time;

Interpretation Bulletins: IT-148R3: Recreational properties and club dues; IT-160R3: Personal use of aircraft (archived); IT-209R: Inter-vivos gifts of capital property to individuals directly or through trusts; IT-525R: Performing artists.

I.T. Technical News: 18 (*Cudd Pressure* case).

(c) **[partial use to produce income]** — where property has, since it was acquired by a taxpayer, been regularly used in part for the purpose of gaining or producing income and in part for some other purpose,

the taxpayer shall be deemed to have acquired, for the purpose of gaining or producing income, the proportion of the property that the use regularly made of the property for gaining or producing income is of the whole use regularly made of the property at a capital cost to the taxpayer equal to the same proportion of the capital cost to the taxpayer of the whole property and, if the property has, in such a case, been disposed of, the proceeds of disposition of the proportion of the property deemed to have been acquired for gaining or producing income shall be deemed to be the same proportion of the proceeds of disposition of the whole property;

Related Provisions: 13(9) — Gaining or producing income. See also at end of s. 13.

History: Para. 13(7)(c) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 9(4), to substitute "where property has" for "where property (other than a motor vehicle in respect of which section 67.3 applies) has", applicable with respect to changes in use occurring after April 1988.

Interpretation Bulletins: IT-148R3: Recreational properties and club dues; IT-160R3: Personal use of aircraft (archived); IT-217R: Depreciable property owned on December 31, 1971 (archived); IT-525R: Performing artists.

(d) **[partial change in use]** — where, at any time after a taxpayer has acquired property, there has been a change in the relation between the use regularly made by the taxpayer of the property for gaining or producing income and the use regularly made of the property for other purposes,

(i) if the use regularly made by the taxpayer of the property for the purpose of gaining or producing income has increased, the taxpayer shall be deemed to have acquired at that time depreciable property of that class at a capital cost equal to the total of

(A) the proportion of the lesser of

(I) its fair market value at that time, and

(II) its cost to the taxpayer at that time determined without reference to this subparagraph, subparagraph (ii) and paragraph (a)

that the amount of the increase in the use regularly made by the taxpayer of the property for that purpose is of the whole of the use regularly made of the property, and

(B) ½ of the amount, if any, by which

(I) the amount deemed under subparagraph 45(1)(c)(ii) to be the taxpayer's proceeds of disposition of the property in respect of the change

exceeds the total of

(II) that proportion of the cost to the taxpayer of the property as determined under subclause (A)(II) that the amount of the increase in the use regularly made by the taxpayer of the property for that purpose is of the whole of the use regularly made of the property, and

(III) twice the amount deducted by the taxpayer under section 110.6 in respect of the amount, if any, by which the amount determined under subclause (I) exceeds the amount determined under subclause (II), and

(ii) if the use regularly made of the property for the purpose of gaining or producing income has decreased, the taxpayer shall be deemed to have disposed at that time of depreciable property of that class and the proceeds of disposition shall be deemed to be an amount equal to the proportion of the fair market value of the property as of that time that the amount of the decrease in the use regularly made by the taxpayer of the property for that purpose is of the whole use regularly made of the property;

Related Provisions: 13(4) — Exchange of property; 13(7)(e) — Rules applicable; 13(9) — Gaining or producing income; 44(1) — Exchanges of property; 45(1)(c) — Partial change in use of capital property; 45(2) — Election where change in use; 70(12) — Capital cost of depreciable property on death; 248(1)"cost amount"(a) — Application of 13(7) to determination of cost amount; 256(6) — Controlled corporation. See also at end of s. 13.

History: Cl. 13(7)(d)(i)(B) amended by replacing the reference to the fraction "¾" with a reference to the fraction "½" and by replacing the reference to the expression "⅔ of" with a reference to the word "twice" by 2001, c. 17, subsec. 6(2), applicable to changes in use of property that occur in taxation years that end after February 27, 2000 except that, for changes in use of property that occur in a taxpayer's taxation year that includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, the reference to the fraction "½" shall be read as a reference to the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the taxpayer for the year and the reference to the word "twice" shall be read as a reference to the expression "the fraction that is the reciprocal of the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the taxpayer for the year, multiplied by".

Subcls. 13(7)(d)(i)(B)(II), (III) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 9(5), applicable to changes in use occurring after May 22, 1985, except that in applying subcl. (III)

(a) to changes in use of property by a person or partnership in taxation years and fiscal periods ending before 1988, the reference therein to "⅔ of" shall be read as a reference to "2 times", and

(b) to changes in use of property by an individual or a partnership in taxation years and fiscal periods ending after 1987 and before 1990, the reference therein to "⅔" shall be read as a reference to "½".

Subcls. (d)(i)(B)(II), (III) formerly read:

(II) the cost to the taxpayer of the property immediately before that time, and

(III) ⅔ of the amount deducted by the taxpayer under section 110.6 in respect of the amount, if any, by which the amount determined under subclause (I) exceeds the cost to the taxpayer of the property immediately before that time, and

Interpretation Bulletins: IT-160R3: Personal use of aircraft (archived); IT-209R: Inter-vivos gifts of capital property to individuals directly or through trusts.

(e) **[non-arm's length acquisition]** — notwithstanding any other provision of this Act except subsection 70(13), where at a particular time a person or partnership (in this paragraph referred to as the "taxpayer") has, directly or indirectly, in any manner whatever, acquired (otherwise than as a consequence of the death of the transferor) a depreciable property (other than a timber resource property) of a prescribed class from a person or partnership with whom the taxpayer did not deal at arm's length (in this paragraph referred to as the "transferor") and, immediately before the transfer, the property was a capital property of the transferor,

(i) where the transferor was an individual resident in Canada or a partnership any member of which was either an individual resident in Canada or another partnership and the cost of the property to the taxpayer at the particular time determined without reference to this paragraph exceeds the cost, or where the property was depreciable property, the capital cost of the property to the transferor immediately before the transferor disposed of it, the capital cost of the property to the taxpayer at the par-

ticular time shall be deemed to be the amount that is equal to the total of

(A) the cost or capital cost, as the case may be, of the property to the transferor immediately before the particular time, and

(B) ½ of the amount, if any, by which

(I) the transferor's proceeds of disposition of the property

exceed the total of

(II) the cost or capital cost, as the case may be, to the transferor immediately before the particular time,

(III) twice the amount deducted by any person under section 110.6 in respect of the amount, if any, by which the amount determined under subclause (I) exceeds the amount determined under subclause (II), and

(IV) the amount, if any, required by subsection 110.6(21) to be deducted in computing the capital cost to the taxpayer of the property at that time

and, for the purposes of paragraph (b) and subparagraph (d)(i), the cost of the property to the taxpayer shall be deemed to be the same amount,

(ii) where the transferor was neither an individual resident in Canada nor a partnership any member of which was either an individual resident in Canada or another partnership and the cost of the property to the taxpayer at the particular time determined without reference to this paragraph exceeds the cost, or where the property was depreciable property, the capital cost of the property to the transferor immediately before the transferor disposed of it, the capital cost of the property to the taxpayer at that time shall be deemed to be the amount that is equal to the total of

(A) the cost or capital cost, as the case may be, of the property to the transferor immediately before the particular time, and

(B) ½ of the amount, if any, by which the transferor's proceeds of disposition of the property exceed the cost or capital cost, as the case may be, to the transferor immediately before the particular time

and, for the purposes of paragraph (b) and subparagraph (d)(i), the cost of the property to the taxpayer shall be deemed to be the same amount, and

(iii) where the cost or capital cost, as the case may be, of the property to the transferor immediately before the transferor disposed of it exceeds the capital cost of the property to the taxpayer at that time determined without reference to this paragraph, the capital cost of the property to the taxpayer at that time shall be deemed to be the amount that was the cost or capital cost, as the case may be, of the property to the transferor immediately before the transferor disposed of it and the excess shall be deemed to have been allowed to the taxpayer in respect of the property under regulations made under paragraph 20(1)(a) in computing the taxpayer's income for taxation years ending before the acquisition of the property by the taxpayer;

Related Provisions: 13(7)(e.1) — Where election made to trigger capital gains exemption; 13(7.3) — Control of corporations by one trustee; 13(21.2) — Transfer of property where u.c.c. exceeds fair market value; 70(12) — Capital cost of depreciable property on death; 85(5) — Similar rule on section 85 rollover; 97(4) — Transfer of depreciable property to partnership; 248(8) — Occurrences as a consequence of death; 256(6) — Controlled corporation. See also at end of s. 13.

History: Para. 13(7)(e) amended by replacing the references to the fraction "3/4" with references to the fraction "½" and by replacing the reference to the expression "4/3 of" with a reference to the word "twice" by 2001, c. 17, subsec. 6(3), applicable to acquisitions of property that occur in taxation years that end after February 27, 2000 except that, for acquisitions of property in a taxation year that includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, of a person or partnership from whom the property was acquired, the references to the fraction "½" shall be read as references to the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the person or partnership from whom the taxpayer acquired the property for the year in which the person or partnership disposed of the property, and the reference to the word "twice" shall be read as a reference to the expression "the fraction that is the reciprocal of the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the person or partnership from whom the taxpayer acquired the property for the year in which the person or partnership disposed of the property, multiplied by".

Subcl. 13(7)(e)(i)(B)(IV) added by 1995, c. 3, subsec. 4(1), applicable to 1994 *et seq.*

The opening words of para. 13(7)(e) substituted by 1994, c. 21, subsec. 7(2), applicable after 1992. The opening words formerly read:

> (e) notwithstanding any other provision of this Act, where at a particular time a person or partnership (in this paragraph referred to as the "taxpayer") has, directly or indirectly, in any manner whatever, acquired (otherwise than as a consequence of the death of the transferor) a depreciable property (other than a timber resource property) of a prescribed class from a person or partnership with whom the taxpayer did not deal at arm's length (in this paragraph referred to as the "transferor") and the property was a capital property of the transferor,

That portion of para. 13(7)(e) preceding subpara. (i) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 9(6), applicable to property acquired after May 22, 1985. That portion formerly read:

> (e) notwithstanding any other provision of this Act, where at a particular time a person or partnership (in this paragraph referred to as the "taxpayer") has, directly or indirectly, in any manner whatever, acquired a depreciable property of a prescribed class from a person or partnership with whom the taxpayer did not deal at arm's length (in this paragraph referred to as the "transferor") and the property was a capital property of the transferor immediately before the particular time,

Regulations: 1102(14) — Class of property preserved on non-arm's length acquisition.

Interpretation Bulletins: IT-209R: Inter-vivos gifts of capital property to individuals directly or through trusts; IT-217R: Depreciable property owned on December 31, 1971 (archived); IT-291R3: Transfer of property to a corporation under subsection 85(1).

(e.1) **[capital gains exemption election]** — where a taxpayer is deemed by paragraph 110.6(19)(a) to have disposed of and reacquired a property that immediately before the disposition was a depreciable property, the taxpayer shall be deemed to have acquired the property from himself, herself or itself and, in so having acquired the property, not to have been dealing with himself, herself or itself at arm's length;

Related Provisions: 69(1) — Effect of acquiring property not at arm's length.

History: Para. 13(7)(e.1) added by 1995, c. 3, subsec. 4(2), applicable to 1994 *et seq.*

Regulations: 1102(14) — Class of property preserved on deemed reacquisition.

(f) **[change in control]** — where a corporation is deemed under paragraph 111(4)(e) to have disposed of and reacquired depreciable property (other than a timber resource property), the capital cost to the corpora-

tion of the property at the time of the reacquisition is deemed to be the amount that is equal to the total of

(i) the capital cost to the corporation of the property at the time of the disposition, and

(ii) ½ of the amount, if any, by which the corporation's proceeds of disposition of the property exceed the capital cost to the corporation of the property at the time of the disposition;

Related Provisions: See at end of s. 13.

History: Subpara. 13(7)(f)(ii) amended by replacing the reference to the fraction "3/4" with a reference to the fraction "½" by 2001, c. 17, subsec. 6(4), applicable to acquisitions of property that occur in taxation years that end after February 27, 2000 except that, for acquisitions of property that occur in a taxpayer's taxation year that includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, the reference to the fraction "½" shall be read as a reference to the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the taxpayer for the year.

The opening words of para. 13(7)(f) amended by 1998, c. 19, subsec. 73(3), applicable after April 26, 1995. The opening words formerly read:

(f) [change in control or in exempt status] — where a corporation is deemed under paragraph 111(4)(e) or 149(10)(b) to have disposed of and reacquired depreciable property (other than a timber resource property), the capital cost to the corporation of the property at the time of the reacquisition shall be deemed to be the amount that is equal to the total of

That portion of para. 13(7)(f) preceding subpara. (i) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 9(7), to substitute "deemed under" for "deemed by" and to add "(other than a timber resource property)", applicable to property acquired after May 22, 1985.

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987.

(g) **[luxury automobile]** — where the cost to a taxpayer of a passenger vehicle exceeds $20,000 or such other amount as may be prescribed, the capital cost to the taxpayer of the vehicle shall be deemed to be $20,000 or that other prescribed amount, as the case may be; and

Related Provisions: 13(2) — No recapture on luxury automobile; 13(7)(h) — Where vehicle acquired not at arm's length; 20(16.1)(a) — No terminal loss on luxury automobile; 67.2 — Limitation on interest expense; 67.3 — Limitation on leasing cost; 85(1)(e.4) — Transfer of property to corporation by shareholders; Reg. 1100(2.5) — 50% CCA in year of disposition.

Regulations: 1101(1af) (separate class); 7307(1) (prescribed amount); Sch. II:Cl. 10.1 (class for CCA).

Interpretation Bulletins: IT-521R: Motor vehicle expenses claimed by self-employed individuals.

I.T. Technical News: 10 (1997 deduction limits and benefit rates for automobiles); 12 (1998 deduction limits and benefit rates for automobiles).

(h) **[luxury automobile — non-arm's length acquisition]** — notwithstanding paragraph (g), where a passenger vehicle is acquired by a taxpayer at any time from a person with whom the taxpayer does not deal at arm's length, the capital cost at that time to the taxpayer of the vehicle shall be deemed to be the least of

(i) the fair market value of the vehicle at that time,

(ii) the amount that immediately before that time was the cost amount to that person of the vehicle, and

(iii) $20,000 or such other amount as is prescribed.

Related Provisions: 20(16.1)(a) — Terminal loss; 67.4 — More than one owner. See additional Related Provisions at end of s. 13.

History: That portion of para. 13(7)(h) preceding subpara. (i) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 9(8), to add "notwithstanding paragraph (g)," applicable with respect to taxation years and fiscal periods beginning after June 17, 1987 that end after 1987.

Regulations: 7307(1) (prescribed amount).

Interpretation Bulletins [para. 13(7)(h)]: IT-521R: Motor vehicle expenses claimed by self-employed individuals.

I.T. Technical News: 10 (1997 deduction limits and benefit rates for automobiles).

Interpretation Bulletins [subsec. 13(7)]: IT-102R2: Conversion of property, other than real property, from or to inventory; IT-120R6: Principal residence; IT-218R: Profit, capital gains and losses from the sale of real estate, including farmland and inherited land and conversion of real estate from capital property to inventory and vice versa; IT-478R2: CCA — recapture and terminal loss; IT-522R: Vehicle, travel and sales expenses of employees.

(7.1) Deemed capital cost of certain property — For the purposes of this Act, where section 80 applied to reduce the capital cost to a taxpayer of a depreciable property or a taxpayer deducted an amount under subsection 127(5) or (6) in respect of a depreciable property or received or is entitled to receive assistance from a government, municipality or other public authority in respect of, or for the acquisition of, depreciable property, whether as a grant, subsidy, forgivable loan, deduction from tax, investment allowance or as any other form of assistance other than

(a) an amount described in paragraph 37(1)(d),

(b) an amount deducted as an allowance under section 65, or

(b.1) an amount included in income by virtue of paragraph 12(1)(u) or 56(1)(s),

the capital cost of the property to the taxpayer at any particular time shall be deemed to be the amount, if any, by which the total of

(c) the capital cost of the property to the taxpayer, determined without reference to this subsection, subsection (7.4) and section 80, and

(d) such part, if any, of the assistance as has been repaid by the taxpayer, pursuant to an obligation to repay all or any part of that assistance, in respect of that property before the disposition thereof by the taxpayer and before the particular time

exceeds the total of

(e) where the property was acquired in a taxation year ending before the particular time, all amounts deducted under subsection 127(5) or (6) by the taxpayer for a taxation year ending before the particular time,

(f) the amount of assistance the taxpayer has received or is entitled, before the particular time, to receive, and

(g) all amounts by which the capital cost of the property to the taxpayer is required because of section 80 to be reduced at or before that time,

in respect of that property before the disposition thereof by the taxpayer.

Related Provisions: 6(8)(d) — GST rebate deemed to be assistance; 12(1)(t) — Investment tax credit; 13(7.2) — Receipt of public assistance; 13(7.4) — Deemed capital cost of certain property; 65 — Allowances; 80(1)"excluded obligation"(a)(iii) — Debt forgiveness rules do not apply where amount has reduced capital cost of property; 80(5) — Reduction in capital cost on settlement of debt; 80(9) — Additional reduction in capital cost for limited purposes; 87(2)(j.6) — Amalgamations — continuing corporation; 127(11.5) — Ignore 13(7.1) for purposes of ITC qualified expenditures; 127(12) — Investment tax credit; 143.2(6) — Reduction in cost of tax shelter investment; 248(16), (16.1), (18), (18.1) — GST and QST input tax credit, refund and rebate deemed to be government assistance. See also at end of s. 13.

History: The opening words of subsec. 13(7.1) and para. (c) amended and para. (g) added by 1995, c. 21, subsecs. 2(1)–(3), applicable to taxation

years that end after February 21, 1994. The opening words and para. (c) formerly read:

> (7.1) For the purposes of this Act, where a taxpayer has deducted an amount under subsection 127(5) or (6) in respect of a depreciable property or has received or is entitled to receive assistance from a government, municipality or other public authority in respect of, or for the acquisition of, depreciable property, whether as a grant, subsidy, forgivable loan, deduction from tax, investment allowance or as any other form of assistance other than
>
> . . . . .
>
> (c) the capital cost thereof to the taxpayer, determined without reference to this subsection and subsection (7.4), and

Selected Cases [subsec. 13(7.1)]: *Prince Albert Pulp Co. v. Canada*, [1990] 2 C.T.C. 339 (FCTD); aff'd [1992] 1 C.T.C. 262 (FCA) (Reduction in capital cost occurs in year investment tax credit used); *Canadian Pacific Ltd. v. R.*, [1988] 1 C.T.C. 429 (FCA) (Government assistance deducted from capital cost); *R. v. A.E.L. Mirotel Ltd.*, [1986] 2 C.T.C. 108 (FCA) (Investment tax credits, government assistance, deducted from capital cost); *R. v. British Columbia Forest Products Ltd.*, [1986] 1 C.T.C. 1 (FCA) (Investment tax credit deducted from capital cost); *R. v. G.T.E. Sylvania Canada Ltd.*, [1974] C.T.C. 751 (FCA) (Reduction in taxable income consequent upon amendment to Quebec statute not "grant, subsidy or other assistance" for purposes of former para. 20(6)(h) [now subsec. 13(7.1)]); *Valley Camp Ltd. v. MNR*, [1974] C.T.C. 418 (FCTD) (Former para. 20(6)(h) [now subsec. 13(7.1)] does not apply to ordinary business arrangements with Canadian National, hence no assistance from public authority in acquiring property).

Interpretation Bulletins: IT-273R2: Government assistance — General comments; IT-478R2: CCA — recapture and terminal loss.

(7.2) Receipt of public assistance — For the purposes of subsection (7.1), where at any time a taxpayer who is a beneficiary of a trust or a member of a partnership has received or is entitled to receive assistance from a government, municipality or other public authority whether as a grant, subsidy, forgivable loan, deduction from tax, investment allowance or as any other form of assistance, the amount of the assistance that may reasonably be considered to be in respect of, or for the acquisition of, depreciable property of the trust or partnership shall be deemed to have been received at that time by the trust or partnership, as the case may be, as assistance from the government, municipality or other public authority for the acquisition of depreciable property.

Related Provisions: 53(2)(c)(ix) — Reduction of ACB of partnership interest; 53(2)(h)(v) — Reduction of ACB of capital interest in trust. See also Related Provisions at end of s. 13.

(7.3) Control of corporations by one trustee — For the purposes of paragraph (7)(e), where at a particular time one corporation would, but for this subsection, be related to another corporation by reason of both corporations being controlled by the same executor, liquidator of a succession or trustee and it is established that

(a) the executor, liquidator or trustee did not acquire control of the corporations as a result of one or more estates or trusts created by the same individual or by two or more individuals not dealing with each other at arm's length, and

(b) the estate or trust under which the executor, liquidator or trustee acquired control of each of the corporations arose only on the death of the individual creating the estate or trust,

the two corporations are deemed not to be related to each other at the particular time.

Related Provisions: 256(6)–(9) — Whether control acquired. Also see Related Provisions at end of s. 13.

History: Subsec. 13(7.3) amended by 2001, c. 17, subsec. 196(1), in force June 14, 2001. The subsec. formerly read:

> (7.3) For the purposes of paragraph (7)(e), where at a particular time one corporation would, but for this subsection, be related to another corporation by reason of both corporations being controlled by the same trustee or executor and it is established that
>
> (a) the trustee or executor did not acquire control of the corporations as a result of one or more trusts or estates created by the same individual or by two or more individuals not dealing with each other at arm's length, and
>
> (b) the trust or estate under which the trustee or executor acquired control of each of the corporations arose only on the death of the individual creating the trust or estate,
>
> the two corporations shall be deemed not to be related to each other at that particular time.

(7.4) Deemed capital cost — Notwithstanding subsection (7.1), where a taxpayer has in a taxation year received an amount that would, but for this subsection, be included in the taxpayer's income under paragraph 12(1)(x) in respect of the cost of a depreciable property acquired by the taxpayer in the year, in the three taxation years immediately preceding the year or in the taxation year immediately following the year and the taxpayer elects under this subsection on or before the day on or before which the taxpayer is required to file the taxpayer's return of income under this Part for the year, or, where the property is acquired in the taxation year immediately following the year, for that following year, the capital cost of the property to the taxpayer shall be deemed to be the amount by which the total of

(a) the capital cost of the property to the taxpayer otherwise determined, applying the provisions of subsection (7.1), where necessary, and

(b) such part, if any, of the amount received by the taxpayer as has been repaid by the taxpayer pursuant to a legal obligation to repay all or any part of that amount, in respect of that property and before the disposition thereof by the taxpayer, and as may reasonably be considered to be in respect of the amount elected under this subsection in respect of the property

exceeds the amount elected by the taxpayer under this subsection, but in no case shall the amount elected under this subsection exceed the least of

(c) the amount so received by the taxpayer,

(d) the capital cost of the property to the taxpayer otherwise determined, and

(e) where the taxpayer has disposed of the property before the year, nil.

Related Provisions: 87(2)(j.6) — Amalgamations — continuing corporation; 125.4(5) — Canadian film/video credit is deemed to be assistance; 125.5(5) — Film/video production services credit is deemed to be assistance; 127(11.5) — Ignore 13(7.4) for purposes of ITC qualified expenditures; 220(3.2), Reg. 600(b) — Late filing or revocation of election. See also at end of s. 13.

Selected Cases [subsec. 13(7.4)]: *Woodward Stores Ltd. v. Canada*, [1991] 1 C.T.C. 233 (FCTD) ("Fixturing allowance" (inducement) was capital receipt).

Interpretation Bulletins: IT-273R2: Government assistance — general comments; IT-478R2: CCA — recapture and terminal loss.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

(7.5) Deemed capital cost — For the purposes of this Act,

(a) where a taxpayer, to acquire a property prescribed in respect of the taxpayer, is required under the terms of a contract made after March 6, 1996 to make a payment to Her Majesty in right of Canada or a province or to a Canadian municipality in respect of costs in-

curred or to be incurred by the recipient of the payment

(i) the taxpayer is deemed to have acquired the property at a capital cost equal to the portion of that payment made by the taxpayer that can reasonably be regarded as being in respect of those costs, and

(ii) the time of acquisition of the property by the taxpayer is deemed to be the later of the time the payment is made and the time at which those costs are incurred;

(b) where

(i) at any time after March 6, 1996 a taxpayer incurs a cost on account of capital for the building of, for the right to use or in respect of, a prescribed property, and

(ii) the amount of the cost would, if this paragraph did not apply, not be included in the capital cost to the taxpayer of depreciable property of a prescribed class,

the taxpayer is deemed to have acquired the property at that time at a capital cost equal to the amount of the cost;

(c) where a taxpayer acquires an intangible property as a consequence of making a payment to which paragraph (a) applies or incurring a cost to which paragraph (b) applies,

(i) the property referred to in paragraph (a) or (b) is deemed to include the intangible property, and

(ii) the portion of the capital cost referred to in paragraph (a) or (b) that applies to the intangible property is deemed to be the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the lesser of the amount of the payment made or cost incurred and the amount determined for C,

B is the fair market value of the intangible property at the time the payment was made or the cost was incurred, and

C is the fair market value at the time the payment was made or the cost was incurred of all intangible properties acquired as a consequence of making the payment or incurring the cost; and

Proposed Amendment — 13(7.5)(c)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 201(3), will amend para. 13(7.5)(c) by substituting "intangible property, or for civil law an incorporeal property," for the first instance of "intangible property", and "intangible or incorporeal property(ies)" for "intangible property(ies)" in the next four places, to come into force on Royal Assent.

Technical Notes: See under 12(4).

(d) any property deemed by paragraph (a) or (b) to have been acquired at any time by a taxpayer as a consequence of making a payment or incurring a cost

(i) is deemed to have been acquired for the purpose for which the payment was made or the cost was incurred, and

(ii) is deemed to be owned by the taxpayer at any subsequent time that the taxpayer benefits from the property.

Related Provisions: 66.1(6)"Canadian exploration expense"(l), 66.2(5)"Canadian development expense"(j) — Where property is depreciable property, its cost will not be CEE or CDE. See also at end of s. 13..

History: Subsec. 13(7.5) added by 1997, c. 25, subsec. 3(2), applicable to taxation years that end after March 6, 1996.

Regulations: 1102(14.2) (prescribed property for 13(7.5)(a)); 1102(14.3) (prescribed property for 13(7.5)(b)).

Interpretation Bulletins: IT-143R3: Meaning of eligible capital expenditure.

(8) Disposition after ceasing business — Notwithstanding subsections (3) and 11(2), where a taxpayer, after ceasing to carry on a business, has disposed of depreciable property of the taxpayer of a prescribed class that was acquired by the taxpayer for the purpose of gaining or producing income from the business and that was not subsequently used by the taxpayer for some other purpose, in applying subsection (1) or (2), each reference therein to a "taxation year" and "year" shall not be read as a reference to a "fiscal period".

Related Provisions: 13(1) — Recaptured depreciation; 20(16.3) — Same rule for purposes of subsecs. 20(16) and (16.1); 25(3) — Disposition in extended fiscal period. See also at end of s. 13.

Interpretation Bulletins: IT-478R2: CCA — recapture and terminal loss.

(9) Meaning of "gaining or producing income" — In applying paragraphs (7)(a) to (d) in respect of a non-resident taxpayer, a reference to "gaining or producing income" in relation to a business shall be read as a reference to gaining or producing income from a business wholly carried on in Canada or such part of a business as is wholly carried on in Canada.

Related Provisions: See at end of s. 13.

Interpretation Bulletins: IT-478R2: CCA — recapture and terminal loss.

I.T. Technical News: 18 (*Cudd Pressure* case).

(10) Deemed capital cost — For the purposes of this Act, where a taxpayer has, after December 3, 1970 and before April 1, 1972, acquired prescribed property

(a) for use in a prescribed manufacturing or processing business carried on by the taxpayer, and

(b) that was not used for any purpose whatever before it was acquired by the taxpayer,

the taxpayer shall be deemed to have acquired that property at a capital cost to the taxpayer equal to 115% of the amount that, but for this subsection and section 21, would have been the capital cost to the taxpayer of that property.

Related Provisions: See at end of s. 13.

Regulations: 1102(15) (prescribed property, prescribed manufacturing or processing business).

(11) Deduction in respect of property used in performance of duties — Any amount deducted under subparagraph 8(1)(j)(ii) or (p)(ii) of this Act or subsection 11(11) of *The Income Tax Act*, chapter 52 of the Statutes of Canada, 1948, shall be deemed, for the purposes of this section to have been deducted under regulations made under paragraph 20(1)(a).

Related Provisions: See at end of s. 13.

Interpretation Bulletins: IT-522R: Vehicle, travel and sales expenses of employees.

(12) Application of para. 20(1)(cc) [lobbying expenses] — Where, in computing the income of a taxpayer for a taxation year, an amount has been deducted under paragraph 20(1)(cc) or the taxpayer has elected under subsection 20(9) to make a deduction in respect of an amount that would otherwise have been deductible

under that paragraph, the amount shall, if it was a payment on account of the capital cost of depreciable property, be deemed to have been allowed to the taxpayer in respect of the property under regulations made under paragraph 20(1)(a) in computing the income of the taxpayer

(a) for the year, or

(b) for the year in which the property was acquired,

whichever is the later.

Related Provisions: See at end of s. 13.

Interpretation Bulletins: IT-99R5: Legal and accounting fees.

(13) Deduction under *Canadian Vessel Construction Assistance Act* — Where a deduction has been made under the *Canadian Vessel Construction Assistance Act* for any taxation year, subsection (1) is applicable in respect of the prescribed class created by that Act or any other prescribed class to which the vessel may have been transferred.

Related Provisions: See at end of s. 13.

(14) Conversion cost — For the purposes of this section, section 20 and any regulations made under paragraph 20(1)(a), a vessel in respect of which any conversion cost is incurred after March 23, 1967 shall, to the extent of the conversion cost, be deemed to be included in a separate prescribed class.

Related Provisions: 13(17) — Transfer of separate class to same class as vessel. See also at end of s. 13.

Regulations: 1100(1)(v), 1101(2a).

Interpretation Bulletins: IT-267R2: CCA — vessels.

(15) Where subsec. (1) and subdivision c do not apply — Where a vessel owned by a taxpayer on January 1, 1966 or constructed pursuant to a construction contract entered into by the taxpayer prior to 1966 and not completed by that date was disposed of by the taxpayer before 1974,

(a) subsection (1) and subdivision c do not apply to the proceeds of disposition

(i) if an amount at least equal to the proceeds of disposition was used by the taxpayer, before May, 1974 and during the taxation year of the taxpayer in which the vessel was disposed of or within 4 months from the end of that taxation year, under conditions satisfactory to the appropriate minister, either for replacement or to incur any conversion cost with respect to a vessel owned by the taxpayer, or

(ii) if the appropriate minister certified that the taxpayer had, on satisfactory terms, deposited

(A) on or before the day on which the taxpayer was required to file a return of the taxpayer's income for the taxation year in which the vessel was disposed of, or

(B) on or before such day subsequent to the day referred to in clause (A) as the appropriate minister specified in respect of the taxpayer,

an amount at least equal to the tax that would, but for this subsection, have been payable by the taxpayer under this Part in respect of the proceeds of disposition, or satisfactory security therefor, as a guarantee that the proceeds of disposition would be used before 1975 for replacement; and

(b) if within the time specified for the filing of a return of the taxpayer's income for the taxation year in which the vessel was disposed of

(i) the taxpayer elected to have the vessel constituted a prescribed class, or

(ii) where any conversion cost in respect of the vessel was included in a separate prescribed class, the taxpayer elected to have the vessel transferred to that class,

the vessel shall be deemed to have been so transferred immediately before the disposition thereof, but this paragraph does not apply unless the proceeds of disposition of the vessel exceed the amount that would be the undepreciated capital cost of property of the class to which it would be so transferred.

Related Provisions: 13(16) — Election; 13(17) — Prescribed class; 13(18) — Reassessment; 13(19), (20) — Disposition of deposit; 13(21)"appropriate minister"; 150(1) — When return of income due. See also at end of s. 13.

(16) Election concerning vessel — Where a vessel owned by a taxpayer is disposed of by the taxpayer, the taxpayer may, if subsection (15) does not apply to the proceeds of disposition or if the taxpayer did not make an election under paragraph (15)(b) in respect of the vessel, within the time specified for the filing of a return of the taxpayer's income for the taxation year in which the vessel is disposed of, elect to have the proceeds that would be included in computing the taxpayer's income for the year under this Part treated as proceeds of disposition of property of another prescribed class that includes a vessel owned by the taxpayer.

Related Provisions: 13(17) — Transfer of separate prescribed class on disposition of vessel; 96(3) — Election by members of partnership. See also at end of s. 13.

Interpretation Bulletins: IT-267R2: CCA — vessels.

(17) Separate prescribed class concerning vessel — Where a separate prescribed class has been constituted either under this Act or the *Canadian Vessel Construction Assistance Act* by reason of the conversion of a vessel owned by a taxpayer and the vessel is disposed of by the taxpayer, if no election in respect of the vessel was made under paragraph (15)(b), the separate prescribed class constituted by reason of the conversion shall be deemed to have been transferred to the class in which the vessel was included immediately before the disposition thereof.

Related Provisions: See at end of s. 13.

Interpretation Bulletins: IT-267R2: CCA — vessels.

(18) Reassessments — Notwithstanding any other provision of this Act, where a taxpayer has

(a) used an amount as described in paragraph (4)(c), or

(b) made an election under paragraph (15)(b) in respect of a vessel and the proceeds of disposition of the vessel were used before 1975 for replacement under conditions satisfactory to the appropriate minister,

such reassessments of tax, interest or penalties shall be made as are necessary to give effect to subsections (4) and (15).

(18.1) Ascertainment of certain property — For the purpose of determining whether property meets the criteria set out in the Regulations in respect of prescribed energy conservation property, the Technical Guide to Class 43.1, as amended from time to time and published by the

Department of Natural Resources, shall apply conclusively with respect to engineering and scientific matters.

Related Provisions: 241(4)(d)(vi.1) — Disclosure of information to Department of Natural Resources. See also at end of s. 13.

History: Subsec. 13(18.1) added by 1995, c. 3, subsec. 4(6), applicable to property acquired after February 21, 1994.

Regulations: Reg. 8200.1 (prescribed energy conservation property).

(19) Disposition of deposit [vessel construction] — All or any part of a deposit made under subparagraph (15)(a)(ii) or under the *Canadian Vessel Construction Assistance Act* may be paid out to or on behalf of any person who, under conditions satisfactory to the appropriate minister and as a replacement for the vessel disposed of, acquires a vessel before 1975

(a) that was constructed in Canada and is registered in Canada or is registered under conditions satisfactory to the appropriate minister in any country or territory to which the British Commonwealth Merchant Shipping Agreement, signed at London on December 10, 1931, applies, and

(b) in respect of the capital cost of which no allowance has been made to any other taxpayer under this Act or the *Canadian Vessel Construction Assistance Act*,

or incurs any conversion cost with respect to a vessel owned by that person that is registered in Canada or is registered under conditions satisfactory to the appropriate minister in any country or territory to which the agreement referred to in paragraph (a) applies, but the ratio of the amount paid out to the amount of the deposit shall not exceed the ratio of the capital cost to that person of the vessel or the conversion cost to that person of the vessel, as the case may be, to the proceeds of disposition of the vessel disposed of, and any deposit or part of a deposit not so paid out before July 1, 1975 or not paid out pursuant to subsection (20) shall be paid to the Receiver General and form part of the Consolidated Revenue Fund.

Related Provisions: 13(21)"appropriate minister". See also at end of s. 13.

(20) Idem — Notwithstanding any other provision of this section, where a taxpayer made a deposit under subparagraph (15)(a)(ii) and the proceeds of disposition in respect of which the deposit was made were not used by any person before 1975 under conditions satisfactory to the appropriate minister as a replacement for the vessel disposed of,

(a) to acquire a vessel described in paragraphs (19)(a) and (b), or

(b) to incur any conversion cost with respect to a vessel owned by that person that is registered in Canada or is registered under conditions satisfactory to the appropriate minister in any country or territory to which the agreement referred to in paragraph (19)(a) applies,

the appropriate minister may refund to the taxpayer the deposit, or the part thereof not paid out to the taxpayer under subsection (19), as the case may be, in which case there shall be added, in computing the income of the taxpayer for the taxation year of the taxpayer in which the vessel was disposed of, that proportion of the amount that would have been included in computing the income for the year under this Part had the deposit not been made under subparagraph (15)(a)(ii) that the portion of the proceeds of disposition not so used before 1975 as such a replacement is of the proceeds of disposition, and, notwithstanding any other provision of this Act, such reassessments of tax, interest or penalties shall be made as are necessary to give effect to this subsection.

Related Provisions: 13(21)"appropriate minister". See also at end of s. 13.

(21) Definitions — In this section,

Related Provisions: 20(1.1) — Definitions in 13(21) apply to regulations made under 20(1)(a); 20(27.1) — Definitions in 13(21) apply to s. 20.

"appropriate minister" means the Canadian Maritime Commission, the Minister of Industry, Trade and Commerce, the Minister of Regional Industrial Expansion, the Minister of Industry, Science and Technology or the Minister of Industry or any other minister or body that was or is legally authorized to perform the act referred to in the provision in which this expression occurs at the time the act was or is performed;

Origin of subsec. 13(21)"appropriate minister": R.S.C. 1985, c. 1 (5th Supp.).

History: The definition "appropriate minister" in subsec. 13(21) amended by 1995, c. 1, s. 44, in force March 29, 1995. The definition formerly read:

> "appropriate minister" means the Canadian Maritime Commission, the Minister of Industry, Trade and Commerce, the Minister of Regional Industrial Expansion, the Minister of Industry, Science and Technology or such other minister or body as was or is legally authorized to perform the act referred to in the provision in which this expression occurs at the time the act was or is performed;

"conversion", in respect of a vessel, means a conversion or major alteration in Canada by a taxpayer;

History: The definition "conversion" in subsec. 13(21) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 9(9), applicable with respect to conversions beginning after July 13, 1990. That definition formerly read:

> "conversion", in respect of a vessel, means a conversion or major alteration in Canada by a taxpayer in accordance with plans approved in writing by the appropriate minister for the purposes of this Act;

Interpretation Bulletins: IT-267R2: CCA — vessels; IT-273R2: Government assistance — general comments.

"conversion cost", in respect of a vessel, means the cost of a conversion;

History: The definition "conversion cost" in subsec. 13(21) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 9(9), applicable with respect to conversions beginning after July 13, 1990. That definition formerly read:

> "conversion cost", in respect of a vessel, means the cost of a conversion as determined by the appropriate minister for the purposes of this Act;

Interpretation Bulletins: IT-267R2: CCA — vessels.

"depreciable property" of a taxpayer as of any time in a taxation year means property acquired by the taxpayer in respect of which the taxpayer has been allowed, or would, if the taxpayer owned the property at the end of the year and this Act were read without reference to subsection (26), be entitled to, a deduction under paragraph 20(1)(a) in computing income for that year or a preceding taxation year;

Related Provisions: 13(1) — Recapture; 13(5.2)(c) — Certain real property deemed to be depreciable property; 20(1)(a) — Capital cost allowance; 54 — "Capital property"; 88(1)(c.7) — Extended meaning for certain windup rules; 107.4(3)(d) — Rollover of depreciable property to trust; 248(1)"depreciable property" — Definition applies to entire Act. See also at end of s. 13.

History: The definition "depreciable property" in subsec.13(21) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 9(9), applicable in respect of property acquired after 1989. The definition formerly read:

> "depreciable property" of a taxpayer as of any time in a taxation year means property acquired by the taxpayer in respect of which the taxpayer was allowed, or, if the taxpayer owned the property at the end of the year, would be entitled to, a deduction under para-

graph 20(1)(a) in computing income for that year or a previous taxation year;

Selected Cases [subsec. 13(21)"depreciable property"]: *R. v. Construction Bérou Inc.*, [2000] 2 C.T.C. 174 (FCA) (Trucks "acquired" pursuant to lease financing arrangement); *Kettle River Sawmills Ltd. v. Canada*, [1992] 2 C.T.C. 276 (FCTD); rev'd in part (Nov. 12, 1993), Doc. A-1299-92, A-1300-92 (FCA) (Timber rights acquired in 1961 but renewed after May 6, 1974, were "timber resource property"); *Stearns Catalytic Ltd. v. Canada*, [1990] 1 C.T.C. 398 (FCTD) (Spare parts capable of causing lengthy termination of production if damaged are "major parts" of capital property, not inventory); *Avril Holdings Ltd. v. MNR*, [1970] C.T.C. 572 (SCC) (Land containing sand and gravel deposits sold separately was depreciable property).

Regulations: Part XI (capital cost allowance allowed on depreciable property).

I.T. Application Rules: 18, 20 (property acquired before 1972).

Interpretation Bulletins: IT-102R2: Conversion of property, other than real property, from or to inventory; IT-128R: CCA — depreciable property; IT-220R2: CCA — proceeds of disposition of depreciable property.

"disposition of property" — [Repealed]

History: The definition "disposition of property" in subsec. 13(21) repealed by 2001, c. 17, subsec. 6(5), applicable to transactions and events that occur after December 23, 1998. The definition formerly read:

> "disposition of property" includes any transaction or event entitling a taxpayer to proceeds of disposition of property;

Selected Cases [subsec. 13(21)"disposition of property"]: *Larose v. MNR*, [1992] 2 C.T.C. 2339 (TCC); amended (Nov. 18, 1991), Doc. 87-294(IT) (TCC) [unreported] (Assessment in respect of sale of properties upheld despite court decision and other circumstances denying taxpayer proceeds of sale; right to dispose of properties had been transferred to purchaser); *Browning Harvey Ltd. v. MNR*, [1990] 1 C.T.C. 161 (FCTD); aff'd (May 21, 1992), [unreported] (FCA); leave to appeal to SCC refused (Feb. 14, 1993), Doc. 23167 [unreported] (Capital assets sold conditionally remain depreciable property of the taxpayer until title passes).

"proceeds of disposition" of property includes

(a) the sale price of property that has been sold,

(b) compensation for property unlawfully taken,

(c) compensation for property destroyed and any amount payable under a policy of insurance in respect of loss or destruction of property,

(d) compensation for property taken under statutory authority or the sale price of property sold to a person by whom notice of an intention to take it under statutory authority was given,

(e) compensation for property injuriously affected, whether lawfully or unlawfully or under statutory authority or otherwise,

(f) compensation for property damaged and any amount payable under a policy of insurance in respect of damage to property, except to the extent that the compensation or amount, as the case may be, has within a reasonable time after the damage been expended on repairing the damage,

(g) an amount by which the liability of a taxpayer to a mortgagee or hypothecary creditor is reduced as a result of the sale of mortgaged or hypothecated property under a provision of the mortgage or hypothec, plus any amount received by the taxpayer out of the proceeds of the sale, and

(h) any amount included because of section 79 in computing a taxpayer's proceeds of disposition of the property;

Related Provisions: 12(1)(f) — Insurance proceeds received for amount expended; 13(4) — Exchanges of property; 13(21) — Undepreciated capital cost; 13(21.1) — Disposition of a building; 44 — Exchanges of property; 54"proceeds of disposition" — Parallel definition for capital property; 79(3) — Deemed proceeds of disposition when property surrendered to creditor; 248(1) — "Cost amount"(a); 248(39)(b) — Anti-avoidance — selling property and donating proceeds. See also at end of s. 13.

History: Para. (g) of the definition "proceeds of disposition" in subsec. 13(21) amended by 2001, c. 17, subsec. 196(2), in force June 14, 2001. The para. formerly read:

> (g) an amount by which the liability of a taxpayer to a mortgagee is reduced as a result of the sale of mortgaged property under a provision of the mortgage, plus any amount received by the taxpayer out of the proceeds of the sale, and

Para. (h) of the definition "proceeds of disposition" in subsec. 13(21) amended by 1995, c. 21, subsec. 2(4), applicable to taxation years that end after February 21, 1994. The para. formerly read:

> (h) any amount included in computing a taxpayer's proceeds of disposition of the property by virtue of paragraph 79(c);

Selected Cases [subsec. 13(21)"proceeds of disposition"]: *Ipsco Inc. v. R.*, [2002] 2 C.T.C. 2907 (TCC) (Damage award for defective piping did not have to be deducted from CCA pool); *Corbett v. Canada*, [1997] 1 C.T.C. 2 (FCA) (No conflict with s. 79); *Seaforth Plastics Ltd. v. R.*, [1979] C.T.C. 241 (FCTD) (Amounts received from insurance for business interruption income, not capital).

Interpretation Bulletins: IT-170R: Sale of property — when included in income computation; IT-259R4: Exchanges of property; IT-271R: Expropriations (archived); IT-460: Dispositions — absence of consideration; IT-505: Mortgage foreclosures and conditional sales repossessions (archived).

"timber resource property" of a taxpayer means

(a) a right or licence to cut or remove timber from a limit or area in Canada (in this definition referred to as an "original right") if

(i) that original right was acquired by the taxpayer (other than in the manner referred to in paragraph (b)) after May 6, 1974, and

(ii) at the time of the acquisition of the original right

(A) the taxpayer may reasonably be regarded as having acquired, directly or indirectly, the right to extend or renew that original right or to acquire another such right or licence in substitution therefor, or

(B) in the ordinary course of events, the taxpayer may reasonably expect to be able to extend or renew that original right or to acquire another such right or licence in substitution therefor, or

(b) any right or licence owned by the taxpayer to cut or remove timber from a limit or area in Canada if that right or licence may reasonably be regarded

(i) as an extension or renewal of or as one of a series of extensions or renewals of an original right of the taxpayer, or

(ii) as having been acquired in substitution for or as one of a series of substitutions for an original right of the taxpayer or any renewal or extension thereof;

Related Provisions: 128.1(4)(b)(i) — timber resource property excluded from deemed disposition on emigration; 248(1)"timber resource property" — Definition applies to entire Act; 248(10) — Series of transactions.

Selected Cases [subsec. 13(21)"timber resource property"]: *MacAlpine v. R.*, [2004] 4 C.T.C. 19 (FCA); aff'g [2003] 2 C.T.C. 2074 (TCC) (Property owned in fee simple not a timber resource property); *ITT Industries of Canada Ltd. v. R.*, [2000] 3 C.T.C. 400 (FCA); aff'g [1999] 2 C.T.C. 277 (FCTD) (License held to be timber resource property); *Kettle River Sawmills Ltd. v. Canada*, [1992] 2 C.T.C. 276 (FCTD); rev'd in part (Nov. 12, 1993), Doc. A-1299-92, A-1300-92 (FCA) (Timber rights acquired in 1961 but renewed after May 6, 1974, were "timber resource property").

Interpretation Bulletins: IT-373R2: Woodlots; IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-418: CCA — partial dispositions of property; IT-481: Timber resource property and timber limits.

"total depreciation" allowed to a taxpayer before any time for property of a prescribed class means the total of all amounts each of which is an amount deducted by the taxpayer under paragraph 20(1)(a) in respect of property of that class or an amount deducted under subsection 20(16), or that would have been so deducted but for subsection 20(16.1), in computing the taxpayer's income for taxation years ending before that time;

Related Provisions: See also at end of s. 13.

Regulations: Part XI.

Interpretation Bulletins: IT-478R2: CCA — recapture and terminal loss.

"undepreciated capital cost" to a taxpayer of depreciable property of a prescribed class as of any time means the amount determined by the formula

$$(A + B + C + D + D.1) - (E + E.1 + F + G + H + I + J + K)$$

where

A is the total of all amounts each of which is the capital cost to the taxpayer of a depreciable property of the class acquired before that time,

B is the total of all amounts included in the taxpayer's income under this section for a taxation year ending before that time, to the extent that those amounts relate to depreciable property of the class,

C is the total of all amounts each of which is such part of any assistance as has been repaid by the taxpayer, pursuant to an obligation to repay all or any part of that assistance, in respect of a depreciable property of the class subsequent to the disposition thereof by the taxpayer that would have been included in an amount determined under paragraph (7.1)(d) had the repayment been made before the disposition,

D is the total of all amounts each of which is an amount repaid in respect of a property of the class subsequent to the disposition thereof by the taxpayer that would have been an amount described in paragraph (7.4)(b) had the repayment been made before the disposition,

D.1 is the total of all amounts each of which is an amount paid by the taxpayer before that time as or on account of an existing or proposed countervailing or anti-dumping duty in respect of depreciable property of the class,

E is the total depreciation allowed to the taxpayer for property of the class before that time,

E.1 is the total of all amounts each of which is an amount by which the undepreciated capital cost to the taxpayer of depreciable property of that class is required (otherwise than because of a reduction in the capital cost to the taxpayer of depreciable property) to be reduced at or before that time because of subsection 80(5),

F is the total of all amounts each of which is an amount in respect of a disposition before that time of property (other than a timber resource property) of the taxpayer of the class, and is the lesser of

(a) the proceeds of disposition of the property minus any outlays and expenses to the extent that they were made or incurred by the taxpayer for the purpose of making the disposition, and

(b) the capital cost to the taxpayer of the property,

G is the total of all amounts each of which is the proceeds of disposition before that time of a timber resource property of the taxpayer of the class minus any outlays and expenses to the extent that they were made or incurred by the taxpayer for the purpose of making the disposition,

H is, where the property of the class was acquired by the taxpayer for the purpose of gaining or producing income from a mine and the taxpayer so elects in prescribed manner and within a prescribed time in respect of that property, the amount equal to that portion of the income derived from the operation of the mine that is, by virtue of the provisions of the *Income Tax Application Rules* relating to income from the operation of new mines, not included in computing income of the taxpayer or any other person,

I is the total of all amounts deducted under subsection 127(5) or (6), in respect of a depreciable property of the class of the taxpayer, in computing the taxpayers' tax payable for a taxation year ending before that time and subsequent to the disposition of that property by the taxpayer,

J is the total of all amounts of assistance that the taxpayer received or was entitled to receive before that time, in respect of or for the acquisition of a depreciable property of the class of the taxpayer subsequent to the disposition of that property by the taxpayer, that would have been included in an amount determined under paragraph (7.1)(f) had the assistance been received before the disposition, and

K is the total of all amounts each of which is an amount received by the taxpayer before that time in respect of a refund of an amount added to the undepreciated capital cost of depreciable property of the class because of the description of D.1;

Related Provisions: 12(1)(f) — Damage to depreciable property — insurance proceeds; 12(1)(t) — Investment tax credit; 13(1) — Recapture where E to J exceed A to D; 13(2) — Recaptured depreciation for vehicle; 13(4) — Exchanges of property; 13(5) — Transferred property; 13(5.2) — Where rent paid on property before its acquisition; 13(7) — Rule affecting capital cost; 13(21) — "timber resource property"; 13(22), (23) — Deductions deemed allowed to insurer for 1977 and 1978; 13(24) — Acquisition of control — limitation re calculation of UCC; 13(26) — Restriction on deduction before available for use; 13(33) — Consideration given for depreciable capital; 20(16) — Terminal loss; 70(12) — Capital cost of depreciable property on death; 87(2)(j.6) — Amalgamations — continuing corporation; 138(11.31)(b) — Change-in-use rule for insurance properties does not apply for purposes of UCC definition; 248(1)"undepreciated capital cost" — Definition applies to entire Act; 257 — Formula cannot calculate to less than zero. See also at end of s. 13.

History: The descriptions of D.1 and K added to the definition "undepreciated capital cost" in subsec. 13(21) and the corresponding formula amended by 1999, c. 22, subsecs. 6(2) to (4), the formula applicable after February 23, 1998; D.1 applicable to amounts that become payable after February 23, 1998; and K applicable to amounts that are received after February 23, 1998.

The description of E.1 added to the definition "undepreciated capital cost" in subsec. 13(21) and the corresponding formula amended by 1995, c. 21, subsec. 2(6), applicable to taxation years that end after February 21, 1994.

Selected Cases [subsec. 13(21)"undepreciated capital cost"]: *Duncan v. R.*, [2002] 4 C.T.C. 1 (FCA) (Statutory purpose of CCA scheme apparent and was abused by transactions); *Prince Albert Pulp Co. v. Canada*, [1990] 2 C.T.C. 339 (FCTD); aff'd [1992] 1 C.T.C. 262 (FCA) (Reduction in capital cost occurs in year investment tax credit used); *Consumers' Gas Co. Ltd. v. R.*, [1987] 1 C.T.C. 79 (FCA) (Capital cost not reduced by reimbursement from government for relocating pipelines); *Emco Ltd. v. MNR*, [1968] C.T.C. 457 (Exch.) (Taxpayer permitted to change previous allocation of purchase price entirely to land).

Regulations: Part XI (amounts of depreciation allowed, for E).

I.T. Application Rules: 18 (property acquired before 1972).

Interpretation Bulletins: IT-327: CCA — Elections under Regulation 1103 (archived); IT-418: CCA — partial dispositions of property; IT-478R2: CCA — recapture and terminal loss; IT-481: Timber resource property and timber limits.

Information Circulars: 87-5: Capital cost of property where trade-in is involved.

"vessel" means a vessel as defined in the *Canada Shipping Act*.

Interpretation Bulletins: IT-267R2: CCA — vessels.

Advance Tax Rulings: ATR-52: Accelerated rate of CCA for vessels.

Related Provisions [subsec. 13(21)]: 20(1.1) — Definitions in 13(21) apply to regulations made under 20(1)(a); 20(27.1) — Definitions in 13(21) apply to s. 20.

Selected Cases [subsec. 13(21)]: *Hewlett Packard (Canada) Ltd. v. R.*, [2004] 4 C.T.C. 230 (FCA) (Intention of parties as to timing of passage of title governed timing of disposition).

(21.1) Disposition of building — Notwithstanding subsection (7) and the definition "proceeds of disposition" in section 54, where at any particular time in a taxation year a taxpayer disposes of a building of a prescribed class and the proceeds of disposition of the building determined without reference to this subsection and subsection (21.2) are less than the lesser of the cost amount and the capital cost to the taxpayer of the building immediately before the disposition, for the purposes of paragraph (a) of the description of F in the definition "undepreciated capital cost" in subsection (21) and subdivision c,

(a) where in the year the taxpayer or a person with whom the taxpayer does not deal at arm's length disposes of land subjacent to, or immediately contiguous to and necessary for the use of, the building, the proceeds of disposition of the building are deemed to be the lesser of

(i) the amount, if any, by which

(A) the total of the fair market value of the building at the particular time and the fair market value of the land immediately before its disposition

exceeds

(B) the lesser of the fair market value of the land immediately before its disposition and the amount, if any, by which the cost amount to the vendor of the land (determined without reference to this subsection) exceeds the total of the capital gains (determined without reference to subparagraphs 40(1)(a)(ii) and (iii)) in respect of dispositions of the land within 3 years before the particular time by the taxpayer or by a person with whom the taxpayer was not dealing at arm's length to the taxpayer or to another person with whom the taxpayer was not dealing at arm's length, and

(ii) the greater of

(A) the fair market value of the building at the particular time, and

(B) the lesser of the cost amount and the capital cost to the taxpayer of the building immediately before its disposition,

and, notwithstanding any other provision of this Act, the proceeds of disposition of the land are deemed to be the amount, if any, by which

(iii) the total of the proceeds of disposition of the building and of the land determined without reference to this subsection and subsection (21.2)

exceeds

(iv) the proceeds of disposition of the building as determined under this paragraph,

and the cost to the purchaser of the land shall be determined without reference to this subsection; and

(b) where paragraph (a) does not apply with respect to the disposition and, at any time before the disposition, the taxpayer or a person with whom the taxpayer did not deal at arm's length owned the land subjacent to, or immediately contiguous to and necessary for the use of, the building, the proceeds of disposition of the building are deemed to be an amount equal to the total of

(i) the proceeds of disposition of the building determined without reference to this subsection and subsection (21.2), and

(ii) ½ of the amount by which the greater of

(A) the cost amount to the taxpayer of the building, and

(B) the fair market value of the building

immediately before its disposition exceeds the proceeds of disposition referred to in subparagraph (i).

Related Provisions: 70(5)(c), (d) — Capital property of a deceased taxpayer.

History: Subpara. 13(21.1)(b)(ii) amended by replacing the reference to the fraction "¼" with a reference to the fraction "½" by 2001, c. 17, subsec. 6(6), applicable to taxation years that end after February 27, 2000 except that, for a taxpayer's taxation year that includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, the reference to the fraction "½" shall be read as a reference to the fraction determined when the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the taxpayer for the year is subtracted from 1.

Subsec. 13(21.1) amended by 1998, c. 19, subsec. 73(4), subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), applicable to dispositions of property that occur after April 26, 1995. The subsec. formerly read:

(21.1) Notwithstanding subsection (7) and the definition "proceeds of disposition" in section 54, where at any particular time in a taxation year a taxpayer disposed of a building of a prescribed class and the proceeds of disposition of the building determined without reference to this subsection are less than the lesser of the cost amount and the capital cost to the taxpayer of the building immediately before its disposition, for the purposes of paragraph (a) of the description of F in the definition "undepreciated capital cost" in subsection (21) and subdivision c, the following rules apply:

(a) where in the same taxation year the taxpayer or a person with whom the taxpayer was not dealing at arm's length disposed of the land subjacent to, or immediately contiguous to and necessary for the use of, the building, the proceeds of disposition of the building shall be deemed to be the lesser of

(i) the amount, if any, by which

(A) the total of the fair market value of the building at the particular time and the fair market value of the land immediately before its disposition

exceeds

(B) the lesser of the fair market value of the land immediately before its disposition and the amount, if any, by which the cost amount to the vendor of the land (determined without reference to this subsection) exceeds the total of the capital gains (determined without reference to subparagraphs 40(1)(a)(ii) and (iii)) in respect of dispositions of the land within the 3 year period preceding the particular time by the taxpayer or by a person with whom the taxpayer was not dealing at arm's length to the taxpayer or to another person with whom the taxpayer was not dealing at arm's length, and

(ii) the greater of

(A) the fair market value of the building at the particular time, and

(B) the lesser of the cost amount and the capital cost to the taxpayer of the building immediately before its disposition

and, notwithstanding any other provision of this Act, the proceeds of disposition of the land shall be deemed to be the amount, if any, by which

(iii) the total of the proceeds of disposition of the building and of the land determined without reference to this subsection

exceeds

(iv) the proceeds of disposition of the building as determined under this paragraph,

and the cost to the purchaser of the land shall be determined without reference to this subsection; and

(b) where paragraph (a) does not apply with respect to the disposition and, at any time before the disposition, the taxpayer or a person with whom the taxpayer was not dealing at arm's length owned the land subjacent to, or immediately contiguous to and necessary for the use of, the building, the proceeds of disposition of the building shall be deemed to be an amount equal to the total of

(i) the proceeds of disposition of the building determined without reference to this subsection, and

(ii) ¼ of the amount by which the greater of

(A) the cost amount to the taxpayer of the building, and

(B) the fair market value of the building

immediately before its disposition exceeds the proceeds of disposition referred to in subparagraph (i).

Selected Cases [subsec. 13(21.1)]: *R. v. Trade Investments Shopping Centre Ltd.*, [1999] 1 C.T.C. 92 (FCA) (Agreement was original option granted, not subsequent exercise).

Interpretation Bulletins [subsec. 13(21.1)]: IT-220R2: CCA — proceeds of disposition of depreciable property; IT-349R3: Intergenerational transfers of farm property on death.

(21.2) Loss on certain transfers [within affiliated group] — Where

(a) a person or partnership (in this subsection referred to as the "transferor") disposes at a particular time (otherwise than in a disposition described in any of paragraphs (c) to (g) of the definition "superficial loss" in section 54) of a depreciable property of a particular prescribed class of the transferor,

(b) the lesser of

(i) the capital cost to the transferor of the transferred property, and

(ii) the proportion of the undepreciated capital cost to the transferor of all property of the particular class immediately before that time that

(A) the fair market value of the transferred property at that time

is of

(B) the fair market value of all property of the particular class immediately before that time

exceeds the amount that would otherwise be the transferor's proceeds of disposition of the transferred property at the particular time, and

(c) on the 30th day after the particular time, a person or partnership (in this subsection referred to as the "subsequent owner") who is the transferor or a person affiliated with the transferor owns or has a right to acquire the transferred property (other than a right, as security only, derived from a mortgage, hypothec, agreement for sale or similar obligation),

the following rules apply:

(d) sections 85 and 97 do not apply to the disposition,

(e) for the purposes of applying this section and section 20 and any regulations made for the purpose of paragraph 20(1)(a) to the transferor for taxation years that end after the particular time,

(i) the transferor is deemed to have disposed of the transferred property for proceeds equal to the lesser of the amounts determined under subparagraphs (b)(i) and (ii) with respect to the transferred property,

(ii) where two or more properties of a prescribed class of the transferor are disposed of at the same time, subparagraph (i) applies as if each property so disposed of had been separately disposed of in the order designated by the transferor or, if the transferor does not designate an order, in the order designated by the Minister,

(iii) the transferor is deemed to own a property that was acquired before the beginning of the taxation year that includes the particular time at a capital cost equal to the amount of the excess described in paragraph (b), and that is property of the particular class, until the time that is immediately before the first time, after the particular time,

(A) at which a 30-day period begins throughout which neither the transferor nor a person affiliated with the transferor owns or has a right to acquire the transferred property (other than a right, as security only, derived from a mortgage, hypothec, agreement for sale or similar obligation),

(B) at which the transferred property is not used by the transferor or a person affiliated with the transferor for the purpose of earning income and is used for another purpose,

(C) at which the transferred property would, if it were owned by the transferor, be deemed by section 128.1 or subsection 149(10) to have been disposed of by the transferor,

(D) that is immediately before control of the transferor is acquired by a person or group of persons, where the transferor is a corporation, or

(E) at which the winding-up of the transferor begins (other than a winding-up to which subsection 88(1) applies), where the transferor is a corporation, and

(iv) the property described in subparagraph (iii) is considered to have become available for use by the transferor at the time at which the transferred property is considered to have become available for use by the subsequent owner,

(f) for the purposes of subparagraphs (e)(iii) and (iv), where a partnership otherwise ceases to exist at any time after the particular time, the partnership is deemed not to have ceased to exist, and each person who was a member of the partnership immediately before the partnership would, but for this paragraph, have ceased to exist is deemed to remain a member of the partnership, until the time that is immediately after the first time described in clauses (e)(iii)(A) to (E), and

(g) for the purposes of applying this section and section 20 and any regulations made for the purpose of paragraph 20(1)(a) to the subsequent owner,

(i) the subsequent owner's capital cost of the transferred property is deemed to be the amount that was the transferor's capital cost of the transferred property, and

(ii) the amount by which the transferor's capital cost of the transferred property exceeds its fair market value at the particular time is deemed to have been deducted under paragraph 20(1)(a) by the subsequent owner in respect of property of that class in computing income for taxation years that ended before the particular time.

Related Provisions: 14(12) — Parallel rule for eligible capital property; 18(13)–(16) — Parallel rule for share or debt owned by financial institution; 40(3.3), (3.4) — Parallel rule with respect to capital losses; 69(5)(d) — No application on winding-up ; 87(2)(g.3) — Amalgamations — continuing corporation; 88(1)(d.1) — No application to property acquired on windup of subsidiary; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 251.1 — Affiliated persons; 256(6)–(9) — Whether control acquired.

History: Para. 13(21.2)(a) amended by 2001, c. 17, subsec. 6(7), applicable after November 1999 except that, if an individual (other than a trust) so elects in writing and files the election with the Minister of National Revenue on or before the individual's filing-due date for the taxation year that includes June 14, 2001, the amendment does not apply in respect of the disposition of a property by the individual before July 2000

(a) to a person who was obliged on November 30, 1999 to acquire the property pursuant to the terms of an agreement in writing made on or before that day; or

(b) in a transaction, or as part of a series of transactions, the arrangements for which, evidenced in writing, were substantially advanced before December 1999, other than a transaction or series of transactions a main purpose of which can reasonably be considered to have been to enable an unrelated person to obtain the benefit of

(i) any deduction in computing income, taxable income, taxable income earned in Canada or tax payable under the Act, or

(ii) any balance of undeducted outlays, expenses or other amounts.

The para. formerly read:

(a) a corporation, trust or partnership (in this subsection referred to as the "transferor") disposes at a particular time (otherwise than in a disposition described in any of paragraphs (c) to (g) of the definition "superficial loss" in section 54) of a depreciable property of a particular prescribed class of the transferor,

Para. 13(21.2)(c) and cl. 13(21.2)(e)(iii)(A) amended to add "hypothec" by 2001, c. 17, subsecs. 196(3) and (4), in force June 14, 2001.

Subpara. 13(21.2)(e)(ii) amended by 2001, c. 17, subsec. 6(8), applicable after November 1999. The subpara. formerly read:

(ii) where 2 or more properties of a prescribed class of the transferor are disposed of at the same time, subparagraph (i) applies as if each property so disposed of had been separately disposed of in the order designated by the taxpayer or, if the taxpayer does not designate an order, in the order designated by the Minister,

Subsec. 13(21.2) added by 1998, c. 19, subsec. 73(4), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260) to dispositions of property that occur after April 26, 1995 except that, where

(a) a property is disposed of after April 26, 1995 and before June 20, 1996, and

(b) the transferor elects in writing, filed with the Minister of National Revenue before October 1998,

the opening portion of subpara. 13(21.2)(e)(iii) shall be read as follows:

(iii) the transferor is deemed to own a property that was acquired before the beginning of the taxation year that includes the particular time at a capital cost equal to the amount of the excess described in paragraph (b), and that is of a separate prescribed class that is the same class as the particular class, until the time that is immediately before the first time, after the particular time,

Interpretation Bulletins: IT-291R3: Transfer of property to a corporation under subsection 85(1).

(22) Deduction for insurer — For the purposes of E in the definition "undepreciated capital cost" in subsection (21), an insurer shall be deemed to have been allowed a deduction for depreciation for property of a prescribed class under paragraph 20(1)(a) in computing income for taxation years before its 1977 taxation year equal to the total of

(a) the amount determined, immediately after the end of its 1976 taxation year, for E in that definition, with respect to property of the particular prescribed class of the insurer (determined without reference to this subsection),

(b) the lesser of

(i) the amount of its 1975-76 excess capital cost allowance with respect to property of the particular prescribed class of the insurer, and

(ii) that proportion of the amount, if any, by which its 1975 branch accounting election deficiency exceeds the amount determined under subparagraph 138(4.1)(d)(ii) that

(A) the amount of its 1975-76 excess capital cost allowance with respect to property of the particular prescribed class of the insurer

is of

(B) the total of all its 1975-76 excess capital cost allowances with respect to properties of a prescribed class of the insurer, and

(c) the lesser of

(i) the amount, if any, by which

(A) the undepreciated capital cost of property of the particular prescribed class of the insurer immediately after the end of its 1976 taxation year (determined without reference to this subsection),

exceeds

(B) the amount determined under paragraph (b) in respect of property of the particular prescribed class of the insurer, and

(ii) that proportion of the amount, if any, by which its 1975 branch accounting election deficiency exceeds the total of

(A) the amount determined under subparagraph 138(4.1)(d)(ii),

(B) the total of all amounts determined under paragraph (b) with respect to property of a prescribed class of the insurer,

(C) the total described in subclause 138(4.1)(a)(ii)(B)(IV),

(D) the amount determined under subparagraph 138(4.1)(b)(ii), and

(E) the amount determined under subparagraph 138(4.1)(a)(ii)

that

(F) the undepreciated capital cost of property of the particular prescribed class of the insurer immediately after the end of its 1976 taxation year (determined without reference to this subsection),

is of

(G) the total of all amounts each of which is the undepreciated capital cost of property of a prescribed class of the insurer immediately after

the end of its 1976 taxation year (determined without reference to this subsection).

Related Provisions: See at end of s. 13.

(23) Deduction for life insurer — For the purposes of E in the definition "undepreciated capital cost" in subsection (21), a life insurer shall be deemed to have been allowed a deduction for depreciation for property of a prescribed class under paragraph 20(1)(a) in computing income for taxation years before its 1978 taxation year equal to the total of

(a) the amount determined immediately after the end of its 1977 taxation year for E in that definition, with respect to property of the particular prescribed class of the insurer (determined without reference to this subsection), and

(b) the amount, if any, by which

(i) the total of all maximum amounts the insurer was entitled to claim with respect to property of the particular prescribed class of the insurer in taxation years ending before 1978 and after 1968

exceeds

(ii) the amount determined under paragraph (a).

Related Provisions: See at end of s. 13.

(23.1) Application of subsec. 138(12) — The definitions in subsection 138(12) apply to this section.

Origin of subsec. 13(23.1): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words to subsec. 138(12)).

(24) Acquisition of control — Where control of a corporation has been acquired at any time by a person or group of persons and, within the 12-month period that ended immediately before that time, the corporation or a partnership of which it was a majority interest partner acquired depreciable property (other than property that was owned by the corporation or partnership or by a person that would, if section 251.1 were read without reference to the definition "controlled" in subsection 251.1(2)[1], be affiliated with the corporation throughout the period that began immediately before the 12-month period began and ended at the time the property was acquired by the corporation or partnership) that was not used, or acquired for use, by the corporation or partnership in a business that was carried on by it immediately before the 12-month period began,

(a) for the purposes of the description of A in the definition "undepreciated capital cost" in subsection (21) and of sections 127 and 127.1, the property is, subject to paragraph (b), deemed not to have been acquired by the corporation or partnership before that time and to have been acquired by it immediately after that time; and

(b) where the property was disposed of by it before that time and was not reacquired by it before that time, for the purpose of the description of A in that definition, the property is deemed to have been acquired by the corporation or partnership immediately before the property was disposed of.

Related Provisions: 13(25) — Change of control within 12 months of incorporation; 87(2)(j.6) — Amalgamations — continuing corporation; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired. See also at end of s. 13.

History: Subsec. 13(24) amended by 1998, c. 19, subsec. 73(5), applicable to acquisitions of control that occur after April 26, 1995. The subsec. formerly read:

(24) Where at any time control of a corporation has been acquired by a person or group of persons and, within the twelve month period ending immediately before that time, the corporation, or a partnership of which it was a majority interest partner (within the meaning assigned by subsection 97(3.1)), acquired depreciable property (other than property that was owned by the corporation or partnership or by a person or persons related to the corporation throughout the period commencing immediately before the twelve month period and ending at the time the property was acquired by the corporation or partnership) that was not used, or acquired for use, by the corporation or partnership in a business that was carried on by it immediately before that twelve month period, for the purposes of A in the definition "undepreciated capital cost" in subsection (21) and of sections 127 and 127.1, the property shall be deemed not to have been acquired by the corporation or partnership before that time and shall be deemed to have been acquired by it immediately after that time, except that, where the property was disposed of by it before that time and not reacquired by it before that time, for the purposes of A in that definition, the property shall be deemed to have been acquired by the corporation or partnership immediately before the property was disposed of.

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987.

I.T. Technical News: 7 (control by a group — 50/50 arrangement).

(25) Early change of control — For the purpose of subsection (24), where a corporation referred to in that subsection was incorporated or otherwise formed in the 12-month period referred to in that subsection, the corporation is deemed to have been, throughout the period that began immediately before the 12-month period and ended immediately after it was incorporated or otherwise formed,

(a) in existence; and

(b) affiliated with every person with whom it was affiliated (otherwise than because of a right referred to in paragraph 251(5)(b)) throughout the period that began when it was incorporated or otherwise formed and ended immediately before its control is acquired.

History: Subsec. 13(25) amended by 1998, c. 19, subsec. 73(5), applicable to acquisitions of control that occur after April 26, 1995. The subsec. formerly read:

(25) For the purposes of subsection (24), where the corporation referred to in that subsection was incorporated or otherwise formed during the twelve month period referred to in that subsection, it shall be deemed to have been, throughout the period commencing immediately before the twelve month period and ending immediately after it was incorporated or otherwise formed,

(a) in existence; and

(b) related to the person or persons to whom it was related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) throughout the period commencing when it was incorporated or otherwise formed and ending immediately before the control of the corporation was acquired.

(26) Restriction on deduction before available for use — In applying the definition "undepreciated capital cost" in subsection (21) for the purpose of paragraph 20(1)(a) and any regulations made for the purpose of that paragraph, in computing a taxpayer's income for a taxation year from a business or property, no amount shall be included in calculating the undepreciated capital cost to the taxpayer of depreciable property of a prescribed class in respect of the capital cost to the taxpayer of a property of that class (other than property that is a certified production, as defined by regulations made for the purpose of

[1] *Sic*. Should read "251.1(3)" — ed.

paragraph 20(1)(a)) before the time the property is considered to have become available for use by the taxpayer.

Related Provisions: 13(27), (28) — Interpretation — available for use; 13(30) — Transfers of property; 13(32) — Leased property; 20(28) — Deduction against rental income from building; 37(1.2) — No R&D deduction for capital expenditure until property available for use; 127(11.2) — No investment tax credit until property available for use; 248(19) — When property available for use. See also at end of s. 13.

History: See under subsec. 13(29).

Regulations: 1100(2)(a)(i) (CCA in year property becomes available for use); 1104(2) (definition of "certified production").

Advance Tax Rulings: ATR-44: Utilization of deductions and credits within a related corporate group.

(27) Interpretation — available for use — For the purposes of subsection (26) and subject to subsection (29), property (other than a building or part thereof) acquired by a taxpayer shall be considered to have become available for use by the taxpayer at the earliest of

(a) the time the property is first used by the taxpayer for the purpose of earning income,

(b) the time that is immediately after the beginning of the first taxation year of the taxpayer that begins more than 357 days after the end of the taxation year of the taxpayer in which the property was acquired by the taxpayer,

(c) the time that is immediately before the disposition of the property by the taxpayer,

(d) the time the property

(i) is delivered to the taxpayer, or to a person or partnership (in this paragraph referred to as the "other person") that will use the property for the benefit of the taxpayer, or, where the property is not of a type that is deliverable, is made available to the taxpayer or the other person, and

(ii) is capable, either alone or in combination with other property in the possession at that time of the taxpayer or the other person, of being used by or for the benefit of the taxpayer or the other person to produce a commercially saleable product or to perform a commercially saleable service, including an intermediate product or service that is used or consumed, or to be used or consumed, by or for the benefit of the taxpayer or the other person in producing or performing any such product or service,

(e) in the case of property acquired by the taxpayer for the prevention, reduction or elimination of air or water pollution created by operations carried on by the taxpayer or that would be created by such operations if the property had not been acquired, the time at which the property is installed and capable of performing the function for which it was acquired,

(f) in the case of property acquired by

(i) a corporation a class of shares of the capital stock of which is listed on a prescribed stock exchange,

(ii) a corporation that is a public corporation because of an election made under subparagraph (b)(i) of the definition "public corporation" in subsection 89(1) or a designation made by the Minister in a notice to the corporation under subparagraph (b)(ii) of that definition, or

(iii) a subsidiary wholly-owned corporation of a corporation described in subparagraph (i) or (ii),

the end of the taxation year for which depreciation in respect of the property is first deducted in computing the earnings of the corporation in accordance with generally accepted accounting principles and for the purpose of the financial statements of the corporation for the year presented to its shareholders,

(g) in the case of property acquired by the taxpayer in the course of carrying on a business of farming or fishing, the time at which the property has been delivered to the taxpayer and is capable of performing the function for which it was acquired,

(h) in the case of property of a taxpayer that is a motor vehicle, trailer, trolley bus, aircraft or vessel for which one or more permits, certificates or licences evidencing that the property may be operated by the taxpayer in accordance with any laws regulating the use of such property are required to be obtained, the time all those permits, certificates or licences have been obtained,

(i) in the case of property that is a spare part intended to replace a part of another property of the taxpayer if required due to a breakdown of that other property, the time the other property became available for use by the taxpayer,

(j) in the case of a concrete gravity base structure and topside modules intended to be used at an oil production facility in a commercial discovery area (within the meaning assigned by section 2 of the *Canada Petroleum Resources Act*) on which the drilling of the first well that indicated the discovery began before March 5, 1982, in an offshore region prescribed for the purposes of subsection 127(9), the time the gravity base structure deballasts and lifts the assembled topside modules, and

(k) where the property is (within the meaning assigned by subsection (4.1)) a replacement for a former property described in paragraph (4)(a) that was acquired before 1990 or that became available for use at or before the time the replacement property is acquired, the time the replacement property is acquired,

and, for the purposes of paragraph (f), where depreciation is calculated by reference to a portion of the cost of the property, only that portion of the property shall be considered to have become available for use at the end of the taxation year referred to in that paragraph.

Related Provisions: 13(21.2)(e)(iv) — When property considered available for use following transfer to affiliated person; 13(30), (31) — Transfers of property; 20(28) — Deduction before available for use; 87(2)(j.6) — Continuing corporation; 248(19) — When property available for use. See also at end of s. 13.

History: Para. 13(27)(d) amended by 1998, c. 19, subsec. 73(6), applicable to property acquired after 1989. The para. formerly read:

> (d) the time the property is delivered or made available to the taxpayer and is capable, either alone or in combination with other property in the taxpayer's possession at that time, of producing a commercially saleable product or performing a commercially saleable service, including an intermediate product or service that is used or consumed, or is to be used or consumed, by the taxpayer in producing or providing any such product or service,

See also under subsec. 13(29).

Selected Cases [subsec. 13(27)]: *Morley v. R.*, [2005] 1 C.T.C. 2284 (TCC); add'l reasons to [2004] 3 C.T.C. 2153 (TCC) (Software not used by partnership for gaining or producing income from a business).

Regulations: 1100(2)(a)(vii) (CCA in year property becomes available for use under 13(27)(b)); 3200, 3201 (prescribed stock exchanges for 13(27)(f)(i)).

Application Policies: SR&ED 2000-04R2: Recapture of investment tax credit.

(28) Idem — For the purposes of subsection (26) and subject to subsection (29), property that is a building or

part thereof of a taxpayer shall be considered to have become available for use by the taxpayer at the earliest of

(a) the time all or substantially all of the building is first used by the taxpayer for the purpose for which it was acquired,

(b) the time the construction of the building is complete,

(c) the time that is immediately after the beginning of the taxpayer's first taxation year that begins more than 357 days after the end of the taxpayer's taxation year in which the property was acquired by the taxpayer,

(d) the time that is immediately before the disposition of the property by the taxpayer, and

(e) where the property is (within the meaning assigned by subsection (4.1)) a replacement for a former property described in paragraph (4)(a) that was acquired before 1990 or that became available for use at or before the time the replacement property is acquired, the time the replacement property is acquired,

and, for the purpose of this subsection, a renovation, alteration or addition to a particular building shall be considered to be a building separate from the particular building.

Related Provisions: 13(21.2)(e)(iv) — When property considered available for use following transfer to affiliated person; 13(30), (31) — Transfers of property; 87(2)(j.6) — Continuing corporation.

History: See under subsec. 13(29).

Regulations: 1100(2)(a)(vii) (CCA in year property becomes available for use under 13(28)(c)).

(29) Idem — For the purposes of subsection (26), where a taxpayer acquires property (other than a building that is used or is to be used by the taxpayer principally for the purpose of gaining or producing gross revenue that is rent) in the taxpayer's first taxation year (in this subsection referred to as the "particular year") that begins more than 357 days after the end of the taxpayer's taxation year in which the taxpayer first acquired property after 1989, that is part of a project of the taxpayer, or in a taxation year subsequent to the particular year, and at the end of any taxation year (in this subsection referred to as the "inclusion year") of the taxpayer

(a) the property can reasonably be considered to be part of the project, and

(b) the property has not otherwise become available for use,

if the taxpayer so elects in prescribed form filed with the taxpayer's return of income under this Part for the particular year, that particular portion of the property the capital cost of which does not exceed the amount, if any, by which

(c) the total of all amounts each of which is the capital cost to the taxpayer of a depreciable property (other than a building that is used or is to be used by the taxpayer principally for the purpose of gaining or producing gross revenue that is rent) that is part of the project, that was acquired by the taxpayer after 1989 and before the end of the taxpayer's last taxation year that ends more than 357 days before the beginning of the inclusion year and that has not become available for use at or before the end of the inclusion year (except where the property has first become available for use before the end of the inclusion year because of this subsection or paragraph (27)(b) or (28)(c))

exceeds

(d) the total of all amounts each of which is the capital cost to the taxpayer of a depreciable property, other than the particular portion of the property, that is part of the project to the extent that the property is considered, because of this subsection, to have become available for use before the end of the inclusion year

shall be considered to have become available for use immediately before the end of the inclusion year.

Related Provisions: 220(3.2), Reg. 600(b) — Late filing or revocation of election.

History: Subsecs. 13(26) to (29) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 9(11), applicable to property acquired by a taxpayer after 1989 other than property acquired

(a) from a person with whom the taxpayer was not dealing at arm's length (otherwise than by reason of a right referred to in para. 251(5)(b)) at the time the property was acquired, or

(b) in the course of a reorganization in respect of which, if a dividend were received by a corporation in the course of the reorganization, subsec. 55(2) would not be applicable to the dividend by reason of the application of para. 55(3)(b),

where the property was depreciable property of the person from whom it was acquired and was owned by that person before 1990.

Regulations: 4609 (prescribed offshore region).

Forms: T1031: Subsection 13(29) election re certain depreciable properties, acquired for use in a long term project.

(30) Transfers of property — Notwithstanding subsections (27) to (29), for the purpose of subsection (26), property of a taxpayer shall be deemed to have become available for use by the taxpayer at the earlier of the time the property was acquired by the taxpayer and, if applicable, a prescribed time, where

(a) the property was acquired

(i) from a person with whom the taxpayer was not dealing at arm's length (otherwise than because of a right referred to in paragraph 251(5)(b)) at the time the property was acquired by the taxpayer, or

(ii) in the course of a reorganization in respect of which, if a dividend were received by a corporation in the course of the reorganization, subsection 55(2) would not apply to the dividend because of paragraph 55(3)(b); and

(b) before the property was acquired by the taxpayer, it became available for use (determined without reference to paragraphs (27)(c) and (28)(d)) by the person from whom it was acquired.

History: Subsec. 13(30) substituted by 1994, c. 7, Sch. VIII (1993, c. 24), s. 4, applicable to property acquired after 1989. Subsec. 13(30) formerly read:

(30) Notwithstanding subsections (27) to (29), for the purposes of subsection (26), property of a taxpayer shall be deemed to have become available for use by the taxpayer at the time at which the property was acquired where

(a) the property was acquired

(i) from a person with whom the taxpayer was not dealing at arm's length (otherwise than by reason of a right referred to in paragraph 251(5)(b)) at that time, or

(ii) in the course of a reorganization in respect of which, if a dividend were received by a corporation in the course of the reorganization, subsection 55(2) would not be applicable to the dividend by reason of the application of paragraph 55(3)(b); and

(b) the property had become available for use by the person from whom it was acquired (determined without reference to paragraphs (27)(c) and (28)(d)) before that time.

Subsec. 13(30) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 9(11), applicable in respect of property acquired after 1989.

Regulations: 1100(2.2)(j).

(31) Idem — For the purposes of paragraphs (27)(b) and (28)(c) and subsection (29), where a property of a taxpayer was acquired from a person (in this subsection referred to as "the transferor")

(a) with whom the taxpayer was, at the time the taxpayer acquired the property, not dealing at arm's length (otherwise than because of a right referred to in paragraph 251(5)(b)), or

(b) in the course of a reorganization in respect of which, if a dividend were received by a corporation in the course of the reorganization, subsection 55(2) would not apply to the dividend because of the application of paragraph 55(3)(b),

the taxpayer shall be deemed to have acquired the property at the time it was acquired by the transferor.

History: Subsec. 13(31) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 9(11), applicable to property acquired after 1989.

(32) Leased property — Where a taxpayer has leased property that is depreciable property of a person with whom the taxpayer does not deal at arm's length, the amount, if any, by which

(a) the total of all amounts paid or payable by the taxpayer for the use of, or the right to use, the property in a particular taxation year and before the time the property would have been considered to have become available for use by the taxpayer if the taxpayer had acquired the property, and that, but for this subsection, would be deductible in computing the taxpayer's income for any taxation year

exceeds

(b) the total of all amounts received or receivable by the taxpayer for the use of, or the right to use, the property in the particular taxation year and before that time and that are included in the income of the taxpayer for any taxation year

shall be deemed to be a cost to the taxpayer of a property included in Class 13 in Schedule II to the *Income Tax Regulations* and not to be an amount paid or payable for the use of, or the right to use, the property.

History: Subsec. 13(32) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 9(11), applicable to depreciable property of a person referred to in that subsection that was acquired by that person after 1989.

(33) Consideration given for depreciable property — For greater certainty, where a person acquires a depreciable property for consideration that can reasonably be considered to include a transfer of property, the portion of the cost to the person of the depreciable property attributable to the transfer shall not exceed the fair market value of the transferred property.

Related Provisions: 68 — Allocation of amounts in consideration for disposition of property; 69(1) — Inadequate considerations.

History: Subsec. 13(33) added by 1994, c. 21, subsec. 7(3), applicable to property acquired after November 1992.

(34) Deductible expenses — Notwithstanding paragraph 1102(1)(a) of the Regulations, for taxation years that end after 1987 and before December 6, 1996, the classes of property prescribed for the purpose of paragraph 20(1)(a) are deemed to include property of a taxpayer that, if the Act were read without reference to sections 66 to 66.4, would be included in one of the classes.

History: Subsec. 13(34) added by 2001, c. 17, subsec. 6(9), applicable to taxation years that end after 1987 and before December 6, 1996.

Related Provisions [s. 13]: 36 — Railway companies; 37(6) — Scientific research capital expenditures; 45(2) — Election where change in use; 68 — Allocation of amounts in consideration for disposition of property; 70(5) — Depreciable and other capital property of deceased taxpayer; 70(9.1) — Transfer of farm property from spouse's trust to children of settlor; 70(12) — Capital cost of depreciable property on death; 73(2) — Capital cost and amount deemed allowed to spouse, etc. or trust; 73(3)(e) — *Inter vivos* transfer of farm property by farmer to child; 80(9)(c) — Reduction of capital cost on debt forgiveness ignored for purposes of s. 13; 85(5) — Rules on transfers of depreciable property; 87(2)(d) — Amalgamations — depreciable property; 87(2)(l.3) — Amalgamations — replacement property; 88(1)(f) — Winding-up; 97(4) — Where capital cost to partner exceeds proceeds of disposition; 98(3)(e) — Rules where partnership ceases to exist; 98(5)(e) — Rules where partnership business carried on as sole proprietorship; 104(5)(c) — Trust — deemed disposition of property; 104(16) — Trusts — capital cost allowance deduction; 107(2) — Distribution by trust in satisfaction of capital interest; 107.2 — Distribution by retirement compensation arrangement; 132.1(1)(d) — Deemed capital cost of property following mutual fund reorganization; 138(11.8) — Rules on transfer of depreciable property; 138(11.91)(f) — Computation of income of non-resident insurer.

Definitions [s. 13]: "acquired" — 256(7)–(9); "affiliated" — 13(25), 251.1; "amount" — 248(1); "amount payable" — 13(23.1), 138(12); "appropriate minister" — 13(21); "arm's length" — 13(7)(e.1), 251; "assessment" — 248(1); "assistance" — 79(4), 125.4(5), 248(16), (16.1), (18), (18.1); "available for use" — 13(21.2)(e)(iv), 13(27)–(31), 248(19); "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "capital cost" — 13(7)–(7.4), (10), 13(21.2)(g)(i), 70(12), 128.1(1)(c), 128.1(4)(c), 132.1(1)(d); "capital gain" — 39(1), 248(1); "capital property" — 54, 248(1); "certified production" — Reg. 1104(2); "class of shares" — 248(6); "control" — 256(6)–(9); "conversion", "conversion cost" — 13(21); "consequence of the death" — 248(8); "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount" — 248(1); "cost to an insurer of acquiring a mortgage or hypothec" — 13(23.1), 138(12); "depreciable property" — 13(21), 248(1); "disposition" — 248(1); "eligible capital amount" — 14(1), 248(1); "eligible capital expenditure" — 14(5), 248(1); "estate" — 104(1), 248(1); "farming" — 248(1); "fiscal period" — 249.1; "fishing", "former business property" — 248(1); "former property" — 13(4); "gaining or producing income" — 13(9); "gross revenue" — 248(1); "Her Majesty" — *Interpretation Act* 35(1); "immovable" — Quebec *Civil Code* art. 900–907; "income" — 13(3)(b); "incorporeal property" — Quebec *Civil Code* art. 899, 906; "individual", "life insurer", "majority interest partner", "Minister", "motor vehicle" — 248(1); "1975 branch accounting election deficiency", "1975-76 excess capital cost allowance" — 13(23.1), 138(12); "non-resident" — 248(1); "passenger vehicle", "person", "prescribed" — 248(1); "prescribed stock exchange" — 248(29), Reg. 3200, 3201; "property" — 248(1); "province" — *Interpretation Act* 35(1); "public corporation" — 89(1), 248(1); "regulation" — 248(1); "related" — 13(25), 251(2); "replacement property" — 13(4), (4.1); "resident in Canada" — 94(3)(a)(viii), 250; "series" — 248(10); "share", "shareholder", "subsidiary wholly-owned corporation" — 248(1); "tax payable" — 248(2); "taxable Canadian property" — 248(1); "taxation year" — 11(2), 13(3)(a), 13(8), 249; "taxpayer" — 104(1), 248(1); "timber resource property" — 13(21), 248(1); "transferee" — 13(4.2)(a); "transferor" — 13(4.2)(a), 13(7)(e), 13(21.2)(a), 13(31); "treaty-protected property" — 248(1); "trust" — 104(1), 248(1), (3); "undepreciated capital cost" — 13(21), 248(1); "written" — *Interpretation Act* 35(1)"writing"; "year" — 11(2), 13(3)(a), 13(8).

Regulations [s. 13]: 1105 (prescribed classes of depreciable property).

I.T. Application Rules [s. 13]: 20(1), (1.1), (3).

Interpretation Bulletins [s. 13]: IT-151R5: Scientific research and experimental development expenditures; IT-297R2: Gifts in kind to charity and others; IT-325R2: Property transfers after separation, divorce and annulment.

Forms [s. 13]: T2 SCH 8: Capital cost allowance.

14. (1) Eligible capital property — inclusion in income from business — Where, at the end of a taxation year, the total of all amounts each of which is an amount determined, in respect of a business of a taxpayer, for E in the definition "cumulative eligible capital" in subsection (5) (in this section referred to as an "eligible capital amount") or for F in that definition exceeds the total of all amounts determined for A to D in that definition in respect of the business (which excess is in this

subsection referred to as "the excess"), there shall be included in computing the taxpayer's income from the business for the year the total of

(a) the amount, if any, that is the lesser of

(i) the excess, and

(ii) the amount determined for F in the definition "cumulative eligible capital" in subsection (5) at the end of the year in respect of the business, and

(b) the amount, if any, determined by the formula

$$2/3 \times (A - B - C - D)$$

where

A is the excess,

B is the amount determined for F in the definition "cumulative eligible capital" in subsection (5) at the end of the year in respect of the business,

C is ½ of the amount determined for Q in the definition "cumulative eligible capital" in subsection (5) at the end of the year in respect of the business, and

D is the amount claimed by the taxpayer, not exceeding the taxpayer's exempt gains balance for the year in respect of the business.

Related Provisions: 14(1.01) — Election to recognize capital gain in place of reducing CEC pool; 14(1.1) — Expenditure relating to qualified farm property; 14(3) — Non-arm's length acquisition of ECP; 14(8) — Deemed residence in Canada; 14(9) — Effect of excessive election for capital gains exemption; 20(1)(b) — Cumulative eligible capital amount; 20(4.2) — Bad debt from disposition of ECP; 24(1) — Ceasing to carry on business; 24(2)(d) — Business carried on by spouse or controlled corporation; 28(1)(d) — Inclusion in farming or fishing income when using cash method; 39(9), (10) — Deduction from business investment loss; 39.1(5) — Partnership income inclusion — exempt capital gains balance; 53(1)(e)(i)(A), (A.2), 53(2)(c)(i)(A), (A.2) — Adjustments to ACB of partnership interest; 70(5.1) — ECP of deceased; 70(9.8) — Farm property used by corporation or partnership; 73(3) — *Inter vivos* transfer of farm property by farmer to child; 85(1)(d.1)–(d.12) — Rollover of property to corporation; 87(2)(f) — Amalgamation — continuing corporation; 88(1)(c.1) — Windup — Amount to be included under 14(1)(b); 98(3)(b) — Where partnership ceases to exist; 98(5)(h) — Where partnership business carried on as sole proprietorship; 107(2)(f) — Capital interest distribution by personal or prescribed trust; 107.4(3)(e) — Rollover of eligible capital property to trust; 110.6(17) — Capital gains exemption — ordering rule; 146(1)"earned income"(h) — Amount under 14(1)(a)(v) excluded from earned income for RRSP purposes; 248(1)"eligible capital amount" — Definition applies to entire Act; 257 — Formula cannot calculate to less than zero.

History: Subsec. 14(1) amended by 2001, c. 17, subsec. 7(1), applicable to taxation years that end after February 27, 2000 except that, for taxation years that ended after February 27, 2000 and before October 18, 2000, the reference to the fraction "⅔" in the formula in para. 14(1)(b) shall be read as a reference to the fraction "⅞". The subsec. formerly read:

14. (1) Inclusion in income from business [eligible capital property] — Where, at the end of a taxation year, the total of all amounts each of which is an amount determined, in respect of a business of a taxpayer, for E in the definition "cumulative eligible capital" in subsection (5) (in this section referred to as an "eligible capital amount") or for F in that definition exceeds the total of all amounts determined for A to D in that definition in respect of the business (which excess is in this subsection referred to as "the excess"),

(a) in the case of a taxpayer (other than

(i) a corporation,

(ii) a partnership all the members of which were

(A) corporations,

(B) partnerships all the members of which were corporations, or

(C) partnerships described in this subparagraph, or

(iii) a partnership that was not a Canadian partnership throughout the year)

who was resident in Canada throughout the year,

(iv) the amount, if any, that is the lesser of

(A) the excess, and

(B) the amount determined for F in the definition "cumulative eligible capital" in subsection (5) at the end of the year in respect of the business

shall be included in computing the taxpayer's income from that business for the year, and

(v) there shall be included in computing the taxpayer's income from the business for the year the amount determined by the formula

$$A - B - C - D$$

where

A is the excess,

B is the amount determined for F in the definition "cumulative eligible capital" in subsection (5) at the end of the year in respect of the business,

C is ½ of the amount determined for Q in the definition "cumulative eligible capital" in subsection (5) at the end of the year in respect of the business, and

D is such amount as the taxpayer claims, not exceeding the taxpayer's exempt gains balance in respect of the business for the year

(b) in any other case, the amount, if any, by which the excess exceeds ½ of the amount determined for Q in the definition "cumulative eligible capital" in subsection (5) in respect of the business shall be included in computing the taxpayer's income from that business for that year.

The closing words of subpara. 14(1)(a)(v) repealed by 1998, c. 19, subsec. 74(1), applicable to fiscal periods that end after February 22, 1994, otherwise than solely because of an election under subsec. 25(1). The closing words formerly read:

and, for the purposes of section 110.6 and of paragraph 3(b) as it applies for the purposes of that section, the total of all amounts each of which is the portion of the amount so included that can reasonably be attributed to proceeds of a disposition in the year of a qualified farm property (within the meaning assigned by subsection 110.6(1)) in excess of the taxpayer's cost of the property shall be deemed to be a taxable capital gain of the taxpayer from the disposition in the year of qualified farm property.

Subpara. 14(1)(a)(v) amended by 1995, c. 3, subsec. 5(1), applicable to fiscal periods that end after February 22, 1994 otherwise than because of an election under subsec. 25(1). Subpara. (v) formerly read:

(v) the amount, if any, by which the excess exceeds the total of

(A) the amount determined under subparagraph (iv), and

(B) ½ of the amount determined for Q in the definition "cumulative eligible capital" in subsection (5) in respect of the business

shall be deemed to be a taxable capital gain of the taxpayer from a disposition of capital property by the taxpayer in the year and, for the purposes of section 110.6, that property shall be deemed to have been disposed of by the taxpayer in the year; and

Subpara. 14(1)(a)(v) and para. 14(1)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 10(1), applicable

(a) in the case of a corporation, to taxation years commencing after June 1988, and

(b) in any other case, to fiscal periods commencing after 1987.

That subpara. and para. formerly read:

(v) the amount, if any, by which the excess exceeds the amount determined under subparagraph (iv) shall be deemed to be a taxable capital gain of the taxpayer from a disposition of capital property by the taxpayer in the year and, for the purposes of section 110.6, that property shall be deemed to have been disposed of by the taxpayer in the year; and

(b) in any other case, the excess shall be included in computing the taxpayer's income from that business for that year.

Selected Cases [subsec. 14(1)]: *Toronto Refiners & Smelters Ltd. v. R.*, [2003] 1 C.T.C. 365 (FCA) (Purpose of payment was civic, not for gaining or producing income, therefore not ECE); *Fortino v. R.*, [2000] 1 C.T.C. 349 (FCA); aff'g [1997] 2 C.T.C. 2184 (TCC) (Non-competition

agreement proceeds not eligible capital amounts); *Edmonton Plaza Hotel (1980) Ltd. v. R.*, [1987] 2 C.T.C. 153 (FCTD) (Amount paid to municipality for provision of parking spaces required for expansion was capital); *R. v. Goodwin Johnson (1960) Ltd.*, [1986] 1 C.T.C. 448 (FCA) (Amount paid to company for surrender of rights under contract not eligible capital amount); *Tekarra Lodge Ltd. v. R.*, [1985] 1 C.T.C. 334 (FCTD) (Proceeds of disposition of expired government licence were amounts received in respect of government right); *Brooke Bond Foods Ltd. v. R.*, [1984] C.T.C. 115 (FCTD) (Cost of plans for construction eligible capital expenditure even though building not built); *R. v. Timagami Financial Services Ltd.*, [1982] C.T.C. 314 (FCA) (Goodwill portion of proceeds payable in subsequent year not included in current year eligible capital amount); *R. v. Lague, Leopold, Ltd.*, [1981] C.T.C. 348 (FCTD) (Sale of rights under contract less than two years after closing was sale of eligible capital property, not adventure in nature of trade).

I.T. Application Rules: 21(1).

Interpretation Bulletins: IT-73R6: The small business deduction; IT-291R3: Transfer of property to a corporation under subsection 85(1); IT-365R2: Damages, settlements and similar receipts; IT-386R: Eligible capital amounts. See also list at end of s. 14.

Advance Tax Rulings: ATR-6: Vendor reacquires business assets following default by purchaser.

(1.01) Election re capital gain — Where, at any time in a taxation year, a taxpayer disposes of an eligible capital property (other than goodwill) in respect of a business, the cost of the property to the taxpayer can be determined, the proceeds of the disposition (in this subsection referred to as the "actual proceeds") exceed that cost, the taxpayer's exempt gains balance in respect of the business for the year is nil and the taxpayer so elects under this subsection in the taxpayer's return of income for the year,

(a) for the purposes of subsection (5), the proceeds of disposition of the property are deemed to be equal to that cost;

(b) the taxpayer is deemed to have disposed at that time of a capital property that had at that time an adjusted cost base to the taxpayer equal to that cost, for proceeds of disposition equal to the actual proceeds; and

Proposed Amendment — 14(1.01) before (c)

(1.01) Election re capital gain — A taxpayer may, in the taxpayer's return of income for a taxation year, or with an election under subsection 83(2) filed on or before the taxpayer's filing-due date for the taxation year, elect that the following rules apply to a disposition made at any time in the year of an eligible capital property in respect of a business, if the taxpayer's actual proceeds of the disposition exceed the taxpayer's eligible capital expenditure in respect of the acquisition of the property, that eligible capital expenditure can be determined and, for taxpayers who are individuals, the taxpayer's exempt gains balance in respect of the business for the taxation year is nil:

(a) for the purpose of subsection (5) other than the description of A in the definition "cumulative eligible capital", the proceeds of disposition of the property are deemed to be equal to the amount of that eligible capital expenditure;

(b) the taxpayer is deemed to have disposed at that time of a capital property that had, immediately before that time, an adjusted cost base to the taxpayer equal to the amount of that eligible capital expenditure, for proceeds of disposition equal to the actual proceeds; and

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 53(1), will amend the portion of subsec. 14(1.01) before para. (c) to read as above, applicable to dispositions of eligible capital property that occur in taxation years that end after February 27, 2000 except that, in its application to those dispositions of eligible capital property that occur before December 21, 2002, the amended portion is to be read as follows:

(1.01) A taxpayer may, in the taxpayer's return of income for a taxation year, elect that the following rules apply to a disposition made at any time in the taxation year of an eligible capital property (other than goodwill) in respect of a business, if the taxpayer's actual proceeds of the disposition exceed the taxpayer's cost of the property, that cost can be determined and, for taxpayers who are individuals, the taxpayer's exempt gains balance in respect of the business for the taxation year is nil:

(a) for the purposes of subsection (5), the proceeds of disposition of the property are deemed to be equal to that cost;

(b) the taxpayer is deemed to have disposed at that time of a capital property that had, immediately before that time, an adjusted cost base to the taxpayer equal to that cost, for proceeds of disposition equal to the actual proceeds; and

Technical Notes: Subsection 14(1.01) permits a taxpayer to elect, in the taxpayer's return of income for a taxation year, to report a capital gain on the disposition of an eligible capital property in respect of which the taxpayer can identify the cost of the particular property. Where the taxpayer has so elected, the taxpayer is deemed to have disposed of a capital property with an adjusted cost base equal to that cost, for proceeds of disposition equal to the actual proceeds of the eligible capital property. Paragraph 14(1.01)(a) removes the property from the cumulative eligible capital pool by coincidentally deeming the proceeds of disposition of the eligible capital property to be equal to its original cost.

Subsection 14(1.01) is amended to clarify that it is the eligible capital expenditure by the taxpayer to acquire the eligible capital property that must be verifiable.

The amended provision will allow a taxpayer to elect in the taxpayer's return of income for the taxation year of the disposition, or with an election under subsection 83(2). This allows a taxpayer to consider the resulting capital gain when making a capital dividend election.

(c) where the eligible capital property is at that time a qualified farm property (within the meaning assigned by subsection 110.6(1)) of the taxpayer, the capital property deemed by paragraph (b) to have been disposed of by the taxpayer is deemed to have been at that time a qualified farm property of the taxpayer.

Related Provisions: 14(1.02) — Parallel election for property acquired before 1972; 14(1.03) — Non-application of 14(1.01); 14(3) — Effect of 14(1.01) on non-arm's length acquisition of ECP; 96(3) — Election by members of partnership.

History: Subsec. 14(1.01) added by 2001, c. 17, subsec. 7(1), applicable to taxation years that end after February 27, 2000.

Proposed Addition — 14(1.02), (1.03)

(1.02) Election re property acquired with pre-1972 outlays or expenditures — If at any time in a taxation year a taxpayer has disposed of an eligible capital property in respect of which an outlay or expenditure to acquire the property was made before 1972 (which outlay or expenditure would have been an eligible capital expenditure if it had been made or incurred as a result of a transaction that occurred after 1971), the taxpayer's actual proceeds of the disposition exceed the total of those outlays or expenditures, that total can be determined, subsection 21(1) of the *Income Tax Application Rules* applies in respect of the disposition and, for taxpayers who are individuals, the taxpayer's exempt gains balance in respect of the business for the taxation year is nil, the taxpayer may, in the taxpayer's return of income for the taxation year, or with an election under subsection 83(2) filed on or before the taxpayer's filing-due date for the taxation year, elect that the following rules apply:

(a) for the purpose of subsection (5) other than the description of A in the definition "cumulative eligible capital", the proceeds of disposition of the property are deemed to be nil;

(b) the taxpayer is deemed to have disposed at that time of a capital property that had, immediately before that time, an adjusted cost base to the taxpayer equal to nil, for proceeds of disposition equal to the amount determined, in respect of the disposition, under subsection 21(1) of the *Income Tax Application Rules*; and

(c) if the eligible capital property is at that time a qualified farm property (within the meaning assigned by subsection 110.6(1)) of the taxpayer, the capital property deemed by paragraph (b) to have been disposed of by the taxpayer is deemed to have been at that time a qualified farm property of the taxpayer.

Technical Notes: Amended subsection 14(1.01) does not allow a taxpayer to elect under that subsection in respect of a property acquired prior to 1972. New subsection 14(1.02) is added to allow a taxpayer to make a similar election in respect of property that would, if an outlay or expenditure were made after 1971 to acquire the property, be eligible for the election under subsection 14(1.01). For the purposes of calculating the capital gain to the taxpayer under this election, the adjusted cost base of such property is deemed to be nil and the proceeds of disposition would be determined under subsection 21(1) of the *Income Tax Application Rules*.

Related Provisions: 14(1.03) — Non-application of 14(1.02); 14(3) — Effect of 14(1.02) on non-arm's length acquisition of ECP.

(1.03) Non-application of ss. (1.01) and (1.02) — Subsections (1.01) and (1.02) do not apply to a disposition by a taxpayer of a property

(a) that is goodwill; or

(b) that was acquired by the taxpayer

(i) in circumstances where an election was made under subsection 85(1) or (2) and the amount agreed on in that election in respect of the property was less than the fair market value of the property at the time it was so acquired, and

(ii) from a person or partnership with whom the taxpayer did not deal at arm's length and for whom the eligible capital expenditure in respect of the acquisition of the property cannot be determined.

Technical Notes: New subsection 14(1.03) is added, concurrently with the amendment of subsection 14(1.01) and the addition of new subsection 14(1.02), to preclude a taxpayer from making an election under those subsections in respect of eligible capital property that is goodwill. Subsection 14(1.03) also precludes an election by a corporation under those subsections for property acquired in circumstances where an election was made under subsection 85(1) or (2), if the amount agreed on as the corporation's cost under those subsections was less than the fair market value of the property at the time it was so acquired. However, this rule only applies in circumstances where the corporation is dealing at non-arm's length with the transferor of the property and the eligible capital expenditure of the transferor to acquire the property cannot be determined. The exclusion from electing for property acquired in a rollover prevents the conversion of property with no determinable cost into property with a cost that is determinable for tax purposes.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 53(?), will add subsecs. 14(1.02) and (1.03), applicable to dispositions of eligible capital property that occur after December 20, 2002, except that subsec. 14(1.03), in its application to those dispositions that occur on or before February 27, 2004, is to be read without reference to its paragraph (b).

(1.1) Deemed taxable capital gain — For the purposes of section 110.6 and paragraph 3(b) as it applies for the purposes of that section, an amount included under paragraph (1)(b) in computing a taxpayer's income for a particular taxation year from a business is deemed to be a taxable capital gain of the taxpayer for the year from the disposition in the year of qualified farm property to the extent of the lesser of

(a) the amount included under paragraph (1)(b) in computing the taxpayer's income for the particular year from the business, and

(b) the amount determined by the formula

$$A - B$$

where

A is the amount by which the total of

(i) 3/4 of the total of all amounts each of which is the taxpayer's proceeds from a disposition in a preceding taxation year that began after 1987 and ended before February 28, 2000 of eligible capital property in respect of the business that, at the time of the disposition, was a qualified farm property (within the meaning assigned by subsection 110.6(1)) of the taxpayer,

(ii) 2/3 of the total of all amounts each of which is the taxpayer's proceeds from a disposition in the particular year or a preceding taxation year that ended after February 27, 2000 and before October 18, 2000 of eligible capital property in respect of the business that, at the time of the disposition, was a qualified farm property (within the meaning assigned by subsection 110.6(1)) of the taxpayer, and

(iii) 1/2 of the total of all amounts each of which is the taxpayer's proceeds from a disposition in the particular year or a preceding taxation year that ended after October 17, 2000 of eligible capital property in respect of the business that, at the time of the disposition, was a qualified farm property (within the meaning assigned by subsection 110.6(1)) of the taxpayer

exceeds the total of

(iv) 3/4 of the total of all amounts each of which is

(A) an eligible capital expenditure of the taxpayer in respect of the business that was made or incurred in respect of a qualified farm property disposed of by the taxpayer in a preceding taxation year that began after 1987 and ended before February 28, 2000, or

(B) an outlay or expense of the taxpayer that was not deductible in computing the taxpayer's income and that was made or incurred for the purpose of making a disposition referred to in clause (A),

(v) 2/3 of the total of all amounts each of which is

(A) an eligible capital expenditure of the taxpayer in respect of the business that was made or incurred in respect of a qualified farm property disposed of by the taxpayer in the particular year or a preceding taxation year that ended after February 27, 2000 and before October 18, 2000, or

(B) an outlay or expense of the taxpayer that was not deductible in computing the taxpayer's income and that was made or incurred for the purpose of making a disposition referred to in clause (A), and

(vi) 1/2 of the total of all amounts each of which is

(A) an eligible capital expenditure of the taxpayer in respect of the business that was made or incurred in respect of a qualified farm property disposed of by the taxpayer in the particular year or a preceding taxation year that ended after October 17, 2000, or

(B) an outlay or expense of the taxpayer that was not deductible in computing the taxpayer's income and that was made or incurred for the purpose of making a disposition referred to in clause (A), and

B is the total of all amounts each of which is

(i) that portion of an amount deemed by subparagraph (1)(a)(v) (as it applied in respect of the business to fiscal periods that began after 1987 and ended before February 23, 1994) to be a taxable capital gain of the taxpayer that can reasonably be attributed to a disposition of a qualified farm property of the taxpayer, or

(ii) an amount deemed by this section to be a taxable capital gain of the taxpayer for a taxation year preceding the particular year from the disposition of qualified farm property of the taxpayer.

Related Provisions: 110.6(2) — Capital gains exemption for qualified farm property; 257 — Formula cannot calculate to less than zero.

History: The portion of subsec. 14(1.1) before the description of B in para. (b) amended by 2001, c. 17, subsec. 7(2), applicable to taxation years that end after February 27, 2000. That portion formerly read:

(1.1) For the purposes of section 110.6 and of paragraph 3(b) as it applies for the purposes of that section, an amount included under subparagraph (1)(a)(v) in computing a taxpayer's income for a particular taxation year from a business is deemed to be a taxable capital gain of the taxpayer for the year from the disposition in the year of qualified farm property to the extent of the lesser of

(a) the amount included under subparagraph (1)(a)(v) in computing the taxpayer's income for the particular year from the business, and

(b) the amount determined by the formula

A – B

where

A is 3/4 of the amount determined in respect of the taxpayer for the particular year equal to the amount, if any, by which

(i) the total of all amounts each of which is the taxpayer's proceeds from a disposition in the particular year or a preceding taxation year that began after 1987 of an eligible capital property in respect of the business that, at the time of disposition, was a qualified farm property (as defined in subsection 110.6(1)) of the taxpayer

exceeds

(ii) the total of all amounts each of which is

(A) an eligible capital expenditure of the taxpayer in respect of the business that was made or incurred in respect of a qualified farm property disposed of by the taxpayer in the particular year or a preceding taxation year that began after 1987, or

(B) an outlay or expense of the taxpayer that was not deductible in computing the taxpayer's income and was made or incurred for the purpose of making a disposition referred to in subparagraph (i), and

Subsec. 14(1.1) added by 1998, c. 19, subsec. 74(2), applicable to fiscal periods that end after February 22, 1994, otherwise than solely because of an election under subsec. 25(1).

(2) Amount deemed payable — Where any amount is, by any provision of this Act, deemed to be a taxpayer's proceeds of disposition of any property disposed of by the taxpayer at any time, for the purposes of this section, that amount shall be deemed to have become payable to the taxpayer at that time.

Interpretation Bulletins: See list at end of s. 14.

(3) Acquisition of eligible capital property [not at arm's length] — Notwithstanding any other provision of this Act, where at any particular time a person or partnership (in this subsection referred to as the "taxpayer") has, directly or indirectly, in any manner whatever, acquired an eligible capital property in respect of a business from a person or partnership with which the taxpayer did not deal at arm's length (in this subsection referred to as the "transferor") and the property was an eligible capital property of the transferor (other than property acquired by the taxpayer as a consequence of the death of the transferor), the eligible capital expenditure of the taxpayer in respect of the business is, in respect of that acquisition, deemed to be equal to 4/3 of the amount, if any, by which

(a) the amount determined for E in the definition "cumulative eligible capital" in subsection (5) in respect of the disposition of the property by the transferor

Proposed Amendment — 14(3)(a)

(a) the amount determined for E in the definition "cumulative eligible capital" in subsection (5) in respect of the disposition of the property by the transferor or, if the property is the subject of an election under subsection (1.01) or (1.02) by the transferor, 3/4 of the actual proceeds referred to in that subsection,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 53(3), will amend para. 14(3)(a) to read as above, applicable to taxation years that end after February 27, 2000.

Technical Notes: Subsection 14(3) provides rules regarding non-arm's length transfers of eligible capital property. The provision prevents the deduction, under paragraph 20(1)(b), of the portion of the purchaser's cost that is reflected in a capital gains exemption claimed by the vendor under section 110.6. Absent any claim by the vendor of a capital gains exemption under subsection 110.6, the eligible capital expenditure to the purchaser generally equals the proceeds of disposition of the vendor. That is, the eligible capital expenditure of the purchaser equals 4/3 of the amount determined in respect of the vendor under the description of E in the formula in the definition "cumulative eligible capital" in subsection 14(5).

Paragraph 14(3)(a) is amended, for taxation years that end after February 27, 2000, to ensure that, if the eligible capital property is the subject of an election by the vendor under subsection 14(1.01) or (1.02), the eligible capital expenditure of the purchaser will, subject to the adjustments in subsection 14(3) for deductions under section 110.6, equal the actual proceeds of disposition to the vendor.

Letter from Dept. of Finance, June 6, 2002:

Dear [xxx]

I am writing in response to your facsimile transmission dated May 21, 2002 and further to your conversation with Ed Short of the Tax Legislation Division. In your facsimile you noted that the application of subsection 14(3) of the *Income Tax Act* ("the Act") may have unintended results in circumstances where a non-arm's length transfer of eligible capital property is the subject of an election by the vendor under subsection 14(1.01) of the Act.

Subsection 14(1.01) permits a vendor to elect to report a capital gain on the disposition of an eligible capital property, the cost of which the vendor can identify. Where the vendor so elects, the vendor is deemed to have disposed of a capital property with an adjusted cost base equal to that cost, for proceeds of disposition equal to the actual proceeds received for the eligible capital property. If the purchaser is not dealing at arm's length with the vendor, subsection 14(3) of the Act provides, in effect, that the purchaser's cost will be equal to the vendor's original cost rather than the actual proceeds of disposition. This could result in

double taxation if the purchaser were to sell the property for an amount in excess of the purchaser's deemed cost.

We appreciate the nature of the unintended consequences of the interaction of subsections 14(1.01) and (3). Consequently, we are prepared to recommend to the Minister of Finance an amendment to paragraph 14(3)(a) of the Act to ensure that, if an eligible capital property is the subject of an election by a vendor under subsection 14(1.01) of the Act, the eligible capital expenditure of the non-arm's length purchaser will, subject to the existing adjustments in subsection 14(3) for deductions under section 110.6, be equal to the actual proceeds of disposition to the vendor. Further, it will be recommended that the amendment be effective for taxation years that end after February 27, 2000 which is the effective date of subsection 14(1.01).

Thank you for bringing this matter to my attention.

Yours sincerely,
Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

exceeds the total of

(b) the total of all amounts that can reasonably be considered to have been claimed as deductions under section 110.6 for taxation years that ended before February 28, 2000 by any person with whom the taxpayer was not dealing at arm's length in respect of the disposition of the property by the transferor, or any other disposition of the property before the particular time,

(b.1) 9/8 of the total of all amounts that can reasonably be considered to have been claimed as deductions under section 110.6 for taxation years that ended after February 27, 2000 and before October 18, 2000 by any person with whom the taxpayer was not dealing at arm's length in respect of the disposition of the property by the transferor, or any other disposition of the property before the particular time, and

(b.2) 3/2 of the total of all amounts that can reasonably be considered to have been claimed as deductions under section 110.6 for taxation years that end after October 17, 2000 by any person with whom the taxpayer was not dealing at arm's length in respect of the disposition of the property by the transferor, or any other disposition of the property before that particular time,

except that, where the taxpayer disposes of the property after the particular time, the amount of the eligible capital expenditure deemed by this subsection to be made by the taxpayer in respect of the property shall be determined at any time after the disposition as if the total of the amounts determined under paragraphs (b), (b.1) and (b.2) in respect of the disposition were the lesser of

(c) the amount otherwise so determined, and

(d) the amount, if any, by which

(i) the amount determined under paragraph (a) in respect of the disposition of the property by the transferor

exceeds

(ii) the amount determined for E in the definition "cumulative eligible capital" in subsection (5) in respect of the disposition of the property by the taxpayer.

Related Provisions: 110.6(19)(b)(ii) — Where election made to trigger capital gains exemption; 248(8) — Occurrences as a consequence of death.

History: The portion of subsec. 14(3) before para. (c) amended by 2001, c. 17, subsec. 7(3), applicable to taxation years that end after February 27, 2000. That portion formerly read:

(3) Notwithstanding any other provision of this Act, where at any time a person or partnership (in this subsection referred to as the "taxpayer") has, directly or indirectly, in any manner whatever, acquired an eligible capital property in respect of a business from a person or partnership with whom the taxpayer did not deal at arm's length (in this subsection referred to as the "transferor") and the property was an eligible capital property of the transferor (other than property acquired by the taxpayer as a consequence of the death of the transferor), the eligible capital expenditure of the taxpayer in respect of the business shall, in respect of that acquisition, be deemed to be equal to 4/3 of the amount, if any, by which

(a) the amount determined for E in the definition "cumulative eligible capital" in subsection (5) in respect of the disposition of the property by the transferor

exceeds

(b) the total of all amounts that can reasonably be considered to have been claimed as deductions under section 110.6 by any person with whom the taxpayer was not dealing at arm's length in respect of the disposition of the property by the transferor, or any other disposition of the property before that time,

except that, where the taxpayer disposes of the property after that time, the amount of the eligible capital expenditure deemed by this subsection to be made by the taxpayer in respect of the property shall be determined at any time after the disposition as if the amount determined under paragraph (b) in respect thereof were the lesser of

Subsec. 14(3) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 10(2), applicable with respect to acquisitions of property occurring after 1987, except that, in its application to acquisitions by a taxpayer after 1987 and before the taxpayer's adjustment time in respect of the business in which the property is used, the reference to "4/3 of" shall be read as a reference to "2 times". Subsec. 14(3) formerly read:

(3) Acquisition of eligible capital property — Notwithstanding any other provision of this Act, where at a particular time a person or partnership (in this subsection referred to as the "taxpayer") has, directly or indirectly, in any manner whatever, acquired an eligible capital property in respect of a business from a person or partnership that disposed of the property to the taxpayer and with whom the taxpayer did not deal at arm's length, and the property that was disposed of was an eligible capital property of the person or partnership, the eligible capital expenditure in respect of the business made by the taxpayer relating to the acquisition shall be deemed to be 4/3 of the amount, if any, by which

(a) the amount determined for E in the definition "cumulative eligible capital" in subsection (5) by the person or partnership in respect of the disposition

exceeds

(b) the amount, if any, determined under subparagraph (1)(a)(v) by the person or partnership in respect of the disposition to the extent that the amount may reasonably be considered to have been claimed by any person as a deduction under section 110.6.

Interpretation Bulletins: See list at end of s. 14.

(4) References to "taxation year" or "year" — Where a taxpayer is an individual and the taxpayer's income for a taxation year includes income from a business the fiscal period of which does not coincide with the calendar year, for greater certainty a reference in this section to a "taxation year" or "year" shall be read as a reference to a "fiscal period" or "period".

Related Provisions: 11(2) — References to "taxation year" or "year" of an individual.

(5) Definitions — In this section,

"adjustment time" of a taxpayer in respect of a business is

(a) in the case of a corporation formed as a result of an amalgamation occurring after June 30, 1988, the time immediately before the amalgamation,

(b) in the case of any other corporation, the time immediately after the commencement of its first taxation year commencing after June 30, 1988, and

(c) for any other taxpayer, the time immediately after the commencement of the taxpayer's first fiscal period commencing after 1987 in respect of the business.

Related Provisions: 248(1)"adjustment time" — Definition applies to entire Act.

"cumulative eligible capital" of a taxpayer at any time in respect of a business of the taxpayer means the amount determined by the formula

$$(A + B + C + D + D.1) - (E + F)$$

where

A is ¾ of the total of all eligible capital expenditures in respect of the business made or incurred by the taxpayer before that time and after the taxpayer's adjustment time,

Proposed Amendment — 14(5)"cumulative eligible capital"A

A is the amount, if any, by which ¾ of the total of all eligible capital expenditures in respect of the business made or incurred by the taxpayer after the taxpayer's adjustment time and before that time exceeds the total of all amounts each of which is determined by the formula

$$1/2 \times (A.1 - A.2) \times (A.3/A.4)$$

where

A.1 is the amount required, because of paragraph (1)(b) or 38(a), to be included in the income of a person or partnership (in this definition referred to as the "transferor") not dealing at arm's length with the taxpayer in respect of the disposition after December 20, 2002 of a property that was an eligible capital property acquired by the taxpayer directly or indirectly, in any manner whatever, from the transferor and not disposed of by the taxpayer before that time,

A.2 is the total of all amounts that can reasonably be considered to have been claimed as deductions under section 110.6 by the transferor in respect of that disposition,

A.3 is the transferor's proceeds from that disposition, and

A.4 is the transferor's total proceeds of disposition of eligible capital property in the taxation year of the transferor in which the property described in A.1 was disposed of,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 53(4), will amend the description of A in the definition "cumulative eligible capital" in subsec. 14(5) to read as above, applicable to taxation years that end after February 27, 2000, except that "disposition after December 20, 2002 of a property that was an eligible capital property" in the description of A.1 is to be read as "disposition after 2003 of a property that was an eligible capital property" if

(a) the taxpayer referred to in that description of A.1 acquired the property referred to in that description from the transferor referred to in that description;

(b) the property was so acquired under an agreement in writing made before December 21, 2002, between the transferor, or a particular person that controlled the transferor, and another person who dealt at an arm's length with the transferor and the particular person; and

(c) no clause in the agreement or any other arrangement allows an obligation of any party to the agreement to be changed, reduced or waived in the event of a change to, or an adverse assessment under, the Act.

Technical Notes: The definition "cumulative eligible capital" in subsection 14(5) provides for the calculation of a taxpayer's cumulative eligible capital property pool for the purpose of determining the taxpayer's allowable deduction in respect of eligible capital property (ECP) for the year.

Variable A in the definition "cumulative eligible capital" represents ¾ of the eligible capital expenditures of a taxpayer as the result of the acquisition of an eligible capital property after the taxpayer's "adjustment time" (generally since 1987). Variable A is amended to ensure that the taxpayer's pool includes only the taxable portion of the gain realized by the non-arm's length transferor on the disposition after December 20, 2002 of eligible capital property.

Variable A is generally reduced by ½ of the gain of the transferor in respect of the property under paragraph 14(1)(b) or 38(a). (Where the transferor has claimed a capital gains exemption in respect of the transfer under subsection 110.6, subsection 14(3) reduces the taxpayer's eligible capital expenditure accordingly. The reduction in Variable A will therefore not include ½ of the amount of that claim.) Where the transferor has realized such a gain in a taxation year in respect of more than one property, the amount of the gain of the transferor for the purposes of this calculation is that proportion of the gain that the proceeds of disposition of the eligible capital property acquired by the taxpayer is of the total proceeds of disposition of all such property disposed of in the transferor's taxation year.

The reduction to Variable A does not apply where the eligible capital property has previously been disposed of by the taxpayer or was acquired on or before December 20, 2002.

Example 1

Mr. X purchased a farm production quota several years ago for $300,000 and claimed no cumulative eligible capital amounts, such that his cumulative eligible capital at the end of his previous taxation year was $225,000. This year he sold the production quota to his sister, Mrs. Y, for its fair market value of $1,200,000. Mr. X reported income of $450,000 under paragraph 14(1)(b), and did not claim a capital gains exemption under section 110.6. (Alternatively, Mr. X could have made an election under subsection 14(1.01) to report a taxable capital gain under paragraph 38(a).)

Because Mrs. Y purchased the production quota in a non-arm's length transaction, the amount included in Variable A of her cumulative eligible capital balance at the end of the year of acquisition would be $675,000 (i.e. ¾ of $1,200,000, less ½ of the taxable gain of Mr. X of $450,000). This result may also be illustrated as the total of the taxable gain of Mr. X of $450,000 and ¾ of his eligible capital expenditure of $300,000.

Example 2

Assume the same facts as Example 1, except that Mr. X claimed a capital gains exemption of $250,000 in respect of his $450,000 taxable gain under paragraph 14(1)(b).

Mrs. Y's eligible capital expenditure under subsection 14(3) is deemed to be $700,000, calculated as ¾ of the excess of

- *¾ of the actual proceeds of disposition of $1,200,000 (i.e. over $900,000)*
- *½ of the $250,000 capital gains exemption claimed by Mr. X (i.e. $375,000)*

The amount included in Variable A of Mrs. Y's cumulative eligible capital balance is calculated as follows:

• *¾ of her deemed eligible capital expenditure of $700,000 less 1/2 of the amount by which*		$525,000
• *the taxable gain of Mr. X*	$450,000	
exceeds		
• *the capital gains exemption claimed by Mr. X*	250,000	
	200,000	
	× 1/2	
		100,000
Amount included in Variable A		$425,000

The calculation of "cumulative eligible capital" is designed so that the pool cannot be negative immediately after the end of the year. In this regard, variable F in the calculation generally reduces the pool by the total amount of ECP deductions claimed in prior years (generally, variable P), net of amounts included in income in prior years (variable R) under subsection 14(1) as recapture of ECP deductions or as deemed capital gains.

Variable R in the definition "cumulative eligible capital" is amended to ensure that amounts included in the income of a corporation under former paragraph 14(1)(b) (as it applied to taxation years that ended before

February 28, 2000) continue to be included in the calculation of variable F.

Letter from Dept. of Finance, December 6, 2004:

Dear [xxx]

I am writing in response to your letters of April 20 and April 27, 2004, sent on behalf of your client concerning certain amendments to the definition of "cumulative eligible capital" included in the draft technical amendments to the *Income Tax Act* released for consultation on December 20, 2002, and again on February 27, 2004. In particular, you request that certain agreements entered into before December 21, 2002 be grandfathered, for the purposes of the application of the proposed variable "A.1" in the definition of "*cumulative eligible capital*" in subsection 14(5) of the *Income Tax Act*.

In 2002, a Canadian corporation ("Quebec") wanted to purchase the assets of an arm's length Canadian corporation ("Opco"), all the shares of which were owned by your client ("Vendor"). For administrative and legal reasons, the assets of Opco could not be sold. In mid-December of that year, Vendor and Quebec entered into a written agreement pursuant to which Quebec agreed to purchase all the shares of Opco and Opco agreed to transfer on a taxable basis all its assets, including a customer list, to a wholly-owned subsidiary. On December 27, 2002, Opco transferred its assets to the wholly-owned subsidiary. On December 31, 2002, Quebec acquired the first portion of shares of Opco.

We also understand that the agreements do not include any obligation to alter, to reduce, or to waive any term or condition of the agreements should there be any change to, or any adverse assessment under, the *Income Tax Act*. Based on our understanding of the facts as described above, we are prepared to recommend to the Minister of Finance that written agreements such as these, entered into on or before December 21, 2002, be grandfathered.

If the above recommendation is accepted, we anticipate that the amendment would be included in a future technical bill. While I cannot offer any assurance that our recommendation will be accepted, I hope our statement of intent in this letter will be helpful in responding to your concern.

Thank you for bringing this matter to my attention.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

B is the total of

(a) 3/2 of all amounts included under paragraph (1)(b) in computing the taxpayer's income from the business for taxation years that ended before that time and after October 17, 2000,

(b) 9/8 of all amounts included under paragraph (1)(b) in computing the taxpayer's income from the business for taxation years that ended

(i) before that time, and

(ii) after February 27, 2000 and before October 18, 2000,

(c) all amounts included under paragraph (1)(b) in computing the taxpayer's income from the business for taxation years that ended

(i) before the earlier of that time and February 28, 2000, and

(ii) after the taxpayer's adjustment time,

(d) all amounts each of which is the amount that would have been included under subparagraph (1)(a)(v) (as that subparagraph applied for taxation years that ended before February 28, 2000) in computing the taxpayer's income from the business, if the amount determined for D in that subparagraph for the year were nil, for taxation years that ended

(i) before the earlier of that time and February 28, 2000, and

(ii) after February 22, 1994, and

(e) all taxable capital gains included, because of the application of subparagraph (1)(a)(v) (as that subparagraph applied for taxation years that ended before February 28, 2000) to the taxpayer in respect of the business, in computing the taxpayer's income for taxation years that began before February 23, 1994,

C is 3/2 of the amount, if any, of the taxpayer's cumulative eligible capital in respect of the business at the taxpayer's adjustment time,

D is the amount, if any, by which

(a) the total of all amounts deducted under paragraph 20(1)(b) in computing the taxpayer's income from the business for taxation years ending before the taxpayer's adjustment time

exceeds

(b) the total of all amounts included under subsection (1) in computing the taxpayer's income from the business for taxation years ending before the taxpayer's adjustment time,

D.1 is, where the amount determined by B exceeds zero, 1/2 of the amount determined for Q in respect of the business,

E is the total of all amounts each of which is 3/4 of the amount, if any, by which

(a) an amount which, as a result of a disposition occurring after the taxpayer's adjustment time and before that time, the taxpayer has or may become entitled to receive, in respect of the business carried on or formerly carried on by the taxpayer where the consideration given by the taxpayer therefor was such that, if any payment had been made by the taxpayer after 1971 for that consideration, the payment would have been an eligible capital expenditure of the taxpayer in respect of the business

exceeds

(b) all outlays and expenses to the extent that they were not otherwise deductible in computing the taxpayer's income and were made or incurred by the taxpayer for the purpose of giving that consideration, and

F is the amount determined by the formula

$$(P + P.1 + Q) - R$$

where

P is the total of all amounts deducted under paragraph 20(1)(b) in computing the taxpayer's income from the business for taxation years ending before that time and after the taxpayer's adjustment time,

P.1 is the total of all amounts each of which is an amount by which the cumulative eligible capital of the taxpayer in respect of the business is required to be reduced at or before that time because of subsection 80(7),

Q is the amount, if any, by which

(a) the total of all amounts deducted under paragraph 20(1)(b) in computing the taxpayer's income from the business for taxation years ending before the taxpayer's adjustment time

exceeds

(b) the total of all amounts included under subsection (1) in computing the taxpayer's income for taxation years ending before the taxpayer's adjustment time, and

R is the total of all amounts included, in computing the taxpayer's income from the business for taxation years that ended before that time and after the taxpayer's adjustment time, under subparagraph (1)(a)(iv) in respect of taxation years that ended before February 28, 2000 and under paragraph (1)(a) in respect of taxation years that end after February 27, 2000;

Proposed Amendment — 14(5)"cumulative eligible capital"R

R is the total of all amounts each of which is an amount included, in computing the taxpayer's income from the business for a taxation year that ended before that time and after the taxpayer's adjustment time

(a) in the case of a taxation year that ends after February 27, 2000, under paragraph (1)(a), or

(b) in the case of a taxation year that ended before February 28, 2000,

(i) under subparagraph (1)(a)(iv), as that subparagraph applied in respect of that taxation year, or

(ii) under paragraph (1)(b), as that paragraph applied in respect of that taxation year, to the extent that the amount so included is in respect of an amount included in the amount determined for P;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 53(5), will amend the description of R in the definition "cumulative eligible capital" in subsec. 14(5) to read as above, applicable to taxation years that end after February 27, 2000.

Technical Notes: See under 14(5)"cumulative eligible capital"A above.

Related Provisions: 14(1) — Inclusion in income from business; 14(1.01), (1.02) — Election to recognize capital gain in place of reducing CEC pool; 14(3) — Non-arm's length acquisition of eligible capital property; 14(5.1), 56.4(7)(d) — Application of formula element E to restrictive covenant; 14(12) — Acquisition of eligible capital property by affiliated person on cessation of business; 20(1)(b) — Annual deduction of 7% of cumulative eligible capital; 20(4.2) — Bad debts; 20(4.3) — Deemed allowable capital loss on bad on disposition of eligible capital property; 24(1) — Ceasing to carry on business; 24(2)(d) — Business carried on by spouse or controlled corporation; 70(5.1) — Eligible capital property of deceased; 87(2)(f) — Amalgamations — cumulative eligible capital; 89(1) — Capital dividend account; 98(3)(b) — Rules where partnership ceases to exist; 98(5)(h) — Where partnership business carried on as sole proprietorship; 248(1)"cumulative eligible capital" — Definition applies to entire Act; 248(39)(c) — Anti-avoidance — selling property and donating proceeds; 257 — Formula amounts cannot calculate to less than zero.

History: The descriptions of B and R in the definition "cumulative eligible capital" in subsec. 14(5) amended by 2001, c. 17, subsecs. 7(4) and (5), applicable to taxation years that end after February 27, 2000. Those descriptions formerly read:

B is the total of

(a) all amounts each of which is the amount that would have been included under subparagraph (1)(a)(v) in computing the taxpayer's income from the business for a taxation year that ended before that time and after February 22, 1994 if the amount determined for D in that subparagraph for the year were nil,

(b) all amounts included under paragraph (1)(b) in computing the taxpayer's income from the business for taxation years that ended before that time and after the taxpayer's adjustment time, and

(c) all taxable capital gains included, because of the application of subparagraph (1)(a)(v) to the taxpayer in respect of the business, in computing the taxpayer's income for taxation years that began before February 23, 1994.

. . . . .

R is the total of all amounts included under subparagraph (1)(a)(iv) in computing the taxpayer's income from the business for taxation years ending before that time and after the taxpayer's adjustment time;

P.1 added to the second formula in the definition "cumulative eligible capital" in subsec. 14(5) and its description added by 1995, c. 21, subsecs. 3(1) and (2), applicable to taxation years that end after February 21, 1994.

The description of B in the definition "cumulative eligible capital" in subsec. 14(5) amended by 1995, c. 3, subsec. 5(2), applicable to fiscal periods that end after February 22, 1994 otherwise than because of an election under subsec. 25(1). The description of B formerly read:

B is the total of all amounts deemed by subparagraph (1)(a)(v) to have been a taxable capital gain of the taxpayer from a disposition of capital property and all amounts included by reason of paragraph (1)(b) in computing the taxpayer's income from the business for taxation years ending before that time and after the taxpayer's adjustment time,

The first formula in "cumulative eligible capital" in subsec. 14(5) was amended to include D.1, and the description of D.1 was added, by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 10(3), (3.1), applicable

(a) in the case of a corporation, to taxation years commencing after June 1988, and

(b) in any other case, to fiscal periods commencing after 1987.

Selected Cases [subsec. 14(5)"cumulative eligible capital"]: *Teleglobe Canada Inc. v. R.*, [2003] 1 C.T.C. 255 (FCA) (No outlay for goodwill even though value of assets exceeded transaction values).

Interpretation Bulletins: IT-99R5: Legal and accounting fees; IT-143R3: Meaning of eligible capital expenditure; IT-291R3: Transfer of property to a corporation under subsection 85(1); IT-365R2: Damages, settlements and similar receipts; IT-386R: Eligible capital amounts; IT-471R: Merger of partnerships. See also list at end of s. 14.

Forms: T2 SCH 10: Cumulative eligible capital deduction.

"eligible capital expenditure" of a taxpayer in respect of a business means the portion of any outlay or expense made or incurred by the taxpayer, as a result of a transaction occurring after 1971, on account of capital for the purpose of gaining or producing income from the business, other than any such outlay or expense

(a) in respect of which any amount is or would be, but for any provision of this Act limiting the quantum of any deduction, deductible (otherwise than under paragraph 20(1)(b)) in computing the taxpayer's income from the business, or in respect of which any amount is, by virtue of any provision of this Act other than paragraph 18(1)(b), not deductible in computing that income,

(b) made or incurred for the purpose of gaining or producing income that is exempt income, or

(c) that is the cost of, or any part of the cost of,

(i) tangible property of the taxpayer,

(ii) intangible property that is depreciable property of the taxpayer,

(iii) property in respect of which any deduction (otherwise than under paragraph 20(1)(b)) is permitted in computing the taxpayer's income from the business or would be so permitted if the taxpayer's income from the business were sufficient for the purpose, or

(iv) an interest in, or right to acquire, any property described in any of subparagraphs (i) to (iii),

Proposed Amendment — 14(5)"eligible capital expenditure"(c)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 202(1), will amend para. (c) of the definition "eligible capital expenditure" in subsec. 14(5) by substituting "tangible property, or for civil law corporeal property," for "tangible property", "intangible property, or

for civil law incorporeal property," for "intangible property" and "an interest in, or for civil law a right in, or a right to" for "an interest in, or right to", to come into force on Royal Assent.

Technical Notes: See under 12(4).

but, for greater certainty and without restricting the generality of the foregoing, does not include any portion of

(d) any amount paid or payable to any creditor of the taxpayer as, on account or in lieu of payment of any debt or as or on account of the redemption, cancellation or purchase of any bond or debenture,

(e) where the taxpayer is a corporation, any amount paid or payable to a person as a shareholder of the corporation, or

(f) any amount that is the cost of, or any part of the cost of,

(i) an interest in a trust,

(ii) an interest in a partnership,

(iii) a share, bond, debenture, mortgage, hypothecary claim, note, bill or other similar property, or

(iv) an interest in, or right to acquire, any property described in any of subparagraphs (i) to (iii);

Proposed Amendment — 14(5)"eligible capital expenditure"(f)(iv)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 202(2), will amend subpara. (f)(iv) of the definition "eligible capital expenditure" in subsec. 14(5) by substituting "an interest in, or for civil law a right in, or a right to" for "an interest in, or right to", to come into force on Royal Assent.

Technical Notes: See under 12(4).

Related Provisions: 14(3) — Non-arm's length acquisition of eligible capital property; 56.4(4)(b) — Restrictive covenant or non-competition agreement — treatment of purchaser; 87(2)(f) — Amalgamations — cumulative eligible capital; 98(3)(b) — Rules applicable where partnership ceases to exist; 107(2)(f) — Capital interest distribution by personal or prescribed trust; 139.1(4)(b) — Amount payable by insurer on demutualization deemed not to be eligible capital expenditure; 248(1)"eligible capital expenditure" — Definition applies to entire Act.

History: Subpara. (f)(iii) of the definition "eligible capital expenditure" in subsec. 14(5) amended to add "hypothecary claim" by 2001, c. 17, subsec. 197(1), in force June 14, 2001.

Selected Cases [subsec. 14(5)"eligible capital expenditure"]: *Teleglobe Canada Inc. v. R.*, [2003] 1 C.T.C. 255 (FCA) (No outlay for goodwill even though value of assets exceeded transaction values); *F.A.S. Seafood Producers Ltd. v. R.*, [1998] 4 C.T.C. 2794 (TCC) (Fishing licences were eligible capital expenditures, not deductible expenses); *228262 Alberta Ltd. v. MNR*, [1996] 1 C.T.C. 2416 (TCC) (Price rectification was eligible capital expenditure, not current expense or cost of borrowing); *R. v. Royal Trust Corp. of Canada*, [1983] C.T.C. 159 (FCA) (Stockbroker's commission during public issue eligible capital expenditure).

Interpretation Bulletins: IT-99R5: Legal and accounting fees; IT-104R2: Deductibility of fines or penalties; IT-143R3: Meaning of eligible capital expenditure; IT-187: Customer lists and ledger accounts; IT-291R3: Transfer of property to a corporation under subsection 85(1); IT-341R3: Expenses of issuing shares or borrowing money; IT-364: Commencement of business operations; IT-386R: Eligible capital amounts; IT-467R2: Damages, settlements and similar payments; IT-482R: Pipelines. See also list at end of s. 14.

"exempt gains balance" of an individual in respect of a business of the individual for a taxation year means the amount determined by the formula

$$A - B$$

where

A is the lesser of

(a) the amount by which

(i) the amount that would have been the individual's taxable capital gain determined under paragraph 110.6(19)(b) in respect of the business if

(A) the amount designated in an election under subsection 110.6(19) in respect of the business were equal to the fair market value at the end of February 22, 1994 of all the eligible capital property owned by the elector at that time in respect of the business, and

(B) this Act were read without reference to subsection 110.6(20)

exceeds

(ii) the amount determined by the formula

$$0.75(C - 1.1D)$$

where

C is the amount designated in the election that was made under subsection 110.6(19) in respect of the business, and

D is the fair market value at the end of February 22, 1994 of the property referred to in clause (i)(A), and

(b) the individual's taxable capital gain determined under paragraph 110.6(19)(b) in respect of the business, and

B is the total of all amounts each of which is the amount determined for D in subparagraph (1)(a)(v) in respect of the business for a preceding taxation year that ended before February 28, 2000 or the amount determined for D in paragraph (1)(b) for a preceding taxation year that ended after February 27, 2000.

Related Provisions: 14(9) — Effect of excessive election; 257 — Formulas cannot calculate to less than zero.

History: The description of B in the definition "exempt gains balance" in subsec. 14(5) amended by 2001, c. 17, subsec. 7(6), applicable to taxation years that end after February 27, 2000. The description formerly read:

B is the total of all amounts each of which is the amount determined for D in subparagraph (1)(a)(v) in respect of the business for a preceding taxation year.

The definition "exempt gains balance" added to subsec. 14(5) by 1995, c. 3, subsec. 5(3), applicable to fiscal periods that end after February 22, 1994 otherwise than because of an election under subsec. 25(1).

Proposed Addition — 14(5.1)

(5.1) Restrictive covenant amount — The description of E in the definition "cumulative eligible capital" in subsection (5) does not apply to an amount that is received or receivable by a taxpayer in a taxation year if that amount is required to be included in the taxpayer's income because of subsection 56.4(2).

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 53(6), will add subsec. 14(5.1), applicable after October 7, 2003.

Technical Notes: New subsection 14(5.1) provides that the description E of the definition "cumulative eligible capital" in subsection 14(5) does not apply to an amount if the amount is required to be included in the taxpayer's income because of subsection 56.4(2). However, subsection 56.4(2) does not apply to an amount if paragraph 56.4(3)(b) applies to the amount, in which case the amount may be a cumulative eligible capital receipt for the purposes of applying section 14. As well, if new subparagraphs 56.4(7)(d)(i) or (ii) apply, consideration that could reasonably be regarded as being for the restrictive covenant granted by a taxpayer for nil proceeds may be — depending on the circumstances — a goodwill amount (as defined by new subsection 56.4(1)) that is to be

included in computing the cumulative eligible capital of the taxpayer, or the taxpayer's eligible corporation (as defined by new subsection 56.4(1)). New section 56.4 is more fully described below in the notes accompanying that provision.

New subsection 14(5.1) is consequential to the rules for restrictive covenant amounts as set out in new section 56.4, and applies after October 7, 2003.

Related Provisions: 56.4(7)(d) — Allocation of goodwill amount in restrictive covenant.

(6) Exchange of property — Where in a taxation year (in this subsection referred to as the "initial year") a taxpayer disposes of an eligible capital property (in this section referred to as the taxpayer's "former property") and the taxpayer so elects under this subsection in the taxpayer's return of income for the year in which the taxpayer acquires an eligible capital property that is a replacement property for the taxpayer's former property, such amount, not exceeding the amount that would otherwise be included in the amount determined for E in the definition "cumulative eligible capital" in subsection (5) (if the description of E in that definition were read without reference to "3/4 of") in respect of a business, as has been used by the taxpayer before the end of the first taxation year after the initial year to acquire the replacement property

Proposed Amendment — 14(6) opening words

(6) Exchange of property — If in a taxation year (in this subsection referred to as the "initial year") a taxpayer disposes of an eligible capital property (in this section referred to as the taxpayer's "former property") and the taxpayer so elects under this subsection in the taxpayer's return of income for the year in which the taxpayer acquires an eligible capital property that is a replacement property for the taxpayer's former property, the amount, not exceeding the amount that would otherwise be included in the amount determined for E in the definition "cumulative eligible capital" in subsection (5) (if the description of E in that definition were read without reference to "¾ of") in respect of a business, that has been used by the taxpayer to acquire the replacement property before the later of the end of the first taxation year after the initial year and 12 months after the end of the initial year

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 53(7), will amend the opening words of subsec. 14(6) to read as above, applicable in respect of dispositions that occur in taxation years that end after December 19, 2001.

Technical Notes: Where a taxpayer has disposed of an eligible capital property in a taxation year and has acquired a replacement eligible capital property before the end of the subsequent taxation year, subsection 14(6) allows the taxpayer to elect to defer the inclusion of an amount in income under subsection 14(1) that would normally result from a negative balance in the taxpayer's cumulative eligible capital account at the end of the year of disposition.

Subsection 14(6) is amended to accommodate taxation years that are shorter than 12 months, by providing that the period for acquiring a replacement property ends at the later of the end of the subsequent taxation year and the time that is 12 months after the end of the taxation year in which the property was disposed of.

(a) shall, subject to paragraph (b), not be included in the amount determined for E in that definition for the purpose of determining the cumulative eligible capital of the taxpayer in respect of the business; and

(b) shall, to the extent of ¾ thereof, be included in the amount determined for E in that definition for the purpose of determining the cumulative eligible capital of the taxpayer in respect of the business at a time that is the later of

(i) the time the replacement property was acquired by the taxpayer, and

(ii) the time the former property was disposed of by the taxpayer.

Related Provisions: 13(4.2), (4.3) — Exchange of franchise, concession or licence with fixed term; 14(7) — Meaning of a "replacement property"; 96(3) — Election by members of partnership; 220(3.2), Reg. 600(b) — Late filing or revocation of election.

History: The opening words of subsec. 14(6) amended by 1998, c. 19, subsec. 74(3), applicable to dispositions of former properties that occur after the 1993 taxation year. The opening words formerly read:

(6) Where in a taxation year (in this subsection referred to as the "initial year") a taxpayer has disposed of an eligible capital property (in this section referred to as the taxpayer's "former property"), if the taxpayer so elects under this subsection in the taxpayer's return of income under this Part for the year in which the taxpayer acquires, as a replacement property for the taxpayer's former property, an eligible capital property (in this section referred to as a "replacement property"), such amount not exceeding the amount that would otherwise be included in the amount determined for E in the definition "cumulative eligible capital" in subsection (5) (if the description of E in that definition were read without reference to "¾ of") in respect of a business as has been used by the taxpayer before the end of the first taxation year following the initial year to acquire the replacement property

Interpretation Bulletins: IT-259R4: Exchanges of property. See also list at end of s. 14.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

(7) Replacement property for a former property — For the purposes of subsection (6), a particular eligible capital property of a taxpayer is a replacement property for a former property of the taxpayer if

(a) it is reasonable to conclude that the property was acquired by the taxpayer to replace the former property;

(a.1) it was acquired by the taxpayer for a use that is the same as or similar to the use to which the taxpayer put the former property;

(b) it was acquired for the purpose of gaining or producing income from the same or a similar business as that in which the former property was used; and

(c) where the former property was used by the taxpayer in a business carried on in Canada, the particular property was acquired for use by the taxpayer in a business carried on by the taxpayer in Canada.

History: Para. 14(7)(a) amended and para. (a.1) added by 1998, c. 19, subsec. 74(4), applicable to dispositions of former properties that occur after the 1993 taxation year. Para. (a) formerly read:

(a) it was acquired by the taxpayer for the same or a similar use as the use to which the taxpayer put the former property;

Para. 14(7)(c) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 10(4), applicable to property acquired as a replacement for a former property disposed of after April 2, 1990, other than a former property disposed of

(a) under an agreement in writing entered into before April 3, 1990; or

(b) pursuant to a written notice of an intention to take the property under statutory authority given before April 3, 1990 or for the sale price of the property sold to a person by whom such a notice was given before April 3, 1990.

Para. 14(7)(c) formerly read:

(c) where the taxpayer was not resident in Canada at the time the taxpayer acquired the particular property, in addition to the requirements in paragraphs (a) and (b), the particular property was acquired for use by the taxpayer in a business carried on by the taxpayer in Canada.

Interpretation Bulletins: IT-259R4: Exchanges of property. See also list at end of s. 14.

(8) Deemed residence in Canada — Where an individual was resident in Canada at any time in a particular taxation year and throughout

(a) the preceding taxation year, or

(b) the following taxation year,

for the purpose of paragraph (1)(a), the individual shall be deemed to have been resident in Canada throughout the particular year.

Related Provisions: 110.6(5) — Parallel rule for capital gains exemption.

History: Subsec. 14(8) added by 1994, c. 21, s. 8, applicable to 1988 *et seq.*

(9) Effect of election under subsec. 110.6(19) — Where an individual elects under subsection 110.6(19) in respect of a business, the individual shall be deemed to have received proceeds of a disposition on February 23, 1994 of eligible capital property in respect of the business equal to the amount determined by the formula

$$(A - B)\frac{4}{3}$$

where

A is the amount determined in respect of the business under subparagraph (a)(ii) of the description of A in the definition "exempt gains balance" in subsection (5), and

B is the amount determined in respect of the business under subparagraph (a)(i) of the description of A in the definition "exempt gains balance" in subsection (5).

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: Subsec. 14(9) added by 1995, c. 3, subsec. 5(4), applicable to fiscal periods that end after February 22, 1994 otherwise than because of an election under subsec. 25(1).

(10) Deemed eligible capital expenditure — For the purposes of this Act, where a taxpayer received or is entitled to receive assistance from a government, municipality or other public authority in respect of, or for the acquisition of, property the cost of which is an eligible capital expenditure of the taxpayer in respect of a business, whether as a grant, subsidy, forgivable loan, deduction from tax, investment allowance or as any other form of assistance, that eligible capital expenditure shall at any time be deemed to be the amount, if any, by which the total of

(a) that eligible capital expenditure, determined without reference to this subsection, and

(b) such part, if any, of the assistance as the taxpayer repaid before

(i) the taxpayer ceased to carry on the business, and

(ii) that time

under a legal obligation to pay all or any part of the assistance

exceeds

(c) the amount of the assistance the taxpayer received or is entitled to receive before the earlier of that time and the time the taxpayer ceases to carry on the business.

Related Provisions: 14(5) — Definition of "exempt gains balance"; 14(11) — Assistance deemed received by trust or partnership; 20(1)(hh.1) — Deduction for repayment after ceasing to carry on business.

History: Subsec. 14(10) added by 1995, c. 21, subsec. 3(3), applicable to assistance that a taxpayer receives or becomes entitled to receive after February 21, 1994 and repayments of such assistance.

Interpretation Bulletins: IT-273R2: Government assistance — general comments. See also list at end of s. 14.

(11) Receipt of public assistance — For the purpose of subsection (10), where at any time a taxpayer who is a beneficiary under a trust or a member of a partnership received or is entitled to receive assistance from a government, municipality or other public authority, whether as a grant, subsidy, forgivable loan, deduction from tax, investment allowance or as any other form of assistance, the amount of the assistance that can reasonably be considered to be in respect of, or for the acquisition of, property the cost of which was an eligible capital expenditure of the trust or partnership shall be deemed to have been received at that time by the trust or partnership, as the case may be, as assistance from the government, municipality or other public authority for the acquisition of such property.

History: Subsec. 14(11) added by 1995, c. 21, subsec. 3(3), applicable to assistance that a taxpayer receives or becomes entitled to receive after February 21, 1994 and repayments of such assistance.

Interpretation Bulletins: IT-273R2: Government assistance — general comments. See also list at end of s. 14.

(12) Loss on certain transfers [within affiliated group] — Where

(a) a corporation, trust or partnership (in this subsection referred to as the "transferor") disposes at any time in a taxation year of a particular eligible capital property in respect of a business of the transferor in respect of which it would, but for this subsection, be permitted a deduction under paragraph 24(1)(a) as a consequence of the disposition, and

(b) during the period that begins 30 days before and ends 30 days after the disposition, the transferor or a person affiliated with the transferor acquires a property (in this subsection referred to as the "substituted property") that is, or is identical to, the particular property and, at the end of that period, a person or partnership that is either the transferor or a person or partnership affiliated with the transferor owns the substituted property,

the transferor is deemed, for the purposes of this section and sections 20 and 24, to continue to own eligible capital property in respect of the business, and not to have ceased to carry on the business, until the time that is immediately before the first time, after the disposition,

(c) at which a 30-day period begins throughout which neither the transferor nor a person affiliated with the transferor owns

(i) the substituted property, or

(ii) a property that is identical to the substituted property and that was acquired after the day that is 31 days before the period begins,

(d) at which the substituted property is not eligible capital property in respect of a business carried on by the transferor or a person affiliated with the transferor,

(e) at which the substituted property would, if it were owned by the transferor, be deemed by section 128.1 or subsection 149(10) to have been disposed of by the transferor,

(f) that is immediately before control of the transferor is acquired by a person or group of persons, where the transferor is a corporation, or

(g) at which the winding-up of the transferor begins (other than a winding-up to which subsection 88(1) applies), where the transferor is a corporation.

Related Provisions: 13(21.2) — Parallel rule for depreciable capital property; 14(13) — Deemed identical property; 18(13)–(16) — Parallel rule for share or debt owned by financial institution; 40(3.3), (3.4) — Parallel rule re capital losses; 69(5)(d) — No application on winding-up; 87(2)(g.3) — Amalgamations — continuing corporation; 88(1)(d.1) — No application to property acquired on windup of subsidiary; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 248(12) — Whether properties are identical; 251.1 — Affiliated persons; 256(6)–(9) — Whether control acquired.

History: Subsec. 14(12) added by 1998, c. 19, subsec. 74(5), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced in the history to s. 260) to dispositions of property that occur after April 26, 1995.

Interpretation Bulletins: IT-291R3: Transfer of property to a corporation under subsection 85(1).

(13) Deemed identical property — For the purpose of subsection (12),

(a) a right to acquire a property (other than a right, as security only, derived from a mortgage, hypothec, agreement for sale or similar obligation) is deemed to be a property that is identical to the property; and

(b) where a partnership otherwise ceases to exist at any time after the disposition, the partnership is deemed not to have ceased to exist and each person who, immediately before the partnership would, but for this paragraph, have ceased to exist, was a member of the partnership is deemed to remain a member of the partnership, until the time that is immediately after the first time described in paragraphs (12)(c) to (g).

History: Para. 14(13)(a) amended to add "hypothec" by 2001, c. 17, subsec. 197(2), in force June 14, 2001.

Subsec. 14(13) added by 1998, c. 19, subsec. 74(5), subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced in the history to s. 260), applicable to dispositions of property that occur after April 26, 1995.

(14) [Non-resident] Ceasing to use [eligible capital] property in Canadian business — If at a particular time a non-resident taxpayer ceases to use, in connection with a business or part of a business carried on by the taxpayer in Canada immediately before the particular time, a property that was immediately before the particular time eligible capital property of the taxpayer (other than a property that was disposed of by the taxpayer at the particular time), the taxpayer is deemed to have disposed of the property immediately before the particular time for proceeds of disposition equal to the amount determined by the formula

$$A - B$$

where

A is the fair market value of the property immediately before the particular time, and

B is

(a) where at a previous time before the particular time the taxpayer ceased to use the property in connection with a business or part of a business carried on by the taxpayer outside Canada and began to use it in connection with a business or part of a business carried on by the taxpayer in Canada, the amount, if any, by which the fair market value of the property at the previous time exceeded its cost to the taxpayer at the previous time, and

(b) in any other case, nil.

Related Provisions: 10(12) — Parallel rule for inventory; 142.6(1.1) — Parallel rule for non-resident financial institution; 257 — Formula cannot calculate to less than zero.

History: Subsec. 14(14) added by 2001, c. 17, subsec. 7(7), applicable after June 27, 1999 in respect of an authorized foreign bank, and after August 8, 2000 in any other case.

(15) [Non-resident] Beginning to use [eligible capital] property in Canadian business — If at a particular time a non-resident taxpayer ceases to use, in connection with a business or part of a business carried on by the taxpayer outside Canada immediately before the particular time, and begins to use, in connection with a business or part of a business carried on by the taxpayer in Canada, a property that is an eligible capital property of the taxpayer, the taxpayer is deemed to have disposed of the property immediately before the particular time and to have reacquired the property at the particular time for consideration equal to the lesser of the cost to the taxpayer of the property immediately before the particular time and its fair market value immediately before the particular time.

Related Provisions: 10(14) — Parallel rule for inventory; 142.6(1.2) — Parallel rule for non-resident financial institution.

History: Subsec. 14(15) added by 2001, c. 17, subsec. 7(7), applicable after June 27, 1999 in respect of an authorized foreign bank, and after August 8, 2000 in any other case.

Definitions [s. 14]: "acquired" — 256(7)–(9); "adjusted cost base" — 54, 248(1); "adjustment time" — 14(5), 248(1); "affiliated" — 251.1; "amount" — 248(1); "arm's length" — 251(1); "assistance" — 79(4), 125.4(5), 248(16), (16.1), (18), (18.1); "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "Canadian partnership" — 102, 248(1); "capital gain" — 39(1)(a), 248(1); "capital property" — 54, 248(1); "consequence of the death" — 248(8); "control" — 256(7)–(9); "corporation" — 248(1), *Interpretation Act* 35(1); "corporeal property" — Quebec *Civil Code* art. 899, 906; "cumulative eligible capital" — 14(5), 248(1); "depreciable property" — 13(21), 248(1); "disposition" — 248(1); "eligible capital amount" — 14(1), 248(1); "eligible capital expenditure" — 14(5), 248(1); "eligible capital property" — 54, 248(1); "exempt gains balance" — 14(5); "exempt income", "filing-due date" — 248(1); "fiscal period" — 249.1; "identical" — 14(13), 248(12); "incorporeal property" — Quebec *Civil Code* art. 899, 906; "individual" — 248(1); "month" — *Interpretation Act* 35(1); "non-resident" — 248(1); "person", "property" — 248(1); "qualified farm property" — 110.6(1); "replacement property" — 14(6), (7); "resident in Canada" — 14(8), 94(3)(a)(viii), 250; "shareholder" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxation year" — 11(2), 14(4), 249; "taxpayer" — 248(1); "transferor" — 14(3), 14(12)(a); "trust" — 104(1), 248(1), (3); "year" — 11(2), 14(4).

I.T. Application Rules [s. 14]: 21(1) (business carried on since before 1972).

Interpretation Bulletins [s. 14]: IT-66R6: Capital dividends; IT-123R4: Disposition of eligible capital property; IT-123R6: Transactions involving eligible capital property; IT-187: Customer lists and ledger accounts; IT-206R: Separate businesses; IT-313R2: Eligible capital property — rules where a taxpayer has ceased carrying on a business or has died; IT-330R: Dispositions of capital property subject to warranty, covenant, etc. (archived); IT-341R3: Expenses of issuing shares or borrowing money; IT-364: Commencement of business operations; IT-488R2: Winding-up of 90%-owned taxable Canadian corporations (archived).

15. (1) Benefit conferred on shareholder — Where at any time in a taxation year a benefit is conferred on a shareholder, or on a person in contemplation of the person becoming a shareholder, by a corporation otherwise than by

(a) the reduction of the paid-up capital, the redemption, cancellation or acquisition by the corporation of shares of its capital stock or on the winding-up, discontinuance or reorganization of its business, or otherwise by way of a transaction to which section 88 applies,

(b) the payment of a dividend or a stock dividend,

(c) conferring, on all owners of common shares of the capital stock of the corporation at that time, a right in

respect of each common share, that is identical to every other right conferred at that time in respect of each other such share, to acquire additional shares of the capital stock of the corporation, and, for the purpose of this paragraph,

(i) where

(A) the voting rights attached to a particular class of common shares of the capital stock of a corporation differ from the voting rights attached to another class of common shares of the capital stock of the corporation, and

(B) there are no other differences between the terms and conditions of the classes of shares that could cause the fair market value of a share of the particular class to differ materially from the fair market value of a share of the other class,

the shares of the particular class shall be deemed to be property that is identical to the shares of the other class, and

(ii) rights are not considered identical if the cost of acquiring the rights differs, or

(d) an action described in paragraph 84(1)(c.1), (c.2) or (c.3),

the amount or value thereof shall, except to the extent that it is deemed by section 84 to be a dividend, be included in computing the income of the shareholder for the year.

Related Provisions: 15(1.1) — Where stock dividend paid; 15(1.2), (1.21) — Forgiveness of shareholder debt; 15(1.3), (1.4) — GST on shareholder benefit; 15(5) — Calculation of benefit where automobile available to shareholder; 15(7) — Application; 15(9) — Deemed benefit; 69(4), (5) — Property deemed disposed of by corporation at fair market value; 80.04(5.1) — No benefit conferred where debtor transfers property to eligible transferee under 80.04; 80.1(4) — Assets acquired from foreign affiliate of taxpayer as dividend in kind or as benefit to shareholder; 80.4(2) — Loans; 84(2) — Distribution on winding-up, etc.; 120.4(1)"split income"(a)(i) — Shareholder benefits received by children subject to income splitting tax; 139(a) — Life insurance corporations; 139.1(11) — No application to conversion benefit on demutualization of insurance corporation; 142.7(4) — Deemed value of property on rollover from foreign bank subsidiary to branch; 214(3)(a) — Deemed dividend for purposes of non-resident withholding tax.

History: Para. 15(1)(c) substituted by 1994, c. 21, subsec. 9(1), applicable to benefits conferred after December 19, 1991. That para. formerly read:

(c) conferring, on all owners of common shares of the capital stock of the corporation at that time, a right in respect of each common share, that is identical to every other right conferred at that time in respect of each other such share, to acquire additional shares of the capital stock of the corporation, and for the purpose of this paragraph, rights shall not be considered identical if the cost of acquiring the rights differs, or

That portion of subsec. 15(1) preceding para. (a) amended to substitute "at any time in a taxation year" for "in a taxation year", and para. (c) substituted, by 1994, c. 7, Sch. VIII (1993, c. 24), subsecs. 5(1), (2), applicable to benefits conferred after December 19, 1991. Para. (c) formerly read:

(c) conferring on all owners of common shares of the capital stock of the corporation a right to buy additional shares thereof, or

Para. 15(1)(b) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 11(1), to add "or a stock dividend", applicable to benefits conferred after June 1988.

Selected Cases [subsec. 15(1)]: *James v. R.*, [1999] 4 C.T.C. 2036 (TCC) (Benefit appropriated over series of years as materials used); *Felray Inc. v. R.*, [1998] 2 C.T.C. 4 (FCTD) (Discontinuance of business implies element of finality or complete cessation, not merely diminution); *Fingold v. R.*, [1997] 3 C.T.C. 441 (FCA) (Shareholder benefit to be measured by equity rate of return on capital devoted); *Hrga v. R.*, [1997] 2 C.T.C. 172 (FCTD) (No possible benefit from providing guarantee); *Doyle v. Canada*, [1997] 1 C.T.C. 2659 (TCC) (Payment of shareholder's legal fees by company was taxable benefit); *De Giorgio v. Canada*, [1996] 2 C.T.C. 2038 (TCC) (Reported income was not a shareholder benefit); *Donovan v. Canada*, [1996] 1 C.T.C. 264 (FCA) (Value of benefit is interest on value of property); *Chopp v. Canada*, [1995] 2 C.T.C. 2946 (TCC) (Provision not applicable where taxpayer unaware of accounting error which led to benefit); *Riddell et al. v. Canada*, [1995] 2 C.T.C. 434 (FCTD) (Provision applied where taxpayer unable to establish existence of loan); *Vieira v. Canada*, [1995] 2 C.T.C. 2218 (TCC) (Appropriate time to determine if appropriation occurred was at end of taxation year); *King v. Canada*, [1995] 1 C.T.C. 2353 (TCC) (Conduct of taxpayers may consitute estoppel with respect to attribution and timing); *Penny v. Canada*, [1995] 1 C.T.C. 114 (FCTD) (Double taxation clearly contemplated by language of s. 15); *Cartwright v. Canada*, [1995] 1 C.T.C. 15 (FCTD) (Valuation of shareholder's benefit of cottage was rental value for summer); *Simpson (H.H.) v. MNR*, [1992] 2 C.T.C. 2387 (TCC) (Payment to shareholder by company's bank to settle action by company and shareholders for failure to give reasonable notice before seizure and sale of assets not shareholder appropriation or benefit); *Outerbridge Estate v. Canada*, [1991] 1 C.T.C. 113 (FCA) (Benefit acquired as son-in-law, not as shareholder); *Youngman v. R.*, [1990] 2 C.T.C. 10 (FCA) (Shareholder occupying house owned by company received benefit to the extent that shortfall in fair market value rent paid exceeded benefit conferred upon company through interest free loan from shareholder); *Vine Estate v. Canada*, [1990] 1 C.T.C. 18 (FCTD) (Amount applied by 50% shareholder from one company to cover losses of another company he owned was taxable benefit); *Outerbridge Estate v. Canada*, [1989] 2 C.T.C. 55 (FCTD); aff'd [1991] 1 C.T.C. 113 (FCA) (Benefit received where shares acquired below fair market value); *Grohne v. Canada*, [1989] 1 C.T.C. 434 (FCTD) (Shares acquired by director/shareholder pursuant to rights offering were not benefit received by virtue of office); *Westcoast Petroleum Ltd. v. Canada*, [1989] 1 C.T.C. 363 (FCTD) (Amounts received due to pipeline service rate increase pending public hearing not liability since no obligation to repay; reserve under para. 20(1)(m) denied, since no subsequent services to be rendered); *Cooper v. MNR*, [1989] 1 C.T.C. 66 (FCTD) (Interest-free loan by estate to executor was not taxable benefit); *Smith v. R.*, [1986] 1 C.T.C. 418 (FCTD) (Amounts paid by company to extinguish debts of another shareholder benefits to majority shareholder of both companies); *Hall et al. v. R.*, [1986] 1 C.T.C. 399 (FCTD) (Company debt purchased at discount by shareholder a shareholder benefit); *Mele v. R.*, [1985] 1 C.T.C. 257 (FCTD); aff'd (Sept. 12, 1990), File A-356-85 (FCA) [unreported] (Loans by corporation to third parties were personal advances by, and benefit to, controlling shareholder where not repaid); *Hart v. R.*, [1982] C.T.C. 275 (FCA) (Trip principally in relation to business, paid for by company, was benefit to shareholder to the extent that it was of personal value apart from business value); *Berbynuk v. R.*, [1978] C.T.C. 448 (FCTD) (Income suppressed by company was not income of shareholder); *Perrault v. R.*, [1978] C.T.C. 395 (FCA) (Dividend paid to shareholder selling shares to controlling shareholder, in satisfaction of purchase price obligation, taxable benefit to controlling shareholder); *R. v. Neudorf*, [1975] C.T.C. 192 (FCTD) (Where a corporation leasing shareholder's building made an addition to it and lease amendment attributing ownership of addition to company executed only subsequent to assessment, contract insufficient to dislodge presumption that addition was shareholder benefit); *Angle v. MNR*, [1975] 2 S.C.R. 248 (Despite earlier case between same parties finding no debt to company for income tax purposes, debt found to exist in present case); *Kennedy v. MNR*, [1973] C.T.C. 437 (FCA) (Sale of building to shareholder below fair market value was shareholder benefit; improvements by company on shareholder's property leased to company were shareholder benefits to extent that value of property increased more than amount below fair market value paid as rent); *Guilder News Co. (1963) v. MNR*, [1973] C.T.C. 1 (FCA) (Shares sold to shareholder below F.M.V. resulted in shareholder benefit despite price adjustment clause in contract); *St-Germain v. MNR*, [1969] C.T.C. 194 (SCC) (Improvements made by company to shareholder's building leased to company were shareholder benefits).

Interpretation Bulletins: IT-63R5: Benefits, including standby charge for an automobile, from the personal use of a motor vehicle supplied by an employer — after 1992; IT-96R6: Options to acquire shares, bonds or debentures and by trusts to acquire trust units; IT-116R3: Rights to buy additional shares; IT-119R4: Debts of shareholders and certain persons connected with shareholders; IT-160R3: Personal use of aircraft (archived); IT-169: Price adjustment clauses; IT-256R: Gains from theft, defalcation or embezzlement; IT-291R3: Transfer of property to a corporation under subsection 85(1); IT-335R2: Indirect payments; IT-357R2: Expenses of training; IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt; IT-432R2: Benefits conferred on shareholders; IT-498: The deductibility of interest on money borrowed to reloan to employees or shareholders (archived); IT-529: Flexible employee benefit programs.

Information Circulars: 76-19R3: Transfer of property to a corporation under section 85; 87-2R: International transfer pricing.

I.T. Technical News: 25 (dividend reinvestment plans); 31 (single-purpose corporations); 32 (new administrative policy on single-purpose corporations).

Advance Tax Rulings: ATR-9: Transfer of personal residence from corporation to its controlling shareholder; ATR-14: Non-arm's length interest charges; ATR-15: Employee stock option plan; ATR-22R: Estate freeze using share exchange; ATR-27: Exchange and acquisition of interests in capital; ATR-29: Amalgamation of social clubs; ATR-35: Partitioning of assets to get specific ownership — "butterfly"; ATR-36: Estate freeze.

Transfer Pricing Memoranda: TPM-03: Downward transfer pricing adjustments under subsec. 247(2).

Forms: T2 SCH 11: Transactions with shareholders, officers, or employees.

(1.1) Conferring of benefit — Notwithstanding subsection (1), where in a taxation year a corporation has paid a stock dividend to a person and it may reasonably be considered that one of the purposes of that payment was to significantly alter the value of the interest of any specified shareholder of the corporation, the fair market value of the stock dividend shall, except to the extent that it is otherwise included in computing that person's income under paragraph 82(1)(a), be included in computing the income of that person for the year.

Related Provisions: 52(3) — Cost of stock dividend.

Selected Cases [subsec. 15(1.1)]: *Wong v. R.*, [1999] 2 C.T.C. 2173 (TCC) (Provision not applicable where purpose of dividends not to alter value of interest).

Interpretation Bulletins: IT-88R2: Stock dividends; IT-432R2: Benefits conferred on shareholders.

(1.2) Forgiveness of shareholder debt — For the purpose of subsection (1), the value of the benefit where an obligation issued by a debtor is settled or extinguished at any time shall be deemed to be the forgiven amount at that time in respect of the obligation.

Related Provisions: 6(15) — Forgiveness of employee loans; 15(1.21) — Meaning of "forgiven amount"; 79(3)F(b)(i) — Where property surrendered to creditor; 80(1)"forgiven amount"B(b) — Debt forgiveness rules do not apply to amount of benefit; 80.01 — Deemed settlement of debts.

History: Subsec. 15(1.2) amended by 1995, c. 21, s. 4, applicable to taxation years that end after February 21, 1994. Subsec. 15(1.2) formerly read:

> (1.2) Forgiveness of shareholder loans — For the purposes of subsection (1), the value of the benefit or advantage conferred on a shareholder, in circumstances where a loan or other obligation to pay an amount is settled or extinguished at any time without any payment by that shareholder or by payment by the shareholder of an amount that is less than the amount of the obligation outstanding at that time, shall be deemed to be the amount, if any, by which the obligation outstanding at that time exceeds the total of the amount, if any, of the benefit in respect of the obligation that was included in the shareholder's income at the time the obligation arose and the amount, if any.

Interpretation Bulletins: IT-119R4: Debts of shareholders and certain persons connected with shareholders; IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt; IT-432R2: Benefits conferred on shareholders.

(1.21) Forgiven amount — For the purpose of subsection (1.2), the "forgiven amount" at any time in respect of an obligation issued by a debtor has the meaning that would be assigned by subsection 80(1) if

(a) the obligation were a commercial obligation (within the meaning assigned by subsection 80(1)) issued by the debtor;

(b) no amount included in computing income (otherwise than because of paragraph 6(1)(a)) because of the obligation being settled or extinguished were taken into account;

(c) the definition "forgiven amount" in subsection 80(1) were read without reference to paragraphs (f) and (h) of the description B in that definition; and

(d) section 80 were read without reference to paragraphs (2)(b) and (q) of that section.

Related Provisions: 80.01(1)"forgiven amount" — Application of definition for purposes of s. 80.01; 248(26) — Liability deemed to be obligation issued by debtor; 248(27) — Partial settlement of debt obligation.

History: Subsec. 15(1.21) added by 1995, c. 21, s. 4, applicable to taxation years that end after February 21, 1994.

Forms: T2 SCH 11: Transactions with shareholders, officers, or employees.

(1.3) Cost of property or service — To the extent that the cost to a person of purchasing a property or service or an amount payable by a person for the purpose of leasing property is taken into account in determining an amount required under this section to be included in computing a taxpayer's income for a taxation year, that cost or amount payable, as the case may be, shall include any tax that was payable by the person in respect of the property or service or that would have been so payable of the person were not exempt from the payment of that tax because of the nature of the person or the use to which the property or service is to be put.

Related Provisions: 15(1.4) — Inclusion in income to reflect GST.

History: Subsec. 15(1.3) amended by 1997, c. 10, subsec. 269(1), applicable to 1996 *et seq.* Subsec. (1.3) formerly read:

> (1.3) Goods and services tax — To the extent that an amount or value of a benefit required under subsection (1) to be included in computing the income of a taxpayer for a taxation year is determined by reference to the cost to a corporation of any property or service, that cost shall, for the purposes of that subsection, be determined without reference to any goods and services tax payable by that corporation in respect of the property or service.

Interpretation Bulletins: IT-63R5: Benefits, including standby charge for an automobile, from the personal use of a motor vehicle supplied by an employer — after 1992; IT-432R2: Benefits conferred on shareholders.

Forms: T2 SCH 11: Transactions with shareholders, officers, or employees.

(1.4) [Repealed]

History: Subsec. 15(1.4) repealed by 1997, c. 10, subsec. 269(1), applicable to 1996 *et seq.* Subsec. (1.4) formerly read:

> (1.4) Idem — Where the amount or value of a benefit (in this subsection referred to as the "benefit amount") (other than a benefit referred to in subsection (5)) would be required under subsection (1) to be included in computing a taxpayer's income for a taxation year in respect of a supply, other than a zero-rated supply or an exempt supply (within the meanings assigned by Part IX of the *Excise Tax Act*), of property or a service if no amount were paid to the corporation or to a person related to the corporation in respect of the amount that would be so required to be included, there shall be included in computing the taxpayer's income for the year the total of all amounts each of which is an amount determined by the formula
>
> $$0.07 (A - B)$$
>
> where
>
> A is the amount that would be so required under subsection (1) to be included in computing the taxpayer's income for the year; and
>
> B is the amount, if any, included in the benefit amount that can reasonably be attributed to tax imposed under an Act of the legislature of a province that is a prescribed tax for the purposes of section 154 of the *Excise Tax Act*.

The portion of subsec. 15(1.4) before the formula substituted by 1994, c. 21, subsec. 9(2), applicable to 1993 *et seq.* That portion formerly read:

> (1.4) Idem — Where the amount or value (in this subsection referred to as the "benefit amount") of a benefit would be required under subsection (1) to be included in computing a taxpayer's income for a taxation year in respect of a supply, other than a zero-rated supply or an exempt supply, (within the meanings assigned by

Part IX of the *Excise Tax Act*) of property or a service, if no amount were paid to the corporation or to a person related to the corporation in respect of the amount that would be so required to be included, there shall be included in computing the taxpayer's income for the year the total of all amounts each of which is an amount determined by the formula

Subsec. 15(1.4) substituted by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 5(3), applicable to 1991 *et seq.*, except that in its application to the 1991 taxation year the subsec. shall be read as follows:

(1.4) Where the amount or value (in this subsection referred to as the "benefit amount") of a benefit is required under subsection (1) to be included in computing a taxpayer's income for a taxation year in respect of a supply, other than a zero-rated supply or an exempt supply, (within the meanings assigned by Part IX of the *Excise Tax Act*) of property or a service, there shall be included in computing the taxpayer's income for the year the total of all amounts each of which is an amount determined by the formula

$$0.07(A - B)$$

where

A is an amount required under subsection (1) to be included in computing the taxpayer's income for the year in respect of a supply (other than a zero-rated supply or an exempt supply, within the meanings assigned by Part IX of the *Excise Tax Act*) of property or a service; and

B is an amount, if any, included in the benefit amount that can reasonably be attributed to tax imposed under an Act of the legislature of a province that is a prescribed tax for the purposes of section 154 of the *Excise Tax Act*.

Subsec. 15(1.4) formerly read:

(1.4) Idem — Where the amount or value of a benefit is required under subsection (1) to be included in computing the income of a taxpayer for a taxation year (in this subsection referred to as the "benefit amount") in respect of a supply, other than a zero-rated supply or an exempt supply (within the meanings assigned by Part IX of the *Excise Tax Act*), of property or a service in respect of which section 173 of that Act applies, an additional amount, equal to 7% of the amount by which the benefit amount exceeds the amount, if any, included in the benefit amount that may reasonably be attributed to tax imposed under an Act of the legislature of a province that is a prescribed tax for the purposes of section 154 of the *Excise Tax Act*, shall be included in computing the income of the taxpayer for the year.

(2) Shareholder debt — Where a person (other than a corporation resident in Canada) or a partnership (other than a partnership each member of which is a corporation resident in Canada) is

(a) a shareholder of a particular corporation,

(b) connected with a shareholder of a particular corporation, or

(c) a member of a partnership, or a beneficiary of a trust, that is a shareholder of a particular corporation

and the person or partnership has in a taxation year received a loan from or has become indebted to the particular corporation, any other corporation related to the particular corporation or a partnership of which the particular corporation or a corporation related to the particular corporation is a member, the amount of the loan or indebtedness is included in computing the income for the year of the person or partnership.

Related Provisions: 15(2.1) — Persons connected with shareholder; 15(2.2)–(2.6) — Exceptions to 15(2); 15(7) — Application of subsec. 15(2); 20(1)(j) — Repayment of loan by shareholder; 80(1)"excluded obligation"(a)(i) — Debt forgiveness rules do not apply where amount included in debtor's income; 80.4(2), (3) — Deemed interest; 120.4(1)"split income"(a)(i) — Shareholder benefits received by children subject to income splitting tax; 139(a) — Life insurance corporations; 214(3)(a) — Deemed dividend for withholding tax where shareholder is non-resident; 227(6.1) — Repayment of non-resident shareholder loan.

History: Subsec. 15(2) amended by 1998, c. 19, subsec. 75(1), applicable to loans made and indebtedness arising in 1990 *et seq.* The subsec. formerly read:

(2) Where a person (other than a corporation resident in Canada) or a partnership (other than a partnership each member of which is a corporation resident in Canada) is a shareholder of a particular corporation, is connected with a shareholder of a particular corporation or is a member of a partnership, or a beneficiary of a trust, that is a shareholder of a particular corporation and the person or partnership has in a taxation year received a loan from or has become indebted to the particular corporation, to any other corporation related thereto or to a partnership of which the particular corporation or a corporation related thereto is a member, the amount of the loan or indebtedness shall be included in computing the income for the year of the person or partnership, unless

(a) the loan was made or the indebtedness arose

(i) in the ordinary course of the lender's or creditor's business and, in the case of a loan, the lending of money was part of its ordinary business,

(ii) in respect of an individual who is an employee of the lender or creditor or the spouse of an employee of the lender or creditor to enable or assist the individual to acquire a dwelling or a share of the capital stock of a cooperative housing corporation acquired for the sole purpose of acquiring the right to inhabit a dwelling owned by the corporation, where the dwelling is for the individual's habitation,

(iii) where the lender or creditor is a corporation, in respect of an employee of the corporation, or of another corporation that is related to the corporation, to enable or assist the employee to acquire from the corporation, or a corporation related thereto, previously unissued fully paid shares of the capital stock of the corporation or the related corporation, as the case may be, to be held by the employee for the employee's own benefit, or

(iv) in respect of an employee of the lender or creditor to enable or assist the employee to acquire an automobile to be used by the employee in the performance of the duties of the employee's office or employment,

and *bona fide* arrangements were made, at the time the loan was made or the indebtedness arose, for repayment thereof within a reasonable time; or

(b) the loan or indebtedness was repaid within one year from the end of the taxation year of the lender or creditor in which it was made or incurred and it is established, by subsequent events or otherwise, that the repayment was not made as part of a series of loans or other transactions and repayments.

Subparas. 15(2)(a)(ii), (iii) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 11(2), (3), subpara. (ii) applicable to 1985 *et seq.*, subpara. (iii) applicable with respect to loans made and indebtedness arising after 1981. Subparas. 15(2)(a)(ii), (iii) formerly read:

(ii) in respect of an employee of the lender or creditor or the spouse of an employee of the lender or creditor to enable or assist the employee or the employee's spouse to acquire a dwelling for his or her habitation,

(iii) where the lender or creditor is a corporation, in respect of an employee of the corporation to enable or assist the employee to acquire from the corporation fully paid shares of the capital stock of the corporation, or to acquire from a corporation related thereto fully paid shares of the capital stock of the related corporation, to be held by the employee for the employee's own benefit, or

Selected Cases [subsec. 15(2)]: *Gillette Canada Inc. v. R.*, [2003] 3 C.T.C. 27 (FCA) (Debtor-creditor relationship required for subsec. 15(2) to apply); *Erb v. R.*, [2000] 1 C.T.C. 2597 (TCC) (No consideration for transfer gives rise to inference of benefit); *Davidson v. R.*, [1999] 3 C.T.C. 2159 (TCC) (Reasonable time for repayment does not require fixed date); *Quigley v. Canada*, [1996] 1 C.T.C. 2378 (TCC) ("Was included" is question of fact and not same as "ought to have been included"); *Lavoie v. Canada*, [1995] 2 C.T.C. 2709D (TCC) (Demand loan not a binding agreement between company and debtor where debtor was 98% shareholder); *Luoma v. Canada*, [1995] 1 C.T.C. 2993D (TCC) (Set-off is not automatic where mutual debts exist; shareholder benefit properly assessed); *Haynes v. Canada*, [1995] 1 C.T.C. 2515 (TCC) (Evidence required to rebut onus of showing transaction was loan and not shareholder appropriation); *Cormie v. Canada*, [1995] 1 C.T.C. 2463 (TCC) (Loans not made in ordinary course of business and no *bona fide* arrangements for

repayment); *Silden (J.) v. MNR*, [1993] 2 C.T.C. 123 (FCA) (*NB*: [1990] 2 C.T.C. 533 (FCTD) rev'd on issue of repayment arrangements)); *Perlingieri (G.) v. MNR*, [1993] 1 C.T.C. 2137 (TCC) (Demand loan not *bona fide* arrangement for repayment within reasonable time); *Nellis v. R.*, [1986] 2 C.T.C. 216 (FCTD) (Loan to shareholder to acquire shares in other company was income); *Schlamp v. R.*, [1982] C.T.C. 304 (FCTD) (Loan to acquire dwelling for shareholder's habitation was income); *Tick v. MNR*, [1972] C.T.C. 137 (FCTD) (Owner of five private companies not permitted to set off one company's debt to him against his debts to other companies for purposes of provision).

Interpretation Bulletins: IT-119R4: Debts of shareholders and certain persons connected with shareholders; IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt; IT-503: Exploration and development shares (archived).

Transfer Pricing Memoranda: TPM-02: Repatriation of funds by non-residents — Part XIII assessments.

Forms: T2 SCH 11: Transactions with shareholders, officers, or employees.

(2.1) Persons connected with a shareholder — For the purposes of subsection (2), a person is connected with a shareholder of a particular corporation if that person does not deal at arm's length with the shareholder and if that person is a person other than

(a) a foreign affiliate of the particular corporation; or

(b) a foreign affiliate of a person resident in Canada with which the particular corporation does not deal at arm's length.

Interpretation Bulletins: IT-119R4: Debts of shareholders and certain persons connected with shareholders.

(2.2) When s. 15(2) not to apply — non-resident persons — Subsection (2) does not apply to indebtedness between non-resident persons.

Related Provisions: 95(2)(a)(ii) — Whether FAPI on income from loans between non-resident corporations.

History: Subsec. 15(2.2) added by 1998, c. 19, subsec. 75(2), applicable to loans made and indebtedness arising in 1990 *et seq.*.

(2.3) When s. 15(2) not to apply — ordinary lending business — Subsection (2) does not apply to a debt that arose in the ordinary course of the creditor's business or a loan made in the ordinary course of the lender's ordinary business of lending money where, at the time the indebtedness arose or the loan was made, *bona fide* arrangements were made for repayment of the debt or loan within a reasonable time.

Related Provisions: 80.4(2), (3) — Deemed interest.

History: Subsec. 15(2.3) added by 1998, c. 19, subsec. 75(2), applicable to loans made and indebtedness arising in 1990 *et seq.*

Interpretation Bulletins: IT-119R4: Debts of shareholders and certain persons connected with shareholders.

(2.4) When s. 15(2) not to apply — certain employees — Subsection (2) does not apply to a loan made or a debt that arose

(a) in respect of an individual who is an employee of the lender or creditor but not a specified employee of the lender or creditor,

(b) in respect of an individual who is an employee of the lender or creditor or who is the spouse or common-law partner of an employee of the lender or creditor to enable or assist the individual to acquire a dwelling or a share of the capital stock of a cooperative housing corporation acquired for the sole purpose of acquiring the right to inhabit a dwelling owned by the corporation, where the dwelling is for the individual's habitation,

(c) where the lender or creditor is a particular corporation, in respect of an employee of the particular corporation or of another corporation that is related to the particular corporation, to enable or assist the employee to acquire from the particular corporation, or from another corporation related to the particular corporation, previously unissued fully paid shares of the capital stock of the particular corporation or the related corporation, as the case may be, to be held by the employee for the employee's own benefit, or

(d) in respect of an employee of the lender or creditor to enable or assist the employee to acquire a motor vehicle to be used by the employee in the performance of the duties of the employee's office or employment,

where

(e) it is reasonable to conclude that the employee or the employee's spouse or common-law partner received the loan, or became indebted, because of the employee's employment and not because of any person's share-holdings, and

(f) at the time the loan was made or the debt was incurred, *bona fide* arrangements were made for repayment of the loan or debt within a reasonable time.

Related Provisions: 15(2.7) — Deemed specified employee of a partnership; 80.4(2), (3) — Deemed interest.

History: Paras. 15(2.4)(b) and (e) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subsec. 15(2.4) added by 1998, c. 19, subsec. 75(2), applicable to loans made and indebtedness arising in 1990 *et seq.*, except that in its application to loans made and indebtedness arising before April 26, 1995, subsec. 15(2.4) shall be read without reference to paragraph (e).

Interpretation Bulletins: IT-119R4: Debts of shareholders and certain persons connected with shareholders.

(2.5) When s. 15(2) not to apply — certain trusts — Subsection (2) does not apply to a loan made or a debt that arose in respect of a trust where

(a) the lender or creditor is a private corporation;

(b) the corporation is the settlor and sole beneficiary of the trust;

(c) the sole purpose of the trust is to facilitate the purchase and sale of the shares of the corporation, or of another corporation related to the corporation, for an amount equal to their fair market value at the time of the purchase or sale, as the case may be, from or to the employees of the corporation or of the related corporation (other than employees who are specified employees of the corporation or of another corporation related to the corporation), as the case may be; and

(d) at the time the loan was made or the debt incurred, *bona fide* arrangements were made for repayment of the loan or debt within a reasonable time.

Related Provisions: 15(2.7) — Deemed specified employee of a partnership; 80.4(2), (3) — Deemed interest.

History: Subsec. 15(2.5) added by 1998, c. 19, subsec. 75(2), applicable to loans made and indebtedness arising in 1990 *et seq.*, except that in its application to loans made and indebtedness arising before June 20, 1996, subsec. 15(2.5) shall be read without reference to "(other than employees who are specified employees of the corporation or of another corporation related to the corporation)".

Interpretation Bulletins: IT-119R4: Debts of shareholders and certain persons connected with shareholders.

(2.6) When s. 15(2) not to apply — repayment within one year — Subsection (2) does not apply to a loan or an indebtedness repaid within one year after the end of the taxation year of the lender or creditor in which the loan was made or the indebtedness arose, where it is

established, by subsequent events or otherwise, that the repayment was not part of a series of loans or other transactions and repayments.

Related Provisions: 80.4(2), (3) — Deemed interest.

History: Subsec. 15(2.6) added by 1998, c. 19, subsec. 75(2), applicable to loans made and indebtedness arising in 1990 *et seq.*

Interpretation Bulletins: IT-119R4: Debts of shareholders and certain persons connected with shareholders.

I.T. Technical News: 3 (paragraphs 15(2)(b) and 20(1)(j)).

(2.7) Employee of partnership — For the purpose of this section, an individual who is an employee of a partnership is deemed to be a specified employee of the partnership where the individual is a specified shareholder of one or more corporations that, in total, are entitled, directly or indirectly, to a share of any income or loss of the partnership, which share is not less than 10% of the income or loss.

Related Provisions: 248(1) — Definition of "specified employee".

History: Subsec. 15(2.7) added by 1998, c. 19, subsec. 75(2), applicable to loans made and indebtedness arising in 1990 *et seq.*

Interpretation Bulletins: IT-119R4: Debts of shareholders and certain persons connected with shareholders.

(3) Interest or dividend on income bond or debenture — An amount paid as interest or a dividend by a corporation resident in Canada to a taxpayer in respect of an income bond or income debenture shall be deemed to have been paid by the corporation and received by the taxpayer as a dividend on a share of the capital stock of the corporation, unless the corporation is entitled to deduct the amount so paid in computing its income.

Related Provisions: 15(4) — Where paid by corporation not resident in Canada; 15.1(1), 15.2(1) — Parallel treatment for small business development bonds and small business bonds; 18(1)(g) — Payment on income bonds; 112(2.1) — Where no deductions permitted; 214(3) — Non-residents' Canadian income; 258(2) — Deemed dividend on preferred share.

Selected Cases [subsec. 15(3)]: *R. v. Canadian Pacific Ltd. (No. 1)*, [1977] C.T.C. 606 (FCA) (Interest on income bonds paid by U.S. subsidiary permitted treatment as deemed dividend).

Interpretation Bulletins: IT-52R4: Income bonds and income debentures (archived); IT-243R4: Dividend refund to private corporations; IT-269R3: Part IV tax on taxable dividends received by a private corporation or a subject corporation; IT-527: Distress preferred shares.

(4) Idem, where corporation not resident — An amount paid as interest or a dividend by a corporation not resident in Canada to a taxpayer in respect of an income bond or income debenture shall be deemed to have been received by the taxpayer as a dividend on a share of the capital stock of the corporation unless the amount so paid was, under the laws of the country in which the corporation was resident, deductible in computing the amount for the year on which the corporation was liable to pay income or profits tax imposed by the government of that country.

Related Provisions: 15(3) — Where paid by corporation resident in Canada; 18(1)(g) — Payment on income bonds; 214(3) — Non-residents' Canadian income; 258 — Deemed dividend on preferred share.

Interpretation Bulletins: IT-52R4: Income bonds and income debentures (archived).

(5) Automobile benefit — For the purposes of subsection (1), the value of the benefit to be included in computing a shareholder's income for a taxation year with respect to an automobile made available to the shareholder, or a person related to the shareholder, by a corporation shall (except where an amount is determined under subparagraph 6(1)(e)(i) in respect of the automobile in computing the shareholder's income for the year) be computed on the assumption that subsections 6(1), (1.1), (2) and (7) apply, with such modifications as the circumstances require, and as though the references therein to "the employer of the taxpayer", "the taxpayer's employer" and "the employer" were read as "the corporation".

Related Provisions: 15(7) — Application; 214(3)(a) — Non-residents' Canadian income.

History: Subsec. 15(5) amended by 1997, c. 10, subsec. 269(2), applicable to 1996 *et seq.* Subsec. (5) formerly read:

> (5) For the purpose of subsection (1), the value of the benefit to be included in computing a shareholder's income for a taxation year with respect to an automobile made available to the shareholder, or a person related to the shareholder, by a corporation shall (except where an amount is determined under subparagraph 6(1)(e)(i) in respect of the automobile in computing the shareholder's income for the year) be computed on the assumption that subsections 6(1), (1.1) and (2) apply, with such modifications as the circumstances require, and as though the references therein to "the employer of the taxpayer", "the taxpayer's employer" and "the employer" were read as "the corporation".

Subsec. 15(5) substituted by 1994, c. 21, subsec. 9(3), applicable to 1993 *et seq.* That subsec. formerly read:

> (5) For the purposes of subsection (1), the value of the benefit to be included in computing the income of a shareholder for a taxation year with respect to an automobile made available to the shareholder, or to a person related to the shareholder, by a corporation shall, except when an amount has been included in computing the shareholder's income by virtue of paragraph 6(1)(e) in respect of the automobile, be computed on the assumption that subsections 6(1), (2) and (2.2) apply, with such modifications as the circumstances require, and as though the references in those subsections to "the employer" or "the taxpayer's employer", as the case may be, were read as references to "the corporation".

Regulations: 200(2)(h), 200(4) (information returns).

Interpretation Bulletins: IT-63R5: Benefits, including standby charge for an automobile, from the personal use of a motor vehicle supplied by an employer — after 1992.

Forms: T2 SCH 11: Transactions with shareholders, officers, or employees.

(6) [Repealed under former Act]

(7) Application of subsecs. (1), (2) and (5) — For greater certainty, subsections (1), (2) and (5) are applicable in computing, for the purposes of this Part, the income of a shareholder or of a person or partnership whether or not the corporation, or the lender or creditor, as the case may be, was resident or carried on business in Canada.

Interpretation Bulletins: IT-63R5: Benefits, including standby charge for an automobile, from the personal use of a motor vehicle supplied by an employer — after 1992; IT-119R4: Debts of shareholders and certain persons connected with shareholders; IT-432R2: Benefits conferred on shareholders.

Forms: T2 SCH 11: Transactions with shareholders, officers, or employees.

(8) [Repealed]

History: Subsec. 15(8) repealed by 1998, c. 19, subsec. 75(3), applicable to loans made and indebtedness arising in 1990 *et seq.* The subsec. formerly read:

> (8) Where subsec. (2) does not apply — Subsection (2) does not apply in respect of indebtedness between non-resident persons.

(9) Deemed benefit to shareholder by corporation — Where an amount in respect of a loan or debt is deemed by section 80.4 to be a benefit received by a person or partnership in a taxation year, the amount is deemed for the purpose of subsection (1) to be a benefit conferred in the year on a shareholder, unless subsection 6(9) or paragraph 12(1)(w) applies to the amount.

History: Subsec. 15(9) amended by 1998, c. 19, subsec. 75(4), applicable to taxation years that end after November 1991. The subsec. formerly read:

> (9) Where an amount in respect of a loan or debt is deemed by section 80.4 to be a benefit received by a person or partnership in a taxation year, the amount of the loan or debt (other than any amount to which subsection 6(9) or paragraph 12(1)(w) applies) shall be deemed for the purposes of subsection (1) to be a benefit conferred in the year on a shareholder.

Regulations: 200(2)(i) (information return).

Interpretation Bulletins: IT-119R4: Debts of shareholders and certain persons connected with shareholders; IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt.

Transfer Pricing Memoranda: TPM-02: Repatriation of funds by non-residents — Part XIII assessments.

Definitions [s. 15]: "Act" — *Interpretation Act* 35(1); "amount", "business" — 248(1); "Canada" — 255; "carried on business in Canada" — 253; "class" — 248(6); "common share", "common-law partner" — 248(1); "connected" — 15(2.1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend", "employee" — 248(1); "forgiven amount" — 15(1.21); "goods and services tax", "income bond", "income debenture", "individual" — 248(1); "legislature" — *Interpretation Act* 35(1); "motor vehicle" — 248(1); "obligation" — 248(26); "paid-up capital" — 89(1), 248(1); "person", "property" — 248(1); "province" — *Interpretation Act* 35(1); "resident in Canada" — 94(3)(a)(viii), 250; "series" — 248(10); "share", "shareholder" — 248(1); "specified employee" — 15(2.7), 248(1); "specified shareholder", "stock dividend" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

15.1 (1) Interest on small business development bonds — Any amount received by a taxpayer as or on account of interest on a small business development bond shall, except for the purposes of Part IV, be deemed to have been received as a taxable dividend.

Related Provisions: 15(3) — Parallel rule for income bonds; 15.2(1) — Parallel rule for small business bonds.

(2) Rules for small business development bonds — Where a corporation (in this section referred to as the "issuer") has issued an obligation that is at any time a small business development bond, notwithstanding any other provision of this Act,

(a) in computing the issuer's income for a taxation year, no deduction shall be made in respect of any amount paid or payable (depending on the method regularly followed in computing the issuer's income) as or on account of interest on the obligation in respect of a period that includes that time;

(b) except for the purpose of subsection 129(1), to the extent that any amount paid by the issuer as or on account of interest on the obligation is not allowed as a deduction because of paragraph (a), it shall, when paid, be deemed to have been paid as a taxable dividend; and

(c) except for the purposes of paragraph 125(1)(b), the issuer's taxable income for any taxation year that includes a period throughout which the obligation was a small business development bond but

(i) the issuer was not an eligible small business corporation, or

(ii) all or substantially all of the proceeds from the issue of the obligation cannot reasonably be regarded as having been used by the issuer or a corporation with which it was not dealing at arm's length in the financing of an active business carried on in Canada immediately before the obligation was issued

shall be deemed to be an amount equal to the total of

(iii) the amount paid or payable (depending on the method regularly followed in computing the issuer's income) as or on account of interest on the obligation in respect of that period, and

(iv) the issuer's taxable income otherwise determined for the year.

(3) Definitions — In this section,

"eligible small business corporation" at any time means a taxable Canadian corporation that at that time is

(a) a small business corporation, or

(b) a cooperative corporation (within the meaning assigned by subsection 136(2)) all or substantially all of the assets of which are used in an active business carried on by it in Canada;

"joint election" means an election that is made in prescribed form, containing prescribed information, jointly by the issuer of an obligation and the person who is the holder of the obligation at the time of the election, that is filed with the Minister by the holder, and in which the holder and the issuer elect that this section apply to the obligation;

"majority interest partner" — [Repealed]

History: The definition "majority interest partner" in subsec. 15.1(3) repealed by 1998, c. 19, s. 76, applicable after April 26, 1995. The definition formerly read:

> "majority interest partner" of a partnership means a taxpayer who, if subsection 97(3.1) applied to this section, would be deemed to be a majority interest partner of the partnership;

"qualifying debt obligation" of a corporation at a particular time means an obligation that is a bond, debenture, bill, note, mortgage, hypothecary claim or similar obligation issued after February 25, 1992 and before 1995,

(a) the principal amount of which is not less than $10,000 or more than $500,000,

(b) that is issued for a term of not more than 5 years and, except in the event of a failure or default under the terms or conditions of the obligation, not less than one year, and

(c) that was issued not more than 5 years before the particular time,

if the obligation is issued by the corporation

(d) as part of a proposal to, or an arrangement with, its creditors that has been approved by a court under the *Bankruptcy and Insolvency Act*,

(e) at a time when all or substantially all of its assets are under the control of a receiver, receiver-manager, sequestrator or trustee in bankruptcy, or

(f) at a time when, because of financial difficulty, the corporation is in default, or could reasonably be expected to default, on a debt held by a person with whom the corporation was dealing at arm's length and the obligation is issued, in whole or in part, directly or indirectly in exchange or substitution for that debt;

History: The opening words of the definition "qualifying debt obligation" in subsec. 15.1(3) amended to add "hypothecary claim" by 2001, c. 17, s. 198, in force June 14, 2001.

The opening words of the definition of "qualifying debt obligation" in subsec. 15.1(3) amended by 1994, c. 8, subsec. 1(1), applicable to obligations issued after 1992; and, for the purpose of the definition "small business development bond" in subsec. 15.1(3), an election made before August 11, 1994 in respect of an obligation issued after 1992 and before 1995

shall be deemed to have been made within 90 days after the day the obligation was issued. The opening words formerly read:

> "qualifying debt obligation" of a corporation at a particular time means an obligation that is a bond, debenture, bill, note, mortgage or similar obligation issued after December 11, 1979 and before 1988 or after February 25, 1992 and before 1993,

"small business development bond" at any time means

(a) an obligation that is at that time a qualifying debt obligation issued after 1981 and before 1988 by a Canadian-controlled private corporation in respect of which a joint election was made within 90 days after the later of its issue date and March 30, 1983,

(b) an obligation that is at that time a qualifying debt obligation issued after February 25, 1992 by a Canadian-controlled private corporation in respect of which a joint election was made within 90 days after its issue date, or

(c) an obligation that is at that time a qualifying debt obligation issued by a Canadian-controlled private corporation if

(i) it is reasonable to consider that the corporation and the holder of the obligation intended that this section apply to the obligation, having regard to such factors as may be relevant, including the rate of interest stipulated under the terms of the obligation and the manner in which the corporation and the holder have treated the obligation for the purposes of this Act, and

(ii) the holder files with the Minister a joint election in respect of the obligation within 90 days after the date of notification by the Minister that a joint election in respect of the obligation has not been filed.

Related Provisions: 248(1)"small business development bond" — Definition applies to entire Act.

(4) Money borrowed — Notwithstanding any other provision of this Act, an amount paid or payable by a taxpayer pursuant to a legal obligation to pay interest on borrowed money used for the purpose of acquiring a small business development bond shall be deemed to be an amount paid or payable, as the case may be, on borrowed money used for the purpose of earning income from a business or property.

(5) False declaration — Where the Minister establishes that an issuer has knowingly or under circumstances amounting to gross negligence made a false declaration in a joint election in respect of an obligation, the reference in subparagraph (2)(c)(iii) to "the amount paid or payable" shall in respect of the obligation be read as a reference to "3 times the amount paid or payable".

(6) Disqualification — Where at a particular time an issuer makes a joint election in respect of an obligation and

(a) the issuer or any other corporation associated at the time the obligation was issued with the issuer,

(b) an individual who controls or is a member of a related group that controls the issuer, or

(c) a partnership any member of which, who is a majority interest partner of the partnership, controls, or is a member of a related group that controls, the issuer

had at or before the particular time made a joint election in respect of any small business development bond or small business bond, as the case may be, for the purposes of this section, the issuer shall be deemed not to be an eligible small business corporation in respect of the obligation.

(7) Exception — Subsection (6) does not apply in respect of an obligation issued at any time where the issue price of the obligation does not exceed the amount, if any, by which

(a) $500,000

exceeds

(b) the total of all amounts each of which is the principal amount outstanding immediately after that time in respect of

(i) another obligation that is a small business development bond issued by

(A) the issuer, or

(B) a corporation associated with the issuer, or

(ii) a small business bond issued by

(A) an individual who controls, or is a member of a related group that controls, the issuer, or

(B) a partnership any member of which, who is a majority interest partner of the partnership, controls, or is a member of a related group that controls, the issuer.

Related Provisions [s. 15.1]: 136 — Cooperative not private corporation — exception; 143(1)(k) — Communal organization (e.g. Hutterite colony) may issue small business development bond.

History [s. 15.1]: S. 15.1 substituted by 1994, c. 7, Sch. VIII (1993, c. 24), s. 6, applicable to obligations issued after February 25, 1992. For the purpose of the definition "small business development bond" in subsec. 15.1(3), an election made in respect of an obligation after February 25, 1992 and before September 9, 1993, shall be deemed to have been made within 90 days after the day the obligation was issued. S. 15.1 formerly read:

> 15.1 (1) Small business development bond — Any amount received by a taxpayer as or on account of interest in respect of a small business development bond shall, except for the purposes of Part IV, be deemed to have been received as a taxable dividend.
>
> (2) Idem — Where a corporation, in this section referred to as the "issuer", has issued an obligation that is at any time a small business development bond, notwithstanding any other provision of this Act, the following rules apply:
>
> (a) in computing the income of the issuer for a taxation year, no deduction shall be made in respect of any amount paid or payable (depending on the method regularly followed by the issuer in computing its income) for a period that includes that time as or on account of interest on the bond;
>
> (b) except for the purposes of subsection 129(1), to the extent that any amount paid by the issuer as or on account of interest on the bond is not allowed as a deduction by virtue of paragraph (a), it shall, when paid, be deemed to have been paid as a taxable dividend; and
>
> (c) [Repealed under former Act]
>
> (d) except for the purposes of paragraph 125(1)(b), the taxable income of the issuer for any taxation year that includes a period throughout which the obligation was a small business development bond shall, where
>
> (i) the issuer was not an eligible small business corporation,
>
> (ii) the property acquired with the proceeds of the bond or the property referred to in subparagraph (d)(iii) of the definition "qualifying debt obligation" in subsection (3)
>
> (A) was not property used for specified purposes by the issuer, or
>
> (B) was not owned by the issuer, or
>
> (iii) all or substantially all of the proceeds from the issue of an obligation issued in circumstances described in subparagraphs (e)(i) to (iii) of the defintion "qualifying debt obligation" in subsection (3) cannot reasonably be regarded as having been used by the issuer or a corporation with which it was not dealing at arm's length in the financing of an

active business carried on in Canada immediately before the time of its issuance,

be deemed to be an amount equal to the total of

(iv) the amount paid or payable (depending on the method regularly followed by the issuer in computing its income) for that period as or on account of interest on the obligation, and

(v) its taxable income otherwise determined for the year.

(3) Definitions — In this section,

"eligible small business corporation" at any time means a taxable Canadian corporation that at that time is

(a) a small business corporation, or

(b) a cooperative corporation (within the meaning assigned by subsection 136(2)) all or substantially all of the assets of which are used in an active business carried on by it in Canada;

"joint election" means an election made in prescribed form jointly by the issuer of an obligation and the person who is the holder of the obligation at the election time and filed with the Minister by the holder in which the issuer and the holder elect that the provisions of this section apply with respect to that obligation and in which the issuer declares that

(a) it is an eligible small business corporation, and

(b) the property, if any, acquired with the proceeds of or financed or refinanced by the obligation is property used for specified purposes;

"property used for specified purposes" means property used primarily in the carrying on of an active business in Canada but does not include

(a) property that is used by an issuer primarily for the purpose of being leased to any person, other than an eligible small business corporation,

(i) that does not use the property primarily for the purpose of leasing it to any other person, and

(ii) that would be associated with the issuer if this Act were read without reference to paragraph 251(5)(b), or

(b) property used in a business carried on by an issuer as a member of a partnership;

"qualifying debt obligation" of a corporation at any particular time means an obligation that is a bond, debenture, bill, note, mortgage or similar obligation issued after December 11, 1979 and before 1988,

(a) the principal amount of which is not less than $10,000 or more than $500,000,

(b) that is issued for a term of not more than five years and, except in the event of a failure or default under the terms or conditions of the obligation, not less than one year, and

(c) that was issued not more than five years before the particular time

if

(d) all of the proceeds from the issuance before February 1, 1982 of the obligation are used by the corporation

(i) to acquire after December 11, 1979 and before February 1, 1982 property that is specified property of the corporation,

(ii) to finance qualified expenditures (within the meaning assigned by paragraph 127(10.1)(c)) made by the corporation after December 11, 1979 and before February 1, 1982 in respect of scientific research,

(iii) to repay at any time before February 1, 1982, in whole or in part, one or more obligations of the corporation to the extent of an amount not exceeding the cost to the corporation of property referred to in subparagraph (i) or qualified expenditures referred to in subparagraph (ii) that was acquired or that were incurred by the corporation after December 11, 1979 and before the time of the repayment, or

(iv) for any combination of purposes described in subparagraphs (i) to (iii), or

(e) the obligation is issued by the corporation

(i) as part of a proposal to, or an arrangement with, its creditors that has been approved by a court under the *Bankruptcy and Insolvency Act*;

(ii) at a time when all or substantially all of its assets are under the control of a receiver, receiver-manager, sequestrator or trustee in bankruptcy, or

(iii) at a time when, by reason of financial difficulty, the corporation is in default, or could reasonably be expected to default, on a debt held by a person with whom the corporation was dealing at arm's length and it is issued, in whole or in part, directly or indirectly in exchange or substitution for that debt;

"small business development bond" at any time means

(a) an obligation that is at that time a qualifying debt obligation issued before 1982 by a Canadian-controlled private corporation in respect of which a joint election was made at a particular time that is within 90 days after the later of its issue date and February 26, 1981, or

(b) an obligation that is at that time a qualifying debt obligation issued after 1981 by a Canadian-controlled private corporation in respect of which a joint election was made at a particular time that is within 90 days after the later of its issue date and March 30, 1983;

"specified property" of an issuer means property acquired by the issuer that is

(a) depreciable property that has not been used for any purpose whatever before it was acquired by the issuer, or

(b) capital property that is land (excluding any building or other structure affixed to land) other than land acquired by the issuer from a person with whom it was not dealing at arm's length,

but does not include any

(c) automobile, or

(d) transportation equipment used principally for the purpose of transporting persons other than passengers who pay for the transportation services.

(4) Presumption — Where an issuer has disposed of specified property, for the purposes of paragraph (2)(d), the property shall be deemed to be owned by the issuer and to be property used for specified purposes if, in the thirty day period after the date of disposition of the property, the principal amount of the obligation is reduced by an amount not less than the amount by which the proceeds of disposition to the issuer of the property exceed the expense incurred by it in disposing of the property.

(5) Idem — Notwithstanding any other provision of this Act, an amount paid or payable by a taxpayer pursuant to a legal obligation to pay interest on borrowed money used for the purpose of acquiring a small business development bond shall be deemed to be an amount paid or payable, as the case may be, on borrowed money used for the purpose of earning income from a business or property.

(6) False declaration — Where an issuer knowingly or under circumstances amounting to gross negligence makes a false declaration in a joint election in respect of an obligation, the reference in subparagraph (2)(d)(iv) to "the amount" shall in respect of the issuer be read as a reference to "3 times the amount".

(7) Presumption — Where at any particular time an issuer makes a joint election in respect of an obligation and at or before that time the issuer or any other corporation associated with the issuer at or before that time makes or has made a joint election in respect of any other obligation, for the purposes of this section, the issuer shall be deemed not to be an eligible small business corporation.

(8) Idem — For the purposes of this section, where an eligible small business corporation has acquired property from another person who did not deal at arm's length with the corporation immediately after the acquisition, the corporation shall be deemed to have acquired the property

(a) from the person from whom that other person acquired the property; and

(b) at the time the other person acquired the property.

(9) Exception — Where an issuer or any corporation associated with the issuer has made a joint election in respect of a small business development bond, subsection (7) shall not apply with respect to the issuer and any corporation associated with that issuer that would, but for that subsection, be an eligible small business corporation in respect of any obligation issued at any particular time after May 23, 1985 in circumstances described in any of subparagraphs (e)(i) to (iii) of the definition "qualifying debt obligation" in subsec-

tion (3), if the issue price of any such bond does not exceed the amount, if any, by which

(a) $500,000

exceeds

(b) the total of all amounts each of which is the principal amount outstanding at that time in respect of

(i) a small business development bond issued

(A) before the particular time by the issuer, or

(B) at or before the particular time by a corporation associated with the issuer, or

(ii) a small business bond issued at or before the particular time by

(A) an individual who controls or is a member of a related group that controls the issuer, or

(B) a partnership any member of which is a person who is a majority interest partner of the partnership (within the meaning assigned by subsection 97(3.1)) and who controls, or is a member of a related group that controls, the issuer.

(10) Presumption — Notwithstanding the definition "small business development bond" in subsection (3), where the holder of a qualifying debt obligation issued by a Canadian-controlled private corporation has not filed with the Minister a joint election within the time referred to in that definition and, after the issue of the qualifying debt obligation, the corporation has not issued a small business development bond, other than a small business development bond that is an obligation described in paragraph (e) of the definition "qualifying debt obligation" in subsection (3), the obligation shall be deemed to be a small business development bond if

(a) it is reasonable to consider that the corporation and the holder intended that this section would apply to the obligation having regard to such factors as may be relevant, including the rate of interest stipulated under the terms of the obligation and the manner in which the corporation and the holder have treated the obligation for the purposes of this Act; and

(b) the holder files with the Minister a joint election within 90 days from the later of

(i) the date of notification by the Minister that a joint election in respect of the obligation has not been filed pursuant to the definition "small business development bond" in subsection (3), and

(ii) March 30, 1983

(11) Penalties — For the purpose of subsection 163(3), where an amount is added to the taxable income of an issuer by virtue of subsection (6), the amount shall be deemed to be a penalty assessed by the Minister under section 163.

(12) Replacement property — Where, at any time after December 11, 1979, an amount has become receivable by a corporation as proceeds of disposition (within the meaning assigned by paragraph (b), (c) or (d) of the definition "proceeds of disposition" in subsection 13(21) or paragraph (b), (c) or (d) of the definition of that expression in section 54) of specified property and the corporation has, before the end of the first taxation year following the taxation year in which an amount in respect of the disposition of the specified property has become receivable, acquired a replacement property (within the meaning assigned by subsection 13(4.1) or 44(5)) that is specified property, for the purpose of subsection (4) the cost to the corporation of its replacement property shall be deemed to be an expense incurred by it in disposing of the specified property.

Cl. 15.1(3)(b)(iv)(A) amended by 1994, c. 7, Sch. V (1992, c. 27), para. 90(1)(q), to substitute "*Bankruptcy and Insolvency Act*" for "*Bankruptcy Act*", in force November 30, 1992.

Definitions [s. 15.1]: "active business", "amount" — 248(1); "arm's length" — 251(1); "associated" — 256; "borrowed money", "business" — 248(1); "Canada" — 255; "Canadian-controlled private corporation" — 125(7), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "eligible small business corporation" — 15.1(3); "individual" — 248(1); "issuer" — 15.1(2); "joint election" — 15.1(3); "majority interest partner", "Minister", "person", "prescribed", "principal amount", "property" — 248(1); "qualifying debt obligation" — 15.1(3); "related group" — 251(4); "small business bond" — 15.2(3), 248(1); "small business corporation" — 248(1); "small business development bond" — 15.1(3), 248(1); "taxable Canadian corporation", "taxable dividend" — 89(1), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 15.1]: IT-507R: Small business development bonds and small business bonds (archived).

15.2 (1) Interest on small business bond — Any amount received by a taxpayer as or on account of interest on a small business bond shall, except for the purposes of Part IV, be deemed to have been received as a taxable dividend from a taxable Canadian corporation.

Related Provisions: 15(3) — Parallel rule for income bonds; 15.1(1) — Parallel rule for small business development bonds.

(2) Rules for small business bonds — Where an individual or a partnership (in this section referred to as the "issuer") has issued an obligation that is at any time a small business bond, notwithstanding any other provision of this Act,

(a) in computing the issuer's income for a taxation year, no deduction shall be made in respect of any amount paid or payable (depending on the method regularly followed in computing the issuer's income) as or on account of interest on the bond in respect of a period that includes that time; and

(b) for any taxation year that includes a period throughout which the obligation was a small business bond but

(i) the issuer was not an eligible issuer, or

(ii) all or substantially all of the proceeds from the issue of the obligation were not used by the issuer in the financing of an active business carried on by the issuer in Canada immediately before the time of the issue of the obligation,

there shall be added to the tax otherwise payable under this Part by the issuer for that taxation year an amount equal to 29% of the amount of interest paid or payable (depending on the method regularly followed in computing the issuer's income) in respect of the bond for that period.

(3) Definitions — In this section,

"eligible issuer" at any time means

(a) an individual (other than a trust) who is resident in Canada and who

(i) has not made a joint election before that time in respect of a small business bond,

(ii) is not a majority interest partner of a partnership that has made a joint election before that time in respect of a small business bond, and

(iii) neither controls nor is a member of a related group that controls

(A) a corporation that has made a joint election before that time in respect of a small business development bond, or

(B) a corporation that is associated with a corporation referred to in clause (A), or

(b) a partnership

(i) each member of which is an individual (other than a trust) who is resident in Canada,

(ii) each majority interest partner, if any, of which is an eligible issuer, and

(iii) that has not made a joint election before that time in respect of a small business bond;

"joint election" means an election that is made in prescribed form, containing prescribed information, jointly by the issuer of an obligation and the person who is the holder of the obligation at the time of the election, that is filed with the Minister by the holder and in which the holder and the issuer elect that the provisions of this section apply with respect to that obligation;

Related Provisions: 96(3) — Election by partners.

"majority interest partner" — [Repealed]

History: The definition "majority interest partner" in subsec. 15.2(3) repealed by 1998, c. 19, s. 77, applicable after April 26, 1995. The definition formerly read:

> "majority interest partner" of a partnership means a taxpayer who, if subsection 97(3.1) applied to this section, would be deemed to be a majority interest partner of the partnership;

"qualifying debt obligation" of an issuer at a particular time means an obligation that is a bill, note, mortgage, hypothecary claim or similar obligation issued after February 25, 1992 and before 1995,

(a) the principal amount of which is not less than $10,000 or more than $500,000,

(b) that is issued for a term of not more than 5 years and, except in the event of a failure or default under the terms or conditions of the obligation, not less than one year, and

(c) that was issued not more than 5 years before the particular time,

if the obligation is issued

(d) as part of a proposal to, or an arrangement with, the issuer's creditors that has been approved by a court under the *Bankruptcy and Insolvency Act*,

(e) at a time when all or substantially all of the issuer's assets are under the control of a receiver, receiver-manager, sequestrator or trustee in bankruptcy, or

(f) at a time when, because of financial difficulty, the issuer is in default, or could reasonably be expected to default, on a debt incurred in the course of the issuer's business and held by a person with whom the issuer was dealing at arm's length or, where the issuer is a partnership, by a person with whom each member of the partnership was dealing at arm's length, and it is issued, in whole or in part, directly or indirectly in exchange or substitution for that debt,

and the funds from the issue of the obligation are used in Canada in a business of the issuer carried on immediately before the time of issue;

History: The opening words of the definition "qualifying debt obligation" in subsec. 15.2(3) amended to add "hypothecary claim" by 2001, c. 17, s. 199, in force June 14, 2001.

The opening words of the definition of "qualifying debt obligation" in subsec. 15.2(3) amended by 1994, c. 8, subsec. 2(1), applicable to obligations issued after 1992; and, for the purposes of the definition "small business bond" in subsec. 15.2(3), an election made before August 11, 1994 in respect of an obligation issued after 1992 and before 1995 shall be deemed to have been made within 90 days after the day the obligation was issued. The opening words formerly read:

> "qualifying debt obligation" of an issuer at a particular time means an obligation that is a bill, note, mortgage or similar obligation issued after November 12, 1981 and before 1988 or after February 25, 1992 and before 1993,

"small business bond" at any time means

(a) an obligation that is at that time a qualifying debt obligation, issued by an individual or a partnership, in respect of which a joint election was made within 90 days after its issue date, or

(b) an obligation that is at that time a qualifying debt obligation issued by an individual or a partnership if

(i) it is reasonable to consider that the issuer and the holder of the obligation intended that this section apply to the obligation, having regard to such factors as may be relevant, including the rate of interest stipulated under the terms of the obligation and the manner in which the issuer and the holder have treated the obligation for the purposes of this Act, and

(ii) the holder files with the Minister a joint election in respect of the obligation within 90 days after the date of notification by the Minister that a joint election in respect of the obligation has not been filed under paragraph (a).

Related Provisions: 96(3) — Election by partners; 248(1)"small business bond" — Definition applies to entire Act.

(4) Status of interest — Notwithstanding any other provision of this Act, an amount paid or payable by a taxpayer pursuant to a legal obligation to pay interest on borrowed money used for the purpose of acquiring a small business bond shall be deemed to be an amount paid or payable, as the case may be, on borrowed money used for the purpose of earning income from a business or property.

(5) False declaration — Where the Minister establishes that an issuer has knowingly or under circumstances amounting to gross negligence made a false declaration in a joint election in respect of an obligation, the reference in paragraph (2)(b) to "29%" shall, in respect of the obligation, be read as a reference to "87%".

(6) Partnerships — For the purpose of paragraph (2)(b), in the case of an issuer that is a partnership, the expression "tax otherwise payable under this Part by the issuer" shall be read as a reference to the "tax otherwise payable under this Part by each member of the partnership" and each member shall add to that member's tax otherwise payable under this Part for the taxation year that includes the period described in paragraph (2)(b) the amount that can reasonably be regarded as that member's share of the amount determined under that paragraph with respect to the partnership.

(7) Deemed eligible issuer — Where, but for subparagraphs (a)(i), (ii) and (iii) and (b)(ii) of the definition "eligible issuer" in subsection (3), an individual or a partnership would be an "eligible issuer", the individual or partnership shall be deemed to be an eligible issuer in respect of a small business bond at any time where the issue price of the bond does not exceed the amount, if any, by which

(a) $500,000

exceeds

(b) where the issuer is an individual, the total of all amounts each of which is the principal amount outstanding immediately after that time in respect of

(i) another obligation that is a small business bond issued by

(A) the individual, or

(B) a partnership of which the individual is a majority interest partner, or

(ii) a small business development bond issued by

(A) a corporation that is controlled by the individual or by a related group of which the individual is a member, or

(B) a corporation that is associated with a corporation referred to in clause (A), or

(c) where the issuer is a partnership, the total of all amounts each of which is the principal amount outstanding immediately after that time in respect of

(i) another obligation that is a small business bond issued by

(A) the partnership,

(B) an individual who is a majority interest partner of the partnership, or

(C) a partnership of which the individual referred to in clause (B) is a majority interest partner, or

(ii) a small business development bond issued by

(A) a corporation that is controlled by the individual referred to in clause (i)(B) or by a related group of which the individual is a member, or

(B) a corporation that is associated with a corporation referred to in clause (A).

History [s. 15.2]: S. 15.2 substituted by 1994, c. 7, Sch. VIII (1993, c. 24), s. 6 applicable with respect to obligations issued after February 25, 1992. For the purposes of the definition "small business bond" in subsec. 15.2(3), an election made in respect of an obligation after February 25, 1992 and before September 9, 1993, shall be deemed to have been made within 90 days after the day the obligation was issued. S. 15.2 formerly read:

15.2 (1) Small business bond — Any amount received by a taxpayer as or on account of interest in respect of a small business bond shall, except for the purposes of Part IV, be deemed to have been received as a taxable dividend from a taxable Canadian corporation.

(2) Idem — Where an individual or partnership (in this section referred to as the "issuer") has issued an obligation that is at any time a small business bond, notwithstanding any other provision of this Act, the following rules apply:

(a) in computing the income of the issuer for a taxation year, no deduction shall be made in respect of any amount paid or payable (depending on the method regularly followed by the issuer in computing its income) for a period that includes that time as or on account of interest on the bond; and

(b) for any taxation year that includes a period throughout which the obligation was a small business bond but

(i) the issuer was not an eligible issuer, or

(ii) all or substantially all of the proceeds from the issue of an obligation issued in circumstances described in paragraph (d) of the definition "qualifying debt obligation" in subsection(3) were not used by the eligible issuer in the financing of an active business carried on by it in Canada immediately before the time of the issuance of the obligation,

there shall be added to the tax otherwise payable by the issuer for that taxation year an amount equal to 34% of the amount of interest paid or payable (depending on the method regularly followed by the issuer in computing its income) in respect of the bond for that period.

(3) Definitions — In this section,

"eligible issuer" means

(a) an individual (other than a trust) resident in Canada who has not, or is not a majority interest partner (within the meaning assigned by subsection 97(3.1)) of a partnership that has, previously made a joint election in respect of a small business bond or who does not control or is not a member of a related group that controls a corporation that has previously made a joint election in respect of a small business development bond, or

(b) a partnership, all the members of which are individuals who are eligible issuers under paragraph (a);

"joint election" means an election made in prescribed form jointly by the issuer of an obligation and the person who is the holder of the obligation at the election time and filed with the Minister by the holder in which the issuer and the holder elect that the provisions of this section apply with respect to that obligation and in which the issuer declares that

(a) it is an eligible issuer, and

(b) the requirements of paragraph (d) of the definition "qualifying debt obligation" in this subsection have been met;

"qualifying debt obligation" of an individual or a partnership at any time means an obligation that is a bill, note, mortgage or similar obligation issued after November 12, 1981 and before 1988,

(a) the principal amount of which is not less than $10,000 or more than $500,000,

(b) that is issued for a term of not more than five years and, except in the event of a failure or default under the terms or conditions of the obligation, not less than one year, and

(c) that was issued not more than five years before that time

if

(d) the obligation is issued

(i) as part of a proposal to, or an arrangement with, the individual's or partnership's creditors, as the case may be, that has been approved by a court under the *Bankruptcy and Insolvency Act*,

(ii) at a time when all or substantially all of the individual's or partnership's assets, as the case may be, are under the control of a receiver, receiver-manager, sequestrator or trustee in bankruptcy, or

(iii) at a time when, by reason of financial difficulty, the individual or partnership is in default, or could reasonably be expected to default, on a debt incurred in the course of the business of the individual or partnership, as the case may be, and held by a person with whom the individual or each member of the partnership was dealing at arm's length and it is issued, in whole or in part, directly or indirectly in exchange or substitution for that debt,

and the funds from the issuance thereof are used in Canada in a business of the individual or partnership carried on immediately before the time of issuance;

"small business bond" at any time means an obligation that is at that time a qualifying debt obligation issued by an individual or partnership in respect of which a joint election was made at a particular time that is within 90 days after the later of its issue date and March 30, 1983.

(4) Presumption — Notwithstanding any other provision of this Act, an amount paid or payable by a taxpayer pursuant to a legal obligation to pay interest on borrowed money used for the purpose of acquiring a small business bond shall be deemed to be an amount paid or payable, as the case may be, on borrowed money used for the purpose of earning income from a business or property.

(5) False declaration — Where an issuer knowingly or under circumstances amounting to gross negligence makes a false declaration in a joint election in respect of an obligation, the reference in paragraph (2)(b) to "34%" shall be read as a reference to "102%".

(6) Partnerships — For the purposes of paragraph (2)(b), in the case of an issuer that is a partnership, the expression "tax otherwise payable by the issuer" shall be read as a reference to the "tax otherwise payable by each member of the partnership" and each member shall add to the member's tax otherwise payable for the taxation year that includes the period described in paragraph (2)(b) the amount that can reasonably be regarded as the member's share of the amount determined under that paragraph with respect to the partnership.

(7) Deemed eligible issuer — Where an individual, a partnership of which the individual is a majority interest partner (within the meaning assigned by subsection 97(3.1)) or a corporation that is controlled by

(a) the individual,

(b) a related group of which the individual is a member, or

(c) a member of the partnership who is a majority interest partner of the partnership (within the meaning assigned by subsection 97(3.1))

has previously made a joint election in respect of a small business bond or, in the case of a corporation, a small business development bond, the individual and any partnership of which the individual is a majority interest partner (within the meaning assigned by subsection 97(3.1)) shall be deemed to be an eligible issuer in respect of any additional small business bond that the individual or partnership may issue at any particular time after May 23, 1985 if at the particular time the issue price of such additional bond does not exceed the amount, if any, by which

(d) $500,000

exceeds,

(e) where the issuer is an individual, the total of all amounts each of which is the principal amount outstanding at that particular time in respect of

(i) another small business bond issued

(A) before the particular time by the individual, or

(B) at or before the particular time by a partnership of which the individual is a majority interest partner (within the meaning assigned by subsection 97(3.1)), or

(ii) a small business development bond issued at or before the particular time by

(A) a corporation that is controlled by the individual, or by a related group of which the individual is a member, or

(B) a corporation that is associated with a corporation referred to in clause (A), or

(f) where the issuer is a partnership, the total of all amounts each of which is the principal amount outstanding at that particular time in respect of

(i) another small business bond issued

(A) before the particular time by the partnership, or

(B) at or before the particular time by an individual who is a majority interest partner of the partnership (within the meaning assigned by subsection 97(3.1)), or

(ii) a small business development bond issued at or before the particular time by

(A) a corporation that is controlled by the individual referred to in clause (i)(B) or by a related group of which the individual is a member, or

(B) a corporation that is associated with a corporation referred to in clause (A).

(8) **Presumption** — Notwithstanding the definition "small business bond" in subsection (3), where the holder of a qualifying debt obligation issued by an individual or a partnership has not filed with the Minister a joint election within the time referred to in the definition, the obligation shall be deemed to be a small business bond if

(a) it is reasonable to consider that the issuer and the holder intended that this section would apply to the obligation having regard to such factors as may be relevant, including the rate of interest stipulated under the terms of the obligation and the manner in which the issuer and the holder have treated the obligation for the purposes of this Act; and

(b) the holder files with the Minister a joint election within 90 days after the date of notification by the Minister that a joint election in respect of the obligation has not been filed pursuant to the definition "small business bond" in subsection (3).

(9) **Penalty** — For the purpose of subsection 163(3), where an amount is added to the tax otherwise payable by an issuer by virtue of subsection (5), the amount shall be deemed to be a penalty assessed by the Minister under section 163.

Subpara. (d)(i) of "qualifying debt obligation" in subsec. 15.2(3) amended by 1994, c. 7, Sch. V (1992, c. 27), para. 90(1)(q), to substitute "*Bankruptcy and Insolvency Act*" for "*Bankruptcy Act*", in force November 30, 1992.

Definitions [s. 15.2]: "active business", "amount" — 248(1); "arm's length" — 251(1); "associated" — 256; "borrowed money", "business" — 248(1); "Canada" — 255; "control" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "eligible issuer" — 15.2(3); "individual" — 248(1); "issuer" — 15.2(2); "joint election" — 15.2(3); "majority interest partner", "Minister", "person", "prescribed", "principal amount", "property" — 248(1); "qualifying debt obligation" — 15.2(3); "related group" — 251(4); "resident in Canada" — 250; "small business bond" — 15.2(3), 248(1); "small business development bond" — 15.1(3), 248(1); "tax otherwise payable under this Part" — 15.2(6); "taxable Canadian corporation", "taxable dividend" — 89(1), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

Interpretation Bulletins [s. 15.2]: IT-507R: Small business development bonds and small business bonds (archived).

16. (1) Income and capital combined — Where, under a contract or other arrangement, an amount can reasonably be regarded as being in part interest or other amount of an income nature and in part an amount of a capital nature, the following rules apply:

(a) the part of the amount that can reasonably be regarded as interest shall, irrespective of when the contract or arrangement was made or the form or legal effect thereof, be deemed to be interest on a debt obligation held by the person to whom the amount is paid or payable; and

(b) the part of the amount that can reasonably be regarded as an amount of an income nature, other than interest, shall, irrespective of when the contract or arrangement was made or the form or legal effect thereof, be included in the income of the taxpayer to whom the amount is paid or payable for the taxation year in which the amount was received or became due to the extent it has not otherwise been included in the taxpayer's income.

Related Provisions: 12(1)(c) — Interest income; 12(1)(g) — Amount fully taxable where based on production or use; 12(3) — Accrual of interest income; 16(4), (5) — Application of subsec. (1); 138(12) — "Gross investment revenue" of an insurer; 214(2) — Tax on non-residents.

Selected Cases [subsec. 16(1)]: *West Hill Redevelopment Co. v. MNR*, [1991] 2 C.T.C. 83 (FCTD) (Where plaintiff sold condominiums and took back mortgages at below-market interest rates, excess of face value of mortgages over fair market value not interest under subsec. 16(1)); *Alepin v. R.*, [1979] C.T.C. 360 (FCTD) (Absent agreement to contrary, amounts received apply first to arrears of interest); *Rodmon Construction Inc. v. R.*, [1975] C.T.C. 73 (FCTD) (Not reasonable to regard payments as part interest where loan is interest free); *Vanwest Logging Co. Ltd. v. MNR*, [1971] C.T.C. 199 (Exch.) (Subsec. 7(1) [now subsec. 16(1)] inapplicable to amount paid by instalments without interest; taxpayer's intention relevant).

Regulations: 201(1)(d) (information return).

Interpretation Bulletins: IT-233R: Lease-option agreements; sale-leaseback agreements (archived); IT-265R3: Payments of income and capital combined (archived); IT-365R2: Damages, settlements and similar receipts; IT-396R: Interest income; IT-533: Interest deductibility and related issues.

Forms: T5: Statement of investment income; T5 Summ: Return of investment income.

(2) Obligation issued at discount — Where, in the case of a bond, debenture, bill, note, mortgage or similar obligation issued after December 20, 1960 and before June 19, 1971 by a person exempt from tax under section 149, a non-resident person not carrying on business in Canada, or a government, municipality or municipal or other public body performing a function of government,

(a) the obligation was issued for an amount that is less than the principal amount of the obligation,

(b) the interest stipulated to be payable on the obligation, expressed in terms of an annual rate on

(i) the principal amount thereof, if no amount is payable on account of the principal amount before the maturity of the obligation, or

(ii) the amount outstanding from time to time as or on account of the principal amount thereof, in any other case,

is less than 5%, and

(c) the yield from the obligation, expressed in terms of an annual rate on the amount for which the obligation was issued (which annual rate shall, if the terms of the obligation or any agreement relating thereto conferred on the holder thereof a right to demand payment of the principal amount of the obligation or the amount outstanding as or on account of the principal amount, as the case may be, before the maturity of the obligation, be calculated on the basis of the yield that produces the highest annual rate obtainable either on the maturity of the obligation or conditional on the exercise of any such right) exceeds the annual rate determined under paragraph (b) by more than 1/3 thereof,

the amount by which the principal amount of the obligation exceeds the amount for which the obligation was issued shall be included in computing the income of the first owner of the obligation who is a resident of Canada and is not a person exempt from tax under section 149 or a government, for the taxation year of the owner of the obligation in which he, she or it became the owner thereof.

Related Provisions: 16(5) — Application of subsec. 16(1); 53(1)(g) — Addition to adjusted cost base; 142.4(1)"tax basis"(b) — Disposition of specified debt obligation by financial institution.

Interpretation Bulletins: IT-265R3: Payments of income and capital combined (archived).

(3) Obligation issued at discount — Where, in the case of a bond, debenture, bill, note, mortgage, hypothecary claim or similar obligation (other than an obligation that is a prescribed debt obligation for the purpose of subsection 12(9)) issued after June 18, 1971 by a person exempt, because of section 149, from Part I tax on part or on all of the person's income, a non-resident person not carrying on business in Canada or a government, municipality or municipal or other public body performing a function of government,

(a) the obligation was issued for an amount that is less than the principal amount of the obligation, and

(b) the yield from the obligation, expressed in terms of an annual rate on the amount for which the obligation was issued (which annual rate shall, if the terms of the obligation or any agreement relating thereto conferred on the holder thereof a right to demand payment of the principal amount of the obligation or the amount outstanding as or on account of the principal amount, as the case may be, before the maturity of the obligation, be calculated on the basis of the yield that produces the highest annual rate obtainable either on the maturity of the obligation or conditional on the exercise of any such right) exceeds 4/3 of the interest stipulated to be payable on the obligation, expressed in terms of an annual rate on

(i) the principal amount of the obligation, if no amount is payable on account of the principal amount before the maturity of the obligation, or

(ii) the amount outstanding from time to time as or on account of the principal amount thereof, in any other case,

the amount by which the principal amount of the obligation exceeds the amount for which the obligation was issued shall be included in computing the income of the first owner of the obligation

(c) who is resident in Canada,

(d) who is not a government nor a person exempt, because of section 149, from tax under this Part on all or part of the person's taxable income, and

(e) of whom the obligation is a capital property,

for the taxation year in which the owner acquired the obligation.

Related Provisions: 16(5) — Application of subsec. 16(1); 20(14) — Treatment of accrued bond interest; 53(1)(g) — Addition to adjusted cost base; 142.4(1)"tax basis"(b) — Disposition of specified debt obligation by financial institution.

History: The opening words of subsec. 16(3) amended to add "hypothecary claim" by 2001, c. 17, s. 200, in force June 14, 2001.

All that portion of subsec. 16(3) after para. (b) substituted by 1994, c. 21, s. 10, applicable to 1990 *et seq.* That portion formerly read:

the amount by which the principal amount of the obligation exceeds the amount for which the obligation was issued shall be included in computing the income of the first owner of the obligation who is a resident of Canada and is not a person exempt from tax under section 149 or a government, for the taxation year of the owner of the obligation in which he, she or it became the owner thereof.

That portion of subsec. 16(3) preceding para. (a) substituted by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 7(1), applicable to 1991 *et seq.* That portion formerly read:

(3) Idem — Where, in the case of a bond, debenture, bill, note, mortgage or similar obligation issued after June 18, 1971 by a person exempt from tax under section 149, a non-resident person not carrying on business in Canada, or a government, municipality or municipal or other public body performing a function of government,

Regulations: 7000(1) (prescribed debt obligation).

Interpretation Bulletins: IT-265R3: Payments of income and capital combined (archived).

(4) Where subsec. (1) does not apply — Subsection (1) does not apply to any amount received by a taxpayer in a taxation year

(a) as an annuity payment; or

(b) in satisfaction of the taxpayer's rights under an annuity contract.

(5) Idem — Subsection (1) does not apply in any case where subsection (2) or (3) applies.

(6) Indexed debt obligations — Subject to subsection (7) and for the purposes of this Act, where at any time in a taxpayer's taxation year

(a) an interest in an indexed debt obligation is held by the taxpayer,

(i) an amount determined in prescribed manner shall be deemed to be received and receivable by the taxpayer in the year as interest in respect of the obligation, and

(ii) an amount determined in prescribed manner shall be deemed to be paid and payable in respect of the year by the taxpayer as interest under a legal obligation of the taxpayer to pay interest on borrowed money used for the purpose of earning income from a business or property;

(b) an indexed debt obligation is an obligation of the taxpayer,

(i) an amount determined in prescribed manner shall be deemed to be payable in respect of the year by the taxpayer as interest in respect of the obligation, and

(ii) an amount determined in prescribed manner shall be deemed to be received and receivable by the taxpayer in the year as interest in respect of the obligation; and

(c) the taxpayer pays or credits an amount in respect of an amount determined under subparagraph (b)(i) in respect of an indexed debt obligation, the payment or crediting shall be deemed to be a payment or crediting of interest on the obligation.

Related Provisions: 20(1)(c) — Interest deduction; 53(1)(g.1) — Addition to adjusted cost base; 53(2)(l.1) — Deduction from adjusted cost base; 138(12)"gross investment revenue"G(a) — Gross investment revenue of insurer; 142.3(2) — Indexed debt obligation not subject to rules re income from specified debt obligations; 142.4(1)"tax basis"(e), (n) — Disposition of specified debt obligation by financial institution; 214(7) — Sale of obligation by non-resident.

History: The opening words of subsec. 16(6) amended by 1998, c. 19, subsec. 78(1), applicable

(a) to taxation years that end after September 1997; and

(b) to a taxpayer's taxation years that end after 1995 and before October 1997 where the taxpayer files an election in accordance with para. 81(11)(b).

The opening words formerly read:

(6) For the purposes of this Act, where at any time in a taxpayer's taxation year

Subsec. 16(6) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 7(2), applicable to debt obligations issued after October 16, 1991.

Regulations: 7001 (amounts determined in prescribed manner).

(7) Impaired indexed debt obligations — Paragraph (6)(a) does not apply to a taxpayer in respect of an indexed debt obligation for the part of a taxation year throughout which the obligation is impaired where an amount in respect of the obligation is deductible because of subparagraph 20(1)(l)(ii) in computing the taxpayer's income for the year.

History: Subsec. 16(7) added by 1998, c. 19, subsec. 78(2), applicable

(a) to taxation years that end after September 1997; and

(b) to a taxpayer's taxation years that end after 1995 and before October 1997 where the taxpayer files an election in accordance with para. 81(11)(b).

Definitions [s. 16]: "amount", "annuity", "borrowed money", "business" — 248(1); "Canada" — 255; "capital property" — 54, 248(1); "carrying on business in Canada" — 253; "indexed debt obligation", "non-resident", "prescribed" — 248(1); "prescribed debt obligation" — Reg. 7000(1); "principal amount", "property" — 248(1); "received" — 248(7); "regulation" — 248(1); "resident of Canada" — 94(3)(a)(viii), 250; "taxation year" — 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 16]: IT-265R3: Payments of income and capital combined (archived); IT-533: Interest deductibility and related issues.

16.1 (1) Leasing properties — Where a taxpayer (in this section referred to as the "lessee") leases tangible property (other than prescribed property) that would, if the lessee acquired the property, be depreciable property of the lessee, from a person resident in Canada other than a person whose taxable income is exempt from tax under this Part, or from a non-resident person who holds the lease in the course of carrying on a business through a permanent establishment in Canada, as defined by regulation, any income from which is subject to tax under this Part, who owns the property and with whom the lessee was dealing at arm's length (in this section referred to as the "lessor") for a term of more than one year, if the lessee and the lessor jointly elect in prescribed form filed with their returns of income for their respective taxation years that include the particular time when the lease began, the following rules apply for the purpose of computing the income of the lessee for the taxation year that includes the particular time and for all subsequent taxation years:

Proposed Amendment — 16.1(1) opening words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), s. 203, will amend the opening words of subsec. 16.1(1) by substituting ", or for civil law corporeal property, that is not prescribed property and" for "(other than prescribed property)", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(a) in respect of amounts paid or payable for the use of, or for the right to use, the property, the lease shall be deemed not to be a lease;

(b) the lessee shall be deemed to have acquired the property from the lessor at the particular time at a cost equal to its fair market value at that time;

(c) the lessee shall be deemed to have borrowed money from the lessor at the particular time, for the purpose of acquiring the property, in a principal amount equal to the fair market value of the property at that time;

(d) interest shall be deemed to accrue on the principal amount of the borrowed money outstanding from time to time, compounded semi-annually, not in advance, at the prescribed rate in effect

(i) at the earlier of

(A) the time, if any, before the particular time, at which the lessee last entered into an agreement to lease the property, and

(B) the particular time, or

(ii) where the lease provides that the amount payable by the lessee for the use of, or the right to use, the property varies according to prevailing interest rates in effect from time to time, and the lessee so elects, in respect of all of the property that is subject to the lease, in the lessee's return of income under this Part for the taxation year of the lessee in which the lease began, at the beginning of the period for which the interest is being calculated;

(e) all amounts paid or payable by or on behalf of the lessee for the use of, or the right to use, the property in the year shall be deemed to be blended payments, paid or payable by the lessee, of principal and interest on the borrowed money outstanding from time to time, calculated in accordance with paragraph (d), applied firstly on account of interest on principal, secondly on account of interest on unpaid interest and thirdly on account of unpaid principal, if any, and the amount, if any, by which any such payment exceeds the total of those amounts shall be deemed to be paid or payable on account of interest, and any amount deemed by reason of this paragraph to be a payment of interest shall be deemed to have been an amount paid or payable, as the case may be, pursuant to a legal obligation to pay interest in respect of the year on the borrowed money;

(f) at the time of the expiration or cancellation of the lease, the assignment of the lease or the sublease of the property by the lessee, the lessee shall (except where subsection (4) applies) be deemed to have disposed of the property at that time for proceeds of disposition equal to the amount, if any, by which

(i) the total of

(A) the amount referred to in paragraph (c), and

(B) all amounts received or receivable by the lessee in respect of the cancellation or assignment of the lease or the sublease of the property

exceeds

(ii) the total of

(A) all amounts deemed under paragraph (e) to have been paid or payable, as the case may be, by the lessee on account of the principal amount of the borrowed money, and

(B) all amounts paid or payable by or on behalf of the lessee in respect of the cancellation or assignment of the lease or the sublease of the property;

(g) for the purposes of subsections 13(5.2) and (5.3), each amount paid or payable by or on behalf of the lessee that would, but for this subsection, have been an amount paid or payable for the use of, or the right to use, the property shall be deemed to have been deducted in computing the lessee's income as an amount paid or payable by the lessee for the use of, or the right to use, the property after the particular time;

(h) any amount paid or payable by or on behalf of the lessee in respect of the granting or assignment of the lease or the sublease of the property that would, but for this paragraph, be the capital cost to the lessee of a leasehold interest in the property shall be deemed to be an amount paid or payable, as the case may be, by the lessee for the use of, or the right to use, the property for the remaining term of the lease; and

(i) where the lessee elects under this subsection in respect of a property and, at any time after the lease was entered into, the owner of the property is a non-resident person who does not hold the lease in the course of carrying on a business through a permanent establishment in Canada, as defined by regulation, any income from which is subject to tax under this Part, for the purposes of this subsection the lease shall be deemed to have been cancelled at that time.

Related Provisions: 16.1(5) — Replacement property; 16.1(6) — Additional property; 16.1(7) — Renegotiation of lease; Reg. 1100(1.1)–(1.13) — CCA restrictions on leasing property.

History: The opening words of subsec. 16.1(1) amended by 1999, c. 22, s. 7, applicable to leases entered into by a taxpayer or partnership after 3:30 p.m., EDST, August 18, 1998, other than such leases entered into after that time pursuant to an agreement in writing

(a) made before that time under which the taxpayer or partnership was required to enter into the lease, and

(b) in respect of which there is no agreement or other arrangement under which the obligation of the taxpayer or partnership to enter into the lease can be changed, reduced or waived if there is a change to the Act or if there is an adverse assessment under the Act,

and for the purpose of this application, a lease in respect of which a material change has been agreed to by the parties to the lease, effective at any particular time that is after 3:30 p.m., EDST, August 18, 1998, is deemed to have been entered into at that particular time. The opening words formerly read:

16.1 (1) Where a taxpayer (in this section referred to as the "lessee") leases tangible property (other than prescribed property) that would, if the lessee acquired the property, be depreciable property of the lessee, from a person resident in Canada (or from a non-resident person who holds the lease in the course of carrying on a business through a permanent establishment in Canada, as defined by regulation, any income from which is subject to tax under this Part) who owns the property and with whom the lessee was dealing at arm's length (in this section referred to as the "lessor") for a term of more than one year, if the lessee and the lessor jointly elect in prescribed form filed with their returns of income under this Part for their respective taxation years that include the particular time when the lease began, the following rules apply for the purposes of computing the income of the lessee for the taxation year that includes the particular time and for all subsequent taxation years:

That portion of subsec. 16.1(1) preceding para. (e) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 12(1), applicable to leases and subleases entered into after 10 p.m. EDST, April 26, 1989, other than

(a) leases entered into under an agreement in writing entered into at or before 10 p.m. EDST, April 26, 1989 under which the lessee thereunder has the right to require the lease of the property, and

(b) subleases of properties that are subject to leases described in paragraph (a) or to leases entered into at or before 10 p.m. EDST, April 26, 1989,

except that, with respect to leases and subleases entered into after 10 p.m. EDST, April 26, 1989 and before June 12, 1989, the subsec. shall be read without reference to the words "resident in Canada (or from a non-resident person who holds the lease in the course of carrying on a business through a permanent establishment in Canada, as defined by regulation, any income from which is subject to tax under this Part)" and the words "and with whom the lessee was dealing at arm's length", and, with respect to leases and subleases entered into after June 11, 1989 and before July 13, 1990, the subsec. shall be read without reference to cl. (d)(i)(A), to the words "the earlier of" and to the words "any income from which is subject to tax under this Part". That portion of subsec. 16.1(1) formerly read:

16.1 (1) Leasing properties — Where, at any particular time, a taxpayer (in this section referred to as the "lessee") has leased tangible property (other than prescribed property) that would, if the lessee had acquired the property, have been depreciable property of the lessee, from a person resident in Canada (or from a person not resident in Canada where the lease is held in the course of carrying on a business through a permanent establishment in Canada, as defined by regulation) who owns the property and with whom the lessee was dealing at arm's length (in this section referred to as the "lessor") for a term of more than one year, if the lessee and the lessor have jointly elected by filing the prescribed form with their returns of income under this Part for their respective taxation years that include the time at which the lease was entered into, the following rules apply for the purposes of computing the income of the lessee for the taxation year that includes the particular time and for all subsequent taxation years:

(a) the lease shall be deemed not to be a lease;

(b) the lessee shall be deemed to have acquired the property from the lessor at the particular time at a cost equal to its fair market value at that time;

(c) the lessee shall be deemed to have borrowed money from the lessor at the particular time, for the purpose of acquiring the property, in a principal amount equal to the fair market value of the property at that time;

(d) interest shall be deemed to accrue on the principal amount of the borrowed money outstanding from time to time, compounded semi-annually, not in advance, at the prescribed rate in effect at the particular time (or, where a particular lease provides that the amount paid or payable by the lessee for the use of, or the right to use, the property varies according to prevailing interest rates in effect from time to time, and the lessee so elects, in respect of all of the property that is subject to the particular lease, in the lessee's return of income under this Part for the taxation year of the lessee in which the particular lease was entered into, the prescribed rate that is in effect at the time the interest is being calculated);

Para. 16.1(1)(i) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 12(2), applicable to leases and subleases entered into after June 11, 1989, other than

(a) leases entered into under an agreement in writing entered into at or before 10 p.m. EDST, April 26, 1989 under which the lessee thereunder has the right to require the lease of the property, and

(b) subleases of properties that are subject to leases described in paragraph (a) or to leases entered into at or before 10 p.m. EDST, April 26, 1989,

except that, with respect to such leases and subleases entered into before July 13, 1990, para. (i) shall be read without reference to the words "any income from which is subject to tax under this Part". Para. 16.1(1)(i) formerly read:

(i) where the lessee has made an election under this subsection in respect of a property and, at any time after the lease was entered into, the owner of the property is a person not resident in Canada (except where the person holds the lease in the course of carrying

on a business through a permanent establishment in Canada, as defined by regulation), for the purposes of this subsection, the lease shall be deemed to have been cancelled at that time.

Regulations: 1100(2)(a)(vi) — Half-year CCA rule inapplicable to property deemed acquired by 16.1(1)(b); 4302 (prescribed rate of interest for 16.1(1)(d)); 8200 (prescribed property); 8201 (permanent establishment).

Interpretation Bulletins: IT-233R: Lease-option agreements; sale-leaseback agreements (archived); IT-265R3: Payments of income and capital combined (archived).

I.T. Technical News: 21 (cancellation of Interpretation Bulletin IT-233R).

Forms: T2145: Election in respect of the leasing of property.

(2) Assignments and subleases — Subject to subsections (3) and (4), where at any particular time a lessee who has made an election under subsection (1) in respect of a leased property assigns the lease or subleases the property to another person (in this section referred to as the "assignee"),

(a) subsection (1) shall not apply in computing the income of the lessee in respect of the lease for any period after the particular time; and

(b) if the lessee and the assignee jointly elect in prescribed form filed with their returns of income under this Part for their respective taxation years that include the particular time, subsection (1) shall apply to the assignee as if

(i) the assignee leased the property at the particular time from the owner of the property for a term of more than one year, and

(ii) the assignee and the owner of the property jointly elected under subsection (1) in respect of the property with their returns of income under this Part for their respective taxation years that include the particular time.

History: Para. 16.1(2)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 12(3), applicable to leases and subleases entered into after 10 p.m. EDST, April 26, 1989, other than

(a) leases entered into pursuant to an agreement in writing entered into at or before 10 p.m. EDST, April 26, 1989 under which the lessee thereunder has the right to require the lease of the property, and

(b) subleases of properties that are subject to leases described in paragraph (a) or to leases entered into at or before 10 p.m. EDST, April 26, 1989.

Para. 16.1(2)(b) formerly read:

(b) if the lessee and the assignee have jointly elected by filing the prescribed form with their returns of income under this Part for their respective taxation years that include the time at which the assignment or sublease was entered into, subsection (1) shall apply to the assignee as if the assignee leased the property at that time from the owner of the property for a term of more than one year.

Forms: T2146: Election in respect of assigned leases or subleased property.

(3) Idem — Subject to subsection (4), where at any particular time a lessee who has made an election under subsection (1) in respect of a leased property assigns the lease or subleases the property to another person with whom the lessee is not dealing at arm's length, the other person shall, for the purposes of subsection (1) and for the purposes of computing that person's income in respect of the lease for any period after the particular time, be deemed to be the same person as, and a continuation of, the lessee, except that, notwithstanding paragraph (1)(b), that other person shall be deemed to have acquired the property from the lessee at the time that it was acquired by the lessee at a cost equal to the amount that would be the lessee's proceeds of disposition of the property determined under paragraph (1)(f) if that amount were determined without reference to clauses (1)(f)(i)(B) and (ii)(B).

(4) Amalgamations and windings-up — Notwithstanding subsection (2), where at any time a particular corporation that has made an election under subsection (1) in respect of a lease assigns the lease

(a) by reason of an amalgamation (within the meaning assigned by subsection 87(1)), or

(b) in the course of the winding-up of a Canadian corporation in respect of which subsection 88(1) applies,

to another corporation with which it does not deal at arm's length, the other corporation shall, for the purposes of subsection (1) and for the purposes of computing its income in respect of the lease after that time, be deemed to be the same person as, and a continuation of, the particular corporation.

(5) Replacement property — For the purposes of subsection (1), where at any time a property (in this subsection referred to as a "replacement property") is provided by a lessor to a lessee as a replacement for a similar property of the lessor (in this subsection referred to as the "original property") that was leased by the lessor to the lessee, and the amount payable by the lessee for the use of, or the right to use, the replacement property is the same as the amount that was so payable in respect of the original property, the replacement property shall be deemed to be the same property as the original property.

History: See under subsec. 16.1(7).

(6) Additional property — For the purposes of subsection (1), where at any particular time

(a) an addition or alteration (in this subsection referred to as "additional property") is made by a lessor to a property (in this subsection referred to as the "original property") of the lessor that is the subject of a lease,

(b) the lessor and the lessee of the original property have jointly elected under subsection (1) in respect of the original property, and

(c) as a consequence of the addition or alteration, the total amount payable by the lessee for the use of, or the right to use, the original property and the additional property exceeds the amount so payable in respect of the original property,

the following rules apply:

(d) the lessee shall be deemed to have leased the additional property from the lessor at the particular time,

(e) the term of the lease of the additional property shall be deemed to be greater than one year,

(f) the lessor and the lessee shall be deemed to have jointly elected under subsection (1) in respect of the additional property,

(g) the prescribed rate in effect at the particular time in respect of the additional property shall be deemed to be equal to the prescribed rate in effect in respect of the original property at the particular time,

(h) the additional property shall be deemed not to be prescribed property, and

(i) the excess referred to in paragraph (c) shall be deemed to be an amount payable by the lessee for the use of, or the right to use, the additional property.

History: See under subsec. 16.1(7).

Regulations: 4301(c) (prescribed rate for 16.1(6)(g)); 4302 (prescribed rate for 16.1(6)(d).

(7) Renegotiation of lease — For the purposes of subsection (1), where at any time

(a) a lease (in this subsection referred to as the "original lease") of property is renegotiated in the course of a *bona fide* renegotiation, and

(b) as a result of the renegotiation, the amount payable by the lessee of the property for the use of, or the right to use, the property is altered in respect of a period after that time (otherwise than because of an addition or alteration to which subsection (6) applies),

the original lease shall be deemed to have expired and the renegotiated lease shall be deemed to be a new lease of the property entered into at that time.

Related Provisions: 16(1) — Income and capital combined; 20(1)(c) — Deductions permitted — interest.

History: Subsecs. 16.1(5)–(7) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 12(4), applicable to leases and subleases entered into after 10 p.m. EDST, April 26, 1989, other than

(a) leases entered into pursuant to an agreement in writing entered into at or before 10 p.m. EDST, April 26, 1989 under which the lessee thereunder has the right to require the lease of the property, and

(b) subleases of properties that are subject to leases described in paragraph (a) or to leases entered into at or before 10 p.m. EDST, April 26, 1989.

Definitions [s. 16.1]: "amount" — 248(1); "arm's length" — 251(1); "borrowed money", "business" — 248(1); "Canada" — 255; "corporeal property" — Quebec *Civil Code* art. 899, 906; "depreciable property" — 13(21), 248(1); "lessee", "lessor" — 16.1(1); "non-resident" — 248(1); "permanent establishment" — Reg. 8201; "person", "prescribed" — 248(1); "prescribed rate" — Reg. 4301, 4302; "principal amount", "property", "regulation" — 248(1); "resident in Canada" — 94(3)(a)(viii), 250; "taxable income — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

Regulations [s. 16.1]: 4302 (prescribed interest rate); 8200 (prescribed property).

17. (1) Amount owing by non-resident [deemed interest income] — Where, at any time in a taxation year of a corporation resident in Canada, a non-resident person owes an amount to the corporation, that amount has been or remains outstanding for more than a year and the total determined under paragraph (b) for the year is less than the amount of interest that would be included in computing the corporation's income for the year in respect of the amount owing if that interest were computed at a reasonable rate for the period in the year during which the amount was owing, the corporation shall include an amount in computing its income for the year equal to the amount, if any, by which

(a) the amount of interest that would be included in computing the corporation's income for the year in respect of the amount owing if that interest were computed at the prescribed rate for the period in the year during which the amount was owing

exceeds

(b) the total of all amounts each of which is

(i) an amount included in computing the corporation's income for the year as, on account of, in lieu of or in satisfaction of, interest in respect of the amount owing,

(ii) an amount received or receivable by the corporation from a trust that is included in computing the corporation's income for the year or a subsequent year and that can reasonably be attributed to interest on the amount owing for the period in the year during which the amount was owing, or

(iii) an amount that is included in computing the corporation's income for the year or a subsequent year under subsection 91(1) and that can reasonably be attributed to interest on the amount owing for the period in the year during which the amount was owing.

Proposed Amendment — 17(1)(b)(iii)

Letter from Dept. of Finance, September 3, 2002:

Dear [xxx]

I am writing in reply to your letter dated March 20, 2002 to Mr. Wally Conway in which you requested amendments to subparagraph 17(1)(b)(iii) and subsection 17(2) of the *Income Tax Act* (the "Act").

Subsection 17(l) of the Act generally applies where a non-resident owes an amount, to a corporation resident in Canada, at any time in a particular taxation year of the corporation, that amount owing to the corporation has been or remains outstanding for more than one year and the corporation does not include, in computing its income for the particular taxation year, interest, computed at a reasonable rate, on the amount owing to the corporation for the period in the particular taxation year during which the amount was owing. Where subsection 17(l) applies, the corporation is treated as having received interest, computed at a prescribed rate, on the amount owing for the period in the particular taxation year during which the amount was owing to the corporation.

Subsection 17(2) is an anti-avoidance rule that supports subsection 17(l) and is intended to prevent the use of indirect arrangements to circumvent subsection 17(1). Subsection 17(2) generally provides that, where a corporation resident in Canada (Canco) makes a loan, or transfers property, to an intermediary which in turn uses the loaned money or the transferred property to make a loan or transfer property to another non-resident person (the ultimate debtor), the ultimate debtor is treated as if it owes to Canco an amount equal to the amount owing by the ultimate debtor that arose because of the arrangement.

Subparagraph 17(1)(b)(iii) addresses cases where subsection 17(1) applies to a corporation resident in Canada (Canco) in respect of an amount equal to an amount owing to a controlled foreign affiliate (CFA) of Canco by a non-resident person because that amount is deemed under subsection 17(2) to be an amount owing to Canco by the non-resident person. In those cases, subparagraph 17(l)(b)(iii) was to provide for a reduction in the subsection 17(1) income inclusion of Canco in a particular taxation year of Canco. The reduction is intended to equal the amount of foreign accrual property income of CFA that is included in Canco's income for the particular year or a subsequent year under subsection 91 (1) of the Act that can reasonably be attributed to the interest income of CFA derived from the amount owing to CFA by the non-resident person for the period in the particular year of Canco during which that amount was so owing to CFA and during which an amount equal to that amount owing to CFA was deemed to be owing to Canco by the non-resident person. For example, subparagraph 17(l)(b)(iii) is intended to apply where Canco transfers property to CFA, CFA then uses the property to make an interest-bearing loan to another non-resident person (the ultimate debtor), CFA earns foreign accrual property income from the interest-bearing loan made to the ultimate debtor, Canco includes that foreign accrual property income of CFA in its income, the ultimate debtor is deemed under subsection 17(2) to owe an amount to Canco equal to the amount it owes to CFA and subsection 17(1) applies to Canco in respect of the amount deemed to be owed to it by the ultimate debtor.

In your letter you noted that, in cases where subsection 17(2) applies, the deemed amount owing to Canco by the non-resident person to which subsection 17(1) applies and to which subparagraph 17(l)(b)(iii) refers is not the actual amount owing to CFA by the non-resident person that gives rise to the foreign accrual property income of CFA. Therefore, you noted that, in those cases, subparagraph 17(1)(b)(iii) would not apply to reduce Canco's income inclusion under subsection 17(1). From a tax policy point of view, we agree with your conclusion that the non-application of subparagraph 17(10)(b)(iii) in those cases would be inappropriate. We also agree with your submission that, from a tax policy point of view, it would be appropriate to amend subsection 17(2) so that the amount deemed by subsection 17(2) to be owed to Canco by the non-resident borrower is the actual amount owed to CFA by the non-resident borrower, rather than merely an equivalent amount.

In your letter, you also gave an example involving the interaction of subsections 17(1), (2) and (11.2). In that example, a corporation resident in Canada (Canco) transfers property to a controlled foreign affiliate (CFA) of Canco, CFA uses the property to make an interest-bearing loan (Loan #1) to another non-resident person (Forcol) and then Forcol uses the funds

to make a non interest-bearing loan (Loan #2) to another non-resident person (Forco2). Subsection 17(11.2) could apply to deem Loan #2 to have been made directly by CFA to Forco2. Thus, it is Loan #2 rather than Loan #1 that would be deemed by subsection 17(2) to be owing to Canco by CFA. From a tax policy point of view, we agree with your conclusion that, since it is the interest income earned by CFA on Loan #1 that would be included in computing CFA's foreign accrual property income, it would be appropriate in those cases to give reference to Loan #1 when applying subsection 17(2) in conjunction with subparagraph 17(l)(b)(iii) where Loan #1 can be linked to Loan #2.

We are prepared to recommend to the Minister of Finance that subsection 17(2) of the Act be amended to provide that the amount that is deemed by that subsection to be owing to the corporation resident in Canada by the non-resident person who is described in paragraph 17(2)(a) is the amount owing by that non-resident person to the particular person or partnership who is described in that paragraph under the same terms and conditions that apply to the amount owing by that non-resident person to the particular person or partnership, notwithstanding that the amount remains owing by that non-resident person to the particular person or partnership.

We are also prepared to recommend to the Minister of Finance that subparagraph 17(l)(b)(iii) of the Act be amended. The recommended amendments to that paragraph would provide for the inclusion of amounts in respect of a corporation resident in Canada that are amounts that, under subsection 91(1) of the Act, are included in computing the income of the corporation resident in Canada for the particular year or a subsequent year and that can reasonably be attributed to interest income of a controlled foreign affiliate of the corporation resident in Canada derived from specified amounts in respect of the corporation resident in Canada that are owing to the controlled foreign affiliate when they qualified as such amounts. Amounts will, at a particular time, qualify as specified amounts in respect of a corporation resident in Canada that are owing to a controlled foreign affiliate of that corporation, if at that time,

- the amounts are owing to the controlled foreign affiliate by the non-resident person referred to in subsection 17(1), the amounts are deemed by subsection 17(2) to be owed to the corporation resident in Canada by the non-resident person and the amounts are the amounts to which subsection 17(1) applies in respect of the corporation, or
- the amounts (not exceeding the actual amounts owing to which subsection 17(1) applies) are owing to the controlled foreign affiliate by a non-resident person and

  1. would be deemed by subsection 17(2), if section 17 were read without reference to subsection 17(11.2), to be owed to the corporation resident in Canada by that non-resident person,

  2. are loans made by the controlled foreign affiliate that are deemed, under paragraph 17(11.2)(b), not to have been made by the controlled foreign affiliate, and

  3. are loans made by the controlled foreign affiliate to persons other than the non-resident person referred to in subsection 17(1) that resulted in a loan being made to the non-resident person referred to in subsection 17(1) that

     - is deemed by paragraph 17(11.2)(a) to have been made by the controlled foreign affiliate to the non-resident person referred to in subsection 17(1) for the purposes of subsection 17(2), and
     - is deemed by subsection 17(2) to be owed to the corporation resident in Canada by the non-resident person and is the amount owing to which subsection 17(1) applies.

We will recommend that the amendments apply to taxation years that begin after February 23, 1998.

Thank you for writing.

Yours sincerely,

Len Farber
General Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 17(2)–(6) — Anti-avoidance rules; 17(7)–(9) — Exceptions; 17(10)–(15) — Interpretation.

History: See History at the end of s. 17.

Selected Cases [former subsec. 17(1)]: *Canadian Occidental U.S. Petroleum Corp. v. R.*, [2000] 2 C.T.C. 2113 (TCC) (Governing relationship was that at time loan was made; no requirement for ongoing relationship); *Liampat Holdings v. Canada*, [1996] 3 C.T.C. 246 (FCTD) (Deemed interest never received allowed as bad debt); *Upper Lakes Shipping Ltd. v. MNR*, [1993] 1 C.T.C. 2011 (TCC) (5 per cent was reasonable rate of interest on loan made before 1979).

Regulations: 4301(c) (prescribed rate of interest for 17(1)(a)).

(2) Anti-avoidance rule — indirect loan — For the purpose of this section and subject to subsection (3), where

(a) a non-resident person owes an amount at any time to a particular person or partnership (other than a corporation resident in Canada), and

(b) it is reasonable to conclude that the particular person or partnership entered into the transaction under which the amount became owing or the particular person or partnership permitted the amount owing to remain outstanding because

(i) a corporation resident in Canada made a loan or transfer of property, or

(ii) the particular person or partnership anticipated that a corporation resident in Canada would make a loan or transfer of property,

either directly or indirectly, in any manner whatever, to or for the benefit of any person or partnership (other than an exempt loan or transfer),

the non-resident person is deemed at that time to owe to the corporation an amount equal to the amount owing to the particular person or partnership.

Proposed Amendment — 17(2)

Letter from Dept. of Finance, September 3, 2002: See under 17(1)(b)(iii).

Related Provisions: 17(3) — Exception; 17(11.3) — Determination of whether persons are related; 17(15)"exempt loan or transfer" — Definition.

(3) Exception to anti-avoidance rule — indirect loan — Subsection (2) does not apply to an amount owing at any time by a non-resident person to a particular person or partnership where

(a) at that time, the non-resident person and the particular person or each member of the particular partnership, as the case may be, are controlled foreign affiliates of the corporation resident in Canada; or

(b) at that time,

(i) the non-resident person and the particular person are not related or the non-resident person and each member of the particular partnership are not related, as the case may be,

(ii) the terms or conditions made or imposed in respect of the amount owing, determined without reference to any loan or transfer of property by a corporation resident in Canada described in paragraph (2)(b) in respect of the amount owing, are such that persons dealing at arm's length would have been willing to enter into them at the time that they were entered into, and

(iii) if there were an amount of interest payable on the amount owing at that time that would be required to be included in computing the income of a foreign affiliate of the corporation resident in Canada for a taxation year, that amount of interest would not be required to be included in computing the foreign accrual property income of the affiliate for that year.

Related Provisions: 17(10), (12), (13), (15) — Definition of "controlled foreign affiliate"; 17(11), (11.1), (11.3) — Meaning of "related"; 17(11.2) — Back-to-back loans — look-through rule.

Selected Cases [former subsec. 17(3)]: *Canadian Occidental U.S. Petroleum Corp. v. R.*, [2000] 2 C.T.C. 2113 (TCC) (Governing relationship was that at time loan was made; no requirement for ongoing relationship); *Massey-Ferguson Ltd. v. R.*, [1977] C.T.C. 6 (FCA) (Sub-

sec. 19(3) [now subsec. 17(3)] applies to loan made through subsidiary where latter's functions include genuine business purpose of financing group companies; interest not assessed to parent).

(4) Anti-avoidance rule — loan through partnership — For the purpose of this section, where a non-resident person owes an amount at any time to a partnership and subsection (2) does not deem the non-resident person to owe an amount equal to that amount to a corporation resident in Canada, the non-resident person is deemed at that time to owe to each member of the partnership, on the same terms as those that apply in respect of the amount owing to the partnership, that proportion of the amount owing to the partnership at that time that

(a) the fair market value of the member's interest in the partnership at that time

is of

(b) the fair market value of all interests in the partnership at that time.

(5) Anti-avoidance rule — loan through trust — For the purpose of this section, where a non-resident person owes an amount at any time to a trust and subsection (2) does not deem the non-resident person to owe an amount equal to that amount to a corporation resident in Canada,

(a) where the trust is a non-discretionary trust at that time, the non-resident person is deemed at that time to owe to each beneficiary of the trust, on the same terms as those that apply in respect of the amount owing to the trust, that proportion of the amount owing to the trust that

(i) the fair market value of the beneficiary's interest in the trust at that time

is of

(ii) the fair market value of all the beneficial interests in the trust at that time; and

(b) in any other case, the non-resident person is deemed at that time to owe to each settlor in respect of the trust, on the same terms as those that apply in respect of the amount owing to the trust, an amount equal to the amount owing to the trust.

(6) Anti-avoidance rule — loan to partnership — For the purpose of this section, where a particular partnership owes an amount at any time to any person or any other partnership (in this subsection referred to as the "lender"), each member of the particular partnership is deemed to owe at that time to the lender, on the same terms as those that apply in respect of the amount owing by the particular partnership to the lender, that proportion of the amount owing to the lender that

(a) the fair market value of the member's interest in the particular partnership at that time

is of

(b) the fair market value of all interests in the particular partnership at that time.

(7) Exception — Subsection (1) does not apply in respect of an amount owing to a corporation resident in Canada by a non-resident person if a tax has been paid under Part XIII on the amount owing, except that, for the purpose of this subsection, tax under Part XIII is deemed not to have been paid on that portion of the amount owing in respect of which an amount was repaid or applied under subsection 227(6.1).

(8) Exception — Subsection (1) does not apply to a corporation resident in Canada for a taxation year of the corporation in respect of an amount owing to the corporation by a non-resident person if the non-resident person is a controlled foreign affiliate of the corporation throughout the period in the year during which the amount is owing and it is established that the amount owing

(a) arose as a loan or advance of money to the affiliate that the affiliate has used, throughout the period that began when the loan or advance was made and that ended at the earlier of the end of the year and the time at which the amount was repaid,

(i) for the purpose of earning

(A) income from an active business, as defined in subsection 95(1), of the affiliate, or

(B) income that was included in computing the income from an active business of the affiliate under subsection 95(2), or

(ii) for the purpose of making a loan or advance to another controlled foreign affiliate of the corporation where, if interest became payable on the loan or advance at any time in the period and the affiliate was required to include the interest in computing its income for a taxation year, that interest would not be required to be included in computing the affiliate's foreign accrual property income for that year; or

(b) arose in the course of an active business, as defined in subsection 95(1), carried on by the affiliate throughout the period that began when the amount owing arose and that ended at the earlier of the end of the year and the time at which the amount was repaid.

Related Provisions: 17(8.1), (8.2) — Replacement borrowings still eligible for 17(8); 17(10), (12), (13), (15) — Definition of "controlled foreign affiliate"; 17(11.3) — Effect of 17(8) on whether persons related for 17(3)(b); 212(1)(b) — Part XIII (withholding) tax on interest payments to non-resident; 247(7) — Loan described in 17(8) not subject to transfer pricing rules.

Proposed Addition — 17(8.1), (8.2)

(8.1) Borrowed money — Subsection (8.2) applies in respect of money (referred to in this subsection and in subsection (8.2) as "new borrowings") that a controlled foreign affiliate of a particular corporation resident in Canada has borrowed from the particular corporation where the affiliate has used the new borrowings

(a) to repay money (referred to in this subsection and in subsection (8.2) as "previous borrowings") previously borrowed from any person or partnership, if

(i) the previous borrowings became owing after the last time that the affiliate became a controlled foreign affiliate of the particular corporation, and

(ii) the previous borrowings have, at all times after they became owing, been used for a purpose described in subparagraph (8)(a)(i) or (ii); or

(b) to pay an amount owing (referred to in this subsection and in subsection (8.2) as the "unpaid purchase price") by the affiliate for property previously acquired from any person or partnership, if

(i) the property was acquired, and the unpaid purchase price became owing, by the affiliate after the last time that it became acontrolled foreign affiliate of the particular corporation,

(ii) the unpaid purchase price is in respect of the property, and

(iii) throughout the period that began when the unpaid purchase price became owing by the affiliate and ended when the unpaid purchase price was so paid, the property had been used principally to earn income described in clause (8)(a)(i)(A) or (B).

(8.2) Deemed use — If this subsection applies in respect of new borrowings, the new borrowings are, for the purpose of subsection (8), deemed to have been used for the purpose for which the proceeds from the previous borrowings were used or were deemed by this subsection to have been used, or to acquire the property in respect of which the unpaid purchase price was payable, as the case may be

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 128(1), will add subsecs. 17(8.1) and (8.2), applicable to taxation years that begin after February 23, 1998.

Technical Notes: Subsection 17(8) provides an exception to subsection 17(1) with respect to amounts owing by a non-resident person to a particular corporation resident in Canada where

- the non-resident person is a controlled foreign affiliate of the particular corporation, and
- the amount owing meets the test set out in either subparagraph 17(8)(a)(i) or (ii).

However, the exception afforded by subsection 17(8) is not available in circumstances where the amount owing by the controlled foreign affiliate is incurred to pay existing indebtedness of the affiliate to another person or partnership (other than the particular corporation) because the amount owing arose for the purpose of allowing the affiliate to pay the existing indebtedness rather than for a use that qualifies under subparagraph 17(8)(a)(i) or (ii). New subsections 17(8.1) and (8.2) are introduced to address this issue.

New subsection 17(8.1) provides that new subsection 17(8.2) applies in respect of money (referred to as "new borrowings") that a controlled foreign affiliate of a particular corporation resident in Canada has borrowed from the particular corporation where the affiliate has used the new borrowings

- to repay money (referred to as "previous borrowings") previously borrowed from any person or partnership, if
  - the previous borrowings became owing after the last time that the affiliate became a controlled foreign affiliate of the particular corporation, and
  - the previous borrowings have, at all times after they became owing, been used for a purpose described in subparagraph 17(8)(a)(i) or (ii), or
- to pay an amount owing (referred to as the "unpaid purchase price") by the affiliate for property previously acquired from any person or partnership, if
  - the property was acquired, and the unpaid purchase price became owing, by the affiliate after the last time that the affiliate became a controlled foreign affiliate of the particular corporation,
  - the unpaid purchase price is in respect of the property, and
  - throughout the period that began when the unpaid purchase price became owing by the affiliate and ended when the unpaid purchase price was so paid, the property had been used principally to earn income described in clause 17(8)(a)(i)(A) or (B).

New subsection 17(8.2) provides that the new borrowings are, for the purpose of subsection 17(8), deemed to have been used for the purpose for which the proceeds from the previous borrowings were used or were deemed by subsection 17(8.2) to have been used, or to acquire the property in respect of which the unpaid purchase price was payable, as the case may be.

Related Provisions: 17(8.1) — Conditions for 17(8.2) to apply.

(9) Exception — Subsection (1) does not apply to a corporation resident in Canada for a taxation year of the corporation in respect of an amount owing to the corporation by a non-resident person if

(a) the corporation is not related to the non-resident person throughout the period in the year during which the amount owing is outstanding;

(b) the amount owing arose in respect of goods sold or services provided to the non-resident person by the corporation in the ordinary course of the business carried on by the corporation; and

(c) the terms and conditions in respect of the amount owing are such that persons dealing at arm's length would have been willing to enter into them at the time that they were entered into.

Related Provisions: 17(10), (12), (13), (15) — Definition of "controlled foreign affiliate"; 17(11), (11.1) — Meaning of "related".

(10) Determination of whether related and controlled foreign affiliate status — For the purpose of this section, in determining whether persons are related to each other and whether a non-resident corporation is a controlled foreign affiliate of a corporation resident in Canada at any time,

(a) each member of a partnership is deemed to own that proportion of the number of shares of a class of the capital stock of a corporation owned by the partnership at that time that

(i) the fair market value of the member's interest in the partnership at that time

is of

(ii) the fair market value of all interests in the partnership at that time; and

(b) each beneficiary of a non-discretionary trust is deemed to own that proportion of the number of shares of a class of the capital stock of a corporation owned by the trust at that time that

(i) the fair market value of the beneficiary's interest in the trust at that time

is of

(ii) the fair market value of all the beneficial interests in the trust at that time.

Related Provisions: 17(12), (13) — Determination of controlled foreign affiliate status.

(11) Determination of whether related — For the purpose of this section, in determining whether persons are related to each other at any time, each settlor in respect of a trust, other than a non-discretionary trust, is deemed to own the shares of a class of the capital stock of a corporation owned by the trust at that time.

Related Provisions: 17(11.1) — Limitation on meaning of "related".

(11.1) Determination of whether persons related — For the purposes of this section, in determining whether persons are related to each other at any time, any rights referred to in subparagraph 251(5)(b)(i) that exist at that time are deemed not to exist at that time to the extent that the exercise of those rights is prohibited at that time under a law of the country under the law of which the corporation was formed or last continued and is governed, that restricts the foreign ownership or control of the corporation.

Related Provisions: 17(11.3) — Additional rule re whether persons related for 17(3)(b).

History: Subsec. 17(11.1) added by 2001, c. 17, subsec. 8(1), applicable to taxation years that begin after February 23, 1998.

(11.2) Back-to-back loans — For the purposes of subsection (2) and paragraph (3)(b), where a non-resident person, or a partnership each member of which is non-resident, (in this subsection referred to as the "intermediate lender") makes a loan to a non-resident person, or a partnership each member of which is non-resident, (in this subsection referred to as the "intended borrower") because the intermediate lender received a loan from another non-resident person, or a partnership each member of which is non-resident, (in this subsection referred to as the "initial lender")

(a) the loan made by the intermediate lender to the intended borrower is deemed to have been made by the initial lender to the intended borrower (to the extent of the lesser of the amount of the loan made by the initial lender to the intermediate lender and the amount of the loan made by the intermediate lender to the intended borrower) under the same terms and conditions and at the same time as it was made by the intermediate lender; and

(b) the loan made by the initial lender to the intermediate lender and the loan made by the intermediate lender to the intended borrower are deemed not to have been made to the extent of the amount of the loan deemed to have been made under paragraph (a).

History: Subsec. 17(11.2) added by 2001, c. 17, subsec. 8(1), applicable to taxation years that begin after February 23, 1998.

(11.3) Determination of whether persons related — For the purpose of applying paragraph (3)(b) in respect of a corporation resident in Canada described in paragraph (2)(b), in determining whether persons described in subparagraph (3)(b)(i) are related to each other at any time, any rights referred to in paragraph 251(5)(b) that otherwise exist at that time are deemed not to exist at that time where, if the rights were exercised immediately before that time,

(a) all of those persons would at that time be controlled foreign affiliates of the corporation resident in Canada; and

(b) because of subsection (8), subsection (1) would not apply to the corporation resident in Canada in respect of the amount that would, but for this subsection, have been deemed to have been owing at that time to the corporation resident in Canada by the non-resident person described in subparagraph (3)(b)(i).

History: Subsec. 17(11.3) added by 2001, c. 17, subsec. 8(1), applicable to taxation years that begin after February 23, 1998.

(12) Determination of controlled foreign affiliate status — For the purpose of this section, in determining whether a non-resident person is a controlled foreign affiliate of a corporation resident in Canada at any time, each settlor in respect of a trust, other than a non-discretionary trust, is deemed to own that proportion of the number of shares of a class of the capital stock of a corporation owned by the trust at that time that one is of the number of settlors in respect of the trust at that time.

(13) Extended definition of controlled foreign affiliate — For the purpose of this section, where, at any time, two corporations resident in Canada are related (otherwise than because of a right referred to in paragraph 251(5)(b)), any corporation that is a controlled foreign affiliate of one of the corporations at that time is deemed to be a controlled foreign affiliate of the other corporation at that time.

(14) Anti-avoidance rule — where rights or shares issued, acquired or disposed of to avoid tax — For the purpose of this section,

(a) where any person or partnership has a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently, to, or to acquire, shares of the capital stock of a corporation and it can reasonably be considered that the principal purpose for the existence of the right is to avoid or reduce the amount of income that subsection (1) would otherwise require any corporation to include in computing its income for any taxation year, those shares are deemed to be owned by that person or partnership; and

(b) where any person or partnership acquires or disposes of shares of the capital stock of a corporation, either directly or indirectly, and it can reasonably be considered that the principal purpose for the acquisition or disposition of the shares is to avoid or reduce the amount of income that subsection (1) would otherwise require any corporation to include in computing its income for any taxation year, those shares are deemed not to have been acquired or disposed of, as the case may be, and where the shares were unissued by the corporation immediately before the acquisition, those shares are deemed not to have been issued.

Related Provisions: 95(6) — Similar rule re foreign accrual property income.

(15) Definitions — The definitions in this subsection apply in this section.

"controlled foreign affiliate" has the meaning that would be assigned by the definition "controlled foreign affiliate" in subsection 95(1) if paragraphs (d) and (e) of that definition read as follows:

"(d) one or more persons resident in Canada with whom the taxpayer does not deal at arm's length, or

(e) the taxpayer and one or more persons resident in Canada with whom the taxpayer does not deal at arm's length".

Proposed Amendment — 17(15)"controlled foreign affiliate"

"controlled foreign affiliate" has the meaning that would be assigned by the definition "controlled foreign affiliate" in subsection 95(1) if this Act were read without reference to paragraph 94.1(2)(h) and if paragraphs (d) and (e) of that definition were read as follows:

(d) one or more persons resident in Canada with whom the taxpayer does not deal at arm's length, or

(e) the taxpayer and one or more persons resident in Canada with whom the taxpayer does not deal at arm's length;

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), s. 4, will amend the definition "controlled foreign affiliate" in subsec. 17(15) to read as above, applicable after 2002.

Technical Notes: Subsection 17(15) defines expressions that apply for the purposes of section 17, which provides rules under which imputed interest, in connection with debt owing to a taxpayer from a non-resident person, is included in computing the taxpayer's income. The expression "controlled foreign affiliate" is defined to have the same meaning as it does under subsection 95(1), except that for the purpose of section 17, a non-resident corporation must be controlled by Canadian residents in order to be treated as a controlled foreign affiliate of a taxpayer resident in Canada.

The definition "controlled foreign affiliate" in subsection 17(15) is amended so that new paragraph 94.1(2)(h) does not apply for the purposes of section 17. As a result, an election under that paragraph, to treat a foreign affiliate of a taxpayer as a controlled foreign affiliate of the taxpayer, does not have effect for the purpose of section 17.

Related Provisions: 17(9) — Rules for determining CFA status; 17(10), (12), (13) — Extended meaning of controlled foreign affiliate.

"exempt loan or transfer" means

(a) a loan made by a corporation resident in Canada where the interest rate charged on the loan is not less than the interest rate that a lender and a borrower would have been willing to agree to if they were dealing at arm's length with each other at the time the loan was made;

(b) a transfer of property (other than a transfer of property made for the purpose of acquiring shares of the capital stock of a foreign affiliate of a corporation or a foreign affiliate of a person resident in Canada with whom the corporation was not dealing at arm's length) or payment of an amount owing by a corporation resident in Canada pursuant to an agreement made on terms and conditions that persons who were dealing at arm's length at the time the agreement was entered into would have been willing to agree to;

(c) a dividend paid by a corporation resident in Canada on shares of a class of its capital stock; and

(d) a payment made by a corporation resident in Canada on a reduction of the paid-up capital in respect of shares of a class of its capital stock (not exceeding the total amount of the reduction).

History: The definition "exempt loan or transfer" in subsec. 17(15) amended by 2001, c. 17, subsec. 8(2), applicable to taxation years that begin after February 23, 1998. The definition formerly read:

"exempt loan or transfer" means a loan or transfer of property made by a corporation to a person or a partnership where

(a) at the time of the loan or transfer, the corporation was not related to the person or to any member of the partnership, as the case may be;

(b) the loan or transfer of property was not part of a series of transactions or events at the end of which the corporation was related to the person or to any member of the partnership, as the case may be; and

(c) the terms and conditions of the loan or transfer (determined without reference to any other loan or transfer of property to either a person related to the corporation or a partnership any member of which was related to the corporation) are such that persons dealing at arm's length would have been willing to enter into them at the time that they were entered into.

"non-discretionary trust", at any time, means a trust in which all interests were vested indefeasibly at the beginning of the trust's taxation year that includes that time.

Related Provisions: 248(1)"non-discretionary trust" — Definition applies to entire Act; 248(9.2) — Meaning of "vested indefeasibly".

"settlor" in respect of a trust at any time means any person or partnership that has made a loan or transfer of property, either directly or indirectly, in any manner whatever, to or for the benefit of the trust at or before that time, other than, where the person or partnership deals at arm's length with the trust at that time,

(a) a loan made by the person or partnership to the trust at a reasonable rate of interest; or

(b) a transfer made by the person or partnership to the trust for fair market value consideration.

History [s. 17]: S. 17 amended by 1999, c. 22, s. 8, applicable to taxation years that begin after February 23, 1998 except that

(a) subsecs. 17(2) and (3) do not apply to taxation years that begin before 2000,

(b) in its application to such a taxation year that ends before March 10, 1999, subsec. 17(7) shall be read as follows:

"Subsection (1) does not apply in respect of an amount owing to a corporation resident in Canada by a non-resident person if a tax has been paid under Part XIII on the amount owing."

and

(c) in its application to a taxation year that includes March 10, 1999, the amount determined under subsec. 17(1) is deemed to be the amount that is equal to the total of

(i) the amount that would have been determined under that subsection if the taxation year had ended at the end of March 10, 1999 and if subsec. 17(7) had read as follows:

"Subsection (1) does not apply in respect of an amount owing to a corporation resident in Canada by a non-resident person if a tax has been paid under Part XIII on the amount owing."

and

(ii) the amount that would have been determined under subsec. 17(1) if the taxation year had begun immediately after the end of March 10, 1999.

The section formerly read:

17. (1) Loan to non-resident — Where a corporation resident in Canada has lent money to a non-resident person and the loan remained outstanding for one year or longer without interest on the loan computed at a reasonable rate having been included in computing the lender's income, the corporation shall be deemed to have received, on the last day of each taxation year during which the loan was outstanding, interest on the loan at the prescribed rate computed for the period in the taxation year during which it was outstanding.

(2) Exception — Subsection (1) does not apply if a tax has been paid on the amount of the loan under Part XIII.

(3) Further exception — Subsection (1) does not apply if the loan was made to a subsidiary controlled corporation and it is established that the money that was lent was used in the subsidiary corporation's business for the purpose of gaining or producing income.

Definitions [s. 17]: "active business", "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 255; "class" — 248(6); "controlled foreign affiliate" — 94.1(2)(h), 95(1), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition", "dividend" — 248(1); "exempt loan or transfer" — 17(15); "foreign accrual property income" — 95(1), (2), 248(1); "foreign affiliate" — 95(1), 248(1); "new borrowings" — 17(8.1); "non-discretionary trust" — 17(15); "non-resident" — 248(1); "paid-up capital" — 89(1), 248(1); "person", "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "previous borrowings" — 17(8.1)(a); "property" — 248(1); "related" — 17(10), (11), (11.1), (11.3) 251(2)–(6); "resident", "resident in Canada" — 250; "settlor" — 17(15); "share" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "unpaid purchase price" — 17(8.1)(b); "vested indefeasibly" — 248(9.2).

Deductions

18. (1) General limitations — In computing the income of a taxpayer from a business or property no deduction shall be made in respect of

(a) **general limitation** — an outlay or expense except to the extent that it was made or incurred by the taxpayer for the purpose of gaining or producing income from the business or property;

Related Provisions: 3.1(1) — Reasonable expectation of profit required for loss claim; 7(3)(b) — No deduction to employer for cost of issuing stock options to employees; 18(1)(c) — Limitation re exempt income; 18(9) — Limitation re prepaid expenses; 19, 19.01, 19.1 — Limitations on deductions for advertising expenses; 20(1) — Deductions permitted; 20(16) — Terminal loss; 20.01 — Deduction allowed for private health services plan premiums; 21(1) — Cost of borrowed money; 67 — Unreasonable expenses not allowed; 67.1 — 50% limit on expenses

for food and entertainment; Reg. 1102(1)(c) — No CCA unless property acquired for purpose of gaining or producing income.

Selected Cases [para. 18(1)(a)]: *Teck Corp. v. British Columbia*, [2005] 1 C.T.C. 110 (BC CA) (Mining taxes are not royalties; more in nature of income tax); *BJ Services Co. v. R.*, [2004] 2 C.T.C. 2169 (TCC) (Shareholder communications and expenses of statutory compliance deductible as current expenses); *Nadeau v. R.*, [2004] 1 C.T.C. 293 (FCA) (Support income is income from property); *International Colin Energy Corp. v. R.*, [2003] 1 C.T.C. 2406 (TCC) (Advisor's fees deductible where purpose was to gain or produce income through merger); *Raegele v. R.*, [2002] 2 C.T.C. 2955 (TCC) (Expenses during wind-up period of business deductible); *Fédération des caisses populaires Desjardins de Montréal & de l'ouest-de-Québec v. R.*, [2002] 2 C.T.C. 1 (FCA) (Vacation pay obligations were incurred in the year even though no liability to pay until following year); *Donyina v. R.*, [2001] 3 C.T.C. 2741 (TCC) (Review of principles underlying reasonable expectation of profit); *Spearing v. R.*, [2001] 1 C.T.C. 2689 (TCC) (Reasonable expectation of profit as broad basis for disallowing deduction of expenses has no statutory basis); *Canadian Pacific Ltd. v. Ontario (Minister of Revenue)*, [2000] 2 C.T.C. 331 (Ont CA) (Capitalized value of future disability payments deductible as current expense); *Urbandale Realty Corp. v. MNR*, [2000] 2 C.T.C. 250 (FCA); rev'g [1997] 3 C.T.C. 6 (FCTD) (Matching principle not applied); *Buck Consultants Ltd. v. Canada*, [2000] 1 C.T.C. 93 (FCA); aff'g [1996] 3 C.T.C. 2016 (TCC) (Notional rent was neither paid nor payable); *65302 British Columbia Ltd. v. R.*, [2000] 1 C.T.C. 57 (SCC); rev'g [1998] 1 C.T.C. 131 (FCA); rev'g [1995] 2 C.T.C. 2294 (TCC) (Penalties incurred during income-earning process deductible); *St-Laurent v. R.*, [1999] 1 C.T.C. 2478 (TCC) (No new right created when legal expenses incurred to vary support order; fees deductible); *Northwood Pulp & Timber Ltd. v. R.*, [1999] 1 C.T.C. 53 (FCA); leave to appeal to SCC refused (1999), 242 N.R. 400 (note) (Estimated cost not the same as actual cost and cannot be included in cost of inventory); *Adams v. R.*, [1998] 2 C.T.C. 333 (FCA); rev'g [1996] 1 C.T.C. 2916 (TCC) (Tenant inducement payment by partners to themselves disallowed); *Hickman Motors Ltd. v. R.*, [1998] 1 C.T.C. 213 (SCC) (Property retains depreciable character in hands of transferee on winding-up, if not used for other purposes); *Sunys Petroleum Ltd. v. Canada*, [1996] 3 C.T.C. 2931 (TCC) ("Avoidable" penalties may not be deductible); *Thiele Drywall Inc. v. Canada*, [1996] 3 C.T.C. 2208 (TCC) (Nature of participation in tax evasion scheme was such that legal expenses to defend were not deductible); *Donohue Normick Inc. v. Canada*, 96 D.T.C. 6061 (FCA) (Checklist of factors for determining whether payment is capital or income in nature); *Société Immobilière SSQ Inc. v. MNR*, [1993] 1 C.T.C. 2029 (TCC) (Costs incurred by partnership before taxpayer's acquisition of interest therein not deductible; contracts not retroactive); *Xuereb (G.L.) v. Canada*, [1992] 2 C.T.C. 2132 (TCC) (Pre-incorporation start-up expenses deductible to taxpayer transferring business to corporation); *Moloney v. Canada*, [1992] 2 C.T.C. 227 (FCA); leave to appeal to SCC refused (1993), 154 N.R. 244 (note) (Sole purpose of activity was to obtain tax refunds, not to earn income); *Utah Mines Ltd. v. R.*, [1992] 1 C.T.C. 306 (FCA) (Deduction for mineral royalties paid to provincial government disallowed despite article III of *Canada-U.S. Tax Convention*); *Goulard v. MNR*, [1992] 1 C.T.C. 2396 (TCC) (Interest expenses in respect of share purchase arose from legal obligation to repay borrowed money for purpose of earning income); *Symes v. Canada*, [1991] 2 C.T.C. 1 (FCA); aff'd [1994] 1 C.T.C. 40 (SCC) (Child care expenses not business expenses; taxpayer not entitled to deduct such expenses in excess of statutory limits established in s. 63); *Canada v. Young*, [1989] 1 C.T.C. 421 (FCA) (Cost of subscriptions to investment publications by portfolio owner/manager not deductible); *Morflot Freightliners Ltd. v. Canada*, [1989] 1 C.T.C. 413 (FCTD) (Amounts advanced by parent to subsidiary were capital outlays to preserve enduring asset); *Madronich v. MNR*, [1989] 1 C.T.C. 247 (FCTD) (Systematic tree farming with reasonable expectation of profit in 50 years was business).

Interpretation Bulletins: IT-80: Interest on money borrowed to redeem shares, or to pay dividends (archived); IT-99R5: Legal and accounting fees; IT-104R2: Deductibility of fines or penalties; IT-153R3: Land developers — subdivision and development costs and carrying charges on land; IT-185R: Losses from theft, defalcation or embezzlement; IT-211R: Membership dues — associations and societies; IT-223: Overhead expense insurance vs. income insurance (archived); IT-233R: Lease-option agreements; sale-leaseback agreements (archived); IT-261R: Prepayment of rents; IT-265R3: Payments of income and capital combined (archived); IT-316: Awards for employees' suggestions and inventions (archived); IT-339R2: Meaning of "private health services plan"; IT-341R3: Expenses of issuing or selling shares, units in a trust, interests in a partnership or syndicate, and expenses of borrowing money; IT-364: Commencement of business operations; IT-373R2: Woodlots; IT-389R: Vacation-with-pay plans established under collective agreements; IT-461: Forfeited deposits (archived); IT-467R2: Damages, settlements and similar payments; IT-475: Expenditures on research and for business expansion; IT-487: General limitation on deduction of outlays or expenses; IT-521R: Motor vehicle expenses claimed by self-employed individuals; IT-525R: Performing artists.

Information Circulars: 77-11: Sales tax reassessments.

I.T. Technical News: 12 (meals and beverages at golf clubs); 16 (*Tonn, Mastri, Mohammad* and *Kaye* cases; *Scott* case).

Advance Tax Rulings: ATR-4: Exchange of interest rates; ATR-20: Redemption premium on debentures; ATR-21: Pension benefit from an unregistered pension plan; ATR-23: Private health services plan; ATR-45: Share appreciation rights plan; ATR-50: Structured settlement.

Forms: T2032: Statement of professional activities; T2124: Statement of business activities.

(b) **capital outlay or loss** — an outlay, loss or replacement of capital, a payment on account of capital or an allowance in respect of depreciation, obsolescence or depletion except as expressly permitted by this Part;

Related Provisions: 14(5)"eligible capital expenditure" — Definition includes amounts deductible under 20(1)(b); 20(1) — Deductions permitted; 20(10) — Convention expenses; 20(16) — Terminal loss; 24(1) — Ceasing to carry on business; 26(2) — Banks; 30 — Clearing land, levelling land and laying tile drainage; 37(1)(b) — Deductible R&D expenditures on capital.

Selected Cases [para. 18(1)(b)]: *International Colin Energy Corp. v. R.*, [2003] 1 C.T.C. 2406 (TCC) (Advisor's fees deductible where purpose was to gain or produce income through merger); *Sherway Centre Ltd. v. Canada*, [1996] 3 C.T.C. 2687 (TCC) ("Participating" interest was not "interest"); *Park Royal Shopping Centre Limited v. Canada*, [1995] 2 C.T.C. 2117 (TCC) (Architect's fees for proposed contruction of building which was abandoned not deductible); *Boulangerie St-Augustine Inc. v. Canada*, [1995] 2 C.T.C. 2149 (TCC) (Cost of shareholder communications on take-over bid deductible); *Kamsel Leasing Inc. v. MNR*, [1993] 1 C.T.C. 2279 (TCC) (Agreement treated as "sale" not "lease" where option to acquire property at end of term substantially below probable market value).

Interpretation Bulletins: IT-104R2: Deductibility of fines or penalties; IT-187: Purchase of customer lists and ledger accounts; IT-233R: Lease-option agreements; sale-leaseback agreements (archived); IT-261R: Prepayment of rents; IT-285R2: Capital cost allowance — general comments; IT-341R3: Expenses of issuing or selling shares, units in a trust, interests in a partnership or syndicate, and expenses of borrowing money; IT-357R2: Expenses of training; IT-364: Commencement of business operations; IT-467R2: Damages, settlements and similar payments; IT-475: Expenditures on research and for business expansion.

I.T. Technical News: 5 (lease agreements).

Advance Tax Rulings: ATR-20: Redemption premium on debentures; ATR-50: Structured settlement; ATR-59: Financing exploration and development through limited partnerships.

(c) **limitation re exempt income** — an outlay or expense to the extent that it may reasonably be regarded as having been made or incurred for the purpose of gaining or producing exempt income or in connection with property the income from which would be exempt;

Related Provisions: 81(1) — Exempt income; 248(1)"exempt income" — Definition excludes dividends and support amounts.

Interpretation Bulletins: IT-341R3: Expenses of issuing or selling shares, units in a trust, interests in a partnership or syndicate, and expenses of borrowing money; IT-467R2: Damages, settlements and similar payments.

(d) **annual value of property** — the annual value of property except rent for property leased by the taxpayer for use in the taxpayer's business;

Related Provisions: 20(1)(a) — Deduction for capital cost allowance.

(e) **reserves, etc.** — an amount as, or on account of, a reserve, a contingent liability or amount or a sinking fund except as expressly permitted by this Part;

Related Provisions: 18(9) — Prepaid expenses — deduction denied; 20(1)(l), (l.1), (m), (m.1), (n), (o) — Reserves specifically allowed; 20(7)(c) — Policy reserves for insurance corporations; 20(26) — Deduc-

tion for unpaid claims reserve adjustment; 40(1)(a)(iii) — Capital gains reserve; 61.2–61.4 — Reserves re forgiven debt included in income; 138(3)(a)(ii) — Reserves in respect of life insurance claims; 248(1) — "Insurance policy" includes life insurance policy.

Selected Cases [para. 18(1)(e)]: *General Motors of Canada Ltd. v. R.*, [2004] 1 C.T.C. 2999 (TCC) (Contingent nature of liability indicated by words "and then only if needed"); *Fédération des caisses populaires Desjardins de Montréal & de l'ouest-de-Québec v. R.*, [2002] 2 C.T.C. 1 (FCA); rev'g [2000] 1 C.T.C. 2620 (TCC) (Vacation pay obligations were incurred in the year even though no liability to pay until following year); *Wawang Forest Products Ltd. v. R.*, [2001] 2 C.T.C. 233 (FCA) (Completion of work removed contingency); *Canadian Pacific Ltd. v. Ontario (Minister of Revenue)*, [2000] 2 C.T.C. 331 (Ont CA) (Possible variation of future payments does not make liability contingent); *Huang & Danczkay Ltd. v. MNR*, [1998] 3 C.T.C. 337 (FCTD) (Receivables brought into income only when income-earning process virtually complete); *Barbican Properties Inc. v. Canada*, [1997] 1 C.T.C. 2383 (FCA) (Deferred interest held to be contingent and not deductible); *Co-operators General Insurance Co. v. MNR*, [1993] 1 C.T.C. 2316 (TCC) (Contingent premiums not deductible expense "incurred").

Interpretation Bulletins: IT-109R2: Unpaid amounts; IT-215R: Reserves, contingent accounts and sinking funds (archived); IT-321R: Insurance agents and brokers — unearned commissions (archived); IT-442R: Bad debts and reserves for doubtful debts; IT-467R2: Damages, settlements and similar payments; IT-518R: Food, beverages and entertainment expenses.

I.T. Technical News: 25 (health and welfare trusts).

Advance Tax Rulings: ATR-50: Structured settlement.

(e.1) **unpaid claims under insurance policies** — an amount in respect of claims that were received by an insurer before the end of the year under insurance policies and that are unpaid at the end of the year, except as expressly permitted by this Part;

Related Provisions: 20(7)(c) — Policy reserves for insurance corporations; 20(26) — Deduction for unpaid claims reserve adjustment; 138(3)(a)(ii) — Reserves in respect of life insurance claims.

(f) **payments on discounted bonds** — an amount paid or payable as or on account of the principal amount of any obligation described in paragraph 20(1)(f) except as expressly permitted by that paragraph;

Interpretation Bulletins: IT-341R3: Expenses of issuing or selling shares, units in a trust, interests in a partnership or syndicate, and expenses of borrowing money; IT-518R: Food, beverages and entertainment expenses.

I.T. Technical News: 25 (foreign exchange losses).

(g) **payments on income bonds** — an amount paid by a corporation as interest or otherwise to holders of its income bonds or income debentures unless the bonds or debentures have been issued or the income provisions thereof have been adopted since 1930

(i) to afford relief to the debtor from financial difficulties, and

(ii) in place of or as an amendment to bonds or debentures that at the end of 1930 provided unconditionally for a fixed rate of interest;

Related Provisions: 15(3), (4) — Interest or dividend on income bond or debenture; 15.1(2)(a), 15.2(2)(a) — Parallel rules for small business development bonds and small business bonds.

Interpretation Bulletins: IT-52R4: Income bonds and debentures (archived); IT-518R: Food, beverages and entertainment expenses.

(h) **personal and living expenses** — personal or living expenses of the taxpayer, other than travel expenses incurred by the taxpayer while away from home in the course of carrying on the taxpayer's business;

Related Provisions: 20(1) — Deductions permitted; 20(16) — Terminal loss; 20.01 — Deduction allowed for private health services plan premiums; 56(1)(o)(i) — No deduction for personal or living expenses against research grant income; 67 — Unreasonable expenses not allowed; 67.1 — 50% limit on expenses for food and entertainment; 248(1)"personal or living expenses" — Reasonable expectation of profit required.

Selected Cases [para. 18(1)(h)]: *Spearing v. R.*, [2001] 1 C.T.C. 2689 (TCC) (Reasonable expectation of profit as broad basis for disallowing deduction of expenses has no statutory basis); *Scott v. R.*, [1998] 4 C.T.C. 103 (FCA) (Extra food and water of messengers similar to fuel and costs allowed as deduction); *Symes v. Canada*, [1994] 1 C.T.C. 40 (SCC) (Child-care expenses not deductible as business expenses); *R. v. Cork*, [1990] 2 C.T.C. 116 (FCA) (Office expenses of self-employed draftsman operating out of home deductible); *Sher v. R.*, [1980] C.T.C. 168 (FCTD) (Business expenses unsupported by receipts not deductible); *Deutsch v. R.*, [1979] C.T.C. 217 (FCTD) (Deductibility of claimed expenses related to automobile, travel and office at home allowed in part, despite inflated expenses and confusion of records).

Interpretation Bulletins: IT-223: Overhead expense insurance vs. income insurance (archived); IT-322R: Farm losses; IT-334R2: Miscellaneous receipts; IT-341R3: Expenses of issuing or selling shares, units in a trust, interests in a partnership or syndicate, and expenses of borrowing money; IT-357R2: Expenses of training; IT-373R2: Woodlots; IT-467R2: Damages, settlements and similar payments; IT-518R: Food, beverages and entertainment expenses; IT-521R: Motor vehicle expenses claimed by self-employed individuals.

I.T. Technical News: 16 (*Tonn*, *Mastri*, *Mohammad* and *Kaye* cases; *Scott* case); 25 (reasonable expectation of profit).

Forms: T2032: Statement of professional activities; T2124: Statement of business activities.

(i) **limitation re employer's contribution under supplementary unemployment benefit plan** — an amount paid by an employer to a trustee under a supplementary unemployment benefit plan except as permitted by section 145;

Related Provisions: 20(1)(x), 145(5) — Employer's contribution to supplementary unemployment benefit plan deductible.

(j) **limitation re employer's contribution under deferred profit sharing plan** — an amount paid by an employer to a trustee under a deferred profit sharing plan except as expressly permitted by section 147;

Related Provisions: 147(8) — Employer's DPSP contribution deductible.

(k) **limitation re employer's contribution under profit sharing plan** — an amount paid by an employer to a trustee under a profit sharing plan that is not

(i) an employees profit sharing plan,

(ii) a deferred profit sharing plan, or

(iii) a registered pension plan;

Interpretation Bulletins: IT-502: Employee benefit plans and employee trusts.

(l) **use of recreational facilities and club dues** — an outlay or expense made or incurred by the taxpayer after 1971,

(i) for the use or maintenance of property that is a yacht, a camp, a lodge or a golf course or facility, unless the taxpayer made or incurred the outlay or expense in the ordinary course of the taxpayer's business of providing the property for hire or reward, or

(ii) as membership fees or dues (whether initiation fees or otherwise) in any club the main purpose of which is to provide dining, recreational or sporting facilities for its members;

Related Provisions: 8(1)(f)(vi) — Salesman's expenses.

Selected Cases [para. 18(1)(l)]: *R. v. C.I.P. Inc.*, [1988] 1 C.T.C. 32 (FCTD) (Expenses of chartered vessel deductible); *R. v. Jaddco Anderson Ltd.*, [1984] C.T.C. 137 (FCA) (Rental expenses for fishing lodge to entertain clients not deductible).

Interpretation Bulletins: IT-148R3: Recreational properties and club dues; IT-211R: Membership dues — Associations and societies; IT-470R: Employees' fringe benefits.

I.T. Technical News: 12 (meals and beverages at golf clubs).

(l.1) [Repealed]

History: Para. 18(1)(l.1) repealed by 2003, c. 28, subsec. 2(1), applicable to amounts that become payable after December 20, 2002. The para. formerly read:

(l.1) *Petroleum and Gas Revenue Tax Act* payments — any amount paid or that became payable in the year to Her Majesty in right of Canada by virtue of an obligation imposed under the *Petroleum and Gas Revenue Tax Act*;

(m) **royalties, etc.** — [Phased out 2003-06 and repealed effective 2007 — see below] any amount (other than a prescribed amount)

(i) that is paid or payable in the year to

(A) Her Majesty in right of Canada or of a province,

(B) an agent of Her Majesty in right of Canada or of a province, or

(C) a corporation, a commission or an association that is controlled by Her Majesty in right of Canada or of a province or by an agent of Her Majesty in right of Canada or of a province, and

(ii) that can reasonably be considered to be a royalty, tax (other than a tax or portion of a tax that can reasonably be considered to be a municipal or school tax), lease rental or bonus, however described, or to be in respect of the late payment or non-payment of any of those amounts, in relation to

(A) the acquisition, development or ownership of a Canadian resource property, or

(B) the production in Canada

(I) of petroleum, natural gas or related hydrocarbons from a natural accumulation of petroleum or natural gas (other than a mineral resource) located in Canada, or from an oil or gas well located in Canada,

(II) of sulphur from a natural accumulation of petroleum or natural gas located in Canada, from an oil or gas well located in Canada or from a mineral resource located in Canada,

(III) to any stage that is not beyond the prime metal stage or its equivalent, of metal, minerals (other than iron or petroleum or related hydrocarbons) or coal from a mineral resource located in Canada,

(IV) to any stage that is not beyond the pellet stage or its equivalent, of iron from a mineral resource located in Canada, or

(V) to any stage that is not beyond the crude oil stage or its equivalent, of petroleum or related hydrocarbons from a deposit located in Canada of bituminous sands or oil shales;

Repeal [effective 2007] — 18(1)(m)

Application: S.C. 2003, c. 28 (Bill C-48, Royal Assent November 7, 2003), subsec. 2(3), repeals para. 18(1)(m), applicable to taxation years that begin after 2006. For each taxation year that ends after 2002 and begins before 2007, para. 18(1)(m) applies, notwithstanding para. 20(1)(v), only to the percentage of each amount described by that para. 18(1)(m) that is the total of

(a) that proportion of 100% that the number of days in the taxation year that are before 2003 is of the number of days in the taxation year,

(b) that proportion of 90% that the number of days in the taxation year that are in 2003 is of the number of days in the taxation year,

(c) that proportion of 75% that the number of days in the taxation year that are in 2004 is of the number of days in the taxation year,

(d) that proportion of 65% that the number of days in the taxation year that are in 2005 is of the number of days in the taxation year, and

(e) that proportion of 35% that the number of days in the taxation year that are in 2006 is of the number of days in the taxation year.

The above does not apply for the purpose of applying any provision of Part XII of the *Income Tax Regulations* that makes reference to the income of a taxpayer.

Proposed Amendment — Repeal of 18(1)(m) by S.C. 2003, c. 28

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 194, will amend the application of the repeal of para. 18(1)(m) by S.C. 2003, c. 28 to replace "applicable to taxation years that begin after 2006. For each taxation year that ends after 2002 and begins before 2007," with "applicable to taxation years that begin after 2007. For each taxation year that ends after 2002 and begins before 2008," in force on Royal Assent.

Technical Notes: Subsection 2(5) of the *Act to Amend the Income Tax Act (Natural Resources)* repealed paragraph 18(1)(m) effective for taxation years that begin after 2006. Subsection 2(5) is being amended with the result that paragraph 18(1)(m) is now being repealed effective for taxation years that begin after 2007. This amendment is being made to accommodate a reimbursement made in a taxation year of the taxpayer that begins after 2006 and before 2008 in circumstances where the taxpayer's taxation year does not coincide with the taxation year or fiscal period of the recipient, as would normally be the case where the recipient of the reimbursement is a partnership of which the taxpayer is a member.

Related Provisions: 12(1)(o) — Royalties, etc., to be included in income; 66.2(5)"Canadian development expense"(e); 66.4(5)"Canadian oil and gas property expense"(a); 80.2 — Royalty reimbursements; 104(29) — Flow-through from trust to beneficiaries; 208 — Tax on certain royalties payable by tax-exempt person; 219(1)(k) — Reduction in branch tax; *Interpretation Act* 8(2.1), (2.2) — Application to exclusive economic zone and continental shelf.

History: Para. 18(1)(m) amended by 2003, c. 28, subsec. 2(2), applicable to amounts that become payable after December 20, 2002. The para. formerly read:

(m) any amount (other than a prescribed amount) paid or payable by virtue of an obligation imposed by statute or a contractual obligation substituted for an obligation imposed by statute to

(i) Her Majesty in right of Canada or a province,

(ii) an agent of Her Majesty in right of Canada or a province, or

(iii) a corporation, commission or association that is controlled by Her Majesty in right of Canada or a province or by an agent of Her Majesty in right of Canada or a province

as a royalty, tax (other than a tax or portion of a tax that can reasonably be considered to be a municipal or school tax), lease rental or bonus or as an amount, however described, that can reasonably be regarded as being in lieu of any such amount, or in respect of the late payment or non-payment of any such amount, and that can reasonably be regarded as being in relation to

(iv) the acquisition, development or ownership of a Canadian resource property, or

(v) the production in Canada

(A) of petroleum, natural gas or related hydrocarbons from a natural accumulation of petroleum or natural gas (other than a mineral resource) located in Canada or from an oil or gas well located in Canada,

(B) of sulphur from a natural accumulation of petroleum or natural gas located in Canada, from an oil or gas well located in Canada or from a mineral resource located in Canada,

(C) to any stage that is not beyond the prime metal stage or its equivalent, of metal, minerals (other than iron or petroleum or related hydrocarbons) or coal from a mineral resource located in Canada,

(D) to any stage that is not beyond the pellet stage or its equivalent, of iron from a mineral resource located in Canada, or

(E) to any stage that is not beyond the crude oil stage or its equivalent, of petroleum or related hydrocarbons from tar sands from a mineral resource located in Canada;

any amount (other than a prescribed amount) paid or payable by virtue of an obligation imposed by statute or a contractual obligation substituted for an obligation imposed by statute to

(i) Her Majesty in right of Canada or a province,

(ii) an agent of Her Majesty in right of Canada or a province, or

(iii) a corporation, commission or association that is controlled by Her Majesty in right of Canada or a province or by an agent of Her Majesty in right of Canada or a province

as a royalty, tax (other than a tax or portion of a tax that can reasonably be considered to be a municipal or school tax), lease rental or bonus or as an amount, however described, that can reasonably be regarded as being in lieu of any such amount, or in respect of the late payment or non-payment of any such amount, and that can reasonably be regarded as being in relation to

(iv) the acquisition, development or ownership of a Canadian resource property, or

(v) the production in Canada

(A) of petroleum, natural gas or related hydrocarbons from a natural accumulation of petroleum or natural gas (other than a mineral resource) located in Canada or from an oil or gas well located in Canada,

(B) of sulphur from a natural accumulation of petroleum or natural gas located in Canada, from an oil or gas well located in Canada or from a mineral resource located in Canada,

(C) to any stage that is not beyond the prime metal stage or its equivalent, of metal, minerals (other than iron or petroleum or related hydrocarbons) or coal from a mineral resource located in Canada,

(D) to any stage that is not beyond the pellet stage or its equivalent, of iron from a mineral resource located in Canada, or

(E) to any stage that is not beyond the crude oil stage or its equivalent, of petroleum or related hydrocarbons from tar sands from a mineral resource located in Canada;

Proposed Amendment — Repeal of 18(1)(m) by S.C. 2003, c. 28

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 194, will amend the application of the repeal of para. 18(1)(m) by S.C. 2003, c. 28 to replace "applicable to taxation years that begin after 2006. For each taxation year that ends after 2002 and begins before 2007," with "applicable to taxation years that begin after 2007. For each taxation year that ends after 2002 and begins before 2008," in force on Royal Assent.

Technical Notes: Subsection 2(5) of the *Act to Amend the Income Tax Act (Natural Resources)* repealed paragraph 18(1)(m) effective for taxation years that begin after 2006. Subsection 2(5) is being amended with the result that paragraph 18(1)(m) is now being repealed effective for taxation years that begin after 2007. This amendment is being made to accommodate a reimbursement made in a taxation year of the taxpayer that begins after 2006 and before 2008 in circumstances where the taxpayer's taxation year does not coincide with the taxation year or fiscal period of the recipient, as would normally be the case where the recipient of the reimbursement is a partnership of which the taxpayer is a member.

The portion of para. 18(1)(m) following subpara. (iii) amended by 1997, c. 25, subsec. 4(1), applicable to taxation years that begin after 1996. That portion formerly read:

as a royalty, tax (other than a tax or portion of a tax that may reasonably be considered to be a municipal or school tax), lease rental or bonus or as an amount, however described, that may reasonably be regarded as being in lieu of any such amount, and that may reasonably be regarded as being in relation to

(iv) the acquisition, development or ownership of a Canadian resource property, or

(v) the production in Canada of

(A) petroleum, natural gas or related hydrocarbons from a natural accumulation of petroleum or natural gas in Canada, other than a mineral resource, or from an oil or gas well in Canada,

(B) metal, minerals (other than iron or petroleum or related hydrocarbons) or coal from a mineral resource in Canada to any stage that is not beyond the prime metal stage or its equivalent,

(C) iron from a mineral resource in Canada to any stage that is not beyond the pellet stage or its equivalent, or

(D) petroleum or related hydrocarbons from tar sands from a mineral resource in Canada to any stage that is not beyond the crude oil stage or its equivalent;

Cl. 18(1)(m)(v)(B) substituted by 1994, c. 7, Sch II (1991, c. 49), subsec. 13(1), applicable to amounts becoming payable after July 13, 1990. Cl. (v)(B) formerly read:

(B) metal or minerals, other than iron or petroleum or related hydrocarbons, from a mineral resource in Canada to any stage that is not beyond the prime metal stage or its equivalent,

Selected Cases [para. 18(1)(m)]: *Cogema Resources Inc. v. R.*, [2005] 1 C.T.C. 2452 (TCC) (Provision not applicable once mineral resources removed from ground and subject to further transaction); *Mobil Oil Canada Ltd. v. R.*, [2002] 1 C.T.C. 55 (FCA) ("Royalty" not limited to commercial meaning); *Utah Mines Ltd. v. R.*, [1992] 1 C.T.C. 306 (FCA) (Deduction for mineral royalties paid to provincial government disallowed despite article III of *Canada-U.S. Tax Convention*).

Regulations: 1211 (prescribed amounts).

Remission Orders: *Syncrude Remission Order*, P.C. 1976-1026 (remission of tax on royalties etc. relating to the Syncrude Project).

Interpretation Bulletins: IT-438R2: Crown charges — resource properties in Canada.

Information Circulars: 86-3: Alberta Royalty Tax Credit — Individuals.

(n) **political contributions** — a political contribution;

Related Provisions: 127(3) — Tax credit for contributions to registered parties and candidates.

(o) **employee benefit plan contributions** — an amount paid or payable as a contribution to an employee benefit plan;

Related Provisions: 6(1)(a)(ii), 6(1)(g) — Employee benefit plan benefits taxable to employee; 12(1)(n.1) — Income inclusion — amounts received by employer from employee benefit plan; 18(10) — Exceptions where para. 18(1)(o) does not apply; 32.1 — Employee benefit plan deductions; 107.1 — Distribution by employee benefit plan.

Interpretation Bulletins: IT-502: Employee benefit plans and employee trusts.

(o.1) **salary deferral arrangement** — except as expressly permitted by paragraphs 20(1)(oo) and (pp), an outlay or expense made or incurred under a salary deferral arrangement in respect of another person, other than such an arrangement established primarily for the benefit of one or more non-resident employees in respect of services to be rendered outside Canada;

Related Provisions: 6(1)(a)(v) — Value of benefits; 6(1)(i), 56(1)(w) — Salary deferral arrangements — amounts included in income.

History: Para. 18(1)(o.1) amended by 1994, c. 8, Sch. II (1991, c. 49), subsec. 13(2), to add reference to para. 20(1)(pp) and to substitute "outside Canada" for "in a country other than Canada", applicable to 1986 *et seq.*

(o.2) **retirement compensation arrangement** — except as expressly permitted by paragraph 20(1)(r), contributions made under a retirement compensation arrangement;

(p) **limitation re personal services business expenses** — an outlay or expense to the extent that it was made or incurred by a corporation in a taxation year for the purpose of gaining or producing income from a personal services business, other than

(i) the salary, wages or other remuneration paid in the year to an incorporated employee of the corporation,

(ii) the cost to the corporation of any benefit or allowance provided to an incorporated employee in the year,

(iii) any amount expended by the corporation in connection with the selling of property or the nego-

tiating of contracts by the corporation if the amount would have been deductible in computing the income of an incorporated employee for a taxation year from an office or employment if the amount had been expended by the incorporated employee under a contract of employment that required the employee to pay the amount, and

(iv) any amount paid by the corporation in the year as or on account of legal expenses incurred by it in collecting amounts owing to it on account of services rendered

that would, if the income of the corporation were from a business other than a personal services business, be deductible in computing its income;

Related Provisions: 122.3(1.1) — Restrictions on overseas employment tax credit for incorporated employee; 207.6(3) — Retirement compensation arrangement for incorporated employee; 248(1) — extended definition of "salary or wages".

Interpretation Bulletins: IT-73R6: The small business deduction; IT-168R3: Athletes and players employed by football, hockey and similar clubs; IT-189R2: Corporations used by practising members of professions.

(q) **limitation re cancellation of lease** — an amount paid or payable by the taxpayer for the cancellation of a lease of property of the taxpayer leased by the taxpayer to another person, except to the extent permitted by paragraph 20(1)(z) or (z.1);

Interpretation Bulletins: IT-359R2: Premiums on leases.

(r) **certain automobile expenses** — an amount paid or payable by the taxpayer as an allowance for the use by an individual of an automobile to the extent that the amount exceeds an amount determined in accordance with prescribed rules, except where the amount so paid or payable is required to be included in computing the individual's income;

Regulations: 7306 (prescribed rules).

I.T. Technical News: 10 (1997 deduction limits and benefit rates for automobiles).

(s) **loans or lending assets** — any loss, depreciation or reduction in a taxation year in the value or amortized cost of a loan or lending asset of a taxpayer made or acquired by the taxpayer in the ordinary course of the taxpayer's business of insurance or the lending of money and not disposed of by the taxpayer in the year, except as expressly permitted by this Part;

History: Para. 18(1)(s) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 13(3), applicable to taxation years and fiscal periods beginning after June 17, 1987 that end after 1987. Para. 18(1)(s) formerly read:

(s) any loss, depreciation or reduction in the value or amortized cost of a loan or lending asset described in subparagraph 20(1)(l)(ii) of a taxpayer who was an insurer or whose ordinary business included the lending of money, acquired by the taxpayer in the ordinary course of the taxpayer's business of insurance or lending money and not disposed of by the taxpayer in the taxation year, except as expressly permitted by this Part; and

(t) **payments under [Income Tax] Act** — any amount paid or payable under this Act (other than tax paid or payable under Part XII.2 or Part XII.6);

Related Provisions: 20(1)(v) — Deduction for mining taxes; 20(1)(ll) — Deduction for interest repaid; 20(1)(nn) — Deduction for Part XII.6 tax; 20(1)(vv) — Deduction for countervailing and anti-dumping duties; 60(o) — Expenses of objection or appeal; 67.6 — Fines and penalties non-deductible; 104(30) — Deduction for Part XII.2 tax paid by trust; 161.1 — Offsetting of non-deductible interest against taxable interest of other years.

History: Para. 18(1)(t) amended by 1997, c. 25, subsec. 4(2), applicable to 1997 *et seq.* Para. (t) formerly read:

(t) any amount paid or payable under this Act.

Selected Cases [para. 18(1)(t)]: *Harrowston Corp. v. Canada*, [1997] 1 C.T.C. 101 (FCA) (Liability to pay tax did not result in deductible bad debt).

Interpretation Bulletins: IT-104R2: Deductibility of fines or penalties.

Information Circulars: 77-11: Sales tax reassessments — deductibility in computing income.

(u) **RSP/RIF [RRSP/RRIF] fees** — any amount paid or payable by the taxpayer for services in respect of a retirement savings plan or retirement income fund under which the taxpayer is the annuitant; and

Related Provisions: 18(11)(b) — No deduction for interest paid on money borrowed to make RRSP contribution.

History: Para. 18(1)(u) added by 1997, c. 25, subsec. 4(2), applicable to amounts paid or payable after March 5, 1996.

(v) **interest — authorized foreign bank** — where the taxpayer is an authorized foreign bank, an amount in respect of interest that would otherwise be deductible in computing the taxpayer's income from a business carried on in Canada, except as provided in section 20.2.

History: Para. 18(1)(v) added by 2001, c. 17, subsec. 9(1), applicable after June 27, 1999.

Proposed Addition — 18(1)(w)

(w) **underlying payments on qualified securities** — except as expressly permitted, an amount that is deemed by subsection 260(5.1) to have been received by another person as an amount described in any of paragraphs 260(5.1)(a) to (c).

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 55(1), will add para. 18(1)(w), applicable after 2001.

Technical Notes: Section 260 provides special rules relating to securities lending arrangements. Former subsection 260(6) prohibited a borrower, other than in certain circumstances, from deducting in computing its income an amount paid as a compensation payment pursuant to a securities lending arrangement.

As part of the restructuring of section 260, particularly subsection 260(6), new paragraph 18(1)(w) is enacted to prohibit a borrower from deducting a compensation payment, except where expressly permitted by the Act. This new paragraph, therefore, continues the function of the former subsection 260(6).

Selected Cases [subsec. 18(1)]: *Matt Harris & Son Ltd. v. R.*, [2001] 1 C.T.C. 2513 (TCC) (No "remoteness" test applicable to incurring of expense and generation of income).

(2) Limit on certain interest and property tax — Notwithstanding paragraph 20(1)(c), in computing the taxpayer's income for a particular taxation year from a business or property, no amount shall be deductible in respect of any expense incurred by the taxpayer in the year as, on account or in lieu of payment of, or in satisfaction of,

(a) interest on debt relating to the acquisition of land, or

(b) property taxes (not including income or profits taxes or taxes computed by reference to the transfer of property) paid or payable by the taxpayer in respect of land to a province or to a Canadian municipality,

unless, having regard to all the circumstances (including the cost to the taxpayer of the land in relation to the taxpayer's gross revenue, if any, from the land for the particular year or any preceding taxation year), the land can reasonably be considered to have been, in the year,

(c) used in the course of a business carried on in the particular year by the taxpayer, other than a business in the ordinary course of which land is held primarily for the purpose of resale or development, or

(d) held primarily for the purpose of gaining or producing income of the taxpayer from the land for the particular year,

except to the extent of the total of

(e) the amount, if any, by which the taxpayer's gross revenue, if any, from the land for the particular year exceeds the total of all amounts deducted in computing the taxpayer's income from the land for the year, and

(f) in the case of a corporation whose principal business is the leasing, rental or sale, or the development for lease, rental or sale, or any combination thereof, of real property owned by it, to or for a person with whom the corporation is dealing at arm's length, the corporation's base level deduction for the particular year.

Proposed Amendment — 18(2)(f)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 204(1), will amend para. 18(2)(f) by substituting "real or immovable property" for "real property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

Related Provisions: 10(1.1) — Cost of land inventory; 18(2.1) — Limitations; 18(2.2)–(2.5) — Base level deduction; 18(3) — Definitions; 53(1)(d.3) — Addition to adjusted cost base of share; 53(1)(e)(xi) — Addition to adjusted cost base of partnership interest; 53(1)(h) — Addition to adjusted cost base of land; 80(2)(b) — Application of debt forgiveness rules; 212(1)(b)(iii)(E) — Non-resident withholding tax — interest; 241(4)(b) — Communication of information; 248(1)"business".

Selected Cases [subsec. 18(2)]: *Ward v. R.*, [1988] 1 C.T.C. 336 (FCTD) (Deductibility of taxpayer's proportionate share of loss resulting from carrying costs of "golf course operation").

Interpretation Bulletins: IT-142R3: Settlement of debts on the winding-up of a corporation; IT-153R3: Land developers — subdivision and development costs and carrying charges on land; IT-355R2: Interest on loans to buy life insurance policies and annuity contracts, and interest on policy loans (archived); IT-360R2: Interest payable in a foreign currency; IT-373R2: Woodlots.

(2.1) Where taxpayer member of partnership — Where a taxpayer who is a member of a partnership was obligated to pay any amount as, on account or in lieu of payment of, or in satisfaction of, interest (in this subsection referred to as an "interest amount") on money that was borrowed by the taxpayer before April 1, 1977 and that was used to acquire land owned by the partnership before that day or on an obligation entered into by the taxpayer before April 1, 1977 to pay for land owned by the partnership before that day, and, in a taxation year of the taxpayer, either,

(a) the partnership has disposed of all or any portion of the land, or

(b) the taxpayer has disposed of all or any portion of the taxpayer's interest in the partnership

to a person other than a person with whom the taxpayer does not deal at arm's length, in computing the taxpayer's income for the year or any subsequent year, there may be deducted such portion of the taxpayer's interest amount

(c) that was, by virtue of subsection (2), not deductible in computing the income of the taxpayer for any previous taxation year,

(d) that was not deductible in computing the income of any other taxpayer for any taxation year,

(e) that was not included in computing the adjusted cost base to the taxpayer of any property, and

(f) that was not deductible under this subsection in computing the income of the taxpayer for any previous taxation year

as is reasonable having regard to the portion of the land or interest in the partnership, as the case may be, so disposed of.

(2.2) Base level deduction — For the purposes of this section, a corporation's base level deduction for a taxation year is the amount that would be the amount of interest, computed at the prescribed rate, for the year in respect of a loan of $1,000,000 outstanding throughout the year, unless the corporation is associated in the year with one or more other corporations in which case, except as otherwise provided in this section, its base level deduction for the year is nil.

Related Provisions: 18(2.3), (2.4) — Associated corporations; 18(2.5) — Special rules for base level deduction.

Regulations: 4301(c) (prescribed rate of interest).

Interpretation Bulletins: IT-153R3: Land developers — subdivision and development costs and carrying charges on land.

(2.3) Associated corporations — Notwithstanding subsection (2.2), if all of the corporations that are associated with each other in a taxation year have filed with the Minister in prescribed form an agreement whereby, for the purposes of this section, they allocate an amount to one or more of them for the taxation year and the amount so allocated or the total of the amounts so allocated, as the case may be, does not exceed $1,000,000, the base level deduction for the year for each of the corporations is the base level deduction that would be computed under subsection (2.2) in respect of the corporation if the reference in that subsection to $1,000,000 were read as a reference to the amount so allocated to it.

Related Provisions: 18(2.4) — Failure to file agreement.

Interpretation Bulletins: IT-153R3: Land developers — subdivision and development costs and carrying charges on land.

Forms: T2005: Agreement among associated corporations to allocate an amount to calculate their base level deduction; T2013: Agreement among associated corporations.

(2.4) Failure to file agreement — If any of the corporations that are associated with each other in a taxation year has failed to file with the Minister an agreement as contemplated by subsection (2.3) within 30 days after notice in writing by the Minister has been forwarded to any of them that such an agreement is required for the purpose of any assessment of tax under this Part, the Minister shall, for the purpose of this section, allocate an amount to one or more of them for the taxation year, which amount or the total of which amounts, as the case may be, shall equal $1,000,000 and in any such case, the amount so allocated to any corporation shall be deemed to be an amount allocated to the corporation pursuant to subsection (2.3).

Interpretation Bulletins: IT-153R3: Land developers — subdivision and development costs and carrying charges on land.

(2.5) Special rules for base level deduction — Notwithstanding any other provision of this section,

(a) where a corporation, in this paragraph referred to as the "first corporation", has more than one taxation year ending in the same calendar year and is associated in two or more of those taxation years with another corporation that has a taxation year ending in that calendar year, the base level deduction of the first corporation for each taxation year in which it is associated with the other corporation ending in that calen-

dar year is, subject to the application of paragraph (b), an amount equal to its base level deduction for the first such taxation year determined without reference to paragraph (b); and

(b) where a corporation has a taxation year that is less than 51 weeks, its base level deduction for the year is that proportion of its base level deduction for the year determined without reference to this paragraph that the number of days in the year is of 365.

Related Provisions: 18(2.2) — Base level deduction.

Interpretation Bulletins: IT-153R3: Land developers — subdivision and development costs and carrying charges on land.

Forms: T2005: Agreement among associated corporations to allocate an amount to calculate their base level deduction.

(3) Definitions — In subsection (2),

"interest on debt relating to the acquisition of land" includes

(a) interest paid or payable in a year in respect of borrowed money that cannot be identified with particular land but that may nonetheless reasonably be considered (having regard to all the circumstances) as interest on borrowed money used in respect of or for the acquisition of land, and

(b) interest paid or payable in the year by a taxpayer in respect of borrowed money that may reasonably be considered (having regard to all the circumstances) to have been used to assist, directly or indirectly,

(i) another person with whom the taxpayer does not deal at arm's length,

(ii) a corporation of which the taxpayer is a specified shareholder, or

(iii) a partnership of which the taxpayer's share of any income or loss is 10% or more,

to acquire land to be used or held by that person, corporation or partnership otherwise than as described in paragraph (2)(c) or (d), except where the assistance is in the form of a loan to that person, corporation or partnership and a reasonable rate of interest on the loan is charged by the taxpayer;

Related Provisions: 53(1)(h) — Addition to adjusted cost base of land.

Interpretation Bulletins: IT-153R3: Land developers — subdivision and development costs, etc.

"land" does not, except to the extent that it is used for the provision of parking facilities for a fee or charge, include

(a) any property that is a building or other structure affixed to land,

(b) the land subjacent to any property described in paragraph (a), or

(c) such land immediately contiguous to the land described in paragraph (b) that is a parking area, driveway, yard, garden or similar land as is necessary for the use of any property described in paragraph (a).

Interpretation Bulletins: IT-153R3: Land developers — subdivision and development costs, etc.

(3.1) Costs relating to construction of building or ownership of land — Notwithstanding any other provision of this Act, in computing a taxpayer's income for a taxation year,

(a) no deduction shall be made in respect of any outlay or expense made or incurred by the taxpayer (other than an amount deductible under paragraph 20(1)(a), (aa) or (qq) or subsection 20(29)) that can reasonably be regarded as a cost attributable to the period of the construction, renovation or alteration of a building by or on behalf of the taxpayer, a person with whom the taxpayer does not deal at arm's length, a corporation of which the taxpayer is a specified shareholder or a partnership of which the taxpayer's share of any income or loss is 10% or more and relating to the construction, renovation or alteration, or a cost attributable to that period and relating to the ownership during that period of land

(i) that is subjacent to the building, or

(ii) that

(A) is immediately contiguous to the land subjacent to the building,

(B) is used, or is intended to be used, for a parking area, driveway, yard, garden or any other similar use, and

(C) is necessary for the use or intended use of the building; and

(b) the amount of such an outlay or expense shall, to the extent that it would otherwise be deductible in computing the taxpayer's income for the year, be included in computing the cost or capital cost, as the case may be, of the building to the taxpayer, to the person with whom the taxpayer does not deal at arm's length, to the corporation of which the taxpayer is a specified shareholder or to the partnership of which the taxpayer's share of any income or loss is 10% or more, as the case may be.

Related Provisions: 18(3.2)–(3.7) — Interpretation and application; 20(29) — Deduction against rental income from building; 53(1)(d.3) — Addition to adjusted cost base of share; 53(1)(e)(xi) — Addition to adjusted cost base of partnership interest; 80(2)(b) — Application of debt forgiveness rules; 241(4) — Communication of information.

History: Para. 18(3.1)(b) amended by 2001, c. 17, subsec. 9(2), applicable to outlays and expenses made or incurred after December 21, 2000. The para. formerly read:

(b) the amount of such outlay or expense shall be included in computing the cost or capital cost, as the case may be, of the building to the taxpayer, to the person with whom the taxpayer does not deal at arm's length, to the corporation of which the taxpayer is a specified shareholder or to the partnership of which the taxpayer's share of any income or loss is 10% or more, as the case may be.

The opening words of para. 18(3.1)(a) substituted by 1994, c. 21, subsec. 11(1), applicable after 1990 except that, in its application to buildings acquired before 1990, the words "or subsection 20(29)" shall be read as ", subsection 20(29) or section 37 or 37.1". The opening words of that para. formerly read:

(a) no deduction shall be made in respect of any outlay or expense made or incurred by the taxpayer (other than an amount deductible under paragraph 20(1)(a), (aa) or (gg) or subsection 20(29)) that can reasonably be regarded as a cost attributable to the period of the construction, renovation or alteration of a building by or on behalf of the taxpayer, a person with whom the taxpayer does not deal at arm's length, a corporation of which the taxpayer is a specified shareholder or a partnership of which the taxpayer's share of any income or loss is 10% or more and relating to the construction, renovation or alteration, or a cost attributable to that period and relating to the ownership during that period of land

That portion of para. 18(3.1)(a) preceding subpara. (i) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 13(4), applicable to 1987 *et seq.* except that, in its application to buildings acquired before 1990, the reference in para. 18(3.1)(a) to "or subsection 20(29)" shall be read as ", subsection 20(29) or section 37 or 37.1". That portion formerly read:

(a) no deduction shall be made in respect of any outlay or expense made or incurred by the taxpayer, other than an amount deductible by reason of paragraph 20(1)(a) or (aa), that may reasonably be regarded as a cost attributable to the period of the construction, renovation or alteration of a building and relating to the construction, renovation or alteration or a cost attributable to that period and relating to the ownership during that period, of land

Interpretation Bulletins: IT-121R3: Election to capitalize cost of borrowed money (archived); IT-142R3: Settlement of debts on the winding-up of a corporation; IT-355R2: Interest on loans to buy life insurance policies and annuity contracts, and interest on policy loans (archived).

(3.2) Included costs — For the purposes of subsection (3.1), costs relating to the construction, renovation or alteration of a building or to the ownership of land include

(a) interest paid or payable by a taxpayer in respect of borrowed money that cannot be identified with a particular building or particular land, but that can reasonably be considered (having regard to all the circumstances) as interest on borrowed money used by the taxpayer in respect of the construction, renovation or alteration of a building or the ownership of land; and

(b) interest paid or payable by a taxpayer in respect of borrowed money that may reasonably be considered (having regard to all the circumstances) to have been used to assist, directly or indirectly,

(i) another person with whom the taxpayer does not deal at arm's length,

(ii) a corporation of which the taxpayer is a specified shareholder, or

(iii) a partnership of which the taxpayer's share of any income or loss is 10% or more,

to construct, renovate or alter a building or to purchase land, except where the assistance is in the form of a loan to that other person, corporation or partnership and a reasonable rate of interest on the loan is charged by the taxpayer.

(3.3) Completion — For the purposes of subsection (3.1), the construction, renovation or alteration of a building is completed at the earlier of the day on which the construction, renovation or alteration is actually completed and the day on which all or substantially all of the building is used for the purpose for which it was constructed, renovated or altered.

(3.4) Where subsec. (3.1) does not apply — Subsection (3.1) does not apply to prohibit a deduction in a taxation year of the specified percentage of any outlay or expense described in that subsection made or incurred before 1992 by

(a) a corporation whose principal business is throughout the year the leasing, rental or sale, or the development for lease, rental or sale, or any combination thereof, of real property owned by it to or for a person with whom the corporation is dealing at arm's length, or

(b) a partnership

(i) each member of which is a corporation described in paragraph (a), and

(ii) the principal business of which is throughout the year the leasing, rental or sale, or the development for lease, rental or sale, or any combination thereof, of real property held by it, to or for a person with whom each member of the partnership is dealing at arm's length,

Proposed Amendment — 18(3.4)(a), (b)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 204(2), will amend paras. 18(3.4)(a) and (b) by substituting "real or immovable property" for "real property" in each, to come into force on Royal Assent.

Technical Notes: See under 12(4).

and for the purposes of this subsection, "specified percentage" means, in respect of an outlay or expense made or incurred in 1988, 80%, in 1989, 60%, in 1990, 40%, and in 1991, 20%.

(3.5) Idem — Subsection (3.1) does not apply in respect of an outlay or expense in respect of a building or the land described in subparagraph (3.1)(a)(i) or (ii) in respect of the building,

(a) where the construction, renovation or alteration of the building was in progress on November 12, 1981,

(b) where the installation of the footings or other base support of the building commenced after November 12, 1981 and before 1982,

(c) if, in the case of a new building being constructed in Canada or an existing building being renovated or altered in Canada, arrangements, evidenced in writing, for the construction, renovation or alteration were substantially advanced before November 13, 1981 and the installation of footings or other base support for the new building or the renovation or alteration of the existing building, as the case may be, commenced before June 1, 1982, or

(d) if, in the case of a new building being constructed in Canada, the taxpayer was obligated to construct the building under the terms of an agreement in writing entered into before November 13, 1981 and arrangements, evidenced in writing, respecting the construction of the building were substantially advanced before June 1, 1982 and the installation of footings or other base support for the building commenced before 1983,

and the construction, renovation or alteration, as the case may be, of the building proceeds after 1982 without undue delay (having regard to acts of God, labour disputes, fire, accidents or unusual delay by common carriers or suppliers of materials or equipment).

Related Provisions: 18(3.7) — Commencement of installation of footings.

History: That portion of subsec. 18(3.5) preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 13(5), applicable to outlays and expenses made or incurred after May 9, 1985. That portion formerly read:

(3.5) Idem — Subsection (3.1) does not apply in respect of an outlay or expense in respect of a building or the land described in subparagraph (3.1)(a)(i) or (ii),

(3.6) Undue delay — For the purposes of subsection (3.5), where more than one building is being constructed under any of the circumstances described in that subsection on one site or on immediately contiguous sites, no undue delay shall be regarded as occurring in the construction of any such building if construction of at least one such building proceeds after 1982 without undue delay and continuous construction of all other such buildings proceeds after 1983 without undue delay.

(3.7) Commencement of footings — For the purposes of this section, the installation of footings or other base support for a building shall be deemed to commence on the first placement of concrete, pilings or other material that is to provide permanent support for the building.

(4) Limitation re deduction of interest by certain corporations [thin capitalization] — Notwithstanding any other provision of this Act, in computing the income for a taxation year of a corporation resident in Canada from a business or property, no deduction shall be made in respect of that proportion of any amount otherwise deductible in computing its income for the year in

respect of interest paid or payable by it on outstanding debts to specified non-residents that

(a) the amount, if any, by which

(i) the average of all amounts each of which is, in respect of a calendar month that ends in the year, the greatest total amount at any time in the month of the corporation's outstanding debts to specified non-residents,

exceeds

(ii) two times the total of

(A) the retained earnings of the corporation at the beginning of the year, except to the extent that those earnings include retained earnings of any other corporation,

(B) the average of all amounts each of which is the corporation's contributed surplus at the beginning of a calendar month that ends in the year, to the extent that it was contributed by a specified non-resident shareholder of the corporation, and

(C) the average of all amounts each of which is the corporation's paid-up capital at the beginning of a calendar month that ends in the year, excluding the paid-up capital in respect of shares of any class of the capital stock of the corporation owned by a person other than a specified non-resident shareholder of the corporation,

is of

(b) the amount determined under subparagraph (a)(i) in respect of the corporation for the year.

Related Provisions: 18(5) — Meaning of certain expressions; 18(5.1) — Person deemed not to be specified shareholder; 18(6) — Loan made on conditions; Canada-U.S. Tax Treaty:Art. XXV:8 — Thin capitalization rules grandfathered from treaty non-discrimination provision.

History: Para. 18(4)(a) amended by 2001, c. 17, subsec. 9(3), applicable to taxation years that begin after 2000. The para. formerly read:

(a) the amount, if any, by which

(i) the greatest aggregate amount that the corporation's outstanding debts to specified non-residents were at any time in the year,

exceeds

(ii) 3 times the total of

(A) the retained earnings of the corporation at the commencement of the year, except to the extent that those earnings include retained earnings of any other corporation,

(B) the corporation's contributed surplus at the commencement of the year, to the extent that it was contributed by a specified non-resident shareholder of the corporation, and

(C) the greater of the corporation's paid-up capital at the commencement of the year and the corporation's paid-up capital at the end of the year, excluding the paid-up capital in respect of shares of any class of the capital stock of the corporation owned by a person other than a specified non-resident shareholder of the corporation,

Selected Cases [subsec. 18(4)]: *Specialty Manufacturing Ltd. v. R.*, [1999] 3 C.T.C. 82 (FCA); aff'g [1998] 1 C.T.C. 2095 (TCC) (U.S. Convention did not prevent application of provision); *Uddeholm Ltd. v. R.*, [1987] 2 C.T.C. 236 (FCTD) (Thin capitalization rules apply on date interest on debt becomes payable); *R. v. Thyssen Canada Ltd.*, [1987] 1 C.T.C. 112 (FCA); leave to appeal to SCC refused (1987), 79 N.R. 400 (note) (Late-payment charges not included in price paid attributed to payments of interest on outstanding debts; charges disallowed).

Interpretation Bulletins: IT-59R3: Interest on debts owing to specified non-residents (thin capitalization); IT-121R3: Election to capitalize cost of borrowed money (archived).

Information Circulars: 87-2R: International transfer pricing.

Advance Tax Rulings: ATR-43: Utilization of a non-resident-owned investment corporation as a holding corporation.

I.T. Technical News: 15 (back-to-back loans in relation to subsections 18(4) and 18(6)); 16 (*Wildenburg Holdings* case).

(5) Definitions — Notwithstanding any other provision of this Act (other than subsection (5.1)), in this subsection and subsections (4) to (6),

History: The introductory portion of subsec. 18(5) substituted by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 8(1), applicable to 1993 *et seq.* and, where a corporation so elects by notifying the Minister of National Revenue in writing before December 11, 1993, to its 1989 to 1992 taxation years also. That portion formerly read:

(5) Meaning of certain expressions — Notwithstanding any other provision of this Act, in this subsection and subsections (4) and (6),

"outstanding debts to specified non-residents" of a corporation at any particular time in a taxation year means

(a) the total of all amounts each of which is an amount outstanding at that time as or on account of a debt or other obligation to pay an amount

(i) that was payable by the corporation to a person who was, at any time in the year,

(A) a specified non-resident shareholder of the corporation, or

(B) a non-resident person, or a non-resident-owned investment corporation, who was not dealing at arm's length with a specified shareholder of the corporation, and

(ii) on which any amount in respect of interest paid or payable by the corporation is or would be, but for subsection (4), deductible in computing the corporation's income for the year,

but does not include

(b) an amount outstanding at the particular time as or on account of a debt or other obligation to pay an amount to

(i) a non-resident insurance corporation to the extent that the obligation was, for the non-resident insurance corporation's taxation year that included the particular time, designated insurance property in respect of an insurance business carried on in Canada through a permanent establishment as defined by regulation, or

(ii) an authorized foreign bank, if the bank uses or holds the obligation at the particular time in its Canadian banking business;

History: Para. (b) of the definition "outstanding debts to specified non-residents" in subsec. 18(5) amended by 2001, c. 17, subsec. 9(4), applicable after June 27, 1999. The para. formerly read:

(b) an amount outstanding at the particular time as or on account of a debt or other obligation to pay an amount to a non-resident insurance corporation to the extent that the amount was, for the non-resident insurance corporation's taxation year that included the particular time, designated insurance property in respect of an insurance business carried on in Canada through a permanent establishment as defined by regulation;

Para. (b) of the definition "outstanding debts to specified non-residents" in subsec. 18(5) amended by 1997, c. 25, subsec. 4(3), applicable to 1997 *et seq.* Para. (b) formerly read:

(b) any amount outstanding at the particular time as or on account of a debt or other obligation to pay an amount to a non-resident insurance corporation where the amount outstanding at the particular time was, in the non-resident insurance corporation's taxation year that included the particular time, included, for the purposes of section 138, as property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business through a permanent establishment (within the meaning assigned for the purpose of subsection 112(2)) in Canada,

Para. (b) of "outstanding debts to specified non-residents" in subsec. 18(5) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 8(2), applicable to 1991 *et seq.* and, where a corporation so elects by notifying the Minister of National Revenue in writing before December 11, 1993, to its 1985 to 1990 taxation years also. Para. (b) formerly read:

> (b) where the corporation is controlled by a non-resident insurance corporation, the total of all amounts each of which is an amount outstanding at the particular time as or on account of a debt or other obligation to pay an amount to the non-resident insurance corporation where the amount outstanding at the particular time has, in the non-resident insurance corporation's taxation year that included the particular time, been included as property used by it in the year in, or held by it in the year in the course of (within the meaning assigned by the definition "property used by it in the year in, or held by it in the year in the course of" in subsection 138(12)) carrying on an insurance business in Canada;

Regulations: 8201 (permanent establishment).

Advance Tax Rulings: ATR-43: Utilization of a non-resident-owned investment corporation as a holding corporation.

"specified non-resident shareholder" of a corporation at any time means a specified shareholder of the corporation who was at that time a non-resident person or a non-resident-owned investment corporation;

"specified shareholder" of a corporation at any time means a person who at that time, either alone or together with persons with whom that person is not dealing at arm's length, owns

> (a) shares of the capital stock of the corporation that give the holders thereof 25% or more of the votes that could be cast at an annual meeting of the shareholders of the corporation, or
>
> (b) shares of the capital stock of the corporation having a fair market value of 25% or more of the fair market value of all of the issued and outstanding shares of the capital stock of the corporation,

and, for the purpose of determining whether a particular person is a specified shareholder of a corporation at any time, where the particular person or a person with whom the particular person is not dealing at arm's length has at that time a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently

> (c) to, or to acquire, shares in a corporation or to control the voting rights of shares in a corporation, or
>
> (d) to cause a corporation to redeem, acquire or cancel any of its shares (other than shares held by the particular person or a person with whom the particular person is not dealing at arm's length),

the particular person or the person with whom the particular person is not dealing at arm's length, as the case may be, shall be deemed at that time to own the shares referred to in paragraph (c) and the corporation referred to in paragraph (d) shall be deemed at that time to have redeemed, acquired or cancelled the shares referred to in paragraph (d), unless the right is not exercisable at that time because the exercise thereof is contingent on the death, bankruptcy or permanent disability of an individual.

Related Provisions: 18(5.1) — Person deemed not to be specified shareholder.

History: Definition "specified shareholder" in subsec. 18(5) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 8(3), applicable to 1993 *et seq.* and, where a corporation so elects by notifying the Minister of National Revenue in writing before December 11, 1993, to its 1989 to 1992 taxation years also. That definition formerly read:

> "specified shareholder" of a corporation at any time means a shareholder of the corporation who at that time, either alone or together with persons with whom that shareholder was not dealing at arm's length, owned 25% or more of the issued shares of any class of the capital stock of the corporation.

Interpretation Bulletins: IT-59R3: Interest on debts owing to specified non-residents (thin capitalization).

(5.1) Person deemed not to be specified shareholder — For the purposes of subsections (4) to (6), where

> (a) a particular person would, but for this subsection, be a specified shareholder of a corporation at any time,
>
> (b) there was in effect at that time an agreement or arrangement under which, on the satisfaction of a condition or the occur[r]ence of an event that it is reasonable to expect will be satisfied or will occur, the particular person will cease to be a specified shareholder, and
>
> (c) the purpose for which the particular person became a specified shareholder was the safeguarding of rights or interests of the particular person or a person with whom the particular person is not dealing at arm's length in respect of any indebtedness owing at any time to the particular person or a person with whom the particular person is not dealing at arm's length,

the particular person shall be deemed not to be a specified shareholder of the corporation at that time.

History: Subsec. 18(5.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 8(4), applicable to 1993 *et seq.* and, where a corporation so elects by notifying the Minister of National Revenue in writing before December 11, 1993, to its 1989 to 1992 taxation years also.

(6) Loans made on condition — Where any loan (in this subsection referred to as the "first loan") has been made

> (a) by a specified non-resident shareholder of a corporation, or
>
> (b) by a non-resident person, or a non-resident-owned investment corporation, who was not dealing at arm's length with a specified shareholder of a corporation,

to another person on condition that a loan (in this subsection referred to as the "second loan") be made by any person to a particular corporation resident in Canada, for the purposes of subsections (4) and (5), the lesser of

> (c) the amount of the first loan, and
>
> (d) the amount of the second loan

shall be deemed to be a debt incurred by the particular corporation to the person who made the first loan.

Related Provisions: 18(5.1) — Person deemed not to be specified shareholder.

Interpretation Bulletins: IT-59R3: Interest on debts owing to specified non-residents (thin capitalization).

I.T. Technical News: 15 (back-to-back loans in relation to subsections 18(4) and 18(6)).

(7) [Repealed under former Act]

(8) [Repealed]

History: Subsec. 18(8) repealed by 2001, c. 17, subsec. 9(5), applicable to taxation years that begin after 2000.

> (8) Where subsec. (4) does not apply — Subsection (4) does not apply in computing the income for a taxation year of a corporation whose principal business in Canada throughout the year was the developing or manufacturing of aircraft or aircraft components.

(9) Limitation respecting prepaid expenses — Notwithstanding any other provision of this Act,

> (a) in computing a taxpayer's income for a taxation year from a business or property (other than income from a business computed in accordance with the

method authorized by subsection 28(1)), no deduction shall be made in respect of an outlay or expense to the extent that it can reasonably be regarded as having been made or incurred

(i) as consideration for services to be rendered after the end of the year,

(ii) as, on account of, in lieu of payment of or in satisfaction of, interest, taxes (other than taxes imposed on an insurer in respect of insurance premiums of a non-cancellable or guaranteed renewable accident and sickness insurance policy, or a life insurance policy other than a group term life insurance policy that provides coverage for a period of 12 months or less), rent or royalties in respect of a period that is after the end of the year, or

(iii) as consideration for insurance in respect of a period after the end of the year, other than

(A) where the taxpayer is an insurer, consideration for reinsurance, and

(B) consideration for insurance on the life of an individual under a group term life insurance policy where all or part of the consideration is for insurance that is (or would be if the individual survived) in respect of a period that ends more than 13 months after the consideration is paid;

(b) such portion of each outlay or expense (other than an outlay or expense of a corporation, partnership or trust as, on account of, in lieu of payment of or in satisfaction of, interest) made or incurred as would, but for paragraph (a), be deductible in computing a taxpayer's income for a taxation year shall be deductible in computing the taxpayer's income for the subsequent year to which it can reasonably be considered to relate;

(c) for the purposes of section 37.1, such portion of each qualified expenditure (within the meaning assigned by subsection 37.1(5)) as was made by a taxpayer in a taxation year and as would, but for paragraph (a), have been deductible in computing the taxpayer's income for the year shall be deemed

(i) not to be a qualified expenditure made by the taxpayer in the year, and

(ii) to be a qualified expenditure made by the taxpayer in the subsequent year to which the expenditure can reasonably be considered to relate;

(d) for the purpose of paragraph (a), an outlay or expense of a taxpayer is deemed not to include any payment referred to in subparagraph 37(1)(a)(ii) or (iii) that

(i) is made by the taxpayer to a person or partnership with which the taxpayer deals at arm's length, and

(ii) is not an expenditure described in subparagraph 37(1)(a)(i); and

(e) for the purposes of section 37 and the definition "qualified expenditure" in subsection 127(9), the portion of an expenditure that is made or incurred by a taxpayer in a taxation year and that would, but for paragraph (a), have been deductible under section 37 in computing the taxpayer's income for the year, is deemed

(i) not to be made or incurred by the taxpayer in the year, and

(ii) to be made or incurred by the taxpayer in the subsequent taxation year to which the expenditure can reasonably be considered to relate.

Related Provisions: 6(1)(a)(i), 6(4) — Group term life insurance premiums — taxable benefit; 18(9.01) — Group term life insurance — deductibility of premiums; 18(9.02) — Application to insurers; 20(1)(m.1) — Manufacturer's warranty reserve; 20(1)(m.2) — Repayment of amount previously included in income; 87(2)(j.2) — Amalgamations — prepaid expenses.

History: Subpara. 18(9)(a)(ii) amended by 2001, c. 17, subsec. 9(6), applicable to taxation years that begin after 1999 except that, where a taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes June 14, 2001, the amendment applies to taxation years that end after 1997. The subpara. formerly read:

(ii) as, on account or in lieu of payment of, or in satisfaction of, interest, taxes (other than taxes imposed on insurance premiums), rent or royalty in respect of a period after the end of the year, or

Para. 18(9)(d) amended and (e) added by 1996, c. 21, subsec. 5(1), para. (d) applicable to payments made after 1995, and para. (e) applicable to expenditures made or incurred at any time. Para. (d) formerly read:

(d) for the purposes of paragraph (a), an outlay or expense shall be deemed not to include any payment referred to in clause 37(1)(a)(ii)(E).

Subpara. 18(9)(a)(iii) amended by 1995, c. 3, subsec. 6(1), applicable to premiums paid after February 1994 for insurance. Subpara. (iii) formerly read:

(iii) as consideration for insurance in respect of a period after the end of the year (other than an amount paid in respect of reinsurance by an insurer);

Para. 18(9)(b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 8(5), applicable with respect to amounts paid as, on account of, in lieu of payment of or in satisfaction of, interest in respect of a period or part thereof that is after 1991. Para. 18(9)(b) formerly read:

(b) such portion of each outlay or expense made or incurred as would, but for paragraph (a), have been deductible in computing a taxpayer's income for a taxation year shall be deductible in computing the taxpayer's income for the subsequent year to which it can reasonably be considered to relate;

Interpretation Bulletins: IT-109R2: Unpaid amounts; IT-151R5: Scientific research and experimental development expenditures; IT-211R: Membership dues — associations and societies; IT-233R: Lease-option agreements; sale-leaseback agreements (archived); IT-341R3: Expenses of issuing or selling shares, units in a trust, interests in a partnership or syndicate, and expenses of borrowing money; IT-417R2: Prepaid expenses and deferred charges.

I.T. Technical News: 25 (health and welfare trusts).

(9.01) Group term life insurance — Where

(a) a taxpayer pays a premium after February 1994 and before 1997 under a group term life insurance policy for insurance on the life of an individual,

(b) the insurance is for the remainder of the individual's lifetime, and

(c) no further premiums will be payable for the insurance,

no amount may be deducted in computing the taxpayer's income for a taxation year from a business or property in respect of the premium except that there may be so deducted,

(d) where the year is the taxation year in which the premium was paid or a subsequent taxation year and the individual is alive at the end of the year, the lesser of

(i) the amount determined by the formula

$$A - B$$

and

(ii) 1/3 of the amount determined by the formula

$$A \times \frac{C}{365}$$

where

A is the amount that would, if this Act were read without reference to this subsection, be deductible in respect of the premium in computing the taxpayer's income,

B is the total amount deductible in respect of the premium in computing the taxpayer's income for preceding taxation years, and

C is the number of days in the year, and

(e) where the individual died in the year, the amount determined under subparagraph (d)(i).

Related Provisions: 6(4) — Taxable benefit from premiums paid by employer; 87(2)(j.2) — Amalgamations — prepaid expenses; 257 — Formula cannot calculate to less than zero.

History: Subsec. 18(9.01) added by 1995, c. 3, subsec. 6(2), applicable to premiums paid after February 1994 for insurance.

(9.02) Application of subsec. (9) to insurers — For the purpose of subsection (9), an outlay or expense made or incurred by an insurer on account of the acquisition of an insurance policy (other than a non-cancellable or guaranteed renewable accident and sickness insurance policy or a life insurance policy other than a group term life insurance policy that provides coverage for a period of 12 months or less) is deemed to be an expense incurred as consideration for services rendered consistently throughout the period of coverage of the policy.

History: Subsec. 18(9.02) added by 2001, c. 17, subsec. 9(7), applicable to taxation years that begin after 1999 except that, where a taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes June 14, 2001, the subsec. applies to taxation years that end after 1997.

(9.1) Penalties, bonuses and rate-reduction payments — Subject to subsection 142.4(10), where at any time a payment, other than a payment that

(a) can reasonably be considered to have been made in respect of the extension of the term of a debt obligation or in respect of the substitution or conversion of a debt obligation to another debt obligation or share, or

(b) is contingent or dependent on the use of or production from property or is computed by reference to revenue, profit, cash flow, commodity price or any other similar criterion or by reference to dividends paid or payable to shareholders of any class of shares of the capital stock of a corporation,

is made to a person or partnership by a taxpayer in the course of carrying on a business or earning income from property in respect of borrowed money or on an amount payable for property acquired by the taxpayer (in this subsection referred to as a "debt obligation")

(c) as consideration for a reduction in the rate of interest payable by the taxpayer on the debt obligation, or

(d) as a penalty or bonus payable by the taxpayer because of the repayment by the taxpayer of all or part of the principal amount of the debt obligation before its maturity,

the payment shall, to the extent that it can reasonably be considered to relate to, and does not exceed the value at that time of, an amount that, but for the reduction described in paragraph (c) or the repayment described in paragraph (d), would have been paid or payable by the taxpayer as interest on the debt obligation for a taxation year of the taxpayer ending after that time, be deemed,

(e) for the purposes of this Act, to have been paid by the taxpayer and received by the person or partnership at that time as interest on the debt obligation, and

(f) for the purpose of computing the taxpayer's income in respect of the business or property for the year, to have been paid or payable by the taxpayer in that year as interest pursuant to a legal obligation to pay interest,

(i) in the case of a reduction described in paragraph (c), on the debt obligation, and

(ii) in the case of a repayment described in paragraph (d),

(A) where the repayment was in respect of all or part of the principal amount of the debt obligation that was borrowed money, except to the extent that the borrowed money was used by the taxpayer to acquire property, on borrowed money used in the year for the purpose for which the borrowed money that was repaid was used, and

(B) where the repayment was in respect of all or part of the principal amount of the debt obligation that was either borrowed money used to acquire property or an amount payable for property acquired by the taxpayer, on the debt obligation to the extent that the property or property substituted therefor is used by the taxpayer in the year for the purpose of gaining or producing income therefrom or for the purpose of gaining or producing income from a business.

Related Provisions: 18(9.2) — Prepaid interest on debt obligations; 20(1)(e) — Expenses re financing; 87(2)(j.6) — Amalgamations — continuing corporation; 248(5) — Substituted property.

History: The opening words of subsec. 18(9.1) amended by 1998, c. 19, subsec. 79(1), applicable to taxation years that end after February 22, 1994. The opening words formerly read:

(9.1) Where at any time a payment, other than a payment that

Subsec. 18(9.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 13(6), applicable with respect to payments made after 1984 except that, in its application with respect to payments made before July 13, 1990, subsec. (9.1) shall be read without reference to para. (e).

Interpretation Bulletins: IT-104R2: Deductibility of fines or penalties; IT-341R3: Expenses of issuing or selling shares, units in a trust, interests in a partnership or syndicate, and expenses of borrowing money.

(9.2) Interest on debt obligations — For the purposes of this Part, the amount of interest payable on borrowed money or on an amount payable for property (in this subsection and subsections (9.3) to (9.8) referred to as the "debt obligation") by a corporation, partnership or trust (in this subsection and subsections (9.3) to (9.7) referred to as the "borrower") in respect of a taxation year shall, notwithstanding subparagraph (9.1)(f)(i), be deemed to be an amount equal to the lesser of

(a) the amount of interest, not in excess of a reasonable amount, that would be payable on the debt obligation by the borrower in respect of the year if no amount had been paid before the end of the year in satisfaction of the obligation to pay interest on the debt obligation in respect of the year and if the amount outstanding at each particular time in the year that is

after 1991 on account of the principal amount of the debt obligation were the amount, if any, by which

(i) the amount outstanding at the particular time on account of the principal amount of the debt obligation

exceeds the total of

(ii) all amounts each of which is an amount paid before the particular time in satisfaction, in whole or in part, of the obligation to pay interest on the debt obligation in respect of a period or part thereof that is after 1991, after the beginning of the year, and after the time the amount was so paid (other than a period or part thereof that is in the year where no such amount was paid before the particular time in respect of a period, or part of a period, that is after the end of the year), and

(iii) the amount, if any, by which

(A) the total of all amounts of interest payable on the debt obligation (determined without reference to this subsection) by the borrower in respect of taxation years ending after 1991 and before the year (to the extent that the interest does not exceed a reasonable amount)

exceeds

(B) the total of all amounts of interest deemed by this subsection to have been payable on the debt obligation by the borrower in respect of taxation years ending before the year, and

(b) the amount, if any, by which

(i) the total of all amounts of interest payable on the debt obligation (determined without reference to this subsection) by the borrower in respect of the year or taxation years ending after 1991 and before the year (to the extent that the interest does not exceed a reasonable amount)

exceeds

(ii) the total of all amounts of interest deemed by this subsection to have been payable on the debt obligation by the borrower in respect of taxation years ending before the year.

Related Provisions: 18(9.3)–(9.8) — Prepaid interest on debt obligations.

History: Subsec. 18(9.2) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 8(6), applicable to 1992 *et seq.*

Interpretation Bulletins: IT-417R2: Prepaid expenses and deferred charges.

(9.3) Interest on debt obligations — Where at any time in a taxation year of a borrower a debt obligation of the borrower is settled or extinguished or the holder of the obligation acquires or reacquires property of the borrower in circumstances in which section 79 applies in respect of the debt obligation and the total of

(a) all amounts each of which is an amount paid at or before that time in satisfaction, in whole or in part, of the obligation to pay interest on the debt obligation in respect of a period or part of a period that is after that time, and

(b) all amounts of interest payable on the debt obligation (determined without reference to subsection (9.2)) by the borrower in respect of taxation years ending after 1991 and before that time, or in respect of periods, or parts of periods, that are in such years and before that time (to the extent that the interest does not exceed a reasonable amount),

exceeds the total of

(c) all amounts of interest deemed by subsection (9.2) to have been payable on the debt obligation by the borrower in respect of taxation years ending before that time, and

(d) the amount of interest that would be deemed by subsection (9.2) to have been payable on the debt obligation by the borrower in respect of the year if the year had ended immediately before that time,

(which excess is in this subsection referred to as the "excess amount"), the following rules apply:

(e) for the purpose of applying section 79 in respect of the borrower, the principal amount at that time of the debt obligation shall be deemed to be equal to the amount, if any, by which

(i) the principal amount at that time of the debt obligation

exceeds

(ii) the excess amount, and

(f) the excess amount shall be deducted at that time in computing the forgiven amount in respect of the obligation (within the meaning assigned by subsection 80(1)).

Related Provisions: 80(1)"forgiven amount"B(c) — Deduction from forgiven amount as per 18(9.3)(f).

History: The portion of subsec. 18(9.3) before para. (b) and paras. (e) and (f) amended by 1995, c. 21, subsecs. 5(1), (2), the opening words of subsec. 18(9.3) and para. (e) applicable to 1992 *et seq.* and paras. (a) and (f) applicable to taxation years that end after February 21, 1994, except that they do not apply to any obligation settled or extinguished

(a) before February 22, 1994;

(b) after February 21, 1994

(i) under the terms of an agreement in writing entered into on or before that date, or

(ii) under the terms of any amendment to such an agreement, where that amendment was entered into in writing before July 12, 1994 and the amount of the settlement or extinguishment was not substantially greater than the settlement or extinguishment provided under the terms of the agreement;

(c) before 1996 pursuant to a restructuring of debt in connection with a proceeding commenced in a court in Canada before February 22, 1994;

(d) before 1996 in connection with a proposal (or notice of intention to make a proposal) that was filed under the *Bankruptcy and Insolvency Act*, or similar legislation of a country other than Canada, before February 22, 1994; or

(e) before 1996 in connection with a written offer that was made by, or communicated to, the holder of the obligation before February 22, 1994.

That portion of subsec. 18(9.3) before para. (b) and paras. (e) and (f) formerly read:

(9.3) Idem — Where at any time in a taxation year of a borrower a debt obligation of the borrower has been settled or extinguished and the total of

(a) all amounts each of which is an amount paid before that time in satisfaction, in whole or in part, of the obligation to pay interest on the debt obligation in respect of a period or part thereof that is after that time, and

. . . . .

(e) for the purpose of applying paragraph 79(c) in respect of the borrower, where the debt obligation was extinguished in circumstances to which section 79 applies, the amount outstanding at that time on account of the principal amount of the debt obligation shall be deemed to be the amount, if any, by which

(i) the amount outstanding at that time on account of the principal amount of the debt obligation

exceeds

(ii) the excess amount, and

(f) for the purpose of applying section 80 in respect of the borrower, where the debt obligation was settled or extinguished in circumstances to which that section applies, the debt obligation shall be deemed to have been settled or extinguished by the payment of an amount equal to the total of

(i) the amount, if any, of the payment made to settle or extinguish the debt obligation (determined without reference to this subsection), and

(ii) the excess amount.

Subsec. 18(9.3) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 8(6), applicable to 1992 *et seq.*

Interpretation Bulletins: IT-417R2: Prepaid expenses and deferred charges.

(9.4) Idem — Where an amount is paid at any time by a person or partnership in respect of a debt obligation of a borrower

(a) as, on account of, in lieu of payment of or in satisfaction of, interest on the debt obligation in respect of a period or part thereof that is after 1991 and after that time, or

(b) as consideration for a reduction in the rate of interest payable on the debt obligation (excluding, for greater certainty, a payment described in paragraph (9.1)(a) or (b)) in respect of a period or part thereof that is after 1991 and after that time,

that amount shall be deemed, for the purposes of subsection (9.5) and, subject to that subsection, for the purposes of clause (9.2)(a)(iii)(A), subparagraph (9.2)(b)(i), paragraph (9.3)(b) and subsection (9.6), to be an amount of interest payable on the debt obligation by the borrower in respect of that period or part thereof and shall be deemed, for the purposes of subparagraph (9.2)(a)(ii) and paragraph (9.3)(a), to be an amount paid at that time in satisfaction of the obligation to pay interest on the debt obligation in respect of that period or part thereof.

History: Subsec. 18(9.4) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 8(6), applicable to 1992 *et seq.*

Interpretation Bulletins: IT-417R2: Prepaid expenses and deferred charges.

(9.5) Idem — Where the amount of interest payable on a debt obligation (determined without reference to subsection (9.2)) by a borrower in respect of a particular period or part thereof that is after 1991 can reasonably be regarded as an amount payable as consideration for

(a) a reduction in the amount of interest that would otherwise be payable on the debt obligation in respect of a subsequent period, or

(b) a reduction in the amount that was or may be paid before the beginning of a subsequent period in satisfaction of the obligation to pay interest on the debt obligation in respect of that subsequent period

(determined without reference to the existence of, or the amount of any interest paid or payable on, any other debt obligation), that amount shall, for the purposes of clause (9.2)(a)(iii)(A), subparagraph (9.2)(b)(i), paragraph (9.3)(b) and subsection (9.6), be deemed to be an amount of interest payable on the debt obligation by the borrower in respect of the subsequent period and not to be an amount of interest payable on the debt obligation by the borrower in respect of the particular period and shall, when paid, be deemed for the purposes of subparagraph (9.2)(a)(ii) and paragraph (9.3)(a) to be an amount paid in satisfaction of the obligation to pay interest on the debt obligation in respect of the subsequent period.

Related Provisions: 18(9.4) — Prepaid interest on debt obligations.

History: Subsec. 18(9.5) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 8(6), applicable to 1992 *et seq.*

Interpretation Bulletins: IT-417R2: Prepaid expenses and deferred charges.

(9.6) Idem — Where the liability in respect of a debt obligation of a person or partnership is assumed by a borrower at any time,

(a) the amount of interest payable on the debt obligation (determined without reference to subsection (9.2)) by any person or partnership in respect of a period shall, to the extent that that period is included in a taxation year of the borrower ending after 1991, be deemed, for the purposes of clause (9.2)(a)(iii)(A), subparagraph (9.2)(b)(i) and paragraph (9.3)(b), to be an amount of interest payable on the debt obligation by the borrower in respect of that year, and

(b) the application of subsections (9.2) and (9.3) to the borrower in respect of the debt obligation after that time shall be determined on the assumption that subsection (9.2) applied to the borrower in respect of the debt obligation before that time,

and, for the purposes of this subsection, where the borrower came into existence at a particular time that is after the beginning of the particular period beginning at the beginning of the first period in respect of which interest was payable on the debt obligation by any person or partnership and ending at the particular time, the borrower shall be deemed

(c) to have been in existence throughout the particular period, and

(d) to have had, throughout the particular period, taxation years ending on the day of the year on which its first taxation year ended.

History: Subsec. 18(9.6) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 8(6), applicable to 1992 *et seq.*

Interpretation Bulletins: IT-417R2: Prepaid expenses and deferred charges.

(9.7) Idem — Where the amount paid by a borrower at any particular time, in satisfaction of the obligation to pay a particular amount of interest on a debt obligation in respect of a subsequent period or part thereof, exceeds the particular amount of that interest, discounted

(a) for the particular period beginning at the particular time and ending at the end of the subsequent period or part thereof, and

(b) at the rate or rates of interest applying under the debt obligation during the particular period (or, where the rate of interest of any part of the particular period is not fixed at the particular time, at the prescribed rate of interest in effect at the particular time),

that excess shall

(c) for the purposes of applying subsections (9.2) to (9.6) and (9.8), be deemed to be neither an amount of interest payable on the debt obligation nor an amount paid in satisfaction of the obligation to pay interest on the debt obligation, and

(d) be deemed to be a payment described in paragraph (9.1)(d) in respect of the debt obligation.

History: Subsec. 18(9.7) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 8(6), applicable to 1992 *et seq.*

Regulations: 4301(c) (prescribed rate of interest).

Interpretation Bulletins: IT-417R2: Prepaid expenses and deferred charges.

(9.8) Idem — Nothing in any of subsections (9.2) to (9.7) shall be construed as providing that

(a) the total of all amounts each of which is the amount of interest payable on a debt obligation by an individual (other than a trust), or deemed by subsection (9.2) to be payable on the debt obligation by a corporation, partnership or trust, in respect of a taxation year ending after 1991 and before any particular time,

may exceed

(b) the total of all amounts each of which is the amount of interest payable on the debt obligation (determined without reference to subsection (9.2)) by a person or partnership in respect of a taxation year ending after 1991 and before that particular time.

History: Subsec. 18(9.8) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 8(6), applicable to 1992 *et seq.*

Interpretation Bulletins: IT-417R2: Prepaid expenses and deferred charges.

(10) Employee benefit plan — Paragraph (1)(o) does not apply in respect of a contribution to an employee benefit plan

(a) to the extent that the contribution

(i) is made in respect of services performed by an employee who is not resident in Canada and is regularly employed in a country other than Canada, and

(ii) cannot reasonably be regarded as having been made in respect of services performed or to be performed during a period when the employee is resident in Canada;

(b) the custodian of which is non-resident, to the extent that the contribution

(i) is in respect of an employee who is non-resident at the time the contribution is made, and

(ii) cannot reasonably be regarded as having been made in respect of services performed or to be performed during a period when the employee is resident in Canada; or

(c) the custodian of which is non-resident, to the extent that the contribution can reasonably be regarded as having been made in respect of services performed by an employee in a particular calendar month where

(i) the employee was resident in Canada throughout no more than 60 of the 72 calendar months ending with the particular month, and

(ii) the employee became a member of the plan before the end of the month following the month in which the employee became resident in Canada,

and, for the purpose of this paragraph, where benefits provided to an employee under a particular employee benefit plan are replaced by benefits provided under another employee benefit plan, the other plan shall be deemed, in respect of the employee, to be the same plan as the particular plan.

History: Para. 18(10)(b) substituted, and para. (c) added, by 1994, c. 21, subsec. 11(2), applicable to contributions made after 1992. Para. (b) formerly read:

(b) the custodian of which is not resident in Canada, to the extent that the contribution

(i) is in respect of an employee who was

(A) not resident in Canada at the time the contribution was made, or

(B) resident in Canada for a period (in this paragraph referred to as an "excluded period") of not more than 36 of the 72 months preceding the date on which the contribution is made and was a beneficiary under the plan before becoming resident in Canada, and

(ii) cannot reasonably be regarded as having been made in respect of services performed or to be performed during a period (other than an excluded period) when the employee is resident in Canada.

Interpretation Bulletins: IT-502: Employee benefit plans and employee trusts.

(11) Limitation [on interest expense] — Notwithstanding any other provision of this Act, in computing the income of a taxpayer for a taxation year, no amount is deductible under paragraph 20(1)(c), (d), (e), (e.1) or (f) in respect of borrowed money (or other property acquired by the taxpayer) in respect of any period after which the money (or other property) is used by the taxpayer for the purpose of

(a) making a payment after November 12, 1981 as consideration for an income-averaging annuity contract, unless the contract was acquired pursuant to an agreement in writing entered into before November 13, 1981;

(b) paying a premium (within the meaning assigned by subsection 146(1) read without reference to the portion of the definition "premium" in that subsection following paragraph (b) of that definition) under a registered retirement savings plan after November 12, 1981;

(c) making a contribution to a registered pension plan or a deferred profit sharing plan after November 12, 1981, other than

(i) a contribution described in subparagraph 8(1)(m)(ii) or (iii) (as they read in their application to the 1990 taxation year) that was required to be made pursuant to an obligation entered into before November 13, 1981, or

(ii) a contribution deductible under paragraph 20(1)(q) or (y) in computing the taxpayer's income;

(d) making a payment as consideration for an annuity the payment for which was deductible in computing the taxpayer's income by virtue of paragraph 60(l);

(e) making a contribution to a retirement compensation arrangement where the contribution was deductible under paragraph 8(1)(m.2) in computing the taxpayer's income;

(f) making a contribution to a net income stabilization account;

(g) making a contribution to any account under a provincial pension plan prescribed for the purpose of paragraph 60(v); or

(h) making a contribution into a registered education savings plan,

and, for the purposes of this subsection, to the extent that an indebtedness is incurred by a taxpayer in respect of a property and at any time that property or a property substituted therefor is used for any of the purposes referred to in this subsection, the indebtedness shall be deemed to be incurred at that time for that purpose.

Related Provisions: 18(1)(u) — Investment counselling and administration fees for RRSP or RRIF are non-deductible; 110.6(1)"investment expense"(a); 248(5) — Substituted property.

History: Para. 18(11)(h) added by 1998, c. 19, s. 3, applicable to 1998 *et seq.*

Para. 18(11)(g) added by 1994, c. 21, subsec. 11(3), applicable to 1993 *et seq.*

Para. 18(11)(b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 8(7), applicable to 1992 *et seq.* Para. 18(11)(b) formerly read:

(b) paying a premium under a registered retirement savings plan after November 12, 1981;

That portion of subsec. 18(11) following para. (e) amended (para. (f) being added) by 1994, c. 7, Sch VIII (1993, c. 24), subsec. 8(8), applicable to 1991 *et seq.* That portion formerly read:

and, for the purposes of this subsection, where an indebtedness is incurred by a taxpayer in respect of a property and at any time that property or a property substituted therefor is used for any of the purposes referred to in paragraphs (a) to (e), the indebtedness shall be deemed to be incurred at that time for that purpose.

That portion of subsec. 18(11) preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 13(7), applicable to 1990 *et seq.* That portion formerly read:

(11) Notwithstanding any other provision of this Act, in computing the income of a taxpayer for a taxation year, no amount shall be deducted under paragraph 20(1)(c), (d) or (e) of this Act or paragraph 20(1)(k) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in respect of indebtedness incurred for the purpose of

That portion of subsec. 18(11) following para. (e) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 13(8), applicable to 1990 *et seq.*

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-167R6: Registered pension plans — employee's contributions; IT-307R4: Spousal or common-law partner registered retirement savings plans; IT-355R2: Interest on loans to buy life insurance policies and annuity contracts, and interest on policy loans (archived).

(12) Work space in home — Notwithstanding any other provision of this Act, in computing an individual's income from a business for a taxation year,

(a) no amount shall be deducted in respect of an otherwise deductible amount for any part (in this subsection referred to as the "work space") of a self-contained domestic establishment in which the individual resides, except to the extent that the work space is either

(i) the individual's principal place of business, or

(ii) used exclusively for the purpose of earning income from business and used on a regular and continuous basis for meeting clients, customers or patients of the individual in respect of the business;

(b) where the conditions set out in subparagraph (a)(i) or (ii) are met, the amount for the work space that is deductible in computing the individual's income for the year from the business shall not exceed the individual's income for the year from the business, computed without reference to the amount and sections 34.1 and 34.2; and

(c) any amount not deductible by reason only of paragraph (b) in computing the individual's income from the business for the immediately preceding taxation year shall be deemed to be an amount otherwise deductible that, subject to paragraphs (a) and (b), may be deducted for the year for the work space in respect of the business.

Related Provisions: 8(13) — Parallel rule for employee.

History: Para. 18(12)(b) amended by 1996, c. 21, subsec. 5(2), applicable to 1995 *et seq.*. The para. formerly read:

(b) where the conditions set out in subparagraph (a)(i) or (ii) are met, the amount for the work space that is deductible in computing the individual's income from the business for a taxation year shall not exceed the individual's income from the business for the year, computed without reference to the amount; and

Selected Cases [subsec. 18(12)]: *Jenkins v. R.*, [2005] 2 C.T.C. 2156 (TCC) (Principal place of fishing business was taxpayer's home).

Interpretation Bulletins: IT-120R6: Principal residence; IT-504R2: Visual artists and writers; IT-514: Work space in home expenses.

(13) When subsec. (15) applies to money lenders — Subsection (15) applies, subject to subsection 142.6(7), when

(a) a taxpayer (in this subsection and subsection (15) referred to as the "transferor") disposes of a particular property;

(b) the disposition is not described in any of paragraphs (c) to (g) of the definition "superficial loss" in section 54;

(c) the transferor is not an insurer;

(d) the ordinary business of the transferor includes the lending of money and the particular property was used or held in the ordinary course of that business;

(e) the particular property is a share, or a loan, bond, debenture, mortgage, hypothecary claim, note, agreement for sale or any other indebtedness;

(f) the particular property was, immediately before the disposition, not a capital property of the transferor;

(g) during the period that begins 30 days before and ends 30 days after the disposition, the transferor or a person affiliated with the transferor acquires a property (in this subsection and subsection (15) referred to as the "substituted property") that is, or is identical to, the particular property; and

(h) at the end of the period, the transferor or a person affiliated with the transferor owns the substituted property.

Related Provisions: 18(14) — Alternate application of subsec. 18(15); 40(2)(g)(i), 54"superficial loss" — Parallel rule for capital property; 248(12) — Identical properties.

History: Para. 18(13)(e) amended to add "hypothecary claim" by 2001, c. 17, subsec. 201(1), in force June 14, 2001.

Subsec. 18(13) amended by 1998, c. 19, subsec. 79(2), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260) to dispositions of property that occur after April 26, 1995, other than a disposition that occurred before July 1995 to which subsec. 142.6(7)

(a) does not apply; and

(b) would apply if the disposition had occurred after June 1995.

The subsec. formerly read:

(13) Superficial loss — Subject to subsection 142.6(7) and notwithstanding any other provision of this Act, where a taxpayer (other than an insurer)

(a) who was a resident of Canada at any time in a taxation year and whose ordinary business during that year included the lending of money, or

(b) who at any time in the year carried on a business of lending money in Canada

has sustained a loss on a disposition of property used or held in that business that is a share, or a loan, bond, debenture, mortgage, note, agreement of sale or any other indebtedness, other than a property that is a capital property of the taxpayer, no amount shall be deducted in computing the income of the taxpayer from that business for the year in respect of the loss where

(c) during the period commencing 30 days before and ending 30 days after the disposition, the taxpayer or a person or partnership that does not deal at arm's length with the taxpayer acquired or agreed to acquire the same or identical property (in this subsection referred to as the "substituted property"), and

(d) at the end of the period described in paragraph (c), the taxpayer, person or partnership, as the case may be, owned or had a right to acquire the substituted property,

and any such loss shall be added in computing the cost to the taxpayer, person or partnership, as the case may be, of the substituted property.

The opening words of subsec. 18(13) amended by 1995, c. 21, s. 48, applicable to dispositions occurring after October 30, 1994. The opening words formerly read:

(13) Superficial loss — Subject to subsection 138(5.2) and notwithstanding any other provision of this Act, where a taxpayer

Selected Cases [subsec. 18(13)]: *Mathew v. R.*, [2003] 1 C.T.C. 2045 (TCC) (Superficial loss subject to GAAR).

(14) When subsec. (15) applies to adventurers in trade — Subsection (15) applies where

(a) a person (in this subsection and subsection (15) referred to as the "transferor") disposes of a particular property;

(b) the particular property is described in an inventory of a business that is an adventure or concern in the nature of trade;

(c) the disposition is not a disposition that is deemed to have occurred by section 70, subsection 104(4), section 128.1, paragraph 132.2(1)(f) or subsection 138(11.3) or 149(10);

Proposed Amendment — 18(14)(c)

(c) the disposition is not a disposition that is deemed to have occurred by section 70, subsection 104(4), section 128.1, paragraph 132.2(3)(a) or (c) or subsection 138(11.3) or 149(10);

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 55(2), will amend para. 18(14)(c) to read as above, applicable to dispositions that occur after 1998.

Technical Notes: Subsection 18(14) describes the circumstances in which the loss-deferral rule in subsection 18(15) applies to dispositions of property that is described in an inventory of a business that is an adventure or concern in the nature of trade. Paragraph 18(14)(c) excludes from the application of the rule dispositions under specified provisions of the Act. As a consequence of the restructuring of section 132.2, the reference in paragraph 18(14)(c) to paragraph 132.2(1)(f) is replaced by references to paragraphs 132.2(3)(a) and (c).

(d) during the period that begins 30 days before and ends 30 days after the disposition, the transferor or a person affiliated with the transferor acquires property (in this subsection and subsection (15) referred to as the "substituted property") that is, or is identical to, the particular property; and

(e) at the end of the period, the transferor or a person affiliated with the transferor owns the substituted property.

Related Provisions: 10(1.01) — No writedown of inventory held as adventure in the nature of trade; 18(13) — Alternate application of subsec. 18(15); 40(2)(g)(i), 54"superficial loss" — Parallel rule for capital property; 248(12) — Identical properties.

History: Subsec. 18(14) added by 1998, c. 19, subsec. 79(2), applicable to dispositions of property that occur after June 20, 1996, other than a disposition that occurred before 1997 to a person or partnership that was obliged on June 20, 1996 to acquire the property pursuant to the terms of an agreement in writing made on or before that day and, for the purpose of this application, a person or partnership shall be considered not to be obliged to acquire property where the person or partnership can be excused from performing the obligation if there is a change to the Act or if there is an adverse assessment under the Act.

(15) Loss on certain properties [transferred within affiliated group] — If this subsection applies because of subsection (13) or (14) to a disposition of a particular property,

(a) the transferor's loss, if any, from the disposition is deemed to be nil, and

(b) the amount of the transferor's loss, if any, from the disposition (determined without reference to this subsection) is deemed to be a loss of the transferor from a disposition of the particular property at the first time, after the disposition,

(i) at which a 30-day period begins throughout which neither the transferor nor a person affiliated with the transferor owns

(A) the substituted property, or

(B) a property that is identical to the substituted property and that was acquired after the day that is 31 days before the period begins,

(ii) at which the substituted property would, if it were owned by the transferor, be deemed by section 128.1 or subsection 149(10) to have been disposed of by the transferor,

(iii) that is immediately before control of the transferor is acquired by a person or group of persons, where the transferor is a corporation, or

(iv) at which the winding-up of the transferor begins (other than a winding-up to which subsection 88(1) applies), where the transferor is a corporation,

and for the purpose of paragraph (b), where a partnership otherwise ceases to exist at any time after the disposition, the partnership is deemed not to have ceased to exist, and each person who was a member of the partnership immediately before the partnership would, but for this subsection, have ceased to exist is deemed to remain a member of the partnership, until the time that is immediately after the first time described in subparagraphs (b)(i) to (iv).

Related Provisions: 13(21.2) — Parallel rule for depreciable capital property; 14(12) — Parallel rule for eligible capital property; 18(16) — Deemed identical property; 40(3.3), (3.4) — Parallel rule for capital losses; 69(5)(d) — No application on winding-up; 87(2)(g.3) — Amalgamations — continuing corporation; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 248(12) — Whether properties are identical; 251.1 — Affiliated persons; 256(6)–(9) — Whether control acquired.

History: Subsec. 18(15) added by 1998, c. 19, subsec. 79(2), applicable to dispositions of property that occur after April 26, 1995.

(16) Deemed identical property — For the purposes of subsections (13), (14) and (15), a right to acquire a property (other than a right, as security only, derived from a mortgage, hypothec, agreement for sale or similar obligation) is deemed to be a property that is identical to the property.

History: Subsec. 18(16) amended to add "hypothec" by 2001, c. 17, subsec. 201(2), in force June 14, 2001.

Subsec. 18(16) added by 1998, c. 19, subsec. 79(2), applicable to dispositions of property that occur after April 26, 1995.

Proposed Amendment — Section 18 — Limitation on deductibility of provincial payroll and capital taxes

Department of Finance press release, March 2, 1993: Finance Minister Don Mazankowski today announced that the government would take action, on an interim basis, to effectively deny the deductibility of any increases in provincial payroll and capital taxes. This measure would take effect if provincial payroll and capital tax revenues were increased by way of a rate increase, base change, or the introduction of a new tax.

The 1991 federal Budget proposed a mechanism to limit the impact on federal revenue of the provinces' increasing reliance on such taxes. Discussions with the provinces and affected taxpayers have been held since that time to consider possible modifications of the federal proposal to limit deductibility. Those discussions are continuing, and it is anticipated that a comprehensive solution will be ready for implementation in 1994. Today's measure is intended to apply until that final proposal is brought forward.

Mr. Mazankowski said, "I remain concerned that any provincial actions to increase existing payroll and capital taxes or the introduction of new taxes would further erode federal revenues and put additional pressure on the fiscal framework."

If a province institutes or increases payroll or capital taxes in 1993, an income tax amendment would be sought to ensure that corporations and certain trusts operating in that province are allowed to deduct only a certain percentage of such taxes in computing their income for federal tax purposes. To compute its deductible amount, a taxpayer would simply multiply its total amount of those taxes paid to the province by a percentage prescribed under the *Income Tax Act*. That percentage, which would be determined after consultation with the province on expected revenues, would ensure that the total amount of payroll and capital taxes deducted by all businesses in the province remained the same. It would not, in contrast, ensure that the level of each taxpayer's deductible taxes remained the same. The restriction on deductibility would apply on a prorated basis from the date the provincial tax increase took effect.

The Minister noted that this measure would not restrict the tax policy options of any province. A province may continue to levy these taxes as it sees fit. "However, provinces that increase these taxes will no longer be able to pass part of the cost on to the federal government and taxpayers in other provinces," added Mr. Mazankowski.

The Minister stressed that this is an interim measure and that federal and provincial officials are continuing to work on a longer-term solution.

For further information: Jack Jung, (613) 992-7162; Lawrence Purdy, (613) 996-0602.

Department of Finance press release, October 1, 1993: *Extension of Interim Measure to Limit the Deductibility of Provincial Payroll and Capital Taxes*

Finance Minister Gilles Loiselle today announced that proposed limits to the deductibility for federal tax purposes of provincial payroll and capital taxes will be delayed for another year, to allow time for additional consultations with provincial and business representatives. An interim measure announced earlier this year to limit the impact of any increases in these taxes will continue to apply until the revised proposal is in effect. The Minister indicated that federal and provincial officials will continue their discussions on a longer term solution.

The 1991 federal budget proposed to limit the impact of deductible provincial payroll and capital taxes on federal revenue without adding to the overall tax burden. Implementation of the proposal was to begin on January 1, 1992, but was postponed for two years, pending revisions. Today's announcement delays the implementation of the revised proposal until January 1, 1995.

Under the interim measure announced in March 1993, the government would deny the deductibility of any increases in provincial payroll and capital taxes, whether by way of rate increases, base changes, or the introduction of new taxes. "The problems associated with deductible provincial payroll and capital taxes still need to be addressed," Mr. Loiselle said. "Until the revised proposal is in effect, the interim measure protects the federal tax base from any further erosion resulting from provincial actions to increase these taxes."

For further information: Denis Boucher, (613) 996-7861; Jack Jung, (613) 992-7162.

[Parallel news releases issued on October 14, 1994, December 27, 1995, November 29, 1996, November 25, 1997, December 18, 1998, December 17, 1999, December 12, 2000, December 18, 2001, December 23, 2002 and December 18, 2003 — ed.]

Department of Finance press release, December 16, 2004: *Extension of Interim Measure on Deductibility of Provincial Payroll and Capital Taxes*

Minister of Finance Ralph Goodale announced today that the interim measure that limits the deductibility of increases in provincial payroll and capital taxes will continue to apply.

Under the interim measure, any existing provincial payroll and capital taxes will remain deductible for federal income tax purposes, but increases in these taxes by way of provincial actions to increase the rate, change the definition of the base or introduce new taxes generally would not be deductible.

The announcement of the extension of the interim measure ensures that all businesses and provinces are informed of the rules that apply to the deductibility of provincial payroll and capital taxes.

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Definitions [s. 18]: "acquired" — 256(7)–(9); "affiliated" — 251.1; "amortized cost", "amount", "annuity" — 248(1); "arm's length" — 251(1); "associated" — 256; "automobile", "authorized foreign bank" — 248(1); "base level deduction" — 18(2.2); "borrowed money", "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "Canadian banking business" — 248(1); "Canadian resource property" — 66(15), 248(1); "capital property" — 54, 248(1); "class of shares" — 248(6); "control" — 256(6)–(9); "controlled" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "custodian" — 248(1)"employee benefit plan"; "debt obligation" — 18(9.1), (9.2); "deferred profit sharing plan" — 147(1), 248(1); "depreciable property" — 13(21), 248(1); "designated insurance property" — 138(12), 248(1); "dividend", "employee", "employee benefit plan" — 248(1); "employees profit sharing plan" — 144(1), 248(1); "employer", "exempt income", "gross revenue", "group term life insurance policy" — 248(1); "Her Majesty" — *Interpretation Act* 35(1); "identical" — 18(16), 248(12); "immovable" — Quebec *Civil Code* art. 900–907; "income-averaging annuity contract", "income bond", "income debenture" — 248(1); "incorporated employee" — 125(7)"personal services business"(a); "individual", "insurance corporation", "insurance policy", "insurer" — 248(1); "interest on debt relating to the acquisition of land" — 18(3); "inventory" — 248(1); "land" — 18(3); "lending asset", "life insurance corporation" — 248(1); "life insurance policy" — 138(12), 248(1); "mineral resource", "mineral", "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "net income stabilization account", "non-resident" — 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "outstanding debts to specified non-residents" — 18(5); "paid-up capital" — 89(1), 248(1); "permanent establishment" — Reg. 8201; "person", "personal or living expenses", "personal services business", "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "principal amount" — 248(1); "profit sharing plan" — 147(1); "property" — 248(1); "province" — *Interpretation Act* 35(1); "received" — 248(7); "registered education savings plan" — 146.1(1), 248(1); "registered pension plan" — 248(1); "registered retirement savings plan" — 146(1), 248(1); "regulation" — 248(1); "relating to the construction, renovation or alteration" — 18(3.2); "resident in Canada" — 94(3)(a)(viii), 250; "retirement compensation arrangement", "retirement income fund", "retirement savings plan", "salary" — 248(1)"salary or wages"; "salary deferral arrangement", "self-contained domestic establishment", "share", "shareholder" — 248(1); "specified non-resident shareholder" — 18(5); "specified shareholder" — 18(5), 18(5.1), 248(1); "substituted property" — 18(13)(g), 248(5); "supplementary unemployment benefit fund" — 145(1), 248(1); "tar sands" — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1); "transferor" — 18(13)(a), 18(14)(a); "trust" — 104(1), 248(1), (3); "undue delay" — 18(3.6); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [s. 18]: IT-105: Administrative costs of pension plans.

18.1 [Matchable expenditures] — (1) Definitions — The definitions in this subsection apply in this section.

"matchable expenditure" of a taxpayer means the amount of an expenditure that is made by the taxpayer to

(a) acquire a right to receive production,

(b) fulfil a covenant or obligation arising in circumstances in which it is reasonable to conclude that a relationship exists between the covenant or obligation and a right to receive production, or

(c) preserve or protect a right to receive production,

but does not include an amount for which a deduction is provided under section 20 in computing the taxpayer's income.

"right to receive production" means a right under which a taxpayer is entitled, either immediately or in the future and either absolutely or contingently, to receive an amount all or a portion of which is computed by reference to use of property, production, revenue, profit, cash flow, commodity price, cost or value of property or any other similar criterion or by reference to dividends paid or payable to shareholders of any class of shares where the amount is in respect of another taxpayer's activity, property or business but such a right does not include an income interest in a trust, a Canadian resource property or a foreign resource property.

Related Provisions: 88(1)(a)(i) — Treatment of right to receive production on windup of corporation; 248(1)"cost amount"(e)(iv) — Definition of cost amount does not apply to right to receive production.

I.T. Technical News: 10 (net profits interests and proposed section 18.1).

"tax benefit" means a reduction, avoidance or deferral of tax or other amount payable under this Act or an increase in a refund of tax or other amount under this Act.

"tax shelter" means a property that would be a tax shelter (as defined in subsection 237.1(1)) if

(a) the cost of a right to receive production were the total of all amounts each of which is a matchable expenditure to which the right relates; and

(b) subsections (2) to (13) did not apply for the purpose of computing an amount, or in the case of a partnership a loss, represented to be deductible.

"taxpayer" includes a partnership.

(2) Limitation on the deductibility of matchable expenditure — In computing a taxpayer's income from a business or property for a taxation year, no amount of a matchable expenditure may be deducted except as provided by subsection (3).

Related Provisions: 18.1(15) — No application to risks ceded between insurers; 18.1(16) — No application where not a tax shelter; 87(2)(j.2) — Amalgamation — continuing corporation; 88(1)(a)(i) — Treatment of right to receive production on windup of corporation.

I.T. Technical News: 10 (net profits interests and proposed section 18.1).

(3) Deduction of matchable expenditure — If a taxpayer's matchable expenditure would, but for subsection (2) and this subsection, be deductible in computing the taxpayer's income, there may be deducted in respect of the matchable expenditure in computing the taxpayer's income for a taxation year the amount that is determined under subsection (4) for the year in respect of the expenditure.

Related Provisions: 18.1(6) — Income inclusion; 18.1(10) — Amount of deduction if non-arm's length disposition; 18.1(14) — Where right to receive production is reasonably certain.

(4) Amount of deduction — For the purpose of subsection (3), the amount determined under this subsection for a taxation year in respect of a taxpayer's matchable expenditure is the amount, if any, that is the least of

(a) the total of

(i) the lesser of

(A) 1/5 of the matchable expenditure, and

(B) the amount determined by the formula

$$(A/B) \times C$$

where

A is the number of months that are in the year and after the day on which the right to receive production to which the matchable expenditure relates is acquired,

B is the lesser of 240 and the number of months that are in the period that begins on the day on which the right to receive production to which the matchable expenditure relates is acquired and that ends on the day the right is to terminate, and

C is the amount of the matchable expenditure, and

(ii) the amount, if any, by which the amount determined under this paragraph for the preceding taxation year in respect of the matchable expenditure exceeds the amount of the matchable expenditure deductible in computing the taxpayer's income for that preceding year,

(b) the total of

(i) all amounts each of which is included in computing the taxpayer's income for the year (other than any portion of such amount that is the subject of a reserve claimed by the taxpayer for the year under this Act) in respect of the right to receive production to which the matchable expenditure relates, and

(ii) the amount by which the amount determined under this paragraph for the preceding taxation year in respect of the matchable expenditure exceeds the amount of the matchable expenditure deductible in computing the taxpayer's income for that preceding year, and

(c) the amount, if any, by which

(i) the total of all amounts each of which is an amount of the matchable expenditure that would, but for this section, have been deductible in computing the taxpayer's income for the year or a preceding taxation year

exceeds

(ii) the total of all amounts each of which is an amount of the matchable expenditure deductible under subsection (3) in computing the taxpayer's income for a preceding taxation year.

Related Provisions: 18.1(5) — Rules for determining amount; 18.1(17) — Non-application of 18.1(4)(a) (film shelters, etc.).

(5) Special rules — For the purpose of this section,

(a) where a taxpayer's matchable expenditure is made before the day on which the related right to receive production is acquired by the taxpayer, the expenditure is deemed to have been made on that day;

(b) where a taxpayer has one or more rights to renew a particular right to receive production to which a matchable expenditure relates for one or more additional terms, after the term that includes the time at which the particular right was acquired, the particular right is deemed to terminate on the latest day on which the latest possible such term could terminate if all rights to renew the particular right were exercised;

(c) where a taxpayer has 2 or more rights to receive production that can reasonably be considered to be related to each other, the rights are deemed to be one right; and

(d) where the term of a taxpayer's right to receive production is for an indeterminate period, the right is deemed to terminate 240 months after it is acquired.

(6) Proceeds of disposition considered income — Where in a taxation year a taxpayer disposes of all or part of a right to receive production to which a matchable expenditure relates, the proceeds of the disposition shall be included in computing the taxpayer's income for the year.

Related Provisions: 12(1)(g.1) — Inclusion in income of proceeds of disposition; 87(2)(j.2) — Amalgamation — continuing corporation.

(7) Arm's length disposition — Subject to subsections (8) to (10), where in a taxation year a taxpayer disposes (otherwise than in a disposition to which subsection 87(1) or 88(1) applies) of all of the taxpayer's right to

receive production to which a matchable expenditure (other than an expenditure no portion of which would, if this section were read without reference to this subsection, be deductible under subsection (3) in computing the taxpayer's income) relates, or the taxpayer's right expires, the amount deductible in respect of the expenditure under subsection (3) in computing the taxpayer's income for the year is deemed to be the amount, if any, determined under paragraph (4)(c) for the year in respect of the expenditure.

Related Provisions: 87(2)(j.2) — Amalgamation — continuing corporation; 88(1)(a)(i) — Treatment of right to receive production on windup of corporation; 251.1 — Affiliated persons.

(8) Non-arm's length disposition — Subsection (10) applies where

(a) a taxpayer's particular right to receive production to which a matchable expenditure (other than an expenditure no portion of which would, if this section were read without reference to subsections (7) and (10), be deductible under subsection (3) in computing the taxpayer's income) relates has expired or the taxpayer has disposed of all of the right (otherwise than in a disposition to which subsection 87(1) or 88(1) applies);

(b) during the period that begins 30 days before and ends 30 days after the disposition or expiry, the taxpayer or a person affiliated, or who does not deal at arm's length, with the taxpayer acquires a right to receive production (in this subsection and subsection (10) referred to as the "substituted property") that is, or is identical to, the particular right; and

(c) at the end of the period, the taxpayer or a person affiliated, or who does not deal at arm's length, with the taxpayer owns the substituted property.

(9) Special case — Subsection (10) applies where

(a) a taxpayer's particular right to receive production to which a matchable expenditure (other than an expenditure no portion of which would, if this section were read without reference to subsections (7) and (10), be deductible under subsection (3) in computing the taxpayer's income) relates has expired or the taxpayer has disposed of all of the right (otherwise than in a disposition to which subsection 87(1) or 88(1) applies); and

(b) during the period that begins at the time of the disposition or expiry and ends 30 days after that time, a taxpayer that had an interest, directly or indirectly, in the right has another interest, directly or indirectly, in another right to receive production, which other interest is a tax shelter or a tax shelter investment (as defined by section 143.2).

Related Provisions: 18.1(12) — Identical properties.

(10) Amount of deduction if non-arm's length disposition — Where this subsection applies because of subsection (8) or (9) to a disposition or expiry in a taxation year or a preceding taxation year of a taxpayer's right to receive production to which a matchable expenditure relates,

(a) the amount deductible under subsection (3) in respect of the expenditure in computing the taxpayer's income for a taxation year that ends at or after the disposition or expiry of the right is the least of the amounts determined under subsection (4) for the year in respect of the expenditure; and

(b) the least of the amounts determined under subsection (4) in respect of the expenditure for a taxation year is deemed to be the amount, if any, determined under paragraph (4)(c) in respect of the expenditure for the year where the year includes the time that is immediately before the first time, after the disposition or expiry,

(i) at which the right would, if it were owned by the taxpayer, be deemed by section 128.1 or subsection 149(10) to have been disposed of by the taxpayer,

(ii) that is immediately before control of the taxpayer is acquired by a person or group of persons, if the taxpayer is a corporation,

(iii) at which winding-up of the taxpayer begins (other than a winding-up to which subsection 88(1) applies), if the taxpayer is a corporation,

(iv) if subsection (8) applies, at which a 30-day period begins throughout which neither the taxpayer nor a person affiliated, or who does not deal at arm's length, with the taxpayer owns

(A) the substituted property, or

(B) a property that is identical to the substituted property and that was acquired after the day that is 31 days before the period began, or

(v) if subsection (9) applies, at which a 30-day period begins throughout which no taxpayer who had an interest, directly or indirectly, in the right has an interest, directly or indirectly, in another right to receive production if one or more of those direct or indirect interests in the other right is a tax shelter or tax shelter investment (as defined by section 143.2).

Related Provisions: 18.1(11) — Partnerships; 18.1(12) — Identical properties; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether and when control acquired.

(11) Partnerships — For the purpose of paragraph (10)(b), where a partnership otherwise ceases to exist at any time after a disposition or expiry referred to in subsection (10), the partnership is deemed not to have ceased to exist, and each taxpayer who was a member of the partnership immediately before the partnership would, but for this subsection, have ceased to exist is deemed to remain a member of the partnership until the time that is immediately after the first of the times described in subparagraphs (10)(b)(i) to (v).

(12) Identical property — For the purposes of subsections (8) and (10), a right to acquire a particular right to receive production (other than a right, as security only, derived from a mortgage, hypothec, agreement of sale or similar obligation) is deemed to be a right to receive production that is identical to the particular right.

Related Provisions: 248(12) — Extended definition of identical properties.

History: Subsec. 18.1(12) amended to add "hypothec" by 2001, c. 17, s. 202, in force June 14, 2001.

(13) Application of section 143.2 — For the purpose of applying section 143.2 to an amount that would, if this section were read without reference to this subsection, be a matchable expenditure any portion of the cost of which is deductible under subsection (3), the expenditure is deemed to be a tax shelter investment and that section shall be read without reference to subparagraph 143.2(6)(b)(ii).

(14) Debt obligations — Where the rate of return on a taxpayer's right to receive production to which a matchable expenditure (other than an expenditure no portion of which would, if this section were read without reference to this subsection, be deductible under subsection (3) in computing the taxpayer's income) relates is reasonably certain at the time the taxpayer acquires the right,

(a) the right is, for the purposes of subsection 12(9) and Part LXX of the *Income Tax Regulations*, deemed to be a debt obligation in respect of which no interest is stipulated to be payable in respect of its principal amount and the obligation is deemed to be satisfied at the time the right terminates for an amount equal to the total of the return on the obligation and the amount that would otherwise be the matchable expenditure that is related to the right; and

(b) notwithstanding subsection (3), no amount may be deducted in computing the taxpayer's income in respect of any matchable expenditure that relates to the right.

(15) Non-applicability of section 18.1 — Subject to subsections (1) and (14), this section does not apply to a taxpayer's matchable expenditure in respect of a right to receive production if

(a) no portion of the expenditure can reasonably be considered to have been paid to another taxpayer, or to a person with whom the other taxpayer does not deal at arm's length, to acquire the right from the other taxpayer and

(i) the taxpayer's expenditure cannot reasonably be considered to relate to a tax shelter or tax shelter investment (within the meaning assigned by subsection 143.2(1)) and none of the main purposes for making the expenditure is that the taxpayer, or a person with whom the taxpayer does not deal at arm's length, obtain a tax benefit, or

(ii) before the end of the taxation year in which the expenditure is made, the total of all amounts each of which is included in computing the taxpayer's income for the year (other than any portion of such an amount that is the subject of a reserve claimed by the taxpayer for the year under this Act) in respect of the right to receive production to which the matchable expenditure relates exceeds 80% of the expenditure; or

(b) the expenditure is in respect of commissions or other expenses related to the issuance of an insurance policy for which all or a portion of a risk has been ceded to the taxpayer (in this paragraph referred to as the "reinsurer) and both the reinsurer and the person to whom the expenditure is made or is to be made are insurers subject to the supervision of

(i) the Superintendent of Financial Institutions, in the case of an insurer that is required by law to report to the Superintendent of Financial Institutions, or

(ii) in any other case, the Superintendent of Insurance or other similar officer or authority of the province under whose laws the insurer is incorporated.

Related Provisions [subsec. 18.1(15)]: 12(1)(s), 20(1)(jj) — Reinsurance commissions.

History: Subsec. 18.1(15) amended by 2001, c. 17, s. 10, applicable to expenditures made after November 17, 1996. The subsec. formerly read:

(15) Subject to subsections (1) and (14), this section does not apply to a taxpayer's matchable expenditure in respect of a right to receive production if no portion of the expenditure can reasonably be considered to have been paid to another taxpayer, or to a person with whom the other taxpayer does not deal at arm's length, to acquire the right from the other taxpayer and

(a) the taxpayer's expenditure cannot reasonably be considered to relate to a tax shelter or tax shelter investment (as defined by section 143.2) and none of the main purposes for making the expenditure is that the taxpayer, or a person with whom the taxpayer does not deal at arm's length, obtain a tax benefit; or

(b) before the end of the taxation year in which the expenditure is made, the total of all amounts each of which is included in computing the taxpayer's income for the year (other than any portion of such an amount that is the subject of a reserve claimed by the taxpayer for the year under this Act) in respect of the right to receive production to which the matchable expenditure relates exceeds 80% of the expenditure.

Proposed Amendment — 18.1(15)–(17)

(15) Non-application — risks ceded between insurers — Subsections (2) to (13) do not apply to a taxpayer's matchable expenditure in respect of a right to receive production if

(a) the expenditure is in respect of commissions, or other expenses, related to the issuance of an insurance policy for which all or a portion of a risk has been ceded to the taxpayer; and

(b) the taxpayer and the person to whom the expenditure is made, or is to be made, are both insurers who are subject to the supervision of

(i) the Superintendent of Financial Institutions, if the taxpayer or that person, as the case may be, is an insurer who is required by law to report to the Superintendent of Financial Institutions, or

(ii) the Superintendent of Insurance, or other similar officer or authority, of the province under whose laws the insurer is incorporated, in any other case.

Technical Notes: Section 18.1 provides rules that restrict the deductibility of a taxpayer's cost of a "right to receive production", by prorating the deductibility of the amount of the investment over the economic life of the right. In the transactions that are subject to these rules, investors undertake to pay expenditures that would otherwise be expenses payable by the "vendor" (e.g., payroll, selling commissions) in exchange for a right to receive future income (a "right to receive production"), usually from the vendor's business operations. Such an expenditure by the taxpayer, referred to as a "matchable expenditure", is defined in subsection 18.1(1).

Subsection 18.1(15) provides two general exceptions to the application of the matchable expenditure rules. One such exception, in paragraph 18.1(15)(b), generally applies where the matchable expenditure relates to the issuance of an insurance policy for which all or a portion of a risk has been ceded to the taxpayer. This exception remains unchanged other than changes in numbering.

Paragraph 18.1(15)(a) provides the other exception to the matchable expenditure rules, applicable only if no part of the expenditure of the taxpayer can reasonably considered to have been paid to another person to acquire the right to receive production from that person. If this condition is met, the expenditures must meet one of two further criteria. Subparagraph 18.1(15)(a)(i) allows the exception if the taxpayer's expenditure cannot reasonably be considered to relate to a tax shelter investment and none of the main purposes of making the expenditure is to obtain a tax benefit. Alternatively, subparagraph 18.1(15)(a)(ii) allows the exception if, in the same year as the matchable expenditure is made, the total revenues of the taxpayer from the right to receive production exceed 80% of the expenditure. If this 80% revenue threshold is met, the portion of the expenditure that is deductible is limited only by general rules that apply to all business expenditures.

(16) Non-application — no rights, tax benefits or shelters — Subsections (2) to (13) do not apply to a taxpayer's matchable expenditure in respect of a right to receive production if

(a) no portion of the matchable expenditure can reasonably be considered to have been paid to another taxpayer, or to a person or partnership with whom the other taxpayer does not deal at arm's length, to acquire the right from the other taxpayer;

(b) no portion of the matchable expenditure can reasonably be considered to relate to a tax shelter or a tax shelter investment (within the meaning assigned by subsection 143.2(1)); and

(c) none of the main purposes for making the matchable expenditure can reasonably be considered to have been to obtain a tax benefit for the taxpayer, a person or partnership with whom the taxpayer does not deal at arm's length, or a person or partnership that holds, directly or indirectly, an interest in the taxpayer.

(17) Revenue exception — Paragraph (4)(a) does not apply in determining the amount for a taxation year that may be deducted in respect of a taxpayer's matchable expenditure in respect of a right to receive production if

(a) before the end of the taxation year in which the matchable expenditure is made, the total of all amounts each of which is included in computing the taxpayer's income for the year (other than any portion of any of those amounts that is the subject of a reserve claimed by the taxpayer for the year under this Act) in respect of the right to receive production that relates to the matchable expenditure exceeds 80% of the matchable expenditure; and

(b) no portion of the matchable expenditure can reasonably be considered to have been paid to another taxpayer, or to a person or partnership with whom the other taxpayer does not deal at arm's length, to acquire the right from the other taxpayer.

Technical Notes: Subparagraph 18.1(15)(a)(i) is renumbered as new subsection 18.1(16) and remains unchanged. The alternative exception in subparagraph 18.1(15)(a)(ii) (the 80% revenue threshold) is renumbered as new subsection 18.1(17) and no longer provides a general exception to the application of the matchable expenditure rules. This amended rule provides that if any portion of the matchable expenditure can reasonably be considered to relate to a tax shelter or a tax shelter investment, subsection 18.1(4), which requires the amortization of the expenditure (subject to an income limit), will apply without reference to paragraph 18.1(4)(a). The result is that the cumulative amount deducted in respect of a matchable expenditure may not exceed the taxpayer's cumulative revenue from the associated right to receive production.

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 56, will replace subsec. 18.1(15) with subsecs. (15), (16) and (17), applicable in respect of expenditures made by a taxpayer on or after September 18, 2001 in respect of a right to receive production, except if

(a) the expenditure was

(i) required to be made under a written agreement made by the taxpayer before September 18, 2001,

(ii) made under, or described in, the terms of a prospectus, preliminary prospectus or registration statement that was, before September 18, 2001, filed with a public authority in Canada in accordance with the securities legislation of Canada or of a province and, if required by law, accepted for filing by the public authority before September 18, 2001, or

(iii) made under, or described in, the terms of an offering memorandum distributed as part of an offering of securities if

(A) the memorandum contains a complete, or substantially complete, description of the securities contemplated in the offering as well as the terms and conditions of the offering,

(B) the memorandum was distributed before September 18, 2001,

(C) solicitations in respect of a sale of the securities contemplated in the offering were made before September 18, 2001, and

(D) the sale of the securities contemplated in the offering was substantially in accordance with the memorandum,

(b) the expenditure was made before 2002,

(c) the expenditure was made in consideration for services that were rendered in Canada before 2002 in respect of an activity, or a business, all or substantially all of which was carried on in Canada,

(d) there is no agreement, or other arrangement, under which the obligation of any taxpayer in respect of the expenditure can, on or after September 18, 2001, be changed, reduced or waived if there is a change to, or an adverse assessment under, the Act,

(e) if the right to receive production is, or is related to, a tax shelter investment, a tax shelter identification number in respect of the tax shelter was obtained before September 18, 2001, and

(f) if the expenditure was made under, or described in, the terms of a document that is a prospectus, a preliminary prospectus, a registration statement or an offering memorandum (and regardless of whether the expenditure was also made under a written agreement)

(i) all of the funds raised pursuant to the document that may reasonably be used to make a matchable expenditure were received by the taxpayer before 2002,

(ii) all or substantially all of the securities distributed pursuant to the document for the purpose of raising the funds described in subpara. (i) were acquired before 2002 by a person who is not

(A) a promoter, or an agent of a promoter, of the securities, other than an agent of the promoter who acquired the security as principal and not for resale,

(B) a vendor of the right to receive production,

(C) a broker or dealer in securities, other than a person who acquired the security as principal and not for resale, or

(D) a person who does not deal at arm's length with a person to whom clause (A) or (B) applies, and

(iii) all or substantially all of the funds raised pursuant to the document before 2002 were used to make expenditures that were required to be made pursuant to agreements in writing made before September 18, 2001.

The amendment does not apply to an expenditure made by a taxpayer in respect of a right to receive production in respect of a particular film or video production if

(a) expenditures in respect of the particular film or video production

(i) were made before September 18, 2001 (as determined, for the purpose of this paragraph, without reference to subsec. 143.2(10), except if a repaid amount for the purposes of that subsection is paid after 2002), or

(ii) were required to be made by the taxpayer under a written agreement made before September 18, 2001 by the taxpayer,

(b) principal photography of the particular film or video production

(i) began before 2002,

(ii) was primarily completed before April 2002, and

(iii) was conducted primarily in Canada;

(c) the expenditure

(i) was made before April 2002 in the course of the taxpayer's business of providing film production services in respect of the particular film or video production (as determined for the purpose of this subparagraph without reference to subsec. 143.2(10), except to the extent that a repaid amount for the purposes of that subsection is paid after 2002),

(ii) was made under, or described in, the terms of

(A) a prospectus, preliminary prospectus or registration statement that was, before September 18, 2001, filed with a public authority in Canada in accordance with the securities legislation of Canada or of a province and, if required by law, accepted for filing by the public authority before September 18, 2001, or

(B) an offering memorandum distributed as part of an offering of securities if

(I) the memorandum contains a complete, or substantially complete, description of the securities contemplated in the offering as well as the terms and conditions of the offering,

(II) the memorandum was distributed before September 18, 2001,

(III) solicitations in respect of a sale of the securities contemplated in the offering have been made before September 18, 2001, and

(IV) the sale of the securities contemplated in the offering was substantially in accordance with the memorandum, and

(iii) was not an amount in respect of advertising, marketing, promotion or market research;

(d) except where the particular film or video production is a designated production of the taxpayer, at least 75% of the total of all expenditures, each of which is an expenditure made by the taxpayer in the course of the business referred to in subpara. (c)(i), is an expenditure described for the purpose of that subparagraph made in consideration for the supply of goods or services that are supplied or rendered in Canada before April 2002 by persons that are subject to tax on the expenditure under Part I or XIII of the Act;

(e) there is no agreement, or other arrangement, under which the obligation of any taxpayer to acquire a security distributed pursuant to the prospectus, preliminary prospectus, registration statement or offering memorandum can, after September 18, 2001, be changed, reduced or waived if there is a change to, or an adverse assessment under, the Act;

(f) if the right to receive production is, or is related to, a tax shelter investment, a tax shelter identification number in respect of the tax shelter was obtained before September 18, 2001;

(g) all of the funds raised pursuant to the prospectus, preliminary prospectus, registration statement or offering memorandum that may reasonably be used to make a matchable expenditure before April 2002 in respect of the particular film or video production are received by the taxpayer before 2003;

(h) all of the securities distributed pursuant to the prospectus, preliminary prospectus, registration statement or offering memorandum for the purpose of raising the funds described in para. (g) were acquired before 2002;

(i) all or substantially all of the securities distributed pursuant to the prospectus, preliminary prospectus, registration statement or offering memorandum for the purpose of raising the funds described in para. (g) were acquired by a person who is not

(i) a promoter, or an agent of a promoter, of the securities, other than an agent of the promoter who acquired the security as principal and not for resale,

(ii) a vendor of the right to receive production,

(iii) a broker or dealer in securities, other than a person who acquired the security as principal and not for resale, or

(iv) a person who does not deal at arm's length with a person referred to in subparagraph (i) or (ii); and

(j) except where the particular film or video production is a designated production of the taxpayer, all or substantially all of the matchable expenditures made by the taxpayer that are wholly attributable to the principal photography of the particular film or video production are wholly attributable to principal photography conducted in Canada.

For the purpose of paras. (d) and (j) above, a designated production of a taxpayer is

(a) a film or video production in respect of which

(i) all of the expenditures made by the taxpayer in respect of the particular film or video production were required to be made under a written agreement made by the taxpayer before September 18, 2001,

(ii) if the taxpayer is a partnership,

(A) the taxpayer's expenditures in respect of the particular film or video production were funded, in whole or in part, with funds raised from the initial contribution of capital of members of the taxpayer, pursuant to subscriptions in writing for the issue of units in the taxpayer,

(B) all or substantially all of those written subscriptions were received by the taxpayer on or before September 18, 2001,

(C) at least one member of the taxpayer referred to in subparagraph (i) is a partnership (in this subsection referred to as a "master partnership"),

(D) the subscriptions in writing of all master partnerships for units in the taxpayer were funded, in whole or in part, with funds raised from the initial contribution of capital of members of the master partnerships, pursuant to subscriptions in writing for the issue of units in the master partnerships, and

(E) all or substantially all of the subscriptions in writing referred to in clause (D) were received by the master partnership on or before September 18, 2001,

(iii) if a member of a particular master partnership is a partnership (in this subsection referred to as an "original master partnership"),

(A) the subscriptions in writing of all original master partnerships for units in the particular master partnership were funded, in whole or in part, with funds raised from the initial contribution of capital of members of the original master partnerships, pursuant to subscriptions in writing for the issue of units in the original master partnerships, and

(B) all or substantially all of those written subscriptions were received by the original master partnership on or before September 18, 2001, and

(iv) no member of an original master partnership is a partnership, an interest in which is a tax shelter; or

(b) a film or video production in respect of which

(i) principal photography was all or substantially all complete before September 18, 2001; and

(ii) all or substantially all of the taxpayer's expenditures were made on or before September 18, 2001 (as determined, for the purpose of this paragraph, without reference to subsec. 143.2(10), except if a repaid amount for the purposes of that subsection is paid after 2002).

Department of Finance news release, September 18, 2001: *Technical Legislative Proposals for Matchable Expenditure Rules*

Finance Minister Paul Martin today tabled in the House of Commons a detailed Notice of Ways and Means Motion to amend the *Income Tax Act* in respect of matchable expenditures. These proposed changes would limit the ability of a taxpayer to obtain tax shelter benefits by financing the business expenses of another person in exchange for a right to receive future income relating to that business.

Measures announced in 1996, known as the matchable expenditure rules, require that the cost of these expenditures be allocated over the economic life of the related right to receive future income. These rules are not intended to affect ordinary business transactions, and generally apply only where the expenditures relate to a tax shelter or may reasonably be considered to have been made to obtain a tax benefit.

An exception to the matchable expenditure rules applies if, in the same year as the expenditure is made, the total revenues realized by the taxpayer in respect of the expenditure exceed 80% of its cost [18.1(4)(a) — ed.]. However, certain tax shelter arrangements [generally film shelters including Grosvenor Park — ed.] have been designed to exploit this exception.

Therefore, the technical amendments tabled today propose to amend the matchable expenditure rules to ensure that unintended tax shelter benefits cannot be achieved. Specifically, under the proposed rules [18.1(17) — ed.], the 80% threshold will be modified to match the deductible expenditure against the revenue received from the related right to future income.

Minister Martin indicated that this proposed exception to the matchable expenditure rules would generally apply to expenditures made on or after September 18, 2001. However, transitional relief will apply as indicated in the attached legislative proposals.

The Minister emphasized that this transitional relief should not be taken to indicate government approval of these tax shelters. All tax shelters utilizing the exception to the matchable expenditure rules are being closely monitored by the Canada Customs and Revenue Agency.

Minister Martin confirmed that the Government intends to introduce legislation to implement these tax changes in Parliament at the earliest opportunity.

For further information: Ed Short, Tax Legislation Division, (613) 996-0599; Karl Littler, Senior Advisor, Tax Policy, Office of the Minister of Finance, (613) 996-7861; Harry Adams, Public Affairs and Operations Division, (613) 996-8080.

Backgrounder

Tax-assisted arrangements for the financing of business expenditures are attractive to businesses because the financing is partially subsidized by government through the benefit of tax deferral. The matchable expenditure rules in the *Income Tax Act* [18.1(2) — ed.] constrain the tax assistance in such structures by matching the cost of an investor's investment to the periods during which the investment earns income. In the transactions that are subject to these rules, investors undertake to pay expenditures that would otherwise be expenses payable by the "vendor" (e.g., payroll, selling commissions) in exchange for a right to receive future income (a "right to receive production"), usually from the vendor's operation.

The matchable expenditure rules are designed to restrict the deductibility of a taxpayer's cost of a right to receive production, by prorating the deductibility of the amount of the investment over the economic life of the right. This amortization of the expenditure effectively eliminates the tax deferral advantage of this type of financing.

An exception to the matchable expenditure rules [18.1(4) — ed.] applies in certain circumstances. This exception applies where, in the same year as the expenditure is made, the total revenues of the taxpayer from the right to receive production exceed 80 per cent of the expenditure. Under the rules announced in 1996, if this 80-per-cent revenue threshold is met, the portion of the expenditure that is deductible is limited only by general rules that apply to all business expenditures.

The proposed amendment to the matchable expenditure rules [new 18.1(17) — ed.] provides that, where the 80-per-cent revenue threshold is met, expenditures are deductible only to the extent of revenues received from the right to receive production. This restriction will apply where the matchable expenditure relates to a tax shelter or a tax shelter investment, or one of the main purposes of incurring the matchable expenditure is to obtain the reduction, avoidance or deferral of tax. Any portion of an otherwise deductible expenditure not yet deducted at the time of expiry of the right to receive production will be deductible at that time.

An existing exception to the matchable expenditure rules which applies where the expenditure is not related to a tax shelter, and cannot reasonably be considered to have been made to achieve a tax benefit, will remain unchanged. [Existing 18.1(15)(a), to be 18.1(16) — ed.]

Transitional relief for certain public offerings of tax shelter investments, as described in this release and in the attached proposed amendments to the *Income Tax Act*, should not be taken to indicate government approval of these tax shelters. Further, the existence of a tax shelter registration number in respect of a promotion should not be taken as government confirmation of the tax effects of the investment.

Tax shelter promotional documents are required to display a tax shelter identification number, and to prominently indicate that the identification number is for administrative proposes only and does not in any way confirm the entitlement of an investor to claim any tax benefits associated with the tax shelter. The Canada Customs and Revenue Agency (CCRA), under the direction of the Honourable Martin Cauchon, Minister of National Revenue, uses tax shelter identification numbers to identify those investors participating in a tax shelter arrangement.

For more information regarding the activities of the CCRA regarding tax shelters, refer to the August 14, 2001, CCRA "Tax Tip" entitled "Tax shelters: Advance income tax rulings do not guarantee deductions," available on the CCRA Web site at www.ccra-adrc.gc.ca.

Letter from Dept. of Finance, October 29, 2001:

Dear [xxx]:

I am writing concerning the transitional rules in respect of amendments to the matchable expenditure rules in the *Income Tax Act* as proposed by the Minister of Finance on September 18, 2001. Representatives of various sectors of the film industry have asked for additional transitional relief in this regard.

We have considered these representations and are prepared to recommend additional transitional relief to the Minister of Finance. In general terms, this would provide relief for a film or video production that began before September 18 and that is to be produced in Canada, in respect of expenditures, other than expenditures in respect of advertising, marketing, promotion or market research, made before April 2002 (determined without reference to the Act's limited-recourse debt provisions in respect of debt repaid before 2003). Such relief would be provided where the production meets all of the following conditions:

1. some expenditures were made by the production services partnership in respect of the production before September 18, 2001. For the purpose of this test, the Act's limited-recourse debt provisions would not apply to deem the expenditure to be made when the debt is paid, unless the debt remains unpaid after 2002;

2. principal photography is commenced before 2002, is primarily completed before April 2002 and is conducted primarily in Canada;

3. all or substantially all of the expenditures of the production services partnership that are in respect of principal photography are in respect of principal photography that takes place in Canada (this requirement will not apply to certain investments already sold to tax shelter investors as of September 18, 2001, and certain productions that were all or substantially all completed before that date);

4. at least 75% of film production expenditures are for services in Canada (this requirement will not apply to certain investments already sold to tax shelter investors as of September 18, 2001, and certain productions that were all or substantially all completed before that date);

5. all tax shelter units are sold before 2002, and all investment funds are received before the end of 2002;

6. no investor has the right to withdraw from or unwind the investment; and

7. subparagraphs (a)(ii) or (iii) (requirement for a prospectus or offering memorandum to be issued before September 18, 2001), paragraph (e) (the requirement to have obtained a tax shelter registration number before September 18, 2001) and subparagraph (f)(ii) (the requirement to have the securities acquired before 2002 by the person who will claim the deduction, i.e. the prohibition against warehousing units) of the entry into force rules announced on September 18th are satisfied.

An additional change to the already proposed grandfathering rules would confirm that tax shelter units could be purchased by brokers, dealers and agents of promoters acting in their personal capacities as investors.

If our Minister approves, we anticipate that this additional transitional relief would be included in an upcoming Technical Bill.

Should you have any questions, please do not hesitate to call Ed Short of this Division at (613) 996-0599.

Yours sincerely,

Len Farber, General Director, Tax Legislation Division, Tax Policy Branch

[Virtually identical letters were dated October 26, 2001 and (in French) October 30, 2001 — ed.]

History [s. 18.1]: S. 18.1 added by 1998, c. 19, s. 80, applicable to every expenditure made by a taxpayer or a partnership after November 17, 1996 other than, in respect of a particular right to receive production, such an expenditure made

(a) before 1997 under an agreement in writing made by the taxpayer or the partnership before 1997 to acquire the particular right

(i) in return for paying selling commissions incurred before 1997 in connection with the distribution of shares of a mutual fund corporation or units of mutual fund trust, or

(ii) to render production services before 1997 for a film or video production,

and, for the purpose of applying this paragraph, the expenditure is deemed to have been made no earlier than the time and only to the extent it is considered for the purposes of the Act to have been made and, if subparagraph (ii) applies, only to the extent the services were rendered at or before that time,

(b) before August 1997 if

(i) the expenditure was made under an agreement in writing made by the taxpayer or the partnership before August 1997 to acquire the particular right in return for paying selling commissions incurred after 1996 and before August 1997 in connection with the distribution of shares of a mutual fund corporation or units of a mutual fund trust that is managed by an administrator of mutual funds,

(ii) the particular right to receive production is identified in an advance income tax ruling request delivered to Revenue Canada before November 18, 1996,

(iii) the total of all such expenditures made by any taxpayer or partnership in respect of all of the rights identified in the advance income tax ruling request does not exceed $30,000,000, and

(iv) all tax shelter investments (as defined in section 143.2 of the Act) that can reasonably be considered to relate to the expenditure were acquired before August 1997,

and, for the purpose of applying this paragraph, an expenditure is deemed to have been made no earlier than the time and only to the extent it is considered for the purposes of the Act to have been made,

(c) before August 1997 if

(i) the expenditure is made under an agreement in writing made by the taxpayer or the partnership before August 1997 to acquire the particular right in return for paying selling commissions incurred after 1996 and before August 1997 in connection with the distribution of shares of a mutual fund corporation or units of a mutual fund trust that is managed by an administrator of mutual funds, other than by an administrator of a mutual fund that is or is related to an administrator to which paragraph (b) refers in respect of commissions incurred in connection with the distribution of the shares or units described in paragraph (b),

(ii) the total of all such expenditures made by any taxpayer or partnership to acquire particular rights in return for paying selling commissions in connection with the distribution of shares of the mutual fund corporation or units of the mutual fund trust that is managed by the administrator of mutual funds or any other person that is related to the administrator does not exceed $10,000,000, and

(iii) all tax shelter investments (as defined in section 143.2 of the Act) that can reasonably be considered to relate to the expenditure were acquired before August 1997,

and, for the purpose of applying this paragraph, an expenditure is deemed to have been made no earlier than the time and only to the extent it is considered for the purposes of the Act to have been made,

(d) before November 1997 under an agreement in writing made by the taxpayer or the partnership before November 1997 to acquire the particular right and to render production services before November 1997 for a film or video production if

(i) at least 75% of the expenditures made in respect of the film or video production by the taxpayer or partnership pertain to services performed in Canada by residents of Canada, and

(ii) all tax shelter investments (as defined in section 143.2 of the Act) that can reasonably be considered to relate to the expenditure were acquired before November 1997,

and, for the purpose of applying this paragraph, the expenditure is deemed to have been made no earlier than the time and only to the extent it is considered for the purposes of the Act to have been made and only to the extent the services are rendered at or before that time,

(e) before 1998, under an agreement in writing made by the taxpayer or the partnership before November 18, 1996 to acquire the particular right and, for the purpose of this paragraph, if the expenditure relates to service obligations to be fulfilled by the taxpayer or partnership, the expenditure is deemed to have been made no earlier than the time and only to the extent it is considered for the purposes of the Act to have been made and only to the extent the services are rendered at or before that time,

(f) before 1998, pursuant to the terms of a document that is a prospectus, preliminary prospectus or registration statement if

(i) the document was filed before November 18, 1996 with a public authority in Canada in accordance with the securities legislation of Canada or of any province and, where required by law, accepted for filing by the public authority,

(ii) the particular right is identified in the document, and

(iii) all the funds raised pursuant to the document were raised before 1997 and all tax shelter investments (as defined in section 143.2 of the Act), that can reasonably be considered to relate to the expenditure, were acquired before August 1997,

and, for the purpose of applying this paragraph, if an expenditure relates to service obligations to be fulfilled by the taxpayer or partnership, the expenditure is deemed to have been made no earlier than the time and only to the extent it is considered for the purposes of the Act to have been made and only to the extent the services are rendered at or before that time, or

(g) before 1998, pursuant to the terms of an offering memorandum distributed as part of an offering of securities if

(i) the memorandum contained a complete or substantially complete description of the securities contemplated in the offering as well as the terms and conditions of the offering,

(ii) the memorandum was distributed before November 18, 1996,

(iii) solicitations in respect of the sale of the securities contemplated by the memorandum were made before November 18, 1996,

(iv) the sale of the securities was substantially in accordance with the memorandum,

(v) the particular right is identified in the document, and

(vi) all the funds raised pursuant to the memorandum were raised before 1997 and all tax shelter investments (as defined in section 143.2 of the Act) that can reasonably be considered to relate to the expenditure were acquired before August 1997,

and, for the purpose of applying this paragraph, if an expenditure relates to service obligations to be fulfilled by the taxpayer or partnership, the expenditure is deemed to have been made no earlier than the time and only to the extent it is considered for the purposes of the Act to have been made and only to the extent the services are rendered at or before that time,

except that paragraphs (e), (f) and (g) apply to an expenditure only if

(h) there is no agreement or other arrangement under which the obligations of the taxpayer or the partnership with respect to the expenditure can be changed, reduced or waived if there is a change to the Act or if there is an adverse assessment under the Act,

(i) where the expenditure is associated with one or more tax shelters sold or offered for sale at a time and in circumstances in which section 237.1 of the Act requires an identification number to have been obtained, the identification number was obtained before that time, and

(j) in the case of an expenditure, including an expenditure to which paragraph (e) applies, made pursuant to a document described in paragraph (f) or (g), a portion of the securities authorized to be sold in 1996 pursuant to the document were after 1995 and before November 18, 1996 sold to, or subscribed for by, a person who was not at the time of sale or subscription

(i) a promoter, or an agent of a promoter, of the securities,

(ii) a grantor of the right to receive production to which the expenditure relates,

(iii) a broker or dealer in securities, or

(iv) a person who did not deal at arm's length with a person referred to in subparagraph (i) or (ii).

Definitions [s. 18.1]: "affiliated" — 251.1; "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canadian resource property" — 66(15), 248(1); "class of shares" — 248(6); "control" — 256(6)–(9); "dividend" — 248(1); "foreign resource property" — 66(15), 248(1); "identical" — 18.1(12); "insurer" — 248(1); "matchable expenditure" — 18.1(1); "officer", "person" — 248(1); "principal amount", "property" — 248(1); "province" — *Interpretation Act* 35(1); "related" — 251(2)–(6); "right to receive production" — 18.1(1); "share", "shareholder" — 248(1); "substituted property" — 18.1(8)(b); "tax benefit", "tax shelter" — 18.1(1); "taxation year" — 249; "taxpayer" — 18.1(1), 248(1); "trust" — 104(1), 248(1), (3).

19. (1) Limitation re advertising expense — newspapers — In computing income, no deduction shall be made in respect of an otherwise deductible outlay or expense of a taxpayer for advertising space in an issue of a newspaper for an advertisement directed primarily to a market in Canada unless

(a) the issue is a Canadian issue of a Canadian newspaper; or

(b) the issue is an issue of a newspaper that would be a Canadian issue of a Canadian newspaper except that

(i) its type has been wholly set in the United States or has been partly set in the United States with the remainder having been set in Canada, or

(ii) it has been wholly printed in the United States or has been partly printed in the United States with the remainder having been printed in Canada.

Related Provisions: 19.01 — Limitation for magazines and other periodicals.

History: The portion of subsec. 19(1) before subpara. (b)(i) amended by 2001, c. 17, subsec. 11(1), applicable in respect of advertisements placed in an issue dated after May 2000. That portion formerly read:

19. (1) Limitation re advertising expense — In computing income, no deduction shall be made in respect of an otherwise deductible outlay or expense of a taxpayer for advertising space in an issue of a newspaper or periodical for an advertisement directed primarily to a market in Canada unless

(a) the issue is a Canadian issue of a Canadian newspaper or periodical dated after 1975; or

(b) the issue is an issue of a newspaper or periodical dated after December 31, 1988 that would be a Canadian issue of a Canadian newspaper or periodical except that

Selected Cases [subsec. 19(1)]: *Jay-Kay Publications Ltd. v. MNR*, [1972] C.T.C. 539 (FCA) (Amounts paid for advertising in non-Canadian periodical promoting medical scholarship deductible).

(2) [Repealed under former Act]

(3) Where subsec. (1) does not apply — Subsection (1) does not apply with respect to an advertisement in a special issue or edition of a newspaper that is edited in whole or in part and printed and published outside Canada if that special issue or edition is devoted to features or news related primarily to Canada and the publishers thereof publish such an issue or edition not more frequently than twice a year.

(4) [Repealed under former Act]

(5) Definitions — In this section,

"Canadian issue" of a newspaper means an issue, including a special issue,

(a) the type of which, other than the type for advertisements or features, is set in Canada,

(b) all of which, exclusive of any comics supplement, is printed in Canada,

(c) that is edited in Canada by individuals resident in Canada, and

(d) that is published in Canada;

History: The definition "Canadian issue" in subsec. 19(5) amended by 2001, c. 17, subsec. 11(3), applicable in respect of advertisements placed in an issue dated after May 2000. The definition formerly read:

"Canadian issue" means,

(a) in relation to a newspaper, an issue, including a special issue,

(i) the type of which, other than the type for advertisements or features, is set in Canada,

(ii) the whole of which, exclusive of any comics supplement, is printed in Canada,

(iii) that is edited in Canada by individuals resident in Canada, and

(iv) that is published in Canada, and

(b) in relation to a periodical, an issue, including a special issue,

(i) the type of which, other than the type for advertisements, is set in Canada,

(ii) that is printed in Canada,

(iii) that is edited in Canada by individuals resident in Canada, and

(iv) that is published in Canada,

but does not include an issue of a periodical

(v) that is produced or published under a licence granted by a person who produces or publishes issues of a periodical that are printed, edited or published outside Canada, or

(vi) the contents of which, excluding advertisements, are substantially the same as the contents of an issue of a periodical, or the contents of one or more issues of one or more periodicals, that was or were printed, edited or published outside Canada;

"Canadian newspaper" means a newspaper the exclusive right to produce and publish issues of which is held by one or more of the following:

(a) a Canadian citizen,

(b) a partnership

(i) in which interests representing in value at least 3/4 of the total value of the partnership property are beneficially owned by, and

(ii) at least 3/4 of each income or loss of which from any source is included in the determination of the income of,

corporations described in paragraph (e) or Canadian citizens or any combination thereof,

(c) an association or society of which at least 3/4 of the members are Canadian citizens,

(d) Her Majesty in right of Canada or a province, or a municipality in Canada, or

(e) a corporation

(i) that is incorporated under the laws of Canada or a province,

(ii) of which the chairperson or other presiding officer and at least 3/4 of the directors or other similar officers are Canadian citizens, and

(iii) that, if it is a corporation having share capital, is

(A) a public corporation a class or classes of shares of the capital stock of which are listed on a prescribed stock exchange in Canada, other than a corporation controlled by citizens or subjects of a country other than Canada, or

(B) a corporation of which at least 3/4 of the shares having full voting rights under all circumstances, and shares having a fair market value in total of at least 3/4 of the fair market value of all of the issued shares of the corporation, are beneficially owned by Canadian citizens or by public corporations a class or classes of shares of the capital stock of which are listed on a prescribed stock exchange in Canada, other than a public corporation controlled by citizens or subjects of a country other than Canada,

and, for the purposes of clause (B), where shares of a class of the capital stock of a corporation are owned, or deemed by this definition to be owned, at any time by another corporation (in this definition referred to as the "holding corporation"), other than a public corporation a class or classes of shares of the capital stock of which are listed on a prescribed stock exchange in Canada, each shareholder of the holding corporation shall be deemed to own at that time that proportion of the number of such shares of that class that

(C) the fair market value of the shares of the capital stock of the holding corporation owned at that time by the shareholder

is of

(D) the fair market value of all the issued shares of the capital stock of the holding corporation outstanding at that time,

and, where at any time shares of a class of the capital stock of a corporation are owned, or are deemed by this definition to be owned, by a partnership, each member of the partnership shall be deemed to own at that time the least proportion of the number of such shares of that class that

(E) the member's share of the income or loss of the partnership from any source for its fiscal period that includes that time

is of

(F) the income or loss of the partnership from that source for its fiscal period that includes that time,

and for this purpose, where the income and loss of a partnership from any source for a fiscal period are nil, the partnership shall be deemed to have had income from that source for that period in the amount of $1,000,000;

Related Provisions: 19(5.1) — Extended meaning of "Canadian citizen"; 19(6) — Trust property; 19(7) — Grace period on ceasing to be Canadian newspaper; 19(8) — Anti-avoidance — certain newspapers and periodicals deemed not to be Canadian.

History: The opening words of the definition "Canadian newspaper or periodical" in subsec. 19(5) amended by 2001, c. 17, subsec. 11(4), applicable in respect of advertisements placed in an issue dated after May 2000. The opening words formerly read:

"Canadian newspaper or periodical" means a newspaper or periodical the exclusive right to produce and publish issues of which is held by one or more of the following:

Para. (b) and subpara. (e)(iii) of "Canadian newspaper..." substituted by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 14(1), (2), applicable with respect to rights referred to in the definition that are acquired after July 13, 1990 (and rights acquired after 1988 where the acquiror of the right so elects by notifying the Minister of National Revenue in writing before 1992 [1994, c. 7, Sch. VIII (1993, c. 24), s. 159 provides that such an election made before December 11, 1993 shall be deemed to have been made before 1992]) and, for this purpose where an individual who is a citizen or subject of a country other than Canada or a corporation controlled by such an individual or individuals has at any time after July 13, 1990 acquired, in an arm's length transaction,

(a) more than 1/4 of the shares of a particular corporation that have full voting rights under all circumstances, or

(b) shares of a particular corporation having a fair market value in total of more than 1/4 of the fair market value of all of the issued shares of the particular corporation,

the particular corporation and any corporation controlled by the particular corporation shall be deemed to have acquired at that time any right referred to in the definition that is owned by the particular corporation or controlled corporation at that time. Those portions of that definition formerly read:

(b) a partnership of which at least 3/4 of the members are Canadian citizens and in which interests representing in value at least 3/4 of the total value of the partnership property are beneficially owned by Canadian citizens,

. . . . .

(iii) of which, if it is a corporation having share capital, at least 3/4 of the shares having full voting rights under all circumstances, and shares representing in total at least 3/4 of the paid-up capital, are beneficially owned by Canadian citizens or by corporations other than corporations controlled by citizens or subjects of a country other than Canada;

Regulations: 3200 (prescribed stock exchange for "Canadian newspaper or periodical"(e)(iii)).

"issue of a non-Canadian newspaper or periodical [para. 19(5)(c)]" — [Repealed under former Act]

"substantially the same" — [Repealed]

History: The definition "substantially the same" in subsec. 19(5) repealed by 2001, c. 17, subsec. 11(2), applicable in respect of advertisements placed in an issue dated after May 2000. The definition formerly read:

"substantially the same" means more than 20% the same;

"United States" means

(a) the United States of America, but does not include Puerto Rico, the Virgin Islands, Guam or any other United States possession or territory, and

(b) any areas beyond the territorial sea of the United States within which, in accordance with international law and its domestic laws, the United States may exercise rights with respect to the seabed and subsoil and the natural resources of those areas.

(5.1) Interpretation ["Canadian citizen"] — In this section, each of the following is deemed to be a Canadian citizen:

(a) a trust or corporation described in paragraph 149(1)(o) or (o.1) formed in connection with a pension plan that exists for the benefit of individuals a majority of whom are Canadian citizens;

(b) a trust described in paragraph 149(1)(r) or (x), the annuitant in respect of which is a Canadian citizen;

(c) a mutual fund trust, within the meaning assigned by subsection 132(6), other than a mutual fund trust the majority of the units of which are held by citizens or subjects of a country other than Canada;

(d) a trust, each beneficiary of which is a person, partnership, association or society described in any of paragraphs (a) to (e) of the definition "Canadian newspaper" in subsection (5); and

(e) a person, association or society described in paragraph (c) or (d) of the definition "Canadian newspaper" in subsection (5).

History: Subsec. 19(5.1) added by 2001, c. 17, subsec. 11(5), applicable in respect of advertisements placed in an issue dated after June 1996 except that, in applying the subsec. to advertisements placed in an issue dated after June 1996 and before June 2000, the references to "Canadian newspaper" shall be read as references to "Canadian newspaper or periodical".

(6) Trust property — Where the right that is held by any person, partnership, association or society described in the definition "Canadian newspaper" in subsection (5) to produce and publish issues of a newspaper is held as property of a trust or estate, the newspaper is not a Canadian newspaper unless each beneficiary under the trust or estate is a person, partnership, association or society described in that definition.

History: Subsec. 19(6) amended by 2001, c. 17, subsec. 11(6), applicable in respect of advertisements placed in an issue dated after May 2000. The subsec. formerly read:

(6) Where the right that is held by any person, partnership, association or society described in the definition "Canadian newspaper or periodical" in subsection (5) to produce and publish issues of a newspaper or periodical is held as property of a trust or estate, the newspaper or periodical is not a Canadian newspaper or periodical within the meaning of this section unless each beneficiary under the trust or estate is a person, partnership, association or society so described.

(7) Grace period — A Canadian newspaper that would, but for this subsection, cease to be a Canadian newspaper, is deemed to continue to be a Canadian newspaper until the end of the 12th month that follows the month in which it would, but for this subsection, have ceased to be a Canadian newspaper.

History: Subsec. 19(7) amended by 2001, c. 17, subsec. 11(6), applicable in respect of advertisements placed in an issue dated after May 2000. The subsec. formerly read:

> (7) Notwithstanding any other provision of this section, where a newspaper or periodical that was at any time after June 30, 1965 a Canadian newspaper or periodical within the meaning of this section subsequently ceases to be such a Canadian newspaper or periodical, the newspaper or periodical shall be deemed to continue to be a Canadian newspaper or periodical within the meaning of this section until the expiration of the 12th month following the month in which it so ceased to be a Canadian newspaper or periodical.

(8) Non-Canadian newspaper — Where at any time one or more persons or partnerships that are not described in any of paragraphs (a) to (e) of the definition "Canadian newspaper" in subsection (5) have any direct or indirect influence that, if exercised, would result in control in fact of a person or partnership that holds a right to produce or publish issues of a newspaper, the newspaper is deemed not to be a Canadian newspaper at that time.

Related Provisions: 256(5.1) — General test for "control in fact".

History: Subsec. 19(8) amended by 2001, c. 17, subsec. 11(6), applicable in respect of advertisements placed in an issue dated after May 2000. The subsec. formerly read:

> (8) Non-Canadian newspaper or periodical — Where at any time one or more persons or partnerships that are not described in any of paragraphs (a) to (e) of the definition "Canadian newspaper or periodical" in subsection (5) have any direct or indirect influence that, if exercised, would result in control in fact of a person or partnership that holds a right to produce or publish issues of a newspaper or periodical, the newspaper or periodical is deemed not to be a Canadian newspaper or periodical at that time.

Subsec. 19(8) added by 1995, c. 46, s. 5, applicable after December 15, 1995, except that it does not apply to a newspaper or periodical where the influence that would result in control in fact of a person or partnership that holds the right to produce or publish the newspaper or periodical arose as a consequence of a transaction or series of transactions that was completed before April 1993.

Definitions [s. 19]: "beneficially owned" — 248(3); "Canada" — 255, *Interpretation Act* 35(1); "Canadian citizen" — 19(5.1); "Canadian issue" — 19(5); "Canadian newspaper" — 19(5), (8); "class", "class of shares" — 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "estate" — 104(1), 248(1); "Her Majesty" — *Interpretation Act* 35(1); "individual" — 248(1); "month" — *Interpretation Act* 35(1); "mutual fund trust" — 132(6)–(7), 248(1); "paid-up capital" — 89(1), 248(1); "person" — 248(1); "prescribed stock exchange in Canada" — Reg. 3200; "property" — 248(1); "province" — *Interpretation Act* 35(1); "public corporation" — 89(1), 248(1); "resident in Canada" — 94(3)(a)(viii), 250; "share", "shareholder" — 248(1); "substantially" — 19(5); "taxpayer" — 248(1); "territorial sea" — *Interpretation Act* 35(1); "trust" — 104(1), 248(1), (3); "United States" — 19(5).

19.01 (1) Definitions — The definitions in this subsection apply in this section.

"advertisement directed at the Canadian market" has the same meaning as the expression "directed at the Canadian market" in section 2 of the *Foreign Publishers Advertising Services Act* and includes a reference to that expression made by or under that Act.

"original editorial content" in respect of an issue of a periodical means non-advertising content

> (a) the author of which is a Canadian citizen or a permanent resident of Canada within the meaning assigned by the *Immigration Act* and, for this purpose, "author" includes a writer, a journalist, an illustrator and a photographer; or
>
> (b) that is created for the Canadian market and has not been published in any other edition of that issue of the periodical published outside Canada.

"periodical" has the meaning assigned by section 2 of the *Foreign Publishers Advertising Services Act*.

Related Provisions: 19.01(6) — Meaning of "edition".

(2) Limitation re advertising expenses — periodicals — Subject to subsections (3) and (4), in computing income, no deduction shall be made by a taxpayer in respect of an otherwise deductible outlay or expense for advertising space in an issue of a periodical for an advertisement directed at the Canadian market.

(3) 100% deduction — A taxpayer may deduct in computing income an outlay or expense of the taxpayer for advertising space in an issue of a periodical for an advertisement directed at the Canadian market if

> (a) the original editorial content in the issue is 80% or more of the total non-advertising content in the issue; and
>
> (b) the outlay or expense would, but for subsection (2), be deductible in computing the taxpayer's income.

Related Provisions: 19.01(5) — Calculation of percentage.

(4) 50% deduction — A taxpayer may deduct in computing income 50% of an outlay or expense of the taxpayer for advertising space in an issue of a periodical for an advertisement directed at the Canadian market if

> (a) the original editorial content in the issue is less than 80% of the total non-advertising content in the issue; and
>
> (b) the outlay or expense would, but for subsection (2), be deductible in computing the taxpayer's income.

Related Provisions: 19.01(5) — Calculation of percentage.

(5) Application — For the purposes of subsections (3) and (4),

> (a) the percentage that original editorial content is of total non-advertising content is the percentage that the total space occupied by original editorial content in the issue is of the total space occupied by non-advertising content in the issue; and
>
> (b) the Minister may obtain the advice of the Department of Canadian Heritage for the purpose of
>
> > (i) determining the result obtained under paragraph (a), and
> >
> > (ii) interpreting any expression defined in this section that is defined in the *Foreign Publishers Advertising Services Act*.

(6) Editions of issues — For the purposes of this section,

> (a) where an issue of a periodical is published in several versions, each version is an edition of that issue; and
>
> (b) where an issue of a periodical is published in only one version, that version is an edition of that issue.

History [s. 19.01]: S. 19.01 added by 2001, c. 17, s. 12, applicable in respect of advertisements placed in an issue dated after May 2000.

Definitions [s. 19.01]: "advertisement directed at the Canadian market" — 19.01(5); "Canada" — 255, *Interpretation Act* 35(1); "edition" — 19.01(6); "Minister" — 248(1); "original editorial content", "periodical" — 19.01(1); "taxpayer" — 248(1).

19.1 (1) Limitation re advertising expense on broadcasting undertaking — Subject to subsection (2), in computing income, no deduction shall be made in respect of an otherwise deductible outlay or expense of a taxpayer made or incurred after September 21, 1976 for an advertisement directed primarily to a market in Canada and broadcast by a foreign broadcasting undertaking.

(2) Exception — In computing income, a deduction may be made in respect of an outlay or expense made or incurred before September 22, 1977 for an advertisement directed primarily to a market in Canada and broadcast by a foreign broadcasting undertaking pursuant to

(a) a written agreement entered into on or before January 23, 1975; or

(b) a written agreement entered into after January 23, 1975 and before September 22, 1976 if the agreement is for a term of one year or less and by its express terms is not capable of being extended or renewed.

(3) [Repealed under former Act]

(4) Definitions — In this section,

"foreign broadcasting undertaking" means a network operation or a broadcasting transmitting undertaking located outside Canada or on a ship or aircraft not registered in Canada;

"network" includes any operation involving two or more broadcasting undertakings whereby control over all or any part of the programs or program schedules of any of the broadcasting undertakings involved in the operation is delegated to a network operator.

Definitions [s. 19.1]: "broadcasting" — *Interpretation Act* 35(1); "Canada" — 255; "foreign broadcasting undertaking", "network" — 19.1(4); "taxpayer" — 248(1).

20. (1) Deductions permitted in computing income from business or property — Notwithstanding paragraphs 18(1)(a), (b) and (h), in computing a taxpayer's income for a taxation year from a business or property, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts as may reasonably be regarded as applicable thereto:

(a) **capital cost of property** — such part of the capital cost to the taxpayer of property, or such amount in respect of the capital cost to the taxpayer of property, if any, as is allowed by regulation;

Related Provisions: 13(4.3)(c) — Where franchise, concession or license is exchanged; 13(5) — Transferred property; 13(5.2) — Rules applicable; 13(6) — Misclassified property; 13(7) — Change in use of depreciable property; 13(11) — Automobile deduction; 13(12) — Lobbying expenses; 13(14) — Conversion cost of vessel; 13(21.2) — Transfer of property where u.c.c. exceeds fair market value; 13(26)–(32) — Restriction on deduction before available for use; 18(3.1)(a) — Costs relating to construction of building or ownership of land; 18(12) — Home office expense; 20(1.1) — Definitions in 13(21) apply to regulations; 20(16), (16.1) — Terminal loss; 21 — Cost of borrowed money; 28(1)(g) — Deduction from farming or fishing income when using cash method; 34.2(2)(c) — Maximum CCA deemed claimed for; 1995 stub period income; 36 — Railway companies; 37(6) — Scientific research capital expenditures; 68 — Allocation of cost between property and services; 70(13) — Capital cost of depreciable property on death; 80(9)(c) — Reduction of capital cost on debt forgiveness ignored for CCA purposes; 85(5) — Rules on transfers of depreciable property; 87(2)(d.1) — Amalgamations — depreciable property acquired from predecessor corporation; 107.2(e) — Distribution of depreciable property by retirement compensation arrangement; 107.4(3)(d) — Rollover of depreciable property to trust; 125.4(4) — No Canadian film/video production credit to corporation if investor can claim CCA; 127.52(1)(b), (c) — Minimum tax — add-back of some CCA; 132.2(1)(d) [to be repealed], 132.2(3)(d) [draft], 132.2(5)(d) [draft] — Deemed capital cost of depreciable property following mutual fund reorganization; 138(11.8) — Transfer of depreciable property by non-resident insurer; 164(6) — Refund — disposition of property by legal representative of deceased taxpayer. See additional Related provisions and Definitions at end of s. 20.

Selected Cases [para. 20(1)(a)]: *Enstone v. R.*, [2000] 2 C.T.C. 279 (FCA) (Holder of life interest in property could claim CCA); *Saskatchewan Wheat Pool v. R.*, [1999] 2 C.T.C. 369 (FCA); leave to appeal to SCC refused (Apr. 13, 2000), File 27346 (ITC should not be higher for taxpayer who capitalizes interest); *Hickman Motors Ltd. v. R.*, [1998] 1 C.T.C. 213 (SCC) (Property retains depreciable character in hands of transferee on winding-up, if not used for other purposes); *Kamsel Leasing Inc. v. MNR*, [1993] 1 C.T.C. 2279 (TCC) (Agreement treated as "sale" not "lease" where option to acquire property at end of term substantially below probable market value); *Société Immobilière SSQ Inc. v. MNR*, [1993] 1 C.T.C. 2029 (TCC) (Costs incurred by partnership before taxpayer's acquisition of interest not deductible; contracts not retroactive); *British Columbia Telephone Co. v. Canada*, [1992] 1 C.T.C. 26 (FCA) (Fibre optic telephone transmission systems properly classified as cable); *Vaillancourt v. Canada*, [1991] 2 C.T.C. 42 (FCA) (Condominium was residential and within Class 31).

Regulations: Part XI (CCA rules); Part XVII (farming and fishing property owned since before 1972); Reg. Sch. II–Sch. VI (classes of property).

I.T. Application Rules: 18(2), 20, 26.1(2).

Interpretation Bulletins: IT-79R3: CCA — Buildings or other structures; IT-121R3: Election to capitalize cost of borrowed money (archived); IT-128R: CCA — Depreciable property; IT-147R3: CCA — Accelerated write-off of manufacturing and processing machinery and equipment; IT-187: Customer lists and ledger accounts; IT-195R4: Rental property — CCA restrictions; IT-267R2: CCA — Vessels; IT-283R2: CCA — video tapes, video tape cassettes, films, computer software and master recording media (archived); IT-285R2: CCA — General comments; IT-291R3: Transfer of property to a corporation under subsection 85(1); IT-304R2: Condominiums; IT-306R2: CCA — Contractor's movable equipment; IT-317R: CCA — Radio and television equipment (archived); IT-324: Emphyteutic lease (archived); IT-325R2: Property transfers after separation, divorce and annulment; IT-327: CCA — Elections under regulation 1103 (archived); IT-336R: CCA — Pollution control property (archived); IT-371: Rental property — meaning of "principal business"; IT-422: Definition of tools; IT-464R: CCA — Leasehold interests; IT-465R: Non-resident beneficiaries of trusts; IT-469R: CCA — Earth-moving equipment; IT-472: CCA — Class 8 property; IT-476: CCA — Gas and oil exploration and production equipment; IT-477: CCA — Patents, franchises, concessions and licences; IT-481: Timber resource property and timber limits; IT-485: Cost of clearing or levelling land [to be amended re golf courses, per I.T. Technical News 20]; IT-492: CCA — Industrial mineral mines; IT-501: CCA — Logging assets.

Information Circulars: 84-1: Revision of capital cost allowance claims and other permissive deductions; 87-5: Capital cost of property where trade-in is involved.

I.T. Technical News: 1 (sales commission expenses of mutual-fund limited partnerships); 3 (loss utilization within a corporate group); No. 12 ("millennium bug" expenditures); 20 (tax treatment of golf courses).

Advance Tax Rulings: ATR-1: Transfer of legal title in land to bare trustee corporation — mortgagee's requirements sole reason for transfer.

Forms: T1-CP Summ: Summary of certified productions; T1-CP Supp: Statement of certified productions; T2 SCH 8: Capital cost allowance; T776: Statement of real estate rentals; T777: Statement of employment expenses; T4044: Employment expenses [guide]; T5014: Partnership capital cost allowance schedule.

(b) **cumulative eligible capital amount** — such amount as the taxpayer claims in respect of a business, not exceeding 7% of the taxpayer's cumulative eligible capital in respect of the business at the end of the year except that, where the year is less than 12 months, the amount allowed as a deduction under this paragraph shall not exceed that proportion of the maximum amount otherwise allowable that the number of days in the taxation year is of 365;

Related Provisions: 14(1) — Inclusion in income from business; 14(5) — Definitions — "cumulative eligible capital", "eligible capital expenditure"; 24 — Ceasing to carry on business; 28(1)(g) — Deduction from farming or fishing income when using cash method; 34.2(2)(c) — Maximum amount deemed claimed for purposes of 1995 stub period income; 70(5.1) — Eligible capital property of deceased; 70(9.8) — Farm property used by corporation or partnership; 87(2)(f) — Amalgamations — cumulative eligible capital; 107(2)(f) — Capital interest distribution by personal or prescribed trust; 111(5.2) — Computation of cumulative eligible capital. See also at end of s. 20.

History: Para. 20(1)(b) amended by 2001, c. 17, subsec. 13(1), applicable to taxation years that begin after December 21, 2000. The para. formerly read:

> (b) such amount as the taxpayer may claim in respect of a business, not exceeding 7% of the taxpayer's cumulative eligible capital in respect of the business at the end of the year;

Interpretation Bulletins: IT-99R5: Legal and accounting fees; IT-123R4: Disposition of and transactions involving eligible capital property; IT-123R6: Transactions involving eligible capital property; IT-291R3: Transfer of property to a corporation under subsection 85(1); IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987; IT-313R2: Eligible capital property — rules where a taxpayer has ceased carrying on a business or has died; IT-341R3: Expenses of issuing or selling shares, units in a trust, interests in a partnership or syndicate, and expenses of borrowing money.

Forms: T5017: Calculation of deduction for cumulative eligible capital of a partnership.

(c) **interest** — an amount paid in the year or payable in respect of the year (depending upon the method regularly followed by the taxpayer in computing the taxpayer's income), pursuant to a legal obligation to pay interest on

(i) borrowed money used for the purpose of earning income from a business or property (other than borrowed money used to acquire property the income from which would be exempt or to acquire a life insurance policy),

(ii) an amount payable for property acquired for the purpose of gaining or producing income from the property or for the purpose of gaining or producing income from a business (other than property the income from which would be exempt or property that is an interest in a life insurance policy),

(iii) an amount paid to the taxpayer under

(A) an appropriation Act and on terms and conditions approved by the Treasury Board for the purpose of advancing or sustaining the technological capability of Canadian manufacturing or other industry, or

(B) the *Northern Mineral Exploration Assistance Regulations* made under an appropriation Act that provides for payments in respect of the Northern Mineral Grants Program, or

(iv) borrowed money used to acquire an interest in an annuity contract in respect of which section 12.2 applies (or would apply if the contract had an anniversary day in the year at a time when the taxpayer held the interest) except that, where annuity payments have begun under the contract in a preceding taxation year, the amount of interest paid or payable in the year shall not be deducted to the extent that it exceeds the amount included under section 12.2 in computing the taxpayer's income for the year in respect of the taxpayer's interest in the contract,

Proposed Addition [on hold] — 20(1)(c)(v), (vi) [December 1991]

Application: The December 20, 1991 draft legislation (interest deductibility), subsec. 1(1), will add subparas. 20(1)(c)(v) and (vi), applicable to 1972 *et seq.* These amendments are not expected to be enacted.

or a reasonable amount in respect thereof, whichever is the lesser;

Proposed Amendment — Overturning *Ludco* decision

Federal budget, Supplementary Information, February 18, 2003: *Deductibility of Interest and Other Expenses*

Recent court decisions [especially *Ludco Enterprises Ltd.*, [2002] 1 C.T.C. 95 (SCC) — ed.] have raised uncertainties as to how taxpayers are to treat expenses, in particular interest, in computing income from a business or property for purposes of the *Income Tax Act*. Most notably, these decisions could lead to inappropriate tax results where a taxpayer derives a tax loss by deducting interest expenses, even if under any objective standard there is no reasonable expectation that the taxpayer would earn any income (as opposed to capital gains), or where the presence or the prospect of revenue (as opposed to income net of expenses) is enough to conclude that an expenditure was incurred "for the purpose of earning income".

Neither of these results is consistent with appropriate tax policy, nor would they have been generally expected under prior law and practice. Therefore legislative amendments to the *Income Tax Act* will be considered in order to provide continuity in this important area of the law. Before finalizing any proposals, however, the Department of Finance will release them for public consultation, with a general goal of ensuring that they restore continuity with the expected consequences before these recent court decisions.

[See now proposed 3.1, which partially addresses these concerns — ed.]

Related Provisions: 3.1(1) — No deduction without reasonable expectation of profit; 9(3) — Capital gains not included in income from property; 15.1(2)(a), 15.1(4) — Small business development bonds; 16(1) — Income and capital combined; 16(6) — Indexed debt obligations — amount deemed paid as interest; 17 — Loan to non-resident; 18(1)(e) — No deduction for contingent reserve; 18(1)(g) — Interest on income bonds; 18(1)(t) — No deduction for interest paid on late payments of income tax; 18(1)(v) — No deduction to authorized foreign bank except under 20.2; 18(2) — Limitation — interest and property taxes on land; 18(4)–(8) — Thin capitalization — limitation on interest deductibility; 18(9)–(9.2) — Prepaid interest; 18(11) — No deduction for interest on money borrowed to make RRSP or certain other contributions; 20(1)(e) — Expense of borrowing money; 20(1)(f) — Amounts paid in satisfaction of the "principal amount"; 20(1.2) — Definitions in 12.2(11) apply; 20(2) — Borrowed money; 20(2.1) — Limitation; 20(2.2) — Life insurance policy; 20(3), (3.1) — Borrowed money; 20(14) — Accrued bond interest; 20.1(1) — Borrowed money where property is disposed of; 20.3 — Weak currency debt — limitation on interest deduction; 21(1)–(4) — Capitalizing interest; 60(d) — Annual interest accruing in respect of estate tax or succession duties; 67.2 — Interest on money borrowed for passenger vehicle; 80.5 — Deemed interest — employee deduction re funds borrowed to purchase auto or aircraft; 110.6(1) — "investment expense"; 118.62 — Credit for interest paid on student loans; 127.52(1)(b), (c), (c.2), (e.1) — Limitation on deduction for minimum tax purposes; 133(1) — No interest deduction to NRO; 137(4.1) — Interest deemed paid on certain reductions of capital by credit union; 138(5)(b) — Insurers — limitation; 212(1)(b) — Non-resident withholding tax on interest; 218 — Loan to wholly-owned subsidiary. See also at end of s. 20.

History: Subpara. 20(1)(c)(iv) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 15(1), applicable with respect to contracts last acquired after 1989. Subpara. 20(1)(c)(iv) formerly read:

> (iv) borrowed money used to acquire an interest in an annuity contract to which section 12.2 applies, except that, where annuity payments have commenced under the contract in a preceding taxation year, the amount of interest paid or payable in the year shall not be deducted to the extent that it exceeds the amount included under that section or under paragraph 56(1)(d.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in computing the taxpayer's income for the year with respect to the taxpayer's interest in the contract,

Selected Cases [para. 20(1)(c)]: *722540 Ontario Inc. v. R.*, [2003] 3 C.T.C. 1 (FCA); aff'g [2002] 1 C.T.C. 2872 (TCC) (Series of transactions was for sole purpose of creating interest expense; deduction disallowed); *Penn Ventilator Canada Ltd.*, [2002] 2 C.T.C. 2636 (TCC) (Interest deductible where income-earning capacity of borrower would have been depleted by making payments from existing resources); *Singleton v. R.*, [2002] 1 C.T.C. 121 (SCC); aff'g [1999] 3 C.T.C. 446 (FCA) ("Economic reality" approach rejected and taxpayer entitled to change mind as to purpose of borrowed funds); *Ludmer v. MNR*, [2002] 1 C.T.C. 95 (SCC); rev'g [1999] 3 C.T.C. 601 (FCA) (Test for deductibility is reasonable expectation of income at time investment is made. Income is "gross," not "net" income); *Shell Canada Ltd. v. R.*, [1999] 4 C.T.C. 313 (SCC); rev'g

Shell Canada Ltd. v. R., [1998] 2 C.T.C. 207 (FCA); rev'g on other grounds [1997] 3 C.T.C. 2238 (TCC) (Economic realities cannot change *bona fide* legal relationships); *Hudson Bay Mining & Smelting Co. v. R.*, [1999] 3 C.T.C. 76 (FCA) (Issuer of debentures repurchased had obligation to pay interest to date of repurchase); *Robitaille v. R.*, [1997] 3 C.T.C. 3031 (TCC) (Interest on financing of personal assets not deductible); *Parthenon Investments Ltd. v. R.*, [1997] 3 C.T.C. 152 (FCA) (Novation did not create a borrower-lender relationship); *Chase Manhattan Bank of Canada v. R.*, [1997] 2 C.T.C. 3097 (TCC) (Interest on money borrowed to pay dividends not deductible); *74712 Alberta v. MNR (formerly Cal-Gas)*, [1997] 2 C.T.C. 30 (FCA) (Use of borrowed funds was to honour guarantee, not for use in business); *Barbican Properties Inc. v. Canada*, [1997] 1 C.T.C. 2383 (FCA) (Deferred interest held to be contingent and not deductible); *Sherway Centre Ltd. v. Canada*, [1996] 3 C.T.C. 2687 (TCC) ("Participating" interest was not "interest"); *Hudson Bay Mining Smelting Co. v. Canada*, [1996] 2 C.T.C. 2245D (TCC) (Payment for accrued interest is for an expectancy to receive interest and is not itself interest); *Ludco Enterprises Ltd. v. Canada*, [1996] 3 C.T.C. 74 (FCA) (Previous treatment by Minister not binding); *Redclay Holdings Ltd. v. Canada*, [1996] 2 C.T.C. 2347 (TCC) (Deduction disallowed in respect of particular year since obligation to pay was contingent, although eventually absolute); *Tennant v. MNR*, [1996] 1 C.T.C. 290 (SCC) (Deductibility of interest not related to value of property acquired, especially replacement property, but to original purpose of loan); *Canwest Broadcasting Ltd. v. Canada*, [1995] 2 C.T.C. 2780 (TCC) (Interest incurred for purpose of gaining access to tax losses of unrelated company not deductible); *Joy v. Canada*, [1995] 1 C.T.C. 2834 (TCC) (Reference to draft legislation not permitted as guide to interpretation); *Mark Resources Inc. v. Canada*, [1993] 2 C.T.C. 2259 (TCC) (Interest on money borrowed to contribute capital to foreign affiliate for latter to earn investment income and use foreign tax losses not deductible; "income" means gross revenue from use of money; "reasonable amount" of interest need not exceed revenue); *Morscher (A.A.) v. MNR*, [1992] 2 C.T.C. 2534 (TCC) (Interest on money used by lawyer to finance work in progress deductible); *Grenier v. MNR*, [1992] 1 C.T.C. 2703 (TCC); aff'd [1998] 3 C.T.C. 243 (FCTD) (Taxpayer allowed to deduct interest only on portion of loan used to earn income); *Kalef v. MNR*, [1992] 1 C.T.C. 2771 (TCC) (Interest on loan for share purchase deductible only for year of purchase); *Goulard v. MNR*, [1992] 1 C.T.C. 2396 (TCC) (Interest expenses in respect of share purchase arose from legal obligation to repay borrowed money for purpose of earning income); *R. v. Attaie*, [1990] 2 C.T.C. 157 (FCA) (Deductibility determined by current use of borrowed money, not original use); *Holotnak v. R.*, [1990] 1 C.T.C. 13 (FCA) (Deduction of interest disallowed when mortgage funds used to purchase residence); *Malik v. MNR*, [1989] 1 C.T.C. 316 (FCTD) (Amounts paid with respect to debts when insufficient connection to employment not deductible); *Bowater Canadian Ltd. v. R.*, [1987] 2 C.T.C. 47 (FCA); leave to appeal to SCC refused (1987), 86 N.R. 265 (note), (sub nom. *Bowater Can. Ltd. v. MNR)* (Holding company rendering technical and administrative services to subsidiaries disallowed interest deduction when not in business of financing); *R. v. Bronfman Trust*, [1987] 1 C.T.C. 117 (SCC) (Relevancy of current use rather than original use of borrowed funds when assessing deductibility of interest payments); *Emerson v. R.*, [1986] 1 C.T.C. 422 (FCA); leave to appeal to SCC refused [1986] 1 SCR vii, 70 N.R. 160n (June 12, 1986) (Interest disallowed where money borrowed to repay previous loan on shares no longer owned); *R. v. Terra Mining & Exploration Ltd. (NPL)*, [1984] C.T.C. 176 (FCTD) (Accounting method used in financial statements must be the same for interest expense claims); *Sternthal v. R.*, [1974] C.T.C. 851 (FCTD) (Interest paid on borrowed money subsequently loaned interest-free to children not deductible); *MNR v. Mid-West Abrasive Co. of Canada Ltd.*, [1973] C.T.C. 548 (FCTD) (Interest payments on borrowed money not deductible prior to year in which money used); *Trans-Prairie Pipelines Ltd. v. MNR*, [1970] C.T.C. 537 (Exch.) (Interest and legal expenses deductible on money borrowed to redeem preferred shares); *DWS Corp. v. MNR*, [1968] C.T.C. 65 (Exch.); aff'd [1969] C.T.C. vi (SCC) (Interest on money borrowed from subsidiary and loaned to another disallowed when loan not made for purpose of earning income).

Regulations: 201(1)(b) (information return).

Interpretation Bulletins: IT-80: Interest on money borrowed to redeem shares or pay dividends (archived); IT-104R2: Deductibility of fines or penalties; IT-121R3: Election to capitalize cost of borrowed money (archived); IT-153R3: Land developers — subdivision and development costs and carrying charges on land; IT-265R3: Payments of income and capital combined (archived); IT-315: Interest expense incurred for the purpose of winding-up or amalgamation (archived); IT-341R3: Expenses of issuing or selling shares, units in a trust, interests in a partnership or syndicate, and expenses of borrowing money; IT-355R2: Interest on loans to buy life insurance policies and annuity contracts, and interest on policy loans (archived); IT-362R: Patronage dividends; IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt; IT-445: Deduction of interest on borrowed funds which are loaned at less than a reasonable rate (archived); IT-488R2: Winding-up of 90%-owned taxable Canadian corporations (archived); IT-498: Deductibility of interest on money borrowed to reloan to employees or shareholders (archived); IT-533: Interest deductibility and related issues.

Information Circulars: 88-2, paras. 19, 20: General anti-avoidance rule — section 245 of the *Income Tax Act*; 88-2, Supplement, para. 5: General anti-avoidance rule.

I.T. Technical News: 3 (loss utilization within a corporate group; use of a partner's assets by a partnership; interest-bearing note issued in consideration for the redemption or repurchase of shares); 16 (*Sherway Centre* case; *Shell Canada* and *Canadian Pacific* cases; *Parthenon Investments* case); 18 (*C.R.B. Logging*, *Ludco Enterprises*, *Byram* and *Singleton* cases).

Advance Tax Rulings: ATR-4: Exchange of interest rates; ATR-14: Non-arm's length interest charges; ATR-16: Inter-company dividends and interest expense; ATR-41: Convertible preferred shares; ATR-43: Utilization of a non-resident-owned investment corporation as a holding corporation; ATR-44: Utilization of deductions and credits within a related corporate group; ATR-59: Financing exploration and development through limited partnerships.

Forms: T2210: Verification of policy loan interest by the insurer.

(d) **compound interest** — an amount paid in the year pursuant to a legal obligation to pay interest on an amount that would be deductible under paragraph (c) if it were paid in the year or payable in respect of the year;

Related Provisions: 18(11) — Limitation; 20(2.1) — Limitation; 20(2.2) — Life insurance policy; 21(1)–(4) — Cost of borrowed money; 67.2 — Interest on money borrowed for passenger vehicle; 67.3 — Limitation re motor vehicle expenses; 127.52(1)(b), (c), (c.2), (e.1) — Limitation on deduction for minimum tax purposes; 138(5)(b) — Insurers — limitation; 248(1) — "Borrowed money". See also at end of s. 20.

Interpretation Bulletins: IT-121R3: Election to capitalize cost of borrowed money (archived); IT-355R2: Interest on loans to buy life insurance policies and annuity contracts, and interest on policy loans (archived); IT-362R: Patronage dividends; IT-533: Interest deductibility and related issues.

Advance Tax Rulings: ATR-4: Exchange of interest rates.

Forms: T2210: Verification of policy loan interest by the insurer.

(e) **expenses re financing** — such part of an amount (other than an excluded amount) that is not otherwise deductible in computing the income of the taxpayer and that is an expense incurred in the year or a preceding taxation year

(i) in the course of an issuance or sale of units of the taxpayer where the taxpayer is a unit trust, of interests in a partnership or syndicate by the partnership or syndicate, as the case may be, or of shares of the capital stock of the taxpayer,

(ii) in the course of a borrowing of money used by the taxpayer for the purpose of earning income from a business or property (other than money used by the taxpayer for the purpose of acquiring property the income from which would be exempt),

(ii.1) in the course of incurring indebtedness that is an amount payable for property acquired for the purpose of gaining or producing income therefrom or for the purpose of gaining or producing income from a business (other than property the income from which would be exempt or property that is an interest in a life insurance policy), or

(ii.2) in the course of a rescheduling or restructuring of a debt obligation of the taxpayer or an assumption of a debt obligation by the taxpayer, where the debt obligation is

(A) in respect of a borrowing described in subparagraph (ii), or

(B) in respect of an amount payable described in subparagraph (ii.1),

and, in the case of a rescheduling or restructuring, the rescheduling or restructuring, as the case may be, provides for the modification of the terms or conditions of the debt obligation or the conversion or substitution of the debt obligation to or with a share or another debt obligation,

(including a commission, fee, or other amount paid or payable for or on account of services rendered by a person as a salesperson, agent or dealer in securities in the course of the issuance, sale or borrowing) that is the lesser of

(iii) that proportion of 20% of the expense that the number of days in the year is of 365 and

(iv) the amount, if any, by which the expense exceeds the total of all amounts deductible by the taxpayer in respect of the expense in computing the taxpayer's income for a preceding taxation year,

and, for the purposes of this paragraph,

(iv.1) "excluded amount" means

(A) an amount paid or payable as or on account of the principal amount of a debt obligation or interest in respect of a debt obligation,

(B) an amount that is contingent or dependent on the use of, or production from, property, or

(C) an amount that is computed by reference to revenue, profit, cash flow, commodity price or any other similar criterion or by reference to dividends paid or payable to shareholders of any class of shares of the capital stock of a corporation,

(v) where in a taxation year all debt obligations in respect of a borrowing described in subparagraph (ii) or in respect of indebtedness described in subparagraph (ii.1) are settled or extinguished (otherwise than in a transaction made as part of a series of borrowings or other transactions and repayments), by the taxpayer for consideration that does not include any unit, interest, share or debt obligation of the taxpayer or any person with whom the taxpayer does not deal at arm's length or any partnership or trust of which the taxpayer or any person with whom the taxpayer does not deal at arm's length is a member or beneficiary, this paragraph shall be read without reference to the words "the lesser of" and to subparagraph (iii), and

(vi) where a partnership has ceased to exist at any particular time in a fiscal period of the partnership,

(A) no amount may be deducted by the partnership under this paragraph in computing its income for the period, and

(B) there may be deducted for a taxation year ending at or after that time by any person or partnership that was a member of the partnership immediately before that time, that proportion of the amount that would, but for this subparagraph, have been deductible under this paragraph by the partnership in the fiscal period ending in the year had it continued to exist and had the partnership interest not been redeemed, acquired or cancelled, that the fair market value of the member's interest in the partnership immediately before that time is of the fair market value of all the interests in the partnership immediately before that time;

Related Provisions: 18(11) — Limitation; 20(1)(e.1) — Deduction for annual fees, etc.; 20(1)(e.2) — Premiums on life insurance used as collateral; 20(1)(g) — Deduction for share transfer, listing and annual report fees; 20(3) — Use of borrowed money; 21(1)–(4) — Cost of borrowed money; 53(2)(c)(x) — Deduction from adjusted cost base of partnership interest; 87(2)(j.6) — Amalgamations — continuing corporation; 110.6(1) — "investment expense"; 127.52(1)(b), (c), (c.2), (e.1) — Limitation on deduction for minimum tax purposes; 142.7(8)(c) — Application to debt transferred to foreign bank branch by Canadian affiliate; 248(1) — "Borrowed money"; 248(10) — Series of transactions. See also at end of s. 20.

History: The opening words of para. 20(1)(e) and the portion of para. 20(1)(e) between subparas. (ii.2) and (iii) amended, and subpara. (iv.1) added, by 2001, c. 17, subsecs. 13(2) to (4), applicable to expenses incurred by a taxpayer after November 1999, other than expenses incurred pursuant to a written agreement made by the taxpayer before December 1999. The amended portions formerly read:

(e) such part of an amount that is not otherwise deductible in computing the income of the taxpayer and that is an expense incurred in the year or a preceding taxation year

. . . . .

(including a commission, fee or other amount paid or payable for or on account of services rendered by a person as a salesperson, agent or dealer in securities in the course of the issuance, sale or borrowing, but not including any amount that is paid or payable as or on account of the principal amount of the indebtedness or as or on account of interest) that is the lesser of

The portion of para. 20(1)(e) between subparas. (ii.2) and (iii) amended by 1998, c. 19, subsec. 81(1), applicable to expenses incurred after 1987. That portion formerly read:

(including a commission, fee or other amount paid or payable for or on account of services rendered by a person as a salesperson, agent or dealer in securities in the course of the issuance, sale or borrowing, but not including any amount that is a payment described in paragraph 18(9.1)(c) or (d) nor any amount paid or payable as or on account of the principal amount of the indebtedness or as or on account of interest) that is the lesser of

That portion of para. 20(1)(e) between subparas. (ii) and (iii) (subparas. (ii.1) and (ii.2) being added) substituted by 1994, c. 21, subsec. 12(1), applicable to expenses incurred after 1987. That portion of the para. formerly read:

(including a commission, fee or other amount paid or payable for or on account of services rendered by a person as a salesman, agent or dealer in securities in the course of the issuance, sale or borrowing, but not including any amount paid or payable as or on account of the principal amount of the indebtedness or as or on account of interest) that is the lesser of,

Subpara. 20(1)(e)(v) substituted by 1994, c. 21, subsec. 12(2), applicable to expenses incurred after 1987. That subpara. formerly read:

(v) where in a taxation year all debt obligations in respect of a borrowing are settled or extinguished (otherwise than in a transaction made as part of a series of borrowings or other transactions and repayments) by the taxpayer for consideration that does not include any unit, interest, share or debt obligation of the taxpayer or any person with whom the taxpayer does not deal at arm's length or any partnership or trust of which the taxpayer or any person with whom the taxpayer does not deal at arm's length is a member or beneficiary, this paragraph shall be read without reference to the words "the lesser of" and to subparagraph (iii), and

Selected Cases [para. 20(1)(e)]: *BJ Services Co. v. R.*, [2004] 2 C.T.C. 2169 (TCC) (Shareholder communications and expenses of statutory compliance deductible as current expenses); *Besse v. MNR*, [1999] 3 C.T.C. 52 (FCA) (Expenses of syndicate were expenses of its members); *Harrowston Corp. v. Canada*, [1997] 1 C.T.C. 101 (FCA) (Liability to pay tax did not result in deductible bad debt); *Sherway Centre Ltd. v. Canada*, [1996] 3 C.T.C. 2687 (TCC) ("Participating" interest was not "interest"); *228262 Alberta Ltd. v. MNR*, [1996] 1 C.T.C. 2416 (TCC) (Price rectification was eligible capital expenditure, not current expense or cost of borrowing); *R. v. Royal Trust Corp. of Canada*, [1983] C.T.C. 159 (FCA) (Commission payable to broker in the course of public issue was eligible capital expenditure); *MNR v. Yonge-Eglinton Building Ltd.*, [1974] C.T.C. 209 (FCA) (Payments incidental to borrowing of money under financing agreement for construction of building deductible); *Riviera Hotel Co. Ltd.*

v. MNR, [1972] C.T.C. 157 (FCTD) (Bonus to discharge loan not deductible); *Trans-Prairie Pipelines Ltd. v. MNR*, [1970] C.T.C. 537 (Exch.) (Interest and legal expenses deductible on money borrowed to redeem preferred shares).

Interpretation Bulletins: IT-99R5: Legal and accounting fees; IT-121R3: Election to capitalize cost of borrowed money (archived); IT-341R3: Expenses of issuing or selling shares, units in a trust, interests in a partnership or syndicate, and expenses of borrowing money; IT-533: Interest deductibility and related issues.

I.T. Technical News: 16 (*Sherway Centre* case).

Advance Tax Rulings: ATR-49: Long-term foreign debt; ATR-59: Financing exploration and development through limited partnerships.

(e.1) **annual fees, etc. [re borrowings]** — an amount payable by the taxpayer (other than a payment that is contingent or dependent on the use of, or production from, property or is computed by reference to revenue, profit, cash flow, commodity price or any other similar criterion or by reference to dividends paid or payable to shareholders of any class of shares of the capital stock of a corporation) as a standby charge, guarantee fee, registrar fee, transfer agent fee, filing fee, service fee or any similar fee, that can reasonably be considered to relate solely to the year and that is incurred by the taxpayer

(i) for the purpose of borrowing money to be used by the taxpayer for the purpose of earning income from a business or property (other than borrowed money used by the taxpayer for the purpose of acquiring property the income from which would be exempt income),

(ii) in the course of incurring indebtedness that is an amount payable for property acquired for the purpose of gaining or producing income therefrom or for the purpose of gaining or producing income from a business (other than property the income from which would be exempt or property that is an interest in a life insurance policy), or

(iii) for the purpose of rescheduling or restructuring a debt obligation of the taxpayer or an assumption of a debt obligation by the taxpayer, where the debt obligation is

(A) in respect of a borrowing described in subparagraph (i), or

(B) in respect of an amount payable described in subparagraph (ii),

and, in the case of a rescheduling or restructuring, the rescheduling or restructuring, as the case may be, provides for the modification of the terms or conditions of the debt obligation or the conversion or substitution of the debt obligation to or with a share or another debt obligation.

Related Provisions: 18(11) — Limitation; 20(3) — Use of borrowed money; 21 — Cost of borrowed money; 87(2)(j.6) — Amalgamations — continuing corporation; 110.6(1) — "investment expense"; 127.52(1)(b), (c), (c.2), (e.1) — Limitation on deduction for minimum tax purposes; 248(1) — "Borrowed money". See also at end of s. 20.

History: Para. 20(1)(e.1) substituted by 1994, c. 21, subsec. 12(3), applicable to expenses incurred after 1987. That para. formerly read:

(e.1) an amount payable by the taxpayer (other than a payment that is contingent or dependent upon the use or production from property or is computed by reference to revenue, profit, cash flow, commodity price or any other similar criterion or by reference to dividends paid or payable to shareholders of any class of shares of the capital stock of a corporation) as a standby charge, guarantee fee, registrar fee, transfer agent fee, filing fee, service fee or any similar fee, that may reasonably be considered to relate solely to the year and that relates to money borrowed by the taxpayer and used by the taxpayer for the purpose of earning income from a business or property (other than money used by the taxpayer for the purpose of acquiring property the income from which would be exempt);

Interpretation Bulletins: IT-121R3: Election to capitalize cost of borrowed money (archived); IT-341R3: Expenses of issuing or selling shares, units in a trust, interests in a partnership or syndicate, and expenses of borrowing money.

Advance Tax Rulings: ATR-49: Long-term foreign debt.

(e.2) **premiums on life insurance used as collateral** — such portion of the lesser of

(i) the premiums payable by the taxpayer under a life insurance policy (other than an annuity contract) in respect of the year, where

(A) an interest in the policy is assigned to a restricted financial institution in the course of a borrowing from the institution,

(B) the interest payable in respect of the borrowing is or would, but for subsections 18(2) and (3.1) and sections 21 and 28, be deductible in computing the taxpayer's income for the year, and

(C) the assignment referred to in clause (A) is required by the institution as collateral for the borrowing

and

(ii) the net cost of pure insurance in respect of the year, as determined in accordance with the regulations, in respect of the interest in the policy referred to in clause (i)(A),

as can reasonably be considered to relate to the amount owing from time to time during the year by the taxpayer to the institution under the borrowing;

Related Provisions: 127.52(1)(b), (c), (c.2), (e.1) — Limitation on deduction for minimum tax purposes.

History: Para. 20(1)(e.2) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 15(2), applicable with respect to premiums payable after 1989.

Selected Cases [para. 20(1)(e.2)]: *Quantz v. R.*, [2003] 1 C.T.C. 2714 (TCC) (Policy had not been assigned to specified financial institution).

Regulations: 308 (net cost of pure insurance).

Interpretation Bulletins: IT-309R2: Premiums on life insurance used as collateral; IT-341R3: Expenses of issuing or selling shares, units in a trust, interests in a partnership or syndicate, and expenses of borrowing money.

(f) **discount on certain obligations** — an amount paid in the year in satisfaction of the principal amount of any bond, debenture, bill, note, mortgage, hypothecary claim or similar obligation issued by the taxpayer after June 18, 1971 on which interest was stipulated to be payable, to the extent that the amount so paid does not exceed,

(i) in any case where the obligation was issued for an amount not less than 97% of its principal amount, and the yield from the obligation, expressed in terms of an annual rate on the amount for which the obligation was issued (which annual rate shall, if the terms of the obligation or any agreement relating thereto conferred on its holder a right to demand payment of the principal amount of the obligation or the amount outstanding as or on account of its principal amount, as the case may be, before the maturity of the obligation, be calculated on the basis of the yield that produces the highest annual rate obtainable either on the maturity of the obligation or conditional on the exercise of any such right) does not exceed 4/3 of the interest

stipulated to be payable on the obligation, expressed in terms of an annual rate on

(A) the principal amount of the obligation, if no amount is payable on account of the principal amount before the maturity of the obligation, or

(B) the amount outstanding from time to time as or on account of the principal amount of the obligation, in any other case,

the amount by which the lesser of the principal amount of the obligation and all amounts paid in the year or in any preceding year in satisfaction of its principal amount exceeds the amount for which the obligation was issued, and

(ii) in any other case, 1/2 of the lesser of the amount so paid and the amount by which the lesser of the principal amount of the obligation and all amounts paid in the year or in any preceding taxation year in satisfaction of its principal amount exceeds the amount for which the obligation was issued;

Related Provisions: 18(1)(f) — Payments on discounted bonds; 18(11) — Limitation; 110.6(1) — "Investment expense"; 127.52(1)(b), (c), (c.2), (e.1) — Limitation on deduction for minimum tax purposes; 142.7(8)(c) — Application to debt transferred to foreign bank branch by Canadian affiliate. See additional Related Provisions and Definitions at end of s. 20.

History: The opening words of para. 20(1)(f) amended to add "hypothecary claim" by 2001, c. 17, subsec. 203(1), in force June 14, 2001.

Subpara. 20(1)(f)(ii) amended by replacing the reference to the fraction "3/4" with a reference to the fraction "1/2" by 2001, c. 17, subsec. 13(5), applicable in respect of amounts that become payable after February 27, 2000 except that, for amounts that became payable after February 27, 2000 and before October 18, 2000, the reference to the fraction "1/2" shall be read as a reference to the fraction "2/3".

Selected Cases [para. 20(1)(f)]: *Inco Ltd. v. R.*, [2005] 1 C.T.C. 369 (FCA); rev'g [2005] 1 C.T.C. 2096 (TCC) (See *Imperial Oil*); *Imperial Oil Ltd. v. R.*, [2005] 1 C.T.C. 65 (FCA); rev'g [2004] 2 C.T.C. 3030 (TCC) (Borrowing costs between issuance and redemption of debt deductible); *92735 Canada Ltd. v. R.*, [1999] 2 C.T.C. 2661 (TCC) (Debt becomes doubtful when collection doubtful on objective basis).

Interpretation Bulletins: IT-341R3: Expenses of issuing or selling shares, units in a trust, interests in a partnership or syndicate, and expenses of borrowing money; IT-533: Interest deductibility and related issues.

I.T. Technical News: 25 (foreign exchange losses).

(g) **share transfer and other fees** — where the taxpayer is a corporation,

(i) an amount payable in the year as a fee for services rendered by a person as a registrar of or agent for the transfer of shares of the capital stock of the taxpayer or as an agent for the remittance to shareholders of the taxpayer of dividends declared by it,

(ii) an amount payable in the year as a fee to a stock exchange for the listing of shares of the capital stock of the taxpayer, and

(iii) an expense incurred in the year in the course of printing and issuing a financial report to shareholders of the taxpayer or to any other person entitled by law to receive the report;

Related Provisions: See at end of s. 20.

Selected Cases [para. 20(1)(g)]: *Boulangerie St-Augustine Inc. v. Canada*, [1995] 2 C.T.C. 2149 (TCC) (Cost of shareholder communications on take-over bid deductible).

(h), (i) [Repealed under former Act]

(j) **repayment of loan by shareholder** — such part of any loan or indebtedness repaid by the taxpayer in the year as was by virtue of subsection 15(2) included in computing the taxpayer's income for a preceding taxation year (except to the extent that the amount of the loan or indebtedness was deductible from the taxpayer's income for the purpose of computing the taxpayer's taxable income for that preceding taxation year), if it is established by subsequent events or otherwise that the repayment was not made as part of a series of loans or other transactions and repayments;

Related Provisions: 20(3) — Use of borrowed money; 110.6(1) — "investment expense"; 227(6.1) — Repayment of loan by shareholder when shareholder is non-resident; 248(10) — Series of transactions. See additional Related Provisions at end of s. 20.

Interpretation Bulletins: IT-119R4: Debts of shareholders and certain persons connected with shareholders.

I.T. Technical News: 3 (paragraphs 15(2)(b) and 20(1)(j)).

(k) [Repealed under former Act]

Interpretation Bulletins: IT-233R: Lease-option agreements; sale-leaseback agreements (archived).

(l) **doubtful or impaired debts** — a reserve determined as the total of

(i) a reasonable amount in respect of doubtful debts (other than a debt to which subparagraph (ii) applies) that have been included in computing the taxpayer's income for the year or a preceding taxation year, and

(ii) where the taxpayer is a financial institution (as defined in subsection 142.2(1)) in the year or a taxpayer whose ordinary business includes the lending of money, an amount in respect of properties (other than mark-to-market properties, as defined in that subsection) that are

(A) impaired loans or lending assets that are specified debt obligations (as defined in that subsection) of the taxpayer, or

(B) impaired loans or lending assets that were made or acquired by the taxpayer in the ordinary course of the taxpayer's business of insurance or the lending of money

equal to the total of

(C) the percentage (not exceeding 100%) that the taxpayer claims of the prescribed reserve amount for the taxpayer for the year, and

(D) in respect of loans, lending assets or specified debt obligations that are impaired and for which an amount is not deductible for the year because of clause (C) (each of which in this clause is referred to as a "loan"), the taxpayer's specified percentage for the year of the lesser of

(I) the total of all amounts each of which is a reasonable amount as a reserve (other than any portion of which is in respect of a sectoral reserve) for a loan in respect of the amortized cost of the loan to the taxpayer at the end of the year, and

(II) the amount determined by the formula

$$0.9M - N$$

where

M is the amount that is the taxpayer's reserve or allowance for impairment (other than any portion of the amount that is in respect of a sectoral reserve) for all loans that is determined for the year in accordance with generally accepted accounting principles, and

N is the total of all amounts each of which is the specified reserve adjustment for a loan (other than an income bond, an income debenture, a small business bond or small business development bond) for the year or a preceding taxation year;

Related Provisions: 12(1)(d) — Income inclusion in following year; 12(4.1) — Regular interest income rules do not apply where 20(1)(l)(ii) applies; 16(7) — Indexed debt obligation rules do not apply where 20(1)(l)(ii) applies; 18(1)(s) — Limitation on deduction by insurer or money lender; 20(1)(p) — Bad debt deduction; 20(2.3) — Sectoral reserve; 20(2.4) — Specified percentage; 20(27) — Non-arm's length acquisition of loan or lending asset; 20(30) — Specified reserve adjustment; 22(1) — Sale of accounts receivable; 34.2(2)(c) — Maximum reserve deemed claimed for purposes of 1995 stub period income; 79.1(8) — Creditor cannot deduct amount for bad or impaired debt where property seized; 87(2)(g) — Amalgamations — reserves; 87(2)(h) — Amalgamations — debts; 87(2.2) — Amalgamation of insurance corporations; 88(1)(g) — Winding-up of subsidiary insurance corporations; 111(5.3) — Doubtful debts and bad debts; 138(5)(a) — Deductions not allowed; 138(11.31)(b) — Change in use rule for insurance properties does not apply for purposes of 20(1)(l); 142.3(1)(c) — Amount deductible in respect of specified debt obligation; 142.3(4) — Specified debt obligation rules do not apply where 20(1)(l)(ii) applies; 142.7(7) — Application to foreign bank branch on transfer of business from affiliate; 149(10)(a.1) — Exempt corporations; 257 — Formula cannot calculate to less than zero; Reg. 2405(3)"gross Canadian life investment income"(d), (i) — Inclusion in life insurer's income for following year. See also at end of s. 20.

History: Para. 20(1)(l) amended by 1998, c. 19, subsec. 81(4), applicable

(a) to taxation years that end after September 1997; and

(b) to a taxpayer's taxation years that end after 1995 and before October 1997 where the taxpayer elects in writing to have the amendment apply to the year and files the election with the Minister of National Revenue before October 1998.

The para. formerly read:

(l) reserve for doubtful debts — a reserve determined as the total of

(i) a reasonable amount in respect of doubtful debts that have been included in computing the income of the taxpayer for that year or a preceding year, and

(ii) where the taxpayer is a financial institution (as defined in subsection 142.2(1)) in the year or a taxpayer whose ordinary business includes the lending of money, an amount in respect of properties (other than mark-to-market properties, as defined in that subsection) that are doubtful loans or lending assets that were made or acquired by the taxpayer in the ordinary course of the taxpayer's business of insurance or the lending of money or that were specified debt obligations (as defined in that subsection) of the taxpayer, equal to the total of

(A) the prescribed reserve amount for the taxpayer for the year, and

(B) in respect of doubtful loans or lending assets for which an amount was not deducted for the year by reason of clause (A) (in this clause referred to as the "loans"), the lesser of

(I) a reasonable amount as a reserve for the loans in respect of the amortized cost of the loans to the taxpayer at the end of the year, and

(II) the product obtained when the total of

1. that part of the reserve for the loans reported in the financial statements of the taxpayer for the year that is in respect of the amortized cost to the taxpayer at the end of the year of the loans, and

2. the total of all amounts included under subsection 12(3) or paragraph 142.3(1)(a) in computing the taxpayer's income for the year or a preceding taxation year to the extent that those amounts reduced the part of the reserve referred to in sub-subclause 1

is multiplied by one minus the prescribed recovery rate,

or such lesser amount as the taxpayer may claim where the lesser amount is the total of a percentage of the amount determined under clause (A) and the same percentage of the amount determined under clause (B);

The opening words of subpara. 20(1)(l)(ii) and sub-subcl. 20(1)(l)(ii)(B)(II)2 amended by 1998, c. 19, subsec. 81(2) and (3), applicable to taxation years that end after February 22, 1994. The opening words and sub-subcl. formerly read:

(ii) an amount in respect of doubtful loans or lending assets of a taxpayer who was an insurer or whose ordinary business included the lending of money, made or acquired by the taxpayer in the ordinary course of the taxpayer's business of insurance or the lending of money, equal to the total of

. . . . .

2. the total of all amounts included in computing the taxpayer's income under subsection 12(3) for the year or a preceding taxation year to the extent that those amounts reduced the part of the reserve referred to in sub-subclause 1

Selected Cases [para. 20(1)(l)]: *Stokesly Ltd. v. MNR*, [1996] 3 C.T.C. 2928 (TCC) (Change in structure of business did not alter character of business or character of inventory); *Monaghan v. Canada*, [1996] 2 C.T.C. 2169 (TCC) (Significant events occurring well after year-end do not affect determination of bad debt); *Rostland Corp. v. Canada*, [1995] 2 C.T.C. 2276 (TCC) (Interest income in heavily leveraged real estate venture was income from an active business and not FAPI); *Remington v. Canada*, [1995] 1 C.T.C. 9 (FCA) (Reserve allowed where conduct of taxpayer was adventure in nature of trade); *Gibraltar Mines Ltd. v. R.*, [1983] C.T.C. 261 (FCA) (Agreement that taxpayer would mine adjacent property; costs transferred to adjacent owner attributed to trading debts; reserve permitted).

Regulations: 8000(a) (prescribed reserve amount).

I.T. Application Rules: 23(5)"investment interest".

Interpretation Bulletins: IT-109R2: Unpaid amounts; IT-188R: Sale of accounts receivable; IT-291R3: Transfer of property to a corporation under subsection 85(1); IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987; IT-442R: Bad debts and reserve for doubtful debts; IT-505: Mortgage foreclosures and conditional sales repossessions (archived).

Advance Tax Rulings: ATR-6: Vendor reacquires business assets following default by purchaser.

(l.1) **reserve for guarantees, etc.** — a reserve in respect of credit risks under guarantees, indemnities, letters of credit or other credit facilities, bankers' acceptances, interest rate or currency swaps, foreign exchange or other future or option contracts, interest rate protection agreements, risk participations and other similar instruments or commitments issued, made or assumed by a taxpayer who was an insurer or whose ordinary business included the lending of money in favour of persons with whom the taxpayer deals at arm's length in the ordinary course of the taxpayer's business of insurance or the lending of money, equal to the lesser of

(i) a reasonable amount as a reserve for credit risk losses of the taxpayer expected to arise after the end of the year under or in respect of such instruments or commitments, and

(ii) 90% of the reserve for credit risk losses of the taxpayer expected to arise after the end of the year under or in respect of those instruments or commitments determined for the year in accordance with generally accepted accounting principles,

or such lesser amount as the taxpayer may claim;

Related Provisions: 12(1)(d.1) — Income inclusion in following year; 20(27) — Non-arm's length acquisition of loan or lending assets; 34.2(2)(c) — Maximum reserve deemed claimed for purposes of 1995 stub period income; 87(2)(g) — Amalgamations — reserves; 87(2)(h) — Amalgamation — debts; 87(2.2) — Amalgamation of insurance corporations; 88(1)(g) — Winding-up of subsidiary insurance corporations; 142.7(7) — Application to foreign bank branch on transfer of business from affiliate; 149(10)(a.1) — Exempt corporations. See also at end of s. 20.

History: Subpara. 20(1)(l.1)(ii) amended by 1998, c. 19, subsec. 81(5), applicable

(a) to taxation years that end after September 1997; and

(b) to a taxpayer's taxation years that end after 1995 and before October 1997 where the taxpayer elects in writing to have the amendment to para. 20(1)(l) (made by 1998, c. 19, subsec. 81(4)) apply to the year and files the election with the Minister of National Revenue before October 1998.

The subpara. formerly read:

(ii) the product obtained when the reserve for credit risk losses of the taxpayer expected to arise after the end of the year under or in respect of such instruments or commitments reported in the financial statements of the taxpayer for the year is multiplied by one minus the prescribed recovery rate,

Proposed Addition — Reserve on premium received on reopening bond issue

Letter from Dept. of Finance, October 24, 2001:

Dear [xxx]:

I am writing in response to your letter dated October 17, 2001 concerning the income tax treatment of a premium received by a taxpayer upon the reopening of a bond issue where the bond's interest rate is higher than the market rate of interest for similar debt instruments at the time of such reopening.

You have requested that we consider recommending a provision that would permit a taxpayer to claim a reserve in respect of such a premium with the intended effect that the income tax treatment would follow the accounting treatment. This would avoid having the premium included in income at the outset, only to be offset by increased interest expense over the remaining term of the debt.

We are sympathetic to your request. Consequently it will be recommended to the Minister of Finance that an amendment be introduced to the Act that will have the effect of matching the premium income and the enhanced interest expense that gives rise to the premium. Our recommendation regarding the timing of the effective date will likely depend on the exact nature of our recommendation, however, we would, at a minimum, recommend that a taxpayer be able to elect to have the amendment apply to debts issued after 2000.

While I can, as you know, offer no assurance that either the Minister or Parliament will accept our recommendation, I have no reason to believe that this would be controversial.

We trust that this letter addresses your concerns.

Yours sincerely,

Brian Ernewein, Director, Tax Legislation Division, Tax Policy Branch

(m) **reserve in respect of certain [future] goods and services** — subject to subsection (6), where amounts described in paragraph 12(1)(a) have been included in computing the taxpayer's income from a business for the year or a previous year, a reasonable amount as a reserve in respect of

(i) goods that it is reasonably anticipated will have to be delivered after the end of the year,

(ii) services that it is reasonably anticipated will have to be rendered after the end of the year,

(iii) periods for which rent or other amounts for the possession or use of land or chattels have been paid in advance, or

Proposed Amendment — 20(1)(m)(iii)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 206(1), will amend subpara. 20(1)(m)(iii) by substituting "of land or of chattels or movables" for "of land or chattels", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(iv) repayments under arrangements or understandings of the class described in subparagraph 12(1)(a)(ii) that it is reasonably anticipated will have to be made after the end of the year on the return or resale to the taxpayer of articles other than bottles;

Related Provisions: 12(1)(e)(i) — Income inclusion in following year; 20(1)(m.2) — Deduction for amounts repaid; 20(6) — Reserve for food, drink or transportation; 20(7) — Where 20(1)(m) does not apply; 20(24) — Amounts paid for undertaking future obligations; 32(1) — Insurance agents and brokers; 34 — Professional business; 34.2(2)(c) — Maximum reserve deemed claimed for purposes of 1995 stub period income; 87(2)(g) — Amalgamations — reserves; 142.7(7) — Application to foreign bank branch on transfer of business from affiliate; 149(10)(a.1) — Exempt corporations. See also at end of s. 20.

Selected Cases [para. 20(1)(m)]: *Redhead Equipment Ltd. v. R.*, [2001] 3 C.T.C. 2104 (TCC) (Distinction between manufacturer's warranty and distributor's requirement to perform inspections); *Sussex Square Apartments Ltd. v. R.*, [1999] 2 C.T.C. 2143 (TCC) (Reserve allowed on prepaid rent where lease assigned for less than full term); *Westcoast Petroleum Ltd. v. Canada*, [1989] 1 C.T.C. 363 (FCTD) (Reserve cannot be claimed when no services are to be rendered); *J.W. Baker Agency (1976) Ltd. v. Canada*, [1989] 1 C.T.C. 246 (FCA) (Portion of insurance commissions deductible when commissions earned over life of policies); *Sears Canada Inc. v. Canada*, [1989] 1 C.T.C. 127 (FCA); leave to appeal to SCC refused (1989), 100 N.R. 160 (note), (sub nom. *Sears Can. Inc. v. MNR)* (Maintenance agreement for appliances constituted indemnity; reserves disallowed); *Burrard Yarrows Corp. v. R.*, [1988] 2 C.T.C. 90 (FCA) (Reserve on progress payments permitted only on amounts earned in the year); *Dixie Lee (Maritimes) Ltd. v. R.*, [1988] 1 C.T.C. 193 (FCTD) (Amount received pursuant to franchise agreement regarded as income when receivable).

Interpretation Bulletins: IT-92R2: Income of contractors; IT-154R: Special reserves; IT-165R: Returnable containers (archived); IT-215R: Reserves, contingent accounts (archived); IT-261R: Prepayment of rents; IT-321R: Insurance agents and brokers — unearned commissions (archived); IT-531: Eligible funeral arrangements.

I.T. Technical News: 18 (*Oerlikon Aérospatiale* case); 30 (prepaid income — whether 9(1) or 12(1)(a) applies); 32 (reserve for prepaid amount: impact of the *Ellis Vision* case).

Forms: T2 SCH 13: Continuity of reserves.

(m.1) **manufacturer's warranty reserve** — where an amount described in paragraph 12(1)(a) has been included in computing the taxpayer's income from a business for the year or a preceding taxation year, a reasonable amount as a reserve in respect of goods or services that it is reasonably anticipated will have to be delivered or rendered after the end of the year pursuant to an agreement for an extended warranty

(i) entered into by the taxpayer with a person with whom the taxpayer was dealing at arm's length, and

(ii) under which the only obligation of the taxpayer is to provide such goods or services with respect to property manufactured by the taxpayer or by a corporation related to the taxpayer,

not exceeding that portion of the amount paid or payable by the taxpayer to an insurer that carries on an insurance business in Canada to insure the taxpayer's liability under the agreement in respect of an outlay or expense made or incurred after December 11, 1979 and in respect of the period after the end of the year;

Related Provisions: 12(1)(e)(i) — Income inclusion in following year; 20(24) — Amounts paid for undertaking future obligations; 34.2(2)(c) — Maximum reserve deemed claimed for purposes of 1995 stub period income; 87(2)(g), (j) — Amalgamations — reserves; 149(10)(a.1) — Exempt corporations. See also at end of s. 20.

Interpretation Bulletins: IT-154R: Special reserves.

(m.2) **repayment of amount previously included in income** — a repayment in the year by the taxpayer of an amount required by paragraph 12(1)(a) to be included in computing the taxpayer's income from a business for the year or a preceding taxation year;

Related Provisions: 20(1)(m) — Reserve; 87(2)(j) — Amalgamations. See additional Related Provisions at end of s. 20.

Interpretation Bulletins: IT-154R: Special reserves.

(n) **reserve for unpaid amounts** — where an amount included in computing the taxpayer's income from the business for the year or for a preceding taxation year in respect of property sold in the course of the business is payable to the taxpayer after the end of the year and, except where the property is real property, all or part of the amount was, at the time of the sale, not due until at least 2 years after that time, a reasonable amount as a reserve in respect of such part of the amount as can reasonably be regarded as a portion of the profit from the sale;

Proposed Amendment — 20(1)(n)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 206(2), will amend para. 20(1)(n) by substituting "real or immovable property" for "real property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

Related Provisions: 12(1)(e)(ii) — Income inclusion in following year; 20(8) — No deduction in certain circumstances; 34.2(2)(c) — Maximum reserve deemed claimed for 1995 stub period income; 66.2(2) — Deduction for cumulative Canadian development expenses; 66.4(2) — Deduction for cumulative Canadian oil and gas property expenses; 72(1)(a) — No reserve for year of death; 79.1(4), (6)(c) — Deemed amount where property repossessed by creditor; 87(2)(g), (i), (ll) — Amalgamations — reserves; 88(1)(d)(i)(C) — Winding-up; 142.7(7) — Application to foreign bank branch on transfer of business from affiliate; 149(10)(a.1) — Exempt corporations. See also at end of s. 20.

History: Para. 20(1)(n) amended by 1995, c. 21, subsec. 6(1), applicable to taxation years that end after February 21, 1994. Para. (n) formerly read:

(n) reserve for amount not due until later year — where an amount has been included in computing the taxpayer's income from the business for the year or for a previous year in respect of property sold in the course of the business and that amount or a part thereof is not due,

(i) where the property sold is property other than land, until a day that is

(A) more than 2 years after the day on which the property was sold, and

(B) after the end of the taxation year, or

(ii) where the property sold is land, until a day that is after the end of the taxation year,

a reasonable amount as a reserve in respect of such part of the amount so included in computing the income as may reasonably be regarded as a portion of the profit from the sale;

Selected Cases [para. 20(1)(n)]: *Odyssey Industries Inc. v. Canada*, [1996] 2 C.T.C. 2401 (TCC) (Recaptured CCA is not profit from sale of assets; no reserve applicable where proceeds of disposition paid over time); *R. v. Enniscare Corp.*, [1984] C.T.C. 286 (FCA) ("Reasonable" amount as a reserve is determined in every case); *Korvette Realties Ltd. v. R.*, [1976] C.T.C. 780 (FCTD) (Sum paid as commission for services to be rendered not subject to reserve); *R. v. Esskay Farms Ltd.*, [1976] C.T.C. 24 (FCTD) (Trust company receiving proceeds of sale for its own benefit; reserve for amount not receivable permitted. Trust company not acting as agent; tax deferral permitted); *MNR v. Colford (John) Contracting Co. Ltd.*, [1962] C.T.C. 546 (SCC) (Construction holdbacks deductible until architect's or engineer's final certificate issued).

Interpretation Bulletins: IT-109R2: Unpaid amounts; IT-123R6: Transactions involving eligible capital property; IT-152R3: Special reserves — sale of land; IT-154R: Special reserves; IT-442R: Bad debts and reserves for doubtful debts; IT-505: Mortgage foreclosures and conditional sales repossessions (archived).

Information Circulars: 88-2, para. 24: General anti-avoidance rule — section 245 of the *Income Tax Act*.

Forms: T2 SCH 13: Continuity of reserves; T2069: Election in respect of amounts not deductible as reserves for the year of death.

(o) **reserve for quadrennial survey** — such amount as may be prescribed as a reserve for expenses to be incurred by the taxpayer by reason of quadrennial or other special surveys required under the *Canada Shipping Act*, or the regulations under that Act, or under the rules of any society or association for the classification and registry of shipping approved by the Minister of Transport for the purposes of the *Canada Shipping Act*;

Related Provisions: 12(1)(h) — Inclusion into income — previous reserve for quadrennial survey; 87(2)(g) — Amalgamations — reserves; 149(10)(a.1) — Exempt corporations. See also at end of s. 20.

Regulations: 3600 (prescribed amount).

(p) **bad debts** — the total of

(i) all debts owing to the taxpayer that are established by the taxpayer to have become bad debts in the year and that have been included in computing the taxpayer's income for the year or a preceding taxation year, and

(ii) all amounts each of which is that part of the amortized cost to the taxpayer at the end of the year of a loan or lending asset (other than a mark-to-market property, as defined in subsection 142.2(1)) that is established in the year by the taxpayer to have become uncollectible and that,

(A) where the taxpayer is an insurer or a taxpayer whose ordinary business includes the lending of money, was made or acquired in the ordinary course of the taxpayer's business of insurance or the lending of money, or

(B) where the taxpayer is a financial institution (as defined in subsection 142.2(1)) in the year, is a specified debt obligation (as defined in that subsection) of the taxpayer;

Related Provisions: 12(1)(i) — Income inclusion — bad debts recovered; 12.4 — Bad debt inclusion; 20(1)(l) — Reserve for doubtful debts; 20(27) — Non-arm's length acquisition of loan or lending assets; 22(1) — Sale of accounts receivable; 50(1)(a) — Deemed disposition where debt becomes bad debt; 60(f) — Deduction for bad debt on restrictive covenant; 79.1(7)(d) — Deduction by creditor for bad debt where property seized; 79.1(8) — No deduction for principal amount of bad debt where property seized by creditor; 87(2)(g), (h) — Amalgamations; 87(2.2) — Amalgamation of insurance corporations; 88(1)(g) — Winding-up of subsidiary insurance corporations; 111(5.3) — Doubtful debts and bad debts; 142.3(1)(c) — Amount deductible in respect of specified debt obligation; 142.4(1)"tax basis"(p) — Disposition of specified debt obligation by financial institution; 142.5(8)(d)(i) — First deemed disposition of mark-to-market debt obligation; 142.7(7) — Application to foreign bank branch on transfer of business from affiliate. See additional Related Provisions and Definitions at end of s. 20.

History: Subpara. 20(1)(p)(ii) amended by 1998, c. 19, subsec. 81(6), applicable to taxation years that end after February 22, 1994. The subpara. formerly read:

(ii) all amounts each of which is that part of the amortized cost to the taxpayer at the end of the year of a loan or lending asset made or acquired in the ordinary course of business by a taxpayer who was an insurer or whose ordinary business included the lending of money established by the taxpayer to have become uncollectable in the year;

Selected Cases [para. 20(1)(p)]: *Loman Warehousing v. R.*, [1999] 4 C.T.C. 2049 (TCC) (Not sufficient that activities were businesslike; particular business of taxpayer to be examined); *Terrador Investments Ltd. v. R.*, [1999] 3 C.T.C. 520 (FCA); leave to appeal to SCC refused (May 18, 2000), File 27499 (No bad debt possible where statute deemed amount to have been received); *Liampat Holdings v. Canada*, [1996] 2 C.T.C. 246 (FCTD) (Deemed interest never received allowed as bad debt); *Monaghan v. Canada*, [1996] 2 C.T.C. 2169 (TCC) (Significant events occurring well after year-end do not affect determination of bad debt); *Anjalie v. Canada*, [1995] 1 C.T.C. 2802 (TCC) (Taxpayer not permitted to change year in which bad debt arose); *Brunette Investments Ltd. et al. v. R.*, [1981] C.T.C. 486 (FCTD) (Losses on advances from solvent members of related group to insolvent members not deductible); *Picadilly Hotels Ltd. v. R.*, [1978] C.T.C. 658 (FCTD) (Recaptured capital cost allowance included in year of transaction); *R. v. Pollock Sokoloff Holdings Corp.*, [1976] C.T.C. 349

(FCA) (Bad debt disallowed where loss not arising from taxpayer's current business operations); *R. v. Keith Enterprises*, [1976] C.T.C. 21 (FCTD) (Unlicensed money lender allowed loss on bad debt in ordinary course of its business).

Interpretation Bulletins: IT-109R2: Unpaid amounts; IT-123R4: Disposition of and transactions involving eligible capital property; IT-123R6: Transactions involving eligible capital property; IT-159R3: Capital debts established to be bad debts; IT-188R: Sale of accounts receivable; IT-291R3: Transfer of property to a corporation under subsection 85(1); IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987; IT-442R: Bad debts and reserve for doubtful debts; IT-488R2: Winding-up of 90%-owned taxable Canadian corporations (archived); IT-505: Mortgage foreclosures and conditional sales repossessions (archived).

Advance Tax Rulings: ATR-6: Vendor reacquires business assets following default by purchaser.

(q) **employer's contributions to registered pension plan** — such amount in respect of employer contributions to registered pension plans as is permitted by subsection 147.2(1);

Related Provisions: 6(1)(a)(i) — Employer's contribution to RPP not a taxable benefit; 18(1)(c) — Limitation re exempt income; 146(5) — Amount of premium deductible. See also at end of s. 20.

Selected Cases [para. 20(1)(q)]: *West Hill Redevelopment Co. Ltd. v. MNR*, [1969] C.T.C. 581 (Exch.) (Deductions disallowed for amounts paid to company pension plan after registration withdrawn).

Interpretation Bulletins: IT-105: Administrative costs of pension plans.

Information Circulars: 72-13R8: Employee's pension plans.

(r) **employer's contributions under retirement compensation arrangement** — amounts paid by the taxpayer in the year as contributions under a retirement compensation arrangement in respect of services rendered by an employee or former employee of the taxpayer, other than where it is established, by subsequent events or otherwise, that the amounts were paid as part of a series of payments and refunds of contributions under the arrangement;

Related Provisions: 12(1)(n.3) — Retirement compensation arrangement; 18(1)(o.2) — Retirement compensation arrangement; 87(2)(j.3) — Amalgamations — continuing corporation; 153(1)(p) — Withholding; 227(8.2) — RCA — failure to withhold; 248(10) — Series of transactions. See also at end of s. 20.

Forms: T737-RCA: Statement of contributions paid to a custodian of a retirement compensation arrangement.

(s) [Repealed under former Act]

Selected Cases [para. 20(1)(s)]: *Cam Gard Supply Ltd. v. MNR*, [1977] C.T.C. 143 (SCC) (Taxpayer's contribution to past service pension not deductible where fund under no obligation to employees); *Produits LDG Products Inc. v. R.*, [1976] C.T.C. 591 (FCA) (Contributions to pension plan deductible despite investment of contributed funds in preferred shares of company); *Mittler Bros. of Quebec Ltd. v. MNR*, [1973] C.T.C. 182 (FCTD) (Contributions to pension plan not deductible for past services of employees when taxpayer under no obligation to members to require special payment, despite prior approval of Minister); *MNR v. Inland Industries Ltd.*, [1972] C.T.C. 27 (SCC) (Payment to approved pension fund for past services not deductible where no obligation to make special payment); *Western Smallware and Stationery Co. Ltd. v. MNR*, [1972] C.T.C. 7 (FCTD) (Deductible contributions to pension plan for past services must be obligatory).

(t) [Repealed under former Act]

(u) **patronage dividends** — such amounts in respect of payments made by the taxpayer pursuant to allocations in proportion to patronage as are permitted by section 135;

Related Provisions: See at end of s. 20.

(v) **mining taxes** — such amount as is allowed by regulation in respect of taxes on income for the year from mining operations;

Related Provisions: See at end of s. 20.

Selected Cases [para. 20(1)(v)]: *Rio Algom Mines Ltd. v. MNR*, [1970] C.T.C. 53 (SCC) (Proportion of income under federal Act must be considered in calculation of allowance for mining taxes paid to Ontario).

Regulations: 3900 (amount allowed).

(v.1) **resource allowance** — [Phased out 2003-06 and repealed effective 2007 — see below] such amount as is allowed to the taxpayer for the year by regulation in respect of natural accumulations of petroleum or natural gas in Canada, oil or gas wells in Canada or mineral resources in Canada;

Repeal [effective 2007] — 20(1)(v.1)

Application: S.C. 2003, c. 28 (Bill C-48, Royal Assent November 7, 2003), subsec. 3(1), repeals para. 20(1)(v.1), applicable to taxation years that begin after 2006. For each taxation year that ends after 2002 and begins before 2007, para. 20(1)(v.1) applies only to the percentage of each amount described by that paragraph that is the total of

(a) that proportion of 100% that the number of days in the taxation year that are before 2003 is of the number of days in the taxation year,

(b) that proportion of 90% that the number of days in the taxation year that are in 2003 is of the number of days in the taxation year,

(c) that proportion of 75% that the number of days in the taxation year that are in 2004 is of the number of days in the taxation year,

(d) that proportion of 65% that the number of days in the taxation year that are in 2005 is of the number of days in the taxation year, and

(e) that proportion of 35% that the number of days in the taxation year that are in 2006 is of the number of days in the taxation year.

Related Provisions: 12(1)(z.5) — Inclusion in income of prescribed resource loss; 20(15) — What can be allowed by regulation; 65 — Depletion allowance; 80.2 — Royalty reimbursements; 96(1)(d) — Partnerships — no deduction for resource expenditures; 104(29) — Flow-through from trust to beneficiaries; 125.11 — Resource rate reduction 2003-06; 219(1)(c) — Branch tax on non-resident corporations. See also at end of s. 20.

Selected Cases [para. 20(1)(v.1)]: *Echo Bay Mines Ltd. v. Canada*, [1992] 2 C.T.C. 182 (FCTD) (Gains from settlement of forward sales contracts for silver were "resource profits").

Regulations: 1210 (amount allowed).

Forms: T2 SCH 51: Resource allowance and depletion schedules.

(w) **employer's contributions under profit sharing plan** — an amount paid by the taxpayer to a trustee in trust for employees of the taxpayer or of a corporation with whom the taxpayer does not deal at arm's length, under an employees profit sharing plan as permitted by section 144;

Related Provisions: 12(1)(n) — Receipts from employees profit sharing plan — inclusion in income of employer; 144(5) — Employer's contribution to trust deductible. See also at end of s. 20.

(x) **employer's contributions under registered supplementary unemployment benefit plan** — an amount paid by the taxpayer to a trustee under a registered supplementary unemployment benefit plan as permitted by section 145;

Related Provisions: 6(1)(a)(i) — Employer's contribution not a taxable benefit to employee; 18(1)(i) — No deduction except as permitted by s. 145; 145(5) — Payments by employer deductible. See also at end of s. 20.

(y) **employer's contributions under deferred profit sharing plan** — an amount paid by the taxpayer to a trustee under a deferred profit sharing plan as permitted by subsection 147(8);

Related Provisions: 18(1)(c) — Limitation re exempt income. See also at end of s. 20.

(z) **cancellation of lease** — the proportion of an amount not otherwise deductible that was paid or that became payable by the taxpayer before the end of the year to a person for the cancellation of a lease of pro-

perty of the taxpayer leased by the taxpayer to that person that

(i) the number of days that remained in the term of the lease (including all renewal periods of the lease), not exceeding 40 years, immediately before its cancellation and that were in the year

is of

(ii) the number of days that remained in the term of the lease (including all renewal periods of the lease), not exceeding 40 years, immediately before its cancellation,

in any case where the property was owned at the end of the year by the taxpayer or by a person with whom the taxpayer was not dealing at arm's length and no part of the amount was deductible by the taxpayer under paragraph (z.1) in computing the taxpayer's income for a preceding taxation year;

Related Provisions: 13(5.5) — Lease cancellation payment not included as rental payment under 13(5.4) for CCA purposes; 18(1)(q) — Limitation re cancellation of lease; 20(1)(z.1) — Cancellation payment where property not owned at end of year; 87(2)(j.5) — Amalgamations — cancellation of lease. See also at end of s. 20.

Interpretation Bulletins: IT-359R2: Premiums and other amounts re leases; IT-467R2: Damages, settlements, and similar payments.

(z.1) **idem [lease cancellation payment where property not owned at year-end]** — an amount not otherwise deductible that was paid or that became payable by the taxpayer before the end of the year to a person for the cancellation of a lease of property of the taxpayer leased by the taxpayer to that person, in any case where

(i) the property was not owned at the end of the year by the taxpayer or by a person with whom the taxpayer was not dealing at arm's length, and

(ii) no part of the amount was deductible by the taxpayer under this paragraph in computing the taxpayer's income for any preceding taxation year,

to the extent of the amount thereof (or in the case of capital property, 1/2 of the amount thereof) that was not deductible by the taxpayer under paragraph (z) in computing the taxpayer's income for any preceding taxation year;

Related Provisions: 13(5.5) — Lease cancellation payment; 18(1)(q) — Limitation re cancellation of lease; 20(1)(z) — Alternative deduction for cancellation payment; 87(2)(j.5) — Amalgamations — cancellation of lease. See also at end of s. 20.

History: Para. 20(1)(z.1) amended by replacing the reference to the fraction "3/4" with a reference to the fraction "1/2" by 2001, c. 17, subsec. 13(6), applicable in respect of amounts that become payable after February 27, 2000 except that, for amounts that became payable after February 27, 2000 and before October 18, 2000, the reference to the fraction "1/2" shall be read as a reference to the fraction "2/3".

Interpretation Bulletins: IT-359R2: Premiums and other amounts re leases; IT-467R2: Damages, settlements, and similar payments.

(aa) **landscaping of grounds** — an amount paid by the taxpayer in the year for the landscaping of grounds around a building or other structure of the taxpayer that is used by the taxpayer primarily for the purpose of gaining or producing income therefrom or from a business;

Related Provisions: 18(3.1)(a) — Costs relating to construction of building or ownership of land. See at end of s. 20.

Selected Cases [para. 20(1)(aa)]: *R. v. Hampton Golf Club Ltd.*, [1986] 2 C.T.C. 403 (FCTD) (Capital cost allowance for greens and tees of golf course disallowed; expenses to clear trees and drain proposed fairways not deductible); *Qualico Developments Ltd. v. R.*, [1984] C.T.C. 122 (FCA) (Costs of landscaping grounds deductible when part of cost of inventory in year of sale).

Interpretation Bulletins: IT-296: Landscaping of grounds (archived); IT-304R2: Condominiums; IT-485: Cost of clearing or levelling land [to be amended re golf courses, per I.T. Technical News 20].

I.T. Technical News: 20 (tax treatment of golf courses).

(bb) **fees paid to investment counsel** — an amount other than a commission paid by the taxpayer in the year to a person

(i) for advice as to the advisability of purchasing or selling a specific share or security of the taxpayer, or

(ii) for services in respect of the administration or management of shares or securities of the taxpayer,

if that person's principal business

(iii) is advising others as to the advisability of purchasing or selling specific shares or securities, or

(iv) includes the provision of services in respect of the administration or management of shares or securities;

Related Provisions: 18(1)(u) — Investment counsel fees for RRSP or RRIF are non-deductible; 87(2.2) — Amalgamation of insurance corporations; 88(1)(g) — Winding-up of subsidiary insurance corporations; 110.6(1) — "investment expense". See also at end of s. 20.

Selected Cases [para. 20(1)(bb)]: *Bond Estate v. R.*, [1999] 1 C.T.C. 2181 (TCC) (Fees for protection of assets not deductible); *Richard v. R.*, [1998] 4 C.T.C. 2671 (TCC) (Investment counsel fees re buildings allowed as deduction).

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-238R2: Fees paid to investment counsel.

(cc) **expenses of representation [lobbying]** — an amount paid by the taxpayer in the year as or on account of expenses incurred by the taxpayer in making any representation relating to a business carried on by the taxpayer,

(i) to the government of a country, province or state or to a municipal or public body performing a function of government in Canada, or

(ii) to an agency of a government or of a municipal or public body referred to in subparagraph (i) that had authority to make rules, regulations or by-laws relating to the business carried on by the taxpayer,

including any representation for the purpose of obtaining a licence, permit, franchise or trade mark relating to the business carried on by the taxpayer;

Related Provisions: 13(12) — Application to depreciable property; 20(9) — Amortizing claim over 10 years. See also at end of s. 20.

Interpretation Bulletins: IT-99R5: Legal and accounting fees; IT-477: Capital cost allowance — patents, franchises, concessions and licences.

(dd) **investigation of site** — an amount paid by the taxpayer in the year for investigating the suitability of a site for a building or other structure planned by the taxpayer for use in connection with a business carried on by the taxpayer;

Related Provisions: 53(1)(a) — Valuation or surveying costs — addition to adjusted cost base. See also at end of s. 20.

Selected Cases [para. 20(1)(dd)]: *Brooke Bond Foods Ltd. v. R.*, [1984] C.T.C. 115 (FCTD) (Costs of site soil analysis deductible); *Queen and Metcalfe Carpark Ltd. v. MNR*, [1973] C.T.C. 810 (FCTD) (Cost of feasibility study for rental project deductible for company in business of leasing properties).

Interpretation Bulletins: IT-350R: Investigation of site.

(ee) **utilities service connection** — an amount paid by the taxpayer in the year to a person (other than a person with whom the taxpayer was not dealing at arm's length) for the purpose of making a service connection to the taxpayer's place of business for the sup-

ply, by means of wires, pipes or conduits, of electricity, gas, telephone service, water or sewers supplied by that person, to the extent that the amount so paid was not paid

(i) to acquire property of the taxpayer, or

(ii) as consideration for the goods or services for the supply of which the service connection was undertaken or made;

Related Provisions: See at end of s. 20.

Selected Cases [para. 20(1)(ee)]: *R. v. Guaranteed Homes Ltd.*, [1978] C.T.C. 636 (FCTD) (Deduction of utility service connection disallowed when lots in subdivision not taxpayer's sole place of business).

Interpretation Bulletins: IT-452: Utility service connections (archived); IT-482R: Pipelines.

(ff) **payments by farmers** — an amount paid by the taxpayer in the year as a levy under the *Western Grain Stabilization Act*, as a premium in respect of the gross revenue insurance program established under the *Farm Income Protection Act* or as an administration fee in respect of a net income stabilization account;

Related Provisions: 12(1)(p) — Certain payments made to farmers — income inclusion. See also at end of s. 20.

History: Para. 20(1)(ff) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 9(1), applicable to 1991 *et seq.* Para. 20(1)(ff) formerly read:

(ff) an amount paid by the taxpayer in the year as the levy under the *Western Grain Stabilization Act*;

Forms: T1163: Statement A — CAIS program information and statement of farming activities for individuals; T1164: Statement B — CAIS program information and statement of farming activities for additional farming operations; T1165: Statement of farming activities for Ontario self directed risk management (SDRM); T1175: Calculation of CCA and business-use-of-home expenses.

(gg) [Repealed]

History: Para. 20(1)(gg) repealed by 1994, c. 7, Sch. VIII (1993, c. 24), s. 157, deemed to have come into force December 17, 1991. [The para. was re-enacted in amended form as 20(1)(qq): see below.]

Para. 20(1)(gg) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 15(3), applicable with respect to renovations and alterations made after 1990.

Selected Cases [para. 20(1)(gg)]: *Canadian Imperial Bank of Commerce v. R.*, [2000] 2 C.T.C. 269 (FCA) (Bullion and foreign currency were tangible property held for sale); *Cargill Ltd. v. Canada*, [1996] 2 C.T.C. 2102 (TCC) (Calculation of grain inventory on location-by-location basis was incorrect); *Bastion Management Ltd. v. Canada*, [1995] 2 C.T.C. 252 (FCA) (Bullion bought in year-end straddle scheme not bought in ordinary course of business).

(hh) **repayments of inducements, etc.** — an amount repaid by the taxpayer in the year pursuant to a legal obligation to repay all or part of a particular amount

(i) included under paragraph 12(1)(x) in computing the taxpayer's income for the year or a preceding taxation year, or

(ii) that is, by reason of subparagraph 12(1)(x)(vi) or subsection 12(2.2), not included under paragraph 12(1)(x) in computing the taxpayer's income for the year or a preceding taxation year, where the particular amount relates to an outlay or expense (other than an outlay or expense that is in respect of the cost of property of the taxpayer or that is or would be, if amounts deductible by the taxpayer were not limited by reason of paragraph 66(4)(b), subsection 66.1(2), subparagraph 66.2(2)(a)(ii), the words "30% of" in clause 66.21(4)(a)(ii)(B), clause 66.21(4)(a)(ii)(C) or (D) or subparagraph 66.4(2)(a)(ii), deductible under section 66, 66.1, 66.2, 66.21 or 66.4) that would, if the particular amount had not been received, have been deductible in computing the taxpayer's income for the year or a preceding taxation year;

Related Provisions: 60(s) — Repayment of policy loan; 79(4)(d) — Subsequent payment by debtor following surrender of property deemed to be repayment of assistance; 87(2)(j.6) — Amalgamations — continuing corporation; 148(9)"adjusted cost basis"E — "adjusted cost basis". See also at end of s. 20.

History: Subpara. 20(1)(hh)(ii) amended by 2001, c. 17, subsec. 13(7), applicable to taxation years that begin after 2000. The subpara. formerly read:

(ii) that is, because of subparagraph 12(1)(x)(vi) or subsection 12(2.2), not included under paragraph 12(1)(x) in computing the taxpayer's income for the year or a preceding taxation year, where the particular amount relates to an outlay or expense (other than an outlay or expense that is in respect of the cost of property of the taxpayer or that is or would be, if amounts deductible by the taxpayer were not limited because of paragraph 66(4)(b), subsection 66.1(2) or subparagraph 66.2(2)(a)(ii) or 66.4(2)(a)(ii), deductible under section 66, 66.1, 66.2 or 66.4) that would, but for the receipt of the particular amount, have been deductible in computing the taxpayer's income for the year or a preceding taxation year;

Subpara. 20(1)(hh)(ii) amended by 1994, c. 8, s. 3, applicable to taxation years ending after December 2, 1992. Subpara. (ii) formerly read:

(ii) that is, by reason of subparagraph 12(1)(x)(vi) or subsection 12(2.2), not included in computing the income of the taxpayer under paragraph 12(1)(x) for the year or a preceding taxation year, where the particular amount relates to an outlay or expense (other than an outlay or expense that is in respect of the cost of property of the taxpayer or that is or would be, if amounts deductible by the taxpayer were not limited by reason of paragraph 66(4)(b) or subparagraph 66.1(2)(a)(ii), 66.2(2)(a)(ii) or 66.4(2)(a)(ii), deductible under section 66, 66.1, 66.2 or 66.4) that would, but for the receipt of the particular amount, have been deductible in computing the income of the taxpayer for the year or a preceding taxation year;

Interpretation Bulletins: IT-273R2: Government assistance — general comments.

(hh.1) **repayment of obligation** — ¾ of any amount (other than an amount to which paragraph 14(10)(b) applies in respect of the taxpayer) repaid by the taxpayer in the year under a legal obligation to repay all or part of an amount to which paragraph 14(10)(c) applies in respect of the taxpayer;

Related Provisions: 79(4)(b) — Subsequent payment by debtor following surrender of property deemed to be repayment of assistance.

History: Para. 20(1)(hh.1) added by 1995, c. 21, subsec. 6(2), applicable to amounts repaid after February 21, 1994.

Interpretation Bulletins: IT-273R2: Government assistance — general comments.

(ii) **inventory adjustment** — the amount required by paragraph 12(1)(r) to be included in computing the taxpayer's income for the immediately preceding year;

Related Provisions: 87(2)(j.1) — Amalgamations — inventory adjustment. See also at end of s. 20.

(jj) **reinsurance commission** — the amount required by paragraph 12(1)(s) to be included in computing the taxpayer's income for the immediately preceding taxation year;

Related Provisions: 18.1(15)(b) — Reinsurance commission excluded from matchable expenditure rules; 20(7)(c) — Deduction for policy reserves; 87(2.2) — Amalgamations of insurance corporations; 88(1)(g) — Winding-up of subsidiary insurance corporations. See also at end of s. 20.

(kk) **exploration and development grants** — the amount of any assistance or benefit received by the taxpayer in the year as a deduction from or reimbursement of an expense that is a tax (other than the goods and services tax) or royalty to the extent that

(i) the tax or royalty is, by reason of the receipt of the amount by the taxpayer, not deductible in com-

puting the taxpayer's income for a taxation year, and

(ii) the deduction or reimbursement was included by the taxpayer in the amount determined for J in the definition "cumulative Canadian exploration expense" in subsection 66.1(6), for M in the definition "cumulative Canadian development expense" in subsection 66.2(5) or for I in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5);

Related Provisions: See at end of s. 20.

(ll) **repayment of interest** — such part of any amount payable by the taxpayer because of a provision of this Act, or of an Act of a province that imposes a tax similar to the tax imposed under this Act, as was paid in the year and as can reasonably be considered to be a repayment of interest that was included in computing the taxpayer's income for the year or a preceding taxation year;

Related Provisions: 129(2.2), 131(3.2), 132(2.2), 133(7.02), 164(3.1) — Provisions requiring repayment of interest. See also at end of s. 20.

History: Para. 20(1)(ll) substituted by 1994, c. 21, subsec. 12(4), applicable to taxation years that begin after 1991. That para. formerly read:

(ll) amount deemed to be tax payable — such part of any amount payable by the taxpayer by virtue of

(i) paragraph 164(3.1)(a) or (4)(a) or any similar provision of any Act of a province that imposes a tax similar to the tax imposed under this Act, or

(ii) paragraph 18(4)(a) of the *Petroleum and Gas Revenue Tax Act*

as was paid in the year and as may reasonably be considered to be repayment of interest that was included in computing the taxpayer's income for the year or a preceding taxation year;

(mm) **cost of substances injected in reservoir** — the portion claimed by the taxpayer of an amount that is an outlay or expense made or incurred by the taxpayer before the end of the year that is a cost to the taxpayer of any substance injected before that time into a natural reservoir to assist in the recovery of petroleum, natural gas or related hydrocarbons to the extent that that portion was not

(i) otherwise deducted in computing the taxpayer's income for the year, or

(ii) deducted in computing the taxpayer's income for any preceding taxation year,

except that where the year is less than 51 weeks, the amount that may be claimed under this paragraph by the taxpayer for the year shall not exceed the greater of

(iii) that proportion of the maximum amount that may otherwise be claimed under this paragraph by the taxpayer for the year that the number of days in the year is of 365, and

(iv) the amount of such outlay or expense that was made or incurred by the taxpayer in the year and not otherwise deducted in computing the taxpayer's income for the year;

Related Provisions: 10(5)(c) — Property deemed to be inventory with cost of nil; 66(13.1) — Short taxation years; 87(2)(j.2) — Amalgamation — continuing corporation. See also at end of s. 20.

History: Para. 20(1)(mm) amended by 1997, c. 25, subsec. 5(1), applicable to 1996 *et seq.* Para. (mm) formerly read:

(mm) such portion, as may be claimed by the taxpayer, of an amount that is an outlay or expense made or incurred by the taxpayer before the end of the year that is a cost to the taxpayer of any substance injected before that time into a natural reservoir to assist in the recovery of petroleum, natural gas or related hydrocarbons to the extent that that portion was not

(i) otherwise deducted by the taxpayer in computing the taxpayer's income for the year,

(ii) deducted by the taxpayer in computing the taxpayer's income for any preceding taxation year,

(iii) an outlay or expense described in the definition "Canadian exploration expense" in subsection 66.1(6) or the definition "Canadian development expense" in subsection 66.2(5), or

(iv) a Canadian oil and gas property expense,

except that where the year is less than 51 weeks, the amount that may be claimed under this paragraph by the taxpayer for the year shall not exceed the greater of

(v) that proportion of the maximum amount that may otherwise be claimed under this paragraph by the taxpayer for the year that the number of days in the year is of 365, and

(vi) the amount of such outlay or expense not referred to in any of subparagraphs (i) to (iv) that was made or incurred by the taxpayer in the year;

That portion of para. 20(1)(mm) following subpara. (iv) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 15(4), applicable to taxation years beginning after July 13, 1990.

(nn) **Part XII.6 tax** — the tax, if any, under Part XII.6 paid in the year or payable in respect of the year by the taxpayer (depending on the method regularly followed by the taxpayer in computing the taxpayer's income);

Related Provisions: 18(1)(t) — Part XII.6 tax not non-deductible. See also at end of s. 20.

History: Para. 20(1)(nn) added by 1997, c. 25, subsec. 5(1), applicable to 1997 *et seq.*

(oo) **salary deferral arrangement** — any deferred amount under a salary deferral arrangement in respect of another person to the extent that it was

(i) included under paragraph 6(1)(a) as a benefit in computing the income of the other person for the taxation year of the other person that ends in the taxpayer's taxation year, and

(ii) in respect of services rendered to the taxpayer;

Related Provisions: 6(1)(i) — Salary deferral arrangement payments; 6(11) — Salary deferral arrangement; 12(1)(n.2) — Forfeited salary deferral amounts; 18(1)(o.1) — Deductions — General limitations — Salary deferral arrangement; 87(2)(j.3) — Amalgamation — continuation of corporation. See also at end of s. 20.

(pp) **idem** — any amount under a salary deferral arrangement in respect of another person (other than an arrangement established primarily for the benefit of one or more non-resident employees in respect of services to be rendered outside Canada) to the extent that it was

(i) included under paragraph 6(1)(i) in computing the income of the other person for the taxation year of the other person that ends in the taxpayer's taxation year, and

(ii) in respect of services rendered to the taxpayer;

Related Provisions: 18(1)(o.1) — Salary deferral arrangement; 87(2)(j.3) — Amalgamations — continuation of corporation.

History: Para. 20(1)(pp) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 15(5), applicable to 1986 *et seq.*

(qq) **disability-related modifications to buildings** — an amount paid by the taxpayer in the year for prescribed renovations or alterations to a building used by the taxpayer primarily for the purpose of gaining or producing income from the building or from a business that are made to enable individuals who have a mobility impairment to gain access to the building or to be mobile within it;

Related Provisions: 18(3.1)(a) — Costs relating to construction of building or ownership of land; 20(1)(rr) — Disability-related equipment.

History: Para. 20(1)(qq) was moved from 20(1)(gg) and amended, by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 9(2), applicable with respect to renovations and alterations made after 1990 except that, with respect to such renovations and alterations made before February 26, 1992, the reference to "prescribed renovations or alterations to a building" shall be read as a reference to "prescribed renovations or alterations to a building of the taxpayer". Para. 20(1)(gg) formerly read:

> (gg) an amount paid by the taxpayer in the year for such prescribed renovations or alterations to a building of the taxpayer that is used by the taxpayer primarily for the purpose of gaining or producing income therefrom or from a business as are made for the purpose of enabling individuals who have a mobility impairment to gain access to the building or be mobile within it;

Regulations: 8800 (prescribed renovations and alterations).

Proposed Addition [on hold] — 20(1)(qq) [December 1991 — interest deductibility]

Application: The December 20, 1991 draft legislation (interest deductibility), subsec. 1(2), will add para. 20(1)(qq), applicable to 1972 *et seq.*

The proposals relating to interest deductibility are still subject to change; revisions may be released in the future. They are not expected to be enacted any time soon. (If this provision is enacted, it will have to be renumbered.) See also proposed 20.1, 20.2.

(rr) **disability-related equipment** — an amount paid by the taxpayer in the year for any prescribed disability-specific device or equipment;

Related Provisions: 20(1)(qq) — Disability-related modifications to buildings. See also at end of s. 20.

History: Para. 20(1)(rr) substituted by 1994, c. 21, subsec. 12(5), applicable to amounts paid after February 25, 1992. That para. formerly read:

> (rr) an amount paid by the taxpayer in the year for prescribed devices or equipment acquired primarily to assist individuals who have a sight or hearing impairment.

Para. 20(1)(rr) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 9(2), applicable with respect to amounts paid after February 25, 1992.

Regulations: 8801 (prescribed devices and equipment).

(ss) **qualifying environmental trusts** — a contribution made in the year by the taxpayer to a qualifying environmental trust under which the taxpayer is a beneficiary;

Related Provisions: 12(1)(z.1) — Inclusion in income of amount received from qualifying environmental trust; 87(2)(j.93) — Amalgamations — continuing corporation; Reg. 1204(1)(f), 1204(1.1)(a)(ii) — Amount deducted under 20(1)(ss) excluded from resource allowance computation.

History: Para. 20(1)(ss) amended by 1998, c. 19, s. 4, applicable to taxation years that end after February 18, 1997 and, for the purpose of para. 20(1)(ss), as amended, each contribution made after 1995 and before February 19, 1997 by a taxpayer to a trust (other than a mining reclamation trust as defined in subsec. 248(1)) is deemed to have been made on February 19, 1997. The para. formerly read:

> (ss) mining reclamation trusts — a contribution made in the year by the taxpayer to a mining reclamation trust under which the taxpayer is a beneficiary;

Para. 20(1)(ss) added by 1995, c. 3, subsec. 7(1), applicable to taxation years that end after February 22, 1994 and, for the purpose of para. (ss), each contribution made by a taxpayer to a trust before February 23, 1994 shall be deemed to have been made on February 23, 1994.

(tt) **acquisition of interests in qualifying environmental trusts** — the consideration paid by the taxpayer in the year for the acquisition from another person or partnership of all or part of the taxpayer's interest as a beneficiary under a qualifying environmental trust, other than consideration that is the assumption of a reclamation obligation in respect of the trust;

Related Provisions: 12(1)(z.2) — Inclusion in income on disposition of interest in qualifying environmental trust; 87(2)(j.93) — Amalgamations — continuing corporation; Reg. 1204(1)(f), 1204(1.1)(a)(ii) — Amount deducted under 20(1)(tt) excluded from resource allowance computation.

History: Para. 20(1)(tt) amended by 1998, c. 19, s. 4, applicable to taxation years that end after February 18, 1997. The para. formerly read:

> (tt) acquisition of interests in mining reclamation trusts — the consideration paid by the taxpayer in the year for the acquisition from another person or partnership of all or part of the taxpayer's interest as a beneficiary under a mining reclamation trust, other than consideration that is the assumption of a mining reclamation obligation in respect of the trust; and

Para. 20(1)(tt) added by 1995, c. 3, subsec. 7(1), applicable to taxation years that end after February 22, 1994.

(uu) **debt forgiveness** — any amount deducted in computing the taxpayer's income for the year because of paragraph 80(15)(a) or subsection 80.01(10);

Related Provisions: 28(1)(g) — Deduction from farming or fishing income when using cash method.

History: Para. 20(1)(uu) added by 1995, c. 21, subsec. 6(3), applicable to taxation years that end after February 21, 1994.

(vv) **countervailing or anti-dumping duty** — an amount paid in the year by the taxpayer as or on account of an existing or proposed countervailing or anti-dumping duty in respect of property (other than depreciable property); and

Related Provisions: 12(1)(z.6) — Refund of duties included in income; 13(21)"undepreciated capital cost"D.1, K — Inclusion of duties in u.c.c. of depreciable property.

History: Para. 20(1)(vv) added by 1999, c. 22, subsec. 9(1), applicable to amounts that become payable after February 23, 1998.

(ww) **split income** — where the taxpayer is a specified individual in relation to the year, the individual's split income for the year.

Related Provisions: 120(3)(c) — No deduction in determining income not earned in a province and income subject to Quebec abatement; 120.4 — Income splitting tax (kiddie tax) payable by child.

History: Para. 20(1)(ww) added by 2000, c. 19, s. 2, applicable to 2000 *et seq.*

(1.1) Application of subsec. 13(21) — The definitions in subsection 13(21) apply to any regulations made under paragraph (1)(a).

Origin of subsec. 20(1.1): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsec. 13(21)).

(1.2) Application of subsec. 12.2(11) — The definitions in subsection 12.2(11) apply to paragraph (1)(c).

Origin of subsec. 20(1.2): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsec. 12.2(11)).

(2) Borrowed money — For the purposes of paragraph (1)(c), where a person has borrowed money in consideration of a promise by the person to pay a larger amount and to pay interest on the larger amount,

(a) the larger amount shall be deemed to be the amount borrowed; and

(b) where the amount actually borrowed has been used in whole or in part for the purpose of earning income from a business or property, the proportion of the larger amount that the amount actually so used is of the amount actually borrowed shall be deemed to be the amount so used.

Related Provisions: See at end of s. 20.

Regulations: 304 (prescribed annuity contract) [technically does not apply to this subsection].

Interpretation Bulletins: IT-533: Interest deductibility and related issues.

(2.1) Limitation of expression "interest" — For the purposes of paragraphs (1)(c) and (d), "interest" does not

include an amount that is paid after the taxpayer's 1977 taxation year or payable in respect of a period after the taxpayer's 1977 taxation year, depending on the method regularly followed by the taxpayer in computing the taxpayer's income, in respect of interest on a policy loan made by an insurer except to the extent that the amount of that interest is verified by the insurer in prescribed form and within the prescribed time to be

(a) interest paid in the year on that loan; and

(b) interest (other than interest that would, but for paragraph (2.2)(b), be interest on money borrowed before 1978 to acquire a life insurance policy or on an amount payable for property acquired before 1978 that is an interest in a life insurance policy) that is not added to the adjusted cost basis (within the meaning given that expression in subsection 148(9)) to the taxpayer of the taxpayer's interest in the policy.

Related Provisions: See at end of s. 20.

Regulations: 4001 (prescribed time).

Interpretation Bulletins: IT-355R2: Interest on loans to buy life insurance policies and annuity contracts, and interest on policy loans (archived).

Forms: T2210: Verification of policy loan interest by the insurer.

(2.2) Limitation of expression "life insurance policy" — For the purposes of paragraphs (1)(c) and (d), a "life insurance policy" does not include a policy

(a) that is or is issued pursuant to a registered pension plan, a registered retirement savings plan, an income-averaging annuity contract or a deferred profit sharing plan;

(b) that was an annuity contract issued before 1978 that provided for annuity payments to commence not later than the day on which the policyholder attains 75 years of age; or

(c) that is an annuity contract all of the insurer's reserves for which vary in amount depending on the fair market value of a specified group of properties.

Related Provisions: 138(12)"life insurance policy". See also at end of s. 20.

History: Para. 20(2.2)(c) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 15(6), applicable to 1987 *et seq.*

Interpretation Bulletins: IT-355R2: Interest on loans to buy life insurance policies and annuity contracts, and interest on policy loans (archived); IT-533: Interest deductibility and related issues.

(2.3) Sectoral reserve — For the purpose of clause (1)(l)(ii)(D), a sectoral reserve is a reserve or an allowance for impairment for a loan that is determined on a sector-by-sector basis (including a geographic sector, an industrial sector or a sector of any other nature) and not on a property-by-property basis.

History: Subsec. 20(2.3) added by 1998, c. 19, subsec. 81(7), applicable

(a) to taxation years that end after September 1997; and

(b) to a taxpayer's taxation years that end after 1995 and before October 1997 where the taxpayer elects in writing to have the amendment to para. 20(1)(l) (made by 1998, c. 19, subsec. 81(4)) apply to the year and files the election with the Minister of National Revenue before October 1998.

(2.4) Specified percentage — For the purpose of clause (1)(l)(ii)(D), a taxpayer's specified percentage for a taxation year is

(a) where the taxpayer has a prescribed reserve amount for the year, the percentage that is the percentage of the prescribed reserve amount of the taxpayer for the year claimed by the taxpayer under clause (1)(l)(ii)(C) for the year, and

(b) in any other case, 100%.

History: Subsec. 20(2.4) added by 1998, c. 19, subsec. 81(7), applicable

(a) to taxation years that end after September 1997; and

(b) to a taxpayer's taxation years that end after 1995 and before October 1997 where the taxpayer elects in writing to have the amendment to para. 20(1)(l) (made by 1998, c. 19, subsec. 81(4)) apply to the year and files the election with the Minister of National Revenue before October 1998.

Regulations: 8000(a) (prescribed reserve amount).

(3) Borrowed money — For greater certainty, it is hereby declared that where a taxpayer has used borrowed money

(a) to repay money previously borrowed, or

(b) to pay an amount payable for property described in subparagraph (1)(c)(ii) previously acquired,

subject to subsection 20.1(6), the borrowed money shall, for the purposes of paragraphs (1)(c), (e) and (e.1), subsections 20.1(1) and (2), section 21 and subparagraph 95(2)(a)(ii) and for the purpose of paragraph 20(1)(k) of the *Income Tax Act*, Chapter 148 of the Revised Statutes of Canada, 1952, be deemed to have been used for the purpose for which the money previously borrowed was used or was deemed by this subsection to have been used, or to acquire the property in respect of which the amount was payable, as the case may be.

Related Provisions: See at end of s. 20.

History: That portion of subsec. 20(3) after para. (b) amended by 1995, c. 21, s. 45, applicable to expenses incurred in taxation years that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the amended legislation applies to expenses incurred in taxation years of the foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation year of such foreign affiliate.

That portion formerly read:

subject to subsection 20.1(6), the borrowed money shall, for the purposes of paragraphs (1)(c), (e) and (e.1), subsections 20.1(1) and (2) and section 21, and for the purpose of paragraph 20(1)(k) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, be deemed to have been used for the purpose for which the money previously borrowed was used or was deemed by this subsection to have been used, or to acquire the property in respect of which the amount was payable, as the case may be.

That portion of subsec. 20(3) after para. (b) substituted by 1994, c. 21, subsec. 12(6), applicable to expenses incurred after 1987 except that, in its application to such expenses incurred before 1994, that portion shall be read without reference to the expressions "subject to subsection 20.1(6)" and "subsections 20.1(1) and (2)". That portion formerly read:

the borrowed money shall, for the purposes of paragraph (1)(c) (or 20(1)(k) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952) and section 21, be deemed to have been used for the purpose for which the money previously borrowed was used or was deemed by this subsection to have been used, or to acquire the property in respect of which the said amount was so payable, as the case may be.

Selected Cases [subsec. 20(3)]: *Grenier v. MNR*, [1992] 1 C.T.C. 2703 (TCC); aff'd [1998] 3 C.T.C. 243 (FCTD) (Interest deductible only on portion of loan used to earn income); *Emerson v. R.*, [1986] 1 C.T.C. 422 (FCA); leave to appeal to SCC refused (June 12, 1986), Doc. 19907 [unreported] (Interest disallowed where money borrowed to repay previous loan on shares no longer owned).

Interpretation Bulletins: IT-533: Interest deductibility and related issues.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

I.T. Technical News: 3 (use of a partner's assets by a partnership).

Proposed Addition [on hold] — 20(3.1), (3.2) [December 1991 — interest deductibility]

Application: The December 20, 1991 draft legislation (interest deductibility), subsec. 1(3), proposes to add subsecs. 20(3.1) and (3.2).

The proposals are like to be withdrawn. However, they are still under review by the Department of Finance (IT-533).

(4) Bad debts from dispositions of depreciable property — Where an amount that is owing to a taxpayer as or on account of the proceeds of disposition of depreciable property (other than a timber resource property or a passenger vehicle having a cost to the taxpayer in excess of $20,000 or such other amount as may be prescribed) of the taxpayer of a prescribed class is established by the taxpayer to have become a bad debt in a taxation year, there may be deducted in computing the taxpayer's income for the year the lesser of

(a) the amount so owing to the taxpayer, and

(b) the amount, if any, by which the capital cost to the taxpayer of that property exceeds the total of the amounts, if any, realized by the taxpayer on account of the proceeds of disposition.

Related Provisions: 20(1)(a) — Capital cost of property; 50(1)(a) — Deemed disposition where debt becomes bad debt; 79.1(7)(d) — Deduction by creditor for bad debt where property seized; 79.1(8) — No deduction for principal amount of bad debt where property seized by creditor. See additional Related Provisions and Definitions at end of s. 20.

History: Subsec. 20(4) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 15(7), applicable with respect to amounts that are established after July 13, 1990 to have become bad debts. Subsec. 20(4) formerly read:

(4) Uncollectable portion of proceeds of disposition of depreciable property — Where an amount that is owing to a taxpayer as or on account of the proceeds of disposition of depreciable property (other than a timber resource property) of the taxpayer of a prescribed class is established by the taxpayer to have become a bad debt in a taxation year, there may be deducted in computing the taxpayer's income for the year the lesser of

(a) the amount so owing to the taxpayer, and

(b) the amount, if any, by which the capital cost to the taxpayer of that property exceeds the aggregate of the amounts, if any, realized by the taxpayer on account of the proceeds of disposition.

Regulations: 7307(1) (prescribed amount).

Interpretation Bulletins: IT-159R3: Capital debts established to be bad debts; IT-220R2: CCA — proceeds of disposition of depreciable property; IT-442R: Bad debts and reserve for doubtful debts.

I.T. Technical News: 10 (1997 deduction limits and benefit rates for automobiles).

(4.1) Idem — Where an amount that is owing to a taxpayer as or on account of the proceeds of disposition of a timber resource property of the taxpayer is established by the taxpayer to have become a bad debt in a taxation year, the amount so owing to the taxpayer may be deducted in computing the taxpayer's income for the year.

Related Provisions: 50(1)(a) — Deemed disposition where debt becomes bad debt; 79.1(7)(d) — Deduction by creditor for bad debt where property seized; 79.1(8) — No deduction for principal amount of bad debt where property seized by creditor. See at end of s. 20.

Interpretation Bulletins: IT-442R: Bad debts and reserve for doubtful debts.

(4.2) Bad debts re eligible capital property — Where, in respect of one or more dispositions of eligible capital property by a taxpayer, an amount that is described in paragraph (a) of the description of E in the definition "cumulative eligible capital" in subsection 14(5) in respect of the taxpayer is established by the taxpayer to have become a bad debt in a taxation year, there shall be deducted in computing the taxpayer's income for the year the amount determined by the formula

$$(A + B) - (C + D + E + F + G + H)$$

where

A is the lesser of

(a) ½ of the total of all amounts each of which is such an amount that was so established to have become a bad debt in the year or a preceding taxation year, and

(b) the amount that is

(i) where the year ended after February 27, 2000, the amount, if any, that would be the total of all amounts determined by the formula in paragraph 14(1)(b) (if that formula were read without reference to the description of D) for the year, or for a preceding taxation year that ended after February 27, 2000, and

(ii) where the year ended before February 28, 2000, nil;

B is the amount, if any, by which

(a) ¾ of the total of all amounts each of which is such an amount that was so established to be a bad debt in the year or a preceding taxation year

exceeds the total of

(b) ⅜ of the amount by which

(i) the value of A

exceeds

(ii) the amount included in the value of A because of subparagraph (b)(i) of the description of A in respect of taxation years that ended after February 27, 2000 and before October 18, 2000, and

(c) ⅞ of the amount included in the value of A because of subparagraph (b)(i) of the description of A in respect of taxation years that ended after February 27, 2000 and before October 18, 2000;

C is the total of all amounts each of which is an amount determined under subsection 14(1) or (1.1) for the year, or a preceding taxation year, that ends after October 17, 2000 and in respect of which a deduction can reasonably be considered to have been claimed under section 110.6 by the taxpayer;

D is the total of all amounts each of which is an amount determined under subsection 14(1) or (1.1) for the year, or a preceding taxation year, that ended after February 27, 2000 and before October 18, 2000 and in respect of which a deduction can reasonably be considered to have been claimed under section 110.6 by the taxpayer;

E is the total of all amounts each of which is an amount determined under subsection 14(1) or (1.1) for a preceding taxation year that ended before February 28, 2000 and in respect of which a deduction can reasonably be considered to have been claimed under section 110.6 by the taxpayer;

F is the total of

(a) ⅔ of the total of all amounts each of which is the value determined in respect of the taxpayer for D in the formula in paragraph 14(1)(b) for the year, or a preceding taxation year, that ends after October 17, 2000, and

(b) 8/9 of the total of all amounts each of which is the value determined in respect of the taxpayer for D in the formula in paragraph 14(1)(b) for the year, or a preceding taxation year, that ended after February 27, 2000 and before October 18, 2000;

G is the total of all amounts each of which is the value determined in respect of the taxpayer for D in the formula in subparagraph 14(1)(a)(v) (as that subparagraph applied for taxation years that ended before February 28, 2000) for a preceding taxation year; and

H is the total of all amounts deducted by the taxpayer under this subsection for preceding taxation years.

Related Provisions: 12(1)(i.1) — Bad debts recovered; 20(4.3) — Deemed allowable capital loss on bad on disposition of eligible capital property; 39(11) — Bad debt recovery; 50(1)(a) — Deemed disposition where debt becomes bad debt; 79.1(7)(d) — Deduction by creditor for bad debt where property seized; 79.1(8) — No deduction for principal amount of bad debt where property seized by creditor; 89(1)"capital dividend account"(c) — Capital dividend account; 257 — Formula cannot calculate to less than zero. See also at end of s. 20.

History: Subsec. 20(4.2) amended by 2001, c. 17, subsec. 13(8), applicable to taxation years that end after February 27, 2000 except that, for taxation years that ended after February 27, 2000 and before October 18, 2000,

(a) the reference to the fraction "½" in para. (a) of the description of A shall be read as a reference to the fraction "⅔"; and

(b) the reference to the fraction "¾" in para. (b) of the description of B shall be read as a reference to the fraction "9/8".

The subsec. formerly read:

(4.2) Idem — Where, in respect of a disposition of eligible capital property by a taxpayer, an amount that comes within the terms of paragraph (a) of the description of E in the definition "cumulative eligible capital" in subsection 14(5) was included in the calculation of the taxpayer's cumulative eligible capital and is established by the taxpayer to have become a bad debt in a taxation year, there shall be deducted in computing the income of the taxpayer for the year

(a) the amount, if any, by which

(i) ¾ of the total of

(A) the total of all amounts each of which is such an amount that was so established by the taxpayer to be a bad debt in the year, and

(B) the total of all amounts each of which is such an amount that was so established by the taxpayer to be a bad debt in a preceding taxation year,

exceeds the total of

(ii) the total of all amounts each of which is

(A) the taxable capital gain of the taxpayer determined under subsection 14(1) for the year or a preceding taxation year and in respect of which a deduction can reasonably be considered to have been claimed under section 110.6, or

(B) an amount determined in respect of the taxpayer for D in subparagraph 14(1)(a)(v) for the year or a preceding taxation year, and

(iii) the total of all amounts deducted by the taxpayer under this subsection in preceding taxation years

and the amount, if any, by which

(b) ¾ of the amount determined under clause (a)(i)(A) for the year

exceeds

(c) the amount determined under paragraph (a) for the year

shall be deemed to be an allowable capital loss of the taxpayer from a disposition of capital property by the taxpayer in the year.

Subpara. 20(4.2)(a)(ii) amended by 1995, c. 3, subsec. 7(2), applicable to taxation years that end after February 22, 1994. Subpara. (ii) formerly read:

(ii) the total of all amounts each of which is an amount determined under subparagraph 14(1)(a)(v) in respect of the taxpayer for the year or a preceding taxation year, and in respect of which a deduction under section 110.6 may reasonably be considered to have been claimed, and

Interpretation Bulletins: IT-123R6: Transactions involving eligible capital property.

(4.3) Deemed allowable capital loss — Where, in respect of one or more dispositions of eligible capital property by a taxpayer, an amount that is described in paragraph (a) of the description of E in the definition "cumulative eligible capital" in subsection 14(5) in respect of the taxpayer is established by the taxpayer to have become a bad debt in a taxation year, the taxpayer is deemed to have an allowable capital loss from a disposition of capital property in the year equal to the lesser of

(a) the total of the value determined for A and ⅔ of the value determined for B in the formula in subsection (4.2) in respect of the taxpayer for the year; and

(b) the total of all amounts each of which is

(i) the value determined for C or paragraph (a) of the description of F in the formula in subsection (4.2) in respect of the taxpayer for the year,

(ii) ¾ of the value determined for D or paragraph (b) of the description of F in the formula in subsection (4.2) in respect of the taxpayer for the year, or

(iii) ⅔ of the value determined for E or G in the formula in subsection (4.2) in respect of the taxpayer for the year.

History: Subsec. 20(4.3) added by 2001, c. 17, subsec. 13(8), applicable to taxation years that end after February 27, 2000 except that, for taxation years that ended after February 27, 2000 and before October 18, 2000,

(a) the reference to the fraction "⅔" in para. (a) and subpara. (b)(iii) shall be read as a reference to the fraction "8/9"; and

(b) subpara. (b)(ii) shall be read without reference to the expression "¾ of".

(5) Sale of agreement for sale, mortgage or hypothecary claim included in proceeds of disposition — Where depreciable property, other than a timber resource property, of a taxpayer has, in a taxation year, been disposed of to a person with whom the taxpayer was dealing at arm's length, and the proceeds of disposition include an agreement for the sale of, or a mortgage or hypothecary claim on, land that the taxpayer has, in a subsequent taxation year, sold to a person with whom the taxpayer was dealing at arm's length, there may be deducted in computing the income of the taxpayer for the subsequent year an amount equal to the lesser of

(a) the amount, if any, by which the principal amount of the agreement for sale, mortgage or hypothecary claim outstanding at the time of the sale exceeds the consideration paid by the purchaser to the taxpayer for the agreement for sale, mortgage or hypothecary claim, and

(b) the amount determined under paragraph (a) less the amount, if any, by which the proceeds of disposition of the depreciable property exceed the capital cost to the taxpayer of that property.

Related Provisions: See at end of s. 20.

History: The portion of subsec. 20(5) before para. (b) amended by 2001, c. 17, subsec. 203(2), in force June 14, 2001. That portion formerly read:

(5) Sale of agreement for sale or mortgage included in proceeds of disposition — Where depreciable property, other than a timber resource property, of a taxpayer has, in a taxation year, been disposed of to a person with whom the taxpayer was dealing at arm's length, and the proceeds of disposition include an agreement for sale of or mortgage on land that the taxpayer has, in a subsequent taxation year, sold to a person with whom the taxpayer was dealing at arm's length, there may be deducted in computing the

income of the taxpayer for the subsequent year an amount equal to the lesser of

(a) the amount, if any, by which the principal amount of the agreement for sale or mortgage outstanding at the time of the sale exceeds the consideration paid by the purchaser to the taxpayer for the agreement for sale or mortgage, and

Interpretation Bulletins: IT-323: Sale of mortgage included in proceeds of disposition of depreciable property (archived).

(5.1) Sale of agreement for sale, mortgage or hypothecary claim included in proceeds of disposition — Where a timber resource property of a taxpayer has, in a taxation year, been disposed of to a person with whom the taxpayer was dealing at arm's length, and the proceeds of disposition include an agreement for sale of, or a mortgage or hypothecary claim on, land that the taxpayer has, in a subsequent taxation year, sold to a person with whom the taxpayer was dealing at arm's length, there may be deducted in computing the income of the taxpayer for the subsequent year the amount, if any, by which the principal amount of the agreement for sale, mortgage or hypothecary claim outstanding at the time of the sale exceeds the consideration paid by the purchaser to the taxpayer for the agreement for sale, mortgage or hypothecary claim.

Related Provisions: See at end of s. 20.

History: Subsec. 20(5.1) amended by 2001, c. 17, subsec. 203(3), in force June 14, 2001. The subsec. formerly read:

(5.1) Idem — Where a timber resource property of a taxpayer has, in a taxation year, been disposed of to a person with whom the taxpayer was dealing at arm's length, and the proceeds of disposition include an agreement for sale of or mortgage on land that the taxpayer has, in a subsequent taxation year, sold to a person with whom the taxpayer was dealing at arm's length, there may be deducted in computing the income of the taxpayer for the subsequent year the amount, if any, by which the principal amount of the agreement for sale or mortgage outstanding at the time of the sale exceeds the consideration paid by the purchaser to the taxpayer for the agreement for sale or mortgage.

(6) Special reserves — Where an amount is deductible in computing income for a taxation year under paragraph (1)(m) as a reserve in respect of

(a) articles of food or drink that it is reasonably anticipated will have to be delivered after the end of the year, or

(b) transportation that it is reasonably anticipated will have to be provided after the end of the year,

there shall be substituted for the amount determined under that paragraph an amount not exceeding the total of amounts included in computing the taxpayer's income from the business for the year that were received or receivable (depending on the method regularly followed by the taxpayer in computing the taxpayer's profit) in the year in respect of

(c) articles of food or drink not delivered before the end of the year, or

(d) transportation not provided before the end of the year,

as the case may be.

Related Provisions: 12(1)(e) — Reserves in respect of certain goods and services, etc., rendered. See also at end of s. 20.

Interpretation Bulletins: IT-154R: Special reserves.

(7) Where para. (1)(m) does not apply — Paragraph (1)(m) does not apply to allow a deduction

(a) as a reserve in respect of guarantees, indemnities or warranties;

(b) in computing the income of a taxpayer for a taxation year from a business in any case where the taxpayer's income for the year from that business is computed in accordance with the method authorized by subsection 28(1); or

(c) as a reserve in respect of insurance, except that in computing an insurer's income for a taxation year from an insurance business, other than a life insurance business, carried on by it, there may be deducted as a policy reserve any amount that the insurer claims not exceeding the amount prescribed in respect of the insurer for the year.

Selected Cases [para. 20(7)(c)]: *Gore Mutual Insurance Co. v. R.*, [1997] 2 C.T.C. 2530 (TCC) (Decision in *Co-Operators General Insurance* not affected by SCC decision in *Notre-Dame de Bons Secours*).

Related Provisions: 12(1)(e) — Income inclusion in following year; 12(1)(s) — Reinsurance commission; 18(1)(e.1) — Unpaid claims under insurance policies; 20(26) — Deduction for unpaid claims reserve adjustment; 87(2.2) — Amalgamation of insurance corporations; 88(1)(g) — Winding-up of subsidiary insurance corporations; 138(3)(a)(i) — Policy reserves for life insurance business; 139.1(8)(b) — No deduction for policy dividend paid on demutualization; Reg. 8100(a) — Unpaid claims reserve adjustment. See also at end of s. 20.

History: Para. 20(7)(c) amended by 1997, c. 25, subsec. 5(2), applicable to 1996 *et seq.* Para. (c) formerly read:

(c) as a reserve in respect of insurance, except that an insurance corporation may, in computing its income for a taxation year from an insurance business, other than a life insurance business, carried on by it, deduct as policy reserves such amounts as are prescribed for the purposes of this paragraph.

Selected Cases [subsec. 20(7)]: *Sears Canada Inc. v. Canada*, [1989] 1 C.T.C. 127 (FCA); leave to appeal to SCC refused (1989), 100 N.R. 160 (note), (sub nom. *Sears Can. Inc. v. MNR*) (Maintenance agreement for appliances constituted indemnity; reserves disallowed); *Amesbury Distributors Ltd. v. R.*, [1984] C.T.C. 667 (FCTD) (Reserve from fee charged to dealers for after-sales service disallowed); *Mister Muffler Ltd. v. R.*, [1974] C.T.C. 813 (FCTD) (No reserve permitted for part of purchase price constituting contingent allowance for replacement).

Regulations: 1400(1) (amount prescribed for 20(7)(c)); for structured settlement reserves, see Reg. 1400(3)E; for earthquake reserves, see Reg. 1400(3)L.

Interpretation Bulletins: IT-154R: Special reserves.

(8) No deduction in respect of [sale of] property in certain circumstances — Paragraph (1)(n) does not apply to allow a deduction in computing the income of a taxpayer for a taxation year from a business in respect of a property sold in the course of the business if

(a) the taxpayer, at the end of the year or at any time in the immediately following taxation year,

(i) was exempt from tax under any provision of this Part, or

(ii) was not resident in Canada and did not carry on the business in Canada; or

(b) the sale occurred more than 36 months before the end of the year.

Proposed Addition — 20(8)(c), (d)

(c) the purchaser of the property sold was a corporation that, immediately after the sale,

(i) was controlled, directly or indirectly, in any manner whatever, by the taxpayer,

(ii) was controlled, directly or indirectly, in any manner whatever, by a person or group of persons that controlled the taxpayer, directly or indirectly, in any manner whatever, or

(iii) controlled the taxpayer, directly or indirectly, in any manner whatever; or

(d) the purchaser of the property sold was a partnership in which the taxpayer was, immediately after the sale, a majority interest partner.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 57(1), will add paras. 20(8)(c) and (d), applicable in respect of property sold by a taxpayer after December 20, 2002. However, if a property so sold pursuant to an agreement in writing made before December 21, 2002 is transferred to the purchaser before 2004

(a) subsec. 20(8), as it read immediately before its amendment, applies in respect of the property; and

(b) for the purpose of applying para. 20(1)(n) to the taxpayer for a taxation year in respect of the property, a reasonable amount as a reserve in respect of an amount not due in respect of the sale may not exceed the amount that would be reasonable if the proceeds from any subsequent disposition of the property that the purchaser receives before the end of the taxation year were received by the taxpayer.

Technical Notes: Paragraph 20(1)(n) allows a taxpayer to claim a reserve in respect of the taxpayer's profit from the sale of certain property, where all or part of the proceeds of the sale are not due until at least two years after the time of sale. However, subsection 20(8) provides that this reserve is limited to taxation years that end less than 36 months after the time of the sale. For example, where the taxation year is 12 months, the reserve is available in the taxation year in which the sale occurred and the two subsequent taxation years.

New paragraphs 20(8)(c) and (d) generally apply, in respect of dispositions of property that occur after December 20, 2002, to provide that the reserve under paragraph 20(1)(n) is not available to a taxpayer where the purchaser of the property is a corporation controlled by the taxpayer or is a partnership of which the taxpayer is a majority interest partner.

Letter from Dept. of Finance, October 9, 2003:

Dear [xxx]

I am writing in response to your letter of August 13, 2003, in which you requested that an amendment to subsection 20(8) of the *Income Tax Act* (the "Act"), proposed in the package of income tax technical amendments released on December 20, 2002, be modified to provide transitional relief in respect of agreements entered into on or before that date.

The proposed amendments provide that a reserve under paragraph 20(1)(n) of the Act in respect of a property is not available to a taxpayer where the purchaser of the property is a corporation controlled by the taxpayer or is a partnership of which the taxpayer is a majority interest partner. A similar amendment is proposed to subsection 44(7) of the Act in respect of the availability of a capital gains reserve to a partnership of which the transferor is a majority interest partner.

Grandfathering is generally not provided in respect of non-arm's length transactions, reflecting the ability of non-arm's length parties to either accept the proposed tax changes or unwind incomplete transactions. However, we recognize that in certain circumstances a taxpayer may have relied on such an agreement when contracting with arm's length third parties. As such, we will propose to the Minister of Finance that property transferred before 2004, pursuant to an agreement in writing made before December 21, 2002, not be subject to the proposed amendment. However, the amount that the transferor would be entitled to claim as a reserve for a taxation year under paragraph 20(1)(n) of the Act would be reduced if the transferee has received, before the end of the taxation year of the transferor, proceeds from a subsequent disposition of the property. In such a case, the reserve of the transferor in respect of a property would be limited to the amount that would be calculated as if the proceeds from the subsequent disposition of the property had been paid to the transferor as proceeds from the original transfer.

We will recommend similar grandfathering in respect of the proposed amendment to subsection 44(7) of the Act.

Thank you for bringing this matter to my attention.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 149 — Exemptions; 256(5.1) — Meaning of "controlled, directly or indirectly". See additional Related Provisions and Definitions at end of s. 20.

Interpretation Bulletins: IT-152R3: Special reserves — sale of land; IT-154R: Special reserves.

(9) Application para. (1)(cc) — In lieu of making any deduction of an amount permitted by paragraph (1)(cc) in computing a taxpayer's income for a taxation year from a business, the taxpayer may, if the taxpayer so elects in prescribed manner, make a deduction of 1/10 of that amount in computing the taxpayer's income for that taxation year and a like deduction in computing the taxpayer's income for each of the 9 immediately following taxation years.

Related Provisions: 13(12) — Application of 20(1)(cc); 96(3) — Election by members of partnership. See also at end of s. 20.

Regulations: 4100 (prescribed manner).

Interpretation Bulletins: IT-99R5: Legal and accounting fees.

(10) Convention expenses — Notwithstanding paragraph 18(1)(b), there may be deducted in computing a taxpayer's income for a taxation year from a business an amount paid by the taxpayer in the year as or on account of expenses incurred by the taxpayer in attending, in connection with the business, not more than two conventions held during the year by a business or professional organization at a location that may reasonably be regarded as consistent with the territorial scope of that organization.

Related Provisions: 67.1(3) — Meals and entertainment included in fee for convention; Canada-U.S. Tax Treaty:Art. XXV:9 — Fees for convention held in U.S. deductible if would be deductible in Canada. See also at end of s. 20.

Selected Cases [subsec. 20(10)]: *Wees v. Canada*, [1995] 1 C.T.C. 2711 (FCA) (Seminars and inhouse meetings held to be conventions and deductions limited).

Interpretation Bulletins: IT-131R2: Convention expenses; IT-357R2: Expenses of training.

(11) Foreign taxes on income from property exceeding 15% — In computing the income of an individual from a property other than real property for a taxation year after 1975 that is income from a source outside Canada, there may be deducted the amount, if any, by which,

Proposed Amendment — 20(11) opening words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 206(3), will amend the opening words of subsec. 20(11) by substituting "real or immovable property" for "real property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(a) such part of any income or profits tax paid by the taxpayer to the government of a country other than Canada for the year as may reasonably be regarded as having been paid in respect of an amount that has been included in computing the taxpayer's income for the year from the property,

exceeds

(b) 15% of the amount referred to in paragraph (a).

Related Provisions: 20(12) — Deduction for foreign tax as alternative to credit; 94(3)(b) [proposed] — Application to trust deemed resident in Canada; 104(22)–(22.4) — Foreign tax credit for beneficiaries of trust; 126(1) — Foreign tax credit; 126(7)"non-business-income tax"(b) — Limitation on foreign tax credit; 144(8.1) — Employees profit sharing plan — Foreign tax deduction; Canada-U.S. Tax Treaty:Art. XXIX:5 — United States S corporations. See also at end of s. 20.

Interpretation Bulletins: IT-201R2: Foreign tax credit — trusts and beneficiaries; IT-270R3: Foreign tax credit; IT-506: Foreign income taxes as a deduction from income.

(12) Foreign non-business income tax — In computing a taxpayer's income for a taxation year from a business or property, there may be deducted such amount as the taxpayer claims not exceeding the non-business in-

come tax paid by the taxpayer for the year to the government of a country other than Canada (within the meaning assigned by subsection 126(7) read without reference to paragraphs (c) and (e) of the definition "non-business-income tax" in that subsection) in respect of that income, other than any such tax, or part thereof, that can reasonably be regarded as having been paid by a corporation in respect of income from a share of the capital stock of a foreign affiliate of the corporation.

Proposed Amendment — 20(12)

(12) Foreign non-business income tax — In computing the income of a taxpayer who is resident in Canada at any time in a taxation year from a business or property for the year, there may be deducted any amount that the taxpayer claims that does not exceed the non-business income tax paid by the taxpayer for the year to the government of a country other than Canada (within the meaning assigned by subsection 126(7) read without reference to paragraphs (c) and (e) of the definition "non-business income tax" in that subsection) in respect of that income, other than any of those taxes paid that can, in whole or in part, reasonably be regarded as having been paid by a corporation in respect of income from a share of the capital stock of a foreign affiliate of the corporation.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 57(2), will amend subsec. 20(12) to read as above, applicable after December 20, 2002 in respect of taxes paid at any time.

Technical Notes: Subsection 20(12) allows a taxpayer to deduct, in computing income for a taxation year from a business or property, non-business income taxes paid to a foreign government in respect of the income. The subsection is amended to make explicit the requirement that the taxpayer claiming the deduction be resident in Canada during all or part of the year for which the claim is made. This amendment is clarifying only, and applicable after December 20, 2002. (Accordingly, the amendment is effective for any application of the Act after that date.)

Related Provisions: 20(11) — Deduction to limit foreign tax credit of individual; 93.1(1) — Where shares are owned by partnership; 94(3)(b) [proposed] — Application to trust deemed resident in Canada; 104(22)–(22.4) — Foreign tax credit for beneficiaries of trust; 126(1) — Foreign tax credit; 126(1.1) — Application to authorized foreign bank; 126(7)"non-business-income tax"(c) — Limitation on foreign tax credit. See also at end of s. 20.

History: Subsec. 20(12) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 9(3), applicable to 1992 *et seq.* Subsec. 20(12) formerly read:

> (12) Foreign non-business income tax — In computing the income of a taxpayer for a taxation year, there may be deducted such amount as the taxpayer may claim not exceeding the non-business income tax paid by the taxpayer for the year to the government of a country other than Canada (within the meaning assigned by the definition "non-business-income tax" in subsection 126(7) if that definition read without reference to paragraphs (c) and (e) thereof) other than any such tax, or part thereof, that may reasonably be regarded as having been paid by a corporation in respect of income from a share of the capital stock of a foreign affiliate of the corporation.

Selected Cases [subsec. 20(12)]: *Kaiser v. MNR*, [1991] 2 C.T.C. 2168 (TCC) (No deduction for foreign non-business income); *Taylor v. Canada*, [1991] 1 C.T.C. 304 (FCA) (Deduction allowed in respect of non-business income tax paid during period of residence only).

Interpretation Bulletins: IT-201R2: Foreign tax credit — trusts and beneficiaries; IT-270R3: Foreign tax credit; IT-506: Foreign income taxes as a deduction from income.

(12.1) Foreign tax where no economic profit — In computing a taxpayer's income for a taxation year from a business, there may be deducted the amount that the taxpayer claims not exceeding the lesser of

(a) the amount of foreign tax (within the meaning assigned by subsection 126(4.1)) that

(i) is in respect of a property used in the business for a period of ownership by the taxpayer or in respect of a related transaction (as defined in subsection 126(7)),

(ii) is paid by the taxpayer for the year,

(iii) is, because of subsection 126(4.1), not included in computing the taxpayer's business-income tax or non-business-income tax, and

(iv) where the taxpayer is a corporation, is not an amount that can reasonably be regarded as having been paid in respect of income from a share of the capital stock of a foreign affiliate of the taxpayer, and

(b) the portion of the taxpayer's income for the year from the business that is attributable to the property for the period or to a related transaction (as defined in subsection 126(7)).

Related Provisions: 20(13) — Deduction for foreign tax on dividend from foreign affiliate; 126(1.1) — Application to authorized foreign bank.

History: Subsec. 20(12.1) added by 1999, c. 22, subsec. 9(2), applicable to 1998 *et seq.*

(13) Dividend on share from foreign affiliate of taxpayer — In computing the income for a taxation year of a taxpayer resident in Canada, there may be deducted such amount in respect of a dividend received by the taxpayer in the year on a share owned by the taxpayer of the capital stock of a foreign affiliate of the taxpayer as is provided by subdivision i.

Related Provisions: 20(12.1) — Deduction for foreign tax where no economic profit; 91(5) — Amount deductible in respect of dividends received from foreign affiliate; 93.1(2) — Dividends received from foreign affiliate by partnership; 113(1) — Deduction re dividend received from foreign affiliate. See also at end of s. 20.

(14) Accrued bond interest — Where, by virtue of an assignment or other transfer of a debt obligation, other than an income bond, an income debenture, a small business development bond or a small business bond, the transferee has become entitled to an amount of interest that accrued on the debt obligation for a period commencing before the time of transfer and ending at that time that is not payable until after that time, that amount

(a) shall be included as interest in computing the transferor's income for the transferor's taxation year in which the transfer occurred, except to the extent that it was otherwise included in computing the transferor's income for the year or a preceding taxation year; and

(b) may be deducted in computing the transferee's income for a taxation year to the extent that the amount was included as interest in computing the transferee's income for the year.

Related Provisions: 12(9) — Deemed accrual; 16(3) — Purchase of bond at a discount; 53(2)(l) — Adjusted cost base — amounts to be deducted; 138(12)"gross investment revenue"E(b) — Inclusion in gross investment revenue of insurer; 142.4(1)"tax basis"(m) — Disposition of specified debt obligation by financial institution; 142.4(3)(b) — Disposition of specified debt obligation by financial institution; 142.5(3)(a) — Mark-to-market debt obligation; 214(6) — Deemed interest; 214(9) — Deemed resident. See additional Related Provisions at end of s. 20.

Selected Cases [subsec. 20(14)]: *Trzop v. R.*, [2000] 4 C.T.C. 2093 (TCC) (Gain from deemed disposition of asset did not change basis of assessment from which earlier appeal taken); *Antosko (H.B.) v. Canada*, [1994] 2 C.T.C. 25 (SCC) (Ability to claim deduction not dependent on inclusion of interest by transferor).

Regulations: 211 (information return by financial institution).

Interpretation Bulletins: IT-396R: Interest income; IT-410R: Debt obligations — accrued interest on transfer (archived).

(14.1) Interest on debt obligation — Where a person who has issued a debt obligation, other than an income bond, an income debenture, a small business development bond or a small business bond, is obligated to pay an amount that is stipulated to be interest on that debt obligation in respect of a period before its issue (in this subsection referred to as the "unearned interest amount") and it is reasonable to consider that the person to whom the debt obligation was issued paid to the issuer consideration for the debt obligation that included an amount in respect of the unearned interest amount,

(a) for the purposes of subsection (14) and section 12, the issue of the debt obligation shall be deemed to be an assignment of the debt obligation from the issuer, as transferor, to the person to whom the obligation was issued, as transferee, and an amount equal to the unearned interest amount shall be deemed to be interest that accrued on the obligation for a period commencing before the issue and ending at the time of issue; and

(b) notwithstanding paragraph (a) or any other provision of this Act, no amount that can reasonably be considered to be an amount in respect of the unearned interest amount shall be deducted or included in computing the income of the issuer.

Related Provisions: See at end of s. 20.

(15) [Repealed]

History: Subsec. 20(15) repealed by 2003, c. 28, subsec. 3(2), applicable to taxation years that begin after 2002. The subsec. formerly read:

(15) Regulations — For greater certainty it is hereby declared that, in the case of a regulation made under paragraph (1)(v.1) allowing to a taxpayer an amount in respect of natural accumulations of petroleum or natural gas in Canada, oil or gas wells in Canada or mineral resources in Canada,

(a) there may be allowed to the taxpayer by that regulation an amount in respect of any or all such accumulations, wells or resources; and

(b) notwithstanding any other provision contained in this Act, the Governor in Council may prescribe the formula by which the amount that may be allowed to the taxpayer by that regulation shall be determined.

Regulations: 1210 (amount allowed under 20(1)(v.1)).

(16) Terminal loss — Notwithstanding paragraphs 18(1)(a), (b) and (h), where at the end of a taxation year,

(a) the total of all amounts used to determine A to D in the definition "undepreciated capital cost" in subsection 13(21) in respect of a taxpayer's depreciable property of a particular class exceeds the total of all amounts used to determine E to J in that definition in respect of that property, and

Proposed Amendment — 20(16)(a)

(a) the total of all amounts used to determine A to D.1 in the definition "undepreciated capital cost" in subsection 13(21) in respect of a taxpayer's depreciable property of a particular class exceeds the total of all amounts used to determine E to K in that definition in respect of that property, and

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 57(3), will amend para. 20(16)(a) to read as above, applicable to taxation years that end after February 23, 1998.

Technical Notes: Subsection 20(16) permits a taxpayer to deduct, in computing the taxpayer's income for a year, the terminal loss of the taxpayer in respect of a class of depreciable property at the end of the year.

That subsection is amended to add a reference to new descriptions D.1 and K of the definition "undepreciated capital cost" in subsection 13(21). For information about those new descriptions, see the commentary to subsection 13(1).

This amendment . . . corrects a technical deficiency.

(b) the taxpayer no longer owns any property of that class,

in computing the taxpayer's income for the year

(c) there shall be deducted the amount of the excess determined under paragraph (a), and

(d) no amount shall be deducted for the year under paragraph (1)(a) in respect of property of that class.

Related Provisions: 13(1) — Recapture where E to J exceed A to D; 13(6) — Misclassified property; 13(21.1) — Limitation on disposition of a building; 13(21.2) — Limitation where affiliated person acquires the property; 20(16.1) — Limitations on terminal loss; 20(16.2) — Meaning of "taxation year" and "year"; 20(16.3) — Property disposed of after ceasing business; 28(1)(g) — Deduction from farming or fishing income when using cash method; 70(13) — Capital cost of depreciable property on death; 80(9)(c) — Reduction of capital cost on debt forgiveness ignored for CCA purposes; 132.2(1)(d) [to be repealed], 132.2(5)(d) [draft] — Deemed capital cost of depreciable property following mutual fund reorganization; 138(11.8) — Rules on transfer of depreciable property; 164(6)(b) — Disposition of property by legal representative of deceased taxpayer. See additional Related Provisions and Definitions at end of s. 20.

History: That portion of subsec. 20(16) following para. (d) repealed by 1994, c. 7, Sch. II (1991, c. 49), subsec. 15(8), applicable to taxation years beginning after July 13, 1990. That portion formerly read:

and the amount of the excess determined under paragraph (a) shall be deemed to have been deducted under paragraph (1)(a) in computing the taxpayer's income for the year from a business or property.

Selected Cases [subsec. 20(16)]: *Duncan v. R.*, [2002] 4 C.T.C. 1 (FCA) (Statutory purpose of CCA scheme apparent and was abused by transactions); *Gordon v. Canada*, [1995] 2 C.T.C. 2185 (TCC) (Uncompleted film held to be "depreciable property". Terminal loss allowed).

Interpretation Bulletins: IT-195R4: Rental property — CCA restrictions; IT-288R2: Gifts of capital properties to a charity and others; IT-464R: CCA — leasehold interests; IT-465R: Non-resident beneficiaries of trusts; IT-478R2: CCA — recapture and terminal loss; IT-522R: Vehicle, travel and sales expenses of employees.

(16.1) Idem — Subsection (16) does not apply in respect of a passenger vehicle of a taxpayer that has a cost to the taxpayer in excess of $20,000 or such other amount as is prescribed.

Proposed Amendment — 20(16.1)

(16.1) Non-application of subsec. (16) — Subsection (16) does not apply

(a) in respect of a passenger vehicle of a taxpayer that has a cost to the taxpayer in excess of $20,000 or any other amount that is prescribed; and

(b) in respect of a taxation year in respect of a property that was a former property deemed by paragraph 13(4.3)(a) or (b) to be owned by the taxpayer, if

(i) within 24 months after the taxpayer last owned the former property, the taxpayer or a person not dealing at arm's length with the taxpayer acquires a similar property in respect of the same fixed place to which the former property applied, and

(ii) at the end of the taxation year, the taxpayer or the person owns the similar property or another similar property in respect of the same fixed place to which the former property applied.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 57(4), will amend subsec. 20(16.1) to read as above, applicable in respect of taxation years that end after December 20, 2002.

Technical Notes: Subsection 20(16.1) provides that a terminal loss under subsection 20(16) in respect of a depreciable property that is a "passenger vehicle" costing more than a prescribed amount (currently set at $30,000) is not deductible in computing income. That rule is renumbered as paragraph 20(16.1)(a) and new paragraph 20(16.1)(b) is added, applicable to taxation years that end after December 20, 2002. These amendments are made concurrently with the addition of subsections 13(4.2) and (4.3) and with the amendment of the definition "former business property" in subsection 248(1).

New paragraph 20(16.1)(b) provides that a terminal loss is not available in respect of another person's former business property that was deemed under paragraphs 13(4.3)(a) or (b) (as the result of a joint election under subsection 13(4.2) by the taxpayer and the other person) to be owned by the taxpayer. For further information, refer to the commentary to subsections 13(4.2) and (4.3).

Related Provisions: 13(2) — No recapture on luxury automobile; 13(7)(g) — Maximum capital cost of passenger vehicle; 13(8) — Disposition after ceasing business; 20(16.2) — Meaning of "taxation year" and "year"; 87(2)(g.5) — Amalgamation — continuing corporation for 20(16.1)(b); Reg. 1100(2.5) — 50% CCA in year of disposition. See also at end of s. 20.

History: Subsec. 20(16.1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 9(4), applicable to taxation years and fiscal periods beginning after June 17, 1987 that end after 1987. Subsec. 20(16.1) formerly read:

> (16.1) Idem — Notwithstanding paragraph (16)(c), where an excess amount is determined under paragraph (16)(a) at the end of a taxation year in respect of a passenger vehicle having a cost to a taxpayer in excess of $20,000 or such other amount as may be prescribed, that excess amount shall not be deducted in computing the taxpayer's income for the year.

Regulations: 7307(1) (prescribed amount).

Interpretation Bulletins: IT-478R2: CCA — recapture and terminal loss; IT-521R: Motor vehicle expenses claimed by self-employed individuals; IT-522R: Vehicle, travel and sales expenses of employees.

I.T. Technical News: 10 (1997 deduction limits and benefit rates for automobiles).

(16.2) Reference to "taxation year" and "year" of individual — Where a taxpayer is an individual and the taxpayer's income for a taxation year includes income from a business the fiscal period of which does not coincide with the calendar year, if depreciable property acquired for the purpose of gaining or producing income from the business has been disposed of, each reference in subsections (16) and (16.1) to a "taxation year" and "year" shall, for greater certainty, be read as a reference to a "fiscal period".

Related Provisions: 11(2) — References to "taxation year" and "year"; 20(16.3) — Exception — disposition after ceasing business; 249 — Taxation year; 249.1 — Fiscal period.

Origin of subsec. 20(16.2): R.S.C. 1985, c.1 (5th Supp.) (formerly contained in para. 13(3)(a)).

Interpretation Bulletins: IT-478R2: CCA — recapture and terminal loss.

(16.3) Disposition after ceasing business — Where a taxpayer, after ceasing to carry on a business, has disposed of depreciable property of the taxpayer of a prescribed class that was acquired by the taxpayer for the purpose of gaining or producing income from the business and that was not subsequently used by the taxpayer for some other purpose, in applying subsection (16) or (16.1), each reference in that subsection to a "taxation year" and "year" shall, notwithstanding anything in subsection (16.2), not be read as a reference to a "fiscal period".

Origin of subsec. 20(16.3): R.S.C. 1985, c.1 (5th Supp.) (formerly contained in para. 13(8)).

Interpretation Bulletins: IT-478R2: CCA — recapture and terminal loss.

(17) Reduction of inventory allowance deduction — Notwithstanding paragraph 20(1)(gg) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, the deduction allowed under that paragraph to a taxpayer for a taxation year shall be reduced by 3% of that proportion of the lesser of

(a) the cost amount to the taxpayer of the taxpayer's qualifying inventory that was disposed of during the year by the taxpayer in a specified transaction to a person with whom the taxpayer was not dealing at arm's length, and

(b) the cost amount to the taxpayer of the taxpayer's qualifying inventory at the beginning of the year,

that the number of days in the year and after the date of disposition is of 365.

Proposed Repeal — 20(17)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 206(4), will repeal subsec. 20(17), to come into force on Royal Assent.

Technical Notes: Subsections 20(17) and 20(18) are repealed, as the provision to which they relate has been repealed.

Selected Cases [subsec. 20(17)]: *Brault-Clement Inc. v. Canada*, [1992] 1 C.T.C. 44 (FCA); leave to appeal to SCC refused (Sept. 24, 1992), Doc. 22970 [unreported] (Taxpayer was mandatary of provincial government in collecting tobacco tax; tax not part of "cost amount" of tobacco products in inventory); *Plaza Pontiac Buick Ltd. v. MNR*, [1991] 2 C.T.C. 259 (FCTD); aff'd [1994] 1 C.T.C. 27 (FCA) (Automobiles leased to customers not "held for sale").

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

(18) Definitions — For the purposes of this subsection and subsection (17),

"qualifying inventory" means tangible property described in subparagraphs 20(1)(gg)(i) and (ii) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, other than real property or an interest therein or property of a taxpayer that becomes property of a new corporation by virtue of an amalgamation or merger;

"specified transaction" means

(a) a distribution by a corporation of qualifying inventory on or in the course of its winding-up,

(b) a disposition by a taxpayer of all or a substantial part of the taxpayer's qualifying inventory, or

(c) a disposition at a particular time of qualifying inventory by a taxpayer one of the principal purposes of which was to permit a person with whom the taxpayer does not deal at arm's length to obtain a deduction in respect thereof under paragraph 20(1)(gg) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, for that person's first taxation year commencing after the particular time,

but does not include any such distribution or disposition by a taxpayer to another person during a taxation year of that other person that ends at least 11 months after the commencement of the taxation year of the taxpayer during which the distribution or disposition occurs.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Proposed Repeal — 20(18)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 206(4), will repeal subsec. 20(18), to come into force on Royal Assent.

Technical Notes: See under 20(17) above.

(19) Annuity contract — Where a taxpayer has in a particular taxation year received a payment under an an-

nuity contract in respect of which an amount was by virtue of subsection 12(3) included in computing the taxpayer's income for a taxation year commencing before 1983, there may be deducted in computing the taxpayer's income for the particular year such amount, if any, as is allowed by regulation.

Related Provisions: 20(20) — Disposal of annuity where payments have not commenced; 148(9)"adjusted cost basis"I — Amount deducted reduces adjusted cost basis. See additional Related Provisions and Definitions at end of s. 20.

Regulations: 303 (amounts that may be deducted).

(20) Life insurance policy [disposed of] — Where in a taxation year a taxpayer disposes of an interest in a life insurance policy that is not an annuity contract (otherwise than as a consequence of a death) or of an interest in an annuity contract (other than a prescribed annuity contract), there may be deducted in computing the taxpayer's income for the year an amount equal to the lesser of

(a) the total of all amounts in respect of the interest in the policy that were included under section 12.2 of this Act or paragraph 56(1)(d.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in computing the taxpayer's income for the year or a preceding taxation year, and

(b) the amount, if any, by which the adjusted cost basis (within the meaning assigned by section 148) to the taxpayer of that interest immediately before the disposition exceeds the proceeds of the disposition (within the meaning assigned by section 148) of the interest that the policyholder, a beneficiary or an assignee became entitled to receive.

Related Provisions: 148(2) — Deemed proceeds of disposition; 248(8) — Occurrences as a consequence of death. See also at end of s. 20.

History: That portion of subsec. 20(20) preceding para. (b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 15(9), applicable with respect to dispositions occurring after 1989. That portion formerly read:

(20) Where a taxpayer has in a particular taxation year disposed of an interest in a life insurance policy that is not an annuity contract (otherwise than as a consequence of a death) or an interest in an annuity contract under which annuity payments have not commenced and in respect of which an amount was included by virtue of subsection 12.2(1) or (3) of this Act or subsection 12.2(4) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in computing the taxpayer's income for a taxation year, there may be deducted in computing the taxpayer's income for the particular year an amount equal to the lesser of

(a) the total of all amounts each of which is an amount in respect of the interest in the policy that was included by virtue of subsection 12.2(1), (3) or (5) of this Act or subsection 12.2(4) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in computing the taxpayer's income for the year or a preceding taxation year, and

Regulations: 304 (prescribed annuity contract — technically does not apply to this subsection).

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies.

(21) Debt obligation — Where a taxpayer has in a particular taxation year disposed of a property that is an interest in a debt obligation for consideration equal to its fair market value at the time of disposition, there may be deducted in computing the taxpayer's income for the particular year the amount, if any, by which

Proposed Amendment — 20(21) opening words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 206(5), will amend the opening words of subsec. 20(21) by substituting "interest in, or for civil law a right in," for "interest in", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(a) the total of all amounts each of which is an amount that was included in computing the taxpayer's income for the particular year or a preceding taxation year as interest in respect of that property

exceeds the total of all amounts each of which is

(b) the portion of an amount that was received or became receivable by the taxpayer in the particular year or a preceding taxation year that can reasonably be considered to be in respect of an amount described in paragraph (a) and that was not repaid by the taxpayer to the issuer of the debt obligation because of an adjustment in respect of interest received before the time of disposition by the taxpayer, or

(c) an amount in respect of that property that was deductible by the taxpayer by virtue of paragraph (14)(b) in computing the taxpayer's income for the particular year or a preceding taxation year.

Related Provisions: 12(9) — Deemed accrual; 142.5(3)(a) — Mark-to-market debt obligation; 142.5(8)(c) — First deemed disposition of mark-to-market debt obligation. See additional Related Provisions and Definitions at end of s. 20.

History: Para. 20(21)(b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 9(5), applicable with respect to dispositions occurring after December 20, 1991. Para. 20(21)(b) formerly read:

(b) the portion of an amount that was received or became receivable by the taxpayer at or before that time that can reasonably be considered to be in respect of an amount described in paragraph (a) and that was not repaid by the taxpayer to the issuer of the debt obligation because of an adjustment in respect of interest received before that time by the taxpayer, or

Para. 20(21)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 15(10), applicable to 1986 *et seq.* Para. 20(21)(b) formerly read:

(b) the portion of an amount that was received or became receivable by the taxpayer at or before that time as can reasonably be considered to be in respect of an amount described in paragraph (a), or

Interpretation Bulletins: IT-396R: Interest income.

(22) Deduction for [insurer's] negative reserves — In computing an insurer's income for a taxation year, there may be deducted the amount included under paragraph 12(1)(e.1) in computing the insurer's income for the preceding taxation year.

Related Provisions: 87(2.2) — Amalgamation of insurance corporations; 88(1)(g)(i) — Windup of subsidiary insurance corporation; 138(11.91)(d.1) — Computation of income for non-resident insurer. See also at end of s. 20.

History: Subsec. 20(22) added by 1997, c. 25, subsec. 5(3), applicable to 1996 *et seq.*

Regulations: 1400(2) (negative reserves).

(23) [Repealed under former Act]

(24) Amounts paid for undertaking future obligations — Where an amount is included under paragraph 12(1)(a) in computing a taxpayer's income for a taxation year in respect of an undertaking to which that paragraph applies and the taxpayer paid a reasonable amount in a particular taxation year to another person as consideration for the assumption by that other person of the taxpayer's obligations in respect of the undertaking, if the taxpayer and the other person jointly so elect,

(a) the payment may be deducted in computing the taxpayer's income for the particular year and no amount is deductible under paragraph (1)(m) or (m.1) in computing the taxpayer's income for that or any

subsequent taxation year in respect of the undertaking; and

(b) where the amount was received by the other person in the course of business, it shall be deemed to be an amount described in paragraph 12(1)(a).

Related Provisions: 20(25) — Manner of election; 87(2)(j) — Amalgamations — special reserve. See also at end of s. 20.

History: Subsec. 20(24) substituted by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 9(6), applicable to 1991 *et seq.* Subsec. 20(24) formerly read:

(24) Where a taxpayer has under paragraph 12(1)(a) included in computing the taxpayer's income for a taxation year amounts in respect of services not rendered or goods not delivered before the end of the year and the taxpayer has paid a reasonable amount in a particular taxation year to another taxpayer for undertaking to provide those services or goods, if the payer and the recipient have jointly so elected, the following rules apply:

(a) the payer may deduct the payment in computing the payer's income for the particular year and no amount is deductible in respect of those services and goods under paragraph (1)(m) in computing the payer's income for that or any subsequent taxation year; and

(b) for the purposes of paragraph 12(1)(a), the recipient shall be deemed to have received the payment in the course of a business on account of services not rendered or goods not delivered before the end of the taxation year in which the recipient received the payment.

Interpretation Bulletins: IT-154R: Special reserves; IT-321R: Insurance agents and brokers — unearned commissions (archived).

Forms: T2 SCH 13: Continuity of reserves.

(25) Manner of election — An election under subsection (24) shall be made by notifying the Minister in writing on or before the earlier of the days on or before which either the payer or the recipient is required to file a return of income pursuant to section 150 for the taxation year in which the payment to which the election relates was made.

Related Provisions: See at end of s. 20.

Interpretation Bulletins: IT-154R: Special reserves.

(26) Transition deduction re unpaid claims reserve — An insurer may deduct, in computing its income for its taxation year that includes February 23, 1994, such amount as the insurer claims not exceeding the amount prescribed to be the insurer's unpaid claims reserve adjustment.

Related Provisions: 12.3 — Net reserve inclusion; 20(7)(c) — Deduction for policy reserves; 87(2)(g.1) — Amalgamation; Reg. 1400 — Deduction for policy reserves. See also at end of s. 20.

History: Subsec. 20(26) amended by 1995, c. 3, subsec. 7(3), applicable to taxation years that include February 23, 1994. Subsec. (26) formerly read:

(26) Deduction re net reserve adjustment — In computing the income from a business of a taxpayer who is an insurer or whose business includes the lending of money for the taxpayer's first taxation year that commences after June 17, 1987 and ends after 1987, there may be deducted an amount equal to the taxpayer's prescribed amount of net reserve adjustment or such lesser amount as the taxpayer may claim.

Regulations: 8100 (unpaid claims reserve adjustment).

(27) Loans, etc., acquired in ordinary course of business — For the purposes of computing a deduction under paragraph (1)(l), (l.1) or (p) from the income for a taxation year of a taxpayer who was an insurer or whose ordinary business included the lending of money, a loan or lending asset or an instrument or commitment described in paragraph (1)(l.1) acquired from a person with whom the taxpayer did not deal at arm's length for an amount equal to its fair market value shall be deemed to have been acquired by the taxpayer in the ordinary course of the taxpayer's business of insurance or the lending of money where

(a) the person from whom the loan or lending asset or instrument or commitment was acquired carried on the business of insurance or the lending of money; and

(b) the loan or lending asset was made or acquired or the instrument or commitment was issued, made or assumed by the person in the ordinary course of the person's business of insurance or the lending of money.

Related Provisions: See at end of s. 20.

Interpretation Bulletins: IT-442R: Bad debts and reserves for doubtful debts.

(27.1) Application of subsecs. 13(21) and 138(12) — The definitions in subsections 13(21) and 138(12) apply to this section.

Origin of subsec. 20(27.1): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsecs. 13(21) and 138(12)).

(28) Deduction [for building] before available for use — In computing a taxpayer's income from a business or property for a taxation year ending before the time a building or a part thereof acquired after 1989 by the taxpayer becomes available for use by the taxpayer, there may be deducted an amount not exceeding the amount by which the lesser of

(a) the amount that would be deductible under paragraph (1)(a) for the year in respect of the building if subsection 13(26) did not apply, and

(b) the taxpayer's income for the year from renting the building, computed without reference to this subsection and before deducting any amount in respect of the building under paragraph (1)(a)

exceeds

(c) the amount deductible under paragraph (1)(a) for the year in respect of the building, computed without reference to this subsection,

and any amount so deducted shall be deemed to be an amount deducted by the taxpayer under paragraph (1)(a) in computing the taxpayer's income for the year.

Related Provisions: 20(29) — Deduction before available for use. See also at end of s. 20.

History: Subsec. 20(28) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 15(11), applicable to taxation years ending after 1989.

(29) Idem — Where, because of subsection 18(3.1), a deduction would, but for this subsection, not be allowed to a taxpayer in respect of an outlay or expense in respect of a building, or part thereof, and the outlay or expense would, but for that subsection and without reference to this subsection, be deductible in computing the taxpayer's income for a taxation year, there may be deducted in respect of such outlays and expenses in computing the taxpayer's income for the year an amount equal to the lesser of

(a) the total of all such outlays or expenses, and

(b) the taxpayer's income for the year from renting the building or the part thereof computed without reference to subsection (28) and this subsection.

Related Provisions: 18(3.1)(a) — Costs relating to construction of building or ownership of land. See also at end of s. 20.

History: Subsec. 20(29) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 15(11), applicable in respect of outlays and expenses made or incurred after 1989.

(30) Specified reserve adjustment — For the purpose of the description of N in subclause (1)(l)(ii)(D)(II), the specified reserve adjustment for a loan of a taxpayer

for a taxation year is the amount determined by the formula

$$0.1(A \times B \times C/365)$$

where

A is the carrying amount of the impaired loan that is used or would be used in determining the interest income on the loan for the year in accordance with generally accepted accounting principles;

B is the effective interest rate on the loan for the year determined in accordance with generally accepted accounting principles; and

C is the number of days in the year on which the loan is impaired.

Related Provisions: See at end of s. 20.

History: Subsec. 20(30) added by 1998, c. 19, subsec. 81(8), applicable

(a) to taxation years that end after September 1997; and

(b) to a taxpayer's taxation years that end after 1995 and before October 1997 where the taxpayer elects in writing to have the amendment to para. 20(1)(l) (made by 1998, c. 19, subsec. 81(4)) apply to the year and files the election with the Minister of National Revenue before October 1998.

Related Provisions [s. 20]: 18 — Limitations on deductions; 67 — Expenses must be reasonable; 67.1 — Limitation on expenses for meals and entertainment; 67.3 — Limitation re motor vehicle expenses; 78 — Unpaid amounts; 104(5) — Deemed disposition by a trust; 107.2 — Distribution by a retirement compensation arrangement; 138(11.5)(k) — Transfer of business by non-resident insurer; 138(11.91)(f) — Computation of income of non-resident insurer; 209 — "carved-out income"(a).

Definitions [s. 20]: "adjusted cost base" — 54, 248(1); "allowable capital loss" — 38(b), 248(1); "amortized cost", "amount" — 248(1); "amount payable" — (in respect of a policy loan) 20(27.1), 138(12); "anniversary day" — 12.2(11), 20(1.2); "annuity" — 248(1); "arm's length" — 251(1); "assistance" — 79(4), 125.4(5), 248(16), (16.1), (18), (18.1); "authorized foreign bank" — 248(1); "available for use" — 13(27)–(31), 248(19); "borrowed money" — 20(2), 20.1(1), 248(1); "business" — 248(1); "business-income tax" — 126(7); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "Canadian oil and gas property expense" — 66.4(5), 248(1); "Canadian partnership" — 102(1), 248(1); "capital cost" — 13(7)–(7.4), 70(12), 128.1(1)(c), 128.1(4)(c), 132.2(1)(d); "capital property" — 54, 248(1); "class of shares" — 248(6); "consequence of the death" — 248(8); "controlled" — 256(5.1), (6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "cumulative eligible capital" — 14(5), 248(1); "deferred amount" — 248(1); "deferred profit sharing plan" — 147(1), 248(1); "depreciable property" — 13(21), 248(1); "disposition" — 13(21), 20(27.1), 248(1); "dividend" — 248(1); "eligible capital property" — 54, 248(1); "employee" — 248(1); "employees profit sharing plan" — 144(1), 248(1); "employer" — 248(1); "excluded amount" — 20(1)(e)(iv.1); "exempt income" — 248(1); "fiscal period" — 249(2), 249.1; "foreign affiliate" — 95(1), 248(1); "foreign tax" — 126(4.1); "goods and services tax" — 248(1); "immovable" — Quebec *Civil Code* art. 900–907; "income" — from business or property 9(1), (3); "income-averaging annuity contract", "income bond", "income debenture", "individual", "insurance corporation", "insurer" — 248(1); "interest in real property" — 248(4); "interest" — in respect of a policy loan 20(27.1), 138(12); "interest paid" — 20(2.1); "inventory", "lending asset", "life insurance business" — 248(1); "life insurance policy" — 20(2.2), 138(12), 248(1); "majority interest partner" — 248(1); "mark-to-market property" — 142.2(1); "mineral resource", "mining reclamation trust", "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "motor vehicle" — 248(1); "movable" — Quebec *Civil Code* art. 900–907; "net cost of pure insurance" — 148(9)"adjusted cost basis"L(a), Reg. 308; "net income stabilization account" — 248(1); "non-business-income tax" — 126(7); "non-resident", "oil or gas well" — 248(1); "passenger vehicle", "person" — 248(1); "policy loan" — 138(12); "prescribed" — 248(1); "prescribed annuity contract" — Reg. 304; "principal amount" — 248(1); "proceeds of disposition" — 13(21), 20(27.1); "property" — 248(1); "province" — *Interpretation Act* 35(1); "qualifying environmental trust", "registered pension plan" — 248(1); "registered retirement savings plan" — 146(1), 248(1); "registered supplementary unemployment benefit plan" — 145(1), 248(1); "regulation" — 248(1); "resident", "resident in Canada" — 250; "restricted financial institution", "retirement compensation arrangement", "salary deferral arrangement" — 248(1); "sectoral reserve" — 20(2.3); "series" — 248(10); "share", "shareholder" — 248(1); "small business bond" — 15.2(3), 248(1); "small business development bond" — 15.1(3), 248(1); "specified individual" — 120.4(1), 248(1); "specified percentage" — 20(2.4); "specified reserve adjustment" — 20(30); "split income" — 120.4(1), 248(1); "subsidiary controlled corporation", "superannuation or pension benefit" — 248(1); "taxable Canadian corporation" — 89(1), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 11(2), 20(16.2), (16.3), 249; "taxpayer" — 248(1); "testamentary trust" — 108(1), 248(1); "timber resource property" — 13(21), 248(1); "Treasury Board" — 248(1); "trust" — 104(1), 248(1, (3); "unit trust" — 108(2), 248(1); "writing" — *Interpretation Act* 35(1); "year" — 11(2), 20(16.2), (16.3).

I.T. Application Rules [s. 20]: 20(3)(b), 20(5)(b).

20.01 (1) PHSP [private health services plan] premiums — Notwithstanding paragraphs 18(1)(a) and (h) and subject to subsection (2), there may be deducted in computing an individual's income for a taxation year from a business carried on by the individual and in which the individual is actively engaged on a regular and continuous basis, directly or as a member of a partnership, an amount payable by the individual or partnership in respect of the year as a premium, contribution or other consideration under a private health services plan in respect of the individual, the individual's spouse or common-law partner or any person who is a member of the individual's household if

(a) in the year or in the preceding taxation year

(i) the total of all amounts each of which is the individual's income from such a business for a fiscal period that ends in the year exceeds 50% of the individual's income for the year, or

(ii) the individual's income for the year does not exceed the total of $10,000 and the total referred to in subparagraph (i) in respect of the individual for the year,

on the assumption that the individual's income from each business is computed without reference to this subsection and the individual's income is computed without reference to this subsection and subdivision e; and

(b) the amount is payable under a contract between the individual or partnership and

(i) a person licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an insurance business or the business of offering to the public its services as trustee,

(ii) a person or partnership engaged in the business of offering to the public its services as an administrator of private health services plans, or

(iii) a person the taxable income of which is exempt under section 149 and that is a business or professional organization of which the individual is a member or a trade union of which the individual or a majority of the individual's employees are members.

Related Provisions: 53(2)(c)(xii) — Reduction in ACB of partnership interest; 118.2(2)(q) — Medical expense credit for premiums.

Interpretation Bulletins: IT-339R2: Meaning of "private health services plan"; IT-502: Employee benefit plans and employee trusts.

(2) Limit — For the purpose of calculating the amount deductible under subsection (1) in computing an indivi-

dual's income for a taxation year from a particular business,

(a) no amount may be deducted to the extent that

(i) it is deducted under this section in computing another individual's income for any taxation year, or

(ii) it is included in calculating a deduction under section 118.2 in computing an individual's tax payable under this Part for any taxation year;

(b) where an amount payable under a private health services plan relates to a period in the year throughout which

(i) each of one or more persons

(A) is employed on a full-time basis (other than on a temporary or seasonal basis) in the particular business or in another business carried on by

(I) the individual (otherwise than as a member of a partnership),

(II) a partnership of which the individual is a majority interest partner, or

(III) a corporation affiliated with the individual, and

(B) has accumulated not less than three months of service in that employment since the person last became so employed, and

(ii) the total number of persons employed in a business described in clause (i)(A), with whom the individual deals at arm's length and to whom coverage is extended under the plan, is not less than 50% of the total number of persons each of whom is a person

(A) who carries on the particular business or is employed in a business described in clause (i)(A), and

(B) to whom coverage is extended under the plan,

the amount so deductible in relation to the period shall not exceed the individual's cost of equivalent coverage under the plan in respect of each employed person who deals at arm's length with the individual and who is described in subparagraph (i) in relation to the period;

(c) subject to paragraph (d), where an amount payable under a private health services plan relates to a particular period in the year, other than a period described in paragraph (b), the amount so deductible in relation to the particular period shall not exceed the amount determined by the formula

$$(A/365) \times (B + C)$$

where

A is the number of days in the year that are included in the particular period,

B is the product obtained when $1,500 is multiplied by the number of persons each of whom is covered under the plan, and

(i) is the individual or the individual's spouse or common-law partner, or

(ii) is a member of the individual's household and has attained the age of 18 years before the beginning of the particular period, and

C is the product obtained when $750 is multiplied by the number of members of the individual's household who, but for the fact that they have not attained the age of 18 years before the particular period began, would be included in computing the product under the description of B; and

(d) where an amount payable under a private health services plan relates to a particular period in the year (other than a period described in paragraph (b)) and one or more persons with whom the individual deals at arm's length are described in subparagraph (b)(i) in relation to the particular period, the amount so deductible in relation to the particular period shall not exceed the lesser of the amount determined under the formula set out in paragraph (c) and the individual's cost of equivalent coverage in respect of any such person in relation to the particular period.

Related Provisions: 20.01(3) — Cost of equivalent coverage; 118.2(2)(q) — Medical expense credit for premiums.

(3) Equivalent coverage — For the purpose of subsection (2), an amount payable in respect of an individual under a private health services plan in relation to a period does not exceed the individual's cost of equivalent coverage under the plan in respect of another person in relation to the period to the extent that, in relation to the period, the amount does not exceed the product obtained when

(a) the amount that would be the individual's cost of coverage under the plan if the benefits and coverage in respect of the individual, the individual's spouse or common-law partner and the members of the individual's household were identical to the benefits and coverage made available in respect of the other person, the other person's spouse or common-law partner and the members of the other person's household

is multiplied by

(b) the percentage of the cost of coverage under the plan in respect of the other person that is payable by the individual or a partnership of which the individual is a member.

History [s. 20.01]: The opening words of subsec. 20.01(1), subpara. (i) of the description of B in para. 20.01(2)(c) and para. 20.01(3)(a) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

S. 20.01 added by 1999, c. 22, s. 10, applicable to amounts that become payable after 1997.

Definitions [s. 20.01]: "affiliated" — 251.1; "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "common-law partner" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "cost of equivalent coverage" — 20.01(3); "employed", "employee", "employment" — 248(1); "fiscal period" — 249.1; "immovable" — Quebec *Civil Code* art. 900–907; "individual", "majority interest partner" — 248(1); "month" — *Interpretation Act* 35(1); "person", "private health services plan" — 248(1); "province" — *Interpretation Act* 35(1); "taxable income" — 248(1); "taxation year" — 249.

Interpretation Bulletins [s. 20.01]: See under 20.01(1).

20.1 (1) Borrowed money used to earn income from property — Where

(a) at any time after 1993 borrowed money ceases to be used by a taxpayer for the purpose of earning income from a capital property (other than real property or depreciable property), and

Proposed Amendment — 20.1(1)(a)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 207(2), will amend para. 20.1(1)(a) by substituting "real or im-

movable property" for "real property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(b) the amount of the borrowed money that was so used by the taxpayer immediately before that time exceeds the total of

(i) where the taxpayer disposed of the property at that time for an amount of consideration that is not less than the fair market value of the property at that time, the amount of the borrowed money used to acquire the consideration,

(ii) where the taxpayer disposed of the property at that time and subparagraph (i) does not apply, the amount of the borrowed money that, if the taxpayer had received as consideration an amount of money equal to the amount by which the fair market value of the property at that time exceeds the amount included in the total by reason of subparagraph (iii), would be considered to be used to acquire the consideration,

(iii) where the taxpayer disposed of the property at that time for consideration that includes a reduction in the amount of the borrowed money, the amount of the reduction, and

(iv) where the taxpayer did not dispose of the property at that time, the amount of the borrowed money that, if the taxpayer had disposed of the property at that time and received as consideration an amount of money equal to the fair market value of the property at that time, would be considered to be used to acquire the consideration,

an amount of the borrowed money equal to the excess shall, to the extent that the amount is outstanding after that time, be deemed to be used by the taxpayer for the purpose of earning income from the property.

(2) Borrowed money used to earn income from business — Where at any particular time after 1993 a taxpayer ceases to carry on a business and, as a consequence, borrowed money ceases to be used by the taxpayer for the purpose of earning income from the business, the following rules apply:

(a) where, at any time (in this paragraph referred to as the "time of disposition") at or after the particular time, the taxpayer disposes of property that was last used by the taxpayer in the business, an amount of the borrowed money equal to the lesser of

(i) the fair market value of the property at the time of disposition, and

(ii) the amount of the borrowed money outstanding at the time of disposition that is not deemed by this paragraph to have been used before the time of disposition to acquire any other property

shall be deemed to have been used by the taxpayer immediately before the time of disposition to acquire the property;

(b) subject to paragraph (a), the borrowed money shall, after the particular time, be deemed not to have been used to acquire property that was used by the taxpayer in the business;

(c) the portion of the borrowed money outstanding at any time after the particular time that is not deemed by paragraph (a) to have been used before that subsequent time to acquire property shall be deemed to be used by the taxpayer at that subsequent time for the purpose of earning income from the business; and

(d) the business shall be deemed to have fiscal periods after the particular time that coincide with the taxation years of the taxpayer, except that the first such fiscal period shall be deemed to begin at the end of the business's last fiscal period that began before the particular time.

Related Provisions: 20.1(3) — Deemed dispositions — rules.

Selected Cases [subsec. 20.1(2)]: *Ciebien v. R.*, [2002] 3 C.T.C. 2001 (TCC) (Interest deductible where borrowed funds used to acquire business property that had been lost by default).

(3) Deemed dispositions — For the purpose of paragraph (2)(a),

(a) where a property was used by a taxpayer in a business that the taxpayer has ceased to carry on, the taxpayer shall be deemed to dispose of the property at the time at which the taxpayer begins to use the property in another business or for any other purpose;

(b) where a taxpayer, who has at any time ceased to carry on a business, regularly used a property in part in the business and in part for some other purpose,

(i) the taxpayer shall be deemed to have disposed of the property at that time, and

(ii) the fair market value of the property at that time shall be deemed to equal the proportion of the fair market value of the property at that time that the use regularly made of the property in the business was of the whole use regularly made of the property; and

(c) where the taxpayer is a trust, subsections 104(4) to (5.2) do not apply.

(4) Amount payable for property — Where an amount is payable by a taxpayer for property, the amount shall be deemed, for the purposes of this section and, where subsection (2) applies with respect to the amount, for the purposes of this Act, to be payable in respect of borrowed money used by the taxpayer to acquire the property.

Interpretation Bulletins: IT-533: Interest deductibility and related issues.

(5) Interest in partnership — For the purposes of this section, where borrowed money that has been used to acquire an interest in a partnership is, as a consequence, considered to be used at any time for the purpose of earning income from a business or property of the partnership, the borrowed money shall be deemed to be used at that time for the purpose of earning income from property that is the interest in the partnership and not to be used for the purpose of earning income from the business or property of the partnership.

(6) Refinancings — Where at any time a taxpayer uses borrowed money to repay money previously borrowed that was deemed by paragraph (2)(c) immediately before that time to be used for the purpose of earning income from a business,

(a) paragraphs (2)(a) to (c) apply with respect to the borrowed money; and

(b) subsection 20(3) does not apply with respect to the borrowed money.

Related Provisions [s. 20.1]: 20(3) — Use of borrowed money; 87(2)(j.6) — Amalgamations — continuing corporation.

History [s. 20.1]: S. 20.1 enacted by 1994, c. 21, s. 13, applicable after 1993.

Definitions [s. 20.1]: "amount", "borrowed money", "business" — 248(1); "capital property" — 54, 248(1); "depreciable property" — 13(21), 248(1); "fiscal period" — 249.1; "property", "taxpayer" — 248(1); "time of disposition" — 20.1(2)(a).

Interpretation Bulletins: IT-533: Interest deductibility and related issues.

Proposed Addition [on hold] — 20.1 [*sic*], 20.2 [*sic*] [December 1991 version]

[The overall effect of the Dec. 20, 1991 proposed 20.1 and 20.2 (unrelated to 20.1 and 20.2 enacted later) would be to allow a deduction for interest on money borrowed by a corporation or partnership and used to make a distribution of retained earnings or capital. They have not been formally withdrawn by the Dept. of Finance but have been overtaken by the case law. New proposals on interest deductibility are being planned, in response to *Ludco* (SCC): see IT-533, proposed 3.1 and 20(1)(c) — ed.]

20.2 (1) Interest — authorized foreign bank — interpretation — The following definitions apply in this section.

"branch advance" of an authorized foreign bank means an amount allocated or provided by, or on behalf of, the bank to, or for the benefit of, its Canadian banking business under terms that were documented, before the amount was so allocated or provided, to the same extent as, and in a form similar to the form in which, the bank would ordinarily document a loan by it to a person with whom it deals at arm's length.

"branch financial statements" of an authorized foreign bank for a taxation year means the unconsolidated statements of assets and liabilities and of income and expenses for the year, in respect of its Canadian banking business,

(a) that form part of the bank's annual report for the year filed with the Superintendent of Financial Institutions as required under section 601 of the *Bank Act*, and accepted by the Superintendent, and

(b) if no filing is so required for the taxation year, that are prepared in a manner consistent with the statements in the annual report or reports so filed and accepted for the period or periods in which the taxation year falls,

except if the Minister demonstrates that the statements are not prepared in accordance with generally-accepted accounting principles in Canada as modified by any specifications applicable to the bank made by the Superintendent of Financial Institutions under subsection 308(4) of the *Bank Act* (in this definition referred to as "modified GAAP"), in which case it means the statements subject to such modifications as are required to make them comply with modified GAAP.

Related Provisions: 115(1)(a)(ii) — Foreign bank's Canadian income calculated using branch financial statements.

"calculation period" of an authorized foreign bank for a taxation year means any one of a series of regular periods into which the year is divided in a designation by the bank in its return of income for the year or, in the absence of such a designation, by the Minister,

(a) none of which is longer than 31 days;

(b) the first of which commences at the beginning of the year and the last of which ends at the end of the year; and

(c) that are, unless the Minister otherwise agrees in writing, consistent with the calculation periods designated for the bank's preceding taxation year.

(2) Formula elements — The following descriptions apply for the purposes of the formulae in subsection (3) for any calculation period in a taxation year of an authorized foreign bank:

A is the amount of the bank's assets at the end of the period;

BA is the amount of the bank's branch advances at the end of the period;

IBA is the total of all amounts each of which is a reasonable amount on account of notional interest for the period, in respect of a branch advance, that would be deductible in computing the bank's income for the year if it were interest payable by, and the advance were indebtedness of, the bank to another person and if this Act were read without reference to paragraph 18(1)(v) and this section;

IL is the total of all amounts each of which is an amount on account of interest for the period in respect of a liability of the bank to another person or partnership that would be deductible in computing the bank's income for the year if this Act were read without reference to paragraph 18(1)(v) and this section; and

L is the amount of the bank's liabilities to other persons and partnerships at the end of the period.

Related Provisions: 20.2(4) — Branch amounts; 20.2(5) — Notional interest for IBA.

(3) Interest deduction — In computing the income of an authorized foreign bank from its Canadian banking business for a taxation year, there may be deducted on account of interest for each calculation period of the bank for the year,

(a) where the total amount at the end of the period of its liabilities to other persons and partnerships and branch advances is 95% or more of the amount of its assets at that time, an amount not exceeding

(i) if the amount of liabilities to other persons and partnerships at that time is less than 95% of the amount of its assets at that time, the amount determined by the formula

$$IL + IBA \times (0.95 \times A - L) / BA$$

and

(ii) if the amount of those liabilities at that time is greater than or equal to 95% of the amount of its assets at that time, the amount determined by the formula

$$IL \times (0.95 \times A) / L$$

and

(b) in any other case, the total of

(i) the amount determined by the formula

$$IL + IBA$$

and

(ii) the product of

(A) the amount claimed by the bank, in its return of income for the year, not exceeding the amount determined by the formula

$$(0.95 \times A) - (L + BA)$$

and

(B) the average, based on daily observations, of the Bank of Canada bank rate for the period.

Related Provisions: 18(1)(v) — No other interest deduction allowed; 20.2(2) — Formula element descriptions; 20.2(4) — Branch amounts; 218.2(2) — Part XIII.1 tax on taxable interest expense; 219 — Branch tax on Canadian branch; 257 — Formulas cannot calculate to less than zero.

(4) Branch amounts — Only amounts that are in respect of an authorized foreign bank's Canadian banking business, and that are recorded in the books of account of the business in a manner consistent with the manner in which they are required to be treated for the purposes of the branch financial statements, shall be used to determine

(a) the amounts in subsection (2); and

(b) the amounts in subsection (3) of an authorized foreign bank's assets, liabilities to other persons and partnerships, and branch advances.

(5) Notional interest — For the purposes of the description of IBA in subsection (2), a reasonable amount on account of notional interest for a calculation period in respect of a branch advance is the amount that would be payable on account of interest for the period by a notional borrower, having regard to the duration of the advance, the currency in which repayment is required and all other terms, as adjusted by paragraph (c), of the advance, if

(a) the borrower were a person that dealt at arm's length with the bank, that carried on the bank's Canadian banking business and that had the same creditworthiness and borrowing capacity as the bank;

(b) the advance were a loan by the bank to the borrower; and

(c) any of the terms of the advance (excluding the rate of interest, but including the structure of the interest calculation, such as whether the rate is fixed or floating and the choice of any reference rate referred to) that are not terms that would be made between the bank as lender and the borrower, having regard to all the circumstances, including the nature of the Canadian banking business, the use of the advanced funds in the business and normal risk management practices for banks, were instead terms that would be agreed to by the bank and the borrower.

History [s. 20.2]: S. 20.2 added by 2001, c. 17, s. 14, applicable after June 27, 1999 except that in its application to amounts allocated or provided before August 22, 2000, the definition "branch advance" shall be read as follows:

"branch advance" of an authorized foreign bank at a particular time means an amount allocated or provided by, or on behalf of, the bank to, or for the benefit of, its Canadian banking business under terms that were documented, on or before December 31, 2000, to the same extent as, and in a form similar to the form in which, the bank would ordinarily document a loan by it to a person with whom it deals at arm's length.

20.3 (1) Weak currency debt [Kiwi loans] — interpretation — The definitions in this subsection apply in this section.

"exchange date" in respect of a debt of a taxpayer that is at any time a weak currency debt means, if the debt is incurred or assumed by the taxpayer

(a) in respect of borrowed money that is denominated in the final currency, the day that the debt that is incurred or assumed by the taxpayer; and

(b) in respect of borrowed money that is not denominated in the final currency, or in respect of the acquisition of property, the day on which the taxpayer uses the borrowed money or the acquired property, directly or indirectly, to acquire funds that are, or to settle an obligation that is, denominated in the final currency.

"hedge" in respect of a debt of a taxpayer that is at any time a weak currency debt means any agreement made by the taxpayer

(a) that can reasonably be regarded as having been made by the taxpayer primarily to reduce the taxpayer's risk, with respect to payments of principal or interest in respect of the debt, of fluctuations in the value of the weak currency; and

(b) that is identified by the taxpayer as a hedge in respect of the debt in a designation in prescribed form filed with the Minister on or before the 30th day after the day the taxpayer enters into the agreement.

"weak currency debt" of a taxpayer at a particular time means a particular debt in a foreign currency (in this section referred to as the "weak currency"), incurred or assumed by the taxpayer at a time (in this section referred to as the "commitment time") after February 27, 2000, in respect of a borrowing of money or an acquisition of property, where

(a) any of the following applies, namely,

(i) the borrowed money is denominated in a currency (in this section referred to as the "final currency") other than the weak currency, is used for the purpose of earning income from a business or property and is not used to acquire funds in a currency other than the final currency,

(ii) the borrowed money or the acquired property is used, directly or indirectly, to acquire funds that are denominated in a currency (in this section referred to as the "final currency") other than the weak currency, that are used for the purpose of earning income from a business or property and that are not used to acquire funds in a currency other than the final currency,

(iii) the borrowed money or the acquired property is used, directly or indirectly, to settle an obligation that is denominated in a currency (in this section referred to as the "final currency") other than the weak currency, that is incurred or assumed for the purpose of earning income from a business or property and that is not incurred or assumed to acquire funds in a currency other than the final currency, or

(iv) the borrowed money or the acquired property is used, directly or indirectly, to settle another debt of the taxpayer that is at any time a weak currency debt in respect of which the final currency (which is deemed to be the final currency in respect of the particular debt) is a currency other than the currency of the particular debt;

(b) the amount of the particular debt (together with any other debt that would, but for this paragraph, be at any time a weak currency debt, and that can reasonably be regarded as having been incurred or assumed by the taxpayer as part of a series of transactions that includes the incurring or assumption of the particular debt) exceeds $500,000; and

(c) either of the following applies, namely,

(i) if the rate at which interest is payable at the particular time in the weak currency in respect of the particular debt is determined under a formula based

on the value from time to time of a reference rate (other than a reference rate the value of which is established or materially influenced by the taxpayer), the interest rate at the commitment time, as determined under the formula as though interest were then payable, exceeds by more than two percentage points the rate at which interest would have been payable at the commitment time in the final currency if

(A) the taxpayer had, at the commitment time, instead incurred or assumed an equivalent amount of debt in the final currency on the same terms as the particular debt (excluding the rate of interest but including the structure of the interest calculation, such as whether the rate is fixed or floating) with those modifications that the difference in currency requires, and

(B) interest on the equivalent amount of debt referred to in clause (A) was payable at the commitment time, or

(ii) in any other case, the rate at which interest is payable at the particular time in the weak currency in respect of the particular debt exceeds by more than two percentage points the rate at which interest would have been payable at the particular time in the final currency if at the commitment time the taxpayer had instead incurred or assumed an equivalent amount of debt in the final currency on the same terms as the particular debt (excluding the rate of interest but including the structure of the interest calculation, such as whether the rate is fixed or floating), with those modifications that the difference in currency requires.

(2) Interest and gain — Notwithstanding any other provision of this Act, the following rules apply in respect of a particular debt of a taxpayer (other than a corporation described in one or more of paragraphs (a), (b), (c) and (e) of the definition "specified financial institution" in subsection 248(1)) that is at any time a weak currency debt:

(a) no deduction on account of interest that accrues on the debt for any period that begins after the day that is the later of June 30, 2000 and the exchange date during which it is a weak currency debt shall exceed the amount of interest that would, if at the commitment time the taxpayer had instead incurred or assumed an equivalent amount of debt, the principal and interest in respect of which were denominated in the final currency, on the same terms as the particular debt (excluding the rate of interest but including the structure of the interest calculation, such as whether the rate is fixed or floating) have accrued on the equivalent debt during that period, with those modifications that the difference in currency requires;

(b) the amount, if any, of the taxpayer's gain or loss (in this section referred to as a "foreign exchange gain or loss") for a taxation year on the settlement or extinguishment of the debt that arises because of the fluctuation in the value of any currency shall be included or deducted, as the case may be, in computing the taxpayer's income for the year from the business or the property to which the debt relates; and

(c) the amount of any interest on the debt that was, because of this subsection, not deductible is deemed, for the purpose of computing the taxpayer's foreign exchange gain or loss on the settlement or extinguishment of the debt, to be an amount paid by the taxpayer to settle or extinguish the debt.

(3) Hedges — In applying subsection (2) in circumstances where a taxpayer has entered into a hedge in respect of a debt of the taxpayer that is at any time a weak currency debt, the amount paid or payable in the weak currency for a taxation year on account of interest on the debt, or paid in the weak currency in the year on account of the debt's principal, shall be decreased by the amount of any foreign exchange gain, or increased by the amount of any foreign exchange loss, on the hedge in respect of the amount so paid or payable.

(4) Repayment of principal — If the amount (expressed in the weak currency) outstanding on account of principal in respect of a debt of the taxpayer that is at any time a weak currency debt is reduced before maturity (whether by repayment or otherwise), the amount (expressed in the weak currency) of the reduction is deemed, except for the purposes of determining the rate of interest that would have been charged on an equivalent loan in the final currency and applying paragraph (b) of the definition "weak currency debt" in subsection (1), to have been a separate debt from the commitment time.

History [s. 20.3]: S. 20.3 added by 2001, c. 17, s. 14, applicable to taxation years that end after February 27, 2000.

By 2001, c. 17, subsec. 14(4), a designation described in para. (b) of the definition "hedge" in subsec. 20.3(1) is deemed to have been filed in a timely manner if it is filed on or before the later of July 31, 2000 and the 30th day after the day the taxpayer agrees to the hedge.

Definitions [s. 20.3]: "amount", "borrowed money", "business" — 248(1); "commitment time" — 20.3(1)"weak currency debt"; "corporation" — 248(1), *Interpretation Act* 35(1); "exchange date" — 20.3(1); "final currency" — 20.3(1)"weak currency"(a)(i)–(iii); "foreign currency" — 248(1); "hedge" — 20.3(1); "Minister", "prescribed", "property" — 248(1); "series of transactions" — 248(10); "specific financial institution" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "weak currency", "weak currency debt" — 20.3(1).

21. (1) Cost of borrowed money — Where in a taxation year a taxpayer has acquired depreciable property, if the taxpayer elects under this subsection in the taxpayer's return of income under this Part for the year,

(a) in computing the taxpayer's income for the year and for such of the 3 immediately preceding taxation years as the taxpayer had, paragraphs 20(1)(c), (d), (e) and (e.1) do not apply to the amount or to the part of the amount specified in the taxpayer's election that, but for an election under this subsection in respect thereof, would be deductible in computing the taxpayer's income (other than exempt income) for any such year in respect of borrowed money used to acquire the depreciable property or the amount payable for the depreciable property; and

(b) the amount or the part of the amount, as the case may be, described in paragraph (a) shall be added to the capital cost to the taxpayer of the depreciable property so acquired by the taxpayer.

Related Provisions: 13(10) — Deemed capital cost of certain property; 13(21) — Definitions; 20(3) — Life insurance policy; 21(5) — Reassessments; 80(2)(b) — Application of debt forgiveness rules; 96(3) — Election by members of partnership; 127(11.5)(b)(i) — Ignore s. 21 for purposes of ITC qualified expenditures; 220(3.2), Reg. 600(a) — Late filing or revocation of election.

History: Para. 21(1)(a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 16(1), applicable after 1987. Para. 21(1)(a) formerly read:

(a) in computing the taxpayer's income for the year and for such of the 3 immediately preceding taxation years as the taxpayer had, paragraphs 20(1)(c), (d) and (e) do not apply to the amount or to the

part of the amount specified by the taxpayer in the election that, but for an election under this subsection in respect thereof, would have been deductible in computing the taxpayer's income (other than exempt income) for any such year in respect of borrowed money used to acquire the depreciable property or the amount payable for the depreciable property acquired by the taxpayer; and

Interpretation Bulletins: See list at end of s. 21.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

Advance Tax Rulings: ATR-1: Transfer of legal title in land to bare trustee corporation — mortgagee's requirements sole reason for transfer.

(2) Borrowed money used for exploration or development — Where in a taxation year a taxpayer has used borrowed money for the purpose of exploration, development or the acquisition of property and the expenses incurred by the taxpayer in respect of those activities are Canadian exploration and development expenses, Canadian exploration expenses, Canadian development expenses, Canadian oil and gas property expenses, foreign resource expenses in respect of a country, or foreign exploration and development expenses, as the case may be, if the taxpayer so elects under this subsection in the taxpayer's return of income for the year,

(a) in computing the taxpayer's income for the year and for such of the three immediately preceding taxation years as the taxpayer had, paragraphs 20(1)(c), (d), (e) and (e.1) do not apply to the amount or to the part of the amount specified in the taxpayer's election that, but for that election, would be deductible in computing the taxpayer's income (other than exempt income or income that is exempt from tax under this Part) for any such year in respect of the borrowed money used for the exploration, development or acquisition of property, as the case may be; and

(b) the amount or the part of the amount, as the case may be, described in paragraph (a) is deemed to be Canadian exploration and development expenses, Canadian exploration expenses, Canadian development expenses, Canadian oil and gas property expenses, foreign resource expenses in respect of a country, or foreign exploration and development expenses, as the case may be, incurred by the taxpayer in the year.

Related Provisions: 13(10) — Deemed capital cost of property; 13(21) — Definitions; 21(5) — Reassessments; 66(18) — Expenses incurred by partnerships; 80(2)(b) — Application of debt forgiveness rules; 96(3) — Election by members of partnership; 220(3.2), Reg. 600(a) — Late filing or revocation of election.

History: Subsec. 21(2) amended by 2001, c. 17, subsec. 15(1), applicable to taxation years that begin after 2000. The subsec. formerly read:

(2) Where in a taxation year a taxpayer has used borrowed money for the purpose of exploration, development or the acquisition of property and the expenses incurred by the taxpayer in respect thereof are Canadian exploration and development expenses, foreign exploration and development expenses, Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses, as the case may be, if the taxpayer elects under this subsection in the taxpayer's return of income under this Part for the year,

(a) in computing the taxpayer's income for the year and for such of the 3 immediately preceding taxation years as the taxpayer had, paragraphs 20(1)(c), (d), (e) and (e.1) do not apply to the amount or to the part of the amount specified in the taxpayer's election that, but for an election under this subsection in respect thereof, would be deductible in computing the taxpayer's income (other than exempt income) for any such year in respect of the borrowed money used for the exploration, development or acquisition of property, as the case may be; and

(b) the amount or the part of the amount, as the case may be, described in paragraph (a) shall be deemed to be Canadian exploration and development expenses, foreign exploration and development expenses, Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses, as the case may be, incurred by the taxpayer in the year.

Para. 21(2)(a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 16(2), applicable after 1987. Para. 21(2)(a) formerly read:

(a) in computing the taxpayer's income for the year and for such of the 3 immediately preceding taxation years as the taxpayer had, paragraphs 20(1)(c), (d) and (e) do not apply to the amount or to the part of the amount specified by the taxpayer in the election that, but for an election under this subsection in respect thereof, would have been deductible in computing the taxpayer's income (other than exempt income) for any such year in respect of the borrowed money used for the exploration, development or acquisition of property, as the case may be; and

Interpretation Bulletins: See list at end of s. 21.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

(3) Borrowing for depreciable property — In computing the income of a taxpayer for a particular taxation year, where the taxpayer

(a) in any preceding taxation year

(i) made an election under subsection (1) in respect of borrowed money used to acquire depreciable property or an amount payable for depreciable property acquired by the taxpayer, or

(ii) was, by virtue of subsection 18(3.1), required to include an amount in respect of the construction of a depreciable property in computing the capital cost to the taxpayer of the depreciable property, and

(b) in each taxation year, if any, after that preceding taxation year and before the particular year, made an election under this subsection covering the total amount that, but for an election under this subsection in respect thereof, would have been deductible in computing the taxpayer's income (other than exempt income) for each such year in respect of the borrowed money used to acquire the depreciable property or the amount payable for the depreciable property acquired by the taxpayer,

if an election under this subsection is made in the taxpayer's return of income under this Part for the particular year, paragraphs 20(1)(c), (d), (e) and (e.1) do not apply to the amount or to the part of the amount specified in the election that, but for an election under this subsection in respect thereof, would be deductible in computing the taxpayer's income (other than exempt income) for the particular year in respect of the borrowed money used to acquire the depreciable property or the amount payable for the depreciable property acquired by the taxpayer, and the amount or part of the amount, as the case may be, shall be added to the capital cost to the taxpayer of the depreciable property.

Related Provisions: 96(3) — Election by members of partnership; 127(11.5)(b)(i) — Ignore s. 21 for purposes of ITC qualified expenditures; 220(3.2), Reg. 600(a) — Late filing or revocation of election.

History: That portion of subsec. 21(3) following para. (b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 16(3), applicable after 1987. That portion formerly read:

if the taxpayer elects under this subsection in the taxpayer's return of income under this Part for the particular year, paragraphs 20(1)(c), (d) and (e) do not apply to the amount or to the part of the amount specified by the taxpayer in the election that, but for an election under this subsection in respect thereof, would have been deductible in computing the taxpayer's income (other than exempt income) for the particular year in respect of the borrowed money used to acquire the depreciable property or the amount payable for the depreciable property acquired by the taxpayer, and the said

amount or part of the amount, as the case may be, shall be added to the capital cost to the taxpayer of the depreciable property so acquired [by the taxpayer].

Interpretation Bulletins: See list at end of s. 21.

(4) Borrowing for exploration, etc. — In computing the income of a taxpayer for a particular taxation year, where the taxpayer

(a) in any preceding taxation year made an election under subsection (2) in respect of borrowed money used for the purpose of exploration, development or acquisition of property,

(b) in each taxation year, if any, after that preceding taxation year and before the particular year, made an election under this subsection covering the total amount that, but for that election, would have been deductible in computing the taxpayer's income (other than exempt income or income that is exempt from tax under this Part) for each such year in respect of the borrowed money used for the exploration, development or acquisition of property, as the case may be, and

(c) so elects in the taxpayer's return of income for the particular year,

the following rules apply:

(d) paragraphs 20(1)(c), (d), (e) and (e.1) do not apply to the amount or to the part of the amount specified in the election that, but for the election, would be deductible in computing the taxpayer's income (other than exempt income or income that is exempt from tax under this Part) for the particular year in respect of the borrowed money used for the exploration, development or acquisition of property, and

(e) the amount or part of the amount, as the case may be, is deemed to be Canadian exploration and development expenses, Canadian exploration expenses, Canadian development expenses, Canadian oil and gas property expenses, foreign resource expenses in respect of a country, or foreign exploration and development expenses, as the case may be, incurred by the taxpayer in the particular year.

Related Provisions: 96(3) — Election by members of partnership; 220(3.2), Reg. 600(a) — Late filing or revocation of election.

History: The portion of subsec. 21(4) after para. (a) amended by 2001, c. 17, subsec. 15(2), applicable to taxation years that begin after 2000. That portion formerly read:

> (b) in each taxation year, if any, after that preceding taxation year and before the particular year, made an election under this subsection covering the total amount that, but for an election under this subsection in respect thereof, would have been deductible in computing the taxpayer's income (other than exempt income) for each such year in respect of the borrowed money used for the exploration, development or acquisition of property, as the case may be,
>
> if an election under this subsection is made in the taxpayer's return of income under this Part for the particular year, paragraphs 20(1)(c), (d), (e) and (e.1) do not apply to the amount or to the part of the amount specified in the election that, but for an election under this subsection in respect thereof, would be deductible in computing the taxpayer's income (other than exempt income) for the particular year in respect of the borrowed money used for the exploration, development or acquisition of property, and the amount or part of the amount, as the case may be, shall be deemed to be Canadian exploration and development expenses, foreign exploration and development expenses, Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses, as the case may be, incurred by the taxpayer in the particular year.

That portion of subsec. 21(4) following para. (b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 16(4), applicable after 1987. That portion formerly read:

> if the taxpayer elects under this subsection in the taxpayer's return of income under this Part for the particular year, paragraphs 20(1)(c), (d) and (e) do not apply to the amount or to the part of the amount specified by the taxpayer in the election that, but for an election under this subsection in respect thereof would have been deductible in computing the taxpayer's income (other than exempt income) for the particular year in respect of the borrowed money used for the exploration, development or acquisition of property, and the said amount or part of the amount, as the case may be, shall be deemed to be Canadian exploration and development expenses, foreign exploration and development expenses, Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses, as the case may be, incurred by the taxpayer in the particular year.

Interpretation Bulletins: See list at end of s. 21.

(5) Reassessments — Notwithstanding any other provision of this Act, where a taxpayer has made an election in accordance with the provisions of subsection (1) or (2), such reassessments of tax, interest or penalties shall be made as are necessary to give effect thereto.

Selected Cases [s. 21]: *Saskatchewan Wheat Pool v. R.*, [1999] 2 C.T.C. 369 (FCA); leave to appeal to SCC refused (Apr. 13, 2000), File 27346 (ITC should not be higher for taxpayer who capitalizes interest); *Lornex Mining Corp. Ltd. v. Canada*, [1996] 3 C.T.C. 309 (FCTD) ("Exempt income" includes income exempt under s. 28 of ITAR, 1971).

Definitions [s. 21]: "amount", "borrowed money" — 248(1); "Canadian exploration expense" — 66.1(6), 248(1); "Canadian exploration and development expenses" — 66(15), 248(1); "Canadian development expense" — 66.2(5), 248(1); "Canadian oil and gas property expense" — 66.4(5), 248(1); "depreciable property" — 13(21), 248(1); "exempt income" — 248(1); "foreign exploration and development expenses" — 66(15), 248(1); "prescribed", "property", "regulation" — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 21]: IT-109R2: Unpaid amounts; IT-121R3: Election to capitalize cost of borrowed money (archived); IT-142R3: Settlement of debts on the winding-up of a corporation; IT-341R3: Expenses of issuing or selling shares, units in a trust, interests in a partnership or syndicate, and expenses of borrowing money; IT-360R2: Interest payable in a foreign currency.

Ceasing to Carry on Business

22. (1) Sale of accounts receivable [on sale of business] — Where a person who has been carrying on a business has, in a taxation year, sold all or substantially all the property used in carrying on the business, including the debts that have been or will be included in computing the person's income for that year or a previous year and that are still outstanding, and including the debts arising from loans made in the ordinary course of the person's business if part of the person's ordinary business was the lending of money and that are still outstanding, to a purchaser who proposes to continue the business which the vendor has been carrying on, if the vendor and the purchaser have executed jointly an election in prescribed form to have this section apply, the following rules are applicable:

(a) there may be deducted in computing the vendor's income for the taxation year an amount equal to the difference between the face value of the debts so sold (other than debts in respect of which the vendor has made deductions under paragraph 20(1)(p)), and the consideration paid by the purchaser to the vendor for the debts so sold;

(b) an amount equal to the difference described in paragraph (a) shall be included in computing the purchaser's income for the taxation year;

(c) the debts so sold shall be deemed, for the purposes of paragraphs 20(1)(l) and (p), to have been included in computing the purchaser's income for the taxation year or a previous year but no deduction may be made by the purchaser under paragraph 20(1)(p) in respect of a debt in respect of which the vendor has previously made a deduction; and

(d) each amount deducted by the vendor in computing income for a previous year under paragraph 20(1)(p) in respect of any of the debts so sold shall be deemed, for the purpose of paragraph 12(1)(i), to have been so deducted by the purchaser.

Related Provisions: 13(8) — Disposition of depreciable property after ceasing to carry on business; 22(2) — Required statement by vendor and purchaser; 96(3) — Election by members of partnership.

Interpretation Bulletins: IT-188R: Sale of accounts receivable; IT-291R3: Transfer of property to a corporation under subsection 85(1); IT-433R: Farming or fishing — use of cash method; IT-442R: Bad debts and reserve for doubtful debts; IT-471R: Merger of partnership; IT-488R2: Winding-up of 90%-owned taxable Canadian corporations (archived).

Forms: T2022: Election in respect of the sale of debts receivable.

(2) Statement by vendor and purchaser — An election executed for the purposes of subsection (1) shall contain a statement by the vendor and the purchaser jointly as to the consideration paid for the debts sold by the vendor to the purchaser and that statement shall, subject to subsection 69(1), as against the Minister, be binding upon the vendor and the purchaser in so far as it may be relevant in respect of any matter arising under this Act.

Definitions [s. 22]: "amount", "business", "Minister", "person", "prescribed", "property" — 248(1); "taxation year" — 11(2), 249.

23. (1) Sale of inventory — Where, on or after disposing of or ceasing to carry on a business or a part of a business, a taxpayer has sold all or any part of the property that was included in the inventory of the business, the property so sold shall, for the purposes of this Part, be deemed to have been sold by the taxpayer in the course of carrying on the business.

Related Provisions: 12.4 — Bad debt inclusion on sale of inventory.

Selected Cases [subsec. 23(1)]: *Terminal Dock and Warehouse Co. Ltd. v. MNR*, [1968] C.T.C. 78 (Exch.) (Sale at discount not capital loss).

Interpretation Bulletins: IT-287R2: Sale of inventory; IT-457R: Election by professionals to exclude work in progress from income.

(2) [Repealed under former Act]

(3) Reference to property in inventory — A reference in this section to property that was included in the inventory of a business shall be deemed to include a reference to property that would have been so included if the income from the business had not been computed in accordance with the method authorized by subsection 28(1) or paragraph 34(a).

Definitions [s. 23]: "business" — 248(1); "inventory" — 23(3), 248(1); "Minister", "person", "property", "taxpayer" — 248(1).

24. (1) Ceasing to carry on business [deduction for cumulative eligible capital] — Notwithstanding paragraph 18(1)(b), where at any time after a taxpayer ceases to carry on a business the taxpayer no longer owns any property that was eligible capital property in respect of the business and that has value, in computing the taxpayer's income for taxation years ending after that time,

(a) there shall be deducted, for the first such taxation year, the amount of the taxpayer's cumulative eligible capital in respect of the business at that time;

(b) no amount may be deducted under paragraph 20(1)(b) in respect of the business;

(c) for the purposes of determining the value of P in the definition "cumulative eligible capital" in subsection 14(5), the amount deducted by the taxpayer under paragraph (a) shall be deemed to be an amount deducted under paragraph 20(1)(b) in computing the taxpayer's income from the business for the taxation year that included that time; and

(d) for the purposes of subsection 14(1), section 14 shall be read without reference to subsection 14(4).

Related Provisions: 10(12) — Where non-resident ceases to use inventory in business; 13(8) — Disposition of depreciable property after ceasing to carry on business; 14(12) — Limitation where affiliated person acquires the property; 20(1)(hh.1) — Deduction for repayment of assistance relating to eligible capital expenditure after ceasing to carry on business; 24(2) — Business carried on by spouse or controlled corporation; 25 — Fiscal period for individual proprietor of business disposed of; 28(1)(g) — Deduction from farming or fishing income when using cash method; 70(5.1) — Eligible capital property of deceased taxpayer; 107(2)(f) — Capital interest distribution by personal or prescribed trust; Reg. 8103(6) — Mark-to-market — transition inclusion on ceasing to carry on business; Reg. 9204(5) — Residual portion of specified debt obligation on ceasing to carry on business.

History: Subsec. 24(1) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 17, applicable after July 13, 1990. Subsec. 24(1) formerly read:

> 24. (1) Notwithstanding paragraph 18(1)(b), where a taxpayer has ceased to carry on a business, in computing the taxpayer's income for the taxpayer's taxation year in which the taxpayer so ceased to carry on the business,
>
> (a) there shall be deducted the amount of the taxpayer's cumulative eligible capital in respect of the business at the time the taxpayer so ceased to carry on the business;
>
> (b) no amount is deductible by virtue of paragraph 20(1)(b) in respect of the business;
>
> (c) notwithstanding the definition "cumulative eligible capital" in subsection 14(5), the taxpayer's cumulative eligible capital in respect of the business immediately after the time the taxpayer so ceased to carry on the business shall be deemed to be nil; and
>
> (d) for the purposes of subsection 14(1), section 14 shall be read without reference to subsection 14(4).

Interpretation Bulletins: IT-123R6: Transactions involving eligible capital property; IT-291R3: Transfer of property to a corporation under subsection 85(1); IT-313R2: Eligible capital property — rules where a taxpayer has ceased carrying on a business or has died; IT-488R2: Winding-up of 90%-owned taxable Canadian corporations (archived).

(2) Business carried on by spouse [or common-law partner] or controlled corporation — Notwithstanding subsection (1), where at any time an individual ceases to carry on a business and thereafter the individual's spouse or common-law partner, or a corporation controlled directly or indirectly in any manner whatever by the individual, carries on the business and acquires all of the property that was eligible capital property in respect of the business owned by the individual before that time and that had value at that time,

(a) in computing the individual's income for the individual's first taxation year ending after that time, subsection (1) shall be read without reference to paragraph (1)(a) and the reference in paragraph (1)(c) to "the amount deducted by the taxpayer under paragraph (a)" shall be read as a reference to "an amount equal to the taxpayer's cumulative eligible capital in respect of the business immediately before that time";

(b) in computing the cumulative eligible capital of the spouse or common-law partner or the corporation, as the case may be, in respect of the business, the spouse or common-law partner or corporation shall be deemed to have acquired an eligible capital property

and to have made an eligible capital expenditure at that time at a cost equal to 4/3 of the total of

(i) the cumulative eligible capital of the taxpayer in respect of the business immediately before that time, and

(ii) the amount, if any, determined for F in the definition "cumulative eligible capital" in subsection 14(5) in respect of the business of the individual at that time;

(c) for the purposes of determining the cumulative eligible capital in respect of the business of the spouse or common-law partner or corporation after that time, an amount equal to the amount determined under subparagraph (b)(ii) shall be added to the amount otherwise determined in respect thereof for P in the definition "cumulative eligible capital" in subsection 14(5); and

(d) for the purpose of determining after that time the amount required to be included under paragraph 14(1)(b) in computing the income of the spouse, the common-law partner or the corporation in respect of any subsequent disposition of property of the business, there shall be added to the amount otherwise determined for Q in the definition "cumulative eligible capital" in subsection 14(5) the amount, if any, determined for Q in that definition in respect of the business of the individual immediately before the individual ceased to carry on business.

Related Provisions: 14(12) — Certain property deemed not acquired by affiliated person; 25 — Fiscal period for individual proprietor of business disposed of; 256(5.1), (6.2) — Controlled directly or indirectly.

History: Para. 24(2)(d) amended by 2001, c. 17, s. 16, applicable to taxation years that end after February 27, 2000. The para. formerly read:

(d) for the purposes of determining after that time

(i) the amount deemed by subparagraph 14(1)(a)(v) to be the spouse's or common-law partner's taxable capital gain, and

(ii) the amount to be included under subparagraph 14(1)(a)(v) or paragraph 14(1)(b) in computing the income of the spouse or common-law partner or corporation

in respect of any subsequent disposition of property of the business, there shall be added to the amount otherwise determined for Q in the second formula in the definition "cumulative eligible capital" in subsection 14(5) the amount, if any, determined for Q in that formula in respect of the business of the individual immediately before the individual ceased to carry on the business.

The opening words of subsec. 24(2), paras. 24(2)(b) and (c) and subpara. 24(2)(d)(ii) amended by 2000, c. 12, Sch. 2, s. 1 to replace "spouse" with "spouse or common-law partner", and subpara. 24(2)(d)(i) amended by Sch. 2, s. 7 to replace "spouse's" with "spouse's or common-law partner's", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subpara. 24(2)(d)(ii) amended by 1995, c. 3, s. 8, applicable to fiscal periods that end after February 22, 1994. Subpara. (ii) formerly read:

(ii) the amount to be included under paragraph 14(1)(b) in computing the income of the spouse or corporation

Para. 24(2)(a) amended to substitute "in respect of the business" for "in respect of property", and para. (d) added, by 1994, c. 7, Sch. VIII (1993, c. 24), subsecs. 10(1) and (2), applicable after July 13, 1990.

Subsec. 24(2) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 17, applicable after July 13,1990. Subsec. 24(2) formerly read:

(2) Where business carried on by spouse or controlled corporation — Notwithstanding subsection (1), where an individual has ceased to carry on a business and thereafter the individual's spouse, or a corporation controlled directly or indirectly in any manner whatever by the individual, has carried on the business,

(a) in computing the individual's income for the individual's taxation year in which the individual so ceased to carry on the business, the provisions of subsection (1) shall be read without reference to paragraph (1)(a) and as if the reference in paragraph (1)(c) to "the time the taxpayer so ceased to carry on the business" were read as a reference to "the end of the taxation year in which the taxpayer so ceased to carry on the business"; and

(b) in computing the cumulative eligible capital in respect of the business of the spouse or the corporation, as the case may be, at any time after the end of the taxation year in which the individual so ceased to carry on the business, there shall be included the amount of the individual's cumulative eligible capital in respect thereof at the end of that taxation year.

(3) Where partnership has ceased to exist — Notwithstanding subsection (1), where at any time a partnership ceases to exist in circumstances to which neither subsection 98(3) nor subsection 98(5) applies, there may be deducted, in computing the income for the first taxation year beginning after that time of a taxpayer who was a member of the partnership immediately before that time, an amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount that would, had the partnership continued to exist, have been deductible under subsection (1) in computing its income;

B is the fair market value of the taxpayer's interest in the partnership immediately before that time; and

C is the fair market value of all interests in the partnership immediately before that time.

History: Subsec. 24(3) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 10(3), applicable after July 13, 1990.

Definitions [s. 24]: "amount", "business", "common-law partner" — 248(1); "controlled directly or indirectly" — 256(5.1), (6.2); "corporation" — 248(1), *Interpretation Act* 35(1); "cumulative eligible capital" — 14(5), 248(1); "eligible capital property" — 54, 248(1); "individual", "property" — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

24.1 [Repealed]

History: S. 24.1 repealed by 1996, c. 21, s. 6, applicable to appointments made after 1995. S. 24.1 formerly read:

24.1 Judges — Where in a taxation year a taxpayer has been appointed a judge by the Governor General or the Governor in Council or by the lieutenant governor in council of a province and the taxpayer elects in the taxpayer's return of income under this Part for the year to have this section apply to the computation of the taxpayer's income,

(a) the taxpayer's income from a professional practice for a fiscal period ending in that taxation year and commencing in the preceding taxation year shall be deemed to be that proportion of such income that the number of months in the taxation year during which the taxpayer was not a judge is of the number of months in the fiscal period; and

(b) the amount by which the taxpayer's income for that taxation year from the taxpayer's professional practice, computed without reference to this section, exceeds the amount that is deemed by paragraph (a) to be the taxpayer's income for the fiscal period shall be deemed to be income of the taxpayer in the immediately following taxation year.

25. (1) Fiscal period of business disposed of by individual — Where an individual was the proprietor of a business and disposed of it during a fiscal period of the business, the fiscal period may, if the individual so elects and subsection 249.1(4) does not apply in respect of the business, be deemed to have ended at the time it would have ended if the individual had not disposed of the business during the fiscal period.

Related Provisions: 13(8) — Disposition of depreciable property after ceasing to carry on business; 14(1) — Inclusion of eligible capital amount in income; 99(2) — Parallel rule where partnership ceases to exist.

History: Subsec. 25(1) amended by 1996, c. 21, s. 7, applicable to fiscal periods that begin after 1994. The subsec. formerly read:

> (1) Fiscal period for individual proprietor of business disposed of — Where an individual was the proprietor of a business and disposed of it during a fiscal period of the business, the fiscal period may, if the individual so elects, be deemed to have ended at the time it would have ended if the individual had not disposed of the business during the fiscal period.

Interpretation Bulletins: IT-179R: Change of fiscal period; IT-313R2: Eligible capital property — rules where a taxpayer has ceased carrying on a business or has died.

Information Circulars: 76-19R3: Transfer of property to a corporation under section 85.

(2) Election — An election under subsection (1) is not valid unless the individual, at the time when the fiscal period of the business would, if the election were valid, be deemed to have ended, is resident in Canada.

(3) Dispositions in the extended fiscal period — Where subsection (1) applies in respect of a fiscal period of a business of an individual, for the purpose of computing the individual's income for the fiscal period,

(a) section 13 shall be read without reference to subsection 13(8); and

(b) section 24 shall be read without reference to paragraph 24(1)(d).

Interpretation Bulletins: IT-313R2: Eligible capital property — rules where a taxpayer has ceased carrying on a business or has died; IT-478R2: CCA — recapture and terminal loss.

Definitions [s. 25]: "business" — 248(1); "Canada" — 255; "fiscal period" — 249.1; "individual" — 248(1); "resident in Canada" — 94(3)(a)(viii), 250; "taxpayer" — 248(1).

Special Cases

26. (1) Banks — inclusions in income — There shall be included in computing the income of a bank for its first taxation year that commences after June 17, 1987 and ends after 1987 the total of

(a) the total of the specific provisions of the bank, as determined, or as would be determined if such a determination were required, under the Minister's rules, as at the end of its immediately preceding taxation year,

(b) the total of the general provisions of the bank, as determined, or as would be determined if such a determination were required, under the Minister's rules, as at the end of its immediately preceding taxation year,

(c) the amount, if any, by which

> (i) the amount of the special provision for losses on trans-border claims of the bank, as determined, or as would be determined if such a determination were required, under the Minister's rules, that was deductible by the bank under subsection (2) in computing its income for its immediately preceding taxation year

exceeds

> (ii) that part of the amount determined under subparagraph (i) that was a realized loss of the bank for that immediately preceding taxation year, and

(d) the amount, if any, of the tax allowable appropriations account of the bank, as determined, or as would be determined if such a determination were required, under the Minister's rules, at the end of its immediately preceding taxation year.

Related Provisions: 20(1)(l) — Reserve for doubtful accounts; 20(1)(l.1) — Reserve for guarantees; 26(4) — Minister's rules; 33.1 — International banking centres; 87(2)(g.1) — Amalgamation — continuing corporation; 142.2–142.6 — Additional rules for financial institutions; 142.7 — Foreign banks — conversion from subsidiary to branch; 248(1)"authorized foreign bank" — Foreign bank branches.

(2) Banks — deductions from income — In computing the income for a taxation year of a bank, there may be deducted an amount not exceeding the total of

(a) that part of the total of the amounts of the five-year average loan loss experiences of the bank, as determined, or as would be determined if such a determination were required, under the Minister's rules, for all taxation years before its first taxation year that commences after June 17, 1987 and ends after 1987 that is specified by the bank for the year and was not deducted by the bank in computing its income for any preceding taxation year,

(b) that part of the total of the amounts transferred by the bank to its tax allowable appropriations account, as permitted under the Minister's rules, for all taxation years before its first taxation year that commences after June 17, 1987 and ends after 1987 that is specified by the bank for the year and was not deducted by the bank in computing its income for any preceding taxation year,

(c) that part of the amount, if any, by which

> (i) the amount of the special provision for losses on trans-border claims, as determined, or as would be determined if such a determination were required, under the Minister's rules, that was deductible by the bank under this subsection in computing its income for its last taxation year before its first taxation year that commences after June 17, 1987 and ends after 1987

exceeds

> (ii) that part of the amount determined under subparagraph (i) that was a realized loss of the bank for that last taxation year

that is specified by the bank for the year and was not deducted by the bank in computing its income for any preceding taxation year,

(d) where the tax allowable appropriations account of the bank at the end of its last taxation year before its first taxation year that commences after June 17, 1987 and ends after 1987, as determined, or as would be determined if such a determination were required, under the Minister's rules, is a negative amount, that part of such amount expressed as a positive number that is specified by the bank for the year and was not deducted by the bank in computing its income for any preceding taxation year, and

(e) that part of the total of the amounts calculated in respect of the bank for the purposes of the Minister's rules, or that would be calculated for the purposes of those rules if such a calculation were required, under Procedure 8 of the Procedures for the Determination of the Provision for Loan Losses as set out in Appendix 1 of those rules, for all taxation years before its first taxation year that commences after June 17, 1987 and ends after 1987 that is specified by the bank for the year and was not deducted by the bank in computing its income for any preceding taxation year.

Related Provisions: 20.2 — Foreign bank branch — interest deduction; 87(2)(g.1) — Amalgamation — continuing corporation.

(3) Write-offs and recoveries — In computing the income of a bank, the following rules apply:

(a) any amount that was recorded by the bank as a realized loss or a write-off of an asset that was included by the bank in the calculation of an amount deductible under the Minister's rules, or would have been included in the calculation of such an amount if such a calculation had been required, for any taxation year before its first taxation year that commences after June 17, 1987 and ends after 1987, shall, for the purposes of paragraph 12(1)(i) and section 12.4, be deemed to have been deducted by the bank under paragraph 20(1)(p) in computing its income for the year for which it was so recorded; and

(b) any amount that was recorded by the bank as a recovery of a realized loss or a write-off of an asset that was included by the bank in the calculation of an amount deductible under the Minister's rules, or would have been included in the calculation of such an amount if such a calculation had been required, for any taxation year before its first taxation year that commences after June 17, 1987 and ends after 1987 shall, for the purposes of section 12.4, be deemed to have been included by the bank under paragraph 12(1)(i) in computing its income for the year for which it was so recorded.

(4) Definition of "Minister's rules" — For the purposes of this section, "Minister's rules" means the *Rules for the Determination of the Appropriations for Contingencies of a Bank* issued under the authority of the Minister of Finance pursuant to section 308 of the *Bank Act* for the purposes of subsections (1) and (2) of this section.

Definitions [s. 26]: "amount", "bank" — 248(1); "Minister's rules" — 26(4); "taxation year" — 249.

27. (1) Application of Part I to Crown corporation — This Part applies to a federal Crown corporation as if

(a) any income or loss from a business carried on by the corporation as agent of Her Majesty, or from a property of Her Majesty administered by the corporation, were an income or loss of the corporation from the business or the property, as the case may be; and

(b) any property, obligation or debt of any kind whatever held, administered, entered into or incurred by the corporation as agent of Her Majesty were a property, obligation or debt, as the case may be, of the corporation.

Related Provisions: 124(3) — No tax abatement for income earned in a province; 181(1) — Meaning of "long-term debt"; 181.71, 190.211 — Capital taxes apply to federal Crown corporations; 187.61, 191.4(3) — Part IV.1 and VI.1 taxes on preferred share dividends apply to federal Crown corporations.

History: Subsec. 27(1) amended by 1998, c. 19, s. 82, applicable

(a) for the purpose of s. 181.71, to taxation years that end after June 1989;

(b) for the purposes of s. 187.61, and subsec. 191.4(3) after 1987;

(c) for the purpose of s. 190.211, after May 23, 1985; and

(d) for all other purposes, after April 26, 1995.

The subsec. formerly read:

(1) Application of Part to Crown corporations — This Part applies to a prescribed federal Crown corporation as if any income or loss from

(a) a business carried on by the corporation as agent of Her Majesty, and

(b) a property of Her Majesty administered by the corporation,

were an income or loss, as the case may be, of the corporation therefrom.

Interpretation Bulletins: IT-347R2: Crown corporations (archived).

(2) Presumption — Notwithstanding any other provision of this Act, a prescribed federal Crown corporation and any corporation controlled by such a corporation are each deemed not to be a private corporation and paragraphs 149(1)(d) to (d.4) do not apply to those corporations.

Related Provisions: 181.71, 190.211 — Capital taxes apply to prescribed federal Crown corporations; 187.61, 191.4(3) — Part IV.1 and VI.1 taxes on preferred share dividends apply to prescribed federal Crown corporations; 256(6), (6.1) — Meaning of "control".

History: Subsec. 27(2) amended by 2001, c. 17, s. 17, applicable to taxation years and fiscal periods that begin after 1998. The subsec. formerly read:

(2) Notwithstanding any other provision of this Act, a prescribed federal Crown corporation and any corporation controlled by such a corporation shall be deemed not to be a private corporation and paragraph 149(1)(d) does not apply thereto.

Regulations: 7100 (prescribed federal Crown corporation).

Interpretation Bulletins: IT-347R2: Crown corporations (archived).

(3) Transfers of land for disposition — Where land of Her Majesty has been transferred to a prescribed federal Crown corporation for purposes of disposition, the acquisition of the property by the corporation and any disposition thereof shall be deemed not to have been in the course of the business carried on by the corporation.

Interpretation Bulletins: IT-347R2: Crown corporations (archived).

Definitions [s. 27]: "business" — 248(1); "controlled" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "Her Majesty" — *Interpretation Act* 35(1); "private corporation" — 89(1), 248(1); "property" — 248(1).

28. (1) Farming or fishing business [cash method] — For the purpose of computing the income of a taxpayer for a taxation year from a farming or fishing business, the income from the business for that year may, if the taxpayer so elects, be computed in accordance with a method (in this section referred to as the "cash method") whereby the income therefrom for that year shall be deemed to be an amount equal to the total of

(a) all amounts that

(i) were received in the year, or are deemed by this Act to have been received in the year, in the course of carrying on the business, and

(ii) were in payment of or on account of an amount that would, if the income from the business were not computed in accordance with the cash method, be included in computing income therefrom for that or any other year, and

(b) with respect to a farming business, such amount, if any, as is specified by the taxpayer in respect of the business in the taxpayer's return of income under this Part for the year, not exceeding the amount, if any, by which

(i) the fair market value at the end of the year of inventory owned by the taxpayer in connection with the business at that time

exceeds

(ii) the amount determined under paragraph (c) for the year,

(c) with respect to a farming business, the amount, if any, that is the lesser of

(i) the taxpayer's loss from the business for the year computed without reference to this paragraph and to paragraph (b), and

(ii) the value of inventory purchased by the taxpayer that was owned by the taxpayer in connection with the business at the end of the year, and

(d) the total of all amounts each of which is an amount included in computing the taxpayer's income for the year from the business because of subsection 13(1), 14(1), 80(13) or 80.3(3) or (5),

minus the total of

(e) all amounts, other than amounts described in section 30, that

(i) were paid in the year, or are deemed by this Act to have been paid in the year, in the course of carrying on the business,

(ii) in the case of amounts paid, or deemed by this Act to have been paid, for inventory, were in payment of or on account of an amount that would be deductible in computing the income from the business for the year or any other taxation year if that income were not computed in accordance with the cash method, and

(iii) in any other case, were in payment of or on account of an amount that would be deductible in computing the income from the business for a preceding taxation year, the year or the following taxation year if that income were not computed in accordance with the cash method,

(e.1) all amounts, other than amounts described in section 30, that

(i) would be deductible in computing the income from the business for the year if that income were not computed in accordance with the cash method,

(ii) are not deductible in computing the income from the business for any other taxation year, and

(iii) were paid in a preceding taxation year in the course of carrying on the business,

(f) the total of all amounts each of which is the amount, if any, included under paragraph (b) or (c) in computing the taxpayer's income from the business for the immediately preceding taxation year, and

(g) the total of all amounts each of which is an amount deducted for the year under paragraph 20(1)(a), (b) or (uu), subsection 20(16) or 24(1), section 30 or subsection 80.3(2) or (4) in respect of the business,

except that paragraphs (b) and (c) do not apply in computing the income of the taxpayer for the taxation year in which the taxpayer dies.

Related Provisions: 20(7)(b) — No reserve available under 20(1)(m) when using cash method; 23(3) — Reference to property included in inventory; 28(2) — Limitation where business carried on jointly with other persons; 28(4) — Non-resident; 29–31 — Additional special rules for farmers; 34.2(2)(a) — Para. 28(1)(b) ignored for purposes of 1995 stub period income; 76(1) — Security in satisfaction of income debt; 79(3)F(b)(v)(B)(II) — Proceeds of disposition to debtor on surrender of property — unpaid interest included under 28(1)(e); 80(1)"excluded obligation"(b) — Obligation not subject to debt forgiveness rules; 80.3 — Income deferral from destruction of livestock or drought-induced sales of breeding animals; 85(1)(c.2) — Transfer of property to corporation by shareholders; 87(2)(b) — Amalgamations — inventory; 88(1.6) — Winding-up; 248(1)"cash method" — Definition applies to entire Act.

History: Para. 28(1)(d) amended by 1998, c. 19, subsec. 83(1), applicable to taxation years that end after February 21, 1994. The para. formerly read:

(d) the total of all amounts each of which is an amount included in computing the taxpayer's income for the year from the business because of subsection 13(1), 14(1), 80(13) or (17) or 80.3(3) or (5),

Subpara. 28(1)(e)(ii) amended and subpara. (iii) and para. (e.1) added by 1998, c. 19, subsec. 83(2), applicable to amounts paid after April 26, 1995, other than amounts paid pursuant to an agreement in writing made by the payer on or before April 26, 1995. Subpara. (ii) formerly read:

(ii) were in payment of or on account of an amount that would, if the income from the business were not computed in accordance with the cash method, be deductible in computing income therefrom for that or any other taxation year,

Paras. 28(1)(d) and (g) amended by 1995, c. 21, subsecs. 7(1), (2), applicable to taxation years that end after February 21, 1994. Those paras. formerly read:

(d) the total of all amounts each of which is an amount included in computing the taxpayer's income for the year from the business by reason of subsection 13(1), 14(1) or 80.3(3) or (5),

. . . . .

(g) the total of all amounts each of which is an amount deducted for the year as permitted under paragraph 20(1)(a) or (b), subsection 20(16) or 24(1), section 30 or subsection 80.3(2) or (4) in respect of the business,

That portion of subsec. 28(1) following para. (g) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 18(1), applicable to fiscal periods beginning after 1988.

Selected Cases [subsec. 28(1)]: *Dansereau v. R.*, [2000] 1 C.T.C. 2582 (TCC) (Cash basis cannot be denied simply because business is complicated); *Hadler Turkey Farms Inc. v. R.*, [1986] 1 C.T.C. 81 (FCTD) (Switch to cash option not permitted when taxpayer filed on accrual basis); *Pollon v. R.*, [1984] C.T.C. 131 (FCTD) (Where income derived from farming, despite not physically taking part in operations, taxpayers operating independent businesses permitted to compute income on cash basis).

Regulations: 1700–1704 (capital cost allowance rates for pre-1972 property of farming or fishing business).

Interpretation Bulletins: IT-154R: Special reserves; IT-184R: Deferred cash purchase tickets issued by Canadian Wheat Board; IT-291R3: Transfer of property to a corporation under subsection 85(1); IT-373R2: Woodlots; IT-427R: Livestock of farmers; IT-526: Farming — cash method inventory adjustments.

Forms: RC4060: Farming income and the CAIS program [guide]; T1163: CAIS program information and statement of farming activities for individuals; T1164: CAIS program information and statement of farming activities for additional farming operations; T1165: Statement of farming activities for Ontario self directed risk management; T1175: Farming — calculation of CCA and business-use-of home expenses; T2034: Election to establish inventory unit prices for animals; T2042: Statement of farming activities; T2121: Statement of fishing activities; T4003: Farming income [guide]; T4004: Fishing income [guide]; TD3F: Fisher's election for tax deductions at source.

(1.1) Acquisition of inventory — Where at any time, and in circumstances where paragraph 69(1)(a) or (c) applies, a taxpayer acquires inventory that is owned by the taxpayer in connection with a farming business the income from which is computed in accordance with the cash method, for the purposes of this section an amount equal to the cost to the taxpayer of the inventory shall be deemed

(a) to have been paid by the taxpayer at that time and in the course of carrying on that business, and

(b) to be the only amount so paid for the inventory by the taxpayer,

and the taxpayer shall be deemed to have purchased the inventory at the time it was so acquired.

History: Subsec. 28(1.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 18(3), applicable to taxation years and fiscal periods ending after 1990.

Interpretation Bulletins: IT-427R: Livestock of farmers.

Forms: T2034: Election to establish inventory unit prices for animals.

History [former subsec. 28(1.1)]: Former subsec. 28(1.1) repealed by 1994, c. 7, Sch. II (1991, c. 49), subsec. 18(2), applicable to fiscal periods beginning after 1988. Former subsec. 28(1.1) had read:

> (1.1) Inventory — For the purposes of subsection (1), inventory owned in connection with a farming business means property that would have been included as inventory of the business if the income from the business had not been computed in accordance with the cash method, and includes livestock but does not include animals included in a taxpayer's basic herd (within the meaning assigned by section 29).

(1.2) Valuation of inventory — For the purpose of paragraph (1)(c) and notwithstanding section 10, inventory of a taxpayer shall be valued at any time at the lesser of the total amount paid by the taxpayer at or before that time to acquire it (in this section referred to as its "cash cost") and its fair market value, except that an animal (in this section referred to as a "specified animal") that is a horse or, where the taxpayer has so elected in respect thereof for the taxation year that includes that time or for any preceding taxation year, is a bovine animal registered under the *Animal Pedigree Act*, shall be valued

> (a) at any time in the taxation year in which it is acquired, at such amount as is designated by the taxpayer not exceeding its cash cost to the taxpayer and not less than 70% of its cash cost to the taxpayer; and
>
> (b) at any time in a subsequent taxation year, at such amount as is designated by the taxpayer not exceeding its cash cost to the taxpayer and not less than 70% of the total of
>
> > (i) its value determined under this subsection at the end of the preceding taxation year, and
> >
> > (ii) the total amount paid on account of the purchase price of the animal during the year.

Related Provisions: 85(1)(c.2) — Transfer of property to corporation by shareholders; 88(1.6) — Winding-up.

History: Subsec. 28(1.2) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 18(4), applicable to fiscal periods commencing after 1988. Subsec. 28(1.2) formerly read:

> (1.2) For the purpose of paragraph (1)(c) and notwithstanding section 10, inventory of a taxpayer shall be valued at any time at the lesser of the amount paid by the taxpayer at or before that time to acquire it (in this section referred to as its "cash cost") and its fair market value, except that an animal (in this section referred to as a "specified animal") that is a horse or, where the taxpayer so elects in respect thereof, is a bovine animal registered under the *Animal Pedigree Act* shall be valued
>
> > (a) at any time in the taxation year in which it is acquired, at such amount as is designated by the taxpayer not exceeding its cash cost to the taxpayer and not less than 70% of its cash cost to the taxpayer; and
> >
> > (b) at any time in any subsequent taxation year, at such amount as is designated by the taxpayer not exceeding its cash cost to the taxpayer and not less than 70% of its value determined under this subsection at the end of the preceding taxation year.

Regulations: 1801, 1802 (valuation of inventory).

Interpretation Bulletins: IT-291R3: Transfer of property to a corporation under subsection 85(1).

Forms: T2034: Election to establish inventory unit prices for animals.

(1.3) Short fiscal period — For each taxation year that is less than 51 weeks, the reference in subsection (1.2) to "70" shall be read as a reference to the number determined by the formula

$$100 - \left(30 \times \frac{A}{365} \right)$$

where

A is the number of days in the taxation year.

(2) Where joint farming or fishing business — Subsection (1) does not apply for the purpose of computing the income of a taxpayer for a taxation year from a farming or fishing business carried on by the taxpayer jointly with one or more other persons, unless each of the other persons by whom the business is jointly carried on has elected to have his or her income from the business for that year computed in accordance with the cash method.

(3) Concurrence of Minister — Where a taxpayer has filed a return of income under this Part for a taxation year wherein the taxpayer's income for that year from a farming or fishing business has been computed in accordance with the cash method, income from the business for each subsequent taxation year shall, subject to the other provisions of this Part, be computed in accordance with that method unless the taxpayer, with the concurrence of the Minister and on such terms and conditions as are specified by the Minister, adopts some other method.

(4) Non-resident — Notwithstanding subsections (1) and (5), where at the end of a taxation year a taxpayer who carried on a business the income from which was computed in accordance with the cash method is non-resident and does not carry on that business in Canada, an amount equal to the total of all amounts each of which is the fair market value of an amount outstanding during the year as or on account of a debt owing to the taxpayer that arose in the course of carrying on the business and that would have been included in computing the taxpayer's income for the year if the amount had been received by the taxpayer in the year, shall (to the extent that the amount was not otherwise included in computing the taxpayer's income for the year or a preceding taxation year) be included in computing the taxpayer's income from the business

> (a) for the year, if the taxpayer was non-resident throughout the year; and
>
> (b) for the part of the year throughout which the taxpayer was resident in Canada, if the taxpayer was resident in Canada at any time in the year.

Related Provisions: 28(5) — Accounts receivable; 128.1(4)(b) — Deemed disposition of property where taxpayer ceases to be resident in Canada; 253 — Extended meaning of "carrying on business in Canada".

History: Paras. 28(4)(a) and (b) amended by 2001, c. 17, subsec. 18(1), applicable to 1998 *et seq.* The paras. formerly read:

> (a) for the year, if section 114 is not applicable; or
>
> (b) if section 114 is applicable, for the period or periods referred to in paragraph 114(a) in respect of the year.

Subsec. 28(4) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 18(5), applicable with respect to taxpayers who cease to reside in Canada or who cease to carry on business in Canada after July 13, 1990. Subsec. 28(4) formerly read:

> (4) Change in residence — Where a taxpayer who, at a time when the taxpayer was a resident of Canada, carried on a business the income from which was computed in accordance with the method authorized by subsection (1) has, on or after disposing of or ceasing to carry on the business or a part of the business, ceased to be a resident of Canada in a taxation year, an amount equal to the value, at the time the taxpayer ceased to be a resident of Canada, of
>
> > (a) such part of the property that would have been included in the inventory of the business or the part of the business if the income from the business had not been computed in accordance with the method authorized by subsection (1) as remained the property of the taxpayer at the time the taxpayer ceased to be a resident of Canada, and
> >
> > (b) such part of amounts outstanding at the time the taxpayer ceased to be a resident of Canada as or on account of debts owing to the taxpayer that arose in the course of carrying on the

business as would have been included in computing the taxpayer's income for the year if the amounts had been received by the taxpayer in the year at a time when the taxpayer was a resident of Canada,

shall be included in computing the taxpayer's income

(c) for the year, if section 114 is not applicable, or

(d) if section 114 is applicable, for the period or periods in the year referred to in paragraph 114(a).

Interpretation Bulletins: IT-427R: Livestock of farmers.

(4.1) [Repealed]

History: Subsec. 28(4.1) repealed by 2001, c. 17, subsec. 18(2), applicable after December 23, 1998. The subsec. formerly read:

(4.1) Idem — Notwithstanding subsection (1), where at any time in a taxation year

(a) a taxpayer who carried on a business the income from which is computed in accordance with the cash method is non-resident, and

(b) a property that was inventory owned by the taxpayer in connection with the business is not used in connection with a business carried on in Canada by the taxpayer (other than inventory sold in the course of carrying on the business),

the taxpayer shall (except where this subsection applied in respect of the property at an earlier time) be deemed to have disposed of the property at that time in the course of carrying on the business for proceeds of disposition equal to its fair market value at that time and an amount equal to those proceeds shall be included in computing the taxpayer's income from the business

(c) for the year, if section 114 does not apply, or

(d) if section 114 applies, for the period or periods in the year referred to in paragraph 114(a).

Subsec. 28(4.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 18(5), applicable with respect to taxpayers who cease to reside in Canada after July 13, 1990 and with respect to property that ceases after July 13, 1990 to be used in connection with a business carried on in Canada.

(5) Accounts receivable — There shall be included in computing the income of a taxpayer for a taxation year such part of an amount received by the taxpayer in the year, on or after disposing of or ceasing to carry on a business or a part of a business, for, on account or in lieu of payment of, or in satisfaction of debts owing to the taxpayer that arose in the course of carrying on the business as would have been included in computing the income of the taxpayer for the year had the amount so received been received by the taxpayer in the course of carrying on the business.

Definitions [s. 28]: "amount", "business" — 248(1), 253; "Canada" — 255; "cash method" — 28(1), 248(1); "farming", "inventory", "Minister", "non-resident", "person", "property" — 248(1); "specified animal" — 28(1.2); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 28]: IT-156R: Feedlot operators (archived); IT-188R: Sale of accounts receivable; IT-433R: Farming or fishing — use of cash method; IT-505: Mortgage foreclosures and conditional sales repossessions (archived); IT-526: Farming — cash method inventory adjustments.

29. (1) Disposition of animal of basic herd class — Where a taxpayer has a basic herd of a class of animals and disposes of an animal of that class in the course of carrying on a farming business in a taxation year, if the taxpayer so elects in the taxpayer's return of income under this Part for the year the following rules apply:

(a) there shall be deducted in computing the taxpayer's basic herd of that class at the end of the year such number as is designated by the taxpayer in the taxpayer's election, not exceeding the least of

(i) the number of animals of that class so disposed of by the taxpayer in that year,

(ii) 1/10 of the taxpayer's basic herd of that class on December 31, 1971, and

(iii) the taxpayer's basic herd of that class of animal at the end of the immediately preceding taxation year; and

(b) there shall be deducted in computing the taxpayer's income from the farming business for the taxation year the product obtained when

(i) the number determined under paragraph (a) in respect of the taxpayer's basic herd of that class for the year

is multiplied by

(ii) the quotient obtained when the fair market value on December 31, 1971 of the taxpayer's animals of that class on that day is divided by the number of the taxpayer's animals of that class on that day.

Related Provisions: 28(1)(b) — Optional inclusion of inventory in income; 96(3) — Election by members of partnership.

Forms: T2034: Election to establish inventory unit prices for animals.

(2) Reduction in basic herd — Where a taxpayer carries on a farming business in a taxation year and the taxpayer's basic herd of any class at the end of the immediately preceding year, minus the deduction, if any, required by paragraph (1)(a) to be made in computing the taxpayer's basic herd of that class at the end of the year, exceeds the number of animals of that class owned by the taxpayer at the end of the year,

(a) there shall be deducted in computing the taxpayer's basic herd of that class at the end of the year the number of animals comprising the excess, and

(b) there shall be deducted in computing the taxpayer's income from the farming business for the taxation year the product obtained when

(i) the number of animals comprising the excess

is multiplied by

(ii) the quotient obtained when the fair market value on December 31, 1971 of the taxpayer's animals of that class on that day is divided by the number of the taxpayer's animals of that class on that day.

(3) Interpretation — For the purposes of this section,

(a) a taxpayer's "basic herd" of any class of animals at a particular time means such number of the animals of that class that the taxpayer had on hand at the end of [the taxpayer's] 1971 taxation year as were, for the purpose of assessing the taxpayer's tax under this Part for that year, accepted by the Minister, as a consequence of an application made by the taxpayer, to be capital properties and not to be stock-in-trade, minus the numbers, if any, required by virtue of this section to be deducted in computing the taxpayer's basic herd of that class at the end of taxation years of the taxpayer ending before the particular time;

(b) "class of animals" means animals of a particular species, namely, cattle, horses, sheep or swine, that are

(i) purebred animals of that species for which a certificate of registration has been issued by a person recognized by breeders in Canada of purebred animals of that species to be the registrar of the breed to which such animals belong, or issued by the Canadian National Livestock Records Corporation, or

(ii) animals of that species other than purebred animals described in subparagraph (i),

each of which descriptions in subparagraphs (i) and (ii) shall be deemed to be of separate classes, except that where the number of the taxpayer's animals described in subparagraph (i) or (ii), as the case may be, of a particular species is not greater than 10% of the total number of the taxpayer's animals of that species that would otherwise be of two separate classes by virtue of this paragraph, the taxpayer's animals described in subparagraphs (i) and (ii) of that species shall be deemed to be of a single class; and

(c) in determining the number of animals of any class on hand at any time, an animal shall not be included if it was acquired for a feeder operation, and an animal shall be included only if its actual age is not less than,

(i) in the case of cattle, 2 years,

(ii) in the case of horses, 3 years, and,

(iii) in the case of sheep or swine, one year,

except that 2 animals of a class under the age specified in subparagraph (i), (ii) or (iii), as the case may be, shall be counted as one animal of the age so specified.

Definitions [s. 29]: "basic herd" — 29(3)(a); "business" — 248(1); "capital property" — 54, 248(1); "class of animals" — 29(3)(b); "farming", "Minister", "person" — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 29]: IT-427R: Livestock of farmers.

30. Improving land for farming — Notwithstanding paragraphs 18(1)(a) and (b), there may be deducted in computing a taxpayer's income for a taxation year from a farming business any amount paid by the taxpayer before the end of the year for clearing land, levelling land or installing a land drainage system for the purposes of the business, to the extent that such amount has not been deducted in a preceding taxation year.

Related Provisions: 28(1)(g) — Deduction from farming or fishing income when using cash method.

Definitions [s. 30]: "amount", "business", "farming" — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 30]: IT-485: Cost of clearing or levelling land.

31. (1) Loss from farming where chief source of income not farming — Where a taxpayer's chief source of income for a taxation year is neither farming nor a combination of farming and some other source of income, for the purposes of sections 3 and 111 the taxpayer's loss, if any, for the year from all farming businesses carried on by the taxpayer shall be deemed to be the total of

(a) the lesser of

(i) the amount by which the total of the taxpayer's losses for the year, determined without reference to this section and before making any deduction under section 37 or 37.1, from all farming businesses carried on by the taxpayer exceeds the total of the taxpayer's incomes for the year, so determined from all such businesses, and

(ii) $2,500 plus the lesser of

(A) ½ of the amount by which the amount determined under subparagraph (i) exceeds $2,500, and

(B) $6,250, and

(b) the amount, if any, by which

(i) the amount that would be determined under subparagraph (a)(i) if it were read as though the words "and before making any deduction under section 37 or 37.1" were deleted,

exceeds

(ii) the amount determined under subparagraph (a)(i).

Related Provisions: 9(2) — Loss from business or property; 31(1.1) — Restricted farm loss; 53(1)(i) — Addition to adjusted cost base for non-deductible losses; 53(2)(c)(i)(B) — Adjusted cost base of interest in partnership; 87(2.1)(a) — Amalgamation — Restricted farm loss carried forward; 96(1) — Restricted farm loss of partner; 101 — Disposition of land used in farming business of partnership; 111(1)(c) — Carryover of restricted farm losses; 111(9) — Restricted farm loss where taxpayer not resident in Canada; 127.52(1)(i)(ii)(B) — Calculation of previous year's restricted farm loss for minimum tax purposes; 128.1(4)(f) — Restricted farm loss limitation on becoming non-resident.

History: The closing words of subsec. 31(1) repealed by 1995, c. 21, subsec. 8(1), applicable to taxation years that end after February 21, 1994. The closing words formerly read:

and for the purposes of this Act the amount, if any, by which the amount determined under subparagraph (a)(i) exceeds the amount determined under subparagraph (a)(ii) is the taxpayer's "restricted farm loss" for the year.

Selected Cases [subsec. 31(1)]: *McKinnon v. R.*, [2000] 4 C.T.C. 2061 (TCC) (Non-farming employment continued only as condition of loan to finance farming equipment); *Riveros v. R.*, [2000] 1 C.T.C. 3013 (TCC) (Test met where employment was for benefit of and subject to the farming business); *Phillips v. Canada*, [1997] 1 C.T.C. 59 (FCTD) (Consideration of psychological, physical and professional commitment as well as income and capital levels); *Moldowan v. R.*, [1977] C.T.C. 310 (SCC) (Taxpayer's chief source of income determined from reasonable expectations of income from various revenue sources and ordinary mode and habit of work); *McLaws v. R.*, [1976] C.T.C. 15 (FCTD) (Losses from raising racehorses were from business with expectation of profit).

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987.

I.T. Technical News: 30 (restricted farm losses).

(1.1) Restricted farm loss — For the purposes of this Act, a taxpayer's "restricted farm loss" for a taxation year is the amount, if any, by which

(a) the amount determined under subparagraph (1)(a)(i) in respect of the taxpayer for the year

exceeds

(b) the total of the amount determined under subparagraph (1)(a)(ii) in respect of the taxpayer for the year and all amounts each of which is an amount by which the taxpayer's restricted farm loss for the year is required to be reduced because of section 80.

Related Provisions: 80(3)(c) — Reduction in restricted farm loss on debt forgiveness; 248(1)"restricted farm loss" — Definition applies to entire Act. See also at 31(1).

History: Subsec. 31(1.1) added by 1995, c. 21, subsec. 8(2), applicable to taxation years that end after February 21, 1994.

(2) Determination by Minister — For the purpose of this section, the Minister may determine that a taxpayer's chief source of income for a taxation year is neither farming nor a combination of farming and some other source of income.

Selected Cases [subsec. 31(2)]: *Cormack v. R.*, [2000] 1 C.T.C. 2035 (T.C.C.) (Comparison of capital employed not always necessary in determining chief source).

Selected Cases [s. 31]: *Kroeker v. R.*, [2003] 1 C.T.C. 183 (FCA) (FCA overturned TCC finding that taxpayer was not a "chief source" farmer); *R. v. Donnelly*, [1998] 1 C.T.C. 23 (FCA) (Distinction between country person going to city to supplement farming income and city person going to country).

Definitions [s. 31]: "amount", "business", "farming", "Minister" — 248(1); "restricted farm loss" — 31(1.1), 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 31]: IT-156R: Feedlot operators (archived); IT-232R3: Losses — their deductibility in the loss year or in other years; IT-262R2 — Losses of non-residents and part-year residents; IT-322R: Farm losses; IT-373R2: Woodlots.

32. (1) Insurance agents and brokers [unearned commissions] — In computing a taxpayer's income for a taxation year from the taxpayer's business as an insurance agent or broker, no amount may be deducted under paragraph 20(1)(m) for the year in respect of unearned commissions from the business, but in computing the taxpayer's income for the year from the business there may be deducted, as a reserve in respect of such commissions, an amount equal to the lesser of

(a) the total of all amounts each of which is that proportion of an amount that has been included in computing the taxpayer's income for the year or a preceding taxation year as a commission in respect of an insurance contract (other than a life insurance contract) that

(i) the number of days in the period provided for in the insurance contract that are after the end of the taxation year

is of

(ii) the number of days in that period, and

(b) the total of all amounts each of which is the amount that would, but for this subsection, be deductible under paragraph 20(1)(m) for the year in respect of a commission referred to in paragraph (a).

Related Provisions: 72(1)(b) — Reserves, etc. for year of death; 87(2)(j.6) — Amalgamation — continuing corporation.

History: Subsec. 32(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 19(1), applicable to taxation years ending after 1990. Subsec. 32(1) formerly read:

> 32. (1) Paragraph 20(1)(m) does not apply to allow a deduction to an insurance agent or broker in respect of unearned commissions but a taxpayer may, in computing the taxpayer's income from a business as an insurance agent or broker for a taxation year, deduct as a reserve in respect of unearned commissions an amount equal to the proportion of an amount that has been included in computing the taxpayer's income for the year or a previous year as a commission in respect of an insurance contract, other than a life insurance contract, that
>
> (a) the number of days in that portion of the period provided for in the insurance contract that is after the end of the taxation year,
>
> is of
>
> (b) the whole of that period.

Forms: T2069: Election in respect of amounts not deductible as reserves for the year of death.

(2) Reserve to be included — There shall be included as income of a taxpayer for a taxation year from a business as an insurance agent or broker, the amount deducted under subsection (1) in computing the taxpayer's income therefrom for the immediately preceding year.

(3) Additional reserve — In computing a taxpayer's income for a taxation year ending after 1990 from a business carried on by the taxpayer throughout the year as an insurance agent or broker, there may be deducted as an additional reserve an amount not exceeding

(a) where the year ends in 1991, 90%,

(b) where the year ends in 1992, 80%,

(c) where the year ends in 1993, 70%,

(d) where the year ends in 1994, 60%,

(e) where the year ends in 1995, 50%,

(f) where the year ends in 1996, 40%,

(g) where the year ends in 1997, 30%,

(h) where the year ends in 1998, 20%,

(i) where the year ends in 1999, 10%, and

(j) where the year ends after 1999, 0%

of the amount, if any, by which

(k) the reserve that was deducted by the taxpayer under subsection (1) for the taxpayer's last taxation year ending before 1991

exceeds

(l) the amount deductible by the taxpayer under subsection (1) for the taxpayer's first taxation year ending after 1990,

and any amount so deducted by the taxpayer for a taxation year shall be deemed for the purposes of subsection (2) to have been deducted for that year pursuant to subsection (1).

Related Provisions: 87(2)(j.6) — Rules applicable — continuing corporation.

History: Subsec. 32(3) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 19(2), applicable to taxation years ending after 1990.

Definitions [s. 32]: "amount", "business" — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 32]: IT-321R: Insurance agents and brokers — unearned commissions (archived).

32.1 (1) Employee benefit plan deductions — Where a taxpayer has made contributions to an employee benefit plan in respect of the taxpayer's employees or former employees, the taxpayer may deduct in computing the taxpayer's income for a taxation year

(a) such portion of an amount allocated to the taxpayer for the year under subsection (2) by the custodian of the plan as does not exceed the amount, if any, by which

(i) the total of all amounts each of which is a contribution by the taxpayer to the plan for the year or a preceding year

exceeds the total of all amounts each of which is

(ii) an amount in respect of the plan deducted by the taxpayer in computing the taxpayer's income for a preceding year, or

(iii) an amount received by the taxpayer in the year or a preceding year that was a return of amounts contributed by the taxpayer to the plan; and

(b) where at the end of the year all of the obligations of the plan to the taxpayer's employees and former employees have been satisfied and no property of the plan will thereafter be paid to or otherwise be available for the benefit of the taxpayer, the amount, if any, by which

(i) the total of all amounts each of which is a contribution by the taxpayer to the plan for the year or a preceding year

exceeds the total of all amounts each of which is

(ii) an amount in respect of the plan deducted by the taxpayer in computing the taxpayer's income for a preceding year, or, by virtue of paragraph (a), for the year, or

(iii) an amount received by the taxpayer in the year or a preceding year that was a return of amounts contributed by the taxpayer to the plan.

Related Provisions: 6(1)(a)(ii), 6(1)(g) — Employee benefit plan benefits taxable; 12(1)(n) — Employer's income inclusion — amounts received from employees profit sharing plan; 12(1)(n.1) — Employee benefit plan; 18(1)(o) — Employee benefit plan contributions; 87(2)(j.3) — Amalgamation — continuation of corporation; 94(1)"exempt foreign trust"(f) [proposed] — Employee benefit plan excluded from non-resident trust rules; 107.1 — Distribution by employee trust or employee benefit plan; 207.6(4) — Deemed contribution.

Advance Tax Rulings: ATR-17: Employee benefit plan — purchase of company shares.

(2) **Allocation** — Every custodian of an employee benefit plan shall each year allocate to persons who have made contributions to the plan in respect of their employees or former employees the amount, if any, by which the total of

(a) all payments made in the year out of or under the plan to or for the benefit of their employees or former employees (other than the portion thereof that, by virtue of subparagraph 6(1)(g)(ii), is not required to be included in computing the income of a taxpayer), and

(b) all payments made in the year out of or under the plan to the heirs or the legal representatives of their employees or former employees

exceeds the income of the plan for the year.

Related Provisions: 32.1(3) — Income of employee benefit plan; 94(1)"exempt foreign trust"(f) [proposed] — Employee benefit plan excluded from non-resident trust rules.

(3) **Income of employee benefit plan** — For the purposes of subsection (2), the income of an employee benefit plan for a year

(a) in the case of a plan that is a trust, is the amount that would be its income for the year if section 104 were read without reference to subsections 104(4) to (24); and

(b) in any other case, is the total of all amounts each of which is the amount, if any, by which a payment under the plan by the custodian thereof in the year exceeds

(i) in the case of an annuity, that part of the payment determined in prescribed manner to have been a return of capital, and

(ii) in any other case, that part of the payment that could, but for paragraph 6(1)(g), reasonably be regarded as being a payment of a capital nature.

Regulations: 300 (prescribed manner).

Selected Cases [s. 32.1]: *J.W. Baker Agency (1976) Ltd. v. Canada*, [1989] 1 C.T.C. 246 (FCA) (Provision intended to permit spreading commissions over duration of policies).

Definitions [s. 32.1]: "amount", "annuity" — 248(1); "custodian" — 248(1)"employee benefit plan"; "employee benefit plan", "person", "prescribed", "property" — 248(1); "taxation year" — 11(2), 249.

Interpretation Bulletins [s. 32.1]: IT-502: Employee benefit plans and employee trusts.

33. [Repealed under former Act]

33.1 (1) International banking centres — definitions — In this section,

"eligible deposit", at any particular time, means a debt owing at the particular time by a taxpayer that is a prescribed financial institution as or on account of an amount deposited with the taxpayer by

(a) a non-resident person with whom the taxpayer is dealing at arm's length at the particular time, where

(i) at the particular time, the deposit is recorded in the books of account of an international banking centre business of the taxpayer,

(ii) at the particular time, the taxpayer is not obligated, either immediately or in the future and either absolutely or contingently, to repay any portion of the debt to a person other than a non-resident person, and

(iii) before the deposit was recorded in the books of account of the international banking centre business, the taxpayer made reasonable inquiries and had no reasonable cause to believe that any portion of the amount was deposited on behalf of, for the benefit of or as a condition of any transaction with, a person (other than a non-resident person with whom the taxpayer was dealing at arm's length), or

(b) another prescribed financial institution with whom the taxpayer is dealing at arm's length at the particular time, where

(i) at or before the time at which the deposit was made, the prescribed financial institution provided written notice to the taxpayer that the deposit was being made from deposits recorded in the books of account of an international banking centre business of that prescribed financial institution, and

(ii) a reasonable rate of interest is paid or payable by the taxpayer in respect of the deposit;

Related Provisions: 212(1)(b)(xi) — Non-resident withholding tax — exemption.

History: Subpara. (a)(iii) of the definition "eligible deposit" in subsec. 33.1(1) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 20(1), to substitute "(other than a non-resident person with whom the taxpayer was dealing at arm's length)" for "other than a non-resident person", applicable to deposits first recorded in the books of account of an international banking centre business after July 13, 1990.

Regulations: 7900 (prescribed financial institution).

"eligible loan", at any particular time, means

(a) a loan or deposit (in this paragraph referred to as a "loan") made by a taxpayer that is a prescribed financial institution to a non-resident person (in this paragraph referred to as the "borrower") with whom the taxpayer is dealing at arm's length at the particular time, where

(i) at the particular time, neither a person other than a non-resident person nor a person with whom the taxpayer is not dealing at arm's length is obligated to the taxpayer, either immediately or in the future and either absolutely or contingently, to pay to the taxpayer any amount in respect of the loan,

(ii) the loan was recorded in the books of account of an international banking centre business of the taxpayer throughout the period commencing with the later of

(A) the time at which the loan was made, and

(B) the earliest of

(I) the time at which the loan was first recorded in the books of account of a branch or office of the taxpayer located in Canada,

(II) the end of the first taxation year in respect of which the taxpayer has made any designation under subsection (3), and

(III) the end of 1992

and ending at the particular time,

(iii) in the case of a loan made before the end of the first taxation year in respect of which the taxpayer has made any designation under subsection (3) (other than a loan recorded in the books of account of an international banking centre business of the taxpayer at the time at which the loan was made) or a loan made to a foreign bank, the taxpayer made reasonable inquiries before the loan was recorded in the books of account of the international banking centre business and had no reasonable cause to believe that the borrower had used or would use any proceeds of the loan, directly or indirectly, for the purpose of

(A) earning income in Canada, or

(B) making a loan to a person other than a non-resident person, and

(iv) in the case of any other loan, the taxpayer, before the loan was recorded in the books of account of the international banking centre business,

(A) obtained a statement signed by or on behalf of the borrower that the borrower would not use any proceeds of the loan, directly or indirectly, for a purpose described in subparagraph (iii), and

(B) had no reasonable cause to believe that the borrower would use any proceeds of the loan, directly or indirectly, for a purpose described in subparagraph (iii),

(b) a loan acquired by a taxpayer that is a prescribed financial institution from a foreign bank with which the taxpayer is not dealing at arm's length at the time the loan was acquired, where the conditions described in subparagraphs (a)(i) to (iii) are met at the particular time, or

(c) a deposit made by a taxpayer that is a prescribed financial institution with another prescribed financial institution with whom the taxpayer is dealing at arm's length at the particular time where, at or before the time at which the deposit was made, the taxpayer provided written notice to the prescribed financial institution that the deposit was being made from deposits recorded in the books of account of an international banking centre business of the taxpayer;

Regulations: 7900 (prescribed financial institution).

"foreign bank" has the meaning assigned by the definition "foreign bank" in section 2 of the *Bank Act* (read without reference to paragraph (g)), except that an authorized foreign bank is not considered to be a foreign bank in respect of its Canadian banking business;

Related Provisions: 142.7 — Foreign banks — conversion from subsidiary to branch; 248(1)"authorized foreign bank" — Foreign bank branches.

History: The definition "foreign bank" in subsec. 33.1(1) amended by 2001, c. 17, s. 19, applicable after June 27, 1999. The definition formerly read:

> "foreign bank" has the meaning that would be assigned by the definition "foreign bank" in subsection 2(1) of the *Bank Act* if that definition were read without reference to paragraph (g) thereof;

"non-resident person" at any time, with respect to a taxpayer, includes a person that the taxpayer, based on reasonable inquiries, believes at that time to be a person not resident in Canada.

(2) Interpretation — For the purposes of this section,

(a) a partnership shall be deemed to be a person;

(b) where a member of a partnership and a person do not deal with each other at arm's length, the partnership and the person shall be deemed not to deal with each other at arm's length;

(c) a partnership is a non-resident person only where all of its members are non-resident persons; and

(d) a deposit made by or to a non-resident person or a loan made to a non-resident person does not include a deposit made by or to, or a loan made to, as the case may be, a fixed place of business in Canada of the non-resident person.

(3) Designation and exemption — Where a taxpayer that was, throughout a taxation year, a prescribed financial institution has designated in respect of the year, by filing a prescribed form with the Minister on or before the day that is 90 days after the commencement of the year, a branch or office of the taxpayer in the metropolitan area of Montreal in the Province of Quebec or in the metropolitan area of Vancouver in the Province of British Columbia as a branch or office in which an international banking centre business of the taxpayer is to be carried on and has not revoked that designation by filing a prescribed form with the Minister on or before that day, in computing the income of the taxpayer for the year no amount shall be added or deducted in respect of the taxpayer's income or loss, as the case may be, for the year from the international banking centre business.

Related Provisions: 33.1(5) — Restriction; 33.1(6) — Election; 33.1(7) — Election restriction; 33.1(9) — Exception where less than 90% of revenue from eligible loans; 33.1(12) — Return; 87(2)(j.8) — Amalgamations — continuing corporation.

Regulations: 7900 (prescribed financial institution).

Forms: T781: Designation as an international banking centre; T781-C: Revocation of designation as an international banking centre.

(4) Income or loss from an international banking centre business — Subject to subsection (5), the amount of a taxpayer's income or loss, as the case may be, for a taxation year from an international banking centre business shall be determined on the assumption that

(a) the international banking centre business was a separate business carried on by the taxpayer the only income or loss of which was derived from eligible loans for the period in the year during which they were recorded in the books of account of the business; and

(b) the only amount payable for the year by the taxpayer in respect of interest on money borrowed for the purpose of earning income from the business was equal to the total of

(i) the total of all amounts each of which is the interest payable by the taxpayer in respect of an eligible deposit for the period in the year during which it was recorded in the books of account of the business, and

(ii) the amount equal to that proportion of

(A) the total of all amounts each of which is the amount determined in respect of a day in the year equal to the amount, if any, by which

(I) 96% of the total of all amounts each of which is the amount outstanding on account of the principal amount of an eligible loan

recorded in the books of account of the business at the end of the day

exceeds

(II) the total of all amounts each of which is the amount outstanding on account of the principal amount of an eligible deposit recorded in the books of account of the business at the end of the day

that

(B) the total determined under subparagraph (i)

is of

(C) the total of all amounts each of which is the amount outstanding on account of the principal amount of an eligible deposit recorded in the books of account of the business at the end of a day in the year.

Related Provisions: 33.1(6) — Election; 33.1(10) — No deduction permitted; 33.1(11) — Rules clarifying application of provision; 87(2)(j.8) — Amalgamations — continuing corporation.

(5) Restriction — A taxpayer's income for a taxation year from an international banking centre business shall not exceed that proportion of such income determined in accordance with subsection (4) that

(a) the total of all amounts each of which is an amount determined in respect of a day in the year equal to the lesser of

(i) 96% of the total of all amounts each of which is the amount outstanding on account of the principal amount of an eligible loan recorded in the books of account of the business at the end of the day, and

(ii) the total of all amounts each of which is the amount outstanding on account of the principal amount of an eligible deposit recorded in the books of account of the business at the end of the day

is of

(b) 96% of the total of all amounts each of which is the amount outstanding on account of the principal amount of an eligible loan recorded in the books of account of the business at the end of a day in the year.

Related Provisions: 33.1(6) — Election.

(6) Election — For the purposes of subsections (4) and (5), where a taxpayer so elects in the taxpayer's return of income for a taxation year or in a prescribed form filed with the Minister within 90 days after the day of mailing of a notice of assessment for the year or a notification that no tax is payable for the year, an eligible deposit recorded in the books of account of an international banking centre business of the taxpayer at the end of a day in the year shall be deemed not to have been recorded at any time in the day in the books of account of that business and shall be deemed to have been recorded throughout that day in the books of account of another international banking centre business of the taxpayer designated by the taxpayer in the election.

Related Provisions: 33.1(7) — Election restriction.

Forms: T781-B: Election re deemed transfers of eligible deposits between international banking centres.

(7) Election restriction — A taxpayer may elect, as provided in subsection (6), only in respect of eligible deposits recorded in the books of account of an international banking centre business at the end of a day to the extent that the total of those deposits exceeds 96% of the total of all amounts outstanding on account of the principal amounts of eligible loans recorded in the books of account of the business at the end of the day.

History: Subsec. 33.1(7) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 20(2), to substitute "96% of the total" for "the total", applicable to taxation years commencing after December 17, 1987.

(8) Limitation — In computing the income of a taxpayer for a taxation year, an amount paid or payable by the taxpayer on a deposit for the period in the year during which it was an eligible deposit shall, notwithstanding any other provision of this Act, be deductible only in computing the income or loss of the taxpayer from an international banking centre business.

(9) Exception — Where less than 90% of the revenue of a taxpayer for a taxation year from loans or deposits for the period in the year during which they were recorded in the books of account of an international banking centre business was derived from eligible loans in respect of which employees of the taxpayer actively participated in the solicitation, negotiation, analysis or management thereof while employed at a branch or office designated under subsection (3) as a branch or office in which an international banking centre business of the taxpayer is to be carried on, the amount, if any, of the taxpayer's income for the year from the international banking centre business shall, notwithstanding subsection (3), be included in computing the taxpayer's income for the year.

(10) No deduction permitted — Notwithstanding any other provision of this Act, in computing the income of a taxpayer no deduction shall be made in respect of any amount paid or payable in respect of indebtedness of the taxpayer to any person where, under an arrangement of which the taxpayer was aware or ought to have been aware at the time the indebtedness was incurred by the taxpayer, any portion of the indebtedness may reasonably be regarded as having been provided directly or indirectly from proceeds of a loan recorded in the books of account of an international banking centre business of a prescribed financial institution and any person has, in respect of that loan, signed a statement described in subparagraph (a)(iv) of the definition "eligible loan" in subsection (1).

Regulations: 7900 (prescribed financial institution).

(11) Application — For greater certainty,

(a) where at any time a loan or deposit of a taxpayer ceases to be an eligible loan otherwise than by virtue of its disposition to another person, the taxpayer shall be deemed to have disposed of the loan or deposit in the course of carrying on an international banking centre business and to have received proceeds of disposition therefor equal to the fair market value of the loan or deposit at that time and to have reacquired the loan or deposit immediately after that time at a cost equal to its fair market value at that time;

(b) a taxpayer's loss for a taxation year from an international banking centre business shall not be included in determining the taxpayer's non-capital loss for the year; and

(c) the amount, if any, by which

(i) the amount that would be a taxpayer's income for a taxation year from an international banking centre business if this section were read without reference to subsection (5)

exceeds

(ii) the taxpayer's income for the year from the international banking centre business

shall be added in computing the income of the taxpayer for the year.

Related Provisions: 54"superficial loss"(c) — Superficial loss rule does not apply.

(12) Return — Every taxpayer that has, in respect of a taxation year, designated a branch or office under subsection (3) as a branch or office in which an international banking centre business of the taxpayer is to be carried on shall, within six months after the end of the year, file with the Minister a return in prescribed form containing prescribed information.

Forms: T781-A: International banking centre information return.

Definitions [s. 33.1]: "amount" — 248(1); "arm's length" — 251(1); "assessment", "authorized foreign bank", "borrowed money", "business", "Canadian banking business" — 248(1); "carrying on business" — 253; "eligible deposit", "eligible loan" — 33.1(1); "employed" — 248(1); "foreign bank" — 33.1(1); "Minister" — 248(1); "non-capital loss" — 111(8), 248(1); "non-resident" — 33.1(1), 248(1); "office", "person", "prescribed", "principal amount" — 248(1); "person" — 33.1(2), 248(1); "resident in Canada" — 250; "taxation year" — 249; "taxpayer" — 248(1).

34. Professional business — In computing the income of a taxpayer for a taxation year from a business that is the professional practice of an accountant, dentist, lawyer, medical doctor, veterinarian or chiropractor, the following rules apply:

(a) where the taxpayer so elects in the taxpayer's return of income under this Part for the year, there shall not be included any amount in respect of work in progress at the end of the year; and

(b) where the taxpayer has made an election under this section, paragraph (a) shall apply in computing the taxpayer's income from the business for all subsequent taxation years unless the taxpayer, with the concurrence of the Minister and on such terms and conditions as are specified by the Minister, revokes the election to have that paragraph apply.

Related Provisions: 10(4)(a) — Valuation of work in progress; 10(5)(a) — Work in progress deemed to be inventory; 23(3) — Reference to property included in inventory; 34.2(2)(b) — Election deemed to have been made for purposes of 1995 stub period income; 70(2) — Rights or things included in income on death; 96(3) — Election by members of partnership.

Selected Cases [s. 34]: *Ferro v. R.*, [2003] 2 C.T.C. 2461 (TCC) (Cash disbursements deductible in year incurred where lawyer worked on contingency only, notwithstanding election).

Definitions [s. 34]: "amount", "business" — 248(1); "lawyer" — 232(1), 248(1); "Minister", "property" — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

I.T. Application Rules [s. 34]: 23(3)–(5) (where business carried on since before 1972).

Interpretation Bulletins [s. 34]: IT-188R: Sale of accounts receivable; IT-189R2: Corporations used by practising members of professions; IT-212R3: Income of deceased persons — rights or things; IT-278R2: Death of a partner or of a retired partner; IT-457R: Election by professionals to exclude work in progress from income; IT-471R: Merger of partnerships.

Forms [s. 34]: T2032: Statement of professional activities.

34.1 (1) Additional business income [off-calendar fiscal period] — Where

(a) an individual (other than a testamentary trust) carries on a business in a taxation year,

(b) a fiscal period of the business begins in the year and ends after the end of the year (in this subsection referred to as the "particular period"), and

(c) the individual has elected under subsection 249.1(4) in respect of the business and the election has not been revoked,

there shall be included in computing the individual's income for the year from the business, the amount determined by the formula

$$(A - B) \times \frac{C}{D}$$

where

A is the total of the individual's income from the business for the fiscal periods of the business that end in the year,

B is the lesser of

(i) the total of all amounts each of which is an amount included in the value of A in respect of the business and that is deemed to be a taxable capital gain for the purpose of section 110.6, and

(ii) the total of all amounts deducted under section 110.6 in computing the individual's taxable income for the year,

C is the number of days on which the individual carries on the business that are both in the year and in the particular period, and

D is the number of days on which the individual carries on the business that are in fiscal periods of the business that end in the year.

Related Provisions: 11(1) — Determination of income from fiscal period of proprietor; 34.1(3) — Offsetting deduction in following year; 34.1(4) — Effect on 1995 stub period; 34.1(7) — Maximum December 31, 1995 income; 34.1(8) — No additional inclusion on death, bankruptcy or cease of business; 96(1.01)(a) — Income allocation to former partner; 96(1.1), (1.6) — Allocation of share of income to retiring partner; 257 — Formula cannot calculate to less than zero.

Selected Cases [subsec. 34.1(1)]: *Cho v. R.*, [2000] 2 C.T.C. 2714 (TCC) (Provision applies to businesses started before end of 1994).

Forms: RC4015: Reconciliation of business income for tax purposes [guide]; T1139: Reconciliation of business income for tax purposes.

(2) Additional income election — Where

(a) an individual (other than a testamentary trust) begins carrying on a business in a taxation year and not earlier than the beginning of the first fiscal period of the business that begins in the year and ends after the end of the year (in this subsection referred to as the "particular period"), and

(b) the individual has elected under subsection 249.1(4) in respect of the business and the election has not been revoked,

there shall be included in computing the individual's income for the year from the business the lesser of

(c) the amount designated in the individual's return of income for the year, and

(d) the amount determined by the formula

$$(A - B) \times \frac{C}{D}$$

where

A is the individual's income from the business for the particular period,

B is the lesser of

(i) the total of all amounts each of which is an amount included in the value of A in respect of the business and that is deemed to be a taxable capital gain for the purpose of section 110.6, and

(ii) the total of all amounts deducted under section 110.6 in computing the individual's taxable

income for the taxation year that includes the end of the particular period,

C is the number of days on which the individual carries on the business that are both in the year and in the particular period, and

D is the number of days on which the individual carries on the business that are in the particular period.

Related Provisions: 34.1(3) — Offsetting deduction in following year; 34.1(5) — Effect on 1995 stub period; 34.1(6) — Deemed December 31, 1995 income; 34.1(8) — No additional inclusion on death, bankruptcy or cease of business; 96(1.01)(a) — Income allocation to former partner; 96(1.1), (1.6) — Allocation of share of income to retiring partner; 257 — Formula cannot calculate to less than zero.

Forms: RC4015: Reconciliation of business income for tax purposes [guide]; T1139: Reconciliation of business income for tax purposes.

(3) Deduction — There shall be deducted in computing an individual's income for a taxation year from a business the amount, if any, included under subsection (1) or (2) in computing the individual's income for the preceding taxation year from the business.

(4) Deemed December 31, 1995 income — For the purpose of section 34.2, where

(a) at the end of 1994 an individual carried on a particular business no fiscal period of which ended at that time, and

(b) an amount is included under subsection (1) in computing the individual's income for the 1995 taxation year in respect of

(i) the particular business, or

(ii) another business that would, if subsection 34.2(3) applied for the purpose of this subparagraph, be included in the particular business,

subject to subsection (7), the December 31, 1995 income of the individual in respect of the particular business or the other business, as the case may be, is deemed to be the amount that would have been so included if the descriptions of A and B in subsection (1) were read as follows:

"A is the total of the individual's income from the business for the fiscal periods of the business that end in the year (determined as if paragraphs 34.2(2)(a) to (d) applied in computing that income),

B is the lesser of

(i) the total of all amounts each of which is an amount included in the value of A in respect of the business and that is deemed to be a taxable capital gain for the purpose of section 110.6, and

(ii) the total of the maximum amounts deductible under section 110.6 in computing the individual's taxable income for the year,".

Related Provisions: 96(1.01)(a) — Income allocation to former partner.

(5) Deemed December 31, 1995 income — For the purpose of section 34.2, where

(a) at the end of 1994 an individual carried on a particular business no fiscal period of which ended at that time, and

(b) an amount is included under subsection (2) in computing the individual's income for the 1995 taxation year in respect of another business that would, if subsection 34.2(3) applied for the purpose of this paragraph, be included in the particular business,

the December 31, 1995 income of the individual in respect of the other business is deemed to be the amount that would have been so included if the descriptions of A and B in paragraph (2)(d) were read as follows:

"A is the individual's income from the business for the particular period (determined as if paragraphs 34.2(2)(a) to (d) applied in computing that income),

B is the lesser of

(i) the total of all amounts each of which is an amount included in the value of A in respect of the business and that is deemed to be a taxable capital gain for the purpose of section 110.6, and

(ii) the total of the maximum amounts deductible under section 110.6 in computing the individual's taxable income for the taxation year that includes the end of the particular period,".

Related Provisions: 96(1.01)(a) — Income allocation to former partner.

(6) Deemed December 31, 1995 income — For the purpose of section 34.2, where

(a) at the end of 1995 an individual carries on a business as a member of a partnership no fiscal period of which ended at the end of 1994,

(b) the business was carried on by a professional corporation as a member of the partnership at the end of 1994,

(c) the professional corporation transferred its interest in the partnership to the individual before the end of 1995,

(d) the individual is a practising member of the professional body under the authority of which the professional corporation practised the profession,

(e) the individual was a specified shareholder of the professional corporation immediately before the transfer,

(f) the professional corporation does not have a share of the income or loss of the partnership for the first fiscal period of the partnership that ends after the end of 1995, and

(g) an amount is included under subsection (2) in computing the individual's income for the 1995 taxation year in respect of the business,

the December 31, 1995 income of the individual in respect of the business is deemed to be the amount that would have been so included if the descriptions of A and B in paragraph (2)(d) were read as follows:

"A is the individual's income from the business for the particular period (determined as if paragraphs 34.2(2)(a) to (d) applied in computing that income),

B is the lesser of

(i) the total of all amounts each of which is an amount included in the value of A in respect of the business and that is deemed to be a taxable capital gain for the purpose of section 110.6, and

(ii) the total of the maximum amounts deductible under section 110.6 in computing the individual's taxable income for the taxation year that includes the end of the particular period,"

and, for the purpose of computing the values of C and D in paragraph (2)(d), the individual is deemed to carry on the business on the days on which the corporation carried on the business.

Related Provisions: 96(1.01)(a) — Income allocation to former partner.

(7) Maximum December 31, 1995 income — Where an amount was included under subsection (1) in computing an individual's income for the 1995 taxation year from a business and

(a) the individual's December 31, 1995 income otherwise determined under subsection (4) in respect of the business for the purpose of section 34.2

exceeds

(b) the amount that would be described under paragraph (a) if the descriptions of A, B and D in subsection (1) were read as follows:

"A is the individual's income from the business for the particular period (determined as if paragraphs 34.2(2)(a) to (d) applied in computing that income),

B is the lesser of

(i) the total of all amounts each of which is an amount included in the value of A in respect of the business and that is deemed to be a taxable capital gain for the purpose of section 110.6, and

(ii) the total of the maximum amounts deductible under section 110.6 in computing the individual's taxable income for the taxation year that includes the end of the particular period,

D is the number of days on which the individual carries on the business that are in the particular period."

for the purpose of applying subsection 34.2(4) to the 1996 and subsequent taxation years, the December 31, 1995 income of the individual in respect of the business is deemed to be the amount determined under paragraph (b).

(8) No additional income inclusion — Subsections (1) and (2) do not apply in computing an individual's income for a taxation year from a business where

(a) the individual dies or otherwise ceases to carry on the business in the year; or

(b) the individual becomes a bankrupt in the calendar year in which the taxation year ends.

Related Provisions: 34.1(9) — Income inclusion on death where election made or separate return filed.

(9) Death of partner or proprietor — Where

(a) an individual carries on a business in a taxation year,

(b) the individual dies in the year and after the end of a fiscal period of the business that ends in the year,

(c) another fiscal period of the business ends because of the individual's death (in this subsection referred to as the "short period"), and

(d) the individual's legal representative

(i) elects that this subsection apply in computing the individual's income for the year, or

(ii) files a separate return of income under subsection 150(4) in respect of the individual's business,

notwithstanding subsection (8), there shall be included in computing the individual's income for the year from the business, the amount determined by the formula

$$(A - B) \times C/D$$

where

A is the total of the individual's income from the business for fiscal periods (other than the short period) of the business that end in the year,

B is the lesser of

(i) the total of all amounts, each of which is an amount included in the value of A in respect of the business that is deemed to be a taxable capital gain for the purpose of section 110.6, and

(ii) the total of all amounts deducted under section 110.6 in computing the individual's taxable income for the year,

C is the number of days in the short period, and

D is the total number of days in fiscal periods of the business (other than the short period) that end in the year.

Related Provisions: 96(1.01)(a) — Income allocation to former partner; 257 — Formula cannot calculate to less than zero; 150(4)(c)C — Additional amount deductible on deceased's separate return.

History: Subsec. 34.1(9) added by 1998, c. 19, s. 84, applicable to 1996 *et seq.*, except that subpara. 34.1(9)(d)(ii) does not apply to the 1996 and 1997 taxation years.

History [s. 34.1]: S. 34.1 added by 1996, c. 21, s. 8, applicable after 1994.

Selected Cases [s. 34.1]: *McLauchlin v. R.*, [2002] 2 C.T.C. 2935 (TCC) (Net, not gross, figures used in provision).

Definitions [s. 34.1]: "amount", "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "December 31, 1995 income" — 34.1(4)–(7), 34.2(1); "fiscal period" — 249.1; "individual", "legal representative" — 248(1); "particular period" — 34.1(1)(b), 34.1(2)(a); "professional corporation" — 248(1); "short period" — 34.1(9)(c); "specified shareholder" — 248(1); "taxable capital gain" — 38, 248(1); "taxation year" — 249; "testamentary trust" — 108(1), 248(1).

34.2 [1995 stub period reserve] — (1) Definitions — The definitions in this subsection apply in this section.

"December 31, 1995 income" in respect of a business carried on by a taxpayer means the amount determined by the formula

$$(A - B - C + D) \times E$$

where

A is the total of all amounts each of which is the taxpayer's income from the business for a qualifying fiscal period,

B is the total of all amounts each of which is the taxpayer's loss from the business for a qualifying fiscal period,

C is the lesser of

(a) the total of all amounts each of which is an amount included in computing the taxpayer's income or loss from the business for a qualifying fiscal period and that is deemed to be a taxable capital gain for the purpose of section 110.6, and

(b) the total of the maximum amounts deductible under section 110.6 in computing the taxpayer's taxable income for the taxation year in which the qualifying fiscal periods end,

D is

(a) where the taxpayer is a professional corporation, the total salary or wages deductible in computing the value of A or B in respect of the business that is payable by the corporation to an individual

(i) who is a practising member of the professional body under the authority of which the corporation practised the profession, and

(ii) who is a specified shareholder of the corporation, and

(b) in any other case, nil, and

E is

(a) where the taxpayer is a professional corporation a taxation year of which ended at the end of 1995 because of the application of paragraph 249.1(1)(b), the amount determined by the formula

$$\frac{F - G}{F}$$

where

F is the number of days in all qualifying fiscal periods of the business, and

G is the number of days in the year, and

(b) in any other case, 1.

Related Provisions: 34.1(7) — Maximum December 31, 1995 income where additional amount included under 34.1(1); 34.2(2) — Maximum reserves and allowances deemed claimed for qualifying fiscal period; 96(1.1), (1.6) — Allocation of share of income to retiring partner; 257 — Formulas cannot calculate to less than zero.

"qualifying fiscal period" of a business of a taxpayer means

(a) where at the end of 1994 the taxpayer carried on the business and no fiscal period of the business ended at that time, a fiscal period of the business that

(i) begins after the beginning of the taxpayer's taxation year that includes the end of 1995, and

(ii) ends

(A) at the end of 1995 because of the application of paragraph 249.1(1)(b) or because of the application of section 25 and paragraph 249.1(1)(b), or

(B) immediately before the end of 1995 because of the application of subsection 99(2) and paragraph 249.1(1)(b),

(b) a fiscal period of the business that ends at the end of 1995 because of the application of paragraph 249.1(1)(b) where

(i) the taxpayer is an individual who carries on the business as a member of a partnership at the end of 1995,

(ii) the individual acquired the individual's interest in the partnership in 1995 from a professional corporation,

(iii) the professional corporation carried on the business at the end of 1994 as a member of the partnership and does not have a share of the income or loss of the partnership for the fiscal period,

(iv) the individual is a practising member of the professional body under the authority of which the professional corporation practised the profession, and

(v) the individual was a specified shareholder of the professional corporation immediately before acquiring the interest, and

(c) where

(i) the taxpayer is a professional corporation that has a taxation year that ends at the end of 1995 because of the application of paragraph 249.1(1)(b), and

(ii) at the end of 1994 the business was carried on by the professional corporation as a member of a partnership, or by an individual

(A) who transferred an interest in the partnership to the professional corporation before the end of 1995,

(B) who is a practising member of the professional body under the authority of which the professional corporation practises the profession,

(C) who was a specified shareholder of the professional corporation immediately after the transfer, and

(D) who does not have a share of the income or loss of the partnership for the first fiscal period of the partnership that ends in 1995,

a fiscal period of the business that ends in that taxation year.

"specified percentage" of a taxpayer for a particular taxation year in respect of a business means

(a) where the first taxation year in which a qualifying fiscal period of the business ends is 1995, or subsection 34.1(4), (5) or (6) applies in respect of the business, and the particular year ends in

(i) 1995, 95%,

(ii) 1996, 85%,

(iii) 1997, 75%,

(iv) 1998, 65%,

(v) 1999, 55%,

(vi) 2000, 45%,

(vii) 2001, 35%,

(viii) 2002, 25%,

(ix) 2003, 15%, and

(x) any other year, 0%, and

(b) where the first taxation year in which a qualifying fiscal period of a business of the taxpayer ends is 1996 and the particular year ends in

(i) 1996, 95%,

(ii) 1997, 85%,

(iii) 1998, 75%,

(iv) 1999, 65%,

(v) 2000, 55%,

(vi) 2001, 45%,

(vii) 2002, 35%,

(viii) 2003, 25%,

(ix) 2004, 15%, and

(x) any other year, 0%.

(2) Computation of December 31, 1995 income — For the purpose of the definition "December 31, 1995 income" in subsection (1), a taxpayer's income or loss from

a business for a qualifying fiscal period shall be computed as if

(a) this Act were read without reference to paragraph 28(1)(b);

(b) the taxpayer had made the election referred to in paragraph 34(a) in respect of the business for the period;

(c) the maximum amount deductible in respect of any reserve, allowance or other amount were deducted; and

(d) the taxpayer had not received any taxable dividend.

Related Provisions: 96(1.01)(a) — Income allocation to former partner.

(3) Business defined — For the purposes of the definition "qualifying fiscal period" in subsection (1) and subparagraphs (6)(b)(i) and (c)(i), a reference to a particular business of a taxpayer includes another business substituted therefor, or for which the particular business was substituted, by the taxpayer where

(a) all or substantially all of the gross revenue of the particular business is derived from the sale, leasing, rental or development of properties or the rendering of services; and

(b) all or substantially all of the gross revenue of the other business is derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services.

Related Provisions: 34.2(7) — Anti-avoidance rule re carrying on business.

(4) Reserve — Subject to subsection (6), where a taxpayer carries on a business in a particular taxation year, there may be deducted in computing the taxpayer's income for the year from the business, as a reserve in respect of December 31, 1995 income, such amount as the taxpayer claims not exceeding the least of

(a) the specified percentage for the particular year of the taxpayer's December 31, 1995 income in respect of the business;

(b) where an amount was deductible under this subsection in computing the taxpayer's income for a preceding taxation year from the business, the amount included under subsection (5) in computing the taxpayer's income for the particular year from the business; and

(c) the taxpayer's income for the particular year computed before deducting any amount under this subsection in respect of the business or under any of paragraph 60(w), sections 61.2 to 61.4 and subsection 80(17).

Related Provisions: 18(12)(b) — Reserve ignored for purposes of home office limitations; 34.1(7) — Maximum December 31, 1995 income where additional amount included under 34.1(1); 34.2(3) — Similar business carried on; 34.2(5) — Reserve included in income the following year; 34.2(6) — No reserve on death, bankruptcy or cease of business; 34.2(8) — Reserve deduction in year of death; 53(2)(c)(i.4) — Reduction in ACB of passive partner's partnership interest; 87(2)(j) — Amalgamations — continuing corporation; 96(1)(d) — Reserve ignored in determining income of partnership; 96(1.01)(a) — Income allocation to former partner; 96(1.1), (1.6) — Allocation of share of income to retiring partner; 125(7)"specified partnership income"A(a)H — Reserve deducted from specified partnership income for CCPC that is member of partnership.

Forms: RC4015: Reconciliation of business income for tax purposes [guide]; T1139: Reconciliation of business income for tax purposes; T4002: Business and professional income [guide].

(5) Reserve included in income — There shall be included in computing a taxpayer's income for a taxation year from a business the amount deducted under subsection (4) in computing the taxpayer's income therefrom for the preceding taxation year.

Related Provisions: 87(2)(j) — Amalgamations — continuing corporation; 125(7)"specified partnership income"A(a)G — Reserve included in specified partnership income for CCPC that is member of partnership.

Forms: T1139: Reconciliation of business income for tax purposes.

(6) No reserve — No deduction shall be made under subsection (4) in computing a taxpayer's income for a taxation year from a business where

(a) at the end of the year or at any time in the following taxation year,

(i) the taxpayer's income from the business is exempt from tax under this Part, or

(ii) the taxpayer is non-resident and does not carry on the business through a permanent establishment (as defined by regulation) in Canada;

(b) the taxpayer is a corporation and the year ends immediately before another taxation year

(i) at the beginning of which the business is not carried on principally by the corporation nor by members of a partnership of which the corporation is a member,

(ii) in which the corporation becomes a bankrupt, or

(iii) in which the corporation is dissolved or wound up (other than in circumstances to which subsection 88(1) applies); or

(c) the taxpayer is an individual, and

(i) at the beginning of the year, the business is not carried on principally by the individual nor by members of a partnership of which the individual is a member,

(ii) the individual dies or becomes a bankrupt in the calendar year in which the taxation year ends, or

(iii) the individual is a trust that ceases to exist in the year.

Related Provisions: 34.2(7) — Anti-avoidance rule re carrying on business; 34.2(8) — Optional deduction in year of death; 96(1.1) — Retired partner deemed to continue as member of partnership; 96(1.6) — Members of partnership deemed to be carrying on business in Canada (except where 34.2(7) applies).

Regulations: 8201 (permanent establishment).

(7) Anti-avoidance rule — Where it is reasonable to conclude that one of the main reasons a person carries on a business or is a member of a partnership is to avoid the application of subparagraph (6)(b)(i) or (c)(i), the person is deemed not to carry on the business, and not to be a member of the partnership, for the purposes of those subparagraphs.

(8) Death of partner or proprietor — Where

(a) an individual carries on a business in a taxation year,

(b) the individual dies in the year,

(c) an amount is included under subsection (5) in computing the individual's income for the year from the business, and

(d) the individual's legal representative

(i) elects that this subsection apply in computing the individual's income for the year, or

(ii) files a separate return of income under subsection 150(4) in respect of the individual's business,

there shall be deducted in computing the individual's income for the year from the business the lesser of

(e) the greatest amount that would have been deductible under subsection (4) in computing the individual's income for the year from the business if the individual had not died, and

(f) any amount that the representative claims.

Related Provisions: 96(1.01)(a) — Income allocation to former partner; 150(4)(c)B — Additional amount taxable on deceased's separate return.

History: Subsec. 34.2(8) added by 1998, c. 19, s. 85, applicable to 1996 *et seq.*

History [s. 34.2]: S. 34.2 added by 1996, c. 21, s. 8, applicable after 1994.

Definitions [s. 34.2]: "amount", "bankrupt" — 248(1); "business" — 34.2(3), (7), 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "corporation" — 248(1), *Interpretation Act* 35(1); "December 31, 1995 income" — 34.1(4)–(7), 34.2(1); "fiscal period" — 249.1; "gross revenue" — 248(1); "income or loss from a business" — 34.2(2); "individual", "legal representative", "non-resident" — 248(1); "permanent establishment" — Reg. 8201; "person", "professional corporation" — 248(1); "qualifying fiscal period" — 34.2(1); "regulation" — 248(1); "specific percentage" — 34.2(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

35. (1) Prospectors and grubstakers — Where a share of the capital stock of a corporation

(a) is received in a taxation year by an individual as consideration for the disposition by the individual to the corporation of a mining property or interest therein acquired by the individual as a result of the individual's efforts as a prospector, either alone or with others, or

Proposed Amendment — 35(1)(a)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 208(1), will amend para. 35(1)(a) by substituting "an interest, or for civil law a right," for "interest", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(b) is received in a taxation year

(i) by a person who has, either under an arrangement with a prospector made before the prospecting, exploration or development work or as an employer of a prospector, advanced money for, or paid part or all of, the expenses of prospecting or exploring for minerals or of developing a property for minerals, and

(ii) as consideration for the disposition by the person referred to in subparagraph (i) to the corporation of a mining property or interest therein acquired under the arrangement under which that person made the advance or paid the expenses, or if the prospector was the person's employee, acquired by the person through the employee's efforts,

Proposed Amendment — 35(1)(b)(ii)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 208(2), will amend subpara. 35(1)(b)(ii) by substituting "an interest, or for civil law a right," for "interest", and "prospector's employee" for "prospector was the person's employee", to come into force on Royal Assent.

Technical Notes: See under 12(4).

the following rules apply:

(c) notwithstanding any other provision of this Act, no amount in respect of the receipt of the share shall be included

(i) in computing the income for the year of the individual or person, as the case may be, except as provided in paragraph (d), or

(ii) in computing at any time the amount to be determined for F in the definition "cumulative Canadian development expense" in subsection 66.2(5) in respect of the individual or person, as the case may be,

(d) in the case of an individual or partnership (other than a partnership each member of which is a taxable Canadian corporation), an amount in respect of the receipt of the share equal to the lesser of its fair market value at the time of acquisition and its fair market value at the time of disposition or exchange of the share shall be included in computing the income of the individual or partnership, as the case may be, for the year in which the share is disposed of or exchanged,

(e) notwithstanding subdivision c, in computing the cost to the individual, person or partnership, as the case may be, of the share, no amount shall be included in respect of the disposition of the mining property or the interest therein, as the case may be,

(f) notwithstanding sections 66 and 66.2, in computing the cost to the corporation of the mining property or the interest therein, as the case may be, no amount shall be included in respect of the share, and

Proposed Amendment — 35(1)(e), (f)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 208(3), will amend paras. 35(1)(e) and (f) by substituting "interest, or for civil law the right," for "interest" in each, to come into force on Royal Assent.

Technical Notes: See under 12(4).

(g) for the purpose of paragraph (d), an individual or partnership shall be deemed to have disposed of or exchanged shares that are identical properties in the order in which they were acquired.

Related Provisions: 35(2) — "prospector"; 81(1)(l) — Income exemption; 110(1)(d.2) — Deduction in computing taxable income; 110.6(19)(a)(i)(A)B — Election to trigger capital gains exemption — no income inclusion; 248(12) — Identical properties.

Selected Cases [subsec. 35(1)]: *Geophysical Engineering Ltd. v. MNR*, [1976] C.T.C. 687 (SCC) (Shares obtained in consideration for syndicate member's interest in claims staked by another member's employee as prospector not obtained for property acquired under arrangement with prospector, nor as employer of prospector); *Winchell v. MNR*, [1974] C.T.C. 782 (FCA) (Arrangement with prospector's employer, not with prospector); *Appleby v. MNR*, [1974] C.T.C. 693 (SCC) (No exemption for disposition of shares during sales campaign by stock brokerage company controlled by taxpayer).

Interpretation Bulletins: IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits (archived).

(2) Definitions — In this section,

"mining property" means

(a) a right, licence or privilege to prospect, explore, drill or mine for minerals in a mineral resource in Canada, or

(b) real property in Canada (other than depreciable property) the principal value of which depends on its mineral resource content;

Proposed Amendment — 35(2)"mining property"(b)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 208(4), will amend para. (b) of the definition "mining property" in subsec. 35(2) by substituting "real property or an immovable" for "real property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

Related Provisions: 66.21 — Foreign mining properties.

History: The definition "mining property" in subsec. 35(2) amended by 2001, c. 17, s. 20, applicable to shares received after December 21, 2000. The definition formerly read:

> "mining property" means a right to prospect, explore or mine for minerals or a property the principal value of which depends on its mineral content;

"prospector" means an individual who prospects or explores for minerals or develops a property for minerals on behalf of the individual, on behalf of the individual and others or as an employee.

Selected Cases [subsec. 35(2)"prospector"]: *Foster v. MNR*, [1971] C.T.C. 335 (Exch.) ("Prospector" includes independent contractor).

Definitions [s. 35]: "amount" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "corporation" — 248(1), *Interpretation Act* 35(1); "depreciable property" — 13(21), 248(1); "employee", "employer" — 248(1); "identical" — 248(12); "immovable" — Quebec *Civil Code* art. 900–907; "individual", "mineral", "mineral resource" — 248(1); "mining property" — 35(2); "person", "property" — 248(1); "prospector" — 35(2); "share" — 248(1); "taxable Canadian corporation" — 89(1), 248(1); "taxation year" — 11(2), 249.

36. Railway companies — Where any amount in respect of an expenditure incurred by a taxpayer on or in respect of the repair, replacement, alteration or renovation of depreciable property of the taxpayer of a prescribed class is, under a uniform classification and system of accounts and returns prescribed by the National Transportation Agency pursuant to the *Railway Act*, required to be entered in the books of the taxpayer otherwise than as an expense,

(a) no deduction may be made in respect of that expenditure in computing the income of the taxpayer for a taxation year; and

(b) for the purposes of section 13 and regulations made under paragraph 20(1)(a), the taxpayer shall be deemed to have acquired, at the time the expenditure was incurred, depreciable property of a class prescribed by regulation at a capital cost equal to that amount.

Related Provisions: Canada-U.S. Tax Treaty:Art. VIII:4–6 — Income from railway business.

Selected Cases [s. 36]: *Canadian Pacific Ltd. v. R.*, [1988] 1 C.T.C. 429 (FCA) (Government assistance in respect of capital outlays deducted from capital cost allowance); *R. v. Canadian Pacific Ltd.*, [1977] C.T.C. 606 (FCA) (No capital cost allowance where assets acquired for third parties).

Definitions [s. 36]: "amount" — 248(1); "depreciable property" — 13(21), 248(1); "prescribed", "regulation" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Regulations: Sch. II:Cl. 1, Sch. II:Cl. 4, Sch. II:Cl. 6, Sch. II:Cl. 35.

37. (1) Scientific research and experimental development [in Canada] — Where a taxpayer carried on a business in Canada in a taxation year, there may be deducted in computing the taxpayer's income from the business for the year such amount as the taxpayer claims not exceeding the amount, if any, by which the total of

(a) the total of all amounts each of which is an expenditure of a current nature made by the taxpayer in the year or in a preceding taxation year ending after 1973

(i) on scientific research and experimental development carried on in Canada, directly undertaken by or on behalf of the taxpayer, and related to a business of the taxpayer,

(i.1) by payments to a corporation resident in Canada to be used for scientific research and experimental development carried on in Canada that is related to a business of the taxpayer, but only where the taxpayer is entitled to exploit the results of that scientific research and experimental development,

(ii) by payments to

(A) an approved association that undertakes scientific research and experimental development,

(B) an approved university, college, research institute or other similar institution,

(C) a corporation resident in Canada and exempt from tax under paragraph 149(1)(j), or

(D) [Repealed]

(E) an approved organization that makes payments to an association, institution or corporation described in any of clauses (A) to (C)

to be used for scientific research and experimental development carried on in Canada that is related to a business of the taxpayer, but only where the taxpayer is entitled to exploit the results of that scientific research and experimental development, or

(iii) where the taxpayer is a corporation, by payments to a corporation resident in Canada and exempt from tax because of paragraph 149(1)(j), for scientific research and experimental development that is basic research or applied research carried on in Canada

(A) the primary purpose of which is the use of results therefrom by the taxpayer in conjunction with other scientific research and experimental development activities undertaken or to be undertaken by or on behalf of the taxpayer that relate to a business of the taxpayer, and

(B) that has the technological potential for application to other businesses of a type unrelated to that carried on by the taxpayer,

Selected Cases [para. 37(1)(a)]: *LGL Ltd. v. R.*, [2000] 2 C.T.C. 27 (FCA); aff'g [1999] 2 C.T.C. 2482 (TCC) (Each item of expense must have been incurred in Canada to be deductible; overall project not a consideration); *Dew Engineering & Development Ltd. v. Canada*, [1996] 3 C.T.C. 2904 (TCC) (Portable laboratory was not a "building"); *Eta Performance Systems Corp. v. MNR*, [1993] 1 C.T.C. 2710 (TCC) (Scientific research does not include routine data collection or research in social sciences or humanities).

(b) the lesser of

(i) the total of all amounts each of which is an expenditure of a capital nature made by the taxpayer (in respect of property acquired that would be depreciable property of the taxpayer if this section were not applicable in respect of the property, other than land or a leasehold interest in land) in the year or in a preceding taxation year ending after 1958 on scientific research and experimental development carried on in Canada, directly under-

taken by or on behalf of the taxpayer, and related to a business of the taxpayer, and

(ii) the undepreciated capital cost to the taxpayer of the property so acquired as of the end of the taxation year (before making any deduction under this paragraph in computing the income of the taxpayer for the taxation year),

(c) the total of all amounts each of which is an expenditure made by the taxpayer in the year or in a preceding taxation year ending after 1973 by way of repayment of amounts described in paragraph (d),

(c.1) all amounts included by virtue of paragraph 12(1)(v), in computing the taxpayer's income for any previous taxation year,

(c.2) all amounts added because of subsection 127(27), (29) or (34) to the taxpayer's tax otherwise payable under this Part for any preceding taxation year, and

(c.3) in the case of a partnership, all amounts each of which is an excess referred to in subsection 127(30) in respect of the partnership for any preceding fiscal period,

exceeds the total of

(d) the total of all amounts each of which is the amount of any government assistance or non-government assistance (within the meanings assigned to those expressions by subsection 127(9)) in respect of an expenditure described in paragraph (a) or (b) that, at the taxpayer's filing-due date for the year, the taxpayer has received, is entitled to receive or can reasonably be expected to receive,

(d.1) the total of all amounts each of which is the super-allowance benefit amount (within the meaning assigned by subsection 127(9)) for the year or for a preceding taxation year in respect of the taxpayer in respect of a province,

(e) that part of the total of all amounts each of which is an amount deducted under subsection 127(5) in computing the tax payable under this Part by the taxpayer for a preceding taxation year where the amount can reasonably be attributed to

(i) a prescribed proxy amount for a preceding taxation year,

(ii) an expenditure of a current nature incurred in a preceding taxation year that was a qualified expenditure incurred in that preceding year in respect of scientific research and experimental development for the purposes of section 127, or

(iii) an amount included because of paragraph 127(13)(e) in the taxpayer's SR&ED qualified expenditure pool at the end of a preceding taxation year within the meaning assigned by subsection 127(9),

(f) the total of all amounts each of which is an amount deducted under this subsection in computing the taxpayer's income for a preceding taxation year, except amounts described in subsection (6),

(f.1) the total of all amounts each of which is the lesser of

(i) the amount deducted under section 61.3 in computing the taxpayer's income for a preceding taxation year, and

(ii) the amount, if any, by which the amount that was deductible under this subsection in computing the taxpayer's income for that preceding year exceeds the amount claimed under this subsection in computing the taxpayer's income for that preceding year,

(g) the total of all amounts each of which is an amount equal to twice the amount claimed under subparagraph 194(2)(a)(ii) by the taxpayer for the year or any preceding taxation year, and

(h) where the taxpayer is a corporation control of which has been acquired by a person or group of persons before the end of the year, the amount determined for the year under subsection (6.1) with respect to the corporation.

Related Provisions: 12(1)(t) — Investment tax credit included in income; 12(1)(v) — Income inclusion where calculation under 37(1) would be negative; 18(9)(d), (e) — Certain prepaid expenses deemed incurred in later taxation year; 37(1.1) — Business of related corporations; 37(1.2) — Deemed time of capital expenditure; 37(1.3) — SR&ED within 200 nautical miles offshore is deemed done in Canada; 37(2) — Research outside Canada; 37(4) — No deduction for acquisition of rights: 37(6) — Expenditures of a capital nature; 37(6.1) — Change of control of corporation; 37(7), (8) — Interpretation; 37(11) — Prescribed form required; 53(2)(k) — Deduction from adjusted cost base — government assistance; 87(2)(l) — Amalgamations — SR&ED; 96(1)(e.1) — Partnerships — carryforward of expenses not allowed; 125.4(2)(c) — No film production credit where R&D deduction allowed; 127(9) — "contract payment", "qualified expenditure"; 127(10.1), (10.8) — Additions to investment tax credits; 127(11.2) — Investment tax credit; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 149(1)(j) — Non-profit corporation for SR&ED — exemption; 248(1)"scientific research and experimental development" — Definition applicable for purposes of entire Act; 248(16), (16.1) — GST or QST input tax credit/refund and rebate; 248(18), (18.1) — GST or QST — repayment of input tax credit or refund; 256(6)–(9) — Whether control acquired; Reg. 1102(1)(d) — No CCA for capital property deducted under 37(1)(b). See also at end of s. 37.

History: Para. 37(1)(d.1) added by 2001, c. 17, s. 21, applicable to taxation years that begin after February 2000 except that, if a taxpayer's first taxation year that begins after February 2000 ends before 2001, the para. applies to the taxpayer's taxation years that begin after 2000.

Paras. 37(1)(c.2) and (c.3) added by 1999, c. 22, s. 11, applicable to 1998 *et seq.*

The opening words of subsec. 37(1) amended by 1996, c. 21, subsec. 9(1), applicable to taxation years that begin after 1995. The opening words formerly read:

(1) Where a taxpayer carried on a business in Canada in a taxation year and files with the Minister by the day on or before which the taxpayer's return of income under this Part for the taxpayer's following taxation year is required to be filed, or would be required to be filed if tax under this Part were payable by the taxpayer for that following year, a prescribed form containing prescribed information, there may be deducted in computing the taxpayer's income from the business for the year such amount as the taxpayer claims not exceeding the amount, if any, by which the total of

Subpara. 37(1)(a)(i.1) added by 1996, c. 21, subsec. 9(2), applicable to payments made after 1995.

Cl. 37(1)(a)(ii)(D) repealed by 1996, c. 21, subsec. 9(4), applicable to payments made after 1995. The clause formerly read:

(D) a corporation resident in Canada, or

The closing words of subpara. 37(1)(a)(ii) amended by 1996, c. 21, subsec. 9(5), applicable to payments made after 1995. The closing words formerly read:

to be used for scientific research and experimental development carried on in Canada, related to a business of the taxpayer, and provided that the taxpayer is entitled to exploit the results of such scientific research and experimental development, or

Subpara. 37(1)(a)(iii) amended to delete the word "and" at the end of the subpara. by 1996, c. 21, subsec. 9(6), applicable on June 20, 1996.

Paras. 37(1)(d) and (e) amended by 1996, c. 21, subsec. 9(7), applicable to taxation years that begin after 1995. The paras. formerly read:

(d) the total of all amounts each of which is the amount of any government assistance or non-government assistance (within the mean-

ings assigned to those expressions by subsection 127(9)) in respect of an expenditure described in paragraph (a) or (b) that, at the time of filing of the return of income for the year, the taxpayer has received, is entitled to receive or can reasonably be expected to receive,

(e) that part of the total of all amounts each of which is an amount deducted under subsection 127(5) in computing the tax otherwise payable by the taxpayer under this Part for a preceding taxation year that can reasonably be attributed to a prescribed proxy amount of a preceding taxation year or expenditures of a current nature made in a preceding taxation year that were qualified expenditures in respect of scientific research and experimental development for the purposes of section 127,

Para. 37(1)(f.1) added by 1995, c. 21, s. 9, applicable to taxation years that end after February 21, 1994.

The opening words of subsec. 37(1) amended by 1995, c. 3, subsec. 9(1), applicable after February 21, 1994 to expenditures incurred at any time except that, for an expenditure incurred by a taxpayer in a taxation year that ended before February 22, 1994, the taxpayer may file the prescribed form referred to in subsec. 37(1) by the later of the day referred to in that subsec. and June 24, 1995. The opening words formerly read:

(1) Where a taxpayer carried on a business in Canada in a taxation year and files with the taxpayer's return of income under this Part for the year a prescribed form containing prescribed information, there may be deducted in computing the taxpayer's income from the business for the year such amount as the taxpayer may claim not exceeding the amount, if any, by which the total of

Para. 37(1)(e) amended by 1994, c. 8, subsec. 4(1), applicable to taxation years ending after December 2, 1992. Para. (e) formerly read:

(e) that part of the total of all amounts each of which is an amount deducted under subsection 127(5) in computing the tax otherwise payable by the taxpayer under this Part for a preceding taxation year that may reasonably be attributed to expenditures of a current nature made in a preceding taxation year that were qualified expenditures in respect of scientific research and experimental development for the purposes of section 127,

Subpara. 37(1)(a)(iii) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 21(1), applicable with respect to payments made after December 15, 1987.

Selected Cases [subsec. 37(1)]: *Tigney Technology Inc. v. R.*, [2000] 2 C.T.C. 134 (FCA) (Individual expenditures deductible only if incurred in Canada); *Sunshine Uniform Supply (1983) Ltd. v. R.*, [2000] 2 C.T.C. 107 (FCTD) ("Expenditures on" narrower than "expenditures for"); *Hun-Medipharma Research Inc. v. R.*, [1999] 1 C.T.C. 2800 (TCC) (Not necessary for SR&ED that there be both analysis and experimentation); *RIS-Christie Ltd. v. R.*, [1999] 1 C.T.C. 132 (FCA); rev'g [1996] 3 C.T.C. 2827 (TCC) (Failure to adduce documentary evidence of research not necessarily fatal); *Data Kinetics Ltd. v. R.*, [1998] 4 C.T.C. 2618 (TCC) (Research not to be broken into constituent elements, but looked at as a whole for purposes of determining where it was carried on); *Consoltex Inc. v. R.*, [1997] 2 C.T.C. 2846 (TCC) (Expenditure not netted against receipts from sale of product produced through scientific research); *Canalerta Technologies Inc. v. MNR*, [1993] 1 C.T.C. 2141 (TCC) (Scientific research is activity for gaining knowledge based on testing hypotheses against empirical data through controlled experimentation and accurate measurements); *Gulf Canada Ltd. v. Canada*, [1991] 1 C.T.C. 99 (FCTD); aff'd [1992] 1 C.T.C. 183 (FCA); leave to appeal to SCC refused (1992), 141 N.R. 393 (note), (sub nom. *Gulf Canada Ltd. v. MNR*) (Interpretation of: "Canadian exploration expenses", "Canadian development expenses", "taxable production profits").

Regulations: 2900(4) (prescribed proxy amount for 37(1)(e)).

Interpretation Bulletins: IT-121R3: Election to capitalize cost of borrowed money (archived); IT-151R5: Scientific research and experimental development expenditures.

Information Circulars: 86-4R2 Supplement 1: Automotive industry application paper; 86-4R2 Supplement 2: Aerospace industry application paper; 86-4R3: Scientific research and experimental development; 94-1: Plastics industry application paper; 94-2: Machinery and equipment industry application paper; 97-1: Administrative guidelines for software development.

I.T. Technical News: 23 (list of "approved" entities for SR&ED).

Application Policies: SR&ED 95-05: SR&ED capital expenditures — retroactive deductions under subsec. 37(1); SR&ED 96-04: Payments to third parties for SR&ED; SR&ED 96-05: Penalties under subsection 163(2); SR&ED 96-10: Third party payments — approval process; SR&ED 2000-02R: Guidelines for resolving claimants' SR&ED concerns; SR&ED 2000-04R2: Recapture of investment tax credit; SR&ED 2002-01: Expenditures incurred for administrative salaries or wages — "directly related" test ; SR&ED 2002-02R2: Experimental production and commercial production with experimental development work — allowable SR&ED expenditures; SR&ED 2004-01: Retiring allowance; SR&ED 2004-02: Filing requirements for claiming SR&ED carried put in Canada; SR&ED 2004-03: Prototypes, pilot plants/commercial plants, custom products and commercial assets.

Forms: T2 SCH 301: Newfoundland research and development tax credit; T2 SCH 340: Nova Scotia research and development tax credit; T2 SCH 360: New Brunswick research and development tax credit; T2 SCH 380: Manitoba research and development tax credit; T2 SCH 403: Saskatchewan research and development tax credit; T2 SCH 422: Yukon research and development tax credit; T661: Claim for SR&ED in Canada; T666: British Columbia scientific research and experimental development tax credit; T1129: Newfoundland research and development tax credit (individuals); T1132: Yukon research and development tax credit (individuals); T4088: Claiming scientific research and experimental development expenditures — guide to form T661.

(1.1) Business of related corporations — Notwithstanding paragraph (8)(c), for the purposes of subsection (1), where a taxpayer is a corporation, scientific research and experimental development, related to a business carried on by another corporation to which the taxpayer is related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) and in which that other corporation is actively engaged, at the time at which an expenditure or payment in respect of the scientific research and experimental development is made by the taxpayer, shall be considered to be related to a business of the taxpayer at that time.

Related Provisions: See at end of s. 37.

Interpretation Bulletins: IT-151R5: Scientific research and experimental development expenditures.

(1.2) Deemed time of capital expenditure — For the purposes of paragraph (1)(b), an expenditure made by a taxpayer in respect of property shall be deemed not to have been made before the property is considered to have become available for use by the taxpayer.

Related Provisions: 13(26) — No CCA until property available for use; 127(11.2) — No investment tax credit until property available for use; 248(19) — When property available for use.

History: Subsec. 37(1.2) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 21(2), applicable in respect of expenditures made by a taxpayer after 1989 other than expenditures in respect of property acquired

(a) from a person with whom the taxpayer was not dealing at arm's length (otherwise than by reason of a right referred to in para. 251(5)(b)) at the time the property was acquired, or

(b) in the course of a reorganization in respect of which, if a dividend were received by a corporation in the course of the reorganization, subsec. 55(2) would not be applicable to the dividend by reason of the application of para. 55(3)(b),

where the property was depreciable property of the person from whom it was acquired (or would, but for s. 37, be depreciable property of the person from whom it was acquired) and was owned by that person before 1990.

Application Policies: SR&ED 2003-01: Capital property intended to be used all or substantially all for SR&ED.

(1.3) SR&ED in the exclusive economic zone — For the purposes of this section and section 127 of this Act and Part XXIX of the *Income Tax Regulations*, an expenditure is deemed to have been made by a taxpayer in Canada if the expenditure is

(a) made by the taxpayer in the course of a business carried on by the taxpayer in Canada; and

(b) made for the prosecution of scientific research and experimental development in the exclusive economic zone of Canada, within the meaning of the *Oceans*

Act, or in the airspace above that zone or the seabed or subsoil below that zone.

History: Subsec. 37(1.3) added by 2005, c. 30, s. 2, applicable to expenditures made after February 22, 2005.

(2) Research outside Canada — In computing the income of a taxpayer for a taxation year from a business of the taxpayer, there may be deducted expenditures of a current nature made by the taxpayer in the year

(a) on scientific research and experimental development carried on outside Canada, directly undertaken by or on behalf of the taxpayer, and related to the business; or

(b) by payments to an approved association, university, college, research institute or other similar institution to be used for scientific research and experimental development carried on outside Canada related to the business provided that the taxpayer is entitled to exploit the results of that scientific research and experimental development.

Related Provisions: 37(1.3) — SR&ED within 200 nautical miles offshore is deemed done in Canada. See also at end of s. 37.

Interpretation Bulletins: IT-151R5: Scientific research and experimental development expenditures.

(3) Minister may obtain advice — The Minister may obtain the advice of the Department of Industry, the National Research Council of Canada, the Defence Research Board or any other agency or department of the Government of Canada carrying on activities in the field of scientific research as to whether any particular activity constitutes scientific research and experimental development.

Related Provisions: 241(4)(a) — Disclosure of taxpayer information in order to obtain advice. See also at end of s. 37.

History: Subsec. 37(3) amended by 1995, c. 1, para. 63(1)(c), to substitute "Department of Industry" for "Department of Industry, Science and Technology", in force March 29, 1995.

Selected Cases [subsec. 37(3)]: *Stromotich v. R.*, [1988] 1 C.T.C. 252 (FCTD); appealed to FCA (March 7, 1988), File A-391-88 (Minister not under duty to obtain advice).

Interpretation Bulletins: IT-151R5: Scientific research and experimental development expenditures.

(4) Where no deduction allowed under section — No deduction may be made under this section in respect of an expenditure made to acquire rights in, or arising out of, scientific research and experimental development.

Related Provisions: See at end of s. 37.

Selected Cases [subsec. 37(4)]: *Inro Consultants Inc. v. R.*, [2001] 3 C.T.C. 2601 (TCC) (Royalty payments for existing technology are not scientific expenditures).

Interpretation Bulletins: IT-151R5: Scientific research and experimental development expenditures.

Application Policies: SR&ED 2000-04R2: Recapture of investment tax credit.

(5) Where no deduction allowed under sections 110.1 and 118.1 — Where, in respect of an expenditure on scientific research and experimental development made by a taxpayer in a taxation year, an amount is otherwise deductible under this section and under section 110.1 or 118.1, no deduction may be made in respect of the expenditure under section 110.1 or 118.1 in computing the taxable income of, or the tax payable by, the taxpayer for any taxation year.

Related Provisions: See at end of s. 37.

Interpretation Bulletins: IT-151R5: Scientific research and experimental development expenditures.

(6) Expenditures of a capital nature — An amount claimed under subsection (1) that may reasonably be considered to be in respect of a property described in paragraph (1)(b) shall, for the purpose of section 13, be deemed to be an amount allowed to the taxpayer in respect of the property under regulations made under paragraph 20(1)(a), and for that purpose the property shall be deemed to be of a separate prescribed class.

Related Provisions: 87(2)(d)(ii)(D) — Amalgamations — depreciable property. See also at end of s. 37.

Interpretation Bulletins: IT-151R5: Scientific research and experimental development expenditures.

Application Policies: SR&ED 2000-04R2: Recapture of investment tax credit.

(6.1) Amount referred to in para. (1)(h) — Where a taxpayer is a corporation control of which was last acquired by a person or group of persons at any time (in this subsection referred to as "that time") before the end of a taxation year of the corporation, the amount determined for the purposes of paragraph (1)(h) for the year with respect to the corporation in respect of a business is the amount, if any, by which

(a) the amount, if any, by which

(i) the total of all amounts each of which is

(A) an expenditure described in paragraph (1)(a) or (c) that was made by the corporation before that time,

(B) the lesser of the amounts determined in respect of the corporation under subparagraphs (1)(b)(i) and (ii) immediately before that time, or

(C) an amount determined in respect of the corporation under paragraph (1)(c.1) for its taxation year ending immediately before that time

exceeds the total of all amounts each of which is

(ii) the total of all amounts determined in respect of the corporation under paragraphs (1)(d) to (g) for its taxation year ending immediately before that time, or

(iii) the amount deducted by virtue of subsection (1) in computing the corporation's income for its taxation year ending immediately before that time

exceeds

(b) the total of

(i) where the business to which the amounts described in clause (a)(i)(A), (B) or (C) may reasonably be considered to have been related was carried on by the corporation for profit or with a reasonable expectation of profit throughout the year, the total of

(A) the corporation's income for the year from the business before making any deduction under subsection (1), and

(B) where properties were sold, leased, rented or developed, or services were rendered, in the course of carrying on the business before that time, the corporation's income for the year, before making any deduction under subsection (1), from any other business substantially all the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services, and

(ii) the total of all amounts each of which is an amount determined in respect of a preceding taxation year of the corporation that ended after that time equal to the lesser of

(A) the amount determined under subparagraph (i) with respect to the corporation in respect of the business for that preceding year, and

(B) the amount in respect of the business deducted by virtue of subsection (1) in computing the corporation's income for that preceding year.

Related Provisions: 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired. See also at end of s. 37.

Interpretation Bulletins: IT-151R5: Scientific research and experimental development expenditures.

I.T. Technical News: 7 (control by a group — 50/50 arrangement).

(7) Definitions — In this section,

"approved" means approved by the Minister after the Minister has, if the Minister considers it necessary, obtained the advice of the Department of Industry or the National Research Council of Canada;

History: The definition of "approved" in subsec. 37(7) amended by 1995, c. 1, para. 63(1)(c), to substitute "Department of Industry" for "Department of Industry, Science and Technology", in force March 29, 1995.

Interpretation Bulletins: IT-151R5: Scientific research and experimental development expenditures.

I.T. Technical News: 23 (list of "approved" entities for SR&ED).

Application Policies: SR&ED 96-10: Third party payments — approval process.

"scientific research and experimental development" — [Repealed]

History: The definition "scientific research and experimental development" in subsec. 37(7) repealed by 1996, c. 21, subsec. 9(8), applicable to work performed after February 27, 1995 except that, for the purposes of paras. 149(1)(j) and (8)(b), the repeal does not apply to work performed pursuant to an agreement in writing entered into before February 28, 1995. The definition formerly read:

> "scientific research and experimental development" has the meaning given to that expression by regulation.

Selected Cases [subsec. 37(7)"scientific research and experimental development"]: *Eta Performance Systems Corp. v. MNR*, [1993] 1 C.T.C. 2710 (TCC) (Scientific research does not include routine data collection or research in social sciences or humanities); *Cultures Laflamme (1984) Inc. v. MNR*, [1993] 1 C.T.C. 2634 (TCC) (Revenues from sales of experimental mushrooms do not reduce current expenses incurred for scientific research and experimental development in connection therewith).

Regulations: 2900 (meaning of "scientific research and experimental development").

Information Circulars: See under 248(1)"scientific research and experimental development".

(8) Interpretation — In this section,

(a) references to expenditures on or in respect of scientific research and experimental development

(i) where the references occur in subsection (2), include only

(A) expenditures each of which was an expenditure incurred for and all or substantially all of which was attributable to the prosecution of scientific research and experimental development, and

(B) expenditures of a current nature that were directly attributable, as determined by regulation, to the prosecution of scientific research and experimental development, and

(ii) where the references occur other than in subsection (2), include only

(A) expenditures incurred by a taxpayer in a taxation year (other than a taxation year for which the taxpayer has elected under clause (B)), each of which is

(I) an expenditure of a current nature all or substantially all of which was attributable to the prosecution, or to the provision of premises, facilities or equipment for the prosecution, of scientific research and experimental development in Canada,

(II) an expenditure of a current nature directly attributable, as determined by regulation, to the prosecution, or to the provision of premises, facilities or equipment for the prosecution, of scientific research and experimental development in Canada, or

(III) an expenditure of a capital nature that at the time it was incurred was for the provision of premises, facilities or equipment, where at that time it was intended

1. that it would be used during all or substantially all of its operating time in its expected useful life for, or

2. that all or substantially all of its value would be consumed in,

the prosecution of scientific research and experimental development in Canada, and

(B) where a taxpayer has elected in prescribed form and in accordance with subsection (10) for a taxation year, expenditures incurred by the taxpayer in the year each of which is

(I) an expenditure of a current nature for, and all or substantially all of which was attributable to, the lease of premises, facilities or equipment for the prosecution of scientific research and experimental development in Canada, other than an expenditure in respect of general purpose office equipment or furniture,

(II) an expenditure in respect of the prosecution of scientific research and experimental development in Canada directly undertaken on behalf of the taxpayer,

(III) an expenditure described in subclause (A)(III), other than an expenditure in respect of general purpose office equipment or furniture,

(IV) that portion of an expenditure made in respect of an expense incurred in the year for salary or wages of an employee who is directly engaged in scientific research and experimental development in Canada that can reasonably be considered to relate to such work having regard to the time spent by the employee thereon, and, for this purpose, where that portion is all or substantially all of the expenditure, that portion shall be deemed to be the amount of the expenditure,

(V) the cost of materials consumed in the prosecution of scientific research and experimental development in Canada, or

Proposed Amendment — 37(8)(a)(ii)(B)(V)

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 58, will amend subcl. 37(8)(a)(ii)(B)(V) to replace "consumed" with "consumed or transformed", applicable to costs incurred after February 23, 1998.

Technical Notes: Paragraph 37(8)(a) provides rules for interpreting the expression "expenditures on or in respect of scientific research and experimental development" which is used in subsections 37(1), (2) and (5).

Clause 37(8)(a)(ii)(B) provides for the alternative "proxy" method for determining SR&ED expenditures. Subclause 37(8)(a)(ii)(B)(V) provides that, in the context of the proxy method for determining SR&ED expenditures, the references to expenditures on or in respect of SR&ED (other than in subsection 37(2)) include only, among things listed in clause (8)(a)(ii)(B), the cost of "materials consumed" in the prosecution of SR&ED in Canada.

Subclause 37(8)(a)(ii)(B)(V) is amended for costs incurred after February 23, 1998 . . . [T]he phrase "materials consumed" is changed to "materials consumed or transformed".

(VI) ½ of any other expenditure of a current nature in respect of the lease of premises, facilities or equipment used primarily for the prosecution of scientific research and experimental development in Canada, other than an expenditure in respect of general purpose office equipment or furniture;

Selected Cases [subpara. 37(8)(a)(ii)]: *Dew Engineering & Development Ltd. v. Canada*, [1996] 3 C.T.C. 2904 (TCC) (Portable laboratory was not a "building"); *Highland Foundry Ltd. v. Canada*, [1994] 2 C.T.C. 2329 (TCC) (Time frame for "all or substantially all" is time period over which prosecution or construction takes place, not full useful life of equipment; but see Reg. 2902(b)(i)(B) and 2900(11)(c)).

(b) for greater certainty, references to scientific research and experimental development related to a business include any scientific research and experimental development that may lead to or facilitate an extension of that business;

(c) except in the case of a taxpayer who derives all or substantially all of the taxpayer's revenue from the prosecution of scientific research and experimental development (including the sale of rights arising out of scientific research and experimental development carried on by the taxpayer), the prosecution of scientific research and experimental development shall not be considered to be a business of the taxpayer to which scientific research and experimental development is related; and

(d) notwithstanding paragraph (a), references to expenditures on or in respect of scientific research and experimental development shall not include

(i) any capital expenditure made in respect of the acquisition of a building, other than a prescribed special-purpose building, including a leasehold interest therein,

(ii) any outlay or expense made or incurred for the use of, or the right to use, a building other than a prescribed special-purpose building, and

(iii) payments made by a taxpayer to

(A) a corporation resident in Canada and exempt from tax under paragraph 149(1)(j), an approved research institute or an approved association, with which the taxpayer does not deal at arm's length,

(B) a corporation other than a corporation referred to in clause (A), or

(C) an approved university, college or organization

to be used for scientific research and experimental development

(D) in the case of such a payment to a person described in clause (A) or (B), to the extent that the amount of the payment may reasonably be considered to have been made to enable the recipient to acquire a building or a leasehold interest in a building or to pay an amount in respect of the rental expense in respect of a building, and

(E) in the case of a payment to a person described in clause (C), to the extent that the amount of the payment may reasonably be considered to have been made to enable the recipient to acquire a building, or a leasehold interest in a building, in which the taxpayer has, or may reasonably be expected to acquire, an interest.

Proposed Amendment — 37(8)(d)(iii)(E)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 209(2), will amend cl. 37(8)(d)(iii)(E) by substituting "interest, or for civil law, a right" for "interest", to come into force on Royal Assent.

Technical Notes: See under 12(4).

Related Provisions: 37(1.1) — Business of related corporations; 37(1.3) — SR&ED within 200 nautical miles offshore is deemed done in Canada; 37(9) — Salary or wages; 37(9.1)–(9.5) — Limitation on payments to specified employees; 37(10) — Time for election; 96(3) — Election by members of partnership; 149(1)(j)(ii)(A) — Non-profit SR&ED corporation's expenditures; 248(1)"scientific research and experimental development" — Definition of SR&ED. See additional Related Provisions at end of s. 37.

History: Subpara. 37(8)(a)(ii) amended by 1994, c. 8, subsec. 4(2), applicable (by subsec. 4(5), as amended by 1997, c. 25, s. 74, deemed to have come into force May 12, 1994), to taxation years of a taxpayer that end after December 2, 1992, except that it does not apply to taxation years of a taxpayer that began before March 6, 1996 with respect to rental expenses incurred pursuant to a written lease agreement renewed, extended or entered into before June 18, 1987 by the taxpayer or a person with whom the taxpayer did not deal at arm's length at the time the lease was renewed, extended or entered into. Subpara. (a)(ii) formerly read:

(ii) where the references occur other than in subsection (2), include only

(A) expenditures each of which was an expenditure incurred for and all or substantially all of which was attributable to the prosecution, or to the provision of premises, facilities or equipment for the prosecution, of scientific research and experimental development in Canada, and

(B) expenditures of a current nature that were directly attributable, as determined by regulation, to the prosecution, or to the provision of premises, facilities or equipment for the prosecution, of scientific research and experimental development in Canada;

Subpara. 37(8)(d)(ii) amended by 1994, c. 8, subsec. 4(3), applicable to taxation years ending after December 2, 1992. Subpara. (d)(ii) formerly read:

(ii) any rental expense incurred in respect of a building other than a prescribed special-purpose building, and

Selected Cases [subsec. 37(8)]: *Consoltex Inc. v. R.*, [1997] 2 C.T.C. 2846 (TCC) (Cost of yarn used for scientific research fell within provision).

Regulations: 2900(2)–(4) (meaning of "expenditures directly attributable"); 2903 (prescribed special-purpose building).

Interpretation Bulletins: IT-151R5: Scientific research and experimental development expenditures.

Information Circulars: 86-4R2 Supplement 1: Automotive industry application paper; 86-4R2 Supplement 2: Aerospace industry application paper; 86-4R3: Scientific research and experimental development; 94-1: Plastics industry application paper; 94-2: Machinery and equipment industry application paper; 97-1: Administrative guidelines for software development.

Application Policies: SR&ED 95-04R: Conflict of interest with regard to outside consultants; SR&ED 96-06: Directly undertaking, supervising or supporting v. "directly engaged" SR&ED salary and wages; SR&ED 2000-01: Cost of materials; SR&ED 2002-01: Expenditures incurred for administrative salaries or wages — "directly related" test ; SR&ED 2002-02R2: Experimental production and commercial production with experimental development work — allowable SR&ED expenditures; SR&ED 2003-01: Capital property intended to be used all or substantially all for SR&ED; SR&ED 2004-01: Retiring allowance; SR&ED 2004-03: Prototypes, pilot plants/commercial plants, custom products and commercial assets.

(9) Salary or wages — For the purposes of clauses (8)(a)(ii)(A) and (B), an expenditure of a taxpayer does not include remuneration based on profits or a bonus, where the remuneration or bonus, as the case may be, is in respect of a specified employee of the taxpayer.

History: Subsec. 37(9) added by 1994, c. 8, subsec. 4(4), applicable to taxation years ending after December 2, 1992.

(9.1) Limitation re specified employees — For the purposes of clauses (8)(a)(ii)(A) and (B), expenditures incurred by a taxpayer in a taxation year do not include expenses incurred in the year in respect of salary or wages of a specified employee of the taxpayer to the extent that those expenses exceed the amount determined by the formula

$$A \times \frac{B}{365}$$

where

A is 5 times the Year's Maximum Pensionable Earnings (as determined under section 18 of the *Canada Pension Plan*) for the calendar year in which the taxation year ends; and

B is the number of days in the taxation year on which the employee is a specified employee of the taxpayer.

Related Provisions: 38(9.2)–(9.5) — Allocation of salary of specified employee of associated corporations.

History: Subsec. 37(9.1) added by 1997, c. 25, s. 6, applicable to taxation years that begin after March 5, 1996.

(9.2) Associated corporations — Where

(a) in a taxation year of a corporation that ends in a calendar year, the corporation employs an individual who is a specified employee of the corporation,

(b) the corporation is associated with another corporation (in this subsection and subsection (9.3) referred to as the "associated corporation") in a taxation year of the associated corporation that ends in the calendar year, and

(c) the individual is a specified employee of the associated corporation in the taxation year of the associated corporation that ends in the calendar year,

for the purposes of clauses (8)(a)(ii)(A) and (B), the expenditures incurred by the corporation in its taxation year or years that end in the calendar year and by each associated corporation in its taxation year or years that end in the calendar year do not include expenses incurred in those taxation years in respect of salary or wages of the specified employee unless the corporation and all of the associated corporations have filed with the Minister an agreement referred to in subsection (9.3) in respect of those years.

Related Provisions: 37(9.5) — Certain individuals and partnerships deemed to be associated corporations.

History: Subsec. 37(9.2) added by 1997, c. 25, s. 6, applicable to taxation years that begin after March 5, 1996.

(9.3) Agreement among associated corporations — Where all of the members of a group of associated corporations of which an individual is a specified employee file, in respect of their taxation years that end in a particular calendar year, an agreement with the Minister in which they allocate an amount in respect of the individual to one or more of them for those years and the amount so allocated or the total of the amounts so allocated, as the case may be, does not exceed the amount determined by the formula

$$A \times \frac{B}{365}$$

where

A is 5 times the Year's Maximum Pensionable Earnings (as determined under section 18 of the *Canada Pension Plan*) for the particular calendar year, and

B is the lesser of 365 and the number of days in those taxation years on which the individual was a specified employee of one or more of the corporations,

the maximum amount that may be claimed in respect of salary or wages of the individual for the purposes of clauses (8)(a)(ii)(A) and (B) by each of the corporations for each of those years is the amount so allocated to it for each of those years.

Related Provisions: 37(9.5) — Certain individuals and partnerships deemed to be associated corporations.

History: Subsec. 37(9.3) added by 1997, c. 25, s. 6, applicable to taxation years that begin after March 5, 1996.

Forms: T1174: Agreement between associated corporations to allocate salaries or wages of specified employees for SR&ED carried on in Canada.

(9.4) Filing — An agreement referred to in subsection (9.3) is deemed not to have been filed by a taxpayer unless

(a) it is in prescribed form; and

(b) where the taxpayer is a corporation, it is accompanied by

(i) where its directors are legally entitled to administer its affairs, a certified copy of their resolution authorizing the agreement to be made, and

(ii) where its directors are not legally entitled to administer its affairs, a certified copy of the document by which the person legally entitled to administer its affairs authorized the agreement to be made.

History: Subsec. 37(9.4) added by 1997, c. 25, s. 6, applicable to taxation years that begin after March 5, 1996.

(9.5) Deemed corporation — For the purposes of subsections (9.2) and (9.3) and this subsection, each

(a) individual related to a particular corporation,

(b) partnership of which a majority interest partner is

(i) an individual related to a particular corporation, or

(ii) a corporation associated with a particular corporation, and

(c) limited partnership of which a member whose liability as a member is not limited is

(i) an individual related to a particular corporation, or

(ii) a corporation associated with a particular corporation,

is deemed to be a corporation associated with the particular corporation.

History: Subsec. 37(9.5) added by 1997, c. 25, s. 6, applicable to taxation years that begin after March 5, 1996.

(10) Time for election — Any election made under clause (8)(a)(ii)(B) for a taxation year by a taxpayer shall be filed by the taxpayer on the day on which the taxpayer first files a prescribed form referred to in subsection (11) for the year.

History: Subsec. 37(10) amended by 1998, c. 19, subsec. 86(2), applicable after February 21, 1994 to expenditures incurred at any time except that, for taxation years that began before 1996, the reference in subsec. 37(10) to "subsection (11)" shall be read as a reference to "subsection (1)". The subsec. formerly read:

> (10) Any election made under clause (8)(a)(ii)(B) for a taxation year by a taxpayer shall be filed by the taxpayer on the day on which the taxpayer first files a prescribed form referred to in subsection (11) for the year.

Subsec. 37(10) amended by 1996, c. 21, subsec. 9(9), applicable to taxation years that begin after 1995. The subsec. formerly read:

> (10) Any election under clause (8)(a)(ii)(B) made by a taxpayer for a taxation year shall be filed with the taxpayer's return of income under this Part for the year.

Subsec. 37(10) added by 1994, c. 8, subsec. 4(4), applicable to taxation years ending after December 2, 1992.

(11) Filing requirement — Subject to subsection (12), no amount in respect of an expenditure that would be incurred by a taxpayer in a taxation year that begins after 1995 if this Act were read without reference to subsection 78(4) may be deducted under subsection (1) unless the taxpayer files with the Minister a prescribed form containing prescribed information in respect of the expenditure on or before the day that is 12 months after the taxpayer's filing-due date for the year.

Related Provisions: 127(9)"investment tax credit"(m) — Filing deadline applies to all investment tax credits.

History: Subsec. 37(11) added by 1996, c. 21, subsec. 9(10), applicable to taxation years that begin after 1995. Former subsec. 37(11) amended and renumbered as subsec. 37(12). See below.

Application Policies: SR&ED 2004-02: Filing requirements for claiming SR&ED carried out in Canada.

Forms: T661: Claim for SR&ED in Canada; T4088: Claiming scientific research and experimental development expenditures — guide to form T661.

(12) Misclassified expenditures — If a taxpayer has not filed a prescribed form in respect of an expenditure in accordance with subsection (11), for the purposes of this Act, the expenditure is deemed not to be an expenditure on or in respect of scientific research and experimental development.

History: Subsec. 37(12) amended by 1998, c. 19, s. 5, applicable to 1997 *et seq.* The subsec. formerly read:

> (12) Reclassified expenditures — A taxpayer is not required to file the prescribed form referred to in subsection (11) in respect of an expenditure that would be incurred in a taxation year by the taxpayer if this Act were read without reference to subsection 78(4) where the expenditure is reclassified by the Minister on an assessment of the taxpayer's tax payable under this Part for the year, or on a determination that no tax under this Part is payable by the taxpayer for the year, as an expenditure in respect of scientific research and experimental development.

Subsec. 37(12) renumbered (from 37(11)) and amended by 1996, c. 21, subsec. 9(10), applicable to taxation years that begin after 1995. The subsec. formerly read:

> (11) Reclassified expenditures — For the purpose of subsection (1), a taxpayer is not required to file the prescribed form referred to in that subsection in respect of an expenditure incurred in a taxation year by the taxpayer where the expenditure is reclassified by the Minister on an assessment of the taxpayer's tax payable under this Part for the year, or on a determination that no tax under this Part is payable by the taxpayer for the year, as an expenditure in respect of scientific research and experimental development.

Subsec. 37(11) (now subsec. 37(12)) added by 1995, c. 3, subsec. 9(2), applicable after February 21, 1994 to expenditures incurred at any time.

Application Policies: SR&ED 2004-02: Filing requirements for claiming SR&ED carried out in Canada.

(13) Non-arm's length contract — linked work — For the purposes of this section and sections 127 and 127.1, where

(a) work is performed by a taxpayer for a person or partnership at a time when the person or partnership does not deal at arm's length with the taxpayer, and

(b) the work would be scientific research and experimental development if it were performed by the person or partnership,

the work is deemed to be scientific research and experimental development.

History: Para. 37(13)(b) amended by 1998, c. 19, subsec. 86(3), applicable to taxation years that begin after 1995. The para. formerly read:

> (b) the work would be scientific research and experimental development described in paragraph 2900(1)(d) of the *Income Tax Regulations* if it were performed by the person or partnership,

Subsec. 37(13) added by 1996, c. 21, subsec. 9(10), applicable to taxation years that begin after 1995.

Related Provisions [s. 37]: 87(2)(l) — Amalgamations — continuing corporation; 127(12.1) — Investment tax credit; 256(8) — Deemed acquisition of shares.

Selected Cases [s. 37]: *Northwest Hydraulic Consultants Ltd. v. R.*, [1998] 3 C.T.C. 2520 (TCC) (Court approved criteria in IC 86-4R3 as indicative of SR&ED).

Definitions [s. 37]: "acquired" — 256(7)–(9); "amount" — 248(1); "approved" — 37(7); "arm's length" — 251(1); "associated" — 13(9.5), 256; "available for use" — 13(27)–(32), 248(19); "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 37(1.3), 255, *Interpretation Act* 35(1); "carried on a business in Canada" — 253; "control" — 256(6)–(9); "corporation" — 248(1), *Interpretation Act* 35(1); "depreciable property" — 13(21), 248(1); "expenditure" — 37(8)(a), (d), 37(9); "filing-due date" — 150(1), 248(1); "individual" — 248(1); "majority interest partner", "Minister", "person", "prescribed", "property" — 248(1); "received" — 248(7); "regulation" — 248(1); "related to a business" — 37(8)(b); "resident in Canada" — 94(3)(a)(viii), 250; "scientific research and experimental development" — 37(8), (13), 248(1), Reg. 2900; "specified employee" — 248(1); "super-allowance benefit amount" — 127(9); "tax payable" — 248(2); "taxable income" — 2(2), 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

37.1 [Repealed]

History: S. 37.1 repealed by 1998, c. 19, s. 87, applicable to 1995 *et seq.* S. 37.1 formerly read:

> 37.1 (1) Additional allowance for scientific research and experimental development — In computing the income for a taxation year of a corporation that carried on business in Canada, other than a corporation referred to in subsection (2), there may be deducted an amount (in this section referred to as the "research allowance" of the corporation) equal to 50% of the amount, if any, by which
>
> (a) the qualified expenditure made by the corporation in the year
>
> exceeds
>
> (b) the total of
>
> (i) the expenditure base of the corporation for the year, and
>
> (ii) the total of all amounts each of which is an amount paid to the corporation in the year by
>
> (A) Her Majesty in right of Canada or a province in respect of scientific research and experimental development to the extent that the amount may reasonably be considered to relate to
>
> (I) the qualified expenditure made by the corporation in taxation years ending after 1977, or

(II) the cost of or depreciation on any research property of the corporation,

(B) another corporation resident in Canada for scientific research and experimental development related to the business of that other corporation, or

(C) a corporation not resident in Canada if it is entitled to a deduction under subparagraph 37(1)(a)(v) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in respect of the amount so paid.

(2) Idem, where corporations associated — In computing the income for a particular taxation year of a corporation that carried on business in Canada and that was associated in the particular year with one or more other such corporations, there may be deducted an amount (in this section referred to as the "research allowance" of the corporation) determined in accordance with the following rules:

(a) determine the amount in respect of the corporation by which the qualified expenditure made by the corporation in the particular year exceeds the total that would have been described in paragraph (1)(b) in respect of the corporation for the particular year if subsection (1) had applied to the corporation,

(b) determine the amount, if any, by which the total of

(i) the qualified expenditure made by the corporation in the particular year, and

(ii) the total of all amounts each of which is the qualified expenditure made by another corporation associated in the particular year with the corporation, in the other corporation's taxation year that ended in the calendar year in which the particular year ended,

exceeds

(iii) the total of

(A) the expenditure base of the corporation for the particular year,

(B) the expenditure base of each other corporation associated in the particular year with the corporation for that other corporation's taxation year that ended in the calendar year in which the particular year ended, and

(C) the total of all amounts each of which is an amount that would be described in subparagraph (1)(b)(ii) if subsection (1) were applicable

(I) paid to the corporation in the particular year, and

(II) paid to another corporation associated in the particular year with the corporation, if paid in the other corporation's taxation year that ended in the calendar year in which the particular year ended,

(c) determine the total of

(i) the amount determined under paragraph (a) in respect of the corporation for the year, and

(ii) the total of all amounts each of which is the amount determined under paragraph (a) for another corporation that is associated in the particular year with the corporation in respect of the other corporation's taxation year that ended in the calendar year in which the particular year ended, and

(d) determine the amount that is 50% of that proportion of the amount determined under paragraph (b) that

(i) the amount determined under paragraph (a)

is of

(ii) the total determined under paragraph (c),

and the amount determined under paragraph (d) is the amount of the research allowance that may be deducted in computing the income for the particular year of the corporation.

(3) Inclusion in income where research property disposed of — Where at any time in a particular taxation year a corporation has disposed of a research property (other than to a corporation with which it was associated in the year in a transaction to which subsection 85(1) or 88(1) applied), there shall be included in computing the income of the corporation for the year an amount equal to the lesser of

(a) 50% of the lesser of

(i) the fair market value at that time of the property, and

(ii) the capital cost to the corporation of the property at that time, and

(b) the amount, if any, by which the total of

(i) all amounts each of which is the research allowance deducted in computing the income of the corporation for any taxation year commencing before that time, and

(ii) all amounts each of which is an amount in respect of another corporation associated in the particular year with the corporation, equal to the research allowance deducted in computing the income of the other corporation for any taxation year ending in or before the particular year,

exceeds the total of all amounts each of which is an amount in respect of a disposition of property before that time, that was

(iii) an amount included by virtue of this subsection in computing the income of the corporation for any taxation year commencing before that time, or

(iv) an amount in respect of another corporation associated in the particular year with the corporation included by virtue of this subsection in computing the income of that other corporation for any taxation year ending in or before the particular year.

(4) Capital cost of research property disposed of to associated corporation — For the purposes of this subsection and subsection (3), where at any time in a taxation year subsection 85(1) or 88(1) applied with respect to a disposition of research property by a particular corporation to another corporation with which it was associated in the year,

(a) the property shall be deemed to be a research property of the other corporation; and

(b) where the capital cost to the particular corporation of the property exceeds its proceeds of disposition, the capital cost to the other corporation shall be deemed to be the amount that was the capital cost thereof to the particular corporation.

(5) Definitions — In this section,

"base period" of a corporation for a particular taxation year means, except as provided in paragraph 87(2)(l.1), the period commencing

(a) where the corporation has 3 consecutive taxation years commencing at any time after the end of its 1976 taxation year and ending immediately before the particular year, on the first day of the first of those 3 years, and

(b) in any other case, on the later of the first day of its first taxation year and the first day of its 1977 taxation year

and ending immediately before the first day of the particular taxation year;

"expenditure base" of a corporation for a particular taxation year means the product obtained when the amount, if any, by which

(a) the total of all amounts each of which is the qualified expenditure made by the corporation in a taxation year in its base period (or, in the case of a new corporation within the meaning of subsection 87(1), made by the corporation in its base period),

exceeds

(b) the total of all amounts paid to the corporation by

(i) Her Majesty in right of Canada or a province in respect of scientific research and experimental development to the extent that the amount may reasonably be considered to relate to

(A) the qualified expenditure made by the corporation in taxation years ending after 1976, or

(B) the cost of or depreciation on any research property of the corporation,

(ii) another corporation resident in Canada for scientific research and experimental development related to the business of that other corporation, or

(iii) a corporation not resident in Canada if it was entitled to a deduction under subparagraph 37(1)(a)(v) in respect of the amount so paid

in a taxation year in its base period (or, in the case of a new corporation within the meaning of subsection 87(1), paid to the corporation in its base period),

is multiplied by the proportion that the number of days in the particular year is of the number of days in its base period;

"qualified expenditure" made by a corporation in a taxation year means the total of expenditures (other than prescribed expenditures) each of which is

(a) an expenditure, in respect of scientific research and experimental development carried on in Canada, made by it in the year and described in paragraph 37(1)(a),

(b) an expenditure made by it in the year to acquire property that has not been used for any purpose whatever before it was acquired by the corporation and that is an expenditure described in subparagraph 37(1)(b)(i), or

(c) a payment made by it in the year to Her Majesty in right of Canada or a province to the extent that it may reasonably be considered to be a repayment of an amount described in clause (1)(b)(ii)(A) with regard to that corporation;

"research property" of a corporation means property referred to in paragraph (b) of the definition "qualified expenditure" in this subsection acquired by virtue of an expenditure made by the corporation after the end of its 1977 taxation year;

"scientific research and experimental development" has the meaning given to that expression by regulation.

(6) When certain qualified expenditures deemed to be made — Where a corporation has in a taxation year ending in a particular calendar year made a payment to another corporation with which it is associated in the taxation year,

(a) if the payment would, but for this paragraph, be included in the qualified expenditure made by the corporation in the taxation year, such portion of the payment as may reasonably be regarded as a payment for or on account of a scientific research and experimental development expenditure to be made by the other corporation in a taxation year (in this paragraph referred to as a "subsequent year") ending after the particular calendar year shall be deemed, for the purposes of this section, not to have been paid at the time at which it was actually paid, but to have been paid on the last day of the subsequent year; and

(b) if the payment is received by the other corporation in a taxation year ending in a calendar year preceding the particular calendar year, the payment shall, if it may reasonably be regarded as a payment for or on account of a scientific research and experimental development expenditure to be made by the other corporation in a taxation year (in this paragraph referred to as the "specified year") following the year in which the payment was received by it, be deemed, for the purposes of this section, not to have been paid to the other corporation in the taxation year in which it was actually paid, but to have been paid on the last day of the specified year.

(7) Certain corporations deemed to be associated — For the purpose of computing the research allowance of a particular corporation for a taxation year, where another corporation other than a corporation that was

(a) a predecessor corporation (within the meaning of subsection 87(1)) in respect of the particular corporation or in respect of a corporation associated with the particular corporation in the year, or

(b) a subsidiary corporation (within the meaning assigned to the expression "subsidiary" by subsection 88(1)) that was wound up before the taxation year, if its parent corporation (within the meaning assigned to the expression "parent" by that subsection) was the particular corporation or a corporation associated with the particular corporation in the year,

was not associated with the particular corporation in the year but was associated with the particular corporation in a taxation year in the particular corporation's base period for the year, and

(c) all or substantially all of the property of the other corporation used by it in carrying on any business during that base period, was acquired in any manner whatever by the particular corporation, or by one or more corporations associated with the particular corporation in the year,

that other corporation shall (notwithstanding that it may have ceased to exist) be deemed to be a corporation

(d) associated with the particular corporation in the year, and

(e) that had taxation years ending on anniversaries of the last day of its taxation year in which it was last associated with the particular corporation.

37.2 [Repealed]

Origin of s. 37.2: R.S.C. 1985, c. 1 (5th Supp.) (formerly an application rule in 1977-78, c. 32, s. 6).

History: S. 37.2 repealed by 1998, c. 19, s. 87, applicable to 1995 *et seq.*. S. 37.2 formerly read:

37.2 (1) Application of section 37.1 — Section 37.1 is applicable to taxation years ending after 1977 and before 1989 except that,

(a) in its application to any taxation year commencing before 1978, the research allowance of a corporation shall be that proportion of the research allowance otherwise deductible that the number of days in the taxation year after 1977 is of the number of days in the taxation year;

(b) in its application to a taxation year ending after 1987, the research allowance of a corporation shall be that proportion of the research allowance otherwise deductible that the number of days in the taxation year before 1988 is of the number of days in the taxation year; and

(c) with respect to the disposition of a research property, section 37.1 is applicable to the 1978 and subsequent taxation years.

(2) Idem — Words and expressions used in subsection (1) have the meanings assigned by section 37.1.

37.3 [Repealed]

Origin of s. 37.3: R.S.C. 1985, c. 1 (5th Supp.) (formerly an application rule in 1984, c. 1, s. 11).

History: S. 37.3 repealed by 1998, c. 19, s. 87, applicable to 1995 *et seq.* S. 37.3 formerly read:

37.3 Application of subsecs. 37.1(1) and (2) — Notwithstanding section 37.2, subsections 37.1(1) and (2) do not apply to a taxation year of a corporation that ends after October 1983 unless

(a) in the case of a particular taxation year that includes November 1, 1983, the corporation elects in its return of income under Part I for the year to have those subsections apply, in which case each corporation that was associated with the corporation in the year shall be deemed to have so elected in respect of its taxation year that ended in the calendar year in which the particular taxation year ended; or

(b) the qualified expenditure (within the meaning assigned by subsection 37.1(5)) made by the corporation in the year includes

(i) an expenditure that the corporation was obligated to make pursuant to an agreement in writing entered into by the corporation before April 20, 1983, or

(ii) an expenditure that the corporation was obligated to make in respect of a project pursuant to an agreement in writing entered into by the corporation before November 2, 1983, where the project commenced before 1984 and proceeded without undue delay, and arrangements, evidenced by writing, respecting the project were substantially advanced before April 20, 1983,

and the corporation elects in its return of income under Part I for the taxation year to have those subsections apply, in which case the amount that may be deducted under section 37.1 in computing the income of the corporation for the year shall be that proportion of the amount thereof that could, but for this section, have been so deducted by the corporation (on the assumption that it is not associated in the year with any other corporation) that

(iii) an amount equal to the total of expenditures made by the corporation in the year each of which is an expenditure described in the definition "qualified expenditure" in subsection 37.1(5) and is made pursuant to an agreement referred to in subparagraph (i) or (ii)

is of

(iv) the qualified expenditure (within the meaning assigned by subsection 37.1(5)) made by the corporation in the year.

Subdivision c — Taxable Capital Gains and Allowable Capital Losses

38. Taxable capital gain and allowable capital loss — For the purposes of this Act,

(a) **[taxable capital gain — general]** — subject to paragraphs (a.1) and (a.2), a taxpayer's taxable capital gain for a taxation year from the disposition of any property is 1/2 of the taxpayer's capital gain for the year from the disposition of the property;

Selected Cases [para. 38(a)]: *Sani Sport Inc. v. Canada*, [1990] 2 C.T.C. 15 (FCA) (Part of expropriation compensation paid for loss of business use of land was capital).

(a.1) **[taxable capital gain — donation of listed shares]** — a taxpayer's taxable capital gain for a taxation year from the disposition of any property is 1/4 of the taxpayer's capital gain for the year from the disposition of the property if

(i) the disposition is the making of a gift to a qualified donee (as defined in subsection 149.1(1)), other than a private foundation, of a share, debt obligation or right listed on a prescribed stock exchange, a share of the capital stock of a mutual fund corporation, a unit of a mutual fund trust, an interest in a related segregated fund trust (within the meaning assigned by paragraph 138.1(1)(a)) or a prescribed debt obligation, or

(ii) the disposition is deemed by section 70 to have occurred and the taxpayer is deemed by subsection 118.1(5) to have made a gift described in subparagraph (i) of the property;

(a.2) **[taxable capital gain — ecological gift]** — a taxpayer's taxable capital gain for a taxation year from the disposition of a property is 1/4 of the taxpayer's capital gain for the year from the disposition of the property where

(i) the disposition is the making of a gift to a qualified donee (other than a private foundation) of a property described, in respect of the taxpayer, in paragraph 110.1(1)(d) or in the definition "total ecological gifts" in subsection 118.1(1), or

(ii) the disposition is deemed by section 70 to have occurred and the taxpayer is deemed by subsection 118.1(5) to have made a gift described in subparagraph (i) of the property;

(b) **[allowable capital loss]** — a taxpayer's allowable capital loss for a taxation year from the disposition of any property is 1/2 of the taxpayer's capital loss for the year from the disposition of that property; and

(c) **[allowable business investment loss]** — a taxpayer's allowable business investment loss for a taxation year from the disposition of any property is 1/2 of the taxpayer's business investment loss for the year from the disposition of that property.

Selected Cases [para. 38(c)]: *Windrim v. Canada*, [1991] 1 C.T.C. 271 (FCTD) (Only portion of land necessary to use and enjoyment of mobile home).

Related Provisions [s. 38]: 11(2) — Fiscal (business) year of individual does not apply to subdivision c; 20(4.3) — Deemed allowable capital loss on bad debt on disposition of eligible capital property; 38.1 — Allocation of gain to 38(a.1) or (a.2) where advantage received; 39 — Capital gains and losses; 83(2), 89(1)"capital dividend account"(a)(i) — Untaxed fraction of gain can be distributed free of tax by corporation as capital dividend; 96(1.7) — Partnership gains and losses; 100(1) — Disposition of interest in a partnership; 104(21) — Flow-through of gain from trust to beneficiary; 110(1)(d.01) — Deduction on donating employee stock-option shares to charity; 110.6 — Capital gains exemption; 111(8)"net capital loss" — Carryover of unused allowable capital loss; 127.52(1)(d)(i) — 30% of gain added to income for minimum tax purposes; 133(1)(d) — Non-resident-owned investment corporation fully taxed on gains; 142.5(6) — Transitional allowable capital loss re mark-to-market property; 142.5(9)(e) — Deemed taxable capital gain where mark-to-market property acquired by financial institution on rollover; 149.1(6.4) — Rule re gifts of public securities applies to gifts to registered national arts service organizations; 248(1)"allowable business investment loss", 248(1)"allowable capital loss", 248(1)"taxable capital gain" — Definitions in s. 38 apply to entire Act; 248(37)(d) — Rule limiting value of donated property does not apply where 38(a.1) or (a.2) applies; Canada-U.S. Tax Treaty:Art. XIII — Gains.

History: The opening words of para. 38(a.1) amended by 2002, c. 9, s. 22, applicable to dispositions that occur after 2001. The opening words formerly read:

(a.1) a taxpayer's taxable capital gain for a taxation year from the disposition after February 18, 1997 and before 2002 of any property is 1/4 of the taxpayer's capital gain for the year from the disposition of the property where

Paras. 38(a) (b) and (c) amended by 2001, c. 17, subsec. 22(1), applicable to 2000 *et seq.* except that

(a) for a taxation year of a taxpayer that ended before February 28, 2000, the references to the fraction "1/2" in paras. 38(a), (b) and (c) shall be read as references to the fraction "3/4",

(b) for a taxpayer's taxation year that began after February 28, 2000 and ended before October 17, 2000, the references to the fraction "1/2" in paras. 38(a), (b) and (c) shall be read as references to the fraction "2/3",

(c) for a taxation year of a taxpayer that includes February 28, 2000 but does not include October 18, 2000, the references to the fraction "1/2" in paras. 38(a), (b) and (c) shall be read as references to the fraction that applies to the taxpayer for that year, and for this purpose,

(i) where the amount of the taxpayer's net capital gains from dispositions of property in the period that began at the beginning of the year and ended at the end of February 27, 2000 (in this paragraph referred to as the "first period") exceeds the amount of the taxpayer's net capital losses from dispositions of property in the period that begins at the beginning of February 28, 2000 and ends at the end of the year (in this paragraph referred to as the "second period"), the fraction that applies to the taxpayer for the year is 3/4,

(ii) where the amount of the taxpayer's net capital losses from dispositions of property in the first period exceeds the amount of the taxpayer's net capital gains from dispositions of property in the second period, the fraction that applies to the taxpayer for the year is 3/4,

(iii) where the amount of the taxpayer's net capital gains from dispositions of property in the first period is less than the amount of the taxpayer's net capital losses from dispositions of property in the second period, the fraction that applies to the taxpayer for the year is 2/3,

(iv) where the amount of the taxpayer's net capital losses from dispositions of property in the first period is less than the amount of the taxpayer's net capital gains from dispositions of property in the second period, the fraction that applies to the taxpayer for the year is 2/3,

(v) where the taxpayer has only net capital gains, or only net capital losses, from dispositions of property in each of the first and second periods, the fraction that applies to the taxpayer for the year is the fraction determined by the formula

$$(3/4 \times A + 2/3 \times B) / (A + B)$$

where

A is the net capital gains or the net capital losses, as the case may be, of the taxpayer from dispositions of property in the first period, and

B is the net capital gains or the net capital losses, as the case may be, of the taxpayer from dispositions of property in the second period, and

(vi) where the net capital gains and net capital losses of the taxpayer for the year are nil, the fraction that applies to the taxpayer for the year is 2/3,

(d) for a taxation year of a taxpayer that began after February 27, 2000 and includes October 18, 2000, the references to the fraction "1/2" in

paras. 38(a), (b) and (c) shall be read as references to the fraction that applies to the taxpayer for that year, and for this purpose,

(i) where the amount of the taxpayer's net capital gains from dispositions of property in the period that began at the beginning of the year and ended at the end of October 17, 2000 (in this paragraph referred to as the "first period") exceeds the amount of the taxpayer's net capital losses from dispositions of property in the period that begins at the beginning of October 18, 2000 and ends at the end of the year (in this paragraph referred to as the "second period"), the fraction that applies to the taxpayer for the year is 2/3,

(ii) where the amount of the taxpayer's net capital losses from dispositions of property in the first period exceeds the amount of the taxpayer's net capital gains from dispositions of property in the second period, the fraction that applies to the taxpayer for the year is 2/3,

(iii) where the amount of the taxpayer's net capital gains from dispositions of property in the first period is less than the amount of the taxpayer's net capital losses from dispositions of property in the second period, the fraction that applies to the taxpayer for the year is 1/2,

(iv) where the amount of the taxpayer's net capital losses from dispositions of property in the first period is less than the amount of the taxpayer's net capital gains from dispositions of property in the second period, the fraction that applies to the taxpayer for the year is 1/2,

(v) where the taxpayer has only net capital gains, or only net capital losses, from dispositions of property in each of the first and second periods, the fraction that applies to the taxpayer for the year is the fraction determined by the formula

$$(2/3 \times A + 1/2 \times B) / (A + B)$$

where

A is the net capital gains or the net capital losses, as the case may be, of the taxpayer from dispositions of property in the first period, and

B is the net capital gains or the net capital losses, as the case may be, of the taxpayer from dispositions of property in the second period, and

(vi) where the net capital gains and net capital losses of the taxpayer for the year are nil, the fraction that applies to the taxpayer for the year is 1/2,

(e) for a taxation year of a taxpayer that includes February 27, 2000 and October 18, 2000, the references to the fraction "1/2" in paras. 38(a), (b) and (c) shall be read as references to the fraction that applies to the taxpayer for that year, and for this purpose,

(i) the fraction that applies to the taxpayer for the year is 3/4, where

(A) the amount by which the amount of the taxpayer's net capital gains from dispositions of property in the period that began at the beginning of the year and ended at the end of February 27, 2000 (in this paragraph referred to as the "first period") exceeds the amount of the taxpayer's net capital losses from dispositions of property in the period that began at the beginning of February 28, 2000 and ended at the end of October 17, 2000 (in this paragraph referred to as the "second period")

exceeds

(B) the amount of the taxpayer's net capital losses from dispositions of property in the period that begins at the beginning of October 18, 2000 and ends at the end of the year (in this paragraph referred to as the "third period"),

(ii) the fraction that applies to the taxpayer for the year is 3/4, where

(A) the amount by which the amount of the taxpayer's net capital losses from dispositions of property in the first period exceeds the amount of the taxpayer's net capital gains from dispositions of property in the second period

exceeds

(B) the amount of the taxpayer's net capital gains from dispositions of property in the third period,

(iii) the fraction that applies to the taxpayer for the year is 2/3, where

(A) the amount by which the amount of the taxpayer's net capital gains from dispositions of property in the second period exceeds the amount of the taxpayer's net capital losses from dispositions of property in the first period

exceeds

(B) the amount of the taxpayer's net capital losses from dispositions of property in the third period,

(iv) the fraction that applies to the taxpayer for the year is 2/3, where

(A) the amount by which the amount of the taxpayer's net capital losses from dispositions of property in the second period exceeds the amount of the taxpayer's net capital gains from dispositions of property in the first period

exceeds

(B) the amount of the taxpayer's net capital gains from dispositions of property in the third period,

(v) where the taxpayer has net capital gains in each of the first and second periods and the total amount of those net capital gains in those periods exceeds the amount of the taxpayer's net capital losses in the third period, the fraction that applies to the taxpayer for the year is the fraction that is determined by the formula

$$(3/4 \times A + 2/3 \times B) / (A + B)$$

where

A is the net capital gains of the taxpayer from dispositions of property in the first period, and

B is the net capital gains of the taxpayer from dispositions of property in the second period,

(vi) where the taxpayer has net capital losses in each of the first and second periods and the total amount of those net capital losses in those periods exceeds the amount of the taxpayer's net capital gains in the third period, the fraction that applies to the taxpayer for the year is the fraction that is determined by the formula

$$(3/4 \times A + 2/3 \times B) / (A + B)$$

where

A is the net capital losses of the taxpayer from dispositions of property in the first period, and

B is the net capital losses of the taxpayer from dispositions of property in the second period,

(vii) where the taxpayer has only net capital gains, or only net capital losses, from dispositions of property in each of the first, second and third periods, the fraction that applies to the taxpayer for the year is the fraction that is determined by the formula

$$(3/4 \times A + 2/3 \times B + 1/2 \times C) / (A + B + C)$$

where

A is the taxpayer's net capital gains or net capital losses, as the case may be, from dispositions of property in the first period,

B is the taxpayer's net capital gains or net capital losses, as the case may be, from dispositions of property in the second period, and

C is the taxpayer's net capital gains or net capital losses, as the case may be, from dispositions of property in the third period,

(viii) where the amount of the taxpayer's net capital gains from dispositions of property in the first period exceeds the amount of the taxpayer's net capital losses from dispositions of property in the second period and the taxpayer has net capital gains from dispositions of property in the third period, the fraction that applies to the taxpayer for the year is the fraction that is determined by the formula

$$(3/4 \times A + 1/2 \times B) / (A + B)$$

where

A is the amount by which the taxpayer's net capital gains from dispositions of property in the first period exceeds the amount of the taxpayer's net capital losses from dispositions of property in the second period, and

B is the taxpayer's net capital gains from dispositions of property in the third period,

(ix) where the amount of the taxpayer's net capital losses from dispositions of property in the first period exceeds the amount of the taxpayer's net capital gains from dispositions of property in the second period and the taxpayer has net capital losses from dispositions of property in the third period, the fraction that applies to the taxpayer for the year is the fraction that is determined by the formula

$$(3/4 \times A + 1/2 \times B) / (A + B)$$

where

A is the amount by which the taxpayer's net capital losses from dispositions of property in the first period exceeds the amount of the taxpayer's net capital gains from dispositions of property in the second period, and

B is the taxpayer's net capital losses from dispositions of property in the third period,

(x) where the amount of the taxpayer's net capital gains from dispositions of property in the second period exceeds the amount of the taxpayer's net capital losses from dispositions of property in the first period and the taxpayer has net capital gains from dispositions of property in the third period, the fraction that applies to the taxpayer for the year is the fraction that is determined by the formula

$$(2/3 \times A + 1/2 \times B) / (A + B)$$

where

A is the amount by which the taxpayer's net capital gains from dispositions of property in the second period exceeds the amount of the taxpayer's net capital losses from dispositions of property in the first period, and

B is the taxpayer's net capital gains from dispositions of property in the third period,

(xi) where the amount of the taxpayer's net capital losses from dispositions of property in the second period exceeds the amount of the taxpayer's net capital gains from dispositions of property in the first period and the taxpayer has net capital losses from dispositions of property in the third period, the fraction that applies to the taxpayer for the year is the fraction that is determined by the formula

$$(2/3 \times A + 1/2 \times B) / (A + B)$$

where

A is the amount by which the taxpayer's net capital losses from dispositions of property in the second period exceeds the amount of the taxpayer's net capital gains from dispositions of property in the first period, and

B is the taxpayer's net capital losses from dispositions of property in the third period, and

(xii) in any other case, the fraction that applies to the taxpayer for the year is ½, and

in determining the fraction that applies to the taxpayer under paragraphs (a) to (e) for the year, the following rules apply:

(f) the net capital gains of a taxpayer from dispositions of property in a period is the amount, if any, by which the taxpayer's capital gains from dispositions of property in the period exceeds the taxpayer's capital losses from dispositions of property in the period,

(g) the net capital losses of a taxpayer from dispositions of property in a period is the amount, if any, by which the taxpayer's capital losses from dispositions of property in the period exceeds the taxpayer's capital gains from dispositions of property in the period,

(h) the net amount included as a capital gain of the taxpayer for a taxation year from a disposition to which para. 38(a.2) applies or from a disposition to which para. 38(a.1) applies, is deemed to be equal to one half of the capital gain,

(i) the net amount included as a capital gain of the taxpayer for a taxation year from a disposition of property before the year because of subparas. 40(1)(a)(ii) and (iii) is deemed to be a capital gain of the taxpayer from a disposition of property on the first day of the year,

(j) each capital loss that is a business investment loss shall be determined without reference to subsecs. 39(9) and (10),

(k) where an amount is included in computing the income of the taxpayer for the year because of subsec. 80(13) in respect of a commercial obligation that is settled, the amount that would be determined under that subsection in respect of the obligation, if the value of E in the formula in that subsection were 1, is deemed to be a capital gain of the taxpayer from a disposition of property on the day on which the settlement occurs,

(l) the taxpayer's capital gains and losses from dispositions of property (other than taxable Canadian property) while the taxpayer is a non-resident are deemed to be nil,

(m) where an election is made by a taxpayer under para. 104(21.4)(d), subsec. 104(21.5), subsec. 130.1(4.4) or (4.5), or subsec. 131(1.7) or (1.9), all as amended 2001, c. 17, for a year, the portion of the taxpayer's net capital gains for the year that are to be treated as being in respect of capital gains realized on dispositions of property that occurred in a particular period in the year is that proportion of those net capital gains that the number of days in the particular period is of the number of days in the year,

(n) where the election made under para. 104(21.4)(d) or subsec. 104(21.5), both as amended by 2001, c. 17, for the year was made by a personal trust, the portion of the taxpayer's net capital gains for the year that are to be treated as being in respect of capital gains realized on dispositions of property that occurred in a particular period in the year is that proportion of those net capital gains that the number of days in the particular period is of the number of days that are in all periods in the year in which a net gain was realized,

(o) where an amount is designated under subsec. 104(21), in respect of a beneficiary by a trust in respect of the net taxable capital gains of the trust for a taxation year of the trust and the trust does not elect under para. 104(21.4)(d), as amended by 2001, c. 17, for the year, the deemed gains of the beneficiary referred to in subsec. 104(21.4), as amended by 2001, c. 17, are deemed to have been realized in each period in the year in a proportion that is equal to the same proportion that the net capital gains of the trust realized by the trust in that period is of all the net capital gains realized by the trust in the year,

(p) where in the course of administering the estate of a deceased taxpayer, a capital loss from a disposition of property by the legal representative of a deceased taxpayer is deemed under para. 164(6)(c) to be a capital loss of the deceased taxpayer from the disposition of property by the taxpayer in the taxpayer's last taxation year and not to be a capital loss of the estate, the capital loss is deemed to be from the disposition of a property by the taxpayer immediately before the taxpayer's death,

(q) each capital gain referred to in para. 104(21.4)(a), as amended by 2001, c. 17, in respect of a beneficiary, shall be determined as if that para. were read without reference to subpara. 104(21.4)(a)(ii),

(r) where no capital gains or losses are realized in a period, the amount of net capital gains or losses for that period is deemed to be nil,

(s) where a net amount is included as a capital gain of a taxpayer for a taxation year because of the granting of an option under subsec. 49(1), the net amount is deemed to be a capital gain of the taxpayer from a disposition of property on the day on which the option was granted,

(t) where a net amount is included as a capital gain of a corporation for its taxation year under subsec. 49(2) because of the expiration of an option that was granted by the corporation, the net amount is deemed to be a capital gain of the corporation from a disposition of property on the day on which the option expired,

(u) where a net amount is included as a capital gain of a trust for its taxation year under subsec. 49(2.1) because of the expiration of an option that was granted by the trust, the net amount is deemed to be a capital gain of the trust from a disposition of property on the day on which the option expired, and

(v) where a net amount is included as a capital gain of a taxpayer for a taxation year because of subsec. 49(3), (3.01) or (3.1), the net amount is deemed to be a capital gain of the taxpayer from a disposition of property on the day on which the option was exercised.

Paras. (a), (b) and (c) formerly read:

(a) subject to paragraph (a.1), a taxpayer's taxable capital gain for a taxation year from the disposition of any property is ¾ of the taxpayer's capital gain for the year from the disposition of the property;

. . . . .

(b) a taxpayer's allowable capital loss for a taxation year from the disposition of any property is ¾ of the taxpayer's capital loss for the year from the disposition of that property; and

(c) a taxpayer's allowable business investment loss for a taxation year from the disposition of any property is ¾ of the taxpayer's bus-

iness investment loss for the year from the disposition of that property.

Para. 38(a.1) amended by replacing the reference to the fraction "3/8" with a reference to the fraction "1/4", by the said c. 17, subsec. 22(2), applicable to 2000 *et seq.* except that,

(a) for a taxation year of a taxpayer that includes February 28, 2000 or October 17, 2000, the reference to the fraction "1/4" shall be read as a reference to 1/2 of the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the taxpayer for the year;

(a.1) for a taxation year that began after February 28, 2000 and ended before October 17, 2000, the reference to the fraction "1/4" shall be read as a reference to the fraction "1/3"; and

(b) for a taxation year that ended before February 28, 2000, the reference to the fraction "1/4" shall be read as a reference to the fraction "3/8".

Para. 38(a.2) added by the said c. 17, subsec. 22(3), applicable to gifts made by a taxpayer after February 27, 2000 except that,

(a) if the taxpayer's taxation year began after February 28, 2000 and ended before October 17, 2000, the reference to the fraction "1/4" shall be read as a reference to the fraction "1/3"; and

(b) if the taxpayer's taxation year includes February 28, 2000 or October 17, 2000, the reference to the fraction "1/4" shall be read as a reference to 1/2 of the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the taxpayer for the year.

Para. 38(a) amended and para. (a.1) added by 1998, c. 19, s. 6, applicable after February 18, 1997. Para. (a) formerly read:

(a) a taxpayer's taxable capital gain for a taxation year from the disposition of any property is 3/4 of the taxpayer's capital gain for the year from the disposition of that property;

Selected Cases [s. 38]: *Fortino v. R.*, [2000] 1 C.T.C. 349 (FCA); aff'g [1997] 2 C.T.C. 2184 (TCC) (Non-competition agreement proceeds not capital gain); *Haslam et al. v. R.*, [1988] 1 C.T.C. 153 (FCTD) (Land values determined using "cost of development" approach); *Doral Holdings Ltd. v. R.*, [1987] 1 C.T.C. 398 (FCTD) (Mere possibility of future development could not considerably increase value of land acquired in 1971); *R. v. Demco Management Ltd.*, [1986] 1 C.T.C. 92 (FCA) (Where property sold as a going concern, purchase price need not be broken down into component parts); *Yager v. R.*, [1985] 1 C.T.C. 89 (FCTD) (Valuation Day value of shares determined using double capitalization of intangibles method); *R. v. Waddell Hugh, Ltd.*, [1983] C.T.C. 270 (FCA) (Fair market value accepted as Valuation Day value where shares had "retention value" beyond that determined using formula); *Community Shopping Developments Ltd. v. R.*, [1983] C.T.C. 60 (FCTD) (Taxable capital gain determined as proportion of capital gain equal to years of ownership after Valuation Day, over total years of ownership); *Smith v. R.*, [1981] C.T.C. 476 (FCTD) (Revenue officer subject to examination for discovery on appraisal); *National System of Baking of Alberta Ltd. v. R.*, [1980] C.T.C. 237 (FCA) (Valuation Day value determined without adjustment for possible takeover bid); *Connor v. R.*, [1979] C.T.C. 365 (FCA) (Expert evidence of Valuation Day value rejected in favour of Court's criteria); *Littler v. MNR*, [1976] C.T.C. 379 (FCTD); aff'd on other grounds [1978] C.T.C. 235 (FCA) (Fair market value was price listed on stock exchange despite premium paid for control).

Definitions [s. 38]: "business investment loss" — 39(1)(c), 248(1); "capital gain" — 39(1)(a), 248(1); "capital loss" — 39(1)(b), 248(1); "disposition", "mineral resource" — 248(1); "mutual fund corporation" — 131(8), 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q) [to be repealed], 132.2(3)(n) [draft], 248(1); "prescribed" — 248(1); "prescribed debt obligation" — Reg. 6210; "prescribed stock exchange" — 248(29), Reg. 3200, 3201; "private foundation" — 149.1(1), 248(1); "property" — 248(1); "qualified donee" — 149.1(1), 248(1); "share" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "total ecological gifts" — 118.1(1).

Regulations: 3200, 3201 (prescribed stock exchanges for 38(a.1)); 6210 (prescribed debt obligations for 38(a.1).

Interpretation Bulletins [s. 38]: IT-484R2: Business investment losses.

Registered Charities Newsletters: 12 (valuing gifts of public securities).

Forms [s. 38]: T1170: Capital gains on gifts of certain capital property; T4037: Capital gains [guide].

Proposed Addition — 38.1

38.1 Allocation of gain re certain gifts — If a taxpayer is entitled to an amount of an advantage in respect of a gift of property described in paragraph 38(a.1) or (a.2),

(a) those paragraphs apply only to that proportion of the taxpayer's capital gain in respect of the gift that the eligible amount of the gift is of the taxpayer's proceeds of disposition in respect of the gift; and

(b) paragraph 38(a) applies to the extent that the taxpayer's capital gain in respect of the gift exceeds the amount of the capital gain to which paragraph 38(a.1) or (a.2) applies.

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 59, will add s. 38.1, applicable to gifts made after December 20, 2002.

Technical Notes: Paragraphs 38(a.1) and (a.2) provide a special inclusion rate for capital gains arising as a result of a gift to qualified donees of certain securities or of environmentally sensitive land. This inclusion rate is one-half of the normal inclusion rate.

Section 38.1 is added consequential to the addition of new subsections 248(31) to (33), for gifts made after December 20, 2002. New section 38.1 provides that, where a taxpayer is entitled to an advantage or benefit in respect of a gift, only part of the taxpayer's capital gain will be entitled to the special inclusion rate. The part entitled to the special inclusion rate is that proportion of the gain that the eligible amount of the gift is of the taxpayer's total proceeds of disposition in respect of the property.

For additional details, see the commentary to new subsections 248(31) and (32) regarding the eligible amount of a gift and the amount of the advantage in respect of a gift.

Related Provisions [s. 38.1]: 248(30)–(33) — Eligible amount of gift and advantage in respect of gift.

Definitions [s. 38.1]: "advantage" — 248(32); "amount" — 248(1); "capital gain" — 39(1)(a), 248(1); "disposition" — 248(1); "eligible amount" — 248(31), (41); "property", "taxpayer" — 248(1).

39. (1) Meaning of capital gain and capital loss [and business investment loss] — For the purposes of this Act,

(a) a taxpayer's capital gain for a taxation year from the disposition of any property is the taxpayer's gain for the year determined under this subdivision (to the extent of the amount thereof that would not, if section 3 were read without reference to the expression "other than a taxable capital gain from the disposition of a property" in paragraph 3(a) and without reference to paragraph 3(b), be included in computing the taxpayer's income for the year or any other taxation year) from the disposition of any property of the taxpayer other than

(i) eligible capital property,

(i.1) an object that the Canadian Cultural Property Export Review Board has determined meets the criteria set out in paragraphs 29(3)(b) and (c) of the *Cultural Property Export and Import Act* and that has been disposed of,

(A) in the case of a gift to which subsection 118.1(5) applies, within the period ending 36 months after the death of the taxpayer or, where written application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister considers reasonable in the circumstances, and

(B) in any other case, at any time,

to an institution or a public authority in Canada that was, at the time of the disposition, designated under subsection 32(2) of that Act either generally or for a specified purpose related to that object,

(ii) a Canadian resource property,

(ii.1) a foreign resource property,

(ii.2) a property to the disposition of which subsection 142.4(4) or (5) or 142.5(1) applies,

Proposed Addition — 39(1)(a)(ii.3)

(ii.3) a property in respect of which subsection 94.2(3) applies (and subsection 94.2(20) does not apply) to the taxpayer for the year,

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), s. 5, will add subpara. 39(1)(a)(ii.3), applicable to dispositions that occur after 2002.

Technical Notes: Paragraph 39(1)(a) describes a taxpayer's capital gain for a taxation year from the disposition of property. Under this paragraph, gains from dispositions of specified properties are to be excluded in determining a capital gain. Under subparagraph 39(1)(a)(ii.2), the specified properties include specified debt obligations, where subsection 142.4(4) or (5) applies to the disposition, and mark-to-market properties where subsection 142.5(1) applies to the disposition. Under subparagraph 39(1)(b)(ii), the same exclusion generally applies with regard to a taxpayer's capital loss.

New subparagraph 39(1)(a)(ii.3) provides a similar exclusion for property in respect of which subsection 94.2(3) applies (and subsection 94.2(20) does not apply) to a taxpayer for a taxation year. Subsection 94.2(3) sets out the conditions for the application of the mark-to-market taxation regime under section 94.2 for participating interests in foreign investment entities and tracking entities. Because of paragraph 94.2(5)(b), this exclusion does not apply to gains from the disposition by a taxpayer of property where the taxpayer is not resident in Canada immediately before the time of the disposition.

(iii) an insurance policy, including a life insurance policy, except for that part of a life insurance policy in respect of which a policyholder is deemed by paragraph 138.1(1)(e) to have an interest in a related segregated fund trust,

(iv) a timber resource property, or

(v) an interest of a beneficiary under a qualifying environmental trust;

Selected Cases [para. 39(1)(a)]: *Whent v. R.*, [2000] 1 C.T.C. 329 (FCA) (Bargain purchases do not necessarily exclude capital treatment of gains); *Sani Sport Inc. v. Canada*, [1990] 2 C.T.C. 15 (FCA) (Part of expropriation compensation paid for loss of business use of land was capital); *Dumais v. MNR*, [1990] 1 C.T.C. 342 (FCTD) (Capital gain from disposition of community property taxable to husband alone).

(b) a taxpayer's capital loss for a taxation year from the disposition of any property is the taxpayer's loss for the year determined under this subdivision (to the extent of the amount thereof that would not, if section 3 were read in the manner described in paragraph (a) of this subsection and without reference to the expression "or the taxpayer's allowable business investment loss for the year" in paragraph 3(d), be deductible in computing the taxpayer's income for the year or any other taxation year) from the disposition of any property of the taxpayer other than

(i) depreciable property, or

(ii) property described in any of subparagraphs (a)(i), (ii) to (iii) and (v); and

Selected Cases [para. 39(1)(b)]: *Sénécal (J.G.) v. MNR*, [1993] 2 C.T.C. 2218 (TCC) (Proceeds of disposition of land equal to cash and face value of promissory note received, despite evidence that note's value nil).

(c) a taxpayer's business investment loss for a taxation year from the disposition of any property is the amount, if any, by which the taxpayer's capital loss for the year from a disposition after 1977

(i) to which subsection 50(1) applies, or

(ii) to a person with whom the taxpayer was dealing at arm's length

of any property that is

(iii) a share of the capital stock of a small business corporation, or

(iv) a debt owing to the taxpayer by a Canadian-controlled private corporation (other than, where the taxpayer is a corporation, a debt owing to it by a corporation with which it does not deal at arm's length) that is

(A) a small business corporation,

(B) a bankrupt (within the meaning assigned by subsection 128(3)) that was a small business corporation at the time it last became a bankrupt, or

(C) a corporation referred to in section 6 of the *Winding-up and Restructuring Act* that was insolvent (within the meaning of that Act) and was a small business corporation at the time a winding-up order under that Act was made in respect of the corporation,

exceeds the total of

(v) in the case of a share referred to in subparagraph (iii), the amount, if any, of the increase after 1977 by virtue of the application of subsection 85(4) in the adjusted cost base to the taxpayer of the share or of any share (in this subparagraph referred to as a "replaced share") for which the share or a replaced share was substituted or exchanged,

Selected Cases [subpara. 39(1)(c)(v)]: *Reeson Investments Ltd. v. Canada*, [1990] 2 C.T.C. 190 (FCTD) (Conversion of capital loss to business investment loss prevented in transactions between associated companies; transfers of business investment loss permitted).

(vi) in the case of a share referred to in subparagraph (iii) that was issued before 1972 or a share (in this subparagraph and subparagraph (vii) referred to as a "substituted share") that was substituted or exchanged for such a share or for a substituted share, the total of all amounts each of which is an amount received after 1971 and before or on the disposition of the share or an amount receivable at the time of such a disposition by

(A) the taxpayer,

(B) where the taxpayer is an individual, the taxpayer's spouse or common-law partner, or

(C) a trust of which the taxpayer or the taxpayer's spouse or common-law partner was a beneficiary

as a taxable dividend on the share or on any other share in respect of which it is a substituted share, except that this subparagraph shall not apply in respect of a share or substituted share that was acquired after 1971 from a person with whom the taxpayer was dealing at arm's length,

(vii) in the case of a share to which subparagraph (vi) applies and where the taxpayer is a trust referred to in paragraph 104(4)(a), the total of all amounts each of which is an amount received after 1971 or receivable at the time of the disposition by the settlor (within the meaning assigned by subsection 108(1)) or by the settlor's spouse or common-

law partner as a taxable dividend on the share or on any other share in respect of which it is a substituted share, and

(viii) the amount determined in respect of the taxpayer under subsection (9) or (10), as the case may be.

Selected Cases [para. 39(1)(c)]: *Klein v. R.*, [2001] 3 C.T.C. 2200 (TCC) (Loan to a corporate partner that was small business corporation was eligible for ABIL treatment); *Tipster Investments Ltd. v. R.*, [1998] 2 C.T.C. 3005 (TCC) (Business investment loss included in definition of capital loss).

Related Provisions: 12(1)(z.1) — Disposition of interest in qualifying environmental trust; 39(2) — Capital gains and losses in respect of foreign currencies; 39(3) — Gain — purchase of bonds by issuer; 39(12) — Amount paid under guarantee deemed to be business investment loss; 40 — Calculation of gain or loss; 44.1(2) — Capital gain on disposition of small business investment that is replaced by another; 50(1) — Conditions for business investment loss where shares or debt still owned; 55(2) — Deemed capital gain on certain dividends; 80.03(2), (4) — Deemed capital gain on disposition of property following debt forgiveness; 100(4), (5) — Capital loss on disposition of partnership interest; 104(4.1) — Mark-to-market property can be capital property for trust's 21-year deemed disposition; 110.6 — Capital gains exemption; 118.1(7.1) — Gifts of cultural property; 136 — Cooperative can be private corporation for 39(1)(c); 139.1(4)(a) — Capital gain and loss on ownership rights resulting from demutualization of insurer deemed nil; 144(4) — Deemed capital gain from employees profit sharing plan; 248(1)"capital gain", "capital loss" — Definitions in 39(1) apply to entire Act; 248(37)(c) — Rule limiting value of donated property does not apply where 39(1)(a)(i.1) applies; Canada-U.S. Tax Treaty:Art. XIII — Gains.

History: Clauses 39(1)(c)(vi)(B) and (C) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subpara. 39(1)(a)(v) amended by 1998, c. 19, subsec. 7(1), applicable to taxation years that end after February 18, 1997. The subpara. formerly read:

(v) an interest of a beneficiary under a mining reclamation trust;

Cl. 39(1)(c)(iv)(C) amended by 1996, c. 6, subsec. 167(2), to substitute "Winding-up and Restructuring Act" for "Winding-up Act", effective June 28, 1996.

Subpara. 39(1)(a)(ii.2) added by 1995, c. 21, subsecs. 49(1), (2), applicable to dispositions of property occurring after February 22, 1994. Subpara. (ii.2) formerly read:

(ii) property described in subparagraph (a)(i), (ii), (ii.1), (iii) or (v); and

Subpara. 39(1)(a)(v) added by 1995, c. 3, subsec. 10(1), applicable to taxation years that end after February 22, 1994.

Subpara. 39(1)(b)(ii) amended by 1995, c. 3, subsec. 10(2), applicable to taxation years that end after February 22, 1994. Subpara. (ii) formerly read:

(ii) property described in subparagraph (a)(i), (ii) or (iii); and

Subpara. 39(1)(a)(i.1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 22(1), applicable with respect to dispositions occurring after December 11, 1988. Subpara. 39(1)(a)(i.1) formerly read:

(i.1) an object that the Canadian Cultural Property Export Review Board has determined meets all criteria set out in paragraphs 23(3)(b) and (c) of the *Cultural Property Export and Import Act* and that has been disposed of,

(A) in the case of a gift to which subsection 118.1(5) applies, within 15 months after the death of the taxpayer or such longer period as is reasonable in the circumstances, and

(B) in any other case, at any time,

to an institution or public authority in Canada that was at the time of the disposition designated under subsection 32(2) of that Act either generally or for a purpose related to that object,

Subpara. 39(1)(c)(iv) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 22(2), applicable to 1987 *et seq.* Subpara. 39(1)(c)(iv) formerly read:

(iv) a debt owing to the taxpayer by a small business corporation other than, where the taxpayer is a corporation, a debt owed to it by a small business corporation with which it does not deal at arm's length

Selected Cases [subsec. 39(1)]: *Gordon v. Canada*, [1996] 3 C.T.C. 2229 (TCC) (Payment directly to creditors instead of to company whose debt was guaranteed was acceptable); *Macdonald (I.V.) v. Canada*, [1993] 2 C.T.C. 75 (FCA) (Inflation not accounted for in computation of capital gain); *Dumais v. MNR*, [1990] 1 C.T.C. 342 (FCTD) (Proceeds of disposition of community property under *Civil Code* Article 1292 taxed in hands of husband alone); *Louie, H.Y., Co. Ltd. v. R.*, [1986] 1 C.T.C. 499 (FCTD) (Loss on shares in construction company was business investment loss).

Interpretation Bulletins: IT-123R5: Transactions involving eligible capital property; IT-125R4: Dispositions of resource properties; IT-159R3: Capital debts established to be bad debts; IT-220R2: Capital cost allowance — proceeds of disposition of depreciable property; IT-359R2: Premiums and other amounts re leases; IT-346R: Commodity futures and certain commodities; IT-407R4: Dispositions of cultural property to designated Canadian institutions; IT-426R: Shares sold subject to an earnout agreement; IT-444R: Corporations — involuntary dissolutions; IT-481: Timber resource property and timber limits; IT-484R2: Business investment losses. See also list at end of s. 39.

I.T. Technical News: 16 (*Continental Bank* case).

Advance Tax Rulings: ATR-15: Employee stock option plan; ATR-28: Redemption of capital stock of family farm corporation.

Forms: T1 Sched. 3: Capital gains (or losses); T2 SCH 6: Summary of dispositions of capital property; T3 Sched. 1: Dispositions of capital property; T1161: List of properties by an emigrant of Canada; T4037: Capital gains [guide].

(2) Capital gains and losses in respect of foreign currencies — Notwithstanding subsection (1), where, by virtue of any fluctuation after 1971 in the value of the currency or currencies of one or more countries other than Canada relative to Canadian currency, a taxpayer has made a gain or sustained a loss in a taxation year, the following rules apply:

(a) the amount, if any, by which

(i) the total of all such gains made by the taxpayer in the year (to the extent of the amounts thereof that would not, if section 3 were read in the manner described in paragraph (1)(a) of this section, be included in computing the taxpayer's income for the year or any other taxation year)

exceeds

(ii) the total of all such losses sustained by the taxpayer in the year (to the extent of the amounts thereof that would not, if section 3 were read in the manner described in paragraph (1)(a) of this section, be deductible in computing the taxpayer's income for the year or any other taxation year), and

(iii) if the taxpayer is an individual, $200,

shall be deemed to be a capital gain of the taxpayer for the year from the disposition of currency of a country other than Canada, the amount of which capital gain is the amount determined under this paragraph; and

(b) the amount, if any, by which

(i) the total determined under subparagraph (a)(ii),

exceeds

(ii) the total determined under subparagraph (a)(i), and

(iii) if the taxpayer is an individual, $200,

shall be deemed to be a capital loss of the taxpayer for the year from the disposition of currency of a country other than Canada, the amount of which capital loss is the amount determined under this paragraph.

Proposed Amendment — 39(2)

Letter from Dept. of Finance, February 12, 2001: See under 93(2).

Related Provisions: 20.3(2)(b) — Foreign exchange gain on weak currency loan deemed to be income; 80.01(11) — Fluctuation in foreign cur-

rency ignored for purposes of debt parking and statute-barred debt rules; 95(2)(g)–(g.02), 95(2)(i) — Gain or loss of foreign affiliate on fluctuation of foreign currency; 142.3(1)(a), (b) — Foreign currency gain or loss by financial institution on specified debt obligation; 142.4(1)"tax basis"(f), (o) — Disposition of specified debt obligation by financial institution; 144(4) — Deemed capital loss from employees profit sharing plan; 248(1)"amortized cost"(c.1), (f.1) — Effect on amortized cost of loan or lending asset.

Selected Cases [subsec. 39(2)]: *Imperial Oil Ltd. v. R.*, [2004] 2 C.T.C. 3030 (TCC) (Foreign exchange losses during term of loan not deductible; treated as capital loss); *Rezvankhah v. R.*, [2003] 1 C.T.C. 2473 (TCC) (Two-step process for determination of gain or loss where foreign currency involved); *MacMillan Bloedel Ltd. v. R.*, [1999] 3 C.T.C. 652 (FCA) (Exchange loss recognized on share redemptions); *Tahsis Co. Ltd. v. R.*, [1979] C.T.C. 410 (FCTD) (Pre-Valuation Day exchange rate not relevant).

Interpretation Bulletins: IT-95R: Foreign exchange gains and losses. See also list at end of s. 39.

I.T. Technical News: 15 (tax consequences of the adoption of the "euro" currency); 25 (foreign exchange losses).

(3) Gain in respect of purchase of bonds, etc., by issuer — Where a taxpayer has issued any bond, debenture or similar obligation and has at any subsequent time in a taxation year and after 1971 purchased the obligation in the open market, in the manner in which any such obligation would normally be purchased in the open market by any member of the public,

(a) the amount, if any, by which the amount for which the obligation was issued by the taxpayer exceeds the purchase price paid or agreed to be paid by the taxpayer for the obligation shall be deemed to be a capital gain of the taxpayer for the taxation year from the disposition of a capital property, and

(b) the amount, if any, by which the purchase price paid or agreed to be paid by the taxpayer for the obligation exceeds the greater of the principal amount of the obligation and the amount for which it was issued by the taxpayer shall be deemed to be a capital loss of the taxpayer for the taxation year from the disposition of a capital property,

to the extent that the amount determined under paragraph (a) or (b) would not, if section 3 were read in the manner described in paragraph (1)(a) and this Act were read without reference to subsections 80(12) and (13), be included or be deductible, as the case may be, in computing the taxpayer's income for the year or any other taxation year.

Related Provisions: 80(1)"forgiven amount"B(d) — Debt forgiveness rules do not apply where subsec. 39(3) applies; 248(27) — Purchase of partial obligation treated as purchase of obligation.

History: The closing words of subsec. 39(3) amended by 1995, c. 21, s. 10, applicable to taxation years that end after February 21, 1994. The closing words formerly read:

> to the extent of the amount of the capital gain or capital loss, as the case may be, that would not, if section 3 were read in the manner described in paragraph (1)(a) of this section, be included or be deductible, as the case may be, in computing the taxpayer's income for the year or any other taxation year.

I.T. Application Rules: 26(1.1) (when obligation was outstanding on January 1, 1972).

Interpretation Bulletins: See list at end of s. 39.

(4) Election concerning disposition of Canadian securities — Except as provided in subsection (5), where a Canadian security has been disposed of by a taxpayer in a taxation year and the taxpayer so elects in prescribed form in the taxpayer's return of income under this Part for that year,

(a) every Canadian security owned by the taxpayer in that year or any subsequent taxation year shall be deemed to have been a capital property owned by the taxpayer in those years; and

(b) every disposition by the taxpayer of any such Canadian security shall be deemed to be a disposition by the taxpayer of a capital property.

Related Provisions: 39(4.1) — Look through partnerships for purposes of 39(4); 39(5) — Taxpayers to whom subsec. (4) inapplicable; 39(6) — Definition of "Canadian security"; 54.2 — Certain shares deemed to be capital property.

History: Subsec. 7(5) of 1998, c. 19 provides:

> (5) For the purpose of subsection 39(4) of the Act, if
>
> (a) an election referred to in that subsection is made by a mutual fund corporation or mutual fund trust in prescribed form on or before its filing-due date for its taxation year that includes the day on which this Act is assented to [June 18, 1998], and
>
> (b) the election is in respect of a particular taxation year that ends after 1990 and that is not after the corporation's or trust's taxation year that includes the day on which this Act is assented to [June 18, 1998],
>
> the election is deemed to have been made in the corporation's or trust's return of income under Part I of the Act for the particular year.

Selected Cases [subsec. 39(4)]: *Satinder v. Canada (A.-G.)*, [2003] 2 C.T.C. 34 (FCA) (Accrued interest cannot be converted to capital gain by election); *Kane v. Canada*, [1995] 1 C.T.C. 1 (FCTD) (Election not available to individuals having professional knowledge of market in which they deal); *Vancouver Art Metal Works Ltd. v. Canada*, [1993] 1 C.T.C. 346 (FCA); leave to appeal to SCC refused (1993), 160 N.R. 314 (note) (Election not available to taxpayer whose dealings amount to carrying on business); *Loewen (H.R.) v. MNR*, [1993] 1 C.T.C. 212 (FCTD) (Late election not permitted).

Interpretation Bulletins: IT-346R: Commodity futures and certain commodities; IT-479R: Transactions in securities. See also at end of s. 39.

Forms: T123: Election on disposition of Canadian securities.

(4.1) Members of partnerships — For the purpose of determining the income of a taxpayer who is a member of a partnership, subsections (4) and (5) apply as if

(a) every Canadian security owned by the partnership were owned by the taxpayer; and

(b) every Canadian security disposed of by the partnership in a fiscal period of the partnership were disposed of by the taxpayer at the end of that fiscal period.

History: Subsec. 39(4.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 22(3), applicable to dispositions occurring after July 13, 1990.

(5) Exception — An election under subsection (4) does not apply to a disposition of a Canadian security by a taxpayer (other than a mutual fund corporation or a mutual fund trust) who at the time of the disposition is

(a) a trader or dealer in securities,

(b) a financial institution (as defined in subsection 142.2(1)),

(c)–(e) [Repealed]

(f) a corporation whose principal business is the lending of money or the purchasing of debt obligations or a combination thereof, or

(g) a non-resident,

or any combination thereof.

Related Provisions: 39(4.1) — Members of partnerships; 96(3) — Election by members of partnership.

History: The opening words of subsec. 39(5) amended by 1998, c. 19, subsec. 7(2), applicable to 1991 *et seq.* The opening words formerly read:

> (5) Where election under subsec. (4) does not apply — An election under subsection (4) does not apply to a disposition of a Canadian security by a taxpayer who, at the time the security is disposed of, is

Subsec. 7(5) of 1998, c. 19 provides:

(5) For the purpose of subsection 39(4) of the Act, if

(a) an election referred to in that subsection is made by a mutual fund corporation or mutual fund trust in prescribed form on or before its filing-due date for its taxation year that includes the day on which this Act is assented to [June 18, 1998], and

(b) the election is in respect of a particular taxation year that ends after 1990 and that is not after the corporation's or trust's taxation year that includes the day on which this Act is assented to [June 18, 1998],

the election is deemed to have been made in the corporation's or trust's return of income under Part I of the Act for the particular year.

Para. 39(5)(b) substituted for paras. (b) to (e) by 1995, c. 21, subsec. 49(3), applicable to dispositions of property occurring after February 22, 1994, other than the disposition of property in a taxation year that begins before November 1994 where the property is mark-to-market property (as defined in subsec. 142.2(1)) for the year. Paras. (b) to (e) formerly read:

(b) a bank,

(c) a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee,

(d) a credit union,

(e) an insurance corporation,

Selected Cases [subsec. 39(5)]: *Sandnes v. R.*, [2004] 2 C.T.C. 3139 (TCC) (Trading involves buying and selling); *Kane v. Canada*, [1995] 1 C.T.C. 1 (FCTD) (Election not available to individuals having professional knowledge of market in which they deal); *Vancouver Art Metal Works Ltd. v. Canada*, [1993] 1 C.T.C. 346, (sub nom. *R. v. Vancouver Art Metal Works Ltd.*) (FCA) (Professional trader/dealer or other person whose activity amounts to carrying on business cannot make election).

Interpretation Bulletins: IT-479R: Transactions in securities. See also list at end of s. 39.

(6) Definition of "Canadian security" — For the purposes of this section, "Canadian security" means a security (other than a prescribed security) that is a share of the capital stock of a corporation resident in Canada, a unit of a mutual fund trust or a bond, debenture, bill, note, mortgage, hypothecary claim or similar obligation issued by a person resident in Canada.

History: Subsec. 39(6) amended to add "hypothecary claim" by 2001, c. 17, s. 204, in force June 14, 2001.

Selected Cases [subsec. 39(6)]: *Hayes v. R.*, [2004] 1 C.T.C. 2605 (TCC) (Convertible hedge was "property").

Regulations: 6200 (prescribed security).

Interpretation Bulletins: IT-346R: Commodity futures and certain commodities; IT-479R: Transactions in securities. See also list at end of s. 39.

(7) Unused share-purchase tax credit — The amount of any unused share-purchase tax credit of a taxpayer for a particular taxation year, to the extent that it was not deducted from the taxpayer's tax otherwise payable under this Part for the immediately preceding taxation year, shall be deemed to be a capital loss of the taxpayer from a disposition of property for the year immediately following the particular taxation year.

Related Provisions: 127.2(6) — Share-purchase tax credit.

Interpretation Bulletins: IT-479R: Transactions in securities. See also list at end of s. 39.

(8) Unused scientific research and experimental development tax credit — The amount of any unused scientific research and experimental development tax credit of a taxpayer for a particular taxation year, to the extent that it was not deducted from the taxpayer's tax otherwise payable under this Part for the immediately preceding taxation year, shall be deemed to be a capital loss of the taxpayer from a disposition of property for the year immediately following the particular taxation year, except that where the taxpayer is an individual the capital loss shall be deemed to be 147% of that amount.

Related Provisions: 127.3(2) — Scientific research and experimental development tax credit.

Interpretation Bulletins: IT-479R: Transactions in securities. See also list at end of s. 39.

(9) Deduction from business investment loss — In computing the business investment loss of a taxpayer who is an individual (other than a trust) for a taxation year from the disposition of a particular property, there shall be deducted an amount equal to the lesser of

(a) the amount that would be the taxpayer's business investment loss for the year from the disposition of that particular property if paragraph (1)(c) were read without reference to subparagraph (1)(c)(viii), and

(b) the amount, if any, by which the total of

(i) the total of all amounts each of which is twice the amount deducted by the taxpayer under section 110.6 in computing the taxpayer's taxable income for a preceding taxation year that

(A) ended before 1988, or

(B) begins after October 17, 2000,

(i.1) the total of all amounts each of which is

(A) 3/2 of the amount deducted under section 110.6 in computing the taxpayer's taxable income for a preceding taxation year that

(I) ended after 1987 and before 1990, or

(II) began after February 27, 2000 and ended before October 18, 2000, or

(B) the amount determined by multiplying the reciprocal of the fraction in paragraph 38(a) that applies to the taxpayer for each of the taxpayer's taxation years that includes February 28, 2000 or October 18, 2000 by the amount deducted under section 110.6 in computing the taxpayer's taxable income for that year, and

(i.2) the total of all amounts each of which is 4/3 of the amount deducted under section 110.6 in computing the taxpayer's taxable income for a preceding taxation year that ended after 1989 and before February 28, 2000

exceeds

(ii) the total of all amounts each of which is an amount deducted by the taxpayer under paragraph (1)(c) by virtue of subparagraph (1)(c)(viii) in computing the taxpayer's business investment loss

(A) from the disposition of property in taxation years preceding the year, or

(B) from the disposition of property other than the particular property in the year,

except that, where a particular amount was included under subparagraph 14(1)(a)(v) in the taxpayer's income for a taxation year that ended after 1987 and before 1990, the reference in subparagraph (i.1) to "3/2" shall, in respect of that portion of any amount deducted under section 110.6 in respect of the particular amount, be read as "4/3".

Related Provisions: 39(10) — Deduction from business investment loss of trust.

History: Subparas. 39(9)(b)(i) to (i.2) amended by 2001, c. 17, subsec. 23(1), applicable to taxation years that end after February 27, 2000. Those subparas. formerly read:

(i) the total of all amounts each of which is twice the amount deducted by the taxpayer under section 110.6 in computing the taxpayer's taxable income for a preceding taxation year ending before 1988,

(i.1) the total of all amounts each of which is 3/2 of the amount deducted by the taxpayer under section 110.6 in computing the taxpayer's taxable income for a preceding taxation year ending after 1987 and before 1990, and

(i.2) the total of all amounts each of which is 4/3 of the amount deducted by the taxpayer under section 110.6 in computing the taxpayer's taxable income for a preceding taxation year ending after 1989

The closing words to para. 39(9)(b) added by 1994, c. 21, subsec. 14(1), applicable to 1988 *et seq.*

Interpretation Bulletins: IT-484R2: Business investment losses. See also list at end of s. 39.

(10) Idem, of a trust — In computing the business investment loss of a trust for a taxation year from the disposition of a particular property, there shall be deducted an amount equal to the lesser of

(a) the amount that would be the trust's business investment loss for the year from the disposition of that particular property if paragraph (1)(c) were read without reference to subparagraph (1)(c)(viii), and

(b) the amount, if any, by which the total of

(i) the total of all amounts each of which is twice the amount designated by the trust under subsection 104(21.2) in respect of a beneficiary in its return of income for a preceding taxation year that

(A) ended before 1988, or

(B) begins after October 17, 2000,

(i.1) the total of all amounts each of which is

(A) 3/2 of the amount designated by the trust under subsection 104(21.2) in respect of a beneficiary in its return of income for a preceding taxation year that

(I) ended after 1987 and before 1990, or

(II) began after February 27, 2000 and ended before October 18, 2000, or

(B) the amount determined by multiplying the reciprocal of the fraction in paragraph 38(a) that applies to the trust for each of the trust's taxation years that includes February 28, 2000 or October 18, 2000 by the amount designated by the trust under subsection 104(21.2) in respect of a beneficiary in its return of income for that year, and

(i.2) the total of all amounts each of which is 4/3 of the amount designated by the trust under subsection 104(21.2) in respect of a beneficiary in its return of income for a preceding taxation year that ended after 1989 and before February 28, 2000

exceeds

(ii) the total of all amounts each of which is an amount deducted by the trust under paragraph (1)(c) by virtue of subparagraph (1)(c)(viii) in computing its business investment loss

(A) from the disposition of property in taxation years preceding the year, or

(B) from the disposition of property other than the particular property in the year,

except that, where a particular amount was included under subparagraph 14(1)(a)(v) in the trust's income for a taxation year that ended after 1987 and before 1990, the reference in subparagraph (i.1) to "3/2" shall, in respect of that portion of any amount deducted under section 110.6 in respect of the particular amount, be read as "4/3".

History: Subparas. 39(10)(b)(i) to (i.2) amended by 2001, c. 17, subsec. 23(2), applicable to taxation years that end after February 27, 2000. Those subparas. formerly read:

(i) the total of all amounts each of which is twice the amount designated by the trust under subsection 104(21.2) in respect of a beneficiary in its return of income for a preceding taxation year ending before 1988,

(i.1) the total of all amounts each of which is 3/2 of the amount designated by the trust under subsection 104(21.2) in respect of a beneficiary in its return of income for a preceding taxation year ending after 1987 and before 1990, and

(i.2) the total of all amounts each of which is 4/3 of the amount designated by the trust under subsection 104(21.2) in respect of a beneficiary in its return of income for a preceding taxation year ending after 1989

The closing words to para. 39(10)(b) added by 1994, c. 21, subsec. 14(2), applicable to 1988 *et seq.*

Interpretation Bulletins: IT-484R2: Business investment losses. See also list at end of s. 39.

(11) Recovery of bad debt — Where an amount is received in a taxation year on account of a debt (in this subsection referred to as the "recovered amount") in respect of which a deduction for bad debts had been made under subsection 20(4.2) in computing a taxpayer's income for a preceding taxation year, the amount, if any, by which 1/2 of the recovered amount exceeds the amount determined under paragraph 12(1)(i.1) in respect of the recovered amount is deemed to be a taxable capital gain of the taxpayer from a disposition of capital property in the year.

History: Subsec. 39(11) amended by 2001, c. 17, subsec. 23(3), applicable to taxation years that end after February 27, 2000 except that, for taxation years that ended after February 27, 2000 and before October 18, 2000, the reference to the fraction "1/2" shall be read as a reference to the fraction "2/3". The subsec. formerly read:

(11) Where an amount is received in a taxation year on account of a debt (in this subsection referred to as the "recovered amount") in respect of which a deduction for bad debts had been made under subsection 20(4.2) in computing the taxpayer's income for a preceding taxation year, the amount, if any, by which 3/4 of the recovered amount exceeds the amount determined under paragraph 12(1)(i.1) in respect of the recovered amount shall be deemed to be a taxable capital gain of the taxpayer from a disposition of capital property by the taxpayer in the year.

Subsec. 39(11) amended by 1995, c. 3, subsec. 10(3), applicable to 1994 *et seq.* except that, in its application to the 1994 taxation year, it shall be read as follows:

(11) Where an amount is received in a taxation year on account of a debt (in this subsection referred to as the "recovered amount") in respect of which a deduction for bad debts had been made under subsection 20(4.2) in computing the taxpayer's income for a preceding taxation year, the amount, if any, by which 3/4 of the recovered amount exceeds the amount determined under paragraph 12(1)(i.1) in respect of the recovered amount shall be deemed to be a taxable capital gain of the taxpayer from a disposition of capital property by the taxpayer in the year and, for the purposes of section 110.6, that property shall be deemed to have been disposed of by the taxpayer on the day on which the taxpayer received the recovered amount.

Subsec. 39(11) formerly read:

(11) Recovery of bad debt — Where an amount is received in a taxation year on account of a debt (in this subsection referred to as the "recovered amount") in respect of which a deduction for bad debts under subsection 20(4.2) had been made in computing the taxpayer's income for a preceding taxation year, the amount, if any, by which 3/4 of the recovered amount exceeds the amount determined under paragraph 12(1)(i.1) in respect of the recovered amount shall

be deemed to be a taxable capital gain of the taxpayer from a disposition of capital property by the taxpayer in the year and, for the purposes of section 110.6, that property shall be deemed to have been disposed of by the taxpayer in the year.

(12) Guarantees — For the purpose of paragraph (1)(c), where

(a) an amount was paid by a taxpayer in respect of a debt of a corporation under an arrangement under which the taxpayer guaranteed the debt,

(b) the amount was paid to a person with whom the taxpayer was dealing at arm's length, and

(c) the corporation was a small business corporation

(i) at the time the debt was incurred, and

(ii) at any time in the 12 months before the time an amount first became payable by the taxpayer under the arrangement in respect of a debt of the corporation,

that part of the amount that is owing to the taxpayer by the corporation shall be deemed to be a debt owing to the taxpayer by a small business corporation.

Related Provisions: 80(2)(l) — Application of debt forgiveness rules on payment by guarantor.

History: Subsec. 39(12) added by 1994, c. 7, Sch. II (1994, c. 7, Sch. II (1991, c. 49)), subsec. 22(4), applicable to amounts paid after 1985.

Selected Cases [subsec. 39(12)]: *Aylward Estate v. R.*, [2001] 3 C.T.C. 2437 (TCC) (Minister ought to be consistent in interpretation and application of provision).

Interpretation Bulletins: IT-484R2: Business investment losses. See also list at end of s. 39.

(13) Repayment of assistance — The total of all amounts paid by a taxpayer in a taxation year each of which is

(a) such part of any assistance described in subparagraph 53(2)(k)(i) in respect of, or for the acquisition of, a capital property (other than depreciable property) by the taxpayer that was repaid by the taxpayer in the year where the repayment is made after the disposition of the property by the taxpayer and under an obligation to repay all or any part of that assistance, or

(b) an amount repaid by the taxpayer in the year in respect of a capital property (other than depreciable property) acquired by the taxpayer that is repaid after the disposition thereof by the taxpayer and that would have been an amount described in subparagraph 53(2)(s)(ii) had the repayment been made before the disposition of the property,

shall be deemed to be a capital loss of the taxpayer for the year from the disposition of property by the taxpayer in the year and, for the purpose of section 110.6, that property shall be deemed to have been disposed of by the taxpayer in the year.

Related Provisions: 79(4)(a) — Subsequent payment by debtor following surrender of property deemed to be repayment of assistance.

History: Subsec. 39(13) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 11, applicable to 1991 *et seq.*

Selected Cases [s. 39]: *Hallatt v. R.*, [2001] 1 C.T.C. 2626 (TCC) (Role of experts in valuation cases considered); *Fortino v. R.*, [2000] 1 C.T.C. 349 (FCA); aff'g [1997] 2 C.T.C. 2184 (TCC) (Non-competition agreement proceeds not capital gain); *Lalande v. MNR*, [1989] 2 C.T.C. 30 (FCA) (Losses on loans and guarantees for purpose of establishing school and seniors' home not deductible current expense).

Definitions [s. 39]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "arm's length" — 251(1); "bank" — 248(1); "Canada" — 255; "Canadian-controlled private corporation" — 248(1); "Canadian resource property" — 66(15), 248(1); "Canadian security" — 39(6); "capital gain" — 39(1)(a), 248(1); "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "common-law partner" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "credit union" — 137(6), 248(1); "depreciable property" — 13(21), 248(1); "disposition" — 248(1); "eligible capital property" — 54, 248(1); "fiscal period" — 249(2)(b), 249.1; "foreign resource property" — 66(15), 248(1); "individual", "insurance corporation" — 248(1); "life insurance policy" — 138(12), 248(1); "Minister" — 248(1); "mutual fund corporation" — 131(8), 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q) [to be repealed], 132.2(3)(n) [draft], 248(1); "prescribed" — 248(1); "principal amount" — 248(1), 26(1.1); "property", "qualifying environmental trust" — 248(1); "received" — 248(7); "resident in Canada" — 94(3)(a)(viii), 250; "share", "small business corporation" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "timber resource property" — 13(21), 248(1); "trust" — 104(1), 248(1), (3); "unused scientific research and experimental development tax credit" — 127.3(2), 248(1); "unused share-purchase tax credit" — 127.2(6), 248(1).

Interpretation Bulletins [s. 39]: IT-297R2: Gifts in kind to charity and others; IT-316: Awards for employees' suggestions and inventions (archived); IT-395R2: Foreign tax credit — capital gains and capital losses on foreign property; IT-442R: Bad debts and reserves for doubtful debts; Foreign tax credit — foreign-source capital gains and losses; IT-479R: Transactions in securities.

39.1 (1) Definitions — In this section,

"exempt capital gains balance" of an individual for a taxation year that ends before 2005 in respect of a flow-through entity means the amount determined by the formula

$$A - B - C - F$$

where

A is

(a) if the entity is a trust referred to in any of paragraphs (f) to (j) of the definition "flow-through entity" in this subsection, the amount determined under paragraph 110.6(19)(c) in respect of the individual's interest or interests therein, and

(b) in any other case, the lesser of

(i) 4/3 of the total of the taxable capital gains that resulted from elections made under subsection 110.6(19) in respect of the individual's interests in or shares of the capital stock of the entity, and

(ii) the amount that would be determined under subparagraph (i) if

(A) the amount designated in the election in respect of each interest or share were equal to the amount determined by the formula

$$D - E$$

where

D is the fair market value of the interest or share at the end of February 22, 1994, and

E is the amount, if any, by which the amount designated in the election that was made in respect of the interest or share exceeds 11/10 of its fair market value at the end of February 22, 1994, and

(B) this Act were read without reference to subsection 110.6(20),

B is the total of all amounts each of which is the amount by which the individual's capital gain for a preceding taxation year, determined without reference to subsection (2), from the disposition of an interest in or a share of the capital stock of the entity was reduced under that subsection, and

C is

(a) if the entity is a trust described in any of paragraphs (d) and (h) to (j) of the definition "flow-through entity" in this subsection, the total of

(i) 3/2 of the total of all amounts each of which is the amount by which the individual's taxable capital gain (determined without reference to this section), for a preceding taxation year that began after February 27, 2000 and ended before October 18, 2000 that resulted from a designation made under subsection 104(21) by the trust, was reduced under subsection (3),

(ii) 4/3 of the total of all amounts each of which is the amount by which the individual's taxable capital gain (determined without reference to this section), for a preceding taxation year that ended before February 28, 2000 that resulted from a designation made under subsection 104(21) by the trust, was reduced under subsection (3),

(iii) the amount claimed by the individual under subparagraph 104(21.4)(a)(ii) or (21.7)(b)(ii) for a preceding taxation year, and

(iv) twice the total of all amounts each of which is the amount by which the individual's taxable capital gain (determined without reference to this section) for a preceding taxation year that began after October 17, 2000 and that resulted from a designation made under subsection 104(21) by the trust, was reduced under subsection (3),

(b) if the entity is a partnership, the total of

(i) 3/2 of the total of

(A) the total of all amounts each of which is the amount by which the individual's share of the partnership's taxable capital gains (determined without reference to this section), for its fiscal period that began after February 27, 2000 and ended before October 18, 2000, was reduced under subsection (4), and

(B) the total of all amounts each of which is the amount by which the individual's share of the partnership's income from a business (determined without reference to this section), for its fiscal period that began after February 27, 2000 and ended before October 18, 2000, was reduced under subsection (5),

(ii) 4/3 of the total of

(A) the total of all amounts each of which is the amount by which the individual's share of the partnership's taxable capital gains (determined without reference to this section), for its fiscal period that ended before February 28, 2000 and in a preceding taxation year was reduced under subsection (4), and

(B) the total of all amounts each of which is the amount by which the individual's share of the partnership's income from a business (determined without reference to this section), for its fiscal period that ended before February 28, 2000 and in a preceding taxation year, was reduced under subsection (5),

(iii) the product obtained when the reciprocal of the fraction in paragraph 38(a) that applies to the partnership for its fiscal period that includes February 28, 2000 or October 17, 2000 is multiplied by the total of

(A) the total of all amounts each of which is the amount by which the individual's share of the partnership's taxable capital gains (determined without reference to this section), for its fiscal period that includes February 28, 2000 or October 17, 2000 and ended in a preceding taxation year, was reduced under subsection (4), and

(B) the total of all amounts each of which is the amount by which the individual's share of the partnership's income from a business (determined without reference to this section), for its fiscal period that includes February 28, 2000 or October 17, 2000 and ended in a preceding taxation year was reduced under subsection (5), and

(iv) twice the total of

(A) the total of all amounts each of which is the amount by which the individual's share of the partnership's taxable capital gains (determined without reference to this section), for its fiscal period that began after October 17, 2000 and ended in a preceding taxation year, was reduced under subsection (4), and

(B) the total of all amounts each of which is the amount by which the individual's share of the partnership's income from a business (determined without reference to this section), for its fiscal period that began after October 17, 2000 and ended in a preceding taxation year, was reduced under subsection (5), and

(c) in any other case, the total of all amounts each of which is the amount by which the total of the individual's capital gains otherwise determined under subsection 130.1(4) or 131(1), subsections 138.1(3) and (4) or subsection 144(4), as the case may be, for a preceding taxation year in respect of the entity was reduced under subsection (6), and

F is

(a) if the entity is a trust described in any of paragraphs (g) to (j) of the definition "flow-through entity" in this subsection, the total of all amounts each of which is an amount included before the year in the cost to the individual of a property under subsection 107(2.2) or paragraph 144(7.1)(c) because of the individual's exempt capital gains balance in respect of the entity, and

(b) in any other case, nil;

Related Provisions: 39.1(7) — Balance deemed nil after ceasing to be shareholder or beneficiary; 53(1)(p) — Addition to ACB after balance expires at end of 2004; 53(1)(r) — Increase in ACB immediately before disposing of all interests or shares of a flow-through entity; 54"adjusted cost base"(c) — ACB adjustment to flow-through entity preserved through disposition and reacquisition; 87(2)(bb.1) — Amalgamation — flow-through entity considered to be same corporation; 107(2.2) — Cost bump on distribution of property from trust that is a flow-through entity; 132.2(1)(j)(ii) [to be repealed], 132.2(3)(g)(ii) [draft] — Effect of mutual fund reorganization; 144(1) — Employees profit sharing plan — unused portion of a beneficiary's exempt capital gains balance; 144(7.1) — Employees profit

sharing plan — where property received by beneficiary; 257 — Formulas cannot calculate to less than zero.

History: Paras. (a) and (b) of the description of C in the definition "exempt capital gains balance" in subsec. 39.1(1) amended by 2001, c. 17, subsec. 24(1), applicable to taxation years that end after February 27, 2000. The paras. formerly read:

C is

(a) if the entity is a trust described in any of paragraphs (d) and (h) to (j) of the definition "flow-through entity" in this subsection, 4/3 of the total of all amounts each of which is the amount by which the individual's taxable capital gain otherwise determined for a preceding taxation year that resulted from a designation made under subsection 104(21) by the trust was reduced under subsection (3),

(b) if the entity is a partnership, 4/3 of the total of all amounts each of which is

(i) the amount by which the individual's share otherwise determined of the partnership's taxable capital gains for its fiscal period that ended in a preceding taxation year was reduced under subsection (4), or

(ii) the amount by which the individual's share otherwise determined of the partnership's income from a business for its fiscal period that ended in a preceding taxation year was reduced under subsection (5), and

The element F and its description added to the definition "exempt capital gains balance" in subsec. 39.1(1) by 1998, c. 19, subsec. 88(2), applicable to 1994 *et seq.*

"flow-through entity" means

(a) an investment corporation,

(b) a mortgage investment corporation,

(c) a mutual fund corporation,

(d) a mutual fund trust,

(e) a partnership,

(f) a related segregated fund trust for the purpose of section 138.1,

(g) a trust governed by an employees profit sharing plan,

(h) a trust maintained primarily for the benefit of employees of a corporation or 2 or more corporations that do not deal at arm's length with each other, where one of the main purposes of the trust is to hold interests in shares of the capital stock of the corporation or corporations, as the case may be, or any corporation not dealing at arm's length therewith,

Proposed Amendment — 39.1(1)"flow-through entity"(h)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), s. 210, will amend para. (h) of the definition "flow-through entity" in subsec. 39.1(1) by substituting "interests in, or for civil law rights in," for "interests in", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(i) a trust established exclusively for the benefit of one or more persons each of whom was, at the time the trust was created, either a person from whom the trust received property or a creditor of that person, where one of the main purposes of the trust is to secure the payments required to be made by or on behalf of that person to such creditor, and

(j) a trust all or substantially all of the properties of which consist of shares of the capital stock of a corporation, where the trust was established pursuant to an agreement between 2 or more shareholders of the corporation and one of the main purposes of the trust is to provide for the exercise of voting rights in respect of those shares pursuant to that agreement.

Related Provisions: 54"adjusted cost base"(c) — ACB adjustment preserved through disposition and reacquisition; 87(2)(bb.1) — Amalgamation — flow-through entity considered to be same corporation; 107(2.2) — Cost bump on distribution of property from trust that is a flow-through entity. See also Definitions at end of 39.1.

History: Subsec. 39.1(1) added by 1995, c. 3, s. 11, applicable to 1994 *et seq.*

(2) Reduction of capital gain — Where at any time after February 22, 1994 an individual disposes of an interest in or a share of the capital stock of a flow-through entity, the individual's capital gain, if any, otherwise determined for a taxation year from the disposition shall be reduced by such amount as the individual claims, not exceeding the amount determined by the formula

$$A - B - C$$

where

A is the exempt capital gains balance of the individual for the year in respect of the entity,

B is

(a) if the entity made a designation under subsection 104(21) in respect of the individual for the year, twice the amount, if any, claimed under subsection (3) by the individual for the year in respect of the entity,

(b) if the entity is a partnership, twice the total of

(i) the amount, if any, claimed under subsection (4) by the individual for the year in respect of the entity, and

(ii) the amount, if any, claimed under subsection (5) by the individual for the year in respect of the entity, and

(c) in any other case, the amount, if any, claimed under subsection (6) by the individual for the year in respect of the entity, and

C is the total of all reductions under this subsection in the individual's capital gains otherwise determined for the year from the disposition of other interests in or shares of the capital stock of the entity.

Related Provisions: 39.1(6) — Reduction of capital gains on ongoing basis; 110.6(19)–(30) — Election to trigger capital gains exemption; 132.2(1)(j)(ii) [to be repealed], 132.2(3)(g)(ii) [draft] — Effect of mutual fund reorganization; 257 — Formula cannot calculate to less than zero.

History: Paras. (a) and (b) of the description of B in subsec. 39.1(2) amended by replacing the reference to the expression "4/3 of" with a reference to the word "twice", by 2001, c. 17, subsec. 24(2), applicable to taxation years that end after February 27, 2000 except that, where the taxation year of an entity that ends in the taxpayer's taxation year includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, the reference to the word "twice" shall be read as a reference to the expression "the fraction that is the reciprocal of the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the entity for its taxation year that ends in the taxpayer's taxation year, multiplied by".

Subsec. 39.1(2) added by 1995, c. 3, s. 11, applicable to 1994 *et seq.*

(3) Reduction of taxable capital gain — The taxable capital gain otherwise determined under subsection 104(21) of an individual for a taxation year as a result of a designation made under that subsection by a flow-through entity shall be reduced by such amount as the individual claims, not exceeding 1/2 of the individual's exempt capital gains balance for the year in respect of the entity.

Related Provisions: 104(21.4)–(21.7) — Transitional rule for 2000 capital gains rate changes.

History: Subsec. 39.1(3) amended by replacing the reference to the fraction "3/4" with a reference to the fraction "1/2", by 2001, c. 17, subsec. 24(3), applicable to taxation years that end after February 27, 2000 except

that, where the taxation year of an entity that ends in the taxpayer's taxation year includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, the reference to the fraction "½" shall be read as a reference to the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the entity for its taxation year that ends in the taxpayer's taxation year.

Subsec. 39.1(3) added by 1995, c. 3, s. 11, applicable to 1994 *et seq.*

(4) Reduction in share of partnership's taxable capital gains — An individual's share otherwise determined for a taxation year of a taxable capital gain of a partnership from the disposition of a property (other than property acquired by the partnership after February 22, 1994 in a transfer to which subsection 97(2) applied) for its fiscal period that ends after February 22, 1994 and in the year shall be reduced by such amount as the individual claims, not exceeding the amount determined by the formula

$$A - B$$

where

A is ½ of the individual's exempt capital gains balance for the year in respect of the partnership, and

B is the total of amounts claimed by the individual under this subsection in respect of other taxable capital gains of the partnership for that fiscal period.

Related Provisions: 39.1(1)"exempt capital gains balance"C(b)(i), 39.1(2)B(b)(i) — Reduction in balance to reflect application of subsec. (4); 257 — Formula cannot calculate to less than zero.

History: The description of A in subsec. 39.1(4) amended by replacing the reference to the fraction "¾" with a reference to the fraction "½", by 2001, c. 17, subsec. 24(4), applicable to taxation years that end after February 27, 2000 except that, where the taxation year of an entity that ends in the taxpayer's taxation year includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, the reference to the fraction "½" shall be read as a reference to the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the entity for its taxation year that ends in the taxpayer's taxation year.

Subsec. 39.1(4) added by 1995, c. 3, s. 11, applicable to 1994 *et seq.*

(5) Reduction in share of partnership's income from a business — An individual's share otherwise determined for a taxation year of the income of a partnership from a business for the partnership's fiscal period that ends in the year and the individual's share of the partnership's taxable capital gain, if any, arising under paragraph 14(1)(b) shall be reduced by such amount as the individual claims, not exceeding the lesser of

(a) the amount, if any, by which ½ of the individual's exempt capital gains balance for the year in respect of the partnership exceeds the total of

(i) the amount, if any, claimed under subsection (4) by the individual for the year in respect of the partnership, and

(ii) all amounts, if any, claimed under this subsection by the individual for the year in respect of other businesses of the partnership, and

(b) the amount determined by the formula

$$A \times (B/C)$$

where

A is the amount included under paragraph 14(1)(b) in computing the income of the partnership from the business for the fiscal period,

B is the amount that would otherwise be the individual's share of the partnership's income from the business for the fiscal period, and

C is the partnership's income from the business for the fiscal period.

Related Provisions: 39.1(1)"exempt capital gains balance"C(b)(ii), 39.1(2)B(b)(ii) — Reduction in balance to reflect application of subsec. (4).

History: Subsec. 39.1(5) amended by 2001, c. 17, subsec. 24(5), applicable to taxation years that end after February 27, 2000 except that where the taxation year of an entity that ends in the taxpayer's taxation year includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000,

(a) the reference to the fraction "½" shall be read as a reference to the fraction in para. 14(1)(b), as amended by 2001, c. 17, that applies to the entity for its taxation year that ends in the taxpayer's taxation year; and

(b) subpara. 39.1(5)(a)(i) shall be read as follows:

"(i) the amount, if any, claimed under subsection (4) by the individual for the year in respect of the partnership multiplied by the fraction obtained when the fraction in paragraph 14(1)(b) applicable to the entity for its taxation year that ends in the taxpayer's taxation year is divided by the fraction in paragraph 38(a) that applies to the entity for that taxation year."

Subsec. 39.1(5) formerly read:

(5) An individual's share otherwise determined for a taxation year of the income of a partnership from a business for the partnership's fiscal period that ends in the year and the individual's share of the partnership's taxable capital gain, if any, arising under subparagraph 14(1)(a)(v) shall be reduced by such amount as the individual claims, not exceeding the lesser of

(a) the amount, if any, by which ¾ of the individual's exempt capital gains balance for the year in respect of the partnership exceeds the total of

(i) the amount, if any, claimed under subsection (4) by the individual for the year in respect of the partnership, and

(ii) all amounts, if any, claimed under this subsection by the individual for the year in respect of other businesses of the partnership, and

(b) the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount included under subparagraph 14(1)(a)(v) in computing the income of the partnership from the business for the fiscal period,

B is the amount that would otherwise be the individual's share of the partnership's income from the business for the fiscal period, and

C is the partnership's income from the business for the fiscal period.

Subsec. 39.1(5) added by 1995, c. 3, s. 11, applicable to 1994 *et seq.*

(6) Reduction of capital gains — The total capital gains otherwise determined under subsection 130.1(4) or 131(1), subsections 138.1(3) and (4) or subsection 144(4), as the case may be, of an individual for a taxation year as a result of one or more elections, allocations or designations made after February 22, 1994 by a flow-through entity shall be reduced by such amount as the individual claims, not exceeding the individual's exempt capital gains balance for the year in respect of the entity.

Related Provisions: 39.1(1)"exempt capital gains balance"C(c), 39.1(2)B(c) — Reduction in balance to reflect application of subsec. (4).

History: Subsec. 39.1(6) added by 1995, c. 3, s. 11, applicable to 1994 *et seq.*

(7) Nil exempt capital gains balance — Notwithstanding subsection (1), where at any time an individual ceases to be a member or shareholder of, or a beneficiary under, a flow-through entity, the exempt capital gains balance of the individual in respect of the entity for each taxation year that begins after that time is deemed to be nil.

Related Provisions: 53(1)(r) — Increase in ACB on disposition before 2005.

History: Subsec. 39.1(7) added by 1995, c. 3, s. 11, applicable to 1994 *et seq.*

Definitions [s. 39.1]: "amount" — 248(1); "capital gain" — 39(1)(a), 248(1); "disposition" — 248(1); "employees profit sharing plan" — 144(1), 248(1); "exempt capital gains balance" — 39.1(1), (7); "fiscal period" — 249(2)(b), 249.1; "flow-through entity" — 39.1(1); "individual" — 248(1); "investment corporation" — 130(3)(a), 248(1); "mortgage investment corporation" — 130.1(6), 248(1); "mutual fund corporation" — 131(8), (8.1), 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q) [to be repealed], 132.2(3)(n) [draft], 248(1); "person" — 248(1); "related segregated fund trust" — 138.1(1)(a); "share" — (of corporation) 248(1); "share" — (of partnership's gains) 39.1(4); "shareholder" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxation year" — 11(2), 249; "trust" — 104(1), 248(1).

40. (1) General rules [gain and loss calculation] — Except as otherwise expressly provided in this Part

(a) a taxpayer's gain for a taxation year from the disposition of any property is the amount, if any, by which

(i) if the property was disposed of in the year, the amount, if any, by which the taxpayer's proceeds of disposition exceed the total of the adjusted cost base to the taxpayer of the property immediately before the disposition and any outlays and expenses to the extent that they were made or incurred by the taxpayer for the purpose of making the disposition, or

(ii) if the property was disposed of before the year, the amount, if any, claimed by the taxpayer under subparagraph (iii) in computing the taxpayer's gain for the immediately preceding year from the disposition of the property,

exceeds

(iii) subject to subsection (1.1), such amount as the taxpayer may claim

(A) in the case of an individual (other than a trust) in prescribed form filed with the taxpayer's return of income under this Part for the year, and

(B) in any other case, in the taxpayer's return of income under this Part for the year,

as a deduction, not exceeding the lesser of

(C) a reasonable amount as a reserve in respect of such of the proceeds of disposition of the property that are payable to the taxpayer after the end of the year as can reasonably be regarded as a portion of the amount determined under subparagraph (i) in respect of the property, and

(D) an amount equal to the product obtained when 1/5 of the amount determined under subparagraph (i) in respect of the property is multiplied by the amount, if any, by which 4 exceeds the number of preceding taxation years of the taxpayer ending after the disposition of the property; and

Selected Cases [subpara. 40(1)(a)(iii)]: *Regina Shoppers Mall Ltd. v. Canada*, [1991] 1 C.T.C. 297 (FCA) (Taxpayer entitled to file return inconsistent with Minister's assessment for previous year).

Selected Cases [para. 40(1)(a)]: *Sénécal (J.G.) v. MNR*, [1993] 2 C.T.C. 2218 (TCC) (Proceeds of disposition of land equal to cash and face value of promissory note received, despite evidence that note's value nil); *Bodrug Estate v. Canada*, [1991] 2 C.T.C. 347 (FCA) (Damages paid under lawsuit in respect of provincial securities statute not part of cost of shares deemed disposed of upon death); *Watkins v. Canada*, [1990] 2 C.T.C. 205 (FCTD) (Maintenance cost of race horse not included in adjusted cost base of horse).

(b) a taxpayer's loss for a taxation year from the disposition of any property is,

(i) if the property was disposed of in the year, the amount, if any, by which the total of the adjusted cost base to the taxpayer of the property immediately before the disposition and any outlays and expenses to the extent that they were made or incurred by the taxpayer for the purpose of making the disposition, exceeds the taxpayer's proceeds of disposition of the property, and

(ii) in any other case, nil.

Related Provisions: 7(1.3) — Order of disposition of securities acquired under stock option agreement; 40(1.1) — Reserve where farm property transferred to child; 40(2) — Limitations; 40(3.3), (3.4) — Limitation on loss where property acquired by affiliated person; 44(1) — Exchanges of property; 53(1)(n) — Survey and valuation costs for disposition included in adjusted cost base; 69(11) — Deemed proceeds of disposition; 72(1)(c) — No reserve for year of death; 79.1(3), (6)(c) — Capital gains reserve where property repossessed by creditor; 84.1(2.1) — Non-arm's length sale of shares; 87(2)(e) — Amalgamations — capital property; 87(2)(m) — Amalgamations — proceeds not due until after end of year; 87(2)(ll) — Amalgamations — continuation of predecessor corporations; 88(1)(d)(i)(C) — Winding-up; 100(2) — Gain from disposition of interest in partnership; 104(6) — Reduction in loss where property disposed of owned by a trust; 112(3) — Loss on share that is capital property.

History: Cl. 40(1)(a)(iii)(C) amended by 1995, c. 21, subsec. 11(1), applicable to taxation years that end after February 21, 1994. The clause formerly read:

> (C) a reasonable amount as a reserve in respect of such of the proceeds of disposition of the property that are not due to the taxpayer until after the end of the year as may reasonably be regarded as a portion of the amount determined under subparagraph (i) in respect of the property, and

Selected Cases [subsec. 40(1)]: *Canada v. Young*, [1989] 1 C.T.C. 421 (FCA) (Cost of subscriptions to investment publications not deductible); *Pineo v. R.*, [1986] 2 C.T.C. 71 (FCTD) (Demand promissory note in consideration for shares "due" immediately); *R. v. Sterling*, [1985] 1 C.T.C. 275 (FCA) (Interest and storage charges for gold bullion excluded from adjusted cost base); *R. v. Derbecker*, [1984] C.T.C. 606 (FCA) (Demand promissory note "due" immediately).

I.T. Application Rules: 26(3), 26(11).

Interpretation Bulletins: IT-66R6: Capital dividends; IT-95R: Foreign exchange gains and losses; IT-99R5: Legal and accounting fees; IT-104R2: Deductibility of fines or penalties; IT-220R2: Capital cost allowance — proceeds of disposition of depreciable property; IT-236R4: Reserves — disposition of capital property (archived); IT-259R4: Exchanges of property; IT-268R4: *Inter vivos* transfer of farm property to child; IT-328R3: Losses on shares on which dividends have been received; IT-426R: Shares sold subject to an earnout agreement; IT-461: Forfeited deposits (archived); IT-467R2: Damages, settlements, and similar payments; IT-505: Mortgage foreclosures and conditional sales repossessions (archived).

Information Circulars: 88-2, paras. 24, 27: General anti-avoidance rule — section 245 of the *Income Tax Act*.

Forms: T2 SCH 13: Continuity of reserves; T3 Sched. 2: Reserves on dispositions of capital property; T2017: Summary of reserves on dispositions of capital property; T2069: Election in respect of amounts not deductible as reserves for the year of death; T4037: Capital gains [guide]; T4091: Return of securities transactions [guide]; T5008: Statement of securities transactions.

(1.01) [Reserve on] Gift of non-qualifying security — A taxpayer's gain for a particular taxation year from a disposition of a non-qualifying security of the taxpayer (as defined in subsection 118.1(18)) that is the making of a gift (other than an excepted gift, within the meaning assigned by subsection 118.1(19)) to a qualified

donee (as defined in subsection 149.1(1)) is the amount, if any, by which

(a) where the disposition occurred in the particular year, the amount, if any, by which the taxpayer's proceeds of disposition exceed the total of the adjusted cost base to the taxpayer of the security immediately before the disposition and any outlays and expenses to the extent they were made or incurred by the taxpayer for the purpose of making the disposition, and

(b) where the disposition occurred in the 60-month period that ends at the beginning of the particular year, the amount, if any, deducted under paragraph (c) in computing the taxpayer's gain for the preceding taxation year from the disposition of the security

exceeds

(c) the amount that the taxpayer claims in prescribed form filed with the taxpayer's return of income for the particular year, where the taxpayer is not deemed by subsection 118.1(13) to have made a gift of property before the end of the particular year as a consequence of a disposition of the security by the donee or as a consequence of the security ceasing to be a non-qualifying security of the taxpayer before the end of the particular year.

Proposed Amendment — 40(1.01)(c)

(c) the amount that the taxpayer claims in prescribed form filed with the taxpayer's return of income for the particular year, not exceeding the eligible amount of the gift, where the taxpayer is not deemed by subsection 118.1(13) to have made a gift of property before the end of the particular year as a consequence of a disposition of the security by the donee or as a consequence of the security ceasing to be a non-qualifying security of the taxpayer before the end of the particular year.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 60(1), will amend para. 40(1.01)(c) to read as above, applicable to gifts made after December 20, 2002.

Technical Notes: Subsection 40(1.01) allows a taxpayer to claim a reserve in respect of any gain realized from the making of a gift of a "non-qualifying security", as defined for the purposes of sections 110.1 and 118.1. The gift is not recognized as a gift for the purposes of those sections until a subsequent time when the security ceases to be a non-qualifying security or it is disposed of by the donee. The reserve available in subsection 40(1.01) allows the resulting inclusion in income to be deferred until the year that includes the subsequent time, unless the taxpayer first becomes non-resident or tax-exempt.

Paragraph 40(1.01)(c) is amended consequential to the addition of new subsections 248(30) to (33), for gifts made after December 20, 2002, to provide that the reserve claimed by the taxpayer may not exceed the eligible amount of the gift. For additional details, see the commentary to subsection 248(31) regarding the eligible amount of a gift.

Related Provisions: 72(1)(c) — No reserve for year of death; 87(2)(m.1) — Amalgamation — continuing corporation; 110.1(6), 118.1(13) — Donation of non-qualifying security disallowed; 248(30)–(33) — Determination of eligible amount of gift.

History: Subsec. 40(1.01) added by 1998, c. 19, s. 8, applicable to 1997 *et seq.*

(1.1) [Farm or small business] Property disposed of to a child — Where the property referred to in subparagraph (1)(a)(iii) is property that the taxpayer disposed of to the taxpayer's child, who was resident in Canada immediately before the disposition, and was

(a) any land in Canada or depreciable property in Canada of a prescribed class that was, immediately before the disposition, used by the taxpayer, the taxpayer's spouse or common-law partner, or any of the taxpayer's children in the business of farming,

(b) immediately before the disposition, a share of the capital stock of a family farm corporation of the taxpayer or an interest in a family farm partnership of the taxpayer, or

(c) immediately before the disposition, a share of the capital stock of a small business corporation of the taxpayer,

in computing the amount of any claim in respect of that property under subparagraph (1)(a)(iii), that subparagraph shall be read as if the references therein to "1/5" and "4" were references to "1/10" and "9" respectively.

Related Provisions: 40(8), 70(10) — Extended meaning of "child".

History: Para. 40(1.1)(a) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Interpretation Bulletins: IT-236R4: Reserves — disposition of capital property (archived); IT-268R4: *Inter vivos* transfer of farm property to child; IT-328R3: Losses on shares on which dividends have been received.

(2) Limitations — Notwithstanding subsection (1),

(a) **[reserve limitations]** — subparagraph (1)(a)(iii) does not apply to permit a taxpayer to claim any amount under that subparagraph in computing a gain for a taxation year if

(i) the taxpayer, at the end of the year or at any time in the immediately following year, was not resident in Canada or was exempt from tax under any provision of this Part, or

(ii) the purchaser of the property sold is a corporation that, immediately after the sale,

(A) was controlled, directly or indirectly, in any manner whatever, by the taxpayer,

(B) was controlled, directly or indirectly, in any manner whatever, by a person or group of persons by whom the taxpayer was controlled, directly or indirectly, in any manner whatever, or

(C) controlled the taxpayer, directly or indirectly, in any manner whatever, where the taxpayer is a corporation;

Proposed Addition — 40(2)(a)(iii)

(iii) the purchaser of the property sold is a partnership in which the taxpayer was, immediately after the sale, a majority interest partner;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 60(2), will add subpara. 40(2)(a)(iii), applicable to sales that occur after December 20, 2002.

Technical Notes: Paragraph 40(2)(a) generally restricts a taxpayer's ability to claim a capital gains reserve in respect of properties disposed of to a non-resident or to a corporation that controlled the taxpayer or was controlled by the taxpayer. Paragraph 40(2)(a) is amended in respect of dispositions of property that occur after December 20, 2002, to provide that a capital gains reserve will also not be allowed to a taxpayer where the purchaser of the property is a partnership of which the taxpayer is a majority interest partner.

Related Provisions: 256(5.1), (6.2) — Controlled directly or indirectly — control in fact.

Interpretation Bulletins: IT-236R4: Reserves — disposition of capital property (archived).

(b) **[principal residence]** — where the taxpayer is an individual, the taxpayer's gain for a taxation year from the disposition of a property that was the taxpayer's principal residence at any time after the date (in this section referred to as the "acquisition date")

that is the later of December 31, 1971 and the day on which the taxpayer last acquired or reacquired it, as the case may be, is the amount determined by the formula

$$A - \frac{A \times B}{C} - D$$

where

A is the amount that would, if this Act were read without reference to this paragraph and subsections 110.6(19) and (21), be the taxpayer's gain therefrom for the year,

B is one plus the number of taxation years that end after the acquisition date for which the property was the taxpayer's principal residence and during which the taxpayer was resident in Canada,

C is the number of taxation years that end after the acquisition date during which the taxpayer owned the property whether jointly with another person or otherwise, and

D is

(i) where the acquisition date is before February 23, 1994 and the taxpayer or a spouse or common-law partner of the taxpayer elected under subsection 110.6(19) in respect of the property or an interest therein that was owned, immediately before the disposition, by the taxpayer, 4/3 of the lesser of

(A) the total of all amounts each of which is the taxable capital gain of the taxpayer or of a spouse or common-law partner of the taxpayer that would have resulted from an election by the taxpayer or spouse or common-law partner under subsection 110.6(19) in respect of the property or interest if

(I) this Act were read without reference to subsection 110.6(20), and

(II) the amount designated in the election were equal to the amount, if any, by which the fair market value of the property or interest at the end of February 22, 1994 exceeds the amount determined by the formula

$$E - 1.1F$$

where

E is the amount designated in the election that was made in respect of the property or interest, and

F is the fair market value of the property or interest at the end of February 22, 1994, and

(B) the total of all amounts each of which is the taxable capital gain of the taxpayer or of a spouse or common-law partner of the taxpayer that would have resulted from an election that was made under subsection 110.6(19) in respect of the property or interest if the property were the principal residence of neither the taxpayer nor the spouse or common-law partner for each particular taxation year unless the property was designated, in a return of income for the taxation year that includes February 22, 1994 or for a preceding taxation year, to be the principal residence of either of them for the particular taxation year, and

Proposed Amendment — 40(2)(b)D(i)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), s. 211, will amend subpara. (i) of the description of D in para. 40(2)(b) by substituting "interest, or for civil law a right," for "interest" in the first instance, and "the interest or right" for "interest" thereafter in five places, to come into force on Royal Assent.

Technical Notes: See under 12(4).

(ii) in any other case, zero;

Related Provisions: 40(4) — Disposal of principal residence to spouse or trust for spouse; 40(5) — Where principal residence is property of trust for spouse; 40(6) — Special rule re principal residence; 40(7.1) — Capital gains exemption election ignored for purposes of determining when property last acquired; 45(3) — Election re principal residence; 257 — Formula amounts cannot calculate to less than zero.

History: The description of D in para. 40(2)(b) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Para. 40(2)(b) amended by 1995, c. 3, subsec. 12(1), applicable to dispositions that occur after February 22, 1994. Para. (b) formerly read:

(b) where the taxpayer is an individual, the taxpayer's gain for a taxation year from the disposition of a property that was the taxpayer's principal residence at any time after the date, (in this section referred to as the "acquisition date") that is the later of December 31, 1971 and the day on which the taxpayer last acquired or reacquired it, as the case may be, is the taxpayer's gain therefrom for the year otherwise determined minus that proportion thereof that

(i) one plus the number of taxation years ending after the acquisition date for which the property was the taxpayer's principal residence and during which the taxpayer was resident in Canada,

is of

(ii) the number of taxation years ending after the acquisition date during which the taxpayer owned the property whether jointly with another person or otherwise;

Selected Cases [para. 40(2)(b)]: *Mintenko v. Canada*, [1989] 1 C.T.C. 40 (FCTD) (Only portion of farm land necessary to use and enjoyment of principal residence).

I.T. Application Rules: 26.1(1) (change of use of property before 1972).

Interpretation Bulletins: IT-120R6: Principal residence; IT-268R3: *Inter vivos* transfer of farm property to child; IT-332R: Personal-use property (archived).

Info Sheets: TI-001: Sale of a residence by an owner builder.

Forms: T1255: Designation of a property as a principal residence by the legal representative of a deceased individual; T2091: Designation of a property as a principal residence by an individual; T2091(IND)WS: Principal residence worksheet.

(c) **[land used in farming business]** — where the taxpayer is an individual, the taxpayer's gain for a taxation year from the disposition of land used in a farming business carried on by the taxpayer that includes property that was at any time the taxpayer's principal residence is

(i) the taxpayer's gain for the year, otherwise determined, from the disposition of the portion of the land that does not include the property that was the taxpayer's principal residence, plus the taxpayer's gain for the year, if any, determined under paragraph (b) from the disposition of the property that was the taxpayer's principal residence, or

(ii) if the taxpayer so elects in prescribed manner in respect of the land, the taxpayer's gain for the year from the disposition of the land including the property that was the taxpayer's principal residence,

determined without regard to paragraph (b) or subparagraph (i) of this paragraph, less the total of

(A) $1,000, and

(B) $1,000 for each taxation year ending after the acquisition date for which the property was the taxpayer's principal residence and during which the taxpayer was resident in Canada;

Related Provisions: 40(4) — Disposal of principal residence to spouse or trust for spouse.

Regulations: 2300 (prescribed manner).

Interpretation Bulletins: IT-120R6: Principal residence; IT-268R3: *Inter vivos* transfer of farm property to child; IT-332R: Personal-use property (archived).

(d) **[disposition of bond]** — where the taxpayer is a corporation, its loss for a taxation year from the disposition of a bond or debenture is its loss therefrom for the year otherwise determined, less the total of such amounts received by it as, on account or in lieu of payment of, or in satisfaction of interest thereon as were, by virtue of paragraph 81(1)(m), not included in computing its income;

(e) **[disposition to controller or controlled corporation]** — [Repealed]

History: Para. 40(2)(e) repealed by 1998, c. 19, subsec. 89(1), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995. The para. formerly read:

(e) where the taxpayer is a corporation, its loss otherwise determined from the disposition of any property disposed of by it to

(i) a person by whom it was controlled, directly or indirectly in any manner whatever, or

(ii) a corporation that was controlled, directly or indirectly in any manner whatever, by a person described in subparagraph (i),

is nil;

Selected Cases [para. 40(2)(e)]: *Reeson Investments Ltd. v. Canada*, [1990] 2 C.T.C. 190 (FCTD) (Conversion of capital loss to business investment loss prevented in transactions between associated companies; transfers of business investment loss permitted).

(e.1) **[disposition of debt of related person]** — a taxpayer's loss, if any, from the disposition at any time to a particular person or partnership of an obligation that was, immediately after that time, payable by another person or partnership to the particular person or partnership is nil where the taxpayer, the particular person or partnership and the other person or partnership are related to each other at that time or would be related to each other at that time if paragraph 80(2)(j) applied for the purpose of this paragraph;

Related Provisions: 40(2)(e.2), 40(2)(g)(ii) — Further limitations on loss on disposition of debt; 53(1)(f.1), (f.11) — Addition to adjusted cost base; 54"superficial loss"(e) — Superficial loss rule does not apply; 80.01(8) — Deemed settlement after debt parking.

History: Para. 40(2)(e.1) added by 1995, c. 21, subsec. 11(2), applicable to dispositions that occur after July 12, 1994, other than dispositions pursuant to agreements in writing entered into before July 13, 1994.

I.T. Application Rules: 26(5)(c)(ii)(A) (where property owned since June 18, 1971).

(e.2) **[settlement of commercial obligation]** — a taxpayer's loss on the settlement or extinguishment of a particular commercial obligation (in this paragraph having the meaning assigned by subsection 80(1)) issued by a person or partnership and payable to the taxpayer shall, where any part of the consideration given by the person or partnership for the settlement or extinguishment of the particular obligation consists of one or more other commercial obligations issued by the person or partnership to the taxpayer, be deemed to be the amount determined by the formula

$$A \times \frac{(B - C)}{B}$$

where

A is the amount, if any, that would be the taxpayer's loss from the disposition of the particular obligation if this Act were read without reference to this paragraph,

B is the total fair market value of all the consideration given by the person or partnership for the settlement or extinguishment of the particular obligation, and

C is the total fair market value of the other obligations;

Related Provisions: 40(2)(e.2), 40(2)(g)(ii) — Further limitations on loss on disposition of debt; 53(1)(f.12) — Addition to adjusted cost base; 80(2)(h) — Application of debt forgiveness rules; 257 — Formula cannot calculate to less than zero.

History: Para. 40(2)(e.2) added by 1995, c. 21, subsec. 11(2), applicable to dispositions that occur after December 20, 1994, other than dispositions pursuant to agreements in writing entered into before December 21, 1994.

I.T. Application Rules: 26(5)(c)(ii)(A) (where property owned since June 18, 1971).

(f) **[right to a prize]** — a taxpayer's gain or loss from the disposition of

(i) a chance to win a prize or bet, or

(ii) a right to receive an amount as a prize or as winnings on a bet,

in connection with a lottery scheme or a pool system of betting referred to in section 205 of the *Criminal Code* is nil;

Interpretation Bulletins: IT-213R: Prizes from lottery schemes, pool system betting and giveaway contests; IT-404R: Payments to lottery ticket vendors.

(g) **[various losses deemed nil]** — a taxpayer's loss, if any, from the disposition of a property, to the extent that it is

(i) a superficial loss,

(ii) a loss from the disposition of a debt or other right to receive an amount, unless the debt or right, as the case may be, was acquired by the taxpayer for the purpose of gaining or producing income from a business or property (other than exempt income) or as consideration for the disposition of capital property to a person with whom the taxpayer was dealing at arm's length,

Selected Cases [subpara. 40(2)(g)(ii)]: *Super West Homes Inc. v. R.*, [2004] 5 C.T.C. 2103 (TCC) (Where conduct indicated advances not made for purpose of producing income, loss denied); *Poirier v. R.*, [2001] 1 C.T.C. 2253 (TCC) (Where no possibility of gaining or producing income, no ABIL); *W.F. Botkin Construction Ltd. v. Canada*, [1993] 1 C.T.C. 2765 (TCC) (Loss on loan guarantee nil where no commercial reality to transaction other than to benefit taxpayer's children).

(iii) a loss from the disposition of any personal-use property of the taxpayer (other than listed personal property or a debt referred to in subsection 50(2)), or

(iv) a loss from the disposition of property to

(A) a trust governed by a deferred profit sharing plan, an employees profit sharing plan or a registered retirement income fund under which the taxpayer is a beneficiary or immediately after the disposition becomes a beneficiary, or

(B) a trust governed by a registered retirement savings plan under which the taxpayer or the taxpayer's spouse or common-law partner is an annuitant or becomes, within 60 days after the end of the taxation year, an annuitant,

is nil;

Related Provisions: 3(b)(ii) — Limitation on use of listed personal property losses; 13(21.2) — Superficial loss rule for depreciable property; 18(13)–(16) — Superficial loss in moneylending business or adventure in nature of trade; 40(2)(e.1) — Limitation on loss where commercial obligation disposed of in exchange for another commercial obligation; 40(3.3), (3.4) — Limitation on loss where property acquired by affiliated person; 41 — Listed personal property losses can offset listed personal property gains; 53(1)(f) — Addition to adjusted cost base — superficial loss; 80(1) — "Unrecognized loss"; 112(3)–(4.22) — Reduction in capital loss on shares where dividends previously paid.

History: Cl. 40(2)(g)(iv)(A) amended by 2001, c. 17, subsec. 25(1), applicable to 1998 *et seq.* Cl. 40(2)(g)(iv)(A) formerly read:

(A) a trust governed by a plan or fund referred to in any of subparagraphs (e)(ii) to (iv) of the definition "disposition" in section 54 under which the taxpayer is a beneficiary or immediately after the disposition becomes a beneficiary, or

Clause 40(2)(g)(iv)(B) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Selected Cases [para. 40(2)(g)]: *Graphic Packaging Canada Corp. v. R.*, [2001] 4 C.T.C. 2399 (TCC) (Superficial loss not created when substituted property not owned by seller at relevant time); *Boudreau v. R.*, [2000] 1 C.T.C. 2242 (T.C.C.) (Personal-use property cannot be depreciable nor give rise to terminal loss).

I.T. Application Rules: 26(6).

Interpretation Bulletins: IT-120R6: Principal residence; IT-124R6: Contributions to registered retirement savings plans; IT-159R3: Capital debts established to be bad debts; IT-160R3: Personal use of aircraft (archived); IT-218R: Profit, capital gains and losses from the sale of real estate; IT-239R2: Deductibility of capital losses from guaranteeing loans and loaning funds in non-arm's length circumstances (archived); IT-291R3: Transfer of property to a corporation under subsection 85(1); IT-325R2: Property transfers after separation, divorce and annulment; IT-332R: Personal-use property (archived); IT-373R2: Woodlots.

I.T. Technical News: 18 (*Byram* case).

(h) **[shares of controlled corporation]** — where the taxpayer is a corporation, its loss otherwise determined from the disposition at any time in a taxation year of shares of the capital stock of a corporation (in this paragraph referred to as the "controlled corporation") that was controlled, directly or indirectly in any manner whatever, by it at any time in the year, is its loss therefrom otherwise determined less the amount, if any, by which

(i) all amounts added under paragraph 53(1)(f.1) to the cost to a corporation, other than the controlled corporation, of property disposed of to that corporation by the controlled corporation that were added to the cost of the property during the period while the controlled corporation was controlled by the taxpayer and that can reasonably be attributed to losses on the property that accrued during the period while the controlled corporation was controlled by the taxpayer,

exceeds

(ii) all amounts by which losses have been reduced by virtue of this paragraph in respect of dispositions before that time of shares of the capital stock of the controlled corporation; and

Related Provisions: 40(3.3), (3.4) — Limitation on loss where property acquired by affiliated person; 87(2)(kk) — Amalgamations — Continuation of predecessor corporations; 112(3)–(4.22) — Reduction in capital loss on shares where dividends previously paid; 256(5.1), (6.2) — Controlled directly or indirectly — control in fact.

History: Subpara. 40(2)(h)(i) amended by 1998, c. 19, subsec. 89(2), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995. The subpara. formerly read:

(i) all amounts added under paragraph 53(1)(f.1) to the cost to another corporation of property disposed of to that corporation by the controlled corporation that were added to the cost of that property during the period that the controlled corporation was controlled by the taxpayer and that may reasonably be considered to be attributable to losses on the property that accrued during the period that the controlled corporation was controlled by the taxpayer,

(i) **[shares of certain corporations]** — where at a particular time a taxpayer has disposed of a share of the capital stock of a corporation that was at any time a prescribed venture capital corporation or a prescribed labour-sponsored venture capital corporation or a share of the capital stock of a taxable Canadian corporation that was held in a prescribed stock savings plan or of a property substituted for such a share, the taxpayer's loss from the disposition thereof shall be deemed to be the amount, if any, by which

(i) the loss otherwise determined

exceeds

(ii) the amount, if any, by which

(A) the amount of prescribed assistance that the taxpayer (or a person with whom the taxpayer was not dealing at arm's length) received or is entitled to receive in respect of the share

exceeds

(B) the total of all amounts determined under subparagraph (i) in respect of any disposition of the share or of the property substituted for the share before the particular time by the taxpayer or by a person with whom the taxpayer was not dealing at arm's length.

Related Provisions: 53(2)(k) — Reduction in adjusted cost base — government assistance; 112(3)–(4.22) — Reduction in capital loss on shares where dividends previously paid; 248(5) — Substituted property.

History: Subpara. 40(2)(i)(ii) substituted by 1994, c. 21, s. 15, applicable to 1991 *et seq.* That subpara. formerly read:

(ii) the amount, if any, by which the amount of any prescribed assistance in respect of the share received by the taxpayer or by a person with whom the taxpayer was not dealing at arm's length exceeds the total of all amounts each of which is an amount determined under subparagraph (i) in respect of any disposition of the share or of the property substituted for the share before the particular time by the taxpayer or by a person with whom the taxpayer was not dealing at arm's length.

Regulations: 6700, 6700.1 (prescribed venture capital corporation); 6701 (prescribed labour-sponsored venture capital corporation); 6702 (prescribed assistance); 6705 (prescribed stock savings plan).

Interpretation Bulletins: IT-273R2: Government assistance — general comments.

(j) [Repealed under former Act]

(3) Deemed gain where amounts to be deducted from ACB exceed cost plus amounts to be added to ACB — Where

(a) the total of all amounts required by subsection 53(2) (except paragraph 53(2)(c)) to be deducted in computing the adjusted cost base to a taxpayer of any property at any time in a taxation year

exceeds

(b) the total of

(i) the cost to the taxpayer of the property determined for the purpose of computing the adjusted

cost base to the taxpayer of that property at that time, and

(ii) all amounts required by subsection 53(1) to be added to the cost to the taxpayer of the property in computing the adjusted cost base to the taxpayer of that property at that time,

the following rules apply:

(c) subject to paragraph 93(1)(b), the amount of the excess shall be deemed to be a gain of the taxpayer for the year from a disposition at that time of the property,

(d) for the purposes of section 93, the definition "foreign accrual property income" in subsection 95(1) and section 110.6, the property shall be deemed to have been disposed of by the taxpayer in the year, and

(e) for the purposes of section 93, the amount of the excess shall be deemed to be proceeds of disposition of the property to the taxpayer.

Related Provisions: 40(3.1)–(3.2) — Deemed capital gain or loss for passive partners; 53(1)(a) — Deemed gain added to adjusted cost base of property; 93(1) — Election re disposition of share in foreign affiliate; 98(1)(c) — Where partnership ceases to exist; 98.1(1)(c) — Residual interest in partnership.

History: That portion of subsec. 40(3) following para. (b) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 23, applicable to 1987 *et seq.* That portion formerly read:

> the amount of the excess shall be deemed to be a gain of the taxpayer for the year from a disposition at that time of that property and for the purposes of section 110.6, that property shall be deemed to have been disposed of by the taxpayer in the year.

Selected Cases [subsec. 40(3)]: *Trzop v. R.*, [2000] 4 C.T.C. 2093 (TCC) (Gain from deemed disposition of asset did not change basis of assessment from which earlier appeal taken); *Stursberg (R.K.G.) v. MNR*, [1993] 2 C.T.C. 76 (FCA) (Transactions resulting in reduction of partner's share and corresponding increase of another partner's share was disposition of part of first partner's interest, not distribution of capital).

Interpretation Bulletins: IT-242R: Retired partners; IT-278R2: Death of a partner or of a retired partner.

(3.1) Deemed gain for certain partners — Where, at the end of a fiscal period of a partnership, a member of the partnership is a limited partner of the partnership, or is a member of the partnership who was a specified member of the partnership at all times since becoming a member, except where the member's partnership interest was held by the member on February 22, 1994 and is an excluded interest at the end of the fiscal period,

(a) the amount determined under subsection (3.11) is deemed to be a gain from the disposition, at the end of the fiscal period, of the member's interest in the partnership; and

(b) for the purpose of section 110.6, the interest is deemed to have been disposed of by the member at that time.

Proposed Amendment — 40(3.1)

Letter from Dept. of Finance, July 11, 2003:

Dear [xxx]

Re: Limited Liability Partnerships

I am replying to your letter of October 3, 2002 and follow-up discussions with Departmental officials concerning the definition "limited partner" in the *Income Tax Act*. Your client is concerned that this definition does not provide an exception for all types of professional limited liability partnerships ("LLPs").

As you know, the definition "limited partner" in the *Income Tax Act* was amended in 2001, to provide an exception for partners of an LLP (applicable after 1997) in cases where the LLP legislation protects the partner from liability arising because of the negligence of another member of the LLP. You described such partnerships as "partial" shield LLPs. You note that another statutory model for LLPs exists under which LLP partners are provided a "full" shield from partnership liabilities (for example, from partnership account payables). You ask that the definition "limited partner" for income tax purposes be amended to provide an exception for partners who benefit from full shield LLP legislation.

As mentioned in our discussions, we have difficulty supporting your proposal. In particular, a partner's personal liability with respect to the operation of a full shield LLP business, including general debts of the LLP, is limited. As well, the partner can withdraw capital (or be allocated losses) such that the partner's interest in the LLP can become negative. It is precisely such circumstances to which the negative adjusted cost base rule and limited partnership at-risk loss rules are intended to apply. From a tax policy perspective, therefore, we see no basis for distinguishing between the income tax treatment accorded a partner of a full shield professional LLP and that accorded a limited partner of another partnership.

However, in our discussions you also asked that, if we are unable to agree to your original request, that we consider allowing for an adjustment to the adjusted cost base (the "ACB") of a partner's interest in a full shield LLP for the income (loss) allocation made at the end of a fiscal period of the LLP rather than the current approach under which the adjustment is made immediately after the end of the fiscal period. The advantage of such a change for full shield LLP partners would be that an income allocation would be included in the ACB of partner's LLP interest at the end of the fiscal period of the LLP for the purpose of applying the negative adjusted cost base rule in subsection 40(3.1) of the *Income Tax Act*.

In this regard, we are prepared to recommend to the Minister of Finance that, for the purposes of applying the negative adjusted cost base rule in subsection 40(3.1) of the *Income Tax Act*, the Act be amended to provide that the ACB of a full shield professional LLP be adjusted at the end of the fiscal period of the LLP to reflect income (loss) allocations made by the LLP at that time. If enacted, we would anticipate that such a change would apply to allocations of income (loss) made by full shield LLPs on or after December 1, 2001.

I trust that your client is in agreement with this approach to the matter and thank you for bringing this matter to my attention.

Yours sincerely,

Len Farber
General Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 40(3.12) — Election for deemed capital loss where ACB is later positive; 40(3.131) — Specified member of partnership — anti-avoidance rule; 40(3.14) — Limited partner; 40(3.15) — Excluded interest; 40(3.18) — Grandfathered partners; 40(3.19) — Subsec. 40(3.1) takes precedence over 40(3); 40(3.2) — Paras. 98(1)(c) and 98.1(1)(c) take precedence; 53(1)(e)(vi) — Addition to adjusted cost base; 53(2)(c)(i.3), (i.4) — Reduction in adjusted cost base.

History: Subsec. 40(3.1) amended by 1998, c. 19, subsec. 89(3), applicable after February 21, 1994, except that subsec. 40(3.1) does not apply to a member of a partnership before the end of the partnership's fifth fiscal period that ends after 1994 if the following conditions are met:

(a) the member acquired the partnership interest before 1995;

(b) all or substantially all of the property (other than money) of the partnership is a film production or an interest in one or more partnerships all or substantially all of the property of which is a film production;

(c) the principal photography of the production (or, in the case of a production that is a television series, an episode of the series) began before 1995;

(d) the funds used to produce the film production were raised before 1995 and the principal photography of the production was completed, and the funds were expended, before 1995 (or, in the case of a film production prescribed for the purpose of subpara. 96(2.2)(d)(ii), the principal photography of the production was completed, and the funds were expended, before March 2, 1995); and

(e) one of the following conditions is met:

(i) the producer of the production

(A) had, before February 22, 1994, entered into a written agreement for the pre-production, distribution, broadcasting, financing or acquisition of the production or the acquisition of the screenplay for the production, or

(B) had entered into a written contract before February 22, 1994 with a screenwriter to write the screenplay for the production,

(ii) the producer of the production received before 1995 a commitment for funding or government assistance (or an advance ruling or active status letter in respect of eligibility for such funding

or other government assistance) for the production from a federal or provincial government agency the mandate of which is related to the provision of assistance to film productions in Canada, or

(iii) the production is a continuation of a television series an episode of which satisfies the requirements of this paragraph.

The subsec. formerly read:

(3.1) Where, at the end of a fiscal period of a partnership, a member of the partnership is a limited partner of the partnership or is a member of the partnership who was a specified member of the partnership at all times since becoming a member (except where the member's partnership interest was held by the member on February 22, 1994 and is an excluded interest at the end of the fiscal period), the amount determined under subsection (3.11) shall be deemed to be a gain from the disposition, at the end of the fiscal period, of the member's interest in the partnership and, for the purpose of section 110.6, the interest shall be deemed to have been disposed of by the member at that time.

Subsec. 40(3.1) added by 1995, c. 3, subsec. 12(2), applicable after February 21, 1994, except that subsec. 40(3.1) does not apply to a member of a partnership before the end of the partnership's fifth fiscal period ending after 1994 where the following conditions are met:

(a) the member acquires the partnership interest before 1995;

(b) all or substantially all of the property (other than money) of the partnership is a film production or an interest in one or more partnerships all or substantially all of the property of which is a film production;

(c) the principal photography of the production (or, in the case of a television series, an episode of the series) commences before 1995;

(d) the funds used to produce the film production are raised before 1995 and the principal photography of the production is completed, and the funds are expended, before 1995 (or, in the case of a film production prescribed for the purpose of subpara. 96(2.2)(d)(ii), the principal photography of the production is completed, and the funds are expended, before March 2, 1995); and

(e) one of the following conditions is met:

(i) the producer of the production has, before February 22, 1994, entered into a written agreement for the pre-production, distribution, broadcasting, financing or acquisition of the production or the acquisition of the screenplay for the production (or has entered into a written contract before February 22, 1994 with a screenwriter to write the screenplay for the production),

(ii) the producer of the production receives before 1995 a commitment for funding or government assistance (or an advance ruling or active status letter in respect of eligibility for such funding or other government assistance) for the production from a federal or provincial government agency the mandate of which is related to the provision of assistance to film productions in Canada, or

(iii) the production is a continuation of a television series an episode of which satisfies the requirements of paragraph (e).

I.T. Technical News: 5 (adjusted cost base of partnership interest).

(3.11) Amount of gain — For the purpose of subsection (3.1), the amount determined at any time under this subsection in respect of a member's interest in a partnership is the amount determined by the formula

$$A - B$$

where

A is the total of all amounts required by subsection 53(2) to be deducted in computing the adjusted cost base to the member of the interest in the partnership at that time, and

B is the total of

(a) the cost to the member of the interest determined for the purpose of computing the adjusted cost base to the member of the interest at that time, and

(b) all amounts required by subsection 53(1) to be added to the cost to the member of the interest in computing the adjusted cost base to the member of the interest at that time.

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: Subsec. 40(3.11) added by 1995, c. 3, subsec. 12(2), applicable after February 21, 1994.

(3.12) Deemed loss for certain partners — Where a corporation, an individual (other than a trust) or a testamentary trust (each of which is referred to in this subsection as the "taxpayer") is a member of a partnership at the end of a fiscal period of the partnership, the taxpayer shall be deemed to have a loss from the disposition at that time of the member's interest in the partnership equal to the amount that the taxpayer elects in the taxpayer's return of income under this Part for the taxation year that includes that time, not exceeding the lesser of

(a) the amount, if any, by which

(i) the total of all amounts each of which was an amount deemed by subsection (3.1) to be a gain of the taxpayer from a disposition of the interest before that time

exceeds

(ii) the total of all amounts each of which was an amount deemed by this subsection to be a loss of the taxpayer from a disposition of the interest before that time, and

(b) the adjusted cost base to the taxpayer of the interest at that time.

Related Provisions: 53(2)(c)(i.2) — Reduction in adjusted cost base.

History: Subsec. 40(3.12) added by 1995, c. 3, subsec. 12(2), applicable after February 21, 1994.

(3.13) Artificial transactions — For the purpose of applying section 53 at any time to a member of a partnership who would be a member described in subsection (3.1) of the partnership if the fiscal period of the partnership that includes that time ended at that time, where at any time after February 21, 1994 the member of the partnership makes a contribution of capital to the partnership and

(a) the partnership or a person or partnership with whom the partnership does not deal at arm's length

(i) makes a loan to the member or to a person with whom the member does not deal at arm's length, or

(ii) pays an amount as, on account of, in lieu of payment of or in satisfaction of, a distribution of the member's share of the partnership profits or partnership capital, or

(b) the member or a person with whom the member does not deal at arm's length becomes indebted to the partnership or a person or partnership with whom the partnership does not deal at arm's length,

and it is established, by subsequent events or otherwise, that the loan, payment or indebtedness, as the case may be, was made or arose as part of a series of contributions and such loans, payments or other transactions, the contribution of capital shall be deemed not to have been made.

Related Provisions: 251 — Arm's length.

History: Subsec. 40(3.13) added by 1995, c. 3, subsec. 12(2), applicable after February 21, 1994.

(3.131) Specified member of a partnership — Where it can reasonably be considered that one of the main reasons that a member of a partnership was not a specified member of the partnership at all times since becoming a member of the partnership is to avoid the application of subsection (3.1) to the member's interest in the partnership, the member is deemed for the purpose of that subsection to have been a specified member of the part-

nership at all times since becoming a member of the partnership.

Related Provisions: 127.52(2.1) — Parallel rule for minimum tax purposes.

History: Subsec. 40(3.131) added by 1998, c. 19, subsec. 89(4), applicable after April 26, 1995.

(3.14) Limited partner — For the purpose of subsection (3.1), a member of a partnership at a particular time is a limited partner of the partnership at that time if, at that time or within 3 years after that time,

(a) by operation of any law governing the partnership arrangement, the liability of the member as a member of the partnership is limited (except by operation of a provision of a statute of Canada or a province that limits the member's liability only for debts, obligations and liabilities of the partnership, or any member of the partnership, arising from negligent acts or omissions or misconduct that another member of the partnership or an employee, agent or representative of the partnership commits in the course of the partnership business while the partnership is a limited liability partnership);

Proposed Amendment — 40(3.14)(a)

(a) by operation of any law governing the partnership arrangement, the liability of the member as a member of the partnership is limited (except by operation of a provision of a statute of Canada or a province that limits the member's liability only for debts, obligations and liabilities of the partnership, or any member of the partnership, arising from negligent acts or omissions, from misconduct or from fault of another member of the partnership or an employee, an agent or a representative of the partnership in the course of the partnership business while the partnership is a limited liability partnership);

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 60(3), will amend para. 40(3.14)(a) to read as above, applicable after June 20, 2001.

Technical Notes: Subsection 40(3.1) provides that a member of a partnership is considered to realize a capital gain from the disposition, at the end of a fiscal period of the partnership, of the member's interest in the partnership where, at the end of the fiscal period, the member is a limited partner or was, since becoming a partner, a "specified member" of the partnership and the member's adjusted cost base of the interest is negative at that time.

Subsection 40(3.14) provides an extended definition of "limited partner" for the purpose of determining whether a member's interest in a partnership is subject to the negative adjusted cost base rule in subsection 40(3.1).

Paragraph 40(3.14)(a) provides that a member of a partnership is a "limited partner" if, by operation of law governing the partnership agreement, the liability of the member as a member is limited. However, paragraph 40(3.14)(a) does not apply in cases where a member's liability is limited by operation of a statutory provision of Canada (or of a province) that limits the member's liability only for the debts, obligations and liabilities of a limited liability partnership (or of any member of the partnership) arising from negligent acts or omissions of another member of the partnership (or of an employee, agent or representative of the partnership) in the course of the partnership business and while the partnership is a limited liability partnership.

The Province of Quebec has amended its legislation concerning partnerships to allow partners to carry on their activities within a limited liability partnership. That legislation refers to the civil law concept of "fault/fautes". Paragraph 40(3.14)(a) of the English version does not currently refer to the civil law concept of "fault" and is amended to do so, effective after June 20, 2001.

Proposed Amendment — 40(3.14)(a)

Letter from Dept. of Finance, July 11, 2003: See under 40(3.1).

(b) the member or a person not dealing at arm's length with the member is entitled, either immediately or in the future and either absolutely or contingently, to receive an amount or to obtain a benefit that would be described in paragraph 96(2.2)(d) if that paragraph were read without reference to subparagraphs (ii) and (vi);

(c) one of the reasons for the existence of the member who owns the interest

(i) can reasonably be considered to be to limit the liability of any person with respect to that interest, and

(ii) cannot reasonably be considered to be to permit any person who has an interest in the member to carry on the person's business (other than an investment business) in the most effective manner; or

(d) there is an agreement or other arrangement for the disposition of an interest in the partnership and one of the main reasons for the agreement or arrangement can reasonably be considered to be to attempt to avoid the application of this subsection to the member.

Related Provisions: 96(2.4) — Definition of limited partner for purposes of at-risk amount.

History: Para. 40(3.14)(a) amended by 2001, c. 17, subsec. 25(2), applicable after 1997. Para. 40(3.14)(a) formerly read:

(a) by operation of any law governing the partnership arrangement, the liability of the member as a member of the partnership is limited;

Para. 40(3.14)(b) amended by 1998, c. 19, subsec. 89(5), applicable to fiscal periods that end after November 1994. The para. formerly read:

(b) the member or a person with whom the member does not deal at arm's length is entitled to receive an amount or obtain a benefit that would be described in paragraph 96(2.2)(d) if it were read without reference to subparagraphs 96(2.2)(d)(ii) and (vi);

Subsec. 40(3.14) added by 1995, c. 3, subsec. 12(2), applicable after February 21, 1994.

(3.15) Excluded interest — For the purpose of subsection (3.1), an excluded interest in a partnership at any time means an interest in a partnership that actively carries on a business that was carried on by it throughout the period beginning February 22, 1994 and ending at that time, or that earns income from a property that was owned by it throughout that period, unless in that period there was a substantial contribution of capital to the partnership or a substantial increase in the indebtedness of the partnership.

Related Provisions: 40(3.16) — Amounts considered not to be substantial; 40(3.17) — Whether carrying on business before February 22, 1994; 53(2)(c)(i.4)(E) — Effect of excluded interest on ACB of partnership with 1995 stub period income.

History: Subsec. 40(3.15) added by 1995, c. 3, subsec. 12(2), applicable after February 21, 1994.

(3.16) Amounts considered not to be substantial — For the purpose of subsection (3.15), an amount will be considered not to be substantial where

(a) the amount

(i) was raised pursuant to the terms of a written agreement entered into by a partnership before February 22, 1994 to issue an interest in the partnership and was expended on expenditures contemplated by the agreement before 1995 (or before March 2, 1995 in the case of amounts expended to acquire a film production prescribed for the purpose of subparagraph 96(2.2)(d)(ii) the principal photography of which or, in the case of such a production that is a television series, one episode of

the series, commences before 1995 and the production is completed before March 2, 1995, or an interest in one or more partnerships all or substantially all of the property of which is such a film production),

(ii) was raised pursuant to the terms of a written agreement (other than an agreement referred to in subparagraph (i)) entered into by a partnership before February 22, 1994 and was expended on expenditures contemplated by the agreement before 1995 (or before March 2, 1995 in the case of amounts expended to acquire a film production prescribed for the purpose of subparagraph 96(2.2)(d)(ii) the principal photography of which or, in the case of such a production that is a television series, one episode of the series, commences before 1995 and the production is completed before March 2, 1995, or an interest in one or more partnerships all or substantially all of the property of which is such a film production),

(iii) was used by the partnership before 1995 (or before March 2, 1995 in the case of amounts expended to acquire a film production prescribed for the purpose of subparagraph 96(2.2)(d)(ii) the principal photography of which or, in the case of such a production that is a television series, one episode of the series, commences before 1995 and the production is completed before March 2, 1995, or an interest in one or more partnerships all or substantially all of the property of which is such a film production) to make an expenditure required to be made pursuant to the terms of a written agreement entered into by the partnership before February 22, 1994, or

(iv) was used to repay a loan, debt or contribution of capital that had been received or incurred in respect of any such expenditure;

(b) the amount was raised before 1995 pursuant to the terms of a prospectus, preliminary prospectus, offering memorandum or registration statement filed before February 22, 1994 with a public authority in Canada pursuant to and in accordance with the securities legislation of Canada or of a province and, where required by law, accepted for filing by the public authority, and expended before 1995 (or before March 2, 1995 in the case of amounts expended to acquire a film production prescribed for the purpose of subparagraph 96(2.2)(d)(ii), or an interest in one or more partnerships all or substantially all of the property of which is such a film production) on expenditures contemplated by the document that was filed before February 22, 1994;

(c) the amount was raised before 1995 pursuant to the terms of an offering memorandum distributed as part of an offering of securities where

(i) the memorandum contained a complete or substantially complete description of the securities contemplated in the offering as well as the terms and conditions of the offering,

(ii) the memorandum was distributed before February 22, 1994,

(iii) solicitations in respect of the sale of the securities contemplated by the memorandum were made before February 22, 1994,

(iv) the sale of the securities was substantially in accordance with the memorandum, and

(v) the funds are expended in accordance with the memorandum before 1995 (except that the funds may be expended before March 2, 1995 in the case of a partnership all or substantially all of the property of which is a film production prescribed for the purpose of subparagraph 96(2.2)(d)(ii) the principal photography of which or, in the case of such a production that is a television series, one episode of the series, commences before 1995 and the production is completed before March 2, 1995, or an interest in one or more partnerships all or substantially all of the property of which is such a film production); or

(d) the amount was used for an activity that was carried on by the partnership on February 22, 1994 but not for a significant expansion of the activity nor for the acquisition or production of a film production.

Related Provisions: 40(3.17) — Partnership deemed to have carried on business before February 22, 1994; 40(3.18)(d) — Grandfathering of certain partnership interests.

History: Subsec. 40(3.16) added by 1995, c. 3, subsec. 12(2), applicable after February 21, 1994.

(3.17) Whether carrying on business before February 22, 1994 — For the purpose of subsection (3.15), a partnership in respect of which paragraph (3.16)(a), (b) or (c) applies shall be considered to have actively carried on the business, or earned income from the property, contemplated in the document referred to in that paragraph throughout the period beginning February 22, 1994 and ending on the earlier of the closing date, if any, stipulated in the document and January 1, 1995.

History: Subsec. 40(3.17) added by 1995, c. 3, subsec. 12(2), applicable after February 21, 1994.

(3.18) Deemed partner — For the purpose of subsection (3.1), a member of a partnership who acquired an interest in the partnership after February 22, 1994 shall be deemed to have held the interest on February 22, 1994 where the member acquired the interest

(a) in circumstances in which

(i) paragraph 70(6)(d.1) applied,

(ii) where the member is an individual, the member's spouse or common-law partner held the partnership interest on February 22, 1994,

(iii) where the member is a trust, the taxpayer by whose will the trust was created held the partnership interest on February 22, 1994, and

(iv) the partnership interest was, immediately before the death of the spouse or common-law partner or the taxpayer, as the case may be, an excluded interest;

(b) in circumstances in which

(i) paragraph 70(9.2)(c) applied,

(ii) the member's parent held the partnership interest on February 22, 1994, and

(iii) the partnership interest was, immediately before the parent's death, an excluded interest;

(c) in circumstances in which

(i) paragraph 70(9.3)(e) applied,

(ii) the trust referred to in subsection 70(9.3) or the taxpayer by whose will the trust was created held the partnership interest on February 22, 1994, and

(iii) the partnership interest was, immediately before the death of the spouse or common-law

partner referred to in subsection 70(9.3), an excluded interest; or

(d) before 1995 pursuant to a document referred to in subparagraph (3.16)(a)(i) or paragraph (3.16)(b) or (c).

Related Provisions: 252(2)(a) — Extended meaning of "parent".

History: Subparas. 40(3.18)(a)(ii), (a)(iv) and (c)(iii) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subsec. 40(3.18) added by 1995, c. 3, subsec. 12(2), applicable after February 21, 1994.

(3.19) Non-application of subsec. (3) — Subsection (3) does not apply in any case where subsection (3.1) applies.

History: Subsec. 40(3.19) added by 1995, c. 3, subsec. 12(2), applicable after February 21, 1994.

(3.2) Non-application of subsec. (3.1) — Subsection (3.1) does not apply in any case where paragraph 98(1)(c) or 98.1(1)(c) applies.

History: Subsec. 40(3.2) added by 1995, c. 3, subsec. 12(2), applicable after February 21, 1994.

(3.3) When subsection (3.4) applies — Subsection (3.4) applies when

(a) a corporation, trust or partnership (in this subsection and subsection (3.4) referred to as the "transferor") disposes of a particular capital property (other than depreciable property of a prescribed class) otherwise than in a disposition described in any of paragraphs (c) to (g) of the definition "superficial loss" in section 54;

(b) during the period that begins 30 days before and ends 30 days after the disposition, the transferor or a person affiliated with the transferor acquires a property (in this subsection and subsection (3.4) referred to as the "substituted property") that is, or is identical to, the particular property; and

(c) at the end of the period, the transferor or a person affiliated with the transferor owns the substituted property.

Related Provisions: 93(2)–(2.3) — Loss on disposition of share of foreign affiliate; 95(2)(h)–(h.5) — Application to FAPI; 251.1 — Affiliated persons.

History: Subsecs. 40(3.3) added by 1998, c. 19, subsec. 89(6), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995.

I.T. Application Rules: 26(5)(c)(ii)(A) (where property owned since June 18, 1971).

(3.4) Loss on certain properties — If this subsection applies because of subsection (3.3) to a disposition of a particular property,

(a) the transferor's loss, if any, from the disposition is deemed to be nil, and

(b) the amount of the transferor's loss, if any, from the disposition (determined without reference to paragraph (2)(g) and this subsection) is deemed to be a loss of the transferor from a disposition of the particular property at the time that is immediately before the first time, after the disposition,

(i) at which a 30-day period begins throughout which neither the transferor nor a person affiliated with the transferor owns

(A) the substituted property, or

(B) a property that is identical to the substituted property and that was acquired after the day that is 31 days before the period begins,

(ii) at which the property would, if it were owned by the transferor, be deemed by section 128.1 or subsection 149(10) to have been disposed of by the transferor,

(iii) that is immediately before control of the transferor is acquired by a person or group of persons, where the transferor is a corporation,

(iv) at which the transferor or a person affiliated with the transferor is deemed by section 50 to have disposed of the property, where the substituted property is a debt or a share of the capital stock of a corporation, or

(v) at which the winding-up of the transferor begins (other than a winding-up to which subsection 88(1) applies), where the transferor is a corporation,

and, for the purpose of paragraph (b), where a partnership otherwise ceases to exist at any time after the disposition, the partnership is deemed not to have ceased to exist, and each person who was a member of the partnership immediately before the partnership would, but for this subsection, have ceased to exist is deemed to remain a member of the partnership, until the time that is immediately after the first time described in subparagraphs (b)(i) to (v).

Related Provisions: 13(21.2) — Parallel rule for depreciable capital property; 14(12) — Parallel rule for eligible capital property; 18(13)–(15) — Parallel rule for share or debt owned by financial institution; 40(3.5) — Deemed identical property; 40(3.6) — Where share in corporation disposed of to the corporation; 40(3.61) — Exception where estate loss carried back; 69(5)(d) — No application on winding-up; 87(2)(g.3) — Amalgamations — continuing corporation; 93(2)–(2.3), (4) — Loss on disposition of share of foreign affiliate; 95(2)(h.1)(v) — Parallel rules for FAPI; 112(3)–(4.22) — Reduction in capital loss on shares where dividends previously paid; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 248(12) — Whether properties are identical; 256(6)–(9) — Whether control acquired.

History: Subsecs. 40(3.4) added by 1998, c. 19, subsec. 89(6), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995.

Interpretation Bulletins: IT-291R3: Transfer of property to a corporation under subsection 85(1).

(3.5) Deemed identical property — For the purposes of subsections (3.3) and (3.4),

(a) a right to acquire a property (other than a right, as security only, derived from a mortgage, hypothec, agreement for sale or similar obligation) is deemed to be a property that is identical to the property;

(b) a share of the capital stock of a corporation that is acquired in exchange for another share in a transaction to which section 51, 85.1, 86 or 87 applies is deemed to be a property that is identical to the other share;

Proposed Amendment — 40(3.5)(b)

(b) a share of the capital stock of a corporation that is acquired in exchange for another share in a transaction is deemed to be a property that is identical to the other share if

(i) section 51, 86, or 87 applies to the transaction, or

(ii) the following conditions are met, namely,

(A) section 85.1 applies to the transaction,

(B) subsection (3.4) applied to a prior disposition of the other share, and

(C) none of the times described in any of subparagraphs (3.4)(b)(i) to (v) has occurred in respect of the prior disposition;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 60(4), will amend para. 40(3.5)(b) to read as above, applicable to dispositions of property that occur after April 26, 1995, except that it does not apply to any of those dispositions by a person or partnership that occurred before 1996 and that is described in subsec. 247(1) of the *Income Tax Amendments Act, 1997* [1995-97 technical bill; see Grandfathering provision reproduced after s. 260] unless the person or partnership, as the case may be, made a valid election under subsec. 247(2) of that Act.

Technical Notes: Subsections 40(3.3) and (3.4) set out rules under which losses on certain dispositions of non-depreciable capital property are deferred. In some cases, the application of these rules is contingent upon whether one property is identical to the disposed of non-depreciable capital property.

Current paragraph 40(3.5)(b) treats a share that is acquired in exchange for another share under any of a number of sections as being identical to that other share. Among the effects of this deeming rule is to ensure that a deferred loss is not inappropriately realized through a transaction under one of those sections.

For example, assume that a taxpayer who on Day 1 disposed of a share for proceeds that were less than the taxpayer's adjusted cost base of the share reacquired an identical share on Day 15. Under the loss-deferral rules, the taxpayer's loss on the disposition will be deferred until, generally, neither the taxpayer nor an affiliated person owns such a share. If the taxpayer then exchanged that share for another, under for example an exchange under section 86, it would be appropriate to continue to defer recognition of the deferred loss until that substituted share is disposed of. This is accomplished by treating the share acquired on the exchange as identical to the share given up.

However, paragraph 40(3.5)(b) can have an inappropriate effect where a taxpayer uses the share-for-share exchange rule in section 85.1. Provided certain criteria are satisfied, that section permits a share-for-share exchange to take place on a tax-deferred basis, but it also allows the exchanging shareholder to realize a loss. A shareholder who chooses to do so may find that paragraph 40(3.5)(b) forces a deferral of that loss — even though the loss arises from the section 85.1 exchange itself, not from a previous disposition as in the above example.

Paragraph 40(3.5)(b) is amended to deem a share that is acquired in exchange for another share under section 85.1 to be identical to that other share only if the loss in respect of the exchanged share is suspended at the time of the exchange by virtue of subsections 40(3.3) and (3.4).

This amendment to paragraph 40(3.5)(b) applies to dispositions of property that occur after April 26, 1995, subject to the coming-into-force provisions that originally enacted subsection 40(3.5).

Letter from Dept. of Finance, November 17, 1997:

Mr. Steve Suarez, Bennett Jones Verchere, Toronto

Re: Proposed Subsections 40(3.3)–(3.5) — Loss deferral rules

Dear Mr. Suarez:

I am writing further to your recent discussion of proposed *Income Tax Act* subsections 40(3.3) and following, with Lawrence Purdy of this Division.

You have described a situation in which you consider that these provisions may operate inappropriately, and have asked for our comments. As I understand that you have a client for whom this is an immediate concern, we have given this some priority.

Proposed subsections 40(3.3) to (3.5) set out rules that would apply where, in general terms, a corporation, partnership or trust would otherwise realize a loss on disposition of a non-depreciable capital property to an affiliated person. The rules would defer the recognition of that loss until the earliest of several possible subsequent events, the most typical of which is that the property (or an identical property) is no longer held by a person who is affiliated with the initial transferor. Once the property had left the affiliated population, the initial transferor could recognize that deferred loss.

The proposals include a few provisions directed at special circumstances. One of these is proposed paragraph 40(3.5)(b), which is meant to cover cases where shares are exchanged for one another. Paragraph 40(3.5)(b) would treat a share that was acquired in exchange for another share, in a transaction to which section 51, 85.1, 86 or 87 applies, as being identical to the other share. This ensures, for example, that a loss that is deferred on the transfer of a share to an affiliate will not be recognized if the share is merely replaced with another share under one of those provisions. Even though it may be argued that the former share is no longer held by an affiliated person (since that share no longer exists), paragraph 40(3.5)(b) causes the new share in effect to take its place for this purpose.

Your concern, as I understand it, is that paragraph 40(3.5)(b) may apply not only where the section 85.1 exchange takes place after the initial transfer of a share to an affiliated person, but also where the section 85.1 exchange is itself that initial transfer. In other words, paragraph 40(3.5)(b) might apply to any exchange to which section 85.1 applies. If this is the case, then the clear intention of section 85.1 to permit a loss to be realized on such an exchange, at least in some circumstances, would be contradicted — the shares taken back would be deemed to be identical to the shares given up, and the loss would be deferred under subsection 40(3.4).

I agree that this would not be an appropriate result, at least where the vendor and the purchaser (as they are described in subsection 85.1(1)(a)) are not affiliated. That is, I agree that it ought in policy terms to be possible for a vendor to realize a loss on an exchange of shares of an acquired corporation for shares of a purchaser that is not affiliated with the vendor immediately after the exchange.

We will consider further how this policy view can best be accommodated in the proposed legislation. Given the tight time-line we are on, it may not be possible to recommend a clarifying change before the legislation is introduced. In that case, we will recommend that the change be included in a future set of technical amendments. While I cannot, as you know, offer any assurance that either the Minister or Parliament itself will agree with the recommendations we intend to make in this regard, I hope this summary of our views is helpful.

Yours sincerely

Len Farber

Director General, Tax Legislation Division

Letter from Dept. of Finance, September 15, 1998:

Dear [xxx]

I am writing further to a recent exchange of messages between [xxx] and Lawrence Purdy of this Division, regarding *Income Tax Act* subsections 40(3.3) and following. I understand that you and [xxx] are working together on a particular transaction to which these provisions may be relevant, and that [xxx] has asked that you and he be given the same information.

Subsections 40(3.3) to (3.5) set out rules that apply where, in general terms, a corporation, partnership or trust would otherwise realize a loss on a disposition of a non-depreciable capital property to an affiliated person. The rules defer the recognition of that loss until the earliest of several possible subsequent events, the most typical of which is that the property (or an identical property) is no longer held by a person who is affiliated with the initial transferor. Once the property has left the affiliated population, the initial transferor can recognize that deferred loss.

The provisions include a few rules directed at special circumstances. One of those is paragraph 40(3.5)(b), which is meant to cover cases where shares are exchanged for one another. Paragraph 40(3.5)(b) treats a share that was acquired in exchange for another share, in a transaction to which section 51, 85.1, 86 or 87 applies, as being identical to the other share. This ensures, for example, that a loss that is deferred on the transfer of a share to an affiliate will not be recognized if the share is merely replaced with another share under one of those provisions. Even though it may be argued that the former share is no longer held by an affiliated person (since that share no longer exists), paragraph 40(3.5)(b) causes the new share in effect to take its place for this purpose.

Your concern, which has also been raised with us by others in the past, is that paragraph 40(3.5)(b) may apply not only where the section 85.1 exchange takes place after the initial transfer of a share to an affiliated person, but also where the section 85.1 exchange is itself that initial transfer. In other words, paragraph 40(3.5)(b) might apply to any exchange to which section 85.1 applies. If this is the case, then the clear intention of section 85.1 to permit a loss to be realized on such an exchange, at least in some circumstances, would be contradicted — the shares taken back would be deemed to be identical to the shares given up, and the loss would be deferred under subsection 40(3.4).

I agree that this would not be an appropriate result, at least where the vendor and the purchaser (as they are described in subsection 85.1(1) are not affiliated. That is, I agree that it ought in policy terms to be possible for a vendor to realize a loss on an exchange of shares of an acquired corporation for shares of a purchaser that is not affiliated with the vendor immediately after the exchange.

We will recommend that a clarifying change to the relevant rules be included in a future package of amendments. Since the change would be a strictly technical correction to the rules as they were enacted, I expect to recommend that the change apply as of the date the rules themselves took effect — that is, to dispositions of property that occur after April 26, 1995.

As you know, I cannot offer any assurance that either the Minister or Parliament itself will agree with the recommendations we intend to make in this regard. Nonetheless, I hope this summary of our views is helpful.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division

(c) where subsections (3.3) and (3.4) apply to the disposition by a transferor of a share of the capital stock of a corporation, and after the disposition the corporation is merged with one or more other corporations, otherwise than in a transaction in respect of which paragraph (b) applies to the share, or is wound up in a winding-up to which subsection 88(1) applies, the corporation formed on the merger or the parent (within the meaning assigned by subsection 88(1)), as the case may be, is deemed to own the share while it is affiliated with the transferor; and

(d) where subsections (3.3) and (3.4) apply to the disposition by a transferor of a share of the capital stock of a corporation, and after the disposition the share is redeemed, acquired or cancelled by the corporation, otherwise than in a transaction in respect of which paragraph (b) or (c) applies to the share, the transferor is deemed to own the share while the corporation is affiliated with the transferor.

Related Provisions: 87(2)(g.2) — Amalgamations — continuing corporation.

History: Para. 40(3.5)(a) amended to add "hypothec" by 2001, c. 17, s. 205, in force June 14, 2001.

Subsecs. 40(3.5) added by 1998, c. 19, subsec. 89(6), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995.

(3.6) Loss on shares — Where at any time a taxpayer disposes, to a corporation that is affiliated with the taxpayer immediately after the disposition, of a share of a class of the capital stock of the corporation (other than a share that is a distress preferred share as defined in subsection 80(1)),

(a) the taxpayer's loss, if any, from the disposition is deemed to be nil; and

(b) in computing the adjusted cost base to the taxpayer after that time of a share of a class of the capital stock of the corporation owned by the taxpayer immediately after the disposition, there shall be added the proportion of the amount of the taxpayer's loss from the disposition (determined without reference to paragraph (2)(g) and this subsection) that

(i) the fair market value, immediately after the disposition, of the share

is of

(ii) the fair market value, immediately after the disposition, of all shares of the capital stock of the corporation owned by the taxpayer.

Related Provisions: 40(3.61) — Exception where estate loss carried back; 53(1)(f.2) — Addition to adjusted cost base; 84(3) — Deemed dividend of excess of proceeds over paid-up capital; 251.1 — Affiliated persons.

History: Subsecs. 40(3.6) added by 1998, c. 19, subsec. 89(6), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995.

(3.61) Exception — estate loss carried back — If, in the course of administering the estate of a deceased taxpayer, the taxpayer's legal representative elects in accordance with subsection 164(6) to treat all or any portion of the estate's capital loss (determined without reference to subsections (3.4) and (3.6)) from the disposition of a share of the capital stock of a corporation as a capital loss of the deceased taxpayer from the disposition of the share, subsections (3.4) and (3.6) apply to the estate in respect of the loss only to the extent that the amount of the loss exceeds the portion of the loss to which the election applies.

History: Subsecs. 40(3.61) added by 2005, c. 19, s. 13, applicable to losses from dispositions that occur or occurred after March 22, 2004.

(3.7) Losses of non-resident — If an individual disposes of a property at any time after having ceased to be resident in Canada, for the purposes of applying subsections 100(4), 107(1) and 112(3) to (3.32) and (7) in computing the individual's loss from the disposition,

(a) the individual is deemed to be a corporation in respect of dividends received by the individual, or deemed under Part XIII to have been paid to the individual, at a particular time that is after the time at which the individual last acquired the property and at which the individual was non-resident; and

(b) an amount on account of

(i) each taxable dividend received by the individual at a particular time described in paragraph (a), and

(ii) each amount deemed under Part XIII to have been paid to the individual at a particular time described in paragraph (a), as a dividend from a corporation resident in Canada, to the extent that the amount can reasonably be considered to relate to the property,

is deemed to be a taxable dividend that was received by the individual and that was deductible under section 112 in computing the individual's taxable income or taxable income earned in Canada for the taxation year that includes that particular time.

Related Provisions: 119 — Credit to former resident where stop-loss rule applies; 128.1(6)(b), 128.1(7)(e) — Returning former resident of Canada.

History: Subsec. 40(3.7) added by 2001, c. 17, subsec. 25(3), applicable to dispositions after December 23, 1998 by individuals who cease to be resident in Canada after October 1, 1996.

(4) Disposal of principal residence to spouse or trust for spouse [or common-law partner] — Where a taxpayer has, after 1971, disposed of property to an individual in circumstances to which subsection 70(6) or 73(1) applied, for the purposes of computing the individual's gain from the disposition of the property under paragraph (2)(b) or (c), as the case may be,

(a) the individual shall be deemed to have owned the property throughout the period during which the taxpayer owned it;

Selected Cases [para. 40(4)(a)]: *Dumais v. MNR*, [1990] 1 C.T.C. 342 (FCTD) (Capital gain from disposition of community property taxable to husband alone).

(b) the property shall be deemed to have been the individual's principal residence

(i) in any case where subsection 70(6) is applicable, for any taxation year for which it would, if the taxpayer had designated it in prescribed manner to have been the taxpayer's principal residence for that year, have been the taxpayer's principal residence, and

(ii) in any case where subsection 73(1) is applicable, for any taxation year for which it was the taxpayer's principal residence; and

(c) where the individual is a trust, the trust shall be deemed to have been resident in Canada during each taxation year during which the taxpayer was resident in Canada.

Related Provisions: 40(7.1) — Effect of election to trigger capital gains exemption.

Regulations: 2301 (prescribed manner of designation).

Interpretation Bulletins: IT-120R6: Principal residence.

(5) [Repealed]

History: Subsec. 40(5) repealed by 1994, c. 7, Sch. VIII (1993, c. 24), s. 12, applicable to dispositions occurring after 1990. Subsec. 40(5) formerly read:

(5) Where principal residence is property of trust for spouse — For the purposes of determining whether any property of a trust described in subsection 70(6) or 73(1) was its principal residence for any taxation year, the reference in paragraph (a) of the definition "principal residence" in section 54 to "the taxpayer" shall be read as if it were a reference to the spouse referred to in subparagraph 70(6)(b)(i) or 73(1)(c)(i), as the case may be.

(6) Special rule concerning principal residence — Where a property was owned by a taxpayer, whether jointly with another person or otherwise, at the end of 1981 and continuously thereafter until disposed of by the taxpayer, the amount of the gain determined under paragraph (2)(b) in respect of the disposition shall not exceed the amount, if any, by which the total of

(a) the taxpayer's gain calculated in accordance with paragraph (2)(b) on the assumption that the taxpayer had disposed of the property on December 31, 1981 for proceeds of disposition equal to its fair market value on that date, and

(b) the taxpayer's gain calculated in accordance with paragraph (2)(b) on the assumption that that paragraph applies and that

(i) the taxpayer acquired the property on January 1, 1982 at a cost equal to its proceeds of disposition as determined under paragraph (a), and

(ii) the description of B in paragraph (2)(b) is read without reference to "one plus"

exceeds

(c) the amount, if any, by which the fair market value of the property on December 31, 1981 exceeds the proceeds of disposition of the property determined without reference to this subsection.

Related Provisions: 40(7.1) — Effect of election to trigger capital gains exemption.

History: Subpara. 40(6)(b)(ii) amended by 1995, c. 3, subsec. 12(3), applicable to dispositions that occur after February 22, 1994. Subpara. (ii) formerly read:

(ii) subparagraph (2)(b)(i) is read without reference to "one plus"

Interpretation Bulletins: IT-120R6: Principal residence.

(7) Property in satisfaction of interest in trust — Where property has been acquired by a taxpayer in satisfaction of all or any part of the taxpayer's capital interest in a trust, in circumstances to which subsection 107(2) applies and subsection 107(4) does not apply, for the purposes of paragraph (2)(b) and the definition "principal residence" in section 54, the taxpayer shall be deemed to have owned the property continuously since the trust last acquired it.

Related Provisions: 40(7.1) — Effect of election to trigger capital gains exemption; 107(2.01) — Principal residence distribution by spouse trust.

Interpretation Bulletins: IT-120R6: Principal residence; IT-437R: Ownership of property (principal residence).

(7.1) Effect of election under subsec. 110.6(19) — Where an election was made under subsection 110.6(19) in respect of a property of a taxpayer that was the taxpayer's principal residence for the 1994 taxation year or that, in the taxpayer's return of income for the taxation year in which the taxpayer disposes of the property or grants an option to acquire the property, is designated as the taxpayer's principal residence, in determining, for the purposes of paragraph (2)(b) and subsections (4) to (7), the day on which the property was last acquired or reacquired by the taxpayer and the period throughout which the property was owned by the taxpayer this Act shall be read without reference to subsection 110.6(19).

History: Subsec. 40(7.1) added by 1995, c. 3, subsec. 12(4), applicable to dispositions that occur after February 22, 1994.

Interpretation Bulletins: IT-120R6: Principal residence.

(8) Application of subsec. 70(10) — The definitions in subsection 70(10) apply to this section.

Origin of subsec. 40(8): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsec. 70(10)).

(9) Additions to taxable Canadian property — If a non-resident person disposes of a taxable Canadian property

(a) that the person last acquired before April 27, 1995,

(b) that would not be a taxable Canadian property immediately before the disposition if section 115 were read as it applied to dispositions that occurred on April 26, 1995, and

(c) that would be a taxable Canadian property immediately before the disposition if section 115 were read as it applied to dispositions that occurred on January 1, 1996,

the person's gain or loss from the disposition is deemed to be the amount determined by the formula

$$A \times B/C$$

where

A is the amount of the gain or loss determined without reference to this subsection;

B is the number of calendar months in the period that begins with May 1995 and ends with the calendar month that includes the time of the disposition; and

C is the number of calendar months in the period that begins with the calendar month in which the person last acquired the property and ends with the calendar month that includes the time of the disposition.

Related Provisions: ITAR 26(30) — Relief for property held since pre-1972 does not apply to property that became taxable Canadian property due to amendments effective 1995.

History: The portion of subsec. 40(9) before the formula amended by 2001, c. 17, subsec. 25(4), applicable to dispositions that occur after April 26, 1995. The portion formerly read:

(9) Where a non-resident person disposes of a taxable Canadian property that the person last acquired before April 27, 1995 and that would not be a taxable Canadian property immediately before the disposition if section 115 were read as it applied to dispositions that occurred on April 26, 1995, the person's gain or loss from the disposition is deemed to be the amount determined by the formula

Subsec. 40(9) added by 1998, c. 19, subsec. 89(7), applicable, subject to s. 247 of the said c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995.

Definitions [s. 40]: "acquired" — 40(7.1), 256(7)–(9); "acquisition date" — 40(2)(b); "adjusted cost base" — 54, 248(1); "affiliated" — 251.1; "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 255; "capital gain" — 39(1), 248(1); "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "child" — 40(8), 70(10), 252(1); "class of shares" — 248(6); "commercial obligation" — 80(1); "common-law partner" — 248(1); "control" — 256(6)–(9); "controlled directly or indirectly" — 256(5.1), (6.2); "corporation" — 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan" — 147(1), 248(1); "disposition", "dividend" — 248(1); "eligible amount" — 248(31), (41); "employee" — 248(1); "employees profit sharing plan" — 144(1), 248(1); "estate" — 104(1), 248(1); "excepted gift" — 118.1(19); "excluded interest" — 40(3.15); "exempt income", "farming" — 248(1); "fiscal period" — 249(2)(b), 249.1; "identical" — 40(3.5), 248(12); "individual" — 248(1); "interest in a family farm partnership" — 40(8), 70(10); "last acquired" — 40(7.1); "legal representative" — 248(1); "limited partner" — 40(3.14); "listed personal property" — 54, 248(1); "majority interest partner" — 248(1); "non-qualifying security" — 118.1(18); "non-resident" — 248(1); "parent" — 252(2)(a); "person" — 248(1); "personal-use property" — 54, 248(1); "prescribed" — 248(1); "prescribed labour-sponsored venture capital corporation" — Reg. 6701; "prescribed venture capital corporation" — Reg. 6700, 6700.1, 6700.2; "principal residence", "proceeds of disposition" — 54; "property" — 248(1); "province" — *Interpretation Act* 35(1); "qualified donee" — 149.1(1), 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "resident in Canada" — 94(3)(a)(viii), 250; "series of contributions" — 248(10); "share" — 248(1); "share of the capital stock of a family farm corporation" — 40(8), 70(10); "small business corporation", "specified member" — 40(3.131), 248(1); "substantial" — 40(3.16); "substituted" — 248(5); "substituted property" — 40(3.3)(b); "superficial loss" — 54; "taxable Canadian corporation" — 89(1), 248(1); "taxable Canadian property" — 248(1); "taxable dividend" — 89(1), 248(1); "taxable income", "taxable income earned in Canada" — 248(1); "taxation year" — 249; "taxpayer" — 40(3.12), 248(1); "testamentary trust" — 108(1), 248(1); "transferor" — 40(3.3)(a); "trust" — 104(1), 248(1), (3); "written" — *Interpretation Act* 35(1) [writing].

41. (1) Taxable net gain from disposition of listed personal property — For the purposes of this Part, a taxpayer's taxable net gain for a taxation year from dispositions of listed personal property is ½ of the amount determined under subsection (2) to be the taxpayer's net gain for the year from dispositions of such property.

Related Provisions: 127.52(1)(d)(i) — Untaxed 30% of gain added to income for minimum tax purposes; 248(1)"taxable net gain" — Definition applies to entire Act.

History: Subsec. 41(1) amended by replacing the reference to the fraction "¾" with a reference to the fraction "½", by 2001, c. 17, s. 26, applicable to taxation years that end after February 27, 2000 except that, for taxation years that include February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, the reference to the fraction "½" shall be read as a reference to the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the taxpayer for the year.

Interpretation Bulletins: See list at end of s. 41.

(2) Determination of net gain — A taxpayer's net gain for a taxation year from dispositions of listed personal property is an amount determined as follows:

(a) determine the amount, if any, by which the total of the taxpayer's gains for the year from the disposition of listed personal property, other than property described in subparagraph 39(1)(a)(i.1), exceeds the total of the taxpayer's losses for the year from dispositions of listed personal property, and

(b) deduct from the amount determined under paragraph (a) such portion as the taxpayer may claim of the taxpayer's listed-personal-property losses for the 7 taxation years immediately preceding and the 3 taxation years immediately following the taxation year, except that for the purposes of this paragraph

(i) an amount in respect of a listed-personal-property loss is deductible for a taxation year only to the extent that it exceeds the total of amounts deducted under this paragraph in respect of that loss for preceding taxation years,

(ii) no amount is deductible in respect of the listed-personal-property loss of any year until the deductible listed-personal-property losses for previous years have been deducted, and

(iii) no amount is deductible in respect of listed-personal-property losses from the amount determined under paragraph (a) for a taxation year except to the extent of the amount so determined for the year,

and the remainder determined under paragraph (b) is the taxpayer's net gain for the year from dispositions of listed personal property.

Related Provisions: 46(1) — Personal-use property.

Interpretation Bulletins: IT-407R4: Dispositions of cultural property to designated Canadian institutions. See also list at end of s. 41.

Forms: T1A: Request for loss carryback; T3A: Request for loss carryback by a trust.

(3) Definition of "listed-personal-property loss" — In this section, "listed-personal-property loss" of a taxpayer for a taxation year means the amount, if any, by which the total of the taxpayer's losses for the year from dispositions of listed personal property exceeds the total of the taxpayer's gains for the year from dispositions of listed personal property, other than property described in subparagraph 39(1)(a)(i.1).

Related Provisions: 152(6) — Reassessment; 164(5), (5.1) — Effect of carryback of loss.

Interpretation Bulletins [subsec. 41(3)]: IT-159R3: Capital debts established to be bad debts. See also list at end of s. 41.

Definitions [s. 41]: "amount", "disposition" — 248(1); "listed personal property" — 54, 248(1); "listed-personal-property loss" — 41(3); "property" — 248(1); "taxable net gain" — 41(1), 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 41]: IT-332R: Personal-use property (archived).

42. Dispositions subject to warranty — In computing a taxpayer's proceeds of disposition of any property for the purposes of this subdivision, there shall be included all amounts received or receivable by the taxpayer as consideration for warranties, covenants or other conditional or contingent obligations given or incurred by the taxpayer in respect of the disposition, and in computing the taxpayer's income for the taxation year in which the property was disposed of and for each subsequent taxation year, any outlay or expense made or incurred by the taxpayer in any such year pursuant to or by reason of any such obligation shall be deemed to be a loss of the taxpayer for that year from a disposition of a capital property and for the purposes of section 110.6, that capital property shall be deemed to have been disposed of by the taxpayer in that year.

Proposed Amendment — 42

42. Consideration for warranties, covenants or other obligations — For the purposes of this subdivision

(a) an amount received or receivable by a taxpayer in a taxation year as consideration for a warranty, a covenant or another conditional or contingent obligation given or incurred by the taxpayer in respect of a property disposed of, at any time, by the taxpayer

(i) is, if the amount is received or becomes receivable on or before the taxpayer's filing-due

date for the taxpayer's taxation year in which the taxpayer disposed of the property, to be included in computing the taxpayer's proceeds of disposition of the property, and

(ii) is, if the amount is received or becomes receivable after that filing-due date, deemed to be a capital gain of the taxpayer from the disposition, by the taxpayer of the property, that occurs at the time when the amount is received or becomes receivable; and

(b) an outlay or expense paid or payable by the taxpayer in a taxation year under a warranty, covenant or another conditional or contingent obligation given or incurred by the taxpayer in respect of property disposed of, at any time, by the taxpayer

(i) is, if the amount is paid or becomes payable on or before the taxpayer's filing-due date for the taxpayer's taxation year in which the taxpayer disposed of the property, to be deducted in computing the taxpayer's proceeds of disposition of the property, and

(ii) is, if the amount is paid or becomes payable after that filing-due date, deemed to be a capital loss of the taxpayer from the disposition, by the taxpayer of the property, that occurs at the time when the amount is paid or becomes payable.

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), s. 129, will amend s. 42 to read as above, applicable to taxation years that end after February 27, 2004.

Technical Notes: Section 42 provides rules governing warranties, covenants, and other conditional or contingent obligations given by a taxpayer in respect of a disposition of properties.

Section 42 is amended to provide that an amount received or receivable by a taxpayer in a taxation year as consideration for a warranty, a covenant or another conditional or contingent obligation given or incurred by the taxpayer in respect of a property disposed of, at any time, by the taxpayer

- is, if the amount is received or becomes receivable on or before the taxpayer's filing-due date for the taxpayer's taxation year in which the taxpayer disposed of the property, to be included in computing the taxpayer's proceeds of disposition of the property, and
- is, if the amount is received or becomes receivable after that filingdue date, deemed to be a capital gain of the taxpayer from the disposition, by the taxpayer of the property, that occurs at the time when the amount is received or becomes receivable.

This section is also amended to provide that an outlay or expense paid or payable by the taxpayer in a taxation year under a warranty, covenant or another conditional or contingent obligation given or incurred by the taxpayer in respect of property disposed of, at any time, by the taxpayer

- is, if the amount is paid or becomes payable on or before the taxpayer's filing-due date for the taxpayer's taxation year in which the taxpayer disposed of the property, to be deducted in computing the taxpayer's proceeds of disposition of the property, and
- is, if the amount is paid or becomes payable after that filing-due date, deemed to be a capital loss of the taxpayer from the disposition, by the taxpayer of the property, that occurs at the time when the amount is paid or becomes payable.

Definitions [s. 42]: "amount" — 248(1); "capital gain" — 39(1)(a), 248(1); "capital loss" — 39(1)(b), 248(1); "disposition", "filing-due date", "property" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Related Provisions: 56.4(10) — Restrictive covenant or non-competition agreement — s. 42 does not apply; 87(2)(n) — Amalgamations — outlays made pursuant to warranty.

Definitions [s. 42]: "amount" — 248(1); "capital property" — 54, 248(1); "disposition", "property" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 42]: IT-330R: Disposition of capital property subject to warranty, covenant, etc (archived).

43. (1) General rule for part dispositions — For the purpose of computing a taxpayer's gain or loss for a taxation year from the disposition of part of a property, the adjusted cost base to the taxpayer, immediately before the disposition, of that part is the portion of the adjusted cost base to the taxpayer at that time of the whole property that can reasonably be regarded as attributable to that part.

Related Provisions: 43(3) — Where trust makes payment out of income or gains; 53(2)(d) — Reduction in adjusted cost base; 98.2(c), 100(3)(c) — No application to transfer of partnership interest on death.

Interpretation Bulletins: IT-200: Surface rentals and farming operations; IT-226R: Gift to a charity of a residual interest in real property or an equitable interest in a trust; IT-242R: Retired partners; IT-264R: Part dispositions; IT-278R2: Death of a partner or of a retired partner; IT-338R2: Partnership interests — changes in cost base resulting from the admission or retirement of a partner (archived); IT-359R2: Premiums and other amounts re leases; IT-373R2: Woodlots; IT-418: Capital cost allowance — partial dispositions of property.

I.T. Technical News: 25 (partnership issues).

(2) Ecological gifts — For the purposes of subsection (1) and section 53, where at any time a taxpayer disposes of a servitude, covenant or easement to which land is subject in circumstances where subsection 110.1(5) or 118.1(12) applies,

(a) the portion of the adjusted cost base to the taxpayer of the land immediately before the disposition that can reasonably be regarded as attributable to the servitude, covenant or easement, as the case may be, is deemed to be equal to the amount determined by the formula

Proposed Amendment — 43(2) before formula in (a)

(2) **Ecological gifts** — For the purposes of subsection (1) and section 53, where at any time a taxpayer disposes of a covenant or an easement to which land is subject or, in the case of land in the Province of Quebec, a real servitude, in circumstances where subsection 110.1(5) or 118.1(12) applies,

(a) the portion of the adjusted cost base to the taxpayer of the land immediately before the disposition that can reasonably be regarded as attributable to the covenant, easement or real servitude, as the case may be, is deemed to be equal to the amount determined by the formula

Application: The July 18 draft legislation (Part 2 — technical), s. 61, will amend the portion of subsec. 43(2) before the formula in para. (a) to read as above, applicable to gifts made after December 20, 2002.

Technical Notes: Section 43(2) applies where the part of a property donated as an ecological gift is a covenant, easement or servitude established under common law, the civil law of the province of Quebec, or the law of other provinces allowing for their establishment. Subsection 43(2) ensures that a portion of the adjusted cost base ("ACB") of the land to which the covenant, easement or servitude relates is allocated to the donated covenant, easement or servitude. For this purpose, the allocation of the ACB of the land to the gift is calculated in proportion to the percentage decrease in the value of the land as a result of the donation.

Subsection 43(2) is amended to clarify its application to "real servitudes" under the *Civil Code of Quebec*.

$$A \times B/C$$

where

A is the adjusted cost base to the taxpayer of the land immediately before the disposition,

B is the amount determined under subsection 110.1(5) or 118.1(12) in respect of the disposition, and

C is the fair market value of the land immediately before the disposition; and

(b) for greater certainty, the cost to the taxpayer of the land shall be reduced at the time of the disposition by the amount determined under paragraph (a).

Related Provisions: 107(2), (2.1), (2.11) — No capital gain on disposition of capital interest.

(3) Payments out of trust income, etc. — Notwithstanding subsection (1), where part of a capital interest of a taxpayer in a trust would, but for paragraph (h) or (i) of the definition "disposition" in subsection 248(1), be disposed of solely because of the satisfaction of a right to enforce payment of an amount by the trust, no part of the adjusted cost base to the taxpayer of the taxpayer's capital interest in the trust shall be allocated to that part of the capital interest.

History: S. 43 amended by 2001, c. 17, s. 27, with subsec. (1) applicable after February 27, 1995, subsec. (2) applicable in respect of gifts made after February 27, 1995, and subsec. (3) applicable to satisfactions of rights that occur after 1999. It formerly read:

> 43. Part dispositions — For the purpose of computing a taxpayer's gain or loss for a taxation year from the disposition of a part of a property, the adjusted cost base to the taxpayer, immediately before the disposition, of that part is such portion of the adjusted cost base to the taxpayer at that time of the whole property as may reasonably be regarded as attributable to that part.

Definitions [s. 43]: "adjusted cost base" — 54, 248(1); "capital interest" — 108(1), 248(1); "disposition", "property" — 248(1); "real servitude" — Quebec *Civil Code* art. 1177; "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

43.1 (1) Life estates in real property — Notwithstanding any other provision of this Act, where at any time a taxpayer disposes of a remainder interest in real property (except as a result of a transaction to which subsection 73(3) would otherwise apply or by way of a gift to a donee described in the definition "total charitable gifts" or "total Crown gifts" in subsection 118.1(1)) to a person or partnership and retains a life estate or an estate *pur autre vie* (in this section called the "life estate") in the property, the taxpayer shall be deemed

Proposed Amendment — 43.1(1) opening words

43.1 Life estates in real property — (1) Notwithstanding any other provision of this Act, if at any time a taxpayer disposes of a remainder interest in real property (except as a result of a transaction to which subsection 73(3) would otherwise apply or by way of a gift to a donee described in the definition "total charitable gifts", "total Crown gifts" or "total ecological gifts" in subsection 118.1(1)) to a person or partnership and retains a life estate or an estate pur autre vie (in this section called the "life estate") in the property, the taxpayer is deemed

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 62, will amend the opening words of subsec. 43.1(1) to read as above, applicable to dispositions that occur after February 27, 1995.

Technical Notes: Section 43.1 deals with the disposition of a remainder interest in real property by a taxpayer who retains the life estate or estate *pur autre vie* in the property. Subsection 43.1(1) provides that in such a case the taxpayer will be considered to have disposed of the life estate, that has been retained, for proceeds equal to its fair market value at the time the remainder interest is disposed of, and to have reacquired the life estate immediately after that time at the same fair market value.

However, subsection 43.1(1) does not apply in cases where the remainder interest is a gift to a donee described in the definition "total charitable gifts" or "total Crown gifts" in subsection 118.1(1). Subsection 43.1(1) is amended to also preclude its application to gifts made to donees described in the definition "total ecological gifts" in subsection 118.1(1). This amendment applies to dispositions of life interests that occur after February 27, 1995, when ecological gifts were first defined for the purposes of section 118.1.

(a) to have disposed at that time of the life estate in the property for proceeds of disposition equal to its fair market value at that time; and

(b) to have reacquired the life estate immediately after that time at a cost equal to the proceeds of disposition referred to in paragraph (a).

Related Provisions: 248(4) — Interest in real property.

History: The opening words of subsec. 43.1(1) substituted by 1994, c. 21, s. 16, applicable to dispositions occurring after December 20, 1991. The opening words of that subsec. formerly read:

> 43.1 (1) Life estates in real property — Notwithstanding any other provision of this Act, where at any time a taxpayer disposes of a remainder interest in real property (except as a result of a transaction to which subsection 73(3) would otherwise apply) to a person or partnership (other than a registered charity that is a charitable organization within the meaning assigned by subsection 149.1(1)) and retains a life estate or an estate *pur autre vie* (in this section called the "life estate") in the property, the taxpayer shall be deemed

See also History at end of s. 43.1.

(2) Idem — Where, as a result of an individual's death, a life estate to which subsection (1) applied is terminated,

(a) the holder of the life estate immediately before the death shall be deemed to have disposed of the life estate immediately before the death for proceeds of disposition equal to the adjusted cost base to that person of the life estate immediately before the death; and

(b) where a person who is the holder of the remainder interest in the real property immediately before the death was not dealing at arm's length with the holder of the life estate, there shall, after the death, be added in computing the adjusted cost base to that person of the real property an amount equal to the lesser of

(i) the adjusted cost base of the life estate in the property immediately before the death, and

(ii) the amount, if any, by which the fair market value of the real property immediately after the death exceeds the adjusted cost base to that person of the remainder interest immediately before the death.

Related Provisions: 53(1)(o) — Addition to adjusted cost base.

History [s. 43.1]: S. 43.1 enacted by 1994, c. 7, Sch. VIII (1993, c. 24), s. 13, applicable with respect to dispositions and terminations occurring after December 20, 1991.

Definitions [s. 43.1]: "adjusted cost base" — 54, 248(1); "arm's length" — 251(1); "individual" — 248(1); "life estate" — 43.1(1); "person", "property", "registered charity", "taxpayer" — 248(1); "total charitable gifts", "total Crown gifts", "total ecological gifts" — 118.1(1).

44. (1) Exchanges of property [rollover] — Where at any time in a taxation year (in this subsection referred to as the "initial year") an amount has become receivable by a taxpayer as proceeds of disposition of a capital property that is not a share of the capital stock of a corporation (which capital property is in this section referred to as the taxpayer's "former property") that is either

(a) property the proceeds of disposition of which are described in paragraph (b), (c) or (d) of the definition "proceeds of disposition" in subsection 13(21) or paragraph (b), (c) or (d) of the definition "proceeds of disposition" in section 54, or

(b) a property that was, immediately before the disposition, a former business property of the taxpayer,

Selected Cases [para. 44(1)(b)]: *Macklin (M.) v. Canada*, [1993] 1 C.T.C. 21 (FCTD) ("Immediately" before disposition includes period prior to event (stripping of topsoil) precluding use of land as farmland).

and the taxpayer has

(c) where the former property is described in paragraph (a), before the end of the second taxation year following the initial year, and

(d) in any other case, before the end of the first taxation year following the initial year,

Proposed Amendment — 44(1)(c), (d)

(c) if the former property is described in paragraph (a), before the later of the end of the second taxation year following the initial year and 24 months after the end of the initial year, and

(d) in any other case, before the later of the end of the first taxation year following the initial year and 12 months after the end of the initial year,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 63(1), will amend paras. 44(1)(c) and (d) to read as above, applicable in respect of dispositions that occur in taxation years that end after December 19, 2000 (for para. (c)) or December 19, 2001 (for para. (d)).

Technical Notes: Subsection 44(1) allows a taxpayer who incurs a capital gain on the disposition of certain capital property to elect to defer tax on the gain to the extent that the taxpayer reinvests the proceeds in a replacement property within a certain period of time, namely

- in the case of certain involuntary dispositions, e.g., theft or expropriation, before the end of the second taxation year of the taxpayer that begins after the property was disposed of, or
- in other situations, before the end of the first taxation year of the taxpayer that begins after the property was disposed of.

Paragraphs 44(1)(c) and (d) are amended to accommodate taxation years that are shorter than 12 months, by providing that the periods for acquiring replacement property end at the later of the times mentioned above and

- in the case of involuntary dispositions, within 24 months after the end of the taxation year in which the property was disposed of, or
- in other situations, within 12 months after the end of the taxation year in which the property was disposed of.

acquired a capital property that is a replacement property for the taxpayer's former property and the replacement property has not been disposed of by the taxpayer before the time the taxpayer disposed of the taxpayer's former property, notwithstanding subsection 40(1), if the taxpayer so elects under this subsection in the taxpayer's return of income for the year in which the taxpayer acquired the replacement property,

(e) the gain for a particular taxation year from the disposition of the taxpayer's former property shall be deemed to be the amount, if any, by which

(i) where the particular year is the initial year, the lesser of

(A) the amount, if any, by which the proceeds of disposition of the former property exceed

(I) in the case of depreciable property, the lesser of the proceeds of disposition of the former property computed without reference to subsection (6) and the total of its adjusted cost base to the taxpayer immediately before the disposition and any outlays and expenses to the extent that they were made or incurred by the taxpayer for the purpose of making the disposition, and

(II) in any other case, the total of its adjusted cost base to the taxpayer immediately before the disposition and any outlays and expenses to the extent that they were made or incurred by the taxpayer for the purpose of making the disposition, and

(B) the amount, if any, by which the proceeds of disposition of the former property exceed the total of the cost to the taxpayer, or in the case of depreciable property, the capital cost to the taxpayer, determined without reference to paragraph (f), of the taxpayer's replacement property and any outlays and expenses to the extent that they were made or incurred by the taxpayer for the purpose of making the disposition, or

(ii) where the particular year is subsequent to the initial year, the amount, if any, claimed by the taxpayer under subparagraph (iii) in computing the taxpayer's gain for the immediately preceding year from the disposition of the former property,

exceeds

(iii) subject to subsection (1.1), such amount as the taxpayer claims,

(A) in the case of an individual (other than a trust), in prescribed form filed with the taxpayer's return of income under this Part for the particular year, and

(B) in any other case, in the taxpayer's return of income under this Part for the particular year,

as a deduction, not exceeding the lesser of

(C) a reasonable amount as a reserve in respect of such of the proceeds of disposition of the former property that are payable to the taxpayer after the end of the particular year as can reasonably be regarded as a portion of the amount determined under subparagraph (i) in respect of the property, and

(D) an amount equal to the product obtained when 1/5 of the amount determined under subparagraph (i) in respect of the property is multiplied by the amount, if any, by which 4 exceeds the number of preceding taxation years of the taxpayer ending after the disposition of the property, and

(f) the cost to the taxpayer or, in the case of depreciable property, the capital cost to the taxpayer, of the taxpayer's replacement property at any time after the time the taxpayer disposed of the taxpayer's former property, shall be deemed to be

(i) the cost to the taxpayer or, in the case of depreciable property, the capital cost to the taxpayer of the taxpayer's replacement property otherwise determined,

minus

(ii) the amount, if any, by which the amount determined under clause (e)(i)(A) exceeds the amount determined under clause (e)(i)(B).

Related Provisions: 13(4) — Parallel rule for CCA recapture; 14(6) — Parallel rule for eligible capital property; 44(4) — Deemed election; 44(5) — Replacement property; 44(6) — Deemed proceeds of disposition; 72(1)(c) — No reserve for year of death; 72(2)(b) — Election by legal representative and transferee re reserves; 79.1(3), (6)(c) — Capital gains reserve where property repossessed by creditor; 87(2)(l.3) — Amalgamations — replacement property acquired by new corporation; 87(2)(m) — Amalgamations — proceeds not due until after end of year; 87(2)(ll) — Amalgamations — continuation of predecessor corporations; 88(1)(d)(i)(C) — Winding-up; 96(3) — Election by members of partnership; 220(3.2), Reg. 600(b) — Late filing or revocation of election.

History: The opening words of subsec. 44(1) amended by 2001, c. 17, s. 28, applicable to shares disposed of after April 15, 1999 other than shares disposed of after that date as a consequence of a public takeover bid or offer filed with a public authority before April 16, 1999. The opening words formerly read:

> 44. (1) Where at any time in a taxation year (in this subsection referred to as the "initial year") an amount has become receivable by a taxpayer as proceeds of disposition of a capital property (in this section referred to as the taxpayer's "former property") that is either

The portion of subsec. 44(1) between paras. (d) and (e) amended by 1998, c. 19, subsec. 90(1), applicable to dispositions of former properties that occur after the 1993 taxation year. That portion formerly read:

> acquired a capital property (in this section referred to as the taxpayer's "replacement property") as a replacement for the taxpayer's former property and the taxpayer's replacement property has not been disposed of by the taxpayer prior to the time the taxpayer disposed of the taxpayer's former property, notwithstanding subsection 40(1), if the taxpayer so elects under this subsection in the taxpayer's return of income under this Part for the year in which the taxpayer acquired the replacement property,

Cl. 44(1)(e)(iii)(C) amended by 1995, c. 21, s. 12, applicable to taxation years that end after February 21, 1994. The clause formerly read:

> (C) a reasonable amount as a reserve in respect of such of the proceeds of disposition of the former property that are not due to the taxpayer until after the end of the particular year as can reasonably be regarded as a portion of the amount determined under subparagraph (i) in respect of the property, and

Subpara. 44(1)(e)(iii) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 24(1), applicable to 1990 *et seq.* Subpara. 44(1)(e)(iii) formerly read:

> (iii) subject to subsection (1.1), such amount as the taxpayer may claim as a deduction, not exceeding the lesser of
>
> (A) a reasonable amount as a reserve in respect of such of the proceeds of disposition of the former property that are not due to the taxpayer until after the end of the particular year as may reasonably be regarded as a portion of the amount determined under subparagraph (i) in respect of the property, and
>
> (B) an amount equal to the product obtained when 1/5 of the amount determined under subparagraph (i) in respect of the property is multiplied by the amount, if any, by which 4 exceeds the number of preceding taxation years of the taxpayer ending after the disposition of the property, and

Selected Cases [subsec. 44(1)]: *Grove Acceptance Ltd. v. R.*, [2003] 1 C.T.C. 2377 (TCC) (Quantitative factor as to use is principal test); *Buonincontri v. R.*, [1985] 1 C.T.C. 370 (FCTD) (Rental is income from property and not from business even if taxpayer in business of renting property).

Remission Orders: *Telesat Canada Remission Order*, P.C. 1999-1335.

Interpretation Bulletins: IT-491: Former business property. See also list at end of s. 44.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

Forms: T1030: Election to claim a capital gains reserve for individuals (other than trusts) when calculating the amount of a capital gain using the replacement property rules; T2069: Election in respect of amounts not deductible as reserves for the year of death.

(1.1) Farm property disposed of to child — Where the former property referred to in subparagraph (1)(e)(iii) is real property in respect of the disposition of which the rules in subsection 73(3) apply, in computing the amount of any claim in respect of that property under that subparagraph, it shall be read as if the references therein to "1/5" and "4" were references to "1/10" and "9" respectively.

Proposed Amendment — 44(1.1)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 213(1), will amend subsec. 44(1.1) by substituting "44(1)(e)(iii) is real or immovable property" for "(1)(e)(iii) is real property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(2) Time of disposition and of receipt of proceeds — For the purposes of this Act, the time at which a taxpayer has disposed of a property for which there are proceeds of disposition as described in paragraph (b), (c) or (d) of the definition "proceeds of disposition" in subsection 13(21) or paragraph (b), (c) or (d) of the definition "proceeds of disposition" in section 54, and the time at which an amount, in respect of those proceeds of disposition has become receivable by the taxpayer shall be deemed to be the earliest of

(a) the day the taxpayer has agreed to an amount as full compensation to the taxpayer for the property lost, destroyed, taken or sold,

Selected Cases [para. 44(2)(a)]: *Shaw (J.M.) v. MNR*, [1993] 1 C.T.C. 221 (FCA); leave to appeal to SCC refused (1993), 158 N.R. 399 (note) (Amount paid as "interest" on award of additional compensation was interest income not proceeds of disposition of land).

(b) where a claim, suit, appeal or other proceeding has been taken before one or more tribunals or courts of competent jurisdiction, the day on which the taxpayer's compensation for the property is finally determined by those tribunals or courts,

(c) where a claim, suit, appeal or other proceeding referred to in paragraph (b) has not been taken before a tribunal or court of competent jurisdiction within two years of the loss, destruction or taking of the property, the day that is two years following the day of the loss, destruction or taking,

(d) the time at which the taxpayer is deemed by section 70 or paragraph 128.1(4)(b) to have disposed of the property, and

(e) where the taxpayer is a corporation other than a subsidiary corporation referred to in subsection 88(1), the time immediately before the winding-up of the corporation,

and the taxpayer shall be deemed to have owned the property continuously until the time so determined.

Related Provisions: 59.1 — Involuntary disposition of resource property; 70(10), (11) — Definitions.

History: Para. 44(2)(d) substituted by 1994, c. 21, subsec. 17(1), applicable after 1992 except that, where a corporation elects in accordance with paragraph 111(4)(a) of 1994, c. 21 (i.e., elects before the end of December 1994 for new subsec. 250(5.1) to apply in respect of a continuance before 1993), the amended para. applies from the corporation's time of continuation (within the meaning assigned by that paragraph). Para. 44(2)(d) formerly read:

> (d) the time at which the taxpayer is deemed by section 48 or 70 to have disposed of the property, and

Selected Cases [subsec. 44(2)]: *Laurentide Rendering Inc. v. R.*, [1988] 2 C.T.C. 200 (FCA) (Expropriation compensation, including allocation for recaptured capital cost allowance, receivable when agreement concluded).

Interpretation Bulletins: IT-125R4: Dispositions of resource properties; IT-185R: Losses from theft, defalcation or embezzlement; IT-259R4: Exchanges of property; IT-271R: Expropriations — time and proceeds of disposition (archived).

(3) Where subsec. 70(3) does not apply — Subsection 70(3) does not apply to compensation referred to in paragraph (b), (c) or (d) of the definition "proceeds of disposition" in subsection 13(21) or paragraph (b), (c) or (d) of the definition "proceeds of disposition" in section 54 that has been transferred or distributed to beneficiaries or other persons beneficially interested in an estate or trust.

(4) Deemed election — Where a former property of a taxpayer was a depreciable property of the taxpayer

(a) if the taxpayer has elected in respect of that property under subsection (1), the taxpayer shall be deemed to have elected in respect thereof under subsection 13(4); and

(b) if the taxpayer has elected in respect of that property under subsection 13(4), the taxpayer shall be deemed to have elected in respect thereof under subsection (1).

(5) Replacement property — For the purposes of this section, a particular capital property of a taxpayer is a replacement property for a former property of the taxpayer, if

(a) it is reasonable to conclude that the property was acquired by the taxpayer to replace the former property;

(a.1) it was acquired by the taxpayer and used by the taxpayer or a person related to the taxpayer for a use that is the same as or similar to the use to which the taxpayer or a person related to the taxpayer put the former property;

(b) where the former property was used by the taxpayer or a person related to the taxpayer for the purpose of gaining or producing income from a business, the particular capital property was acquired for the purpose of gaining or producing income from that or a similar business or for use by a person related to the taxpayer for such a purpose;

(c) where the former property was a taxable Canadian property of the taxpayer, the particular capital property is a taxable Canadian property of the taxpayer; and

(d) where the former property was a taxable Canadian property (other than treaty-protected property) of the taxpayer, the particular capital property is a taxable Canadian property (other than treaty-protected property) of the taxpayer.

History: Para. 44(5)(c) amended and para. (d) added by 1999, c. 22, s. 12, applicable to dispositions that occur in taxation years that end after 1997. Para. (c) formerly read:

(c) where the former property was taxable Canadian property (or would have been taxable Canadian property if the taxpayer were non-resident throughout the year in which the former property was disposed of and the former property were used in a business carried on by the taxpayer), the particular capital property was taxable Canadian property (or would have been taxable Canadian property if the taxpayer were non-resident throughout the year in which the particular capital property was acquired and the particular capital property were used in a business carried on by the taxpayer).

Para. 44(5)(a) amended and para. (a.1) added by 1998, c. 19, subsec. 90(2), applicable to dispositions of former properties that occur after the 1993 taxation year except that, if a taxpayer so elects in respect of a former property of the taxpayer that was disposed of before June 18, 1998 by notifying the Minister of National Revenue in writing on or before the filing-due date for the taxpayer's first taxation year that ends after June 18, 1998, para. 44(5)(a.1) shall, for the purpose of determining whether a property of the taxpayer is a replacement property of the former property, be read as follows:

(a.1) it was acquired by the taxpayer for a use that is the same as or similar to the use to which the taxpayer or a person related to the taxpayer put the former property;

Para. (a) formerly read:

(a) it was acquired by the taxpayer for the same or a similar use as the use to which the taxpayer or a person related to the taxpayer put the former property;

Paras. 44(5)(a) to (c) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 24(2), paras. 44(5)(a), (b) applicable to dispositions of former properties occurring after July 13, 1990, and para. (c) applicable to property acquired as a replacement for a former property disposed of after April 2, 1990, other than a former property disposed of

(a) under an agreement in writing entered into before April 3, 1990; or

(b) pursuant to a written notice of an intention to take the property under statutory authority given before April 3, 1990 or for the sale price of the property sold to a person by whom such a notice was given before April 3, 1990.

Paras. 44(5)(a) to (c) formerly read:

(a) it was acquired by the taxpayer for the same or a similar use as the use to which the taxpayer put the former property;

(b) where the former property was used by the taxpayer for the purpose of gaining or producing income from a business, the particular capital property was acquired for the purpose of gaining or producing income from that or a similar business; and

(c) where the taxpayer was not resident in Canada at the time the taxpayer acquired the particular capital property, in addition to the requirements in paragraphs (a) and (b), the particular capital property was taxable Canadian property.

Interpretation Bulletins: IT-259R4: Exchanges of property; IT-271R: Expropriations — time and proceeds of disposition (archived).

I.T. Technical News: 25 (replacement property rules and business expansions).

(6) Deemed proceeds of disposition — Where a taxpayer has disposed of property that was a former business property and was in part a building and in part the land (or an interest therein) subjacent to, or immediately contiguous to and necessary for the use of, the building, for the purposes of this subdivision, the amount if any, by which

Proposed Amendment — 44(6) opening words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 213(2), will amend the opening words of subsec. 44(6) by substituting "interest, or for civil law a right," for "interest", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(a) the proceeds of disposition of one such part determined without regard to this subsection

exceed

(b) the adjusted cost base to the taxpayer of that part

shall, to the extent that the taxpayer so elects in the taxpayer's return of income under this Part for the year in which the taxpayer acquired a replacement property for the former business property, be deemed not to be proceeds of disposition of that part and to be proceeds of disposition of the other part.

Related Provisions: 96(3) — Election by members of partnership; 220(3.2), Reg. 600(b) — Late filing or revocation of election; 248(4) — Interest in real property.

History: The opening words of subsec. 44(6) substituted by 1994, c. 21, subsec. 17(2), applicable to dispositions occurring after December 21, 1992. The opening words of that subsec. formerly read:

(6) Deemed proceeds of disposition — Where a taxpayer has disposed of property that was a former business property and was in part a building and in part the land, or an interest therein, subjacent to or necessary for the use of the building, for the purposes of subsection (1), the amount, if any, by which

Interpretation Bulletins: IT-271R: Expropriations — time and proceeds of disposition (archived); IT-259R4: Exchanges of property.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

(7) Where subpara. (1)(e)(iii) does not apply — Subparagraph (1)(e)(iii) does not apply to permit a taxpayer to claim any amount under that subparagraph in computing a gain for a taxation year where

(a) the taxpayer, at the end of the year or at any time in the immediately following year, was not resident in Canada or was exempt from tax under any provision of this Part; or

(b) the person to whom the former property of the taxpayer was disposed of was a corporation that, immediately after the disposition,

(i) was controlled, directly or indirectly in any manner whatever, by the taxpayer,

(ii) was controlled, directly or indirectly in any manner whatever, by a person or group of persons by whom the taxpayer was controlled, directly or indirectly in any manner whatever, or

(iii) controlled the taxpayer, directly or indirectly in any manner whatever, where the taxpayer is a corporation.

Proposed Addition — 44(7)(c)

(c) the former property of the taxpayer was disposed of to a partnership in which the taxpayer was, immediately after the disposition, a majority interest partner.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 63(2), will add para. 44(7)(c), applicable to dispositions of property by a taxpayer that occur after December 20, 2002. However, if a property so disposed of pursuant to an agreement in writing made before December 21, 2002 is transferred to the purchaser before 2004,

(a) subsec. 44(7), as it read immediately before this amendment, applies in respect of the disposition of property; and

(b) for the purpose of applying subpara. 44(1)(e)(iii) to the taxpayer for a taxation year in respect of the property, a reasonable amount as a reserve in respect of the proceeds of disposition may not exceed the amount that would be reasonable if the proceeds from any subsequent disposition of the property that the purchaser receives before the end of the taxation year were received by the taxpayer.

Technical Notes: Subsection 44(7) restricts a taxpayer from claiming a capital gains reserve under subparagraph 44(1)(e)(iii) where the former property of the taxpayer was disposed of to a non-resident or a corporation that, immediately after the disposition, controlled the taxpayer or was controlled by the taxpayer or by a person or group of persons who controlled the taxpayer. Subsection 44(7) is amended, generally in respect of dispositions of property that occur after December 20, 2002, to provide that the capital gains reserve is also not allowed to a taxpayer where the purchaser of the property is a partnership of which the taxpayer is a majority interest partner.

Letter from Dept. of Finance, October 9, 2003: See under 20(8)(c), (d).

Related Provisions: 256(5.1), (6.2) — Controlled directly or indirectly — control in fact.

(8) Application of subsec. 70(10) — The definitions in subsection 70(10) apply to this section.

Origin of subsec. 44(8): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words to subsec. 70(10)).

Selected Cases [s. 44]: *Glaxo Wellcome Inc. v. R.*, [1999] 4 C.T.C. 371 (FCA); aff'g [1996] 1 C.T.C. 2904 (TCC) (Property must have been "used" in the business, not merely held).

Definitions [s. 44]: "amount" — 248(1); "adjusted cost base" — 54, 248(1); "beneficially interested" — 248(25); "business" — 248(1); "capital property" — 54, 248(1); "child" — 44(8), 70(10), 252(1); "controlled directly or indirectly" — 256(5.1), (6.2); "corporation" — 248(1), *Interpretation Act* 35(1); "depreciable property" — 13(21), 248(1); "disposition", "farming", "former business property" — 248(1); "former property" — 44(1); "immovable" — Quebec *Civil Code* art. 900–907; "individual" — 248(1); "interest" — (in real property) 248(4); "majority interest partner", "prescribed" — 248(1); "proceeds of disposition" — 54; "property" — 248(1); "resident in Canada" — 94(3)(a)(viii), 250; "replacement property" — 44(5); "share", "taxable Canadian property" — 248(1); "taxation year" — 249; "taxpayer", "treaty-protected property" — 248(1); "trust" — 104(1), 248(1), (3).

Interpretation Bulletins [s. 44]: IT-259R4: Exchanges of property; IT-271R: Expropriations — time and proceeds of disposition (archived).

44.1 (1) [Small-business share rollover] Definitions — The definitions in this subsection apply in this section.

"ACB reduction" of an individual in respect of a replacement share of the individual in respect of a qualifying disposition of the individual means the amount determined by the formula

$$D \times (E/F)$$

where

D is the permitted deferral of the individual in respect of the qualifying disposition;

E is the cost to the individual of the replacement share; and

F is the cost to the individual of all the replacement shares of the individual in respect of the qualifying disposition.

"active business corporation" at any time means, subject to subsection (10), a corporation that is, at that time, a taxable Canadian corporation all or substantially all of the fair market value of the assets of which at that time is attributable to assets of the corporation that are

(a) assets used principally in an active business carried on by the corporation or by an active business corporation that is related to the corporation;

(b) shares issued by or debt owing by other active business corporations that are related to the corporation; or

(c) a combination of assets described in paragraphs (a) and (b).

Related Provisions: 44.1(8) — Special rule re carrying on an active business; 44.1(10) — Exclusions to definition.

"carrying value" of the assets of a corporation at any time means the amount at which the assets of the corporation would be valued for the purpose of the corporation's balance sheet as of that time if that balance sheet were prepared in accordance with generally accepted accounting principles used in Canada at that time, except that an asset of a corporation that is a share or debt issued by a related corporation is deemed to have a carrying value of nil.

Related Provisions: 248(24) — Equity and consolidation methods of accounting not to be used.

Regulations: 6204 (prescribed share).

"common share" means a share prescribed for the purpose of paragraph 110(1)(d).

"eligible pooling arrangement" in respect of an individual means an agreement in writing made between the individual and another person or partnership (which other person or partnership is referred to in this definition and subsection (3) as the "investment manager") where the agreement provides for

(a) the transfer of funds or other property by the individual to the investment manager for the purpose of making investments on behalf of the individual;

(b) the purchase of eligible small business corporation shares with those funds, or the proceeds of a disposition of the other property, within 60 days after receipt of those funds or the other property by the investment manager; and

(c) the provision of a statement of account to the individual by the investment manager at the end of each month that ends after the transfer disclosing the details

of the investment portfolio held by the investment manager on behalf of the individual at the end of that month and the details of the transactions made by the investment manager on behalf of the individual during the month.

"eligible small business corporation" at any time means, subject to subsection (10), a corporation that, at that time, is a Canadian-controlled private corporation all or substantially all of the fair market value of the assets of which at that time is attributable to assets of the corporation that are

(a) assets used principally in an active business carried on primarily in Canada by the corporation or by an eligible small business corporation that is related to the corporation;

(b) shares issued by or debt owing by other eligible small business corporations that are related to the corporation; or

(c) a combination of assets described in paragraphs (a) and (b).

Related Provisions: 44.1(8) — Special rule re carrying on an active business; 44.1(10) — Exclusions to definition.

"eligible small business corporation share" of an individual means a common share issued by a corporation to the individual if

(a) at the time the share was issued, the corporation was an eligible small business corporation; and

(b) immediately before and after the share was issued, the total carrying value of the assets of the corporation and corporations related to it did not exceed $50,000,000.

"permitted deferral" of an individual in respect of a qualifying disposition of the individual means the amount determined by the formula

$$(G/H) \times I$$

where

G is the lesser of the individual's proceeds of disposition from the qualifying disposition and the total of all amounts each of which is the cost to the individual of a replacement share in respect of the qualifying disposition;

H is the individual's proceeds of disposition from the qualifying disposition; and

I is the individual's capital gain from the qualifying disposition.

Related Provisions: 44.1(12) — Anti-avoidance — permitted deferral deemed nil.

"qualifying cost" [Repealed]

"qualifying disposition" of an individual (other than a trust) means, subject to subsection (9), a disposition of shares of the capital stock of a corporation where each such share disposed of was

(a) an eligible small business corporation share of the individual;

(b) throughout the period during which the individual owned the share, a common share of an active business corporation; and

(c) throughout the 185-day period that ended immediately before the disposition of the share, owned by the individual.

Related Provisions: 44.1(9) — Special rule re qualifying disposition.

"qualifying portion of a capital gain" [Repealed]

"qualifying portion of the proceeds of disposition" [Repealed]

"replacement share" of an individual in respect of a qualifying disposition of the individual in a taxation year means an eligible small business corporation share of the individual that is

(a) acquired by the individual in the year or within 120 days after the end of the year; and

(b) designated by the individual in the individual's return of income for the year to be a replacement share in respect of the qualifying disposition.

(2) Capital gain deferral — Where an individual has made a qualifying disposition in a taxation year,

(a) the individual's capital gain for the year from the qualifying disposition is deemed to be the amount by which the individual's capital gain for the year from the qualifying disposition, determined without reference to this section, exceeds the individual's permitted deferral in respect of the qualifying disposition;

(b) in computing the adjusted cost base to the individual of a replacement share of the individual in respect of the qualifying disposition at any time after its acquisition, there shall be deducted the amount of the ACB reduction of the individual in respect of the replacement share; and

(c) where the qualifying disposition was a disposition of a share that was a taxable Canadian property of the individual, the replacement share of the individual in respect of the qualifying disposition is deemed to be taxable Canadian property of the individual.

Related Provisions: 53(2)(a)(v) — Reduction in ACB of replacement share as per 44.1(2)(b); 107.4(3)(f) — Deemed taxable Canadian property retains status when rolled into trust.

(3) Special rule — re eligible pooling arrangements — Except for the purpose of the definition "eligible pooling arrangement" in subsection (1), any transaction entered into by an investment manager under an eligible pooling arrangement on behalf of an individual is deemed to be a transaction of the individual and not a transaction of the investment manager.

Related Provisions: 44.1(1)"eligible pooling arrangement" — Meaning of "investment manager".

(4) Special rule — re acquisitions on death — For the purpose of this section, a share of the capital stock of a corporation, acquired by an individual as a consequence of the death of a person who is the individual's spouse, common-law partner or parent, is deemed to be a share that was acquired by the individual at the time it was acquired by that person and owned by the individual throughout the period that it was owned by that person, if

(a) where the person was the spouse or common-law partner of the individual, the share was an eligible small business share of the person and subsection 70(6) applied to the individual in respect of the share; or

(b) where the person was the individual's parent, the share was an eligible small business share of the parent and subsection 70(9.2) applied to the individual in respect of the share.

(5) Special rule — re breakdown of relationships — For the purpose of this section, a share of the capital stock of a corporation, acquired by an individual

from a person who was the individual's former spouse or common-law partner as a consequence of the settlement of rights arising out of their marriage or common-law partnership, is deemed to be a share that was acquired by the individual at the time it was acquired by that person and owned by the individual throughout the period that it was owned by that person if the share was an eligible small business share of the person and subsection 73(1) applied to the individual in respect of the share.

(6) Special rule — re eligible small business corporation share exchanges — For the purpose of this section, where an individual receives shares of the capital stock of a corporation that are eligible small business corporation shares of the individual (in this subsection referred to as the "new shares") as the sole consideration for the disposition of shares issued by another corporation that were eligible small business corporation shares of the individual (in this subsection referred to as the "exchanged shares"), the new shares are deemed to have been owned by the individual throughout the period that the exchanged shares were owned by the individual if

(a) paragraph 85(1)(h) or subsection 85.1(3) or 87(4) applied to the individual in respect of the new shares; and

Proposed Amendment — 44.1(6) before (b)

(6) Special rule — re eligible small business corporation share exchanges — For the purpose of this section, where an individual receives shares of the capital stock of a particular corporation that are eligible small business corporation shares of the individual (in this subsection referred to as the "new shares") as the sole consideration for the disposition by the individual of shares issued by the particular corporation or by another corporation that were eligible small business corporation shares of the individual (in this subsection referred to as the "exchanged shares"), the new shares are deemed to have been owned by the individual throughout the period that the exchanged shares were owned by the individual if

(a) section 51, paragraph 85(1)(h), subsection 85.1(1), section 86 or subsection 87(4) applied to the individual in respect of the new shares; and

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 64(1), will amend the portion of subsec. 44.1(6) before para. (b) to read as above, applicable to dispositions that occur after February 27, 2000.

Technical Notes: Subsection 44.1(6) provides rules that apply where an individual exchanges an eligible small business corporation share for new eligible small business corporation share. Subsection 44.1(6) is amended to substitute the reference to subsection 85.1(3) with a reference to subsection 85.1(1) and to add a reference to sections 51 and 86.

(b) the individual's total proceeds of disposition of the exchanged shares was equal to the total of all amounts each of which was the individual's adjusted cost base of an exchanged share immediately before the disposition.

(7) Special rule — re active business corporation share exchanges — For the purpose of this section, where an individual receives common shares of the capital stock of a corporation (in this subsection referred to as the "new shares") as the sole consideration for the disposition of common shares of another corporation (in this subsection referred to as the "exchanged shares"), the new shares are deemed to be eligible small business corporation shares of the individual and shares of the capital stock of an active business corporation that were owned by the individual throughout the period that the exchanged shares were owned by the individual, if

(a) paragraph 85(1)(h) or subsection 85.1(3) or 87(4) applied to the individual in respect of the new shares;

Proposed Amendment — 44.1(7) before (b)

(7) Special rule — re active business corporation share exchanges — For the purpose of this section, where an individual receives common shares of the capital stock of a particular corporation (in this subsection referred to as the "new shares") as the sole consideration for the disposition by the individual of common shares of the particular corporation or of another corporation (in this subsection referred to as the "exchanged shares"), the new shares are deemed to be eligible small business corporation shares of the individual and shares of the capital stock of an active business corporation that were owned by the individual throughout the period that the exchanged shares were owned by the individual, if

(a) section 51, paragraph 85(1)(h), subsection 85.1(1), section 86 or subsection 87(4) applied to the individual in respect of the new shares;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 64(2), will amend the portion of subsec. 44.1(7) before para. (b) to read as above, applicable to dispositions that occur after February 27, 2000.

Technical Notes: Subsection 44.1(7) provides rules that apply where an individual, in the course of a qualifying disposition, disposes of common shares of an active business corporation for consideration consisting only of new common shares of another active business corporation issued to the individual. Subsection 44.1(7) is amended to substitute the reference to subsection 85.1(3) with a reference to subsection 85.1(1) and to add a reference to sections 51 and 86.

(b) the total of the individual's proceeds of disposition in respect of the disposition of the exchanged shares was equal to the total of the individual's adjusted cost bases immediately before the disposition of such shares; and

(c) the disposition of the exchanged shares was a qualifying disposition of the individual.

(8) Special rule — re carrying on an active business — For the purpose of the definitions in subsection (1), a property held at any particular time by a corporation that would, if this Act were read without reference to this subsection, be considered to carry on an active business at that time, is deemed to be used or held by the corporation in the course of carrying on that active business if the property (or other property for which the property is substituted property) was acquired by the corporation, at any time in the 36-month period ending at the particular time, because the corporation

(a) issued a debt or a share of a class of its capital stock in order to acquire money for the purpose of acquiring property to be used in or held in the course of, or making expenditures for the purpose of, earning income from an active business carried on by it;

(b) disposed of property used or held by it in the course of carrying on an active business in order to acquire money for the purpose of acquiring property to be used in or held in the course of, or making expenditures for the purpose of, earning income from an active business carried on by it; or

(c) accumulated income derived from an active business carried on by it in order to acquire property to be used in or held in the course of, or to make expendi-

tures for the purpose of, earning income from an active business carried on by it.

Related Provisions: 248(5) — Substituted property.

(9) Special rule — re qualifying disposition — A disposition of a common share of an active business corporation (in this subsection referred to as the "subject share") by an individual that, but for this subsection, would be a qualifying disposition of the individual is deemed not to be a qualifying disposition of the individual unless the active business of the corporation referred to in paragraph (a) of the definition "active business corporation" in subsection (1) was carried on primarily in Canada

(a) at all times in the period that began at the time the individual last acquired the subject share and ended at the time of disposition, if that period is less than 730 days; or

(b) in any other case, for at least 730 days in the period referred to in paragraph (a).

(10) Special rule — re exceptions — For the purpose of this section, an eligible small business corporation and an active business corporation at any time do not include a corporation that is, at that time,

(a) a professional corporation;

(b) a specified financial institution;

(c) a corporation the principal business of which is the leasing, rental, development or sale, or any combination of those activities, of real property owned by it; or

(d) a corporation more than 50 per cent of the fair market value of the property of which (net of debts incurred to acquire the property) is attributable to real property.

Proposed Amendment — 44.1(10)(c), (d)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), s. 214, will amend paras. 44.1(10)(c) and (d) by substituting "real or immovable property" for "real property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(11) Determination rule — In determining whether a share owned by an individual is an eligible small business corporation share of the individual, this Act shall be read without reference to section 48.1.

(12) Anti-avoidance rule — The permitted deferral of an individual in respect of a qualifying disposition of shares issued by a corporation (in this subsection referred to as "new shares") is deemed to be nil where

(a) the new shares (or shares for which the new shares are substituted property) were issued to the individual or a person related to the individual as part of a series of transactions or events in which

(i) shares of the capital stock of a corporation (in this subsection referred to as the "old shares") were disposed of by the individual or a person related to the individual, or

(ii) the paid-up capital of old shares or the adjusted cost base to the individual or to a person related to the individual of the old shares was reduced;

(b) the new shares (or shares for which the new shares are substituted property) were issued by the corporation that issued the old shares or were issued by a corporation that, at or immediately after the time of issue of those shares, was a corporation that was not dealing at arm's length with the corporation that issued the old shares; and

Proposed Amendment — 44.1(12)(b)

(b) the new shares (or shares for which the new shares are substituted property) were

(i) issued by the corporation that issued the old shares,

(ii) issued by a corporation that, at or immediately after the time of issue of the new shares, was a corporation that was not dealing at arm's length with

(A) the corporation that issued the old shares, or

(B) the individual, or

(iii) issued, by a corporation that acquired the old shares (or by another corporation related to that corporation), as part of the transaction or event or series of transactions or events that included that acquisition of the old shares; and

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 64(3), will amend para. 44.1(12)(b) to read as above, applicable in respect of dispositions that occur after February 27, 2004.

Technical Notes: Subsection 44.1(12) is an anti-avoidance rule. It applies where an individual or persons related to the individual dispose of shares of a particular corporation (which would normally result in the use of the corporate reorganization rules or a return of paid-up capital of shares of the corporation) and acquire new shares of the particular corporation or a corporation that does not deal at arm's length with the particular corporation principally for the purpose of increasing the total amount of permitted deferrals with respect to qualifying dispositions of the individual and the related persons. Where the rule applies, the permitted deferral with respect to qualifying dispositions of the new shares is deemed to be nil.

Subsection 44.1(12) is amended to apply to the following circumstances:

- when the new shares are issued by a corporation that, at or immediately after the time of issue of the new shares, was a corporation that was not dealing at arm's length with the individual; and
- when the new shares are issued, by a corporation that acquired the old shares (or by another corporation related to that corporation), as part of the transaction or event or series of transactions or events that included that acquisition of the old shares.

(c) it is reasonable to conclude that one of the main reasons for the series of transactions or events or a transaction in the series was to permit the individual, persons related to the individual, or the individual and persons related to the individual to become eligible to deduct under subsection (2) permitted deferrals in respect of qualifying dispositions of new shares (or shares substituted for the new shares) the total of which would exceed the total that those persons would have been eligible to deduct under subsection (2) in respect of permitted deferrals in respect of qualifying dispositions of old shares.

Related Provisions: 248(5) — Substituted property.

Proposed Addition — 44.1(13)

(13) Order of disposition of shares — For the purpose of this section, an individual is deemed to dispose of shares that are identical properties in the order in which the individual acquired them.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 64(4), will add subsec. 44.1(13), applicable in respect of dispositions that occur after December 20, 2002. However, if an individual so elects in writing and files the election with the Minister of National Revenue on or before the individual's filing-due date for the individual's taxation year in which the amending legislation is assented to, subsec. 44.1(13)

applies, in respect of the individual, to dispositions that occur after February 27, 2000.

Technical Notes: New subsection 44.1(13) is a provision that applies when an individual disposes of a share that is identical to other shares owned by the individual. The provision deems, for the purposes of section 44.1, the shares to have been disposed of in the same order in which the individual acquired them.

Letter from Dept. of Finance, 2002:

Mr. Mark D. Brender, Davies Ward Phillips & Vineberg LLP, Montreal

Dear Mr. Brender:

We are responding to your letter dated February 20, 2002 concerning section 44.1 of the *Income Tax Act* (the Act).

Section 44.1 of the Act provides for a deferral of the recognition of a capital gain in cases where an individual disposes of shares of an eligible small business corporation. Your comments relate to the application of this deferral where identical properties are disposed of and not all of the gains on the identical properties are eligible for deferral.

In your example, an individual purchases 100 common shares of an eligible small business corporation (as defined in section 44.1). In the year after the purchase, the corporation makes an initial public offering and ceases to be an eligible small business corporation. On the initial public offering, the individual buys an additional 100 common shares. Finally, the individual disposes of 100 common shares and reinvests the capital gain realized in another eligible small business corporation. In the absence of an ordering rule for dispositions of shares, it would not be certain that the capital gain realized on the sale of the 100 common shares was eligible for the deferral treatment.

It would be appropriate to provide a rule which provides for certainty in determining access to the deferral of the recognition of a capital gain under section 44.1 in the case described in your example. Consequently, we are prepared to recommend that an individual be deemed, for the purpose of this provision, to have disposed of shares that are identical properties in the order in which the individual acquired them.

It will be recommended that this amendment apply to dispositions of shares that occur after announcement date and that, if an individual elects in writing and files the election with the Minister of National Revenue in the time provided for filing the election, that this amendment apply to dispositions of shares that occur after February 27, 2000. Normally, the time for filing the election would be on or before the filing-due date for the return of income of the individual for the individual's taxation year in which this amendment receives royal assent.

Thank you for bringing this matter to our attention.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch
c.c.: Patrick Massicotte, Canada Customs and Revenue Agency

History: The descriptions of E and F in the definition "ACB reduction", the descriptions of G, H and I in the definition "permitted deferral", and para. (a) of the definition "replacement share", in subsec. 44.1(1) amended by 2003, c. 15, subsecs. 70(2)–(4), applicable in respect of dispositions that occur after February 18, 2003. The descriptions and para. (a) formerly read:

E is the qualifying cost to the individual of the replacement share; and

F is the qualifying cost to the individual of all the replacement shares of the individual in respect of the qualifying disposition.

. . . . .

G is the lesser of the amount included in the description of H and the total of all amounts each of which is the qualifying cost to the individual of a replacement share in respect of the qualifying disposition;

H is the qualifying portion of the individual's proceeds of disposition from the qualifying disposition; and

I is the qualifying portion of the individual's capital gain from the qualifying disposition.

. . . . .

(a) acquired by the individual in the year or within 60 days after the end of the year, but not later than 120 days after the qualifying disposition occurred; and

The definitions "qualifying cost", "qualifying portion of a capital gain" and "qualifying portion of the proceeds of disposition" in subsec. 44.1(1) repealed by 2003, c. 15, subsec. 70(1), applicable in respect of dispositions that occur after February 18, 2003. The definitions formerly read:

"qualifying cost" to an individual of particular replacement shares of the individual in respect of a qualifying disposition of the individual that are shares of the capital stock of a particular eligible small business corporation means the lesser of

(a) the total of all amounts each of which is the cost to the individual of such a replacement share; and

(b) the amount by which $2,000,000 exceeds the total of all amounts each of which is the cost to the individual of a share that was a share of the capital stock of the particular eligible small business corporation or of a corporation related to it at the time the particular replacement shares were acquired and that was a replacement share of the individual in respect of another qualifying disposition.

. . . . .

"qualifying portion of a capital gain" of an individual from a particular qualifying disposition of the individual means the amount determined by the formula

$$J \times (1 - (K / L))$$

where

J is the individual's capital gain from the particular qualifying disposition, determined without reference to this section;

K is the amount, if any, by which the total of

(a) the total of all amounts each of which is the adjusted cost base to the individual of a share of a particular corporation that was the subject of the particular qualifying disposition (which adjusted cost base shall be determined immediately before the share was disposed of and without reference to this section), and

(b) the total of all amounts each of which is the adjusted cost base to the individual of a share of the particular corporation or a corporation related to it at the time of the particular qualifying disposition that was the subject of another qualifying disposition (in respect of which a permitted deferral was deducted under this section by the individual) that occurred at or before the time of the particular qualifying disposition (which adjusted cost base shall be determined immediately before the share was disposed of and without reference to this section)

exceeds

(c) $ 2,000,000; and

L is the total of all amounts each of which is the adjusted cost base to the individual of a share of the particular corporation that was the subject of the particular qualifying disposition (which adjusted cost base shall be determined immediately before the share was disposed of and without reference to this section).

. . . . .

"qualifying portion of the proceeds of disposition" of an individual from a qualifying disposition means the amount determined by the formula

$$M \times (N / O)$$

where

M is the individual's proceeds of disposition from the qualifying disposition;

N is the individual's qualifying portion of the capital gain from the qualifying disposition; and

O is the individual's capital gain from the qualifying disposition, determined without reference to this section.

S. 44.1 added by 2001, c. 17, s. 29, applicable to dispositions that occur after February 27, 2000 except that, for dispositions that occurred after February 27, 2000 and before October 18, 2000,

(a) the definition "active business corporation" in subsec. (1) shall be read without reference to the words "subject to subsection (10)" and as if the reference to the words "carried on" in para. (a) of that definition were read as a reference to "carried on primarily in Canada";

(b) the definition "eligible small business corporation" in subsec. (1) shall be read without reference to the words "subject to subsection (10)";

(c) the definition "eligible small business corporation share" in subsec. (1) shall be read as follows:

> "eligible small business corporation share" of an individual means a common share issued by a corporation to the individual if
>
> (a) at the time the share was issued, the corporation was an eligible small business corporation;
>
> (b) immediately before the share was issued, the total carrying value of the assets of the corporation and corporations related to it did not exceed $2,500,000; and
>
> (c) immediately after the share was issued, the total carrying value of the assets of the corporation and corporations related to it did not exceed $10,000,000.";

(d) the definition "qualifying cost" in subsec. (1) shall be read as if the reference to "$2,000,000" in para. (b) of that definition were read as a reference to "$500,000";

(e) the definition "qualifying disposition" in subsec. (1) shall be read without reference to the words "subject to subsection (9)";

(f) the definition "qualifying portion of a capital gain" in subsec. (1) shall be read as if the reference to "$2,000,000" in para. (c) of the description of K in that definition were read as a reference to "$500,000"; and

(g) s. 44.1 shall be read without reference to subsecs. 44.1(9) and (10).

Definitions: "ACB reduction" — 44.1(1); "active business" — 248(1); "active business corporation" — 44.1(1), (10); "adjusted cost base" — 54, 248(1); "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "Canadian-controlled private corporation" — 125(7), 248(1); "capital gain" — 39(1)(a), 248(1); "carrying value", "common share" — 44.1(1); "common-law partner", "common-law partnership" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition" — 248(1); "eligible pooling arrangement" — 44.1(1); "eligible small business corporation" — 44.1(1), (10); "eligible small business corporation share" — 44.1(1), (11); "immovable" — Quebec *Civil Code* art. 900–907; "individual" — 248(1); "investment manager" — 44.1(1)"eligible pooling arrangement"; "month" — *Interpretation Act* 35(1); "paid-up capital" — 89(1), 248(1); "parent" — 252(2)(a); "permitted deferral" — 44.1(1); "person", "prescribed", "professional corporation", "property" — 248(1); "qualifying cost" — 44.1(1); "qualifying disposition" — 44.1(1), (9); "qualifying portion of a capital gain", "qualifying portion of the proceeds" — 44.1(1); "related" — 251(2)–(6); "replacement share" — 44.1(1); "series of transactions" — 248(10); "share", "small business corporation", "specified financial institution" — 248(1); "substituted property" — 248(5); "taxable Canadian corporation" — 89(1), 248(1); "taxable Canadian property" — 248(1); "taxation year" — 249; "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

45. (1) Property with more than one use [change in use] — For the purposes of this subdivision the following rules apply:

(a) where a taxpayer,

> (i) having acquired property for some other purpose, has commenced at a later time to use it for the purpose of gaining or producing income, or
>
> (ii) having acquired property for the purpose of gaining or producing income, has commenced at a later time to use it for some other purpose,

the taxpayer shall be deemed to have

> (iii) disposed of it at that later time for proceeds equal to its fair market value at that later time, and
>
> (iv) immediately thereafter reacquired it at a cost equal to that fair market value;

(b) where property has, since it was acquired by a taxpayer, been regularly used in part for the purpose of gaining or producing income and in part for some other purpose, the taxpayer shall be deemed to have acquired, for that other purpose, the proportion of the property that the use regularly made of the property for that other purpose is of the whole use regularly made of the property at a cost to the taxpayer equal to the same proportion of the cost to the taxpayer of the whole property, and, if the property has, in such a case, been disposed of, the proceeds of disposition of the proportion of the property deemed to have been acquired for that other purpose shall be deemed to be the same proportion of the proceeds of disposition of the whole property;

(c) where, at any time after a taxpayer has acquired property, there has been a change in the relation between the use regularly made by the taxpayer of the property for gaining or producing income and the use regularly made of the property for other purposes,

> (i) if the use regularly made of the property for those other purposes has increased, the taxpayer shall be deemed to have
>
> > (A) disposed of the property at that time for proceeds equal to the proportion of the fair market value of the property at that time that the amount of the increase in the use regularly made by the taxpayer of the property for those other purposes is of the whole use regularly made of the property, and
> >
> > (B) immediately thereafter reacquired the property so disposed of at a cost equal to the proceeds referred to in clause (A), and
>
> (ii) if the use regularly made of the property for those other purposes has decreased, the taxpayer shall be deemed to have
>
> > (A) disposed of the property at that time for proceeds equal to the proportion of the fair market value of the property at that time that the amount of the decrease in use regularly made by the taxpayer of the property for those other purposes is of the whole use regularly made of the property, and
> >
> > (B) immediately thereafter reacquired the property so disposed of at a cost equal to the proceeds referred to in clause (A); and

(d) in applying this subsection in respect of a non-resident taxpayer, a reference to "gaining or producing income" shall be read as a reference to "gaining or producing income from a source in Canada".

Related Provisions: 13(7)(a), (b), (d) — Change in use rules for depreciable property; 54"superficial loss"(c) — Superficial loss rule does not apply.

History: Para. 45(1)(d) added by 2001, c. 17, s. 30, applicable after October 1, 1996.

Subpara. 45(1)(c)(i) [which had earlier been inadvertently deleted — see below], re-enacted and (ii) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 25, applicable to 1972 *et seq*. Subpara. 45(1)(c)(ii) formerly read:

> (ii) if the use regularly made by the taxpayer of the property for those other purposes has decreased, the taxpayer shall be deemed to have disposed of property at that time and the proceeds of disposition shall be deemed to be an amount equal to the proportion of the fair market value of the property at that time that the amount of the decrease in use regularly made by the taxpayer of the property for those other purposes is of the whole use regularly made of the property.

Selected Cases [subsec. 45(1)]: *Duthie Estate v. Canada*, [1995] 2 C.T.C. 157 (FCTD) (Change of use determined on balance of indications); *Derlago v. R.*, [1988] 2 C.T.C. 21 (FCTD) (Change in use of property deemed disposition; proceeds equal to fair market value).

Interpretation Bulletins: IT-83R3: Non-profit organizations — taxation of income from property; IT-120R6: Principal residence; IT-160R3: Personal use of aircraft (archived); IT-218R: Profit, capital gains and losses from the sale of real estate, including farmland and inherited land and conversion of real estate from capital property to inventory and vice versa.

(2) Election where change of use — For the purposes of this subdivision and section 13, where subparagraph (1)(a)(i) or paragraph 13(7)(b) would otherwise apply to any property of a taxpayer for a taxation year and the taxpayer so elects in respect of the property in the taxpayer's return of income for the year under this Part, the taxpayer shall be deemed not to have begun to use the property for the purpose of gaining or producing income except that, if in the taxpayer's return of income under this Part for a subsequent taxation year the taxpayer rescinds the election in respect of the property, the taxpayer shall be deemed to have begun so to use the property on the first day of that subsequent year.

Related Provisions: 13(1) — Recapture of depreciation; 54"principal residence"(b) — Effect of election on principal residence; 220(3.2), Reg. 600(b) — Late filing or revocation of election.

History: Subsec. 45(2) substituted by 1994, c. 21, s. 18, applicable to 1992 *et seq.* That subsec. formerly read:

> (2) Election where change in use — For the purposes of this subdivision and section 13, where subparagraph (1)(a)(i) and paragraph 13(7)(b) would otherwise be applicable in respect of any property of a taxpayer for a taxation year and the taxpayer so elects in the taxpayer's return of income for the year under this Part, the taxpayer shall be deemed not to have commenced to use the property for the purpose of gaining or producing income therefrom or for the purpose of gaining or producing income from a business except that, if in the taxpayer's return of income for a subsequent year and under this Part the taxpayer rescinds the taxpayer's election in respect of the property, the taxpayer shall be deemed to have commenced so to use the property on the first day of that subsequent year.

Selected Cases [subsec. 45(2)]: *Bullard Estate v. R.*, [2004] 3 C.T.C. 2008 (TCC) (Election must be made in respect of the year of change).

Interpretation Bulletins: IT-120R6: Principal residence.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

(3) Election concerning principal residence — Where at any time a property that was acquired by a taxpayer for the purpose of gaining or producing income ceases to be used for that purpose and becomes the principal residence of the taxpayer, subsection (1) shall not apply to deem the taxpayer to have disposed of the property at that time and to have reacquired it immediately thereafter if the taxpayer so elects by notifying the Minister in writing on or before the earlier of

(a) the day that is 90 days after a demand by the Minister for an election under this subsection is sent to the taxpayer, and

(b) the taxpayer's filing-due date for the taxation year in which the property is actually disposed of by the taxpayer.

Related Provisions: 45(4) — Where election cannot be made; 54"principal residence"(b), (d) — Effect of election and parallel rule when moving out of principal residence; 220(3.2), Reg. 600(b) — Late filing or revocation of election.

History: Para. 45(3)(b) amended by 1996, c. 21, s. 10, applicable to 1995 *et seq.* The para. formerly read:

> (b) April 30 following the year in which the property is actually disposed of by the taxpayer.

Interpretation Bulletins: IT-120R6: Principal residence.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

(4) Where election cannot be made — Notwithstanding subsection (3), an election described in that subsection shall be deemed not to have been made in respect of a change in use of property if any deduction in respect of the property has been allowed for any taxation year ending after 1984 and on or before the change in use under regulations made under paragraph 20(1)(a) to the taxpayer, the taxpayer's spouse or common-law partner or a trust under which the taxpayer or the taxpayer's spouse or common-law partner is a beneficiary.

History: Subsec. 45(4) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Interpretation Bulletins: IT-120R6: Principal residence.

Definitions [s. 45]: "amount", "business", "common-law partner" — 248(1); "filing-due date" — 150(1), 248(1); "gaining or producing income" — 45(1)(d); "Minister" — 248(1); "principal residence", "proceeds of disposition" — 54; "property", "regulation" — 248(1); "taxation year" — 249; "taxpayer", "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [s. 45]: IT-102R2: Conversion of property, other than real property, from or to inventory.

46. (1) Personal-use property — Where a taxpayer has disposed of a personal-use property (other than an excluded property disposed of in circumstances to which subsection 110.1(1), or the definition "total charitable gifts", "total cultural gifts" or "total ecological gifts" in subsection 118.1(1), applies) of the taxpayer, for the purposes of this subdivision

(a) the adjusted cost base to the taxpayer of the property immediately before the disposition shall be deemed to be the greater of $1,000 and the amount otherwise determined to be its adjusted cost base to the taxpayer at that time; and

(b) the taxpayer's proceeds of disposition of the property shall be deemed to be the greater of $1,000 and the taxpayer's proceeds of disposition of the property otherwise determined.

Related Provisions: 40(2)(g)(iii) — No loss allowed on most personal-use property; 46(3) — Properties ordinarily disposed of as a set; 46(5) — Excluded property; 50(2) — Personal-use property debts.

History: The opening words of subsec. 46(1) amended by 2001, c. 17, subsec. 31(1), applicable to property acquired after February 27, 2000. The opening words formerly read:

> 46. (1) Where a taxpayer has disposed of any personal-use property of the taxpayer, for the purposes of this subdivision

Interpretation Bulletins: IT-332R: Personal Use Property (archived).

(2) Where part only of property disposed of — Where a taxpayer has disposed of part of a personal-use property (other than a part of an excluded property disposed of in circumstances to which subsection 110.1(1), or the definition "total charitable gifts", "total cultural gifts" or "total ecological gifts" in subsection 118.1(1), applies) owned by the taxpayer and has retained another part of the property, for the purposes of this subdivision

(a) the adjusted cost base to the taxpayer, immediately before the disposition, of the part so disposed of shall be deemed to be the greater of

(i) the adjusted cost base to the taxpayer at that time of that part otherwise determined, and

(ii) that proportion of $1,000 that the amount determined under subparagraph (i) is of the adjusted cost base to the taxpayer at that time of the whole property; and

(b) the proceeds of disposition of the part so disposed of shall be deemed to be the greater of

(i) the proceeds of disposition of that part otherwise determined, and

(ii) the amount determined under subparagraph (a)(ii).

History: The opening words of subsec. 46(2) amended by 2001, c. 17, subsec. 31(2), applicable to property acquired after February 27, 2000. The opening words formerly read:

> (2) Where a taxpayer has disposed of part of a personal-use property owned by the taxpayer and has retained another part of the property, for the purposes of this subdivision

(3) Properties ordinarily disposed of as a set — For the purposes of this subdivision, where a number of personal-use properties of a taxpayer that would, if the properties were disposed of, ordinarily be disposed of in one disposition as a set,

(a) have been disposed of by more than one disposition so that all of the properties have been acquired by one person or by a group of persons not dealing with each other at arm's length, and

(b) had, immediately before the first disposition referred to in paragraph (a), a total fair market value greater than $1,000,

the properties shall be deemed to be a single personal-use property and each such disposition shall be deemed to be a disposition of a part of that property.

(4) Decrease in value of personal-use property of corporation, etc. — Where it may reasonably be regarded that, by reason of a decrease in the fair market value of any personal-use property of a corporation, partnership or trust,

(a) a taxpayer's gain, if any, from the disposition of a share of the capital stock of a corporation, an interest in a trust or an interest in a partnership has become a loss, or is less than it would have been if the decrease had not occurred, or

(b) a taxpayer's loss, if any, from the disposition of a share or interest described in paragraph (a) is greater than it would have been if the decrease had not occurred,

the amount of the gain or loss, as the case may be, shall be deemed to be the amount that it would have been but for the decrease.

(5) Excluded property [art flips] — For the purpose of this section, "excluded property" of a taxpayer means property acquired by the taxpayer, or by a person with whom the taxpayer does not deal at arm's length, in circumstances in which it is reasonable to conclude that the acquisition of the property relates to an arrangement, plan or scheme that is promoted by another person or partnership and under which it is reasonable to conclude that the property will be the subject of a gift to which subsection 110.1(1), or the definition "total charitable gifts", "total cultural gifts" or "total ecological gifts" in subsection 118.1(1), applies.

Related Provisions: 163.2 — Penalties for third-party promoters and valuators; 248(35)–(37) — Value of gift limited to cost if acquired within 3 years or as tax shelter.

History: Subsec. 46(5) added by 2001, c. 17, subsec. 31(3), applicable to property acquired after February 27, 2000.

Definitions [s. 46]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "arm's length" — 251(1); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition" — 248(1); "excluded property" — 46(5); "person" — 248(1); "personal-use property" — 54, 248(1); "proceeds of disposition" — 54; "property", "share", "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

Interpretation Bulletins [s. 46]: IT-332R: Personal-use property (archived); IT-373R2: Woodlots.

47. (1) Identical properties [averaging rule] — Where at any particular time after 1971 a taxpayer who owns one property that was or two or more identical properties each of which was, as the case may be, acquired by the taxpayer after 1971, acquires one or more other properties (in this subsection referred to as "newly-acquired properties") each of which is identical to each such previously-acquired property, for the purposes of computing, at any subsequent time, the adjusted cost base of the taxpayer of each such identical property,

(a) the taxpayer shall be deemed to have disposed of each such previously-acquired property immediately before the particular time for proceeds equal to its adjusted cost base to the taxpayer immediately before the particular time;

(b) the taxpayer shall be deemed to have acquired the identical property at the particular time at a cost equal to the quotient obtained when

(i) the total of the adjusted cost bases to the taxpayer immediately before the particular time of the previously-acquired properties, and the cost to the taxpayer (determined without reference to this section) of the newly-acquired properties

is divided by

(ii) the number of the identical properties owned by the taxpayer immediately after the particular time;

(c) there shall be deducted, after the particular time, in computing the adjusted cost base to the taxpayer of each such identical property, the amount determined by the formula

$$\frac{A}{B}$$

where

A is the total of all amounts deducted under paragraph 53(2)(g.1) in computing immediately before the particular time the adjusted cost base to the taxpayer of the previously-acquired properties, and

B is the number of such identical properties owned by the taxpayer immediately after the particular time or, where subsection (2) applies, the quotient determined under that subsection in respect of the acquisition; and

(d) there shall be added, after the particular time, in computing the adjusted cost base to the taxpayer of each such identical property the amount determined under paragraph (c) in respect of the identical property.

Related Provisions: 7(1.3) — Order of disposition of securities acquired under stock-option agreement; 47(2) — Where identical properties are bonds, etc.; 47(3) — Certain securities acquired by employee deemed not identical; 53(1)(q) — Addition to ACB for amount under 47(1)(d); 53(2)(g.1) — Reduction in ACB under 47(1)(c); 80.03(2)(a) — Deemed gain on disposition following debt forgiveness; 138(11.1) — Properties of life insurance corporation; 248(12) — Meaning of "identical properties".

History: Paras. 47(1)(c) and (d) added by 1995, c. 21, s. 13, applicable to taxation years that end after February 21, 1994.

I.T. Application Rules: 26(8)–(8.5) (property owned since before 1972).

I.T. Technical News: 19 (Disposition of identical properties acquired under a section 7 securities option; Change in position in respect of GAAR — section 7).

(2) Where identical properties are bonds, etc. — For the purposes of subsection (1), where a group of identical properties referred to in that subsection is a group of identical bonds, debentures, bills, notes or similar obliga-

tions issued by a debtor, subparagraph (1)(b)(ii) shall be read as follows:

"(ii) the quotient obtained when the total of the principal amounts of all such identical properties owned by the taxpayer immediately after the particular time is divided by the principal amount of the identical property."

Related Provisions: 248(12) — Whether bonds, etc., are identical properties.

(3) Securities acquired by employee — For the purpose of subsection (1), a security (within the meaning assigned by subsection 7(7)) acquired by a taxpayer after February 27, 2000 is deemed not to be identical to any other security acquired by the taxpayer if

(a) the security is acquired in circumstances to which any of subsections 7(1.1), (1.5) or (8) or 147(10.1) applies; or

(b) the security is a security to which subsection 7(1.31) applies.

Related Provisions: 7(1.3) — Order of disposition of securities; 53(1)(j) — Addition of deferred employment benefit to ACB of security.

History: Subsec. 47(3) added by 2001, c. 17, s. 32, applicable after 1999.

(4) [Repealed under former Act]

Definitions [s. 47]: "adjusted cost base" — 54, 248(1); "identical" — 138(11.1), 248(12); "principal amount" — 248(1); "property" — 248(1); "security" — 7(7); "taxpayer" — 248(1).

Interpretation Bulletins [s. 47]: IT-78: Capital property owned on December 31, 1971 — identical properties (archived); IT-88R2: Stock dividends; IT-115R2: Fractional interest in shares; IT-199: Identical properties acquired in non-arm's length transactions (archived); IT-387R2: Meaning of "identical properties".

47.1 Indexed Security Investment Plans — (1)–(26) [Repealed under former Act]

(26.1) Application of section 47.1 of R.S.C., 1952, c. 148 — Words and expressions used in subsections (27) and (28) have the meanings assigned to them by subsections 47.1(1) to (26) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as the latter subsections read on July 1, 1986 and in so far as they are not inconsistent with subsections (27) and (28).

Origin of subsec. 47.1(26.1): R.S.C. 1985, c. 1 (5th Supp.).

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

(27) Capital losses in 1986 — Notwithstanding any other provision of this Act, where paragraph 47.1(10)(f) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as that paragraph read on January 1, 1986, applied in respect of the termination before 1986 of an indexed security investment plan under which a taxpayer was a participant, any amount that would have been deemed under that paragraph to be a capital loss of the taxpayer from the Plan for the 1986 or a subsequent taxation year shall be deemed to be a capital loss of the taxpayer for the 1986 taxation year from the disposition of property in 1986.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

(28) Transition for 1986 — Where a taxpayer was a participant under a Plan on January 1, 1986, the following rules apply:

(a) each indexed security owned under the Plan by the taxpayer on that date shall be deemed to have been disposed of under the Plan on that date for proceeds of disposition determined by the formula

$$A \times \frac{B}{C}$$

where

A is the indexing base of the Plan on that date determined as if subparagraph 47.1(3)(a)(i) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, were read as "the fair market value of all indexed securities owned by the taxpayer under the Plan at the end of the preceding taxation year",

B is the fair market value of the security on that date, and

C is the fair market value of all indexed securities owned under the Plan by the taxpayer on that date;

(b) each indexed security deemed under paragraph (a) to have been disposed of under the Plan shall be deemed to have been reacquired outside the Plan by the taxpayer immediately after that date at a cost equal to the amount deemed under paragraph (a) to be the proceeds of the disposition of that security;

(c) each put or call option referred to in clause 47.1(4)(a)(iv)(B) or (C) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as that clause read on January 1, 1986, outstanding under the Plan on that date shall be deemed to have been closed out under the Plan on that date at a cost equal to the amount that the taxpayer would have had to pay on that date if the taxpayer had actually closed out the option on a prescribed stock exchange in Canada on that date;

(d) each put or call option deemed under paragraph (c) to have been closed out shall be deemed to be written outside the Plan immediately after that date for proceeds equal to the amount deemed under paragraph (c) to be the cost at which the option was closed out; and

(e) for greater certainty, the taxpayer's indexed gain or loss, as the case may be, for the 1986 taxation year from the Plan and unindexed gain or loss, as the case may be, for that year from the Plan shall be nil.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Definitions [s. 47.1]: "amount" — 248(1); "capital loss" — 39(1)(b), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "prescribed stock exchange in Canada" — Reg. 3200; "proceeds of disposition" — 54; "taxation year" — 249; "taxpayer" — 248(1).

Regulations [s. 47.1]: 3200 (prescribed stock exchange).

48. (1) [Repealed]

History: Subsec. 48(1) repealed by 1994, c. 21, s. 19, applicable after 1992 except that, where a corporation elected in accordance with paragraph 111(4)(a) of 1994, c. 21 (i.e., elects before the end of December 1994 for new subsec. 250(5.1) to apply in respect of a continuance before 1993), the repeal applies to the corporation from the corporation's time of continuation (within the meaning assigned by that paragraph). That subsec. formerly read:

48. (1) Deemed disposition of property where taxpayer has ceased to be resident in Canada — For the purposes of this subdivision, where a taxpayer has ceased, at any particular time in a taxation year and after 1971, to be resident in Canada, the taxpayer shall be deemed to have disposed, immediately before the particular time, of each property, other than

(a) any property that would be taxable Canadian property if at no time in the year the taxpayer had been resident in Canada except where the taxpayer is an individual other than a trust and the taxpayer has elected in prescribed manner and within a prescribed time to be deemed to have disposed of such property owned by the taxpayer immediately before the particular time,

(b) a right to receive any payment described in paragraph 212(1)(h), in any of paragraphs 212(1)(j) to (q) and a right to

receive any payment of a benefit under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act, or

(c) where the taxpayer is an individual other than a trust or was, immediately before the particular time, a Canadian corporation, any property not described in paragraph (a) or (b) in respect of which the taxpayer has elected in prescribed manner and within prescribed time and has furnished the Minister with security acceptable to the Minister for the payment of the additional tax under this Part that would have been payable by the taxpayer if the taxpayer had not so elected,

that was owned by the taxpayer immediately before the particular time for proceeds of disposition equal to the fair market value of the property immediately before the particular time and to have reacquired the property immediately after the taxpayer so ceased to be resident in Canada at a cost equal to that fair market value, except that where the taxpayer has made an election under paragraph (a) or (c), the total of the taxpayer's allowable capital losses for the year from dispositions under this subsection of such of those properties as were not listed personal property of the taxpayer shall be deemed to be the lesser of that total otherwise determined and the total of the taxpayer's taxable capital gains for the year from the dispositions under this subsection of such of those properties as were not listed personal property of the taxpayer.

(1.1) [Repealed under former Act]

(2) [Repealed]

History: Subsec. 48(2) repealed by 1994, c. 21, s. 19, applicable after 1992 except that, where a corporation elects in accordance with paragraph 111(4)(a) of 1994, c. 21 (i.e., elects before the end of December 1994 for new subsec. 250(5.1) to apply in respect of a continuance before 1993), the repeal applies to the corporation from the corporation's time of continuation (within the meaning assigned by that paragraph). That subsec. formerly read:

(2) Property in respect of which election made deemed to be taxable Canadian property — Any property of a taxpayer described in paragraph (1)(c) in respect of which the taxpayer has made an election under that paragraph shall be deemed to be taxable Canadian property of the taxpayer from the time immediately after the taxpayer ceased to be resident in Canada until the time immediately after the taxpayer

(a) disposes of it, or

(b) next becomes resident in Canada,

whichever first occurs.

(3) [Repealed]

History: Subsec. 48(3) repealed by 1994, c. 21, s. 19, applicable after 1992 except that, where a corporation elects in accordance with paragraph 111(4)(a) of 1994, c. 21 (i.e., elects before the end of December 1994 for new subsec. 250(5.1) to apply in respect of a continuance before 1993), the repeal applies to the corporation from the corporation's time of continuation (within the meaning assigned by that paragraph). That subsec. formerly read:

(3) Deemed acquisition of property on becoming a resident of Canada — For the purposes of this subdivision, where a taxpayer has become, at any particular time in a taxation year and after 1971, resident in Canada, the taxpayer shall be deemed to have acquired at the particular time each property owned by the taxpayer at that time, other than

(a) property that would be taxable Canadian property if the taxpayer had disposed of it immediately before the particular time, or

(b) property described in paragraph (1)(c) in respect of which the taxpayer had previously made an election under that paragraph in respect of the last preceding time the taxpayer ceased to be resident in Canada,

at a cost equal to its fair market value at the particular time.

(4) [Repealed]

History: Subsec. 48(4) repealed by 1994, c. 21, s. 19, applicable after 1992 except that, where a corporation elects in accordance with paragraph 111(4)(a) of 1994, c. 21 (i.e., elects before the end of December 1994 for new subsec. 250(5.1) to apply in respect of a continuance before 1993), the repeal applies to the corporation from the corporation's time of continuation (within the meaning assigned by that paragraph). That subsec. formerly read:

(4) Exception where taxpayer resident in Canada for short term only — Subsection (1) does not apply in respect of any property owned by an individual other than a trust at the particular time immediately before the individual ceased to be resident in Canada, if

(a) the property was

(i) owned by the individual immediately before the individual last became resident in Canada, or

(ii) acquired by the individual by inheritance or bequest at any time after the individual last became resident in Canada; and

(b) during the 10 years immediately preceding the particular time, the individual was resident in Canada for a period or periods the total of which was 60 months or less.

(5) [Repealed]

History: Subsec. 48(5) repealed by 1994, c. 21, s. 19, applicable after 1992 except that, where a corporation elects in accordance with paragraph 111(4)(a) of 1994, c. 21 (i.e., elects before the end of December 1994 for new subsec. 250(5.1) to apply in respect of a continuance before 1993), the repeal applies to the corporation from the corporation's time of continuation (within the meaning assigned by that paragraph). That subsec. formerly read:

(5) Where corporation becomes resident in Canada — Where at any time a corporation becomes resident in Canada and immediately before that time the corporation was a foreign affiliate of a taxpayer resident in Canada, for the purposes of subdivision i, the following rules apply:

(a) the taxation year of the corporation that would otherwise have included that time shall be deemed to have ended immediately before that time and a new taxation year shall be deemed to have commenced at that time;

(b) the corporation shall be deemed to have been a controlled foreign affiliate (within the meaning assigned by subsection 95(1)) of the taxpayer at the end of the taxation year that is deemed by paragraph (a) to have ended immediately before that time; and

(c) such amount as is prescribed shall be included in the foreign accrual property income (within the meaning assigned by subsection 95(1)) of the foreign affiliate for the taxation year that is deemed by paragraph (a) to have ended immediately before that time.

48.1 (1) Gain when small business corporation becomes public[ly listed] — Where

(a) at any time in a taxation year an individual owns capital property that is a share of a class of the capital stock of a corporation that,

(i) at that time, is a small business corporation, and

(ii) immediately after that time, ceases to be a small business corporation because a class of its or another corporation's shares is listed on a prescribed stock exchange, and

(b) the individual elects in prescribed form to have this section apply,

the individual shall be deemed, except for the purposes of sections 7 and 35 and paragraph 110(1)(d.1),

(c) to have disposed of the share at that time for proceeds of disposition equal to the greater of

(i) the adjusted cost base to the individual of the share at that time, and

(ii) the lesser of the fair market value of the share at that time and such amount as is designated in the prescribed form by the individual in respect of the share, and

(d) to have reacquired the share immediately after that time at a cost equal to those proceeds of disposition.

Related Provisions: 44.1(11) — 48.1 inapplicable in determining eligible small business corporation share for small business investment rollover; 53(4) — Effect on adjusted cost base where para. 48.1(1)(c) applies; 110.6(2.1) — Capital gains deduction — qualified small business corporation shares.

History: Subpara. 48.1(1)(a)(ii) amended by 2001, c. 17, s. 33, applicable to corporations that cease to be small business corporations after 1999.

Where a corporation ceases to be a Canadian-controlled private corporation in a taxation year solely because of the application of the amendment to 125(7)"Canadian-controlled private corporation", an election under subsec. 48.1(1), as amended, that is made by an individual in respect of the 1999 or 2000 taxation year is deemed to have been made on time if the election is made on or before the individual's filing-due date for the taxation year that includes June 14, 2001.

The subpara. formerly read:

> (ii) immediately after that time, ceases to be a small business corporation because a class of its shares is listed on a prescribed stock exchange, and

Subpara. 48.1(1)(a)(ii) amended by 1998, c. 19, s. 91, applicable to corporations that cease to be a small business corporation after 1995. The subpara. formerly read:

> (ii) immediately after that time, becomes a public corporation because of the listing of a class of its shares on a prescribed stock exchange in Canada, and

Subsec. 91(3) of 1998, c. 19, provides:

> An election under subsec. 48.1(1), as amended, that is made by an individual for the 1995 taxation year is deemed to have been made on time, if
>
> (a) a class of the shares of the capital stock of the corporation in respect of which the election is made was, on January 1, 1996, listed on a stock exchange listed in section 3201 of the *Income Tax Regulations*;
>
> (b) the corporation was a small business corporation on December 31, 1995; and
>
> (c) the election is made before October 1, 1998.

Regulations: 3200, 3201 (prescribed stock exchanges for 48.1(1)(a)(ii)).

Forms: T2101: Election for gains on shares of a corporation becoming public.

(2) Time for election — An election made under subsection (1) by an individual for a taxation year shall be made on or before the individual's filing-due date for the year.

History [s. 48.1(2)]: Subsec. 48.1(2) amended by 1996, c. 21, s. 11, applicable to 1995 *et seq.* The subsec. formerly read:

> (2) An election made under subsection (1) by an individual for a taxation year shall be made on or before the balance-due day of the individual for that year.

(3) Late filed election — Where the election referred to in subsection (2) was not made on or before the day referred to therein, the election shall be deemed for the purposes of subsections (1) and (2) to have been made on that day if, on or before the day that is 2 years after that day,

(a) the election is made in prescribed form; and

(b) an estimate of the penalty in respect of that election is paid by the individual when the election is made.

(4) Penalty for late filed election — For the purposes of this section, the penalty in respect of an election referred to in paragraph (3)(a) is an amount equal to the lesser of

(a) ¼ of 1% of the amount, if any, by which

> (i) the proceeds of disposition determined under subsection (1)

exceed

> (ii) the amount referred to in subparagraph (1)(c)(i)

for each month or part of a month during the period commencing on the day referred to in subsection (2) and ending on the day the election is made, and

(b) an amount equal to the product obtained by multiplying $100 by the number of months each of which is a month all or part of which is during the period referred to in paragraph (a).

(5) Unpaid balance of penalty — The Minister shall, with all due dispatch, examine each election referred to in paragraph (3)(a), assess the penalty payable and send a notice of assessment to the individual, who shall pay forthwith to the Receiver General the amount, if any, by which the penalty so assessed exceeds the total of all amounts previously paid on account of that penalty.

History [s. 48.1]: S. 48.1 added by 1994, c. 7, Sch. II (1991, c. 49), s. 26, applicable to 1991 *et seq.*

Definitions [s. 48.1]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "capital property" — 54, 248(1); "class of shares" — 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "filing-due date" — 150(1), 248(1); "individual", "Minister", "prescribed" — 248(1); "prescribed stock exchange" — 248(29), Reg. 3200, 3201; "share", "small business corporation" — 248(1); "taxation year" — 11(2), 249.

49. (1) Granting of options — Subject to subsections (3) and (3.1), for the purposes of this subdivision, the granting of an option, other than

(a) an option to acquire or to dispose of a principal residence,

(b) an option granted by a corporation to acquire shares of its capital stock or bonds or debentures to be issued by it, or

(c) an option granted by a trust to acquire units of the trust to be issued by the trust,

is a disposition of a property the adjusted cost base of which to the grantor immediately before the grant is nil.

Related Provisions: 13(5.3) — Disposition of option on depreciable property or real property; 49(2), (2.1) — Where option expires; 49(5) — Extension or renewal of options.

History: Subsec. 49(1) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 27(1), to substitute "(3) and (3.1)" for "(2), (3) and (3.1)" in that portion preceding para. (a), and to add para. (c), applicable to options granted after 1989.

Interpretation Bulletins: IT-96R6: Options granted by corporations to acquire shares, bonds or debentures and by trusts to acquire trust units; IT-403R: Options on real estate; IT-479R: Transactions in securities.

(2) Where option expires — Where at any time an option described in paragraph (1)(b) (other than an option to acquire shares of the capital stock of a corporation in consideration for the incurring, pursuant to an agreement described in paragraph (e) of the definition "Canadian exploration and development expenses" in subsection 66(15), paragraph (i) of the definition "Canadian exploration expense" in subsection 66.1(6), paragraph (g) of the definition "Canadian development expense" in subsection 66.2(5) or paragraph (c) of the definition "Canadian oil and gas property expense" in subsection 66.4(5), of any expense described in whichever of those paragraphs is applicable) that has been granted by a corporation after 1971 expires,

(a) the corporation shall be deemed to have disposed of capital property at that time for proceeds equal to the proceeds received by it for the granting of the option; and

(b) the adjusted cost base to the corporation of that capital property immediately before that time shall be deemed to be nil.

Related Provisions: 49(5) — Extension or renewal of options; 54"superficial loss"(d) — Superficial loss rule does not apply; 87(2)(o) — Amalgamations — expiry of options previously granted.

Interpretation Bulletins: IT-96R6: Options granted by corporations to acquire shares, bonds or debentures and by trusts to acquire trust units; IT-98R2: Investment corporations (archived); IT-334R2: Miscellaneous receipts.

(2.1) Idem — Where at any time an option referred to in paragraph (1)(c) expires,

(a) the trust shall be deemed to have disposed of capital property at that time for proceeds equal to the proceeds received by it for the granting of the option; and

(b) the adjusted cost base to the trust of that capital property immediately before that time shall be deemed to be nil.

Related Provisions: 49(5) — Extension or renewal; 54"superficial loss"(d) — Superficial loss rule does not apply.

History: Subsec. 49(2.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 27(2), applicable to options granted after 1989.

Interpretation Bulletins: IT-96R6: Options granted by corporations to acquire shares, bonds or debentures and by trusts to acquire trust units.

(3) Where option to acquire exercised — Where an option to acquire property is exercised so that property is disposed of by a taxpayer (in this subsection referred to as the "vendor") or so that property is acquired by another taxpayer (in this subsection referred to as the "purchaser"), for the purpose of computing the income of each such taxpayer the granting and the exercise of the option shall be deemed not to be dispositions of property and there shall be included

(a) in computing the vendor's proceeds of disposition of the property, the consideration received by the vendor for the option; and

(b) in computing the cost to the purchaser of the property,

(i) where paragraph 53(1)(j) applied to the acquisition of the property by the purchaser because a person who did not deal at arm's length with the purchaser was deemed because of the acquisition to have received a benefit under section 7, the adjusted cost base to that person of the option immediately before that person last disposed of the option, and

(ii) in any other case, the adjusted cost base to the purchaser of the option.

Related Provisions: 49(3.2) — Election to have 49(3) not apply where option granted before Feb. 23/94; 49(5) — Extension or renewal of option; 164(5)(c), 164(5.1)(c) — Effect of carryback of loss.

History: Para. 49(3)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 27(3), applicable after July 13, 1990. Para 49(3)(b) formerly read:

(b) in computing the cost to the purchaser of the property, the adjusted cost base to the purchaser of the option.

Selected Cases [subsec. 49(3)]: *Salt et al. v. R.*, [1984] C.T.C. 414 (FCTD) (Amounts received for extended options included in proceeds of disposition).

Interpretation Bulletins: IT-96R6: Options granted by corporations to acquire shares, bonds or debentures and by trusts to acquire trust units; IT-334R2: Miscellaneous receipts; IT-403R: Options on real estate; IT-479R: Transactions in securities.

(3.01) Option to acquire specified property exercised — Where at any time a taxpayer exercises an option to acquire a specified property,

(a) there shall be deducted after that time in computing the adjusted cost base to the taxpayer of the specified property the total of all amounts deducted under paragraph 53(2)(g.1) in computing, immediately before that time, the adjusted cost base to the taxpayer of the option; and

(b) the amount determined under paragraph (a) in respect of that acquisition shall be added after that time in computing the adjusted cost base to the taxpayer of the specified property.

Related Provisions: 53(1)(q) — Addition to adjusted cost base for amount under 49(3.01)(b); 53(2)(g.1) — Reduction in adjusted cost base under 49(3.01)(a); 80.03(2)(a) — Deemed gain on disposition following debt forgiveness.

History: Subsec. 49(3.01) added by 1995, c. 21, s. 14, applicable to taxation years that end after February 21, 1994.

Interpretation Bulletins: IT-96R6: Options granted by corporations to acquire shares, bonds or debentures and by trusts to acquire trust units.

(3.1) Where option to dispose exercised — Where an option to dispose of property is exercised so that property is disposed of by a taxpayer (in this subsection referred to as the "vendor") or so that property is acquired by another taxpayer (in this subsection referred to as the "purchaser"), for the purpose of computing the income of each such taxpayer the granting and the exercise of the option shall be deemed not to be dispositions of property and there shall be deducted

(a) in computing the vendor's proceeds of disposition of the property, the adjusted cost base to the vendor of the option; and

(b) in computing the cost to the purchaser of the property, the consideration received by the purchaser for the option.

Related Provisions: 49(5) — Extension or renewal of option.

Interpretation Bulletins: IT-96R6: Options granted by corporations to acquire shares, bonds or debentures and by trusts to acquire trust units; IT-403R: Options on real estate.

(3.2) Option granted before February 23, 1994 — Where an individual (other than a trust) who disposes of property pursuant to the exercise of an option that was granted by the individual before February 23, 1994 so elects in the individual's return of income for the taxation year in which the disposition occurs, subsection (3) does not apply in respect of the disposition in computing the income of the individual.

History: Subsec. 49(3.2) added by 1995, c. 3, s. 13, applicable to dispositions that occur after February 22, 1994.

Interpretation Bulletins: IT-96R6: Options granted by corporations to acquire shares, bonds or debentures and by trusts to acquire trust units.

(4) Reassessment where option exercised in subsequent year — Where

(a) an option granted by a taxpayer in a taxation year (in this subsection referred to as the "initial year") is exercised in a subsequent taxation year (in this subsection referred to as the "subsequent year"),

(b) the taxpayer has filed a return of the taxpayer's income for the initial year as required by section 150, and

(c) on or before the day on or before which the taxpayer was required by section 150 to file a return of the taxpayer's income for the subsequent year, the taxpayer has filed an amended return for the initial year excluding from the taxpayer's income the proceeds received by the taxpayer for the granting of the option,

such reassessment of the taxpayer's tax, interest or penalties for the year shall be made as is necessary to give effect to the exclusion.

Related Provisions: 49(5) — Extension or renewal of option; 161(7)(b)(iii) — Effect of carryback of loss, etc.

Interpretation Bulletins: IT-96R6: Options granted by corporations to acquire shares, bonds or debentures and by trusts to acquire trust units. See also list at end of s. 49; IT-384R: Reassessment where option exercised in subsequent year.

(5) [Extension or renewal of option] — Where a taxpayer has granted an option (in this subsection referred to as the "original option") to which subsection (1), (2) or (2.1) applies, and grants one or more extensions or renewals of that original option,

(a) for the purposes of subsections (1), (2) and (2.1), the granting of each extension or renewal shall be deemed to be the granting of an option at the time the extension or renewal is granted;

(b) for the purposes of subsections (2) to (4) and subparagraph (b)(iv) of the definition "disposition" in subsection 248(1), the original option and each extension or renewal of it is deemed to be the same option; and

(c) subsection (4) shall be read as if the year in which the original option was granted and each year in which any extension or renewal thereof was granted were all initial years.

History: Para. 49(5)(b) amended by 2001, c. 17, s. 34, applicable to options granted after December 23, 1998. Para. 49(5)(b) formerly read:

(b) for the purposes of subsections (2) to (4) and subparagraph (b)(iv) of the definition "disposition" in section 54, the original option and each extension or renewal thereof shall be deemed to be the same option; and

That portion of subsec. 49(5) preceding para. (c) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 27(4), to substitute "grants" for "has granted", to add two references to subsection (2.1), and to substitute "(2) to (4)" for "(2), (3), (3.1) and (4)", applicable with respect to options granted, extended or renewed after 1989.

Interpretation Bulletins: IT-96R6: Options to acquire shares, bonds or debentures and by trusts to acquire trust units.

Definitions [s. 49]: "adjusted cost base" — 54, 248(1); "arm's length" — 251(1); "assessment" — 248(1); "capital property" — 54, 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition", "person" — 248(1); "principal residence" — 54; "property", "share" — 248(1); "specified property" — 54; "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

49.1 No disposition where obligation satisfied — For greater certainty, where a taxpayer acquires a particular property in satisfaction of an absolute or contingent obligation of a person or partnership to provide the particular property pursuant to a contract or other arrangement one of the main objectives of which was to establish a right, whether absolute or contingent, to the particular property and that right was not under the terms of a trust, partnership agreement, share or debt obligation, the satisfaction of the obligation is not a disposition of that right.

History: S. 49.1 added by 2000, c. 19, s. 3, applicable to obligations satisfied after December 15, 1998.

Definitions: "disposition" — 248(1); "person", "property", "share", "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

50. (1) Debts established to be bad debts and shares of bankrupt corporation — For the purposes of this subdivision, where

(a) a debt owing to a taxpayer at the end of a taxation year (other than a debt owing to the taxpayer in respect of the disposition of personal-use property) is established by the taxpayer to have become a bad debt in the year, or

(b) a share (other than a share received by a taxpayer as consideration in respect of the disposition of personal-use property) of the capital stock of a corporation is owned by the taxpayer at the end of a taxation year and

(i) the corporation has during the year become a bankrupt (within the meaning of subsection 128(3)[2]),

(ii) the corporation is a corporation referred to in section 6 of the *Winding-up and Restructuring Act* that is insolvent (within the meaning of that Act) and in respect of which a winding-up order under that Act has been made in the year, or

(iii) at the end of the year,

(A) the corporation is insolvent,

(B) neither the corporation nor a corporation controlled by it carries on business,

(C) the fair market value of the share is nil, and

(D) it is reasonable to expect that the corporation will be dissolved or wound up and will not commence to carry on business

and the taxpayer elects in the taxpayer's return of income for the year to have this subsection apply in respect of the debt or the share, as the case may be, the taxpayer shall be deemed to have disposed of the debt or the share, as the case may be, at the end of the year for proceeds equal to nil and to have reacquired it immediately after the end of the year at a cost equal to nil.

Related Provisions: 39(1)(c) — Business investment loss; 40(2)(e.2), (g)(ii) — Restrictions on capital losses on debt; 50(1.1) — Where insolvent corporation begins carrying on business again; 54"superficial loss"(c) — Superficial loss rule does not apply; 79.1(8) — No bad debt deduction where property seized by creditor; 80.01(6)(b) — Debt deemed a specified obligation after subsec. 50(1) applies; 80.01(8) — Deemed settlement after debt parking; 96(3) — Election by members of partnership; 111(5.3) — Limitation on bad debt deduction after change in control of corporation; 220(3.2), Reg. 600(b) — Late filing or revocation of election.

History: Subpara. 50(1)(b)(ii) amended by 1996, c. 6, subsec. 167(2), to substitute "Winding-up and Restructuring Act" for "Winding-up Act", effective June 28, 1996.

The portion of subsec. 50(1) after subpara. (b)(ii) amended by 1995, c. 21, s. 15, applicable to taxation years that end after February 21, 1994. That portion formerly read:

(iii) at the end of the year, the corporation is insolvent and neither the corporation nor a corporation controlled by it carries on business, and

(A) at the end of the year, the fair market value of the share is nil and it is reasonable to expect that the corporation will be dissolved or wound up and will not begin to carry on business, and

(B) in the taxpayer's return of income under this Part for the year the taxpayer elects to have this subsection apply in respect of the share,

the taxpayer shall be deemed to have disposed of the debt or the share, as the case may be, at the end of the year for proceeds equal to nil and to have reacquired it immediately thereafter at a cost equal to nil.

That portion of subsec. 50(1) following subpara. (b)(ii) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 28(1), applicable

(a) to 1990 *et seq.*; and

(b) where the taxpayer so elects in respect of the shares of the capital stock of a corporation by notifying the Minister of National Revenue in writing before 1992 [1994, c. 7, Sch. VIII (1993, c. 24), s. 159 provides that such an election made before December 11, 1993 shall be deemed to have been made before 1992], to each of the taxpayer's 1985 to 1989 taxation years in respect of the share owned by the tax-

[2]The definition "bankrupt" has been moved from 128(3) to 248(1) — ed.

payer at the end of the year, except that the subsec. is not applicable in respect of any such taxation year in respect of the share where the corporation or a corporation controlled by it carries on business during the 24-month period immediately following the end of the year; and, where a taxpayer makes an election under this paragraph in respect of a share of the capital stock of a corporation,

(i) the taxpayer shall be deemed to have elected, in the taxpayer's returns of income under Part I of the Act for each of those years, to have subsec. 50(1) as amended, apply in respect of the share, and

(ii) notwithstanding subsecs. 152(4) to (5), such assessments of tax, interest and penalties shall be made as are necessary to give effect to the election.

That portion of subsec. (1) formerly read:

(iii) the corporation ceased to carry on all of its businesses and was insolvent during the year, and

(A) at the end of the year, the fair market value of the share is nil and it is reasonable to expect that the corporation will be dissolved or wound up and will not commence to carry on any business, and

(B) the corporation did not commence to carry on any business in the year or within 24 months following the end of the year,

the taxpayer shall be deemed to have disposed of the debt or the share, as the case may be, at the end of the year and to have reacquired it immediately thereafter at a cost equal to nil.

Winding-up Act: S. 6 of the *Winding-up and Restructuring Act*, R.S.C. 1985, c. W-11, as amended by 1996, c. 6, s. 136 (effective June 28, 1996) and 1999, c. 28, s. 78 (effective June 28, 1999), provides:

6. (1) Application — This Act applies to all corporations incorporated by or under the authority of an Act of Parliament, of the former Province of Canada or of the Province of Nova Scotia, New Brunswick, British Columbia, Prince Edward Island or Newfoundland, and whose incorporation and affairs are subject to the legislative authority of Parliament, and to incorporate banks and savings banks, to authorized foreign banks, and to trust companies, insurance companies, loan companies having borrowing powers, building societies having a capital stock and incorporated trading companies doing business in Canada wherever incorporated where any of those bodies

(a) is insolvent;

(b) is in liquidation or in the process of being wound up and, on petition by any of its shareholders or creditors, assignees or liquidators, asks to be brought under this Act; or

(c) if it is a financial institution, is under the control, or its assets are under the control, of the Superintendent and is the subject of an application for a winding-up order under section 10.1.

(2) Application to authorized foreign banks — In its application to an authorized foreign bank, this Act only applies to the winding-up of its business in Canada and to the liquidation of its assets, and any reference to the winding-up of a company or to the winding-up of the business of a company is deemed, in relation to an authorized foreign bank, to be a reference to the winding-up of the business in Canada of the authorized foreign bank and to include the liquidation of the assets of the authorized foreign bank.

S. 3 of the *Winding-Up and Restructuring Act*, as amended by 1992, c. 26, s. 19 (effective August 28, 1992), defines "insolvent" as follows:

3. When company deemed insolvent — A company is deemed insolvent

(a) if it is unable to pay its debts as they become due;

(b) if it calls a meeting of its creditors for the purpose of compounding with them;

(c) if it exhibits a statement showing its inability to meet its liabilities;

(d) if it has otherwise acknowledged its insolvency;

(e) if it assigns, removes or disposes of, or attempts or is about to assign, remove or dispose of, any of its property, with intent to defraud, defeat or delay its creditors, or any of them;

(f) if, with the intent referred to in paragraph (e), it has procured its money, goods, chattels, land or property to be seized, levied on or taken, under or by any process of execution;

(g) if it has made any general conveyance or assignment of its property for the benefit of its creditors, or if, being unable to meet its liabilities in full, it makes any sale or conveyance of the whole or the main part of its stock in trade or assets without the consent of its creditors or without satisfying their claims;

(h) if it permits any execution issued against it, under which any of its goods, chattels, land or property are seized, levied on or taken in execution, to remain unsatisfied until within four days of the time fixed by the sheriff or other officer for the sale thereof, or for fifteen days after the seizure; or

(i) if, in the case of a company that is a federal member institution, within the meaning assigned to that expression by the *Canada Deposit Insurance Corporation Act*, the shares and subordinated debt of which have been vested in the Canada Deposit Insurance Corporation by order of the Governor in Council under section 39.13 of that Act, a transaction or series of transactions referred to in subsection 39.19(1) of that Act is not, in the opinion of the Corporation, substantially completed on or before the date that is not later than

(i) sixty days after the making of the order vesting the shares and subordinated debt of the federal member institution in the Corporation, or

(ii) the expiration of any extension of that period.

Selected Cases [subsec. 50(1)]: *Super West Homes Inc. v. R.*, [2004] 5 C.T.C. 2103 (TCC) (Where conduct indicated advances not made for purpose of producing income, loss denied); *Jacques St-Onge Inc. v. R.* (2001), [2004] 1 C.T.C. 2094 (TCC) (Actual dissolution by year-end not required; reasonable expectation sufficient); *Gordon v. Canada*, [1996] 3 C.T.C. 2229 (TCC) (Payment directly to creditors instead of to company whose debt was guaranteed was acceptable); *Monaghan v. Canada*, [1996] 2 C.T.C. 2169 (TCC) (Significant events occurring well after year-end do not affect determination of bad debt).

Interpretation Bulletins: IT-159R3: Capital debts established to be bad debts; IT-188R: Sale of accounts receivable; IT-220R2: Capital cost allowance — proceeds of disposition of depreciable property; IT-239R2: Deductibility of capital losses from guaranteeing loans for inadequate consideration and from loaning funds at less than a reasonable rate of interest in non-arm's length circumstances (archived); IT-442R: Bad debts and reserves for doubtful debts; IT-484R2: Business investment losses.

(1.1) Idem — Where

(a) a taxpayer is deemed because of subparagraph (1)(b)(iii) to have disposed of a share of the capital stock of a corporation at the end of a taxation year, and

(b) the taxpayer or a person with whom the taxpayer is not dealing at arm's length owns the share at the earliest time, during the 24-month period immediately following the disposition, that the corporation or a corporation controlled by it carries on business,

the taxpayer or the person, as the case may be, shall be deemed to have disposed of the share at that earliest time for proceeds of disposition equal to its adjusted cost base to the taxpayer determined immediately before the time of the disposition referred to in paragraph (a) and to have reacquired it immediately after that earliest time at a cost equal to those proceeds.

History: Subsec. 50(1.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 28(2), applicable to 1990 *et seq.*

(2) Where debt a personal-use property — Where at the end of a taxation year a debt that is a personal-use property of a taxpayer is owing to the taxpayer by a person with whom the taxpayer deals at arm's length and is established by the taxpayer to have become a bad debt in the year,

(a) the taxpayer shall be deemed to have disposed of it at the end of the year for proceeds equal to the amount, if any, by which

(i) its adjusted cost base to the taxpayer immediately before the end of the year

exceeds

(ii) the amount of the taxpayer's gain, if any, from the disposition of the personal-use property the proceeds of disposition of which included the debt; and

(b) the taxpayer shall be deemed to have reacquired the debt immediately after the end of the year at a cost equal to the amount of the proceeds determined under paragraph (a).

Related Provisions: 46 — Disposition of personal-use property; 54"superficial loss"(c) — Superficial loss rule does not apply.

Interpretation Bulletins: IT-159R3: Capital debts established to be bad debts.

(3) Disposal of RHOSP properties — Each trust that was at the end of 1985 governed by a registered home ownership savings plan (within the meaning assigned by paragraph 146.2(1)(h) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1985 taxation year) shall be deemed to have disposed, immediately before 1986, of each property it holds at that time for proceeds of disposition equal to the fair market value of the property at that time and to have reacquired it immediately after 1985 at a cost equal to that fair market value.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Definitions [s. 50]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "carrying on business" — 253; "controlled" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition" — 248(1); "personal-use property" — 54, 248(1); "share" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

51. (1) Convertible property — Where a share of the capital stock of a corporation is acquired by a taxpayer from the corporation in exchange for

(a) a capital property of the taxpayer that is another share of the corporation (in this section referred to as a "convertible property"), or

(b) a capital property of the taxpayer that is a bond, debenture or note of the corporation the terms of which confer on the holder the right to make the exchange (in this section referred to as a "convertible property")

and no consideration other than the share is received by the taxpayer for the convertible property,

(c) except for the purpose of subsection 20(21), the exchange shall be deemed not to be a disposition of the convertible property,

Proposed Amendment — 51(1)(c)

(c) except for the purposes of subsection 20(21) and paragraph 94(2)(m), the exchange shall be deemed not to be a disposition of the convertible property,

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 6(2), will amend para. 51(1)(c) to read as above, applicable to taxation years that begin after 2002, and to

(a) taxation years of a taxpayer that begin after 2000 if a trust, to which the taxpayer, directly or indirectly, transferred property in 2001 (or would have so transferred property if s. 94, as amended, applied in 2001), makes a valid election under para. (a) of the Application of the amendment to s. 94; and

(b) taxation years of a taxpayer that begin after 2001 if a trust, to which the taxpayer, directly or indirectly, transferred property in 2002 (or would have so transferred property if s. 94, as amended, applied in 2002), makes a valid election under para. (a) or (b) of the Application of the amendment to s. 94.

Technical Notes: Paragraph 51(1)(c) provides that, except for the purpose of subsection 20(21), an exchange described in paragraph 51(1)(a) or (b) is deemed not to be to be a disposition of the convertible property.

Paragraph 51(1)(c) is amended to ensure that an exchange of convertible property will be considered to be a disposition for the purpose of paragraph 94(2)(m).

(d) the cost to the taxpayer of all the shares of a particular class acquired by the taxpayer on the exchange shall be deemed to be the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the adjusted cost base to the taxpayer of the convertible property immediately before the exchange,

B is the fair market value, immediately after the exchange, of all the shares of the particular class acquired by the taxpayer on the exchange, and

C is the fair market value, immediately after the exchange, of all the shares acquired by the taxpayer on the exchange,

(d.1) there shall be deducted, after the exchange, in computing the adjusted cost base to the taxpayer of a share acquired by the taxpayer on the exchange, the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the total of all amounts deducted under paragraph 53(2)(g.1) in computing, immediately before the exchange, the adjusted cost base to the taxpayer of the convertible property,

B is the fair market value, immediately after the exchange, of that share, and

C is the fair market value, immediately after the exchange, of all the shares acquired by the taxpayer on the exchange,

(d.2) the amount determined under paragraph (d.1) in respect of a share shall be added, after the exchange, in computing the adjusted cost base to the taxpayer of the share,

(e) for the purposes of sections 74.4 and 74.5, the exchange shall be deemed to be a transfer of the convertible property by the taxpayer to the corporation, and

(f) where the convertible property is taxable Canadian property of the taxpayer, the share acquired by the taxpayer on the exchange shall be deemed to be taxable Canadian property of the taxpayer.

Related Provisions: 51(2) — Where benefit conferred on related person; 51(3) — Computation of paid-up capital after exchange of shares; 51.1 — Conversion of debt obligation; 53(1)(q) — Addition to adjusted cost base for amount under 51(1)(d.2); 53(2)(g.1) — Reduction in adjusted cost base under 51(1)(d.1); 77 — Bond conversion; 80(2)(g) — Shares issued in settlement of debt; 80.03(2)(a) — Deemed gain on disposition following debt forgiveness; 84(1)(c.3) — Contributed surplus; 86(2) — Exchange of shares — reorganization of capital; 107(2)(d.1)(iii), 107.4(3)(f) — Deemed taxable Canadian property retains status when rolled out of trust or into trust; 112(7) — Application of stop-loss rule where shares exchanged; 248(25.1) — Deemed taxable Canadian property retains status through trust-to-trust transfer.

History: The opening words of subsec. 51(1) amended by 1998, c. 19, s. 92, applicable to exchanges that occur after June 20, 1996, other than exchanges that occur before 1997 under agreements in writing made on or before June 20, 1996. The opening words formerly read:

(1) Where a share of the capital stock of a corporation is acquired by a taxpayer in exchange for

Paras. 51(1)(d.1) and (d.2) added by 1995, c. 21, s. 16, applicable to taxation years that end after February 21, 1994.

Subsec. 51(1) substituted by 1994, c. 21, subsec. 20(1), applicable to exchanges occurring, and reorganizations that begin, after December 21, 1992. That subsec. formerly read:

> 51. (1) Where shares of the capital stock of a corporation have been acquired by a taxpayer in exchange for a capital property of the taxpayer that was a share, bond, debenture or note of the corporation (in this section referred to as a "convertible property") the terms of which conferred on the holder the right to make the exchange and no consideration was received by the taxpayer for the convertible property other than those shares, the following rules apply:
>
> (a) the exchange shall be deemed not to have been a disposition of property;
>
> (b) the cost to the taxpayer of all the shares of a particular class acquired by the taxpayer on the exchange shall be deemed to be that proportion of the adjusted cost base to the taxpayer of the convertible property immediately before the exchange that
>
> (i) the fair market value, immediately after the exchange, of all the shares of the particular class acquired by the taxpayer on the exchange
>
> is of
>
> (ii) the fair market value, immediately after the exchange, of all the shares acquired by the taxpayer on the exchange; and
>
> (c) for the purposes of sections 74.4 and 74.5, the exchange shall be deemed to be a transfer of the convertible property by the taxpayer to the corporation.

Selected Cases [subsec. 51(1)]: *Mansfield v. R.*, [1984] C.T.C. 547 (FCA); leave to appeal to SCC refused (1985), 58 N.R. 237 (Debentures converted into common shares constitute conferred employment benefit; value added to adjusted cost base).

Regulations: 230(3) (no information return required).

I.T. Application Rules: 26(28).

Interpretation Bulletins: IT-115R2: Fractional interest in shares. See also list at end of s. 51.

(2) Idem — Notwithstanding subsection (1), where

(a) shares of the capital stock of a corporation have been acquired by a taxpayer in exchange for a convertible property in circumstances such that, but for this subsection, subsection (1) would have applied,

(b) the fair market value of the convertible property immediately before the exchange exceeds the fair market value of the shares immediately after the exchange, and

(c) it is reasonable to regard any portion of the excess (in this subsection referred to as the "gift portion") as a benefit that the taxpayer desired to have conferred on a person related to the taxpayer,

the following rules apply:

(d) the taxpayer shall be deemed to have disposed of the convertible property for proceeds of disposition equal to the lesser of

(i) the total of its adjusted cost base to the taxpayer immediately before the exchange and the gift portion, and

(ii) the fair market value of the convertible property immediately before the exchange,

(e) the taxpayer's capital loss from the disposition of the convertible property shall be deemed to be nil, and

(f) the cost to the taxpayer of all the shares of a particular class acquired in exchange for the convertible property shall be deemed to be that proportion of the lesser of

(i) the adjusted cost base to the taxpayer of the convertible property immediately before the exchange, and

(ii) the total of the fair market value immediately after the exchange of all the shares acquired by the taxpayer in exchange for the convertible property and the amount that, but for paragraph (e), would have been the taxpayer's capital loss on the disposition of the convertible property,

that

(iii) the fair market value, immediately after the exchange, of all the shares of the particular class acquired by the taxpayer on the exchange

is of

(iv) the fair market value, immediately after the exchange, of all the shares acquired by the taxpayer on the exchange.

Related Provisions: 112(7) — Application of stop-loss rule where shares exchanged.

(3) Computation of paid-up capital — Where subsection (1) applies to the exchange of convertible property described in paragraph (1)(a) (referred to in this subsection as the "old shares"), in computing the paid-up capital in respect of a particular class of shares of the capital stock of the corporation at any particular time that is the time of, or any time after, the exchange

(a) there shall be deducted the amount determined by the formula

$$(A - B) \times \frac{C}{A}$$

where

A is the total of all amounts each of which is the amount of the increase, if any, as a result of the exchange, in the paid-up capital in respect of a class of shares of the capital stock of the corporation, computed without reference to this subsection as it applies to the exchange,

B is the paid-up capital immediately before the exchange in respect of the old shares, and

C is the increase, if any, as a result of the exchange, in the paid-up capital in respect of the particular class of shares, computed without reference to this subsection as it applies to the exchange; and

(b) there shall be added an amount equal to the lesser of

(i) the amount, if any, by which

(A) the total of all amounts deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of that class paid by the corporation before the particular time

exceeds

(B) the total that would be determined under clause (A) if this Act were read without reference to paragraph (a), and

(ii) the total of all amounts required by paragraph (a) to be deducted in respect of that particular class of shares before the particular time.

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: Subsec. 51(3) added by 1994, c. 21, subsec. 20(2), applicable to exchanges occurring after August 1992, other than exchanges occurring

after August 1992 and before December 21, 1992 where the corporation issuing shares on the exchange elects in writing and files the election with the Minister of National Revenue by December 31, 1994.

(4) Application — Subsections (1) and (2) do not apply to any exchange to which subsection 85(1) or (2) or section 86 applies.

Proposed Amendment — 51(4)

(4) Application — Subsections (1) and (2) do not apply to

(a) any exchange to which subsection 85(1) or (2) or section 86 applies; and

(b) any exchange of property if that property is, immediately before the exchange, a specified participating interest.

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 6(3), will amend subsec. 51(4) to read as above, applicable to exchanges that occur in taxation years that begin after 2002.

Technical Notes: Subsection 51(4) provides that subsections 51(1) and (2) will not apply to any exchange to which subsection 85(1) or (2) or section 86 applies.

Subsection 51(4) is amended to provide that subsections 51(1) and (2) also will not apply to any exchange of property if that property was, immediately before the exchange, a specified participating interest. The concept of a specified participating interest is generally relevant in the context of the foreign investment entity rules in sections 94.1 to 94.4. For more information on the definition "specified participating interest" in subsection 248(1), see the commentary on that definition.

Related Provisions: 86(3) — Application of section 86.

History: Subsec. 51(4) added by 1994, c. 21, subsec. 20(2), applicable to exchanges occurring, and reorganizations that begin, after December 21, 1992.

Interpretation Bulletins: IT-115R2: Fractional interest in shares.

Proposed Amendment — 51 — Convertible LSVCC shares

Letter from Dept. of Finance, May 13, 2004: See under 127.4(1)"original acquisition".

Definitions [s. 51]: "adjusted cost base" — 54, 248(1); "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "class of shares" — 248(6); "convertible property" — 51(1) (draft 51(1)(b)); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition" — 248(1); "paid-up capital" — 89(1), 248(1); "property", "share", "specified participating interest", "taxable Canadian property", "taxpayer" — 248(1).

Interpretation Bulletins [s. 51]: IT-96R6: Options to acquire shares, bonds or debentures and by trusts to acquire trust units; IT-146R4: Shares entitling shareholders to choose taxable or capital dividends; IT-243R4: Dividend refund to private corporations.

51.1 Conversion of debt obligation — Where

(a) a taxpayer acquires a bond, debenture or note of a debtor (in this section referred to as the "new obligation") in exchange for a capital property of the taxpayer that is another bond, debenture or note of the same debtor (in this section referred to as the "convertible obligation"),

(b) the terms of the convertible obligation conferred on the holder the right to make the exchange, and

(c) the principal amount of the new obligation is equal to the principal amount of the convertible obligation,

the cost to the taxpayer of the new obligation and the proceeds of disposition of the convertible obligation shall be deemed to be equal to the adjusted cost base to the taxpayer of the convertible obligation immediately before the exchange.

History: S. 51.1 added by 1995, c. 21, s. 50, applicable to exchanges occurring after October 1994.

Definitions [s. 51.1]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "capital property" — 54, 248(1); "convertible obligation", "new obligation" — 51.1(a); "principal amount" — 248(1); "proceeds of disposition" — 54; "taxpayer" — 248(1).

Regulations: 230(3) (no information return required).

I.T. Application Rules: 26(25) (where bond owned since before 1972).

52. (1) Cost of certain property the value of which included in income — Where

(a) a taxpayer acquired property after 1971 (other than an annuity contract, a right as a beneficiary under a trust to enforce payment of an amount by the trust to the taxpayer, property acquired in circumstances to which subsection (2) or (3) applies or property acquired from a trust in satisfaction of all or part of the taxpayer's capital interest in the trust), and

(b) an amount in respect of its value was

(i) included, otherwise than under section 7, in computing

(A) the taxpayer's taxable income or taxable income earned in Canada, as the case may be, for a taxation year during which the taxpayer was non-resident, or

(B) the taxpayer's income for a taxation year throughout which the taxpayer was resident in Canada, or

(ii) for the purpose of computing the tax payable under Part XIII by the taxpayer, included in an amount that was paid or credited to the taxpayer,

for the purposes of this subdivision, the amount so included shall be added in computing the cost to the taxpayer of the property, except to the extent that the amount was otherwise added to the cost or included in computing the adjusted cost base to the taxpayer of the property.

Proposed Amendment — 52(1)

(1) Cost of certain property the value of which included in income — In applying this subdivision, an amount shall be added in computing the cost at any time to a taxpayer of a property if

(a) the taxpayer acquired the property after 1971;

(b) the amount was not at or before that time otherwise added to the cost or included in computing the adjusted cost base to the taxpayer of the property;

(c) the property is not an annuity contract, a right as a beneficiary under a trust to enforce payment of an amount by the trust to the taxpayer, property acquired in circumstances to which subsection (2) or (3) applies, or property acquired from a trust in satisfaction of all or part of the taxpayer's capital interest in the trust; and

(d) an amount in respect of the property's value was

(i) included, otherwise than under section 7 or subsection 94.2(4), in computing

(A) the taxpayer's taxable income or taxable income earned in Canada, as the case may be, for a taxation year during which the taxpayer was non-resident, or

(B) the taxpayer's income for a taxation year throughout which the taxpayer was resident in Canada, or

(ii) for the purpose of computing the tax payable under Part XIII by the taxpayer, included in an amount that was paid or credited to the taxpayer.

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), s. 7, will amend subsec. 52(1) to read as above, applicable to taxation years that begin after 2002.

Technical Notes: Subject to a number of exceptions, subsection 52(1) applies where a taxpayer acquires property and a particular amount in respect of its value was included in computing the taxpayer's income for a taxation year throughout which the taxpayer was resident in Canada (or in computing a non-resident taxpayer's taxable income earned in Canada under section 115, taxable income under section 114 or an amount from which tax is withheld under Part XIII). In these circumstances, the particular amount is added in determining the cost to the taxpayer of the property for the purposes of determining capital gains and losses in respect of the property.

Where subsection 94.2(3) applies (and subsection 94.2(20) does not apply) to a taxpayer for a taxation year in respect of a property, an amount in respect of the taxpayer's cost of the property may be included under subsection 94.2(4) in computing the taxpayer's income from the property. Subsection 52(1) is amended so that it does not apply to add an amount to the cost to a taxpayer of a property where the amount may have been so included under subsection 94.2(4).

This amendment is made, even though a taxpayer's property that is subject to the mark-to-market rules in subsection 94.2(4) for a taxation year is generally considered not to be (except where subsection 94.2(20) applies to the taxpayer for the taxation year) property a gain from the disposition of which is a capital gain, to deal with the situation where it may become at some later time capital property or where it is capital property to which subsection 94.2(20) applied to the taxpayer for the taxation year. Subsection 52(1) should not apply to cause a "bump" in the cost of a property in respect of income or gains recognized under subsection 94.2(4) because section 94.2 contains its own rules for making adjustments in respect of such income or gains. For more detail, see the commentary on subsections 94.2(12), (13) and (21), and the definition "deferral amount" in subsection 94.1(1).

For more information on the definitions "participating interest" and "foreign investment entity" and section 94.2, see the commentary on those provisions.

Related Provisions: 69(5)(c) — No application to property appropriated by shareholder on winding-up.

History: Subsec. 52(1) amended by 2001, c. 17, subsec. 35(1), applicable after 1999 except that, in respect of property acquired before 2000 and disposed of before March 2000, para. 52(1)(a) shall be read as follows:

> "(a) a taxpayer acquired property after 1971 (other than an annuity contract or property acquired as described in subsection (2), (3) or (6)), and"

The subsec. formerly read:

> (1) For the purposes of this subdivision, where a taxpayer has acquired property after 1971 (other than an annuity contract or property acquired as described in subsection (2), (3) or (6)) and an amount in respect of the value thereof was included in computing the taxpayer's income otherwise than under section 7, the amount so included shall be added in computing the cost to the taxpayer of that property, except to the extent that the amount was otherwise added to the cost or included in computing the adjusted cost base to the taxpayer of the property.

Subsec. 52(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 14, applicable after October 16, 1991. Subsec. 52(1) formerly read:

> (1) For the purposes of this subdivision, where a taxpayer has acquired property after 1971 (other than an annuity contract or property acquired as described in subsection (2), (3) or (6)) and an amount in respect of the value thereof has been included in computing the taxpayer's income otherwise than under section 7, the amount so included shall be added in computing the cost to the taxpayer of that property.

Interpretation Bulletins: IT-96R6: Options to acquire shares, bonds or debentures and by trusts to acquire trust units; IT-432R2: Benefits conferred on shareholders.

(1.1) [Repealed]

History: Subsec. 52(1.1) repealed by 2001, c. 17, subsec. 35(1), applicable after 1999. It formerly read:

> (1.1) Idem, where owner non-resident — For the purposes of this subdivision, where a non-resident person has acquired property after 1971 (other than property acquired as described in subsection (2), (3) or (6)) that would, if that person disposed of it, be taxable Canadian property of that person and
>
> (a) an amount in respect of the value thereof has been included, otherwise than under section 7, in computing that person's taxable income earned in Canada, or
>
> (b) an amount in respect of the value thereof has, for the purposes of computing the tax payable by that person under Part XIII, been included in an amount that has been paid or credited to that person,
>
> the amount so included shall be added in computing the cost to that person of that property.

(2) Cost of property received as dividend in kind — Where any property has, after 1971, been received by a shareholder of a corporation at any time as, on account or in lieu of payment of, or in satisfaction of, a dividend payable in kind (other than a stock dividend) in respect of a share owned by the shareholder of the capital stock of the corporation, the shareholder shall be deemed to have acquired the property at a cost to the shareholder equal to its fair market value at that time, and the corporation shall be deemed to have disposed of the property at that time for proceeds equal to that fair market value.

Related Provisions: 69(5)(c) — No application to property appropriated by shareholder on winding-up; 80.1(4) — Assets acquired from foreign affiliate of taxpayer as dividend in kind or as benefit to taxpayer; 86.1(1)(b) — No application to eligible distribution (foreign spin-off).

I.T. Technical News: 11 (U.S. spin-offs (divestitures) — dividends in kind).

(3) Cost of stock dividend — Where a shareholder of a corporation has, after 1971, received a stock dividend in respect of a share owned by the shareholder of the capital stock of the corporation, the shareholder shall be deemed to have acquired the share or shares received by the shareholder as a stock dividend at a cost to the shareholder equal to the total of

(a) where the stock dividend is a dividend, the amount of the stock dividend,

(a.1) where the stock dividend is not a dividend, nil, and

(b) where an amount is included in the shareholder's income in respect of the stock dividend under subsection 15(1.1), the amount so included.

Related Provisions: 95(7) — Stock dividends from foreign affiliates.

History: Paras. 52(3)(a), (a.1) substituted for para. (a) by 1994, c. 7, Sch. II (1991, c. 49), s. 29, applicable to stock dividends paid after May 23, 1985. Para. 52(3)(a) formerly read:

> (a) the amount of the stock dividend, and

Interpretation Bulletins: IT-88R2: Stock dividends.

(4) Cost of property acquired as prize — Where any property has been acquired by a taxpayer at any time after 1971 as a prize in connection with a lottery scheme, the taxpayer shall be deemed to have acquired the property at a cost to the taxpayer equal to its fair market value at that time.

Related Provisions: 40(2)(f) — No gain or loss on disposition of chance to win or right to receive a prize.

Interpretation Bulletins: IT-213R: Prizes from lottery schemes and giveaway contests.

Registered Charities Newsletters: 22 (property won through a lottery).

(5) [Repealed under former Act]

(6) [Repealed]

History: Subsec. 52(6) repealed by 2001, c. 17, subsec. 35(2), applicable after 1999, but not to rights that were acquired before 2000 and disposed of before March 2000. It formerly read:

> (6) Cost of right to receive from trust — Notwithstanding subsection (1), where a beneficiary under a trust acquires a right to enforce payment by the trust of an amount out of a capital gain or the income of the trust (determined without reference to the provisions of this Act) for the taxation year of the trust in which the right was acquired by the beneficiary, for the purposes of this subdivision, the cost to the beneficiary of the right shall be deemed to be the amount that became so payable.

Interpretation Bulletins: IT-286R2: Trusts — amounts payable; IT-390: Unit trusts — cost of rights and adjustments to cost base (archived).

(7) Cost of shares of subsidiary — Notwithstanding any other provision of this Act, where a corporation disposes of property to another corporation in a transaction to which paragraph 219(1)(l) applies, the cost to it of any share of a particular class of the capital stock of the other corporation received by it as consideration for the property is deemed to be the lesser of the cost of the share to the corporation otherwise determined immediately after the disposition and the amount by which the paid-up capital in respect of that class increases because of the issuance of the share.

History: Subsec. 52(7) amended by 1998, c. 19, s. 93, applicable to taxation years that begin after 1995. The subsec. formerly read:

> (7) Notwithstanding any other provision of this Act, where a corporation has disposed of property to its subsidiary wholly-owned corporation in a transaction to which paragraph 219(1)(k) applies, the cost to it of any share of a particular class of the capital stock of the subsidiary corporation received by it as consideration for the property shall be deemed to be equal to the lesser of the cost of the share to the corporation otherwise determined immediately after the disposition and the amount, if any, by which the paid-up capital of that class increased by virtue of the issuance of that share.

Interpretation Bulletins: IT-137R3: Additional tax on certain corporations carrying on business in Canada.

(8) Cost of shares of immigrant corporation — Notwithstanding any other provision of this Act, where at any time a corporation becomes resident in Canada, the cost to any shareholder who is not at that time resident in Canada of any share of the corporation's capital stock, other than a share that was taxable Canadian property immediately before that time, is deemed to be equal to the fair market value of the share at that time.

Related Provisions: 53(1)(b.1), (c) — Additions to ACB of share; 128.1(1)–(3) — Effect of corporation's immigration; 250(4), (5) — Residence of corporation.

History: Subsec. 52(8) amended by 1999, c. 22, s. 13, applicable in respect of corporations that become resident in Canada after February 23, 1998. The subsec. formerly read:

> (8) Cost of shares on immigration [of corporation] — Notwithstanding any other provision of this Act, where at any time a corporation becomes resident in Canada, the cost to any shareholder that is not at that time resident in Canada of any share of the capital stock of the corporation shall be deemed to be equal to the lesser of that cost otherwise determined and the paid-up capital in respect of the share immediately after that time.

Subsec. 52(8) added by 1994, c. 21, s. 21, applicable to dispositions occurring after 1992.

Definitions [s. 52]: "adjusted cost base" — 54, 248(1); "amount" — 95(7), 248(1); "annuity" — 248(1); "Canada" — 255; "capital gain" — 39(1)(a), 248(1); "capital interest" — 108(1), 248(1); "class of shares" — 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition" — 248(1); "dividend" — 248(1); "employees profit sharing plan" — 144(1), 248(1); "non-resident" — 248(1); "paid-up capital" — 89(1), 248(1); "person", "property" — 248(1); "resident in Canada" — 94(3)(a)(viii), 250; "share", "shareholder", "stock dividend", "subsidiary wholly-owned corporation" — 248(1); "taxable Canadian property" — 248(1); "taxable income", "taxable income earned in Canada" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "unit trust" — 108(2), 248(1).

53. (1) Adjustments to cost base [additions to ACB] — In computing the adjusted cost base to a taxpayer of property at any time, there shall be added to the cost to the taxpayer of the property such of the following amounts in respect of the property as are applicable:

(a) **[negative ACB]** — any amount deemed by subsection 40(3) to be a gain of the taxpayer for a taxation year from a disposition before that time of the property;

(b) **[share, where 84(1) applied]** — where the property is a share of the capital stock of a corporation resident in Canada, the amount of any dividend on the share deemed by subsection 84(1) to have been received by the taxpayer before that time;

(b.1) **[share of immigrant corporation]** — where the property is a share of the capital stock of a corporation, the amount of any dividend deemed by paragraph 128.1(1)(c.2) to have been received in respect of the share by the taxpayer before that time and while the taxpayer was resident in Canada;

Related Provisions: 52(8) — Cost of share to non-resident.

History: Para. 53(1)(b.1) added by 1999, c. 22, subsec. 14(1), applicable after February 23, 1998.

(c) **[share, where contribution of capital made]** — where the property is a share of the capital stock of a corporation and the taxpayer has, after 1971, made a contribution of capital to the corporation otherwise than by way of a loan, by way of a disposition of shares of a foreign affiliate of the taxpayer to which subsection 85.1(3) or paragraph 95(2)(c) applies or, subject to subsection (1.1), a disposition of property in respect of which the taxpayer and the corporation have made an election under section 85, that proportion of such part of the amount of the contribution as cannot reasonably be regarded as a benefit conferred by the taxpayer on a person (other than the corporation) who was related to the taxpayer that

> (i) the amount that may reasonably be regarded as the increase in the fair market value, as a result of the contribution, of the share

is of

> (ii) the amount that may reasonably be regarded as the increase in the fair market value, as a result of the contribution, of all shares of the capital stock of the corporation owned by the taxpayer immediately after the contribution;

Related Provisions: 52(8) — Cost to non-resident of share of corporation that becomes resident in Canada; 53(1)(j) — Addition to ACB of share on which stock option benefit received; 53(1.1) — Deemed contribution of capital.

Interpretation Bulletins: IT-291R3: Transfer of property to a corporation under subsection 85(1); IT-456R: Capital property — some adjustments to cost base; IT-527: Distress preferred shares.

(d) **[share of foreign affiliate]** — where the property is a share of the capital stock of a foreign affiliate of the taxpayer, any amount required by paragraph 92(1)(a) to be added in computing the adjusted cost base to the taxpayer of the share;

Related Provisions: 91(6) — Amounts deductible in respect of dividends received.

(d.01) **[share of demutualized insurer]** — where the property is a share of the capital stock of a corporation, any amount required by paragraph 139.1(16)(l) to be added in computing the adjusted cost base to the taxpayer of the share;

History: Para. 53(1)(d.01) added by 2000, c. 19, s. 4, applicable after December 15, 1998.

(d.1) **[capital interest in trust]** — where the property is a capital interest of the taxpayer in a trust to which paragraph 94(1)(d) applies, any amount required by paragraph 94(5)(a) to be added in computing the adjusted cost base to the taxpayer of the interest;

Proposed Amendment — 53(1)(d.1)

(d.1) any amount required by paragraph 94(5)(a) (as that paragraph read in its application to taxation years that include December 31, 2000) to be added in computing the adjusted cost base to the taxpayer of the property;

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 8(1), will amend para. 53(1)(d.1) to read as above, applicable to taxation years that begin after 2002, and to

(a) taxation years of a taxpayer that begin after 2000 if a trust, in which the taxpayer had a capital interest at any time in 2001, makes a valid election under para. (a) of the Application of the amendment to s. 94; and

(b) taxation years of a taxpayer that begin after 2001 if a trust, in which the taxpayer had a capital interest at any time in 2002, makes a valid election under para. (a) or (b) of the Application of the amendment to s. 94.

Technical Notes: Paragraph 53(1)(d.1), applied together with existing paragraph 94(5)(a), provides for an addition in computing the adjusted cost base (ACB) to a taxpayer of the taxpayer's capital interest in a trust to which existing paragraph 94(1)(d) applies. Paragraph 53(1)(d.1) is amended to ensure that historical ACB additions are maintained, notwithstanding the replacement of the rules in existing section 94.

This amendment applies to taxation years that begin after 2002.

It also applies to taxation years of a taxpayer that begin

- after 2000 if a trust, in which the taxpayer had a capital interest at any time in 2001, makes a valid election under paragraph (a) of the coming-into-force provision for new section 94, and
- after 2001 if a trust, in which the taxpayer had a capital interest at any time in 2002, makes a valid election under paragraph (b) of the coming-into-force provision for new section 94.

Because of the possibility of such an election, amended paragraph 53(1)(d.1) refers to paragraph 94(5)(a) as it read for taxation years that include December 31, 2000.

Related Provisions: 53(2)(h), (i), (j) — Deductions from adjusted cost base — interest in a trust.

(d.2) **[unit in mutual fund trust]** — where the property is a unit in a mutual fund trust, any amount required by subsection 132.1(2) to be added in computing the adjusted cost base to the taxpayer of the unit;

(d.3) **[share]** — where the property is a share of the capital stock of a corporation of which the taxpayer was, at any time, a specified shareholder, any expense incurred by the taxpayer in respect of land or a building of the corporation that was by reason of subsection 18(2) or (3.1) not deductible by the taxpayer in computing the taxpayer's income for any taxation year commencing before that time;

Related Provisions: 10(1.1) — Effect of 53(1)(d.3) on cost of land inventory; 53(1)(h) — Where land owned directly by taxpayer.

Interpretation Bulletins: IT-153R3: Land developers — subdivision and development costs and carrying charges on land.

(e) **[partnership interest]** — where the property is an interest in a partnership,

(i) an amount in respect of each fiscal period of the partnership ending after 1971 and before that time, equal to the total of all amounts each of which is the taxpayer's share (other than a share under an agreement referred to in subsection 96(1.1)) of the income of the partnership from any source for that fiscal period, computed as if this Act were read without reference to

(A) the fractions set out in subsection 14(5), paragraphs 38(a) to (a.2), subsection 41(1) and in the formula in paragraph 14(1)(b),

Proposed Amendment — 53(1)(e)(i)(A)

Letter from Dept. of Finance, January 29, 2004:

Dear [xxx]

I am writing further to your e-mail of May 26, 2003 to Mr. Ed Short of this office concerning the adjustment to the cost base of a partnership interest in respect of the exempt gain of a partnership from a disposition to a designated institution of cultural property that is certified by the *Cultural Property Export Review Board*.

As you are aware, the full amount of a partnership's capital gain from the disposition of property is added to the adjusted cost base (ACB) of the members' interest in the partnership, by clause 53(1)(e)(i)(A) of the *Income Tax Act* (the "Act"). However, since gains from certified cultural property are excluded from the definition of capital gains, such gains generated within a partnership are not added in computing the members' ACB of their partnership interest. Consequently, the disposition by a partnership of a certified cultural property to a designated institution may result in a capital gain to the partners on the disposition of their interest.

In this regard, we are prepared to recommend to the Minister of Finance that subsection 53(1) of the Act be amended to provide that the exempt gain from the disposition of a certified cultural property be included in computing the ACB of a partnership interest, except such property that is related to a tax shelter gifting arrangement. We will recommend that such an amendment apply in respect of dispositions of certified cultural property made after 2003.

Thank you for bringing this matter to my attention.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

(A.1) paragraph 18(1)(l.1),

(A.2) the description of C in the formula in paragraph 14(1)(b), and

(B) paragraph (i), paragraphs 12(1)(o) and (z.5), 18(1)(m), 20(1)(v.1) and 29(1)(b) and (2)(b), section 55, subsections 69(6) and (7) and paragraph 82(1)(b) of this Act and paragraphs 20(1)(gg) and 81(1)(r) and (s) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, and the provisions of the *Income Tax Application Rules* relating to income from the operation of new mines,

(ii) the taxpayer's share of any capital dividends and any life insurance capital dividends received by the partnership before that time on shares of the capital stock of a corporation that were partnership property,

(iii) the taxpayer's share of the amount, if any, by which

(A) any proceeds of a life insurance policy received by the partnership after 1971 and before that time in consequence of the death of any person whose life was insured under the policy,

exceeds

(B) the adjusted cost basis (within the meaning assigned by subsection 148(9)) of the policy to the partnership immediately before that person's death,

(iv) where the taxpayer has, after 1971, made a contribution of capital to the partnership otherwise than by way of loan, such part of the amount of the contribution as cannot reasonably be regarded as a

benefit conferred on any other member of the partnership who was related to the taxpayer,

Proposed Addition — 53(1)(e)(iv.1)

(iv.1) each amount that is in respect of a specified amount described in subsection 80.2(1) and that is paid by the taxpayer to the partnership, to the extent that the amount paid is not deductible in computing the income of the taxpayer,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 65(1), will add subpara. 53(1)(e)(iv.1), applicable to payments made in taxation years that end after 2002.

Technical Notes: Paragraph 53(1)(e) provides for additions to the adjusted cost base of a taxpayer's partnership interest. This paragraph is being amended, by adding new subparagraph (iv.1), effective for payments made in taxation years that end after 2002. New subparagraph 53(1)(e)(iv.1) provides for an addition to the taxpayer's adjusted cost base in circumstances where the taxpayer makes a payment to a partnership that is described in subsection 80.2(1). The addition to the adjusted cost base is equal to the amount of the payment that is not deductible in computing the income of the taxpayer.

(v) where the time is immediately before the taxpayer's death and the taxpayer was at that time a member of a partnership, the value, at the time of the taxpayer's death, of the rights or things referred to in subsection 70(2) in respect of a partnership interest held by the taxpayer immediately before the taxpayer's death, other than an interest referred to in subsection 96(1.5),

(vi) any amount deemed by subsection 40(3.1) to be a gain of the taxpayer for a taxation year from a disposition before that time of the property,

(vii) any amount deemed by paragraph 98(1)(c) or 98.1(1)(c) to be a gain of the taxpayer for a taxation year from a disposition before that time of the property,

(vii.1) a share of the taxpayer's Canadian development expense or Canadian oil and gas property expense that was deducted at or before that time in computing the adjusted cost base to the taxpayer of the interest because of subparagraph (2)(c)(ii) and in respect of which the taxpayer elected under paragraph (f) of the definition "Canadian development expense" in subsection 66.2(5) or paragraph (b) of the definition "Canadian oil and gas property expense" in subsection 66.4(5), as the case may be,

(viii) an amount deemed, before that time, by subsection 66.1(7), 66.2(6) or 66.4(6) to be an amount referred to in the description of G in the definition "cumulative Canadian exploration expense" in subsection 66.1(6), paragraph (a) of the description of F in the definition "cumulative Canadian development expense" in subsection 66.2(5) or the description of G in that definition, or paragraph (a) of the description of F in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5) or the description of G in that definition in respect of the taxpayer,

(ix) the amount, if any, by which

(A) the taxpayer's share of the amount of any assistance or benefit that the partnership received or became entitled to receive after 1971 and before that time from a government, municipality or other public authority, whether as a grant, subsidy, forgivable loan, deduction from royalty or tax, investment allowance or any other form of assistance or benefit, in respect of or related to a Canadian resource property or an exploration or development expense incurred in Canada

exceeds

(B) the part, if any, of the amount included in clause (A) in respect of the interest that was repaid before that time by the taxpayer under a legal obligation to repay all or any part of the amount,

(x) any amount required by section 97 to be added before that time in computing the adjusted cost base to the taxpayer of the interest,

(xi) of which the taxpayer's share of any income or loss of the partnership was, at any time, 10% or more, any expense incurred by the taxpayer in respect of land or a building of the partnership that was by reason of subsection 18(2) or (3.1) not deductible by the taxpayer in computing the taxpayer's income for any taxation year commencing before that time,

(xii) any amount required by paragraph 110.6(23)(a) to be added at that time in computing the adjusted cost base to the taxpayer of the interest, and

(xiii) any amount required by subsection 127(30) to be added to the taxpayer's tax otherwise payable under this Part for a taxation year that ended before that time;

Proposed Amendment — 53(1)(e)

Letter from Dept. of Finance, July 16, 2004:

Dear [xxx]

Thank you for your letter of January 27, 2004 to Davine Roach of this Division concerning the interaction among subsection 59(1.1) and paragraphs 53(1)(e) and 96(1)(d) of the *Income Tax Act* (the "Act"). In particular, your concern relates to the application of these provisions in circumstances where a partnership disposes of a foreign resource property ("FRP").

Where a taxpayer is a member of a partnership, the taxpayer's share of the net proceeds of disposition of a FRP disposed of by the partnership is deemed by subsections 59(1) and (1.1) of the Act to be included in the taxpayer's income. However, there is no provision of the Act that permits an addition to the adjusted cost base ("ACB") of the partnership interest held by the taxpayer. You submit that this is an inappropriate tax result because a subsequent distribution of the net proceeds realized on the disposition of the FRP by the partnership would reduce the ACB of the taxpayer's partnership interest. Since the ACB of the taxpayer's partnership interest was not increased to reflect the fact that this amount was already included in the taxpayer's income, the taxpayer would be subject to double taxation.

In your letter, you noted that paragraph 96(1)(d) of the Act was amended, applicable to partnership fiscal periods that begin after 2000, to include a reference to subsection 59(1). As a result of this change, you submit that a concurrent amendment to paragraph 53(1)(e) is required to ensure that the proceeds of disposition deemed to become receivable by a partner under subsection 59(1.1) are added to the ACB of that partner's partnership interest.

We agree that the proceeds of disposition of a FRP that are deemed by subsection 59(1.1) of the Act to become receivable by a member of a partnership and that are excluded in computing the income of the partnership by paragraph 96(1)(d) should be added to the ACB of that member's partnership interest. Accordingly, we are prepared to recommend that paragraph 53(1)(e) be amended, applicable to fiscal periods that begin after 2000, to include in the ACB of a partner's partnership interest, an amount equal to the amount deemed to be receivable by the partner pursuant to subsection 59(1.1). While I cannot, as you know, offer an assurance that either the Minister or Parliament will agree with our recommendation, I hope that this statement of our position is helpful to you.

Yours sincerely,

Brian Ernewein

Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 10(1.1) — Cost of land inventory; 40(3.13) — Artificial transactions affecting partnership capital; 53(2)(c) — Reduction in adjusted cost base — partnership interest; 70(6)(d.1)(iii) — Where transfer or distribution to spouse or trust; 70(9.2)(c)(iii) — Transfer of family farm corporations and partnerships; 70(9.3)(e)(iii) — Transfer of family farm corporation or partnership from spouse's trust to children of settlor; 87(2)(e.1) — Amalgamations — cost of partnership interest; 96(1.01)(b) — Deemed end of fiscal period when taxpayer ceases to be partner; 96(1.9) — Foreign trusts and other foreign investment entities; 248(8) — Occurrences as a consequence of death; 248(16), (16.1) — GST or QST input tax credit/refund and rebate deemed to be assistance; 248(18), (18.1) — GST or QST — repayment of input tax credit or refund.

History: Cls. 53(1)(e)(i)(A) and (A.1) amended, and cl. (A.2) added, by 2001, c. 17, subsec. 36(1), applicable in respect of fiscal periods that end after February 27, 2000 and, for fiscal periods that ended after February 18, 1997 and before February 28, 2000, cl. 53(1)(e)(i)(A) shall be read as follows:

> "(A) the fractions set out in subsection 14(5), paragraphs 38(a) and (a.1) and subsection 41(1),"

Cls. 53(1)(e)(i)(A) and (A.1) formerly read:

> (A) the fractions set out in subsection 14(5), paragraph 38(a) and subsection 41(1),
>
> (A.1) paragraph 18(1)(l.1), and

Subpara. 53(1)(e)(xiii) added by 1999, c. 22, subsec. 14(2), applicable to 1998 *et seq.*

Cl. 53(1)(e)(i)(B) amended by 1997, c. 25, subsec. 7(1), applicable for the purpose of computing the adjusted cost base of property after 1996. Cl. (e)(i)(B) formerly read:

> (B) paragraph (i), paragraphs 12(1)(o), 18(1)(m), 20(1)(v.1) and 29(1)(b) and (2)(b), section 55, subsections 69(6) and (7) and paragraph 82(1)(b) of this Act and paragraphs 20(1)(gg) and 81(1)(r) and (s) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, and the provisions of the *Income Tax Application Rules* relating to income from the operation of new mines,

New subpara. 53(1)(e)(vi) added by 1995, c. 3, subsec. 14(1), applicable after February 21, 1994.

Subpara. 53(1)(e)(xii) added by 1995, c. 3, subsec. 14(2), applicable to 1994 *et seq.*

Subpara. 53(1)(e)(vii.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 15(1), applicable after July 1990.

Subpara. 53(1)(e)(ix) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 30(1), applicable for the purposes of computing the adjusted cost base of an interest in a partnership after January 1990. Subpara. (e)(ix) formerly read:

> (ix) the taxpayer's share of the amount of any assistance or benefit that the partnership has received or has become entitled to receive after 1971 and before that time from a government, municipality or other public authority, whether as a grant, subsidy, forgivable loan, deduction from royalty or tax, investment allowance or any other form of assistance or benefit, in respect of or related to a Canadian resource property or an exploration or development expense incurred in Canada,

I.T. Application Rules: 26(9)–(9.4) (where taxpayer became partner before 1972); 69 (meaning of "chapter 148 of ..." in cl. 53(1)(e)(i)(B))).

Interpretation Bulletins: IT-153R3: Land developers — subdivision and development costs and carrying charges on land; IT-242R: Retired partners; IT-278R2: Death of a partner or of a retired partner; IT-338R2: Partnership interests — effects on ACB of admission or retirement of a partner (archived); IT-353R2: Partnership interests — some adjustments to cost base (archived); IT-430R3: Life insurance proceeds received by a private corporation or a partnership as a consequence of death; IT-471R: Merger of partnerships.

I.T. Technical News: 5 (adjusted cost base of partnership interest); No. 9 (calculation of ACB of a partnership interest); 12 (adjusted cost base of partnership interest — subparagraph 53(1)(e)(viii)).

Forms: T2065: Determination of adjusted cost base of a partnership interest; T5015: Reconciliation of partner's capital account; T5016: Summary information for tax shelters that are partnerships or for partnerships that allocated renounced resource expenses to their members.

(f) **[substituted property]** — where the property is substituted property (within the meaning assigned by paragraph (a) of the definition "superficial loss" in section 54) of the taxpayer, the amount, if any, by which

> (i) the amount of the loss that was, because of the acquisition by the taxpayer of the property, a superficial loss of any taxpayer from a disposition of a property
>
> exceeds
>
> (ii) where the property disposed of was a share of the capital stock of a corporation, the amount that would, but for paragraph 40(2)(g), be deducted under subsection 112(3), (3.1) or (3.2) in computing the loss of any taxpayer in respect of the disposition of the share;

Related Provisions: 40(2)(g)(i) — Superficial loss denied; 40(2)(h) — Loss on disposition of share of controlled corporation; 142.4(1)"tax basis"(h) — Disposition of specified debt obligation by financial institution.

History: Para. 53(1)(f) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 30(2), applicable for the purposes of computing the adjusted cost base of property after July 13, 1990. Para. 53(1)(f) formerly read:

> (f) where the property is substituted property (within the meaning assigned by the definition "superficial loss" in section 54) of the taxpayer, the amount of the loss that was, by virtue of the acquisition by the taxpayer of the property, a superficial loss of any taxpayer;

Interpretation Bulletins: IT-291R3: Transfer of property to a corporation under subsection 85(1); IT-456R: Capital property — some adjustments to cost base.

(f.1) **[property disposed of at loss by other corporation]** — where the taxpayer is a taxable Canadian corporation and the property was disposed of by another taxable Canadian corporation to the taxpayer in circumstances such that

> (i) paragraph (f.2) does not apply to increase the adjusted cost base to the other corporation of shares of the capital stock of the taxpayer, and
>
> (ii) the capital loss from the disposition was deemed by paragraph 40(2)(e.1) (or, where the property was acquired by the taxpayer before 1996, by paragraph 40(2)(e) or 85(4)(a) as those paragraphs read in their application to property acquired before April 26, 1995) to be nil,
>
> the amount that would otherwise have been the capital loss from the disposition;

Related Provisions: 53(1)(f.11) — Alternative addition to ACB on dispositions subject to para. 40(2)(e.1); 142.4(1)"tax basis"(h) — Disposition of specified debt obligation by financial institution.

History: Para. 53(1)(f.1) amended by 1998, c. 19, subsec. 94(1), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995. The para. formerly read:

> (f.1) where the taxpayer is a taxable Canadian corporation and the property was disposed of by another taxable Canadian corporation to the taxpayer in circumstances such that paragraph (f.2) does not apply so as to increase the adjusted cost base to the other corporation of shares of the capital stock of the taxpayer and the capital loss from the disposition was deemed by paragraph 40(2)(e) or (e.1) or 85(4)(a) to be nil, the amount that would otherwise have been the capital loss from the disposition;

Advance Tax Rulings: ATR-57: Transfer of property for estate planning purposes; ATR-66: Non-arm's length transfer of debt followed by a winding-up and a sale of shares.

(f.11) **[property disposed of at loss by other person]** — where the property was disposed of by a person (other than a non-resident person or a person exempt from tax under this Part on the person's taxable income) or by an eligible Canadian partnership (as

defined in subsection 80(1)) to the taxpayer in circumstances such that

(i) paragraph (f.1) does not apply to increase the adjusted cost base to the taxpayer of the property,

(ii) paragraph (f.2) does not apply to increase the adjusted cost base to that person of shares of the capital stock of the taxpayer, and

(iii) the capital loss from the disposition was deemed by paragraph 40(2)(e.1) (or, where the property was acquired by the taxpayer before 1996, by paragraph 85(4)(a) as it read in its application to property acquired before April 26, 1995) to be nil,

the amount that would otherwise be the capital loss from the disposition;

History: Para. 53(1)(f.11) amended by 1998, c. 19, subsec. 94(1), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995. The para. formerly read:

(f.11) where the property was disposed of by a person (other than a non-resident person or a person exempt from tax under this Part on the person's taxable income) or by an eligible Canadian partnership (within the meaning assigned by subsection 80(1)) to the taxpayer in circumstances such that paragraph (f.1) does not apply so as to increase the adjusted cost base to the taxpayer of the property, paragraph (f.2) does not apply so as to increase the adjusted cost base to that person of shares of the capital stock of the taxpayer and the capital loss from the disposition was deemed by paragraph 40(2)(e.1) or 85(4)(a) to be nil, the amount that would otherwise be the capital loss from the disposition;

(f.12) **[commercial obligation owing to taxpayer]** — where the property is a particular commercial obligation (in this paragraph having the meaning assigned by subsection 80(1)) payable to the taxpayer as consideration for the settlement or extinguishment of another commercial obligation payable to the taxpayer and the taxpayer's loss from the disposition of the other obligation was reduced because of paragraph 40(2)(e.2), the proportion of the reduction that the principal amount of the particular obligation is of the total of all amounts each of which is the principal amount of a commercial obligation payable to the taxpayer as consideration for the settlement or extinguishment of that other obligation;

(f.2) **[share, after transfer of other shares to corporation]** — where the property is a share, any amount required by paragraph 40(3.6)(b) (or, where the property was acquired by the taxpayer before 1996, by paragraph 85(4)(b) as it read in its application to property disposed of before April 26, 1995) to be added in computing the adjusted cost base to the taxpayer of the share;

Related Provisions: 53(1)(f.1), (f.11) — Para. (f.2) takes precedence over (f.1) and (f.11).

History: Para. 53(1)(f.2) amended by 1998, c. 19, subsec. 94(2), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995. The para. formerly read:

(f.2) where the property is a share of the capital stock of a corporation, any amount required by paragraph 85(4)(b) to be added in computing the adjusted cost base to the taxpayer of the share;

Para. 53(1)(f.1) amended and paras. (f.11) and (f.12) added by 1995, c. 21, subsec. 17(1), applicable to taxation years that end after February 21, 1994. Para. 53(1)(f.1) formerly read:

(f.1) where the property has been disposed of by a taxable Canadian corporation to the taxpayer, and the taxpayer is a taxable Canadian corporation, in circumstances such that paragraph 85(4)(b) does not apply so as to increase the adjusted cost base to the corporation of shares of the capital stock of the taxpayer, and the corporation's capital loss from the disposition has been deemed by paragraph 40(2)(e) or 85(4)(a) to be nil, the amount that would otherwise have been the corporation's capital loss from the disposition;

Interpretation Bulletins: IT-456R: Capital property — some adjustments to cost base.

(g) **[bond, mortgage, etc.]** — where the property is a bond, debenture, bill, note, mortgage, hypothecary claim or similar obligation, the amount, if any, by which the principal amount of the obligation exceeds the amount for which the obligation was issued, if the excess was required by subsection 16(2) or (3) to be included in computing the income of the taxpayer for a taxation year commencing before that time;

History: Para. 53(1)(g) amended to add "hypothecary claim" and to replace "such excess" with "the excess" by 2001, c. 17, s. 206, in force June 14, 2001.

(g.1) **[indexed debt obligation]** — where the property is an indexed debt obligation, any amount determined under subparagraph 16(6)(a)(i) in respect of the obligation and required to be included in computing the taxpayer's income for a taxation year beginning before that time;

Related Provisions: 53(2)(l.1) — Reduction in adjusted cost base — indexed debt obligation.

History: Para. 53(1)(g.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 15(2), applicable with respect to indexed debt obligations issued after October 16, 1991.

(h) **[land]** — where the property is land of the taxpayer, any amount paid by the taxpayer or by another taxpayer in respect of whom the taxpayer was a person, corporation or partnership described in subparagraph (b)(i), (ii) or (iii) of the definition "interest on debt relating to the acquisition of land" in subsection 18(3), after 1971 and before that time pursuant to a legal obligation to pay

(i) interest on debt relating to the acquisition of land (within the meaning assigned by subsection 18(3)), or

(ii) property taxes (not including income or profits taxes or taxes imposed by reference to the transfer of property) paid by the taxpayer in respect of the property to a province or to a Canadian municipality

to the extent that the amount was, because of subsection 18(2),

(iii) not deductible in computing the taxpayer's income from the land or from a business for any taxation year beginning before that time, or

(iv) not deductible in computing the income of the other taxpayer and was not included in or added to the cost to the other taxpayer of any property otherwise than because of subparagraph (d.3) or subparagraph (e)(xi);

Related Provisions: 43.1(2) — Life estates in real property; 53(1)(d.3) — Where land owned through a corporation.

History: The portion of para. 53(1)(h) after subpara. (ii) amended by 1999, c. 22, subsec. 14(3), applicable after February 23, 1998. That portion formerly read:

to the extent that that amount was neither deductible because of subsection 18(2) in computing the taxpayer's income from the land or from a business for any taxation year beginning before that time nor in computing the income of another person in respect of whom the taxpayer was a person, corporation or partnership described in subparagraph (b)(i), (ii) or (iii) of the definition "interest on debt relating to the acquisition of land" in subsection 18(3), and was not included in or added to the cost to that other person of any property otherwise than because of paragraph (d.3) or subparagraph (e)(xi);

Subpara. 53(1)(h)(i) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 30(3), applicable to 1988 *et seq.* Subpara. 53(1)(h)(i) formerly read:

> (i) interest on debt relating to the acquisition of land, or an amount payable by the taxpayer for the land, or

That portion of para. 53(1)(h) following subpara. (ii) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 30(4), applicable to 1988 *et seq.* That portion formerly read:

> to the extent that that amount was not deductible by reason of subsection 18(2) in computing the taxpayer's income from the land or from a business for any taxation year commencing before that time or, by reason of subsection 18(3), in computing the income of another taxpayer in respect of whom the taxpayer was a person, corporation or partnership described in subparagraph (b)(i), (ii) or (iii) of the definition "interest on debt relating to the acquisition of land" in subsection 18(3), where that amount was not included in the cost to that other taxpayer of any property other than by reason of paragraph (d.3) or subparagraph (e)(xi);

Interpretation Bulletins: IT-456R: Capital property — some adjustments to cost base.

(i) **[land used in farming]** — where the property is land used in a farming business carried on by the taxpayer, an amount in respect of each taxation year ending after 1971 and commencing before that time, equal to the taxpayer's loss, if any, for that year from the farming business, to the extent that the loss

(i) was not, by virtue of section 31, deductible in computing the taxpayer's income for that year,

(ii) was not deducted in computing the taxpayer's taxable income for the taxation year in which the taxpayer disposed of the property or any preceding taxation year,

(iii) did not exceed the total of

(A) taxes (other than income or profits taxes or taxes imposed by reference to the transfer of the property) paid by the taxpayer in that year or payable by the taxpayer in respect of that year to a province or a Canadian municipality in respect of the property, and

(B) interest, paid by the taxpayer in that year or payable by the taxpayer in respect of that year, pursuant to a legal obligation to pay interest on borrowed money used to acquire the property or on any amount as consideration payable for the property,

to the extent that those taxes and interest were included in computing the loss, and

(iv) did not exceed the remainder obtained when

(A) the total of each of the taxpayer's losses from the farming business for taxation years preceding that year (to the extent that they are required by this paragraph to be added in computing the taxpayer's adjusted cost base of the property),

is deducted from

(B) the amount, if any, by which the taxpayer's proceeds of disposition of the property exceed the adjusted cost base to the taxpayer of the property immediately before that time, determined without reference to this paragraph;

Related Provisions: 96(1)(e) — Partnerships — gains to be computed without reference to para. 53(1)(i); 101 — Corresponding rule for partnerships; 111(1)(c), (d) — Farming loss carryovers; 111(3) — Limitations on deductibility of loss carryover; 111(6) — Limitation.

Interpretation Bulletins: IT-232R2: Non-capital losses, net capital losses, restricted farm losses, farm losses and limited partnership losses — their composition and deductibility in computing taxable income.

(j) **share or fund unit taxed as stock option benefit** — if the property is a security (within the meaning assigned by subsection 7(7)) and, in respect of its acquisition by the taxpayer, a benefit was deemed by section 7 to have been received in any taxation year that ends after 1971 and begins before that time by the taxpayer or by a person that did not deal at arm's length with the taxpayer or, if the security was acquired after February 27, 2000, would have been so deemed if section 7 were read without reference to subsections 7(1.1) and (8), the amount of the benefit that was, or would have been, so deemed to have been received;

Related Provisions: 7(1.6), 128.1(4)(d.1) — Effect of emigration on disposition of share or fund unit; 49(3)(b) — Where option to acquire exercised.

History: Para. 53(1)(j) amended by 2001, c. 17, subsec. 36(2), applicable after 1999. The para. formerly read:

> (j) if the property is a share or unit and, in respect of its acquisition by the taxpayer, a benefit was deemed by section 7 to have been received in any taxation year that ends after 1971 and begins before that time by the taxpayer or by a person that did not deal at arm's length with the taxpayer, the amount of the benefit so deemed to have been received;

Para. 53(1)(j) amended by 1999, c. 22, subsec. 14(4), applicable in computing the adjusted cost base of a share acquired after 1984 and of a unit acquired after February 1998. The para. formerly read:

> (j) [share taxed as stock option benefit] — where the property is a share and, in respect of its acquisition by the taxpayer, a benefit was deemed by section 7 to have been received in any taxation year ending after 1971 and commencing before that time by the taxpayer or by a person that did not deal at arm's length with the taxpayer, the amount of the benefit so deemed to have been received;

Selected Cases [para. 53(1)(j)]: *Mansfield v. R.*, [1983] C.T.C. 97 (FCTD); aff'd [1984] C.T.C. 547 (FCA); leave to appeal to SCC refused (1985), 58 N.R. 237 (Debentures converted into common shares constitute conferred employment benefit; value added to adjusted cost base).

Interpretation Bulletins: IT-96R6: Options to acquire shares, bonds or debentures and by trusts to acquire trust units; IT-113R4: Benefits to employees — stock options.

I.T. Technical News: 19 (Disposition of identical properties acquired under a section 7 securities option).

(k) **[expropriation asset]** — where the property is an expropriation asset of the taxpayer (within the meaning assigned by section 80.1) or an asset of the taxpayer assumed for the purposes of that section to be an expropriation asset thereof, any amount required by paragraph 80.1(2)(b) to be added in computing the adjusted cost base to the taxpayer of the asset;

Related Provisions: 53(2)(n) — Reduction in ACB of expropriation asset.

(l) **[interest in related segregated fund trust]** — where the property is an interest in a related segregated fund trust referred to in section 138.1,

(i) each amount deemed by paragraph 138.1(1)(f) to be an amount payable to the taxpayer before that time in respect of that interest,

(ii) each amount required by subparagraph 138.1(1)(g)(ii) to be added before that time in respect of that interest,

(iii) each amount in respect of that interest that is a capital gain deemed to have been allocated under subsection 138.1(4) to the taxpayer before that time, and

(iv) each amount in respect of that interest that before that time was deemed by subsection 138.1(3) to be a capital gain of the taxpayer;

Related Provisions: 53(2)(q) — Deductions from ACB of related segregated fund trust; 138.1(5) — ACB of property in related segregated fund trust.

I.T. Application Rules: 26(4) (property owned since before 1972).

(m) **[offshore investment fund property]** — where the property is an offshore investment fund property (within the meaning assigned by subsection 94.1(1)),

(i) any amount included in respect of the property by virtue of subsection 94.1(1) in computing the taxpayer's income for a taxation year commencing before that time, or

(ii) where the taxpayer is a controlled foreign affiliate (within the meaning of subsection 95(1)), of a person resident in Canada, any amount included in respect of the property in computing the foreign accrual property income of the controlled foreign affiliate by reason of the description of C in the definition "foreign accrual property income" in subsection 95(1) for a taxation year commencing before that time;

Proposed Amendment — 53(1)(m), (m.1)

(m) **[interest in foreign investment entity or pre-2003 offshore investment fund property]** — any amount included in respect of the property

(i) in computing the foreign accrual property income of the taxpayer because of the description of C in the definition "foreign accrual property income" in subsection 95(1) (as that definition read for taxation years that began before 2003) for a taxation year of the taxpayer that began both before that time and before 2003,

(ii) under subsection 94.1(1) (as that subsection read in its application to taxation years that began before 2003) in computing the taxpayer's income for a taxation year that began both before that time and before 2003, or

(iii) under subsection 94.1(4) in computing the taxpayer's income for a taxation year that began before, or includes, that time;

(m.1) **[interest in foreign investment entity]** — any amount required by subsection 94.2(12) or 94.3(5) to be added at or before that time in computing the adjusted cost base to the taxpayer of the property;

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 8(2), will amend para. 53(1)(m) to read as above, and add para. (m.1), applicable to taxation years that begin after 2002.

Technical Notes: Paragraph 53(1)(m) provides for an addition in computing the ACB to a taxpayer of "offshore investment fund property" to which existing section 94.1 applies. Paragraph 53(1)(m) is amended to ensure that the historical ACB additions are maintained, notwithstanding the replacement of the rules in existing section 94.1.

Paragraph 53(1)(m) is also amended to provide for an ACB addition in computing the ACB to a taxpayer of a property in respect of which new subsection 94.1(4) has applied to include in respect of the property an amount in computing the taxpayer's income for a taxation year. For more information, see the commentary on section 94.1.

Paragraph 53(1)(m.1) is introduced to provide for the ACB additions contemplated by new subsections 94.2(12) and 94.3(5). For more information, see the commentary on those subsections.

(n) **[surveying and valuation costs]** — the reasonable costs incurred by the taxpayer, before that time, of surveying or valuing the property for the purpose of its acquisition or disposition (to the extent that those costs are not deducted by the taxpayer in computing the taxpayer's income for any taxation year or attributable to any other property);

Related Provisions: 20(1)(dd) — Deduction for site investigation expenses; 40(1)(a)(i), (b)(i) — Expenses of disposition deductible in computing gain or loss.

Interpretation Bulletins: IT-407R4: Dispositions of cultural property to designated Canadian institutions.

(o) **[real property — remainder interest]** — where the property is real property of the taxpayer, any amount required by paragraph 43.1(2)(b) to be added in computing the adjusted cost base to the taxpayer of the property;

History: Para. 53(1)(o) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 15(3), applicable in computing the adjusted cost base of property after December 20, 1991.

(p) **[flow-through entity after 2004]** — where the time is after 2004 and the property is an interest in or a share of the capital stock of a flow-through entity (within the meaning assigned by subsection 39.1(1)), the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount, if any, that would, if the definition "exempt capital gains balance" in subsection 39.1(1) were read without reference to "that ends before 2005", be the taxpayer's exempt capital gains balance in respect of the entity for the taxpayer's 2005 taxation year,

B is the fair market value at that time of the property, and

C is the fair market value at that time of all the taxpayer's interests in or shares of the capital stock of the entity;

Related Provisions: 53(1)(r) — Increase in ACB before 2005.

History: Para. 53(1)(p) added by 1995, c. 3, subsec. 14(3), applicable to 1994 *et seq.*

(q) **[history preservation rules — debt forgiveness]** — any amount required under paragraph (4)(b), (5)(b), (6)(b), 47(1)(d), 49(3.01)(b), 51(1)(d.2), 86(4)(b) or 87(5.1)(b) or (6.1)(b) to be added in computing the adjusted cost base to the taxpayer of the property; and

History: Para. 53(1)(q) added by 1995, c. 21, subsec. 17(2), applicable to taxation years that end after February 21, 1994.

(r) **[flow-through entity before 2005]** — where the time is before 2005, the property is an interest in, or a share of the capital stock of, a flow-through entity described in any of paragraphs (a) to (f) of the definition "flow-through entity" in subsection 39.1(1) and immediately after that time the taxpayer disposed of all of the taxpayer's interests in, and shares of the capital stock of, the entity, the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount, if any, by which the taxpayer's exempt capital gains balance (as defined in subsec-

tion 39.1(1)) in respect of the entity for the taxpayer's taxation year that includes that time exceeds the total of all amounts each of which is

(i) the amount by which a capital gain is reduced under section 39.1 for the year because of the taxpayer's exempt capital gains balance in respect of the entity, or

(ii) twice an amount by which a taxable capital gain, or the income from a business, is reduced under section 39.1 for the year because of the taxpayer's exempt capital gains balance in respect of the entity,

B is the fair market value at that time of the property, and

C is the fair market value at that time of all the taxpayer's interests in, and shares of the capital stock of, the entity.

Proposed Amendment — 53(1)(r)

Letter from Dept. of Finance, June 13, 2003:

Dear [xxx]

Thank you for your letter dated April 10, 2002, concerning paragraph 53(1)(r) of the *Income Tax Act* (the "Act") and its application in respect of an employee trust.

Paragraph 53(1)(r) of the Act was added as a consequence of the elimination of the $100,000 lifetime capital gains exemption for gains that are realized after February 22, 1994 and the introduction of a mechanism in subsection 110.6(19) of the Act for recognizing gains accrued to the end of that day. Where an individual recognized a capital gain accrued to that time on a share or other interest in a flow-through entity (as defined in subsection 39.1(1) of the Act), the amount of the gain is credited to a special account referred to as the individual's exempt capital gains balance in respect of the entity. Claims may be made against this account to reduce gains that are flowed out to the individual by the entity for taxation years that end before 2005 or that are realized on dispositions of shares or other interests in the entity for those years.

Where an individual disposes of all shares or other interest in an entity described in any of paragraphs (a) to (f) of the flow-though entity definition, paragraph 53(1)(r) of the Act increases the individual's adjusted cost base of each share or interest by a pro rata portion of the amount of the individual's unused exempt capital gains balance in respect of the entity. Paragraph 53(1)(r) of the Act benefits individuals in circumstances in which their interest in a flow-through entity has declined in value since February 22, 1994.

In your letter, you have requested that paragraph 53(1)(r) of the Act be amended to include a reference to a flow-through entity described in paragraph (h) of the definition "flow-through" entity in subsection 39.1(1) of the Act, (i.e. a trust maintained primarily to hold shares of a corporation for the benefit of employees of the corporation).

In your letter, you have also requested that paragraph 53(1)(r) of the Act be amended to provide that where the fair market value of a particular interest in an entity is nil, the fair market value of the particular interest be deemed to be $1 to permit a calculation to be made under the formula in paragraph 53(1)(r) of the Act where the fair market value of all the interests in an entity is nil at the time of disposition.

From a policy perspective, it appears appropriate to permit a trust described in paragraph (h) of the definition "flow-through entity" in subsection 39.1(1) of the Act to qualify for the adjustment to the cost base in paragraph 53(1)(r) of the Act. Consequently, we are prepared to recommend to the Minister of Finance that an amendment be made to paragraph 53(1)(r) of the Act to add a reference to an entity described in paragraph (h) of the definition "flow-through entity" in subsection 39.1(1) of the Act. We understand that this particular issue arises, in the context of your client, with respect to a disposition occurring in 2002; accordingly it will be recommended that this amendment apply to dispositions of shares or interests that occur after 2001.

It also seems appropriate to provide that, for the purpose of the calculation in paragraph 53(1)(r) of the Act, where the fair market value of all the interests in an entity is nil at the time of disposition, the fair market value of each interest in the entity be deemed to be $1 and a recommendation to that effect will also be put forward.

Of course, I can offer no assurance that the Minister of Finance will agree with the recommendations that I have described. Nonetheless, I hope that this statement of our position is helpful.

Thank you for bringing this matter to our attention.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 39.1(7) — Nil exempt capital gains balance; 53(1)(p) — Increase in ACB after 2004.

History: Subpara. (ii) of the description of A in para. 53(1)(r) amended by replacing the reference to the expression "⅓ of" with a reference to the word "twice", by 2001, c. 17, subsec. 36(3), applicable to taxation years that end after February 27, 2000 except that, in applying para. 53(1)(r) for those years in respect of a taxpayer's interest in an entity, where a taxation year of the entity that includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, ends in the taxpayer's taxation year, the reference to the word "twice" shall be read as a reference to the expression "the fraction that is the reciprocal of the fraction in para. 38(a), as amended by 2001, c. 17, that applies in respect of the entity for its taxation year, multiplied by".

Para. 53(1)(r) added by 1998, c. 19, subsec. 94(3), applicable to 1994 *et seq.*

(1.1) Deemed contribution of capital — For the purposes of paragraph (1)(c), where there has been a disposition of property before May 7, 1974, and

(a) the taxpayer and the corporation referred to in that paragraph have made an election under section 85 in respect of that property, and

(b) the consideration received by the taxpayer for the property did not include shares of the capital stock of the corporation,

the disposition of property shall be deemed to be a contribution of capital equal to the amount, if any, by which

(c) the amount that the taxpayer and the corporation have agreed on in the election

exceeds

(d) the fair market value at the time of the disposition of any consideration received by the taxpayer for the property so disposed of.

Interpretation Bulletins: IT-456R: Capital property — some adjustments to cost base.

(2) Amounts to be deducted [from ACB] — In computing the adjusted cost base to a taxpayer of property at any time, there shall be deducted such of the following amounts in respect of the property as are applicable:

(a) **[share]** — where the property is a share of the capital stock of a corporation resident in Canada,

(i) any amount received by the taxpayer after 1971 and before that time as, on account or in lieu of payment of, or in satisfaction of, a dividend on the share (other than a taxable dividend or a dividend in respect of which the corporation paying the dividend has elected in accordance with subsection 83(2) or (2.1) in respect of the full amount thereof),

(ii) any amount received by the taxpayer after 1971 and before that time on a reduction of the paid-up capital of the corporation in respect of the share, except to the extent that the amount is deemed by subsection 84(4) or (4.1) to be a dividend received by the taxpayer,

(iii) any amount required to be deducted before that time under section 84.1 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it applied before May 23, 1985 in computing the adjusted cost base to the taxpayer of the share,

(iv) any amount, to the extent that such amount is not proceeds of disposition of a share, received by the taxpayer before that time that would, but for subsection 84(8), be deemed by subsection 84(2) to be a dividend received by the taxpayer, and

(v) any amount required by paragraph 44.1(2)(b) to be deducted in computing the adjusted cost base to the taxpayer of the share;

Related Provisions: 40(2)(h), (i) — Limitation on capital loss on certain shares; 52(8) — Cost to non-resident of share of corporation that becomes resident in Canada; 91(6) — Amounts deductible in respect of dividends received.

History: Para. 53(2)(a)(v) added by 2001, c. 17, subsec. 36(4), applicable to dispositions that occur after February 27, 2000.

Subpara. 53(2)(a)(ii) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 30(5), to add reference to subpara. 84(4.1), applicable for the purpose of computing the adjusted cost base of any share after 1989.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-456R: Capital property — some adjustments to cost base.

Advance Tax Rulings: ATR-54: Reduction of paid-up capital.

(b) **[share of non-resident corporation]** — where the property is a share of the capital stock of a corporation not resident in Canada,

(i) any amount required by paragraph 80.1(4)(d) or section 92 to be deducted in computing the adjusted cost base to the taxpayer of the share, and

(ii) any amount received by the taxpayer after 1971 and before that time on a reduction of the paid-up capital of the corporation in respect of the share;

Related Provisions: 52(8) — Cost to non-resident of share of corporation that becomes resident in Canada; 56(6)–(9) — Whether control acquired.

(b.1) **[capital interest in non-resident trust]** — where the property is a capital interest of the taxpayer in a trust to which paragraph 94(1)(d) applies, any amount required by paragraph 94(5)(b) to be deducted in computing the adjusted cost base to the taxpayer of the interest;

Proposed Amendment — 53(2)(b.1)

(b.1) **[capital interest in pre-2003 non-resident trust]** — any amount required by paragraph 94(5)(b) (as that paragraph read in its application to taxation years that include December 31, 2000) to be deducted in computing the adjusted cost base to the taxpayer of the property;

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 8(3), will amend para. 53(2)(b.1) to read as above, applicable to taxation years that begin after 2002, and to

(a) taxation years of a taxpayer that begin after 2000 if a trust, in which the taxpayer had a capital interest at any time in 2001, makes a valid election under para. (a) of the Application of the amendment to s. 94; and

(b) taxation years of a taxpayer that begin after 2001 if a trust, in which the taxpayer had a capital interest at any time in 2002, makes a valid election under para. (a) or (b) of the Application of the amendment to s. 94.

Technical Notes: Paragraph 53(2)(b.1), applied together with existing paragraph 94(5)(b), provides for a deduction in computing the ACB to a taxpayer of the taxpayer's capital interest in a trust to which existing paragraph 94(1)(d) applies. Paragraph 53(1)(b.1) is amended to ensure that historical ACB deductions are maintained, notwithstanding the replacement of the rules in existing section 94.

This amendment applies to taxation years that begin after 2002. It also applies to taxation years of a taxpayer that begin

- after 2000 if a trust, in which the taxpayer had a capital interest at any time in 2001, makes a valid election under the coming-into-force provision for new section 94, and
- after 2001 if a trust, in which the taxpayer had a capital interest at any time in 2002, makes a valid election under the coming-into-force provision for new section 94.

Because of the possibility of such an election, amended paragraph 53(2)(b.1) refers to paragraph 94(5)(b) as it read for taxation years that include December 31, 2000.

(b.2) **[property of corporation after change in control]** — where the property is property of a corporation control of which was acquired by a person or group of persons at or before that time, any amount required by paragraph 111(4)(c) to be deducted in computing the adjusted cost base of the property;

Related Provisions: 142.4(1)"tax basis"(q) — Disposition of specified debt obligation by financial institution; 256(6)–(9) — Whether control acquired.

(c) **[partnership interest]** — where the property is an interest in a partnership,

(i) an amount in respect of each fiscal period of the partnership ending after 1971 and before that time, equal to the total of amounts each of which is the taxpayer's share (other than a share under an agreement referred to in subsection 96(1.1)) of any loss of the partnership from any source for that fiscal period, computed as if this Act were read without reference to

(A) the fractions set out in subsection 14(5), paragraph 38(b) and in the formula in paragraph 14(1)(b),

(A.1) paragraph 18(1)(l.1),

(A.2) the description of C in the formula in paragraph 14(1)(b),

(B) paragraphs 12(1)(o) and (z.5), 18(1)(m) and 20(1)(v.1), section 31, subsection 40(2), section 55 and subsections 69(6) and (7) of this Act and paragraphs 20(1)(gg) and 81(1)(r) and (s) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, and

(C) subsections 100(4) and 112(3.1), and subsection 112(4.2) as it read in its application to dispositions of property that occurred before April 27, 1995,

except to the extent that all or a portion of such a loss may reasonably be considered to have been included in the taxpayer's limited partnership loss in respect of the partnership for the taxpayer's taxation year in which that fiscal period ended,

(i.1) an amount in respect of each fiscal period of the partnership ending before that time that is the taxpayer's limited partnership loss in respect of the partnership for the taxation year in which that fiscal period ends to the extent that such loss was deducted by the taxpayer in computing the taxpayer's taxable income for any taxation year that commenced before that time,

(i.2) any amount deemed by subsection 40(3.12) to be a loss of the taxpayer for a taxation year from a disposition before that time of the property,

(i.3) if at that time the property is not a tax shelter investment as defined by section 143.2 and the taxpayer would be a member, described in subsection 40(3.1), of the partnership if the fiscal period of the partnership that includes that time ended at that time, the unpaid principal amount of any indebtedness of the taxpayer for which recourse is limited, either immediately or in the future and either abso-

lutely or contingently, and that can reasonably be considered to have been used to acquire the property,

(i.4) if the taxpayer is a member of the partnership who was a specified member of the partnership at all times since becoming a member of the partnership or the taxpayer is at that time a limited partner of the partnership for the purposes of subsection 40(3.1), the amount

(A) deducted under subsection 34.2(4) in computing the taxpayer's income for the taxation year in respect of the interest, where that time is in the taxpayer's first taxation year in which a qualifying fiscal period (within the meaning assigned by subsection 34.2(1)) of the business carried on by the taxpayer as a member of the partnership ends and is after the end of that period, and

(B) where that time is in any other taxation year, deducted under subsection 34.2(4) in respect of the interest in computing the taxpayer's income for the taxation year preceding that other year

unless

(C) that time is immediately before a disposition of the interest and no amount is deductible under subsection 34.2(4) in respect of the interest in computing the taxpayer's income for the taxation year following the taxation year that includes that time,

(D) the taxpayer has December 31, 1995 income in respect of the business because of section 34.1, or

(E) the taxpayer's partnership interest was held by the taxpayer on February 22, 1994 and is an excluded interest (within the meaning assigned by subsection 40(3.15)) at the end of the fiscal period of the partnership that includes that time,

(ii) an amount in respect of each fiscal period of the partnership ending after 1971 and before that time, other than a fiscal period after the fiscal period in which the taxpayer ceased to be a member of the partnership, equal to the taxpayer's share of the total of

(A) amounts that, but for paragraph 96(1)(d), would be deductible in computing the income of the partnership for the fiscal period by virtue of the provisions of the *Income Tax Application Rules* relating to exploration and development expenses,

(B) the Canadian exploration and development expenses and foreign resource pool expenses, if any, incurred by the partnership in the fiscal period,

(C) the Canadian exploration expense, if any, incurred by the partnership in the fiscal period,

(D) the Canadian development expense, if any, incurred by the partnership in the fiscal period, and

(E) the Canadian oil and gas property expense, if any, incurred by the partnership in the fiscal period,

(iii) any amount deemed by subsection 110.1(4) or 118.1(8) to have been a gift made, or by subsection 127(4.2) to have been an amount contributed, by the taxpayer by reason of the taxpayer's membership in the partnership at the end of a fiscal period of the partnership ending before that time,

Proposed Amendment — 53(2)(c)(iii)

(iii) any amount deemed by subsection 110.1(4) or 118.1(8) to have been the eligible amount of a gift made, or by subsection 127(4.2) to have been an amount contributed, by the taxpayer by reason of the taxpayer's membership in the partnership at the end of a fiscal period of the partnership ending before that time,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 65(2), will amend subpara. 53(2)(c)(iii) to read as above, applicable in respect of gifts and contributions made after December 20, 2002.

Technical Notes: Paragraph 53(2)(c) provides deductions from a taxpayer's adjusted cost base ("ACB") of a partnership interest for the purpose of determining its adjusted cost base. Subparagraph 53(2)(c)(iii) provides for the deduction from the ACB of a partnership interest of an amount deemed by subsection 110.1(4), 118.1(8) or 127(4.2) to have been a charitable donation or a political party contribution because of the taxpayer's membership in the partnership.

Subparagraph 53(2)(c)(iii) is amended, consequential to the amendment of subsections 110.1(4), 118.1(8) and 127(4.2) and the addition of new subsection 248(31), for gifts made after December 20, 2002. Amended subparagraph 53(2)(c)(iii) refers to the "eligible amount" of a gift or contribution made because of the taxpayer's membership in the partnership. For additional information about eligible amounts, see the commentary to new subsections 248(31) and (32).

(iv) any amount required by section 97 to be deducted before that time in computing the adjusted cost base to the taxpayer of the interest,

(v) any amount received by the taxpayer after 1971 and before that time as, on account or in lieu of payment of, or in satisfaction of, a distribution of the taxpayer's share (other than a share under an agreement referred to in subsection 96(1.1)) of the partnership profits or partnership capital,

Selected Cases [subpara. 53(2)(c)(v)]: *Stursberg (R.K.G.) v. MNR*, [1993] 2 C.T.C. 76 (FCA) (Transactions resulting in reduction of partner's share and corresponding increase of another partner's share was disposition of part of first partner's interest, not distribution of capital).

(vi) an amount equal to that portion of all amounts deducted under subsection 127(5) in computing the tax otherwise payable by the taxpayer under this Part for the taxpayer's taxation years ending before that time that may reasonably be attributed to amounts added in computing the investment tax credit of the taxpayer by virtue of subsection 127(8),

(vii) any amount added pursuant to subsection 127.2(4) in computing the taxpayer's share-purchase tax credit for a taxation year ending before or after that time,

(viii) an amount equal to 50% of the amount deemed to be designated pursuant to subsection 127.3(4) before that time in respect of each share, debt obligation or right acquired by the partnership and deemed to have been acquired by the taxpayer under that subsection,

(ix) the amount of all assistance received by the taxpayer before that time that has resulted in a reduction of the capital cost of a depreciable property to the partnership by virtue of subsection 13(7.2),

(x) any amount deductible by the taxpayer under subparagraph 20(1)(e)(vi) in respect of the partner-

ship for a taxation year of the taxpayer ending at or after that time,

(xi) any amount required by paragraph 110.6(23)(b) to be deducted at that time in computing the adjusted cost base to the taxpayer of the interest, and

(xii) any amount payable by the partnership, to the extent that the amount is deductible under subsection 20.01(1) in computing the taxpayer's income for a taxation year that began before that time;

Related Provisions: 40(3) — Deemed gain when ACB becomes negative; 40(3.13) — Artificial transactions affecting partnership capital; 53(1)(e) — Addition to ACB — partnership interest; 66.8(1) — Resource expenses of limited partner; 70(6)(d.1) — Where transfer or distribution to spouse or trust; 70(9.2)(c)(iii), 70(9.3)(e)(iii) — Transfer of family farm corporation or partnership; 80(1)"excluded obligation"(a)(iii) — Debt forgiveness rules do not apply where amount deducted in computing ACB (e.g., under 53(2)(c)(i.3)); 87(2)(e.1), 87(2)(j.6) — Amalgamations; 96(1.01)(b) — Deemed end of fiscal period when taxpayer ceases to be partner; 96(1.9) — Foreign trusts and FIEs; 96(2.2)(c) — At-risk amount — amount deducted under 53(2)(c)(i.3); 98(1)(c) — Disposition of partnership property; 100(2) — Gain from disposition of interest in partnership; 127(12.2) — Investment tax credit; 248(16), (16.1) — GST or QST input tax credit/refund and rebate deemed to be assistance; 248(18), (18.1) — GST or QST — repayment of input tax credit or refund; 248(30)–(33) — Determination of eligible amount of gift.

History: Cls. 53(2)(c)(i)(A) and (A.1) amended, and cl. (A.2) added, by 2001, c. 17, subsec. 36(5), applicable in respect of fiscal periods that end after February 27, 2000. Cls. 53(2)(c)(i)(A) and (A.1) formerly read:

(A) the fractions set out in subsection 14(5) and paragraph 38(b),

(A.1) paragraph 18(1)(l.1),

Cl. 53(2)c)(ii)(B) amended by the said c. 17, subsec. 36(6), applicable to taxation years that begin after 2000. It formerly read:

(B) the Canadian exploration and development expenses and foreign exploration and development expenses, if any, incurred by the partnership in the fiscal period,

Subpara. 53(2)(c)(xii) added by 1999, c. 22, subsec. 14(5), applicable after 1997.

Cl. 53(2)(c)(i)(C) and subpara. 53(2)(c)(i.3) amended by 1998, c. 19, subsec. 94(4) and (5), cl. 53(2)(c)(i)(C) applicable after April 26, 1995 and subpara. 53(2)(c)(i.3) applicable to indebtedness of a taxpayer arising after September 26, 1994, other than indebtedness arising under an agreement in writing entered into by the taxpayer before September 27, 1994. The cl. and subpara. formerly read:

(C) subsections 112(3.1) and (4.2),

. . . . .

(i.3) where at that time the taxpayer would be a member described in subsection 40(3.1) of the partnership, if the fiscal period of the partnership that includes that time ended at that time, the unpaid principal amount of any debt of the taxpayer at that time in respect of which recourse against the taxpayer is limited, either immediately or in the future and either absolutely or contingently, and that can reasonably be considered to have been used to acquire the property,

Cl. 53(2)(c)(i)(B) amended by 1997, c. 25, subsec. 7(2), applicable for the purpose of computing the adjusted cost base of property after 1996. Cl. (i)(B) formerly read:

(B) paragraphs 12(1)(o), 18(1)(m), 20(1)(v.1), section 31, subsection 40(2), section 55 and subsections 69(6) and (7) of this Act and paragraphs 20(1)(gg) and 81(1)(r) and (s) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, and

Subpara. 53(2)(c)(i.4) added by 1996, c. 21, s. 12, applicable after 1994.

Subparas. 53(2)(c)(i.2) and (i.3) added by 1995, c. 3, subsec. 14(4), subpara. (i.2) applicable after February 21, 1994, and (i.3) applicable to debts entered into by a taxpayer after September 26, 1994 other than such a debt entered into pursuant to an agreement in writing entered into by the taxpayer before September 27, 1994.

Subpara. 53(2)(c)(xi) added by 1995, c. 3, subsec. 14(5), applicable to 1994 *et seq.*

I.T. Application Rules: 26(9)–(9.4) (where taxpayer became partner before 1972); 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-242R: Retired partners; IT-278R2: Death of a partner or of a retired partner; IT-338R2: Partnership interests — effects on ACB of admission or retirement of a partner (archived); IT-341R3: Expenses of issuing or selling shares, units in a trust, interests in a partnership or syndicate, and expenses of borrowing money; IT-353R2: Partnership interests — some adjustments to cost base (archived).

I.T. Technical News: 5 (adjusted cost base of partnership interest); 9 (calculation of ACB of a partnership interest).

Forms: T2065: Determination of adjusted cost base of a partnership interest; T5015: Reconciliation of partner's capital account; T5016: Summary information for tax shelters that are partnerships or for partnerships that allocated renounced resource expenses to their members.

(d) **[part of property retained]** — where the property is such that the taxpayer has, after 1971 and before that time, disposed of a part of it while retaining another part of it, the amount determined under section 43 to be the adjusted cost base to the taxpayer of the part so disposed of;

Interpretation Bulletins: IT-200: Surface rentals and farming operations.

(e) **[share acquired before August 1976]** — where the property is a share, or an interest in or a right to a share, of the capital stock of a corporation acquired before August, 1976, an amount equal to any expense incurred by the taxpayer in consideration therefor, to the extent that the expense was, by virtue of

Proposed Amendment — 53(2)(e) opening words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 215(2), will amend the opening words of subsec. 53(2)(e) by substituting "right to — or, for civil law, a right in or to — " for "right to", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(i) paragraph (e) of the definition "Canadian exploration and development expenses" in subsection 66(15), a Canadian exploration and development expense,

(ii) paragraph (i) of the definition "Canadian exploration expense" in subsection 66.1(6), a Canadian exploration expense,

(iii) paragraph (g) of the definition "Canadian development expense" in subsection 66.2(5), a Canadian development expense, or

(iv) paragraph (c) of the definition "Canadian oil and gas property expense" in subsection 66.4(5), a Canadian oil and gas property expense

incurred by the taxpayer;

(f) **[consideration from joint exploration corporation]** — where the property was received by the taxpayer as consideration for any payment or loan

(i) made before April 20, 1983 by the taxpayer as a shareholder corporation (within the meaning assigned by subsection 66(15)) to a joint exploration corporation of the shareholder, and

(ii) described in paragraph (a) of the definition "agreed portion" in subsection 66(15),

or the property was substituted for such a property, such portion of the payment or loan as may reasonably be considered to be related to an agreed portion (within the meaning assigned by subsection 66(15)) of the joint exploration corporation's

(iii) Canadian exploration and development expenses,

(iv) Canadian exploration expense,

(v) Canadian development expense, or

(vi) Canadian oil and gas property expense,

as the case may be;

Related Provisions: 248(5) — Substituted property.

(f.1) **[share of joint exploration corporation]** — where the property is a share of the capital stock of a joint exploration corporation resident in Canada and the taxpayer has, after 1971, made a contribution of capital to the corporation otherwise than by way of a loan, which contribution was included in computing the adjusted cost base of the property by virtue of paragraph (1)(c), such portion of the contribution as may reasonably be considered to be part of an agreed portion (within the meaning assigned by subsection 66(15)) of the corporation's

(i) Canadian exploration and development expenses,

(ii) Canadian exploration expense,

(iii) Canadian development expense, or

(iv) Canadian oil and gas property expense,

as the case may be;

(f.2) **[resource expenses renounced by joint exploration corporation]** — any amount required by paragraph 66(10.4)(a) to be deducted before that time in computing the adjusted cost base to the taxpayer of the property;

Advance Tax Rulings: ATR-60: Joint exploration corporations.

(g) **[debt forgiveness]** — where section 80 is applicable in respect of the taxpayer, the amount, if any, by which the adjusted cost base to the taxpayer of the property is required in prescribed manner to be reduced before that time;

Regulations: 5400(1)(c)–(e) (prescribed manner).

(g.1) **[history preservation rules — debt forgiveness]** — any amount required under paragraph (4)(a), (5)(a), (6)(a), 47(1)(c), 49(3.01)(a), 51(1)(d.1), 86(4)(a) or 87(5.1)(a) or (6.1)(a) to be deducted in computing the adjusted cost base to the taxpayer of the property or any amount by which that adjusted cost base is required to be reduced because of subsection 80(9), (10) or (11);

Related Provisions: 80.03(2), (3) — Gain on subsequent "surrender" of property; 107(1)(a) — Reduction in gain on disposition of capital interest in trust.

History: Para. 53(2)(g.1) added by 1995, c. 21, subsec. 17(3), applicable to taxation years that end after February 21, 1994.

Interpretation Bulletins: IT-96R6: Options to acquire shares, bonds or debentures and by trusts to acquire trust units.

(h) **[capital interest in trust]** — where the property is a capital interest of the taxpayer in a trust (other than an interest in a personal trust that has never been acquired for consideration or an interest of a taxpayer in a trust described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1)),

(i) any amount paid to the taxpayer by the trust after 1971 and before that time as a distribution or payment of capital by the trust (otherwise than as proceeds of disposition of the interest or part thereof), to the extent that the amount became payable before 1988,

(i.1) any amount that has become payable to the taxpayer by the trust after 1987 and before that time in respect of the interest (otherwise than as proceeds of disposition of the interest or part thereof), except to the extent of the portion thereof

(A) that was included in the taxpayer's income by reason of subsection 104(13) or from which an amount of tax was deducted under Part XIII by reason of paragraph 212(1)(c), or

(B) where the trust was resident in Canada throughout its taxation year in which the amount became payable

(I) that is equal to the amount designated by the trust under subsection 104(21) in respect of the taxpayer,

(II) that was designated by the trust under subsection 104(20) in respect of the taxpayer, or

(III) that is an assessable distribution (as defined in subsection 218.3(1)) to the taxpayer,

(ii) an amount equal to that portion of all amounts deducted under subsection 127(5) in computing the tax otherwise payable by the taxpayer under this Part for the taxpayer's taxation years ending before that time that may reasonably be attributed to amounts added in computing the investment tax credit of the taxpayer by virtue of subsection 127(7),

(iii) any amount added pursuant to subsection 127.2(3) in computing the taxpayer's share-purchase tax credit for a taxation year ending before or after that time,

(iv) an amount equal to 50% of the amount deemed to be designated pursuant to subsection 127.3(3) before that time in respect of each share, debt obligation or right acquired by the trust and deemed to have been acquired by the taxpayer under that subsection, and

(v) an amount equal to the amount of all assistance received by the taxpayer before that time that has resulted in a reduction of the capital cost of a depreciable property to the trust by virtue of subsection 13(7.2);

Related Provisions: 53(1)(d.1) — Additions to ACB — capital interest in a trust; 53(2)(i), (j) — further deduction from ACB of interest in a trust; 87(2)(j.6) — Amalgamations — continuing corporation; 94(3)(a)(iv) [proposed] — Application to trust deemed resident in Canada; 104(20) — Designation re non-taxable dividends; 104(24) — Whether amount payable to beneficiary; 107(1.2) — Fair market value of trust interest that is not capital property; 108(6) — Where terms of trust are varied; 108(7) — Meaning of "acquired for consideration"; 127(12.2) — Interpretation; 206(1)"cost amount" — Cost amount of capital interest in a trust that is foreign property; 248(1)"personal trust" — Where interest deemed acquired for no consideration; 248(25.3) — Deemed cost of trust interest; 250(6.1) — Trust that ceases to exist deemed resident throughout year.

History: Subcl. 53(2)(h)(i.1)(B)(III) added by 2005, c. 19, s. 14, applicable after 2004.

The opening words of para. 53(2)(h) amended by 2001, c. 17, subsec. 36(7), applicable to amounts that become payable after 1999. The opening words formerly read:

> (h) where the property is a capital interest of the taxpayer in a trust (other than an interest in a personal trust acquired by the taxpayer for no consideration or an interest of the taxpayer in a trust described in any of paragraphs (a) to (d) of the definition "trust" in subsection 108(1)),

Subcl. 53(2)(h)(i.1)(B)(I) amended to replace ⅓ of the amount" with "the amount" by the said c. 17, subsec. 36(8), applicable to taxation years that end after February 27, 2000 except that, in applying the subcl. for those years in respect of a taxpayer's interest in a trust, where a taxation year of the trust that includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, ends in the

taxpayer's taxation year, the reference to the expression "that is equal to the" shall be read as a reference to the expression "that is equal to the fraction obtained when 1 is subtracted from the reciprocal of the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the trust for its taxation year, multiplied by".

Interpretation Bulletins: IT-342R: Trusts: Income payable to beneficiaries; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-390: Unit trusts — cost of rights and adjustments to cost base (archived); IT-456R: Capital property — some adjustments to cost base.

(i) **[capital interest in non-resident trust]** — where the property is a capital interest in a trust (other than a unit trust) not resident in Canada that was purchased after 1971 and before that time by the taxpayer from a non-resident person at a time (in this paragraph referred to as the "purchase time") when the property was not taxable Canadian property and the fair market value of such of the trust property as was

(i) a Canadian resource property,

(ii) [Repealed under former Act]

(iii) an income interest in a trust resident in Canada,

(iv) taxable Canadian property, or

(v) a timber resource property

was not less than 50% of the fair market value of all the trust property, that proportion of the amount, if any, by which

(vi) the fair market value at the purchase time of such of the trust properties as were properties described in any of subparagraphs (i) to (v)

exceeds

(vii) the total of the cost amounts to the trust at the purchase time of such of the trust properties as were properties described in any of subparagraphs (i) to (v),

that the fair market value at the purchase time of the interest is of the fair market value at the purchase time of all capital interests in the trust;

History: The opening words of para. 53(2)(i) and the portion of para. 53(2)(i) after subpara. (v) amended by 2001, c. 17, subsecs. 36(9), (10), applicable for the purpose of computing the adjusted cost base of property after April 26, 1995. The opening words and that portion formerly read:

(i) where the property is a capital interest in a trust (other than a unit trust) not resident in Canada that was purchased after 1971 by the taxpayer from a non-resident person at a time when the fair market value of such of the trust property as was

. . . . .

was not less than 50% of the total of

(vi) the fair market value of all the trust property, and

(vii) the amount of any money of the trust on hand,

that proportion of the amount, if any, by which

(viii) the fair market value at that time of such of the trust property as was property described in subparagraphs (i) to (v)

exceeds

(ix) the total of the cost amounts to the trust at that time of such of the trust properties as were properties described in subparagraphs (i) to (v),

that the fair market value at that time of the interest is of the fair market value at that time of all capital interests in the trust;

(j) **[unit of non-resident unit trust]** — where the property is a unit of a unit trust not resident in Canada that was purchased after 1971 and before that time by the taxpayer from a non-resident person at a time (in this paragraph referred to as the "purchase time") when the property was not taxable Canadian property and the fair market value of such of the trust property as was

(i) a Canadian resource property,

(ii) [Repealed under former Act]

(iii) an income interest in a trust resident in Canada,

(iv) taxable Canadian property, or

(v) a timber resource property

was not less than 50% of the fair market value of all the trust property, that proportion of the amount, if any, by which

(vi) the fair market value at the purchase time of such of the trust properties as were properties described in any of subparagraphs (i) to (v)

exceeds

(vii) the total of the cost amounts to the trust at the purchase time of such of the trust properties as were properties described in any of subparagraphs (i) to (v),

that the fair market value at the purchase time of the unit is of the fair market value at the purchase time of all the issued units of the trust;

History: The opening words of para. 53(2)(j) and the portion of para. 53(2)(j) after subpara. (v) amended by 2001, c. 17, subsecs. 36(11), (12), applicable for the purpose of computing the adjusted cost base of property after April 26, 1995. The opening words and that portion formerly read:

(j) where the property is a unit of a unit trust not resident in Canada that was purchased after 1971 by the taxpayer from a non-resident person at a time when the fair market value of such of the trust property as was

. . . . .

was not less than 50% of the total of

(vi) the fair market value of all the trust property, and

(vii) the amount of any money of the trust on hand,

that proportion of the amount, if any, by which

(viii) the fair market value at that time of such of the trust property as was property described in subparagraphs (i) to (v),

exceeds

(ix) the total of the cost amounts to the trust at that time of such of the trust properties as were properties described in subparagraphs (i) to (v),

that the fair market value at that time of the unit is of the fair market value at that time of all of the issued units of the trust;

(k) **[government assistance received or receivable]** — where the property was acquired by the taxpayer after 1971, the amount, if any, by which the total of

(i) the amount of any assistance which the taxpayer has received or is entitled to receive before that time from a government, municipality or other public authority, in respect of, or for the acquisition of, the property, whether as a grant, subsidy, forgivable loan, deduction from tax not otherwise provided for under this paragraph, investment allowance or as any other form of assistance other than

(A) an amount described in paragraph 37(1)(d),

(B) an amount deducted as an allowance under section 65,

(C) the amount of prescribed assistance that the taxpayer has received or is entitled to receive in respect of, or for the acquisition of, shares of the capital stock of a prescribed venture capital corporation or a prescribed labour-sponsored venture capital corporation or shares of the cap-

ital stock of a taxable Canadian corporation that are held in a prescribed stock savings plan, or

(D) an amount included in income by virtue of paragraph 12(1)(u) or 56(1)(s), and

(ii) all amounts deducted under subsection 127(5) or (6) in respect of the property before that time,

exceeds such part, if any, of the assistance referred to in subparagraph (i) as has been repaid before that time by the taxpayer pursuant to an obligation to repay all or any part of that assistance;

Related Provisions: 39(13) — Repaid assistance deemed a capital loss; 125.4(5) — Canadian film/video credit deemed to be assistance; 125.5(5) — Film/video production services credit deemed to be assistance; 127(12.2) — Interpretation; 127.4(1)"net cost"(b) — Labour-sponsored venture capital corporation; 248(16), (16.1) — GST or QST input tax credit/refund and rebate deemed to be assistance; 248(18), (18.1) — GST or QST — repayment of input tax credit or refund.

History: Cl. 53(2)(k)(i)(C) substituted by 1994, c. 21, s. 22, applicable to 1991 *et seq.* That cl. formerly read:

(C) the amount of any prescribed assistance received by the taxpayer that has been provided in respect of, or for the acquisition of, shares of the capital stock of a prescribed venture capital corporation or a prescribed labour-sponsored venture capital corporation or shares of the capital stock of a taxable Canadian corporation that are held in a prescribed stock savings plan, or

Regulations: 6700, 6700.1 (prescribed venture capital corporation); 6701 (prescribed labour-sponsored venture capital corporation); 6702 (prescribed assistance); 6705 (prescribed stock savings plan).

Interpretation Bulletins: IT-273R2: Government assistance — general comments.

(l) **[debt obligation]** — where the property is a debt obligation, any amount that was deductible by virtue of subsection 20(14) in computing the taxpayer's income for any taxation year commencing before that time in respect of interest on that debt obligation;

(l.1) **[indexed debt obligation]** — where the property is an indexed debt obligation,

(i) any amount determined under subparagraph 16(6)(a)(ii) in respect of the obligation and deductible in computing the income of the taxpayer for a taxation year beginning before that time, and

(ii) the amount of any payment that was received or that became receivable by the taxpayer at or before that time in respect of an amount that was added under paragraph (1)(g.1) to the cost to the taxpayer of the obligation;

Related Provisions: 53(1)(g.1) — Addition to adjusted cost base — indexed debt obligation.

History: Para. 53(2)(l.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 15(4), applicable with respect to indexed debt obligations issued after October 16, 1991.

(m) **[amounts deducted from income]** — any part of the cost to the taxpayer of the property that was deductible (otherwise than because of this subdivision or paragraph 8(1)(r)) in computing the taxpayer's income for any taxation year commencing before that time and ending after 1971;

History: Para. 53(2)(m) amended by 2002, c. 9, s. 23, applicable after 2001. The para. formerly read:

(m) such part of the cost to the taxpayer of the property as was deductible (otherwise than by virtue of this subdivision) in computing the taxpayer's income for any taxation year commencing before that time and ending after 1971;

Interpretation Bulletins: IT-350R: Investigation of site; IT-456R: Capital property — some adjustments to cost base.

(n) **[expropriation asset]** — where the property is an expropriation asset of the taxpayer (within the meaning assigned by section 80.1) or an asset of the taxpayer assumed for the purposes of that section to be an expropriation asset thereof, any amount required by paragraph 80.1(2)(b) to be deducted in computing the adjusted cost base to the taxpayer of the asset;

Related Provisions: 53(1)(k) — Addition to ACB of expropriation asset.

(o) **[right to receive partnership property]** — where the property is a right to receive partnership property within the meaning assigned by paragraph 98.2(a) or 100(3)(a), any amount received by the taxpayer in full or partial satisfaction of that right;

(p) **[debt owing by corporation]** — where the property is a debt owing to the taxpayer by a corporation, any amount required to be deducted before that time under section 84.1 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it applied before May 23, 1985 or subsection 84.2(2) in computing the adjusted cost base to the taxpayer of the debt;

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

(q) **[interest in related segregated fund trust]** — where the property is an interest in a related segregated fund trust referred to in section 138.1,

(i) each amount in respect of that interest that is a capital loss deemed to have been allocated under subsection 138.1(4) to the taxpayer before that time, and

(ii) each amount in respect of that interest that before that time was deemed by subsection 138.1(3) to be a capital loss of the taxpayer;

Related Provisions: 53(1)(l) — Addition to ACB of interest in related segregated fund trust; 138.1(5) — ACB of property in related segregated fund trust.

(r) [Repealed under former Act]

(s) **[government assistance — amount elected under 53(2.1)]** — the amount, if any, by which

(i) the amount elected by the taxpayer before that time under subsection (2.1)

exceeds

(ii) any repayment before that time by the taxpayer of an amount received by the taxpayer as described in subsection (2.1) that may reasonably be considered to relate to the amount elected where the repayment is made pursuant to a legal obligation to repay all or any part of the amount so received;

Related Provisions: 12(1)(t) — Income inclusion — investment tax credit; 12(1)(x) — Payments as inducement or as reimbursement etc.; 39(13) — Repayment of assistance; 40(3) — Deemed capital gain when ACB goes negative; 53(2.1) — Election; 87(2)(j.6) — Amalgamations — continuing corporation.

Interpretation Bulletins: IT-273R2: Government assistance — general comments.

(t) **[right to acquire shares or fund units]** — if the property is a right to acquire shares or units under an agreement, any amount required by paragraph 164(6.1)(b) to be deducted in computing the adjusted cost base to the taxpayer of the right;

History: Para. 53(2)(t) amended by 1999, c. 22, subsec. 14(6), applicable after February 1998. The para. formerly read:

(t) [right to acquire shares] — where the property is a right to acquire shares under an agreement, any amount required by paragraph 164(6.1)(b) to be deducted in computing the adjusted cost base to the taxpayer of the right;

Para. 53(2)(t) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 15(5), applicable after July 13, 1990.

I.T. Application Rules: 26(3).

Interpretation Bulletins: IT-456R: Capital property — some adjustments to cost base.

(u) **[non-qualifying real property]** — where the property was at the end of February 22, 1994 a non-qualifying real property (within the meaning assigned by subsection 110.6(1) as that subsection applies to the 1994 taxation year) of a taxpayer, any amount required by paragraph 110.6(21)(b) to be deducted in computing the adjusted cost base to the taxpayer of the property; and

History: Para. 53(2)(u) added by 1995, c. 3, subsec. 14(6), applicable to 1994 *et seq.*

(v) **[excessive capital gains election]** — where the taxpayer elected under subsection 110.6(19) in respect of the property, any amount required by subsection 110.6(22) to be deducted in computing the adjusted cost base to the taxpayer of the property at that time.

History: Para. 53(2)(v) added by 1995, c. 3, subsec. 14(6), applicable to 1994 *et seq.*

Proposed Addition — 53(2)(w)

(w) **[interest in foreign investment entity]** — any amount required by subsection 94.2(12), 94.3(5) or 94.4(2) to be deducted at or before that time in computing the adjusted cost base to the taxpayer of the property.

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 8(4), will add para. 53(2)(w), applicable to taxation years that begin after 2002.

Technical Notes: Paragraph 53(2)(w) is introduced to provide for the ACB reductions contemplated by new subsections 94.2(12), 94.3(5) and 94.4(2). For more information, see the commentary on those subsections.

I.T. Technical News: 5 (western grain transition payments).

(2.1) Election — For the purpose of paragraph (2)(s), where in a taxation year a taxpayer receives an amount that would, but for this subsection, be included in the taxpayer's income under paragraph 12(1)(x) in respect of the cost of a property (other than depreciable property) acquired by the taxpayer in the year, in the 3 taxation years preceding the year or in the taxation year following the year, the taxpayer may elect under this subsection on or before the date on or before which the taxpayer's return of income under this Part for the year is required to be filed or, where the property is acquired in the following year, for that following year, to reduce the cost of the property by such amount as the taxpayer specifies, not exceeding the least of

(a) the adjusted cost base, determined without reference to paragraph (2)(s), at the time the property was acquired,

(b) the amount so received by the taxpayer, and

(c) where the taxpayer has disposed of the property before the year, nil.

Related Provisions: 87(2)(j.6) — Amalgamations — continuing corporation; 220(3.2), Reg. 600(b) — Late filing or revocation of election.

History: That portion of subsec. 53(2.1) preceding para. (a) substituted by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 15(6), applicable to 1991 *et seq.* That portion formerly read:

(2.1) For the purposes of paragraph (2)(s), where a taxpayer has in a taxation year received an amount that would, but for this subsection, be included in the taxpayer's income under paragraph 12(1)(x) in respect of the cost of a property acquired by the taxpayer in the year, in the three taxation years immediately preceding the year or in the taxation year immediately following the year, the taxpayer may elect under this subsection on or before the date on or before which the taxpayer is required to file the taxpayer's return of income under this Part for the year or, where the property is acquired in the immediately following year, for that following year, to reduce the cost of the property by such amount as the taxpayer may specify, not exceeding the least of

Interpretation Bulletins: IT-273R2: Government assistance — general comments; IT-456R: Capital property — some adjustments to cost base.

(3) [Repealed]

History: Subsec. 53(3) repealed by 2001, c. 17, subsec. 36(13), applicable after October 1, 1996. The subsec. formerly read:

(3) Application of paras. (2)(i) and (j) — For the purposes of paragraphs (2)(i) and (j), where any property of a trust would, at a particular time, have been a taxable Canadian property of the trust if it had been disposed of by the trust at that time, the property shall be deemed to have been a taxable Canadian property of the trust at that time.

(4) Recomputation of adjusted cost base on transfers and deemed dispositions — Where at any time in a taxation year a person or partnership (in this subsection referred to as the "vendor") disposes of a specified property and the proceeds of disposition of the property are determined under paragraph 48.1(1)(c), section 70 or 73, subsection 85(1), paragraph 87(4)(a) or (c) or 88(1)(a), subsection 97(2) or 98(2), paragraph 98(3)(f) or (5)(f), subsection 104(4), paragraph 107(2)(a), (2.1)(a), (4)(d) or (5)(a), 107.4(3)(a) or 111(4)(e) or section 128.1,

Proposed Amendment — 53(4) opening words

(4) Recomputation of adjusted cost base on transfers and deemed dispositions — If at any time in a taxation year a person or partnership (in this subsection referred to as the "vendor") disposes of a specified property and the proceeds of disposition of the property are determined under paragraph 48.1(1)(c), section 70 or 73, subsection 85(1), paragraph 87(4)(a) or (c) or 88(1)(a), subsection 97(2) or 98(2), paragraph 98(3)(f) or (5)(f), subsection 104(4), paragraph 107(2)(a) or (2.1)(a), 107.4(3)(a) or 111(4)(e) or section 128.1,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 65(3), will amend the opening words of subsec. 53(4) to read as above, applicable after February 27, 2004.

Technical Notes: Subsection 53(4) provides rules that affect the computation of the adjusted cost base (ACB) to a taxpayer of any "specified property". As defined in section 54, "specified property" is capital property that is a share, a capital interest in a trust, a partnership interest or an option to acquire any such property. The rules in subsection 53(4) apply where the proceeds of disposition of a specified property are determined under any one of a number of specified provisions in the Act set out in the subsection.

Subsection 53(4) is amended to reflect amendments to a number of those specified provisions; namely, subsections 107(2.1), (4) and (5). The references in subsection 53(4) to subsections 107(4) and (5) are removed because those provisions no longer provide for a deemed disposition of trust property. Instead, where subsection 107(4) or (5) applies, a disposition of property will result under paragraph 107(2.1)(a). Therefore, the reference to paragraph 107(2.1)(a) in subsection 53(4) is sufficient.

(a) there shall be deducted after that time in computing the adjusted cost base to the person or partnership (in this subsection referred to as the "transferee") who acquires or reacquires the property at or immediately after that time the amount, if any, by which

(i) the total of all amounts deducted under paragraph (2)(g.1) in computing, immediately before that time, the adjusted cost base to the vendor of the property,

exceeds

(ii) the amount that would be the vendor's capital gain for the year from that disposition if this Act were read without reference to subparagraph 40(1)(a)(iii) and subsection 100(2); and

(b) the amount determined under paragraph (a) in respect of that disposition shall be added after that time in computing the adjusted cost base to the transferee of the property.

Related Provisions: 53(1)(q) — Addition to adjusted cost base for amount under 53(4)(b); 53(2)(g.1) — Reduction in adjusted cost base under 53(4)(a); 53(5) — Recomputation of ACB on other transfers; 80.03(2)(a) — Deemed gain on disposition following debt forgiveness; 251(1) — Arm's length.

History: The opening words of subsec. 53(4) amended by 2001, c. 17, subsec. 36(14), applicable to 1998 *et seq.* The opening words formerly read:

(4) Where at any time in a taxation year a person or partnership (in this subsection referred to as the "vendor") disposes of a specified property and the proceeds of disposition of the property are determined under paragraph 48.1(1)(c), section 70 or 73, subsection 85(1), paragraph 87(4)(a) or (c) or 88(1)(a), subsection 97(2) or 98(2), paragraph 98(3)(f) or (5)(f), subsection 104(4), paragraph 107(2)(a), (2.1)(a), (4)(d) or (5)(a) or 111(4)(e) or section 128.1,

The opening words of subsec. 53(4) amended by 1998, c. 19, subsec. 94(6), applicable to taxation years that end after February 21, 1994. The opening words formerly read:

(4) Where at any time in a taxation year a person or partnership (in this subsection referred to as the "vendor") disposes of a specified property and the proceeds of disposition of the property are determined under paragraph 48.1(1)(c), section 70 or 73, subsection 85(1), paragraph 85.1(1)(a), 87(4)(a) or (c) or 88(1)(a), subsection 97(2) or 98(2), paragraph 98(3)(f) or (5)(f), subsection 104(4), paragraph 107(2)(a), (2.1)(a), (4)(d) or (5)(a) or 111(4)(e) or section 128.1,

Subsec. 53(4) added by 1995, c. 21, subsec. 17(4), applicable to taxation years that end after February 21, 1994.

(5) Recomputation of adjusted cost base on other transfers — Where

(a) at any time in a taxation year a person or partnership (in this subsection referred to as the "vendor") disposes of a specified property to another person or partnership (in this subsection referred to as the "transferee"),

(b) immediately before that time, the vendor and the transferee do not deal with each other at arm's length or would not deal with each other at arm's length if paragraph 80(2)(j) applied for the purpose of this subsection,

(c) paragraph (b) would apply in respect of the disposition if each right referred to in paragraph 251(5)(b) that is a right of the transferee to acquire the specified property from the vendor or a right of the transferee to acquire other property as part of a transaction or event or series of transactions or events that includes the disposition were not taken into account, and

(d) the proceeds of the disposition are not determined under any of the provisions referred to in subsection (4),

the following rules apply:

(e) there shall be deducted after that time in computing the adjusted cost base to the transferee of the property the amount, if any, by which

(i) the total of all amounts deducted under paragraph (2)(g.1) in computing the adjusted cost base to the vendor of the property immediately before that time

exceeds

(ii) the amount that would be the vendor's capital gain for the year from that disposition if this Act were read without reference to subparagraph 40(1)(a)(iii) and subsection 100(2), and

(f) the amount determined under paragraph (e) in respect of that disposition shall be added after that time in computing the adjusted cost base to the transferee of the property.

Related Provisions: 53(1)(q) — Addition to ACB for amount under 53(5)(b); 53(2)(g.1) — Reduction in ACB under 53(5)(a); 80.03(2)(a) — Deemed gain on disposition following debt forgiveness.

History: Subsec. 53(5) amended by 1998, c. 19, subsec. 94(7), applicable to taxation years that end after February 21, 1994. The subsec. formerly read:

(5) Where at any time in a taxation year a person or partnership (in this subsection referred to as the "vendor") disposes of a specified property to another person or partnership (in this subsection referred to as the "transferee"), the vendor and the transferee do not deal with each other at arm's length (or would not deal with each other at arm's length if paragraph 80(2)(j) applied for the purpose of this subsection) and the proceeds of disposition of the property at that time are not determined under any of the provisions referred to in subsection (4),

(a) there shall be deducted after that time in computing the adjusted cost base to the transferee of the property the amount, if any, by which

(i) the total of all amounts deducted under paragraph (2)(g.1) in computing, immediately before that time, the adjusted cost base to the vendor of the property

exceeds

(ii) the amount that would be the vendor's capital gain for the year from that disposition if this Act were read without reference to subparagraph 40(1)(a)(iii) and subsection 100(2); and

(b) the amount determined under paragraph (a) in respect of that disposition shall be added after that time in computing the adjusted cost base to the transferee of the property.

Subsec. 53(5) added by 1995, c. 21, subsec. 17(4), applicable to taxation years that end after February 21, 1994.

(6) Recomputation of adjusted cost base on amalgamation — Where a capital property that is a specified property is acquired by a new corporate entity at any time as a result of the amalgamation or merger of 2 or more predecessor corporations,

(a) there shall be deducted after that time in computing the adjusted cost base to the new entity of the property the total of all amounts deducted under paragraph (2)(g.1) in computing, immediately before that time, the adjusted cost base to a predecessor corporation of the property, unless those amounts are otherwise deducted under that paragraph in computing the adjusted cost base to the new entity of the property; and

(b) the amount deducted under paragraph (a) in respect of the acquisition shall be added after that time in computing the adjusted cost base to the new entity of the property.

Related Provisions: 53(1)(q) — Addition to ACB for amount under 53(6)(b); 53(2)(g.1) — Reduction in ACB under 53(6)(a); 80.03(2)(a) — Deemed gain on disposition following debt forgiveness.

History: Subsec. 53(6) added by 1995, c. 21, subsec. 17(4), applicable to taxation years that end after February 21, 1994.

Definitions [s. 53]: "acquired" — 256(7)–(9); "acquired for consideration" — 108(7); "adjusted cost base" — 54, 248(1); "agreed portion" — 66(15); "amount" — 248(1); "arm's length" — 251(1); "assessable distribution" — 218.3(1); "assistance" — 79(4), 125.4(5), 248(16), (16.1), (18), (18.1); "business" — 248(1); "Canada" — 255; "Canadian development expense" — 66.2(5), 248(1); "Canadian exploration and development expense" — 66(15), 248(1); "Canadian exploration expense" — 66.1(6),

248(1); "Canadian oil and gas property expense" — 66.4(5), 248(1); "Canadian resource property" — 66(15), 248(1); "capital dividend" — 83(2), 248(1); "capital interest" — 108(1), 248(1); "consequence of the death" — 248(8); "consideration" — 108(7); "control" — 256(6)–(9); "controlled foreign affiliate" — 94.1(2)(h), 95(1), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount", "disposition", "dividend" — 248(1); "eligible amount" — 248(31), (41); "expropriation asset" — 80.1(1); "farming" — 248(1); "fiscal period" — 249(2)(b), 249.1; "flow-through entity" — 39.1(1); "foreign accrual property income" — 95(1), (2), 248(1); "foreign affiliate" — 95(1), 248(1); "foreign exploration and development expense" — 66(15), 248(1); "foreign investment entity" — 94.1(1), 94.1(2)(q); "foreign resource pool expense" — 248(1); "income bond", "income debenture" — 248(1); "income interest in a trust" — 108(1), 248(1); "indexed debt obligation" — 248(1); "joint exploration corporation" — 66(15); "life insurance capital dividend" — 83(2.1), 248(1); "life insurance policy" — 138(12), 248(1); "limited partnership loss" — 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q) [to be repealed], 132.2(3)(n) [draft], 248(1); "non-qualifying real property" — 110.6(1); "non-resident" — 248(1); "participating interest" — 94.1(1), 94.1(2)(s); "person", "personal trust", "prescribed" — 248(1); "prescribed labour-sponsored venture capital corporation" — Reg. 6701; "prescribed venture capital corporation" — Reg. 6700, 6700.1, 6700.2; "principal amount", "property" — 248(1); "province" — *Interpretation Act* 35(1); "related" — 251(2); "related segregated fund trust" — 138.1(1)(a); "resident in Canada" — 94(3)(a)(viii), 250; "security" — 7(7); "series of transactions" — 248(10); "share", "shareholder", "specified member" — 248(1); "specified amount" — 80.2(1); "specified property" — 54; "specified shareholder" — 248(1); "superficial loss" — 54; "taxable Canadian corporation" — 89(1), 248(1); "taxable Canadian property" — 248(1); "taxable dividend" — 89(1), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "timber resource property" — 13(21), 248(1); "trust" — 104(1), 248(1), (3); "unit trust" — 108(2), 248(1); "vendor" — 53(4), (5).

54. Definitions — In this subdivision,

"adjusted cost base" to a taxpayer of any property at any time means, except as otherwise provided,

(a) where the property is depreciable property of the taxpayer, the capital cost to the taxpayer of the property as of that time, and

(b) in any other case, the cost to the taxpayer of the property adjusted, as of that time, in accordance with section 53,

except that

(c) for greater certainty, where any property (other than an interest in or a share of the capital stock of a flow-through entity within the meaning assigned by subsection 39.1(1) that was last reacquired by the taxpayer as a result of an election under subsection 110.6(19)) of the taxpayer is property that was reacquired by the taxpayer after having been previously disposed of by the taxpayer, no adjustment to the cost to the taxpayer of the property that was required to be made under section 53 before its reacquisition by the taxpayer shall be made under that section to the cost to the taxpayer of the property as reacquired property of the taxpayer, and

(d) in no case shall the adjusted cost base to a taxpayer of any property at any time be less than nil;

Related Provisions: 40(3), (3.1) — Deemed capital gain where ACB is negative; 43 — ACB on partial disposition; 47(1) — ACB of identical properties; 49(1) — Granting of options; 49(2) — Where option expires; 69(1)(c) — Deemed acquisition at fair market value in certain circumstances; 84.1(2) — Non-arm's length sale of shares; 91(6) — Amounts deductible in respect of dividends received; 92 — ACB of share of foreign affiliate; 93(4)(b) — Loss on disposition of shares of foreign affiliate; 110.6(19)(a)(ii) — Increase in cost base on capital gains exemption election; 139.1(4)(d) — Cost of share acquired on insurance demutualization deemed nil; 142.4(1)"tax basis" — cost base for securities held by financial institutions; 143.2(6) — Deemed cost reduction of tax shelter investment; 248(1)"adjusted cost base" — Definition applies to entire Act.

History: Paras. (c) and (d) of the definition "adjusted cost base" in s. 54 amended by 1995, c. 3, s. 15, applicable to 1994 *et seq.* Paras. (c) and (d) formerly read:

(c) for greater certainty, where any property of the taxpayer is property that was reacquired by the taxpayer after having been previously disposed of by the taxpayer, no adjustment to the cost to the taxpayer of the property that was required to be made under section 53 before its reacquisition by the taxpayer shall be made under that section to the cost to the taxpayer of the property as reacquired property of the taxpayer, and

(d) in no case shall the adjusted cost base of any property at the time of its disposition by the taxpayer be less than nil;

Selected Cases [s. 54"adjusted cost base"]: *Bodrug Estate v. Canada*, [1991] 2 C.T.C. 347 (FCA) (Damages paid under lawsuit in respect of provincial securities statute not part of cost of shares deemed disposed of upon death); *Gaynor v. R.*, [1991] 1 C.T.C. 470 (FCA) (Cost to taxpayer is cost in Canadian currency); *Salt et al. v. R.*, [1984] C.T.C. 414 (FCTD) (Where option exercised, adjusted cost base is actual purchase price, not Valuation Day value).

Regulations: 4400, Sch. VII (ACB of publicly-traded shares at end of 1971).

I.T. Application Rules: 26(3)–(27) (where property owned since before 1972).

Interpretation Bulletins: IT-65: Stock splits and consolidations; IT-102R2: Conversion of property, other than real property, from or to inventory; IT-218R: Profit, capital gains and losses from the sale of real estate, including farmland and inherited land and conversion of real estate from capital property to inventory and vice versa; IT-418: Partial disposition of property.

I.T. Technical News: 9 (calculation of ACB of a partnership interest).

Advance Tax Rulings: ATR-67: Increase in the cost of property on the winding-up of a wholly-owned subsidiary.

Forms: T2065: Determination of adjusted cost base of a partnership interest.

"capital property" of a taxpayer means

(a) any depreciable property of the taxpayer, and

(b) any property (other than depreciable property), any gain or loss from the disposition of which would, if the property were disposed of, be a capital gain or a capital loss, as the case may be, of the taxpayer;

Related Provisions: 39(1) — Determination of capital gain and capital loss; 39(4) — Election to treat Canadian securities as capital property; 54.2 — Shares deemed to be capital property where all assets of business transferred; 66.3(1)(a)(i) — Certain exploration and development shares deemed not to be capital property; 96(1.4) — Certain rights to share in income or loss of partnership deemed not to be capital property; 142.5(1) — Mark-to-market rules for financial institutions; 248(1)"capital property" — Definition applies to entire Act.

I.T. Application Rules: 26(5), (6) and (7).

Interpretation Bulletins: IT-102R2: Conversion of property, other than real property, from or to inventory; IT-218R: Profit, capital gains and losses from the sale of real estate, including farmland and inherited land and conversion of real estate from capital property to inventory and vice versa; IT-325R2: Property transfers after separation, divorce and annulment; IT-442R: Bad debts and reserves for doubtful debts; IT-459: Adventure or concern in the nature of trade.

I.T. Technical News: 7 (rollovers of capital property — *Mara Properties*); 12 ("millennium bug" expenditures).

Info Sheets: TI-001: Sale of a residence by an owner builder.

Advance Tax Rulings: ATR-59: Financing exploration and development through limited partnerships.

"disposition" — [Repealed]

History: The definition "disposition" in s. 54 repealed by 2001, c. 17, subsec. 37(1), applicable to transactions and events that occur after December 23, 1998. It formerly read:

"disposition" of any property, except as expressly otherwise provided, includes

(a) any transaction or event entitling a taxpayer to proceeds of disposition of property,

(b) any transaction or event by which

(i) any property of a taxpayer that is a share, bond, debenture, note, certificate, mortgage, agreement of sale or similar property, or an interest therein, is redeemed in whole or in part or is cancelled,

(ii) any debt owing to a taxpayer or any other right of a taxpayer to receive an amount is settled or cancelled,

(iii) any share owned by a taxpayer is converted by virtue of an amalgamation or merger, or

(iv) any option held by a taxpayer to acquire or dispose of property expires, and

(c) any transfer of property to a trust, or any transfer of property of a trust to any beneficiary under the trust, except as provided in paragraph (e),

but, for greater certainty, does not include

(d) any transfer of property for the purpose only of securing a debt or a loan, or any transfer by a creditor for the purpose only of returning property that had been used as security for a debt or a loan,

(e) any transfer of property by virtue of which there is a change in the legal ownership of the property without any change in the beneficial ownership thereof, other than a transfer by a trust resident in Canada to a trust not resident in Canada or a transfer to a trust governed by

(i) a registered retirement savings plan,

(ii) a deferred profit sharing plan,

(iii) an employees profit sharing plan, or

(iv) a registered retirement income fund

by a person who is, immediately after the transfer, a beneficiary under the plan or fund, or a transfer by any such trust governed by a plan or fund to a beneficiary thereunder,

(f) any issue by a corporation of a bond, debenture, note, certificate or mortgage of the corporation, or

(g) any issue by a corporation of a share of its capital stock, or any other transaction that, but for this paragraph, would be a disposition by a corporation of a share of its capital stock;

Selected Cases [s. 54"disposition"]: *T. Eaton Co. v. R.*, [1999] 2 C.T.C. 380 (FCA) (Surrender of participation that reduced value of lease was capital); *Fulljames v. R.*, [2000] 1 C.T.C. 2270 (TCC) (Unrestricted transfer of shares was disposition); *Shepp v. R.*, [1999] 1 C.T.C. 2889 (TCC) (Is disposition of economic interest a disposition of "property"?); *106443 v. Canada*, [1995] 1 C.T.C. 2788 (Sale with right of redemption made to secure repayment of debt); *Stursberg (R.K.G.) v. MNR*, [1993] 2 C.T.C. 76 (FCA) (Transactions resulting in reduction of partner's share and corresponding increase of another partner's share was disposition of part of first partner's interest, not distribution of capital); *Larose v. MNR*, [1992] 2 C.T.C. 2339 (TCC); amended (Nov. 18, 1991), Doc. 87-294(IT) (TCC) [unreported] (Assessment in respect of sale of properties upheld despite court decision and other circumstances denying taxpayer proceeds of sale; right to dispose of properties had been transferred to purchaser); *Fisher, E.R., Ltd. v. R.*, [1986] 2 C.T.C. 114 (FCTD) (Interest on expropriation compensation included in proceeds of disposition); *Wise et al. v. R.*, [1986] 1 C.T.C. 169 (FCA) (Deposit retained as liquidated damages in respect of aborted sale not taxable).

"eligible capital property" of a taxpayer means any property, a part of the consideration for the disposition of which would, if the taxpayer disposed of the property, be an eligible capital amount in respect of a business;

Related Provisions: 14(3) — Non-arm's length acquisition of eligible capital property; 87(2)(f) — Amalgamations — security or debt obligation; 98(3)(b) — Rules applicable where partnership ceases to exist; 248(1)"eligible capital property" — Definition applies to entire Act.

Interpretation Bulletins: IT-123R4: Disposition of eligible capital property; IT-123R5: Transactions involving eligible capital property; IT-143R3: Meaning of eligible capital expenditure; IT-291R3: Transfer of property to a corporation under subsection 85(1).

"listed personal property" of a taxpayer means the taxpayer's personal-use property that is all or any portion of, or any interest in or right to, any

Proposed Amendment — 54"listed personal property" opening words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), s. 216, will amend the opening words of "listed personal property" in s. 54 by substituting "right to — or, for civil law, a right in or to — " for "right to," to come into force on Royal Assent.

Technical Notes: See under 12(4).

(a) print, etching, drawing, painting, sculpture, or other similar work of art,

(b) jewellery,

(c) rare folio, rare manuscript, or rare book,

(d) stamp, or

(e) coin;

Related Provisions: 40(2)(g)(iii) — Limitations; 41 — Gain from listed personal property; 248(1)"listed personal property" — Definition applies to entire Act.

Interpretation Bulletins: IT-159R3: Capital debts established to be bad debts.

"personal-use property" of a taxpayer includes

(a) property owned by the taxpayer that is used primarily for the personal use or enjoyment of the taxpayer or for the personal use or enjoyment of one or more individuals each of whom is

(i) the taxpayer,

(ii) a person related to the taxpayer, or

(iii) where the taxpayer is a trust, a beneficiary under the trust or any person related to the beneficiary,

(b) any debt owing to the taxpayer in respect of the disposition of property that was the taxpayer's personal-use property, and

(c) any property of the taxpayer that is an option to acquire property that would, if the taxpayer acquired it, be personal-use property of the taxpayer,

and "personal-use property" of a partnership includes any partnership property that is used primarily for the personal use or enjoyment of any member of the partnership or for the personal use or enjoyment of one or more individuals each of whom is a member of the partnership or a person related to such a member;

Related Provisions: 3(b)(ii), 40(2)(g)(iii) — No capital loss on personal-use property; 46 — Disposition of personal-use property; 50(2) — Where debt personal-use property; 248(1)"personal-use property" — Definition applies to entire Act.

Interpretation Bulletins: IT-159R3: Capital debts established to be bad debts; IT-218R: Profit, capital gains and losses from the sale of real estate, including farmland and inherited land and conversion of real estate from capital property to inventory and vice versa; IT-332R: Personal-use property (archived).

"principal residence" of a taxpayer for a taxation year means a particular property that is a housing unit, a leasehold interest in a housing unit or a share of the capital stock of a co-operative housing corporation acquired for the sole purpose of acquiring the right to inhabit a housing unit owned by the corporation and that is owned, whether jointly with another person or otherwise, in the year by the taxpayer, if

(a) where the taxpayer is an individual other than a personal trust, the housing unit was ordinarily inhabited in the year by the taxpayer, by the taxpayer's spouse or common-law partner or former spouse or common-law partner or by a child of the taxpayer,

(a.1) where the taxpayer is a personal trust, the housing unit was ordinarily inhabited in the calendar year

ending in the year by a specified beneficiary of the trust for the year, by the spouse or common-law partner or former spouse or common-law partner of such a beneficiary or by a child of such a beneficiary, or

(b) where the taxpayer is a personal trust or an individual other than a trust, the taxpayer

(i) elected[3] under subsection 45(2) that relates to the change in use of the particular property in the year or a preceding taxation year, other than an election rescinded under subsection 45(2) in the taxpayer's return of income for the year or a preceding taxation year, or

(ii) elected[3] under subsection 45(3) that relates to a change in use of the particular property in a subsequent taxation year,

except that, subject to section 54.1, a particular property shall be considered not to be a taxpayer's principal residence for a taxation year

(c) where the taxpayer is an individual other than a personal trust, unless the particular property was designated by the taxpayer in prescribed form and manner to be the taxpayer's principal residence for the year and no other property has been designated for the purposes of this definition for the year

(i) where the year is before 1982, by the taxpayer, or

(ii) where the year is after 1981,

(A) by the taxpayer,

(B) by a person who was throughout the year the taxpayer's spouse or common-law partner (other than a spouse or common-law partner who was throughout the year living apart from, and was separated under a judicial separation or written separation agreement from, the taxpayer),

(C) by a person who was the taxpayer's child (other than a child who was at any time in the year a married person, a person who is in a common-law partnership or 18 years of age or older), or

(D) where the taxpayer was not at any time in the year a married person, a person who is in a common-law partnership or 18 years of age or older, by a person who was the taxpayer's

(I) mother or father, or

(II) brother or sister, where that brother or sister was not at any time in the year a married person, a person who is in a common-law partnership or 18 years of age or older,

(c.1) where the taxpayer is a personal trust, unless

(i) the particular property was designated by the trust in prescribed form and manner to be the taxpayer's principal residence for the year,

(ii) the trust specifies in the designation each individual (in this definition referred to as a "specified beneficiary" of the trust for the year) who, in the calendar year ending in the year,

(A) is beneficially interested in the trust, and

(B) except where the trust is entitled to designate it for the year solely because of paragraph (b), ordinarily inhabited the housing unit or has a spouse or common-law partner, former spouse or common-law partner or child who ordinarily inhabited the housing unit,

(iii) no corporation (other than a registered charity) or partnership is beneficially interested in the trust at any time in the year, and

(iv) no other property has been designated for the purpose of this definition for the calendar year ending in the year by any specified beneficiary of the trust for the year, by a person who was throughout that calendar year such a beneficiary's spouse or common-law partner (other than a spouse or common-law partner who was throughout that calendar year living apart from, and was separated pursuant to a judicial separation or written separation agreement from, the beneficiary), by a person who was such a beneficiary's child (other than a child who was during that calendar year a married person or a person who is in a common-law partnership or a person 18 years or over) or, where such a beneficiary was not during that calendar year a married person or a person who is in a common-law partnership or a person 18 years or over, by a person who was such a beneficiary's

(A) mother or father, or

(B) brother or sister, where that brother or sister was not during that calendar year a married person or a person who is in a common-law partnership or a person 18 years or over, or

(d) because of paragraph (b), if solely because of that paragraph the property would, but for this paragraph, have been a principal residence of the taxpayer for 4 or more preceding taxation years,

and, for the purpose of this definition,

(e) the principal residence of a taxpayer for a taxation year shall be deemed to include, except where the particular property consists of a share of the capital stock of a co-operative housing corporation, the land subjacent to the housing unit and such portion of any immediately contiguous land as can reasonably be regarded as contributing to the use and enjoyment of the housing unit as a residence, except that where the total area of the subjacent land and of that portion exceeds 1/2 hectare, the excess shall be deemed not to have contributed to the use and enjoyment of the housing unit as a residence unless the taxpayer establishes that it was necessary to such use and enjoyment, and

(f) a particular property designated under paragraph (c.1) by a trust for a year shall be deemed to be property designated for the purposes of this definition by each specified beneficiary of the trust for the calendar year ending in the year;

Related Provisions: 40(2)(b), 40(4)–(6) — Principal residence rules; 40(7) — Property in satisfaction of interest in trust; 45(3), (4) — Election where change in use; 54.1 — Exception to principal residence rules; 107(2.01) — Principal residence distribution by spousal trust; 248(25) — Beneficially interested; 252(2) — Mother, father, etc..

History: Para. (c) of the definition "principal residence" in s. 54 amended by 2001, c. 17, subsec. 37(2), applicable to dispositions that occur after 1990 except that cls. (c)(ii)(B) to (D) of the definition shall be read without reference to "or common-law partner" and "a person who is in a common-law partnership" in their application to dispositions made by a taxpayer that occur in a taxation year that is before 2001 and

(a) before 1998; or

[3] *Sic*. Should read "made an election" — ed.

(b) after 1997, unless a valid election is made by the taxpayer under s. 144 of 2000, c. 12 that that Act apply to the taxpayer in respect of one or more taxation years that include the year.

Para. (c) formerly read:

(c) where the taxpayer is an individual other than a personal trust, unless the particular property was designated by the taxpayer in prescribed form and manner to be the taxpayer's principal residence for the year and no other property has been designated for the purposes of this definition for the year by the taxpayer, by a person who was throughout the year the taxpayer's spouse or common-law partner (other than a spouse or common-law partner who was throughout the year living apart from, and was separated under a judicial separation or written separation agreement from, the taxpayer), by a person who was the taxpayer's child (other than a child who was during the year a married person or a person who is in a common-law partnership or 18 years or over) or, where the taxpayer was not during the year a married person or a person who is in a common-law partnership or a person 18 years or over, by a person who was the taxpayer's

(i) mother or father, or

(ii) brother or sister, where that brother or sister was not during the year a married person or a person who is in a common-law partnership or a person 18 years or over,

The definition 54"principal residence" amended by 2000, c. 12, Sch. 2, ss. 1 and 2, to replace "spouse" with "spouse or common-law partner", and by Sch. 2, s. 13, to replace "married person" with "married person or a person who is in a common-law partnership"; by applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

"Principal residence" in s. 54 substituted by 1994, c. 7, Sch. VIII (1993, c. 24), s. 16, applicable to dispositions occurring after 1990. That definition formerly read:

"principal residence" of a taxpayer for a taxation year means a housing unit, a leasehold interest in such a unit, or a share of the capital stock of a co-operative housing corporation, owned, whether jointly with another person or otherwise, in the year by the taxpayer, if the housing unit was, or if the share was acquired for the sole purpose of acquiring the right to inhabit a housing unit owned by the corporation that was,

(a) ordinarily inhabited in the year by the taxpayer, by the taxpayer's spouse or former spouse or by a child of the taxpayer, or

(b) property in respect of which the taxpayer has made an election for the year in accordance with subsection 45(2) or (3),

except that, subject to section 54.1, in no case shall any such housing unit, interest or share, as the case may be, be considered to be a taxpayer's principal residence for a year

(c) unless it has been designated by the taxpayer in prescribed form and manner to be the taxpayer's principal residence for that year and no other such housing unit, leasehold interest or share has been so designated for that year by the taxpayer, by a person who was throughout the year the taxpayer's spouse (other than a spouse who was throughout the year living apart from, and was separated pursuant to a judicial separation or written separation agreement from, the taxpayer), by a person who was the taxpayer's child (other than a child who was during the year a married person or 18 years of age or over) or, where the taxpayer was not during the year a married person or a person 18 years of age or over, by a person who was the taxpayer's

(i) mother or father, or

(ii) brother or sister and who was not during the year a married person or a person 18 years of age or over, or

(d) by virtue of paragraph (b), if by virtue of that paragraph the property would, but for this paragraph, have been the taxpayer's principal residence for 4 or more previous taxation years,

and

(e) for the purposes of this definition the principal residence of a taxpayer for a taxation year shall be deemed to include, except where the property consists of a share of the capital stock of a co-operative housing corporation, the land subjacent to the housing unit and such portion of any immediately contiguous land as may reasonably be regarded as contributing to the taxpayer's use and enjoyment of the housing unit as a residence, except that where the total area of the subjacent land and of that portion exceeds ½ hectare, the excess shall be deemed not to have contributed to the individual's use and enjoyment of the housing unit as a residence unless the taxpayer establishes that it was necessary to that use and enjoyment, and

(f) for the purposes of paragraph (c), a property designated by a trust referred to in subsection 70(6) or 73(1) shall be deemed to be property designated by the spouse who is a beneficiary of the trust and property designated by the spouse who is a beneficiary of any such trust shall be deemed to be a property designated by the trust;

Selected Cases [s. 54"principal residence"]: *Rebus v. R.*, [2002] 3 C.T.C. 2328 (TCC) (Garage is not principal residence); *Carlile v. Canada*, [1995] 2 C.T.C. 273 (FCA) (Uncertainty of being able to re-zone property was sufficient to meet test for principal residence exemption on whole property); *Augart (E.) v. MNR*, [1993] 2 C.T.C. 34 (FCA) (Approximately 9 acres contributed to use and enjoyment where subdivision precluded by law); *Fourt v. MNR*, [1991] 2 C.T.C. 311 (FCTD) (Sale of lot adjacent to principal residence exempt; reasonably regarded as contributing to use and enjoyment of residence); *R. v. Joyner*, [1988] 2 C.T.C. 280 (FCTD) (Whether land in excess of one acre is part of taxpayer's principal residence to be determined upon disposition of property); *R. v. Yates*, [1986] 2 C.T.C. 46 (FCA) (Proceeds exempt from taxation where additional acres necessary for use and enjoyment of taxpayer's principal residence); *Haber v. R.*, [1982] C.T.C. 405 (FCTD) (Taxpayer not ordinarily resident in residential property when home sold one year after acquisition); *R. v. Mitosinka*, [1978] C.T.C. 664 (FCTD) (House held to be principal residence only for part occupied by taxpayer).

Regulations: 2301 (prescribed manner of designation).

I.T. Application Rules: 26.1(1) (change of use of property before 1972).

Interpretation Bulletins: IT-120R6: Principal residence; IT-218R: Profit, capital gains and losses from the sale of real estate, including farmland and inherited land and conversion of real estate from capital property to inventory and vice versa; IT-268R3: *Inter vivos* transfer of farm property to child; IT-437R: Ownership of property (principal residence).

I.T. Technical News: 7 (principal residence and the capital gains election).

Info Sheets: TI-001: Sale of a residence by an owner builder.

Forms: T1079: Designation of a property as a principal residence by a personal trust; T1079-WS: Principal residence worksheet; T1255: Designation of a property as a principal residence by the legal representative of a deceased individual; T2091: Designation of a property as a principal residence by an individual; T2091(IND) WS: Principal residence worksheet.

"proceeds of disposition" of property includes,

(a) the sale price of property that has been sold,

(b) compensation for property unlawfully taken,

(c) compensation for property destroyed, and any amount payable under a policy of insurance in respect of loss or destruction of property,

(d) compensation for property taken under statutory authority or the sale price of property sold to a person by whom notice of an intention to take it under statutory authority was given,

(e) compensation for property injuriously affected, whether lawfully or unlawfully or under statutory authority or otherwise,

(f) compensation for property damaged and any amount payable under a policy of insurance in respect of damage to property, except to the extent that such compensation or amount, as the case may be, has within a reasonable time after the damage been expended on repairing the damage,

(g) an amount by which the liability of a taxpayer to a mortgagee or hypothecary creditor is reduced as a result of the sale of mortgaged or hypothecated property under a provision of the mortgage or hypothec, plus any amount received by the taxpayer out of the proceeds of the sale,

(h) any amount included in computing a taxpayer's proceeds of disposition of the property because of section 79, and

(i) in the case of a share, an amount deemed by subparagraph 88(2)(b)(ii) not to be a dividend on that share,

but notwithstanding any other provision of this Part, does not include

(j) any amount that would otherwise be proceeds of disposition of a share to the extent that the amount is deemed by subsection 84(2) or (3) to be a dividend received and is not deemed by paragraph 55(2)(a) or subparagraph 88(2)(b)(ii) not to be a dividend, or

(k) any amount that would otherwise be proceeds of disposition of property of a taxpayer to the extent that the amount is deemed by subsection 84.1(1), 212.1(1) or 212.2(2) to be a dividend paid to the taxpayer;

Related Provisions: 13(21)"proceeds of disposition" — Parallel definition for depreciable property; 13(21.1) — Disposition of a building; 43.1 — Life estates in real property; 44(6) — Deemed proceeds on replacement of land and building; 48.1(1) — Optional gain when small business corporation becomes public; 49.1 — Satisfaction of obligation is not a disposition of property; 50(1) — Debts established to be bad debts and shares of bankrupt corporation; 51.1 — Deemed proceeds on conversion of convertible bond; 55(2) — Deemed proceeds or capital gain; 56.4(3) — Where non-competition agreement deemed part of sale of shares; 59(5), 66.4(5) — Definition applies to 59 and 66.4; 69(1)(b) — Inadequate considerations — taxpayer deemed to have received proceeds; 69(4) — Shareholder appropriation — deemed proceeds to corporation; 69(11) — Deemed proceeds; 70(5) — Deemed disposition on death; 79(3) — Deemed proceeds to debtor on surrender of property to creditor; 79.1(5) — Deemed proceeds where property sold and repossessed in same taxation year; 85(1)(a) — Transfer of property to corporation by shareholders; 85.1(1)(a)(i) — Share for share exchange; 86(1)(c) — Exchange of shares by a shareholder in course of reorganization of capital; 87(4)(a), (c) — Shares of predecessor corporation; 88(1)(a), (b) — Winding-up; 128.1(4)(b) — Deemed disposition of property on ceasing to be resident in Canada; 128.1(8) — Retroactive adjustment to proceeds for deemed disposition on emigration where taxpayer returns to Canada; 132.2(1)(c), (f), (i), (j) [to be repealed], 132.2(3)(a), (c), (f), (g), 132.2(4)(b), 132.2(5)(c) [draft] — Deemed proceeds on mutual fund reorganization; 248(1) — Definition of "disposition"; 248(39)(b) — Anti-avoidance — selling property and donating proceeds.

History: Para. (g) of the definition "proceeds of disposition" in s. 54 amended by 2001, c. 17, subsec. 207(1), in force June 14, 2001. Para. (g) formerly read:

(g) an amount by which the liability of a taxpayer to a mortgagee is reduced as a result of the sale of mortgaged property under a provision of the mortgage, plus any amount received by the taxpayer out of the proceeds of the sale,

Para. (k) of the definition "proceeds of disposition" in s. 54 amended by 2000, c. 19, s. 5, applicable to taxation years that end after December 15, 1998. Para. (k) formerly read:

(k) any amount that would otherwise be proceeds of disposition of property of a taxpayer to the extent that the amount is deemed by subsection 84.1(1) or 212.1(1) to be a dividend paid to the taxpayer;

Para. (h) of the definition "proceeds of disposition" in s. 54 amended by 1995, c. 21, subsec. 18(1), applicable to taxation years that end after February 21, 1994. The para. formerly read:

(h) any amount included in computing a taxpayer's proceeds of disposition of the property by virtue of paragraph 79(c), and

Selected Cases [s. 54"proceeds of disposition"]: *Corbett v. Canada*, [1997] 1 C.T.C. 2 (FCA) (No conflict with s. 79); *Hogan v. MNR*, [1995] 2 C.T.C. 108 (FCTD) (Proceeds of disposition when property sold at mortgage sale was full amount of mortgage, not lower amount upon subsequent resale); *Sénécal (J.G.) v. MNR*, [1993] 2 C.T.C. 2218 (TCC) (Proceeds of disposition of land equal to cash and face value of promissory note received, despite evidence that note's value nil); *Shaw (J.M.) v. MNR*, [1993] 1 C.T.C. 221 (FCA); leave to appeal to SCC refused (1993), 158 N.R. 399 (note) (Amount paid as "interest" on award of additional compensation for expropriation was interest income, not proceeds of disposition); *Sani Sport Inc. v. Canada*, [1990] 2 C.T.C. 15 (FCA) (Portion of compensation pertaining to expropriated property constitutes proceeds of disposition for calculation of capital gain); *R. v. Fradet et al.*, [1986] 2 C.T.C. 321 (FCA) (Portion of sales price returned to purchaser not included in proceeds of disposition); *Fisher, E.R., Ltd. v. R.*, [1986] 2 C.T.C. 114 (FCTD) (Interest on expropriation compensation included in proceeds of disposition); *Salt et al. v. R.*, [1984] C.T.C. 414 (FCTD) (Amounts received for extended options included in proceeds of disposition).

Interpretation Bulletins: IT-125R4: Dispositions of resource properties; IT-149R4: Winding-up dividend; IT-170R: Sale of property — when included in income computation; IT-185R: Losses from theft, defalcation or embezzlement; IT-200: Surface rentals and farming operations; IT-220R2: Capital cost allowance — proceeds of disposition of depreciable property; IT-259R4: Exchanges of property; IT-271R: Expropriations (archived); IT-373R2: Woodlots; IT-444R: Corporations — involuntary dissolutions; IT-460: Dispositions — absence of consideration; IT-505: Mortgage foreclosures and conditional sales repossessions (archived).

Advance Tax Rulings: ATR-28: Redemption of capital stock of family farm corporation; ATR-35: Partitioning of assets to get specific ownership — "butterfly".

"specified property" of a taxpayer is capital property of the taxpayer that is

(a) a share,

(b) a capital interest in a trust,

(c) an interest in a partnership, or

(d) an option to acquire specified property of the taxpayer;

History: The definition "specified property" added to s. 54 by 1995, c. 21, subsec. 18(3), applicable to taxation years that end after February 21, 1994.

"superficial loss" of a taxpayer means the taxpayer's loss from the disposition of a particular property where

(a) during the period that begins 30 days before and ends 30 days after the disposition, the taxpayer or a person affiliated with the taxpayer acquires a property (in this definition referred to as the "substituted property") that is, or is identical to, the particular property, and

(b) at the end of that period, the taxpayer or a person affiliated with the taxpayer owns or had a right to acquire the substituted property,

except where the disposition was

(c) a disposition deemed by paragraph 33.1(11)(a), subsection 45(1), section 48 as it read in its application before 1993, section 50 or 70, subsection 104(4), section 128.1, paragraph 132.2(1)(f), subsection 138(11.3) or 142.5(2), paragraph 142.6(1)(b) or subsection 144(4.1) or (4.2) or 149(10) to have been made,

Proposed Amendment — 54"superficial loss"(c)

(c) a disposition deemed by paragraph 33.1(11)(a), subsection 45(1), section 50 or 70, subsection 104(4), section 128.1, paragraph 132.2(3)(a) or (c), subsection 138(11.3) or 142.5(2), paragraph 142.6(1)(b) or subsection 144(4.1) or (4.2) or 149(10) to have been made,

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 66, will amend para. (c) of the definition "superficial loss" in s. 54 to read as above, applicable to dispositions that occur after 1998.

Technical Notes: Section 54 defines various terms for the purposes of the rules relating to taxable capital gains and allowable capital losses. The definition "superficial loss" in section 54 excludes losses on dispositions listed in paragraphs (c) to (h) of the definition from being superficial losses. As a consequence of the restructuring of section 132.2, the reference in paragraph (c) of the definition to paragraph 132.2(1)(f) is replaced by references to paragraphs 132.2(3)(a) and (c).

(d) the expiry of an option,

(e) a disposition to which paragraph 40(2)(e.1) applies,

(f) a disposition by a corporation the control of which was acquired by a person or group of persons within 30 days after the disposition,

(g) a disposition by a person that, within 30 days after the disposition, became or ceased to be exempt from tax under this Part on its taxable income, or

(h) a disposition to which subsection 40(3.4) or 69(5) applies,

and, for the purpose of this definition, a right to acquire a property (other than a right, as security only, derived from a mortgage, hypothec, agreement for sale or similar obligation) is deemed to be a property that is identical to the property.

Related Provisions: 13(21.2) — Superficial loss rule for depreciable property; 18(13)–(16) — Superficial loss in moneylending business or adventure in nature of trade; 40(2)(g)(i) — Superficial loss deemed to be nil; 40(3.3), (3.4) — Limitation on loss where property acquired by affiliated person; 53(1)(f) — Addition to ACB of substituted property; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 248(12) — Identical properties; 251.1 — Affiliated persons; 256(5.1) — Controlled directly or indirectly — control in fact; 256(6)–(9) — Whether control acquired.

History: The closing words of the definition "superficial loss" in s. 54 amended to add "hypothec" by 2001, c. 17, subsec. 207(2), in force June 14, 2001.

The definition "superficial loss" in s. 54 amended by 1998, c. 19, s. 95, applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995. The definition formerly read:

"superficial loss" of a taxpayer means the taxpayer's loss from the disposition of a property in any case where

(a) the same or identical property (in this definition referred to as "substituted property") was acquired, during the period beginning 30 days before the disposition and ending 30 days after the disposition, by the taxpayer, the taxpayer's spouse or a corporation controlled, directly or indirectly in any manner whatever, by the taxpayer, and

(b) at the end of the period referred to in paragraph (a) the taxpayer, the taxpayer's spouse or the corporation, as the case may be, owned, in any manner whatever, the substituted property,

except that a loss otherwise described in this definition shall be deemed not to be a superficial loss if the disposition giving rise to the loss

(c) was a disposition deemed by paragraph 33.1(11)(a), subsection 45(1), section 48 as it read in its application before 1993, section 50 or 70, subsection 104(4), section 128.1, paragraph 132.2(1)(f), subsection 138(11.3) or 142.5(2), paragraph 142.6(1)(b) or subsection 144(4.1) or (4.2) or 149(10) to have been made,

(d) was the expiration of an option, or

(e) was a disposition of property by the taxpayer to which paragraph 40(2)(e.1) or subsection 85(4) applies.

Para. (c) of the definition "superficial loss" in s. 54 amended by 1995, c. 21, s. 77, applicable to dispositions that occur after February 22, 1994, except that in applying para. (c) before July 1994, it shall be read without reference to "paragraph 132.2(1)(f)". The para. formerly read:

(c) was a disposition deemed by paragraph 33.1(11)(a), subsection 45(1), section 48 as it read in its application before 1993, section 50 or 70, subsection 104(4), section 128.1 or subsection 138(11.3), 144(4.1) or (4.2) or 149(10) to have [been] made,

Para. (e) of the definition "superficial loss" in s. 54 amended by 1995, c. 21, subsec. 18(2), applicable to taxation years that end after February 21, 1994. The para. formerly read:

(e) was a disposition of property by the taxpayer to which subsection 85(4) applies.

Para. (c) of the definition "superficial loss" in s. 54 substituted by 1994, c. 21, s. 23, applicable after 1992 except that, where a corporation elects in accordance with paragraph 111(4)(a) of 1994, c. 21 (i.e., elects before the end of December 1994 for new subsec. 250(5.1) to apply in respect of a continuance before 1993), the amended para. applies to the corporation from the corporation's time of continuation (within the meaning assigned by that paragraph). Para. (c) formerly read:

(c) was a disposition deemed by paragraph 33.1(11)(a), subsection 45(1), section 48, 50 or 70 or subsection 104(4), 138(11.3), 144(4.1) or (4.2) or 149(10) to have been made,

Para. (a) of the definition "superficial loss" in s. 54 amended by 1994, c. 7, Sch. II (1991, c. 49), s. 31, to substitute "controlled, directly" for "controlled, whether directly", applicable to taxation years beginning after 1988.

I.T. Application Rules: 26(6) (superficial loss where disposition from June 19 to December 31, 1971).

Interpretation Bulletins: IT-159R3: Capital debts established to be bad debts; IT-325R2: Property transfers after separation, divorce and annulment; IT-387R2: Meaning of "identical properties".

I.T. Technical News: 7 (control by a group — 50/50 arrangement (re para. (f))).

Definitions [s. 54]: "acquired" — 256(7)–(9); "affiliated" — 251.1; "amount" — 248(1); "beneficially interested" — 248(25); "brother" — 252(2); "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "capital gain" — 39(1)(a), 248(1); "capital interest" — in a trust 108(1), 248(1); "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "child" — 252(1); "common-law partner", "common-law partnership" — 248(1); "control" — 256(6)–(9); "controlled directly or indirectly" — 256(5.1), (6.2); "corporation" — 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan" — 147(1), 248(1); "depreciable property" — 13(21), 248(1); "disposition", "dividend" — 248(1); "eligible capital amount" — 14(1), 248(1); "eligible capital property" — 54, 248(1); "employees profit sharing plan" — 144(1), 248(1); "father" — 252(2); "identical" — 248(12); "individual" — 248(1); "mother" — 252(2); "person", "personal trust" — 248(1); "personal-use property" — 54, 248(1); "prescribed", "property" — 248(1); "registered charity" — 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "resident in Canada" — 94(3)(a)(viii), 250; "separation agreement" — 248(1); "share" — 248(1); "sister" — 252(2); "specified beneficiary" — 54"principal residence"(c.1)(ii); "substituted property" — 54"superficial loss"(a); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "written" — *Interpretation Act* 35(1)"writing".

54.1 (1) Exception to principal residence rules — A taxation year in which a taxpayer does not ordinarily inhabit the taxpayer's property as a consequence of the relocation of the taxpayer's or the taxpayer's spouse's or common-law partner's place of employment while the taxpayer, spouse or common-law partner, as the case may be, is employed by an employer who is not a person to whom the taxpayer or the spouse is related is deemed not to be a previous taxation year referred to in paragraph (d) of the definition "principal residence" in section 54 if

Proposed Amendment — 54.1(1) opening words

54.1 Exception to principal residence rules — (1) A taxation year in which a taxpayer does not ordinarily inhabit the taxpayer's property as a consequence of the relocation of the place of employment of the taxpayer or the taxpayer's spouse or common-law partner while the taxpayer or the taxpayer's spouse or common-law partner, as the case may be, is employed by an employer who is not a person to whom the taxpayer or the taxpayer's spouse or common-law partner is related is deemed not to be a previous taxation year referred to in paragraph (d) of the definition "principal residence" in section 54 if

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 67, will amend the opening words of subsec. 54.1(1) to read as above, applicable to 2001 *et seq.* except that, if a taxpayer and a person have jointly elected under s. 144 of the *Modernization of Benefits and Obligations Act* [S.C. 2000, c. 12; see the transitional rules reproduced in the

History to 248(1)"common-law partner"], in respect of the 1998, 1999 or 2000 taxation years, the amendment applies to the taxpayer and the person in respect of the applicable taxation year and subsequent taxation years.

Technical Notes: Section 54.1 sets out an exception to the principal residence rules. Under the rules in section 54, if a housing unit is not ordinarily inhabited in a year and is rented out, it can continue to qualify as a principal residence for up to 4 years if the taxpayer so elects under subsection 45(2). However, under section 54.1 it can continue to so qualify indefinitely provided that, as a consequence of a relocation of employment of the taxpayer or the taxpayer's spouse or common-law partner, the property is not ordinarily inhabited by the taxpayer. The recent amendments to add references in the Act to a common-law partner [did not include] the English version of section 54.1. The current amendment adds the required reference and corrects that oversight and generally applies to the 2001 and subsequent taxation years. However, it may apply as early as 1998 where common-law partners have jointly elected to be treated as such under the Act, starting in that year.

(a) the property subsequently becomes ordinarily inhabited by the taxpayer during the term of the taxpayer's or the taxpayer's spouse's or common-law partner's employment by that employer or before the end of the taxation year immediately following the taxation year in which the taxpayer's or the spouse's or common-law partner's employment by that employer terminates; or

(b) the taxpayer dies during the term of the taxpayer's or the spouse's or common-law partner's employment by that employer.

(2) Definition of "property" — In this section, "property", in relation to a taxpayer, means a housing unit

(a) owned by the taxpayer,

(b) in respect of which the taxpayer has a leasehold interest, or

(c) in respect of which the taxpayer owned a share of the capital stock of a co-operative housing corporation if the share was acquired for the sole purpose of acquiring the right to inhabit a housing unit owned by the corporation

whether jointly with another person or otherwise in the year and that at all times was at least 40 kilometres farther from the taxpayer's or the taxpayer's spouse's or common-law partner's new place of employment than was the taxpayer's subsequent place or places of residence.

Related Provisions: 40(2)(b), 40(4)–(6) — Principal residence rules.

History [s. 54.1]: The opening words of subsec. 54.1(1) amended by 2001, c. 17, s. 238, applicable to 2001 *et seq.* except that, if a taxpayer and a person have jointly elected pursuant to s. 144 of the *Modernization of Benefits and Obligations Act* [2000, c. 12], in respect of the 1998, 1999 or 2000 taxation years, the amendment applies to the taxpayer and the person in respect of the applicable taxation year and subsequent taxation years. The opening words formerly read:

> 54.1 (1) A taxation year in which a taxpayer does not ordinarily inhabit the taxpayer's property as a consequence of the relocation of the taxpayer's or the taxpayer's spouse's or common-law partner's place of employment while the taxpayer or the spouse, as the case may be, is employed by an employer who is not a person to whom the taxpayer or the spouse is related shall be deemed not to be a previous taxation year referred to in paragraph (d) of the definition "principal residence" in section 54 if

S. 54.1 amended to replace "spouse's"with "spouse's or common-law partner's" by 2000, c. 12, Sch. 2, s. 7, applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Definitions [s. 54.1]: "common-law partner" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "employed", "employer", "employment", "person" — 248(1); "property" — 54.1(2); "share" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 54.1]: IT-120R6: Principal residence.

54.2 Certain shares deemed to be capital property — Where any person has disposed of property that consisted of all or substantially all of the assets used in an active business carried on by that person to a corporation for consideration that included shares of the corporation, the shares shall be deemed to be capital property of the person.

Related Provisions: 39(4) — Election re disposition of Canadian securities; 85(1) — Rollovers of property to corporation; 110.6(14)(f)(ii) — Shares qualify for capital gains exemption without waiting for 2-year holding period; 248(1) — "Business" does not include adventure or concern in the nature of trade.

Definitions [s. 54.2]: "active business", "business" — 248(1); "capital property" — 54, 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition", "person", "property", "share" — 248(1).

Information Circulars: 88-2 Supplement, para. 7: General anti-avoidance rule — section 245 of the *Income Tax Act*.

55. (1) Definitions — In this section,

"distribution" means a direct or indirect transfer of property of a corporation (referred to in this section as the "distributing corporation") to one or more corporations (each of which is referred to in this section as a "transferee corporation") where, in respect of each type of property owned by the distributing corporation immediately before the transfer, each transferee corporation receives property of that type the fair market value of which is equal to or approximates the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the fair market value, immediately before the transfer, of all property of that type owned at that time by the distributing corporation,

B is the fair market value, immediately before the transfer, of all the shares of the capital stock of the distributing corporation owned at that time by the transferee corporation, and

C is the fair market value, immediately before the transfer, of all the issued shares of the capital stock of the distributing corporation;

Related Provisions: 55(3.02) — Where distributing corporation is a specified corporation; 88(1)(c)(iv) — Winding-up.

"permitted acquisition", in relation to a distribution by a distributing corporation, means an acquisition of property by a person or partnership on, or as part of,

(a) a distribution, or

(b) a permitted exchange or permitted redemption in relation to a distribution by another distributing corporation;

"permitted exchange", in relation to a distribution by a distributing corporation, means

(a) an exchange of shares for shares of the capital stock of the distributing corporation to which subsection 51(1) or 86(1) applies or would, if the shares were capital property to the holder thereof, apply, other than an exchange that resulted in an acquisition of control of the distributing corporation by any person or group of persons, and

(b) an exchange of shares of the capital stock of the distributing corporation by one or more shareholders of the distributing corporation (each of whom is referred to in this paragraph as a "participant") for

shares of the capital stock of another corporation (referred to in this paragraph as the "acquiror") in contemplation of the distribution where

(i) no share of the capital stock of the acquiror outstanding immediately after the exchange (other than directors' qualifying shares) is owned at that time by any person or partnership other than a participant,

and either

(ii) the acquiror owns, immediately before the distribution, all the shares each of which is a share of the capital stock of the distributing corporation that was owned immediately before the exchange by a participant, or

(iii) the fair market value, immediately before the distribution, of each participant's shares of the capital stock of the acquiror is equal to or approximates the amount determined by the formula

$$\left(A \times \frac{B}{C}\right) + D$$

where

A is the fair market value, immediately before the distribution, of all the shares of the capital stock of the acquiror then outstanding (other than shares issued to participants in consideration for shares of a specified class all the shares of which were acquired by the acquiror on the exchange),

B is the fair market value, immediately before the exchange, of all the shares of the capital stock of the distributing corporation (other than shares of a specified class none or all of the shares of which were acquired by the acquiror on the exchange) owned at that time by the participant,

C is the fair market value, immediately before the exchange, of all the shares (other than shares of a specified class none or all of the shares of which were acquired by the acquiror on the exchange and shares to be redeemed, acquired or cancelled by the distributing corporation pursuant to the exercise of a statutory right of dissent by the holder of the share) of the capital stock of the distributing corporation outstanding immediately before the exchange, and

D is the fair market value, immediately before the distribution, of all the shares issued to the participant by the acquiror in consideration for shares of a specified class all of the shares of which were acquired by the acquiror on the exchange;

Related Provisions: 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired.

"permitted redemption", in relation to a distribution by a distributing corporation, means

(a) a redemption or purchase for cancellation by the distributing corporation, as part of the reorganization in which the distribution was made, of all the shares of its capital stock that were owned, immediately before the distribution, by a transferee corporation in relation to the distributing corporation,

(b) a redemption or purchase for cancellation by a transferee corporation in relation to the distributing corporation, or by a corporation that, immediately after the redemption or purchase, was a subsidiary wholly-owned corporation of the transferee corporation, as part of the reorganization in which the distribution was made, of all of the shares of the capital stock of the transferee corporation or the subsidiary wholly-owned corporation that were acquired by the distributing corporation in consideration for the transfer of property received by the transferee corporation on the distribution, and

(c) a redemption or purchase for cancellation by the distributing corporation, in contemplation of the distribution, of all the shares of its capital stock each of which is

(i) a share of a specified class the cost of which, at the time of its issuance, to its original owner was equal to the fair market value at that time of the consideration for which it was issued, or

(ii) a share that was issued, in contemplation of the distribution, by the distributing corporation in exchange for a share described in subparagraph (i);

History: Paras. (a) and (b) of the definition "permitted redemption" in subsec. 55(1) amended by 1998, c. 19, subsec. 96(1), applicable to dividends received after February 21, 1994. The paras. formerly read:

(a) a redemption or purchase for cancellation by the distributing corporation, as part of the reorganization in which the distribution was made, of all the shares of its capital stock owned by a transferee corporation in relation to the distributing corporation,

(b) a redemption or purchase for cancellation by a transferee corporation in relation to the distributing corporation, as part of the reorganization in which the distribution was made, of all of the shares of its capital stock owned by the distributing corporation, and

Proposed Addition — 55(1)"qualified person"

"qualified person", in relation to a distribution, means a person or partnership with whom the distributing corporation deals at arm's length at all times during the course of the series of transactions or events that includes the distribution if

(a) at any time before the distribution,

(i) all of the shares of each class of the capital stock of the distributing corporation that includes shares that cause that person or partnership to be a specified shareholder of the distributing corporation (in this definition all of those shares in all of those classes are referred to as the "exchanged shares") are, in the circumstances described in paragraph (a) of the definition "permitted exchange", exchanged for consideration that consists solely of shares of a specified class of the capital stock of the distributing corporation (in this definition referred to as the "new shares"), or

(ii) the terms or conditions of all of the exchanged shares are amended (which shares are in this definition referred to after the amendment as the "amended shares") and the amended shares are shares of a specified class of the capital stock of the distributing corporation,

(b) immediately before the exchange or amendment, the exchanged shares are listed on a prescribed stock exchange,

(c) immediately after the exchange or amendment, the new shares or the amended shares, as the case may be, are listed on a prescribed stock exchange,

(d) the exchanged shares would be shares of a specified class if they were not convertible into, or exchangeable for, other shares,

(e) the new shares or the amended shares, as the case may be, and the exchanged shares are non-voting in respect of the election of the board of directors of the distributing corporation except in the event of a failure or default under the terms or conditions of the shares, and

(f) no holder of the new shares or the amended shares, as the case may be, is entitled to receive on the redemption, cancellation or acquisition of the new shares or the amended shares, as the case may be, by the distributing corporation or by any person with whom the distributing corporation does not deal at arm's length an amount (other than a premium for early redemption) that is greater than the total of the fair market value of the consideration for which the exchanged shares were issued and the amount of any unpaid dividends on the new shares or on the amended shares, as the case may be;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 68(2), will add the definition "qualified person" to subsec. 55(1), applicable in respect of dividends received after 1999.

Technical Notes: The definition "qualified person" is added to subsection 55(1), in conjunction with amendments to clause 55(3.1)(b)(i)(B) and paragraph 55(3.2)(h). As a result of these amendments, a person or partnership may exchange shares of a distributing corporation ("old shares") for new shares of the distributing corporation and, where the conditions set out in the definition are satisfied, the ownership of the old shares will not affect the tax treatment of dividends received in the course of a reorganization to which paragraph 55(3)(b) applies. In general terms, a qualified person is a person or partnership that exchanges all of the old shares that caused that person or partnership to be a specified shareholder of the distributing corporation for consideration consisting solely of shares of a specified class. The definition also provides that the old shares must not be shares of a specified class solely because they were convertible into a class of shares that was not a specified class and that every holder of old shares must participate in the exchange. In addition, a person or partnership will not be a qualified person unless the old shares and the new shares are non-voting in respect of the election of the board of directors (or have voting rights only in the event of failure or default under the terms of the shares).

The addition of the definition "qualified person", applicable in respect of dividends received after 1999, is made concurrently with the addition of new subsection 55(3.4). New subsection 55(3.4) provides that shares of a specified class are not taken into consideration in determining if a person is a specified shareholder for the purpose of subparagraph 55(3.1)(b)(i) and for the purpose of paragraph 55(3.2)(h), as that paragraph applies for the purpose of subparagraph 55(3.1)(b)(iii).

Letter from Dept. of Finance, May 15, 2000:

Dear [xxx]

This is in response to your letter of April 14, 2000 and further to your telephone conversation with Davine Roach of this Division regarding a proposed butterfly reorganization in which [xxx], a Canadian public corporation, proposes to distribute some of its assets to Newco. You are concerned that the current wording of the definition "specified shareholder" in subsection 55(3.3) of the *Income Tax Act* (the "Act") inappropriately applies to cause paragraph 55(3.1)(b) of the Act to apply to the butterfly reorganization transaction rendering it taxable. You ask that the Act be amended to address this concern.

Our understanding of the facts of the proposed transaction is that MBC proposes to transfer on a tax-deferred-basis to Newco, in the course of a butterfly reorganization to which paragraph 55(3)(b) of the Act applies, 80% of the net fair market value of [xxx] total property. Newco will be owned by the shareholders of [xxx] for the purpose of acquiring the distributed assets. As part of the series of transactions that includes the butterfly reorganization, [xxx] will redeem the first preference shares (Series B). These shares are shares of a "specified class" within the meaning of the definition "specified class" in subsection 55(1) of the Act. Mr. X owns more than 10% of the first preference shares. Consequently, Mr. X is a specified shareholder of [xxx] within the meaning of "specified shareholder" in subsection 55(3.3). Mr. X also owns common shares of [xxx] but would not be a specified shareholder of [xxx] if he did not own more than 10% of the first preference shares.

Immediately after the butterfly reorganization, a company wholly-owned by [xxx] ("Acquisition Co.") will acquire for cash all of [xxx] outstanding shares including those held by Mr. X. [xxx] is the controlling shareholder of [xxx]. Mr. X is unrelated to [xxx]. Because Mr. X is a "specified shareholder" of [xxx] and unrelated to Acquisition Co., paragraph 55(3.1)(b) of the Act will apply to the share acquisition by Acquisition Co. to cause the butterfly reorganization to be subject to the application of subsection 55(2) of the Act. You believe that the restrictions in paragraph 55(3.1)(b) should not apply to a person who is a specified shareholder because the person holds shares of a "specified class" as defined in subsection 55(1) of the Act.

We agree that, from a policy perspective, shareholders holding shares of a specified class should not be subject to all specified shareholder restrictions in paragraph 55(3.1)(b) of the Act. Consequently, we are prepared to recommend to the Minister of Finance that the Act be amended to provide that, for the purposes of subparagraph 55(3.1)(b)(i) and paragraph 55(3.2)(h) of the Act as it applies for the purposes of subparagraph 55(3.1)(b)(iii), a shareholder will not be treated as a specified shareholder only because the shareholder holds shares of a "specified class" as defined by subsection 55(1) of the Act and the shares are otherwise non-voting. It would also be recommended that such an amendment be effective for dividends received after 1999.

If the above recommendations are acted upon, I would anticipate that such amendments would be included in a future income tax technical bill.

Yours sincerely,
Brian Ernewein
Director, Tax Legislation Division

Regulations: 3200, 3201 (prescribed stock exchange).

"safe-income determination time" for a transaction or event or a series of transactions or events means the time that is the earlier of

(a) the time that is immediately after the earliest disposition or increase in interest described in any of subparagraphs (3)(a)(i) to (v) that resulted from the transaction, event or series, and

(b) the time that is immediately before the earliest time that a dividend is paid as part of the transaction, event or series;

History: The definition "safe-income determination time" added to subsec. 55(1) by 1998, c. 19, subsec. 96(2), applicable to dividends received after June 20, 1996.

"specified class" means a class of shares of the capital stock of a distributing corporation where

(a) the paid-up capital in respect of the class immediately before the beginning of the series of transactions or events that includes a distribution by the distributing corporation was not less than the fair market value of the consideration for which the shares of that class then outstanding were issued,

(b) under neither the terms and conditions of the shares nor any agreement in respect of the shares are the shares convertible into or exchangeable for shares other than shares of a specified class or shares of the capital stock of a transferee corporation in relation to the distributing corporation, and

(c) under neither the terms and conditions of the shares nor any agreement in respect of the shares is any holder of the shares entitled to receive on the redemption, cancellation or acquisition of the shares by the corporation or by any person with whom the corporation does not deal at arm's length (excluding any premium for early redemption) an amount greater than the total of the fair market value of the consideration for which the shares were issued and the amount of any unpaid dividends thereon.

Proposed Amendment — 55(1)"specified class"(c), (d)

(c) no holder of the shares is entitled to receive on the redemption, cancellation or acquisition of the shares by the corporation or by any person with whom the corporation does not deal at arm's length an amount (other than a premium for early redemption) that is greater than the total of the fair market value of the consideration for which the shares were issued and the amount of any unpaid dividends on the shares, and

(d) the shares are non-voting in respect of the election of the board of directors except in the event of a failure or default under the terms or conditions of the shares;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 68(1), will amend para. (c) of the definition "specified class" in subsec. 55(1) to read as above, and add para. (d), applicable in respect of shares issued after December 20, 2002.

Technical Notes: The definition "specified class" is relevant in determining whether an exchange of shares of the capital stock of a distributing corporation for shares of the capital stock of another corporation constitutes a permitted exchange, which, in turn, is relevant for the purpose of paragraph 55(3.1)(b). The definition "specified class" is also relevant in determining if a redemption of shares by the distributing corporation prior to a distribution is a permitted redemption.

The rules applicable to shares of a specified class are based on the premise that such shares are equivalent to debt. Thus, to ensure that these shares more closely resemble debt, the definition is amended, for shares issued after December 20, 2002, to include a requirement that they be non-voting with respect to the election of the directors of the corporation (or have voting rights only in the event of failure or default under the terms of the shares).

"specified corporation" in relation to a distribution means a distributing corporation

(a) that is a public corporation or a specified wholly-owned corporation of a public corporation,

(b) shares of the capital stock of which are exchanged for shares of the capital stock of another corporation (referred to in this definition and subsection (3.02) as an "acquiror") in an exchange to which the definition "permitted exchange" in this subsection would apply if that definition were read without reference to paragraph (a) and subparagraph (b)(ii) of that definition,

(c) that does not make a distribution, to a corporation that is not an acquiror, after 1998 and before the day that is three years after the day on which the shares of the capital stock of the distributing corporation are exchanged in a transaction described in paragraph (b), and

(d) no acquiror in relation to which makes a distribution after 1998 and before the day that is three years after the day on which the shares of the capital stock of the distributing corporation are exchanged in a transaction described in paragraph (b),

and, for the purposes of paragraphs (c) and (d),

(e) a corporation that is formed by an amalgamation of two or more other corporations is deemed to be the same corporation as, and a continuation of, each of the other corporations, and

(f) where there has been a winding-up of a corporation to which subsection 88(1) applies, the parent is deemed to be the same corporation as, and a continuation of, the subsidiary;

History: The definition "specified corporation" added to subsec. 55(1) by 2001, c. 17, subsec. 38(1), applicable to transfers that occur after 1998.

"specified wholly-owned corporation" of a public corporation means a corporation all of the outstanding shares of the capital stock of which (other than directors' qualifying shares and shares of a specified class) are held by

(a) the public corporation,

(b) a specified wholly-owned corporation of the public corporation, or

(c) any combination of corporations described in paragraph (a) or (b).

History: The definition "specified wholly-owned corporation" added to subsec. 55(1) by 2001, c. 17, subsec. 38(1), applicable to transfers that occur after 1998.

History [subsec. 55(1)]: New subsec. 55(1) added by 1995, c. 3, subsec. 16(1), applicable to dividends received after February 21, 1994 other than dividends received before 1995 in the course of a reorganization that was required on February 22, 1994 to be carried out pursuant to a written agreement entered into before February 22, 1994.

Selected Cases [subsec. 55(1)]: *Nova Corp. of Alberta v. R.*, [1997] 3 C.T.C. 291 (FCA) (Taxpayer must have done something to increase the loss for provision to apply); *Nova Corporation of Alberta v. Canada*, [1996] 1 C.T.C. 2164 (TCC) (Provision not applicable where taxpayer did nothing to increase an existing loss in shares acquired in arm's length transaction).

(2) Deemed proceeds or capital gain — Where a corporation resident in Canada has received a taxable dividend in respect of which it is entitled to a deduction under subsection 112(1) or (2) or 138(6) as part of a transaction or event or a series of transactions or events, one of the purposes of which (or, in the case of a dividend under subsection 84(3), one of the results of which) was to effect a significant reduction in the portion of the capital gain that, but for the dividend, would have been realized on a disposition at fair market value of any share of capital stock immediately before the dividend and that could reasonably be considered to be attributable to anything other than income earned or realized by any corporation after 1971 and before the safe-income determination time for the transaction, event or series, notwithstanding any other section of this Act, the amount of the dividend (other than the portion of it, if any, subject to tax under Part IV that is not refunded as a consequence of the payment of a dividend to a corporation where the payment is part of the series)

(a) shall be deemed not to be a dividend received by the corporation;

(b) where a corporation has disposed of the share, shall be deemed to be proceeds of disposition of the share except to the extent that it is otherwise included in computing such proceeds; and

(c) where a corporation has not disposed of the share, shall be deemed to be a gain of the corporation for the year in which the dividend was received from the disposition of a capital property.

Related Provisions: 54"proceeds of disposition"(j) — Effect of 55(2) on proceeds of disposition; 55(3) — Exception; 55(4) — Arm's length dealings; 55(5) — Applicable rules; 110.6(7)(a) — Capital gains exemption disallowed on butterfly; 112(3) — Stop-loss rule denying capital loss after dividends received on share; 248(10) — Series of transactions; 256(7) — Where control deemed not to be acquired; 256(8) — Where rights acquired rather than shares in order to avoid 55(2).

History: The opening words of subsec. 55(2) amended by 1998, c. 19, subsec. 96(3), applicable to dividends received after June 20, 1996. The opening words formerly read:

(2) Where a corporation resident in Canada has after April 21, 1980 received a taxable dividend in respect of which it is entitled to a deduction under subsection 112(1) or 138(6) as part of a transaction or event or a series of transactions or events (other than as part of a series of transactions or events that commenced before April 22, 1980), one of the purposes of which (or, in the case of a dividend

under subsection 84(3), one of the results of which) was to effect a significant reduction in the portion of the capital gain that, but for the dividend, would have been realized on a disposition at fair market value of any share of capital stock immediately before the dividend and that could reasonably be considered to be attributable to anything other than income earned or realized by any corporation after 1971 and before the transaction or event or the commencement of the series of transactions or events referred to in paragraph (3)(a), notwithstanding any other section of this Act, the amount of the dividend (other than the portion thereof, if any, subject to tax under Part IV that is not refunded as a consequence of the payment of a dividend to a corporation where the payment is part of the series of transactions or events)

Selected Cases [subsec. 55(2)]: *VIH Logging Ltd. v. R.*, [2005] 1 C.T.C. 387 (FCA); aff'g [2004] 2 C.T.C. 2149 (TCC) (Safe income not limited to post-1971 income on which tax had been paid. Purpose test re stock dividend not met); *729658 Alberta Ltd. v. R.*, [2004] 4 C.T.C. 2261 (TCC) (Where no tax leakage, provision not applicable); *Canutilities Holdings Ltd. v. R.*, [2004] 4 C.T.C. 210 (FCA); rev'g in part [2004] 1 C.T.C. 2001 (TCC) (Preordination plus ability to carry out transaction may produce "series"); *Kruco Inc. v. R.*, [2003] 4 C.T.C. 185 (FCA) (Provision intends to catch income as computed under the Act, subject to stated exceptions); *Granite Bay Charters Ltd. v. R.*, [2001] 3 C.T.C. 2516 (TCC) (Nexus between dividend and disposition results in application of provision); *Lamont Management Ltd. v. R.*, [2000] 3 C.T.C. 18 (FCA); rev'g [1999] 3 C.T.C. 2576 (TCC) ("Any corporation" includes foreign corporation that is not a foreign affiliate); *Brelco Drilling Ltd. v. R.*, [1999] 4 C.T.C. 2737 (TCC) (Losses in foreign jurisdiction do not reduce "safe income"); *Meager Creek Holdings Ltd. v. R.*, [1998] 4 C.T.C. 2090 (TCC) (Must be some connection between events for "series" of transactions to occur); *216663 Ontario Ltd. v. R.*, [1998] 3 C.T.C. 2425 (TCC) (Taxpayer acted to do something to its loss; provision applied); *Nassau Walnut Investments Inc. V. R.*, [1998] 1 C.T.C. 33 (FCA) (Provision available to taxpayers assessed under subsec. 55(2)); *Deuce Holdings Ltd. v. R.*, [1998] 1 C.T.C. 2550 (TCC) ("Safe income" is after-tax computation; *H.T. Hoy Holdings Ltd. v. R.*, [1997] 2 C.T.C. 2874 (TCC) (Series of transactions structured to cause parties to be related resulted in application of provision); *Northern Hot Oil Services Ltd. v. R.*, [1997] 2 C.T.C. 2543 (TCC) (Teleological approach to construction of provision); *Placer Dome Inc. v. Canada*, [1997] 1 C.T.C. 72 (FCA) ("Purpose" is subjective in nature; "result" is objective); *Industries S.L.M. Inc. v. Canada*, [1996] 2 C.T.C. 2572 (TCC) (Dividend subject to application of provision as significantly reducing capital gain on sale of shares); *Champagne v. MNR*, [1996] 2 C.T.C. 2537 (TCC) (Safe income to be calculated on basis of income available for distribution, not already distributed); *Sabo Brothers Construction Ltd v. Canada*, [1996] 2 C.T.C. 2073 (TCC) (Business loss disallowed where no possibility of profit; tax benefits did not arise solely from operation of Act); *CPL Holdings v. Canada*, [1995] 1 C.T.C. 447 (FCTD) (Provision not applicable where transactions not motivated by same considerations and purpose was to improve legal protection).

Information Circulars: 88-2, paras. 7, 13: General anti-avoidance rule — section 245 of the *Income Tax Act*.

I.T. Technical News: 3 (loss utilization within a corporate group; butterfly reorganizations); 7 (subsection 55(2) — recent cases).

Advance Tax Rulings: ATR-22R: Estate freeze using share exchange; ATR-27: Exchange and acquisition of interests in capital properties through rollovers and winding-up ("butterfly"); ATR-35: Partitioning of assets to get specific ownership — "butterfly"; ATR-47: Transfer of assets to Realtyco; ATR-56: Purification of a family farm corporation; ATR-57: Transfer of property for estate planning purposes; ATR-58: Divisive reorganization.

(3) Application — Subsection (2) does not apply to any dividend received by a corporation (in this subsection and subsection (3.01) referred to as the "dividend recipient")

(a) if, as part of a transaction or event or a series of transactions or events as a part of which the dividend was received, there was not at any particular time

(i) a disposition of property, other than

(A) money disposed of on the payment of a dividend or on a reduction of the paid-up capital of a share, and

(B) property disposed of for proceeds that are not less than its fair market value,

to a person or partnership that was an unrelated person immediately before the particular time,

(ii) a significant increase (other than as a consequence of a disposition of shares of the capital stock of a corporation for proceeds of disposition that are not less than their fair market value) in the total direct interest in any corporation of one or more persons or partnerships that were unrelated persons immediately before the particular time,

(iii) a disposition, to a person or partnership who was an unrelated person immediately before the particular time, of

(A) shares of the capital stock of the corporation that paid the dividend (referred to in this paragraph and subsection (3.01) as the "dividend payer"), or

(B) property more than 10% of the fair market value of which was, at any time during the course of the series, derived from shares of the capital stock of the dividend payer,

Proposed Amendment — 55(3)(a)(iii)(B)

(B) property (other than shares of the capital stock of the dividend recipient) more than 10% of the fair market value of which was, at any time during the course of the series, derived from shares of the capital stock of the dividend payer,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 68(3), will amend cl. 55(3)(a)(iii)(B) to read as above, applicable to dividends received after February 21, 1994.

Technical Notes: Paragraph 55(3)(a) provides an exemption from the application of subsection 55(2) for dividends received in the course of certain related-party transactions. More specifically, paragraph 55(3)(a) exempts a dividend received by a corporation if, as part of a transaction or event or a series of transactions or events that includes the receipt of the dividend, there was not, at any particular time, a disposition of property or a significant increase in the total direct interest in a corporation in the circumstances described in subparagraphs 55(3)(a)(i) to (v).

Clause 55(3)(a)(iii)(B) describes a disposition, to a person or partnership that was unrelated to the dividend recipient, of property more than 10% of the fair market value of which was derived from shares of the capital stock of the dividend payer. Clause 55(3)(a)(iii)(B) is amended, for dividends received after February 21, 1994, to exclude a disposition of property that is a share of the capital stock of the dividend recipient. This amendment ensures that subsection 55(2) does not apply to the dividend received in the circumstances described in the following example involving the disposition of the shares of the dividend recipient:

A corporation (BuyerCo) owns all the shares of another corporation (SubCo). BuyerCo acquires all the shares of a third corporation (Target) in an arm's length transaction for fair market value. Target owns all the shares of two corporations — T1Subco and T2Subco. Target transfers, on a tax-deferred basis under section 85, all the shares of T2SubCo to SubCo in consideration for High/Low Shares of SubCo. SubCo subsequently redeems the High/Low Shares with the result that Target receives a deemed dividend.

Letter from Dept. of Finance, December 23, 1998:

Dear [xxx],

This is in response to your letter of September 9, 1998 regarding the application of subparagraph 55(3)(a)(iii) of the *Income Tax Act* (the "Act") to the circumstances described in your letter.

We agree that, from a tax policy perspective, subsection 55(2) of the Act should not apply to Target in respect of the dividend it receives on the redemption of the SubCo shares as part of the transactions described in your letter and example 5 of the explanatory notes for subclause 96(4) of Bill C-28. The scope of subparagraph 55(3)(a)(iii) of the Act is too broad and should not capture the dividend paid on the Subco shares merely because the SubCo shares acquired by Target in exchange for the

T2SubCo shares have a value greater than 10% of the value of the Target's shares.

We will recommend to the Minister of Finance that an amendment be made to subparagraph 55(3)(a)(iii) of the Act to ensure that it does not apply to the acquisition of the shares of Target by Buyerco in the circumstances described in your letter. We will recommend that an amendment be effective for dividends received by a corporation after February 21, 1994. If the recommendation is acted upon, I would anticipate that such an amendment would be included in the next technical bill.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

(iv) after the time the dividend was received, a disposition, to a person or partnership that was an unrelated person immediately before the particular time, of

(A) shares of the capital stock of the dividend recipient, or

(B) property more than 10% of the fair market value of which was, at any time during the course of the series, derived from shares of the capital stock of the dividend recipient, and

(v) a significant increase in the total of all direct interests in the dividend payer of one or more persons or partnerships who were unrelated persons immediately before the particular time; or

Selected Cases [para. 55(3)(a)]: *Deuce Holdings Ltd. v. R.*, [1998 1 C.T.C. 2550 (TCC) ("Any dividend" means one dividend); *CPL Holdings v. Canada*, [1995] 1 C.T.C. 447 (FCTD) (Provision not applicable where transactions not motivated by same considerations and purpose was to improve legal protection).

(b) if the dividend was received

(i) in the course of a reorganization in which

(A) a distributing corporation made a distribution to one or more transferee corporations, and

(B) the distributing corporation was wound up or all of the shares of its capital stock owned by each transferee corporation immediately before the distribution were redeemed or cancelled otherwise than on an exchange to which subsection 51(1), 85(1) or 86(1) applies, and

(ii) on a permitted redemption in relation to the distribution or on the winding-up of the distributing corporation.

Proposed Amendment — No acquisition of control on spin-off distribution

Letter from Dept. of Finance, July 3, 2001: See under 256(7)(a)(i)(E).

Related Provisions: 13(30) — Transfers of property; 55(3.01) — Rules of interpretation for 55(3)(a); 55(3.1), (3.2) — Exception for purchase butterfly; 55(6) — Reorganization share deemed listed on prescribed stock exchange for certain purposes; 88(1)(d) — Winding-up; 88(1)(c)(iii), 88(1)(c.2) — Cost base of property after windup; 110.6(7)(a) — Capital gains exemption disallowed on butterfly; 248(10) — Series of transactions; 256(7)(a)(i)(E) — No acquisition of control on spin-off distribution; Reg. 1100(2.2), 1102(14)(a) — Depreciable property acquired on reorganization.

History: The portion of subsec. 55(3) before para. (b) amended by 1998, c. 19, subsec. 96(4), applicable to dividends received by a corporation after February 21, 1994, except that,

(a) in respect of such dividends received before June 20, 1996, or received under an arrangement substantially advanced, as evidenced in writing, before June 20, 1996, subparas. 55(3)(a)(ii) and (v) shall, if paragraph (b) does not apply, be read as follows:

(ii) a significant increase (other than as a consequence of a disposition of shares of the capital stock of a corporation for proceeds of disposition that are not less than their fair market value) in the interest in any corporation of one or more persons or partnerships that were unrelated persons immediately before the particular time,

. . . . .

(v) a significant increase in the interest in the dividend payer of one or more persons or partnerships that were unrelated persons immediately before the particular time; or

and

(b) in respect of such dividends, where they are received on shares issued before June 20, 1996, and the corporation so elects in writing before November 1, 1998 or in its return of income under Part I of the Act for the year in which it received the dividends, the Act shall be read without reference to subsec. 55(3.01), and para. 55(3)(a) shall be read as follows:

(a) unless the dividend was received as part of a transaction or event or a series of transactions or events that resulted in

(i) a disposition of any property to a person with whom the dividend recipient was dealing at arm's length, or

(ii) a significant increase in the interest in any corporation of any person with whom the dividend recipient was dealing at arm's length; or

The portion before para. (b) formerly read:

(3) Exception — Subsection (2) does not apply to any dividend received by a corporation,

(a) unless the dividend was received as part of a transaction or event or a series of transactions or events that resulted in

(i) a disposition of property to a person (other than the corporation) to whom that corporation was not related, or

(ii) a significant increase in the interest in any corporation of any person (other than the corporation that received the dividend) to whom the corporation that received the dividend was not related; or

Subsec. 96(15) of 1998, c. 19, applicable to dividends received after February 21, 1994, provides:

(15) Where a corporation elects under [paragraph (b) of the application to this amendment (above) — ed.] in respect of dividends,

(a) subsection 55(4) of the Act shall, in respect of those dividends, be read as follows:

(4) Where it can reasonably be considered that the principal purpose of one or more transactions or events was to cause 2 or more persons to be related or to not deal with each other at arm's length, or to cause one corporation to control another corporation, so as to make subsection (2) inapplicable, for the purposes of this section, those persons are deemed not to be related or are deemed to deal with each other at arm's length, or the corporation is deemed not to control the other corporation, as the case may be.

and

(b) paragraph 55(5)(e) of the Act shall, in respect of those dividends, be read as follows:

(e) in determining whether 2 or more persons deal with each other at arm's length,

(i) a person is deemed to deal with another person at arm's length and not to be related to the other person if the person is the brother or sister of the other person, and

(ii) persons who are otherwise related to each other solely because of a right referred to in paragraph 251(5)(b) are deemed not to be related to each other; and

Subparas. 55(3)(a)(i) and (ii) amended by 1995, c. 3, subsec. 16(2), applicable to dividends received after February 21, 1994, other than dividends received as part of a transaction or event or a series of transactions or events that was required on February 22, 1994 to be carried out pursuant to a written agreement entered into before February 22, 1994. Subparas. (i) and (ii) formerly read:

(i) a disposition of any property to a person with whom that corporation was dealing at arm's length, or

(ii) a significant increase in the interest in any corporation of any person with whom the corporation that received the dividend was dealing at arm's length; or

Para. 55(3)(b) amended by 1995, c. 3, subsec. 16(3), applicable to dividends received after February 21, 1994 other than dividends received before 1995 in the course of a reorganization that was required on February 22, 1994 to be carried out pursuant to a written agreement entered into before February 22, 1994. Para. (b) formerly read:

(b) if the dividend was received in the course of a reorganization in which property of a particular corporation was transferred, directly or indirectly, to one or more corporations (each of which is in this paragraph referred to as a "transferee") and, in respect of each type of property so transferred, the fair market value of the property so received by each transferee was equal to or approximated the proportion of the fair market value of all property of that type owned by the particular corporation immediately before the transfer that

(i) the total of the fair market value immediately before the transfer of all shares of the capital stock of the particular corporation owned by the transferee at that time

is of

(ii) the fair market value immediately before the transfer of all the issued shares of the capital stock of the particular corporation at that time,

except that this paragraph does not apply in respect of a transfer where, in contemplation of and before the transfer, property has become property of the particular corporation, a corporation controlled by the particular corporation or a predecessor of any such corporation otherwise than as a result of

(iii) an amalgamation of corporations each of which was related to the particular corporation,

(iv) the winding-up of a corporation that was related to the particular corporation,

(v) a transaction to which subsection (2) would, but for this subsection, apply,

(vi) a disposition of property by the particular corporation or a corporation controlled by it to another corporation controlled by the particular corporation,

(vii) a disposition of property by the particular corporation or a predecessor thereof for consideration that consists only of money or indebtedness that is not convertible into other property, or of any combination thereof, or

(viii) a prescribed transaction.

Information Circulars: 88-2, para. 7: General anti-avoidance rule — section 245 of the *Income Tax Act*.

I.T. Technical News: 3 (butterfly reorganizations); No. 16 (*Parthenon Investments* case).

Advance Tax Rulings: ATR-22R: Estate freeze using share exchange; ATR-27: Exchange and acquisition of interests in capital properties through rollovers and winding-up ("butterfly"); ATR-35: Partitioning of assets to get specific ownership — "butterfly"; ATR-47: Transfer of assets to Realtyco; ATR-56: Purification of a family farm corporation; ATR-57: Transfer of property for estate planning purposes; ATR-58: Divisive reorganization.

(3.01) Interpretation for para. (3)(a) — For the purposes of paragraph (3)(a),

(a) an unrelated person means a person (other than the dividend recipient) to whom the dividend recipient is not related or a partnership any member of which (other than the dividend recipient) is not related to the dividend recipient;

(b) a corporation that is formed by an amalgamation of 2 or more other corporations is deemed to be the same corporation as, and a continuation of, each of the other corporations;

(c) where there has been a winding-up of a corporation to which subsection 88(1) applies, the parent is deemed to be the same corporation as, and a continuation of, the subsidiary;

(d) proceeds of disposition shall be determined without reference to "paragraph 55(2)(a) or" in paragraph (j) of the definition "proceeds of disposition" in section 54; and

Proposed Amendment — 55(3.01)(d)

(d) proceeds of disposition are to be determined without reference to

(i) the expression "paragraph 55(2)(a) or" in paragraph (j) of the definition "proceeds of disposition" in section 54, and

(ii) section 93; and

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 68(4), will amend para. 55(3.01)(d) to read as above, applicable to dividends received after February 21, 1994.

Technical Notes: Paragraphs 55(3.01)(a) to (e) contain various interpretive rules for the purpose of paragraph 55(3)(a). Paragraph 55(3.01)(d) provides that proceeds of disposition are to be determined without reference to the application of paragraph 55(2)(a). This rule is intended to ensure that proceeds of disposition do not include a dividend or deemed dividend that is subject to subsection 55(2).

Section 93 permits a corporation resident in Canada to elect to treat the proceeds of disposition of a share of a foreign affiliate as a dividend in certain circumstances. Where such an election is made, the proceeds of disposition of the share are reduced accordingly. The reduction in the proceeds of disposition under section 93 is not intended to affect the application of paragraph 55(3)(a). Thus, paragraph 55(3.01)(d) is amended, for dividends received after February 21, 1994, to ensure that, for the purpose of paragraph 55(3)(a), proceeds of disposition are determined without reference to section 93.

Letter from Dept. of Finance, February 19, 1999:

Dear [xxx]

This is in reply to your letter of December 1, 1998 to Len Farber regarding an anomaly that results from the interaction of section 55 and 93 of the *Income Tax Act* (the "Act"). You ask that a technical amendment be made to the Act to remove this anomaly.

Based on our understanding of the facts set out in your letter, Parentco/Canco undertakes a series of transactions to utilize losses within its related group. As part of this series of transactions, Forco sells its shares of Forco2 to an arm's length third party for proceeds of disposition equal to the fair market value of the shares. On the disposition, section 93 of the Act applies to treat proceeds realized by Forco as a dividend with the result that, for the purposes of the Act, Forco is considered not to have received fair market value proceeds. As part of the series, Canco transfers on a tax-deferred basis under subsection 85(1) of the Act its shares of Forco to Sisterco in exchange for preferred shares of Sisterco. Sisterco redeems its preferred shares held by Canco and Canco receives a dividend (the "Sisterco Dividend"). The Sisterco Dividend is subject to subsection 55(2) of the Act only because section 93 applies to treat Forco's proceeds of disposition to be less than the fair market value of the Forco2 shares.

We agree that, in the above circumstances, the Sisterco Dividend should be exempt from the application of subsection 55(2) because of paragraph 55(3)(a) of the Act. Section 93 should not, in and by itself, cause an intercorporate dividend received by a corporation in the course of certain related-corporate transactions to be subject to subsection 55(2). Inter-corporate dividends that would, but for the application of section 93 which reduces the proceeds of disposition of a property to less than the fair market value of the property, have been exempt from the application of subsection 55(2) because of paragraph 55(3)(a) should remain exempt from the application of subsection 55(2).

We are prepared therefore to recommend to the Minister of Finance that the Act be amended to ensure the appropriate results in the circumstances described above. We will recommend that the amendment be effective for dividends received by a corporation after February 21, 1994. If the recommendation is acted upon, I would anticipate that such an amendment would be included in the next technical bill.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

(e) notwithstanding any other provision of this Act, where a non-resident person disposes of a property in a taxation year and the gain or loss from the disposition is not included in computing the person's taxable income earned in Canada for the year, the person is deemed to have disposed of the property for proceeds of disposition that are less than its fair market value

unless, under the income tax laws of the country in which the person is resident, the gain or loss is computed as if the property were disposed of for proceeds of disposition that are not less than its fair market value and the gain or loss so computed is recognized for the purposes of those laws.

Proposed Amendment — 55(3.01)

Letter from Dept. of Finance, April 21, 2005:

Dear [xxx]

We are writing in response to your letter dated February 22, 2005, and further to your telephone discussions with Daryl Boychuk of this Division in which you expressed concern regarding the application of paragraphs 55(3.01)(b) and (c) of the *Income Tax Act* (the "Act") in certain situations involving the winding-up of a wholly-owned subsidiary into its parent corporation or the amalgamation of a wholly-owned subsidiary with its parent corporation.

Subsection 55(3.01) of the Act applies for the purpose of paragraph 55(3)(a), which, in turn, provides that subsection 55(2) of the Act does not apply to a dividend received by a corporation if, as part of a transaction or event or series of transactions or events in which the dividend was received, there was not, at any particular time, a disposition of property, or a significant increase in the direct interest in a corporation, in circumstances described in subparagraphs 55(3)(a)(i) to (v).

Subsection 55(3.01) of the Act sets out certain rules that apply for the purpose of paragraph 55(3)(a). In particular, paragraph 55(3.01)(c) provides that where there has been a winding-up of a subsidiary corporation into its parent to which subsection 88(1) applies, the parent is deemed to be the same corporation as, and a continuation of, the subsidiary. Similarly, if the subsidiary corporation is amalgamated with the parent corporation, paragraph 55(3.01)(b) deems the new corporation to be the same corporation and a continuation of each of the predecessor corporations.

Your concern is that a winding-up of a wholly-owned subsidiary into its parent corporation or the amalgamation of a wholly-owned subsidiary with its parent corporation in the situations described below may result in a significant increase in the direct interest in the subsidiary corporation by a shareholder of the parent corporation as described in subparagraphs 55(3)(a)(ii) and (v).

We have assumed that the transactions or events described in each situation below are part of the same series of transactions or events.

Situation #1

A public corporation ("Pubco") owns all the issued and outstanding shares of a taxable Canadian corporation ("Subco"). None of the shareholders of Pubco are related to Pubco. Subco owns property1 and property2 and Pubco wishes to acquire property1. However, corporate and commercial restrictions preclude Pubco from issuing shares to Subco and, therefore, a direct tax-deferred acquisition of property1 by Pubco is not possible. Accordingly, Pubco will incorporate a wholly-owned subsidiary ("Newco") and cause Subco to transfer property1 to Newco on a tax-deferred basis in exchange for redeemable preferred shares of Newco ("Newco shares"). The Newco shares will then be redeemed giving rise to a deemed dividend to Subco. Following the redemption of the Newco shares, Newco will be wound up into or amalgamated with Pubco.

Situation #2

Two taxable Canadian corporations ("Aco" and "Bco") are both controlled by the same person ("Mr. X"). Mr. X owns 100% of the shares of the capital stock of Aco and 70% of the shares of each class of Bco. Persons that are not related to Mr. X own the remaining shares of Bco. In addition, Aco owns 100% of the shares of another taxable Canadian corporation ("Cco"). Aco intends to transfer the properties owned by Cco to Bco. To accomplish this, Aco will transfer the shares of Cco to Bco in exchange for redeemable preferred shares of Bco ("Bco shares"). The transfer will be done on a tax-deferred basis using subsection 85(1) of the Act. Aco will then cause Bco to redeem the preferred shares owned by Aco giving rise to a deemed dividend to Aco. Cco will then be wound up into or amalgamated with Bco.

Situation #3

A public corporation ("Pubco") owns all the issued and outstanding shares of a taxable Canadian corporation ("Subco"). None of the shareholders of Pubco are related to Pubco. Subco pays a dividend to Pubco and then is wound up into Pubco or amalgamated with Pubco.

In each of the situations described above, the amalgamation or winding-up will result in an increase in the total direct interests in the subsidiary corporation by a person unrelated to the dividend recipient because the new corporation formed on the amalgamation (or the parent corporation in the case of a winding-up) is deemed by paragraph 55(3.01)(b) (or paragraph 55(3.01)(c) in the case of a winding-up) to be a continuation of the subsidiary corporation. Accordingly, subsection 55(2) of the Act will apply to the dividends that are received or deemed to be received by the dividend recipient. You have asked us to recommend an amendment to the Act that would ensure that a short-form vertical amalgamation of a wholly-owned subsidiary with its parent corporation or a winding-up of a wholly-owned subsidiary into its parent corporation would not, in the situations described above, result in the application of subsection 55(2) to a dividend received as part of a series of transactions or events that included the amalgamation or winding-up.

We agree that, in the situations described above, the amalgamation of a wholly-owned subsidiary with its parent corporation or the winding-up of a wholly-owned subsidiary corporation into its parent corporation, should not result in the increase in the total direct interests in the subsidiary corporation described in subparagraphs 55(3)(a)(ii) or (v) of the Act. Accordingly, we will recommend to the Minister that the Act be amended to ensure that, in the situations described above, the winding-up or amalgamation of the subsidiary corporation will not result in an increase in the interest in the subsidiary corporation described in subparagraphs 55(3)(a)(ii) and (v). We will also recommend that the amendment be effective for dividends received after 2004. While we cannot offer any assurance that either the Minister or Parliament will agree with our recommendation, we trust that this statement of our intentions is helpful to you.

Yours sincerely,

Len Farber
General Director, Tax Legislation Division, Tax Policy Branch

History: Subsec. 55(3.01) added by 1998, c. 19, subsec. 96(5), applicable to dividends received by a corporation after February 21, 1994, except that in respect of such dividends, where they are received on shares issued before June 20, 1996, and the corporation so elects in writing before November 1, 1998 or in its return of income under Part I of the Act for the year in which it received the dividends, the Act shall be read without reference to subsec. 55(3.01).

Subsec. 96(15) of 1998, c. 19, applicable to dividends received after February 21, 1994, provides:

> (15) Where a corporation elects under [paragraph (b) of the application to this amendment (above) — ed.] in respect of dividends,
>
> (a) subsection 55(4) of the Act shall, in respect of those dividends, be read as follows:
>
> (4) Where it can reasonably be considered that the principal purpose of one or more transactions or events was to cause 2 or more persons to be related or to not deal with each other at arm's length, or to cause one corporation to control another corporation, so as to make subsection (2) inapplicable, for the purposes of this section, those persons are deemed not to be related or are deemed to deal with each other at arm's length, or the corporation is deemed not to control the other corporation, as the case may be.
>
> and
>
> (b) paragraph 55(5)(e) of the Act shall, in respect of those dividends, be read as follows:
>
> (e) in determining whether 2 or more persons deal with each other at arm's length,
>
> (i) a person is deemed to deal with another person at arm's length and not to be related to the other person if the person is the brother or sister of the other person, and
>
> (ii) persons who are otherwise related to each other solely because of a right referred to in paragraph 251(5)(b) are deemed not to be related to each other; and

(3.02) Distribution by a specified corporation — For the purposes of the definition "distribution" in subsection (1), where the transfer referred to in that definition is by a specified corporation to an acquiror described in the definition "specified corporation" in subsection (1), the references in the definition "distribution" to

(a) "each type of property" shall be read as "property"; and

(b) "property of that type" shall be read as "property".

History: Subsec. 55(3.02) added by 2001, c. 17, subsec. 38(2), applicable to transfers that occur after 1998.

(3.1) Where para. (3)(b) not applicable — Notwithstanding subsection (3), a dividend to which subsection (2) would, but for paragraph (3)(b), apply is not excluded from the application of subsection (2) where

(a) in contemplation of and before a distribution made in the course of the reorganization in which the dividend was received, property became property of the distributing corporation, a corporation controlled by it or a predecessor corporation of any such corporation otherwise than as a result of

(i) an amalgamation of corporations each of which was related to the distributing corporation,

(ii) an amalgamation of a predecessor corporation of the distributing corporation and one or more corporations controlled by that predecessor corporation,

(iii) a reorganization in which a dividend was received to which subsection (2) would, but for paragraph (3)(b), apply, or

(iv) a disposition of property by

(A) the distributing corporation, a corporation controlled by it or a predecessor corporation of any such corporation to a corporation controlled by the distributing corporation or a predecessor corporation of the distributing corporation,

(B) a corporation controlled by the distributing corporation or by a predecessor corporation of the distributing corporation to the distributing corporation or predecessor corporation, as the case may be, or

(C) the distributing corporation, a corporation controlled by it or a predecessor corporation of any such corporation for consideration that consists only of money or indebtedness that is not convertible into other property, or of any combination thereof,

Proposed Amendment — 55(3.1)(a)

Letter from Dept. of Finance, November 26, 2004:

Dear [xxx]

We are writing in response to your correspondence dated September 28, 2004 regarding paragraph 55(3.1)(a) of the *Income Tax Act* (the "Act"). More specifically, you have asked us to consider an amendment to paragraph 55(3.1)(a) to ensure that the restrictions on the acquisition of property in contemplation of a butterfly reorganization do not apply if the distributing corporation is a "specified corporation" as defined in subsection 55(1) of the Act.

Paragraph 55(3.1)(a) of the Act provides that the exemption from subsection 55(2) for dividends received in the course of a butterfly reorganization does not generally apply if property becomes property of the distributing corporation in contemplation of the distribution of property by the corporation.

The rules governing butterfly reorganizations mandate that each type of property owned by the distributing corporation (other than a distributing corporation that is a specified corporation) be distributed *pro rata* based on each transferee corporation's proportionate interest in the distributing corporation. In the case of a specified corporation, subsection 55(3.02) of the Act permits the distributing corporation to undertake a butterfly reorganization by making a proportionate distribution of all of its property as opposed to each type of property. Therefore, while an acquisition of property may alter the types of property owned by the distributing corporation, you submit that since a distribution by a specified corporation is not subject to the types of property requirement, the restrictions in paragraph 55(3.1)(a) should not apply to a specified corporation.

We agree that paragraph 55(3.1)(a) of the Act should not apply to a dividend if a specified corporation acquires the property referred to in that paragraph in contemplation of a distribution by that corporation. Accordingly, we are prepared to recommend to the Minister of Finance that the Act be amended, applicable to dividends received after November 2004, to exclude the restrictions in paragraph 55(3.1)(a) from applying if the distribution referred to in that paragraph is a distribution by a specified corporation.

While I cannot offer any assurance that either the Minister or Parliament will agree with our recommendation, I hope that this statement of our intentions is helpful to you.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

(b) the dividend was received as part of a series of transactions or events in which

(i) a person or partnership (referred to in this subparagraph as the "vendor") disposed of property and

(A) the property is

(I) a share of the capital stock of a distributing corporation that made a distribution as part of the series or of a transferee corporation in relation to the distributing corporation, or

(II) property 10% or more of the fair market value of which was, at any time during the course of the series, derived from one or more shares described in subclause (I),

(B) the vendor was, at any time during the course of the series, a specified shareholder of the distributing corporation or of the transferee corporation, and

Proposed Amendment — 55(3.1)(b)(i)(B)

(B) the vendor (other than a qualified person in relation to the distribution) was, at any time during the course of the series, a specified shareholder of the distributing corporation or of the transferee corporation, and

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 68(5), will amend cl. 55(3.1)(b)(i)(B) to read as above, applicable in respect of dividends received after 1999.

Technical Notes: Paragraph 55(3.1)(b) provides that a dividend received in the course of a reorganization to which paragraph 55(3)(b) applies is not excluded from the application of subsection 55(2) if one of the transactions or events described in paragraph 55(3.1)(b) occurs as part of the series of transactions or events that includes the receipt of the dividend. Subparagraph 55(3.1)(b)(i) deals with a disposition of property in circumstances described in clauses 55(3.1)(b)(i)(A) to (C). Clause 55(3.1)(b)(i)(A) describes the type of property (i.e., shares of the distributing or transferee corporation or property whose value is derived from such shares), clause 55(3.1)(b)(i)(B) describes the type of vendor (i.e., a specified shareholder of the distributing or transferee corporation) and clause 55(3.1)(b)(i)(C) describes the type of acquirer (i.e., a person unrelated to the vendor or a partnership).

Clause 55(3.1)(b)(i)(B) is amended, for dividends received after 1999, to exclude a vendor that is a qualified person in relation to the distribution. "Qualified person" is a new expression defined in subsection 55(1). For additional information, see the commentary to "qualified person" under subsection 55(1).

Letter from Dept. of Finance, May 15, 2000: See under 55(1)"qualified person".

(C) the property or any other property (other than property received by the transferee corporation on the distribution) acquired by any person or partnership in substitution therefor was acquired (otherwise than on a permitted acquisi-

tion, permitted exchange or permitted redemption in relation to the distribution) by a person (other than the vendor) who was not related to the vendor or, as part of the series, ceased to be related to the vendor or by a partnership,

(ii) control of a distributing corporation that made a distribution as part of the series or of a transferee corporation in relation to the distributing corporation was acquired (otherwise than as a result of a permitted acquisition, permitted exchange or permitted redemption in relation to the distribution) by any person or group of persons, or

(iii) in contemplation of a distribution by a distributing corporation, a share of the capital stock of the distributing corporation was acquired (otherwise than on a permitted acquisition or permitted exchange in relation to the distribution or on an amalgamation of 2 or more predecessor corporations of the distributing corporation) by

(A) a transferee corporation in relation to the distributing corporation or by a person or partnership with whom the transferee corporation did not deal at arm's length from a person to whom the acquiror was not related or from a partnership,

(B) a person or any member of a group of persons who acquired control of the distributing corporation as part of the series,

(C) a particular partnership any interest in which is held, directly or indirectly through one or more partnerships, by a person referred to in clause (B), or

(D) a person or partnership with whom a person referred to in clause (B) or a particular partnership referred to in clause (C) did not deal at arm's length,

(c) the dividend was received by a transferee corporation from a distributing corporation that, immediately after the reorganization in the course of which a distribution was made and the dividend was received, was not related to the transferee corporation and the total of all amounts each of which is the fair market value, at the time of acquisition, of a property that

(i) was acquired, as part of the series of transactions or events that includes the receipt of the dividend, by a person (other than the transferee corporation) who was not related to the transferee corporation or, as part of the series, ceased to be related to the transferee corporation or by a partnership, otherwise than

(A) as a result of a disposition in the ordinary course of business,

(B) on a permitted acquisition in relation to a distribution, or

(C) as a result of an amalgamation of 2 or more corporations that were related to each other immediately before the amalgamation, and

(ii) is a property (other than money, indebtedness that is not convertible into other property, a share of the capital stock of the transferee corporation and property more than 10% of the fair market value of which is attributable to one or more such shares)

(A) that was received by the transferee corporation on the distribution,

(B) more than 10% of the fair market value of which was, at any time after the distribution and before the end of the series, attributable to property (other than money and indebtedness that is not convertible into other property) described in clause (A) or (C), or

(C) to which, at any time during the course of the series, the fair market value of property described in clause (A) was wholly or partly attributable

is greater than 10% of the fair market value, at the time of the distribution, of all the property (other than money and indebtedness that is not convertible into other property) received by the transferee corporation on the distribution, or

(d) the dividend was received by a distributing corporation that, immediately after the reorganization in the course of which a distribution was made and the dividend was received, was not related to the transferee corporation that paid the dividend and the total of all amounts each of which is the fair market value, at the time of acquisition, of a property that

(i) was acquired, as part of the series of transactions or events that includes the receipt of the dividend, by a person (other than the distributing corporation) who was not related to the distributing corporation or, as part of the series, ceased to be related to the distributing corporation or by a partnership, otherwise than

(A) as a result of a disposition in the ordinary course of business,

(B) on a permitted acquisition in relation to a distribution, or

(C) as a result of an amalgamation of 2 or more corporations that were related to each other immediately before the amalgamation, and

(ii) is a property (other than money, indebtedness that is not convertible into other property, a share of the capital stock of the distributing corporation and property more than 10% of the fair market value of which is attributable to one or more such shares)

(A) that was owned by the distributing corporation immediately before the distribution and not disposed of by it on the distribution,

(B) more than 10% of the fair market value of which was, at any time after the distribution and before the end of the series, attributable to property (other than money and indebtedness that is not convertible into other property) described in clause (A) or (C), or

(C) to which, at any time during the course of the series, the fair market value of property described in clause (A) was wholly or partly attributable

is greater than 10% of the fair market value at the time of the distribution, of all the property (other than money and indebtedness that is not convertible into other property) owned immediately before that time by the distributing corporation and not disposed of by it on the distribution.

Proposed Amendment — 55(3.1)(c), (d)

Letter from Dept. of Finance, June 8, 2005:

Dear [xxx]

We are writing in response to your correspondence of June 2, 2005 and further to your discussions with Daryl Boychuk of this Division regarding the application of paragraphs 55(3.1)(c) and (d) of the *Income Tax Act* (the "Act") in the circumstances described below.

You advised us that a taxable Canadian corporation ("Holdco") has two shareholders, both of which are taxable Canadian corporations ("Xco" and "Yco"). Xco and Yco own ⅔ and ⅓, respectively, of the common shares of Holdco. The principal asset owned by Holdco is shares of a public corporation ("Pubco").

Holdco is proposing to implement a reorganization described in paragraph 55(3)(b) of the Act (*i.e.*, a "butterfly reorganization"). Prior to the distribution that will occur in the course of the butterfly reorganization, Holdco intends to dispose of ⅓ of its Pubco shares either directly through the stock exchange or indirectly by disposing of the shares of a wholly-owned subsidiary corporation to which Holdco will transfer the Pubco shares. In each case, the shares will be disposed of at fair market value, for consideration that consists only of money.

Your concern is that property described in clause 55(3.1)(c)(ii)(B) and 55(3.1)(d)(ii)(B) will be acquired as a result of the proposed disposition of the shares of Pubco. You submit that the result is anomalous and frustrates the legislative scheme in paragraphs 55(3.1)(c) and (d), particularly in view of the exclusion in clause 55(3.1)(a)(iv)(C) for property disposed of for proceeds that consists only of money or indebtedness that is not convertible into other property. In addition, you suggest that paragraphs 55(3.1)(c) and (d) should not apply to the pre-butterfly dispositions of property in the circumstances described above.

Based on our understanding of the facts described above and the circumstances surrounding the proposed transactions, we agree that paragraphs 55(3.1)(c) and (d) of the Act should not apply to the direct or indirect disposition by Holdco of the shares of Pubco if the disposition occurs before the distribution that will be made in the course of the proposed butterfly reorganization. Accordingly, we are prepared to recommend to the Minister of Finance that paragraph 55(3.1)(c) and (d) of the Act be amended to ensure this result in respect of the proposed transactions described above, which we understand will occur in June of 2005. While we cannot offer any assurance that either the Minister or Parliament will agree with our recommendations, we hope that this statement of our position is helpful to you.

Yours sincerely,

Len Farber, General Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 55(3.2) — Interpretation; 88(1)(c)(iv), 88(1)(c.2) — Limitation of cost base of property on winding-up; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired.

History: Cls. 55(3.1)(c)(ii)(B), (C) and 55(3.1)(d)(ii)(B), (C) amended by 1998, c. 19, subsecs. 96(6) and (7), applicable to dividends received after April 26, 1995 except that, with respect to acquisitions of property that occur before June 20, 1996 or under a written agreement made before June 20, 1996,

cl. 55(3.1)(c)(ii)(B) shall be read as follows:

(B) more than 10% of the fair market value of which was, at any time after the distribution and before the end of the series, attributable to property (other than money and indebtedness that is not convertible into other property) described in clause (A), or

and

cl. 55(3.1)(d)(ii)(B) shall be read as follows:

(B) more than 10% of the fair market value of which was, at any time after the distribution and before the end of the series, attributable to property (other than money and indebtedness that is not convertible into other property) described in clause (A), or

Cls. 55(3.1)(c)(ii)(B), (C) and 55(3.1)(d)(ii)(B), (C) formerly read:

(B) more than 10% of the fair market value of which was, at any time after the distribution and before the end of the series, attributable to property received by the transferee corporation on the distribution, or

(C) to which, at any time during the course of the series, more than 10% of the fair market value of a property referred to clause (A) was attributable

. . . . .

(B) more than 10% of the fair market value of which was, at any time after the distribution, attributable to property described in clause (A), or

(C) to which, at any time during the course of the series, more than 10% of the fair market value of a property referred to in clause (A) was attributable

Subsec. 55(3.1) amended by 1995, c. 3, subsec. 16(4), applicable to dividends received after February 21, 1994 other than dividends received before 1995 in the course of a reorganization that was required on February 22, 1994 to be carried out pursuant to a written agreement entered into before February 22, 1994, except that, in applying the Act to dividends received before June 23, 1994,

(a) para. 55(3.1)(b) shall be read as follows:

(b) the dividend was received as part of a series of transactions or events in which

(i) a person or partnership (referred to in this subparagraph as the "vendor") disposed of property and

(A) the property is

(I) a share of the capital stock of a distributing corporation that made a distribution as part of the series or of a transferee corporation in relation to the distributing corporation, or

(II) property 10% or more of the fair market value of which was, at any time during the course of the series, derived from one or more shares described in subclause (I),

(B) the property or any other property (other than property received by the transferee corporation on the distribution) acquired by any person or partnership in substitution therefor was acquired (otherwise than on a permitted acquisition, permitted exchange or permitted redemption in relation to the distribution) by a person (other than the vendor) who was not related to the vendor or, as part of the series, ceased to be related to the vendor or by a partnership, and

(C) either

(I) control of the distributing corporation or of a transferee corporation in relation to the distributing corporation was acquired (otherwise than as a result of a permitted acquisition, permitted exchange or permitted redemption in relation to the distribution) by any person or group of persons, or

(II) the vendor was, at any time during the course of the series, a specified shareholder of the distributing corporation or a transferee corporation in relation to the distributing corporation, or

(ii) a share of the capital stock of a distributing corporation was acquired (otherwise than on a permitted acquisition or permitted exchange in relation to a distribution by the distributing corporation or on an amalgamation of 2 or more predecessor corporations of the distributing corporation), in contemplation of a distribution by the distributing corporation, by

(A) a transferee corporation in relation to the distributing corporation, or by any person or partnership with whom the transferee corporation did not deal at arm's length from a person to whom the acquiror was not related,

(B) a person or any member of a group of persons who acquired control of the distributing corporation as part of the series,

(C) a particular partnership any interest in which is held, directly or indirectly through one or more partnerships, by a person referred to in clause (B), or

(D) a person or partnership with whom a person referred to in clause (B) or a particular partnership referred to in clause (C) did not deal at arm's length, or

and

(b) the Act shall be read without reference to paras. 55(3.1)(c) and (d).

Subsec. 55(3.1) formerly read:

(3.1) **Idem** — Notwithstanding subsection (3), a dividend to which subsection (2) would, but for paragraph (3)(b), otherwise apply is not excluded from the application of subsection (2) where the dividend is received as part of a series of transactions or events in which

(a) a person or partnership (in this subsection referred to as the "foreign vendor") who, or any member of which, is resident in a country other than Canada disposes of property that is

(i) a share of the capital stock of the particular corporation referred to in paragraph (3)(b) or of a transferee (within the meaning assigned by that paragraph) in relation to the particular corporation that is taxable Canadian property of the foreign vendor or, where the foreign vendor is a partnership, would be taxable Canadian property of the foreign vendor if the foreign vendor were non-resident, or

(ii) property the fair market value of which, at any time during the course of the series of transactions or events, is derived principally from one or more shares which, if owned by the foreign vendor, would be shares described in subparagraph (i); and

(b) the property disposed of by the foreign vendor or any other property acquired by any person or partnership in substitution for it is acquired by a person (other than the particular corporation) or partnership that, at any time during the course of the series of transactions or events, deals at arm's length with the foreign vendor.

Subsec. 55(3.1) added by 1994, c. 21, s. 24, applicable to dividends received after May 4, 1993, other than a dividend received as part of a series of transactions or events in which a foreign vendor was obliged on May 4, 1993 to dispose of property described in para. 55(3.1)(a), under a written agreement entered into before May 5, 1993.

I.T. Technical News: 3 (butterfly reorganizations); 9 (the backdoor butterfly rule); 16 (*Parthenon Investments* case).

(3.2) **Interpretation of para. (3.1)(b)** — For the purpose of paragraph (3.1)(b),

(a) in determining whether the vendor referred to in subparagraph (3.1)(b)(i) is at any time a specified shareholder of a transferee corporation or of a distributing corporation, the references in the definition "specified shareholder" in subsection 248(1) to "taxpayer" shall be read as "person or partnership";

(b) a corporation that is formed by the amalgamation of 2 or more corporations (each of which is referred to in this paragraph as a "predecessor corporation") shall be deemed to be the same corporation as, and a continuation of, each of the predecessor corporations;

(c) subject to paragraph (d), each particular person who acquired a share of the capital stock of a distributing corporation in contemplation of a distribution by the distributing corporation shall be deemed, in respect of that acquisition, not to be related to the person from whom the particular person acquired the share unless

(i) the particular person acquired all the shares of the capital stock of the distributing corporation that were owned, at any time during the course of the series of transactions or events that included the distribution and before the acquisition, by the other person, or

(ii) immediately after the reorganization in the course of which the distribution was made, the particular person was related to the distributing corporation;

(d) where a share is acquired by an individual from a personal trust in satisfaction of all or a part of the individual's capital interest in the trust, the individual shall be deemed, in respect of that acquisition, to be related to the trust;

(e) subject to paragraph (f), where at any time a share of the capital stock of a corporation is redeemed or cancelled (otherwise than on an amalgamation where the only consideration received or receivable for the share by the shareholder on the amalgamation is a share of the capital stock of the corporation formed by the amalgamation), the corporation shall be deemed to have acquired the share at that time;

(f) where a share of the capital stock of a corporation is redeemed, acquired or cancelled by the corporation pursuant to the exercise of a statutory right of dissent by the holder of the share, the corporation shall be deemed not to have acquired the share;

(g) control of a corporation shall be deemed not to have been acquired by a person or group of persons where it is so acquired solely because of

(i) the incorporation of the corporation, or

(ii) the acquisition by an individual of one or more shares for the sole purpose of qualifying as a director of the corporation; and

(h) each corporation that is a shareholder and specified shareholder of a distributing corporation at any time during the course of a series of transactions or events, a part of which includes a distribution made by the distributing corporation, is deemed to be a transferee corporation in relation to the distributing corporation.

Proposed Amendment — 55(3.2)(h)

(h) in relation to a distribution each corporation (other than a qualified person in relation to the distribution) that is a shareholder and a specified shareholder of the distributing corporation at any time during the course of a series of transactions or events, a part of which includes the distribution made by the distributing corporation, is deemed to be a transferee corporation in relation to the distributing corporation.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 68(6), will amend para. 55(3.2)(h) to read as above, applicable in respect of dividends received after 1999.

Technical Notes: Subsection 55(3.2) sets out a number of interpretative rules for the purpose of paragraph 55(3.1)(b). Paragraph 55(3.2)(h) provides that each corporation that is a shareholder and specified shareholder of the distributing corporation at any time during the course of the series of transactions or events that includes a distribution is deemed to be a transferee corporation in relation to the distributing corporation. Paragraph 55(3.2)(h) is amended, for dividends received after 1999, to ensure that a "qualified person" as defined in subsection 55(1) is not deemed by this provision to be a transferee corporation in relation to the distributing corporation. For additional information, see the comments in the explanatory note to "qualified person" under subsection 55(1).

Letter from Dept. of Finance, May 15, 2000: See under 55(1)"qualified person".

Related Provisions: 88(1)(c)(iv), 88(1)(c.2) — Winding-up; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired.

History: Para. 55(3.2)(h) added by 1998, c. 19, subsec. 96(8), applicable to dividends received after June 20, 1996 other than dividends received in the course of a reorganization that is carried out under a series of transactions or events substantially advanced, as evidenced in writing, before June 21, 1996 or that was required on June 20, 1996 to be carried out under a written agreement made before June 21, 1996, and for the purpose of this application, a reorganization is deemed not to be required to be carried out if the parties to that agreement can be relieved of that requirement if there is a change to the Act.

Subsec. 55(3.2) added by 1995, c. 3, subsec. 16(4), applicable to dividends received after February 21, 1994 other than dividends received before 1995 in the course of a reorganization that was required on February 22, 1994 to be carried out pursuant to a written agreement entered into before February 22, 1994, except that, in applying the Act to dividends received

before June 23, 1994, the Act shall be read without reference to paras. 55(3.2)(c) and (e).

(3.3) Interpretation of "specified shareholder" changed — In determining whether a person is a specified shareholder of a corporation for the purposes of subparagraph (3.1)(b)(i) and paragraph (3.2)(h), the reference in the definition "specified shareholder" in subsection 248(1) to "or of any other corporation that is related to the corporation" shall be read as "or of any other corporation that is related to the corporation and that has a significant direct or indirect interest in any issued shares of the capital stock of the corporation".

History: Subsec. 55(3.3) added by 1998, c. 19, subsec. 96(9), applicable to dividends received after 1996.

Proposed Addition — 55(3.4)

(3.4) Specified shareholder exclusion — In determining whether a person is a specified shareholder of a corporation for the purposes of the definition "qualified person" in subsection (1), subparagraph (3.1)(b)(i) and paragraph (3.2)(h) as it applies for the purpose of subparagraph (3.1)(b)(iii), the expression "not less than 10% of the issued shares of any class of the capital stock of the corporation" in the definition "specified shareholder" in subsection 248(1) is to be read as the expression "not less than 10% of the issued shares of any class of the capital stock of the corporation, other than shares of a specified class (within the meaning of subsection 55(1))".

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 68(7), will add subsec. 55(3.4), applicable in respect of dividends received after 1999.

Technical Notes: New subsection 55(3.4) is added to provide that shares of a specified class are not to be considered in determining whether a person is a specified shareholder for the purposes of subparagraph 55(3.1)(b)(i) and paragraph 55(3.2)(h) (as it applies for the purpose of subparagraph 55(3.1)(b)(iii)) and for the purpose of the definition "qualified person" in subsection 55(1). New subsection 55(3.4), which applies to dividends received after 1999, ensures that a person or partnership that would not, but for the ownership of shares of a specified class, be a specified shareholder, will not be subject to the restrictions on the disposition of property described in subparagraph 55(3.1)(b)(i) and will not be deemed to be a transferee corporation for the purpose of subparagraph 55(3.1)(b)(iii).

Letter from Dept. of Finance, May 15, 2000: See under 55(1)"qualified person".

Proposed Addition — 55(3.5)

(3.5) Amalgamation of related corporations — For the purposes of paragraphs (3.1)(c) and (d), a corporation formed by an amalgamation of two or more corporations (each of which is referred to in this subsection as a "predecessor corporation") that were related to each other immediately before the amalgamation, is deemed to be the same corporation as, and a continuation of, each of the predecessor corporations.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 68(7), will add subsec. 55(3.5), applicable in respect of dividends received after April 26, 1995.

Technical Notes: Subsection 55(3.5) is a new provision that applies for the purposes of paragraphs 55(3.1)(c) and (d). Paragraphs 55(3.1)(c) and (d) provide that a dividend arising in the course of a reorganization to which paragraph 55(3)(b) applies is not exempt from the application of subsection 55(2) where, as part of the series of transactions or events that includes the receipt of the dividend, property described therein is acquired by a particular person or partnership. In the case of paragraph 55(3.1)(c), the particular person is a person who is not related to the transferee corporation (or ceases to be related to the transferee corporation). In the case of paragraph 55(3.1)(d), the particular person is a person who is not related to the distributing corporation (or ceases to be related to the distributing corporation). Property described in paragraph 55(3.1)(c) does not include a share of the capital stock of the transferee corporation. Similarly, property described in paragraph 55(3.1)(d) does not include a share of the capital stock of the distributing corporation.

New subsection 55(3.5), which applies to dividends received after April 26, 1995, deems an amalgamated corporation to be the same corporation as, and a continuation of, each of its predecessor corporations provided each of the predecessor corporations was related to each other immediately before the amalgamation. As a result, the references in paragraphs 55(3.1)(c) and (d) to a share of the capital stock of the transferee or distributing corporation include a share of the capital stock of a new corporation formed on an amalgamation where the new corporation is deemed by new subsection 55(3.5) to be the same corporation as, and a continuation of, the transferee or distributing corporation, as the case may be.

Letter from Dept. of Finance, February 8, 2002:

Dear [xxx]

We are writing in response to your correspondence of January 25, 2002 and further to your numerous discussions with officials at the Tax Policy Branch regarding the application of paragraph 55(3.1)(c) of the *Income Tax Act* (the "Act") to a proposed issuance of shares by a corporation following a reorganization described in paragraph 55(3)(b) of the Act.

More specifically, you advised us that a transferee corporation ("Newco") received a distribution in the course of a paragraph 55(3)(b) reorganization. The property received by Newco consisted of all the shares of the capital stock of Subco A which, in turn, owned all the shares of Subco B (itself a transferee corporation as a result of a previous paragraph 55(3)(b) reorganization). At the time of the distribution, Subco B owned shares of Opco. Following the distribution, Newco amalgamated with Subco A and Subco B to form Amalco. Amalco then amalgamated with Opco to form Amalco2. Immediately before the amalgamation in which Amalco2 was created, Amalco owned all the shares of Opco. Each amalgamation was governed by subsection 87(1) of the Act. Amalco2 is now proposing to issue shares of its capital stock to persons not related to it in consideration for the transfer of property to Amalco2.

Your concern is that property described in paragraph 55(3.1)(c) will be acquired as a result of the issuance of the Amalco2 shares. While subparagraph 55(3.1)(c)(ii) excludes a share of the capital stock of a transferee corporation from the type of property described in paragraph 55(3.1)(c), this exclusion does not extend to a share of the capital stock of a new corporation formed on the amalgamation of a transferee corporation and a corporation related to the transferee corporation.

You submit that the result is anomalous and frustrates the legislative scheme in paragraph 55(3.1)(c), particularly in view of the exclusion in clause 55(3.1)(c)(i)(C) for property acquired as a result of an amalgamation of two or more related corporations. In addition, you submit that there is an apparent conflict between subparagraph 55(3.1)(b)(ii) and paragraph 55(3.1)(c). Subparagraph 55(3.1)(b)(ii) applies, among other things, to an issuance of shares of the capital stock of a transferee corporation (or a new corporation deemed by paragraph 55(3.2)(b) to be a continuation of the transferee corporation) that results in an acquisition of control. In your view, subparagraph 55(3.1)(b)(ii) establishes the parameters within which a share issued by a transferee corporation (or by a new corporation formed on the amalgamation of a transferee corporation and a corporation related to the transferee corporation) should or should not affect a paragraph 55(3)(b) reorganization and, therefore, if paragraph 55(3.1)(c) also applied, the acquisition of control test in subparagraph 55(3.1)(b)(ii) would be compromised. Based on our understanding of the facts described above and the circumstances surrounding these transactions, we agree that the issuance of shares by Amalco2 should not result in an acquisition of property described in paragraph 55(3.1)(c). Accordingly, we are prepared to recommend to the Minister of Finance that, for the purpose of paragraph 55(3.1)(c), the Act be amended to ensure that, in situations described in your correspondence, Amalco2 will be considered to be the same corporation as, and a continuation of, Newco. In addition, as a result of our review, we will also recommend that an amendment be made to the Act to ensure that a similar continuation rule will apply to a distributing corporation for the purpose of paragraph 55(3.1)(d). If the recommendations are acted upon, we anticipate that the amendments would be included in the next technical bill.

Yours sincerely,

Len Farber, General Director, Tax Policy Branch

(4) Avoidance of subsec. (2) — For the purposes of this section, where it can reasonably be considered that one of the main purposes of one or more transactions or events was to cause 2 or more persons to be related to each other or to cause a corporation to control another corporation, so that subsection (2) would, but for this subsection, not apply to a dividend, those persons shall be deemed not to be related to each other or the corporation shall be deemed not to control the other corporation, as the case may be.

Related Provisions: 55(5)(e) — Determination of "related" and "arm's length"; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization.

History: Subsec. 55(4) amended by 1994, c. 3, subsec. 16(5), applicable to dividends received after February 21, 1994, other than dividends received as part of a transaction or event or a series of transactions or events that was required on February 22, 1994 to be carried out pursuant to a written agreement entered into before February 22, 1994. Subsec. 55(4) formerly read:

> (4) Arm's length dealings — Where it may reasonably be considered that the principal purpose of one or more transactions or events was to cause two or more persons to be related or to not deal with each other at arm's length, or to cause one corporation to control another corporation, so as to make subsection (2) inapplicable, for the purposes of this section, those persons shall be deemed not to be related or shall be deemed to deal with each other at arm's length, or the corporation shall be deemed not to control the other corporation, as the case may be.

(5) Applicable rules — For the purposes of this section,

(a) where a dividend referred to in subsection (2) was received by a corporation as part of a transaction or event or a series of transactions or events, the portion of a capital gain attributable to any income expected to be earned or realized by a corporation after the safe-income determination time for the transaction, event or series is deemed to be a portion of a capital gain attributable to anything other than income;

(b) the income earned or realized by a corporation for a period throughout which it was resident in Canada and not a private corporation shall be deemed to be the total of

(i) its income for the period otherwise determined on the assumption that no amounts were deductible by the corporation by reason of section 37.1 of this Act or paragraph 20(1)(gg) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952,

(ii) the amount, if any, by which

(A) the amount, if any, by which the total of the capital gains of the corporation for the period exceeds the total of the taxable capital gains of the corporation for the period

exceeds

(B) the amount, if any, by which the total of the capital losses of the corporation for the period exceeds the total of the allowable capital losses of the corporation for the period,

(iii) the total of all amounts each of which is an amount required to have been included under this subparagraph as it read in its application to a taxation year that ended before February 28, 2000,

(iv) the amount, if any, by which

(A) ½ of the total of all amounts each of which is an amount required by paragraph 14(1)(b) to be included in computing the corporation's income in respect of a business carried on by the corporation for a taxation year that is included in the period and that ended after February 27, 2000 and before October 18, 2000,

exceeds

(B) where the corporation has deducted an amount under subsection 20(4.2) in respect of a debt established by it to have become a bad debt in a taxation year that is included in the period and that ended after February 27, 2000 and before October 18, 2000, or has an allowable capital loss for such a year because of the application of subsection 20(4.3), the amount determined by the formula

$$V + W$$

where

V is ½ of the value determined for A under subsection 20(4.2) in respect of the corporation for the last such taxation year that ended in the period, and

W is ⅓ of the value determined for B under subsection 20(4.2) in respect of the corporation for the last such taxation year that ended in the period, and

(C) in any other case, nil, and

(v) the amount, if any, by which

(A) the total of all amounts each of which is an amount required by paragraph 14(1)(b) to be included in computing the corporation's income in respect of a business carried on by the corporation for a taxation year that is included in the period and that ends after October 17, 2000,

exceeds

(B) where the corporation has deducted an amount under subsection 20(4.2) in respect of a debt established by it to have become a bad debt in a taxation year that is included in the period and that ends after October 17, 2000, or has an allowable capital loss for such a year because of the application of subsection 20(4.3), the amount determined by the formula

$$X + Y$$

where

X is the value determined for A under subsection 20(4.2) in respect of the corporation for the last such taxation year that ended in the period, and

Y is ⅓ of the value determined for B under subsection 20(4.2) in respect of the corporation for the last such taxation year that ended in the period, and

(C) in any other case, nil;

Selected Cases [para. 55(5)(b)]: *Lamont Management Ltd. v. R.*, [2000] 3 C.T.C. 18 (FCA); rev'g [1999] 3 C.T.C. 2576 (TCC) (Provision does not limit "any corporation" in subsec. 55(2)).

(c) the income earned or realized by a corporation for a period throughout which it was a private corporation is deemed to be its income for the period otherwise determined on the assumption that no amounts were deductible by the corporation under section 37.1 of this Act, as that section applies for taxation years that ended before 1995, or paragraph 20(1)(gg) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952;

Selected Cases [para. 55(5)(c)]: *Lamont Management Ltd. v. R.*, [2000] 3 C.T.C. 18 (FCA); rev'g [1999] 3 C.T.C. 2576 (TCC) (Provision does not limit "any corporation" in subsec. 55(2)).

(d) the income earned or realized by a corporation for a period ending at a time when it was a foreign affiliate of another corporation shall be deemed to be the total of the amount, if any, that would have been deductible by that other corporation at that time by virtue of paragraph 113(1)(a) and the amount, if any, that would have been deductible by that other corporation at that time by virtue of paragraph 113(1)(b) if that other corporation

(i) owned all of the shares of the capital stock of the foreign affiliate immediately before that time,

(ii) had disposed at that time of all of the shares referred to in subparagraph (i) for proceeds of disposition equal to their fair market value at that time, and

(iii) had made an election under subsection 93(1) in respect of the full amount of the proceeds of disposition referred to in subparagraph (ii);

Selected Cases [para. 55(5)(d)]: *Lamont Management Ltd. v. R.*, [2000] 3 C.T.C. 18 (FCA); rev'g [1999] 3 C.T.C. 2576 (TCC) (Provision does not limit "any corporation" in subsec. 55(2)); *Brelco Drilling Ltd. v. R.*, [1999] 3 C.T.C. 95 (FCA); rev'g [1998] 3 C.T.C. 2208 (TCC) (Provision not a complete code for determining "safe income").

(e) in determining whether 2 or more persons are related to each other, in determining whether a person is at any time a specified shareholder of a corporation and in determining whether control of a corporation has been acquired by a person or group of persons,

(i) a person shall be deemed to be dealing with another person at arm's length and not to be related to the other person if the person is the brother or sister of the other person,

(ii) where at any time a person is related to each beneficiary (other than a registered charity) under a trust who is or may (otherwise than by reason of the death of another beneficiary under the trust) be entitled to share in the income or capital of the trust, the person and the trust shall be deemed to be related at that time to each other and, for this purpose, a person shall be deemed to be related to himself, herself or itself,

(iii) a trust and a person shall be deemed not to be related to each other unless they are deemed by paragraph (3.2)(d) or subparagraph (ii) to be related to each other or the person is a corporation that is controlled by the trust, and

(iv) this Act shall be read without reference to subsection 251(3) and paragraph 251(5)(b); and

Selected Cases [para. 55(5)(e)]: *Gestion B. Dufresne Ltée v. R.*, [1998] 4 C.T.C. 2551 (TCC) (Wide definition of terms permitted to give effect to intention of Parliament).

(f) where a corporation has received a dividend any portion of which is a taxable dividend,

(i) the corporation may designate in its return of income under this Part for the taxation year during which the dividend was received any portion of the taxable dividend to be a separate taxable dividend, and

(ii) the amount, if any, by which the portion of the dividend that is a taxable dividend exceeds the portion designated under subparagraph (i) shall be deemed to be a separate taxable dividend.

Selected Cases [para. 55(5)(f)]: *Nassau Walnut Investments Inc. V. R.*, [1998] 1 C.T.C. 33 (FCA) (Provision available to taxpayers assessed under subsec. 55(2)); *Administration Gilles Leclair Inc. v. R.*, [1997] 3 C.T.C. 3053 (TCC) (Taxpayer not precluded from late filing of designation for separate dividends); *Placer Dome Inc. v. Canada*, [1997] 1 C.T.C. 72 (FCA) ("Purpose" is subjective in nature; "result" is objective); *CPL Holdings v. Canada*, [1995] 1 C.T.C. 447 (FCTD) (Provision not applicable where transactions not motivated by same considerations and purpose was to improve legal protection); *Trico Industries Ltd. v. Canada*, [1994] 2 C.T.C. 2053 (TCC) (Separate designation not permitted where not made at proper time).

Related Provisions [subsec. 55(5)]: 141.1 — Insurance corporation deemed not to be private corporation; 256(6)–(9) — Whether control acquired.

History: Subpara. 55(5)(b)(iii) amended and subparas. (iv) and (v) added, by 2001, c. 17, subsec. 38(3), applicable to taxation years that end after February 27, 2000. Subpara. (iii) formerly read:

(iii) the total of all amounts each of which is an amount in respect of a business carried on by the corporation at any time in the period, equal to the amount, if any, by which the total of

(A) where the period commenced before the corporation's adjustment time, the amount, if any, by which

(I) the total of the amounts in respect of the business required to be included in the calculation of the corporation's cumulative eligible capital by reason of the description of E in the definition "cumulative eligible capital" in subsection 14(5) with respect to that portion of the period preceding its adjustment time

exceeds the total of

(II) the cumulative eligible capital of the corporation in respect of the business at the commencement of the period,

(III) ½ of the total of the eligible capital expenditures in respect of the business that were made or incurred by the corporation during that portion of the period preceding its adjustment time, and

(IV) to the extent that the amount determined under subclause (I) exceeds the total of the amounts determined under subclauses (II) and (III), ½ of the total of the eligible capital expenditures in respect of the business that were made or incurred by the corporation during that portion of the period following its adjustment time,

(B) ⅓ of the total of the amounts in respect of the business required to be included in the calculation of the corporation's cumulative eligible capital by reason of the description of E in the definition "cumulative eligible capital" in subsection 14(5) with respect to that portion of the period following its adjustment time, and

(C) ⅓ of all amounts received in the period that were required to be included in the corporation's income by reason of paragraph 12(1)(i.1)

exceeds the total of

(D) where the period commenced after the corporation's adjustment time, ⅓ of the cumulative eligible capital of the corporation in respect of the business at the commencement of the period,

(E) ¼ of the total of the eligible capital expenditures in respect of the business made or incurred by the corporation with respect to that portion of the period after its adjustment time and a portion of which were not included in subclause (A)(IV),

(F) where the period commenced before the corporation's adjustment time, ½ of the amount, if any, by which the total of the amounts determined in respect of the corporation under subclauses (A)(II) and (III) exceeds the amount determined in respect of the corporation under subclause (A)(I), and

(G) ⅓ of all amounts deducted by the corporation under subsection 20(4.2) in respect of debts established by it to have become bad debts during the period;

Subpara. 55(5)(e)(iv) amended by the said c. 17, subsec. 38(5), applicable to dividends that are received after November 1999, other than dividends received as part of a transaction or event, or a series of transactions or events, that was required before December 1, 1999 to be carried out pursu-

ant to a written agreement made before that day. Subpara. (iv) formerly read:

> (iv) persons who are related to each other solely because of a right referred to in paragraph 251(5)(b) shall be deemed not to be related to each other; and

Paras. 55(5)(a) and (c) amended by 1998, c. 19, subsecs. 96(10) and (11), para. 55(5)(a) applicable to dividends received after June 20, 1996 and para. 55(5)(c) applicable to 1995 *et seq.* The paras. formerly read:

> (a) the portion of any capital gain attributable to any income that is expected to be earned or realized by a corporation after the time of receipt of the dividend referred to in subsection (2) shall, for greater certainty, be deemed to be a portion of the capital gain attributable to anything other than income;
>
> . . . . .
>
> (c) the income earned or realized by a corporation for a period throughout which it was a private corporation shall be deemed to be its income for the period otherwise determined on the assumption that no amounts were deductible by the corporation by reason of section 37.1 of this Act or paragraph 20(1)(gg) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952;

Para. 55(5)(e) amended by 1995, c. 3, subsec. 16(6), applicable to dividends received after February 21, 1994, other than dividends received as part of a transaction or event or a series of transactions or events that was required on February 22, 1994 to be carried out pursuant to a written agreement entered into before February 22, 1994. Para. (e) formerly read:

> (e) in determining whether two or more persons are dealing with each other at arm's length, persons shall be deemed to be dealing with each other at arm's length and not to be related to each other if one is the brother or sister of the other; and

Selected Cases [subsec. 55(5)]: *Nassau Walnut Investments Inc. V. R.*, [1998] 1 C.T.C. 33 (FCA) (Provision available to taxpayers assessed under subsec. 55(2)).

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

I.T. Technical News: 7 (subsection 55(2) — recent cases); 16 (*Brelco Drilling* case).

Proposed Addition — 55(6)

(6) Unlisted shares deemed listed — A share (in this subsection referred to as the "reorganization share") is deemed, for the purposes of subsection 116(6) and the definition "taxable Canadian property" in subsection 248(1), to be listed on a prescribed stock exchange if

(a) a dividend, to which subsection (2) does not apply because of paragraph (3)(b), is received in the course of a reorganization;

(b) in contemplation of the reorganization

(i) the reorganization share is issued to a taxpayer by a public corporation in exchange for another share of that corporation (in this subsection referred to as the "old share") owned by the taxpayer, and

(ii) the reorganization share is exchanged by the taxpayer for a share of another public corporation (in this subsection referred to as the "new share") in an exchange that would be a permitted exchange if the definition "permitted exchange" were read without reference to paragraph (a) and subparagraph (b)(ii) of that definition;

(c) immediately before the exchange, the old share

(i) is listed on a prescribed stock exchange, and

(ii) is not taxable Canadian property of the taxpayer; and

(d) the new share is listed on a prescribed stock exchange.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 68(8), will add subsec. 55(6), applicable to shares that are issued after April 26, 1995.

Technical Notes: New subsection 55(6), which applies to shares issued after April 26, 1995, treats a taxpayer's unlisted shares of a public corporation ("reorganization shares") — that were issued to the taxpayer and redeemed in the course of a tax-deferred reorganization spin-off by the public corporation — to be listed on a prescribed stock exchange. This subsection ensures that the shares are listed on a prescribed stock exchange for the purposes of the clearance certificate rule in subsection 116(1) and the definition "taxable Canadian property" in subsection 248(1). However, for this treatment to apply, the following conditions must be met:

- a dividend must be received in the course of the reorganization to which the anti-avoidance rule in subsection 55(2) does not apply because of the exception for certain spin-off butterfly transactions in paragraph 55(3)(b);
- in contemplation of the reorganization
  - the reorganization share must be issued to a taxpayer by a public corporation in an exchange for another share of that corporation (the old share) owned by the taxpayer, and
  - the reorganization share must be exchanged by the taxpayer for a new share of another public corporation in an exchange that would be within the meaning of the definition "permitted exchange" in subsection 55(1) if that definition were read without reference to paragraph (a) and subparagraph (b)(ii) of that definition. In other words, the exchange occurs in contemplation of a public corporation transacting a spin-off reorganization;
- immediately before the exchange, the old share
  - must be listed on a prescribed stock exchange, and
  - must not be taxable Canadian property of the taxpayer; and
- the new share must be listed on a prescribed stock exchange.

Regulations: 3200, 3201 (prescribed stock exchange).

Letter from Dept. of Finance, June 6, 2000:

Dear [xxx]

I am writing in response to your letter of March 20, 2000 and further to your telephone conversation with Davine Roach of this Division regarding a proposed butterfly reorganization in which [xxx], a Canadian public corporation, proposes to distribute the shares of its wholly-owned subsidiary, [xxx] ("Subco"), proportionately amongst [xxx] shareholders. [xxx] shareholders will hold their interest in Subco indirectly through Newco, which will subsequently be amalgamated with Subco.

Our understanding of the facts of the proposed transaction is that the common shares currently held by each [xxx] shareholder will be exchanged for New [xxx] Common Shares and [xxx] Reorganisation Shares. The Reorganisation Shares will not be listed on a stock exchange prescribed in the Income Tax Regulations (a "prescribed stock exchange"). The [xxx] Reorganisation Shares will be exchanged for Newco common shares (the "Newco Shares"). The Newco Shares will be listed on a prescribed stock exchange. [xxx] Reorganisation Shares will be redeemed by [xxx] as part of the butterfly reorganisation.

Because of subparagraph 115(1)(b)(iv) of the *Income Tax Act* (the "Act"), the [xxx] Reorganisation Shares will be considered to be taxable Canadian property for the purposes of the Act. Under the provisions of section 85 and 85.1 of the Act, the taxable Canadian property status of the [xxx] Reorganisation Shares will also cause the Newco Shares acquired in exchange for a shareholder's Reorganisation Shares to be taxable Canadian property of the shareholder even though the Newco Shares will be listed on a prescribed stock exchange. In addition, the [xxx] Reorganisation Shares will not be considered to be excluded property for the purpose of subsection 116(3) of the Act because paragraph 116(6)(b) of the Act will not apply to those shares.

In these circumstances, we agree that the Newco Shares held by a shareholder, which were acquired by the shareholder in exchange for the Reorganisation Shares in the course of the butterfly reorganisation, should not be considered to be taxable Canadian property of the shareholders for the purposes of the Act. Consequently, we will recommend to the Minister of Finance that amendments to the Act be introduced to ensure that the [xxx] Reorganisation Shares held by a shareholder of [xxx] will not be considered to be taxable Canadian property of the shareholder for the purposes of the Act.

You have also expressed a concern that shareholders may be prevented from choosing, under subsection 85.1(1) of the Act, to include in computing their incomes a loss arising from the disposition of their Reorganisation Shares in exchange for Newco Common Shares because of the application of paragraph 40(3.5)(b) of the Act.

The stop-loss rule in subsection 40(3.4) of the Act suspends the loss that would otherwise be realized on a transfer of a non-depreciable capital property to an affiliated person. For the purposes of this rule, paragraph 40(3.5)(b) provides that a share that is acquired in exchange for another share in a transaction to which section 85.1 applies is deemed to be a property identical to the other share. This ensures, for example, that a loss that is deferred on the transfer of a share to an affiliate will not be recognized at the time the share is subsequently replaced by the affiliate in a share-for-share exchange with another corporation under that provision. Even though it may be argued that the former share is no longer held by an affiliated person (since that share no longer exists), paragraph 40(3.5)(b) causes the new share in effect to take its place for this purpose.

We agree that from a policy point of view, in a transaction to which section 85.1 applies, it ought to be possible for the vendor (as defined in that subsection) to realize a loss on the transfer of the exchanged shares to the purchaser corporation in exchange for shares of the purchaser, provided that the purchaser is not affiliated with the vendor. We will recommend that the Act be amended to ensure that this result obtains in the context of the transaction that you have described. We do not, however, anticipate recommending that this change be implemented in the particular manner proposed in your letter — through a new exclusion in subsection 85.1(2). This would have the incidental effect of removing a whole class of transactions from the application of paragraph 85.1(1)(b), a result which we do not believe would be appropriate in policy terms.

We will recommend that the amendments described above be included in a future bill containing technical amendments to the Act. While I cannot, as you know, offer any assurance that either the Minister or Parliament will agree with our recommendations, I hope that this statement of our position is helpful to you.

Yours sincerely,
Len Farber
General Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, February 28, 2001:

Dear [xxx]

This is in response to your letter of December 20, 2000 to Davine Roach of the Department regarding a proposed series of transactions under which a public corporation ("Opco") in the course of a butterfly reorganization spins-off certain of its property to a new corporation ("Newco").

Our understanding of the facts of the proposed transaction is that each common share currently held by an Opco shareholder will be exchanged for a new common share and a special share of Opco. This exchange will be governed by section 86 of the *Income Tax Act* (the "Act"). The special shares of Opco will be redeemable and will not be listed on a prescribed stock exchange. Newco will acquire all the special shares of Opco from the Opco shareholders in exchange for common shares of Newco (the Newco shares). This exchange will be governed by section 85.1 of the Act unless a shareholder elects under subsection 85(1) of the Act. The Newco shares will be listed on a prescribed stock exchange. Opco will redeem the special shares of Opco acquired by Newco as part of the butterfly reorganization.

Because of subparagraph 115(1)(b)(iv) of the Act, the special shares of Opco held by a non-resident shareholder will be considered to be taxable Canadian property for the purposes of the Act. Under the provisions of sections 85 and 85.1 of the Act, the taxable Canadian property status of the special shares of Opco will also cause the Newco shares acquired by the non-resident shareholder in exchange for the non-resident's special shares of Opco to be taxable Canadian property of the non-resident even though the Newco shares will be listed on a prescribed stock exchange. As well, the special shares of Opco will not be considered to be excluded property for the purpose of subsection 116(3) of the Act because the definition "excluded property" in subsection 116(6) applies, in the case of shares of the capital stock of a corporation, only if the shares are listed on a prescribed stock exchange.

In these circumstances, we agree that Newco shares should not be considered to be taxable Canadian property by reason only of a deeming rule that applies on the exchange of the special shares for the Newco shares (i.e., because subparagraph 115(1)(b)(iv) applied before the exchange to the special shares of Opco). Consequently, we are prepared to recommend to the Minister of Finance that the income tax provisions be amended to ensure that the above-mentioned special shares of Opco held by a non-resident shareholder will not be considered to be taxable Canadian property of the non-resident in these circumstances for the purposes of the Act. We would recommend that such an amendment be effective for such reorganization shares issued by a public corporation after April 26, 1995 where the shares were issued by the corporation as part of the series of transactions or events that included a distribution of property by the corporation in the course of a butterfly reorganization. The date of April 26, 1995 is the date upon which the related amendments to paragraph 115(1)(b) took effect. If the recommendation is acted upon, I would anticipate that such an amendment would be included in a future technical bill.

Yours sincerely,

Len Farber
General Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, July 3, 2001: See under 256(7)(a)(i)(E).

Selected Cases [s. 55]: *943963 Ontario Inc. v. R.*, [1999] 4 C.T.C. 2119 (TCC) (Part IV tax applicable to all dividends and deemed dividends, including those from "safe income").

Definitions [s. 55]: "acquired" — 55(3.2)(e), (f), 139.1(18), 256(7); "acquiror" — 55(1)"permitted exchange"(b); "acquisition of control" — 55(3.2)(g), 55(5)(e), 256(7), (8); "adjustment time" — 14(5), 248(1); "allowable capital loss" — 38(b), 248(1); "amount" — 248(1); "arm's length" — 55(4), 55(5)(e), 251(1); "brother" — 252(2); "business" — 248(1); "Canada" — 255; "capital gain", "capital loss" — 39(1), 248(1); "capital property" — 54, 248(1); "class of shares" — 248(6); "control", "controlled" — 55(3.2)(g), 55(5)(e), 139.1(18), 256(6)–(9); "corporation" — 55(3.2)(b), 248(1), *Interpretation Act* 35(1); "cumulative eligible capital" — 14(5), 248(1); "disposition" — 248(1); "distributing corporation" — 55(1) (under "distribution"); "distribution" — 55(1); "dividend" — 248(1); "dividend payer" — 55(3)(a)(iii)(A); "dividend recipient" — 55(3); "eligible capital property" — 54, 248(1); "foreign vendor" — 55(3.1)(a); "income earned or realized..." — 55(5)(b), (c); "individual", "non-resident" — 248(1); "participant" — 55(1)"permitted exchange"(b); "permitted acquisition", "permitted exchange", "permitted redemption" — 55(1); "person" — 248(1); "prescribed stock exchange" — 55(6), Reg. 3200, 3201; "proceeds of disposition" — 55(3.01)(d); "property" — 248(1); "public corporation" — 89(1), 248(1); "qualified person" — 55(1); "qualifying share" — 192(6), 248(1) *[not intended to apply to s. 55]*; "related" — 55(3.2)(c), (d), 55(5)(e), 251(2); "resident in Canada" — 250; "safe-income determination time" — 55(1); "series of transactions" — 248(10); "share", "shareholder" — 248(1); "sister" — 252(2); "specified class", "specified corporation" — 55(1); "specified shareholder" — 55(3.2)(a), 55(3.3), 248(1); "specified wholly-owned corporation" — 55(1); "subsidiary wholly-owned corporation" — 248(1); "taxable Canadian corporation" — 89(1), 248(1); "taxable Canadian property" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxable dividend" — 89(1), 248(1); "taxpayer" — 248(1); "transferee" — 55(1)"distribution"; "transferee corporation" — 55(1)"distribution", 55(3.2)(h); "trust" — 104(1), 248(1), (3); "unrelated" — 55(3.01)(a) "vendor" — 55(3.1)(b)(i).

Subdivision d — Other Sources of Income

56. (1) Amounts to be included in income for year — Without restricting the generality of section 3, there shall be included in computing the income of a taxpayer for a taxation year,

(a) **pension benefits, unemployment insurance benefits, etc.** — any amount received by the taxpayer in the year as, on account or in lieu of payment of, or in satisfaction of,

(i) a superannuation or pension benefit including, without limiting the generality of the foregoing,

(A) the amount of any pension, supplement or spouse's or common-law partner's allowance under the *Old Age Security Act* and the amount of any similar payment under a law of a province,

(B) the amount of any benefit under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act,

(C) the amount of any payment out of or under a prescribed provincial pension plan, and

(C.1) the amount of any payment out of or under a foreign retirement arrangement established under the laws of a country, except to the extent that the amount would not, if the taxpayer were resident in the country, be subject to income taxation in the country,

Proposed Amendment — 56(1)(a)(i)(C.1) — Income inclusion on conversion to Roth IRA

Department of Finance press release, December 18, 1998: See under 56(12).

but not including

(D) the portion of a benefit received out of or under an employee benefit plan that is required by paragraph 6(1)(g) to be included in computing the taxpayer's income for the year, or would be required to be so included if that paragraph were read without reference to subparagraph 6(1)(g)(ii),

(E) the portion of an amount received out of or under a retirement compensation arrangement that is required by paragraph (x) or (z) to be included in computing the taxpayer's income for the year, and

(F) a benefit received under section 71 of the *Canada Pension Plan* or under a similar provision of a provincial pension plan as defined in section 3 of that Act,

(ii) a retiring allowance, other than an amount received out of or under an employee benefit plan, a retirement compensation arrangement or a salary deferral arrangement,

(iii) a death benefit,

(iv) a benefit under the *Unemployment Insurance Act*, other than a payment relating to a course or program designed to facilitate the re-entry into the labour force of a claimant under that Act, or a benefit under Part I, VIII or VIII.1 of the *Employment Insurance Act*,

Proposed Amendment — QPIP treated like Employment Insurance

Department of Finance news release, July 19, 2005: *Amendments to be Recommended to the* Income Tax Act *With Respect to the Québec Parental Insurance Plan*

The Department of Finance today indicated its intention to recommend amendments to the *Income Tax Act* to provide for the tax treatment of benefits and premiums under the Québec Parental Insurance Plan (QPIP), which is expected to come into force on January 1, 2006.

The QPIP will replace maternity and parental benefits currently provided under the employment insurance (EI) program for eligible Quebec residents. EI premiums for employers and employees in Quebec will be reduced to reflect the fact that Quebec residents will no longer receive maternity and parental benefits under EI. QPIP premiums will be collected directly by the Province of Quebec.

The proposed amendments would ensure that the federal tax treatment of QPIP premiums and benefits is consistent with the federal tax treatment of EI premiums and benefits. Specifically:

- Benefits paid under the QPIP would be included in the calculation of an individual's income [56(1)(a)(iv) — ed.].
- Employees would be eligible for a federal non-refundable tax credit for QPIP premiums paid, to be provided at the same rate as the federal non-refundable tax credit for EI premiums [118.7 — ed.].
- Employers would be able to deduct premiums paid under the plan in the calculation of their income [9(1), and 8(1)(l.1) for individuals — ed.].
- The self-employed would be eligible for a non-refundable tax credit for the employee's share of QPIP premiums [118.7 — ed.] and a tax deduction for the employer's share [9(1) — ed.], where the calculation of these shares is determined by the Province of Quebec.

These amendments would apply to benefits received and premiums paid upon the implementation of the QPIP. It is intended that legislation to implement the proposed amendments be introduced at the earliest opportunity.

For further information, media may contact: David Gamble, Public Affairs and Operations Division, (613) 996-8080.

(v) a benefit under regulations made under an appropriation Act providing for a scheme of transitional assistance benefits to persons employed in the production of products to which the Canada-United States Agreement on Automotive Products, signed on January 16, 1965 applies, or

(vi) except to the extent otherwise required to be included in computing the taxpayer's income, a prescribed benefit under a government assistance program;

(vii) [Repealed]

Related Provisions: 56(1)(r), 110(1)(g) — *EI Act* Part II tuition assistance; 56(8) — CPP/QPP benefits for previous years; 56(12) — Distribution from foreign retirement arrangement; 57 — Certain superannuation or pension benefits; 60(j) — Transfer of superannuation benefits; 60(j.03), (j.04) — Deduction for repayments of pension benefits; 60(j.1) — Transfer of retiring allowances; 60(j.2) — Transfer to spousal RRSP; 60(n)(iii) — Deduction for repayment of pension or benefits; 60(v.1) — UI/EI benefit repayment; 60.2(1) — Refund of undeducted past service AVCs; 78(4) — Unpaid remuneration and other amounts; 81(1)(d)–(g) — Certain pensions exempt from tax; 104(27) — Testamentary trust — income included under subpara. 56(1)(a)(i); 104(28) — Death benefit flowed through trust; 110(1)(f) — Deductions for certain payments; 110.2(1)"qualifying amount" — Retroactive spreading of certain lump-sum payments over prior years; 118.7 — Credit for UI/EI premium and CPP contributions; 128.1(10)"excluded right or interest"(a)(viii), (d), (g), (h) — Emigration — no deemed disposition of right to pension or retiring allowance; 139.1(12) — Conversion benefit on demutualization of insurance corporation; 147.4(4) — Amount deemed received when converting pension rights before 1997 to annuity contract commencing after age 69; 153(1) — Withholding of tax at source; 212(1)(h), (j) — Pension and benefit payments to non-residents — withholding tax; 254 — Contract under pension plan; Canada-U.S. Tax Treaty:Art. XVIII — Pensions and annuities; Art. XXIX:7 — exemption for half of old age security paid to citizen of U.S. resident in Canada.

History: Para. 56(1)(a) amended to replace "spouse's" with "spouse's or common-law partner's" by 2000, c. 12, Sch. 2, s. 7, applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Cl. 56(1)(a)(i)(F) added by 1998, c. 19, subsec. 9(1), applicable to 1997 *et seq.*, except that cl. 56(1)(a)(i)(F) does not apply to benefits received before August 1997 by a taxpayer in respect of the death of an individual if the taxpayer is an estate that arose on or as a consequence of the death of the individual.

Subpara. 56(1)(a)(iv) amended by 1998, c. 19, subsec. 97(1), deemed to have come into force on June 30, 1996. The subpara. formerly read:

(iv) a benefit under the *Employment Insurance Act*, other than a payment relating to the cost of a course or program designed to facilitate the re-entry into the labour force of a claimant under that Act,

Subpara. 56(1)(a)(iv) amended by 1996, c. 23, para. 187(d), to substitute "*Employment Insurance Act*" for "*Unemployment Insurance Act*", in force June 30, 1996.

Subpara. 56(1)(a)(vi) substituted for subparas. (vi), (vii), by 1994, c. 21, subsec. 25(1), applicable to benefits received after October 1991. Subparas. (vi) and (vii) formerly read:

(vi) a benefit under the *Labour Adjustment Benefits Act*, or

(vii) an income assistance payment made pursuant to an agreement under section 5 of the *Department of Labour Act*;

Cl. 56(1)(a)(i)(C.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 32(1), applicable to payments received after July 13, 1990.

Subpara. 56(1)(a)(iv) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 32(2), applicable to 1988 *et seq.* Subpara. 56(1)(a)(iv) formerly read:

(iv) a benefit under the *Unemployment Insurance Act*,

Subpara. 56(1)(a)(vii) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 32(3), applicable to payments received after September 14, 1989.

Selected Cases [para. 56(1)(a)]: *Fawkes v. R.*, [2004] 5 C.T.C. 2430 (TCC) ("In respect of" includes "in association with" loss of taxpayer's position); *Saardi v. R.*, [1999] 4 C.T.C. 2488 (TCC) (Taxpayer entitled to structure claim settlement to avoid amount becoming retiring allowance); *Fournier v. R.*, [1999] 4 C.T.C. 2247 (TCC) (Damages were not retiring allowance); *Schwartz v. Canada*, [1996] 1 C.T.C. 303 (SCC) (Retiring allowance not related to employment which never started); *Layton v. Canada*, [1995] 2 C.T.C. 2408 (TCC) (Grant was not "income from a source"); *Kaiser v. Canada*, [1994] 2 C.T.C. 2385 (TCC) (Inherited IRA fund from U.S. taxable under clause 56(1)(a)(i)(C.1)); *Williams v. Canada*, [1992] 1 C.T.C. 225 (SCC) (Benefits paid under *Unemployment Insurance Act* exempt from tax pursuant to *Indian Act*); *Cewe, Jack, Ltd. v. Jorgenson*, [1980] C.T.C. 314 (SCC) (Sum received in respect of dismissal not income); *R. v. Herman*, [1978] C.T.C. 442 (FCTD) (Amounts received as pension benefits from U.N. fund taxable as pension benefits); *R. v. Atkins*, [1976] C.T.C. 497 (FCA) (Sum received upon dismissal non-taxable damages).

Regulations: 100(1)"remuneration"(b), (c), (d), (g) (withholding at source); 103(4), (6)(e) (withholding required for retiring allowance); 200(2)(e) (information return); 5502 (prescribed benefits for 56(1)(a)(vi)); 7800(1) (prescribed provincial pension plan).

Remission Orders: *Willard Thorne Remission Order*, P.C. 2002-2177 (remission of tax on retroactive lump sum payment of CPP benefits); *Danielle Gareau Remission Order*, P.C. 2003-774 (remission of tax on EI benefits repaid in a later year); *Janet Hall Remission Order*, P.C. 2004-1336 (remission where CPP lump sum disability repaid to wage loss replacement provider).

Interpretation Bulletins: IT-75R4: Scholarships, fellowships, bursaries, prizes, research grants and financial assistance; IT-91R4: Employment at special work sites or remote work locations; IT-167R6: Registered pension plans — employee's contributions; IT-247: Employer's contribution to pensioners' premiums under provincial medical and hospital services plans (archived); IT-337R4: Retiring allowances; IT-365R2: Damages, settlements and similar receipts; IT-397R: Amounts excluded from income — statutory exemptions and certain service or RCMP pensions, allowances and compensation; IT-499R: Superannuation or pension benefits; IT-508R: Death benefits; IT-528: Transfers of funds between registered plans; IT-529: Flexible employee benefit programs.

Advance Tax Rulings: ATR-12: Retiring allowance; ATR-21: Pension benefit from an unregistered pension plan.

Forms: RC4157(E): Employers' Guide: Filing the T4A Slip and Summary Form; T4A(OAS) Supp: Statement of old age security; T4A(P): Statement of Canada Pension Plan benefits.

(a.1) **[death] benefits under CPP/QPP** — where the taxpayer is an estate that arose on or as a consequence of the death of an individual, each benefit received under section 71 of the *Canada Pension Plan*, or under a similar provision of a provincial pension plan as defined in section 3 of that Act, after July 1997 and in the year in respect of the death of the individual;

Related Provisions: 56(8) — CPP/QPP benefits for previous years.

History: Para. 56(1)(a.1) added by 1998, c. 19, subsec. 9(2), applicable to 1997 *et seq.*

(b) **[spousal or child] support** — the total of all amounts each of which is an amount determined by the formula

$$A - (B + C)$$

where

A is the total of all amounts each of which is a support amount received after 1996 and before the end of the year by the taxpayer from a particular person where the taxpayer and the particular person were living separate and apart at the time the amount was received,

B is the total of all amounts each of which is a child support amount that became receivable by the taxpayer from the particular person under an agreement or order on or after its commencement day and before the end of the year in respect of a period that began on or after its commencement day, and

C is the total of all amounts each of which is a support amount received after 1996 by the taxpayer from the particular person and included in the taxpayer's income for a preceding taxation year;

Related Provisions: 56.1 — Support payments; 56.1(4) — Definitions of "commencement day", "support amount" and "child support amount"; 60(b) — Parallel deduction for payer; 60(c.2) — Repayment of support payments; 110.2(1)"qualifying amount" — Retroactive spreading of lump-sum payments over prior years; 122.64(3) — Disclosure of name and address for enforcement of support payments; 146(1)"earned income" — RRSP — earned income includes amounts under 56(1)(b); 212(1)(f) — No withholding tax on support paid to non-resident; 248(1)"exempt income" — Support amount is not exempt income; 252(3) — Extended meaning of "spouse" and "former spouse"; 257 — Formula cannot calculate to less than zero; Canada-U.S. Tax Treaty:Art. XVIII:6 — Child support exempt if paid by U.S. resident.

History: The description of B in para. 56(1)(b) amended by 1998, c. 19, subsec. 97(2), applicable to amounts received after 1996. The description formerly read:

B is the total of all amounts each of which is a child support amount that became receivable by the taxpayer from the particular person under an agreement or order on or after its commencement day and before the end of the year in respect of a period that began after its commencement day, and

Para. 56(1)(b) amended by 1997, c. 25, subsec. 8(1), applicable to amounts received after 1996. Para. (b) formerly read:

(b) alimony — an amount received by the taxpayer in the year as alimony or other allowance payable on a periodic basis for the maintenance of the taxpayer, children of the taxpayer or both the taxpayer and the children if the taxpayer, because of the breakdown of the taxpayer's marriage, was living separate and apart from the spouse or former spouse who was required to make the payment at the time the payment was received and throughout the remainder of the year and the amount was received under a decree, order or judgment of a competent tribunal or under a written agreement;

Para. 56(1)(b) substituted for former paras. (b) and (c) by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 17(1), applicable to amounts received under a decree, order or judgment of a competent tribunal or under a written agreement, with respect to a breakdown of a marriage occurring after 1992. Paras. (b) and (c) formerly read:

(b) alimony — any amount received by the taxpayer in the year, pursuant to a decree, order or judgment of a competent tribunal or pursuant to a written agreement, as alimony or other allowance payable on a periodic basis for the maintenance of the recipient thereof, children of the marriage, or both the recipient and children of the marriage, if the recipient was living apart from, and was separated pursuant to a divorce, judicial separation or written separation agreement from, the spouse or former spouse required to make the payment at the time the payment was received and throughout the remainder of the year;

(c) maintenance — any amount received by the taxpayer in the year, pursuant to an order of a competent tribunal, as an allowance payable on a periodic basis for the maintenance of the taxpayer, children of the taxpayer, or both the taxpayer and children of the taxpayer if, at the time the payment was received and throughout the remainder of the year, the taxpayer was living apart from the taxpayer's spouse who was required to make the payment;

Selected Cases [para. 56(1)(b)]: *Badeau v. R.*, [2002] 1 C.T.C. 2627 (TCC) (Factors considered in determination of amount to be received do not bind recipient to spend allowance accordingly); *Ouellet v. R.*, [2001] 1 C.T.C. 2557 (TCC) (Court order declaring amounts to be tax free not binding on Minister); *Nagy v. R.*, [2001] 1 C.T.C. 2540 (TCC) (Discretion to use funds need not be absolute discretion); *Drapeau v. R.*, [2000] 1 C.T.C. 2589 (TCC) (No constructive trust created; amounts taxable); *Pelletier v. Canada*, [1995] 1 C.T.C. 2327 (TCC) (Replacement of periodic payments with lump sum by supplementary agreement resulted in non-taxability); *Thibaudeau v. Canada*, [1995] 1 C.T.C. 382 (SCC); rev'g [1994] 2 C.T.C. 4 (FCA); rev'g [1992] 2 C.T.C. 2497 (TCC) (Provision is not unconstitutional under subsec. 15(1) of the Charter); *Gagnon v. R.*,

[1986] 1 C.T.C. 410 (SCC) (Stated purposes of amounts not affecting nature of allowance paid to taxpayer); *R. v. Sigglekow*, [1985] 2 C.T.C. 251 (FCTD) (Amount received included in taxpayer's income despite divorce decree providing former husband to pay "tax-free" amount); *R. v. Sills*, [1985] 1 C.T.C. 49 (FCA); leave to appeal to SCC refused (1986), 68 N.R. 320 (note) (Sums payable on periodic basis remain allowances even if not paid on time).

Interpretation Bulletins: IT-99R5: Legal and accounting fees; IT-325R2: Property transfers after separation, divorce and annulment; IT-530R: Support payments.

Forms: T1157: Election for child support payments; T1158: Registration of family support payments; P102: Support payments (pamphlet).

(c), (c.1) [Repealed]

History: Para. 56(1)(c) repealed by 1997, c. 25, subsec. 8(1), applicable to amounts received after 1996. Para. (c) formerly read:

> (c) maintenance — an amount received by the taxpayer in the year as an allowance payable on a periodic basis for the maintenance of the taxpayer, children of the taxpayer or both the taxpayer and the children if
>
> (i) at the time the amount was received and throughout the remainder of the year the taxpayer was living separate and apart from the person who was required to make the payment,
>
> (ii) the person who was required to make the payment is the natural parent of a child of the taxpayer, and
>
> (iii) the amount was received under an order made by a competent tribunal in accordance with the laws of a province;

Para. 56(1)(c) substituted for para. (c.1) by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 17(2), applicable to amounts received under an order made after 1992. Para. (c.1) formerly read:

> (c.1) idem — any amount received by the taxpayer in the year, pursuant to an order made by a competent tribunal in accordance with the laws of a province, as an allowance payable on a periodic basis for the maintenance of the taxpayer, the children of the taxpayer or both the taxpayer and the children of the taxpayer if
>
> (i) the order was made
>
> (A) after February 10, 1988, or
>
> (B) before February 11, 1988 and the taxpayer and the person required to pay the amount jointly elected in writing before the end of the year to have this paragraph and paragraph 60(c.1) apply with respect to all those amounts,
>
> (ii) at the time the amount was received and throughout the remainder of the year, the taxpayer was living apart from the person required to pay the amount, and
>
> (iii) the person required to pay the amount is a person of the opposite sex who
>
> (A) before the date of the order cohabited with the taxpayer in a conjugal relationship, or
>
> (B) is the natural parent of a child of the taxpayer;

Selected Cases [para. 56(1)(c)]: *R. v. Sigglekow*, [1985] 2 C.T.C. 251 (FCTD) (Amount received included in taxpayer's income despite divorce decree providing former husband to pay "tax-free" amount); *James v. R.*, [1985] 1 C.T.C. 239 (FCTD) (Maintenance payments included in taxpayer's income notwithstanding that payments made late and in smaller amounts).

(c.2) **reimbursement of support payments** — an amount received by the taxpayer in the year under a decree, order or judgment of a competent tribunal as a reimbursement of an amount deducted under paragraph 60(b) or (c), or under paragraph 60(c.1) as it applies, in computing the taxpayer's income for the year or a preceding taxation year to decrees, orders and judgments made before 1993;

Related Provisions: 60(c.2) — Parallel deduction to spouse; 146(1)"earned income"(b) — Amount under 56(1)(c.2) included in RRSP earned income.

History: Para. 56(1)(c.2) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 17(3), applicable to payments received after 1990.

Interpretation Bulletins: IT-530R: Support payments.

(d) **annuity payments** — any amount received by the taxpayer in the year as an annuity payment other than an amount

(i) otherwise required to be included in computing the taxpayer's income for the year, or

(ii) with respect to an interest in an annuity contract to which subsection 12.2(1) applies (or would apply if the contract had an anniversary day in the year at a time when the taxpayer held the interest);

Related Provisions: 56(1.1) — Definitions in 12.2(11) apply; 58 — Government annuities and like annuities; 60(a) — Deduction of capital element; 94.2(11)(b), (c) — No application to foreign insurance policy of foreign investment entity; 128.1(10)"excluded right or interest"(f)(i) — Emigration — no deemed disposition of right to annuity contract; 153(1)(f) — Withholding at source; 212(1)(o) — Withholding tax on annuity payment to non-resident.

History: Subpara. 56(1)(d)(ii) substituted for subparas. (ii), (iii), by 1994, c. 7, Sch. II (1991, c. 49), subsec. 32(4), applicable to contracts last acquired after 1989. Subparas. 56(1)(d)(ii), (iii) formerly read:

> (ii) with respect to an interest in an annuity contract to which subsection 12.2(1) applies or would apply if the interest had been last acquired after December 19, 1980 and before December 2, 1982 (other than a contract to which subsection 12.2(1) does not apply in the year by reason of subsection 12.2(6) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952), or
>
> (iii) with respect to an interest in an annuity contract to which subsection 12.2(3) applies;

Selected Cases [para. 56(1)(d)]: *Thibault v. R.*, [1975] C.T.C. 587 (FCTD) (Interest on monthly payments and indemnity amounts taxable income when calculated on annuity basis).

Interpretation Bulletins: IT-85R2: Health and welfare trusts for employees; IT-365R2: Damages, settlements and similar receipts.

I.T. Technical News: 25 (health and welfare trusts).

Advance Tax Rulings: ATR-40: Taxability of receipts under a structured settlement; ATR-50: Structured settlement; ATR-68: Structured settlement.

(d.1) [Repealed under former Act]

Interpretation Bulletins: IT-365R2: Damages, settlements and similar receipts.

(d.2) **idem [annuity payments]** — any amount received out of or under, or as proceeds of disposition of, an annuity the payment for which was

(i) deductible in computing the taxpayer's income because of paragraph 60(l) or because of subsection 146(5.5) of the *Income Tax Act*, Chapter 148 of the Revised Statutes of Canada, 1952,

(ii) made in circumstances to which subsection 146(21) applied, or

(iii) made pursuant to or under a deferred profit sharing plan by a trustee under the plan to purchase the annuity for a beneficiary under the plan;

Related Provisions: 60.2(1) — Refund of undeducted past service AVCs; 147(2)(k)(vi) — Purchase of annuity by DPSP; 147(10.6) — Purchase of annuity by DPSP before 1997.

History: Subpara. 56(1)(d.2)(iii) added by 1997, c. 25, subsec. 8(2), applicable to 1996 *et seq.*

Para. 56(1)(d.2) substituted by 1994, c. 21, subsec. 25(2), applicable to 1992 *et seq.* Para. (d.2) formerly read:

> (d.2) any amount received out of or under, or as proceeds of disposition of, an annuity the payment for which was deductible in computing the taxpayer's income by reason of paragraph 60(l) of this Act or subsection 146(5.5) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952;

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-517R: Pension tax credit (archived).

(e) **disposition of income-averaging annuity contract** — any amount received by the taxpayer in

the year as, on account or in lieu of payment of, or in satisfaction of, proceeds of the surrender, cancellation, redemption, sale or other disposition of an income-averaging annuity contract;

Related Provisions: 153(1)(k) — Withholding of tax at source; Canada-U.S. Tax Treaty:Art. XVIII:3 — Pension income excludes payment from IAAC.

Regulations: 208 (information return).

(f) **idem** — any amount deemed by subsection 61.1(1) to have been received by the taxpayer in the year as proceeds of the disposition of an income-averaging annuity contract;

Related Provisions: 212(1)(n), 214(3)(b) — Non-resident withholding tax.

Regulations: 208 (information return).

(g) **supplementary unemployment benefit plan** — amounts received by the taxpayer in the year from a trustee under a supplementary unemployment benefit plan as provided by section 145;

Related Provisions: 6(1)(a)(i) — Employer-paid premiums not a taxable benefit; 145(3) — Amounts received taxable; 146(1)"earned income"(b) — Amount under 56(1)(g) included in RRSP earned income; 153(1)(e) — Withholding of tax at source.

Regulations: 100(1)"remuneration"(e) (withholding at source).

(h) **registered retirement savings plan, etc. [RRSP or RRIF]** — amounts required by section 146 in respect of a registered retirement savings plan or a registered retirement income fund to be included in computing the taxpayer's income for the year;

Related Provisions: 56(1)(t) — RRIF inclusion under 146.3; 60.2(1) — Refund of undeducted past service AVCs; 139.1(12) — Conversion benefit on demutualization of insurance corporation; 146(8) — Benefits taxable; 148(8.1) — *Inter vivos* transfer to spouse; 153(1)(j) — Withholding of tax at source.

Regulations: 214 (information return).

Interpretation Bulletins: IT-307R4: Spousal or common-law partner registered retirement savings plans.

Advance Tax Rulings: ATR-37: Refund of premiums transferred to spouse.

(h.1) **Home Buyers' Plan** — amounts required by section 146.01 to be included in computing the taxpayer's income for the year;

Related Provisions: 146.01(4), (5), (6) — Income inclusions.

History: Para. 56(1)(h.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 17(4), applicable to 1992 *et seq.*

(h.2) **Lifelong Learning Plan** — amounts required by section 146.02 to be included in computing the taxpayer's income for the year;

Related Provisions: 146.02(4), (5), (6) — Income inclusions.

History: Para. 56(1)(h.2) added by 1999, c. 22, s. 15, applicable to 1999 *et seq.*

(i) **deferred profit sharing plan** — amounts received by the taxpayer in the year under a deferred profit sharing plan as provided by section 147;

Related Provisions: 60(j.2) — Transfer to spousal RRSP; 139.1(11), (12) — Conversion benefit on demutualization of insurance corporation; 147(10) — Amounts received from DPSP taxable; 153(1)(h) — Withholding of tax at source; 212(1)(m) — DPSP payments to non-residents.

Selected Cases [para. 56(1)(i)]: *R. v. Powell*, [1980] C.T.C. 382 (FCTD) (Amount of increase in value from time of acquisition of shares in DPSP included in income).

Regulations: 100(1)"remuneration"(f) (withholding at source).

Interpretation Bulletins: IT-281R2: Elections on single payments from a deferred profit-sharing plan (archived).

Advance Tax Rulings: ATR-31: Funding of divorce settlement amount from DPSP.

(j) **life insurance policy proceeds** — any amount required by subsection 148(1) or (1.1) to be included in computing the taxpayer's income for the year;

Related Provisions: 94.2(11)(b), (c) — No application to foreign insurance policy of foreign investment entity; 148(9)"adjusted cost basis"C — increase in adjusted cost basis.

Regulations: 217 (information return).

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies.

Forms: T5: Statement of investment income; T5 Summ: Return of investment income.

(k) **apprentice tools, re proceeds** — all amounts received in the year by a person or partnership (in this paragraph referred to as the "vendor") as consideration for the disposition by the vendor of a property the cost of which was included in computing an amount under paragraph 8(1)(r) in respect of the vendor or in respect of a person with whom the vendor does not deal at arm's length, to the extent that the total of those amounts received in respect of the disposition in the year and in preceding taxation years exceeds the total of the cost to the vendor of the property immediately before the disposition and all amounts included in respect of the disposition under this paragraph in computing the vendor's income for a preceding taxation year, unless the property was acquired by the vendor in circumstances to which subsection 85(5.1) or subsection 97(5) applied;

History: Para. 56(1)(k) added by 2002, c. 9, s. 24, applicable to 2002 *et seq.*

(l) **legal expenses [awarded or reimbursed]** — amounts received by the taxpayer in the year as

(i) legal costs awarded to the taxpayer by a court on an appeal in relation to an assessment of any tax, interest or penalties referred to in paragraph 60(o),

(ii) reimbursement of costs incurred in relation to a decision of the Canada Employment and Immigration Commission, the Canada Employment and Insurance Commission, a board of referees or an umpire under the *Unemployment Insurance Act* or the *Employment Insurance Act*, or

(iii) reimbursement of costs incurred in relation to an assessment or a decision under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act,

if with respect to that assessment or decision, as the case may be, an amount has been deducted or may be deductible under paragraph 60(o) in computing the taxpayer's income;

Related Provisions: 60(o) — Expense of objection or appeal; 152(1.2) — Rule applies to determination of losses as well as assessment.

History: Subpara. 56(1)(l)(ii) amended by 1998, c. 19, subsec. 97(3), deemed to have come into force on June 30, 1996. The subpara. formerly read:

(ii) reimbursement of costs incurred in relation to a decision of the Canada Employment Insurance Commission, a board of referees or an umpire under the *Employment Insurance Act*, or

Subpara. 56(1)(l)(ii) amended by 1996, c. 23, para. 187(d), to substitute "*Employment Insurance Act*" for "*Unemployment Insurance Act*", in force June 30, 1996.

Para. 56(1)(l) amended by 1996, c. 11, para. 99(c), to substitute "Canada Employment Insurance Commission" for "Canada Employment and Immigration Commission", in force July 12, 1996.

Interpretation Bulletins: IT-99R5: Legal and accounting fees.

(l.1) **idem** — amounts received by the taxpayer in the year as an award or a reimbursement in respect of legal expenses (other than those relating to a division or settlement of property arising out of, or on a breakdown of, a marriage or common-law partnership) paid to collect or establish a right to a retiring allowance or a benefit under a pension fund or plan (other than a benefit under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act) in respect of employment;

Related Provisions: 60(o.1) — Deductions in computing income — legal expenses in respect of retiring allowances and pension benefits.

History: Para. 56(1)(l.1) amended by 2000, c. 12, Sch. 2, s. 9, to replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Para. 56(1)(l.1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 17(5), to substitute "an award or a reimbursement" for "an award or reimbursement" and "arising out of, or on a breakdown of, a marriage" for "arising from a marriage or other conjugal relationship" and applicable after 1992.

Interpretation Bulletins: IT-99R5: Legal and accounting fees; IT-337R4: Retiring allowances.

(m) [Repealed]

History: Para. 56(1)(m) repealed by 1996, c. 23, s. 172, in force January 1, 1998. It formerly read:

(m) training allowance — amounts received by the taxpayer in the year as or on account of a training allowance paid to the taxpayer under the *National Training Act*, except to the extent that they were paid to the taxpayer as or on account of an allowance for the taxpayer's personal or living expenses while the taxpayer was away from home;

Proposed Addition — 56(1)(m)

(m) **bad debt recovered [non-competition agreement]** — any amount received by the taxpayer, or by a person who does not deal at arm's length with the taxpayer, in the year on account of a debt in respect of which a deduction was made under paragraph 60(f) in computing the taxpayer's income for a preceding taxation year;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 69(1), will add para. 56(1)(m), applicable after October 7, 2003.

Technical Notes: New paragraph 56(1)(m) is added to provide that a taxpayer is required to include in income any amount received in a taxation year on account of a debt in respect of which a bad debt deduction was made under new paragraph 60(f) in computing the taxpayer's income for a preceding taxation year. In other words, if a taxpayer makes a bad debt deduction for an amount receivable in respect of a restrictive covenant that was previously included in computing the taxpayer's income because of new section 56.4 (or new subsection 6(3.1)), and the taxpayer (or a person not dealing at arm's length with the taxpayer) subsequently receives the amount, the amount so received is to be included in computing the taxpayer's income.

Related Provisions: 212(1)(i), (13)(g) — Non-resident withholding tax.

(n) **scholarships, bursaries, etc.** — the amount, if any, by which

(i) the total of all amounts (other than amounts described in paragraph (q), amounts received in the course of business, and amounts received in respect of, in the course of or by virtue of an office or employment) received by the taxpayer in the year, each of which is an amount received by the taxpayer as or on account of a scholarship, fellowship or bursary, or a prize for achievement in a field of endeavour ordinarily carried on by the taxpayer (other than a prescribed prize),

exceeds

(ii) the taxpayer's scholarship exemption for the year computed under subsection (3);

Related Provisions: 56(1)(p) — Income inclusion — refund of scholarships, bursaries and research grants; 56(3) — Amount of scholarship exemption; 60(q) — Refund of income payments; 62(1) — Moving expenses; 63(3)"earned income"(b), 64(b)(i)(A) — Amount under 56(1)(n) is earned income for child care expenses and for disability supports deduction; 115(2)(a)–(b.1), 115(2)(e)(ii) — Non-resident's taxable income earned in Canada; 248(1) — Extended meaning of "personal or living expenses"; Canada-U.S. Tax Treaty:Art. XX — Students.

History: The portion of para. 56(1)(n) after subpara. (i) amended by 2001, c. 17, subsec. 39(1), applicable to 2000 *et seq.* The portion formerly read:

exceeds the greater of $500 and the total of all amounts each of which is the lesser of

(ii) the amount included under subparagraph (i) for the year in respect of a scholarship, fellowship, bursary or prize that is to be used by the taxpayer in the production of a literary, dramatic, musical or artistic work, and

(iii) the total of all amounts each of which is an expense incurred by the taxpayer in the year for the purpose of fulfilling the conditions under which the amount described in subparagraph (ii) was received, other than

(A) personal or living expenses of the taxpayer (except expenses in respect of travel, meals and lodging incurred by the taxpayer in the course of fulfilling those conditions and while absent from the taxpayer's usual place of residence for the period to which the scholarship, fellowship, bursary or prize, as the case may be, relates),

(B) expenses for which the taxpayer was reimbursed, and

(C) expenses that are otherwise deductible in computing the taxpayer's income;

That portion of para. 56(1)(n) following subpara. (i) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 32(5), applicable to 1987 *et seq.* That portion formerly read:

exceeds

(ii) $500;

Selected Cases [para. 56(1)(n)]: *Simser v. R.*, [2005] 1 C.T.C. 229 (FCA); leave to appeal to SCC refused 2005 CarswellNat 1727 (Grant for disabled student considered "bursary"); *Jones v. R.*, [2002] 3 C.T.C. 2483 (TCC) (Scholarship credited to student's tuition account was amount received); *Foulds v. R.*, [1997] 2 C.T.C. 2660 (TCC) (Prize for outstanding achievement in music not taxable); *Cai v. Canada*, [1996] 3 C.T.C. 2724 (TCC) (Taxpayer's presence in Canada was more than just as student); *R. v. Savage*, [1983] C.T.C. 393 (SCC) (Award received by employee for passing self-improvement course was a "prize" for achievement); *McLaughlin v. MNR*, [1978] C.T.C. 602 (FCTD) (Prize for achievement not taxable when taxpayer not competing for award); *R. v. Amyot*, [1976] C.T.C. 352 (FCTD) (Grant used primarily to advance career of taxpayer is taxable).

Regulations: 200(2)(a) (information return); 7700 (prescribed prize).

Interpretation Bulletins: IT-75R4: Scholarships, fellowships, bursaries, prizes, research grants and financial assistance; IT-178R3: Moving expenses; IT-257R: Canada Council grants; IT-340R: Scholarships, fellowships, bursaries and research grants — forgivable loans, repayable awards, etc.; IT-495R3: Child care expenses; IT-515R2: Education tax credit; IT-516R2: Tuition tax credit.

(o) **research grants** — the amount, if any, by which any grant received by the taxpayer in the year to enable the taxpayer to carry on research or any similar work exceeds the total of expenses incurred by the taxpayer in the year for the purpose of carrying on the work, other than

(i) personal or living expenses of the taxpayer except travel expenses (including the entire amount expended for meals and lodging) incurred by the taxpayer while away from home in the course of carrying on the work,

(ii) expenses in respect of which the taxpayer has been reimbursed, or

(iii) expenses that are otherwise deductible in computing the taxpayer's income for the year;

Related Provisions: 60(q) — Refund of income payments; 62(1) — Moving expenses; 63(3)"earned income"(b), 64(b)(i)(A) — Amount under 56(1)(o) is earned income for child care expenses and for disability supports deduction; 115(2)(b.1), 115(2)(e)(ii) — Non-resident's taxable income earned in Canada; 146(1)"earned income"(b) — Amount under 56(1)(o) is earned income for RRSP; 248(1) — Extended meaning of "personal or living expenses"; Canada-U.S. Tax Treaty:Art. XX — Students.

Regulations: 200(2)(b) (information return).

Interpretation Bulletins: IT-75R4: Scholarships, fellowships, bursaries, prizes, research grants and financial assistance; IT-178R3: Moving expenses; IT-257R: Canada Council grants; IT-340R: Scholarships, fellowships, bursaries, business and research grants — forgivable loans and repayable awards, etc; IT-495R3: Child care expenses.

(p) **refund of scholarships, bursaries and research grants** — amounts as described in paragraph 60(q) received by the taxpayer in the year from an individual;

Related Provisions: 56(1)(n) — Scholarships, bursaries, etc.; 60(q) — Refund of income payments.

Interpretation Bulletins: IT-340R: Scholarships, fellowships, bursaries, and research grants — forgivable loans and repayable awards.

(q) **education savings plan payments** — amounts in respect of a registered education savings plan required by section 146.1 to be included in computing the taxpayer's income for the year;

Related Provisions: 146.1(7) — Amounts to be included in beneficiary's income; 212(1)(r) — RESP payments to non-residents.

Interpretation Bulletins: IT-75R4: Scholarships, fellowships, bursaries, prizes, research grants and financial assistance.

(r) **[government] financial assistance** — amounts received in the year by the taxpayer as

(i) earnings supplements provided under a project sponsored by a government or government agency in Canada to encourage individuals to obtain or keep employment,

(ii) financial assistance under a program established by the Canada Employment Insurance Commission under Part II of the *Employment Insurance Act*, or

(iii) financial assistance under a program that is

(A) established by a government or government agency in Canada or by an organization,

(B) similar to a program established under Part II of that Act, and

(C) the subject of an agreement between the government, government agency or organization and the Canada Employment Insurance Commission because of section 63 of that Act;

Proposed Addition — 56(1)(r)(iv)

(iv) financial assistance provided under a program established by a government, or government agency, in Canada that provides income replacement benefits similar to income replacement benefits provided under a program established under the *Employment Insurance Act*;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 69(2), will add subpara. 56(1)(r)(iv), applicable to 2003 *et seq.*

Technical Notes: Paragraph 56(1)(r) requires that certain amounts received as earnings supplements under government sponsored projects or as financial assistance under programs established by the Canada Employment Insurance Commission or under similar programs established by other government entities or organizations pursuant to agreements with the Commission are to be included in computing the recipient's income.

In recent years, there have been a number of income replacement benefits paid under government programs, usually in response to an unforeseen event, or as bridging benefits payable until another program is implemented. These income replacement benefits are generally paid to individuals who are not eligible for employment insurance (EI) benefits either because they have not worked enough weeks or because they have otherwise exhausted their benefits. However, the benefits paid are generally calculated by reference to the amounts that the individual would receive under the *Employment Insurance Act* if they were eligible for benefits under that Act.

Paragraph 56(1)(r) is amended, for the 2003 and subsequent taxation years, to clarify that income replacement benefits received under government assistance programs that are similar to income replacement payments provided under the *Employment Insurance Act* are to be included in computing the recipient's income.

Related Provisions: 56(1)(u) — Inclusion of social assistance payments generally (subject to offsetting deduction); 60(n)(iii) — "Deduction for amounts repaid"; 63(3)"earned income"(b), 64(b)(i)(A) — Amount under 56(1)(r) is earned income for child care expenses and for disability supports deduction; 110(1)(g) — Deduction for tuition assistance for adult basic education; 118.6(1)"qualifying educational program"(a)(iii) — Financial assistance does not preclude claim for education credit; 153(1)(s) — Withholding of tax at source.

History: Para. 56(1)(r) added by 1998, c. 19, subsec. 97(4), applicable to 1993 *et seq.*, except that, in its application before July 1996, para. 56(1)(r) shall be read without reference to subparas. (ii) and (iii).

Regulations: 100(1)"remuneration"(h) (withholding at source).

Interpretation Bulletins: IT-75R4: Scholarships, fellowships, bursaries, prizes, research grants and financial assistance; IT-495R3: Child care expenses.

(s) **grants under prescribed programs** — the amount of any grant received in the year under a prescribed program of the Government of Canada relating to home insulation or energy conversion by

(i) the taxpayer, other than a married taxpayer or a taxpayer who is in a common-law partnership who resided with the taxpayer's spouse or common-law partner at the time the grant was received and whose income for the year is less than the taxpayer's spouse's or common-law partner's income for the year, or

(ii) the spouse or common-law partner of the taxpayer with whom the taxpayer resided at the time the grant was received, if the spouse's or common-law partner's income for the year is less than the taxpayer's income for the year

to the extent that the amount is not required by paragraph 12(1)(u) to be included in computing the taxpayer's or the taxpayer's spouse's or common-law partner's income for the year or a subsequent year;

Related Provisions: 13(7.1)(b.1) — Deemed capital cost of certain property; 56(9) — Definition of "income for the year"; 81(1)(g.4) — Exemption for 2000-01 heating expenses credit.

History: Para. 56(1)(s) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner"; by Sch. 2, s. 7 to replace "spouse's" with "spouse's or common-law partner's"; and by Sch. 2, s. 12 to replace to replace "married taxpayer" with "married taxpayer or a taxpayer who is in a common-law partnership", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Regulations: 224 (information return); 5500, 5501 (prescribed program).

Interpretation Bulletins: IT-273R2: Government assistance — general comments.

(t) **registered retirement income fund** — amounts in respect of a registered retirement income fund required by section 146.3 to be included in computing the taxpayer's income for the year;

Related Provisions: 60.2(1) — Refund of undeducted past service AVCs; 139.1(11), (12) — Conversion benefit on demutualization of insur-

ance corporation; 146.3(5), (5.1), (7) — Benefits taxable; 153(1)(l) — Withholding of tax at source; 212(1)(q) — RRIF payments to non-residents.

Regulations: 215 (information return).

Forms: T1234: Allowable amounts of non-refundable tax credits; T2205: Amounts from a spousal or common-law partner RRSP or RRIF to include in income.

(u) **social assistance [welfare] payments** — a social assistance payment made on the basis of a means, needs or income test and received in the year by

(i) the taxpayer, other than a married taxpayer or a taxpayer who is in a common-law partnership who resided with the taxpayer's spouse or common-law partner at the time the payment was received and whose income for the year is less than the spouse's or common-law partner's income for the year, or

(ii) the taxpayer's spouse or common-law partner, if the taxpayer resided with the spouse or common-law partner at the time the payment was received and if the spouse's or common-law partner's income for the year is less than the taxpayer's income for the year,

except to the extent that the payment is otherwise required to be included in computing the income for a taxation year of the taxpayer or the taxpayer's spouse or common-law partner;

Related Provisions: 56(1)(r) — Inclusion of social assistance payments intended to supplement employment income (with no offsetting deduction); 56(9) — Definition of "income for the year"; 81(1)(h) — Exemption for payments to foster care givers; 110(1)(f) — Offsetting deduction.

History: Para. 56(1)(u) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner"; by Sch. 2, s. 7 to replace "spouse's" with "spouse's or common-law partner's"; and by Sch. 2, s. 12 to replace to replace "married taxpayer" with "married taxpayer or a taxpayer who is in a common-law partnership", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

The closing words of para. 56(1)(u) amended by 1998, c. 19, subsec. 97(5), applicable to 1993 *et seq.* The closing words formerly read:

except to the extent that the payment is otherwise required to be included in computing the income for a taxation year from a business or property of the taxpayer or the taxpayer's spouse;

Para. 56(1)(u) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 32(6), applicable to 1982 *et seq.* Para. 56(1)(u) formerly read:

(u) a social assistance payment made in the year

(i) on the basis of a means, needs or income test, and

(ii) in respect of the taxpayer or of a person who, at the time of the payment, is related to the taxpayer or is a person in respect of whom any individual was entitled to receive a family allowance payment under the *Family Allowances Act*

and received by

(iii) the taxpayer, other than a married taxpayer who resides with the taxpayer's spouse at the time of the payment and whose income for the year is less than the spouse's income for the year, or

(iv) the taxpayer's spouse with whom the taxpayer resides at the time of the payment if the spouse's income for the year is less than the taxpayer's income for the year;

Regulations: 233 (information return).

Forms: T4115: T5007 guide — return of benefits; T5007: Statement of benefits; T5007 Summ: Summary of benefits.

(v) **workers' compensation** — compensation received under an employees' or workers' compensation law of Canada or a province in respect of an injury, a disability or death;

Related Provisions: 110(1)(f)(ii) — Offsetting deduction.

History: Para. 56(1)(v) substituted by 1994, c. 7, Sch. III (1992, c. 1), s. 13, applicable from February 28, 1992. Para. (v) formerly read:

(v) workmen's compensation — compensation received under an employee's or workmen's compensation law of Canada or a province in respect of an injury, disability or death;

Selected Cases [para. 56(1)(v)]: *Whitney v. R.*, [2002] 3 C.T.C. 476 (FCA) (Amounts received pursuant to collective agreement are income from employment, not compensation received under compensation law).

Regulations: 232 (information return).

Interpretation Bulletins: IT-202R2: Employees' or workers' compensation.

Forms: T4115: T5007 guide — return of benefits; T5007: Statement of benefits; T5007 Summ: Summary of benefits.

(w) **salary deferral arrangement** — the total of all amounts each of which is an amount received by the taxpayer as a benefit (other than an amount received by or from a trust governed by a salary deferral arrangement) in the year out of or under a salary deferral arrangement in respect of a person other than the taxpayer except to the extent that the amount, or another amount that may reasonably be considered to relate thereto, has been included in computing the income of that other person for the year or for any preceding taxation year;

Related Provisions: 6(1)(i) — Inclusions — salary deferral arrangement payments; 6(11) — Salary deferral arrangement.

(x) **retirement compensation arrangement** — any amount, including a return of contributions, received in the year by the taxpayer or another person, other than an amount required to be included in that other person's income for a taxation year under paragraph 12(1)(n.3), out of or under a retirement compensation arrangement that can reasonably be considered to have been received in respect of an office or employment of the taxpayer;

Related Provisions: 56(11) — Disposition of property by RCA trust; 60(j.1) — Transfer of retiring allowances; 60(t) — Deductions — amount included under 56(1)(x); 149(1)(q.1) — RCA trust — exempt from Part I tax; 107.2 — Distribution by RCA to beneficiary; 153(1)(q) — Withholding of tax at source; 160.3 — Liability in respect of amounts received out of or under RCA trust; 207.6(7) — Transfer from RCA to another RCA; 212(1)(j) — Non-resident withholding tax.

Regulations: 100(1)"remuneration"(b.1) (withholding at source).

Interpretation Bulletins: IT-499R: Superannuation or pension benefits.

Forms: T4A-RCA: Statement of amounts paid from an RCA; T4A-RCA Summ: Return of distributions from an RCA; T4041: Retirement compensation arrangements [guide].

(y) **idem** — any amount received or that became receivable in the year by the taxpayer as proceeds from the disposition of an interest in a retirement compensation arrangement;

Related Provisions: 60(u) — Deductions — amount included under 56(1)(y); 153(1)(r) — Withholding of tax at source; 214(3)(b.1) — Non-resident withholding tax — deemed payments.

Forms: T4A-RCA: Statement of amounts paid from an RCA; T4A-RCA Summ: Return of distributions from an RCA; T4041: Retirement compensation arrangements [guide].

(z) **idem** — the total of all amounts, including a return of contributions, each of which is an amount received in the year by the taxpayer out of or under a retirement compensation arrangement that can reasonably be considered to have been received in respect of an office or employment of a person other than the taxpayer, except to the extent that the amount was required

(i) under paragraph 12(1)(n.3) to be included in computing the taxpayer's income for a taxation year, or

(ii) under paragraph (x) or subsection 70(2) to be included in computing the income for the year of a person resident in Canada other than the taxpayer; and

Related Provisions: 56(11) — Disposition of property by RCA trust; 60(t) — Deductions — amount included under 56(1)(z); 153(1)(q) — Withholding of tax at source; 212(1)(j) — Non-resident withholding tax.

Regulations: 100(1)"remuneration"(b.1) (withholding at source).

Forms: T4A-RCA: Statement of amounts paid from an RCA; T4A-RCA Summ: Return of distributions from an RCA; T4041: Retirement compensation arrangements [guide].

Interpretation Bulletins: IT-499R: Superannuation or pension benefits.

(aa) **[benefit from registered national arts service organization]** — the value of benefits received or enjoyed by any person in the year in respect of workshops, seminars, training programs and similar development programs because of the taxpayer's membership in a registered national arts service organization.

Related Provisions [para. 56(1)(aa)]: 149.1(6.4) — National arts service organizations.

History: Para. 56(1)(aa) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 32(7), applicable after July 13, 1990.

Interpretation Bulletins: IT-75R4: Scholarships, fellowships, bursaries, prizes, research grants and financial assistance.

Selected Cases [subsec. 56(1)]: *Ahmad v. R.*, [2002] 4 C.T.C. 2497 (TCC) (General damages not retiring allowance).

(1.1) Application of subsec. 12.2(11) — The definitions in subsection 12.2(11) apply to paragraph (1)(d).

Origin of subsec. 56(1.1): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsec. 12.2(11)).

(2) Indirect payments — A payment or transfer of property made pursuant to the direction of, or with the concurrence of, a taxpayer to some other person for the benefit of the taxpayer or as a benefit that the taxpayer desired to have conferred on the other person (other than by an assignment of any portion of a retirement pension pursuant to section 65.1 of the *Canada Pension Plan* or a comparable provision of a provincial pension plan as defined in section 3 of that Act or of a prescribed provincial pension plan) shall be included in computing the taxpayer's income to the extent that it would be if the payment or transfer had been made to the taxpayer.

Related Provisions: 56(5) — 56(2) does not apply to income subject to income-splitting tax; 74.1–74.5 — Attribution rules; 80.04(5.1) — No benefit conferred where debtor transfers property to eligible transferee under 80.04; 135(4)"payment"(c) — Patronage dividend payments; 212(2), 214(3)(a) — Non-resident withholding tax; 246 — Benefit conferred on a person.

Selected Cases [subsec. 56(2)]: *Williams v. R.*, [2005] 1 C.T.C. 2789 (TCC) (Provision not applicable where payments made pursuant to normal business practice); *Peddle v. R.*, [2004] 2 C.T.C. 3111 (TCC) (Provision not applicable if double taxation would result); *Wong v. R.*, [1999] 2 C.T.C. 2173 (TCC) (Provision not applicable where purpose of dividends not to alter value of interest); *Minet Inc. v. R.*, [1998] 3 C.T.C. 352 (FCA); rev'g [1996] 3 C.T.C. 2108 (TCC) (Income not income where no legal entitlement or control); *Neuman v. MNR*, [1998] 3 C.T.C. 177 (SCC); rev'g [1996] 3 C.T.C. 270 (FCA) (Absent fraud or sham, provision does not apply to dividends. No general scheme in Act to prevent income splitting. Pre-existing entitlement to income is essential element to application of provision); *Ascot Enterprises v. Canada*, [1996] 1 C.T.C. 384 (FCA) (Desire to confer benefit is critical to application of provision); *McClurg v. MNR*, [1991] 1 C.T.C. 169 (SCC) (Dividends to wife on separate class of shares not included in taxpayer's income); *Century 21 Ramos Realty Inc. et al. v. R.*, [1987] 1 C.T.C. 340, (sub nom. *Ramos v. The Queen*) (Ont CA); leave to appeal to SCC refused (1987), 44 D.L.R. (4th) vii (note) (Conviction for tax evasion; benefit from transactions attributed to taxpayer when ultimate remuneration earned by taxpayer through corporation); *Boardman et al. v. R.*, [1986] 1 C.T.C. 103 (FCTD); appealed to FCA (Dec. 20, 1985), File A-1015-85 (Transfer of houses; net fair market value included in transferor's income); *R. v. Hoffman*, [1985] 2 C.T.C. 347 (FCTD) (Amounts withheld from income received by U.S. citizen working in Canada and forwarded to U.S. government included in income); *Champ v. R.*, [1983] C.T.C. 1 (FCTD) (Indirect benefit from payment of dividends included in income); *Barbeau v. R.*, [1981] C.T.C. 496 (FCTD) (Commissions in lieu of salary paid to holding company were income from employment); *Fraser Companies Ltd. v. R.*, [1981] C.T.C. 61 (FCTD) (Proceeds of sale received from U.S. subsidiary loaned interest-free from Canadian parent to subsidiary exempted from Canadian income tax constitute loan, not transfer of interest income); *Murphy v. R.*, [1980] C.T.C. 386 (FCTD) (Income distributed to wife attributed to taxpayer executor and beneficiary of father's estate); *McClain Industries of Canada Inc. v. R.*, [1978] C.T.C. 511 (FCTD) (Taxpayer taxable on portion of commission assigned to third party); *Perrault v. R.*, [1978] C.T.C. 395 (FCA) (Renunciation of dividends taxable benefit when extinguishing shareholder debt); *Nelson v. R.*, [1974] C.T.C. 360 (FCA) (Dividends not indirect payment when issued shares held in trust for members of partnership in equal shares or when agreement calling for equal equity shareholdings); *R. v. Quinn*, [1973] C.T.C. 258 (FCTD) (Interest on sums in scholarship trust fund not received by taxpayer or beneficiary son not included in taxpayer's income); *Campeau v. MNR*, [1970] C.T.C. 306 (Exch.) (Amounts paid by operating companies when management companies not providing services taxable in hands of shareholder-employees).

Regulations: 7800(1) (prescribed provincial pension plan).

Interpretation Bulletins: IT-75R4: Scholarships, fellowships, bursaries, prizes, research grants and financial assistance; IT-335R2: Indirect payments; IT-362R: Patronage dividends; IT-385R2: Disposition of an income interest in a trust; IT-415R2: Deregistration of registered retirement savings plans (archived); IT-432R: Benefits conferred on shareholders.

I.T. Technical News: 16 (*Neuman* case).

Advance Tax Rulings: ATR-3: Winding-up of an estate; ATR-14: Non-arm's length interest charges; ATR-15: Employee stock option plan; ATR-17: Employee benefit plan — purchase of company shares; ATR-22R: Estate freeze using share exchange; ATR-27: Exchange and acquisition of interests in capital properties through rollovers and winding-up ("butterfly"); ATR-29: Amalgamation of social clubs; ATR-35: Partitioning of assets to get specific ownership ("butterfly"); ATR-36: Estate freeze.

Transfer Pricing Memoranda: TPM-02: Repatriation of funds by non-residents — Part XIII assessments; TPM-03: Downward transfer pricing adjustments under subsec. 247(2).

(3) Exemption for scholarships, fellowships, bursaries and prizes — For the purpose of subparagraph (1)(n)(ii), a taxpayer's scholarship exemption for a taxation year is the greatest of

(a) $500,

(b) the lesser of

(i) $3,000 and

(ii) the total of all amounts each of which is the amount included under subparagraph (1)(n)(i) in computing the taxpayer's income for the year in respect of a scholarship, fellowship or bursary received in connection with the taxpayer's enrolment in an educational program in respect of which an amount may be deducted under subsection 118.6(2) in computing the taxpayer's tax payable under this Part for the year, and

(c) the total of all amounts each of which is the lesser of

(i) the amount included under subparagraph (1)(n)(i) in computing the taxpayer's income for the year in respect of a scholarship, fellowship, bursary or prize that is to be used by the taxpayer in the production of a literary, dramatic, musical or artistic work, and

(ii) the total of all amounts each of which is an expense incurred by the taxpayer in the year for the purpose of fulfilling the conditions under which the

amount described in subparagraph (i) was received, other than

(A) personal or living expenses of the taxpayer (except expenses in respect of travel, meals and lodging incurred by the taxpayer in the course of fulfilling those conditions and while absent from the taxpayer's usual place of residence for the period to which the scholarship, fellowship, bursary or prize, as the case may be, relates),

(B) expenses for which the taxpayer is entitled to be reimbursed, and

(C) expenses that are otherwise deductible in computing the taxpayer's income.

History: Subsec. 56(3) added by 2001, c. 17, subsec. 39(2), applicable to 2000 *et seq.*

Interpretation Bulletins: IT-75R4: Scholarships, fellowships, bursaries, prizes, research grants and financial assistance.

(4) Transfer of rights to income — Where a taxpayer has, at any time before the end of a taxation year, transferred or assigned to a person with whom the taxpayer was not dealing at arm's length the right to an amount (other than any portion of a retirement pension assigned by the taxpayer under section 65.1 of the *Canada Pension Plan* or a comparable provision of a provincial pension plan as defined in section 3 of that Act) that would, if the right had not been so transferred or assigned, be included in computing the taxpayer's income for the taxation year, the part of the amount that relates to the period in the year throughout which the taxpayer is resident in Canada shall be included in computing the taxpayer's income for the year unless the income is from property and the taxpayer has also transferred or assigned the property.

Related Provisions: 56(5) — 56(4) does not apply to income subject to income-splitting tax; 82(2) — Dividends deemed received by taxpayer; 212(12) — No non-resident withholding tax where income attributed.

History: Subsec. 56(4) substituted by 1994, c. 21, subsec. 25(3), applicable to 1992 *et seq.* That subsec. formerly read:

(4) Where a taxpayer has, at any time before the end of a taxation year (whether before or after the end of 1971), transferred or assigned to a person with whom the taxpayer was not dealing at arm's length the right to an amount (other than any portion of a retirement pension assigned by the taxpayer pursuant to section 65.1 of the *Canada Pension Plan* or a comparable provision of a provincial pension plan as defined in section 3 of that Act or of a prescribed provincial pension plan) that would, if the right thereto had not been so transferred or assigned, be included in computing the taxpayer's income for the taxation year because the amount would have been received or receivable by the taxpayer in or in respect of the year, the amount shall be included in computing the taxpayer's income for the year unless the income is from property and the taxpayer has also transferred or assigned the property.

Selected Cases [subsec. 56(4)]: *De Groote v. R.*, [1984] C.T.C. 687 (FCTD) (Dividends assigned by shareholder to company included in company's income); *Fraser Companies Ltd. v. R.*, [1981] C.T.C. 61 (FCTD) (Proceeds of sale received from U.S. subsidiary loaned interest-free from Canadian parent to subsidiary exempted from Canadian income tax constitute loan, not transfer of interest income); *R. v. Campbell*, [1980] C.T.C. 319 (SCC) (Taxpayer not assigning own money when assigning fees to company under arrangement in which fees belong to company); *R. v. Canadian-American Loan and Investment Corp. Ltd.*, [1974] C.T.C. 101 (FCTD) (Income taxable in taxpayer's hands when profits income from business rather than property); *R. v. Guay*, [1973] C.T.C. 148 (FCTD) (Bonus payments held to be taxable income for taxpayer dealing personally with company).

Interpretation Bulletins: IT-440R2: Transfer of rights to income; IT-499R: Superannuation or pension benefits.

(4.1) Interest free or low interest loans — Where

(a) a particular individual (other than a trust) or a trust in which the particular individual is beneficially interested has, directly or indirectly by means of a trust or by any means whatever, received a loan from or become indebted to

(i) another individual (in this subsection referred to as the "creditor") who

(A) does not deal at arm's length with the particular individual, and

(B) is not a trust, or

(ii) a trust (in this subsection referred to as the "creditor trust") to which another individual (in this subsection referred to as the "original transferor") who

(A) does not deal at arm's length with the particular individual,

(B) was resident in Canada at any time in the period during which the loan or indebtedness is outstanding, and

(C) is not a trust,

has, directly or indirectly by means of a trust or by any means whatever, transferred property, and

(b) it can reasonably be considered that one of the main reasons for making the loan or incurring the indebtedness was to reduce or avoid tax by causing income from

(i) the loaned property,

(ii) property that the loan or indebtedness enabled or assisted the particular individual, or the trust in which the particular individual is beneficially interested, to acquire, or

(iii) property substituted for property referred to in subparagraph (i) or (ii)

to be included in the income of the particular individual,

the following rules apply:

(c) any income of the particular individual for a taxation year from the property referred to in paragraph (b) that relates to the period or periods in the year throughout which the creditor or the creditor trust, as the case may be, was resident in Canada and the particular individual was not dealing at arm's length with the creditor or the original transferor, as the case may be, shall be deemed,

(i) where subparagraph (a)(i) applies, to be income of the creditor for that year and not of the particular individual except to the extent that

(A) section 74.1 applies or would, but for subsection 74.5(3), apply, or

(B) subsection 75(2) applies

to that income, and

(ii) where subparagraph (a)(ii) applies, to be income of the creditor trust for that year and not of the particular individual except to the extent that

(A) subparagraph (i) applies,

(B) section 74.1 applies or would, but for subsection 74.5(3), apply, or

(C) subsection 75(2) applies (otherwise than because of paragraph (d))

to that income; and

(d) where subsection 75(2) applies to any of the property referred to in paragraph (b) and subparagraph

(c)(ii) applies to income from the property, subsection 75(2) applies after subparagraph (c)(ii) is applied.

Related Provisions: 56(4.2) — Exception where interest charged; 56(5) — Exception where kiddie tax applies; 74.4(2) — Transfer or loan to corporation; 82(2) — Dividends deemed received by taxpayer; 96(1.8) — Transfer or loan of partnership interest; 212(12) — No non-resident withholding tax where income attributed; 248(5) — Substituted property; 248(25) — Meaning of "beneficially interested"; 250(6.1) — Creditor trust that ceases to exist deemed resident throughout year.

History: Subpara. 56(4.1)(b)(ii) substituted by 1994, c. 21, subsec. 25(4), applicable to income relating to periods that begin after December 21, 1992. That subpara. formerly read:

> (ii) property that the loan or indebtedness enabled or assisted the particular individual to acquire, or

That portion of para. 56(4.1)(a) preceding subpara. (i) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 17(6), to delete "(within the meaning assigned by subsection 74.5(10))" from after "beneficially interested", applicable after 1990.

Subsec. 56(4.1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 32(8), applicable with respect to income relating to periods commencing after 1990. Subsec. 56(4.1) formerly read:

> (4.1) Where an individual has lent property, directly or indirectly by means of a trust or by any means whatever, to another individual with whom the individual was not dealing at arm's length and it may reasonably be considered that one of the main reasons for the loan was to reduce or avoid tax by causing income from the property or property substituted therefor to be included in the income of the other individual, any income for a taxation year from the property or from property substituted therefor that relates to the period or periods of the year throughout which the individual was resident in Canada and was not dealing at arm's length with the other individual, shall be deemed to be income of the individual and not of the other individual except to the extent that section 74.1 is otherwise applicable.

Interpretation Bulletins: IT-394R2: Preferred beneficiary election; IT-511R: Interspousal and certain other transfers and loans of property.

(4.2) Exception — Notwithstanding any other provision of this Act, subsection (4.1) does not apply to any income derived in a particular taxation year where

(a) interest was charged on the loan or indebtedness at a rate equal to or greater than the lesser of

(i) the prescribed rate of interest in effect at the time the loan was made or the indebtedness arose, and

(ii) the rate that would, having regard to all the circumstances, have been agreed on, at the time the loan was made or the indebtedness arose, between parties dealing with each other at arm's length;

(b) the amount of interest that was payable in respect of the particular year in respect of the loan or indebtedness was paid not later than 30 days after the end of the particular year; and

(c) the amount of interest that was payable in respect of each taxation year preceding the particular year in respect of the loan or indebtedness was paid not later than 30 days after the end of each of those preceding taxation years.

History: Subsec. 56(4.2) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 32(8), applicable with respect to income relating to periods commencing after 1990. Subsec. 56(4.2) formerly read:

> (4.2) Where subsec. (4.1) does not apply — Notwithstanding any other provision of this Act, subsection (4.1) does not apply to any income derived in a particular taxation year from lent property or from property substituted therefor if
>
> (a) interest was charged on the loan at a rate equal to or greater than the lesser of
>
> (i) the prescribed rate that was in effect at the time the loan was made, and
>
> (ii) the rate that would, having regard to all circumstances, have been agreed on, at the time the loan was made, between parties dealing with each other at arm's length;
>
> (b) the amount of interest that was payable in respect of the particular year in respect of the loan was paid not later than 30 days after the end of the particular year; and
>
> (c) the amount of interest that was payable in respect of each taxation year preceding the particular year in respect of the loan was paid not later than 30 days after the end of each such taxation year.

Regulations: 4301(c) (prescribed rate of interest).

Interpretation Bulletins: IT-511R: Interspousal and certain other transfers and loans of property.

(4.3) Repayment of existing indebtedness — For the purposes of subsection (4.1), where at any time a particular property is used to repay, in whole or in part, a loan or indebtedness that enabled or assisted an individual to acquire another property, there shall be included in computing the income from the particular property that proportion of the income or loss, as the case may be, derived after that time from the other property or from property substituted therefor that the amount so repaid is of the cost to the individual of the other property, but for greater certainty nothing in this subsection shall affect the application of subsection (4.1) to any income or loss derived from the other property or from property substituted therefor.

Related Provisions: 248(5) — Substituted property.

History: Subsec. 56(4.3) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 32(8), applicable to income relating to periods commencing after 1990. Subsec. 56(4.3) formerly read:

> (4.3) For the purposes of subsection (4.1), where at any time an individual has lent property (in this subsection referred to as the "lent property") either directly or indirectly, by means of a trust or by any other means whatever, to a person, and the lent property or property substituted therefor is used
>
> (a) to repay, in whole or in part, borrowed money with which other property was acquired, or
>
> (b) to reduce an amount payable for other property,
>
> there shall be included in computing the income from the lent property, or from property substituted therefor, that is so used, that proportion of the income or loss, as the case may be, derived after that time from the other property or from property substituted therefor that the fair market value at that time of the lent property, or property substituted therefor, that is so used is of the cost to that person of the other property at the time of its acquisition, but for greater certainty nothing in this subsection shall affect the application of subsection (4.1) to any income or loss derived from the other property or from property substituted therefor.

Interpretation Bulletins: IT-511R: Interspousal and certain other transfers and loans of property.

(5) Exception for split income — Subsections (2), (4) and (4.1) do not apply to any amount that is included in computing a specified individual's split income for a taxation year.

History: Subsec. 56(5) added by 2000, c. 19, s. 6, applicable to 2000 *et seq.*

(6), (7) [Repealed]

History: Former subsec. 56(5), and subsecs. (6), (7) repealed by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 1(1), applicable to 1993 *et seq.* Subsecs. (5) to (7) formerly read:

> (5) Family allowances — An individual who is deemed by subsection (6) or (7) to have supported in a particular month of a taxation year a person in respect of whom
>
> (a) a family allowance under the *Family Allowances Act*, or
>
> (b) an allowance under a law of a province that provides for payment of an allowance similar to the family allowance provided under the *Family Allowances Act*

is paid for the particular month shall include in computing the individual income for the year an amount equal to the total of all amounts each of which is the amount of such an allowance received by the individual or the individual's spouse for a month of the year in which the individual is deemed to have supported the person.

(6) Deemed support — For the purposes of subsection (5) and subject to subsection (7), an individual shall be deemed to have supported a person in a particular month of a taxation year if

(a) the person is a child of, or is dependent for support in the particular month on, the individual or the individual's spouse; and

(b) where the individual is married at the end of the particular month,

(i) the individual's income for the year (computed without reference to subsection (5) and section 63) exceeds that of the individual's spouse; and

(ii) the individual's spouse was not, by reason of a breakdown of the marriage, living separate and apart from the individual at the end of the particular month and for a period of at least 90 days commencing in the year.

(7) Idem — For the purposes of subsection (5), where

(a) an amount is allowed under subsection 118(1) because of paragraph 118(1)(b) in computing an individual's tax payable under this Part for a taxation year in respect of a person referred to in subsection (5), the individual shall be deemed to be the only individual to have supported the person in each month of the year and any allowance referred to in subsection (5) that is paid in respect of the person for each such month shall be deemed to have been received by the individual; and

(b) an allowance referred to in that subsection is paid in respect of a person for a particular month of a taxation year and no amount in respect of the allowance would, but for this paragraph, be included in computing the income for the year of any individual, the individual to whom the allowance is paid shall be deemed to have supported the person in the particular month.

Para. 56(7)(a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 32(9), applicable to 1988 *et seq*. Para. 56(7)(a) formerly read:

(a) an amount is allowed under subsection 118(1) by reason of paragraph 118(1)(b) in computing an individual's tax payable under this Part for a taxation year in respect of a person, the individual shall be deemed to be the only individual to have supported the person in each month of the year; and

(8) CPP/QPP benefits for previous years — Notwithstanding subsection (1), where

(a) one or more amounts are received by an individual (other than a trust) in a taxation year as, on account of, in lieu of payment of or in satisfaction of, any benefit under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act, and

(b) a portion, not less than $300, of the total of those amounts relates to one or more preceding taxation years,

that portion shall, at the option of the individual, not be included in the individual's income.

Related Provisions: 120.2 — General deferral rule for lump-sum payments; 120.3 — CPP/QPP benefits for previous years; 146(1)"earned income"(b.1) — RRSP — earned income includes amount under 56(8)(a).

History: The portion of subsec. 56(8) before para. (b) amended by 1998, c. 19, subsec. 9(3), applicable to amounts received by an individual after 1994, other than an individual to whom tax has been remitted under subsec. 23(2) of the *Financial Administration Act* in respect of the amounts referred to in para. 56(8)(a), as amended. That portion formerly read:

(8) CPP/QPP disability benefits for previous years — Notwithstanding subsection (1), where

(a) one or more amounts are received by an individual (other than a trust) in a taxation year as, on account of, in lieu of payment of or in satisfaction of, a disability pension under the *Canada Pension Plan* or a provincial plan as defined in section 3 of that Act, and

Subsec. 56(8) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 32(10), applicable with respect to amounts received after 1989.

Remission Orders: *Willard Thorne Remission Order*, P.C. 2002-2177 (remission of tax on retroactive lump sum payment of CPP benefits); *Janet Hall Remission Order*, P.C. 2004-1336 (remission where CPP lump sum disability repaid to wage loss replacement provider).

(9) Meaning of "income for the year" — For the purposes of paragraphs (1)(s) and (u), "income for the year" of a person means the amount that would, but for those paragraphs, paragraphs 60(v.1) and (w) and section 63, be the income of that person for the year.

History: Subsec. 56(9) substituted by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 1(2), applicable to 1993 *et seq*. Subsec. 56(9) formerly read:

(9) Definition of "income for the year" — For the purposes of paragraphs (1)(s) and (u) and subsection (6), "income for the year" of a person means the amount that would, but for those paragraphs, subsection (5), paragraphs 60(v.1) and (w) and section 63, be the income of that person for the year.

Subsec. 56(9) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 32(11), to add reference to paragraph 60(v.1), applicable to 1989 *et seq*.

(10) Severability of retirement compensation arrangement — Where a retirement compensation arrangement is part of a plan or arrangement (in this subsection referred to as the "plan") under which amounts not related to the retirement compensation arrangement are payable or provided, for the purposes of this Act, other than this subsection,

(a) the retirement compensation arrangement shall be deemed to be a separate arrangement independent of other parts of the plan of which it is a part; and

(b) subject to subsection 6(14), amounts paid out of or under the plan shall be deemed to have first been paid out of the retirement compensation arrangement unless a provision in the plan otherwise provides.

(11) Disposition of property by RCA trust — For the purposes of paragraphs (1)(x) and (z), where, at any time in a year, a trust governed by a retirement compensation arrangement

(a) disposes of property to a person for consideration less than the fair market value of the property at the time of the disposition, or for no consideration,

(b) acquires property from a person for consideration greater than the fair market value of the property at the time of the acquisition, or

(c) permits a person to use or enjoy property of the trust for no consideration or for consideration less than the fair market value of such use or enjoyment,

the amount, if any, by which such fair market value differs from the consideration or, if there is no consideration, the amount of the fair market value shall be deemed to be an amount received at that time by the person out of or under the arrangement that can reasonably be considered to have been received in respect of an office or employment of a taxpayer.

Related Provisions: 69(1) — General rule deeming disposition to be at fair market value.

(12) [Repealed]

History: Subsec. 56(12) repealed by 1997, c. 25, subsec. 8(3), applicable to amounts received after 1996. Subsec. (12) formerly read:

(12) Definition of "allowance" — Subject to subsections 56.1(2) and 60.1(2), for the purposes of paragraphs (1)(b), (c) and (c.1) (in this subsection referred to as the "former paragraphs") and 60(b), (c) and (c.1) (in this subsection referred to as the "latter paragraphs"), "allowance" does not include any amount that is received by a person, referred to in the former paragraphs as "the taxpayer" and in the latter paragraphs as "the recipient", unless that person has discretion as to the use of the amount.

Selected Cases [subsec. 56(12)]: *Badeau v. R.*, [2002] 1 C.T.C. 2627 (TCC) (Factors considered in determination of amount to be received do not bind recipient to spend allowance accordingly).

Proposed Addition — 56(12)

(12) Foreign retirement arrangement — If an amount in respect of a foreign retirement arrangement is, as a result of a transaction, an event or a circumstance, considered to be distributed to an individual under the income tax laws of the country in which the arrangement is established, the amount is, for the purpose of paragraph (1)(a), deemed to be received by the individual as a payment out of the arrangement in the taxation year that includes the time of the transaction, event or circumstance.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 69(3), will add subsec. 56(12), applicable to 1998 *et seq.* except that, for taxation years that end before 2002, the subsec. is to be read as follows:

(12) For the purpose of paragraph (1)(a),

(a) if an amount in respect of a foreign retirement arrangement is considered, under section 408A(d)(3)(C) of the *Internal Revenue Code of 1986* of the United States (in this subsection referred to as the "Code"), to be distributed to an individual as a result of a conversion of the arrangement after 1998 and before 2002, the amount is deemed to be received by the individual as a payment out of the arrangement in the taxation year that includes the time of the conversion; and

(b) if an individual received an amount as a payment out of or under a foreign retirement arrangement in 1998, or an amount is considered under section 408A(d)(3)(C) of the Code to be distributed to the individual as a result of a conversion of the arrangement in 1998, the individual was resident in Canada at the time of the receipt or conversion and the amount is an amount to which section 408A(d)(3)(A)(iii) of the Code applies,

(i) the amount is deemed not to have been received by the individual, and

(ii) an amount equal to the amount that is included under section 408A(d)(3)(A)(iii) or 408A(d)(3)(E) of the Code in the individual's gross income for a particular taxable year is deemed to be an amount received by the individual, in the taxation year that includes the day on which the particular taxable year begins, as a payment out of the arrangement, where the expressions "gross income" and "taxable year" in this subparagraph have the meanings assigned to those expressions by the Code.

Technical Notes: Clause 56(1)(a)(i)(C.1) generally requires that payments received by a taxpayer from a foreign retirement arrangement (FRA) be included in computing the taxpayer's income as a superannuation or pension benefit. An FRA is defined in subsection 248(1) as a prescribed plan or arrangement. Presently, the only arrangements prescribed to be an FRA under Regulation 6803 are individual retirement accounts and annuities (IRAs) established pursuant to section 408(a), (b) or (h) of the United States' *Internal Revenue Code of 1986* (referred to as the "Code").

New subsection 56(12) is introduced to require Canadian residents who hold IRAs to include in income any amount treated under the Code as a distribution from an IRA, to the extent that the amount is required to be included in income for U.S. tax purposes. New subsection 56(12), among other things, gives effect to a proposal that was announced in Finance Canada News Release 1998-129, dated December 18, 1998.

In certain circumstances, the Code provides that an amount is to be treated as a distribution from an IRA even though no distribution has in fact been made. For example, if an individual converts an IRA into a Roth IRA (which is an individual retirement plan established pursuant to section 408A(b) of the Code) simply by amending the plan terms, section 408A(d)(3)(C) of the Code treats the converted amount as a distribution from the regular IRA and, thus, includible in income for U.S. tax purposes. For Canadian tax purposes, however, the converted amount might not be considered to have been received by the individual and, thus, could escape taxation in Canada. Other circumstances in which the Code treats a distribution to have occurred include borrowing money from an IRA and using an IRA as security for a loan. New subsection 56(12) clarifies that such "deemed" distributions under the Code are to be treated as distributions for Canadian income tax purposes.

More specifically, subsection 56(12) provides that, for the purpose of paragraph 56(1)(a), an individual is deemed to have received an amount as a payment from an FRA where, as a result of a transaction, event or circumstance, the income tax laws of the foreign country in which the FRA is established treats the amount as having been distributed from the FRA to the individual. The taxation year in which the individual is deemed to have received the amount is the taxation year that includes the time of the transaction, event or circumstance.

Subsection 56(12) applies to the 1998 and subsequent taxation years except that, in its application to the 1998 to 2001 taxation years, two modifications are made. First, its application is limited to circumstances involving the conversion of an IRA into a Roth IRA. Second, for conversions of IRAs into Roth IRAs that occurred in 1998, the amount and timing of the income inclusion in Canada will match the amount and timing in the U.S. Under the Code, individuals who converted an IRA into a Roth IRA in 1998 were entitled to spread the income inclusion over a four-year period. Subsection 56(12) provides for the same treatment. However, if an individual became resident in Canada after having converted an IRA into a Roth IRA in 1998, the individual will not be subject to taxation in Canada on any amounts relating to the conversion that remain taxable for U.S. tax purposes.

Department of Finance news release, December 18, 1998: *Qualified RRSP Investments and IRAs*

Finance Minister Paul Martin today announced that he will propose changes to the *Income Tax Act* and the *Income Tax Regulations* to address two issues that have been recently raised with the Department of Finance, in the context of retirement savings decisions currently being made by individuals.

[First measure now implemented in Reg. 4900(1)(n.1) — ed.]

The second issue deals with individual retirement accounts (IRAs) established under the United States Internal Revenue Code. The Minister announced that he will propose an amendment to the *Income Tax Act* in response to recent changes to the Code relating to IRAs.

The changes to the Code have established a new type of IRA, known as a Roth IRA. Under the Code, contributions to a Roth IRA are not deductible, but investment income accrues tax-free and distributions are generally not taxable. Under certain circumstances, an individual may convert an ordinary IRA into a Roth IRA, but is required to include in computing income for the year of conversion the value of the ordinary IRA at the time of conversion. If the conversion is made in 1998, the income inclusion may be spread out over a four-year period.

The proposed amendment to the Act would affect Canadian residents who convert ordinary IRAs into Roth IRAs. It would require that the individual include in income for Canadian tax purposes any amount that must be included in income for U.S. tax purposes. This would ensure that the conversion amount is taxed in Canada, even where the IRA is converted simply by amending its terms. It would also ensure that the amount and timing of the inclusion in Canada matches the amount and timing in the U.S., thus allowing individuals to maximize the use of U.S. taxes paid on conversion as foreign tax credits in computing Canadian income tax payable.

Mr. Martin noted that the deferral opportunities in the U.S. for Roth IRAs are far more generous than the deferral opportunities in the U.S. for ordinary IRAs and the deferral opportunities in Canada for tax-assisted retirement savings. In particular, contributions can be made to a Roth IRA at any age, and there is no requirement for payments under a Roth IRA to begin by a certain age. Accordingly, there are no plans to provide tax assistance by way of an exemption from or deferral of taxation in Canada on earnings within a Roth IRA.

For further information: Tax Legislation Division, (613) 992-1916; Jean-Michel Catta, Public Affairs and Operations Division, (613) 992-1574.

Definitions [s. 56]: "allowance" — 56(12); "amount" — 248(1); "anniversary day" — 12.2(11), 56(1.1); "annuity" — 248(1); "arm's length" — 251(1); "assessment" — 248(1); "beneficially interested" — 248(25); "borrowed money", "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "child" — 252(1); "child support amount", "commencement day" — 56.1(4); "common-law partner", "common-law partnership" — 248(1); "consequence of the death" — 248(8); "death benefit" — 248(1); "deferred profit sharing plan" — 147(1), 248(1); "employee benefit plan", "employment" — 248(1); "estate" — 104(1), 248(1); "foreign retirement arrangement" — 248(1), Reg. 6803; "income for the year" — 56(9); "income-averaging annuity contract" — 61(4), 248(1); "individual", "insurer" — 248(1); "office" — 248(1); "parent" — 252(2); "per-

son", "personal or living expenses", "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "property" — 248(1); "province" — *Interpretation Act* 35(1); "received" — 248(7); "registered education savings plan" — 146.1(1), 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "regulation" — 248(1); "related" — 251(2); "resident in Canada" — 94(3)(a)(viii), 250; "retirement compensation arrangement", "retiring allowance", "salary deferral arrangement" — 248(1); "scholarship exemption" — 56(3); "specified individual", "split income" — 120.4(1), 248(1); "superannuation or pension benefit" — 248(1); "supplementary unemployment benefit plan" — 145(1), 248(1); "support amount" — 56.1(4); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

56.1 (1) Support — For the purposes of paragraph 56(1)(b) and subsection 118(5), where an order or agreement, or any variation thereof, provides for the payment of an amount to a taxpayer or for the benefit of the taxpayer, children in the taxpayer's custody or both the taxpayer and those children, the amount or any part thereof

(a) when payable, is deemed to be payable to and receivable by the taxpayer; and

(b) when paid, is deemed to have been paid to and received by the taxpayer.

Related Provisions: 60.1(1) — Parallel rule for payer.

History: Subsec. 56.1(1) amended by 1997, c. 25, subsec. 9(1), applicable to amounts received after 1996. Subsec. (1) formerly read:

> 56.1 (1) Maintenance — Where a decree, order, judgment or written agreement described in paragraph 56(1)(b) or (c), or any variation thereof, provides for the periodic payment of an amount
>
> (a) to a taxpayer by a person who is
>
> (i) the taxpayer's spouse or former spouse, or
>
> (ii) where the amount is paid under an order made by a competent tribunal in accordance with the laws of a province, an individual of the opposite sex who is the natural parent of a child of the taxpayer, or
>
> (b) for the benefit of the taxpayer, children in the custody of the taxpayer or both the taxpayer and those children,
>
> the amount or any part thereof, when paid, shall be deemed for the purposes of paragraphs 56(1)(b) and (c) to have been paid to and received by the taxpayer.

Subsec. 56.1(1) substituted by 1994, c. 7, Sch. VIII (1993, c. 24), s. 18, applicable (by subsec. 18(2), as amended by 1994, c. 21, s. 134) to amounts received under a decree, order or judgment made by a competent tribunal after 1992 or under a written agreement entered into after 1992 other than such a decree, order or judgment, or written agreement, made with respect to a marriage breakdown that occurred before 1993. Subsec. (1) formerly read:

> 56.1 (1) Where, after May 6, 1974, a decree, order, judgment or written agreement described in paragraph 56(1)(b), (c) or (c.1), or any variation thereof, has been made providing for the periodic payment of an amount
>
> (a) to a taxpayer by a person who is
>
> (i) the taxpayer's spouse or former spouse, or
>
> (ii) where the amount is paid pursuant to an order made by a competent tribunal after February 10, 1988 in accordance with the laws of a province, an individual of the opposite sex who
>
> (A) before the date of the order cohabited with the taxpayer in a conjugal relationship, or
>
> (B) is the natural parent of a child of the taxpayer, or
>
> (b) for the benefit of the taxpayer, children in the custody of the taxpayer or both the taxpayer and those children,
>
> the amount or any part thereof, when paid, shall be deemed, for the purposes of paragraphs 56(1)(b), (c) and (c.1), to have been paid to and received by the taxpayer.

Interpretation Bulletins: IT-530R: Support payments.

(2) Agreement — For the purposes of section 56, this section and subsection 118(5), the amount determined by the formula

$$A - B$$

where

A is the total of all amounts each of which is an amount (other than an amount that is otherwise a support amount) that became payable by a person in a taxation year, under an order of a competent tribunal or under a written agreement, in respect of an expense (other than an expenditure in respect of a self-contained domestic establishment in which the person resides or an expenditure for the acquisition of tangible property that is not an expenditure on account of a medical or education expense or in respect of the acquisition, improvement or maintenance of a self-contained domestic establishment in which the taxpayer described in paragraph (a) or (b) resides) incurred in the year or the preceding taxation year for the maintenance of a taxpayer, children in the taxpayer's custody or both the taxpayer and those children, where the taxpayer is

Proposed Amendment — 56.1(2)A opening words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), s. 217, will amend the opening words of the description of A in subsec. 56.1(2) by substituting "tangible property, or for civil law corporeal property," for "tangible property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(a) the person's spouse or common-law partner or former spouse or common-law partner, or

(b) where the amount became payable under an order made by a competent tribunal in accordance with the laws of a province, an individual who is the parent of a child of whom the person is a legal parent,

and

B is the amount, if any, by which

(a) the total of all amounts each of which is an amount included in the total determined for A in respect of the acquisition or improvement of a self-contained domestic establishment in which the taxpayer resides, including any payment of principal or interest in respect of a loan made or indebtedness incurred to finance, in any manner whatever, such acquisition or improvement

exceeds

(b) the total of all amounts each of which is an amount equal to 1/5 of the original principal amount of a loan or indebtedness described in paragraph (a),

is, where the order or written agreement, as the case may be, provides that this subsection and subsection 60.1(2) shall apply to any amount paid or payable thereunder, deemed to be an amount payable to and receivable by the taxpayer as an allowance on a periodic basis, and the taxpayer is deemed to have discretion as to the use of that amount.

Related Provisions: 60.1(2) — Parallel rule for payer; 252(3) — Extended meaning of "spouse" and "former spouse".

History: Para. (b) of the description of A in subsec. 56.1(2) amended by 2005, c. 33, subsec. 10(1) to replace "natural parent" with "legal parent", in force on July 20, 2005 (Royal Assent).

Subsec. 56.1(2) amended by 2000, c. 12, Sch. 2, s. 2, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force

July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

The portion of subsec. 56.1(2) preceding the formula, the description of A, and the closing words of subsec. (2), amended by 1997, c. 25, subsecs. 9(2)–(4), applicable to amounts received after 1996. Those portions formerly read:

(2) For the purposes of paragraphs 56(1)(b) and (c), the amount determined by the formula

. . . . .

A is the total of all amounts each of which is an amount (other than an amount to which paragraph 56(1)(b) or (c) otherwise applies) paid by a person in a taxation year, under a decree, order or judgment of a competent tribunal or under a written agreement, in respect of an expense (other than an expenditure in respect of a self-contained domestic establishment in which the person resides or an expenditure for the acquisition of tangible property that is not an expenditure on account of a medical or education expense or in respect of the acquisition, improvement or maintenance of a self-contained domestic establishment in which the taxpayer described in paragraph (a) or (b) resides) incurred in the year or the preceding taxation year for the maintenance of a taxpayer who is

(a) that person's spouse or former spouse, or

(b) where the amount is paid under an order made by a competent tribunal in accordance with the laws of a province, an individual of the opposite sex who is the natural parent of a child of the person,

or for the maintenance of children in the taxpayer's custody or both the taxpayer and those children if, at the time the expense was incurred and throughout the remainder of the year, the taxpayer was living separate and apart from that person, and

. . . . .

shall, where the decree, order, judgment or written agreement, as the case may be, provides that this subsection and subsection 60.1(2) shall apply to any payment made thereunder, be deemed to be an amount paid by that person and received by the taxpayer as an allowance payable on a periodic basis.

Subsec. 56.1(2) substituted by 1994, c. 7, Sch. VIII (1993, c. 24), s. 18, applicable (by subsec. 18(2), as amended by 1994, c. 21, s. 134) to amounts received under a decree, order or judgment made by a competent tribunal after 1992 or under a written agreement entered into after 1992 other than such a decree, order or judgment, or written agreement, made with respect to a marriage breakdown that occurred before 1993. Subsec. (2) formerly read:

(2) For the purposes of paragraphs 56(1)(b), (c) and (c.1), the amount, if any, by which

(a) the total of all amounts each of which is an amount (other than an amount to which paragraph 56(1)(b), (c) or (c.1) otherwise applies) paid by a person in a taxation year, pursuant to a decree, order or judgment of a competent tribunal or pursuant to a written agreement, in respect of an expense (other than an expenditure in respect of a self-contained domestic establishment in which the person resides or an expenditure for the acquisition of tangible property that is not an expenditure on account of a medical or educational expense or in respect of the acquisition, improvement or maintenance of a self-contained domestic establishment in which the taxpayer described in subparagraph (i) or (ii) resides) incurred in the year or the immediately preceding taxation year for maintenance of a taxpayer who is

(i) that person's spouse or former spouse, or

(ii) where the amount is paid pursuant to an order made by a competent tribunal after February 10, 1988 in accordance with the laws of a province, an individual of the opposite sex who

(A) before the date of the order cohabited with the person in a conjugal relationship, or

(B) is the natural parent of a child of the person,

or for the maintenance of children in the taxpayer's custody or both the taxpayer and those children if, at the time the expense was incurred and throughout the remainder of the year, the taxpayer was living apart from that person

exceeds

(b) the amount, if any, by which

(i) the total of all amounts each of which is an amount included in the total determined under paragraph (a) in respect of the acquisition or improvement of a self-contained domestic establishment in which the taxpayer resides, including any payment of principal or interest in respect of a loan made or indebtedness incurred to finance, in any manner whatever, such acquisition or improvement

exceeds

(ii) the total of all amounts each of which is an amount equal to 1/5 of the original principal amount of a loan or indebtedness described in subparagraph (i)

shall, where the decree, order, judgment or written agreement, as the case may be, provides that this subsection and subsection 60.1(2) shall apply to any payment made pursuant thereto, be deemed to be an amount paid by that person and received by the taxpayer as an allowance payable on a periodic basis.

Selected Cases [subsec. 56.1(2)]: *Veilleux v. R.*, [2003] 1 C.T.C. 138 (FCA) (Not necessary to refer to sections of the Act, provided substance contained in agreement); *Larsson v. Canada*, [1996] 3 C.T.C. 2430 (TCC) (Inclusion/deduction process should be favoured in ambiguous or doubtful cases).

Interpretation Bulletins: IT-530R: Support payments.

(3) Prior payments — For the purposes of this section and section 56, where a written agreement or order of a competent tribunal made at any time in a taxation year provides that an amount received before that time and in the year or the preceding taxation year is to be considered to have been paid and received thereunder,

(a) the amount is deemed to have been received thereunder; and

(b) the agreement or order is deemed, except for the purpose of this subsection, to have been made on the day on which the first such amount was received, except that, where the agreement or order is made after April 1997 and varies a child support amount payable to the recipient from the last such amount received by the recipient before May 1997, each varied amount of child support received under the agreement or order is deemed to have been receivable under an agreement or order the commencement day of which is the day on which the first payment of the varied amount is required to be made.

Related Provisions: 60.1(3) — Parallel rule for payer.

History: Subsec. 56.1(3) amended by 1997, c. 25, subsec. 9(5), applicable to amounts received after 1996. Subsec. (3) formerly read:

(3) For the purposes of this section and section 56, where a decree, order or judgment of a competent tribunal or a written agreement made at any time in a taxation year provides that an amount received before that time and in the year or the preceding taxation year is to be considered to have been paid and received thereunder, the amount shall be deemed to have been received thereunder.

Subsec. 56.1(3) substituted by 1994, c. 7, Sch. VIII (1993, c. 24), s. 18, applicable (by subsec. 18(2), as amended by 1994, c. 21, s. 134), to amounts received under a decree, order or judgment made by a competent tribunal after 1992 or under a written agreement entered into after 1992 other than such a decree, order or judgment or written agreement made with respect to a marriage breakdown that occurred before 1993. Subsec. (3) formerly read:

(3) For the purposes of this section and section 56, where a decree, order or judgment of a competent tribunal or a written agreement made at any time in a taxation year provides that an amount received before that time and in the year or the immediately preceding taxation year is to be considered as having been paid and received pursuant thereto, the following rules apply:

(a) the amount shall be deemed to have been received pursuant thereto; and

(b) the person who made the payment shall be deemed to have been separated pursuant to a divorce, judicial separation or writ-

ten separation agreement from that person's spouse or former spouse at the time the payment was made and throughout the remainder of the year.

Interpretation Bulletins: IT-530R: Support payments.

(4) Definitions — The definitions in this subsection apply in this section and section 56.

"child support amount" means any support amount that is not identified in the agreement or order under which it is receivable as being solely for the support of a recipient who is a spouse or common-law partner or former spouse or common-law partner of the payer or who is a parent of a child of whom the payer is a legal parent.

Related Provisions: 60.1(4) — Definition applies to sections 60 and 60.1; 252(3) — Extended meaning of "spouse" and "former spouse".

Interpretation Bulletins: IT-530R: Support payments.

"commencement day" at any time of an agreement or order means

(a) where the agreement or order is made after April 1997, the day it is made; and

(b) where the agreement or order is made before May 1997, the day, if any, that is after April 1997 and is the earliest of

(i) the day specified as the commencement day of the agreement or order by the payer and recipient under the agreement or order in a joint election filed with the Minister in prescribed form and manner,

(ii) where the agreement or order is varied after April 1997 to change the child support amounts payable to the recipient, the day on which the first payment of the varied amount is required to be made,

(iii) where a subsequent agreement or order is made after April 1997, the effect of which is to change the total child support amounts payable to the recipient by the payer, the commencement day of the first such subsequent agreement or order, and

(iv) the day specified in the agreement or order, or any variation thereof, as the commencement day of the agreement or order for the purposes of this Act.

Related Provisions: 60.1(4) — Definition applies to sections 60 and 60.1.

Interpretation Bulletins: IT-530R: Support payments.

"support amount" means an amount payable or receivable as an allowance on a periodic basis for the maintenance of the recipient, children of the recipient or both the recipient and children of the recipient, if the recipient has discretion as to the use of the amount, and

(a) the recipient is the spouse or common-law partner or former spouse or common-law partner of the payer, the recipient and payer are living separate and apart because of the breakdown of their marriage or common-law partnership and the amount is receivable under an order of a competent tribunal or under a written agreement; or

(b) the payer is a legal parent of a child of the recipient and the amount is receivable under an order made by a competent tribunal in accordance with the laws of a province.

Related Provisions: 60.1(4) — Definition applies to ss. 60 and 60.1; 118(5) — No personal credit in respect of person to whom support amount payable; 248(1)"exempt income" — Support amount is not exempt income; 252(3) — Extended meaning of "spouse" and "former spouse".

Interpretation Bulletins: IT-530R: Support payments.

History: The definitions "child support amount" and "support amount" in subsec. 56.1(4) amended by 2005, c. 33, subsecs. 10(2), (3) to replace "natural parent" with "legal parent", in force on July 20, 2005 (Royal Assent).

The definition "child support amount" in subsec. 56.1(4) amended by 2000, c. 12, Sch. 2, s. 2, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Para. (a) of the definition "support amount" in subsec. 56.1(4) amended by 2000, c. 12, Sch. 2, s. 2, to replace "spouse" with "spouse or common-law partner", and by Sch. 2, s. 9, to replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subsec. 56.1(4) added by 1997, c. 25, subsec. 9(6), applicable (as amended by 1998, c. 19, subsec. 307(1), deemed to have come into force on April 25, 1997) after 1996, except that

(a) a support amount, as defined in subsection 56.1(4) does not include an amount

(i) that was received under a decree, order or judgment of a competent tribunal, or under a written agreement, that does not have a commencement day (within the meaning assigned by that subsec. 56.1(4)), and

(ii) that if paid and received would, but for this amendment, not be included in computing the income of the recipient of the amount; and

(b) with respect to an amount payable or receivable under a decree, order or judgment of a competent tribunal, or under a written agreement, made after March 27, 1986 and before 1988, the portion of the definition "support amount" in subsec. 56.1(4) before paragraph (a) shall be read without reference to "the recipient has discretion as to the use of the amount, and".

Selected Cases [subsec. 56.1(4)]: *Patriquin v. R.*, [2004] 4 C.T.C. 2222 (TCC) (Effective date was date intended by parties, not date agreement filed in court); *Fraser v. R.*, [2004] 3 C.T.C. 1 (FCA) (Order under provincial statute for support was support amount); *Fitzpatrick v. R.*, [2003] 4 C.T.C. 2350 (TCC) (Paternity agreement sufficient basis for deducting support amounts); *Mullen v. R.*, [2003] 3 C.T.C. 2201 (TCC) (Paternity agreement and payments thereunder qualified as support amount); *Biggs v. R.*, [2002] 1 C.T.C. 2295 (TCC) (Retroactive effect given to written agreement).

Forms: T1157: Election for child support payments; T1158: Registration of family support payments.

Definitions [s. 56.1]: "amount" — 248(1); "child" — 252(1); "child support amount", "commencement day" — 56.1(4); "common-law partner", "common-law partnership" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "corporeal property" — Quebec *Civil Code* art. 899, 906; "employee benefit plan" — 248(1); "former spouse" — 252(3); "individual" — 248(1); "Minister" — 248(1); "parent" — 252(2); "person", "prescribed", "principal amount", "property" — 248(1); "province" — *Interpretation Act* 35(1); "received" — 248(7); "self-contained domestic establishment", "share" — 248(1); "spouse" — 252(3); "superannuation or pension benefit" — 248(1); "support amount" — 56.1(4); "taxation year" — 249; "taxpayer" — 248(1); "written" — *Interpretation Act* 35(1) [writing].

56.2 Reserve claimed for debt forgiveness — There shall be included in computing an individual's income for a taxation year during which the individual was not a bankrupt the amount, if any, deducted under section 61.2 in computing the individual's income for the preceding taxation year.

History: S. 56.2 added by 1995, c. 21, s. 19, applicable to taxation years that end after February 21, 1994.

Definitions [s. 56.2]: "amount", "bankrupt", "individual" — 248(1); "taxation year" — 249.

56.3 Reserve claimed for debt forgiveness — There shall be included in computing a taxpayer's income for a taxation year during which the taxpayer was not a bankrupt the amount, if any, deducted under section 61.4

in computing the taxpayer's income for the preceding taxation year.

Related Provisions: 61.4(a)B(ii) — Effect on reserve for subsequent year; 87(2)(g) — Amalgamations — carryover of reserve; 115(1)(a)(iii.21) — Non-resident's taxable income earned in Canada.

History: S. 56.3 added by 1995, c. 21, s. 19, applicable to taxation years that end after February 21, 1994.

Definitions [s. 56.3]: "amount", "bankrupt" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Proposed Addition — 56.4

Technical Notes: New section 56.4 sets out rules with respect to amounts that are received or receivable in respect of a restrictive covenant. New section 56.4 reflects changes to the income tax law proposed by the Minister of Finance on October 7, 2003 (release 2003-049), and subject to certain exceptions, it applies to amounts received or receivable by a taxpayer after October 7, 2003, other than to amounts received by the taxpayer before 2005 under a grant of a restrictive covenant made in writing on or before October 7, 2003 between the taxpayer and a person with whom the taxpayer deals at arm's length.

In addition to new section 56.4, there are consequential changes to other provisions of the Act, including section 6 (employment income), subsection 14(5.1) (restrictive covenant amount), section 56 (amounts to be included in income), section 60 (other deductions), section 68 (allocation of consideration) and section 212 (Part XIII tax, non-resident withholding tax). The notes accompanying those consequential changes contain additional details about each change.

56.4 Restrictive covenants [Non-competition agreements] — (1) Definitions — The following definitions apply in this section.

Technical Notes: New subsection 56.4(1) defines an "eligible corporation", an "eligible interest", a "restrictive covenant", a "goodwill amount" and a "taxpayer" — these definitions are relevant for the purpose of computing the amount, if any, that a taxpayer is required to include in income, or in proceeds of disposition in respect of certain capital property, in respect of amounts received or receivable for a restrictive covenant.

"eligible corporation", of a taxpayer at any time, means a taxable Canadian corporation of which, at the time, the taxpayer holds not less than 90% of the issued and outstanding share capital having full voting rights under all circumstances and having a fair market value of not less than 90% of the fair market value of all of the issued and outstanding shares of the capital stock of the corporation.

Technical Notes: "Eligible corporation" of a taxpayer at any time means a taxable Canadian corporation of which, at the time, the taxpayer holds 90% of the issued share capital (votes and value). This definition is relevant for the purpose of determining whether new subsections 56.4(5) and (7) apply to provide an exception from the rule in section 68 that may deem a person who grants a restrictive covenant to receive an amount for the restrictive covenant.

"eligible interest", of a taxpayer, means capital property of the taxpayer that is

(a) a partnership interest in a partnership that carries on a business;

(b) a share of the capital stock of a corporation that carries on a business; or

(c) a share of the capital stock of a corporation 90% or more of the fair market value of which is attributable to eligible interests in one other corporation.

Technical Notes: "Eligible interest", of a taxpayer, means capital property of the taxpayer that is

- a partnership interest in a partnership that carries on a business, or
- a share of the capital stock of a corporation that carries on a business.
- a share of the capital stock of a corporation 90% or more of the fair market value of which is attributable to eligible interest in one other corporation.

Related Provisions: 56.4(4)(c) — Cost to purchaser of eligible interest.

"goodwill amount", of a taxpayer, is an amount received or receivable by the taxpayer as consideration for the disposition by the taxpayer of goodwill, and that is required by the description of E in the definition "cumulative eligible capital" in subsection 14(5) to be included in computing the cumulative eligible capital of a business carried on by the taxpayer through a permanent establishment located in Canada.

Technical Notes: "Goodwill amount", of a taxpayer, is an amount that is received or receivable by the taxpayer as consideration for the disposition by the taxpayer of goodwill, and that is required by the description E in the definition "cumulative eligible capital" in subsection 14(5) to be included in computing the cumulative eligible capital of a business carried on through a permanent establishment located in Canada. This definition is relevant for the purpose of determining whether new subsections 56.4(5) and (7) apply to provide an exception from the rule in section 68 that deems a person who grants a restrictive covenant to receive an amount for the restrictive covenant.

Related Provisions: 56.4(7)(d) — Allocation of goodwill amount.

Regulations: Nothing yet prescribed re "permanent establishment" (Finance advises that it is expected to be Reg. 8201).

"restrictive covenant", of a taxpayer, means an agreement entered into, an undertaking made, or a waiver of an advantage or right by the taxpayer (other than an agreement or undertaking for the disposition of the taxpayer's property or for the satisfaction of an obligation described in section 49.1 that is not a disposition), whether legally enforceable or not, that affects, or is intended to affect, in any way whatever, the acquisition or provision of property or services by the taxpayer or by another taxpayer that does not deal at arm's length with the taxpayer.

Technical Notes: "Restrictive covenant", of a taxpayer, means an arrangement entered into, an undertaking made, or a waiver of an advantage or right by a taxpayer (other than an arrangement or undertaking for the disposition of the taxpayer's property or for the satisfaction of an obligation described in section 49.1 that is not a disposition), that affects, in any way whatever, the acquisition or provision of property or services by a taxpayer or by another taxpayer that does not deal at arm's length with the taxpayer.

Related Provisions: 68(c) — Allocation of amount to restrictive covenant must be reasonable.

"taxpayer" includes a partnership.

Technical Notes: "Taxpayer" includes a partnership.

(2) Income — restrictive covenants [non-competition agreements] — There is to be included in computing a taxpayer's income for a taxation year the total of all amounts each of which is an amount in respect of a restrictive covenant of the taxpayer that is received or receivable in the taxation year by the taxpayer or by a person not dealing at arm's length with the taxpayer (other than an amount that has been included in computing the taxpayer's income because of this subsection for a preceding taxation year or in the taxpayer's eligible corporation's income because of this subsection for the taxation year or a preceding taxation year).

Technical Notes: New subsection 56.4(2) provides that there is to be included in computing a taxpayer's income for a taxation year amounts in respect of a restrictive covenant that are received or receivable in the taxation year by the taxpayer (or by a person not dealing at arm's length with the taxpayer). If an amount that is receivable is included because of subsection 56.4(2) in computing a taxpayer's income, or the taxpayer's eligible corporation's income, in a taxation year, the amount will not be included in computing the taxpayer's income in a subsequent year. Sub-

section 56.4(2) does not apply in certain circumstances described in subsection (3).

Related Provisions: 6(3), (3.1) — Employment income inclusion from restrictive covenant; 12(1)(x)(v.1) — No income inclusion under 12(1)(x); 14(5.1) — Cumulative eligible capital — exclusion from calculation; 56.4(3) — Exceptions; 60(f) — Deduction for bad debt; 68(c) — Allocation of amount to restrictive covenant must be reasonable; 212(1)(i), (13)(g) — Non-resident withholding tax.

(3) Non-application of subsec. (2) — Subsection (2) does not apply to an amount received or receivable by a taxpayer in a taxation year in respect of a restrictive covenant granted by the taxpayer to a person with whom the taxpayer deals at arm's length (referred to in this subsection and subsection (4) as the "purchaser") if

(a) section 5 or 6 applied to include the amount in computing the taxpayer's income for the taxation year or would have so applied if the amount had been received in the taxation year;

(b) the amount would, if this Act were read without reference to this section, be required by the description of E in the definition "cumulative eligible capital" in subsection 14(5) to be included in computing the taxpayer's cumulative eligible capital in respect of the business to which the restrictive covenant relates, and the taxpayer and the purchaser elect in prescribed form to apply this paragraph in respect of the amount; or

(c) the amount directly relates to the taxpayer's disposition of property that is, at the time of the disposition, an eligible interest in the partnership or corporation that carries on the business to which the restrictive covenant relates, or that is at that time an eligible interest by virtue of paragraph (c) of the definition "eligible interest" where the other corporation referred to in that paragraph carries on the business to which the restrictive covenant relates, and

(i) the disposition is to the purchaser (or to a person related to the purchaser),

(ii) the amount is consideration for an undertaking by the taxpayer not to provide property or services in competition with the property or services provided or to be provided by the purchaser (or by a person related to the purchaser),

(iii) the amount does not exceed the amount determined by the formula

$$A - B$$

where

A is the amount that would be the fair market value of the taxpayer's eligible interest that is disposed of if all restrictive covenants that may reasonably be considered to relate to a disposition of an interest in the business by any taxpayer were provided for no consideration, and

B is the amount that would be the fair market value of the taxpayer's eligible interest that is disposed of if no covenant were granted by any taxpayer that held an interest in the business,

(iv) subsection 84(3) does not apply to the disposition,

(v) the amount is added to the taxpayer's proceeds of disposition, as defined by section 54, for the purpose of applying this Act to the disposition of the taxpayer's eligible interest, and

(vi) the taxpayer and the purchaser elect in prescribed form to apply this paragraph in respect of the amount.

Technical Notes: There are three exceptions to the income inclusion rule in subsection 56.4(2) for amounts received or receivable in respect of a restrictive covenant granted by a taxpayer to a person with whom the taxpayer deals at arm's length (the "purchaser").

First, subsection 56.4(2) does not apply to an amount if section 5 or 6 applies to include the amount in computing the taxpayer's income for the year or would have so applied if the amount had been received in the taxation year.

Second, subsection 56.4(2) does not apply to an amount that would, if the Act were read without reference to section 56.4, be required by the description E in the definition "cumulative eligible capital" in subsection 14(5) to be included in computing the taxpayer's cumulative eligible capital in respect of the business to which the restrictive covenant relates. The taxpayer and the purchaser of the restrictive covenant are required to elect jointly in prescribed form to apply this exception. The note accompanying new subsection 56.4(9) provides further details with respect to filing an election.

Third, subsection 56.4(2) does not apply to an amount to the extent that the amount is additional "proceeds of disposition" from the disposition of an eligible interest (see the definition "eligible interest" in subsection 56.4(1)) of the taxpayer if certain conditions are met. For this to be the case:

- The amount must directly relate to the taxpayer's disposition of a property that is an eligible interest in the partnership or corporation that carries on the business to which the restrictive covenant relates, or that is an eligible interest by virtue of paragraph (c) of the definition "eligible interest" where the other corporation refered to in that paragraph carries on the business to which the restrictive covenant relates.
- The disposition of the eligible interest must be to the purchaser of the restrictive covenant (or to a person related to that purchaser).
- The amount received or receivable must be consideration for an undertaking by the taxpayer not to provide property or services in competition with the property or services provided by the purchaser (or by a person related to the purchaser).
- The amount cannot exceed the amount determined by the formula A - B

  Where *(see example below)*

  A is the amount that would be the fair market value of the taxpayer's eligible interest that is disposed of — if all of the restrictive covenants that may reasonably be considered to relate to the disposition of an interest in the business by any taxpayer were provided for no consideration, and

  B is the amount that would be the fair market value of the taxpayer's eligible interest that is disposed of if no covenant were granted by any taxpayer that held an interest in the business.
- In order to be able to add the restrictive covenant amount to the proceeds of disposition of an eligible interest that is a share, there cannot be a redemption, acquisition or cancellation of the share to which subsection 84(3) applies. This requirement applies to a restrictive covenant granted on or after July 18, 2005.
- The amount is added in the taxpayer's proceeds of disposition of the eligible interest.

And

- The taxpayer and the purchaser of the restrictive covenant jointly elect in prescribed form to apply this exception. The note accompanying new subsection 56.4(9) provides further details with respect to filing an election.

Example 1:

Assumed facts:

- Terence and Isabelle each own 50 of 100 common shares of X Ltd., which carries on a business. The adjusted cost base of their shares is nil.
- In 2004, a person with whom they deal at arm's length, Y Ltd., offers to acquire all of the shares of X Ltd. for $2 million provided Terence (who has been much more closely involved in the management and operations of X Ltd.'s business) agrees not

to compete with the business of Y Ltd. and X Ltd. after the sale. If no covenant is provided, Y Ltd. will pay $1.8 million. Terence and Isabelle agree to accept the offer to sell X Ltd., with the proceeds broken down as follows: $1.8 million for shares ($18,000 a share) plus $200,000 for Terence's covenant not to compete after the sale.

- Of total amounts payable to Terence and Isabelle, Terence will receive total proceeds of $1.1 million ($900,000 for shares and $200,000 for his covenant) and Isabelle will receive $900,000.

Application of proposed rules:

To Isabelle:

Because no proceeds were receivable by Isabelle for a restrictive covenant with respect to the business of X Ltd., her $900,000 in proceeds relate solely to the disposition of her shares of X Ltd.

1. Capital gain = $900,000 ($900,000 proceeds less nil adjusted cost base).

2. Ordinary income from covenant = Nil.

To Terence:

Because Terence will receive $200,000 for his restrictive covenant, he may add a portion of those proceeds to the $900,000 he is to receive for the sale of his shares of X Ltd. The portion of the $200,000 that can be added to those share proceeds is the amount by which the value of his share interest would increase if the covenant were provided for no consideration (when compared to the value of those shares if no covenant were provided).

1. Capital gain = $1,000,000 ($1,000,000 of proceeds less nil adjusted cost base).

Where proceeds of disposition are:

- $900,000 in proceeds of disposition for shares of X Ltd.

plus

- $100,000 of the covenant's proceeds (which can be added to the proceeds of disposition from the sale of the shares), determined as follows:

Lesser of:

i. $200,000 (amount receivable)

ii. $100,000 (value by which Terence's share interest in X Ltd. would increase if covenant were provided for no consideration when compared with a sale in which no covenant is granted), computed as follows:

To the extent

- $1 million (50% of $2 million if covenant for no consideration)

exceeds

- $900,000 (50% of $1.8 million if no covenant granted).

2. Ordinary income = $100,000 ($200,000 less $100,000 allocated to proceeds of disposition for the shares).

Example 2:

Assumed facts:

- The facts are a variation of those provided in the above example. Both Terence and Isabelle receive $900,000 for selling their 50 shares of X Ltd. to Y Ltd. However, instead of Terence receiving $200,000 for his restrictive covenant, he is to receive $150,000 and Isabelle (who in this example is active in the business) grants a restrictive covenant to Y Ltd. for which she is to receive $50,000.

- The required elections and prescribed forms are filed on time.

Application of proposed rules:

To Isabelle:

Because Isabelle is to receive $50,000 for her restrictive covenant, she may add a portion of those proceeds to the $900,000 she is to receive for the sale of her shares of X Ltd. The portion of the $50,000 that can be added to those share proceeds is the amount by which the value of her share interest would increase if the covenant (and all restrictive covenants that may be reasonably be considered to relate to a disposition of an interest in the business by any taxpayer) were provided for no consideration.

1. Capital gain = $950,000 ($950,000 proceeds less nil adjusted cost base)

Where proceeds of disposition are:

- $900,000 in proceeds of disposition for shares of X Ltd.

plus

- $50,000 of the covenant proceeds (which can be added to the proceeds of disposition from the sale of the business), determined as follows:

Lesser of:

i. $50,000 (amount receivable)

ii. $100,000 (value by which Isabelle's share interest in X Ltd. would increase if covenants provided by her and Terence were provided for no consideration when compared with a sale in which no covenant is granted, that is, 50% of $200,000), computed as follows:

To the extent

- $1 million (50% of $2 million if covenants for no consideration)

exceeds

- $900,000 (50% of $1.8 million if no covenant granted)

2. Ordinary income = Nil ($50,000 less $50,000 allocated to proceeds of disposition for shares).

To Terence:

Because Terence is to receive $150,000 for granting a restrictive covenant, he may add a portion of those proceeds to the $900,000 he is to receive for the sale of his shares of X Ltd. The portion of the $150,000 that can be added to those share proceeds is the amount by which the value of his share interest would increase if the covenant (and all restrictive covenants that may be reasonably be considered to relate to a disposition of an interest in the business by any taxpayer) were provided for no consideration.

1. Capital gain = $1 million ($1 million proceeds less nil adjusted cost base)

Where proceeds of disposition are:

- $900,000 in proceeds of disposition for shares of X Ltd.

plus

- $100,000 of covenant proceeds (which can be added to the proceeds of disposition from the sale of the business), determined as follows:

Lesser of:

i. $150,000 (amount receivable)

ii. $100,000 (value by which Terence's share interest in X Ltd. would increase if covenants provided by him and Isabelle were provided for no consideration when compared with a sale in which no covenant is granted, that is, 50% of $200,000), computed as follows:

To the extent

- $1 million (50% of $2 million if covenants for no consideration)

exceeds

- $900,000 (50% of $1.8 million if no covenant granted).

2. Ordinary income = $50,000 ($150,000 less $100,000 allocated to proceeds of disposition for shares).

Related Provisions: 6(3), (3.1) — Employment income inclusion from restrictive covenant; 56.4(4) — Treatment of purchaser; 56.4(9) — Filing of prescribed form for paras. (b) and (c); 257 — Formula cannot calculate to less than zero.

(4) Treatment of purchaser — An amount paid or payable by a purchaser for a restrictive covenant is

(a) if the amount is required because of section 5 or 6 to be included in computing the income of an employee of the purchaser, to be considered to be wages paid or payable by the purchaser to the employee;

(b) if an election has been made under paragraph (3)(b) in respect of the amount, to be considered to be an outlay incurred by the purchaser on account of capital for the purpose of applying the definition "eligible capital expenditure" in subsection 14(5); and

(c) if an election has been made under subparagraph (3)(c)(vi) in respect of the amount and the amount relates to the purchaser's acquisition of property that is, immediately after the acquisition, an eligible interest of the purchaser, to be included in computing the cost to the purchaser of that interest.

Technical Notes: New subsection 56.4(4) provides rules that apply to an amount paid or payable by a purchaser of a restrictive covenant in certain circumstances.

If the amount paid or payable by a purchaser of a restrictive covenant is employment income of an employee of the purchaser, the amount is considered to be wages paid or payable by the purchaser to the employee.

If an election has been made under paragraph (3)(b) in respect of the amount, the amount is to be considered to be an outlay incurred by the purchaser on account of capital for the purpose of applying the definition "eligible capital expenditure" in subsection 14(5).

If an election has been made under paragraph (3)(c) in respect of the amount and the amount relates to the purchaser's acquisition of property that is immediately after the acquisition an eligible interest of the purchaser, the amount is to be included in computing the cost to the purchaser of that interest.

Related Provisions: 153(1)(a) — Tax to be withheld at source.

(5) Non-application of s. 68 — If this subsection applies in respect of a restrictive covenant granted by a taxpayer, section 68 does not apply to deem consideration to be received or receivable by the taxpayer for the restrictive covenant.

Technical Notes: New subsection 56.4(5) provides that, in respect of a restrictive covenant granted by a taxpayer, section 68 does not apply to deem consideration to be received or receivable by the taxpayer for the restrictive covenant. There are two cases in which subsection 56.4(5) may apply, which are more fully described below in the notes accompanying new subsections 56.4(6) and (7).

Related Provisions: 56.4(6), (7) — Conditions for 56.4(5) to apply; 56.4(8) — Effect of 56.4(5) applying.

(6) Application of subsec. (5) — if employee provides covenant — Subsection (5) applies to a restrictive covenant if

(a) the restrictive covenant is granted by an individual to a person with whom the individual deals at arm's length (referred to in this subsection as the "purchaser");

(b) the restrictive covenant directly relates to the acquisition from one or more other persons (in this subsection and subsection (8) referred to as the "vendors") by the purchaser of an interest in the individual's employer, in a corporation related to that employer or in a business carried on by that employer;

(c) the individual deals at arm's length with the employer and with the vendors;

(d) the restrictive covenant is an undertaking by the individual not to provide property or services in competition with property or services provided or to be provided by the purchaser (or by a person related to the purchaser) in the course of carrying on the business to which the restrictive covenant relates;

(e) no proceeds are received or receivable by the individual for granting the restrictive covenant; and

(f) the amount that can reasonably be regarded to be consideration for the restrictive covenant is received or receivable only by the vendors.

Technical Notes: New subsection 56.4(6) provides a set of conditions that, if met, result in subsection 56.4(5) applying with respect to a restrictive covenant granted by an individual — with the result that section 68 does not apply to deem consideration to be received or receivable by the individual for granting the restrictive covenant. This is the case if all of the following conditions exist:

- The individual grants a restrictive covenant to a person with whom the individual deals at arm's length (referred to as the "purchaser").
- The restricted covenant directly relates to the acquisition from one or more other persons (referred to as the "vendors") by the purchaser of an eligible interest in the individual's employer, in a corporation related to that employer or in the business carried on by that employer.
- The individual deals at arm's length with the employer and with the vendors.
- The restrictive covenant is an undertaking of the individual not to provide property or services in competition with the property or services provided or to be provided by the purchaser (or by a person related to the purchaser) in the course of carrying on the business to which the restrictive covenant relates.
- No proceeds are received or receivable by the individual for granting the restrictive covenant.
- The amount that can reasonably be regarded to be consideration for the restrictive covenant is received or receivable only by the vendors.

(7) Application of subsec. (5) — Subsection (5) applies to a restrictive covenant if

(a) the restrictive covenant is granted by a taxpayer (in this subsection referred to as the "vendor") to a person with whom the vendor deals at arm's length (referred to in this subsection as the "purchaser");

(b) the restrictive covenant is an undertaking of the vendor not to provide property or services in competition with the property or services provided or to be provided by the purchaser (or by a person related to the purchaser) in the course of carrying on the business to which the restrictive covenant relates;

(c) no proceeds are received or receivable by the vendor for granting the restrictive covenant;

(d) the amount that can reasonably be regarded to be consideration for the restrictive covenant is

(i) included by the vendor in computing a goodwill amount of the vendor, or

(ii) received or receivable by a corporation that was an eligible corporation of the vendor when the restrictive covenant was granted and included by the eligible corporation in computing a goodwill amount of the eligible corporation in respect of the business to which the restrictive covenant relates;

(e) the restrictive covenant may reasonably be considered to have been granted to maintain or preserve the value of

(i) goodwill acquired by the purchaser from the vendor, or

(ii) goodwill acquired by the purchaser from the vendor's eligible corporation; and

(f) the vendor and the purchaser or, if subparagraph (d)(ii) applies, the vendor, the eligible corporation and the purchaser, jointly elect in prescribed form to apply subsection (5) to the restrictive covenant.

Technical Notes: New subsection 56.4(7) provides a set of conditions that, if met, result in subsection 56.4(5) applying with respect to a restrictive covenant granted by a taxpayer — with the result that section 68 does not apply to deem consideration to be received or receivable by a taxpayer for granting the restrictive covenant. This is the case if all of the following conditions exist:

- The restrictive covenant is granted by a taxpayer (in this subsection referred to as the "vendor") to a person with whom the vendor deals with at arm's length (referred to as the "purchaser").
- The restrictive covenant is an undertaking of the vendor not to provide property or services in competition with the property or services provided or to be provided by the purchaser (or by a persons related to the purchaser) in the course of carrying on the business to which the restrictive covenant relates.
- No proceeds are received or receivable by the vendor for granting the restrictive covenant.
- The amount that could otherwise be reasonably be regarded to be consideration for the restrictive covenant is
  - — included by the vendor in computing a goodwill amount of the vendor, or
  - — received or receivable by a corporation that was an eligible corporation of the vendor when the restrictive covenant was granted and is included by that corporation in computing a goodwill amount in respect of the business to which the restrictive covenant relates.
- The restrictive covenant may reasonably be considered to have been granted to maintain or preserve the value of the goodwill acquired by the purchaser.
- The vendor and the purchaser, or the vendor, the eligible corporation and the purchaser, as the case may be, jointly elect in prescribed form to apply subsection (5) to the restrictive covenant. The note accompanying new subsection 56.4(9) provides further details with respect to filing an election.

In general, if subsection (7) applies to a vendor who grants a restrictive covenant that directly relates to a transfer of goodwill by the vendor, no amount need be allocated to the restrictive covenant under section 68 provided the amount is included in the vendor's goodwill amount. Similarly, this exception may also apply to a vendor's grant of a restrictive covenant if it is the vendor's eligible corporation that transfers goodwill to which the restrictive covenant directly relates, provided the amount is included in computing the vendor corporation's goodwill amount.

Related Provisions: 56.4(9) — Filing of prescribed form for para. (f).

(8) Clarification if subsec. (5) applies — If subsection (5) applies in respect of a restrictive covenant granted by a taxpayer, for greater certainty

(a) the amount referred to in paragraph (6)(f) is to be added in computing the amount received or receivable by the vendors as consideration for the disposition of the interest referred to in paragraph (6)(b); and

(b) the amount that could reasonably be regarded as consideration referred to in subparagraph (7)(d)(i) or (ii), as the case may be, is to be added in computing

(i) the amount that is required by the description of E in the definition "cumulative eligible capital" in subsection 14(5) to be included in computing the cumulative eligible capital of a business carried on by the vendor through a permanent establishment located in Canada, or

(ii) the amount that is required by the description of E in the definition "cumulative eligible capital" in subsection 14(5) to be included in computing the cumulative eligible capital of a business carried on by the eligible corporation through a permanent establishment located in Canada.

Technical Notes: New subsection 56.4(8) provides that, if subsection 56.4(5) applies in respect of restrictive covenant granted by a taxpayer (that is, section 68 does not apply to allocate consideration to the taxpayer's grant of a restrictive covenant), for greater certainty

- The amount referred to in paragraph (6)(f) — that is, the amount received by the vendors other than the taxpayer — is to be included in computing the amount received or receivable by those vendors as consideration for the disposition of the interest referred to in paragraph (6)(b).
- The amount referred to in paragraph (7)(d) — that is, the amount that could reasonably be regarded as consideration for the restrictive covenant that was included in the taxpayer's income as a goodwill amount, or in the taxpayer's eligible corporation as a goodwill amount — is to be included in computing the eligible corporation's cumulative eligible capital.

Regulations: Nothing yet prescribed re "permanent establishment" in 56.4(8)(b) (Finance advises that it is expected to be Reg. 8201).

(9) Filing of prescribed form — For the purpose of paragraphs (3)(b) and (c) and (7)(f), a joint election in prescribed form filed under any of those provisions is to include a copy of the restrictive covenant and be filed

(a) if the person who granted the restrictive covenant is a person resident in Canada when the restrictive covenant was granted, by the person with the Minister on or before the person's filing-due date for the taxation year that includes the day on which the restrictive covenant was granted; and

(b) in any other case, with the Minister on or before the day that is six months after the day on which the restrictive covenant is granted.

Technical Notes: New subsection 56.4(9) provides that a joint election in prescribed form filed under paragraph 56.4(3)(b) or (c) or under paragraph 56.4(7)(f) is to include a copy of the restrictive covenant, and be filed

- if the person who agreed to the restrictive covenant is a person resident in Canada when the restrictive covenant was granted, by that person with the Minister on or before that person's filing due-date for the taxation year that includes the day on which the restrictive covenant was granted, and
- in any other case, with the Minister on or before the day that is six months after the day on which the restrictive covenant was granted.

However, such an election is deemed to be filed on a timely basis if it is filed on or before the day that is 180 days after the day this provision is assented to.

(10) Non-application of s. 42 — Section 42 does not apply to an amount received or receivable as consideration for a restrictive covenant.

Technical Notes: New subsection 56.4(10) provides that section 42 does not apply to an amount received or receivable as consideration for a restrictive covenant.

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 70, will add s. 56.4, applicable (subject to the proviso below) to

(a) amounts received or receivable by a taxpayer after October 7, 2003 other than amounts received by the taxpayer before 2005 under a grant of a restrictive covenant made in writing on or before October 7, 2003 between the taxpayer and a person with whom the taxpayer deals at arm's length; and

(b) amounts paid or payable by a purchaser after October 7, 2003 other than to amounts paid or payable by the purchaser before 2005 under a grant of a restrictive covenant made in writing on or before October 7, 2003 between the purchaser and a taxpayer with whom the purchaser deals at arm's length.

For the purpose of applying s. 56.4 to a restrictive covenant granted before July 18, 2005,

(a) para. 56.4(3)(c) is to be read without reference to its subpara. (iv); and

(b) an election referred to in subsec. 56.4(9) is deemed to be filed on a timely basis if it is filed on or before the day that is 180 days after the day on which the amending legislation is assented to.

Department of Finance news release, October 7, 2003: *Minister Manley Proposes Amendments to the Tax Treatment of Restrictive Covenants*

John Manley, Deputy Prime Minister and Minister of Finance, today announced his intention to propose amendments to the *Income Tax Act* affecting the income tax treatment of amounts received or receivable by a taxpayer for granting a restrictive covenant.

The proposed amendments respond to recent Federal Court of Appeal decisions [*Fortino*, [2000] 1 C.T.C. 349, and *Manrell*, [2003] 3 C.T.C. 50 — ed.], which held that amounts receivable by a vendor on the sale of shares of a corporation, for an agreement not to compete with the business carried on by the corporation, were generally not taxable. The proposed amendments would alter this result and, subject to an exception described below, would treat any amount receivable in respect of a restrictive covenant as ordinary income for income tax purposes.

The proposed amendments include an exception to ordinary income treatment in circumstances where proceeds are receivable by a taxpayer in respect of an arm's length disposition of shares in a corporation, and other proceeds are receivable by the taxpayer for a restrictive covenant relating to the business carried on by the corporation. In these cases, the amount receivable for the covenant may be treated as part of the proceeds for the disposition of the shares, to the extent that the covenant increases the fair market value of the shares. Only the portion of the amount receivable for the covenant that is in excess of that treated as share proceeds will be taxable as ordinary income. This mechanism, which is described in more detail in the attached backgrounder, will also apply to dispositions of partnership interests.

These proposals will apply to amounts received or receivable after today, other than to amounts received before 2005 pursuant to a written agreement made on or before today between parties dealing at arm's length.

For further information: Andrée Houde, Public Affairs and Operations Division, (613) 996-8080; Mike Scandiffio, Communications Advisor, Office of the Deputy Prime Minister and Minister of Finance (613) 996-7861; Kerry Harnish, Tax Legislation Division, (613) 992-4385.

Backgrounder: Under the proposals announced today, amounts receivable for granting a restrictive covenant (that is not treated as a disposition of property for income tax purposes) will be taxable as ordinary income. However, exceptions will apply to amounts receivable for a restrictive covenant granted in the context of the sale of a business, either directly or indirectly through the sale of the shares of a corporation or an interest in a partnership.

In circumstances where a proprietor sells a business, an amount receivable by the proprietor for the goodwill of the business (eligible capital property) is generally taxable on capital account as an eligible capital receipt. This will generally also include situations where a restrictive covenant is provided for no consideration by a vendor to ensure that the value of that goodwill is not undermined by subsequent actions of the vendor.

Treatment on capital account may apply if a taxpayer sells shares of a corporation or an interest in a partnership to a party dealing at arm's length, and an amount is receivable by the taxpayer for granting a restrictive covenant (that is not property) relating to a business carried on by the corporation or the partnership. In these circumstances, the amount receivable by the taxpayer will be taxable on capital account to the extent that the taxpayer's share or partnership interest being disposed of would increase in value (when compared to a sale in which the taxpayer does not grant a covenant) if no amount were payable for the covenant. To that extent, the amount will be treated as additional sales proceeds from the disposition of the shares or partnership interest.

Where an amount is paid for a restrictive covenant in conjunction with the acquisition of a business, or of a share or partnership interest, the payer of the amount will be allowed to include the payment in the cost of the eligible capital expenditure or share/partnership interest.

Example:

Assumed facts:

- Terence and Isabelle each own 50 of 100 common shares of X Ltd., which carries on a business. The adjusted cost base of their shares is nil.
- In 2004, a person with whom they deal at arm's length, Y Ltd., offers to acquire all of the shares of X Ltd. for $2 million provided Terence (who has been much more closely involved in the management and operations of X Ltd.'s business) agrees not to compete with the business of Y Ltd. and X Ltd. after the sale. If no covenant is provided, Y Ltd. will pay $1.8 million. Terence and Isabelle agree to accept the offer to sell X Ltd., with the proceeds broken down as follows: $1.8 million for shares ($18,000 a share) plus $200,000 for Terence's covenant not to compete after the sale.
- Of total amounts payable to Terence and Isabelle, Terence will receive total proceeds of $1.1 million ($900,000 for shares and $200,000 for his covenant) and Isabelle will receive $900,000.

Application of proposed rules:

To Isabelle:

Because no proceeds were receivable by Isabelle for a restrictive covenant with respect to the business of X Ltd., her $900,000 in proceeds relate solely to the disposition of her shares of X Ltd.

1. Capital gain = $900,000 ($900,000 proceeds less nil adjusted cost base).

2. Ordinary income from covenant = Nil.

To Terence:

Because Terence will receive $200,000 for his restrictive covenant, he may add a portion of those proceeds to the $900,000 he is to receive for the sale of his shares of X Ltd. The portion of the $200,000 that can be added to those share proceeds is the amount by which the value of his share interest would increase if the covenant were provided for no consideration (when compared to the value of those shares if no covenant were provided).

1. Capital gain = $1,000,000 ($1,000,000 of proceeds less nil adjusted cost base).

where proceeds of disposition are:

- $900,000 in proceeds of disposition for shares of X Ltd.

plus

- $100,000 of the covenant's proceeds (which can be added to the proceeds of disposition from the sale of the shares), determined as follows:

Lesser of:

i. $200,000 (amount receivable)

ii. $100,000 (value by which Terence's share interest in X Ltd. would increase if covenant were provided for no consideration when compared with a sale in which no covenant is granted), computed as follows:

To the extent

- $1 million (50% of $2 million if covenant for no consideration)

exceeds

- $900,000 (50% of $1.8 million if no covenant granted).

2. Ordinary income = $100,000 ($200,000 less $100,000 allocated to proceeds of disposition for the shares).

Definitions [s. 56.4]: "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "capital property" — 54, 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "cumulative eligible capital" — 14(5), 248(1); "disposition" — 248(1); "eligible corporation", "eligible interest" — 56.4(1); "employee", "employer", "filing-due date" — 248(1); "goodwill amount" — 56.4(1); "individual", "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "permanent establishment" — not yet prescribed, may be Reg. 8201; "person", "prescribed", "property" — 248(1); "purchaser" — 56.4(3); "related" — 251(2)-(6); "resident in Canada" — 250; "restrictive covenant" — 56.4(1); "share" — 248(1); "taxable Canadian corporation" — 89(1), 248(1); "taxation year" — 249; "taxpayer" — 56.4(1), 248(1).

57. (1) Certain superannuation or pension benefits — Notwithstanding subparagraph 56(1)(a)(i), there shall be included in computing the income of a taxpayer in respect of a payment received by the taxpayer out of or under a superannuation or pension fund or plan the investment income of which has at some time been exempt from taxation under the *Income War Tax Act* by reason of an election for such exemption by the trustees or corporation administering the fund or plan, only that part of the

payment that remains after deducting the proportion thereof

(a) that the total of the amounts paid by the taxpayer into or under the fund or plan during the period when its income was exempt by reason of that election is of the total of all amounts paid by the taxpayer into or under the fund or plan, or

(b) that the total of the amounts paid by the taxpayer into or under the fund or plan during the period when its income was exempt by reason of that election together with simple interest on each amount so paid from the end of the year of payment thereof to the commencement of the superannuation allowance or pension at 3% per annum is of the total of all amounts paid by the taxpayer into or under the fund or plan together with simple interest, computed in the same manner, on each amount so paid,

whichever is the greater.

Related Provisions: 57(2)–(4) — Exceptions and limitations; 212(1)(h)(iv) — Parallel exemption from non-resident withholding tax.

(2) Exception — This section does not apply in respect of a payment received by a taxpayer out of or under a superannuation or pension fund or plan if the taxpayer made no payment into or under the fund or plan.

(3) Limitation — Where a payment, to which subsection (1) would otherwise be applicable, is received by a taxpayer out of or under a superannuation or pension fund or plan in respect of a period of service for part only of which the taxpayer made payments into or under the fund or plan, subsection (1) is applicable only to that part of the payment which may reasonably be regarded as having been received in respect of the period for which the taxpayer made payments into or under the fund or plan and any part of the payment which may reasonably be regarded as having been received in respect of a period for which the taxpayer made no payments into or under the fund or plan shall be included in computing the taxpayer's income for the year without any deduction whatever.

(4) Certain payments from pension plan — Where a taxpayer, during the period from August 15, 1944 to December 31, 1945, made a contribution in excess of $300 to or under a registered pension plan in respect of services rendered by the taxpayer before the taxpayer became a contributor, there shall be included in computing the taxpayer's income in respect of a payment received by the taxpayer out of or under the plan only that part of the payment that remains after deducting the proportion thereof that the contribution so made minus $300 is of the total of the amounts paid by the taxpayer to or under the plan.

Related Provisions: 212(1)(h)(iv) — Parallel benefits — non-residents.

(5) Payments to widow, etc., of contributor — Where, in respect of the death of a taxpayer who was a contributor to or under a superannuation or pension fund or plan described in subsection (1) or (4), a payment is received by a person in a taxation year out of or under the fund or plan, there shall be included in computing the income of that person for the year in respect thereof only that part of the payment that would, if the payment had been received by the taxpayer in the year out of or under the fund or plan, have been included by virtue of this section in computing the income of the taxpayer for the year.

Definitions [s. 57]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "registered pension plan", "superannuation or pension benefit" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 57]: IT-499R: Superannuation or pension benefits.

58. (1) Government annuities and like annuities — In determining the amount that shall be included in computing the income of a taxpayer in respect of payments received by the taxpayer in a taxation year under contracts entered into before May 26, 1932 with the Government of Canada or annuity contracts like those issued under the *Government Annuities Act* entered into before that day with the government of a province or a corporation incorporated or licensed to carry on an annuities business in Canada, there may be deducted from the total of the payments received the lesser of

(a) the total of the amounts that would have been so received if the contracts had continued in force as they were immediately before June 25, 1940, without the exercise of any option or contractual right to enlarge the annuity by the payment of additional sums or premiums unless those additional sums or premiums had been paid before that day, and

(b) $5,000.

Related Provisions: 58(3) — Limitation; 58(4) — Capital element.

(2) Annuities before 1940 — In determining the amount that shall be included in computing the income of a taxpayer in respect of payments received by the taxpayer in a taxation year under annuity contracts entered into after May 25, 1932, and before June 25, 1940, with the Government of Canada or annuity contracts like those issued under the *Government Annuities Act* entered into during that period with the government of a province or a corporation incorporated or licensed to carry on an annuities business in Canada, there may be deducted from the total of the payments received the lesser of

(a) the total of the amounts that would have been received under the contracts if they had continued in force as they were immediately before June 25, 1940, without the exercise of any option or contractual right to enlarge the annuity by the payment of additional sums or premiums unless such additional sums or premiums had been paid before that day, and

(b) $1,200.

Related Provisions: 58(3) — Limitation; 58(4) — Capital element.

(3) Limitation — Where a taxpayer has received annuity payments in respect of which the taxpayer would otherwise be entitled to make deductions under both subsection (1) and subsection (2),

(a) if the amount deductible under subsection (1) is $1,200 or more, [the taxpayer] may not make a deduction under subsection (2); and

(b) if the amount deductible under subsection (1) is less than $1,200, the taxpayer may make one deduction computed as though subsection (2) applied to all contracts entered into before June 25, 1940.

Related Provisions: 58(4) — Capital element.

(4) Capital element — The amount remaining after deducting from the total of the annuity payments to which this section applies received in a taxation year the deductions permitted by subsection (1), (2) or (3) shall be deemed to be the annuity payment in respect of which the capital element is deductible under paragraph 60(a).

(5) Spouses [or common-law partners] — Where a taxpayer and the taxpayer's spouse or common-law partner each received annuity payments in respect of which they may deduct amounts under this section, the amount deductible shall be computed as if their annuities belonged to one person and may be deducted by either of them or be apportioned between them in such manner as is agreed to by them or, in case of disagreement, as the Minister determines.

History: Subsec. 58(5) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subsec. 58(5) substituted by 1994, c. 7, Sch. VIII (1993, c. 24), s. 19, applicable after 1992. Subsec. 58(5) formerly read:

> (5) Husband and wife — Where a husband and wife have each received annuity payments in respect of which they may make a deduction under this section, the amount deductible shall be computed as if their annuities belonged to one person and may be deducted by either of them or apportioned between them in such manner as may be agreed by them or, in case of disagreement, as the Minister may determine.

(6) Pension benefits — This section does not apply to superannuation or pension benefits received out of or under a registered pension plan.

(7) Enlargement of annuity — For the purpose of this section, an annuity shall be deemed to have been enlarged on or after June 25, 1940, if what is payable under the contract has, at any such time, been increased whether by increasing the amount of each periodic payment, by increasing the number of payments or otherwise.

Definitions [s. 58]: "amount", "annuity", "business", "common-law partner" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "Minister" — 248(1); "province" — *Interpretation Act* 35(1); "registered pension plan" — 248(1); "superannuation or pension benefit" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

59. (1) Consideration for foreign resource property — Where a taxpayer has disposed of a foreign resource property, there shall be included in computing the taxpayer's income for a taxation year the amount, if any, by which

(a) the portion of the taxpayer's proceeds of disposition from the disposition of the property that becomes receivable in the year

exceeds

(b) the total of

(i) all amounts each of which is an outlay or expense made or incurred by the taxpayer for the purpose of making the disposition that was not otherwise deductible for the purposes of this Part, and

(ii) where the property is a foreign resource property in respect of a country, the amount designated under this subparagraph in prescribed form filed with the taxpayer's return of income for the year in respect of the disposition.

Related Provisions: 59(1.1) — Look-through rule for partnerships; 66.21(1)"cumulative foreign resource expense"F(a) — Amount under 59(1)(b)(ii); 72(2) — Election by legal representative and transferee re reserves; 87(2)(p) — Consideration for resource property disposition; 96(1)(d)(i) — Partnerships — no deduction for resource expenses; 104(5.2) — Trusts — 21-year deemed disposition; 248(1)"foreign resource property" — Meaning of foreign resource property in respect of a country.

History: Subsec. 59(1) amended by 2001, c. 17, subsec. 40(1), applicable to taxation years that begin after 2000. It formerly read:

> (1) Where a taxpayer has disposed of a foreign resource property, the amount, if any, by which the taxpayer's proceeds of disposition therefrom exceed any outlays or expenses made or incurred by the taxpayer for the purpose of making the disposition and that were not otherwise deductible for the purposes of this Part shall be included in computing the taxpayer's income for a taxation year to the extent that the proceeds become receivable in that year.

Interpretation Bulletins: IT-125R4: Dispositions of resource property.

(1.1) Partnerships [look-through rule] — Where a taxpayer is a member of a partnership in a fiscal period of the partnership, the taxpayer's share of the amount that would be included under subsection (1) in respect of a disposition of a foreign resource property in computing the partnership's income for a taxation year if the partnership were a person, the fiscal period were a taxation year, subsection (1) were read without reference to subparagraph (1)(b)(ii) and section 96 were read without reference to paragraph 96(1)(d) is deemed to be proceeds of disposition that become receivable by the taxpayer at the end of the fiscal period in respect of a disposition of the property by the taxpayer.

Proposed Amendment — 59(1.1)

Letter from Dept. of Finance, July 16, 2004: See under 53(1)(e).

Related Provisions: 66.2(6) — Parallel rule for CCDE; 66.4(6) — Parallel rule for CCOGPE.

History: Subsec. 59(1.1) added by 2001, c. 17, subsec. 40(1), applicable to fiscal periods that begin after 2000.

(2) Deduction under former section 64 in preceding year — There shall be included in computing a taxpayer's income for a taxation year any amount that has been deducted as a reserve under subsection 64(1), (1.1) or (1.2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in computing the taxpayer's income for the immediately preceding taxation year.

Related Provisions: 66(5) — Dealers; 85(1) — Transfer of property to corporation by shareholder; 85(2) — Transfer of property to corporation from partnership; 88 — Winding-up; 115(4) — Non-resident's income earned on Canadian resource property.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

(3), (3.1) [Repealed under former Act]

Selected Cases [subsec. 59(3.1)]: *De Luca v. MNR*, [1991] 2 C.T.C. 243 (FCA) (Income from payment of balance of purchase price on transaction completed prior to 1972 validly assessed in year of receipt).

(3.2) Recovery of exploration and development expenses — There shall be included in computing a taxpayer's income for a taxation year

(a) any amount referred to in paragraph 66(12.4)(b);

(b) any amount referred to in subsection 66.1(1);

(c) any amount referred to in subsection 66.2(1);

(c.1) any amount referred to in subsection 66.21(3);

(d) any amount referred to in subparagraph 66(10.4)(b)(ii); and

(e) any amount referred to in paragraph 66(10.4)(c).

Related Provisions: 66(5) — Dealers; 66.21(1)"cumulative foreign resource expense"B — Amount under 59(3.2)(c.1); 66.21(3) — Amount to be included in income; 96(1)(d)(i) — Partnerships — no deduction for resource expenses; 104(5.2) — Trusts — 21-year deemed disposition; 110.6(1) — "investment income"; 115(1)(a)(iii.1) — Non-resident's taxable income earned in Canada; 125.11 — Resource rate reduction 2003-06.

History: Para. 59(3.2)(c.1) added by 2001, c. 17, subsec. 40(2), applicable to taxation years that begin after 2000.

I.T. Application Rules: 29(11)(b)(iv); 29(12)(b)(iv) (undeducted expenses incurred before 1972).

Interpretation Bulletins: IT-125R4: Dispositions of resource property.

(3.3) Amounts to be included in income — There shall be included in computing a taxpayer's income for a taxation year

(a) 33⅓% of the total of all amounts, each of which is the stated percentage of

(i) an amount that became receivable by the taxpayer after December 31, 1983 and in the year (other than an amount that would have been a Canadian oil and gas exploration expense if it had been an expense incurred by the taxpayer at the time it became receivable),

(ii) an amount that became receivable by the taxpayer after December 31, 1983 and in the year that would have been a Canadian oil and gas exploration expense described in paragraph (c) or (d) of the definition "Canadian exploration expense" in subsection 66.1(6) in respect of a qualified tertiary oil recovery project if it had been an expense incurred by the taxpayer at the time it became receivable, or

(iii) 30% of an amount that became receivable by the taxpayer in the year and in 1984 that would have been a Canadian oil and gas exploration expense (other than an expense described in paragraph (c) or (d) of the definition "Canadian exploration expense" in subsection 66.1(6) in respect of a qualified tertiary oil recovery project) incurred in respect of non-conventional lands if it had been an expense incurred by the taxpayer at the time it became receivable

and in respect of which the consideration given by the taxpayer was a property (other than a share, depreciable property of a prescribed class or a Canadian resource property) or services the cost of which may reasonably be regarded as having been an expenditure that was added in computing the earned depletion base of the taxpayer or in computing the earned depletion base of a predecessor where the taxpayer is a successor corporation to the predecessor;

(b) 33⅓% of the total of all amounts, each of which is the stated percentage of an amount in respect of a disposition of depreciable property of a prescribed class (other than a disposition of such property that had been used by the taxpayer to any person with whom the taxpayer was not dealing at arm's length) of the taxpayer after December 11, 1979 and in the year, the capital cost of which was added in computing the earned depletion base of the taxpayer or of a person with whom the taxpayer was not dealing at arm's length or in computing the earned depletion base of a predecessor where the taxpayer is a successor corporation to the predecessor, that is equal to the lesser of

(i) the proceeds of disposition of the property, and

(ii) the capital cost of the property to the taxpayer, the person with whom the taxpayer was not dealing at arm's length or the predecessor, as the case may be, computed as if no amount had been added thereto by virtue of paragraph 21(1)(b) or subsection 21(3);

(c) 33⅓% of the total of all amounts, each of which is an amount in respect of a disposition of depreciable property of a prescribed class that is bituminous sands equipment (other than a disposition of such property that had been used by the taxpayer to any person with whom the taxpayer was not dealing at arm's length) of the taxpayer after December 11, 1979 and before 1990 and in the year, the capital cost of which was added in computing the supplementary depletion base of the taxpayer or of a person with whom the taxpayer was not dealing at arm's length or in computing the supplementary depletion base of a predecessor where the taxpayer is a successor corporation to the predecessor, that is equal to the lesser of

(i) the proceeds of disposition of the property, and

(ii) the capital cost of the property to the taxpayer, the person with whom the taxpayer was not dealing at arm's length or the predecessor, as the case may be, computed as if no amount had been added thereto by virtue of paragraph 21(1)(b) or subsection 21(3);

(d) 50% of the total of all amounts, each of which is an amount in respect of a disposition of depreciable property of a prescribed class that is enhanced recovery equipment (other than a disposition of such property that had been used by the taxpayer to any person with whom the taxpayer was not dealing at arm's length) of the taxpayer after December 11, 1979 and before 1990 and in the year, the capital cost of which was added in computing the supplementary depletion base of the taxpayer or of a person with whom the taxpayer was not dealing at arm's length or in computing the supplementary depletion base of a predecessor where the taxpayer is a successor corporation to the predecessor, that is equal to the lesser of

(i) the proceeds of disposition of the property, and

(ii) the capital cost of the property to the taxpayer, the person with whom the taxpayer was not dealing at arm's length or the predecessor, as the case may be, computed as if no amount had been added thereto by virtue of paragraph 21(1)(b) or subsection 21(3);

(e) 66⅔% of the total of all amounts, each of which is an amount that became receivable by the taxpayer after December 11, 1979 and before 1990 and in the year and in respect of which the consideration given by the taxpayer was a property (other than a share or a Canadian resource property) or services the cost of which may reasonably be regarded as having been an expenditure in connection with an oil or gas well in respect of which an amount was included in computing the taxpayer's frontier exploration base or in computing the frontier exploration base of a predecessor where the taxpayer is a successor corporation to the predecessor; and

(f) 33⅓% of the total of all amounts, each of which is the stated percentage of an amount that became receivable by the taxpayer after April 19, 1983 and in the year and in respect of which the consideration given by the taxpayer was a property (other than a share, depreciable property of a prescribed class or a Canadian resource property) or services the cost of which may reasonably be regarded as having been an expenditure that was included in computing the mining exploration depletion base of the taxpayer or in computing the mining exploration depletion base of a specified predecessor of the taxpayer.

Related Provisions: 66(5) — Dealers; 66.1(2) — Deduction for principal business corporation; 87(1.2) — Amalgamation — continuing corporation; 88(1.5) — Winding-up — Parent deemed continuation of subsidiary.

Regulations: 1105 (classes in Schedule II are prescribed).

(3.4) Definitions — For the purposes of this subsection and subsection (3.3),

"specified predecessor" of a taxpayer means a person who is a predecessor of

(a) the taxpayer, or

(b) a person who is a specified predecessor of the taxpayer;

"stated percentage" means

(a) in respect of an amount described in paragraph (3.3)(a) or (f) that became receivable by a taxpayer,

(i) 100% where the amount became receivable before July, 1988,

(ii) 50% where the amount became receivable after June, 1988 and before 1990, and

(iii) 0% where the amount became receivable after 1989, and

(b) in respect of the disposition described in paragraph (3.3)(b) of a depreciable property of a taxpayer,

(i) 100% where the property was disposed of before July, 1988,

(ii) 50% where the property was disposed of after June, 1988 and before 1990, and

(iii) 0% where the property was disposed of after 1989;

Related Provisions: 59(3.5) — Variation of stated percentage.

"successor corporation" means a corporation that has at any time after November 7, 1969 acquired, by purchase, amalgamation, merger, winding-up or otherwise (other than pursuant to an amalgamation that is described in subsection 87(1.2) or a winding-up to which the rules in subsection 88(1) apply), from another person (in this subsection and subsection (3.3) referred to as the "predecessor") all or substantially all of the Canadian resource properties of the predecessor in circumstances in which any of subsection 29(25) of the *Income Tax Application Rules* and subsections 66.7(1) and (3) to (5) apply to the corporation.

(3.5) Variation of stated percentage — Notwithstanding the definition "stated percentage" in subsection (3.4), where

(a) an amount became receivable by a taxpayer within 60 days after the end of 1989 in respect of a disposition of property or services, and

(b) the person to whom the disposition was made is a corporation that, before the end of 1989, had issued, or had undertaken to issue, a flow-through share and the corporation renounces under subsection 66(12.66), effective on December 31, 1989, an amount in respect of Canadian exploration expenses that includes an expenditure in respect of the amount referred to in paragraph (a),

the stated percentage in respect of the amount described in paragraph (a) shall be 50%.

(4) [Repealed under former Act]

(5) Definition of "proceeds of disposition" — In this section, "proceeds of disposition" has the meaning assigned by section 54.

History: Subsec. 59(5) amended by 2001, c. 17, s. 40(3), applicable to transactions and events that occur after December 23, 1998. It formerly read:

(5) In this section, "disposition" and "proceeds of disposition" have the meanings assigned by section 54.

Interpretation Bulletins: IT-125R4: Dispositions of resource property.

(6) Definitions in regulations under section 65 — In this section, "bituminous sands equipment", "Canadian oil and gas exploration expense", "earned depletion base", "enhanced recovery equipment", "frontier exploration base", "mining exploration depletion base", "non-conventional lands", "qualified tertiary oil recovery project" and "supplementary depletion base" have the meanings assigned by regulations made for the purposes of section 65.

Regulations [subsec. 59(6)]: Part XII (Reg. 1206(1) and others).

Definitions [s. 59]: "amount" — 248(1); "bituminous sands equipment" — 59(6), Reg. 1206(1); "arm's length" — 251(1); "Canada" — 255; "Canadian exploration expense" — 66.1(6), 248(1); "Canadian oil and gas exploration expense" — 59(6), Reg. 1206(1); "Canadian resource property" — 66(15), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "depreciable property" — 13(21), 248(1); "disposition" — 248(1); "earned depletion base" — 59(6), Reg. 1202(1), Reg. 1205(1); "enhanced recovery equipment" — 59(6), Reg. 1206(1); "fiscal period" — 249.1; "flow-through share", "foreign resource property" — 66(15), 248(1); "foreign resource property in respect of a country" — 248(1); "frontier exploration base" — 59(6), Reg. 1207(2); "mining exploration depletion base" — 59(6), Reg. 1203(2), (3); "non-conventional lands" — 59(6), Reg. 1206(1); "oil or gas well" — 248(1); "person", "prescribed" — 248(1); "proceeds of disposition" — 54, 59(5); "property", "share" — 248(1); "qualified tertiary oil recovery project" — 59(6), Reg. 1206(1); "specified predecessor" — 59(3.4); "stated percentage" — 59(3.4); "successor corporation" — 59(3.4); "supplementary depletion base" — 59(6), Reg. 1212(2)–(4); "taxation year" — 249; "taxpayer" — 248(1).

59.1 Involuntary disposition of resource property — Where in a particular taxation year an amount is deemed by subsection 44(2) to have become receivable by a taxpayer as proceeds of disposition described in paragraph (d) of the definition "proceeds of disposition" in section 54 of any Canadian resource property and the taxpayer elects, in the taxpayer's return of income under this Part for the year, to have this section apply to those proceeds of disposition,

(a) there shall be deducted in computing the taxpayer's income for the particular year such amount as the taxpayer may claim, not exceeding the least of,

(i) the total of all those proceeds so becoming receivable in the particular year by the taxpayer to the extent that they have been included in the amount referred to in paragraph (a) of the description of F in the definition "cumulative Canadian development expense" in subsection 66.2(5) or in paragraph (a) of the description of F in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5) in respect of the taxpayer,

(ii) the amount required to be included in computing the taxpayer's income for the particular year by virtue of paragraph 59(3.2)(c), and

(iii) the taxpayer's income for the particular year determined without reference to this section;

(b) the amount, if any, by which

(i) the amount deducted under paragraph (a)

exceeds

(ii) the total of such of the Canadian exploration expenses, Canadian development expenses and Canadian oil and gas property expenses made or in-

curred by the taxpayer in the taxpayer's ten taxation years immediately following the particular year as were designated by the taxpayer in the taxpayer's return of income for the year in which the expense was made or incurred,

shall be included in computing the taxpayer's income for the particular year and, notwithstanding subsections 152(4) and (5), such reassessment of the taxpayer's tax, interest or penalties for any year shall be made as is necessary to give effect to such inclusion; and

(c) any Canadian exploration expense, Canadian development expense or Canadian oil and gas property expense made or incurred by the taxpayer and designated in the taxpayer's return of income in accordance with subparagraph (b)(ii) shall (except for the purposes of subsections 66(12.1), (12.2), (12.3) and (12.5) and for the purpose of computing the taxpayer's earned depletion base within the meaning assigned by regulations made for the purposes of section 65) be deemed not to be a Canadian exploration expense, a Canadian development expense or a Canadian oil and gas property expense, as the case may be, of the taxpayer.

Related Provisions: 66(18) — Members of partnerships.

History: That portion of s. 59.1 preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 33, applicable with respect to amounts deemed to have become receivable in taxation years beginning after 1984. That portion formerly read:

59.1 Involuntary disposition of resource property — Where in a particular taxation year an amount is deemed by subsection 44(2) to have become receivable by a taxpayer as proceeds of disposition described in paragraph (d) of the definition "proceeds of disposition" in section 54 of any property described in subsection 59(1.1), (1.2) or (3.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, and the taxpayer has filed a return of the taxpayer's income for the year, as required by section 150, in which the taxpayer has elected to have this section apply in respect of those proceeds of disposition,

Definitions [s. 59.1]: "amount" — 248(1); "Canadian development expense" — 66.2(5), 248(1); "Canadian exploration expense" — 66.1(6), 248(1); "Canadian oil and gas property expense" — 66.4(5), 248(1); "Canadian resource property" — 66(15), 248(1); "earned depletion base" — Reg. 1202(1), Reg. 1205(1); "Minister", "property", "regulations" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 59.1]: IT-125R4: Dispositions of resource properties.

Subdivision e — Deductions in Computing Income

60. Other deductions — There may be deducted in computing a taxpayer's income for a taxation year such of the following amounts as are applicable:

(a) **capital element of annuity payments** — the capital element of each annuity payment included by virtue of paragraph 56(1)(d) in computing the taxpayer's income for the year, that is to say,

(i) if the annuity was paid under a contract, an amount equal to that part of the payment determined in prescribed manner to have been a return of capital, and

(ii) if the annuity was paid under a will or trust, such part of the payment as can be established by the recipient not to have been paid out of the income of the estate or trust;

Related Provisions: 58(4) — Government and similar annuities; 94.2(11)(b), (c) — No application to foreign insurance policy of foreign investment entity; 110.6(1) — "investment income"; 147.4(4) — Deemed annuity on conversion of pension rights before 1997 to annuity contract commencing after age 69; 148(9)"adjusted cost basis"K — Reduction in adjusted cost basis. See also at end of s. 60.

Selected Cases [para. 60(a)]: *Speerstra v. MNR*, [1973] C.T.C. 179 (FCTD) (Payments to taxpayer under annuity contracts not refunds of capital).

Regulations: 300 (prescribed manner).

Interpretation Bulletins: IT-85R2: Health and welfare trusts for employees; IT-415R2: Deregistration of registered retirement savings plans (archived).

I.T. Technical News: 25 (health and welfare trusts).

Advance Tax Rulings: ATR-68: Structured settlement.

(b) **[spousal or child] support** — the total of all amounts each of which is an amount determined by the formula

$$A - (B + C)$$

where

A is the total of all amounts each of which is a support amount paid after 1996 and before the end of the year by the taxpayer to a particular person, where the taxpayer and the particular person were living separate and apart at the time the amount was paid,

B is the total of all amounts each of which is a child support amount that became payable by the taxpayer to the particular person under an agreement or order on or after its commencement day and before the end of the year in respect of a period that began on or after its commencement day, and

C is the total of all amounts each of which is a support amount paid by the taxpayer to the particular person after 1996 and deductible in computing the taxpayer's income for a preceding taxation year;

Related Provisions: 4(3) — Deductions applicable; 56(1)(b) — Parallel income inclusion for recipient; 56(1)(c.2) — Reimbursement of support payments; 56.1(4), 60.1(4) — Definitions of "commencement day", "support amount" and "child support amount"; 60.1(1), (2) — Payments to third parties; 60.1(3) — Payments made before agreement signed or court order made; 118(5) — No personal credits in respect of person to whom support paid; 146(1)"earned income"(f) — Amount under 60(b) reduces RRSP earned income; 212(1)(f) — No withholding tax on support paid to non-resident; 252(3) — Extended meaning of "spouse" and "former spouse"; 257 — Formula cannot calculate to less than zero; Canada-U.S. Tax Treaty:Art. XVIII:6 — Exemptions for cross-border alimony and support. See additional Related Provisions and Definitions at end of s. 60.

History: The description of B in para. 60(b) amended by 1998, c. 19, subsec. 99(1), applicable to amounts paid after 1996. That description formerly read:

B is the total of all amounts each of which is a child support amount that became payable by the taxpayer to the particular person under an agreement or order on or after its commencement day and before the end of the year in respect of a period that began after its commencement day, and

Para. 60(b) amended by 1997, c. 25, s. 10, applicable to amounts received after 1996. Para. (b) formerly read:

(b) alimony payments — an amount paid by the taxpayer in the year as alimony or other allowance payable on a periodic basis for the maintenance of the recipient, children of the recipient or both the recipient and the children, if the taxpayer, because of the breakdown of the taxpayer's marriage, was living separate and apart from the spouse or former spouse to whom the taxpayer was required to make the payment at the time the payment was made and throughout the remainder of the year and the amount was paid under a decree, order or judgment of a competent tribunal or under a written agreement;

Para. 60(b) substituted for paras. (b) and (c) by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 20(1), applicable to amounts received under a decree, order or judgment of a competent tribunal or under a written agree-

ment, with respect to a breakdown of a marriage occurring after 1992. Paras. (b) and (c) formerly read:

> (b) alimony payments — an amount paid by the taxpayer in the year, pursuant to a decree, order or judgment of a competent tribunal or pursuant to a written agreement, as alimony or other allowance payable on a periodic basis for the maintenance of the recipient thereof, children of the marriage, or both the recipient and children of the marriage, if the taxpayer was living apart from, and was separated pursuant to a divorce, judicial separation or written separation agreement from, the taxpayer's spouse or former spouse to whom the taxpayer was required to make the payment at the time the payment was made and throughout the remainder of the year;
>
> (c) maintenance payments — an amount paid by the taxpayer in the year, pursuant to an order of a competent tribunal, as an allowance payable on a periodic basis for the maintenance of the recipient thereof, children of the recipient, or both the recipient and children of the recipient if, at the time the payment was made and throughout the remainder of the year, the taxpayer was living apart from the taxpayer's spouse to whom the taxpayer was required to make the payment;

Selected Cases [para. 60(b)]: *Nistor v. R.*, [2004] 1 C.T.C. 2849 (TCC) ("Custody" extended to child living in university dormitory); *Fitzpatrick v. R.*, [2003] 4 C.T.C. 2350 (TCC) (Paternity agreement sufficient basis for deducting support amounts); *Foley v. R.*, [2000] 4 C.T.C. 2016 (TCC) (Lawyers can bind clients if properly authorized); *Demey v. R.*, [2000] 2 C.T.C. 2026 (TCC) (No legal "custody" of adult children); *Leet v. R.*, [1999] 2 C.T.C. 2477 (TCC) (Payment not periodic where even death would not affect liability to pay); *Hak v. R.*, [1999] 1 C.T.C. 2633 (TCC) (Failure to mention that provision should apply to payments not fatal to deductibility); *Paustian v. Canada*, [1995] 1 C.T.C. 2395 (TCC) (Entitlement to deduction under para. 60(b) disqualifies deduction under s. 118); *Burgess v. MNR*, [1991] 1 C.T.C. 163 (FCTD) (Exchange of solicitors' letters not "written separation agreement"); *Caston v. Canada*, [1990] 1 C.T.C. 439 (FCTD); appealed to FCA (May 1990), File A-348-90 (Payments pursuant to oral agreement and payments made after application adjourned *sine die* not deductible); *McKimmon v. R.*, [1990] 1 C.T.C. 109 (FCA) (Five annual maintenance payments not deductible; factors to be considered); *Larivière v. R.*, [1989] 1 C.T.C. 297 (FCA) (Three unequal annual maintenance payments, intended as alimentary pension for former spouse, deductible); *Gagnon v. R.*, [1986] 1 C.T.C. 410 (SCC) (Payments adjustable according to municipal and school taxes constituted an "allowance"); *Hanlin v. R.*, [1985] 1 C.T.C. 54 (FCTD) (Monthly and annual payments deductible as periodic payments); *R. v. Taylor Estate*, [1984] C.T.C. 244 (FCTD) (Payments to "spouse or former spouse" not deductible where marriage invalid); *Ahern v. R.*, [1982] C.T.C. 362 (FCTD) (Payments made for benefit of child, not a child of the marriage, not deductible); *R. v. Dorion*, [1981] C.T.C. 136 (FCTD) (Lump sum in consideration for waiver of benefits under marriage contract not deductible); *Lavoie v. R.*, [1979] C.T.C. 48 (FCTD) (Interest on sum owed to taxpayer by province, included in lump sum paid, not deductible); *Hardtman v. R.*, [1977] C.T.C. 358 (FCTD) (Maintenance payments prior to separation agreement not deductible); *R. v. Guay*, [1977] C.T.C. 266 (FCA) (Payments for medical and other expenses paid directly to third parties for benefit of former spouse and children not deductible); *R. v. Pascoe*, [1975] C.T.C. 656 (FCA) (Payments of medical and educational expenses on behalf of children not "allowance"); *A.G. Can. v. Weaver*, [1975] C.T.C. 646 (FCA) (Payments on account of mortgage and utility expenses not "allowance").

Regulations: 100(3)(d) (no source withholding on amount deductible under 60(b) where it is held back by employer).

Interpretation Bulletins: IT-325R2: Property transfers after separation, divorce and annulment; IT-513R: Personal tax credits; IT-530R: Support payments.

Forms: T1157: Election for child support payments; T1158: Registration of family support payments; P102: Support payments (pamphlet).

(c), (c.1) [Repealed]

History: Para. 60(c) repealed by 1997, c. 25, s. 10, applicable to amounts received after 1996. Para. (c) formerly read:

> (c) maintenance — an amount paid by the taxpayer in the year as an allowance payable on a periodic basis for the maintenance of the recipient, children of the recipient or both the recipient and the children, if
>
> (i) at the time the amount was paid and throughout the remainder of the year the taxpayer was living separate and apart from the recipient,
>
> (ii) the taxpayer is the natural parent of a child of the recipient, and
>
> (iii) the amount was received under an order made by a competent tribunal in accordance with the laws of a province;

Para. 60(c) substituted for para. (c.1) by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 20(2), applicable with respect to orders made after 1992. Para. (c.1) formerly read:

> (c.1) idem — an amount paid by the taxpayer in the year, pursuant to an order made by a competent tribunal in accordance with the laws of a province, as an allowance payable on a periodic basis for the maintenance of the recipient thereof, children of the recipient, or both the recipient and children of the recipient if
>
> (i) the order was made
>
> (A) after February 10, 1988, or
>
> (B) before February 11, 1988 and the taxpayer and the recipient jointly elected in writing before the end of the year to have this paragraph and paragraph 56(1)(c.1) apply with respect to the payment,
>
> (ii) at the time the payment was made and throughout the remainder of the year, the taxpayer was living apart from the recipient, and
>
> (iii) the taxpayer required to pay the amount is an individual of the opposite sex who
>
> (A) before the date of the order cohabited with the recipient in a conjugal relationship, or
>
> (B) is the natural parent of a child of the recipient;

Selected Cases [para. 60(c)]: *MNR v. Hastie*, [1974] C.T.C. 131 (FCTD) (Mortgage payments, made to mortgagee, upon alimentary allowance for benefit of wife and children deductible).

(c.2) **repayment of support payments** — an amount paid by the taxpayer in the year or one of the 2 preceding taxation years under a decree, order or judgment of a competent tribunal as a repayment of an amount included under paragraph 56(1)(b) or (c), or under paragraph 56(1)(c.1) (as it applies, in computing the taxpayer's income for the year or a preceding taxation year, to decrees, orders and judgments made before 1993) to the extent that it was not so deducted for a preceding taxation year;

Related Provisions: 56(1)(c.2) — Parallel rule for other taxpayer; 146(1)"earned income"(f) — Amount deducted under 60(c.2) reduces RRSP earned income.

History: Para. 60(c.2) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 20(3), applicable to payments made after 1990.

Interpretation Bulletins: IT-530R: Support payments.

(d) **interest on death duties** — an amount equal to annual interest accruing within the taxation year in respect of succession duties, inheritance taxes or estate taxes;

Related Provisions: 4(3) — Deductions applicable. See additional Related Provisions at end of s. 60.

Interpretation Bulletins: IT-203: Interest on death duties (archived); IT-533: Interest deductibility and related issues.

(e) **CPP/QPP contributions on self-employed earnings** — ½ of the lesser of

(i) the total of all amounts each of which is an amount payable by the taxpayer in respect of self-employed earnings for the year as a contribution under the *Canada Pension Plan* or under a provincial pension plan within the meaning assigned by section 3 of that Act, and

(ii) the maximum amount of such contributions payable by the taxpayer for the year under the plan;

Related Provisions: 118.7 — Credit for 16% of other half of contributions.

History: Para. 60(e) added by 2001, c. 17, s. 41, applicable to 2001 *et seq.*

(f) [Repealed under former Act]

Proposed Addition — 60(f)

(f) **restrictive covenant — bad debt** — all debts owing to a taxpayer that are established by the taxpayer to have become bad debts in the taxation year and that are in respect of an amount included because of the operation of subsection 6(3.1) or 56.4(2) in computing the taxpayer's income in a preceding taxation year;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 71(1), will add para. 60(f), applicable after October 7, 2003.

Technical Notes: New paragraph 60(f) provides a taxpayer with a deduction for a bad debt in respect of an amount that was receivable on a restrictive covenant and previously included in computing the taxpayer's income because of new section 56.4 (or new subsection 6(3.1)).

Related Provisions: 56(1)(m) — Bad debt recovered — inclusion in income.

(g)–(h) [Repealed under former Act]

(i) **premium or payment under RRSP or RRIF** — any amount that is deductible under section 146 or subsection 147.3(13.1) in computing the income of the taxpayer for the year;

Related Provisions: 4(3) — Deductions applicable; 127.52(1)(a) — Limitation on deduction for minimum tax purposes; 146(5), (5.1), (6), (6.1), (8.2) — RRSP payments and premiums deductible; 152(6) — Reassessment. See additional Related Provisions at end of s. 60.

History: Para. 60(i) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 20(4), applicable to 1992 *et seq.* Para. (i) formerly read:

(i) premium or payment under RRSP — any amount that by virtue of section 146 is deductible in computing the income of the taxpayer for the taxation year;

Regulations: 100(3)(c) (payroll deduction of RRSP contribution reduces source withholding).

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans.

(j) **transfer of superannuation benefits [to RRSP]** — such part of the total of all amounts each of which is

(i) a superannuation or pension benefit (other than any amount in respect of the benefit that is deducted in computing the taxable income of the taxpayer for a taxation year because of subparagraph 110(1)(f)(i) or a benefit that is part of a series of periodic payments) payable out of or under a pension plan that is not a registered pension plan, attributable to services rendered by the taxpayer or a spouse or common-law partner or former spouse or common-law partner of the taxpayer in a period throughout which that person was not resident in Canada, and included in computing the income of the taxpayer for the year because of subparagraph 56(1)(a)(i), or

(ii) an eligible amount in respect of the taxpayer for the year under section 60.01, subsection 104(27) or (27.1) or paragraph 147(10.2)(d),

as

(iii) is designated by the taxpayer in the taxpayer's return of income under this Part for the year, and

(iv) does not exceed the total of all amounts each of which is an amount paid by the taxpayer in the year or within 60 days after the end of the year

(A) as a contribution to or under a registered pension plan for the taxpayer's benefit, other than the portion thereof deductible under paragraph 8(1)(m) in computing the taxpayer's income for the year, or

(B) as a premium (within the meaning assigned by subsection 146(1)) under a registered retirement savings plan under which the taxpayer is the annuitant (within the meaning assigned by subsection 146(1)), other than the portion thereof designated for a taxation year for the purposes of paragraph (l),

to the extent that the amount was not deducted in computing the taxpayer's income for a preceding taxation year;

Related Provisions: 60(j.01) — Transfer of surplus; 60.2(1) — Refund of undeducted past service AVCs; 104(27) — Pension benefits; 104(27.1) — DPSP benefits; 127.52(1)(a) — Limitation on deduction for minimum tax purposes; 146(5) — Amount of RRSP premiums deductible; 146(6.1) — Recontribution of certain withdrawals; 146(8.2) — Amount deductible; 147(10) — Amounts received taxable; 146(16) — RRSP deduction on transfer of funds; 147(10.2) — Single payment on retirement etc.; 147(21) — Restriction re transfers; 147.1(3)(a) — Deemed registration; 147.3 — Transfer from RPP; 147.3(12) — Restriction re transfers; 204.2(1)(b)(i)(A) — Excess amount for a year in respect of RRSP; 212(1)(h)(iii.1) — Pension benefits; 252(3) — Extended meaning of "spouse" and "former spouse". See additional Related Provisions and Definitions at end of s. 60.

History: Para. 60(j) amended by 2000, c. 12, Sch. 2, s. 2, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subpara. 60(j)(i) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 20(5), applicable after 1992. Subpara. (j)(i) formerly read:

(i) a superannuation or pension benefit (other than any amount in respect of the benefit that is deducted in computing the taxable income of the taxpayer for a taxation year by reason of subparagraph 110(1)(f)(i) or a benefit that is part of a series of periodic payments) payable out of or under a pension plan that is not a registered pension plan, attributable to services rendered by the taxpayer or a spouse (in this subparagraph having the meaning assigned by subsection 146(1.1)) or former spouse of the taxpayer in a period throughout which that person was not resident in Canada, and included in computing the income of the taxpayer for the year by reason of subparagraph 56(1)(a)(i), or

Subpara. 60(j)(ii) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 34(1), to substitute "under section 60.01, subsection 104(27)" for "pursuant to subsection 104(27)", applicable to 1990 *et seq.*

I.T. Application Rules: 40(3), 40(6).

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-528: Transfers of funds between registered plans.

Advance Tax Rulings: ATR-31: Funding of divorce settlement amount from DPSP.

(j.01) **transfer of surplus** — such part of the total of all amounts each of which is an amount received by the taxpayer before March 28, 1988 that can reasonably be considered to be a payment in respect of the actuarial surplus under a defined benefit provision (within the meaning assigned by subsection 147.1(1)) of a registered pension plan and that is included in computing the income of the taxpayer for the year by virtue of subparagraph 56(1)(a)(i) (other than any portion thereof deducted by the taxpayer under subsection 60.2(1) in computing the taxpayer's income for the year) as

(i) is designated by the taxpayer in the taxpayer's return of income under this Part for the year, and

(ii) does not exceed the total of all amounts each of which is an amount paid by the taxpayer in the year or within 60 days after the end of the year

(A) as a contribution to or under a registered pension plan for the taxpayer's benefit, other than the portion thereof deductible under paragraph (j) or (j.1) or 8(1)(m) of this Act or paragraph 8(1)(m.1) of the *Income Tax Act*, chapter

148 of the Revised Statutes of Canada, 1952, in computing the taxpayer's income for the year, or

(B) as a premium (within the meaning assigned by subsection 146(1)) under a registered retirement savings plan under which the taxpayer is the annuitant (within the meaning assigned by subsection 146(1)), other than the portion thereof that has been designated for the purposes of paragraph (j), (j.1) or (l),

to the extent that it was not deducted in computing the taxpayer's income for a preceding taxation year;

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-528: Transfers of funds between registered plans.

Forms: T2 SCH 15: Deferred income plans.

(j.02) **payment to registered pension plan [pre-April 1988 agreements]** — an amount equal to the lesser of

(i) the total of

(A) all contributions made in the year by the taxpayer to registered pension plans in respect of eligible service of the taxpayer before 1990 under the plans, where the taxpayer was obliged under the terms of an agreement in writing entered into before March 28, 1988 to make the contributions, and

(B) all amounts each of which is an amount paid in the year by the taxpayer to a registered pension plan as

(I) a repayment under a prescribed statutory provision of an amount received from the plan that was included under subsection 56(1) in computing the taxpayer's income for a taxation year ending before 1990, where the taxpayer was obliged as a consequence of a written election made before March 28, 1988 to make the repayment, or

(II) interest in respect of a repayment referred to in subclause (I),

other than the portion of that total that is deductible under paragraph 8(1)(m) or paragraph (j.03) in computing the taxpayer's income for the year, and

(ii) the total of all amounts each of which is an amount paid out of or under a registered pension plan as part of a series of periodic payments and included under subsection 56(1) in computing the taxpayer's income for the year, other than the portion of that total that can reasonably be considered to have been designated by the taxpayer for the purpose of paragraph (j.2);

Related Provisions: 60(j.04) — Repayments of post-1989 pension benefits; 127.52(1)(a) — Limitation on deduction for minimum tax purposes.

History: Para. 60(j.02) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 20(6), applicable to 1990 *et seq.*

Regulations: 6503 (prescribed statutory provisions for 60(j.02)(i)(B)(I)).

(j.03) **repayments of pre-1990 pension benefits** — an amount equal to the lesser of

(i) the total of all amounts each of which is an amount paid in the year or a preceding taxation year by the taxpayer to a registered pension plan that was not deductible in computing the taxpayer's income for a preceding taxation year and that was paid as

(A) a repayment under a prescribed statutory provision of an amount received from the plan that was included under subsection 56(1) in computing the taxpayer's income for a taxation year ending before 1990, or

(B) interest in respect of a repayment referred to in clause (A), and

(ii) the amount, if any, by which $3,500 exceeds the amount deducted under paragraph 8(1)(m) in computing the taxpayer's income for the year;

Related Provisions: 60(j.02) — Payments to registered pension plan; 127.52(1)(a) — Limitation on deduction for minimum tax purposes.

History: Para. 60(j.03) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 20(6), applicable to 1991 *et seq.*

Regulations: 6503 (prescribed statutory provisions for 60(j.03)(i)(A)).

(j.04) **repayments of post-1989 pension benefits** — the total of all amounts each of which is an amount paid in the year by the taxpayer to a registered pension plan as

(i) a repayment under a prescribed statutory provision of an amount received from the plan that

(A) was included under subsection 56(1) in computing the taxpayer's income for a taxation year ending after 1989, and

(B) can reasonably be considered not to have been designated by the taxpayer for the purpose of paragraph (j.2), or

(ii) interest in respect of a repayment referred to in subparagraph (i),

except to the extent that the total was deductible under paragraph 8(1)(m) in computing the taxpayer's income for the year;

Related Provisions: 127.52(1)(a) — Limitation on deduction for minimum tax purposes.

History: Para. 60(j.04) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 20(6), applicable to 1990 *et seq.*

Regulations: 6503 (prescribed statutory provisions for 60(j.04)(i)).

(j.1) **transfer of retiring allowances [to RRSP]** — such part of the total of all amounts each of which is an amount paid to the taxpayer by an employer, or under a retirement compensation arrangement to which the employer has contributed, as a retiring allowance and included in computing the taxpayer's income for the year by virtue of subparagraph 56(1)(a)(ii) or paragraph 56(1)(x) as

(i) is designated by the taxpayer in the taxpayer's return of income under this Part for the year,

(ii) does not exceed the amount, if any, by which the total of

(A) $2,000 multiplied by the number of years before 1996 during which the employee or former employee in respect of whom the payment was made (in this paragraph referred to as the "retiree") was employed by the employer or a person related to the employer, and

(B) $1,500 multiplied by the number by which the number of years before 1989 described in clause (A) exceeds the number that can reasonably be regarded as the equivalent number of years before 1989 in respect of which employer contributions under either a pension plan or a deferred profit sharing plan of the employer or a

person related to the employer had vested in the retiree at the time of the payment

exceeds the total of

(C) all amounts deducted under this paragraph in respect of amounts paid before the year in respect of the retiree

(I) by the employer or a person related to the employer, or

(II) under a retirement compensation arrangement to which the employer or a person related to the employer has contributed,

(C.1) all other amounts deducted under this paragraph for the year in respect of amounts paid in the year in respect of the retiree

(I) by a person related to the employer, or

(II) under a retirement compensation arrangement to which a person related to the employer has contributed, and

(D) all amounts deducted under paragraph (t) in computing the retiree's income for the year in respect of a retirement compensation arrangement to which the employer or a person related to the employer has contributed, and

(iii) does not exceed the total of all amounts each of which is an amount paid by the taxpayer in the year or within 60 days after the end of the year in respect of the amount so designated

(A) as a contribution to or under a registered pension plan, other than the portion thereof deductible under paragraph (j) or 8(1)(m) in computing the taxpayer's income for the year, or

(B) as a premium (within the meaning assigned by section 146) under a registered retirement savings plan under which the taxpayer is the annuitant (within the meaning assigned by section 146), other than the portion thereof that has been designated for the purposes of paragraph (j) or (l),

to the extent that it was not deducted in computing the taxpayer's income for a preceding taxation year

and for the purposes of this paragraph, "person related to the employer" includes

(iv) any person whose business was acquired or continued by the employer, and

(v) a previous employer of the retiree whose service therewith is recognized in determining the retiree's pension benefits;

Related Provisions: 60(j.01) — Transfer of surplus; 127.52(1)(a) [repealed] — Limitation on deduction for minimum tax purposes; 146(5) — Amount of RRSP premiums deductible; 146(6.1) — Recontribution of certain withdrawals; 147.3 — Transfer from RPP; 204.2(1)(b)(i)(A) — Excess amount in respect of RRSP. See also at end of s. 60.

History: Cl. 60(j.1)(ii)(A) amended by 1996, c. 21, s. 13, applicable to 1996 *et seq.* The clause formerly read:

(A) $2,000 multiplied by the number of years during which the employee or former employee in respect of whom the payment was made (in this paragraph referred to as the "retiree") was employed by the employer or a person related to the employer, and

That portion of para. 60(j.1) between cls. (ii)(B) and (iii)(A) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 34(2), applicable to 1990 *et seq.*, except that where a taxpayer so elects in the taxpayer's return of income under Part I for the 1990 taxation year,

(a) the amendment shall not apply in respect of the taxpayer for that year, and

(b) the expression "amount paid to the taxpayer" in para. 60(j.1) shall be read as "amount paid before July 14, 1990 to the taxpayer" for that year.

That portion formerly read:

exceeds the total of

(C) all amounts deducted under this paragraph in respect of amounts paid before the year in respect of the retiree by the employer or a person related to the employer, or under a retirement compensation arrangement to which the employer or the person has contributed, and

(D) all amounts deducted under paragraph (t) in computing the retiree's income for the year, and

(iii) does not exceed the total of all amounts each of which is an amount paid by the taxpayer in the year or within 60 days after the end of the year

Regulations: 100(3)(c) (no source withholding where amount is paid by employer directly to RRSP).

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-337R4: Retiring allowances.

I.T. Technical News: 7 (retiring allowances); 19 (Retiring allowances — clarification to Interpretation Bulletin IT-337R3 — (d): Deductions at source); 20 (retiring allowances — effect of re-employment or employment with affiliate).

Advance Tax Rulings: ATR-12: Retiring allowance; ATR-48: Transfer of retiring allowance to an RRSP.

Forms: NRTA1: Authorization for non-resident tax exemption.

(j.2) **transfer to spousal RRSP [before 1995]** — for taxation years ending after 1988 and before 1995, such part of the total of all amounts (other than amounts paid out of or under a registered retirement savings plan or a registered retirement income fund that by reason of section 254 are considered to be amounts paid out of or under a registered pension plan) paid on a periodic basis out of or under a registered pension plan or a deferred profit sharing plan and included, by reason of subsection 56(1), in computing the taxpayer's income for the year as

(i) is designated by the taxpayer in the taxpayer's return of income under this Part for the year, and

(ii) does not exceed the least of

(A) $6,000,

(B) the amount, if any, by which that total exceeds the part of that total designated for the year for the purposes of paragraph (j) of this Act or deducted under paragraph 60(k) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in computing the taxpayer's income for the year, and

(C) the total of all amounts each of which is paid by the taxpayer in the year or within 60 days after the end of the year as a premium (within the meaning assigned by subsection 146(1)) under a registered retirement savings plan under which the taxpayer's spouse or common-law partner (or, where the taxpayer died in the year or within 60 days after the end of the year, an individual who was the taxpayer's spouse or common-law partner immediately before the death) is the annuitant (within the meaning assigned by subsection 146(1)), to the extent that the amount was not deducted in computing the taxpayer's income for a preceding taxation year;

Related Provisions: 60(j.02) — Payment to registered pension plan; 60(j.04) — Repayments of post-1989 pension benefits; 118(3) — Pension income credit; 127.52(1)(a) [repealed] — Limitation on deduction for minimum tax purposes; 146(1) — "earned income"; 146(5.1) — Amount of spousal RRSP premiums deductible; 146(8.3) — Spousal RRSP pay-

ments; 146(16) — RRSP — deduction on transfer of funds; 146.3(5.1) — Amount included in income; 147(21) — Restriction re transfers; 147.1(3)(a) — Deemed registration; 147.3(12)(b)(i) — RPP — restriction re transfers; 204.2(1)(b)(i)(A) — Excess amount in respect of RRSP; 212(1)(h)(iii.1)(B), 212(1)(m)(ii) — Exemption on payment to non-resident.

History: Para. 60(j.2) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Cl. 60(j.2)(ii)(C) substituted by 1994, c. 21, subsec. 26(1), applicable to 1992 *et seq.* That cl. formerly read:

> (C) the total of all amounts each of which is an amount paid by the taxpayer in the year or within 60 days after the end of the year as a premium (within the meaning assigned by subsection 146(1)) under a registered retirement savings plan under which the taxpayer's spouse is the annuitant (within the meaning assigned by subsection 146(1)), to the extent that the amount was not deducted in computing the taxpayer's income for a preceding taxation year;

Interpretation Bulletins: IT-307R4: Spousal or common-law partner registered retirement savings plans.

(k) [Repealed under former Act]

(l) **transfer of refund of premium under RRSP [on death]** — the total of all amounts each of which is an amount paid by or on behalf of the taxpayer in the year or within 60 days after the end of the year (or within such longer period after the end of the year as is acceptable to the Minister)

(i) as a premium under a registered retirement savings plan under which the taxpayer is the annuitant,

(ii) to acquire, from a person licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an annuities business, an annuity

(A) under which the taxpayer is the annuitant

Proposed Amendment — 60(l)(ii)(A)

[Former proposed amendment to 60(l)(ii)(A) is now 60.011 — ed.]

Possible Future Amendment — 60(l)(ii)(A)

Federal budget, Supplementary Information, February 23, 2005: *Registered Retirement Savings Plans and Registered Retirement Income Funds*

Currently, financially-dependent children with mental or physical infirmities are eligible to receive, on a tax-deferred basis, a deceased parent's (or in the case of a child that is financially dependent on a grandparent, the deceased grandparent's) proceeds from a registered retirement savings plan (RRSP) or a registered retirement income fund (RRIF) if the funds are transferred to the child's RRSP or are used to purchase a life annuity. The Committee [Technical Advisory Committee on Tax Measures for Persons with Disabilities; see under 118.3(1) — ed.] recommended that the Government review these rules in order to allow more flexibility in respect of a deceased's RRSP or RRIF proceeds left to a financially-dependent child or grandchild with a disability and, in particular, that the use of a discretionary trust be permitted in these circumstances. The Government will review the tax rules in this area with a view to providing more flexibility where appropriate.

(I) for the taxpayer's life, or for the lives jointly of the taxpayer and the taxpayer's spouse or common-law partner either without a guaranteed period, or with a guaranteed period that is not greater than 90 years minus the lesser of the age in whole years of the taxpayer and the age in whole years of the taxpayer's spouse or common-law partner at the time the annuity was acquired, or

(II) for a term equal to 90 years minus the age in whole years of the taxpayer or the age in whole years of the taxpayer's spouse or common-law partner, at the time the annuity was acquired, or

(B) under which the taxpayer, or a trust under which the taxpayer is the sole person beneficially interested in amounts payable under the annuity, is the annuitant for a term not exceeding 18 years minus the age in whole years of the taxpayer at the time the annuity was acquired

Proposed Amendment — 60(l)(ii)(B)

(B) under which the taxpayer is the annuitant for a term not exceeding 18 years minus the age in whole years of the taxpayer at the time the annuity was acquired

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 71(2), will amend cl. 60(l)(ii)(B) to read as above, applicable after 1988. (See 60.011.)

Technical Notes: In circumstances where an individual has received (or is deemed to have received) certain taxable lump sum amounts from a registered retirement savings plan, a registered retirement income fund or a registered pension plan, paragraph 60(l) allows the individual to claim an offsetting deduction for qualifying payments (not exceeding the amounts so received) made by or on behalf of the individual.

If the individual is a minor and the taxable amount is received as a consequence of the death of a parent or grandparent on whom the minor was financially dependent, a payment made to acquire an immediate annuity payable for a fixed term not exceeding 18 years minus the age of the minor at the time of acquisition is a qualifying payment for the purpose of paragraph 60(l). Clause 60(l)(ii)(B) requires that the annuitant under the annuity be either the minor or a trust under which the minor is the sole person beneficially interested in amounts payable under the annuity.

Clause 60(l)(ii)(B) is amended to require that the minor be the annuitant under the annuity. This is consequential to the introduction of new section 60.011 which, among other things, allows this requirement in paragraph 60(l) to be disregarded, if the annuitant under the term annuity is a trust under which the minor is the sole person beneficially interested in amounts payable under the annuity. Section 60.011 also provides that, in determining if the minor is the sole person beneficially interested in amounts payable under the annuity, any right of a person to receive an amount from the trust only on or after the death of the minor is to be disregarded. Section 60.011 also introduces a requirement, applicable with respect to annuities acquired after 2005, that the annuity provide for commutation on the death of the minor. (Refer to the explanatory notes to new section 60.011 for further details.)

This amendment applies after 1988, which reflects the effective date of the amendment to paragraph 60(l) allowing a trust to be named as the annuitant.

that does not provide for any payment thereunder except

(C) the single payment by or on behalf of the taxpayer,

(D) annual or more frequent periodic payments

(I) beginning not later than one year after the date of the payment referred to in clause (C), and

(II) each of which is equal to all other such payments or not equal to all other such payments solely because of an adjustment that would, if the annuity were an annuity under a retirement savings plan, be in accordance with subparagraphs 146(3)(b)(iii) to (v), and

(E) payments in full or partial commutation of the annuity and, where the commutation is partial,

(I) equal annual or more frequent periodic payments thereafter, or

(II) annual or more frequent periodic payments thereafter that are not equal solely be-

cause of an adjustment that would, if the annuity were an annuity under a retirement savings plan, be in accordance with subparagraphs 146(3)(b)(iii) to (v),

or

(iii) to a carrier as consideration for a registered retirement income fund under which the taxpayer is the annuitant

where that total

(iv) is designated by the taxpayer in the taxpayer's return of income under this Part for the year,

(v) does not exceed the total of

(A) the amount included in computing the taxpayer's income for the year as a refund of premiums out of or under a registered retirement savings plan under which the taxpayer's spouse or common-law partner was the annuitant,

(B) the amount included in computing the taxpayer's income for the year as a refund of premiums out of or under a registered retirement savings plan where the taxpayer was dependent by reason of physical or mental infirmity on the annuitant under the plan,

(B.01) the amount included in computing the taxpayer's income for the year as a payment (other than a payment that is part of a series of periodic payments or that relates to an actuarial surplus) received by the taxpayer out of or under a registered pension plan as a consequence of the death of an individual of whom the taxpayer was a child or grandchild, if the taxpayer was, immediately before the death, financially dependent on the individual for support because of mental or physical infirmity,

(B.1) the least of

(I) the amount paid by or on behalf of the taxpayer to acquire an annuity that would be described in subparagraph (ii) if that subparagraph were read without reference to clause (A) thereof,

(II) the amount (other than any portion of it that is included in the amount determined under clause (B), (B.01) or (B.2)) that is included in computing the taxpayer's income for the year as

1. a payment (other than a payment that is part of a series of periodic payments or that relates to an actuarial surplus) received by the taxpayer out of or under a registered pension plan,

2. a refund of premiums out of or under a registered retirement savings plan, or

3. a designated benefit in respect of a registered retirement income fund (in this clause having the meaning assigned by subsection 146.3(1))

as a consequence of the death of an individual of whom the taxpayer is a child or grandchild, and

(III) the amount, if any, by which the amount determined for the year under subclause (II) in respect of the taxpayer exceeds the amount, if any, by which

1. the total of all designated benefits of the taxpayer for the year in respect of registered retirement income funds

exceeds

2. the total of all amounts that would be eligible amounts of the taxpayer for the year in respect of those funds (within the meaning that would be assigned by subsection 146.3(6.11) if the taxpayer were described in paragraph (b) thereof), and

(B.2) all eligible amounts of the taxpayer for the year in respect of registered retirement income funds (within the meaning assigned by subsection 146.3(6.11)),

and, where the amount is paid by a direct transfer from the issuer of a registered retirement savings plan or a carrier of a registered retirement income fund,

(C) the amount included in computing the taxpayer's income for the year as a consequence of a payment described in subparagraph 146(2)(b)(ii), and

(D) the amount, if any, by which

(I) the amount received by the taxpayer out of or under a registered retirement income fund under which the taxpayer is the annuitant and included because of subsection 146.3(5) in computing the taxpayer's income for the year

exceeds

(II) the amount, if any, by which the minimum amount (within the meaning assigned by subsection 146.3(1)) under the fund for the year exceeds the total of all amounts received out of or under the fund in the year by an individual who was an annuitant under the fund before the taxpayer became the annuitant under the fund and that were included because of subsection 146.3(5) in computing that individual's income for the year, and

(vi) was not deducted in computing the taxpayer's income for a preceding taxation year;

Related Provisions: 56(1)(d.2) — Income inclusion; 60(j) — Transfer of superannuation benefits; 60.011(3) — Application of 60(l)(ii) to qualifying trust annuity; 70(3.1)(a) — "Rights or things" treatment on death; 75.2 — Treatment of qualifying trust annuity payout or on death; 104(27)(e) — Where pension benefit paid to trust as a consequence of death; 127.52(1)(a) — Minimum tax — adjusted taxable income determined; 146(1.1) — Where child presumed not financially dependent for 60(l)(v)(B.01); 146(2), (3) — Acceptance of plan for registration; 146(5) — Amount of RRSP premiums deductible; 146(6.1) — Recontribution of certain withdrawals; 146(8.1) — RRSP — deemed receipt of refund of premiums; 146(8.2) — RRSP — amount deductible; 146(16)(d) — RRSP — transfer of funds; 146(21) — Transfer from prescribed provincial pension plan; 146.3(5.1) — Amount included in income; 146.3(6.11) — Transfer of designated benefit; 147.3 — Transfer from RPP; 148(1)(e) — Amounts included in computing policyholder's income; 204.2(1)(b)(i)(A) — Excess amount for a year in respect of RRSP; 212(1)(q)(i)(B) — Exemption from non-resident withholding tax; 248(8) — Occurrences as a consequence of death; 252(3) — Extended meaning of "spouse". See also at end of s. 60.

History: Clause 60(1)(v)(B.01) added, the opening words of subclause 60(1)(v)(B.1)(II) amended, by 2003, c. 15, subsecs. 71(1), (2), applicable

in respect of deaths that occur after 2002. The opening words formerly read:

(II) the amount (other than any portion thereof included in the amount determined under clause (B) or (B.2)) included in computing the taxpayer's income for the year as

Para. 60(l) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

The opening words of para. 60(l) amended by 2000, c. 19, s. 7, applicable to 1999 *et seq.* and, where an amount is included in computing a taxpayer's income for a taxation year as a result of an election under subsec. 42(4) of the amending legislation (see the amendment to 146(1)"refund of premiums"(b)), para. 60(l) shall apply to the taxpayer for the year and each subsequent taxation year that ends before 1999 as if

(a) the words "in the year or within 60 days after the end of the year" in that para. were read as "in the period that begins at the beginning of the year and ends on February 29, 2000 or on such later day as is acceptable to the Minister"; and

(b) subpara. 60(l)(iv) were read as follows:

(iv) is designated in prescribed form filed with the Minister before May 2000 (or before such later day as is acceptable to the Minister),

The portion formerly read:

(l) the total of all amounts each of which is an amount paid by or on behalf of the taxpayer in the year or within 60 days after the end of the year

Cls. 60(l)(ii)(A) and (B) amended by 1998, c. 19, subsec. 99(2), applicable to 1989 *et seq.*. The cls. formerly read:

(A) under which the taxpayer is the annuitant

(I) for the taxpayer's life, or for the lives jointly of the taxpayer and the taxpayer's spouse either with a guaranteed period that is not greater than 90 years minus the age of the taxpayer or the age of the taxpayer's spouse, at the time of its acquisition or without a guaranteed period, or

(II) for a term of years equal to 90 minus the age of the taxpayer or the age of the taxpayer's spouse, at the time of its acquisition, or

(B) under which the taxpayer, or a trust under which the taxpayer is the sole person beneficially interested in all amounts payable under the annuity, is the annuitant for a term of years not exceeding 18 minus the age of the taxpayer at the time of its acquisition

The opening words of cl. 60(l)(v)(B.1) substituted, subcl. (B.1)(II) substituted, and subcl. (III) added, by 1994, c. 21, subsecs. 26(2), (3), applicable to 1993 *et seq.* The opening words of cl. (B.1) and subcl. (II) formerly read:

(B.1) the lesser of

. . . . .

(II) the amount (other than any portion thereof included in the amount determined under clause (B)) included in computing the taxpayer's income for the year as a payment (other than a payment that is part of a series of periodic payments or that relates to an actuarial surplus) received by the taxpayer out of or under a registered pension plan, or as a refund of premiums out of or under a registered retirement savings plan, as a consequence of the death of an individual, where the taxpayer is a child or grandchild of the individual, and

Cl. 60(l)(v)(B.2) substituted by 1994, c. 21, subsec. 26(4), applicable to 1993 *et seq.*; and subpara. 60(l)(v) shall apply to a taxpayer for the 1992 taxation year as if it were read without reference to cl. (B.2), unless the taxpayer otherwise elects by notifying the Minister of National Revenue in writing. That cl. formerly read:

(B.2) the amount included in computing the taxpayer's income for the year that was received by the taxpayer, as a consequence of the death of the taxpayer's spouse, out of or under a provincial pension plan prescribed for the purposes of paragraph (v),

Cl. 60(l)(v)(D) substituted by 1994, c. 21, subsec. 26(5), applicable to 1993 *et seq.* except that, for the 1993 to 1996 taxation years, subcl. 60(l)(v)(D)(I) shall be read as follows:

(I) the amount received by the taxpayer out of or under a registered retirement income fund under which the taxpayer is the annuitant (or, where the taxpayer's spouse died before 1993, under which the spouse was the annuitant) and included because of subsection 146.3(5) in computing the taxpayer's income for the year

Cl. 60(l)(v)(D) formerly read:

(D) the portion of the amount received by the taxpayer out of or under a registered retirement income fund and included in computing the taxpayer's income for the year by virtue of subsection 146.3(5) that exceeds the minimum amount (within the meaning assigned by subsection 146.3(1)) required to be paid to the annuitant in the year under that fund, and

Subcl. 60(l)(ii)(A)(I) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 20(7), applicable after 1992. That subcl. formerly read:

(I) for the taxpayer's life, or for the lives jointly of the taxpayer and the taxpayer's spouse (in this paragraph having the meaning assigned by subsection 146(1.1)), either with a guaranteed period that is not greater than 90 years minus the age of the taxpayer or the age of the taxpayer's spouse, at the time of its acquisition or without a guaranteed period, or

Cls. 60(l)(ii)(D) and (E) amended by the said c. 7, subsec. 20(8), applicable to 1990 *et seq.* Those cls. formerly read:

(D) equal annual or more frequent periodic payments commencing not later than one year after the date of the payment referred to in clause (C), and

(E) payments in full or partial commutation of the annuity and, where the commutation is partial, equal annual or more frequent periodic payments thereafter,

Cl. 60(l)(v)(B.2) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 34(3), applicable to 1990 *et seq.*

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-307R4: Spousal or common-law partner registered retirement savings plans; IT-500R: RRSPs — death of an annuitant; IT-517R: Pension tax credit (archived); IT-528: Transfers of funds between registered plans.

Advance Tax Rulings: ATR-37: Refund of premiums transferred to spouse.

Forms: T2030: Direct transfer under subpara. 60(l)(v).

(m) **estate tax applicable to certain property** — that proportion of any superannuation or pension benefit, death benefit, benefit under a registered retirement savings plan or benefit under a deferred profit sharing plan, received by the taxpayer in the year, on or after the death of a predecessor, in payment of or on account of property to which the taxpayer is the successor, that

(i) such part of any tax payable under the *Estate Tax Act*, chapter E-9 of the Revised Statutes of Canada, 1970, in respect of the death of the predecessor as is determined under that Act to be the part thereof applicable to the property in payment of or on account of which the benefit was so received,

is of

(ii) the value of the property in payment of or on account of which the benefit was so received, computed as provided for the purpose of subsection 62(4) of the *Estate Tax Act*, chapter E-9 of the Revised Statutes of Canada, 1970;

(m.1) **succession duties applicable to certain property** — that proportion of any superannuation or pension benefit, death benefit, benefit under a registered retirement savings plan, benefit under a deferred profit sharing plan or benefit that is a payment under an income-averaging annuity contract, received by the taxpayer in the year, on or after the death of a predecessor, in payment of or on account of property to which the taxpayer is the successor, that

(i) such part of any succession duties payable under a law of a province in respect of the death of the predecessor as may reasonably be regarded as at-

tributable to the property in payment of or on account of which the benefit was so received,

is of

(ii) the value of the property in payment of or on account of which the benefit was so received, as computed for the purposes of the law referred to in subparagraph (i);

(n) **repayment of pension or benefits** — any amount paid by the taxpayer in the year as a repayment (otherwise than because of Part VII of the *Unemployment Insurance Act*, chapter U-1 of the Revised Statutes of Canada, 1985, or of Part VII of the *Employment Insurance Act*) of any of the following amounts to the extent that the amount was included in computing the taxpayer's income, and not deducted in computing the taxpayer's taxable income, for the year or for a preceding taxation year, namely,

(i) a pension described in clause 56(1)(a)(i)(A),

(ii) a benefit described in clause 56(1)(a)(i)(B),

(iii) an amount described in subparagraph 56(1)(a)(ii),

(iv) a benefit described in subparagraph 56(1)(a)(iv),

(v) a benefit described in subparagraph 56(1)(a)(vi), and

(vi) an amount described in paragraph 56(1)(r);

History: Para. 60(n) amended by 2002, c. 9, s. 25, applicable to 1997 *et seq.* and, notwithstanding subsecs. 152(4) to (5), any assessment of a taxpayer's tax, interest or penalty for any taxation year shall be made that is necessary to give effect to the amendment. The para. formerly read:

(n) the amount of

(i) any pension described in clause 56(1)(a)(i)(A),

(i.1) any amount described in subparagraph 56(1)(a)(ii),

(ii) any benefit described in clause 56(1)(a)(i)(B),

(ii.1) any benefit described in subparagraph 56(1)(a)(vi), or

(iii) any amount or benefit described in subparagraph 56(1)(a)(iv) or paragraph 56(1)(r),

received by the taxpayer and included in computing the taxpayer's income for the year or a preceding taxation year, to the extent of the amount or benefit repaid by the taxpayer in the year otherwise than because of Part VII of the *Unemployment Insurance Act* or Part VII of the *Employment Insurance Act*;

The opening words of para. 60(n) and the portion after subpara. (ii.1) amended by 1998, c. 19, subsecs. 99(3) and (4), deemed to have come into force on June 30, 1996. The opening words and that portion formerly read:

(n) overpayment of pension or benefits — the amount of any overpayment of

. . . . .

(ii.2) [Repealed]

(iii) any benefit under the *Employment Insurance Act*,

(iv) [Repealed]

received by the taxpayer and included in computing the taxpayer's income for the year or a preceding taxation year, to the extent of the amount thereof repaid by the taxpayer in the year otherwise than by virtue of Part VII of the *Employment Insurance Act*;

Para. 60(n) amended by 1996, c. 23, para. 187(d) and s. 172.1, to substitute "*Employment Insurance Act*" for "*Unemployment Insurance Act*" in subpara. 60(n)(iii) and the closing words of para. 60(n), and to repeal subpara. 60(n)(iv); the substitutions in force June 30, 1996, and the repeal in force January 1, 1998. Subpara. (iv) formerly read:

(iv) any amount described in paragraph 56(1)(m)

Subpara. 60(n)(i.1) added by 1994, c. 21, subsec. 26(6), applicable to repayments made after 1990.

Subpara. 60(n)(ii.2) repealed by 1994, c. 21, subsec. 26(7), applicable to repayments made after October 1991. That subpara. formerly read:

(ii.2) any amount described in subparagraph 56(1)(a)(vii),

Subpara. 60(n)(ii.2) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 34(4), applicable to repayments made after September 14, 1989.

Interpretation Bulletins: IT-75R4: Scholarships, fellowships, bursaries, prizes, research grants and financial assistance.

Forms: PD24: Statement of overpayment and application for refund; T2204: Employee overpayment of CPP contributions and EI premiums.

(o) **legal [or other] expenses [of objection or appeal]** — amounts paid by the taxpayer in the year in respect of fees or expenses incurred in preparing, instituting or prosecuting an objection to, or an appeal in relation to,

(i) an assessment of tax, interest or penalties under this Act or an Act of a province that imposes a tax similar to the tax imposed under this Act,

(ii) a decision of the Canada Employment and Immigration Commission, the Canada Employment and Insurance Commission, a board of referees or an umpire under the *Unemployment Insurance Act* or the *Employment Insurance Act*,

(iii) an assessment of any income tax deductible by the taxpayer under section 126 or any interest or penalty with respect thereto, or

(iv) an assessment or a decision made under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act;

Related Provisions: 56(1)(l) — Reimbursed costs included in income; 152(1.2) — Rule applies to determination of losses as well as assessment. See also at end of s. 60.

History: Subpara. 60(o)(ii) amended by 1998, c. 19, subsec. 99(5), deemed to have come into force on June 30, 1996. The subpara. formerly read:

(ii) a decision of the Canada Employment Insurance Commission, a board of referees or an umpire under the *Employment Insurance Act*,

Subpara. 60(o)(ii) amended by 1996, c. 23, para. 187(d), to substitute "*Employment Insurance Act*" for "*Unemployment Insurance Act*", in force June 30, 1996.

Subpara. 60(o)(ii) amended by 1996, c. 11, para. 99(c), to substitute "Canada Employment Insurance Commission" for "Canada Employment and Immigration Commission", in force July 12, 1996.

Selected Cases [para. 60(o)]: *Ghali v. R.*, [2003] 3 C.T.C. 2513 (TCC) (Payments received during sabbatical year taxable).

Interpretation Bulletins: IT-99R5: Legal and accounting fees.

(o.1) **legal expenses** — the amount, if any, by which the lesser of

(i) the total of all legal expenses (other than those relating to a division or settlement of property arising out of, or on a breakdown of, a marriage or common-law partnership) paid by the taxpayer in the year or in any of the 7 preceding taxation years to collect or establish a right to an amount of

(A) a benefit under a pension fund or plan (other than a benefit under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act) in respect of the employment of the taxpayer or a deceased individual of whom the taxpayer was a dependant, relation or legal representative, or

(B) a retiring allowance of the taxpayer or a deceased individual of whom the taxpayer was a dependant, relation or legal representative, and

(ii) the amount, if any, by which the total of all amounts each of which is

(A) an amount described in clause (i)(A) or (B)

(I) that is received after 1985,

(II) in respect of which legal expenses described in subparagraph (i) were paid, and

(III) that is included in computing the income of the taxpayer for the year or a preceding taxation year, or

(B) an amount included in computing the income of the taxpayer under paragraph 56(1)(l.1) for the year or a preceding taxation year,

exceeds the total of all amounts each of which is an amount deducted under paragraph (j), (j.01), (j.1) or (j.2) in computing the income of the taxpayer for the year or a preceding taxation year, to the extent that the amount may reasonably be considered to have been deductible as a consequence of the receipt of an amount referred to in clause (A),

exceeds

(iii) the portion of the total described in subparagraph (i) in respect of the taxpayer that may reasonably be considered to have been deductible under this paragraph in computing the income of the taxpayer for a preceding taxation year;

Related Provisions: 56(1)(l.1) — Amounts included in income — amounts received as award or in reimbursement of legal expenses paid to collect or establish a right to retiring allowance, etc. See additional Related Provisions and Definitions at end of s. 60.

History: Para. 60(o.1) amended by 2000, c. 12, Sch. 2, s. 9, to replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

That portion of subpara. 60(o.1)(i) preceding cl. (A) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 20(9), applicable after 1992. That portion formerly read:

(i) the total of all legal expenses (other than those relating to a division or settlement of property arising from a marriage or other conjugal relationship) paid by the taxpayer after 1985 and in the year or any of the 7 immediately preceding taxation years to collect or establish a right to an amount of

Interpretation Bulletins: IT-99R5: Legal and accounting fees; IT-337R4: Retiring allowances.

(p) [Repealed]

History: Para. 60(p) repealed by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 2(2), applicable to 1995 *et seq.* Para. 60(p) formerly read:

(p) overpayment of allowance — the amount of any overpayment of an allowance included under subsection 56(5) in computing the taxpayer's income for the year or a preceding taxation year or an amount included because of subparagraph 115(2)(e)(iii) in computing the taxpayer's taxable income earned in Canada for the year or a preceding taxation year to the extent of the amount thereof repaid in the year under the *Family Allowances Act*, or under a law of a province that provides for the payment of an allowance similar to the family allowance provided under the *Family Allowances Act*;

Para. 60(p) substituted by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 2(1), applicable to 1990 *et seq.*, and is to be repealed by subsec. 2(2) applicable to 1995 *et seq.* Para. 60(p) formerly read:

(p) overpayment of allowance — the amount of any overpayment of an allowance included in computing the taxpayer's income for the year or a preceding taxation year by reason of subsection 56(5) of this Act or subsection 56(8) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, or an amount included in computing the taxpayer's taxable income earned in Canada for the year or a preceding taxation year by virtue of subparagraph 115(2)(e)(iii) to the extent of the amount thereof that has been repaid in the year under the *Family Allowances Act*, or under a law of a province that provides for the payment of an allowance similar to the family allowance provided under the *Family Allowances Act*;

(q) **refund of income payments** — where the taxpayer is an individual, an amount paid by the taxpayer in the year to a person with whom the taxpayer was dealing at arm's length (in this paragraph referred to as the "payer") if

(i) the amount has been included in computing the income of the taxpayer in a preceding taxation year as an amount described in subparagraph 56(1)(n)(i) or paragraph 56(1)(o) paid to the taxpayer by the payer,

(ii) at the time the amount was paid by the payer to the taxpayer a condition was stipulated for the taxpayer to fulfil,

(iii) as a result of the failure of the taxpayer to fulfil the condition referred to in subparagraph (ii) the taxpayer was required to repay the amount to the payer,

(iv) during the period for which the amount referred to in subparagraph (i) was paid the taxpayer did not provide other than occasional services to the payer as an officer or under a contract of employment, and

(v) the amount was paid to the taxpayer for the purpose of enabling the taxpayer to further the taxpayer's education;

Related Provisions: 56(1)(p) — Refund of scholarships, bursaries and research grants. See also at end of s. 60.

Interpretation Bulletins: IT-75R4: Scholarships, fellowships, bursaries, prizes, research grants and financial assistance; IT-340R: Scholarships, fellowships, bursaries and research grants.

(r) **amounts included under subsec. 146.2(6) [RHOSP]** — where an amount has been included in computing the income of the taxpayer by virtue of subsection 146.2(6) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952 (as it read in its application to the 1985 taxation year) for any of the taxpayer's three immediately preceding taxation years, the taxpayer may deduct the lesser of

(i) the amount that had been so included in computing the taxpayer's income, and

(ii) the total of all amounts used by the taxpayer to acquire in the year the taxpayer's owner-occupied home (within the meaning assigned by paragraph 146.2(1)(f) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1985 taxation year),

except that no amount may be deducted by the taxpayer for the year under this paragraph if an amount has been deducted

(iii) under subsection 146.2(6.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952 (as it read in its application to taxation years before 1986) in computing the taxpayer's income for any taxation year ending before 1986, or

(iv) under this paragraph for any preceding taxation year ending after 1985;

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

(s) **repayment of policy loan** — the total of all repayments made by the taxpayer in the year in respect of a policy loan (within the meaning assigned by subsection 148(9) made under a life insurance policy, not exceeding the amount, if any, by which

(i) the total of all amounts required by subsection 148(1) to be included in computing the taxpayer's income for the year or a preceding taxation year from a disposition described in paragraph (b) of the definition "disposition" in subsection 148(9) in respect of that policy

exceeds

(ii) the total of all repayments made by the taxpayer in respect of the policy loan that were deductible in computing the taxpayer's income for a preceding taxation year;

Related Provisions: 94.2(11)(b), (c) — No application to foreign insurance policy of foreign investment entity; 148(9) — "value". See additional Related Provisions at end of s. 60.

History: That portion of para. 60(s) preceding subpara. (i) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 20(10), to substitute "all repayments" for "payments", applicable to repayments made after December 20, 1991.

(t) **RCA distributions** — where an amount in respect of a particular retirement compensation arrangement is required by paragraph 56(1)(x) or (z) or subsection 70(2) to be included in computing the taxpayer's income for the year, an amount equal to the lesser of

(i) the total of all amounts in respect of the particular arrangement so required to be included in computing the taxpayer's income for the year, and

(ii) the amount, if any, by which the total of all amounts each of which is

(A) an amount (other than an amount deductible under paragraph 8(1)(m.2) or transferred to the particular arrangement under circumstances in which subsection 207.6(7) applies) contributed under the particular arrangement by the taxpayer while it was a retirement compensation arrangement and before the end of the year,

(A.1) an amount transferred in respect of the taxpayer before the end of the year to the particular arrangement from another retirement compensation arrangement under circumstances in which subsection 207.6(7) applies, to the extent that the amount would have been deductible under this paragraph in respect of the other arrangement in computing the taxpayer's income if it had been received by the taxpayer out of the other arrangement,

(B) an amount paid by the taxpayer before the end of the year and at a time when the taxpayer was resident in Canada to acquire an interest in the particular arrangement, or

(C) an amount that was received or became receivable by the taxpayer before the end of the year and at a time when the taxpayer was resident in Canada as proceeds from the disposition of an interest in the particular arrangement,

exceeds the total of all amounts each of which is

(D) an amount deducted under this paragraph or paragraph (u) in respect of the particular arrangement in computing the taxpayer's income for a preceding taxation year, or

(E) an amount transferred in respect of the taxpayer before the end of the year from the particular arrangement to another retirement compensation arrangement under circumstances in which subsection 207.6(7) applies, to the extent that the amount would have been deductible under this paragraph in respect of the particular arrangement in computing the taxpayer's income if it had been received by the taxpayer out of the particular arrangement;

Related Provisions: 107.2 — Distribution by retirement compensation arrangement. See also at end of s. 60.

History: Para. 60(t) amended by 1998, c. 19, subsec. 99(6), applicable to 1996 *et seq.* The para. formerly read:

(t) amount included under para. 56(1)(x) or (z) or subsec. 70(2) — where an amount in respect of a retirement compensation arrangement is required by paragraph 56(1)(x) or (z) or subsection 70(2) to be included in computing the taxpayer's income for the year, an amount equal to the lesser of

(i) the total of all amounts in respect of the arrangement so required to be included in the taxpayer's income for the year, and

(ii) the amount, if any, by which the total of

(A) all amounts, other than amounts deductible under paragraph 8(1)(m.2), contributed under the arrangement by the taxpayer while it was a retirement compensation arrangement and before the end of the year,

(B) all amounts paid by the taxpayer before the end of the year and at a time when the taxpayer was resident in Canada to acquire an interest in the arrangement, and

(C) all amounts that were received or became receivable by the taxpayer before the end of the year and at a time when the taxpayer was resident in Canada as proceeds from the disposition of an interest in the arrangement,

exceeds the total of all amounts deducted under this paragraph or paragraph (u) in respect of the arrangement in computing the taxpayer's income for a preceding taxation year;

(u) **RCA dispositions** — where an amount in respect of a particular retirement compensation arrangement is required by paragraph 56(1)(y) to be included in computing the taxpayer's income for the year, an amount equal to the lesser of

(i) the total of all amounts in respect of the particular arrangement so required to be included in computing the taxpayer's income for the year, and

(ii) the amount, if any, by which the total of all amounts each of which is

(A) an amount (other than an amount deductible under paragraph 8(1)(m.2) or transferred to the particular arrangement under circumstances in which subsection 207.6(7) applies) contributed under the particular arrangement by the taxpayer while it was a retirement compensation arrangement and before the end of the year,

(A.1) an amount transferred in respect of the taxpayer before the end of the year to the particular arrangement from another retirement compensation arrangement under circumstances in which subsection 207.6(7) applies, to the extent that the amount would have been deductible under paragraph (t) in respect of the other arrangement in computing the taxpayer's income if it had been received by the taxpayer out of the other arrangement, or

(B) an amount paid by the taxpayer before the end of the year and at a time when the taxpayer was resident in Canada to acquire an interest in the particular arrangement

exceeds the total of all amounts each of which is

(C) an amount deducted under paragraph (t) in respect of the particular arrangement in computing the taxpayer's income for the year or a preceding taxation year,

(D) an amount deducted under this paragraph in respect of the particular arrangement in computing the taxpayer's income for a preceding taxation year, or

(E) an amount transferred in respect of the taxpayer before the end of the year from the particular arrangement to another retirement compen-

sation arrangement under circumstances in which subsection 207.6(7) applies, to the extent that the amount would have been deductible under paragraph (t) in respect of the particular arrangement in computing the taxpayer's income if it had been received by the taxpayer out of the particular arrangement;

Related Provisions: 56(1)(y) — Retirement compensation arrangements; 107.2 — Distribution by a retirement compensation arrangement. See also at end of s. 60.

History: Para. 60(u) amended by 1998, c. 19, subsec. 99(6), applicable to 1996 *et seq.* The para. formerly read:

(u) amount included under para. 56(1)(y) — where an amount in respect of a retirement compensation arrangement is required by paragraph 56(1)(y) to be included in computing the taxpayer's income for the year, an amount equal to the lesser of

(i) the total of all amounts in respect of the arrangement so required to be included in the taxpayer's income for the year, and

(ii) the amount, if any, by which the total of

(A) all amounts, other than amounts deductible under paragraph 8(1)(m.2), contributed under the arrangement by the taxpayer while it was a retirement compensation arrangement and before the end of the year, and

(B) all amounts paid by the taxpayer before the end of the year and at a time when the taxpayer was resident in Canada to acquire an interest in the arrangement

exceeds the total of

(C) the total of all amounts deducted under paragraph (t) in respect of the arrangement in computing the taxpayer's income for the year or a preceding taxation year, and

(D) the total of all amounts deducted under this paragraph in respect of the arrangement in computing the taxpayer's income for a preceding taxation year;

(v) **contribution to a provincial pension plan** — the least of

(i) the amount, if any, by which

(A) the total of all amounts each of which is a contribution made in the year, or within 60 days after the end of the year, by the taxpayer to the account of the taxpayer, or of the taxpayer's spouse or common-law partner, under a prescribed provincial pension plan

exceeds

(B) the portion of the total described in clause (A) that was deducted in computing the taxpayer's income for the preceding taxation year,

(ii) the prescribed amount for the year in respect of the plan, and

(iii) the amount by which the taxpayer's RRSP deduction limit for the year exceeds the total of the amounts deducted under subsections 146(5) and (5.1) in computing the taxpayer's income for the year;

Related Provisions: 18(11)(g) — No deduction for interest paid on money borrowed to make contribution; 60(l)(v)(B.2) — Transfer of premium under RRSP; 60.02 — 60(v)(iii) applicable since 1991; 118(3) — Pension tax credit; 128.1(10)"excluded right or interest"(g)(iii) — Emigration of individual — no deemed disposition of right to pension; 146(1)"unused RRSP deduction room"D — reduction in room; 146(21) — Transfer from prescribed provincial pension plan. See also at end of s. 60.

History: Para. 60(v) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subpara. 60(v)(i) amended by 1999, c. 22, subsec. 16(1), applicable to 1998 *et seq.* The subpara. formerly read:

(i) the amount contributed by the taxpayer to the taxpayer's account under a prescribed provincial pension plan in the year or within 60 days after the end of the year to the extent that the amount has not been deducted in computing the taxpayer's income for a preceding taxation year,

Regulations: 7800(1) (prescribed provincial pension plan is the Saskatchewan Pension Plan); 7800(2) (prescribed amount).

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans.

(v.1) **UI and EI benefit repayment** — any benefit repayment payable by the taxpayer under Part VII of the *Unemployment Insurance Act* or Part VII of the *Employment Insurance Act* on or before April 30 of the following year, to the extent that the amount was not deductible in computing the taxpayer's income for any preceding taxation year;

Related Provisions: 56(1)(a)(iv) — Unemployment insurance/employment insurance benefits taxable; 56(9) — Meaning of "income for the year"; 60(n)(iii) — Deduction for repayment under other Parts of the UI/EI Act; 63(2) — Child care expenses — income exceeding income of supporting person.

History: Para. 60(v.1) amended by 1998, c. 19, subsec. 99(7), deemed to have come into force on June 30, 1996. The para. formerly read:

(v.1) UI benefit repayment — any benefit repayment payable by the taxpayer under Part VII of the *Employment Insurance Act* on or before April 30 of the following year, to the extent that the amount was not deductible in computing the taxpayer's income or taxable income for any preceding taxation year; and

Para. 60(v.1) amended by 1996, c. 23, para. 187(d), to substitute "*Employment Insurance Act*" for "*Unemployment Insurance Act*", in force June 30, 1996.

Para. 60(v.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 34(6), applicable to 1989 *et seq.*

Interpretation Bulletins: IT-75R4: Scholarships, fellowships, bursaries, prizes, research grants and financial assistance; IT-495R3: Child care expenses.

(w) **tax under Part I.2** — the amount of the taxpayer's tax payable under Part I.2 for the year; and

Related Provisions: 56(9) — Meaning of "income for the year"; 180.2 — OAS benefits clawback. See also at end of s. 60.

Interpretation Bulletins: IT-495R3: Child care expenses.

(x) **repayment under *Canada Education Savings Act*** — the total of all amounts each of which is an amount paid by the taxpayer in the year as a repayment, under the *Canada Education Savings Act* or under a program administered pursuant to an agreement entered into under section 12 of that Act, of an amount that was included because of subsection 146.1(7) in computing the taxpayer's income for the year or a preceding taxation year.

Related Provisions: 146.1(14)(a) — Reference to *Canada Education Savings Act* includes reference to earlier *DHRD Act*.

History: Para. 60(x) amended by 2004, c. 26, s. 20, in force December 15, 2004. The para. formerly read:

(x) CESG repayment — the total of all amounts each of which is an amount paid by the taxpayer in the year as a repayment under Part III.1 of the *Department of Human Resources Development Act* of an amount included because of subsection 146.1(7) in computing the taxpayer's income for the year or a preceding taxation year.

Para. 60(x) added by 1999, c. 22, subsec. 16(2), applicable to 1998 *et seq.*

Proposed Amendment — Recontribution of income from employees' leave of absence plan

Letter from Dept. of Finance, June 30, 2000: See under 81(1).

Related Provisions [s. 60]: 4(2), (3) — Whether deductions under s. 60 are applicable to a particular source.

Definitions [s. 60]: "allowance" — 56(12); "amount" — 248(1); "annuitant" — 146(1), 146.3(1); "annuity" — 248(1); "beneficially interested" — 248(25); "benefit under a deferred profit sharing plan", "business" — 248(1); "Canada" — 255; "child" — 252(1); "child support amount", "commencement day" — 56.1(4), 60.1(4); "common-law part-

ner", "common-law partnership" — 248(1); "consequence of the death" — 248(8); "death benefit" — 248(1); "deferred profit sharing plan" — 147(1), 248(1); "designated benefit" — 146.3(1); "eligible amount" — 60.01; "employee", "employee benefit plan", "employer", "employment" — 248(1); "estate" — 104(1), 248(1); "financially dependent" — 146(1.1); "former spouse" — 252(3); "income-averaging annuity contract" — 61(4), 248(1); "individual" — 248(1); "life insurance policy" — 138(12), 248(1); "minimum amount" — 146.3(1); "Minister" — 248(1); "parent" — 252(2); "person", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "refund of premiums" — 146(1); "registered pension plan" — 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan", "RRSP deduction limit" — 146(1), 248(1); "related" — 251(2); "resident in Canada" — 94(3)(a)(viii), 250; "retirement compensation arrangement", "retiring allowance" — 248(1); "series" — 248(10); "spouse" — 252(3); "superannuation or pension benefit" — 248(1); "support amount" — 56.1(4), 60.1(4); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

60.001 Application of subpara. 60(c.1)(i) — In the application of subparagraph 60(c.1)(i) in respect of amounts received pursuant to orders made after December 11, 1979 under the laws of Ontario, the references in that subparagraph to "February 10, 1988" and "February 11, 1988" shall be read as references to "December 11, 1979" and "December 12, 1979", respectively.

Origin of s. 60.001: R.S.C. 1985, c. 1 (5th Supp.). (Formerly contained in the application rule in 1988, c. 55, s. 37. For the history of subparagraph 60(c.1)(i), see under para. 60(c).)

Definitions: "amount" — 248(1).

60.01 Eligible amount — For the purpose of paragraph 60(j), the amount, if any, by which

(a) the amount of any payment received by a taxpayer in a taxation year out of or under a foreign retirement arrangement and included in computing the taxpayer's income because of clause 56(1)(a)(i)(C.1) (other than any portion thereof that is included in respect of the taxpayer for the year under subparagraph 60(j)(i) or that is part of a series of periodic payments)

exceeds

(b) the portion, if any, of the payment included under paragraph (a) that can reasonably be considered to derive from contributions to the foreign retirement arrangement made by a person other than the taxpayer or the taxpayer's spouse or common-law partner or former spouse or common-law partner,

is an eligible amount in respect of the taxpayer for the year.

History: Para. 60.01(b) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Para. 60.01(b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 21, applicable after 1992. Para. (b) formerly read:

(b) the portion, if any, of the payment included under paragraph (a) that can reasonably be considered to derive from contributions to the foreign retirement arrangement made by a person other than the taxpayer or the taxpayer's spouse (within the meaning assigned by subsection 146(1.1)) or former spouse

S. 60.01 added by 1994, c. 7, Sch. II (1991, c. 49), s. 35, applicable to payments received after July 13, 1990.

Definitions [s. 60.01]: "amount", "common-law partner" — 248(1); "foreign retirement arrangement" — 248(1); "former spouse" — 252(3); "person" — 248(1); "series" — 248(10); "spouse" — 252(3); "taxation year" — 249; "taxpayer" — 248(1).

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-528: Transfers of funds between registered plans.

Proposed Addition — 60.011

Technical Notes: New section 60.011 contains special rules relating to the application of paragraph 60(l).

In circumstances where a taxpayer has received (or is deemed to have received), as a consequence of the death of a spouse or common-law partner or of parent or grandparent on whom the taxpayer was financially dependent, certain taxable lump sum amounts from a registered retirement savings plan (RRSP), registered retirement income fund (RRIF) or registered pension plan (RPP), paragraph 60(l) allows the taxpayer to claim an offsetting deduction for, among other things, a payment made by or on behalf of the taxpayer to acquire an immediate annuity that satisfies the requirements set out in that paragraph.

A taxpayer is deemed to have received an amount from an RRSP, RRIF or RPP when the amount is paid to the deceased individual's estate and an election in respect of the amount is made jointly by the taxpayer and the deceased individual's legal representative. These deeming provisions are found in subsections 104(27), 146(8.1) and 146.3(6.1) for RPPs, RRSPs and RRIFs respectively.

There are two types of annuity for which an offsetting deduction may be provided under paragraph 60(l).

- One type (referred to in these notes as a "life annuity") is an annuity that is payable for the life of the taxpayer (with or without a guaranteed period), or for a fixed term equal to 90 years minus the age of the taxpayer when the annuity is acquired, and under which the taxpayer is the annuitant. Where the taxpayer is a child or grandchild of the deceased individual, this type of annuity is available only if the taxpayer was dependent on the deceased individual by reason of physical or mental infirmity.
- The other type (referred to in these notes as a "minor term annuity") is an annuity payable for a fixed term not exceeding 18 years minus the age of the taxpayer when the annuity is acquired. For this type of annuity, the annuitant may be the taxpayer or a trust under which the taxpayer is the sole person beneficially interested in amounts payable under the annuity.

(Refer to subparagraph 60(l)(ii) for a complete description of the conditions applicable to these annuities.)

New section 60.011 contains provisions dealing with the application of paragraph 60(l) to a taxpayer in circumstances where a trust (under which the taxpayer is a beneficiary) is named as the annuitant under an annuity acquired with funds paid out of an RRSP, RRIF or RPP as a consequence of the death of a spouse, common-law partner, parent or grandparent of the taxpayer and included in the taxpayer's income. Section 60.011 incorporates the existing provision of paragraph 60(l) that allows a trust to be named the annuitant under a minor term annuity, and it allows a trust to be named the annuitant under a life annuity, if certain conditions are met. It ensures that the taxpayer is not denied the deduction under paragraph 60(l) by reason only of the fact that the taxpayer is not the annuitant under the annuity, or the fact that the annuity is acquired by the trust or the estate of the deceased individual rather than "by or on behalf of the taxpayer". The provisions of section 60.011 are explained in greater detail below.

Consequential changes to reflect the introduction of section 60.011 are also made. Specifically, new section 75.2 attributes to the taxpayer amounts payable under such an annuity, with corresponding changes to section 160.2 making the annuitant and the policyholder jointly and severally, or solidarily, liable with the taxpayer for any tax payable in connection with amounts attributed to the taxpayer. Paragraph 148(1)(e) is amended to ensure that such annuities are considered to be prescribed annuity contracts and treated in the same manner as other prescribed annuity contracts, the purchase price of which is deductible under paragraph 60(l). Lastly, subsection 146(8.1) is amended to ensure that the election provided for thereunder can be made if the taxpayer is "beneficially interested" in the deceased individual's estate (as defined in subsection 248(25)), but not a beneficiary under the estate (as is currently required under subsection 146(8.1)). (See the explanatory notes to these provisions for further details.)

New section 60.011 applies after 1988, which reflects the effective date of the amendment to paragraph 60(l) allowing a trust to be named as the annuitant under a minor term annuity.

60.011 (1) Meaning of "lifetime benefit trust" — For the purpose of subsection (2), a trust is at any partic-

ular time a lifetime benefit trust with respect to a taxpayer and the estate of a deceased individual if

(a) immediately before the death of the deceased individual, the taxpayer

(i) was both a spouse or common-law partner of the deceased individual and mentally infirm, or

(ii) was both a child or grandchild of the deceased individual and dependent on the deceased individual for support because of mental infirmity; and

(b) the trust is, at the particular time, a personal trust under which

(i) no person other than the taxpayer may receive or otherwise obtain the use of, during the taxpayer's lifetime, any of the income or capital of the trust, and

(ii) the trustees

(A) are empowered to pay amounts from the trust to the taxpayer, and

(B) are required — in determining whether to pay, or not to pay, an amount to the taxpayer — to consider the needs of the taxpayer including, without limiting the generality of the foregoing, the comfort, care and maintenance of the taxpayer.

Technical Notes: New subsection 60.011(1) defines "lifetime benefit trust" with respect to a taxpayer and the estate of a deceased individual for the purposes of new subsection 60.011(2). Subsection 60.011(2) defines "qualifying trust annuity" with respect to a taxpayer and includes, under paragraph 60.011(2)(a), a life annuity acquired after 2005 under which the annuitant is, at the time the annuity is acquired, a lifetime benefit trust with respect to the taxpayer and the estate of a deceased individual. Subsection 60.011(2) is relevant for new subsection 60.011(3), the provisions of which ensure that the eligibility requirements for a taxpayer to deduct the purchase price of an annuity under paragraph 60(l) can be met where the annuity is a qualifying trust annuity with respect to the taxpayer.

Subsection 60.011(1) defines a trust to be, at a particular time, a lifetime benefit trust with respect to a taxpayer and the estate of a deceased individual, if two conditions are satisfied. First, the taxpayer must be, immediately before the death of the deceased individual, a mentally infirm spouse or common-law partner of the deceased individual, or a mentally infirm child or grandchild of the deceased individual who was dependent on the deceased individual by reason of that infirmity. Second, the trust must be, at the particular time, a personal trust under which

- no person other than the taxpayer may, during the taxpayer's lifetime, receive or otherwise obtain the use of any of the income of the trust (determined, as required under subsection 108(3), without reference to the provisions of the Act) or the capital of the trust,
- the trustees are empowered to pay amounts from the trust to the taxpayer, and
- the trustees are required to consider the needs of the taxpayer (including the comfort, care and maintenance of the taxpayer) in determining whether to pay, or not to pay, an amount to the taxpayer.

Related Provisions: 108(3) — Meaning of "income" of trust.

(2) Meaning of "qualifying trust annuity" — Each of the following is a qualifying trust annuity with respect to a taxpayer:

(a) an annuity that meets the following conditions, namely,

(i) it is acquired after 2005,

(ii) the annuitant under it is a trust that is, at the time the annuity is acquired, a lifetime benefit trust with respect to the taxpayer and the estate of a deceased individual,

(iii) it is for the life of the taxpayer (with or without a guaranteed period), or for a fixed term equal to 90 years minus the age in whole years of the taxpayer at the time it is acquired, and

(iv) if it is with a guaranteed period or for a fixed term, it requires that, in the event of the death of the taxpayer during the guaranteed period or fixed term, any amounts that would otherwise be payable after the death of the taxpayer be commuted into a single payment;

(b) an annuity that meets the following conditions, namely,

(i) it is acquired after 1988,

(ii) the annuitant under it is a trust under which the taxpayer is the sole person beneficially interested (determined without regard to any right of a person to receive an amount from the trust only on or after the death of the taxpayer) in amounts payable under the annuity,

(iii) it is for a fixed term not exceeding 18 years minus the age in whole years of the taxpayer at the time it is acquired, and

(iv) if it is acquired after 2005, it requires that, in the event of the death of the taxpayer during the fixed term, any amounts that would otherwise be payable after the death of the taxpayer be commuted into a single payment; and

(c) an annuity that meets the following conditions, namely,

(i) it is acquired

(A) after 2000 and before 2005 at a time at which the taxpayer was mentally or physically infirm, or

(B) in 2005 at a time at which the taxpayer was mentally infirm,

(ii) the annuitant under it is a trust under which the taxpayer is the sole person beneficially interested (determined without regard to any right of a person to receive an amount from the trust only on or after the death of the taxpayer) in amounts payable under the annuity, and

(iii) it is for the life of the taxpayer (with or without a guaranteed period), or for a fixed term equal to 90 years minus the age in whole years of the taxpayer at the time it is acquired.

Technical Notes: New subsection 60.011(2) defines "qualifying trust annuity" with respect to a taxpayer. Subsection 60.011(2) is relevant for new subsection 60.011(3), the provisions of which ensure that the eligibility requirements for a taxpayer to deduct the purchase price of an annuity under paragraph 60(l) can be met where the annuity is a qualifying trust annuity with respect to the taxpayer. It is also relevant for the purposes of new section 75.2, amended section 160.2 and amended paragraph 148(1)(e). Also, subsection 248(1) is amended to define the expression "qualifying trust annuity" as having the meaning assigned by subsection 60.011(2), thus ensuring that the definition in subsection 60.011(2) applies whenever the expression is used in the Act.

Subsection 60.011(2) defines three types of qualifying trust annuities with respect to a taxpayer, all of which have, as the annuitant thereunder, a trust under which the taxpayer is a beneficiary.

- Paragraph 60.011(2)(a) describes a life annuity that is acquired after 2005 and the annuitant under which is a trust that is, at the time of acquisition, a "lifetime benefit trust" with respect to the taxpayer and the estate of a deceased individual. ("Lifetime benefit trust" is defined in new subsection 60.011(1).) If the annuity has a guaranteed period or is for a fixed term, it must provide for commutation in the event of the death of the taxpayer during the guaranteed period or fixed term.

- Paragraph 60.011(2)(b) describes a minor term annuity that is acquired after 1988 and the annuitant under which is a trust under which the taxpayer is the sole person beneficially interested in amounts payable under the annuity (determined without regard to any right of a person to receive amounts from the trust only on or after the death of the taxpayer). If the annuity is acquired after 2005, it must provide for commutation in the event of the death of the taxpayer during the fixed term.

- Paragraph 60.011(2)(c) describes a life annuity that is acquired after 2000 and the annuitant under which is a trust under which the taxpayer is the sole person beneficially interested in amounts payable under the annuity (determined without regard to any right of a person to receive amounts from the trust only on or after the death of the taxpayer). The taxpayer must be infirm at the time of acquisition, and the annuity must be acquired before 2005 in the case of a physically infirm taxpayer, and before 2006 in the case of a mentally infirm taxpayer.

Related Provisions: 60.011(3) — Lifetime benefit trust; 75.2 — Treatment of qualifying trust annuity payout or on death; 248(1)"qualifying trust annuity" — Definition applies to entire Act.

(3) Application of para. 60(l) to "qualifying trust annuity" — For the purpose of paragraph 60(l),

(a) in determining if a qualifying trust annuity with respect to a taxpayer is an annuity described in subparagraph 60(l)(ii), clauses 60(l)(ii)(A) and (B) are to be read without regard to their requirement that the taxpayer be the annuitant under the annuity; and

(b) if an amount paid to acquire a qualifying trust annuity with respect to a taxpayer would, if this Act were read without reference to this subsection, not be considered to have been paid by or on behalf of the taxpayer, the amount is deemed to have been paid on behalf of the taxpayer where

(i) it is paid

(A) by the estate of a deceased individual who was, immediately before death,

(I) a spouse or common-law partner of the taxpayer, or

(II) a parent or grandparent of the taxpayer on whom the taxpayer was dependent for support, or

(B) by the trust that is the annuitant under the qualifying trust annuity, and

(ii) it would, if it had been paid by the taxpayer, be deductible under paragraph 60(l) in computing the taxpayer's income for a taxation year and the taxpayer elects, in the taxpayer's return of income under this Part for that taxation year, to have this paragraph apply to the amount.

Technical Notes: New subsection 60.011(3) contains provisions which ensure that the eligibility requirements for a taxpayer to deduct the purchase price of an annuity under paragraph 60(l) can be met where the annuity is a "qualifying trust annuity" with respect to the taxpayer (as defined in new subsection 60.011(2)). A distinguishing feature of a qualifying trust annuity with respect to a taxpayer is that the annuitant thereunder is a trust under which the taxpayer is a beneficiary.

Paragraph 60(l) requires that the taxpayer claiming a deduction for the purchase price of an annuity be the annuitant under the annuity. New paragraph 60.011(3)(a) provides for this requirement to be disregarded in the case of a qualifying trust annuity.

Paragraph 60(l) allows a taxpayer to deduct the purchase price of an annuity only if the amount paid to acquire the annuity was paid "by or on behalf of" the taxpayer. If a qualifying trust annuity with respect to a taxpayer is acquired either by the trust that is the annuitant, or by the estate of a deceased individual who was a spouse or common-law partner of the taxpayer or a parent or grandparent of the taxpayer on whom the taxpayer was dependent for support, and the purchase price would not otherwise be considered to have been paid "by or on behalf of the taxpayer", paragraph 60.011(3)(b) deems the amount to have been paid on behalf of the taxpayer. For this deeming rule to apply, the taxpayer must so elect in their return of income for the year in which the amount would have been deductible by the taxpayer under paragraph 60(l) had the purchase price been paid by the taxpayer. (A taxpayer is deemed to have made the election required under paragraph 60.011(3)(b) with respect to any amount claimed by the taxpayer as a deduction under paragraph 60(l) in computing income for a taxation year ending before 2005.)

Related Provisions: 75.2 — Treatment of qualifying trust annuity payout or on death.

Letter from Dept. of Finance, July 12, 2001:

Dear [xxx]

I am writing further to your meeting, and subsequent conversations, with Department of Finance officials concerning the tax treatment of proceeds of a registered retirement savings plan (RRSP) that are transferred, on the death of the RRSP annuitant, to a trustee for the benefit of a disabled child of the annuitant.

As you know, the *Income Tax Act* provides preferential tax treatment when RRSP proceeds are left, on the death of the annuitant, to a child of the annuitant who was dependent, financially and by reason of physical or mental infirmity, on the annuitant at the time of the annuitant's death. The main preference, in the context of your submission, is the ability to transfer the proceeds to certain tax-preferred vehicles and, in so doing, to obtain a further deferral of tax (i.e., a "rollover"). You have asked that we consider two changes to the rollover provisions. First, you have asked that the legislated income threshold for determining financially [*sic*] dependency be increased. Secondly, you have asked that the rollover options be expanded so as to allow a trust established for the benefit of an infirm financially dependent child to hold and manage the proceeds of the deceased parent's RRSP on behalf of the child.

Let me, first of all, address the trust issue. We understand that parents of an infirm child who wish to ensure the child's financial security and well-being after the parent's [*sic*] death, will typically create a trust to clearly establish their intentions regarding care for the child and management of property, including RRSP proceeds, left for the benefit of the child. The issue is that, if a trust is used, the only rollover option that is available for proceeds of the parent's RRSP is the acquisition of a term annuity to age 18. While there are other rollover options that provide for a deferral beyond age 18, they do not accommodate the use of a trust, with the result that such a deferral can be obtained only be [*sic*] giving control over the proceeds to the infirm child.

We have concluded that there is no compelling rationale to preclude a deferral past age 18 where a trust is being used to manage property for the benefit of an infirm dependent child. Accordingly, we are prepared to recommend that the existing rollover option, which allows the proceeds of a deceased parent's RRSP to be used to acquire an immediate life annuity under which an infirm dependent child of the deceased is the annuitant, be expanded to allow a trust to be named as the annuitant, provided the child is the sole person beneficially interested in annuity payments made to the trust. I would anticipate that this amendment would be included in the next package of proposed technical amendments to the Act. We would further recommend that this change apply to deaths in the 2001 and subsequent taxation years.

With respect to the test for financial dependency, you submit that the current threshold is below social assistance rates in many provinces, with the result that infirm dependants may be disqualified from the rollover if they receive social assistance. Moreover, although the *Income Tax Act* allows for the financial dependency of a child with income above the legislated threshold to be established on a factual basis, this requires a reliance on the Canada Customs and Revenue Agency (CCRA) to make such a determination. You are concerned that this does not provide sufficient certainty for the parent of a disabled child who is seeking to provide for the care of such a child as part of the parent's estate plan and, in that regard, have asked that the threshold be increased for infirm children. As you know, we appreciate your concerns and are actively reviewing this issue. Unfortunately, we are not in a position at this time to comment on whether it will be possible to recommend such a change. We understand that, in the absence of such confirmation, you may wish to pursue the possibility of obtaining an opinion from the CCRA as to whether your child would be considered, on a factual basis, to be financially dependent on you.

I wish to thank you for raising this matter with us.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, February 18, 2002:

Dear [xxx]

Thank you for your recent letter requesting an increase in the income threshold used to determine the financial dependence of a child of a deceased registered retirement income fund (RRIF) annuitant.

I appreciate you taking the time to contact me and have taken careful note of your suggestion on this important matter. As you may know, government policy is under continuous examination by the Department of Finance with a view to ensuring that the existing system of taxation is fair and effective. The representations and policy suggestions that we receive from a broad range of Canadians are an integral part of this process, helping us to identify issues of concern and focus our efforts toward solutions. I wish to assure you that your proposal will be given careful consideration as part of this on-going review.

Having said this, I would like to clarify that a child with income above the legislated threshold will nonetheless be considered to be financially dependent for purposes of the rollover rules, if this dependence can be established on a factual basis. You may wish to pursue this possibility with the Canada Customs and Revenue Agency.

Finally, I understand that you wish to transfer your RRIF proceeds on death to a trust under which your child will be the beneficiary. In this regard, it may be of interest for you to know that I intend to recommend that the *Income Tax Act* (Act) be amended to provide an additional option for the utilisation of proceeds of a deceased RRIF annuitant. The amendment would involve the existing rollover option that allows the RRIF proceeds to be used to acquire an immediate life annuity under which a child, financially dependant by reason of physical or mental infirmity on the deceased RRIF annuitant, is the annuitant. Specifically, the amendment would expand this option to allow a trust to be named as the annuitant, provided the child is the sole person beneficially interested in payments made under the annuity to the trust. This provision would be comparable to the existing rollover provision that allows a trust to be named as the annuitant under a term annuity payable to age 18. It is anticipated that this amendment will be included in the next package of proposed technical amendments to the Act.

Thank you again for making me aware of your views on this matter.

Sincerely,
The Honourable Paul Martin, P.C., M.P., Minister of Finance

Letter from Dept. of Finance, May 15, 2003:

Dear [xxx]

Thank you for your letter of September 6, 2002 regarding the rules governing the transfer of funds from a deceased annuitant's registered retirement savings plan (RRSP) or registered retirement income fund (RRIF) to a financially dependent child or grandchild. I welcome this opportunity to correspond with you again and regret the delay in my reply.

As my predecessor indicated to you in his letter of February 18, 2002, it will be recommended that the *Income Tax Act* be amended to allow a tax-deferred rollover of RRSP or RRIF proceeds to acquire an immediate life annuity under which a trust is the annuitant, provided a child or grandchild who is financially dependent by reason of physical or mental infirmity on the deceased annuitant is the sole person beneficially interested in payments made under the annuity to the trust.

This amendment is included in the package of proposed technical amendments to the Act that was released on December 20, 2002 (the package is available on the Finance Canada web site — www.fin.gc.ca). The Department is now in the process of receiving public feedback on the proposed amendments. Once this process is complete and any necessary changes are made to the proposals, the package will be tabled in the House of Commons. While I cannot say with absolute certainty, I have no reason to believe that any changes to the proposed amendment mentioned above would be contemplated.

I would also note that the 2003 budget proposes to increase the level of income used in determining the financial dependence of an infirm child or grandchild under the rules that apply to RRSP and RRIF proceeds on the death of the annuitant. These rules allow a financially dependent child who was dependent on the deceased annuitant by reason of physical or mental infirmity to receive a rollover of the deceased annuitant's RRSP or RRIF proceeds. In recognition of the special need for the ongoing care of financially dependent infirm children and to provide supporting parents with greater certainty in their estate planning, the budget proposes to increase the level of income used to determine the financial dependence of an infirm child under these rules from $7,634 to $13,814, effective in 2003 and indexed in subsequent years.

Thank you again for making me aware of your views. I trust my reply has been helpful in responding to your concerns on these matters.

Yours very truly,

John Manley
Minister of Finance

Letter from Dept. of Finance, April 20, 2005: See under 146(8.1).

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 72, will add s. 60.011, applicable after 1988 and, for the purpose of applying subpara. 60.011(3)(b)(ii) to a taxation year that ends before 2005, a taxpayer is deemed to have made the election referred to in that subpara. in respect of an amount paid to acquire a qualifying trust annuity if the taxpayer claimed, in their return of income for that taxation year, an amount as a deduction under para. 60(l) in respect of the amount paid to acquire the qualifying trust annuity.

Definitions [s. 60.011]: "amount", "annuity" — 248(1); "beneficially interested" — 248(25); "child" — 252(1); "common-law partner" — 248(1); "estate" — 104(1), 248(1); "grandparent" — 252(2)(d); "individual" — 248(1); "lifetime benefit trust" — 60.011(1); "parent" — 252(2)(a); "person", "personal trust" — 248(1); "qualifying trust annuity" — 60.011(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

60.02 Application of subpara. 60(v)(iii) — Subparagraph 60(v)(iii) is applicable to the 1991 and subsequent taxation years.

Origin of s. 60.02: R.S.C. 1985, c. 1 (5th Supp.). (Formerly contained in the application rule in 1990, c. 35, s. 5.)

Definitions: "taxation year" — 249.

60.1 (1) Support — For the purposes of paragraph 60(b) and subsection 118(5), where an order or agreement, or any variation thereof, provides for the payment of an amount by a taxpayer to a person or for the benefit of the person, children in the person's custody or both the person and those children, the amount or any part thereof

(a) when payable, is deemed to be payable to and receivable by that person; and

(b) when paid, is deemed to have been paid to and received by that person.

Related Provisions: 56.1(1) — Parallel rule for recipient; 60.11 — Application to orders made in Ontario after May 6, 1974.

History: Subsec. 60.1(1) amended by 1997, c. 25, subsec. 11(1), applicable to amounts paid after 1996. Subsec. (1) formerly read:

> 60.1 (1) Maintenance payments — Where a decree, order, judgment or written agreement described in paragraph 60(b) or (c), or any variation thereof, provides for the periodic payment of an amount by a taxpayer
>
> (a) to a person who is
>
> (i) the taxpayer's spouse or former spouse, or
>
> (ii) where the amount is paid under an order made by a competent tribunal in accordance with the laws of a province, an individual of the opposite sex who is the natural parent of a child of the taxpayer, or
>
> (b) for the benefit of the person, children in the custody of the person or both the person and those children,
>
> the amount or any part thereof, when paid, shall be deemed for the purposes of paragraphs 60(b) and (c) to have been paid to and received by that person.

Subsec. 60.1(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 22, applicable (by subsec. 22(2), as amended by 1994, c. 21, s. 135) to amounts paid under a decree, order or judgment made by a competent tribunal after 1992 or under a written agreement entered into after 1992 other than such a decree, order or judgment, or written agreement, made with respect to a marriage breakdown that occurred before 1993. Subsec. (1) formerly read:

> (1) Where, after May 6, 1974, a decree, order, judgment or written agreement described in paragraph 60(b), (c) or (c.1), or any varia-

tion thereof, has been made providing for the periodic payment of an amount by a taxpayer

(a) to a person who is

(i) the taxpayer's spouse or former spouse, or

(ii) where the amount is paid pursuant to an order made by a competent tribunal after February 10, 1988 in accordance with the laws of a province, an individual of the opposite sex who

(A) before the date of the order cohabited with the taxpayer in a conjugal relationship, or

(B) is the natural parent of a child of the taxpayer, or

(b) for the benefit of the person or children in the custody of the person, or both the person and those children,

the amount or any part thereof, when paid, shall be deemed, for the purposes of paragraphs 60(b), (c) and (c.1), to have been paid to and received by that person.

Selected Cases: *Nistor v. R.*, [2004] 1 C.T.C. 2849 (TCC) ("Custody" extended to child living in university dormitory); *Hinkelman v. R.*, [2001] 2 C.T.C. 2180 (TCC) (Equitable principles applied to avoid windfall to undeserving taxpayer); *Sadler v. R.*, [1997] 3 C.T.C. 2698 (TCC) (Custody and control not the same as legal control, but general care and custody).

Interpretation Bulletins: IT-530R: Support payments.

(2) Agreement — For the purposes of section 60, this section and subsection 118(5), the amount determined by the formula

A – B

where

A is the total of all amounts each of which is an amount (other than an amount that is otherwise a support amount) that became payable by a taxpayer in a taxation year, under an order of a competent tribunal or under a written agreement, in respect of an expense (other than an expenditure in respect of a self-contained domestic establishment in which the taxpayer resides or an expenditure for the acquisition of tangible property that is not an expenditure on account of a medical or education expense or in respect of the acquisition, improvement or maintenance of a self-contained domestic establishment in which the person described in paragraph (a) or (b) resides) incurred in the year or the preceding taxation year for the maintenance of a person, children in the person's custody or both the person and those children, where the person is

Proposed Amendment — 60.1(2)A opening words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), s. 218, will amend the opening words of the description of A in subsec. 60.1(2) by substituting "tangible property, or for civil law corporeal property," for "tangible property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(a) the taxpayer's spouse or common-law partner or former spouse or common-law partner, or

(b) where the amount became payable under an order made by a competent tribunal in accordance with the laws of a province, an individual who is a parent of a child of whom the taxpayer is a legal parent,

and

B is the amount, if any, by which

(a) the total of all amounts each of which is an amount included in the total determined for A in respect of the acquisition or improvement of a self-contained domestic establishment in which that person resides, including any payment of principal or interest in respect of a loan made or indebtedness incurred to finance, in any manner whatever, such acquisition or improvement

exceeds

(b) the total of all amounts each of which is an amount equal to 1/5 of the original principal amount of a loan or indebtedness described in paragraph (a),

is, where the order or written agreement, as the case may be, provides that this subsection and subsection 56.1(2) shall apply to any amount paid or payable thereunder, deemed to be an amount payable by the taxpayer to that person and receivable by that person as an allowance on a periodic basis, and that person is deemed to have discretion as to the use of that amount.

Related Provisions: 56.1(2) — Parallel rule for recipient; 252(3) — Extended meaning of "spouse" and "former spouse".

History: Para. (b) of the description of A in subsec. 60.1(2) amended by 2005, c. 33, s. 11, (3) to replace "natural parent" with "legal parent", in force on July 20, 2005 (Royal Assent).

Para. 60.1(2)(a) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

The portion of subsec. 60.1(2) before the formula, the description of A, and the closing words of subsec. (2), amended by 1997, c. 25, subsecs. 11(2)–(4), applicable to amounts paid after 1996. Those portions formerly read:

(2) For the purposes of paragraphs 60(b) and (c), the amount determined by the formula

. . . . .

A is the total of all amounts each of which is an amount (other than an amount to which paragraph 60(b) or (c) otherwise applies) paid by a taxpayer in a taxation year, under a decree, order or judgment of a competent tribunal or under a written agreement, in respect of an expense (other than an expenditure in respect of a self-contained domestic establishment in which the taxpayer resides or an expenditure for the acquisition of tangible property that is not an expenditure on account of a medical or education expense or in respect of the acquisition, improvement or maintenance of a self-contained domestic establishment in which the person described in paragraph (a) or (b) resides) incurred in the year or the preceding taxation year for maintenance of a person who is

(a) the taxpayer's spouse or former spouse, or

(b) where the amount is paid under an order made by a competent tribunal in accordance with the laws of a province, an individual of the opposite sex who is the natural parent of a child of the taxpayer,

or for the maintenance of children in the person's custody or both the person and those children if, at the time the expense was incurred and throughout the remainder of the year, the taxpayer was living separate and apart from that person, and

. . . . .

shall, where the decree, order, judgment or written agreement, as the case may be, provides that this subsection and subsection 56.1(2) shall apply to any payment made thereunder, be deemed to be an amount paid by the taxpayer and received by that person as an allowance payable on a periodic basis.

Subsec. 60.1(2) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 22, applicable (by subsec. 22(2), as amended by 1994, c. 21, s. 135) to amounts paid under a decree, order or judgment made by a competent tribunal after 1992 or under a written agreement entered into after 1992 other than such a decree, order or judgment, or written agreement, made with respect to a marriage breakdown that occurred before 1993. Subsec. (2) formerly read:

(2) For the purposes of paragraphs 60(b), (c) and (c.1), the amount, if any, by which

(a) the total of all amounts each of which is an amount (other than an amount to which paragraph 60(b), (c) or (c.1) otherwise applies) paid by a taxpayer in a taxation year, pursuant to a decree, order or judgment of a competent tribunal or pursuant to a

written agreement, in respect of an expense (other than an expenditure in respect of a self-contained domestic establishment in which the taxpayer resides or an expenditure for the acquisition of tangible property that is not an expenditure on account of a medical or educational expense or in respect of the acquisition, improvement or maintenance of a self-contained domestic establishment in which the person described in subparagraph (i) or (ii) resides) incurred in the year or the immediately preceding taxation year for maintenance of a person who is

(i) the taxpayer's spouse or former spouse, or

(ii) where the amount is paid pursuant to an order made by a competent tribunal after February 10, 1988 in accordance with the laws of a province, an individual of the opposite sex who

(A) before the date of the order cohabited with the taxpayer in a conjugal relationship, or

(B) is the natural parent of a child of the taxpayer,

or for the maintenance of children in the person's custody or both the person and those children if, at the time the expense was incurred and throughout the remainder of the year, the taxpayer was living apart from that person

exceeds

(b) the amount, if any, by which

(i) the total of all amounts each of which is an amount included in the total determined under paragraph (a) in respect of the acquisition or improvement of a self-contained domestic establishment in which that person resides, including any payment of principal or interest in respect of a loan made or indebtedness incurred to finance, in any manner whatever, the acquisition or improvement

exceeds

(ii) the total of all amounts each of which is an amount equal to 1/5 of the original principal amount of a loan or indebtedness described in subparagraph (i)

shall, where the decree, order, judgment or written agreement, as the case may be, provides that this subsection and subsection 56.1(2) shall apply to any payment made pursuant thereto, be deemed to be an amount paid by the taxpayer and received by that person as an allowance payable on a periodic basis.

Selected Cases [subsec. 60.1(2)]: *Veilleux v. R.*, [2003] 1 C.T.C. 138 (FCA) (Not necessary to refer to sections of the Act, provided substance contained in agreement); *Hak v. R.*, [1999] 1 C.T.C. 2633 (TCC) (Failure to mention that provision should apply to payments not fatal to deductibility); *Larsson v. Canada*, [1996] 3 C.T.C. 2430 (TCC) (Inclusion/deduction process should be favoured in ambiguous or doubtful cases).

Interpretation Bulletins: IT-530R: Support payments.

(3) Prior payments — For the purposes of this section and section 60, where a written agreement or order of a competent tribunal made at any time in a taxation year provides that an amount paid before that time and in the year or the preceding taxation year is to be considered to have been paid and received thereunder,

(a) the amount is deemed to have been paid thereunder; and

(b) the agreement or order is deemed, except for the purpose of this subsection, to have been made on the day on which the first such amount was paid, except that, where the agreement or order is made after April 1997 and varies a child support amount payable to the recipient from the last such amount paid to the recipient before May 1997, each varied amount of child support paid under the agreement or order is deemed to have been payable under an agreement or order the commencement day of which is the day on which the first payment of the varied amount is required to be made.

Related Provisions: 56.1(3) — Parallel rule for recipient.

History: Subsec. 60.1(3) amended by 1997, c. 25, subsec. 11(5), applicable to amounts paid after 1996. Subsec. (3) formerly read:

(3) For the purposes of this section and section 60, where a decree, order or judgment of a competent tribunal or a written agreement made at any time in a taxation year provides that an amount paid before that time and in the year or the preceding taxation year is to be considered to have been paid and received thereunder, the amount shall be deemed to have been paid thereunder.

Subsec. 60.1(3) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 22, applicable (by subsec. 22(2) as amended by 1994, c. 21, s. 135) to amounts paid under a decree, order or judgment made by a competent tribunal after 1992 or under a written agreement entered into after 1992 other than such a decree, order or judgment, or written agreement, made with respect to a marriage breakdown that occurred before 1993. Subsec. (3) formerly read:

(3) For the purposes of this section and section 60, where a decree, order or judgment of a competent tribunal or a written agreement made at any time in a taxation year provides that an amount paid before that time and in the year or the immediately preceding taxation year is to be considered as having been paid and received pursuant thereto, the following rules apply:

(a) the amount shall be deemed to have been paid pursuant thereto; and

(b) the person who made the payment shall be deemed to have been separated pursuant to a divorce, judicial separation or written separation agreement from the person's spouse or former spouse at the time the payment was made and throughout the remainder of the year.

Selected Cases [subsec. 60.1(3)]: *Foley v. R.*, [2000] 4 C.T.C. 2016 (TCC) (Lawyers can bind clients if properly authorized).

Interpretation Bulletins: IT-530R: Support payments.

(4) Definitions — The definitions in subsection 56.1(4) apply in this section and section 60.

History: Subsec. 60.1(4) added by 1997, c. 25, subsec. 11(6), applicable after 1996.

Selected Cases [s. 60.1]: *Larivière v. R.*, [1989] 1 C.T.C. 297 (FCA) (Maintenance sum payable periodically to former spouse deductible).

Definitions [s. 60.1]: "amount" — 248(1); "child" — 252(1); "child support amount", "commencement day" — 56.1(4), 60.1(4); "corporeal property" — Quebec *Civil Code* art. 899, 906; "former spouse" — 252(3); "housing unit" — 56.1(4); "individual" — 248(1); "parent" — 252(2); "person", "prescribed", "principal amount", "property" — 248(1); "province" — *Interpretation Act* 35(1); "received" — 248(7); "self-contained domestic establishment" — 248(1); "spouse" — 252(3); "support amount" — 56.1(4), 60.1(4); "taxation year" — 249; "taxpayer" — 248(1); "written" — *Interpretation Act* 35(1) [writing].

60.11 Application of subpara. 60.1(1)(a)(ii) — In the application of subparagraph 60.1(1)(a)(ii) in respect of amounts paid pursuant to orders made after May 6, 1974 under the laws of Ontario, the reference in that subparagraph to "February 10, 1988" shall be read as a reference to "May 6, 1974".

Origin of s. 60.11: R.S.C. 1985, c. 1 (5th Supp.). (Formerly in the application rule in 1988, c. 55, s. 38.)

Definitions: "amount" — 248(1).

60.2 (1) Refund of undeducted past service AVCs — There may be deducted in computing a taxpayer's income for a taxation year an amount equal to the total of

(a) where the taxation year ends before 1991, the total of all amounts each of which is that portion of an amount paid to the taxpayer before 1991 and included by reason of subparagraph 56(1)(a)(i) or paragraph 56(1)(h) or (t) in computing the taxpayer's income for the year or a preceding taxation year that can reasonably be considered to be a refund of additional voluntary contributions made by the taxpayer before October 9, 1986 to a registered pension plan for the

taxpayer's benefit in respect of services rendered by the taxpayer before the year in which the contributions were made, to the extent that the contributions were not deducted in computing the taxpayer's income for any taxation year; and

(b) the least of

(i) $3,500,

(ii) the total of all amounts each of which is an amount included after 1986 by reason of subparagraph 56(1)(a)(i) or paragraph 56(1)(d.2), (h) or (t) in computing the taxpayer's income for the year, and

(iii) the balance of the annuitized voluntary contributions of the taxpayer at the end of the year.

Related Provisions: 8(1)(m) — Employee's RRP contributions; 60(j.01) — Transfer of surplus.

(2) Definition of "balance of the annuitized voluntary contributions" — For the purposes of subsection (1), "balance of the annuitized voluntary contributions" of a taxpayer at the end of a taxation year means the amount, if any, by which

(a) such part of the total of all amounts each of which is an additional voluntary contribution made by the taxpayer to a registered pension plan before October 9, 1986 in respect of services rendered by the taxpayer before the year in which the contribution was made, to the extent that the contribution was not deducted in computing the taxpayer's income for any taxation year, as may reasonably be considered as having been

(i) used before October 9, 1986 to acquire or provide an annuity for the taxpayer's benefit under a registered pension plan or registered retirement savings plan, or

(ii) transferred before October 9, 1986 to a registered retirement income fund under which the taxpayer was the annuitant (within the meaning assigned by subsection 146.3(1)) at the time of the transfer

exceeds

(b) the total of all amounts each of which is

(i) an amount deducted under paragraph (1)(b) in computing the taxpayer's income for a preceding taxation year, or

(ii) an amount deducted under paragraph (1)(a) in computing the taxpayer's income for the year or a preceding taxation year, to the extent that the amount can reasonably be considered to be in respect of a refund of additional voluntary contributions included in determining the total under paragraph (a).

Definitions [s. 60.2]: "additional voluntary contribution", "amount", "annuity" — 248(1); "balance" — 60.2(2); "registered pension plan" — 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "taxation year" — 249; "taxpayer" — 248(1).

61. (1) Payment made as consideration for income-averaging annuity — In computing the income for a taxation year of an individual resident in Canada, there may be deducted an amount equal to the lesser of

(a) such amount as the individual may claim, not exceeding the total of amounts each of which is a single payment

(i) made by the individual in the year or within 60 days after the end of the year as consideration for an income-averaging annuity contract of the individual, and

(ii) in respect of which no amount has been deducted in computing the individual's income for the immediately preceding taxation year, and

(b) the amount, if any, by which the total of

(i) the remainder obtained when the total of the amounts deductible in computing the individual's income for the year by reason of paragraphs 60(j) and (l) of this Act and paragraph 60(k) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, is deducted from the total of amounts described in subsection (2) in respect of the individual for the year,

(ii) the amount, if any, by which the amount determined under paragraph 3(b) in respect of the individual for the year exceeds the total of amounts each of which is an allowable business investment loss of the individual for the year,

(iii) the individual's income for the year from the production of a literary, dramatic, musical or artistic work,

(iv) the individual's income for the year from the individual's activities as an athlete, a musician or a public entertainer such as a theatre, motion picture, radio or television artist, and

(iv.1) the amount, if any, by which the amount included in computing the income of the individual for the year by virtue of section 59 exceeds the total of amounts deducted in computing the individual's income for the year under sections 64[4], 66, 66.1, 66.2 and 66.4 and under section 29 of the *Income Tax Application Rules*,

exceeds

(v) the total of amounts each of which is the annual annuity amount of the individual in respect of an income-averaging annuity contract in respect of the consideration for which any amount has been deducted under this subsection in computing the individual's income for the year.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

(2) Idem — For the purposes of subsection (1), an amount described in this subsection in respect of an individual for a taxation year is any following amount:

(a) any single payment received by the individual in the year

(i) out of or under a superannuation or pension fund or plan

(A) on the death, withdrawal or retirement from employment of an employee or former employee,

(B) on the winding-up of the fund or plan in full satisfaction of all rights of the payee in or under the fund or plan, or

[4] i.e., s. 64 of R.S.C. 1952, c. 148, as amended.

(C) to which the payee is entitled by virtue of an amendment to the plan although the payee continues to be an employee to whom the plan is applicable,

(ii) on retirement as an employee in recognition of long service and not made out of or under a superannuation fund or plan,

(iii) pursuant to an employees profit sharing plan in full satisfaction of all the individual's rights in or under the plan, to the extent that the amount thereof is required to be included in computing the individual's income for the year in which the payment was received, or

(iv) pursuant to a deferred profit sharing plan on the death, withdrawal or retirement from employment of an employee or former employee, to the extent that the amount thereof is required to be included in computing the individual's income for the year;

(b) a payment or payments made by an employer to the individual as an employee or former employee on or after retirement in respect of loss of office or employment, if made in the year of retirement or within one year after that year;

(c) a payment or payments paid to the individual as a death benefit, if paid in the year of death or within one year after that year;

(d) any amount included in computing the individual's income for the year by virtue of subsection 146(8), to the extent that the amount is a refund of premiums, as defined by section 146, under a registered retirement savings plan received by the individual under the plan on or after the death of the person who was, immediately before the person's death, the annuitant thereunder;

(e) any amount included in computing the individual's income for the year by virtue of section 13, 14 or 23, subsection 28(4) or (5) or paragraph 106(2)(a) of this Act or subparagraph 56(1)(a)(viii) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952;

(f) any amount deemed by section 7 to be a benefit received by the individual in the year by virtue of the individual's employment;

(g) the amount, if any, by which any amount received by the individual in the year as or on account of a prize for achievement in a field of endeavour ordinarily carried on by the individual exceeds $500;

(h) any amount included in computing the individual's income for the year by virtue of subsection 146.2(6) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952;

(i) a payment made in the year to an individual by virtue of paragraph 51(2)(b) of the *Judges Act*;

(j) except where the individual claimed a deduction under paragraph 23(3)(a) of the *Income Tax Application Rules* in computing the individual's income for the year, any amount included in computing that income by virtue of paragraph 23(3)(c) of that Act; and

(k) where the individual ceased to be a member of a partnership in the year or the preceding year and paragraph 34(a) applied in computing the individual's income therefrom in the preceding year, the amount included in the individual's income for the year by virtue of paragraph 3(a) to the extent that, having regard to all the circumstances including the proportion in which the members of the partnership have agreed to share the profits of the partnership, it can reasonably be considered to be in respect of the individual's share of the work in progress of the partnership at the time the individual ceased to be a member thereof, if, during the remainder of the year in which the individual ceased to be a member and in the following year, the individual did not

(i) become employed in the business that had been carried on by the partnership,

(ii) carry on a business that is a profession, or

(iii) become a member of a partnership that carries on a business that is a profession.

Related Provisions: 128.1(10)"excluded right or interest"(f)(ii) — Emigration — no deemed disposition of right to IAAC.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

(3) [Repealed under former Act]

(4) Definitions — In this section,

"annual annuity amount" of an individual in respect of an income-averaging annuity contract means the total of the equal payments described in paragraph (c) of the definition "income-averaging annuity contract" in this subsection that, under the contract, are receivable by the individual in the twelve month period commencing on the day that the first such payment under the contract becomes receivable by the individual;

"income-averaging annuity contract" of an individual means a contract between the individual and a person licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an annuities business or a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee, under which

(a) in consideration of a qualifying payment as consideration under the contract, that person agrees to pay to the individual, commencing at a time not later than 10 months after the individual has made the qualifying payment,

(i) an annuity to the individual for the individual's life, with or without a guaranteed term not exceeding the number of years that is the lesser of

(A) 15, and

(B) 85 minus the age of the individual at the time the annuity payments commence, or

(ii) an annuity to the individual for a guaranteed term described in subparagraph (i), or

(b) in consideration of a single payment in respect of the individual's 1981 taxation year, other than a qualifying payment, made by the individual as consideration under the contract, that person makes all payments provided for under the contract to the individual before 1983

and under which no payments are provided except the single payment by the individual and,

(c) in respect of a contract referred to in paragraph (a), equal annuity payments that are to be made annually or at more frequent periodic intervals, or

(d) in respect of a contract referred to in paragraph (b), payments described therein to the individual;

Related Provisions: 128.1(10)"excluded right or interest"(f)(ii) — Emigration — no deemed disposition of right to IAAC.

"qualifying payment" means a single payment made before November 13, 1981 (or made on or after November 13, 1981 pursuant to an agreement in writing entered into before that date to make such a payment in respect of the individual's 1981 taxation year, or pursuant to an arrangement in writing made before that date to have funds withheld before 1982 from any of the individual's remuneration described in paragraph (1)(b) earned or received before November 13, 1981 and paid by or on behalf of the individual).

Selected Cases [subsec. 61(4)]: *Huet v. Canada*, [1995] 1 C.T.C. 367 (FCTD) (Retroactive legislation not unconstitutional).

Definitions [s. 61]: "amount", "annuity", "business" — 248(1); "Canada" — 255; "corporation" — 248(1), *Interpretation Act* 35(1); "death benefit" — 248(1); "deferred profit sharing plan" — 147(1), 248(1); "employee" — 248(1); "employees profit sharing plan" — 144(1), 248(1); "employment", "individual", "office", "person" — 248(1); "province" — *Interpretation Act* 35(1); "radio" — *Interpretation Act* 35(1); "registered retirement savings plan" — 146(1), 248(1); "resident in Canada" — 250; "taxation year" — 249; "taxpayer" — 248(1); "writing" — *Interpretation Act* 35(1).

61.1 (1) Where income-averaging annuity contract ceases to be such — Where a contract that was at any time an income-averaging annuity contract of an individual has, at a subsequent time, ceased to be an income-averaging annuity contract otherwise than by virtue of the surrender, cancellation, redemption, sale or the disposition thereof, the individual shall be deemed to have received at that subsequent time as proceeds of the disposition of an income-averaging annuity contract an amount equal to the fair market value of the contract at that subsequent time and to have acquired the contract, as another contract not being an income-averaging annuity contract, immediately thereafter at a cost to the individual equal to that fair market value.

Related Provisions: 56(1)(f) — Disposition of income-averaging annuity contracts; 61 — IAAC; 212(1)(n) — Withholding tax on payment to non-resident.

(2) Where annuitant dies and payments continued — Where an individual who was an annuitant under an income-averaging annuity contract has died and payments are subsequently made under that contract, the payments shall be deemed to be payments under an income-averaging annuity contract.

Interpretation Bulletins [subsec. 61.1(2)]: IT-212R3: Income of deceased persons — rights or things.

Definitions [s. 61.1]: "income-averaging annuity contract" — 61(4), 248(1); "individual" — 248(1).

61.2 Reserve for debt forgiveness for resident individuals — There may be deducted in computing the income for a taxation year of an individual (other than a trust) resident in Canada throughout the year such amount as the individual claims not exceeding the amount determined by the formula

$$A + B - 0.2(C - \$40{,}000)$$

where

A is the amount, if any, by which

(a) the total of all amounts each of which is an amount that, because of the application of section 80 to an obligation payable by the individual (or a partnership of which the individual was a member) was included under subsection 80(13) in computing the income of the individual for the year or the income of the partnership for a fiscal period that ends in the year (to the extent that, where the amount was included in computing income of a partnership, it relates to the individual's share of that income)

exceeds

(b) the total of all amounts deducted because of paragraph 80(15)(a) in computing the individual's income for the year,

B is the amount, if any, included under section 56.2 in computing the individual's income for the year, and

C is the greater of $40,000 and the individual's income for the year, determined without reference to this section, paragraph 20(1)(ww), section 56.2, paragraph 60(w), subsection 80(13) and paragraph 80(15)(a).

Related Provisions: 56.2 — Inclusion into income in following year; 61.3, 61.4 — Alternative deductions for corporations, non-residents and trusts; 80(16) — Designation by CCRA to reduce reserve under 61.2; 114(a) — No deduction under 61.2 for part-year residents; 257 — Formula cannot calculate to less than zero.

History: The description of C in s. 61.2 amended by 2000, c. 19, s. 8, applicable to 2000 *et seq.* It formerly read:

C is the greater of $40,000 and the individual's income for the year, determined without reference to this section, section 56.2, paragraph 60(w), subsection 80(13) and paragraph 80(15)(a).

S. 61.2 added by 1995, c. 21, s. 20, applicable to taxation years that end after February 21, 1994.

Definitions [s. 61.2]: "amount" — 248(1); "fiscal period" — 249(2)(b), 249.1; "individual" — 248(1); "resident in Canada" — 250; "taxation year" — 249; "trust" — 104(1), 248(1), (3).

61.3 (1) Deduction for insolvency with respect to resident corporations — There shall be deducted in computing the income for a taxation year of a corporation resident in Canada throughout the year that is not exempt from tax under this Part on its taxable income, the lesser of

(a) the amount, if any, by which

(i) the total of all amounts each of which is an amount that, because of the application of section 80 to a commercial obligation (in this section having the meaning assigned by subsection 80(1)) issued by the corporation (or a partnership of which the corporation was a member) was included under subsection 80(13) in computing the income of the corporation for the year or the income of the partnership for a fiscal period that ends in the year (to the extent that the amount, where it was included in computing income of a partnership, relates to the corporation's share of that income)

exceeds

(ii) the total of all amounts deducted because of paragraph 80(15)(a) in computing the corporation's income for the year, and

(b) the amount determined by the formula

$$A - 2(B - C - D - E)$$

where

A is the amount determined under paragraph (a) in respect of the corporation for the year,

B is the total of

(i) the fair market value of the assets of the corporation at the end of the year,

(ii) the amounts paid before the end of the year on account of the corporation's tax payable under this Part or any of Parts I.3, II, VI and XIV for the year or on account of a similar tax

payable for the year under an Act of a province, and

(iii) all amounts paid by the corporation in the 12-month period preceding the end of the year to a person with whom the corporation does not deal at arm's length

(A) as a dividend (other than a stock dividend),

(B) on a reduction of paid-up capital in respect of any class of shares of its capital stock,

(C) on a redemption, acquisition or cancellation of its shares, or

(D) as a distribution or appropriation in any manner whatever to or for the benefit of the shareholders of any class of its capital stock, to the extent that the distribution or appropriation cannot reasonably be considered to have resulted in a reduction in the amount otherwise determined for C in respect of the corporation for the year,

C is the total liabilities of the corporation at the end of the year (determined without reference to the corporation's liabilities for tax payable under this Part or any of Parts I.3, II, VI and XIV for the year or for a similar tax payable for the year under an Act of a province) and, for this purpose,

(i) the equity and consolidation methods of accounting shall not be used, and

(ii) subject to subparagraph (i) and except as otherwise provided in this description, the total liabilities of the corporation shall

(A) where the corporation is not an insurance corporation or a bank to which clause (B) or (C) applies and the balance sheet as of the end of the year was presented to the shareholders of the corporation and was prepared in accordance with generally accepted accounting principles, be considered to be the total liabilities shown on that balance sheet,

(B) where the corporation is a bank or an insurance corporation that is required to report to the Superintendent of Financial Institutions and the balance sheet as of the end of the year was accepted by the Superintendent, be considered to be the total liabilities shown on that balance sheet,

(C) where the corporation is an insurance corporation that is required to report to the superintendent of insurance or other similar officer or authority of the province under whose laws the corporation is incorporated and the balance sheet as of the end of the year was accepted by that officer or authority, be considered to be the total liabilities shown on that balance sheet, and

(D) in any other case, be considered to be the amount that would be shown as total liabilities of the corporation at the end of the year on a balance sheet prepared in accordance with generally accepted accounting principles,

D is the total of all amounts each of which is the principal amount at the end of the year of a distress preferred share (within the meaning assigned by subsection 80(1)) issued by the corporation, and

E is 50% of the amount, if any, by which

(i) the amount that would be the corporation's income for the year if that amount were determined without reference to this section and section 61.4

exceeds

(ii) the amount determined under paragraph (a) in respect of the corporation for the year.

Related Provisions: 37(1)(f.1) — Reduction in claim allowed for R&D expenditures; 61.2 — Reserve for individuals; 61.3(3) — Anti-avoidance; 61.4 — Additional reserve; 80(16) — Designation by CCRA to reduce reserve under 61.3; 80.01(8), (9) — Deemed settlement on debt parking or debt becoming statute-barred; 80.04(4)(j) — Agreement to transfer forgiven amount; 87(2)(l.21) — Amalgamations — continuing corporation; 257 — Formula cannot calculate to less than zero.

History: The description of E in para. 61.3(1)(b) amended by 1998, c. 19, subsec. 101(1), applicable to taxation years that end after February 21, 1994. That description formerly read:

> E is 50% of the amount, if any, by which the amount that would be the corporation's income for the year if that amount were determined without reference to this section, section 61.4 and subsection 80(17) exceeds the amount determined under paragraph (a) in respect of the corporation for the year.

(2) Reserve for insolvency with respect to non-resident corporations — There shall be deducted in computing the income for a taxation year of a corporation that is non-resident at any time in the year, the lesser of

(a) the amount, if any, by which

(i) the total of all amounts each of which is an amount that, because of the application of section 80 to a commercial obligation issued by the corporation (or a partnership of which the corporation was a member) was included under subsection 80(13) in computing the corporation's taxable income or taxable income earned in Canada for the year or the income of the partnership for a fiscal period that ends in the year (to the extent that, where the amount was included in computing income of a partnership, it relates to the corporation's share of the partnership's income added in computing the corporation's taxable income or taxable income earned in Canada for the year)

exceeds

(ii) the total of all amounts deducted because of paragraph 80(15)(a) in computing the corporation's taxable income or taxable income earned in Canada for the year, and

(b) the amount determined by the formula

$$A - 2(B - C - D - E)$$

where

A is the amount determined under paragraph (a) in respect of the corporation for the year,

B is the total of

(i) the fair market value of the assets of the corporation at the end of the year,

(ii) the amounts paid before the end of the year on account of the corporation's tax payable under this Part or any of Parts I.3, II, VI and XIV for the year or on account of a similar tax payable for the year under an Act of a province, and

(iii) all amounts paid in the 12-month period preceding the end of the year by the corporation to a person with whom the corporation does not deal at arm's length

(A) as a dividend (other than a stock dividend),

(B) on a reduction of paid-up capital in respect of any class of shares of its capital stock,

(C) on a redemption, acquisition or cancellation of its shares, or

(D) as a distribution or appropriation in any manner whatever to or for the benefit of the shareholders of any class of its capital stock, to the extent that the distribution or appropriation cannot reasonably be considered to have resulted in a reduction of the amount otherwise determined for C in respect of the corporation for the year,

C is the total liabilities of the corporation at the end of the year (determined without reference to the corporation's liabilities for tax payable under this Part or any of Parts I.3, II, VI and XIV for the year or for a similar tax payable for the year under an Act of a province), determined in the manner described in the description of C in paragraph (1)(b),

D is the total of all amounts each of which is the principal amount at the end of the year of a distress preferred share (within the meaning assigned by subsection 80(1)) issued by the corporation, and

E is 50% of the amount, if any, by which

(i) the amount that would be the corporation's taxable income or taxable income earned in Canada for the year if that amount were determined without reference to this section and section 61.4

exceeds

(ii) the amount determined under paragraph (a) in respect of the corporation for the year.

Related Provisions: 37(1)(f.1) — Reduction in claim allowed for R&D expenditures; 61.3(3) — Anti-avoidance; 61.4 — Additional reserve; 80(16) — Designation by CCRA to reduce reserve under 61.3; 80.01(8), (9) — Deemed settlement on debt parking or debt becoming statute-barred; 80.04(4)(j) — Agreement to transfer forgiven amount; 87(2)(l.21) — Amalgamations — continuing corporation; 257 — Formula cannot calculate to less than zero.

History: The description of E in para. 61.3(2)(b) amended by 1998, c. 19, subsec. 101(2), applicable to taxation years that end after February 21, 1994. That description formerly read:

E is 50% of the amount, if any, by which the amount that would be the corporation's taxable income or taxable income earned in Canada for the year if that amount were determined without reference to this section, section 61.4 and subsection 80(17) exceeds the amount determined under paragraph (a) in respect of the corporation for the year.

(3) Anti-avoidance — Subsections (1) and (2) do not apply to a corporation for a taxation year where property was transferred in the 12-month period preceding the end of the year or the corporation became indebted in that period and it can reasonably be considered that one of the reasons for the transfer or the indebtedness was to increase the amount that the corporation would, but for this subsection, be entitled to deduct under subsection (1) or (2).

Related Provisions: 160.4 — Joint liability of transferee where property transferred so that 61.3(3) applies.

History: S. 61.3 added by 1995, c. 21, s. 20, applicable to taxation years that end after February 21, 1994.

Definitions [s. 61.3]: "Act" — *Interpretation Act* 35(1); "amount" — 248(1); "arm's length" — 251(1); "bank" — 248(1); "class of shares" — 248(6); "commercial obligation" — 61.3(1)(a)(i), 80(1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "fiscal period" — 249(2)(b), 249.1; "insurance corporation", "non-resident" — 248(1); "officer" — 248(1)"office"; "paid-up capital" — 89(1), 248(1); "principal amount", "property" — 248(1); "province" — *Interpretation Act* 35(1); "resident in Canada" — 250; "share", "shareholder", "stock dividend" — 248(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 249.

61.4 Reserve for debt forgiveness for corporations and others — There may be deducted as a reserve in computing the income for a taxation year of a taxpayer that is a corporation or trust resident in Canada throughout the year or a non-resident person who carried on business through a fixed placed of business in Canada at the end of the year such amount as the taxpayer claims not exceeding the least of

(a) the amount determined by the formula

$$A - B$$

where

A is the amount, if any, by which

(i) the total of all amounts each of which is an amount that, because of the application of section 80 to a commercial obligation (within the meaning assigned by subsection 80(1)) issued by the taxpayer (or a partnership of which the taxpayer was a member) was included under subsection 80(13) in computing the income of the taxpayer for the year or a preceding taxation year or of the partnership for a fiscal period that ends in that year or preceding year (to the extent that, where the amount was included in computing income of a partnership, it relates to the taxpayer's share of that income)

exceeds the total of

(ii) all amounts each of which is an amount deducted under paragraph 80(15)(a) in computing the taxpayer's income for the year or a preceding taxation year, and

(iii) all amounts deducted under section 61.3 in computing the taxpayer's income for the year or a preceding taxation year, and

B is the amount, if any, by which the amount determined for A in respect of the taxpayer for the year exceeds the total of

(i) the amount that would be determined for A in respect of the taxpayer for the year if that value did not take into account amounts included or deducted in computing the taxpayer's income for any preceding taxation year, and

(ii) the amount, if any, included under section 56.3 in computing the taxpayer's income for the year,

(b) the total of

(i) 4/5 of the amount that would be determined for A in paragraph (a) in respect of the taxpayer for the year if that value did not take into account amounts included or deducted in computing the taxpayer's income for any preceding taxation year,

(ii) 3/5 of the amount that would be determined for A in paragraph (a) in respect of the taxpayer for the

year if that value did not take into account amounts included or deducted in computing the taxpayer's income for the year or any preceding taxation year (other than the last preceding taxation year),

(iii) 2/5 of the amount that would be determined for A in paragraph (a) in respect of the taxpayer for the year if that value did not take into account amounts included or deducted in computing the taxpayer's income for the year or any preceding taxation year (other than the second last preceding taxation year), and

(iv) 1/5 of the amount that would be determined for A in paragraph (a) in respect of the taxpayer for the year if that value did not take into account amounts included or deducted in computing the taxpayer's income for the year or any preceding taxation year (other than the third last preceding taxation year), and

(c) where the taxpayer is a corporation that commences to wind up in the year (otherwise than in circumstances to which the rules in subsection 88(1) apply), nil.

Related Provisions: 56.3 — Inclusion into income in following year; 61.2 — Reserve for resident individuals; 61.3 — Additional reserve for insolvent corporation; 80.04(4)(j) — Agreement to transfer forgiven amount; 87(2)(g), (h.1) — Amalgamations — carryover of reserve; 250(6.1) — Trust that ceases to exist deemed resident throughout year.

History: S. 61.4 added by 1995, c. 21, s. 20, applicable to taxation years that end after February 21, 1994.

Definitions [s. 61.4]: "amount", "business" — 248(1); "carrying on business in Canada" — 253; "corporation" — 248(1), *Interpretation Act* 35(1); "fiscal period" — 249(2)(b), 249.1; "non-resident" — 248(1); "resident in Canada" — 94(3)(a)(viii), 250; "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

62. (1) Moving expenses — There may be deducted in computing a taxpayer's income for a taxation year amounts paid by the taxpayer as or on account of moving expenses incurred in respect of an eligible relocation, to the extent that

(a) they were not paid on the taxpayer's behalf in respect of, in the course of or because of, the taxpayer's office or employment;

(b) they were not deductible because of this section in computing the taxpayer's income for the preceding taxation year;

(c) the total of those amounts does not exceed

(i) in any case described in subparagraph (a)(i) of the definition "eligible relocation" in subsection 248(1), the taxpayer's income for the year from the taxpayer's employment at a new work location or from carrying on the business at the new work location, as the case may be, and

(ii) in any case described in subparagraph (a)(ii) of the definition "eligible relocation" in subsection 248(1), the total of amounts included in computing the taxpayer's income for the year because of paragraphs 56(1)(n) and (o); and

(d) all reimbursements and allowances received by the taxpayer in respect of those expenses are included in computing the taxpayer's income.

Related Provisions: 4(2) — Deductions under s. 62 not applicable to any particular source; 64.1 — Individuals absent from Canada; 115(2)(f) — Deduction for non-resident; 118.2(2)(l.5) — Medical expense credit for moving expenses.

History: Subsec. 62(1) amended by 1999, c. 22, subsec. 17(1), applicable after 1997. The subsec. formerly read:

62. (1) Where a taxpayer has, at any time, commenced

(a) to carry on a business or to be employed at a location in Canada (in this subsection referred to as "the new work location"), or

(b) to be a student in full-time attendance at an educational institution (in this subsection referred to as "the new work location") that is a university, college or other educational institution providing courses at a post-secondary school level,

and by reason thereof has moved from the residence in Canada at which, before the move, the taxpayer ordinarily resided (in this section referred to as "the old residence") to a residence in Canada at which, after the move, the taxpayer ordinarily resided (in this section referred to as "the new residence"), so that the distance between the old residence and the new work location is not less than 40 kilometres greater than the distance between the new residence and the new work location, in computing the taxpayer's income for the taxation year in which the taxpayer moved from the old residence to the new residence or for the immediately following taxation year, there may be deducted amounts paid by the taxpayer as or on account of moving expenses incurred in the course of moving from the old residence to the new residence, to the extent that

(c) they were not paid on the taxpayer's behalf by the taxpayer's employer,

(d) they were not deductible by virtue of this section in computing the taxpayer's income for the preceding taxation year,

(e) they would not, but for this section, be deductible in computing the taxpayer's income,

(f) the total of those amounts does not exceed

(i) in any case described in paragraph (a), the taxpayer's income for the year from the taxpayer's employment at the new work location or from carrying on the new business at the new work location, as the case may be, or

(ii) in any case described in paragraph (b), the total of amounts required to be included in computing the taxpayer's income for the year by virtue of paragraphs 56(1)(n) and (o), and

(g) any reimbursement or allowance received by the taxpayer in respect of those expenses is included in computing the taxpayer's income.

Selected Cases [subsec. 62(1)]: *Moodie v. R.*, [2004] 4 C.T.C. 2329 (TCC) (Deduction no longer restricted to year of move); *James v. R.*, [2003] 3 C.T.C. 247 (FCA) (Moving expenses not deductible where only dividend income received); *McLaren v. R.*, [2000] 2 C.T.C. 2633 (TCC) (Expenses must be consequence of change of employment, not in anticipation of change); *Loukine v. R.*, [1998] 3 C.T.C. 2258 (TCC) (Absent means more than simply not being present in a place); *Giannakopoulos v. MNR*, [1995] 2 C.T.C. 316 (FCA) (Distance to be measured along shortest normal route, not straight line); *Glaubitz v. Canada*, [1994] 2 C.T.C. 2448 (TCC) (Deduction disallowed where expenses not incurred for pupose of commencing work at new work location); *Schultz v. R.*, [1988] 2 C.T.C. 293 (FCTD) (Moving expenses deductible when incurred due to loss of employment or to initiate new business); *Midyette v. R.*, [1985] 2 C.T.C. 362 (FCTD) (Teacher taxpayer on one-year fellowship abroad; moving expenses not deductible); *Rath v. R.*, [1982] C.T.C. 207 (FCA) (Deduction disallowed when payment for loss and replacement costs of goods not moving expenses); *Storrow v. R.*, [1978] C.T.C. 792 (FCTD) (Costs incurred in connection with acquisition of new residence not moving expenses).

Interpretation Bulletins: See list at end of s. 62.

I.T. Technical News: 6 (road distance to be used instead of "as the crow flies").

Forms: T1-M: Moving expenses deduction.

(2) Moving expenses of students — There may be deducted in computing a taxpayer's income for a taxation year the amount, if any, that the taxpayer would be entitled to deduct under subsection (1) if the definition "eligible relocation" in subsection 248(1) were read without reference to subparagraph (a)(i) of that definition and if the word "both" in paragraph (b) of that definition were read as "either or both".

Related Provisions: 64.1 — Individuals absent from Canada; 115(2) — Non-resident's taxable income earned in Canada; 118.2(2)(l.5) — Medical expense credit for moving expenses.

History: Subsec. 62(2) amended by 1999, c. 22, subsec. 17(1), applicable after 1997. The subsec. formerly read:

> (2) Application of subsec. (1) to certain students — Where a taxpayer would, if subsection (1) were read without reference to paragraph (a) thereof and
>
> (a) if the reference therein to "moved from the residence in Canada at which" were read as a reference to "moved from the residence at which", or
>
> (b) if the reference therein to "to a residence in Canada at which" were read as a reference to "to a residence at which",
>
> be entitled to deduct an amount by virtue of that subsection in computing the taxpayer's income for a taxation year, that amount may be deducted in computing the taxpayer's income for the year.

Interpretation Bulletins: See list at end of s. 62.

(3) Definition of "moving expenses" — In subsection (1), "moving expenses" includes any expense incurred as or on account of

(a) travel costs (including a reasonable amount expended for meals and lodging), in the course of moving the taxpayer and members of the taxpayer's household from the old residence to the new residence,

(b) the cost to the taxpayer of transporting or storing household effects in the course of moving from the old residence to the new residence,

(c) the cost to the taxpayer of meals and lodging near the old residence or the new residence for the taxpayer and members of the taxpayer's household for a period not exceeding 15 days,

(d) the cost to the taxpayer of cancelling the lease by virtue of which the taxpayer was the lessee of the old residence,

(e) the taxpayer's selling costs in respect of the sale of the old residence,

(f) where the old residence is sold by the taxpayer or the taxpayer's spouse or common-law partner as a result of the move, the cost to the taxpayer of legal services in respect of the purchase of the new residence and of any tax, fee or duty (other than any goods and services tax or value-added tax) imposed on the transfer or registration of title to the new residence,

Selected Cases [para. 62(3)(f)]: *Lachman v. R.*, [1995] 2 C.T.C. 2944D (TCC) (B.C. land transfer tax and GST both included in moving expenses); *Johnson v. Canada*, [1995] 2 C.T.C. 2110 (TCC) (GST is not a tax imposed on transfer or registration of title to new residence); *Mann v. Canada*, [1995] 2 C.T.C. 2049 (TCC) (GST and Ontario land transfer tax deductible under provision in respect of newly constructed home).

(g) interest, property taxes, insurance premiums and the cost of heating and utilities in respect of the old residence, to the extent of the lesser of $5,000 and the total of such expenses of the taxpayer for the period

(i) throughout which the old residence is neither ordinarily occupied by the taxpayer or by any other person who ordinarily resided with the taxpayer at the old residence immediately before the move nor rented by the taxpayer to any other person, and

(ii) in which reasonable efforts are made to sell the old residence, and

(h) the cost of revising legal documents to reflect the address of the taxpayer's new residence, of replacing drivers' licenses and non-commercial vehicle permits (excluding any cost for vehicle insurance) and of connecting or disconnecting utilities,

but, for greater certainty, does not include costs (other than costs referred to in paragraph (f)) incurred by the taxpayer in respect of the acquisition of the new residence.

Related Provisions: 56(1)(n) — Scholarships, bursaries, etc.; 56(1)(o) — Research grants; 64.1 — Individuals absent from Canada; 115(2) — Non-resident's taxable income earned in Canada; 118.2(2)(l.5) — Medical expense credit for moving expenses.

History: Para. 62(3)(f) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Paras. 62(3)(g) and (h) added by 1999, c. 22, subsec. 17(2), applicable to expenses incurred after 1997.

Para. 62(3)(f) amended by 1998, c. 19, s. 102, applicable to costs incurred after 1990. The para. formerly read:

> (f) where the old residence is being or has been sold by the taxpayer or the taxpayer's spouse as a result of the move, the cost to the taxpayer of legal services in respect of the purchase of the new residence and of any taxes imposed on the transfer or registration of title to the new residence,

Selected Cases [subsec. 62(3)]: *Johnston v. R.*, [2003] 3 C.T.C. 298 (FCA) (Interest on borrowed money to buy house not moving expense); *Séguin v. R.*, [1998] 1 C.T.C. 2453 (TCC) (Mortgage interest at old location not included in moving expenses); *Oster v. Canada*, [1995] 1 C.T.C. 2224 (TCC) (Transfer allowances equal to one month's pay were taxable benefits and not moving expenses); *Collin v. MNR*, [1990] 2 C.T.C. 92 (FCTD) (Amount paid by vendor to enable making of loan to purchaser was cost of disposition not reduction in price); *Gold v. R.*, [1977] C.T.C. 616 (FCTD) (Living and education expenses of child in former city of residence not "moving expenses").

Selected Cases [s. 62]: *Jaschinski v. R.*, [2003] 1 C.T.C. 2571 (TCC) (Intermediate move to temporary housing did not count as "real" move); *Fardeau v. R.*, [2002] 3 C.T.C. 2169 (TCC) (Goods damaged in transit are not moving expenses); *Cavalier v. R.*, [2002] 1 C.T.C. 2001 (TCC) (To be ordinarily resident does not require any intention that such residence be permanent); *Cameron (D.) v. MNR*, [1993] 1 C.T.C. 2745 (TCC) (Distance measured as space between two points ("as the crow flies"), not along shortest road between two points).

Definitions [s. 62]: "amount", "business" — 248(1); "Canada" — 64.1, 255; "carrying on business" — 253; "common-law partner", "eligible relocation", "employed", "employer", "employment", "goods and services tax" — 248(1); "moving expenses" — 62(3); "new residence" — 248(1)"eligible relocation"(b); "new work location" — 248(1)"eligible relocation"(a); "office" — 248(1); "old residence" — 248(1)"eligible relocation"(b); "person", "property" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 62]: IT-178R3: Moving expenses; IT-518R: Food, beverages and entertainment expenses.

Forms [s. 62]: T1-M: Claim for moving expenses.

63. (1) Child care expenses — Subject to subsection (2), where a prescribed form containing prescribed information is filed with a taxpayer's return of income (other than a return filed under subsection 70(2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) under this Part for a taxation year, there may be deducted in computing the taxpayer's income for the year such amount as the taxpayer claims not exceeding the total of all amounts each of which is an amount paid, as or on account of child care expenses incurred for services rendered in the year in respect of an eligible child of the taxpayer,

(a) by the taxpayer, where the taxpayer is described in subsection (2) and the supporting person of the child for the year is a person described in clause (i)(D) of the description of C in the formula in that subsection, or

(b) by the taxpayer or a supporting person of the child for the year, in any other case,

to the extent that

(c) the amount is not included in computing the amount deductible under this subsection by an individual (other than the taxpayer), and

(d) the amount is not an amount (other than an amount that is included in computing the taxpayer's income and that is not deductible in computing the taxpayer's taxable income) in respect of which any taxpayer is or was entitled to a reimbursement or any other form of assistance,

and the payment of which is proven by filing with the Minister one or more receipts each of which was issued by the payee and contains, where the payee is an individual, that individual's Social Insurance Number, but not exceeding the amount, if any, by which

(e) the lesser of

(i) 2/3 of the taxpayer's earned income for the year, and

(ii) the total of all amounts each of which is the annual child care expense amount in respect of an eligible child of the taxpayer for the year

exceeds

(f) the total of all amounts each of which is an amount that is deducted, in respect of the taxpayer's eligible children for the year, under this section in computing the income for the year of an individual (other than the taxpayer) to whom subsection (2) applies for the year.

Related Provisions: 4(2) — Deductions under s. 63 not applicable to any particular source; 63(2.2) — Deduction for person attending school or university; 64.1 — Individuals absent from Canada; 220(2.1) — Waiver of filing of documents.

History: Para. 63(1)(a) and subpara. 63(1)(e)(ii) amended by 2001, c. 17, subsecs. 42(1), (2), para. (a) applicable to 1998 *et seq.* and subpara. (e)(ii) applicable to 2000 *et seq.* The para. and subpara. formerly read:

(a) by the taxpayer, where the taxpayer is a taxpayer described in subsection (2) and the supporting person of the child for the year is a person described in subparagraph (2)(b)(vi), or

. . . . .

(ii) the total of

(A) the product obtained when $7,000 is multiplied by the number of eligible children of the taxpayer for the year each of whom

(I) is under 7 years of age at the end of the year, or

(II) is a person in respect of whom an amount may be deducted under section 118.3 in computing a taxpayer's tax payable under this Part for the year, and

(B) the product obtained when $4,000 is multiplied by the number of eligible children of the taxpayer for the year (other than children referred to in clause (A))

The opening words of cl. 63(1)(e)(ii)(A) and cl. 63(1)(e)(ii)(B) amended by 1999, c. 22, subsecs. 18(1), (2), applicable to 1998 *et seq.* The opening words of cl. (A) and cl. (B) formerly read:

(A) the product obtained when $5,000 is multiplied by the number of eligible children of the taxpayer for the year each of whom

. . . . .

(B) the product obtained when $3,000 is multiplied by the number of eligible children of the taxpayer for the year (other than those referred to in clause (A))

Para. 63(1)(f) amended by 1997, c. 25, subsec. 12(1), applicable to 1996 *et seq.* Para. (f) formerly read:

(f) the total of all amounts each of which is an amount deducted, in respect of the eligible children of the taxpayer that are referred to in subparagraph (e)(ii), under this subsection for the year by an individual (other than the taxpayer) to whom subsection (2) is applicable for the year.

That portion of subsec. 63(1) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 23(1), applicable to 1992 *et seq.* That portion formerly read:

(1) Subject to subsection (2), where a taxpayer who has an eligible child for a taxation year files with the taxpayer's return of income (other than a return of income filed under subsection 70(2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) under this Part for the year a prescribed form containing prescribed information, there may be deducted in computing the income of the taxpayer for the year the total of all amounts each of which is an amount paid in the year as or on account of child care expenses in respect of an eligible child of the taxpayer for the year

That portion of cl. 63(1)(e)(ii)(A) preceding subcl. (I), and cl. (1)(e)(ii)(B), amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsecs. 23(2) and (3), to substitute, respectively, "$5,000" for "$4,000" and "$3,000" for "$2,000", applicable to 1993 *et seq.*

Subcl. 63(1)(e)(ii)(A)(II) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 36(1), applicable to 1991 *et seq.* That subcl. formerly read:

(II) has a severe and prolonged mental or physical impairment that has been certified as such in prescribed form by a medical doctor or, where the impairment is an impairment of sight, by a medical doctor or an optometrist, where a copy of the certificate has been filed with the Minister, and

Selected Cases [subsec. 63(1)]: *Wells v. R.*, [1997] 3 C.T.C. 2581 (TCC) (Requirement to file receipts with social insurance number was directory, not mandatory); *Symes v. Canada*, [1994] 1 C.T.C. 40 (SCC) (Child care expenses not business expenses; taxpayer not entitled to deduct such expenses in excess of statutory limits established in s. 63).

Interpretation Bulletins: See list at end of s. 63.

Information Circulars: 82-2R2: SIN legislation that relates to the preparation of information slips.

Forms: T778: Child care expenses deduction.

(2) Income exceeding income of supporting person — Where the income for a taxation year of a taxpayer who has an eligible child for the year exceeds the income for that year of a supporting person of that child (on the assumption that both incomes are computed without reference to this section and paragraphs 60(v.1) and (w)), the amount that may be deducted by the taxpayer under subsection (1) for the year as or on account of child care expenses shall not exceed the lesser of

(a) the amount that would, but for this subsection, be deductible by the taxpayer for the year under subsection (1); and

(b) the amount determined by the formula

$$A \times C$$

where

A is the total of all amounts each of which is the periodic child care expense amount in respect of an eligible child of the taxpayer for the year, and

C is the total of

(i) the number of weeks in the year during which the child care expenses were incurred and throughout which the supporting person was

(A) a student in attendance at a designated educational institution or a secondary school and enrolled in a program of the institution or school of not less than 3 consecutive weeks duration that provides that each student in the program spend not less than 10 hours per week on courses or work in the program,

(B) a person certified by a medical doctor to be a person who

Proposed Amendment — 63(2)(b)C(i)(B) opening words

(B) a person certified in writing by a medical doctor to be a person who

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 73, will amend the opening words of cl. 63(2)(b)C(i)(B) to read as above, applicable to certifications made after December 20, 2002.

Technical Notes: Section 63 provides rules concerning the deductibility of child care expenses in computing an individual's income. When more than one taxpayer contributes to the support of an eligible child, the child care expense deduction must generally be claimed by the taxpayer with the lower income for the year. One of the exceptions to this rule is where a medical doctor certifies that the lower-income supporting individual is incapable of caring for children because of that individual's mental or physical infirmity. This amendment clarifies that such a certification has to be in writing.

(I) was incapable of caring for children because of the person's mental or physical infirmity and confinement throughout a period of not less than 2 weeks in the year to bed, to a wheelchair or as a patient in a hospital, an asylum or other similar institution, or

(II) was in the year, and is likely to be for a long, continuous and indefinite period, incapable of caring for children, because of the person's mental or physical infirmity,

(C) a person confined to a prison or similar institution throughout a period of not less than 2 weeks in the year, or

(D) a person who, because of a breakdown of the person's marriage or common-law partnership, was living separate and apart from the taxpayer at the end of the year and for a period of at least 90 days that began in the year, and

(ii) the number of months in the year (other than a month that includes all or part of a week included in the number of weeks referred to in subparagraph (i)), each of which is a month during which the child care expenses were incurred and the supporting person was a student in attendance at a designated educational institution or a secondary school and enrolled in a program of the institution or school that is not less than 3 consecutive weeks duration and that provides that each student in the program spend not less than 12 hours in the month on courses in the program.

Related Provisions: 3(f) — Nil income is deemed to be $0 income for comparative purposes; 118.4(2) — Reference to medical practitioners.

History: The formula in para. 63(2)(b) and the description of A amended, the description of B repealed, by 2001, c. 17, subsecs. 42(3), (4), applicable to 2000 *et seq.* The formula and the descriptions of A and B formerly read:

$$(A + B) \times C$$

. . . . .

A is the product obtained when $175 is multiplied by the number of eligible children of the taxpayer for the year each of whom

(i) is under 7 years of age at the end of the year, or

(ii) is a person in respect of whom an amount may be deducted under section 118.3 in computing a taxpayer's tax payable under this Part for the year,

B is the product obtained when $100 is multiplied by the number of the taxpayer's eligible children for the year (other than children referred to in the description of A), and

Para. 63(2)(b) amended by 2000, c. 12, Sch. 2, s. 9, to replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Para. 63(2)(b) amended by 1999, c. 22, subsec. 18(3), applicable to 1998 *et seq.* The para. formerly read:

(b) the product obtained when the total of

(i) the product obtained when $150 is multiplied by the number of eligible children of the taxpayer for the year each of whom

(A) is under 7 years of age at the end of the year, or

(B) is a person in respect of whom an amount may be deducted under section 118.3 in computing a taxpayer's tax payable under this Part for the year, and

(ii) the product obtained when $90 is multiplied by the number of eligible children of the taxpayer for the year (other than those referred to in subparagraph (i))

is multiplied by the number of weeks in the year during which the child care expenses were incurred and throughout which the supporting person was

(iii) a student in attendance at a designated educational institution (as defined in subsection 118.6(1)) or a secondary school and enrolled in a program of the institution or school of not less than 3 consecutive weeks duration that provides that each student in the program spend not less than 10 hours per week on courses or work in the program,

(iv) a person certified by a medical doctor to be a person who

(A) by reason of mental or physical infirmity and confinement throughout a period of not less than 2 weeks in the year to bed or to a wheelchair or as a patient in a hospital, an asylum or other similar institution, was incapable of caring for children, or

(B) by reason of mental or physical infirmity, was in the year, and is likely to be for a long-continued period of indefinite duration, incapable of caring for children,

(v) a person confined to a prison or similar institution throughout a period of not less than 2 weeks in the year, or

(vi) a person who, because of a breakdown of the person's marriage, was living separate and apart from the taxpayer at the end of the year and for a period of at least 90 days beginning in the year.

Subpara. 63(2)(b)(iii) amended by 1997, c. 25, subsec. 12(2), applicable to 1996 *et seq.* Subpara. (b)(iii) formerly read:

(iii) a person in full-time attendance at a designated educational institution (within the meaning assigned by subsection 118.6(1)),

That portion of subpara. 63(2)(b)(i) preceding cl. (A), and subpara. (2)(b)(ii), amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsecs. 23(4) and (5), to substitute "$150" for "$120" and "$90" for "$60", applicable to 1993 *et seq.*

Subpara. 63(2)(b)(vi) substituted by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 23(6), applicable to 1993 *et seq.* That subpara. formerly read:

(vi) a person who, by reason of a breakdown of the person's marriage or similar domestic relationship, was living separate and apart from the taxpayer at the end of the year and for a period of at least 90 days commencing in the year.

That portion of subsec. 63(2) preceding para. (a) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 36(2), to add reference to paragraph 60(v.1), applicable to 1989 *et seq.*

Cl. 63(2)(b)(i)(B) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 36(3), applicable to 1991 *et seq.* That cl. formerly read:

(B) has a severe and prolonged mental or physical impairment that has been certified as such in prescribed form by a medical doctor or, where the impairment is an impairment of sight, by a medical doctor or an optometrist, where a copy of the certificate has been filed with the Minister, and

Selected Cases [subsec. 63(2)]: *Kuchta v. R.*, [1999] 4 C.T.C. 285 (FCA) (Provision to be strictly applied); *Kelner v. Canada*, [1996] 1 C.T.C. 2687 (TCC) ("Separate and apart" given same meaning as in *Divorce Act* and can exist within same dwelling); *McLaren v. MNR*, [1990] 2 C.T.C. 429 (FCTD) (Provision not applicable where supporting person has no income).

Interpretation Bulletins: See list at end of s. 63.

(2.1) Taxpayer and supporting person with equal incomes — For the purposes of this section, where in any taxation year the income of a taxpayer who has an eligible child for the year and the income of a supporting person of the child are equal (on the assumption that both incomes are computed without reference to this section and paragraphs 60(v.1) and (w)), no deduction shall be allowed under this section to the taxpayer and the supporting person in respect of the child unless they jointly elect to treat the income of one of them as exceeding the income of the other for the year.

History: Subsec. 63(2.1) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 36(4), to add reference to paragraph 60(v.1), applicable to 1989 *et seq.*

Interpretation Bulletins: See list at end of s. 63.

(2.2) Expenses while at school — There may be deducted in computing a taxpayer's income for a taxation year such part of the amount determined under subsection (2.3) as the taxpayer claims, where

(a) the taxpayer is, at any time in the year, a student in attendance at a designated educational institution or a secondary school and enrolled in a program of the institution or school of not less than 3 consecutive weeks duration that provides that each student in the program spend not less than

(i) 10 hours per week on courses or work in the program, or

(ii) 12 hours per month on courses in the program;

(b) there is no supporting person of an eligible child of the taxpayer for the year or the income of the taxpayer for the year exceeds the income for the year of a supporting person of the child (on the assumption that both incomes are computed without reference to this section and paragraphs 60(v.1) and (w)); and

(c) a prescribed form containing prescribed information is filed with the taxpayer's return of income (other than a return filed under subsection 70(2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) for the year.

History: Para. 63(2.2)(a) amended by 1999, c. 22, subsec. 18(4), applicable to 1998 *et seq.* The para. formerly read:

(a) the taxpayer is, at any time in the year, a student in attendance at a designated educational institution (as defined in subsection 118.6(1)) or a secondary school and enrolled in a program of the institution or school of not less than 3 consecutive weeks duration that provides that each student in the program spend not less than 10 hours per week on courses or work in the program;

Subsec. 63(2.2) added by 1997, c. 25, subsec. 12(3), applicable to 1996 *et seq.*

(2.3) Amount deductible [while at school] — For the purpose of subsection (2.2), the amount determined in respect of a taxpayer for a taxation year is the least of

(a) the amount by which the total of all amounts, each of which is an amount paid as or on account of child care expenses incurred for services rendered in the year in respect of an eligible child of the taxpayer, exceeds the amount that is deductible under subsection (1) in computing the taxpayer's income for the year,

(b) 2/3 of the taxpayer's income for the year computed without reference to this section and paragraphs 60(v.1) and (w),

(c) the amount determined by the formula

$$A \times C$$

where

A is the total of all amounts each of which is the periodic child care expense amount in respect of an eligible child of the taxpayer for the year, and

C is

(i) if there is a supporting person of an eligible child of the taxpayer for the year,

(A) the number of weeks, in the year, in which both the taxpayer and the supporting person were students who would be described in paragraph (2.2)(a) if that paragraph were read without reference to subparagraph (ii), and

(B) the number of months in the year (other than a month that includes all or part of a week included in the number of weeks referred to in clause (A)), in which both the taxpayer and the supporting person were students described in paragraph (2.2)(a), and

(ii) in any other case,

(A) the number of weeks, in the year, in which the taxpayer was a student who would be described in paragraph (2.2)(a) if that paragraph were read without reference to subparagraph (ii), and

(B) the number of months in the year (other than a month that includes all or part of a week included in the number of weeks referred to in clause (A)), in which the taxpayer was a student described in paragraph (2.2)(a),

(d) the amount by which the total calculated under subparagraph (1)(e)(ii) in respect of eligible children of the taxpayer for the year exceeds the amount that is deductible under subsection (1) in computing the taxpayer's income for the year, and

(e) where there is a supporting person of an eligible child of the taxpayer for the year, the amount by which the amount calculated under paragraph (2)(b) for the year in respect of the taxpayer exceeds 2/3 of the taxpayer's earned income for the year.

History: The formula in para. 63(2.3)(c) and the description of A amended, the description of B repealed, by 2001, c. 17, subsecs. 42(5), (6), applicable to 2000 *et seq.* The formula and the descriptions of A and B formerly read:

$$(A + B) \times C$$

. . . . .

A is the product obtained when $175 is multiplied by the number of eligible children of the taxpayer for the year each of whom is

(i) under 7 years of age at the end of the year, or

(ii) a person in respect of whom an amount may be deducted under section 118.3 in computing a taxpayer's tax payable under this Part for the year,

B is the product obtained when $100 is multiplied by the number of the taxpayer's eligible children for the year, (other than children referred to in the description of A), and

The descriptions of A, B and C in para. 63(2.3)(c) amended by 1999, c. 22, subsecs. 18(5) to (7), applicable to 1998 *et seq.* The descriptions formerly read:

A is the product obtained when $150 is multiplied by the number of eligible children of the taxpayer for the year each of whom is

(i) under 7 years of age at the end of the year, or

(ii) a person in respect of whom an amount may be deducted under section 118.3 in computing a taxpayer's tax payable under this Part for the year,

B is the product obtained when $90 is multiplied by the number of the taxpayer's eligible children for the year (other than those referred to in the description of A), and

C is

(i) where there is a supporting person of an eligible child of the taxpayer for the year, the number of weeks, in the year, in which both the taxpayer and the supporting person were students described in paragraph (2.2)(a), and

(ii) in any other case, the number of weeks, in the year, in which the taxpayer was a student described in paragraph (2.2)(a),

Subsec. 63(2.3) added by 1997, c. 25, subsec. 12(3), applicable to 1996 *et seq.*

(3) Definitions — In this section,

"annual child care expense amount", in respect of an eligible child of a taxpayer for a taxation year, means

(a) $10,000, where the child is a person in respect of whom an amount may be deducted under section 118.3 in computing a taxpayer's tax payable under this Part for the year, and

(b) where the child is not a person referred to in paragraph (a),

(i) $7,000, where the child is under 7 years of age at the end of the year, and

(ii) $4,000, in any other case;

History: The definition "annual child care expense amount" added to subsec. 63(3), by 2001, c. 17, subsec. 42(9), applicable to 2000 *et seq.*

"child care expense" means an expense incurred in a taxation year for the purpose of providing in Canada, for an eligible child of a taxpayer, child care services including baby sitting services, day nursery services or services provided at a boarding school or camp if the services were provided

(a) to enable the taxpayer, or the supporting person of the child for the year, who resided with the child at the time the expense was incurred,

(i) to perform the duties of an office or employment,

(ii) to carry on a business either alone or as a partner actively engaged in the business,

(iii) [Repealed]

(iv) to carry on research or any similar work in respect of which the taxpayer or supporting person received a grant, or

(v) to attend a designated educational institution or a secondary school, where the taxpayer is enrolled in a program of the institution or school of not less than three consecutive weeks duration that provides that each student in the program spend not less than

(A) 10 hours per week on courses or work in the program, or

(B) 12 hours per month on courses in the program, and

(b) by a resident of Canada other than a person

(i) who is the father or the mother of the child,

(ii) who is a supporting person of the child or is under 18 years of age and related to the taxpayer, or

(iii) in respect of whom an amount is deducted under section 118 in computing the tax payable under this Part for the year by the taxpayer or by a supporting person of the child,

except that

(c) any such expenses paid in the year for a child's attendance at a boarding school or camp to the extent that the total of those expenses exceeds the product obtained when the periodic child care expense amount in respect of the child for the year is multiplied by the number of weeks in the year during which the child attended the school or camp, and

(d) for greater certainty, any expenses described in subsection 118.2(2) and any other expenses that are paid for medical or hospital care, clothing, transportation or education or for board and lodging, except as otherwise expressly provided in this definition,

are not child care expenses;

Related Provisions: 64.1 — Individuals absent from Canada.

History: Para. (c) of the definition "child care expense" in subsec. 63(3) amended by 2001, c. 17, subsec. 42(7), applicable to 2000 *et seq.* Para. (c) formerly read:

(c) any such expenses paid in the year for a child's attendance at a boarding school or camp to the extent that the total thereof exceeds the product obtained when

(i) in the case of a child of the taxpayer who

(A) is under 7 years of age at the end of the year, or

(B) is a person in respect of whom an amount may be deducted under section 118.3 in computing a taxpayer's tax payable under this Part for the year,

$175, and

(ii) in any other case, $100

is multiplied by the number of weeks in the year during which the child attended the school or camp, and

Subparas. (a)(v), (c)(i) and (ii) of the definition "child care expense" in subsec. 63(3) amended by 1999, c. 22, subsecs. 18(8) and (9), applicable to 1998 *et seq.* The subparas. formerly read:

(v) to attend a designated educational institution (as defined in subsection 118.6(1)) or a secondary school, where the taxpayer is enrolled in a program of the institution or school of not less than 3 consecutive weeks duration that provides that each student in the program spend not less than 10 hours per week on courses or work in the program, and

. . . . .

(i) in the case of a child of the taxpayer who

(A) is under 7 years of age at the end of the year, or

(B) is a person in respect of whom an amount may be deducted under section 118.3 in computing a taxpayer's tax payable under this Part for the year,

$150, and

(ii) in any other case, $90

Subpara. (a)(v) added to the definition "child care expense" in subsec. 63(3) by 1997, c. 25, subsec. 12(4), applicable to 1996 *et seq.*

Subpara. (a)(iii) of the definition "child care expense" in subsec. 63(3) repealed by 1996, c. 23, subsec. 173(1), in force January 1, 1998. Subpara. (a)(iii) formerly read:

(iii) to undertake an occupational training course in respect of which the taxpayer or supporting person received a training allowance paid to him or her under the *National Training Act*, or

That portion of subpara. (c)(i) following cl. (B), and subpara. (c)(ii), of the definition "child care expense" in subsec. 63(3) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsecs. 23(7) and (8), to substitute "$150" for "$120", and "$90" for "$60", applicable to 1993 *et seq.*

Subpara. (b)(ii) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 36(5), applicable to 1990 *et seq.* That subpara. formerly read:

(ii) who is a supporting person of the child or was under 21 years of age and connected with the taxpayer or the taxpayer's spouse by blood relationship, marriage, or adoption, or

Cl. (c)(i)(B) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 36(6), applicable to 1991 *et seq.* That cl. formerly read:

(B) has a severe and prolonged mental or physical impairment that has been certified as such in prescribed form by a medical doctor or,

where the impairment is an impairment of sight, by a medical doctor or an optometrist, where a copy of the certificate has been filed with the Minister,

Interpretation Bulletins: See list at end of s. 63.

"earned income" of a taxpayer means the total of

(a) all salaries, wages and other remuneration, including gratuities, received by the taxpayer in respect of, in the course of, or because of, offices and employments,

(b) all amounts that are included, or that would, but for paragraph 81(1)(a) or subsection 81(4), be included, because of section 6 or 7 or paragraph 56(1)(n), (o) or (r), in computing the taxpayer's income,

(c) all the taxpayer's incomes or the amounts that would, but for paragraph 81(1)(a), be the taxpayer's incomes from all businesses carried on either alone or as a partner actively engaged in the business, and

(d) all amounts received by the taxpayer as, on account of, in lieu of payment of or in satisfaction of, a disability pension under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act;

Related Provisions: 110(2) — Definition applies to person who has taken vow of perpetual poverty.

History: Para. (b) of the definition "earned income" in subsec. 63(3) amended by 2001, c. 17, subsec. 42(8), applicable to 1998 *et seq.* Para. (b) formerly read:

(b) all amounts that are included, or that would, but for paragraph 81(1)(a), be included, because of section 6 or 7 or paragraph 56(1)(n), (o) or (r), in computing the taxpayer's income,

Para. (b) of the definition "earned income" in subsec. 63(3) amended by 1998, c. 19, subsec. 103(2), applicable after 1997. The para. formerly read:

(b) all amounts that are included, or that would, but for paragraph 81(1)(a), be included, because of section 6 or 7 or paragraph 56(1)(m), (n), (o) or (r), in computing the taxpayer's income,

Para. (b) of the definition "earned income" in subsec. 63(3) amended by 1998, c. 19, subsec. 103(1), applicable after 1992 and before 1998. The para. formerly read:

(b) all amounts that are included or that would, but for paragraph 81(1)(a), be included because of section 6 or 7 or paragraph 56(1)(n) or (o), in computing the taxpayer's income,

Para. (d) of the definition "earned income" in subsec. 63(3) amended by 1998, c. 19, s. 10, applicable to amounts received after 1994. The para. formerly read:

(d) all amounts described in paragraph 56(8)(a) received by the taxpayer in the year;

Para. (b) of the definition "earned income" in subsec. 63(3) amended by 1996, c. 23, subsec. 173(2), in force January 1, 1998. Para. (b) formerly read:

(b) all amounts that are included or that would, but for paragraph 81(1)(a), be included because of section 6 or 7 or paragraph 56(1)(m), (n) or (o), in computing the taxpayer's income,

Paras. (a) to (d) of the definition "earned income" in subsec. 63(3) substituted for (a) to (c) by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 3(1), applicable to 1993 *et seq.* Paras. (a) to (c) formerly read:

(a) all salaries, wages and other remuneration, including gratuities, received by the taxpayer in respect of, in the course of, or by virtue of offices and employments, and all amounts included in computing the taxpayer's income by virtue of sections 6 and 7,

(b) amounts included in computing the taxpayer's income by virtue of paragraph 56(1)(m), (n) or (o), and

(c) the taxpayer's incomes from all businesses carried on either alone or as a partner actively engaged in the business;

Interpretation Bulletins: IT-434R: Rental of real property by individual. See also list at end of s. 63.

"eligible child" of a taxpayer for a taxation year means

(a) a child of the taxpayer or of the taxpayer's spouse or common-law partner, or

(b) a child dependent on the taxpayer or the taxpayer's spouse or common-law partner for support and whose income for the year does not exceed the amount used under paragraph (c) of the description of B in subsection 118(1) for the year

if, at any time during the year, the child

(c) is under 16 years of age, or

(d) is dependent on the taxpayer or on the taxpayer's spouse or common-law partner and has a mental or physical infirmity;

History: The definition "eligible child" in subsec. 63(3) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Para. (b) of the definition "eligible child" in subsec. 63(3) amended by 2000, c. 19, s. 9, applicable to 1999 *et seq.* except that, in its application to the 1999 taxation year, the reference to "the amount used under paragraph (c) of the description of B in subsection 118(1) for the year" shall be read as a reference to "$7,044". Para. (b) formerly read:

(b) a child dependent on the taxpayer or the taxpayer's spouse for support and whose income for the year does not exceed the total of $500 and the amount used under paragraph (c) of the description of B in subsection 118(1) for the year

Para. (b) of the definition "eligible child" in subsec. 63(3) amended by 1999, c. 22, subsec. 18(10), applicable to 1998 *et seq.* The para. formerly read:

(b) a child dependent on the taxpayer or the taxpayer's spouse and whose income for the year does not exceed the amount used under paragraph (c) of the description of B in subsection 118(1) for the year

Para. (c) of the definition "eligible child" in subsec. 63(3) amended by 1997, c. 25, subsec. 12(5), applicable to 1996 *et seq.* Para. (c) formerly read:

(c) is under 14 years of age, or

Para. (b) of the definition "eligible child" in subsec. 63(3) substituted by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 3(2), applicable to 1993 *et seq.* Para. (b) formerly read:

(b) a child in respect of whom the taxpayer deducted an amount under section 118 for the year,

"periodic child care expense amount", in respect of an eligible child of a taxpayer for a taxation year, means 1/40 of the annual child care expense amount in respect of the child for the year;

History: The definition "periodic child care expense amount" added to subsec. 63(3) by 2001, c. 17, subsec. 42(9), applicable to 2000 *et seq.*

"supporting person" of an eligible child of a taxpayer for a taxation year means a person, other than the taxpayer, who is

(a) a parent of the child,

(b) the taxpayer's spouse or common-law partner, or

(c) an individual who deducted an amount under section 118 for the year in respect of the child,

if the parent, spouse or common-law partner or individual, as the case may be, resided with the taxpayer at any time during the year and at any time within 60 days after the end of the year.

History: The definition "supporting person" in subsec. 63(3) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

The opening words of the definition "supporting person" in subsec. 63(3) amended by 1997, c. 25, subsec. 12(6), applicable to 1983 *et seq.* The opening words formerly read:

"supporting person" of an eligible child of a taxpayer for a taxation year means

(4) Commuter's child care expense — Where in a taxation year a person resides in Canada near the boundary between Canada and the United States and while so resident incurs expenses for child care services that would be child care expenses if

(a) the definition "child care expense" in subsection (3) were read without reference to the words "in Canada", and

(b) the reference in paragraph (b) of the definition "child care expense" in subsection (3) to "resident of Canada" were read as "person",

those expenses (other than expenses paid for a child's attendance at a boarding school or camp outside Canada) shall be deemed to be child care expenses for the purpose of this section if the child care services are provided at a place that is closer to the person's principal place of residence by a reasonably accessible route, having regard to the circumstances, than any place in Canada where such child care services are available and, in respect of those expenses, subsection (1) shall be read without reference to the words "and contains, where the payee is an individual, that individual's Social Insurance Number".

History: Subsec. 63(4) added by 1994, c. 21, s. 27, applicable to 1992 *et seq.*

Selected Cases [s. 63]: *Beaudoin v. R.*, [2005] 1 C.T.C. 2821 (TCC) (Moving expenses deducted five years after move to new location); *Senger-Hammond v. Canada*, [1997] 1 C.T.C. 2728 (TCC) (Purpose of legislation is to permit deduction of child care expenses, not collection of tax from baby-sitters).

Definitions [s. 63]: "amount" — 248(1); "annual child care expense amount" — 63(3); "business" — 248(1); "Canada" — 64.1, 255; "child" — 252(1); "child care expense" — 63(3); "common-law partner", "common-law partnership" — 248(1); "designated educational institution" — 118.6(1); "earned income", "eligible child" — 63(3); "employment" — 248(1); "father" — 252(2); "individual" — 248(1); "medical doctor" — 118.4(2); "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "mother" — 252(2); "office" — 248(1); "parent" — 252(2); "periodic child care expense amount" — 63(3); "person", "prescribed" — 248(1); "resident of Canada" — 250; "supporting person" — 63(3); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [s. 63]: IT-495R3: Child care expenses; IT-518R: Food, beverages and entertainment expenses.

63.1 [See s. 64.1]

64. Disability supports deduction — If a taxpayer files with the taxpayer's return of income (other than a return of income filed under subsection 70(2), paragraph 104(23)(d) or 128(2)(e) or subsection 150(4)) for the taxation year a prescribed form containing prescribed information, there may be deducted in computing the taxpayer's income for the year the lesser of

(a) the amount determined by the formula

$$A - B$$

where

A is the total of all amounts each of which is an amount paid by the taxpayer in the year and that

(i) was paid to enable the taxpayer

(A) to perform the duties of an office or employment,

(B) to carry on a business either alone or as a partner actively engaged in the business,

(C) to attend a designated educational institution or a secondary school at which the taxpayer is enrolled in an educational program, or

(D) to carry on research or any similar work in respect of which the taxpayer received a grant,

(ii) was paid

(A) where the taxpayer has a speech or hearing impairment, for the cost of sign-language interpretation services or real time captioning services and to a person engaged in the business of providing such services,

(B) where the taxpayer is deaf or mute, for the cost of a teletypewriter or similar device, including a telephone ringing indicator, prescribed by a medical practitioner, to enable the taxpayer to make and receive phone calls,

(C) where the taxpayer is blind, for the cost of a device or equipment, including synthetic speech systems, Braille printers, and large print on-screen devices, prescribed by a medical practitioner, and designed to be used by blind individuals in the operation of a computer,

(D) where the taxpayer is blind, for the cost of an optical scanner or similar device, prescribed by a medical practitioner, and designed to be used by blind individuals to enable them to read print,

(E) where the taxpayer is mute, for the cost of an electronic speech synthesizer, prescribed by a medical practitioner, and designed to be used by mute individuals to enable them to communicate by use of a portable keyboard,

(F) where the taxpayer has a mental or physical impairment, for the cost of note-taking services and to a person engaged in the business of providing such services, if the taxpayer has been certified in writing by a medical practitioner to be a person who, because of that impairment, requires such services,

(G) where the taxpayer has a physical impairment, for the cost of voice recognition software, if the taxpayer has been certified in writing by a medical practitioner to be a person who, because of that impairment, requires that software,

(H) where the taxpayer has a learning disability or a mental impairment, for the cost of tutoring services that are rendered to, and supplementary to the primary education of, the taxpayer and to a person ordinarily engaged in the business of providing such services to individuals who are not related to the person, if the taxpayer has been certified in writing by a medical practitioner to be a person who, because of that disability or impairment, requires those services,

Proposed Amendment — 64(a)A(ii)(F)–(H)

(F) where the taxpayer has an impairment in physical or mental functions, for the cost of note-taking services and to a person engaged in the business of providing such

services, if the taxpayer has been certified in writing by a medical practitioner to be a person who, because of that impairment, requires such services,

(G) where the taxpayer has an impairment in physical functions, for the cost of voice recognition software, if the taxpayer has been certified in writing by a medical practitioner to be a person who, because of that impairment, requires that software,

(H) where the taxpayer has a learning disability or an impairment in mental functions, for the cost of tutoring services that are rendered to, and supplementary to the primary education of, the taxpayer and to a person ordinarily engaged in the business of providing such services to individuals who are not related to the person, if the taxpayer has been certified in writing by a medical practitioner to be a person who, because of that disability or impairment, requires those services,

Application: The August 15, 2005 draft legislation (2005 Budget second bill), subsec. 1(1), will amend cls. (ii)(F) to (H) in the description of A in para. 64(a) to read as above, applicable to 2005 *et seq.*

Technical Notes: Section 64 permits the deduction of disability supports expenses incurred to enable the taxpayer to work, to attend secondary school or to attend a designated educational institution, unless they have been reimbursed by a non-taxable payment. The effect of this deduction is that no income tax is payable on income (including government assistance) used to pay for these expenses, and that this income is not used in determining the value of income-tested benefits.

Clauses 64(1)(A)(ii)(F) to (H) are amended to change the reference to "mental or physical impairment" to "impairment in physical or mental functions". This change in terminology is consequential to a similar change to subsection 118.3(1) (disability tax credit) suggested by the Technical Advisory Committee on Tax Measures for Persons with Disabilities.

(I) where the taxpayer has a perceptual disability, for the cost of talking textbooks used by the taxpayer in connection with the taxpayer's enrolment at a secondary school in Canada or at a designated educational institution, if the taxpayer has been certified in writing by a medical practitioner to be a person who, because of that disability, requires those textbooks, and

(J) where the taxpayer has a mental or physical infirmity, for the cost of attendant care services provided in Canada and to a person who is neither the taxpayer's spouse or common-law partner nor under 18 years of age, if the taxpayer is a taxpayer in respect of whom an amount may be deducted because of section 118.3, or if the taxpayer has been certified in writing by a medical practitioner to be a person who, because of that infirmity is, and is likely to be indefinitely, dependent on others for their personal needs and care and who as a result requires a full-time attendant,

Proposed Addition — 64(a)A(ii)(K)–(Q)

(K) where the taxpayer has a severe and prolonged impairment in physical or mental functions, for the cost of job coaching services (not including job placement or career counselling services) and to a person engaged in the business of providing such services if the taxpayer has been certified in writing by a medical practitioner to be a person who, because of that impairment, requires such services,

(L) where the taxpayer is blind or has a severe learning disability, for the cost of reading services and to a person engaged in the business of providing such services, if the taxpayer has been certified in writing by a medical practitioner to be a person who, because of that impairment or disability, requires those services,

(M) where the taxpayer is blind and profoundly deaf, for the cost of deaf-blind intervening services and to a person engaged in the business of providing such services,

(N) where the taxpayer has a speech impairment, for the cost of a device that is a Bliss symbol board that is prescribed by a medical practitioner to help the taxpayer communicate by motioning at the symbols or spelling out words,

(O) where the taxpayer is blind, for the cost of a device that is a Braille note-taker, prescribed by a medical practitioner to allow the taxpayer to take notes (that can be read back to them or printed or displayed in Braille) with the help of a keyboard,

(P) where the taxpayer has a severe and prolonged impairment in physical functions that markedly restricts their ability to use their arms or hands, for the cost of a device that is a page turner prescribed by a medical practitioner to help the taxpayer to turn the pages of a book or other bound document, and

(Q) where the taxpayer is blind, or has a severe learning disability, for the cost of a device or software that is prescribed by a medical practitioner and designed to enable the taxpayer to read print.

Application: The August 15, 2005 draft legislation (2005 Budget second bill), subsec. 1(2), will add cls. (ii)(K) to (Q) to the description of A in para. 64(a), applicable to 2005 *et seq.*

Technical Notes: Section 64 is further amended to expand the list of expenses eligible for the disability supports deduction by adding amounts paid for:

- Job coaching services used by individuals who have a severe and prolonged impairment (and paid to persons engaged in the business of providing such services). These services do not include job placement or career counselling services. The need for these services must be certified by a medical practitioner.
- Reading services used by individuals who are blind or who have a severe learning disability (and paid to persons engaged in the business of providing such services). The need for these services must be certified by a medical practitioner.
- Deaf-blind intervening services used by individuals who are both blind and profoundly deaf (and paid to persons engaged in the business of providing such services).

In addition, where a medical practitioner certifies the need for the following devices or software, the following expenses will also be eligible for this deduction:

- Bliss symbol boards used by individuals who have a speech impairment to help them communicate by motioning at the symbols or by spelling-out words.

- Braille note-takers used by individuals who are blind to allow them to take notes (that can be read back to them or printed or displayed in Braille) with the help of a keyboard.
- Page-turners used by individuals with a severe and prolonged impairment that markedly restricts their ability to use their arms or hands to turn the pages of a book or other bound document.
- Devices and software designed to be used by individuals who are blind or who have a severe learning disability to enable them to read print.

Federal budget, Notice of Ways and Means Motion, February 23, 2005: *Disability Supports Deduction*

(7) That, for the 2005 and subsequent taxation years, there be added to the list of expenses eligible for the disability supports deduction, amounts paid

(a) for deaf-blind intervening services used by an individual who is both blind and profoundly deaf (if paid to persons engaged in the business of providing such services); and

(b) for the following services or devices, if the need for the service or device is certified in writing by a medical practitioner:

(i) job coaching services (other than job placement or career counselling services) provided to an individual with a severe and prolonged impairment (if paid to persons engaged in the business of providing such services),

(ii) reading services provided to an individual who is blind or who has a severe learning disability (if paid to persons engaged in the business of providing such services),

(iii) a device that is a Bliss symbol board for use by an individual who has a speech impairment to help the individual communicate by motioning at the symbols or spelling out words,

(iv) a device that is a Braille note-taker for use by a blind individual to allow that individual to take notes (that can be read back to them or printed or displayed in Braille) with the help of a keyboard,

(v) a device that is a page turner used by an individual with a severe and prolonged impairment that markedly restricts the individual's ability to use their arms or hands to turn the pages of a book or other bound document, and

(vi) a device or software, designed to be used by a blind individual or an individual with a severe learning disability, to enable the individual to read print (to the extent not already allowed under this deduction).

Federal budget, Supplementary Information, February 23, 2005: *Expansion of the Disability Supports Deduction*

Persons with disabilities may receive tax relief for the cost of disability supports (e.g. sign-language interpretation services, talking textbooks, etc.) incurred for the purposes of employment or education through the disability supports deduction. This deduction was introduced in the 2004 budget following an early recommendation by the Technical Advisory Committee [on Tax Measures for Persons with Disabilities; see under 118.3(1) — ed.].

The effects of this deduction are that no income tax is payable on income (including government assistance) used to pay for these expenses, and that this income is not used in determining the value of income-tested benefits.

The 2004 budget specified a list of expenses eligible for the disability supports deduction. The Committee noted in its report that the existing deduction could be improved by adding to the list of eligible expenses.

In response, this budget proposes to expand the list of expenses eligible for the disability supports deduction by adding amounts paid for:

- Job coaching services used by individuals who have a severe and prolonged impairment (and paid to persons engaged in the business of providing such services). These services do not include job placement or career counselling services. The need for these services will have to be certified by a medical practitioner.
- Reading services used by individuals who are blind or who have a severe learning disability (and paid to persons engaged in the business of providing such services). The need for these services will have to be certified by a medical practitioner.
- Deaf-blind intervening services used by individuals who are both blind and profoundly deaf (and paid to persons engaged in the business of providing such services).
- Bliss symbol boards used by individuals who have a speech impairment to help them communicate by motioning at the symbols or by spelling-out words. The need for these devices will have to be certified by a medical practitioner.
- Braille note-takers used by individuals who are blind to allow them to take notes (that can be read back to them or printed or displayed in Braille) with the help of a keyboard. The need for these devices will have to be certified by a medical practitioner.
- Page-turners used by individuals with a severe and prolonged impairment that markedly restricts their ability to use their arms or hands to turn the pages of a book or other bound document. The need for these devices will have to be certified by a medical practitioner.
- Devices and software designed to be used by individuals who are blind or who have a severe learning disability to enable them to read print (to the extent not already allowed). The need for these devices and software will have to be certified by a medical practitioner.

These disability supports expenses (except for job coaching services) may be expenses incurred for purposes other than employment or education and, therefore will also be added to the list of expenses eligible for the medical expense tax credit.

These measures will apply for the 2005 and subsequent taxation years.

(iii) is evidenced by one or more receipts filed with the Minister each of which was issued by the payee and contains, where the payee is an individual who is a person referred to in clause (ii)(J), that individual's Social Insurance Number, and

(iv) is not included in computing a deduction under section 118.2 for any taxpayer for any taxation year, and

B is the total of all amounts each of which is the amount of a reimbursement or any other form of assistance (other than prescribed assistance or an amount that is included in computing a taxpayer's income and that is not deductible in computing the taxpayer's taxable income) that any taxpayer is or was entitled to receive in respect of an amount included in computing the value of A, and

(b) the total of

(i) the total of all amounts each of which is

(A) an amount included under section 5, 6 or 7 or paragraph 56(1)(n), (o) or (r) in computing the taxpayer's income for the year, or

(B) the taxpayer's income for the year from a business carried on either alone or as a partner actively engaged in the business, and

(ii) where the taxpayer is in attendance at a designated educational institution or a secondary school at which the taxpayer is enrolled in an educational program, the least of

(A) $15,000,

(B) $375 times the number of weeks in the year during which the taxpayer is in attendance at the institution or school, and

(C) the amount, if any, by which the amount that would, if this Act were read without reference to this section, be the taxpayer's income for the year exceeds the total determined under subparagraph (i) in respect of the taxpayer for the year.

Related Provisions: 4(2) — Deductions under s. 64 not applicable to any particular source; 64.1 — Individuals absent from Canada; 118.2(2)(b), (b.1), (c) — Medical expense — attendant care; 118.2(2)(l.4), (l.42), (l.91), Reg. 5700(k), (l), (o), (p), (w) — Medical expense credit for expenses listed in proposed s. 64; 118.4(2) — Meaning of medical practitioner; 122.51(2)(b)(ii) — One-quarter of s. 64 deduction available for refundable medical expense credit; 257 — Formula cannot calculate to less than zero.

History: S. 64 amended by 2005, c. 19, s. 15, applicable to 2004 *et seq.* The section formerly read:

64. Attendant care expenses — If a taxpayer in respect of whom an amount may be deducted because of section 118.3 for a taxation year files with the taxpayer's return of income (other than a return of income filed under subsection 70(2), paragraph 104(23)(d) or 128(2)(e) or subsection 150(4)) for the year a prescribed form containing prescribed information, there may be deducted in computing the taxpayer's income for the year the lesser of

(a) the amount determined by the formula

A – B

where

A is the total of all amounts each of which is an amount that was

(i) paid in the year by the taxpayer to a person who, at the time of the payment, is neither the taxpayer's spouse or common-law partner nor under 18 years of age as or on account of attendant care provided in Canada to the taxpayer to enable the taxpayer to

(A) perform the duties of an office or employment,

(B) carry on a business either alone or as a partner actively engaged in the business,

(C) attend a designated educational institution or a secondary school at which the taxpayer is enrolled in an educational program, or

(D) carry on research or any similar work in respect of which the taxpayer received a grant,

the payment of which is proven by filing with the Minister one or more receipts each of which was issued by the payee and contains, where the payee is an individual, that individual's Social Insurance Number, and

(ii) not included in computing a deduction under section 118.2 for any taxation year, and

B is the total of all amounts each of which is the amount of a reimbursement or any other form of assistance (other than prescribed assistance or an amount that is included in computing a taxpayer's income and that is not deductible in computing the taxpayer's taxable income) that any taxpayer is or was entitled to receive in respect of an amount included in computing the value of A, and

(b) ⅔ of the total of

(i) the total of all amounts each of which is

(A) an amount included under section 5, 6 or 7 or paragraph 56(1)(n), (o) or (r) in computing the taxpayer's income for the year, or

(B) the taxpayer's income for the year from a business carried on either alone or as a partner actively engaged in the business, and

(ii) where the taxpayer is in attendance at a designated educational institution or a secondary school at which the taxpayer is enrolled in an educational program, the least of

(A) $15,000,

(B) $375 times the number of weeks in the year during which the taxpayer is in attendance at the institution or school, and

(C) the amount, if any, by which the amount that would, if this Act were read without reference to this section, be the taxpayer's income for the year exceeds the total determined under subparagraph (i) in respect of the taxpayer for the year.

(c) [Repealed]

Cl. 64(a)A(i)(C) added by 2001, c. 17, subsec. 43(1), applicable to 2000 *et seq.*

Para. 64(b) amended by the said c. 17, subsec. 43(2), applicable to 2000 *et seq.* The para. formerly read:

(b) ⅔ of the total of all amounts each of which is

(i) an amount included under any of sections 5, 6 and 7 in computing the taxpayer's income for the year from an office or employment,

(ii) an amount included by reason of paragraph 56(1)(n) or (o) in computing a taxpayer's income for the year, or

(iii) the taxpayer's income for the year from a business carried on either alone or as a partner actively engaged in the business.

Para. 64(a) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

The opening words of s. 64 amended and para. (c) repealed by 1998, c. 19, s. 11, applicable to 1997 *et seq.* The opening words and para. (c) formerly read:

64. Where a taxpayer in respect of whom an amount may be deducted by reason of section 118.3 for a taxation year files with the taxpayer's return of income (other than a return of income filed under subsection 70(2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) under this Part for the year a prescribed form containing prescribed information, there may be deducted in computing the taxpayer's income for the year an amount that is equal to the least of

. . . . .

(c) $5,000.

Cl. 64(a)A(i)(C) repealed by 1996, c. 23, subsec. 174(1), in force January 1, 1998. Cl. (C) formerly read:

(C) undertake an occupational training course in respect of which the taxpayer received a training allowance under the *National Training Act*, or

Subpara. 64(b)(ii) amended by 1996, c. 23, subsec. 174(2), in force January 1, 1998. Subpara. (ii) formerly read:

(ii) an amount included by reason of paragraph 56(1)(m), (n) or (o) in computing the taxpayer's income for the year, or

Para. 64(a) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 37(1), applicable to 1989 *et seq.*, except that, in its application to the 1989 and 1990 taxation years, that portion of subpara. (i) in the description of A preceding cl. (A) thereof shall be read as follows:

(i) paid in the year by the taxpayer to a person (other than a person related to the taxpayer or a person under 18 years of age) as or on account of attendant care provided in Canada to the taxpayer to enable the taxpayer to

Para. 64(a) formerly read:

(a) the total of all amounts each of which is an amount that was

(i) paid in the year by the taxpayer to a person (other than a person related to the taxpayer or a person under 18 years of age) as or on account of attendant care provided in Canada to the taxpayer to enable the taxpayer to

(A) perform the duties of an office or employment,

(B) carry on a business either alone or as a partner actively engaged in the business,

(C) undertake an occupational training course in respect of which the taxpayer received a training allowance under the *National Training Act*, or

(D) carry on research or any similar work in respect of which the taxpayer received a grant,

the payment of which is proven by filing with the Minister one or more receipts each of which was issued by the payee and contains, where the payee is an individual, that individual's Social Insurance Number, and

(ii) not included in computing a deduction under section 118.2 for the year or any subsequent taxation year,

Definitions [s. 64]: "amount", "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "common-law partner", "employment", "individual" — 248(1); "medical practitioner" — 118.4(2); "Minister", "office", "person", "prescribed" — 248(1); "related" — 251(2)–(6); "taxable income" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "writing" — *Interpretation Act* 35(1).

Regulations: No assistance prescribed to date for 64(a)B.

Interpretation Bulletins: IT-519R2: Medical expense and disability tax credits and attendant care expense deduction.

Information Circulars: 82-2R2: SIN legislation that relates to the preparation of information slips.

Forms: RC4064: Information concerning people with disabilities [guide]; T929: Disability supports deduction.

64.1 Individuals absent from Canada — In applying sections 63 and 64 in respect of a taxpayer who is, throughout all or part of a taxation year, absent from but resident in Canada, the following rules apply for the year or that part of the year, as the case may be:

(a) the definition "child care expense" in subsection 63(3), and section 64, shall be read without reference to the words "in Canada";

(b) subsection 63(1) and section 64 shall be read without reference to the words "and contains, where the payee is an individual, that individual's Social Insurance Number", if the payment referred to in that subsection or section, as the case may be, is made to a person who is not resident in Canada; and

(c) paragraph (b) of the definition "child care expense" in subsection 63(3) shall be read as if the word "person" were substituted for the words "resident of Canada" where they appear therein.

History: The portion of s. 64.1 before para. (b) amended by 1999, c. 22, s. 19, applicable after 1997. That portion formerly read:

64.1 In applying sections 62, 63 and 64 in respect of a taxpayer who is, throughout all or part of a taxation year, absent from but resident in Canada, the following rules apply for the year or that part of the year, as the case may be:

(a) subsection 62(1), the definition "child care expense" in subsection 63(3) and section 64 shall be read without reference to the words "in Canada";

Definitions [s. 64.1]: "Canada" — 255; "person" — 248(1); "resident" — 250; "taxation year" — 249; "taxpayer" — 248(1).

Remission Orders: *Child Care Expense and Moving Expense Remission Order*, P.C. 1991-257 (same relief as section 64.1 for 1984-88, can be applied for retroactively).

Interpretation Bulletins: IT-178R3: Moving expenses; IT-495R3: Child care expenses; IT-519R2: Medical expense and disability tax credits and attendant care expense deduction.

65. (1) Allowance for oil or gas well, mine or timber limit — There may be deducted in computing a taxpayer's income for a taxation year such amount as an allowance, if any, in respect of

(a) a natural accumulation of petroleum or natural gas, oil or gas well, mineral resource or timber limit,

(b) the processing of ore (other than iron ore or tar sands) from a mineral resource to any stage that is not beyond the prime metal stage or its equivalent,

(c) the processing of iron ore from a mineral resource to any stage that is not beyond the pellet stage or its equivalent, or

(d) the processing of tar sands from a mineral resource to any stage that is not beyond the crude oil stage or its equivalent

as is allowed to the taxpayer by regulation.

Related Provisions: 20(1)(v.1) — Resource allowance; 53(2) — Amounts to be deducted; 65(3) — Allocation of allowance for coal mine; 66(1) — Exploration and development expenses of principal-business corporations; 66.7 — Successor rules; 96(1)(d) — No deduction at partnership level; 104(17) — Trusts — depletion allowance; 127.52(1)(e) — Limitation on deduction for minimum tax purposes; 133(1)(b) — No deduction allowed to non-resident-owned investment corporation; 209 — Tax on carved-out income.

Selected Cases [subsec. 65(1)]: *Echo Bay Mines Ltd. v. Canada*, [1992] 2 C.T.C. 182 (FCTD) (Gains from settlement of forward sales contracts for silver were "resource profits"); *Canterra Energy Ltd. v. R.*, [1987] 1 C.T.C. 89 (FCA) (Frontier exploration allowance can result in figure less than zero; mathematical formula requires technical interpretation of "minus"); *Cominco Ltd. v. R.*, [1984] C.T.C. 548 (FCTD); aff'd (Dec. 2, 1985), [unreported] (FCA); leave to appeal to SCC refused (1986), 66 N.R. 77 (note), (sub nom. *Cominco Ltd. v. MNR*) (Allowance disallowed when insurance proceeds for loss of income not from production or processing of minerals); *Texaco Exploration Co. v. R.*, [1975] C.T.C. 404 (FCTD) (Value of abandoned properties deducted in calculating allowance for net increases in capital investment in property); *MNR v. Consolidated Mogul Mines Ltd.*, [1968] C.T.C. 429 (SCC) (Taxpayer engaged in business of mining or exploring for minerals despite principal business of development and management of other mining companies).

Regulations: 1200.

I.T. Application Rules: 29(1)–(4), (11)–(14), (16), (24).

Forms: T2 SCH 51: Resource allowance and depletion schedules.

(2) Regulations — For greater certainty it is hereby declared that, in the case of a regulation made under subsection (1) allowing to a taxpayer an amount in respect of a natural accumulation of petroleum or natural gas, an oil or gas well or a mineral resource or in respect of the processing of ore,

(a) there may be allowed to the taxpayer by that regulation an amount in respect of any or all

(i) natural accumulations of petroleum or natural gas, oil or gas wells or mineral resources in which the taxpayer has any interest, or

Proposed Amendment — 65(2)(a)(i)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), s. 219, will amend subpara. 65(2)(a)(i) by substituting "interest or, for civil law, right" for "interest", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(ii) processing operations described in any of paragraphs (1)(b), (c) or (d) that are carried on by the taxpayer; and

(b) notwithstanding any other provision contained in this Act, the Governor in Council may prescribe the formula by which the amount that may be allowed to the taxpayer by that regulation shall be determined.

Related Provisions: 20(1)(v) — Deduction for mining taxes; 59(6) — Definitions in regulations apply for purposes of s. 59; 66(1) — Exploration and development expenses of principal-business corporations; 66.7 — Successor rules; 221 — Rules applicable to regulations generally.

Regulations: Part XII.

I.T. Application Rules: 29(1)–(4), (11)–(14), (16), (24).

(3) Lessee's share of allowance — Where a deduction is allowed under subsection (1) in respect of a coal mine operated by a lessee, the lessor and lessee may agree as to what portion of the allowance each may deduct and, in the event that they cannot agree, the Minister may fix the portions.

I.T. Application Rules: 29(1)–(4), (11)–(14), (16), (24).

Definitions [s. 65]: "amount", "mineral resource", "Minister", "oil or gas well", "regulation", "tar sands" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

66. (1) Exploration and development expenses of principal-business corporations — A principal-business corporation may deduct, in computing its income for a taxation year, the lesser of

(a) the total of such of its Canadian exploration and development expenses as were incurred by it before the end of the taxation year, to the extent that they were not deductible in computing income for a previous taxation year, and

(b) of that total, an amount equal to its income for the taxation year if no deduction were allowed under this subsection, section 65 or subsection 66.1(2), minus the deductions allowed for the year by sections 112 and 113.

Related Provisions: 66(10) — Joint exploration corporation; 87(6), (7) — Obligations of predecessor corporation. See also at end of s. 66.

Selected Cases [subsec. 66(1)]: *Phénix v. R.*, [1998] 1 C.T.C. 2379 (TCC) (Capital items may form part of CEE); *R. v. Alberta and Southern Gas Co. Ltd.*, [1978] C.T.C. 780 (SCC) (Tax considerations of transaction in acquiring and ending rights not artificially reducing income; deduction permitted).

I.T. Application Rules: 29.

Interpretation Bulletins: IT-400: Exploration and development expenses — meaning of principal-business corporation.

(2) Expenses of special product corporations — A corporation (other than a principal-business corporation the principal business of which is described in paragraph (a) or (b) of the definition "principal-business corporation" in subsection (15)), whose principal business is the production or marketing of sodium chloride or potash or whose business includes manufacturing products the manufacturing of which involves processing sodium chloride or potash, may deduct, in computing its income for a taxation year, the drilling and exploration expenses incurred by it in the year and before May 7, 1974 on or in respect of exploring or drilling for halite or sylvite.

Related Provisions: See also at end of s. 66.

I.T. Application Rules: 29.

(3) Expenses of other taxpayers — A taxpayer other than a principal-business corporation may deduct, in computing the taxpayer's income for a taxation year, the total of the taxpayer's Canadian exploration and development expenses to the extent that they were not deducted in computing the taxpayer's income for a preceding taxation year.

Related Provisions: 66(5) — Dealers; 66(10) — Joint exploration corporation. See also at end of s. 66.

I.T. Application Rules: 29.

(4) Foreign exploration and development expenses — A taxpayer who is resident throughout a taxation year in Canada may deduct, in computing the taxpayer's income for that taxation year, the lesser of

(a) the amount, if any, by which

(i) the total of the foreign exploration and development expenses incurred by the taxpayer

(A) before the end of the year,

(B) at a time at which the taxpayer was resident in Canada, and

(C) where the taxpayer became resident in Canada before the end of the year, after the last time (before the end of the year) that the taxpayer became resident in Canada,

exceeds the total of

(ii) such of the expenses described in subparagraph (i) as were deductible in computing the taxpayer's income for a preceding taxation year, and

(iii) all amounts by which the amount described in this paragraph in respect of the taxpayer is required because of subsection 80(8) to be reduced at or before the end of the year, and

(b) of that total, the greater of

(i) the amount, if any, claimed by the taxpayer not exceeding 10% of the amount determined under paragraph (a) in respect of the taxpayer for the year, and

(i.1) [Repealed]

(ii) the total of

(A) the part of the taxpayer's income for the year, determined without reference to this subsection and subsection 66.21(4), that can reasonably be regarded as attributable to

(I) the production of petroleum or natural gas from natural accumulations outside Canada or from oil or gas wells outside Canada, or

(II) the production of minerals from mines outside Canada,

(B) the taxpayer's income for the year from royalties in respect of a natural accumulation of petroleum or natural gas outside Canada, an oil or gas well outside Canada or a mine outside Canada, determined without reference to this subsection and subsection 66.21(4), and

(C) all amounts each of which is an amount, in respect of a foreign resource property that has been disposed of by the taxpayer, equal to the amount, if any, by which

(I) the amount included in computing the taxpayer's income for the year by reason of subsection 59(1) in respect of the disposition

exceeds

(II) the total of all amounts each of which is that portion of an amount deducted under subsection 66.7(2) in computing the taxpayer's income for the year that

1. can reasonably be considered to be in respect of the foreign resource property, and

2. cannot reasonably be considered to have reduced the amount otherwise determined under clause (A) or (B) in respect of the taxpayer for the year.

Related Provisions: 66(4.1) — Country-by-country FEDE allocations; 66(4.3) — Individuals who cease to be resident in Canada; 66(5) — Dealers; 66(11.4) — Change of control; 66(13.1) — Short taxation year; 66.21(1)"global foreign resource limit" — Determination of limit; 66.21(4) — Deduction for cumulative foreign resource expense; 66.7(2)(a) — Successor of foreign exploration and development expenses; 66.7(2.3) — Successor of foreign resource expenses; 80(8)(e) — Reduction of FEDE on debt forgiveness; 87(7) — Obligations of predecessor corporation; 104(5.2) — Trusts — 21-year deemed disposition; 110.6(1)"investment expense"(d) — effect of claim under 66(4) on capital gains exemption; 115(1)(e.1) — Deduction for unused FEDE balance against taxable income earned in Canada of non-resident; 115(4.1) — Taxable income earned in Canada — foreign resource pool expenses. See additional Related Provisions at end of s. 66.

History: Subpara. 66(4)(a)(i) amended by 2001, c. 17, subsec. 44(1), applicable to 1999 *et seq.*, except that in its application to the 1999 taxation year, the subpara. shall be read as follows:

"(i) the total of the foreign exploration and development expenses incurred by the taxpayer before the end of the year and at a time which the taxpayer was resident in Canada"

The subpara. formerly read:

(i) the total of the foreign exploration and development expenses incurred by the taxpayer before the end of the year

The portion of para. 66(4)(b) before subpara. (ii) amended by the said c. 17, subsec. 44(2), applicable to 1995 *et seq.*, except that the portion shall be read as follows in respect of cessations of residence that occurred before February 28, 2000:

"(b) of that total, the greatest of

(i) the amount, if any, claimed by the taxpayer not exceeding 10% of the amount determined under paragraph (a) in respect of the taxpayer for the year,

(i.1) if the taxpayer ceased to be resident in Canada immediately after the end of the year, the amount, if any, claimed by the taxpayer not exceeding the amount determined under paragraph (a) in respect of the taxpayer for the year, and"

The portion of para. 66(4)(b) before subpara. (ii) formerly read:

(b) of that total, the greater of,

(i) such amount as the taxpayer may claim not exceeding 10% of the total determined under paragraph (a), and

Subpara. 66(4)(b)(ii) amended by the said c. 17, subsec. 44(3), applicable to taxation years that begin after 2000. Subpara. 66(4)(b)(ii) formerly read:

(ii) the total of

(A) such part of the taxpayer's income for the taxation year as may reasonably be regarded as attributable to the production of petroleum or natural gas from natural accumulations thereof outside Canada or from oil or gas wells outside Canada or to the production of minerals from mines outside Canada,

(B) the taxpayer's income for the taxation year from royalties in respect of a natural accumulation of petroleum or natural gas outside Canada, an oil or gas well outside Canada or a mine outside Canada, and

(C) the total of amounts each of which is an amount, in respect of a foreign resource property that has been disposed of by the taxpayer, equal to the amount, if any, by which

(I) the amount included in computing the taxpayer's income for the year by virtue of section 59 in respect of the disposition of the property,

exceeds

(II) the amount deducted under section 64 in respect of the property in computing the taxpayer's income for the year,

determined as if no deductions were allowed under this subsection, subsections (1) and (3), section 65 and subsections 66.1(2) and (3).

The closing words to para. 66(4)(b) repealed and closing words to subpara. 66(4)(b)(ii) added by 1998, c. 19, subsecs. 104(1) and (2), applicable to taxation years that end after May 6, 1974. The closing words to para. 66(4)(b) formerly read:

if no deduction were allowed under this subsection, subsection (1) or (3), section 65 or subsection 66.1(2) or (3).

Para. 66(4)(a) amended by 1995, c. 21, s. 21, applicable to taxation years that end after February 21, 1994. The para. formerly read:

(a) the total of such of the taxpayer's foreign exploration and development expenses as were incurred by the taxpayer before the end of the taxation year to the extent they were not deductible in computing the taxpayer's income for a previous taxation year, and

I.T. Application Rules: 29.

(4.1) Country-by-country FEDE allocations — For greater certainty, the portion of an amount deducted under subsection (4) in computing a taxpayer's income for a taxation year that can reasonably be considered to be in respect of specified foreign exploration and development expenses of the taxpayer in respect of a country is considered to apply to a source in that country.

Related Provisions: 66(4.2) — Method of allocation; 66.7(2.1) — Parallel rule for successor corporation.

History: Subsec. 66(4.1) added by 2001, c. 17, subsec. 44(4), applicable to taxation years of a taxpayer that begin after the earlier of

(a) December 31, 1999; and

(b) where, for the purposes of subsec. 72(9), a date is designated in writing by the taxpayer and the designation is filed with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes June 14, 2001, the later of

(i) the date so designated, and

(ii) December 31, 1994.

(4.2) Method of allocation — For the purpose of subsection (4.1), where a taxpayer has incurred specified foreign exploration and development expenses in respect of two or more countries, an allocation to each of those countries for a taxation year shall be determined in a manner that is

(a) reasonable having regard to all the circumstances, including the level and timing of

(i) the taxpayer's specified foreign exploration and development expenses in respect of the country, and

(ii) the profits or gains to which those expenses relate; and

(b) not inconsistent with the allocation made under subsection (4.1) for the preceding taxation year.

Related Provisions: 66.7(2.2) — Parallel rule for successor corporation.

History: Subsec. 66(4.2) added by 2001, c. 17, subsec. 44(4), applicable to taxation years of a taxpayer that begin after the earlier of

(a) December 31, 1999; and

(b) where, for the purposes of subsec. 72(9), a date is designated in writing by the taxpayer and the designation is filed with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes June 14, 2001, the later of

(i) the date so designated, and

(ii) December 31, 1994.

(4.3) FEDE deductions where change of individual's residence — Where at any time in a taxation year an individual becomes or ceases to be resident in Canada,

(a) subsection (4) applies to the individual as if the year were the period or periods in the year throughout which the individual was resident in Canada; and

(b) for the purpose of applying subsection (4), subsection (13.1) does not apply to the individual for the year.

History: Subsec. 66(4.3) added by 2001, c. 17, subsec. 44(4), applicable to 1998 *et seq.*

(5) Dealers — Subsections (3) and (4) and sections 59, 64, 66.1, 66.2, 66.21, 66.4 and 66.7 do not apply in computing the income for a taxation year of a taxpayer (other than a principal-business corporation) whose business includes trading or dealing in rights, licences or privileges to explore for, drill for or take minerals, petroleum, natural gas or other related hydrocarbons.

Related Provisions: 253 — Extended meaning of "carrying on business". See also at end of s. 66.

History: Subsec. 66(5) amended by 2001, c. 17, subsec. 44(5), applicable to taxation years that begin after 2000. The subsec. formerly read:

(5) Subsections (3) and (4) and sections 59, 64, 66.1, 66.2, 66.4 and 66.7 do not apply in computing the income for a taxation year of a taxpayer (other than a principal-business corporation) whose business includes trading or dealing in rights, licences or privileges to explore for, drill for or take minerals, petroleum, natural gas or other related hydrocarbons.

Subsec. 66(5) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 38(1), to add reference to section 66.7 and to delete "under this Part" from after "taxation year", applicable to taxation years ending after February 17, 1987.

I.T. Application Rules: 29.

Interpretation Bulletins: IT-291R3: Transfer of property to a corporation under subsection 85(1); IT-314: Income of dealers in oil and gas leases (archived); IT-400: Exploration and development expenses — meaning of principal-business corporation.

(6)–(9) [Repealed under former Act]

(10) [Repealed effective 2007]

Related Provisions: 66(15)"agreed portion" — Reduction for amounts previously renounced; 79(3)F(b)(ii) — Where property surrendered to creditor; 80(1)"forgiven amount"B(e) — Debt forgiveness rules do not ap-

ply to amount renounced. See additional Related Provisions at end of s. 66.

History: Subsec. 66(10) repealed by 1997, c. 25, subsec. 13(1), applicable to renunciations made

(a) after 2006, in respect of a payment or loan received by a joint exploration corporation

(i) before March 6, 1996, or

(ii) after March 5, 1996 under an agreement in writing made

(A) by the corporation before March 6, 1996, or

(B) by another corporation before March 6, 1996, where

(I) the other corporation controlled the corporation at the time the agreement was made, or

(II) the other corporation undertook, at the time the agreement was made, to form the corporation; and

(b) after March 5, 1996, in any other case.

Subsec. (10) formerly read:

(10) Joint exploration corporation — A joint exploration corporation may, in any particular taxation year or within 6 months from the end of that year, elect in prescribed form to renounce in favour of another corporation an agreed portion of the total of such of the joint exploration corporation's Canadian exploration and development expenses as were incurred by it during a period, after 1971 and before the end of the particular taxation year, throughout which the other corporation was a shareholder corporation, to the extent that the total of those expenses exceeds any amount deductible under subsection (1) in respect thereof by the joint exploration corporation in computing its income for any taxation year previous to the particular year and, on the election, that agreed portion

(a) shall be deemed, for the purpose of subsection (1) or (3), as the case may be, to be Canadian exploration and development expenses incurred by the other corporation during its taxation year in which the particular taxation year ends; and

(b) shall be subtracted from the total described in paragraph (1)(a) in determining the amount deductible by the joint exploration corporation under subsection (1) in computing its income.

I.T. Application Rules: 29.

Forms: T2035: Election to renounce exploration, development and oil and gas property expenses.

(10.1) [Repealed effective 2007]

Related Provisions: 66(3) — Expenses of other taxpayers; 79(3)F(b)(ii) — Where property surrendered to creditor; 80(1)"forgiven amount"B(e) — Debt forgiveness rules do not apply to amount renounced; 163(2.2) — False statement or omissions — penalty; 248(16), (16.1) — GST or QST input tax credit/refund and rebate deemed to be assistance; 248(18), (18.1) — GST or QST — repayment of input tax credit or refund. See also at end of s. 66.

History: Subsec. 66(10.1) repealed by 1997, c. 25, subsec. 13(1), applicable on the same basis as the repeal of subsec. 66(10). Subsec. (10.1) formerly read:

(10.1) Idem — A joint exploration corporation may, in any particular taxation year or within 6 months from the end of that year, elect in prescribed form in respect of that year to renounce in favour of another corporation an agreed portion of the total of such of the joint exploration corporation's Canadian exploration expenses as were incurred by it during a period (ending before the end of the particular taxation year) throughout which the other corporation was a shareholder corporation, to the extent that the total of those expenses exceeds the total of all amounts each of which is

(a) an amount deducted or required to be deducted under subsection 66.1(2) in respect of those expenses by the joint exploration corporation in computing its income for any taxation year preceding the particular taxation year, or

(b) assistance that any person has received, is entitled to receive or, at any time, becomes entitled to receive in respect of those expenses incurred during the period or that can reasonably be regarded as relating to Canadian exploration activities of the joint exploration corporation during the period, other than that portion of the assistance arising because of section 127 or 127.1 in respect of a shareholder corporation of the joint exploration corporation,

and, on the making of the election, that agreed portion

(c) shall be deemed, for the purposes of the definitions "Canadian exploration expense" and "cumulative Canadian exploration expense" in subsection 66.1(6), to be a Canadian exploration expense incurred by the other corporation during its taxation year in which the particular taxation year ends or, if it has no such year, its last taxation year, and

(d) shall be included in the amount determined for F in the definition "cumulative Canadian exploration expense" in subsection 66.1(6) by the joint exploration corporation in computing its cumulative Canadian exploration expense, at the time the election is made or, where the election is made after the end of the particular taxation year, immediately before the end of that year.

Paras. 66(10.1)(a), (d) amended by 1994, c. 8, subsecs. 5(1), (2), applicable to taxation years ending after December 2, 1992. Paras. (a), (d) formerly read:

(a) an amount deductible under subsection 66.1(2) in respect of those expenses by the joint exploration corporation in computing its income for any taxation year preceding the particular taxation year, or

. . . . .

(d) shall be included in the amount determined for F in the definition "cumulative Canadian exploration expense" in subsection 66.1(6) by reason of its being deducted or deductible, as the case may be, by the joint exploration corporation in computing that corporation's cumulative Canadian exploration expense, at the time that the election is made or, where the election is made after the end of the particular taxation year, immediately before the end of that year.

Para. 66(10.1)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 38(2), applicable to assistance for expenses incurred after November 1985. Para. (b) formerly read:

(b) assistance that any person has received, is entitled to receive or, at any time, becomes entitled to receive in respect of those expenses incurred during the period or that can reasonably be related to Canadian exploration activities of the joint exploration corporation during the period;

Selected Cases [subsec. 66(10.1)]: *Petro-Canada v. R.*, [2004] 3 C.T.C. 156 (FCA); leave to appeal to SCC refused 2004 CarswellNat 4108 (Seismic data purchased for purposes of library not CEE); *Mitchell v. R.*, [1999] 2 C.T.C. 2721 (TCC) (Double renunciation was permitted).

I.T. Application Rules: 29.

Advance Tax Rulings: ATR-60: Joint exploration corporations.

Forms: T2035: Election to renounce exploration, development and oil and gas property expenses.

(10.2) [Repealed effective 2007]

Related Provisions: 66.1(6)"restricted expense"(c) — inclusion of renounced expense; 79(3)F(b)(ii) — Where property surrendered to creditor; 80(1)"forgiven amount"B(e) — Debt forgiveness rules do not apply to amount renounced; 163(2.2) — False statement or omissions — penalty; 248(16), (16.1) — GST or QST input tax credit/refund and rebate deemed to be assistance; 248(18), (18.1) — GST or QST — repayment of input tax credit or refund. See also at end of s. 66.

History: Subsec. 66(10.2) repealed by 1997, c. 25, subsec. 13(1), applicable on the same basis as the repeal of subsec. 66(10). Subsec. (10.2) formerly read:

(10.2) Idem — A joint exploration corporation may, in any particular taxation year or within 6 months from the end of that year, elect in prescribed form in respect of that year to renounce in favour of another corporation an agreed portion of the total of such of the joint exploration corporation's Canadian development expenses as were incurred by it during a period (ending before the end of the particular taxation year) throughout which the other corporation was a shareholder corporation, to the extent that the total of those expenses exceeds the total of all amounts each of which is

(a) an amount deducted under subsection 66.2(2) in respect of those expenses by the joint exploration corporation in computing its income for any taxation year preceding the particular taxation year, or

(b) assistance that any person has received, is entitled to receive or, at any time, becomes entitled to receive in respect of those expenses incurred during the period or that can reasonably be

related to Canadian development activities of the joint exploration corporation during the period,

and, on the making of the election, that agreed portion

(c) shall be deemed, for the purposes of the definitions "Canadian development expense" and "cumulative Canadian development expense" in subsection 66.2(5), to be a Canadian development expense incurred by the other corporation during its taxation year in which the particular taxation year ends or, if it has no such year, its last taxation year, and

(d) shall be included in the amount determined for E in the definition "cumulative Canadian development expense" in subsection 66.2(5) by reason of its being deducted by the joint exploration corporation in computing that corporation's cumulative Canadian development expense, at the time the election is made or, where the election is made after the end of the particular taxation year, immediately before the end of that year.

Forms: T2035: Election to renounce exploration, development and oil and gas property expenses.

(10.3) [Repealed effective 2007]

Related Provisions: 79(3)F(b)(ii) — Where property surrendered to creditor; 80(1)"forgiven amount"B(e) — Debt forgiveness rules do not apply to amount renounced; 163(2.2) — False statement or omission — penalty; 248(16), (16.1) — GST or QST input tax credit/refund and rebate deemed to be assistance; 248(18), (18.1) — GST or QST — repayment of input tax credit or refund. See also at end of s. 66.

History: Subsec. 66(10.3) repealed by 1997, c. 25, subsec. 13(1), applicable on the same basis as the repeal of subsec. 66(10). Subsec. (10.3) formerly read:

(10.3) Idem — A joint exploration corporation may, in any particular taxation year or within 6 months from the end of that year, elect in prescribed form in respect of that year to renounce in favour of another corporation an agreed portion of the total of such of the joint exploration corporation's Canadian oil and gas property expenses as were incurred by it during a period (ending before the end of the particular taxation year) throughout which the other corporation was a shareholder corporation, to the extent that the total of those expenses exceeds the total of all amounts each of which is

(a) an amount deducted under subsection 66.4(2) in respect of those expenses by the joint exploration corporation in computing its income for any taxation year preceding the particular taxation year, or

(b) assistance that any person has received, is entitled to receive or, at any time, becomes entitled to receive in respect of those expenses incurred during the period or that can reasonably be related to those expenses during the period,

and, on the making of the election, that agreed portion

(c) shall be deemed, for the purposes of the definitions "Canadian oil and gas property expense" and "cumulative Canadian oil and gas property expense" in subsection 66.4(5), to be a Canadian oil and gas property expense incurred by the other corporation during its taxation year in which the particular taxation year ends or, if it has no such year, its last taxation year, and

(d) shall be included in the amount determined for E in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5) by reason of its being deducted by the joint exploration corporation in computing that corporation's cumulative Canadian oil and gas property expense, at the time the election is made or, where the election is made after the end of the particular taxation year, immediately before the end of that year.

I.T. Application Rules: 29.

Forms: T2035: Election to renounce exploration, development and oil and gas property expenses.

(10.4) Idem — Where a taxpayer has, after April 19, 1983, made a payment or loan described in paragraph (a) of the definition "agreed portion" in subsection (15) to a joint exploration corporation in respect of which the corporation has at any time renounced in favour of the taxpayer any Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses (in this subsection referred to as "resource expenses") under subsection (10.1), (10.2) or (10.3), the following rules apply:

(a) where the taxpayer receives as consideration for the payment or loan property that is capital property to the taxpayer,

(i) there shall be deducted in computing the adjusted cost base to the taxpayer of the property at any time the amount of any resource expenses renounced by the corporation in the taxpayer's favour in respect of the loan or payment at or before that time,

(ii) there shall be deducted in computing the adjusted cost base to the taxpayer at any time of any property for which the property, or any property substituted therefor, was exchanged the amount of any resource expenses renounced by the corporation in the taxpayer's favour in respect of the loan or payment at or before that time (except to the extent such amount has been deducted under subparagraph (i)), and

(iii) the amount of any resource expenses renounced by the corporation in favour of the taxpayer in respect of the loan or payment at any time, except to the extent that the renunciation of those expenses results in a deduction under subparagraph (i) or (ii), shall, for the purposes of this Act, be deemed to be a capital gain of the taxpayer from the disposition by the taxpayer of property at that time;

(b) where the taxpayer receives as consideration for the payment or loan property that is not capital property to the taxpayer,

(i) there shall be deducted in computing the cost to the taxpayer of the property at any time the amount of any resource expenses renounced by the corporation in the taxpayer's favour in respect of the loan or payment at or before that time, and

(ii) there shall be included in computing the amount referred to in paragraph 59(3.2)(d) for a taxation year the amount of any resource expenses renounced by the corporation in the taxpayer's favour in respect of the loan or payment at any time in the year, except to the extent that the amount has been deducted under subparagraph (i); and

(c) where the taxpayer does not receive any property as consideration for the payment, there shall be included in computing the amount referred to in paragraph 59(3.2)(e) for a taxation year the amount of any resource expenses renounced by the corporation in the taxpayer's favour in respect of the payment in the year, except to the extent that the amount has been deducted from the adjusted cost base to the taxpayer of shares of the corporation under paragraph 53(2)(f.1) in respect of the payment.

Related Provisions: 53(2)(f)–(f.2) — Deductions from adjusted cost base — renounced expenses; 59(3.2)(d), (e) — Recovery of exploration and development expenses; 59(3.3)(f) — Resource property — amounts included in income; 248(5) — Substituted property. See also at the end of s. 66.

Advance Tax Rulings: ATR-60: Joint exploration corporations.

(11) Acquisition of control — Where after March 31, 1977 and before November 13, 1981 control of a corporation has been acquired by a person or persons who did not

control the corporation at the time when it last ceased to carry on active business,

(a) the amount by which the Canadian exploration and development expenses incurred by the corporation before it last ceased to carry on active business exceeds the total of all amounts otherwise deductible by the corporation in respect of Canadian exploration and development expenses in computing its income for taxation years ending before control was so acquired, shall be deemed to have been deductible under this section by the corporation in computing its income for taxation years ending before control was so acquired;

(b) the amount by which the cumulative Canadian exploration expense of the corporation at the time it last ceased to carry on active business exceeds the total of amounts otherwise deducted under section 66.1 in computing its income for taxation years ending after that time and before control was so acquired, shall be deemed to have been deducted under that section by the corporation in computing its income for taxation years ending before control was so acquired;

(c) the amount by which the cumulative Canadian development expense of the corporation at the time it last ceased to carry on active business exceeds the total of amounts otherwise deducted under section 66.2 in computing its income for taxation years ending after that time and before control was so acquired, shall be deemed to have been deducted under that section by the corporation in computing its income for taxation years ending before control was so acquired;

(d) the amount by which the cumulative Canadian oil and gas property expense of the corporation at the time it last ceased to carry on active business exceeds the total of amounts otherwise deducted under section 66.4 in computing its income for taxation years ending after that time and before control was so acquired, shall be deemed to have been deducted under that section by the corporation in computing its income for taxation years ending before control was so acquired; and

(e) the amount by which the foreign exploration and development expenses incurred by the corporation before it last ceased to carry on active business exceeds the total of all amounts otherwise deductible by the corporation in respect of foreign exploration and development expenses in computing its income for taxation years ending before control was so acquired, shall be deemed to have been deductible under this section by the corporation in computing its income for taxation years ending before control was so acquired.

Related Provisions: 66(11.3) — Acquisition of control before 1983; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 249(4) — Deemed year end where change of control occurs; 256(6)–(9) — Whether control acquired. See also at end of s. 66.

I.T. Application Rules: 29.

I.T. Technical News: 7 (control by a group — 50/50 arrangement).

(11.1), (11.2) [Repealed under former Act]

(11.3) Control — For the purposes of subsections (11) and 66.7(10), where a corporation acquired control of another corporation after November 12, 1981 and before 1983 by reason of the acquisition of shares of the other corporation pursuant to an agreement in writing concluded on or before November 12, 1981, it shall be deemed to have acquired that control on or before November 12, 1981.

Related Provisions: See at end of s. 66.

I.T. Application Rules: 29.

(11.4) Change of control — Where,

(a) at any time, control of a corporation has been acquired by a person or group of persons,

(b) within the 12-month period that ended immediately before that time, the corporation or a partnership of which it was a majority interest partner acquired a Canadian resource property or a foreign resource property (other than a property that was owned by the corporation or partnership or a person that would, if section 251.1 were read without reference to the definition "controlled" in subsection 251.1(3), be affiliated with the corporation throughout the period that began immediately before the 12-month period began and ended at the time the property was acquired by the corporation or partnership), and

(c) immediately before the twelve month period commenced, the corporation was not a principal-business corporation and the partnership, if it were a corporation, would not be a principal-business corporation,

for the purposes of subsection (4) and sections 66.2, 66.21 and 66.4, except as those provisions apply for the purposes of section 66.7, the property is deemed not to have been acquired by the corporation or partnership before that time and is deemed to have been acquired by it at that time, except that, where the property has been disposed of by it before that time and not reacquired by it before that time, the property is deemed to have been acquired by the corporation or partnership immediately before it disposed of the property.

Related Provisions: 66(11.5) — Where control changed within 12 months of incorporation; 87(2)(j.6) — Amalgamations — continuing corporation; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired. See also at end of s. 66.

History: The closing words of subsec. 66(11.4) amended by 2001, c. 17, subsec. 44(6), applicable to taxation years that begin after 2000. The closing words formerly read:

> for the purposes of subsection (4) and sections 66.2 and 66.4, except as those provisions apply for the purposes of section 66.7, the property shall be deemed not to have been acquired by the corporation or partnership before that time and shall be deemed to have been acquired by it at that time, except that, where the property has been disposed of by it before that time and not reacquired by it before that time, the property shall be deemed to have been acquired by the corporation or partnership immediately before it disposed of the property.

Para. 66(11.4)(b) amended by 1998, c. 19, subsec. 104(3), applicable after April 26, 1995. The para. formerly read:

> (b) within the twelve month period ending immediately before that time, the corporation, or a partnership of which it was a majority interest partner (within the meaning assigned by subsection 97(3.1)) acquired a Canadian resource property or a foreign resource property (other than a property that was owned by the corporation, partnership or a person or persons related to the corporation throughout the period commencing immediately before the twelve month period and ending at the time the property was acquired by the corporation or partnership), and

I.T. Technical News: 7 (control by a group — 50/50 arrangement).

(11.5) Early change of control — For the purpose of subsection (11.4), where the corporation referred to in that subsection was incorporated or otherwise formed in the 12-month period referred to in that subsection, the corporation is deemed to have been, throughout the period that began immediately before the 12-month period and ended immediately after it was incorporated or otherwise formed,

(a) in existence; and

(b) affiliated with every person with whom it was affiliated (otherwise than because of a right referred to in paragraph 251(5)(b)) throughout the period that began when it was incorporated or otherwise formed and ended immediately before its control was acquired.

Related Provisions: 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired. See also at end of s. 66.

History: Subsec. 66(11.5) amended by 1998, c. 19, subsec. 104(4), applicable to acquisitions of control that occur after April 26, 1995. The subsec. formerly read:

(11.5) Change of control within 12 months of incorporation — For the purposes of subsection (11.4), where the corporation referred to in that subsection was incorporated or otherwise formed during the twelve month period referred to in that subsection, it shall be deemed to have been, throughout the period commencing immediately before the twelve month period and ending immediately after it was incorporated or otherwise formed,

(a) in existence; and

(b) related to the person or persons to whom it was related (otherwise than by virtue of a right referred to in paragraph 251(5)(b)) throughout the period commencing when it was incorporated or otherwise formed and ending immediately before control of the corporation was acquired.

(12) Computation of exploration and development expenses — In computing a taxpayer's Canadian exploration and development expenses,

(a) there shall be deducted any amount paid to the taxpayer before May 7, 1974

(i) and after 1971 under the *Northern Mineral Exploration Assistance Regulations* made under an appropriation Act that provides for payments in respect of the Northern Mineral Grants Program, or

(ii) pursuant to any agreement entered into between the taxpayer and Her Majesty in right of Canada under the Northern Mineral Grants Program or the Development Program of the Department of Indian Affairs and Northern Development, to the extent that the amount has been expended by the taxpayer as or on account of Canadian exploration and development expenses incurred by the taxpayer; and

(b) there shall be included any amount, except an amount in respect of interest, paid by the taxpayer after 1971 and before May 7, 1974 under the Regulations referred to in subparagraph (a)(i) to Her Majesty in right of Canada.

Related Provisions: 66(12.1) — Limitations. See additional Related Provisions at end of s. 66.

I.T. Application Rules: 29.

(12.1) Limitations of Canadian exploration and development expenses — Except as expressly otherwise provided in this Act,

(a) where as a result of a transaction occurring after May 6, 1974 an amount has become receivable by a taxpayer at a particular time in a taxation year and the consideration given by the taxpayer therefor was property (other than a share or a Canadian resource property, or an interest therein or a right thereto) or services, the original cost of which to the taxpayer may reasonably be regarded as having been primarily Canadian exploration and development expenses of the taxpayer (or would have been so regarded if they had been incurred by the taxpayer after 1971 and before May 7, 1974) or a Canadian exploration expense, there shall at that time be included in the amount determined for G in the definition "cumulative Canadian exploration expense" in subsection 66.1(6) in respect of the taxpayer the amount that became receivable by the taxpayer at that time; and

(b) where as a result of a transaction occurring after May 6, 1974 an amount has become receivable by a taxpayer at a particular time in a taxation year and the consideration given by the taxpayer therefor was property (other than a share or a Canadian resource property, or an interest therein or a right thereto) or services, the original cost of which to the taxpayer may reasonably be regarded as having been primarily a Canadian development expense, there shall at that time be included in the amount determined for G in the definition "cumulative Canadian development expense" in subsection 66.2(5) in respect of the taxpayer the amount that became receivable by the taxpayer at that time.

Proposed Amendment — 66(12.1)(a), (b)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 220(1), will amend paras. 66(12.1)(a) and (b) by substituting "interest in or a right to — or, for civil law, a right in or to — the share or the property" for "interest therein or a right thereto", to come into force on Royal Assent.

Technical Notes: See under 12(4).

Related Provisions: 59(1) — Amounts received as consideration for disposition of resource property; 66(15) — Definitions. See additional Related Provisions at end of s. 66.

I.T. Application Rules: 29.

Interpretation Bulletins: IT-125R4: Dispositions of resource properties.

Advance Tax Rulings: ATR-59: Financing exploration and development through limited partnerships.

(12.2) Unitized oil or gas field in Canada — Where, pursuant to an agreement between a taxpayer and another person to unitize an oil or gas field in Canada, an amount has become receivable by the taxpayer at a particular time after May 6, 1974 from that other person in respect of Canadian exploration expense incurred by the taxpayer or Canadian exploration and development expenses incurred by the taxpayer (or expenses that would have been Canadian exploration and development expenses if they had been incurred by the taxpayer after 1971 and before May 7, 1974) in respect of that field or any part thereof, the following rules apply:

(a) there shall, at that time, be included by the taxpayer in the amount determined for G in the definition "cumulative Canadian exploration expense" in subsection 66.1(6) the amount that became receivable by the taxpayer; and

(b) there shall, at that time, be included by the other person in the amount referred to in paragraph (c) of the definition "Canadian exploration expense" in subsection 66.1(6) the amount that became payable by that person.

Related Provisions: 66(15) — Definitions. See additional Related Provisions at end of s. 66.

I.T. Application Rules: 29.

Interpretation Bulletins: IT-273R2: Government assistance — general comments; IT-125R4: Dispositions of resource properties.

(12.3) Idem — Where, pursuant to an agreement between a taxpayer and another person to unitize an oil or gas field in Canada, an amount has become receivable by the taxpayer at a particular time after May 6, 1974 from that other person in respect of Canadian development expense

incurred by the taxpayer in respect of that field or any part thereof, the following rules apply:

(a) there shall, at that time, be included by the taxpayer in the amount determined for G in the definition "cumulative Canadian development expense" in subsection 66.2(5) the amount that became receivable by the taxpayer; and

(b) there shall, at that time, be included by the other person in the amount referred to in paragraph (a) of the definition "Canadian development expense" in subsection 66.2(5) the amount that became payable by that person.

Related Provisions: See at end of s. 66.

I.T. Application Rules: 29.

Interpretation Bulletins: IT-273R2: Government assistance — general comments; IT-125R4: Dispositions of resource properties.

(12.4) Limitation of FEDE — Where, as a result of a transaction that occurs after May 6, 1974, an amount becomes receivable by a taxpayer at a particular time in a taxation year and the consideration given by the taxpayer for the amount receivable is property (other than a foreign resource property) or services, the original cost of which to the taxpayer can reasonably be regarded as having been primarily foreign exploration and development expenses of the taxpayer (or would have been so regarded if they had been incurred by the taxpayer after 1971 and the definition "foreign exploration and development expenses" in subsection (15) were read without reference to paragraph (k) of that definition), the following rules apply:

(a) in computing the taxpayer's foreign exploration and development expenses at that time, there shall be deducted the amount receivable by the taxpayer;

(b) where the amount receivable exceeds the total of the taxpayer's foreign exploration and development expenses incurred before that time to the extent that those expenses were not deducted or deductible, as the case may be, in computing the taxpayer's income for a preceding taxation year, there shall be included in the amount referred to in paragraph 59(3.2)(a) the amount, if any, by which the amount receivable exceeds the total of

(i) the taxpayer's foreign exploration and development expenses incurred before that time to the extent that those expenses were not deducted or deductible, as the case may be, in computing the taxpayer's income for a preceding taxation year, and

(ii) the amount, designated by the taxpayer in prescribed form filed with the taxpayer's return of income for the year, not exceeding the portion of the amount receivable for which the consideration given by the taxpayer was property (other than a foreign resource property) or services, the original cost of which to the taxpayer can reasonably be regarded as having been primarily

(A) specified foreign exploration and development expenses in respect of a country, or

(B) foreign resource expenses in respect of a country; and

(c) where an amount is included in the amount referred to in paragraph 59(3.2)(a) by virtue of paragraph (b), the total of the taxpayer's foreign exploration and development expenses at that time shall be deemed to be nil.

Related Provisions: 59(3.2)(a) — Income inclusion; 66(12.41), (12.42) — Limitations of foreign resource expenses; 95(1) — "foreign affiliate". See also at end of s. 66.

History: The opening words of subsec. 66(12.4) and para. 66(12.4)(b) amended by 2001, c. 17, subsecs. 44(7), (8), applicable to taxation years that begin after 2000. The opening words and the para. formerly read

(12.4) Limitation of foreign exploration and development expenses — Where, as a result of a transaction occurring after May 6, 1974, an amount has become receivable by a taxpayer at a particular time in a taxation year and the consideration given by the taxpayer therefor was property (other than a foreign resource property) or services, the original cost of which to the taxpayer may reasonably be regarded as having been primarily foreign exploration and development expenses of the taxpayer (or would have been so regarded if they had been incurred by the taxpayer after 1971), the following rules apply:

. . . . .

(b) where the amount receivable exceeds the total of the taxpayer's foreign exploration and development expenses incurred before that time to the extent that those expenses were not deducted or deductible, as the case may be, in computing the taxpayer's income for a previous taxation year, there shall be included in the amount referred to in paragraph 59(3.2)(a) the amount by which

(i) the amount receivable

exceeds

(ii) the total of the taxpayer's foreign exploration and development expenses incurred by the taxpayer before that time to the extent that those expenses were not deducted or deductible, as the case may be, in computing the taxpayer's income for a previous taxation year; and

I.T. Application Rules: 29.

(12.41) Limitations of foreign resource expenses — Where a particular amount described in subsection (12.4) becomes receivable by a taxpayer at a particular time, there shall at that time be included in the value determined for G in the definition "cumulative foreign resource expense" in subsection 66.21(1) in respect of the taxpayer and a country the amount designated under subparagraph (12.4)(b)(ii) by the taxpayer in respect of the particular amount and the country.

Related Provisions: 66(12.42) — Partnerships; 66.21(1)"cumulative foreign resource expense"G.

History: Subsec. 66(12.41) added by 2001, c. 17, subsec. 44(9), applicable to taxation years that begin after 2000.

(12.42) Partnerships — For the purposes of subsections (12.4) and (12.41), where a person or partnership is a member of a particular partnership and a particular amount described in subsection (12.4) becomes receivable by the particular partnership in a fiscal period of the particular partnership,

(a) the member's share of the particular amount is deemed to be an amount that became receivable by the member at the end of the fiscal period; and

(b) the amount deemed by paragraph (a) to be an amount receivable by the member is deemed to be an amount

(i) that is described in subsection (12.4) in respect of the member, and

(ii) that has the same attributes for the member as it did for the particular partnership.

History: Subsec. 66(12.42) added by 2001, c. 17, subsec. 44(9), applicable to fiscal periods that begin after 2000.

(12.5) Unitized oil or gas field in Canada — Where, pursuant to an agreement between a taxpayer and another person to unitize an oil or gas field in Canada, an amount has become receivable by the taxpayer at a particular time from that other person in respect of Canadian oil and gas

property expense incurred by the taxpayer in respect of that field or any part thereof, the following rules apply:

(a) there shall, at that time, be included by the taxpayer in the amount determined for G in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5) the amount that became receivable by the taxpayer; and

(b) there shall, at that time, be included by the other person in the amount referred to in paragraph (a) of the definition "Canadian oil and gas property expense" in subsection 66.4(5) the amount that became payable by that person.

Related Provisions: See at end of s. 66.

I.T. Application Rules: 29.

Interpretation Bulletins: IT-125R4: Dispositions of resource properties.

(12.6) Canadian exploration expenses to flow-through shareholder — Where a person gave consideration under an agreement to a corporation for the issue of a flow-through share of the corporation and, in the period that begins on the day the agreement was made and ends 24 months after the end of the month that includes that day, the corporation incurred Canadian exploration expenses, the corporation may, after it complies with subsection (12.68) in respect of the share and before March of the first calendar year that begins after the period, renounce, effective on the day on which the renunciation is made or on an earlier day set out in the form prescribed for the purposes of subsection (12.7), to the person in respect of the share the amount, if any, by which the part of those expenses that was incurred on or before the effective date of the renunciation (which part is in this subsection referred to as the "specified expenses") exceeds the total of

Proposed Amendment — 66(12.6) opening words

(12.6) Canadian exploration expenses to flow-through shareholder — If a person gave consideration under an agreement to a corporation for the issue of a flow-through share of the corporation and, in the period that begins on the day on which the agreement was made and ends 24 months after the end of the month that includes that day, the corporation incurred Canadian exploration expenses (other than an expense deemed by subsection 66.1(9) to be a Canadian exploration expense of the corporation), the corporation may, after it complies with subsection (12.68) in respect of the share and before March of the first calendar year that begins after the period, renounce, effective on the day on which the renunciation is made or on an earlier day set out in the form prescribed for the purpose of subsection (12.7), to the person in respect of the share the amount, if any, by which the portion of those expenses that was incurred on or before the effective date of the renunciation (which portion is in this subsection referred to as the "specified expenses") exceeds the total of

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 74(1), will amend the opening words of subsec. 66(12.6) to read as above, applicable to renunciations made after December 20, 2002.

Technical Notes: Subsection 66(12.6) permits a principal-business corporation to renounce Canadian exploration expenses ("CEE") to its flow-through shareholders. To be eligible for flow-through treatment, CEE must be incurred in the 24-month period that begins on the day on which the relevant flow-through share agreement is entered into and must be incurred, or deemed to be incurred, on or before the effective date of the renunciation.

Subsection 66.1(9) provides for the reclassification of certain Canadian development expenses as CEE ("reclassified CDE"). The reclassified CDE is deemed, for the purposes of the Act, to be incurred by the taxpayer at the time of the reclassification and not at the time the reclassified CDE was actually incurred. To ensure that expenses actually incurred before a flow-through share agreement is entered into cannot be renounced under a flow-through share agreement, subsection 66(12.6) is amended, applicable to renunciations made after December 20, 2002, to exclude reclassified CDE from CEE that may be renounced by a corporation to its flow-through shareholders.

(a) the assistance that the corporation has received, is entitled to receive or can reasonably be expected to receive at any time, and that can reasonably be related to the specified expenses or to Canadian exploration activities to which the specified expenses relate (other than assistance that can reasonably be related to expenses referred to in paragraph (b) or (b.1)),

(b) all specified expenses that are prescribed Canadian exploration and development overhead expenses of the corporation,

(b.1) all specified expenses each of which is a cost of, or for the use of, seismic data

(i) that had been acquired (otherwise than as a consequence of performing work that resulted in the creation of the data) by any other person before the cost was incurred,

(ii) in respect of which a right to use had been acquired by any other person before the cost was incurred, or

(iii) all or substantially all of which resulted from work performed more than one year before the cost was incurred, and

(c) the total of amounts that are renounced on or before the date on which the renunciation is made by any other renunciation under this subsection in respect of those expenses,

but not in any case

(d) exceeding the amount, if any, by which the consideration for the share exceeds the total of other amounts renounced under this subsection or subsection (12.601) or (12.62) in respect of the share on or before the day on which the renunciation is made, or

(e) exceeding the amount, if any, by which the cumulative Canadian exploration expense of the corporation on the effective date of the renunciation computed before taking into account any amounts renounced under this subsection on the date on which the renunciation is made, exceeds the total of all amounts renounced under this subsection in respect of any other share

(i) on the date on which the renunciation is made, and

(ii) effective on or before the effective date of the renunciation.

Related Provisions: 66(12.601), (12.602) — Flow-through share rules for first $2 million of Canadian development expenses; 66(12.61) — Effect of renunciation of Canadian exploration expense; 66(12.62)(d) — Canadian development expenses to flow-through shareholder; 66(12.64)(c) — Canadian oil and gas property expenses to flow-through shareholder; 66(12.66) — Expense in the first 60 days of the year; 66(12.67) — Restriction on renunciation; 66(12.68) — Filing selling instruments; 66(12.69) — Filing re partners; 66(12.7) — Filing; 66(12.71) — Restriction on renunciation; 66(12.73) — Adjustment in renunciation; 66(12.741) — Late renunciation; 66(16) — Partnership deemed to be a person; 66(19) — Renunciation by member of partnership,

etc.; 66.3(3) — Cost of flow-through shares; 66.3(4)(a)(ii)(B) — Paid-up capital; 87(4.4) — Amalgamations — flow-through shares; 110.6(1)"investment expense"(d) — effect of renunciation on capital gains exemption; 127(9)"investment tax credit"(a.2), 127(9)"flow-through mining expenditure"(c), (d) — Investment tax credit; 163(2.2) — False statement or omissions — penalty; 211.91 — Tax on issuer using one-year look-back rule; 248(1)"specified future tax consequence"(b) — Reduction under 66(12.73) is a specified future tax consequence; 248(16), (16.1) — GST or QST input tax credit/refund and rebate deemed to be assistance; 248(18), (18.1) — GST or QST — repayment of input tax credit or refund. See also at end of s. 66.

History: The portion of subsec. 66(12.6) before para. (c) amended, para. (b.1) added and para. (d) amended by 1997, c. 25, subsecs. 13(2)–(4); the portion before para. (c) applicable to expenses incurred after February 1996, para. (b.1) applicable to costs incurred after March 5, 1996, other than costs incurred under an agreement in writing made before March 6, 1996, and para. (d) applicable to renunciations made after 1998. The amended portions formerly read:

> (12.6) Where a person gave consideration under an agreement to a corporation for the issue of a flow-through share of the corporation and, during the period beginning on the day the agreement was entered into and ending 24 months after the end of the month that included that day, the corporation incurred Canadian exploration expenses, the corporation may, after it complies with subsection (12.68) in respect of the share and before March of the first calendar year beginning after that period, renounce, effective on the date on which the renunciation is made or on an earlier date set out in the form prescribed for the purposes of subsection (12.7), to the person in respect of the share the amount, if any, by which those expenses incurred by it during that period and on or before the effective date of the renunciation exceed the total of
>
> (a) the assistance that it has received, is entitled to receive, or may reasonably be expected to receive at any time, and that may reasonably be related to those expenses or to Canadian exploration activities to which those expenses relate (other than assistance that may reasonably be attributable to expenses referred to in paragraph (b)),
>
> (b) any of those expenses that are prescribed Canadian exploration and development overhead expenses of the corporation, and
>
> . . . . .
>
> (d) exceeding the amount, if any, by which the consideration for the share exceeds the total of other amounts renounced under this subsection or subsection (12.601), (12.62) or (12.64) in respect of the share on or before the date on which the renunciation is made, or

The opening words of subsec. 66(12.6) amended by 1994, c. 8, subsec. 5(3), applicable to expenses incurred after February 1986. They formerly read:

> (12.6) Where a person gave consideration under an agreement to a corporation for the issue of a flow-through share of the corporation and, during the period beginning on the day the agreement was entered into and ending 24 months after the end of the month that included that day, the corporation incurred Canadian exploration expenses, the corporation may, after it complies with subsection (12.68) in respect of the share and before March of the first calendar year beginning after that period, renounce, effective on the date on which the renunciation is made or on an earlier date set out in the form prescribed for the purposes of subsection (12.7), to the person in respect of the share the amount, if any, by which those expenses incurred by it during that period and on or before the effective date of the renunciation exceed the total of

Para. 66(12.6)(d) amended by 1994, c. 8, subsec. 5(4), applicable to expenses incurred after December 2, 1992. Para. (d) formerly read:

> (d) exceeding the amount, if any, by which the consideration for the share exceeds the total of other amounts renounced in respect of the share under this subsection or subsection (12.62) or (12.64) on or before the date on which the renunciation is made, or

Interpretation Bulletins: IT-273R2: Government assistance — general comments.

Regulations: 228 (information return); 1206(1), (4.1), (4.2) (prescribed Canadian exploration and development overhead expenses, for 66(12.6)(b)).

Forms: T2 SCH 12: Resource-related deductions; T101: Statement — Resource expense; T101A: Claim for renouncing CEEs and CDEs; T101B: Claim for adjustments to CEEs and CDEs previously renonouced; T101C: Part XII.6 tax return; T101D: Summary of assistance; T1229: Statement of exploration and development expenses and depletion allowances.

(12.601) Flow-through share rules for first $1 million of Canadian development expenses — Where

(a) a person gave consideration under an agreement to a corporation for the issue of a flow-through share of the corporation,

(a.1) the corporation's taxable capital amount at the time the consideration was given was not more than $15,000,000, and

(b) during the period beginning on the later of December 3, 1992 and the particular day the agreement was entered into and ending on the day that is 24 months after the end of the month that included that particular day, the corporation incurred Canadian development expenses described in paragraph (a) or (b) of the definition "Canadian development expense" in subsection 66.2(5) or that would be described in paragraph (f) of that definition if the words "paragraphs (a) to (e)" in that paragraph were read as "paragraphs (a) and (b)",

the corporation may, after it complies with subsection (12.68) in respect of the share and before March of the first calendar year that begins after that period, renounce, effective on the day on which the renunciation is made or on an earlier day set out in the form prescribed for the purposes of subsection (12.7), to the person in respect of the share the amount, if any, by which the part of those expenses that was incurred on or before the effective date of the renunciation (which part is in this subsection referred to as the "specified expenses") exceeds the total of

(c) the assistance that the corporation has received, is entitled to receive, or can reasonably be expected to receive at any time, and that can reasonably be related to the specified expenses or Canadian development activities to which the specified expenses relate (other than assistance that can reasonably be related to expenses referred to in paragraph (d)),

(d) all specified expenses that are prescribed Canadian exploration and development overhead expenses of the corporation, and

(e) all amounts that are renounced on or before the day on which the renunciation is made by any other renunciation under this subsection or subsection (12.62) in respect of those expenses.

Related Provisions: 66(12.6011) — Meaning of "taxable capital amount" for 66(12.601)(a.1); 66(12.602) — Restriction; 66(12.62)(c), (d) — Canadian development expenses to flow-through shareholder; 66(12.64)(c) — Canadian oil and gas property expenses to flow-through shareholder; 66(12.66) — Expenses in first 60 days of following year; 66(12.67) — Restrictions on renunciation; 66(12.69) — Filing re partners; 66(12.7) — Filing; 66(12.71) — Restriction on renunciation; 66(12.73) — Adjustment in renunciation; 66(12.741) — Late renunciation; 66(16) — Partnership deemed to be a person; 66(19) — Renunciation by member of partnership, etc.; 66.1(6)"restricted expense"(c) — inclusion of renounced expenses; 66.3(4)(a)(ii)(B) — Paid-up capital; 87(4.4) — Amalgamations; 110.6(1)"investment expense"(d) — Effect of renunciation on capital gains exemption; 163(2.2) — False statements or omissions — penalty; 211.91 — Tax on issuer using one-year look-back rule; 248(1)"specified future tax consequence"(b) — Reduction under 66(12.73) is a specified future tax consequence.

History: The portion of subsec. 66(12.601) before para. (b) amended by 1997, c. 25, subsec. 13(5), applicable to renunciations made after March 5, 1996, other than a renunciation made before 1999 in respect of consideration given

(a) before March 6, 1996; or

(b) under an agreement in writing made before March 6, 1996 or under the terms of a prospectus, preliminary prospectus, registration statement, offering memorandum or notice filed before March 6, 1996 with a public authority in Canada in accordance with securities legislation of a province.

That portion formerly read:

(12.601) Where

(a) a person gave consideration under an agreement to a corporation for the issue of a flow-through share of the corporation, and

The portion of subsec. 66(12.601) between paras. (b) and (e) amended by 1997, c. 25, subsec. 13(6), applicable to expenses incurred after December 2, 1992. That portion formerly read:

the corporation may, after it complies with subsection (12.68) in respect of the share and before March of the first calendar year beginning after that period, renounce, effective on the day on which the renunciation is made or on an earlier day set out in the form prescribed for the purposes of subsection (12.7), to the person in respect of the share the amount, if any, by which those expenses incurred by it during that period and on or before the effective date of the renunciation exceed the total of

(c) the assistance that it has received, is entitled to receive, or can reasonably be expected to receive at any time, and that can reasonably be related to those expenses or Canadian development activities to which those expenses relate (other than assistance that can reasonably be attributable to expenses referred to in paragraph (b)),

(d) any of those expenses that are prescribed Canadian exploration and development overhead expenses of the corporation, and

Subsec. 66(12.601) added by 1994, c. 8, subsec. 5(5), applicable to expenses incurred after December 2, 1992.

Regulations: 1206(1), (4.1), (4.2) (prescribed Canadian exploration and development overhead expenses, for 66(12.601)(d)).

Forms: T2 SCH 12: Resource-related deductions; T101: Statement — Resource expense; T101A: Claim for renouncing CEEs and CDEs; T101B: Claim for adjustments to CEEs and CDEs previously renonouced; T101C: Part XII.6 tax return; T101D: Summary of assistance; T1229: Statement of exploration and development expenses and depletion allowances.

(12.6011) Taxable capital amount — For the purpose of subsection (12.601), a particular corporation's taxable capital amount at any time is the total of

(a) its taxable capital employed in Canada for its last taxation year that ended more than 30 days before that time, and

(b) the total of all amounts each of which is the taxable capital employed in Canada of another corporation associated at that time with the particular corporation for the other corporation's last taxation year that ended more than 30 days before that time.

Related Provisions: 66(12.6012) — Meaning of taxable capital employed in Canada; 66(12.6013) — Effect of amalgamation or merger; 256 — Associated corporations.

History: Subsec. 66(12.6011) added by 1997, c. 25, subsec. 13(7), applicable after March 5, 1996, except that the amount determined under subsec. (12.6011) in respect of a renunciation by a corporation shall be determined as if each other corporation associated with the corporation were not so associated where the renunciation was made before 1999 in respect of consideration given

(a) before December 6, 1996; or

(b) under an agreement in writing made before December 6, 1996 or under the terms of a prospectus, preliminary prospectus, registration statement, offering memorandum or notice filed before December 7, 1996 with a public authority in Canada in accordance with securities legislation of a province.

(12.6012) Taxable capital employed in Canada — For the purpose of determining a corporation's taxable capital amount at a particular time under subsection (12.6011) and for the purpose of subsection (12.6013), a particular corporation's taxable capital employed in Canada for a taxation year is the amount that would be its taxable capital employed in Canada for the year, determined in accordance with subsection 181.2(1) and without reference to the portion of its investment allowance (as determined under subsection 181.2(4)) that is attributable to shares of the capital stock of, dividends payable by, or indebtedness of, another corporation that

(a) was not associated with the particular corporation at the particular time; and

(b) was associated with the particular corporation at the end of the particular corporation's last taxation year that ended more than 30 days before that time.

Related Provisions: 256 — Associated corporations.

History: Subsec. 66(12.6012) added by 1997, c. 25, subsec. 13(7), applicable after March 5, 1996.

(12.6013) Amalgamations and mergers — For the purpose of determining the taxable capital amount at a particular time under subsection (12.6011) of any corporation and for the purpose of this subsection, a particular corporation that was created as a consequence of an amalgamation or merger of other corporations (each of which is in this subsection referred to as a "predecessor corporation"), and that does not have a taxation year that ended more than 30 days before the particular time, is deemed to have taxable capital employed in Canada for a taxation year that ended more than 30 days before the particular time equal to the total of all amounts each of which is the taxable capital employed in Canada of a predecessor corporation for its last taxation year that ended more than 30 days before the particular time.

History: Subsec. 66(12.6013) added by 1997, c. 25, subsec. 13(7), applicable after March 5, 1996.

(12.602) Idem — A corporation shall be deemed not to have renounced any particular amount under subsection (12.601) in respect of a share where

(a) the particular amount exceeds the amount, if any, by which the consideration for the share exceeds the total of other amounts renounced in respect of the share under subsection (12.6), (12.601) or (12.62) on or before the day on which the renunciation is made;

(b) the particular amount exceeds the amount, if any, by which

(i) the cumulative Canadian development expense of the corporation on the effective date of the renunciation, computed before taking into account any amounts renounced under subsection (12.601) on the day on which the renunciation is made,

exceeds

(ii) the total of all amounts renounced under subsection (12.601) by the corporation in respect of any other share

(A) on the day on which the renunciation is made, and

(B) effective on or before the effective date of the renunciation; or

(c) the particular amount relates to Canadian development expenses incurred by the corporation in a calendar year and the total amounts renounced, on or before the day on which the renunciation is made, under subsection (12.601) in respect of

(i) Canadian development expenses incurred by the corporation in that calendar year, or

(ii) Canadian development expenses incurred in that calendar year by another corporation associated with the corporation at the time the other corporation incurred such expenses

exceeds $1,000,000.

Related Provisions: 66(12.66) — Expenses in first 60 days of following year.

History: Para. 66(12.602)(a) amended by 1997, c. 25, subsec. 13(8), applicable to renunciations made after 1998. Para. (a) formerly read:

(a) the particular amount exceeds the amount, if any, by which the consideration for the share exceeds the total of other amounts renounced in respect of the share under subsection (12.6), (12.601), (12.62) or (12.64) on or before the day on which the renunciation is made;

The closing words of para. 66(12.602)(c) amended by 1997, c. 25, subsec. 13(9), applicable to renunciations made after March 5, 1996, other than a renunciation made before 1999 in respect of consideration given

(a) before March 6, 1996; or

(b) under an agreement in writing made before March 6, 1996 or under the terms of a prospectus, preliminary prospectus, registration statement, offering memorandum or notice filed before March 6, 1996 with a public authority in Canada in accordance with securities legislation of a province.

The closing words formerly read:

exceeds $2,000,000.

Subsec. 66(12.602) added by 1994, c. 8, subsec. 5(5), applicable to expenses incurred after December 2, 1992.

(12.61) Effect of renunciation — Subject to subsections (12.69) to (12.702), where under subsection (12.6) or (12.601) a corporation renounces an amount to a person,

(a) the Canadian exploration expenses or Canadian development expenses to which the amount relates shall be deemed to be Canadian exploration expenses incurred in that amount by the person on the effective date of the renunciation; and

(b) the Canadian exploration expenses or Canadian development expenses to which the amount relates shall, except for the purposes of that renunciation, be deemed on and after the effective date of the renunciation never to have been Canadian exploration expenses or Canadian development expenses incurred by the corporation.

Related Provisions: 66(16) — Partnership deemed to be a person; 66(17) — Non-arm's length partnerships; 127(9)"investment tax credit"(a.2), 127(9)"flow-through mining expenditure" — Investment tax credit. See also at end of s. 66.

History: The opening words of subsec. 66(12.61) amended by 1997, c. 25, subsec. 13(10), applicable to renunciations made after 1998. The opening words formerly read:

(12.61) Subject to subsections (12.69) to (12.701), where under subsection (12.6) or (12.601) a corporation renounces an amount to a person,

Subsec. 66(12.61) amended by 1994, c. 8, subsec. 5(5), applicable to expenses incurred after December 2, 1992. Subsec. (12.61) formerly read:

(12.61) Subject to subsections (12.69) to (12.701), where under subsection (12.6) a corporation renounces an amount to a person,

(a) the Canadian exploration expenses to which the amount relates shall be deemed to be Canadian exploration expenses incurred in that amount by the person on the effective date of the renunciation; and

(b) the Canadian exploration expenses to which the amount relates shall, except for the purpose of that renunciation, be deemed on and after the effective date of the renunciation never to have been Canadian exploration expenses incurred by the corporation.

That portion of subsec. 66(12.61) preceding para. (a) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 38(3), applicable after July 13, 1990. That portion formerly read:

(12.61) Where a person renounces an amount to a person under subsection (12.6),

(12.62) Canadian development expenses to flow-through shareholder — Where a person gave consideration under an agreement to a corporation for the issue of a flow-through share of the corporation and, in the period that begins on the day the agreement was made and ends 24 months after the end of the month that includes that day, the corporation incurred Canadian development expenses, the corporation may, after it complies with subsection (12.68) in respect of the share and before March of the first calendar year that begins after the period, renounce, effective on the day on which the renunciation is made or on an earlier day set out in the form prescribed for the purposes of subsection (12.7), to the person in respect of the share the amount, if any, by which the part of those expenses that was incurred on or before the effective date of the renunciation (which part is in this subsection referred to as the "specified expenses") exceeds the total of

(a) the assistance that the corporation has received, is entitled to receive, or can reasonably be expected to receive at any time, and that can reasonably be related to the specified expenses or to Canadian development activities to which the specified expenses relate (other than assistance that can reasonably be related to expenses referred to in paragraph (b) or (b.1)),

(b) all specified expenses that are prescribed Canadian exploration and development overhead expenses of the corporation,

(b.1) all specified expenses that are described in paragraph (e) of the definition "Canadian development expense" in subsection 66.2(5) or that are described in paragraph (f) of that definition because of the reference in the latter paragraph to paragraph (e), and

(c) the total of amounts that are renounced on or before the day on which the renunciation is made by any other renunciation under this subsection or subsection (12.601) in respect of those expenses,

but not in any case

(d) exceeding the amount, if any, by which the consideration for the share exceeds the total of other amounts renounced in respect of the share under this subsection or subsection (12.6) or (12.601) on or before the day on which the renunciation is made, or

(e) exceeding the amount, if any, by which the cumulative Canadian development expense of the corporation on the effective date of the renunciation computed before taking into account any amounts renounced under this subsection on the date on which the renunciation is made, exceeds the total of all amounts renounced under this subsection in respect of any other share

(i) on the date on which the renunciation is made, and

(ii) effective on or before the effective date of the renunciation.

Related Provisions: 66(12.601), (12.602) — Flow-through share rules for first $2 million of Canadian development expenses; 66(12.63) — Effect of renunciation of Canadian development expense; 66(12.64)(c) — Canadian oil and gas property expenses to flow-through shareholder; 66(12.67) — Restriction on renunciation; 66(12.68) — Filing selling instruments; 66(12.69) — Filing re partners; 66(12.7) — Filing;

66(12.71) — Restriction on renunciation; 66(12.73) — Adjustment in renunciation; 66(12.741) — Late renunciation; 66(16) — Partnership deemed to be a person; 66(19) — Renunciation by member of partnership, etc.; 66.1(6)"restricted expense"(c) — Inclusion of amount renounced; 66.2(5) — Definitions; 66.3(3) — Cost of flow-through shares; 66.3(4)(a)(ii)(B) — Paid-up capital; 87(4.4) — Flow-through shares; 110.6(1)"investment expense"(d) — effect of renunciation on capital gains exemption; 163(2.2) — False statement or omissions — penalty; 248(16), (16.1) — GST or QST input tax credit/refund and rebate deemed to be assistance; 248(18), (18.1) — GST or QST — repayment of input tax credit or refund. See also at end of s. 66.

History: The portion of subsec. 66(12.62) before para. (c) amended by 1997, c. 25, subsec. 13(11), applicable to expenses incurred after February 1996. This portion formerly read:

> (12.62) Where a person gave consideration under an agreement to a corporation for the issue of a flow-through share of the corporation and, during the period beginning on the day the agreement was entered into and ending 24 months after the end of the month that included that day, the corporation incurred Canadian development expenses, the corporation may, after it complies with subsection (12.68) in respect of the share and before March of the first calendar year beginning after that period, renounce, effective on the date on which the renunciation is made or on an earlier date set out in the form prescribed for the purposes of subsection (12.7), to the person in respect of the share the amount, if any, by which those expenses incurred by it during that period and on or before the effective date of the renunciation exceed the total of
>
> (a) the assistance that it has received, is entitled to receive, or may reasonably be expected to receive at any time, and that may reasonably be related to those expenses or to Canadian development activities to which those expenses relate (other than assistance that may reasonably be attributable to expenses referred to in paragraph (b)),
>
> (b) any of those expenses that are prescribed Canadian exploration and development overhead expenses of the corporation, and

Para. 66(12.62)(b.1) added by 1997, c. 25, subsec. 13(12), applicable to renunciations made after March 5, 1996, other than a renunciation made before 1999 in respect of consideration given

> (a) before March 6, 1996; or
>
> (b) under an agreement in writing made before March 6, 1996 or under the terms of a prospectus, preliminary prospectus, registration statement, offering memorandum or notice filed before March 6, 1996 with a public authority in Canada in accordance with securities legislation of a province.

Para. 66(12.62)(d) amended by 1997, c. 25, subsec. 13(13), applicable to renunciations made after 1998. Para. (d) formerly read:

> (d) exceeding the amount, if any, by which the consideration for the share exceeds the total of other amounts renounced in respect of the share under this subsection or subsection (12.6), (12.601) or (12.64) on or before the date on which the renunciation is made, or

The opening words of subsec. 66(12.62) amended by 1994, c. 8, subsec. 5(6), applicable to expenses incurred after February 1986. They formerly read:

> (12.62) Where a person has given consideration under an agreement to a corporation for the issue of a flow-through share of the corporation and, during the period commencing on the day the agreement was entered into and ending 24 months after the end of the month that included that day, the corporation has incurred Canadian development expenses, the corporation may, after it has complied with subsection (12.68) in respect of the share and within that period or within 30 days thereafter, renounce, effective on the date on which the renunciation is made or on such earlier date as may be set out in the form prescribed for the purposes of subsection (12.7), to the person in respect of the share the amount, if any, by which those expenses incurred by it during that period and on or before the effective date of the renunciation exceed the total of

That portion of subsec. 66(12.62) between paras. (b) and (e) amended by 1994, c. 8, subsec. 5(7), applicable to expenses incurred after December 2, 1992. That portion formerly read:

> (c) the total of amounts that are renounced on or before the date on which the renunciation is made by any other renunciation under this subsection in respect of those expenses,

but not in any case

> (d) exceeding the amount, if any, by which the consideration for the share exceeds the total of other amounts renounced in respect of the share under this subsection or subsection (12.6) or (12.64) on or before the date on which the renunciation is made, or

Interpretation Bulletins: IT-273R2: Government assistance — general comments.

Regulations: 228 (information return); 1206(1), (4.1), (4.2) (prescribed Canadian exploration and development overhead expenses, for 66(12.62)(b)).

Forms: T2 SCH 12: Resource-related deductions; T101: Statement — Resource expense; T101A: Claim for renouncing CEEs and CDEs; T101B: Claim for adjustments to CEEs and CDEs previously renonouced; T101C: Part XII.6 tax return; T101D: Summary of assistance; T1229: Statement of exploration and development expenses and depletion allowances.

(12.63) Effect of renunciation — Subject to subsections (12.691) to (12.702), where under subsection (12.62) a corporation renounces an amount to a person,

Proposed Amendment — 66(12.63) opening words

(12.63) Effect of renunciation — Subject to subsections (12.69) to (12.702), if under subsection (12.62) a corporation renounces an amount to a person,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 74(2), will amend the opening words of subsec. 66(12.63) to read as above, applicable to renunciations made after December 20, 2002.

Technical Notes: Subsection 66(12.63) provides that Canadian development expenses renounced under subsection 66(12.62) by a corporation to a person are considered to have been incurred by that person on the effective date of the renunciation and not to have been incurred by the corporation.

Subsection 66(12.63) currently provides that it is subject to subsections 66(12.691) to (12.702). Subsection 66(12.63) is amended, applicable to renunciations made after December 20, 2002, to provide that it is subject to subsections 66(12.69) to (12.702).

> (a) the Canadian development expenses to which the amount relates shall be deemed to be Canadian development expenses incurred in that amount by the person on the effective date of the renunciation; and
>
> (b) the Canadian development expenses to which the amount relates shall, except for the purposes of that renunciation, be deemed on and after the effective date of the renunciation never to have been Canadian development expenses incurred by the corporation.

Related Provisions: 66(16) — Partnership deemed to be a person; 66.2(5) — Definitions. See additional Related Provisions at end of s. 66.

History: That portion of subsec. 66(12.63) preceding para. (a) amended by 1997, c. 25, subsec. 13(14), applicable to renunciations made after 1998. That portion formerly read:

> (12.63) Subject to subsections (12.69) to (12.701), where under subsection (12.62) a corporation renounces an amount to a person,

That portion of subsec. 66(12.63) preceding para. (a) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 38(4), applicable after July 13, 1990. That portion formerly read:

> (12.63) Where a corporation renounces an amount to a person under subsection (12.62),

(12.64) [Repealed]

History: Subsec. 66(12.64) repealed by 1997, c. 25, subsec. 13(15), applicable to renunciations made after March 5, 1996, other than a renunciation made before 1999 in respect of consideration given

> (a) before March 6, 1996; or
>
> (b) under an agreement in writing made before March 6, 1996 or under the terms of a prospectus, preliminary prospectus, registration statement, offering memorandum or notice filed before March 6, 1996 with a public authority in Canada in accordance with securities legislation of a province.

Subsec. (12.64) formerly read:

(12.64) Canadian oil and gas property expenses to flow-through shareholder — Where a person gave consideration under an agreement to a corporation for the issue of a flow-through share of the corporation and, during the period beginning on the day the agreement was entered into and ending 24 months after the end of the month that included that day, the corporation incurred Canadian oil and gas property expenses, the corporation may, after it complies with subsection (12.68) in respect of the share and before March of the first calendar year beginning after that period, renounce, effective on the date on which the renunciation is made or on an earlier date set out in the form prescribed for the purposes of subsection (12.7), to the person in respect of the share the amount, if any, by which those expenses incurred by it during that period and on or before the effective date of the renunciation exceed the total of

(a) the assistance that it has received, is entitled to receive, or may reasonably be expected to receive at any time, and that may reasonably be related to those expenses, and

(b) the total of amounts that are renounced on or before the date on which the renunciation is made by any other renunciation under this subsection in respect of those expenses,

but not in any case

(c) exceeding the amount, if any, by which the consideration for the share exceeds the total of other amounts renounced in respect of the share under this subsection or subsection (12.6), (12.601) or (12.62) on or before the date on which the renunciation is made, or

(d) exceeding the amount, if any, by which the cumulative Canadian oil and gas property expense of the corporation on the effective date of the renunciation computed before taking into account any amounts renounced under this subsection on the date on which the renunciation is made, exceeds the total of all amounts renounced under this subsection in respect of any other share

(i) on the date on which the renunciation is made, and

(ii) effective on or before the effective date of the renunciation.

The opening words of subsec. 66(12.64) amended by 1994, c. 8, subsec. 5(8), applicable to expenses incurred after February 1986. They formerly read:

(12.64) Where a person has given consideration under an agreement to a corporation for the issue of a flow-through share of the corporation and, during the period commencing on the day the agreement was entered into and ending 24 months after the end of the month that included that day, the corporation has incurred Canadian oil and gas property expenses, the corporation may, after it has complied with subsection (12.68) in respect of the share and within that period or within 30 days thereafter, renounce, effective on the date on which the renunciation is made or on such earlier date as may be set out in the form prescribed for the purposes of subsection (12.7), to the person in respect of the share the amount, if any, by which those expenses incurred by it during that period and on or before the effective date of the renunciation exceed the total of

Para. 66(12.64)(c) amended by 1994, c. 8, subsec. 5(9), applicable to expenses incurred after December 2, 1992. Para. (c) formerly read:

(c) exceeding the amount, if any, by which the consideration for the share exceeds the total of other amounts renounced in respect of the share under this subsection or subsection (12.6) or (12.62) on or before the date on which the renunciation is made, or

(12.65) [Repealed]

History: Subsec. 66(12.65) repealed by 1997, c. 25, subsec. 13(15), applicable on the same basis as the repeal of 66(12.64). Subsec. (12.65) formerly read:

(12.65) Effect of renunciation — Subject to subsections (12.69) to (12.701), where under subsection (12.64) a corporation renounces an amount to a person,

(a) the Canadian oil and gas property expenses to which the amount relates shall be deemed to be Canadian oil and gas property expenses incurred in that amount by the person on the effective date of the renunciation; and

(b) the Canadian oil and gas property expense to which the amount relates shall, except for the purposes of that renunciation, be deemed on and after the effective date of the renunciation never to have been Canadian oil and gas property expenses incurred by the corporation.

That portion of subsec. 66(12.65) preceding para. (a) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 38(5), applicable after July 13, 1990. That portion formerly read:

(12.65) Where a corporation renounces an amount to a person under subsection (12.64),

(12.66) Expenses in the first 60 days of year [or throughout next calendar year] — Where

(a) a corporation that issues a flow-through share to a person under an agreement incurs, in a particular calendar year, Canadian exploration expenses or Canadian development expenses,

(a.1) the agreement was made in the preceding calendar year,

(b) the expenses

(i) are described in paragraph (a), (d), (f) or (g.1) of the definition "Canadian exploration expense" in subsection 66.1(6) or paragraph (a) or (b) of the definition "Canadian development expense" in subsection 66.2(5),

(ii) would be described in paragraph (h) of the definition "Canadian exploration expense" in subsection 66.1(6) if the words "paragraphs (a) to (d) and (f) to (g.1)" were read as "paragraphs (a), (d), (f) and (g.1)", or

(iii) would be described in paragraph (f) of the definition "Canadian development expense" in subsection 66.2(5) if the words "any of paragraphs (a) to (e)" were read as "paragraph (a) or (b)",

(c) before the end of that preceding year the person paid the consideration in money for the share to be issued,

(d) the corporation and the person deal with each other at arm's length throughout the particular year, and

(e) in January, February or March of the particular year, the corporation renounces an amount in respect of the expenses to the person in respect of the share in accordance with subsection (12.6) or (12.601) and the effective date of the renunciation is the last day of that preceding year,

the corporation is for the purpose of subsection (12.6) or for the purposes of subsection (12.601) and paragraph (12.602)(b), as the case may be, deemed to have incurred the expenses on the last day of the year.

Proposed Amendment — 66(12.66) closing words

the corporation is for the purpose of subsection (12.6), or of subsection (12.601) and paragraph (12.602)(b), as the case may be, deemed to have incurred the expenses on the last day of that preceding year.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 74(5), will amend the closing words of subsec. 66(12.66) to read as above, in force on Royal Assent.

Technical Notes: The closing words of subsection 66(12.66) currently refer to "the last day of the year". The closing words are amended, effective upon Royal Assent, to clarify that the reference to "the year" means the preceding year referred to in paragraphs 66(12.66)(a.1), (c) and (e).

Related Provisions: 66(12.6) — Canadian exploration expenses to flow-through shareholder; 66(16) — Partnership deemed to be a person; 66(17) — Non-arm's length partnerships; 87(4.4) — Amalgamations; 127(9)"investment tax credit"(a.2), 127(9)"flow-through mining expenditure"(e) — Investment tax credit; 163(2.21), (2.22) — Penalty for false statement or omission; 211.91 — Tax on issuer using one-year look-back

rule: 248(1)"specified future tax consequence"(b) — Reduction under 66(12.73) is a specified future tax consequence. See additional Related Provisions at end of s. 66.

History: Subparas. 66(12.66)(b)(i), (ii) amended by 2003, c. 28, subsec. 4(2), applicable to expenses incurred after 2002 pursuant to a flow-through share agreement entered into after July 26, 2002. The subparas. formerly read:

(i) are described in paragraph (a), (d) or (f) of the definition "Canadian exploration expense" in subsection 66.1(6) or paragraph (a) or (b) of the definition "Canadian development expense" in subsection 66.2(5),

(ii) would be described in paragraph (h) of the definition "Canadian exploration expense" in subsection 66.1(6) if the words "paragraphs (a) to (d) and (f) to (g.1)" were read as "paragraphs (a), (d) and (f)", or

Subpara. 66(12.66)(b)(ii) amended by the said c. 28, subsec. 4(1), applicable after December 5, 1996. The subpara. formerly read:

(ii) would be described in paragraph (h) of the definition "Canadian exploration expense" in subsection 66.1(6) if the words "paragraphs (a), (b), (c), (d), (f) and (g)" were read as "paragraphs (a), (d) and (f)", or

The closing words of subsec. 66(12.66) amended by 1998, c. 19, subsec. 104(5), applicable to expenses incurred after 1992. The closing words formerly read:

the corporation shall for the purpose of subsection (12.6) or (12.601) be deemed to have incurred the expenses on the effective date of the renunciation.

Para. 66(12.66)(a) amended, para. (a.1) added, by 1997, c. 25, subsec. 13(16), applicable to expenses incurred after 1996, except that

amended para. (a) and para. (a.1) do not apply to expenses incurred in January or February of 1997 in respect of an agreement that was made in 1995; and

for the purpose of applying para. (a.1) to expenses incurred in 1998, any agreement made in 1996 is deemed to have been made in 1997.

Para. (a) formerly read:

(a) a corporation that issues a flow-through share to a person under an agreement incurs, within 60 days after the end of a calendar year, Canadian exploration expenses or Canadian development expenses,

Para. 66(12.66)(b) amended by 1997, c. 25, subsec. 13(17), applicable to expenses incurred after 1992. Para. (b) formerly read:

(b) the expenses are expenses described in paragraph (a), (d) or (f) of the definition "Canadian exploration expense" in subsection 66.1(6) or paragraph (a) or (b) of the definition "Canadian development expense" expense in subsection 66.2(5),

Paras. 66(12.66)(c), (d) and (e) amended by 1997, c. 25, subsec. 13(18), applicable to expenses incurred after 1996, except that amended paras. (c) to (e) do not apply to expenses incurred in January or February of 1997 in respect of an agreement that was made in 1995. Paras. (c) to (e) formerly read:

(c) before the end of the year, the agreement was entered into between the corporation and the person and the person paid the consideration for the share in money,

(d) the corporation and the person deal with each other at arm's length throughout the 60 days, and

(e) within 90 days after the end of the year, the corporation renounces an amount in respect of the expenses to the person in respect of the share in accordance with subsection (12.6) or (12.601) and the effective date of the renunciation is the last day of the year,

Subsec. 66(12.66) amended by 1994, c. 8, subsec. 5(10), applicable to expenses incurred after 1992. Subsec. (12.66) formerly read:

(12.66) Where

(a) a corporation that issues a flow-through share to a person under an agreement incurs, within 60 days after the end of a calendar year, Canadian exploration expenses,

(b) the Canadian exploration expenses are expenses described in paragraph (a), (d) or (f) of the definition "Canadian exploration expense" in subsection 66.1(6),

(c) before the end of the year, the agreement was entered into between the corporation and the person and the person paid the consideration for the share in money,

(d) the corporation and the person deal with each other at arm's length throughout the 60 days, and

(e) within 90 days after the end of the year the corporation renounces an amount in respect of the Canadian exploration expenses to the person in respect of the share in accordance with subsection (12.6) and the effective date of the renunciation is the last day of the year,

the corporation shall for purposes of subsection (12.6) be deemed to have incurred the expenses on the effective date of the renunciation.

Selected Cases [subsec. 66(12.66)]: *Furukawa v. Canada*, [1996] 2 C.T.C. 2641 (TCC) (Marketing incentives did not qualify as assistance; shares not prescribed shares).

(12.67) Restrictions on renunciation — A corporation shall be deemed

(a) not to have renounced under any of subsections (12.6), (12.601) and (12.62) any expenses that are deemed to have been incurred by it because of a renunciation under this section by another corporation that is not related to it;

(b) not to have renounced under subsection (12.601) to a trust, corporation or partnership any Canadian development expenses (other than expenses renounced to another corporation that renounces under subsection (12.6) any Canadian exploration expense deemed to have been incurred by it because of the renunciation under subsection (12.601)) if, in respect of the renunciation under subsection (12.601), it has a prohibited relationship with the trust, corporation or partnership;

(c) not to have renounced under subsection (12.601) any Canadian development expenses deemed to have been incurred by it because of a renunciation under subsection (12.62); and

(d) not to have renounced under subsection (12.6) to a particular trust, corporation or partnership any Canadian exploration expenses (other than expenses ultimately renounced by another corporation under subsection (12.6) to an individual (other than a trust) or to a trust, corporation or partnership with which that other corporation does not have, in respect of that ultimate renunciation, a prohibited relationship) deemed to be incurred by it because of a renunciation under subsection (12.601) if, in respect of the renunciation under subsection (12.6), it has a prohibited relationship with the particular trust, corporation or partnership.

Related Provisions: 66(12.671) — Prohibited relationship. See also at end of s. 66.

History: Para. 66(12.67)(a) amended by 1997, c. 25, subsec. 13(19), applicable to renunciations made after 1998. Para. (a) formerly read:

(a) not to have renounced under any of subsections (12.6), (12.601), (12.62) and (12.64) any expenses that are deemed to have been incurred by it because of a renunciation under this section by another corporation that is not related to it;

Subsec. 66(12.67) amended by 1994, c. 8, subsec. 5(11), applicable to expenses incurred after December 2, 1992. Subsec. (12.67) formerly read:

(12.67) Restriction on renunciation — A corporation shall not renounce under any of subsections (12.6), (12.62) and (12.64) any expenses that are deemed to have been incurred by it by virtue of a renunciation under this section by another corporation that is not related to it.

(12.671) Prohibited relationship — For the purposes of subsection (12.67), where a trust, corporation (in paragraph (b) referred to as the "shareholder corporation") or partnership, as the case may be, gave consideration under a particular agreement for the issue of a flow-through share of a particular corporation, the particular corporation has, in respect of a renunciation under subsection

(12.6) or (12.601) in respect of the share, a prohibited relationship

(a) with the trust if, at any time after the particular agreement was entered into and before the share is issued to the trust, the particular corporation or any corporation related to the particular corporation is beneficially interested in the trust;

(b) with the shareholder corporation if, immediately before the particular agreement was entered into, the shareholder corporation was related to the particular corporation; or

(c) with the partnership if any part of the amount renounced would, but for subsection (12.7001), be included, because of paragraph (h) of the definition "Canadian exploration expense" in subsection 66.1(6), in the Canadian exploration expense of

(i) the particular corporation, or

(ii) any other corporation that, at any time

(A) after the particular agreement was entered into, and

(B) before that part of the amount renounced would, but for this paragraph, be incurred,

would, if flow-through shares issued by the particular corporation under agreements entered into at the same time as or after the time the particular agreement was entered into were disregarded, be related to the particular corporation.

History: The opening words of para. 66(12.671)(c) amended by 1997, c. 25, subsec. 13(20), applicable to renunciations made after 1998. The opening words formerly read:

(c) with the partnership if any part of the amount renounced would, but for subsection (12.7), be included, because of paragraph (h) of the definition "Canadian exploration expense" in subsection 66.1(6), in the Canadian exploration expense of

Subsec. 66(12.671) added by 1994, c. 8, subsec. 5(11), applicable to expenses incurred after December 2, 1992.

(12.68) Filing selling instruments — A corporation that agrees to issue or prepares a selling instrument in respect of flow-through shares shall file with the Minister a prescribed form together with a copy of the selling instrument or agreement to issue the shares on or before the last day of the month following the earlier of

(a) the month in which the agreement to issue the shares is entered into, and

(b) the month in which the selling instrument is first delivered to a potential investor,

and the Minister shall thereupon assign an identification number to the form and notify the corporation of the number.

Related Provisions: 66(12.61) — Effect of renunciation; 66(12.74) — Late filed forms; 87(4.4) — Flow-through shares. See additional also at end of s. 66; 163.2(1)"excluded activity"(a)(i) — No good-faith reliance defence for advisor assessed third-party penalty.

Forms: T100A: Flow-through share information — application for a selling instrument T100 identification number (SITIN); T100B: Flow-through share information — Details of the flow-through shares (FTSs) and flow-through warrants (FTWs) subscribed; T100C Flow-through share information — application for a T100 identification number (TIN) on the exercise of flow-through warrants (FTWs) and details of the FTWs exercised; T1221: Ontario focused flow-through share resource expenses; T1231: B.C. mining flow-through share tax credit.

(12.69) Filing re partners — Where, in a fiscal period of a partnership, an expense is incurred by the partnership as a consequence of a renunciation of an amount under subsection (12.6), (12.601) or (12.62), the partnership shall, before the end of the third month that begins after the end of the period, file with the Minister a prescribed form identifying the share of the expense attributable to each member of the partnership at the end of the period.

Related Provisions: 66(12.61), (12.63) — Effect of renunciation; 66(12.6901) — Consequences of partnership failing to file; 66(12.74) — Late filed forms; 66(15) — Definitions. See additional Related Provisions at end of s. 66.

History: Subsec. 66(12.69) amended by 1997, c. 25, subsec. 13(21), applicable to renunciations made after 1998. Subsec. (12.69) formerly read:

(12.69) Where, in a fiscal period of a partnership, an expense is or, but for this subsection, would be incurred by the partnership as a consequence of a renunciation of an amount under subsection (12.6), (12.601), (12.62) or (12.64), the partnership shall, on or before the last day of the third month following the end of that period, file with the Minister a prescribed form indicating the share of the expense attributable to each member of the partnership at the end of the period and, where the prescribed form is not so filed, the partnership shall be deemed not to have incurred the expense.

Subsec. 66(12.69) amended by 1994, c. 8, subsec. 5(12), applicable to expenses incurred after December 2, 1992. Subsec. (12.69) formerly read:

(12.69) Where, in a fiscal period of a partnership, an expense is or, but for this subsection, would be incurred by the partnership as a consequence of a renunciation of an amount under subsection (12.6), (12.62) or (12.64), the partnership shall, on or before the last day of the third month following the end of that period, file with the Minister a prescribed form indicating the share of the expense attributable to each member of the partnership at the end of the period and, where the prescribed form is not so filed, the partnership shall be deemed not to have incurred the expense.

Subsec. 66(12.69) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 38(6), applicable to fiscal periods ending after July 13, 1990. Subsec. 66(12.69) formerly read:

(12.69) Where, as a consequence of a renunciation of an amount under subsection (12.6), (12.62) or (12.64), an expense is incurred by a partnership in a fiscal period thereof, the partnership shall, on or before the last day of the third month following the end of that period, file with the Minister an information return in prescribed form indicating the share of the expense attributable to each member of the partnership at the end of that period.

Forms: T5016: Summary information for tax shelters that are partnerships or for partnerships that allocated renounced resource expenses to their members.

(12.6901) Consequences of failure to file — Where a partnership fails to file a prescribed form as required under subsection (12.69) in respect of an expense, except for the purpose of subsection (12.69) the partnership is deemed not to have incurred the expense.

History: Subsec. (12.6901) added by 1997, c. 25, subsec. 13(21), applicable to renunciations made after 1998.

(12.691) Filing re assistance — Where a partnership receives or becomes entitled to receive assistance as an agent for its members or former members at a particular time in respect of any Canadian exploration expense or Canadian development expense that is or, but for paragraph (12.61)(b) or (12.63)(b), would be incurred by a corporation, the following rules apply:

(a) where the entitlement of any such member or former member to any part of the assistance is known by the partnership as of the end of the partnership's first fiscal period ending after the particular time and that part of the assistance was not required to be reported under paragraph (b) in respect of a calendar year ending before the end of that fiscal period, the partnership shall, on or before the last day of the third month following the end of that fiscal period, file with the Minister a prescribed form indicating the share of that part of the assistance paid to each of those members or former members before the end of that fiscal period or to which each of those members or former members is entitled at the end of that fiscal period;

(b) where the entitlement of any of those members or former members to any part of the assistance is known by the partnership as of the end of a calendar year that ends after the particular time and that part of the assistance was not required to be reported under paragraph (a) in respect of a fiscal period ending at or before the end of that calendar year, or under this paragraph in respect of a preceding calendar year, the partnership shall, on or before the last day of the third month following the end of that calendar year, file with the Minister a prescribed form indicating the share of that part of the assistance paid to each of those members or former members before the end of that fiscal period or to which each of those members or former members is entitled at the end of that calendar year; and

(c) where a prescribed form required to be filed under paragraph (a) or (b) is not so filed, the part of that expense relating to the assistance required to be reported in the prescribed form shall be deemed not to have been incurred by the partnership.

Related Provisions: 163(2.3) — False statement or omissions.

History: The opening words of subsec. 66(12.691) amended by 1997, c. 25, subsec. 13(22), applicable to renunciations made after 1998. The opening words formerly read:

(12.691) Idem — Where a partnership receives or becomes entitled to receive assistance as an agent for its members or former members at a particular time in respect of any Canadian exploration expense, Canadian development expense or Canadian oil and gas property expense that is or, but for paragraph (12.61)(b), (12.63)(b) or (12.65)(b), would be incurred by a corporation, the following rules apply:

Subsec. 66(12.691) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 38(6), applicable to assistance that a partnership receives or becomes entitled to receive after 1989 and in a fiscal period of the partnership ending after July 13, 1990.

(12.7) Filing re renunciation — Where a corporation renounces an amount in respect of Canadian exploration expenses or Canadian development expenses under subsection (12.6), (12.601) or (12.62), the corporation shall file a prescribed form in respect of the renunciation with the Minister before the end of the first month after the month in which the renunciation is made.

Related Provisions: 66(12.7001) — Consequences of corporation failing to file; 66(12.74) — Late filed forms. See additional Related Provisions at end of s. 66.

History: Subsec. 66(12.7) amended by 1997, c. 25, subsec. 13(23), applicable to renunciations made after 1998. Subsec. (12.7) formerly read:

(12.7) Filing — Where a corporation renounces an amount in respect of Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses under subsection (12.6), (12.601), (12.62) or (12.64), the corporation shall file a prescribed form in respect of the renunciation with the Minister before the end of the first month following the month in which the renunciation is made and, where the prescribed form is not so filed, subsections (12.61), (12.63) and (12.65) do not apply in respect of the amount so renounced.

Subsec. 66(12.7) amended by 1994, c. 8, subsec. 5(13), applicable to renunciations after December 2, 1992. Subsec. (12.7) formerly read:

(12.7) Where a corporation renounces an amount in respect of Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses under subsection (12.6), (12.62) or (12.64), the corporation shall file a prescribed form in respect of the renunciation with the Minister before the end of the first month following the month in which the renunciation is made and, where the prescribed form is not so filed, subsections (12.61), (12.63) and (12.65) do not apply in respect of the amount so renounced.

Subsec. 66(12.7) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 38(6), applicable to renunciations made after July 13, 1990. Subsec. 66(12.7) formerly read:

(12.7) Where a corporation renounces an amount in respect of Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses under subsection (12.6), (12.62) or (12.64), the corporation shall file a prescribed form in respect of the renunciation with the Minister on or before the last day of the month following the month in which the renunciation was made.

Forms: T2 SCH 12: Resource-related deductions; T101: Statement — Resource expense; T101A: Claim for renouncing CEEs and CDEs; T101B: Claim for adjustments to CEEs and CDEs previously renonouced; T101C: Part XII.6 tax return; T101D: Summary of assistance; T1229: Statement of exploration and development expenses and depletion allowances.

(12.7001) Consequences of failure to file — Where a corporation fails to file a prescribed form as required under subsection (12.7) in respect of a renunciation of an amount, subsections (12.61) and (12.63) do not apply in respect of the amount.

History: Subsec. (12.7001) added by 1997, c. 25, subsec. 13(23), applicable to renunciations made after 1998.

(12.701) Filing re assistance — Where a corporation receives or becomes entitled to receive assistance as an agent in respect of any Canadian exploration expense or Canadian development expense that is or, but for paragraph (12.61)(b) or (12.63)(b), would be incurred by the corporation, the corporation shall, before the end of the first month after the particular month in which it first becomes known to the corporation that a person that holds a flow-through share of the corporation is entitled to a share of any part of the assistance, file with the Minister a prescribed form identifying the share of the assistance to which each of those persons is entitled at the end of the particular month.

Related Provisions: 66(12.702) — Consequences of corporation failing to file; 66(16) — Partnership deemed to be a person; 163(2.3) — False statement or omissions.

History: Subsec. 66(12.701) amended by 1997, c. 25, subsec. 13(23), applicable to renunciations made after 1998. Subsec. (12.701) formerly read:

(12.701) Idem — Where at a particular time a corporation receives or becomes entitled to receive assistance as an agent in respect of any Canadian exploration expense, Canadian development expense or Canadian oil and gas property expense that is or, but for paragraph (12.61)(b), (12.63)(b) or (12.65)(b), would be incurred by the corporation, the corporation shall, before the end of the first month following the particular month in which it first becomes known that a person or partnership that holds a flow-through share of the corporation is entitled to a share of any part of the assistance, file with the Minister a prescribed form indicating the share of that part of the assistance to which each of those persons or partnerships is entitled at the end of the particular month and, where the prescribed form is not so filed, the part of the expense relating to the assistance required to be reported in the prescribed form shall be deemed not to have been incurred by the corporation.

Subsec. 66(12.701) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 38(6), applicable to assistance that a corporation receives or becomes entitled to receive after July 13, 1990.

Forms: T101D: Summary of assistance.

(12.702) Consequences of failure to file — Where a corporation fails to file a prescribed form as required under subsection (12.701) in respect of assistance, except for the purpose of subsection (12.701) the Canadian exploration expense or Canadian development expense to which the assistance relates is deemed not to have been incurred by the corporation.

History: Subsec. 66(12.702) added by 1997, c. 25, subsec. 13(23), applicable to renunciations made after 1998.

(12.71) Restriction on renunciation — A corporation may renounce an amount under subsection (12.6), (12.601) or (12.62) in respect of Canadian exploration expenses or Canadian development expenses incurred by it only to the extent that, but for the renunciation, it would be entitled to a deduction in respect of the expenses in computing its income.

History: Subsec. 66(12.71) amended by 1997, c. 25, subsec. 13(23), applicable to renunciations made after 1998. Subsec. (12.71) formerly read:

> (12.71) A corporation may renounce an amount under subsection (12.6), (12.601), (12.62) or (12.64) in respect of Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses incurred by it only to the extent that, but for the renunciation, it would be entitled to claim a deduction in respect of the expenses in computing its income for the purposes of this Part.

Subsec. 66(12.71) amended by 1994, c. 8, subsec. 5(14), applicable to renunciations after December 2, 1992. Subsec. (12.71) formerly read:

> (12.71) A corporation may renounce an amount under subsection (12.6), (12.62) or (12.64) in respect of Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses incurred by it only to the extent that, but for the renunciation, it would be entitled to claim a deduction in respect of the expenses in computing its income for the purposes of this Part.

(12.72) [Repealed]

History: Subsec. 66(12.72) repealed by 1997, c. 25, subsec. 13(23), applicable April 25, 1997 (Royal Assent). Subsec. (12.72) formerly read:

> (12.72) Application of sections 231 to 231.3 — Without restricting the generality of sections 231 to 231.3, where a corporation renounces an amount under subsection (12.6), (12.601), (12.62) or (12.64), sections 231 to 231.3 apply, with such modifications as the circumstances require, for the purpose of permitting the Minister to verify or ascertain the Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses of the corporation in respect of which the amount is renounced, the amounts renounced in respect of those expenses, any information in respect of those expenses or the amounts renounced and the amount of, or information relating to, any assistance in respect of those expenses.

Subsec. 66(12.72) amended by 1994, c. 8, subsec. 5(14), applicable after December 2, 1992. Subsec. (12.72) formerly read:

> (12.72) Without restricting the generality of sections 231 to 231.3, where a corporation has renounced an amount under subsection (12.6), (12.62) or (12.64), sections 231 to 231.3 apply, with such modifications as the circumstances require, for the purpose of permitting the Minister to verify or ascertain the Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses of the corporation in respect of which the amount was renounced, the amounts renounced in respect of those expenses, any information in respect of the expenses or the amounts renounced and the amount of, or information relating to, any assistance in respect of the expenses.

Subsec. 66(12.72) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 38(7), applicable after July 13, 1990. Subsec. (12.72) formerly read:

> (12.72) Without restricting the generality of sections 231 to 231.3, where a corporation has renounced any amount under subsection (12.6), (12.62) or (12.64), notwithstanding that a return of income has not been filed by any taxpayer under section 150 for the taxation year of the taxpayer in which the amount so renounced is deemed to be Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses incurred by the taxpayer or a partnership of which the taxpayer is a member, sections 231 to 231.3 apply, with such modifications as the circumstances require, for the purpose of permitting the Minister to verify or ascertain the Canadian exploration expenses, Canadian development expenses, or Canadian oil and gas property expenses of the corporation in respect of which the amount was renounced, the amounts renounced in respect of those expenses, and any information in respect of the expenses or the amounts renounced.

(12.73) Reductions in renunciations — Where an amount that a corporation purports to renounce to a person under subsection (12.6), (12.601) or (12.62) exceeds the amount that it can renounce to the person under that subsection,

(a) the corporation shall file a statement with the Minister in prescribed form where

(i) the Minister sends a notice in writing to the corporation demanding the statement, or

(ii) the excess arose as a consequence of a renunciation purported to be made in a calendar year under subsection (12.6) or (12.601) because of the application of subsection (12.66) and, at the end of the year, the corporation knew or ought to have known of all or part of the excess;

(b) where subparagraph (a)(i) applies, the statement shall be filed not later than 30 days after the Minister sends a notice in writing to the corporation demanding the statement;

(c) where subparagraph (a)(ii) applies, the statement shall be filed before March of the calendar year following the calendar year in which the purported renunciation was made;

(d) except for the purpose of Part XII.6, any amount that is purported to have been so renounced to any person is deemed, after the statement is filed with the Minister, to have always been reduced by the portion of the excess identified in the statement in respect of that purported renunciation; and

(e) where a corporation fails in the statement to apply the excess fully to reduce one or more purported renunciations, the Minister may at any time reduce the total amount purported to be renounced by the corporation to one or more persons by the amount of the unapplied excess in which case, except for the purpose of Part XII.6, the amount purported to have been so renounced to a person is deemed, after that time, always to have been reduced by the portion of the unapplied excess allocated by the Minister in respect of that person.

Related Provisions: 66(16) — Partnership deemed to be a person; 152(4)(b)(v) — Three-year extension to normal reassessment period; 163(2.21), (2.22) — Penalty for false statement or omission; 248(1)"specified future tax consequence"(b) — Reduction is a specified future tax consequence. See also Related Provisions and Definitions at end of s. 66.

History: Subsec. 66(12.73) amended by 1997, c. 25, subsec. 13(23), applicable to purported renunciations made after 1996 except that, in respect of purported renunciations made before 1999, the portion of subsec. (12.73) before para. (a) shall be read as:

> (12.73) Where an amount that a corporation purports to renounce to a person under subsection (12.6), (12.601), (12.62) or (12.64) exceeds the amount it can renounce to the person under that subsection,

Subsec. (12.73) formerly read:

> (12.73) Adjustment in renunciation — Where the total of all amounts that a corporation purports to renounce to persons under subsection (12.6), (12.601), (12.62) or (12.64) in respect of expenses incurred by it in any period ending on the effective date of the purported renunciation exceeds the total amount of those expenses in respect of which it may renounce amounts under that subsection, it shall
>
> (a) reduce the amount so renounced to one or more persons to effect a reduction in the total of the amounts so purported to be renounced by the amount of the excess, and
>
> (b) file a statement with the Minister indicating the adjustments made in the renunciations,
>
> and if the corporation does not so reduce the amounts and file that statement with the Minister within 30 days after notice in writing by the Minister is forwarded to the corporation that such a reduction is or will be required for the purposes of any assessment of tax under this Part, the Minister may, for the purposes of this section, reduce the amounts purported to be renounced by the corporation to one or

more persons to effect a reduction in the total of the amounts so purported to be renounced by the amount of the excess, and in any such case, notwithstanding subsections (12.61), (12.63) and (12.65), the amount renounced to each of the persons shall be deemed to be the amount as reduced by the corporation or the Minister, as the case may be.

Subsec. 66(12.73) amended by 1994, c. 8, subsec. 5(14), applicable to renunciations made after December 2, 1992. Subsec. (12.73) formerly read:

(12.73) Where the total of all amounts that a corporation purported to renounce to persons under subsection (12.6), (12.62) or (12.64) in respect of expenses incurred by it in any period ending on the effective date of the purported renunciation exceeds the total amount of those expenses in respect of which it may renounce amounts under those subsections, it shall reduce the amounts so renounced to one or more of those persons to effect a reduction in the total of the amounts so purported to be renounced by the amount of the excess and file a statement with the Minister indicating the adjustments made in the renunciations and if the corporation has failed to so reduce the amounts and file such a statement with the Minister within 30 days after notice in writing by the Minister has been forwarded to the corporation that such a reduction is or will be required for the purposes of any assessment of tax under this Part, the Minister may, for the purposes of this section, reduce the amounts purported to be renounced by the corporation to one or more of those persons to effect a reduction in the total of the amounts so purported to be renounced by the amount of the excess, and in any such case, notwithstanding subsections (12.61), (12.63) and (12.65), the amount renounced to each of the persons shall be deemed to be the amount as reduced by the corporation or the Minister, as the case may be.

(12.74) Late filed forms — A corporation or partnership may file with the Minister a document referred to in subsection (12.68), (12.69), (12.691), (12.7) or (12.701) after the particular day on or before which the document is required to be filed under the applicable subsection and the document shall, except for the purposes of this subsection and subsection (12.75), be deemed to have been filed on the day on or before which it was required to be filed if

(a) if it is filed

(i) on or before the day that is 90 days after the particular day, or

(ii) after that day that is 90 days after the particular day where, in the opinion of the Minister, the circumstances are such that it would be just and equitable to permit the document to be filed; and

(b) the corporation or partnership, as the case may be, pays to the Receiver General at the time of filing a penalty in respect of the late filing.

Related Provisions: 66(12.75) — Penalty.

History: Subsec. 66(12.74) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 38(8), applicable to documents filed after June 1988, except that with respect to documents filed before July 14, 1990, the reference in the subsec. to "(12.691), (12.7) or (12.701)" shall be read as "or (12.7)". Subsec. 66(12.74) formerly read:

(12.74) A corporation or partnership may file with the Minister a document referred to in subsection (12.68), (12.69) or (12.7) after the day on or before which the document is required to be filed under the applicable subsection and the document shall be deemed to have been filed on the day on or before which it was required to be filed

(a) if it is filed within 90 days after that day; and

(b) if the corporation or partnership, as the case may be, pays to the Receiver General at the time of filing a penalty in respect of the late filing.

(12.741) Late renunciation — Where a corporation purports to renounce an amount under subsection (12.6), (12.601) or (12.62) after the period in which the corporation was entitled to renounce the amount, the amount is deemed, except for the purposes of this subsection and subsections (12.7) and (12.75), to have been renounced at the end of the period if

(a) the corporation purports to renounce the amount

(i) on or before the day that is 90 days after the end of that period, or

(ii) after the day that is 90 days after the end of that period where, in the opinion of the Minister, the circumstances are such that it would be just and equitable that the amount be renounced; and

(b) the corporation pays to the Receiver General a penalty in respect of the renunciation not more than 90 days after the renunciation.

Related Provisions: 66(12.75) — Penalty.

History: Subsec. 66(12.741) preceding para. (a) amended by 1997, c. 25, subsec. 13(24), applicable to renunciations made after 1998. That portion formerly read:

(12.741) Where a corporation purports to renounce an amount under subsection (12.6), (12.601), (12.62) or (12.64) after the period during which the corporation would otherwise be entitled to renounce the amount, the amount shall, except for the purposes of this subsection and subsections (12.7) and (12.75), be deemed to have been renounced at the end of the period if

Subsec. 66(12.741) added by 1994, c. 8, subsec. 5(15), applicable to renunciations purported to be made after February 1993.

(12.75) Penalty — For the purposes of subsections (12.74) and (12.741), the penalty in respect of the late filing of a document referred to in subsection (12.68), (12.69), (12.691), (12.7) or (12.701) or in respect of a renunciation referred to in subsection (12.741) is the lesser of $15,000 and

(a) where the penalty is in respect of the late filing of a document referred to in subsection (12.68), (12.69) or (12.7), the greater of

(i) $100, and

(ii) ¼ of 1% of the maximum amount in respect of the Canadian exploration expenses and Canadian development expenses renounced or attributed or to be renounced or attributed as set out in the document;

(b) where the penalty is in respect of the late filing of a document referred to in subsection (12.691) or (12.701), the greater of

(i) $100, and

(ii) ¼ of 1% of the assistance reported in the document; and

(c) where the penalty is in respect of a renunciation referred to in subsection (12.741), the greater of

(i) $100, and

(ii) ¼ of 1% of the amount of the renunciation.

History: The opening words of para. 66(12.75)(c) amended by 1998, c. 19, subsec. 104(6), applicable to renunciations purported to be made after February 1993. The opening words formerly read:

(c) where the penalty is in respect of a renunciation referred to in subsection (12.74), the greater of

Subpara. 66(12.75)(a)(ii) amended by 1997, c. 25, subsec. 13(25), applicable to renunciations made after 1998. Subpara. (a)(ii) formerly read:

(ii) ¼ of 1% of the maximum amount in respect of the Canadian exploration expenses, Canadian development expenses and Canadian oil and gas property expenses renounced or attributed or to be renounced or attributed as set out in the document;

The opening words of subsec. 66(12.75) amended and para. (c) added, by 1994, c. 8, subsecs. 5(16), (17), applicable to renunciations purported to be made after February 1993. The opening words formerly read:

(12.75) For the purposes of subsection (12.74), the penalty in respect of the late filing of a document referred to in subsection

(12.68), (12.69), (12.691), (12.7) or (12.701) is the lesser of $15,000 and

Subsec. 66(12.75) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 38(9), applicable to documents filed after July 13, 1990, except that in its application to documents filed on or before December 17, 1991, the subsec. shall be read as follows:

(12.75) For the purposes of subsection (12.74), the penalty in respect of the late filing of a document referred to in subsection (12.691) or (12.701) is nil and the penalty in respect of the late filing of a document referred to in subsection (12.68), (12.69) or (12.7) is the lesser of

(a) $15,000, and

(b) ¼ of 1% of the maximum amount in respect of the Canadian exploration expenses, Canadian development expenses and Canadian oil and gas property expenses renounced or attributed or to be renounced or attributed as set out in the document.

Subsec. 66(12.75) formerly read:

(12.75) For the purposes of subsection (12.74), the penalty in respect of the late filing of a document referred to in subsection (12.68), (12.69) or (12.7) is the lesser of

(a) $15,000, and

(b) ¼ of 1% of the maximum amount in respect of the Canadian exploration expenses, Canadian development expenses and Canadian oil and gas property expenses renounced, to be renounced, attributed or to be attributed as set out in the document.

(13) Limitation — Where a taxpayer has incurred an outlay or expense in respect of which a deduction from income is authorized under more than one provision of this section or section 66.1, 66.2 or 66.4, the taxpayer is not entitled to make the deduction under more than one provision but is entitled to select the provision under which to make the deduction.

Related Provisions: See at end of s. 66.

I.T. Application Rules: 29(1)–(4), (6)–(34).

(13.1) Short taxation year — Where a taxpayer has a taxation year that is less than 51 weeks, the amount determined in respect of the year under each of subparagraph (4)(b)(i), paragraph 66.2(2)(c), subparagraph (b)(i) of the definition "global foreign resource limit" in subsection 66.21(1), subparagraph 66.21(4)(a)(i), clause 66.21(4)(a)(ii)(B) and paragraphs 66.4(2)(b) and 66.7(2.3)(a), (4)(a) and (5)(a) shall not exceed that proportion of the amount otherwise determined that the number of days in the year is of 365.

Related Provisions: 20(1)(mm) — Deductions — injection substances; 66(4.3)(b), 66.21(5)(b) — No application to individual part-year resident. See additional Related Provisions and Definitions at end of s. 66.

History: Subsec. 66(13.1) amended by 2001, c. 17, subsec. 44(10), applicable to taxation years that begin after 2000. It formerly read:

(13.1) Short taxation years — Where a taxpayer has a taxation year that is less than 51 weeks, the amount determined in respect of the year under any of subparagraph 66(4)(b)(i) and paragraphs 66.2(2)(c), 66.4(2)(b) and 66.7(4)(a) and (5)(a) shall not exceed that proportion of the amount otherwise determined thereunder that the number of days in the year is of 365.

(14) Amounts deemed deductible under this subdivision — For the purposes of section 3, any amount deductible under the *Income Tax Application Rules* in respect of this subsection shall be deemed to be deductible under this subdivision.

Related Provisions: See at end of s. 66.

I.T. Application Rules: 29, 30(3).

(14.1) Designation respecting Canadian exploration expense — A corporation may designate for a taxation year, by filing a designation in prescribed form with the Minister on or before the day on or before which it is required to file a return of its income for the year under section 150, a particular amount not exceeding the lesser of

(a) its prescribed Canadian exploration expense for the year, and

(b) its cumulative Canadian exploration expense at the end of the year,

and the particular amount shall be added in computing its cumulative offset account immediately before the end of the year and deducted in computing its cumulative Canadian exploration expense at any time after the end of the year.

Related Provisions: 66.1(3)(a) — Expenses of other taxpayers; 66.1(6)"cumulative Canadian exploration expense"K — Reduction in CCEE; 66.5(1) — Deduction from income — cumulative offset account. See also at end of s. 66.

Regulations: 1217 (prescribed Canadian exploration expense).

Forms: T2098: Designation by a corporation to increase its cumulative offset account.

(14.2) Designation respecting cumulative Canadian development expense — A corporation may designate for a taxation year, by filing a designation in prescribed form with the Minister on or before the day on or before which it is required to file a return of its income for the year under section 150, a particular amount not exceeding

(a) where a deduction has been made under subsection 66.2(2) in computing its income for the year, the lesser of

(i) 30% of its prescribed Canadian development expense for the year, and

(ii) the amount, if any, by which 30% of its cumulative Canadian development expense at the end of the year exceeds the amount, if any, deducted for the year under subsection 66.2(2) in computing its income for the year, or

(b) where a deduction has not been made under subsection 66.2(2) in computing its income for the year, the lesser of

(i) 30% of its prescribed Canadian development expense for the year, and

(ii) 30% of the amount, if any, of its adjusted cumulative Canadian development expense at the end of the year,

and the particular amount shall be added in computing its cumulative offset account immediately before the end of the year and deducted in computing its cumulative Canadian development expense at any time after the end of the year.

Related Provisions: 66(14.3) — Meaning of "adjusted cumulative Canadian development expense"; 66.2(5)"cumulative Canadian development expense"N — Reduction in CCDE; 66.5(1) — Deduction from income — cumulative offset account. See also at end of s. 66.

Regulations: 1218 (prescribed Canadian development expense).

Forms: T2098: Designation by a corporation to increase its cumulative offset account.

(14.3) Definition of "adjusted cumulative Canadian development expense" — For the purposes of paragraph (14.2)(b), "adjusted cumulative Canadian development expense" of a corporation at the end of a taxation year means the amount, if any, that would be its cumulative Canadian development expense at the end of the year, if no Canadian resource property were disposed of by it in the year.

Related Provisions: See at end of s. 66.

(14.4) Special cases — Where, in the opinion of the Minister, the circumstances of a case are such that it would be just and equitable

(a) to permit a designation under subsection (14.1) or (14.2) to be filed after the day on or before which it is required by that subsection to be filed, or

(b) to permit a designation filed under subsection (14.1) or (14.2) to be amended,

the Minister may permit the designation to be filed or amended, as the case may be, after that day, and where the designation or amendment is filed pursuant to that permission, it shall be deemed to have been filed on the day on or before which it was required to be filed if

(c) it is filed with the Minister in prescribed form, and

(d) the corporation filing it pays to the Receiver General at the time of filing the penalty in respect of it,

and where a designation is amended under this subsection, the designation to which the amendment is made shall be deemed not to have been effective.

Related Provisions: See at end of s. 66.

(14.5) Penalty for late designation — For the purposes of this section, the penalty in respect of a designation or amended designation referred to in paragraph (14.4)(a) or (b) is the lesser of

(a) an amount determined by the formula

$$.0025 \times A \times B$$

where

A is

(i) in the case of a late-filed designation, the amount designated therein, and

(ii) in the case of an amended designation, the amount, if any, by which the amount designated in the designation being amended differs from the amount designated in the amended designation, and

B is the number of months each of which is included in whole or in part in the period commencing on the day on or before which the designation was required to be filed under subsection (14.1) or (14.2), as the case may be, and ending on the day the late-filed designation or amended designation, as the case may be, is filed, and

(b) an amount, not exceeding $8,000, equal to the product obtained by multiplying $100 by the number of months each of which is included in whole or in part in the period referred to in the description of B in paragraph (a).

Related Provisions: See at the end of s. 66.

(14.6) Deduction of carved-out income — A taxpayer may deduct in computing the taxpayer's income under this Part for a taxation year, an amount equal to the total of the taxpayer's carved-out incomes for the year within the meaning assigned by subsection 209(1).

Related Provisions: See at end of s. 66.

(15) Definitions — In this section,

Related Provisions: 66.1(6.1) — Application to 66.1; 66.2(5.1) — Application to 66.2; 66.21(2) — Application to 66.21; 66.4(5.1) — Application to 66.4; 66.7(18) — Application to 66.7.

"agreed portion" in respect of a corporation that was a shareholder corporation of a joint exploration corporation means such amount as may be agreed on between the joint exploration corporation and the shareholder corporation not exceeding

(a) the total of all amounts each of which is a payment or loan referred to in paragraph (b) of the definition "shareholder corporation" in this subsection (except to the extent that the payment or loan was made by a shareholder corporation that was not a Canadian corporation and was used by the joint exploration corporation to acquire a Canadian resource property after December 11, 1979 from a shareholder corporation that was not a Canadian corporation) made by the shareholder corporation to the joint exploration corporation during the period it was a shareholder corporation of the joint exploration corporation,

minus

(b) the total of the amounts, if any, previously renounced by the joint exploration corporation under any of subsections (10) to (10.3) in favour of the shareholder corporation;

Related Provisions: 53(2)(f.1) — Deduction from ACB.

Advance Tax Rulings: ATR-60: Joint exploration corporations.

"assistance" means any amount, other than a prescribed amount, received or receivable at any time from a person or government, municipality or other public authority whether the amount is by way of a grant, subsidy, rebate, forgivable loan, deduction from royalty or tax, rebate of royalty or tax, investment allowance or any other form of assistance or benefit;

Related Provisions: 66(16) — Partnership deemed to be a person; 248(16), (16.1), (18), (18.1) — GST and QST input tax credit, refund and rebate deemed to be government assistance.

Interpretation Bulletins: IT-273R2: Government assistance — general comments.

"Canadian exploration and development expenses" incurred by a taxpayer means any expense incurred before May 7, 1974 that is

(a) any drilling or exploration expense, including any general geological or geophysical expense, incurred by the taxpayer after 1971 on or in respect of exploring or drilling for petroleum or natural gas in Canada,

(b) any prospecting, exploration or development expense incurred by the taxpayer after 1971 in searching for minerals in Canada,

(c) the cost to the taxpayer of any Canadian resource property acquired by the taxpayer after 1971,

(d) the taxpayer's share of the Canadian exploration and development expenses incurred after 1971 by any association, partnership or syndicate in a fiscal period thereof, if at the end of that fiscal period the taxpayer was a member or partner thereof,

(e) any expense incurred by the taxpayer after 1971 pursuant to an agreement with a corporation under which the taxpayer incurred the expense solely in consideration for shares of the capital stock of the corporation issued to the taxpayer by the corporation or any interest in such shares or right thereto, to the extent that the expense was incurred as or on account of the cost of

(i) drilling or exploration activities, including any general geological or geophysical activities, in or in respect of exploring or drilling for petroleum or natural gas in Canada,

(ii) prospecting, exploration or development activities in searching for minerals in Canada, or

(iii) acquiring a Canadian resource property, and

(f) any annual payment made by the taxpayer for the preservation of a Canadian resource property,

but, for greater certainty, does not include

(g) any consideration given by the taxpayer for any share or any interest therein or right thereto, except as provided by paragraph (e), or

(h) any expense described in paragraph (e) incurred by another taxpayer to the extent that the expense was, by virtue of that paragraph, a Canadian exploration and development expense of that other taxpayer;

Related Provisions: 49(2) — Where option expires; 53(2)(e)(i) — Deduction from ACB of shares; 66.7(1) — Deduction to successor corporation; 248(1)"Canadian exploration and development expenses" — Definition applies to entire Act. See additional Related Provisions at end of s. 66.

History: Para. (c) of the definition "Canadian exploration and development expenses" in subsec. 66(15) amended by 1998, c. 19, subsec. 104(7), applicable to taxation years that begin after 1984. The para. formerly read:

(c) the cost to the taxpayer of any Canadian resource property acquired by the taxpayer,

Selected Cases [subsec. 66(15)"Canadian exploration and development expenses"]: *Gulf Canada Ltd. v. Canada*, [1991] 1 C.T.C. 99 (FCTD); aff'd [1992] 1 C.T.C. 183 (FCA); leave to appeal to SCC refused (1992), 141 N.R. 393 (note), (sub nom. *Gulf Canada Ltd. v. MNR)* (Interpretation of: "Canadian exploration expenses", "Canadian development expenses", "taxable production profits").

Interpretation Bulletins: IT-109R2: Unpaid amounts.

"Canadian resource property" of a taxpayer means any property of the taxpayer that is

(a) any right, licence or privilege to explore for, drill for or take petroleum, natural gas or related hydrocarbons in Canada,

(b) any right, licence or privilege to

(i) store underground petroleum, natural gas or related hydrocarbons in Canada, or

(ii) prospect, explore, drill or mine for minerals in a mineral resource in Canada,

(c) any oil or gas well in Canada or any real property in Canada the principal value of which depends on its petroleum or natural gas content (but not including any depreciable property),

Proposed Amendment — 66(15)"Canadian resource property"(c)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 220(2), will amend para. (c) of the definition "Canadian resource property" in subsec. 66(15) by substituting "real property or immovable" for "real property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(d) any rental or royalty computed by reference to the amount or value of production from an oil or gas well in Canada or from a natural accumulation of petroleum or natural gas in Canada,

(e) any rental or royalty computed by reference to the amount or value of production from a mineral resource in Canada,

Proposed Amendment — 66(15)"Canadian resource property"(d), (e)

(d) any right to a rental or royalty computed by reference to the amount or value of production from an oil or a gas well in Canada, or from a natural accumulation of petroleum or natural gas in Canada, if the payer of the rental or royalty has an interest in, or for civil law a right in, the well or accumulation, as the case may be, and 90% or more of the rental or royalty is payable out of, or from the proceeds of, the production from the well or accumulation,

(e) any right to a rental or royalty computed by reference to the amount or value of production from a mineral resource in Canada, if the payer of the rental or royalty has an interest in, or for civil law a right in, the mineral resource and 90% or more of the rental or royalty is payable out of, or from the proceeds of, the production from the mineral resource,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 74(6), will amend paras. (d) and (e) of the definition "Canadian resource property" in subsec. 66(15) to read as above, applicable to rights acquired after December 20, 2002.

Technical Notes: A "Canadian resource property" is defined to include various interests in oil and gas and mineral resources located in Canada. The cost of a Canadian resource property is either a Canadian oil and gas property expense or a Canadian development expense.

Paragraphs (d) and (e) of the definition "Canadian resource property" are amended, effective for property acquired after December 20, 2002, to ensure that a rental or royalty described therein will not qualify as a Canadian resource property unless the person paying the rental or royalty has an interest in the property to which the rental or royalty relates and 90% or more of the rental or royalty is payable out of the production from the property.

(f) any real property in Canada the principal value of which depends on its mineral resource content (but not including any depreciable property), or

(g) any right to or interest in any property described in any of paragraphs (a) to (f), other than a right or an interest that the taxpayer has because the taxpayer is a beneficiary under a trust or a member of a partnership;

Proposed Amendment — 66(15)"Canadian resource property"(f)–(h)

(f) any real property or immovable in Canada the principal value of which depends on its mineral resource content (but not including any depreciable property),

(g) any right to or interest in — or, for civil law, any right to or in — any property described in any of paragraphs (a) to (e), other than a right or an interest that the taxpayer has because the taxpayer is a beneficiary under a trust or a member of a partnership, or

(h) an interest in real property or a real right in an immovable;

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 220(3), will amend paras. (f) and (g) of the definition "Canadian resource property" in subsec. 66(15) to read as above, and add para. (h), to come into force on Royal Assent.

Technical Notes: See under 12(4).

Related Provisions: 12(1)(x.2) — Crown charge rebate — income inclusion; 18.1(1)"right to receive production" — CRP excluded from matchable expenditure rules; 59(1) — Disposition of resource property; 66(5) — Dealers; 69 — Inadequate consideration and fair market value; 94.1(1)"investment property"(i) [proposed] — CRP is subject to foreign investment entity rules; 128.1(4)(b)(i) — CRP excluded from deemed disposition on emigration; 209 — Tax on carved-out income; 248(1)"Canadian resource property" — Definition applies to entire Act; 248(4.1) — Meaning of "real right in an immovable"; *Interpretation Act* 8(2.1), (2.2) — Application to exclusive economic zone and continental shelf. See additional Related Provisions at end of s. 66.

History: Para. (g) of the definition "Canadian resource property" in subsec. 66(15) amended by 2003, c. 28, subsec. 4(3), applicable to rights and interests acquired after December 20, 2002. The para. formerly read:

(g) any right to or interest in any property described in any of paragraphs (a) to (f), other than such a right or interest that the taxpayer has by virtue of being a beneficiary of a trust;

Paras. (c) and (f) of the definition "Canadian resource property" in subsec. 66(15) amended by 2001, c. 17, subsecs. 44(12), (13), applicable to taxation years that begin after 2000. Paras. (c) and (f) formerly read:

> (c) any oil or gas well in Canada or any real property in Canada the principal value of which depends on its petroleum or natural gas content (but not including any depreciable property used or to be used in connection with the extraction or removal of petroleum or natural gas therefrom),
>
> . . . . .
>
> (f) any real property in Canada the principal value of which depends upon its mineral resource content (but not including any depreciable property used or to be used in connection with the extraction or removal of minerals therefrom), or

Selected Cases [subsec. 66(15)"Canadian resource property"]: *Alberta Energy Co. v. R.*, [1998] 1 C.T.C. 305 (FCA); aff'd [1995] 1 C.T.C. 2111 (TCC) (Right or privilege was Canadian resource property, not eligible capital amount); *De Luca v. MNR*, [1991] 2 C.T.C. 243 (FCA) (Income from payment of balance of purchase price on transaction completed prior to 1972 validly assessed in year of receipt); *Gulf Canada Ltd. v. Canada*, [1991] 1 C.T.C. 99 (FCTD); aff'd [1992] 1 C.T.C. 183 (FCA); leave to appeal to SCC refused (1992), 141 N.R. 393 (note), *(sub nom. Gulf Canada Ltd. v. MNR)* (Interpretation of: "Canadian exploration expenses", "Canadian development expenses", "taxable production profits"); *R. v. Alberta and Southern Gas Co. Ltd.*, [1978] C.T.C. 780 (SCC) (Sum paid to purchase rights to gas on lands is payment for acquisition of Canadian resource property).

Interpretation Bulletins: IT-125R4: Dispositions of resource properties; IT-273R2: Government assistance — general comments; IT-291R3: Transfer of property to a corporation under subsection 85(1).

I.T. Technical News: 10 (net profits interests and proposed section 18.1).

"drilling or exploration expense" incurred on or in respect of exploring or drilling for petroleum or natural gas includes any expense incurred on or in respect of

> (a) drilling or converting a well for the disposal of waste liquids from a petroleum or natural gas well,
>
> (b) drilling for water or gas for injection into a petroleum or natural gas formation, or
>
> (c) drilling or converting a well for the injection of water or gas to assist in the recovery of petroleum or natural gas from another well;

Related Provisions: 66(16) — Partnerships — person — taxation year; 87(4.4) — Flow-through shares.

Regulations: 6202, 6202.1 (prescribed share).

Interpretation Bulletins: IT-273R2: Government assistance — general comments; IT-400: Exploration and development expenses — meaning of principal-business corporation.

"expense", incurred before a particular time by a taxpayer,

> (a) includes an amount designated by the taxpayer at that time under paragraph 98(3)(d) or (5)(d) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as a cost in respect of property that is a Canadian resource property or a foreign resource property,

but

> (b) for greater certainty, does not include any amount paid or payable
>
> (i) as consideration for services to be rendered after that time, or
>
> (ii) as, on account or in lieu of payment of, or in satisfaction of, rent in respect of a period after that time;

Related Provisions: 66(15)"outlay" — same meaning as "expense".

Selected Cases: *Phénix v. R.*, [1998] 1 C.T.C. 2379 (TCC) (Capital items may form part of CEE).

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-273R2: Government assistance — general comments; IT-503: Exploration and development shares (archived).

"flow-through share" means a share (other than a prescribed share) of the capital stock of a principal-business corporation that is issued to a person under an agreement in writing entered into between the person and the corporation after February 1986, under which the corporation agrees for consideration that does not include property to be exchanged or transferred by the person under the agreement in circumstances in which section 51, 85, 85.1, 86 or 87 applies

> (a) to incur, in the period that begins on the day the agreement was made and ends 24 months after the end of the month that includes that day, Canadian exploration expenses or Canadian development expenses in an amount not less than the consideration for which the share is to be issued, and
>
> (b) to renounce, before March of the first calendar year that begins after that period, in prescribed form to the person in respect of the share, an amount in respect of the Canadian exploration expenses or Canadian development expenses so incurred by it not exceeding the consideration received by the corporation for the share,

and includes a right of a person to have such a share issued to that person and any interest acquired in such a share by a person pursuant to such an agreement;

Proposed Amendment — 66(15)"flow-through share"

"flow-through share" means a share (other than a prescribed share) of the capital stock of a principal-business corporation, or a right (other than a prescribed right) to acquire a share of the capital stock of a principal-business corporation, issued to a person under an agreement in writing made between the person and the corporation under which the corporation, for consideration that does not include property to be exchanged or transferred by the person under the agreement in circumstances to which any of sections 51, 85, 85.1, 86 and 87 applies, agrees

> (a) to incur, in the period that begins on the day on which the agreement was made and ends 24 months after the month that includes that day, Canadian exploration expenses or Canadian development expenses in an amount not less than the consideration for which the share or right is to be issued, and
>
> (b) to renounce, in prescribed form and before March of the first calendar year that begins after that period, to the person in respect of the share or right, an amount in respect of the Canadian exploration expenses or Canadian development expenses so incurred by it not exceeding the consideration received by the corporation for the share or right;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 74(7), will amend the definition "flow-through share" in subsec. 66(15) to read as above, applicable to agreements made after December 20, 2002.

Technical Notes: A flow-through share is a share of the capital stock of a principal-business corporation, or a right to such a share, that is issued to a person pursuant to an agreement in writing under which the corporation agrees to incur resource expenses and renounce those expenses to that person.

The definition is amended to exclude a prescribed right from the class of rights that qualifies as flow-through shares. A "prescribed right" is proposed to be defined in new subsections 6202.1(1.1) and (2.1) of the Regulations. This amendment ensures that restrictions on the type of shares that may qualify as flow-through shares, currently found in subsections

6202.1(1) and (2) of the Regulations, also apply to rights to acquire shares.

The amended definition "flow-through share", which applies to agreements made after December 20, 2002, no longer includes the phrase, "any interest acquired in such a share by a person pursuant to such an agreement". This phrase is being deleted because the amended definition is sufficiently comprehensive to include any interest in property that qualifies as a flow-through share.

Related Provisions: 66(12.6), (12.601) — Flow-through of expenditures to shareholder; 66(16) — Partnership deemed to be a person; 127.52(1)(e), (e.1) — Minimum tax; 248(1)"flow-through share" — Definition applies to entire Act.

History: Paras. (a) and (b) of the definition "flow-through share" in subsec. 66(15) amended by 1997, c. 25, subsec. 13(26), applicable to renunciations made after 1998. Paras. (a) and (b) formerly read:

> (a) to incur, during the period commencing on the day the agreement was entered into and ending 24 months after the end of the month that includes that day, Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses in an amount not less than the consideration for which the share is to be issued, and
>
> (b) to renounce, before March of the first calendar year beginning after that period, in prescribed form to the person in respect of the share, an amount in respect of the Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses so incurred by it not exceeding the consideration received by the corporation for the share,

Para. (b) of the definition "flow-through share" in subsec. 66(15) amended by 1994, c. 8, subsec. 5(18), applicable to shares issued pursuant to an agreement entered into after February 1986. Para. (b) formerly read:

> (b) to renounce, within that period or within 30 days thereafter, in prescribed form to the person in respect of the share, an amount in respect of the Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses so incurred by it not exceeding the consideration received by the corporation for the share,

That portion of the definition "flow through share" preceding para. (a) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 38(10), to add "for consideration that does not include property to be exchanged or transferred by the person under the agreement in circumstances in which section 51, 85, 85.1, 86 or 87 applies", applicable to shares issued pursuant to an agreement in writing entered into after July 13, 1990.

Selected Cases: *Esplen v. Canada*, [1996] 1 C.T.C. 2044 (TCC) (Where loan repayment tied to price of shares, shares were prescribed shares).

Regulations: 6202(1), (2) (prescribed share); 6202.1(1.1), (2.1) (prescribed right).

"foreign exploration and development expenses" incurred by a taxpayer means

(a) any drilling or exploration expense, including any general geological or geophysical expense, incurred by the taxpayer after 1971 on or in respect of exploring or drilling for petroleum or natural gas outside Canada,

(b) any expense incurred by the taxpayer for the purpose of determining the existence, location, extent or quality of a mineral resource outside Canada, including any expense incurred in the course of

(i) prospecting,

(ii) carrying out geological, geophysical or geochemical surveys,

(iii) drilling by rotary, diamond, percussion or other method, or

(iv) trenching, digging test pits and preliminary sampling,

(c) the cost to the taxpayer of any foreign resource property acquired by [the taxpayer],

(d) subject to section 66.8, the taxpayer's share of the foreign exploration and development expenses incurred after 1971 by a partnership in a fiscal period thereof, if at the end of that period the taxpayer was a member of the partnership, and

(e) any annual payment made by the taxpayer for the preservation of a foreign resource property,

but does not include

(f) any amount included at any time in the capital cost to the taxpayer of any depreciable property of a prescribed class,

(g) an expenditure incurred at any time after the commencement of production from a foreign resource property of the taxpayer in order to evaluate the feasibility of a method of recovery of petroleum, natural gas or related hydrocarbons from the portion of a natural reservoir to which the foreign resource property relates,

(h) an expenditure (other than a drilling expense) incurred at any time after the commencement of production from a foreign resource property of the taxpayer in order to assist in the recovery of petroleum, natural gas or related hydrocarbons from the portion of a natural reservoir to which the foreign resource property relates,

(i) an expenditure incurred at any time relating to the injection of any substance to assist in the recovery of petroleum, natural gas or related hydrocarbons from a natural reservoir,

(j) an expenditure that is the cost, or any part of the cost, to the taxpayer of any depreciable property of a prescribed class that was acquired after December 21, 2000,

(k) foreign resource expenses in respect of a country, or

(l) an expenditure made after February 27, 2000 by the taxpayer unless the expenditure was made

(i) pursuant to an agreement in writing made by the taxpayer before February 28, 2000,

(ii) for the acquisition of foreign resource property by the taxpayer, or

(iii) for the purpose of

(A) enhancing the value of foreign resource property that the taxpayer owned at the time the expenditure was incurred or that the taxpayer had a reasonable expectation of owning after that time, or

(B) assisting in evaluating whether a foreign resource property is to be acquired by the taxpayer;

Related Provisions: 66(4) — Deduction for FEDE; 66.7(2) — Deduction to successor corporation; 80(8)(e) — Reduction of FEDE on debt forgiveness; 248(1)"foreign exploration and development expenses" — Definition applies to entire Act.

History: Para. (b) of the definition "foreign exploration and development expenses" in subsec. 66(15) amended by 2001, c. 17, subsec. 44(14), applicable to expenses incurred after December 21, 2000, other than expenses incurred pursuant to an agreement in writing made before December 22, 2000. Para. (b) formerly read:

> (b) any prospecting, exploration or development expense incurred by the taxpayer after 1971 in searching for minerals outside Canada,

Paras. (j) to (l) added to the definition "foreign exploration and development expenses" in subsec. 66(15) by the said c. 17, subsec. 44(15), para. (j) applicable after 2000, para. (k) applicable to taxation years that begin after 2000, and para. (l) applicable after February 27, 2000.

The words "but does not include" and paras. (f) to (i), added to the definition "foreign exploration and development expenses" in subsec. 66(15) by

1997, c. 25, subsec. 13(27), applicable to taxation years that end after December 5, 1996.

Interpretation Bulletins: IT-109R2: Unpaid amounts; IT-273R2: Government assistance — general comments.

"foreign resource property" of a taxpayer means any property that would be a Canadian resource property of the taxpayer if the definition "Canadian resource property" in this subsection were read as if the references therein to "in Canada" were read as references to "outside Canada";

Related Provisions: 18.1(1)"right to receive production" — FRP excluded from matchable expenditure rules; 66.7(2.3) — Successor corporation rules; 94.1(1)"investment property"(i) [proposed] — FRP is subject to foreign investment entity rules ; 248(1)"foreign resource property" — Definition applies to entire Act, and definition of FRP in respect of a country.

Interpretation Bulletins: IT-125R4: Dispositions of resource properties; IT-273R2: Government assistance — general comments.

"joint exploration corporation" means a principal-business corporation that has not at any time since its incorporation had more than 10 shareholders, not including any individual holding a share for the sole purpose of qualifying as a director;

Related Provisions: 248(1)"joint exploration corporation" — Definition applies to entire Act.

Interpretation Bulletins: IT-400: Exploration and development expenses — meaning of principal-business corporation; IT-273R2: Government assistance — general comments.

Advance Tax Rulings: ATR-60: Joint exploration corporations.

"oil or gas well [para. 66(15)(g.1)]" — [Repealed under former Act]

"original owner" of a Canadian resource property or a foreign resource property means a person

(a) who owned the property and disposed of it to a corporation that acquired it in circumstances in which subsection 29(25) of the *Income Tax Application Rules* or subsection 66.7(1), (2), (2.3), (3), (4) or (5) applies, or would apply if the corporation had continued to own the property, to the corporation in respect of the property, and

(b) who would, but for subsection 66.7(12), (13), (13.1) or (17), as the case may be, be entitled in computing that person's income for a taxation year that ends after that person disposed of the property to a deduction under section 29 of the *Income Tax Application Rules* or subsection (2), (3) or (4), 66.1(2) or (3), 66.2(2), 66.21(4) or 66.4(2) of this Act in respect of expenses described in subparagraph 29(25)(c)(i) or (ii) of that Act, Canadian exploration and development expenses, foreign resource pool expenses, Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses incurred by the person before the person disposed of the property;

Related Provisions: 66.7(10.1) — Amalgamation — partnership property.

History: The definition "original owner" in subsec. 66(15) amended by 2001, c. 17, subsec. 44(11), applicable to taxation years that begin after 2000. The definition formerly read:

> "original owner" of a Canadian resource property or a foreign resource property means a person
>
> (a) who owned the property and disposed of it to a corporation that acquired it in circumstances in which subsection 29(25) of the *Income Tax Application Rules* or subsection 66.7(1), (2), (3), (4) or (5) applies, or would apply if the corporation had continued to own the property, to the corporation in respect of the property, and
>
> (b) who would, but for subsection 66.7(12), (13) or (17), as the case may be, be entitled in computing that person's income for a taxation year ending after that person disposed of the property to a deduction under section 29 of the *Income Tax Application Rules* or subsection (2), (3) or (4), 66.1(2) or (3), 66.2(2) or 66.4(2) of this Act in respect of expenses described in subparagraph 29(25)(c)(i) or (ii) of that Act, Canadian exploration and development expenses, foreign exploration and development expenses, Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses incurred by the person before the person disposed of the property;

"outlay" made before a particular time by a taxpayer, has the meaning assigned to the expression "expense" by this subsection;

Interpretation Bulletins: IT-273R2: Government assistance — general comments; IT-503: Exploration and development shares (archived).

"predecessor owner" of a Canadian resource property or a foreign resource property means a corporation

(a) that acquired the property in circumstances in which subsection 29(25) of the *Income Tax Application Rules* or subsection 66.7(1), (2), (2.3), (3), (4) or (5) applies, or would apply if the corporation had continued to own the property, to the corporation in respect of the property,

(b) that disposed of the property to another corporation that acquired it in circumstances in which subsection 29(25) of the *Income Tax Application Rules* or subsection 66.7(1), (2), (2.3), (3), (4) or (5) applies, or would apply if the other corporation had continued to own the property, to the other corporation in respect of the property, and

(c) that would, but for subsection 66.7(14), (15), (15.1) or (17), as the case may be, be entitled in computing its income for a taxation year ending after it disposed of the property to a deduction under subsection 29(25) of the *Income Tax Application Rules* or subsection 66.7(1), (2), (2.3), (3), (4) or (5) in respect of expenses incurred by an original owner of the property;

History: The definition "predecessor owner" in subsec. 66(15) amended by 2001, c. 17, subsec. 44(11), applicable to taxation years that begin after 2000. The definition formerly read:

> "predecessor owner" of a Canadian resource property or a foreign resource property means a corporation
>
> (a) that acquired the property in circumstances in which subsection 29(25) of the *Income Tax Application Rules* or subsection 66.7(1), (2), (3), (4) or (5) applies, or would apply if the corporation had continued to own the property, to the corporation in respect of the property,
>
> (b) that disposed of the property to another corporation that acquired it in circumstances in which subsection 29(25) of the *Income Tax Application Rules* or subsection 66.7(1), (2), (3), (4) or (5) applies, or would apply if the other corporation had continued to own the property, to the other corporation in respect of the property, and
>
> (c) that would, but for subsection 66.7(14), (15) or (17), as the case may be, be entitled in computing its income for a taxation year ending after it disposed of the property to a deduction under subsection 29(25) of the *Income Tax Application Rules* or subsection 66.7(1), (2), (3), (4) or (5) in respect of expenses incurred by an original owner of the property;

"principal-business corporation" means a corporation the principal business of which is any of, or a combination of,

(a) the production, refining or marketing of petroleum, petroleum products or natural gas,

(a.1) exploring or drilling for petroleum or natural gas,

(b) mining or exploring for minerals,

(c) the processing of mineral ores for the purpose of recovering metals or minerals from the ores,

(d) the processing or marketing of metals or minerals that were recovered from mineral ores and that include metals or minerals recovered from mineral ores processed by the corporation,

(e) the fabrication of metals,

(f) the operation of a pipeline for the transmission of oil or gas,

(f.1) the production or marketing of calcium chloride, gypsum, kaolin, sodium chloride or potash,

(g) the manufacturing of products, where the manufacturing involves the processing of calcium chloride, gypsum, kaolin, sodium chloride or potash,

(h) the generation of energy using property described in Class 43.1 of Schedule II to the *Income Tax Regulations*, and

(i) the development of projects for which it is reasonable to expect that at least 50% of the capital cost of the depreciable property to be used in each project would be the capital cost of property described in Class 43.1 of Schedule II to the *Income Tax Regulations*,

or a corporation all or substantially all of the assets of which are shares of the capital stock or indebtedness of one or more principal-business corporations that are related to the corporation (otherwise than because of a right referred to in paragraph 251(5)(b));

Related Provisions: 66(2) — Expenses of special products corporations; 66.1(2) — Deduction for principal-business corporation; 66.1(3) — Deduction for corporation that is a principal-business corporation solely under paras. (h) and (i); 115(4) — Non-resident's income from Canadian resource property. See also at end of s. 66.

History: Paras. (h) and (i) added to the definition "principal-business corporation" in subsec. 66(15) by 1997, c. 25, subsec. 13(28), applicable after December 5, 1996.

The definition "principal-business corporation" in subsec. 66(15) substituted by 1994, c. 21, s. 28, applicable to 1993 *et seq.*, except that

(a) a corporation may elect that the amended definition not apply to its 1993 to 1996 taxation years by so notifying the Minister of National Revenue in writing by December 31, 1994; and

(b) it does not apply to transactions and events that occur before the 1993 taxation year.

The definition "principal-business corporation" formerly read:

"principal-business corporation" means a corporation whose principal business is

(a) production, refining or marketing of petroleum, petroleum products or natural gas, or exploring or drilling for petroleum or natural gas,

(b) mining or exploring for minerals,

(c) processing mineral ores for the purpose of recovering metals therefrom,

(d) a combination of

(i) processing mineral ores for the purpose of recovering metals therefrom, and

(ii) processing metals recovered from the ores so processed,

(e) fabricating metals,

(f) operating a pipeline for the transmission of oil or natural gas, or

(g) production or marketing of sodium chloride or potash, or whose business includes manufacturing products the manufacturing of which involves processing sodium chloride or potash,

or a corporation all or substantially all of the assets of which are shares of the capital stock of one or more other corporations that are related to the corporation (otherwise than by reason of a right referred to in paragraph 251(5)(b)) and whose principal business is described in any of paragraphs (a) to (g);

Interpretation Bulletins: IT-273R2: Government assistance — general comments; IT-400: Exploration and development expenses — meaning of principal-business corporation.

Advance Tax Rulings: ATR-60: Joint exploration corporations.

"production" from a Canadian resource property or a foreign resource property means

(a) petroleum, natural gas and related hydrocarbons produced from the property,

(b) heavy crude oil produced from the property processed to any stage that is not beyond the crude oil stage or its equivalent,

(c) ore (other than iron ore or tar sands) produced from the property processed to any stage that is not beyond the prime metal stage or its equivalent,

(d) iron ore produced from the property processed to any stage that is not beyond the pellet stage or its equivalent,

(e) tar sands produced from the property processed to any stage that is not beyond the crude oil stage or its equivalent, and

(f) any rental or royalty from the property computed by reference to the amount or value of the production of petroleum, natural gas or related hydrocarbons or ore;

"reserve amount" of a corporation for a taxation year in respect of an original owner or predecessor owner of a Canadian resource property means the amount determined by the formula

$$A - B$$

where

A is the total of all amounts that are

(a) required by subsection 59(2) to be included in computing the corporation's income for the year, and

(b) in respect of a reserve, deducted in computing the income of the original owner or predecessor owner and deemed by paragraph 87(2)(g) or by virtue of that paragraph and paragraph 88(1)(e.2) to have been deducted by the corporation as a reserve in computing its income for a preceding taxation year, and

B is the total of amounts deducted in computing the corporation's income for the year by virtue of subsection 64(1), (1.1) or (1.2)[5] in respect of dispositions by the original owner or predecessor owner, as the case may be;

Related Provisions: 257 — Formula cannot calculate to less than zero.

"selling instrument" in respect of flow-through shares means a prospectus, registration statement, offering memorandum, term sheet or other similar document that describes the terms of the offer (including the price and number of shares) pursuant to which a corporation offers to issue flow-through shares;

"shareholder corporation" of a joint exploration corporation means a corporation that for the period in respect of which the expression is being applied

(a) was a shareholder of the joint exploration corporation, and

[5] i.e., those subsecs. of R.S.C. 1952, c. 148, as amended.

(b) made a payment or loan to the joint exploration corporation in respect of Canadian exploration and development expenses, a Canadian exploration expense, a Canadian development expense or a Canadian oil and gas property expense incurred or to be incurred by the joint exploration corporation.

Advance Tax Rulings: ATR-60: Joint exploration corporations.

"specified foreign exploration and development expense" of a taxpayer in respect of a country (other than Canada) means an amount that is included in the taxpayer's foreign exploration and development expenses and that is

(a) a drilling or exploration expense, including any general geological or geophysical expense, incurred by the taxpayer on or in respect of exploring or drilling for petroleum or natural gas in that country,

(a.1) an expense incurred by the taxpayer after December 21, 2000 (otherwise than pursuant to an agreement in writing made before December 22, 2000) for the purpose of determining the existence, location, extent or quality of a mineral resource in that country, including any expense incurred in the course of

(i) prospecting,

(ii) carrying out geological, geophysical or geochemical surveys,

(iii) drilling by rotary, diamond, percussion or other methods, or

(iv) trenching, digging test pits and preliminary sampling,

(b) a prospecting, exploration or development expense incurred by the taxpayer before December 22, 2000 (or after December 21, 2000 pursuant to an agreement in writing made before December 22, 2000) in searching for minerals in that country,

(c) the cost to the taxpayer of the taxpayer's foreign resource property in respect of that country,

(d) an annual payment made by the taxpayer in a taxation year of the taxpayer for the preservation of a foreign resource property in respect of that country,

(e) an amount deemed by subsection 21(2) or (4) to be a foreign exploration and development expense incurred by the taxpayer, to the extent that it can reasonably be considered to relate to an amount that, without reference to this paragraph and paragraph (f), would be a specified foreign exploration and development expense in respect of that country, or

(f) subject to section 66.8, the taxpayer's share of the specified foreign exploration and development expenses of a partnership incurred in respect of that country in a fiscal period of the partnership if, at the end of that period, the taxpayer was a member of the partnership.

Related Provisions: 66(4.1), (4.2) — Country-by-country allocation of specified FEDE; 248(1)"foreign resource property" — Meaning of foreign resource property in respect of a country.

History: The definition "specified foreign exploration and development expense" added to subsec. 66(15) by 2001, c. 17, subsec. 44(16), applicable after 1994.

(15.1) Other definitions — The definitions in subsections 66.1(6), 66.2(5), 66.21(1), 66.4(5) and 66.5(2) apply in this section.

History: Subsec. 66(15.1) amended by 2001, c. 17, subsec. 44(17), applicable after 2000. Subsec. 66(15.1) formerly read:

(15.1) Application of subsecs. 66.1(6), 66.2(5), 66.4(5) and 66.5(2) — The definitions in subsections 66.1(6), 66.2(5), 66.4(5) and 66.5(2) apply to this section.

Origin of subsec. 66(15.1): R.S.C. 1985, c. 1 (5th Supp.). Formerly contained in the opening words to 66.1(6), 66.2(5), 66.4(5) and 66.5(2).

(16) Partnerships — For the purposes of subsections (12.6) to (12.73), the definitions "assistance" and "flow-through share" in subsection (15) and subsections (18), (19) and 66.3(3) and (4), a partnership is deemed to be a person and its taxation year is deemed to be its fiscal period.

History: Subsec. 66(16) amended by 1997, c. 25, subsec. 13(29), applicable to fiscal periods that end after 1995. Subsec. (16) formerly read:

(16) For the purposes of subsections (12.6) to (12.66), the definitions "assistance" and "flow-through share" in subsection (15) and subsections (18), (19) and 66.3(3) and (4), a partnership shall be deemed to be a person and its taxation year shall be deemed to be its fiscal period.

Subsec. 66(16) amended to add reference to subsecs. (18) and (19) by 1994, c. 7, Sch. II (1991, c. 49), subsec. 38(11), applicable to fiscal periods ending after February 1986.

(17) Non-arm's length partnerships — For the purpose of paragraph (12.66)(d), a partnership and a corporation are, at all times in a calendar year,

(a) deemed not to deal with each other at arm's length, if

(i) an expense is deemed by subsection (12.61) to be incurred by the partnership,

(ii) the expense would, if this Act were read without reference to paragraph (12.61)(b), be incurred in the calendar year by the corporation, and

(iii) a share of the expense is included, because of paragraph (h) of the definition "Canadian exploration expense" in subsection 66.1(6), in the Canadian exploration expense of the corporation or of a member of the partnership with whom the corporation, at any time in that calendar year, does not deal at arm's length; and

(b) deemed to deal with each other at arm's length, in any other case.

History: Subsec. 66(17) amended by 2003, c. 28, subsec. 4(4), applicable to expenses incurred after 1996, other than expenses incurred in January or February 1997 in respect of an agreement that was made in 1995. The subsec. formerly read:

(17) Where an expense would, but for paragraph (12.61)(b), be incurred during the first 60 days of a calendar year by a corporation and the expense is deemed by subsection (12.61) to be incurred by a partnership, the partnership and the corporation shall be deemed not to deal with each other at arm's length throughout that period for the purposes of paragraph (12.66)(d) only where a share of the expense of the partnership is included because of paragraph (h) of the definition "Canadian exploration expense" in subsection 66.1(6) in the Canadian exploration expense of the corporation or a member of the partnership with whom the corporation does not deal at arm's length at any time during that period.

Subsec. 66(17) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 38(11), applicable to fiscal periods ending after February 1986. Subsec. 66(17) formerly read:

(17) For the purpose of paragraph (12.66)(d), where an expense incurred during a period by a corporation that is, but for this subsection, deemed by subsection (12.61) to be incurred by a partnership is attributable directly or indirectly to a member of the partnership who does not deal with the corporation at arm's length, the partnership and the corporation shall be deemed not to deal with each other at arm's length during the period.

(18) Members of partnerships — For the purposes of this section, subsection 21(2), sections 59.1 and 66.1 to

66.7, paragraph (d) of the definition "investment expense" in subsection 110.6(1) and the descriptions of C and D in subsection 211.91(1), where a person's share of an outlay or expense made or incurred by a partnership in a fiscal period of the partnership is included in respect of the person under paragraph (d) of the definition "foreign exploration and development expenses" in subsection (15), paragraph (h) of the definition "Canadian exploration expense" in subsection 66.1(6), paragraph (f) of the definition "Canadian development expense" in subsection 66.2(5), paragraph (e) of the definition "foreign resource expense" in subsection 66.21(1) or paragraph (b) of the definition "Canadian oil and gas property expense" in subsection 66.4(5), the portion of the outlay or expense so included is deemed, except for the purposes of applying the definitions "foreign exploration and development expenses", "Canadian exploration expense", "Canadian development expense", "foreign resource expense" and "Canadian oil and gas property expense" in respect of the person, to be made or incurred by the person at the end of that fiscal period.

Related Provisions: 6(16) — Partnership deemed to be a person; 66.1(7) — Canadian exploration expense — share of partner; 66.2(6) — Canadian development expense — share of partner; 66.4(6) — Canadian oil and gas property expense — share of partner; 96(1)(d) — Partnerships — no deduction at partnership level; 127(9)"investment tax credit"(a.2), 127(9)"flow-through mining expenditure" — Investment tax credit.

History: Subsec. 66(18) amended by 2001, c. 17, subsec. 44(18), applicable to fiscal periods that begin after 2000. Subsec. 66(18) formerly read:

> (18) For the purposes of this section, subsection 21(2), sections 59.1 and 66.1 to 66.7, paragraph (d) of the definition "investment expense" in subsection 110.6(1) and the descriptions of C and D in subsection 211.91(1), where a person's share of an outlay or expense made or incurred by a partnership in a fiscal period of the partnership is included in respect of the person under paragraph (d) of the definition "foreign exploration and development expenses" in subsection (15), paragraph (h) of the definition "Canadian exploration expense" in subsection 66.1(6), paragraph (f) of the definition "Canadian development expense" in subsection 66.2(5) or paragraph (b) of the definition "Canadian oil and gas property expense" in subsection 66.4(5), the portion of the outlay or expense so included is deemed, except for the purposes of applying the definitions "foreign exploration and development expenses", "Canadian exploration expense", "Canadian development expense" and "Canadian oil and gas property expense" in respect of the person, to be made or incurred by the person at the end of that fiscal period.

Subsec. 66(18) amended by 1997, c. 25, subsec. 13(30), applicable to fiscal periods that end after 1996. Subsec. (18) formerly read:

> (18) For the purposes of this section, subsection 21(2), sections 59.1 and 66.1 to 66.7 and paragraph (d) of the definition "investment expense" in subsection 110.6(1), where a person's share of an outlay or expense incurred by a partnership in a fiscal period thereof is included in respect of the person under paragraph (d) of the definition "foreign exploration and development expenses" in subsection (15), paragraph (h) of the definition "Canadian exploration expense" in subsection 66.1(6), paragraph (f) of the definition "Canadian development expense" in subsection 66.2(5) or paragraph (b) of the definition "Canadian oil and gas property expense" in subsection 66.4(5), the portion of the outlay or expense so included shall be deemed, except for the purposes of applying the definitions "foreign exploration and development expenses", "Canadian exploration expense", "Canadian development expense" and "Canadian oil and gas property expense" in respect of the person, to be made or incurred by the person at the end of that fiscal period.

Subsec. 66(18) added by 1991, c.49, subsec. 38(12) applicable to fiscal periods ending after February 1986.

(19) Renunciation by corporate partner, etc. — A corporation is not entitled to renounce under subsection (12.6), (12.601) or (12.62) to a person a specified amount in respect of the corporation where the corporation would not be entitled to so renounce the specified amount if

> (a) the expression "end of that fiscal period" in subsection (18) were read as "time the outlay or expense was made or incurred by the partnership"; and
>
> (b) the expression "on the effective date of the renunciation" in each of paragraphs (12.61)(a) and (12.63)(a) were read as "at the earliest time that any part of such expense was incurred by the corporation".

Related Provisions: 66(16) — Partnership deemed to be a person; 66(20) — Meaning of "specified amount".

History: Subsec. 66(19) amended by 1997, c. 25, subsec. 13(31), applicable to renunciations made after 1998. Subsec. (19) formerly read:

> (19) Renunciation by member of partnership, etc. — Notwithstanding subsections (12.6), (12.601), (12.62) and (12.64), where at any time a corporation
>
> (a) would, but for this subsection, be entitled to renounce under subsection (12.6), (12.601), (12.62) or (12.64) to another person
>
> (i) all or part of the corporation's share of an outlay or expense made or incurred by a partnership of which the corporation is a member or former member at that time, or
>
> (ii) all or part of an amount renounced to the corporation under subsection (12.6), (12.601), (12.62) or (12.64), and
>
> (b) would not be entitled to so renounce the amount described in subparagraph (a)(i) or (ii) to the other person if
>
> (i) the expression "end of that fiscal period" in subsection (18) were read as "time the outlay or expense was made or incurred by the partnership", and
>
> (ii) the expression "on the effective date of the renunciation" in each of paragraphs (12.61)(a), (12.63)(a) and (12.65)(a) were read as "at the earliest time that any part of such expense was incurred by the corporation",
>
> the corporation is not entitled to renounce that amount under subsection (12.6), (12.601), (12.62) or (12.64), as the case may be, at that time to the other person.

Subsec. 66(19) amended by 1994, c. 8, subsec. 5(19), applicable to renunciations of outlays or expenses made or incurred after December 2, 1992. Subsec. (19) formerly read:

> (19) Notwithstanding subsections (12.6), (12.62) and (12.64), where at any time a corporation
>
> (a) would, but for this subsection, be entitled to renounce
>
> (i) all or part of its share of an outlay or expense made or incurred by a partnership of which the corporation is a member or former member at that time, or
>
> (ii) all or part of an amount renounced to the corporation under subsection (12.6), (12.62) or (12.64),
>
> under subsection (12.6), (12.62) or (12.64) to another person, and
>
> (b) would, if
>
> (i) the expression "end of that fiscal period" in subsection (18) were read as "time the outlay or expense was made or incurred by the partnership", and
>
> (ii) the expression "on the effective date of the renunciation" in each of paragraphs (12.61)(a), (12.63)(a) and (12.65)(a) were read as "at the earliest time that any part of such expense was incurred by the corporation",
>
> not be entitled to so renounce the amount described in subparagraph (a)(i) or (ii) to the other person,
>
> the corporation is not entitled to renounce that amount under subsection (12.6), (12.62) or (12.64), as the case may be, at that time to the other person.

Subsec. 66(19) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 38(12) applicable to renunciations of outlays or expenses made or incurred after July 13, 1990, other than such outlays or expenses made or incurred pursuant to an agreement in writing entered into before July 14, 1990.

(20) Specified amount — For the purpose of subsection (19), a specified amount in respect of a corporation is an amount that represents

(a) all or part of the corporation's share of an outlay or expense made or incurred by a partnership of which the corporation is a member or former member; or

(b) all or part of an amount renounced to the corporation under subsection (12.6), (12.601) or (12.62).

History: Subsec. 66(20) added by 1997, c. 25, subsec. 13(31), applicable to renunciations made after 1998.

Related Provisions [s. 66]: 35(1)(e) — Prospectors and grubstakers; 66.1(6), 66.2(5), 66.4(5) — Definitions; 66.7 — Successor rules; 66.8(1) — Resource expenses of limited partner; 87(1.2) — Amalgamations — new corporation deemed continuation of predecessor; 88(1.5) — Winding-up — parent deemed continuation of subsidiary; 127.52(1)(e) — Addition to adjusted taxable income for minimum tax purposes; 209 — Tax on carved-out income.

Definitions [s. 66]: "acquired" — 256(7)–(9); "adjusted cost base" — 54, 248(1); "adjusted cumulative Canadian development expense" — 66(14.3); "affiliated" — 66(11.5), 251.1; "agreed portion" — 66(15); "amount" — 248(1); "arm's length" — 66(17), 251(1); "assessment" — 248(1); "assistance" — 66(15), 79(4), 125.4(5), 248(16), (16.1), (18), (18.1); "associated" — 256; "beneficially interested" — 248(25); "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255, *Interpretation Act* 8(2.1), (2.2); "Canadian corporation" — 89(1), 248(1); "Canadian development expense" — 66.2(5), 248(1); "Canadian exploration and development expenses" — 66(15), 248(1); "Canadian exploration expense" — 66.1(6), 248(1); "Canadian oil and gas property expense" — 66.4(5), 248(1); "Canadian resource property" — 66(15), 248(1); "capital gain" — 39(1), 248(1); "capital property" — 54, 248(1); "control" — 256(6)–(9); "corporation" — 248(1), *Interpretation Act* 35(1); "cumulative Canadian development expense" — 66(15.1), 66.2(5); "cumulative Canadian exploration expense" — 66(15.1), 66.1(6); "cumulative Canadian oil and gas property expense" — 66(15.1), 66.4; "cumulative foreign resource expense" — 66.21(1); "cumulative offset account" — 66(15.1), 66.5(2); "depreciable property" — 13(21), 248(1); "disposition" — 54, 66.4(5), 248(1); "drilling or exploration expense", "expense" — 66(15); "fiscal period" — 66(16), 249(2), 249.1; "flow-through share" — 66(15); "foreign exploration and development expenses" — 66(15), 248(1); "foreign resource expense" — 66.21(1), 248(1); "foreign resource pool expense" — 248(1); "foreign resource property" — 66(15), 248(1); "global foreign resource limit" — 66.21(1); "Her Majesty" — *Interpretation Act* 35(1); "immovable" — Quebec *Civil Code* art. 900–907; "individual" — 248(1); "in respect of that country" — 248(1)"foreign resource property"; "joint exploration corporation" — 66(15); "majority interest partner", "mineral", "mineral resource", "Minister", "oil or gas well" — 248(1); "original owner", "outlay" — 66(15); "person" — 66(16), 248(1); "predecessor owner" — 66(15); "prescribed" — 248(1); "principal-business corporation", "production" — 66(15); "prohibited relationship" — 66(12.671); "property" — 248(1); "real right in an immovable" — 248(4.1); "related" — 66(11.5), 251(2); "reserve amount" — 66(15); "resident in Canada" — 94(3)(a)(viii), 250; "restricted expense" — 66(15.1), 66.1(6); "selling instrument" — 66(15); "share", "shareholder" — 248(1); "shareholder corporation" — 66(15); "specified amount" — 66(20); "specified foreign exploration and development expense" — 66(15); "specified purpose" — 66(15.1), 66.1(6); "tar sands" — 248(1); "taxable capital amount" — 66(12.6011); "taxable capital employed in Canada" — 66(12.6012); "taxation year" — 66(16), 249; "taxpayer" — 248(1); "writing" — *Interpretation Act* 35(1).

I.T. Application Rules [s. 66]: 29, 30.

66.1 [Canadian exploration expenses] — (1) Amount to be included in income — There shall be included in computing the amount referred to in paragraph 59(3.2)(b) in respect of a taxpayer for a taxation year the amount, if any, by which

(a) the total of all amounts referred to in the descriptions of F to M in the definition "cumulative Canadian exploration expense" in subsection (6) that are deducted in computing the taxpayer's cumulative Canadian exploration expense at the end of the year

exceeds the total of

(b) all amounts referred to in the descriptions of A to E.1 in the definition "cumulative Canadian exploration expense" in subsection (6) that are included in computing the taxpayer's cumulative Canadian exploration expense at the end of the year, and

(c) the total determined under subparagraph 66.7(12.1)(a)(i) in respect of the taxpayer for the year.

Related Provisions: 59(3.2)(b) — Income inclusion; 66.7(1) — Successor of Canadian exploration and development expenses; 87(1.3) — Amalgamations — shareholder corporation. See also at end of s. 66.1.

History: Subsec. 66.1(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 39(1), applicable to taxation years ending after February 17, 1987, except that with respect to such taxation years beginning before February 18, 1987, the reference to "E.1" in para. (b) shall be read as "D". Subsec. (1) formerly read:

66.1 (1) A taxpayer shall include, in computing the amount referred to in paragraph 59(3.2)(b), the amount, if any, by which

(a) the total of all amounts referred to in the descriptions of F to M in the definition "cumulative Canadian exploration expense" in subsection (6) that would be taken into account in computing the taxpayer's cumulative Canadian exploration expense at the end of the year

exceeds

(b) the total of all amounts referred to in the descriptions of A to D in the definition referred to in paragraph (a) that would be taken into account in computing the taxpayer's cumulative Canadian exploration expense at the end of the year.

(2) Deduction for certain principal-business corporations — In computing the income for a taxation year of a principal-business corporation (other than a corporation that would not be a principal-business corporation if the definition "principal-business corporation" in subsection 66(15) were read without reference to paragraphs (h) and (i) of that definition), there may be deducted any amount that the corporation claims not exceeding the lesser of

(a) the total of

(i) the amount, if any, by which its cumulative Canadian exploration expense at the end of the year exceeds the amount, if any, designated by it for the year under subsection 66(14.1), and

(ii) the amount, if any, by which

(A) the total determined under subparagraph 66.7(12.1)(a)(i) in respect of the corporation for the year

exceeds

(B) the amount that would be determined under subsection (1) in respect of the corporation for the year, if that subsection were read without reference to paragraph (c) thereof, and

(b) the amount, if any, by which

(i) the amount that would be its income for the year if no deduction (other than a prescribed deduction) were allowed under this subsection or section 65

exceeds

(ii) the total of all amounts each of which is an amount deducted by the corporation under section 112 or 113 in computing its taxable income for the year.

Related Provisions: 20(1)(hh) — Repayments of inducements, etc.; 65 — Allowance for oil or gas well, mine or timber limit; 66 — Exploration and development expenses; 66.1(3) — Deduction for other taxpayers; 66.7(1) — Successor of Canadian exploration and development expenses; 127.52(1)(e) — Add-back of deduction for minimum tax purposes; 209 — Tax on carved-out income. See also at end of s. 66.1.

History: The opening words of subsec. 66.1(2) amended by 1997, c. 25, subsec. 14(1), applicable to taxation years that end after December 5, 1996. The opening words formerly read:

(2) Deduction for principal-business corporation — In computing the income of a principal-business corporation for a taxation year, there may be deducted any amount that the corporation claims not exceeding the lesser of

Subsec. 66.1(2) amended by 1994, c. 8, subsec. 6(1), applicable to taxation years ending after December 2, 1992. Subsec. (2) formerly read:

(2) In computing its income for a taxation year, a taxpayer that is a principal-business corporation

(a) shall deduct an amount equal to the lesser of

(i) the amount, if any by which its cumulative Canadian exploration expense at the end of the year exceeds the amount, if any, designated by it for the year under subsection 66(14.1), and

(ii) its income for the year (computed without reference to subsection 59(3.3)) if no deduction (other than a prescribed deduction) were allowed under this subsection or section 65 minus the deductions allowed for the year by sections 112 and 113; and

(b) may deduct such amount as it claims not exceeding the total of

(i) the lesser of

(A) the amount, if any, by which

(I) the total determined under subparagraph 66.7(12.1)(a)(i) in respect of the taxpayer for the year

exceeds

(II) the amount that would, but for paragraph (1)(c), be the amount determined under subsection (1) in respect of the taxpayer for the year, and

(B) the amount, if any, by which

(I) the amount, if any, determined under subparagraph (a)(ii) in respect of the taxpayer for the year

exceeds

(II) the amount, if any, deducted under paragraph (a) by the taxpayer for the year, and

(ii) the least of

(A) the total of amounts included under subsection 59(3.3) in computing its income for the year,

(B) the total of

(I) the amount, if any, by which the amount determined under subparagraph (a)(i) in respect of the taxpayer for the year exceeds the amount determined under subparagraph (a)(ii) in respect of the taxpayer for the year, and

(II) the amount, if any, by which the amount determined under clause (i)(A) in respect of the taxpayer for the year exceeds the amount determined under clause (i)(B) in respect of the taxpayer for the year, and

(C) the amount that would be determined under subparagraph (a)(ii) in respect of the taxpayer for the year if that subparagraph were read without reference to the expression "(computed without reference to subsection 59(3.3))".

Para. 66.1(2)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 39(2), applicable to taxation years ending after February 17, 1987. Para. (b) formerly read:

(b) may deduct such amount as it may claim not exceeding the least of

(i) the total of amounts required to be included in computing its income for the year by virtue of subsection 59(3.3),

(ii) the amount, if any, by which the amount described in subparagraph (a)(i) exceeds the amount described in subparagraph (a)(ii), and

(iii) the amount that would be determined under subparagraph (a)(ii) if that subparagraph were read without reference to "(computed without reference to subsection 59(3.3))".

Regulations: 1213 (prescribed deduction).

Interpretation Bulletins: IT-400: Exploration and development expenses — meaning of principal-business corporation.

Advance Tax Rulings: ATR-59: Financing exploration and development through limited partnerships.

(3) Expenses of other taxpayer — In computing the income for a taxation year of a taxpayer that is not a principal-business corporation, or that is a corporation that would not be a principal-business corporation if the definition "principal-business corporation" in subsection 66(15) were read without reference to paragraphs (h) and (i) of that definition, there may be deducted such amount as the taxpayer claims not exceeding the total of

(a) the amount, if any, by which the taxpayer's cumulative Canadian exploration expense at the end of the year exceeds the amount, if any, designated by the taxpayer for the year under subsection 66(14.1), and

(b) the amount, if any, by which

(i) the total determined under subparagraph 66.7(12.1)(a)(i) in respect of the taxpayer for the year

exceeds

(ii) the amount that would, but for paragraph (1)(c), be the amount determined under subsection (1) in respect of the taxpayer for the year.

Related Provisions: 66.1(2) — Deduction for principal-business corporation; 110.6(1)"investment expense"(d) — effect of claim under 66.1(3) on capital gains exemption; 127.52(1)(e) — Add-back of deduction for minimum tax purposes. See also at end of s. 66.1.

History: The opening words of subsec. 66.1(3) amended by 1997, c. 25, subsec. 14(2), applicable to taxation years that end after December 5, 1996. The opening words formerly read:

(3) In computing the income of a taxpayer (other than a principal-business corporation) for a taxation year, there may be deducted such amount as the taxpayer claims not exceeding the total of

Subsec. 66.1(3) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 39(3), applicable to taxation years ending after February 17, 1987. Subsec. (3) formerly read:

(3) A taxpayer other than a principal-business corporation may deduct, in computing the taxpayer's income for a taxation year, such amount as the taxpayer may claim not exceeding the amount, if any, by which the taxpayer's cumulative Canadian exploration expense at the end of the year exceeds the amount, if any, designated by the taxpayer for the year under subsection 66(14.1).

Advance Tax Rulings: ATR-59: Financing exploration and development through limited partnerships.

(4), (5) [Repealed under former Act]

(6) Definitions — In this section,

"Canadian exploration expense" of a taxpayer means any expense incurred after May 6, 1974 that is

(a) any expense including a geological, geophysical or geochemical expense incurred by the taxpayer (other than an expense incurred in drilling or completing an oil or gas well or in building a temporary access road to, or preparing a site in respect of, any such well) for the purpose of determining the existence, location, extent or quality of an accumulation of petroleum or natural gas (other than a mineral resource) in Canada,

(b) any expense (other than an expense incurred in drilling or completing an oil or gas well or in building a temporary access road to, or preparing a site in respect of, any such well) incurred by the taxpayer after March, 1985 for the purpose of bringing a natural accumulation of petroleum or natural gas (other than a mineral resource) in Canada into production and incurred prior to the commencement of the production (other than the production from an oil or gas well) in

reasonable commercial quantities from such accumulation, including

(i) clearing, removing overburden and stripping, and

(ii) sinking a shaft or constructing an adit or other underground entry,

(c) any expense incurred before April, 1987 in drilling or completing an oil or gas well in Canada or in building a temporary access road to, or preparing a site in respect of, any such well,

(i) incurred by the taxpayer in the year, or

(ii) incurred by the taxpayer in any previous year and included by the taxpayer in computing the taxpayer's Canadian development expense for a previous taxation year,

if, within six months after the end of the year, the drilling of the well is completed and

(iii) it is determined that the well is the first well capable of production in commercial quantities from an accumulation of petroleum or natural gas (other than a mineral resource) not previously known to exist, or

(iv) it is reasonable to expect that the well will not come into production in commercial quantities within twelve months of its completion,

(d) any expense incurred by the taxpayer after March, 1987 and in a taxation year of the taxpayer in drilling or completing an oil or gas well in Canada or in building a temporary access road to, or preparing a site in respect of, any such well if

(i) the drilling or completing of the well resulted in the discovery that a natural underground reservoir contains petroleum or natural gas, where

(A) before the time of the discovery, no person or partnership had discovered that the reservoir contained either petroleum or natural gas, and

(B) the discovery occurred at any time before six months after the end of the year,

(ii) the well is abandoned in the year or within six months after the end of the year without ever having produced otherwise than for specified purposes,

(iii) the period of 24 months commencing on the day of completion of the drilling of the well ends in the year, the expense was incurred within that period and in the year and the well has not within that period produced otherwise than for specified purposes, or

(iv) there has been filed with the Minister, on or before the day that is 6 months after the end of the taxation year of the taxpayer in which the drilling of the well was commenced, a certificate issued by the Minister of Natural Resources certifying that, on the basis of evidence submitted to that Minister, that Minister is satisfied that

(A) the total of expenses incurred and to be incurred in drilling and completing the well, in building a temporary access road to the well and in preparing the site in respect of the well will exceed $5,000,000, and

(B) the well will not produce, otherwise than for a specified purpose, within the period of 24 months commencing on the day on which the drilling of the well is completed,

(e) any expense deemed by subsection (9) to be a Canadian exploration expense incurred by the taxpayer,

(f) any expense incurred by the taxpayer (other than an expense incurred in drilling or completing an oil or gas well or in building a temporary access road to, or preparing a site in respect of, any such well) for the purpose of determining the existence, location, extent or quality of a mineral resource in Canada including any expense incurred in the course of

(i) prospecting,

(ii) carrying out geological, geophysical or geochemical surveys,

(iii) drilling by rotary, diamond, percussion or other methods, or

(iv) trenching, digging test pits and preliminary sampling,

but not including

(v) any Canadian development expense, or

(vi) any expense that may reasonably be considered to be related to a mine that has come into production in reasonable commercial quantities or to be related to a potential or actual extension thereof,

(g) any expense incurred by the taxpayer after November 16, 1978 for the purpose of bringing a new mine in a mineral resource in Canada into production in reasonable commercial quantities and incurred before the new mine comes into production in such quantities, including an expense for clearing, removing overburden, stripping, sinking a mine shaft or constructing an adit or other underground entry,

(g.1) any Canadian renewable and conservation expense incurred by the taxpayer,

(h) subject to section 66.8, the taxpayer's share of any expense referred to in any of paragraphs (a) to (d) and (f) to (g.1) incurred by a partnership in a fiscal period thereof, if at the end of the period the taxpayer is a member of the partnership, or

(i) any expense referred to in any of paragraphs (a) to (g) incurred by the taxpayer pursuant to an agreement in writing with a corporation, entered into before 1987, under which the taxpayer incurred the expense solely as consideration for shares, other than prescribed shares, of the capital stock of the corporation issued to the taxpayer or any interest in such shares or right thereto,

Proposed Amendment — 66.1(6)"Canadian exploration expense"(i)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 221(1), will amend para. (i) of the definition "Canadian exploration expense" in subsec. 66.1(6) by substituting "interest in or right to — or, for civil law, any right in or to — such shares" for "interest in such shares or right thereto", to come into force on Royal Assent.

Technical Notes: See under 12(4).

but, for greater certainty, shall not include

(j) any consideration given by the taxpayer for any share or any interest therein or right thereto, except as provided by paragraph (i),

Proposed Amendment — 66.1(6)"Canadian exploration expense"(j)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 221(2), will amend para. (j) of the definition "Canadian exploration expense" in subsec. 66.1(6) by substituting "interest in or right to — or, for civil law, any right in or to — a share" for "interest therein or right thereto", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(k) any expense described in paragraph (i) incurred by any other taxpayer to the extent that the expense was,

(i) by virtue of that paragraph, a Canadian exploration expense of that other taxpayer,

(ii) by virtue of paragraph (g) of the definition "Canadian development expense" in subsection 66.2(5), a Canadian development expense of that other taxpayer, or

(iii) by virtue of paragraph (c) of the definition "Canadian oil and gas property expense" in subsection 66.4(5), a Canadian oil and gas property expense of that other taxpayer,

(k.1) an expense that is the cost, or any part of the cost, to the taxpayer of any depreciable property of a prescribed class that was acquired after 1987,

(k.2) any portion of any expense that may reasonably be considered to have resulted in revenue earned by a taxpayer if

(i) the expense is otherwise described by subparagraph (f)(i), (iii) or (iv) and the revenue is earned before a new mine of the taxpayer in the mineral resource referred to in paragraph (f) comes into production in reasonable commercial quantities, or

(ii) the expense is otherwise described by paragraph (g) and the revenue is earned before the new mine referred to in that paragraph comes into production in reasonable commercial quantities,

(l) any amount (other than a Canadian renewable and conservation expense) included at any time in the capital cost to the taxpayer of any depreciable property of a prescribed class,

(m) an expenditure incurred at any time after the commencement of production from a Canadian resource property of the taxpayer in order to evaluate the feasibility of a method of recovery of, or to assist in the recovery of, petroleum, natural gas or related hydrocarbons from the portion of a natural reservoir to which the Canadian resource property relates,

(n) an expenditure incurred at any time relating to the injection of any substance to assist in the recovery of petroleum, natural gas or related hydrocarbons from a natural reservoir, or

(o) the taxpayer's share of any consideration, expense, cost or expenditure referred to in any of paragraphs (j) to (n) given or incurred by a partnership,

but any assistance that a taxpayer has received or is entitled to receive after May 25, 1976 in respect of or related to the taxpayer's Canadian exploration expense shall not reduce the amount of any of the expenses described in any of paragraphs (a) to (i);

Related Provisions: 13(7.5) — Depreciable property treatment for costs associated with building roads and similar projects; 13(34), Reg. 1102(1)(a) — Depreciable property takes priority over resource property; 66.1(8) — Expenses in first 60 days of year; 66.1(9)(a) — Past CDE deemed to be CEE; 66.1(10) — Certificate ceasing to be valid; 66.2(2) — Deduction — Canadian development expenses; 66.3 — Exploration and development shares; 127(9)"flow-through mining expenditure, 127(9)"investment tax credit"(a.2), (a.3), 127(9)"pre-production mining expenditure" — Investment tax credit; 248(1)"Canadian exploration expense" — Definition applies to entire Act; 248(16), (16.1) — GST or QST input tax credit/refund and rebate deemed to be assistance; 248(18), (18.1) — GST or QST — repayment of input tax credit or refund; *Interpretation Act* 8(2.1), (2.2) — Application to exclusive economic zone and continental shelf. See additional Related Provisions and Definitions at end of s. 66.1.

History: Para. (k.2) of the definition "Canadian exploration expense" added by 2003, c. 28, subsec. 5(2), applicable to expenses incurred after June 9, 2003.

Para. (g) of the definition "Canadian exploration expense" amended by the said c. 28, subsec. 5(1), applicable to expenses incurred after May 9, 1985. The para. formerly read:

(g) any expense incurred by the taxpayer after November 16, 1978 for the purpose of bringing a new mine in a mineral resource in Canada into production in reasonable commercial quantities and incurred before the coming into production of the new mine, including

(i) clearing, removing overburden and stripping, and

(ii) sinking a mine shaft, constructing an adit or other underground entry,

Subpara. (d)(i) of the definition "Canadian exploration expense" amended by 2001, c. 17, subsec. 45(1), applicable to expenses incurred after March 1987. Subpara. (d)(i) formerly read:

(i) the well resulted in the discovery of a natural accumulation of petroleum or natural gas and the discovery occurred at any time before six months after the end of the year,

Para. (k.1) added to the definition "Canadian exploration expense" by the said c. 17, subsec. 45(2), applicable to 1988 *et seq.*

Para. (g.1) added to the definition "Canadian exploration expense" in subsec. 66.1(6), and para. (h) amended, by 1997, c. 25, subsec. 14(3), applicable after December 5, 1996. Para. (h) formerly read:

(h) subject to section 66.8, the taxpayer's share of any expense referred to in any of paragraphs (a), (b), (c), (d), (f) and (g) incurred by a partnership in a fiscal period thereof, if at the end of that period the taxpayer was a member of the partnership, or

Paras. (l) to (o) added to "Canadian exploration expense" by 1997, c. 25, subsec. 14(4), applicable to taxation years that end after December 5, 1996.

The opening words of subpara. 66.1(6)"Canadian exploration expense"(d)(iv) amended by 1994, c. 41, para. 37(1)(o), in force January 12, 1995. They formerly read:

(iv) there has been filed with the Minister, on or before the day that is 6 months after the end of the taxation year of the taxpayer in which the drilling of the well was commenced, a certificate issued by the Minister of Energy, Mines and Resources certifying that, on the basis of evidence submitted to that Minister, that Minister is satisfied that

Selected Cases [subsec. 66.1(6)"Canadian exploration expense"]: *McLarty v. R.*, [2005] 1 C.T.C. 2875 (TCC) (CEE had been acquired and liability not contingent even though amount and payment date not known); *Anchor Pointe Energy Ltd. v. R.*, [2002] 4 C.T.C. 2633 (TCC) (Assumptions of fact that were not actually assumed at time of assessment struck from pleadings); *Phénix v. R.*, [2001] 1 C.T.C. 74 (FCA); aff'g [1998] 1 C.T.C. 2379 (TCC) (Court unwilling to read into statute policy considerations not supported by statutory language); *Resman Holdings Ltd. v. R.*, [2000] 3 C.T.C. 442 (FCA) (Determination between CEE and CDE made once results of drilling are known. "Accumulation" means the same as "pool" in provincial legislation); *Campbell v. R.*, [1999] 2 C.T.C. 2288 (TCC) (Road included in CEE and no time limit applicable); *Teck-Bullmoose Coal Inc. v. R.*, [1998] 3 C.T.C. 195 (FCA); aff'd [1997] 1 C.T.C. 2603 (TCC) (CEE did not include building road necessary to transport resource after it was brought into production); *Wheeler v. R.*, [1997] 2 C.T.C. 2960 (TCC) (No requirement that well be proven to be established reserve for purposes of CEE deduction); *Northcor Energy Ltd. v. R.*, [1998] 1 C.T.C. 3178 (TCC) (No deduction where company never reimbursed for CEE); *Placer Dome Inc. v. Canada*, [1993] 1 C.T.C. 2411 (TCC) (Underground mine and open pit mine were distinct mines); *Gulf Canada Ltd. v. Canada*, [1991] 1 C.T.C. 99 (FCTD); aff'd [1992] 1 C.T.C. 183 (FCA); leave to appeal to SCC refused (1992), 141 N.R. 393 (note), *(sub nom. Gulf Canada Ltd. v. MNR)* (Interpretation of: "Canadian exploration expenses", "Canadian development expenses", "taxable production profits"); *Edmonton Liquid Gas Ltd. v. R.*, [1984] C.T.C. 536 (FCA) (Expense of drilling test wells abandoned as "dry holes" considered as "Canadian exploration expenses").

Regulations: 1215 (prescribed frontier exploration area); 6202 (prescribed share).

Interpretation Bulletins: IT-109R2: Unpaid amounts; IT-273R2: Government assistance — general comments; IT-503: Exploration and development shares (archived).

Advance Tax Rulings: ATR-59: Financing exploration and development through limited partnerships.

"Canadian renewable and conservation expense" has the meaning assigned by regulation, and for the purpose of determining whether an outlay or expense meets the criteria set out in the Regulations in respect of Canadian renewable and conservation expenses, the *Technical Guide to Canadian Renewable and Conservation Expenses*, as amended from time to time and published by the Department of Natural Resources, shall apply conclusively with respect to engineering and scientific matters;

Related Provisions: 66.1(6)"Canadian exploration expense"(g.1) — CRCE treated as CEE; 241(4)(d)(vi.1) — Communication with Dept. of Natural Resources permitted for purpose of determining whether an expense is a CRCE; Reg. 1102(1)(a.1) — CRCE ineligible for capital cost allowance.

History: The definition "Canadian renewable and conservation expense" added to subsec. 66.1(6) by 1997, c. 25, subsec. 14(5), applicable after December 5, 1996.

Regulations: 1219 (meaning of Canadian renewable and conservation expense).

"cumulative Canadian exploration expense" of a taxpayer at any time in a taxation year means the amount determined by the formula

$$(A + B + C + D + E + E.1) - (F + G + H + I + J + J.1 + K + L + M)$$

where

A is the total of all Canadian exploration expenses made or incurred by the taxpayer before that time,

B is the total of all amounts required by subsection (1) to be included in computing the amount referred to in paragraph 59(3.2)(b) for the taxpayer's taxation years ending before that time,

C is the total of all amounts, except amounts in respect of interest, paid by the taxpayer after May 6, 1974 and before that time to Her Majesty in right of Canada in respect of amounts paid to the taxpayer before May 25, 1976 under the regulations referred to in paragraph (a) of the description of H,

D is the total of all amounts referred to in the description of G that are established by the taxpayer to have become bad debts before that time,

E is such part, if any, of the amount determined for J as has been repaid before that time by the taxpayer pursuant to a legal obligation to repay all or any part of that amount, and

E.1 is the total of all specified amounts determined under paragraph 66.7(12.1)(a) in respect of the taxpayer for taxation years ending before that time,

F is the total of all amounts deducted or required to be deducted in computing the taxpayer's income for a taxation year ending before that time in respect of the taxpayer's cumulative Canadian exploration expense,

G is the total of all amounts that became receivable by the taxpayer before that time that are to be included in the amount determined under this description by virtue of paragraph 66(12.1)(a) or (12.2)(a),

H is the total of all amounts paid to the taxpayer after May 6, 1974 and before May 25, 1976

(a) under the *Northern Mineral Exploration Assistance Regulations* made under an appropriations Act that provides for payments in respect of the Northern Mineral Grants Program, or

(b) pursuant to any agreement entered into between the taxpayer and Her Majesty in right of Canada under the Northern Mineral Grants Program or the Development Program of the Department of Indian Affairs and Northern Development,

to the extent that the amounts have been expended by the taxpayer as or on account of Canadian exploration and development expenses or Canadian exploration expense incurred by the taxpayer,

I is the total of all amounts each of which is an amount received before that time on account of any amount referred to in the description of D,

J is the total amount of assistance that the taxpayer has received or is entitled to receive in respect of any Canadian exploration expense incurred after 1980 or that can reasonably be related to Canadian exploration activities after 1980, to the extent that the assistance has not reduced the taxpayer's Canadian exploration expense by virtue of paragraph (9)(g),

J.1 is the total of all amounts by which the cumulative Canadian exploration expense of the taxpayer is required because of subsection 80(8) to be reduced at or before that time,

K is the total of all amounts that are required to be deducted before that time under subsection 66(14.1) in computing the taxpayer's cumulative Canadian exploration expense,

L is that portion of the total of all amounts each of which was deducted by the taxpayer under subsection 127(5) or (6) for a taxation year that ended before that time and that can reasonably be attributed to a qualified Canadian exploration expenditure, a pre-production mining expenditure or a flow-through mining expenditure (each expenditure within the meaning assigned by subsection 127(9)) made in a preceding taxation year, and

M is the total of all amounts that are required to be deducted before that time under paragraph 66.7(12)(b) in computing the taxpayer's cumulative Canadian exploration expense;

Related Provisions: 12(1)(t) — Investment tax credit; 20(1)(kk) — Exploration & development grants; 50(1)(a) — Deemed disposition where debt becomes bad debt; 59(3.2) — Recovery of exploration & development expenses; 66(10.1)(b) — Joint exploration corporation; 66(12.1) — Limitations of Canadian exploration & development expenses; 66(12.2) — Unitized oil or gas field in Canada; 66(15) — Definitions; 66.1(1) — Amount to be included in income; 66.1(7) — Share of partner; 66.7(3) — Deduction to successor corporation; 79(4)(c) — Subsequent payment by debtor following surrender of property deemed to be repayment of assistance; 79.1(8) — No claim for principal amount of bad debt where property seized by creditor; 80(8)(b) — Reduction of CCEE on debt forgiveness; 87(2)(j.6) — Amalgamations — continuing corporation; 96(2.2)(d) — At-risk amount; 127(12.3) — Reduction of cumulative Canadian exploration expense of trust; 248(16), (16.1) — GST or QST input tax credit/refund and rebate deemed to be assistance; 248(18), (18.1) — GST or QST — repayment of input tax credit or refund; 257 — Formula cannot calculate to less than zero. See also at end of s. 66.1.

History: The description of L in the definition "cumulative Canadian exploration expense" in subsec. 66.1(6) amended by 2003, c. 28, subsec. 5(3), applicable to 2003 *et seq*. The description of L formerly read:

L is that portion of the total of all amounts each of which was deducted by the taxpayer under subsection 127(5) or (6) for a taxation year that ended before that time and that can reasonably be attributed to a qualified Canadian exploration expenditure or a flow-through mining expenditure (within the meaning assigned by subsection 127(9)) made in a preceding taxation year, and

The description of L in the definition "cumulative Canadian exploration expense" in subsec. 66.1(6) amended by 2001, c. 17, subsec. 45(3), applicable after October 17, 2000. The description of L formerly read:

L is that portion of the total of all amounts deducted by the taxpayer under subsection 127(5) or (6) for a taxation year ending before that time that may reasonably be attributed to a qualified Canadian exploration expenditure (within the meaning assigned by subsection 127(9)) made in a preceding taxation year, and

The description of J.1 in the definition "cumulative Canadian exploration expense" in subsec. 66.1(6) added and the corresponding formula amended by 1995, c. 21, s. 22, applicable to taxation years that end after February 21, 1994.

The description of F in the definition "cumulative Canadian exploration expense" in subsec. 66.1(6) amended by 1994, c. 8, subsec. 6(2), applicable to taxation years ending after December 2, 1992. The description of F formerly read:

F is the total of all amounts deducted or deductible, as the case may be, in computing the taxpayer's income for a taxation year ending before that time in respect of the taxpayer's cumulative Canadian exploration expense,

E.1 and its description added to the definition "cumulative Canadian exploration expense" in subsec. 66.1(6) by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 39(4) and (4.1), applicable to taxation years beginning after February 17, 1987.

"restricted expense" of a taxpayer means an expense

(a) incurred by the taxpayer before April, 1987,

(b) that is deemed by paragraph 66(10.2)(c) to have been incurred by the taxpayer, or included by the taxpayer in the amount referred to in paragraph (a) of the definition "Canadian development expense" in subsection 66.2(5) by virtue of paragraph 66(12.3)(b), to the extent that the expense was originally incurred before April, 1987,

(c) that was renounced by the taxpayer under subsection 66(10.2), (12.601) or (12.62),

(d) in respect of which an amount referred to in subsection 66(12.3) becomes receivable by the taxpayer,

(e) deemed to be a Canadian exploration expense of the taxpayer or any other taxpayer by virtue of subsection (9), or

(f) where the taxpayer is a corporation, that was incurred by the corporation before the time control of the corporation was last acquired by a person or persons;

Related Provisions: 256(6)–(9) — Whether control acquired.

History: Para. (c) of the definition "restricted expense" in subsec. 66.1(6) was amended by 1994, c. 8, subsec. 6(3), applicable to expenses incurred after December 2, 1992. Para. (c) formerly read:

(c) that was renounced by the taxpayer under subsection 66(10.2) or (12.62),

"specified purpose" means

(a) the operation of an oil or gas well for the sole purpose of testing the well or the well head and related equipment, in accordance with generally accepted engineering practices,

(b) the burning of natural gas and related hydrocarbons to protect the environment, and

(c) prescribed purposes.

(6.1) Application of subsecs. 66(15), 66.2(5) and 66.4(5) — The definitions in subsections 66(15), 66.2(5) and 66.4(5) apply to this section.

Origin of subsec. 66.1(6.1): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsecs. 66(15), 66.2(5) and 66.4(5)).

(7) Share of partner — Where a taxpayer is a member of a partnership, the taxpayer's share of any amount that would be an amount referred to in the description of E, G or J in the definition "cumulative Canadian exploration expense" in subsection (6) in respect of the partnership for a taxation year of the partnership if section 96 were read without reference to paragraph 96(1)(d) shall, for the purposes of this Act, be deemed to be an amount referred to in the description of E, G or J, as the case may be, in that definition in respect of the taxpayer for the taxation year of the taxpayer in which the partnership's taxation year ends.

Related Provisions: 87(1.2) — Amalgamations — new corporation deemed continuation of predecessor; 88(1.5) — Windup — parent corporation deemed to be continuation of subsidiary. See also at end of s. 66.1.

History: Subsec. 66.1(7) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 39(5), to add reference to "E" (twice) applicable after January 1990.

Interpretation Bulletins: IT-273R2: Government assistance — general comments; IT-353R2: Partnership interests — some adjustments to cost base (archived).

I.T. Technical News: 12 (adjusted cost base of partnership interest — subparagraph 53(1)(e)(viii)).

(8) [Repealed]

History: Subsec. 66.1(8) repealed by 1997, c. 25, subsec. 14(6), applicable after March 6, 1996. Subsec. (8) formerly read:

(8) Expenses in first 60 days of year — Where

(a) after December 31, 1985, a taxpayer incurs, within 60 days after the end of a calendar year, Canadian exploration expenses pursuant to an agreement referred to in paragraph (i) of the definition "Canadian exploration expense" in subsection (6),

(b) the Canadian exploration expenses are expenses described in paragraph (f) of the definition "Canadian exploration expense" in subsection (6) incurred in respect of a mineral resource other than a bituminous sands deposit, an oil sands deposit or an oil shale deposit,

(c) the agreement was entered into between the taxpayer and the corporation on or before the last day of the year,

(d) the funds relating to the Canadian exploration expenses have on or before the last day of the year been advanced to an agent acting on behalf of the taxpayer for the purposes of paying the expenses, and

(e) the taxpayer and the corporation deal with each other at arm's length throughout the 60 days,

the Canadian exploration expenses shall be deemed to have been incurred immediately before the end of the year and shall be deemed not to have been incurred in the subsequent year.

(9) Canadian development expenses for preceding years — Where at any time in a taxpayer's taxation year

(a) the drilling or completing of an oil or gas well resulted in the discovery that a natural underground reservoir contains petroleum or natural gas and, before the time of the discovery, no person or partnership had discovered that the reservoir contained either petroleum or natural gas,

(b) the period of 24 months commencing on the day of completion of the drilling of an oil or gas well ends and the well has not, within that period, produced otherwise than for specified purposes, or

(c) an oil or gas well that has never produced, otherwise than for specified purposes, is abandoned,

the amount, if any, by which the total of

(d) all Canadian development expenses (other than restricted expenses) described in subparagraph (a)(ii) of the definition "Canadian development expense" in subsection 66.2(5) in respect of the well that are deemed by subsection 66(10.2) or (12.63) to have been incurred by the taxpayer in the year or a preceding taxation year,

(e) all Canadian development expenses (other than restricted expenses) described in subparagraph (a)(ii) of the definition "Canadian development expense" in subsection 66.2(5) in respect of the well that are required by paragraph 66(12.3)(b) to be included by the taxpayer in the amount referred to in paragraph (a) of that definition for the year or a preceding taxation year, and

(f) all Canadian development expenses (other than expenses referred to in paragraph (d) or (e) and restricted expenses) described in subparagraph (a)(ii) of the definition "Canadian development expense" in subsection 66.2(5) incurred by the taxpayer in respect of the well in a taxation year preceding the year,

exceeds

(g) any assistance that the taxpayer or a partnership of which the taxpayer is a member has received or is entitled to receive in respect of the expenses referred to in any of paragraphs (d) to (f),

shall, for the purposes of this Act, be deemed to be a Canadian exploration expense referred to in paragraph (e) of the definition "Canadian exploration expense" in subsection (6) incurred by the taxpayer at that time.

Related Provisions: 66.2(5)"cumulative Canadian development expense"I, M — Reduction in CCDE; 66.7(9) — CDE becoming CEE; 248(16), (16.1) — GST or QST input tax credit/refund and rebate deemed to be assistance; 248(18), (18.1) — GST or QST — repayment of input tax credit or refund. See also at end of s. 66.

History: Para. 66.1(9)(a) amended by 2001, c. 17, subsec. 45(4), applicable to expenses incurred after March 1987. Para. (a) formerly read:

(a) an oil or gas well resulted in the discovery of a natural accumulation of petroleum or natural gas,

Selected Cases [subsec. 66.1(9)]: *Resman Holdings Ltd. v. R.*, [2000] 3 C.T.C. 442 (FCA) (Determination between CEE and CDE made once results of drilling are known. "Accumulation" means the same as "pool" in provincial legislation).

(10) Certificate ceasing to be valid — A certificate in respect of an oil or gas well issued by the Minister of Natural Resources for the purposes of paragraph (d)(iv) of the definition "Canadian exploration expense" in subsection (6) shall be deemed never to have been issued and never to have been filed with the Minister where

(a) the well produces, otherwise than for a specified purpose, within the period of 24 months commencing on the day on which the drilling of the well was completed; or

(b) in applying for the certificate, the applicant, in any material respect, provided any incorrect information or failed to provide information.

History: The opening words of subsec. 66.1(10) amended by 1994, c. 41, para. 37(1)(o), in force January 12, 1995. They formerly read:

(10) A certificate in respect of an oil or gas well issued by the Minister of Energy, Mines and Resources for the purposes of paragraph (d)(iv) of the definition "Canadian exploration expense" in subsection (6) shall be deemed never to have been issued and never to have been filed with the Minister where

(11) [Repealed under former Act]

Related Provisions [s. 66.1]: 66(5) — Dealers; 66(18) — Members of partnerships; 66.7 — Successor rules; 66.8(1) — Resource expenses of limited partner; 88(1.5) — Winding-up — parent deemed continuation of subsidiary.

Selected Cases [s. 66.1]: *Schmidt v. R.*, [2000] 1 C.T.C. 3031 (TCC) (Expenses of prospector in site investigation were CEE); *Phénix v. R.*, [1998] 1 C.T.C. 2379 (TCC) (Capital items may form part of CEE); *Central Supply Company (1972) Ltd. v. R.*,, [1997] 3 C.T.C. 102 (FCA); rev'd [1995] 2 C.T.C. 2320 (TCC) (Deduction permitted under specific provisions of the Act may nevertheless unduly or artificially reduce income); *Oro Del Norte S.A. v. Canada*, [1993] 1 C.T.C. 245 (FCTD) (Exploration, drilling and tunnelling expenses were "Canadian exploration expenses").

Definitions [s. 66.1]: "acquired" — 256(7)–(9); "amount" — 248(1); "assistance" — 66(15), 66.1(6.1), 79(4), 125.4(5), 248(16), (16.1), (18), (18.1); "Canada" — 255, *Interpretation Act* 8(2.1), (2.2); "Canadian development expense" — 66.2(5), 248(1); "Canadian exploration expense" — 66.1(6), 248(1); "Canadian exploration and development expenses" — 66(15), 66.1(6.1); "Canadian oil and gas property expense" — 66.4(5), 248(1); "Canadian renewable and conservation expense" — 66.1(6); "control" — 256(6)–(9); "corporation" — 248(1), *Interpretation Act* 35(1); "cumulative Canadian development expense" — 66.1(6.1), 66.2(5); "expense" — 66(15), 66.1(6.1); "fiscal period" — 249(2), 249.1; "flow-through mining expenditure" — 127(9), (11.1)(c.2); "Her Majesty" — *Interpretation Act* 35(1); "mineral resource", "Minister" — 248(1); "Minister of Natural Resources" — *Department of Natural Resources Act* s. 3; "oil or gas well" — 248(1); "outlay" — 66(15), 66.1(6.1); "person" — 248(1); "pre-production mining expenditure" — 127(9); "prescribed" — 248(1); "principal-business corporation" — 66(15), 66.1(6.1); "property", "regulation", "share" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "writing" — *Interpretation Act* 35(1); IT-273R2: Government assistance — general comments.

66.2 [Canadian development expenses] — (1) Amount to be included in income — There shall be included in computing the amount referred to in paragraph 59(3.2)(c) in respect of a taxpayer for a taxation year the amount, if any, by which the total of

(a) all amounts referred to in the descriptions of E to O in the definition "cumulative Canadian development expense" in subsection (5) that are deducted in computing the taxpayer's cumulative Canadian development expense at the end of year, and

(b) the amount that is designated by the taxpayer for the year under subsection 66(14.2)

exceeds the total of

(c) all amounts referred to in the descriptions of A to D.1 in the definition "cumulative Canadian development expense" in subsection (5) that are included in computing the taxpayer's cumulative Canadian development expense at the end of the year, and

(d) the total determined under subparagraph 66.7(12.1)(b)(i) in respect of the taxpayer for the year.

Related Provisions: 59(3.2)(c) — Income inclusion; 66(11.4) — Change of control; 66.7(12) — Reduction of Canadian resource expenses; 104(5.2) — Trusts — 21-year deemed disposition; 115(1)(a)(iii.1) — Non-resident's taxable income earned in Canada. See also at end of s. 66.2.

History: Subsec. 66.2(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 40(1), applicable to taxation years ending after February 17, 1987, except that with respect to such taxation years commencing before February 18, 1987, the reference to "D.1" in para. (c) shall be read as a reference to "C". Subsec. (1) formerly read:

66.2 (1) A taxpayer shall include, in computing the amount referred to in paragraph 59(3.2)(c), the amount, if any, by which

(a) the total of

(i) all amounts referred to in the descriptions of E to O in the definition "cumulative Canadian development expense" in subsection (5) that would be taken into account in computing the taxpayer's cumulative Canadian development expense at the end of the year, and

(ii) the amount that is designated for the year under subsection 66(14.2)

exceeds

(b) the total of all amounts referred to in the descriptions of A to C in the definition "cumulative Canadian development expense" in subsection(5) that would be taken into account in computing the taxpayer's cumulative Canadian development expense at the end of the year.

Interpretation Bulletins: IT-125R4: Dispositions of resource properties; IT-273R2: Government assistance — general comments.

(2) Deduction for cumulative Canadian development expenses — A taxpayer may deduct, in computing the taxpayer's income for a taxation year, such amount as the taxpayer may claim not exceeding the total of

(a) the lesser of

(i) the total of

(A) the taxpayer's cumulative Canadian development expense at the end of the year, and

(B) the amount, if any, by which

(I) the total determined under subparagraph 66.7(12.1)(b)(i) in respect of the taxpayer for the year

exceeds

(II) the amount that would, but for paragraph (1)(d), be determined under subsection (1) in respect of the taxpayer for the year, and

(ii) the amount, if any, by which the amount determined under subparagraph 66.4(2)(a)(ii) exceeds the amount determined under subparagraph 66.4(2)(a)(i),

(b) the lesser of

(i) the amount, if any, by which the amount determined under subparagraph (a)(i) exceeds the amount determined under subparagraph (a)(ii), and

(ii) the amount, if any, by which the total of all amounts each of which is

(A) an amount included in the taxpayer's income for the year by virtue of a disposition in the year of inventory described in section 66.3 that was a share, any interest therein or right thereto, acquired by the taxpayer under circumstances described in paragraph (g) of the definition "Canadian development expense" in subsection (5) or paragraph (i) of the definition "Canadian exploration expense" in subsection 66.1(6), or

Proposed Amendment — 66.2(2)(b)(ii)(A)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 222(1), will amend cl. 66.2(2)(b)(ii)(A) by substituting "share or any interest in or right to — or, for civil law, any right in or to — a share" for "share, any interest therein or right thereto", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(B) an amount included by virtue of paragraph 12(1)(e) in computing the taxpayer's income for the year to the extent that it relates to inventory described in clause (A)

exceeds

(C) the total of all amounts deducted as a reserve by virtue of paragraph 20(1)(n) in computing the taxpayer's income for the year to the extent that the reserve relates to inventory described in clause (A), and

(c) 30% of the amount, if any, by which the amount determined under subparagraph (b)(i) exceeds the amount determined under subparagraph (b)(ii).

Related Provisions: 20(1)(hh) — Repayments of inducements, etc.; 66(13.1) — Short taxation year; 110.6(1)"investment expense"(d) — effect of claim under 66.2(2) on capital gains exemption; 127.52(1)(e) — Add-back of deduction for minimum tax purposes. See additional Related Provisions at end of s. 66.2.

History: Subpara. 66.2(2)(a)(i) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 40(2), applicable to taxation years ending after February 17, 1987. Subpara. (a)(i) formerly read:

(i) the amount of the taxpayer's cumulative Canadian development expense at the end of the year, and

Interpretation Bulletins: IT-273R2: Government assistance — general comments; IT-438R2: Crown charges — resource properties in Canada.

Advance Tax Rulings: ATR-59: Financing exploration and development through limited partnerships.

(3) [Repealed under former Act]

History: Subsec. 66.2(3) repealed by 1987, c. 46, subsec. 20(2), applicable to taxation years ending after February 17, 1987. Subsec. (3) formerly read:

(3) Successor corporation's Canadian development expense — Where a corporation (in this subsection referred to as the "successor corporation") has at any time after May 6, 1974 acquired, by purchase, amalgamation, merger, winding-up or otherwise (other than pursuant to an amalgamation that is described in subsection 87(1.2) or a winding-up to which the rules in subsection 88(1) apply), from another person (in this subsection referred to as the "predecessor") all or substantially all of the Canadian resource properties of the predecessor and (except in the case of an amalgamation or a winding-up) the predecessor and the successor corporation have jointly elected in prescribed form on or before the day that is the earlier of the days on or before which either taxpayer making the election is required to file a return of income pursuant to section 150 for the taxation year in which the transaction to which the election relates occurred, there may be deducted by the successor corporation in computing its income under this Part for a taxation year such amount as it may claim not exceeding the lesser of

(a) 30% of the amount by which

(i) the amount, if any, by which

(A) the cumulative Canadian development expense of the predecessor, determined at the time immediately after the properties were so acquired by the successor corporation, to the extent that it has not been

(I) deducted by the successor corporation in computing its income for a preceding taxation year,

(II) deducted by the predecessor in computing his income for any taxation year, or

(III) designated by the predecessor pursuant to subsection 66(14.2) for any taxation year

exceeds

(B) any amount required to be deducted under paragraph 66.1(10)(b) in respect of the successor corporation at any time before the end of the year,

exceeds

(ii) the aggregate of all amounts each of which is an amount that became receivable by the successor corporation in the taxation year or a preceding taxation year, is included in the amount determined under clause (5)(b)(v)(A) and may reasonably be regarded as attributable to the disposition by the successor corporation of any property owned by the predecessor immediately before the acquisition thereof by the successor corporation, and

(b) the amount that is equal to such part of its income for the year, if no deduction were allowed under this section, section 65, 66 or 66.1 or the *Income Tax Application Rules, 1971* in respect of this paragraph (minus the deductions allowed for the year by subsection (4) and sections 112 and 113), as may reasonably be regarded as attributable to

(i) the production of petroleum or natural gas from natural accumulations thereof or from oil or gas wells, or the production of minerals from mines, situated on property in Canada in respect of which the predecessor had, immediately before the acquisition by the successor corporation of the property so acquired, an interest or a right to take or remove petroleum or natural gas or a right to take or remove minerals, and

(ii) the amount, if any, by which the aggregate of all amounts each of which is an amount

(A) required by subsection 59(2) to be included in computing its income for the year, and

(B) in respect of a reserve deducted in computing the predecessor's income and deemed by paragraph 87(2)(g) or by virtue of that paragraph and paragraph 88(1)(e.2) to have been deducted by the successor corporation as a reserve in computing its income for a preceding year,

exceeds the aggregate of amounts, if any, deducted in computing the successor corporation's income for the year by virtue of subsection 64(1), (1.1) or (1.2) in respect of dispositions of property by the predecessor;

and, in respect of any expense included in the cumulative Canadian development expense referred to in clause (a)(i)(A), no deduction may be made under this section by the predecessor in computing his income for a taxation year subsequent to his taxation year in which the property so acquired was acquired by the successor corporation.

Subpara. 66.2(3)(a)(i) substituted, and all that portion of subsec. 66.2(3) following para. (b) amended to substitute "clause (a)(i)(A)" for "subparagraph (a)(i)", by 1986, c. 55, subsecs. 13(1), (2), applicable with respect to expenses incurred after March 1987. Subpara. (a)(i) formerly read:

(i) the cumulative Canadian development expense of the predecessor, determined at the time immediately after the properties were so acquired by the successor corporation, to the extent that it has not been deducted by the successor corporation in computing its income for a preceding taxation year and has not been deducted by the predecessor in computing his income for any taxation year or designated by the predecessor pursuant to subsection 66(14.2) for any taxation year,

Subpara. 66.2(3)(a)(i) amended by 1986, c. 2, subsec. 18(2), to substitute "the properties were so acquired" for "the property so acquired was acquired" and to add "or designated by the predecessor pursuant to subsection 66(14.2) for any taxation year", applicable to 1985 *et seq.*

Subpara. 66.2(3)(b)(i) substituted by 1986, c. 2, subsec. 31(2), applicable to taxation years ending after March 1985 to add "natural accumulations thereof or from oil or gas".

All that portion of subsec. 66.2(3) preceding para. (a) substituted by 1985, c. 45, subsec. 30(1), applicable with respect to acquisitions occurring after 1982 except that with respect to acquisitions occurring after 1982 and in a taxation year commencing before 1985 the reference to "Canadian resource properties of the predecessor" shall be read as a reference to "property of the predecessor used by him in carrying on in Canada such of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) as were carried on by him". That portion of subsec. (3) formerly read:

(3) Successor corporation's Canadian development expense — Where a corporation (in this subsection referred to as the "successor corporation") has, at any time after May 6, 1974, acquired, by purchase or otherwise (including an acquisition as a result of an amalgamation described in section 87), from another person (in this subsection referred to as the "predecessor") all or substantially all of the property of the predecessor used by him in carrying on in Canada such of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) as were carried on by him, and (except in the case of an amalgamation or a winding-up) the predecessor and the successor corporation have jointly elected in prescribed form on or before the day that is the earlier of the days on or before which either taxpayer making the election is required to file a return of income pursuant to section 150 for the taxation year in which the transaction to which the election relates occurred, there may be deducted by the successor corporation in computing its income under this Part for a taxation year, such amount as it may claim not exceeding the lesser of

Subpara. 66.2(3)(a)(ii) substituted by 1985, c. 45, subsec. 30(2), applicable with respect to dispositions occurring in taxation years commencing after 1984. Subpara. (a)(ii) formerly read:

(ii) the aggregate of all amounts each of which is an amount that became receivable by the successor corporation in the taxation year or in a preceding taxation year, that is required to be included in the amount determined under clause 66.2(5)(b)(v)(A) by virtue of subsection 59(1.1) or paragraph 59(3.1)(a) and that may reasonably be regarded as attributable to the disposition by the successor corporation of any property owned by the predecessor immediately before the acquisition thereof by the successor corporation, and

Cl. 66.2(3)(b)(ii)(A) amended by 1985, c. 45, subsec. 24(8), to delete a reference to subsection 59(2.1), applicable to taxation years commencing after 1984.

All that portion of subsec. 66.2(3) preceding para. (b), all that portion of subsec. 66.2(3) following para. (b) substituted; subsec. 66.2(3) amended by substituting "predecessor" and "predecessor's" for "predecessor corporation" and "predecessor corporation's" wherever those expressions appeared, by 1984, c. 1, subsecs. 29(1), (2), (4), applicable with respect to acquisitions of property by a successor corporation from a predecessor after April 19, 1983. That portion of subsec. 66.2(3) preceding para. (b), that portion following para. (b) formerly read:

(3) Successor corporation's Canadian development expense — Where a corporation (in this subsection referred to as the "successor corporation") has, at any time after May 6, 1974, acquired, by purchase or otherwise (including an acquisition as a result of an amalgamation described in section 87), from another corporation (in this subsection referred to as the "predecessor corporation") all or substantially all of the property of the predecessor corporation used by it in carrying on in Canada such of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) as were carried on by it, and (except in the case of an amalgamation or a winding-up) the predecessor corporation and the successor corporation have jointly elected in prescribed form on or before the day that is the earlier of the days on or before which either taxpayer making the election is required to file a return of income pursuant to section 150 for the taxation year in which the transaction to which the election relates occurred, there may be deducted by the successor corporation in computing its income under this Part for a taxation year, such amount as it may claim not exceeding the lesser of

(a) 30% of the amount by which

(i) the cumulative Canadian development expense of the predecessor corporation determined at the time immediately after the property so acquired was acquired by the successor corporation to the extent it has not been deducted by the predecessor corporation in computing its income for any taxation year and has not been deducted by the successor corporation in computing its income for a previous taxation year,

exceeds

(ii) the aggregate of all amounts each of which was an amount that became receivable in the taxation year or in a previous taxation year by the successor corporation, that are required to be included in the amount determined under clause 66.2(5)(b)(v)(A) by virtue of subsection 59(1.1) or paragraph 59(3.1)(a) and that may reasonably be regarded as attributable to the disposition by the successor corporation of any property owned by the predecessor corporation immediately before the acquisition thereof by the successor corporation, and

. . . . .

and, in respect of any expense included in the cumulative Canadian development expense referred to in subparagraph (a)(i), no deduction may be made under this section by the predecessor in computing his income for a taxation year subsequent to his taxation year in which the property so acquired was acquired by the successor corporation.

All that portion of subpara. 66.2(3)(b)(ii) following cl. (B) substituted by 1980-81-82-83, c. 48, subsec. 35(3), applicable to taxation years ending after December 11, 1979, to add reference to subsec. (1.2).

Subsec. 66.2(3) substituted by 1979, c. 5, subsec. 21(1), applicable, as to para. 66.2(3)(a), to 1977 *et seq.*, as to para. 66.2(3)(b), to 1979 *et seq.*, and with respect to the election referred to in subsec. 66.2(3), with respect to acquisitions of property after November 16, 1978. Subsec. (3) formerly read:

(3) Where a corporation (in this subsection referred to as the "successor corporation") has, at any time after May 6, 1974, acquired, by purchase or otherwise (including an acquisition as a result of an amalgamation described in section 87), from another corporation (in this subsection referred to as the "predecessor corporation") all or substantially all of the property of the predecessor corporation used by it in carrying on in Canada such of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) as were carried on by it, there may be deducted by the successor corporation in computing its income under this Part for a taxation year, such amount as it may claim not exceeding the lesser of

(a) 30% of the cumulative Canadian development expense of the predecessor corporation, determined at the time immediately after the property so acquired was acquired by the successor corporation, to the extent that it has not been deducted by the successor corporation in computing its income for a previ-

ous taxation year and has not been deducted by the predecessor corporation in computing its income for any taxation year; and

(b) the amount that is equal to such part of its income for the year, if no deduction were allowed under this section, section 65, 66 or 66.1 or the *Income Tax Application Rules, 1971*, in respect of this paragraph (minus the deductions allowed for the year by subsection (4) and sections 112 and 113, as may reasonably be regarded as attributable to

(i) the disposition of any property described in any of subparagraphs 66(15)(c)(i) to (vi) owned by the predecessor corporation immediately before the acquisition by the successor corporation of the property so acquired, and

(ii) the production of petroleum or natural gas from wells, or the production of minerals from mines, situated on property in Canada in respect of which the predecessor corporation had, immediately before the acquisition by the successor corporation of the property so acquired, an interest or a right to take or remove petroleum or natural gas or a right to take or remove minerals;

and, in respect of any expense included in the cumulative Canadian development expense referred to in paragraph (a), no deduction may be made under this section by the predecessor corporation in computing its income for a taxation year subsequent to its taxation year in which the property so acquired was acquired by the successor corporation.

Subsec. 66.2(3) substituted by 1977-78, c. 1, subsec. 31(1), applicable to 1977 *et seq.* Subsec. (3) formerly read:

(3) Where a corporation (in this subsection referred to as the "successor corporation") has, at any time after May 6, 1974, acquired by purchase or otherwise (including an acquisition as a result of an amalgamation described in subsection 87(1)) from another corporation (in this subsection referred to as the "predecessor corporation") all or substantially all of the property of the predecessor corporation used by it in carrying on its business in Canada, there may be deducted by the successor corporation, in computing its income under this Part for a taxation year, in respect of the cumulative Canadian development expense incurred by the predecessor corporation, to the extent that such expense

(a) was deductible but not deducted by the successor corporation in computing its income for a previous taxation year, and was not deducted by the predecessor corporation in computing its income for the taxation year in which the property so acquired was acquired by the successor corporation or its income for a previous taxation year, and

(b) would have been deductible by the predecessor corporation in computing its income for the taxation year in which the property so acquired was acquired by the successor corporation,

an amount that is equal to the lesser of

(c) 30% of the amount of such cumulative Canadian development expense, and

(d) such part of its income for the year if no deduction were allowed under this section, section 65 or the *Income Tax Application Rules, 1971*, in respect of this paragraph (minus any deductions allowed for the year by sections 66, 66.1, 112 and 113 and the provisions of the *Income Tax Application Rules, 1971* allowing a deduction for the purposes of this paragraph), as may reasonably be regarded as attributable to the production of petroleum or natural gas from wells, or the production of minerals from mines, situated on property in Canada from which the predecessor corporation had, immediately before the acquisition by the successor corporation of the property so acquired, a right to take or remove petroleum or natural gas or a right to take or remove minerals;

and, in respect of any such expense included in the amount of such cumulative Canadian development expense, no deduction may be made under this section by the predecessor corporation in computing its income for a taxation year subsequent to its taxation year in which the property so acquired was acquired by the successor corporation.

(4) [Repealed under former Act]

History: Subsec. 66.2(4) repealed by 1987, c. 46, subsec. 20(2), applicable to taxation years ending after February 17, 1987. Subsec. 66.2(4) formerly read:

(4) **Second successor corporation's Canadian development expense** — Where a corporation (in this subsection referred to as the "second successor corporation") has at any time after May 6, 1974 acquired, by purchase, amalgamation, merger, winding-up or otherwise (other than pursuant to an amalgamation that is described in subsection 87(1.2) or a winding-up to which the rules in subsection 88(1) apply), from another corporation (in this subsection referred to as the "first successor corporation") that was a successor corporation, within the meaning of subsection (3), all or substantially all of the Canadian resource properties of the first successor corporation and (except in the case of an amalgamation or a winding-up) the first successor corporation and the second successor corporation have jointly elected in prescribed form on or before the day that is the earlier of the days on or before which either taxpayer making the election is required to file a return of income pursuant to section 150 for the taxation year in which the transaction to which the election relates occurred, there may be deducted by the second successor corporation in computing its income under this Part for a taxation year such amount as it may claim not exceeding the lesser of

(a) 30% of the amount by which

(i) the amount, if any, by which

(A) the amount, if any, by which the amount determined under subparagraph (3)(a)(i) in respect of the first successor corporation immediately after the property so acquired was acquired by the second successor corporation exceeds the amount determined under subparagraph (3)(a)(ii) in respect of the first successor corporation at that time to the extent that it has not been deducted by the first successor corporation in computing its income for any taxation year and has not been deducted by the second successor corporation in computing its income for a preceding taxation year

exceeds

(B) any amount required to be deducted under paragraph 66.1(11)(a) in respect of the second successor corporation at any time before the end of the year

exceeds

(ii) the aggregate of all amounts each of which is an amount that became receivable in the taxation year or a preceding taxation year by the second successor corporation, is included in the amount determined under clause (5)(b)(v)(A) and may reasonably be regarded as attributable to the disposition by the second successor corporation of any property owned by the predecessor of the first successor corporation immediately before the acquisition thereof by the first successor corporation, and

(b) the amount that is equal to such part of its income for the year, if no deduction were allowed under this section, section 65, 66 or 66.1 or the *Income Tax Application Rules, 1971* in respect of this paragraph (minus the deductions allowed for the year by sections 112 and 113), as may reasonably be regarded as attributable to

(i) the production of petroleum or natural gas from natural accumulations thereof or from oil or gas wells, or the production of minerals from mines, situated on property in Canada in respect of which the predecessor of the first successor corporation had, immediately before the acquisition by the first successor corporation of the property so acquired by the second successor corporation, an interest or a right to take or remove petroleum or natural gas or a right to take or remove minerals, and

(ii) the amount, if any, by which the aggregate of all amounts each of which is an amount

(A) required by subsection 59(2) to be included in computing its income for the year, and

(B) in respect of a reserve deducted in computing the income of the predecessor of the first successor corporation and deemed by paragraph 87(2)(g) or by virtue of that paragraph and paragraph 88(1)(e.2) to have been deducted by the second successor corporation as a reserve in computing its income for a preceding year,

exceeds the aggregate of amounts, if any, deducted in computing the income of the second successor corporation for the year by virtue of subsection 64(1), (1.1) or (1.2) in respect of dispositions of property by the predecessor of the first successor corporation;

and, in respect of any expense included in the amount referred to in clause (a)(i)(A), no deduction may be made under this section by the first successor corporation in computing its income for a taxation year subsequent to its taxation year in which the property so acquired was acquired by the second successor corporation.

Subpara. 66.2(4)(a)(i) substituted, and all that portion of subsec. 66.2(4) following para. (b) amended to substitute "clause (a)(i)(A)" for "subparagraph (a)(i)", by 1986, c. 55, subsecs. 13(3), (4), applicable with respect to expenses incurred after March 1987. Subpara. 66.2(4)(a)(i) formerly read:

(i) the amount, if any, by which the amount determined under subparagraph (3)(a)(i) in respect of the first successor corporation immediately after the property so acquired was acquired by the second successor corporation exceeds the amount determined under paragraph (3)(a)(ii) in respect of the first successor corporation at that time, to the extent it has not been deducted by the first successor corporation in computing its income for any taxation year and has not been deducted by the second successor corporation in computing its income for a preceding taxation year

Subpara. 66.2(4)(b)(i) amended by 1986, c. 6, subsec. 31(2), to add "natural accumulations thereof or from oil or gas", applicable to taxation years ending after March 1985.

All that portion of subsec. 66.2(4) preceding para. (a) substituted by 1985, c. 45, subsec. 30(3), applicable with respect to acquisitions occurring after 1982 except that with respect to acquisitions occurring after 1982 and in a taxation year commencing before 1985 the reference to "Canadian resource properties of the first successor corporation" shall be read as a reference to "property of the first successor corporation used by it in carrying on in Canada such of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) as were carried on by it". That portion of subsec. 66.2(4) formerly read:

(4) Second successor corporation's Canadian development expense — Where a corporation (in this subsection referred to as the "second successor corporation") has, at any time after May 6, 1974, acquired, by purchase or otherwise (including an acquisition as a result of an amalgamation described in section 87), from another corporation (in this subsection referred to as the "first successor corporation") that was a successor corporation within the meaning of subsection (3), all or substantially all of the property of the first successor corporation used by it in carrying on in Canada such of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) as were carried on by it and (except in the case of an amalgamation or a winding-up) the first successor corporation and the second successor corporation have jointly elected in prescribed form on or before the day that is the earlier of the days on or before which either taxpayer making the election is required to file a return of income pursuant to section 150 for the taxation year in which the transaction to which the election relates occurred, there may be deducted by the second successor corporation in computing its income under this Part for a taxation year, such amount as it may claim not exceeding the lesser of

All that portion of para. 66.2(4)(a) preceding subpara. (ii) substituted by 1985, c. 45, subsec. 30(4), applicable to taxation years ending after 1984. That portion of para. 66.2(4)(a) formerly read:

(a) 30% of the amount by which the

(i) cumulative Canadian development expense of the predecessor referred to in subparagraph (3)(a)(i) determined at the time immediately after the property so acquired was acquired by the first successor corporation to the extent it has not been deducted by the first successor corporation in computing its income for any taxation year and has not been deducted by the second successor corporation in computing its income for a previous taxation year,

exceeds

Subpara. 66.2(4)(a)(ii) substituted by 1985, c. 45, subsec. 30(5), applicable with respect to dispositions occurring in taxation years commencing after 1984. Subpara. 66.2(4)(a)(ii) formerly read:

(ii) the aggregate of all amounts each of which was an amount that became receivable in the taxation year or in a previous taxation year by the second successor corporation, that are required to be included in the amount determined under clause 66.2(5)(b)(v)(A) by virtue of subsection 59(1.1) or paragraph 59(3.1)(a) and that may reasonably be regarded as attributable to the disposition by the second successor corporation of any property owned by the predecessor of the first successor corporation immediately before the acquisition thereof by the second successor corporation, and

Cl. 66.2(4)(b)(ii)(A) amended by 1985, c. 45, subsec. 24(8), to delete a reference to subsection 59(2.1), applicable to taxation years commencing after 1984.

Subsec. 66.2(4) amended by 1984, c. 1, subsec. 29(4), applicable with respect to acquisitions of property by a successor corporation from a predecessor after April 19, 1983, to substitute "predecessor" and "predecessor's" for "predecessor corporation" and "predecessor corporation's" wherever those expressions appeared.

All that portion of subpara. 66.2(4)(b)(ii) following cl. (B) substituted by 1980-81-82-83, c. 48, subsec. 35(4), applicable to taxation years ending after December 11, 1979, to add reference to subsec. (1.2).

Subsec. 66.2(4) substituted by 1979, c. 5, subsec. 21(1), applicable, as to para. 66.2(4)(a), to 1977 *et seq.*, as to para. 66.2(4)(b), to 1979 *et seq.*, and with respect to the election referred to in subsec. 66.2(4), with respect to acquisitions of property after November 16, 1978. Subsec. 66.2(4) formerly read:

(4) Where a corporation (in this subsection referred to as the "second successor corporation") has, at any time after May 6, 1974, acquired, by purchase or otherwise (including an acquisition as a result of an amalgamation described in section 87), from another corporation (in this subsection referred to as the "first successor corporation") that was a successor corporation within the meaning of subsection (3), all or substantially all of the property of the first successor corporation used by it in carrying on in Canada such of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) as were carried on by it, there may be deducted by the second successor corporation in computing its income under this Part for a taxation year, such amount as it may claim not exceeding the lesser of

(a) 30% of the cumulative Canadian development expense of the predecessor corporation referred to in paragraph (3)(a), determined at the time immediately after the property so acquired was acquired by the first successor corporation to the extent that it has not been deducted by the second successor corporation in computing its income for a previous taxation year and has not been deducted by the first successor corporation in computing its income for any taxation year; and

(b) the amount that is equal to such part of its income for the year, if no deduction were allowed under this section, section 65, 66 or 66.1 or the *Income Tax Application Rules, 1971* in respect of this paragraph (minus the deductions allowed for the year by sections 112 and 113), as may reasonably be regarded as attributable to

(i) the disposition of any property described in any of subparagraphs 66(15)(c)(i) to (vi) owned by the predecessor of the first successor corporation, within the meaning of subsection (3), immediately before the acquisition by the first successor corporation of the property so acquired by the second successor corporation, and

(ii) the production of petroleum or natural gas from wells, or the production of minerals from mines, situated on property in Canada in respect of which the predecessor of the first successor corporation, within the meaning of subsection (3), had, immediately before the acquisition by the first successor corporation of the property so acquired by the second successor corporation, an interest or a right to take or remove petroleum or natural gas or a right to take or remove minerals;

and, in respect of any expense included in the amount referred to in paragraph (a), no deduction may be made under this section by the first successor corporation in computing its income for a taxation year subsequent to its taxation year in which the property so acquired was acquired by the second successor corporation.

Subsec. 66.2(4) substituted by 1977-78, c. 1, subsec. 31(1), applicable to 1977 *et seq.* Subsec. 66.2(4) formerly read:

(4) Where a corporation (in this subsection referred to as the "second successor corporation") has, at any time after May 6, 1974, acquired by purchase or otherwise (including an acquisition as a result of an amalgamation described in subsection 87(1)) from a corporation (in this subsection referred to as the "first successor corporation") that was a successor corporation within the meaning of subsection (3), all or substantially all of the property of the first

successor corporation used by it in carrying on in Canada its business, there may be deducted by the second successor corporation, in computing its income under this Part for a taxation year, in respect of the cumulative Canadian development expense referred to in paragraph (3)(a) for the purpose of determining the deduction allowable to the first successor corporation under subsection (3) in computing its income for a previous taxation year, to the extent that such expense

(a) was not deducted by the second successor corporation or any other corporation in computing its income for a previous taxation year, and was not deducted by the first successor corporation in computing its income for the taxation year in which the property so acquired was acquired by the second successor corporation, and

(b) would, but for paragraph (3)(b), have been deductible by the first successor corporation in computing its income for the taxation year in which the property so acquired was acquired by the second successor corporation,

an amount that is equal to the lesser of

(c) 30% of the amount of the aggregate referred to in paragraph (a), and

(d) such part of its income for the year if no deduction were allowed under this section, section 65 or the *Income Tax Application Rules, 1971* in respect of this paragraph (minus any deductions allowed for the year by sections 66, 66.1, 112 and 113 and the provisions of the *Income Tax Application Rules, 1971* allowing a deduction for the purposes of this paragraph) as may reasonably be regarded as attributable to the production of petroleum or natural gas from wells, or the production of minerals from mines, situated on property in Canada from which the predecessor of the first successor corporation within the meaning of subsection (3) had, immediately before the acquisition by the first successor corporation of the property so acquired by the second successor corporation, a right to take or remove petroleum or natural gas or a right to take or remove minerals;

and, in respect of the aggregate referred to in paragraph (a), no deduction may be made under this section by the first successor corporation in computing its income for a taxation year subsequent to its taxation year in which the property so acquired was acquired by the second successor corporation.

(5) Definitions — In this section,

Related Provisions: 66(15.1) — Application to s. 66; 66.1(6.1) — Application to s. 66.1.

"Canadian development expense" of a taxpayer means any cost or expense incurred after May 6, 1974 that is

(a) any expense incurred by the taxpayer in

(i) drilling or converting a well in Canada for the disposal of waste liquids from an oil or gas well,

(ii) drilling or completing an oil or gas well in Canada, building a temporary access road to the well or preparing a site in respect of the well, to the extent that the expense was not a Canadian exploration expense of the taxpayer in the taxation year in which it was incurred,

(iii) drilling or converting a well in Canada for the injection of water, gas or any other substance to assist in the recovery of petroleum or natural gas from another well,

(iv) drilling for water or gas in Canada for injection into a petroleum or natural gas formation, or

(v) drilling or converting a well in Canada for the purposes of monitoring fluid levels, pressure changes or other phenomena in an accumulation of petroleum or natural gas,

(b) any expense incurred by the taxpayer in drilling or recompleting an oil or gas well in Canada after the commencement of production from the well,

(c) any expense incurred by the taxpayer before November 17, 1978 for the purpose of bringing a mineral resource in Canada into production and incurred prior to the commencement of production from the resource in reasonable commercial quantities, including

(i) clearing, removing overburden and stripping, and

(ii) sinking a mine shaft, constructing an adit or other underground entry,

(d) any expense (other than an amount included in the capital cost of depreciable property) incurred by the taxpayer after 1987

(i) in sinking or excavating a mine shaft, main haulage way or similar underground work designed for continuing use, for a mine in a mineral resource in Canada built or excavated after the mine came into production, or

(ii) in extending any such shaft, haulage way or work,

(e) [until 2007] notwithstanding paragraph 18(1)(m), the cost to the taxpayer of, including any payment for the preservation of a taxpayer's rights in respect of, any property described in paragraph (b), (e) or (f) of the definition "Canadian resource property" in subsection 66(15) or any right to or interest in such property (other than such a right or an interest that the taxpayer has by reason of being a beneficiary under a trust or a member of a partnership) but not including any payment made to any of the persons referred to in subparagraph 18(1)(m)(i) for the preservation of a taxpayer's rights in respect of a Canadian resource property nor a payment to which paragraph 18(1)(m) applied because of clause 18(1)(m)(ii)(B),

Amendment [effective 2007] — 66.2(5)"Canadian development expense"(e)

(e) the cost to the taxpayer of, including any payment for the preservation of a taxpayer's rights in respect of, any property described in paragraph (b), (e) or (f) of the definition "Canadian resource property" in subsection 66(15), or any right to or interest in such property (other than a right or an interest that the taxpayer has by reason of being a beneficiary under a trust or a member of a partnership),

Application: S.C. 2003, c. 28 (Bill C-48, Royal Assent November 7, 2003), subsec. 6(2), amends para. (e) of the definition "Canadian development expense" in subsec. 66.2(5) to read as above, applicable to taxation years that begin after 2006.

Proposed Amendment — 66.2(5)"Canadian development expense"(e)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 222(2), will amend para. (e) of the definition "Canadian development expense" in subsec. 66.2(5) by substituting "interest in — or, for civil law, any right in or to — such property (other than such a right or interest" for "interest in such property (other than such a right or an interest", to come into force on Royal Assent.

Technical Notes: See under 12(4).

Proposed Amendment [effective 2007] — 66.2(5)"Canadian development expense"(e)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 222(3), will amend para. (e) of the definition "Canadian development expense" in subsec. 66.2(5) by substituting "interest in — or, for civil law, any right in or to — " for "interest in", applicable to taxation years that begin after 2006.

Technical Notes: See under 12(4).

(f) subject to section 66.8, the taxpayer's share of any expense referred to in any of paragraphs (a) to (e) incurred by a partnership in a fiscal period thereof at the end of which the taxpayer was a member of the partnership, unless the taxpayer elects in respect of the share in prescribed form and manner on or before the day that is 6 months after the taxpayer's taxation year in which that period ends, or

(g) any cost or expense referred to in any of paragraphs (a) to (e) incurred by the taxpayer pursuant to an agreement in writing with a corporation, entered into before 1987, under which the taxpayer incurred the cost or expense solely as consideration for shares, other than prescribed shares, of the capital stock of the corporation issued to the taxpayer or any interest in such shares or right thereto,

Proposed Amendment — 66.2(5)"Canadian development expense"(g)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 222(4), will amend para. (g) of the definition "Canadian development expense" in subsec. 66.2(5) by substituting "interest in or right to — or, for civil law, any right in or to — such shares" for "interest in such shares or right thereto", to come into force on Royal Assent.

Technical Notes: See under 12(4).

but, for greater certainty, shall not include

(h) any consideration given by the taxpayer for any share or any interest therein or right thereto, except as provided by paragraph (g),

Proposed Amendment — 66.2(5)"Canadian development expense"(h)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 222(5), will amend para. (h) of the definition "Canadian development expense" in subsec. 66.2(5) by substituting "interest in or right to — or, for civil law, any right in or to — a share" for "interest therein or right thereto", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(i) any expense described in paragraph (g) incurred by any other taxpayer to the extent that the expense was,

(i) by virtue of that paragraph, a Canadian development expense of that other taxpayer,

(ii) by virtue of paragraph (i) of the definition "Canadian exploration expense" in subsection 66.1(6), a Canadian exploration expense of that other taxpayer, or

(iii) by virtue of paragraph (c) of the definition "Canadian oil and gas property expense" in subsection 66.4(5), a Canadian oil and gas property expense of that other taxpayer,

(i.1) an expense that is the cost, or any part of the cost, to the taxpayer of any depreciable property of a prescribed class that was acquired after 1987,

(j) any amount included at any time in the capital cost to the taxpayer of any depreciable property of a prescribed class, or

(k) the taxpayer's share of any consideration, expense, cost or expenditure referred to in any of paragraphs (h) to (j) given or incurred by a partnership,

but any assistance that a taxpayer has received or is entitled to receive after May 25, 1976 in respect of or related to the taxpayer's Canadian development expense shall not reduce the amount of any of the expenses described in any of paragraphs (a) to (g);

Related Provisions: 13(7.5) — Depreciable property treatment for costs associated with building roads and similar projects; 13(34), Reg. 1102(1)(a) — Depreciable property takes priority over resource property; 18(1)(m) — Royalties, etc.; 53(1)(e)(vii.1) — Addition to ACB — partnership interest; 66.2(2) — Deduction for cumulative CDE; 66.2(8) — Presumption; 66.3 — Exploration and development shares; 248(1)"Canadian development expense" — Definition applies to entire Act; 248(16), (16.1) — GST or QST input tax credit/refund and rebate deemed to be assistance; 248(18), (18.1) — GST or QST — repayment of input tax credit or refund; *Interpretation Act* 8(2.1), (2.2) — Application to exclusive economic zone and continental shelf. See additional Related Provisions and Definitions at end of s. 66.2.

History: Para. (e) of the definition "Canadian development expense" amended by 2003, c. 28, subsec. 6(1), applicable after December 20, 2002. The para. formerly read:

> (e) notwithstanding paragraph 18(1)(m), the cost to the taxpayer of any property described in paragraph (b), (e) or (f) of the definition "Canadian resource property" in subsection 66(15) or any right to or interest in such property (other than such a right or interest that the taxpayer has by virtue of being a beneficiary of a trust) but not including any payment made to any of the persons referred to in any of subparagraphs 18(1)(m)(i) to (iii) for the preservation of a taxpayer's rights in respect of a Canadian resource property nor a payment to which paragraph 18(1)(m) applied by virtue of subparagraph 18(1)(m)(v),

Para. (i.1) added to the definition "Canadian development expense" by 2001, c. 17, s. 46, applicable to 1988 *et seq.*

Paras. (j) and (k) added to the definition "Canadian development expense" in subsec. 66.2(5) by 1997, c. 25, s. 15, applicable to taxation years that end after December 5, 1996.

Para. (f) of "Canadian development expense" in subsec. 66.2(5) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 24, applicable to partnership fiscal periods ending after July 1990, except that an election referred to in the para. that is filed before December 11, 1993, shall be deemed to have been filed on a timely basis. Para. (f) formerly read:

> (f) subject to section 66.8, the taxpayer's share of any expense referred to in any of paragraphs (a) to (e) incurred by a partnership in a fiscal period thereof, if, at the end of that period, the taxpayer was a member of the partnership, or

Selected Cases [subsec. 66.2(5)"Canadian development expense"]: *Mitchell v. R.*, [1999] 2 C.T.C. 2721 (TCC) (Double renunciation was permitted); *Gulf Canada Ltd. v. Canada*, [1991] 1 C.T.C. 99 (FCTD); aff'd [1992] 1 C.T.C. 183 (FCA); leave to appeal to SCC refused (1992), 141 N.R. 393 (note), (sub nom. *Gulf Canada Ltd. v. MNR)* (Interpretation of: "Canadian exploration expenses", "Canadian development expenses", "taxable production profits"); *International Nickel Co. of Canada Ltd. v. MNR*, [1969] C.T.C. 106 (Exch.) (Expenses for establishment of town for employees not development expenses).

Regulations: 6202 (prescribed share).

Interpretation Bulletins: IT-109R2: Unpaid amounts; IT-273R2: Government assistance — general comments; IT-438R2: Crown charges — resource properties in Canada; IT-503: Exploration and development shares (archived).

Advance Tax Rulings: ATR-59: Financing exploration and development through limited partnerships.

Forms: T1086: Election by a partner waiving Canadian development expenses or oil and gas property expenses.

"cumulative Canadian development expense" of a taxpayer at any time in a taxation year means the amount determined by the formula

$$(A + B + C + D + D.1) - (E + F + G + H + I + J + K + L + M + M.1 + N + O)$$

where

A is the total of all Canadian development expenses made or incurred by the taxpayer before that time,

B the total of all amounts required by virtue of subsection (1) to be included in computing the amount referred to in paragraph 59(3.2)(c) for taxation years ending before that time,

C is the total of all amounts referred to in the description of F or G that are established by the taxpayer to have become a bad debt before that time,

D is such part, if any, of the amount determined for M as has been repaid before that time by the taxpayer pursuant to a legal obligation to repay all or any part of that amount,

D.1 is the total of all specified amounts determined under paragraph 66.7(12.1)(b) in respect of the taxpayer for taxation years ending before that time,

E is the total of all amounts deducted in computing the taxpayer's income for a taxation year ending before that time in respect of the taxpayer's cumulative Canadian development expense,

F is the total of all amounts each of which is an amount in respect of property described in paragraph (b), (e) or (f) of the definition "Canadian resource property" in subsection 66(15) or any right to or interest in such a property, other than such a right or an interest that the taxpayer has by reason of being a beneficiary under a trust or a member of a partnership, (in this description referred to as "the particular property") disposed of by the taxpayer before that time equal to the amount, if any, by which

Proposed Amendment — 66.2(5)"cumulative Canadian development expense"F opening words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 222(6), will amend the opening words of the description of F in the definition "cumulative Canadian development expense" in subsec. 66.2(5) by substituting "interest in — or, for civil law, any right in or to — " for "interest in", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(a) the amount, if any, by which the proceeds of disposition in respect of the particular property that became receivable by the taxpayer after May 6, 1974 and before that time exceed any outlays or expenses that were made or incurred by the taxpayer after May 6, 1974 and before that time for the purpose of making the disposition and that were not otherwise deductible for the purposes of this Part

exceeds

(b) the amount, if any, by which

(i) the total of all amounts that would be determined under paragraph 66.7(4)(a), immediately before the time (in this paragraph referred to as the "relevant time") when such proceeds of disposition became receivable, in respect of the taxpayer and an original owner of the particular property (or of any other property acquired by the taxpayer with the particular property in circumstances in which subsection 66.7(4) applied and in respect of which the proceeds of disposition became receivable by the taxpayer at the relevant time) if

(A) amounts that became receivable at or after the relevant time were not taken into account,

(B) each designation made under subparagraph 66.7(4)(a)(iii) in respect of an amount that became receivable before the relevant time were made before the relevant time,

(C) paragraph 66.7(4)(a) were read without reference to "30% of", and

(D) no reduction under subsection 80(8) at or after the relevant time were taken into account

exceeds the total of

(ii) all amounts that would be determined under paragraph 66.7(4)(a) at the relevant time in respect of the taxpayer and an original owner of the particular property (or of that other property) if

(A) amounts that became receivable after the relevant time were not taken into account,

(B) each designation made under subparagraph 66.7(4)(a)(iii) in respect of an amount that became receivable at or before the relevant time were made before the relevant time,

(C) paragraph 66.7(4)(a) were read without reference to "30% of",

(D) amounts described in subparagraph 66.7(4)(a)(iii) that became receivable at the relevant time were not taken into account, and

(E) no reduction under subsection 80(8) at or after the relevant time were taken into account, and

(iii) such portion of the amount otherwise determined under this paragraph as was otherwise applied to reduce the amount otherwise determined under this description,

G is the total of all amounts that became receivable by the taxpayer before that time that are to be included in the amount determined under this description by virtue of paragraph 66(12.1)(b) or (12.3)(a),

H is the total of all amounts each of which is an amount included by the taxpayer as an expense under paragraph (a) of the definition "Canadian development expense" in this subsection in computing the taxpayer's Canadian development expense for a previous taxation year that has become a Canadian exploration expense of the taxpayer by virtue of subparagraph (c)(ii) of the definition "Canadian exploration expense" in subsection 66.1(6),

I is the total of all amounts each of which is an amount that before that time has become a Canadian exploration expense of the taxpayer by virtue of subsection 66.1(9),

J is the total of all amounts each of which is an amount received before that time on account of any amount referred to in the description of C,

K is the total of all amounts paid to the taxpayer after May 6, 1974 and before May 25, 1976

(a) under the *Northern Mineral Exploration Assistance Regulations* made under an appropriation Act that provides for payments in respect of the Northern Mineral Grants Program, or

(b) pursuant to any agreement, entered into between the taxpayer and Her Majesty in right of Canada under the Northern Mineral Grants Program or the Development Program of the Department of Indian Affairs and Northern Development,

to the extent that the amounts have been expended by the taxpayer as or on account of Canadian development expense incurred by the taxpayer,

L is the amount by which the total of all amounts determined under subsection 66.4(1) in respect of a taxation year of the taxpayer ending at or before that time

exceeds the total of all amounts each of which is the least of

(a) the amount that would be determined under paragraph 66.7(4)(a), at a time (hereafter in this description referred to only as the "particular time") that is the end of the latest taxation year of the taxpayer ending at or before that time, in respect of the taxpayer as successor in respect of a disposition (in this description referred to as the "original disposition") of Canadian resource property by a person who is an original owner of the property because of the original disposition, if

(i) that paragraph were read without reference to "30% of",

(ii) where the taxpayer has disposed of all or part of the property in circumstances in which subsection 66.7(4) applied, that subsection continued to apply to the taxpayer in respect of the original disposition as if subsequent successors were the same person as the taxpayer, and

(iii) each designation made under subparagraph 66.7(4)(a)(iii) in respect of an amount that became receivable before the particular time were made before the particular time,

(b) the amount, if any, by which the total of all amounts each of which became receivable at or before the particular time and before 1993 by the taxpayer and is included in computing the amount determined under subparagraph 66.7(5)(a)(ii) in respect of the original disposition exceeds the amount, if any, by which

(i) where the taxpayer disposed of all or part of the property before the particular time in circumstances in which subsection 66.7(5) applied, the amount that would be determined at the particular time under subparagraph 66.7(5)(a)(i) in respect of the original disposition if that subparagraph continued to apply to the taxpayer in respect of the original disposition as if subsequent successors were the same person as the taxpayer, and

(ii) in any other case, the amount determined at the particular time under subparagraph 66.7(5)(a)(i) in respect of the original disposition

exceeds

(iii) the amount that would be determined at the particular time under subparagraph 66.7(5)(a)(ii) in respect of the original disposition if that subparagraph were read without reference to the words "or the successor", wherever they appear therein, and if amounts that became receivable after 1992 were not taken into account, and

(c) where

(i) after the original disposition and at or before the particular time, the taxpayer disposed of all or part of the property in circumstances in which subsection 66.7(4) applied, otherwise than by way of an amalgamation or merger or solely because of the application of paragraph 66.7(10)(c), and

(ii) the winding-up of the taxpayer began at or before that time or the taxpayer's disposition referred to in subparagraph (i) (other than a disposition under an agreement in writing entered into before December 22, 1992) occurred after December 21, 1992,

nil,

M is the total amount of assistance that the taxpayer has received or is entitled to receive in respect of any Canadian development expense (including an expense that has become a Canadian exploration expense of the taxpayer by virtue of subsection 66.1(9)) incurred after 1980 or that can reasonably be related to Canadian development activities after 1980,

M.1 is the total of all amounts by which the cumulative Canadian development expense of the taxpayer is required because of subsection 80(8) to be reduced at or before that time,

N is the total of all amounts that are required to be deducted before that time under subsection 66(14.2) in computing the taxpayer's cumulative Canadian development expense, and

O is the total of all amounts that are required to be deducted before that time under paragraph 66.7(12)(c) in computing the taxpayer's cumulative Canadian development expense.

Related Provisions: 13(34), Reg. 1102(1)(a) — Deductible expenses; 35(1)(c) — Prospectors and grubstakers; 50(1)(a) — Deemed disposition where debt becomes bad debt; 59(3.2) — Recovery of exploration & development expenses; 66(12.1) — Limitations of Canadian exploration & development expenses; 66(12.3) — Unitized oil or gas field in Canada; 66.2(7) — Exception; 66.4(1) — Recovery of costs; 66.7(4) — Deduction to successor corporation; 70(5.2) — Resource properties and land inventories of deceased; 79(4)(c) — Subsequent payment by debtor following surrender of property deemed to be repayment of assistance; 79.1(8) — No claim for principal amount of bad debt where property seized by creditor; 80(8)(c) — Reduction of CCDE on debt forgiveness; 96(2.2)(d) — at-risk amount; 104(5.2) — Trusts — 21-year deemed disposition; 248(16), (16.1) — GST or QST input tax credit/refund and rebate deemed to be assistance; 248(18), (18.1) — GST or QST — repayment of input tax credit or refund; 257 — Formula cannot calculate to less than zero. See also at end of s. 66.2.

History: The opening words of the description of F in the definition "cumulative Canadian development expense" in subsec. 66.2(5) amended by 2003, c. 28, subsec. 6(3), applicable after December 20, 2002. The opening words formerly read:

F is the total of all amounts each of which is an amount in respect of a property described in paragraph (b), (e) or (f) of the definition "Canadian resource property" in subsection 66(15) or a right to or interest in such a property, other than such a right or interest that the taxpayer has by virtue of being a beneficiary of a trust, (in this description referred to as the "particular property") disposed of by the taxpayer before that time equal to the amount, if any, by which

Cls. (b)(i)(D) and (b)(ii)(E) added to the description of F in the definition "cumulative Canadian development expense" in subsec. 66.2(5) added by 1995, c. 21, subsecs. 23(2) and (3), applicable to taxation years that end after February 21, 1994.

The description of M.1 added to the definition "cumulative Canadian development expense" in subsec. 66.2(5) and the corresponding formula amended by 1995, c. 21, subsecs. 23(1) and (4), applicable to taxation years that end after February 21, 1994.

All that portion of the description of F in the definition "cumulative Canadian development expense" in subsec. 66.2(5) following para. (a) substituted by 1994, c. 21, subsec. 29(1), applicable to taxation years ending after February 17, 1987. That portion of the description of F formerly read:

exceeds the amount equal to

(b) where the proceeds of disposition referred to in paragraph (a) may reasonably be attributed to the disposition of a property that was acquired by the taxpayer in circumstances in which

subsection 66.7(4) applies to the taxpayer as successor, the lesser of

(i) the amount determined under paragraph (a) in respect of the property, and

(ii) the total of all amounts each of which is an amount that would be determined at that time under paragraph 66.7(4)(a) in respect of the acquisition of the property by the taxpayer if that paragraph were read without reference to "30% of", and

(c) in any other case, nil,

The description of L in the definition "cumulative Canadian development expense" in subsec. 66.2(5) substituted by 1994, c. 21, subsec. 29(2), applicable to taxation years ending after December 21, 1992, except that where a taxpayer so elects by notifying the Minister of National Revenue in writing by December 31, 1994, the description of L shall apply in respect of the taxpayer to taxation years ending after February 17, 1987; and, notwithstanding subsecs. 152(4) to (5), such assessments and determinations in respect of any taxation year shall be made as are necessary to give effect to the election. That description formerly read:

L is the amount by which the total of all amounts each of which is an amount determined under subsection 66.4(1) in respect of a taxation year of the taxpayer ending at or before that time exceeds the total of all amounts each of which is the lesser of

(a) the amount that would be determined at that time under paragraph 66.7(4)(a) in respect of the acquisition of property from a particular original owner or predecessor owner of the property by the taxpayer if that paragraph were read without reference to "30% of", and

(b) the amount, if any, by which the total of the amounts that became receivable at or before that time by the taxpayer and that are described in subparagraph 66.7(5)(a)(ii) in respect of the disposition of property acquired from the particular original owner or predecessor owner exceeds the amount determined in subparagraph 66.7(5)(a)(i) in respect of the acquisition of that property,

D.1 and its description added the definition "cumulative Canadian development expense" in subsec. 66.2(5) by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 40(3)and (3.1), applicable to taxation years beginning after February 17, 1987.

Interpretation Bulletins: IT-109R2: Unpaid amounts; IT-125R4: Dispositions of resource properties; IT-273R2: Government assistance — general comments.

(5.1) Application of subsecs. 66(15), 66.1(6) and 66.4(5) — The definitions in subsections 66(15), 66.1(6) and 66.4(5) apply to this section.

Origin of subsec. 66.2(5.1): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsecs. 66(15), 66.1(6) and 66.4(5)).

(6) Presumption [partner's share] — Except as provided in subsection (7), where a taxpayer is a member of a partnership, the taxpayer's share of any amount that would be an amount referred to in the description of D in the definition "cumulative Canadian development expense" in subsection (5), in paragraph (a) of the description of F in that definition or in the description of G or M in that definition in respect of the partnership for a taxation year of the partnership if section 96 were read without reference to paragraph 96(1)(d) shall, for the purposes of this Act, be deemed to be an amount referred to in the description of D in the definition "cumulative Canadian development expense" in subsection (5), in paragraph (a) of the description of F in that definition or in the description of G or M in that definition, whichever is applicable, in respect of the taxpayer for the taxation year of the taxpayer in which the partnership's taxation year ends.

Related Provisions: 59(1.1) — Parallel rule for foreign resource property; 66.4(6) — Parallel rule for CCOGPE.

History: Subsec. 66.2(6) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 40(4), applicable after January 1990. Subsec. (6) formerly read:

(6) Except as provided in subsection (7), where a taxpayer is a member of a partnership, the taxpayer's share of any amount that would be an amount referred to in paragraph (a) of the description of F in the definition "cumulative Canadian development expense" in subsection (5) or in the description of G or M in that definition in respect of the partnership for a taxation year of the partnership if section 96 were read without reference to paragraph 96(1)(d) shall, for the purposes of this Act, be deemed to be an amount referred to in paragraph (a) of the description of F in the definition "cumulative Canadian development expense" in subsection (5) or in the description of G or M in that definition, as the case may be, in respect of the taxpayer for the taxation year of the taxpayer in which the partnership's taxation year ends.

Interpretation Bulletins: IT-125R4: Dispositions of resource properties; IT-273R2: Government assistance — general comments; IT-353R2: Partnership interest — some adjustments to cost base (archived).

I.T. Technical News: 12 (adjusted cost base of partnership interest — subparagraph 53(1)(e)(viii)).

(7) Exception — Where a non-resident person is a member of a partnership that is deemed under paragraph 115(4)(b) to have disposed of any Canadian resource property, the person's share of any amount that would be an amount referred to in the description of D in the definition "cumulative Canadian development expense" in subsection (5), in paragraph (a) of the description of F in that definition or in the description of G or M in that definition in respect of the partnership for a taxation year of the partnership if section 96 were read without reference to paragraph 96(1)(d) shall, for the purposes of this Act, be deemed to be an amount referred to in the description of D in the definition "cumulative Canadian development expense" in subsection (5), in paragraph (a) of the description of F in that definition or in the description of G or M in that definition, whichever is applicable, in respect of the person for the taxation year of the person that is deemed under paragraph 115(4)(a) to have ended.

History: Subsec. 66.2(7) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 40(4), applicable after January 1990. Subsec. 66.2(7) formerly read:

(7) Where a non-resident person is a member of a partnership that is deemed under paragraph 115(4)(b) to have disposed of a property, the non-resident person's share of any amount that would be an amount referred to in paragraph (a) of the description of F in the definition "cumulative Canadian development expense" in subsection (5) or in the description of G or M in that definition in respect of the partnership for a taxation year of the partnership if section 96 were read without reference to paragraph 96(1)(d) shall, for the purposes of this Act, be deemed in respect of the non-resident person to be an amount referred to in paragraph (a) of the description of F in the definition "cumulative Canadian development expense" in subsection (5) or in the description of G or M in that definition, as the case may be, for the taxation year of the non-resident person that is deemed under paragraph 115(4)(a) to have ended.

Interpretation Bulletins: IT-125R4: Dispositions of resource properties; IT-273R2: Government assistance — general comments.

(8) Presumption — Where pursuant to the terms of an arrangement in writing entered into before December 12, 1979 a taxpayer acquired a property described in paragraph (a) of the definition "Canadian oil and gas property expense" in subsection 66.4(5), for the purposes of this Act, the cost of acquisition shall be deemed to be a Canadian development expense incurred at the time the taxpayer acquired the property.

Related Provisions [s. 66.2]: 66(5) — Dealers; 66(18) — Members of partnerships; 66.7 — Successor rules; 66.8(1) — Resource expenses of limited partner; 87(1.2) — New corporation deemed continuation of predecessor; 88(1.5) — Winding-up — parent deemed continuation of subsidiary.

Selected Cases [s. 66.2]: *Gulf Canada Ltd. v. Canada*, [1991] 1 C.T.C. 99 (FCTD); aff'd [1992] 1 C.T.C. 183 (FCA); leave to appeal to SCC refused (1992), 141 N.R. 393 (note), (sub nom. *Gulf Canada Ltd. v. MNR)* (Interpretation of: "Canadian exploration expenses", "Canadian development expenses", "taxable production profits").

Definitions [s. 66.2]: "amount" — 248(1); "assistance" — 66(15), 66.1(6.1), 79(4), 125.4(5), 248(16), (16.1), (18), (18.1); "Canada" — 255, *Interpretation Act* 8(2.1), (2.2); "Canadian development expense" — 66.2(5), (8), 248(1); "Canadian exploration expense" — 66.1(6), 248(1); "Canadian exploration and development expense" — 66(15), 66.2(5.1); "Canadian exploration expense" — 66.1(6), 248(1); "Canadian oil and gas property expense" — 66.4(5), 248(1); "Canadian resource property" — 66(15), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition" — 54, 66.2(5.1), 66.4(5); "expense" — 66(15), 66.2(5.1); "fiscal period" — 249(2)(b), 249.1; "Her Majesty" — *Interpretation Act* 35(1); "mineral resource", "non-resident", "oil or gas well", "person", "prescribed" — 248(1); "proceeds of disposition" — 54, 66.2(5.1), 66.4(5); "property", "share" — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1); "writing" — *Interpretation Act* 35(1).

66.21 [Foreign resource expenses] — (1) Definitions — The definitions in this subsection apply in this section.

"adjusted cumulative foreign resource expense" of a taxpayer, in respect of a country, at the end of a taxation year means the total of

(a) the cumulative foreign resource expense of the taxpayer, in respect of that country, at the end of the year; and

(b) the amount, if any, by which

(i) the total determined under paragraph 66.7(13.2)(a) in respect of that country and the taxpayer for the year

exceeds

(ii) the amount that would, but for paragraph (3)(c), be determined under subsection (3) in respect of that country and the taxpayer for the year.

"cumulative foreign resource expense" of a taxpayer, in respect of a country other than Canada at a particular time, means the amount determined by the formula

$$(A + B + C + D) - (E + F + G + H + I + J)$$

where

A is the total of all foreign resource expenses, in respect of that country, made or incurred by the taxpayer

(a) before the particular time, and

(b) at a time (in this definition referred to as a "resident time")

(i) at which the taxpayer was resident in Canada, and

(ii) where the taxpayer became resident in Canada before the particular time, that is after the last time (before the particular time) that the taxpayer became resident in Canada;

B is the total of all amounts required to be included in computing the amount referred to in paragraph 59(3.2)(c.1) in respect of that country, for taxation years that ended before the particular time and at a resident time;

C is the total of all amounts referred to in the description of F or G that are established by the taxpayer to have become a bad debt before the particular time and at a resident time;

D is the total of all specified amounts determined under subsection 66.7(13.2), in respect of the taxpayer and that country, for taxation years that ended before the particular time and at a resident time;

E is the total of all amounts deducted, in computing the taxpayer's income for a taxation year that ended before the particular time and at a resident time, in respect of the taxpayer's cumulative foreign resource expense in respect of that country;

F is the total of all amounts each of which is an amount in respect of a foreign resource property, in respect of that country, (in this description referred to as the "particular property") disposed of by the taxpayer equal to the amount, if any, by which

(a) the amount designated under subparagraph 59(1)(b)(ii) by the taxpayer in respect of the portion of the proceeds of that disposition that became receivable before the particular time and at a resident time

exceeds

(b) the amount, if any, by which

(i) the total of all amounts that would be determined under paragraph 66.7(2.3)(a), immediately before the time (in this paragraph referred to as the "relevant time") when such proceeds of disposition became receivable, in respect of the taxpayer, that country and an original owner of the particular property (or of any other property acquired by the taxpayer with the particular property in circumstances to which subsection 66.7(2.3) applied and in respect of which the proceeds of disposition became receivable by the taxpayer at the relevant time) if

(A) amounts that became receivable at or after the relevant time were not taken into account,

(B) paragraph 66.7(2.3)(a) were read without reference to "30% of", and

(C) no reduction under subsection 80(8) at or after the relevant time were taken into account,

exceeds the total of

(ii) all amounts that would be determined under paragraph 66.7(2.3)(a) at the relevant time in respect of the taxpayer, that country and an original owner of the particular property (or of that other property) if

(A) amounts that became receivable after the relevant time were not taken into account,

(B) paragraph 66.7(2.3)(a) were read without reference to "30% of", and

(C) no reduction under subsection 80(8) at or after the relevant time were taken into account, and

(iii) the portion of the amount otherwise determined under this paragraph that was otherwise applied to reduce the amount otherwise determined under this description;

G is the total of all amounts, in respect of that country, each of which is an amount included in the amount determined under this description by reason of subsection 66(12.41) that became receivable by the taxpayer before the particular time and at a resident time;

H is the total of all amounts each of which is an amount received before the particular time and at a resident time on account of any amount referred to in the description of C;

I is the total of all amounts each of which is an amount by which the cumulative foreign resource expense of the taxpayer, in respect of that country, is required, by

reason of subsection 80(8), to be reduced at or before the particular time and at a resident time; and

J is the total of all amounts each of which is an amount that is required to be deducted, before the particular time and at a resident time, under paragraph 66.7(13.1)(a) in computing the taxpayer's cumulative foreign resource expense.

Related Provisions: 104(5.2) — Trusts — 21-year deemed disposition; 248(1)"foreign resource property" — Meaning of foreign resource property in respect of a country; 257 — Formula cannot calculate to less than zero.

"foreign resource expense" of a taxpayer, in respect of a country other than Canada, means

(a) any drilling or exploration expense, including any general geological or geophysical expense, incurred by the taxpayer on or in respect of exploring or drilling for petroleum or natural gas in that country,

(b) any expense incurred by the taxpayer for the purpose of determining the existence, location, extent or quality of a mineral resource in that country, including any expense incurred in the course of

(i) prospecting,

(ii) carrying out geological, geophysical or geochemical surveys,

(iii) drilling by rotary, diamond, percussion or other methods, or

(iv) trenching, digging test pits and preliminary sampling,

(c) the cost to the taxpayer of any of the taxpayer's foreign resource property in respect of that country,

(d) any annual payment made by the taxpayer for the preservation of a foreign resource property in respect of that country, and

(e) subject to section 66.8, the taxpayer's share of an expense, cost or payment referred to in any of paragraphs (a) to (d) that is made or incurred by a partnership in a fiscal period of the partnership that begins after 2000 if, at the end of that period, the taxpayer was a member of the partnership

but does not include

(f) an expenditure that is the cost, or any part of the cost, to the taxpayer of any depreciable property of a prescribed class,

(g) an expenditure incurred at any time after the commencement of production from a foreign resource property of the taxpayer in order to evaluate the feasibility of a method of recovery of petroleum, natural gas or related hydrocarbons from the portion of a natural reservoir to which the foreign resource property relates,

(h) an expenditure (other than a drilling expense) incurred at any time after the commencement of production from a foreign resource property of the taxpayer in order to assist in the recovery of petroleum, natural gas or related hydrocarbons from the portion of a natural reservoir to which the foreign resource property relates,

(i) an expenditure, incurred at any time, that relates to the injection of any substance to assist in the recovery of petroleum, natural gas or related hydrocarbons from a natural reservoir,

(j) an expenditure incurred by the taxpayer, unless the expenditure was made

(i) for the acquisition of foreign resource property by the taxpayer, or

(ii) for the purpose of

(A) enhancing the value of foreign resource property that the taxpayer owned at the time the expenditure was incurred or that the taxpayer had a reasonable expectation of owning after that time, or

(B) assisting in evaluating whether a foreign resource property is to be acquired by the taxpayer, or

(k) the taxpayer's share of any cost or expenditure referred to in any of paragraphs (f) to (j) that is incurred by a partnership.

Related Provisions: 66(18) — Expenses of partnerships; 66.7(2.3) — Successor of foreign resource expenses; 248(1)"foreign resource expense" — Definition applies to entire Act; 248(1)"foreign resource property" — Meaning of foreign resource property in respect of a country.

"foreign resource income" of a taxpayer for a taxation year, in respect of a country other than Canada, means the total of

(a) that part of the taxpayer's income for the year, determined without reference to subsections (4) and 66(4), that is reasonably attributable to

(i) the production of petroleum or natural gas from natural accumulations of petroleum or natural gas in that country or from oil or gas wells in that country, or

(ii) the production of minerals from mines in that country;

(b) the taxpayer's income for the year from royalties in respect of a natural accumulation of petroleum or natural gas in that country, an oil or gas well in that country or a mine in that country, determined without reference to subsections (4) and 66(4); and

(c) all amounts each of which is an amount, in respect of a foreign resource property in respect of that country that has been disposed of by the taxpayer, equal to the amount, if any, by which

(i) the amount included in computing the taxpayer's income for the year by reason of subsection 59(1) in respect of that disposition

exceeds

(ii) the total of all amounts each of which is that portion of an amount deducted under subsection 66.7(2) in computing the taxpayer's income for the year that

(A) can reasonably be considered to be in respect of the foreign resource property, and

(B) cannot reasonably be considered to have reduced the amount otherwise determined under paragraph (a) or (b) in respect of the taxpayer for the year.

Related Provisions: 248(1)"foreign resource property" — Meaning of foreign resource property in respect of a country.

"foreign resource loss" of a taxpayer for a taxation year in respect of a country other than Canada means the taxpayer's loss for the year in respect of the country determined in accordance with the definition "foreign resource income" with such modifications as the circumstances require.

"global foreign resource limit" of a taxpayer for a taxation year means the amount that is the lesser of

(a) the amount, if any, by which

(i) the amount determined under subparagraph 66(4)(b)(ii) in respect of the taxpayer for the year

exceeds the total of

(ii) the total of all amounts each of which is the maximum amount that the taxpayer would be permitted to deduct, in respect of a country, under subsection (4) in computing the taxpayer's income for the year if, in its application to the year, subsection (4) were read without reference to paragraph (4)(b), and

(iii) the amount deducted for the year under subsection 66(4) in computing the taxpayer's income for the year; and

(b) the amount, if any, by which

(i) 30% of the total of all amounts each of which is, at the end of the year, the taxpayer's adjusted cumulative foreign resource expense in respect of a country

exceeds

(ii) the total described in subparagraph (a)(ii).

Related Provisions: 66(13.1) — Short taxation year.

(2) Application of subsection 66(15) — The definitions in subsection 66(15) apply in this section.

(3) Amount to be included in income — For the purpose of paragraph 59(3.2)(c.1), the amount referred to in this subsection in respect of a taxpayer for a taxation year is the amount, if any, by which

(a) the total of all amounts referred to in the descriptions of E to J in the definition "cumulative foreign resource expense" in subsection (1) that are deducted in computing the taxpayer's cumulative foreign resource expense at the end of the year in respect of a country

exceeds the total of

(b) the total of all amounts referred to in the descriptions of A to D in the definition "cumulative foreign resource expense" in subsection (1) that are included in computing the taxpayer's cumulative foreign resource expense at the end of the year in respect of the country, and

(c) the total determined under paragraph 66.7(13.2)(a) for the year in respect of the taxpayer and the country.

Related Provisions: 59(3.2)(c.1) — Income inclusion; 66(5) — No application to certain dealers; 66(11.4)(c) — Change of control; 66.8(1) — Resource expenses of limited partner; 70(5.2)(a) — Death of taxpayer; 87(1.2) — Amalgamation — continuing corporation; 88(1.5) — Windup — parent continuation of subsidiary.

(4) Deduction for cumulative foreign resource expense — In computing a taxpayer's income for a taxation year throughout which the taxpayer is resident in Canada, the taxpayer may deduct the amount claimed by the taxpayer, in respect of a country other than Canada, not exceeding the total of

(a) the greater of

(i) 10% of a particular amount equal to the taxpayer's adjusted cumulative foreign resource expense in respect of the country at the end of the year, and

(ii) the least of

(A) if the taxpayer ceased to be resident in Canada immediately after the end of the year, the particular amount,

(B) if clause (A) does not apply, 30% of the particular amount,

(C) the amount, if any, by which the taxpayer's foreign resource income for the year in respect of the country exceeds the portion of the amount, deducted under subsection 66(4) in computing the taxpayer's income for the year, that applies to a source in the country, and

(D) the amount, if any, by which

(I) the total of all amounts each of which is the taxpayer's foreign resource income for the year in respect of a country

exceeds the total of

(II) all amounts each of which is the taxpayer's foreign resource loss for the year in respect of a country, and

(III) the amount deducted under subsection 66(4) in computing the taxpayer's income for the year, and

(b) the lesser of

(i) the amount, if any, by which the particular amount exceeds the amount determined for the year under paragraph (a) in respect of the taxpayer, and

(ii) that portion of the taxpayer's global foreign resource limit for the year that is designated for the year by the taxpayer, in respect of that country and no other country, in prescribed form filed with the Minister with the taxpayer's return of income for the year.

Related Provisions: 20(1)(hh) — Repayments of inducements, etc.; 66(5) — No application to certain dealers; 66(11.4)(c) — Change of control; 66(13.1) — Short taxation year; 66.8(1) — Resource expenses of limited partner; 70(5.2)(a) — Death of taxpayer; 87(1.2) — Amalgamation — continuing corporation; 88(1.5) — Windup — parent continuation of subsidiary; 96(1)(d)(ii) — Partnerships — no deduction for resource expenses; 110.6(1)"investment expense"(d) — Effect of claim under 66.21(4) on capital gains exemption; 115(4.1) — Taxable income earned in Canada — foreign resource pool expenses; 127.52(1)(e) — Add-back of deduction for minimum tax purposes.

(5) Individual changing residence — Where at any time in a taxation year an individual becomes or ceases to be resident in Canada,

(a) subsection (4) applies to the individual as if the year were the period or periods in the year throughout which the individual was resident in Canada; and

(b) for the purpose of applying this section, subsection 66(13.1) does not apply to the individual for the year.

History: S. 66.21 added by 2001, c. 17, s. 47, applicable to taxation years that begin after 2000.

Definitions [s. 66.21]: "adjusted cumulative foreign resource expense" — 66.21(1); "amount" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "commencement" — *Interpretation Act* 35(1); "cumulative foreign resource expense" — 66.21(1); "depreciable property" — 13(21), 248(1); "disposition" — 248(1); "drilling or exploration expense", "expense" — 66(15), 66.21(2); "fiscal period" — 249.1; "foreign resource expense" — 66.21(1), 248(1); "foreign resource income", "foreign resource loss" — 66.21(1); "foreign resource property" — 66(15), 248(1); "global foreign resource limit" — 66.21(1); "in respect of that country" — 248(1)"foreign resource property"; "individual", "mineral", "mineral resource", "Minister", "oil or gas well" — 248(1); "original owner" — 66(15), 66.21(2); "partnership" — see Notes to 96(1); "prescribed" — 248(1); "production" — 66(15), 66.21(2); "property" — 248(1); "re-

lated" — 251(2)–(6); "resident", "resident in Canada" — 250; "share" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

66.3 (1) Exploration and development shares — Any shares of the capital stock of a corporation or any interest in any such shares or right thereto acquired by a taxpayer under circumstances described in paragraph (i) of the definition "Canadian exploration expense" in subsection 66.1(6), paragraph (g) of the definition "Canadian development expense" in subsection 66.2(5) or paragraph (c) of the definition "Canadian oil and gas property expense" in subsection 66.4(5)

(a) shall, if acquired before November 13, 1981, be deemed

(i) not to be a capital property of the taxpayer,

(ii) subject to subsection 142.6(3), to be inventory of the taxpayer, and

(iii) to have been acquired by the taxpayer at a cost to the taxpayer of nil; and

(b) shall, if acquired after November 12, 1981, be deemed to have been acquired by the taxpayer at a cost to the taxpayer of nil.

History: Para. 66.3(1)(a) amended by 1995, c. 21, s. 51, applicable to taxation years that begin after October 1994. The para. formerly read:

(a) shall, if acquired before November 13, 1981, be deemed not to be a capital property of the taxpayer but to be inventory of the taxpayer acquired at a cost to the taxpayer of nil, and

Interpretation Bulletins: IT-503: Exploration and development shares (archived).

(2) Deductions from paid-up capital — Where, at any time after May 23, 1985, a corporation has issued a share of its capital stock under circumstances described in paragraph (i) of the definition "Canadian exploration expense" in subsection 66.1(6), paragraph (g) of the definition "Canadian development expense" in subsection 66.2(5) or paragraph (c) of the definition "Canadian oil and gas property expense" in subsection 66.4(5) or has issued a share of its capital stock on the exercise of an interest in or right to such a share granted under circumstances described in any of those paragraphs, in computing, at any particular time after that time, the paid-up capital in respect of the class of shares of the capital stock of the corporation that included that share

Proposed Amendment — 66.3(2) opening words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), s. 223, will amend the opening words of subsec. 66.3(2) by substituting "right to — or, for civil law, any right in or to — " for "right to", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(a) there shall be deducted the amount, if any, by which

(i) the increase as a result of the issue of the share in the paid-up capital, determined without reference to this subsection as it applies to the share, in respect of all of the shares of that class

exceeds

(ii) the amount, if any, by which

(A) the total amount of consideration received by the corporation in respect of the share, including any consideration for the interest or right in respect of the share

exceeds

(B) 50% of the amount of the expense referred to in paragraph (i) of the definition "Canadian exploration expense" in subsection 66.1(6), paragraph (g) of the definition "Canadian development expense" in subsection 66.2(5) or paragraph (c) of the definition "Canadian oil and gas property expense" in subsection 66.4(5) that was incurred by a taxpayer who acquired the share or the interest or right on the exercise of which the share was issued, as the case may be, pursuant to an agreement with the corporation under which the taxpayer incurred the expense solely as consideration for the share, interest or right, as the case may be; and

(b) there shall be added an amount equal to the lesser of

(i) the amount, if any, by which

(A) the total of all amounts each of which is an amount deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of that class paid by the corporation after May 23, 1985 and before the particular time

exceeds

(B) the total that would be determined under clause (A) if this Act were read without reference to paragraph (a), and

(ii) the total of all amounts each of which is an amount required by paragraph (a) to be deducted in computing the paid-up capital in respect of that class of shares after May 22, 1985 and before the particular time.

(3) Cost of flow-through shares — Any flow-through share (within the meaning assigned by subsection 66(15)) of a corporation acquired by a person who was a party to the agreement pursuant to which it was issued shall be deemed to have been acquired by the person at a cost to the person of nil.

(4) Paid-up capital — Where, at any time after February, 1986, a corporation has issued a flow-through share (within the meaning assigned by subsection 66(15)), in computing, at any particular time after that time, the paid-up capital in respect of the class of shares of the capital stock of the corporation that included that share

(a) there shall be deducted the amount, if any, by which

(i) the increase as a result of the issue of the share in the paid-up capital, determined without reference to this subsection as it applies to the share, in respect of all of the shares of that class

exceeds

(ii) the amount, if any, by which

(A) the total amount of consideration received by the corporation in respect of the share

exceeds

(B) 50% of the total of the expenses that were renounced by the corporation under subsection 66(12.6), (12.601), (12.62) or (12.64) in respect of the share; and

(b) there shall be added an amount equal to the lesser of

(i) the amount, if any, by which

(A) the total of all amounts each of which is an amount deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of that class paid by the corporation after February, 1986 and before the particular time

exceeds

(B) the total that would be determined under clause (A) if this Act were read without reference to paragraph (a), and

(ii) the total of all amounts each of which is an amount required by paragraph (a) to be deducted in computing the paid-up capital in respect of that class of shares after February, 1986 and before the particular time.

History: Cl. 66.3(4)(a)(ii)(B) amended by 1994, c. 8, s. 7, applicable after December 2, 1992. Cl. (B) formerly read:

(B) 50% of the total of the expenses that were renounced by the corporation under subsection 66(12.6), (12.62) or (12.64) in respect of the share; and

Related Provisions [s. 66.3]: 66(16) — Partnerships — person — taxation year; 66.4(2) — Deduction — Canadian oil and gas property expenses; 66.7 — Successor rules.

Definitions [s. 66.3]: "amount" — 248(1); "capital property" — 54, 248(1); "class of shares" — 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend", "inventory" — 248(1); "paid-up capital" — 89(1), 248(1); "person" — 66(16), 248(1); "share", "taxpayer" — 248(1).

66.4 [Canadian oil and gas property expenses] — (1) Recovery of costs — For the purposes of the description of B in the definition "cumulative Canadian oil and gas property expense" in subsection (5) and the description of L in the definition "cumulative Canadian development expense" in subsection 66.2(5) and for the purpose of subparagraph 64(1.2)(a)(ii) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it applies to dispositions occurring before November 13, 1981, the amount determined under this subsection in respect of a taxpayer for a taxation year is the amount, if any, by which

(a) the total of all amounts referred to in the descriptions of E to J in the definition "cumulative Canadian oil and gas property expense" in subsection (5) that are deducted in computing the taxpayer's cumulative Canadian oil and gas property expense at the end of the year

exceeds the total of

(b) all amounts referred to in the descriptions of A to D.1 in the definition "cumulative Canadian oil and gas property expense" in subsection (5) that are included in computing the taxpayer's cumulative Canadian oil and gas property expense at the end of the year, and

(c) the total determined under subparagraph 66.7(12.1)(c)(i) in respect of the taxpayer for the year.

Related Provisions: 66(11) — Acquisition of control; 66(11.4) — Change of control; 66(13) — Limitation; 104(5.2) — Trusts — 21-year deemed disposition. See additional Related Provisions at end of s. 66.4.

History: The opening words of subsec. 66.4(1) substituted by 1994, c. 21, subsec. 30(1), applicable to taxation years that end after February 17, 1987. The opening words of that subsec. formerly read:

66.4 (1) For the purposes of the descriptions of A in the definition "cumulative Canadian oil and gas property expense" in subsection (5) and L in the definition "cumulative Canadian development expense" in subsection 66.2(5), and of subparagraph 64(1.2)(a)(ii) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read immediately before March 30, 1983, the amount determined under this subsection in respect of a taxpayer for a taxation year is the amount, if any, by which

Subsec. 66.4(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 41(1), applicable to taxation years ending after February 17, 1987, except that with respect to such taxation years commencing before February 18, 1987, the reference to "(A to D.1)" in para. (b) shall be read as "(A to C)". Subsec. 66.4(1) formerly read:

66.4 (1) For the purposes of the descriptions of B in the definition "cumulative Canadian oil and gas property expense" in subsection (5) and L in the definition "cumulative Canadian development expense" in subsection 66.2(5), and of subparagraph 64(1.2)(a)(ii) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read before March 30, 1983, the amount determined under this subsection in respect of a taxpayer for a taxation year is the amount, if any, by which

(a) the total of all amounts referred to in the descriptions of E to J in the definition "cumulative Canadian oil and gas property expense" in subsection (5) that would be taken into account in computing the taxpayer's cumulative Canadian oil and gas property expense at the end of the year

exceeds

(b) the total of all amounts referred to in the descriptions of A to C in the definition "cumulative Canadian oil and gas property expense" in subsection (5) that would be taken into account in computing his cumulative Canadian oil and gas property expense at the end of the year.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

(2) Deduction for cumulative Canadian oil and gas property expense — A taxpayer may deduct, in computing the taxpayer's income for a taxation year, such amount as the taxpayer may claim not exceeding the total of

(a) the lesser of

(i) the total of

(A) the taxpayer's cumulative Canadian oil and gas property expense at the end of the year, and

(B) the amount, if any, by which

(I) the total determined under subparagraph 66.7(12.1)(c)(i) in respect of the taxpayer for the year

exceeds

(II) the amount that would, but for paragraph (1)(c), be determined under subsection (1) in respect of the taxpayer for the year, and

(ii) the amount, if any, by which the total of all amounts each of which is

(A) an amount included in the taxpayer's income for the year by virtue of a disposition in the year of inventory described in section 66.3 that was a share, any interest therein or right thereto acquired by the taxpayer under circumstances described in paragraph (c) of the definition "Canadian oil and gas property expense" in subsection (5), or

Proposed Amendment — 66.4(2)(a)(ii)(A)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 224(1), will amend cl. 66.4(2)(a)(ii)(A) by substituting "or any interest in or right to — or, for civil law, any right in or to — a share" for ", any interest therein or right thereto", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(B) an amount included by virtue of paragraph 12(1)(e) in computing the taxpayer's income for the year to the extent that it relates to inventory described in clause (A)

exceeds

(C) the total of all amounts deducted as a reserve by virtue of paragraph 20(1)(n) in computing the taxpayer's income for the year to the extent that the reserve relates to inventory described in clause (A); and

(b) 10% of the amount, if any, by which the amount determined under subparagraph (a)(i) exceeds the amount determined under subparagraph (a)(ii).

Related Provisions: 20(1)(hh) — Repayments of inducements, etc.; 66(10.3) — Joint exploration corporation; 66(13.1) — Short taxation year; 66.2(2) — Deduction for cumulative CDE; 110.6(1)"investment expense"(d) — effect of claim under 66.4(2) on capital gains exemption; 127.52(1)(e) — Add-back of deduction for minimum tax purposes. See additional Related Provisions at end of s. 66.4.

History: Subpara. 66.4(2)(a)(i) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 41(2), applicable to taxation years ending after February 17, 1987. Subpara. 66.4(2)(a)(i) formerly read:

(i) the amount of the taxpayer's cumulative Canadian oil and gas property expense at the end of the year, and

Interpretation Bulletins: IT-273R2: Government assistance — general comments; IT-438R2: Crown charges — resource properties in Canada.

(3), (4) [Repealed under former Act]

(5) Definitions — In this section

Related Provisions: 66(15.1) — Application to s. 66; 66.1(6.1) — Application to s. 66.1; 66.2(5.1) — Application to s. 66.2.

"Canadian oil and gas property expense" of a taxpayer means any cost or expense incurred after December 11, 1979 that is

(a) [until 2007] notwithstanding paragraph 18(1)(m), the cost to the taxpayer of, including any payment for the preservation of a taxpayer's rights in respect of, any property described in paragraph (a), (c) or (d) of the definition "Canadian resource property" in subsection 66(15) or any right to or interest in such property (other than such a right or an interest that the taxpayer has by reason of being a beneficiary under a trust or a member of a partnership) or an amount paid or payable to Her Majesty in right of the Province of Saskatchewan as a net royalty payment pursuant to a net royalty petroleum and natural gas lease that was in effect on March 31, 1977 to the extent that it can reasonably be regarded as a cost of acquiring the lease, but not including any payment made to any of the persons referred to in subparagraph 18(1)(m)(i) for the preservation of a taxpayer's rights in respect of a Canadian resource property nor a payment (other than a net royalty payment referred to in this paragraph) to which paragraph 18(1)(m) applied because of clause 18(1)(m)(ii)(B),

Amendment [effective 2007] — 66.4(5)"Canadian oil and gas property expense"(a)

(a) the cost to the taxpayer of, including any payment for the preservation of a taxpayer's rights in respect of, any property described in paragraph (a), (c) or (d) of the definition "Canadian resource property" in subsection 66(15), or any right to or interest in such property (other than a right or an interest that the taxpayer has by reason of being a beneficiary under a trust or a member of a partnership), or an amount paid to Her Majesty in right of the Province of Saskatchewan as a net royalty payment pursuant to a net royalty petroleum and natural gas lease that was in effect on March 31, 1977 to the extent that it can reasonably be regarded as a cost of acquiring the lease,

Application: S.C. 2003, c. 28 (Bill C-48, Royal Assent November 7, 2003), subsec. 7(2), amends para. (a) of the definition "Canadian oil and gas property expense" in subsec. 66.4(5) to read as above, applicable to taxation years that begin after 2006.

Proposed Amendment — 66.4(5)"Canadian oil and gas property expense"(a)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 224(2), will amend para. (a) of the definition "Canadian oil and gas property expense" in subsec. 66.4(5) by substituting "interest in — or, for civil law, any right in or to — " for "interest in", to come into force on Royal Assent.

Technical Notes: See under 12(4).

Proposed Amendment [effective 2007] — 66.4(5)"Canadian oil and gas property expense"(a)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 224(3), will amend para. (a) of the definition "Canadian oil and gas property expense" in subsec. 66.4(5) by substituting "interest in — or, for civil law, any right in or to — " for "interest in", applicable to taxation years that begin after 2006.

Technical Notes: See under 12(4).

(b) subject to section 66.8, the taxpayer's share of any expense referred to in paragraph (a) incurred by a partnership in a fiscal period thereof at the end of which the taxpayer was a member of the partnership, unless the taxpayer elects in respect of the share in prescribed form and manner on or before the day that is 6 months after the taxpayer's taxation year in which that period ends, or

(c) any cost or expense referred to in paragraph (a) incurred by the taxpayer pursuant to an agreement in writing with a corporation, entered into before 1987, under which the taxpayer incurred the cost or expense solely as consideration for shares, other than prescribed shares, of the capital stock of the corporation issued to the taxpayer or any interest in such shares or right thereto,

Proposed Amendment — 66.4(5)"Canadian oil and gas property expense"(c)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 224(4), will amend para. (c) of the definition "Canadian oil and gas property expense" in subsec. 66.4(5) by substituting "interest in or right to — or, for civil law, any right in or to — " for "interest in such shares or right thereto", to come into force on Royal Assent.

Technical Notes: See under 12(4).

but, for greater certainty, shall not include

(d) any consideration given by the taxpayer for any share or any interest therein or right thereto, except as provided by paragraph (c), or

(e) any expense described in paragraph (c) incurred by any other taxpayer to the extent that the expense was,

(i) by virtue of that paragraph, a Canadian oil and gas property expense of that other taxpayer,

(ii) by virtue of paragraph (i) of the definition "Canadian exploration expense" in subsection 66.1(6), a Canadian exploration expense of that other taxpayer, or

(iii) by virtue of paragraph (g) of the definition "Canadian development expense" in subsection 66.2(5), a Canadian development expense of that other taxpayer,

but any amount of assistance that a taxpayer has received or is entitled to receive in respect of or related to the taxpayer's Canadian oil and gas property expense shall not reduce the amount of any of the expenses described in any of paragraphs (a) to (c);

Related Provisions: 49(2) — Where option expires; 53(1)(e)(vii.1) — Addition to ACB — partnership interest; 66(10.3) — Joint exploration corporation; 66(12.5) — Unitized oil or gas field in Canada; 66.2(8) — Presumption; 66.3 — Exploration and development shares; 66.4(1) — Recovery of costs; 66.4(2) — Deduction for cumulative COGPE; 248(1)"Canadian oil and gas property expense" — Definition applies to entire Act; 248(16), (16.1) — GST or QST input tax credit/refund and rebate deemed to be assistance; 248(18), (18.1) — GST or QST — repayment of input tax credit or refund. See also at end of s. 66; *Interpretation Act* 8(2.1), (2.2) — Application to exclusive economic zone and continental shelf. See additional Related Provisions and Definitions at end of s. 66.4.

History: Para. (a) of the definition "Canadian oil and gas property expense" in subsec. 66.4(5) amended by 2003, c. 28, subsec. 7(1), applicable after December 20, 2002. The para. formerly read:

> (a) notwithstanding paragraph 18(1)(m), the cost to the taxpayer of any property described in paragraph (a), (c) or (d) of the definition "Canadian resource property" in subsection 66(15) or a right to or interest in such property (other than such a right or interest that the taxpayer has by reason of being a beneficiary of a trust) or an amount paid or payable to Her Majesty in right of the Province of Saskatchewan as a net royalty payment pursuant to a net royalty petroleum and natural gas lease that was in effect on March 31, 1977 to the extent that it can reasonably be regarded as a cost of acquiring the lease, but not including any payment made to any of the persons referred to in any of subparagraphs 18(1)(m)(i) to (iii) for the preservation of a taxpayer's rights in respect of a Canadian resource property nor a payment (other than a net royalty payment referred to in this paragraph) to which paragraph 18(1)(m) applied by virtue of subparagraph 18(1)(m)(v),

Para. (b) of "Canadian oil and gas property expense" in subsec. 66.4(5) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 25, applicable to partnership fiscal periods ending after July 1990, except that an election referred to in the para. that is filed before December 11, 1993, shall be deemed to have been filed on a timely basis. That para. formerly read:

> (b) subject to section 66.8, the taxpayer's share of any expense referred to in paragraph (a) incurred by a partnership in a fiscal period thereof, if at the end of that fiscal period [the taxpayer] was a member thereof, or

Regulations: 6202 (prescribed share).

Interpretation Bulletins: IT-109R2: Unpaid amounts; IT-273R2: Government assistance — general comments; IT-438R2: Crown charges — resource properties in Canada; IT-503: Exploration and development shares (archived).

Forms: T2 SCH 12: Resource-related deductions; T1086: Election by a partner waiving Canadian development expenses or oil and gas property expenses.

"cumulative Canadian oil and gas property expense" of a taxpayer at any time in a taxation year means the amount determined by the formula

$$(A + B + C + D + D.1) - (E + F + G + H + I + I.1 + J)$$

where

A is the total of all Canadian oil and gas property expenses made or incurred by the taxpayer before that time,

B is the total of all amounts determined under subsection (1) in respect of the taxpayer for taxation years ending before that time,

C is the total of all amounts referred to in the description of F or G that are established by the taxpayer to have become bad debts before that time,

D is such part, if any, of the amount determined for I as has been repaid before that time by the taxpayer pursuant to a legal obligation to repay all or any part of that amount,

D.1 is the total of all specified amounts, determined under paragraph 66.7(12.1)(c) in respect of the taxpayer for taxation years ending before that time,

E is the total of all amounts deducted in computing the taxpayer's income for a taxation year ending before that time in respect of the taxpayer's cumulative Canadian oil and gas property expense,

F is the total of all amounts each of which is an amount in respect of property described in paragraph (a), (c) or (d) of the definition "Canadian resource property" in subsection 66(15) or any right to or interest in such a property, other than such a right or an interest that the taxpayer has by reason of being a beneficiary under a trust or a member of a partnership, (in this description referred to as "the particular property") disposed of by the taxpayer before that time equal to the amount, if any, by which

Proposed Amendment — 66.4(5)"cumulative Canadian oil and gas property expense"F opening words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 224(5), will amend the opening words of the description of F in the definition "cumulative Canadian oil and gas property expense" in subsec. 66.4(5) by substituting "interest in — or, for civil law, any right in or to — " for "interest in", to come into force on Royal Assent.

Technical Notes: See under 12(4).

> (a) the amount, if any, by which the proceeds of disposition in respect of the particular property that became receivable by the taxpayer before that time exceed any outlays or expenses made or incurred by the taxpayer before that time for the purpose of making the disposition and that were not otherwise deductible for the purposes of this Part
>
> exceeds the total of
>
> (b) the amount, if any, by which
>
> (i) the total of all amounts that would be determined under paragraph 66.7(5)(a), immediately before the time (in this paragraph and paragraph (c) referred to as the "relevant time") when such proceeds of disposition became receivable, in respect of the taxpayer and an original owner of the particular property (or of any other property acquired by the taxpayer with the particular property in circumstances in which subsection 66.7(5) applied and in respect of which the proceeds of disposition became receivable by the taxpayer at the relevant time) if
>
> (A) amounts that became receivable at or after the relevant time were not taken into account,
>
> (B) each designation made under subparagraph 66.7(4)(a)(iii) in respect of an amount that became receivable before the relevant time were made before the relevant time,
>
> (C) paragraph 66.7(5)(a) were read without reference to "10% of", and
>
> (D) no reduction under subsection 80(8) at or after the relevant time were taken into account
>
> exceeds the total of
>
> (ii) all amounts that would be determined under paragraph 66.7(5)(a) at the relevant time in respect of the taxpayer and an original owner of

the particular property (or of that other property described in subparagraph (i)) if

(A) amounts that became receivable after the relevant time were not taken into account,

(B) each designation made under subparagraph 66.7(4)(a)(iii) in respect of an amount that became receivable at or before the relevant time were made before the relevant time,

(C) paragraph 66.7(5)(a) were read without reference to "10% of", and

(D) no reduction under subsection 80(8) at or after the relevant time were taken into account, and

(iii) such portion of the amount determined under this paragraph as was otherwise applied to reduce the amount otherwise determined under this description, and

(c) the amount, if any, by which

(i) the total of all amounts that would be determined under paragraph 66.7(4)(a), immediately before the relevant time, in respect of the taxpayer and an original owner of the particular property (or of any other property acquired by the taxpayer with the particular property in circumstances in which subsection 66.7(4) applied and in respect of which the proceeds of disposition became receivable by the taxpayer at the relevant time) if

(A) amounts that became receivable at or after the relevant time were not taken into account,

(B) each designation made under subparagraph 66.7(4)(a)(iii) in respect of an amount that became receivable before the relevant time were made before the relevant time,

(C) paragraph 66.7(4)(a) were read without reference to "30% of", and

(D) no reduction under subsection 80(8) at or after the relevant time were taken into account

exceeds the total of

(ii) all amounts that would be determined under paragraph 66.7(4)(a) at the relevant time in respect of the taxpayer and an original owner of the particular property (or of that other property described in subparagraph (i)) if

(A) amounts that became receivable after the relevant time were not taken into account,

(B) each designation made under subparagraph 66.7(4)(a)(iii) in respect of an amount that became receivable at or before the relevant time were made before the relevant time,

(C) paragraph 66.7(4)(a) were read without reference to "30% of",

(D) amounts described in subparagraph 66.7(4)(a)(ii) that became receivable at the relevant time were not taken into account, and

(E) no reduction under subsection 80(8) at or after the relevant time were taken into account, and

(iii) such portion of the amount otherwise determined under this paragraph as was otherwise applied to reduce the amount otherwise determined under this description,

G is the total of all amounts that became receivable by the taxpayer before that time that are to be included in the amount determined under this description by virtue of paragraph 66(12.5)(a),

H is the total of all amounts each of which is an amount received before that time on account of any amount referred to in the description of C,

I is the total amount of assistance that the taxpayer has received or is entitled to receive in respect of any Canadian oil and gas property expense incurred after 1980 or that can reasonably be related to any such expense after 1980,

I.1 is the total of all amounts by which the cumulative Canadian oil and gas property expense of the taxpayer is required because of subsection 80(8) to be reduced at or before that time, and

J is the total of all amounts that are required to be deducted before that time under paragraph 66.7(12)(d) in computing the taxpayer's cumulative Canadian oil and gas property expense;

Related Provisions: 20(1)(kk) — Exploration and development grants; 50(1)(a) — Deemed disposition where debt becomes bad debt; 66(10.3) — Joint exploration corporation; 66(12.5) — Unitized oil or gas field in Canada; 66.7(5) — Deduction to successor corporation; 70(5.2) — Resource properties and land inventories of deceased taxpayer; 79(4)(c) — Subsequent payment by debtor following surrender of property deemed to be repayment of assistance; 79.1(8) — No claim for principal amount of bad debt where property seized by creditor; 80(8)(d) — Reduction of CCOGPE on debt forgiveness; 96(2.2)(d) — At-risk amount; 104(5.2) — Trusts — 21-year deemed disposition; 248(16), (16.1) — GST or QST input tax credit/refund and rebate deemed to be assistance; 248(18), (18.1) — GST or QST — repayment of input tax credit or refund; 257 — Formula cannot calculate to less than zero. See also at end of s. 66.4.

History: The opening words of the description of F in the definition "cumulative Canadian oil and gas property expense" in subsec. 66.4(5) amended by 2003, c. 28, subsec. 7(3), applicable after December 20, 2002. The opening words formerly read:

F is the total of all amounts each of which is an amount in respect of a property described in paragraph (a), (c) or (d) of the definition "Canadian resource property" in subsection 66(15) or a right to or interest in such a property, other than such a right or interest that the taxpayer has by reason of being a beneficiary of a trust, (in this description referred to as "the particular property") disposed of by the taxpayer before that time equal to the amount, if any, by which

Cls. (b)(i)(D), (b)(ii)(D), (c)(i)(D) and (c)(ii)(E) added to the description of F in the definition "cumulative Canadian oil and gas property expense" in subsec. 66.4(5) by 1995, c. 21, subsecs. 24(2)–(5), applicable to taxation years that end after February 21, 1994.

The description of I.1 added to the definition "cumulative Canadian oil and gas property expense" in subsec. 66.4(5) and the corresponding formula amended by 1995, c. 21, subsecs. 24(6) and (1), applicable to taxation years that end after February 21, 1994.

All that portion of the description of F in the definition "cumulative Canadian oil and gas property expense" in subsec. 66.4(5) following para. (a) substituted by 1994, c. 21, subsec. 30(2), applicable to taxation years ending after February 17, 1987. That portion of the description of F formerly read:

exceeds the amount equal to

(b) where the proceeds of disposition referred to in paragraph (a) may reasonably be attributed to the disposition of a property that was acquired by the taxpayer in circumstances in which subsection 66.7(5) applies to the taxpayer as successor, the lesser of

(i) the amount determined under paragraph (a) in respect of the property, and

(ii) the total of all amounts each of which is an amount that would be determined at that time under paragraph 66.7(5)(a) in respect of the acquisition of the property by the taxpayer if that paragraph were read without reference to "10% of", and

(c) in any other case, nil,

D.1 and its description added to in the definition "cumulative Canadian oil and gas property expense" in subsec. 66.4(5) by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 41(3) and (3.1), applicable to taxation years beginning after February 17, 1987.

Selected Cases: *Bow River Pipe Lines Ltd. v. R.*, [1998] 3 C.T.C. 2394 (TCC) (CCOGPE was nil where taxpayer never a partner of limited partnership).

Interpretation Bulletins: IT-125R4: Dispositions of resource properties; IT-273R2: Government assistance — general comments.

"proceeds of disposition" has the meaning assigned by section 54.

History: The definition "disposition" repealed, and "proceeds of disposition" amended, by 2001, c. 17, s. 48, applicable to transactions and events that occur after December 23, 1998. The definitions formerly read:

"disposition" and "proceeds of disposition" have the meanings assigned by section 54.

(5.1) Application of subsecs. 66(15) and 66.1(6) — The definitions in subsections 66(15) and 66.1(6) apply to this section.

Origin of subsec. 66.4(5.1): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsecs. 66(15) and 66.1(6)).

(6) Share of partner — Except as provided in subsection (7), where a taxpayer is a member of a partnership, the taxpayer's share of any amount that would be an amount referred to in the description of D in the definition "cumulative Canadian oil and gas property expense" in subsection (5), in paragraph (a) of the description of F in that definition or in the description of G or I in that definition in respect of the partnership for a taxation year of the partnership if section 96 were read without reference to paragraph 96(1)(d) shall, for the purposes of this Act, be deemed to be an amount referred to in the description of D in the definition "cumulative Canadian oil and gas property expense" in subsection (5), in paragraph (a) of the description of F in that definition or in the description of G or I in that definition, whichever is applicable, in respect of the taxpayer for the taxation year of the taxpayer in which the partnership's taxation year ends.

Related Provisions: 59(1.1) — Parallel rule for foreign resource property; 66.2(6) — Parallel rule for CCDE.

History: Subsec. 66.4(6) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 41(4), to add reference to the description of D (twice), applicable after January 1990.

Interpretation Bulletins: IT-125R4: Dispositions of resource properties; IT-273R2: Government assistance — general comments; IT-353R2: Partnership interests — some adjustments to cost base (archived).

I.T. Technical News: 12 (adjusted cost base of partnership interest — subparagraph 53(1)(e)(viii)).

(7) Exception — Where a non-resident person is a member of a partnership that is deemed under paragraph 115(4)(b) to have disposed of any Canadian resource property, the person's share of any amount that would be an amount referred to in the description of D in the definition "cumulative Canadian oil and gas property expense" in subsection (5), in paragraph (a) of the description of F in that definition or in the description of G or I in that definition in respect of the partnership for a taxation year of the partnership if section 96 were read without reference to paragraph 96(1)(d) shall, for the purposes of this Act, be deemed to be an amount referred to in the description of D in the definition "cumulative Canadian oil and gas property expense" in subsection (5), in paragraph (a) of the description of F in that definition or in the description of G or I in that definition, whichever is applicable, in respect of the person for the taxation year of the person that is deemed under paragraph 115(4)(a) to have ended.

History: Subsec. 66.4(7) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 41(4), applicable to taxation years of partnerships beginning after 1984. Subsec. 66.4(7) formerly read:

(7) Idem — Where a non-resident person is a member of a partnership that is deemed under paragraph 115(4)(b) to have disposed of a property described in any of paragraphs 59(1.2)(a), (2)(c) and (d) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, the non-resident's share of any amount that would be an amount referred to in paragraph (a) of the description of F in the definition "cumulative Canadian oil and gas property expense" in subsection (5) or in the description of G or I in that definition in respect of the partnership for a taxation year of the partnership if section 96 were read without reference to paragraph 96(1)(d) shall, for the purposes of this Act, be deemed to be an amount referred to in paragraph (a) of the description of F in the definition "cumulative Canadian oil and gas property expense" in subsection (5) or in the description of G or I in that definition, as the case may be, in respect of the non-resident person for the taxation year of the non-resident person that is deemed under paragraph 115(4)(a) to have ended.

Interpretation Bulletins: IT-125R4: Dispositions of resource properties; IT-273R2: Government assistance — general comments.

Related Provisions [s. 66.4]: 66(5) — Dealers; 66(18) — Members of partnerships; 66.7 — Successor rules; 66.8(1) — Resource expenses of limited partner; 87(1.2) — New corporation deemed continuation of predecessor.

Selected Cases [s. 66.4]: *Bow River Pipe Lines Ltd. v. R.*, [1997] 3 C.T.C. 397 (FCA) (Entitlement of non-partners to claim COGPE established).

Definitions [s. 66.4]: "amount" — 248(1); "assistance" — 66(15), 66.1(6.1), 79(4), 125.4(5), 248(16), (16.1), (18), (18.1); "Canada" — 255, *Interpretation Act* 8(2.1), (2.2); "Canadian exploration expense" — 66.1(6), 66.4(5.1), 248(1); "Canadian oil and gas property expense" — 66.4(5), 248(1); "Canadian resource property" — 66(15), 66.4(5.1), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition" — 248(1); "expense" — 66(15), 66.4(5.1); "fiscal period" — 249.1; "Her Majesty" — *Interpretation Act* 35(1); "inventory", "mineral", "non-resident", "oil or gas well", "prescribed" — 248(1); "proceeds of disposition" — 54, 66.4(5); "property", "share" — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [s. 66.4]: IT-273R2: Government assistance — general comments.

66.5 (1) Deduction from income — In computing its income for a taxation year that ends before 1995, a corporation that has not made a designation for the year under subsection 66(14.1) or (14.2) may deduct such amount as it may claim not exceeding its cumulative offset account at the end of the year.

Related Provisions: 66.7 — Successor rules; 66.8(1) — Resource expenses of limited partner; 196 — Tax on deduction under s. 66.5.

Forms: T2099: Part IX tax return in respect of amounts deducted under subsection 66.5(1).

(2) Definition of "cumulative offset account" — In this section, "cumulative offset account" of a corporation at any time means the amount, if any, by which

(a) the total of all amounts required to be added under subsections 66(14.1) and (14.2) in computing its cumulative offset account before that time,

exceeds

(b) the total of all amounts deducted under subsection (1) in computing its income for taxation years ending before that time.

Related Provisions: 87(2)(pp) — Amalgamation — cumulative offset account computation.

(3) Change of control — Where at any time after June 5, 1987 control of a corporation has been acquired by a person or group of persons, the amount deductible under subsection (1) by the corporation in computing its income for a taxation year ending after that time shall not exceed the amount, if any, by which

(a) the part of its income for the year that may reasonably be regarded as attributable to production from Canadian resource properties owned by it immediately before that time

exceeds

(b) the total of all amounts deducted under subsection 29(25) of the *Income Tax Application Rules* and subsections 66.7(1), (3), (4) and (5) by it in respect of its income for the year in computing its income for the year.

Related Provisions [subsec. 66.5(3)]: 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 249(4) — Deemed year end where change of control occurs; 256(6)–(9) — Whether control acquired.

Definitions [s. 66.5]: "acquired" — 256(7)–(9); "amount" — 248(1); "control" — 256(6)–(9); "corporation" — 248(1), *Interpretation Act* 35(1); "cumulative offset account" — 66.5(2); "person" — 248(1); "taxation year" — 249.

66.6 Acquisition from tax-exempt [person] — Where a corporation acquires, by purchase, amalgamation, merger, winding-up or otherwise, all or substantially all of the Canadian resource properties or foreign resource properties of a person whose taxable income is exempt from tax under this Part, subsection 29(25) of the *Income Tax Application Rules* and subsections 66.7(1) to (5) do not apply to the corporation in respect of the acquisition of the properties.

Related Provisions: 66.7 — Successor rules; 66.8(1) — Resource expenses of limited partner.

History: S. 66.6 amended by 1998, c. 19, s. 105, applicable to acquisitions that occur after April 26, 1995, other than an acquisition that occurs before 1996 and that was required by an agreement in writing entered into before April 27, 1995. The section formerly read:

66.6 (1) Where subsec. 29(25) of ITAR and subsecs. 66.7(1), (2), etc. do not apply — Where a particular corporation has at any time after July 19, 1985 acquired by purchase, amalgamation, merger, winding-up or otherwise, from another person who is exempt from tax under this Part on that person's taxable income (other than a corporation that is referred to in paragraph 149(1)(d) and that is a principal-business corporation within the meaning assigned by subsection 66(15)) all or substantially all of the person's Canadian resource properties, subsection 29(25) of the *Income Tax Application Rules* and subsections 66.7(1), (2), (3) and (4) do not apply to the particular corporation in respect of the acquisition of the properties except to the extent that the properties were acquired by it before 1987 pursuant to an agreement in writing made by it before July 20, 1985.

(2) Where subsec. 66.7(5) does not apply — Where a particular corporation has at any time after July 19, 1985 acquired by purchase, amalgamation, merger, winding-up or otherwise, from another person who is exempt from tax under this Part on that person's taxable income all or substantially all of the person's Canadian resource properties, subsection 66.7(5) does not apply to the particular corporation in respect of the acquisition of the properties except to the extent that the properties were acquired by it before 1987 pursuant to an agreement in writing made by it before July 20, 1985.

Definitions [s. 66.6]: "business" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "person", "property" — 248(1); "taxable income" — 2(2), 248(1); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-126R2: Meaning of "winding-up".

66.7 (1) Successor of Canadian exploration and development expenses — Subject to subsections (6) and (7), where after 1971 a corporation (in this subsection referred to as the "successor") acquired a particular Canadian resource property (whether by way of a purchase, amalgamation, merger, winding-up or otherwise), there may be deducted by the successor in computing its income for a taxation year an amount not exceeding the total of all amounts each of which is an amount determined in respect of an original owner of the particular property that is the lesser of

(a) the Canadian exploration and development expenses incurred by the original owner before the original owner disposed of the particular property to the extent that those expenses were not otherwise deducted in computing the income of the successor for the year, were not deducted in computing the income of the successor for a preceding taxation year and were not deductible under subsection 66(1) or deducted under subsection 66(2) or (3) by the original owner, or deducted by any predecessor owner of the particular property, in computing income for any taxation year, and

(b) the amount, if any, by which

(i) the part of the successor's income for the year that may reasonably be regarded as attributable to

(A) the amount included in computing its income for the year under paragraph 59(3.2)(c) that may reasonably be regarded as attributable to the disposition by it in the year or a preceding taxation year of any interest in or right to the particular property to the extent that the proceeds of the disposition have not been included in determining an amount under clause 29(25)(d)(i)(A) of the *Income Tax Application Rules*, this clause, clause (3)(b)(i)(A) or paragraph (10)(g) for a preceding taxation year,

Proposed Amendment — 66.7(1)(b)(i)(A)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 225(1), will amend cl. 66.7(1)(b)(i)(A) by substituting "interest in or right to — or, for civil law, any right in or to — " for "interest in or right to", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(B) its reserve amount for the year in respect of the original owner and each predecessor owner, if any, of the particular property, or

(C) production from the particular property,

computed as if no deduction were allowed under section 29 of the *Income Tax Application Rules*, this section or any of sections 65 to 66.5,

exceeds the total of

(ii) all other amounts deducted under subsection 29(25) of the *Income Tax Application Rules*, this subsection and subsections (3), (4) and (5) for the year that can reasonably be regarded as attributable to the part of its income for the year described in subparagraph (i) in respect of the particular property, and

(iii) all amounts added because of subsection 80(13) in computing the amount determined under subparagraph (i).

Related Provisions: 66(1) — Exploration and development expenses; 66.6(1) — Application; 66.7(2.3) — Income deemed not attributable to production from Canadian resource property; 66.7(6), (7) — Application rules; 66.7(10) — Change of control; 66.7(10.1) — Amalgamation — partnership property; 66.7(11) — Change of control — anti-avoidance

rule; 66.7(12) — Reduction of Canadian resource expenses; 66.7(14) — Disposal of Canadian resource properties; 66.7(16) — Non-successor acquisitions; 66.7(17) — Restriction on deductions. See also at end of s. 66.7.

History: Subpara. 66.7(1)(b)(iii) amended by 1998, c. 19, subsec. 106(1), applicable to taxation years that end after February 21, 1994. The subpara. formerly read:

(iii) all amounts added because of subsection 80(13) or (17) in computing the amount determined under subparagraph (i).

The portion of para. 66.7(1)(b) after subpara. (i) amended by 1995, c. 21, subsec. 25(1), applicable to taxation years that end after February 21, 1994. That portion formerly read:

exceeds

(ii) the total of all other amounts deducted under subsection 29(25) of the *Income Tax Application Rules*, this subsection and subsections (3), (4) and (5) for the year that may reasonably be regarded as attributable to the part of its income for the year described in subparagraph (i) in respect of the particular property.

Para. 66.7(1)(a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 42(1), applicable to taxation years ending after February 17, 1987. Para. 66.7(1)(a) formerly read:

(a) the Canadian exploration and development expenses incurred by the original owner before that owner disposed of the particular property to the extent that those expenses were not deducted by the successor in computing its income for a preceding taxation year and were not deductible under subsection 66(1), or deducted under subsection 66(2) or (3), by the original owner or deducted by any predecessor owner of the particular property in computing income for any taxation year, and

Forms: T2010: Election to deduct resource expenses upon acquisition of resource property by a corporation.

(2) Successor of foreign exploration and development expenses — Subject to subsections (6) and (8), where after 1971 a corporation (in this subsection referred to as the "successor") acquired a particular foreign resource property (whether by way of a purchase, amalgamation, merger, winding-up or otherwise), there may be deducted by the successor in computing its income for a taxation year an amount not exceeding the total of all amounts each of which is an amount determined in respect of an original owner of the particular property that is the lesser of

(a) the amount, if any, by which

(i) the foreign exploration and development expenses incurred by the original owner before the original owner disposed of the particular property to the extent that those expenses were incurred when the original owner was resident in Canada, were not otherwise deducted in computing the successor's income for the year, were not deducted in computing the successor's income for a preceding taxation year and were not deductible by the original owner, nor deducted by any predecessor owner of the particular property, in computing income for any taxation year

exceeds

(ii) the total of all amounts each of which is an amount by which the amount described in this paragraph is required because of subsection 80(8) to be reduced at or before the end of the year, and

(b) the amount, if any, by which the total of

(i) the part of the successor's income for the year that can reasonably be regarded as attributable to

(A) the amount included under subsection 59(1) in computing its income for the year that can reasonably be regarded as attributable to the disposition by it of any interest in or right to the particular property, or

Proposed Amendment — 66.7(2)(b)(i)(A)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 225(2), will amend cl. 66.7(2)(b)(i)(A) by substituting "interest in or right to — or, for civil law, any right in or to —" for "interest in or right to", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(B) production from the particular property,

computed as if no deduction were allowed under sections 65 to 66.5 and this section, and

(ii) the lesser of

(A) the total of all amounts each of which is the amount designated by the successor for the year in respect of a Canadian resource property owned by the original owner immediately before being acquired with the particular property by the successor or a predecessor owner of the particular property, not exceeding the amount included in the successor's income for the year, computed as if no deduction were allowed under section 29 of the *Income Tax Application Rules*, this section or any of sections 65 to 66.5, that can reasonably be regarded as being attributable to the production after 1988 from the Canadian resource property, and

(B) the amount, if any, by which 10% of the amount described in paragraph (a) for the year in respect of the original owner exceeds the total of all amounts each of which would, but for this subparagraph, clause (iii)(B) and subparagraph (10)(h)(vi), be determined under this paragraph for the year in respect of the particular property or other foreign resource property owned by the original owner immediately before being acquired with the particular property by the successor or a predecessor owner of the particular property

exceeds the total of

(iii) all other amounts deducted under this subsection for the year that can reasonably be regarded as attributable to

(A) the part of its income for the year described in subparagraph (i) in respect of the particular property, or

(B) a part of its income for the year described in clause (ii)(A) in respect of which an amount is designated by the successor under clause (ii)(A), and

(iv) all amounts added because of subsection 80(13) in computing the amount determined under subparagraph (i),

and income in respect of which an amount is designated under clause (b)(ii)(A) shall, for the purposes of clause 29(25)(d)(i)(B) of the *Income Tax Application Rules*, clauses (1)(b)(i)(C), (3)(b)(i)(C), (4)(b)(i)(B) and (5)(b)(i)(B) and subparagraph (10)(g)(iii), be deemed not to be attributable to production from a Canadian resource property.

Related Provisions: 66(4) — Foreign exploration and development expenses; 66.6(1) — Application; 66.7(2.1), (2.2) — Country-by-country successor FEDE allocations; 66.7(2.3) — Income deemed not attributable to production from Canadian resource property; 66.7(6), (8) — Application rules; 66.7(10) — Change of control; 66.7(10.1) — Amalgamation — partnership property; 66.7(11) — Change of control — anti-avoidance rule; 66.7(13) — Reduction of foreign resource expenses; 66.7(15) — Disposal of foreign resource properties; 66.7(16) — Non-successor acquisi-

tions; 66.7(17) — Restriction on deductions; 80(1)"successor pool" — Debt forgiveness; 80(8)(a) — Reduction of undeducted balances on debt forgiveness. See also at end of s. 66.7.

History: Subpara. 66.7(2)(a)(i) amended by 2001, c. 17, subsec. 49(1), applicable to 1999 *et seq.* Subpara. (i) formerly read:

> (i) the foreign exploration and development expenses incurred by the original owner before the original owner disposed of the particular property to the extent that those expenses were not otherwise deducted in computing the successor's income for the year, were not deducted in computing the successor's income for a preceding taxation year and were not deductible by the original owner, or deducted by any predecessor owner of the particular property, in computing income for any taxation year

Subpara. 66.7(2)(b)(iv) amended by 1998, c. 19, subsec. 106(2), applicable to taxation years that end after February 21, 1994. The subpara. formerly read:

> (iv) all amounts added because of subsection 80(13) or (17) in computing the amount determined under subparagraph (i),

Para. 66.7(2)(a) and the portion of para. 66.7(2)(b) after subpara. (ii) amended by 1995, c. 21, subsecs. 25(2) and (3), applicable to taxation years that end after February 21, 1994. Para. 66.7(2)(a) and that portion of para. 66.7(2)(b) formerly read:

> (a) the foreign exploration and development expenses incurred by the original owner before the original owner disposed of the particular property to the extent that those expenses were not otherwise deducted in computing the income of the successor for the year, were not deducted in computing the income of the successor for a preceding taxation year and were not deductible by the original owner, or deducted by any predecessor owner of the particular property, in computing income for any taxation year, and
>
> exceeds
>
> (iii) the total of all other amounts deducted under this subsection for the year that can reasonably be regarded as attributable to
>
> (A) the part of its income for the year described in subparagraph (i) in respect of the particular property, or
>
> (B) a part of its income for the year described in clause (ii)(A) in respect of which an amount is designated by the successor under clause (ii)(A),

Cl. 66.7(2)(b)(ii)(B) substituted by 1994, c. 21, subsec. 31(1), applicable to taxation years ending after February 17, 1987. That cl. formerly read:

> (B) the amount, if any, by which 10% of the amount described in paragraph (a) for the year in respect of the original owner exceeds the total of all amounts each of which would, but for this subparagraph, clause (iii)(B) and subparagraph (10)(h)(iv), be determined under this paragraph for the year in respect of the particular property or other foreign resource property owned by the original owner immediately before being acquired with the particular property by the successor or a predecessor owner of the particular property

Paras. 66.7(2)(a), (b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 42(2), applicable to taxation years ending after February 17, 1987, except that, where subsec. 66.7(2) applies to the successor referred to therein by reason of the application of subsec. 66.7(10), cl. (b)(ii)(A) shall be read without reference to the expression "after 1988". Paras. 66.7(2)(a), (b) formerly read:

> (a) the foreign exploration and development expenses incurred by the original owner before that owner disposed of the particular property to the extent that those expenses were not deducted by the successor in computing its income for a preceding taxation year and were not deductible by the original owner or deducted by any predecessor owner of the particular property in computing income for any taxation year, and
>
> (b) the amount, if any, by which
>
> (i) the part of the successor's income for the year that may reasonably be regarded as attributable to
>
> (A) the amount included in computing its income for the year under subsection 59(1) that may reasonably be regarded as attributable to the disposition by it of any interest in or right to the particular property, or
>
> (B) production from the particular property,
>
> computed as if no deduction were allowed under this section or any of sections 65 to 66.5,
>
> exceeds
>
> (ii) the total of all other amounts deducted under this subsection for the year that may reasonably be regarded as attributable to the part of its income for the year described in subparagraph (i) in respect of the particular property.

Forms: T2010: Election to deduct resource expenses upon acquisition of resource property by a corporation.

(2.1) Country-by-country successor FEDE allocations — For greater certainty, the portion of an amount deducted under subsection (2) in computing a taxpayer's income for a taxation year that can reasonably be considered to be in respect of specified foreign exploration and development expenses of the taxpayer in respect of a country is considered to apply to a source in that country.

Related Provisions: 66(4.1) — Parallel rule for predecessor; 66.7(2.2) — Method of allocation.

History: Subsec. 66.7(2.1) added by 2001, c. 17, subsec. 49(2), applicable to taxation years of a taxpayer that begin after the earlier of

(a) December 31, 1999; and

(b) where, for the purposes of subsec. 117(26) of c. 17, a date is designated in writing by the taxpayer and the designation is filed with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes June 14, 2001, the later of

(i) the date so designated, and

(ii) December 31, 1994; and

(2.2) Method of allocation — For the purpose of subsection (2.1), where a taxpayer has incurred specified foreign exploration and development expenses in respect of two or more countries, an allocation to each of those countries for a taxation year shall be determined in a manner that is

(a) reasonable having regard to all the circumstances, including the level and timing of

(i) the taxpayer's specified foreign exploration and development expenses in respect of the country, and

(ii) the profits or gains to which those expenses relate; and

(b) not inconsistent with the allocation made under subsection (2.1) for the preceding taxation year.

Related Provisions: 66(4.2) — Parallel rule for predecessor.

History: Subsec. 66.7(2.2) added by 2001, c. 17, subsec. 49(2), applicable to taxation years of a taxpayer that begin after the earlier of

(a) December 31, 1999; and

(b) where, for the purposes of subsec. 117(26) of c. 17, a date is designated in writing by the taxpayer and the designation is filed with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes June 14, 2001, the later of

(i) the date so designated, and

(ii) December 31, 1994; and

(2.3) Successor of foreign resource expenses — Subject to subsections (6) and (8), where a corporation (in this subsection referred to as the "successor") acquired a particular foreign resource property in respect of a country (whether by way of a purchase, amalgamation, merger, winding-up or otherwise), there may be deducted by the successor in computing its income for a taxation year an amount not exceeding the total of all amounts each of which is an amount determined in respect of an

original owner of the particular property that is the lesser of

(a) 30% of the amount, if any, by which

(i) the cumulative foreign resource expense, in respect of the country, of the original owner determined immediately after the disposition of the particular property by the original owner to the extent that it has not been

(A) deducted by the original owner or any predecessor owner of the particular property in computing income for any taxation year,

(B) otherwise deducted in computing the income of the successor for the year, or

(C) deducted by the successor in computing its income for any preceding taxation year

exceeds the total of

(ii) all amounts each of which is an amount (other than any portion of the amount that can reasonably be considered to result in a reduction of the amount otherwise determined under this paragraph in respect of another original owner of a relevant resource property who is not a predecessor owner of a relevant resource property or who became a predecessor owner of a relevant resource property before the original owner became a predecessor owner of a relevant resource property) that became receivable by a predecessor owner of the particular property, or by the successor in the year or a preceding taxation year, and that

(A) was included by the predecessor owner or the successor in computing an amount determined under paragraph (a) of the description of F in the definition "cumulative foreign resource expense" in subsection 66.21(1) at the end of the year, and

(B) can reasonably be regarded as attributable to the disposition of a property (in this subparagraph referred to as a "relevant resource property") that is

(I) the particular property, or

(II) another foreign resource property in respect of the country that was acquired from the original owner with the particular property by the successor or a predecessor owner of the particular property, and

(iii) all amounts each of which is an amount by which the amount described in this paragraph is required by reason of subsection 80(8) to be reduced at or before the end of the year, and

(b) the amount, if any, by which the total of

(i) the part of the successor's income for the year that can reasonably be regarded as attributable to production from the particular property, computed as if no deduction were permitted under section 29 of the *Income Tax Application Rules*, this section or any of sections 65 to 66.5, except that, where the successor acquired the particular property from the original owner at any time in the year (otherwise than by way of an amalgamation or merger or solely by reason of the application of paragraph (10)(c)) and did not deal with the original owner at arm's length at that time, the amount determined under this subparagraph is deemed to be nil, and

(ii) unless the amount determined under subparagraph (i) is nil by reason of the exception provided under that subparagraph, the lesser of

(A) the total of all amounts each of which is the amount designated by the successor for the year in respect of a Canadian resource property owned by the original owner immediately before being acquired with the particular property by the successor or a predecessor owner of the particular property, not exceeding the amount included in the successor's income for the year, computed as if no deduction were permitted under section 29 of the *Income Tax Application Rules*, this section or any of sections 65 to 66.5, that can reasonably be regarded as being attributable to the production from the Canadian resource property, and

(B) the amount, if any, by which 10% of the amount described in paragraph (a) for the year, in respect of the original owner, exceeds the total of all amounts each of which would, but for this subparagraph, clause (2)(b)(iii)(B) and subparagraph (10)(h)(vi), be determined under this paragraph for the year in respect of the particular property or other foreign resource property, in respect of the country, owned by the original owner immediately before being acquired with the particular property by the successor or by a predecessor owner of the particular property

exceeds the total of

(iii) all other amounts each of which is an amount deducted for the year under this subsection or subsection (2) that can reasonably be regarded as attributable to

(A) the part of its income for the year described in subparagraph (i) in respect of the particular property, or

(B) a part of its income for the year described in clause (ii)(A) in respect of which an amount is designated by the successor under clause (ii)(A), and

(iv) all amounts added by reason of subsection 80(13) in computing the amount determined under subparagraph (i),

and income in respect of which an amount is designated under clause (b)(ii)(A) is, for the purposes of clause 29(25)(d)(i)(B) of the *Income Tax Application Rules*, clauses (1)(b)(i)(C), (3)(b)(i)(C), (4)(b)(i)(B) and (5)(b)(i)(B) and subparagraph (10)(g)(iii), deemed not to be attributable to production from a Canadian resource property.

Related Provisions: 66(13.1) — Short taxation year; 66.21(1)"cumulative foreign resource expense"F(b)(i); 66.7(8) — Application; 66.7(10)(h)(v), (vi), 66.7(10)(j)(ii) — Change of control; 66.7(10.1) — Amalgamation — partnership property; 66.7(13.1) — Reduction of foreign resource expenses; 66.7(15.1) — Disposal of foreign resource properties; 80(8)(a) — Debt forgiveness; 248(1)"foreign resource property" — Meaning of foreign resource property in respect of a country.

History: Subsec. 66.7(2.3) added by 2001, c. 17, subsec. 49(2), applicable to taxation years that begin after 2000.

(3) Successor of Canadian exploration expense — Subject to subsections (6) and (7), where after May 6, 1974 a corporation (in this subsection referred to as the "successor") acquired a particular Canadian resource property (whether by way of a purchase, amalgamation, merger, winding-up or otherwise), there may be

deducted by the successor in computing its income for a taxation year an amount not exceeding the total of all amounts each of which is an amount determined in respect of an original owner of the particular property that is the lesser of

(a) the amount, if any, by which

(i) the total of

(A) the cumulative Canadian exploration expense of the original owner determined immediately after the disposition of the particular property by the original owner, and

(B) all amounts required to be added under paragraph (9)(f) to the cumulative Canadian exploration expense of the original owner in respect of a predecessor owner of the particular property, or the successor, as the case may be, at any time after the disposition of the particular property by the original owner and before the end of the year,

to the extent that an amount in respect of that total was not

(C) deducted or required to be deducted under subsection 66.1(2) or (3) by the original owner or deducted by any predecessor owner of the particular property in computing income for any taxation year,

(D) otherwise deducted in computing the successor's income for the year,

(E) deducted in computing the successor's income for a preceding taxation year, or

(F) designated by the original owner pursuant to subsection 66(14.1) for any taxation year,

exceeds

(ii) the total of all amounts each of which is an amount by which the amount described in this paragraph is required because of subsection 80(8) to be reduced at or before the end of the year, and

(b) the amount, if any, by which

(i) the part of the successor's income for the year that may reasonably be regarded as attributable to

(A) the amount included in computing its income for the year under paragraph 59(3.2)(c) that may reasonably be regarded as being attributable to the disposition by it in the year or a preceding taxation year of any interest in or right to the particular property to the extent that the proceeds have not been included in determining an amount under clause 29(25)(d)(i)(A) of the *Income Tax Application Rules*, this clause, clause (1)(b)(i)(A) or paragraph (10)(g) for a preceding taxation year,

Proposed Amendment — 66.7(3)(b)(i)(A)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 225(3), will amend cl. 66.7(3)(b)(i)(A) by substituting "interest in or right to — or, for civil law, any right in or to — " for "interest in or right to", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(B) its reserve amount for the year in respect of the original owner and each predecessor owner, if any, of the particular property, or

(C) production from the particular property,

computed as if no deduction were allowed under section 29 of the *Income Tax Application Rules*, this section or any of sections 65 to 66.5,

exceeds the total of

(ii) all other amounts deducted under subsection 29(25) of the *Income Tax Application Rules*, this subsection and subsections (1), (4) and (5) for the year that can reasonably be regarded as attributable to the part of its income for the year described in subparagraph (i) in respect of the particular property, and

(iii) all amounts added because of subsection 80(13) in computing the amount determined under subparagraph (i).

Related Provisions: 66.6(1) — Application; 66.7(2.3) — Income deemed not attributable to production from Canadian resource property; 66.7(6), (7), (9) — Application rules; 66.7(10), (11) — Change of control; 66.7(10.1) — Amalgamation — partnership property; 66.7(12) — Reduction of Canadian resource expenses; 66.7(14) — Disposal of Canadian resource properties; 66.7(16) — Non-successor acquisitions; 66.7(17) — Restriction on deductions; 80(1)"successor pool" — Debt forgiveness; 80(8)(a) — Reduction of undeducted balances on debt forgiveness. See also at end of s. 66.7.

History: Subpara. 66.7(3)(b)(iii) amended by 1998, c. 19, subsec. 106(3), applicable to taxation years that end after February 21, 1994. The subpara. formerly read:

(iii) all amounts added because of subsection 80(13) or (17) in computing the amount determined under subparagraph (i).

Para. 66.7(3)(a) and the portion of para. 66.7(3)(b) after subpara. (i) amended by 1995, c. 21, subsecs. 25(4) and (5), applicable to taxation years that end after February 21, 1994. Para. 66.7(3)(a) and that portion of para. 66.7(3)(b) formerly read:

(a) the total of

(i) the cumulative Canadian exploration expense of the original owner determined immediately after the disposition of the particular property by the original owner, and

(ii) all amounts required to be added under paragraph (9)(f) to the cumulative Canadian exploration expense of the original owner in respect of a predecessor owner of the particular property, or the successor, as the case may be, at any time after the disposition of the particular property by the original owner and before the end of the year,

to the extent that an amount in respect of that total was not

(iii) deducted or required to be deducted under subsection 66.1(2) or (3) by the original owner or deducted by any predecessor owner of the particular property in computing income for any taxation year,

(iii.1) otherwise deducted in computing the income of the successor for the year,

(iv) deducted by the successor in computing income for a preceding taxation year, or

(v) designated by the original owner pursuant to subsection 66(14.1) for any taxation year, and

exceeds

(ii) the total of all other amounts deducted under subsection 29(25) of the *Income Tax Application Rules*, this subsection and subsections (1), (4) and (5) for the year that may reasonably be regarded as attributable to the part of its income for the year described in subparagraph (i) in respect of the particular property.

Subpara. 66.7(3)(a)(iii) amended by 1994, c. 8, subsec. 8(1), applicable to taxation years ending after December 2, 1992. Subpara. (iii) formerly read:

(iii) deductible under subsection 66.1(2) or deducted under subsection 66.1(3) by the original owner or deducted by any predecessor owner of the particular property in computing income for any taxation year,

Subpara. 66.7(3)(a)(iii.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 42(3), applicable to taxation years ending after February 17, 1987.

Forms: T2010: Election to deduct resource expenses upon acquisition of resource property by a corporation.

(4) Successor of Canadian development expense — Subject to subsections (6) and (7), where after May 6, 1974 a corporation (in this subsection referred to as the "successor") acquired a particular Canadian resource property (whether by way of a purchase, amalgamation, merger, winding-up or otherwise), there may be deducted by the successor in computing its income for a taxation year an amount not exceeding the total of all amounts each of which is an amount determined in respect of an original owner of the particular property that is the lesser of

(a) 30% of the amount, if any, by which

(i) the amount, if any, by which

(A) the cumulative Canadian development expense of the original owner determined immediately after the disposition of the particular property by the original owner to the extent that it has not been

(I) deducted by the original owner or any predecessor owner of the particular property in computing income for any taxation year,

(I.1) otherwise deducted in computing the income of the successor for the year,

(II) deducted by the successor in computing its income for any preceding taxation year, or

(III) designated by the original owner pursuant to subsection 66(14.2) for any taxation year,

exceeds

(B) any amount required to be deducted under paragraph (9)(e) from the cumulative Canadian development expense of the original owner in respect of a predecessor owner of the particular property or the successor, as the case may be, at any time after the disposition of the particular property by the original owner and before the end of the year,

exceeds the total of

(ii) all amounts each of which is an amount (other than any portion thereof that can reasonably be considered to result in a reduction of the amount otherwise determined under this paragraph in respect of another original owner of a relevant mining property who is not a predecessor owner of a relevant mining property or who became a predecessor owner of a relevant mining property before the original owner became a predecessor owner of a relevant mining property) that became receivable by a predecessor owner of the particular property or the successor in the year or a preceding taxation year and that

(A) was included by the predecessor owner or the successor in computing an amount determined under paragraph (a) of the description of F in the definition "cumulative Canadian development expense" in subsection 66.2(5) at the end of the year, and

(B) can reasonably be regarded as attributable to the disposition of a property (in this subparagraph referred to as a "relevant mining property") that is the particular property or another Canadian resource property that was acquired from the original owner with the particular property by the successor or a predecessor owner of the particular property,

(iii) all amounts each of which is an amount (other than any portion thereof that can reasonably be considered to result in a reduction of the amount otherwise determined under paragraph (5)(a) in respect of the original owner or under this paragraph or paragraph (5)(a) in respect of another original owner of a relevant oil and gas property who is not a predecessor owner of a relevant oil and gas property or who became a predecessor owner of a relevant oil and gas property before the original owner became a predecessor owner of a relevant oil and gas property) that became receivable by a predecessor owner of the particular property or the successor after 1992 and in the year or a preceding taxation year and that

(A) is designated in respect of the original owner by the predecessor owner or the successor, as the case may be, in prescribed form filed with the Minister within 6 months after the end of the taxation year in which the amount became receivable,

(B) was included by the predecessor owner or the successor in computing an amount determined under paragraph (a) of the description of F in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5) at the end of the year, and

(C) can reasonably be regarded as attributable to the disposition of a property (in this subparagraph referred to as a "relevant oil and gas property") that is the particular property or another Canadian resource property that was acquired from the original owner with the particular property by the successor or a predecessor owner of the particular property, and

(iv) all amounts each of which is an amount by which the amount described in this paragraph is required because of subsection 80(8) to be reduced at or before the end of the year, and

(b) the amount, if any, by which

(i) the part of the successor's income for the year that can reasonably be regarded as attributable to

(A) its reserve amount for the year in respect of the original owner and each predecessor owner of the particular property, or

(B) production from the particular property,

computed as if no deduction were allowed under section 29 of the *Income Tax Application Rules*, this section or any of sections 65 to 66.5, except that, where the successor acquired the particular property from the original owner at any time in the year (otherwise than by way of an amalgamation or merger or solely because of the application of paragraph (10)(c)) and did not deal with the original owner at arm's length at that time, the amount determined under this subparagraph shall be deemed to be nil,

exceeds the total of

(ii) all other amounts deducted under subsection 29(25) of the *Income Tax Application Rules*, this subsection and subsections (1), (3) and (5) for the

year that can reasonably be regarded as attributable to the part of its income for the year described in subparagraph (i) in respect of the particular property, and

(iii) all amounts added because of subsection 80(13) in computing the amount determined under subparagraph (i).

Related Provisions: 66(13.1) — Short taxation year; 66.6(1) — Application; 66.7(6), (7), (9) — Application rules; 66.7(10) — Change of control; 66.7(10.1) — Amalgamation — partnership property; 66.7(11) — Change of control — anti-avoidance rule; 66.7(12) — Reduction of Canadian resource expenses; 66.7(12.1) — Canadian resource properties — Specified amount; 66.7(14) — Disposal of Canadian resource properties; 66.7(16) — Non-successor acquisitions; 66.7(17) — Restriction on deductions; 80(1)"successor pool" — Debt forgiveness; 80(8)(a) — Reduction of undeducted balances on debt forgiveness. See also at end of s. 66.7.

History: Subpara. 66.7(4)(b)(iii) amended by 1998, c. 19, subsec. 106(4), applicable to taxation years that end after February 21, 1994. The subpara. formerly read:

(iii) all amounts added because of subsection 80(13) or (17) in computing the amount determined under subparagraph (i).

Subpara. 66.7(4)(a)(iv) added and the portion of para. 66.7(4)(b) after subpara. (i) amended by 1995, c. 21, subsecs. 25(6) and (7), applicable to taxation years that end after February 21, 1994. That portion of para. 66.7(4)(b) after subpara. (i) formerly read:

exceeds

(ii) the total of all other amounts deducted under subsection 29(25) of the *Income Tax Application Rules*, this subsection and subsections (1), (3) and (5) for the year that may reasonably be regarded as attributable to the part of its income for the year described in subparagraph (i) in respect of the particular property.

All that portion of para. 66.7(4)(a) following subpara. (i) substituted by 1994, c. 21, subsec. 31(2), applicable to taxation years ending after February 17, 1987 except that, where a taxpayer files a form referred to in cl. 66.7(4)(a)(iii)(A) with the Minister of National Revenue before the end of the sixth month beginning after the end of the taxpayer's taxation year that includes June 15, 1994, the taxpayer shall be deemed to have filed the form in a timely manner. That portion of the para. formerly read:

exceeds

(ii) the total of all amounts each of which is an amount that became receivable by a predecessor owner of the particular property or the successor in the year or a preceding taxation year and that

(A) was included by the predecessor owner or the successor in the amount determined under paragraph (a) of the description of F in the definition "cumulative Canadian development expense" in subsection 66.2(5) at the end of the year, and

(B) may reasonably be regarded as attributable to the disposition of the particular property by the predecessor owner or the successor, and

Subcl. 66.7(4)(a)(i)(A)(I.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 42(4), applicable to taxation years ending after February 17, 1987.

Subpara. 66.7(4)(b)(i) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 42(5), applicable to dispositions occurring in taxation years beginning after December 16, 1991 and with respect to a disposition of a property made by a taxpayer in a taxation year ending after February 17, 1987 and beginning before December 17, 1991, where

(a) the taxpayer, and

(b) each corporation that, before the end of the taxpayer's taxation year that includes December 17, 1991, acquired the property or any other property that was disposed of by the taxpayer in a taxation year ending after February 17, 1987 as part of a transaction or an event as a consequence of which that corporation was or, but for those subsecs., would be entitled to deduct an amount under 66.7(3), (4) or (5) in respect of an expense incurred by the taxpayer,

so elected by notice in writing filed with Revenue Canada on or before the day that was 180 days after the end of the taxpayer's taxation year that included December 17, 1991; and,

(c) notwithstanding 152(4) to (5), such assessments of tax, interest and penalties shall be made as are necessary to give effect to the election, and

(d) where the taxpayer so elected in respect of a disposition, a designation under 66.7(12.1)(a)(i)(B), (b)(i)(B) or (c)(i)(B) in respect of the disposition shall be deemed to have been filed as required if it was filed with Revenue Canada on or before the day that was 180 days after the end of the taxpayer's taxation year that included December 17, 1991.

Subpara. 66.7(4)(b)(i) formerly read:

(i) the part of the successor's income for the year that may reasonably be regarded as attributable to

(A) its reserve amount for the year in respect of the original owner and each predecessor owner of the particular property, or

(B) production from the particular property,

computed as if no deduction were allowed under section 29 of the *Income Tax Application Rules*, this section or any of sections 65 to 66.5,

Forms: T2010: Election to deduct resource expenses upon acquisition of resource property by a corporation.

(5) Successor of Canadian oil and gas property expense — Subject to subsections (6) and (7), where after December 11, 1979 a corporation (in this subsection referred to as the "successor") acquired a particular Canadian resource property (whether by way of a purchase, amalgamation, merger, winding-up or otherwise), there may be deducted by the successor in computing its income for a taxation year an amount not exceeding the total of all amounts each of which is an amount determined in respect of an original owner of the particular property that is the lesser of

(a) 10% of the amount, if any, by which

(i) the cumulative Canadian oil and gas property expense of the original owner determined immediately after the disposition of the particular property by the original owner to the extent it has not been

(A) deducted by the original owner or any predecessor owner of the particular property in computing income for any taxation year,

(A.1) otherwise deducted in computing the income of the successor for the year, or

(B) deducted by the successor in computing its income for any preceding taxation year

exceeds the total of

(ii) the total of all amounts each of which is an amount (other than any portion thereof that can reasonably be considered to result in a reduction of the amount otherwise determined under this paragraph or paragraph (4)(a) in respect of another original owner of a relevant oil and gas property who is not a predecessor owner of a relevant oil and gas property or who became a predecessor owner of a relevant oil and gas property before the original owner became a predecessor owner of a relevant oil and gas property) that became receivable by a predecessor owner of the particular property or the successor in the year or a preceding taxation year and that

(A) was included by the predecessor owner or the successor in computing an amount determined under paragraph (a) of the description of F in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5) at the end of the year, and

(B) can reasonably be regarded as attributable to the disposition of a property (in this subparagraph referred to as a "relevant oil and gas property") that is the particular property or another Canadian resource property that was acquired

from the original owner with the particular property by the successor or a predecessor owner of the particular property, and

(iii) the total of all amounts each of which is an amount by which the amount described in this paragraph is required because of subsection 80(8) to be reduced at or before the end of the year, and

(b) the amount, if any, by which

(i) the part of the successor's income for the year that can reasonably be regarded as attributable to

(A) its reserve amount for the year in respect of the original owner and each predecessor owner of the particular property, or

(B) production from the particular property,

computed as if no deduction were allowed under section 29 of the *Income Tax Application Rules*, this section or any of sections 65 to 66.5, except that, where the successor acquired the particular property from the original owner at any time in the year (otherwise than by way of an amalgamation or merger or solely because of the application of paragraph (10)(c)) and did not deal with the original owner at arm's length at that time, the amount determined under this subparagraph shall be deemed to be nil,

exceeds the total of

(ii) all other amounts deducted under subsection 29(25) of the *Income Tax Application Rules*, this subsection and subsections (1), (3) and (4) for the year that can reasonably be regarded as attributable to the part of its income for the year described in subparagraph (i) in respect of the particular property, and

(iii) all amounts added because of subsection 80(13) in computing the amount determined under subparagraph (i).

Related Provisions: 66(13.1) — Short taxation year; 66.6(2) — Application; 66.7(2.3) — Income deemed not attributable to production from Canadian resource property; 66.7(6), (7) — Application rules; 66.7(10) — Change of control; 66.7(10.1) — Amalgamation — partnership property; 66.7(11) — Change of control — anti-avoidance rule; 66.7(12) — Reduction of Canadian resource expenses; 66.7(14) — Disposal of Canadian resource properties; 66.7(16) — Non-successor acquisitions; 66.7(17) — Restriction on deductions; 80(1)"successor pool" — Debt forgiveness; 80(8)(a) — Reduction of undeducted balances on debt forgiveness. See also at end of s. 66.7.

History: Subpara. 66.7(5)(b)(iii) amended by 1998, c. 19, subsec. 106(5), applicable to taxation years that end after February 21, 1994. The subpara. formerly read:

(iii) all amounts added because of subsection 80(13) or (17) in computing the amount determined under subparagraph (i).

The portion of para. 66.7(5)(a) between subparas. (i) and (ii) amended to add the words "the total of" and subpara. 66.7(5)(a)(iii) added by 1995, c. 21, subsecs. 25(8) and (9), applicable to taxation years that end after February 21, 1994.

The portion of para. 66.7(5)(b) after subpara. (i) amended by 1995, c. 21, subsec. 25(10), applicable to taxation years that end after February 21, 1994. That portion formerly read:

exceeds

(ii) the total of all other amounts deducted under subsection 29(25) of the *Income Tax Application Rules*, this subsection and subsections (1), (3) and (4) for the year that may reasonably be regarded as attributable to the part of its income for the year described in subparagraph (i) in respect of the particular property.

Subpara. 66.7(5)(a)(ii) substituted by 1994, c. 21, subsec. 31(3), applicable to taxation years ending after February 17, 1987. That subpara. formerly read:

(ii) the total of all amounts each of which is an amount that became receivable by a predecessor owner of the particular property or the successor in the year or a preceding taxation year and that

(A) was included by the predecessor owner or the successor in the amount determined under paragraph (a) of the description of F in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5) at the end of the year, and

(B) may reasonably be regarded as attributable to the disposition of the particular property by the predecessor owner or the successor, and

Cl. 66.7(5)(a)(i)(A.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 42(6), applicable to taxation years ending after February 17, 1987.

Subpara. 66.7(5)(b)(i) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 42(7), applicable to dispositions occurring in taxation years beginning after December 16, 1991 and with respect to a disposition of a property made by a taxpayer in a taxation year ending after February 17, 1987 and beginning before December 17, 1991, where

(a) the taxpayer, and

(b) each corporation that, before the end of the taxpayer's taxation year that includes December 17, 1991, acquired the property or any other property that was disposed of by the taxpayer in a taxation year ending after February 17, 1987 as part of a transaction or an event as a consequence of which that corporation was or, but for those subsecs., would be entitled to deduct an amount under subsec. 66.7(3), (4) or (5) in respect of an expense incurred by the taxpayer,

so elected by notice in writing filed with the Minister of National Revenue on or before the day that was 180 days after the end of the taxpayer's taxation year that included December 17, 1991; and,

(c) notwithstanding subsecs. 152(4) to (5), such assessments of tax, interest and penalties shall be made as are necessary to give effect to the election, and

(d) where the taxpayer so elected in respect of a disposition, a designation under cl. 66.7(12.1)(a)(i)(B), (b)(i)(B) or (c)(i)(B) in respect of the disposition shall be deemed to have been filed as required if it was filed with the Minister of National Revenue on or before the day that was 180 days after the end of the taxpayer's taxation year that included December 17, 1991.

Subpara. 66.7(5)(b)(i) formerly read:

(i) the part of the successor's income for the year that may reasonably be regarded as attributable to

(A) its reserve amount for the year in respect of the original owner and each predecessor owner of the particular property, or

(B) production from the particular property,

computed as if no deduction were allowed under section 29 of the *Income Tax Application Rules*, this section or any of sections 65 to 66.5,

Forms: T2010: Election to deduct resource expenses upon acquisition of resource property by a corporation.

(6) Where subsec. 29(25) of ITAR and subsecs. (1) to (5) do not apply — Subsection 29(25) of the *Income Tax Application Rules* and subsections (1) to (5) do not apply

(a) in respect of a Canadian resource property or a foreign resource property acquired by way of an amalgamation to which subsection 87(1.2) applies or a winding-up to which subsection 88(1.5) applies; or

(b) to permit, in respect of the acquisition by a corporation before February 18, 1987 of a Canadian resource property or a foreign resource property, a deduction by the corporation of an amount that the corporation would not have been entitled to deduct under section 29 of the *Income Tax Application Rules* or section 66, 66.1, 66.2 or 66.4 if those sections, as they read in their application to taxation years ending before February 18, 1987, applied to taxation years ending after February 17, 1987.

Related Provisions: See at end of s. 66.7.

(7) Application of subsec. 29(25) of ITAR and subsecs. (1), (3), (4) and (5) — Subsection 29(25) of the *Income Tax Application Rules* and subsections (1), (3), (4) and (5) apply only to a corporation that has acquired a particular Canadian resource property

(a) where it acquired the particular property in a taxation year commencing before 1985 and, at the time it acquired the particular property, the corporation acquired all or substantially all of the property used by the person from whom it acquired the particular property in carrying on in Canada such of the businesses described in paragraphs (a) to (g) of the definition "principal-business corporation" in subsection 66(15) as were carried on by the person;

(b) where it acquired the particular property in a taxation year commencing after 1984 and, at the time it acquired the particular property, the corporation acquired all or substantially all of the Canadian resource properties of the person from whom it acquired the particular property;

(c) where it acquired the particular property after June 5, 1987 by way of an amalgamation or winding-up and it has filed an election in prescribed form with the Minister on or before the day on or before which the corporation is required to file a return of income pursuant to section 150 for its taxation year in which it acquired the particular property;

(d) where it acquired the particular property after November 16, 1978 and in a taxation year ending before February 18, 1987 by any means other than by way of an amalgamation or winding-up and it and the person from whom it acquired the particular property, have filed with the Minister a joint election under and in accordance with any of subsection 29(25) of the *Income Tax Application Rules*, subsection 29(29) of the *Income Tax Application Rules, 1971*, Part III of chapter 63 of the Statutes of Canada, 1970-71-72, and subsections 66(6) and (7), 66.1(4) and (5), 66.2(3) and (4) and 66.4(3) and (4) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as all of those subsections read in their application to that year; and

(e) where it acquired the particular property in a taxation year ending after February 17, 1987 by any means other than by way of an amalgamation or winding-up and it and the person from whom it acquired the particular property have filed a joint election in prescribed form with the Minister on or before the earlier of the days on or before which either of them is required to file a return of income pursuant to section 150 for its or the person's taxation year in which the corporation acquired the particular property.

Related Provisions: 220(3.2), Reg. 600(c) — Late filing or revocation of election under 66.7(7)(c), (d) or (e). See additional Related Provisions and Definitions at end of s. 66.7.

I.T. Application Rules: 69 (meaning of "chapter 148 of ..."; meaning of "*Income Tax Application Rules, 1971*, Part III of chapter 63 of the Statutes of Canada, 1970-71-72").

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

Forms: T2010: Election to deduct resource expenses upon acquisition of resource property by a corporation.

(8) Application of subsecs. (2) and (2.3) — Subsections (2) and (2.3) apply only to a corporation that has acquired a particular foreign resource property

(a) where it acquired the particular property in a taxation year commencing before 1985 and, at the time it acquired the particular property, the corporation acquired all or substantially all of the property used by the person from whom it acquired the particular property in carrying on outside Canada such of the businesses described in paragraphs (a) to (g) of the definition "principal-business corporation" in subsection 66(15) as were carried on by that person;

(b) where it acquired the particular property in a taxation year commencing after 1984 and, at the time it acquired the particular property, the corporation acquired all or substantially all of the foreign resource properties of the person from whom it acquired the particular property;

(c) where it acquired the particular property after June 5, 1987 by way of an amalgamation or winding-up and it has filed an election in prescribed form with the Minister on or before the day on or before which the corporation is required to file a return of income pursuant to section 150 for its taxation year in which it acquired the particular property;

(d) where it acquired the particular property after November 16, 1978 and in a taxation year ending before February 18, 1987 by any means other than by way of an amalgamation or winding-up and it and the person from whom it acquired the particular property, have filed with the Minister a joint election under and in accordance with subsection 66(6) or (7) (as modified by subsections 66(8) and (9), respectively) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as those subsections read in their application to that year; and

(e) where it acquired the particular property in a taxation year ending after February 17, 1987 by any means other than by way of an amalgamation or winding-up and it and the person from whom it acquired the particular property have filed a joint election in prescribed form with the Minister on or before the earlier of the days on or before which either of them is required to file a return of income pursuant to section 150 for its or the person's taxation year in which the corporation acquired the particular property.

Related Provisions: 220(3.2), Reg. 600(c) — Late filing or revocation of election under 66.7(8)(c), (d) or (e). See additional Related Provisions and Definitions at end of s. 66.7.

History: The opening words of subsec. 66.7(8) amended by 2001, c. 17, subsec. 49(3), applicable to taxation years that begin after 2000. The opening words formerly read:

(8) Application of subsec. (2) — Subsection (2) applies only to a corporation that has acquired a particular foreign resource property

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

Forms: T2010: Election to deduct resource expenses upon acquisition of resource property by a corporation.

(9) Canadian development expense becoming Canadian exploration expense — Where

(a) a corporation acquires a Canadian resource property,

(b) subsection (4) applies in respect of the acquisition, and

(c) the cumulative Canadian development expense of an original owner of the property determined under clause (4)(a)(i)(A) in respect of the corporation includes a Canadian development expense incurred by the original owner in respect of an oil or gas well that would, but for this subsection, be deemed by subsection 66.1(9) to be a Canadian exploration expense incurred in respect of the well by the original owner at any particular time after the acquisition by the corporation and before it disposed of the property,

the following rules apply:

(d) subsection 66.1(9) does not apply in respect of the Canadian development expense incurred in respect of the well by the original owner,

(e) an amount equal to the lesser of

(i) the amount that would be deemed by subsection 66.1(9) to be a Canadian exploration expense incurred in respect of the well by the original owner at the particular time if that subsection applied in respect of the expense, and

(ii) the cumulative Canadian development expense of the original owner as determined under clause (4)(a)(i)(A) in respect of the corporation immediately before the particular time

shall be deducted at the particular time from the cumulative Canadian development expense of the original owner in respect of the corporation for the purposes of subparagraph (4)(a)(i), and

(f) the amount required by paragraph (e) to be deducted shall be added at the particular time to the cumulative Canadian exploration expense of the original owner in respect of the corporation for the purpose of paragraph (3)(a).

Related Provisions: See at end of s. 66.7.

History: Para. 66.7(9)(f) amended by 1995, c. 21, subsec. 25(11), applicable to taxation years that end after February 21, 1994. The para. formerly read:

(f) the amount required to be deducted by paragraph (e) shall be added at the particular time to the cumulative Canadian exploration expense of the original owner in respect of the corporation for the purposes of subparagraph (3)(a)(ii).

(10) Change of control — Where at any time after November 12, 1981

(a) control of a corporation has been acquired by a person or group of persons, or

(b) a corporation ceased on or before April 26, 1995 to be exempt from tax under this Part on its taxable income,

for the purposes of the provisions of the *Income Tax Application Rules* and this Act (other than subsections 66(12.6), (12.601), (12.602), (12.62) and (12.71)) relating to deductions in respect of drilling and exploration expenses, prospecting, exploration and development expenses, Canadian exploration and development expenses, foreign resource pool expenses, Canadian exploration expenses, Canadian development expenses and Canadian oil and gas property expenses (in this subsection referred to as "resource expenses") incurred by the corporation before that time, the following rules apply:

(c) the corporation shall be deemed after that time to be a successor (within the meaning assigned by subsection 29(25) of the *Income Tax Application Rules* or any of subsections (1) to (5)) that had, at that time, acquired all the properties owned by the corporation immediately before that time from an original owner thereof,

(c.1) where the corporation did not own a foreign resource property immediately before that time, the corporation is deemed to have owned a foreign resource property immediately before that time,

(d) a joint election shall be deemed to have been filed in accordance with subsections (7) and (8) in respect of the acquisition,

(e) the resource expenses incurred by the corporation before that time shall be deemed to have been incurred by an original owner of the properties and not by the corporation,

(f) the original owner is deemed to have been resident in Canada before that time while the corporation was resident in Canada,

(g) where the corporation (in this paragraph referred to as the "transferee") was, immediately before and at that time,

(i) a parent corporation (within the meaning assigned by subsection 87(1.4)), or

(ii) a subsidiary wholly-owned corporation (within the meaning assigned by subsection 87(1.4))

of a particular corporation (in this paragraph referred to as the "transferor"), if both corporations agree to have this paragraph apply to them in respect of a taxation year of the transferor ending after that time and notify the Minister in writing of the agreement in the return of income under this Part of the transferor for that year, the transferor may, if throughout that year the transferee was such a parent corporation or subsidiary wholly-owned corporation of the transferor, designate in favour of the transferee, in respect of that year, for the purpose of making a deduction under subsection 29(25) of the *Income Tax Application Rules* or this section in respect of resource expenses incurred by the transferee before that time and when it was such a parent corporation or subsidiary wholly-owned corporation of the transferor, an amount not exceeding such portion of the amount that would be its income for the year, if no deductions were allowed under any of section 29 of the *Income Tax Application Rules*, this section and sections 65 to 66.5, that may reasonably be regarded as being attributable to

(iii) the production from Canadian resource properties owned by the transferor immediately before that time, and

(iv) the disposition in the year of any Canadian resource properties owned by the transferor immediately before that time,

to the extent that such portion of the amount so designated is not designated under this paragraph in favour of any other taxpayer, and the amount so designated shall be deemed, for the purposes of determining the amount under paragraph 29(25)(d) of the *Income Tax Application Rules* and paragraphs (1)(b), (3)(b), (4)(b) and (5)(b),

(v) to be income from the sources described in subparagraph (iii) or (iv), as the case may be, of the transferee for its taxation year in which that taxation year of the transferor ends, and

(vi) not to be income from the sources described in subparagraph (iii) or (iv), as the case may be, of the transferor for that year,

(h) where the corporation (in this paragraph referred to as the "transferee") was, immediately before and at that time,

(i) a parent corporation (within the meaning assigned by subsection 87(1.4)), or

(ii) a subsidiary wholly-owned corporation (within the meaning assigned by subsection 87(1.4))

of a particular corporation (in this paragraph referred to as the "transferor"), if both corporations agree to have this paragraph apply to them in respect of a taxation year of the transferor ending after that time and notify the Minister in writing of the agreement in the return of income under this Part of the transferor for that year, the transferor may, if throughout that year the transferee was such a parent corporation or subsidiary wholly-owned corporation of the transferor, designate in favour of the transferee, in respect of that year, for the purpose of making a deduction under this section in respect of resource expenses incurred by the transferee before that time and when it was such a parent corporation or subsidiary wholly-owned corporation of the transferor, an amount not exceeding such portion of the amount that would be its income for the year, if no deductions were allowed under this section and sections 65 to 66.5, that may reasonably be regarded as being attributable to

(iii) the production from foreign resource properties owned by the transferor immediately before that time, and

(iv) the disposition of any foreign resource properties owned by the transferor immediately before that time,

to the extent that such portion of the amount so designated is not designated under this paragraph in favour of any other taxpayer, and the amount so designated shall be deemed,

(v) for the purposes of determining the amounts under paragraphs (2)(b) and (2.3)(b), to be income from the sources described in subparagraph (iii) or (iv), as the case may be, of the transferee for its taxation year in which that taxation year of the transferor ends, and

(vi) for the purposes of determining the amount under paragraphs (2)(b) and (2.3)(b), not to be income from the sources described in subparagraph (iii) or (iv), as the case may be, of the transferor for that year,

(i) where, immediately before and at that time, the corporation (in this paragraph referred to as the "transferee") and another corporation (in this paragraph referred to as the "transferor") were both subsidiary wholly-owned corporations (within the meaning assigned by subsection 87(1.4)) of a particular parent corporation (within the meaning assigned by subsection 87(1.4)), if the transferee and the transferor agree to have this paragraph apply to them in respect of a taxation year of the transferor ending after that time and notify the Minister in writing of the agreement in the return of income under this Part of the transferor for that year, paragraph (g) or (h), or both, as the agreement provides, shall apply for that year to the transferee and transferor as though one were the parent corporation (within the meaning of subsection 87(1.4)) of the other, and

(j) where that time is after January 15, 1987 and at that time the corporation was a member of a partnership that owned a Canadian resource property or a foreign resource property at that time

(i) for the purpose of paragraph (c), the corporation shall be deemed to have owned immediately before that time that portion of the property owned by the partnership at that time that is equal to its percentage share of the total of amounts that would be paid to all members of the partnership if it were wound up at that time, and

(ii) for the purposes of clause 29(25)(d)(i)(B) of the *Income Tax Application Rules*, clauses (1)(b)(i)(C) and (2)(b)(i)(B), subparagraph (2.3)(b)(i) and clauses (3)(b)(i)(C), (4)(b)(i)(B) and (5)(b)(i)(B) for a taxation year ending after that time, the lesser of

(A) its share of the part of the income of the partnership for the fiscal period of the partnership ending in the year that may reasonably be regarded as being attributable to the production from the property, and

(B) an amount that would be determined under clause (A) for the year if its share of the income of the partnership for the fiscal period of the partnership ending in the year were determined on the basis of the percentage share referred to in subparagraph (i),

shall be deemed to be income of the corporation for the year that may reasonably be attributable to production from the property.

Related Provisions: 66(11.3) — Control; 66.7(2.3) — Income deemed not attributable to production from Canadian resource property; 66.7(10.1) — Amalgamation — partnership property; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 149(10) — Ceasing to be exempt after April 26, 1995; 249(4) — Deemed year end where change of control occurs; 256(6)–(9) — Whether control acquired. See also at end of s. 66.7.

History: The portion of subsec. 66.7(10) after para. (b) and before para. (c), subparas. 66.7(10)(h)(v) and (vi), and the opening words of subpara. 66.7(10)(j)(ii), amended by 2001, c. 17, subsecs. 49(4), (6) and (7), applicable to taxation years that begin after 2000. The portion, subparas. (h)(v) and (vi), and the opening words of subpara. (j)(ii) formerly read:

> for the purposes of the provisions of the *Income Tax Application Rules* and this Act (other than subsections 66(12.6), (12.601), (12.602), (12.62) and (12.71)) relating to deductions in respect of drilling and exploration expenses, prospecting, exploration and development expenses, Canadian exploration and development expenses, foreign exploration and development expenses, Canadian exploration expenses, Canadian development expenses and Canadian oil and gas property expenses (in this subsection referred to as "resource expenses") incurred by the corporation before that time, the following rules apply:
>
> . . . . .
>
> (v) for the purposes of determining the amounts under paragraph (2)(b), to be income from the sources described in subparagraph (iii) or (iv), as the case may be, of the transferee for its taxation year in which that taxation year of the transferor ends, and
>
> (vi) for the purposes of determining the amount under paragraph (2)(b), not to be income from the sources described in subparagraph (iii) or (iv), as the case may be, of the transferor for that year,
>
> . . . . .
>
> (ii) for the purposes of clause 29(25)(d)(i)(B) of the *Income Tax Application Rules* and clauses (1)(b)(i)(C), (2)(b)(i)(B), (3)(b)(i)(C), (4)(b)(i)(B) and (5)(b)(i)(B) for a taxation year ending after that time, the lesser of

Para. 66.7(10)(f) added by the said c. 17, subsec. 49(5), applicable to 1999 *et seq.*

Para. 66.7(10)(b) amended and para. (c.1) added by 1998, c. 19, subsecs. 106(6) and (7), para. 66.7(10)(b) applicable after April 26, 1995 and para. (c.1) applicable to taxation years that end after February 17, 1987. Para. (b) formerly read:

(b) a corporation ceases to be exempt from tax under this Part on its taxable income,

That portion of subsec. 66.7(10) between paras. (b) and (c) amended by 1997, c. 25, s. 16, applicable to taxation years that begin after 1998. That portion formerly read:

for the purposes of the provisions of the *Income Tax Application Rules* and this Act (other than subsections 66(12.6), (12.601), (12.602), (12.62), (12.64) and (12.71)) relating to deductions with respect to drilling and exploration expenses, prospecting, exploration and development expenses, Canadian exploration and development expenses, foreign exploration and development expenses, Canadian exploration expenses, Canadian development expenses and Canadian oil and gas property expenses (in this subsection referred to as "resource expenses") incurred by the corporation before that time, the following rules apply:

That portion of subsec. 66.7(10) between paras. (b) and (c) amended by 1994, c. 8, subsec. 8(2), applicable to taxation years ending after December 2, 1992. That portion formerly read:

for the purposes of the provisions of the *Income Tax Application Rules*, and this Act, other than subsections 66(12.6), (12.62), (12.64) and (12.71), relating to deductions with respect to drilling and exploration expenses, prospecting, exploration and development expenses, Canadian exploration and development expenses, foreign exploration and development expenses, Canadian exploration expenses, Canadian development expenses and Canadian oil and gas property expenses (in this subsection referred to as "resource expenses") incurred by the corporation before that time, the following rules apply:

Para. 66.7(10)(f) repealed by 1994, c. 7, Sch. II (1991, c. 49), subsec. 42(8), applicable to taxation years ending after February 17, 1987. Para. (f) formerly read:

(f) where, pursuant to paragraph (e), foreign exploration and development expenses incurred by the corporation are deemed to have been incurred by an original owner of the properties, the corporation may designate in respect of a taxation year an amount not exceeding the lesser of

(i) the amount included in its income for the year, computed as if no deduction were allowed under section 29 of the *Income Tax Application Rules*, this section or sections 65 to 66.5, that may reasonably be regarded as being attributable to the production from a Canadian resource property owned by it immediately before that time, and

(ii) the amount, if any, by which 10% of the amount described in paragraph (2)(a) for the year with respect to those expenses exceeds the amount that would be determined under paragraph (2)(b) for the year if this paragraph and subparagraph (h)(vi) did not apply,

as being an amount attributable to the production described in clause (2)(b)(i)(B), and the amount so designated shall, for the purpose of clause 29(25)(d)(i)(B) of the *Income Tax Application Rules*, clauses (1)(b)(i)(C), (3)(b)(i)(C), (4)(b)(i)(B), (5)(b)(i)(B) and subparagraph (g)(iii) be deemed not to be an amount attributable to production from a Canadian resource property in the year;

Subpara. 66.7(10)(h)(v) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 42(9), to substitute "paragraph (2)(b)" for "paragraph (2)(b) and subparagraph (f)(ii)", applicable to taxation years ending after February 17, 1987.

I.T. Technical News: 7 (control by a group — 50/50 arrangement).

Advance Tax Rulings: ATR-19: Earned depletion base and cumulative Canadian development expense.

Proposed Addition — 66.7(10.1)

(10.1) Amalgamation — partnership property — For the purposes of subsections (1) to (5) and the definition "original owner" in subsection 66(15), if at any particular time there has been an amalgamation within the meaning assigned by subsection 87(1), other than an amalgamation to which subsection 87(1.2) applies, of two or more corporations (each of which is referred to in this subsection as a "predecessor corporation") to form one corporate entity (referred to in this subsection as the "new corporation") and immediately before the particular time a predecessor corporation was a member of a partnership that owned a Canadian resource property or a foreign resource property,

(a) the predecessor corporation is deemed

(i) to have owned, immediately before the particular time, that portion of each Canadian resource property and of each foreign resource property owned by the partnership at the particular time that is equal to the predecessor corporation's percentage share of the total of the amounts that would be paid to all members of the partnership if the partnership were wound up immediately before the particular time, and

(ii) to have disposed of those portions to the new corporation at the particular time;

(b) the new corporation is deemed to have, by way of the amalgamation, acquired those portions at the particular time; and

(c) the income of the new corporation for a taxation year that ends after the particular time that can reasonably be attributable to production from those properties is deemed to be the lesser of

(i) the new corporation's share of the part of the income of the partnership for fiscal periods of the partnership that end in the year that can reasonably be regarded as being attributable to production from those properties, and

(ii) the amount that would be determined under subparagraph (i) for the year if the new corporation's share of the income of the partnership for the fiscal periods of the partnership that end in the year were determined on the basis of the percentage share referred to in paragraph (a).

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 75, will add subsec. 66.7(10.1), applicable to amalgamations that occur after 1996.

Technical Notes: Subsection 66.7(10) treats a corporation as a successor corporation for the purposes of the successor rules in section 66.7 following an acquisition of control (or a change in the tax-exempt status) of the corporation. A rule in paragraph 66.7(10)(j) deems the corporation to own its percentage share of the properties owned by a partnership of which it was a member at the time of the acquisition of control. This "look-through rule" permits the deduction of resource expenses against income from, and proceeds of disposition of, the properties owned by the partnership at the time of the acquisition of control. No similar rule currently exists which would allow a new corporation formed on an amalgamation (other than an amalgamation to which subsection 87(2.1) applies) to deduct resource expenses against income from properties owned by a partnership in which a predecessor corporation was a member at the time of the amalgamation.

New subsection 66.7(10.1) applies to an amalgamation to which subsection 87(1.2) does not apply and provides a look-through rule similar to the rule in paragraph 66.7(10)(j). It does so by deeming the predecessor corporation to have owned a portion of the properties owned by a partnership immediately before the amalgamation and to have disposed of them to the new corporation formed on the amalgamation. Thus, subsection 66.7(10.1) allows a new corporation, to the extent permitted under subsections 66.7(1) to (5), to deduct from the resource pools of the predecessor corporation, amounts relating to the new corporation's share of the income from properties owned by a partnership in which a predecessor corporation was a member at the time of the amalgamation. New subsection 66.7(10.1) applies to amalgamations that occur after 1996.

Letter from Dept. of Finance, December 22, 1999:

Dear [xxx]

This is in reply to your letter of September 23, 1999 to me with regard to a technical deficiency in the successor rules. I also acknowledge your

letter of December 6, 1999 to Simon Thompson providing further detail on the same matter.

You have described a case where Parentco owns approximately 85 per cent of the shares of the capital stock of Subco. Parentco and Subco amalgamate to form Newco. We understand that, immediately before the amalgamation, Subco owned Canadian resource property in its own right and that Subco also is a member of a partnership that owns Canadian resource properties.

Your technical analysis, with which we agree, is that subsection 87(1.2) of the *Income Tax Act* does not apply because Subco is not a "subsidiary wholly-owned corporation" of Parentco. Newco would be viewed as acquiring property from Subco for the purposes of the successor rules in section 66.7. Consequently, Newco's deductions under section 66.7 with regard to Subco's unused pools of resource expenditures would be limited to "streamed income" from resource properties owned by Subco immediately before the amalgamation. However, as "streamed income" does not include partnership income, no part of the resource income generated by the partnership could be offset by deductions under section 66.7 even though a large part of Subco's unused resource pools might be attributable to its share of partnership resource expenditures. As you indicate in your letter, the "look-through" rule for partnerships in paragraph 66.7(10)(j) does not apply because there was no acquisition of control of Newco because of the amalgamation.

We agree that this is a technical deficiency, demonstrated by the more favourable tax treatment in this context where there is an acquisition of control. We will recommend that this technical deficiency be remedied. One approach to remedy the situation would be to follow the option put forward in your letter. This option would effectively provide for a "look-through" rule for partnerships that is similar to the existing rule in paragraph 66.7(10)(j), but which applies where there is an amalgamation that does *not* involve an acquisition of control. However, we will also reflect further on whether it would be appropriate to recommend broader relief (e.g., relief that applies where one party sells a partnership interest that owns Canadian resource properties).

We will also recommended that this relief apply so that amalgamations that occur after 1996 are accommodated.

Yours sincerely,

Len Farber
General Director, Tax Legislation Division, Tax Policy Branch

(11) Idem — Where, at any time,

(a) control of a taxpayer that is a corporation has been acquired by a person or group of persons, or

(b) a taxpayer has disposed of all or substantially all of the taxpayer's Canadian resource properties or foreign resource properties,

and, before that time, the taxpayer or a partnership of which the taxpayer was a member acquired a property that is a Canadian resource property, a foreign resource property or an interest in a partnership and it may reasonably be considered that one of the main purposes of the acquisition was to avoid any limitation provided in subsection 29(25) of the *Income Tax Application Rules* or any of subsections (1) to (5) on the deduction in respect of any expenses incurred by the taxpayer or a corporation referred to as a transferee in paragraph (10)(g) or (h), the taxpayer or the partnership, as the case may be, shall be deemed, for the purposes of applying those subsections to or in respect of the taxpayer, not to have acquired the property.

Related Provisions: 87(2)(j.6) — Amalgamations — continuing corporation; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 249(4) — Deemed year end where change of control occurs; 256(6)–(9) — Whether control acquired. See also at end of s. 66.7.

I.T. Technical News: 7 (control by a group — 50/50 arrangement).

(12) Reduction of Canadian resource expenses — Where in a taxation year an original owner of Canadian resource properties disposes of all or substantially all of the original owner's Canadian resource properties to a particular corporation in circumstances in which subsection 29(25) of the *Income Tax Application Rules* or subsection (1), (3), (4) or (5) applies,

(a) the Canadian exploration and development expenses incurred by the original owner before that owner so disposed of the properties shall, for the purposes of this subdivision, be deemed after the disposition not to have been incurred by the original owner except for the purposes of making a deduction under subsection 66(1) or (2) for the year and of determining the amount that may be deducted under subsection (1) by the particular corporation or by any other corporation that subsequently acquires any of the properties;

(b) in determining the cumulative Canadian exploration expense of the original owner at any time after the time referred to in subparagraph (3)(a)(i), there shall be deducted the amount thereof determined immediately after the disposition;

(b.1) for the purposes of paragraph (3)(a), the cumulative Canadian exploration expenses of the original owner determined immediately after the disposition that was deducted or required to be deducted under subsection 66.1(2) or (3) in computing the original owner's income for the year shall be deemed to be equal to the lesser of

(i) the amount deducted under paragraph (b) in respect of the disposition, and

(ii) the amount, if any, by which

(A) the specified amount determined under paragraph (12.1)(a) in respect of the original owner for the year

exceeds

(B) the total of all amounts each of which is an amount determined under this paragraph in respect of any disposition made by the original owner before the disposition and in the year;

(b.2) for greater certainty, any amount (other than the amount determined under paragraph (b.1)) that was deducted or required to be deducted under subsection 66.1(2) or (3) by the original owner for the year or a subsequent taxation year shall, for the purposes of paragraph (3)(a), be deemed not to be in respect of the cumulative Canadian exploration expense of the original owner determined immediately after the disposition;

(c) in determining the cumulative Canadian development expense of the original owner at any time after the time referred to in clause (4)(a)(i)(A), there shall be deducted the amount thereof determined immediately after the disposition;

(c.1) for the purpose of paragraph (4)(a), the cumulative Canadian development expense of the original owner determined immediately after the disposition that was deducted under subsection 66.2(2) in computing the original owner's income for the year shall be deemed to be equal to the lesser of

(i) the amount deducted under paragraph (c) in respect of the disposition, and

(ii) the amount, if any, by which

(A) the specified amount determined under paragraph (12.1)(b) in respect of the original owner for the year

exceeds

(B) the total of all amounts determined under this paragraph in respect of any dispositions

made by the original owner before the disposition and in the year;

(c.2) for greater certainty, any amount (other than the amount determined under paragraph (c.1)) that was deducted under subsection 66.2(2) by the original owner for the year or a subsequent taxation year shall, for the purpose of paragraph (4)(a), be deemed not to be in respect of the cumulative Canadian development expense of the original owner determined immediately after the disposition;

(d) in determining the cumulative Canadian oil and gas property expense of the original owner at any time after the time referred to in subparagraph (5)(a)(i), there shall be deducted the amount thereof determined immediately after the disposition;

(d.1) for the purpose of paragraph (5)(a), the cumulative Canadian oil and gas property expense of the original owner determined immediately after the disposition that was deducted under subsection 66.4(2) in computing the original owner's income for the year shall be deemed to be equal to the lesser of

(i) the amount deducted under paragraph (d) in respect of the disposition, and

(ii) the amount, if any, by which

(A) the specified amount determined under paragraph (12.1)(c) in respect of the original owner for the year

exceeds

(B) the total of all amounts determined under this paragraph in respect of any dispositions made by the original owner before the disposition and in the year;

(d.2) for greater certainty, any amount (other than the amount determined under paragraph (d.1)) that was deducted under subsection 66.4(2) by the original owner for the year or a subsequent taxation year shall, for the purpose of paragraph (5)(a), be deemed not to be in respect of the cumulative Canadian oil and gas property expense of the original owner determined immediately after the disposition; and

(e) the drilling and exploration expenses, including all general geological and geophysical expenses, incurred by the original owner before 1972 on or in respect of exploring or drilling for petroleum or natural gas in Canada and the prospecting, exploration and development expenses incurred by the original owner before 1972 in searching for minerals in Canada shall, for the purposes of section 29 of the *Income Tax Application Rules*, be deemed after the disposition not to have been incurred by the original owner except for the purposes of making a deduction under that section for the year and of determining the amount that may be deducted under subsection 29(25) of that Act by the particular corporation or any other corporation that subsequently acquires any of the properties.

Related Provisions: 66.1(6)"cumulative Canadian exploration expense"M — Reduction in CCEE; 66.2(5)"cumulative Canadian development expense"O — Reduction in CCDE; 66.4(5)"cumulative Canadian oil and gas property expense"J — Reduction in CCOGPE. See Related Provisions and Definitions at end of s. 66.7.

History: Paras. 66.7(12)(b.1) and (b.2) amended by 1994, c. 8, subsec. 8(3), applicable to taxation years ending after December 2, 1992. Paras. (b.1) and (b.2) formerly read:

(b.1) for the purpose of paragraph (3)(a), the cumulative Canadian exploration expense of the original owner determined immediately after the disposition that was deductible under subsection 66.1(2) or deducted under subsection 66.1(3) in computing the original owner's income for the year shall be deemed to be equal to the lesser of

(i) the amount deducted under paragraph (b) in respect of the disposition, and

(ii) the amount, if any, by which

(A) the specified amount determined under paragraph (12.1)(a) in respect of the original owner for the year

exceeds

(B) the total of all amounts determined under this paragraph in respect of any dispositions made by the original owner before the disposition and in the year;

(b.2) for greater certainty, any amount (other than the amount determined under paragraph (b.1)) that was deductible under subsection 66.1(2) or deducted under subsection 66.1(3) by the original owner for the year or a subsequent taxation year shall, for the purpose of paragraph (3)(a), be deemed not to be in respect of the cumulative Canadian exploration expense of the original owner determined immediately after the disposition;

That portion of subsec. 66.7(12) preceding para. (a) amended to substitute "in a taxation year" for "in a taxation year and after June 5, 1987", para. 66.7(12)(b) substituted, and paras. (b.1), (b.2), (c.1), (c.2), (d.1), (d.2) added by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 42(11) to (15), applicable with respect to dispositions occurring in taxation years commencing on or after December 17, 1991 to the amending legislation and with respect to a disposition of a property made by a taxpayer in a taxation year ending after February 17, 1987 and commencing before December 17, 1991, where

(a) the taxpayer, and

(b) each corporation that, before the end of the taxpayer's taxation year that includes December 17, 1991, acquired the property or any other property that was disposed of by the taxpayer in a taxation year ending after February 17, 1987 as part of a transaction or an event as a consequence of which that corporation was or, but for those subsecs., would be entitled to deduct an amount under subsec. 66.7(3), (4) or (5) in respect of an expense incurred by the taxpayer,

so elected by notice in writing filed with the Minister of National Revenue on or before the day that was 180 days after the end of the taxpayer's taxation year that included December 17, 1991; and,

(c) notwithstanding subsecs. 152(4) to (5), such assessments of tax, interest and penalties shall be made as are necessary to give effect to the election, and

(d) where the taxpayer so elected in respect of a disposition, a designation under cl. 66.7(12.1)(a)(i)(B), (b)(i)(B) or (c)(i)(B) in respect of the disposition shall be deemed to have been filed as required if it was filed with the Minister of National Revenue on or before the day that was 180 days after the end of the taxpayer's taxation year that included December 17, 1991.

Para. 66.7(12)(b) formerly read:

(b) in determining the cumulative Canadian exploration expense of the original owner at any time after the time referred to in subparagraph (3)(a)(i), there shall be deducted the amount, if any, by which the amount thereof determined immediately after the disposition exceeds the amount claimed by the original owner under subsection 66.1(2) or (3) for the year;

(12.1) Specified amount — Where in a taxation year an original owner of Canadian resource properties disposes of all or substantially all of the original owner's Canadian resource properties in circumstances in which subsection (3), (4) or (5) applies,

(a) the lesser of

(i) the total of all amounts each of which is the amount, if any, by which

(A) an amount deducted under paragraph (12)(b) in respect of a disposition in the year by the original owner

exceeds

(B) the amount, if any, designated by the original owner in prescribed form filed with the Minister within 6 months after the end of the

year in respect of an amount determined under clause (A), and

(ii) the total of

(A) the amount claimed under subsection 66.1(2) or (3) by the original owner for the year, and

(B) the amount that would, but for paragraph 66.1(1)(c), be determined under subsection 66.1(1) in respect of the original owner for the year

is the specified amount in respect of the original owner for the year for the purposes of clause (12)(b.1)(ii)(A) and of determining the value of E.1 in the definition "cumulative Canadian exploration expense" in subsection 66.1(6);

(b) the lesser of

(i) the total of all amounts each of which is the amount, if any, by which

(A) an amount deducted under paragraph (12)(c) in respect of a disposition in the year by the original owner

exceeds

(B) the amount, if any, designated by the original owner in prescribed form filed with the Minister within 6 months after the end of the year in respect of an amount determined under clause (A), and

(ii) the total of

(A) the amount claimed under subsection 66.2(2) by the original owner for the year, and

(B) the amount that would, but for paragraph 66.2(1)(d), be determined under subsection 66.2(1) in respect of the original owner for the year

is the specified amount in respect of the original owner for the year for the purposes of clause (12)(c.1)(ii)(A) and of determining the value of D.1 in the definition "cumulative Canadian development expense" in subsection 66.2(5); and

(c) the lesser of

(i) the total of all amounts each of which is the amount, if any, by which

(A) an amount deducted under paragraph (12)(d) in respect of a disposition in the year by the original owner

exceeds

(B) the amount, if any, designated by the original owner in prescribed form filed with the Minister within 6 months after the end of the year in respect of an amount determined under clause (A), and

(ii) the total of

(A) the amount claimed under subsection 66.4(2) by the original owner for the year, and

(B) the amount that would, but for paragraph 66.4(1)(c), be determined under subsection 66.4(1) in respect of the original owner for the year

is the specified amount in respect of the original owner for the year for the purposes of clause (12)(d.1)(ii)(A) and of determining the value of D.1 in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5).

Related Provisions: 66.1(1) — Amount to be included in income; 66.1(2)(b) — Deduction for principal-business corporation; 66.1(3)(b) — Expenses of other taxpayers; 66.1(6)"cumulative Canadian exploration expense"E.1 — addition to CCEE; 66.2(2)(a) — Deduction for CCDE; 66.2(5)"cumulative Canadian development expense"D.1 — Addition to CCDE; 66.4(1)(c) — Recovery of costs; 66.4(2)(a)(i) — Deduction for CCOGPE; 66.4(5)"cumulative Canadian oil and gas property expense"D.1 — addition to CCOGPE.

History: Subsec. 66.7(12.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 42(11) to (15), applicable to dispositions occurring in taxation years commencing on or after December 17, 1991 to the amending legislation and with respect to a disposition of a property made by a taxpayer in a taxation year ending after February 17, 1987 and commencing before December 17, 1991, where

(a) the taxpayer, and

(b) each corporation that, before the end of the taxpayer's taxation year that includes December 17, 1991, acquired the property or any other property that was disposed of by the taxpayer in a taxation year ending after February 17, 1987 as part of a transaction or an event as a consequence of which that corporation was or, but for those subsecs. would be entitled to deduct an amount under subsec. 66.7(3), (4) or (5) in respect of an expense incurred by the taxpayer,

so elected by notice in writing filed with the Minister of National Revenue on or before the day that was 180 days after the end of the taxpayer's taxation year that included December 17, 1991; and,

(c) notwithstanding subsecs. 152(4) to (5), such assessments of tax, interest and penalties shall be made as are necessary to give effect to the election, and

(d) where the taxpayer so elected in respect of a disposition, a designation under cl. 66.7(12.1)(a)(i)(B), (b)(i)(B) or (c)(i)(B) in respect of the disposition shall be deemed to have been filed as required if it was filed with the Minister of National Revenue on or before the day that was 180 days after the end of the taxpayer's taxation year that included December 17, 1991.

Forms: T1046: Designation of resource amount by an original owner.

(13) Reduction of foreign resource expenses — Where after June 5, 1987 an original owner of foreign resource properties disposes of all or substantially all of the original owner's foreign resource properties to a particular corporation in circumstances in which subsection (2) applies, the foreign exploration and development expenses incurred by the original owner before that owner so disposed of the properties shall be deemed after the disposition not to have been incurred by the original owner except for the purposes of determining the amounts that may be deducted under that subsection by the particular corporation or any other corporation that subsequently acquires any of the properties.

Related Provisions: See at end of s. 66.7.

(13.1) Reduction of foreign resource expenses — Where in a taxation year an original owner of foreign resource properties in respect of a country disposes of all or substantially all of the original owner's foreign resource properties in circumstances to which subsection (2.3) applies,

(a) in determining the cumulative foreign resource expense of the original owner in respect of the country at any time after the time referred to in subparagraph (2.3)(a)(i), there shall be deducted the amount of that cumulative foreign resource expense determined immediately after the disposition; and

(b) for the purpose of paragraph (2.3)(a), the cumulative foreign resource expense of the original owner in respect of the country determined immediately after the disposition that was deducted under subsection

66.21(4) in computing the original owner's income for the year is deemed to be equal to the lesser of

(i) the amount deducted under paragraph (a) in respect of the disposition, and

(ii) the amount, if any, by which

(A) the specified amount determined under subsection (13.2) in respect of the original owner and the country for the year

exceeds

(B) the total of all amounts determined under this paragraph in respect of another disposition of foreign resource property in respect of the country made by the original owner before the disposition and in the year.

Related Provisions: 66.21(1)"cumulative foreign resource expense"J; 66.7(15.1) — Parallel rule for predecessor owner; 248(1)"foreign resource property" — Meaning of foreign resource property in respect of a country.

History: Subsec. 66.7(13.1) added by 2001, c. 17, subsec. 49(8), applicable to taxation years that begin after 2000.

(13.2) Specified amount — foreign resource expenses — Where in a taxation year an original owner of foreign resource properties in respect of a country disposes of all or substantially all of the original owner's foreign resource properties in circumstances to which subsection (2.3) applies, the specified amount in respect of the country and the original owner for the year for the purposes of clause (13.1)(b)(ii)(A) and of determining the value of D in the definition "cumulative foreign resource expense" in subsection 66.21(1) is the lesser of

(a) the total of all amounts each of which is the amount, if any, by which

(i) an amount deducted under paragraph (13.1)(a) in respect of a disposition in the year by the original owner of foreign resource property in respect of the country

exceeds

(ii) the amount, if any, designated by the original owner in prescribed form filed with the Minister within six months after the end of the year in respect of an amount described under subparagraph (i), and

(b) the total of

(i) the amount claimed under subsection 66.21(4) by the original owner in respect of the country for the year, and

(ii) the amount that would, but for paragraph 66.21(3)(c), be determined under subsection 66.21(3) in respect of the country and the original owner for the year.

Related Provisions: 66.21(1)"adjusted cumulative foreign resource expense"; 66.21(1)"cumulative foreign resource expense"D; 66.21(3)(c) — Deduction.

History: Subsec. 66.7(13.2) added by 2001, c. 17, subsec. 49(8), applicable to taxation years that begin after 2000.

(14) Disposal of Canadian resource properties — Where in a taxation year a predecessor owner of Canadian resource properties disposes of Canadian resource properties to a corporation in circumstances in which subsection 29(25) of the *Income Tax Application Rules* or subsection (1), (3), (4) or (5) applies,

(a) for the purposes of applying any of those subsections to the predecessor owner in respect of its acquisition of any Canadian resource property owned by it immediately before the disposition, it shall be deemed, after the disposition, never to have acquired any such properties except for the purposes of

(i) determining an amount deductible under subsection (1) or (3) for the year,

(ii) where the predecessor owner and the corporation dealt with each other at arm's length at the time of the disposition or the disposition was by way of an amalgamation or merger, determining an amount deductible under subsection (4) or (5) for the year, and

(iii) determining the amount for F in the definition "cumulative Canadian development expense" in subsection 66.2(5), the amounts for paragraphs (a) and (b) in the description of L in that definition and the amount for F in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5); and

(b) where the corporation or another corporation acquires any of the properties on or after the disposition in circumstances in which subsection (4) or (5) applies, amounts that become receivable by the predecessor owner after the disposition in respect of Canadian resource properties retained by it at the time of the disposition shall, for the purposes of applying subsection (4) or (5) to the corporation or the other corporation in respect of the acquisition, be deemed not to have become receivable by the predecessor owner.

Related Provisions: 66.6 — Canadian resource properties acquired from exempt person. See also at end of s. 66.7.

History: Subsec. 66.7(14) substituted by 1994, c. 21, subsec. 31(4), applicable to dispositions occurring in taxation years ending after February 17, 1987. That subsec. formerly read:

(14) Where in a taxation year a predecessor owner of Canadian resource properties disposes of all or substantially all of its Canadian resource properties to a corporation in circumstances in which subsection 29(25) of the *Income Tax Application Rules* or subsection (1), (3), (4) or (5) applies, for the purposes of applying any of those subsections to the predecessor owner in respect of its acquisition of any of those properties, it shall be deemed, after the disposition, never to have acquired the properties except for the purposes of

(a) determining an amount deductible under subsection (1) or (3) for the year; and

(b) where the predecessor owner and the corporation dealt with each other at arm's length at the time of the disposition or the disposition was by way of an amalgamation or merger, determining an amount deductible under subsection (4) or (5) for the year.

Subsec. 66.7(14) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 42(16), applicable to dispositions occurring in taxation years ending after February 17, 1987. Subsec. 66.7(14) formerly read:

(14) Where, in a taxation year and after June 5, 1987, a predecessor owner of Canadian resource properties disposes of all or substantially all of its Canadian resource properties to a corporation in circumstances in which subsection 29(25) of the *Income Tax Application Rules* or subsection (1), (3), (4) or (5) applies, for the purposes of applying any of those subsections to the predecessor owner in respect of its acquisition of any of those properties, it shall be deemed, after the disposition, never to have acquired the properties except for the purposes of making a deduction under subsection (1) or (3) for the year.

(15) Disposal of foreign resource properties — Where after June 5, 1987 a predecessor owner of foreign resource properties disposes of all or substantially all of its foreign resource properties to a corporation in circumstances in which subsection (2) applies, for the purpose of applying that subsection to the predecessor owner in respect of its acquisition of any of those properties (or other foreign resource properties retained by it at the time of the disposition which were acquired by it in circumstances in

which subsection (2) applied), it shall be deemed, after the disposition, never to have acquired the properties.

Related Provisions: See at end of s. 66.7.

History: Subsec. 66.7(15) substituted by 1994, c. 21, subsec. 31(4), applicable to taxation years ending after February 17, 1987. That subsec. formerly read:

> (15) Where after June 5, 1987 a predecessor owner of foreign resource properties disposes of all or substantially all of its foreign resource properties to a corporation in circumstances in which subsection (2) applies, for the purposes of applying that subsection to the predecessor owner in respect of its acquisition of any of those properties, it shall be deemed, after the disposition, never to have acquired the properties.

(15.1) Disposal of foreign resource properties — subsec. (2.3) — Where in a taxation year a predecessor owner of foreign resource properties disposes of foreign resource properties to a corporation in circumstances to which subsection (2.3) applies,

(a) for the purpose of applying that subsection to the predecessor owner in respect of its acquisition of any foreign resource properties owned by it immediately before the disposition, it is deemed, after the disposition, never to have acquired any such properties except for the purposes of

(i) where the predecessor owner and the corporation dealt with each other at arm's length at the time of the disposition or the disposition was by way of an amalgamation or merger, determining an amount deductible under subsection (2.3) for the year, and

(ii) determining the value of F in the definition "cumulative foreign resource expense" in subsection 66.21(1); and

(b) where the corporation or another corporation acquires any of the properties on or after the disposition in circumstances to which subsection (2.3) applies, amounts that become receivable by the predecessor owner after the disposition in respect of foreign resource properties retained by it at the time of the disposition are, for the purposes of applying subsection (2.3) to the corporation or the other corporation in respect of the acquisition, deemed not to have become receivable by the predecessor owner.

Related Provisions: 66.7(13.1) — Parallel rule for original owner.

History: Subsec. 66.7(15.1) added by 2001, c. 17, subsec. 49(9), applicable to taxation years that begin after 2000.

(16) Non-successor acquisitions — Where at any time a Canadian resource property or a foreign resource property is acquired by a person in circumstances in which none of subsection 29(25) of the *Income Tax Application Rules* and subsections (1) to (5) apply, every person who was an original owner or predecessor owner of the property by reason of having disposed of the property before that time shall, for the purpose of applying those subsections to or in respect of the person or any other person who after that time acquires the property, be deemed after that time not to be an original owner or predecessor owner of the property by reason of having disposed of the property before that time.

Related Provisions: See at end of s. 66.7.

(17) Restriction on deductions — Where in a particular taxation year and before June 6, 1987 a person disposed of a Canadian resource property or a foreign resource property in circumstances in which any of subsection 29(25) of the *Income Tax Application Rules* and subsections (1) to (5) applies, no deduction in respect of an expense incurred before the property was disposed of may be made under this section or section 66, 66.1, 66.2 or 66.4 by the person in computing the person's income for a taxation year subsequent to the particular taxation year.

(18) Application of interpretation provisions — The definitions in subsection 66(15) and sections 66.1 to 66.4 apply in this section.

Origin of subsec. 66.7(18): R.S.C. 1985, c. 1 (5th Supp.).

History: Subsec. 66.7(18) amended by 2001, c. 17, subsec. 49(10), applicable to taxation years that begin after 2000. It formerly read:

> (18) Application of subsec. 66(15) — The definitions in subsection 66(15) apply to this section.

Related Provisions [s. 66.7]: 66(5) — Dealers; 66(18) — Members of partnerships; 66.1(6) — Canadian exploration expense; 66.8(1) — Resource expenses of limited partners; 87(1.2) — Amalgamation — new corporation deemed continuation of predecessor; 88(1.5) — Windup — parent continuation of subsidiary.

Definitions [s. 66.7]: "acquired" — 256(7)–(9); "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 255; "Canadian development expense" — 66.2(5), 248(1); "Canadian exploration and development expense" — 66(15), 248(1); "Canadian exploration expense" — 66.1(6), 248(1); "Canadian oil and gas property expense" — 66.4(5), 248(1); "Canadian resource property" — 66(15), 66.7(18), 248(1); "carrying on business" — 253; "control" — 256(6)–(9); "corporation" — 248(1), *Interpretation Act* 35(1); "cumulative foreign resource expense" — 66.21(1), 66.7(18); "disposition" — 248(1); "expense" — 66(15), 66.7(18); "fiscal period" — 249(2), 249.1; "foreign exploration and development expenses" — 66(15), 248(1); "foreign resource expense" — 66.21(1), 248(1); "foreign resource pool expense" — 248(1); "foreign resource property" — 66(15), 248(1); "foreign resource property in respect of", "mineral", "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "oil or gas well", "person", "prescribed", "property" — 248(1); "resident in Canada" — 250; "specified amount" — 66.7(12.1), (13.2); "specified foreign exploration and development expense" — 66(15); "subsidiary wholly-owned corporation" — 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [s. 66.7]: IT-126R2: Meaning of winding-up.

66.8 (1) Resource expenses of limited partner — Where a taxpayer is a limited partner of a partnership at the end of a fiscal period of the partnership, the following rules apply:

(a) determine the amount, if any, by which

(i) the total of all amounts each of which is the taxpayer's share of

(A) the Canadian oil and gas property expenses (in this subsection referred to as "property expenses"),

(B) the Canadian development expenses (in this subsection referred to as "development expenses"),

(C) the Canadian exploration expenses (in this subsection referred to as "exploration expenses"),

(D) the foreign resource expenses in respect of a country (in this subsection referred to as "country-specific foreign expenses"), or

(E) the foreign exploration and development expenses (in this subsection referred to as "global foreign expenses"),

incurred by the partnership in the fiscal period determined without reference to this subsection

exceeds

(ii) the amount, if any, by which

(A) the taxpayer's at-risk amount at the end of the fiscal period in respect of the partnership

exceeds

(B) the total of

(I) the amount required by subsection 127(8) in respect of the partnership to be added in computing the investment tax credit of the taxpayer in respect of the fiscal period, and

(II) the taxpayer's share of any losses of the partnership for the fiscal period from a farming business;

(b) the amount determined under paragraph (a) shall be applied

(i) first to reduce the taxpayer's share of property expenses,

(ii) if any remains unapplied, then to reduce the taxpayer's share of development expenses,

(iii) if any remains unapplied, then to reduce the taxpayer's share of exploration expenses,

(iv) if any remains unapplied, then to reduce (in the order specified by the taxpayer in writing filed with the Minister on or before the taxpayer's filing-due date for the taxpayer's taxation year in which the fiscal period ends or, where no such specification is made, in the order determined by the Minister) the taxpayer's share of country-specific foreign expenses, and

(v) if any remains unapplied, then to reduce the taxpayer's share of global foreign expenses,

incurred by the partnership in the fiscal period; and

(c) for the purposes of subparagraph 53(2)(c)(ii), sections 66 to 66.7, subsection 96(2.1) and section 111, the taxpayer's share of each class of expenses described in subparagraph (a)(i) incurred by the partnership in the fiscal period shall be deemed to be the amount by which the taxpayer's share of that class of expenses as determined under subparagraph (a)(i) exceeds the amount, if any, that was applied under paragraph (b) to reduce the taxpayer's share of that class of expenses.

Proposed Amendment — 66.8(1)

Letter from Dept. of Finance, October 18, 2004:

Dear [xxx]:

Thank you for your letter of May 14, 2004 to Mr. Daryl Boychuk of this Division concerning the application of section 66.8 and paragraph 96(2.2)(c) of the *Income Tax Act* (the "Act"). In particular, your concern relates to the application of these provisions to a member of a limited partnership where the limited partnership carries on the business of exploring for, developing and producing oil and natural gas.

More specifically, your concern relates to a situation where the only limited partner is a commercial trust, the sole beneficiary of which is a mutual fund trust, and the general partner is a corporation, all the shares of which are owned by the mutual fund trust. In this situation, the mutual fund trust does not deal at arm's length with either the commercial trust or the limited partnership. The mutual fund trust, as the sole investor in the commercial trust, capitalizes it with a combination of debt and equity. The commercial trust uses these funds to acquire a 99% interest in the limited partnership. In no case does the mutual fund trust derive any of its funds from a person or partnership that does not deal at arm's length with the limited partnership.

The limited partnership earns income from the resource properties and allocates 99% of this income to the commercial trust. However, the debt owing to the mutual fund trust reduces the commercial trust's at-risk amount because the debt is owed by the commercial trust to a person (the mutual fund trust) that does not deal at arm's length with the partnership. As a result, section 66.8 of the Act operates to reduce the resource expenses that the commercial trust would otherwise be treated as having incurred.

Generally, the at-risk rules are designed to limit the deduction of limited partnership losses that exceed the amount that a limited partner has risked in the partnership (the "at-risk amount"). However, as applied to a member of a limited partnership that incurs Canadian oil and gas property expenses ("COGPE", 10% of the cumulative balance of which is deductible in respect of a taxation year), Canadian development expenses ("CDE", 30% of the cumulative balance of which is deductible in respect of a taxation year) or Canadian exploration expenses ("CEE", 100% of the cumulative balance of which is deductible in respect of a taxation year) the at-risk rules may preclude a limited partner from deducting the relevant percentage of its share of the resource expenses incurred by the partnership even if the deduction of those expenses would not create a loss for the limited partner.

We agree that, in the circumstances described above, the debt owing by the commercial trust to the mutual fund trust should not, in and of itself, result in a reduction of the COGPE, CDE or CEE that the commercial trust would otherwise be treated as having incurred as a member of the limited partnership. Accordingly, we are prepared to recommend to the Minister of Finance that section 66.8 of the Act be amended to ensure that it would not apply, in the circumstances, to reduce the resource expenditures that would otherwise be treated as having been incurred by the commercial trust.

We are also prepared to recommend that the amendment apply after 2003. If the above recommendation were acted upon, we would anticipate that the amendment would be included in a future technical bill. While I cannot offer any assurance that either the Minister or Parliament will agree with our recommendation, I hope that this statement of our intentions is helpful to you.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

(2) Expenses in following fiscal period — For the purposes of subparagraph (1)(a)(i), the amount by which a taxpayer's share of a class of expenses incurred by a partnership is reduced under paragraph (1)(b) in respect of a fiscal period of the partnership shall be added to the taxpayer's share, otherwise determined, of that class of expenses incurred by the partnership in the immediately following fiscal period of the partnership.

(3) Interpretation — In this section,

(a) the expressions "at-risk amount" of a taxpayer in respect of a partnership and "limited partner" of a partnership have the meanings assigned by subsections 96(2.2) and (2.4), respectively, except that, with respect to the definition "limited partner", the definition "exempt interest" in subsection 96(2.5) shall be read as though the reference therein to

(i) "February 25, 1986" were a reference to "June 17, 1987",

(ii) "February 26, 1986" were a reference to "June 18, 1987",

(iii) "January 1, 1987" were a reference to "January 1, 1988",

(iv) "June 12, 1986" were a reference to "June 18, 1987", and

(v) "prospectus, preliminary prospectus or registration statement" were read as "prospectus, preliminary prospectus, registration statement, offering memorandum or notice that is required to be filed before any distribution of securities may commence";

(b) a reference to a taxpayer who is a member of a particular partnership shall include a reference to an-

other partnership that is a member of the particular partnership; and

(c) a taxpayer's share of Canadian development expenses or Canadian oil and gas property expenses incurred by a partnership in a fiscal period in respect of which the taxpayer has elected in respect of the share under paragraph (f) of the definition "Canadian development expense" in subsection 66.2(5) or paragraph (b) of the definition "Canadian oil and gas property expense" in subsection 66.4(5), as the case may be, shall be deemed to be nil.

History [s. 66.8]: Cl. 66.8(1)(a)(i)(D) and subpara. (1)(b)(iv) amended, and cl. (1)(a)(i)(E) and subpara. (1)(b)(v) added, by 2001, c. 17, s. 50, applicable to fiscal periods that begin after 2000. Cl. (D) and subpara. (iv) formerly read:

(D) the foreign exploration and development expenses (in this subsection referred to as "foreign expenses"),

. . . . .

(iv) if any remains unapplied, then to reduce the taxpayer's share of foreign expenses,

Para. 66.8(3)(c) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 26, applicable with respect to partnership fiscal periods ending after July 1990.

Definitions [s. 66.8]: "amount", "business" — 248(1); "Canadian development expense" — 66.2(5), 248(1); "Canadian exploration expense" — 66.1(6), 248(1); "Canadian oil and gas property expense" — 66.4(5), 248(1); "country-specific foreign expenses" — 66.8(1)(a)(i)(D); "farming", "filing-due date" — 248(1); "fiscal period" — 249(2), 249.1; "foreign exploration and development expenses" — 66(15), 248(1); "global foreign expenses" — 66.8(1)(a)(i)(E); "investment tax credit" — 127(9), 248(1); "Minister", "share", "property" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "writing" — *Interpretation Act* 35(1). See also 66.8(3).

Subdivision f — Rules Relating to Computation of Income

67. General limitation re expenses — In computing income, no deduction shall be made in respect of an outlay or expense in respect of which any amount is otherwise deductible under this Act, except to the extent that the outlay or expense was reasonable in the circumstances.

Related Provisions: 8(9) — Employee's aircraft costs must be reasonable; 18(1)(a) — Expense not deductible unless for purpose of earning income; 18(1)(h) — Personal or living expenses disallowed; 20(1)(c) closing words — Interest deduction limited to reasonable amount; 247(8) — Transfer pricing rules take priority over s. 67.

Selected Cases [s. 67]: *Petro-Canada v. R.*, [2004] 3 C.T.C. 156 (FCA); leave to appeal to SCC refused 2004 CarswellNat 4108 (Paying more than FMV does not necessarily mean price was unreasonable); *Bonin v. R.*, [2000] 2 C.T.C. 2011 (TCC) (Business existed, but expenses unreasonable); *Tarantino v. R.*, [2000] 1 C.T.C. 3039 (TCC) (Expenses reasonable even where properties 100% financed); *Mohammed v. R.*, [1997] 3 C.T.C. 321 (FCA) ("Reasonable expectation of profit" and "expectation of reasonable profit" not synonymous. 100% financing of project not necessarily unreasonable); *Shell Canada Ltd. v. R.*, [1997] 3 C.T.C. 2238 (TCC) (New Zealand currency loans intended to get funds at lowest possible after-tax cost to borrower); *Monga v. Canada*, [1997] 1 C.T.C. 2529 (TCC) (Interest exceeding gross rental income was unreasonable); *Graves v. Canada*, [1990] 1 C.T.C. 357 (FCTD) (Half of expenses of two-car garage at taxpayer's home where business car parked not deductible); *MSS Inc. v. R.*, [1989] 2 C.T.C. 30 (FCA) (Management expenses paid to another company not reasonable where services already provided by taxpayer's employees); *Maduke Foods Ltd. v. Canada*, [1989] 2 C.T.C. 284 (FCTD) (Management salaries paid to spouse and children reduced); *Compagnie Idéal Body Inc. v. Canada*, [1989] 2 C.T.C. 187 (FCTD) (Only $100,000 of $210,000 bonus paid to spouse inheriting controlling interest was reasonable); *Moloney v. Canada*, [1989] 1 C.T.C. 213 (FCTD); aff'd [1992] 2 C.T.C. 226 (FCA); leave to appeal to SCC refused (May 6, 1993), Doc. 23336 [unreported] (Elaborate scheme found lacking in business purpose, deductions not permitted); *Gabco Ltd. v. MNR*, [1968] C.T.C. 313 (Exch.) ($56,000 paid to president's brother over 15 months reasonable).

Definitions [s. 67]: "amount" — 248(1).

I.T. Application Rules: 31.

Interpretation Bulletins: IT-75R4: Scholarships, fellowships, bursaries, prizes, research grants and financial assistance; IT-131R2: Convention expenses; IT-178R3: Moving expenses; IT-357R2: Expenses of training; IT-373R2: Woodlots; IT-467R2: Damages, settlements and similar payments; IT-468R: Management or administration fees paid to non-residents; IT-521R: Motor vehicle expenses claimed by self-employed individuals; IT-525R: Performing artists.

Information Circulars: 87-2R: International transfer pricing.

I.T. Technical News: 12 (meals and beverages at golf clubs); 15 (Christmas parties and employer-paid special events); 16 (*Shell* case); 22 (owner/manager remuneration); 30 (reasonableness of shareholder/manager remuneration).

Advance Tax Rulings: ATR-12: Retiring allowance; ATR-45: Share appreciation rights plan.

67.1 (1) Expenses for food, etc. — For the purposes of this Act, other than sections 62, 63 and 118.2, an amount paid or payable in respect of the human consumption of food or beverages or the enjoyment of entertainment shall be deemed to be 50% of the lesser of

(a) the amount actually paid or payable in respect thereof, and

(b) an amount in respect thereof that would be reasonable in the circumstances.

Related Provisions: 8(4) — Limitation on meals of employee.

History: The opening words of subsec. 67.1(1) amended by 1995, c. 3, s. 17, to substitute "50%" for "80%", applicable to expenses incurred after February 21, 1994 in respect of food and beverages consumed and entertainment enjoyed after February 1994.

Interpretation Bulletins: IT-504R2: Visual artists and writers; IT-518R: Food beverages and entertainment expenses; IT-525R: Performing artists.

Information Circulars: 73-21R8: Claims for meals and lodging expenses of transport employees.

I.T. Technical News: 12 (meals and beverages at golf clubs); 16 (*Scott* case).

(2) Exceptions — Subsection (1) does not apply to an amount paid or payable by a person in respect of the consumption of food or beverages or the enjoyment of entertainment where the amount

(a) is paid or payable for food, beverages or entertainment provided for, or in expectation of, compensation in the ordinary course of a business carried on by that person of providing the food, beverages or entertainment for compensation;

(b) relates to a fund-raising event the primary purpose of which is to benefit a registered charity;

(c) is an amount for which the person is compensated and the amount of the compensation is reasonable and specifically identified in writing to the person paying the compensation;

(d) is required to be included in computing any taxpayer's income because of the application of section 6 in respect of food or beverages consumed or entertainment enjoyed by the taxpayer or a person with whom the taxpayer does not deal at arm's length, or would be so required but for subparagraph 6(6)(a)(ii);

(e) is an amount that

(i) is not paid or payable in respect of a conference, convention, seminar or similar event,

(ii) would, but for subparagraph 6(6)(a)(i), be required to be included in computing any taxpayer's

income for a taxation year because of the application of section 6 in respect of food or beverages consumed or entertainment enjoyed by the taxpayer or a person with whom the taxpayer does not deal at arm's length, and

(iii) is paid or payable in respect of the taxpayer's duties performed at a work site in Canada that is

(A) outside any urban area, as defined by the last Census Dictionary published by Statistics Canada before the year, that has a population of at least 40,000 individuals as determined in the last census published by Statistics Canada before the year, and

(B) at least 30 kilometres from the nearest point on the boundary of the nearest such urban area;

(e.1) is an amount that

(i) is not paid or payable in respect of entertainment or of a conference, convention, seminar or similar event,

(ii) would, if this Act were read without reference to subparagraph 6(6)(a)(i), be required to be included in computing a taxpayer's income for a taxation year because of the application of section 6 in respect of food or beverages consumed by the taxpayer or by a person with whom the taxpayer does not deal at arm's length,

(iii) is paid or payable in respect of the taxpayer's duties performed at a site in Canada at which the person carries on a construction activity or at a construction work camp referred to in subparagraph (iv) in respect of the site, and

(iv) is paid or payable for food or beverages provided at a construction work camp, at which the taxpayer is lodged, that was constructed or installed at or near the site to provide board and lodging to employees while they are engaged in construction services at the site; or

(f) is in respect of one of six or fewer special events held in a calendar year at which the food, beverages or entertainment is generally available to all individuals employed by the person at a particular place of business of the person and consumed or enjoyed by those individuals.

History: Para. 67.1(2)(e.1) added by 2002, c. 9, s. 26, applicable to amounts paid or payable in respect of food and beverages provided after 2001.

Paras. 67.1(2)(d) and (e) amended and para. (f) added by 1999, c. 22, s. 20, para. (d) applicable to 1987 *et seq.* and paras. (e) and (f) applicable to expenses incurred after February 23, 1998. Paras. (d) and (e) formerly read:

(d) is required to be included in computing the income of an employee of the person or would be so required but for subparagraph 6(6)(a)(ii); or

(e) is incurred by the person for food, beverages or entertainment generally available to all individuals employed by the person at a particular place of business of the person and consumed or enjoyed by such individuals.

Para. 67.1(2)(e) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 43, applicable to taxation years ending after July 13, 1990. Para. 67.1(2)(e) formerly read:

(e) is incurred by the person for food, beverages or entertainment generally available to all employees of the person at a particular location.

Selected Cases: *Kelowna Flightcraft Air Charter Ltd. v. R.*, [2003] 4 C.T.C. 2252 (TCC) (Full amount of per diem allowances deductible).

I.T. Technical News: 15 (Christmas parties and employer-paid special events).

(3) Fees for convention, etc. — For the purposes of this section, where a fee paid or payable for a conference, convention, seminar or similar event entitles the participant to food, beverages or entertainment (other than incidental beverages and refreshments made available during the course of meetings or receptions at the event) and a reasonable part of the fee, determined on the basis of the cost of providing the food, beverages and entertainment, is not identified in the account for the fee as compensation for the food, beverages and entertainment, $50 or such other amount as may be prescribed shall be deemed to be the actual amount paid or payable in respect of food, beverages and entertainment for each day of the event on which food, beverages or entertainment is provided and, for the purposes of this Act, the fee for the event shall be deemed to be the actual amount of the fee minus the amount deemed by this subsection to be the actual amount paid or payable for the food, beverages and entertainment.

Related Provisions: 20(10) — Deduction for convention expenses.

Regulations: No amount other than $50 has been prescribed for purposes of 67.1(3).

Interpretation Bulletins: IT-131R2: Convention expenses.

(4) Interpretation — For the purposes of this section,

(a) no amount paid or payable for travel on an airplane, train or bus shall be considered to be in respect of food, beverages or entertainment consumed or enjoyed while travelling thereon; and

(b) "entertainment" includes amusement and recreation.

Selected Cases [s. 67.1]: *Installations GMR Inc. v. R.* (2003), [2004] 4 C.T.C. 2433 (TCC) (English version of Act better reflected parliamentary intention); *Racco Industrial Roofing Ltd. v. R.*, [1997] 2 C.T.C. 3055 (TCC) (Limitation does not apply to per diem amount paid to employee; *ejusdem generis* rule suggests that entertainment must also be involved).

Definitions [s. 67.1]: "amount", "business", "employee" — 248(1); "entertainment" — 67.1(4)(b); "individual", "person", "prescribed", "registered charity" — 248(1); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-518R: Food, beverages and entertainment expenses; IT-522R: Vehicle, travel and sales expenses of employees; IT-533: Interest deductibility and related issues.

67.2 Interest on money borrowed for passenger vehicle — For the purposes of this Act, where an amount is paid or payable for a period by a person in respect of interest on borrowed money used to acquire a passenger vehicle or on an amount paid or payable for the acquisition of such a vehicle, in computing the person's income for a taxation year, the amount of interest so paid or payable shall be deemed to be the lesser of the actual amount paid or payable and the amount determined by the formula

$$\frac{A}{30} \times B$$

where

A is $250 or such other amount as may be prescribed; and

B is the number of days in the period in respect of which the interest was paid or payable, as the case may be.

Related Provisions: 8(1)(j) — Automobile and aircraft costs; 20(1)(c) — Interest deductible; 20(1)(d) — Compound interest deductible; 67.4 — More than one owner or lessor.

History: S. 67.2 substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 44, applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987. S. 67.2 formerly read:

> 67.2 Interest on money borrowed for passenger vehicle — For the purposes of this Act, where an amount in respect of interest is payable by a person on borrowed money used to acquire, or on an amount payable for the acquisition of, a passenger vehicle, in computing the income of the person for a taxation year the amount of interest so payable shall be deemed to be the lesser of the actual amount payable and the amount determined by the formula
>
> $$\frac{A}{30} \times B$$
>
> where
>
> A is $250 or such other amount as may be prescribed; and
>
> B is the number of days in the year in respect of which the interest was payable.

Definitions [s. 67.2]: "amount", "borrowed money", "passenger vehicle", "prescribed" — 248(1); "taxation year" — 11(2), 249.

Regulations: 7307(2) (prescribed amount).

Interpretation Bulletins: IT-355R2: Interest on loans to buy life insurance policies and annuity contracts, and interest on policy loans (archived); IT-521R: Motor vehicle expenses claimed by self-employed individuals; IT-522R: Vehicle, travel and sales expenses of employees; IT-525R: Performing artists.

I.T. Technical News: 10 (1997 deduction limits and benefit rates for automobiles).

67.3 Limitation re cost of leasing passenger vehicle — Notwithstanding any other section of this Act, where

(a) in a taxation year all or part of the actual lease charges in respect of a passenger vehicle are paid or payable, directly or indirectly, by a taxpayer, and

(b) in computing the taxpayer's income for the year an amount may be deducted in respect of those charges,

in determining the amount that may be so deducted, the total of those charges shall be deemed not to exceed the lesser of

(c) the amount determined by the formula

$$\left(A \times \frac{B}{30}\right) - C - D - E$$

where

A is $600 or such other amount as is prescribed,

B is the number of days in the period commencing at the beginning of the term of the lease and ending at the earlier of the end of the year and the end of the lease,

C is the total of all amounts deducted in computing the taxpayer's income for preceding taxation years in respect of the actual lease charges in respect of the vehicle,

D is the amount of interest that would be earned on the part of the total of all refundable amounts in respect of the lease that exceeds $1,000 if interest were

(i) payable on the refundable amounts at the prescribed rate, and

(ii) computed for the period before the end of the year during which the refundable amounts were outstanding, and

E is the total of all reimbursements that became receivable before the end of the year by the taxpayer in respect of the lease, and

(d) the amount determined by the formula

$$\left(\frac{A \times B}{0.85C}\right) - D - E$$

where

A is the total of the actual lease charges in respect of the lease incurred in respect of the year or the total of the actual lease charges in respect of the lease paid in the year (depending on the method regularly followed by the taxpayer in computing income),

B is $20,000 or such other amount as is prescribed,

C is the greater of $23,529 (or such other amount as is prescribed) and the manufacturer's list price for the vehicle,

D is the amount of interest that would be earned on that part of the total of all refundable amounts paid in respect of the lease that exceeds $1,000 if interest were

(i) payable on the refundable amounts at the prescribed rate, and

(ii) computed for the period in the year during which the refundable amounts are outstanding, and

E is the total of all reimbursements that became receivable during the year by the taxpayer in respect of the lease.

Related Provisions: 67.4 — More than one owner or lessor; 257 — Formula cannot calculate to less than zero.

History: S. 67.3 substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 45, applicable to taxation years and fiscal periods beginning after June 17, 1987 that end after 1987, except that with respect to amounts paid or payable as a reimbursement in respect of a lease expense, it is applicable to taxation years that end after July 13, 1990; and with respect to leases entered into before 1991 the description of C in para. (d) shall be read as follows:

> C is the greater of $23,529 (or such other amount as may be prescribed) and the total of
>
> (i) the manufacturer's list price for the vehicle, and
>
> (ii) the provincial sales tax, if any, that would have been payable by a purchaser of the vehicle if it had been purchased at the manufacturer's list price for the vehicle at the time the first lease of the vehicle was entered into and in the province under the laws of which the vehicle was registered for the greatest part of the year,

S. 67.3 formerly read:

> 67.3 Notwithstanding any other provision of this Act, where
>
> (a) a taxpayer leases a passenger vehicle from a lessor in a taxation year, and
>
> (b) in computing the taxpayer's income for the year an amount may be deducted in respect of the vehicle,
>
> in determining the amount that may be so deducted, the cost to the taxpayer of leasing the vehicle shall not exceed the lesser of
>
> (c) the amount determined by the formula
>
> $$\left(\frac{A \times B}{30}\right) - C - D - E$$
>
> where
>
> A is $600 or such other amount as may be prescribed,
>
> B is the number of days before the end of the year during which the vehicle was leased by the taxpayer from the lessor,
>
> C is the total of all amounts deducted in computing the taxpayer's income for preceding taxation years in respect of the lease of the vehicle,
>
> D is the amount of interest that would be earned on that part of the total of all refundable amounts paid by or on behalf

of the taxpayer in respect of the lease that exceeds $1,000 if interest were

(i) payable on the refundable amounts at the prescribed rate, and

(ii) computed for the period before the end of the year during which the refundable amounts were outstanding, and

E is the total of all reimbursements receivable by the taxpayer in respect of the lease of the vehicle before the end of the year; and

(d) the amount determined by the formula

$$\left(\frac{A \times B}{0.85C}\right) - D - E$$

where

A is the total of the actual lease charges payable to the lessor by the taxpayer for the lease of the vehicle during the year,

B is $20,000 or such other amount as may be prescribed,

C is the greater of $23,529 (or such other amount as may be prescribed) and the total of

(i) the manufacturer's list price for the vehicle, and

(ii) the provincial sales tax, if any, that would have been payable by a purchaser of the vehicle if it had been purchased at the manufacturer's list price for the vehicle at the time the first lease of the vehicle was entered into and in the province under the laws of which the vehicle was registered for the greatest part of the year,

D is the amount of interest that would be earned on that part of the total of all refundable amounts paid by or on behalf of the taxpayer in respect of the lease that exceeds $1,000 if interest were

(i) payable on the refundable amounts at the prescribed rate, and

(ii) computed for the period in the year during which the refundable amounts are outstanding, and

E is the total of all reimbursements receivable by the taxpayer in respect of the lease of the vehicle during the year.

Definitions [s. 67.3]: "amount", "borrowed money", "motor vehicle", "passenger vehicle", "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "taxation year" — 11(2), 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

Regulations: 4301(c) (prescribed rate of interest); 7307(1), (3), (4) (prescribed amounts).

Interpretation Bulletins: IT-521R: Motor vehicle expenses claimed by self-employed individuals; IT-522R: Vehicle, travel and sales expenses of employees; IT-525R: Performing artists.

I.T. Technical News: 10 (1997 deduction limits and benefit rates for automobiles); 12 (1998 deduction limits and benefit rates for automobiles).

67.4 More than one owner or lessor — Where a person owns or leases a motor vehicle jointly with one or more other persons, the reference in paragraph 13(7)(g) to the amount of $20,000, in section 67.2 to the amount of $250 and in section 67.3 to the amounts of $600, $20,000 and $23,529 shall be read as a reference to that proportion of each of those amounts or such other amounts as may be prescribed for the purposes thereof that the fair market value of the first-mentioned person's interest in the vehicle is of the fair market value of the interests in the vehicle of all those persons.

Definitions [s. 67.4]: "amount", "motor vehicle", "person" — 248(1).

Regulations: 7307 (prescribed amounts).

Interpretation Bulletins: IT-521R: Motor vehicle expenses claimed by self-employed individuals; IT-522R: Vehicle, travel and sales expenses of employees; IT-525R: Performing artists.

I.T. Technical News: 10 (1997 deduction limits and benefit rates for automobiles).

67.5 (1) Non-deductibility of illegal payments — In computing income, no deduction shall be made in respect of an outlay made or expense incurred for the purpose of doing anything that is an offence under section 3 of the *Corruption of Foreign Public Officials Act* or under any of sections 119 to 121, 123 to 125, 393 and 426 of the *Criminal Code*, or an offence under section 465 of the *Criminal Code* as it relates to an offence described in any of those sections.

Related Provisions: 67.6 — Non-deductibility of fines and penalties.

History: Subsec. 67.5(1) amended by 1998, c. 34, s. 10, in force February 14, 1999. The subsec. formerly read:

> 67.5 (1) In computing income, no deduction shall be made in respect of an outlay made or expense incurred for the purpose of doing anything that is an offence under any of sections 119 to 121, 123 to 125, 393 and 426 of the *Criminal Code* or an offence under section 465 of that Act as it relates to an offence described in any of those sections.

(2) Reassessments — Notwithstanding subsections 152(4) to (5), the Minister may make such assessments, reassessments and additional assessments of tax, interest and penalties and such determinations and redeterminations as are necessary to give effect to subsection (1) for any taxation year.

Related Provisions: 165(1.1) — Limitation of right to object to assessment; 169(2)(a) — Limitation of right to appeal.

History [s. 67.5]: S. 67.5 added by 1994, c. 7, Sch. II (1991, c. 49), s. 46, applicable to outlays made and expenses incurred after July 13, 1990.

Definitions [s. 67.5]: "assessment", "Minister" — 248(1); "taxation year" — 249.

Interpretation Bulletins: IT-525R: Performing artists; IT-533: Interest deductibility and related issues.

67.6 Non-deductibility of fines and penalties — In computing income, no deduction shall be made in respect of any amount that is a fine or penalty (other than a prescribed fine or penalty) imposed under a law of a country or of a political subdivision of a country (including a state, province or territory) by any person or public body that has authority to impose the fine or penalty.

Related Provisions: 18(1)(t) — Non-deductibility of amounts paid under *Income Tax Act*; 67.5 — Non-deductibility of illegal payments.

History [s. 67.6]: S. 67.6 added by 2005, c. 19, s. 16, applicable to fines and penalties imposed after March 22, 2004.

Regulations: 7309 (prescribed fines and penalties).

68. Allocation of amounts in consideration for disposition of property — Where an amount received or receivable from a person can reasonably be regarded as being in part the consideration for the disposition of a particular property of a taxpayer or as being in part consideration for the provision of particular services by a taxpayer,

Proposed Amendment — 68 opening words

68. Allocation of amounts in consideration for property, services or restrictive covenants — If an amount received or receivable from a person can reasonably be regarded as being in part the consideration for the disposition of a particular property of a taxpayer, for the provision of particular services by a taxpayer or for a restrictive covenant as defined by subsection 56.4(1) granted by a taxpayer,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 76(1), will amend the opening words of s. 68 to read as above, applicable after February 26, 2004, other than to a taxpayer's grant of a restrictive covenant made in writing by the taxpayer before February 27,

2004 between the taxpayer and a person with whom the taxpayer deals at arm's length.

Technical Notes: Section 68 applies where an amount received or receivable can reasonably be regarded as being in part consideration for the disposition of a particular property of a taxpayer or as being in part consideration for the provision of particular services. If the amount is in part consideration for the disposition of property, that part of the consideration that can reasonably be regarded as being for the disposition of property is deemed to be the proceeds of disposition of that property and, reciprocally, the cost of the property for the acquirer. If the amount is in part consideration for the provision of particular services, that part of the consideration that can reasonably be regarded as being for the provision of particular services is deemed to be an amount received or receivable by the taxpayer in respect of those services and, reciprocally, an amount paid or payable by the person to whom the services are rendered.

Section 68 is amended to apply in circumstances where consideration received or receivable from a person is in part for a restrictive covenant (as defined by new subsection 56.4(1)) granted by a taxpayer. However, exceptions to the application of section 68 to a restrictive covenant are provided in new subsections 56.4(5) to (7). If section 68 applies, the part of the consideration that can reasonably be regarded as being for the restrictive covenant is considered to be an amount that is received or receivable by the taxpayer in respect of the restrictive covenant, and that part is also considered to be paid or payable to the taxpayer by the person to whom the restrictive covenant was granted.

(a) the part of the amount that can reasonably be regarded as being the consideration for the disposition shall be deemed to be proceeds of disposition of the particular property irrespective of the form or legal effect of the contract or agreement, and the person to whom the property was disposed of shall be deemed to have acquired it for an amount equal to that part; and

(b) the part of the amount that can reasonably be regarded as being consideration for the provision of particular services shall be deemed to be an amount received or receivable by the taxpayer in respect of those services irrespective of the form or legal effect of the contract or agreement, and that part shall be deemed to be an amount paid or payable to the taxpayer by the person to whom the services were rendered in respect of those services.

Proposed Addition — 68(c)

(c) the part of the amount that can reasonably be regarded as being consideration for the restrictive covenant is deemed to be an amount received or receivable by the taxpayer in respect of the restrictive covenant irrespective of the form or legal effect of the contract or agreement, and that part is deemed to be an amount paid or payable to the taxpayer by the person to whom the restrictive covenant was granted.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 76(2), will add para. 68(c), applicable after February 26, 2004, other than to a taxpayer's grant of a restrictive covenant made in writing by the taxpayer before February 27, 2004 between the taxpayer and a person with whom the taxpayer deals at arm's length.

Technical Notes: See under 68 opening words above.

Related Provisions: 12(1)(a) — Services, etc. to be rendered; 12(1)(b) — Amounts receivable in respect of services, etc, rendered; 13(33) — Consideration given for depreciable capital; 56.4(5)–(8) — Whether s. 68 applies to restrictive covenant (non-competition payment); 247(8) — Transfer pricing rules take priority over s. 68.

Selected Cases [s. 68]: *Baur Investments Ltd. v. MNR*, [1990] 2 C.T.C. 122 (FCTD) (Appraisal evidence insufficient to dislodge allocation on disposition similar to allocation at time of acquisition); *Golden et al. v. R.*, [1980] C.T.C. 488 (FCTD) (Minister may reallocate amounts between land and buildings in arm's length transaction); *A.G. Can. v. Matador Inc. et al.*, [1980] C.T.C. 51 (FCA) (Price for land and building below fair market value of land divided *pro rata*); *R. v. Malloney's Studio Ltd.*, [1979] C.T.C. 206 (SCC) (No amount allocated to building where demolished before purchase); *R. v. Jessiman Bros. Cartage Ltd.*, [1978] C.T.C. 274 (FCTD) (Going concern value of assets rather than trade-in value accepted); *Crown Trust Co. v. R.*, [1977] C.T.C. 320 (FCTD) (Price for land and buildings allocated pursuant to assessment rolls in absence of expert evidence); *Stanley v. MNR*, [1972] C.T.C. 34 (SCC) (Value greater than undepreciated capital cost allocated to building even though purchaser desired only land); *Munday v. MNR*, [1971] C.T.C. 585 (FCTD) (Part of price allocated to building destroyed by purchaser after closing); *Emco Ltd. v. MNR*, [1968] C.T.C. 457 (Exch.) (Taxpayer permitted to change previous allocation of purchase price entirely to land).

Definitions [s. 68]: "amount", "disposition", "person", "property" — 248(1); "received" — 248(7); "restrictive covenant" — 56.4(1); "taxpayer" — 248(1).

Interpretation Bulletins: IT-143R3: Meaning of eligible capital expenditure; IT-220R2: Capital cost allowance — proceeds of disposition of depreciable property.

Transfer Pricing Memoranda: TPM-06: Bundled transactions.

69. (1) Inadequate considerations — Except as expressly otherwise provided in this Act,

(a) where a taxpayer has acquired anything from a person with whom the taxpayer was not dealing at arm's length at an amount in excess of the fair market value thereof at the time the taxpayer so acquired it, the taxpayer shall be deemed to have acquired it at that fair market value;

Selected Cases [para. 69(1)(a)]: *Deptuck v. R.*, [2003] 3 C.T.C. 287 (FCA) (Arm's length rule applies to partnerships, not partners).

(b) where a taxpayer has disposed of anything

(i) to a person with whom the taxpayer was not dealing at arm's length for no proceeds or for proceeds less than the fair market value thereof at the time the taxpayer so disposed of it,

(ii) to any person by way of gift *inter vivos*, or

(iii) to a trust because of a disposition of a property that does not result in a change in the beneficial ownership of the property; and

Proposed Amendment — 69(1)(b)(iii)

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 77, will delete the word "and" from the end of subpara. 69(1)(b)(iii), applicable to dispositions that occur after December 23, 1998.

Technical Notes: Subsection 69(1) provides rules that deal with gifts and non-arm's length dispositions of property, except where such transactions are expressly covered by other provisions in the Act that apply to the gift or other disposition. The English version of subparagraph 69(1)(b)(iii) is amended to correct an editorial error, by deleting the word "and" at the end of the subparagraph.

the taxpayer shall be deemed to have received proceeds of disposition therefor equal to that fair market value; and

(c) where a taxpayer acquires a property by way of gift, bequest or inheritance or because of a disposition that does not result in a change in the beneficial ownership of the property, the taxpayer is deemed to acquire the property at its fair market value.

Selected Cases [para. 69(1)(c)]: *Sweeney v. Canada*, [1990] 2 C.T.C. 342 (FCTD); appealed to FCA (Oct. 4, 1990), File A-825-90 (Son's right to purchase father's shares on death not gift).

Related Provisions: 13(33) — Consideration given for depreciable capital; 15(1) — Benefit conferred on shareholder; 28(1.1) — Farming or fishing business — acquisition of inventory; 38(a.1) — Gift of publicly traded shares to charity; 53(5) — Recomputation of ACB on non-arm's length disposition; 56(11) — Disposition of interest in retirement compensation; 69(1.1) — Idem; 69(6) — Inadequate considerations; 73(1) — Rollover at cost on transfer to spouse; 73(3)(c), (4)(b) — No application on family farm rollover; 79(3)E(a) — Where property surrendered to a creditor; 97(1) — Contribution of property by partner to partnership deemed to be at fair market value; 106(1.1) — Cost of income interest in a trust; 107(1.1) — Cost of capital interest in a trust; 107.4(3) — Tax consequences of qualifying disposition to a trust; 107.4(4) — Fair market value

of vested interest in trust; 110.1(5) — Determination of value on donation of servitude, covenant or easement for ecologically sensitive land; 118.1(10.1) — Determination of value by Canadian Cultural Property Export Review Board; 118.1(12) — Determination of value on donation of servitude, covenant or easement for ecologically sensitive land; 127(11.8)(b) — Ignore 69(1)(c) for certain non-arm's length costs re investment tax credit; 142.7(4) — Deemed value of property on rollover from foreign bank subsidiary to branch; 146(9) — Disposition or acquisition of property by RRSP; 146.3(4) — Disposition or acquisition of property by RRIF; 206(4) — Deemed fair market value for purposes of tax on foreign property held by RRSPs etc.; 247(8) — Transfer pricing rules take priority over subsec. 69(1); 248(30) — Existence of an advantage does not prevent there being a gift; 248(35)–(37) — Value of gift limited to cost if acquired within 3 years or as tax shelter; 251 — Arm's length; Canada-U.S. Tax Treaty:Art. IX — Adjustments for transactions between related persons.

History: Subpara. 69(1)(b)(iii) added by 2001, c. 17, subsec. 51(1), applicable to dispositions that occur after December 23, 1998.

Para. 69(1)(c) amended by the said c. 17, subsec. 51(2), applicable to acquisitions that occur after December 23, 1998. The para. formerly read:

> (c) where a taxpayer has acquired property by way of gift, bequest or inheritance, the taxpayer shall be deemed to have acquired the property at its fair market value at the time the taxpayer so acquired it.

Selected Cases [subsec. 69(1)]: *Madsen v. R.*, [2001] 1 C.T.C. 244 (FCA) (Provisions of subsec. 69(1) apply to partnerships even though partnerships are not taxpayers); *Gilvesy Enterprises Inc. v. Canada*, [1997] 1 C.T.C. 2410 (TCC) ("Shotgun" clause may have impact on valuation of assets); *Kieboom v. MNR*, [1992] 2 C.T.C. 59 (FCA) (Taxpayer "transferred" property to related parties by reducing equity in corporation on subscription for shares by related parties); *Terry v. R.*, [1985] 1 C.T.C. 135 (FCTD) (Gift of shares valued; evidence of Crown's valuator, not having full access to information, rejected); *Gervais v. R.*, [1984] C.T.C. 661 (FCTD) (Difference between acquisition price, paid by son to father, and fair market value not gift); *Bouchard v. R.*, [1983] C.T.C. 173 (FCTD) (No capital gain on transfer to child of legal estate of property held in trust by parents); *Hutterian Brethren et al. v. R.*, [1980] C.T.C. 1 (FCA) (Farming not charitable or religious activity; value of members' labour not gift where they and families received colony's support in return); *Lea-Don Canada Ltd. v. MNR*, [1970] C.T.C. 346 (SCC) (Proceeds of non-arm's length sale of assets to parent company deemed fair market value).

Regulations: 1102(14) — Class of depreciable property preserved on non-arm's length acquisition.

I.T. Application Rules: 20(1.3), 32.

Interpretation Bulletins: IT-125R4: Dispositions of resource properties; IT-140R3: Buy-sell agreements; IT-143R3: Meaning of eligible capital expenditure; IT-169: Price adjustment clauses; IT-188R: Sale of accounts receivable; IT-209R: *Inter vivos* gifts of capital property to individuals directly or through trusts; IT-212R3: Income of deceased persons — rights or things; IT-213R: Prizes from lottery schemes and giveaway contests; IT-226R: Gift to a charity of a residual interest in real property or an equitable interest in a trust; IT-268R4: *Inter vivos* transfer of farm property to child; IT-288R2: Gifts of capital properties to a charity and others; IT-297R2: Gifts in kind to charity and others; IT-335R2: Indirect payments; IT-385R2: Disposition of an income interest in a trust; IT-403R: Options on real estate; IT-405: Inadequate considerations — acquisitions and dispositions (archived); IT-427R: Livestock of farmers; IT-432R2: Benefits conferred on shareholders; IT-433R: Farming or fishing — use of cash method; IT-442R: Bad debts and reserves for doubtful debts; IT-490: Barter transactions; IT-504R2: Visual artists and writers.

Information Circulars: 87-2R: International transfer pricing; 89-3: Policy statement on business equity valuations.

Advance Tax Rulings: ATR-1: Transfer of legal title in land to bare trustee corporation — mortgagee's requirements sole reason for transfer; ATR-9: Transfer of personal residence from corporation to its controlling shareholder; ATR-36: Estate freeze.

(1.1) Idem, where subsec. 70(3) applies — Where a taxpayer has acquired property that is a right or thing to which subsection 70(3) applies, the following rules apply:

(a) paragraph (1)(c) is not applicable to that property; and

(b) the taxpayer shall be deemed to have acquired the property at a cost equal to the total of

(i) such part, if any, of the cost thereof to the taxpayer who has died as had not been deducted by the taxpayer in computing the taxpayer's income for any year, and

(ii) any expenditures made or incurred by the taxpayer to acquire the property.

Interpretation Bulletins: IT-212R3: Income of deceased persons — rights or things; IT-427R: Livestock of farmers.

(1.2) Idem — Where, at any time,

(a) a taxpayer disposed of property for proceeds of disposition (determined without reference to this subsection) equal to or greater than the fair market value at that time of the property, and

(b) there existed at that time an agreement under which a person with whom the taxpayer was not dealing at arm's length agreed to pay as rent, royalty or other payment for the use of or the right to use the property an amount less than the amount that would have been reasonable in the circumstances if the taxpayer and the person had been dealing at arm's length at the time the agreement was entered into,

the taxpayer's proceeds of disposition of the property shall be deemed to be the greater of

(c) those proceeds determined without reference to this subsection, and

(d) the fair market value of the property at the time of the disposition, determined without reference to the existence of the agreement.

Related Provisions: 247(8) — Transfer pricing rules take priority over subsec. 69(1.2).

History: Subsec. 69(1.2) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 27(1), applicable to dispositions occurring after December 20, 1991.

(2) [Repealed]

History: Subsec. 69(2) repealed by 1998, c. 19, subsec. 107(1), applicable to taxation years that begin after 1997. The subsec. formerly read:

> (2) Unreasonable consideration [on dealings with non-resident] — Where a taxpayer has paid or agreed to pay to a non-resident person with whom the taxpayer was not dealing at arm's length as price, rental, royalty or other payment for or for the use or reproduction of any property, or as consideration for the carriage of goods or passengers or for other services, an amount greater than the amount (in this subsection referred to as "the reasonable amount") that would have been reasonable in the circumstances if the non-resident person and the taxpayer had been dealing at arm's length, the reasonable amount shall, for the purpose of computing the taxpayer's income under this Part, be deemed to have been the amount that was paid or is payable therefor.

Selected Cases [subsec. 69(2)]: *SmithKline Beecham Animal Health Inc. v. R.*, [2001] 2 C.T.C. 2086 (TCC) (Minister may be obliged to disclose facts on appeal).

(3) [Repealed]

History: Subsec. 69(3) repealed by 1998, c. 19, subsec. 107(1), applicable to taxation years that begin after 1997. The subsec. formerly read:

> (3) Idem — Where a non-resident person has neither paid nor agreed to pay to a taxpayer with whom the person was not dealing at arm's length as price, rental, royalty or other payment for or for the use or reproduction of any property or as consideration for the carriage of goods or passengers or for other services, an amount equal to or greater than the amount that would have been a reasonable amount in the circumstances if the non-resident person and the taxpayer had been dealing at arm's length, that reasonable amount shall, for the purpose of computing the taxpayer's income under this Part, be deemed to have been received or receivable by the taxpayer therefor.

Subsec. 69(3) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 47(1), applicable to transactions or events occurring after July 13, 1990. Subsec. 69(3) formerly read:

> (3) Idem — Where a non-resident person has neither paid nor agreed to pay to a taxpayer with whom the [person] was not dealing at arm's length as price, rental, royalty or other payment for or for the use or reproduction of any property, or as consideration for the carriage of goods or passengers or for other services, the amount that would have been reasonable in the circumstances if the non-resident person and the taxpayer had been dealing at arm's length, that amount shall, for the purpose of computing the taxpayer's income under this Part, be deemed to have been received or receivable by the taxpayer therefor.

(4) Shareholder appropriations — Where at any time property of a corporation has been appropriated in any manner whatever to or for the benefit of a shareholder of the corporation for no consideration or for consideration that is less than the property's fair market value and a sale of the property at its fair market value would have increased the corporation's income or reduced a loss of the corporation, the corporation shall be deemed to have disposed of the property, and to have received proceeds of disposition therefor equal to its fair market value, at that time.

Related Provisions: 15(1) — Benefit conferred on shareholder; 142.7(4) — Deemed value of property on rollover from foreign bank subsidiary to branch.

History: Subsec. 69(4) substituted by 1994, c. 21, s. 32, applicable to appropriations occurring after December 21, 1992. That subsec. formerly read:

> (4) Idem — Where property of a corporation has been appropriated in any manner whatever to, or for the benefit of, a shareholder, for no consideration or for a consideration below the fair market value, if the sale thereof at the fair market value would have increased the corporation's income for a taxation year, for the purpose of determining the corporation's income for the year, it shall be deemed to have sold the property during the year and to have received therefor the fair market value thereof.

Selected Cases [subsec. 69(4)]: *Boardman et al. v. R.*, [1986] 1 C.T.C. 103 (FCTD); appealed to FCA (Dec. 20, 1985), File A-1015-85 (Transfer of title to houses pursuant to order in divorce proceedings deemed sale at fair market value).

(5) Idem — Where in a taxation year of a corporation property of the corporation has been appropriated in any manner whatever to, or for the benefit of, a shareholder, on the winding-up of the corporation, the following rules apply:

(a) the corporation is deemed, for the purpose of computing its income for the year, to have disposed of the property immediately before the winding-up for proceeds equal to its fair market value at that time;

(b) the shareholder shall be deemed to have acquired the property at a cost equal to its fair market value immediately before the winding-up;

(c) subsections 52(1) and (2) do not apply for the purposes of determining the cost to the shareholder of the property; and

(d) subsections 13(21.2), 14(12), 18(15) and 40(3.4) and (3.6) do not apply in respect of any property disposed of on the winding-up.

(e) [Repealed]

Related Provisions: 15(1) — Benefit conferred on shareholder; 54"superficial loss"(h) — Superficial loss rule inapplicable when 69(5) applies; 84(2) — Distribution on winding-up, etc; 142.7(4) — Deemed value of property on rollover from foreign bank subsidiary to branch.

History: Para. 69(5)(c) amended by 2001, c. 17, subsec. 51(3), applicable to dispositions that occur after 1999. The para. formerly read:

> (c) subsections 52(1), (1.1) and (2) are not applicable for the purposes of determining the cost to the shareholder of the property; and

Paras. 69(5)(a) and (d) amended and (e) repealed by 1998, c. 19, subsecs. 107(2) and (3), para. (a) applicable to windings-up that begin after 1995, para. (d) applicable to windings-up that begin after April 26, 1995 except that, in its application to windings-up that began before 1996, it shall be read as follows:

> (d) subsections 13(21.2), 14(12), 18(15), 40(3.4) and (3.6) and 85(4) and (5.1) do not apply to the winding-up; and

and the repeal of para. (e) applicable to windings-up that begin after 1995. The paras. formerly read:

> (a) for the purpose of computing the corporation's income for the year,
>
> (i) it shall be deemed to have sold each such property immediately before the winding-up and to have received therefor the fair market value thereof at that time, and
>
> (ii) paragraph 40(2)(e) shall not apply in computing the loss, if any, from the sale of any such property;
>
> . . . . .
>
> (d) subsections 85(4) and (5.1) shall not apply in respect of the winding-up; and
>
> (e) paragraph 40(2)(e) does not apply in computing the loss, if any, of the shareholder from the disposition of a share of the capital stock of the corporation to the corporation on the winding-up.

Para. 69(5)(e) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 47(2), applicable to dispositions of shares after 1985.

Interpretation Bulletins: IT-444R: Corporations — involuntary dissolutions; IT-488R2: Winding-up of 90%-owned taxable Canadian corporations (archived).

Information Circulars: 89-3: Policy statement on business equity valuations.

(6) Disposition of petroleum, etc. — An operator with respect to a natural accumulation of petroleum or natural gas in Canada, an oil or gas well in Canada or a mineral resource in Canada who at any time disposes of property, produced in the operation, that is petroleum, natural gas or related hydrocarbons, metal or minerals for no proceeds of disposition or for proceeds of disposition less than its fair market value at that time, is deemed to have received proceeds of disposition for the property equal to that fair market value if the disposition is to

(a) Her Majesty in right of Canada or of a province;

(b) an agent of Her Majesty in right of Canada or of a province; or

(c) a corporation, a commission or an association that is controlled by Her Majesty in right of Canada or of a province or by an agent of Her Majesty in right of Canada or of a province.

Repeal [effective 2007] — 69(6)

Application: S.C. 2003, c. 28 (Bill C-48, Royal Assent November 7, 2003), subsec. 8(2), repeals subsec. 69(6), applicable to taxation years that begin after 2006.

Related Provisions: 69(7) — Unreasonable consideration; 104(29) — Amounts deemed to be payable to beneficiaries; 219(1)(k) — Reduction in branch tax.

History: Subsec. 69(6) amended by 2003, c. 28, subsec. 8(1), applicable to dispositions that occur after December 20, 2002. The subsec. formerly read:

> (6) Idem — Where a taxpayer who is an operator with respect to a natural accumulation of petroleum or natural gas in Canada, an oil or gas well in Canada or a mineral resource in Canada disposes by virtue of an obligation imposed by statute or a contractual obligation substituted for an obligation imposed by statute of any petroleum, natural gas or related hydrocarbons or metal or minerals produced in the operation to
>
> (a) Her Majesty in right of Canada or a province,
>
> (b) an agent of Her Majesty in right of Canada or a province, or
>
> (c) a corporation, commission or association that is controlled by Her Majesty in right of Canada or a province or by an agent of Her Majesty in right of Canada or a province

for no proceeds of disposition or for proceeds of disposition less than the fair market value thereof at the time the taxpayer so disposes of it, the taxpayer shall be deemed to have received proceeds of disposition therefor equal to that fair market value determined, in circumstances where the taxpayer is required by a law or contract to so dispose thereof, without regard to that law or contract.

Remission Orders: *Syncrude Remission Order*, C.R.C. 1978, c. 794 (P.C. 1976-1026) (remission of tax on royalties etc. relating to the Syncrude Project).

Interpretation Bulletins: IT-438R2: Crown charges — resource properties in Canada.

(7) Idem — Where a taxpayer who is an operator with respect to a natural accumulation of petroleum or natural gas in Canada, an oil or gas well in Canada or a mineral resource in Canada acquires any petroleum, natural gas or related hydrocarbons or metal or minerals produced in the operation from

(a) Her Majesty in right of Canada or a province,

(b) an agent of Her Majesty in right of Canada or a province, or

(c) a corporation, commission or association that is controlled by Her Majesty in right of Canada or a province or by an agent of Her Majesty in right of Canada or a province

for an amount in excess of the fair market value thereof at the time the taxpayer so acquired the petroleum, natural gas or related hydrocarbons or metal or minerals, the taxpayer shall be deemed to have acquired the petroleum, natural gas or related hydrocarbons or metal or minerals at that fair market value determined, in circumstances where the taxpayer is required by a law or contract to so acquire the petroleum, natural gas or related hydrocarbons or metal or minerals, without regard to that law or contract.

Repeal [effective 2007] — 69(7)

Application: S.C. 2003, c. 28 (Bill C-48, Royal Assent November 7, 2003), subsec. 8(2), repeals subsec. 69(7), applicable to taxation years that begin after 2006.

Related Provisions: 69(9) — Fair market value of resource output acquired from Crown; 104(29) — Amounts deemed to be payable to beneficiaries; 219(1)(k) — Reduction in branch tax.

Remission Orders: *Syncrude Remission Order*, C.R.C. 1978, c. 794 (P.C. 1976-1026) (remission of tax on royalties etc. relating to the Syncrude Project).

Interpretation Bulletins: IT-438R2: Crown charges — resource properties in Canada.

(7.1) [Repealed under former Act]

(8) Fair market value of resource output disposed of to Crown — For the purposes of subsection (6), the fair market value at the time of disposition of a unit of any particular quantity of petroleum, natural gas or related hydrocarbons or metal or minerals disposed of by the taxpayer referred to in that subsection to a person referred to in any of paragraphs (6)(a) to (c) shall be deemed to be the amount by which

(a) the average proceeds of disposition that became receivable in the month that included that time by that person for the disposition of a like unit from a person other than a person referred to in any of paragraphs (6)(a) to (c)

exceed the total of

(b) the average total of all expenses (including depreciation) incurred by that person in respect of that month for each like unit that may reasonably be attributed to transmitting, transporting, marketing or processing thereof to the extent that those expenses are reasonable and necessary and do not include any cost of acquisition thereof, and

(c) in respect of the unit disposed of by the taxpayer, the amount that may reasonably be attributed as being an amount paid to, an amount that became payable to or an amount that became receivable by, Her Majesty in Right of Canada for the use and benefit of a band or bands as defined in the *Indian Act*.

Repeal [effective 2007] — 69(8)

Application: S.C. 2003, c. 28 (Bill C-48, Royal Assent November 7, 2003), subsec. 8(2), repeals subsec. 69(8), applicable to taxation years that begin after 2006.

Related Provisions: 69(10) — Certain persons deemed to be same person.

Remission Orders: *Syncrude Remission Order*, C.R.C. 1978, c. 794 (P.C. 1976-1026) (remission of tax on royalties etc. relating to the Syncrude Project).

Interpretation Bulletins: IT-438R2: Crown charges — resource properties in Canada.

(9) Fair market value of resource output acquired from Crown — For the purposes of subsection (7), the fair market value of a unit of any particular quantity of petroleum, natural gas or related hydrocarbons or metals or minerals acquired by the taxpayer referred to in that subsection from a person referred to in any of paragraphs (7)(a) to (c) shall be deemed to be equal to the total of

(a) the amount, if any, paid or payable to the taxpayer by that person in respect of that unit, and

(b) the amount, if any, in respect of that unit paid or payable to Her Majesty in right of Canada by that person for the use and benefit of a band or bands as defined in the *Indian Act*.

Repeal [effective 2007] — 69(9)

Application: S.C. 2003, c. 28 (Bill C-48, Royal Assent November 7, 2003), subsec. 8(2), repeals subsec. 69(9), applicable to taxation years that begin after 2006.

Remission Orders: *Syncrude Remission Order*, C.R.C. 1978, c. 794 (P.C. 1976-1026) (remission of tax on royalties etc. relating to the Syncrude Project).

Interpretation Bulletins: IT-438R2: Crown charges — resource properties in Canada.

(10) Certain persons deemed to be same person — For the purposes of subsection (8), where a person referred to in any of paragraphs (6)(a) to (c) disposes of a unit of any particular quantity of petroleum, natural gas or related hydrocarbons or metal or minerals to another person referred to in any of those paragraphs, those persons shall be deemed to be the same person.

Repeal [effective 2007] — 69(10)

Application: S.C. 2003, c. 28 (Bill C-48, Royal Assent November 7, 2003), subsec. 8(2), repeals subsec. 69(10), applicable to taxation years that begin after 2006.

Remission Orders: *Syncrude Remission Order*, C.R.C. 1978, c. 794 (P.C. 1976-1026) (remission of tax on royalties etc. relating to the Syncrude Project).

Interpretation Bulletins: IT-438R2: Crown charges — resource properties in Canada.

(11) Deemed proceeds of disposition — Where, at any particular time as part of a series of transactions or events, a taxpayer disposes of property for proceeds of disposition that are less than its fair market value and it

can reasonably be considered that one of the main purposes of the series is

(a) to obtain the benefit of

(i) any deduction (other than a deduction under subsection 110.6(2.1) in respect of a capital gain from a disposition of a share acquired by the taxpayer in an acquisition to which subsection 85(3) or 98(3) applied) in computing income, taxable income, taxable income earned in Canada or tax payable under this Act, or

(ii) any balance of undeducted outlays, expenses or other amounts

available to a person (other than a person that would be affiliated with the taxpayer immediately before the series began, if section 251.1 were read without reference to the definition "controlled" in subsection 251.1(3)) in respect of a subsequent disposition of the property or property substituted for the property, or

(b) to obtain the benefit of an exemption available to any person from tax payable under this Act on any income arising on a subsequent disposition of the property or property substituted for the property,

notwithstanding any other provision of this Act, where the subsequent disposition occurs, or arrangements for the subsequent disposition are made, before the day that is 3 years after the particular time, the taxpayer is deemed to have disposed of the property at the particular time for proceeds of disposition equal to its fair market value at the particular time.

Related Provisions [subsec. 69(11)]: 69(12) — Reassessment to give effect to 69(11); 69(13) — Amalgamation or merger; 69(14) — Where corporation incorporated during series of transactions; 73(3)(c), 73(4)(c) — Rule in 69(11) takes priority over 73(3) and (4); 87 — Amalgamations; 88(1) — Winding-up; 160(1.1) — Joint liability; 248(5) — Substituted property.

History: Subsec. 69(11) amended by 1998, c. 19, subsec. 107(4), applicable to each disposition that is part of a series of transactions or events that begins after April 26, 1995, other than a disposition that occurred before 1996 to a person who was obliged on that day to acquire the property under the terms of an agreement in writing entered into on or before that day, and for the purpose of this application, a person is considered not to be obliged to acquire property where the person can be excused from the obligation if there is a change to the Act or if there is an adverse assessment under the Act. The subsec. formerly read:

(11) Where, at any time as part of a series of transactions, a person or partnership (in this subsection and subsection (12) referred to as the "vendor") has disposed of property for proceeds of disposition that are less than its fair market value and it may reasonably be considered that one of the main purposes of the series was to obtain the benefit of

(a) any deduction in computing income, taxable income, taxable income earned in Canada or tax payable under this Act, or

(b) any balance of undeducted outlays, expenses or other amounts

available to a specified person in respect of a subsequent disposition of the property or property substituted for the property, notwithstanding any other provision of this Act, the vendor shall, where the subsequent disposition occurs within three years after that time, be deemed to have disposed of the property at that time for proceeds of disposition equal to its fair market value at that time.

Interpretation Bulletins: IT-291R3: Transfer of property to a corporation under subsection 85(1); IT-488R2: Winding-up of 90%-owned taxable Canadian corporations (archived).

Information Circulars: 88-2, para. 9: General anti-avoidance rule — section 245 of the *Income Tax Act*.

I.T. Technical News: 9 (loss consolidation within a corporate group); 30 (corporate loss utilization transactions).

(12) Reassessments — Notwithstanding subsections 152(4) to (5), the Minister may at any time make such assessments or reassessments of the tax, interest and penalties payable by the taxpayer as are necessary to give effect to subsection (11).

History: Subsec. 69(12) amended by 1998, c. 19, subsec. 107(4), applicable on the same basis as the amendment to subsec. 69(11). The subsec. formerly read:

(12) Definition of "specified person" — For the purposes of subsection (11), a "specified person" is

(a) a person that was not (otherwise than by virtue of a right referred to in paragraph 251(5)(b)) related to the vendor immediately before the series of transactions commenced;

(b) a partnership of which neither the vendor nor a person who was (otherwise than by virtue of a right referred to in paragraph 251(5)(b)) related to the vendor immediately before the series commenced was a majority interest partner (within the meaning assigned by subsection 97(3.1)) immediately before the series commenced; or

(c) where the vendor is a partnership, a person who was neither

(i) a majority interest partner (within the meaning assigned by subsection 97(3.1)) of the partnership immediately before the series commenced, nor

(ii) a person who was (otherwise than by virtue of a right referred to in paragraph 251(5)(b)) related to a person described in subparagraph (i) immediately before the series commenced.

(12.1) [Repealed]

History: Subsec. 69(12.1) repealed by 1998, c. 19, subsec. 107(4), applicable on the same basis as the amendment to subsec. 69(11). The subsec. formerly read:

(12.1) Application of subsecs. (11) and (12) — Subsections (11) and (12) are applicable with respect to property disposed of after January 15, 1987 except where the person or partnership disposing of the property after that date was obliged on that date to dispose of it pursuant to an agreement in writing entered into on or before that date or where the person or partnership disposed of the property as part of a series of transactions that commenced on or before that date.

(12.2) [Repealed]

Origin of subsecs. 69(12.1), (12.2): R.S.C. 1985, c. 1 (5th Supp.). This was formerly an application rule in 1987, c. 46, s. 24.

History: Subsec. 69(12.2) repealed by 1998, c. 19, subsec. 107(4), applicable on the same basis as the amendment to subsec. 69(11). The subsec. formerly read:

(12.2) Obligation to acquire property, etc. — For the purposes of subsection (12.1), a person shall be considered not to be obliged either to acquire or dispose of property if the person may be excused from performing the obligation as a result of changes to this Act affecting acquisitions or dispositions of property.

(13) Amalgamation or merger — Where there is an amalgamation or merger of a corporation with one or more other corporations to form one corporate entity (in this subsection referred to as the "new corporation"), each property of the corporation that becomes property of the new corporation as a result of the amalgamation or merger is deemed, for the purpose of determining whether subsection (11) applies to the amalgamation or merger, to have been disposed of by the corporation immediately before the amalgamation or merger for proceeds equal to

(a) in the case of a Canadian resource property or a foreign resource property, nil; and

(b) in the case of any other property, the cost amount to the corporation of the property immediately before the amalgamation or merger.

Related Provisions: 87(2)(e) — Rules applicable — capital property.

History: Subsec. 69(13) amended by 1998, c. 19, subsec. 107(5), applicable to amalgamations and mergers that occur after April 26, 1995. The subsec. formerly read:

(13) Where there has been an amalgamation or merger of a corporation with one or more other corporations to form one corporate en-

tity (in this subsection referred to as the "new corporation"), each property of the corporation that became property of the new corporation as a result of the amalgamation or merger shall be deemed, for the purpose of determining whether subsection (11) is applicable in respect of the amalgamation or merger, to have been disposed of by the corporation immediately before the amalgamation or merger for proceeds of disposition equal to

(a) in the case of a Canadian resource property or a foreign resource property, nil; and

(b) [Repealed]

(c) in the case of any other property, the cost amount to the corporation of the property immediately before the amalgamation or merger.

Para. 69(13)(b) repealed by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 27(2), applicable to an amalgamation or merger of a corporation occurring after the beginning of its first taxation year beginning after June 1988. Para. (b) formerly read:

(b) in the case of eligible capital property, an amount equal to 4/3 of the cost amount to the corporation of the property immediately before the amalgamation or merger; and

(14) New taxpayer — For the purpose of subsection (11), where a taxpayer is incorporated or otherwise comes into existence at a particular time during a series of transactions or events, the taxpayer is deemed

(a) to have existed at the time that was immediately before the series began; and

(b) to have been affiliated at that time with every person with whom the taxpayer is affiliated (otherwise than because of a right referred to in paragraph 251(5)(b)) at the particular time.

History: Subsec. (14) added by 1998, c. 19, subsec. 107(5), applicable to each disposition that is part of a series of transactions or events that begins after April 26, 1995, other than a disposition that occurred before 1996 to a person who was obliged on that day to acquire the property under the terms of an agreement in writing entered into on or before that day, and for the purpose of this application, a person is considered not to be obliged to acquire property where the person can be excused from the obligation if there is a change to the Act or if there is an adverse assessment under the Act.

Selected Cases [s. 69]: *Côté v. R.*, [1999] 3 C.T.C. 2373 (TCC) (Gifts valid but valuations exaggerated; penalties upheld).

Definitions [s. 69]: "amount" — 248(1); "affiliated" — 69(14), 251.1; "arm's length" — 251; "assessment" — 248(1); "business" — 248(1); "Canada" — 255; "Canadian resource property" — 66(15), 248(1); "controlled" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "eligible capital property" — 54, 248(1); "fair market value" — 248(35); "foreign resource property" — 66(15), 248(1); "Her Majesty" — *Interpretation Act* 35(1); "non-resident", "oil or gas well", "person", "prescribed" — 248(1); "proceeds of disposition" — 54 [technically does not apply to s. 69]; "property" — 248(1); "province" — *Interpretation Act* 35(1); "series of transactions or events" — 248(10); "shareholder" — 248(1); "substituted property" — 248(5); "tax payable" — 248(2); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

70. (1) Death of a taxpayer — In computing the income of a taxpayer for the taxation year in which the taxpayer died,

(a) an amount of interest, rent, royalty, annuity (other than an amount with respect to an interest in an annuity contract to which paragraph 148(2)(b) applies), remuneration from an office or employment, or other amount payable periodically, that was not paid before the taxpayer's death, shall be deemed to have accrued in equal daily amounts in the period for or in respect of which the amount was payable, and the value of the portion thereof so deemed to have accrued to the day of death shall be included in computing the taxpayer's income for the year in which the taxpayer died; and

(b) paragraph 12(1)(t) shall be read as follows:

"(t) the amount deducted under subsection 127(5) or (6) in computing the taxpayer's tax payable for the year or a preceding taxation year to the extent that it was not included in computing the taxpayer's income for a preceding taxation year under this paragraph or is not included in an amount determined under paragraph 13(7.1)(e) or 37(1)(e) or subparagraph 53(2)(c)(vi) or (h)(ii) or for I in the definition "undepreciated capital cost" in subsection 13(21) or L in the definition "cumulative Canadian exploration expense" in subsection 66.1(6);"

Related Provisions: 7(1)(e) — Stock option benefit where employee has died; 28(1) — Farming or fishing business; 61.2 — Deduction of debt forgiveness reserve for year of death; 70(5) — Capital property of deceased; 80(2)(p), (q) — Debt forgiveness rules — debt obligation settled by estate; 118.1(1)"total gifts"(a)(ii); 118.1(5) — Unlimited claim for charitable donations after death; 146(8.8) — RRSP — effect of death; 146.01(6) — RRSP Home Buyers' Plan — income inclusions; 146.02(6) — RRSP Lifelong Learning Plan — income inclusions; 146.3(6) — RRIF — effect of death; 147.2(6) — Additional deductible pension contributions for year of death; 148.1(2)(b)(i) — No tax on provision of funeral or cemetary services from eligible funeral arrangement; 156.1(3) — Instalments not required after death; 164(6) — Election by executor to carry back losses of estate to year of death.

Interpretation Bulletins: IT-210R2: Income of deceased persons — periodic payments and investment tax credit; IT-212R3: Income of deceased persons — rights or things; IT-234: Income of deceased persons — farm crops; IT-396R: Interest income; IT-410R: Debt obligations — accrued interest on transfer (archived).

Forms: RC4111: What to do following a death [guide]; T4011: Preparing returns for deceased persons [guide].

(2) Amounts receivable — Where a taxpayer who has died had at the time of death rights or things (other than any capital property or any amount included in computing the taxpayer's income by virtue of subsection (1)), the amount of which when realized or disposed of would have been included in computing the taxpayer's income, the value thereof at the time of death shall be included in computing the taxpayer's income for the taxation year in which the taxpayer died, unless the taxpayer's legal representative has, not later than the day that is one year after the date of death of the taxpayer or the day that is 90 days after the mailing of any notice of assessment in respect of the tax of the taxpayer for the year of death, whichever is the later day, elected otherwise, in which case the legal representative shall file a separate return of income for the year under this Part and pay the tax for the year under this Part as if

(a) the taxpayer were another person;

(b) that other person's only income for the year were the value of the rights or things; and

(c) subject to sections 114.2 and 118.93, that other person were entitled to the deductions to which the taxpayer was entitled under sections 110, 118 to 118.7 and 118.9 for the year in computing the taxpayer's taxable income or tax payable under this Part, as the case may be, for the year.

Related Provisions: 28(1) — Farming or fishing business; 53(1)(e)(v) — Adjustments to cost base; 60(t) — Deductions — amount included under 70(2); 70(3) — Rights or things transferred to beneficiaries; 70(4) — Revocation of election; 114.2 — Deductions in separate returns; 118.93 — Credits in separate returns; 120.2(4)(a) — No minimum tax carryover on special return; 127.1(1)(a) — No refundable investment tax credit on special return; 127.55 — Minimum tax not applicable; 150(1)(b) — Filing deadline for deceased's return; 159(5) — Election where certain provisions applicable.

Interpretation Bulletins: IT-210R2: Income of deceased persons — periodic payments and investment tax credit; IT-212R3: Income of deceased persons — rights or things; IT-234: Farm crops; IT-278R2: Death of a partner or of a retired person; IT-326R3: Returns of deceased persons as "another person"; IT-337R4: Retiring allowances; IT-382: Debts bequeathed or forgiven on death (archived); IT-427R: Livestock of farmers; IT-457R: Election by professionals to exclude work in progress from income; IT-502: Employee benefit plans and employee trusts.

Forms: T4011: Preparing returns for deceased persons [guide].

(3) Rights or things transferred to beneficiaries — Where before the time for making an election under subsection (2) has expired, a right or thing to which that subsection would otherwise apply has been transferred or distributed to beneficiaries or other persons beneficially interested in the estate or trust,

(a) subsection (2) is not applicable to that right or thing; and

(b) an amount received by one of the beneficiaries or persons on the realization or disposition of the right or thing shall be included in computing the income of the beneficiary or person for the taxation year in which the beneficiary or person received it.

Related Provisions: 44(3) — Where subsec. 70(3) not to apply; 69(1.1) — Deemed cost of property to beneficiary; 70(3.1) — Exception; 118.1(7)(b), 118.1(7.1)(b) — Donation of art or cultural property on death.

History: Para. 70(3)(b) amended by 1998, c. 19, subsec. 108(1), applicable to taxation years that end after November 1991. The para. formerly read:

(b) an amount received by one of the beneficiaries or other such persons on the realization or disposition of the right or thing shall be included in computing the taxpayer's income for the taxation year in which the taxpayer received it.

Selected Cases [subsec. 70(3)]: *Tory Estate (Montreal Trust Co.) v. MNR*, [1976] C.T.C. 415 (SCC) (Transfer of deceased's accounts receivable by estate to beneficiary taxable to estate in amount exceeding beneficiary's interest).

Interpretation Bulletins: IT-210R2: Income of deceased persons — periodic payments and investment tax credit; IT-212R3: Income of deceased persons — rights or things; IT-278R2: Death of a partner or of a retired partner; IT-427R: Livestock of farmers.

(3.1) Exception — For the purposes of this section, "rights or things" do not include an interest in a life insurance policy (other than an annuity contract of a taxpayer where the payment therefor was deductible in computing the taxpayer's income because of paragraph 60(l) or was made in circumstances in which subsection 146(21) applied), eligible capital property, land included in the inventory of a business, a Canadian resource property or a foreign resource property.

Proposed Amendment — 70(3.1)

(3.1) Exception — In this section, "rights or things" in respect of an individual do not include

(a) an interest in a life insurance policy (other than an annuity contract the payment for which was deductible in computing the individual's income under paragraph 60(l) or was made in circumstances in which subsection 146(21) applied);

(b) eligible capital property;

(c) land included in the inventory of a business;

(d) a Canadian resource property;

(e) a foreign resource property; or

(f) property in respect of which subsection 94.2(3) applies (and subsection 94.2(20) does not apply) to the individual for the individual's taxation year in which the individual dies.

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 9(1), will amend subsec. 70(3.1) to read as above, applicable to taxation years that begin after 2002.

Technical Notes: Under subsection 70(2), the value of certain "rights or things" owned by an individual at the time of the individual's death is required to be included in the individual's income for the year of death. Subsection 70(3) provides that this rule does not apply in connection with "rights or things" transferred to beneficiaries of the deceased within a specified period of time. Subsection 70(3.1) provides that certain property does not constitute a "right or thing" for these purposes.

Subsection 70(3.1) is amended so that a "right or thing" does not include property in respect of which new subsection 94.2(3) applied (and subsection 94.2(20) does not apply) for the individual's taxation year in which the individual dies. New subsection 94.2(3) sets out the conditions for the application of the mark-to-market taxation regime under section 94.2 for participating interests in foreign investment entities.

History: Subsec. 70(3.1) substituted by 1994, c. 21, subsec. 33(1), applicable to 1992 *et seq.* That subsec. formerly read:

(3.1) For the purposes of this section, "rights or things" do not include an interest in a life insurance policy (other than an annuity contract of a taxpayer where the payment therefor was deductible in computing the taxpayer's income by virtue of paragraph 60(l)), eligible capital property, land included in the inventory of a business, a Canadian resource property or a foreign resource property.

Interpretation Bulletins: IT-212R3: Income of deceased persons — rights or things; IT-313R2: Eligible capital property — rules where a taxpayer has ceased carrying on a business or has died.

(4) Revocation of election — An election made under subsection (2) may be revoked by a notice of revocation signed by the legal representative of the taxpayer and filed with the Minister within the time that an election under that subsection may be made.

Interpretation Bulletins: IT-212R3: Income of deceased persons — rights or things.

(5) Capital property of a deceased taxpayer — Where in a taxation year a taxpayer dies,

(a) the taxpayer shall be deemed to have, immediately before the taxpayer's death, disposed of each capital property of the taxpayer and received proceeds of disposition therefor equal to the fair market value of the property immediately before the death;

(b) any person who as a consequence of the taxpayer's death acquires any property that is deemed by paragraph (a) to have been disposed of by the taxpayer shall be deemed to have acquired it at the time of the death at a cost equal to its fair market value immediately before the death;

(c) where any depreciable property of the taxpayer of a prescribed class that is deemed by paragraph (a) to have been disposed of is acquired by any person as a consequence of the taxpayer's death (other than where the taxpayer's proceeds of disposition of the property under paragraph (a) are redetermined under subsection 13(21.1)) and the amount that was the capital cost to the taxpayer of the property exceeds the amount determined under paragraph (b) to be the cost to the person thereof, for the purposes of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a),

(i) the capital cost to the person of the property shall be deemed to be the amount that was the capital cost to the taxpayer of the property, and

(ii) the excess shall be deemed to have been allowed to the person in respect of the property under regulations made for the purpose of paragraph 20(1)(a) in computing income for taxation years that ended before the person acquired the property; and

(d) where a property of the taxpayer that was deemed by paragraph (a) to have been disposed of is acquired by any person as a consequence of the taxpayer's death and the taxpayer's proceeds of disposition of the property under paragraph (a) are redetermined under subsection 13(21.1), notwithstanding paragraph (b),

(i) where the property was depreciable property of a prescribed class and the amount that was the capital cost to the taxpayer of the property exceeds the amount so redetermined under subsection 13(21.1), for the purposes of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a),

(A) its capital cost to the person shall be deemed to be the amount that was its capital cost to the taxpayer, and

(B) the excess shall be deemed to have been allowed to the person in respect of the property under regulations made for the purpose of paragraph 20(1)(a) in computing income for taxation years that ended before the person acquired the property, and

(ii) where the property is land (other than land to which subparagraph (i) applies), its cost to the person shall be deemed to be the amount that was the taxpayer's proceeds of disposition of the land as redetermined under subsection 13(21.1).

Related Provisions: 38(a.1)(ii) — Reduced capital gain on gift on death of publicly-traded securities to charity; 43.1(2) — Life estates in real property; 44(2) — Exchanges of property; 53(4) — Effect on ACB of share, partnership interest or trust interest; 54"superficial loss"(c) — Superficial loss rule does not apply; 70(5.3) — Value of property that depends on life insurance policy; 70(6) — Where transfer or distribution to spouse or trust; 70(6.2) — Election; 70(9) — Transfer of farm property to taxpayer's child; 70(9.2) — Transfer of family farm corporations and partnerships; 70(12) — Capital cost of certain depreciable property; 70(13) — Order of disposal of depreciable property; 75.2(b) — Qualifying trust annuity to be disregarded; 80(2)(p), (q) — Debt forgiveness rules — debt obligation settled by estate; 110.6(14)(g) — Related persons, etc.; 118.1(5) — Gift by will deemed made immediately before death; 118.1(10.1) — Determination of value by Canadian Cultural Property Export Review Board; 139.1(5) — Value of ownership rights in insurer during demutualization; 143.1(4) — Death of beneficiary of amateur athlete trust; 159(5) — Election where certain provisions applicable; 164(6) — Election by executor to carry back losses of estate to year of death; 248(8) — Occurrences as a consequence of death; 256(7)(a)(i)(D) — Control of corporation deemed not acquired; Canada-U.S. Tax Treaty:Art. XXIX-B:6, 7 — Credit for U.S. estate taxes.

History: Paras. 70(5)(a) to (c) substituted, and para. (d) added, by 1994, c. 21, subsec. 33(2), applicable to dispositions and acquisitions occurring after 1992. Paras. (a) to (c) formerly read:

(a) the taxpayer shall be deemed to have disposed, immediately before death, of each property that was at that time a capital property of the taxpayer and to have received proceeds of disposition therefor equal to the fair market value of the property at that time;

(b) any person who as a consequence of the death acquires any property that is deemed by paragraph (a) to have been disposed of by the taxpayer at any time shall be deemed to have acquired it immediately after that time at a cost equal to its fair market value at that time; and

(c) where any depreciable property of the taxpayer of a prescribed class that is deemed by paragraph (a) to have been disposed of is acquired by any person as a consequence of the death and the amount that was the capital cost to the taxpayer of that property exceeds the amount determined under paragraph (b) to be the cost to that person thereof, for the purposes of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a),

(i) the capital cost to that person of the property shall be deemed to be the amount that was the capital cost to the taxpayer of the property, and

(ii) the excess shall be deemed to have been allowed to that person in respect of the property under regulations made for the purpose of paragraph 20(1)(a) in computing income for the taxation years ending before the person acquired the property.

Subsec. 70(5) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 28(1), applicable to dispositions occurring after 1992. Subsec. (5) formerly read:

(5) Depreciable and other capital property of deceased taxpayer — Where in a taxation year a taxpayer has died, the following rules apply:

(a) the taxpayer shall be deemed to have disposed, immediately before the taxpayer's death, of each property owned by the taxpayer at that time that was a capital property of the taxpayer (other than depreciable property of a prescribed class) and to have received proceeds of disposition therefor equal to the fair market value of the property at that time;

(b) the taxpayer shall be deemed to have disposed, immediately before the taxpayer's death, of all depreciable property of a prescribed class owned by the taxpayer at that time and to have received proceeds of disposition therefor equal to,

(i) where the fair market value of that property at that time exceeds the undepreciated capital cost thereof to the taxpayer at that time, the amount of that undepreciated capital cost plus ½ of the amount of the excess, and

(ii) in any other case, the fair market value of that property at that time plus ½ of the amount, if any, by which the undepreciated capital cost thereof to the taxpayer at that time exceeds that fair market value;

(c) any person who, as a consequence of the death of the taxpayer, has acquired any particular capital property of the taxpayer (other than depreciable property of a prescribed class) that is deemed by paragraph (a) to have been disposed of by the taxpayer at any time shall be deemed to have acquired it immediately after that time at a cost equal to its fair market value immediately before the death of the taxpayer;

(d) any person who, as a consequence of the death of the taxpayer, has acquired any particular depreciable property of the taxpayer of a prescribed class that is deemed by paragraph (b) to have been disposed of by the taxpayer at any time shall be deemed to have acquired it immediately after that time at a cost equal to that proportion of the proceeds of disposition of all depreciable property of that class deemed by paragraph (b) to have been received by the taxpayer that the fair market value immediately before the death of the taxpayer of the particular property is of the fair market value at that time of all of that property of that class; and

(e) where any depreciable property of the taxpayer of a prescribed class that is deemed by paragraph (b) to have been disposed of by the taxpayer has been acquired by any person as a consequence of the death of the taxpayer and the amount that was the capital cost to the taxpayer of that property exceeds the amount determined under paragraph (d) to be the cost to that person thereof, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a),

(i) the capital cost to that person of the property shall be deemed to be the amount that was the capital cost to the taxpayer of the property, and

(ii) the excess shall be deemed to have been allowed to that person in respect of the property under regulations made under paragraph 20(1)(a) in computing income for taxation years before the acquisition by that person of the property.

Selected Cases [subsec. 70(5)]: *Geltman Estate v. R.*, [2003] 1 C.T.C. 2641 (TCC) (RRSPs are "rights or things"); *Nussey Estate v. R.*, [2001] 2 C.T.C. 222 (FCA); aff'g [2000] 2 C.T.C. 2284 (TCC) (Agreement could only operate following taxpayer's death, by which time statutory provision applied); *Haas Estate v. R.*, [2000] 1 C.T.C. 2446 (TCC) (Domestic law applies when no definition of "gain" in tax treaty); *Greenwood Estate v. Canada*, [1991] 1 C.T.C. 47 (FCTD); appealed to FCA (April 29, 1991), File A-371-91 (Agreement between sons and father to purchase shares on death prevents shares from vesting indefeasibly in spousal trust); *Gladden Estate v. R.*, [1985] 1 C.T.C. 163 (FCTD) (Capital gain from deemed disposition of shares in Canadian companies exempt as "sale or exchange" of capital assets under Canada-U.S. Tax Treaty); *Pappas Estate v. R.*, [1981] C.T.C. 266 (FCTD) (Vacancies factored into value of rental property); *R. v. Mastronardi Estate*, [1977] C.T.C. 355 (FCA) (Insurance payable to company on death of shareholder not rele-

vant to value of shares "immediately before his death"); *Katz Estate v. R.*, [1976] C.T.C. 633 (FCTD) (Deemed disposition is for purposes of both capital gain and recapture of capital cost allowance).

I.T. Application Rules: 20(1.2) (where depreciable property owned since before 1972 is transferred on death).

Interpretation Bulletins: IT-140R3: Buy-sell agreements; IT-242R: Retired partners; IT-217R: Depreciable property owned on December 31, 1971 (archived); IT-259R4: Exchanges of property; IT-278R2: Death of a partner or of a retired partner; IT-288R2: Gifts of capital properties to a charity and others; IT-305R4: Testamentary spouse trusts; IT-325R2: Property transfers after separation, divorce and annulment; IT-382: Debts bequeathed or forgiven on death (archived); IT-349R3: Intergenerational transfers of farm property on death; IT-416R3: Valuation of shares of a corporation receiving life insurance proceeds on death of a shareholder; IT-504R2: Visual artists and writers; IT-522R: Vehicle, travel and sales expenses of employees.

Information Circulars: 89-3: Policy statement on business equity valuations.

Forms: RC4111: What to do following a death [guide]; T4011: Preparing returns for deceased persons [guide].

(5.1) Eligible capital property of deceased — Notwithstanding subsection 24(1), where at any time a taxpayer dies and any person (in this subsection referred to as the beneficiary), as a consequence of the taxpayer's death, acquires an eligible capital property of the taxpayer in respect of a business carried on by the taxpayer immediately before that time (otherwise than by way of a distribution of property by a trust that claimed a deduction under paragraph 20(1)(b) in respect of the property or in circumstances to which subsection 24(2) applies),

(a) the taxpayer shall be deemed to have disposed of the property, immediately before the taxpayer's death, for proceeds equal to 4/3 of that proportion of the cumulative eligible capital of the taxpayer in respect of the business that the fair market value immediately before that time of the property is of the fair market value immediately before that time of all of the eligible capital property of the taxpayer in respect of the business;

(b) subject to paragraph (c), the beneficiary shall be deemed to have acquired a capital property at the time of the taxpayer's death at a cost equal to the proceeds referred to in paragraph (a);

(c) where the beneficiary continues to carry on the business previously carried on by the taxpayer, the beneficiary shall be deemed to have, at the time of the taxpayer's death, acquired an eligible capital property and made an eligible capital property expenditure at a cost equal to the total of

(i) the proceeds referred to in paragraph (a), and

(ii) 4/3 of that proportion of the amount, if any, determined for F in the definition "cumulative eligible capital" in subsection 14(5) in respect of the business of the taxpayer at that time that the fair market value immediately before that time of the particular property is of the fair market value immediately before that time of all eligible capital property of the taxpayer in respect of the business,

and, for the purposes of determining at any time the beneficiary's cumulative eligible capital in respect of the business, an amount equal to 3/4 of the amount determined under subparagraph (ii) shall be added to the amount otherwise determined, in respect of the business, for P in the definition "cumulative eligible capital" in subsection 14(5); and

(d) for the purpose of determining, after that time, the amount required by paragraph 14(1)(b) to be included in computing the income of the beneficiary in respect of any subsequent disposition of the property of the business, there shall be added to the amount determined for Q in the definition "cumulative eligible capital" in subsection 14(5) the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount, if any, determined for Q in that definition in respect of the business of the taxpayer immediately before that time,

B is the fair market value immediately before that time of the particular property, and

C is the fair market value immediately before that time of all eligible capital property of the taxpayer in respect of the business.

Related Provisions: 14(1) — Inclusion in income from business; 24(1) — Ceasing to carry on business; 24(2) — Where business carried on by spouse or controlled corporation; 110.6(1)"qualified farm property"(d)(ii) — Capital gains exemption; 248(8) — Occurrences as a consequence of death.

History: The portion of para. 70(5.1)(d) before the formula amended by 2001, c. 17, subsec. 52(1), applicable to taxation years that end after February 27, 2000. The portion formerly read:

(d) for the purposes of determining, after that time,

(i) the amount deemed by subparagraph 14(1)(a)(v) to be the beneficiary's taxable capital gain, and

(ii) the amount to be included under subparagraph 14(1)(a)(v) or paragraph 14(1)(b) in computing the beneficiary's income

in respect of any subsequent disposition of the property of the business, there shall be added to the amount determined for Q in the definition "cumulative eligible capital" in [subsection] 14(5) the amount determined by the formula

Subpara. 70(5.1)(d)(ii) amended by 1995, c. 3, s. 18, applicable to dispositions and acquisitions that occur after February 22, 1994. Subpara. (ii) formerly read:

(ii) the amount to be included under paragraph 14(1)(b) in computing the beneficiary's income

Para. 70(5.1)(b) and the opening words of para. (c) substituted by 1994, c. 21, subsec. 33(3) and (4), applicable to dispositions and acquisitions occurring after 1992. Para. (b) and the opening words of para. (c) formerly read:

(b) subject to paragraph (c), the beneficiary shall be deemed to have acquired a capital property, immediately after the death of the taxpayer, at a cost equal to the proceeds referred to in paragraph (a);

(c) where the beneficiary continues to carry on the business previously carried on by the taxpayer, the beneficiary shall be deemed to have acquired an eligible capital property and to have made an eligible capital expenditure at a cost equal to the total of

Para. 70(5.1)(d) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 28(2), applicable to acquisitions occurring as a consequence of the death of a taxpayer after the beginning of the first fiscal period of the taxpayer's business beginning after 1987.

Subsec. 70(5.1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 48(1), applicable to acquisitions occurring as a consequence of the death of a taxpayer after the beginning of the first fiscal period of the taxpayer's business beginning after 1987, except that in applying the subsec. in respect of acquisitions occurring before July 13, 1990 the subsec. shall be read without reference to "(otherwise than under a distribution of property by a trust that has claimed a deduction under paragraph 20(1)(b) in respect of the property or in circumstances to which subsection 24(2) applies)". Subsec. 70(5.1) formerly read:

(5.1) Eligible capital property of deceased — Notwithstanding subsection 24(1), where in a taxation year a taxpayer has died and any person (other than a spouse or corporation to whom subsection 24(2) applies), as a consequence of the death of the taxpayer, has

acquired any particular eligible capital property of the taxpayer, the following rules apply:

(a) the taxpayer shall be deemed to have disposed, immediately before the taxpayer's death, of the property and to have received proceeds of disposition therefor in respect of a business carried on by the taxpayer equal to 4/3 of the cumulative eligible capital in respect of the business at that time; and

(b) the person who has so acquired the property shall be deemed to have acquired a capital property, immediately after the death of the taxpayer, at a cost equal to the proceeds of disposition referred to in paragraph (a), except that, where the person continues to carry on the business previously carried on by the taxpayer, the person shall be deemed to have acquired an eligible capital property and to have made an eligible capital expenditure at a cost equal to the total of

(i) the proceeds of disposition referred to in paragraph (a), and

(ii) the amount, if any, determined for F in the definition "cumulative eligible capital" in subsection 14(5) in respect of the business of the taxpayer at that time

and, for the purposes of determining at any time the person's cumulative eligible capital in respect of the business, an amount equal to the amount determined under subparagraph (ii) shall be added to the amount otherwise determined for P in that definition.

Interpretation Bulletins: IT-313R2: Eligible capital property — rules where a taxpayer has ceased carrying on a business or has died.

(5.2) Resource properties and land inventories of a deceased taxpayer — Where in a taxation year a taxpayer dies,

(a) the taxpayer is deemed to have, immediately before the taxpayer's death, disposed of each Canadian resource property and foreign resource property of the taxpayer and received proceeds of disposition for that property equal to its fair market value immediately before the death;

(a.1) subject to subparagraph (b)(ii), any particular person who as a consequence of the taxpayer's death acquires any property that is deemed by paragraph (a) to have been disposed of by the taxpayer is deemed to have acquired the property at the time of the death at a cost equal to the fair market value of the property immediately before the death;

(b) notwithstanding paragraph (a), where the taxpayer was resident in Canada immediately before the taxpayer's death, any Canadian resource property or foreign resource property of the taxpayer that is, on or after the death and as a consequence of the death, transferred or distributed to a spouse or common-law partner of the taxpayer described in paragraph (6)(a) or a trust described in paragraph (6)(b) and it can be shown within the period ending 36 months after the death or, where written application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister considers reasonable in the circumstances, that the property vested indefeasibly in the spouse or common-law partner or trust, as the case may be,

(i) the taxpayer shall be deemed to have, immediately before the death, disposed of the property and received proceeds of disposition therefor equal to such amount as is specified by the taxpayer's legal representative in the return of income of the taxpayer filed under paragraph 150(1)(b), not exceeding its fair market value immediately before the death, and

(ii) the spouse, common-law partner or trust, as the case may be, is deemed to have acquired the property at the time of the death at a cost equal to the amount determined in respect of the disposition under subparagraph (i);

(c) the taxpayer is deemed to have, immediately before the taxpayer's death, disposed of each property that was land included in the inventory of a business of the taxpayer and received proceeds of disposition for that property equal to its fair market value immediately before the death;

(c.1) subject to subparagraph (d)(ii), any particular person who as a consequence of the taxpayer's death acquires any property that is deemed by paragraph (c) to have been disposed of by the taxpayer is deemed to have acquired the property at the time of the death at a cost equal to the fair market value of the property immediately before the death; and

(d) notwithstanding paragraph (c), where the taxpayer was resident in Canada immediately before the taxpayer's death, any property that is land included in the inventory of a business of the taxpayer is, on or after the death and as a consequence of the death, transferred or distributed to a spouse or common-law partner of the taxpayer described in paragraph (6)(a) or a trust described in paragraph (6)(b) and it can be shown within the period ending 36 months after the death of the taxpayer or, where written application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister considers reasonable in the circumstances, that the property vested indefeasibly in the spouse or common-law partner or trust, as the case may be,

(i) the taxpayer shall be deemed to have, immediately before the death, disposed of the land and received proceeds of disposition therefor equal to its cost amount to the taxpayer immediately before the death, and

(ii) the spouse or common-law partner or trust, as the case may be, shall be deemed to have acquired the property at the time of the death at a cost equal to those proceeds.

Proposed Amendment — 70(5.2)

(5.2) Resource property, land inventory and property subject to s. 94.2(3) of deceased — If in a taxation year a taxpayer dies,

(a) the taxpayer is deemed

(i) to have disposed, at the time that is immediately before the taxpayer's death, of each

(A) Canadian resource property of the taxpayer,

(B) foreign resource property of the taxpayer,

(C) property that was land included in the inventory of a business of the taxpayer, and

(D) property in respect of which subsection 94.2(3) applies (and subsection 94.2(20) does not apply) to the taxpayer for the taxation year, and

(ii) subject to paragraph (c), to have received at that time proceeds of disposition for each such property equal to its fair market value at that time;

(b) any person who, as a consequence of the taxpayer's death, acquires a property that is deemed by paragraph (a) to have been disposed of by the taxpayer is, subject to paragraph (c), deemed to have acquired the property at the time of the death at a cost equal to its fair market value at the time that is immediately before the death; and

(c) where the taxpayer was resident in Canada at the time that is immediately before the taxpayer's death, a particular property described in clause (a)(i)(A), (B) or (C) is, on or after the death and as a consequence of the death, transferred or distributed to a spouse or common-law partner of the taxpayer described in paragraph (6)(a) or a trust described in paragraph (6)(b), and it can be shown within the period that ends 36 months after the death (or, where written application has been made to the Minister by the taxpayer's legal representative within that period, within any longer period that the Minister considers reasonable in the circumstances) that the particular property has, within that period, vested indefeasibly in the spouse, common-law partner or trust, as the case may be,

(i) the taxpayer is deemed to have received, at the time that is immediately before the taxpayer's death, proceeds of disposition of the particular property equal to

(A) where the particular property is Canadian resource property of the taxpayer or foreign resource property of the taxpayer, the amount specified by the taxpayer's legal representative in the taxpayer's return of income filed under paragraph 150(1)(b), not exceeding its fair market value at that time, and

(B) where the particular property was land included in the inventory of a business of the taxpayer, its cost amount to the taxpayer at that time, and

(ii) the spouse, common-law partner or trust, as the case may be, is deemed to have acquired at the time of the death the particular property at a cost equal to the amount determined under subparagraph (i) in respect of the disposition of it under paragraph (a).

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 9(2), will amend subsec. 70(5.2) to read as above, applicable to taxation years that begin after 2002.

Technical Notes: Subsection 70(5.2) provides rules with respect to the disposition of resource properties and land inventories on the death of an individual.

Subsection 70(5.2) is amended so that it also applies to property in respect of which new subsection 94.2(3) applied (and subsection 94.2(20) does not apply) for the individual's taxation year in which the individual dies. With respect to such property, amended paragraph 70(5.2)(a) provides for a deemed disposition, immediately before the death of the individual, for proceeds of disposition equal to the fair market value of the property at that time. New subsection 94.2(3) sets out the conditions for the application of the mark-to-market taxation regime under section 94.2 for participating interests in foreign investment entities.

In the case of a property in respect of which subsection 94.2(3) applied (and subsection 94.2(20) does not apply) for the individual's taxation year in which the individual dies, the proceeds of disposition are included in the value of A in the mark-to-market formula for the taxation year in respect of the property. This formula applies in computing the deceased's income under subsection 94.2(4) for the taxation year of death. The deceased is treated as not having held the interest after death.

Paragraph 70(5.2)(b) is amended to provide that properties in respect of which a deemed disposition occurs under paragraph 70(5.2)(a) are deemed to have been acquired, by the person who as a consequence of the individual's death acquires the property, at a cost equal to its fair market value immediately before that death.

Where certain resource properties and land inventories held by an individual immediately before death are deemed, under paragraph 70(5.2)(a) and (b), to have been disposed of by the individual and acquired at a particular cost by another person, new paragraph 70(5.2)(c) sets out the conditions under which it will apply, instead of 70(5.2)(a) and (b), to determine the proceeds of disposition and cost of acquisition resulting from that deemed disposition and that acquisition. In particular, where the conditions in paragraph (c) are met, subparagraph 70(5.2)(c)(i) applies to determine the deceased individual's proceeds from the deemed disposition under paragraph (a) of a land inventory or resource property. In turn, subparagraph 70(5.2)(c)(ii) deems the land inventory or resource property to have been acquired at the time of the individual's death at a cost equal to the amount determined under subparagraph (i) in respect of the deemed disposition of the property under paragraph 70(5.2)(a).

Related Provisions: 104(4)(a)(i.1) — Deemed disposition of trust property; 159(5) — Election where certain provisions applicable; 248(8) — Occurrences as a consequence of death; 248(9.2) — Meaning of "vested indefeasibly".

History: Para. 70(5.2)(a) amended, applicable to taxation years that begin after 2000, and para. (a.1) added, applicable to acquisitions that occur after 1992, by 2001, c. 17, subsec. 52(2). Para. (a) formerly read:

(a) for the purposes of subsection 59(1), paragraph (a) of the description of F in the definition "cumulative Canadian development expense" in subsection 66.2(5) and paragraph (a) of the description of F in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5), the taxpayer shall be deemed to have, immediately before the taxpayer's death, disposed of each Canadian resource property and foreign resource property of the taxpayer and received proceeds of disposition therefor equal to its fair market value immediately before the death;

Subpara. 70(5.2)(b)(ii) amended by the said c. 17, subsec. 52(3), applicable to taxation years that begin after 2000. The subpara. formerly read:

(ii) the spouse or common-law partner or trust, as the case may be, shall be deemed to have acquired the property at the time of the death at a cost equal to the amount included in the taxpayer's income under subsection 59(1) or included in the amount determined under paragraph (a) of the description of F in the definition "cumulative Canadian development expense" in subsection 66.2(5) or paragraph (a) of the description of F in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5), as the case may be, in respect of the property;

Para. 70(5.2)(c) amended, applicable to taxation years that begin after 2000, and para. (c.1) added, applicable to acquisitions that occur after 1992, by the said c. 17, subsec. 52(4). Para. (c) formerly read:

(c) the taxpayer shall be deemed to have, immediately before the taxpayer's death, disposed of each property that was land included in the inventory of a business of the taxpayer and received proceeds of disposition therefor equal to its fair market value immediately before the death; and

Subsec. 70(5.2) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subsec. 70(5.2) substituted by 1994, c. 21, subsec. 33(5), applicable to dispositions and acquisitions occurring after 1992. That subsec. formerly read:

(5.2) Resource properties and land inventories of deceased taxpayer — Where in a taxation year a taxpayer has died, the following rules apply:

(a) for the purposes of subsection 59(1), paragraph (a) of the description of F in the definition "cumulative Canadian development expense" in subsection 66.2(5) and paragraph (a) of the description of F in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5), the taxpayer shall be deemed to have, immediately before the taxpayer's death, disposed of each property owned by the taxpayer at that time that was a Canadian resource property or a foreign resource property and to have received proceeds of disposition therefor equal to its fair market value at that time;

(b), (c) [Repealed under former Act]

(d) notwithstanding paragraph (a), where any property of a taxpayer who was resident in Canada immediately before the taxpayer's death that is a Canadian resource property or foreign

resource property has, on or after the death of the taxpayer and as a consequence thereof, been transferred or distributed to the taxpayer's spouse referred to in paragraph (6)(a) or a trust referred to in paragraph (6)(b), if it can be shown, within the period ending 36 months after the death of the taxpayer or, where written application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister considers reasonable in the circumstances, that the property has become vested indefeasibly in the spouse or trust, as the case may be, the following rules apply:

(i) the taxpayer shall be deemed to have disposed of the property immediately before the taxpayer's death and to have received proceeds of disposition therefor equal to such amount as is specified by the taxpayer's legal representative in the return of income of the taxpayer referred to in paragraph 150(1)(b), not exceeding the fair market value of the property immediately before the taxpayer's death, and

(ii) the spouse or trust, as the case may be, shall be deemed to have acquired the property for an amount equal to the amount included in the taxpayer's income by virtue of subsection 59(1) or included in the amount determined under paragraph (a) of the description of F in the definition "cumulative Canadian development expense" in subsection 66.2(5) or paragraph (a) of the description of F in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5), as the case may be, in respect of the property;

(e) the taxpayer shall be deemed to have disposed, immediately before the taxpayer's death, of each property that was land included in the inventory of a business of the taxpayer and to have received proceeds of disposition therefor equal to the fair market value of the property at that time; and

(f) notwithstanding paragraph (e), where any property of a taxpayer who was resident in Canada immediately before the taxpayer's death that is land included in the inventory of a business has, on or after the taxpayer's death and as a consequence thereof, been transferred or distributed to the taxpayer's spouse referred to in paragraph (6)(a) or a trust referred to in paragraph (6)(b), if it can be shown within the period ending 36 months after the death of the taxpayer or, where written application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister considers reasonable in the circumstances, that the property has become vested indefeasibly in the spouse or trust, as the case may be, the taxpayer shall be deemed to have disposed of the land immediately before the taxpayer's death and to have received proceeds of disposition therefor equal to the cost amount thereof immediately before the taxpayer's death and the spouse or trust, as the case may be, shall be deemed to have acquired the property for an amount equal to those proceeds.

Interpretation Bulletins: IT-125R4: Dispositions of resource properties; IT-212R3: Income of deceased persons — rights or things; IT-449R: Meaning of "vested indefeasibly" (archived).

(5.3) Fair market value — For the purposes of subsections (5) and 104(4) and section 128.1, the fair market value at any time of any property deemed to have been disposed of at that time as a consequence of a particular individual's death or as a consequence of the particular individual becoming or ceasing to be resident in Canada shall be determined as though the fair market value at that time of any life insurance policy, under which the particular individual (or any other individual not dealing at arm's lenth with the particular individual at that time or at the time the policy was issued) was a person whose life was insured, were the cash surrender value (as defined in subsection 148(9)) of the policy immediately before the particular individual died or became or ceased to be resident in Canada, as the case may be.

Related Provisions: 139.1(5) — Value of ownership rights in insurer during demutualization; 248(8) — Occurrences as a consequence of death; 251 — Arm's length.

History: Subsec. 70(5.3) amended by 2001, c. 17, subsec. 52(5), applicable to dispositions that occur after October 1, 1996. The subsec. formerly read:

(5.3) For the purposes of subsection (5) of this section and subsections 70(9.4) and (9.5) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, the fair market value, immediately before the death of the taxpayer referred to in any of those subsections, of any share of the capital stock of a corporation deemed to have been disposed of as a consequence of the taxpayer's death shall be determined as though the fair market value at that time of any life insurance policy under which the taxpayer was the person whose life was insured were the cash surrender value (within the meaning assigned by subsection 148(9)) of the policy at that time.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-416R3: Valuation of shares of a corporation receiving life insurance proceeds on death of a shareholder.

Information Circulars: 89-3: Policy statement on business equity valuations.

(5.4) NISA on death — Where a taxpayer who dies has at the time of death a net income stabilization account, all amounts held for or on behalf of the taxpayer in the taxpayer's NISA Fund No. 2 shall be deemed to have been paid out of that fund to the taxpayer immediately before that time.

Related Provisions: 12(10.2) — NISA receipts; 248(9.1) — Whether trust created by taxpayer's will.

History: Subsec. 70(5.4) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 28(3), applicable to 1991 *et seq.*

Interpretation Bulletins: IT-212R3: Income of deceased persons — rights or things; IT-305R4: Testamentary spouse trusts.

(6) Where transfer or distribution to spouse [or common-law partner] or spouse trust — Where any property of a taxpayer who was resident in Canada immediately before the taxpayer's death that is a property to which subsection (5) would otherwise apply is, as a consequence of the death, transferred or distributed to

(a) the taxpayer's spouse or common-law partner who was resident in Canada immediately before the taxpayer's death, or

(b) a trust, created by the taxpayer's will, that was resident in Canada immediately after the time the property vested indefeasibly in the trust and under which

(i) the taxpayer's spouse or common-law partner is entitled to receive all of the income of the trust that arises before the spouse's or common-law partner's death, and

(ii) no person except the spouse or common-law partner may, before the spouse's or common-law partner's death, receive or otherwise obtain the use of any of the income or capital of the trust,

if it can be shown, within the period ending 36 months after the death of the taxpayer or, where written application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister considers reasonable in the circumstances, that the property has become vested indefeasibly in the spouse or common-law partner or trust, as the case may be, the following rules apply:

(c) paragraphs (5)(a) and (b) do not apply in respect of the property,

(d) subject to paragraph (d.1), the taxpayer shall be deemed to have, immediately before the taxpayer's

death, disposed of the property and received proceeds of disposition therefor equal to

(i) where the property was depreciable property of a prescribed class, the lesser of the capital cost and the cost amount to the taxpayer of the property immediately before the death, and

(ii) in any other case, its adjusted cost base to the taxpayer immediately before the death,

and the spouse or common-law partner or trust, as the case may be, shall be deemed to have acquired the property at the time of the death at a cost equal to those proceeds,

(d.1) where the property is an interest in a partnership (other than an interest in a partnership to which subsection 100(3) applies),

(i) the taxpayer shall, except for the purposes of paragraph 98(5)(g), be deemed not to have disposed of the property as a consequence of the taxpayer's death,

(ii) the spouse or common-law partner or the trust, as the case may be, shall be deemed to have acquired the property at the time of the death at a cost equal to its cost to the taxpayer, and

(iii) each amount added or deducted in computing the adjusted cost base to the taxpayer of the property shall be deemed to be required by subsection 53(1) or (2) to be added or deducted, as the case may be, in computing the adjusted cost base to the spouse or common-law partner or the trust, as the case may be, of the property; and

(e) where the property was depreciable property of the taxpayer of a prescribed class, paragraph (5)(c) applies as if the references therein to "paragraph (a)" and to "paragraph (b)" were read as references to "paragraph (6)(d)".

Related Provisions: 40(3.18)(a) — Grandfathering of partnership interest transferred under 70(6)(d.1); 40(4) — Where principal residence disposed of to spouse or spouse trust; 44.1(4) — Treatment of small business investment rollover on death; 70(6.2) — Election; 70(7) — Special rules applicable re spouse trust; 70(9.1), (9.3) — Transfer of farm property from spouse trust to settlor's children; 72(2) — Election by legal representative and transferee re reserves; 73(1.01) — *Inter vivos* transfer of property; 94(4)(b) [proposed] — Deeming non-resident trust to be resident in Canada does not apply; 104(4)(a)(i.1) — Trust — deemed disposition on death of spouse; 108(3) — Income of trust; 108(4) — Trust not disqualified by reason only of payment of certain duties and taxes; 148(8.2) — Rollover of life insurance policy to spouse on death; 248(8) — Occurrences as a consequence of death; 248(9.1) — Whether trust created by taxpayer's will; 248(9.2) — Meaning of "vested indefeasibly"; 248(23.1) — Transfer under provincial family law after death; 252(3) — Extended meaning of "spouse"; 256(7)(a)(i)(D) — Control of corporation deemed not acquired; Canada-U.S. Tax Treaty:Art. XXVI:3(g) — Relief from double taxation; Art. XXIX-B:5, 6 — Credit for U.S. estate taxes.

History: Subsec. 70(6) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", and by Sch. 2, s. 7 to replace "spouse's"with "spouse's or common-law partner's", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Para. 70(6)(d) and subpara. (d.1)(ii) substituted by 1994, c. 21, subsecs. 33(6), (7), applicable to dispositions and acquisitions occurring after 1992. That para. and subpara. formerly read:

(d) subject to paragraph (d.1), the taxpayer shall be deemed to have disposed of the property immediately before the taxpayer's death and to have received proceeds of disposition therefor equal to,

(i) where the property was depreciable property of the taxpayer of a prescribed class, that proportion of the undepreciated capital cost to the taxpayer immediately before the taxpayer's death of all of the depreciable property of the taxpayer of that class that the fair market value at that time of the property is of the fair market value at that time of all of the depreciable property of the taxpayer of that class, and

(ii) in any other case, the adjusted cost base to the taxpayer of the property immediately before the taxpayer's death,

and the spouse or trust, as the case may be, shall be deemed to have acquired the property for an amount equal to those proceeds,

. . . . .

(ii) the spouse or the trust, as the case may be, shall be deemed to have acquired the property for an amount equal to the cost thereof to the taxpayer, and

That portion of subsec. 70(6) preceding para. (a), and paras. (c) and (e) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsecs. 28(4) to (6), applicable to dispositions occurring after 1992. Those portions formerly read:

(6) Where transfer or distribution to spouse or trust — Where any property of a taxpayer who was resident in Canada immediately before the taxpayer's death that is a property to which paragraphs (5)(a) and (c), or (5)(b) and (d), as the case may be, would otherwise apply has, on or after the taxpayer's death and as a consequence thereof been transferred or distributed to

. . . . .

(c) paragraphs (5)(a) to (d) are not applicable to the property,

. . . . .

(e) where the property was depreciable property of the taxpayer of a prescribed class, paragraph (5)(e) is applicable as if the reference therein to "paragraph (b)" and to "paragraph (d)" were read as references to "paragraph (6)(d)".

That portion of para. 70(6)(d) preceding subpara. (i) amended to add "subject to paragraph (d.1), and para. (d.1) added, by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 48(2), (3), applicable to transfers, distributions and acquisitions occurring after January 15, 1987.

Selected Cases [subsec. 70(6)]: *Husel Estate v. Canada*, [1995] 1 C.T.C. 2298 (TCC) (Rollover appplies only if property received *qua* beneficiary); *Labbé v. Canada*, [1995] 1 C.T.C. 2209 (TCC) (Interposition of holding company disqualifies shares as family farm corporation); *Greenwood Estate v. Canada*, [1991] 1 C.T.C. 47 (FCTD); appealed to FCA (April 29, 1991), File A-371-91 (Agreement between sons and father to purchase shares on death prevents shares from vesting indefeasibly in spousal trust); *Hillis v. R.*, [1983] C.T.C. 348 (FCA) (Rollover to spouse only on one-third of intestate succession after sons renounced two-thirds to which they were entitled).

I.T. Application Rules: 20(1.1)(a) (property owned since before 1972).

Interpretation Bulletins: IT-125R4: Dispositions of resource properties; IT-236R4: Reserves — disposition of capital property (archived); IT-242R: Retired partners; IT-259R4: Exchange of property; IT-278R2: Death of a partner or of a retired partner; IT-305R4: Testamentary spouse trusts; IT-321R: Insurance agents and brokers — unearned commissions (archived); IT-325R2: Property transfers after separation, divorce and annulment; IT-382: Debts bequeathed or forgiven on death (archived); IT-449R: Meaning of "vested indefeasibly" (archived); IT-522R: Vehicle, travel and sales expenses of employees.

Advance Tax Rulings: ATR-37: Refund of premiums transferred to spouse.

Forms: T4011: Preparing returns for deceased persons [guide].

(6.1) Transfer or distribution of NISA to spouse [or common-law partner] or trust — Where a property that is a net income stabilization account of a taxpayer is, on or after the taxpayer's death and as a consequence thereof, transferred or distributed to

(a) the taxpayer's spouse or common-law partner, or

(b) a trust, created by the taxpayer's will, under which

(i) the taxpayer's spouse or common-law partner is entitled to receive all of the income of the trust that arises before the spouse's or common-law partner's death, and

(ii) no person except the spouse or common-law partner may, before the spouse's or common-law partner's death, receive or otherwise obtain the use of any of the income or capital of the trust,

subsections (5.4) and 73(5) do not apply in respect of the taxpayer's NISA Fund No. 2 if it can be shown, within the period ending 36 months after the death of the taxpayer or, where written application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister considers reasonable in the circumstances, that the property has vested indefeasibly in the spouse or common-law partner or trust, as the case may be.

Related Provisions: 12(10.2) — NISA receipts; 70(6.2) — Election; 70(7) — Special rules applicable re spouse trust; 104(5.1) — NISA Fund No. 2 held by spousal trust; 104(6) — Deduction in computing income of trust; 104(14.1) — NISA election; 108(3) — Meaning of "income" of trust; 108(4) — Trust not disqualified by reason only of payment of certain duties and taxes; 248(8) — Occurrences as a consequence of death; 248(9.1) — Whether trust created by taxpayer's will; 248(9.2) — Meaning of "vested indefeasibly"; 252(3) — Extended meaning of "spouse".

History: Subsec. 70(6.1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", and by Sch. 2, s. 7 to replace "spouse's"with "spouse's or common-law partner's", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subsec. 70(6.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 28(8), applicable to 1991 *et seq.*

Interpretation Bulletins: IT-212R3: Income of deceased persons — rights or things; IT-305R4: Testamentary spouse trusts.

History [former subsec. 70(6.1)]: Former subsec. 70(6.1) repealed by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 28(7), applicable to 1990 *et seq.* That subsec. had read:

> (6.1) How trust created — For the purposes of subsection (6) and paragraph 104(4)(a), a trust shall be considered to be created by a taxpayer's will if the trust is created
>
> (a) under the terms of the taxpayer's will; or
>
> (b) by an order of a court in relation to the taxpayer's estate made pursuant to any law of a province providing for the relief or support of dependants.

(6.2) Election — Subsection (6) or (6.1) does not apply to any property of a deceased taxpayer in respect of which the taxpayer's legal representative elects, in the taxpayer's return of income under this Part (other than a return of income filed under subsection (2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) for the year in which the taxpayer died, to have subsection (5) or (5.4), as the case may be, apply.

Related Provisions: 220(3.2), Reg. 600(b) — Late filing or revocation of election.

History: Subsec. 70(6.2) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 28(8), applicable to 1991 *et seq.* That subsec. formerly read:

> (6.2) Subsection (6) does not apply to any property of a deceased taxpayer in respect of which the legal representative of the taxpayer has elected, in the return of income of the taxpayer for the year in which the taxpayer died, to have subsection (5) apply.

Interpretation Bulletins: IT-305R4: Testamentary spouse trusts.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

(7) Special rules applicable in respect of trust for benefit of spouse [or common-law partner] — Where a trust created by a taxpayer's will would, but for the payment of, or provision for payment of, any particular testamentary debts in respect of the taxpayer, be a trust to which subsection (6) or (6.1) applies,

(a) for the purpose of determining the day on or before which a return (in this subsection referred to as the "taxpayer's return") of the taxpayer's income for the taxation year in which the taxpayer died is required to be filed by the taxpayer's legal representatives, subsection 150(1) shall be read without reference to paragraph 150(1)(b) and as if paragraph 150(1)(d) read as follows:

> "(d) in the case of any other person, by the person's legal representative within 18 months after the person's death; or"; and

(b) where the taxpayer's legal representative so elects in the taxpayer's return (other than a return of income filed under subsection (2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) and lists therein one or more properties (other than a net income stabilization account) that were, on or after the taxpayer's death and as a consequence thereof, transferred or distributed to the trust, the total fair market value of which properties immediately after the taxpayer's death was not less than the total of the non-qualifying debts in respect of the taxpayer,

> (i) subsection (6) does not apply in respect of the properties so listed, and
>
> (ii) notwithstanding the payment of, or provision for payment of, any such particular testamentary debts, the trust shall be deemed to be a trust described in subsection (6),

except that, where the fair market value, immediately after the taxpayer's death, of all of the properties so listed exceeds the total of the non-qualifying debts in respect of the taxpayer (the amount of which excess is referred to in this subsection as the "listed value excess") and the taxpayer's legal representative designates in the taxpayer's return one property so listed (other than money) that is capital property other than depreciable property,

> (iii) the amount of the taxpayer's capital gain or capital loss, as the case may be, from the disposition of that property deemed by subsection (5) to have been made by the taxpayer is that proportion of that capital gain or capital loss otherwise determined that
>
> (A) the amount, if any, by which the fair market value of that property immediately after the taxpayer's death exceeds the listed value excess,
>
> is of
>
> (B) the fair market value of that property immediately after the taxpayer's death, and
>
> (iv) the cost to the trust of that property is
>
> (A) where the taxpayer has a capital gain from the disposition of that property deemed by subsection (5) to have been made by the taxpayer, the total of
>
> (I) its adjusted cost base to the taxpayer immediately before the taxpayer's death, and
>
> (II) the amount determined under subparagraph (iii) to be the taxpayer's capital gain from the disposition of that property, or
>
> (B) where the taxpayer has a capital loss from the disposition of that property deemed by subsection (5) to have been made by the taxpayer, the amount by which
>
> (I) its adjusted cost base to the taxpayer immediately before the taxpayer's death
>
> exceeds
>
> (II) the amount determined under subparagraph (iii) to be the taxpayer's capital loss from the disposition of that property.

Related Provisions: 70(8) — Meaning of certain expressions; 248(8) — Occurrences as a consequence of death; 248(9.1) — Whether trust created by taxpayer's will.

History: Para. 70(7)(a) amended by 1996, c. 21, s. 14, applicable after 1994. The para. formerly read:

> (a) for the purpose of determining the day on or before which a return (in this subsection referred to as the "taxpayer's return") of the taxpayer's income for the taxation year in which the taxpayer died is required to be filed by the taxpayer's legal representatives, subsection 150(1) shall be read without reference to paragraph 150(1)(b) and the reference in paragraph 150(1)(d) to "on or before April 30 in the next year" shall be read as a reference to "within 18 months after the person's death"; and

That portion of subsec. 70(7) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 28(9), applicable to 1991 *et seq.* That portion formerly read

> (7) Where a trust created by a taxpayer's will would, but for the payment of, or provision for payment of, any particular testamentary debts in respect of the taxpayer, be a trust described in subsection (6), the following rules apply:

All that portion of para. 70(7)(b) preceding subpara. (iii) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 28(10), applicable to 1991 *et seq.* That portion formerly read:

> (b) where the taxpayer's legal representative has so elected in the taxpayer's return and has listed therein one or more specified properties (including any money) that have, on or after the taxpayer's death and as a consequence thereof, been transferred or distributed to the trust, the total fair market value of which properties immediately after the taxpayer's death was not less than the total of the non-qualifying debts in respect of the taxpayer,
>
> (i) subsection (6) does not apply in respect of the specified properties so listed, and
>
> (ii) notwithstanding the payment of, or provision for payment of, any such particular testamentary debts, the trust shall be deemed to be a trust described in subsection (6),
>
> except that where the fair market value, immediately after the taxpayer's death, of all of the specified properties so listed exceeds the total of the non-qualifying debts in respect of the taxpayer (the amount of which excess is referred to in this subsection as the "listed value excess") and the taxpayer's legal representative has designated in the taxpayer's return one specified property so listed (other than money) that is a capital property other than depreciable property,

Para. 70(7)(a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 48(4), applicable to 1990 *et seq.* Para. 70(7)(a) formerly read:

> (a) for the purpose of determining the day on or before which a return (in this subsection referred to as the "taxpayer's return") of the taxpayer's income for the taxation year in which the taxpayer died is required to be filed by the taxpayer's legal representative, the reference in paragraph 150(1)(b) to "6 months" shall be read, except for the purposes of section 161, as a reference to "18 months"; and

Interpretation Bulletins: IT-305R4: Testamentary spouse trusts.

(8) Meaning of certain expressions in subsec. (7) — In subsection (7),

(a) the "fair market value" at any time of any property subject to a mortgage or hypothec is the amount, if any, by which the fair market value at that time of the property otherwise determined exceeds the amount outstanding at that time of the debt secured by the mortgage or hypothec, as the case may be;

(b) "non-qualifying debt" in respect of a taxpayer who has died and by whose will any trust has been created that would, but for the payment of, or provision for payment of, any particular testamentary debts in respect of the taxpayer, be a trust described in subsection (6), means any such particular testamentary debt in respect of the taxpayer other than

(i) any estate, legacy, succession or inheritance duty payable, in consequence of the taxpayer's death, in respect of any property of, or interest in, the trust, or

(ii) any debt secured by a mortgage or hypothec on property owned by the taxpayer immediately before the taxpayer's death; and

(c) "testamentary debt", in respect of a taxpayer who has died, means

(i) any debt owing by the taxpayer, or any other obligation of the taxpayer to pay an amount, that was outstanding immediately before the taxpayer's death, and

(ii) any amount payable (other than any amount payable to any person as a beneficiary of the taxpayer's estate) by the taxpayer's estate in consequence of the taxpayer's death,

including any income or profits tax payable by or in respect of the taxpayer for the taxation year in which the taxpayer died or for any previous taxation year, and any estate, legacy, succession or inheritance duty payable in consequence of the taxpayer's death.

Related Provisions: 248(8) — Occurrences as a consequence of death.

History: Para. 70(8)(a) and subpara. (b)(ii) amended by 2001, c. 17, s. 208 to add the words "or hypothec" (in three places), in force on June 14, 2001.

Interpretation Bulletins: IT-305R4: Testamentary spouse trusts.

(9) Transfer of farm property to child — If any land in Canada or depreciable property in Canada of a prescribed class of a taxpayer to which subsection (5) would otherwise apply was, before the taxpayer's death, used principally in a farming business in which the taxpayer, the taxpayer's spouse or common-law partner or any of the taxpayer's children was actively engaged on a regular and continuous basis (or, in the case of property used in the operation of a woodlot, was engaged to the extent required by a prescribed forest management plan in respect of that woodlot), the property is, as a consequence of the death, transferred or distributed to a child of the taxpayer who was resident in Canada immediately before the death and it can be shown, within the period ending 36 months after the death or, if written application that this subsection apply has been made to the Minister by the taxpayer's legal representative within that period, within any longer period that the Minister considers reasonable in the circumstances, that the property has vested indefeasibly in the child,

(a) paragraphs (5)(a) and (b) do not apply in respect of the property,

(b) the taxpayer shall be deemed to have, immediately before the taxpayer's death, disposed of the property and received proceeds of disposition therefor equal to

(i) where the property was depreciable property of a prescribed class, the lesser of the capital cost and the cost amount to the taxpayer of the property immediately before the death, and

(ii) where the property is land (other than land to which subparagraph (i) applies), its adjusted cost base to the taxpayer immediately before the death,

and the child shall be deemed to have acquired the property at the time of the death at a cost equal to those proceeds, and

(c) where the property was depreciable property of a prescribed class, paragraphs (5)(c) and (d) apply as if the references therein to "paragraph (a)" and "paragraph (b)" were read as "paragraph (9)(b)",

except that, where the taxpayer's legal representative so elects in the taxpayer's return of income under this Part for the year in which the taxpayer died, paragraph (b) shall be read as follows:

"(b) the taxpayer shall be deemed to have, immediately before the taxpayer's death, disposed of the property and received proceeds of disposition therefor equal to such amount as the legal representative elects in the taxpayer's return of income under this Part for the year in which the taxpayer died, not greater than the greater of nor less than the lesser of

(i) where the property was depreciable property of a prescribed class,

(A) its fair market value immediately before the death, and

(B) the lesser of the capital cost and the cost amount to the taxpayer of the property immediately before the death, and

(ii) where the property is land (other than land to which subparagraph (i) applies),

(A) its fair market value immediately before the death, and

(B) its adjusted cost base to the taxpayer immediately before the death,

and the child shall be deemed to have acquired the property at the time of the death at a cost equal to those proceeds, except that for the purpose of this paragraph, where the elected amount exceeds the greater of the amounts determined under clauses (i)(A) and (B) or (ii) (A) and (B), as the case may be, it shall be deemed to be equal to the greater thereof, and where the elected amount is less than the lesser of the amounts determined under clauses (i)(A) and (B) or (ii) (A) and (B), as the case may be, it shall be deemed to be equal to the lesser thereof, and".

Related Provisions: 70(9.6) — Transfer to parent; 70(9.8) — Farm property used by corporation or partnership; 70(10) — Definitions; 70(12) — Capital cost of certain depreciable property; 73(3) — *Inter vivos* transfer of farm property by farmer to his child; 220(3.2), Reg. 600(b) — Late filing or revocation of election; 248(8) — Occurrences as a consequence of death; 248(9.2) — Meaning of "vested indefeasibly".

History: The opening words of subsec. 70(9) amended by 2002, c. 9, subsec. 27(1), applicable to transfers of property that occur as a consequence of deaths that occur after December 10, 2001. The opening words formerly read:

(9) Where any land in Canada or depreciable property in Canada of a prescribed class of a taxpayer to which subsection (5) would otherwise apply was, before the taxpayer's death, used principally in the business of farming in which the taxpayer, the taxpayer's spouse or common-law partner or any of the taxpayer's children was actively engaged on a regular and continuous basis and the property is, as a consequence of the death, transferred or distributed to a child of the taxpayer who was resident in Canada immediately before the death and it can be shown, within the period ending 36 months after the death or, where written application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister considers reasonable in the circumstances, that the property has vested indefeasibly in the child,

Subsec. 70(9) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

All that portion of subsec. 70(9) following para. (a) substituted by 1994, c. 21, subsec. 33(8), applicable to dispositions and acquisitions occurring after 1992. That portion of the subsec. formerly read:

(b) the taxpayer shall be deemed to have disposed of the property immediately before the taxpayer's death and to have received proceeds of disposition therefor equal to,

(i) where the property was depreciable property of the taxpayer of a prescribed class, that proportion of the undepreciated capital cost to the taxpayer immediately before the taxpayer's death of all of the depreciable property of the taxpayer of that class that the fair market value at that time of the property was of the fair market value at that time of all of the depreciable property of the taxpayer of that class, and

(ii) where the property was land, its adjusted cost base to the taxpayer immediately before the taxpayer's death,

and the child shall be deemed to have acquired the property for an amount equal to those proceeds, and

(c) where the property was depreciable property of the taxpayer of a prescribed class, paragraph (5)(c) applies as if the references therein to "paragraph (a)" and to "paragraph (b)" were read as references to "paragraph (9)(b)",

except that, where the legal representative of the taxpayer has so elected in the taxpayer's return of income under this Part for the year in which the taxpayer died, paragraph (b) shall be read as follows:

"(b) the taxpayer shall be deemed to have disposed of the property immediately before the taxpayer's death and to have received proceeds of disposition therefor equal to such amount as the legal representative has elected, not greater than the greater of or less than the lesser of

(i) where the property was depreciable property of a prescribed class,

(A) the fair market value of the property immediately before the death of the taxpayer, and

(B) that portion of the undepreciated capital cost to the taxpayer immediately before the taxpayer's death of all the depreciable property of that class of the taxpayer that the fair market value at that time of the property disposed of was of the fair market value at that time of all of the depreciable property of that class of the taxpayer, and

(ii) where the property was land not described in subparagraph (i),

(A) the fair market value of the land immediately before the taxpayer's death, and

(B) the adjusted cost base to the taxpayer of the land immediately before the taxpayer's death,

and the child shall be deemed to have acquired the property for an amount equal to those proceeds, except that for the purposes of this paragraph, where the elected amount exceeds the greater of the amounts determined under subparagraphs (i) and (ii), it shall be deemed to be equal to the greater thereof, and where the elected amount is less than the lesser of the amounts determined under those subparagraphs, it shall be deemed to be equal to the lesser thereof; and"

All that portion of subsec. 70(9) preceding para. (b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 28(11), applicable with respect to dispositions occurring after 1992. That portion formerly read:

(9) Transfer of farm property to child — Where any land in Canada or depreciable property in Canada of a prescribed class of a taxpayer to which paragraphs (5)(a) and (c) or (5)(b) and (d), as the case may be, would otherwise apply was, immediately before the taxpayer's death, used by the taxpayer, the taxpayer's spouse or any of the taxpayer's children in the business of farming and the property has, on or after the death of the taxpayer and as a consequence thereof, been transferred or distributed to a child of the taxpayer who was resident in Canada immediately before the death of the taxpayer and it can be shown, within the period ending 36 months after the death of the taxpayer or, where written application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister consid-

ers reasonable in the circumstances, that the property has become vested indefeasibly in the child, the following rules apply:

(a) paragraphs (5)(a) to (d) are not applicable to the property;

Para. 70(9)(c) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 28(12), applicable with respect to dispositions occurring after 1992. That para. formerly read:

(c) where the property was depreciable property of the taxpayer of a prescribed class, paragraph (5)(e) is applicable as if the reference therein to "paragraph (b)" and to "paragraph (d)" were read as references to "paragraph (9)(b)",

Selected Cases [subsec. 70(9)]: *Boger Estate v. MNR*, [1991] 2 C.T.C. 168 (FCTD); appealed to FCA (Nov. 28, 1991), File A-1199-91 (Bequeathed property unaffected by *Family Relief Act* order vested indefeasibly; rollover allowed).

Regulations: No prescribed forest management plans yet. The February 2002 technical notes state: "The 2001 Budget announced the Government's intention to develop specific criteria for prescribed forest management plans in consultation with interested parties. In respect of transfers of property before the announcement of these criteria, it is proposed that the regulations will reflect that a prescribed forest management plan is a plan of the deceased taxpayer in respect of the woodlot that provides for the necessary attention to the woodlot's growth, health, quality and composition" (see IT-373R2 para. 14).

I.T. Application Rules: 26(18) (farmland owned since before 1972).

Interpretation Bulletins: IT-349R3: Intergenerational transfers of farm property on death; IT-373R2: Woodlots; IT-382: Debts bequeathed or forgiven on death (archived); IT-449R: Meaning of "vested indefeasibly" (archived).

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

Forms: T4060: Farming income and NISA [guide].

(9.1) Transfer of farm property from trust to settlor's children — Where any property in Canada of a taxpayer that is land or depreciable property of a prescribed class has been transferred or distributed to a trust described in subsection (6) or subsection 73(1) (as that subsection applied to transfers before 2000) or a trust to which subparagraph 73(1.01)(c)(i) applies and the property or a replacement property for that property in respect of which the trust has made an election under subsection 13(4) or 44(1) was, immediately before the death of the taxpayer's spouse or common-law partner who was a beneficiary under the trust, used in the business of farming and has, on the death of the spouse or common-law partner and as a consequence of the death, been transferred or distributed to and vested indefeasibly in an individual who was a child of the taxpayer and who was resident in Canada immediately before the death of the spouse or common-law partner, the following rules apply:

(a) subsections 104(4) and (5) do not apply to the trust in respect of the property,

(b) the trust shall be deemed to have, immediately before the spouse's or common-law partner's death, disposed of the property and received proceeds of disposition therefor equal to

(i) where the property was depreciable property of a prescribed class, the lesser of the capital cost and the cost amount to the trust of the property immediately before the death, and

(ii) where the property is land (other than land to which subparagraph (i) applies), its adjusted cost base to the trust immediately before the death,

and the child shall be deemed to have acquired the property at the time of the death at a cost equal to those proceeds,

(c) where any depreciable property of a prescribed class that is deemed by paragraph (b) to have been disposed of by the trust is acquired by a child of the taxpayer as a consequence of the spouse's or common-law partner's death (other than where the trust's proceeds of disposition of the property under paragraph (b) are redetermined under subsection 13(21.1)) and the amount that was the capital cost to the trust of the property exceeds the amount determined under paragraph (b) to be the cost to the child of the property, for the purposes of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a),

(i) its capital cost to the child shall be deemed to be the amount that was its capital cost to the trust, and

(ii) the excess shall be deemed to have been allowed to the child in respect of the property under regulations made for the purpose of paragraph 20(1)(a) in computing income for taxation years that ended before the child acquired the property, and

(d) where the property of the trust that is deemed by paragraph (b) to have been disposed of is acquired by a child of the taxpayer as a consequence of the spouse's or common-law partner's death and the trust's proceeds of disposition of the property under paragraph (b) are redetermined under subsection 13(21.1), notwithstanding paragraph (b),

(i) where the property was depreciable property of a prescribed class and the amount that was its capital cost to the trust exceeds the amount so redetermined under subsection 13(21.1), for the purposes of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a),

(A) its capital cost to the child shall be deemed to be the amount that was its capital cost to the trust, and

(B) the excess shall be deemed to have been allowed to the child in respect of the property under regulations made for the purpose of paragraph 20(1)(a) in computing income for taxation years that ended before the child acquired the property, and

(ii) where the property is land (other than land to which subparagraph (i) applies), its cost to the child shall be deemed to be the amount that was the trust's proceeds of disposition as redetermined under subsection 13(21.1),

except that, where the trust so elects in its return of income under this Part for its taxation year in which the spouse or common-law partner died, paragraph (b) shall be read as follows:

"(b) the trust shall be deemed to have, immediately before the spouse's or common-law partner's death, disposed of the property and received proceeds of disposition therefor equal to such amount as the trust elects in its return of income under this Part for the year in which the spouse or common-law partner died, not greater than the greater of nor less than the lesser of

(i) where the property was depreciable property of a prescribed class,

(A) its fair market value immediately before the death, and

(B) the lesser of the capital cost and the cost amount to the trust of the property immediately before the death, and

(ii) where the property is land (other than land to which subparagraph (i) applies),

(A) its fair market value immediately before the death, and

(B) its adjusted cost base to the trust immediately before the death,

and the child shall be deemed to have acquired the property at the time of the death at a cost equal to those proceeds, except that for the purpose of this paragraph, where the elected amount exceeds the greater of the amounts determined under clauses (i)(A) and (B) or (ii)(A) and (B), as the case may be, it shall be deemed to be equal to the greater thereof, and where the elected amount is less than the lesser of the amounts determined under clauses (i)(A) and (B) or (ii)(A) and (B), as the case may be, it shall be deemed to be equal to the lesser thereof,".

Related Provisions: 70(9.6) — Transfer to parent; 70(10) — Definitions; 70(12) — Capital cost of certain depreciable property; 70(13) — Order of disposal of depreciable property; 73(4) — *Inter vivos* transfer of family farm corporations and partnerships; 220(3.2), Reg. 600(b) — Late filing or revocation of election; 248(8) — Occurrences as a consequence of death; 248(9.2) — Meaning of "vested indefeasibly".

History: The opening words of subsec. 70(9.1) amended by 2001, c. 17, subsec. 52(6), applicable to transfers and distributions from trusts that occur after 1999. Where a particular transfer or distribution to a trust referred to in amended subsec. 70(9.1) occurred before 2001, in applying that subsec. to a transfer or distribution from the trust that occurs after 1997, it shall be read without reference to the words "or common-law partner" and to the *Modernization of Benefits and Obligations Act*, 2000, c. 12, unless

(a) the particular transfer or distribution occurred after 1997;

(b) the death referred to in that subsec. occurs after 1997; and

(c) either

(i) at the time of the particular transfer or distribution referred to in para. (a), the taxpayer was a spouse of the individual whose death is referred to in para. (b), or

(ii) because of an election under s. 144 of 2000, c. 12, sections 130 to 142 of that Act applied, at the time of the particular transfer or distribution referred to in para. (a), to the taxpayer and the individual whose death is referred to in para. (b).

The opening words formerly read:

(9.1) Transfer of farm property from spouse's [or common-law partner's] trust to settlor's children — Where any property in Canada of a taxpayer that is land or depreciable property of a prescribed class has been transferred or distributed to a trust described in subsection (6) or subsection 73(1) and the property or a replacement property therefor in respect of which the trust has made an election under subsection 13(4) or 44(1) was, immediately before the death of the taxpayer's spouse or common-law partner who was a beneficiary under the trust, used in the business of farming and has, on the death of the spouse or common-law partner and as a consequence thereof, been transferred or distributed to and become vested indefeasibly in a child of the taxpayer who was resident in Canada immediately before the death of the spouse or common-law partner, the following rules apply:

Subsec. 70(9.1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", and by Sch. 2, s. 7 to replace "spouse's"with "spouse's or common-law partner's", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

All that portion of subsec. 70(9.1) following para. (a) substituted by 1994, c. 21, subsec. 33(9), applicable to dispositions and acquisitions occurring after 1992. That portion of the subsec. formerly read:

(b) the trust shall be deemed to have disposed of the property immediately before the death of the taxpayer's spouse and to have received proceeds of disposition therefor equal to,

(i) where the property was depreciable property of the trust of a prescribed class, that proportion of the undepreciated capital cost to the trust immediately before the death of the spouse of all of the depreciable property of the trust of that class that the fair market value at that time of the property was of the fair market value at that time of all of the depreciable property of the trust of that class, and

(ii) where the property was land, its adjusted cost base to the trust immediately before the death of the spouse,

and the child shall be deemed to have acquired the property for an amount equal to those proceeds, and

(c) where any depreciable property of the trust of a prescribed class that is deemed by paragraph (b) to have been disposed of by the trust has been acquired by a child of the taxpayer by virtue of the death of the taxpayer's spouse and the amount that was the capital cost to the trust of that property exceeds the amount determined under paragraph (b) to be the cost to the child of that property, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a),

(i) the capital cost to the child of the property shall be deemed to be the amount that was the capital cost to the trust of the property, and

(ii) the excess shall be deemed to have been allowed to the child in respect of the property under regulations made under paragraph 20(1)(a) in computing income for taxation years before the acquisition by the child of the property,

except that, where the trust has so elected in its return of income under this Part for its taxation year in which the taxpayer's spouse died, paragraph (b) shall be read as follows:

"(b) the trust shall be deemed to have disposed of the property immediately before the death of the taxpayer's spouse and to have received proceeds of disposition therefor equal to such amount as the trust has elected, not greater than the greater of or less than the lesser of

(i) where the property was depreciable property of a prescribed class,

(A) the fair market value of the property immediately before the death of the spouse, and

(B) that proportion of the undepreciated capital cost to the trust immediately before the death of the spouse of all the depreciable property of that class of the trust that the fair market value at that time of the property disposed of was of the fair market value at that time of all the depreciable property of that class of the trust, and

(ii) where the property was land not described in subparagraph (i),

(A) the fair market value of the land immediately before the death of the spouse, and

(B) the adjusted cost base to the trust of the land immediately before the death of the spouse,

and the child shall be deemed to have acquired the property for an amount equal to those proceeds, except that for the purposes of this paragraph, where the elected amount exceeds the greater of the amounts determined under subparagraphs (i) and (ii), it shall be deemed to be equal to the greater thereof, and where the elected amount is less than the lesser of the amounts determined under those subparagraphs, it shall be deemed to be equal to the lesser thereof; and".

Para. 70(9.1)(a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 28(13), applicable after December 20, 1991. That para. formerly read:

(a) subsections 104(4) and (5) are not applicable to the property;

Interpretation Bulletins: IT-349R3: Intergenerational transfers of farm property; IT-373R2: Woodlots; IT-449R: Meaning of "vested indefeasibly" (archived).

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

Forms: T4060: Farming income and NISA [guide].

(9.2) Transfer of family farm corporations and partnerships — Where at any time property of a taxpayer that was, immediately before the taxpayer's death, a share of the capital stock of a family farm corporation of the taxpayer or an interest in a family farm partnership of the taxpayer to which subsection (5) would otherwise apply is, as a consequence of the death, transferred or distributed to a child of the taxpayer who was resident in

Canada immediately before the death and it can be shown, within the period ending 36 months after the death or, where written application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister considers reasonable in the circumstances, that the property has vested indefeasibly in the child,

(a) subsection (5) does not apply in respect of the property, and

(b) where the property is a share of the capital stock of a family farm corporation, the taxpayer shall be deemed to have, immediately before the taxpayer's death, disposed of the property and received proceeds of disposition therefor equal to its adjusted cost base to the taxpayer immediately before the death, and the child shall be deemed to have acquired the property at the time of the death at a cost equal to those proceeds, and

(c) where the property is an interest in a family farm partnership (other than an interest in a partnership to which subsection 100(3) applies),

(i) the taxpayer shall, except for the purpose of paragraph 98(5)(g), be deemed not to have disposed of the property as a consequence of the taxpayer's death,

(ii) the child shall be deemed to have acquired the property at the time of the death at a cost equal to the cost to the taxpayer of the interest, and

(iii) each amount added or deducted in computing the adjusted cost base to the taxpayer of the property shall be deemed to be required by subsection 53(1) or (2) to be added or deducted, as the case may be, in computing its adjusted cost base to the child,

except that, where the taxpayer's legal representative so elects in the taxpayer's return of income under this Part for the year in which the taxpayer died, paragraph (c) does not apply and paragraph (b) shall be read as follows:

"(b) the taxpayer shall be deemed to have, immediately before the taxpayer's death, disposed of the property and received proceeds of disposition therefor equal to such amount as the legal representative elects in the taxpayer's return of income under this Part for the year in which the taxpayer died, not greater than the greater of nor less than the lesser of

(i) its fair market value immediately before the death, and

(ii) its adjusted cost base to the taxpayer immediately before the death,

and the child shall be deemed to have acquired the property at the time of the death at a cost equal to those proceeds, except that for the purpose of this paragraph, where the elected amount exceeds the greater of the amounts determined under subparagraphs (i) and (ii), it shall be deemed to be equal to the greater thereof, and where the elected amount is less than the lesser of the amounts determined under subparagraphs (i) and (ii), it shall be deemed to be equal to the lesser thereof, and,".

Related Provisions: 40(3.18)(b) — Grandfathering of partnership interest transferred under 70(9.2)(c); 44.1(4) — Treatment of small business investment rollover on death; 70(9.6) — Transfer to parent; 70(10) — Definitions; 220(3.2), Reg. 600(b) — Late filing or revocation of election; 248(8) — Occurrences as a consequence of death; 248(9.2) — Meaning of "vested indefeasibly".

History: All that portion of subsec. 70(9.2) following para. (a) substituted by 1994, c. 21, subsec. 33(10), applicable to dispositions and acquisitions occurring after 1992. That portion of the subsec. formerly read:

(b) where the property is a share of the capital stock of a family farm corporation, the taxpayer shall be deemed to have disposed of the property immediately before the taxpayer's death and to have received proceeds of disposition therefor equal to its adjusted cost base to the taxpayer immediately before the death, and the child shall be deemed to have acquired the property for an amount equal to the proceeds, and

(c) where the property is an interest in a family farm partnership (other than an interest in a partnership to which subsection 100(3) applies),

(i) the taxpayer shall, except for the purposes of paragraph 98(5)(g), be deemed not to have disposed of the property as a consequence of the taxpayer's death,

(ii) the child shall be deemed to have acquired the property for an amount equal to the cost thereof to the taxpayer, and

(iii) each amount added or deducted in computing the adjusted cost base to the taxpayer of the property shall be deemed to be required by subsection 53(1) or (2) to be added or deducted, as the case may be, in computing the adjusted cost base to the child of the property,

except that, where the legal representative of the taxpayer so elects in the taxpayer's return of income under this Part for the year in which the taxpayer died, paragraph (c) does not apply and paragraph (b) shall be read as follows:

"(b) the taxpayer shall be deemed to have disposed of the property immediately before the taxpayer's death and to have received proceeds of disposition therefor equal to such amount as the legal representative elects, not greater than the greater of or less than the lesser of

(i) the fair market value of the property immediately before the death, and

(ii) the adjusted cost base to the taxpayer of the property immediately before the death,

and the child shall be deemed to have acquired the property for an amount equal to those proceeds, except that for the purposes of this paragraph, where the elected amount exceeds the greater of the amounts determined under subparagraphs (i) and (ii), it shall be deemed to be equal to the greater thereof, and where the elected amount is less than the lesser of the amounts determined under those subparagraphs, it shall be deemed to be equal to the lesser thereof,".

That portion of subsec. 70(9.2) preceding para. (b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 28(14), applicable to dispositions occurring after 1992. That portion formerly read:

(9.2) Transfer of family farm corporations and partnerships — Where at any particular time after April 10, 1978 property of a taxpayer that was, immediately before the taxpayer's death, a share of the capital stock of a family farm corporation of the taxpayer or an interest in a family farm partnership of the taxpayer to which paragraphs (5)(a) and (c) would otherwise apply has, on or after the death of the taxpayer and as a consequence thereof, been transferred or distributed to a child of the taxpayer who was resident in Canada immediately before the death of the taxpayer and it can be shown, within the period ending 36 months after the death of the taxpayer or, where written application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister considers reasonable in the circumstances, that the property has become vested indefeasibly in the child, the following rules apply:

(a) paragraphs (5)(a) and (c) are not applicable to the property;

All that portion of subsec. 70(9.2) following para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 48(5), applicable to transfers, distributions and acquisitions occurring after January 15, 1987. That portion formerly read:

(b) the taxpayer shall be deemed to have disposed of the property immediately before the taxpayer's death and to have received proceeds of disposition therefor equal to its adjusted cost base to the taxpayer immediately before the taxpayer's death and the child shall be deemed to have acquired the property for an amount equal to those proceeds

except that, where the legal representative of the taxpayer has so elected in the taxpayer's return of income under this Part for the year in which the taxpayer died, paragraph (b) shall be read as follows:

"(b) the taxpayer shall be deemed to have disposed of the property immediately before the taxpayer's death and to have received proceeds of disposition therefor equal to such amount as the legal representative has elected, not greater than the greater of or less than the lesser of

(i) the fair market value of the property immediately before the taxpayer's death, and

(ii) the adjusted cost base to the taxpayer of the property immediately before the taxpayer's death,

and the child shall be deemed to have acquired the property for an amount equal to those proceeds, except that for the purposes of this paragraph, where the elected amount exceeds the greater of the amounts determined under subparagraphs (i) and (ii), it shall be deemed to be equal to the greater thereof, and where the elected amount is less than the lesser of the amounts determined under those subparagraphs, it shall be deemed to be equal to the lesser thereof."

Interpretation Bulletins: IT-349R3: Intergenerational transfers of farm property on death; IT-373R2: Woodlots; IT-449R: Meaning of "vested indefeasibly" (archived).

Forms: T4060: Farming income and NISA [guide].

(9.3) Transfer of family farm corporation or partnership from trust to children of settlor — Where property of a taxpayer has been transferred or distributed to a trust described in subsection (6) or 73(1) (as that subsection applied to transfers before 2000) or a trust to which subparagraph 73(1.01)(c)(i) applies and the property was,

(a) immediately before the transfer or distribution, a share of the capital stock of a family farm corporation of the taxpayer or an interest in a family farm partnership of the taxpayer, and

(b) immediately before the death of the taxpayer's spouse or common-law partner who was a beneficiary under the trust,

(i) a share in the capital stock of a Canadian corporation that would be a share in the capital stock of a family farm corporation if paragraph (a) of the definition "share of the capital stock of a family farm corporation" in subsection (10) were read without the words "in which the person or a spouse, common-law partner, child or parent of the person was actively engaged on a regular and continuous basis (or, in the case of property used in the operation of a woodlot, was engaged to the extent required by a prescribed forest management plan in respect of that woodlot)", or

(ii) an interest in a partnership that carried on the business of farming in Canada in which it used all or substantially all of its property,

and has, at any time after April 10, 1978, on the death of the spouse or common-law partner and as a consequence thereof, been transferred or distributed to and become vested indefeasibly in a child of the taxpayer who was resident in Canada immediately before the death of the spouse or common-law partner, the following rules apply:

(c) subsection 104(4) does not apply to the trust in respect of the property,

(d) where the property is a share of the capital stock of a family farm corporation, the trust shall be deemed to have disposed of the share immediately before the death of the spouse or common-law partner and to have received proceeds of disposition therefor equal to its adjusted cost base to the trust immediately before the death of the spouse or common-law partner, and the child shall be deemed to have acquired the property for an amount equal to those proceeds, and

(e) where the property is an interest in a family farm partnership (other than an interest in a partnership to which subsection 100(3) applies),

(i) the trust shall, except for the purposes of paragraph 98(5)(g), be deemed not to have disposed of the property as a consequence of the death of the spouse or common-law partner,

(ii) the child shall be deemed to have acquired the property for an amount equal to the cost thereof to the trust, and

(iii) each amount added or deducted in computing the adjusted cost base to the trust of the property shall be deemed to be required by subsection 53(1) or (2) to be added or deducted, as the case may be, in computing the adjusted cost base to the child of the property,

except that, where the trust so elects in its return of income under this Part for its taxation year in which the spouse or common-law partner died, paragraph (e) shall not apply and paragraph (d) shall be read as follows:

"(d) the trust shall be deemed to have disposed of the property immediately before the death of the spouse or common-law partner and to have received proceeds of disposition therefor equal to such amount as the trust elects, not greater than the greater of or less than the lesser of

(i) the fair market value of the property immediately before the death of the spouse or common-law partner, and

(ii) the adjusted cost base to the trust of the property immediately before the death of the spouse or common-law partner,

and the child shall be deemed to have acquired the property for an amount equal to those proceeds, except that for the purposes of this paragraph, where the elected amount exceeds the greater of the amounts determined under subparagraphs (i) and (ii), it shall be deemed to be equal to the greater thereof, and where the elected amount is less than the lesser of the amounts determined under those subparagraphs, it shall be deemed to be equal to the lesser thereof,".

Related Provisions: 40(3.18)(c) — Grandfathering of partnership interest transferred under 70(9.3)(e); 70(9.6) — Transfer to parent; 70(10) — Definitions; 220(3.2), Reg. 600(b) — Late filing or revocation of election; 248(8) — Occurrences as a consequence of death; 248(9.2) — Meaning of "vested indefeasibly".

History: Subpara. 70(9.3)(b)(i) amended by 2002, c. 9, subsec. 27(2), applicable to transfers and distributions of property that occur after December 10, 2001. The subpara. formerly read:

(i) a share in the capital stock of a Canadian corporation that would be a share in the capital stock of a family farm corporation if paragraph (a) of the definition "share of the capital stock of a family farm corporation" in subsection (10) were read without the words "in which the person or a spouse, common-law partner, child or parent of the person was actively engaged on a regular and continuous basis", or

The opening words of subsec. 70(9.3) amended by 2001, c. 17, subsec. 52(7), applicable to transfers and distributions from trusts that occur after 1999. Where a particular transfer or distribution to a trust referred to in amended subsec. 70(9.1) occurred before 2001, in applying that subsec. to a transfer or distribution from the trust that occurs after 1997, it shall be read without reference to the words "or common-law partner" and to the *Modernization of Benefits and Obligations Act*, 2000, c. 12, unless

(a) the particular transfer or distribution occurred after 1997;

(b) the death referred to in that subsec. occurs after 1997; and

(c) either

(i) at the time of the particular transfer or distribution referred to in para. (a), the taxpayer was a spouse of the individual whose death is referred to in para. (b), or

(ii) because of an election under s. 144 of 2000, c. 12, sections 130 to 142 of that Act applied, at the time of the particular transfer or distribution referred to in para. (a), to the taxpayer and the individual whose death is referred to in para. (b).

The opening words formerly read:

(9.3) Transfer of family farm corporation or partnership from spouse's [or common-law partner's] trust to children of settlor — Where property of a taxpayer has been transferred or distributed to a trust described in subsection (6) or 73(1) and the property was,

Subsec. 70(9.3) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", and by Sch. 2, s. 8 to replace "spouse,"with "spouse, common-law partner,", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subpara. 70(9.3)(b)(i) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 28(15), applicable to 1992 *et seq.* That subpara. formerly read:

(i) a share in the capital stock of a Canadian corporation that would be a share in the capital stock of a family farm corporation if paragraph (a) of the definition "share of the capital stock of a family farm corporation" in subsection (10) were read without the words "and in which that person or that person's spouse or child was actively engaged" and subparagraph (b)(ii) of that definition were read without the words "in which that person or that person's spouse or child was actively engaged", or

Para. 70(9.3)(c) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 28(16), applicable after December 20, 1991. That para. formerly read:

(c) subsection 104(4) is not applicable to the property;

All that portion of subsec. 70(9.3) following para. (c) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 48(6), applicable to transfers, distributions and acquisitions occurring after January 15, 1987. That portion formerly read:

(d) the trust shall be deemed to have disposed of the property immediately before the death of the taxpayer's spouse and to have received proceeds of disposition therefor equal to its adjusted cost base to the trust immediately before the death of that spouse, and the child shall be deemed to have acquired the property for an amount equal to those proceeds,

except that, where the trust has so elected in its return of income under this Part for its taxation year in which the taxpayer's spouse died, paragraph (d) shall be read as follows:

"(d) the trust shall be deemed to have disposed of the property immediately before the death of the taxpayer's spouse and to have received proceeds of disposition therefor equal to such amount as the trust has elected, not greater than the greater of or less than the lesser of

(i) the fair market value of the property immediately before the death of the spouse, and

(ii) the adjusted cost base to the trust of the property immediately before the death of the spouse,

and the child shall be deemed to have acquired the property for an amount equal to those proceeds, except that for the purposes of this paragraph, where the elected amount exceeds the greater of the amounts determined under subparagraphs (i) and (ii), it shall be deemed to be equal to the greater thereof, and where the elected amount is less than the lesser of the amounts determined under those subparagraphs, it shall be deemed to be equal to the lesser thereof."

Regulations: See under 70(9) re prescribed forest management plans.

Interpretation Bulletins: IT-349R3: Intergenerational transfers of farm property on death; IT-373R2: Woodlots; IT-449R: Meaning of "vested indefeasibly" (archived).

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

(9.4), (9.5) [Repealed under former Act]

(9.6) Transfer to parent — Where

(a) any property has been acquired by a taxpayer in circumstances where any of subsections (9), (9.1), (9.2), (9.3) and 73(3) and (4) applied,

(b) as a consequence of the death of the taxpayer after 1983 the property has been transferred or distributed to a parent of the taxpayer, and

(c) the taxpayer's legal representative has so elected in the taxpayer's return of income under this Part for the year in which the taxpayer died,

subsection (9) or (9.2), as the case may be, shall apply in respect of the transfer or distribution as if the references therein to "child" were read as references to "parent".

Related Provisions: 248(8) — Occurrences as a consequence of death.

Interpretation Bulletins: IT-268R4: *Inter vivos* transfer of farm property to child.

(9.7) [Repealed under former Act]

(9.8) Leased farm property — For the purposes of subsections (9) and 14(1), paragraph 20(1)(b), subsection 73(3) and paragraph (d) of the definition "qualified farm property" in subsection 110.6(1), where at any time any property of the taxpayer was used by

(a) a corporation a share of the capital stock of which is a share of the capital stock of a family farm corporation of the taxpayer, the taxpayer's spouse or common-law partner or any of the taxpayer's children, or

(b) a partnership an interest in which is an interest in a family farm partnership of the taxpayer, the taxpayer's spouse or common-law partner or any of the taxpayer's children

in the course of carrying on the business of farming in Canada, the property shall be deemed to have been used at that time by the taxpayer in the business of farming.

History: Subsec. 70(9.8) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

That portion of subsec. 70(9.8) preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 48(7), applicable to 1986 *et seq.* That portion formerly read:

(9.8) Leased farm property — For the purposes of subsections (9) and 73(3), where at any time any property of a taxpayer was used by

Interpretation Bulletins: IT-268R4: *Inter vivos* transfer of farm property to child.

(10) Definitions — In this section,

Related Provisions: 40(8), 44(8), 73(6) — Definitions in 70(10) apply to ss. 40, 44 and 73.

"child" of a taxpayer includes

(a) a child of the taxpayer's child,

(b) a child of the taxpayer's child's child, and

(c) a person who, at any time before the person attained the age of 19 years, was wholly dependent on the taxpayer for support and of whom the taxpayer had, at that time, in law or in fact, the custody and control;

Related Provisions: 84.1(2.2)(a)(i), 212.1(3)(b)(i) — Extended meaning of "child" applies for dividend stripping rules; 110.6(1)"child" — Extended meaning applies for capital gains exemption; 148(9)"child" — Extended meaning applies for life insurance policy rules; 252(1) — Additional extended meaning of "child".

Interpretation Bulletins: IT-489R: Non-arm's length sale of shares to a corporation.

"interest in a family farm partnership" of a person at a particular time means an interest owned by the person at that time in a partnership where, at that time, all or substantially all of the fair market value of the property of the partnership was attributable to

(a) property that has been used by

(i) the partnership,

(ii) the person,

(iii) a spouse, common-law partner, child or parent of the person, or

(iv) a corporation a share of the capital stock of which was a share of the capital stock of a family farm corporation of the person or of a spouse, common-law partner, child or parent of the person,

principally in the course of carrying on a farming business in Canada in which the person or a spouse, common-law partner, child or parent of the person was actively engaged on a regular and continuous basis (or, in the case of property used in the operation of a woodlot, was engaged to the extent required by a prescribed forest management plan in respect of that woodlot),

(b) shares of the capital stock or indebtedness of one or more corporations all or substantially all of the fair market value of the property of which was attributable to property described in paragraph (c), or

(c) properties described in paragraph (a) or (b);

History: The closing words of para. (a) of the definition "interest in a family farm partnership" in subsec. 70(10) amended by 2002, c. 9, subsec. 27(3), applicable to transfers of property that occur after December 10, 2001. The closing words formerly read:

> principally in the course of carrying on the business of farming in Canada in which the person or a spouse, common-law partner, child or parent of the person was actively engaged on a regular and continuous basis,

The definition "interest in a family farm partnership" in subsec. 70(10) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", and by Sch. 2, s. 8 to replace "spouse,"with "spouse, common-law partner,", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

The definition "interest in a family farm partnership" in subsec. 70(10) amended by 1993, c. 24, subsec. 28(18), applicable to 1992 *et seq.* That definition formerly read:

> "interest in a family farm partnership" of a person at a particular time means an interest in a partnership that, at that time, carried on the business of farming in Canada in which it used all or substantially all of its property and in which that person or that person's spouse or child was actively engaged;

Regulations: See under 70(9) re prescribed forest management plans.

I.T. Application Rules: 20(1.11), 26(20).

Interpretation Bulletins: IT-236R4: Reserves — disposition of capital property (archived); IT-349R3: Intergenerational transfers of farm property on death.

Advance Tax Rulings: ATR-28: Redemption of capital stock of family farm corporation; ATR-56: Purification of a family farm corporation.

"share of the capital stock of a family farm corporation" of a person at a particular time means a share of the capital stock of a corporation owned by the person at that time where, at that time, all or substantially all of the fair market value of the property owned by the corporation was attributable to

(a) property that has been used by

(i) the corporation or any other corporation, a share of the capital stock of which was a share of the capital stock of a family farm corporation of the person or of a spouse, common-law partner, child or parent of the person,

(i.1) a corporation controlled by a corporation referred to in subparagraph (i),

(ii) the person,

(iii) a spouse, common-law partner, child or parent of the person, or

(iv) a partnership, an interest in which was an interest in a family farm partnership of the person or of a spouse, common-law partner, child or parent of the person,

principally in the course of carrying on a farming business in Canada in which the person or a spouse, common-law partner, child or parent of the person was actively engaged on a regular and continuous basis (or, in the case of property used in the operation of a woodlot, was engaged to the extent required by a prescribed forest management plan in respect of that woodlot),

(b) shares of the capital stock or indebtedness of one or more corporations all or substantially all of the fair market value of the property of which was attributable to property described in paragraph (c), or

(c) properties described in paragraph (a) or (b).

Related Provisions: 70(12) — Value of NISA deemed nil; 256(6), (6.1) — Meaning of "controlled".

History: The closing words of para. (a) of the definition "share of the capital stock of a family farm corporation" in subsec. 70(10) amended by 2002, c. 9, subsec. 27(4), applicable to transfers of property that occur after December 10, 2001. The closing words formerly read:

> principally in the course of carrying on the business of farming in Canada in which the person or a spouse, common-law partner, child or parent of the person was actively engaged on a regular and continuous basis,

The definition "share of the capital stock of a family farm corporation" in subsec. 70(10) amended by 2000, c. 12, Sch. 2, s. 8 to replace "spouse,"with "spouse, common-law partner,", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subpara. (a)(i.1) added to the definition "share of the capital stock of a family farm corporation" in subsec. 70(10) by 1998, c. 19, subsec. 108(2), applicable to 1994 *et seq.*

The definition "share of the capital stock ..." in subsec. 70(10) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 28(17), applicable to 1992 *et seq.* That definition formerly read:

> "share of the capital stock of a family farm corporation" of a person at a particular time means
>
> (a) a share of the capital stock of a corporation that, at that time, carried on the business of farming in Canada in which it used all or substantially all of its property and in which that person or that person's spouse or child was actively engaged, or
>
> (b) a share of the capital stock of a corporation all or substantially all of the property of which was, at that time,
>
> (i) shares of the capital stock of one or more corporations described in paragraph (a), or a bond, debenture, bill, note, mortgage or similar obligation issued by such a corporation,
>
> (ii) property used by the corporation in carrying on the business of farming in Canada in which that person, or that person's spouse or child was actively engaged, or
>
> (iii) any combination of properties described in subparagraphs (i) and (ii).

Regulations: See under 70(9) re prescribed forest management plans.

I.T. Application Rules: 20(1.11), 26(20).

Interpretation Bulletins: IT-236R4: Reserves — disposition of capital property (archived); IT-349R3: Intergenerational transfers of farm property on death.

Advance Tax Rulings: ATR-28: Redemption of capital stock of family farm corporation; ATR-56: Purification of a family farm corporation.

Interpretation Bulletins [subsec. 70(10)]: IT-268R4: *Inter vivos* transfer of farm property to child.

(11) Application of subsec. 138(12) — The definitions in subsection 138(12) apply to this section.

Origin of subsec. 70(11): R.S.C. 1985, c. 1 (5th Supp.).

(12) Value of NISA — For the purpose of the definition "share of the capital stock of a family farm corporation" in subsection (10), the fair market value of a net income stabilization account shall be deemed to be nil.

History: Subsec. 70(12) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 28(19), applicable to 1992 *et seq.*

(13) Capital cost of certain depreciable property — For the purposes of this section and, where a provision of this section (other than this subsection) applies, for the purposes of sections 13 and 20 (but not for the purposes of any regulation made for the purpose of paragraph 20(1)(a)),

(a) the capital cost to a taxpayer of depreciable property of a prescribed class disposed of immediately before the taxpayer's death, or

(b) the capital cost to a trust, to which subsection (9.1) applies, of depreciable property of a prescribed class disposed of immediately before the death of the spouse or common-law partner described in that subsection,

shall, in respect of property that was not disposed of by the taxpayer or the trust before that time, be the amount that it would be if subsection 13(7) were read without reference to

(c) the expression "the lesser of" in paragraph (b) and clause (d)(i)(A) thereof, and

(d) subparagraph (b)(ii), subclause (d)(i)(A)(II), clause (d)(i)(B) and paragraph (e) thereof.

Related Provisions: 13(7) — Change in use of depreciable property.

History: Subsec. 70(13) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subsec. 70(13) added by 1994, c. 21, subsec. 33(11), applicable to dispositions and acquisitions occurring after 1992.

Interpretation Bulletins: IT-349R3: Intergenerational transfers of farm property on death.

(14) Order of disposal of depreciable property — Where 2 or more depreciable properties of a prescribed class are disposed of at the same time as a consequence of a taxpayer's death, this section and paragraph (a) of the definition "cost amount" in subsection 248(1) apply as if each property so disposed of were separately disposed of in the order designated by the taxpayer's legal representative or, in the case of a trust described in subsection (9.1), by the trust and, where the taxpayer's legal representative or the trust, as the case may be, does not designate an order, in the order designated by the Minister.

History: Subsec. 70(14) added by 1994, c. 21, subsec. 33(11), applicable to dispositions and acquisitions occurring after 1992.

Interpretation Bulletins: IT-349R3: Intergenerational transfers of farm property on death.

Selected Cases [s. 70]: *Van Son Estate v. R.*, [1990] 1 C.T.C. 182 (FCTD) (Rollover applied although widow sold to survivor two years after death upon terms similar to shareholder's agreement calling for purchase upon death).

Definitions [s. 70]: "active business" — 248(1); "adjusted cost base" — 54, 248(1); "amount", "annuity" — 248(1); "arm's length" — 251; "business" — 248(1); "Canada" — 255; "Canadian resource property" — 66(15), 248(1); "capital cost" — 70(12); "capital gain", "capital loss" — 39(1), 248(1); "capital property" — 54, 248(1); "carrying on business" — 253; "child" — 70(10), 252(1); "common-law partner" — 248(1); "consequence" — 248(8); "controlled" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount" — 248(1); "created by the taxpayer's will" — 248(9.1); "cumulative eligible capital" — 14(5), 248(1); "depreciable property" — 13(21), 248(1); "disposition" — 248(1); "eligible capital expenditure" — 14(5), 248(1); "eligible capital property" — 54, 248(1); "employment" — 248(1); "estate" — 104(1), 248(1); "fair market value" — 70(8), 70(12), 139.1(5); "family farm corporation", "family farm partnership" — 70(10); "farming" — 248(1); "foreign resource property" — 66(15), 248(1); "income" — of trust 108(3); "individual" — 248(1); "interest in a family farm partnership" — 70(10); "inventory", "legal representative" — 248(1); "life insurance policy" — 138(12), 248(1); "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "net income stabilization account", "NISA Fund No. 2", "office" — 248(1); "non-qualifying debt" — 70(8); "parent" — 252(2); "person", "prescribed", "property", "regulation" — 248(1); "related" — 251(2); "resident in Canada" — 250; "right or thing", "rights or things" — 70(3.1); "share" — 248(1); "share in the capital stock of a family farm corporation" — 70(10); "specified investment business" — 125(7); "spouse" — 252(3); "tax payable" — 248(2); "taxable income" — 2(2), 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1); "testamentary debt" — 70(8); "trust" — 104(1), 248(1), (3); "undepreciated capital cost" — 13(21), 248(1); "vested indefeasibly" — 248(9.2); "written" — *Interpretation Act* 35(1)"writing".

Interpretation Bulletins [s. 70]: IT-226R: Gift to a charity of a residual interest in real property or an equitable interest in a trust.

71. [Repealed under former Act]

72. (1) Reserves, etc., for year of death — Where in a taxation year a taxpayer has died,

(a) paragraph 20(1)(n) does not apply to allow, in computing the income of the taxpayer for the year from a business, the deduction of any amount as a reserve in respect of property sold in the course of the business;

(b) no amount is deductible under subsection 32(1) as a reserve in respect of unearned commissions in computing the taxpayer's income for the year;

(c) no amount may be claimed under subparagraph 40(1)(a)(iii), paragraph 40(1.01)(c) or subparagraph 44(1)(e)(iii) in computing any gain of the taxpayer for the year;

(d) subsection 64(1)[6] does not apply to allow, in computing the income of the taxpayer for the year, the deduction of any amount as a reserve in respect of the disposition of any property; and

(e) subsection 64(1.1)[6] does not apply to allow, in computing the income of the taxpayer for the year, the deduction of any amount as a reserve in respect of the disposition of any property.

Related Provisions: 61.2 — Deduction of debt forgiveness reserve for year of death; 72(2) — Election by legal representative and transferee re reserves.

History: Para. 72(1)(c) amended by 1998, c. 19, s. 12, applicable to 1997 *et seq.* The para. formerly read:

(c) no amount may be claimed under subparagraph 40(1)(a)(iii) or 44(1)(e)(iii) in computing any gain of the taxpayer for the year;

Para. 72(1)(c) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 49(1), applicable to 1990 *et seq.* Para. 72(1)(c) formerly read:

(c) subparagraph 40(1)(a)(iii) does not apply to permit the claiming of any amount under that subparagraph in computing any gain of the taxpayer for the year;

[6]The section 64 meant to be referred to is s. 64 of R.S.C. 1952, c. 148 — ed.

Interpretation Bulletins: IT-152R3: Special reserves — sale of land; IT-154R: Special reserves; IT-236R4: Reserves — disposition of capital property (archived); IT-321R: Insurance agents and brokers — unearned commissions (archived).

(2) Election by legal representative and transferee re reserves — Where property of a taxpayer that is a right to receive any amount has, on or after the death of the taxpayer and as a consequence thereof, been transferred or distributed to the taxpayer's spouse or common-law partner described in paragraph 70(6)(a) or to a trust described in paragraph 70(6)(b) (in this subsection referred to as the "transferee"), if the taxpayer was resident in Canada immediately before the taxpayer's death and the taxpayer's legal representative and the transferee have executed jointly an election in respect of the property in prescribed form,

(a) any amount in respect of the property that would, but for paragraph (1)(a), (b), (d) or (e), as the case may be, have been deductible as a reserve in computing the taxpayer's income for the taxation year in which the taxpayer died shall,

(i) notwithstanding subsection (1), be deducted in computing the taxpayer's income for the taxation year in which the taxpayer died,

(ii) be included in computing the transferee's income for the transferee's first taxation year ending after the death of the taxpayer, and

(iii) be deemed to be

(A) an amount that has been included in computing the transferee's income from a business for a previous year in respect of property sold in the course of the business,

(B) an amount that has been included in computing the transferee's income for a previous year as a commission in respect of an insurance contract, other than a life insurance contract,

(C) an amount that by virtue of subsection 59(1) has been included in computing the transferee's income for a preceding taxation year, or

(D) for the purposes of subsection 64(1.1)[6], an amount that by virtue of paragraph 59(3.2)(c) has been included in computing the transferee's income for a preceding taxation year and to be an amount deducted by the transferee pursuant to paragraph 64(1.1)(a)[6] in computing the transferee's income for the transferee's last taxation year ending before the death,

as the case may be;

(b) any amount in respect of the property that could, but for paragraph (1)(c), have been claimed under subparagraph 40(1)(a)(iii) or 44(1)(e)(iii) in computing the amount of any gain of the taxpayer for the year shall,

(i) notwithstanding paragraph (1)(c), be deemed to have been so claimed, and

(ii) for the purpose of computing the transferee's income for the transferee's first taxation year ending after the death of the taxpayer and any subsequent taxation year, be deemed to have been

(A) proceeds of the disposition of capital property disposed of by the transferee in that first taxation year, and

(B) the amount determined under subparagraph 40(1)(a)(i) or 44(1)(e)(i), as the case may be, in respect of the capital property referred to in clause (A); and

(c) notwithstanding paragraphs (a) and (b), where any property had been disposed of by the taxpayer, in computing the income of the transferee for any taxation year ending after the death of the taxpayer,

(i) the amount of the transferee's deduction under paragraph 20(1)(n) as a reserve in respect of the property sold in the course of business,

(ii) the amount of the transferee's claim under subparagraph 40(1)(a)(iii) or 44(1)(e)(iii) in respect of the disposition of the property, and

(iii) the amount of the transferee's deduction under section 64[6] as a reserve in respect of the disposition of the property

shall be computed as if the transferee were the taxpayer who had disposed of the property and as if the property were disposed of by the transferee at the time it was disposed of by the taxpayer.

Related Provisions: 220(3.2), Reg. 600(b) — Late filing or revocation of election; 248(8) — Occurrences as a consequence of death.

History: Subsec. 72(2) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

That portion of para. 72(2)(b) preceding subpara. (i), and subpara. 72(2)(c)(ii), amended to add to each "or 44(1)(e)(iii)", and cl. 72(2)(b)(ii)(B) amended to add "or 44(1)(e)(i), as the case may be", by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 49(2) to (4), applicable to 1990 *et seq.*

Interpretation Bulletins [subsec. 72(2)]: IT-152R3: Special reserves — sale of land; IT-236R4: Reserves — disposition of capital property (archived).

Information Circulars [subsec. 72(2)]: 92-1: Guidelines for accepting late, amended or revoked elections.

Forms [subsec. 72(2)]: T2069: Election in respect of amounts not deductible as reserves for the year of death; T4011: Preparing returns for deceased persons [guide].

Definitions [s. 72]: "amount", "business" — 248(1); "Canada" — 255; "capital property", "common-law partner" — 54, 248(1); "consequence" — 248(8); "prescribed", "property" — 248(1); "resident in Canada" — 250; "taxation year" — 11(2), 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

73. (1) *Inter vivos* transfers by individuals — For the purposes of this Part, where at any time any particular capital property of an individual (other than a trust) has been transferred in circumstances to which subsection (1.01) applies and both the individual and the transferee are resident in Canada at that time, unless the individual elects in the individual's return of income under this Part for the taxation year in which the property was transferred that the provisions of this subsection not apply, the particular property is deemed

Proposed Amendment — 73(1) opening words

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), s. 10, will amend the opening words of subsec. 73(1) to add "(other than a specified participating interest)" after "capital property", applicable to transfers that occur in taxation years that begin after 2002.

Technical Notes: Subsection 73(1) generally provides for a tax-deferred disposition of capital property by an individual (other than a trust) where it is transferred by the individual in circumstances where subsection 73(1.01) applies and a number of other conditions are met.

[6]The section 64 meant to be referred to is s. 64 of R.S.C. 1952, c. 148 — ed.

Subsection 73(1) is amended so that it does not apply to a transfer of property that is a specified participating interest. The concept of a specified participating interest is generally relevant in the context of the foreign investment entity rules in sections 94.1 to 94.4. For more information on the definition "specified participating interest" in subsection 248(1), see the commentary on that definition.

(a) to have been disposed of at that time by the individual for proceeds equal to,

(i) where the particular property is depreciable property of a prescribed class, that proportion of the undepreciated capital cost to the individual immediately before that time of all property of that class that the fair market value immediately before that time of the particular property is of the fair market value immediately before that time of all of that property of that class, and

(ii) in any other case, the adjusted cost base to the individual of the particular property immediately before that time; and

(b) to have been acquired at that time by the transferee for an amount equal to those proceeds.

Related Provisions: 40(4) — Where principal residence disposed of to a spouse; 44.1(5) — Small business investment rollover on breakdown of relationship; 53(4) — Effect on ACB of share, partnership interest or trust interest; 56.1 — Maintenance payments; 70(6)(a) — Where transfer or distribution to spouse or trust; 70(9.1), (9.3) — Transfer of farm property from spouse trust to settlor's children before 2000; 73(1.1) — Interpretation; 73(2) — Transfer of depreciable property; 74.1(1) — Attribution of income or loss on property transferred to spouse; 74.2(1) — Gain or loss deemed that of lender or transferor; 94(4)(b) [proposed] — Deeming non-resident trust to be resident in Canada does not apply; 104(4)(a), (a.3), (a.4) — Deemed disposition by trust following transfer under 73(1); 107.4 — Qualifying disposition to a trust; 108(3) — Meaning of "income" of trust; 108(4) — Trust not disqualified by reason only of payment of certain taxes; 148(8) — Disposition at non-arm's length and similar cases; 148(8.1) — *Inter vivos* transfer to spouse; 220(3.2), Reg. 600(b) — Late filing or revocation of election; 252(3) — Extended meaning of "spouse" and "former spouse".

History: Subsec. 73(1) amended by 2001, c. 17, s. 53, applicable to transfers that occur after 1999 except that, in respect of transfers that occur in 2000 or 2001, for the purpose of subsec. 73(1), the residence of a transferee trust shall be determined without reference to s. 94, as it reads before 2002. Subsec. 73(1) formerly read:

73. (1) *Inter vivos* transfer of property of spouse, etc., or trust — For the purposes of this Part, where at any time after 1977 any particular capital property of a taxpayer has been transferred to

(a) the taxpayer's spouse or common-law partner,

(b) a former spouse or common-law partner of the taxpayer in settlement of rights arising out of their marriage or common-law partnership, or

(c) a trust created by the taxpayer under which

(i) the taxpayer's spouse or common-law partner is entitled to receive all of the income of the trust that arises before the spouse's or common-law partner's death, and

(ii) no person except the spouse or common-law partner may, before the spouse's or common-law partner's death, receive or otherwise obtain the use of any of the income or capital of the trust,

(d) [Repealed]

and both the taxpayer and the transferee were resident in Canada at that time, unless the taxpayer elects in the taxpayer's return of income under this Part for the taxation year in which the property was transferred not to have the provisions of this subsection apply, the particular property shall be deemed to have been disposed of at that time by the taxpayer for proceeds equal to,

(e) where the particular property is depreciable property of a prescribed class, that proportion of the undepreciated capital cost to the taxpayer immediately before that time of all property of that class that the fair market value immediately before that time of the particular property is of the fair market value immediately before that time of all of that property of that class, and

(f) in any other case, the adjusted cost base to the taxpayer of the particular property immediately before that time,

and to have been acquired at that time by the transferee for an amount equal to those proceeds.

Proposed Amendment — Application of S.C. 2001, c. 17, s. 53

Application: The July 18, 2005 draft legislation ((Part 1 — NRTs and FIEs), s. 45, will amend the application of the amendment made to subsec. 73(1) by S.C. 2001, c. 17, s. 53, deemed in force on June 14, 2001, to read as follows, :

Subsec. 73(1) amended by 2001, c. 17, s. 53, applicable to transfers that occur after 1999 except that, in respect of transfers that occur in 2000, 2001 or 2002, for the purpose of subsec. 73(1), the residence of a transferee trust shall be determined without reference to s. 94, as it reads in its application to taxation years that began before 2003.

Technical Notes: Subsection 73(1) generally provides for a tax-free disposition of capital property if it is transferred by an individual to the individual's spouse, common-law partner or a trust for the exclusive benefit of the spouse or common-law partner during the lifetime of the spouse or common-law partner. For subsection 73(1) to apply, the transferor and transferee must both be resident in Canada at the time of the transfer. Where the transferee is a trust, in respect of transfers that occur in 2000 or 2001, the residency requirement is determined without reference to subsection 94(1) as it read before 2002.

This amendment to the *Income Tax Amendments Act, 2000*, ensures that, in applying subsection 73(1) in respect of transfers that occur in 2000, 2001 or 2002, the residence of a transferee will be determined without reference to section 94, as it reads in its application to taxation years that began before 2003.

Subsec. 73(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", by Sch. 2, s. 7, to replace "spouse's"with "spouse's or common-law partner's"; and by Sch. 2, s. 9, to replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Para. 73(1)(d) repealed by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 29(1), applicable with respect to transfers of property occurring after 1992. Para. (d) formerly read:

(d) an individual of the opposite sex, under an order for the support or maintenance of the individual, made by a competent tribunal in accordance with the laws of a province, where the individual and the taxpayer cohabited in a conjugal relationship before the date of the order,

Para. 73(1)(d) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 50, applicable with respect to transfers occurring after July 13, 1990. Para. 73(1)(d) formerly read:

(d) an individual pursuant to a decree, order or judgment of a competent tribunal made in accordance with prescribed provisions of the law of a province if that individual either entered into a written agreement with the taxpayer in accordance with those provisions or is a person within a prescribed class of persons referred to in those provisions,

Selected Cases: *King v. Canada*, [1995] 1 C.T.C. 2353 (TCC) (Conduct of taxpayers may constitute estoppel with respect to attribution and timing).

I.T. Application Rules: 20(1.1) (where property owned since before 1972).

Interpretation Bulletins: IT-209R: *Inter vivos* gifts of capital property to individuals directly or through trusts; IT-325R2: Property transfers after separation, divorce and annulment.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

(1.01) Qualifying transfers — Subject to subsection (1.02), property is transferred by an individual in circumstances to which this subsection applies where it is transferred to

(a) the individual's spouse or common-law partner;

(b) a former spouse or common-law partner of the individual in settlement of rights arising out of their marriage or common-law partnership; or

(c) a trust created by the individual under which

(i) the individual's spouse or common-law partner is entitled to receive all of the income of the trust that arises before the spouse's or common-law partner's death and no person except the spouse or common-law partner may, before the spouse's or common-law partner's death, receive or otherwise obtain the use of any of the income or capital of the trust,

(ii) the individual is entitled to receive all of the income of the trust that arises before the individual's death and no person except the individual may, before the individual's death, receive or otherwise obtain the use of any of the income or capital of the trust, or

(iii) either

(A) the individual or the individual's spouse is, in combination with the other, entitled to receive all of the income of the trust that arises before the later of the death of the individual and the death of the spouse and no other person may, before the later of those deaths, receive or otherwise obtain the use of any of the income or capital of the trust, or

(B) the individual or the individual's common-law partner is, in combination with the other, entitled to receive all of the income of the trust that arises before the later of the death of the individual and the death of the common-law partner and no other person may, before the later of those deaths, receive or otherwise obtain the use of any of the income or capital of the trust.

Related Provisions: 73(1.02) — Limitation on transfers to trusts; 108(3) — Calculation of income of trust; 108(4) — Trust not disqualified by reason only of payment of certain duties and taxes; 248(1)"alter ego trust" — Trust for individual during own lifetime.

History: Subsec. 73(1.01) added by 2001, c. 17, s. 53, applicable to transfers that occur after 1999 except that,

(a) in respect of transfers that occur in 2000 and subject to para. (b),

(i) subsec. 73(1.01) shall be read without reference to the words "or common-law partner", "or common-law partner's" and "or common-law partnership", and

(ii) subpara. 73(1.01)(c)(iii) shall be read as follows:

(iii) the individual or the individual's spouse is, in combination with the other, entitled to receive all of the income of the trust that arises before the later of the death of the individual and the death of the spouse and no other person may, before the later of those deaths, receive or otherwise obtain the use of any of the income or capital of the trust.

(b) para. (a) does not apply to a transfer at any time by an individual to or for the benefit of another individual where, because of an election under s. 144 of 2000, c. 12, ss. 130 to 142 of that Act applied at that time to those individuals.

(1.02) Exception for transfers — Subsection (1.01) applies to a transfer of property by an individual to a trust the terms of which satisfy the conditions in subparagraph (1.01)(c)(ii) or (iii) only where

(a) the trust was created after 1999;

(b) either

(i) the individual had attained 65 years of age at the time the trust was created, or

(ii) the transfer does not result in a change in beneficial ownership of the property and there is immediately after the transfer no absolute or contingent right of a person (other than the individual) or partnership as a beneficiary (determined with reference to subsection 104(1.1)) under the trust; and

(c) in the case of a trust the terms of which satisfy the conditions in subparagraph (1.01)(c)(ii), the trust does not make an election under subparagraph 104(4)(a)(ii.1).

Related Provisions: 104(1.1) — Restricted meaning of "beneficiary".

History: Subsec. 73(1.02) added by 2001, c. 17, s. 53, applicable to transfers that occur after 1999 except that, in respect of transfers that occur before March 16, 2001, subpara. 73(1.02)(b)(ii) shall be read as follows:

(ii) no person (other than the individual) or partnership has any absolute or contingent right as a beneficiary under the trust (determined with reference to subsection 104(1.1)); and

(1.1) Interpretation — For greater certainty, a property is, for the purposes of subsections (1) and (1.01), deemed to be property of the individual referred to in subsection (1) that has been transferred to a particular transferee where,

(a) under the laws of a province or because of a decree, order or judgment of a competent tribunal made in accordance with those laws, the property

(i) is acquired or is deemed to have been acquired by the particular transferee,

(ii) is deemed or declared to be property of, or is awarded to, the particular transferee, or

(iii) has vested in the particular transferee; and

(b) the property was or would, but for those laws, have been a capital property of the individual referred to in subsection (1).

Related Provisions: 70(9.1), (9.3) — Transfer of farm property from spouse trust to settlor's children.

History: Subsec. 73(1.1) amended by 2001, c. 17, s. 53, applicable to transfers that occur after 1999. The subsec. formerly read:

(1.1) Interpretation — For greater certainty, where, under the laws of a province or because of a decree, order or judgment of a competent tribunal made in accordance with those laws, a person referred to in subsection (1)

(a) acquires or is deemed to have acquired,

(b) is deemed or declared to have or is awarded, or

(c) has vested in that person,

property that was or would, but for those provisions, have been a capital property of the taxpayer referred to in subsection (1), that property shall, for the purposes of that subsection, be deemed to be capital property of the taxpayer that has been transferred to that person.

The opening words of subsec. 73(1.1) substituted by 1994, c. 21, s. 34, applicable to transfers occurring after July 13, 1990. The opening words formerly read:

(1.1) Interpretation — For greater certainty, where, by the operation of prescribed provisions of the law of a province or by virtue of a decree, order or judgment of a competent tribunal made in accordance with those provisions, a person referred to in subsection (1)

Regulations: 6500(2) (prescribed provisions; no longer needed).

I.T. Application Rules: 20(1.1).

Interpretation Bulletins: IT-325R2: Property transfers after separation, divorce and annulment.

(1.2) [Repealed under former Act]

(2) Capital cost and amount deemed allowed to spouse, etc., or trust — Where a transferee is deemed by subsection (1) to have acquired any particular depreciable property of a prescribed class of a taxpayer for an amount determined under paragraph (1)(e) and the capital cost to the taxpayer of the particular property exceeds the amount determined under that paragraph, for the purposes

of sections 13 and 20 and any regulations made under paragraph 20(1)(a)

(a) the capital cost to the transferee of the particular property shall be deemed to be the amount that was the capital cost to the taxpayer thereof; and

(b) the excess shall be deemed to have been allowed to the transferee in respect of the particular property under regulations made under paragraph 20(1)(a) in computing income for taxation years before the acquisition thereof.

Proposed Amendment — 73(2)

(2) Capital cost and amount deemed allowed to spouse, etc., or trust — If a transferee is deemed by subsection (1) to have acquired any particular depreciable property of a prescribed class of a taxpayer for an amount determined under paragraph (1)(b) and the capital cost to the taxpayer of the particular property exceeds the amount determined under that paragraph, in applying sections 13 and 20 and any regulations made under paragraph 20(1)(a)

(a) the capital cost to the transferee of the particular property is deemed to be the amount that was the capital cost to the taxpayer of the particular property; and

(b) the excess is deemed to have been allowed to the transferee in respect of the particular property under regulations made under paragraph 20(1)(a) in computing income for taxation years before the acquisition of the particular property.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 80(1), will amend subsec. 73(2) to read as above, applicable to transfers that occur after 1999.

Technical Notes: Subsection 73(2) applies where a person ("transferor") transfers depreciable capital property ("DCP") of a prescribed class to a taxpayer ("transferee") in circumstances in which subsection 73(1) applies. If the capital cost to the transferor of the DCP is greater than the amount at which the transferee is deemed under subsection 73(1) to have acquired the DCP, subsection 73(2) ensures that the proper amount of capital cost allowance allowed to the transferor is available for recapture on a subsequent disposition of the DCP by the transferee.

Subsection 73(2) is amended to replace the reference to paragraph 73(1)(e) with a reference to paragraph 73(1)(b). Paragraph 73(1)(b) now provides for the amount at which the transferee is deemed to acquire property on a transfer to which subsection 73(1) applies.

I.T. Application Rules: 20(1.1) (where property owned since before 1972).

Interpretation Bulletins: IT-209R: *Inter vivos* gifts of capital property to individuals directly or through trusts; IT-325R2: Property transfers after separation, divorce and annulment.

(3) *Inter vivos* transfer of farm property to child — For the purposes of this Part, if at any time any land in Canada or depreciable property in Canada of a prescribed class of a taxpayer or any eligible capital property in respect of a business carried on in Canada by a taxpayer is transferred by the taxpayer to a child of the taxpayer who was resident in Canada immediately before the transfer, and the property was, before the transfer, used principally in a farming business in which the taxpayer, the taxpayer's spouse or common-law partner or any of the taxpayer's children was actively engaged on a regular and continuous basis (or, in the case of property used in the operation of a woodlot, was engaged to the extent required by a prescribed forest management plan in respect of that woodlot),

(a) where the property transferred was depreciable property of a prescribed class, the taxpayer shall be deemed to have disposed of the property at the time of the transfer for proceeds of disposition equal to,

(i) in any case to which neither subparagraph (ii) nor (iii) applies, the proceeds of disposition otherwise determined,

(ii) if the proceeds of disposition otherwise determined exceeded the greater of

(A) the fair market value of the property immediately before the time of the transfer, and

(B) that proportion of the undepreciated capital cost to the taxpayer immediately before the time of the transfer of all of the depreciable property of the taxpayer of that class that the fair market value at that time of the property so transferred was of the fair market value at that time of all of the depreciable property of the taxpayer of that class,

the greater of the amounts referred to in clauses (A) and (B), or

(iii) if the proceeds of disposition otherwise determined were less than the lesser of the amounts referred to in clauses (ii)(A) and (B), the lesser of those amounts;

(b) where the property transferred was land, the taxpayer shall be deemed to have disposed of the property at the time of the transfer for proceeds of disposition equal to,

(i) in any case to which neither subparagraph (ii) nor (iii) applies, the proceeds of disposition otherwise determined,

(ii) if the proceeds of disposition otherwise determined exceeded the greater of

(A) the fair market value of the land immediately before the time of the transfer, and

(B) the adjusted cost base to the taxpayer of the land immediately before the time of the transfer,

the greater of the amounts referred to in clauses (A) and (B), or

(iii) if the proceeds of disposition otherwise determined were less than the lesser of the amounts referred to in clauses (ii)(A) and (B), the lesser of those amounts;

(b.1) where the property transferred was eligible capital property, the taxpayer shall be deemed to have disposed of the property at the time of the transfer for proceeds of disposition equal to,

(i) in any case to which neither subparagraph (ii) nor (iii) applies, the proceeds of disposition otherwise determined,

(ii) if the proceeds of disposition otherwise determined exceeded the greater of

(A) the fair market value of the property immediately before the time of the transfer, and

(B) the amount determined by the formula

$$\frac{4}{3}\left(A \times \frac{B}{C}\right)$$

where

A is the cumulative eligible capital of the taxpayer in respect of the business,

B is the fair market value of the property immediately before the transfer, and

C is the fair market value immediately before that time of all eligible capital property of the taxpayer in respect of the business,

the greater of the amounts referred to in clauses (A) and (B), or

(iii) if the proceeds of disposition otherwise determined were less than the lesser of the amounts referred to in clauses (ii)(A) and (B), the lesser of those amounts;

(c) section 69 does not apply in determining the proceeds of disposition of the depreciable property, the land or the eligible capital property;

Proposed Amendment — 73(3)(c)

(c) subsection 69(1) does not apply in determining the proceeds of disposition of the depreciable property, the land or the eligible capital property;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 80(2), will amend para. 73(3)(c) to read as above, applicable to dispositions that occur after December 20, 2002.

Technical Notes: For dispositions made after December 20, 2002, paragraph 73(3)(c) is amended to clarify that subsection 73(3) does not apply if the anti-avoidance rule in subsection 69(11) applies. When applicable, subsection 69(11) denies the benefit of the rollover by treating the vendor's proceeds of disposition to be equal to the fair market value of the transferred property notwithstanding any other provision of the Act.

(d) the child shall be deemed to have acquired the depreciable property or the land, as the case may be, for an amount equal to the proceeds of disposition determined under paragraph (a) or (b), respectively;

(d.1) where the property transferred was eligible capital property of the taxpayer, the child shall be deemed to have acquired a capital property, immediately after the transfer, at a cost equal to the proceeds of disposition determined under paragraph (b.1), except that, where the child continues to carry on the business previously carried on by the taxpayer, the taxpayer's spouse or common-law partner or any of the taxpayer's children, the taxpayer shall be deemed to have acquired an eligible capital property and to have made an eligible capital expenditure at a cost equal to the total of

Proposed Amendment — 73(3)(d.1) opening words

(d.1) where the property transferred was eligible capital property of the taxpayer, the child is deemed to have acquired a capital property, immediately after the transfer, at a cost equal to the proceeds of disposition determined under paragraph (b.1), except that, where the child continues to carry on the business previously carried on by the taxpayer, the taxpayer's spouse or common-law partner or any of the taxpayer's children, the child is deemed to have acquired an eligible capital property and to have made an eligible capital expenditure at a cost equal to the total of

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 80(3), will amend the opening words of para. 73(3)(d.1) to read as above, in force on Royal Assent.

Technical Notes: Paragraph 73(4)(d.1) [should read (3)(d.1) — ed.] is amended, applicable on Royal Assent, to clarify its application in respect of an eligible capital property acquired by the child of the taxpayer.

(i) the proceeds of disposition referred to in paragraph (b.1), and

(ii) 4/3 of the amount determined by the formula

$$\left(A \times \frac{B}{C}\right) - D$$

where

A is the amount, if any, determined for F in the definition "cumulative eligible capital" in subsection 14(5) in respect of the business of the taxpayer immediately before the time of the transfer,

B is the fair market value of the property immediately before that time,

C is the fair market value immediately before that time of all eligible capital property of the taxpayer in respect of the business, and

D is the amount, if any, included under subparagraph 14(1)(a)(iv) in computing the income of the taxpayer as a result of the disposition,

and, for the purpose of determining at any subsequent time the child's cumulative eligible capital in respect of the business, an amount equal to 3/4 of the amount determined under subparagraph (ii) shall be added to the amount otherwise determined in respect thereof for P in the definition "cumulative eligible capital" in subsection 14(5);

(d.2) for the purposes of determining after the time of the transfer

(i) the amount deemed by subparagraph 14(1)(a)(v) to be the child's taxable capital gain, and

(ii) the amount to be included under subparagraph 14(1)(a)(v) or paragraph 14(1)(b) in computing the child's income

in respect of any subsequent disposition of the property of the business, there shall be added to the amount otherwise determined for Q in the definition "cumulative eligible capital" in subsection 14(5) the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount, if any, determined for Q in that definition in respect of the business of the taxpayer immediately before the time of the transfer,

B is the fair market value immediately before that time of the property transferred, and

C is the fair market value immediately before that time of all eligible capital property of the taxpayer in respect of the business; and

(e) where the child is deemed to have acquired depreciable property of a prescribed class of the taxpayer for an amount determined under paragraph (d) and the capital cost to the taxpayer of the property exceeds the amount determined under that paragraph, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a),

(i) the capital cost to the child of the property shall be deemed to be the amount that was the capital cost to the taxpayer thereof, and

(ii) the excess shall be deemed to have been allowed to the child in respect of the property under regulations made under paragraph 20(1)(a) in computing income for taxation years before the acquisition thereof.

Related Provisions: 44(1.1) — Farm property disposed of to child; 69(11) — Anti-avoidance rule where property sold after rollover; 70(9) — Transfer of farm property by farmer to child; 70(9.6) — Transfer to parent; 70(9.8) — Farm property used by corporation or partnership; 75.1 — Gain or loss deemed that of transferor; 104(4)(a.4) — Deemed disposition by trust following transfer; 110.6(1)"qualified farm property"(d)(ii) — Property to which 73(3)(d.1) applies eligible for capital gains exemption; 110.6(2) — Capital gains exemption on farm property; 257 — Formula cannot calculate to less than zero.

History: The opening words of subsec. 73(3) amended by 2002, c. 9, s. 28, applicable to transfers of property that occur after December 10, 2001. The opening words formerly read:

(3) For the purposes of this Part, where at any time any land in Canada or depreciable property in Canada of a prescribed class of a taxpayer or any eligible capital property in respect of a business carried on in Canada by a taxpayer is transferred by the taxpayer to a child of the taxpayer who was resident in Canada immediately before the transfer, and the property was, before the transfer, used principally in the business of farming in which the taxpayer, the taxpayer's spouse or common-law partner or any of the taxpayer's children was actively engaged on a regular and continuous basis,

Subsec. 73(3) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subpara. 73(3)(d.2)(ii) amended by 1995, c. 3, s. 19, applicable to transfers that occur after February 22, 1994. Subpara. (ii) formerly read:

(ii) the amount to be included under paragraph 14(1)(b) in computing the child's income

That portion of subsec. 73(3) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 29(2), applicable to transfers occurring after 1992. That portion formerly read:

(3) *Inter vivos* transfer of farm property by farmer to his child — For the purposes of this Part, where at any time after 1971 any land in Canada or depreciable property in Canada of a prescribed class of a taxpayer or any eligible capital property in respect of a business carried on in Canada by a taxpayer has been transferred by a taxpayer to a child of the taxpayer who was resident in Canada immediately before the transfer, and the property was, immediately before the transfer, used by the taxpayer, the taxpayer's spouse or any of the taxpayer's children in the business of farming, the following rules apply:

Cl. 73(3)(b.1)(ii)(B) and all that portion of para. (d.1) following subpara. (i) amended, and para. (d.2) added, by 1994, c. 7, Sch. VIII (1993, c. 24), subsecs. 29(3) to (5), applicable to transfers by a taxpayer occurring after the beginning of the first fiscal period of the taxpayer's business beginning after 1987. Those portions formerly read:

(B) 4/3 of the taxpayer's cumulative eligible capital in respect of the business immediately before the time of the transfer,

. . . . .

(ii) the amount, if any, by which

(A) the amount, if any, determined for F in the definition "cumulative eligible capital" in subsection 14(5) in respect of the business of the taxpayer immediately before the time of the transfer

exceeds

(B) the amount, if any, included in the income of the taxpayer by reason of subparagraph 14(1)(a)(iv) as a result of the disposition,

and, for the purposes of determining at any time the child's cumulative eligible capital in respect of the business, an amount equal to the amount determined under subparagraph (ii) shall be added to the amount otherwise determined for P in the definition "cumulative eligible capital" in subsection 14(5); and

Regulations: See under 70(9) re prescribed forest management plans.

I.T. Application Rules: 26(19) (property owned since before 1972).

Interpretation Bulletins: IT-268R4: *Inter vivos* transfer of farm property to child; IT-373R2: Woodlots.

(4) *Inter vivos* transfer of family farm corporations and partnerships — For the purposes of this Part, where at any particular time after April 10, 1978 a taxpayer has transferred property to a child of the taxpayer who was resident in Canada immediately before the transfer, and the property was, immediately before the transfer, a share of the capital stock of a family farm corporation of the taxpayer or an interest in a family farm partnership of the taxpayer (within the meaning assigned by subsection 70(10)), the following rules apply:

(a) the taxpayer shall be deemed to have disposed of the property at the time of the transfer for proceeds of disposition equal to,

(i) in any case to which neither subparagraph (ii) nor (iii) applies, the proceeds of disposition otherwise determined,

(ii) if the proceeds of disposition otherwise determined exceeded the greater of

(A) the fair market value of the property immediately before the time of the transfer, and

(B) the adjusted cost base to the taxpayer of the property immediately before the time of the transfer,

the greater of the amounts referred to in clauses (A) and (B), or

(iii) if the proceeds of disposition otherwise determined were less than the lesser of the amounts referred to in clauses (ii)(A) and (B), the lesser of those amounts;

(b) section 69 does not apply in determining the proceeds of disposition of the property; and

Proposed Amendment — 73(4)(b)

(b) subsection 69(1) does not apply in determining the proceeds of disposition of the property; and

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 80(4), will amend para. 73(4)(b) to read as above, applicable to dispositions that occur after December 20, 2002.

Technical Notes: Subsection 73(4) provides a tax-deferral for an *inter vivos* transfer of shares of a family farm corporation or an interest in a family farm partnership by a taxpayer to a child of the taxpayer.

For dispositions made after December 20, 2002, paragraph 73(4)(b) is amended to clarify that subsection 73(4) does not apply if the anti-avoidance rule in subsection 69(11) applies. When applicable, subsection 69(11) denies the benefit of the rollover by treating the vendor's proceeds of disposition to be equal to the fair market value of the transferred property notwithstanding any other provision of the Act.

(c) the child shall be deemed to have acquired the property for an amount equal to the proceeds of disposition determined under paragraph (a).

Related Provisions: 53(4) — Effect on ACB of share or partnership interest; 70(9.2) — Transfer of family farm corporations and partnerships; 70(9.6) — Transfer to parent; 70(10) — "child"; 75.1 — Gain or loss deemed that of transfer; 104(4)(a.4) — Deemed disposition by trust following transfer.

I.T. Application Rules: 20(1.1).

Interpretation Bulletins: IT-268R4: *Inter vivos* transfer of farm property to child.

Advance Tax Rulings: ATR-56: Purification of a family farm corporation.

(5) Disposition of a NISA — Where at any time a taxpayer disposes of an interest in the taxpayer's NISA Fund No. 2, an amount equal to the balance in the fund so dis-

posed of shall be deemed to have been paid out of the fund at that time to the taxpayer except that,

(a) where the interest is disposed of to the taxpayer's spouse or common-law partner, former spouse or common-law partner or an individual referred to in paragraph (1)(d) (as it applies to transfers of property that occurred before 1993) in settlement of rights arising out of their marriage or common-law partnership, on or after the breakdown of the marriage or common-law partnership, that amount shall not be deemed to have been paid to the taxpayer if

(i) the disposition is made under a decree, order or judgment of a competent tribunal or, in the case of a spouse or common-law partner or former spouse or common-law partner, a written separation agreement, and

(ii) the taxpayer elects in the taxpayer's return of income under this Part for the taxation year in which the property was disposed of to have this paragraph apply to the disposition; and

(b) where the interest is disposed of to a taxable Canadian corporation in a transaction in respect of which an election is made under section 85, an amount equal to the proceeds of disposition in respect of that interest shall be deemed to be paid, at that time, to the taxpayer out of the taxpayer's NISA Fund No. 2.

Related Provisions: 252(3) — Extended meaning of "spouse" and "former spouse".

History: Subsec. 73(5) amended by 2000, c. 12, Sch. 2, s. 2, to replace "spouse" with "spouse or common-law partner", and by Sch. 2, s. 9, to replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subsec. 73(5) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 29(6), applicable to dispositions occurring after 1990 except that in applying the subsec. before 1993, the reference to "marriage" shall be read as a reference to "marriage or other conjugal relationship". (After 1992, "marriage" is defined in new 252(4)(b).)

Selected Cases [subsec. 73(5)]: *Brouillette v. R.*, [1998] 1 C.T.C. 2229 (TCC) (Transfer to trust for benefit of child not legal equivalent of transfer to the child); *Paxton v. Canada* (December 12, 1996), Court File No. A-513-94 (FCA) (unreported) ("Inverse sham" had effect of invalidating non-arm's length transfer); *Kieboom (A.) v. MNR*, [1992] 2 C.T.C. 59 (FCA) (Taxpayer "transferred" property to related parties by reducing equity in corporation on subscription for shares by related parties).

Interpretation Bulletins: IT-268R3: *Inter vivos* transfer of farm property to child.

(6) Application of subsec. 70(10) — The definitions in subsection 70(10) apply to this section.

Origin of subsec. 73(6): R.S.C. 1985, c. 1 (5th Supp.).

Interpretation Bulletins: IT-268R4: *Inter vivos* transfer of farm property to child.

Definitions [s. 73]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "beneficiary" — 104(1.1); "business" — 248(1); "Canada" — 255; "capital property" — 54, 73(1.1), 248(1); "carrying on business" — 253; "child" — 70(10), 73(6), 252(1); "common-law partner", "common-law partnership" — 248(1); "cumulative eligible capital" — 14(5), 248(1); "depreciable property" — 13(21), 248(1); "eligible capital property" — 54, 248(1); "farming" — 248(1); "former spouse" — 252(3); "income" — of trust 108(3); "individual" — 248(1); "interest in a family farm partnership" — 70(10), 73(6); "NISA Fund No. 2" — 248(1); ; "person", "prescribed" — 248(1); "proceeds of disposition" — 54; "property" — 248(1); "province" — *Interpretation Act* 35(1); "regulation" — 248(1); "resident in Canada" — 250; "separation agreement" — 248(1); "share of the capital stock of a family farm corporation" — 70(10), 73(6); "specified participating interest" — 248(1); "spouse" — 252(3); "taxable Canadian corporation" — 89(1), 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1); "testamentary trust" — 108(1), 248(1); "transfer" — 73(1.1); "trust" — 104(1), 248(1), (3); "undepreciated capital cost" — 13(21), 248(1).

74. [Repealed under former Act]

Selected Cases [subsec. 74(1)]: *Kieboom v. MNR*, [1992] 2 C.T.C. 59 (FCA) (Taxpayer "transferred" property to related parties by reducing equity in corporation on subscription for shares by related parties).

74.1 (1) Transfers and loans to spouse [or common-law partner] — Where an individual has transferred or lent property (otherwise than by an assignment of any portion of a retirement pension pursuant to section 65.1 of the *Canada Pension Plan* or a comparable provision of a provincial pension plan as defined in section 3 of that Act or of a prescribed provincial pension plan), either directly or indirectly, by means of a trust or by any other means whatever, to or for the benefit of a person who is the individual's spouse or common-law partner or who has since become the individual's spouse or common-law partner, any income or loss, as the case may be, of that person for a taxation year from the property or from property substituted therefor, that relates to the period in the year throughout which the individual is resident in Canada and that person is the individual's spouse or common-law partner, shall be deemed to be income or a loss, as the case may be, of the individual for the year and not of that person.

Related Provisions: 56(2) — Indirect payments; 56(4.1) — Interest free or low interest loans; 73(1) — Transfer to spouse deemed at cost; 74.1(3) — Repayment of existing indebtedness; 74.2(1) — Gain or loss deemed that of lender or transferor; 74.3 — Transfers or loans to a trust; 74.4(4) — Benefit not granted to a designated person; 74.5(1) — Transfers for fair market value consideration; 74.5(2) — Loans for value; 74.5(3) — Spouses living apart; 74.5(6) — Back-to-back loans and transfers; 74.5(7) — Guarantees; 74.5(9) — Transfers or loans to a trust; 74.5(11) — Artificial transactions; 74.5(12) — Attribution rules — exemption; 74.5(13) — No attribution of split income subject to kiddie tax; 82(2) — Attributed dividends deemed received by taxpayer; 96(1.8) — Transfer or loan of partnership interest; 212(12) — No non-resident withholding tax where income attributed; 248(5) — Substituted property.

History: Subsec. 74.1(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Regulations: 7800(1) (prescribed provincial pension plan is the Saskatchewan Pension Plan).

Interpretation Bulletins: IT-295R4: Taxable dividends received after 1987 by a spouse; IT-325R2: Property transfers after separation, divorce and annulment; IT-385R2: Disposition of an income interest in a trust; IT-394R2: Preferred beneficiary election; IT-434R: Rental of real property by individual; IT-511R: Interspousal and certain other transfers and loans of property; IT-531: Eligible funeral arrangements.

(2) Transfers and loans to minors — Where an individual has transferred or lent property, either directly or indirectly, by means of a trust or by any other means whatever, to or for the benefit of a person who was under 18 years of age (other than an amount received in respect of that person as a consequence of the operation of subsection 122.61(1)) and who

(a) does not deal with the individual at arm's length, or

(b) is the niece or nephew of the individual,

any income or loss, as the case may be, of that person for a taxation year from the property or from property substituted therefor, that relates to the period in the year throughout which the individual is resident in Canada, shall be deemed to be income or a loss, as the case may be, of the individual and not of that person unless that person has, before the end of the year, attained the age of 18 years.

Related Provisions: 56(2) — Indirect payments; 56(4.1) — Interest free or low interest loans; 69(1)(b) — Transfer not at arm's length deemed

to be disposition at fair market value; 74.1(3) — Repayment of existing indebtedness; 74.3 — Transfers or loans to a trust; 74.4(4) — Benefit not granted to a designated person; 74.5(1) — Transfers for fair market value consideration; 74.5(2) — Loans for value; 74.5(3) — Spouses living apart; 74.5(6) — Back-to-back loans and transfers; 74.5(7) — Guarantees; 74.5(9) — Transfers or loans to a trust; 74.5(11) — Artificial transactions; 74.5(12) — Attribution rules — exemption; 74.5(13) — No attribution of split income subject to kiddie tax; 75(1) — Transfers before May 23, 1985; 82(2) — Attributed dividends deemed received by taxpayer; 96(1.8) — Transfer or loan of partnership interest; 212(12) — No non-resident withholding tax where income attributed; 248(5) — Substituted property.

History: That portion of subsec. 74.1(2) preceding para. (a) amended by 1994, c. 7, Sch. VII (1992, c. 48), s. 4, to add the phrase in parentheses, applicable to 1993 *et seq.*

Selected Cases [s. 74.1(2)]: *Romkey v. R.*, [2000] 1 C.T.C. 390 (FCA) (Divestiture of right to future dividends was caught by provision).

Interpretation Bulletins: IT-268R4: *Inter vivos* transfer of farm property to child; IT-325R2: Property transfers after separation, divorce and annulment; IT-385R2: Disposition of an income interest in a trust; IT-394R2: Preferred beneficiary election; IT-434R: Rental of real property by individual; IT-510: Transfers and loans of property made after May 22, 1985 to a related minor; IT-531: Eligible funeral arrangements.

(3) Repayment of existing indebtedness — For the purposes of subsections (1) and (2), where, at any time, an individual has lent or transferred property (in this subsection referred to as the "lent or transferred property") either directly or indirectly, by means of a trust or by any other means whatever, to or for the benefit of a person, and the lent or transferred property or property substituted therefor is used

(a) to repay, in whole or in part, borrowed money with which other property was acquired, or

(b) to reduce an amount payable for other property,

there shall be included in computing the income from the lent or transferred property, or from property substituted therefor, that is so used, that proportion of the income or loss, as the case may be, derived after that time from the other property or from property substituted therefor that the fair market value at that time of the lent or transferred property, or property substituted therefor, that is so used is of the cost to that person of the other property at the time of its acquisition, but for greater certainty nothing in this subsection shall affect the application of subsections (1) and (2) to any income or loss derived from the other property or from property substituted therefor.

Interpretation Bulletins [subsec. 74.1(3)]: IT-325R2: Property transfers after separation, divorce and annulment; IT-394R2: Preferred beneficiary election; IT-510: Transfers and loans of property made after May 22, 1985 to a related minor.

Definitions [s. 74.1]: "amount" — 248(1); "arm's length" — 251(1); "borrowed money" — 248(1); "Canada" — 255; "common-law partner", "individual" — 248(1); "nephew", "niece" — 252(2)(g); "person", "property" — 248(1); "resident in Canada" — 250; "substituted property" — 248(5); "taxation year" — 249; "trust" — 104(1), 248(1), (3).

74.2 (1) Gain or loss deemed that of lender or transferor — Where an individual has lent or transferred property (in this section referred to as "lent or transferred property"), either directly or indirectly, by means of a trust or by any other means whatever, to or for the benefit of a person (in this subsection referred to as the "recipient") who is the individual's spouse or common-law partner or who has since become the individual's spouse or common-law partner, the following rules apply for the purposes of computing the income of the individual and the recipient for a taxation year:

(a) the amount, if any, by which

(i) the total of the recipient's taxable capital gains for the year from dispositions of property (other than listed personal property) that is lent or transferred property or property substituted therefor occurring in the period (in this subsection referred to as the "attribution period") throughout which the individual is resident in Canada and the recipient is the individual's spouse or common-law partner

exceeds

(ii) the total of the recipient's allowable capital losses for the year from dispositions occurring in the attribution period of property (other than listed personal property) that is lent or transferred property or property substituted therefor

shall be deemed to be a taxable capital gain of the individual for the year from the disposition of property other than listed personal property;

(b) the amount, if any, by which the total determined under subparagraph (a)(ii) exceeds the total determined under subparagraph (a)(i) shall be deemed to be an allowable capital loss of the individual for the year from the disposition of property other than listed personal property;

(c) the amount, if any, by which

(i) the amount that the total of the recipient's gains for the year from dispositions occurring in the attribution period of listed personal property that is lent or transferred property or property substituted therefor would be if the recipient had at no time owned listed personal property other than listed personal property that was lent or transferred property or property substituted therefor

exceeds

(ii) the amount that the total of the recipient's losses for the year from dispositions of listed personal property that is lent or transferred property or property substituted therefor would be if the recipient had at no time owned listed personal property other than listed personal property that was lent or transferred property or property substituted therefor,

shall be deemed to be a gain of the individual for the year from the disposition of listed personal property;

(d) the amount, if any, by which the total determined under subparagraph (c)(ii) exceeds the total determined under subparagraph (c)(i) shall be deemed to be a loss of the individual for the year from the disposition of listed personal property; and

(e) any taxable capital gain or allowable capital loss or any gain or loss taken into account in computing an amount described in paragraph (a), (b), (c) or (d) shall, except for the purposes of those paragraphs and to the extent that the amount so described is deemed by virtue of this subsection to be a taxable capital gain or an allowable capital loss or a gain or loss of the individual, be deemed not to be a taxable capital gain or an allowable capital loss or a gain or loss, as the case may be, of the recipient.

Related Provisions: 73(1) — Transfer to spouse deemed at cost; 74.1(1) — Transfers and loans to spouse; 74.2(3) — Application to disposition on emigration; 74.3 — Transfers or loans to a trust; 74.4(4) — Benefit not granted to a designated person; 74.5(1) — Transfer for fair market

value consideration; 74.5(2) — Loans for value; 74.5(3) — Spouses living apart; 74.5(6) — Back-to-back loans and transfers; 74.5(7) — Guarantees; 74.5(12) — Attribution rules — exemption; 248(5) — Substituted property.

History: Subsec. 74.2(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Interpretation Bulletins: IT-325R2: Property transfers after separation, divorce and annulment; IT-394R2: Preferred beneficiary election; IT-511R: Interspousal and certain other transfers and loans of property; IT-531: Eligible funeral arrangements.

(2) Deemed gain or loss — Where an amount is deemed by subsection (1) or 75(2) or section 75.1 of this Act, or subsection 74(2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, to be a taxable capital gain or an allowable capital loss of an individual for a taxation year,

(a) for the purposes of sections 3 and 111, as they apply for the purposes of section 110.6, such portion of the gain or loss as may reasonably be considered to relate to the disposition of a property by another person in the year shall be deemed to arise from the disposition of that property by the individual in the year; and

(b) for the purposes of section 110.6, that property shall be deemed to have been disposed of by the individual on the day on which it was disposed of by the other person.

History: Para. 74.2(2)(b) amended by 1995, c. 3, s. 20, applicable to 1994 *et seq.* Para. (b) formerly read:

(b) for the purposes of section 110.6, that property shall be deemed to have been disposed of by the individual in the year.

That portion of subsec. 74.2(2) preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 51, applicable to 1987 *et seq.* That portion formerly read:

(2) Deemed gain or loss — Where an individual is deemed under subsection (1) or section 75.1 of this Act or subsection 74(2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, to have a taxable capital gain or allowable capital loss for a taxation year,

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins [subsec. 74.2(2)]: IT-369R: Attribution of trust income to settlor; IT-394R2: Preferred beneficiary election.

(3) Election for subsection (1) to apply — Subsection (1) does not apply to a disposition at any particular time (in this subsection referred to as the "emigration disposition") under paragraph 128.1(4)(b), by a taxpayer who is a recipient referred to in subsection (1), unless the recipient and the individual referred to in that subsection, in their returns of income for the taxation year that includes the first time, after the particular time, at which the recipient disposes of the property, jointly elect that subsection (1) apply to the emigration disposition.

Related Provisions: 74.2(4) — Application rule.

History: Subsec. 74.2(3) added by 2001, c. 17, s. 54, applicable after October 1, 1996.

(4) Application of subsection (3) — For the purpose of applying subsection (3) and notwithstanding subsections 152(4) to (5), any assessment of tax payable under this Act by the recipient or the individual referred to in subsection (1) shall be made that is necessary to take an election under subsection (3) into account except that no such assessment shall affect the computation of

(a) interest payable under this Act to or by a taxpayer in respect of any period that is before the taxpayer's filing-due date for the taxation year that includes the first time, after the particular time referred to in subsection (3), at which the recipient disposes of the property referred to in that subsection; or

(b) any penalty payable under this Act.

History: Subsec. 74.2(4) added by 2001, c. 17, s. 54, applicable after October 1, 1996.

Selected Cases [s. 74.2]: *King v. Canada*, [1995] 1 C.T.C. 2353 (TCC) (Conduct of taxpayers may constitute estoppel with respect to attribution and timing).

Definitions [s. 74.2]: "allowable capital loss" — 38(b), 248(1); "amount", "assessment" — 248(1); "Canada" — 255; "common-law partner", "disposition", "filing-due date", "individual" — 248(1); "listed personal property" — 54, 248(1); "person", "property" — 248(1); "resident in Canada" — 250; "substituted property" — 248(5); "taxable capital gain" — 38(a), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

74.3 (1) Transfers or loans to a trust — Where an individual has lent or transferred property (in this section referred to as "lent or transferred property"), either directly or indirectly, by means of a trust or by any other means whatever, to a trust in which another individual who is at any time a designated person in respect of the individual is beneficially interested at any time, the following rules apply:

(a) for the purposes of section 74.1, the income of the designated person for a taxation year from the lent or transferred property shall be deemed to be an amount equal to the lesser of

(i) the amount in respect of the trust that was included by virtue of paragraph 12(1)(m) in computing the income for the year of the designated person, and

(ii) that proportion of the amount that would be the income of the trust for the year from the lent or transferred property or from property substituted therefor if no deduction were made under subsections 104(6) or (12) that

(A) the amount determined under subparagraph (i) in respect of the designated person for the year

is of

(B) the total of all amounts each of which is an amount determined under subparagraph (i) for the year in respect of the designated person or any other person who is throughout the year a designated person in respect of the individual; and

(b) for the purposes of section 74.2, an amount equal to the lesser of

(i) the amount that was designated under subsection 104(21) in respect of the designated person in the trust's return of income for the year, and

(ii) the amount, if any, by which

(A) the total of all amounts each of which is a taxable capital gain for the year from the disposition by the trust of the lent or transferred property or property substituted therefor

exceeds

(B) the total of all amounts each of which is an allowable capital loss for the year from the disposition by the trust of the lent or transferred property or property substituted therefor,

shall be deemed to be a taxable capital gain of the designated person for the year from the disposition of

property (other than listed personal property) that is lent or transferred property.

Related Provisions: 56(4.1) — Interest free or low-interest loans; 74.4(4) — Benefit not granted to a designated person; 74.5(5) — "Designated person"; 74.5(6) — Back to back loans and transfers; 74.5(7) — Guarantees; 74.5(12) — Attribution rules — exemption; 74.5(13) — No attribution of split income subject to kiddie tax; 75(2) — Reversionary trusts — attribution rules; 82(2) — Attributed dividends deemed received by individual; 96(1.8) — Transfer or loan of partnership interest; 212(12) — No non-resident withholding tax where income attributed; 248(5) — Substituted property; 248(25) — Beneficially interested.

Interpretation Bulletins: IT-394R2: Preferred beneficiary election; IT-510: Transfers and loans of property made after May 22, 1985 to a related minor; IT-511R: Interspousal and certain other transfers and loans of property.

(2) Definition of "designated person" — In this section, "designated person", in respect of an individual, has the meaning assigned by subsection 74.5(5).

Origin of subsec. 74.3(2): R.S.C. 1985, c. 1 (5th Supp.).

Definitions [s. 74.3]: "allowable capital loss" — 38(b), 248(1); "amount" — 248(1); "beneficially interested" — 248(25); "designated person" — 74.3(2), 74.5(5); "individual" — 248(1); "listed personal property" — 54, 248(1); "property" — 248(1); "substituted property" — 248(5); "taxable capital gain" — 38(a), 248(1); "taxation year" — 249; "trust" — 104(1), 248(1), (3).

74.4 (1) Definitions — In this section,

"designated person", in respect of an individual, has the meaning assigned by subsection 74.5(5);

Origin of 74.4(1)"designated person": R.S.C. 1985, c. 1 (5th Supp.).

"excluded consideration", at any time, means consideration received by an individual that is

(a) indebtedness,

(b) a share of the capital stock of a corporation, or

(c) a right to receive indebtedness or a share of the capital stock of a corporation.

(2) Transfers and loans to corporations — Where an individual has transferred or lent property, either directly or indirectly, by means of a trust or by any other means whatever, to a corporation and one of the main purposes of the transfer or loan may reasonably be considered to be to reduce the income of the individual and to benefit, either directly or indirectly, by means of a trust or by any other means whatever, a person who is a designated person in respect of the individual, in computing the income of the individual for any taxation year that includes a period after the loan or transfer throughout which

(a) the person is a designated person in respect of the individual and would have been a specified shareholder of the corporation if the definition "specified shareholder" in subsection 248(1) were read without reference to paragraphs (a) and (d) of that definition and if the reference therein to "any other corporation that is related to the corporation" were read as a reference to "any other corporation (other than a small business corporation) that is related to the corporation",

(b) the individual was resident in Canada, and

(c) the corporation was not a small business corporation,

the individual shall be deemed to have received as interest in the year the amount, if any, by which

(d) the amount that would be interest on the outstanding amount of the loan or transferred property for such periods in the year if the interest were computed thereon at the prescribed rate of interest for such periods

exceeds the total of

(e) any interest received in the year by the individual in respect of the transfer or loan (other than amounts deemed by this subsection to be interest),

(f) 3/4 of all taxable dividends received (other than dividends deemed by section 84 to have been received) by the individual in the year on shares that were received from the corporation as consideration for the transfer or as repayment for the loan that were excluded consideration at the time the dividends were received or on shares substituted therefor that were excluded consideration at that time, and

(g) where the designated person is a specified individual in relation to the year, the amount required to be included in computing the designated person's income for the year in respect of all taxable dividends received by the designated person that

(i) can reasonably be considered to be part of the benefit sought to be conferred, and

(ii) are included in computing the designated person's split income for any taxation year.

Related Provisions: 56(4.1) — Interest free or low interest loan to individual; 74.4(4) — Benefit not granted to a designated person; 82(2) — Attributed dividends deemed received by individual; 120.4 — Kiddie tax; 248(5) — Substituted property. See also at end of s. 74.4.

History: Para. 74.4(2)(g) added by 2000, c. 19, s. 10, applicable to 2000 *et seq.*

Para. 74.4(2)(a) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 52, applicable to 1987 *et seq.* with respect to loans and transfers made after October 27, 1986. Para. 74.4(2)(a) formerly read:

(a) the person is a designated person in respect of the individual and would have been a specified shareholder of the corporation if the definition "specified shareholder" in subsection 248(1) were read without reference to paragraphs (a) and (d) of that definition,

Regulations: 4301(c) (prescribed rate of interest for 74.4(2)(d)).

Interpretation Bulletins: IT-394R2: Preferred beneficiary election.

Information Circulars: 88-2, para. 10: General anti-avoidance rule — section 245 of the *Income Tax Act*.

I.T. Technical News: 16 (*Neuman* case).

Advance Tax Rulings: ATR-25: Estate freeze; ATR-36: Estate freeze; ATR-47: Transfer of assets to Realtyco.

(3) Outstanding amount — For the purposes of subsection (2), the outstanding amount of a transferred property or loan at a particular time is

(a) in the case of a transfer of property to a corporation, the amount, if any, by which the fair market value of the property at the time of the transfer exceeds the total of

(i) the fair market value, at the time of the transfer, of the consideration (other than consideration that is excluded consideration at the particular time) received by the transferor for the property, and

(ii) the fair market value, at the time of receipt, of any consideration (other than consideration that is excluded consideration at the particular time) received by the transferor at or before the particular time from the corporation or from a person with whom the transferor deals at arm's length, in exchange for excluded consideration previously received by the transferor as consideration for the property or for excluded consideration substituted for such consideration;

(b) in the case of a loan of money or property to a corporation, the amount, if any, by which

(i) the principal amount of the loan of money at the time the loan was made, or

(ii) the fair market value of the property lent at the time the loan was made,

as the case may be, exceeds the fair market value, at the time the repayment is received by the lender, of any repayment of the loan (other than a repayment that is excluded consideration at the particular time).

(4) Benefit not granted to a designated person — For the purposes of subsection (2), one of the main purposes of a transfer or loan by an individual to a corporation shall not be considered to be to benefit, either directly or indirectly, a designated person in respect of the individual, where

(a) the only interest that the designated person has in the corporation is a beneficial interest in shares of the corporation held by a trust;

(b) by the terms of the trust, the designated person may not receive or otherwise obtain the use of any of the income or capital of the trust while being a designated person in respect of the individual; and

(c) the designated person has not received or otherwise obtained the use of any of the income or capital of the trust, and no deduction has been made by the trust in computing its income under subsection 104(6) or (12) in respect of amounts paid or payable to, or included in the income of, that person while being a designated person in respect of the individual.

Related Provisions [s. 74.4]: 51(1)(e) — Exchange deemed transfer of convertible property by taxpayer to corporation; 74.5(4) — Exemption where spouses are living separate and apart; 74.5(5) — "Meaning of designated person"; 74.5(6) — Back-to-back loans and transfers; 74.5(7) — Guarantees; 74.5(9) — Transfers or loans to a trust; 74.5(11) — Artificial transactions; 82(2) — Dividends deemed received; 87(2)(j.7) — Amalgamations — continuing corporation; 212(12) — No non-resident withholding tax where income attributed; 248(25) — Meaning of "beneficial interest".

Definitions [s. 74.4]: "amount" — 248(1); "arm's length" — 251(1); "Canada" — 255; "corporation" — 248(1), *Interpretation Act* 35(1); "designated person" — 74.4(1), 74.5(5); "dividend" — 248(1); "excluded consideration" — 74.4(1); "individual" — 248(1); "outstanding amount" — 74.4(3); "person", "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "principal amount", "property" — 248(1); "received" — 248(7); "resident in Canada" — 250; "share", "small business corporation" — 248(1); "specified individual" — 120.4(1), 248(1); "specified shareholder" — 248(1); "split income" — 120.4(1), 248(1); "substituted" — 248(5); "taxable dividend" — 89(1), 248(1); "taxation year" — 249; "trust" — 104(1), 248(1), (3).

74.5 (1) Transfers for fair market consideration — Notwithstanding any other provision of this Act, subsections 74.1(1) and (2) and section 74.2 do not apply to any income, gain or loss derived in a particular taxation year from transferred property or from property substituted therefor if

(a) at the time of the transfer the fair market value of the transferred property did not exceed the fair market value of the property received by the transferor as consideration for the transferred property;

(b) where the consideration received by the transferor included indebtedness,

(i) interest was charged on the indebtedness at a rate equal to or greater than the lesser of

(A) the prescribed rate that was in effect at the time the indebtedness was incurred, and

(B) the rate that would, having regard to all the circumstances, have been agreed on, at the time the indebtedness was incurred, between parties dealing with each other at arm's length,

(ii) the amount of interest that was payable in respect of the particular year in respect of the indebtedness was paid not later than 30 days after the end of the particular year, and

(iii) the amount of interest that was payable in respect of each taxation year preceding the particular year in respect of the indebtedness was paid not later than 30 days after the end of each such taxation year; and

(c) where the property was transferred to or for the benefit of the transferor's spouse or common-law partner, the transferor elected in the transferor's return of income under this Part for the taxation year in which the property was transferred not to have the provisions of subsection 73(1) apply.

Related Provisions: 74.5(6) — Back-to-back loans and transfers. Seealso at end of s. 74.5.

History: Subsec. 74.5(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Regulations: 4301(c) (prescribed rate of interest for 74.5(1)(b)(i)(A)).

Interpretation Bulletins: IT-394R2: Preferred beneficiary election; IT-510: Transfers and loans of property made after May 22, 1985 to a related minor; IT-511R: Interspousal and certain other transfers and loans of property.

(2) Loans for value — Notwithstanding any other provision of this Act, subsections 74.1(1) and (2) and section 74.2 do not apply to any income, gain or loss derived in a particular taxation year from lent property or from property substituted therefor if

(a) interest was charged on the loan at a rate equal to or greater than the lesser of

(i) the prescribed rate that was in effect at the time the loan was made, and

(ii) the rate that would, having regard to all the circumstances, have been agreed on, at the time the loan was made, between parties dealing with each other at arm's length;

(b) the amount of interest that was payable in respect of the particular year in respect of the loan was paid not later than 30 days after the end of the particular year; and

(c) the amount of interest that was payable in respect of each taxation year preceding the particular year in respect of the loan was paid not later than 30 days after the end of each such taxation year.

Related Provisions: 74.5(7) — Guarantees. See additional Related Provisions at end of s. 74.5.

Regulations: 4301(c) (prescribed rate of interest for 74.5(2)(a)(i)).

Interpretation Bulletins: IT-394R2: Preferred beneficiary election; IT-510: Transfers and loans of property made after May 22, 1985 to a related minor; IT-511R: Interspousal and certain other transfers and loans of property.

(3) Spouses [or common-law partners] living apart — Notwithstanding subsection 74.1(1) and section 74.2, where an individual has lent or transferred property, either directly or indirectly, by means of a trust or by any other means whatever, to or for the benefit of a person who is the individual's spouse or common-law partner or

who has since become the individual's spouse or common-law partner,

(a) subsection 74.1(1) does not apply to any income or loss from the property, or property substituted therefor, that relates to the period throughout which the individual is living separate and apart from that person because of a breakdown of their marriage or common-law partnership; and

(b) section 74.2 does not apply to a disposition of the property, or property substituted therefor, occurring at any time while the individual is living separate and apart from that person because of a breakdown of their marriage or common-law partnership, if an election completed jointly with that person not to have that section apply is filed with the individual's return of income under this Part for the taxation year that includes that time or for any preceding taxation year.

History: Subsec. 74.5(3) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", and by Sch. 2, s. 9, to replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Para. 74.5(3)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 53, applicable to transfers of property made after May 22, 1985 and loans outstanding on or after May 22, 1985. Para. 74.5(3)(b) formerly read:

(b) section 74.2 does not apply with respect to a disposition of the property, or property substituted therefor, during the period throughout which the individual is living separate and apart from that person by reason of a breakdown of their marriage, if the individual files with the individual's return of income under this Part for the taxation year during which the individual commenced to so live separate and apart from that person an election completed jointly with that person not to have that section apply.

Interpretation Bulletins: IT-394R2: Preferred beneficiary election; IT-434R: Rental of real property by individual; IT-511R: Interspousal and certain other transfers and loans of property.

(4) Idem — No amount shall be included in computing the income of an individual under subsection 74.4(2) in respect of a designated person in respect of the individual who is the spouse or common-law partner of the individual for any period throughout which the individual is living separate and apart from the designated person by reason of a breakdown of their marriage or common-law partnership.

Related Provisions: See at end of s. 74.5.

History: Subsec. 74.5(4) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", and by Sch. 2, s. 9, to replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

(5) Definition of "designated person" — For the purposes of this section, "designated person" in respect of an individual, means a person

(a) who is the spouse or common-law partner of the individual; or

(b) who is under 18 years of age and who

(i) does not deal with the individual at arm's length, or

(ii) is the niece or nephew of the individual.

History: Subsec. 74.5(5) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Interpretation Bulletins: IT-394R2: Preferred beneficiary election; IT-511R: Interspousal and certain other transfers and loans of property.

(6) Back to back loans and transfers — Where an individual has lent or transferred property

(a) to another person and that property, or property substituted therefor, is lent or transferred by any person (in this subsection referred to as a "third party") directly or indirectly to or for the benefit of a specified person with respect to the individual, or

(b) to another person on condition that property be lent or transferred by any person (in this subsection referred to as a "third party") directly or indirectly to or for the benefit of a specified person with respect to the individual,

the following rules apply:

(c) for the purposes of sections 74.1, 74.2, 74.3 and 74.4, the property lent or transferred by the third party shall be deemed to have been lent or transferred, as the case may be, by the individual to or for the benefit of the specified person, and

(d) for the purposes of subsection (1), the consideration received by the third party for the transfer of the property shall be deemed to have been received by the individual.

Related Provisions: 74.5(8) — "Specified person". See also at end of s. 74.5.

Interpretation Bulletins: IT-394R2: Preferred beneficiary election; IT-510: Transfers and loans of property made after May 22, 1985 to a related minor; IT-511R: Interspousal and certain other transfers and loans of property.

(7) Guarantees — Where an individual is obligated, either absolutely or contingently, to effect any undertaking including any guarantee, covenant or agreement given to ensure the repayment, in whole or in part, of a loan made by any person (in this subsection referred to as the "third party") directly or indirectly to or for the benefit of a specified person with respect to the individual or the payment, in whole or in part, of any interest payable in respect of the loan, the following rules apply:

(a) for the purposes of sections 74.1, 74.2, 74.3 and 74.4, the property lent by the third party shall be deemed to have been lent by the individual to or for the benefit of the specified person; and

(b) for the purposes of paragraphs (2)(b) and (c), the amount of interest that is paid in respect of the loan shall be deemed not to include any amount paid by the individual to the third party as interest on the loan.

Related Provisions: 74.5(8) — "Specified person". See also at end of s. 74.5.

Interpretation Bulletins: IT-394R2: Preferred beneficiary election; IT-510: Transfers and loans of property made after May 22, 1985 to a related minor; IT-511R: Interspousal and certain other transfers and loans of property.

(8) Definition of "specified person" — For the purposes of subsections (6) and (7), "specified person", with respect to an individual, means

(a) a designated person in respect of the individual; or

(b) a corporation, other than a small business corporation, of which a designated person in respect of the individual would have been a specified shareholder if the definition "specified shareholder" in subsection 248(1) were read without reference to paragraphs (a) and (d) of that definition.

Interpretation Bulletins: IT-394R2: Preferred beneficiary election; IT-510: Transfers and loans of property made after May 22, 1985 to a related minor; IT-511R: Interspousal and certain other transfers and loans of property.

(9) Transfers or loans to a trust — Where a taxpayer has lent or transferred property, either directly or indirectly, by means of a trust or by any other means whatever, to a trust in which another taxpayer is beneficially interested, the taxpayer shall, for the purposes of this section and sections 74.1 to 74.4, be deemed to have lent or transferred the property, as the case may be, to or for the benefit of the other taxpayer.

Related Provisions: 248(25) — Beneficially interested.

Interpretation Bulletins: IT-394R2: Preferred beneficiary election; IT-510: Transfers and loans of property made after May 22, 1985 to a related minor; IT-511R: Interspousal and certain other transfers and loans of property.

(10) [Repealed]

History: Subsec. 74.5(10) repealed by 1994, c. 7, Sch. VIII (1993, c. 24), s. 30, applicable after 1990. (See subsec. 248(25).) Subsec. (10) formerly read:

> (10) Beneficially interested — For the purposes of this section and sections 74.1 to 74.4, a taxpayer is beneficially interested in a trust if the taxpayer has any right (whether immediate or future, whether absolute or contingent or whether conditional on or subject to the exercise of a discretionary power by any person or persons) to receive any of the income or capital of the trust either directly from the trust or indirectly through one or more other trusts.

(11) Artificial transactions — Notwithstanding any other provision of this Act, sections 74.1 to 74.4 do not apply to a transfer or loan of property where it may reasonably be concluded that one of the main reasons for the transfer or loan was to reduce the amount of tax that would, but for this subsection, be payable under this Part on the income and gains derived from the property or from property substituted therefor.

Interpretation Bulletins: IT-394R2: Preferred beneficiary election; IT-510: Transfers and loans of property made after May 22, 1985 to a related minor; IT-511R: Interspousal and certain other transfers and loans of property.

(12) Where sections 74.1 to 74.3 do not apply — Sections 74.1, 74.2 and 74.3 do not apply in respect of a transfer by an individual of property

(a) as a payment of a premium under a registered retirement savings plan under which the individual's spouse or common-law partner is, immediately after the transfer, the annuitant (within the meaning of subsection 146(1)) to the extent that the premium is deductible in computing the income of the individual for a taxation year;

(a.1) as an amount contributed under a provincial pension plan prescribed for the purposes of paragraph 60(v) under which the individual's spouse or common-law partner is, immediately after the transfer, the annuitant (within the meaning assigned by subsection 146(1)) or the owner of the account under the plan to the extent that the amount does not exceed the amount by which the amount prescribed for the purposes of subparagraph 60(v)(ii) for the year in respect of the plan exceeds the total of all other contributions to the plan for the year to the account of the spouse or common-law partner under the plan; or

(b) as or on account of an amount paid by the individual to another individual who is the individual's spouse or common-law partner or a person who was under 18 years of age in a taxation year and who

(i) does not deal with the individual at arm's length, or

(ii) is the niece or nephew of the individual,

that is deductible in computing the individual's income for the year and is required to be included in computing the income of the other individual.

Related Provisions: 146(5.1) — Amount of spousal RRSP premiums deductible; 146(8.3) — Attribution on spousal RRSP payments if withdrawn soon.

History: Subsec. 74.5(12) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Interpretation Bulletins [subsec. 74.5(12)]: IT-394R2: Preferred beneficiary election; IT-510: Transfers and loans of property made after May 22, 1985 to a related minor; IT-511R: Interspousal and certain other transfers and loans of property.

(13) Exception from attribution rules [kiddie tax] — Subsections 74.1(1) and (2), 74.3(1) and 75(2) of this Act and section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, do not apply to any amount that is included in computing a specified individual's split income for a taxation year.

History: Subsec. 74.5(13) added by 2000, c. 19, s. 11, applicable to 2000 *et seq.*

Related Provisions [s. 74.5]: 51(1)(c) — Exchange deemed transfer of convertible property by taxpayer to corporation; 87(2)(j.7) — Amalgamations — continuing corporation; 248(5) — Substituted property.

Definitions [s. 74.5]: "amount" — 248(1); "arm's length" — 251(1); "beneficially interested" — 248(25); "capital gain" — 39(1)(a), 248(1); "common-law partner", "common-law partnership" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "designated person" — 74.5(5); "individual" — 248(1); "nephew", "niece" — 252(2)(g); "person", "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "property" — 248(1); "registered retirement savings plan" — 146(1), 248(1); "shareholder", "small business corporation" — 248(1); "specified individual" — 120.4(1), 248(1); "specified person" — 74.5(8); "specified shareholder" — 248(1); "split income" — 120.4(1), 248(1); "substituted property" — 248(5); "taxable dividend" — 89(1), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

75. (1) [Repealed under former Act]

Selected Cases [subsec. 75(1)]: *Harvey v. Canada*, [1995] 1 C.T.C. 2507 (TCC) (Minimum formalities required where subsec. 75(1) sought to be avoided).

(2) Trusts [revocable, etc.] — Where, by a trust created in any manner whatever since 1934, property is held on condition

(a) that it or property substituted therefor may

(i) revert to the person from whom the property or property for which it was substituted was directly or indirectly received (in this subsection referred to as "the person"), or

(ii) pass to persons to be determined by the person at a time subsequent to the creation of the trust, or

(b) that, during the existence of the person, the property shall not be disposed of except with the person's consent or in accordance with the person's direction,

any income or loss from the property or from property substituted for the property, and any taxable capital gain or allowable capital loss from the disposition of the property or of property substituted for the property, shall, during the existence of the person while the person is resident in Canada, be deemed to be income or a loss, as the case may be, or a taxable capital gain or allowable capital loss, as the case may be, of the person.

Related Provisions: 56(4.1) — Interest free or low interest loans; 73(1) — Rollover of capital property to revocable living trust; 74.2(2) — Deemed gain or loss; 74.5(13) — No attribution of split income subject to kiddie tax; 75(3) — Exceptions; 82(2) — Dividends deemed received; 94(4)(h) [proposed] — Deeming non-resident trust to be resident in Canada does not apply to 75(2); 107(4.1) — Denial of rollover under subsec.

107(2); 107.4(1)(e) — No qualifying disposition where settlor can change beneficiaries of trust; 160(1) — Tax liability — non-arm's length property transfer; 212(12) — Deemed payments to spouse, etc; 248(5) — Substituted property; 256(1.2)(f)(iv) — Associated corporations — where shares owned by trust described in 75(2).

History: The portion of subsec. 75(2) after para. (a) amended by 2001, c. 17, subsec. 55(1), applicable to taxation years that begin after 2000. The portion formerly read:

> (b) that, during the lifetime of the person, the property shall not be disposed of except with the person's consent or in accordance with the person's direction,
>
> any income or loss from the property or from property substituted therefor, any taxable capital gain or allowable capital loss from the disposition of the property or of property substituted therefor, shall, during the lifetime of the person while the person is resident in Canada be deemed to be income or a loss, as the case may be, or a taxable capital gain or allowable capital loss, as the case may be, of the person.

Interpretation Bulletins: IT-325R2: Property transfers after separation, divorce and annulment; IT-394R2: Preferred beneficiary election; IT-369R: Attribution of trust income to settlor; IT-447: Residence of a trust or estate; IT-531: Eligible funeral arrangements.

I.T. Technical News: 7 (revocable living trusts; protective trusts).

(3) Exceptions — Subsection (2) does not apply to property held in a taxation year

(a) by a trust governed by a deferred profit sharing plan, an employee benefit plan, an employees profit sharing plan, a registered education savings plan, a registered pension plan, a registered retirement income fund, a registered retirement savings plan, a registered supplementary unemployment benefit plan or a retirement compensation arrangement;

(b) by an employee trust, a related segregated fund trust (within the meaning assigned by paragraph 138.1(1)(a)), a trust described in paragraph (a.1) of the definition "trust" in subsection 108(1), or a trust described in paragraph 149(1)(y);

(c) by a trust that

(i) is not resident in Canada,

(ii) is resident in a country under the laws of which an income tax is imposed,

(iii) is exempt under the laws referred to in subparagraph (ii) from the payment of income tax to the government of the country of which the trust is a resident, and

(iv) was established principally in connection with, or the principal purpose of which is to administer or provide benefits under, one or more superannuation, pension or retirement funds or plans or any funds or plans established to provide employee benefits;

(c.1) by a qualifying environmental trust; or

Proposed Addition — 75(3)(c.2)

(c.2) by a trust that is non-resident, for the purpose of computing its income for the year, because a contributor (as defined by subsection 94(1)) to the trust is an individual (other than a trust) who is, at the end of the year, resident in Canada and has, at the end of the year, been resident in Canada for a period of, or for periods the total of which is, not more than 60 months; or

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), s. 11, will add para. 75(3)(c.2), applicable to trust taxation years that begin after 2000, except that for trust taxation years that begin in 2001 or 2002, the para. shall be read as follows:

> "(c.2) by a trust that is non-resident, for the purpose of computing its income for the year, because a contributor (as defined by subsection 94(1) as it reads in its application to taxation years that begin after 2002) to the trust is an individual (other than a trust) who is, at the end of the year, resident in Canada and has, at the end of the year, been resident in Canada for a period of, or for periods the total of which is, not more than 60 months; or"

Technical Notes: Subsection 75(2) generally provides for the attribution of income derived from certain trust property to a person resident in Canada where the property was received by the trust from the person and can revert to the person (or pass to other persons determined by that person). Subsection 75(3) exempts property held by certain trusts from this attribution rule.

Subsection 75(3) is amended by adding new paragraph 75(3)(c.2). New paragraph 75(3)(c.2) ensures that subsection 75(2) does not apply to property held by a trust in respect of which all of the contributors are recent immigrants to Canada (i.e., none of the contributors to the trust has been resident in Canada for more than 60 months). The exception is consistent with similar 60-month exemptions in:

- section 94 (see subsection 94(3) and the definitions "connected contributor" and "resident contributor" in subsection 94(1)),
- section 94.1 (see subsection 94.1(3) and the definition "exempt taxpayer" in subsection 94.1(1)), and
- section 94.2 (see subparagraph 94.2(11)(c)(i)).

Letter from Dept. of Finance, May 9, 2001:

Dear [xxx]

I am responding to your faxed letter to Mr. Victor Pietrow dated April 30, 2001 concerning the Legislative Proposals and Explanatory Notes on Taxation of Non-Resident Trusts and Foreign Investment Entities (the "Legislative Proposals") released by the Department of Finance by way of Finance Canada News Release number 2000-050, dated June 22, 2000. As you may know, Finance Canada News Release number 2000-064, dated September 7, 2000, states that the implementation date for the Legislative Proposals will be delayed by one year, to taxation years beginning after 2001.

One of the Legislative Proposals is to amend subsection 75(3) of the *Income Tax Act* (the "Act") to exempt what may be termed "60 month immigration trusts" from the application of subsection 75(2) of the Act. In your letter, you have suggested that the implementation date in respect of the proposed subsection 75(3) amendment should remain as taxation years beginning after 2000.

From a tax policy standpoint, we have no objections to your suggestion. Consequently, we are prepared to recommend to the Minister that the proposed subsection 75(3) amendment be revised so that

- in respect of trust taxation years beginning after 2001, it is substantially in the form announced on June 22, 2000, and
- in respect of any particular trust taxation year that begins in 2001, there is an exemption from subsection 75(2) for a trust that, pursuant to the Act as it reads in its application to trust taxation years commencing after 2001, is non-resident for the purposes of computing the trust's income for the particular year, notwithstanding that there is a person who is, at the end of the particular year, both resident in Canada and a contributor (as defined in section 94, as it reads in its application to trust taxation years commencing after 2001) to the trust.

We advise, however, that the proposed subsection 75(3) amendment is part and parcel of the Legislative Proposals and that at this juncture it would be premature to speculate as to whether we would be prepared to propose an amendment to subsection 75(3) for tabling in the House of Commons except in conjunction with the Legislative Proposals.

Thank you for writing.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

[Identical letters dated November 1, 2000 and October 10, 2001 — ed.]

(d) by a prescribed trust.

History: Paras. 75(3)(a) and (b) amended by 2001, c. 17, subsec. 55(2), para. (a) applicable to taxation years that end after October 8, 1986 and, notwithstanding subsecs. 152(4) to (5), the Minister of National Revenue shall make any assessments, reassessments and additional assessments of

tax, interest and penalties that are necessary to give effect to the words "retirement compensation arrangement" in para. 75(3)(a); and para. (b) applicable to 1999 *et seq.* The paras. formerly read:

(a) by a trust governed by a registered pension plan, an employees profit sharing plan, a registered supplementary unemployment benefit plan, a registered retirement savings plan, a deferred profit sharing plan, a registered education savings plan, a registered retirement income fund or an employee benefit plan;

(b) by an employee trust, a related segregated fund trust (within the meaning assigned by paragraph 138.1(1)(a)) or a trust described in paragraph 149(1)(y);

Para. 75(3)(c.1) amended by 1998, c. 19, s. 13, applicable to taxation years that end after February 22, 1994. The para. formerly read:

(c.1) by a mining reclamation trust; or

Para. 75(3)(c.1) added by 1995, c. 3, s. 21, applicable to taxation years that end after February 22, 1994.

Regulations [subsec. 75(3)]: No trusts prescribed for 75(3)(d).

Definitions [s. 75]: "allowable capital loss" — 38(b), 248(1); "Canada" — 255; "capital gain", "capital loss" — 39(1), 248(1); "contributor" — 94(1); "deferred profit sharing plan" — 147(1), 248(1); "employee benefit plan" — 248(1); "employees profit sharing plan" — 144(1), 248(1); "employee trust", "individual", "non-resident", "person", "property", qualifying environmental trust" — 248(1); "registered education savings plan" — 146.1(1), 248(1); "registered pension plan" — 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "registered supplementary unemployment benefit plan" — 145(1), 248(1); "resident in Canada" — 94(3)(a)(viii), 250; "retirement compensation arrangement" — 248(1); "substituted property" — 248(5); "taxable capital gain" — 38(a), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

Interpretation Bulletins [s. 75]: IT-268R3: *Inter vivos* transfer of farm property to child; IT-369R: Attribution of trust income to settlor.

75.1 (1) Gain or loss deemed that of transferor —

Where

(a) subsection 73(3) or (4) applied to the transfer of property (in this subsection referred to as "transferred property") by a taxpayer to a child of the taxpayer,

(b) the transfer was made at less than the fair market value of the transferred property immediately before the time of the transfer, and

(c) in a taxation year, the transferee disposed of the transferred property and did not, before the end of that year, attain the age of 18 years,

the following rules apply:

(d) the amount, if any, by which

(i) the total of the transferee's taxable capital gains for the year from dispositions of transferred property

exceeds

(ii) the total of the transferee's allowable capital losses for the year from dispositions of transferred property,

shall, during the lifetime of the transferor while the transferor is resident in Canada, be deemed to be a taxable capital gain of the transferor for the year from the disposition of property,

(e) the amount, if any, by which the total determined under subparagraph (d)(ii) exceeds the total determined under subparagraph (d)(i) shall, during the lifetime of the transferor while the transferor is resident in Canada, be deemed to be an allowable capital loss of the transferor for the year from the disposition of property, and

(f) any taxable capital gain or allowable capital loss taken into account in computing an amount described in paragraph (d) or the amount described in paragraph (e) shall, except for the purposes of those paragraphs, to the extent that the amount so described is deemed by virtue of this subsection to be a taxable capital gain or an allowable capital loss of the transferor, be deemed not to be a taxable capital gain or an allowable capital loss, as the case may be, of the transferee.

Related Provisions: 38 — Taxable capital gain and allowable capital loss; 39(1) — Capital gain and capital loss; 74.2(2) — Deemed gain or loss.

History: Para. 75.1(1)(a) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 54, applicable to property transferred after 1989. Para. 75.1(1)(a) formerly read:

(a) a taxpayer has, after 1971, transferred property (in this subsection referred to as "transferred property") to a child of the taxpayer in circumstances where subsection 73(3) applied in respect of the transfer,

(2) Definition of "child" — For the purposes of this section, "child" of a taxpayer includes a child of the taxpayer's child and a child of the taxpayer's child's child.

Related Provisions: 70(10) — Parallel definition for other purposes; 252(1) — Further extended meaning of "child".

Definitions [s. 75.1]: "allowable capital loss" — 38(b), 248(1); "amount" — 248(1); "Canada" — 255; "child" — 75.1(2), 252(1); "property" — 248(1); "resident in Canada" — 250; "taxable capital gain" — 38(a), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "transferred property" — 75.1(1)(a).

Interpretation Bulletins [s. 75.1]: IT-268R4: *Inter vivos* transfer of farm property to child.

Proposed Addition — 75.2

75.2 Rules applicable with respect to "qualifying trust annuity" — Where an amount paid to acquire a qualifying trust annuity with respect to a taxpayer was deductible under paragraph 60(l) in computing the taxpayer's income,

(a) any amount that is paid out of or under the annuity at any particular time after 2005 and before the death of the taxpayer is deemed to have been received out of or under the annuity at the particular time by the taxpayer, and not to have been received by any other taxpayer; and

(b) if the taxpayer dies after 2005

(i) an amount equal to the fair market value of the annuity at the time of the taxpayer's death is deemed to have been received, immediately before the taxpayer's death, by the taxpayer out of or under the annuity, and

(ii) for the purpose of subsection 70(5), the annuity is to be disregarded in determining the fair market value (immediately before the taxpayer's death) of the taxpayer's interest in the trust that is the annuitant under the annuity.

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 81, will add s. 75.2, applicable after 2005.

Technical Notes: New section 75.2 provides attribution rules in respect of a "qualifying trust annuity" with respect to a taxpayer (as defined in new subsection 60.011(2)), the purchase price of which is deductible by the taxpayer under paragraph 60(l). A distinguishing feature of such an annuity is that the annuitant thereunder is a qualifying trust under which the taxpayer is a beneficiary.

Paragraph 75.2(a) deems any amount paid out of or under such an annuity at any time after 2005 and before the taxpayer's death to have been received at that time by the taxpayer. The taxpayer is required, by paragraph 56(1)(d.2), to include this amount in computing the taxpayer's income for the year in which they are deemed to have received the amount, as would be the case if the taxpayer were the annuitant under the annuity.

Paragraph 75.2(a) also deems the amount not to have been received by any other taxpayer, thus ensuring that the amount, although payable to the trust that is the annuitant under the annuity, is disregarded in determining the trust's income for tax purposes.

Paragraph 75.2(b) contains special provisions that apply where a taxpayer who was entitled to a deduction under paragraph 60(l) for the purchase price of a qualifying trust annuity with respect to the taxpayer dies after 2005. Subparagraph 75.2(b)(i) deems the taxpayer to have received, immediately before death, an amount out of or under the annuity equal to the fair market value of the annuity at that time. This amount is included, also under paragraph 56(1)(d.2), in computing the taxpayer's income for the taxation year that includes that time.

Subparagraph 75.2(b)(ii) provides for the annuity to be disregarded in determining, for the purpose of subsection 70(5), the fair market value of the taxpayer's interest in the trust that is the annuitant under the annuity. Subsection 70(5) deems a deceased taxpayer to have disposed of each capital property owned by the taxpayer immediately before death for proceeds equal to the fair market value of the property at that time. To the extent that subsection 70(5) deems a taxpayer who dies after 2005 to have disposed of an interest in a trust that is the annuitant under a qualifying trust annuity with respect to the taxpayer, subparagraph 75.2(b)(ii) ensures — by disregarding the annuity in determining the fair market value of the taxpayer's interest in the trust — that the taxpayer is not subject to double taxation with respect to the annuity.

Related Provisions: 160.2(2.1), (2.2) — Joint and several liability for tax under 75.2.

Definitions [s. 75.2]: "amount", "annuity" — 248(1); "qualifying trust annuity" — 60.011(2), 248(1); "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

76. (1) Security in satisfaction of income debt — Where a person receives a security or other right or a certificate of indebtedness or other evidence of indebtedness wholly or partially as payment of, in lieu of payment of or in satisfaction of, a debt that is then payable, the amount of which debt would be included in computing the person's income if it were paid, the value of the security, right or indebtedness or the applicable portion thereof shall, notwithstanding the form or legal effect of the transaction, be included in computing the person's income for the taxation year in which it is received.

Related Provisions: 214(4) — Non-resident — securities.

History: Subsec. 76(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 55, applicable to securities, rights, certificates of indebtedness and other evidences of indebtedness received after July 13, 1990. Subsec. 76(1) formerly read:

> 76. (1) Security in satisfaction of income debt — Where a person has received a security or other right or a certificate of indebtedness or other evidence of indebtedness wholly or partially as, in lieu of payment of, or in satisfaction of, a debt that was then payable, the amount of which debt would be included in computing the person's income if it had been paid, the value of the security, right or indebtedness or the applicable portion thereof shall, notwithstanding the form or legal effect of the transaction, be included in computing the person's income for the taxation year in which it was received.

Selected Cases [subsec. 76(1)]: *Nellis v. R.*, [1986] 2 C.T.C. 216 (FCTD) (Mortgage received in satisfaction of debt was security in lieu of payment and included in income); *Pendray Farms Ltd. et al. v. R.*, [1980] C.T.C. 109 (FCTD) (Amounts received in cash by marketing association as agent and then by taxpayer in "revolving loan fund certificates" taxable).

Advance Tax Rulings: ATR-6: Vendor reacquires business assets following default by purchaser.

(2) Idem — Where a security or other right or a certificate of indebtedness or other evidence of indebtedness is received by a person wholly or partially as payment of, in lieu of payment of or in satisfaction of, a debt before the debt is payable, but is not itself payable or redeemable before the day on which the debt is payable, it shall, for the purpose of subsection (1), be deemed to be received by the person holding it at that time when the debt becomes payable.

History: Subsec. 76(2) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 55, applicable to securities, rights, certificates of indebtedness and other evidences of indebtedness received after July 13, 1990. Subsec. 76(2) formerly read:

> (2) Idem — Where a security or other right or a certificate of indebtedness or other evidence of indebtedness has been received by a person wholly or partially as, in lieu of payment of, or in satisfaction of, a debt before the debt was payable, but was not itself payable or redeemable before the day on which the debt was payable, it shall, for the purpose of subsection (1), be deemed to have been received when the debt became payable by the person holding it at that time.

Interpretation Bulletins: IT-77R: Securities in satisfaction of an income debt (archived).

(3) Section enacted for greater certainty — This section is enacted for greater certainty and shall not be construed as limiting the generality of the other provisions of this Part by which amounts are required to be included in computing income.

(4) Debt deemed not to be income debt — Where a cash purchase ticket or other form of settlement prescribed pursuant to the *Canada Grain Act* or by the Minister is issued to a taxpayer in respect of grain delivered in a taxation year of a taxpayer to a primary elevator or process elevator and the ticket or other form of settlement entitles the holder thereof to payment by the operator of the elevator of the purchase price, without interest, stated in the ticket for the grain at a date that is after the end of that taxation year, the amount of the purchase price stated in the ticket or other form of settlement shall, notwithstanding any other provision of this section, be included in computing the income of the taxpayer to whom the ticket or other form of settlement was issued for the taxpayer's taxation year immediately following the taxation year in which the grain was delivered and not for the taxation year in which the grain was delivered.

Related Provisions: 76(5) — Meaning of certain expressions.

Interpretation Bulletins: IT-184R: Deferred cash purchase tickets issued for grain; IT-433R: Farming or fishing — use of cash method.

(5) Definitions of certain expressions — In subsection (4), the expressions "cash purchase ticket", "operator", "primary elevator" and "process elevator" have the meanings assigned by the *Canada Grain Act* and "grain" means wheat, oats, barley, rye, flaxseed and rapeseed produced in the designated area defined by the *Canadian Wheat Board Act*.

Related Provisions: 24 — Ceasing to carry on business; 214(4) — Non-resident's tax on securities income.

Definitions [s. 76]: "amount" — 248(1); "cash purchase ticket", "grain" — 76(5); "Minister" — 248(1); "operator" — 76(5); "person" — 248(1); "primary elevator", "process elevator" — 76(5); "taxpayer" — 248(1); "taxation year" — 249.

76.1 (1) Non-resident moving debt from Canadian business — If at any time a debt obligation of a non-resident taxpayer that is denominated in a foreign currency ceases to be an obligation of the taxpayer in respect of a business or part of a business carried on by the taxpayer in Canada immediately before that time (other than an obligation in respect of which the taxpayer ceased to be indebted at that time), for the purpose of determining the amount of any income, loss, capital gain or capital loss due to the fluctuation in the value of the foreign currency relative to Canadian currency, the taxpayer is deemed to have settled the debt obligation immediately before that time at the amount outstanding on account of its principal amount.

(2) Non-resident assuming debt — If at any time a debt obligation of a non-resident taxpayer that is denominated in a foreign currency becomes an obligation of the taxpayer in respect of a business or part of a business that the taxpayer carries on in Canada after that time (other than an obligation in respect of which the taxpayer became indebted at that time), the amount of any income, loss, capital gain or capital loss in respect of the obligation due to the fluctuation in the value of the foreign currency relative to Canadian currency shall be determined based on the amount of the obligation in Canadian currency at that time.

History: S. 76.1 added by 2001, c. 17, s. 56, applicable after June 27, 1999 in respect of an authorized foreign bank, and after August 8, 2000 in any other case.

Definitions [s. 76.1]: "amount", "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "capital gain" — 39(1)(a), 248(1); "capital loss" — 39(1)(b), 248(1); "foreign currency", "non-resident", "principal amount" — 248(1); "resident in Canada" — 94(3)(a)(viii), 250; "taxpayer" — 248(1).

Interpretation Bulletins [s. 76.1]: IT-77R: Securities in satisfaction of an income debt.

77. [Repealed]

History: S. 77 repealed by 1995, c. 21, s. 52, applicable to exchanges occurring after October 1994. S. 77 formerly read:

> 77. Bond conversion — Where a bond of a debtor is acquired by a taxpayer in exchange for another bond of the same debtor and
>
> (a) the terms of the bond for which it was exchanged conferred on the holder thereof the right to make the exchange, and
>
> (b) the amount payable to the holder of the bond on its maturity is the same as the amount that would have been payable to the holder of the bond for which it was exchanged on the maturity of that bond,
>
> the cost of the bond so acquired and the sale price of the bond for which it was exchanged shall be deemed to be,
>
> (c) in the event that the bond that was exchanged was property described in an inventory of a business carried on by the taxpayer, the amount at which it had been valued at the end of the last complete fiscal period of the business preceding the exchange, or
>
> (d) in any other event, the adjusted cost base to the taxpayer of the bond that was exchanged, immediately before the exchange.

78. (1) Unpaid amounts — Where an amount in respect of a deductible outlay or expense that was owing by a taxpayer to a person with whom the taxpayer was not dealing at arm's length at the time the outlay or expense was incurred and at the end of the second taxation year following the taxation year in which the outlay or expense was incurred, is unpaid at the end of that second taxation year, either

(a) the amount so unpaid shall be included in computing the taxpayer's income for the third taxation year following the taxation year in which the outlay or expense was incurred, or

(b) where the taxpayer and that person have filed an agreement in prescribed form on or before the day on or before which the taxpayer is required by section 150 to file the taxpayer's return of income for the third succeeding taxation year, for the purposes of this Act the following rules apply:

(i) the amount so unpaid shall be deemed to have been paid by the taxpayer and received by that person on the first day of that third taxation year, and section 153, except subsection 153(3), is applicable to the extent that it would apply if that amount were being paid to that person by the taxpayer, and

(ii) that person shall be deemed to have made a loan to the taxpayer on the first day of that third taxation year in an amount equal to the amount so unpaid minus the amount, if any, deducted or withheld therefrom by the taxpayer on account of that person's tax for that third taxation year.

Related Provisions: 12(1)(b) — Income inclusion for certain amounts not received until after end of year; 78(3) — Late filing; 78(4), (5) — Unpaid remuneration; 80(1)"excluded obligation"(c) — Obligation not subject to debt forgiveness rules; 127(26) — Parallel rule for unpaid amounts re investment tax credit; 248(1)"salary deferral arrangement"(k) — No SDA where bonus paid within 3 years.

Interpretation Bulletins: IT-109R2: Unpaid amounts; IT-152R3: Special reserves — sale of land.

Information Circulars: 88-2, para. 16: General anti-avoidance rule — section 245 of the *Income Tax Act*.

Forms: T2047: Agreement in respect of unpaid amounts.

(2) Idem — Where an amount in respect of a deductible outlay or expense that was owing by a taxpayer that is a corporation to a person with whom the taxpayer was not dealing at arm's length is unpaid at the time when the taxpayer is wound up, and the taxpayer is wound up before the end of the second taxation year following the taxation year in which the outlay or expense was incurred, the amount so unpaid shall be included in computing the taxpayer's income for the taxation year in which it is wound up.

Related Provisions: 80(1)"excluded obligation"(c) — Obligation not subject to debt forgiveness rules.

Interpretation Bulletins: IT-109R2: Unpaid amounts; IT-126R2: Meaning of "Winding-up".

(3) Late filing — Where, in respect of an amount described in subsection (1) that was owing by a taxpayer to a person, an agreement in a form prescribed for the purposes of this section is filed after the day on or before which the agreement is required to be filed for the purposes of paragraph (1)(b), both paragraphs (1)(a) and (b) apply in respect of the said amount, except that paragraph (1)(a) shall be read and construed as requiring 25% only of the said amount to be included in computing the taxpayer's income.

Interpretation Bulletins: IT-109R2: Unpaid amounts.

(4) Unpaid remuneration and other amounts — Where an amount in respect of a taxpayer's expense that is a superannuation or pension benefit, a retiring allowance, salary, wages or other remuneration (other than reasonable vacation or holiday pay or a deferred amount under a salary deferral arrangement) in respect of an office or employment is unpaid on the day that is 180 days after the end of the taxation year in which the expense was incurred, for the purposes of this Act other than this subsection, the amount shall be deemed not to have been incurred as an expense in the year and shall be deemed to be incurred as an expense in the taxation year in which the amount is paid.

Related Provisions: 37(11) — SR&ED expense must be claimed as such even if not deductible due to 78(4); 78(5) — 78(4) takes priority over 78(1); 80(1)"excluded obligation"(c) — Obligation not subject to debt forgiveness rules; 127(9)"investment tax credit"(m) — investment tax credit must be claimed as such even if not deductible due to 78(4); 127(26) — Unpaid amounts re investment tax credit; 248(1)"salary deferral arrangement"(k) — No SDA where bonus paid within 3 years.

History: Subsec. 78(4) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 56, to add "a superannuation or pension benefit, a retiring allowance", applicable to expenses incurred after July 1990.

For earlier History, see under 78(5).

Selected Cases [subsec. 78(4)]: *R. v. V and R Enterprises Ltd.*, [1979] C.T.C. 465 (FCTD) (Payments at year-end to officers in addition to

basic salaries were not "bonuses", but part of regular remuneration, and deductible); *McClain Industries of Canada Inc. v. R.*, [1978] C.T.C. 511 (FCTD) (Unpaid commissions assigned to non-resident company taxable as benefits conferred on another).

Interpretation Bulletins: IT-109R2: Unpaid amounts.

(5) Where subsec. (1) does not apply — Subsection (1) does not apply in any case where subsection (4) applies.

Definitions [s. 78]: "amount" — 248(1); "arm's length" — 251(1); "corporation" — 248(1), *Interpretation Act* 35(1); "deferred amount", "employment", "office", "person", "prescribed", "retiring allowance", "salary deferral arrangement", "salary or wages", "superannuation or pension benefit" — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 78]: IT-109R2: Unpaid amounts; IT-152R3: Special reserves — sale of land.

79. [Surrender of property — debtor] — (1) Definitions — In this section,

"creditor" of a particular person includes a person to whom the particular person is obligated to pay an amount under a mortgage, hypothecary claim or similar obligation and, where property was sold to the particular person under a conditional sales agreement, the seller of the property (or any assignee with respect to the agreement) is deemed to be a creditor of the particular person in respect of that property;

Related Provisions: 79.1(1)"creditor" — Definition applies to s. 79.1.

"debt" includes an obligation to pay an amount under a mortgage, hypothecary claim or similar obligation or under a conditional sales agreement;

Related Provisions: 79.1(1)"debt" — Definition applies to s. 79.1.

"person" includes a partnership;

Related Provisions: 79.1(1)"person" — Definition applies to s. 79.1.

"property" does not include

(a) money, or

(b) indebtedness owed by or guaranteed by the government of a country, or a province, state, or other political subdivision of that country;

Related Provisions: 79.1(1)"property" — Definition applies to s. 79.1.

"specified amount" at any time of a debt owed or assumed by a person means

(a) the unpaid principal amount of the debt at that time, and

(b) unpaid interest accrued to that time on the debt.

Related Provisions: 79.1(1)"specified amount" — Definition applies to s. 79.1.

History: The definition "creditor" in subsec. 79(1) amended to add "hypothecary claim" and replace "shall be deemed" with "is deemed" by 2001, c. 17, s. 209, in force on June 14, 2001.

The definition "debt" in subsec. 79(1) amended to add the words "hypothecary claim" by the said c. 17, s. 209, in force on June 14, 2001.

(2) Surrender of property — For the purposes of this section, a property is surrendered at any time by a person to another person where the beneficial ownership of the property is acquired or reacquired at that time from the person by the other person and the acquisition or reacquisition of the property was in consequence of the person's failure to pay all or part of one or more specified amounts of debts owed by the person to the other person immediately before that time.

Related Provisions: 79.1(2) — Seizure of property by creditor; 180.2(1)"adjusted income" — No OAS clawback on gain to which 79(2) applies.

(3) Proceeds of disposition for debtor — Where a particular property is surrendered at any time by a person (in this subsection referred to as the "debtor") to a creditor of the debtor, the debtor's proceeds of disposition of the particular property shall be deemed to be the amount determined by the formula

$$(A + B + C + D + E - F) \times \frac{G}{H}$$

where

A is the total of all specified amounts of debts of the debtor that are in respect of properties surrendered at that time by the debtor to the creditor and that are owing immediately before that time to the creditor;

B is the total of all amounts each of which is a specified amount of a debt that is owed by the debtor immediately before that time to a person (other than the creditor), to the extent that the amount ceases to be owing by the debtor as a consequence of properties being surrendered at that time by the debtor to the creditor;

C is the total of all amounts each of which is a specified amount of a particular debt that is owed by the debtor immediately before that time to a person (other than a specified amount included in the amount determined for A or B as a consequence of properties being surrendered at that time by the debtor to the creditor), where

(a) any property surrendered at that time by the debtor to the creditor was security for

(i) the particular debt, and

(ii) another debt that is owed by the debtor immediately before that time to the creditor, and

(b) the other debt is subordinate to the particular debt in respect of that property;

D is

(a) where a specified amount of a debt owed by the debtor immediately before that time to a person (other than the creditor) ceases, as a consequence of the surrender at that time of properties by the debtor to the creditor, to be secured by all properties owned by the debtor immediately before that time, the lesser of

(i) the amount, if any, by which the total of all such specified amounts exceeds the portion of that total included in any of the amounts determined for B or C as a consequence of properties being surrendered at that time by the debtor to the creditor, and

(ii) the amount, if any, by which the total cost amount to the debtor of all properties surrendered at that time by the debtor to the creditor exceeds the total amount that would, but for this description and the description of F, be determined under this subsection as a consequence of the surrender, and

(b) in any other case, nil;

E is

(a) where the particular property is surrendered at that time by the debtor in circumstances in which paragraph 69(1)(b) would, but for this subsection, apply and the fair market value of all properties surrendered at that time by the debtor to the creditor exceeds the amount that would, but for this description and the description of F, be determined

under this subsection as a consequence of the surrender, that excess, and

(b) in any other case, nil;

F is the total of all amounts each of which is the lesser of

(a) the portion of a particular specified amount of a particular debt included in the amount determined for A, B, C or D in computing the debtor's proceeds of disposition of the particular property, and

(b) the total of

(i) all amounts included under paragraph 6(1)(a) or subsection 15(1) in computing the income of any person because the particular debt was settled, or deemed by subsection 80.01(8) to have been settled, at or before the end of the taxation year that includes that time,

(ii) all amounts renounced under subsection 66(10), (10.1), (10.2) or (10.3) by the debtor in respect of the particular debt,

(iii) all amounts each of which is a forgiven amount (within the meaning assigned by subsection 80(1)) in respect of the debt at a previous time that the particular debt was deemed by subsection 80.01(8) to have been settled,

(iv) where the particular debt is an excluded obligation (within the meaning assigned by subsection 80(1)), the particular specified amount, and

(v) the lesser of

(A) the unpaid interest accrued to that time on the particular debt, and

(B) the total of

(I) the amount, if any, by which the total of all amounts included because of section 80.4 in computing the debtor's income for the taxation year that includes that time or for a preceding taxation year in respect of interest on the particular debt exceeds the total of all amounts paid before that time on account of interest on the particular debt, and

(II) such portion of that unpaid interest as would, if it were paid, be included in the amount determined under paragraph 28(1)(e) in respect of the debtor;

G is the fair market value at that time of the particular property; and

H is the fair market value at that time of all properties surrendered by the debtor to the creditor at that time.

Related Provisions: 13(21)"proceeds of disposition"(h) — Inclusion for depreciable property rules; 15(1.21)(b) — Inclusion under 79(3) ignored for calculating shareholder benefit from forgiven amount; 18(9.3) — Rule where debtor previously prepaid interest; 79(2) — Meaning of "surrendered"; 79(4) — Subsequent payment by debtor; 79(5) — Where amount included in consequence of properties being surrendered before the year; 79(7) — Where debt denominated in foreign currency; 80(1)"forgiven amount"B(f) — Debt forgiveness rules do not apply; 87(2)(h.1) — Amalgamations — continuing corporation; 118(2)B — Inclusion under s. 79 ignored for old age credit threshold; 122.5(1)"adjusted income" — Inclusion under s. 79 ignored for GST credit threshold; 122.6"adjusted income" — Inclusion under s. 79 ignored for Child Tax Benefit threshold; 257 — Formula cannot calculate to less than zero.

Interpretation Bulletins: IT-505: Mortgage foreclosures and conditional sales repossessions (archived).

(4) Subsequent payment by debtor — An amount paid at any time by a person as, on account of or in satisfaction of, a specified amount of a debt that can reasonably be considered to have been included in the amount determined for A, C or D in subsection (3) in respect of a property surrendered before that time by the person shall be deemed to be a repayment of assistance, at that time in respect of the property, to which

(a) subsection 39(13) applies, where the property was capital property (other than depreciable property) of the person immediately before its surrender;

(b) paragraph 20(1)(hh.1) applies, where the cost of the property to the person was an eligible capital expenditure;

(c) the description of E in the definition "cumulative Canadian exploration expense" in subsection 66.1(6), the description of D in the definition "cumulative Canadian development expense" in subsection 66.2(5) or the description of D in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5), as the case may be, applies, where the cost of the property to the person was a Canadian exploration expense, a Canadian development expense or a Canadian oil and gas property expense; or

(d) paragraph 20(1)(hh) applies, in any other case.

(5) Subsequent application with respect to employee or shareholder debt — Any amount included under paragraph 6(1)(a) or subsection 15(1) in computing a person's income for a taxation year that can reasonably be considered to have been included in the amount determined for A, C or D in subsection (3) as a consequence of properties being surrendered before the year by the person shall be deemed to be a repayment by the person, immediately before the end of the year, of assistance to which subsection (4) applies.

Forms: T2 SCH 11: Transactions with shareholders, officers, or employees.

(6) Surrender of property not payment or repayment by debtor — Where a specified amount of a debt is included in the amount determined at any time for A, B, C or D in subsection (3) in respect of a property surrendered at that time by a person to a creditor of the person, for the purpose of computing the person's income, no amount shall be considered to have been paid or repaid by the person as a consequence of the acquisition or reacquisition of the surrendered property by the creditor.

Advance Tax Rulings: ATR-6: Vendor reacquires business assets following default by purchaser.

(7) Foreign exchange — Where a debt is denominated in a currency (other than Canadian currency), any amount determined for A, B, C or D in subsection (3) in respect of the debt shall be determined with reference to the relative value of that currency and Canadian currency at the time the debt was issued.

History [s. 79]: S. 79 amended by 1995, c. 21, subsec. 26(1), applicable to property acquired or reacquired after February 21, 1994, other than property acquired or reacquired pursuant to a court order made before February 22, 1994. Subsec. 26(3) of S.C. 1995, c. 21, provides that where a taxpayer so elects in writing filed with the Minister of National Revenue, para. 79(f) shall apply to the taxpayer in respect of property reacquired by the taxpayer after 1991 as if it read as follows:

(e.1) where the property is capital property of the taxpayer and was disposed of by the taxpayer to the other person in the year and subsequently reacquired by the taxpayer in the year, the taxpayer's proceeds of disposition of the property shall be deemed to be the lesser of the proceeds of disposition of the property to the taxpayer (deter-

mined without reference to this paragraph) and the amount that is the greater of

(i) the amount, if any, by which such proceeds (determined without reference to this paragraph) exceeds such portion of the proceeds as is represented by the taxpayer's claim, and

(ii) the cost amount to the taxpayer of the property immediately before its disposition by the taxpayer;

(f) the taxpayer shall be deemed to have reacquired the property at the amount, if any, by which the cost at that time of the taxpayer's claim exceeds the amount described in subparagraph (e)(i) or (ii) in respect of that property or the amount, if any, by which the proceeds of disposition of the property are reduced because of paragraph (e.1), as the case may be;

S. 79 formerly read:

79. Mortgage foreclosures and conditional sales repossessions — Where, at any time in a taxation year, a taxpayer who

(a) was a mortgagee or other creditor of another person who had previously acquired property, or

(b) had previously sold property to another person under a conditional sales agreement,

has acquired or reacquired the beneficial ownership of the property in consequence of the other person's failure to pay all or any part of an amount (in this section referred to as the "taxpayer's claim") owing by that person to the taxpayer, the following rules apply:

(c) there shall be included, in computing the other person's proceeds of disposition of the property, the principal amount of the taxpayer's claim plus all amounts each of which is the principal amount of any debt that had been owing by the other person, to the extent that it has been extinguished by virtue of the acquisition or reacquisition, as the case may be,

(d) any amount paid by the other person after the acquisition or reacquisition, as the case may be, as, on account of or in satisfaction of the taxpayer's claim shall be deemed to be a loss of that person, for that person's taxation year in which payment of that amount was made, from the disposition of the property,

(e) in computing the income of the taxpayer for the year,

(i) the amount, if any, claimed by the taxpayer under subparagraph 40(1)(a)(iii) or 44(1)(e)(iii) in computing the taxpayer's gain for the immediately preceding taxation year from the disposition of the property, and

(ii) the amount, if any, deducted under paragraph 20(1)(n) in computing the income of the taxpayer for the immediately preceding year in respect of the property,

shall be deemed to be nil,

(f) the taxpayer shall be deemed to have acquired or reacquired, as the case may be, the property at the amount, if any, by which the cost at that time of the taxpayer's claim exceeds the amount described in subparagraph (e)(i) or (ii), as the case may be, in respect of the property,

(g) the adjusted cost base to the taxpayer of the taxpayer's claim shall be deemed to be nil, and

(h) in computing the taxpayer's income for the year or a subsequent year, no amount is deductible in respect of the taxpayer's claim by virtue of paragraph 20(1)(l) or (p).

Subpara. 79(e)(i) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 57, to add "or 44(1)(e)(iii)", applicable

(a) to property in respect of which a taxpayer has claimed an amount under subpara. 44(1)(e)(iii) and that was reacquired by the taxpayer after 1985 and before July 13, 1990, where the taxpayer so elects before July 1991, and

(b) to property acquired or reacquired after July 12, 1990,

and, notwithstanding subsecs. 152(4) to (5), such assessments of tax, interest and penalties shall be made as are necessary to give effect to an election made pursuant to para. (a).

Selected Cases [s. 79]: *Waltz v. R.*, [2001] 2 C.T.C. 2627 (TCC) (Proper time for calculation of foreign exchange gain or loss is date of foreclosure); *Jones v. R.*, [1999] 1 C.T.C. 2644 (TCC) (Surrender and subrogation gave rise to new creditor; provision applicable); *Hallbauer v. R.*, [1998] 3 C.T.C. 115 (FCA); aff'd [1997] 1 C.T.C. 2428 (TCC) (Non-contingent, irreversible transfers were dispositions); *Corbett v. Canada*, [1997] 1 C.T.C. 2 (FCA) (Section intended to apply where no fixed price of sale. No conflict with ss. 13 and 54); *Peters (D.L.) v. Canada*, [1993] 1 C.T.C. 2628 (TCC) (Section 80 applies to unpaid interest on obligation to which section 79 applied); *Moysey (R.) v. Canada*, [1992] 2 C.T.C. 2657 (TCC) (Section applies only to principal amount extinguished, not unpaid interest); *Ward v. R.*, [1988] 1 C.T.C. 336 (FCTD) (Member of group purchasing "golf course" operation permitted to deduct share of loss after foreclosure).

Definitions [s. 79]: "amount" — 248(1); "assistance" — 79(4), 125.4(5), 248(16), (16.1), (18), (18.1); "Canadian exploration expense" — 66.1(6), 248(1); "Canadian development expense" — 66.2(5), 248(1); "Canadian oil and gas property expense" — 66.4(5), 248(1); "creditor", "debt" — 79(1); "debtor" — 79(3); "eligible capital expenditure" — 14(5), 248(1); "person" — 79(1), 248(1); "principal amount" — 248(1); "property" — 79(1), 248(1); "province" — *Interpretation Act* 35(1); "specified amount" — 79(1); "surrendered" — 79(2); "taxation year" — 249.

79.1 [Seizure of property — creditor] — (1) Definitions — In this section,

"creditor" has the meaning assigned by subsection 79(1);

"debt" has the meaning assigned by subsection 79(1);

"person" has the meaning assigned by subsection 79(1);

"property" has the meaning assigned by subsection 79(1);

"specified amount" has the meaning assigned by subsection 79(1);

"specified cost" to a person of a debt owing to the person means

(a) where the debt is capital property of the person, the adjusted cost base to the person of the debt, and

(b) in any other case, the amount, if any, by which

(i) the cost amount to the person of the debt

exceeds

(ii) such portion of that cost amount as would be deductible in computing the person's income (otherwise than in respect of the principal amount of the debt) if the debt were established by the person to have become a bad debt or to have become uncollectable.

Related Provisions: 20(1)(p), 20(4)–(4.2), 50(1) — Provisions allowing deductions for bad debts.

(2) Seizure of property — Subject to subsection (2.1) and for the purpose of this section, a property is seized at any time by a person in respect of a debt where

(a) the beneficial ownership of the property is acquired or reacquired at that time by the person; and

(b) the acquisition or reacquisition of the property is in consequence of another person's failure to pay to the person all or part of the specified amount of the debt.

Related Provisions: 50(1) — Deemed disposition of debt on bad debt, windup, insolvency or bankruptcy; 79(2) — Surrender of property by debtor; 79.1(2.1) — Exception — foreign resource property; 138(11.93)(a) — Section 79.1 does not apply to insurer.

History: Subsec. 79.1(2) amended by 2001, c. 17, s. 57, applicable in respect of property acquired or reacquired after February 27, 2000. The subsec. formerly read:

(2) For the purposes of this section, a property is seized at any time by a person in respect of a debt where the beneficial ownership of the property is acquired or reacquired at that time by the person and the acquisition or reacquisition of the property was in consequence of another person's failure to pay to the person all or part of the specified amount of the debt.

(2.1) Exception — For the purpose of this section, foreign resource property is deemed not to be seized at any time from

(a) an individual or a corporation, if the individual or corporation is non-resident at that time; or

(b) a partnership (other than a partnership each member of which is resident in Canada at that time).

History: Subsec. 79.1(2.1) added by 2001, c. 17, s. 57, applicable in respect of property acquired or reacquired after February 27, 2000.

(3) Creditor's capital gains reserves — Where a property is seized at any time in a particular taxation year by a creditor in respect of a debt, for the purpose of computing the income of the creditor for the particular year, the amount claimed by the creditor under subparagraph 40(1)(a)(iii) or 44(1)(e)(iii) in computing the creditor's gain for the preceding taxation year from any disposition before the particular year of the property shall be deemed to be the amount, if any, by which the amount so claimed exceeds the total of all amounts each of which is an amount determined under paragraph (6)(a) or (b) in respect of the seizure.

(4) Creditor's inventory reserves — Where a property is seized at any time in a particular taxation year by a creditor in respect of a debt, for the purpose of computing the income of the creditor for the particular year, the amount deducted under paragraph 20(1)(n) in computing the income of the creditor for the preceding taxation year in respect of any disposition of the property before the particular year shall be deemed to be the amount, if any, by which the amount so deducted exceeds the total of all amounts each of which is an amount determined under paragraph (6)(a) or (b) in respect of the seizure.

(5) Adjustment where disposition and reacquisition of capital property in same year — Where a property is seized at any time in a taxation year by a creditor in respect of one or more debts and the property was capital property of the creditor that was disposed of by the creditor at a previous time in the year, the proceeds of disposition of the property to the creditor at the previous time shall be deemed to be the lesser of the amount of the proceeds (determined without reference to this subsection) and the amount that is the greater of

(a) the amount, if any, by which the amount of such proceeds (determined without reference to this subsection) exceeds such portion of the proceeds as is represented by the specified amounts of those debts immediately before that time, and

(b) the cost amount to the creditor of the property immediately before the previous time.

(6) Cost of seized properties for creditor — Where a particular property is seized at any time in a taxation year by a creditor in respect of one or more debts, the cost to the creditor of the particular property shall be deemed to be the amount, if any, by which the total of

(a) that proportion of the total specified costs immediately before that time to the creditor of those debts that

(i) the fair market value of the particular property immediately before that time

is of

(ii) the fair market value of all properties immediately before that time that were seized by the creditor at that time in respect of those debts, and

(b) all amounts each of which is an outlay or expense made or incurred, or a specified amount at that time of a debt that is assumed, by the creditor at or before that time to protect the creditor's interest in the particular property, except to the extent the outlay or expense

Proposed Amendment — 79.1(6)(b) opening words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), s. 226, will amend the opening words of para. 79.1(6)(b) by substituting "creditor's interest, or for civil law the creditor's right," for "creditor's interest", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(i) was included in the cost to the creditor of property other than the particular property,

(ii) was included before that time in computing, for the purposes of this Act, any balance of undeducted outlays, expenses or other amounts of the creditor, or

(iii) was deductible in computing the creditor's income for the year or a preceding taxation year

exceeds

(c) the amount, if any, claimed or deducted under paragraph 20(1)(n) or subparagraph 40(1)(a)(iii) or 44(1)(e)(iii), as the case may be, in respect of the particular property in computing the creditor's income or capital gain for the preceding taxation year or the amount by which the proceeds of disposition of the creditor of the particular property are reduced because of subsection (5) in respect of a disposition of the particular property by the creditor occurring before that time and in the year.

Related Provisions: 79.1(3) — Capital gains reserve; 79.1(4) — Inventory reserve.

(7) Treatment of debt — Where a property is seized at any time in a taxation year by a creditor in respect of a particular debt,

(a) the creditor shall be deemed to have disposed of the particular debt at that time;

(b) the amount received on account of the particular debt as a consequence of the seizure shall be deemed

(i) to be received at that time, and

(ii) to be equal to

(A) where the particular debt is capital property, the adjusted cost base to the creditor of the particular debt, and

(B) in any other case, the cost amount to the creditor of the particular debt;

(c) where any portion of the particular debt is outstanding immediately after that time, the creditor shall be deemed to have reacquired that portion immediately after that time at a cost equal to

(i) where the particular debt is capital property, nil, and

(ii) in any other case, the amount, if any, by which

(A) the cost amount to the creditor of the particular debt

exceeds

(B) the specified cost to the creditor of the particular debt; and

(d) where no portion of the particular debt is outstanding immediately after that time and the particular debt is not capital property, the creditor may deduct as a bad debt in computing the creditor's income for the

year the amount described in subparagraph (c)(ii) in respect of the seizure.

Related Provisions: 79.1(8) — No deduction for principal amount of bad debt; 142.4(3)(a) — Disposition of specified debt obligation.

(8) Claims for debts — Where a property is seized at any time in a taxation year by a creditor in respect of a debt, no amount in respect of the debt

(a) is deductible in computing the creditor's income for the year or a subsequent taxation year as a bad, doubtful or impaired debt; or

(b) shall be included after that time in computing, for the purposes of this Act, any balance of undeducted outlays, expenses or other amounts of the creditor as a bad, doubtful or impaired debt.

Related Provisions: 50(1)(a) — Deemed disposition of bad debt; 79.1(7)(d) — Deduction by creditor for bad debt.

History: Subsec. 79.1(8) amended by 1998, c. 19, s. 110, applicable

(a) to taxation years that end after September 1997; and

(b) to a taxpayer's taxation years that end after 1995 and before October 1997 where the taxpayer files an election in accordance with para. 81(11)(b).

The subsec. formerly read:

(8) Claims for bad and doubtful debts — Where a property is seized at any time in a taxation year by a creditor in respect of a debt, no amount in respect of the principal amount of the debt shall be

(a) deductible in computing the creditor's income for the year or a subsequent taxation year as a bad or doubtful debt; or

(b) included after that time in computing, for the purposes of this Act, any balance of undeducted outlays, expenses or other amounts of the creditor as a bad or doubtful debt.

S. 79.1 added by 1995, c. 21, s. 26, applicable to property acquired or reacquired after February 21, 1994, other than property acquired or reacquired pursuant to a court order made before February 22, 1994.

Definitions [s. 79.1]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "capital gain" — 39(1), 248(1); "capital property" — 54, 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "cost" — 79.1(6); "cost amount" — 248(1); "creditor", "debt" — 79(1), 79.1(1); "disposition" — 248(1); "foreign resource property" — 66(15), 248(1); "individual", "non-resident" — 248(1); "person" — 79(1), 79.1(1), 248(1); "principal amount" — 248(1); "proceeds of disposition" — 54; "property" — 79(1), 79.1(1), 248(1); "resident in Canada" — 94(3)(a)(viii), 250; "seized" — 79.1(2); "specified amount" — 79(1), 79.1(1); "specified cost" — 79.1(1); "taxation year" — 249.

80. [Debt forgiveness] — (1) Definitions — In this section,

"commercial debt obligation" issued by a debtor means a debt obligation issued by the debtor

(a) where interest was paid or payable by the debtor in respect of it pursuant to a legal obligation, or

(b) if interest had been paid or payable by the debtor in respect of it pursuant to a legal obligation,

an amount in respect of the interest was or would have been deductible in computing the debtor's income, taxable income or taxable income earned in Canada, as the case may be, if this Act were read without reference to subsections 15.1(2) and 15.2(2), paragraph 18(1)(g), subsections 18(2), (3.1) and (4) and section 21;

Related Provisions: 6(15) — Income inclusion on forgiveness of debt owing by employee; 80.01(1)"commercial debt obligation" — Definition applies to s. 80.01; 80.02(1) — Definition applies to s. 80.02; 80.03(1)(a) — Definition applies to s. 80.03; 80.03(7)(b)(i) — Commercial debt obligation deemed issued where amount designated; 80.04(1) — Definition applies to s. 80.04; 80.04(4)(e) — Commercial debt obligation deemed issued on agreement to transfer forgiven amount; 95(2)(g.1)(i) — Application to FAPI; 248(26) — Liability deemed to be obligation issued by debtor; 248(27) — Partial settlement of debt obligation.

"commercial obligation" issued by a debtor means

(a) a commercial debt obligation issued by the debtor, or

(b) a distress preferred share issued by the debtor;

Related Provisions: 40(2)(e.2) — Disposition of commercial obligation in exchange for another obligation issued by same person; 80(2)(b) — Obligation to pay interest deemed to be a debt obligation; 80.01(1)"commercial obligation" — Definition applies to s. 80.01; 80.02(1) — Definition applies to s. 80.02; 80.03(1)(a) — Definition applies to s. 80.03; 80.04(1) — Definition applies to s. 80.04.

"debtor" includes any corporation that has issued a distress preferred share and any partnership;

Related Provisions: 80.01(1)"debtor" — Definition applies to s. 80.01; 80.04(1) — Definition applies to s. 80.04.

"directed person" at any time in respect of a debtor means

(a) a taxable Canadian corporation or an eligible Canadian partnership by which the debtor is controlled at that time, or

(b) a taxable Canadian corporation or an eligible Canadian partnership that is controlled at that time by

(i) the debtor,

(ii) the debtor and one or more persons related to the debtor, or

(iii) a person or group of persons by which the debtor is controlled at that time;

Related Provisions: 80.04(1) — Definition applies to s. 80.04; 256(6), (6.1) — Meaning of "controlled".

"distress preferred share" issued by a corporation means, at any time, a share issued after February 21, 1994 (other than a share issued pursuant to an agreement in writing entered into on or before that date) by the corporation that is a share described in paragraph (e) of the definition "term preferred share" in subsection 248(1) that would be a term preferred share at that time if that definition were read without reference to paragraphs (e) and (f);

Related Provisions: 61.3(1)(b)D, 61.3(2)(b)D — Deduction of principal amount of distress preferred share in determining debt forgiveness reserve; 80.01(1)"distress preferred share" — Definition applies to s. 80.01; 80.02(1) — Definition applies to s. 80.02; 80.03(1)(a) — Definition applies to s. 80.03.

"eligible Canadian partnership" at any time means a Canadian partnership none of the members of which is, at that time,

(a) a non-resident owned investment corporation,

(b) a person exempt, because of subsection 149(1), from tax under this Part on all or part of the person's taxable income,

(c) a partnership, other than an eligible Canadian partnership, or

(d) a trust, other than a trust in which no non-resident person and no person described in paragraph (a), (b) or (c) is beneficially interested;

Related Provisions: 80.04(1) — Definition applies to s. 80.04; 102(1) — Canadian partnership.

"excluded obligation" means an obligation issued by a debtor where

(a) the proceeds from the issue of the obligation

(i) were included in computing the debtor's income or, but for the expression "other than a prescribed amount" in paragraph 12(1)(x), would have been so included,

(ii) were deducted in computing, for the purposes of this Act, any balance of undeducted outlays, expenses or other amounts, or

(iii) were deducted in computing the capital cost or cost amount to the debtor of any property of the debtor,

(b) an amount paid by the debtor in satisfaction of the entire principal amount of the obligation would be included in the amount determined under paragraph 28(1)(e) or section 30 in respect of the debtor,

(c) section 78 applies to the obligation, or

(d) the principal amount of the obligation would, if this Act were read without reference to sections 79 and 80 and the obligation were settled without any amount being paid in satisfaction of its principal amount, be included in computing the debtor's income because of the settlement of the obligation;

Related Provisions: 79(3)F(b)(iv) — Proceeds of disposition for debtor; 80(1)"forgiven amount"B(j) — Debt forgiveness rules do not apply to principal amount of excluded obligation; 80(2)(a) — Debt forgiveness rules do not apply to obligation settled as consideration for share described in para. (c).

"excluded property" means property of a non-resident debtor that is treaty-protected property or that is not taxable Canadian property;

Related Provisions: 111(9) — Losses ignored while taxpayer is non-resident.

History: The definition "excluded property" in subsec. 80(1) amended by 1999, c. 22, s. 21, applicable to 1998 *et seq.* The definition formerly read:

"excluded property" at any time means property of a non-resident debtor that would not be taxable Canadian property of the debtor if it were disposed of at that time by the debtor;

"excluded security" issued by a corporation to a person as consideration for the settlement of a debt means

(a) a distress preferred share issued by the corporation to the person, or

(b) a share issued by the corporation to the person under the terms of the debt, where the debt was a bond, debenture or note listed on a prescribed stock exchange in Canada and the terms for the conversion to the share were not established or substantially modified after the later of February 22, 1994 and the time that the bond, debenture or note was issued;

Regulations: 3200 (prescribed stock exchange; not yet amended to apply for purposes of 80(1)).

"forgiven amount" at any time in respect of a commercial obligation issued by a debtor is the amount determined by the formula

$$A - B$$

where

A is the lesser of the amount for which the obligation was issued and the principal amount of the obligation, and

B is the total of

(a) the amount, if any, paid at that time in satisfaction of the principal amount of the obligation,

(b) the amount, if any, included under paragraph 6(1)(a) or subsection 15(1) in computing the income of any person because of the settlement of the obligation at that time,

(c) the amount, if any, deducted at that time under paragraph 18(9.3)(f) in computing the forgiven amount in respect of the obligation,

(d) the capital gain, if any, of the debtor resulting from the application of subsection 39(3) to the purchase at that time of the obligation by the debtor,

(e) such portion of the principal amount of the obligation as relates to an amount renounced under subsection 66(10), (10.1), (10.2) or (10.3) by the debtor,

(f) any portion of the principal amount of the obligation that is included in the amount determined for A, B, C or D in subsection 79(3) in respect of the debtor for the taxation year of the debtor that includes that time or for a preceding taxation year,

(g) the total of all amounts each of which is a forgiven amount at a previous time that the obligation was deemed by subsection 80.01(8) or (9) to have been settled,

(h) such portion of the principal amount of the obligation as can reasonably be considered to have been included under section 80.4 in computing the debtor's income for a taxation year that includes that time or for a preceding taxation year,

(i) where the debtor is a bankrupt at that time, the principal amount of the obligation,

(j) such portion of the principal amount of the obligation as represents the principal amount of an excluded obligation,

(k) where the debtor is a partnership and the obligation was, since the later of the creation of the partnership or the issue of the obligation, always payable to a member of the partnership actively engaged, on a regular, continuous and substantial basis, in those activities of the partnership that are other than the financing of the partnership business, the principal amount of the obligation, and

(l) the amount, if any, given at or before that time by the debtor to another person as consideration for the assumption by the other person of the obligation;

Related Provisions: 6(15.1) — Meaning of "forgiven amount" for employee benefits; 15(1.21) — Meaning of "forgiven amount" for shareholder benefits; 80(2)(k) — Determination of forgiven amount where obligation denominated in foreign currency; 80.01(1)"forgiven amount" — Application of definition to s. 80.01; 80.01(8)(b) — Determination of forgiven amount following debt parking; 80.02(3)–(6) — Distress preferred share — determination of amount paid in satisfaction of principal; 80.03(1)(a) — Definition applies to s. 80.03; 80.03(7)(b)(ii) — Deemed forgiven amount where amount designated following debt forgiveness; 80.04(1) — Definition applies to s. 80.04; 80.04(4)(f) — Agreement to transfer forgiven amount; 87(2)(h.1) — Amalgamations — continuing corporation; 137.1(10) — Settlement of debts by deposit insurance corporation; 248(26) — Liability deemed to be obligation issued by debtor; 248(27) — Partial settlement of debt obligation; 257 — Formula cannot calculate to less than zero.

I.T. Application Rules: 26(1.1) (debt outstanding since before 1972).

Advance Tax Rulings: ATR-27: Exchange and acquisition of interests in capital properties through rollovers and winding-up ("butterfly").

I.T. Technical News: 15 (tax consequences of the adoption of the "euro" currency).

"person" includes a partnership;

Related Provisions: 80(15)(c) — Where commercial debt obligation issued by partnership; 80.01(1)"person" — Definition applies to s. 80.01; 80.02(1) — Definition applies to s. 80.02; 80.03(1)(a) — Definition applies to s. 80.03; 80.04(1) — Definition applies to s. 80.04.

"relevant loss balance" at a particular time for a commercial obligation and in respect of a debtor's non-capital loss, farm loss, restricted farm loss or net capital loss, as

the case may be, for a particular taxation year means the amount of such loss that would be deductible in computing the debtor's taxable income or taxable income earned in Canada, as the case may be, for the taxation year that includes that time if

(a) the debtor had sufficient incomes from all sources and sufficient taxable capital gains,

(b) subsections (3) and (4) did not apply to reduce such loss at or after that time, and

(c) paragraph 111(4)(a) and subsection 111(5) did not apply to the debtor,

except that, where the debtor is a corporation the control of which was acquired at a previous time by a person or group of persons and the particular year ended before the previous time, the relevant loss balance at the particular time for the obligation and in respect of such loss for the particular year shall be deemed to be nil unless

(d) the obligation was issued by the debtor before, and not in contemplation of, the acquisition of control, or

(e) all or substantially all of the proceeds from the issue of the obligation were used to satisfy the principal amount of another obligation to which paragraph (d) or this paragraph would apply if the other obligation were still outstanding;

Related Provisions: 80(15)(c)(iv)(B) — Application of para. (e) of definition where obligation issued by partnership; 80.04(4)(h)(ii) — Application of para. (e) of definition on agreement to transfer forgiven amount; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired; 256(8) — Deemed acquisition of shares.

I.T. Technical News: 7 (control by a group — 50/50 arrangement).

"successor pool" at any time for a commercial obligation and in respect of an amount determined in relation to a debtor means the portion of that amount that would be deductible under subsection 66.7(2), (2.3), (3), (4) or (5), as the case may be, in computing the debtor's income for the taxation year that includes that time, if

(a) the debtor had sufficient incomes from all sources,

(b) subsection (8) did not apply to reduce the amount so determined at that time,

(c) the year ended immediately after that time, and

(d) paragraphs 66.7(2.3)(a), (4)(a) and (5)(a) were read without reference to the expressions "30% of", "30% of" and "10% of", respectively,

except that the successor pool at that time for the obligation is deemed to be nil unless

(e) the obligation was issued by the debtor before, and not in contemplation of, the event described in paragraph (8)(a) that gives rise to the deductibility under subsection 66.7(2), (2.3), (3), (4) or (5), as the case may be, of all or part of that amount in computing the debtor's income, or

(f) all or substantially all of the proceeds from the issue of the obligation were used to satisfy the principal amount of another obligation to which paragraph (e) or this paragraph would apply if the other obligation were still outstanding;

Related Provisions: 80(15)(c)(iv)(B) — Application of para. (f) of definition where obligation issued by partnership; 80.04(4)(h)(ii) — Application of para. (f) of definition on agreement to transfer forgiven amount; 256(8) — Deemed acquisition of shares.

History: The portion of the definition "successor pool" in subsec. 80(1) before para. (f) amended by 2001, c. 17, subsec. 58(1), applicable to taxation years that begin after 2000. The portion formerly read:

> "successor pool" at any time for a commercial obligation and in respect of an amount determined in relation to a debtor means such portion of that amount as would be deductible under subsection 66.7(2), (3), (4) or (5), as the case may be, in computing the debtor's income for the taxation year that includes that time, if
>
> (a) the debtor had sufficient incomes from all sources,
>
> (b) subsection (8) did not apply to reduce the amount so determined at that time,
>
> (c) the year ended immediately after that time, and
>
> (d) paragraphs 66.7(4)(a) and (5)(a) were read without reference to the expressions "30% of" and "10% of", respectively,
>
> except that the successor pool at that time for the obligation shall be deemed to be nil unless
>
> (e) the obligation was issued by the debtor before, and not in contemplation of, the event described in paragraph (8)(a) that gives rise to the deductibility under subsection 66.7(2), (3), (4) or (5), as the case may be, of all or part of that amount in computing the debtor's income, or

"unrecognized loss" at a particular time, in respect of an obligation issued by a debtor, from the disposition of a property means the amount that would, but for subparagraph 40(2)(g)(ii), be a capital loss from the disposition by the debtor at or before the particular time of a debt or other right to receive an amount, except that where the debtor is a corporation the control of which was acquired before the particular time and after the time of the disposition by a person or group of persons, the unrecognized loss at the particular time in respect of the obligation is deemed to be nil unless

(a) the obligation was issued by the debtor before, and not in contemplation of, the acquisition of control, or

(b) all or substantially all of the proceeds from the issue of the obligation were used to satisfy the principal amount of another obligation to which paragraph (a) or this paragraph would apply if the other obligation were still outstanding.

Related Provisions: 80(15)(c)(iv)(B) — Application of para. (b) of definition where obligation issued by partnership; 80.04(4)(h)(ii) — Application of para. (b) of definition on agreement to transfer forgiven amount; 87(2)(l.21) — Amalgamations — continuing corporation; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired; 256(8) — Deemed acquisition of shares.

History: The opening words of the definition "unrecognized loss" in subsec. 80(1) amended by 1998, c. 19, subsec. 111(1), applicable to taxation years that end after February 21, 1994. The opening words formerly read:

> "unrecognized loss" at a particular time, in respect of an obligation issued by a debtor, from the disposition of a property means the amount that would, but for subparagraph 40(2)(g)(ii), be a capital loss from the disposition at or before the particular time of a debt or other right to receive an amount, except that where the debtor is a corporation the control of which was acquired before the particular time and after the time of the disposition by a person or group of persons, the unrecognized loss at the particular time in respect of the obligation shall be deemed to be nil unless

(2) Application of debt forgiveness rules — For the purposes of this section,

(a) **[when obligation settled]** — an obligation issued by a debtor is settled at any time where the obligation is settled or extinguished at that time (otherwise than by way of a bequest or inheritance or as consideration for the issue of a share described in paragraph (b) of the definition "excluded security" in subsection (1));

Related Provisions: 6(15) — Forgiveness of debt owing by employee — taxable benefit; 15(1.2) — Forgiveness of debt owing by share-

holder — taxable benefit; 80.01(2)(a) — Application to s. 80.01; 80.01(3)–(9) — Deemed settlement of debts; 80.02(2)(c) — Meaning of "settled" for distress preferred share; 80.02(7)(a) — Deemed settlement where share ceases to be distress preferred share; 80.03(7)(b)(i) — Deemed settlement where amount designated; 80.04(3) — Application to s. 80.04; 80.04(4)(e) — Deemed settlement on agreement to transfer forgiven amount.

(b) **[interest deemed to be obligation]** — an amount of interest payable by a debtor in respect of an obligation issued by the debtor shall be deemed to be an obligation issued by the debtor that

(i) has a principal amount, and

(ii) was issued by the debtor for an amount,

equal to the portion of the amount of such interest that was deductible or would, but for subsection 18(2) or (3.1) or section 21, have been deductible in computing the debtor's income for a taxation year;

Related Provisions: 6(15.1)(d), 15(1.21)(d) — 80(2)(b) ignored for employee and shareholder benefit purposes; 80.01(2)(a) — Application to s. 80.01; 80.04(3) — Application to s. 80.04.

(c) **[ordering of rules]** — subsections (3) to (5) and (7) to (13) apply in numerical order to the forgiven amount in respect of a commercial obligation;

Related Provisions: 80(15) — Deduction by member of partnership; 80.04(4)(b) — Transfer of forgiven amount to related person after maximum designations; 248(27)(b), (c) — Partial settlement of debt deemed to be proportional to entire amount.

(d) **[applicable fraction]** — the applicable fraction of the unapplied portion of a forgiven amount at any time in respect of an obligation issued by the debtor is in respect of a loss for any other taxation year[7], the fraction required to be used under section 38 for that year;

(e) **[where applicable fraction reduces loss]** — where an applicable fraction (as determined under paragraph (d)) of the unapplied portion of a forgiven amount is applied under subsection (4) to reduce at any time a loss for a taxation year, the portion of the forgiven amount so applied shall, except for the purpose of reducing the loss, be deemed to be the quotient obtained when the amount of the reduction is divided by the applicable fraction;

(f) **[cumulative eligible capital]** — where 3/4 of the unapplied portion of a forgiven amount is applied under subsection (7) to reduce cumulative eligible capital, except for the purpose of reducing the cumulative eligible capital, the portion of the forgiven amount so applied shall be deemed to be 4/3 of the amount of the reduction;

(g) **[amount paid in satisfaction of debt]** — where a corporation issues a share (other than an excluded security) to a person as consideration for the settlement of a debt issued by the corporation and payable to the person, the amount paid in satisfaction of the debt because of the issue of the share is deemed to be equal to the fair market value of the share at the time it was issued;

Related Provisions: 51(1) — Conversion of convertible debt into shares.

(g.1) **[amount paid in satisfaction of debt]** — where a debt issued by a corporation and payable to a person is settled at any time, the amount, if any, that can reasonably be considered to be the increase, as a consequence of the settlement of the debt, in the fair market value of shares of the capital stock of the corporation owned by the person (other than any shares acquired by the person as consideration for the settlement of the debt) is deemed to be an amount paid at that time in satisfaction of the debt;

(h) **[debt replaced with debt]** — where any part of the consideration given by a debtor to another person for the settlement at any time of a particular commercial debt obligation issued by the debtor and payable to the other person consists of a new commercial debt obligation issued by the debtor to the other person

(i) an amount equal to the principal amount of the new obligation shall be deemed to be paid by the debtor at that time, because of the issue of the new obligation, in satisfaction of the principal amount of the particular obligation, and

(ii) the new obligation shall be deemed to have been issued for an amount equal to the amount, if any, by which

(A) the principal amount of the new obligation

exceeds

(B) the amount, if any, by which the principal amount of the new obligation exceeds the amount for which the particular obligation was issued;

Related Provisions: 40(2)(e.2) — Limitation on capital loss; 80(2)(l) — Where debt replaced with debt to third party; 248(1)"principal amount" — Principal amount excludes amounts payable on account of interest.

I.T. Technical News: 15 (tax consequences of the adoption of the "euro" currency).

(i) **[multiple debts settled]** — where 2 or more commercial obligations issued by a debtor are settled at the same time, those obligations shall be treated as if they were settled at different times in the order designated by the debtor in a prescribed form filed with the debtor's return of income under this Part for the debtor's taxation year that includes that time or, if the debtor does not so designate any such order, in the order designated by the Minister;

Related Provisions: 220(3.21)(a) — Late filing, amendment or revocation of designation.

Forms: T2153: Designation under para. 80(2)(i) when two or more commercial obligations are settled at the same time.

(j) **["related" and "controlled"]** — for the purpose of determining, at any time, whether 2 persons are related to each other or whether any person is controlled by any other person, it shall be assumed that

(i) each partnership and each trust is a corporation having a capital stock of a single class of voting shares divided into 100 issued shares,

(ii) each member of a partnership and each beneficiary under a trust owned at that time the number of issued shares of that class that is equal to the proportion of 100 that

(A) the fair market value at that time of the member's interest in the partnership or the beneficiary's interest in the trust, as the case may be

is of

(B) the fair market value at that time of all members' interests in the partnership or all ben-

[7] *Sic.* The word "other" was inadvertently left over from an earlier draft and should be ignored — ed.

eficiaries' interests in the trust, as the case may be, and

(iii) where a beneficiary's share of the income or capital of a trust depends on the exercise by any person of, or the failure by any person to exercise, any discretionary power, the fair market value at any time of the beneficiary's interest in the trust is equal to

(A) where the beneficiary is not entitled to receive or otherwise obtain the use of any of the income or capital of the trust before the death after that time of one or more other beneficiaries under the trust, nil, and

(B) in any other case, the total fair market value at that time of all beneficiaries' interests under the trust;

Related Provisions: 40(2)(e.1) — Application to stop-loss rule; 80.01(2)(a) — Application to s. 80.01; 80.04(3) — Application to s. 80.04.

(k) **[foreign currency obligation]** — where an obligation is denominated in a currency (other than Canadian currency), the forgiven amount at any time in respect of the obligation shall be determined with reference to the relative value of that currency and Canadian currency at the time the obligation was issued;

Related Provisions: 79(7) — Parallel rule re proceeds of disposition where property surrendered to creditor; 80.01(11) — Debt parking and statute-barred debt rules ignored where currency fluctuates.

(l) **[debt replaced with debt to third party]** — where an amount is paid in satisfaction of the principal amount of a particular commercial obligation issued by a debtor and, as a consequence of the payment, the debtor is legally obliged to pay that amount to another person, the obligation to pay that amount to the other person shall be deemed to be a commercial obligation that was issued by the debtor at the same time and in the same circumstances as the particular obligation;

Related Provisions: 80(2)(h) — Where debt replaced with new debt; 80.01(2)(a) — Application to s. 80.01.

(m) **[amount reducible only to zero]** — for greater certainty, the amount that can be applied under this section to reduce another amount may not exceed that other amount;

Related Provisions: 257 — Formulas cannot calculate to less than zero.

(n) **[where debt owed by partnership]** — except for the purposes of this paragraph, where

(i) a commercial debt obligation issued by a debtor is settled at any time,

(ii) the debtor is at that time a member of a partnership, and

(iii) the obligation was, under the agreement governing the obligation, treated immediately before that time as a debt owed by the partnership,

the obligation shall be considered to have been issued by the partnership and not by the debtor;

Related Provisions: 80(2)(o) — Override rule where debtor jointly liable with others; 80(15) — Commercial debt obligation issued by partnership; 80.01(2)(a) — Application to s. 80.01; 80.04(3) — Application to s. 80.04.

(o) **[where joint liability for debt]** — notwithstanding paragraph (n), where a commercial debt obligation for which a particular person is jointly liable with one or more other persons is settled at any time in respect of the particular person but not in respect of all of the other persons, the portion of the obligation that can reasonably be considered to be the particular person's share of the obligation shall be considered to have been issued by the particular person and settled at that time and not at any subsequent time;

Proposed Amendment — 80(2)(o)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), s. 227, will amend para. 80(2)(o) by adding commas before and after, and deleting the word "jointly" from, the phrase "for which a particular person is jointly liable with one or more other persons", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(p) **[death of debtor]** — a commercial debt obligation issued by an individual that is outstanding at the time of the individual's death and settled at a subsequent time shall, if the estate of the individual was liable for the obligation immediately before the subsequent time, be deemed to have been issued by the estate at the same time and in the same circumstances as the obligation was issued by the individual; and

Related Provisions: 80(2)(q) — Where debt settled within 6 months of death.

(q) **[death of debtor]** — where a commercial debt obligation issued by an individual would, but for this paragraph, be settled at any time in the period ending 6 months after the death of an individual (or within such longer period as is acceptable to the Minister and the estate of the individual) and the estate of the individual was liable immediately before that time for the obligation

(i) the obligation shall be deemed to have been settled at the beginning of the day on which the individual died and not at that time,

(ii) any amount paid at that time by the estate in satisfaction of the principal amount of the obligation shall be deemed to have been paid at the beginning of the day on which the individual died,

(iii) any amount given by the estate at or before that time to another person as consideration for assumption by the other person of the obligation shall be deemed to have been given at the beginning of the day on which the individual died, and

(iv) paragraph (b) shall not apply in respect of the settlement to interest that accrues within that period,

except that this paragraph does not apply in circumstances in which any amount is because of the settlement included under paragraph 6(1)(a) or subsection 15(1) in computing the income of any person or in which section 79 applies in respect of the obligation.

Related Provisions: 6(15.1)(d), 15(1.21)(d) — 80(2)(q) ignored for employee and shareholder benefit purposes; 80(2)(p) — Where debt not settled within 6 months of death.

History: Para. 80(2)(d) amended by 2001, c. 17, subsec. 58(2), applicable to taxation years that end after February 27, 2000. The para. formerly read:

(d) [applicable fraction] — the applicable fraction of the unapplied portion of a forgiven amount at any time in respect of an obligation issued by a debtor is

(i) in respect of a loss for a taxation year that ends after 1989, 3/4,

(ii) in respect of a loss for a taxation year that ended before 1988, 1/2, and

(iii) in respect of a loss for any other taxation year, the fraction required to be used under section 38 for that year;

Para. 80(2)(g) amended and para. (g.1) added by 1998, c. 19, subsec. 111(2), applicable to taxation years that end after February 21, 1994. Para. (g) formerly read:

(g) the amount paid in satisfaction of a debt issued by a corporation and payable to a person shall

(i) where any part of the consideration given to the person for the settlement of the debt consists of a share (other than an excluded security) issued by the corporation to the person, be deemed to be equal to the total of

(A) the fair market value of the share at the time it was issued, and

(B) the amount, if any, that can reasonably be considered to be the increase, as a consequence of the settlement of the debt, in the fair market value of other shares of the capital stock of the corporation owned by the person, and

(ii) in any other case, be deemed to include the amount described in clause (i)(B);

(3) Reductions of non-capital losses — Where a commercial obligation issued by a debtor is settled at any time, the forgiven amount at that time in respect of the obligation shall be applied to reduce at that time, in the following order,

(a) the debtor's non-capital loss for each taxation year that ended before that time to the extent that the amount so applied

(i) does not exceed the amount (in subsection (4) referred to as the debtor's "ordinary non-capital loss at that time for the year") that would be the relevant loss balance at that time for the obligation and in respect of the debtor's non-capital loss for the year if the description of E in the definition "non-capital loss" in subsection 111(8) were read without reference to the expression "the taxpayer's allowable business investment loss for the year", and

(ii) does not, because of this subsection, reduce the debtor's non-capital loss for a preceding taxation year;

(b) the debtor's farm loss for each taxation year that ended before that time, to the extent that the amount so applied

(i) does not exceed the amount that is the relevant loss balance at that time for the obligation and in respect of the debtor's farm loss for the year, and

(ii) does not, because of this subsection, reduce the debtor's farm loss for a preceding taxation year; and

(c) the debtor's restricted farm loss for each taxation year that ended before that time, to the extent that the amount so applied

(i) does not exceed the amount that is the relevant loss balance at that time for the obligation and in respect of the debtor's restricted farm loss for the year, and

(ii) does not, because of this subsection, reduce the debtor's restricted farm loss for a preceding taxation year.

Related Provisions: 31(1.1)(b) — Reduction in restricted farm loss; 80(2)(c) — Order of application of rules; 80(2)(m) — Reduction cannot exceed the amount of losses; 80(4)(a) — Reduction of allowable business investment loss carryforward; 111(8)"farm loss"C — Reduction in farm loss; 111(8)"non-capital loss"D.2 — Reduction in non-capital loss.

(4) Reductions of capital losses — Where a commercial obligation issued by a debtor is settled at any time, the applicable fraction of the remaining unapplied portion of a forgiven amount at that time in respect of the obligation shall be applied to reduce at that time, in the following order,

(a) the debtor's non-capital loss for each taxation year that ended before that time to the extent that the amount so applied

(i) does not exceed the amount, if any, by which

(A) the relevant loss balance at that time for the obligation and in respect of the debtor's non-capital loss for the year

exceeds

(B) the debtor's ordinary non-capital loss (within the meaning assigned by subparagraph (3)(a)(i)) at that time for the year, and

(ii) does not, because of this subsection, reduce the debtor's non-capital loss for a preceding taxation year; and

(b) the debtor's net capital loss for each taxation year that ended before that time, to the extent that the amount so applied

(i) does not exceed the relevant loss balance at that time for the obligation and in respect of the debtor's net capital loss for the year, and

(ii) does not, because of this subsection, reduce the debtor's net capital loss for a preceding taxation year.

Related Provisions: 80(2)(c) — Order of application of rules; 80(2)(e) — Determination of applicable fraction; 80(2)(m) — Reduction cannot exceed the amount of losses; 111(8)"net capital loss"D — Reduction in net capital loss; 111(8)"non-capital loss"D.2 — Reduction in non-capital loss.

(5) Reductions with respect to depreciable property — Where a commercial obligation issued by a debtor is settled at any time, the remaining unapplied portion of the forgiven amount at that time in respect of the obligation shall be applied, in such manner as is designated by the debtor in a prescribed form filed with the debtor's return of income under this Part for the taxation year that includes that time, to reduce immediately after that time the following amounts:

(a) the capital cost to the debtor of a depreciable property that is owned by the debtor immediately after that time; and

(b) the undepreciated capital cost to the debtor of depreciable property of a prescribed class immediately after that time.

Related Provisions: 13(7.1)(g) — Reduction in capital cost of depreciable property; 13(21)"undepreciated capital cost"E.1 — Reduction in undepreciated capital cost; 80(2)(c) — Order of application of rules; 80(2)(m) — Reduction cannot exceed the capital cost or u.c.c.; 80(6) — Restriction with respect to depreciable property; 80(13)D(a) — Income inclusion of remaining balance; 80(16) — Designation by CCRA where debtor fails to designate; 80.04(4)(b) — Transfer of forgiven amount after maximum designations; 96(3) — Designation by members of partnership; 220(3.21)(a) — Late filing, amendment or revocation of designation.

Regulations: 1105 (prescribed classes of depreciable property).

Forms: T2153: Designation under para. 80(2)(i) when two or more commercial obligations are settled at the same time; T2154: Application of designated forgiven debt under sec. 80.

(6) Restriction with respect to depreciable property — Where a commercial obligation issued by a debtor is settled at any time,

(a) an amount may be applied under subsection (5) to reduce, immediately after that time, the capital cost to

the debtor of a depreciable property of a prescribed class only to the extent that

(i) the undepreciated capital cost to the debtor of depreciable property of that class at that time

exceeds

(ii) the total of all other reductions immediately after that time to that undepreciated capital cost; and

(b) an amount may be applied under subsection (5) to reduce, immediately after that time, the capital cost to the debtor of a depreciable property (other than a depreciable property of a prescribed class) only to the extent that

(i) the capital cost to the debtor of the property at that time

exceeds

(ii) the amount that was allowed to the debtor before that time under Part XVII of the *Income Tax Regulations* in respect of the property.

Regulations: 1105 (prescribed classes of depreciable property).

(7) Reductions of cumulative eligible capital — Where a commercial obligation issued by a debtor is settled at any time, 3/4 of the remaining unapplied portion of the forgiven amount at that time in respect of the obligation shall be applied (to the extent designated in a prescribed form filed with the debtor's return of income under this Part for the taxation year that includes that time) to reduce immediately after that time the cumulative eligible capital of the debtor in respect of each business of the debtor (or, where the debtor is at that time non-resident, in respect of each business carried on in Canada by the debtor).

Related Provisions: 14(5)"cumulative eligible capital"F:P.1 — Reduction in cumulative eligible capital; 80(2)(c) — Order of application of rules; 80(2)(f) — Rule where cumulative eligible capital reduced; 80(2)(m) — Reduction cannot exceed the amount of cumulative eligible capital; 80(13)D(a) — Income inclusion of remaining balance; 80(16) — Designation by CCRA where debtor fails to designate; 80.04(4)(b) — Transfer of forgiven amount after maximum designations; 220(3.21)(a) — Late filing, amendment or revocation of designation; 253 — Extended meaning of carrying on business in Canada.

Forms: T2153: Designation under para. 80(2)(i) when two or more commercial obligations are settled at the same time; T2154: Application of designated forgiven debt under sec. 80.

(8) Reductions of resource expenditures — Where a commercial obligation issued by a debtor is settled at any time, the remaining unapplied portion of the forgiven amount at that time in respect of the obligation shall be applied (to the extent designated in a prescribed form filed with the debtor's return of income under this Part for the taxation year that includes that time) to reduce immediately after that time the following amounts:

(a) where the debtor is a corporation resident in Canada throughout that year, each particular amount that would be determined in respect of the debtor under paragraph 66.7(2)(a), (2.3)(a), (3)(a), (4)(a) or (5)(a) if paragraphs 66.7(2.3)(a), (4)(a) and (5)(a) were read without reference to the expressions "30% of", "30% of" and "10% of", respectively, as a consequence of the acquisition of control of the debtor by a person or group of persons, the debtor ceasing to be exempt from tax under this Part on its taxable income or the acquisition of properties by the debtor by way of an amalgamation or merger, where the amount so applied does not exceed the successor pool immediately after that time for the obligation and in respect of the particular amount;

(b) the cumulative Canadian exploration expense (within the meaning assigned by subsection 66.1(6)) of the debtor;

(c) the cumulative Canadian development expense (within the meaning assigned by subsection 66.2(5)) of the debtor;

(d) the cumulative Canadian oil and gas property expense (within the meaning assigned by subsection 66.4(5)) of the debtor;

(e) the total determined under paragraph 66(4)(a) in respect of the debtor, where

(i) the debtor is resident in Canada throughout that year, and

(ii) the amount so applied does not exceed such portion of the total of the debtor's foreign exploration and development expenses (within the meaning assigned by subsection 66(15)) as were incurred by the debtor before that time and would be deductible under subsection 66(4) in computing the debtor's income for that year if the debtor had sufficient income described in subparagraph 66(4)(b)(ii) and if that year ended at that time; and

(f) the cumulative foreign resource expense (within the meaning assigned by subsection 66.21(1)) of the debtor in respect of a country.

Related Provisions: 66(4)(a)(iii) — Reduction in claim for foreign exploration and development expenses; 66.1(6)"cumulative Canadian exploration expense"J.1 — Reduction in CCEE; 66.2(5)"cumulative Canadian development expense"M.1 — Reduction in CCDE; 66.21(1)"cumulative foreign resource expense"I; 66.4(5)"cumulative Canadian oil and gas property expense"I.1 — Reduction in CCOGPE; 66.7(2)(a)(ii), 66.7(3)(a)(ii), 66.7(4)(a)(iv), 66.7(5)(a)(iii) — Reductions in successor pools; 80(2)(c) — Order of application of rules; 80(2)(m) — Reduction cannot exceed the resource expenditures reduced; 80(13)D(a) — Income inclusion of remaining balance; 80(16) — Designation by CCRA where debtor fails to designate; 80.04(4)(b) — Transfer of forgiven amount after maximum designations; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 220(3.21)(a) — Late filing, amendment or revocation of designation; 256(6)–(9) — Whether control acquired.

History: Para. 80(8)(a) amended by 2001, c. 17, subsec. 58(3), applicable to taxation years that begin after 2000. The para. formerly read:

(a) where the debtor is a corporation resident in Canada throughout that year, each particular amount that would be determined in respect of the debtor under paragraph 66.7(2)(a), (3)(a), (4)(a) or (5)(a) if paragraphs 66.7(4)(a) and (5)(a) were read without reference to the expressions "30% of" and "10% of", respectively, as a consequence of the acquisition of control of the debtor by a person or group of persons, the debtor ceasing to be exempt from tax under this Part on its taxable income or the acquisition of properties by the debtor by way of an amalgamation or merger, where the amount so applied does not exceed the successor pool immediately after that time for the obligation and in respect of the particular amount;

Para. 80(8)(f) added by the said c. 17, subsec. 58(4), applicable to taxation years that begin after 2000.

Forms: T2153: Designation under para. 80(2)(i) when two or more commercial obligations are settled at the same time; T2154: Application of designated forgiven debt under sec. 80.

(9) Reductions of adjusted cost bases of capital properties — Where a commercial obligation issued by a debtor is settled at any time and amounts have been designated under subsections (5), (7) and (8) to the maximum extent permitted in respect of the settlement, subject to subsection (18)

(a) the remaining unapplied portion of the forgiven amount at that time in respect of the obligation shall be applied (to the extent designated in a prescribed form filed with the debtor's return of income under this Part for the taxation year that includes that time)

to reduce immediately after that time the adjusted cost bases to the debtor of capital properties (other than shares of the capital stock of corporations of which the debtor is a specified shareholder at that time, debts issued by corporations of which the debtor is a specified shareholder at that time, interests in partnerships that are related to the debtor at that time, depreciable property that is not of a prescribed class, personal-use properties and excluded properties) that are owned by the debtor immediately after that time;

(b) an amount may be applied under this subsection to reduce, immediately after that time, the capital cost to the debtor of a depreciable property of a prescribed class only to the extent that

(i) the capital cost immediately after that time to the debtor of the property (determined without reference to the settlement of the obligation at that time)

exceeds

(ii) its capital cost immediately after that time to the debtor for the purposes of paragraphs 8(1)(j) and (p), sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a) (determined without reference to the settlement of the obligation at that time); and

(c) for the purposes of paragraphs 8(1)(j) and (p), sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a), no amount shall be considered to have been applied under this subsection.

Related Provisions: 53(2)(g.1) — Reduction in ACB; 80(2)(c) — Order of application of rules; 80(2)(m) — Reduction cannot exceed the adjusted cost base; 80(10), (11) — Reduction of ACB of certain shares, debt and partnership interests; 80(13)D(a) — Income inclusion of remaining balance; 80(16) — Designation by CCRA where debtor fails to designate; 80(18) — Limitation on designation by partnership; 80.04(4)(b) — Transfer of forgiven amount after maximum designations; 96(3) — Designation by members of partnership; 220(3.21)(a) — Late filing, amendment or revocation of designation.

Regulations: 1105 (prescribed classes of depreciable property).

Forms: T2153: Designation under para. 80(2)(i) when two or more commercial obligations are settled at the same time; T2154: Application of designated forgiven debt under sec. 80.

(10) Reduction of adjusted cost bases of certain shares and debts — Where a commercial obligation issued by a debtor is settled at any time in a taxation year and amounts have been designated by the debtor under subsections (5), (7), (8) and (9) to the maximum extent permitted in respect of the settlement, subject to subsection (18) the remaining unapplied portion of that forgiven amount shall be applied (to the extent that it is designated in a prescribed form filed with the debtor's return of income under this Part for the year) to reduce immediately after that time the adjusted cost bases to the debtor of capital properties, owned by the debtor immediately after that time, that are shares of the capital stock of corporations of which the debtor is a specified shareholder at that time and debts issued by corporations of which the debtor is a specified shareholder at that time (other than shares of the capital stock of corporations related to the debtor at that time, debts issued by corporations related to the debtor at that time and excluded properties).

Related Provisions: 53(2)(g.1) — Reduction in ACB; 80(2)(c) — Order of application of rules; 80(2)(m) — Reduction cannot exceed the adjusted cost base; 80(11) — Reduction of ACB of certain shares, debt and partnership interests; 80(13)D(a) — Income inclusion of remaining balance; 80(16) — Designation by CCRA where debtor fails to designate; 80(18) — Limitation on designation by partnership; 80.04(4)(b) — Transfer of forgiven amount after maximum designations; 96(3) — Designation by members of partnership; 220(3.21)(a) — Late filing, amendment or revocation of designation.

Forms: T2153: Designation under para. 80(2)(i) when two or more commercial obligations are settled at the same time; T2154: Application of designated forgiven debt under sec. 80.

(11) Reduction of adjusted cost bases of certain shares, debts and partnership interests — Where a commercial obligation issued by a debtor is settled at any time in a taxation year and amounts have been designated by the debtor under subsections (5), (7), (8), (9) and (10) to the maximum extent permitted in respect of the settlement, subject to subsection (18) the remaining unapplied portion of that forgiven amount shall be applied (to the extent that it is designated in a prescribed form filed with the debtor's return of income under this Part for the year) to reduce immediately after that time the adjusted cost bases to the debtor of

(a) shares and debts that are capital properties (other than excluded properties and properties the adjusted cost bases of which are reduced at that time under subsection (9) or (10)) of the debtor immediately after that time; and

(b) interests in partnerships that are related to the debtor at that time that are capital properties (other than excluded properties) of the debtor immediately after that time.

Related Provisions: 53(2)(g.1) — Reduction in ACB; 80(2)(c) — Order of application of rules; 80(2)(m) — Reduction cannot exceed the adjusted cost base; 80(13)B(a) — Income inclusion where reductions in ACB are excessive; 80(16) — Designation by CCRA where debtor fails to designate; 80(18) — Limitation on designation by partnership; 80.03 — Gains on subsequent dispositions; 96(3) — Designation by members of partnership; 220(3.21)(a) — Late filing, amendment or revocation of designation.

Forms: T2153: Designation under para. 80(2)(i) when two or more commercial obligations are settled at the same time; T2154: Application of designated forgiven debt under sec. 80.

(12) Capital gain where current year capital loss — Where a commercial obligation issued by a debtor (other than a partnership) is settled at any time in a taxation year and amounts have been designated by the debtor under subsections (5), (7), (8) and (9) to the maximum extent permitted in respect of the settlement,

(a) the debtor shall be deemed to have a capital gain for the year from the disposition of capital property (or, where the debtor is non-resident at the end of the year, taxable Canadian property), equal to the lesser of

(i) the remaining unapplied portion of the forgiven amount at that time in respect of the obligation, and

(ii) the amount, if any, by which the total of

(A) all of the debtor's capital losses for the year from the dispositions of properties (other than listed personal properties and excluded properties), and

(B) twice the amount that would, because of subsection 88(1.2), be deductible under paragraph 111(1)(b) in computing the debtor's taxable income for the year, if the debtor had sufficient income and taxable capital gains for the year,

exceeds the total of

(C) all of the debtor's capital gains for the year from the dispositions of such properties (determined without reference to this subsection), and

(D) all amounts each of which is an amount deemed by this subsection to be a capital gain

of the debtor for the year as a consequence of the application of this subsection to other commercial obligations settled before that time; and

(b) the forgiven amount at that time in respect of the obligation shall be considered to have been applied under this subsection to the extent of the amount deemed by this subsection to be a capital gain of the debtor for the year as a consequence of the application of this subsection to the settlement of the obligation at that time.

Related Provisions: 80(2)(c) — Order of application of rules.

History: Cl. 80(12)(a)(ii)(B) amended by 2001, c. 17, subsec. 58(5) to replace the expression "4/3 of" with the word "twice", applicable to taxation years that end after February 27, 2000 except that, for a taxation year of a debtor that includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, the reference to the word "twice" shall be read as a reference to the expression "the fraction that is the reciprocal of the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the debtor for the year, multiplied by".

(13) Income inclusion — Where a commercial obligation issued by a debtor is settled at any time in a taxation year, there shall be added, in computing the debtor's income for the year from the source in connection with which the obligation was issued, the amount determined by the formula

$$(A + B - C - D) \times E$$

where

A is the remaining unapplied portion of the forgiven amount at that time in respect of the obligation,

B is the lesser of

(a) the total of all amounts designated under subsection (11) by the debtor in respect of the settlement of the obligation at that time, and

(b) the residual balance at that time in respect of the settlement of the obligation,

C is the total of all amounts each of which is an amount specified in an agreement filed under section 80.04 in respect of the settlement of the obligation at that time,

D is

(a) where the debtor has designated amounts under subsections (5), (7), (8), (9) and (10) to the maximum extent permitted in respect of the settlement, the amount, if any, by which

(i) the total of all amounts each of which is an unrecognized loss at that time, in respect of the obligation, from the disposition of a property

exceeds

(ii) twice the total of all amounts each of which is an amount by which the amount determined before that time under this subsection in respect of a settlement of an obligation issued by the debtor has been reduced because of an amount determined under this paragraph, and

(b) in any other case, nil, and

E is

(a) where the debtor is a partnership, 1, and

(b) in any other case, ½.

Related Provisions: 4(1) — Income from a source; 6(15) — Income inclusion on forgiveness of debt owing by employee; 12(1)(z.3) — Inclusion into income from business or property; 28(1)(d) — Inclusion in farming or fishing income when using cash method; 61.2–61.4 — Reserves to offset amount included under 80(13); 66.7(1)(b)(iii), 66.7(2)(b)(iv), 66.7(3)(b)(iii), 66.7(4)(b)(iii), 66.7(5)(b)(iii) — Resource expenditures — reduction in successor pools; 80(2)(c) — Order of application of rules; 80(14) — Determination of residual balance; 80(16) — Designation by CCRA to reduce reserve under 61.2; 80.04(8) — Where corporations become related in order to transfer forgiven amount; 95(1)"foreign accrual property income"A.1 — 4/3 inclusion in FAPI; 137.1(10) — Settlement of debts by deposit insurance corporation; 257 — Formula cannot calculate to less than zero.

History: Subpara. (a)(ii) of the description of D in subsec. 80(13) amended by 2001, c. 17, subsec. 58(6), to replace the expression "4/3 of" with the word "twice", applicable to taxation years that end after February 27, 2000 except that, for a taxation year of a debtor that includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, the reference to the word "twice" shall be read as a reference to the expression "the fraction that is the reciprocal of the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the debtor for the year, multiplied by".

Para. (b) of the description of E in subsec. 80(13) amended by the said c. 17, subsec. 58(7), to replace the number "0.75" with the fraction "1/2", applicable to taxation years that end after February 27, 2000 except that, for a taxation year of a debtor that includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, the reference to the fraction "1/2" shall be read as a reference to the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the debtor for the year.

Para. (b) of the description of B in subsec. 80(13) amended by 1998, c. 19, subsec. 111(3), applicable to taxation years that end after February 21, 1994. The para. formerly read:

(b) the total of

(i) the residual balance at that time in respect of the settlement of the obligation, and

(ii) the amount, if any, by which the amount determined for C in respect of the settlement exceeds the amount determined for A in respect of the settlement,

Interpretation Bulletins: See list at end of s. 80.

Information Circulars: See list at end of s. 80.

Advance Tax Rulings: ATR-27: Exchange and acquisition of interests in capital properties through rollovers and winding-up ("butterfly").

(14) Residual balance — For the purpose of subsection (13), the residual balance at any time in a taxation year in respect of the settlement of a particular commercial obligation issued by a debtor is the amount, if any, by which

(a) the gross tax attributes of directed persons at that time in respect of the debtor

exceeds the total of

(b) the value of A in subsection (13) in respect of the settlement of the particular obligation at that time,

(c) all amounts each of which is

(i) the amount, if any, by which the value of A in subsection (13) in respect of a settlement before that time and in the year of a commercial obligation issued by the debtor exceeds the value of C in that subsection in respect of the settlement,

(ii) the value of A in subsection (13) in respect of a settlement of a commercial obligation that is deemed by paragraph 80.04(4)(e) to have been issued by a directed person in respect of the debtor because of the filing of an agreement under section 80.04 in respect of a settlement before that time and in the year of a commercial obligation issued by the debtor, or

(iii) the amount specified in an agreement (other than an agreement with a directed person in respect of the debtor) filed under section 80.04 in respect of the settlement before that time and in the year of a commercial obligation issued by the debtor, and

(d) all amounts each of which is an amount in respect of a settlement at a particular time before that time and

in the year of a commercial obligation issued by the debtor equal to the least of

(i) the total of all amounts designated under subsection (11) in respect of the settlement,

(ii) the residual balance of the debtor at the particular time, and

(iii) the amount, if any, by which the sum of the values of A and B in subsection (13) in respect of the settlement exceeds the value of C in that subsection in respect of the settlement.

Related Provisions: 80(14.1) — Meaning of "gross tax attributes".

History: Subsec. 80(14) amended by 1998, c. 19, subsec. 111(4), applicable to taxation years that end after February 21, 1994. The subsec. formerly read:

(14) For the purpose of subsection (13), the residual balance at any time in a taxation year in respect of the settlement of a particular commercial obligation issued by a debtor is the amount, if any, by which the total of

(a) all amounts each of which is an amount that would be applied under any of subsections (3) to (10) and (12) in respect of the settlements of separate commercial obligations issued by directed persons at that time in respect of the debtor if

(i) those obligations were issued at that time by those directed persons and were settled immediately after that time,

(ii) an amount equal to the forgiven amount at that time in respect of the particular obligation were the forgiven amount immediately after that time in respect of each of those obligations,

(iii) amounts were designated under subsections (5), (7), (8), (9) and (10) by those directed persons to the maximum extent permitted in respect of the settlement of each of those obligations, and

(iv) no amounts were designated under subsection (11) by any of those directed persons in respect of the settlement of any of those obligations, and

(b) where the debtor is a partnership, all amounts each of which is ¼ of an amount deducted because of paragraph (c) or (d) in computing the residual balance at that time in respect of the settlement of the particular obligation,

exceeds the total of

(c) all amounts each of which is ⅘ of the amount that would be included under subsection (13) in computing the debtor's income for the year in respect of the settlement at or before that time of a commercial obligation issued by the debtor if the amounts determined for B and D in subsection (13) were nil,

(d) all amounts each of which is ⅘ of an amount that would, if the amount determined for D in subsection (13) were nil, be included under subsection (13) in computing the income of any of those directed persons in respect of the settlement of an obligation that is deemed by paragraph 80.04(4)(e) to have been issued by the directed person because of the filing of an agreement under section 80.04 in respect of the settlement at or before that time and in the year of a commercial obligation issued by the debtor,

(e) all amounts each of which is an amount specified in an agreement (other than an agreement with any of those directed persons) filed under section 80.04 in respect of the settlement at or before that time and in the year of a commercial obligation issued by the debtor, and

(f) all amounts each of which is the lesser of

(i) the total of all amounts designated under subsection (11) in respect of the settlement before that time and in the year of another commercial obligation issued by the debtor, and

(ii) the residual balance of the debtor at that previous time.

(14.1) Gross tax attributes — The gross tax attributes of directed persons at any time in respect of a debtor means the total of all amounts each of which is an amount that would be applied under any of subsections (3) to (10) and (12) in respect of a settlement of a separate commercial obligation (in this subsection referred to as a "notional obligation") issued by directed persons at that time in respect of the debtor if the following assumptions were made:

(a) a notional obligation was issued immediately before that time by each of those directed persons and was settled at that time;

(b) the forgiven amount at that time in respect of each of those notional obligations was equal to the total of all amounts each of which is a forgiven amount at or before that time and in the year in respect of a commercial obligation issued by the debtor;

(c) amounts were designated under subsections (5), (7), (8), (9) and (10) by each of those directed persons to the maximum extent permitted in respect of the settlement of each of those notional obligations; and

(d) no amounts were designated under subsection (11) by any of those directed persons in respect of the settlement of any of the notional obligations.

History: Subsec. 80(14.1) added by 1998, c. 19, subsec. 111(4), applicable to taxation years that end after February 21, 1994.

(15) Members of partnerships — Where a commercial debt obligation issued by a partnership (in this subsection referred to as the "partnership obligation") is settled at any time in a fiscal period of the partnership that ends in a taxation year of a member of the partnership,

(a) the member may deduct, in computing the member's income for the year, such amount as the member claims not exceeding the relevant limit in respect of the partnership obligation;

(b) for the purpose of paragraph (a), the relevant limit in respect of the partnership obligation is the amount that would be included in computing the member's income for the year as a consequence of the application of subsection (13) and section 96 to the settlement of the partnership obligation if the partnership had designated amounts under subsections (5), (7), (8), (9) and (10) to the maximum extent permitted in respect of each obligation settled in that fiscal period and if income arising from the application of subsection (13) were from a source of income separate from any other sources of partnership income; and

(c) for the purposes of this section and section 80.04,

(i) the member shall be deemed to have issued a commercial debt obligation that was settled at the end of that fiscal period,

(ii) the amount deducted under paragraph (a) in respect of the partnership obligation in computing the member's income shall be treated as if it were the forgiven amount at the end of that fiscal period in respect of the obligation referred to in subparagraph (i),

(iii) subject to subparagraph (iv), the obligation referred to in subparagraph (i) shall be deemed to have been issued at the same time at which, and in the same circumstances in which, the partnership obligation was issued,

(iv) where the member is a corporation the control of which was acquired at a particular time that is before the end of that fiscal period and before the corporation became a member of the partnership and the partnership obligation was issued before the particular time,

(A) subject to the application of this subparagraph to an acquisition of control of the corpo-

ration after the particular time and before the end of that fiscal period, the obligation referred to in subparagraph (i) shall be deemed to have been issued by the member after the particular time, and

(B) paragraph (e) of the definition "relevant loss balance" in subsection (1), paragraph (f) of the definition "successor pool" in that subsection and paragraph (b) of the definition "unrecognized loss" in that subsection do not apply in respect of that acquisition of control, and

(v) the source in connection with which the obligation referred to in subparagraph (i) was issued shall be deemed to be the source in connection with which the partnership obligation was issued.

Related Provisions: 4(1) — Income from a source; 20(1)(uu) — Deduction for amount allowed under para. 80(15)(a); 61.2:A(b) — Effect of para. 80(15)(a) on reserve for individuals; 61.2:A(b), 61.3(1)(a)(ii), 61.3(2)(a)(ii), 61.4(a)A(ii) — Reserve in respect of debt forgiven; 80(1) — "Person" includes a partnership; 80(2)(n) — Commercial debt obligation issued by partner — deemed issued by partnership; 80(13)E(a) — Income inclusion where debtor is partnership; 80(14)(b) — Residual balance where debtor is partnership; 80(18) — Limitation on designation by partnership; 96(3) — Designation by members of partnership; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired; 256(8) — Deemed acquisition of shares.

(16) Designations by Minister — Where a commercial obligation issued by a debtor is settled at any time in a taxation year and, as a consequence of the settlement an amount would, but for this subsection, be deducted under section 61.2 or 61.3 in computing the debtor's income for the year and the debtor has not designated amounts under subsections (5) to (11) to the maximum extent possible in respect of the settlement,

(a) the Minister may designate amounts under subsections (5) to (11) to the extent that the debtor would have been permitted to designate those amounts; and

(b) the amounts designated by the Minister shall, except for the purpose of this subsection, be deemed to have been designated by the debtor as required by subsections (5) to (11).

(17) [Repealed]

History: Subsec. 80(17) repealed by 1998, c. 19, subsec. 111(5), applicable to taxation years that end after February 21, 1994. The subsec. formerly read:

(17) Income inclusion where residual balance a positive amount — Where a commercial obligation issued by a corporation is settled at any time in a taxation year and, as a consequence of the settlement an amount is deducted under section 61.3 in computing the corporation's income for the year, unless the corporation has commenced to wind up on or before the day that is 12 months after the end of the year there shall be added in computing the corporation's income for the year from the source in connection with which the obligation was issued 50% of the lesser of

(a) the total of all amounts designated under subsection (11) by the corporation in respect of the settlement of the obligation at that time, and

(b) the amount, if any, by which the lesser of

(i) the residual balance (within the meaning assigned by subsection (14)) of the corporation at that time in respect of the settlement of the obligation, and

(ii) the amount, if any, by which the amount deducted under section 61.3 in computing the corporation's income for the year exceeds the amount, if any, deducted because of paragraph 37(1)(f.1) in determining the balance determined under subsection 37(1) in respect of the corporation after the year because of an amount deducted under section 61.3 in computing the corporation's income for the year

exceeds the total of all amounts included because of this subsection in computing the corporation's income for the year in respect of a settlement before that time of a commercial obligation issued by the corporation.

(18) Partnership designations — Where a commercial obligation issued by a partnership is settled at any time after December 20, 1994, the amount designated under subsection (9), (10) or (11) in respect of the settlement by the partnership to reduce the adjusted cost base of a capital property acquired shall not exceed the amount, if any, by which the adjusted cost base at that time to the partnership of the property exceeds the fair market value at that time of the property.

History [s. 80]: S. 80 substituted by 1995, c. 21, s. 27, applicable to taxation years that end after February 21, 1994, except that

(a) the amended section does not, other than for the purposes of subsections 6(15) and (15.1) and 15(1.2) and (1.21) and section 79, apply to any obligation settled or extinguished

(i) before February 22, 1994,

(ii) after February 21, 1994

(A) under the terms of an agreement in writing entered into on or before that date, or

(B) under the terms of any amendment to such an agreement, where that amendment was entered into in writing before July 12, 1994 and the amount of the settlement or extinguishment was not substantially greater than the settlement or extinguishment provided under the terms of the agreement,

(iii) before 1996 pursuant to a restructuring of debt in connection with a proceeding commenced in a court in Canada before February 22, 1994,

(iv) before 1996 in connection with a proposal (or notice of intention to make a proposal) that was filed under the *Bankruptcy and Insolvency Act*, or similar legislation of a country other than Canada, before February 22, 1994, or

(v) before 1996 in connection with a written offer that was made by, or communicated to, the holder of the obligation before February 22, 1994;

(b) in its application with respect to interest accruing before July 14, 1990, the words "was deductible" in paragraph 80(2)(b), shall be read as "was deducted"; and

(c) a form referred to in section 80 shall be deemed to have been filed on a timely basis if it is filed with the Minister of National Revenue before 1996.

Definitions [s. 80]: "acquired" — 256(7)–(9); "adjusted cost base" — 54, 248(1); "amount" — 248(1); "applicable fraction" — 80(2)(d); "bankrupt" — 248(1); "beneficially interested" — 248(25); "business" — 80.03(7)(b)(iii), 248(1); "Canada" — 255; "Canadian partnership" — 102(1), 248(1); "capital gain", "capital loss" — 39(1), 248(1); "capital property" — 54, 248(1); "carried on in Canada" — 253; "class" — 248(6); "commercial debt obligation" — 80(1); "control" — 80(2)(j), 256(6)–(9); "controlled, directly or indirectly" — 256(5.1), (6.2); "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount" — 248(1); "cumulative eligible capital" — 14(5), 248(1); "cumulative foreign resource expense" — 66.21(1); "debtor" — 80(1); "depreciable property" — 13(21), 248(1); "directed person" — 80(1); "distress preferred share", "eligible Canadian partnership", "excluded obligation", "excluded property", "excluded security" — 80(1); "farm loss" — 111(8), 248(1); "fiscal period" — 249(2)(b), 249.1; "foreign exploration and development expenses" — 66(15); "forgiven amount" — 80(1), 80.01(8)(b), 80.03(7)(b)(ii); "gross tax attributes" — 80(14.1) "listed personal property" — 54, 248(1); "Minister" — 248(1); "net capital loss", "non-capital loss" — 111(8), 248(1); "non-resident" — 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "ordinary non-capital loss" — 80(3)(a)(i); "partnership obligation" — 80(15); "person" — 80(1), 248(1); "personal-use property" — 54, 248(1); "prescribed" — 248(1); "prescribed stock exchange in Canada" — Reg. 3200; "principal amount", "property", "regulation" — 248(1); "related" — 80(2)(j), 251(2); "relevant limit" — 80(15)(b); "relevant loss balance" — 80(1); "residual balance" — 80(14); "resident in Canada" — 94(3)(a)(viii), 250; "restricted farm loss" — 31, 248(1); "settled" — 80(2)(a), 80.01(3)–(9), 80.02(2)(c), 80.02(7)(a), 80.03(7)(b)(i); "share" — 248(1); "source" — 4(1), 80.03(7)(b)(iv); "specified shareholder" — 248(1); "successor pool" — 80(1); "taxable Canadian corporation" — 89(1), 248(1); "taxable Cana-

dian property" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 11(2), 249; "treaty-protected property" — 248(1); "trust" — 104(1), 248(1), (3); "undepreciated capital cost" — 13(21), 248(1); "unrecognized loss" — 80(1); "writing" — *Interpretation Act* 35(1).

I.T. Application Rules [s. 80]: 26(1.1) (debt outstanding since before 1972.).

Interpretation Bulletins [s. 80]: IT-109R2: Unpaid amounts; IT-142R3: Settlement of debts on the winding-up of a corporation; IT-232R3: Losses — their deductibility in the loss year or in other years; IT-262R2: Losses of non-residents and part-year residents; IT-268R3: *Inter vivos* transfer of farm property to child; IT-293R: Debtor's gain on settlement of debt; IT-382: Debts bequeathed or forgiven on death (archived); IT-430R3: Life insurance proceeds received by a private corporation or a partnership as a consequence of death; IT-474R: Amalgamations of Canadian corporations; IT-488R2: Winding-up of 90%-owned taxable Canadian corporations (archived).

Information Circulars [s. 80]: 88-2, para. 23: General anti-avoidance rule — section 245 of the *Income Tax Act*; 88-2 Supplement, para. 6: General anti-avoidance rule — section 245 of the *Income Tax Act*.

History [former s. 80]: *subsec. 80(4)*

Subsec. 80(4) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 58, applicable to interest in respect of debts or other obligations settled or extinguished after May 9, 1985, except that, in its application to interest accruing before July 14, 1990, the subsec. shall be read as follows:

> (4) For the purposes of subsections (1) and (3), an amount of interest in respect of a debt or other obligation of a taxpayer shall be deemed to be a debt or other obligation issued by the taxpayer that
>
> (a) has a principal amount, and
>
> (b) was issued by the taxpayer for an amount,
>
> equal to the portion of the amount of the interest that was deducted, or would, but for subsection 18(2) or (3.1) or section 21, be deductible, in computing the taxpayer's income under this Part for a taxation year.

Subsec. (4) formerly read:

> (4) Principal for interest payable — For the purposes of subsections (1) and (3), an amount of interest payable by a taxpayer on a debt or other obligation shall be deemed to have a principal amount equal to the portion thereof that was deducted, or would, but for subsection 18(2) or (3.1) or section 21, have been deductible, in computing the taxpayer's income for a taxation year under this Part.

Selected Cases [former s. 80]: *Gibralt Capital Corp. v. R.*, [2003] 3 C.T.C. 147 (FCA) (Same debt existed where no novation); *Beach v. R.*, [2002] 1 C.T.C. 89 (BC CA) (Proposal to creditors that would avoid application of provision was illegal and unreasonable); *Queenswood Land Associates Ltd. v. R.*, [2000] 1 C.T.C. 352 (FCA); rev'g [1997] 2 C.T.C. 2688 (TCC) (Court cannot, absent sham, recharacterize legal relationships); *Metro-Can Construction Ltd. v. R.*, [1999] 2 C.T.C. 2206 (TCC) (Provision applies at partnership level, not at level of individual partner); *Central City Financial Services Ltd. v. R*, [1997] 3 C.T.C. 2949 (TCC) (Mere assignment of debt is not a settlement of it); *Wigmar Holdings Ltd. v. R.*, [1997] 2 C.T.C. 263 (FCA) (Test in s. 80 is legal settlement or extinguishment of particular debt in legally binding form); *Queenswood Associates Ltd. v. R.*, [1997] 2 C.T.C. 2688 (TCC) (Forgiveness of debt related to inventory to be included in computation of income); *Molstad Development Co. v. Canada*, [1997] 2 C.T.C. 2360 (TCC) (Borrowed funds were capital, even if proceeds used to acquire inventory); *Denthor Developments Ltd. v. Canada*, [1997] 1 C.T.C. 2075 (TCC) (No proceeds of disposition of land until land is sold); *Carma Developers Ltd. v. Canada*, [1996] 3 C.T.C. 2029 (TCC) ("Settlement" means final settlement and extinguishment of debt from debtor's perspective); *King Rentals Ltd. v. Canada*, [1995] 2 C.T.C. 2612 (TCC) (Consideration for debt was amount of debt for which shares were issued and credit made to share capital, not fair market value of the debt).

80.01 (1) Definitions — In this section,

"commercial debt obligation" has the meaning assigned by subsection 80(1);

"commercial obligation" has the meaning assigned by subsection 80(1);

"debtor" has the meaning assigned by subsection 80(1);

"distress preferred share" has the meaning assigned by subsection 80(1);

"forgiven amount" has the meaning assigned by subsection 80(1) except that, where an amount would be included in computing a person's income under paragraph 6(1)(a) or subsection 15(1) as a consequence of the settlement of an obligation if the obligation were settled without any payment being made in satisfaction of its principal amount, "forgiven amount" in respect of that obligation has the meaning assigned by subsection 6(15.1) or 15(1.21), as the case may be;

"person" has the meaning assigned by subsection 80(1);

"specified cost" at any time to a person of an obligation means,

(a) where the obligation is capital property of the person at that time, the adjusted cost base at that time to the person of the obligation, and

(b) in any other case, the cost amount to the person of the obligation.

(2) Application — For the purposes of this section,

(a) paragraphs 80(2)(a), (b), (j), (l) and (n) apply; and

(b) a person has a significant interest in a corporation at any time if the person owned at that time

(i) shares of the capital stock of the corporation that would give the person 25% or more of the votes that could be cast under all circumstances at an annual meeting of shareholders of the corporation, or

(ii) shares of the capital stock of the corporation having a fair market value of 25% or more of the fair market value of all the issued shares of the capital stock of the corporation

and, for the purposes of this paragraph, a person shall be deemed to own at any time each share of the capital stock of a corporation that is owned, otherwise than because of this paragraph, at that time by another person with whom the person does not deal at arm's length.

(3) Deemed settlement on amalgamation — Where a commercial obligation or another obligation (in this subsection referred to as the "indebtedness") of a debtor that is a corporation to pay an amount to another corporation (in this subsection referred to as the "creditor") is settled on an amalgamation of the debtor and the creditor, the indebtedness shall be deemed to have been settled immediately before the time that is immediately before the amalgamation by a payment made by the debtor and received by the creditor of an amount equal to the amount that would have been the creditor's cost amount of the indebtedness at that time if

(a) the definition "cost amount" in subsection 248(1) were read without reference to paragraph (e) of that definition; and

(b) that cost amount included amounts added in computing the creditor's income in respect of the portion of the indebtedness representing unpaid interest, to the extent those amounts have not been deducted in computing the creditor's income as bad debts in respect of that unpaid interest.

Related Provisions: 80(3)–(13) — Treatment of obligation deemed to have been settled.

(4) Deemed settlement on winding-up — Where there is a winding-up of a subsidiary to which the rules in subsection 88(1) apply and

(a) a debt or other obligation (in this subsection referred to as the "subsidiary's obligation") of the subsidiary to pay an amount to the parent, or

(b) a debt or other obligation (in this subsection referred to as the "parent's obligation") of the parent to pay an amount to the subsidiary

is, as a consequence of the winding-up, settled at a particular time without any payment of an amount or by the payment of an amount that is less than the principal amount of the subsidiary's obligation or the parent's obligation, as the case may be,

(c) where that payment is less than the amount that would have been the cost amount to the parent or subsidiary of the subsidiary's obligation or the parent's obligation immediately before the particular time if the definition "cost amount" in subsection 248(1) were read without reference to paragraph (e) of that definition and the parent so elects in a prescribed form on or before the day on or before which the parent is required to file a return of income pursuant to section 150 for the taxation year that includes the particular time, the amount paid at that time in satisfaction of the principal amount of the subsidiary's obligation or the parent's obligation shall be deemed to be equal to the amount that would be the cost amount to the parent or the subsidiary, as the case may be, of the subsidiary's obligation or the parent's obligation immediately before the particular time if

(i) the definition "cost amount" in subsection 248(1) were read without reference to paragraph (e) of that definition, and

(ii) that cost amount included amounts added in computing the parent's income or the subsidiary's income in respect of the portion of the indebtedness representing unpaid interest, to the extent that the parent or the subsidiary has not deducted any amounts as bad debts in respect of that unpaid interest, and

(d) for the purposes of applying section 80 to the subsidiary's obligation, where property is distributed at any time in circumstances to which paragraph 88(1)(a) or (b) applies and the subsidiary's obligation is settled as a consequence of the distribution, the subsidiary's obligation shall be deemed to have been settled immediately before the time that is immediately before the time of the distribution and not at any later time.

Related Provisions: 50(1)(b)(ii) — Deemed disposition of debt or shares on winding-up; 80(3)–(13) — Treatment of obligation deemed to have been settled; 80.01(5) — Where distress preferred share issued; 220(3.2), Reg. 600(b) — Late filing or revocation of election under 80.01(4)(c).

Advance Tax Rulings: ATR-66: Non-arm's length transfer of debt followed by a winding-up and a sale of shares.

Forms: T2027: Election to deem amount of settlement of a debt or obligation.

(5) Deemed settlement on winding-up — Where there is a winding-up of a subsidiary to which the rules in subsection 88(1) apply and, as a consequence of the winding-up, a distress preferred share issued by the subsidiary and owned by the parent (or a distress preferred share issued by the parent and owned by the subsidiary) is settled at any time without any payment of an amount or by the payment of an amount that is less than the principal amount of the share,

(a) where the payment was less than the adjusted cost base of the share to the parent or the subsidiary, as the case may be, immediately before that time, for the purposes of applying the provisions of this Act to the issuer of the share, the amount paid at that time in satisfaction of the principal amount of the share shall be deemed to be equal to its adjusted cost base to the parent or to the subsidiary, as the case may be; and

(b) for the purposes of applying section 80 to the share, where property is distributed at any time in circumstances to which paragraph 88(1)(a) or (b) applies and the share is settled as a consequence of the distribution, the share shall be deemed to have been settled immediately before the time that is immediately before the time of the distribution and not at any later time.

Related Provisions: 50(1)(b)(ii) — Deemed disposition of debt or shares on winding-up; 80(3)–(13) — Treatment of obligation deemed to have been settled; 80.02(2)(c) — Meaning of "settled" for distress preferred shares; 88(1)(b) — Determination of proceeds of disposition to parent.

(6) Specified obligation in relation to debt parking — For the purpose of subsection (7), an obligation issued by a debtor is, at a particular time, a specified obligation of the debtor where

(a) at any previous time (other than a time before the last time, if any, the obligation became a parked obligation before the particular time),

(i) a person who owned the obligation

(A) dealt at arm's length with the debtor, and

(B) where the debtor is a corporation, did not have a significant interest in the debtor, or

(ii) the obligation was acquired by the holder of the obligation from another person who was, at the time of that acquisition, not related to the holder or related to the holder only because of paragraph 251(5)(b); or

(b) the obligation is deemed by subsection 50(1) to be reacquired at the particular time.

Related Provisions: 80(2)(j), 80.01(2)(a) — Special rules for determining the meaning of "related" and "arm's length"; 80.01(7) — Meaning of "parked obligation".

(7) Parked obligation — For the purposes of this subsection and subsections (6), (8) and (10),

(a) an obligation issued by a debtor is a "parked obligation" at any time where at that time

(i) the obligation is a specified obligation of the debtor, and

(ii) the holder of the obligation

(A) does not deal at arm's length with the debtor, or

(B) where the debtor is a corporation and the holder acquired the obligation after July 12, 1994 (otherwise than pursuant to an agreement in writing entered into on or before July 12, 1994), has a significant interest in the debtor; and

(b) an obligation that is, at any time, acquired or reacquired in circumstances to which subparagraph (6)(a)(ii) or paragraph (6)(b) applies shall, if the obligation is a parked obligation immediately after that

time, be deemed to have become a parked obligation at that time.

Related Provisions: 80(2)(j), 80.01(2)(a) — Special rules for determining the meaning of "related" and thence "arm's length"; 80.01(6) — Meaning of "specified obligation".

(8) Deemed settlement after debt parking — Where at any particular time after February 21, 1994 a commercial debt obligation that was issued by a debtor becomes a parked obligation (otherwise than pursuant to an agreement in writing entered into before February 22, 1994) and the specified cost at the particular time to the holder of the obligation is less than 80% of the principal amount of the obligation, for the purpose of applying the provisions of this Act to the debtor

(a) the obligation shall be deemed to have been settled at the particular time; and

(b) the forgiven amount at the particular time in respect of the obligation shall be determined as if the debtor had paid an amount at the particular time in satisfaction of the principal amount of the obligation equal to that specified cost.

Related Provisions: 40(2)(e.1), (e.2), (g)(ii) — Stop-loss rules on disposition of debt; 50(1)(a) — Deemed disposition of bad debt; 79(3)F(b)(i), (iii) — Where property surrendered to creditor; 80(1)"forgiven amount"B(g) — Debt forgiveness rules do not apply if parked obligation subsequently forgiven; 80(3)–(13) — Treatment of obligation deemed to have been settled; 80.01(7) — Meaning of "parked obligation"; 80.01(10) — Subsequent payments; 80.01(11) — Foreign currency fluctuation to be ignored.

(9) Statute-barred debt — Where at any particular time after February 21, 1994 a commercial debt obligation issued by a debtor that is payable to a person (other than a person with whom the debtor is related at the particular time) becomes unenforceable in a court of competent jurisdiction because of a statutory limitation period and the obligation would, but for this subsection, not have been settled or extinguished at the particular time, for the purpose of applying the provisions of this Act to the debtor, the obligation shall be deemed to have been settled at the particular time.

Related Provisions: 80(1)"forgiven amount"B(g) — Debt forgiveness rules do not apply; 80(2)(j), 80.01(2)(a) — Special rules for determining the meaning of "related"; 80(3)–(13) — Treatment of obligation deemed to have been settled; 80.01(10) — Subsequent payments; 80.01(11) — Foreign currency fluctuation to be ignored.

(10) Subsequent payments in satisfaction of debt — Where a commercial debt obligation issued by a debtor is first deemed by subsection (8) or (9) to have been settled at a particular time, at a subsequent time a payment is made by the debtor of an amount in satisfaction of the principal amount of the obligation and it cannot reasonably be considered that one of the reasons the obligation became a parked obligation or became unenforceable, as the case may be, before the subsequent time was to have this subsection apply to the payment, in computing the debtor's income for the taxation year (in this subsection referred to as the "subsequent year") that includes the subsequent time from the source in connection with which the obligation was issued, there may be deducted the amount determined by the formula

$$0.5(A - B) - C$$

where

A is the amount of the payment,

B is the amount, if any, by which

(a) the principal amount of the obligation

exceeds the total of

(b) all amounts each of which is a forgiven amount at any time

(i) in the period that began at the particular time and ended immediately before the subsequent time, and

(ii) at which a particular portion of the obligation is deemed by subsection (8) or (9) to be settled

in respect of the particular portion, and

(c) all amounts paid in satisfaction of the principal amount of the obligation in the period that began at the particular time and ended immediately before the subsequent time, and

C is the amount, if any, by which the total of

(a) all amounts deducted under section 61.3 in computing the debtor's income for the subsequent year or a preceding taxation year,

(b) all amounts added because of subsection 80(13) in computing the debtor's income for the subsequent year or a preceding taxation year in respect of a settlement under subsection (8) or (9) in a period during which the debtor was exempt from tax under this Part on its taxable income, and

(c) all amounts added because of subsection 80(13) in computing the debtor's income for the subsequent year or a preceding taxation year in respect of a settlement under subsection (8) or (9) in a period during which the debtor was non-resident (other than any of those amounts added in computing the debtor's taxable income or taxable income earned in Canada)

exceeds the total of

(d) the amount, if any, deducted because of paragraph 37(1)(f.1) in determining the balance determined under subsection 37(1) in respect of the debtor immediately after the subsequent year, and

(e) all amounts by which the amount deductible under this subsection in respect of a payment made by the debtor before the subsequent time in computing the debtor's income for the subsequent year or a preceding year has been reduced because of this description.

Related Provisions: 3, 4(1) — Income from a source; 20(1)(uu) — Deduction for amount allowed under subsec. 80.01(10); 80.01(7) — Meaning of "parked obligation"; 87(2)(l.21) — Amalgamations — continuing corporation; 257 — Formula cannot calculate to less than zero.

History: Subsec. 80.01(10) amended by 2001, c. 17, s. 59 to replace the number "0.75" in the formula with the number "0.5", applicable to taxation years that end after Feb. 27, 2000 except that, where a taxation year of a debtor includes Feb. 28, 2000 or Oct. 17, 2000, or began after Feb. 28, 2000 and ended before Oc. 17, 2000, the reference to the fraction "1/2" in the subsec. shall be read as a reference to the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the debtor for the year.

Proposed Amendment — Application of S.C. 2001, c. 17, s. 59

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 198, will amend the application of the amendment made to subsec. 80.01(10) by S.C. 2001, c. 17, s. 59, deemed in force on June 14, 2001, to read as follows:

Subsec. 80.01(10) amended by 2001, c. 17, s. 59 to replace the number "0.75" in the formula with the number "0.5", applicable to taxation years that end after February 27, 2000 except that, for a taxation year of a debtor that includes either February 28, 2000 or October 17, 2000 or began after February 28, 2000 and ended before October 17, 2000, the reference to the fraction "1/2" shall be read as a reference to the fraction in para. 38(a) that applied to the

debtor for the year in which the commercial debt obligation was deemed to have been settled.

Technical Notes: Subsection 59(2) of the *Income Tax Amendments Act, 2000* is amended to provide that, in computing a debtor's income for a particular taxation year, the fraction in paragraph 38(a) of the *Income Tax Act* to be applied in respect of the settlement of a commercial debt obligation is the fraction in that paragraph that applied to the debtor in the debtor's taxation year in which the obligation was deemed to have been settled instead of the fraction in that paragraph that applies to the debtor in the particular taxation year.

This change corrects a technical deficiency, and is deemed to have come into force on June 14, 2001.

(11) Foreign currency gains and losses — Where an obligation issued by a debtor is denominated in a currency (other than the Canadian currency) and the obligation is deemed by subsection (8) or (9) to have been settled, those subsections do not apply for the purpose of determining any gain or loss of the debtor on the settlement that is attributable to a fluctuation in the value of the currency relative to the value of Canadian currency.

Related Provisions: 39(2) — Gain or loss on fluctuation of foreign currency; 79(7) — Currency fluctuation where property surrendered to creditor; 80(2)(k) — Determination of forgiven amount where obligation denominated in foreign currency.

I.T. Technical News: 15 (tax consequences of the adoption of the "euro" currency).

History [s. 80.01]: S. 80.01 added by 1995, c. 21, s. 27, applicable to taxation years that end after February 21, 1994, except that it does not, other than for the purposes of subsections 6(15) and (15.1) and 15(1.2) and (1.21) and section 79, apply to any obligation settled or extinguished

(i) before February 22, 1994,

(ii) after February 21, 1994

(A) under the terms of an agreement in writing entered into on or before that date, or

(B) under the terms of any amendment to such an agreement, where that amendment was entered into in writing before July 12, 1994 and the amount of the settlement or extinguishment was not substantially greater than the settlement or extinguishment provided under the terms of the agreement,

(iii) before 1996 pursuant to a restructuring of debt in connection with a proceeding commenced in a court in Canada before February 22, 1994,

(iv) before 1996 in connection with a proposal (or notice of intention to make a proposal) that was filed under the *Bankruptcy and Insolvency Act*, or similar legislation of a country other than Canada, before February 22, 1994, or

(v) before 1996 in connection with a written offer that was made by, or communicated to, the holder of the obligation before February 22, 1994.

Definitions [s. 80.01]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "arm's length" — 80(2)(j), 80.01(2)(a), 251(1); "capital property" — 54, 248(1); "commercial debt obligation", "commercial obligation" — 80(1), 80.01(1); "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount" — 248(1); "creditor" — 80.01(3); "debtor", "distress preferred share" — 80(1), 80.01(1); "forgiven amount" — 80(1), 80.01(1), 80.01(8)(b); "non-resident" — 248(1); "parent" — 88(1); "parked obligation" — 80.01(7); "person" — 80(1), 80.01(1); "prescribed", "principal amount" — 248(1); "related" — 80(2)(j), 80.01(2)(a), 251(2); "settled" — 80(2)(a), 80.01(3)–(9), 80.02(2)(c), 80.02(7)(a); "significant interest" — 80.01(2)(b); "source" — 4(1); "specified cost" — 80.01(1); "specified obligation" — 80.01(6); "specified shareholder" — 248(1); "subsidiary" — 88(1); "taxation year" — 249; "writing" — *Interpretation Act* 35(1).

80.02 (1) Definitions — In this section, "commercial debt obligation", "commercial obligation", "distress preferred share" and "person" have the meanings assigned by subsection 80(1).

(2) General rules for distress preferred shares — For the purpose of applying the provisions of this Act to an issuer of a distress preferred share,

(a) the principal amount, at any time, of the share shall be deemed to be the amount (determined at that time) for which the share was issued;

(b) the amount for which the share was issued shall, at any time, be deemed to be the amount, if any, by which the total of

(i) the amount for which the share was issued, determined without reference to this paragraph, and

(ii) all amounts by which the paid-up capital in respect of the share increased after the share was issued and before that time

exceeds

(iii) the total of all amounts each of which is an amount paid before that time on a reduction of the paid-up capital in respect of the share, except to the extent that the amount is deemed by section 84 to have been paid as a dividend;

(c) the share shall be deemed to be settled at such time as it is redeemed, acquired or cancelled by the issuer; and

(d) a payment in satisfaction of the principal amount of the share is any payment made on a reduction of the paid-up capital in respect of the share to the extent that the payment would be proceeds of disposition of the share within the meaning that would be assigned by the definition "proceeds of disposition" in section 54 if that definition were read without reference to paragraph (j).

Related Provisions: 80.02(3)(b), 80.02(5)(b) — Deemed amounts for purposes of subpara. 80.02(2)(b)(i).

(3) Substitution of distress preferred share for debt — Where any part of the consideration given by a corporation to another person for the settlement or extinguishment at any time of a commercial debt obligation that was issued by the corporation and owned immediately before that time by the other person consists of a distress preferred share issued by the corporation to the other person,

(a) for the purposes of section 80, the amount paid at that time in satisfaction of the principal amount of the obligation because of the issue of that share shall be deemed to be equal to the lesser of

(i) the principal amount of the obligation, and

(ii) the amount by which the paid-up capital in respect of the class of shares that include that share increases because of the issue of that share; and

(b) for the purpose of subparagraph (2)(b)(i), the amount for which the share was issued shall be deemed to be equal to the amount deemed by paragraph (a) to have been paid at that time.

Related Provisions: 80.02(2) — General rules.

(4) Substitution of commercial debt obligation for distress preferred share — Where any part of the consideration given by a corporation to another person for the settlement at any time of a distress preferred share that was issued by the corporation and owned immediately before that time by the other person consists of a commer-

cial debt obligation issued by the corporation to the other person, for the purposes of section 80

(a) the amount paid at that time in satisfaction of the principal amount of the share because of the issue of that obligation shall be deemed to be equal to the principal amount of the obligation; and

(b) the amount for which the obligation was issued shall be deemed to be equal to its principal amount.

Related Provisions: 80.02(2) — General rules.

(5) Substitution of distress preferred share for other distress preferred share — Where any part of the consideration given by a corporation to another person for the settlement at any time of a particular distress preferred share that was issued by the corporation and owned immediately before that time by the other person consists of another distress preferred share issued by the corporation to the other person, for the purposes of section 80

(a) the amount paid at that time in satisfaction of the principal amount of the particular share because of the issue of the other share shall be deemed to be equal to the amount by which the paid-up capital in respect of the class of shares that includes the other share increases because of the issue of the other share; and

(b) for the purpose of subparagraph (2)(b)(i), the amount for which the other share was issued shall be deemed to be equal to the amount deemed by paragraph (a) to have been paid at that time.

Related Provisions: 80.02(2) — General rules.

(6) Substitution of non-commercial obligation for distress preferred share — Where any part of the consideration given by a corporation to another person for the settlement at any time of a distress preferred share that was issued by the corporation and owned immediately before that time by the other person consists of another share (other than a distress preferred share) or an obligation (other than a commercial obligation) issued by the corporation to the other person, for the purposes of section 80, the amount paid at that time in satisfaction of the principal amount of the distress preferred share because of the issue of the other share or obligation shall be deemed to be equal to the fair market value of the other share or obligation, as the case may be, at that time.

Related Provisions: 80.02(2) — General rules.

(7) Deemed settlement on expiry of term — Where at any time a distress preferred share becomes a share that is not a distress preferred share, for the purposes of section 80

(a) the share shall be deemed to have been settled immediately before that time; and

(b) a payment equal to the fair market value of the share at that time shall be deemed to have been made immediately before that time in satisfaction of the principal amount of the share.

Related Provisions: 80(1)"distress preferred share", 248(1)"term preferred share"(e) — Maximum term of distress preferred share is 5 years.

History [s. 80.02]: S. 80.02 added by 1995, c. 21, s. 27, applicable to taxation years that end after February 21, 1994, except that it does not, other than for the purposes of subsections 6(15) and (15.1) and 15(1.2) and (1.21) and section 79, apply to any obligation settled or extinguished

(i) before February 22, 1994,

(ii) after February 21, 1994

(A) under the terms of an agreement in writing entered into on or before that date, or

(B) under the terms of any amendment to such an agreement, where that amendment was entered into in writing before July 12, 1994 and the amount of the settlement or extinguishment was not substantially greater than the settlement or extinguishment provided under the terms of the agreement,

(iii) before 1996 pursuant to a restructuring of debt in connection with a proceeding commenced in a court in Canada before February 22, 1994,

(iv) before 1996 in connection with a proposal (or notice of intention to make a proposal) that was filed under the *Bankruptcy and Insolvency Act*, or similar legislation of a country other than Canada, before February 22, 1994, or

(v) before 1996 in connection with a written offer that was made by, or communicated to, the holder of the obligation before February 22, 1994;

Definitions [s. 80.02]: "amount" — 80.02(2)(b), 248(1); "class of shares" — 248(6); "commercial debt obligation", "commercial obligation" — 80(1), 80.02(1); "corporation" — 248(1), *Interpretation Act* 35(1); "distress preferred share" — 80(1), 80.02(1); "dividend" — 248(1); "paid-up capital" — 89(1), 248(1); "payment in satisfaction" — 80.02(2)(d); "person" — 80(1), 80.02(1); "principal amount" — 80.02(2)(a), 248(1); "settled" — 80(2)(a), 80.01(5), 80.02(2)(c), 80.02(7)(a); "share" — 248(1).

80.03 (1) [Definitions — In this section, "commercial debt obligation", "commercial obligation", "distress preferred share", "forgiven amount" and "person" have the meanings assigned by subsection 80(1).][8]

(2) Deferred recognition of debtor's gain on settlement of debt — Where at any time in a taxation year a person (in this subsection referred to as the "transferor") surrenders a particular capital property (other than a distress preferred share) that is a share, a capital interest in a trust or an interest in a partnership, the person shall be deemed to have a capital gain from the disposition at that time of another capital property (or, where the particular property is a taxable Canadian property, another taxable Canadian property) equal to the amount, if any, by which

(a) the total of all amounts deducted under paragraph 53(2)(g.1) in computing the adjusted cost base to the transferor of the particular property immediately before that time

exceeds the total of

(b) the amount that would be the transferor's capital gain for the year from the disposition of the particular property if this Act were read without reference to subsection 100(2), and

(c) where, at the end of the year, the transferor is resident in Canada or is a non-resident person who carries on business in Canada through a fixed place of business, the amount designated under subsection (7) by the transferor in respect of the disposition, at that time or immediately after that time, of the particular property.

Related Provisions: 80.03(3) — Meaning of "surrender"; 253 — Extended meaning of carrying on business in Canada.

[8]The English version of subsec. 80.03(1) was inadvertently deleted by 1998, c. 19, subsec. 112(1). The Dept. of Finance has confirmed that this will be corrected in an upcoming technical bill.

(3) Surrender of capital property — For the purpose of subsection (2), a person shall be considered to have surrendered a property at any time only where

(a) in the case of a share of the capital stock of a particular corporation,

(i) the person is a corporation that disposed of the share at that time and the proceeds of disposition of the share are determined under paragraph 88(1)(b), or

(ii) the person is a corporation that owned the share at that time and, immediately after that time, amalgamates or merges with the particular corporation;

(b) in the case of a capital interest in a trust, the person disposed of the interest at that time and the proceeds of disposition are determined under paragraph 107(2)(c); and

(c) in the case of an interest in a partnership, the person disposed of the interest at that time and the proceeds of disposition are determined under paragraph 98(3)(a) or (5)(a).

(4)–(6) [Repealed]

History: Subsec. 80.03(1) accidentally deleted, instead of amended to repeal "taxable dividend", by 1998, c. 19, subsec. 112(1), with the version in square brackets above to have been applicable to taxation years that end after February 21, 1994. The subsec. formerly read:

(1) In this section,

(a) "commercial debt obligation", "commercial obligation", "distress preferred share", "forgiven amount" and "person" have the meanings assigned by subsection 80(1); and

(b) "taxable dividend" does not include any capital gains dividends (within the meaning assigned by subsection 131(1)).

History: Subsecs. 80.03(4) to (6) repealed by 1998, c. 19, subsec. 112(2), applicable to taxation years that end after February 21, 1994. The subsecs. formerly read:

(4) Dispositions by corporations — Where at any time in a taxation year a corporation (in this subsection referred to as the "vendor") disposes of a particular capital property that is a share, an interest in a partnership or a capital interest in a trust, otherwise than by way of a disposition to which subsection (2) or 53(6) applies, a disposition to another corporation in circumstances to which subsection 53(5) applies, or a disposition the proceeds from which are determined under subsection 47(1), section 86 or any of the provisions (other than subsection 97(2)) referred to in subsection 53(4), the vendor shall be deemed to have a capital gain from the disposition at that time of another capital property (or where the particular property is a taxable Canadian property, another taxable Canadian property) equal to the amount, if any, by which the lesser of

(a) all amounts deducted under paragraph 53(2)(g.1) in computing the adjusted cost base to the vendor of the particular property immediately before that time, and

(b) where the particular property

(i) is a share, the total of all amounts each of which is

(A) a taxable dividend on the share that was received in the specified period relating to the disposition of the share, to the extent that the dividend is deductible in computing taxable income of a holder of the share or a beneficiary under a trust that held the share, or

(B) a capital dividend on the share that was received in the specified period relating to the disposition of the share,

(ii) is an interest in a partnership, the total of all amounts each of which is

(A) the share of a taxable dividend relating to the interest that was received after July 12, 1994 and in a fiscal period of the partnership that ended in the specified period relating to the disposition of the interest, to the extent that such share is deductible in computing taxable income of a person holding the interest in the partnership or a beneficiary under a trust that held the interest in the partnership, or

(B) the share of a capital dividend relating to the interest that was received after July 12, 1994 and in a fiscal period of the partnership that ended in the specified period relating to the disposition of the interest, or

(iii) is a capital interest in a trust, the total of all amounts each of which is such portion of a taxable dividend that was received by the trust in the specified period relating to the disposition of the capital interest and that was deemed by subsection 104(19) to have been received in respect of the capital interest, to the extent that such portion was deductible in computing taxable income of a person holding the capital interest

exceeds the total of

(c) the amount that would be the vendor's capital gain for the year from the disposition of the particular property if this Act were read without reference to subparagraph 40(1)(a)(iii) and subsection 100(2), and

(d) where the vendor is resident in Canada at the end of the year or is a non-resident person who carries on business in Canada through a fixed place of business at the end of the year, the amount designated under subsection (7) by the vendor in respect of the disposition of the particular property.

(5) Specified period — For the purpose of subsection (4), the specified period relating to a disposition at a particular time of a property by a person is the period

(a) that began at or on the later of July 12, 1994 and the last time before the particular time that the person acquired the property, and

(b) that ended at the particular time.

(6) When property acquired — For the purposes of this subsection and subsection (5), where, as a consequence of the disposition at a particular time of a property to a person, an amount is deducted under paragraph 53(2)(g.1) in computing the adjusted cost base of the property after the particular time, the person shall be deemed not to have acquired the property at the particular time and to have acquired the property at the time it was last acquired before the particular time.

(7) Alternative treatment — Where at any time in a taxation year a person disposes of a property, for the purposes of subsection (2) and section 80

(a) the person may designate an amount in a prescribed form filed with the person's return of income under this Part for the year; and

(b) where an amount is designated by the person under paragraph (a) in respect of the disposition,

(i) the person shall be deemed to have issued a commercial debt obligation at that time that is settled immediately after that time,

(ii) the lesser of the amount so designated and the amount that would, but for this subsection, be a capital gain determined in respect of the disposition because of subsection (2) shall be treated as if it were the forgiven amount at the time of the settlement in respect of the obligation referred to in subparagraph (i),

(iii) the source in connection with which the obligation referred to in subparagraph (i) was issued shall be deemed to be the business, if any, carried on by the person at the end of the year, and

(iv) where the person does not carry on a business at the end of the year, the person shall be deemed to carry on an active business at the end of the year and the source in connection with which the obligation referred to in subparagraph (i) was issued shall be deemed to be the business deemed by this subparagraph to be carried on.

Related Provisions: 87(2)(h.1) — Amalgamations — continuing corporation; 220(3.21)(a) — Late filing, amendment or revocation of designation.

History: The opening words of subsec. 80.03(7) and subpara. 80.03(7)(b)(ii) amended by 1998, c. 19, subsecs. 112(3) and (4), applicable to taxation years that end after February 21, 1994. The opening words and subpara. formerly read:

> (7) Where at any time in a taxation year a person disposes of a property, for the purposes of subsections (2) and (4) and section 80
>
> . . . . .
>
> (ii) the lesser of the amount so designated and the amount that would, but for this subsection, be a capital gain determined in respect of the disposition because of subsection (2) or (4) shall be treated as if it were the forgiven amount at the time of the settlement in respect of the obligation referred to in subparagraph (i),

Forms: T2155: Alternative treatment of capital gains arising under sec. 80.03 on settlement of debt.

(8) Lifetime capital gains exemption — Where, as a consequence of the disposition at any time by an individual of a property that is a qualified farm property of the individual or a qualified small business corporation share of the individual (within the meanings assigned by subsection 110.6(1)), the individual is deemed by subsection (2) to have a capital gain at that time from the disposition of another property, for the purposes of sections 3, 74.3 and 111, as they apply for the purpose of section 110.6, the other property shall be deemed to be a qualified farm property of the individual or a qualified small business corporation share of the individual, as the case may be.

History [s. 80.03]: S. 80.03 added by 1995, c. 21, s. 27, applicable to taxation years that end after February 21, 1994, except that

> (a) it does not, other than for the purposes of subsections 6(15) and (15.1) and 15(1.2) and (1.21) and section 79, apply to any obligation settled or extinguished
>
> (i) before February 22, 1994,
>
> (ii) after February 21, 1994
>
> (A) under the terms of an agreement in writing entered into on or before that date, or
>
> (B) under the terms of any amendment to such an agreement, where that amendment was entered into in writing before July 12, 1994 and the amount of the settlement or extinguishment was not substantially greater than the settlement or extinguishment provided under the terms of the agreement,
>
> (iii) before 1996 pursuant to a restructuring of debt in connection with a proceeding commenced in a court in Canada before February 22, 1994,
>
> (iv) before 1996 in connection with a proposal (or notice of intention to make a proposal) that was filed under the *Bankruptcy and Insolvency Act*, or similar legislation of a country other than Canada, before February 22, 1994, or
>
> (v) before 1996 in connection with a written offer that was made by, or communicated to, the holder of the obligation before February 22, 1994; and
>
> (b) a form referred to in subsection 80.03(7) shall be deemed to have been filed on a timely basis if it is filed with the Minister of National Revenue before 1996.

Definitions [s. 80.03]: "active business" — 248(1); "adjusted cost base" — 54, 248(1); "amount" — 248(1); "business" — 248(1); "capital dividend" — 83(2), 248(1); "capital gain" — 39(1)(a), 248(1); "capital interest" — in a trust 108(1), 248(1); "capital property" — 54, 248(1); "carries on business in Canada" — 253; "commercial debt obligation" — 80(1), 80.03(1)(a), 80.03(7)(b)(i); "commercial obligation" — 80(1), 80.03(1)(a); "corporation" — 248(1), *Interpretation Act* 35(1); "directed person" — 80(1), 80.04(1); "distress preferred share" — 80(1), 80.03(1)(a); "fiscal period" — 249(2)(b), 249.1; "forgiven amount" — 80(1), 80.03(1)(a), 80.03(7)(b)(ii); "individual", "non-resident" — 248(1); "person" — 80(1), 80.03(1)(a); "prescribed" — 248(1); "proceeds of disposition" — 54; "property" — 248(1); "resident in Canada" — 94(3)(a)(viii), 250; "settled" — 80.03(7)(b)(i); "share" — 248(1); "source" — 4(1), 80.03(7)(b)(iv); "surrender" — 80.03(3); "taxable Canadian property" — 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "transferor" — 80.03(2); "trust" — 104(1), 248(1), (3); "vendor" — 80.03(4).

80.04 [Transfer of forgiven amount to other taxpayer] — (1) Definitions — In this section, "commercial debt obligation", "commercial obligation", "debtor", "directed person", "eligible Canadian partnership", "forgiven amount" and "person" have the meanings assigned by subsection 80(1).

(2) Eligible transferee — For the purpose of this section, an "eligible transferee" of a debtor at any time is a directed person at that time in respect of the debtor or a taxable Canadian corporation or eligible Canadian partnership related (otherwise than because of a right referred to in paragraph 251(5)(b)) at that time to the debtor.

Related Provisions: 87(2)(h.1) — Amalgamations — continuing corporation.

(3) Application — Paragraphs 80(2)(a), (b), (j), (l) and (n) apply for the purpose of this section.

(4) Agreement respecting transfer of forgiven amount — Where

> (a) a particular commercial obligation (other than an obligation deemed by paragraph (e) to have been issued) issued by a debtor is settled at a particular time,
>
> (b) amounts have been designated by the debtor under subsections 80(5) to (10) to the maximum extent permitted in respect of the settlement of the particular obligation at the particular time,
>
> (c) the debtor and an eligible transferee of the debtor at the particular time file under this section an agreement between them in respect of that settlement, and
>
> (d) an amount is specified in that agreement

the following rules apply:

> (e) except for the purposes of subsection 80(11), the transferee shall be deemed to have issued a commercial debt obligation that was settled at the particular time,
>
> (f) the specified amount shall be deemed to be the forgiven amount at the particular time in respect of the obligation referred to in paragraph (e),
>
> (g) subject to paragraph (h), the obligation referred to in paragraph (e) shall be deemed to have been issued at the same time (in paragraph (h) referred to as the "time of issue") at which, and in the same circumstances in which, the particular obligation was issued,
>
> (h) where the transferee is a corporation the control of which was acquired by a person or group of persons after the time of issue and the transferee and the debtor were not related to each other immediately before that acquisition of control,
>
> (i) the obligation referred to in paragraph (e) shall be deemed to have been issued after that acquisition of control, and
>
> (ii) paragraph (e) of the definition "relevant loss balance" in subsection 80(1), paragraph (f) of the definition "successor pool" in that subsection and paragraph (b) of the definition "unrecognized loss" in that subsection do not apply in respect of that acquisition of control,
>
> (i) the source in connection with which the obligation referred to in paragraph (e) was issued shall be deemed to be the source in connection with which the particular obligation was issued, and
>
> (j) for the purposes of sections 61.3 and 61.4, the amount included under subsection 80(13) in computing the income of the eligible transferee in respect of

the settlement of the obligation referred to in paragraph (e) or deducted under paragraph 80(15)(a) in respect of such income shall be deemed to be nil.

Related Provisions: 80(13)C — Amount specified in agreement reduces income inclusion; 80(14)(c) — Calculation of residual balance for income inclusion; 80(15)(c) — Where commercial debt obligation issued by partnership; 80.04(5) — Where consideration given for entering into agreement; 80.04(6) — How and when agreement to be filed with CCRA; 87(2)(h.1) — Amalgamations — continuing corporation; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired; 256(8) — Deemed acquisition of shares.

(5) Consideration for agreement — For the purposes of this Part, where property is acquired at any time by an eligible transferee as consideration for entering into an agreement with a debtor that is filed under this section

(a) where the property was owned by the debtor immediately before that time,

(i) the debtor shall be deemed to have disposed of the property at that time for proceeds equal to the fair market value of the property at that time, and

(ii) no amount may be deducted in computing the debtor's income as a consequence of the transfer of the property, except any amount arising as a consequence of the application of subparagraph (i);

(b) the cost at which the property was acquired by the eligible transferee at that time shall be deemed to be equal to the fair market value of the property at that time; and

(c) the eligible transferee shall not be required to add an amount in computing income solely because of the acquisition at that time of the property.

(d) [Repealed]

Related Provisions: 80.04(5.1) — No benefit conferred on debtor as a consequence of the agreement; 191.3(1.1) — Similar rule for purposes of Part VI.1 tax.

History: Para. 80.04(5)(d) repealed by 1998, c. 19, subsec. 113(1), applicable to taxation years that end after February 21, 1994. The para. formerly read:

(d) no benefit shall be considered to have been conferred on the debtor as a consequence of the debtor entering into an agreement filed under this section.

(5.1) No benefit conferred — For the purposes of this Part, where a debtor and an eligible transferee enter into an agreement that is filed under this section, no benefit shall be considered to have been conferred on the debtor as a consequence of the agreement.

History: Subsec. 80.04(5.1) added by 1998, c. 19, subsec. 113(2), applicable to taxation years that end after February 21, 1994.

(6) Manner of filing agreement — Subject to subsection (7), a particular agreement between a debtor and an eligible transferee in respect of an obligation issued by the debtor that was settled at any time shall be deemed not to have been filed under this section

(a) where it is not filed with the Minister in a prescribed form

(i) on or before the later of

(A) the day on or before which the debtor's return of income under this Part is required to be filed for the taxation year or fiscal period, as the case may be, that includes that time (or would be required to be filed if tax under this Part were payable by the debtor for the year), and

(B) the day on or before which the transferee's return of income under this Part is required to be filed for the taxation year or fiscal period, as the case may be, that includes that time, or

(ii) within the period within which the debtor or the transferee may serve a notice of objection to an assessment of tax payable under this Part for a taxation year or fiscal period, as the case may be, described in clause (i)(A) or (B), as the case may be;

(b) where it is not accompanied by,

(i) where the debtor is a corporation and its directors are legally entitled to administer its affairs, a certified copy of their resolution authorizing the agreement to be made,

(ii) where the debtor is a corporation and its directors are not legally entitled to administer its affairs, a certified copy of the document by which the person legally entitled to administer its affairs authorized the agreement to be made,

(iii) where the transferee is a corporation and its directors are legally entitled to administer its affairs, a certified copy of their resolution authorizing the agreement to be made, and

(iv) where the transferee is a corporation and its directors are not legally entitled to administer its affairs, a certified copy of the document by which the person legally entitled to administer its affairs authorized the agreement to be made; or

(c) if an agreement amending the particular agreement has been filed in accordance with this section, except where subsection (8) applies to the particular agreement.

Related Provisions: 80.04(7) — Deemed due dates for partnership to file return and service notice of objection; 96(3) — Agreement of members of partnership; 150(1) — Due date for return; 165(1) — Deadline for serving notice of objection.

Forms: T2156: Agreement to transfer a forgiven amount under s. 80.04.

(7) Filing by partnership — For the purpose of subsection (6), where an obligation is settled at any time in a fiscal period of a partnership, it shall be assumed that

(a) the partnership is required to file a return of income under this Part for the fiscal period on or before the latest day on or before which any member of the partnership during the fiscal period is required to file a return of income under this Part for the taxation year in which that fiscal period ends (or would be required to file such a return of income if tax under this Part were payable by the member for that year); and

(b) the partnership may serve a notice of objection described in subparagraph (6)(a)(ii) within each period within which any member of the partnership during the fiscal period may serve a notice of objection to tax payable under this Part for a taxation year in which that fiscal period ends.

(8) Related corporations — Where at any time a corporation becomes related to another corporation and it can reasonably be considered that the main purpose of the corporation becoming related to the other corporation is to enable the corporations to file an agreement under this section, the amount specified in the agreement shall be deemed to be nil for the purpose of the description of C in subsection 80(13).

(9) Assessment of taxpayers in respect of agreement — The Minister shall, notwithstanding subsections 152(4) to (5), assess or reassess the tax, interest and pen-

alties payable under this Act by any taxpayer in order to take into account an agreement filed under this section.

(10) Liability of debtor — Without affecting the liability of any person under any other provision of this Act, where a debtor and an eligible transferee file an agreement between them under this section in respect of an obligation issued by the debtor that was settled at any time, the debtor is, to the extent of 30% of the amount specified in the agreement, liable to pay

(a) where the transferee is a corporation, all taxes payable under this Act by it for taxation years that end in the period that begins at that time and ends 4 calendar years after that time;

(b) where the transferee is a partnership, the total of all amounts each of which is the tax payable under this Act by a person for a taxation year

(i) that begins or ends in that period, and

(ii) that includes the end of a fiscal period of the partnership during which the person was a member of the partnership; and

(c) interest and penalties in respect of such taxes.

Related Provisions: 80.04(11) — Joint and several liability; 80.04(12) — Assessment; 80.04(14) — Where partnership is a member of a partnership; 87(2)(h.1) — Amalgamations — continuing corporation.

History: Para. 80.04(10)(a) amended by 1998, c. 19, subsec. 113(3), applicable to taxation years that end after February 21, 1994. The para. formerly read:

(a) where the transferee is a corporation, all taxes payable under this Act by it for taxation years that end in the period that begins at that time and ends 10 calendar years after that time;

(11) Joint liability — Where taxes, interest and penalties are payable under this Act by a person for a taxation year and those taxes, interest and penalties are payable by a debtor because of subsection (10), the debtor and the person are jointly and severally liable to pay those amounts.

Proposed Amendment — 80.04(11)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), s. 228, will amend subsec. 80.04(11) by substituting "jointly and severally, or solidarily," for "jointly and severally", to come into force on Royal Assent.

Technical Notes: See under 12(4).

Related Provisions: 87(2)(h.1) — Amalgamations — continuing corporation.

(12) Assessments in respect of liability — Where a debtor and an eligible transferee file an agreement between them under this section in respect of an obligation issued by the debtor that was settled at a particular time,

(a) where the debtor is an individual or a corporation, the Minister may at any subsequent time assess the debtor in respect of taxes, interest and penalties for which the debtor is liable because of subsection (10); and

(b) where the debtor is a partnership, the Minister may at any subsequent time assess any person who has been a member of the partnership in respect of taxes, interest and penalties for which the partnership is liable because of subsection (10), to the extent that those amounts relate to taxation years of the transferee (or, where the transferee is another partnership, members of the other partnership) that end at or after

(i) where the person was not a member of the partnership at the particular time, the first subsequent time the person becomes a member of the partnership, and

(ii) in any other case, the particular time.

Related Provisions: 80.04(13) — Provisions applicable to assessment; 80.04(14) — Where partnership is a member of a partnership; 87(2)(h.1) — Amalgamations — continuing corporation.

(13) Application of Division I — The provisions of Division I apply to an assessment under subsection (12) as though it had been made under section 152.

(14) Partnership members — For the purposes of paragraphs (10)(b) and (12)(b) and this subsection, where at any time a member of a particular partnership is another partnership, each member of the other partnership shall be deemed to be a member of the particular partnership at that time.

History [s. 80.04]: S. 80.04 added by 1995, c. 21, s. 27, applicable to taxation years that end after February 21, 1994, except that

(a) it does not, other than for the purposes of subsections 6(15) and (15.1) and 15(1.2) and (1.21) and section 79, apply to any obligation settled or extinguished

(i) before February 22, 1994,

(ii) after February 21, 1994

(A) under the terms of an agreement in writing entered into on or before that date, or

(B) under the terms of any amendment to such an agreement, where that amendment was entered into in writing before July 12, 1994 and the amount of the settlement or extinguishment was not substantially greater than the settlement or extinguishment provided under the terms of the agreement,

(iii) before 1996 pursuant to a restructuring of debt in connection with a proceeding commenced in a court in Canada before February 22, 1994,

(iv) before 1996 in connection with a proposal (or notice of intention to make a proposal) that was filed under the *Bankruptcy and Insolvency Act*, or similar legislation of a country other than Canada, before February 22, 1994, or

(v) before 1996 in connection with a written offer that was made by, or communicated to, the holder of the obligation before February 22, 1994; and

(b) a form referred to in subsection 80.04(6) shall be deemed to have been filed on a timely basis if it is filed with the Minister of National Revenue before 1996.

Definitions [s. 80.04]: "acquired" — 256(7)–(9); "amount" — 80.04(5), 248(1); "benefit" — 80.04(5.1); "commercial debt obligation" — 80(1), 80.04(1), (4)(e); "commercial obligation" — 80(1), 80.04(1); "control" — 256(6)–(9); "corporation" — 248(1), *Interpretation Act* s. 35(1); "debtor", "directed person", "eligible Canadian partnership" — 80(1), 80.04(1); "eligible transferee" — 80.04(2); "fiscal period" — 249(2)(b), 249.1; "forgiven amount" — 80(1), 80.01(8)(b), 80.04(1); "individual", "Minister" — 248(1); "person" — 80(1), 80.04(1); "prescribed" — 248(1); "related" — 80(2)(j), 80.04(3), (8), 251(2); "settled" — 80(2)(a), 80.01(3)–(9), 80.02(2)(c), 80.02(7)(a), 80.04(4)(e); "specified amount" — 80.04(4)(d); "taxable Canadian corporation" — 89(1), 248(1); "taxation year" — 249; "time of issue" — 80.04(4)(g).

80.1 (1) Expropriation assets acquired as compensation for, or as consideration for sale of, foreign property taken by or sold to foreign issuer — Where in a taxation year ending coincidentally with or after December 31, 1971 a taxpayer resident in Canada has acquired any bonds, debentures, mortgages, hypothecary claims, notes or similar obligations (in this section referred to as "expropriation assets") issued by the government of a country other than Canada or issued by a

person resident in a country other than Canada and guaranteed by the government of that country,

(a) as compensation for

(i) shares owned by the taxpayer of the capital stock of a foreign affiliate of the taxpayer that carried on business in that country, or

(ii) all or substantially all of the property used by the taxpayer in carrying on business in that country,

(which shares or property, as the case may be, are referred to in this section as "foreign property"), taken, after June 18, 1971, from the taxpayer by the issuer under the authority of a law of that country, or

(b) as consideration for the sale of foreign property sold, after June 18, 1971, by the taxpayer to the issuer, if

(i) the sale was, by a law of that country, expressly required to be made, or

(ii) the sale was made after notice or other manifestation of an intention to take the foreign property,

if the taxpayer has so elected, in prescribed form and within prescribed time, in respect of all of the expropriation assets so acquired by the taxpayer, the following rule applies, namely, an amount in respect of each such expropriation asset, equal to

(c) the principal amount of the asset, or

(d) where the taxpayer has designated in the taxpayer's election an amount in respect of the asset that is less than the principal amount thereof, the amount so designated,

shall be deemed to be

(e) the cost to the taxpayer of the asset, and

(f) for the purpose of computing the taxpayer's proceeds of disposition of the foreign property so taken or sold, the amount received by the taxpayer by virtue of the taxpayer's acquisition of the asset,

except that in no case may the taxpayer designate an amount in respect of any expropriation asset so that the taxpayer's proceeds of disposition of the foreign property so taken or sold (computed having regard to the provisions of paragraph (f)) are less than the cost amount to the taxpayer of the foreign property immediately before it was so taken or sold.

Related Provisions: 53(1)(k), 53(2)(n) — Adjustments to cost base; 90–95 — Shareholders of corporations not resident in Canada.

History: The opening words of subsec. 80.1(1) amended by 2001, c. 17, s. 210 to add the words "hypothecary claims", in force on June 14, 2001.

Regulations: 4500 (prescribed time).

Forms: T2079: Election re: expropriation assets acquired as compensation for or a consideration for sale of foreign property taken by or sold to foreign issuer.

(2) Election re interest received or to be received on expropriation assets acquired by taxpayer — Where a taxpayer has elected in prescribed form and within prescribed time in respect of all amounts (each of which is referred to in this subsection as an "interest amount") received or to be received by the taxpayer as or on account of interest on all expropriation assets acquired by the taxpayer as compensation for, or as consideration for the sale of, foreign property taken by or sold to any particular issuer as described in subsection (1), the following rules apply in respect of each such asset so acquired by the taxpayer:

(a) in computing the taxpayer's income for a taxation year from the asset, there may be deducted, in respect of each interest amount received by the taxpayer in the year on the asset, the lesser of the interest amount and the total of

(i) the amount required by paragraph (b) to be added, by virtue of the receipt by the taxpayer of the interest amount, in computing the adjusted cost base to the taxpayer of the asset, and

(ii) the greater of

(A) the adjusted cost base to the taxpayer of the asset immediately before the interest amount was so received by the taxpayer, and

(B) the adjusted principal amount to the taxpayer of the asset immediately before the interest amount was so received by the taxpayer,

and there shall be included, in respect of each amount (in this paragraph referred to as a "capital amount") received by the taxpayer in the year as, on account or in lieu of payment of, or in satisfaction of,

(iii) any proceeds of disposition of the asset, or

(iv) the principal amount of the asset,

the amount, if any, by which the capital amount exceeds the greater of the adjusted cost base to the taxpayer of the asset immediately before the capital amount was received by the taxpayer and its adjusted principal amount to the taxpayer at that time;

(b) in computing, at any particular time, the adjusted cost base to the taxpayer of the asset, there shall be added, in respect of each interest amount received by the taxpayer on the asset before the particular time, an amount equal to the lesser of

(i) any income or profits tax paid by the taxpayer to the government of a country other than Canada in respect of the interest amount, and

(ii) that proportion of the tax referred to in subparagraph (i) that the adjusted cost base to the taxpayer of the asset immediately before the interest amount was received by the taxpayer is of the amount, if any, by which the interest amount exceeds the tax referred to in that subparagraph,

and there shall be deducted

(iii) each interest amount received by the taxpayer on the asset before the particular time, and

(iv) each amount received by the taxpayer before the particular time on account of the principal amount of the asset;

(c) the receipt by the taxpayer of an amount described in subparagraph (b)(iv) in respect of the asset shall be deemed not to be a partial disposition thereof; and

(d) for the purposes of section 126, notwithstanding the definition "non-business-income tax" in subsection 126(7), the "non-business-income tax" paid by a taxpayer does not include any tax, or any portion thereof, the amount of which is required by paragraph (b) to be added in computing the adjusted cost base to the taxpayer of the asset.

Related Provisions: 53(1)(k), 53(2)(n) — Adjustments to cost base.

Regulations: 4500 (prescribed time).

Forms: T2079: Election re: expropriation assets acquired as compensation for or a consideration for sale of foreign property taken by or sold to foreign issuer.

(3) Where interest amount and capital amount received at same time — For the purposes of subsection (2), where an interest amount on an expropriation asset and a capital amount with respect to that asset are received by a taxpayer at the same time, the interest amount shall be deemed to have been received by the taxpayer immediately before the capital amount.

(4) Assets acquired from foreign affiliate of taxpayer as dividend in kind or as benefit to shareholder — Where a foreign affiliate of a taxpayer resident in Canada would, on the assumption that the foreign affiliate were resident in Canada and its only foreign affiliates were corporations that were foreign affiliates of the taxpayer, be entitled to make an election under subsection (1) in respect of assets acquired by it that would, on that assumption, be expropriation assets of the foreign affiliate, and all or any of those assets are subsequently acquired by the taxpayer from the foreign affiliate as a dividend payable in kind, or as a benefit received from the foreign affiliate that would otherwise be required by subsection 15(1) to be included in computing the income of the taxpayer, if the taxpayer has so elected, in prescribed form and within prescribed time, in respect of all of the assets so acquired by the taxpayer from the foreign affiliate, the following rules apply in respect of each such asset so acquired by the taxpayer:

(a) an amount equal to

(i) the principal amount of the asset, or

(ii) where the taxpayer has designated in the taxpayer's election an amount in respect of the asset that is less than the principal amount thereof, the amount so designated,

shall be deemed to be,

(iii) notwithstanding subsection 52(2), the cost to the taxpayer of the asset, and

(iv) the amount of the dividend or benefit, as the case may be, received by the taxpayer by virtue of the acquisition by the taxpayer of the asset;

(b) where the asset was so acquired as such a benefit and the taxpayer has designated in the election a class of shares as described in this paragraph in respect of the asset, the amount of the benefit shall be deemed

(i) to have been received by the taxpayer as a dividend from the foreign affiliate in respect of such class of shares of the capital stock thereof as the taxpayer has designated in the election, and

(ii) not to be an amount required by subsection 15(1) to be included in computing the taxpayer's income;

(c) in computing the taxable income of the taxpayer for the taxation year in which the taxpayer acquired the asset, there may be deducted from the taxpayer's income for the year the amount, if any, by which the amount received by the taxpayer as a dividend by virtue of the acquisition by the taxpayer of the asset exceeds the total of amounts deductible in respect of the dividend under sections 91 and 113 in computing the taxpayer's income or taxable income, as the case may be, for the year;

(d) there shall be deducted in computing the adjusted cost base to the taxpayer of each share of the capital stock of the foreign affiliate that is a share of a class in respect of which an amount was received by the taxpayer as a dividend by virtue of the acquisition by the taxpayer of the asset, the quotient obtained by dividing the amount, if any, deducted by the taxpayer under paragraph (c) in respect of the dividend by the number of shares of that class owned by the taxpayer immediately before that amount was received by the taxpayer as a dividend;

(e) any capital loss of the taxpayer from the disposition, after that time when the asset was so acquired by the taxpayer, of a share of the capital stock of the foreign affiliate shall be deemed to be nil; and

(f) where the taxpayer has so elected in prescribed form and within prescribed time, subsection (2) applies as if the asset were an expropriation asset acquired by the taxpayer as compensation for foreign property taken by a particular issuer as described in subsection (1).

Related Provisions: 53(2)(b) — Reduction in ACB; 220(3.2), Reg. 600(b) — Late filing or revocation of election.

Regulations: 4500 (prescribed time).

Forms: T2079: Elèction re: expropriation assets acquired as compensation for or a consideration for sale of foreign property taken by or sold to foreign issuer.

(5) Assets acquired from foreign affiliate of taxpayer as consideration for settlement, etc., of debt — Where a foreign affiliate of a taxpayer resident in Canada would, on the assumption that the foreign affiliate were resident in Canada and its only foreign affiliates were corporations that were foreign affiliates of the taxpayer, be entitled to make an election under subsection (1) in respect of assets acquired by it that would, on that assumption, be expropriation assets of the foreign affiliate, and all or any of those assets are subsequently acquired by the taxpayer from the foreign affiliate as consideration for the settlement or extinguishment of a capital property of the taxpayer that was a debt payable by the foreign affiliate to the taxpayer or any other obligation of the foreign affiliate to pay an amount to the taxpayer (which debt or other obligation is referred to in this subsection as the "obligation"), if the taxpayer has so elected, in prescribed form and within prescribed time, in respect of all of the assets so acquired by the taxpayer from the foreign affiliate, the following rules apply in respect of each such asset so acquired by the taxpayer,

(a) paragraph (4)(a) applies in respect of the asset as if subparagraph (4)(a)(iv) were read as follows:

"(iv) the taxpayer's proceeds of the disposition of the obligation settled or extinguished by virtue of the acquisition by the taxpayer of the asset;";

(b) where the taxpayer has designated in the taxpayer's election a class of shares as described in this paragraph in respect of the asset,

(i) the amount, if any, by which the cost to the taxpayer of the asset (computed having regard to paragraph (a) and paragraph (4)(a)) exceeds the amount of the obligation settled or extinguished by virtue of the acquisition by the taxpayer of the asset shall be deemed to have been received by the taxpayer as a dividend from the foreign affiliate in respect of such class of shares of the capital stock thereof as the taxpayer has designated in the election, and

(ii) the taxpayer's gain, if any, from the disposition of the obligation shall be deemed to be nil;

(c) the taxpayer's loss, if any, from the disposition of the obligation shall be deemed to be nil; and

(d) paragraphs (4)(c) to (f) apply in respect of the asset.

Regulations: 4500 (prescribed time).

Forms: T2079: Election re: expropriation assets acquired as compensation for or a consideration for sale of foreign property taken by or sold to foreign issuer.

(6) Assets acquired from foreign affiliate of taxpayer on winding-up, etc. — Where a foreign affiliate of a taxpayer resident in Canada would, on the assumption that the foreign affiliate were resident in Canada and its only foreign affiliates were corporations that were foreign affiliates of the taxpayer, be entitled to make an election under subsection (1) in respect of assets acquired by it that would, on that assumption, be expropriation assets of the foreign affiliate, and all or any of those assets are subsequently acquired by the taxpayer from the foreign affiliate,

(a) on the winding-up, discontinuance or reorganization of the business of the foreign affiliate, or

(b) as consideration for the redemption, cancellation or acquisition by the foreign affiliate of shares of its capital stock,

if the taxpayer has so elected, in prescribed form and within prescribed time,

(c) in respect of all of the assets so acquired by the taxpayer from the foreign affiliate, subsection (1) applies in respect of each such asset, or

(d) in respect of all amounts received or to be received by the taxpayer as or on account of interest on all of the assets so acquired by the taxpayer from the foreign affiliate, subsection (2) applies in respect of each such asset,

as if the assets were expropriation assets acquired by the taxpayer as consideration for the sale of foreign property that consisted of shares of the capital stock of the foreign affiliate owned by the taxpayer immediately before the assets were so acquired and that was sold to a particular issuer as described in subsection (1).

Regulations: 4500 (prescribed time).

Forms: T2079: Election re: expropriation assets acquired as compensation for or a consideration for sale of foreign property taken by or sold to foreign issuer.

(7) Definition of "adjusted principal amount" — In this section, "adjusted principal amount" to a taxpayer of an expropriation asset at any particular time means the amount, if any, by which

(a) the total of the principal amount of the asset and, in respect of each interest amount received by the taxpayer on the asset before the particular time, the lesser of the tax referred to in subparagraph (2)(b)(i) in respect of that interest amount and the proportion determined under subparagraph (2)(b)(ii) in respect thereof,

exceeds

(b) the total of each amount received by the taxpayer before the particular time as an interest amount on the asset and each amount received by the taxpayer before the particular time as, on account or in lieu of payment of, or in satisfaction of, the principal amount of the asset.

(8) Currency in which adjusted principal amount to be computed or expressed — For the purposes of this section, the adjusted principal amount, at any particular time, of an expropriation asset or of any asset assumed for the purposes of this section to be an expropriation asset shall be computed in the currency in which the principal amount of the asset is, under the terms thereof, payable, except that for greater certainty, for the purposes of paragraph (2)(a), the adjusted principal amount at any particular time of such an asset is its adjusted principal amount at that time computed as provided in this subsection but expressed in Canadian currency.

(9) Election in respect of two or more expropriation assets acquired by taxpayer — For the purposes of subdivision c and subsection (2), and in applying subsections (7) and (8) for those purposes, where two or more expropriation assets that were

(a) issued by the government of a country other than Canada, or

(b) issued by a person resident in a country other than Canada and guaranteed by the government of that country

at the same time, or as compensation for, or consideration for the sale of, the same foreign property, have been acquired by a taxpayer and the taxpayer has so elected, in prescribed form and within prescribed time, in respect of all of the expropriation assets that were so issued or guaranteed by the government of that country and acquired by the taxpayer before the making of the election, all of those expropriation assets shall be considered to be a single expropriation asset that was issued or guaranteed by the government of that country and acquired by the taxpayer.

Regulations: 4500 (prescribed time).

Forms: T2079: Election re: expropriation assets acquired as compensation for or a consideration for sale of foreign property taken by or sold to foreign issuer.

Definitions [s. 80.1]: "adjusted cost base" — 54, 248(1); "adjusted principal amount" — 80.1(7); "amount", "business" — 248(1); "Canada" — 255; "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "class of shares" — 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount", "dividend" — 248(1); "expropriation assets" — 80.1(1); "foreign affiliate" — 95(1), 248(1); "foreign property" — 80.1(1)(a); "person", "prescribed", "principal amount", "property" — 248(1); "resident in Canada" — 94(3)(a)(viii), 250; "share" — 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

80.2 Reimbursement by taxpayer [resource royalties] — Where

(a) a taxpayer, under the terms of a contract, pays to another person an amount (in this subsection[9] referred to as the "specified payment") that may reasonably be considered to have been received by the other person as a reimbursement, contribution or allowance in respect of an amount (referred to in paragraph (b) as the "particular amount") paid or payable by the other person,

(b) the particular amount is included in the income of the other person or is denied as a deduction in computing the income of the other person by reason of paragraph 12(1)(o) or 18(1)(m), as the case may be, and

(c) the taxpayer was resident in Canada or carrying on business in Canada at the time the specified payment was made by the taxpayer,

[9] *Sic.* Should read "section" — ed.

the following rules apply for the purposes of this Act, other than this section:

(d) the taxpayer shall be deemed neither to have made nor to have become obligated to make the specified payment to the other person but to have paid an amount described in paragraph 18(1)(m) equal to the amount of the specified payment, and

(e) the other person shall be deemed neither to have received nor to have become entitled to receive the specified payment from the taxpayer.

Proposed Amendment — 80.2

Technical Notes [s. 80.2]: Section 80.2 is a special rule that applies where a taxpayer pays an amount to another person as a reimbursement, contribution or allowance (collectively referred to herein as a "reimbursement") in respect of a Crown charge described in paragraph 12(1)(o) or 18(1)(m). If applicable, section 80.2 deems the taxpayer to have paid an amount described in paragraph 18(1)(m) and deems the other person (the "recipient") neither to have received nor to have become entitled to receive the reimbursement. In effect, section 80.2 provides for the transfer of non-deductible Crown charges from the recipient to the taxpayer. Normally, the taxpayer is entitled to a share of the production or the income from production from the property that is subject to the Crown charge. Therefore, although section 80.2 treats the taxpayer as having incurred a non-deductible Crown charge, the taxpayer would be entitled to a deduction under paragraph 20(1)(v.1) (resource allowance) calculated by reference to the taxpayer's income from the property.

Section 80.2 operates to deem the taxpayer making the reimbursement to have paid an amount described in paragraph 18(1)(m) only to the extent that the reimbursed Crown charge was either included in the recipient's income or was denied as a deduction in computing the recipient's income. With the phasing out of the income inclusion in paragraph 12(1)(o) and the prohibition against the deduction of Crown charges in paragraph 18(1)(m), section 80.2 may no longer apply to the entire amount of a reimbursement. In addition, section 80.2 does not explicitly preclude the recipient from taking a deduction (or reducing an income inclusion) in respect of a reimbursed Crown charge. As well, since section 80.2 does not deem the taxpayer to have made the reimbursement at the time the obligation to pay the Crown charge arose, a taxpayer may seek to increase the percentage of the reimbursement that is not subject to paragraph 18(1)(m) by delaying the reimbursement. For these reasons, the total amount deductible in computing the income of the taxpayer and the recipient may, in certain circumstances, exceed the amount that was intended to be deductible.

Accordingly, section 80.2 is amended:

(a) to eliminate any excess deductions that may be available as a result of a reimbursement of a Crown charge;

(b) to preclude a taxpayer who makes a reimbursement of a Crown charge from increasing the amount deductible by delaying the time of the reimbursement; and

(c) to ensure that a taxpayer who makes a reimbursement of a Crown charge is deemed to have paid an amount described in paragraph 18(1)(m) only to the extent that the reimbursed Crown charge can reasonably be considered to relate to the taxpayer's share of the production, or the income from production, from the property to which the Crown charge relates.

New section 80.2 applies to reimbursements made after 2001, except that, the rule described in paragraph (c) above, applies only to reimbursements made on or after September 17, 2004.

The ability to claim excess deductions in respect of reimbursed Crown charges is eliminated by treating the eligible portion of the reimbursement (in most cases, the full amount of the reimbursement) as a payment described in paragraph 18(1)(m) (subsection 80.2(2)) and by reversing the benefit of any deduction in respect of a reimbursed Crown charge claimed by the recipient (subsection 80.2(6)). The eligible portion of the reimbursement is referred to in new section 80.2 as the "eligible portion of the specified amount" (see discussion below under ITA 80.2(11) and (12)). The amount of a reimbursement that exceeds the eligible portion of the specified amount is included in the income of the recipient (subsection 80.2(8)) and, subject to paragraphs 18(1)(a) and (b), is deductible in computing the income of the taxpayer (subsection 80.2(9)). In addition, new subsection 80.2(3) precludes a taxpayer from increasing the deductible portion of a reimbursement by delaying the time of the reimbursement. It does this by ensuring that the amount deductible is determined by reference to the time that the reimbursed Crown charge was imposed (i.e., became payable to, or receivable by, the Crown or an emanation of the Crown). It should be noted that new subsection 80.2(3) does not apply to a reimbursement paid to a partnership if the reimbursement meets the conditions described in new subsection 80.2(4). These conditions, which are set out in paragraphs 80.2(4)(a) to (d), are discussed in the commentary to new subsection 80.2(4).

Department of Finance news release 2004-053, September 17, 2004: *Minister of Finance Proposes Amendments to Royalty Reimbursement Rule*

Minister of Finance Ralph Goodale today announced his intention to propose amendments to the *Income Tax Act* that would prevent corporations and other taxpayers from obtaining inappropriate tax deductions in respect of reimbursed resource-related Crown charges such as royalties.

The 2003 budget announced improvements to the tax structure applying to Canada's resource sector. These improvements, which were enacted in November 2003, included a deduction for Crown charges that is to be phased in during the period 2003 to 2007. Previously, Crown charges such as royalties could not be deducted in computing income for tax purposes.

A special reimbursement rule applies in circumstances where one taxpayer reimburses another taxpayer for a Crown charge incurred by that other taxpayer. This reimbursement rule, which was designed to limit the deductibility of Crown charge reimbursements, may not operate as intended during the phase-in period.

Accordingly, amendments to the *Income Tax Act* are proposed to ensure that the reimbursement rule imposes the appropriate limits on the deductibility of reimbursement payments and provides for the appropriate tax treatment to the recipients of reimbursements. The attached backgrounder provides a detailed description of the proposed amendments.

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Backgrounder

In November 2003, a new regime for taxing resource income received Royal Assent. This regime was outlined in the Department of Finance technical paper in March 2003 and was subject to extensive consultations with the resource sector. As described in that paper, this new regime includes the following three key features, which are being phased in over a five-year period (beginning in taxation years that end after 2002):

- a reduction of the federal corporate tax rate on income earned from resource activities from 28% to 21%;
- elimination of the resource allowance; and
- a deduction for Crown charges, such as royalties and mining taxes.

Consequential to the enactment of the new regime, a long-standing rule in section 80.2 of the *Income Tax Act* (the "Act") dealing with reimbursements, contributions or allowances (collectively referred to herein as "reimbursements") in respect of Crown charges was repealed, effective for taxation years beginning after 2006. Prior to the introduction of the new regime, a taxpayer who reimbursed a Crown charge incurred by another person (the "recipient") was considered to have made a payment described in paragraph 18(1)(m) of the Act, which payment was not deductible in computing the taxpayer's income. Thus, neither the taxpayer nor the recipient was entitled to deduct an amount in respect of the Crown charge. The purpose of this reimbursement rule was to put the taxpayer making the reimbursement in the same position as the recipient in respect of the reimbursed Crown charge.

As a result of the phase-in of the deductibility of Crown charges, the reimbursement rule no longer operates as intended and may result in deductions during the phase-in period in excess of those that were intended.

Accordingly, it is proposed that section 80.2 be amended, applicable to reimbursements made after 2001, to provide as follows:

(a) that the full amount of a reimbursement be deemed to be a payment described in paragraph 18(1)(m) of the Act;

(b) that the income of the recipient be adjusted to offset any reduction in income that relates to the reimbursed Crown charge; and

(c) that the percentage of a reimbursement that is deductible in computing the income of the taxpayer making the reimbursement be determined by reference to the percentage that would have applied if the taxpayer had made the reimbursement at the time the Crown charge became payable or receivable.

These proposed amendments are intended to ensure that only the taxpayer making the reimbursement is entitled to a deduction in respect of the reimbursed Crown charge and that, subject to the exception described below, the deduction available to the taxpayer be limited to the amount that would

have been available to the taxpayer at the time the Crown charge became payable or receivable.

It is proposed that the requirement to determine the deductibility of a reimbursement by reference to the time the Crown charge became payable or receivable generally not apply to a reimbursement by a taxpayer of actual Crown charges incurred by a partnership during a particular fiscal period if certain conditions are met. These conditions include a requirement that the taxpayer be a member of the partnership at the end of a particular fiscal period of the partnership and that the reimbursement be made in the taxation year of the taxpayer in which the fiscal period of the partnership ends.

In circumstances where the taxpayer or the recipient is required to amend a previously filed tax return, it is proposed that no penalties or interest apply to any additional tax payable as a result of the application of these rules if the tax is paid within two months of September 17, 2004.

For reimbursements made on or after September 17, 2004, it is proposed that:

- The amount of a reimbursement that exceeds the eligible portion of the reimbursement not be subject to the rules described in (a) to (c) above. The eligible portion of a reimbursement is the amount that can reasonably be considered to be the taxpayer's share of the Crown charges that apply to a particular property determined by reference to the taxpayer's share of the production or net income from production from the property. In applying this rule, the eligible portion of a reimbursement of a tax on freehold mineral rights would be deemed to be equal to the amount of the reimbursement. The eligible portion of a reimbursement may be deemed to be equal to the amount of the reimbursement in other appropriate circumstances.
- The amount of a reimbursement that exceeds the eligible portion of the reimbursement be included in computing the income of the recipient and, subject to paragraphs 18(1)(a) and (b) of the Act, generally be deductible in computing the income of the taxpayer.

These proposed amendments are intended to ensure that certain taxpayers or partnerships do not enter into reimbursement arrangements to artificially increase the amount that would otherwise be deductible in respect of a Crown charge.

80.2 [Resource royalty reimbursement] — (1) Application — Subsections (2) to (13) apply if

(a) in a taxation year, a taxpayer, under the terms of a contract, pays to a person (referred to in this section as the "recipient") an amount (referred to in this section as the "specified amount") that may reasonably be considered to be received by the recipient as a reimbursement of, or a contribution or an allowance in respect of, an amount (referred to in this section as the "original amount")

(i) that was described by paragraph 18(1)(m) and was paid or payable by the recipient, or

(ii) that was, in respect of the recipient, an amount described by paragraph 12(1)(o);

(b) the original amount is paid or became payable or receivable in a taxation year or fiscal period of the recipient that begins before 2007; and

(c) the taxpayer is resident in Canada or carries on business in Canada when the specified amount is paid.

Technical Notes: New subsection 80.2(1) provides that subsections 80.2(2) to (13) apply if a taxpayer (either resident in Canada or carrying on business in Canada) pays an amount, under the terms of a contract, that may reasonably be considered to have been received by the recipient as a reimbursement in respect of a Crown charge described by paragraph 12(1)(o) or 18(1)(m). The Crown charge is referred to in new section 80.2 as the "original amount." By referring to an original amount "described" by paragraphs 12(1)(o) or 18(1)(m) (and not the amount either included in income or denied as a deduction under these provisions), subsection 80.2(1) ensures that section 80.2 applies to the full amount of the reimbursement. The full amount of the reimbursement is referred to in new section 80.2 as the "specified amount."

New paragraph 80.2(1)(b) provides that the reimbursed Crown charge must be paid or payable by the recipient or receivable by a person described in paragraph 12(1)(o) in a taxation year or fiscal period of the recipient that begins before 2007. As a result, section 80.2 will only apply to a reimbursement if the recipient is subject to restrictions on the deductibility of the reimbursed Crown charge (i.e., the Crown charge is described in paragraph 18(1)(m)) or is required to include some portion of the Crown charge in income (i.e., the Crown charge is described in paragraph 12(1)(o)).

Related Provisions: 53(1)(e)(iv.1) — Addition to ACB of partnership interest for specified amount paid by partner to partnership.

(2) Rules relating to time of payment — If the specified amount is paid in a taxation year of the taxpayer that begins before 2008, the eligible portion of the specified amount, referred to in subsection (1), is deemed to be a payment described by paragraph 18(1)(m). If, however, the specified amount is paid in a taxation year of the taxpayer that begins after 2007, the specified amount is deemed, for the purpose of applying this section to the taxpayer, to be nil.

Technical Notes: New subsection 80.2(2) provides that if the specified amount is paid in a taxation year of the taxpayer that begins before 2008, the eligible portion of the specified amount is deemed to be an amount described by paragraph 18(1)(m). It also provides that, if the specified amount is paid in a taxation year of the taxpayer that begins after 2007, the specified amount is deemed, for the purpose of applying section 80.2 to the taxpayer, to be nil.

For payments made before September 17, 2004, the eligible portion of the specified amount is equal to the specified amount. For reimbursements made on or after September 17, 2004, the eligible portion of the specified amount may be less than the specified amount. The rules for determining the eligible portion of the specified amount are described in the commentary to ITA 80.2(11) and (12).

To accommodate the payment of a reimbursement in a taxation year of the taxpayer that begins after 2006 and before 2008 (the eligible portion of which is deemed to be described by paragraph 18(1)(m)), paragraph 18(1)(m), which was originally repealed effective for taxation years that begin after 2006, will be repealed for taxation years that begin after 2007. If, however, a reimbursement described in subsection 80.2(1) is delayed to a taxation year of the taxpayer that begins after 2007, the specified amount is deemed, for the purpose of applying section 80.2 to the taxpayer, to be nil and no deduction will be available to the taxpayer in respect of the reimbursement.

(3) Applying para. 18(1)(m) — For the purpose of applying paragraph 18(1)(m) for the taxpayer's taxation year in which the specified amount was paid, the amount to which that paragraph applies is to be determined for that taxation year

(a) if the taxpayer was in existence at the time the original amount became receivable by a person referred to in subparagraph 12(1)(o)(i) or became payable to a person referred to in subparagraph 18(1)(m)(i), as if the specified amount were paid by the taxpayer at that time; and

(b) in any other case, as if

(i) the taxpayer were in existence and had a calendar taxation year at the time the original amount became receivable by a person referred to in subparagraph 12(1)(o)(i) or became payable to a person referred to in subparagraph 18(1)(m)(i), and

(ii) the specified amount were paid by the taxpayer at that time.

Technical Notes: To ensure that the taxpayer does not benefit (i.e., increase the percentage of the reimbursement that is deductible in computing income) by delaying the reimbursement of a Crown charge, new subsection 80.2(3) provides that paragraph 18(1)(m) applies as if the reimbursement were made at the time the Crown charge was imposed (i.e., became payable or receivable). If the taxpayer did not exist at the time the Crown charge was imposed (e.g., a new corporation created on an amalgamation), the percentage of the reimbursement that is subject to paragraph 18(1)(m) is computed as if the taxpayer were in existence at that time and had a calendar year end. In either case, the percentage of

the reimbursement that is subject to paragraph 18(1)(m) and, accordingly, the amount that is not deductible in the taxation year in which the reimbursement is paid, is determined by reference to the percentages described in the transitional rules to the repeal of paragraph 18(1)(m), as if the taxpayer paid the reimbursement at the time the reimbursed Crown charge was imposed.

Related Provisions: 80.2(4) — Exception for certain partnership reimbursements.

(4) Exception for certain partnership reimbursements — Subsection (3) does not apply to a specified amount paid by a taxpayer

(a) if the recipient is a partnership;

(b) the original amount became receivable by a person referred to in subparagraph 12(1)(o)(i) or became payable to a person referred to in subparagraph 18(1)(m)(i), in a particular fiscal period of the partnership;

(c) the taxpayer is a member of the partnership at the end of the particular fiscal period; and

(d) the taxpayer paid the specified amount before the end of the taxation year of the taxpayer in which that particular fiscal period ends.

Technical Notes: New subsection 80.2(4) provides that subsection 80.2(3) does not apply to certain partnership reimbursements if the conditions, set out in new paragraphs 80.2(4)(a) to (d), are met. Those conditions require the taxpayer to be a member of the partnership at the end of the particular fiscal period in which the Crown charge became payable or receivable and require the reimbursement to be paid before the end of the taxation year of the taxpayer in which the particular fiscal period of the partnership ends. The purpose of new subsection 80.2(4) is to permit a member of a partnership to determine the amount deductible in respect of a reimbursed Crown charge by reference to the same taxation year as the profit from the partnership's production (on which the reimbursed Crown charge was imposed) is allocated to the member.

(5) Specified amount deemed to be paid at end of taxation year — A specified amount paid by the taxpayer to a partnership is deemed to have been paid on the last day of a particular taxation year of the taxpayer, and not at the time it was paid, if

(a) the taxpayer paid an amount to the partnership in the particular taxation year (referred to in this subsection as the "initial payment");

(b) the initial payment was paid before September 17, 2004;

(c) the initial payment is an amount to which subsection (3) did not apply because of subsection (4);

(d) the taxpayer's share of the original amount in respect of the initial payment is greater than the initial payment;

(e) the specified amount is equal to or less than the difference between the taxpayer's share of the original amount in respect of the initial payment and the initial payment;

(f) the taxpayer elects in the taxpayer's return of income for the taxpayer's taxation year that includes the time at which the specified amount would, if this Act were read without reference to this subsection, have been paid, to have this subsection apply to the specified amount; and

(g) the specified amount is paid before 2006.

Technical Notes: New subsection 80.2(5) is a special rule that applies to a taxpayer that made a reimbursement payment to a partnership before September 17, 2004 ("initial reimbursement"). If the conditions set out in new subsection 80.2(5) are met, the taxpayer may make a supplemental reimbursement ("top-up reimbursement") that is deemed to have been paid at the end of the taxation year in which the initial reimbursement was made. New subsection 80.2(5) only applies if the taxpayer's share of the original amount in respect of the initial reimbursement is greater than the initial reimbursement (i.e., the taxpayer reimbursed the partnership for less than the taxpayer's share of the Crown charges). In addition, the top-up reimbursement must be paid before 2006 and cannot exceed the difference between the taxpayer's share of the original amount in respect of the initial reimbursement and the initial reimbursement. The rules for determining a taxpayer's share of the original amount in respect of the initial reimbursement are set out in new subsection 80.2(12).

The purpose of new subsection 80.2(5) is to permit a taxpayer to make a retroactive top-up reimbursement if the initial reimbursement was less than the taxpayer's share of the Crown charges. This provision recognizes that: 1) a taxpayer may have made a partial reimbursement prior to September 17, 2004 (the date of the press release announcing the amendments to section 80.2) in the expectation of obtaining a deduction in respect of reimbursed Crown charges that was proportionate to the reduction in the taxpayer's resource allowance; and 2) the deduction anticipated by the taxpayer may have been diminished by new section 80.2. Thus, new subsection 80.2(5) affords the taxpayer the opportunity to correct for unanticipated tax consequences relating to the application of new section 80.2 to the initial reimbursement.

(6) Inclusion in recipient's income — The recipient shall include in computing the recipient's income for the taxation year or fiscal period in which the original amount was paid or became payable or receivable, the amount, if any, by which the eligible portion of the specified amount exceeds the portion of the original amount that was included in computing the income of the recipient for the taxation year or fiscal period because of paragraph 12(1)(o) or that was not deductible in computing the income of the recipient for the taxation year or fiscal period because of paragraph 18(1)(m).

Technical Notes: New subsection 80.2(6) requires the recipient to include in income, for the taxation year or fiscal period in which the original amount was paid or became payable or receivable, the amount by which the eligible portion of the specified amount exceeds the portion of the original amount that was included in the income of the recipient (if the reimbursement relates to a paragraph 12(1)(o) amount) or was not allowed as a deduction (if the reimbursement relates to a paragraph 18(1)(m) amount). The purpose of this provision is to offset any reduction in income available to the recipient in respect of a reimbursed Crown charge.

Related Provisions: 80.2(7) — Interpretation; 80.2(8) — Alternative inclusion; 80.2(11) — Eligible portion.

(7) Interpretation — portion of the original amount — For the purpose of subsection (6), the portion of the original amount that was included in computing the income of the recipient or that was not deductible in computing the income of the recipient is the amount that would be included in computing the income of the recipient under paragraph 12(1)(o) or that would not be deductible in computing the income of the recipient under paragraph 18(1)(m), if the original amount were equal to the eligible portion of the specified amount.

Technical Notes: New subsection 80.2(7) provides that, in determining the amount included in the income of the recipient under subsection 80.2(6), the portion of the original amount that was included in computing the income of the recipient or that was not deductible in computing the income of the recipient is determined as if the original amount were equal to the eligible portion of the specified amount. For example, assume that, in its taxation year ending on December 31, 2003, a recipient was entitled to a deduction of $500 in respect of $5,000 of Crown charges described in paragraph 18(1)(m) (10% of $5,000) and that one-half of the Crown charges ($2,500) were reimbursed in that year. In this case, the recipient would be required to include $250 in its income (10% of $2,500 — the amount deductible by the recipient if the original amount were equal to the eligible portion of the specified amount). As a further example, assume that the recipient receives a reimbursement of $3,000 after September 17, 2004 in respect of $5,000 of Crown charges incurred in its taxation year ending December 31, 2004. It is further determined that the eligible portion of the specified amount is $2,000. In this case, the recipient would be required to include $500 in its income

under this provision (25% of $2,000 — the amount deductible by the recipient if the original amount were equal to the eligible portion of the specified amount). The portion of the reimbursement that exceeds the eligible portion of the specified amount ($1,000) would be included in the recipient's 2004 income under new subsection 80.2(8).

Related Provisions: 80.2(11) — Eligible portion.

(8) Inclusion in recipient's income — The recipient shall include, in computing the recipient's income for its taxation year or fiscal period in which the original amount was paid or became payable or receivable, the amount, if any, by which the specified amount exceeds the eligible portion of the specified amount.

Technical Notes: New subsection 80.2(8) requires the recipient to include, in computing the recipient's income for its taxation year or fiscal period in which the original amount was paid or became payable or receivable, the amount, if any, by which the specified amount exceeds the eligible portion of the specified amount. The amount included in the income of the recipient under this subsection is equal to the amount that may be deductible by the taxpayer under subsection 80.2(9).

Related Provisions: 80.2(6) — Alternative inclusion; 80.2(11) — Eligible portion.

(9) Deduction by taxpayer — Subject to paragraphs 18(1)(a) and (b), the taxpayer may deduct in computing the taxpayer's income for the taxpayer's taxation year in which the specified amount was paid, the amount, if any, by which the specified amount exceeds the eligible portion of the specified amount.

Technical Notes: New subsection 80.2(9) provides that the taxpayer may deduct, subject to paragraphs 18(1)(a) and (b), in computing the taxpayer's income for the taxpayer's taxation year in which the specified amount was paid, the amount, if any, by which the specified amount exceeds the eligible portion of the specified amount. The amount described in this subsection is that portion of a reimbursement that is not treated as a payment described by paragraph 18(1)(m).

Related Provisions: 80.2(11) — Eligible portion.

(10) Specified amount deemed not to be payable or receivable — Except for the purposes of this section and subparagraph 53(1)(e)(iv.1),

(a) the taxpayer is deemed not to have paid, and not to have been obligated to pay, the specified amount; and

(b) the recipient is deemed not to have received, and not to have been entitled to receive, the specified amount.

Technical Notes: New paragraphs 80.2(10)(a) and (b), provide that, except for the purposes of section 80.2 and subparagraph 53(1)(e)(iv.1), the taxpayer is deemed not to have paid and not to have been obligated to pay, the specified amount and the recipient is deemed not to have received and not to have been entitled to receive, the specified amount. This subsection ensures that the tax implications of payments described in subsection 80.2(1) are dealt with entirely within section 80.2.

(11) Eligible portion of a specified amount — The eligible portion of a specified amount is

(a) an amount equal to the specified amount if

(i) the specified amount was paid before September 17, 2004,

(ii) the original amount is a tax imposed under a provincial law on the production of

(A) petroleum, natural gas or related hydrocarbons from a natural accumulation of petroleum or natural gas (other than a mineral resource) located in Canada, or from an oil or gas well located in Canada if the petroleum, natural gas or related hydrocarbons are not, before extraction, owned by the Crown in right of Canada or a province, or

(B) metals, mineral or coal from a mineral resource located in Canada if the metals, mineral or coal are not, before extraction, owned by the Crown in right of Canada or a province,

(iii) the specified amount does not exceed the taxpayer's share of the original amount, or

(iv) the original amount is a prescribed amount; and

(b) the taxpayer's share of the original amount, in any other case.

Technical Notes: The amount of a reimbursement that is deemed by new subsection 80.2(2) to be a payment described by paragraph 18(1)(m) is the "eligible portion of the specified amount." The eligible portion of the specified amount is defined in paragraph 80.2(11)(b), subject to certain exceptions enumerated in paragraph 80.2(11)(a), as the taxpayer's share of the original amount. The taxpayer's share of the original amount is described in new subsection 80.2(12).

Paragraph 80.2(11)(a) provides that the eligible portion of the specified amount is equal to the specified amount if

(a) the specified amount was paid before September 17, 2004;

(b) the original amount is a tax imposed under a law of a province on freehold minerals; or

(c) the specified amount does not exceed the taxpayer's share the original amount.

The specified amount of a reimbursement, in future, may also be prescribed, by regulation, to be equal to the eligible portion of the specified amount.

Related Provisions: 80.2(12) — Taxpayer's share.

(12) Taxpayer's share of original amount — A taxpayer's share of an original amount in respect of a specified amount paid by the taxpayer to a recipient in respect of a property is the amount that may reasonably be considered to be the taxpayer's share of the total of all amounts described in paragraph 12(1)(o) or 18(1)(m) in respect of the property which share may not exceed the total of

(a) that proportion of the total of all amounts described in paragraph 12(1)(o) or 18(1)(m) in respect of the property that the taxpayer's share of production from the property payable to the taxpayer as a royalty that is computed without reference to the costs of exploration or production, is of the total production from the property, and

(b) that proportion of the total of all amounts described in paragraph 12(1)(o) or 18(1)(m) in respect of the property (other than those amounts which the recipient has received or is entitled to receive as a reimbursement, contribution or allowance in respect of a royalty described in paragraph (a)) that the taxpayer's share of the income from the property is of the total income from the property.

Technical Notes: New subsection 80.2(12) provides that the taxpayer's share of the original amount is the amount that may reasonably be considered to be the taxpayer's share of the Crown charges in respect of a particular property. More specifically, this subsection provides that the taxpayer's share of the Crown charges may not exceed the total of the amounts described in paragraphs 80.2(12)(a) and (b).

New paragraph 80.2(12)(a) provides that the taxpayer's share of the Crown charges in respect of a property upon which the taxpayer has an overriding royalty (a royalty calculated without reference to the cost of exploration or production) is the proportion of those Crown charges that is equal to the taxpayer's proportionate share of the production from the property.

New paragraph 80.2(12)(b) provides that the taxpayer's share of the Crown charges in respect of a property (excluding any Crown charges that were reimbursed under the terms of an overriding royalty) is equal to the taxpayer's share of the income from the property.

The requirement that the taxpayer be entitled to a share of the production, or the income, from the property to which the reimbursed Crown charge relates is intended to ensure that a reimbursement paid by a taxpayer will be deemed to be an amount described by paragraph 18(1)(m) only to the extent that the taxpayer is entitled to an appropriate share of the production, or the income, from the property. This, in turn, is intended to ensure that section 80.2 is not used to separate the Crown charges (through a reimbursement) from the resource profits generated by a particular property for the purpose of increasing the deduction that may be available in respect of the Crown charges.

(13) Reduction in original amount for Part XII of the regulations — For the purpose of applying Part XII of the *Income Tax Regulations*, an original amount in respect of which a specified amount is received is deemed, for the taxation year in which the original amount was paid or became payable or receivable, not to include an amount equal to the eligible portion of the specified amount.

Technical Notes: New subsection 80.2(13) clarifies that, in computing the resource profits under Part XII of the *Income Tax Regulations* (the "Regulations"), the Crown charges that were paid or became payable by the recipient, or that were receivable in respect of the recipient, are reduced by the eligible portion of the specified amount. For example, if a recipient had an amount described in paragraph 12(1)(o) equal to $1,000 and $700 of this amount was reimbursed (and the $700 did not exceed the eligible portion of the specified amount) in circumstances described in subsection 80.2(1), the recipient would be treated, for the purpose of computing the recipient's resource profits, as having a paragraph 12(1)(o) amount equal to $300.

Payment of Tax

In circumstances where a taxpayer or recipient is required to pay any income tax that the taxpayer or recipient would not be so liable but for the amendments to section 80.2, such taxes will be deemed to have been paid on the balance due date for the relevant year if the balance due date was before September 17, 2004 and the tax is paid to the Receiver General for Canada before March 2005.

Examples

Assume that each of the recipient and the taxpayer is a resident taxable Canadian corporation and that each has a calendar taxation year. The recipient acquires a lease on Crown lands, which gives it the right to explore for and produce oil and natural gas from a particular property. Under the terms of the lease, the recipient is subject to a provincial Crown royalty based on the production from the property. The recipient enters into a contract with the taxpayer under which it sells a royalty interest on the property to the taxpayer equal to 50% of the production from the property free of all costs of development and operation. During each of 2003, 2004 and 2005, the production from the property is $2.4 million, the royalty payable to the taxpayer is $1.2 million and the Crown royalty on the production from the property is $600,000.

Example 1

Assume that the Crown royalty is described in paragraph 18(1)(m) and that, under the terms of the contract, the taxpayer agreed to reimburse the recipient for the portion of the Crown royalty relating to its share of production ($300,000). During 2003, the taxpayer reimburses the recipient on a monthly basis at the same time that the Crown royalty became payable to the provincial government. Although the recipient receives the reimbursement, it claims a deduction in respect of the reimbursed Crown royalty equal to $30,000. In this case, new section 80.2 would apply as follows:

	Recipient (2003)	Taxpayer (2003)
80.2(2)		($30,000)
80.2(6)	$30,000	
Penalty/Interest	Nil**	Nil**

Table notes:

* Note that if the taxpayer had claimed a deduction that exceeded $30,000, the "excess" deduction would be disallowed.

** Assuming that any tax resulting from the application of proposed section 80.2 is paid before March 2005.

The taxpayer is deemed by subsection 80.2(2) to have paid an amount under paragraph 18(1)(m) equal to the specified amount (the amount of the reimbursement), 90% of which is denied as a deduction in computing the taxpayer's income by paragraph 18(1)(m). In addition, the deduction taken by the recipient in respect of the reimbursed Crown royalty is reversed by subsection 80.2(6). Pursuant to subsection 80.2(13), the recipient would not include in computing its resource profits under Part XII of the Regulations any portion of the Crown royalty that was reimbursed by the taxpayer. Accordingly, for the purpose of computing its resource profits, the recipient would be treated as having a Crown royalty equal to $300,000.

Example 2

Assume that the Crown royalty is described by paragraph 12(1)(o) and that, under the terms of the contract, the taxpayer reimburses the recipient on January 1, 2004 for its share of the Crown royalty that became receivable in 2003. Although the recipient is entitled to the reimbursement, it includes, under paragraph 12(1)(o), only $270,000 in its income in respect of the reimbursed Crown royalties (90% of $300,000). In this case, new section 80.2 would apply as follows:

	Recipient (2003)	Taxpayer (2004)
80.2(2)/(3)		($30,000)
80.2(6)	$30,000	
Penalty/Interest	Nil	

Table notes:

* (10% of $300,000). Note that if the taxpayer had claimed a total deduction that exceeded $30,000, the "excess" deduction would be disallowed.

** Assuming that any tax resulting from the application of proposed section 80.2 is paid before March 2005.

As in Example 1, the recipient has a $30,000 income inclusion under new subsection 80.2(6). The result is that the total amount included in the income of the recipient in 2003 under paragraph 12(1)(o) and subsection 80.2(6) in respect of the reimbursed Crown royalty is equal to $300,000. In addition, new subsections 80.2(2) and (3) ensure that the entire amount of the reimbursement is an amount described in paragraph 18(1)(m) and that the percentage of the reimbursement that is not deductible by the taxpayer is determined as if the reimbursement were paid at the time the Crown royalty became receivable (i.e., 2003 percentages apply). Pursuant to subsection 80.2(13), the recipient would not include in computing its resource profits under Part XII of the Regulations any portion of the Crown royalty that was reimbursed by the taxpayer. Accordingly, for the purpose of computing its resource profits, the recipient would be treated as having a Crown royalty equal to $300,000.

Example 3

Assume that, under the terms of the contract, the taxpayer reimburses the recipient $400,000 on January 31, 2005 in respect of Crown royalties described in paragraph 12(1)(o), all of which became receivable by the province during 2004. In this situation, the reimbursement exceeds the eligible portion of the specified amount by $100,000. In computing its income for 2004, the recipient includes $300,000 (75% of $400,000) in respect of the reimbursed Crown royalty. Assuming that a deduction by the taxpayer for any portion of the reimbursement would not be denied by either paragraph 18(1)(a) or (b), new section 80.2 would apply as follows:

	Recipient (2004)	Taxpayer (2005)
80.2(2)/(3)		($75,000)
80.2(6)	$75,000	
80.2(8)	$100,000***	
80.2(9)		($100,000)

Table notes:

* The deduction for the eligible portion of the specified amount is based on the percentage that applies in the taxpayer's 2004 taxation year (25% of $300,000).

** Subsection 80.2(6) requires the recipient to include in its income, the amount by which the eligible portion of the specified amount ($300,000) exceeds the portion of the original amount that was included in the recipient's income ($225,000 or 75% of $300,000).

*** Subsection 80.2(8) requires the recipient to include in income, in the taxation year in which the Crown royalty became receivable, an amount equal to the difference between the specified amount ($400,000) and the eligible portion of the specified amount ($300,000).

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 82, will amend s. 80.2 to read as above, applicable in respect of specified amounts paid after 2001. Where a person is liable to an amount of tax under Part I of the Act for a taxation year that exceeds the amount to which the person would be liable if s. 80.2 applied as it read on December 31, 2001, the person is deemed, for the purpose of determining any interest or penalty payable by that person, to have paid the excess on that person's balance due date, if

(a) the person's balance-due date for the taxation year was before September 17, 2004; and

(b) the excess was paid to the Receiver General before March 2005.

Notwithstanding subsecs. 152(4) to (5) of the Act, all assessments, determinations, and redeterminations may be made as necessary to give effect to this amendment.

Definitions [s. 80.2]: "amount" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "carries on business in Canada" — 253; "eligible portion" — 80.2(11); "fiscal period" — 249(2)(b), 249.1; "mineral", "mineral resource", "oil or gas well" — 248(1); "original amount" — 80.2(1)(a); "person", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "recipient" — 80.2(1)(a); "regulation" — 248(1); "related" — 251(2)–(6); "resident in Canada" — 250; "share" — 248(1); "specified amount" — 80.2(1)(a); "taxation year" — 249; "taxpayer" — 248(1); "taxpayer's share" — 80.2(12).

Proposed Repeal — Repeal of 80.2

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 195, proposes to repeal the provision repealing s. 80.2 in S.C. 2003, c. 28 (Bill C-48, Royal Assent November 7, 2003, s. 9), in force on Royal Assent.

Technical Notes: Subsection 80.2 was repealed by section 9 of *An Act to Amend the Income Tax Act (Natural Resources)*, S.C. 2003, c. 28, effective for taxation years that begin after 2006. Section 9 of that Act is being repealed with the result that section 80.2 will continue in force. However, section 80.2 will apply only to specified amounts paid in respect of original amounts that are paid or become payable or receivable in taxation years or fiscal periods of the recipient that begin before 2007. As a result, section 80.2 will only apply to a reimbursement if the recipient is subject to restrictions on the deductibility of the reimbursed Crown charge (i.e., the Crown charge is described in paragraph 18(1)(m)) or is required to include some portion of the Crown charge in income (i.e., the Crown charge is described in paragraph 12(1)(o)).

The repeal of section 9 of the *Act to Amend the Income Tax Act (Natural Resources)* extends the possible application of section 80.2 to a reimbursement that is made in a taxation year of the taxpayer that begins after 2006 (assuming the reimbursed Crown charge was imposed in a taxation year or fiscal period of the recipient that begins before 2007). This extension of section 80.2, along with the extension of paragraph 18(1)(m) will accommodate, among other things, a reimbursement of a Crown charge by a member of a partnership, as described in new subsection 80.2(4), where such reimbursement is made in a taxation year of the member that begins after 2006 and before 2008.

Related Provisions: 104(29) — Amounts deemed to be payable to beneficiaries.

Definitions: "amount" — 248(1); "carrying on business in Canada" — 253; "particular amount" — 80.2(a); "person", "property" — 248(1); "resident in Canada" — 250; "specified payment" — 80.2(a); "taxpayer" — 248(1).

Interpretation Bulletins: IT-438R2: Crown charges — resource properties in Canada.

80.3 [Income deferrals — livestock] — (1) Definitions — In this section,

"breeding animals" means

(a) horses that are over 12 months of age and are kept for breeding in the commercial production of pregnant mares' urine, and

(b) deer, elk and other similar grazing ungulates, bovine cattle, bison, goats and sheep that are over 12 months of age and are kept for breeding;

History: Para. (b) of the definition "breeding animals" in subsec. 80.3(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 31, to add "deer, elk and other similar grazing ungulates", applicable to fiscal periods and taxation years ending after 1990.

"breeding herd" of a taxpayer at any time means the number determined by the formula

$$A - (B - C)$$

where

A is the total number of the taxpayer's breeding animals held in the course of carrying on a farming business at that time,

B is the total number of the taxpayer's breeding animals held in the business at that time that are female bovine cattle that have not given birth to calves, and

C is the lesser of the number determined as the value of B and one-half the total number of the taxpayer's breeding animals held in the business at that time that are female bovine cattle that have given birth to calves.

(2) Income deferral from the destruction of livestock — Where a particular amount in respect of the forced destruction of livestock under statutory authority in a taxation year of a taxpayer is included in computing the income of the taxpayer for the year from a farming business, there may be deducted in computing that income such amount as the taxpayer claims not exceeding the particular amount.

Related Provisions: 28(1)(g) — Deduction for farmer using cash method; 80.3(3) — Inclusion of deferred amount; 80.3(6) — Where subsecs. (2) and (4) not to apply.

Interpretation Bulletins: IT-425: Miscellaneous farm income.

(3) Inclusion of deferred amount — The amount deducted under subsection (2) in computing the income of a taxpayer from a farming business for a taxation year shall be deemed to be income of the taxpayer from the business for the taxpayer's immediately following taxation year.

Related Provisions: 28(1)(d) — Amount under 80.3(3) to be added to income of farmer using cash method; 87(2)(tt) — Amalgamations — deferral of amounts received; 88(1)(e.2) — Winding-up — rules applicable.

Interpretation Bulletins: IT-425: Miscellaneous farm income.

(4) Income deferral for sales in prescribed drought region — Where in a taxation year a taxpayer carries on a farming business in a region that is a prescribed drought region at any time in the year and the taxpayer's breeding herd at the end of the year in respect of the business does not exceed 85% of the taxpayer's breeding herd at the beginning of the year in respect of the business, there may be deducted in computing the taxpayer's income from the business for the year such amount as the taxpayer claims, not exceeding the amount, if any, determined by the formula

$$(A - B) \times C$$

where

A is the amount by which

(a) the total of all amounts included in computing the taxpayer's income for the year from the business in respect of the sale of breeding animals in the year

exceeds

(b) the total of all amounts deducted under paragraph 20(1)(n) in computing the taxpayer's income from the business for the year in respect of an amount referred to in paragraph (a) of this description;

B is the total of all amounts deducted in computing the taxpayer's income from the business for the year in respect of the acquisition of breeding animals; and

C is

(a) 30% where the taxpayer's breeding herd at the end of the year in respect of the business exceeds 70% of the taxpayer's breeding herd at the beginning of the year in respect of the business, and

(b) 90% where the taxpayer's breeding herd at the end of the year in respect of the business does not exceed 70% of the taxpayer's breeding herd at the beginning of the year in respect of the business.

Related Provisions: 28(1)(g) — Deduction for farmer using cash method; 80.3(5) — Inclusion of deferred amount; 80.3(6) — Where subsecs. (2) and (4) not to apply; 257 — Formula cannot calculate to less than zero.

Regulations: 7305, 7305.01 (prescribed drought region).

(5) Inclusion of deferred amount — The amount deducted under subsection (4) in computing the income of a taxpayer for a particular taxation year from a farming business carried on in a prescribed drought region may, to the extent that the taxpayer so elects, be included in computing the taxpayer's income from the business for a taxation year ending after the particular taxation year, and shall, except to the extent that the amount has been included under this subsection in computing the taxpayer's income from the business for a preceding taxation year after the particular year, be deemed to be income of the taxpayer from the business for the taxation year of the taxpayer that is the earliest of

(a) the first taxation year beginning after the end of the period or series of continuous periods, as the case may be, for which the region is a prescribed drought region,

(b) the first taxation year, following the particular taxation year, at the end of which the taxpayer is

(i) non-resident, and

(ii) not carrying on business through a fixed place of business in Canada, and

(c) the taxation year in which the taxpayer dies.

Related Provisions: 28(1)(d) — Inclusion in farming or fishing income when using cash method.

History: Subsec. 80.3(5) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 59(1), applicable to fiscal periods and taxation years ending after 1987. Subsec. 80.3(5) formerly read:

(5) Inclusion of deferred amount — The amount deducted under subsection (4) in computing the income of a taxpayer for a taxation year from a farming business carried on in a prescribed drought region shall be deemed to be income of the taxpayer from the business for the taxpayer's first taxation year commencing after the end of the period or series of continuous periods, as the case may be, for which the region was a prescribed drought region or, where the taxpayer has died before the beginning of that first taxation year, for the taxation year in which the taxpayer died, except to the extent that the amount has been included in computing the taxpayer's income from the business for a preceding taxation year.

Regulations: 7305, 7305.01 (prescribed drought regions for each year).

(6) Where subsecs. (2) and (4) do not apply — Subsections (2) and (4) do not apply to a taxpayer in respect of a farming business for a taxation year

(a) in which the taxpayer died; or

(b) where at the end of the year the taxpayer is non-resident and not carrying on the business through a fixed place of business in Canada.

History: Para. 80.3(6)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 59(2), applicable to fiscal periods and taxation years ending after 1987. Para. 80.3(6)(b) formerly read:

(b) where the taxpayer is not resident in Canada at the end of the year and at any time in the year did not carry on the business in Canada.

Definitions [s. 80.3]: "amount" — 248(1); "breeding animals", "breeding herd" — 80.3(1); "business" — 248(1); "Canada" — 255; "farming", "taxpayer" — 248(1); "taxation year" — 11(2), 249; "year" — 11(2).

80.4 (1) Loans [to employees — deemed interest] — Where a person or partnership receives a loan or otherwise incurs a debt because of or as a consequence of a previous, the current or an intended office or employment of an individual, or because of the services performed or to be performed by a corporation carrying on a personal services business, the individual or corporation, as the case may be, shall be deemed to have received a benefit in a taxation year equal to the amount, if any, by which the total of

(a) all interest on all such loans and debts computed at the prescribed rate on each such loan and debt for the period in the year during which it was outstanding, and

(b) the total of all amounts each of which is an amount of interest that was paid or payable in respect of the year on such a loan or debt by

(i) a person or partnership (in this paragraph referred to as the "employer") that employed or intended to employ the individual,

(ii) a person (other than the debtor) related to the employer, or

(iii) a person or partnership to or for whom or which the services were or were to be provided or performed by the corporation or a person (other than the debtor) that does not deal at arm's length with that person or any member of such partnership,

exceeds the total of

(c) the amount of interest for the year paid on all such loans and debts not later than 30 days after the end of the year, and

(d) any portion of the total determined in respect of the year under paragraph (b) that is reimbursed in the year or within 30 days after the end of the year by the debtor to the person or entity who made the payment referred to in that paragraph.

Related Provisions: 6(9) — Inclusion as income from employment; 6(23) — Employer-provided mortgage subsidy is taxable; 12(1)(w) — Benefit from carrying on personal services business; 15(2) — Shareholder debt; 20(1)(c)(v) — Deductibility of interest; 79(3)F(b)(v)(B)(I) — Where property surrendered to creditor; 80(1)"forgiven amount"B(h) — Debt forgiveness rules do not apply; 80.4(1.1) — Interpretation; 80.4(3) — Loans — exceptions; 80.4(4) — Interest on loans for home purchase or relocation; 80.5 — Interest deemed paid; 110(1)(j) — Deduction — home relocation loan; 248(1)"home relocation loan"(c) — Definition based on application of 80.4(1).

History: That portion of subsec. 80.4(1) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 32, applicable to taxation years commencing after 1991. That portion formerly read:

(1) Loans — Where a person or partnership received a loan or otherwise incurred a debt by virtue of the office or employment or intended office or employment of an individual, or by virtue of the services performed or to be performed by a corporation carrying on a personal services business, the individual or corporation, as the case may be, shall be deemed to have received a benefit in a taxation year equal to the amount, if any, by which the total of

Selected Cases [subsec. 80.4(1)]: *Vine Estate v. Canada*, [1990] 1 C.T.C. 18 (FCTD) (Amount applied by 50% shareholder from one com-

pany to cover losses of another fully owned company was benefit); *Cooper v. MNR*, [1989] 1 C.T.C. 66 (FCTD) (Provision applies only to corporate officers and shareholders, not to loan from estate to executor).

Regulations: 4301(c) (prescribed rate of interest for 80.4(1)(a)); but see also ITA 80.4(7)"prescribed rate".

Interpretation Bulletins: IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits (archived); IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt.

I.T. Technical News: 6 (payment of mortgage interest subsidy by employer).

(1.1) Interpretation — A loan or debt is deemed to have been received or incurred because of an individual's office or employment, or because of services performed by a corporation that carries on a personal services business, as the case may be, if it is reasonable to conclude that, but for an individual's previous, current or intended office or employment, or the services performed or to be performed by the corporation,

(a) the terms of the loan or debt would have been different; or

(b) the loan would not have been received or the debt would not have been incurred.

Related Provisions: 6(23) — Employer-provided mortgage subsidy is taxable; 248(1)"home relocation loan"(c) — Definition based on application of 80.4(1).

History: Subsec. 80.4(1.1) added by 1999, c. 22, s. 22, applicable to loans received and debts incurred after February 23, 1998 except that, in its application to a loan received or a debt incurred after February 23, 1998 in respect of an eligible relocation of an individual in connection with which the individual begins employment at the new work location before October 1998, subsec. (1.1) does not apply to taxation years that end before 2001.

(2) Idem [loan to shareholders — deemed interest] — Where a person (other than a corporation resident in Canada) or a partnership (other than a partnership each member of which is a corporation resident in Canada) was

(a) a shareholder of a corporation,

(b) connected with a shareholder of a corporation, or

(c) a member of a partnership, or a beneficiary of a trust, that was a shareholder of a corporation,

and by virtue of such shareholding that person or partnership received a loan from, or otherwise incurred a debt to, that corporation, any other corporation related thereto or a partnership of which that corporation or any corporation related thereto was a member, the person or partnership shall be deemed to have received a benefit in a taxation year equal to the amount, if any, by which

(d) all interest on all such loans and debts computed at the prescribed rate on each such loan and debt for the period in the year during which it was outstanding

exceeds

(e) the amount of interest for the year paid on all such loans and debts not later than 30 days after the later of the end of the year and December 31, 1982.

Related Provisions: 15(2) — Income inclusion for amount of loan; 15(9) — Deemed benefit to shareholder; 20(1)(c)(vi) — Deductibility of interest; 79(3)F(b)(v)(B)(I) — Where property surrendered to creditor; 80(1)"forgiven amount"B(h) — Debt forgiveness rules do not apply; 80.4(3) — Exceptions; 80.4(8) — Meaning of "connected"; 80.5 — Deemed interest; 95(1)"foreign accrual property income"A(d) — Definitions — "foreign accrual property income".

Regulations: 4301(c) (prescribed rate of interest for 80.4(2)(d)); but see also ITA 80.4(7)"prescribed rate".

Interpretation Bulletins: IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt.

(3) Where subsecs. (1) and (2) do not apply — Subsections (1) and (2) do not apply in respect of any loan or debt, or any part thereof,

(a) on which the rate of interest was equal to or greater than the rate that would, having regard to all the circumstances (including the terms and conditions of the loan or debt), have been agreed on, at the time the loan was received or the debt was incurred, between parties dealing with each other at arm's length if

(i) none of the parties received the loan or incurred the debt by virtue of an office or employment or by virtue of the shareholding of a person or partnership, and

(ii) the ordinary business of the creditor included the lending of money,

except where an amount is paid or payable in any taxation year to the creditor in respect of interest on the loan or debt by a party other than the debtor; or

(b) that was included in computing the income of a person or partnership under this Part.

Selected Cases [subsec. 80.4(3)]: *Quigley v. Canada*, [1996] 1 C.T.C. 2378 (TCC) ("Was included" is question of fact and not same as "ought to have been included").

(4) Interest on loans for home purchase or relocation — For the purpose of computing the benefit under subsection (1) in a taxation year in respect of a home purchase loan or a home relocation loan and for the purpose of paragraph 110(1)(j), the amount of interest determined under paragraph (1)(a) shall not exceed the amount of interest that would have been determined thereunder if it had been computed at the prescribed rate in effect at the time the loan was received or the debt was incurred, as the case may be.

Related Provisions: 80(14)(d) — Residual balance; 80.4(6) — Interest rate cap reset every 5 years; 110(1.4) — Replacement of home relocation loan.

Regulations: 4301(c) (prescribed rate of interest); but see also ITA 80.4(7)"prescribed rate".

Interpretation Bulletins: IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt.

(5) Idem — Where an individual has, before November 13, 1981,

(a) received a housing loan, or

(b) made arrangements in writing in respect of a home purchase loan that would, if the loan were made before 1982, have been a housing loan,

for the purpose of computing the amount of interest referred to in paragraph (1)(a) on the loan, the amount of the loan may be reduced

(c) for the 1982 taxation year, by the amount, if any, by which $40,000 exceeds the total of

(i) all amounts claimed as a reduction under this subsection for the year by the individual's spouse or common-law partner with whom the individual resided in the year, and

(ii) all amounts claimed as a reduction under this subsection for the year by the individual on all other loans, and

(d) for the 1983 taxation year, by the amount, if any, by which $20,000 exceeds the total of

(i) all amounts claimed as a reduction under this subsection for the year by the individual's spouse or common-law partner with whom the individual resided in the year, and

(ii) all amounts claimed as a reduction under this subsection for the year by the individual on all other loans.

History: Subsec. 80.4(5) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

(6) Deemed new home purchase loans — For the purposes of this section, other than paragraph (3)(a) and subsection (5), where a home purchase loan or a home relocation loan of an individual has a term for repayment exceeding five years, the balance outstanding on the loan on the date that is five years from the day the loan was received or was last deemed by this subsection to have been received shall be deemed to be a new home purchase loan received by the individual on that date.

Related Provisions: 110(1)(j) — Home relocation loan; 110(1.4) — Replacement of home relocation loan.

Interpretation Bulletins: IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt.

(7) Definitions — In this section,

"home purchase loan" means that portion of any loan received or debt otherwise incurred by an individual in the circumstances described in subsection (1) that is used to acquire, or to repay a loan or debt that was received or incurred to acquire, a dwelling, or a share of the capital stock of a cooperative housing corporation acquired for the sole purpose of acquiring the right to inhabit a dwelling owned by the corporation, where the dwelling is for the habitation of

(a) the individual by virtue of whose office or employment the loan is received or the debt is incurred,

(b) a specified shareholder of the corporation by virtue of whose services the loan is received or the debt is incurred, or

(c) a person related to a person described in paragraph (a) or (b),

or that is used to repay a home purchase loan;

History: That portion of "home purchase loan" preceding para. (a) in subsec. 80.4(7) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 60, applicable to 1985 *et seq*. That portion formerly read:

"home purchase loan" means that portion of any loan received or debt otherwise incurred by an individual in the circumstances described in subsection (1) that is used to acquire, or to repay a loan or debt that had been received or incurred to acquire, a dwelling for the habitation of

Interpretation Bulletins: IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt.

"prescribed rate" of interest means

(a) 6% per annum before 1978,

(b) 8% per annum for 1978, and

(c) for any year, or part thereof, after 1978, such rate of interest as is prescribed therefor except that, for the purpose of computing the benefit under subsection (1) in a taxation year on a home purchase loan received after November 12, 1981 and before 1982, the prescribed rate of interest at the time the loan was received shall be deemed to be 16% per annum.

Regulations: 4301(c) (prescribed rate of interest for para. (c)).

(8) Persons connected with a shareholder — For the purposes of subsection (2), a person is connected with a shareholder of a corporation if that person does not deal at arm's length with the shareholder and if that person is a person other than

(a) a foreign affiliate of the corporation; or

(b) a foreign affiliate of a person resident in Canada with which the corporation does not deal at arm's length.

Selected Cases [s. 80.4]: *Marchand v. R.*, [1997] 2 C.T.C. 312 (FCA) (Blending of market and other interest rates not permitted).

Definitions [s. 80.4]: "amount" — 248(1); "arm's length" — 251(1); "because of" — 80.4(1.1); "Canada" — 255; "carrying on business" — 253; "common-law partner" — 248(1); "connected" — 80.4(8); "corporation" — 248(1), *Interpretation Act* 35(1); "employee" — 248(1); "employer" — 80.4(1)(b)(i); "employment" — 248(1); "foreign affiliate" — 95(1), 248(1); "home purchase loan" — 80.4(7); "home relocation loan", "individual", "office", "officer", "person" — 248(1); "personal services business" — 125(7), 248(1); "prescribed" — 80.4(7), 248(1); "prescribed rate" — Reg. 4301; "related" — 251(2); "resident in Canada" — 94(3)(a)(viii), 250; "share", "shareholder", "specified shareholder" — 248(1); "taxation year" — 249; "writing" — *Interpretation Act* 35(1).

80.5 Deemed interest — Where a benefit is deemed by section 80.4 to have been received in a taxation year by

(a) an individual or corporation under subsection 80.4(1), or

(b) a person or partnership under subsection 80.4(2),

the amount of the benefit shall, for the purposes of subparagraph 8(1)(j)(i) and paragraph 20(1)(c), be deemed to be interest paid in, and payable in respect of, the year by the debtor pursuant to a legal obligation to pay interest on borrowed money.

Definitions [s. 80.5]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "individual", "person" — 248(1); "taxation year" — 249.

Interpretation Bulletins: IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt.

Subdivision g — Amounts Not Included in Computing Income

81. (1) Amounts not included in income — There shall not be included in computing the income of a taxpayer for a taxation year,

(a) **statutory exemptions [including Indians]** — an amount that is declared to be exempt from income tax by any other enactment of Parliament, other than an amount received or receivable by an individual that is exempt by virtue of a provision contained in a tax convention or agreement with another country that has the force of law in Canada;

Related Provisions: 110(1)(f)(i) — Deduction for amount exempted by treaty; 120(2.2) — Credit for persons subject to First Nations Tax; 126(3)(c) — Employees of international organizations; 150(1)(a)(ii) — Non-resident claiming treaty exemption must file tax return; 212(1)(h)(iii) — Exemption from non-resident withholding tax.

Selected Cases [para. 81(1)(a)]: *Jeddore v. R.*, [2002] 1 C.T.C. 2336 (TCC) (Taxpayer unable to establish legal existence of reserve); *Perley v. R.*, [1999] 3 C.T.C. 180 (FCA) (Remission orders applicable only after tax liability has been determined); *Poker v. Canada*, [1995] 1 C.T.C. 84 (FCTD) (Factors considered with respect to taxability of income earned by taxpayer identified in *Indian Act*); *Williams v. Canada*, [1990] 2 C.T.C. 124 (FCA); rev'd [1992] 1 C.T.C. 225 (SCC) (Unemployment insurance benefits received by Indian after work on reserve completed not taxable).

Remission Orders: *Indian Settlements Remission Order*, P.C. 2000-1112 (certain settlements treated as reserves); *Indian Income Tax Remission Order (Yukon Territory Lands)*, P.C. 1995-197 (certain lands in Yukon treated as reserves); *Indian Income Tax Remission Order*, P.C. 1993-523, P.C. 1993-1649 (remission of tax on income from an employer that resides on a reserve); *Indians and Bands on Certain Indian Settlements Remission Orders*, P.C. 1992-1052 (certain settlements treated as

reserves); *Indians and Bands on Certain Indian Settlements Remission Orders (1997)*, P.C. 1997-1529 (certain settlements treated as reserves); *Saskatchewan Indian Federal College Remission Order, 2003*, P.C. 2003-910 (college campus treated as a reserve).

Interpretation Bulletins: IT-62: Indians [withdrawn — under revision]; IT-397R: Amounts excluded from income — statutory exemptions and certain service or RCMP pensions, allowances and compensation; IT-495R3: Child care expenses.

I.T. Technical News: 2 (tax exemption for Indians); 5 (statutory exemptions — *Indian Act*); 7 (Indians: interest income — situs of savings accounts); 9 (taxation of Indians' investment income).

Forms: TD1-IN: Determination of exemption of an Indian's employment income.

(b) **War Savings Certificate** — an amount received under a War Savings Certificate issued by His Majesty in right of Canada or under a similar savings certificate issued by His Majesty in right of Newfoundland before April 1, 1949;

Related Provisions: 212(1)(h)(iii) — Exemption from non-resident withholding tax.

(c) **ship or aircraft of non-residents** — the income for the year of a non-resident person earned in Canada from the operation of a ship or aircraft in international traffic, if the country where that person resided grants substantially similar relief for the year to a person resident in Canada;

Related Provisions: 248(1)"taxable Canadian property"(b)(ii) — Exclusion of ship or aircraft from taxable Canadian property; 250(6) — Residence of international shipping corporation; Canada-U.S. Tax Treaty:Art. VIII — Operation of ships or aircraft in international traffic.

Selected Cases [para. 81(1)(c)]: *Crown Forest Industries Ltd. v. Canada*, [1992] 2 C.T.C. 1 (FCTD); aff'd (Nov. 8, 1993), Doc. A-1103-92, A-1104-92, A-1105-92 (FCA) (Corporation liable to, but exempt from, US tax was resident in US under treaty by virtue of place of management and business); *Furness, Withy & Co. Ltd. v. MNR*, [1968] C.T.C. 35 (SCC) (income from services rendered in Canada to unrelated companies not exempt; income from services by company's Canadian branches rendered to ships in company's service exempt).

Interpretation Bulletins: IT-494: Hire of ships and aircraft from non-residents.

(d) **service pension, allowance or compensation** — a pension payment, an allowance or compensation that is received under or is subject to the *Pension Act*, the *Civilian War-related Benefits Act* or the *War Veterans Allowance Act*, an amount received under the *Gallantry Awards Order* or compensation received under the regulations made under section 9 of the *Aeronautics Act*;

Related Provisions: 81(1)(d.1) — Exemption for certain Canadian Forces members and veterans benefits; 212(1)(h)(iii) — Exemption from non-resident withholding tax.

History: Para. 81(1)(d) amended by 1999, c. 10, s. 44, to substitute "*Civilian War-related Benefits Act*" for "*Merchant Navy Veteran and Civilian War-related Benefits Act*", proclaimed into force on May 1, 1999.

Para. 81(1)(d) amended by 1994, c. 7, Sch. IV (1992, c. 24), s. 15, to substitute "*Merchant Navy Veteran and Civilian War-related Benefits Act*" for "*Civilian War Pension and Allowances Act*", effective July 1, 1992.

Para. 81(1)(d) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 61(1), to add "an amount received under the *Gallantry Awards Order*", applicable to 1986 *et seq.*

Interpretation Bulletins: IT-397R: Amounts excluded from income — statutory exemptions and certain service or RCMP pensions, allowances and compensation.

Proposed Addition — 81(1)(d.1)

(d.1) **Canadian Forces members and veterans amounts** — the total of all amounts received by the taxpayer in the year on account of a Canadian Forces income support benefit payable to the taxpayer under Part 2 of the *Canadian Forces Members and Veterans Re-establishment and Compensation Act* or on account of a disability award, death benefit, clothing allowance or detention benefit payable to the taxpayer under Part 3 of that Act;

Application: S.C. 2005, c. 21 (Bill C-45, Royal Assent May 13, 2005), s. 102, added 81(1)(d.1), in force on a day to be proclaimed by the Governor in Council.

Related Provisions: 6(1)(f.1) — Income inclusion for certain payments under CFMVRCA; 81(1)(d) — Exemption for other service pensions.

(e) **war pensions** — a pension payment received on account of disability or death arising out of a war from a country that was an ally of Canada at the time of the war, if that country grants substantially similar relief for the year to a person receiving a pension referred to in paragraph (d);

Related Provisions: 212(1)(h)(iii) — Exemption from non-resident withholding tax.

History: Para. 81(1)(e) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 61(2), applicable to 1988 *et seq.* Para. (e) formerly read:

(e) service pension from another country — a pension payment received on account of disability or death arising out of war service from a country that was an ally of Her majesty or His Majesty at the time of the war service, if that country grants substantially similar relief for the year to a person receiving a pension referred to in paragraph (d);

Interpretation Bulletins: IT-397R: Amounts excluded from income — statutory exemptions and certain service or RCMP pensions, allowances and compensation.

(f) **Halifax disaster pensions, grants or allowances** — a pension payment, a grant or an allowance in respect of death or injury sustained in the explosion at Halifax in 1917 and received from the Halifax Relief Commission the incorporation of which was confirmed by *An Act respecting the Halifax Relief Commission*, chapter 24 of the Statutes of Canada, 1918, or received pursuant to the *Halifax Relief Commission Pension Continuation Act*, chapter 88 of the Statutes of Canada, 1974-75-76;

Related Provisions: 212(1)(h)(iii) — Exemption from non-resident withholding tax.

History: Para. 81(1)(f) amended by 1995, c. 18, s. 88, in force September 15, 1995. Para. (f) formerly read:

(f) a pension payment, a grant or an allowance in respect of death or injury sustained in the explosion at Halifax in 1917 received from the Halifax Relief Commission the incorporation of which was confirmed by *An Act respecting the Halifax Relief Commission*, chapter 24 of the Statutes of Canada, 1918, or from the Canadian Pension Commission pursuant to the *Halifax Relief Commission Pension Continuation Act*, chapter 88 of the Statutes of Canada, 1974-75-76;

(g) **compensation by Federal Republic of Germany** — a payment made by the Federal Republic of Germany or by a public body performing a function of government within that country as compensation to a victim of National Socialist persecution, where no tax is payable in respect of that payment under a law of the Federal Republic of Germany that imposes an income tax;

(g.1) **income from personal injury award property** — the income for the year from any property acquired by or on behalf of a person as an award of, or pursuant to an action for, damages in respect of physical or mental injury to that person, or from any property substituted therefor and any taxable capital gain for the year from the disposition of any such property,

(i) where the income was income from the property, if the income was earned in respect of a pe-

riod before the end of the taxation year in which the person attained the age of 21 years, and

(ii) in any other case, if the person was less than 21 years of age during any part of the year;

Related Provisions: 81(1)(g.2) — Income from income exempt under paragraph (g.1); 81(5) — Election to increase ACB of capital property at age 21; 212(1)(h)(iii) — Exemption from non-resident holding tax; 248(5) — Substituted property.

Interpretation Bulletins: IT-365R2: Damages, settlements and similar receipts.

(g.2) **income from income exempt under para. (g.1)** — any income for the year from any income that is by virtue of this paragraph or paragraph (g.1) not required to be included in computing the taxpayer's income (other than any income attributable to any period after the end of the taxation year in which the person on whose behalf the income was earned attained the age of 21 years);

Related Provisions: 212(1)(h)(iii) — Exemption from non-resident withholding tax.

Interpretation Bulletins: IT-365R2: Damages, settlements and similar receipts.

(g.3) **hepatitis C trust** — the amount that, but for this paragraph, would be the income of the taxpayer for the year where

(i) the taxpayer is the trust established under the 1986-1990 Hepatitis C Settlement Agreement entered into by Her Majesty in right of Canada and Her Majesty in right of each of the provinces, and

(ii) the only contributions made to the trust before the end of the year are those provided for under the Agreement;

History: Para. 81(1)(g.3) added by 2000, c. 19, s. 12, applicable to 1999 *et seq.*

(g.4) **relief for increased heating expenses** — an amount received pursuant to the *Order Authorizing Ex Gratia Payments for Increased Heating Expenses*;

History: Para. 81(1)(g.4) added by 2001, c. 17, subsec. 60(1), applicable to amounts received after 2000.

(h) **social assistance** — where the taxpayer is an individual (other than a trust), a social assistance payment (other than a prescribed payment) ordinarily made on the basis of a means, needs or income test under a program provided for by an Act of Parliament or a law of a province, to the extent that it is received directly or indirectly by the taxpayer for the benefit of another individual (other than the taxpayer's spouse or common-law partner or a person who is related to the taxpayer or to the taxpayer's spouse or common-law partner), if

(i) no family allowance under the *Family Allowances Act* or any similar allowance under a law of a province that provides for payment of an allowance similar to the family allowance provided under that Act is payable in respect of the other individual for the period in respect of which the social assistance payment is made, and

(ii) the other individual resides in the taxpayer's principal place of residence, or the taxpayer's principal place of residence is maintained for use as the residence of that other individual, throughout the period referred to in subparagraph (i);

Possible Future Amendment — 81(1)(h)

Letter from Dept. of Finance, January 31, 2002:

Dear Colleague:

I am writing in response to the April 11, 2001 letter that you forwarded to me from [xxx].

I have already responded directly to [xxx] in writing, with copies to the Honourable Martin Cauchon, and Mr. Greg Thompson, M.P. A copy of this response is attached, as well as a response from the Canada Customs and Revenue Agency.

More recently, foster families in New Brunswick have asked for a legislative change to exempt relief and respite care payments from taxation. I have asked my officials to examine this issue.

Thank you for keeping me apprised of this matter.

Sincerely,

The Honourable Paul Martin, P.C., M.P.
Minister of Finance

Related Provisions: 18(1)(c) — Foster parents cannot deduct expenses laid out to earn exempt income; 56(1)(u), 110(1)(f) — Income inclusion and deduction — social assistance payments; 212(1)(h)(iii) — Exemption from non-resident holding tax.

History: Para. 81(1)(h) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

That portion of para. 81(1)(h) preceding subpara. (i) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 33, to substitute "the taxpayer's spouse or a person who is related to the taxpayer or to the taxpayer's spouse" for "a person who is cohabiting in a conjugal relationship with the taxpayer or who is related to the taxpayer or to such a person", applicable after 1992.

Para. 81(1)(h) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 61(3), applicable to 1982 *et seq.* and, notwithstanding subsecs. 152(4) to (5), if before 1992 [1994, c. 7, Sch. VIII (1993, c. 24), s. 159 provides that such a request made before December 11, 1993 shall be deemed to have been made before 1992] a taxpayer requested the Minister of National Revenue to do so, such assessments of tax, amounts deemed to be paid on account of tax, interest and penalties payable or deemed to be paid by the taxpayer for any such year shall be made as are necessary to give effect to the para. in respect of the taxpayer.

Regulations: No prescribed payments to date.

I.T. Technical News: 17 (application of para. 81(1)(h) to employment income); 31 (application of para. 81(1)(h)).

(i) **RCMP pension or compensation** — a pension payment or compensation received under section 5, 31 or 45 of the *Royal Canadian Mounted Police Pension Continuation Act*, chapter R-10 of the Revised Statutes of Canada, 1970, or section 32 or 33 of the *Royal Canadian Mounted Police Superannuation Act*, in respect of an injury, disability or death;

Related Provisions: 212(1)(h)(iii) — Exemption from non-resident withholding tax.

Interpretation Bulletins: IT-397R: Amounts excluded from income — statutory exemptions and certain service or RCMP pensions, allowances and compensation.

(j) [Repealed under former Act]

(k) **employees profit sharing plan** — a payment or part of a payment from an employees profit sharing plan that section 144 provides is not to be included;

Related Provisions: 212(1)(h)(iii) — Exemption from non-resident withholding tax.

(l) **prospecting** — an amount in respect of the receipt of a share that section 35 provides is not to be included;

Related Provisions: 212(1)(h)(iii) — Exemption from non-resident withholding tax.

Selected Cases [para. 81(1)(l)]: *Cooper v. MNR*, [1977] C.T.C. 107 (FCA) (Proceeds from disposition of shares received for claims acquired pursuant to agreement with prospector exempt).

(m) **interest on certain obligations** — interest that accrued to, became receivable or was received by, a corporation resident in Canada (in this paragraph referred to as the "parent corporation") on a bond, debenture, bill, note, mortgage or similar obligation re-

ceived by it as consideration for the disposition by it, before June 18, 1971, of

(i) a business carried on by it in a country other than Canada, or

(ii) all of the shares of a corporation that carried on a business in a country other than Canada, and such of the debts and other obligations of that corporation as were, immediately before the disposition, owing to the parent corporation,

if

(iii) the business was of a public utility or public service nature,

(iv) the business or the property described in subparagraph (ii), as the case may be, was disposed of to a person or persons resident in that country, and

(v) the obligation received by the parent corporation was issued by or guaranteed by the government of that country or any agent thereof;

Related Provisions: 40(2)(d) — Reduction in capital loss on bond to reflect exempt income; 87(2)(jj) — Amalgamations — continuation of predecessor corporations; 212(1)(h)(iii) — Exemption from non-resident withholding tax.

(n) **Governor General** — income from the office of Governor General of Canada;

(o), (p) [Repealed]

History: Paras. 81(1)(o) and (p) repealed by 1998, c. 19, subsec. 14(1), applicable to 1998 *et seq.* The paras. formerly read:

(o) RESP refunds — a refund of payments (within the meaning assigned by subsection 146.1(1));

(p) educational assistance payments — an educational assistance payment (within the meaning assigned by subsection 146.1(1)) received by a beneficiary under an education savings plan (within the meaning assigned by subsection 146.1(1)) that is not registered or the registration of which has been revoked pursuant to section 146.1;

(q) **provincial indemnities** — an amount paid to an individual as an indemnity under a prescribed provision of the law of a province; or

Regulations: 6501 (prescribed provisions — criminal injuries compensation and motor vehicle accident claims).

(r) **foreign retirement arrangements** — an amount that is credited or added to a deposit or account governed by a foreign retirement arrangement as interest or other income in respect of the deposit or account, where the amount would, but for this paragraph, be included in the taxpayer's income solely because of that crediting or adding.

Related Provisions: 56(1)(a)(i)(C.1), 56(12) — Inclusion in income of payment from foreign retirement arrangement; 146(20) — Where amount credited or added deemed not received.

History: Para. 81(1)(r) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 61(4), applicable to 1990 *et seq.*

(s) [Repealed under former Act]

Proposed Addition — 81(1) — Recontribution of income from employees' leave of absence plan

Letter from Dept. of Finance, June 30, 2000:

Dear [xxx]

Thank you for your letter of January 5, 2000 concerning the taxation of amounts paid to a participant under a leave of absence plan. I wish also to acknowledge your subsequent telephone conversations with Mr. Simon Thompson of this Division. I apologize for the delay in writing to you.

In your letter you describe a plan to fund "salary" of a plan participant on leave from employment. We understand that the Canada Customs and Revenue Agency has provided an advance ruling to the effect the plan will be a prescribed plan under paragraph 6801(a) of the *Income Tax Regulations* (and not a salary deferral arrangement or employee benefit plan). Amounts withheld and contributed to the plan from a participant's salary in a particular year will not be taxable in that year, but rather when received upon payment from the plan. We also understand that under the plan the investment income earned in each year on a participant's contributions to the plan will be allocated and paid out to the participant (and included in the participant's income for that year). The participant is required under the plan, however, to contribute the allocated income amount back to the plan ("re-contributions").

You are seeking a technical amendment to the income tax provisions so that the amount of re-contributions by a participant is excluded from the participant's income when paid out of the plan during the leave period. We agree that it would be appropriate that the return of re-contributions not be included in computing income. We will recommend that an amendment to this effect apply to the 2000 and subsequent taxation years.

Thank you for your [*sic*] writing.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Selected Cases [subsec. 81(1)]: *ACTRA Fraternal Benefit Society v. R.*, [1997] 3 C.T.C. 61 (FCA) (Allocation of assets to particular fund was rebuttable presumption only).

(1.1) [Repealed under former Act]

(2) M.L.A.'s expense allowance — Where an elected member of a provincial legislative assembly has, under an Act of the provincial legislature, been paid an allowance in a taxation year for expenses incident to the discharge of the member's duties in that capacity, the allowance shall not be included in computing the member's income for the year unless it exceeds ½ of the maximum fixed amount provided by law as payable to the member by way of salary, indemnity and other remuneration as a member in respect of attendance at a session of the legislature, in which event there shall be included in computing the member's income for the year only the amount by which the allowance exceeds ½ of that maximum fixed amount.

Related Provisions: 6(1)(b) — Allowances taxable, and exclusions.

Interpretation Bulletins: IT-266: Taxation of members of provincial legislative assemblies (archived).

(3) Municipal officers' expense allowance — Where a person who is

(a) an elected officer of an incorporated municipality,

(b) an officer of a municipal utilities board, commission or corporation or any other similar body, the incumbent of whose office as such an officer is elected by popular vote, or

(c) a member of a public or separate school board or similar body governing a school district,

has been paid by the municipal corporation or the body of which the person was such an officer or member (in this subsection referred to as the person's "employer") an amount as an allowance in a taxation year for expenses incident to the discharge of the person's duties as such an officer or member, the allowance shall not be included in computing the person's income for the year unless it exceeds ½ of the amount that was paid to the person in the year by the person's employer as salary or other remuneration as such an officer or member, in which event there shall be included in computing the person's income for the year only the amount by which the allowance exceeds ½ of the amount so paid to the person by way of salary or remuneration.

Related Provisions: 6(1)(b) — Allowances taxable, and exclusions.

Interpretation Bulletins: IT-292: Taxation of elected officers of incorporated municipalities, school boards, etc.

(3.1) Travel expenses — There shall not be included in computing an individual's income for a taxation year an amount (not in excess of a reasonable amount) received by the individual from an employer with whom the individual was dealing at arm's length as an allowance for, or reimbursement of, travel expenses incurred by the individual in the year in respect of the individual's part-time employment in the year with the employer (other than expenses incurred in the performance of the duties of the individual's part-time employment) if

(a) throughout the period in which the expenses were incurred,

(i) the individual had other employment or was carrying on a business, or

(ii) where the employer is a designated educational institution (as within the meaning assigned by subsection 118.6(1)), the duties of the individual's part-time employment were the provision in Canada of a service to the employer in the individual's capacity as a professor or teacher; and

(b) the duties of the individual's part-time employment were performed at a location not less than 80 kilometres from,

(i) where subparagraph (a)(i) applies, both the individual's ordinary place of residence and the place of the other employment or business referred to in that subparagraph, and

(ii) where subparagraph (a)(ii) applies, the individual's ordinary place of residence.

History: Subsec. 81(3.1) amended by 2001, c. 17, subsec. 60(2), applicable to 1995 *et seq.* and, notwithstanding subsecs. 152(4) to (5), any assessment of an individual's tax payable under the Act for any taxation year that ends before 2000 shall be made that is necessary to take into account the application of subsec. 81(3.1). Subsec. (3.1) formerly read:

(3.1) An amount received by an individual in respect of the individual's part-time employment by an employer with whom the individual was dealing at arm's length as an allowance for, or reimbursement of, travel expenses incurred during a period throughout which the individual had other employment or was carrying on a business shall not be included in computing the individual's income to the extent that it is paid by the employer and does not exceed a reasonable amount on account of travel expenses (other than expenses incurred in the performance of the duties of the individual's part-time employment) incurred by the individual in respect of that part-time employment, if the duties of the part-time employment are performed at a location not less than 80 kilometres from both the individual's ordinary place of residence and principal place of employment or business.

Interpretation Bulletins: IT-522R: Vehicle, travel and sales expenses of employees.

(4) Payments for volunteer [emergency] services — Where

(a) an individual was employed or otherwise engaged in a taxation year by a government, municipality or public authority (in this subsection referred to as "the employer") and received in the year from the employer one or more amounts for the performance, as a volunteer, of the individual's duties as

(i) an ambulance technician,

(ii) a firefighter, or

(iii) a person who assists in the search or rescue of individuals or in other emergency situations, and

(b) if the Minister so demands, the employer has certified in writing that

(i) the individual was in the year a person described in paragraph (a), and

(ii) the individual was at no time in the year employed or otherwise engaged by the employer, otherwise than as a volunteer, in connection with the performance of any of the duties referred to in paragraph (a) or of similar duties,

there shall not be included in computing the individual's income derived from the performance of those duties the lesser of $1,000 and the total of those amounts.

History: Subsec. 81(4) added by 2001, c. 17, subsec. 60(2), applicable to 1998 *et seq.*

Interpretation Bulletins: IT-495R3: Child care expenses.

(5) Election — Where a taxpayer or a person described in paragraph (1)(g.1) has acquired capital property under the circumstances described in that paragraph, the taxpayer or the person may, in the return of income of the taxpayer for the taxation year in which the taxpayer attains the age of 21 years, elect to treat any such capital property held by the taxpayer or person as having been disposed of on the day immediately preceding the day on which the taxpayer attained the age of 21 years for proceeds of disposition equal to the fair market value of the property on that day and the person or taxpayer making the election shall be deemed to have reacquired that property immediately thereafter at a cost equal to those proceeds.

Definitions [s. 81]: "Act" — *Interpretation Act* 35(1); "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 255; "capital property" — 54, 248(1); "common-law partner" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "designated educational institution" — 118.6(1); "employees profit sharing plan" — 144(1), 248(1); "employed" — 248(1); "employer" — 81(4)(a), 248(1); "employment", "foreign retirement arrangement" — 248(1); "Her Majesty" — *Interpretation Act* 35(1); "His Majesty" — *Interpretation Act* 35(1)"Her Majesty"; "individual", "international traffic" — 248(1); "legislative assembly", "legislature" — *Interpretation Act* 35(1)"legislative assembly"; "Minister", "non-resident", "office" — 248(1); "Parliament" — *Interpretation Act* 35(1); "person", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "regulation" — 248(1); "related" — 251(2); "resident in Canada" — 94(3)(a)(viii), 250; "share" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

Subdivision h — Corporations Resident in Canada and Their Shareholders

82. (1) Taxable dividends received — In computing the income of a taxpayer for a taxation year, there shall be included

(a) the total of

(i) all amounts each of which is a taxable dividend received by the taxpayer in the year as part of a dividend rental arrangement of the taxpayer from a corporation resident in Canada or a taxable dividend received by the taxpayer in the year from a corporation resident in Canada that is not a taxable Canadian corporation,

(i.1) where the taxpayer is a trust, all amounts each of which is all or part of a taxable dividend (other than a taxable dividend described in subparagraph (i)) that was received by the trust in the year on a share of the capital stock of a taxable Canadian corporation and that can reasonably be considered as having been included in computing the income of a beneficiary under the trust who was non-resident at the end of the year, and

(ii) the amount, if any, by which

(A) the total of all amounts received by the taxpayer in the year from corporations resident in Canada as, on account of, in lieu of payment of or in satisfaction of, taxable dividends, other than an amount included in computing the income of the taxpayer because of subparagraph (i) or (i.1)

exceeds

(B) where the taxpayer is an individual, the total of all amounts paid by the taxpayer in the year that are deemed by subsection 260(5) to have been received by another person as taxable dividends,

Proposed Amendment — 82(1)(a)(ii)(B)

(B) where the taxpayer is an individual, the total of all amounts each of which is, or is deemed by paragraph 260(12)(b) to have been, an amount paid by the taxpayer in the year and deemed by subsection 260(5.1) to have been received by another person as a taxable dividend,

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 83, will amend cl. 82(1)(a)(ii)(B) to read as above, applicable

(a) to amounts paid in respect of arrangements made after 2001, except that, in its application to amounts paid in respect of an arrangement made before December 21, 2002, cl. 82(1)(a)(ii)(B) is to be read without reference to the expression "or is deemed by paragraph 260(12)(b) to have been" unless an election referred to in para. 185(25)(b) of the amending legislation [see under 248(1)"dividend rental arrangement] has been made in respect of the arrangement; and

(b) to amounts paid in respect of arrangements made after November 2, 1998 and before 2002, if the parties to the arrangement have made the election referred to in para. 185(25)(b) of the amending legislation [see under 248(1)"dividend rental arrangement], except that in its application to those arrangements made before 2002, the reference to the expression "subsection 260(5.1)" in cl. 82(1)(a)(ii)(B) is to be read as a reference to the expression "subsection 260(5)".

Technical Notes: Clause 82(1)(a)(ii)(B) allows an individual who has entered into a securities lending arrangement to deduct, to the extent of the individual's dividend income, the dividend compensation payment paid by the individual.

Due to the amendments made to the securities lending arrangement rules in section 260, clause 82(1)(a)(ii)(B) is amended in two ways. First, it is amended to apply in respect of an individual's specified proportion of a dividend compensation payment made by a partnership of which the individual is a member. Secondly, since new subsection 260(5.1) now sets out the treatment of dividend compensation payments, the clause is amended to replace the reference to "subsection 260(5)" with a reference to "subsection 260(5.1)".

Whether this amendment applies in respect of a particular securities lending arrangement depends on when the arrangement is made and, in the case of an arrangement made after November 2, 1998 and before December 21, 2002, whether the parties to the arrangement have elected to have the amended definition of "dividend rental arrangement" in subsection 248(1) apply. The following table shows these alternative results.

	Date Arrangement Was Made			
	Before November 3, 1998	*After November 2, 1998 and before 2002*	*After 2001 and before December 21, 2002*	*After December 20, 2002*
Election made	Election not available. Amendment does not apply	Amendment applies, but read reference to 260(5.1) as a reference to 260(5)	Amendment applies	Election not available. Amendment applies
Election not made	Election not available. Amendment does not apply	Amendment does not apply	Amendment applies, but ignore reference to 260(12)(b)	Election not available. Amendment applies

plus

(b) where the taxpayer is an individual, other than a trust that is a registered charity, 1/4 of the amount determined under subparagraph (a)(ii) in respect of the taxpayer for the year.

Related Provisions: 12(1)(j) — Inclusion into income from business or property; 52(3) — Cost of stock dividend; 82(1.1) — Application of 82(1)(a)(i); 82(2) — Dividends included in income by attribution rules; 82(3) — Dividends received by spouse; 84 — Deemed dividends; 86.1 — Election to avoid income inclusion when shares received on foreign spin-off transaction; 90 — Dividends received from non-resident corporation; 104(19) — Taxable dividend received by trust; 112(3)(b)(i) — Reduction in loss on subsequent disposition of share by corporate shareholder; 112(4)–(4.3) — Loss on share held as inventory; 120.4(1)"split income"(a)(i) — Dividends received by children subject to income splitting tax; 121 — Dividend tax credit; 127.52(1)(f) — Exclusion of gross-up for minimum tax purposes; 137(4.2) — Credit unions — deemed interest deemed not to be a dividend; 139.1(4)(f), (g) — Deemed dividend on demutualization of insurance corporation; 139.2 — Deemed dividend on distribution by mutual holding corporation; Canada-U.S. Tax Treaty:Art. X — Taxation of dividends.

History: Subpara. 82(1)(a)(i.1) added and cl. 82(1)(a)(ii)(A) amended by 1998, c. 19, subsecs. 114(1) and (2), applicable to taxation years that end after April 26, 1995. Cl. 82(1)(a)(ii)(A) formerly read:

(A) the total of all amounts received by the taxpayer in the year from corporations resident in Canada as, on account or in lieu of payment of, or in satisfaction of, taxable dividends, other than an amount included in computing the income of the taxpayer by reason of subparagraph (i),

Selected Cases [subsec. 82(1)]: *Doswell v. R.*, [2003] 4 C.T.C. 2209 (TCC) (Grossed-up dividend amount used for Old Age Security clawback); *Mulligan v. R.*, [1999] 3 C.T.C. 2092 (TCC) (Corporate informality can be disregarded).

Regulations: 201(1)(a) (information return).

Interpretation Bulletins: IT-67R3: Taxable dividends from corporations resident in Canada; IT-379R: Employees profit sharing plans — allocations to beneficiaries; IT-432R2: Benefits conferred on shareholders; IT-524: Trusts — flow-through of taxable dividends to a beneficiary — after 1987.

I.T. Technical News: 11 (U.S. spin-offs (divestitures) — dividends in kind).

Forms: T5: Statement of investment income; T5 Summ: Return of investment income.

(1.1) Limitations as to subpara. (1)(a)(i) — An amount shall be included in the amounts described in subparagraph (1)(a)(i) in respect of a taxable dividend received at any time as part of a dividend rental arrangement only where that dividend was received on a share acquired before that time and after April, 1989.

Origin of subsec. 82(1.1): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the application rule for subsec. 82(1) in 1990, c. 39, subsec. 18(2)).

(2) Certain dividends [deemed] received by taxpayer — Where by reason of subsection 56(4) or (4.1) or

sections 74.1 to 75 of this Act or section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, there is included in computing a taxpayer's income for a taxation year a dividend received by another person, for the purposes of this Act, the dividend shall be deemed to have been received by the taxpayer.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-440R2: Transfer of rights to income.

(3) Dividends received by spouse [or common-law partner] — Where the amount that would, but for this subsection, be deductible under subsection 118(1) by reason of paragraph 118(1)(a) in computing a taxpayer's tax payable under this Part for a taxation year is less than the amount that would be so deductible if no amount were required by subsection (1) to be included in computing the income for the year of the taxpayer's spouse or common-law partner and the taxpayer so elects in the taxpayer's return of income for the year under this Part, all amounts described in paragraph (1)(a) received in the year from taxable Canadian corporations by the taxpayer's spouse or common-law partner shall be deemed to have been so received by the taxpayer and not by the spouse or common-law partner.

Related Provisions: 220(3.2), Reg. 600(b) — Late filing or revocation of election.

History: Subsec. 82(3) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Selected Cases [subsec. 82(3)]: *Gillis v. R.*, [1977] C.T.C. 343 (FCTD) (All of spouse's income to be included if any is included).

Interpretation Bulletins [subsec. 82(3)]: IT-295R4: Taxable dividends received after 1987 by a spouse; IT-513R: Personal tax credits.

Definitions [s. 82]: "amount" — 248(1); "Canada" — 255; "Canadian corporation" — 89(1), 248(1); "common-law partner" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend", "dividend rental arrangement", "individual" — 248(1); "non-resident" — 248(1); "person" — 248(1); "received" — 248(7); "registered charity" — 248(1); "resident in Canada" — 250; "series of transactions" — 248(10); "tax payable" — 248(2); "taxable Canadian corporation", "taxable dividend" — 89(1), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

83. (1) Qualifying dividends — Where a qualifying dividend has been paid by a public corporation to shareholders of a series of tax-deferred preferred shares of a class of the capital stock of the corporation that were outstanding on March 31, 1977, the following rules apply:

(a) no part of the qualifying dividend shall be included in computing the income of any shareholder of the corporation by virtue of this subdivision; and

(b) in computing the adjusted cost base to any shareholder of the corporation of any tax-deferred preferred share of the corporation owned by the shareholder, there shall be deducted in respect of the qualifying dividend an amount as provided by subparagraph 53(2)(a)(i).

Related Provisions: 83(3) — Late filed elections; 83(6) — "Qualifying dividend" defined; 89(3) — Simultaneous dividends; 184 — Tax on excessive elections.

Regulations: 2107 (tax-deferred preferred series).

Interpretation Bulletins: IT-67R3: Taxable dividends from corporations resident in Canada; IT-379R: Employees profit sharing plans — allocations to beneficiaries; IT-465R: Non-resident beneficiaries of trusts.

(2) Capital dividend [not taxable] — Where at any particular time after 1971 a dividend becomes payable by a private corporation to shareholders of any class of shares of its capital stock and the corporation so elects in respect of the full amount of the dividend, in prescribed manner and prescribed form and at or before the particular time or the first day on which any part of the dividend was paid if that day is earlier than the particular time, the following rules apply:

(a) the dividend shall be deemed to be a capital dividend to the extent of the corporation's capital dividend account immediately before the particular time; and

(b) no part of the dividend shall be included in computing the income of any shareholder of the corporation.

Related Provisions: 14(1.01), (1.02) — Election where proceeds of disposition exceed eligible capital expenditure; 83(2.1) — Capital dividend on certain shares disallowed; 83(3) — Late filed elections; 87(2)(z.1) — Amalgamations — capital dividend account; 88(2)(b) — Winding-up of a Canadian corporation; 89(1) — Capital dividend account; 89(1)"taxable dividend"(a) — Taxable dividend excludes capital dividend; 89(3) — Simultaneous dividends; 104(20) — Flow-through of capital dividend through trust; 108(3)(a) — "Income" of a trust; 112(3)(a), 112(3)(b)(ii) — Reduction in loss on disposition of share on which capital dividend paid; 112(3.1)(a), 112(3.1)(b)(ii) — Reduction in loss of partner on disposition of share by partnership; 112(3.2)(b) — Reduction in loss on disposition of share by trust; 112(5.2)B(b)(iv) — Adjustment for dividends received on mark-to-market property; 133(1)(e) — NRO investment corporations; 184, 185 — Tax on excessive elections; 212(1)(c)(ii) — Tax on payments to non-residents — estate or trust income derived from capital dividend; 212(2)(b) — Tax on capital dividend paid to non-resident; 220(3.2), Reg. 600(b) — Late filing or revocation of election; 248(1)"capital dividend" — Definition applies to entire Act.

Regulations: 2101 (prescribed manner, prescribed form).

Interpretation Bulletins: IT-66R6: Capital dividends; IT-67R3: Taxable dividends from corporations resident in Canada; IT-146R4: Shares entitling shareholders to choose taxable or capital dividends; IT-149R4: Winding-up dividend; IT-430R3: Life insurance proceeds received by a private corporation or a partnership as a consequence of death.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

I.T. Technical News: 9 (life insurance policy used as security for indebtedness).

Advance Tax Rulings: ATR-54: Reduction of paid-up capital.

Forms: T2054: Election for a capital dividend under subsec. 83(2).

(2.1) Idem — Notwithstanding subsection (2), where a dividend that, but for this subsection, would be a capital dividend is paid on a share of the capital stock of a corporation and the share (or another share for which the share was substituted) was acquired by its holder in a transaction or as part of a series of transactions one of the main purposes of which was to receive the dividend,

(a) the dividend shall, for the purposes of this Act (other than for the purposes of Part III and computing the capital dividend account of the corporation), be deemed to be received by the shareholder and paid by the corporation as a taxable dividend and not as a capital dividend; and

(b) paragraph (2)(b) does not apply in respect of the dividend.

Related Provisions: 83(2.2)–(2.4) — Exceptions; 87(2)(z.1) — Amalgamations — capital dividend account; 112(3)(a)(i), 112(3)(b)(ii), 112(3.1)(a), 112(3.1)(b)(ii), 112(3.2)(b) — Taxable dividend under 83(2.1) excluded from stop-loss rule on disposition of share; 248(1)"life insurance capital dividend" — Definition applies to entire Act248(10) — Series of transactions.

Interpretation Bulletins: IT-66R6: Capital dividends.

Advance Tax Rulings: ATR-54: Reduction of paid-up capital.

History [subsec. 83(2.1)]: Subsec. 83(2.1) added by 1988, c. 55, s. 55, applicable with respect to dividends paid after 4 p.m. EDST, September 25, 1987.

(2.2) Where subsec. (2.1) does not apply — Subsection (2.1) does not apply in respect of a particular divi-

dend, in respect of which an election is made under subsection (2), paid on a share of the capital stock of a particular corporation to an individual where it is reasonable to consider that all or substantially all of the capital dividend account of the particular corporation immediately before the particular dividend became payable consisted of amounts other than any amount

(a) added to that capital dividend account under paragraph (b) of the definition "capital dividend account" in subsection 89(1) in respect of a dividend received on a share of the capital stock of another corporation, which share (or another share for which the share was substituted) was acquired by the particular corporation in a transaction or as part of a series of transactions one of the main purposes of which was that the particular corporation receive the dividend, but not in respect of a dividend where it is reasonable to consider that the purpose of paying the dividend was to distribute an amount that was received by the other corporation and included in computing the other corporation's capital dividend account by reason of paragraph (d) of that definition;

(b) added to that capital dividend account under paragraph 87(2)(z.1) as a result of an amalgamation or winding-up or a series of transactions including the amalgamation or winding-up that would not have been so added had the amalgamation or winding-up occurred or the series of transactions been commenced after 4:00 p.m. Eastern Daylight Saving Time, September 25, 1987;

(c) added to that capital dividend account at a time when the particular corporation was controlled, directly or indirectly, in any manner whatever, by one or more non-resident persons; or

(d) in respect of a capital gain from a disposition of a property by the particular corporation or another corporation that may reasonably be considered as having accrued while the property (or another property for which it was substituted) was a property of a corporation that was controlled, directly or indirectly, in any manner whatever, by one or more non-resident persons.

Related Provisions: 248(5) — Substituted property; 248(10) — Series of transactions; 256(5.1), (6.2) — Controlled directly or indirectly — control in fact.

Interpretation Bulletins: IT-66R6: Capital dividends.

I.T. Technical News: 25 (*Silicon Graphics* case — dispersed control is not control).

(2.3) Idem — Subsection (2.1) does not apply in respect of a dividend, in respect of which an election is made under subsection (2), paid on a share of the capital stock of a corporation where it is reasonable to consider that the purpose of paying the dividend was to distribute an amount that was received by the corporation and included in computing its capital dividend account by reason of paragraph (d) of the definition "capital dividend account" in subsection 89(1).

Interpretation Bulletins: IT-66R6: Capital dividends.

(2.4) Idem — Subsection (2.1) does not apply in respect of a particular dividend, in respect of which an election is made under subsection (2), paid on a share of the capital stock of a particular corporation to a corporation (in this subsection referred to as the "related corporation") related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the particular corporation where it is reasonable to consider that all or substantially all of the capital dividend account of the particular corporation immediately before the particular dividend became payable consisted of amounts other than any amount

(a) added to that capital dividend account under paragraph (b) of the definition "capital dividend account" in subsection 89(1) in respect of a dividend received on a share of the capital stock of another corporation if it is reasonable to consider that any portion of the capital dividend account of that other corporation immediately before that dividend became payable consisted of amounts added to that account under paragraph 87(2)(z.1) or paragraph (b) of that definition as a result of a transaction or a series of transactions that would not have been so added had the transaction occurred or the series of transactions been commenced after 4:00 p.m. Eastern Daylight Saving Time, September 25, 1987;

(b) that represented the capital dividend account of a corporation before it became related to the related corporation;

(c) added to the capital dividend account of the particular corporation at a time when that corporation was controlled, directly or indirectly, in any manner whatever, by one or more non-resident persons;

(d) in respect of a capital gain from a disposition of a property by the particular corporation or another corporation that may reasonably be considered as having accrued while the property (or another property for which it was substituted) was a property of a corporation that was controlled, directly or indirectly, in any manner whatever, by one or more non-resident persons; or

(e) in respect of a capital gain from a disposition of a property (or another property for which it was substituted) that may reasonably be considered as having accrued while the property or the other property was a property of a person that was not related to the related corporation.

Related Provisions: 248(5) — Substituted property; 248(10) — Series of transactions; 256(5.1), (6.2) — Controlled directly or indirectly — control in fact.

Interpretation Bulletins: IT-66R6: Capital dividends.

I.T. Technical News: 25 (*Silicon Graphics* case — dispersed control is not control).

(3) Late filed elections — Where at any particular time after 1974 a dividend has become payable by a corporation to shareholders of any class of shares of its capital stock, and subsection (1) or (2) would have applied to the dividend except that the election referred to therein was not made on or before the day on or before which the election was required by that subsection to be made, the election shall be deemed to have been made at the particular time or on the first day on which any part of the dividend was paid, whichever is the earlier, if

(a) the election is made in prescribed manner and prescribed form;

(b) an estimate of the penalty in respect of that election is paid by the corporation when that election is made; and

(c) the directors or other person or persons legally entitled to administer the affairs of the corporation have, before the time the election is made, authorized the election to be made.

Related Provisions: 83(3.1) — Request for late filed election; 83(4) — Penalty for late filed election; 83(5) — Unpaid balance of penalty.

Regulations: 2101(e) (prescribed manner, prescribed form).

Forms: T2054: Election for a capital dividend under subsec. 83(2).

(3.1) Request for election — The Minister may at any time, by written request served personally or by registered mail, request that an election referred to in subsection (3) be made by a taxpayer, and where the taxpayer on whom such a request is served does not comply therewith within 90 days of service thereof on the taxpayer, subsection (3) does not apply to such an election made by the taxpayer.

Related Provisions: 244(5), (6) — Proof of service; 248(7) — Mail deemed received on day mailed.

(4) Penalty for late filed election — For the purposes of this section, the penalty in respect of an election referred to in paragraph (3)(a) is an amount equal to the lesser of

(a) 1% per annum of the amount of the dividend referred to in the election for each month or part of a month during the period commencing with the time that the dividend became payable, or the first day on which any part of the dividend was paid if that day is earlier, and ending with the day on which that election was made, and

(b) the product obtained when $500 is multiplied by the proportion that the number of months or parts of months during the period referred to in paragraph (a) bears to 12.

Related Provisions: 83(5) — Unpaid balance of penalty.

(5) Unpaid balance of penalty — The Minister shall, with all due dispatch, examine each election referred to in paragraph (3)(a), assess the penalty payable and send a notice of assessment to the corporation and the corporation shall pay, forthwith to the Receiver General, the amount, if any, by which the penalty so assessed exceeds the total of all amounts previously paid on account of that penalty.

(6) Definition of "qualifying dividend" — For the purposes of subsection (1), "qualifying dividend" means a dividend on shares of a series of a class of the capital stock of a public corporation that is prescribed to be a tax-deferred preferred series that became payable by the corporation after 1978 and not later than

(a) where the terms as at March 31, 1977 of the shares of that series entitled the holder of any such share to exchange it after a particular date for a share or shares of another series or class of preferred shares of the capital stock of the corporation, that particular date,

(b) where the terms as at March 31, 1977 of the shares of that series required the corporation to offer to purchase at a time not later than a particular date all of the shares of that series from all of the holders of those shares, that particular date, and

(c) in any other case, October 1, 1991,

whichever is applicable in respect of that series of shares, except that a dividend on shares of such a series that would otherwise be a qualifying dividend shall be deemed not to be a qualifying dividend if

(d) at the time that the dividend became payable, the terms of the shares of that series differ from the terms as at March 31, 1977 of the shares of that series, or

(e) after March 31, 1977 the corporation issued additional shares of that series.

(7) Amalgamation where there are tax-deferred preferred shares — For the purposes of this section, where, after March 31, 1977, there has been an amalgamation within the meaning of section 87 and one or more of the predecessor corporations had a series of shares outstanding on March 31, 1977 that was prescribed to be a tax-deferred preferred series, the following rules apply:

(a) the series of shares of the capital stock of the predecessor corporation that was prescribed to be a tax-deferred preferred series shall be deemed to have been continued in existence in the form of the new shares; and

(b) the new corporation shall be deemed to be the same corporation as, and a continuation of, each such predecessor corporation.

Regulations: 2107 (tax-deferred preferred series).

Definitions [s. 83]: "adjusted cost base" — 54, 248(1); "amount", "assessment" — 248(1); "Canadian corporation" — 89(1), 248(1); "capital dividend" — 83(2), 248(1); "capital dividend account" — 89(1); "capital gain" — 39(1)(a), 248(1); "class", "class of shares" — 248(6); "controlled directly or indirectly" — 256(5.1), (6.2); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend", "individual", "Minister", "non-resident" — 248(1); "payable" — 84(7), 89(3); "person", "preferred share", "prescribed" — 248(1); "private corporation" — 89(1), 248(1); "property" — 248(1); "qualifying dividend" — 83(6); "received" — 248(7); "series of transactions" — 248(10); "share", "shareholder" — 248(1); "substituted property" — 248(5); "taxable dividend" — 89(1), 248(1).

84. (1) Deemed dividend — Where a corporation resident in Canada has at any time after 1971 increased the paid-up capital in respect of the shares of any particular class of its capital stock, otherwise than by

(a) payment of a stock dividend,

(b) a transaction by which

(i) the value of its assets less its liabilities has been increased, or

(ii) its liabilities less the value of its assets have been decreased,

by an amount not less than the amount of the increase in the paid-up capital in respect of the shares of the particular class,

(c) a transaction by which the paid-up capital in respect of the shares of all other classes of its capital stock has been reduced by an amount not less than the amount of the increase in the paid-up capital in respect of the shares of the particular class,

(c.1) where the corporation is an insurance corporation, any action by which it converts contributed surplus related to its insurance business into paid-up capital in respect of the shares of its capital stock,

(c.2) where the corporation is a bank, any action by which it converts any of its contributed surplus that arose on the issuance of shares of its capital stock into paid-up capital in respect of shares of its capital stock, or

(c.3) where the corporation is neither an insurance corporation nor a bank, any action by which it converts into paid-up capital in respect of a class of shares of its capital stock any of its contributed surplus that arose after March 31, 1977

(i) on the issuance of shares of that class or shares of another class for which the shares of that class were substituted (other than an issuance to which section 51, 66.3, 84.1, 85, 85.1, 86 or 87, subsection 192(4.1) or 194(4.1) or section 212.1 applied),

(ii) on the acquisition of property by the corporation from a person who at the time of the acquisition held any of the issued shares of that class or

shares of another class for which shares of that class were substituted for no consideration or for consideration that did not include shares of the capital stock of the corporation, or

(iii) as a result of any action by which the paid-up capital in respect of that class of shares or in respect of shares of another class for which shares of that class were substituted was reduced by the corporation, to the extent of the reduction in paid-up capital that resulted from the action,

the corporation shall be deemed to have paid at that time a dividend on the issued shares of the particular class equal to the amount, if any, by which the amount of the increase in the paid-up capital exceeds the total of

(d) the amount, if any, of the increase referred to in subparagraph (b)(i) or the decrease referred to in subparagraph (b)(ii), as the case may be,

(e) the amount, if any, of the reduction referred to in paragraph (c), and

(f) the amount, if any, of the increase in the paid-up capital that resulted from a conversion referred to in paragraph (c.1), (c.2) or (c.3),

and a dividend shall be deemed to have been received at that time by each person who held any of the issued shares of the particular class immediately after that time equal to that proportion of the dividend so deemed to have been paid by the corporation that the number of the shares of the particular class held by the person immediately after that time is of the number of the issued shares of that class outstanding immediately after that time.

Related Provisions: 15(1) — Benefit conferred on shareholder — income inclusion; 53(1)(b) — Addition to ACB; 82(1) — Income inclusion of dividend deemed received; 84(8) — Application; 84(10) — Reduction of contributed surplus; 84(11) — Computation of contributed surplus; 85(2.1) — Reduction in paid-up capital to prevent deemed dividend on s. 85 rollover; 86(2.1) — Adjustment to paid-up capital on internal reorganization; 87(2)(y) — Amalgamations — contributed surplus; 89(3) — Simultaneous dividends; 131(4) — S. 84 does not apply to mutual fund corporation; 131(11)(c) — Rules re prescribed labour-sponsored venture capital corporations; 138(11.9) — Computation of contributed surplus.

History: Para. 84(1)(c.3) substituted by 1994, c. 21, subsec. 35(1), applicable to actions occurring after July 13, 1990, except that for such actions occurring before December 21, 1992, subpara. (c.3)(iii) shall be read as follows:

(iii) on the reduction by the corporation of the paid-up capital in respect of that class of shares or in respect of shares of another class for which shares of that class were substituted,

Para. (c.3) formerly read:

(c.3) where the corporation is neither an insurance corporation nor a bank, any action by which it converts into paid-up capital in respect of a class of shares of its capital stock any of its contributed surplus that arose after March 31, 1977

(i) on the issuance of shares of that class or shares of another class for which the shares of that class were substituted (other than an issuance to which section 51, 66.3, 84.1, 85, 85.1, 86 or 87, subsection 192(4.1) or 194(4.1) or section 212.1 applied),

(ii) on the acquisition of property by the corporation from a person who at the time of the acquisition held any of the issued shares of that class or shares of another class for which shares of that class were substituted for no consideration or for consideration that did not include shares of the capital stock of the corporation, or

(iii) on the reduction by the corporation of the paid-up capital in respect of that class of shares or in respect of shares of another class for which shares of that class were substituted,

Para. 84(1)(c.3) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 62(1), applicable to actions occurring after July 13, 1990. Para. (c.3) formerly read:

(c.3) where the corporation is a corporation other than an insurance corporation or a bank, any action by which it converts any of its contributed surplus that arose on the issuance, after March 31, 1977, of shares of a class of its capital stock (other than an issuance to which section 51, 66.3, 84.1, 85, 85.1, 86 or 87, subsection 192(4.1) or 194(4.1) or section 212.1 applied) into paid-up capital in respect of shares of that class of its capital stock,

Para. 84(1)(f) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 62(2), applicable after 1985.

Selected Cases [subsec. 84(1)]: *Aylward v. R.*, [1997] 2 C.T.C. 2748 (TCC) (Section 7, when applicable, overrides subsec. 84(1)).

Regulations: 201(1)(a) (information return).

Interpretation Bulletins: IT-67R3: Taxable dividends from corporations resident in Canada; IT-243R4: Dividend refund to private corporations; IT-291R3: Transfer of property to a corporation under subsection 85(1); IT-432R2: Benefits conferred on shareholders; IT-463R2: Paid-up capital.

Information Circulars: 76-19R3: Transfer of property to a corporation under section 85.

Advance Tax Rulings: ATR-33: Exchange of shares.

Forms: T5: Statement of investment income; T5 Summ: Return of investment income.

(2) Distribution on winding-up, etc. — Where funds or property of a corporation resident in Canada have at any time after March 31, 1977 been distributed or otherwise appropriated in any manner whatever to or for the benefit of the shareholders of any class of shares in its capital stock, on the winding-up, discontinuance or reorganization of its business, the corporation shall be deemed to have paid at that time a dividend on the shares of that class equal to the amount, if any, by which,

(a) the amount or value of the funds or property distributed or appropriated, as the case may be,

exceeds

(b) the amount, if any, by which the paid-up capital in respect of the shares of that class is reduced on the distribution or appropriation, as the case may be,

and a dividend shall be deemed to have been received at that time by each person who held any of the issued shares at that time equal to that proportion of the amount of the excess that the number of the shares of that class held by the person immediately before that time is of the number of the issued shares of that class outstanding immediately before that time.

Related Provisions: 15(1) — Benefit conferred on shareholder; 54"proceeds of disposition"(j) — exclusion of deemed dividend; 55(1) — "Permitted redemption" for butterfly purposes; 69(5) — Unreasonable consideration; 84(5) — Amount distributed or paid where a share; 84(6), (8) — Application rules; 88(1) — Winding-up; 88(2)(b) — Winding up of a Canadian corporation; 89(3) — Simultaneous dividends; 131(4) — S. 84 does not apply to mutual fund corporation; 135.1(7), (8) — Rules for agricultural co-op's tax deferred cooperative shares; 137(4.2) — No application to credit union.

Selected Cases [subsec. 84(2)]: *James v. R.*, [2000] 3 C.T.C. 2035 (TCC) (No deemed dividend where corporation had ceased to exist); *Felray Inc. v. R.*, [1998] 2 C.T.C. 4 (FCTD) (Discontinuance of business implies element of finality or complete cessation, not merely diminution); *RMM Canadian Enterprises Inc. v. R.*, [1997] 3 C.T.C. 2103 (TCC) (Language of provision very broad and covers variety of ways corporate funds can end up in shareholders' hands); *Maccala v. Canada*, [1995] 1 C.T.C. 2215 (TCC) (Mere reception of property upon dissolution of company does not constitute appropriation of capital unless there is something more); *David v. R.*, [1975] C.T.C. 197 (FCTD) (Proceeds from disposition of shares deemed partial appropriation of undistributed income); *Craddock v. MNR*, [1969] C.T.C. 566 (SCC) (Proceeds from disposition of shares deemed partial appropriation of undistributed income); *Smythe et al. v. MNR*, [1969] C.T.C. 558 (SCC) (Proceeds from disposition of shares deemed partial appropriation of undistributed income).

Regulations: 201(1)(a) (information return).

Interpretation Bulletins: IT-67R3: Taxable dividends from corporations resident in Canada; IT-126R2: Meaning of "winding-up"; IT-149R4: Winding-up dividend; IT-243R4: Dividend refund to private corporations; IT-409: Winding-up of a non-profit organization (archived); IT-444R: Corporations — involuntary dissolutions; IT-488R2: Winding-up of 90%-owned taxable Canadian corporations (archived).

(3) Redemption, etc. — Where at any time after December 31, 1977 a corporation resident in Canada has redeemed, acquired or cancelled in any manner whatever (otherwise than by way of a transaction described in subsection (2)) any of the shares of any class of its capital stock,

(a) the corporation shall be deemed to have paid at that time a dividend on a separate class of shares comprising the shares so redeemed, acquired or cancelled equal to the amount, if any, by which the amount paid by the corporation on the redemption, acquisition or cancellation, as the case may be, of those shares exceeds the paid-up capital in respect of those shares immediately before that time; and

(b) a dividend shall be deemed to have been received at that time by each person who held any of the shares of that separate class at that time equal to that portion of the amount of the excess determined under paragraph (a) that the number of those shares held by the person immediately before that time is of the total number of shares of that separate class that the corporation has redeemed, acquired or cancelled, at that time.

Related Provisions: 8(12) — Return of employee shares by trustee; 40(3.6) — Stop-loss rule on disposition of share of corporation to the corporation; 54"proceeds of disposition"(j) — exclusion of deemed dividend; 55(1) — "Permitted redemption" for butterfly purposes; 55(2) — Deemed proceeds or capital gain on capital gains strip; 84(5) — Amount distributed or paid where a share; 84(6), (8) — Application rules; 84(9) — Shares disposed of on redemption; 89(3) — Simultaneous dividends; 128.1(3) — Addition to PUC of corporation that previously became resident in Canada; 131(4) — S. 84 does not apply to mutual fund corporation; 135.1(7), (8) — Rules for agricultural co-op's tax deferred cooperative shares; 137(4.1) — Deemed interest on certain reductions of capital by credit union; 137(4.2) — No application to credit union; 191.1(1) — Application of Part VI.1 tax to corporation.

Selected Cases: *943963 Ontario Inc. v. R.*, [1999] 4 C.T.C. 2119 (TCC) (Part IV tax applicable to all dividends and deemed dividends, including those from "safe income"); *MacMillan Bloedel Ltd. v. R.*, [1999] 3 C.T.C. 652 (FCA); aff'g [1997] 3 C.T.C. 3012 (TCC) (Foreign exchange difference between issue prices and redemption price of preferred shares not a deemed dividend).

Regulations: 201(1)(a) (information return).

Interpretation Bulletins: IT-146R4: Shares entitling shareholders to choose taxable or capital dividends; IT-243R4: Dividend refund to private corporations; IT-269R3: Part IV tax on taxable dividends received by private corporation or subject corporation; IT-291R3: Transfer of property to a corporation under subsection 85(1); IT-450R: Share for share exchange; IT-489R: Non-arm's length sale of shares to a corporation.

Advance Tax Rulings: ATR-28: Redemption of capital stock of family farm corporation; ATR-35: Partitioning of assets to get specific ownership — "butterfly"; ATR-54: Reduction of paid-up capital; ATR-57: Transfer of property for estate planning purposes; ATR-58: Divisive reorganization.

(4) Reduction of paid-up capital — Where at any time after March 31, 1977 a corporation resident in Canada has reduced the paid-up capital in respect of any class of shares of its capital stock otherwise than by way of a redemption, acquisition or cancellation of any shares of that class or a transaction described in subsection (2) or (4.1),

(a) the corporation shall be deemed to have paid at that time a dividend on shares of that class equal to the amount, if any, by which the amount paid by it on the reduction of the paid-up capital, exceeds the amount by which the paid-up capital in respect of that class of shares of the corporation has been so reduced; and

(b) a dividend shall be deemed to have been received at that time by each person who held any of the issued shares at that time equal to that proportion of the amount of the excess referred to in paragraph (a) that the number of the shares of that class held by the person immediately before that time is of the number of the issued shares of that class outstanding immediately before that time.

Related Provisions: 53(2)(a)(ii) — Reduction in ACB; 84(5) — Amount distributed or paid where a share; 84(8) — Application; 89(3) — Simultaneous dividends; 128.1(3) — Addition to PUC of corporation that previously became resident in Canada; 131(4) — S. 84 does not apply to mutual fund corporation; 137(4.1) — Deemed interest on certain reductions of capital by credit union; 137(4.2) — No application to credit union.

Regulations: 201(1)(a) (information return).

Interpretation Bulletins: IT-67R3: Taxable dividends from corporations resident in Canada; IT-243R4: Dividend refund to private corporations; IT-450R: Share for share exchange.

(4.1) Deemed dividend on reduction of paid-up capital — Where at any time after April 10, 1978, a public corporation has reduced the paid-up capital in respect of any class of shares of its capital stock otherwise than by way of a redemption, acquisition or cancellation of any shares of that class or a transaction described in subsection (2) or section 86, any amount paid by it on the reduction of the paid-up capital shall be deemed to have been paid by the corporation and received by the person to whom it was paid, as a dividend.

Proposed Amendment — 84(4.1)

(4.1) Deemed dividend on reduction of paid-up capital — Any amount paid by a public corporation on the reduction of the paid-up capital in respect of any class of shares of its capital stock, otherwise than by way of a redemption, acquisition or cancellation of any shares of that class or by way of a transaction described in subsection (2) or section 86, is deemed to have been paid by the corporation and received by the person to whom it was paid, as a dividend, unless

(a) the amount may reasonably be considered to be derived from proceeds of disposition realized by the public corporation, or by a person or partnership in which the public corporation had a direct or indirect interest at the time that the proceeds were realized, from a transaction that occurred

(i) outside the ordinary course of the business of the corporation, or of the person or partnership that realized the proceeds, and

(ii) within the period that commenced 24 months before the payment; and

(b) no amount that may reasonably be considered to be derived from those proceeds was paid by the public corporation on a previous reduction of the paid-up capital in respect of any class of shares of its capital stock.

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 84, will amend subsec. 84(4.1) to read as above, applicable to amounts paid after 1996, except that in respect of those amounts paid before February 27, 2004, the subsec. is to be read as follows:

(4.1) Any amount paid by a public corporation on the reduction of the paid-up capital in respect of any class of shares of its capital stock, otherwise than by way of a redemption, acquisition or cancellation of any shares of that class or by way of a transaction

described in subsection (2) or in section 86, is deemed to have been paid by the corporation and received by the person to whom it was paid, as a dividend, unless the amount may reasonably be considered to be derived from proceeds of disposition realized by the public corporation, or by a person or partnership in which the public corporation had a direct or indirect interest at the time that the proceeds were realized, from a transaction that occurred outside the ordinary course of the business of the public corporation, or of the person or partnership that realized the proceeds.

Technical Notes: Subsection 84(4.1) treats a payment on a reduction of paid-up capital by a public corporation as a dividend, except where the payment is made by way of a redemption, acquisition or cancellation of a share or in the course of a transaction described in subsection 84(2) or section 86.

Subsection 84(4.1) is amended to introduce a new exception. Generally, this exception will apply where the amount paid on a reduction of paid-up capital may reasonably be considered to be a distribution of proceeds of disposition realized from a transaction that did not occur in the ordinary course of the corporation's business and those proceeds were derived from a transaction that occurred no more than 24 months before the return of the paid-up capital.

In the case of a transaction that funds the payment, generally relief from the deemed dividend rule in subsection 84(4.1) will apply if the paid-up capital distribution can be traced to proceeds of disposition realized in connection with a transaction that may reasonably be considered to be derived from a transaction that occurs outside of the ordinary course of the corporation's business. For example, a paid-up capital distribution paid out of proceeds realized on the sale of a business unit of a corporation, where the proceeds were not required for reinvestment, would generally not be considered to be a distribution from amounts realized in the ordinary course of the corporation's business. In general terms, this aspect of the amendment to subsection 84(4.1) is intended to ensure that only a return of corporate capital, as opposed to a distribution of earnings, is subject to the new exception to subsection 84(4.1).

In order to ensure that the proceeds from an extraordinary transaction are not used to fund a stream of regular or periodic distributions, only one return of paid-up capital will be permitted in respect of any particular extraordinary transaction and that return must occur within 24 months of the proceeds being realized. However, this one-time return rule and 24 month limitation will not apply to distributions of paid-up capital made after 1996 and before February 27, 2004.

Letter from Dept. of Finance, July 2, 1998:

Dear [xxx]

This is in reply to your letter of June 30, 1998 to Davine Roach of the Department regarding the application of subsection 84(4.1) of the *Income Tax Act* to your client.

As you know, we are prepared to recommend to the Minister of Finance that subsection 84(4.1) of the *Income Tax Act* be amended. The amendment would provide that subsection 84(4.1) apply only in respect of a reduction in the paid-up capital of a class of shares to the extent that a previous increase in the paid-up capital of that class resulted in a dividend in respect of which the taxpayer elected to treat the dividend as having been paid out of the taxpayer's 1971 CSOH.

It would be recommended that such an amendment be effective for paid-up capital reductions occurring after 1996. If the recommendation is acted upon, I would anticipate that such an amendment would be included in a future technical bill.

Yours sincerely,

Len Farber
Director General, Tax Legislation Division

Letter from Dept. of Finance, May 12, 1999:

Dear [xxx]

This is in reply to your letter of April 23, 1999 regarding subsection 84(4.1) of the *Income Tax Act* as it applies to your client, [xxx].

Based on our understanding of the facts described in your letter, [xxx] has been refocusing its business activity in an effort to improve profitability. To this end, [xxx] has been disposing of businesses that are inconsistent with its aviation services business. The last disposition was scheduled to close by the end of [xxx]. As a result of these dispositions, [xxx] has capital in excess of its future business requirements. Consequently, [xxx] may want to reduce the stated capital of its common shares with a payment of cash to its shareholders in an amount equal to the reduction. The amount of any such reduction has not been determined.

As you know, we believe that subsection 84(2) of the *Income Tax Act* may apply to this proposed reduction in stated capital. While the Department of National Revenue would determine the applicability of subsection 84(2) in the circumstances, it is our understanding that the Department has ruled in circumstances where they have been satisfied that the conditions set out in subsection 84(2) have been met. Given that subsection 84(2) of the *Income Tax Act* would appear to render the appropriate tax results on the proposed reduction of stated capital, your concerns about subsection 84(4.1) of the *Income Tax Act* may not be warranted.

However, as you are aware, we are prepared to recommend to the Minister of Finance that subsection 84(4.1) of the *Income Tax Act* be amended so that it applies only in respect of certain reductions of the paid-up capital of a class of shares of a corporation. Based on our understanding of the facts associated with [xxx]'s proposed reduction of the slated capital of its common shares, we do not regard the distribution as a substitution for an ordinary-course dividend and therefore are prepared to recommend that such a reduction be excluded from the application of subsection 84(4.1). If the recommendation were acted upon, I would anticipate that such an amendment would be included in the next technical bill.

Yours sincerely,

Brian Ernewein
Director General, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, March 21, 2001:

Dear [xxx]

This is in reply to your firm's letters of March 8 and 14, 2001 to, and telephone conversations with, Davine Roach and Kerry Harnish of this Division regarding the application of the deemed dividend rules in subsections 84(2) and 84(4.1) of the *Income Tax Act* to your client, [xxx].

Based on our understanding of the facts described in your letter and our conversations, [xxx] is a taxable Canadian corporation listed on the Toronto Stock Exchange (the "TSE") that had [xxx] as of [xxx] issued and outstanding [xxx] common shares, with an historic paid-up capital for tax purposes of [xxx] or about [xxx] per share (herein referred to as "historic paid-up capital").

In [xxx] reorganized its business and sold off subsidiaries, which generated in excess of [xxx] (of which [xxx] remains on hand), and it now has capital far in excess of its future business requirements.

[xxx] intends to announce a special distribution [xxx] per share to all of its existing shareholders (or approximately [xxx] in total).

You request a comfort letter to the effect that subsection 84(4.1) of the Act will not apply to the special distribution to [xxx] shareholders. Where, on the reorganization of the business of a corporation, subsection 84(2) of the Act applies to a distribution of funds or property to shareholders with respect to a class of common shares, a dividend is deemed to have been paid by the corporation to the extent that the value of the distribution exceeds any paid-up capital reduction with respect to the class of shares. While [xxx] did reorganize its business in [xxx], we understand that the Canada Customs and Revenue Agency has indicated to you that it is not of the view that subsection 84(2) of the Act would apply to the special distribution because, given the [xxx] delay, the distribution would not be made "on" the reorganization of [xxx] business.

However, as you are aware, we are prepared to recommend to the Minister of Finance that subsection 84(4.1) of the Act be amended so that it applies only with respect to certain reductions of the paid-up capital of a class of shares of a corporation. Based on our understanding of the facts associated with [xxx] proposed special distribution, we do not regard that subsection 84(4.1) of the Act should apply to deem a dividend in the case of the historic paid-up capital portion of the special distribution with respect to the Class A common shares. Consequently, we are prepared to recommend to the Minister of Finance that this paid-up capital reduction be excluded from the application of subsection 84(4.1) of the Act. If the recommendation is acted upon, I would anticipate that such an amendment would be included in a future technical bill.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 53(2)(a) — Reduction in ACB; 84(4) — Reduction of paid-up capital; 89(3) — Simultaneous dividends; 128.1(3) — Addition to PUC of corporation that previously became resident in Canada; 131(4) — S. 84 does not apply to mutual fund corporation.

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations; IT-450R: Share for share exchange.

(4.2) Deemed dividend on term preferred share — Where, at any time after November 16, 1978, the paid-up capital in respect of a term preferred share owned by a shareholder that is

(a) a specified financial institution, or

(b) a partnership or trust of which a specified financial institution or a person related to such an institution was a member or a beneficiary,

was reduced otherwise than by way of a redemption, acquisition or cancellation of the share or of a transaction described in subsection (2) or (4.1), the amount received by the shareholder on the reduction of the paid-up capital in respect of the share shall be deemed to be a dividend received by the shareholder at that time unless the share was not acquired in the ordinary course of the business carried on by the shareholder.

Related Provisions: 89(3) — Simultaneous dividends; 131(4) — S. 84 does not apply to mutual fund corporation; 248(13) — Interests in trusts or partnerships.

(4.3) Deemed dividend on guaranteed share — Where at any time after 1987 the paid-up capital in respect of a share of the capital stock of a particular corporation owned

(a) by a shareholder that is another corporation to which subsection 112(2.2) or (2.4) would, if the particular corporation were a taxable Canadian corporation, apply to deny the deduction under subsection 112(1) or (2) or 138(6) of a dividend received on the share, or

(b) by a partnership or trust of which such other corporation is a member or beneficiary, as the case may be,

was reduced otherwise than by way of a redemption, acquisition or cancellation of the share or of a transaction described in subsection (2) or (4.1), the amount received by the shareholder on the reduction of the paid-up capital in respect of the share shall be deemed to be a dividend received by the shareholder at that time.

Related Provisions: 89(3) — Simultaneous dividends; 131(4) — S. 84 does not apply to mutual fund corporation; 248(13) — Interests in trusts or partnerships.

(5) Amount distributed or paid where a share — Where

(a) the amount of property distributed by a corporation or otherwise appropriated to or for the benefit of its shareholders as described in paragraph (2)(a), or

(b) the amount paid by a corporation as described in paragraph (3)(a) or (4)(a),

includes a share of the capital stock of the corporation, for the purposes of subsections (2) to (4) the following rules apply:

(c) in computing the amount referred to in paragraph (a) at any time, the share shall be valued at an amount equal to its paid-up capital at that time, and

(d) in computing the amount referred to in paragraph (b) at any time, the share shall be valued at an amount equal to the amount by which the paid-up capital in respect of the class of shares to which it belongs has increased by virtue of its issue.

Related Provisions: 51(3), 86(2.1) — Computation of paid-up capital after share exchange.

Interpretation Bulletins: IT-291R3: Transfer of property to a corporation under subsection 85(1).

(6) Where subsec. (2) or (3) does not apply — Subsection (2) or (3), as the case may be, is not applicable

(a) in respect of any transaction or event, to the extent that subsection (1) is applicable in respect of that transaction or event; and

(b) in respect of any purchase by a corporation of any of its shares in the open market, if the corporation acquired those shares in the manner in which shares would normally be purchased by any member of the public in the open market.

(7) When dividend payable — A dividend that is deemed by this subsection or section 84.1, 128.1 or 212.1 to have been paid at a particular time is deemed, for the purposes of this subdivision and sections 131 and 133, to have become payable at that time.

Proposed Amendment — 84(7)

Letter from Dept. of Finance, April 8, 2003:

Dear [xxx]

Thank you for your letter of January 27, 2003 to Kerry Harnish of this Division requesting that the phrase "deemed by this subsection" in subsection 84(7) of the *Income Tax Act* be replaced by the phrase "deemed by this section".

In particular, prior to an amendment in 1998, subsection 84(7) of the Act referred to certain dividends. The 1998 amendment added a reference to section 128.1 and replaced the words "deemed by this *section*" with the words "deemed by this *subsection*". You note that the change to refer to "this subsection" appears to have been inadvertent and ask that the matter be corrected by an amendment. Among other things, you note that the explanatory note accompanying the amendment refers to dividends deemed to have been paid under section 84 rather than under subsection 84(7), which does not deem any dividend to have been paid.

We agree that the reference to "this subsection" in subsection 84(7) of the Act should be a reference to "this section". Consequently, we are prepared to recommend that subsection 84(7) be amended to correct this deficiency and that the amendment apply after February 23, 1998, which is the application date of the 1998 amendment. We would anticipate including the recommended change in a future technical bill of amendments.

Thank you for bringing your concerns to my attention.

Yours sincerely,

[Gerard Lalonde for] Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 15(1) — Appropriation of property to a shareholder.

History: Subsec. 84(7) amended by 1999, c. 22, s. 23, applicable after February 23, 1998. It formerly read:

(7) A dividend that is deemed by this section or section 84.1 or 212.1 to have been paid at a particular time shall be deemed, for the purposes of this subdivision and sections 131 and 133, to have become payable at that time.

Subsec. 84(7) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 62(3), applicable with respect to dividends paid after 1988. Subsec. (7) formerly read:

(7) A dividend that is deemed by this section or by section 212.1 to have been paid at a particular time shall be deemed, for the purposes of this subdivision, to have become payable at that time.

(8) Where subsec. (3) does not apply — Subsection (3) does not apply to deem a dividend to have been received by a shareholder of a public corporation where the shareholder is an individual resident in Canada who deals at arm's length with the corporation and the shares redeemed, acquired or cancelled are prescribed shares of the capital stock of the corporation.

Regulations: 6206 (prescribed shares — Class I shares of Reed Stenhouse).

(9) Shares disposed of on redemptions, etc. — For greater certainty it is declared that where a shareholder of a corporation has disposed of a share of the cap-

ital stock of the corporation as a result of the redemption, acquisition or cancellation of the share by the corporation, the shareholder shall, for the purposes of this Act, be deemed to have disposed of the share to the corporation.

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations; IT-444R: Corporations — involuntary dissolutions; IT-484R2: Business investment losses.

(10) Reduction of contributed surplus — For the purpose of paragraph (1)(c.3), there shall be deducted in determining at any time a corporation's contributed surplus that arose after March 31, 1977 in any manner described in that paragraph the lesser of

(a) the amount, if any, by which the amount of a dividend paid by the corporation at or before that time and after March 31, 1977 and when it was a public corporation exceeded its retained earnings immediately before the payment of the dividend, and

(b) the amount of its contributed surplus immediately before the payment of the dividend referred to in paragraph (a) that arose after March 31, 1977.

Related Provisions: 84(11) — Computation of contributed surplus; 87(2)(y) — Amalgamations — contributed surplus.

History: Subsec. 84(10) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 62(4), applicable to the determination after July 13, 1990 of the contributed surplus of a corporation.

Interpretation Bulletins: IT-463R2: Paid-up capital.

(11) Computation of contributed surplus — For the purpose of subparagraph (1)(c.3)(ii), where the property acquired by the corporation (in this subsection referred to as the "acquiring corporation") consists of shares (in this subsection referred to as the "subject shares") of any class of the capital stock of another corporation resident in Canada (in this subsection referred to as the "subject corporation") and, immediately after the acquisition of the subject shares, the subject corporation would be connected (within the meaning that would be assigned by subsection 186(4) if the references in that subsection to "payer corporation" and "particular corporation" were read as "subject corporation" and "acquiring corporation", respectively) with the acquiring corporation, the contributed surplus of the acquiring corporation that arose on the acquisition of the subject shares shall be deemed to be the lesser of

(a) the amount added to the contributed surplus of the acquiring corporation on the acquisition of the subject shares, and

(b) the amount, if any, by which the paid-up capital in respect of the subject shares at the time of the acquisition exceeded the fair market value of any consideration given by the acquiring corporation for the subject shares.

Related Provisions: 84(10) — Reduction of contributed surplus; 186(7) — Interpretation of "connected".

History: Subsec. 84(11) added by 1994, c. 21, subsec. 35(2), applicable to actions occurring after December 20, 1992.

Interpretation Bulletins: IT-463R2: Paid-up capital.

Definitions [s. 84]: "amount" — 248(1); "arm's length" — 251(1); "bank", "business" — 248(1); "Canada" — 255; "class", "class of shares" — 248(6); "connected" — 186(4), (7); "contributed surplus" — 84(10), (11); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend", "insurance corporation" — 248(1); "month" — *Interpretation Act* 28, 35(1); "non-resident" — 248(1); "paid-up capital" — 89(1), 248(1); "payable" — 84(7), 89(3); "person", "prescribed" — 248(1); "private corporation", "public corporation" — 89(1), 248(1); "property" — 248(1); "received" — 248(7); "resident in Canada" — 94(3)(a)(viii), 250; "share", "shareholder", "specified financial institution" — 248(1); "taxable Canadian corporation" — 89(1), 248(1); "taxable income" — 2(2), 248(1); "term preferred share" — 248(1); "trust" — 104(1), 248(1), (3).

84.1 (1) Non-arm's length sale of shares — Where after May 22, 1985 a taxpayer resident in Canada (other than a corporation) disposes of shares that are capital property of the taxpayer (in this section referred to as the "subject shares") of any class of the capital stock of a corporation resident in Canada (in this section referred to as the "subject corporation") to another corporation (in this section referred to as the "purchaser corporation") with which the taxpayer does not deal at arm's length and, immediately after the disposition, the subject corporation would be connected (within the meaning assigned by subsection 186(4) if the references therein to "payer corporation" and to "particular corporation" were read as "subject corporation" and "purchaser corporation" respectively) with the purchaser corporation,

(a) where shares (in this section referred to as the "new shares") of the purchaser corporation have been issued as consideration for the subject shares, in computing the paid-up capital, at any particular time after the issue of the new shares, in respect of any particular class of shares of the capital stock of the purchaser corporation, there shall be deducted an amount determined by the formula

$$(A - B) \times \frac{C}{A}$$

where

A is the increase, if any, determined without reference to this section as it applies to the acquisition of the subject shares, in the paid-up capital in respect of all shares of the capital stock of the purchaser corporation as a result of the issue of the new shares,

B is the amount, if any, by which the greater of

(i) the paid-up capital, immediately before the disposition, in respect of the subject shares, and

(ii) subject to paragraphs (2)(a) and (a.1), the adjusted cost base to the taxpayer, immediately before the disposition, of the subject shares,

exceeds the fair market value, immediately after the disposition, of any consideration (other than the new shares) received by the taxpayer from the purchaser corporation for the subject shares, and

C is the increase, if any, determined without reference to this section as it applies to the acquisition of the subject shares, in the paid-up capital in respect of the particular class of shares as a result of the issue of the new shares; and

(b) for the purposes of this Act, a dividend shall be deemed to be paid to the taxpayer by the purchaser corporation and received by the taxpayer from the purchaser corporation at the time of the disposition in an amount determined by the formula

$$(A + D) - (E + F)$$

where

A is the increase, if any, determined without reference to this section as it applies to the acquisition of the subject shares, in the paid-up capital in respect of all shares of the capital stock of the purchaser corporation as a result of the issue of the new shares,

D is the fair market value, immediately after the disposition, of any consideration (other than the new shares) received by the taxpayer from the purchaser corporation for the subject shares,

E is the greater of

(i) the paid-up capital, immediately before the disposition, in respect of the subject shares, and

(ii) subject to paragraphs (2)(a) and (a.1), the adjusted cost base to the taxpayer, immediately before the disposition, of the subject shares, and

F is the total of all amounts each of which is an amount required to be deducted by the purchaser corporation under paragraph (a) in computing the paid-up capital in respect of any class of shares of its capital stock by virtue of the acquisition of the subject shares.

Related Provisions: 53(2)(a)(iii), 53(2)(p) — Reductions in adjusted cost base; 54"proceeds of disposition"(k) — Exclusion of deemed dividend from proceeds; 84(7) — When dividend payable; 84.1(2) — Non-arm's length sale of shares; 85(2.1) — Alternative reduction in paid-up capital of new shares; 89(1) — Definitions; 186(7) — Interpretation of "connected"; 212.1 — Similar rule for non-residents; 257 — Formula amounts cannot calculate to less than zero.

History: That portion of para. 84.1(1)(b) preceding the formula amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 63(1), to add "and received by the taxpayer from the purchaser corporation", applicable to dispositions occurring after May 22, 1985.

Interpretation Bulletins: IT-67R3: Taxable dividends from corporations resident in Canada; IT-489R: Non-arm's length sale of shares to a corporation.

Information Circulars: 88-2 Supplement, paras. 4, 9: General anti-avoidance rule — section 245 of the *Income Tax Act*.

Advance Tax Rulings: ATR-27: Exchange and acquisition of interests in capital properties through rollovers and winding-up ("butterfly"); ATR-32: Rollover of fixed assets from Opco into Holdco; ATR-35: Partitioning of assets to get specific ownership — "butterfly"; ATR-36: Estate freeze; ATR-42: Transfer of shares; ATR-55: Amalgamation followed by sale of shares; ATR-57: Transfer of property for estate planning purposes.

(2) **Idem** — For the purposes of this section,

(a) where a share disposed of by a taxpayer was acquired by a taxpayer before 1972, the adjusted cost base to the taxpayer of the share at any time shall be deemed to be the total of

(i) the amount that would be its adjusted cost base to the taxpayer if the *Income Tax Application Rules* were read without reference to subsections 26(3) and (7) of that Act, and

(ii) the total of all amounts each of which is an amount received by the taxpayer after 1971 and before that time as a dividend on the share and in respect of which the corporation that paid the dividend has made an election under subsection 83(1);

(a.1) where a share disposed of by a taxpayer was acquired by the taxpayer after 1971 from a person with whom the taxpayer was not dealing at arm's length, was a share substituted for such a share or was a share substituted for a share owned by the taxpayer at the end of 1971, the adjusted cost base to the taxpayer of the share at any time shall be deemed to be the amount, if any, by which its adjusted cost base to the taxpayer, otherwise determined, exceeds the total of

(i) where the share or a share for which the share was substituted was owned at the end of 1971 by the taxpayer or a person with whom the taxpayer did not deal at arm's length, the amount in respect of that share equal to the amount, if any, by which

(A) the fair market value of the share or the share for which it was substituted, as the case may be, on valuation day (within the meaning assigned by section 24 of the *Income Tax Application Rules*)

exceeds the total of

(B) the actual cost (within the meaning assigned by subsection 26(13) of that Act) of the share or the share for which it was substituted, as the case may be, on January 1, 1972, to the taxpayer or the person with whom the taxpayer did not deal at arm's length, and

(C) the total of all amounts each of which is an amount received by the taxpayer or the person with whom the taxpayer did not deal at arm's length after 1971 and before that time as a dividend on the share or the share for which it was substituted and in respect of which the corporation that paid the dividend has made an election under subsection 83(1), and

(ii) the total of all amounts each of which is an amount determined after 1984 under subparagraph 40(1)(a)(i) in respect of a previous disposition of the share or a share for which the share was substituted (or such lesser amount as is established by the taxpayer to be the amount in respect of which a deduction under section 110.6 was claimed) by the taxpayer or an individual with whom the taxpayer did not deal at arm's length;

(a.2) [Repealed]

(b) in respect of any disposition described in subsection (1) by a taxpayer of shares of the capital stock of a subject corporation to a purchaser corporation, the taxpayer shall, for greater certainty, be deemed not to deal at arm's length with the purchaser corporation if the taxpayer

(i) was, immediately before the disposition, one of a group of fewer than 6 persons that controlled the subject corporation, and

(ii) was, immediately after the disposition, one of a group of fewer than 6 persons that controlled the purchaser corporation, each member of which was a member of the group referred to in subparagraph (i); and

(c) [Repealed]

(d) a trust and a beneficiary of the trust or a person related to a beneficiary of the trust shall be deemed not to deal with each other at arm's length.

(e) [Repealed]

Related Provisions: 84.1(2.01) — Rules for 84.1(2)(a.1); 84.1(2.1) — Where capital gains reserve claimed; 84.1(2.2) — Rules for 84.1(2)(b); 256(6), (6.1) — Meaning of "controlled".

History: Paras. 84.1(2)(a.2), (c) and (e) repealed by 1998, c. 19, subsecs. 115(1) to (3), the repeal of para. (a.2) applicable to 1994 *et seq.* and the repeal of paras. (c) and (e) in force on June 18, 1998. The paras. formerly read:

(a.2) for the purposes of paragraph (a.1), where a corporation (in this paragraph referred to as the "issuing corporation") issues previously unissued shares of a class of its capital stock (in this paragraph referred to as the "new shares") to a taxpayer, the taxpayer and the issuing corporation shall be deemed not to have been dealing with each other at arm's length at the time the new shares were acquired by the taxpayer;

. . . . .

(c) for the purposes of determining whether or not a taxpayer referred to in paragraph (b) was a member of a group of fewer than 6 persons that controlled a corporation at any time, any shares of the capital stock of that corporation owned at that time by

(i) the taxpayer's child (within the meaning assigned by subsection 70(10)), who is under 18 years of age, or the taxpayer's spouse,

(ii) a trust of which the taxpayer, a person described in subparagraph (i) or a corporation described in subparagraph (iii), is a beneficiary, or

(iii) a corporation controlled by the taxpayer, by a person described in subparagraph (i), by a trust described in subparagraph (ii) or by any combination thereof

shall be deemed to be owned at that time by the taxpayer and not by the person who actually owned the shares at that time;

. . . . .

(e) for the purpose of paragraph (b),

(i) a group of persons in respect of a corporation means any 2 or more persons each of whom owns shares of the capital stock of the corporation,

(ii) a corporation that is controlled by one or more members of a particular group of persons in respect of that corporation shall be considered to be controlled by that group of persons, and

(iii) a corporation may be controlled by a person or a particular group of persons notwithstanding that the corporation is also controlled or deemed to be controlled by another person or group of persons.

Para. 84.1(2)(e) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 34, applicable to dispositions occurring after December 20, 1991.

Subparas. 84.1(2)(c)(i) to (iii) substituted, para. (d) added, by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 63(2), (3), applicable to dispositions occurring after July 13, 1990. Subparas. (i) to (iii) formerly read:

(i) the taxpayer's spouse,

(ii) an *inter vivos* trust of which the taxpayer, the spouse, a corporation described in subparagraph (iii) or any combination thereof is a beneficiary, or

(iii) a corporation controlled by the taxpayer, the spouse, a trust described in subparagraph (ii) or any combination thereof

Interpretation Bulletins: IT-67R3: Taxable dividends from corporations resident in Canada; IT-489R: Non-arm's length sale of shares to a corporation.

Advance Tax Rulings: ATR-42: Transfer of shares; ATR-55: Amalgamation followed by sale of shares.

(2.01) Rules for para. 84.1(2)(a.1) — For the purpose of paragraph (2)(a.1),

(a) where at any time a corporation issues a share of its capital stock to a taxpayer, the taxpayer and the corporation are deemed not to be dealing with each other at arm's length at that time;

(b) where a taxpayer is deemed by paragraph 110.6(19)(a) to have reacquired a share, the taxpayer is deemed to have acquired the share at the beginning of February 23, 1994 from a person with whom the taxpayer was not dealing at arm's length; and

(c) where a share owned by a particular person, or a share substituted for that share, has by one or more transactions or events between persons not dealing at arm's length become vested in another person, the particular person and the other person are deemed at all times not to be dealing at arm's length with each other whether or not the particular person and the other person coexisted.

History: Subsec. 84.1(2.01) added by 1998, c. 19, subsec. 115(4), applicable to 1994 *et seq.*, except that para. 84.1(2.01)(c) is applicable in respect of the determination of the adjusted cost base of a share after June 20, 1996.

(2.1) Idem — For the purposes of subparagraph (2)(a.1)(ii), where the taxpayer or an individual with whom the taxpayer did not deal at arm's length (in this subsection referred to as the "transferor") disposes of a share in a taxation year and claims an amount under subparagraph 40(1)(a)(iii) in computing the gain for the year from the disposition, the amount in respect of which a deduction under section 110.6 was claimed in respect of the transferor's gain from the disposition shall be deemed to be equal to the lesser of

(a) the total of

(i) the amount claimed under subparagraph 40(1)(a)(iii) by the transferor for the year in respect of the disposition, and

(ii) twice the amount deducted under section 110.6 in computing the taxable income of the transferor for the year in respect of the taxable capital gain from the disposition, and

(b) twice the maximum amount that could have been deducted under section 110.6 in computing the taxable income of the transferor for the year in respect of the taxable capital gain from the disposition if

(i) no amount had been claimed by the transferor under subparagraph 40(1)(a)(iii) in computing the gain for the year from the disposition, and

(ii) all amounts deducted under section 110.6 in computing the taxable income of the transferor for the year in respect of taxable capital gains from dispositions of property to which this subsection does not apply were deducted before determining the maximum amount that could have been deducted under section 110.6 in respect of the taxable capital gain from the disposition,

and, for the purposes of subparagraph (ii), ½ of the total of all amounts determined under this subsection for the year in respect of other property disposed of before the disposition of the share shall be deemed to have been deducted under section 110.6 in computing the taxable income of the transferor for the year in respect of the taxable capital gain from the disposition of property to which this subsection does not apply,

and, for the purposes of this subsection, where more than one share to which this subsection applies is disposed of in the year, each such share shall be deemed to have been separately disposed of in the order designated by the taxpayer in the taxpayer's return of income under this Part for the year.

History: Subsec. 84.1(2.1) amended by 2001, c. 17, s. 61, to replace references to the expression "⅔ of" with references to the word "twice" and to replace the reference to the fraction "¾" with a reference to the fraction "½", applicable to taxation years that end after February 27, 2000 except that, for a taxation year of a taxpayer that includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, the references to the word "twice" shall be read as references to the expression "the fraction that is the reciprocal of the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the taxpayer for the year multiplied by" and the reference to the fraction "½" shall be read as a reference to the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the taxpayer for the year.

Subsec. 84.1(2.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 62(4), applicable to dispositions occurring after July 13, 1990.

(2.2) Rules for para. 84.1(2)(b) — For the purpose of paragraph (2)(b),

(a) in determining whether or not a taxpayer referred to in that paragraph was a member of a group of fewer than 6 persons that controlled a corporation at any

time, any shares of the capital stock of that corporation owned at that time by

(i) the taxpayer's child (as defined in subsection 70(10)), who is under 18 years of age, or the taxpayer's spouse or common-law partner,

(ii) a trust of which the taxpayer, a person described in subparagraph (i) or a corporation described in subparagraph (iii), is a beneficiary, or

(iii) a corporation controlled by the taxpayer, by a person described in subparagraph (i) or (ii) or by any combination of those persons or trusts

are deemed to be owned at that time by the taxpayer and not by the person who actually owned the shares at that time;

(b) a group of persons in respect of a corporation means any 2 or more persons each of whom owns shares of the capital stock of the corporation;

(c) a corporation that is controlled by one or more members of a particular group of persons in respect of that corporation is considered to be controlled by that group of persons; and

(d) a corporation may be controlled by a person or a particular group of persons even though the corporation is also controlled or deemed to be controlled by another person or group of persons.

Related Provisions: 256(6), (6.1) — Extended meaning of "controlled".

History: Subsec. 84.1(2.2) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subsec. 84.1(2.2) added by 1998, c. 19, subsec. 115(5), in force on June 18, 1998.

(3) Addition to paid-up capital — In computing the paid-up capital at any time after May 22, 1985 in respect of any class of shares of the capital stock of a corporation, there shall be added an amount equal to the lesser of

(a) the amount, if any, by which

(i) the total of all amounts each of which is an amount deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of the class paid after May 22, 1985 and before that time by the corporation

exceeds

(ii) the total of such dividends that would be determined under subparagraph (i) if this Act were read without reference to paragraph (1)(a), and

(b) the total of all amounts required by paragraph (1)(a) to be deducted in computing the paid-up capital in respect of that class of shares after May 22, 1985 and before that time.

Interpretation Bulletins: IT-67R3: Taxable dividends from corporations resident in Canada; IT-489R: Non-arm's length sale of shares to a corporation.

Selected Cases: *Olsen v. R.*, [2002] 2 C.T.C. 64 (FCA); rev'g [2000] 3 C.T.C. 2299 (TCC) (Reference to subsec. 186(4) includes definition in 186(2)); *Juliar v. Canada (A. G.)*, [2001] 4 C.T.C. 45 (Ont CA); aff'g [2000] 2 C.T.C. 464 (Ont SCJ); leave to appeal to SCC refused (2001), 272 N.R. 196 (note) (Rectification allowed where obvious that taxpayer would not have proceeded in manner chosen); *Hickman v. R.*, [2000] 4 C.T.C. 2557 (TCC) (Related group does not deal at arm's length; provision applied).

Definitions [s. 84.1]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "arm's length" — 84.1(2)(b), (d), 84.1(2.01)(a), (c), 251(1); "child" — 70(10), 252(1); "class of shares" — 248(6); "common-law partner" — 248(1); "connected" — 186(4), (7); "control" — 84.1(2.2)(c), (d); "controlled" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "group" — 84.1(2.2)(a), (b); "individual" — 248(1); "new shares" — 84.1(1)(a); "paid-up capital" — 84.1(3), 89(1), 248(1); "person" — 248(1); "private corporation" — 89(1), 248(1); "purchaser corporation" — 84.1(1); "resident in Canada" — 94(3)(a)(viii), 250; "share" — 248(1); "subject corporation", "subject shares" — 84.1(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

84.2 (1) Computation of paid-up capital in respect of particular class of shares — In computing the paid-up capital in respect of any particular class of shares of the capital stock of a corporation at any particular time after March 31, 1977,

(a) there shall be deducted that proportion of the amount, if any, by which the paid-up capital in respect of all of the issued shares of the capital stock of the corporation on April 1, 1977, determined without reference to this section, exceeds the greater of

(i) the amount that the paid-up capital limit of the corporation would have been on March 31, 1977 if paragraph 89(1)(d) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read at that date, were read without reference to clause 89(1)(d)(iv.1)(F) of that Act and without reference to all subparagraphs of paragraph 89(1)(d) of that Act except subparagraphs 89(1)(d)(iv.1) and (vii) of that Act, and

(ii) the paid-up capital limit of the corporation on March 31, 1977,

that the paid-up capital on April 1, 1977, determined without reference to this section, in respect of the particular class of shares is of the paid-up capital on April 1, 1977, determined without reference to this section, in respect of all of the issued and outstanding shares of the capital stock of the corporation; and

(b) there shall be added an amount equal to the lesser of

(i) the amount, if any, by which

(A) the total of all amounts each of which is an amount deemed by subsection 84(3) or (4) to be a dividend on shares of the particular class paid by the corporation after March 31, 1977 and before the particular time

exceeds

(B) the total that would be determined under clause (A) if this Act were read without reference to paragraph (a), and

(ii) the amount required by paragraph (a) to be deducted in computing the paid-up capital of shares of the particular class.

Related Provisions: 84.1 — Non-arm's length sale of shares.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

(2) Debt deficiency — In computing, after March 31, 1977, the adjusted cost base to an individual of a debt that was owing to the individual by a corporation on March 31, 1977, there shall be deducted the amount of any dividend that would have been deemed to have been received by the individual on that day if the corporation had paid the debt in full on that day.

Related Provisions: 53(2)(p) — Deduction from ACB; 84.2(3) — Where debt converted to shares.

(3) Idem — Where, after March 31, 1977 and before 1979, any debt referred to in subsection (2) owing by a corporation and held by an individual on March 31, 1977 and continuously after that date until conversion, is con-

verted into shares of a particular class of the capital stock of the corporation,

(a) subsection (2) shall not apply in respect of the debt; and

(b) in computing the paid-up capital in respect of the shares of the particular class at any particular time after the conversion,

(i) there shall be deducted the amount by which the adjusted cost base to the taxpayer of the debt would, but for paragraph (a), have been reduced by virtue of subsection (2), and

(ii) there shall be added an amount equal to the lesser of

(A) the amount, if any, by which

(I) the total of all amounts deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of the particular class paid by the corporation after the conversion and before the particular time,

exceeds

(II) the total that would be determined under subclause (I) if this Act were read without reference to subparagraph (i), and

(B) the amount required by subparagraph (i) to be deducted in computing the paid-up capital of shares of the particular class.

Definitions [s. 84.2]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "class of shares" — 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "paid-up capital" — 89(1), 248(1); "share" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

85. (1) Transfer of property to corporation by shareholders [rollover] — Where a taxpayer has, in a taxation year, disposed of any of the taxpayer's property that was eligible property to a taxable Canadian corporation for consideration that includes shares of the capital stock of the corporation, if the taxpayer and the corporation have jointly elected in prescribed form and in accordance with subsection (6), the following rules apply:

(a) the amount that the taxpayer and the corporation have agreed on in their election in respect of the property shall be deemed to be the taxpayer's proceeds of disposition of the property and the corporation's cost of the property;

(b) subject to paragraph (c), where the amount that the taxpayer and the corporation have agreed on in their election in respect of the property is less than the fair market value, at the time of the disposition, of the consideration therefor (other than any shares of the capital stock of the corporation or a right to receive any such shares) received by the taxpayer, the amount so agreed on shall, irrespective of the amount actually so agreed on by them, be deemed to be an amount equal to that fair market value;

(c) where the amount that the taxpayer and the corporation have agreed on in their election in respect of the property is greater than the fair market value, at the time of the disposition, of the property so disposed of, the amount so agreed on shall, irrespective of the amount actually so agreed on, be deemed to be an amount equal to that fair market value;

(c.1) where the property was inventory, capital property (other than depreciable property of a prescribed class), a NISA Fund No. 2 or a property that is eligible property because of paragraph (1.1)(g) or (g.1), and the amount that the taxpayer and corporation have agreed on in their election in respect of the property is less than the lesser of

(i) the fair market value of the property at the time of the disposition, and

(ii) the cost amount to the taxpayer of the property at the time of the disposition,

the amount so agreed on shall, irrespective of the amount actually so agreed on by them, be deemed to be an amount equal to the lesser of the amounts described in subparagraphs (i) and (ii);

(c.2) subject to paragraphs (b) and (c) and notwithstanding paragraph (c.1), where the taxpayer carries on a farming business the income from which is computed in accordance with the cash method and the property was inventory owned in connection with that business immediately before the particular time the property was disposed of to the corporation,

(i) the amount that the taxpayer and the corporation agreed on in their election in respect of inventory purchased by the taxpayer shall be deemed to be equal to the amount determined by the formula

$$\left(A \times \frac{B}{C}\right) + D$$

where

A is the amount that would be included because of paragraph 28(1)(c) in computing the taxpayer's income for the taxpayer's last taxation year beginning before the particular time if that year had ended immediately before the particular time,

B is the value (determined in accordance with subsection 28(1.2)) to the taxpayer immediately before the particular time of the purchased inventory in respect of which the election is made,

C is the value (determined in accordance with subsection 28(1.2)) of all of the inventory purchased by the taxpayer that was owned by the taxpayer in connection with that business immediately before the particular time, and

D is such additional amount as the taxpayer and the corporation designate in respect of the property,

(ii) for the purpose of subparagraph 28(1)(a)(i), the disposition of the property and the receipt of proceeds of disposition therefor shall be deemed to have occurred at the particular time and in the course of carrying on the business, and

(iii) where the property is owned by the corporation in connection with a farming business and the income from that business is computed in accordance with the cash method, for the purposes of section 28,

(A) an amount equal to the cost to the corporation of the property shall be deemed to have been paid by the corporation, and

(B) the corporation shall be deemed to have purchased the property for an amount equal to that cost,

at the particular time and in the course of carrying on that business;

(d) where the property was eligible capital property in respect of a business of the taxpayer and the amount that, but for this paragraph, would be the proceeds of disposition of the property is less than the least of

(i) 4/3 of the taxpayer's cumulative eligible capital in respect of the business immediately before the disposition,

(ii) the cost to the taxpayer of the property, and

(iii) the fair market value of the property at the time of the disposition,

the amount agreed on by the taxpayer and the corporation in their election in respect of the property shall, irrespective of the amount actually so agreed on by them, be deemed to be the least of the amounts described in subparagraphs (i) to (iii);

(d.1) for the purpose of determining after the time of the disposition the amount to be included under paragraph 14(1)(b) in computing the corporation's income, there shall be added to the amount otherwise determined for Q in the definition "cumulative eligible capital" in subsection 14(5) the amount determined by the formula

$$\left(A \times \frac{B}{C}\right) - 2(D - E)$$

where

A is the amount, if any, determined for Q in that definition in respect of the taxpayer's business immediately before the time of the disposition,

Proposed Amendment — 85(1)(d.1) before B

(d.1) for the purpose of determining after the time of the disposition the amount to be included under paragraph 14(1)(b) in computing the corporation's income, there shall be added to the amount otherwise determined for C in that paragraph the amount determined by the formula

$$1/2 \times [(A \times B/C) - 2(D - E)]$$

where

A is the amount, if any, determined for Q in the definition "cumulative eligible capital" in subsection 14(5) in respect of the taxpayer's business immediately before the time of the disposition,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 85(1), will amend the portion of para. 85(1)(d.1) before the description of B to read as above, applicable in respect of dispositions that occur after December 20, 2002.

Technical Notes: See under 85(1)(d.11), (d.12) below.

B is the fair market value immediately before that time of the eligible capital property disposed of to the corporation by the taxpayer,

C is the fair market value immediately before that time of all eligible capital property of the taxpayer in respect of the business,

D is the amount, if any, that would be included under subsection 14(1) in computing the taxpayer's income as a result of the disposition if the values determined for C and D in paragraph 14(1)(b) were zero, and

E is the amount, if any, that would be included under subsection 14(1) in computing the taxpayer's income as a result of the disposition if the value determined for D in paragraph 14(1)(b) were zero;

Proposed Addition — 85(1)(d.11), (d.12)

(d.11) for the purpose of determining after the time of the disposition (referred to in this paragraph and in paragraph (d.12) as the "disposition time") the amount to be included under paragraph 14(1)(a) or (b) in computing the corporation's income, there shall be added to the amount otherwise determined for each of A and F in the definition "cumulative eligible capital" in subsection 14(5) the amount, if any, determined by the formula

$$A \times B/C$$

where

A is the amount, if any, that would be determined for F in that definition in respect of the taxpayer's business at the beginning of the taxpayer's following taxation year if the taxpayer's taxation year that includes the disposition time had ended immediately after the disposition time and if, in respect of the disposition, this Act were read without reference to paragraph (d.12),

B is the fair market value immediately before the disposition time of the eligible capital property disposed of to the corporation by the taxpayer, and

C is the fair market value immediately before the disposition time of all eligible capital property of the taxpayer in respect of the business;

(d.12) for the purpose of determining after the disposition time the amount to be included under paragraph 14(1)(a) or (b) in computing the taxpayer's income, the amount, if any, determined by the formula in paragraph (d.11) in respect of the disposition is to be deducted from each of the amounts otherwise determined

(i) by subparagraph 14(1)(a)(ii), and

(ii) for the description of B in paragraph 14(1)(b);

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 85(2), will add paras. 85(1)(d.11) and (d.12), applicable in respect of dispositions that occur after December 20, 2002.

Technical Notes: Subsection 85(1) provides a tax deferral for the transfer of various types of property by a taxpayer to a taxable Canadian corporation for consideration that includes shares of the corporation's capital stock. In general, tax deferral may be achieved if the taxpayer and the corporation jointly elect that the proceeds of disposition of the taxpayer and the eligible capital expenditure of, or cost to, the corporation are deemed to be less than the fair market value of the property transferred.

Paragraph 85(1)(d.1) generally reduces, for the corporation that has acquired an eligible capital property (ECP), the gain that would be included in income under paragraph 14(1)(b) on a subsequent disposition of the property. Paragraph 85(1)(d.1) adjusts the gain, in order to take into account the 1988 change of the rate of income inclusion and expenditure deductibility from ½ to ¾, by adjusting the calculation of variable Q in the definition "cumulative eligible capital" in subsection 14(5). Variable Q generally represents, for the period prior to the taxpayer's "adjustment time", the difference between ECP deductions claimed under paragraph 20(1)(b) and the total of recapture and gains from prior dispositions of eligible capital property by the taxpayer. Paragraph 85(1)(d.1) adjusts variable Q only for the purposes of calculating the amount to be included in a corporation's income under paragraph 14(1)(b), but not for the purpose of calculating the corporation's cumulative eligible capital balance for other purposes, such as the claiming of ECP deductions. Specifically, the adjustment of variable Q adjusts the value of variables A, B and C in the formula in paragraph 14(1)(b). Variables A and B are affected indirectly, since variable Q affects variable F in the calculation of the cumulative eligible capital balance.

Paragraph 85(1)(d.1) is amended concurrently with the addition of new paragraph 85(1)(d.11). New paragraph 85(1)(d.11) generally applies to ensure that an amount that would have been recaptured ECP deductions

to the taxpayer under subsection 14(1), if the taxpayer had disposed of the eligible capital property for an amount greater than the taxpayer's cumulative eligible capital at the time of the disposition, is subject to recapture in the hands of the corporation upon a subsequent sale of the property. This result is achieved by adding an allocation of the potential recapture to the taxpayer (i.e., variable F of the taxpayer) simultaneously to the corporation's eligible capital expenditures and aggregate ECP deductions (i.e., variables A and F respectively in the definition "cumulative eligible capital" of the corporation). This adjustment applies only for the purpose of calculating the amount to be included in income of the corporation under subsection 14(1) upon the subsequent disposition of eligible capital property. In this regard, variable F of the taxpayer is determined at the beginning of the taxpayer's following taxation year if the taxpayer's taxation year that included the transfer had ended immediately after the disposition time, determined without reference to new paragraph (d.12). Variable F of the taxpayer is apportioned to the corporation in the same proportion as the fair market value of the property transferred is to the fair market value of total eligible capital property of the taxpayer immediately before the transfer.

Because new paragraph 85(1)(d.11) now accommodates variable F of the corporation, paragraph 85(1)(d.1) is amended to add ½ of the taxpayer's variable Q amount directly to the corporation's variable C amount in paragraph 14(1)(b), rather than adjusting variable Q of the corporation (and thus variable F as well).

New paragraph 85(1)(d.12) is added, concurrently with new paragraph 85(1)(d.11), to ensure that a subsequent disposition of other ECP by the taxpayer does not result in recapture of depreciation under paragraph 14(1)(a) when the resulting gain from that disposition should have been taxed at a lower rate under paragraph 14(1)(b). This could happen, for instance, if the taxpayer were to defer all of the recapture to the corporation, such that the taxpayer's cumulative eligible capital balance at the end of the taxation year that includes the rollover is nil. In this case, if in the next taxation year the taxpayer were to make another disposition of ECP, paragraph 85(1)(d.12) would reduce to nil the amounts that would be determined for the taxpayer by subparagraph 14(1)(a) and variable B of paragraph 14(1)(b).

Example of 85(1)(d.1) and (d.11)

Mr. X purchased an eligible capital property in 1984 (when the income inclusion rate for eligible capital property was one half) at a cost of $300,000. This was the first and only eligible capital property held in respect of his business. Mr. X claimed deductions of $40,650 under paragraph 20(1)(b) before his "adjustment time" (in the case of Mr. X, January 1, 1988), and of $11,482 subsequent to that time. Mr. X now transfers the property to a corporation in circumstances to which subsection 85(1) applies. Immediately before the time of the transfer, the fair market value of the property is $500,000. Mr. X and the corporation agree that the proceeds of disposition to Mr. X will be $203,391, which is 4/3 of the cumulative eligible capital balance of $152,543. The balance is calculated as follows:

Eligible capital expenditure	*$300,000*
Rate applicable in 1984	*50%*
	150,000
Depreciation before 1988	*<40,650>*
Cumulative eligible capital at adjustment time	*109,350*
"C" amount: 3/2 of 109,350	*164,025*
"D" amount: depreciation before 1988	*40,650*
"P" amount: depreciation after 1987	*<11,482>*
"Q" amount: depreciation before 1988	*<40,650>*
Cumulative eligible capital of Mr. X	*$152,543*

Upon the subsequent sale of the property by the corporation for actual proceeds of disposition of $500,000, the amount included in the corporation's income under subsection 14(1) is calculated as follows:

Agreed amount of eligible capital expenditure (4/3 of $152,543)	*$203,391*
Eligible capital expenditure rate	*75%*
"A" amount in cumulative eligible capital balance of corporation	*152,543*

14(1)(a) calculation for corporation:			
Proceeds	*$500,000*		
Rate applicable	*75%*		
		375,000	
"E" amount in cumulative eligible capital balance of corporation			
Excess		*222,457*	
"F" for corporation: bumped by 85(1)(d.11) ($40,650 + $11,482)		*52,132*	
14(1)(a) income: lesser of "F" and excess			*$52,132*
14(1)(b) calculation for corporation:			
Excess (as above)	*$222,457*		
Less: "B" amount: amount "F", as bumped by 85(1)(d.11)	*<52,132>*		
"C" amount: 1/2 of "Q" (above), as bumped by 85(1)(d.1)	*<20,325>*		
Net	*150,000*		
Multiply by 2/3	*× 2/3*		
14(1)(b) income			*$100,000*
Total 14(1) income inclusion to corporation			*$152,132*

(e) where the property was depreciable property of a prescribed class of the taxpayer and the amount that, but for this paragraph, would be the proceeds of disposition thereof is less than the least of

(i) the undepreciated capital cost to the taxpayer of all property of that class immediately before the disposition,

(ii) the cost to the taxpayer of the property, and

(iii) the fair market value of the property at the time of the disposition,

the amount agreed on by the taxpayer and the corporation in their election in respect of the property shall, irrespective of the amount actually so agreed on by them, be deemed to be the least of the amounts described in subparagraphs (i) to (iii);

(e.1) where two or more properties, each of which is a property described in paragraph (d) or each of which is a property described in paragraph (e), are disposed of at the same time, paragraph (d) or (e), as the case may be, applies as if each property so disposed of had been separately disposed of in the order designated by the taxpayer before the time referred to in subsection (6) for the filing of an election in respect of those properties or, if the taxpayer does not so designate any such order, in the order designated by the Minister;

(e.2) where the fair market value of the property immediately before the disposition exceeds the greater of

(i) the fair market value, immediately after the disposition, of the consideration received by the taxpayer for the property disposed of by the taxpayer, and

(ii) the amount that the taxpayer and the corporation have agreed on in their election in respect of the property, determined without reference to this paragraph,

and it is reasonable to regard any part of the excess as a benefit that the taxpayer desired to have conferred on a person related to the taxpayer (other than a corporation that was a wholly owned corporation of the taxpayer immediately after the disposition), the amount that the taxpayer and the corporation agreed on in their election in respect of the property shall, regardless of

the amount actually so agreed on by them, be deemed (except for the purposes of paragraphs (g) and (h)) to be an amount equal to the total of the amount referred to in subparagraph (ii) and that part of the excess;

(e.3) where, under any of paragraphs (c.1), (d) and (e), the amount that the taxpayer and the corporation have agreed on in their election in respect of the property (in this paragraph referred to as "the elected amount") would be deemed to be an amount that is greater or less than the amount that would be deemed, subject to paragraph (c), to be the elected amount under paragraph (b), the elected amount shall be deemed to be the greater of

(i) the amount deemed by paragraph (c.1), (d) or (e), as the case may be, to be the elected amount, and

(ii) the amount deemed by paragraph (b) to be the elected amount;

(e.4) where

(i) the property is depreciable property of a prescribed class of the taxpayer and is a passenger vehicle the cost to the taxpayer of which was more than $20,000 or such other amount as may be prescribed, and

(ii) the taxpayer and the corporation do not deal at arm's length,

the amount that the taxpayer and the corporation have agreed on in their election in respect of the property shall be deemed to be an amount equal to the undepreciated capital cost to the taxpayer of the class immediately before the disposition, except that, for the purposes of subsection 6(2), the cost to the corporation of the vehicle shall be deemed to be an amount equal to its fair market value immediately before the disposition;

(f) the cost to the taxpayer of any particular property (other than shares of the capital stock of the corporation or a right to receive any such shares) received by the taxpayer as consideration for the disposition shall be deemed to be an amount equal to the lesser of

(i) the fair market value of the particular property at the time of the disposition, and

(ii) that proportion of the fair market value, at the time of the disposition, of the property disposed of by the taxpayer to the corporation that

(A) the amount determined under subparagraph (i)

is of

(B) the fair market value, at the time of the disposition, of all properties (other than shares of the capital stock of the corporation or a right to receive any such shares) received by the taxpayer as consideration for the disposition;

(g) the cost to the taxpayer of any preferred shares of any class of the capital stock of the corporation receivable by the taxpayer as consideration for the disposition shall be deemed to be the lesser of the fair market value of those shares immediately after the disposition and that proportion of the amount, if any, by which the proceeds of the disposition exceed the fair market value of the consideration (other than shares of the capital stock of the corporation or a right to receive any such shares) received by the taxpayer for the disposition, that

(i) the fair market value, immediately after the disposition, of those preferred shares of that class,

is of

(ii) the fair market value, immediately after the disposition, of all preferred shares of the capital stock of the corporation receivable by the taxpayer as consideration for the disposition;

(h) the cost to the taxpayer of any common shares of any class of the capital stock of the corporation receivable by the taxpayer as consideration for the disposition shall be deemed to be that proportion of the amount, if any, by which the proceeds of the disposition exceed the total of the fair market value, at the time of the disposition, of the consideration (other than shares of the capital stock of the corporation or a right to receive any such shares) received by the taxpayer for the disposition and the cost to the taxpayer of all preferred shares of the capital stock of the corporation receivable by the taxpayer as consideration for the disposition, that

(i) the fair market value, immediately after the disposition, of those common shares of that class,

is of

(ii) the fair market value, immediately after the disposition, of all common shares of the capital stock of the corporation receivable by the taxpayer as consideration for the disposition; and

(i) where the property so disposed of is taxable Canadian property of the taxpayer, all of the shares of the capital stock of the Canadian corporation received by the taxpayer as consideration for the property shall be deemed to be taxable Canadian property of the taxpayer.

Related Provisions: 13(7)(e) — Deemed maximum capital cost on non-arm's length transfer; 13(7)(g), (h) — Maximum capital cost of passenger vehicles; 13(21.2)(d) — No election allowed on certain transfers of depreciable property where u.c.c. exceeds fair market value; 40(3.3), (3.4) — Limitation on loss where share acquired by affiliated person; 44.1(6), (7) — Small business investment rollover on exchange of shares; 51(4) — Application of 85(1) to exchange of convertible property; 53(4) — Effect on ACB of share, partnership interest or trust interest; 54.2 — Certain shares deemed to be capital property; 55(1) — "Permitted redemption" for butterfly purposes; 55(3.1)(b) — Rules where foreign vendor's capital gain exempted by treaty; 69(11) — Where corporation later sells transferred property and shelters gain; 85(1.1) — "Eligible property"; 85(2) — Rollover of property to corporation from partnership; 85(5) — Rules on transfers of depreciable property; 85(6) — Time for election; 86(3)(a) — 85(1) takes precedence over s. 86; 97(2)(a) — Rollover of property to a partnership; 107(2)(d.1)(iii), 107.4(3)(f) — Deemed taxable Canadian property retains status when rolled out of trust or into trust; 138(11.5) — Transfer of insurance business by non-resident insurer; 139.1(4)(c) — No election allowed re ownership rights on demutualization of insurer; 142.5(9) — Transitional rule — mark-to-market property acquired by financial institution on rollover; 142.7(3) — Application on conversion of foreign bank affiliate to branch; 248(25.1) — Deemed taxable Canadian property retains status through trust-to-trust transfer; 256(7)(c), (d) — Whether control of corporation acquired on rollover; 257 — Formula cannot calculate to less than zero; Reg. 5301(8) — Effect of transfer on instalment base of transferee; Canada-U.S. Tax Treaty:Art. XIII:8 — Deferral of tax for U.S. resident transferor.

History: The descriptions of D and E in para. 85(1)(d.1) amended by 2001, c. 17, subsec. 62(1), applicable in respect of taxation years that end after February 27, 2000. The descriptions formerly read:

D is the amount, if any, that would be included under subsection 14(1) in computing the taxpayer's income as a result of the disposition if

(i) the amounts determined for C and D in subparagraph 14(1)(a)(v) were zero, and

(ii) paragraph 14(1)(b) were read as follows:

"(b) in any other case, the excess shall be included in computing the taxpayer's income from that business for that year.", and

E is the amount, if any, that would be included under subsection 14(1) in computing the taxpayer's income as a result of the disposition if the amount determined for D in subparagraph 14(1)(a)(v) were zero;

The opening words of para. 85(1)(c.1) amended by 1995, c. 21, subsec. 53(1), applicable to dispositions occurring after February 22, 1994. The opening words of para. (c.1) formerly read:

(c.1) where the property of the taxpayer was inventory, capital property (other than depreciable property of a prescribed class), a NISA Fund No. 2 or a property (other than capital property or an inventory) of the taxpayer that is a security or debt obligation used in the year in, or held in the year in the course of, carrying on the business of insurance or lending money, and the amount that the taxpayer and corporation have agreed on in their election in respect of the property is less than the lesser of

Para. 85(1)(d.1) amended by 1995, c. 3, s. 22, applicable to dispositions of property in respect of a business that occur in a fiscal period of the business that ends after February 22, 1994 otherwise than because of an election under subsec. 25(1). Para. (d.1) formerly read:

(d.1) for the purpose of determining after the time of the disposition the amount to be included under paragraph 14(1)(b) in computing the corporation's income, there shall be added to the amount otherwise determined for Q in the definition "cumulative eligible capital" in subsection 14(5) the amount determined by the formula

$$\left(A \times \frac{B}{C}\right) - 2[(D + E) - (F + G)]$$

where

A is the amount, if any, determined for Q in that definition in respect of the taxpayer's business immediately before the time of the disposition,

B is the fair market value immediately before that time of the eligible capital property disposed of to the corporation by the taxpayer,

C is the fair market value immediately before that time of all eligible capital property of the taxpayer in respect of the business,

D is the amount, if any, that would be included under subsection 14(1) in computing the taxpayer's income as a result of the disposition if paragraph 14(1)(b) were read as follows:

"(b) in any other case, the excess shall be included in computing the taxpayer's income from that business for that year.",

E is the amount, if any, that would be deemed under subsection 14(1) to be a taxable capital gain of the taxpayer as a result of the disposition if clause 14(1)(a)(v)(B) were read as follows:

"(B) zero"

F is the amount, if any, included under subsection 14(1) in computing the taxpayer's income as a result of the disposition, and

G is the amount, if any, deemed under subsection 14(1) to be a taxable capital gain of the taxpayer as a result of the disposition;

Para. 85(1)(d.1) substituted by 1994, c. 21, subsec. 36(1), applicable to the disposition of property to a corporation occurring after the beginning of its first taxation year that begins after June 1988. That para. formerly read:

(d.1) for the purpose of determining after the time of the disposition the amount to be included under paragraph 14(1)(b) in computing the corporation's income, there shall be added to the amount otherwise determined for Q in the definition "cumulative eligible capital" in subsection 14(5) the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount, if any, determined for Q in that definition in respect of the taxpayer's business immediately before the time of the disposition,

B is the fair market value immediately before that time of the eligible capital property disposed of to the corporation by the taxpayer, and

C is the fair market value immediately before that time of all eligible capital property of the taxpayer in respect of the business;

That portion of para. 85(1)(c.1) preceding subpara. (i) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 35(1), to substitute "where the property of the taxpayer" for "where the property" and to add reference to "a NISA Fund No. 2", applicable to dispositions occurring after 1990.

Para. 85(1)(d.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 35(2), applicable to the disposition of property to a corporation occurring after the beginning of its first taxation year beginning after June 1988.

Para. 85(1)(e.2) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 64(1), applicable to dispositions occurring after July 13, 1990.

That portion of para. 85(1)(e.2) following subpara. (ii) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 64(2), to add "(other than the corporation, where all of its issued shares, except directors' qualifying shares, are owned by the taxpayer immediately before the disposition)," applicable to dispositions occurring after June 1988.

Selected Cases [subsec. 85(1)]: *Bugera*, [2003] 3 C.T.C. 256 (FCTD) (Late-filed elections not allowed; Minister's discretion to refuse upheld where retroactive tax planning involved); *Juliar v. Canada (A. G.)*, [2001] 4 C.T.C. 45 (Ont CA); aff'g [2000] 2 C.T.C. 464 (Ont SCJ); leave to appeal to SCC refused (2001), 272 N.R. 196 (note) (Rectification allowed where obvious that taxpayer would not have proceeded in manner chosen); *Barnabe Estate v. MNR*, [1999] 4 C.T.C. 5 (FCA); rev'g [1998] 3 C.T.C. 2201 (TCC) (Executors capable of making election); *Shepp v. R.*, [1999] 1 C.T.C. 2889 (TCC) (No transfer of value between classes of shares upon reorganization); *Dale v. R.*, [1997] 2 C.T.C. 286 (FCA) (Retroactive court approval of share issue was binding on Minister); *Deconinck v. R.*, [1990] 2 C.T.C. 464 (FCA) (Particulars provided in statement of claim on appeal too late to cause finding of erroneous assessment based on vague election form).

Regulations: 7307(1) (prescribed amount for 85(1)(e.4)(i)).

I.T. Application Rules: 20(1.2) (transfer of depreciable property by person who owned it before 1972).

Interpretation Bulletins: IT-169: Price adjustment clauses; IT-188R: Sale of accounts receivable; IT-217R: Depreciable property owned on December 31, 1971 (archived); IT-243R4: Dividend refund to private corporations; IT-291R3: Transfer of property to a corporation under subsection 85(1); IT-427R: Livestock of farmers; IT-433R: Farming or fishing — use of cash method; IT-457R: Election by professionals to exclude work in progress from income; IT-489R: Non-arm's length sale of shares to a corporation; IT-521R: Motor vehicle expenses claimed by self-employed individuals; IT-522R: Vehicle, travel and sales expenses of employees.

Information Circulars: 76-19R3: Transfer of property to a corporation under section 85; 88-2, paras. 9, 10, 13, 14, 22: General anti-avoidance rule — section 245 of the *Income Tax Act*; 88-2 Supplement, paras. 3, 8: General anti-avoidance rule — section 245 of the *Income Tax Act*; 89-3: Policy statement on business equity valuations.

I.T. Technical News: 3 (section 85 — *Dale* case); 7 (rollovers of capital property — *Mara Properties*); 10 (1997 deduction limits and benefit rates for automobiles (for 85(1)(e.4)(i)).

Advance Tax Rulings: ATR-6: Vendor reacquires business assets following default by purchaser; ATR-7: Amalgamation involving losses and control; ATR-19: Earned depletion base and cumulative Canadian development expense; ATR-25: Estate freeze; ATR-27: Exchange and acquisition of interests in capital properties through rollovers and winding-up ("butterfly"); ATR-28: Redemption of capital stock of family farm corporation; ATR-32: Rollover of fixed assets from Opco into Holdco; ATR-35: Partitioning of assets to get specific ownership — "butterfly"; ATR-36: Estate freeze; ATR-42: Transfer of shares; ATR-55: Amalgamation followed by sale of shares; ATR-57: Transfer of property for estate planning purposes; ATR-58: Divisive reorganization; ATR-70: Distribution of taxable Canadian property by a trust to a non-resident.

Forms: T2 SCH 44: Non-arm's length transactions; T2057: Election on disposition of property by a taxpayer to a taxable Canadian corporation.

(1.1) Definition of "eligible property" — For the purposes of subsection (1), "eligible property" means

(a) a capital property (other than real property, or an interest in or an option in respect of real property, owned by a non-resident person);

(b) a capital property that is real property, or an interest in or an option in respect of real property, owned by a non-resident insurer where that property and the property received as consideration for that property are designated insurance property for the year;

Proposed Amendment — 85(1.1)(a), (b)

(a) a capital property (other than real or immovable property, an option in respect of such property, or an interest in real property or a real right in an immovable, owned by a non-resident person);

(b) a capital property that is real or immovable property, an option in respect of such property, or an interest in real property or a real right in an immovable, owned by a non-resident insurer where that property and the property received as consideration for that property are desigated insurance property for the year;

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 229(1), will amend paras. 85(1.1)(a) and (b) to read as above, to come into force on Royal Assent.

Technical Notes: See under 12(4).

(c) a Canadian resource property;

(d) a foreign resource property;

(e) an eligible capital property;

(f) an inventory (other than real property, an interest in real property or an option in respect of real property);

Proposed Amendment — 85(1.1)(f)

(f) an inventory (other than real or immovable property, an option in respect of such property, or an interest in real property or a real right in an immovable);

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 229(2), will amend para. 85(1.1)(f) to read as above, to come into force on Royal Assent.

Technical Notes: See under 12(4).

(g) a property that is a security or debt obligation used by the taxpayer in the year in, or held by it in the year in the course of, carrying on the business of insurance or lending money, other than

(i) a capital property,

(ii) inventory, or

(iii) where the taxpayer is a financial institution in the year, a mark-to-market property for the year;

(g.1) where the taxpayer is a financial institution in the year, a specified debt obligation (other than a mark-to-market property of the taxpayer for the year);

(h) a capital property that is real property, an interest in real property or an option in respect of real property, owned by a non-resident person (other than a non-resident insurer) and used in the year in a business carried on in Canada by that person; or

Proposed Amendment — 85(1.1)(h)

(h) a capital property that is real or immovable property, an option in respect of such property, or an interest in real property or a real right in an immovable, owned by a non-resident person (other than a non-resident insurer) and used in the year in a business carried on in Canada by that person; or

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 229(3), will amend para. 85(1.1)(h) to read as above, to come into force on Royal Assent.

Technical Notes: See under 12(4).

(i) a NISA Fund No. 2.

Related Provisions: 85(1.11) — Exception — foreign resource property or interest in FIE; 85(1.2) — Limitation on 85(1.1)(h); 248(4) — Interest in real property includes a leasehold interest but not a security interest; 248(4.1) — Meaning of "real right in an immovable".

History: Para. 85(1.1)(b) amended by 1997, c. 25, s. 17, applicable to dispositions that occur in an insurer's 1997 or subsequent taxation year. Para. (b) formerly read:

> (b) a capital property that is real property or an interest in or an option in respect of real property, owned by a non-resident insurer where that property and the property received as consideration for that property are property used by it in the year in, or held by it in the year in the course of (within the meaning assigned by subsection 138(12)), carrying on an insurance business in Canada;

Para. 85(1.1)(g) amended, and para. (g.1) added, by 1995, c. 21, subsecs. 53(2), (3); para. (g) applicable to dispositions occurring in taxation years that begin after October 1994, and para. (g.1) applicable to dispositions occurring after February 22, 1994. Para. (g) formerly read:

> (g) a property (other than a capital property or an inventory) that is a security or debt obligation used by the taxpayer in the year in, or held by it in the year in the course of, carrying on the business of insurance or lending money;

Para. 85(1.1)(f) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 35(3), applicable to dispositions occurring after December 20, 1991. Para. (f) formerly read:

> (f) an inventory (other than real property);

Para. 85(1.1)(i) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 35(4), applicable to dispositions occurring after 1990.

Para. 85(1.1)(h) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 64(3), applicable to

> (a) dispositions occurring after 1989, and
>
> (b) dispositions occurring after 1984 where the taxpayer is a resident of a country with which Canada has a tax treaty and a provision of that treaty that was prescribed for the purposes of section 115.1 of the Act was effective at the time the disposition occurred.

Interpretation Bulletins: IT-291R3: Transfer of property to a corporation under subsection 85(1).

(1.11) Exception — Notwithstanding subsection (1.1), a foreign resource property, or an interest in a partnership that derives all or part of its value from one or more foreign resource properties, is not an eligible property of a taxpayer in respect of a disposition by the taxpayer to a corporation where

(a) the taxpayer and the corporation do not deal with each other at arm's length; and

(b) it is reasonable to conclude that one of the purposes of the disposition, or a series of transactions or events of which the disposition is a part, is to increase the extent to which any person may claim a deduction under section 126.

Proposed Amendment — 85(1.11)

(1.11) Exception — Notwithstanding subsection (1.1), the following property is not an eligible property of a taxpayer in respect of a disposition of the property in a taxation year by the taxpayer to a corporation:

(a) a foreign resource property, or an interest in a partnership that derives all or part of its value from one or more foreign resource properties, if

(i) the taxpayer and the corporation do not deal with each other at arm's length, and

(ii) it is reasonable to conclude that one of the purposes of the disposition, or a series of transactions or events of which the disposition is a part, is to increase the extent to which any person may claim a deduction under section 126; and

(b) a specified participating interest.

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), s. 12, will amend subsec. 85(1.11) to read as above, applicable to taxation years that begin after 2002.

Technical Notes: Subsection 85(1.1) describes the types of property (referred to as "eligible property") that may be transferred to a corporation under subsection 85(1). Subsection 85(1.11) provides that certain foreign resource property (or an interest in a partnership that derives all or part of its value from one or more foreign resource properties) is not an "eligible property" of a taxpayer in respect of a transfer to a corporation.

Subsection 85(1.11) is amended to provide that a specified participating interest is not an eligible property of a taxpayer in respect of a transfer to a corporation. The concept of a specified participating interest is generally relevant in the context of the foreign investment entity rules in sections 94.1 to 94.4. For more information on the definition "specified participating interest" in subsection 248(1), see the commentary on that definition.

Related Provisions: 251(1) — Arm's length.

History: Subsec. 85(1.11) added by 2001, c. 17, subsec. 62(2), applicable to dispositions that occur after December 21, 2000 other than a disposition by a taxpayer that occurs pursuant to an agreement in writing made by the taxpayer on or before that date.

Interpretation Bulletins: IT-291R3: Transfer of property to a corporation under subsection 85(1).

(1.2) Application of subsec. (1) [to non-resident vendor] — Subsection (1) does not apply to a disposition by a taxpayer to a corporation of a property referred to in paragraph (1.1)(h) unless

(a) immediately after the disposition, the corporation is controlled by the taxpayer, a person or persons related (otherwise than because of a right referred to in paragraph 251(5)(b)) to the taxpayer or the taxpayer and a person or persons so related to the taxpayer;

(b) the disposition is part of a transaction or series of transactions in which all or substantially all of the property used in the business referred to in paragraph (1.1)(h) is disposed of by the taxpayer to the corporation; and

(c) the disposition is not part of a series of transactions that result in control of the corporation being acquired by a person or group of persons after the time that is immediately after the disposition.

Related Provisions: 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired.

History: Subsec. 85(1.2) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 64(4), applicable to

(a) dispositions occurring after 1989, and

(b) dispositions occurring after 1984 where the taxpayer is a resident of a country with which Canada has a tax treaty and a provision of that treaty that was prescribed for the purposes of section 115.1 of the said Act was effective at the time the disposition occurred,

Interpretation Bulletins: IT-291R3: Transfer of property to a corporation under subsection 85(1).

(1.3) Meaning of "wholly owned corporation" — For the purposes of this subsection and paragraph (1)(e.2), "wholly owned corporation" of a taxpayer means a corporation all the issued and outstanding shares of the capital stock of which (except directors' qualifying shares) belong to

(a) the taxpayer;

(b) a corporation that is a wholly owned corporation of the taxpayer; or

(c) any combination of persons described in paragraph (a) or (b).

History: Subsec. 85(1.3) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 64(4), applicable to dispositions occurring after June 1988.

Interpretation Bulletins: IT-291R3: Transfer of property to a corporation under subsection 85(1).

(1.4) Definitions — For the purpose of subsection (1.1), "financial institution", "mark-to-market property" and "specified debt obligation" have the meanings assigned by subsection 142.2(1).

History: Subsec. 85(1.4) added by 1995, c. 21, subsec. 53(4), applicable to dispositions occurring after February 22, 1994.

(2) Transfer of property to corporation from partnership — Where

(a) a partnership has disposed, to a taxable Canadian corporation for consideration that includes shares of the corporation's capital stock, of any partnership property that was

(i) a capital property (other than real property, or an interest in or an option in respect of real property, where the partnership was not a Canadian partnership at the time of the disposition),

Proposed Amendment — 85(2)(a)(i)

(i) a capital property (other than real or immovable property, an option in respect of such property, or an interest in real property or a real right in an immovable, where the partnership was not a Canadian partnership at the time of the disposition),

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 229(4), will amend subpara. 85(2)(a)(i) to read as above, to come into force on Royal Assent.

Technical Notes: See under 12(4).

(ii) a property described in any of paragraphs (1.1)(c) to (f), or

(iii) a property that would be described in paragraph (1.1)(g) or (g.1) if the references in those paragraphs to "taxpayer" were read as "partnership", and

(b) the corporation and all the members of the partnership have jointly so elected, in prescribed form and within the time referred to in subsection (6),

paragraphs (1)(a) to (i) are applicable, with such modifications as the circumstances require, in respect of the disposition as if the partnership were a taxpayer resident in Canada who had disposed of the property to the corporation.

Related Provisions: 13(21.2)(d) — No election allowed on certain transfers of depreciable property where u.c.c. exceeds fair market value; 40(3.3), (3.4) — Limitation on loss where share acquired by affiliated person; 51(4) — Application of 85(2) to exchange of convertible property; 54.2 — Certain shares deemed to be capital property; 69(11) — Where corporation later sells transferred property and shelters gain; 85(3) — Where partnership wound up; 85(5) — Rules on transfers of depreciable property; 85(6) — Time for election; 86(3)(a) — Section 86 does not apply where 85(2) applies; 139.1(4)(c) — No election allowed re ownership rights on demutualization of insurer; 248(4) — Interest in real property; 248(4.1) — Meaning of "real right in an immovable"; Reg. 5301(8) — Effect of transfer on instalment base of transferee; Canada-U.S. Tax Treaty:Art. XIII:8 — Deferral of tax for U.S. resident transferor.

History: The portion of subsec. 85(2) before para. (b) amended by 1998, c. 19, subsec. 116(1), applicable to dispositions that occur after June 20, 1996. That portion formerly read:

(2) Where, after May 6, 1974,

(a) a partnership has disposed of any partnership property that was a capital property (other than real property, or an interest in or an option in respect of real property, owned by a partnership that was not a Canadian partnership at the time of the disposition), a Canadian resource property, a foreign resource property, an eligible capital property, an inventory (other than real property) or a property (other than a capital property or an in-

ventory) that is a security or debt obligation used by it in the year in, or held by it in the year in the course of, carrying on the business of insurance or lending money to a taxable Canadian corporation for consideration that includes shares of the capital stock of the corporation, and

I.T. Application Rules: 20(1.2) (transfer of depreciable property by person who owned it before 1972).

Interpretation Bulletins: IT-217R: Depreciable property owned on December 31, 1971 (archived); IT-378R: Winding-up of a partnership; IT-457R: Election by professionals to exclude work in progress from income.

Information Circulars: 76-19R3: Transfer of property to a corporation under section 85.

Forms: T2 SCH 44: Non-arm's length transactions; T2058: Election on disposition of property by a partnership to a taxable Canadian corporation.

(2.1) Computing paid-up capital — Where subsection (1) or (2) applies to a disposition of property (other than a disposition of property to which section 84.1 or 212.1 applies) to a corporation by a person or partnership (in this subsection referred to as the "taxpayer"),

(a) in computing the paid-up capital in respect of any particular class of shares of the capital stock of the corporation at the time of, and at any time after, the issue of shares of the capital stock of the corporation in consideration for the disposition of the property, there shall be deducted an amount determined by the formula

$$(A - B) \times \frac{C}{A}$$

where

A is the increase, if any, determined without reference to this section as it applies to the disposition of the property, in the paid-up capital in respect of all the shares of the capital stock of the corporation as a result of the acquisition by the corporation of the property,

B is the amount, if any, by which the corporation's cost of the property, immediately after the acquisition, determined under subsection (1) or (2), as the case may be, exceeds the fair market value, immediately after the acquisition, of any consideration (other than shares of the capital stock of the corporation) received by the taxpayer from the corporation for the property, and

C is the increase, if any, determined without reference to this section as it applies to the disposition of the property, in the paid-up capital in respect of the particular class of shares as a result of the acquisition by the corporation of the property; and

(b) in computing the paid-up capital, at any time after November 21, 1985, in respect of any class of shares of the capital stock of a corporation, there shall be added an amount equal to the lesser of

(i) the amount, if any, by which

(A) the total of all amounts each of which is an amount deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of that class paid after November 21, 1985 and before that time by the corporation

exceeds

(B) the total of such dividends that would be determined under clause (A) if the Act were read without reference to paragraph (a), and

(ii) the total of all amounts required by paragraph (a) to be deducted in computing the paid-up capital in respect of that class of shares after November 21, 1985 and before that time.

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: All that portion of subsec. 85(2.1) preceding the formula in para. (a) substituted by 1994, c. 21, subsec. 36(2), applicable to dispositions occurring after November 21, 1985 and, notwithstanding subsections 152(4) to (5), such assessments and determinations in respect of any taxation year may be made as are consequential on the application of the provision, as amended, to dispositions occurring before 1993. That portion of the subsec. formerly read:

(2.1) Computation of paid-up capital — Where subsection (1) or (2) has been applicable in respect of a disposition to a corporation, after November 21, 1985, of property (other than a disposition of property in respect of which section 84.1 or 212.1 applies) by a person or partnership (in this subsection referred to as the "taxpayer"), the following rules apply:

(a) in computing the paid-up capital, at any time after the disposition of the property, in respect of any particular class of shares of the capital stock of the corporation, there shall be deducted an amount determined by the formula

Interpretation Bulletins: IT-291R3: Transfer of property to a corporation under subsection 85(1).

Advance Tax Rulings: ATR-28: Redemption of capital stock of family farm corporation; ATR-32: Rollover of fixed assets from Opco into Holdco; ATR-35: Partitioning of assets to get specific ownership — "butterfly"; ATR-36: Estate freeze.

(3) Where partnership wound up — Where,

(a) in respect of any disposition of partnership property of a partnership to a corporation, subsection (2) applies,

(b) the affairs of the partnership were wound up within 60 days after the disposition, and

(c) immediately before the winding-up there was no partnership property other than money or property received from the corporation as consideration for the disposition,

the following rules apply:

(d) the cost to any member of the partnership of any property (other than shares of the capital stock of the corporation or a right to receive any such shares) received by the member as consideration for the disposition of the member's partnership interest on the winding-up shall be deemed to be the fair market value of the property at the time of the winding-up,

(e) the cost to any member of the partnership of any preferred shares of any class of the capital stock of the corporation receivable by the member as consideration for the disposition of the member's partnership interest on the winding-up shall be deemed to be

(i) where any common shares of the capital stock of the corporation were also receivable by the member as consideration for the disposition of the interest, the lesser of

(A) the fair market value, immediately after the winding-up, of the preferred shares of that class so receivable by the member, and

(B) that proportion of the amount, if any, by which the adjusted cost base to the member of the member's partnership interest immediately before the winding-up exceeds the total of the fair market value, at the time of the winding-up, of the consideration (other than shares of the capital stock of the corporation or a right to re-

ceive any such shares) received by the member for the disposition of the interest, that

(I) the fair market value, immediately after the winding-up, of the preferred shares of that class so receivable by the member,

is of

(II) the fair market value, immediately after the winding-up, of all preferred shares of the capital stock of the corporation receivable by the member as consideration for the disposition, and

(ii) in any other case, the amount determined under clause (i)(B),

(f) the cost to any member of the partnership of any common shares of any class of the capital stock of the corporation receivable by the member as consideration for the disposition of the member's partnership interest on the winding-up shall be deemed to be that proportion of the amount, if any, by which the adjusted cost base to the member of the member's partnership interest immediately before the winding-up exceeds the total of the fair market value, at the time of the winding-up, of the consideration (other than shares of the capital stock of the corporation or a right to receive any such shares) received by the member for the disposition of the interest and the cost to the member of all preferred shares of the capital stock of the corporation receivable by the member as consideration for the disposition of the interest, that

(i) the fair market value, immediately after the winding-up, of the common shares of that class so receivable by the member,

is of

(ii) the fair market value, immediately after the winding-up, of all common shares of the capital stock of the corporation so receivable by the member as consideration for the disposition,

(g) the proceeds of disposition of the partnership interest of any member of the partnership shall be deemed to be the cost to the member of all shares and property receivable or received by the member as consideration for the disposition of the interest plus the amount of any money received by the member as consideration for the disposition, and

(h) where the partnership has distributed partnership property referred to in paragraph (c) to a member of the partnership, the partnership shall be deemed to have disposed of that property for proceeds equal to the cost amount to the partnership of the property immediately before its distribution.

Related Provisions: 69(11)(a)(i) — Exception to rule deeming proceeds at FMV where capital gains exemption claimed after incorporation of partnership; 98(2) — Deemed proceeds; 98(4) — Winding-up of partnership.

I.T. Application Rules: 20(1.2) (transfer of depreciable property by person who owned it before 1972).

Interpretation Bulletins: IT-217R: Depreciable property owned on December 31, 1971 (archived); IT-242R: Retired partners; IT-338R2: Partnership interests — effects on adjusted cost base resulting from the admission or retirement of a partner (archived); IT-378R: Winding-up of a partnership; IT-457R: Election by professionals to exclude work in progress from income.

(4) [Repealed]

History: Subsec. 85(4) repealed by 1998, c. 19, subsec. 116(3), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995. The subsec. formerly read:

(4) Loss from disposition to controlled corporation — Where a taxpayer or a partnership (in this subsection referred to as the "taxpayer") disposes of any capital property (other than depreciable property of a prescribed class) of the taxpayer or eligible capital property in respect of a business of the taxpayer in respect of which the taxpayer would, but for this subsection, be permitted a deduction under paragraph 24(1)(a), to a corporation that immediately after the disposition is controlled, directly or indirectly in any manner whatever, by the taxpayer, by the spouse of the taxpayer or by a person or group of persons by whom the taxpayer is controlled, directly or indirectly in any manner whatever,

(a) notwithstanding any other provision of this Act,

(i) the capital loss therefrom, and

(ii) any deduction under paragraph 24(1)(a) in respect of the business in computing the taxpayer's income for the taxation year in which the taxpayer ceased to carry on the business

shall be deemed to be nil; and

(b) except where the property so disposed of was, immediately after the disposition, an obligation that was payable to the corporation by another corporation that is related to the corporation or by a corporation or a partnership that would be related to the corporation if paragraph 80(2)(j) applied for the purpose of this paragraph, in computing the adjusted cost base to the taxpayer of all shares of any particular class of the capital stock of the corporation owned by the taxpayer immediately after the disposition, there shall be added that proportion of the amount, if any, by which

(i) the cost amount to the taxpayer immediately before the disposition of the property so disposed of,

exceeds the total of

(ii) the taxpayer's proceeds of disposition of the property or, where the property is an eligible capital property, 4/3 of the taxpayer's eligible capital amount resulting from the disposition of the property, and

(ii.1) where the property disposed of by the taxpayer is a share of the capital stock of a corporation, the total of all amounts each of which is an amount that, but for paragraphs (a) and 40(2)(e), would be deducted

(A) under subsection 93(2) or 112(3) or (3.2) in computing a loss of the taxpayer from the disposition, or

(B) where the taxpayer is a partnership, by a corporation that is a member of the partnership under subsection 112(3.1) in computing its share of the loss of the partnership from the disposition,

that

(iii) the fair market value, immediately after the disposition, of all shares of that class so owned by the taxpayer,

is of

(iv) the fair market value, immediately after the disposition, of all shares of the capital stock of the corporation so owned by the taxpayer.

Subpara. 85(4)(b)(ii) amended by 1998, c. 19, subsec. 116(2), applicable

(a) in the case of a corporation, to dispositions by it of property that occur after the beginning of its first taxation year that begins after June 1988; and

(b) in any other case, to dispositions of property in respect of a business that occur after the beginning of the first fiscal period, that begins after 1987, of the business.

The subpara. formerly read:

(ii) the taxpayer's proceeds of disposition of the property or, where the property is an eligible capital property, the taxpayer's eligible capital amount resulting from the disposition of the property, and

The opening words of para. 85(4)(b) amended by 1995, c. 21, s. 28, applicable to property disposed of after July 12, 1994, other than property disposed of pursuant to an agreement in writing entered into before July 13, 1994. The opening words formerly read:

(b) in computing the adjusted cost base to the taxpayer of all shares of any particular class of the capital stock of the corporation owned

by the taxpayer immediately after the disposition, there shall be added that proportion of the amount, if any, by which

The opening words of para. 85(4)(b) substituted by 1994, c. 21, subsec. 36(3), applicable

(a) in the case of a corporation, to dispositions by it of property occurring after the beginning of its first taxation year that begins after June 1988; and

(b) in any other case, to dispositions of property in respect of a business occurring after the beginning of the first fiscal period, that begins after 1987, of the business.

The opening words of that para. formerly read:

(b) in computing the adjusted cost base to the taxpayer of all shares of any particular class of the capital stock of the corporation owned by the taxpayer immediately after the disposition, there shall be added, in the case of capital property, the amount that is equal to, and in the case of eligible capital property, ⅘ of the amount that is equal to, that proportion of the amount, if any, by which

That portion of subsec. 85(4) preceding para. (b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 64(5), applicable to dispositions occurring after July 13, 1990. That portion formerly read:

(4) Where loss from disposition of property to controlled corporation — Where a taxpayer or a partnership (in this subsection referred to as the taxpayer) has, after May 6, 1974, disposed of any capital property or eligible capital property of the taxpayer to a corporation that, immediately after the disposition, was controlled, directly or indirectly in any manner whatever, by the taxpayer, by the spouse of the taxpayer or by a person or group of persons by whom the taxpayer was controlled, directly or indirectly in any manner whatever, and, but for this subsection, subsection 24(2) and paragraphs 40(2)(e) and (g), the taxpayer would have had a capital loss therefrom or a deduction pursuant to paragraph 24(1)(a) in computing the taxpayer's income for the taxation year in which the taxpayer ceased to carry on a business, as the case may be, the following rules apply:

(a) notwithstanding section 24 and paragraphs 40(2)(e) and (g), the taxpayer's capital loss therefrom, or the taxpayer's deduction pursuant to paragraph 24(1)(a) in computing the taxpayer's income for the taxation year in which the taxpayer ceased to carry on the business, as the case may be, otherwise determined shall be deemed to be nil; and

That portion of para. 85(4)(b) between subparas. (i) and (iii) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 64(6), applicable with respect to dispositions occurring after July 13, 1990. That portion formerly read:

exceeds

(ii) the taxpayer's proceeds of disposition of the property or, where the property was an eligible capital property, the taxpayer's eligible capital amount, as a result of the disposition of that property

that

Selected Cases [subsec. 85(4)]: *Miller Estate v. R.*, [2002] 1 C.T.C. 2555 (TCC) (Temporary restraining order did not affect control of shares).

(5) Rules on transfers of depreciable property — Where subsection (1) or (2) has applied to a disposition at any time of depreciable property to a person (in this subsection referred to as the "transferee") and the capital cost to the transferor of the property exceeds the transferor's proceeds of disposition of the property, for the purposes of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a),

(a) the capital cost to the transferee of the property is deemed to be the amount that was its capital cost to the transferor; and

(b) the excess is deemed to have been deducted by the transferee under paragraph 20(1)(a) in respect of the property in computing income for taxation years that ended before that time.

Related Provisions: 13(7)(e) — Similar rule on non-arm's length transfer of depreciable property; 132.2(1)(d) [to be repealed], 132.2(5)(d) [draft] — Parallel rule on mutual fund reorganization.

History: Subsec. 85(5) amended by 1998, c. 19, subsec. 116(4), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995. The subsec. formerly read:

(5) Where subsection (1), (2) or (5.1) has applied in respect of a disposition of depreciable property to a person or partnership (in this subsection referred to as the "transferee") and the capital cost to the transferor of the property exceeds the transferor's proceeds of disposition of the property, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a),

(a) the capital cost of the property to the transferee shall be deemed to be the amount that was the capital cost of the property to the transferor; and

(b) the excess shall be deemed to have been allowed to the transferee in respect of the property under regulations made under paragraph 20(1)(a) in computing income for taxation years before the acquisition by the transferee of the property.

Interpretation Bulletins: IT-291R3: Transfer of property to a corporation under subsection 85(1).

(5.1) Acquisition of apprentice tools, re capital cost and deemed depreciation — If subsection (1) has applied in respect of the acquisition at any particular time of any depreciable property by a corporation from an individual, the cost of the property to the individual was included in computing an amount under paragraph 8(1)(r) in respect of the individual, and the amount that would be the cost of the property to the individual immediately before the transfer if this Act were read without reference to subsection 8(7) (which amount is in this subsection referred to as the "individual's original cost") exceeds the individual's proceeds of disposition of the property,

(a) the capital cost to the corporation of the property is deemed to be equal to the individual's original cost; and

(b) the amount by which the individual's original cost exceeds the individual's proceeds of disposition in respect of the property is deemed to have been deducted by the corporation under paragraph 20(1)(a) in respect of the property in computing income for taxation years that ended before that particular time.

Related Provisions: 56(1)(k) — Income inclusion where tools disposed of without rollover; 97(5) — Parallel rule for rollover to partnership.

History: Subsec. 85(5.1) added by 2002, c. 9, s. 29, applicable to dispositions that occur after 2001.

Interpretation Bulletins: IT-291R3: Transfer of property to a corporation under subsection 85(1).

History [former subsec. 85(5.1)]: Subsec. 85(5.1) repealed by 1998, c. 19, subsec. 116(5), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995. The subsec. formerly read:

(5.1) Idem — Where a person or a partnership (in this subsection referred to as the "taxpayer") has disposed of any depreciable property of a prescribed class of the taxpayer to a transferee that was

(a) a corporation that, immediately after the disposition, was controlled, directly or indirectly in any manner whatever, by the taxpayer, by the spouse of the taxpayer or by a person, group of persons or partnership by whom or which the taxpayer was controlled, directly or indirectly in any manner whatever,

(b) a person, spouse of a person, member of a group of persons or partnership who or that immediately after the disposition controlled the taxpayer, directly or indirectly in any manner whatever, or

(c) a partnership and, immediately after the disposition, the taxpayer's interest in the partnership as a member thereof is as described in paragraph 97(3.1)(a) or (b),

and the fair market value of the property at the time of the disposition is less than both the cost to the taxpayer of the property and the amount (in this subsection referred to as the "proportionate amount") that is the proportion of the undepreciated capital cost to the taxpayer of all property of that class immediately before the disposition that the fair market value of the property at the time of the

disposition is of the fair market value of all property of that class at the time of disposition, the following rules apply:

(d) subsections (1) and (2) and section 97 are not applicable with respect to the disposition,

(e) the lesser of the cost to the taxpayer of the property and the proportionate amount in respect of the property shall be deemed to be the taxpayer's proceeds of disposition and the transferee's cost of the property,

(f) where two or more depreciable properties of a prescribed class of the taxpayer are disposed of at the same time, paragraph (e) applies as if each property so disposed of had been separately disposed of in the order designated by the taxpayer or, if the taxpayer does not so designate any such order, in the order designated by the Minister, and

(g) the cost to the taxpayer of any particular property received by the taxpayer as consideration for the disposition shall be deemed to be an amount equal to the lesser of

(i) the fair market value of the particular property at the time of the disposition, and

(ii) that proportion of the fair market value, at the time of the disposition, of the property disposed of by the taxpayer that

(A) the amount determined under subparagraph (i)

is of

(B) the fair market value, at the time of the disposition, of all properties received by the taxpayer as consideration for the disposition.

(6) Time for election — Any election under subsection (1) or (2) shall be made on or before the day that is the earliest of the days on or before which any taxpayer making the election is required to file a return of income pursuant to section 150 for the taxation year in which the transaction to which the election relates occurred.

Related Provisions: 85(7)–(9) — Late-filed election.

(7) Late filed election — Where the election referred to in subsection (6) was not made on or before the day on or before which the election was required by that subsection to be made and that day is after May 6, 1974, the election shall be deemed to have been made on that day if, on or before the day that is 3 years after that day,

(a) the election is made in prescribed form; and

(b) an estimate of the penalty in respect of that election is paid by the taxpayer or the partnership, as the case may be, when that election is made.

Related Provisions: 85(8), (9) — Penalty for late-filed election.

Information Circulars: 76-19R3: Transfer of property to a corporation under section 85.

(7.1) Special cases — Where, in the opinion of the Minister, the circumstances of a case are such that it would be just and equitable

(a) to permit an election under subsection (1) or (2) to be made after the day that is 3 years after the day on or before which the election was required by subsection (6) to be made, or

(b) to permit an election made under subsection (1) or (2) to be amended,

the election or amended election shall be deemed to have been made on the day on or before which the election was so required to be made if

(c) the election or amended election is made in prescribed form, and

(d) an estimate of the penalty in respect of the election or amended election is paid by the taxpayer or partnership, as the case may be, when the election or amended election is made,

and where this subsection applies to the amendment of an election, that election shall be deemed not to have been effective.

Related Provisions: 85(8), (9) — Penalty for late-filed election.

Selected Cases [subsec. 85(7.1)]: *Bugera*, [2003] 3 C.T.C. 256 (FCTD) (Late-filed elections not allowed; Minister's discretion to refuse upheld where retroactive tax planning involved).

Information Circulars: 76-19R3: Transfer of property to a corporation under section 85; 92-1: Guidelines for accepting late, amended or revoked elections.

(8) Penalty for late filed election — For the purposes of this section, the penalty in respect of an election or an amended election referred to in paragraph (7)(a) or (7.1)(c) is an amount equal to the lesser of

(a) ¼ of 1% of the amount, if any, by which

(i) the fair market value of the property in respect of which that election or amended election was made, at the time the property was disposed of,

exceeds

(ii) the amount agreed on in the election or amended election by the taxpayer or partnership, as the case may be, and the corporation,

for each month or part of a month during the period commencing with the day on or before which the election is required by subsection (6) to be made and ending on the day the election or amended election is made, and

(b) an amount, not exceeding $8,000, equal to the product obtained by multiplying $100 by the number of months each of which is a month all or part of which is during the period referred to in paragraph (a).

Related Provisions: 220(3.1) — Waiver of penalty by CCRA.

(9) Unpaid balance of penalty — The Minister shall, with all due dispatch, examine each election and amended election referred to in paragraph (7)(a) or (7.1)(c), assess the penalty payable and send a notice of assessment to the taxpayer or partnership, as the case may be, and the taxpayer or partnership, as the case may be, shall pay forthwith to the Receiver General the amount, if any, by which the penalty so assessed exceeds the total of all amounts previously paid on account of that penalty.

Definitions [s. 85]: "acquired" — 256(7)–(9); "adjusted cost base" — 54, 248(1); "amount" — 248(1); "arm's length" — 251(1); "assessment", "business" — 248(1); "Canada" — 255; "Canadian corporation" — 89(1), 248(1); "Canadian partnership" — 102(1), 248(1); "Canadian resource property" — 66(15), 248(1); "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "cash method" — 28(1), 248(1); "class of shares" — 248(6); "common share" — 248(1); "control" — 256(6)–(9); "controlled" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "cumulative eligible capital" — 14(5), 248(1); "depreciable property" — 13(21), 248(1); "designated insurance property" — 138(12), 248(1); "disposition" — 248(1); "eligible capital property" — 54, 248(1); "eligible property" — 85(1.1), (1.11); "farming" — 248(1); "financial institution" — 85(1.4), 142.2(1); "foreign affiliate" — 95(1), 248(1); "foreign resource property" — 66(15), 248(1); "immovable" — Quebec *Civil Code* art. 900–907; "insurer" — 248(1); "interest" — in real property 248(4); "inventory" — 248(1); "mark-to-market property" — 85(1.4), 142.2(1); "Minister", "NISA Fund No. 2", "non-resident" — 248(1); "paid-up capital" — 89(1), 248(1); "passenger vehicle", "person", "preferred share", "prescribed", "property" — 248(1); "qualifying share" — 192(6), 248(1) [*not intended to apply to s. 85*]; "real right in an immovable" — 248(4.1); "regulation" — 248(1); "related" — 251(2); "resident in Canada" — 94(3)(a)(viii), 250; "series of transactions" — 248(10); "share", "shareholder" — 248(1); "specified debt obligation" — 85(1.4), 142.2(1); "specified participating interest" — 248(1); "taxable Canadian corporation" — 89(1), 248(1); "taxable Canadian property" — 248(1); "taxable dividend" — 89(1), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "undepreciated capital cost" — 13(21), 248(1); "wholly owned corporation" — 85(1.3).

Interpretation Bulletins [s. 85]: IT-188R: Sale of accounts receivable.

Information Circulars [s. 85]: 76-19R3: Transfer of property to a corporation under section 85.

85.1 (1) Share for share exchange — Where shares of any particular class of the capital stock of a Canadian corporation (in this section referred to as the "purchaser") are issued to a taxpayer (in this section referred to as the "vendor") by the purchaser in exchange for a capital property of the vendor that is shares of any particular class of the capital stock (in this section referred to as the "exchanged shares") of another corporation that is a taxable Canadian corporation (in this section referred to as the "acquired corporation"), subject to subsection (2),

(a) except where the vendor has, in the vendor's return of income for the taxation year in which the exchange occurred, included in computing the vendor's income for that year any portion of the gain or loss, otherwise determined, from the disposition of the exchanged shares, the vendor shall be deemed

(i) to have disposed of the exchanged shares for proceeds of disposition equal to the adjusted cost base to the vendor of those shares immediately before the exchange, and

(ii) to have acquired the shares of the purchaser at a cost to the vendor equal to the adjusted cost base to the vendor of the exchanged shares immediately before the exchange,

and where the exchanged shares were taxable Canadian property of the vendor, the shares of the purchaser so acquired by the vendor shall be deemed to be taxable Canadian property of the vendor; and

(b) the cost to the purchaser of each exchanged share, at any time up to and including the time the purchaser disposed of the share, shall be deemed to be the lesser of

(i) its fair market value immediately before the exchange, and

(ii) its paid-up capital immediately before the exchange.

Related Provisions: 7(1.5) — Shares acquired through employee stock option; 40(3.5)(b)(ii) — Application of loss deferral rules on share exchange; 85.1(2) — Where rollover not to apply; 85.1(3)–(6) — Exchange of foreign share for foreign share; 107(2)(d.1)(iii), 107.4(3)(f) — Deemed taxable Canadian property retains status when rolled out of trust or into trust; 112(7) — Application of stop-loss rule where shares exchanged; 219.1 — Corporate emigration; 248(25.1) — Deemed taxable Canadian property retains status through trust-to-trust transfer; 256(7)(c), (d) — Whether control of corporation acquired on rollover; Canada-U.S. Tax Treaty:Art. XIII:8 — Deferral of tax for U.S. resident transferor.

History: That portion of subsec. 85.1(1) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 36, applicable to exchanges of shares occurring after December 20, 1991. That portion formerly read:

> 85.1 (1) Where shares of any particular class of the capital stock of a Canadian corporation (in this section referred to as the "purchaser") have, after May 6, 1974, been issued to a taxpayer (in this section referred to as the "vendor") by the purchaser in exchange for capital property of the vendor that is shares of any particular class of the capital stock (in this section referred to as the "exchanged shares") of another corporation (in this section referred to as the "acquired corporation"), subject to subsection (2), the following rules apply:

I.T. Application Rules: 26(26), (28).

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations; IT-291R3: Transfer of property to a corporation under subsection 85(1); IT-450R: Share for share exchange.

Advance Tax Rulings: ATR-26: Share exchange.

(2) Where subsec. (1) does not apply — Subsection (1) does not apply where

(a) the vendor and purchaser were, immediately before the exchange, not dealing with each other at arm's length (otherwise than because of a right referred to in paragraph 251(5)(b) that is a right of the purchaser to acquire the exchanged shares);

(b) the vendor or persons with whom the vendor did not deal at arm's length, or the vendor together with persons with whom the vendor did not deal at arm's length,

(i) controlled the purchaser, or

(ii) beneficially owned shares of the capital stock of the purchaser having a fair market value of more than 50% of the fair market value of all of the outstanding shares of the capital stock of the purchaser,

immediately after the exchange;

(c) the vendor and the purchaser have filed an election under subsection 85(1) or (2) with respect to the exchanged shares;

(d) consideration other than shares of the particular class of the capital stock of the purchaser was received by the vendor for the exchanged shares, notwithstanding that the vendor may have disposed of shares of the capital stock of the acquired corporation (other than the exchanged shares) to the purchaser for consideration other than shares of one class of the capital stock of the purchaser; or

(e) the vendor

(i) is a foreign affiliate of a taxpayer resident in Canada at the end of the taxation year of the vendor in which the exchange occurred, and

(ii) has included any portion of the gain or loss, otherwise determined, from the disposition of the exchanged shares in computing its foreign accrual property income for the taxation year of the vendor in which the exchange occurred.

Related Provisions: 256(6), (6.1) — Meaning of "controlled".

History: Para. 85.1(2)(e) added by 2001, c. 17, subsec. 63(1), applicable to exchanges that occur after 1995.

Para. 85.1(2)(a) substituted by 1994, c. 21, s. 37, applicable to exchanges occurring after December 21, 1992. That para. formerly read:

> (a) the vendor and purchaser were, immediately before the exchange, not dealing with each other at arm's length;

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations; IT-291R3: Transfer of property to a corporation under subsection 85(1); IT-450R: Share for share exchange.

Advance Tax Rulings: ATR-26: Share exchange.

(2.1) Computation of paid-up capital — Where, at any time, a purchaser has issued shares of its capital stock as a result of an exchange to which subsection (1) applied, in computing the paid-up capital in respect of any particular class of shares of its capital stock at any particular time after that time

(a) there shall be deducted that proportion of the amount, if any, by which

(i) the increase, if any, as a result of the issue, in the paid-up capital in respect of all the shares of the capital stock of the purchaser, computed without reference to this subsection as it applies to the issue,

exceeds

(ii) the paid-up capital in respect of all of the exchanged shares received as a result of the exchange

that

(iii) the increase, if any, as a result of the issue, in the paid-up capital in respect of the particular class of shares, computed without reference to this subsection as it applies to the issue,

is of

(iv) the amount, if any, determined in subparagraph (i) in respect of the issue; and

(b) there shall be added an amount equal to the lesser of

(i) the amount, if any, by which

(A) the total of all amounts each of which is an amount deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of that class paid by the purchaser before the particular time

exceeds

(B) the total that would be determined under clause (A) if this Act were read without reference to paragraph (a), and

(ii) the total of all amounts required by paragraph (a) to be deducted in respect of that particular class of shares before the particular time.

Related Provisions: 219.1 — Corporate emigration; 256(6), (6.1) — Meaning of "controlled".

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations; IT-291R3: Transfer of property to a corporation under subsection 85(1); IT-450R: Share for share exchange.

(3) Disposition of shares of foreign affiliate — Where a taxpayer has disposed of capital property that was shares of the capital stock of a foreign affiliate of the taxpayer to any corporation that was, immediately following the disposition, a foreign affiliate of the taxpayer (in this subsection referred to as the "acquiring affiliate") for consideration including shares of the capital stock of the acquiring affiliate,

(a) the cost to the taxpayer of any property (other than shares of the capital stock of the acquiring affiliate) receivable by the taxpayer as consideration for the disposition shall be deemed to be the fair market value of the property at the time of the disposition;

(b) the cost to the taxpayer of any shares of any class of the capital stock of the acquiring affiliate receivable by the taxpayer as consideration for the disposition shall be deemed to be that proportion of the amount, if any, by which the total of the adjusted cost bases to the taxpayer, immediately before the disposition, of the shares disposed of exceeds the fair market value at that time of the consideration receivable for the disposition (other than shares of the capital stock of the acquiring affiliate) that

(i) the fair market value, immediately after the disposition, of those shares of the acquiring affiliate of that class

is of

(ii) the fair market value, immediately after the disposition, of all shares of the capital stock of the acquiring affiliate receivable by the taxpayer as consideration for the disposition;

(c) the taxpayer's proceeds of disposition of the shares shall be deemed to be an amount equal to the cost to the taxpayer of all shares and other property receivable by the taxpayer from the acquiring affiliate as consideration for the disposition; and

(d) the cost to the acquiring affiliate of the shares acquired from the taxpayer shall be deemed to be an amount equal to the taxpayer's proceeds of disposition referred to in paragraph (c).

Related Provisions: 44.1(6), (7) — Small business investment rollover on exchange of shares; 53(1)(c) — Addition to ACB of share; 85.1(4) — Exception.

(4) Exception — Subsection (3) is not applicable in respect of a disposition at any time by a taxpayer of a share of the capital stock of a foreign affiliate, all or substantially all of the property of which at that time was excluded property (within the meaning assigned by subsection 95(1)), to another foreign affiliate of the taxpayer where the disposition is part of a series of transactions or events for the purpose of disposing of the share to a person who, immediately after the series of transactions or events, was a person (other than a foreign affiliate of the taxpayer) with whom the taxpayer was dealing at arm's length.

Proposed Amendment — 85.1(4)

(4) Exception — Subsection (3) does not apply in respect of a disposition at any time by a taxpayer of property that is

(a) a share of the capital stock of a foreign affiliate, all or substantially all of the property of which at that time was excluded property (within the meaning assigned by subsection 95(1)), to another foreign affiliate of the taxpayer where the disposition is part of a series of transactions or events for the purpose of disposing of the share to a person who, immediately after the series of transactions or events, was a person (other than a foreign affiliate of the taxpayer) with whom the taxpayer was dealing at arm's length; or

(b) a specified participating interest.

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 13(1), will amend subsec. 85.1(4) to read as above, applicable to dispositions and exchanges that occur in taxation years that begin after 2002.

Technical Notes: Subsection 85.1(3) permits a taxpayer to transfer, on a tax-deferred "rollover" basis, the shares of a foreign affiliate of the taxpayer to another foreign affiliate of the taxpayer. Subsection 85.1(5) provides a similar rollover for shareholders who exchange shares of a foreign corporation for shares of another corporation. Subsections 85.1(4) and (6), respectively, identify circumstances in which subsection 85.1(3) or (5) will not apply.

Subsection 85.1(4) is amended to provide that subsection 85.1(3) does not apply to a disposition at any time by a taxpayer of a property that is a specified participating interest. Subsection 85.1(6) is similarly amended so that subsection 85.1(5) does not apply to an exchanged share that was, immediately before the exchange, a specified participating interest. The concept of a specified participating interest is generally relevant in the context of the foreign investment entity rules in sections 94.1 to 94.4. For more information on the definition "specified participating interest" in subsection 248(1), see the commentary on that definition.

Related Provisions: 248(10) — Series of transactions.

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations; IT-291R3: Transfer of property to a corporation under subsection 85(1).

(5) Foreign share for foreign share exchange — Subject to subsections (3) and (6) and 95(2), where a corporation resident in a country other than Canada (in this section referred to as the "foreign purchaser") issues

shares of its capital stock (in this section referred to as the "issued foreign shares") to a vendor in exchange for shares of the capital stock of another corporation resident in a country other than Canada (in this section referred to as the "exchanged foreign shares") that were immediately before the exchange capital property of the vendor, except where the vendor has, in the vendor's return of income for the taxation year in which the exchange occurred, included in computing the vendor's income for that year any portion of the gain or loss, otherwise determined, from the disposition of the exchanged foreign shares, the vendor is deemed

(a) to have disposed of the exchanged foreign shares for proceeds of disposition equal to the adjusted cost base to the vendor of those shares immediately before the exchange, and

(b) to have acquired the issued foreign shares at a cost to the vendor equal to the adjusted cost base to the vendor of the exchanged foreign shares immediately before the exchange,

and where the exchanged foreign shares were taxable Canadian property of the vendor, the issued foreign shares so acquired by the vendor are deemed to be taxable Canadian property of the vendor.

Related Provisions: 85.1(6) — Where rollover does not apply; 86.1(1) — Foreign spinoff; 95(2)(f.6)(i) — No FAPI rollover where 85.1(5) applies; 107(2)(d.1)(iii), 107.4(3)(f) — Deemed taxable Canadian property retains status when rolled out of trust or into trust; 248(25.1) — Deemed taxable Canadian property retains status through trust-to-trust transfer.

History: Subsec. 85.1(5) added by 2001, c. 17, subsec. 63(2), applicable to exchanges that occur after 1995.

(6) Where subsection (5) does not apply — Subsection (5) does not apply where

(a) the vendor and foreign purchaser were, immediately before the exchange, not dealing with each other at arm's length (otherwise than because of a right referred to in paragraph 251(5)(b) that is a right of the foreign purchaser to acquire the exchanged foreign shares);

(b) immediately after the exchange the vendor, persons with whom the vendor did not deal at arm's length or the vendor together with persons with whom the vendor did not deal at arm's length

(i) controlled the foreign purchaser, or

(ii) beneficially owned shares of the capital stock of the foreign purchaser having a fair market value of more than 50% of the fair market value of all of the outstanding shares of the capital stock of the foreign purchaser;

(c) consideration other than issued foreign shares was received by the vendor for the exchanged foreign shares, notwithstanding that the vendor may have disposed of shares of the capital stock of the other corporation referred to in subsection (5) (other than the exchanged foreign shares) to the foreign purchaser for consideration other than shares of the capital stock of the foreign purchaser;

(d) the vendor

(i) is a foreign affiliate of a taxpayer resident in Canada at the end of the taxation year of the vendor in which the exchange occurred, and

(ii) has included any portion of the gain or loss, otherwise determined, from the disposition of the exchanged foreign shares in computing its foreign accrual property income for the taxation year of the vendor in which the exchange occurred; or

(e) the vendor is a foreign affiliate of a taxpayer resident in Canada at the end of the taxation year of the vendor in which the exchange occurred and the exchanged foreign shares are excluded property (within the meaning assigned by subsection 95(1)) of the vendor.

Proposed Addition — 85.1(6)(f)

(f) the exchanged foreign shares were, immediately before the exchange, specified participating interests.

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 13(2), will add para. 85.1(6)(f), applicable to dispositions and exchanges that occur in taxation years that begin after 2002.

Technical Notes: See under 85.1(4).

History: Subsec. 85.1(6) added by 2001, c. 17, subsec. 63(2), applicable to exchanges that occur after 1995.

Proposed Amendment — Canadian/foreign (cross-border) share-for-share exchange

Supplementary Information, Economic Statement, October 18, 2000 and Federal budget, Supplementary Information, February 18, 2003, March 23, 2004 and February 23, 2005: See after 86.1.

Definitions [s. 85.1]: "acquired corporation" — 85.1(1); "adjusted cost base" — 54, 248(1); "amount" — 248(1); "arm's length" — 251(1); "Canadian corporation" — 89(1), 248(1); "capital property" — 54, 248(1); "class of shares" — 248(6); "controlled" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition" — 248(1); "dividend" — 248(1); "exchanged foreign shares" — 85.1(5); "exchanged share" — 85.1(1); "foreign accrual property income" — 95(1); "foreign affiliate" — 95(1), 248(1); "foreign purchaser", "issued foreign shares" — 85.1(5); "paid-up capital" — 89(1), 248(1); "person", "property" — 248(1); "purchaser" — 85.1(1); "resident" — 250; "resident in Canada" — 94(3)(a)(viii), 250; "series of transactions" — 248(10); "share", "specified participating interest" — 248(1); "taxable Canadian corporation" — 89(1), 248(1); "taxable Canadian property" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

86. (1) Exchange of shares by a shareholder in course of reorganization of capital — Where, at a particular time after May 6, 1974, in the course of a reorganization of the capital of a corporation, a taxpayer has disposed of capital property that was all the shares of any particular class of the capital stock of the corporation that were owned by the taxpayer at the particular time (in this section referred to as the "old shares"), and property is receivable from the corporation therefor that includes other shares of the capital stock of the corporation (in this section referred to as the "new shares"), the following rules apply:

(a) the cost to the taxpayer of any property (other than new shares) receivable by the taxpayer for the old shares shall be deemed to be its fair market value at the time of the disposition;

(b) the cost to the taxpayer of any new shares of any class of the capital stock of the corporation receivable by the taxpayer for the old shares shall be deemed to be that proportion of the amount, if any, by which the total of the adjusted cost bases to the taxpayer, immediately before the disposition, of the old shares exceeds the fair market value at that time of the consideration receivable for the old shares (other than new shares) that

(i) the fair market value, immediately after the disposition, of those new shares of that class,

is of

(ii) the fair market value, immediately after the disposition, of all new shares of the capital stock of the corporation receivable by the taxpayer for the old shares; and

(c) the taxpayer shall be deemed to have disposed of the old shares for proceeds of disposition equal to the cost to the taxpayer of all new shares and other property receivable by the taxpayer for the old shares.

Related Provisions: 7(1.5) — Exchange of shares; 51(1), (2) — Conversion of debt to shares; 51(4) — Application of s. 86 to exchange of convertible property; 55(1) — "Permitted redemption" for butterfly purposes; 85(1)–(3) — Transfer of property to corporation; 86(2.1) — Computation of paid-up capital; 86(3) — Application; 86(4) — Debt forgiveness — reduction in adjusted cost base of new shares; 112(7) — Application of stop-loss rule where shares exchanged; Canada-U.S. Tax Treaty:Art. XIII:8 — Deferral of tax for U.S. resident transferor.

Regulations: 230(3) (no information return required if no other consideration).

I.T. Application Rules: 26(27), (28).

Interpretation Bulletins: IT-65: Stock splits and consolidations; IT-146R4: Shares entitling shareholders to choose taxable or capital dividends.

Advance Tax Rulings: ATR-22R: Estate freeze using share exchange; ATR-33: Exchange of shares.

(2) Idem — Notwithstanding paragraphs (1)(b) and (c), where a taxpayer has disposed of old shares in circumstances described in subsection (1) and the fair market value of the old shares immediately before the disposition exceeds the total of

(a) the cost to the taxpayer of the property (other than new shares) receivable by the taxpayer for the old shares as determined under paragraph (1)(a), and

(b) the fair market value of the new shares, immediately after the disposition,

and it is reasonable to regard any portion of the excess (in this subsection referred to as the "gift portion") as a benefit that the taxpayer desired to have conferred on a person related to the taxpayer, the following rules apply:

(c) the taxpayer shall be deemed to have disposed of the old shares for proceeds of disposition equal to the lesser of

(i) the total of the cost to the taxpayer of the property as determined under paragraph (1)(a) and the gift portion

and

(ii) the fair market value of the old shares immediately before the disposition,

(d) the taxpayer's capital loss from the disposition of the old shares shall be deemed to be nil, and

(e) the cost to the taxpayer of any new shares of any class of the capital stock of the corporation receivable by the taxpayer for the old shares shall be deemed to be that proportion of the amount, if any, by which the total of the adjusted cost bases to the taxpayer, immediately before the disposition, of the old shares exceeds the total determined under subparagraph (c)(i) that

(i) the fair market value, immediately after the disposition, of the new shares of that class,

is of

(ii) the fair market value, immediately after the disposition, of all new shares of the capital stock of the corporation receivable by the taxpayer for the old shares.

Related Provisions: 86(3) — Application.

I.T. Application Rules: 26(27), (28) (where shares or property owned since before 1972).

Advance Tax Rulings: ATR-22R: Estate freeze using share exchange; ATR-33: Exchange of shares.

(2.1) Computation of paid-up capital — Where subsection (1) applies to a disposition of shares of the capital stock of a corporation (in this subsection referred to as the "exchange"), in computing the paid-up capital in respect of a particular class of shares of the capital stock of the corporation at any particular time that is the time of, or any time after, the exchange,

(a) there shall be deducted the amount determined by the formula

$$(A - B) \times \frac{C}{A}$$

where

A is the total of all amounts each of which is the increase, if any, as a result of the exchange, in the paid-up capital in respect of a class of shares of the capital stock of the corporation, computed without reference to this subsection as it applies to the exchange,

B is the amount, if any, by which the paid-up capital in respect of the old shares exceeds the fair market value of the consideration (other than shares of the capital stock of the corporation) given by the corporation for the old shares on the exchange, and

C is the increase, if any, as a result of the exchange, in the paid-up capital in respect of the particular class of shares, computed without reference to this subsection as it applies to the exchange; and

(b) there shall be added an amount equal to the lesser of

(i) the amount, if any, by which

(A) the total of all amounts deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of that class paid by the corporation before the particular time

exceeds

(B) the total that would be determined under clause (A) if this Act were read without reference to paragraph (a), and

(ii) the total of all amounts required by paragraph (a) to be deducted in respect of that particular class of shares before the particular time.

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: Subsec. 86(2.1) added by 1994, c. 21, subsec. 38(1), applicable to exchanges occurring after August 1992, other than an exchange occurring after August 1992 and before December 21, 1992 where the corporation issuing shares on the exchange so elects in writing and files the election with the Minister of National Revenue by December 31, 1994.

(3) Application — Subsections (1) and (2) do not apply in any case where subsection 85(1) or (2) applies.

Proposed Amendment — 86(3)

(3) Application — Subsections (1) and (2) do not apply

(a) to any disposition to which subsection 85(1) or (2) applies; and

(b) to any disposition of property that was, immediately before the disposition, a specified participating interest.

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), s. 14, will amend subsec. 86(3) to read as above, applicable to dispositions that occur in taxation years that begin after 2002.

Technical Notes: Subsection 86(1) applies where a corporation reorganizes its capital structure by issuing shares to a taxpayer as full or partial consideration for the surrender of all of the taxpayer's shares of the capital stock of the corporation. Where this is the case, the cost of the new shares is determined with reference to the adjusted cost base of the surrendered shares. Subsection 86(3) provides that subsection 86(1) does not apply in any case where subsection 85(1) or (2) applies.

Subsection 86(3) is amended to provide that subsection 86(1) also does not apply to any disposition of property that was, immediately before the disposition, a specified participating interest. The concept of a specified participating interest is generally relevant in the context of the foreign investment entity rules in sections 94.1 to 94.4. For more information on the definition "specified participating interest" in subsection 248(1), see the commentary on that definition.

Related Provisions: 51(4) — Application of section 51.

History: Subsec. 86(3) substituted by 1994, c. 21, subsec. 38(2), applicable to reorganizations that begin after December 21, 1992. That subsec. formerly read:

(3) Where subsecs. (1) and (2) do not apply — Subsections (1) and (2) are not applicable in any case where section 51 or any of subsections 85(1) to (3) is applicable.

(4) Computation of adjusted cost base — Where a taxpayer has disposed of old shares in circumstances described in subsection (1),

(a) there shall be deducted after the disposition in computing the adjusted cost base to the taxpayer of each new share the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount, if any, by which

(i) the total of all amounts deducted under paragraph 53(2)(g.1) in computing the adjusted cost base to the taxpayer of the old shares immediately before the disposition

exceeds

(ii) the amount that would be the taxpayer's capital gain for the taxation year that includes the time of the disposition from the disposition of the old shares if paragraph 40(1)(a) were read without reference to subparagraph (iii) of that paragraph,

B is the fair market value of the new share at the time it was acquired by the taxpayer in consideration for the disposition of the old shares, and

C is the total of all amounts each of which is the fair market value of a new share at the time it was acquired by the taxpayer in consideration for the disposition of the old shares; and

(b) the amount determined under paragraph (a) in respect of the acquisition shall be added in computing the adjusted cost base to the taxpayer of the new share after the disposition.

Related Provisions: 53(1)(q) — Addition to ACB for amount under 86(4)(b); 53(2)(g.1) — Reduction in ACB under 86(4)(a); 80.03(2)(a) — Deemed gain on disposition following debt forgiveness.

History: Subsec. 86(4) added by 1995, c. 21, s. 29, applicable to taxation years that end after February 21, 1994.

Definitions [s. 86]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "class of shares" — 248(6); "common share" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "old shares" — 86(1); "person", "preferred share", "property", "share", "specified participating interest", "taxpayer" — 248(1).

I.T. Application Rules [s. 86]: 26(27) (where old shares owned since before 1972).

Interpretation Bulletins [s. 86]: IT-146R4: Shares entitling shareholders to choose taxable or capital dividends; IT-243R4: Dividend refund to private corporations.

86.1 Foreign spin-offs — (1) Eligible distribution not included in income — Notwithstanding any other provision of this Part,

(a) the amount of an eligible distribution received by a taxpayer shall not be included in computing the income of the taxpayer; and

(b) subsection 52(2) does not apply to the eligible distribution received by the taxpayer.

Related Provisions: 85.1(5) — Foreign share-for-share exchange; 86.1(2) — Eligible distribution.

(2) Eligible distribution — For the purpose of this section, a distribution by a particular corporation that is received by a taxpayer is an eligible distribution if

(a) the distribution is with respect to all of the taxpayer's common shares of the capital stock of the particular corporation (in this section referred to as the "original shares");

(b) the distribution consists solely of common shares of the capital stock of another corporation that were owned by the particular corporation immediately before their distribution to the taxpayer (in this section referred to as the "spin-off shares");

(c) in the case of a distribution that is not prescribed,

(i) at the time of the distribution, both corporations are resident in the United States and were never resident in Canada,

(ii) at the time of the distribution, the shares of the class that includes the original shares are widely held and actively traded on a prescribed stock exchange in the United States, and

(iii) under the *United States Internal Revenue Code* applicable to the distribution, the shareholders of the particular corporation who are resident in the United States are not taxable in respect of the distribution;

Proposed Amendment — 86.1(2)(c)(ii), (iii)

(ii) at the time of the distribution, the shares of the class that includes the original shares are widely held and

(A) are actively traded on a prescribed stock exchange in the United States, or

(B) are required, under the *Securities Exchange Act of 1934* of the United States, as amended from time to time, to be registered with the Securities and Exchange Commission of the United States and are so registered, and

(iii) under the provisions of the *Internal Revenue Code of 1986* of the United States, as amended from time to time, that apply to the distribution, the shareholders of the particular corporation who are resident in the United States are not taxable in respect of the distribution;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 86(1), will amend subparas. 86.1(2)(c)(ii) and (iii) to read as above, applicable to distributions made after 1999 except that, with respect to a distribution in respect of original shares described in cl. 86.1(2)(c)(ii)(B),

(a) information referred to in para. 86.1(2)(e) is deemed to be provided to the Minister of National Revenue on a timely basis if it is

provided to that Minister before the 90th day after the day on which the amending legislation is assented to; and

(b) an election referred to in para. 86.1(2)(f) is deemed to be filed on a timely basis if it is filed with the Minister of National Revenue before the 90th day after the day on which the amending legislation is assented to.

Technical Notes: Subsection 86.1(2) defines an "eligible distribution" for the purposes of the tax-deferral that applies with respect to distributions to Canadian resident shareholders of spin-off shares by a foreign corporation. Subsection 86.1(2) is amended in three respects.

First, subparagraph 86.1(2)(c)(ii) requires that a taxpayer's original shares be included in a class that is widely held and actively traded on a prescribed stock exchange in the United States at the time of the distribution (section 3201 of the Regulations prescribes certain U.S. stock exchanges). The condition that the share be actively traded on a U.S. stock exchange is amended effective after 1999 to require that the taxpayer's original shares of the foreign corporation be, at the time of the distribution, widely held and

- actively traded on a prescribed stock exchange in the United States, or
- required, under the *Securities Exchange Act of 1934* of the United States, to be registered with the Securities and Exchange Commission (and are so registered).

In general, a class of shares of a U.S. corporation must be registered under the *Securities Exchange Act of 1934* with the Securities and Exchange Commission ("SEC") if more than 500 shareholders own shares of the class, the corporation has more than $10 million in assets and shares of the class will be traded on a national securities exchange. Thus this SEC registration requirement applies if it is expected that the shares will trade on a national securities exchange, with the SEC filing and public disclosure requirements thereafter applying to the corporation regardless of whether any of its issued shares trade in the future on the exchange.

Second, the references in subparagraphs 86.1(2)(c)(iii) and 86.1(2)(e)(vi) to the *United States Internal Revenue Code* are replaced by "the *Internal Revenue Code of 1986* of the United States, as amended from time to time".

[See also 86.1(2)(e)(i) — ed.]

Letter from Dept. of Finance, June 11, 2001:

Dear [xxx]

This is in response to your letters of January 19, May 1 and May 22, 2001 concerning your request on behalf of your client, [xxx] regarding proposed section 86.1 of the *Income Tax Act* (the "Act"). In particular, you ask that consideration be given to extending proposed subparagraph 86.1(2)(c)(ii) to foreign spin-off distributions made by a corporation resident in the United States (the "U.S.") where shares of the corporation are not actively traded on a prescribed stock exchange but are registered by the corporation with the U.S. Securities and Exchange Commission (the "SEC") under the *Securities Exchange Act of 1934* of the U.S. (the "Exchange Act").

Based on our understanding of the facts as set out in your letters, in September 2000 [xxx] undertook a spin-off transaction in the U.S. that was tax deferred to its U.S. shareholders but taxable to its Canadian shareholders. At the time of the spin-off, shares of [xxx] (i.e., the "original shares") did not actively trade on a prescribed stock exchange in the U.S. However, because [xxx] had more than [xxx] shareholders and more than [xxx] in assets, it was required by the Exchange Act to register its shares with the SEC and to comply with extensive public filing and disclosure requirements. The original shares were also widely held by more than [xxx] employees with more than [xxx] of those employees being resident in Canada.

We agree that the required registration with the SEC, as described in your letters, and all the requisite disclosures mandated by such registration is analogous to the registration and disclosure requirements for a public company actively traded on a U.S. prescribed stock exchange. However, we are of the view that retention of the widely held requirement in proposed subparagraph 86.1(2)(c)(ii) is appropriate in cases where shares of a class are required to be registered with the SEC. In the case at hand, this widely held requirement would extend to a company such as [xxx] that is widely held by the employees of the company.

Given our understanding of the facts, we will recommend to the Minister of Finance that proposed subparagraph 86.1(2)(c)(ii) of the Act be extended to original shares issued by a U.S. corporation where the shares are widely held, required to be registered and are so registered with the SEC under the Exchange Act. We will also recommend that such an amendment apply to distributions made after 1999. If the recommendation is acted upon, we anticipate that the amendment would be included in a future technical bill.

Yours sincerely,

Len Farber
General Director, Tax Legislation Division, Tax Policy Branch
c.c.: Mr. Bill McCloskey, Assistant Commissioner, Policy and Legislation Branch, CCRA

(d) in the case of a distribution that is prescribed,

(i) at the time of the distribution, both corporations are resident in the same country, other than the United States, with which Canada has a tax treaty (in this section referred to as the "foreign country") and were never resident in Canada,

(ii) at the time of the distribution, the shares of the class that includes the original shares are widely held and actively traded on a prescribed stock exchange,

(iii) under the law of the foreign country, those shareholders of the particular corporation who are resident in that country are not taxable in respect of the distribution, and

(iv) the distribution is prescribed subject to such terms and conditions as are considered appropriate in the circumstances;

(e) before the end of the sixth month following the day on which the particular corporation first distributes a spin-off share in respect of the distribution, the particular corporation provides to the Minister information satisfactory to the Minister establishing

(i) that, at the time of the distribution, the shares of the class that includes the original shares are widely held and actively traded on a prescribed stock exchange,

Proposed Amendment — 86.1(2)(e)(i)

(i) that, at the time of the distribution, the shares of the class that includes the original shares are shares described in subparagraph (c)(ii) or (d)(ii),

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 86(2), will amend subpara. 86.1(2)(e)(i) to read as above, applicable on the same basis as 86.1(2)(c)(ii), (iii) above.

Technical Notes: Third, subparagraph 86.1(2)(e)(i) is amended consequential to the amendment to subparagraph 86.1(2)(c)(ii) described above.

(ii) that the particular corporation and the other corporation referred to in paragraph (b) were never resident in Canada,

(iii) the date of the distribution,

(iv) the type and fair market value of each property distributed to residents of Canada,

(v) the name and address of each resident of Canada that received property with respect to the distribution,

(vi) in the case of a distribution that is not prescribed, that the distribution is not taxable under the *United States Internal Revenue Code* applicable to the distribution,

Proposed Amendment — 86.1(2)(e)(vi)

(vi) in the case of a distribution that is not prescribed, that the distribution is not taxable under the provisions of the *Internal Revenue Code of 1986* of the United States, as amended from time to time, that apply to the distribution,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 86(3), will amend subpara. 86.1(2)(e)(vi) to read as above, applicable on the same basis as 86.1(2)(c)(ii), (iii) above.

Technical Notes: See under 86.1(2)(c)(ii), (iii) above.

(vii) in the case of a distribution that is prescribed, that the distribution is not taxable under the law of the foreign country, and

(viii) such other matters that are required, in prescribed form; and

(f) the taxpayer elects in writing filed with the taxpayer's return of income for the taxation year in which the distribution occurs that this section apply to the distribution and provides information satisfactory to the Minister

(i) of the number, cost amount (determined without reference to this section) and the fair market value of the taxpayer's original shares immediately before the distribution,

(ii) of the number, and fair market value, of the taxpayer's original shares and the spin-off shares immediately after the distribution of the spin-off shares to the taxpayer,

(iii) except where the election is filed with the taxpayer's return of income for the year in which the distribution occurs, concerning the amount of the distribution, the manner in which the distribution was reported by the taxpayer and the details of any subsequent disposition of original shares or spin-off shares for the purpose of determining any gains or losses from those dispositions, and

(iv) of such other matters that are required, in prescribed form.

Related Provisions: 86.1(5) — Reassessments beyond limitation period; 95(2)(g.2) — Foreign accrual property income; 96(3) — Election by members of partnership; 220(3.2), Reg. 600(c) — Late filing of election under 86.1(2)(f).

Regulations: 3201(o) (prescribed stock exchanges in the United States); 5600 (prescribed distribution).

I.T. Technical News: 28 (foreign spin-offs with "poison pill" shareholder rights plans).

(3) Cost adjustments — Where a spin-off share is distributed by a corporation to a taxpayer pursuant to an eligible distribution with respect to an original share of the taxpayer,

(a) there shall be deducted for the purpose of computing the cost amount to the taxpayer of the original share at any time the amount determined by the formula

$$A \times (B/C)$$

where

A is the cost amount, determined without reference to this section, to the taxpayer of the original share at the time that is immediately before the distribution or, if the original share is disposed of by the taxpayer, before the distribution, at the time that is immediately before its disposition,

B is the fair market value of the spin-off share immediately after its distribution to the taxpayer, and

C is the total of

(i) the fair market value of the original share immediately after the distribution of the spin-off share to the taxpayer, and

(ii) the fair market value of the spin-off share immediately after its distribution to the taxpayer; and

(b) the cost to the taxpayer of the spin-off share is the amount by which the cost amount of the taxpayer's original share was reduced as a result of paragraph (a).

(4) Inventory — For the purpose of calculating the value of the property described in an inventory of a taxpayer's business,

(a) an eligible distribution to the taxpayer of a spin-off share that is included in the inventory is deemed not to be an acquisition of property in the fiscal period of the business in which the distribution occurs; and

(b) for greater certainty, the value of the spin-off share is to be included in computing the value of the inventory at the end of that fiscal period.

(5) Reassessments — Notwithstanding subsections 152(4) to (5), the Minister may make at any time such assessments, reassessments, determinations and redeterminations that are necessary where information is obtained that the conditions in subparagraph (2)(c)(iii) or (d)(iii) are not, or are no longer, satisfied.

Proposed Amendment — Cross-border share-for-share exchanges

Supplementary information, Economic Statement, October 18, 2000: *Canadian/Foreign Share-for-Share Exchanges*

Under the *Income Tax Act*, certain share-for-share exchanges can be effected on a tax-deferred basis where the corporations involved are all resident in Canada or are all non-residents. These rules do not apply, however, to a Canadian resident shareholder who exchanges shares of a domestic corporation for shares of a foreign corporation (or vice versa).

It is intended that a share-for-share exchange rollover rule be developed in consultation with the private sector to apply to cross-border share-for-share exchanges where a Canadian resident shareholder receives only share consideration on the exchange. To ensure the preservation of the Canadian income tax base, rules must be developed to provide for, among other things, cost base adjustments, paid-up capital adjustments, the preservation of taxable Canadian property status, and adjustments for tax benefits that could potentially arise because of the conversion of capital gains into dividends (or vice versa). Any such rollover rule would not take effect before the release of draft legislation for public discussion.

Federal budget, Supplementary Information, February 18, 2003: *Cross-Border Share-For-Share Exchanges*

Under the *Income Tax Act*, certain share-for-share exchanges can be undertaken on a tax-deferred basis where the corporations involved are all resident in Canada or are all non-residents. These rules do not apply, however, to a Canadian resident shareholder who exchanges shares of a domestic corporation for shares of a foreign corporation. While there may be other indirect means of accomplishing such an exchange on a tax-deferred basis, the resulting transactions can be complex and costly.

In the October 2000 Economic Statement and Budget Update, the Government undertook to consult with interested parties on a tax deferral provision that specifically address tax-deferred cross-border share-for-share exchanges. At the same time, the Government noted that a basic requirement for such a mechanism is that it protect Canada's tax base.

A draft of legislative proposals, designed to balance these objectives, will be released in the near future for public review and comment.

Federal budget, Supplementary Information, March 23, 2004: *Cross-Border Share-For-Share Exchanges*

Under the *Income Tax Act*, certain share-for-share exchanges can be undertaken on a tax-deferred basis where the corporations involved are all resident in Canada or are all non-residents. These rules do not apply, however, to a Canadian resident shareholder who exchanges shares of a domestic corporation for shares of a foreign corporation. While there may be other indirect means of accomplishing such an exchange on a tax-deferred basis, the resulting transactions can be complex and costly.

In the October 2000 Economic Statement and Budget Update, the Government undertook to consult with interested parties on the merits and technical design of a tax deferral provision that would, if implemented, apply in

respect of cross-border share-for-share exchanges. Budget 2003 reiterated this plan.

It is intended that a detailed proposal be released for public comment in the coming months.

Federal budget, Supplementary Information, February 23, 2005: *Cross-Border Share-for-Share Exchanges*

The 2000 Economic Statement and Budget Update and subsequent budgets indicated the Government's intention to develop rules that would provide an explicit rollover for cross-border share-for-share exchanges while ensuring that the Canadian tax base was protected. A discussion draft of proposed income tax amendments to implement this initiative will be released in the near future.

History: Opening words of subsec. 86.1(2) amended by 2005, c. 30, subsec. 3(1) to replace "this section and Part XI" with "this section", applicable to distributions received after 2004.

Opening words of para. 86.1(2)(f) amended by the said c. 30, subsec. 3(2), applicable to distributions received after 2004. The opening words formerly read:

> (f) except where Part XI applies in respect of the taxpayer, the taxpayer elects in writing filed with the taxpayer's return of income for the taxation year in which the distribution occurs (or, in the case of a distribution received before October 18, 2000, filed with the Minister before July 2001) that this section apply to the distribution and provides information satisfactory to the Minister

S. 86.1 added by 2001, c. 17, s. 64, applicable to distributions received after 1997, except that

> (a) information referred to in para. 86.1(2)(e) is deemed to be provided to the Minister of National Revenue on a timely basis if it is provided to that Minister before September 12, 2001 (90 days after Royal Assent); and
>
> (b) the election referred to in para. 86.1(2)(f) is deemed to be filed on a timely basis if it is filed with the Minister of National Revenue before September 12, 2001 (90 days after Royal Assent).

Definitions [s. 86.1]: "amount", "assessment", "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "common share" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount", "disposition" — 248(1); "fiscal period" — 249.1; "foreign country" — 86.1(2)(d); "inventory", "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "prescribed" — 248(1); "prescribed stock exchange" — 248(29), Reg. 3201(o); "property" — 248(1); "resident", "resident in Canada" — 250; "share", "shareholder", "tax treaty" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "United States", "writing" — *Interpretation Act* 35(1).

87. (1) Amalgamations — In this section, an amalgamation means a merger of two or more corporations each of which was, immediately before the merger, a taxable Canadian corporation (each of which corporations is referred to in this section as a "predecessor corporation") to form one corporate entity (in this section referred to as the "new corporation") in such a manner that

> (a) all of the property (except amounts receivable from any predecessor corporation or shares of the capital stock of any predecessor corporation) of the predecessor corporations immediately before the merger becomes property of the new corporation by virtue of the merger,
>
> (b) all of the liabilities (except amounts payable to any predecessor corporation) of the predecessor corporations immediately before the merger become liabilities of the new corporation by virtue of the merger, and
>
> (c) all of the shareholders (except any predecessor corporation), who owned shares of the capital stock of any predecessor corporation immediately before the merger, receive shares of the capital stock of the new corporation because of the merger,

otherwise than as a result of the acquisition of property of one corporation by another corporation, pursuant to the purchase of that property by the other corporation or as a result of the distribution of that property to the other corporation on the winding-up of the corporation.

Related Provisions: 53(6) — Effect of amalgamation or merger on adjusted cost base of share, partnership interest or trust interest; 69(13) — Amalgamation or merger — deemed proceeds of disposition; 80.03(1), (3)(a)(ii) — Capital gain on amalgamation following debt forgiveness; 87(1.1) — Shares deemed to have been received by virtue of merger; 87(8) — Foreign mergers; 87(9) — Triangular amalgamations; 89(1)"Canadian corporation" — Whether amalgamated corporation is a Canadian corporation; 89(1)"taxable Canadian corporation"(b) — Farmers' or fishermen's insurer eligible for amalgamation rules; 89(2) — Where corporation is beneficiary under life insurance policy; 112(7) — Application of stop-loss rule following amalgamation; 128.2 — Predecessor corporations take on residence status of amalgamated corporation; 137(4.3) — Determination of preferred-rate amount; 139.1(3)(g) — Where insurance corporation merges causing demutualization; 204.85(3) — Rules on amalgamation of LSVCCs; 248(1)"disposition"(n), 248(1.1) — Cancellation of shares on foreign amalgamation deemed not to be a disposition; 251(3.1), (3.2) — Amalgamated corporation deemed related to predecessor. See also at end of s. 87.

History: Para. 87(1)(c) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 37(1), applicable to amalgamations occurring after 1989. Para. (c) formerly read:

> (c) all of the shareholders (except any predecessor corporation) of the predecessor corporations immediately before the merger receive shares of the capital stock of the new corporation by virtue of the merger,

Regulations: 230(3) (no information return required on cancellation of predecessor's shares).

I.T. Application Rules: 26(28).

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987. See also list at end of s. 87.

Information Circulars: 88-2, paras. 20, 28: General anti-avoidance rule — section 245 of the *Income Tax Act*; 88-2 Supplement, para. 9: General anti-avoidance rule — section 245 of the *Income Tax Act*.

Advance Tax Rulings: ATR-29: Amalgamation of social clubs; ATR-55: Amalgamation followed by sale of shares; ATR-59: Financing exploration and development through limited partnerships.

Registered Charities Newsletters: 16 (issues: amalgamations, mergers, and consolidations); 21 (when is an amalgamation not an amalgamation?).

(1.1) Shares deemed to have been received by virtue of merger — For the purposes of paragraph (1)(c) and the *Income Tax Application Rules*, where there is a merger of

> (a) a corporation and one or more of its subsidiary wholly-owned corporations, or
>
> (b) two or more corporations each of which is a subsidiary wholly-owned corporation of the same corporation,

any shares of the capital stock of a predecessor corporation owned by a shareholder (except any predecessor corporation) immediately before the merger that were not cancelled on the merger shall be deemed to be shares of the capital stock of the new corporation received by the shareholder by virtue of the merger as consideration for the disposition of the shares of the capital stock of the predecessor corporations.

Related Provisions: 87(1.4) — Subsidiary wholly-owned corporation. See also at end of s. 87.

Interpretation Bulletins: See list at end of s. 87.

(1.2) New corporation continuation of a predecessor — Where there has been an amalgamation of corporations described in paragraph (1.1)(a) or of two or more corporations each of which is a subsidiary wholly-owned corporation of the same person, the new corporation is, for the purposes of section 29 of the *Income Tax Application Rules*, subsection 59(3.3) and sections 66, 66.1, 66.2,

66.21, 66.4 and 66.7, deemed to be the same corporation as, and a continuation of, each predecessor corporation, except that this subsection does not affect the determination of any predecessor corporation's fiscal period, taxable income or tax payable.

Related Provisions: 87(1.4) — Subsidiary wholly-owned corporation. See also at end of s. 87.

History: Subsec. 87(1.2) amended by 2001, c. 17, subsec. 65(1), applicable to amalgamations that occur after 2000. The subsec. formerly read:

> (1.2) New corporation continuation of a predecessor — Where there has been an amalgamation of corporations described in paragraph (1.1)(a) or of 2 or more corporations each of which is a subsidiary wholly-owned corporation of the same person, the new corporation shall, for the purposes of section 29 of the *Income Tax Application Rules*, subsection 59(3.3) and sections 66, 66.1, 66.2, 66.4 and 66.7, be deemed to be the same corporation as, and a continuation of, each predecessor corporation, except that this subsection shall not affect the determination of any predecessor corporation's fiscal period, taxable income or tax payable.

Subsec. 87(1.2) substituted by 1994, c. 21, subsec. 39(1), applicable to amalgamations occurring after December 21, 1992. That subsec. formerly read:

> (1.2) New corporation continuation of predecessor — Where there has been an amalgamation of corporations described in paragraph (1.1)(a) or (b), the new corporation shall, for the purposes of section 29 of the *Income Tax Application Rules*, subsection 59(3.3) and sections 66, 66.1, 66.2, 66.4 and 66.7, be deemed to be the same corporation as and a continuation of each predecessor corporation, except that this subsection shall in no respect affect the determination of any predecessor corporation's fiscal period, taxable income or tax payable.

Regulations: 1214 (resource and processing allowances — purposes for which amalgamated corporation deemed to be continuation of predecessors).

Interpretation Bulletins: IT-125R4: Dispositions of resource properties. See also list at end of s. 87.

(1.3) [Repealed under former Act]

(1.4) Definition of "subsidiary wholly-owned corporation" — Notwithstanding subsection 248(1), for the purposes of this subsection and subsections (1.1), (1.2) and (2.11), "subsidiary wholly-owned corporation" of a person (in this subsection referred to as the "parent") means a corporation all the issued and outstanding shares of the capital stock of which belong to

(a) the parent;

(b) a corporation that is a subsidiary wholly-owned corporation of the parent; or

(c) any combination of persons each of which is a person described in paragraph (a) or (b).

Related Provisions: See Related Provisions at end of s. 87.

History: Subsec. 87(1.4) substituted by 1994, c. 21, subsec. 39(2), applicable to amalgamations occurring after December 21, 1992. That subsec. formerly read:

> (1.4) Notwithstanding subsection 248(1), for the purposes of this subsection and subsections (1.1), (1.2) and (2.11), "subsidiary wholly-owned corporation" of a corporation (in this subsection referred to as the "parent corporation") means a corporation all the issued and outstanding shares of the capital stock of which belong to
>
> (a) the parent corporation;
>
> (b) a corporation that is a subsidiary wholly-owned corporation of the parent corporation; or
>
> (c) any combination of corporations each of which is a corporation described in paragraph (a) or (b).

That portion of subsec. 87(1.4) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 37(2), to add reference to subsection (2.11), applicable to amalgamations occurring after 1989.

Interpretation Bulletins: See list at end of s. 87.

(1.5) Definitions — For the purpose of this section, "financial institution", "mark-to-market property" and "specified debt obligation" have the meanings assigned by subsection 142.2(1).

History: Subsec. 87(1.5) added by 1995, c. 21, subsec. 54(1), applicable to taxation years that end after February 22, 1994.

(2) Rules applicable — Where there has been an amalgamation of two or more corporations after 1971 the following rules apply:

(a) **taxation year** — for the purposes of this Act, the corporate entity formed as a result of the amalgamation shall be deemed to be a new corporation the first taxation year of which shall be deemed to have commenced at the time of the amalgamation, and a taxation year of a predecessor corporation that would otherwise have ended after the amalgamation shall be deemed to have ended immediately before the amalgamation;

Selected Cases [para. 87(2)(a)]: *Pan Ocean Oil Ltd. v. Canada*, [1994] 2 C.T.C. 143 (FCA) (New company did not "acquire" property of predecessor companies); *Guaranty Properties Ltd. v. Canada*, [1990] 2 C.T.C. 94 (FCA); leave to appeal to SCC refused (1991), 49 B.L.R. 320 (note) (Notice of reassessment to company subsequent to amalgamation was valid).

Interpretation Bulletins: IT-179R: Change of fiscal period. See also list at end of s. 87.

Information Circulars: 88-2, para. 21: General anti-avoidance rule — section 245 of the *Income Tax Act*.

(b) **inventory** — for the purpose of computing the income of the new corporation, where the property described in the inventory, if any, of the new corporation at the beginning of its first taxation year includes property that was described in the inventory of a predecessor corporation at the end of the taxation year of the predecessor corporation that ended immediately before the amalgamation (which taxation year of a predecessor corporation is referred to in this section as its "last taxation year"), the property so included shall be deemed to have been acquired by the new corporation at the beginning of its first taxation year for an amount determined in accordance with section 10 as the value thereof for the purpose of computing the income of the predecessor corporation for its last taxation year, except that where the income of the predecessor corporation for its last taxation year from a farming business was computed in accordance with the cash method, the amount so determined in respect of inventory owned in connection with that business shall be deemed to be the total of all amounts each of which is an amount included because of paragraph 28(1)(b) or (c) in computing that income for that year and, where the income of the new corporation from a farming business is computed in accordance with the cash method, for the purpose of section 28,

> (i) an amount equal to that total shall be deemed to have been paid by the new corporation, and
>
> (ii) the new corporation shall be deemed to have purchased the property for an amount equal to that total,

in its first taxation year and in the course of carrying on that business;

History: Para. 87(2)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 65(1), applicable to amalgamations occurring after 1988, except that, in its application with respect to property acquired from a predecessor corporation the last taxation year of which commenced before 1989, the

reference to "paragraph 28(1)(b) or (c)" in the para. shall be read as "paragraph 28(1)(b)". Para. 87(2)(b) formerly read:

(b) inventory — for the purpose of computing the income of the new corporation for its first taxation year, where the property described in the inventory, if any, of the new corporation at the commencement of that year includes

(i) property that was described in the inventory of a predecessor corporation at the end of the taxation year of the predecessor corporation that ended immediately before the amalgamation (which taxation year of a predecessor corporation is referred to in this section as its "last taxation year"), or

(ii) property that would have been described in the inventory of the predecessor corporation at the end of its last taxation year if its income for that year had not been computed in accordance with the method authorized by subsection 28(1),

the property so included shall be deemed to have been acquired by the new corporation at the commencement of its first taxation year for an amount determined in accordance with section 10 as the value thereof for the purpose of computing the income of the predecessor corporation for its last taxation year, except that where the income of the predecessor corporation for its last taxation year was computed in accordance with the method authorized by subsection 28(1), the amount so determined shall be deemed to be the amount, if any, specified in respect of the predecessor corporation under paragraph 28(1)(b) for that year;

Interpretation Bulletins: IT-427R: Livestock of farmers. See also list at end of s. 87.

(c) **method adopted for computing income** — in computing the income of the new corporation for a taxation year from a business or property

(i) there shall be included any amount received or receivable (depending on the method followed by the new corporation in computing its income for that year) by it in that year that would, if it had been received or receivable (depending on the method followed by the predecessor corporation in computing its income for its last taxation year) by the predecessor corporation in its last taxation year, have been included in computing the income of the predecessor corporation for that year, and

(ii) there may be deducted any amount paid or payable (depending on the method followed by the new corporation in computing its income for that year) by it in that year that would, if it had been paid or payable (depending on the method followed by the predecessor corporation in computing its income for its last taxation year) by the predecessor corporation in its last taxation year, have been deductible in computing the income of the predecessor corporation for that year;

Related Provisions: 87(2)(b) — Meaning of "last taxation year"; 88(1)(e.2) — Winding-up. See also at end of s. 87.

Interpretation Bulletins: See list at end of s. 87.

(d) **depreciable property** — for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a),

(i) where depreciable property of a prescribed class has been acquired by the new corporation from a predecessor corporation, the capital cost of the property to the new corporation shall be deemed to be the amount that was the capital cost of the property to the predecessor corporation, and

(ii) in determining the undepreciated capital cost to the new corporation of depreciable property of a prescribed class at any time,

(A) there shall be added to the capital cost to the new corporation of depreciable property of the class acquired before that time the cost amount, immediately before the amalgamation, to a predecessor corporation of each property included in that class by the new corporation,

(B) there shall be subtracted from the capital cost to the new corporation of depreciable property of that class acquired before that time the capital cost to the new corporation of property of that class acquired by virtue of the amalgamation,

(C) a reference in subparagraph 13(5)(b)(ii) to amounts that would have been deducted in respect of property in computing a taxpayer's income shall be construed as including a reference to amounts that would have been deducted in respect of that property in computing a predecessor corporation's income, and

(D) where depreciable property that is deemed by subsection 37(6) to be a separate prescribed class has been acquired by the new corporation from a predecessor corporation, the property shall continue to be deemed to be of that same separate prescribed class;

History: Cl. 87(2)(d)(ii)(C) amended by 1997, c. 25, subsec. 18(1), applicable to taxation years that begin after 1996. Cl. (ii)(C) formerly read:

(C) a reference in subparagraph 13(5)(b)(ii) to amounts that would have been deducted by a taxpayer in respect of transferred property shall be construed as including a reference to amounts that would have been deducted by a predecessor corporation in respect of that property, and

Cl. 87(2)(d)(ii)(C) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 65(2), applicable to taxation years commencing after June 17, 1987 that end after 1987. Cl. (ii)(C) formerly read:

(C) a reference in subparagraph 13(5)(a)(ii) to amounts that would have been allowed to a taxpayer in respect of transferred property, at the rate that was allowed to the taxpayer in respect of property of a prescribed class, shall be construed as including a reference to amounts that would have been allowed to a predecessor corporation in respect of that property at the rate that was allowed to the predecessor corporation in respect of property of that prescribed class, and

I.T. Application Rules: 20(1.2) (transfer of depreciable property by person who owned it before 1972).

Interpretation Bulletins: See list at end of s. 87.

(d.1) **depreciable property acquired from predecessor corporation** — for the purposes of this Act, where depreciable property (other than property of a prescribed class) has been acquired by the new corporation from a predecessor corporation, the new corporation shall be deemed to have acquired the property before 1972 at an actual cost equal to the actual cost of the property to the predecessor corporation, and the new corporation shall be deemed to have been allowed the total of all amounts allowed to the predecessor corporation in respect of the property, under regulations made under paragraph 20(1)(a), in computing the income of the predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

I.T. Application Rules: 20(1.2) (transfer of depreciable property by person who owned it before 1972).

Interpretation Bulletins: See list at end of s. 87.

(e) **capital property** — subject to paragraph (e.4) and subsection 142.6(5), where a capital property (other than depreciable property or an interest in a partnership) has been acquired by the new corporation from a predecessor corporation, the cost of the property to the new corporation shall be deemed to be the amount that was the adjusted cost base of the property to the predecessor corporation immediately before the amalgamation;

Related Provisions: 53(6) — Effect of amalgamation on ACB of share, partnership interest or trust interest; 69(13) — Amalgamation or merger. See also at end of s. 87.

History: Para. 87(2)(e) amended by 1995, c. 21, subsec. 54(2), applicable to taxation years that end after February 22, 1994. Para. (e) formerly read:

> (e) where any capital property (other than depreciable property or an interest in a partnership) has been acquired by the new corporation from a predecessor corporation, the cost of the property to the new corporation shall be deemed to be the amount that was the adjusted cost base of the property to the predecessor corporation immediately before the amalgamation;

Interpretation Bulletins: See list at end of s. 87.

(e.1) **partnership interest** — where a partnership interest that is capital property has been acquired from a predecessor corporation to which the new corporation was related, for the purposes of this Act, the cost of that partnership interest to the new corporation shall be deemed to be the amount that was the cost of that interest to the predecessor corporation and, in respect of that partnership interest, the new corporation shall be deemed to be the same corporation as and a continuation of the predecessor corporation;

Related Provisions: 53(1)(e), 53(2)(c) — ACB — partnership interest; 88(1)(c), 88(1)(e.2) — Winding-up; 100(2.1) — Gain from disposition of partnership interest on amalgamation. See also at end of s. 87.

Interpretation Bulletins: See list at end of s. 87.

(e.2) **security or debt obligation** — subject to paragraphs (e.3) and (e.4) and subsection 142.6(5), where a property that is a security or debt obligation (other than a capital property or an inventory) of a predecessor corporation used by it in the year in, or held by it in the year in the course of, carrying on the business of insurance or lending money in the taxation year ending immediately before the amalgamation has been acquired by the new corporation from the predecessor corporation, the cost of the property to the new corporation shall be deemed to be the amount that was the cost amount of the property to the predecessor corporation immediately before the amalgamation;

History: Para. 87(2)(e.2) amended by 1995, c. 21, subsec. 54(3), applicable to taxation years that end after February 22, 1994. Para. (e.2) formerly read:

> (e.2) where any property that is a security or debt obligation (other than a capital property or an inventory) of a predecessor corporation used by it in the year in, or held by it in the year in the course of, carrying on the business of insurance or lending money in the taxation year ending immediately before the amalgamation has been acquired by the new corporation from the predecessor corporation, the cost of the property to the new corporation shall be deemed to be the amount that was the cost amount of the property to the predecessor corporation immediately before the amalgamation;

Interpretation Bulletins: See list at end of s. 87.

(e.3) **financial institutions — specified debt obligation** — where the new corporation is a financial institution in its first taxation year, it shall be deemed, in respect of a specified debt obligation (other than a mark-to-market property) acquired from a predecessor corporation that was a financial institution in its last taxation year, to be the same corporation as, and a continuation of, the predecessor corporation;

Related Provisions: 87(1.5) — Interpretation; 87(2)(b) — Meaning of "last taxation year"; 88(1)(e.2) — Winding-up; 142.6(5) — Parallel rule for rollover transactions generally. See also at end of s. 87.

History: Para. 87(2)(e.3) added by 1995, c. 21, subsec. 54(3), applicable to amalgamations occurring, and windings-up beginning, after February 22, 1994.

(e.4) **financial institutions — mark-to-market property** — where

(i) the new corporation is a financial institution in its first taxation year and a property acquired by the new corporation from a predecessor corporation is a mark-to-market property of the new corporation for the year, or

(ii) a predecessor corporation was a financial institution in its last taxation year and a property acquired by the new corporation from the predecessor corporation was a mark-to-market property of the predecessor corporation for the year,

the cost of the property to the new corporation shall be deemed to be the amount that was the fair market value of the property immediately before the amalgamation;

Related Provisions: 87(1.5) — Interpretation; 87(2)(b) — Meaning of "last taxation year"; 87(2)(e), (e.2) — Rule overrides normal rules for capital property, securities and debt obligations; 87(2)(g.2), 142.6(1)(b) — Predecessor non-financial institution deemed to have disposed of property before amalgamation; 142.5(2) — Predecessor financial institution deemed to have disposed of property before amalgamation; 142.6(5), (6) — Acquisition of specified debt obligation by financial institution in rollover transaction. See also at end of s. 87.

History: Para. 87(2)(e.4) added by 1995, c. 21, subsec. 54(3), applicable to amalgamations occurring after October 1994.

(e.5) **financial institutions — mark-to-market property** — for the purposes of subsections 112(5) to (5.2) and (5.4) and the definition "mark-to-market property" in subsection 142.2(1), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 87(1.5) — Interpretation; 88(1)(h) — Parallel rule on windup; 142.7(6)(a) — Parallel rule on conversion of foreign bank affiliate to branch. See also at end of s. 87.

History: Para. 87(2)(e.5) added by 1995, c. 21, subsec. 54(3), applicable to amalgamations occurring at any time (including, for greater certainty, amalgamations occurring before June 22, 1995).

(f) **eligible capital property** — for the purposes of determining under this Act any amount relating to cumulative eligible capital, an eligible capital amount, an eligible capital expenditure or eligible capital property, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

History: Para. 87(2)(f) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 37(3), applicable to amalgamations occurring after June 1988. That para. formerly read:

> (f) cumulative eligible capital — for the purposes of computing the cumulative eligible capital of the new corporation at any time in respect of a business, where a predecessor corporation carried on a business that is carried on by the new corporation, the amount of the cumulative eligible capital of the predecessor corporation immediately before the amalgamation in respect of that business shall be added to the amount determined for A in the definition "cumulative eligible capital" in subsection 14(5) in respect of that business;

Interpretation Bulletins: See list at end of s. 87.

(f.1) [Repealed]

History: Para. 87(2)(f.1) repealed by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 37(3), applicable to amalgamations occurring after June 1988. That para. formerly read:

> (f.1) idem — notwithstanding paragraph (f), for the purposes of computing the cumulative eligible capital of the new corporation at any time in respect of a business, where the last taxation year of a predecessor corporation commenced before July, 1988 and the predecessor corporation carried on a business that is carried on by the

new corporation, 3/2 of the amount of the cumulative eligible capital of the predecessor corporation immediately before the amalgamation in respect of that business shall be added to the amount determined for A in the definition "cumulative eligible capital" in subsection 14(5) in respect of that business;

(g) **reserves** — for the purpose of computing the income of the new corporation for a taxation year,

(i) any amount that has been deducted as a reserve in computing the income of a predecessor corporation for its last taxation year shall be deemed to have been deducted as a reserve in computing the income of the new corporation for a taxation year immediately preceding its first taxation year, and

(ii) any amount deducted under paragraph 20(1)(p) in computing the income of a predecessor corporation for its last taxation year or a previous taxation year shall be deemed to have been deducted under that paragraph in computing the income of the new corporation for a taxation year immediately preceding its first taxation year;

Related Provisions: 87(2)(b) — Meaning of "last taxation year"; 88(1)(e.2) — Winding-up.

(g.1) **continuation** — for the purposes of sections 12.3 and 12.4, subsection 20(26) and section 26, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

Interpretation Bulletins: See list at end of s. 87.

(g.2) **financial institution rules** — for the purposes of paragraphs 142.4(4)(c) and (d) and subsections 142.5(5) and (7) and 142.6(1), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up; 142.6(1)(b) — Deemed disposition of specified debt obligations and mark-to-market properties on becoming a financial institution. See also list at end of s. 87.

History: Para. 87(2)(g.2) added by 1995, c. 21, subsec. 54(4), applicable to taxation years that end after February 22, 1994.

(g.3) **superficial losses** — for the purposes of applying subsections 13(21.2), 14(12), 18(15) and 40(3.4) to any property that was disposed of by a predecessor corporation before the amalgamation, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

History: Para. 87(2)(g.3) added by 1998, c. 19, subsec. 117(1), applicable to amalgamations that occur, and windings-up that begin, after April 26, 1995.

(g.4) **superficial losses — capital property** — for the purpose of applying paragraph 40(3.5)(c) in respect of any share that was acquired by a predecessor corporation, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

History: Para. 87(2)(g.4) added by 1998, c. 19, subsec. 117(1), applicable to amalgamations that occur, and windings-up that begin, after April 26, 1995.

Proposed Addition — 87(2)(g.5)

(g.5) **patronage dividends** — for the purpose of section 135, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 87(1), will add para. 87(2)(g.5), applicable to amalgamations that occur, and windings-up that begin, after 1997.

Technical Notes: New paragraph 87(2)(g.5) deems a new corporation formed on an amalgamation to be the same corporation as and a continuation of each of the predecessor corporations for the purpose of section 135. This paragraph, which applies to amalgamations that occur after 1997, ensures that the rules in section 135 concerning the deduction for and inclusion in income of patronage dividends continue to apply where a cooperative corporation or a customer of a cooperative corporation amalgamates with one or more other corporations between the time a cooperative corporation makes an allocation in proportion to patronage and the time that the patronage dividend is paid. This amendment ensures that payments made under subsection 135(1) by the new corporation in satisfaction of allocations made by a predecessor corporation will be deductible by the new corporation. In addition, new paragraph 87(2)(g.5) ensures that the deductibility of an amount paid to a new corporation formed on the amalgamation of the cooperative corporation's customer and another corporation will not be affected by the amalgamation.

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

(h) **debts** — for the purpose of computing a deduction from the income of the new corporation for a taxation year under paragraph 20(1)(l), (l.1) or (p)

(i) any debt owing to a predecessor corporation that was included in computing the income of the predecessor corporation for its last taxation year or a preceding taxation year,

(ii) where a predecessor corporation was an insurer or a corporation the ordinary business of which included the lending of money, any loan or lending asset made or acquired by the predecessor corporation in the ordinary course of its business of insurance or the lending of money, or

(iii) where a predecessor corporation was an insurer or a corporation the ordinary business of which included the lending of money, any instrument or commitment described in paragraph 20(1)(l.1) that was issued, made or assumed by the predecessor corporation in the ordinary course of its business of insurance or the lending of money,

and that by reason of the amalgamation, has been acquired by the new corporation, shall be deemed to be a debt owing to the new corporation that was included in computing its income for a preceding taxation year, a loan or lending asset made or acquired or an instrument or commitment that was issued, made or assumed by the new corporation in a preceding taxation year in the ordinary course of its business of insurance or the lending of money, as the case may be;

Related Provisions: 80(2) — Deemed settlement on amalgamation; 87(2)(b) — Meaning of "last taxation year"; 88(1)(e.2) — Winding-up. See also at end of s. 87.

Interpretation Bulletins: See list at end of s. 87.

(h.1) **debts** — for the purposes of section 61.4, the description of F in subsection 79(3), the definition "forgiven amount" in subsection 80(1), subsection 80.03(7) and section 80.04, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

History: Para. 87(2)(h.1) added by 1995, c. 21, subsec. 30(1), applicable to taxation years that end after February 21, 1994.

Interpretation Bulletins: See list at end of s. 87.

(i) **special reserve** — for the purpose of computing a deduction from the income of the new corporation for a taxation year under paragraph 20(1)(n), any

amount included in computing the income of a predecessor corporation from a business for its last taxation year or a previous taxation year in respect of property sold in the course of the business shall be deemed to have been included in computing the income of the new corporation from the business for a previous year in respect of that property;

Related Provisions: 87(2)(b) — Meaning of "last taxation year"; 88(1)(e.2) — Winding-up. See also at end of s. 87.

Interpretation Bulletins: IT-154R: Special reserves. See also list at end of s. 87.

(j) **special reserves** — for the purposes of paragraphs 20(1)(m), (m.1) and (m.2), subsection 20(24) and section 34.2, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

History: Para. 87(2)(j) amended by 1996, c. 21, subsec. 15(1), applicable to amalgamations that occur and windings-up that begin after 1994. The para. formerly read:

(j) idem — for the purposes of paragraphs 20(1)(m), (m.1) and (m.2) and subsection 20(24), the new corporation shall be deemed to be the same corporation as, and a continuation of, the predecessor corporation;

Para. 87(2)(j) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 37(4), applicable to amalgamations occurring and windings-up beginning after 1990. Para. (j) formerly read:

(j) idem — for the purpose of computing a deduction from the income of the new corporation for a taxation year under paragraph 20(1)(m), (m.1) or (m.2) or section 32, any amount included in computing the income of a predecessor corporation from a business for its last taxation year or a preceding taxation year by virtue of paragraph 12(1)(a) shall be deemed to have been included in computing the income of the new corporation from the business for a preceding taxation year by virtue of that paragraph;

Interpretation Bulletins: IT-154R: Special reserves. See also list at end of s. 87.

(j.1) **inventory adjustment** — for the purposes of paragraph 20(1)(ii), an amount required by paragraph 12(1)(r) to be included in computing the income of a predecessor corporation for its last taxation year shall be deemed to be an amount required by paragraph 12(1)(r) to be included in computing the income of the new corporation for a taxation year immediately preceding its first taxation year;

Related Provisions: 87(2)(b) — Meaning of "last taxation year"; 88(1)(e.2) — Winding-up. See also list at end of s. 87.

Interpretation Bulletins: See list at end of s. 87.

(j.2) **prepaid expenses and matchable expenditures** — for the purposes of subsections 18(9) and (9.01), section 18.1 and paragraph 20(1)(mm), the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

History: Para. 87(2)(j.2) amended by 1998, c. 19, subsec. 117(2), applicable after November 17, 1996. The para. formerly read:

(j.2) prepaid expenses — for the purposes of subsections 18(9) and (9.01) and paragraph 20(1)(mm), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Para. 87(2)(j.2) amended by 1995, c. 3, subsec. 23(1), applicable to 1994 *et seq.* Para. (j.2) formerly read:

(j.2) prepaid expenses — for the purposes of subsection 18(9) and paragraph 20(1)(mm), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Interpretation Bulletins: See list at end of s. 87.

(j.3) **employee benefit plans, etc. [SDAs, RCAs]** — for the purposes of paragraphs 12(1)(n.1), (n.2) and (n.3) and 20(1)(r), (oo) and (pp), section 32.1, paragraph 104(13)(b) and Part XI.3, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

History: Para. 87(2)(j.3) substituted by 1994, c. 21, subsec. 39(3), applicable to taxation years ending after December 21, 1992. That para. formerly read:

(j.3) employee benefit plans, etc. — for the purposes of paragraphs 12(1)(n.2) and (n.3), 20(1)(r), (oo) and (pp), section 32.1 and Part XI.3, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Para. 87(2)(j.3) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 65(3), to add reference to para. (pp), applicable to amalgamations occurring and windings-up commencing after 1985.

Interpretation Bulletins: IT-502: Employee benefit plans and employee trusts. See also list at end of s. 87.

(j.4) **accrual rules** — for the purposes of subsections 12(3) and (9), section 12.2, subsection 20(19) and the definition "adjusted cost basis" in subsection 148(9) of this Act, and subsections 12(5) and (6) and paragraph 56(1)(d.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: See list at end of s. 87.

(j.5) **cancellation of lease** — for the purposes of paragraphs 20(1)(z) and (z.1), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

Interpretation Bulletins: See list at end of s. 87.

(j.6) **continuing corporation** — for the purposes of paragraphs 12(1)(t) and (x), subsections 12(2.2) and 13(7.1), (7.4) and (24), paragraphs 13(27)(b) and (28)(c), subsections 13(29) and 18(9.1), paragraphs 20(1)(e), (e.1) and (hh), sections 20.1 and 32, paragraph 37(1)(c), subsection 39(13), subparagraphs 53(2)(c)(vi) and (h)(ii), paragraph 53(2)(s), subsections 53(2.1), 66(11.4) and 66.7(11), section 139.1, subsection 152(4.3), the determination of D in the definition "undepreciated capital cost" in subsection 13(21) and the determination of L in the definition "cumulative Canadian exploration expense" in subsection 66.1(6), the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 55(3.2)(b) — Continuation for purposes of butterfly reorganizations and capital gains stripping; 88(1)(e.2) — Winding-up. See also at end of s. 87.

History: Para. 87(2)(j.6) amended by 2000, c. 19, s. 13, applicable to amalgamations that occur, and windings-up that begin, after December 15, 1998. The para. formerly read:

(j.6) for the purposes of paragraphs 12(1)(t) and (x), subsections 12(2.2) and 13(7.1), (7.4) and (24), paragraphs 13(27)(b) and (28)(c), subsections 13(29) and 18(9.1), paragraphs 20(1)(e), (e.1) and (hh), sections 20.1 and 32, paragraph 37(1)(c), subsection 39(13), subparagraphs 53(2)(c)(vi) and (h)(ii), paragraph 53(2)(s), subsections 53(2.1), 66(11.4), 66.7(11) and 152(4.3), the determination of D in the definition "undepreciated capital cost" in subsection 13(21) and the determination of L in the definition "cumulative Canadian exploration expense" in subsection 66.1(6), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Para. 87(2)(j.6) substituted by 1994, c. 21, subsec. 39(4), applicable after January 1990, and

(a) in applying the para. after 1987 and before February 1990, it shall be read as including a reference to para. 20(1)(e.1); and

(b) in applying the para. after January 1990 and before 1994, it shall be read as if the reference in it to "sections 20.1 and 32" were a reference to "section 32".

Para. 87(2)(j.6) formerly read:

(j.6) [continuation as to various subjects] — for the purposes of paragraphs 12(1)(t) and (x), subsections 12(2.2) and 13(7.1), (7.4) and (24), paragraphs 13(27)(b) and (28)(c), subsections 13(29) and 18(9.1), paragraphs 20(1)(e) and (hh), section 32, paragraph 37(1)(c), subsection 39(13), subparagraphs 53(2)(c)(vi) and (h)(ii), paragraph 53(2)(s), subsections 53(2.1), 66(11.4), 66.7(11) and 152(4.3) and the determination of D in the definition "undepreciated capital cost" in subsection 13(21) and of L in the definition "cumulative Canadian exploration expense" in subsection 66.1(6), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Para. 87(2)(j.6) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 37(5), applicable after January 1990. Para. (j.6) formerly read:

(j.6) continuation as to various subjects — for the purposes of paragraphs 12(1)(t) and (x), subsections 13(7.1), (7.4) and (24), paragraphs 13(27)(b) and (28)(c), subsections 13(29) and 18(9.1), paragraphs 20(1)(e) and (hh), section 32, paragraph 37(1)(c), subparagraphs 53(2)(c)(vi) and (h)(ii), paragraph 53(2)(s), subsections 53(2.1), 66(11.4), and 66.7(11) and the determination of D in the definition "undepreciated capital cost" in subsection 13(21) and of L in the definition "cumulative Canadian exploration expense" in subsection 66.1(6), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Para. 87(2)(j.6) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 65(4), to add reference to paras. 13(27)(b), (28)(c), subsecs. 13(29), 18(9.1) and s. 32, applicable with respect to amalgamations occurring and windings-up commencing after 1989.

Interpretation Bulletins: See list at end of s. 87.

(j.7) **certain transfers and loans [attribution rules]** — for the purposes of sections 74.4 and 74.5, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

Interpretation Bulletins: See list at end of s. 87.

(j.8) **international banking centre business** — for the purposes of section 33.1, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

Interpretation Bulletins: See list at end of s. 87.

(j.9) **Part VI and Part I.3 tax [pre-1992]** — for the purposes of determining the amount deductible by the new corporation for any taxation year under section 125.2 or 125.3, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

Interpretation Bulletins: See list at end of s. 87.

(j.91) **Part I.3 and Part VI tax** — for the purpose of determining the amount deductible under subsection 181.1(4) or 190.1(3) by the new corporation for any taxation year, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation, except that this paragraph does not affect the determination of the fiscal period of any corporation or the tax payable by any predecessor corporation;

Proposed Amendment — 87(2)(j.91)

(j.91) **Part I.3 and Part VI tax** — for the purpose of determining the amount deductible under subsection 181.1(4) or 190.1(3) by the new corporation for any taxation year, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation, except that this paragraph does not affect the determination of the fiscal period of any corporation or the tax payable by any corporation for any taxation year that ends before the amalgamation;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 87(2), will amend para. 87(2)(j.91) to read as above, applicable to amalgamations that occur, and to windings-up that begin, after December 20, 2002.

Technical Notes: Subsection 88(1) sets out rules relating to the winding-up of a subsidiary into a parent corporation that owns at least 90% of each class of shares of the subsidiary. A number of the rules that apply to amalgamations under subsection 87(2) also apply to windings-up under subsection 88(1).

Paragraph 87(2)(j.91) allows a new corporation, or, in the case of a winding-up under subsection 88(1), a parent corporation, to be considered as a continuation of its predecessors or subsidiary, as the case may be, for the purposes of determining an amount deductible under subsection 181.1(4) or 190.1(3). Those provisions relate, respectively, to the deduction from a corporation's tax otherwise payable under Part I.3 of the Act of an amount in respect of its Canadian surtax, and the deduction from a financial institution's tax otherwise payable under Part VI of the Act of an amount in respect of its tax under Part I of the Act.

Paragraph 87(2)(j.91) is amended to clarify that it does not affect the fiscal period of, or tax payable by, any corporation for any taxation year that ends prior to an amalgamation, or, by virtue paragraph 88(1)(e.2), the commencement of a winding-up under subsection 88(1).

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

History: Para. 87(2)(j.91) amended by 1998, c. 19, subsec. 117(3), applicable to amalgamations that occur, and windings-up that begin, after April 26, 1995. The para. formerly read:

(j.91) for the purposes of determining the amount deductible under subsection 181.1(4) or 190.1(3) by the new corporation for any taxation year, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Para. 87(2)(j.91) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 37(6), applicable to amalgamations occurring and windings-up beginning after 1990.

(j.92) **subsections 125(5.1) and 157.1(1) [small business deduction and instalment deferral]** — for the purposes of subsection 125(5.1) and the definition "eligible corporation" in subsection 157.1(1), the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

History: Para. 87(2)(j.92) amended by 2002, c. 9, subsec. 30(1), applicable to taxation years that end after 2001. The para. formerly read:

(j.92) subsec. 125(5.1) [small business deduction] — for the purposes of subsection 125(5.1), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Para. 87(2)(j.92) added by 1995, c. 3, subsec. 23(2) applicable to taxation years that end after June 1994.

(j.93) **mining reclamation trusts [and qualifying environmental trusts]** — for the purposes of paragraphs 12(1)(z.1) and (z.2) and 20(1)(ss) and (tt) and sections 107.3 and 127.41, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

History: Para. 87(2)(j.93) added by 1995, c. 3, subsec. 23(2), applicable to amalgamations that occur and windings-up that begin after February 22, 1994.

(j.94) **film or video productions** — for the purposes of sections 125.4 and 125.5, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

History: Para. 87(2)(j.94) amended by 1998, c. 19, subsec. 117(4), applicable to amalgamations that occur and windings-up that begin after October 1997. The para. formerly read:

(j.94) Canadian film or video production tax credit — for the purpose of section 125.4, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Para. 87(2)(j.94) added by 1996, c. 21, subsec. 15(2), applicable to amalgamations that occur and windings-up that begin after 1994.

Proposed Addition — 87(2)(j.95)

(j.95) **non-resident trusts and foreign investment entities** — for the purposes of sections 94 to 94.4, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), s. 15, will add para. 87(2)(j.95), applicable to taxation years that begin after 2000.

Technical Notes: Section 87 sets out rules that apply on the amalgamation of two or more taxable Canadian corporations. The amalgamated corporation is generally treated as a continuation of the predecessor corporations for the purposes of the Act.

New paragraph 87(2)(j.95) provides that, where there has been an amalgamation of two or more taxable Canadian corporations, the amalgamated corporation is deemed to be a continuation of its predecessor corporations for the purposes of sections 94 to 94.4, which relate to foreign trusts and foreign investment entities. Thus, for example, an amalgamated corporation will be considered to be a "contributor" (as defined in subsection 94(1)) to a trust if any predecessor corporation was a contributor to the trust. In addition, the new corporation's "deferral amount" (as defined in subsection 94.2(1)) in respect of an interest in a foreign investment entity will be determined in the same manner as a predecessor's "deferral amount" in respect of the same interest.

Because of the operation of paragraph 88(1)(e.2), new paragraph 87(2)(j.95) also applies to windings-up to which section 88 applies.

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

(k) **certain payments to employees** — for the purpose of subsection 6(3), any amount received by a person from the new corporation that would, if received by the person from a predecessor corporation, be deemed for the purpose of section 5 to be remuneration for that person's services rendered as an officer or during a period of employment, shall be deemed for the purposes of section 5 to be remuneration for services so rendered by the person;

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

(l) **scientific research and experimental development** — for the purposes of section 37 and Part VIII, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

Interpretation Bulletins: See list at end of s. 87.

(l.1) **idem [repealed R&D allowance]** — for the purposes of this paragraph, paragraph (l.2) and section 37.1,

(i) the base period for a particular taxation year of a new corporation that has fewer than 3 preceding taxation years shall be deemed to be the period

(A) commencing on the day that

(I) is the earliest of all days each of which is a day immediately before the commencement of a taxation year of a predecessor corporation in respect of the new corporation that ended after 1976, and

(II) is in the 3 year period ending on the day immediately before the commencement of the particular year, and

(B) ending immediately before the first day of the particular taxation year,

(ii) where subparagraph (i) applies,

(A) in determining the qualified expenditures made by the new corporation in its base period, there shall be included the total of all amounts each of which is the qualified expenditure made by a predecessor corporation in a taxation year that commenced in the base period of the new corporation, and

(B) in determining the total of the amounts paid to the new corporation by persons referred to in subparagraphs (b)(i) to (iii) of the definition "expenditure base" in subsection 37.1(5) in its base period, there shall be included the total of all such amounts paid to a predecessor corporation by a person referred to in those subparagraphs in a taxation year that commenced in the base period of the new corporation,

(iii) the capital cost to the new corporation of any property that was a research property of a predecessor corporation acquired by it from the predecessor corporation shall be deemed to be the capital cost thereof to the predecessor corporation and the property shall be deemed to be a research property of the new corporation, and

(iv) each amount determined in respect of the new corporation under subparagraph 37.1(3)(b)(i) or (iii), as the case may be, shall be deemed to be the total of the amount otherwise determined and the total of amounts each of which is the amount determined under subparagraph 37.1(3)(b)(i) or (iii), as the case may be, in respect of a predecessor corporation;

(l.2) **definition of "predecessor corporation"** — for the purposes of this paragraph and paragraph (l.1), "predecessor corporation" includes any corporation in respect of which a predecessor corporation was a new corporation;

(l.21) **[debt forgiveness rules]** — for the purposes of section 61.3, the definition "unrecognized loss" in subsection 80(1) and subsection 80.01(10), the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

History: Para. 87(2)(l.21) amended by 1998, c. 19, subsec. 117(5), applicable to taxation years that end after February 21, 1994. The para. formerly read:

(l.21) forgiven amount — for the purposes of section 61.3 and subsection 80.01(10), the new corporation shall be deemed to be the

same corporation as, and a continuation of, each predecessor corporation;

Para. 87(2)(l.21) added by 1995, c. 21, subsec. 30(2), applicable to taxation years that end after February 21, 1994.

(l.3) **replacement property** — where before the amalgamation property of a predecessor corporation was unlawfully taken, lost, destroyed or taken under statutory authority, or was a former business property of the predecessor corporation, for the purposes of applying sections 13 and 44 and the definition "former business property" in subsection 248(1) to the new corporation in respect of the property and any replacement property acquired therefor, the new corporation shall be deemed to be the same corporation as, and a continuation of, the predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

History: Para. 87(2)(l.3) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 37(7), applicable to amalgamations occurring and windings-up beginning after 1989. Para. (l.3) formerly read:

(l.3) property lost, destroyed or taken — if the amalgamation was after May 6, 1974 and a property of a predecessor corporation was unlawfully taken, lost, destroyed or taken under statutory authority prior to the amalgamation, sections 13 and 44 apply to the new corporation as though

(i) the new corporation had been in existence and owned that property at the time it was so lost, destroyed or taken,

(ii) the cost or capital cost, as the case may be, of that property to the new corporation were its cost or capital cost, as the case may be, to the predecessor corporation, and

(iii) where the predecessor corporation had acquired a replacement property for that property before the amalgamation, the new corporation had acquired that replacement property immediately after the amalgamation;

Interpretation Bulletins: IT-259R4: Exchanges of property. See also list at end of s. 87.

Proposed Addition — 87(2)(l.4)

(l.4) **subsec. 13(4.2) election** — for the purposes of subsection 13(4.3) and paragraph 20(16.1)(b), the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 87(3), will add para. 87(2)(l.4), applicable to amalgamations that occur, and windings-up that begin, after December 20, 2002.

Technical Notes: New paragraph 87(2)(l.4) is added to provide that, for the purposes of the rules in new subsection 13(4.3) and paragraph 20(16.1)(b) in respect of which an election is made under new subsection 13(4.2), the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation. This new provision also applies in respect of the winding up of a corporation to which section 88 applies, as a result of the application of paragraph 88(1)(e.2).

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

(m) **reserves** — for the purpose of computing the income of the new corporation for a taxation year, any amount claimed under subparagraph 40(1)(a)(iii) or 44(1)(e)(iii) in computing a predecessor corporation's gain for its last taxation year from the disposition of any property shall be deemed

(i) to have been claimed under subparagraph 40(1)(a)(iii) or 44(1)(e)(iii), as the case may be, in computing the new corporation's gain for a taxation year immediately preceding its first taxation year from the disposition of that property by it before its first taxation year, and

(ii) to be the amount determined under subparagraph 40(1)(a)(i) or 44(1)(e)(i), as the case may be, in respect of that property;

Related Provisions: 87(2)(b) — Meaning of "last taxation year"; 88(1)(e.2) — Winding-up. See also at end of s. 87.

History: Para. 87(2)(m) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 65(5), applicable to amalgamations occurring and windings-up beginning after 1989. Para. 87(2)(m) formerly read:

(m) proceeds not due until after end of year — for the purpose of computing the income of the new corporation for its first taxation year and any subsequent taxation year, any amount claimed under subparagraph 40(1)(a)(iii) in computing a predecessor corporation's gain for its last taxation year from the disposition of any property shall be deemed

(i) to have been claimed under that subparagraph in computing the new corporation's gain for a taxation year immediately preceding its first taxation year from the disposition of that property by it before its first taxation year, and

(ii) to be the amount determined under subparagraph 40(1)(a)(i) in respect of that property;

(m.1) **[charitable] gift of non-qualifying security** — for the purpose of computing the new corporation's gain under subsection 40(1.01) for any taxation year from the disposition of a property, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

History: Para. 87(2)(m.1) added by 1998, c. 19, s. 15, applicable to 1997 *et seq.*

(n) **outlays made pursuant to warranty** — for the purpose of section 42, any outlay or expense made or incurred by the new corporation in a taxation year, pursuant to or by virtue of an obligation described in that section incurred by a predecessor corporation, that would, if the outlay or expense had been made or incurred by the predecessor corporation in that year, have been deemed to be a loss of the predecessor corporation for that year from the disposition of a capital property shall be deemed to be a loss of the new corporation for that year from the disposition of a capital property;

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

Interpretation Bulletins: IT-330R: Disposition of capital property subject to warranty, covenant, etc. (archived). See also list at end of s. 87.

(o) **expiration of options previously granted** — for the purpose of subsection 49(2), any option granted by a predecessor corporation that expires after the amalgamation shall be deemed to have been granted by the new corporation, and any proceeds received by the predecessor corporation for the granting of the option shall be deemed to have been received by the new corporation therefor;

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

(p) **consideration for resource property disposition** — for the purpose of computing a deduction from the income of the new corporation for a taxation year under section 64 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, any amount that has been included in computing the income of a predecessor corporation for its last taxation year or a previous taxation year by virtue of subsection 59(1) or paragraph 59(3.2)(c) of this Act, of subsection 59(3) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, or of subsection 83A(5ba) or (5c) of that Act as it read in its application to a taxation year before the 1972 taxation year, shall be deemed to have been included in computing the income of the new corporation for a previous year by virtue thereof;

Related Provisions: 87(2)(b) — Meaning of "last taxation year"; 88(1)(e.2) — Winding-up. See also at end of s. 87.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

(q) **registered [pension] plans [and DPSPs]** — for the purposes of sections 147, 147.1 and 147.2 and any regulations made under subsection 147.1(18), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

Interpretation Bulletins: See list at end of s. 87.

(r) [Repealed under former Act]

Proposed Addition — 87(2)(r)

(r) **employees profit sharing plan** — an election made under subsection 144(10) by a predecessor corporation is deemed to be an election made by the new corporation;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 87(4), will add para. 87(2)(r), applicable to amalgamations that occur, and windings-up that begin, after 1994.

Technical Notes: New paragraph 87(2)(r) preserves an election under subsection 144(10) in connection with an employees profit sharing plan that was made by a predecessor corporation before an amalgamation. Paragraph 88(1)(e.2) provides that this rule also applies, with appropriate modifications, for the purposes of the rules relating to the winding-up of a subsidiary corporation into its parent corporation.

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

(s) [Repealed under former Act]

Proposed Addition — 87(2)(s)

(s) **tax deferred cooperative shares** — for the purpose of section 135.1, if the new corporation is, at the beginning of its first taxation year, an agricultural cooperative corporation (within the meaning assigned by subsection 135.1(1)),

(i) the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation that was an agricultural cooperative corporation at the end of the predecessor corporation's last taxation year, and

(ii) if, on the amalgamation, the new corporation issues a share (in this subparagraph referred to as the "new share") that is described in all of paragraphs (b) to (d) of the definition "tax deferred cooperative share" in subsection 135.1(1) to a taxpayer in exchange for a share of a predecessor corporation (in this subparagraph referred to as the "old share") that was, at the end of the predecessor corporation's last taxation year, a tax deferred cooperative share within the meaning assigned by that definition, and the amount of paid-up capital, and the amount, if any, that the taxpayer is entitled to receive on a redemption, acquisition or cancellation, of the new share are equal to those amounts, respectively, in respect of the old share,

(A) the new share is deemed to have been issued at the time the old share was issued, and

(B) in applying subsection 135.1(2), the taxpayer is deemed to have disposed of the old share for nil proceeds;

Application: The August 15, 2005 draft legislation (2005 Budget second bill), s. 2, will add para. 87(2)(s), applicable to 2005 *et seq.*

Technical Notes: New paragraph 87(2)(s) is added as a consequence of the addition of the new rules in section 135.1 relating to the payment of tax-deferred patronage dividends by agricultural cooperative corporations. Paragraph 87(2)(s) provides that for the purpose of section 135.1, if the new corporation formed on an amalgamation is, at the beginning of its first taxation year, an agricultural cooperative corporation,

(i) the new corporation is deemed to be the same corporation as, and a continuation of each predecessor corporation that was an agricultural cooperative corporation and

(ii) if, on the amalgamation, the new corporation issues a new share that is described in all of paragraphs (b) to (d) of the definition "tax deferred cooperative share" in subsection 135.1(1) in exchange for a tax deferred cooperative share ("old share") of a predecessor corporation and the amount of paid-up capital, and the amount that the taxpayer is entitled to receive on a redemption, acquisition or cancellation, of the new share are equal to those amounts, in respect of the old share, the new share is deemed to have been issued at the time the old share was issued, and in applying subsection 135.1(2), the taxpayer is deemed to have disposed of the old share for nil proceeds.

It should be noted that as a result of existing paragraph 88(1)(e.2), the equivalent of new paragraph 87(2)(s) will in effect apply to windings-up under subsection 88(2).

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

(s.1) [Repealed under former Act]

(t) **pre-1972 capital surplus on hand** — for the purpose of subsection 88(2.1), any capital property owned by a predecessor corporation on December 31, 1971 that was acquired by the new corporation by virtue of the amalgamation shall be deemed to have been acquired by the new corporation before 1972 at an actual cost to it equal to the actual cost of the property to the predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

Interpretation Bulletins: See list at end of s. 87.

(u) **shares of foreign affiliate** — where one or more shares of the capital stock of a foreign affiliate of a predecessor corporation have, by virtue of the amalgamation, been acquired by the new corporation and as a result of the acquisition the affiliate has become a foreign affiliate of the new corporation,

(i) for the purposes of subsection 91(5) and paragraph 92(1)(b), any amount required by section 92 to be added or deducted, as the case may be, in computing the adjusted cost base of any such share to the predecessor corporation before the amalgamation shall be deemed to have been so required to be added or deducted, as the case may be, in computing the adjusted cost base of the share to the new corporation, and

(ii) for the purposes of subsections 93(2) to (2.3), any exempt dividend received by the predecessor corporation on any such share is deemed to be an exempt dividend received by the new corporation on the share;

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

History: Subpara. 87(2)(u)(ii) amended by 2001, c. 17, subsec. 65(2), applicable after November 1999. The subpara. formerly read:

(ii) for the purpose of subsection 93(2), any exempt dividend received by the predecessor corporation on any such share shall be deemed to be an exempt dividend received by the new corporation on the share;

Interpretation Bulletins: See list at end of s. 87.

(v) **gifts [donations]** — for the purposes of section 110.1, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation with respect to gifts;

Interpretation Bulletins: See list at end of s. 87.

(w) [Repealed under former Act]

(x) **taxable dividends** — for the purposes of subsections 112(3) to (4.22),

(i) any taxable dividend received on a share that was deductible from the predecessor corporation's income for a taxation year under section 112 or subsection 138(6) is deemed to be a taxable dividend received on the share by the new corporation that was deductible from the new corporation's income under section 112 or subsection 138(6), as the case may be,

(ii) any dividend (other than a taxable dividend) received on a share by the predecessor corporation is deemed to have been received on the share by the new corporation, and

(iii) a share acquired by the new corporation from a predecessor corporation is deemed to have been owned by the new corporation throughout any period of time throughout which it was owned by a predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

History: Para. 87(2)(x) amended by 1998, c. 19, subsec. 117(6), applicable to 1994 *et seq.* except that, in its application to dispositions of shares that occurred before April 27, 1995, para. 87(2)(x) shall be read as follows:

(x) for the purposes of subsections 112(3) to (4.3),

(i) any taxable dividend received on a share that was deductible from the predecessor corporation's income for a taxation year under section 112 or subsection 138(6) is deemed to be a taxable dividend received on the share by the new corporation that was deductible from the new corporation's income under section 112 or 138(6), as the case may be,

(ii) any capital dividend or life insurance capital dividend received on a share by the predecessor corporation is deemed to be a capital dividend or life insurance capital dividend, as the case may be, received on the share by the new corporation, and

(iii) a share acquired by the new corporation from a predecessor corporation is deemed to have been owned by the new corporation throughout any period of time throughout which it was owned by a predecessor corporation;

The para. formerly read:

(x) for the purposes of subsections 112(3) to (4.3),

(i) any taxable dividend received on a share that was deductible from the predecessor corporation's income for a taxation year under section 112 or subsection 138(6) shall be deemed to be a taxable dividend received on the share by the new corporation that was deductible from the new corporation's income for a taxation year under section 112 or subsection 138(6), as the case may be, and

(ii) any capital dividend or life insurance capital dividend received on a share by the predecessor corporation shall be deemed to be a capital dividend or life insurance capital dividend, as the case may be, received on the share by the new corporation;

Interpretation Bulletins: See list at end of s. 87.

(y) **contributed surplus** — for the purposes of subsections 84(1) and (10), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

History: Para. 87(2)(y) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 65(6), applicable after July 13, 1990.

(y.1) [Repealed]

History: Para. 87(2)(y.1) repealed by 1998, c. 19, subsec. 117(7), applicable to taxes payable for taxation years that begin after 1986. The para. formerly read:

(y.1) preferred-earnings amount — for the purpose of computing the preferred-earnings amount (within the meaning assigned by subsection 181(2)) of the new corporation, there shall be added to the new corporation's preferred-earnings amount at the end of its first taxation year the total of all amounts each of which is the amount, if any, by which

(i) a predecessor corporation's preferred-earnings amount at the end of its last taxation year

exceeds

(ii) the amount that would be determined under paragraph 181(2)(c) in respect of the predecessor corporation for its last taxation year if the references in that paragraph to "the immediately preceding taxation year" and "that year" were read as "the year";

Interpretation Bulletins: See list at end of s. 87.

(z) **foreign tax carryover** — for the purposes of determining the new corporation's unused foreign tax credit (within the meaning of subsection 126(7)) in respect of a country for any taxation year and determining the extent to which subsection 126(2.3) applies to reduce the amount that may be claimed by the new corporation under paragraph 126(2)(a) in respect of an unused foreign tax credit in respect of a country for a taxation year, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation, except that this paragraph shall in no respect affect the determination of

(i) the fiscal period of the new corporation or any of its predecessor corporations, or

(ii) the tax payable under this Act by any predecessor corporation;

Interpretation Bulletins: IT-520: Unused foreign tax credits — carryforward and carryback. See also list at end of s. 87.

(z.1) **capital dividend account** — for the purposes of computing the capital dividend account of the new corporation, it shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation, other than a predecessor corporation to which subsection 83(2.1) would, if a dividend were paid immediately before the amalgamation and an election were made under subsection 83(2) in respect of the full amount of that dividend, apply to deem any portion of the dividend to be paid by the predecessor corporation as a taxable dividend;

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

History: Para. 87(2)(z.1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 65(7), applicable to amalgamations occurring and windings-up beginning after July 13, 1990. Para. 87(2)(z.1) formerly read:

(z.1) capital dividend account — for the purpose of computing at any particular time after the amalgamation the capital dividend account of a new corporation that has been a private corporation continuously from the time of the amalgamation to the particular time, there shall be added the amount of the capital dividend account of each predecessor corporation immediately before the amalgamation, except that the amount of the capital dividend account of any predecessor corporation immediately before the amalgamation shall be deemed to be nil where, had a dividend been paid by the predecessor corporation immediately before the amalgamation and an election been made under subsection 83(2) in respect of that dividend, subsection 83(2.1) would have applied to deem all or any portion of the dividend to be a taxable dividend;

Interpretation Bulletins: IT-66R6: Capital dividends. See also list at end of s. 87.

(z.2) **application of Part III** — for the purposes of Part III, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

Interpretation Bulletins: See list at end of s. 87.

(aa) **refundable dividend tax on hand** — where the new corporation was a private corporation immediately after the amalgamation, for the purpose of

computing the refundable dividend tax on hand (within the meaning assigned by subsection 129(3)) of the new corporation at the end of its first taxation year there shall be added to the total determined under subsection 129(3) in respect of the new corporation for the year the total of all amounts each of which is the amount, if any, by which the refundable dividend tax on hand of a predecessor corporation at the end of its last taxation year exceeds its dividend refund (within the meaning assigned by subsection 129(1)) for its last taxation year, except that no amount shall be added under this paragraph in respect of a predecessor corporation

(i) that was not a private corporation at the end of its last taxation year, or

(ii) where subsection 129(1.2) would have applied to deem a dividend paid by the predecessor corporation immediately before the amalgamation not to be a taxable dividend for the purpose of subsection 129(1);

Related Provisions: 87(2)(b) — Meaning of "last taxation year"; 88(1)(e.2) — Winding-up; 131(5) — Dividend refund to mutual fund corporation; 186(5) — Deemed private corporation. See also at end of subsec. 87(9).

History: Para. 87(2)(aa) amended by 1996, c. 21, subsec. 15(3), applicable to amalgamations that occur and windings-up that begin after June 1995. The para. formerly read:

(aa) refundable dividend tax on hand — where the new corporation was a private corporation continuously from the time of the amalgamation until the time immediately after the beginning of any taxation year, for the purpose of computing the refundable dividend tax on hand (within the meaning assigned by subsection 129(3)) of the new corporation at the end of that year there shall be added to the total determined under subsection 129(3) for that year, from which the total of amounts determined under paragraphs 129(3)(c) to (e) is subtracted, the total of all amounts each of which is the amount, if any, by which the refundable dividend tax on hand immediately before the amalgamation of a predecessor corporation that was a private corporation at that time exceeds its dividend refund (within the meaning assigned by subsection 129(1)) for its taxation year ending at that time, except that no amount shall be so added in respect of a predecessor corporation where subsection 129(1.2) would have applied to deem a dividend paid by the predecessor corporation immediately before the amalgamation not to be a taxable dividend for the purpose of subsection 129(1);

Para. 87(2)(aa) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 37(8), applicable to the computation of refundable dividend tax on hand (within the meaning assigned by subsec. 129(3) as amended) for 1993 *et seq.* Para. (aa) formerly read:

(aa) refundable dividend tax on hand — in the case of a new corporation that has been a private corporation continuously from the time of the amalgamation to the end of any taxation year, for the purposes of computing the refundable dividend tax on hand (within the meaning assigned by subsection 129(3)), of the new corporation at the end of the taxation year, where a predecessor corporation had refundable dividend tax on hand immediately before the amalgamation, the amount by which the refundable dividend tax on hand at that time exceeds any dividend refund (within the meaning assigned by subsection 129(1)) of the predecessor corporation for its taxation year ending immediately before the amalgamation shall be added to the total determined under subsection 129(3) from which the new corporation's dividend refunds are to be subtracted, except that the amount to be added to the total determined under subsection 129(3) shall be deemed to be nil where, had a dividend been paid by the predecessor corporation immediately before the amalgamation, subsection 129(1.2) would have applied to deem the dividend not to be a taxable dividend;

Interpretation Bulletins: See list at end of s. 87.

(bb) **mutual fund and investment corporations** — where the new corporation is a mutual fund corporation or an investment corporation, there shall be added to

(i) the amount determined under each of paragraphs (a) and (b) of the definition "capital gains dividend account" in subsection 131(6), and

(ii) the values of A and B in the definition "refundable capital gains tax on hand" in that subsection

in respect of the new corporation at any time the amounts so determined and the values of those factors immediately before the amalgamation in respect of each predecessor corporation that was, immediately before the amalgamation, a mutual fund corporation or an investment corporation;

History: Para. 87(2)(bb) amended by 1998, c. 19, subsec. 117(8), applicable to amalgamations that occur after 1991 except that, for amalgamations that occurred after 1991 and before February 23, 1994, subpara. 87(2)(bb)(i) shall be read as follows:

(i) the amount determined under each of paragraphs (a) to (g) of the definition "capital gains dividend account" in subsection 131(6), and

The para. formerly read:

(bb) mutual fund and investment corporations — where the new corporation is a mutual fund corporation or an investment corporation, there shall be added to the amount determined for each of A, B, C and D in the definition "capital gains dividend account" and A and B in the definition "refundable capital gains tax on hand" in subsection 131(6) in respect of the new corporation at any time the amount so determined immediately before the amalgamation in respect of each predecessor corporation that was a mutual fund corporation or an investment corporation;

Para. 87(2)(bb) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 65(8), applicable to amalgamations occurring after July 13, 1990 and, where the corporation so elects by notifying the Minister of National Revenue in writing before 1993, to amalgamations occurring after 1986. Para. 87(2)(bb) formerly read:

(bb) mutual fund corporation — in the case of a new corporation that is a mutual fund corporation,

(i) for the purpose of computing its capital gains dividend account at any time, where a predecessor mutual fund corporation had a capital gains dividend account immediately before the amalgamation the amount thereof shall be added to the amount determined for A in the definition "capital gains dividend account" in subsection 131(6), and

(ii) for the purpose of computing its refundable capital gains tax on hand at the end of any taxation year, where a predecessor mutual fund corporation had refundable capital gains tax on hand immediately before the amalgamation the amount thereof shall be added to the amount determined for A in the definition "refundable capital gains [tax] on hand" in subsection 131(6);

(bb.1) **flow-through entities** — where a predecessor corporation was, immediately before the amalgamation, an investment corporation, a mortgage investment corporation or a mutual fund corporation and the new corporation is an investment corporation, a mortgage investment corporation or a mutual fund corporation, as the case may be, for the purpose of section 39.1, the new corporation is deemed to be the same corporation as, and a continuation of, the predecessor corporation;

History: Para. 87(2)(bb.1) added by 1998, c. 19, subsec. 117(8), applicable to amalgamations that occur after 1993.

(cc) **non-resident-owned investment corporation** — in the case of a new corporation that is a non-resident-owned investment corporation,

(i) for the purpose of computing its allowable refundable tax on hand (within the meaning assigned by subsection 133(9)) at any time, where a predecessor corporation had allowable refundable tax on hand immediately before the amalgamation, the

amount thereof shall be added to the total determined for A in the definition "allowable refundable tax on hand" in subsection 133(9),

(ii) for the purpose of computing its capital gains dividend account (within the meaning assigned by subsection 133(8)) at any time, where a predecessor corporation had an amount in its capital gains dividend account immediately before the amalgamation, that amount shall be added to the amount determined under paragraph (a) of the description of A in the definition "capital gains dividend account" in subsection 133(8), and

(iii) for the purpose of computing its cumulative taxable income (within the meaning assigned by subsection 133(9)) at any time, where a predecessor corporation had cumulative taxable income immediately before the amalgamation, the amount thereof shall be added to the total determined for A in the definition "cumulative taxable income" in subsection 133(9);

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

Interpretation Bulletins: See list at end of s. 87.

(dd)–(hh) [Repealed under former Act]

(ii) **public corporation** — where a predecessor corporation was a public corporation immediately before the amalgamation, the new corporation shall be deemed to have been a public corporation at the commencement of its first taxation year;

Interpretation Bulletins: See list at end of s. 87.

(jj) **interest on certain obligations** — for the purposes of paragraph 81(1)(m), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Interpretation Bulletins: See list at end of s. 87.

(kk) **disposition of shares of controlled corporation** — for the purposes of paragraph 40(2)(h),

(i) where a corporation was controlled, directly or indirectly in any manner whatever, by a predecessor corporation immediately before the amalgamation and has, by reason of the amalgamation, become controlled, directly or indirectly in any manner whatever, by the new corporation, the new corporation shall be deemed to have acquired control of the corporation so controlled at the time control thereof was acquired by the predecessor corporation, and

(ii) where a predecessor corporation was immediately before the amalgamation controlled, directly or indirectly in any manner whatever, by a corporation that, immediately after the amalgamation, controlled, directly or indirectly in any manner whatever, the new corporation, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 256(5.1), (6.2) — Controlled directly or indirectly — control in fact. See also at end of s. 87.

Interpretation Bulletins: See list at end of s. 87.

(ll) **para. 20(1)(n) and subpara. 40(1)(a)(iii) amounts** — notwithstanding any other provision of this Act, where any property was disposed of by a predecessor corporation, the new corporation shall, in computing

(i) the amount of any deduction under paragraph 20(1)(n) as a reserve in respect of the property sold in the course of business, and

(ii) the amount of its claim under subparagraph 40(1)(a)(iii) or 44(1)(e)(iii) in respect of the disposition of the property,

be deemed to be the same corporation as, and a continuation of, the predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

History: Subpara. 87(2)(ll)(ii) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 65(9), to add reference to subpara. 44(1)(e)(iii), applicable to amalgamations occurring and windings-up beginning after 1989.

(mm) **idem** — for the purposes of section 126.1, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Proposed Repeal — 87(2)(mm)

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 87(5), will repeal para. 87(2)(mm), applicable to amalgamations that occur, and windings-up that begin, after March 20, 2003.

Technical Notes: Paragraph 87(2)(mm) ensures that an amalgamated corporation will be treated as a continuation of, and the same corporation as, each of its predecessor corporations for the purposes of the provisions relating to UI premium tax credit. That paragraph is repealed as a consequence of the repeal of the provisions relating to the UI premium tax credit. For additional information, see the commentary to section 126.1.

History: Para. 87(2)(mm) added by 1994, c. 8, subsec. 9(1), applicable to amalgamations occurring, and windings-up beginning, after 1991.

(nn) **refundable Part VII tax on hand** — for the purpose of computing the refundable Part VII tax on hand of the new corporation at the end of any taxation year, there shall be added to the total determined under paragraph 192(3)(a) the total of all amounts each of which is the amount, if any, by which

(i) a predecessor corporation's refundable Part VII tax on hand at the end of its last taxation year

exceeds

(ii) the predecessor corporation's Part VII refund for its last taxation year;

Related Provisions: 87(2)(b) — Meaning of "last taxation year"; 88(1)(e.2) — Winding-up. See also list at end of s. 87.

Interpretation Bulletins: See list at end of s. 87.

(oo) **investment tax credit** — for the purpose of applying subsection 127(10.2) to any corporation, the new corporation is deemed to have had

(i) a particular taxation year that

(A) where it was associated with another corporation in the new corporation's first taxation year, ended in the calendar year that precedes the calendar year in which that first year ends, and

(B) in any other case, immediately precedes that first year, and

(ii) taxable income for the particular year (determined before taking into consideration the specified future tax consequences for the particular year) equal to the total of all amounts each of which is a predecessor corporation's taxable income for its taxation year that ended immediately before the amalgamation (determined before taking into consideration the specified future tax consequences for that year);

History: Para. 87(2)(oo) amended by 1997, c. 25, subsec. 18(2), applicable to amalgamations that occur after 1995, except that, for amalgamations that occur in 1996, the expression "any corporation" shall be read as "the new corporation". For amalgamations that occur after May 23, 1985 and before 1996, para. (oo) shall be read without reference to the expression

"paragraph 127.1(2)(a) and subparagraph 157(1)(b)(i)". Para. (oo) formerly read:

(oo) for the purposes of applying subsection 127(10.1), paragraph 127.1(2)(a)[10] and subparagraph 157(1)(b)(i) in respect of the first taxation year of the new corporation, the new corporation shall be deemed to have had a taxation year immediately preceding its first taxation year and to have had

(i) taxable income for that preceding taxation year equal to the total of amounts each of which is the taxable income of a predecessor corporation for its taxation year ending immediately before the amalgamation, and

(ii) a business limit for that preceding taxation year equal to the total of amounts each of which is the business limit of a predecessor corporation for its taxation year ending immediately before the amalgamation;

Interpretation Bulletins: See list at end of s. 87.

(oo.1) **refundable investment tax credit and balance-due day** — for the purpose of applying the definition "qualifying corporation" in subsection 127.1(2), and subparagraph (d)(i) of the definition "balance-due day" in subsection 248(1), to any corporation, the new corporation is deemed to have had

(i) a particular taxation year that

(A) where it was associated with another corporation in the new corporation's first taxation year, ended in the calendar year that precedes the calendar year in which that first year ends, and

(B) where clause (A) does not apply, immediately precedes that first year,

(ii) taxable income for the particular year (determined before taking into consideration the specified future tax consequences for the particular year) equal to the total of all amounts each of which is a predecessor corporation's taxable income for its taxation year that ended immediately before the amalgamation (determined before taking into consideration the specified future tax consequences for that year), and

(iii) a business limit for the particular year equal to the total of all amounts each of which is a predecessor corporation's business limit for its taxation year that ended immediately before the amalgamation;

History: The opening words of para. 87(2)(oo.1) amended by 2002, c. 9, subsec. 30(2), applicable to taxation years that end after 2001. The opening words formerly read:

(oo.1) for the purpose of applying subparagraph 157(1)(b)(i) and the definition "qualifying corporation" in subsection 127.1(2) to any corporation, the new corporation is deemed to have had

Para. 87(2)(oo.1) added by 1997, c. 25, subsec. 18(3), applicable to amalgamations that occur after May 23, 1985, except that,

(a) for amalgamations that occur before 1997, the expression "any corporation" shall be read as "the new corporation";

(b) for the purpose of applying para. (oo.1) for the purpose of the definition "qualifying corporation" in subsec. 127.1(2), the business limits referred to in para. (oo.1), for taxation years that ended after June 1994 and began before 1996, shall be determined under s. 125 as that section read in its application to taxation years that ended before July 1994; and

(c) cl. (oo.1)(i)(A) does not apply

(i) for the purpose of applying the definition "qualifying corporation" in subsec. 127.1(2) to taxation years that ended before July 1994, and

(ii) for the purpose of applying subpara. 157(1)(b)(i) to taxation years that end before 1998.

(pp) **cumulative offset account computation** — for the purpose of computing the cumulative offset account (within the meaning assigned by subsection 66.5(2)) of the new corporation at any time, there shall be added to the total otherwise determined under paragraph 66.5(2)(a) the total of all amounts each of which is the amount, if any, by which

(i) a predecessor corporation's cumulative offset account at the end of its last taxation year

exceeds

(ii) the amount deducted under subsection 66.5(1) in computing the predecessor corporation's income for its last taxation year;

Related Provisions: 87(2)(b) — Meaning of "last taxation year"; 88(1)(c.2) — Winding-up. See also list at end of s. 87.

Interpretation Bulletins: See list at end of s. 87.

(qq) **continuation of corporation [investment tax credit]** — for the purpose of computing the new corporation's investment tax credit at the end of any taxation year, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation, except that this paragraph does not affect the determination of the fiscal period of any corporation or the tax payable by any predecessor corporation;

Related Provisions: See Related Provisions at end of s. 87.

History: Para. 87(2)(qq) amended by 1998, c. 19, subsec. 117(9), applicable to amalgamations that occur after April 26, 1995. The para. formerly read:

(qq) for the purpose of computing the new corporation's investment tax credit and employment tax credit at the end of any taxation year, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Interpretation Bulletins: See list at end of s. 87.

(rr) **tax on taxable preferred shares** — for the purposes of subsections 112(2.9), 191(4), and 191.1(2) and (4), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

(ss) **transferred liability for Part VI.1 tax** — for the purposes of section 191.3, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

(tt) **livestock — inclusion of deferred amount** — for the purposes of subsections 80.3(3) and (5), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation; and

Related Provisions: 88(1)(e.2) — Winding-up. See also at end of s. 87.

(uu) **fuel tax rebates** — for the purposes of paragraph 12(1)(x.1), the description of D.1 in the definition "non-capital loss" in subsection 111(8), and subsections 111(10) and (11), the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation.

Related Provisions: 88(1)(e.2) — Winding-up; 93(2)–(2.3) — Loss limitation on disposition of share. See also list at end of s. 87.

History: Para. 87(2)(uu) amended by 1997, c. 26, s. 83, applicable to 1997 *et seq.* Para. (uu) formerly read:

(uu) for the purposes of paragraph 12(1)(x.1), the description of D.1 in the definition "non-capital loss" in subsection 111(8), clause 111(10)(a)(i)(B) and subsection 111(11), the new corporation shall

[10] *Sic.* This refers to an earlier version of subsec. 127.1(2), which is now the definition of "qualifying corporation" in that subsec.

be deemed to be the same corporation as, and a continuation of, each predecessor corporation.

Para. 87(2)(uu) added by 1994, c. 7, Sch. VI (1992, c. 29), s. 3, applicable to amalgamations occurring after 1991.

Interpretation Bulletins: See list at end of s. 87.

(2.01) Application of subsec. 37.1(5) — The definitions in subsection 37.1(5) apply to subsection (2).

Origin of subsec. 87(2.01): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words to subsec. 37.1(5)).

(2.1) Non-capital losses, etc., of predecessor corporations — Where there has been an amalgamation of two or more corporations, for the purposes only of

(a) determining the new corporation's non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss, as the case may be, for any taxation year, and

(b) determining the extent to which subsections 111(3) to (5.4) and paragraph 149(10)(c) apply to restrict the deductibility by the new corporation of any non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss, as the case may be,

the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation, except that this subsection shall in no respect affect the determination of

(c) the fiscal period of the new corporation or any of its predecessors,

(d) the income of the new corporation or any of its predecessors, or

(e) the taxable income of, or the tax payable under this Act by, any predecessor corporation.

Related Provisions: 87(2)(a) — Taxation year-end; 87(2.11) — Losses, etc., on amalgamation with subsidiary wholly-owned corporation; 256(7) — Where control deemed not acquired. See also at end of s. 87.

History: Para. 87(2.1)(b) amended by 1998, c. 19, subsec. 117(10), applicable to a corporation that becomes or ceases to be exempt from tax under Part I of the Act after April 26, 1995. The para. formerly read:

(b) determining the extent to which subsections 111(3) to (5.4) and paragraph 149(10)(d) apply to restrict the deductibility by the new corporation of any non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss, as the case may be,

Selected Cases [subsec. 87(2.1)]: *Duha Printers (Western) Ltd. v. R.*, [1998] 3 C.T.C. 303 (SCC); Reversed [1996] 3 C.T.C. 19 (FCA) (Shareholder agreement did not result in *de jure* control); *Garage Montplaisir Ltée v. MNR*, [1992] 2 C.T.C. 2700 (TCC) (Predecessor corporation's business not carried on by corporation resulting from amalgamation; non-capital losses not deductible).

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987. See also list at end of s. 87.

(2.11) Vertical amalgamations — Where a new corporation is formed by the amalgamation of a particular corporation and one or more of its subsidiary wholly-owned corporations, the new corporation is deemed to be the same corporation as, and a continuation of, the particular corporation for the purposes of applying sections 111 and 126, subsections 127(5) to (26) and 181.1(4) to (7), Part IV and subsections 190.1(3) to (6) in respect of the particular corporation.

Related Provisions: 87(1.4) — Definition of "subsidiary wholly-owned corporation"; 87(2.1) — Non-capital losses, etc., of predecessor corporations; 87(11) — Vertical amalgamation — effects; 256(7) — Where control deemed not acquired.

History: Subsec. 87(2.11) amended by 1998, c. 19, subsec. 117(11), applicable to amalgamations that occur after April 26, 1995. The subsec. formerly read:

(2.11) Losses, etc., on amalgamation with subsidiary wholly-owned corporation — Where a new corporation is formed by the amalgamation of a particular corporation and one or more of its subsidiary wholly-owned corporations, the new corporation shall, for the purposes of applying section 111 and Part IV in respect of the particular corporation, be deemed to be the same corporation as, and a continuation of, the particular corporation.

Subsec. 87(2.11) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 37(9), applicable to amalgamations occurring after 1989.

I.T. Technical News: 3 (subsection 87(2.11)).

(2.2) Amalgamation of insurers — Where there has been an amalgamation and one or more of the predecessor corporations was an insurer, the new corporation is, notwithstanding subsection (2), deemed, for the purposes of paragraphs 12(1)(d), (e), (e.1), (i) and (s) and 20(1)(l), (l.1), (p) and (jj) and 20(7)(c), subsection 20(22), sections 138, 138.1, 140, 142 and 148 and Part XII.3, to be the same corporation as, and a continuation of, each of those predecessor corporations.

Related Provisions: 139.1(3)(g) — Where merger causes demutualization of insurer. See also at end of s. 87.

History: Subsec. 87(2.2) amended by 1997, c. 25, subsec. 18(4), applicable to amalgamations that occur after 1995. Subsec. (2.2) formerly read:

(2.2) Amalgamation of insurance corporations — Where there has been an amalgamation of two or more corporations and one or more of the predecessor corporations was an insurance corporation, the new corporation shall, notwithstanding subsection (2), be deemed, for the purposes of paragraphs 12(1)(d), (e), (i) and (s) and 20(1)(l), (l.1), (p) and (jj) and 20(7)(c), sections 138, 138.1, 140, 142 and 148 and Part XII.3 of this Act and section 33 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, to be the same corporation as, and a continuation of, each such predecessor corporation.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: See list at end of s. 87.

Proposed Addition — 87(2.3)

(2.3) Quebec credit unions — For the purpose of applying this section to an amalgamation governed by section 689 of *An Act respecting financial services cooperatives*, R.S.Q., c. C-67.3, an investment deposit of a credit union is deemed to be a share of a separate class of the capital stock of a predecessor corporation in respect of the amalgamation the adjusted cost base and paid up capital of which to the credit union is equal to the adjusted cost base to the credit union of the investment deposit immediately before the amalgamation if

(a) immediately before the amalgamation, the investment deposit is an investment deposit to which section 425 of the *Savings and Credit Unions Act*, R.S.Q., c. C-4.1, applies to the investment fund of that predecessor corporation; and

(b) on the amalgamation the credit union disposes of the investment deposit for consideration that consists solely of shares of a class of the capital stock of the new corporation.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 87(6), will add subsec. 87(2.3), applicable to amalgamations that occur after June 2001.

Technical Notes: New subsection 87(2.3) provides a special rule that applies to an "investment deposit" of a Quebec credit union in another Quebec credit union (the "predecessor corporation"). This rule applies where the credit union's investment deposit in the predecessor corporation is disposed of because of an amalgamation of credit unions that includes the predecessor corporation with that amalgamation being governed by section 689 of the *Act Respecting Financial Services Cooperatives*, R.S.Q., 2001, c. C-67.3. The credit union's investment deposit

will, if certain conditions are met, be deemed to be a share of the capital stock of the predecessor corporation having an adjusted cost base and paid up capital equal to the adjusted cost base of the investment deposit to the credit union. The conditions that must be met are that

- immediately before the amalgamation the investment deposit must be an investment deposit (to which section 425 of the *Savings and Credit Unions Act*, R.S.Q., 2001, c. C-4.1 applies) in an investment fund of the predecessor corporation; and
- on the amalgamation the credit union disposes of the investment deposit for consideration that consists solely of shares of the capital stock of the new corporation.

Letter from Dept. of Finance, December 5, 2000:

La présente fait suite à votre lettre du 27 octobre 2000 et à la réponse que nous vous avions donnée en novembre 1999 (copie jointe) concernant la réorganisation proposée du [xxx]. Je crois savoir que vous avez discuté de la question avec Davine Roach et Kerry Harnish de cette division, le 16 novembre 2000.

Lors de votre rencontre du 10 octobre 2000 avec des représentants de la Direction de la politique de l'impôt, vous indiquiez que l'Agence des douanes et du revenu du Canada (« l'ADRC ») avait déterminé que les *dépôts à participation* ne constituent pas des actions aux fins de la *Loi de l'impôt sur le revenu* (la « Loi ») et qu'ils ne peuvent donc être transférés en franchise d'impôt au moment de la fusion (selon la définition au paragraphe 87(1) de la Loi) [xxx]. Dans votre lettre du 27 octobre 2000, vous demandez donc que la Loi soit modifiée:

- pour traiter chaque « dépôt à participation » d'un contribuable comme une « action » aux fins de la fusion,
- pour considérer que l'action réputée représentant le dépôt à participation a un prix de base rajusté et un capital versé équivalant au prix de base rajusté du dépôt par ailleurs déterminé pour le contribuable,
- pour mettre en place une règle spéciale relativement à l'attribution du coût d'une telle action à la nouvelle ou aux nouvelles actions en fonction du coût plutôt que de la juste valeur marchande. Selon la règle actuelle d'attribution des coûts prévue au paragraphe 87(4), un transfert de coûts pourrait donner lieu à des gains en capital non réalisés artificiels relativement à certaines des nouvelles actions acquises lors de la fusion.

Comme nous l'indiquions dans notre lettre de novembre 1999, nous sommes disposés à recommander au ministre des Finances que la Loi soit modifiée pour assurer le transfert libre d'impôt d'un dépôt à participation échangé pour une action lors de la fusion [xxx]. Plus précisément, nous sommes disposés à traiter un dépôt à participation comme s'il s'agissait d'une action aux fins de l'application des règles relatives aux fusions à l'article 87 de la Loi. Nous sommes aussi disposés à considérer que l'action réputée représentant le dépôt à participation a un prix de base rajusté et un capital versé équivalent au prix de base rajusté de la participation du contribuable dans un dépôt à participation en particulier.

Toutefois, nous ne sommes pas disposés à nous écarter de la formule d'attribution selon la juste valeur marchande prévue au paragraphe 87(4) de la Loi dans le cas des transactions réalisées dans le cadre de la fusion de [xxx]. La formule actuelle tient compte des cas où les nouvelles actions ne sont pas de la même categorie que les anciennes actions. Nous croyons toutefois savoir que l'ADRC a adopté une mesure administrative qui pourrait être utile dans votre cas.

Enfin, nous sommes aussi disposés à recommander que les changements susmentionnés (que nous acceptons de recommander au ministre) s'appliquent aux fusions réalisées après 1999. Si nos recommandations sont acceptées, on prévoit que les modifications seraient incluses plus tard dans un projet de loi technique.

Veuillez agréer, Monsieur, l'expression de mes sentiments les meilleurs.

Le directeur, Division de la législation de l'impôt, Direction de la politique de l'impôt
Brian Ernewein

(3) Computation of paid-up capital — Subject to subsection (3.1), where there is an amalgamation or a merger of 2 or more Canadian corporations, in computing at any particular time the paid-up capital in respect of any particular class of shares of the capital stock of the new corporation,

(a) there shall be deducted that proportion of the amount, if any, by which the paid-up capital, determined without reference to this subsection, in respect of all the shares of the capital stock of the new corporation immediately after the amalgamation or merger exceeds the total of all amounts each of which is the paid-up capital in respect of a share (except a share held by any other predecessor corporation) of the capital stock of a predecessor corporation immediately before the amalgamation or merger, that

(i) the paid-up capital, determined without reference to this subsection, of the particular class of shares of the capital stock of the new corporation immediately after the amalgamation or merger

is of

(ii) the paid-up capital, determined without reference to this subsection, in respect of all of the issued and outstanding shares of the capital stock of the new corporation immediately after the amalgamation or merger; and

(b) there shall be added an amount equal to the lesser of

(i) the amount, if any, by which

(A) the total of all amounts each of which is an amount deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of the particular class paid by the new corporation before the particular time

exceeds

(B) the total that would be determined under clause (A) if this Act were read without reference to paragraph (a), and

(ii) the amount required by paragraph (a) to be deducted in computing the paid-up capital of shares of the particular class.

Related Provisions: 87(3.1) — Election for 87(3) not to apply. See also at end of s. 87.

History: That portion of subsec. 87(3) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 37(10), applicable to amalgamations occurring after 1990. That portion formerly read:

(3) Computation of paid-up capital — Where there has been an amalgamation or a merger after March 31, 1977 of two or more Canadian corporations, in computing, at any particular time the paid-up capital in respect of any particular class of shares of the capital stock of the new corporation

Interpretation Bulletins: See list at end of s. 87.

(3.1) Election for non-application of subsec. (3) — Where,

(a) there is an amalgamation of 2 or more corporations,

(b) all of the issued shares, immediately before the amalgamation, of each class of shares (other than a class of shares all of the issued shares of which were cancelled on the amalgamation) of the capital stock of each predecessor corporation (in this subsection referred to as the "exchanged class") are converted into all of the issued shares, immediately after the amalgamation, of a separate class of shares of the capital stock of the new corporation (in this subsection referred to as the "substituted class"),

(c) immediately after the amalgamation, the number of shareholders of each substituted class, the number of shares of each substituted class owned by each shareholder, the number of issued shares of each substituted class, the terms and conditions of each share of a substituted class, and the paid-up capital of each substituted class determined without reference to the provi-

sions of this Act are identical to the number of shareholders of the exchanged class from which the substituted class was converted, the number of shares of each such exchanged class owned by each shareholder, the number of issued shares of each such exchanged class, the terms and conditions of each share of such exchanged class, and the paid-up capital of each such exchanged class determined without reference to the provisions of this Act, respectively, immediately before the amalgamation, and

(d) the new corporation elects in its return of income filed in accordance with section 150 for its first taxation year to have the provisions of this subsection apply,

for the purpose of computing at any particular time the paid-up capital in respect of any particular class of shares of the capital stock of the new corporation,

(e) subsection (3) does not apply in respect of the amalgamation, and

(f) each substituted class shall be deemed to be the same as, and a continuation of, the exchanged class from which it was converted.

History: Subsec. 87(3.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 37(11), applicable to amalgamations occurring after 1990.

(4) Shares of predecessor corporation — Where there has been an amalgamation of two or more corporations after May 6, 1974, each shareholder (except any predecessor corporation) who, immediately before the amalgamation, owned shares of the capital stock of a predecessor corporation (in this subsection referred to as the "old shares") that were capital property to the shareholder and who received no consideration for the disposition of those shares on the amalgamation, other than shares of the capital stock of the new corporation (in this subsection referred to as the "new shares"), shall be deemed

(a) to have disposed of the old shares for proceeds equal to the total of the adjusted cost bases to the shareholder of those shares immediately before the amalgamation, and

(b) to have acquired the new shares of any particular class of the capital stock of the new corporation at a cost to the shareholder equal to that proportion of the proceeds described in paragraph (a) that

(i) the fair market value, immediately after the amalgamation, of all new shares of that particular class so acquired by the shareholder,

is of

(ii) the fair market value, immediately after the amalgamation, of all new shares so acquired by the shareholder,

except that, where the fair market value of the old shares immediately before the amalgamation exceeds the fair market value of the new shares immediately after the amalgamation and it is reasonable to regard any portion of the excess (in this subsection referred to as the "gift portion") as a benefit that the shareholder desired to have conferred on a person related to the shareholder, the following rules apply:

(c) the shareholder shall be deemed to have disposed of the old shares for proceeds of disposition equal to the lesser of

(i) the total of the adjusted cost bases to the shareholder, immediately before the amalgamation, of the old shares and the gift portion, and

(ii) the fair market value of the old shares immediately before the amalgamation,

(d) the shareholder's capital loss from the disposition of the old shares shall be deemed to be nil,

(e) the cost to the shareholder of any new shares of any class of the capital stock of the new corporation acquired by the shareholder on the amalgamation shall be deemed to be that proportion of the lesser of

(i) the total of the adjusted cost bases to the shareholder, immediately before the amalgamation, of the old shares, and

(ii) the total of the fair market value, immediately after the amalgamation, of all new shares so acquired by the shareholder and the amount that, but for paragraph (d), would have been the shareholder's capital loss from the disposition of the old shares

that

(iii) the fair market value, immediately after the amalgamation, of the new shares of that class so acquired by the shareholder

is of

(iv) the fair market value, immediately after the amalgamation, of all new shares so acquired by the shareholder,

and where the old shares were taxable Canadian property of the shareholder, the new shares shall be deemed to be taxable Canadian property of the shareholder.

Related Provisions: 44.1(6), (7) — Small business investment rollover on exchange of shares; 7(1.5) — Shares acquired through employee stock option; 53(4) — Effect on ACB of shares; 87(5) — Option to acquire share of predecessor corporation; 87(8) — Merger of foreign affiliate; 87(9)(a), (c) — Effect of triangular amalgamation; 95(2)(d) — Merger of foreign affiliate; 107(2)(d.1)(iii), 107.4(3)(f) — Deemed taxable Canadian property retains status when rolled out of trust or into trust; 248(1)"disposition"(n), 248(1.1) — Cancellation of shares on foreign amalgamation deemed not to be a disposition; 248(25.1) — Deemed taxable Canadian property retains status through trust-to-trust transfer. See also at end of s. 87.

Interpretation Bulletins: IT-113R: Benefits to employees — stock options. See also list at end of s. 87.

(4.1) Exchanged shares — For the purposes of the definition "term preferred share" in subsection 248(1), where there has been an amalgamation of two or more corporations after November 16, 1978 and a share of any class of the capital stock of the new corporation (in this subsection referred to as the "new share") was issued in consideration for the disposition of a share of any class of the capital stock of a predecessor corporation (in this subsection referred to as the "exchanged share") and the terms and conditions of the new share were the same as, or substantially the same as, the terms and conditions of the exchanged share,

(a) the new share shall be deemed to have been issued at the time the exchanged share was issued;

(b) if the exchanged share was issued under an agreement in writing, the new share shall be deemed to have been issued under that agreement; and

(c) the new corporation shall be deemed to be the same corporation as, and a continuation of, each such predecessor corporation.

Related Provisions: 87(9)(a.1) — Effect of triangular amalgamation. See also at end of s. 87.

Interpretation Bulletins: See list at end of s. 87.

(4.2) Idem — Where there has been an amalgamation or merger of two or more corporations after November 27, 1986 and a share of any class of the capital stock of the new corporation (in this subsection referred to as the "new share") was issued to a shareholder in consideration for the disposition of a share by that shareholder of any class of the capital stock of a predecessor corporation (in this subsection referred to as the "exchanged share") and the terms and conditions of the new share were the same as, or substantially the same as, the terms and conditions of the exchanged share, for the purposes of applying the provisions of this subsection, subsections 112(2.2) and (2.4), Parts IV.1 and VI.1, section 258 and the definitions "grandfathered share", "short-term preferred share", "taxable preferred share" and "taxable RFI share" in subsection 248(1) to the new share, the following rules apply:

(a) the new share shall be deemed to have been issued at the time the exchanged share was issued;

(b) where the exchanged share was a share described in paragraph (a), (b), (c) or (d) of the definition "grandfathered share" in subsection 248(1), the new share shall be deemed to be the same share as the exchanged share for the purposes of that definition;

(c) the new share shall be deemed to have been acquired by the shareholder at the time the exchanged share was acquired by the shareholder;

(d) the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

(e) an election made under subsection 191.2(1) by a predecessor corporation with respect to the class of shares of its capital stock to which the exchanged share belonged shall be deemed to be an election made by the new corporation with respect to the class of shares of its capital stock to which the new share belongs; and

(f) where the terms or conditions of the exchanged share or an agreement in respect of the exchanged share specify an amount in respect of the exchanged share for the purposes of subsection 191(4) and an amount equal to the amount so specified in respect of the exchanged share is specified in respect of the new share for the purposes of subsection 191(4),

(i) for the purposes of subparagraphs 191(4)(d)(i) and (e)(i), the new share shall be deemed to have been issued for the same consideration as that for which the exchanged share was issued and to have been issued for the purpose for which the exchanged share was issued,

(ii) for the purposes of subparagraphs 191(4)(d)(ii) and (e)(ii), the new share shall be deemed to be the same share as the exchanged share and to have been issued for the purpose for which the exchanged share was issued, and

(iii) where the shareholder received no consideration for the disposition of the exchanged share other than the new share, for the purposes of subsection 191(4),

(A) in the case of an exchanged share to which subsection 191(4) applies because of paragraph 191(4)(a), the new share shall be deemed to have been issued for consideration having a fair market value equal to the consideration for which the exchanged share was issued, and

(B) in the case of an exchanged share to which subsection 191(4) applies because of an event described in paragraph 191(4)(b) or (c), the consideration for which the new share was issued shall be deemed to have a fair market value equal to the fair market value of the exchanged share immediately before the time that event occurred.

Related Provisions: 87(9)(a.1) — Effect of triangular amalgamation.

History: Para. 87(4.2)(f) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 65(10), applicable to 1988 *et seq.*

Interpretation Bulletins: See list at end of s. 87.

(4.3) Exchanged rights — Where there has been an amalgamation or merger of two or more corporations after June 18, 1987 and a right listed on a prescribed stock exchange to acquire a share of any class of the capital stock of the new corporation (in this subsection referred to as the "new right") was acquired by a shareholder in consideration for the disposition of a right described in paragraph (d) of the definition "grandfathered share" in subsection 248(1) to acquire a share of any class of the capital stock of a predecessor corporation (in this subsection referred to as the "exchanged right"), the new right shall be deemed to be the same right as the exchanged right for the purposes of paragraph (d) of the definition "grandfathered share" in subsection 248(1) where the terms and conditions of the new right were the same as, or substantially the same as, the terms and conditions of the exchanged right and the terms and conditions of the share receivable on an exercise of the new right were the same as, or substantially the same as, the terms and conditions of the share that would have been received on an exercise of the exchanged right.

Related Provisions: 87(9)(a.2) — Effect of triangular amalgamation. See also at end of s. 87.

Regulations: 3200 (prescribed stock exchange).

Interpretation Bulletins: See list at end of s. 87.

(4.4) Flow-through shares — Where

(a) there is an amalgamation of two or more corporations each of which is a principal-business corporation (within the meaning assigned by subsection 66(15)) or a corporation that at no time carried on business,

(b) a predecessor corporation entered into an agreement with a person at a particular time for consideration given by the person to the predecessor corporation,

(c) a share of the predecessor corporation

(i) that was a flow-through share (in this subsection having the meaning that would be assigned by subsection 66(15) if the definition "flow-through share" in that subsection were read without reference to the portion after paragraph (b) of that definition) was issued to the person before the amalgamation, or

(ii) that would (if it were issued) be a flow-through share, was to be issued to the person

for the consideration under the agreement, and

(d) the new corporation

(i) issues a share (in this subsection referred to as a "new share") of any class of its capital stock on the amalgamation to the person in consideration for the disposition of the flow-through share of the predecessor corporation and the terms and conditions of the new share are the same as, or substantially the same as, the terms and conditions of the flow-through share, or

(ii) is obliged after the amalgamation to issue a new share of any class of its capital stock to the person under the obligation of the predecessor corporation to issue a flow-through share of the predecessor corporation to the person and the new share would not, if issued, be a prescribed share referred to in the definition "flow-through share" in subsection 66(15),

Proposed Amendment — 87(4.4)(c), (d)

(c) for the consideration under the agreement

(i) a share (in this subsection referred to as the "old share") of the predecessor corporation that was a flow-through share (other than a right to acquire a share) was issued to the person before the amalgamation, or

(ii) a right was issued to the person before the amalgamation to acquire a share that would, if it were issued, be a flow-through share, and

(d) the new corporation

(i) issues, on the amalgamation and in consideration for the disposition of the old share, a share (in this subsection referred to as a "new share") of any class of its capital stock to the person (or to any person or partnership that subsequently acquired the old share) and the terms and conditions of the new share are the same as, or substantially the same as, the terms and conditions of the old share, or

(ii) is, because of the right referred to in subparagraph (c)(ii), obliged after the amalgamation to issue to the person a share of any class of the new corporation's capital stock that would, if it were issued, be a flow-through share,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 87(7), will amend paras. 87(4.4)(c) and (d) to read as above, applicable to amalgamations that occur after 1997.

Technical Notes: Subsection 87(4.4) applies where there is an amalgamation of two or more corporations and a predecessor corporation of the new corporation formed on the amalgamation had entered into a flow-through share agreement. The rules in subsection 87(4.4) generally enable the new corporation to renounce certain resource-related expenses incurred after the amalgamation to a flow-through shareholder.

Paragraph 87(4.4)(c) sets out certain conditions that must be satisfied for a new corporation to renounce expenses to a flow-through shareholder of a predecessor corporation. This paragraph is amended, effective for amalgamations that occur after 1997, to delete the unnecessary reference to the definition "flow-through share" in subsection 66(15) and to ensure that this paragraph is consistent with the amended definition "flow-through share" in subsection 66(15).

Paragraph 87(4.4)(d) sets out certain conditions that must be satisfied to qualify for the relief provided in subsection 87(4.4). Subparagraph 87(4.4)(d)(i) requires the new corporation to issue a new share to the flow-through share subscriber in consideration for the flow-through share. Current subparagraph 87(4.4)(d)(i) does not, however, contemplate the transfer of a flow-through share by the flow-through share subscriber ("original flow-through shareholder") prior to an amalgamation. Consequently, subsection 87(4.4) does not accommodate a renunciation by the new corporation to an original flow-through shareholder of expenses incurred by the new corporation if the original flow-through shareholder transferred those shares to another person. Subparagraph 87(4.4)(d)(i) is amended, effective for amalgamations that occur after 1997, to accommodate the issuance of a new share to a person other than the original flow-through shareholder. This amendment ensures that the new corporation may renounce resource expenses incurred after an amalgamation to an original flow-through shareholder on the same basis as if that person had owned the flow-through share at the time of the amalgamation.

for the purposes of subsection 66(12.66) and Part XII.6 and for the purposes of renouncing an amount under subsection 66(12.6), (12.601) or (12.62) in respect of Canadian exploration expenses or Canadian development expenses that would, but for the renunciation, be incurred by the new corporation after the amalgamation,

(e) the person shall be deemed to have given the consideration under the agreement to the new corporation for the issue of the new share,

(f) the agreement shall be deemed to have been entered into between the new corporation and the person at the particular time,

(g) the new share shall be deemed to be a flow-through share of the new corporation, and

(h) the new corporation shall be deemed to be the same corporation as, and a continuation of, the predecessor corporation.

Related Provisions: 87(9)(a.21) — Effect of triangular amalgamation.

History: The portion of subsec. 87(4.4) between paras. (d) and (e) amended by 1997, c. 25, subsec. 18(5), applicable (as amended by 1998, c. 19, s. 308, deemed to have come into force on April 25, 1997) to amalgamations that occur after 1995, except that the expression "subsection 66(12.6), (12.601) or (12.62) in respect of Canadian exploration expenses or Canadian development expenses" in subsection 87(4.4) of the Act, as enacted by subsection (5), shall be read as "subsection 66(12.6), (12.601), (12.62) or (12.64) in respect of Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses" in respect of amalgamations that occur before 1999. This portion formerly read:

> for the purpose of subsection 66(12.66) and for the purposes of renouncing an amount under subsection 66(12.6), (12.601), (12.62) or (12.64) in respect of Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses that would, but for the renunciation, be incurred by the new corporation after the amalgamation,

That portion of subsec. 87(4.4) between paras. (d) and (e) amended by 1994, c. 8, subsec. 9(2), applicable to amalgamations occurring after December 2, 1992. That portion formerly read:

> for the purpose of subsection 66(12.66) and for the purpose of renouncing an amount under subsection 66(12.6), (12.62) or (12.64) in respect of Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses that would, but for the renunciation, be incurred by the new corporation after the amalgamation,

Subsec. 87(4.4) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 65(11), applicable to amalgamations occurring after February 1986.

(5) Options to acquire shares of predecessor corporation — Where there has been an amalgamation of two or more corporations after May 6, 1974, each taxpayer (except any predecessor corporation) who immediately before the amalgamation owned a capital property that was an option to acquire shares of the capital stock of a predecessor corporation (in this subsection referred to as the "old option") and who received no consideration for the disposition of that option on the amalgamation, other than an option to acquire shares of the capital stock of the

new corporation (in this subsection referred to as the "new option"), shall be deemed

(a) to have disposed of the old option for proceeds equal to the adjusted cost base to the taxpayer of that option immediately before the amalgamation, and

(b) to have acquired the new option at a cost to the taxpayer equal to the proceeds described in paragraph (a),

and where the old option was taxable Canadian property of the taxpayer, the new option shall be deemed to be taxable Canadian property of the taxpayer.

Related Provisions: 7(1.4) — Employee stock options; 87(5.1) — ACB of option; 87(8) — Merger of foreign affiliate; 87(9)(a.3) — Rules applicable in respect of certain mergers; 107(2)(d.1)(iii), 107.4(3)(f) — Deemed taxable Canadian property retains status when rolled out of or into trust; 248(25.1) — Deemed taxable Canadian property retains status through trust-to-trust transfer. See also at end of s. 87.

Interpretation Bulletins: See list at end of s. 87.

(5.1) Adjusted cost base of option — Where the cost to a taxpayer of a new option is determined at any time under subsection (5),

(a) there shall be deducted after that time in computing the adjusted cost base to the taxpayer of the new option the total of all amounts deducted under paragraph 53(2)(g.1) in computing, immediately before that time, the adjusted cost base to the taxpayer of the old option; and

(b) the amount determined under paragraph (a) shall be added after that time in computing the adjusted cost base to the taxpayer of the new option.

Related Provisions: 53(1)(q) — Addition to ACB for amount under 87(5.1)(b); 53(2)(g.1) — Reduction in ACB under 87(5.1)(a); 80.03(2)(a) — Deemed gain on disposition following debt forgiveness.

History: Subsec. 87(5.1) added by 1995, c. 21, subsec. 30(3), applicable to taxation years that end after February 21, 1994.

(6) Obligations of predecessor corporation — Notwithstanding subsection (7), where there has been an amalgamation of two or more corporations after May 6, 1974, each taxpayer (except any predecessor corporation) who, immediately before the amalgamation, owned a capital property that was a bond, debenture, mortgage, hypothecary claim, note or other similar obligation of a predecessor corporation (in this subsection referred to as the "old property") and who received no consideration for the disposition of the old property on the amalgamation other than a bond, debenture, mortgage, hypothecary claim, note or other similar obligation respectively, of the new corporation (in this subsection referred to as the "new property") is, if the amount payable to the holder of the new property on its maturity is the same as the amount that would have been payable to the holder of the old property on its maturity, deemed

(a) to have disposed of the old property for proceeds equal to the adjusted cost base to the taxpayer of that property immediately before the amalgamation; and

(b) to have acquired the new property at a cost to the taxpayer equal to the proceeds described in paragraph (a).

Related Provisions: 80(2) — Deemed settlement on amalgamation; 87(6.1) — ACB of property; 88(1)(e.2) — Application to winding-up. See also at end of s. 87.

History: The opening words of subsec. 87(6) amended to add "hypothecary claim" (twice) and to replace "shall ... be deemed" with "is ... deemed" by 2001, c. 17, s. 211, in force on June 14, 2001.

I.T. Application Rules: 26(23) (where taxpayer owned the old property since before 1972).

Interpretation Bulletins: See list at end of s. 87.

(6.1) Adjusted cost base — Where the cost to a taxpayer of a particular property that is a bond, debenture or note is determined at any time under subsection (6) and the terms of the bond, debenture or note conferred upon the holder the right to exchange that bond, debenture or note for shares,

(a) there shall be deducted after that time in computing the adjusted cost base to the taxpayer of the bond, debenture or note the total of all amounts deducted under paragraph 53(2)(g.1) in computing, immediately before that time, the adjusted cost base to the taxpayer of the property for which the particular property was exchanged at that time; and

(b) the amount determined under paragraph (a) in respect of the particular property shall be added after that time in computing the adjusted cost base to the taxpayer of the particular property.

Related Provisions: 53(1)(q) — Addition to ACB for amount under 87(6.1)(b); 53(2)(g.1) — Reduction in ACB under 87(6.1)(a); 80.03(2)(a) — Deemed gain on disposition following debt forgiveness.

History: Subsec. 87(6.1) added by 1995, c. 21, subsec. 30(4), applicable to taxation years that end after February 21, 1994.

(7) [Obligations of predecessor corporation] — Where there has been an amalgamation of two or more corporations after May 6, 1974 and

(a) a debt or other obligation of a predecessor corporation that was outstanding immediately before the amalgamation became a debt or other obligation of the new corporation on the amalgamation, and

(b) the amount payable by the new corporation on the maturity of the debt or other obligation, as the case may be, is the same as the amount that would have been payable by the predecessor corporation on its maturity,

the provisions of this Act

(c) shall not apply in respect of the transfer of the debt or other obligation to the new corporation, and

(d) shall apply as if the new corporation had incurred or issued the debt or other obligation at the time it was incurred or issued by the predecessor corporation under the agreement made on the day on which the predecessor corporation made an agreement under which the debt or other obligation was issued,

except that, for the purposes of the definition "income bond" or "income debenture" in subsection 248(1), paragraph (d) shall not apply to any debt or other obligation of the new corporation unless the terms and conditions thereof immediately after the amalgamation are the same as, or substantially the same as, the terms and conditions of the debt or obligation that was an income bond or income debenture of the predecessor corporation immediately before the amalgamation.

Related Provisions: 87(6) — Obligations of predecessor corporation; 88(1)(e.2) — Application to winding-up. See also at end of s. 87.

History: Para. 87(7)(a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 37(12). Para. (a) formerly read:

> (a) a debt or other obligation of a predecessor corporation, other than any such debt or other obligation owed to any other predecessor corporation, was outstanding immediately before the amalgamation and became a debt or other obligation, as the case may be, of the new corporation on the amalgamation, and

Interpretation Bulletins: See list at end of s. 87.

(8) Foreign merger — Subject to subsection 95(2), where there has been a foreign merger in which a tax-

payer's shares or options to acquire shares of the capital stock of a corporation that was a predecessor foreign corporation immediately before the merger were exchanged for or became shares or options to acquire shares of the capital stock of the new foreign corporation or the foreign parent corporation, unless the taxpayer elects in the taxpayer's return of income for the taxation year in which the foreign merger took place not to have this subsection apply, subsections (4) and (5) apply to the taxpayer as if the references in those subsections to

(a) "amalgamation" were read as "foreign merger";

(b) "predecessor corporation" were read as "predecessor foreign corporation"; and

(c) "new corporation" were read as "new foreign corporation or the foreign parent corporation".

Related Provisions: 87(8.1) — Definition of "foreign merger"; 95(2)(d) — Effect of foreign merger on FAPI. See also at end of s. 87.

History: The opening words of subsec. 87(8) amended by 2001, c. 17, subsec. 65(3), applicable to mergers and combinations that occur after 1995 and, where a taxpayer notifies the Minister of National Revenue in writing before the taxpayer's filing-due date for 2001 that the taxpayer makes the election referred to in subsec. 87(8), as amended, in respect of a merger or combination that occurred before 1999, the election is deemed to have been validly made in respect of the merger or combination. The opening words formerly read:

(8) Where there has been a foreign merger in which a taxpayer's shares or options to acquire shares of the capital stock of a corporation that was a predecessor foreign corporation immediately before the merger were exchanged for or became shares or options to acquire shares of the capital stock of the new foreign corporation or the foreign parent corporation, unless the taxpayer elects in the taxpayer's return of income under this Part for the taxation year in which the foreign merger took place not to have this subsection apply, subsections (4) and (5) apply to the taxpayer as if the references in those subsections to

Subsec. 87(8) amended by 1999, c. 22, subsec. 24(1), applicable to a taxpayer in respect of a merger or combination of foreign corporations

(a) that occurs after February 24, 1998, or

(b) that occurred

(i) before February 25, 1998 and in a taxation year of the taxpayer for which the taxpayer's normal reassessment period, as defined in subsec. 152(3.1), has not ended before 1999, or

(ii) after 1994 and before February 25, 1998 and in a taxation year of the taxpayer in which the taxpayer was exempt from tax under s. 149,

unless the taxpayer elects by notifying the Minister of National Revenue in writing, before January 1, 2000, that the amendment not apply to the taxpayer in respect of the merger or combination. Subsec. 87(8) formerly read:

(8) Merger of foreign affiliate — Where there has been a foreign merger in which the shares owned by a taxpayer of the capital stock of a corporation that was a predecessor foreign corporation immediately before the merger were exchanged for or became shares of the capital stock of the new foreign corporation, unless the taxpayer elects in the taxpayer's return of income under this Part for the taxation year in which the foreign merger took place not to have the provisions of this section apply, subsection (4) applies to the taxpayer as if the references therein to

(a) "amalgamation" were read as "foreign merger";

(b) "predecessor corporation" were read as "predecessor foreign corporation";

(c) "new corporation" were read as "new foreign corporation"; and

(d) "May 6, 1974" were read as "November 12, 1981".

Interpretation Bulletins: See list at end of s. 87.

(8.1) Definition of "foreign merger" — For the purposes of this section, "foreign merger" means a merger or combination of two or more corporations each of which was, immediately before the merger or combination, resident in a country other than Canada (each of which is in this section referred to as a "predecessor foreign corporation") to form one corporate entity resident in a country other than Canada (in this section referred to as the "new foreign corporation") in such a manner that, and otherwise than as a result of the distribution of property to one corporation on the winding-up of another corporation,

(a) all or substantially all the property (except amounts receivable from any predecessor foreign corporation or shares of the capital stock of any predecessor foreign corporation) of the predecessor foreign corporations immediately before the merger or combination becomes property of the new foreign corporation as a consequence of the merger or combination;

(b) all or substantially all the liabilities (except amounts payable to any predecessor foreign corporation) of the predecessor foreign corporations immediately before the merger or combination become liabilities of the new foreign corporation as a consequence of the merger or combination; and

(c) all or substantially all of the shares of the capital stock of the predecessor foreign corporations (except any shares or options owned by any predecessor foreign corporation) are exchanged for or become, because of the merger or combination,

(i) shares of the capital stock of the new foreign corporation, or

(ii) if, immediately after the merger, the new foreign corporation was controlled by another corporation (in this section referred to as the "foreign parent corporation") that was resident in a country other than Canada, shares of the capital stock of the foreign parent corporation.

Related Provisions: 95(4.1) — Application to FAPI; 142.7(1)"qualifying foreign merger" — Merger of foreign bank affiliates; 248(1)"disposition"(n), 248(1.1) — Cancellation of shares on foreign merger deemed not to be a disposition; 256(6), (6.1) — Meaning of "controlled". See Related Provisions at end of s. 87.

History: Subsec. 87(8.1) amended by 2001, c. 17, subsec. 65(4), applicable to mergers and combinations that occur after 1995. The subsec. formerly read:

(8.1) Definition of "foreign merger" — For the purposes of this section, "foreign merger" means a merger or combination of two or more corporations each of which was, immediately before the merger or combination, resident in a country other than Canada (each of which is in this section referred to as a "predecessor foreign corporation") to form one corporate entity resident in the country in which all the predecessor foreign corporations were resident (in this section referred to as the "new foreign corporation") in such manner that

(a) all or substantially all the property (except amounts receivable from any predecessor foreign corporation or shares of the capital stock of any predecessor foreign corporation) of the predecessor foreign corporations immediately before the merger or combination becomes property of the new foreign corporation by virtue of the merger or combination,

(b) all or substantially all the liabilities (except amounts payable to any predecessor foreign corporation) of the predecessor foreign corporations immediately before the merger or combination become liabilities of the new foreign corporation by virtue of the merger or combination, and

(c) all or substantially all of the shares of the capital stock of the predecessor foreign corporations (except any shares or options owned by any predecessor foreign corporation) are exchanged for or become, because of the merger or combination,

(i) shares of the capital stock of the new foreign corporation, or

(ii) if, immediately after the merger, the new foreign corporation was controlled by another foreign corporation (in this section referred to as the "foreign parent corporation") that

was resident in the same country as the new foreign corporation, shares of the capital stock of the foreign parent corporation,

otherwise than as a result of the distribution of property to one corporation on the winding-up of another corporation.

Para. 87(8.1)(c) amended by 1999, c. 22, subsec. 24(2), applicable to a taxpayer in respect of a merger or combination of foreign corporations

(a) that occurs after February 24, 1998, or

(b) that occurred

(i) before February 25, 1998 and in a taxation year of the taxpayer for which the taxpayer's normal reassessment period, as defined in subsec. 152(3.1), has not ended before 1999, or

(ii) after 1994 and before February 25, 1998 and in a taxation year of the taxpayer in which the taxpayer was exempt from tax under s. 149,

unless the taxpayer elects by notifying the Minister of National Revenue in writing, before January 1, 2000, that the amendment not apply to the taxpayer in respect of the merger or combination. Para. 87(8.1)(c) formerly read:

(c) all or substantially all the shares of the capital stock of the predecessor foreign corporations (except any such shares owned by any predecessor foreign corporation) are exchanged for or become shares of the capital stock of the new foreign corporation by virtue of the merger or combination,

Interpretation Bulletins: See list at end of s. 87.

(9) Rules applicable in respect of certain mergers [triangular amalgamation] — Where there has been a merger of two or more taxable Canadian corporations to form a new corporation that was controlled, immediately after the merger, by a taxable Canadian corporation (in this subsection referred to as the "parent") and, on the merger, shares of the capital stock of the parent (in this subsection referred to as "parent shares") were issued by the parent to persons who were, immediately before the merger, shareholders of a predecessor corporation, the following rules apply:

(a) for the purposes of paragraph (1)(c), subsection (4) and the *Income Tax Application Rules*, any parent shares received by a shareholder of a predecessor corporation shall be deemed to be shares of the capital stock of the new corporation received by the shareholder by virtue of the merger;

(a.1) for the purposes of subsections (4.1) and (4.2), a parent share issued to a shareholder in consideration for the disposition of a share of a class of the capital stock of a predecessor corporation shall be deemed to be a share of a class of the capital stock of the new corporation that was issued in consideration for the disposition of a share of a class of the capital stock of a predecessor corporation by that shareholder;

(a.2) for the purposes of subsection (4.3), a right listed on a prescribed stock exchange to acquire a share of a class of the capital stock of the parent shall be deemed to be a right listed on a prescribed stock exchange to acquire a share of a class of the capital stock of the new corporation;

Proposed Addition — 87(9)(a.21)

(a.21) for the purpose of paragraph (4.4)(d)

(i) each parent share received by a shareholder of a predecessor corporation is deemed to be a share of the capital stock of the new corporation issued to the shareholder by the new corporation on the merger, and

(ii) any obligation of the parent to issue a share of any class of its capital stock to a person in circumstances described in subparagraph (4.4)(d)(ii) is deemed to be an obligation of the new corporation to issue a share to the person;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 87(8), will add para. 87(9)(a.21), applicable to amalgamations that occur after 1997.

Technical Notes: New paragraph 87(9)(a.21), which is effective for amalgamations that occur after 1997, provides that a share of the parent issued to a shareholder on a triangular amalgamation is considered, for the purpose of paragraph 87(4.4)(d), to be a share issued by the new corporation and that a right to acquire a share of the parent issued to a person on a triangular amalgamation is deemed to be in consideration for a right to acquire a share of the new corporation. New paragraph 87(9)(a.21) therefore ensures that the requirements in subparagraph 87(4.4)(d)(i) and (ii) that the new corporation issue a share or right to a person are satisfied. As a result, a new corporation may renounce expenditures to a flow-through shareholder of a predecessor corporation in accordance with a flow-through share agreement concluded before the triangular amalgamation.

(a.3) for the purpose of applying subsection (5) in respect of the merger, the reference in that subsection to "the new corporation" shall be read as a reference to "the parent";

(a.4) for the purpose of paragraph (c), any shares of the new corporation acquired by the parent on the merger shall be deemed to be new shares;

(a.5) for the purpose of applying subsection (10) in respect of the merger,

(i) the reference in paragraph (10)(b) to "the new corporation" shall be read as a reference to "the new corporation or the parent, within the meaning assigned by subsection (9)", and

(ii) the references in paragraphs (10)(c) and (f) to "the new corporation" shall be read as references to "the public corporation described in paragraph (b)".

(b) in computing, at any particular time, the paid-up capital in respect of any particular class of shares of the capital stock of the parent that included parent shares immediately after the merger

(i) there shall be deducted that proportion of the amount, if any, by which the paid-up capital, determined without reference to this paragraph, in respect of all the shares of the capital stock of the parent immediately after the merger exceeds the total of all amounts each of which is the paid-up capital in respect of a share of the capital stock of the parent or a predecessor corporation (other than any share of a predecessor corporation owned by the parent or by another predecessor corporation and any share of a predecessor corporation owned by a shareholder other than the parent or another predecessor corporation that was not exchanged on the merger for parent shares) immediately before the merger that

(A) the paid-up capital, determined without reference to this paragraph, in respect of that particular class of shares of the capital stock of the parent immediately after the merger

is of

(B) the paid-up capital, determined without reference to this paragraph, in respect of all the issued and outstanding shares of the classes of the capital stock of the parent that included parent shares immediately after the merger, and

(ii) there shall be added an amount equal to the lesser of

(A) the amount, if any, by which

(I) the total of all amounts each of which is an amount deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of the particular class paid by the parent before the particular time

exceeds

(II) the total that would be determined under subclause (I) if this Act were read without reference to subparagraph (i), and

(B) the amount required by subparagraph (i) to be deducted in computing the paid-up capital of shares of the particular class; and

(c) notwithstanding paragraph (4)(b), the parent shall be deemed to have acquired the new shares of any particular class of the capital stock of the new corporation at a cost equal to the total of

(i) the amount otherwise determined under paragraph (4)(b) to be the cost of those shares, and

(ii) in any case where the parent owned, immediately after the merger, all of the issued shares of the capital stock of the new corporation, such portion of

(A) the amount, if any, by which

(I) the amount by which the total of the money on hand of the new corporation and all amounts each of which is the cost amount to the new corporation of a property owned by it, immediately after the merger, exceeds the total of all amounts each of which is the amount of any debt owing by the new corporation, or of any other obligation of the new corporation to pay any amount, that was outstanding immediately after the merger,

exceeds

(II) the total of the adjusted cost bases to the parent of all shares of the capital stock of each predecessor corporation beneficially owned by it immediately before the merger

as is designated by the parent in respect of the shares of that particular class in its return of income under this Part for its taxation year in which the merger occurred, except that

(B) in no case shall the amount so designated in respect of the shares of a particular class exceed the amount, if any, by which the total fair market value, immediately after the merger, of the shares of that particular class issued by virtue of the merger exceeds the cost of those shares to the parent determined without reference to this paragraph, and

(C) in no case shall the total of the amounts so designated in respect of the shares of each class of the capital stock of the new corporation exceed the amount determined under clause (A).

Related Provisions: 88(4) — Amalgamation deemed not to be acquisition of control; 256(6), (6.1) — Meaning of "controlled". See also at end of s. 87.

History: Para. 87(9)(a.5) added by 1998, c. 19, subsec. 117(12), applicable to amalgamations that occur after April 26, 1995 except that, in its application to amalgamations that occurred before 1998, para. 87(9)(a.5) shall be read as follows:

(a.5) for the purpose of applying subsection (10) in respect of the merger,

(i) any share issued by the parent on the merger is deemed to have been issued by the new corporation, and

(ii) the reference in paragraph (10)(f) to "the new corporation" shall be read as a reference to "the corporation that issued the share";

Paras. 87(9)(a.3) and (a.4) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 37(13), applicable to amalgamations and mergers occurring after December 20, 1991.

Paras. 87(9)(a.1), (a.2) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 65(12), applicable to amalgamations and mergers occurring after 1986.

Regulations: 3200 (prescribed stock exchange).

(10) Share deemed listed — Where

(a) a new corporation is formed as a result of an amalgamation,

(b) the new corporation is a public corporation,

(c) the new corporation issues a share (in this subsection referred to as the "new share") of its capital stock,

(d) the new share is issued in exchange for a share (in this subsection referred to as the "old share") of the capital stock of a predecessor corporation,

(e) immediately before the amalgamation, the old share was listed on a prescribed stock exchange, and

(f) the new share is redeemed, acquired or cancelled by the new corporation within 60 days after the amalgamation,

the new share is deemed, for the purposes of subsection 116(6), the definitions "qualified investment" in subsections 146(1), 146.1(1), and 146.3(1) and in section 204, and the definition "taxable Canadian property" in subsection 248(1), to be listed on the exchange until the earliest time at which it is so redeemed, acquired or cancelled.

Related Provisions: 87(9)(a.5) — Effect of triangular amalgamation.

History: The closing words of subsec. 87(10) amended by 2001, c. 17, subsec. 65(5), applicable after October 1, 1996. The closing words formerly read:

the new share is deemed, for the purposes of subsections 115(1) and 116(6) and the definitions "qualified investment" in subsections 146(1), 146.1(1) and 146.3(1) and in section 204, to be listed on the exchange until the earliest time at which it is so redeemed, acquired or cancelled.

The closing words of subsec. 87(10) amended by 1999, c. 22, subsec. 24(3), applicable after 1997. The closing words formerly read:

the new share is deemed, for the purposes of subsections 115(1) and 116(6) and the definitions "qualified investment" in subsections 146(1) and 146.3(1) and in section 204, to be listed on the exchange until the earliest time at which it is so redeemed, acquired or cancelled.

Subsec. 87(10) added by 1998, c. 19, subsec. 117(13), applicable to amalgamations that occur after April 26, 1995 except that, in its application to amalgamations that occurred before July 1996, subsec. 87(10) shall be read without reference to para. (b).

Regulations: 3200, 3201 (prescribed stock exchanges; expected to be amended to cover 87(10)).

(11) Vertical amalgamations — Where at any time there is an amalgamation of a corporation (in this subsection referred to as the "parent") and one or more other corporations (each of which in this subsection is referred to as the "subsidiary") each of which is a subsidiary wholly-owned corporation of the parent,

(a) the shares of the subsidiary are deemed to have been disposed of by the parent immediately before the amalgamation for proceeds equal to the proceeds that would be determined under paragraph 88(1)(b) if sub-

sections 88(1) and (1.7) applied, with any modifications that the circumstances require, to the amalgamation; and

(b) the cost to the new corporation of each capital property of the subsidiary acquired on the amalgamation is deemed to be the amount that would have been the cost to the parent of the property if the property had been distributed at that time to the parent on a winding-up of the subsidiary and subsections 88(1) and (1.7) had applied to the winding-up.

Related Provisions: 87(2.11) — Vertical amalgamation — carryback of losses; 87(9)(a.5) — Application on triangular amalgamation; 248(1)"disposition"(n), 248(1.1) — Cancellation of shares on foreign amalgamation deemed not to be a disposition; Reg. 5905(5.1) — FAPI — amalgamation of corporation holding foreign affiliate.

History: Subsec. 87(11) added by 1998, c. 19, subsec. 117(13), subject to subsec. 117(27) of 1998, c. 19, applicable to amalgamations that occur after 1994, and for the purpose of para. 87(11)(b), any designation by a new corporation of an amount under para. 88(1)(d) that is filed with the Minister of National Revenue before October 1998 is deemed to have been made by the new corporation in its return of income under Part I of the Act for its first taxation year.

1998, c. 19, subsec. 117(27), provides:

(27) Where the new corporation formed on an amalgamation that occurred before June 20, 1996 so elects in writing, filed with the Minister of National Revenue with the return of income under Part I of the Act for the parent's taxation year that ended immediately before the amalgamation, or within 90 days after any assessment or reassessment of tax payable under that Part for the year, subsection 87(11) of the Act, as enacted by subsection (13), does not apply to the amalgamation.

Related Provisions [s. 87]: 66.7 — Resource taxation — successor corporation rules; 89(1)"Canadian corporation" — Whether amalgamated corporation is a Canadian corporation; 128.2 — Predecessor corporations take on residence status of amalgamated corporation; 134 — Status of non-resident-owned investment corporation for purposes of s. 87; 142.6(5), (6) — Acquisition of specified debt obligation by financial institution in rollover transaction; 251(3.1), (3.2) — Amalgamated corporation — whether related to predecessor.

Definitions [s. 87]: "adjusted cost base" — 54, 248(1); "agricultural cooperative corporation" — 135.1(1); "amalgamation" — 87(1); "amount" — 248(1); "business" — 248(1); "business limit" — 125(2)–(5.1), 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "Canadian corporation" — 89(1), 248(1); "Canadian development expense" — 66.2(5), 248(1); "Canadian exploration expense" — 66.1(6), 248(1); "Canadian oil and gas property expense" — 66.4(5), 248(1); "capital dividend" — 83(2), 248(1); "capital gain", "capital loss" — 39(1), 248(1); "capital property" — 54, 248(1); "carrying on business" — 253; "cash method" — 248(1); "class", "class of shares" — 248(6); "common share" — 248(1); "controlled directly or indirectly" — 256(5.1), (6.2); "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount", "credit union" — 248(1); "cumulative eligible capital" — 14(5), 248(1); "depreciable property" — 13(21), 248(1); "disposition", "dividend" — 248(1); "eligible capital amount" — 14(1), 248(1); "eligible capital expenditure" — 14(5), 248(1); "eligible capital property" — 54, 248(1); "employment" — 248(1); "farming" — 248(1); "farm loss" — 111(8), 248(1); "financial institution" — 87(1.5), 142.2(1); "fiscal period" — 249(2)(b), 249.1; "flow-through share" — 66(15), 87(4.4), 248(1); "foreign affiliate" — 95(1), 248(1); "foreign merger" — 87(8.1); "foreign parent corporation" — 87(8.1)(c); "former business property" — 248(1); "grandfathered share", "income bond", "insurance corporation", "insurer", "inventory" — 248(1); "investment corporation" — 130(3), 248(1); "investment tax credit" — 127(9), 248(1); "last taxation year" — 87(2)(b); "lending asset" — 248(1); "life insurance capital dividend" — 83(2.1), 248(1); "life insurance corporation", "limited partnership loss" — 248(1); "mark-to-market property" — 87(1.5), 142.2(1); "mineral" — 248(1); "mutual fund corporation" — 131(8), 248(1); "net capital loss" — 111(8), 248(1); "new corporation" — 87(1); "new foreign corporation" — 87(8.1); "non-capital loss" — 111(8), 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "paid-up capital" — 89(1), 248(1); "person" — 248(1); "predecessor corporation" — 87(1); "predecessor foreign corporation" — 87(8.1); "preferred share", "prescribed" — 248(1); "prescribed stock exchange" — 248(29), Reg. 3200, 3201; "private corporation" — 89(1), 248(1); "property" — 248(1); "public corporation" — 89(1), 248(1); "qualified expenditure" — 87(2.01); "regulation" — 248(1); "research property" — 37.1(5), 87(2.01); "restricted farm loss" — 31, 248(1); "share", "shareholder", "short-term preferred share" — 248(1); "specified debt obligation" — 87(1.5), 142.2(1); "specified future tax consequence" — 248(1); "subsidiary wholly-owned corporation" — 87(1.4), 248(1); "tax payable" — 248(2); "taxable Canadian corporation" — 89(1), 248(1); "taxable Canadian property" — 248(1); "taxable dividend" — 89(1), 248(1); "taxable income" — 2(2), 248(1); "taxable preferred share", "taxable RFI share" — 248(1); "taxation year" — 87(2)(a), 249; "taxpayer", "term preferred share" — 248(1); "writing" — *Interpretation Act* 35(1).

I.T. Application Rules [s. 87]: 20(1.2), 26(21)–(23), 34(4), (7), 58(3.3).

Interpretation Bulletins [s. 87]: IT-52R4: Income bonds and income debentures (archived); IT-121R3: Election to capitalize cost of borrowed money (archived); IT-151R5: Scientific research and experimental development expenditures; IT-243R4: Dividend refund to private corporations; IT-315: Interest expense incurred for the purpose of winding-up or amalgamation (archived); IT-474R: Amalgamations of Canadian corporations; IT-488R2: Winding-up of 90%-owned taxable Canadian corporations (archived).

Information Circulars [s. 87]: 88-2, para. 20: General anti-avoidance rule — section 245 of the *Income Tax Act*.

88. (1) Winding-up [of subsidiary] — Where a taxable Canadian corporation (in this subsection referred to as the "subsidiary") has been wound up after May 6, 1974 and not less than 90% of the issued shares of each class of the capital stock of the subsidiary were, immediately before the winding-up, owned by another taxable Canadian corporation (in this subsection referred to as the "parent") and all of the shares of the subsidiary that were not owned by the parent immediately before the winding-up were owned at that time by persons with whom the parent was dealing at arm's length, notwithstanding any other provision of this Act other than subsection 69(11), the following rules apply:

Related Provisions: See at end of subsec. 88(1).

Forms: RC145: Request to close Business Number (BN) accounts.

(a) **[property of subsidiary]** — subject to paragraphs (a.1) and (a.3), each property (other than an interest in a partnership) of the subsidiary that was distributed to the parent on the winding-up shall be deemed to have been disposed of by the subsidiary for proceeds equal to

(i) in the case of a Canadian resource property, a foreign resource property or a right to receive production (as defined in subsection 18.1(1)) to which a matchable expenditure (as defined in subsection 18.1(1)) relates, nil, and

(ii) [Repealed]

(iii) in the case of any other property, the cost amount to the subsidiary of the property immediately before the winding-up;

Related Provisions: 53(4) — Effect on ACB of share or trust interest; 84(2) — Deemed dividend on distribution of assets; 88(2) — Windup of other corporation.

History: Subpara. 88(1)(a)(i) amended by 1998, c. 19, subsec. 118(1), applicable after November 17, 1996. The subpara. formerly read:

(i) in the case of a Canadian resource property or foreign resource property, nil, and

The opening words of para. 88(1)(a) amended by 1995, c. 21, subsec. 55(1), applicable to windings-up that begin after February 22, 1994. The opening words formerly read:

(a) subject to paragraph (a.1), each property (other than an interest in a partnership) of the subsidiary that was distributed to the parent on the winding-up shall be deemed to have been disposed of by the subsidiary for proceeds equal to,

Subpara. 88(1)(a)(ii) repealed by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 38(1), applicable to distributions of property on the winding-up of a

subsidiary in a taxation year of the subsidiary beginning after June 1988. Subpara. 88(1)(a)(ii) formerly read:

> (ii) in the case of any eligible capital property, an amount equal to 4/3 of the cost amount to the subsidiary of that property immediately before the winding-up, and

Subpara. 88(1)(a)(ii) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(1), to substitute "4/3 of" for "twice", applicable to distributions of property on the winding-up of a subsidiary in a taxation year of the subsidiary beginning after June 1988.

Selected Cases [para. 88(1)(a)]: *Hollinger Inc. v. R.*, [1998] 4 C.T.C. 2424 (TCC) (Losses flow through and sale of unproductive investment does not change nature from capital to inventory); *Mara Properties Ltd. v. Canada*, [1996] 2 C.T.C. 54 (SCC) (Property retained its character as inventory upon rollover).

Interpretation Bulletins: IT-259R4: Exchanges of property.

Advance Tax Rulings: ATR-67: Increase in the cost of property on the winding-up of a wholly-owned subsidiary.

(a.1) **[property of subsidiary]** — each property of the subsidiary that was distributed to the parent on the winding-up shall, for the purpose of paragraph (2.1)(b) or (e), be deemed not to have been disposed of;

(a.2) **[partnership interest]** — each interest of the subsidiary in a partnership that was distributed to the parent on the winding-up shall, except for the purpose of paragraph 98(5)(g), be deemed not to have been disposed of by the subsidiary;

History: Para. 88(1)(a.2) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(2), to add ", except for the purpose of paragraph 98(5)(g)," applicable to windings-up beginning after January 15, 1987.

(a.3) **[specified debt obligation]** — where

(i) the subsidiary was a financial institution in its taxation year in which its assets were distributed to the parent on the winding up, and

(ii) the parent was a financial institution in its taxation year in which it received the assets of the subsidiary on the winding up,

each specified debt obligation (other than a mark-to-market property) of the subsidiary that was distributed to the parent on the winding-up shall, except for the purpose of subsection 69(11), be deemed not to have been disposed of, and for the purpose of this paragraph, "financial institution", "mark-to-market property" and "specified debt obligation" have the meanings assigned by subsection 142.2(1);

Related Provisions: Reg. 8103(3) — Mark-to-market — transition inclusion; Reg. 9204(2) — Residual portion of specified debt obligation.

History: Para. 88(1)(a.3) added by 1995, c. 21, subsec. 55(2), applicable to windings-up that begin after February 22, 1994.

(b) **[shares of subsidiary]** — the shares of the capital stock of the subsidiary owned by the parent immediately before the winding-up shall be deemed to have been disposed of by the parent on the winding-up for proceeds equal to the greater of

(i) the lesser of the paid-up capital in respect of those shares immediately before the winding-up and the amount determined under subparagraph (d)(i), and

(ii) the total of all amounts each of which is an amount in respect of any share of the capital stock of the subsidiary so disposed of by the parent on the winding-up, equal to the adjusted cost base to the parent of the share immediately before the winding-up;

Related Provisions: 80.01(5) — Determination of proceeds of disposition of distress preferred share to subsidiary; 80.03(1), (3)(a)(i) — Capital gain where para. 88(1)(b) applies to share on disposition following debt forgiveness; 87(11) — Application to vertical amalgamation. See also at end of 88(1).

(c) **[cost to parent]** — subject to paragraph 87(2)(e.3) (as modified by paragraph (e.2)), and notwithstanding paragraph 87(2)(e.1) (as modified by paragraph (e.2)), the cost to the parent of each property of the subsidiary distributed to the parent on the winding-up shall be deemed to be

(i) in the case of a property that is an interest in a partnership, the amount that but for this paragraph would be the cost to the parent of the property, and

(ii) in any other case, the amount, if any, by which

(A) the amount that would, but for subsection 69(11), be deemed by paragraph (a) to be the proceeds of disposition of the property

exceeds

(B) any reduction of the cost amount to the subsidiary of the property made because of section 80 on the winding-up,

plus, where the property was a capital property (other than an ineligible property) of the subsidiary at the time that the parent last acquired control of the subsidiary and was owned by the subsidiary thereafter without interruption until such time as it was distributed to the parent on the winding-up, the amount determined under paragraph (d) in respect of the property and, for the purposes of this paragraph, "ineligible property" means

(iii) depreciable property,

(iv) property transferred to the parent on the winding-up where the transfer is part of a distribution (within the meaning assigned by subsection 55(1)) made in the course of a reorganization in which a dividend was received to which subsection 55(2) would, but for paragraph 55(3)(b), apply,

(v) property acquired by the subsidiary from the parent or from any person or partnership that was not (otherwise than because of a right referred to in paragraph 251(5)(b)) dealing at arm's length with the parent, or any other property acquired by the subsidiary in substitution for it, where the acquisition was part of the series of transactions or events in which the parent last acquired control of the subsidiary, and

(vi) property distributed to the parent on the winding-up where, as part of the series of transactions or events that includes the winding-up,

(A) the parent acquired control of the subsidiary, and

(B) any property distributed to the parent on the winding-up or any other property acquired by any person in substitution therefor is acquired by

(I) a particular person (other than a specified person) that, at any time during the course of the series and before control of the subsidiary was last acquired by the parent, was a specified shareholder of the subsidiary,

(II) 2 or more persons (other than specified persons), if a particular person would have been, at any time during the course of the series and before control of the subsidiary was last acquired by the parent, a specified shareholder of the subsidiary if all the shares

that were then owned by those 2 or more persons were owned at that time by the particular person, or

(III) a corporation (other than a specified person or the subsidiary)

1. of which a particular person referred to in subclause (I) is, at any time during the course of the series and after control of the subsidiary was last acquired by the parent, a specified shareholder, or

2. of which a particular person would be, at any time during the course of the series and after control of the subsidiary was last acquired by the parent, a specified shareholder if all the shares then owned by persons (other than specified persons) referred to in subclause (II) and acquired by those persons as part of the series were owned at that time by the particular person;

Related Provisions: 88(1)(c.2) — Specified person for 88(1)(c)(vi); 88(1)(c.3) — Property acquired in substitution, for purpose of 88(1)(c)(vi)(B); 88(1)(c.7) — Extended meaning of depreciable property; 88(1)(d.2) — When taxpayer last acquired control; 88(1)(d.3) — Where control acquired because of death; 88(1.7) — Where parent did not deal at arm's length; 88(4) — Amalgamation deemed not to be acquisition of control; 248(10) — Series of transactions or events; 256(6)–(9) — Whether control acquired. See also at end of 88(1).

History: The opening words of subcl. 88(1)(c)(vi)(B)(III) amended by 2001, c. 17, subsec. 66(1), to add the words "or the subsidiary", applicable to windings-up that begin after November 1994.

Subpara. 88(1)(c)(v) amended by 1998, c. 19, subsec. 118(2), applicable to windings-up that begin after 1996. The subpara. formerly read:

(v) property transferred to the subsidiary by the parent or by any person or partnership that was not, otherwise than because of a right referred to in paragraph 251(5)(b), dealing at arm's length with the parent, and

The portion of subpara. 88(1)(c)(vi) before subcl. (B)(I) and sub-subcl. 88(1)(c)(vi)(B)(III)2 amended by 1998, c. 19, subsecs. 118(3) and (4), that portion before subcl. (B)(I) applicable to windings-up that begin after June 20, 1996, other than windings-up that are part of an arrangement that was substantially advanced, as evidenced in writing, before June 21, 1996, and sub-subcl. 88(1)(c)(vi)(B)(III)2 applicable to windings-up that begin after November 1994. That portion and sub-subcl. formerly read:

(vi) property disposed of by the parent as part of the series of transactions or events that includes the winding-up where, as part of the series,

(A) the parent acquired control of the subsidiary, and

(B) the property or any other property acquired by any person in substitution therefor is acquired by

. . . . .

2. of which a particular person would be, at any time during the course of the series and after control of the subsidiary was last acquired by the parent, a specified shareholder if all the shares then owned by persons (other than specified persons) referred to in subclause (II) were owned at that time by the particular person;

The opening words of para. 88(1)(c) amended by 1995, c. 21, subsec. 55(3), applicable to windings-up that begin after February 22, 1994. The opening words formerly read:

(c) notwithstanding the reference to paragraph 87(2)(e.1) in paragraph (e.2), the cost to the parent of each property of the subsidiary distributed to the parent on the winding-up shall be deemed to be

Cl. 88(1)(c)(ii)(B) amended by 1995, c. 21, s. 31, applicable to windings-up that begin after July 13, 1990. Cl. (B) formerly read:

(B) any reduction of the cost amount to the subsidiary of the property made because of paragraph 80(1)(b) on the winding-up,

That portion of para. 88(1)(c) after cl. (ii)(B) amended by 1995, c. 3, subsec. 24(1), applicable to windings-up that begin after February 21, 1994 except that, in its application to a winding-up that begins after February 21, 1994 and before December 1994, cl. 88(1)(c)(vi)(B) shall be read as follows:

(B) the property or any other property acquired by any person in substitution therefor is acquired by

(I) a particular person (other than a specified person) that, at any time during the course of the series and before control of the subsidiary was last acquired by the parent, was a specified shareholder of the subsidiary, or

(II) any person (other than a specified person) that at any time during the course of the series did not deal at arm's length with a particular person (other than a specified person) referred to in subclause (I);

That portion of para. 88(1)(c) formerly read:

plus, where the property was a capital property (other than depreciable property) owned by the subsidiary at the time that the parent last acquired control of the subsidiary and thereafter without interruption until such time as it was distributed to the parent on the winding-up, the amount determined under paragraph (d) in respect thereof;

Cl. 88(1)(c)(ii)(A) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 38(2), applicable to windings-up beginning after December 20, 1991. Cl. (c)(ii)(A) formerly read:

(A) the amount deemed by paragraph (a) to be the proceeds of disposition of the property

Subpara. 88(1)(c)(ii) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(3), applicable to windings-up beginning after July 13, 1990. Subpara. 88(1)(c)(ii) formerly read:

(ii) in any other case, the amount deemed by paragraph (a) to be the proceeds of disposition of the property,

Selected Cases [para. 88(1)(c)]: *Hollinger Inc. v. R.*, [1998] 4 C.T.C. 2424 (TCC) (Losses flow through and sale of unproductive investment does not change nature from capital to inventory).

Advance Tax Rulings: ATR-67: Increase in the cost of property on the winding-up of a wholly-owned subsidiary.

I.T. Technical News: 9 (the backdoor butterfly rule).

(c.1) **[eligible capital property]** — for the purpose of determining after the winding-up the amount to be included under paragraph 14(1)(b) in computing the parent's income in respect of the business carried on by the subsidiary immediately before the winding-up, there shall be added to the amount otherwise determined for Q in the definition "cumulative eligible capital" in subsection 14(5) the amount, if any, determined for Q in that definition in respect of that business immediately before the disposition;

Proposed Amendment — 88(1)(c.1)

(c.1) for the purpose of determining after the winding-up the amount to be included under subsection 14(1) in computing the parent's income in respect of the business carried on by the subsidiary immediately before the winding-up

(i) there shall be added to the amount otherwise determined for each of A and F in the definition "cumulative eligible capital" in subsection 14(5), the amount, if any, determined for the description of F in that definition in respect of that business immediately before the disposition, and

(ii) there shall be added to the amount determined for the description of C in the formula in paragraph 14(1)(b), one-half of the amount, if any, determined for the description of Q in that definition in respect of that business immediately before the disposition;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 88(1), will amend para. 88(1)(c.1) to read as above, applicable in respect of dispositions that occur after December 20, 2002.

Technical Notes: Subparagraph 88(1)(a)(iii) generally provides that property of a subsidiary corporation is deemed to have been disposed of

on its winding-up for proceeds of disposition equal to its cost amount to the subsidiary immediately before the winding-up. Under subparagraph 88(1)(c)(ii), the cost of such property to the parent corporation is equal to such proceeds of disposition. Paragraph 88(1)(c.1) ensures that an amount that would have been recaptured depreciation to the subsidiary under subsection 14(1), if the subsidiary had instead disposed of the eligible capital property for fair market value proceeds, is subject to possible recapture in the hands of the parent upon a subsequent sale of the property.

Paragraph 88(1)(c.1) is renumbered as subparagraph 88(1)(c.1)(ii) and remains unchanged. Paragraph 88(1)(c.1) is further amended by the addition of new subparagraph (i), which ensures that eligible capital property deductions claimed under paragraph 20(1)(b) by the subsidiary after its "adjustment time" (as defined in subsection 14(5), i.e., generally the beginning of the first taxation year of the subsidiary that starts after June 30, 1988) are included in the amount subject to potential recapture.

Paragraph 88(1)(c.1) applies to a parent corporation similarly to the application of paragraphs 85(1)(d.1) and (d.11) to a transferee corporation. For additional information, refer to the commentary to those paragraphs for an example of that application.

History: Para. 88(1)(c.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 38(3), applicable to distributions of property on the winding-up of a subsidiary in a taxation year of the subsidiary beginning after June 1988.

(c.2) **["specified person" and "specified shareholder"]** — for the purposes of this paragraph and subparagraph (c)(vi),

(i) "specified person" at any time means the parent and each person that would, if this Act were read without reference to paragraph 251(5)(b), be related to the parent at that time and, for this purpose, a person shall be deemed not to be related to the parent where it can reasonably be considered that one of the main purposes of one or more transactions or events was to cause the person to be related to the parent so as to prevent a property that was distributed to the parent on the winding-up from being an ineligible property for the purpose of paragraph (c),

(ii) where at any time a property is owned or acquired by a partnership or a trust,

(A) the partnership or the trust, as the case may be, shall be deemed to be a person that is a corporation having one class of issued shares, which shares have full voting rights under all circumstances,

(B) each member of the partnership or beneficiary under the trust, as the case may be, shall be deemed to own at that time the proportion of the number of issued shares of the capital stock of the corporation that

(I) the fair market value at that time of that member's interest in the partnership or that beneficiary's interest in the trust, as the case may be,

is of

(II) the fair market value at that time of all the members' interests in the partnership or beneficiaries' interests in the trust, as the case may be, and

(C) the property shall be deemed to have been owned or acquired at that time by the corporation, and

(iii) in determining whether a person is a specified shareholder of a corporation,

(A) the reference in the definition "specified shareholder" in subsection 248(1) to "the issued shares of any class of the capital stock of the corporation or of any other corporation that is related to the corporation" shall be read as "the issued shares of any class (other than a specified class) of the capital stock of the corporation or of any other corporation that is related to the corporation and that has a significant direct or indirect interest in any issued shares of the capital stock of the corporation", and

(B) a corporation is deemed not to be a specified shareholder of itself;

Proposed Amendment — 88(1)(c.2)

Letter from Dept. of Finance, August 13, 2004:

Dear [xxx]

Thank you for your letter of May 31, 2004 concerning the availability of the addition to the cost of non-depreciable capital property under paragraphs 88(1)(c) and (d) of the *Income Tax Act* (the "Act") in the circumstances described below.

Your concern relates to a series of proposed transactions wherein a taxable Canadian corporation ("Bidco") will acquire control of another taxable Canadian corporation ("Subco") followed by a winding up of Subco into Bidco. Prior to the acquisition of control, Holdco will own all of the shares of Subco and Subco will own all the shares of another corporation ("Sellco"). As a condition of the sale of the Subco shares by Holdco to Bidco, Holdco and Subco/Bidco will enter into an agreement to sell ("purchase agreement") the shares of Sellco to an arm's length purchaser ("Pco"), which sale will occur shortly after the winding up of Subco. Prior to entering into the purchase agreement, Pco will not be a specified shareholder of Subco.

More specifically, you are concerned that the right to acquire the shares of Sellco under the purchase agreement would result in Pco being a specified shareholder of Subco, although Pco does not have, nor does it intend to acquire, any direct or indirect interest in the shares of Subco, Holdco or Bidco. Your concern relates to the application of the deeming rules in subsections 251(2), (3) and (5) combined with the definition of "specified shareholder" in subsection 248(1) of the Act.

In the circumstances described above, paragraph 251(5)(b) of the Act would deem Pco, for the purpose of subsection 251(2), to be in the same position in relation to the control of Sellco as if it owned the shares of Sellco. As a result, Pco would be related to Sellco after entering into the purchase agreement. As Pco and Holdco would be related to the same corporation, they would be deemed by subsection 251(3) to be related to each other. Under the definition of "specified shareholder," Pco would be treated as owning all the shares of Subco owned by Holdco and, therefore, would be a specified shareholder of Subco before control of Subco is acquired by Bidco. Since Pco would be a specified shareholder of Subco and, since Pco will acquire the shares of Sellco as part of the series of transactions that includes the winding up of Subco, Bidco would be precluded from obtaining a bump in the adjusted cost base of the shares of Sellco acquired on the winding up of Subco.

We agree that where a person has a right to acquire a share of a corporation (the "downstream corporation") controlled by another corporation (the "upstream corporation") and the downstream corporation does not have a direct or indirect interest in any of the issued shares of the upstream corporation, the right should not, in and of itself, result in the person becoming a specified shareholder of the upstream corporation for the purpose of subparagraph 88(1)(c)(vi) of the Act. Accordingly, we are prepared to recommend to the Minister that paragraph 88(1)(c.2) of the Act be amended to exclude a right to acquire shares of a downstream corporation from being considered in determining if a person is a specified shareholder of the upstream corporation in circumstances where the downstream corporation does not have a direct or indirect interest in any of the issued shares of the upstream corporation.

We are prepared to recommend that the amendment apply to windings-up that begin after August 2004. While we cannot offer any assurance that either the Minister or Parliament will agree with our recommendation, we hope that this statement of our position is helpful to you.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 88(1)(c.8) — Meaning of "specified class" for 88(1)(c.2)(iii)(A); 88(4) — Amalgamation deemed not to be acquisition of control.

History: Cl. 88(1)(c.2)(iii)(A) amended by 2001, c. 17, subsec. 66(2), applicable to windings-up that begin after November 1994. The clause formerly read:

> (A) the reference in the definition "specified shareholder" in subsection 248(1) to "or of any other corporation that is related to the corporation" shall be read as "or of any other corporation that is related to the corporation and that has a significant direct or indirect interest in any issued shares of the capital stock of the corporation", and

Subpara. 88(1)(c.2)(iii) added by 1998, c. 19, subsec. 118(5), applicable to windings-up that begin after November 1994.

Para. 88(1)(c.2) added by 1995, c. 3, subsec. 24(2), applicable to windings-up that begin after February 21, 1994.

(c.3) **[substituted property]** — for the purpose of clause (c)(vi)(B), property acquired by any person in substitution for particular property or properties distributed to the parent on the winding-up includes

(i) property (other than a specified property) owned by the person at any time after the acquisition of control referred to in clause (c)(vi)(A) the fair market value of which is, at that time, wholly or partly attributable to the particular property or properties, and

(ii) property owned by the person at any time after the acquisition of control referred to in clause (c)(vi)(A) the fair market value of which is, at that time, determinable primarily by reference to the fair market value of, or to any proceeds from a disposition of, the particular property or properties

but does not include

(iii) money,

(iv) property that was not owned by the person at any time after the acquisition of control referred to in clause (c)(vi)(A), or

(v) property described in subparagraph (i) if the only reason the property is described in that subparagraph is because a specified property described in any of subparagraphs (c.4)(i) to (iv) was received as consideration for the acquisition of a share of the capital stock of the subsidiary in the circumstances described in subparagraphs (c.4)(i) to (iv);

Propcsed Addition — 88(1)(c.3)(vi), (vii)

(vi) a share of the capital stock of the subsidiary or a debt owing by it, if the share or debt, as the case may be, was owned by the parent immediately before the winding-up, or

(vii) a share of the capital stock of a corporation or a debt owing by a corporation, if the fair market value of the share or debt, as the case may be, was not, at any time after the beginning of the winding-up, wholly or partly attributable to property distributed to the parent on the winding-up;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 88(2), will add subparas. 88(1)(c.3)(vi) and (vii), applicable to windings-up that begin after 1997.

Technical Notes: Paragraph 88(1)(c) generally provides that the cost to the parent of each property distributed to it on the winding-up of a subsidiary is equal to the subsidiary's proceeds of disposition plus, where the property is a capital property and is not an ineligible property, an amount determined under paragraph 88(1)(d) in respect of the property. "Ineligible property" is described in subparagraphs 88(1)(c)(iii) to (vi). Pursuant to subparagraph 88(1)(c)(vi), ineligible property includes any property distributed to the parent on the winding-up if, as part of the series of transactions or events that includes the winding-up, the property or property acquired in substitution for such property was acquired by a person or persons described in clause 88(1)(c)(vi)(B). Property acquired in substitution for property distributed on the winding-up ("substituted property") has its ordinary meaning and an extended meaning found in paragraph 88(1)(c.3).

Paragraph 88(1)(c.3) provides that substituted property includes property described in subparagraphs 88(1)(c.3)(i) and (ii) but excludes property described in subparagraphs 88(1)(c.3)(iii) to (v). Subparagraph 88(1)(c.3)(i) provides that, for the purpose of clause 88(1)(c)(vi)(B), substituted property includes property (other than a "specified property") owned by a person after the acquisition of control of the subsidiary where the fair market value of the property is wholly or partly attributable to property distributed to the parent on the winding-up. Subparagraph 88(1)(c.3)(iv) ensures that property that would be substituted property under the ordinary meaning of the term will not be substituted property if it is not owned by the person after the acquisition of control.

Example 1 of the explanatory notes to the introduction of paragraph 88(1)(c.3) [see the explanatory notes to S.C. 1998, c. 19 (formerly Bill C-28)] describes a scenario under the heading *Safe Income Crystallization* that illustrates the application of subparagraph 88(1)(c.3)(iv) to a situation involving a safe income crystallization prior to a takeover. In that example, Sco, a taxable Canadian corporation, owns 15% of Tco, a publicly traded taxable Canadian corporation. Another corporation ("Pco") makes a takeover offer for all the shares of Tco. In anticipation of the sale of the Tco shares, Sco incorporates Newco and transfers, on a tax-deferred basis under section 85, all of its Tco shares to Newco in exchange for Newco shares. The adjusted cost base and the paid-up capital of the Newco shares are then increased by the amount equal to the so-called "safe income" attributable to the Tco shares. Immediately thereafter, Sco sells the Newco shares to Pco for cash and Newco is wound up into Pco.

In the example, subparagraph 88(1)(c.3)(iv) ensures that the Newco shares are not substituted property since Sco did not own the Newco shares after the acquisition of control of Newco by Pco. However, assuming that Tco is subsequently wound up into Pco, the non-depreciable capital property ("bump property") owned by Tco at the time of the acquisition of control of Tco would be ineligible property since, as part of the series of transactions or events that includes the winding up of Tco, property substituted for the bump property (i.e., the 15% of the Tco shares) would have been acquired by a specified shareholder of Tco (i.e., Newco) and would have been owned by Newco after the acquisition of control of Tco.

New subparagraphs 88(1)(c.3)(vi) and (vii), which apply to windings-up that begin after 1997, are enacted to ensure that certain shares or debt will not be substituted property even if they are owned by a specified shareholder after the acquisition of control of the subsidiary. Subparagraph 88(1)(c.3)(vi) provides that shares or debt of the subsidiary will not be substituted property if such shares or debt are owned by the parent immediately before the winding-up of the subsidiary. Thus, in the example discussed above, the Tco shares, which are owned by Pco immediately before the winding-up of Tco, would not be substituted property.

Subparagraph 88(1)(c.3)(vii) provides that a share or debt of a corporation will not be substituted property if the fair market value of the share or debt is not attributable, at any time after the winding-up process begins, to property acquired by the parent on the winding-up. This exemption would apply, for example, if an individual ("Mr. S"), who is a specified shareholder of Tco, incorporates Newco in contemplation of the takeover of Tco and transfers the Tco shares to Newco. Mr. S then transfers the Newco shares to Sco. Immediately after the increase in the adjusted cost base of the shares of Newco (i.e., following the safe income crystallization) Sco sells the Newco shares to Pco. In this scenario, the Sco shares owned by Mr. S after the sale would not be substituted property by reason of new subparagraph 88(1)(c.3)(vii).

Letter from Dept. of Finance, December 19, 2001:

Dear [xxx]:

Thank you for your letter of November 30, 2001 concerning the application of paragraph 88(1)(c.3) of the *Income Tax Act* in the context of a takeover of a taxable Canadian corporation ("Targetco") wherein a specified shareholder of Targetco ("SCo") proposes to transfer its shares in Targetco to a new corporation ("Newco") prior to the completion of the takeover, so as to access SCo's share of the safe income of Targetco. You believe that the application of this provision gives rise to unintended tax consequences, and ask that consideration be given to amending that paragraph to ensure the appropriate tax consequences in the circumstances.

In particular, you advised us that a Canadian corporation ("Buyco") owns 51% of the shares of Targetco, a public corporation. Another cor-

poration ("SCo") owns 15% of the shares of Targetco and is a specified shareholder of Targetco for the purposes of subsection 88(1) of the Act. SCo was also a specified shareholder of Targetco before Buyco last acquired control of Targetco. Buyco decides to acquire all of the remaining shares of Targetco. To this end, Buyco incorporates a wholly-owned subsidiary ("PCo") and transfers its shares of Targetco to PCo, thus resulting in an acquisition of control of Targetco by PCo. PCo then makes a cash takeover bid for all of the remaining shares of Targetco.

In anticipation of the successful takeover bid, SCo incorporates Newco and transfers all of its Targetco shares to Newco in exchange for shares in Newco. The adjusted cost base and paid-up capital of the Newco shares are increased through a safe income crystallization transaction involving Newco and SCo. On the takeover bid, PCo directly or indirectly acquires all of the shares of Targetco for cash by acquiring all of the Targetco shares held by the public and by acquiring all of the Newco shares held by SCo. Newco is wound up into PCo and an election is made under paragraph 88(1)(d) of the Act to "bump" the cost base of the shares of Targetco distributed to PCo on the winding-up. Immediately thereafter, Targetco is wound up into PCo.

The technical concern arises out of the combined application of clause 88(1)(c)(vi)(B) of the Act and the definition of substituted property in paragraph 88(1)(c.3) of the Act. In particular, you are of the view that the Newco shares could be property that is substituted for property acquired by PCo on the winding-up of Targetco and that is acquired by a person (SCo) that was a specified shareholder of Targetco before the last acquisition of control of Targetco. Paragraph 88(1)(c.3)(iv) of the Act does not exclude the Newco shares owned by SCo from the definition of substituted property because the Newco shares are owned by SCo after PCo acquires control of Targetco. Therefore, if the safe income crystallization is viewed as part of the series of transactions or events that includes the winding-up of Targetco, then the "bump" may be denied with respect to eligible property of Targetco distributed to PCo on the winding-up of Targetco.

You submit that, from a tax policy perspective, there is no reason that the safe income crystallization should result in the denial of the bump on the winding-up of Targetco. You contend that the bump denial rules are intended to eliminate "backdoor" purchase butterflies, namely transactions whereby a significant shareholder of the target corporation uses the subsection 88(1) bump rules to achieve what is, in effect, a tax-deferred sale of certain corporate assets of the target while maintaining a continuing interest in other corporate assets of the target. In your view, a safe income crystallization, such as the one described above, does not constitute or facilitate a backdoor purchase butterfly.

We agree that the safe income crystallization described above should not, in and of itself, result in the denial of the bump on otherwise eligible property distributed by Targetco to PCo. Accordingly, we are prepared to recommend to the Minister of Finance an amendment to the Act the effect of which will be to ensure that the shares of Newco are not substituted property for the purposes of paragraph 88(1)(c) of the Act.

If the above recommendation were acted upon, I would anticipate that such amendments would be included in a future technical bill.

Yours sincerely,

Len Farber
General Director, Tax Legislation Division, Tax Policy Branch

Proposed Amendment — 88(1)(c.3)

Letter from Dept. of Finance, April 22, 2002:

Dear [xxx]

Thank you for your letter of October 11, 2001 to Davine Roach of this Division concerning the application of the substituted property rules in paragraphs 88(1)(c.3) and (c.4) of the *Income Tax Act* (the "Act").

In particular, your concern relates to a series of proposed transactions wherein a taxable Canadian corporation ("Bidco") will acquire control of a public corporation ("Targetco"). Under the terms of the takeover, employees of Targetco will participate in the stock option plan of Bidco's parent corporation ("Parentco"). Parentco is a taxable Canadian corporation and owns all of the shares of Bidco. You indicate that a person ("Mr. X"), who is both an employee and specified shareholder of Targetco, holds options under Targetco's employee stock option plan. Concurrently with the closing of the takeover bid, Mr. X, along with other employees of Targetco, will exchange their Targetco options for Parentco options ("option exchange"). Mr. X is also a party to an arrangement with a trust that is governed by subsection 7(6) of the Act. Under that arrangement, Mr. X has an option to acquire Targetco shares ("trust option") from the trust. The trust will elect under the terms of the takeover bid to receive shares of Parentco and the trust option will be amended to reflect the substitution of the Targetco shares for Parentco shares. Following the takeover, Targetco will be wound-up into Bidco.

Your concern is that Mr. X may acquire property described in subparagraph 88(1)(c.3)(i) as a consequence of the option exchange and the amendment to the trust option. Accordingly, the addition to the adjusted cost base of certain non-depreciable capital property of Targetco provided in paragraphs 88(1)(c) and (d) (the "bump") may be unavailable on the winding-up of Targetco into Bidco.

You ask that we consider including, in the definition of specified property in paragraph 88(1)(c.4) of the Act, an option or right to acquire a share received in the circumstances described above. You argue that the option exchange and the amendment to the trust option is simply a proxy for an exchange of the underlying shares. Accordingly, you submit that there is no policy reason for treating the option exchange and the amendment to the trust option any differently from an exchange of Targetco shares for Parentco shares.

We agree that the option exchange and the amendment to the trust option described above, in and of themselves, should not result in the denial of the bump on the winding-up of Targetco into Bidco. Accordingly, we are prepared to recommend to the Minister of Finance that the Act be amended to ensure that the rights to acquire shares of Parentco received by Mr. X will not be substituted property within the meaning of subparagraph 88(1)(c.3)(i). We are also prepared to recommend that the amendment apply to windings-up that begin after 2001. If the above recommendation were acted upon, we would anticipate that the amendment would be included in a future technical bill.

Yours sincerely,

Brian Ernewein

Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 88(1)(c.4) — Meaning of specified property; 88(1)(c.6) — Where control acquired by way of articles of arrangement; 88(1)(c.7) — Extended meaning of depreciable property; 88(4) — Amalgamation deemed not to be acquisition of control; 248(5) — Substituted property; 256(6)–(9) — Whether control acquired.

History: Para. 88(1)(c.3) added by 1998, c. 19, subsec. 118(6), applicable to windings-up that begin after February 21, 1994 except that, in its application to windings-up that began before June 21, 1996 and to windings-up that begin after June 20, 1996 that are part of an arrangement that was substantially advanced, as evidenced in writing, before June 21, 1996, the para. shall be read as follows:

> (c.3) for the purpose of clause (c)(vi)(B), property acquired by any person in substitution for particular property or properties
>
> (i) includes property owned by the person at any time after the acquisition of control referred to in clause (c)(vi)(A) the fair market value of which is, at that time, determinable primarily by reference to the fair market value of the particular property or properties or by reference to any proceeds from a disposition of the particular property or properties, but
>
> (ii) does not include property that is money received as consideration for a disposition of the particular property or properties;

I.T. Technical News: 9 (the backdoor butterfly rule).

(c.4) **["specified property"]** — for the purposes of subparagraphs (c.3)(i) and (v), a specified property is

(i) a share of the capital stock of the parent that was received as consideration for the acquisition of a share of the capital stock of the subsidiary by the parent or by a corporation that was a specified subsidiary corporation of the parent immediately before the acquisition,

Proposed Amendment — 88(1)(c.4)(i)

(i) a share of the capital stock of the parent that was

(A) received as consideration for the acquisition of a share of the capital stock of the subsidiary by the parent or by a corporation that was a specified subsidiary corporation of the parent immediately before the acquisition, or

(B) issued for consideration that consists solely of money,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 88(3), will amend subpara. 88(1)(c.4)(i) to read as above, applicable to windings-up that begin after 1997.

Technical Notes: Paragraph 88(1)(c.4) defines "specified property" for the purposes of subparagraphs 88(1)(c.3)(i) and (v). Specified property is excluded from the extended meaning of a substituted property found in subparagraph 88(1)(c.3)(i). Subparagraph 88(1)(c.4)(i) is amended to include, within the definition "specified property", shares of the parent issued for consideration that consists solely of money. This amendment, which applies to windings-up that begin after 1997, ensures that a specified shareholder that participates in a takeover by acquiring shares of the parent for cash consideration will not be considered to have acquired substituted property within the meaning assigned by subparagraph 88(1)(c.3)(i).

Letter from Dept. of Finance, September 28, 2000:

Dear [xxx]

This is in response to your letters of September 15 and 20, 2000, and further to your conversations with Davine Roach, regarding the application of the "specified property" rule in paragraph 88(1)(c.4) of the *Income Tax Act* (the "Act") to the proposed transactions described in your letter. You believe this application gives rise to unintended tax consequences and ask that consideration be given to amending the paragraph to ensure the appropriate tax results in the circumstances.

Based on our understanding of the facts of the proposed transactions as described in your letter, JB1 and JB2 will make a joint bid through Bidco to acquire all the shares of Target for cash. JB1 is a specified shareholder of the Target and JB2 is not a specified shareholder of Target. JB1 will, amongst other things, contribute cash to Bidco, which will issue shares to JB1 in consideration for that cash. JB1 will not control Bidco at the time Bidco acquires control of Target. Target will be wound-up into Bidco and Bidco will seek to bump the cost of certain non-depreciable capital property distributed to Bidco on the wind-up of Target pursuant to paragraph 88(1)(c) of the Act. Bidco shares acquired by JB1 as consideration for the cash contribution will not qualify as "specified property" for the purposes of 88(1)(c)(vi) and consequently the so called "bump denial rule" in 88(1)(c)(vi) will cause the property distributed to Bidco on the winding up of Target to be an "ineligible property" for the purposes of the 88(1)(c) bump.

As you know, paragraph 88(1)(c.4) of the Act excludes property that is "specified property" from the extended definition of substituted property in subparagraph 88(1)(c.3)(i), which applies for the purpose of the bump denial rule in subparagraph 88(1)(c)(vi) of the Act. The statutory exclusions from the bump denial rule do not, however, anticipate joint takeover bids by a specified shareholder of the subsidiary and a third party, where such bids result in the acquisition of a non-controlling interest in the parent by the specified shareholder who acquired shares of the parent for cash prior to the acquisition of control of the subsidiary by the parent.

In these circumstances, we agree that the bump denial rule in subparagraph 88(1)(c)(vi) of the Act should not apply. Consequently, we will recommend to the Minister of Finance that an amendment be introduced to the Act to ensure that, in the circumstances described in your letter, the bump denial rule does not apply solely because JB1 acquired shares of Bidco for consideration consisting only of cash prior to Bidco acquiring control of Target. We would also recommend that such an amendment be effective for windings-up that begin after 1999.

If the recommendation is acted upon, I would anticipate that such an amendment would be included in a future technical bill.

Yours sincerely,

Len Farber
General Director, Tax Legislation Division, Tax Policy Branch

(ii) an indebtedness that was issued by the parent as consideration for the acquisition of a share of the capital stock of the subsidiary by the parent,

(iii) a share of the capital stock of a taxable Canadian corporation that was received as consideration for the acquisition of a share of the capital stock of the subsidiary by the taxable Canadian corporation or by the parent where the parent was a specified subsidiary corporation of the taxable Canadian corporation immediately before the acquisition,

(iv) an indebtedness of a taxable Canadian corporation that was issued by it as consideration for the acquisition of a share of the capital stock of the subsidiary by the taxable Canadian corporation or by the parent where the parent was a specified subsidiary corporation of the taxable Canadian corporation immediately before the acquisition,

(v) where the subsidiary was formed on the amalgamation of 2 or more predecessor corporations at least one of which was a subsidiary wholly-owned corporation of the parent, a share of the capital stock of the subsidiary

(A) that was issued on the amalgamation in exchange for a share of the capital stock of a predecessor corporation, and

(B) that was, immediately after the amalgamation, redeemed, acquired or cancelled by the subsidiary for money, and

(vi) where the subsidiary was formed on the amalgamation of 2 or more predecessor corporations at least one of which was a subsidiary wholly-owned corporation of the parent, a share of the capital stock of the parent

(A) that was issued on the amalgamation in exchange for a share of the capital stock of a predecessor corporation, and

(B) that was, immediately after the amalgamation, redeemed, acquired or cancelled by the parent for money;

Proposed Amendment — 88(1)(c.4)

Letter from Dept. of Finance, April 22, 2002: See under 88(1)(c.3).

Proposed Amendment — 88(1)(c.4)

Letter from Dept. of Finance, May 2, 2002:

Dear Mr. [xxx]

Thank you for your letters dated March 1 and 5, 2002 concerning the application of the substituted property rules in paragraphs 88(1)(c.3) and (c.4) of the *Income Tax Act* (the "Act").

In particular, your concern relates to a series of proposed transactions wherein a taxable Canadian corporation ("Bidco") acquires more than 66⅔% but less than 90% of the shares of another corporation ("Targetco") under a takeover bid. To complete the takeover, Bidco implements what is commonly referred to as an amalgamation squeeze out. On the amalgamation, a new corporation ("Amalco") will issue common shares to Bidco and redeemable preferred shares to the minority shareholders of Targetco. Amalco will redeem the redeemable preferred shares immediately after the amalgamation for consideration that includes common shares of Bidco, as required under the applicable securities law. Following the redemption, Amalco will be a wholly-owned subsidiary of Bidco. Amalco will then be wound-up into Bidco.

Your concern is that the redeemable preferred shares and the common shares of Bidco would not qualify as specified property as defined in paragraph 88(1)(c.4) of the Act and, therefore, such shares will be substituted property as defined in subparagraph 88(1)(c.3)(i) of the Act. Accordingly, the addition to the adjusted cost base of certain non-depreciable capital property of Amalco (the "bump") provided in paragraphs 88(1)(c) and (d) of the Act would be unavailable on the winding-up of Amalco into Bidco.

In your view, the redemption of the redeemable preferred shares for common shares of Bidco does not violate any policy objectives underlying the bump rules. You state that, if the minority shareholders had tendered their shares of Targetco to Bidco under the takeover bid, the Bidco common shares received by them would have been specified property and, as a result, would not have been substituted property for the purpose of subparagraph 88(1)(c.3)(i). Accordingly, you request that we consider amending the definition of specified property in paragraph 88(1)(c.4) to accommodate the redemption of the redeemable preferred shares of Amalco for common shares of Bidco.

We agree that the redemption of the redeemable preferred shares in consideration for common shares of Bideo should not, in the circumstances described above, affect the availability of the bump on the winding-up of Amalco into Bideo. Accordingly, we are prepared to recommend to the Minister of Finance that the Act be amended to ensure that the redeemable preferred shares of Amalco and the common shares of Bideo be considered specified property within the meaning of paragraph 88(1)(c.4). We are also prepared to recommend that the amendment apply to windings-up that begin after 2001. If the above recommendation were acted upon, we would anticipate that the amendment would be included in a future technical bill.

Yours sincerely,

Brian Ernewein

Director, Tax Legislation Division, Tax Policy Branch

Proposed Amendment — 88(1)(c.4)

Letter from Dept. of Finance, June 24, 2003:

Dear [xxx]

Thank you for your letter of May 5, 2003 concerning the application of the substituted property rules in paragraphs 88(1)(c.3) and (c.4) of the *Income Tax Act* (the "Act").

In particular, your concern relates to the treatment of employee stock options in a series of proposed transactions wherein a taxable Canadian corporation that is a public corporation ("Acquireco") will acquire control of another taxable Canadian corporation that is also a public corporation ("Targeteo").

Certain employees (including directors) of Targeteo and other corporations related to Targeteo (the "Optionholders") hold options to acquire Targeteo Common Shares ("Targeteo Options"). Under the terms of the takeover, Targeteo Options that are unexercised on the date of the acquisition of Targeteo will become options to acquire Acquireco common shares ("Acquireco Options") at a ratio that is consistent with the purchase price of the shares under the takeover transaction (the "Option Exchange"). Following the takeover, Targeteo may be wound-up or amalgamated into Acquireco or a corporation related to Acquireco in circumstances where subsections 87(11) or 88(1) of the Act would apply. The Optionholders who receive Acquireco Options may in the aggregate be considered a "specified shareholder" of Targeteo (as that term is applied in subparagraph 88(1)(c)(vi)).

Your concern is that the Optionholders may acquire "substituted property" as described in subparagraph 88(1)(c.3) as a consequence of the Option Exchange. Accordingly, the addition to the adjusted cost base of certain non-depreciable capital property of Targeteo provided in paragraphs 88(1)(c) and (d) (the "bump") may be unavailable on the winding-up or amalgamation of Targeteo into Acquireco or a corporation related to Acquireco.

You ask that we consider including, in the definition of specified property in paragraph 88(1)(c.4) of the Act, an option or right to acquire a share received in the circumstances described above. You argue that the Option Exchange is simply a proxy for an exchange of the underlying shares. Accordingly, you submit that there is no policy reason for treating the Option Exchange any differently from an exchange of Targeteo shares for Acquireco shares.

Based on our understanding of the facts, we agree that the Option Exchange should not, in and of itself, result in the denial of the bump on the winding up of Targeteo into Acquireco or a corporation related to Acquireco. Accordingly, we are prepared to recommend to the Minister of Finance that the Act be amended to ensure that the rights to acquire shares of Acquireco received by the Optionholders will not be substituted property within the meaning of subparagraph 88(1)(c.3)(i). We are also prepared to recommend that the amendment apply to windings-up that begin after 2001. If the above recommendation were acted upon, we would anticipate that the amendment would be included in a future technical bill.

Yours very truly,

Brian Ernewein

Director, Tax Legislation Division, Tax Policy Branch

Proposed Amendment — 88(1)(c.4)

Letter from Dept. of Finance, May 31, 2004:

Dear [xxx]

Thank you for your email of May 13, 2004 to Mr. Daryl Boychuk of this Division concerning the application of the substituted property rules in paragraphs 88(1)(c.3) and (c.4) of the *Income Tax Act* (the "Act").

In particular, your concern relates to a series of proposed transactions in which control of a taxable Canadian corporation ("[xxx]") will be acquired. The controlling shareholders of [xxx] (each of which is a "subsidiary wholly-owned corporation" of "[xxx]") will amalgamate with [xxx] to create "[xxx]". Pursuant to the terms of the amalgamation, a wholly owned subsidiary of [xxx] ("[xxx]") will receive common shares of [xxx] and the public shareholders of [xxx] will receive redeemable preferred shares that will be redeemed immediately after the amalgamation. [xxx] will then be wound-up into [xxx] in circumstances described in subsection 88(1) of the Act.

You advised us that one of the shareholders of [xxx] (the "Shareholder") owns less than 10% of the issued shares of any class of [xxx]. However, there is a group of key employees of [xxx] who are also shareholders and option holders of [xxx] that, together with the Shareholder, may be viewed as a group described in subclause 88(1)(c)(vi)(B)(II).

To finance the acquisition of [xxx], [xxx] will issue debt in the U.S. and Canadian markets. As part of its general investment strategy, the Shareholder would like to subscribe for a portion of the debt. The debt in question would be non-participating, interest-bearing debt and would not differ from the debt issued to other lenders.

You are concerned that the subscription for any portion of the debt by the Shareholder could be viewed as an acquisition of property substituted for property acquired by [xxx] on the winding up of [xxx] within the meaning of subparagraph 88(1)(c.3)(i). You note that the debt would not be "specified property" as defined in paragraph 88(1)(c.4) since it would not be issued as consideration for the acquisition of a share of the capital stock of a corporation described in subparagraphs 88(1)(c.4)(ii) or (iv). Accordingly, the addition to the adjusted cost base of certain non-depreciable capital property of [xxx] provided in paragraphs 88(1)(c) and (d) (the "bump") may not be available on the winding-up of [xxx] into [xxx].

In your view, the denial of the bump in these circumstances would not be consistent with the tax policy underlying subparagraph 88(1)(c)(vi) in that the transactions do not facilitate a tax-deferred transfer of some of the assets of [xxx]. Moreover, an amendment to paragraph 88(1)(c.4) to exclude a debt issued to a specified shareholder for consideration that consists solely of money would be consistent with the proposed amendment to subparagraph 88(1)(c.4)(i).

We understand your concerns regarding the denial of the bump in the circumstances described in your letter and we do not dispute that the result appears to be inconsistent with the policy underlying subparagraph 88(1)(c)(vi). As discussed, we are reviewing subparagraph 88(1)(c.3)(i) and the definition of "specified property" in paragraph 88(1)(c.4) with a view to identifying those amendments that are necessary to ensure that the bump is not denied in appropriate circumstances. I trust that this letter is informative of our general position regarding your submission.

Yours sincerely,

Len Farber

General Director, Tax Legislative Division, Tax Policy Branch

Proposed Amendment — 88(1)(c.4)

Letter from Dept. of Finance, April 15, 2005:

Dear [xxx]

This is in reply to your letter dated March 16, 2005 and further to your discussions with Daryl Boychuk of this Division concerning the application of paragraphs 88(1)(c.3) and (c.4) of the *Income Tax Act* (the "Act"). In your letter, you asked us for clarification concerning the scope of certain proposed amendments referred to in correspondence released by the Tax Legislation Division. In particular, you have asked us to advise you whether these amendments, which relate to the meaning of specified property in paragraph 88(1)(c.4) of the Act and, by implication, to the meaning of substituted property in subparagraph 88(1)(c.3)(i) of the Act, will apply to shares and options of the parent corporation in the circumstances described below. In the alternative, you have asked us if we would be prepared to recommend amendments to the Act that would include such property within the meaning of specified property.

In addition, you asked us if we would be prepared to recommend an amendment to the Act that would ensure that certain publicly-traded warrants cancelled before the winding up of the subsidiary corporation,

as described below, would not be substituted property within the meaning of subparagraph 88(1)(c)(vi).

In the situation described in your letter, a taxable Canadian corporation ("Parent") and its subsidiary wholly-owned corporation ("Subco") acquired control of another taxable Canadian corporation ("Target") by acquiring, pursuant to a takeover offer, more than 80% of the issued and outstanding common shares of Target. The only consideration issued for the Target shares was Parent shares. Although Target has outstanding options and warrants to acquire Target shares, the takeover offer did not extend to these options or warrants. All of the warrants ("Target Warrants") are listed on the Toronto Stock Exchange.

Parent intends to acquire the remaining Target shares through a plan of arrangement. Prior to entering into the plan of arrangement, Subco will be wound up into Parent and, as a result, the Target shares acquired by Subco pursuant to the takeover offer will be transferred to Parent. In furtherance of the plan of arrangement, Parent has incorporated a new subsidiary wholly-owned corporation ("Newco") under the laws of Ontario.

The Target shareholders will be asked to approve a plan of arrangement pursuant to which Target will amalgamate with Newco to form Amalco. On the amalgamation, the Target shareholders, other than Parent (and any dissenting shareholders) will receive Parent shares on the same basis as they would have received had they tendered their Target shares under the takeover offer. As a consequence of the amalgamation, Parent will become the sole shareholder of Amalco. Each person that owns a Target Warrant or Target option will, on the amalgamation, exchange that option or warrant for an option or warrant, respectively, to acquire that number of shares of Parent that such holder would have acquired if the Target Warrant or Target option had been exercised and the Target shares so acquired exchanged for Parent shares under the takeover offer. The option exchange will be governed by subsection 7(1.4) of the Act and the warrant exchange will be governed by subsection 87(5) of the Act, as modified by paragraph 87(9)(a.3) of the Act. Subsequent to the amalgamation, Parent intends to cause Amalco to be wound up with the intention of making designations under paragraph 88(1)(d) of the Act in respect of capital property, owned by Target at the time Parent acquired control of Target, that is not ineligible property as defined in paragraph 88(1)(c) of the Act.

In your letter, you refer to correspondence from the Tax Legislation Division dated May 2, 2002 and June 24, 2003. The letter dated May 2, 2002 states that we are prepared to recommend to the Minister that an amendment to the Act be made to ensure that certain redeemable preferred shares acquired on an amalgamation (and the shares of the parent corporation acquired on the redemption of those shares) would be specified property within the meaning of paragraph 88(1)(c.4) of the Act. The letter dated June 24, 2003 states that we are prepared to recommend to the Minister that the Act be amended to ensure that the right to acquire shares of the parent corporation would not, in the circumstances described in the letter, be substituted property within the meaning of subparagraph 88(1)(c.3)(i) of the Act.

You have asked us if the recommended amendments referred to in our letters dated May 2, 2002 and June 24, 2003, would ensure that the Parent shares received by the shareholders of Target and the Parent options or warrants received by the holders of Target options and Target Warrants on the amalgamation of Newco and Target would be specified property within the meaning of paragraph 88(1)(c.4) of the Act. Alternatively, you have asked us if we would be prepared to recommend amendments to the Act that would include such property within the meaning of specified property.

In addition, you stated in your letter that if a specified shareholder of Target acquires Target Warrants prior to the effective date of the plan of arrangement, such acquisition would result in the denial of the paragraph 88(1)(c) bump on the winding up of Amalco into Parent since the Target Warrants will be property substituted for property owned by Target for the purpose of paragraph 88(1)(c)(vi). In your view, the Target Warrants should not be considered substituted property since they will be cancelled on the amalgamation and, therefore, will not, at any time after the beginning of the winding up of Amalco, derive any value from the Amalco assets.

We confirm that the recommended amendment referred to in our letter of May 2, 2002, if enacted, will ensure that the Parent shares acquired by the Target shareholders, on the amalgamation described above, will be specified property within the meaning of paragraph 88(1)(c.4) of the Act. In addition, we confirm that we are prepared to recommend to the Minister that paragaph 88(1)(c.4) of the Act be amended so that the Parent options and warrants acquired on the amalgamation described above, will be specified property within the meaning of paragraph 88(1)(c.4) of the Act. Lastly, we are of the view that the Target Warrants acquired prior to the effective date of the plan of arrangement should not, in the circumstances described above, be substituted property for the purpose of paragraph 88(1)(c)(vi) solely because of subparagraph 88(1)(c.3)(i). Accordingly, we will recommend to the Minister that the Act be amended to ensure that the Target Warrants will be specified property within the meaning of paragraph 88(1)(c.4) of the Act.

If the above recommendations are accepted, the amendments would be applicable to windings-up that begin after 2001. While we cannot offer any assurance that either the Minister or Parliament will agree with our recommendations, we hope that this statement of our intention is helpful to you.

Yours sincerely,

Len Farber
General Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 88(1)(c.5) — Meaning of specified subsidiary corporation; 88(4) — Amalgamation deemed not to be acquisition of control.

History: Para. 88(1)(c.4) added by 1998, c. 19, subsec. 118(6), applicable to windings-up that begin after February 21, 1994.

(c.5) **["specified subsidiary corporation"]** — for the purpose of paragraph (c.4), a corporation is a specified subsidiary corporation of another corporation, at any time, where the other corporation holds, at that time, shares of the corporation

(i) that give the shareholder 90% or more of the votes that could be cast under all circumstances at an annual meeting of shareholders of the corporation, and

(ii) having a fair market value of 90% or more of the fair market value of all the issued shares of the capital stock of the corporation;

Related Provisions: 88(4) — Amalgamation deemed not to be acquisition of control.

History: Para. 88(1)(c.5) added by 1998, c. 19, subsec. 118(6), applicable to windings-up that begin after February 21, 1994.

(c.6) **[control acquired by way of articles of arrangement]** — for the purpose of paragraph (c.3) and notwithstanding subsection 256(9), where control of a corporation is acquired by way of articles of arrangement, that control is deemed to have been acquired at the end of the day on which the arrangement becomes effective;

Related Provisions: 88(4) — Amalgamation deemed not to be acquisition of control.

History: Para. 88(1)(c.6) added by 1998, c. 19, subsec. 118(6), applicable to windings-up that begin after February 21, 1994.

(c.7) **[depreciable property]** — for the purpose of subparagraph (c)(iii), a leasehold interest in a depreciable property and an option to acquire a depreciable property are depreciable properties;

Related Provisions: 88(4) — Amalgamation deemed not to be acquisition of control.

History: Para. 88(1)(c.7) added by 1998, c. 19, subsec. 118(6), applicable to windings-up that begin after June 20, 1996.

(c.8) **["specified class"]** — for the purpose of clause (c.2)(iii)(A), a specified class of the capital stock of a corporation is a class of shares of the capital stock of the corporation where

(i) the paid-up capital in respect of the class was not, at any time, less than the fair market value of the consideration for which the shares of that class then outstanding were issued,

(ii) the shares are non-voting in respect of the election of the board of directors of the corporation, except in the event of a failure or default under the terms or conditions of the shares,

(iii) under neither the terms and conditions of the shares nor any agreement in respect of the shares are the shares convertible into or exchangeable for shares other than shares of a specified class of the capital stock of the corporation, and

(iv) under neither the terms and conditions of the shares nor any agreement in respect of the shares is any holder of the shares entitled to receive on the redemption, cancellation or acquisition of the shares by the corporation or by any person with whom the corporation does not deal at arm's length an amount (excluding any premium for early redemption) greater than the total of the fair market value of the consideration for which the shares were issued and the amount of any unpaid dividends on the shares;

Related Provisions: 88(4) — Amalgamation deemed not to be acquisition of control.

History: Para. 88(1)(c.8) added by 2001, c. 17, subsec. 66(3), applicable to windings-up that begin after November 1994.

(d) **[increase in cost amounts (bump)]** — the amount determined under this paragraph in respect of each property of the subsidiary distributed to the parent on the winding-up is such portion of the amount, if any, by which the total determined under subparagraph (b)(ii) exceeds the total of

(i) the amount, if any, by which

(A) the total of all amounts each of which is an amount in respect of any property owned by the subsidiary immediately before the winding-up, equal to the cost amount to the subsidiary of the property immediately before the winding-up, plus the amount of any money of the subsidiary on hand immediately before the winding-up,

exceeds the total of

(B) all amounts each of which is the amount of any debt owing by the subsidiary, or of any other obligation of the subsidiary to pay any amount, that was outstanding immediately before the winding-up, and

(C) the amount of any reserve (other than a reserve referred to in paragraph 20(1)(n), subparagraph 40(1)(a)(iii) or 44(1)(e)(iii) of this Act or in subsection 64(1) or (1.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as those two provisions read immediately before November 3,[11] 1981) deducted in computing the subsidiary's income for its taxation year during which its assets were distributed to the parent on the winding-up, and

(i.1) the total of all amounts each of which is an amount in respect of any share of the capital stock of the subsidiary disposed of by the parent on the winding-up or in contemplation of the winding-up, equal to the total of all amounts received by the parent or by a corporation with which the parent was not dealing at arm's length (otherwise than because of a right referred to in paragraph 251(5)(b) in respect of the subsidiary) in respect of

(A) taxable dividends on the share or on any share (in this subparagraph referred to as a "replaced share") for which the share or a replaced share was substituted or exchanged to the extent that the amounts thereof were deductible from the recipient's income for any taxation year by virtue of section 112 or subsection 138(6) and were not amounts on which the recipient was required to pay tax under Part VII of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read on March 31, 1977, or

(B) capital dividends and life insurance capital dividends on the share or on any share (in this subparagraph referred to as a "replaced share") for which a share or a replaced share was substituted or exchanged,

as is designated by the parent in respect of that capital property in its return of income under this Part for its taxation year in which the subsidiary was so wound up, except that

(ii) in no case shall the amount so designated in respect of any such capital property exceed the amount, if any, by which the fair market value of the property at the time the parent last acquired control of the subsidiary exceeds the cost amount to the subsidiary of the property immediately before the winding-up, and

(iii) in no case shall the total of amounts so designated in respect of all such capital properties exceed the amount, if any, by which the total determined under subparagraph (b)(ii) exceeds the total of the amounts determined under subparagraphs (i) and (i.1).

Related Provisions: 88(1)(d.2) — When taxpayer last acquired control; 88(1)(d.3) — Where control acquired because of death; 88(1)(d.4) — Share in foreign affiliate of subsidiary; 88(1.7) — Where parent did not deal at arm's length; 88(4) — Amalgamation deemed not to be acquisition of control; 256(6)–(9) — Whether control acquired; Reg. 5905(5.1) — FAPI — windup of corporation holding foreign affiliate. See also at end of 88(1).

History: The portion of para. 88(1)(d) after subpara. (iii) repealed by 1998, c. 19, subsec. 118(7), applicable to windings-up that begin after February 21, 1994. That portion formerly read:

> and for the purposes of this paragraph, where a parent corporation has been incorporated or otherwise formed after the time any other corporation (other than a corporation acquired by it from a person with whom it was dealing at arm's length) with which it did not deal at arm's length at any time prior to the winding-up was incorporated or otherwise formed, the parent corporation shall be deemed to have been in existence from the time of formation of the other corporation and to have been not dealing at arm's length with the other corporation from that time;

The opening words of para. 88(1)(d) amended by 1995, c. 3, subsec. 24(3), applicable to windings-up that begin after February 21, 1994. The opening words formerly read:

> (d) the amount determined under this paragraph in respect of each property that was a capital property (other than property transferred in the course of a reorganization described in paragraph 55(3)(b) in the course of which a dividend was received by a corporation to which subsection 55(2) would, but for paragraph 55(3)(b), apply where the winding-up of the subsidiary was part of a transfer, directly or indirectly, of property of a particular corporation to a transferee, within the meaning assigned by paragraph 55(3)(b), property transferred to the subsidiary by the parent or by any person or partnership that was not, otherwise than because of a right referred to in paragraph 251(5)(b), dealing at arm's length with the parent, or a depreciable property) owned by the subsidiary at the time that the parent last acquired control of the subsidiary and thereafter without interruption until such time as it was distributed to the parent on the winding-up, is such portion of the amount, if any, by which the total determined under subparagraph (b)(ii) exceeds the total of

That portion of para. 88(1)(d) preceding subpara. (i) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(4), applicable to windings-up after

[11] *Sic.* The date should be November 13.

September 1988, except that, in its application to such windings-up beginning before July 14, 1990, that portion shall be read as follows:

"(d) the amount determined under this paragraph in respect of each property that was a capital property (other than property transferred in the course of a reorganization described in paragraph 55(3)(b) in the course of which a dividend was received by a corporation to which subsection 55(2) would, but for paragraph 55(3)(b), apply where the winding-up of the subsidiary was part of a transfer, directly or indirectly, of property of a particular corporation to a transferee, within the meaning assigned by paragraph 55(3)(b), or a depreciable property) owned by the subsidiary at the time that the parent last acquired control of the subsidiary and thereafter without interruption until such time as it was distributed to the parent on the winding-up, is such portion of the amount, if any, by which the total determined under subparagraph (b)(ii) exceeds the total of".

That portion formerly read:

(d) the amount determined under this paragraph in respect of each property that was a capital property (other than property transferred in the course of a series of transactions or events to which subsection 55(2) would, but for paragraph 55(3)(b), apply or a depreciable property) owned by the subsidiary at the time that the parent last acquired control of the subsidiary and thereafter without interruption until such time as it was distributed to the parent on the winding-up, is such portion of the amount, if any, by which the total determined under subparagraph (b)(ii) exceeds the total of

Cl. 88(1)(d)(i)(C) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(5), applicable to windings-up beginning after 1989. Cl. (d)(i)(C) formerly read:

(C) the amount of any reserve (other than a reserve referred to in paragraph 20(1)(n) or subparagraph 40(1)(a)(iii) of this Act or subsection 64(1) or (1.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952) deducted in computing the subsidiary's income for its taxation year during which its assets were distributed to the parent on the winding-up, and

That portion of subpara. 88(1)(d)(i.1) preceding cl. (A) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(6), to add "(otherwise than by reason of a right referred to in paragraph 251(5)(b) in respect of the subsidiary)", applicable to windings-up beginning after 1986, except that, in its application with respect to windings-up beginning before July 1988, that portion shall be read without reference to the phrase "or in contemplation of the winding-up" therein.

I.T. Application Rules: 26(5)(c)(i)(C) (where property owned since before 1972); 69 (meaning of "chapter 148 of ...").

I.T. Technical News: 16 (*Parthenon Investments* case).

Advance Tax Rulings: ATR-67: Increase in the cost of property on the winding-up of a wholly-owned subsidiary.

(d.1) **[rules not applicable]** — subsection 84(2) and section 21 of the *Income Tax Application Rules* do not apply to the winding-up of the subsidiary, and subsections 13(21.2) and 14(12) do not apply to the winding-up of the subsidiary with respect to property acquired by the parent on the winding-up;

History: Para. 88(1)(d.1) amended by 1998, c. 19, subsec. 118(8), applicable to windings-up that begin after April 26, 1995 except that, in its application to windings-up that began before 1996, the reference in para. 88(1)(d.1) to "subsections 13(21.2) and 14(12)" shall be read as a reference to "subsections 13(21.2), 14(12) and 85(5.1)". The para. formerly read:

(d.1) subsections 84(2) and 85(5.1) and section 21 of the *Income Tax Application Rules* are not applicable to the winding-up of the subsidiary;

(d.2) **[when control acquired]** — in determining, for the purposes of this paragraph and paragraphs (c) and (d), the time at which a person or group of persons (in this paragraph and paragraph (d.3) referred to as the "acquirer") last acquired control of the subsidiary, where control of the subsidiary was acquired from another person or group of persons (in this paragraph referred to as the "vendor") with whom the acquirer was not (otherwise than solely because of a right referred to in paragraph 251(5)(b)) dealing at arm's length, the acquirer is deemed to have last acquired control of the subsidiary at the earlier of

(i) the time at which the vendor last acquired control (within the meaning that would be assigned by subsection 186(2) if the reference in that subsection to "another corporation" were read as "a person" and the references in that subsection to "the other corporation" were read as "the person") of the subsidiary, and

(ii) the time at which the vendor was deemed for the purpose of this paragraph to have last acquired control of the subsidiary;

Related Provisions: 88(1)(d.3) — Where control acquired because of death; 88(4) — Amalgamation deemed not to be acquisition of control; 256(6)–(9) — Whether control acquired. See also at end of 88(1).

History: Para. 88(1)(d.2) amended by 1998, c. 19, subsec. 118(9), applicable to windings-up that begin after December 20, 1991. The para. formerly read:

(d.2) in determining, for the purposes of this paragraph and paragraphs (c) and (d), the time that a taxpayer last acquired control of the subsidiary, where control of the subsidiary was acquired from a person or group of persons (in this paragraph referred to as the "vendor") with whom the taxpayer was not (otherwise than because of a right referred to in paragraph 251(5)(b)) dealing at arm's length, the taxpayer shall be deemed to have last acquired control at the earlier of the time that the vendor last acquired control (within the meaning that would be assigned by subsection 186(2) if the reference therein to "another corporation" were read as "a person" and the references therein to "the other corporation" were read as "the person") of the subsidiary and the time that the vendor was deemed by this subsection to have last acquired control, except that in determining the time that a particular person or group of persons last acquired control of a corporation where at any time control of the corporation is acquired by the particular person or group of persons because of a bequest or an inheritance of shares of the capital stock of the corporation, for the purposes of this paragraph and subsection 186(2) in its application to this paragraph, the particular person or group of persons shall be deemed at that time, and at any time before that time, to have dealt at arm's length with the person who bequeathed the shares, or from whom the shares were inherited, and each other person who is related to that person;

Para. 88(1)(d.2) substituted by 1994, c. 21, subsec. 40(1), applicable to windings-up that begin after December 20, 1991. That para. formerly read:

(d.2) in determining for the purposes of this paragraph and paragraphs (c) and (d) the time that a taxpayer last acquired control of the subsidiary, where control of the subsidiary was acquired from a person or group of persons (in this paragraph referred to as the "vendor") with whom the taxpayer was not (otherwise than because of a right referred to in paragraph 251(5)(b)) dealing at arm's length, the taxpayer shall be deemed to have last acquired control at the earlier of the time that the vendor last acquired control (within the meaning that would be assigned by subsection 186(2) if the reference therein to "another corporation" were read as a reference to "a person" and the references therein to "the other corporation" were read as references to "the person") of the subsidiary and the time that the vendor was deemed by this subsection to have last acquired control, except that, in determining the time that a particular taxpayer last acquired control of a corporation where at any time control of the corporation is acquired by the particular taxpayer because of a bequest or an inheritance of shares of the capital stock of the corporation, for the purposes of this paragraph and subsection 186(2) in its application to this paragraph, the particular taxpayer shall be deemed at that time, and at any time before that time, to have dealt at arm's length with the person who bequeathed the shares, or from whom the shares were inherited, and each other person who is related to that person;

Para. 88(1)(d.2) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 38(4), applicable to windings-up beginning after December 20, 1991. Para (d.2) formerly read:

(d.2) in determining for the purposes of this paragraph and paragraphs (c) and (d) the time that a taxpayer last acquired control of the subsidiary, where control of the subsidiary was acquired (otherwise than by way of bequest or inheritance) from a person or group of persons (in this paragraph referred to as the "vendor") with

whom the taxpayer was not (otherwise than by virtue of a right referred to in paragraph 251(5)(b)) dealing at arm's length, the taxpayer shall be deemed to have last acquired control at the earlier of the time that the vendor last acquired control (within the meaning assigned by subsection 186(2) if the reference therein to "another corporation" were read as a reference to "a person" and the references therein to "the other corporation" were read as references to "the person") of the subsidiary and the time that the vendor was deemed by this subsection to have last acquired control;

(d.3) **[control acquired due to death]** — for the purposes of paragraphs (c), (d) and (d.2), where at any time control of a corporation is last acquired by an acquirer because of an acquisition of shares of the capital stock of the corporation as a consequence of the death of an individual, the acquirer is deemed to have last acquired control of the corporation immediately after the death from a person who dealt at arm's length with the acquirer;

Related Provisions: 88(4) — Amalgamation deemed not to be acquisition of control; 256(6)–(9) — Whether control acquired. See also at end of 88(1).

History: Para. 88(1)(d.3) added by 1998, c. 19, subsec. 118(9), applicable to windings-up that begin after December 20, 1991.

Proposed Addition — 88(1)(d.4)

(d.4) **[share in foreign affiliate of subsidiary]** — for the purpose of subparagraph (d)(ii),

(i) if, at the time immediately before the winding-up, the subsidiary holds one or more shares of a foreign affiliate of the subsidiary, there shall be added to the cost amount, at that time, of each of those shares (referred to in this subparagraph as the "particular share") the amount determined by the formula

$$A \times B/C$$

where

A is the total of all amounts each of which is the amount, if any, by which

(A) the amount of a dividend received on any share of the foreign affiliate (or any other share of the foreign affiliate for which that share is substituted property) held by the subsidiary immediately before the winding-up, that was deductible under section 113 in computing the income of the subsidiary or of a corporation with which the subsidiary was not dealing at arm's length (otherwise than because of a right referred to in paragraph 251(5)(b) in respect of the foreign affiliate),

exceeds

(B) the portion of that dividend that may reasonably be considered to have reduced the foreign affiliate's exempt or taxable surplus in respect of the subsidiary that arose after the acquisition of control of the subsidiary by the parent (determined on the assumption that a dividend is paid out of the foreign affiliate's exempt or taxable surplus, as the case may be, in respect of the subsidiary, in the reverse order to that in which it was added to the foreign affiliate's exempt or taxable surplus in respect of the subsidiary),

B is the fair market value of the particular share immediately before the winding-up, and

C is the total of all amounts each of which is the fair market value of a share of the foreign affiliate held by the subsidiary immediately before the winding-up, and

(ii) if, at the time immediately before the winding-up, the subsidiary holds a partnership interest in a partnership (referred to in this subparagraph as a "holding partnership") which holds one or more shares of a foreign affiliate of the subsidiary, there shall be added to the cost amount, at that time, of the subsidiary's partnership interest in the holding partnership (referred to in this subparagraph as the "particular partnership interest"), the amount determined by the formula

$$D \times E/F$$

where

D is the total of all amounts each of which is the amount, if any, by which

(A) the amount of a dividend received on any share of the foreign affiliate (or any other share of the foreign affiliate for which that share is substituted property) held by the holding partnership immediately before the winding-up, that was deductible under section 113 in computing the income of the subsidiary or of a corporation with which the subsidiary was not dealing at arm's length (otherwise than because of a right referred to in paragraph 251(5)(b) in respect of the foreign affiliate),

exceeds

(B) the portion of that dividend that may reasonably be considered to have reduced the foreign affiliate's exempt or taxable surplus in respect of the subsidiary that arose after the acquisition of control of the subsidiary by the parent (determined on the assumption that a dividend is paid out of the foreign affiliate's exempt or taxable surplus, as the case may be, in respect of the subsidiary, in the reverse order to that in which it was added to the foreign affiliate's exempt or taxable surplus in respect of the subsidiary),

E is the fair market value of the particular partnership interest immediately before the winding-up, and

F is the total of all amounts each of which is the fair market value of a partnership interest in the holding partnership held by the subsidiary immediately before the winding-up;

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 130(1), will add para. 88(1)(d.4), applicable to amalgamations that occur, and to windings-up that begin, after February 27, 2004 and if the taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which the amending legislation is assented to, the para. applies in respect of the taxpayer to all amalgamations that occur, and to all windings-up that begin, after December 20, 2002 and, notwithstanding subsecs. 152(4) to (5) of the Act, any assessment of the taxpayer's tax, interest and penalties payable under the Act for any taxation year that begins before February 28, 2004 shall be made that is necessary to take the election into account.

Technical Notes: Subsection 88(1) provides rules that apply where a subsidiary has been wound up into its parent corporation where both

corporations are taxable Canadian corporations and the parent owns at least 90% of the issued shares of each class of the capital stock of the subsidiary.

Subsection 88(1) is amended by adding proposed new paragraph (d.4) effective for amalgamations that occur after February 27, 2004 and to windings-up that begin after February 27, 2004. Taxpayers may elect to have the provision apply to all amalgamations that occur, and all windings-up that begin, after December 20, 2002.

In general terms, proposed new paragraph 88(1)(d.4) applies for the purpose of subparagraph 88(1)(d)(ii) and increases, in certain circumstances, the cost amount to the subsidiary of a share of a foreign affiliate of the subsidiary or the cost amount of a partnership interest in a partnership that holds such a share, thereby limiting the amount of a increase in cost base of a property to the parent that is the share or the interest in the partnership that might otherwise occur on an amalgamation or a winding up of the subsidiary.

New paragraph 88(1)(d.4) provides that

- if, at the time immediately before the winding-up, the subsidiary holds one or more shares of a foreign affiliate of the subsidiary, there shall be added to the cost amount, at that time, of each of those shares (referred to here as the "particular share") the amount determined by the formula

$$\frac{A \times B}{C}$$

where

A is the total of all amounts each of which is the amount, if any, by which

(A) the amount of a dividend received on any share of the foreign affiliate (or any other share of the foreign affiliate for which that share is substituted property) held by the subsidiary immediately before the winding-up, that was deductible under section 113 in computing the income of the subsidiary or of a corporation with which the subsidiary was not dealing at arm's length (otherwise than because of a right referred to in paragraph 251(5)(b) in respect of the foreign affiliate),

exceeds

(B) the portion of that dividend that may reasonably be considered to have reduced the foreign affiliate's exempt or taxable surplus in respect of the subsidiary that arose after the acquisition of control of the subsidiary by the parent (determined on the assumption that a dividend is paid out of the foreign affiliate's exempt or taxable surplus, as the case may be, in respect of the subsidiary, in the reverse order to that in which it was added to the foreign affiliate's exempt or taxable surplus in respect of the subsidiary),

B is the fair market value of the particular share immediately before the winding-up, and

C is the total of all amounts each of which is the fair market value of a share of the foreign affiliate held by the subsidiary immediately before the winding-up, and

- if, at the time immediately before the winding-up, the subsidiary holds a partnership interest in a partnership (a "holding partnership") which holds one or more shares of a foreign affiliate of the subsidiary, there shall be added to the cost amount, at that time, of the subsidiary's partnership interest in the holding partnership (referred to as the "particular partnership interest"), the amount determined by the formula

$$\frac{D \times E}{F}$$

where

D is the total of all amounts each of which is the amount, if any, by which

(A) the amount of a dividend received on any share of the foreign affiliate (or any other share of the foreign affiliate for which that share is substituted property) held by a holding partnership immediately before the winding-up, that was deductible under section 113 in computing the income of the subsidiary or of a corporation with which the subsidiary was not dealing at arm's length (otherwise than because of a right referred to in paragraph 251(5)(b) in respect of the foreign affiliate),

exceeds

(B) the portion of that dividend that may reasonably be considered to have reduced the foreign affiliate's exempt or taxable surplus in respect of the subsidiary that arose after the acquisition of control of the subsidiary by the parent (determined on the assumption that a dividend is paid out of the foreign affiliate's exempt or taxable surplus, as the case may be, in respect of the subsidiary, in the reverse order to that in which it was added to the foreign affiliate's exempt or taxable surplus in respect of the subsidiary),

E is the fair market value of the particular partnership interest immediately before the winding-up, and

F is the total of all amounts each of which is the fair market value of a partnership interest in a holding partnership held by the subsidiary immediately before the winding-up.

Related Provisions: 248(5) — Substituted property.

(e) [Repealed under former Act]

(e.1) **[reserves]** — the subsidiary may, for the purposes of computing its income for its taxation year during which its assets were transferred to, and its obligations were assumed by, the parent on the winding-up, claim any reserve that would have been allowed under this Part if its assets had not been transferred to, or its obligations had not been assumed by, the parent on the winding-up and notwithstanding any other provision of this Part, no amount shall be included in respect of any reserve so claimed in computing the income of the subsidiary for its taxation year, if any, following the year in which its assets were transferred to or its obligations were assumed by the parent;

(e.2) **[rules applicable]** — paragraphs 87(2)(c), (d.1), (e.1), (e.3), (g) to (l), (l.3) to (u), (x), (z.1), (z.2), (aa), (cc), (ll), (nn), (pp), (rr), (tt) and (uu), subsection 87(6) and, subject to section 78, subsection 87(7) apply to the winding-up as if the references in those provisions to

Proposed Amendment — 88(1)(e.2) opening words — reference to 87(2)(l.21)

Letter from Dept. of Finance, March 6, 2003:

Mr. Mark D. Brender, Davies Ward Phillips & Vineberg LLP, Montreal

Dear Mr. Brender:

Thank you for your letter of November 5, 2002, concerning the application of the debt forgiveness rule in section 80.01(10) of the *Income Tax Act* (Canada) (the "Act") in circumstances involving the wind-up of a subsidiary into its parent in accordance with subsection 88(1).

In your letter, you suggest making a retroactive change to paragraph 88(1)(e.2) of the Act in order to incorporate a reference to paragraph 87(2)(l.21). You point out that the current operation of section 87 specifically allows for a deduction under subsection 80.01(10) to a successor corporation when a subsequent payment is made against a parked debt of one of the pre-amalgamation corporations. You further state that no corresponding rule appears to exist for a parent making a subsequent payment against a parked debt issued by its subsidiary after the subsidiary is wound up under subsection 88(1).

Based on your submissions and our own internal analysis, we have concluded that, although the tax policy underlying amalgamations under section 87 and wind-ups under subsection 88(1) may not always coincide, in this case we agree that there does not appear to be any policy reason why paragraph 87(2)(l.21) should not be incorporated in paragraph 88(1)(e.2). Accordingly, we intend to recommend to the Minister of Finance that paragraph 88(1)(e.2) of the Act be amended to include a reference to paragraph 87(2)(l.21) in order to provide for the continuation of a subsidiary to its parent for the purposes of subsection 80.01(10).

It would be recommended that the amendment apply with respect to taxation years that end after 2001. If this recommendation is adopted, I would anticipate that the amendment would be included in a future technical bill and presented to Parliament for approval.

Thank you for writing.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

(i) "amalgamation" were read as "winding-up",

(ii) "predecessor corporation" were read as "subsidiary",

(iii) "new corporation" were read as "parent",

(iv) "its first taxation year" were read as "its taxation year during which it received the assets of the subsidiary on the winding-up",

(v) "its last taxation year" were read as "its taxation year during which its assets were distributed to the parent on the winding-up",

(vi) "predecessor corporation's gain" were read as "subsidiary's gain",

(vii) "predecessor corporation's income" were read as "subsidiary's income",

(viii) "new corporation's income" were read as "parent's income",

(ix) [Repealed under former Act]

(x) "any predecessor private corporation" were read as "the subsidiary (if it was a private corporation at the time of the winding-up)",

(xi), (xii) [Repealed]

(xiii) "two or more corporations" were read as "a subsidiary",

(xiv), (xv) [Repealed]

(xvi) "the life insurance capital dividend account of any predecessor corporation immediately before the amalgamation" were read as "the life insurance capital dividend account of the subsidiary at the time the subsidiary was wound-up",

(xvii) "predecessor corporation's refundable Part VII tax on hand" were read as "subsidiary's refundable Part VII tax on hand",

(xviii) "predecessor corporation's Part VII refund" were read as "subsidiary's Part VII refund",

(xix) "predecessor corporation's refundable Part VIII tax on hand" were read as "subsidiary's refundable Part VIII tax on hand",

(xx) "predecessor corporation's Part VIII refund" were read as "subsidiary's Part VIII refund", and

(xxi) "predecessor corporation's cumulative offset account" were read as "subsidiary's cumulative offset account";

Related Provisions: 88(1)(g) — Where subsidiary was insurance corporation. See also at end of 88(1).

History: The openings words of para. 88(1)(e.2) amended and subparas. 88(1)(e.2)(xiv) and (xv) repealed by 1998, c. 19, subsecs. 118(10) and (11), applicable to windings-up that begin after June 1995. The opening words and subparas. formerly read:

(e.2) paragraphs 87(2)(c), (d.1), (e.1), (e.3), (g) to (l), (l.3) to (u), (x), (y.1), (z.1), (z.2), (aa), (cc), (ll), (nn), (pp), (rr), (tt) and (uu), subsection 87(6) and, subject to section 78, subsection 87(7) apply to the winding-up as if the references therein to

. . . . .

(xiv) "predecessor corporation's preferred-earnings amount" were read as "subsidiary's preferred-earnings amount",

(xv) "new corporation's preferred-earnings amount" were read as "parent's preferred-earnings amount",

The opening words of para. 88(1)(e.2) amended by 1996, c. 21, subsec. 16(1), applicable to windings-up that begin after June 1995. The opening words formerly read:

(e.2) paragraphs 87(2)(c), (d.1), (e.1), (e.3), (g) to (l), (l.3) to (u), (x), (y.1), (z.1), (z.2), (cc), (ll), (nn), (pp), (rr), (tt) and (uu), subsection 87(6) and, subject to section 78, subsection 87(7) apply to the winding-up as if the references therein to

The opening words of para. 88(1)(e.2) amended by 1995, c. 21, subsec. 55(4), applicable to windings-up that begin after February 22, 1994. The opening words formerly read:

(e.2) paragraphs 87(2)(c), (d.1), (e.1), (g) to (l), (l.3) to (u), (x), (y.1), (z.1), (z.2), (cc), (ll), (nn), (pp), (rr), (tt) and (uu), subsection 87(6) and, subject to section 78, subsection 87(7) apply to the winding-up as if the references therein to

That portion of para. 88(1)(e.2) preceding subpara. (i) amended by 1994, c. 7, Sch. VI (1992, c. 29), s. 4, to add reference to para. 87(2)(uu), applicable to windings-up beginning after 1991.

That portion of para. 88(1)(e.2) preceding subpara. (i) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(7), to delete reference to para. 87(2)(e.2), applicable to windings-up ending after June 18, 1987, except that

(a) in its application to windings-up beginning before 1988, the para. shall be read without the reference to "(tt)", and

(b) in its application with respect to windings-up beginning before May 1988, the para. shall be read without the reference to "(z.2)".

Subparas. 88(1)(e.2)(xi), (xii) repealed by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(8), applicable to the computation after July 13, 1990 of capital dividend accounts. Those subparas. formerly read:

(xi) "predecessor corporation's capital dividend account" were read as "subsidiary's capital dividend account",

(xii) "the capital dividend account of any predecessor corporation immediately before the amalgamation" were read as "the capital dividend account of the subsidiary at the time the subsidiary was wound up",

Interpretation Bulletins: IT-66R6: Capital dividends; IT-330R: Dispositions of capital property subject to warranty, covenant, etc. (archived); IT-502: Employee benefit plans and employee trusts. See also lists at end of subsec. 88(1) and s. 88.

(e.3) **[investment tax credit]** — for the purpose of computing the parent's investment tax credit at the end of any particular taxation year ending after the subsidiary was wound up,

(i) property acquired or expenditures made by the subsidiary or an amount included in the investment tax credit of the subsidiary by virtue of paragraph (b) of the definition "investment tax credit" in subsection 127(9) in a taxation year (in this paragraph referred to as the "expenditure year") shall be deemed to have been acquired, made or included, as the case may be, by the parent in its taxation year in which the expenditure year of the subsidiary ended, and

(ii) there shall be added to the amounts otherwise determined for the purposes of paragraphs (f) to (k) of the definition "investment tax credit" in subsection 127(9) in respect of the parent for the particular year

(A) the amounts that would have been determined in respect of the subsidiary for the purposes of paragraph (f) of the definition "investment tax credit" in subsection 127(9) for its taxation year in which it was wound up if the reference therein to "a preceding taxation year" were read as a reference to "the year or a preceding taxation year",

(B) the amounts determined in respect of the subsidiary for the purposes of paragraphs (g) to (i) and (k) of the definition "investment tax

credit" in subsection 127(9) for its taxation year in which it was wound up, and

(C) the amount determined in respect of the subsidiary for the purposes of paragraph (j) of the definition "investment tax credit" in subsection 127(9) for its taxation year in which it was wound up except that, for the purpose of the calculation in this clause, where control of the subsidiary has been acquired by a person or group of persons (each of whom is referred to in this clause as the "purchaser") at any time (in this clause referred to as "that time") before the end of the taxation year in which the subsidiary was wound up, there may be added to the amount determined under subparagraph 127(9.1)(d)(i) in respect of the subsidiary the amount, if any, by which that proportion of the amount that, but for subsections 127(3) and (5) and sections 126, 127.2 and 127.3, would be the parent's tax payable under this Part for the particular year, that,

(I) where the subsidiary carried on a particular business in the course of which a property was acquired, or an expenditure was made, before that time in respect of which an amount was included in computing the subsidiary's investment tax credit for its taxation year in which it was wound up, and the parent carried on the particular business throughout the particular year, the amount, if any, by which the total of all amounts each of which is the parent's income for the particular year from the particular business, or the parent's income for the particular year from any other business substantially all the income of which was derived from the sale, leasing, rental or development of properties or the rendering of services similar to the properties sold, leased, rented or developed, or the services rendered, as the case may be, by the subsidiary in carrying on the particular business before that time, exceeds the total of the amounts, if any, deducted for the particular year under paragraph 111(1)(a) or (d) by the parent in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of the particular business

is of the greater of

(II) the amount determined under subclause (I), and

(III) the parent's taxable income for the particular year

exceeds the amount, if any, calculated under subparagraph 127(9.1)(d)(i) in respect of the particular business or the other business, as the case may be, in respect of the parent at the end of the particular year

to the extent that such amounts determined in respect of the subsidiary may reasonably be considered to have been included in computing the parent's investment tax credit at the end of the particular year by virtue of subparagraph (i),

and, for the purposes of the definitions "first term shared-use-equipment" and "second term shared-use-equipment" in subsection 127(9), the parent shall be deemed to be the same corporation as, and a continuation of, the subsidiary;

Related Provisions: 88(1.3) — Rules relating to computation of income and tax of parent; 256(6)–(9) — Whether control acquired. See also at end of 88(1).

History: Subcl. 88(1)(e.3)(ii)(C)(I) substituted by 1994, c. 21, subsec. 40(2), applicable to windings-up that begin after December 21, 1992. That subcl. formerly read:

> (I) where the subsidiary carried on a particular business in the course of which a property was acquired, or an expenditure was made, before that time in respect of which an amount was included in computing the subsidiary's investment tax credit for its taxation year in which it was wound up, the amount, if any, by which the total of all amounts each of which is the parent's income for the particular year from the particular business, or the parent's income for the particular year from any other business substantially all the income of which was derived from the sale, leasing, rental or development of properties or the rendering of services similar to the properties sold, leased, rented or developed, or the services rendered, as the case may be, by the subsidiary in carrying on the particular business before that time, exceeds the total of the amounts, if any, deducted by the parent under paragraph 111(1)(a) or (d) for the particular year in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of the particular business

The words following subpara. 88(1)(e.3)(ii) added by 1994, c. 8, s. 10, applicable to taxation years ending after December 2, 1992.

(e.4) **[employment tax credit]** — for the purpose of computing the parent's employment tax credit at the end of any particular taxation year ending after the subsidiary was wound up,

(i) the subsidiary's taxpayer employment credits for any taxation year (in this paragraph referred to as the "employment year") and any amounts required to be added by virtue of subsection 127(15) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in computing the subsidiary's employment tax credit at the end of the employment year shall be deemed to be taxpayer employment credits of the parent for, and amounts required to be added by virtue of that subsection in computing the parent's employment tax credit at the end of, its taxation year in which the employment year of the subsidiary ended, and

(ii) there shall be added to the amounts otherwise determined under paragraphs 127(16)(c) and (d) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in respect of the parent for the particular taxation year, the amounts that would have been determined under those paragraphs in respect of the subsidiary for its taxation year in which it was wound-up if the reference in paragraph 127(16)(c) of that Act to "the five immediately preceding taxation years" were read as a reference to "that taxation year or the five immediately preceding taxation years" to the extent that those amounts determined in respect of the subsidiary may reasonably be considered to be in respect of a taxpayer employment credit or an amount required to be added by virtue of subsection 127(15) of that Act that is included in computing the parent's employment tax credit at the end of the particular year by virtue of subparagraph (i);

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

(e.5) **[refundable dividend tax on hand]** — [Repealed]

History: Para. 88(1)(e.5) repealed by 1996, c. 21, subsec. 16(2), applicable to windings-up that begin after June 1995. The para. formerly read:

(e.5) for the purpose of computing the refundable dividend tax on hand (within the meaning assigned by subsection 129(3)) of the parent at the end of any particular taxation year ending after the subsidiary was wound up, the amount, if any, by which

(i) the subsidiary's refundable dividend tax on hand at the end of its taxation year during which it was wound up

exceeds

(ii) the subsidiary's dividend refund (within the meaning assigned by subsection 129(1)) for its taxation year referred to in subparagraph (i)

shall, if

(iii) the subsidiary was a private corporation at the end of the year during which it was wound up, and

(iv) the parent was a private corporation

(A) where the subsidiary was wound up in the particular year, at the time immediately after the winding-up, and

(B) in any other case, continuously from the time of the winding-up until the time immediately after the beginning of the particular year,

be added to the total determined for the particular year under subsection 129(3) from which the total of amounts determined under paragraphs 129(3)(c) to (e) is subtracted, except that no amount shall be so added in respect of the subsidiary where subsection 129(1.2) would have applied to deem a dividend paid by the subsidiary immediately before the winding-up not to be a taxable dividend for the purpose of subsection 129(1);

Para. 88(1)(e.5) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 38(5), applicable to the computation of refundable dividend tax on hand (within the meaning assigned by subsec. 129(3) as amended) for 1993 *et seq.* Para. (e.5) formerly read:

(e.5) for the purpose of computing the refundable dividend tax on hand (within the meaning assigned by subsection 129(3)) of the parent at the end of any taxation year ending after the subsidiary was wound up, the amount, if any, by which

(i) the subsidiary's refundable dividend tax on hand at the end of its taxation year during which it was wound up

exceeds

(ii) the subsidiary's dividend refund (within the meaning assigned by subsection 129(1)) for its taxation year referred to in subparagraph (i)

shall, if the parent has been a private corporation continuously from the time of the winding-up to the end of the taxation year, be added to the total determined under subsection 129(3) from which the parent's dividend refunds are to be subtracted, except that the amount to be added to the total determined under subsection 129(3) shall be deemed to be nil where, had a dividend been paid by the subsidiary immediately before the winding-up, subsection 129(1.2) would have applied to deem the dividend not to be a taxable dividend;

(e.6) **[charitable donations]** — where a subsidiary has made a gift in a taxation year (in this section referred to as the "gift year"), for the purposes of computing the amount deductible under section 110.1 by the parent for its taxation years ending after the subsidiary was wound up, the parent shall be deemed to have made a gift in each of its taxation years in which a gift year of the subsidiary ended equal to the amount, if any, by which the total of all gifts made by the subsidiary in the gift year exceeds the total of all amounts deducted by the subsidiary under section 110.1 of this Act or paragraph 110(1)(a), (b) or (b.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in respect of those gifts;

Proposed Amendment — 88(1)(e.6)

(e.6) **[charitable donations]** — if a subsidiary has made a gift in a taxation year (in this section referred to as the "gift year"), for the purposes of computing the amount deductible under section 110.1 by the parent for its taxation years that end after the subsidiary was wound up, the parent is deemed to have made a gift, in each of its taxation years in which a gift year of the subsidiary ended, equal to the amount, if any, by which the total of all amounts, each of which is the amount of a gift or, in the case of a gift made after December 20, 2002, the eligible amount of the gift, made by the subsidiary in the gift year exceeds the total of all amounts deducted under section 110.1 by the subsidiary in respect of those gifts;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 88(4), will amend para. 88(1)(e.6) to read as above, applicable to windings-up that begin after December 20, 2002.

Technical Notes: Paragraph 88(1)(e.6) permits a parent corporation to deduct the amount of a subsidiary's charitable gifts, gifts to Her Majesty, gifts to certain cultural institutions and ecological gifts, to the extent that they were not deducted by the subsidiary prior to the time of its winding-up. Paragraph 88(1)(e.6) is amended, consequential to the addition of new subsection 248(31), to allow the parent to deduct the eligible amount of a gift made after December 20, 2002 that was not deducted by the subsidiary. For additional details, see the commentary to new subsection 248(31).

Related Provisions: 110.1(1.2) — No carryforward of donations after change in control; 248(30)–(33) — Determination of eligible amount of gift.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

(e.61) **[donation of non-qualifying securities]** — the parent is deemed for the purpose of section 110.1 to have made any gift deemed by subsection 118.1(13) to have been made by the subsidiary after the subsidiary ceased to exist;

History: Para. 88(1)(e.61) added by 1998, c. 19, s. 16, applicable after July 1997.

(e.7) **[foreign tax credit]** — for the purposes of

(i) determining the amount deductible by the parent under subsection 126(2) for any taxation year commencing after the commencement of the winding-up, and

(ii) determining the extent to which subsection 126(2.3) applies to reduce the amount that may be claimed by the parent under paragraph 126(2)(a),

any unused foreign tax credit (within the meaning of subsection 126(7)) of the subsidiary in respect of a country for a particular taxation year (in this section referred to as the "foreign tax year"), to the extent that it exceeds the total of all amounts each of which is claimed in respect thereof under paragraph 126(2)(a) in computing the tax payable by the subsidiary under this Part for any taxation year, shall be deemed to be an unused foreign tax credit of the parent for its taxation year in which the subsidiary's foreign tax year ended;

Related Provisions: 88(1.3) — Rules relating to computation of income and tax of parent. See also at end of 88(1).

(e.8) **[investment tax credit — expenditure limit]** — for the purpose of applying subsection 127(10.2) to any corporation (other than the subsidiary)

(i) where the parent is associated with another corporation in a taxation year (in this paragraph referred to as the "current year") of the parent that begins after the parent received an asset of the subsidiary on the winding-up and that ends in a calendar year,

(A) the parent's taxable income for its last taxation year that ended in the preceding calendar year (determined before taking into considera-

tion the specified future tax consequences for that last year) is deemed to be the total of

(I) its taxable income for that last year (determined before applying this paragraph to the winding-up and before taking into consideration the specified future tax consequences for that last year), and

(II) the total of the subsidiary's taxable incomes for its taxation years that ended in that preceding calendar year (determined without reference to clause (B) and before taking into consideration the specified future tax consequences for those years), and

(B) the subsidiary's taxable income for each of its taxation years that ends after the first time that the parent receives an asset of the subsidiary on the winding-up of the subsidiary is deemed to be nil, and

(ii) where the parent received an asset of the subsidiary on the winding-up before the current year and is not associated with any corporation in the current year, the parent's taxable income for its immediately preceding taxation year (determined before taking into consideration the specified future tax consequences for that preceding year) is deemed to be the total of

(A) its taxable income for that preceding taxation year (determined before applying this paragraph to the winding-up and before taking into consideration the specified future tax consequences for that preceding taxation year), and

(B) the total of the subsidiary's taxable incomes for its taxation years that ended in the calendar year in which that preceding taxation year ended (determined before taking into consideration the specified future tax consequences for those years);

History: Para. 88(1)(e.8) amended by 1997, c. 25, subsec. 19(1), applicable for the purpose of applying subsecs. 127(10.1) and (10.2) to taxation years that begin after 1995, except that, for taxation years that begin in 1996, the expression "any corporation (other than the subsidiary)" shall be read as "the parent". For windings-up that begin after May 23, 1985, para. (e.8) shall be read without reference to the expression "the definition "qualifying corporation" in subsection 127.1(2) and subparagraph 157(1)(b)(i)". Para. (e.8) formerly read:

(e.8) for the purposes of subsection 127(10.1), the definition "qualifying corporation" in subsection 127.1(2) and subparagraph 157(1)(b)(i),

(i) the taxable income of the parent for its taxation year during which it received the assets of the subsidiary on the winding-up shall be deemed to be the total of its taxable income for that year as otherwise determined and the taxable incomes of the subsidiary for its taxation years ending in the calendar year in which that year ended, and

(ii) the business limit of the parent for that year shall be deemed to be the total of its business limit for that year as otherwise determined and the business limits of the subsidiary for its taxation years ending in the calendar year in which that year ended;

That portion of para. 88(1)(e.8) preceding subpara. (i) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(9), to substitute "the definition "qualifying corporation" in subsection 127.1(2)" for "paragraph 127.1(2)(a)", applicable to windings-up beginning after May 23, 1985.

(e.9) **[refundable ITC and balance-due day]** — for the purpose of applying the definition "qualifying corporation" in subsection 127.1(2), and subparagraph (d)(i) of the definition "balance-due day" in subsection 248(1), to any corporation (other than the subsidiary)

(i) where the parent is associated with another corporation in a taxation year (in this paragraph referred to as the "current year") of the parent that begins after the parent received an asset of the subsidiary on the winding-up and ends in a calendar year,

(A) the parent's taxable income for its last taxation year that ended in the preceding calendar year (determined before taking into consideration the specified future tax consequences for that last year) is deemed to be the total of

(I) its taxable income for that last year (determined before applying this paragraph to the winding-up and before taking into consideration the specified future tax consequences for that last year), and

(II) the total of the subsidiary's taxable incomes for its taxation years that ended in that preceding calendar year (determined without reference to subparagraph (iii) and before taking into consideration the specified future tax consequences for those years), and

(B) the parent's business limit for that last year is deemed to be the total of

(I) its business limit (determined before applying this paragraph to the winding-up) for that last year, and

(II) the total of the subsidiary's business limits (determined without reference to subparagraph (iii)) for its taxation years that ended in that preceding calendar year,

(ii) where the parent received an asset of the subsidiary on the winding-up before the current year and subparagraph (i) does not apply,

(A) the parent's taxable income for its immediately preceding taxation year (determined before taking into consideration the specified future tax consequences for that preceding year) is deemed to be the total of

(I) its taxable income for that preceding taxation year (determined before applying this paragraph to the winding-up and before taking into consideration the specified future tax consequences for that preceding taxation year), and

(II) the total of the subsidiary's taxable incomes for the subsidiary's taxation years that end in the calendar year in which that preceding taxation year ended (determined before taking into consideration the specified future tax consequences for those years), and

(B) the parent's business limit for that preceding taxation year is deemed to be the total of

(I) its business limit (determined before applying this paragraph to the winding-up) for that preceding taxation year, and

(II) the total of the subsidiary's business limits (determined without reference to subparagraph (iii)) for the subsidiary's taxation

years that end in the calendar year in which that preceding taxation year ended, and

(iii) where the parent and the subsidiary are associated with each other in the current year, the subsidiary's taxable income and the subsidiary's business limit for each taxation year that ends after the first time that the parent receives an asset of the subsidiary on the winding-up are deemed to be nil;

History: The opening words of para. 88(1)(e.9) amended by 2002, c. 9, s. 31, applicable to taxation years that end after 2001. The opening words formerly read:

(e.9) [instalments and refundable ITCs] — for the purpose of applying subparagraph 157(1)(b)(i) and the definition "qualifying corporation" in subsection 127.1(2) to any corporation (other than the subsidiary)

Para. 88(1)(e.9) added by 1997, c. 25, subsec. 19(2), applicable to windings-up that begin after May 23, 1985, except that

(a) the expression "any corporation (other than the subsidiary)" shall be read as "the parent" with respect to windings-up that begin before 1997;

(b) for the purpose of applying para. (e.9) for the purpose of the definition "qualifying corporation" in subsec. 127.1(2), the business limits referred to in para. (e.9), for taxation years that ended after June 1994 and began before 1996, shall be determined under s. 125 as that section read in its application to taxation years that ended before July 1994; and

(c) subpara. (e.9)(i) does not apply

(i) for the purpose of applying the definition "qualifying corporation" in subsec. 127.1(2) to taxation years that ended before July 1994, and

(ii) for the purpose of applying subpara. 157(1)(b)(i) to taxation years that end before 1998.

(f) **[depreciable property]** — where property that was depreciable property of a prescribed class of the subsidiary has been distributed to the parent on the winding-up and the capital cost to the subsidiary of the property exceeds the amount deemed by paragraph (a) to be the subsidiary's proceeds of disposition of the property, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a),

(i) notwithstanding paragraph (c), the capital cost to the parent of the property shall be deemed to be the amount that was the capital cost of the property to the subsidiary, and

(ii) the excess shall be deemed to have been allowed to the parent in respect of the property under regulations made under paragraph 20(1)(a) in computing income for taxation years before the acquisition by the parent of the property;

I.T. Application Rules: 20(1.2) (transfer of depreciable property by person who owned it before 1972).

(g) **[insurance corporation]** — where the subsidiary was an insurance corporation,

(i) for the purposes of paragraphs 12(1)(d), (e), (e.1), (i) and (s) and 20(1)(l), (l.1), (p) and (jj) and 20(7)(c), subsection 20(22), sections 138, 138.1, 140, 142 and 148 and Part XII.3, the parent is deemed to be the same corporation as, and a continuation of, the subsidiary, and

(ii) for the purpose of determining the amount of the gross investment revenue required to be included under subsection 138(9) in the income of the subsidiary and the parent and the amount of gains and losses of the subsidiary and the parent from property used by them in the year or held by them in the year in the course of carrying on an insurance business in Canada

(A) the subsidiary and the parent shall, in addition to their normal taxation years, be deemed to have had a taxation year ending immediately before the time when the property of the subsidiary was transferred to, and the obligations of the subsidiary were assumed by, the parent on the winding-up, and

(B) for the taxation years of the subsidiary and the parent following the time referred to in clause (A), the property transferred to, and the obligations assumed by, the parent on the winding-up shall be deemed to have been transferred or assumed, as the case may be, on the last day of the taxation year ending immediately before that time and the parent shall be deemed to be the same corporation as and a continuation of the subsidiary with respect to that property, those obligations and the insurance businesses carried on by the subsidiary;

History: Subpara. 88(1)(g)(i) amended by 1997, c. 25, subsec. 19(3), applicable to windings-up that begin after 1995. Subpara. (i) formerly read:

(i) for the purposes of paragraphs 12(1)(d), (e), (i) and (s) and 20(1)(l), (l.1), (p) and (jj) and 20(7)(c), sections 138, 138.1, 140, 142 and 148 and Part XII.3 of this Act and section 33 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, the parent shall, notwithstanding paragraph (e.2), be deemed to be the same corporation as, and a continuation of, the subsidiary, and

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

(h) **[financial institution — mark-to-market property]** — for the purposes of subsections 112(5) to (5.2) and (5.4) and the definition "mark-to-market property" in subsection 142.2(1), the parent shall be deemed, in respect of each property distributed to it on the winding-up, to be the same corporation as, and a continuation of, the subsidiary; and

History: Para. 88(1)(h) added by 1995, c. 21, subsec. 55(5), applicable to windings-up that begin at any time (including, for greater certainty, windings-up that began before June 22, 1995).

(i) **[financial institution — mark-to-market property]** — for the purpose of subsection 142.5(2), the subsidiary's taxation year in which its assets were distributed to the parent on the winding-up shall be deemed to have ended immediately before the time when the assets were distributed.

History: Para. 88(1)(i) added by 1995, c. 21, subsec. 55(5), applicable to windings-up that begin after October 1994.

Related Provisions [subsec. 88(1)]: 69(5) — Deemed distribution of corporation's property before windup; 69(13) — Amalgamation or merger; 80.01(4) — Deemed settlement of debt on winding-up; 80.01(5) — Deemed settlement of distress preferred share on winding-up; 84(2) — Distribution on winding-up, etc.; 89(3) — Ordering of simultaneous dividends; 98(5)(a)(i) — Where partnership business carried on as sole proprietorship; 137(4.3) — Determination of preferred-rate amount; 142.6(5), (6) — Acquisition of specified debt obligation by financial institution in rollover transaction; 186(5) — Presumption; Reg. 8101(3) — Windup of insurer.

Selected Cases [subsec. 88(1)]: *Hickman Motors Ltd. v. R.*, [1998] 1 C.T.C. 213 (SCC); rev'g [1995] 2 C.T.C. 320 (FCA) (Property retains depreciable character in hands of transferee on winding-up, if not used for other purposes).

Interpretation Bulletins [subsec. 88(1)]: IT-109R2: Unpaid amounts; IT-121R3: Election to capitalize cost of borrowed money (archived); IT-126R2: Meaning of "winding-up"; IT-142R3: Settlement of debts on the winding-up of a corporation; IT-151R5: Scientific research and experimental development expenditures; IT-154R: Special reserves; IT-321R: Insurance agents and brokers — unearned commissions (archived); IT-488R2: Winding-up of 90%-owned taxable Canadian corporations (archived). See also list at end of s. 88.

Information Circulars [subsec. 88(1)]: 88-2 Supplement, para. 8: General anti-avoidance rule — section 245 of the *Income Tax Act*.

I.T. Technical News: 16 (*Continental Bank* case).

(1.1) Non-capital losses, etc., of subsidiary — Where a Canadian corporation (in this subsection referred to as the "subsidiary") has been wound up and not less than 90% of the issued shares of each class of the capital stock of the subsidiary were, immediately before the winding-up, owned by another Canadian corporation (in this subsection referred to as the "parent") and all the shares of the subsidiary that were not owned by the parent immediately before the winding-up were owned at that time by a person or persons with whom the parent was dealing at arm's length, for the purpose of computing the taxable income of the parent under this Part and the tax payable under Part IV by the parent for any taxation year commencing after the commencement of the winding-up, such portion of any non-capital loss, restricted farm loss, farm loss or limited partnership loss of the subsidiary as may reasonably be regarded as its loss from carrying on a particular business (in this subsection referred to as the "subsidiary's loss business") and any other portion of any non-capital loss or limited partnership loss of the subsidiary as may reasonably be regarded as being derived from any other source or being in respect of a claim made under section 110.5 for any particular taxation year of the subsidiary (in this subsection referred to as "the subsidiary's loss year"), to the extent that it

(a) was not deducted in computing the taxable income of the subsidiary for any taxation year of the subsidiary, and

(b) would have been deductible in computing the taxable income of the subsidiary for any taxation year beginning after the commencement of the winding-up, on the assumption that it had such a taxation year and that it had sufficient income for that year,

shall, for the purposes of this subsection, paragraphs 111(1)(a), (c), (d) and (e), subsection 111(3) and Part IV,

(c) in the case of such portion of any non-capital loss, restricted farm loss, farm loss or limited partnership loss of the subsidiary as may reasonably be regarded as its loss from carrying on the subsidiary's loss business, be deemed, for the taxation year of the parent in which the subsidiary's loss year ended, to be a non-capital loss, restricted farm loss, farm loss or limited partnership loss, respectively, of the parent from carrying on the subsidiary's loss business, that was not deductible by the parent in computing its taxable income for any taxation year that commenced before the commencement of the winding-up,

(d) in the case of any other portion of any non-capital loss or limited partnership loss of the subsidiary as may reasonably be regarded as being derived from any other source, be deemed, for the taxation year of the parent in which the subsidiary's loss year ended, to be a non-capital loss or a limited partnership loss, respectively, of the parent that was derived from the source from which the subsidiary derived the loss and that was not deductible by the parent in computing its taxable income for any taxation year that commenced before the commencement of the winding-up, and

(d.1) in the case of any other portion of any non-capital loss of the subsidiary as may reasonably be regarded as being in respect of a claim made under section 110.5, be deemed, for the taxation year of the parent in which the subsidiary's loss year ended, to be a non-capital loss of the parent in respect of a claim made under section 110.5 that was not deductible by the parent in computing its taxable income for any taxation year that commenced before the commencement of the winding-up,

except that

(e) where at any time control of the parent or subsidiary has been acquired by a person or group of persons, no amount in respect of the subsidiary's non-capital loss or farm loss for a taxation year ending before that time is deductible in computing the taxable income of the parent for a particular taxation year ending after that time, except that such portion of the subsidiary's non-capital loss or farm loss as may reasonably be regarded as its loss from carrying on a business and, where a business was carried on by the subsidiary in that year, such portion of the non-capital loss as may reasonably be regarded as being in respect of an amount deductible under paragraph 110(1)(k) in computing its taxable income for the year is deductible only

Proposed Amendment — 88(1.1)(e) opening words

(e) where control of the parent has been acquired by a person or group of persons at any time after the commencement of the winding-up, or control of the subsidiary has been acquired by a person or group of persons at any time whatever, no amount in respect of the subsidiary's non-capital loss or farm loss for a taxation year ending before that time is deductible in computing the taxable income of the parent for a particular taxation year ending after that time, except that such portion of the subsidiary's non-capital loss or farm loss as may reasonably be regarded as its loss from carrying on a business and, where a business was carried on by the subsidiary in that year, such portion of the non-capital loss as may reasonably be regarded as being in respect of an amount deductible under paragraph 110(1)(k) in computing its taxable income for the year is deductible only

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 88(5), will amend the opening words of para. 88(1.1)(e) to read as above, applicable to windings-up that begin after May 1996.

Technical Notes: Subsection 88(1.1) allows a parent corporation under certain circumstances to use losses of a subsidiary corporation that has been wound up. Paragraph 88(1.1)(e) limits the use that can be made of the former subsidiary's non-capital losses and farm losses where either the parent or the subsidiary has undergone an acquisition of control. In its current form, the paragraph applies these limits regardless of when the acquisition of control took place. This can produce results that are unnecessarily restrictive. If, for example, a newly-acquired corporation is made the parent of an existing subsidiary that has losses, but the subsidiary itself has not undergone an acquisition of control since it incurred those losses, there is no reason for paragraph 88(1.1)(e) to limit the use that the parent corporation can make of the subsidiary's losses after the winding-up.

To ensure that it applies more appropriately, paragraph 88(1.1)(e) is amended to distinguish between acquisitions of control of the parent corporation and acquisitions of control of the subsidiary. In respect of the parent, the limits imposed by the provision will apply only where a person or group of persons has acquired control after the commencement of the winding-up. In respect of the subsidiary, those limits will continue to apply if control has been acquired at any time.

Letter from Dept. of Finance, October 26, 2001:

Dear [xxx]:

This is further to your discussions with officials of this Division and your letter of September 25, 2001 to Lawrence Purdy, in which you request our views on whether the tax consequences of the application of

paragraph 88(1.1)(e) of the *Income Tax Act* (Act) to a series of transactions accord with the Department's income tax policies.

You describe a series of transactions that is comprised of three main steps and involves three corporations, Parentco, Lossco and Profitco. By way of background, Parentco controls Lossco, which has accumulated non-capital losses and has not been subject to a change of control since these losses arose. First, Parentco acquires control of Profitco, which is expected to continue to profit in future taxation years. Control of Lossco is then transferred to Profitco, after which the last step is to wind-up Lossco into Profitco.

It does seem that, as you suggest, the change in control of the parent, Profitco, would trigger the application of paragraph 88(1.1)(e). The effect would be to restrict the use of the losses of Lossco by Profitco following the winding-up. This would occur despite the fact that, as I have mentioned, the loss arose while Lossco was part of Parentco's corporate group. You express the view that this result is contrary to the policies that underlie the Act.

As you point out, an amalgamation, rather than a winding-up, of Profitco and Lossco would allow the newly formed company — which could in substance be Profitco — to use Lossco's losses without restrictions. This is so because subsection 87(2.1) of the Act stipulates that, for the purposes of subsections 111(3) to 111(5.4) of the Act, the new corporation is deemed to be a continuation of each predecessor corporation. Subsection 111(5) would apply only to restrict the losses, if any, of Profitco, since it, unlike Lossco, would have been subject to an acquisition of control.

In principle, we agree that the application of paragraph 88(1.1)(e) to transactions akin to that which you describe produces an anomalous result, since it restricts the use of losses where there has been no change in the ultimate control of the corporation that produced the losses. Further, the differential treatment in cases of this sort between windings-up and amalgamations is unintended.

Currently, paragraph 88(1.1)(e) may be triggered where at *any time* the parent has undergone a change of control. This aspect of the provision could be refined to apply to acquisitions of control of the parent *subsequent* to the winding-up. This would ensure that the paragraph would not apply to the type of situation discussed above. Further, its effect would be consistent with the present treatment of loss utilizations after a change in control: any winding-up of a subsidiary that had undergone even an indirect change in control prior to the winding-up would still trigger the application of paragraph 88(1.1)(e); and the parent's use of the losses of the subsidiary would be restricted if the parent were subject to an acquisition of control after the winding-up.

I am therefore prepared to recommend an amendment along the lines described above. I cannot offer any assurance that either the Minister of Finance or Parliament will agree with the recommendation that we intend to make in this regard. Nonetheless, I hope that this statement of our position is helpful.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, October 29, 2001:

Dear [xxx]:

I write further to my letter of October 26, 2001, which outlines our intention to recommend an amendment to paragraph 88(1.1)(e) of the *Income Tax Act*, and the request you subsequently made to Lawrence Purdy that we indicate as of what date we are prepared to recommend that the amendment come into force.

We intend to recommend that the amendment take effect for windings-up that commence after October 25, 2001. As you know, although we have no reason to believe that such an amendment would be controversial, I am not in a position to offer any assurance that either the Minister of Finance or Parliament will agree with this or any aspect of the recommendation.

I trust that the above will be of some assistance.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, July 2, 2003:

Dear [xxx]

Further to our meeting in December 2002, concerning the coming into force of a proposed amendment to subsection 88(1.1) of the *Income Tax Act*, I am writing to inform you of the results of our consideration of this matter.

As you know, we recently issued a letter stating our intention to recommend amending the rules concerning the treatment of losses where a company that is part of a winding-up transaction has undergone an acquisition of control. More specifically, paragraph 88(1.1)(e) of the Act would be amended to apply, in respect of a parent corporation, only to acquisitions of control that take place after the winding up has begun. In this way, the parent's use of losses incurred by the former subsidiary while it was a member of the group would not be restricted by subsection 88(1.1).

Your submission recommends that the proposed change apply to windings-up begun as early as June 1996. This would accommodate a particular transaction that was undertaken at that time. As you have noted in support of your request, the current rules produce a result that is not appropriate in policy terms, which would also be true in respect of a transaction occurring in 1996. Further, there have been no other requests or issues that have come to the attention of CCRA respecting the coming into force of the proposed amendment.

As a consequence, we are prepared to recommend that the proposed amendments to paragraph 88(1.1)(e) apply to windings-up begun after May 1996.

Of course, we cannot offer any assurance that either the Minister of Finance or Parliament will agree with the recommendations that we intend to make in this regard. Nonetheless, we trust that this statement of our position is helpful.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

(i) if that business is carried on by the subsidiary or the parent for profit or with a reasonable expectation of profit throughout the particular year, and

(ii) to the extent of the total of the parent's income for the particular year from that business and, where properties were sold, leased, rented or developed or services rendered in the course of carrying on that business before that time, from any other business substantially all of the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services,

and, for the purpose of this paragraph, where this subsection applied to the winding-up of another corporation in respect of which the subsidiary was the parent and this paragraph applied in respect of losses of that other corporation, the subsidiary shall be deemed to be the same corporation as, and a continuation of, that other corporation with respect to those losses, and

(f) any portion of a loss of the subsidiary that would otherwise be deemed by paragraph (c), (d) or (d.1) to be a loss of the parent for a particular taxation year beginning after the commencement of the winding-up shall be deemed, for the purpose of computing the parent's taxable income for taxation years beginning after the commencement of the winding-up, to be such a loss of the parent for its immediately preceding taxation year and not for the particular year, where the parent so elects in its return of income under this Part for the particular year.

Related Provisions: 10(11) — Adventure in the nature of trade deemed to be business carried on by corporation; 88(1.3) — Rules relating to computation of income and tax of parent; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired.

History: Para. 88(1.1)(b) amended to substitute "any taxation year" for "its first taxation year", and that portion of subsec. 88(1.1) between paras. (b) and (c) amended to add "this subsection", by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(10), applicable in computing the taxable income of parent corporations for 1985 *et seq.*

That portion of para. 88(1.1)(e) following subpara. (ii) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(11), applicable in computing taxable income for 1990 *et seq.*

Para. 88(1.1)(f) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(12), applicable in computing the taxable income of parent corporations for 1985 *et seq.*, except that a parent corporation may elect in accordance with the para. in respect of any of its 1985 to 1991 taxation years by so notifying the Minister of National Revenue in writing before June 18, 1992.

Selected Cases [subsec. 88(1.1)]: *Hickman Motors Ltd. v. R.*, [1998] 1 C.T.C. 213 (SCC) (Property retains depreciable character in hands of transferee on winding-up, if not used for other purposes).

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987. See also list at end of s. 88.

(1.2) Net capital losses of subsidiary — Where the winding-up of a Canadian corporation (in this subsection referred to as the "subsidiary") commenced after March 31, 1977 and not less than 90% of the issued shares of each class of the capital stock of the subsidiary were, immediately before the winding-up, owned by another Canadian corporation (in this subsection referred to as the "parent") and all of the shares of the subsidiary that were not owned by the parent immediately before the winding-up were owned at that time by persons with whom the parent was dealing at arm's length, for the purposes of computing the taxable income of the parent for any taxation year commencing after the commencement of the winding-up, any net capital loss of the subsidiary for any particular taxation year of the subsidiary (in this subsection referred to as the "subsidiary's loss year"), to the extent that it

(a) was not deducted in computing the taxable income of the subsidiary for any taxation year of the subsidiary, and

(b) would have been deductible in computing the taxable income of the subsidiary for any taxation year beginning after the commencement of the winding-up, on the assumption that it had such a taxation year and that it had sufficient income and taxable capital gains for that year,

shall, for the purposes of this subsection, paragraph 111(1)(b) and subsection 111(3), be deemed to be a net capital loss of the parent for its taxation year in which the particular taxation year of the subsidiary ended, except that

(c) where at any time control of the parent or subsidiary has been acquired by a person or group of persons, no amount in respect of the subsidiary's net capital loss for a taxation year ending before that time is deductible in computing the parent's taxable income for a taxation year ending after that time, and

(d) any portion of a net capital loss of the subsidiary that would otherwise be deemed by this subsection to be a loss of the parent for a particular taxation year beginning after the commencement of the winding-up shall be deemed, for the purposes of computing its taxable income for taxation years beginning after the commencement of the winding-up, to be a net capital loss of the parent for its immediately preceding taxation year and not for the particular year, where the parent so elects in its return of income under this Part for the particular year.

Related Provisions: 80(12)(a)(ii)(B) — Application of subsidiary's capital losses against capital gain from forgiveness of debt; 88(1.3) — Computation of income and tax of parent; 111(5.4) — Non-capital loss; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired.

History: That portion of subsec. 88(1.2) following para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(13), applicable in computing the taxable income of parent corporations for 1985 *et seq.*, except that a parent corporation may elect in accordance with para. (d), with respect to any of its 1985 to 1991 taxation years by so notifying the Minister of National Revenue in writing within 6 months after December 17, 1991. That portion formerly read:

> (b) would have been deductible in computing the taxable income of the subsidiary for its first taxation year commencing after the commencement of the winding-up, on the assumption that it had such a taxation year and that it had sufficient income and taxable capital gains for that year,
>
> shall, for the purposes of paragraph 111(1)(b) and subsection 111(3), be deemed to be a net capital loss of the parent for the taxation year of the parent in which the particular taxation year of the subsidiary ended that was not deductible by the parent in computing its taxable income for any taxation year that commenced before the commencement of the winding-up, except that this subsection does not apply to permit the parent to deduct, for the purpose of computing its taxable income for a particular taxation year, the subsidiary's net capital loss for a taxation year if control of the parent or the subsidiary has been acquired, before the end of the parent's particular year, by a person or persons who did not, at the end of the subsidiary's loss year, control the parent or the subsidiary, as the case may be.

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987. See also list at end of s. 88.

(1.3) Computation of income and tax of parent — For the purpose of paragraphs (1)(e.3), (e.6) and (e.7), subsections (1.1) and (1.2), section 110.1, subsections 111(1) and (3) and Part IV, where a parent corporation has been incorporated or otherwise formed after the end of an expenditure year, gift year, foreign tax year or loss year, as the case may be, of a subsidiary of the parent, for the purpose of computing the taxable income of, and the tax payable under this Part and Part IV by, the parent for any taxation year,

(a) it shall be deemed to have been in existence during the particular period beginning immediately before the end of the subsidiary's first expenditure year, gift year, foreign tax year or loss year, as the case may be, and ending immediately after it was incorporated or otherwise formed;

(b) it shall be deemed to have had, throughout the particular period, fiscal periods ending on the day of the year on which its first fiscal period ended; and

(c) it shall be deemed to have been controlled, throughout the particular period, by the person or persons who controlled it immediately after it was incorporated or otherwise formed.

Related Provisions: 88(1)(e.6) — Meaning of "gift year"; 256(6), (6.1) — Meaning of "controlled".

History: Para. 88(1.3)(a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 38(6), applicable to windings-up commencing after 1988. Para. (a) formerly read:

> (a) it shall be deemed to have been in existence during the particular period commencing immediately before the end of the subsidiary's first foreign tax year, gift year or loss year, as the case may be, and ending immediately after it was incorporated or otherwise formed;

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987.

(1.4) Qualified expenditure of subsidiary — For the purposes of this subsection and section 37.1, where the rules in subsection (1) applied to the winding-up of a subsidiary, for the purpose of computing the income of its parent for any taxation year commencing after the subsidiary has been wound up, the following rules apply:

(a) where the parent's base period consists of fewer than three taxation years, its base period shall be determined on the assumption that it had taxation years in each of the calendar years preceding the year in which

it was incorporated, each of which commenced on the same day of the year as the day of its incorporation;

(b) the qualified expenditure made by the parent in a particular taxation year in its base period shall be deemed to be the total of the amount thereof otherwise determined and the qualified expenditure made by the subsidiary in its taxation year ending in the same calendar year as the particular year;

(c) the total of the amounts paid to the parent by persons referred to in subparagraphs (b)(i) to (iii) of the definition "expenditure base" in subsection 37.1(5) in a particular taxation year in its base period shall be deemed to be the total otherwise determined and all those amounts paid to the subsidiary by a person referred to in those subparagraphs in the subsidiary's taxation year ending in the same calendar year as the particular year; and

(d) there shall be added to the total of the amounts otherwise determined in respect of the parent under subparagraphs 37.1(3)(b)(i) and (iii) respectively, the total of the amounts determined under those subparagraphs in respect of the subsidiary.

(1.41) Application of subsec. 37.1(5) — The definitions in subsection 37.1(5) apply to subsection (1.4).

Origin of subsec. 88(1.41): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words to subsec. 37.1(5)).

(1.5) Parent continuation of subsidiary — For the purposes of section 29 of the *Income Tax Application Rules*, subsection 59(3.3) and sections 66, 66.1, 66.2, 66.21, 66.4 and 66.7, where the rules in subsection (1) applied to the winding-up of a subsidiary, its parent is deemed to be the same corporation as, and a continuation of, the subsidiary.

History: Subsec. 88(1.5) amended by 2001, c. 17, subsec. 66(4), applicable to windings-up that occur after 2000. The subsec. formerly read:

> (1.5) For the purposes of section 29 of the *Income Tax Application Rules*, subsection 59(3.3) and sections 66, 66.1, 66.2, 66.4 and 66.7, where the rules in subsection (1) applied to the winding-up of a subsidiary, its parent shall be deemed to be the same corporation as, and a continuation of, the subsidiary.

Subsec. 88(1.5) added by 1985, c. 45, subsec. 43(9), applicable with respect to windings-up commencing after 1982.

Interpretation Bulletins: IT-125R4: Dispositions of resource properties; IT-488R2: Winding-up of 90%-owned taxable Canadian corporations (archived).

(1.6) Idem — Where a corporation that carries on a farming business and computes its income from that business in accordance with the cash method is wound up in circumstances to which subsection (1) applies and, at the time that is immediately before the winding-up of the corporation, owned inventory that was used in connection with that business,

(a) for the purposes of subparagraph (1)(a)(iii), the cost amount to the corporation at that time of property purchased by it that is included in that inventory shall be deemed to be the amount determined by the formula

$$\left(A \times \frac{B}{C}\right) + D$$

where

A is the amount, if any, that would be included under paragraph 28(1)(c) in computing the corporation's income for its last taxation year beginning before that time if that year had ended at that time,

B is the value (determined in accordance with subsection 28(1.2)) to the corporation at that time of the purchased inventory that is distributed to the parent on the winding-up,

C is the value (determined in accordance with subsection 28(1.2)) of all of the inventory purchased by the corporation that was owned by it in connection with that business at that time, and

D is the lesser of

(i) such additional amount as the corporation designates in respect of the property, and

(ii) the amount, if any, by which the fair market value of the property at that time exceeds the amount determined for A in respect of the property;

(b) for the purpose of subparagraph 28(1)(a)(i), the disposition of the inventory and the receipt of the proceeds of disposition therefor shall be deemed to have occurred at that time and in the course of carrying on the business; and

(c) where the parent carries on a farming business and computes its income therefrom in accordance with the cash method, for the purposes of section 28,

(i) an amount equal to the cost to the parent of the inventory shall be deemed to have been paid by it, and

(ii) the parent shall be deemed to have purchased the inventory for an amount equal to that cost,

in the course of carrying on that business and at the time it acquired the inventory.

History: Subsec. 88(1.6) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(14), applicable to windings-up beginning after July 13, 1990.

Interpretation Bulletins: IT-427R: Livestock of farmers.

(1.7) Interpretation — For the purposes of paragraphs (1)(c) and (d), where a parent of a subsidiary did not deal at arm's length with another person (other than a corporation the control of which was acquired by the parent from a person with whom the parent dealt at arm's length) at any time before the winding-up of the subsidiary, the parent and the other person are deemed never to have dealt with each other at arm's length, whether or not the parent and the other person coexisted.

Related Provisions: 87(11) — Application to vertical amalgamation; 256(6)–(9) — Whether control acquired.

History: Subsec. 88(1.7) added by 1998, c. 19, subsec. 118(12), applicable to windings-up that begin after February 21, 1994.

(2) Winding-up of [other] Canadian corporation — Where a Canadian corporation (other than a subsidiary to the winding-up of which the rules in subsection (1) applied) has been wound up after 1978 and, at a particular time in the course of the winding-up, all or substantially all of the property owned by the corporation immediately before that time was distributed to the shareholders of the corporation,

(a) for the purposes of computing the corporation's

(i) capital dividend account,

(i.1) capital gains dividend account (within the meaning assigned by subsection 131(6)), where the corporation is an investment corporation,

(ii) capital gains dividend account (within the meaning assigned by section 133), and

(iii) pre-1972 capital surplus on hand,

at the time (in this paragraph referred to as the "time of computation") immediately before the particular time,

(iv) the taxation year of the corporation that otherwise would have included the particular time shall be deemed to have ended immediately before the time of computation, and a new taxation year shall be deemed to have commenced at that time, and

(v) each property of the corporation that was so distributed at the particular time shall be deemed to have been disposed of by the corporation immediately before the end of the taxation year so deemed to have ended for proceeds equal to the fair market value of the property immediately before the particular time;

(vi) [Repealed]

(b) where the corporation is, by virtue of subsection 84(2), deemed to have paid at the particular time a dividend (in this paragraph referred to as the "winding-up dividend") on shares of any class of its capital stock, the following rules apply:

(i) such portion of the winding-up dividend as does not exceed the corporation's capital dividend account immediately before that time or capital gains dividend account immediately before that time, as the case may be, shall be deemed, for the purposes of an election in respect thereof under subsection 83(2), 131(1) (as that subsection applies for the purposes of section 130) or 133(7.1), as the case may be, and where the corporation has so elected, for all other purposes, to be the full amount of a separate dividend,

(i.1) [Repealed under former Act]

(ii) the portion of the winding-up dividend equal to the lesser of the corporation's pre-1972 capital surplus on hand immediately before that time and the amount by which the winding-up dividend exceeds

(A) the portion thereof in respect of which the corporation has made an election under subsection 83(2), or

(B) the portion thereof in respect of which the corporation has made an election under subsection 133(7.1),

as the case may be, shall be deemed not to be a dividend,

(iii) notwithstanding the definition "taxable dividend" in subsection 89(1), the winding-up dividend, to the extent that it exceeds the total of the portion thereof deemed by subparagraph (i) to be a separate dividend for all purposes and the portion deemed by subparagraph (ii) not to be a dividend, shall be deemed to be a separate dividend that is a taxable dividend, and

(iv) each person who held any of the issued shares of that class at the particular time shall be deemed to have received that proportion of any separate dividend determined under subparagraph (i) or (iii) that the number of shares of that class held by the person immediately before the particular time is of the number of issued shares of that class outstanding immediately before that time; and

(c) for the purpose of computing the income of the corporation for its taxation year that includes the particular time, paragraph 12(1)(t) shall be read as follows:

"(t) the amount deducted under subsection 127(5) or (6) in computing the taxpayer's tax payable for the year or a preceding taxation year to the extent that it was not included under this paragraph in computing the taxpayer's income for a preceding taxation year or is not included in an amount determined under paragraph 13(7.1)(e) or 37(1)(e) or subparagraph 53(2)(c)(vi) or (h)(ii) or the amount determined for I in the definition "undepreciated capital cost" in subsection 13(21) or L in the definition "cumulative Canadian exploration expense" in subsection 66.1(6);".

Related Provisions: 69(5) — Property appropriated by shareholder on winding-up of corporation; 84(2) — Distribution of property on winding-up of corporation; 88(2.1) — "Pre-1972 capital surplus on hand" defined; 89(3) — Ordering of simultaneous dividends; 134 — Status of non-resident-owned investment corporation for 88(2).

History: Subpara. 88(2)(a)(i.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(15), applicable to windings-up beginning after 1988.

Subpara. 88(2)(a)(vi) repealed by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(16), applicable to windings-up beginning after 1987. Subpara. 88(2)(a)(vi) formerly read:

(vi) in calculating the income of the corporation for the taxation year so deemed to have ended, paragraph 12(1)(t) shall be read as follows:

"(t) the amount deducted under subsection 127(5) or (6) in computing the taxpayer's tax payable for the year or a preceding taxation year to the extent that it was not included in computing the taxpayer's income for a preceding taxation year under this paragraph or is not included in an amount determined under paragraph 13(7.1)(e) or 37(1)(e), or subparagraph 53(2)(c)(vi) or (h)(ii) or for I in the definition "undepreciated capital cost" in subsection 13(21) or L in the definition "cumulative Canadian exploration expense" in subsection 66.1(6);" and

Subpara. 88(2)(b)(i) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(17), to add "131(1) (as that subsection applies for the purposes of section 130)", applicable to windings-up beginning after 1988.

Para. 88(2)(c) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(18), applicable to windings-up commencing after 1987.

Interpretation Bulletins: IT-126R2: Meaning of "winding-up"; IT-149R4: Winding-up dividend. See also list at end of s. 88.

Forms: RC145: Request to close Business Number (BN) accounts.

(2.1) Definition of "pre-1972 capital surplus on hand" — For the purposes of subsection (2), "pre-1972 capital surplus on hand" of a particular corporation at a particular time means the amount, if any, by which the total of

(a) the corporation's 1971 capital surplus on hand on December 31, 1978 within the meaning of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read on that date,

(b) the total of all amounts each of which is an amount in respect of a capital property of the corporation owned by it on December 31, 1971 and disposed of by it after 1978 and before the particular time, equal to the amount, if any, by which the lesser of its fair market value on valuation day (within the meaning assigned by section 24 of the *Income Tax Application Rules*) and the corporation's proceeds of disposition of that capital property exceeds its actual cost to the corporation determined without reference to the *Income Tax Application Rules* other than subsections 26(15), (17) and (21) to (27) of that Act,

(c) where before the particular time a subsidiary (to the winding-up of which the rules in subsection (1) ap-

plied) of the particular corporation has been wound up after 1978, an amount equal to the pre-1972 capital surplus on hand of the subsidiary immediately before the commencement of the winding-up, and

(d) where the particular corporation is a new corporation formed as a result of an amalgamation (within the meaning of section 87) after 1978 and before the particular time, the total of all amounts each of which is an amount in respect of a predecessor corporation, equal to the predecessor corporation's pre-1972 capital surplus on hand immediately before the amalgamation

exceeds

(e) the total of all amounts each of which is an amount in respect of a capital property (other than depreciable property) of the corporation owned by it on December 31, 1971 and disposed of by it after 1978 and before the particular time equal to the amount, if any, by which its actual cost to the corporation determined without reference to the *Income Tax Application Rules*, other than subsections 26(15), (17) and (21) to (27) of that Act, exceeds the greater of the fair market value of the property on valuation day (within the meaning assigned by section 24 of that Act) and the corporation's proceeds of disposition of the property.

Related Provisions: 84(2) — Distribution on winding-up, etc.; 87(2)(t) — Deemed date of acquisition; 88(2.2) — Determination of pre-1972 CSOH; 88(2.3) — Actual cost of certain depreciable property.

I.T. Application Rules: 26(15), (17), (21)–(27); 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-488R2: Winding-up of 90%-owned taxable Canadian corporations (archived). See also list at end of s. 88.

(2.2) Determination of pre-1972 capital surplus on hand — For the purposes of determining the pre-1972 capital surplus on hand of any corporation at a particular time after 1978, the following rules apply:

(a) an amount referred to in paragraphs (2.1)(b) and (e) in respect of the corporation shall be deemed to be nil, where the property disposed of is

(i) a share of the capital stock of a subsidiary, within the meaning of subsection (1), that was disposed of on the winding-up of the subsidiary where that winding-up commenced after 1978,

(ii) a share of the capital stock of another Canadian corporation that was controlled, within the meaning assigned by subsection 186(2), by the corporation immediately before the disposition and that was disposed of by the corporation after 1978 to a person with whom the corporation was not dealing at arm's length immediately after the disposition, other than by a disposition referred to in paragraph (b), or

(iii) subject to subsection 26(21) of the *Income Tax Application Rules*, a share of the capital stock of a particular corporation that was disposed of by the corporation after 1978, on an amalgamation, within the meaning assigned by subsection 87(1), where the corporation controlled, within the meaning assigned by subsection 186(2), both the particular corporation immediately before the amalgamation and the new corporation immediately after the amalgamation; and

(b) where another corporation that is a Canadian corporation owned a capital property on December 31, 1971 and subsequently disposed of it to the corporation in a transaction to which section 85 applied, the other corporation shall be deemed not to have disposed of that property in the transaction and the corporation shall be deemed to have owned that property on December 31, 1971 and to have acquired it at an actual cost equal to the actual cost of that property to the other corporation.

Interpretation Bulletins: IT-488R2: Winding-up of 90%-owned taxable Canadian corporations (archived). See also list at end of s. 88.

(2.3) Actual cost of certain depreciable property — For the purpose of subsection (2.1), the actual cost of the depreciable property that was acquired by a corporation before the commencement of its 1949 taxation year that is capital property referred to in that subsection shall be deemed to be the capital cost of that property to the corporation (within the meaning assigned by section 144 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1971 taxation year).

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

(3) Dissolution of foreign affiliate — Where on the dissolution of a controlled foreign affiliate (within the meaning assigned by subsection 95(1)) of a taxpayer (in this subsection referred to as the "disposing affiliate") one or more shares of the capital stock of another foreign affiliate of the taxpayer have been disposed of to the taxpayer,

(a) the disposing affiliate's proceeds of disposition of each such share and the cost thereof to the taxpayer shall be deemed to be an amount equal to the adjusted cost base to the disposing affiliate of the share immediately before the dissolution, or such greater amount as the taxpayer claims not exceeding the fair market value of the share immediately before the dissolution; and

(b) the taxpayer's proceeds of disposition of the shares of the disposing affiliate shall be deemed to be the amount, if any, by which the total of

(i) the cost to the taxpayer of the shares of the other foreign affiliate, as determined in paragraph (a), and

(ii) the fair market value of any property (other than the shares referred to in subparagraph (i)) disposed of by the disposing affiliate to the taxpayer on the dissolution,

exceeds

(iii) the total of all debts owing by the disposing affiliate, and of all amounts of other obligations of the disposing affiliate to pay amounts, otherwise than as or on account of a dividend owing by the disposing affiliate to the taxpayer or to persons with whom the taxpayer was not dealing at arm's length, that were outstanding immediately before the dissolution and that were assumed or cancelled by the taxpayer on the dissolution.

Proposed Amendment — 88(3)

(3) Distributions of property of a foreign affiliate — If, at any time, a taxpayer resident in Canada receives a property from a foreign affiliate of the taxpayer (the property received and the foreign affiliate from which the property was received being referred to in this subsection as the "distributed property" and the "disposing foreign affiliate", respectively), on a dissolution and a liquidation of the disposing foreign affiliate, on a redemption of shares of the capital stock of the disposing foreign affiliate, as a payment of a dividend by the dis-

posing foreign affiliate, or as a distribution of property by the disposing foreign affiliate,

(a) where the distributed property was, immediately before that time, a share of the capital stock of another foreign affiliate of the taxpayer and an excluded property of the disposing foreign affiliate, the distributed property

(i) is deemed to have been disposed of, at that time, by the disposing foreign affiliate to the taxpayer for proceeds of disposition that are equal to

(A) unless a valid election is made under clause (B), the adjusted cost base to the disposing foreign affiliate of the distributed property, immediately before that time, and

(B) the amount that the taxpayer elects in the prescribed manner and in the prescribed time in respect of the distributed property, which amount may not be less than the adjusted cost base to the disposing foreign affiliate of the distributed property immediately before that time and may not exceed the fair market value, at that time, of the distributed property, and

(ii) is deemed to have been acquired, at that time, by the taxpayer at a cost equal to the amount, determined under subparagraph (i), to be the disposing foreign affiliate's proceeds of disposition of the distributed property;

(b) where the distributed property is property to which paragraph (a) does not apply, the distributed property is deemed

(i) to have been disposed of, at that time, by the disposing foreign affiliate to the taxpayer for proceeds of disposition that are equal to the fair market value, at that time, of the distributed property, and

(ii) to have been acquired, at that time, by the taxpayer at a cost equal to the amount, determined under subparagraph (i), to be the disposing foreign affiliate's proceeds of disposition of the distributed property;

(c) where the taxpayer disposed of shares of the capital stock of the disposing foreign affiliate on the dissolution and liquidation of the disposing foreign affiliate or on the redemption, acquisition or cancellation of shares of the disposing foreign affiliate, as the case may be, the taxpayer's proceeds of disposition of the shares are deemed to be the amount determined by the formula

$$A - B$$

where

A is the total of all amounts each of which is the cost to the taxpayer of a distributed property received by the taxpayer as consideration for the disposition of the shares, and

B is the total of all amounts each of which is the amount of a debt owing by the disposing foreign affiliate, or of an obligation of the disposing foreign affiliate to pay an amount, (other than a dividend payable to the taxpayer or to persons with whom the taxpayer does not deal at arm's length) that was assumed or cancelled by the taxpayer because of the dissolution and liquidation or because of the redemption, acquisition or cancellation;

(d) where the taxpayer received distributed property as a dividend or a distribution of property, the amount of the dividend paid by the disposing foreign affiliate or the amount of the distribution of property made by the disposing foreign affiliate to the taxpayer, as case may be, is deemed to be the amount determined by the formula

$$D - E$$

where

D is the total of all amounts each of which is the cost to the taxpayer of a distributed property received by the taxpayer from the disposing foreign affiliate as the payment of a dividend or as the distribution of property, as the case may be, and

E is the total of all amounts each of which is the amount of a debt owing by the disposing foreign affiliate or of an obligation of the disposing foreign affiliate to pay an amount (other than a dividend payable to the taxpayer or to persons with whom the taxpayer does not deal at arm's length) that was assumed or cancelled by the taxpayer because of the payment of the dividend or because of the distribution;

(e) the amount of a distribution of property made, at that time, by the disposing foreign affiliate to the taxpayer, is to be deducted in computing the taxpayer's adjusted cost base of a particular share of the capital stock of disposing foreign affiliate held by the taxpayer, at that time, to the extent that it is reasonable to consider the distribution to be a payment made by the disposing foreign affiliate to the taxpayer as

(i) a return of an amount that was received by the disposing foreign affiliate as consideration for the issuance of the particular share, or

(ii) a return of an amount of contributed surplus that was received by the disposing foreign affiliate before that time, as a contribution of capital to the disposing foreign affiliate by the shareholder that held the particular share at the time of the contribution; and

(f) the amount of a distribution of property made, at that time, by the disposing foreign affiliate to the taxpayer is to be included in computing the taxpayer's income as income from property that is the shares of the capital stock of the disposing foreign affiliate held at that time by the taxpayer, to the extent that it is not deducted, under paragraph (e), in computing the adjusted cost base of a particular share of the capital stock of the disposing foreign affiliate held by the taxpayer.

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 130(2), will amend subsec. 88(3) to read as above, applicable to property received after February 27, 2004.

Technical Notes: Subsection 88(3) provides for rules that apply on the dissolution of a controlled foreign affiliate (a "disposing affiliate") of a taxpayer resident in Canada. For example, shares of a foreign affiliate of a taxpayer that are transferred to the taxpayer on the dissolution of the disposing affiliate will be considered to have been disposed of by the controlled foreign affiliate, and to have been acquired by the taxpayer, for the adjusted cost base or such greater amount as the taxpayer claims not exceeding the fair market value of the shares. Also, in general terms, the taxpayer's proceeds of disposition of the taxpayer's shares of the capital stock of the controlled foreign affiliate disposed of on the dissolution are deemed to be the amount, if any, by which the total of all

amounts each of which is the cost to the taxpayer of property received by the taxpayer from the controlled foreign affiliate on the dissolution exceeds the total of all debts of the controlled foreign affiliate that were assumed or cancelled by the taxpayer on the dissolution.

In general terms, subsection 88(3) is being amended to be applicable to property received, by a taxpayer resident in Canada from a foreign affiliate of a taxpayer resident in Canada, in the following circumstances:

- on a dissolution and liquidation of the foreign affiliate,
- on a redemption of shares by the foreign affiliate,
- as payment of a dividend by the foreign affiliate, or
- as a distribution of property by the foreign affiliate.

This amendment applies to property received after February 27, 2004.

Proposed subsection 88(3) provides for the following rules if, at any time (referred to in this commentary as the "distribution time"), a taxpayer resident in Canada receives, in the circumstances described above, a property from a foreign affiliate of the taxpayer (the property received and the foreign affiliate from which the property was received being referred to in this subsection as the "distributed property" and the "disposing foreign affiliate", respectively):

- If the distributed property was, immediately before the distribution time, a share of the capital stock of another foreign affiliate of the taxpayer and an excluded property of the disposing foreign affiliate,
  - the distributed property is deemed to have been disposed of, at the distribution time, by the disposing foreign affiliate to the taxpayer for proceeds of disposition that are equal to
    - unless a valid election referred to below is made, the adjusted cost base to the disposing foreign affiliate of the distributed property, immediately before that time, and
    - the amount that the taxpayer elects in the prescribed manner and in the prescribed time (see proposed new section 5919 of the *Income Tax Regulations*) in respect of the distributed property, which amount may not be less than the adjusted cost base to the disposing foreign affiliate of the distributed property immediately before that time and may not exceed the fair market value, at that time, of the distributed property, and
  - the distributed property is deemed to have been acquired, at that time, by the taxpayer at a cost equal to the amount determined to be the disposing foreign affiliate's proceeds of disposition of the distributed property.
- If the distributed property is not, immediately before the distribution time, both a share of the capital stock of another foreign affiliate of the taxpayer and an excluded property of the disposing foreign affiliate,
  - the distributed property is deemed to have been disposed of, at that time, by the disposing foreign affiliate to the taxpayer for proceeds of disposition that are equal to the fair market value, at that time, of the distributed property, and
  - the distributed property is deemed to have been acquired, at that time, by the taxpayer at a cost equal to the amount determined to be the disposing foreign affiliate's proceeds of disposition of the distributed property.
- If the taxpayer disposed of shares of the capital stock of the disposing foreign affiliate on the dissolution and liquidation of the disposing foreign affiliate or on the redemption, acquisition or cancellation of shares of the disposing foreign affiliate, as the case may be, the taxpayer's proceeds of disposition of the shares are deemed to be the amount determined by the formula

$$A - B$$

where

A is the total of all amounts each of which is the cost to the taxpayer of a distributed property received by the taxpayer as consideration for the disposition of the shares, and

B is the total of all amounts each of which is the amount of a debt owing by the disposing foreign affiliate or of an obligation of the disposing foreign affiliate to pay an amount (other than a dividend payable to the taxpayer or to persons with whom the taxpayer does not deal at arm's length) that was assumed or cancelled by the taxpayer because of the dissolution and liquidation or because of the redemption, acquisition or cancellation.

- If the taxpayer has received distributed property as a dividend or a distribution of property, the amount of the dividend paid by the disposing foreign affiliate or the amount of the distribution of property made by the disposing foreign affiliate to the taxpayer, as case may be, is deemed to be the amount determined by the formula

$$D - E$$

where

D is the total of all amounts each of which is the cost to the taxpayer of a distributed property received by the taxpayer from the disposing foreign affiliate as the payment of a dividend or as the distribution of property, as the case may be, and

E is the total of all amounts each of which is the amount of a debt owing by the disposing foreign affiliate or of an obligation of the disposing foreign affiliate to pay an amount (other than a dividend payable to the taxpayer or to persons with whom the taxpayer does not deal at arm's length) that was assumed or cancelled by the taxpayer because of the payment of the dividend or because of the distribution.

- The amount of a distribution of property made, at the distribution time, by the disposing foreign affiliate to the taxpayer, is to be deducted in computing the taxpayer's adjusted cost base of a particular share of the capital stock of the disposing foreign affiliate held by the taxpayer, at that time, to the extent that it is reasonable to consider the distribution as a payment made by the disposing foreign affiliate to the taxpayer as
  - a return of an amount that was received by the disposing foreign affiliate as consideration for the issuance of the particular share, or
  - a return of an amount of contributed surplus that was received by the disposing foreign affiliate, before the distribution time, as a contribution of capital to the disposing foreign affiliate by the shareholder that held the particular share at that time of the contribution.
- The amount of a distribution of property made, at the distribution time, by the disposing foreign affiliate to the taxpayer is to be included in computing the taxpayer's income as income from property that is the shares of the capital stock of disposing foreign affiliate held at that time by the taxpayer, to the extent that it is not deducted in computing the adjusted cost base of a particular share of the capital stock of the disposing foreign affiliate held by the taxpayer.

Letter from Dept. of Finance, August 19, 2004:

Dear [xxx]

We are responding to your correspondence and related communications made on behalf of [xxx] in connection with proposed subsection 88(3) of the *Income Tax Act* (the "Act"), as contained in the draft technical amendments released on February 27, 2004 by the Minister of Finance, the Honourable Ralph Goodale.

In your correspondence and communications, you mention the case where a foreign affiliate of a taxpayer resident in Canada makes a payment to the taxpayer of an amount in respect of shares held by the taxpayer of a particular class of shares of the capital stock of the foreign affiliate. For the purposes of your submission, you ask us to assume that

- the payment in question is not a dividend under the relevant foreign corporation law governing the foreign affiliate and is a reduction or a return to the taxpayer of the shares' portion of the paid-up capital in respect of the particular class of shares under that law, and
- the amount of the payment in question does not exceed the taxpayer's pro-rata portion (based on the proportion that the number of shares of the particular class of shares held by the taxpayer is of the total number of outstanding shares of the particular class) of the amount of money that had been received by the foreign affiliate on the issuance of shares of the particular class or received by another foreign affiliate of the taxpayer on the issuance of shares of the capital stock of that other foreign affiliate that were exchanged for shares of the particular class.

Under the Act as it currently reads, the payment in question would be treated as a return of the paid-up capital of the shares of the particular class held by the taxpayer and would be deducted, under paragraph 53(2)(b), in computing the adjusted cost base to the taxpayer of the shares. No amount would, under the Act as it currently reads, be included in the income of the taxpayer in respect of the payment except amounts that may be required to be included in the taxpayer's income

because of a gain that could arise, under subsection 40(3), in respect of the payment if the amount of the payment exceeded the taxpayer's adjusted cost base of those shares held by the taxpayer.

The proposed subsection 88(3) of the Act that was included in the February 27, 2004 draft technical amendments was not intended to change the tax outcome described above in respect of the payment made as a return of the paid-up capital of the shares of the foreign affiliate described above. Although our Branch is studying further revisions to that proposed subsection 88(3), it is not intended that any such revisions that we would recommend to the Minister of Finance would change that tax outcome in respect of such a payment. I can also confirm that the operation of that proposed subsection 88(3) is not intended to be dependent upon the source of the funds used by the foreign affiliate of the taxpayer to make such a payment to the taxpayer.

I trust that the foregoing provides the clarifications sought.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, January 19, 2005:

Dear [xxx]

Subject: Subsection 88(3) of the *Income Tax Act*

Thank you for your letter dated July 30, 2004 in connection with proposed subsection 88(3) of the *Income Tax Act* (the "Act"), as contained in the draft technical amendments released on February 27, 2004 by the Minister of Finance.

Your letter relates to the application of that proposed subsection 88(3) to a proposed distribution of money to a taxpayer resident in Canada by a foreign affiliate of the taxpayer made in respect of shares of the capital stock of the foreign affiliate held by the taxpayer. According to your letter, that distribution is in respect of amounts included in the shares' portion of the paid-up capital (determined under the relevant foreign corporation law) in respect of the class of shares of the capital stock of the foreign affiliate to which the shares belong.

Your concern is that the portion of a distribution that is not treated by proposed subsection 88(3) as a reduction to the adjusted cost base to the taxpayer of the shares would be treated by that proposed subsection as income from property (other than dividends) from the shares. You request that that proposed subsection 88(3) be revised so as to treat the amount of that distribution made to the taxpayer in respect of the shares, to the extent that the amount exceeds the total of the amounts of the reductions in respect of the distribution to the adjusted cost base to the taxpayer of the shares, as the payment of a dividend on the shares. You argue that such a revision to proposed subsection 88(3) would, where the taxpayer is a corporation, enable the taxpayer to benefit from the deductions permitted under section 113 of the Act in respect of dividends paid by the foreign affiliate that are prescribed by the *Income Tax Regulations* to be paid out of the foreign affiliate's exempt surplus in respect of the taxpayer.

From a tax policy perspective, we agree that, in the circumstances described in your letter, it would be appropriate to make the change you have requested. We are currently considering revisions to that proposed subsection 88(3) of the Act, and the requested revision to subsection 88(3) that is described in this letter is to be included in our recommendations to the Minister of Finance.

Thank you again for writing.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 93(1.4) — No election allowed on disposing of share of foreign affiliate; 93(4) — capital loss denied; 95(1)"foreign accrual property income"B(b) — Inclusion in FAPI; 95(2)(f) — Determination of certain components of foreign accrual property income; 95(2)(f.6)(i) — No FAPI rollover where 88(3) applies; 257 — Formula amounts cannot calculate to less than zero.

History: Subpara. 88(3)(b)(iii) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(19), to add "otherwise than as or on account of a dividend owing by the disposing affiliate to the taxpayer or to a person with whom the taxpayer was not dealing at arm's length," applicable to dissolutions occurring after July 13, 1990.

Regulations: 5907(2.01) (FAPI — determining earnings derived from disposition).

(4) Amalgamation deemed not to be acquisition of control — For the purposes of paragraphs (1)(c), (c.2), (d) and (d.2) and, for greater certainty, paragraphs (c.3) to (c.8) and (d.3),

(a) subject to paragraph (c), control of any corporation shall be deemed not to have been acquired because of an amalgamation;

(b) any corporation formed as a result of an amalgamation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation; and

(c) in the case of an amalgamation described in subsection 87(9), control of a predecessor corporation that was not controlled by the parent before the amalgamation shall be deemed to have been acquired by the parent immediately before the amalgamation.

History: The opening words of subsec. 88(4) amended by 2001, c. 17, subsec. 66(5), applicable to windings-up that begin after November 1994. The opening words formerly read:

(4) For the purposes of paragraphs (1)(c), (d) and (d.2),

Subsec. 88(4) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(20), applicable to windings-up beginning after March 1977. Subsec. 88(4) formerly read:

(4) In determining, for the purposes of paragraphs (1)(c) and (d), whether control of any corporation has been acquired, control shall be deemed not to have been acquired by virtue of any amalgamation and any corporation formed as a result of any amalgamation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation and, in the case of a merger described in subsection 87(9), control of a predecessor corporation that was not controlled by the parent prior to such a merger shall be deemed to have been acquired by the parent immediately prior to the merger.

Interpretation Bulletins: IT-488R2: Winding-up of 90%-owned taxable Canadian corporations (archived).

Definitions [s. 88]: "acquired" — 88(1)(c.6), (d.2), 88(4), 256(7)–(9); "acquirer" — 88(1)(d.2); "adjusted cost base" — 54, 248(1); "allowable business investment loss", "allowable capital loss" — 38, 248(1); "amount" — 248(1); "arm's length" — 88(1.7), 251(1); "assessment", "business" — 248(1); "business limit" — 125(2)–(5.1), 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canadian corporation" — 89(1), 248(1); "Canadian resource property" — 66(15), 248(1); "capital property" — 54, 248(1); "carrying on business" — 253; "cash method" — 28(1), 248(1); "class", "class of shares" — 248(6); "consequence of the death" — 248(8); "control" — 88(1)(c.6), (d.2), 88(4), 256(6)–(9); "controlled" — 256(6), (6.1); "controlled foreign affiliate" — 94.1(2)(h), 95(1), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount" — 248(1); "depreciable property" — 13(21), 88(1)(c.7), 248(1); "disposition", "dividend" — 248(1); "eligible amount" — 248(31), (41); "expenditure year" — 88(1)(e.3); "farm loss" — 111(8); "farming" — 248(1); "financial institution" — 142.2(1); "filing-due date" — 248(1); "fiscal period" — 249(2)(b), 249.1; "foreign affiliate" — 95(1), 248(1); "foreign resource property" — 66(15), 248(1); "gift year" — 88(1)(e.6); "ineligible property" — 88(1)(c) [before (iii)]; "investment tax credit" — 127(9), 248(1); "life insurance capital dividend" — 83(2.1), 248(1); "limited partnership loss" — 248(1); "mark-to-market property" — 142.2(1); "Minister" — 248(1); "net capital loss", "non-capital loss" — 111(8), 248(1); "paid-up capital" — 89(1), 248(1); "parent" — 88(1), (1.1), (1.2); "payable" — 84(7), 89(3); "person" — 248(1); "pre-1972 capital surplus on hand" — 88(2.1), (2.2); "prescribed", "property" — 248(1); "qualified expenditure" — 37.1(5), 88(1.41); "resident in Canada" — 250; "restricted farm loss" — 31, 248(1); "series of transactions" — 248(10); "share", "shareholder" — 248(1); "specified class" — 88(1)(c.8); "specified debt obligation" — 142.2(1); "specified future tax consequence" — 248(1); "specified person" — 88(1)(c.2)(i); "specified property" — 88(1)(c.4); "specified shareholder" — 88(1)(c.2)(iii), 248(1); "specified subsidiary corporation" — 88(1)(c.5); "subsidiary" — 88(1), (1.1), (1.2); "substituted" — 248(5); "substitution" — 88(1)(c.3); "tax payable" — 248(2); "taxable Canadian corporation" — 89(1), 248(1); "taxable capital gain" — 38, 248(1); "taxable dividend" — 89(1), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 108(1); "writing" — *Interpretation Act* 35(1).

I.T. Application Rules [s. 88]: 20(1.2).

Interpretation Bulletins [s. 88]: IT-188R: Sale of accounts receivable; IT-243R4: Dividend refund to private corporations; IT-474R: Amalgamations of Canadian corporations.

Forms: T2 SCH 24: First time filer after incorporation, amalgamation or winding-up of a subsidiary into a parent.

88.1 [Repealed]

History: S. 88.1 repealed by 1994, c. 21, s. 41, applicable after 1992 except that

(a) where a corporation elects in accordance with para. 111(4)(a) of 1994, c. 21 (i.e., elects before December 16, 1994 for new subsec. 250(5.1) to apply in respect of a continuance before 1993), the repeal applies to the corporation from the corporation's "time of continuation" (within the meaning assigned by that para.); and

(b) where a corporation elects in accordance with para. 111(4)(b) of 1994, c. 21 (i.e., elects before December 16, 1994 for new subsec. 250(5.1) to not apply), the repeal applies to the corporation only after the corporation was granted the articles of continuance or similar constitutional documents in respect of which the election was made.

S. 88.1 formerly read:

88.1 Corporate emigration — Where at any particular time after August 28, 1980 a corporation that was incorporated in Canada, other than a corporation that was not at any time resident in Canada,

(a) has been granted articles of continuance, or similar corporate constitutional documents, in a jurisdiction outside Canada, or

(b) has become resident in a jurisdiction outside Canada and would, as a consequence thereof, be exempt from tax under this Part on income from any source outside Canada derived by it after the particular time by virtue of any Act of Parliament or anything approved, made or declared to have the force of law under any Act of Parliament,

the following rules apply:

(c) the corporation's taxation year that would otherwise have included the particular time shall be deemed to have ended immediately before the particular time and a new taxation year of the corporation shall be deemed to have commenced at the particular time,

(d) the corporation shall be deemed not to be a Canadian corporation at the particular time and all subsequent times,

(e) each property owned by the corporation immediately before the particular time shall be deemed to have been disposed of by it immediately before that time for proceeds of disposition equal to its fair market value at that time and those proceeds shall be deemed to have become receivable and to have been received by it immediately before that time,

(f) section 48 does not apply to the corporation for the taxation year in which it is deemed by paragraph (e) to have disposed of its property, and

(g) each property deemed by paragraph (e) to have been disposed of by the corporation shall be deemed to have been reacquired by it immediately after the particular time at a cost equal to the proceeds of disposition of the property as determined in that paragraph.

89. (1) Definitions — In this subdivision,

"Canadian corporation" at any time means a corporation that is resident in Canada at that time and was

(a) incorporated in Canada, or

(b) resident in Canada throughout the period that began on June 18, 1971 and that ends at that time,

and, for greater certainty, a corporation formed at any particular time by the amalgamation or merger of, or by a plan of arrangement or other corporate reorganization in respect of, 2 or more corporations (otherwise than as a result of the acquisition of property of one corporation by another corporation, pursuant to the purchase of the property by the other corporation or as a result of the distribution of the property to the other corporation on the winding-up of the corporation) is a Canadian corporation because of paragraph (a) only if

(c) that reorganization took place under the laws of Canada or a province, and

(d) each of those corporations was, immediately before the particular time, a Canadian corporation;

Related Provisions: 134 — NRO not a Canadian corporation; 219 — Additional tax on corporations (other than Canadian corporations) carrying on business in Canada; 219.1 — Tax when corporation ceases to be Canadian corporation; 248(1)"Canadian corporation" — Definition applies to entire Act; 248(1)"corporation" — meaning of "incorporated in Canada"; 250 — Resident in Canada.

History: The definition "Canadian corporation" in subsec. 89(1) substituted by 1994, c. 21, subsec. 42(1), applicable June 15, 1994. That definition formerly read:

"Canadian corporation" at any time means a corporation that was resident in Canada at that time and was

(a) incorporated in Canada, or

(b) resident in Canada throughout the period commencing June 18, 1971 and ending at that time;

Interpretation Bulletins: IT-98R2: Investment corporations (archived); IT-291R3: Transfer of property to a corporation under subsection 85(1); IT-458R2: Canadian-controlled private corporation.

"capital dividend account" of a corporation at any particular time means the amount, if any, by which the total of

(a) the amount, if any, by which

(i) the total of all amounts each of which is the amount if any, by which

(A) the amount of the corporation's capital gain from a disposition (other than a disposition that is the making of a gift after December 8, 1997 that is not a gift described in subsection 110.1(1)) of a property in the period beginning at the beginning of its first taxation year (that began after the corporation last became a private corporation and that ended after 1971) and ending immediately before the particular time (in this definition referred to as "the period")

exceeds the total of

(B) the portion of the capital gain referred to in clause (A) that is the corporation's taxable capital gain, and

(C) the portion of the amount, if any, by which the amount determined under clause (A) exceeds the amount determined under clause (B) from the disposition by it of a property that can reasonably be regarded as having accrued while the property, or a property for which it was substituted,

(I) except in the case of a disposition of a designated property, was a property of a corporation (other than a private corporation, an investment corporation, a mortgage investment corporation or a mutual fund corporation),

(II) where, after November 26, 1987, the property became a property of a Canadian-controlled private corporation (otherwise than by reason of a change in the residence of one or more shareholders of the corporation), was a property of a corporation controlled directly or indirectly in any manner whatever by one or more non-resident persons, or

(III) where, after November 26, 1987, the property became a property of a private corporation that was not exempt from tax under this Part on its taxable income, was a property of a corporation exempt from tax under this Part on its taxable income,

exceeds

(ii) the total of all amounts each of which is the amount, if any, by which

(A) the amount of the corporation's capital loss from a disposition (other than a disposition that is the making of a gift after December 8, 1997 that is not a gift described in subsection 110.1(1)) of a property in that period

exceeds the total of

(B) the part of the capital loss referred to in clause (A) that is the corporation's allowable capital loss, and

(C) the portion of the amount, if any, by which the amount determined under clause (A) exceeds the amount determined under clause (B) from the disposition by it of a property that can reasonably be regarded as having accrued while the property, or a property for which it was substituted,

(I) except in the case of a disposition of a designated property, was a property of a corporation (other than a private corporation, an investment corporation, a mortgage investment corporation or a mutual fund corporation),

(II) where, after November 26, 1987, the property became a property of a Canadian-controlled private corporation (otherwise than by reason of a change in the residence of one or more shareholders of the corporation), was a property of a corporation controlled directly or indirectly in any manner whatever by one or more non-resident persons, or

(III) where, after November 26, 1987, the property became a property of a private corporation that was not exempt from tax under this Part on its taxable income, was a property of a corporation exempt from tax under this Part on its taxable income,

(b) all amounts each of which is an amount in respect of a dividend received by the corporation on a share of the capital stock of another corporation in the period, which amount was, by virtue of subsection 83(2), not included in computing the income of the corporation,

(c) the total of all amounts each of which is an amount required to have been included under this paragraph as it read in its application to a taxation year that ended before February 28, 2000,

(c.1) the amount, if any, by which

(i) ½ of the total of all amounts each of which is an amount required by paragraph 14(1)(b) to be included in computing the corporation's income in respect of a business carried on by the corporation for a taxation year that is included in the period and that ended after February 27, 2000 and before October 18, 2000,

exceeds

(ii) where the corporation has deducted an amount under subsection 20(4.2) in respect of a debt established by it to have become a bad debt in a taxation year that is included in the period and that ended after February 27, 2000 and before October 18, 2000, or has an allowable capital loss for such a year because of the application of subsection 20(4.3), the amount determined by the formula

$$V + W$$

where

V is ½ of the value determined for A under subsection 20(4.2) in respect of the corporation for the last such taxation year that ended in the period, and

W is ⅓ of the value determined for B under subsection 20(4.2) in respect of the corporation for the last such taxation year that ended in the period, and

(iii) in any other case, nil,

(c.2) the amount, if any, by which

(i) the total of all amounts each of which is an amount required by paragraph 14(1)(b) to be included in computing the corporation's income in respect of a business carried on by the corporation for a taxation year that is included in the period and that ends after October 17, 2000,

exceeds

(ii) where the corporation has deducted an amount under subsection 20(4.2) in respect of a debt established by it to have become a bad debt in a taxation year that is included in the period and that ends after October 17, 2000, or has an allowable capital loss for such a year because of the application of subsection 20(4.3), the amount determined by the formula

$$X + Y$$

where

X is the value determined for A under subsection 20(4.2) in respect of the corporation for the last such taxation year that ended in the period, and

Y is ⅓ of the value determined for B under subsection 20(4.2) in respect of the corporation for the last such taxation year that ended in the period, and

(iii) in any other case, nil,

(d) the amount, if any, by which the total of

(i) all amounts each of which is the proceeds of a life insurance policy of which the corporation was a beneficiary on or before June 28, 1982 received by the corporation in the period and after 1971 in consequence of the death of any person, and

(ii) all amounts each of which is the proceeds of a life insurance policy of which the corporation was not a beneficiary on or before June 28, 1982 received by the corporation in the period and after May 23, 1985 in consequence of the death of any person

exceeds the total of all amounts each of which is the adjusted cost basis (within the meaning assigned by subsection 148(9)) of a policy referred to in subpara-

graph (i) or (ii) to the corporation immediately before that person's death,

(e) the amount of the corporation's life insurance capital dividend account immediately before May 24, 1985,

(f) all amounts each of which is an amount in respect of a distribution made in the period by a trust to the corporation in respect of capital gains of the trust equal to the lesser of

(i) the amount, if any, by which

(A) the amount of the distribution,

exceeds

(B) the amount designated under subsection 104(21) by the trust (other than a designation to which subsection 104(21.4) applies) in respect of the net taxable capital gains of the trust attributable to those capital gains, and

(ii) the amount determined by the formula

$$A \times B$$

where

A is the fraction or whole number determined when 1 is subtracted from the reciprocal of the fraction under paragraph 38(a) applicable to the trust for the year, and

B is the amount referred to in clause (i)(B), and

(g) all amounts each of which is an amount in respect of a distribution made by a trust to the corporation in the period in respect of a dividend (other than a taxable dividend) paid on a share of the capital stock of another corporation resident in Canada to the trust during a taxation year of the trust throughout which the trust was resident in Canada equal to the lesser of

(i) the amount of the distribution, and

(ii) the amount designated under subsection 104(20) by the trust in respect of the corporation in respect of that dividend,

exceeds the total of all capital dividends that became payable by the corporation after the commencement of the period and before the particular time;

Related Provisions: 83(2) — Election to pay capital dividend out of capital dividend account; 83(2.3) — Life insurance proceeds included under 89(1)"capital dividend account"(d); 87(2)(z.1) — Amalgamations — rules applicable — capital dividend account; 88(2)(a) — Winding-up of a Canadian corporation; 89(1.1) — Capital dividend account where control acquired; 89(1.2) — Capital dividend account where corporation ceases to be exempt; 89(2) — Where corporation is beneficiary; 94.2(19) — Determination of CDA where foreign investment entity mark-to-market rules apply; 104(20) — Flow-through of capital dividend through trust; 131(11)(e) — Rules re prescribed labour-sponsored venture capital corporations; 141.1 — Insurance corporation deemed not to be private corporation; 248(5) — Substituted property; 248(8) — Occurrences as a consequence of death; 256(5.1), (6.2) — Controlled directly or indirectly — control in fact.

History: Cl. (a)(i)(A) of the definition "capital dividend account" in subsec. 89(1) amended by 2001, c. 17, subsec. 67(1) to add a missing parenthesis and the words "(in this definition referred to as "the period")", applicable to dispositions made after December 8, 1997, other than a disposition made under a written agreement made before December 9, 1997.

Para. (c) of the definition amended and paras. (c.1) and (c.2) added by the said c. 17, subsec. 67(2), applicable in respect of taxation years that end after February 27, 2000. Para. (c) formerly read:

(c) all amounts each of which is an amount in respect of a business carried on by the corporation at any time in the period, equal to the amount, if any, by which the total of

(i) where the period commenced before the corporation's adjustment time, the amount, if any, by which

(A) the total of the amounts in respect of the business required to be included in the calculation of the corporation's cumulative eligible capital by reason of the description of E in the definition "cumulative eligible capital" in subsection 14(5) with respect to that portion of the period preceding its adjustment time

exceeds the total of

(B) the cumulative eligible capital of the corporation in respect of the business at the commencement of the period, and

(C) ½ of the total of the eligible capital expenditures in respect of the business that were made or incurred by the corporation during that portion of the period preceding its adjustment time,

(ii) ⅓ of the total of the amounts in respect of the business required to be included in the calculation of the corporation's cumulative eligible capital by reason of the description of E in the definition "cumulative eligible capital" in subsection 14(5) with respect to that portion of the period following its adjustment time, and

(iii) ⅓ of all amounts received in the period that were required to be included in the corporation's income by reason of paragraph 12(1)(i.1)

exceeds the total of

(iv) where the period commenced after the corporation's adjustment time, ⅓ of its cumulative eligible capital in respect of the business at the commencement of the period,

(v) ¼ of the total of the eligible capital expenditures in respect of the business made or incurred by the corporation with respect to that portion of the period after its adjustment time,

(vi) where the period commenced before the corporation's adjustment time, ½ of the amount, if any, by which the total of the amounts determined in respect of the corporation under clauses (i)(B) and (C) exceeds the amount determined in respect of the corporation under clause (i)(A), and

(vii) ⅓ of all amounts deducted by the corporation under subsection 20(4.2) in respect of debts established by it to have become bad debts during the period,

Paras. (f) and (g) of the definition added by the said c. 17, subsec. 67(3), applicable to elections in respect of capital dividends that become payable after 1997.

Cls. (a)(i)(A) and (a)(ii)(A) of the definition "capital dividend account" in subsec. 89(1) amended by 1998, c. 19, subsecs. 17(1) and (2), applicable to dispositions made after December 8, 1997, other than a disposition made under a written agreement made before December 9, 1997. The cls. formerly read:

(A) the amount of a capital gain of the corporation realized in the period commencing on the first day of the first taxation year commencing after the time the corporation last became a private corporation and ending after 1971, and ending immediately before the particular time

. . . . .

(A) the amount of a capital loss of the corporation realized in that period

That portion of cl. (a)(i)(c) and of (a)(ii)(C) preceding subcl. (II) of each in the definition "capital dividend account" in subsec. 89(1) amended by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 67(1), (2), to substitute "the disposition by it of a property" for "the disposition by it of a property, other than a designated property" in that portion preceding subcl. (I), and to add "except in the case of a disposition of a designated property" in subcl. (I), applicable to taxation years ending after November 26, 1987.

Selected Cases [89(1)"capital dividend account"]: *CSI Development Corp. v. R.*, [1999] 3 C.T.C. 2421 (TCC) (Partnership has no capital dividend account); *Tipster Investments Ltd. v. R.*, [1998] 2 C.T.C.

3005 (TCC) (Business investment loss included in definition of capital loss).

I.T. Application Rules: 32.1(4) (where dividend paid or payable before May 7, 1974).

Interpretation Bulletins: IT-66R6: Capital dividends IT-123R4: Disposition of eligible capital property; IT-123R6: Transactions involving eligible capital property; IT-149R4: Winding-up dividend; IT-430R3: Life insurance proceeds received by a private corporation or a partnership as a consequence of death; IT-484R2: Business investment losses.

I.T. Technical News: 9 (life insurance policy used as security for indebtedness); 25 (*Silicon Graphics* case — dispersed control is not control).

Advance Tax Rulings: ATR-54: Reduction of paid-up capital.

"designated property" means

(a) any property of a private corporation that last became a private corporation before November 13, 1981 and that was acquired by it

(i) before November 13, 1981, or

(ii) after November 12, 1981 pursuant to an agreement in writing entered into on or before that date,

(b) any property of a private corporation that was acquired by it from another private corporation with whom the private corporation was not dealing at arm's length (otherwise than by virtue of a right referred to in paragraph 251(5)(b)) at the time the property was acquired, where the property was a designated property of the other private corporation,

(c) a share acquired by a private corporation in a transaction to which section 51, subsection 85(1) or section 85.1, 86 or 87 applied in exchange for another share that was a designated property of the corporation, or

(d) a replacement property (within the meaning assigned by section 44) for a designated property disposed of by virtue of an event referred to in paragraph (b), (c) or (d) of the definition "proceeds of disposition" in section 54;

Related Provisions: 89(1)"capital dividend account"(a)(i)(C)(I), 89(1)"capital dividend account"(a)(ii)(C)(I) — Application to capital dividend account; 129(4.3) — Application of definition to s. 129.

Interpretation Bulletins: IT-66R6: Capital dividends; IT-243R4: Dividend refund to private corporations.

"life insurance capital dividend account [para. 89(1)(b.2)]" — [Repealed under former Act]

"paid-up capital" at any particular time means,

(a) in respect of a share of any class of the capital stock of a corporation, an amount equal to the paid-up capital at that time, in respect of the class of shares of the capital stock of the corporation to which that share belongs, divided by the number of issued shares of that class outstanding at that time,

(b) in respect of a class of shares of the capital stock of a corporation,

(i) where the particular time is before May 7, 1974, an amount equal to the paid-up capital in respect of that class of shares at the particular time, computed without reference to the provisions of this Act,

(ii) where the particular time is after May 6, 1974, and before April 1, 1977, an amount equal to the paid-up capital in respect of that class of shares at the particular time, computed in accordance with the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read on March 31, 1977, and

(iii) where the particular time is after March 31, 1977, an amount equal to the paid-up capital in respect of that class of shares at the particular time, computed without reference to the provisions of this Act except subsections 51(3) and 66.3(2) and (4), sections 84.1 and 84.2, subsections 85(2.1), 85.1(2.1), 86(2.1), 87(3) and (9), 128.1(2) and (3), 138(11.7), 139.1(6) and (7), 192(4.1) and 194(4.1) and section 212.1,

except that, where the corporation is a cooperative corporation (within the meaning assigned by subsection 136(2)) or a credit union and the statute by or under which it was incorporated does not provide for paid-up capital in respect of a class of shares, the paid-up capital in respect of that class of shares at the particular time, computed without reference to the provisions of this Act, shall be deemed to be the amount, if any, by which

(iv) the total of the amounts received by the corporation in respect of shares of that class issued and outstanding at that time

exceeds

(v) the total of all amounts each of which is an amount or part thereof described in subparagraph (iv) repaid by the corporation to persons who held any of the issued shares of that class before that time, and

(c) in respect of all the shares of the capital stock of a corporation, an amount equal to the total of all amounts each of which is an amount equal to the paid-up capital in respect of any class of shares of the capital stock of the corporation at the particular time;

Related Provisions: 51(3) — Exchange of convertible property; 66.3(2) — Exploration and development shares — deductions from PUC; 66.3(4) — PUC of flow-through share; 84.1 — Grind of PUC on non-arm's length sales of shares; 84.2 — Computation of PUC in respect of particular class of shares; 85(2.1) — Transfer of property to corporation by shareholders — computation of PUC; 85.1(2.1) — Share for share exchange — computation of PUC; 86(2.1) — Internal reorganization; 87(3), (3.1) — Amalgamation — computation of PUC; 87(9)(b) — PUC following triangular amalgamation; 128.1(2), (3) — Corporation becoming resident in Canada; 138(11.7) — Insurance corporations — computation of PUC; 139.1(6), (7) — PUC after demutualization of insurer; 192(4.1), 194(4.1) — Computing PUC after SPTC or SRTC designation; 212.1 — Non-arm's length sale of shares by non-resident; 248(1)"paid-up capital" — Definition applies to entire Act; 248(6) — Series of shares.

History: Subpara. (b)(iii) of the definition "paid-up capital" amended by 2000, c. 19, s. 14, applicable after December 15, 1998. The subpara. formerly read:

(iii) where the particular time is after March 31, 1977, an amount equal to the paid-up capital in respect of that class of shares at the particular time, computed without reference to the provisions of this Act except subsections 51(3) and 66.3(2) and (4), sections 84.1 and 84.2, subsections 85(2.1), 85.1(2.1), 86(2.1), 87(3) and (9), 128.1(2) and (3), 138(11.7), 192(4.1) and 194(4.1) and section 212.1,

Subpara. (b)(iii) of the definition "paid-up capital" in subsec. 89(1) substituted by 1994, c. 21, subsec. 42(2), applicable to determinations of paid-up capital after August 1992, except that, in applying the subpara. before 1993, it shall be read without reference to "128.1(2) and (3)". That subpara. formerly read:

(iii) where the particular time is after March 31, 1977, an amount equal to the paid-up capital in respect of that class of shares at the particular time, computed without reference to the provisions of this Act except subsections 66.3(2) and (4), sections 84.1 and 84.2, subsections 85(2.1), 85.1(2.1), 87(3) and (9), 138(11.7), 192(4.1) and 194(4.1) and section 212.1,

That portion of para. (b) of "paid-up capital" following subpara. (iii) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 67(3), applicable after 1988.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-88R2: Stock dividends; IT-463R2: Paid-up capital; IT-489R: Non-arm's length sale of shares to a corporation.

Advance Tax Rulings: ATR-27: Exchange and acquisition of interests in capital properties through rollovers and winding-up ("butterfly"); ATR-28: Redemption of capital stock of family farm corporation; ATR-35: Partitioning of assets to get specific ownership — "butterfly"; ATR-54: Reduction of paid-up capital.

"paid-up capital deficiency [para. 89(1)(d)]" and "paid-up capital limit [para. 89(1)(e)]" — [Repealed under former Act]

"private corporation" at any particular time means a corporation that, at the particular time, is resident in Canada, is not a public corporation and is not controlled by one or more public corporations (other than prescribed venture capital corporations) or prescribed federal Crown corporations or by any combination thereof and, for greater certainty, for the purposes of determining at any particular time when a corporation last became a private corporation,

(a) a corporation that was a private corporation at the commencement of its 1972 taxation year and thereafter without interruption until the particular time shall be deemed to have last become a private corporation at the end of its 1971 taxation year, and

(b) a corporation incorporated after 1971 that was a private corporation at the time of its incorporation and thereafter without interruption until the particular time shall be deemed to have last become a private corporation immediately before the time of its incorporation;

Related Provisions: 27(2) — Crown corporations; 134 — NRO deemed not private corporation; 136(1) — Cooperative corporation not private corporation; 137(7) — Credit union not private corporation; 137.1(6) — Deposit insurance corporation not private corporation; 141.1 — Insurance corporation not private corporation for certain purposes; 186(5) — Subject corporation deemed private corporation for certain purposes; 227(16) — Municipal or provincial corporation deemed not private corporation for Part IV tax; 248(1)"private corporation" — Definition applies to entire Act; 250 — Resident in Canada; 256(6), (6.1) — Meaning of "controlled".

History: That portion of the definition "private corporation" preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 67(4), applicable after July 13, 1990. That portion formerly read:

> "private corporation" at any particular time means a corporation that, at the particular time, was resident in Canada, was not a public corporation, and was not controlled by one or more public corporations and for greater certainty for the purposes of determining, at any particular time, when a corporation last became a private corporation,

Regulations: 6700 (prescribed venture capital corporation); 7100 (prescribed federal Crown corporation; intended to apply to 89(1), but has not been amended to do so).

I.T. Application Rules: 50(1) (status of corporation in 1972 taxation year).

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations; IT-391R: Status of corporations; IT-458R2: Canadian-controlled private corporation.

I.T. Technical News: 25 (*Silicon Graphics* case — dispersed control is not control).

"public corporation" at any particular time means

(a) a corporation that is resident in Canada at the particular time if at that time a class of shares of the capital stock of the corporation is listed on a prescribed stock exchange in Canada,

(b) a corporation (other than a prescribed labour-sponsored venture capital corporation) that is resident in Canada at the particular time if at any time after June 18, 1971 and

(i) before the particular time, it elected in prescribed manner to be a public corporation, and at the time of the election it complied with prescribed conditions relating to the number of its shareholders, the dispersal of ownership of its shares and the public trading of its shares, or

(ii) before the day that is 30 days before the day that includes the particular time it was, by notice in writing to the corporation, designated by the Minister to be a public corporation and at the time it was so designated it complied with the conditions referred to in subparagraph (i),

unless, after the election or designation, as the case may be, was made and before the particular time, it ceased to be a public corporation because of an election or designation under paragraph (c), or

(c) a corporation (other than a prescribed labour-sponsored venture capital corporation) that is resident in Canada at the particular time if, at any time after June 18, 1971 and before the particular time it was a public corporation, unless after the time it last became a public corporation and

(i) before the particular time, it elected in prescribed manner not to be a public corporation, and at the time it so elected it complied with prescribed conditions relating to the number of its shareholders, the dispersal of ownership of its shares and the public trading of its shares, or

(ii) before the day that is 30 days before the day that includes the particular time, it was, by notice in writing to the corporation, designated by the Minister not to be a public corporation and at the time it was so designated it complied with the conditions referred to in subparagraph (i),

and where a corporation has, on or before its filing-due date for its first taxation year, become a public corporation, it is, if it so elects in its return of income for the year, deemed to have been a public corporation from the beginning of the year until the time when it so became a public corporation;

Related Provisions: 13(27)(f) — Restriction on deduction before available for use; 87(2)(ii) — Amalgamations — public corporation; 130.1(5) — Mortgage investment corporation deemed to be public corporation; 141(2) — Life insurance corporation deemed to be public corporation; 141(3) — Life insurance holding corporation deemed to be public corporation; 248(1)"public corporation" — Definition applies to entire Act; 250 — Resident in Canada.

History: The definition "public corporation" in subsec. 89(1) amended by 1998, c. 19, subsec. 17(3), applicable to 1995 *et seq.* The definition formerly read:

> "public corporation" at any particular time means a corporation that was resident in Canada at the particular time, if
>
> (a) at the particular time, a class or classes of shares of the capital stock of the corporation were listed on a prescribed stock exchange in Canada,
>
> (b) at any time after June 18, 1971 and
>
> (i) before the particular time, it elected in prescribed manner to be a public corporation, and at the time of the election it complied with prescribed conditions relating to the number of its shareholders, dispersal of ownership of its shares, public trading of its shares and size of the corporation, or
>
> (ii) before a day 30 days before the particular time, it was, by notice in writing to the corporation, designated by the Minister to be a public corporation, and at the time it was

so designated it complied with the conditions referred to in subparagraph (i),

unless subsequent to the election or designation, as the case may be, and before the particular time, it ceased to be a public corporation by virtue of paragraph (c), or

(c) at any time after June 18, 1971 and before the particular time, it was a public corporation, unless after the time it last became a public corporation and

(i) before the particular time, it elected in prescribed manner not to be a public corporation, and at the time it so elected it complied with prescribed conditions relating to the number of its shareholders, dispersal of ownership of its shares and public trading of its shares, or

(ii) before a day 30 days before the particular time, it was, by notice in writing to the corporation, designated by the Minister not to be a public corporation, and at the time it was so designated it complied with the conditions referred to in subparagraph (i),

in which case it shall be deemed thereupon to have ceased to be a public corporation,

except that where a corporation's first taxation year ended after 1971 and the corporation has, after 1971 and on or before the day on or before which it was required by section 150 to file its return of income for that year, become a public corporation, it shall, if it so elected in that return, be deemed to have been a public corporation from the commencement of that year until the day on which it so became a public corporation;

Regulations: 3200 (prescribed stock exchange); 4800, 4803 (prescribed conditions); 6701 (prescribed labour-sponsored venture capital corporation).

I.T. Application Rules: 50 (status of corporation in 1972 taxation year).

Interpretation Bulletins: IT-98R2: Investment corporations (archived); IT-176R2: Taxable Canadian property — interests in and options on real property and shares; IT-391R: Status of corporations; IT-458R2: Canadian-controlled private corporation.

Forms: T2067: Election not to be a public corporation; T2073: Election to be a public corporation.

"tax equity [para. 89(1)(h)]" — [Repealed under former Act]

"taxable Canadian corporation" means a corporation that, at the time the expression is relevant,

(a) was a Canadian corporation, and

(b) was not, by virtue of a statutory provision, exempt from tax under this Part;

Proposed Amendment — 89(1)"taxable Canadian corporation"(b)

(b) was not, by reason of a statutory provision other than paragraph 149(1)(t), exempt from tax under this Part;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 89(3), will amend para. (b) of the definition "taxable Canadian corporation" in subsec. 89(1) to read as above, applicable in respect of taxation years that end after 1999.

Technical Notes: Paragraph (b) of the definition "taxable Canadian corporation" in subsection 89(1) is amended to clarify that a farming or fishing insurer to which paragraph 149(1)(t) applies is a taxable Canadian corporation. This amendment applies in respect of taxation years that end after 1999.

Letter from Dept. of Finance, February 21, 2000:

Dear [xxx]

Thank you for your letter of November 8, 1999 regarding section 87 of the *Income Tax Act* (the "Act") and the treatment accorded thereunder to insurance corporations earning premium income in respect of the insurance of property used in farming or fishing.

In your letter you express concern that an amalgamation of insurers of farmers and fishermen partially, or totally, exempt from tax under paragraph 149(1)(t) of the Act could trigger significant tax consequences. You ask that I consider amending the Act so that insurers of farmers and fishermen can, on amalgamation, benefit from the tax rollover provisions contained in section 87.

There does not appear to be a policy reason for not allowing subsection 87(1) of the Act to apply to an amalgamation of two or more farmers' and fishermen's insurers described in paragraph 149(1)(t) of the Act. Consequently, I am prepared to support an amendment to the Act to provide that subsection 87(1) of the Act apply to amalgamations of insurers exempt, or partially exempt, from tax under paragraph 149(1)(t) occurring after 1999.

Thank you for your helpful advice on this matter.

Sincerely,

The Honourable Paul Martin, P.C., M.P.
Minister of Finance

Related Provisions: 134 — NRO deemed not taxable Canadian corporation; 149 — Statutory provisions exempting taxpayers from tax under this Part; 248(1)"taxable Canadian corporation" — Definition applies to entire Act.

Interpretation Bulletins: IT-291R3: Transfer of property to a corporation under subsection 85(1).

"taxable dividend" means a dividend other than

(a) a dividend in respect of which the corporation paying the dividend has elected in accordance with subsection 83(1) as it read prior to 1979 or in accordance with subsection 83(2), and

(b) a qualifying dividend paid by a public corporation to shareholders of a prescribed class of tax-deferred preferred shares of the corporation within the meaning of subsection 83(1).

Related Provisions: 15.1(1) — Small business development bond interest deemed taxable dividend; 15.2(1) — Small business bond interest deemed taxable dividend; 82(1) — Inclusion of taxable dividend in income; 88(2) — Winding-up of a Canadian corporation; 129(1.2) — Dividends paid to create dividend refund deemed not to be taxable dividends for purposes of s. 129; 129(7) — Capital gains dividend is not a taxable dividend for purposes of dividend refund (s. 129); 142.7(10)(a) — Branch-establishment dividend to foreign entrant bank deemed not to be taxable dividend; 248(1)"taxable dividend" — Definition applies to entire Act; 260(5) — Deemed taxable dividend on securities lending arrangement.

Regulations: 2107 (tax-deferred preferred series).

Interpretation Bulletins: IT-52R4: Income bonds and income debentures (archived); IT-67R3: Taxable dividends from corporations resident in Canada; IT-146R4: Shares entitling shareholders to choose taxable or capital dividends.

"tax-paid undistributed surplus on hand [para. 89(1)(k)]" — [Repealed under former Act]

"1971 capital surplus on hand [para. 89(1)(l)]" — [Repealed under former Act]

(1.01) Application of subsec. 138(12) — The definitions in subsection 138(12) apply to this section.

Origin of subsec. 89(1.01): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words to subsec. 138(12)).

(1.1) Capital dividend account where control acquired — Where at any particular time after March 31, 1977 a corporation that was, at a previous time, a private corporation controlled directly or indirectly in any manner whatever by one or more non-resident persons becomes a Canadian-controlled private corporation (otherwise than by reason of a change in the residence of one or more of its shareholders), in computing the corporation's capital dividend account at and after the particular time there shall be deducted the amount of the corporation's capital dividend account immediately before the particular time.

Related Provisions: 256(5.1), (6.2) — Controlled directly or indirectly — control in fact; 256(7) — Where control deemed not acquired.

Interpretation Bulletins: IT-66R6: Capital dividends.

(1.2) Capital dividend account of tax-exempt corporation — Where at any particular time after November 26, 1987 a corporation ceases to be exempt from tax under this Part on its taxable income, in computing the corporation's capital dividend account at and after the particular time there shall be deducted the amount of the corporation's capital dividend account (computed without reference to this subsection) immediately after the particular time.

Interpretation Bulletins: IT-66R6: Capital dividends.

(2) Where corporation is beneficiary — For the purposes of this section,

(a) where a corporation was a beneficiary under a life insurance policy on June 28, 1982, it shall be deemed not to have been a beneficiary under such a policy on or before June 28, 1982 where at any time after December 1, 1982 a prescribed premium has been paid under the policy or there has been a prescribed increase in any benefit on death under the policy; and

(b) where a corporation becomes a beneficiary under a life insurance policy by virtue of an amalgamation or a winding-up to which subsection 87(1) or 88(1) applies, it shall be deemed to have been a beneficiary under the policy throughout the period during which its predecessor or subsidiary, as the case may be, was a beneficiary under the policy.

Regulations: 309 (prescribed increase, prescribed premium).

(3) Simultaneous dividends — Where a dividend becomes payable at the same time on more than one class of shares of the capital stock of a corporation, for the purposes of sections 83, 84 and 88, the dividend on any such class of shares shall be deemed to become payable at a different time than the dividend on the other class or classes of shares and to become payable in the order designated

(a) by the corporation on or before the day on or before which its return of income for its taxation year in which such dividends become payable is required to be filed; or

(b) in any other case, by the Minister.

(4)–(6) [Repealed under former Act]

Definitions [s. 89]: "adjustment time" — 14(5), 248(1); "allowable capital loss" — 38(b), 248(1); "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 255; "Canadian-controlled private corporation" — 125(7), 248(1); "Canadian corporation" — 89(1), 248(1); "capital dividend" — 83(2), 248(1); "capital gain" — 39(1)(a), 248(1); "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "class", "class of shares" — 248(6); "consequence of the death" — 248(8); "controlled" — 256(6), (6.1); "controlled directly or indirectly" — 256(5.1), (6.2); "cooperative corporation" — 136(2); "corporation" — 248(1), *Interpretation Act* 35(1); "credit union" — 137(6), 248(1); "cumulative eligible capital" — 14(5), 248(1); "depreciable property" — 13(21), 248(1); "designated property" — 89(1); "dividend" — 248(1); "eligible capital amount" — 14(1), 248(1); "eligible capital expenditure" — 14(5), 248(1); "foreign affiliate" — 95(1), 248(1); "incorporated in Canada" — 248(1)"corporation incorporated in Canada"; "inventory" — 248(1); "investment corporation" — 130(3), 248(1); "life insurance corporation" — 248(1); "life insurance policy" — 138(12), 248(1); "Minister" — 248(1); "mortgage investment corporation" — 130.1(6), 248(1); "mutual fund corporation" — 131(8), 248(1); "non-resident" — 248(1); "paid-up capital" — 89(1), 248(1); "payable" — 84(7); "person", "prescribed" — 248(1); "prescribed labour-sponsored venture capital corporation" — Reg. 6701; "prescribed stock exchange in Canada" — Reg. 3200; "prescribed venture capital corporation" — Reg. 6700; "private corporation" — 89(1), 248(1); "property" — 248(1); "province" — *Interpretation Act* 35(1); "public corporation" — 89(1), 248(1); "resident in Canada" — 94(3)(a)(viii), 250; "share", "shareholder" — 248(1); "substituted property" — 248(5); "taxable capital gain" — 38(a), (a.1), 248(1); "taxable dividend" — 89(1), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

Regulations [s. 89]: 3200 (prescribed stock exchange).

89.1 [Repealed under former Act]

Subdivision i — Shareholders of Corporations Not Resident in Canada

90. Dividends received from non-resident corporation — In computing the income for a taxation year of a taxpayer resident in Canada, there shall be included any amounts received by the taxpayer in the year as, on account or in lieu of payment of, or in satisfaction of, dividends on a share owned by the taxpayer of the capital stock of a corporation not resident in Canada.

Related Provisions: 82(1) — Dividends received from corporation resident in Canada; 113(1) — Deduction for dividend received from foreign affiliate; 139.1(4)(f), (g) — Deemed dividend on demutualization of insurance corporation; 139.2 — Deemed dividend on distribution by mutual holding corporation.

Definitions [s. 90]: "amount" — 248(1); "Canada" — 255; "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "resident in Canada" — 94(3)(a)(viii), 250; "share" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Interpretation Bulletins: IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada.

91. (1) Amounts to be included in respect of share of foreign affiliate — In computing the income for a taxation year of a taxpayer resident in Canada, there shall be included, in respect of each share owned by the taxpayer of the capital stock of a controlled foreign affiliate of the taxpayer, as income from the share, the percentage of the foreign accrual property income of any controlled foreign affiliate of the taxpayer, for each taxation year of the affiliate ending in the taxation year of the taxpayer, equal to that share's participating percentage in respect of the affiliate, determined at the end of each such taxation year of the affiliate.

Proposed Amendment — 91(1)

91. Amounts to be included in respect of share of foreign affiliate — **(1)** In computing the income for a particular taxation year of a taxpayer resident in Canada, there shall be included, in respect of each share owned by the taxpayer of the capital stock of a controlled foreign affiliate of the taxpayer, as income from the share, the percentage of the foreign accrual property income of any controlled foreign affiliate of the taxpayer, for each taxation year of the affiliate that ends in the particular taxation year, equal to that share's participating percentage in respect of the affiliate determined

(a) at the end of each such taxation year of the affiliate; and

(b) without regard to each share in respect of which subsection 94.2(9) applies to the taxpayer for the particular taxation year.

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 16(1), will amend subsec. 91(1) to read as above, applicable to taxation years that begin after 2002.

Technical Notes: Subsection 91(1) provides that a taxpayer that is resident in Canada must include in computing income an amount in respect of each share owned by the taxpayer of the capital stock of a controlled foreign affiliate of the taxpayer.

Subsection 91(1) is amended so that it does not result in additional income for a taxpayer in respect of shares that are participating interests in a "tracking entity" to which the prescribed rate regime under section 94.1 or the mark-to-market regime under section 94.2 applies by reason of the application of subsection 94.2(9). The shares of a taxpayer in the capital stock of a corporation that is a controlled foreign affiliate of the taxpayer will generally be treated as "exempt interests" (as defined in new subsection 94.1(1)), and therefore not subject to the income inclusions under subsections 94.1(4), 94.2(4) or 94.3(4). However, if subsection 94.2(9) applies in respect of those shares (in particular, note that paragraph 94.2(9)(b) does not exclude the application of subsection 94.2(9) to an exempt interest that is an interest in a controlled foreign affiliate) either of subsections 94.1(4), or 94.2(4) or 94.3(4) will apply generally to require an amount to be included in computing the income of the taxpayer. Because of subparagraph 94.3(2)(b)(i), the accrual regime in section 94.3 will not apply in respect of an interest to which subsection 94.2(9) applies. The exception provided for such shares under subsection 91(1) is intended solely to prevent any incidence of double taxation that might otherwise arise.

For more details on the application of sections 94.1 to 94.4, see the commentary on those provisions.

Related Provisions: 17(1)(b)(iii) — Amount included as FAPI not taxed under rule for loan to non-resident; 152(6.1) — Reassessment to apply FAPI loss carryback. See also at end of s. 91.

Interpretation Bulletins: IT-392: Meaning of the term "share"; IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada.

I.T. Application Rules: 35(1) (ITAR 26 does not apply to gains and losses of foreign affiliates for FAPI purposes).

Information Circulars: 77-9R: Books, records and other requirements for taxpayers having foreign affiliates.

(2) Reserve where foreign exchange restriction — Where an amount in respect of a share has been included in computing the income of a taxpayer for a taxation year by virtue of subsection (1) or (3) and the Minister is satisfied that, by reason of the operation of monetary or exchange restrictions of a country other than Canada, the inclusion of the whole amount with no deduction for a reserve in respect thereof would impose undue hardship on the taxpayer, there may be deducted in computing the taxpayer's income for the year such amount as a reserve in respect of the amount so included as the Minister deems reasonable in the circumstances.

Related Provisions: 91(3) — Reserve included in income following year.

Interpretation Bulletins: IT-392: Meaning of the term "share".

(3) Reserve for preceding year to be included — In computing the income of a taxpayer for a taxation year, there shall be included each amount in respect of a share that was deducted by virtue of subsection (2) in computing the taxpayer's income for the immediately preceding year.

(4) Amounts deductible in respect of foreign taxes — Where, by virtue of subsection (1), an amount in respect of a share has been included in computing the income of a taxpayer for a taxation year or for any of the 5 immediately preceding taxation years (in this subsection referred to as the "income amount"), there may be deducted in computing the taxpayer's income for the year the lesser of

(a) the product obtained when

(i) the portion of the foreign accrual tax applicable to the income amount that was not deductible under this subsection in any previous year

is multiplied by

(ii) the relevant tax factor, and

Proposed Amendment — 91(4)(a)(ii)

(ii) the taxpayer's relevant tax factor for the year, and

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 16(2), will amend subpara. 91(4)(a)(ii) to read as above, applicable to 2002 *et seq.*

Technical Notes: Subsection 91(4) provides for a deduction in computing the income of a taxpayer resident in Canada. The deduction is available where the taxpayer has included an amount under subsection 91(1) in computing income in respect of a share of the capital stock of a controlled foreign affiliate of the taxpayer. The deduction is generally determined with reference to foreign taxes payable by the affiliate and a "relevant tax factor". The "relevant tax factor" for a resident taxpayer is designed to permit a deduction for the resident taxpayer that will result in tax relief that is a proxy for a foreign tax credit in respect of foreign taxes payable by a controlled foreign affiliate of the resident taxpayer.

Subsection 91(4) is amended to explicitly link the "relevant tax factor" to the resident taxpayer and the taxation year for which the deduction under subsection 91(4) is claimed. For more detail on the definition "relevant tax factor" in subsection 95(1), see the commentary on that provision.

(b) the amount, if any, by which the income amount exceeds the total of the amounts in respect of that share deductible under this subsection in any of the 5 immediately preceding taxation years in respect of the income amount.

(5) Amounts deductible in respect of dividends received — Where in a taxation year a taxpayer resident in Canada has received a dividend on a share of the capital stock of a corporation that was at any time a controlled foreign affiliate of the taxpayer, there may be deducted, in respect of such portion of the dividend as is prescribed to have been paid out of the taxable surplus of the affiliate, in computing the taxpayer's income for the year, the lesser of

(a) the amount by which that portion of the dividend exceeds the amount, if any, deductible in respect thereof under paragraph 113(1)(b), and

(b) the amount, if any, by which

(i) the total of all amounts required by paragraph 92(1)(a) to be added in computing the adjusted cost base to the taxpayer of the share before the dividend was so received by the taxpayer

exceeds

(ii) the total of all amounts required by paragraph 92(1)(b) to be deducted in computing the adjusted cost base to the taxpayer of the share before the dividend was so received by the taxpayer.

Related Provisions: 20(13) — Deduction for dividend; 91(6) — Amounts deductible re dividends received; 91(7) — Where share acquired by partner from partnership; 94.4(4)(a)(i)(D) — Prevention of double taxation. See also at end of s. 91.

Regulations: 5900(1)(b), 5900(3) (portion of dividend prescribed to be paid out of taxable surplus).

Interpretation Bulletins: IT-392: Meaning of the term "share".

Information Circulars: 77-9R: Books, records and other requirements for taxpayers having foreign affiliates.

(6) Idem — Where a share of the capital stock of a foreign affiliate of a taxpayer that is a taxable Canadian corporation is acquired by the taxpayer from another corporation resident in Canada with which the taxpayer is not dealing at arm's length, for the purpose of subsection (5), any amount required by section 92 to be added or deducted, as the case may be, in computing the adjusted cost base to the other corporation of the share shall be deemed to have been so required to be added or deducted, as the

case may be, in computing the adjusted cost base to the taxpayer of the share.

Related Provisions: 20(13) — Dividend on share from foreign affiliate of taxpayer; 80.1(4)(c) — Assets acquired from foreign affiliate as dividend in kind or benefit to shareholder; 87(2)(u) — Amalgamations; 92(1) — ACB of share in foreign affiliate; 94(1)(d) — Application of certain provisions to trusts not resident in Canada; 113(1) — Deduction for dividend received from foreign affiliate; 233.2–233.5 — Disclosure of foreign property.

History: Subsec. 91(6) added by 1994, c. 7, Sch. II (1991, c. 49), s. 68, applicable to 1990 *et seq.*

Interpretation Bulletins: IT-392: Meaning of the term "share".

(7) Shares acquired from a partnership — For the purpose of subsection (5), where a taxpayer resident in Canada acquires a share of the capital stock of a corporation that is immediately after the acquisition a foreign affiliate of the taxpayer from a partnership of which the taxpayer, or a corporation resident in Canada with which the taxpayer was not dealing at arm's length at the time the share was acquired, was a member (each such person referred to in this subsection as the "member") at any time during any fiscal period of the partnership that began before the acquisition,

(a) that portion of any amount required by subsection 92(1) to be added to the adjusted cost base to the partnership of the share of the capital stock of the foreign affiliate equal to the amount included in the income of the member because of subsection 96(1) in respect of the amount that was included in the income of the partnership because of subsection (1) or (3) in respect of the foreign affiliate and added to that adjusted cost base, and

(b) that portion of any amount required by subsection 92(1) to be deducted from the adjusted cost base to the partnership of the share of the capital stock of the foreign affiliate equal to the amount by which the income of the member from the partnership under subsection 96(1) was reduced because of the amount deducted in computing the income of the partnership under subsection (2), (4) or (5) and deducted from that adjusted cost base

is deemed to be an amount required by subsection 92(1) to be added or deducted, as the case may be, in computing the adjusted cost base to the taxpayer of the share.

History: Subsec. 91(7) added by 2001, c. 17, s. 68, applicable to shares acquired after November 1999.

Interpretation Bulletins: IT-392: Meaning of the term "share".

Definitions [s. 91]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "arm's length" — 251(1); "Canada" — 255; "controlled foreign affiliate" — 94.1(2)(h), 95(1), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "fiscal period" — 249.1; "foreign accrual property income" — 95(1), (2), 248(1); "foreign accrual tax" — 95(1); "foreign affiliate" — 94(1)(d), 95(1), 248(1); "Minister" — 248(1); "participating percentage" — 95(1); "person" — 248(1); "relevant tax factor" — 95(1); "resident in Canada" — 94(3)(a)(viii), 250; "share" — 248(1); "taxable Canadian corporation" — 89(1), 248(1); "taxable surplus" — 113(1)(b)(i), Reg. 5907(1); "taxation year" — 95(1) (for foreign affiliate only), 249; "taxpayer" — 248(1).

92. (1) Adjusted cost base of share of foreign affiliate — In computing, at any time in a taxation year, the adjusted cost base to a taxpayer resident in Canada of any share owned by the taxpayer of the capital stock of a foreign affiliate of the taxpayer,

(a) there shall be added any amount required to be included in respect of that share by reason of subsection 91(1) or (3) in computing the taxpayer's income for the year or any preceding taxation year (or that would have been so required to be included but for subsection 56(4.1) and sections 74.1 to 75 of this Act and section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952); and

(b) there shall be deducted in respect of that share

(i) any amount deducted by the taxpayer by reason of subsection 91(2) or (4), and

(ii) any dividend received by the taxpayer before that time to the extent of the amount deducted by the taxpayer in respect thereof by reason of subsection 91(5)

in computing the taxpayer's income for the year or any preceding taxation year (or that would have been deductible by the taxpayer but for subsection 56(4.1) and sections 74.1 to 75 of this Act and section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952).

Related Provisions: 53(1)(d) — ACB — additions; 53(2)(b) — ACB — deductions; 87(2)(u) — Shares of foreign affiliate; 91(6) — Amounts deductible re dividends received.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-392: Meaning of the term "share".

Proposed Addition — 92(1.1)–(1.4)

(1.1) Where subsection (1.3) applies — Subsection (1.3) applies to a holder of a share (referred to in this subsection and subsections (1.2) and (1.3) as the "relevant share") of a foreign affiliate (referred to in this subsection and subsection (1.2) as the "relevant foreign affiliate") of a particular corporation resident in Canada in computing at any time (referred to in this subsection and subsections (1.2) and (1.3) as the "computation time") the adjusted cost base to the holder of the relevant share, if, at the computation time, there is a specified section 93 election related to the relevant share.

Technical Notes: New subsection 92(1.1) provides that new subsection 92(1.3) will apply to the holder of a share of a foreign affiliate of a corporation resident in Canada in computing at any time the adjusted cost base of the share if there is a "specified section 93 election" related to the share. Subsection 92(1.1) defines that share as the "relevant share", and defines such a time as the "computation time", for the purposes of subsections 92(1.2) and (1.3). Also, subsection 92(1.1) defines that foreign affiliate as the "relevant foreign affiliate", for the purpose of subsection 92(1.2).

For information regarding the coming-into-force of this subsection, refer to the commentary regarding new subsection 92(1.4).

Related Provisions: 92(1.2) — Specified section 93 election.

(1.2) Specified section 93 election — An election made by the particular corporation resident in Canada under subsection 93(1) or (1.2), as the case may be, in respect of a share of a particular foreign affiliate of the particular corporation that is disposed of at a time (referred to in this subsection as the "election time") before the computation time is, at the computation time, a specified section 93 election related to the relevant share if

(a) the particular foreign affiliate has, at the election time, an equity percentage in the relevant foreign affiliate;

(b) the relevant foreign affiliate was, at the election time, a foreign affiliate of the particular corporation;

(c) throughout the period that begins at the election time and ends at the computation time,

(i) the holder held the relevant share, and

(ii) the holder was

(A) a foreign affiliate of the particular corporation,

(B) a foreign affiliate of a corporation resident in Canada that was related to the particular corporation,

(C) a partnership of which a foreign affiliate of the particular corporation was a member, or

(D) a partnership of which a foreign affiliate, of a corporation resident in Canada that was related to the particular corporation, was a member;

(d) the relevant share was, at the election time, excluded property of the holder (or would have been, at the election time, excluded property of the holder if the holder had been a foreign affiliate of the particular corporation); and

(e) the relevant share is, at the computation time, excluded property of the holder (or would have been, at the computation time, excluded property of the holder if the holder had been a foreign affiliate of the particular corporation or of a corporation resident in Canada that is related to the particular corporation).

Technical Notes: New subsection 92(1.2) establishes, for the purposes of subsections 92(1.1) and (1.3), whether an election made under subsection 93(1) or (1.2) by a particular corporation resident in Canada in respect of a share of a particular foreign affiliate of the particular corporation that is disposed of at a time before the computation time is, at the computation time, a "specified section 93 election" related to the relevant share. The time of that disposition is referred to in subsection 92(1.2) as the "election time".

Such an election is, at the computation time, a "specified section 93 election" related to the relevant share for the purposes of subsections 92(1.1) and (1.3) if

- the particular foreign affiliate has, at the election time, an equity percentage in the relevant foreign affiliate;
- the relevant foreign affiliate was, at the election time, a foreign affiliate of the particular corporation;
- throughout the period that begins at the election time and ends at the computation time;
  - — the holder held the relevant share, and
  - — the holder was
    - a foreign affiliate of the particular corporation,
    - a foreign affiliate of a corporation resident in Canada that was related to the particular corporation,
    - a partnership of which a foreign affiliate of the particular corporation was a member, or
    - a partnership of which a foreign affiliate, of a corporation resident in Canada that was related to the particular corporation, was a member;
- the relevant share was, at the election time, excluded property of the holder (or would at that time have been excluded property of the holder if the holder had been a foreign affiliate of the particular corporation); and
- the relevant share is, at the computation time, excluded property of the holder (or would at that time have been excluded property of the holder if the holder had been a foreign affiliate of the particular corporation or of a corporation resident in Canada that is related to the particular corporation).

For information regarding the coming-into-force of this subsection, refer to the commentary regarding new subsection 92(1.4).

(1.3) Adjustments to adjusted cost base — If this subsection applies, the following rules apply in determining the adjusted cost base to the holder of the relevant share for the purposes described in subsection (1.4):

(a) there shall be added, to the adjusted cost base to the holder of the relevant share, the amount prescribed in respect of the relevant share in respect of the specified section 93 election, and

(b) there shall be deducted, from the adjusted cost base to the holder of the relevant share, the amount prescribed in respect of the relevant share in respect of the specified section 93 election.

Technical Notes: New subsection 92(1.3) contains rules that require adjustments to the adjusted cost base to the holder of the "relevant share". See the commentary to new subsection 92(1.1) for information regarding the circumstances that make subsection 92(1.3) apply. The adjustments are for the purposes described in subsection 92(1.4).

Under the rules contained in subsection 92(1.3), there is to be added to, or deducted from, as the case may be, the adjusted cost base to the holder of the relevant share the amount prescribed in new section 5911 of the *Income Tax Regulations* in respect of the specified section 93 election related to the relevant share.

Related Provisions: 92(1.1) — Conditions for 92(1.3) to apply.

Regulations: 5911(1) (amount prescribed for 92(1.3)(a)); 5911(2) (amount prescribed for 92(1.3)(b)).

(1.4) Applicability of subsection (1.3) — The purposes described in this subsection are

(a) the computation, at any time after the election time, of the exempt surplus or deficit, the taxable surplus or deficit, and the underlying foreign tax, of the holder, in respect of the particular corporation resident in Canada or in respect of any other person that would, at the time after the election time, and if the taxpayer referred to in subparagraphs 95(2)(f)(iv) to (vii) were the particular corporation, be described by any of those subparagraphs; and

(b) the application, at any time after the election time, of paragraphs 95(2)(c.1) to (e.6).

Technical Notes: New subsection 92(1.4) sets out the purposes for which the adjustments described in new subsection 92(1.3) are applicable.

Those purposes are

- the computation of the exempt surplus or deficit, the taxable surplus or deficit, and the underlying foreign tax, of the holder, in respect of the corporation resident in Canada, or in respect of any other person referred to in subparagraphs 95(2)(f)(iv) to (vii) on the assumption that the taxpayer referred to in those subparagraphs were the particular corporation resident in Canada, and
- the application of paragraphs 95(2)(c.1) to (e.6), at any time after the time of the election.

Coming-into-Force

New subsections 92(1.1) to (1.4) apply in respect of elections made under subsection 93(1) or (1.2) in respect of dispositions that occur after December 20, 2002.

However, new subsections 92(1.1) to (1.4) will not apply in respect of elections made under subsection 93(1) or (1.2) in respect of a disposition by a vendor of a share if one of the following conditions are met:

- the disposition was required to be made under an agreement in writing made by the vendor on or before December 20, 2002,
- the disposition occurs on or before February 27, 2004 and either
  - — a valid election was made by the taxpayer to have new paragraphs 95(2)(c.1) to (e.6) not apply (and to have a modified version of the draft paragraphs 93(1.4) to (1.6) that were announced on December 20, 2002 apply) to dispositions made after December 20, 2002 and on or before February 27, 2004, or
  - — none of new paragraphs 88(3)(a), 95(2)(e.2) and 95(2)(d) to (e.5) applies to the disposition, or
- the disposition occurs after February 27, 2004 and that disposition is required to be made under an agreement in writing made by the

vendor on or before February 27, 2004, and none of paragraphs 88(3)(a), 95(2)(c.2) and 95(2)(d) to (e.5) applies to the disposition.

For information about the aforementioned election and the aforementioned modified version of subsections 93(1.4) to (1.6), refer to the commentary to new paragraphs 95(2)(c.1) to (c.6).

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), s. 131, will add subsecs. 92(1.1)-(1.4), applicable in respect of elections made under subsec. 93(1) or (1.2) in respect of dispositions that occur after December 20, 2002, except that the new subsecs. do not apply in respect of an election made under subsec. 93(1) or (1.2) in respect of a disposition by a vendor of a share

(a) that is required to be made under an agreement in writing made by the vendor before December 21, 2002;

(b) that occurs before February 28, 2004, if a valid election in respect of the vendor was made under subsec. 133(40) [application of amendment to 95(2)(c.1)-(c.6)] or if none of paras. 88(3)(a), 95(2)(c.2) and 95(2)(d) to (e.5) of the Act applies to the disposition; or

(c) that occurs after February 27, 2004 if that disposition is required to be made under an agreement in writing made by the vendor before February 28, 2004 and if none of paras. 88(3)(a), 95(2)(c.2) and 95(2)(d) to (e.5) applies to the disposition.

(2) Deduction in computing adjusted cost base — In computing, at any time in a taxation year,

(a) the adjusted cost base to a corporation resident in Canada (in this subsection referred to as an "owner") of any share of the capital stock of a foreign affiliate of the corporation, or

(b) the adjusted cost base to a foreign affiliate (in this subsection referred to as an "owner") of a person resident in Canada of any share of the capital stock of another foreign affiliate of that person,

there shall be deducted, in respect of any dividend received on the share before that time by the owner of the share, an amount equal to the amount, if any, by which

(c) such portion of the amount of the dividend so received as was deductible by virtue of paragraph 113(1)(d) from the income of the owner for the year in computing the owner's taxable income for the year or as would have been so deductible if the owner had been a corporation resident in Canada,

exceeds

(d) such portion of any income or profits tax paid by the owner to the government of a country other than Canada as may reasonably be regarded as having been paid in respect of the portion described in paragraph (c).

Related Provisions: 53(2)(b) — ACB — deductions; 91(6) — Amounts deductible re dividends received.

Interpretation Bulletins: IT-392: Meaning of the term "share".

(3) Idem — In computing, at any time in a taxation year, the adjusted cost base to a corporation resident in Canada of any share of the capital stock of a foreign affiliate of the corporation, there shall be deducted an amount in respect of any dividend received on the share by the corporation before that time equal to such portion of the amount so received as was deducted under subsection 113(2) from the income of the corporation for the year or any preceding year in computing its taxable income.

Related Provisions: 53(2)(b) — ACB — deductions.

Interpretation Bulletins: IT-392: Meaning of the term "share".

(4) Disposition of a partnership interest — Where a corporation resident in Canada or a foreign affiliate of a corporation resident in Canada has at any time disposed of all or a portion of an interest in a partnership of which it was a member, there shall be added, in computing the proceeds of disposition of that interest, the amount determined by the formula

$$(A - B) \times (C/D)$$

where

A is the amount, if any, by which

(a) the total of all amounts each of which is an amount that was deductible under paragraph 113(1)(d) by the member from its income in computing its taxable income for any taxation year of the member that began before that time in respect of any portion of a dividend received by the partnership, or would have been so deductible if the member were a corporation resident in Canada,

exceeds

(b) the total of all amounts each of which is the portion of any income or profits tax paid by the partnership or the member of the partnership to a government of a country other than Canada that can reasonably be considered as having been paid in respect of the member's share of the dividend described in paragraph (a);

B is the total of

(a) the total of all amounts each of which was an amount added under this subsection in computing the member's proceeds of a disposition before that time of another interest in the partnership, and

(b) the total of all amounts each of which was an amount deemed by subsection (5) to be a gain of the member from a disposition before that time of a share by the partnership;

C is the adjusted cost base, immediately before that time, of the portion of the member's interest in the partnership disposed of by the member at that time; and

D is the adjusted cost base, immediately before that time, of the member's interest in the partnership immediately before that time.

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: Subsec. 92(4) added by 2001, c. 17, s. 69, applicable to dispositions that occur after November 1999.

(5) Deemed gain from the disposition of a share — Where a partnership has, at any time in a fiscal period of the partnership at the end of which a corporation resident in Canada or a foreign affiliate of a corporation resident in Canada was a member, disposed of a share of the capital stock of a corporation, the amount determined under subsection (6) in respect of such a member is deemed to be a gain of the member from the disposition of the share by the partnership for the member's taxation year in which the fiscal period of the partnership ends.

History: Subsec. 92(5) added by 2001, c. 17, s. 69, applicable to dispositions that occur after November 1999.

(6) Formula — The amount determined for the purposes of subsection (5) is the amount determined by the formula

$$A - B$$

where

A is the amount, if any, by which

(a) the total of all amounts each of which is an amount that was deductible under paragraph 113(1)(d) by the member from its income in computing its taxable income for a taxation year in respect of any portion of a dividend received by the partnership on the share in a fiscal period of the

partnership that began before the time referred to in subsection (5) and ends in the member's taxation year, or would have been so deductible if the member were a corporation resident in Canada,

exceeds

(b) the total of all amounts each of which is the portion of any income or profits tax paid by the partnership or the member to a government of a country other than Canada that can reasonably be considered as having been paid in respect of the member's share of the dividend described in paragraph (a); and

B is the total of all amounts each of which is an amount that was added under subsection (4) in computing the member's proceeds of a disposition before the time referred to in subsection (5) of an interest in the partnership.

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: Subsec. 92(6) added by 2001, c. 17, s. 69, applicable to dispositions that occur after November 1999.

Definitions [s. 92]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "Canada" — 255; "computation time" — 92(1.1); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition", "dividend" — 248(1); "excluded property" — 95(1); "exempt surplus" — 113(1)(a); "fiscal period" — 249.1; "foreign affiliate" — 95(1), 248(1); "person", "prescribed" — 248(1); "related" — 251(2)–(6); "relevant foreign affiliate", "relevant share" — 92(1.1); "resident in Canada" — 94(3)(a)(viii), 250; "share" — 248(1); "specified section 93 election" — 92(1.2); "taxable income" — 2(2), 248(1); "taxation year" — 95(1) (for foreign affiliate only), 249; "taxpayer" — 248(1).

93. (1) Election re disposition of share in foreign affiliate — For the purposes of this Act, where a corporation resident in Canada so elects, in prescribed manner and within the prescribed time, in respect of any share of the capital stock of a foreign affiliate of the corporation disposed of by it or by another foreign affiliate of the corporation,

(a) the amount (in this subsection referred to as the "elected amount") designated by the corporation in its election not exceeding the proceeds of disposition of the share shall be deemed to have been a dividend received on the share from the affiliate by the disposing corporation or disposing affiliate, as the case may be, immediately before the disposition and not to have been proceeds of disposition; and

Proposed Amendment — 93(1)(a)

(a) the amount (which may not exceed the lesser of the proceeds of disposition of the share and the amount prescribed in respect of the share) designated by the corporation in its election (referred to in this subsection as the "elected amount") is deemed

(i) to have been a dividend received on the share from the affiliate by the disposing corporation or the disposing affiliate, as the case may be, immediately before the disposition, and

(ii) not to have been received as proceeds of disposition; and

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 132(1), will amend para. 93(1)(a) to read as above, applicable on the same basis as the addition of subsecs. 92(1.1)–(1.4) above.

Technical Notes: Paragraph 93(1)(a) provides that the amount elected in respect of the proceeds of disposition cannot exceed the proceeds of disposition of the share otherwise determined and that the amount elected is deemed to be a dividend received on the share and is deemed not to be proceeds of disposition. The amendments to subparagraph 93(1)(a) provide that the amount elected in respect of the proceeds of disposition of the share cannot exceed those proceeds of disposition otherwise determined, nor exceed the amount prescribed, under proposed new subsection 5902(6) of the Regulations, in respect of the share being disposed of.

Refer to the coming-into-force commentary below [proposed 93(1.4)] to determine the coming-into-force dates for these amendments.

(b) where subsection 40(3) applies to the disposing corporation or disposing affiliate, as the case may be, in respect of the share,

(i) the amount deemed by that subsection to be the gain of the disposing corporation or disposing affiliate, as the case may be, from the disposition of the share shall, except for the purposes of paragraph 53(1)(a), be deemed to be equal to the amount, if any, by which

(A) the amount deemed by that subsection to be the gain from the disposition of the share determined without reference to this subparagraph

exceeds

(B) the elected amount, and

(ii) for the purposes of determining the exempt surplus, exempt deficit, taxable surplus, taxable deficit and underlying foreign tax of the affiliate in respect of the corporation resident in Canada (within the meanings assigned by Part LIX of the *Income Tax Regulations*), the affiliate is deemed to have redeemed at the time of disposition shares of a class of its capital stock.

Related Provisions: 40(3) — Deemed gain where amounts to be deducted from ACB exceed cost plus amounts to be added to adjusted cost base; 93(1.1) — Election re share in foreign affiliate; 93(1.4) — Where no election permitted; 93(5) — Late filed elections; 93.1(1) — Where shares are owned by partnership; 95(2)(c.1)–(c.6) — Suspended gain for FAPI on internal disposition by FA of another FA; 95(2)(f) — Determination of certain components of foreign accrual property income; Reg. 5900(2) — No election for dividend to have been paid out of taxable surplus; Reg. 5905(2) — Where shares of foreign affiliate are redeemed or cancelled.

History: Subpara. 93(1)(b)(ii) amended by 2001, c. 17, subsec. 70(1), applicable to dispositions that occur after November 1999. The subpara. formerly read:

(ii) for the purposes of determining the exempt surplus, exempt deficit, taxable surplus, taxable deficit and underlying foreign tax of the affiliate in respect of the corporation resident in Canada (within the meanings assigned by the regulations for the purpose of section 95), the affiliate shall be deemed at the time of disposition to have redeemed shares of a class of its capital stock.

Subsec. 93(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 69(1), applicable to 1987 *et seq.* Subsec. 93(1) formerly read:

93. (1) Election re disposition of share in foreign affiliate — Where at any time a corporation resident in Canada has so elected, in prescribed manner and within the prescribed time, in respect of any share of the capital stock of a foreign affiliate of the corporation disposed of by it or by another foreign affiliate of the corporation, for the purposes of this Act, an amount equal to the lesser of

(a) the amount designated by the corporation in its election, and

(b) the proceeds of disposition of the share

shall be deemed to have been a dividend received on the share from the affiliate by the disposing corporation or disposing affiliate, as the case may be, immediately before the disposition and not to have been proceeds of disposition.

Selected Cases [subsec. 93(1)]: *Terrador Investments Ltd. v. R.*, [1999] 3 C.T.C. 520 (FCA); leave to appeal to SCC refused (May 18, 2000), File 27499 (No bad debt possible where statute deemed amount to have been received).

Regulations: 5902 (prescribed manner, prescribed time).

Interpretation Bulletins: See at end of s. 93.

Information Circulars: 76-19R3: Transfer of property to a corporation under section 85; 77-9R: Books, records and other requirements for taxpayers having foreign affiliates.

Forms: T2107: Election for a disposition of shares in a foreign affiliate.

(1.1) Idem — Where at any time shares of the capital stock of a foreign affiliate of a corporation resident in Canada that are excluded property are disposed of by another foreign affiliate of the corporation (other than a disposition to which paragraph 95(2)(c), (d) or (e) applies), the corporation shall be deemed to have made an election at that time under subsection (1) in respect of each such share disposed of and in the election to have designated an amount equal to such amount as is prescribed.

Proposed Amendment — 93(1.1)

(1.1) Deemed election — If at any time shares of the capital stock of a foreign affiliate of a corporation resident in Canada are disposed of by another foreign affiliate of the corporation, the corporation is deemed

(a) to have made an election at that time under subsection (1) in respect of each of those shares; and

(b) to have designated, in the election, the amount prescribed in respect of each of those shares.

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 132(2), will amend subsec. 93(1.1) to read as above, applicable on the same basis as the addition of subsecs. 92(1.1)–(1.4) above.

Technical Notes: Subsection 93(1.1) provides that the rules in subsection 93(1) will automatically apply in respect of a disposition of a share of a foreign affiliate of a corporation resident in Canada by another foreign affiliate of the corporation, without the need for an election, where the share disposed of was "excluded property" (as defined in subsection 95(1)) of the vendor (other than a disposition, of a share that is excluded property, to which paragraph 95(2)(c), (d) or (e) applies). The amount of the deemed election in respect of the proceeds of disposition of the share is determined by the Regulations but will not in any event exceed the vendor's capital gain otherwise determined in respect of the disposition.

Subsection 93(1.1) is amended

- to remove the requirement that the shares be excluded property of the foreign affiliate of the corporation resident in Canada that disposed of the share, and
- to remove the rule that made the deemed election apply in respect of a disposition, of a share that is an excluded property, to which paragraph 95(2)(c), (d) or (e) applies. (Such a rule is no longer needed, as the excluded property requirement has been removed altogether.)

Refer to the coming-into-force commentary below [proposed 93(1.4)] to determine the coming-into-force dates for these amendments

Related Provisions: 95(2)(f) — Determination of certain components of foreign accrual property income.

Regulations: 5902(6) (prescribed amount).

(1.2) Disposition of a share of a foreign affiliate held by a partnership — Where a particular corporation resident in Canada or a foreign affiliate of the particular corporation (each of which is referred to in this subsection as the "disposing corporation") would, but for this subsection, have a taxable capital gain from a disposition by a partnership, at any time, of shares of a class of the capital stock of a foreign affiliate of the particular corporation and the particular corporation so elects in prescribed manner in respect of the disposition,

Proposed Amendment — 93(1.2) opening words

(1.2) Disposition of shares of a foreign affiliate held by a partnership — If a particular corporation resident in Canada or a foreign affiliate of the particular corporation (each of which is referred to in this subsection as the "disposing corporation") would, but for this subsection, have a taxable capital gain from a disposition by a partnership, at any time, of shares of a class of the capital stock of a foreign affiliate of the particular corporation and the particular corporation so elects in prescribed manner and within the prescribed time in respect of the disposition,

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 132(3), will amend the opening words of subsec. 93(1.2) to read as above, applicable to dispositions that occur after November 1999.

Technical Notes: Subsection 93(1.2) provides that, where a particular corporation resident in Canada or a foreign affiliate of the particular corporation (each of which is referred to as the "disposing corporation") would, but for that subsection, have a taxable capital gain from a disposition by the partnership of a particular share of a class of the capital stock of a foreign affiliate of the corporation, and the disposing corporation elects in prescribed manner in respect of the gain, the amount designated in the election will reduce the taxable capital gain and will be grossed-up and treated as a dividend received on the particular share by the disposing corporation.

Subsection 93(1.2) is being amended in the following ways:

- The preamble of that section is amended to add a requirement that the election in respect of the disposition be filed "within the prescribed time". ...

(a) twice

(i) the amount designated by the particular corporation (which amount shall not exceed the amount that is equal to the proportion of the taxable capital gain of the partnership that the number of shares of that class of the capital stock of the foreign affiliate, determined as the amount, if any, by which the number of those shares that were deemed to have been owned by the disposing corporation for the purposes of subsection 93.1(1) immediately before the disposition exceeds the number of those shares that were deemed to have been owned for those purposes by the disposing corporation immediately after the disposition, is of the number of those shares of the foreign affiliate that were owned by the partnership immediately before the disposition), or

Proposed Amendment — 93(1.2)(a)(i)

(i) the amount that the particular corporation designates that may not exceed the lesser of

(A) the amount determined by the formula

$$K \times L/M$$

where

K is the taxable capital gain of the partnership,

L is the number of shares of that class of the capital stock of the foreign affiliate, determined as the amount, if any, by which the number of those shares that were deemed to have been owned by the disposing corporation for the purposes of subsection 93.1(1) immediately before the disposition exceeds the number of those shares that were deemed to have been owned for those purposes by the disposing corporation immediately after the disposition, and

M is the number of those shares of the foreign affiliate that were owned by the partnership immediately before the disposition, and

(B) the amount prescribed in respect of the share, or

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 132(4), will amend subpara. 93(1.2)(a)(i) to read as above, applicable on the same basis as the addition of subsecs. 92(1.1)–(1.4) above.

Technical Notes: Subsection 93(1.2) is being amended in the following ways: ...

- Subparagraph (a)(i) of that section is amended to provide that the amount designated by the corporation in the election cannot exceed the lesser of two amounts.
- The first amount is the amount determined by the following formula

$$K \times L/M$$

where

K is the taxable capital gain of the partnership,

L is the number of shares of that class of the capital stock of the foreign affiliate, determined as the amount, if any, by which the number of those shares that were deemed to have been owned by the disposing corporation for the purposes of subsection 93.1(1) immediately before the disposition exceeds the number of those shares that were deemed to have been owned for those purposes by the disposing corporation immediately after the disposition, and

M is the number of those shares of the foreign affiliate that were owned by the partnership immediately before the disposition; and

- the second amount is the amount prescribed in respect of the share (see new Regulation 5902(7)).

Refer to the coming-into-force commentary below [proposed 93(1.4)] to determine the coming-into-force dates for these amendments.

(ii) where subsection (1.3) applies, the amount prescribed for the purpose of that subsection

in respect of those shares is deemed to have been a dividend received immediately before that time on the number of those shares of the foreign affiliate which shall be determined as the amount, if any, by which the number of those shares that the disposing corporation was deemed to own for the purpose of subsection 93.1(1) immediately before the disposition exceeds the number of those shares of the foreign affiliate that the disposing corporation was deemed to own for the purposes of subsection 93.1 (1) immediately after the disposition;

(b) notwithstanding section 96, the disposing corporation's taxable capital gain from the disposition of those shares is deemed to be the amount, if any, by which the disposing corporation's taxable capital gain from the disposition of the shares otherwise determined exceeds the amount designated by the particular corporation in respect of the shares;

(c) for the purpose of any regulation made under this subsection, the disposing corporation is deemed to have disposed of the number of those shares of the foreign affiliate which shall be determined as the amount, if any, by which the number of those shares that the disposing corporation was deemed to own for the purposes of subsection 93.1(1) immediately before the disposition exceeds the number of those shares that the disposing corporation was deemed to own for those purposes immediately after the disposition;

(d) for the purposes of section 113 in respect of the dividend referred to in paragraph (a), the disposing corporation is deemed to have owned the shares on which that dividend was received; and

(e) where the disposing corporation has a taxable capital gain from the partnership because of the application of subsection 40(3) to the partnership in respect of those shares, for the purposes of this subsection, the shares are deemed to have been disposed of by the partnership.

Related Provisions: 93(1.3) — Deemed election; 93(1.4) — Where no election permitted; 93.1(1) — Where shares are owned by partnership; Reg. 5900(2) — No election for dividend to have been paid out of taxable surplus; Reg. 5905(2) — Where shares of foreign affiliate are redeemed or cancelled.

History: Subsec. 93(1.2) amended by 2001, c. 17, subsec. 70(4) to replace the reference to the expression "4/3 of" with a reference to the word "twice", applicable to taxation years that end after February 27, 2000.

Proposed Amendment — Application of S.C. 2001, c. 17, subsec. 70(4)

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 199, will amend the application of the amendment made to subsec. 93(1.2) by S.C. 2001, c. 17, subsec. 70(4), deemed in force on June 14, 2001, to read as follows:

> Subsec. 93(1.2) amended by 2001, c. 17, subsec. 70(4) to replace the reference to the expression "4/3 of" with a reference to the word "twice", applicable to taxation years that end after February 27, 2000 except that, for a taxation year of a taxpayer that includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, the reference to the word "twice" shall be read as a reference to the expression "the fraction that is the reciprocal of the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the taxpayer for the year, multiplied by".

Technical Notes: Section 93 contains a number of rules relating to the disposition of shares of a foreign affiliate of a taxpayer resident in Canada.

Subsection 93(1.2) provides that, where a particular corporation resident in Canada or a foreign affiliate of the particular corporation (each of which is referred to as the "disposing corporation") would, but for this subsection, have a taxable capital gain from a partnership from the disposition by the partnership of shares of a class of the capital stock of a foreign affiliate of the corporation, and the disposing corporation so elects in prescribed manner in respect of the gain, the amount designated will reduce the taxable capital gain and will be grossed up and recharacterized as a dividend received on the share by the disposing corporation.

Paragraph 93(1.2)(a) provides that twice the amount designated by the disposing corporation in respect of the shares (or where subsection 93(1.3) applies, twice the amount determined under that subsection) will be treated as a dividend received on the shares by the disposing corporation from the foreign affiliate.

Before the present amendment, subsection 93(1.2) was applicable to taxation years that end after February 27, 2000. This amendment ensures that, for a taxation year of a taxpayer that includes either February 28, 2000 or October 17, 2000 or began after February 28, 2000 and ended before October 17, 2000, the reference to the word "twice" is to read as references to the reciprocal of the capital gains inclusion rate applicable to the corporation resident in Canada or to the foreign affiliate for the taxation year. This amendment corrects a technical deficiency.

Subsec. 93(1.2) added by the said c. 17, subsec. 70(2), applicable to dispositions that occur after November 1999.

Regulations: 5902 (prescribed manner, prescribed time).

(1.3) Deemed election — Where a foreign affiliate of a particular corporation resident in Canada has a gain from the disposition by a partnership at any time of shares of a class of the capital stock of a foreign affiliate of the particular corporation that are excluded property, the particular corporation is deemed to have made an election under subsection (1.2) in respect of the number of shares of the foreign affiliate which shall be determined as the amount, if any, by which the number of those shares that the disposing corporation was deemed to own for the purposes of subsection 93.1(1) immediately before the disposition exceeds the number of those shares that the disposing corporation was deemed to own for those purposes immediately after the disposition.

Related Provisions: Reg. 5902(7) — Deemed amount designated.

History: Subsec. 93(1.3) added by 2001, c. 17, subsec. 70(2), applicable to dispositions that occur after November 1999.

Proposed Addition — 93(1.4)

(1.4) No election — Notwithstanding subsections (1) to (1.3), no election may be made under subsection (1) or (1.2) by a corporation in respect of a disposition of a share of the capital stock of a foreign affiliate of the corporation if any of paragraph 88(3)(a) and subparagraphs 95(2)(d)(i), (d.1)(i), (e)(i), (e.1)(i), (e.2)(i), (e.3)(i), (e.4)(i) and (e.5)(i) applies to the disposition.

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 132(5), will add subsec. 93(1.4), applicable to dispositions that occur after February 27, 2004.

Technical Notes: New subsection 93(1.4) provides that, notwithstanding subsections 93(1) to (1.3), no election may be made under subsection 93(1) or (1.2) by a corporation in respect of a disposition of a share of the capital stock of a foreign affiliate of the corporation if any of paragraph 88(3)(a) and subparagraphs 95(2)(d)(i), (d.1)(i), (e)(i), (e.1)(i), (e.2)(i), (e.3)(i), (e.4)(i) and (e.5)(i) applies to the disposition.

Refer to the coming-into-force commentary below to determine the coming-into-force dates for this new subsection.

Coming-into-Force (ITA 93(1)(a), (1.1), (1.2), (1.3) and (1.4))

The amendments to paragraph 93(1)(a), to subsection 93(1.1) and to subparagraph 93(1.2)(a)(i) apply to dispositions that occur after December 20, 2002.

However, those amendments will not apply in respect of dispositions by a vendor if one of the following conditions are met:

- the disposition is required to be made under an agreement in writing made by the vendor on or before December 20, 2002,
  - — the disposition occurs on or before February 27, 2004 and either
  - — a valid election was made by the taxpayer to have new paragraphs 95(2)(c.1) to (c.6) not apply (and to have a modified version of the draft paragraphs 93(1.4) to (1.6) that were announced on December 20, 2002 apply) to dispositions made after December 20, 2002 and on or before February 27, 2004, or
  - — none of new paragraphs 88(3)(a), 95(2)(c.2), and 95(2)(d) to (e.5) of the Act applies to the disposition, or
  - — the disposition occurs after February 27, 2004, that disposition is required to be made under an agreement in writing made by the vendor on or before February 27, 2004 and none of new paragraphs 88(3)(a), 95(2)(c.2) and 95(2)(d) to (e.5) applies to the disposition.

For information about the aforementioned election and the aforementioned modified version of subsections 93(1.4) to (1.6), refer to the commentary to new paragraphs 95(2)(c.1) to (c.6).

The amendment to the preamble of subsection 93(1.2) applies to dispositions that occur after November 1999.

New subsection 93(1.4) applies to dispositions that occur after February 27, 2004.

Letter from Dept. of Finance, October 20, 2003:

Dear [xxx]

I am writing in response to your three letters dated August 18, 2003 in connection with subsection 93(1.4) of the *Income Tax Act*, as proposed in the Legislative Proposals and Explanatory Notes Relating to Income Tax that were announced on December 20, 2002. In each of those letters, you highlighted transactions that involve the disposition of shares, of a foreign affiliate of a taxpayer resident in Canada, that are excluded property. You expressed your concern that, if proposed subsection 93(1.4) is enacted as drafted, those dispositions could result in foreign accrual property income (FAPI) to the taxpayer resident in Canada, and you requested that the Act not be amended to introduce subsection 93(1.4) as proposed.

It is our intention to recommend the introduction of amendments to the Act (the "new rule") which, in general terms, would provide that where a specified vendor in respect of a taxpayer resident in Canada makes a disposition (including, for greater certainty, a disposition arising on a redemption, acquisition or cancellation of a share) of a share of a foreign affiliate of the taxpayer, that is excluded property, to a specified purchaser in respect of the taxpayer, no gain would be recognized at the time of that disposition. However, a taxpayer would be permitted to elect an amount of proceeds of disposition, up to the fair market value of the share disposed of, which could result in a gain. In the case of such an election, any such gain would be included in computing FAPI. Therefore, the only FAPI that could arise on such a disposition would be self-imposed.

The new rule would apply only in respect of a disposition of a share of a foreign affiliate of the taxpayer that is excluded property of the specified vendor (or would be excluded property of the specified vendor if the specified vendor were a foreign affiliate of the taxpayer) and only where the disposition would otherwise result in a gain being realized by the specified vendor.

Should our recommendation be acted upon, it is contemplated that the new rule would apply to dispositions occurring after draft implementing legislation is made public. The proposed subsection 93(1.4), with some modifications, would apply to dispositions occurring before that time; however, taxpayers would be given the alternative of applying, in respect of all foreign affiliates of the taxpayer, the new rule to all relevant dispositions occurring after December 20, 2002. For a taxpayer that wishes to apply the new rule to dispositions occurring before its announcement date, certain other related changes to the foreign affiliate regime may also apply with respect to those dispositions.

I trust that this letter addresses your concerns.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

[Two similar letters dated October 28, 2003, one of which was addressed to Angelo Nikolakakis, Davies Ward Phillips & Vineberg LLP, Montréal — ed.]

Related Provisions: 93(1.5) — Meaning of "specified vendor"; 93(1.6) — Meaning of "specified purchaser".

(2) Loss limitation on disposition of share — Where

(a) a corporation resident in Canada has a loss from the disposition by it at any time of a share of the capital stock of a foreign affiliate of the corporation (in this subsection referred to as the "affiliate share"), or

(b) a foreign affiliate of a corporation resident in Canada has a loss from the disposition by it at any time of a share of the capital stock of another foreign affiliate of the corporation resident in Canada that is not excluded property (in this subsection referred to as the "affiliate share"),

the amount of the loss is deemed to be the amount determined by the formula

$$A - (B - C)$$

Proposed Amendment — 93(2) formula

$$A - (B - C) + D$$

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 132(6), will amend the formula in subsec. 93(2) to read as above, applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after February 27, 2004, except that if the taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which the amending legislation is assented to, the amendment applies to taxation years, of the taxpayer and of all the taxpayer's foreign affiliates, that begin after 1994, and, notwithstanding subsecs. 152(4) to (5), any assessment of the taxpayer's tax, interest and penalties payable under the Act for any of those taxation years that begin on or before February 27, 2004 shall be made that is necessary to take the election into account.

Technical Notes: Subsection 93(2) provides rules for the purpose of determining the loss of a corporation resident in Canada from the disposition of a share of a foreign affiliate of the corporation or the loss of a foreign affiliate of the corporation from a disposition of a share of the capital stock of another foreign affiliate of the corporation that is not excluded property to the foreign affiliate that disposed of the share.

The amount of the loss, determined without reference to this subsection, is reduced by exempt dividends received, on the share or a share for which the share was substituted, by the corporation resident in Canada, by another corporation resident in Canada that is related to the corporation or by a foreign affiliate of either of those corporations resident in Canada (to the extent that the exempt dividends have not already re-

duced losses or allowable capital losses of those corporations or foreign affiliates under subsection 93(2), (2.1), (2.2) or (2.3)). The term "exempt dividend" is defined in subsection 93(3).

Subsection 93(2) is being amended to permit the corporation resident in Canada or its foreign affiliate to restore a loss from a disposition of a share of the capital stock of a foreign affiliate of the corporation resident in Canada to the extent of the lesser of two amounts.

- The first amount is the reduction of that loss which is attributable to exempt dividends.
- The second amount is the total of the following gains determined in respect of the corporation resident in Canada or the foreign affiliate, as the case may be, that disposed of the share:
  - — The foreign exchange gain arising on the settlement or extinguishment of an obligation issued or incurred to acquire the share.
  - — The foreign exchange gain arising on the redemption, acquisition or cancellation of shares issued to acquire the share.
  - — The gain arising under an agreement that provides for the purchase, sale or exchange of a currency, or from the disposition of a currency, that was entered into or acquired for hedging the foreign exchange exposure arising in connection with the acquisition of the share.

First, the formula in subsection 93(2) is amended by adding the new variable "D" and will read as follows:

$$A - (B - C) + D$$

where

A is the amount of the loss determined without reference to this subsection,

B is the total of all amounts each of which is an amount received before that time, in respect of an exempt dividend on the affiliate share or on a share for which the affiliate share was substituted, by

(a) the corporation resident in Canada,

(b) a corporation related to the corporation resident in Canada,

(c) a foreign affiliate of the corporation resident in Canada, or

(d) a foreign affiliate of a corporation related to the corporation resident in Canada,

C is the total of

(a) the total of all amounts each of which is the amount by which a loss (determined without reference to this section), from another disposition at or before that time by a corporation or foreign affiliate described in the description of B of the affiliate share or a share for which the affiliate share was substituted, was reduced under this subsection in respect of the exempt dividends referred to in the description of B,

(b) the total of all amounts each of which is twice the amount by which an allowable capital loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from a previous disposition by a partnership of the affiliate share or a share for which the affiliate share was substituted, was reduced under subsection (2.1) in respect of the exempt dividends referred to in the description of B,

(c) the total of all amounts each of which is the amount by which a loss (determined without reference to this section), from a disposition at or before that time by a corporation or foreign affiliate described in the description of B of an interest in a partnership, was reduced under subsection (2.2) in respect of the exempt dividends referred to in the description of B, and

(d) the total of all amounts each of which is twice the amount by which an allowable capital loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from a disposition at or before that time by a partnership of an interest in another partnership, was reduced under subsection (2.3) in respect of the exempt dividends referred to in the description of B.

Proposed Addition — 93(2)D

D is the lesser of

(a) the amount, if any, by which the amount determined for B exceeds the amount determined for C, and

(b) the total of the following amounts determined in respect of the corporation resident in Canada or the foreign affiliate of the corporation resident in Canada, as the case may be,

(i) the amount of the capital gain determined under paragraph 39(2)(a) for the taxation year that includes that time in respect of

(A) the settlement or extinguishment of an obligation of the corporation resident in Canada or of the foreign affiliate of the corporation resident in Canada, as the case may be, that can reasonably be considered to have been issued or incurred in relation to the acquisition of the affiliate share by the corporation resident in Canada or by the foreign affiliate of the corporation resident in Canada, as the case may be, or

(B) the redemption, acquisition or cancellation of a share of the capital stock of a corporation resident in Canada or of the foreign affiliate of the corporation resident in Canada, as the case may be, that can reasonably be considered to have been issued in relation to the acquisition of the affiliate share by the corporation resident in Canada or by the foreign affiliate of the corporation resident in Canada, as the case may be, and

(ii) the amount of any gain realized by the corporation resident in Canada or by the foreign affiliate of the corporation resident in Canada, as the case may be, under an agreement that provides for the purchase, sale or exchange of currency, or from the disposition of a currency, which agreement or currency, as the case may be, can reasonably be considered to have been entered into or acquired, by the corporation resident in Canada or by the foreign affiliate of the corporation resident in Canada, as the case may be, for the principal purpose of hedging the foreign exchange exposure arising in connection with the acquisition of the affiliate share.

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 132(7), will add the description of D to subsec. 93(2), applicable on the same basis as the amendment to the formula above.

Technical Notes: Second, the addition to the loss under new variable "D" will be determined as the lesser of

- The reduction of the loss in respect of exempt dividends (determined as (B - C) in the formula), and

- The total of the following amounts determined in respect of the corporation resident in Canada or the foreign affiliate of the corporation resident in Canada, as the case may be:
  - — the amount of the capital gain determined under paragraph 39(2)(a) for the taxation year that includes that time in respect of
    - the settlement or extinguishment of an obligation of the corporation resident in Canada or of the foreign affiliate of the corporation resident in Canada, as the case may be, that can reasonably be considered to have been issued or incurred in relation to the acquisition of the affiliate share by the corporation resident in Canada or by the foreign affiliate of the corporation resident in Canada, as the case may be, or
    - the redemption, acquisition or cancellation of a share of the capital stock of a corporation resident in Canada or of the foreign affiliate of the corporation resident in Canada, as the case may be, that can reasonably be considered to have been issued in relation to the acquisition of the affiliate share by the corporation resident in Canada or by the foreign affiliate of the corporation resident in Canada, as the case may be, and
  - — the amount of any gain realized by the corporation resident in Canada or by the foreign affiliate of the corporation resident in Canada, as the case may be, under an agreement that provides for the purchase, sale or exchange of currency, or from the disposition of a currency, which agreement or currency, as the case may be, can reasonably be considered to have been entered into or acquired, by the corporation resident in Canada or by the foreign affiliate resident in Canada, as the case may be, for the principal purpose of hedging the foreign exchange exposure arising in connection with the acquisition of the affiliate share.

Coming-into-Force (ITA 93(2), 93(2.1), 93(2.2) and 93(2.3))

The amendments to subsections 93(2), 93(2.1), 93(2.2) and (2.3) apply to taxation years, of foreign affiliates of a taxpayer, that begin after February 27, 2004. However, if the taxpayer so elects in writing and files that election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxation year in which these amendments are assented to, the amendments will apply taxation years of the taxpayer and all foreign affiliates of the taxpayer that begin after 1994.

Letter from Dept. of Finance, February 12, 2001:

Angelo Nikolakakis, Stikeman Elliott, Toronto

Dear Mr. Nikolakakis:. . .

Relationship between 93(2) and 39(2)

Finally you have submitted that subsection 93(2) should not apply to deny a loss on the disposition of the shares of a foreign affiliate where the loss results from the fluctuation in the value of a foreign currency, particularly where subsection 39(2) also applies to require the recognition of a corresponding gain.

Although we will wish to give further consideration to the issue of how best to identify both gains and losses related to such shares, we are prepared to recommend that an amendment be made to subsection 93(2) of the Act to address your concerns.

Effective Date

It will be recommended that the amendments be made effective for taxation years commencing after announcement date. It will also be recommended that taxpayer be permitted to elect to have the amendments apply to the 1994 and subsequent taxation years of foreign affiliates where the taxpayer so elects in respect of all the taxpayer's foreign affiliates ...

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 40(3) — Deemed gain where amounts to be deducted from ACB exceed cost plus amounts to be added; 40(3.3), (3.4) — Limitation on loss where share acquired by affiliated person; 87(2)(u)(ii) — Amalgamation; 93(3) — Exempt dividends; 93(4) — Loss on disposition of shares of foreign affiliate; 93.1(1) — Where shares are owned by partnership; 93.1(2) — Dividend on shares of foreign affiliate held by partnership; 257 — Formula amounts cannot calculate to less than zero.

History: Subsec. 93(2) amended by 2001, c. 17, subsec. 70(5) to replace the references to the expression "4/3 of" with references to the word "twice", applicable to taxation years that end after February 27, 2000 except that, for a taxation year of a taxpayer that includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, the references to the word "twice" shall be read as references to the expression "the fraction that is the reciprocal of the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the taxpayer for the year, multiplied by".

Subsec. 93(2) amended by the said c. 17, subsec. 70(3), applicable to dispositions that occur after November 1999. The subsec. formerly read:

(2) Loss limitation on disposition of share — Where

(a) a corporation resident in Canada has disposed of a share of the capital stock of any foreign affiliate of the corporation, or

(b) a foreign affiliate of a corporation resident in Canada has disposed of a share of the capital stock of another foreign affiliate of the corporation,

the amount of the loss of the disposing corporation from the disposition of the share shall be deemed to be the amount, if any, by which

(c) the amount that would be the loss of the disposing corporation therefrom if this Act were read without reference to this subsection

exceeds

(d) the amount, if any, by which

(i) the total of all amounts received before the disposition of the share in respect of exempt dividends on the share or a share for which the share was substituted by

(A) the disposing corporation,

(B) a corporation related to the disposing corporation,

(C) a foreign affiliate of the disposing corporation, or

(D) a foreign affiliate of a corporation related to the disposing corporation

exceeds

(ii) the total of all amounts each of which is the amount by which a loss from a previous disposition of the share or a share for which the share was substituted by a corporation referred to in any of clauses (i)(A) to (D) has been reduced because of this subsection.

That portion of subsec. 93(2) following para. (b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 69(2), applicable to the determination of losses arising in 1985 *et seq.*, except that, in its application to such losses from dispositions occurring before July 13, 1990, para. (d) shall be read as follows:

(d) the total of all amounts in respect of exempt dividends received by the disposing corporation on the share at any time before the disposition.

That portion of subsec. 93(2) formerly read:

the amount of any capital loss of the disposing corporation from the disposition of the share shall be deemed to be the amount, if any, by which the amount of the capital loss therefrom otherwise determined exceeds the total of all amounts in respect of exempt dividends received by the disposing corporation on the share at any time before the disposition.

Interpretation Bulletins: See at end of s. 93.

(2.1) Loss limitation — disposition of share by partnership — Where

(a) a corporation resident in Canada has an allowable capital loss from a disposition at any time by a partnership of a share of the capital stock of a foreign affiliate of the corporation (in this subsection referred to as the "affiliate share"), or

(b) a foreign affiliate of a corporation resident in Canada has an allowable capital loss from a disposition at any time by a partnership of a share of the capital stock of another foreign affiliate of the corporation resident in Canada that would not be excluded property of the affiliate if the affiliate owned the share immediately before it was disposed of (in this subsection referred to as the "affiliate share"),

the amount of the allowable capital loss is deemed to be the amount determined by the formula

A – (B – C)

Proposed Amendment — 93(2.1) formula

A – (B – C) + D

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 132(8), will amend the formula in subsec. 93(2.1) to read as above, applicable on the same basis as the amendment to the formula in 93(2).

Technical Notes: Subsection 93(2.1) provides rules for the purpose of determining the allowable capital loss of a corporation resident in Canada from the disposition by a partnership of a share of the capital stock of a foreign affiliate of the corporation and for the purpose of determining the allowable capital loss of a foreign affiliate of a corporation resident in Canada from a disposition by a partnership of a share of the capital stock of another foreign affiliate of the corporation that would not be excluded property of the foreign affiliate if the foreign affiliate owned the share immediately before it was disposed of.

The amount of the allowable capital loss otherwise determined is reduced by ½ of the exempt dividends received, on the share or a share for which the share was substituted, by the corporation resident in Canada, by another corporation resident in Canada that is related to the corporation resident in Canada, or by a foreign affiliate of either of those corporations resident in Canada (to the extent that the exempt dividends have not already reduced losses or allowable capital losses of those corporations or foreign affiliates under subsection 93(2), (2.1), (2.2) or (2.3)). The term "exempt dividend" is defined in subsection 93(3) of the Act.

Subsection 93(2.1) is being amended to permit the corporation resident in Canada or its foreign affiliate to restore an allowable capital loss from a disposition by a partnership of a share of the capital stock of a foreign affiliate of the corporation resident in Canada to the extent of the lesser of two amounts.

The addition to the loss under new variable "D" will be determined as the lesser of

- The first amount is the reduction of that allowable capital loss which is attributable to exempt dividends.
- The second amount is ½ of the total of the following gains determined in respect of the corporation resident in Canada or the foreign affiliate, as the case may be,
  - — The foreign exchange gain arising on the settlement of an obligation issued or incurred to acquire the share.
  - — The foreign exchange gain arising on the redemption, acquisition or cancellation of shares issued to acquire the share.
  - — The gain arising under an agreement that provides for the purchase, sale or exchange of a currency, or from the disposition of a currency, that was entered into or acquired for hedging the foreign exchange exposure arising in connection with the acquisition of the share.

First, the formula in subsection 93(2.1) is amended by adding the new variable "D" and will read as follows:

A – (B – C) + D

where

A is the amount of the allowable capital loss determined without reference to this subsection,

B is ½ of the total of all amounts each of which was received before that time, in respect of an exempt dividend on the affiliate share or on a share for which the affiliate share was substituted, by

(a) the corporation resident in Canada,

(b) a corporation related to the corporation resident in Canada,

(c) a foreign affiliate of the corporation resident in Canada, or

(d) a foreign affiliate of a corporation related to the corporation resident in Canada, and

C is the total of

(a) the total of all amounts each of which is the amount by which an allowable capital loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from a disposition at or before that time by a partnership of the affiliate share or a share for which the affiliate share was substituted, was reduced under this subsection in respect of the exempt dividends referred to in the description of B,

(b) the total of all amounts each of which is ½ of the amount by which a loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from another disposition at or before that time of the affiliate share or a share for which the affiliate share was substituted, was reduced under subsection (2) in respect of the exempt dividends referred to in the description of B,

(c) the total of all amounts each of which is ½ of the amount by which a loss (determined without reference to this section), from a disposition at or before that time by a corporation or foreign affiliate described in the description of B of an interest in a partnership, was reduced under subsection (2.2) in respect of the exempt dividends referred to in the description of B, and

(d) the total of all amounts each of which is the amount by which an allowable capital loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from a disposition at or before that time by a partnership of an interest in another partnership, was reduced under subsection (2.3) in respect of exempt dividends referred to in the description of B.

Proposed Addition — 93(2.1)D

D is the lesser of

(a) the amount, if any, by which the amount determined for B exceeds the amount determined for C, and

(b) one-half of the total of the following amounts determined in respect of the corporation resident in Canada or the foreign affiliate of the corporation resident in Canada, as the case may be,

(i) the amount of the capital gain of the corporation resident in Canada, of the foreign affiliate of the corporation resident in Canada, or of the partnership (to the extent that such a gain is reasonably attributable to the corporation resident in Canada, or to the foreign affiliate of the corporation resident in Canada, as the case may be) determined under paragraph 39(2)(a) for the taxation year that includes that time in respect of

(A) the settlement or extinguishment of an obligation of the corporation resident in Canada, of the foreign affiliate of the corporation resident in Canada, or of the partnership, as the case may be, that can reasonably be considered to have been issued or incurred in relation to the acquisition of the affiliate share by the partnership, or

(B) the redemption, acquisition or cancellation of a share of the capital stock of the corporation resident in Canada or of the foreign affiliate of the corporation resident in Canada, as the case may be, that can reasonably be considered to have been issued in relation to the acquisition of the affiliate share by the partnership, and

(ii) the amount of any gain realized by the partnership (to the extent that the gain is reasonably attributable to the corporation resident in Canada or to the foreign affiliate of the corporation resident in Canada, as the case may be), by the corporation resident in Canada or by the foreign affiliate of the corporation resident in Canada, as the case may be, under an agreement that provides for the purchase, sale or exchange of currency, or from the disposition of a currency, which agreement or currency, as the case may be, can reasonably be considered to have been entered into or acquired, by the partnership, by the corporation resident in Canada or by the foreign affiliate of the corporation resident in Canada, as the case may be, for the principal purpose of hedging the foreign exchange exposure arising in connection with the acquisition of the affiliate share.

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 132(9), will add the description of D to subsec. 93(2.1), applicable on the same basis as the amendment to the formula in 93(2).

Technical Notes: Second, the addition to the allowable capital loss under new variable "D" will be determined as the lesser of:

- The reduction of the allowable capital loss in respect of exempt dividends (determined as (B - C) in the formula), and
- ½ of the total of the following amounts determined in respect of the corporation resident in Canada or the foreign affiliate of the corporation resident in Canada, as the case may be,
  - the amount of the capital gain of the corporation resident in Canada, of the foreign affiliate of the corporation resident in Canada, or of the partnership (to the extent that such a gain is reasonably attributable to the corporation resident in Canada, or to the foreign affiliate of the corporation resident in Canada, as the case may be) determined under paragraph 39(2)(a) for the taxation year that includes that time in respect of
    - the settlement or extinguishment of an obligation of the corporation resident in Canada, of the foreign affiliate of the corporation resident in Canada, or of the partnership, as the case may be, that can reasonably be considered to have been issued or incurred in relation to the acquisition of the affiliate share by the partnership, or
    - the redemption, acquisition or cancellation of a share of the capital stock of a corporation resident in Canada or of the foreign affiliate of the corporation resident in Canada, as the case may be, that can reasonably be considered to have been issued in relation to the acquisition of the affiliate share by the partnership, and
  - the amount of any gain realized by the partnership (to the extent that the gain is reasonably attributable to the corporation resident in Canada or to the foreign affiliate of the corporation resident in Canada, as the case may be), by the corporation resident in Canada or by the foreign affiliate of the corporation resident in Canada, as the case may be, under an agreement that provides for the purchase, sale or exchange of currency, or from the disposition of a currency, which agreement or currency, as the case may be, can reasonably be considered to have been entered into or acquired, by the partnership, by the corporation resident in Canada or by the foreign affiliate of the corporation resident in Canada, as the case may be, for the principal purpose of hedging the foreign exchange exposure arising in connection with the acquisition of the affiliate share.

Refer to the coming-into-force commentary [under 93(2)D] to determine the coming-into-force for this new subsection.

Related Provisions: 87(2)(u)(ii) — Amalgamation; 93(3) — Exempt dividends; 93.1(2) — Dividend on shares of foreign affiliate held by partnership; 257 — Formula amounts cannot calculate to less than zero.

History: Subsec. 93(2.1) amended by 2001, c. 17, subsec. 70(6) to replace the references to the fraction "3/4" with references to the fraction "1/2", applicable to taxation years that end after February 27, 2000 except that, for a taxation year of a taxpayer that includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, the references to the fraction "1/2" shall be read as references to the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the taxpayer for the year.

Subsec. 93(2.1) added by the said c. 17, subsec. 70(3), applicable to dispositions that occur after November 1999.

(2.2) Loss limitation — disposition of partnership interest — Where

(a) a corporation resident in Canada has a loss from the disposition by it at any time of an interest in a partnership (in this subsection referred to as the "partnership interest"), which has a direct or indirect interest in shares of the capital stock of a foreign affiliate of the corporation resident in Canada (in this subsection referred to as "affiliate shares"), or

(b) a foreign affiliate of a corporation resident in Canada has a loss from the disposition by it at any time of an interest in a partnership (in this subsection referred to as the "partnership interest"), which has a direct or indirect interest in shares of the capital stock of another foreign affiliate of the corporation resident in Canada that would not be excluded property if the shares were owned by the affiliate (in this subsection referred to as "affiliate shares"),

the amount of the loss is deemed to be the amount determined by the formula

$$A - (B - C)$$

Proposed Amendment — 93(2.2) formula

$$A - (B - C) + D$$

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 132(10), will amend the formula in subsec. 93(2.2) to read as above, applicable on the same basis as the amendment to the formula in 93(2).

Technical Notes: Subsection 93(2.2) provides rules for the purpose of determining the loss of a corporation resident in Canada from the disposition of an interest in a partnership that holds interests in shares of the capital stock of a foreign affiliate of the corporation resident in Canada or the loss of a foreign affiliate of the corporation from a disposition of an interest in a partnership that holds interests in shares of the capital stock of another foreign affiliate of the corporation that would not be excluded property of the foreign affiliate if the foreign affiliate owned the share immediately before it was disposed of.

The amount of the loss otherwise determined is reduced by exempt dividends received on the shares, or shares for which the shares were substituted, by the corporation resident in Canada, by another corporation resident in Canada that is related to the corporation, or a by foreign affiliate of either of those corporations resident in Canada (to the extent that the exempt dividends have not already reduced losses or allowable capital losses of those corporations or foreign affiliates under subsection 93(2), (2.1), (2.2) or (2.3)). The term "exempt dividend" is defined in subsection 93(3) of the Act.

Subsection 93(2.2) is being amended to permit the corporation resident in Canada or its foreign affiliate to restore a loss arising on the disposition of an interest in a partnership that holds interests in shares of the

capital stock of a foreign affiliate of the corporation resident in Canada to the extent of the lesser of two amounts.

- The first amount is the reduction of the loss attributable to exempt dividends.
- The second amount is the sum of the following gains determined in respect of the corporation or the foreign affiliate, as the case may be, that disposed of the partnership interest
  - The foreign exchange gain arising on the settlement of an obligation issued or incurred to acquire the share interests held by the partnership.
  - The foreign exchange gain arising on the redemption, acquisition or cancellation of shares issued to acquire share interests held by the partnership.
  - The gain arising under an agreement that provides for the purchase, sale or exchange of a currency, or from the disposition of a currency, that was entered into or acquired for hedging the foreign exchange exposure arising in connection with the acquisition of the share interests held by the partnership.

First, the formula in subsection 93(2.2) is being amended by adding the new variable "D" and will read as follows:

$$A - (B - C) + D$$

where

A is the amount of the loss determined without reference to this subsection,

B is the total of all amounts each of which was received before that time, in respect of an exempt dividend on affiliate shares or on shares for which affiliate shares were substituted, by

(a) the corporation resident in Canada,

(b) a corporation related to the corporation resident in Canada,

(c) a foreign affiliate of the corporation resident in Canada, or

(d) a foreign affiliate of a corporation related to the corporation resident in Canada, and

C is the total of

(a) the total of all amounts each of which is the amount by which a loss (determined without reference to this section), from another disposition at or before that time by a corporation or foreign affiliate described in the description of B of affiliate shares or shares for which affiliate shares were substituted, was reduced under subsection (2) in respect of the exempt dividends referred to in the description of B,

(b) the total of all amounts each of which is twice the amount by which an allowable capital loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from another disposition at or before that time by a partnership of affiliate shares or shares for which affiliate shares were substituted, was reduced under subsection (2.1) in respect of the exempt dividends referred to in the description of B,

(c) the total of all amounts each of which is the amount by which a loss (determined without reference to this section), from a disposition at or before that time by a corporation or foreign affiliate described in the description of B of an interest in a partnership, was reduced under this subsection in respect of the exempt dividends referred to in the description of B, and

(d) the total of all amounts each of which is twice the amount by which an allowable capital loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from a disposition at or before that time by a partnership of an interest in another partnership, was reduced under subsection (2.3) in respect of the exempt dividends referred to in the description of B.

Proposed Addition — 93(2.2)D

D is the lesser of

(a) the amount, if any, by which the amount determined for B exceeds the amount determined for C, and

(b) the total of the following amounts determined in respect of the corporation resident in Canada or the foreign affiliate of the corporation resident in Canada, as the case may be,

(i) the amount of the capital gain of the corporation resident in Canada, of the foreign affiliate of the corporation resident in Canada, or of the partnership (to the extent that such a gain is reasonably attributable to the corporation resident in Canada, or to the foreign affiliate of the corporation resident in Canada, as the case may be) determined under paragraph 39(2)(a) for the taxation year that includes that time in respect of

(A) the settlement or extinguishment of an obligation of the corporation resident in Canada, of the foreign affiliate of the corporation resident in Canada, or of the partnership, as the case may be, that can reasonably be considered to have been issued or incurred in relation to the acquisition of the affiliate shares, or

(B) the redemption, acquisition or cancellation of a share of the corporation resident in Canada or of the foreign affiliate resident in Canada, as the case may be, or of an interest in the partnership that can reasonably be considered to have been issued in relation to the acquisition of the affiliate shares, and

(ii) the amount of any gain realized by the corporation resident in Canada or by the foreign affiliate of the corporation resident in Canada, as the case may be, under an agreement that provides for the purchase, sale or exchange of currency, or from the disposition of a currency, which agreement or currency, as the case may be, can reasonably be considered to have been entered into or acquired by the corporation resident in Canada, by the foreign affiliate of the corporation resident in Canada, or by the partnership, as the case may be, for the principal purpose of hedging the foreign exchange exposure arising in connection with the acquisition of the affiliate shares.

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 132(11), will add the description of D to subsec. 93(2.2), applicable on the same basis as the amendment to the formula in 93(2).

Technical Notes: Second, the addition to the loss under new variable "D" will be determined as the lesser of

- The reduction of the loss in respect of exempt dividends (determined as (B - C) in the formula), and

- The total of the following amounts determined in respect of the corporation resident in Canada or the foreign affiliate of the corporation resident in Canada, as the case may be,
  - the amount of the capital gain of the corporation resident in Canada, of the foreign affiliate of the corporation resident in Canada, or of the partnership (to the extent that such a gain is reasonably attributable to the corporation resident in Canada, or to the foreign affiliate of the corporation resident in Canada, as the case may be) determined under paragraph 39(2)(a) for the taxation year that includes that time in respect of
    - the settlement or extinguishment of an obligation of the corporation resident in Canada, of the foreign affiliate of the corporation resident in Canada, or of the partnership, as the case may be, that can reasonably be considered to have been issued or incurred in relation to the acquisition of the affiliate shares, or
    - the redemption, acquisition or cancellation of a share of the corporation resident in Canada or of the foreign affiliate resident in Canada, as the case may be, or of an interest in the partnership that can reasonably be considered to have been issued in relation to the acquisition of the affiliate shares, and
  - the amount of any gain realized by the corporation resident in Canada or by the foreign affiliate of the corporation resident in Canada, as the case may be, under an agreement that provides for the purchase, sale or exchange of currency, or from the disposition of a currency, which agreement or currency, as the case may be, can reasonably be considered to have been entered into or acquired by the corporation resident in Canada, by the foreign affiliate of the corporation resident in Canada, or by the partnership, as the case may be, for the principal purpose of hedging the foreign exchange exposure arising in connection with the acquisition of the affiliate shares.

Refer to the coming-into-force commentary [under 93(2)D] to determine the coming-into-force dates for this new subsection.

Related Provisions: 87(2)(u)(ii) — Amalgamation; 93(3) — Exempt dividends; 93.1(1) — Where shares are owned by partnership; 93.1(2) — Dividend on shares of foreign affiliate held by partnership; 257 — Formula amounts cannot calculate to less than zero.

History: Subsec. 93(2.2) amended by 2001, c. 17, subsec. 70(7) to replace the references to the expression "4/3 of" with references to the word "twice", applicable to taxation years that end after February 27, 2000 except that, for a taxation year of a taxpayer that includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, the references to the word "twice" shall be read as references to the expression "the fraction that is the reciprocal of the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the taxpayer for the year, multiplied by".

Subsec. 93(2.2) added by the said c. 17, subsec. 70(3), applicable to dispositions that occur after November 1999.

(2.3) Loss limitation — disposition of partnership interest — Where

(a) corporation resident in Canada has an allowable capital loss from a partnership from a disposition at any time of an interest in another partnership that has a direct or indirect interest in shares of the capital stock of a foreign affiliate of the corporation resident in Canada (in this subsection referred to as "affiliate shares"), or

(b) a foreign affiliate of a corporation resident in Canada has an allowable capital loss from a partnership from a disposition at any time by a partnership of an interest in another partnership that has a direct or indirect interest in shares of the capital stock of a foreign affiliate of the corporation resident in Canada that would not be excluded property of the affiliate if the affiliate owned the shares immediately before the disposition (in this subsection referred to as "affiliate shares"),

the amount of the allowable capital loss is deemed to be the amount determined by the formula

$$A - (B - C)$$

Proposed Amendment — 93(2.3) formula

$$A - (B - C) + D$$

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 132(12), will amend the formula in subsec. 93(2.3) to read as above, applicable on the same basis as the amendment to the formula in 93(2).

Technical Notes: Subsection 93(2.3) provides rules for the purpose of determining the allowable capital loss of a corporation resident in Canada from the disposition by a partnership of an interest in another partnership that has interests in shares of the capital stock of a foreign affiliate of the corporation resident in Canada and for determining the allowable capital loss of a foreign affiliate of the corporation resident in Canada from a disposition by a partnership of an interest in another partnership that has interests in shares of the capital stock of another foreign affiliate of the corporation resident in Canada that would not be excluded property if the shares were owned by the foreign affiliate.

The amount of the allowable capital loss otherwise determined is reduced by ½ of the exempt dividends received, on the share or a share for which the share was substituted, by the corporation resident in Canada, by another corporation resident in Canada that is related to the corporation, or by a foreign affiliate of either of those corporations resident in Canada (to the extent that the exempt dividends have not already reduced losses or allowable capital losses of those corporations or foreign affiliates under subsection 93(2), (2.1), (2.2) or (2.3)). The term "exempt dividend" is defined in subsection 93(3).

Subsection 93(2.3) is being amended to permit the corporation resident in Canada or its foreign affiliate to restore an allowable capital loss from a disposition by a partnership of an interest in another partnership that has interests in shares of the capital stock of a foreign affiliate of the corporation resident in Canada to the extent of the lesser of two amounts.

- The first amount is the reduction of the allowable capital loss attributable to exempt dividends.
- The second amount is one-half of the total of the following gains determined in respect of the corporation resident in Canada or the foreign affiliate, as the case may be,
  - The foreign exchange gain arising on the settlement of an obligation issued or incurred to acquire the share.
  - The foreign exchange gain arising on the redemption, acquisition or cancellation of shares issued to acquire the share.
  - The gain arising under an agreement that provides for the purchase, sale or exchange of a currency, or from the disposition of a currency, that was entered into or acquired for hedging the foreign exchange exposure arising in connection with the acquisition of the share.

First, the formula in subsection 93(2.3) is being amended by adding the new variable "D" and will read as follows:

$$A - (B - C) + D$$

where

A is the amount of the allowable capital loss determined without reference to this subsection,

B is ½ of the total of all amounts each of which was received before that time, in respect of an exempt dividend on affiliate shares or on shares for which affiliate shares were substituted, by

(a) the corporation resident in Canada,

(b) a corporation related to the corporation resident in Canada,

(c) a foreign affiliate of the corporation resident in Canada, or

(d) a foreign affiliate of a corporation related to the corporation resident in Canada, and

C is the total of

(a) the total of all amounts each of which is ½ of the amount by which a loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from another disposition at or before that time of affiliate shares or shares for which affiliate shares were substituted, was reduced under subsection (2) in respect of the exempt dividends referred to in the description of B,

(b) the total of all amounts each of which is the amount by which an allowable capital loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from a disposition at or before that time by a partnership of affiliate shares or shares for which affiliate shares were substituted, was reduced under subsection (2.1) in respect of the exempt dividends referred to in the description of B,

(c) the total of all amounts each of which is ½ of the amount by which a loss (determined without reference to this section), from a disposition at or before that time by a corporation or foreign affiliate described in the description of B of an interest in a partnership, was reduced under subsection (2.2) in respect of the exempt dividends referred to in the description of B, and

(d) the total of all amounts each of which is the amount by which an allowable capital loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from a disposition at or before that time by a partnership of an interest in another partnership, was reduced under this subsection in respect of the exempt dividends referred to in the description of B.

Proposed Addition — 93(2.3)D

D is the lesser of

(a) the amount, if any, by which the amount determined for B exceeds the amount determined for C, and

(b) one-half of the total of the following amounts determined in respect of the corporation resident in Canada or the foreign affiliate of the corporation resident in Canada, as the case may be,

(i) the amount of the capital gain of the corporation resident in Canada, of the foreign affiliate of the corporation resident in Canada, or of the partnership (to the extent that such a gain is reasonably attributable to the corporation resident in Canada, or to the foreign affiliate of the corporation resident in Canada, as the case may be) determined under paragraph 39(2)(a) for the taxation year that includes that time in respect of

(A) the settlement or extinguishment of an obligation of the corporation resident in Canada, of the foreign affiliate of the corporation resident in Canada, of the partnership or of the other partnership, as the case may be, that can reasonably be considered to have been issued or incurred in relation to the acquisition of the affiliate shares, or

(B) the redemption, acquisition or cancellation of a share of the corporation resident in Canada or of the foreign affiliate of the corporation resident in Canada, as the case may be, or of an interest in the partnership or in the other partnership, as the case may be, that can reasonably be considered to have been issued in relation to the acquisition of the affiliate shares, and

(ii) the amount of any gain realized by a partnership (to the extent that such gain is reasonably attributable to the corporation resident in Canada or to the foreign affiliate of the corporation resident in Canada, as the case may be), by the corporation resident in Canada or by the foreign affiliate of the corporation resident in Canada, as the case may be, under an agreement that provides for the purchase, sale or exchange of currency, or from the disposition of a currency, which agreement or currency, as the case may be, can reasonably be considered to have been entered into or acquired by the partnership, by the corporation resident in Canada or by the foreign affiliate of the corporation resident in Canada, as the case may be, for the principal purpose of hedging the foreign exchange exposure arising in connection with the acquisition of the affiliate shares.

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 132(13), will add the description of D to subsec. 93(2.3), applicable on the same basis as the amendment to the formula in 93(2).

Technical Notes: Second, the addition to the allowable capital loss under new variable "D" will be determined as the lesser of:

- The reduction of the allowable capital loss in respect of exempt dividends (determined as (B - C) in the formula), and

- ½ of the total of the following amounts determined in respect of the corporation resident in Canada or the foreign affiliate of the corporation resident in Canada, as the case may be,

  — the amount of the capital gain of the corporation resident in Canada, of the foreign affiliate of the corporation resident in Canada, or of the partnership (to the extent that such a gain is reasonably attributable to the corporation resident in Canada, or to the foreign affiliate of the corporation resident in Canada, as the case may be) determined under paragraph 39(2)(a) for the taxation year that includes that time in respect of

  - the settlement or extinguishment of an obligation of the corporation resident in Canada, of the foreign affiliate of the corporation resident in Canada, of the partnership or of the other partnership, as the case may be, that can reasonably be considered to have been issued or incurred in relation to the acquisition of the affiliate shares, or

  - the redemption, acquisition or cancellation of a share of the corporation resident in Canada or of the foreign affiliate of the corporation resident in Canada, as the case may be, or of an interest in the partnership or in the other partnership, as the case may be, that can reasonably be considered to have been issued in relation to the acquisition of the affiliate shares, and

  — the amount of any gain realized by a partnership (to the extent that such gain is reasonably attributable to the corporation resident in Canada or to the foreign affiliate of the corporation resident in Canada, as the case may be), by the corporation resident in Canada or by the foreign affiliate of the corporation resident in Canada, as the case may be, under an agreement that provides for the purchase, sale or exchange of currency, or from the disposition of a currency, which agreement or currency, as the case may be, can reasonably be considered to have been entered into or acquired by the partnership, by the corporation resident in Canada or by the foreign affiliate of the corporation resident in Canada, as the case may be, for the principal pur-

pose of hedging the foreign exchange exposure arising in connection with the acquisition of the affiliate shares.

Refer to the coming-into-force commentary [under 93(2)D] to determine the coming-into-force for this new subsection.

Related Provisions: 87(2)(u)(ii) — Amalgamation; 93(3) — Exempt dividends; 93.1(1) — Where shares are owned by partnership; 93.1(2) — Dividend on shares of foreign affiliate held by partnership; 257 — Formula amounts cannot calculate to less than zero.

History: Subsec. 93(2.3) amended by 2001, c. 17, subsec. 70(8) to replace the references to the fraction "3/4" with references to the fraction "1/2", applicable to taxation years that end after February 27, 2000 except that, for a taxation year of a taxpayer that includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, the references to the fraction "1/2" shall be read as references to the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the taxpayer for the year.

Subsec. 93(2.3) added by the said c. 17, subsec. 70(3), applicable to dispositions that occur after November 1999.

(3) Exempt dividends — For the purposes of subsections (2) to (2.3),

(a) a dividend received by a corporation resident in Canada is an exempt dividend to the extent of the amount in respect of the dividend that is deductible from the income of the corporation for the purpose of computing the taxable income of the corporation because of paragraph 113(1)(a), (b) or (c); and

(b) a dividend received by a particular foreign affiliate of a corporation resident in Canada from another foreign affiliate of the corporation is an exempt dividend to the extent of the amount, if any, by which the portion of the dividend that was not prescribed to have been paid out of the pre-acquisition surplus of the other affiliate exceeds the total of such portion of the income or profits tax that can reasonably be considered to have been paid in respect of that portion of the dividend by the particular affiliate or by a partnership in which the particular affiliate had, at the time of the payment of the income or profits tax, a partnership interest, either directly or indirectly.

History: Subsec. 93(3) amended by 2001, c. 17, subsec. 70(9), applicable to dispositions that occur after November 1999. The subsec. formerly read:

(3) For the purposes of subsection (2),

(a) a dividend received by a corporation resident in Canada is an exempt dividend to the extent of the amount in respect of the dividend that is deductible from the income of the corporation in computing its taxable income by virtue of paragraph 113(1)(a), (b) or (c); and

(b) a dividend received by a foreign affiliate of a corporation resident in Canada from another foreign affiliate of that corporation is an exempt dividend to the extent of the amount, if any, by which the portion of the dividend that was not prescribed to have been paid out of the pre-acquisition surplus of that other affiliate exceeds such portion of any income or profits tax paid by the first-mentioned affiliate as may reasonably be regarded as having been paid in respect of that portion of the dividend.

Regulations: 5900(1)(c) (amount prescribed to have been paid out of pre-acquisition surplus).

(4) Loss on disposition of shares of foreign affiliate — Where a taxpayer resident in Canada or a foreign affiliate of the taxpayer (in this subsection referred to as the "vendor") has acquired shares of a foreign affiliate of the taxpayer (in this subsection referred to as the "acquired affiliate") on the disposition of shares of any other foreign affiliate of the taxpayer (other than a disposition to which subsection 40(3.4) applies),

(a) the capital loss therefrom otherwise determined shall be deemed to be nil; and

(b) in computing the adjusted cost base to the vendor of all shares of any particular class of the capital stock of the acquired affiliate owned by the vendor immediately after the disposition, there shall be added an amount determined by the formula

$$(A - B) \times \frac{C}{D}$$

where

A is the cost amount to the vendor immediately before the disposition of the shares disposed of,

B is the total of

(i) the proceeds of disposition of the shares disposed of, and

(ii) the total of all amounts deducted under paragraph (2)(d) in computing losses of the vendor from the dispositions of the shares disposed of,

C is the fair market value, immediately after the disposition, of all shares of that particular class owned by it at that time, and

D is the fair market value, immediately after the disposition, of all shares of the capital stock of the acquired affiliate owned by it at that time.

Related Provisions: 93(2) — Loss limitation on disposition of share; 93.1(1) — Where shares are owned by partnership; 257 — Formula cannot calculate to less than zero.

History: The opening words of subsec. 93(4) amended by 1998, c. 19, s. 120, applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995. The opening words formerly read:

(4) Where a taxpayer resident in Canada or a foreign affiliate of the taxpayer (in this subsection referred to as the "vendor") has acquired shares of a foreign affiliate of the taxpayer (in this subsection referred to as the "acquired affiliate") on the disposition of shares of any other foreign affiliate of the taxpayer (other than a disposition to which subsection 85(4) applies), the following rules apply:

Para. 93(4)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 69(3), applicable to dispositions of shares occurring after July 13, 1990. Para. 93(4)(b) formerly read:

(b) in computing the adjusted cost base to the vendor of all shares of any particular class of the capital stock of the acquired affiliate owned by it immediately after the disposition there shall be added the amount that is equal to that proportion of the amount, if any, by which

(i) the cost amount to it immediately before the disposition of the shares disposed of

exceeds

(ii) the proceeds of the disposition

that

(iii) the fair market value, immediately after the disposition, of all shares of that class owned by it at that time,

is of

(iv) the fair market value, immediately after the disposition, of all shares of the capital stock of the acquired affiliate owned by it at that time.

Interpretation Bulletins: See at end of s. 93.

(5) Late filed elections — Where the election referred to in subsection (1) was not made on or before the day on or before which the election was required by that subsection to be made, the election shall be deemed to have been made on that day if, on or before the day that is 3 years after that day,

(a) the election is made in prescribed manner; and

(b) an estimate of the penalty in respect of that election is paid by the corporation when that election is made.

Regulations: 5902 (prescribed manner).

Forms: T2107: Election for a disposition of shares in a foreign affiliate.

(5.1) Special cases — Where, in the opinion of the Minister, the circumstances of a case are such that it would be just and equitable

(a) to permit an election under subsection (1) to be made after the day that is 3 years after the day on or before which the election was required by that subsection to be made, or

(b) to permit an election made under subsection (1) to be amended,

the election or amended election shall be deemed to have been made on the day on or before which the election was so required to be made if

(c) the election or amended election is made in prescribed form, and

(d) an estimate of the penalty in respect of the election or amended election is paid by the corporation when the election or amended election is made,

and where this subsection applies to the amendment of an election, that election shall be deemed not to have been effective.

Forms: T2107: Election for a disposition of shares in a foreign affiliate.

(6) Penalty for late filed election — For the purposes of this section, the penalty in respect of an election or amended election referred to in paragraph (5)(a) or (5.1)(c) is an amount equal to the lesser of

(a) ¼ of 1% of the amount designated in the election or amended election for each month or part of a month during the period commencing with the day on or before which the election is required by subsection (1) to be made and ending on the day the election is made, and

(b) an amount, not exceeding $8,000, equal to the product obtained by multiplying $100 by the number of months each of which is a month all or part of which is during the period referred to in paragraph (a).

Related Provisions: 93(7) — Assessment of penalty; 220(3.1) — Waiver of penalty by CCRA.

(7) Unpaid balance of penalty — The Minister shall, with all due dispatch, examine each election and amended election referred to in paragraph (5)(a) or (5.1)(c), assess the penalty payable and send a notice of assessment to the corporation, and the corporation shall pay forthwith to the Receiver General the amount, if any, by which the penalty so assessed exceeds the total of all amounts previously paid on account of that penalty.

Definitions [s. 93]: "adjusted cost base" — 54, 248(1); "allowable capital loss" — 38(b), 248(1); "amount" — 248(1); "arm's length" — 251(1); "Canada" — 255; "capital gain", "capital loss" — 39(1), 248(1); "class" — of shares 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount", "disposition", "dividend" — 248(1); "excluded property" — 93(1.4)(a), 95(1); "exempt surplus" — 113(1)(a), Reg. 5907(1)(d); "foreign affiliate" — 93.1(1), 95(1), 248(1); "Minister" — 248(1); "pre-acquisition surplus" — Reg. 5900(1)(c); "prescribed" — 248(1); "proceeds of disposition" — 54; "property", "regulation" — 248(1); "related" — 251(2)-(6); "resident in Canada" — 250; "share" — 248(1); "specified purchaser" — 93(1.6); "specified vendor" — 93(1.5); "taxable capital gain" — 38(a), 248(1); "taxable income" — 248(1); "taxable surplus" — 113(1)(b)(i), Reg. 5907(1)(k); "taxation year" — 95(1) (for foreign affiliate only), 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 93]: IT-392: Meaning of the term "share"; IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada.

93.1 (1) Shares held by a partnership — For the purpose of determining whether a non-resident corporation is a foreign affiliate of a corporation resident in Canada for the purposes of subsections (2) and 20(12), sections 93 and 113, paragraph 128.1(1)(d), (and any regulations made for the purposes of those provisions), section 95 (to the extent that that section is applied for the purposes of those provisions) and section 126, where based on the assumptions contained in paragraph 96(1)(c), at any time shares of a class of the capital stock of a corporation are owned by a partnership or are deemed under this subsection to be owned by a partnership, each member of the partnership is deemed to own at that time that number of those shares that is equal to the proportion of all those shares that

(a) the fair market value of the member's interest in the partnership at that time

is of

(b) the fair market value of all members' interests in the partnership at that time.

Regulations: 5905(14) (where number of shares deemed owned increases or decreases).

(2) Where dividends received by a partnership — Where, based on the assumptions contained in paragraph 96(1)(c), at any time shares of a class of the capital stock of a foreign affiliate of a corporation resident in Canada (in this subsection referred to as "affiliate shares") are owned by a partnership and at that time the affiliate pays a dividend on affiliate shares to the partnership (in this subsection referred to as the "partnership dividend"),

(a) for the purposes of sections 93 and 113 and any regulations made for the purposes of those sections, each member of the partnership is deemed to have received the proportion of the partnership dividend that

(i) the fair market value of the member's interest in the partnership at that time

is of

(ii) the fair market value of all members' interests' in the partnership at that time;

(b) for the purposes of sections 93 and 113 and any regulations made for the purposes of those sections, the proportion of the partnership dividend deemed by paragraph (a) to have been received by a member of the partnership at that time is deemed to have been received by the member in equal proportions on each affiliate share that is property of the partnership at that time;

(c) for the purpose of applying section 113, in respect of the dividend referred to in paragraph (a), each affiliate share referred to in paragraph (b) is deemed to be owned by each member of the partnership; and

(d) notwithstanding paragraphs (a) to (c),

(i) where the corporation resident in Canada is a member of the partnership, the amount deductible by it under section 113 in respect of the dividend referred to in paragraph (a) shall not exceed the portion of the amount of the dividend included in its income pursuant to subsection 96(1), and

(ii) where another foreign affiliate of the corporation resident in Canada is a member of the partnership, the amount included in that other affiliate's income in respect of the dividend referred to in paragraph (a) shall not exceed the amount that would be included in its income pursuant to sub-

section 96(1) in respect of the partnership dividend received by the partnership if the value for H in the definition "foreign accrual property income" in subsection 95(1) were nil and this Act were read without reference to this subsection.

Related Provisions: 92(4)–(6) — Dividend from pre-acquisition surplus; 93.1(1) — Where shares are owned by partnership; 95(1)"foreign accrual property income"H — Exclusion from FAPI.

History: S. 93.1 added by 2001, c. 17, s. 71, subsec. 93.1(1) applicable in determining whether a non-resident corporation is, at any time after November 1999, a foreign affiliate of a taxpayer and, where a taxpayer so elects and notifies the Minister of National Revenue in writing before 2002 of its election, that subsection also applies in determining (other than for the purposes of subsec. 20(12) and s. 126) whether a non-resident corporation was, at any time after 1972 and before December 1999, a foreign affiliate of the taxpayer; subsec. 93.1(2) applicable in respect of dividends received after November 1999.

Definitions [s. 93.1]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "foreign accrual property income" — 95(1), (2), 248(1); "foreign affiliate" — 93.1(1), 95(1), 248(1); "non-resident" — 248(1); "property", "regulation" — 248(1); "resident in Canada" — 250; "share" — 248(1).

94. (1) Application of certain provisions to trusts not resident in Canada — Where,

(a) at any time in a taxation year of a trust that is not resident in Canada or that, but for paragraph (c), would not be so resident, a person beneficially interested in the trust (in this section referred to as a "beneficiary") was

(i) a person resident in Canada,

(ii) a corporation or trust with which a person resident in Canada was not dealing at arm's length, or

(iii) a controlled foreign affiliate of a person resident in Canada, and

(b) at any time in or before the taxation year of the trust,

(i) the trust, or a non-resident corporation that would, if the trust were resident in Canada, be a controlled foreign affiliate of the trust, has, other than in prescribed circumstances, acquired property, directly or indirectly in any manner whatever, from

(A) a particular person who

(I) was the beneficiary referred to in paragraph (a), was related to that beneficiary or was the uncle, aunt, nephew or niece of that beneficiary,

(II) was resident in Canada at any time in the 18 month period before the end of that year or, in the case of a person who has ceased to exist, was resident in Canada at any time in the 18 month period before the person ceased to exist, and

(III) in the case of an individual, had before the end of that year been resident in Canada for a period of, or periods the total of which is, more than 60 months, or

(B) a trust or corporation that acquired the property, directly or indirectly in any manner whatever, from a particular person described in clause (A) with whom it was not dealing at arm's length

and the trust was not

(C) an *inter vivos* trust created at any time before 1960 by a person who at that time was a non-resident person,

(D) a testamentary trust that arose as a consequence of the death of an individual before 1976, or

(E) governed by a foreign retirement arrangement, or

(ii) all or any part of the interest of the beneficiary in the trust was acquired directly or indirectly by the beneficiary by way of

(A) purchase,

(B) gift, bequest or inheritance from a person referred to in clause (i)(A) or (B), or

(C) the exercise of a power of appointment by a person referred to in clause (i)(A) or (B),

the following rules apply for that taxation year of the trust:

(c) where the amount of the income or capital of the trust to be distributed at any time to any beneficiary of the trust depends on the exercise by any person of, or the failure by any person to exercise, any discretionary power,

(i) the trust is deemed for the purposes of this Part and sections 233.3 and 233.4 to be a person resident in Canada no part of whose taxable income is exempt because of section 149 from tax under this Part and whose taxable income for the year is the amount, if any, by which the total of

(A) the amount, if any, that would but for this subparagraph be its taxable income earned in Canada for the year,

(B) the amount that would be its foreign accrual property income for the year if

(I) except for the purpose of applying subsections 104(4) to (5.2) to days after 1998 that are determined under subsection 104(4), the trust were a non-resident corporation all the shares of which were owned by a person who was resident in Canada,

(II) the description of A in the definition "foreign accrual property income" in subsection 95(1) were, in respect of dividends received after 1998, read without reference to paragraph (b) of that description,

(III) the descriptions of B and E in that definition were, in respect of dispositions that occur after 1998, read without reference to "other than dispositions of excluded property to which none of paragraphs (2)(c), (d) and (e) apply",

(IV) the value of C in that definition were nil, and

(V) for the purposes of computing the trust's foreign accrual property income, the consequences of the application of subsections 104(4) to (5.2) applied in respect of days after 1998 that are determined under subsection 104(4),

(C) the amount, if any, by which the total of all amounts each of which is an amount required by subsection 91(1) or (3) to be included in

computing its income for the year exceeds the total of all amounts each of which is an amount deducted by it for that year under subsection 91(2), (4) or (5), and

(D) the amount, if any, required by section 94.1 to be included in computing its income for the year

exceeds

(E) the amount, if any, by which the total of all amounts each of which is an amount deducted by it under subsection 91(2), (4) or (5) in computing its income for the year exceeds the total of all amounts each of which is an amount included in computing its income for the year because of subsection 91(1) or (3), and

(ii) for the purposes of section 126,

(A) the amount that would be determined under subparagraph (i) in respect of the trust for the year, if that subparagraph were read without reference to clause (i)(A), is deemed to be income of the trust for the year from sources in the country other than Canada in which the trust would, but for subparagraph (i), be resident, and

(B) any income or profits tax paid by the trust for the year (other than any tax paid because of this section), to the extent that it can reasonably be regarded as having been paid in respect of that income, is deemed to be non-business income tax paid by the trust to the government of that country, and

(d) in any other case, for the purposes of subsections 91(1) to (4) and sections 95 and 233.4,

(i) the trust shall, with respect to any beneficiary under the trust the fair market value of whose beneficial interest in the trust is not less than 10% of the aggregate fair market value of all beneficial interests in the trust, be deemed to be a non-resident corporation that is controlled by the beneficiary,

(ii) the trust shall be deemed to be a non-resident corporation having a capital stock of a single class divided into 100 issued shares, and

(iii) each beneficiary under the trust shall be deemed to own at any time the number of the issued shares that is equal to the proportion of 100 that

(A) the fair market value at that time of the beneficiary's beneficial interest in the trust

is of

(B) the fair market value at that time of all beneficial interests in the trust.

Proposed Amendment — 94(1)

See at end of s. 94.

Related Provisions: 94(2) — Rights and obligations; 94(3) — Deduction in computing taxable income; 94(4) — Deduction from foreign accrual property income; 94(5) — ACB of capital interest in trust; 94(6) — Where financial assistance given; 94.1(2) — Trust covered by 94(1)(c) or (d) is a "non-resident entity"; 126 — Foreign tax credit; 248(8) — Occurrences as a consequence of death; 248(25) — Beneficially interested.

History: Subparas. 94(1)(c)(i) and (ii) amended by 2001, c. 17, s. 72, applicable to 1999 *et seq.* The subparas. formerly read:

(i) the trust is deemed for the purposes of this Part and sections 233.3 and 233.4 to be a person resident in Canada no part of whose taxable income is exempt because of section 149 from Part I tax and whose taxable income for the taxation year is the total of

(A) the amount, if any, that would but for this subparagraph be its taxable income earned in Canada for that year,

(B) the amount that would, if it were a trust to which paragraph (d) applies, be its foreign accrual property income for that year, and

(C) the amount, if any, by which the amount required by section 91 to be included in computing its income for the year exceeds the amount deducted for that year by virtue of subsections 91(2), (4) and (5), and

(ii) for the purposes of section 126,

(A) the amounts referred to in clauses (i)(B) and (C) shall be deemed to be income of the trust from sources in the country other than Canada in which the trust would, but for subparagraph (i), be resident, and

(B) such part of any income or profits tax paid by the trust for the year (other than any tax paid by virtue of this section) that may reasonably be regarded as having been paid in respect of that income shall be deemed to be the non-business-income tax paid by the trust to the government of that country, and

The opening words of subpara. 94(1)(c)(i), and the opening words of para. 94(1)(d), amended by 1997, c. 25, subsecs. 20(1), (2), applicable after 1995. These portions formerly read:

(i) the trust shall be deemed for the purposes of this Part to be a person resident in Canada not exempt from tax under section 149 whose taxable income for the taxation year is the total of

. . . . .

(d) in any other case, for the purposes of subsections 91(1) to (4) and section 95,

Cl. 94(1)(b)(i)(E) added by 1994, c. 7, Sch. II (1991, c. 49), s. 70, applicable to 1990 *et seq.*

Regulations: 5909 (prescribed circumstances for 94(1)(b)(i)).

Interpretation Bulletins: IT-447: Residence of a trust or estate; IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada.

Information Circulars: 77-9R: Books, records and other requirements for taxpayers having foreign affiliates.

Forms: T2 SCH 22: Non-resident discretionary trust.

(2) Rights and obligations — Where paragraph (1)(c) is applicable to a trust, each person described in clause (1)(b)(i)(A) or (B) shall jointly and severally with the trust have the rights and obligations of the trust by virtue of Divisions I and J and shall be subject to the provisions of Part XV, but no amount in respect of taxes, penalties, costs and other amounts payable under this Act shall be recoverable from any such person except to the extent of

(a) amounts paid to the person by the trust or the payment of which from the trust the person is entitled to enforce; and

(b) amounts received by the person on the disposition of an interest in the trust.

Related Provisions: 94(3)(e) [proposed] — Application after 2002.

(3) Deduction in computing taxable income — In computing the amount of taxable income of a trust to which paragraph (1)(c) applies for any taxation year, there may be deducted such portion of the amount that would, but for this subsection, be included in computing the taxable income of the trust for the year by virtue of clauses (1)(c)(i)(B) and (C) as may reasonably be considered as having become an amount payable in the year within the meaning of subsection 104(24) to a beneficiary.

Interpretation Bulletins: IT-342R: Trusts — income payable to beneficiaries; IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada.

(4) Deduction from foreign accrual property income — In computing the foreign accrual property income of a trust to which paragraph (1)(d) applies for any taxation year, there may be deducted such portion of the amount that would, but for this subsection, be the foreign accrual property income of the trust as may reasonably be considered as having become an amount payable in the year within the meaning of subsection 104(24) to a beneficiary.

Interpretation Bulletins: IT-342R: Trusts — income payable to beneficiaries; IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada.

(5) Adjusted cost base of capital interest in trust — In computing, at any time in a taxation year, the adjusted cost base to a taxpayer resident in Canada of a capital interest in a trust to which paragraph (1)(d) applies,

(a) there shall be added any amount required by subsection 91(1) or (3) to be included in computing the taxpayer's income for the year or any preceding taxation year (or that would have been so required to be included but for subsection 56(4.1) and sections 74.1 to 75 of this Act and section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952) in respect of that interest; and

(b) there shall be deducted any amount deducted by the taxpayer by reason of subsection 91(2) or (4) in computing the taxpayer's income for the year or any preceding taxation year (or that would have been so deductible by the taxpayer but for subsection 56(4.1) and sections 74.1 to 75 of this Act and section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952) in respect of that interest.

Related Provisions: 53(1)(d.1) — Addition to ACB; 53(2)(b.1) — Reduction in ACB.

(6) Where financial assistance given — For the purposes of paragraph (1)(b), a trust or a non-resident corporation shall be deemed to have acquired property from any person who has given a guarantee on its behalf or from whom it has received any other financial assistance whatever.

(7) [Repealed]

History: Subsec. 94(7) repealed by 1994, c. 7, Sch. VIII (1993, c. 24), s. 39, applicable after 1990. [See now subsec. 248(25).] Subsec. (7) formerly read:

(7) Beneficially interested — For the purposes of this section, a person is beneficially interested in a trust if that person has any right (whether immediate or future, whether absolute or contingent or whether conditional on or subject to the exercise of a discretionary power by any person or persons) to receive any of the income or capital of the trust either directly from the trust or indirectly through one or more other trusts.

Definitions [s. 94]: "adjusted cost base" — 54, 248(1); "allowable capital loss" — 38(b), 248(1); "amount", "annuity" — 248(1); "arm's length" — 251(1); "aunt" — 252(2)(e); "beneficially interested" — 248(25); "beneficiary" — 94(1)(a); "business" — 248(1); "Canada" — 255; "capital interest" — 108(1), 248(1); "consequence of the death" — 248(8); "controlled foreign affiliate" — 94.1(2)(h), 95(1), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "fiscal period" — 249(2)(b), 249.1; "foreign accrual property income", "foreign affiliate" — 95(1), 248(1); "foreign retirement arrangement" — 248(1); "nephew", "niece" — 252(2)(g); "non-resident" — 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "person", "prescribed", "property" — 248(1); "resident in Canada" — 94(1)(c)(i), 250; "share" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxable dividend" — 89(1), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — (of foreign affiliate) 95(1); "taxpayer" — 248(1); "testamentary trust" — 108(1), 248(1); "trust" — 104(1), 248(1), (3); "uncle" — 252(2)(e).

Interpretation Bulletins [s. 94]: IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada.

Proposed Amendment — 94

Technical Notes [July 18, 2005]: *OVERVIEW*

Existing Rules

Section 94 sets out rules that tax certain income earned by certain non-resident trusts. Section 94 generally applies if a person resident in Canada has transferred or loaned property to a non-resident trust that has one or more beneficiaries that are resident in Canada.

Section 94 uses two different methods to impose tax, depending on the terms of the non-resident trust.

If the amount to be distributed to a beneficiary of the trust depends upon a discretionary power, paragraph 94(1)(c) deems the trust to be resident in Canada for the purposes of Part I of the Act and deems its taxable income for tax purposes to be the total of its Canadian source income and its foreign accrual property income, if any. Each beneficiary is jointly and severally liable to pay the Canadian tax of the trust. However, the liability can be enforced against a particular beneficiary only to the extent that the beneficiary has received a distribution from the trust or proceeds from the sale of an interest in the trust.

For other non-resident trusts to which section 94 applies, paragraph 94(1)(d) provides that it is to be treated in much the same manner that a non-resident corporation is treated. If a Canadian resident beneficiary holds an interest in the trust with a fair market value equal to 10% or more of the total fair market value of all beneficial interests in the trust, the trust is deemed to be a controlled foreign affiliate of the beneficiary. Consequently, the foreign accrual property income rules apply to the trust and the beneficiary, requiring the beneficiary to include a portion of the foreign accrual property income of the trust in income. On the other hand, beneficiaries whose beneficial interests are less than 10% of the total fair market value of all interests in the trust may be subject to tax under the offshore investment fund rules in section 94.1. If section 94.1 does not apply, such beneficiaries are taxed only if trust income becomes payable to them in the year in which it arises.

New Rules

New section 94 takes a different approach to the taxation of non-resident trusts (NRTs). In general, if a Canadian resident contributes property to a NRT, then the trust is deemed resident in Canada for a number of purposes, and the contributor, the NRT and certain Canadian resident beneficiaries of the trust may all become jointly and severally, or solidarily, liable to pay Canadian tax on the world-wide income of the trust. (The English-language expression "jointly and severally" no longer exists in the civil law of the province of Quebec and has been replaced in that civil law with the expression "solidarily". In the English-language version of section 94, the expression "solidarily" is added to the expression "jointly and severally", which latter expression is maintained for common-law purposes. The French-language version of new section 94 uses only the expression "*solidaire*" as this expression is appropriate for both the civil and common-law. These changes ensure that the Act appropriately reflects both the civil law of the province of Quebec and the law of other provinces.)

Except as indicated otherwise, the amendments to section 94 apply to trust taxation years that begin after 2002. In addition,

- a trust created in 2001 may elect in writing (by filing the election with the Minister on or before the trust's filing-due date for the trust's taxation year in which the amending legislation is assented to) to have new section 94 apply to its taxation years that begin in 2001 and 2002, and

- a trust created in 2002 may elect in writing (by filing the election with the Minister on or before the trust's filing-due date for the trust's taxation year in which the amending legislation is assented to) to have new section 94 apply to its taxation years that begin in 2002.

Note that, under the coming-into-force provision for new section 94, any election or form (but for greater certainty, not including returns of income) referred to in new section 94 that would otherwise be required to be filed before 120 days after Royal Assent is deemed to have been filed with the Minister of National Revenue on a timely basis if it is filed with the Minister of National Revenue within 365 days after Royal Assent.

For more detail on filing obligations regarding returns of income, contact the Canada Revenue Agency.

The following table briefly summarizes section 94 and related rules.

Issue	Summary	References
1. Which trusts are subject to the new NRT rules?	A. In general, a trust (other than an exempt foreign trust) will be subject to tax for a taxation year as a trust resident in Canada if a contribution was made to the trust by an entity (other than a recent immigrant to Canada) that is resident in Canada at a specified time (generally, the end of the year).	S. 94(3) "entity", "exempt foreign trust", "resident contributor", "specified time" — s. 94(1) "contribution" — s. 94(1) and (2)
	B. In addition, a trust (other than an exempt foreign trust) will generally be subject to Canadian tax for a taxation year if there is a resident beneficiary under the trust. More specifically if: • a contribution was made by an entity when the entity was resident in Canada (or generally within a 60-month period before the entity became resident in Canada or within a 60-month period after the entity ceased to be resident in Canada), • where the contributing entity is an individual (other than a trust), at the specified time the individual had been resident in Canada for more than 60 months, and • at the specified time there is an entity (other than a specified charity or successor beneficiary) that is resident in Canada and is a beneficiary under the trust.	S. 94(3) and (10) "beneficiary", "connected contributor", "entity", "non-resident time", "resident beneficiary", "specified charity", "specified time", "successor beneficiary" — s. 94(1) "contribution" — s. 94(1) and (2)
2. Who is responsible for the tax payable by an NRT?	The trust is required to pay tax. If it fails to do so, each contributor referred to in 1(A) and/or each beneficiary referred to in 1(B) is jointly and severally or solidarily liable with the trust for the tax. However, the amount recoverable from an entity that is simply a beneficiary is limited to the beneficiary's recovery limit. Relief is also available in some cases for a contributor whose contribution to the trust is insignificant relative to other contributions made to the trust.	Jointly and severally, or solidarily, liable: paragraphs 94(3)(d) and (e) Limit to amount recoverable — 94(7) Recovery limit — 94(8) Determination of fair market value — 94(9) Definitions — 94(1)
3. Where the NRT rules apply to a trust for a taxation year, how will the trust's tax liabilities be calculated?	A. Canadian rules generally apply to the trust as if the trust were resident in Canada throughout the year for the purpose of computing the trust's income.	s. 94(3)(a) and 94(4)
	B. Explicit rule treats the trust as becoming resident in Canada, with resulting adjustment to cost amount of property.	s. 94(3)(c)
	C. Part XII.2 does not apply to the trust. Explicit exemption from Part XIII tax on amounts distributed to the trust, although payer must still withhold. Part XIII will generally apply to amounts (other than exempt amounts) paid or credited by the trust to non-resident beneficiaries	s. 94(3)(a)(viii) and (ix) and (4)(e) and 215 and 216(4.1) "exempt amount" — s. 94(1)
	D. Flow-through of income to resident and non-resident beneficiaries permitted, subject to special rules in the event that Canadian-source income is distributed to non-residents.	s. 94(3)(a)(ix) and 104(7.01) — special rules

Department of Finance news release, December 17, 2001: *Non-Resident Trusts and Foreign Investment Entities*

Finance Minister Paul Martin today announced a one-year delay of the effective date of income tax proposals affecting non-resident trusts and foreign investment entities.

Draft income tax legislation to implement these proposals, which were first put forward in the 1999 budget, was released for comment on August 2, 2001. Several detailed submissions have recently been received by the Department concerning the proposed legislation. Minister Martin noted that it is important to carefully consider these submissions before finalizing changes in this complex area of the income tax system.

Accordingly, it is proposed that the effective date for the new income tax rules affecting non-resident trusts and foreign investment entities be delayed by one year, generally to take effect for taxation years that begin after 2002. This delay will allow for full consideration, in the first part of next year, of all of the submissions that have been received, in order to finalize and implement these proposals before the end of 2002.

For further information: Jean-Michel Catta, Public Affairs and Operations Division, (613) 996-8080; Karl Littler, Senior Advisor, Tax Policy, Office of the Minister of Finance, (613) 996-7861; Non-Resident Trusts: Grant Nash, Tax Legislation Division, (613) 992-5287; Foreign Investment Entities: Marie-Claude Hébert, Tax Legislation Division, (613) 992-4859.

Letter from Dept. of Finance, May 31, 2001:

Dear [xxx]

I am responding to your letter to Len Farber dated May 1, 2001 concerning the Legislative Proposals and Explanatory Notes on Taxation of Non-Resident Trusts and Foreign Investment Entities (the "Legislative Proposals") released by the Department of Finance by way of Finance Canada News Release number 2000-050, dated June 22, 2000. As you know, Finance Canada News Release number 2000-064, dated September 7, 2000, states that the implementation date for the Legislative Proposals will be delayed by one year, to taxation years that begin after 2001.

Firstly, you suggested that the Legislative Proposals should be revised to allow a trust to elect to have the rules in proposed amended section 94 of the *Income Tax Act* (the "Act") apply to the trust in respect of trust taxation years that begin after 2000. You noted that such a revision would be especially useful in cases such as where the trust is formed in 2001 and that the availability of such an election would obviate the need for the trust to report for the 2001 taxation year under the rules in existing subsection 94(1) of the Act and then to switch over to the rules in proposed new section 94 for the 2002 and subsequent taxation years.

We have no objections to this suggestion and we are prepared to recommend to the Minister of Finance a revision to the implementation provision for proposed new section 94. The recommended implementation provision would provide that

- in general, proposed new section 94 would apply to trust taxation years that begin after 2001, and
- proposed new section 94 would apply to taxation years of the trust that begin after 2000, if the trust was formed in 2001 and has, on or before the trust's filing-due date for the taxation year of the trust that includes the day on which the Act implementing proposed new section 94 receives Royal Assent, notified the Minister of National Revenue in writing of its election to have proposed new subsection 94 apply to taxation years of the trust that begin after 2000.

Secondly, you made suggestions concerning paragraph (h) of the proposed new definition "exempt foreign trust" in proposed new subsection 94(1) of the Act. That paragraph essentially results in a trust described in paragraph

(c) of the definition "exempt trust" in subsection 233.2(1) (i.e., a unit trust that has at least 150 beneficiaries in respect of the same class of units of the trust and meets the other conditions prescribed by section 4801.1 of the *Income Tax Regulations*) being an "exempt foreign trust" for the purpose of proposed new section 94. A unit trust that would not be subject to the rules in proposed new section 94 relating to non-resident trusts (the "new NRT rules") could, however, be subject to the rules in proposed new sections 94.1 and 94.2 relating to foreign investment entities (the "new FIE rules"). You pointed out that paragraph (h) of the proposed definition "exempt foreign trust" (as presently worded in the Legislative Proposals) could result in a situation where a unit trust would be subject to the new NRT rules in a particular taxation year of the trust if the trust did not, at the end of the particular year, have at least 150 beneficiaries, but would become subject to the new FIE rules in the subsequent year if, at the end of that subsequent year, the trust had at least 150 beneficiaries. You suggested that the Legislative Proposals should be revised to allow a trust to have the right to make an election, applicable to a current taxation year of the trust and all subsequent taxation years, to have the definition "exempt foreign trust" read without reference to paragraph (h).

We have no objections to this suggestion and we are prepared to recommend to the Minister of Finance a revision to paragraph (h) of the definition "exempt foreign trust" in proposed new subsection 94(1). The recommended revision would provide that a non-resident trust that is, at the particular time, a trust described in paragraph (c) of the definition "exempt trust" in subsection 233.2(1) will not be a trust described in paragraph (h) of the definition "exempt foreign trust" in proposed new subsection 94(1) for the trust's taxation year that includes the particular time (referred to in this letter as the trust's "current year") if it meets all the following conditions:

- the trust has, on or before the trust's filing-due date for the taxation year of the trust that is the later of

  — the "electing year" (as defined below) of the trust,

  and

  — the taxation year of the trust that includes the day on which the Act implementing new section 94 receives Royal Assent,

  notified the Minister of National Revenue in writing that the trust is electing to have the definition "exempt foreign trust" read without reference to paragraph (h) of the definition "exempt foreign trust" for the "electing year" of the trust and for all subsequent taxation years of the trust, and
- throughout the period that begins at the beginning of the trust's "electing year" and ends at the end of the trust's current year (referred to in this letter as the "specified period"), all of the income of the trust for Canadian income tax purposes in any particular taxation year of the trust was paid, or became payable, in the particular year to a beneficiary under the trust.

For this purpose, the trust's "electing year" means the first particular taxation year of the trust in respect of which both of the following conditions are met:

- the trust is an "exempt foreign trust" (as defined in new subsection 94(1)) at the end of the particular year and would, but for paragraph (h) of the definition "exempt foreign trust" in new subsection 94(1), have been deemed by new subsection 94(3) to be resident in Canada in the particular year, and
- the trust was, because of new subsection 94(3) or existing subsection 94(1) of the Act, deemed to be resident in Canada in the trust's taxation year immediately preceding the particular year.

Thirdly, you made a suggestion for a change to paragraph (a) of the definition "foreign investment entity" in proposed new subsection 94.1(1) with a view to simplification of the drafting. While we will continue to consider your suggestion, we cannot at this time recommend the adoption of your suggestion.

Thank you for writing.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

94. Treatment of trusts with Canadian contributors — (1) Definitions — The following definitions apply in this section.

"arm's length transfer", at any time by an entity (referred to in this definition as the "transferor") means a transfer or loan (which transfer or loan is referred to in this definition as the "transfer") of property (other than a restricted property) that is made at that time (referred to in this definition as the "transfer time") by the transferor to a particular entity (referred to in this definition as the "recipient") where

(a) it is reasonable to conclude that none of the reasons (determined by reference to all the circumstances including the terms of a trust, an intention, the laws of a country or the existence of an agreement, a memorandum, a letter of wishes or any other arrangement) for the transfer is the acquisition at any time by any entity of an interest as a beneficiary under a non-resident trust; and

(b) the transfer

(i) is a payment of interest, of a dividend, of rent, of a royalty or of any other return on investment, or any substitute for such a return on investment, in respect of a particular property held by the recipient, if

(A) the transfer is not a transfer described in paragraph (2)(g), or the transfer is a transfer described in paragraph (2)(g) that is an acquisition by the recipient of

(I) a unit of a mutual fund trust or of a trust that would be a mutual fund trust if section 4801 of the *Income Tax Regulations* were read without reference to paragraph 4801(b),

(II) a share of the capital stock of a mutual fund corporation, or

(III) a particular share of the capital stock of a corporation (other than a closely-held corporation) which particular share is identical to a share that is, at the transfer time, of a class that is listed on a prescribed stock exchange, and

(B) the fair market value of the property, at the transfer time, is not more than the amount that the transferor would have transferred at the transfer time in respect of the particular property to the recipient if the transferor dealt at arm's length with the recipient,

(ii) is a payment made by a corporation on a reduction of the paid-up capital in respect of shares of a class of its capital stock held by the recipient, if

(A) the transfer is not a transfer described in paragraph (2)(g), and

(B) the amount of the payment is not more than the lesser of the amount of the reduction and the consideration for which the shares were issued,

(iii) is a refund in whole or in part of a gift that the recipient made to the transferor, if the recipient is a trust and the transferor is at the transfer time a specified charity in respect of the recipient,

(iv) is a transfer

(A) in exchange for which, the recipient transfers or loans property (other than a restricted property) to the transferor, or becomes obligated to transfer or loan property (other than a restricted property) to the transferor, and

(B) for which it is reasonable to conclude

(I) having regard only to the transfer and the exchange that the transferor would have been willing to make the transfer if the transferor dealt at arm's length with the recipient, and

(II) that the terms and conditions, and circumstances, under which the transfer was made would have been acceptable to the transferor if the transferor dealt at arm's length with the recipient,

(v) is made in satisfaction of an obligation that arose because of a transfer to which subparagraph (iv) applied, if

(A) the transfer is not a transfer described in paragraph (2)(g),

(B) the transferor would have been willing to make the transfer if the transferor dealt at arm's length with the recipient, and

(C) the terms and conditions, and circumstances, under which the transfer was made would have been acceptable to the transferor if the transferor dealt at arm's length with the recipient,

(vi) is a payment of an amount owing by the transferor under a written agreement the terms and conditions of which, when entered into, were terms and conditions that, having regard only to the amount owing and the agreement, persons dealing at arm's length with each other would have entered into, if the transfer is not a transfer described in paragraph (2)(g),

(vii) is a payment made before 2002 to a trust (or to a corporation controlled by the trust or to a partnership of which the trust is a majority interest partner, together referred to in this subparagraph as "the specified person or partnership") in repayment of or otherwise in respect of a particular loan made by the trust (or by the specified person or partnership, as the case may be) to the transferor, or

(viii) is a payment made after 2001 to a trust (or to a corporation controlled by the trust or to a partnership of which the trust is a majority interest partner, together referred to in this subparagraph as "the specified person or partnership") in repayment of or otherwise in respect of a particular loan made by the trust (or by the specified person or partnership, as the case may be) to the transferor and either

(A) they would have been willing to enter into the particular loan if they dealt at arm's length with each other and the payment is not a transfer described in paragraph (2)(g), or

(B) the payment is made before 2005 in accordance with fixed repayment terms agreed to before June 23, 2000.

Technical Notes: A loan or transfer of property by an "entity" in respect of a trust will generally not be considered a "contribution" to the trust where the loan or transfer is an "arm's length transfer". In these circumstances, the transferor entity generally will not, because of that loan or transfer, be considered to be a "contributor" to the trust. Accordingly, subsection 94(3) does not apply to a non-resident trust as a consequence only of an "arm's length transfer" in respect of the trust unless a deemed contribution or deemed contributor rule applies. (For more information on the definitions "contribution", "contributor" and "entity" in subsection 94(1), see the commentary on those definitions.)

The definition "arm's length transfer" also is relevant in applying the rules in new paragraphs 94(2)(a) and (c). Under those rules, a loan or transfer of property made to an entity other than a particular trust may, in specified circumstances, result in a transfer of property being considered to have been made to the particular trust. (For more information, see the commentary on new subsection 94(2).)

If property transferred or loaned is "restricted property", the transfer or loan will not be an arm's length transfer. (For more information on the definition "restricted property", see the commentary on that definition.)

Under paragraph (a) of the definition, a transfer or loan will be an arm's length transfer only if it is reasonable to conclude that none of the reasons (determined by reference to all the circumstances including the terms of a trust, an intention, the laws of a country or the existence of an agreement, a memorandum, a letter of wishes or any other arrangement) for the transfer is the acquisition at any time by any entity of an interest as a beneficiary under a non-resident trust.

Under subparagraphs (b)(i) and (ii) of the definition, an arm's length transfer includes, in general terms, an arm's length return on investment (conferred by the entity in which the investment is made) and certain payments made by a corporation on a reduction of the paid up capital in respect of shares of a class of the corporation's capital stock.

Under subparagraph (b)(iii) of the definition, an arm's length transfer includes a transfer to a trust by a "specified charity" (as defined in new subsection 94(1)) in respect of the trust that is made by the specified charity for the purpose of refunding in whole or in part a gift previously made to the specified charity entity by the trust. For more information on the definition "specified charity", see the commentary on that definition.

Under subparagraph (b)(iv) of the definition, an arm's length transfer includes a transfer in exchange for which, the recipient transfers or loans property (other than a restricted property) to the transferor, or becomes obligated to so transfer or loan such property, and for which it is reasonable to conclude

- having regard only to the transfer and the exchange that the transferor would have been willing to make the transfer if the transferor dealt at arm's length with the recipient, and
- that the terms and conditions, and circumstances, under which the transfer was made would have been acceptable to the transferor if the transferor dealt at arm's length with the recipient,

Under subparagraph (b)(v) of the definition, an arm's length transfer includes a transfer that is made in satisfaction of an obligation that arose because of a transfer to which subparagraph (b)(iv) applied, if

- the transfer is not a transfer described in paragraph 94(2)(g),
- the transferor would have been willing to make the transfer if the transferor dealt at arm's length with the recipient, and
- the terms and conditions, and circumstances, under which the transfer was made would have been acceptable to the transferor if the transferor dealt at arm's length with the recipient.

Under subparagraph (b)(vi) of the definition, an arm's length transfer includes a transfer that is a payment of an amount owing by the transferor under a written agreement the terms and conditions of which, when entered into, were terms and conditions that, having regard only to the amount owing and the agreement, persons dealing at arm's length with each other would have entered into, if the transfer is not a transfer described in paragraph 94(2)(g).

Under subparagraph (b)(vii) of the definition, an arm's length transfer includes a transfer that is a payment made before 2002 to a trust (or to a corporation controlled by the trust or to a partnership of which the trust is a majority interest partner, together referred to in this subparagraph as "the specified person or partnership") in repayment of or otherwise in respect of a particular loan made by the trust (or by the specified person or partnership, as the case may be) to the transferor.

Finally, under subparagraph (b)(viii) of the definition, an arm's length transfer includes a transfer that is a payment made after 2001 to a trust (or to a corporation controlled by the trust or to a partnership of which the trust is a majority interest partner, together referred to in this subparagraph as "the specified person or partnership") in repayment of or otherwise in respect of a particular loan made by the trust (or by the speci-

fied person or partnership, as the case may be) to the transferor in circumstances where either

- they would have been willing to enter the particular loan if they dealt at arm's length with each other and the payment is not a transfer described in paragraph 94(2)(g), or
- the payment is made before 2005 in accordance with fixed repayment terms agreed to before June 23, 2000.

The definition "arm's length transfer" generally applies to trust taxation years that begin after 2002. However, where a trust elects, by notifying the Minister in writing on or before its filing-due date for its taxation year that includes the day on which the amending legislation introducing section 94 is assented to, the definition "arm's length transfer" will be read without reference to a loan or transfer of property that is made before 2003 and identified in the election. This electing provision recognizes that the definition "arm's length transfer" in the new rules does not have an equivalent under existing subsection 94(1). In particular, a non-resident trust now considered resident by reason of existing subsection 94(1) might not be described in new subsection 94(3) and would no longer be considered resident, which would result in the change in residency rules in subsection 128.1(4) applying. The election, which is found in the coming-into-force provision of the amending legislation, effectively permits a trust to continue to be deemed resident.

Related Provisions: 87(2)(j.95) — Amalgamations — continuing corporation; 94(4)(c) [proposed] — Deeming non-resident trust to be resident in Canada does not apply; 248(12) — Identical properties.

Regulations: 3200, 3201 (prescribed stock exchange for subcl. (b)(i)(A)(III)).

"beneficiary", under a trust, includes

(a) an entity that is beneficially interested in the trust; and

(b) an entity that would be beneficially interested in the trust if

(i) each reference in subsection 248(25) to the word "person" were read as a reference to the expression "entity (as defined by subsection 94(1))", and

(ii) for greater certainty, the reference in subparagraph 248(25)(b)(ii) to

(A) "any arrangement in respect of the particular trust" were read as a reference to "any arrangement (including the terms or conditions of a share, or any arrangement in respect of a share, of the capital stock of a corporation that is beneficially interested in the particular trust) in respect of the particular trust", and

(B) "the particular person or partnership might" were read as a reference to "the particular person or partnership becomes (or could become on the exercise of any discretion by any entity), directly or indirectly, entitled to any amount derived, directly or indirectly, from the income or capital of the particular trust or might".

Technical Notes: Under paragraph (a) of the new definition "beneficiary" in subsection 94(1), a beneficiary under a trust includes an entity beneficially interested in the trust.

Under paragraph (b) of that definition, a beneficiary under a trust also includes an entity (including a person) that would be beneficially interested in the trust if

- each reference in subsection 248(25) to a "person" were read as a reference to an "entity" (as defined by new section 94), and
- for greater certainty, the reference in subparagraph 248(25)(b)(ii) to

(A) "any arrangement in respect of the particular trust" were read as a reference to "any arrangement (including the terms or conditions of a share, or any arrangement in respect of a share, of the capital stock of a corporation that is beneficially interested in the particular trust) in respect of the particular trust", and

(B) "the particular person or partnership might" were read as a reference to "the particular person or partnership becomes (or could become on the exercise of any discretion by any entity), directly or indirectly, entitled to any amount derived, directly or indirectly, from the income or capital of the particular trust or might".

For the purposes of the Act, the expression "beneficially interested" has the meaning assigned by subsection 248(25).

Related Provisions: 94.1(1)"beneficiary" — Application of definition to foreign investment entities; 248(25) — Meaning of "beneficially interested".

"closely-held corporation", at any time, means a corporation, other than a corporation in respect of which

(a) there is at least one class of shares of its capital stock that includes shares prescribed for the purpose of paragraph 110(1)(d);

(b) it is reasonable to conclude that at that time, in respect of each class of shares described by paragraph (a), shares of the class are held by at least 150 entities each of whom holds shares, of the class, that have a total fair market value of at least $500; and

(c) it is reasonable to conclude that at that time in no case does a particular entity (or the particular entity together with any other entity with whom the particular entity does not deal at arm's length) hold shares of the capital stock of the corporation

(i) that would give the particular entity (or the particular entity together with those other entities) 10% or more of the votes that could be cast under any circumstance at an annual meeting of shareholders of the corporation if the meeting were held at that time, or

(ii) that have a fair market value of 10% or more of the fair market value of all of the issued and outstanding shares of the corporation.

Technical Notes: The definition "closely-held corporation" is relevant in applying subparagraph (b)(i) of the definition "arm's length transfer" and the definition "restricted property". (For more information on the definitions "arm's length transfer" and "restricted property" in subsection 94(1), see the commentary on those definitions.)

A closely-held corporation, at any time, means a corporation, other than a corporation in respect of which

- there is at least one class of shares of its capital stock that includes shares prescribed for the purpose of paragraph 110(1)(d);
- it is reasonable to conclude that at that time, in respect of each class of shares of the corporation's capital stock that are shares prescribed for the purpose of paragraph 110(1)(d), shares of the class are held by at least 150 entities each of whom holds shares, of the class, that have a total fair market value of at least $500 — i.e., in general terms, the shares must be widely-held; and
- it is reasonable to conclude that at that time in no case does a particular entity (or the particular entity together with any other entity with whom the particular entity does not deal at arm's length) hold shares of the capital stock of the corporation
  - — that would give the particular entity (or the particular entity together with those other entities) 10% or more of the votes that could be cast under any circumstance at an annual meeting of shareholders of the corporation if the meeting were held at that time, or
  - — that have a fair market value of 10% or more of the fair market value of all of the issued and outstanding shares of the corporation.

This amendment generally applies in respect of trusts for taxation years that begin after July 18, 2005. However, a trust may make a special election (provided for in the coming-into-force provision for new section 94) to have the definition as described above apply in respect of it for taxation years that begin after 2002 (or where the trust qualifies to so elect under the coming-into-force provision of new section 94, for its taxation years that begin after 2000 or after 2001). If the trust does not

make the special election, then for its taxation years that begin on or before July 18, 2005, in respect of the trust a closely-held corporation at any time, means a corporation, other than a corporation in respect of which

- there is at least one class of shares of its capital stock that class is not a specified class (within the meaning assigned by subsection 256(1.1),
- it is reasonable conclude that at that time the shares of those classes (other than such a specified class) are held by at least 150 entities each of whom holds shares that have a total fair market value of at least $500, and
- it is reasonable conclude that the total number of issued and outstanding shares of a class (other than such a specified class) held by a particular entity or by any other entity with whom the particular entity does not deal at arm's length is not more than 10% of the total number of the issued and outstanding shares of that class.

Subsection 94(16) is an anti-avoidance provision that applies in determining whether a corporation is a closely-held corporation at any time. For more detail, see the commentary on that provision.

Related Provisions: 94(16)(a) — Anti-avoidance rule re 150 entities.

"connected contributor", to a trust at a particular time, means an entity (including an entity that has ceased to exist) that is a contributor to the trust at the particular time, other than an entity

(a) that is an individual (other than a trust) who was, at or before the particular time, resident in Canada for a period of, or periods the total of which is, not more than 60 months (but not including an individual who, before the particular time, was never non-resident); or

(b) all of whose contributions to the trust made at or before the particular time were made at a non-resident time of the entity.

Technical Notes: The definition "connected contributor" is relevant in determining whether a beneficiary is, at a particular time, a "resident beneficiary" (as defined in new subsection 94(1)) under a non-resident trust. Under new paragraph 94(3)(d), such a resident beneficiary can, to an extent, be liable for the trust's income tax. For more information, see the commentary on subsections 94(3) and (7) to (10), subparagraph 152(4)(b)(vi) and subsections 160(2.1) and (3).

A connected contributor at a particular time is any entity, including an entity that has ceased to exist, that is a "contributor" (as defined in new subsection 94(1)) to the trust at that time, other than

- an individual who was resident in Canada for a period of, or periods the total of which is, not more than 60 months (but not including a trust or an individual who before that time was never non-resident), or
- an entity all of whose contributions to the trust made at or before that time occurred at a "non-resident time" (as defined in new subsection 94(1)) of the entity.

For more information on the definitions "contributor", "resident beneficiary" and "non-resident time" in subsection 94(1), see the commentary on those definitions.

In the context of the definition "connected contributor", reference should also be made to new paragraphs 94(2)(a) to (m) (which extend the circumstances in which a transfer is considered to occur for the purposes of section 94), new paragraphs 94(2)(n) to (q), subsections 94(11) to (13) (which generally extend the circumstances in which a contribution is considered to be made for the purposes of section 94 and may apply to deem an entity to be a connected contributor to a trust), and paragraphs 94(2)(r) to (u) (which generally narrow the circumstances in which a contribution is considered to be made for the purposes of section 94). Reference should also be made to new subsection 94(10), which applies where a contributor becomes resident in Canada within 60 months after making a contribution to a trust.

Related Provisions: 87(2)(j.95) — Amalgamation — continuing corporation; 94(10) [proposed] — Where contributor becomes resident in Canada within 60 months; 94(13) [proposed] — Deemed connected contributor to transferee trust.

"contribution", to a trust by a particular entity, means

(a) a transfer or loan (other than an arm's length transfer) of property to the trust by the particular entity;

(b) if a particular transfer or loan (other than an arm's length transfer) of property is made by the particular entity as part of a series of transactions or events that includes another transfer or loan (other than an arm's length transfer) of property to the trust by another entity, that other transfer or loan to the extent that it can reasonably be considered to have been made in respect of the particular transfer or loan; and

(c) if the particular entity becomes obligated to make a particular transfer or loan (other than a transfer or loan that would, if it were made, be an arm's length transfer) of property as part of a series of transactions or events that includes another transfer or loan (other than an arm's length transfer) of property to the trust by another entity, that other transfer or loan to the extent that it can reasonably be considered to have been made in respect of the obligation.

Technical Notes: Where a "contribution" is made at or before a particular time to a non-resident trust by an entity, that entity will be considered to be a "contributor" at the particular time and, in certain cases, will be jointly and severally or solidarily liable under subsection 94(3) for the trust's income taxes. (For more detail on the expression "solidarily", please refer to the introductory commentary above on new section 94.) For more information on subsection 94(3), see the commentary on that subsection.

Under paragraph (a) of the definition, a "contribution" to a trust by a particular entity means a loan or transfer of property (in this commentary referred to as a "transfer") by the entity to the trust (other than an "arm's length transfer", as defined in new subsection 94(1)).

Under paragraphs (b) and (c) of the definition "contribution", a contribution is also considered to have been made by a particular entity where

- the particular entity makes a particular transfer (other than an "arm's length transfer") as part of a series of transactions or events that includes another transfer (other than an arm's length transfer), to the trust, by another entity; or
- the particular entity becomes obligated to make a particular transfer (other than a transfer that would, if it were made, be an "arm's length transfer") as part of a series of transactions or events that includes another transfer (other than an arm's length transfer), to the trust, by another entity.

In these circumstances, the other transfer is considered to be a contribution to the trust by the particular entity only to the extent that the other transfer can reasonably be considered to have been made in respect of the particular transfer or the particular entity's obligation to make the particular transfer, as the case may be. In either case, a contribution is considered to be made at the time of the other transfer.

There are a number of rules that have the effect of applying the definition "contribution" more broadly than would otherwise be the case. See the commentary on new paragraphs 94(2)(a) to (m) (which extend the circumstances in which a transfer is considered to occur for the purposes of section 94), new paragraphs 94(2)(n) to (q) and subsections 94(11) to (13) (which generally extend the circumstances in which a contribution is considered to be made for the purposes of section 94) and paragraphs 94(2)(r) to (u) (which generally narrow the circumstances in which a contribution is considered to be made for the purposes of section 94).

The definition "contribution" applies to all loans and transfers, irrespective of when made.

Related Provisions: 94(2)(s)–(u) [proposed] — Certain transfers deemed not to be contribution; 94(9) [proposed] — Determination of contribution amount.

"contributor", to a trust at any time, means an entity (including an entity that has ceased to exist) that, at or before that time, has made a contribution to the trust.

Technical Notes: A "contributor" to a trust at any time means an "entity" (as defined in new subsection 94(1)), including an entity that

has ceased to exist, that at or before that time has made a "contribution" (as defined in new subsection 94(1)) to the trust. The definition "contributor" is significant primarily for the purposes of the definitions "resident contributor" and "connected contributor" in new subsection 94(1). For more information, see the commentary on those definitions.

Reference should be made in this context to new paragraphs 94(2)(a) to (m) (which extend the circumstances in which a transfer is considered to occur for the purposes of section 94), new paragraphs 94(2)(n) to (q) and subsections 94(11) to (13) (which generally extend the circumstances in which a contribution is considered to be made for the purposes of section 94) and paragraphs 94(2)(r) to (u) (which generally narrow the circumstances in which a contribution is considered to be made for the purposes of section 94).

Related Provisions: 75(3)(c.2) — Reversionary trust rules do not apply to non-resident trust even with Canadian resident contributor; 94(13) — Deemed contributor to transferee trust; 233.2(4) — Annual information return by contributor to non-resident trust.

"eligible trust", at any particular time, means a trust, other than a trust

(a) created or maintained for charitable purposes;

(b) governed by an employee benefit plan;

(c) described in paragraph (a.1) of the definition "trust" in subsection 108(1);

(d) governed by a salary deferral arrangement;

(e) operated for the purpose of administering or providing superannuation, pension, retirement or employee benefits;

(f) where the amount of income or capital that any entity may receive directly from the trust at any time as a beneficiary under the trust depends on the exercise by any entity of, or the failure by any entity to exercise, a discretionary power; or

(g) that has elected in writing filed with the Minister, on or before the trust's filing-due date for the particular taxation year of the trust that includes the particular time (or for an earlier taxation year that ended before the particular time), that the definition "exempt foreign trust" in this subsection not apply to it for the particular taxation year (or for the earlier taxation year) and for all of its subsequent taxation years.

Technical Notes: An "eligible trust" can qualify as an exempt foreign trust under paragraph (h) of the definition "exempt foreign trust" where it meets the conditions imposed by that paragraph. An eligible trust may also qualify as an "exempt taxpayer" under subsections 94(1) and 94.1(1). For more detail, see the commentary on those subsections.

An eligible trust at any time means a trust other than a trust

- created or maintained for charitable purposes,
- governed by an employee benefit plan,
- described in paragraph (a.1) of the definition "trust" in subsection 108(1),
- governed by a salary deferral arrangement,
- operated for the purpose of administering or providing superannuation, pension, retirement or employee benefits,
- the amount of income or capital that any entity may receive directly from the trust at any time as a beneficiary under which depends on the exercise by any entity of, or the failure by any entity to exercise, a discretionary power; however, note that, if a trust so elects, for its taxation years that begin on or before July 18, 2005, this description of the trust is replaced in respect of the trust with "a trust that has at or before that time been a personal trust", or
- has elected in writing filed with the Minister in a timely fashion that the definition "exempt foreign trust" not apply to it.

Related Provisions: 94(1)"exempt foreign trust"(h) — Eligible trust can be EFT.

"entity" includes an association, a corporation, a fund, a natural person, a joint venture, an organization, a partnership, a syndicate and a trust.

Technical Notes: The expression "entity" is defined to include an association, a corporation, a fund, a natural person, a joint venture, an organization, a partnership, a syndicate and a trust.

Related Provisions: 87(2)(j.95) — Amalgamation — continuing corporation.

"excluded property", at any time, means a particular property issued by a particular entity, if the following conditions are met:

(a) the particular entity is at that time a corporation, trust or partnership;

(b) the particular property is at that time

(i) a share of the capital stock of the corporation,

(ii) a specified fixed interest in the trust, or

(iii) an interest, as a member of the partnership, under which, by operation of any law governing the arrangement in respect of the partnership, the liability of the member as a member of the partnership is limited;

(c) there are at least 150 persons each of whom holds at that time property that at that time

(i) is identical to the particular property, and

(ii) has a total fair market value of at least $500;

(d) it is reasonable to conclude that no more than 10% of the total of all properties each of which is the particular property, or an identical property, is held by an entity (in this paragraph referred to as "the first entity") or another entity with whom the first entity does not deal at arm's length;

(e) property that is identical to the particular property can normally be acquired by and sold by members of the public in the open market; and

(f) the particular property, or identical property, is listed on a prescribed stock exchange.

Technical Notes: The expression "excluded property" is relevant to determining whether a property is restricted property. In particular, paragraph (e) of the definition "restricted property" in subsection 94(1) does not apply to excluded property. Accordingly, excluded property that is a share of the capital stock of a corporation would be restricted property only if paragraph (a) of the definition "restricted property" were to apply to it. For more detail on the definition "restricted property", see the commentary on that provision.

Excluded property, at any time, means a particular property issued by a particular entity that is a corporation, trust or partnership if the following conditions are met:

- the particular property is at that time a share of the capital stock of the corporation, a specified fixed interest in the trust, or an interest as a limited partner in the partnership;
- it is reasonable to conclude that there are at least 150 persons each of whom holds at that time property that at that time is identical to the particular property, and has a total fair market value of at least $500;
- there is no one entity, or group of non-arm's length entities, that holds more than 10% of the total of all properties each of which is the particular property, or an identical property; and
- the particular property or property that is identical to it is listed on a prescribed stock exchange and can normally be acquired by and sold by members of the public in the open market.

Related Provisions: 94(16)(c) — Anti-avoidance rule re 150 persons; 248(12) — Identical properties.

"exempt amount", in respect of a particular taxation year of a trust, means an amount

(a) that is referred to in paragraph 104(7.01)(b) in respect of the trust for the particular taxation year and that is paid or credited to a non-resident person; or

(b) that is paid in the particular taxation year (or within 60 days after the end of the particular taxation year) by the trust directly to a beneficiary (determined without reference to subsection 248(25)) under the trust, if

(i) the beneficiary is a natural person none of whose interests as a beneficiary under the trust was ever acquired for consideration,

(ii) the amount is not included in computing an exempt amount in respect of any other taxation year of the trust,

(iii) the trust was created before October 30, 2003, and

(iv) no contribution has been made to the trust on or after July 18, 2005.

Technical Notes: The expression "exempt amount" is relevant in determining whether Part XIII tax applies to a non-resident person in respect of an amount paid or credited after 2003 by a trust to which subsection 94(3) applies. In general terms, Part XIII tax will not apply to such amounts if they are exempt amounts.

Two kinds of amounts may qualify as an exempt amount in respect of a particular taxation year of a trust. The first is an amount that is referred to in paragraph 104(7.01)(b) in respect of the trust for the particular taxation year and that is paid or credited to a non-resident person. For more detail on paragraph 104(7.01)(b), see the commentary on that provision.

The second type of exempt amount arises only in respect of trusts created before October 30, 2003 and to which no contributions have been made on or after July 18, 2005. In respect of such trusts, an exempt amount also means an amount (other than amount included in computing an exempt amount in respect of any other taxation year of the trust) that is paid in the particular taxation year (or within 60 days after the end of the particular taxation year) by the trust directly to a qualifying beneficiary under the trust. In this regard, a qualifying beneficiary means a beneficiary (determined without reference to subsection 248(25)) who is a natural person none of whose interests as a beneficiary under the trust was ever acquired for consideration (determined by reference to subsection 108(7)).

For more detail on subsection 108(7), see the commentary on that provision.

Related Provisions: 108(7) — Meaning of "acquired for consideration".

"exempt foreign trust", at a particular time, means

(a) a non-resident trust, if

(i) each beneficiary under the trust at the particular time is

(A) an individual who, at the time that the trust was created, was, because of mental or physical infirmity, dependent on an individual who is a contributor to the trust or on an individual related to such a contributor (which beneficiary is referred to in this paragraph as an "infirm beneficiary"), or

(B) a person who is entitled, only after the particular time, to receive or otherwise obtain the use of any of the trust's income or capital,

(ii) at the particular time there is at least one infirm beneficiary who suffers from a mental or physical infirmity that causes the beneficiary to be dependent on a person,

(iii) each infirm beneficiary is, at all times that the infirm beneficiary is a beneficiary under the trust during the trust's taxation year that includes the particular time, non-resident, and

(iv) each contribution to the trust made at or before the particular time can reasonably be considered to have been, at the time that the contribution was made, made to provide for the maintenance of an infirm beneficiary during the expected period of the beneficiary's infirmity;

(b) a non-resident trust, if

(i) the trust was created as a consequence of the breakdown of a marriage or common-law partnership of two particular individuals to provide for the maintenance of a beneficiary under the trust who was, during that marriage or common-law partnership, a child of both of those particular individuals (which beneficiary is referred to in this paragraph as a "child beneficiary"),

(ii) each beneficiary under the trust at the particular time is

(A) a child beneficiary under 21 years of age at the particular time,

(B) a child beneficiary under 31 years of age at the particular time who is enrolled at any time in the trust's taxation year that includes the particular time at an educational institution that is described in clause (v)(A) or (B), or

(C) a person who is entitled, only after the particular time, to receive or otherwise obtain the use of any of the trust's income or capital,

(iii) each child beneficiary is, at all times that the child beneficiary is a beneficiary under the trust during the trust's taxation year that includes the particular time, non-resident,

(iv) each contributor to the trust at the particular time was one of those particular individuals or a person related to one of those particular individuals, and

(v) each contribution to the trust, at the time that the contribution was made, was made to provide for the maintenance of a child beneficiary, while the child was either under 21 years of age, or was under 31 years of age and enrolled at an educational institution located outside Canada that is

(A) a university, college or other educational institution that provides courses at a post-secondary school level, or

(B) an educational institution that provides courses designed to furnish a person with skills for, or improve a person's skills in, an occupation;

(c) a non-resident trust, if

(i) at the particular time, the trust is an agency of the United Nations,

(ii) at the particular time, the trust owns and administers a university described in paragraph (f) of the definition "total charitable gifts" in subsection 118.1(1), or

(iii) at any time in the trust's taxation year that includes the particular time or at any time in the preceding calendar year, Her Majesty in right of Canada has made a gift to the trust;

(d) a non-resident trust

(i) that, throughout the particular period that began at the time it was created and ends at the particular time, would be non-resident if this Act were read without reference to subsection (1) as that subsection read in its application to taxation years that include December 31, 2000,

(ii) that was created exclusively for charitable purposes and has been operated, throughout the particular period, exclusively for charitable purposes,

(iii) if the particular time is more than 24 months after the day on which the trust was created, in respect of which, there is at the particular time a group of at least 20 persons (other than trusts) each of whom at the particular time

(A) is a contributor to the trust,

(B) exists, and

(C) deals with each of the others in the group at arm's length,

(iv) the income of which (determined in accordance with the laws described in subparagraph (v)) for each of its taxation years that ends at or before the particular time would, if the income were not distributed and the laws described in subparagraph (v) did not apply, be subject to an income or profits tax in the country in which it was resident in each of those taxation years, and

(v) that was, for each of those taxation years, exempt under the laws of the country in which it was resident from the payment of income or profits tax to the government of that country in recognition of the charitable purposes for which the trust is operated;

(e) a non-resident trust that, throughout the trust's taxation year that includes the particular time, is a trust governed by an employees profit sharing plan, a retirement compensation arrangement or a foreign retirement arrangement;

(f) a non-resident trust, if

(i) throughout the particular period that began when it was created and ends at the particular time it has been operated exclusively for the purpose of administering or providing employee benefits,

(ii) throughout its taxation year that includes the particular time

(A) the trust is a trust governed by an employee benefit plan or is a trust (referred to in this paragraph as the "specified trust") described in paragraph (a.1) of the definition "trust" in subsection 108(1), and

(B) the plan or the specified trust is maintained for the benefit of natural persons

(I) the majority of whom are non-resident, and

(II) all or substantially all of whom are or were employed by one entity or by two or more entities each of which is related to each other,

(iii) either

(A) at all times on or after July 18, 2005 the trust holds no restricted property, or

(B) the trust

(I) throughout its taxation year that includes the particular time holds no restricted property, and

(II) throughout the particular period that began when it was created and ends at the particular time

1. held cash, or shares of the capital stock of one or more corporations that is an entity referred to in clause (ii)(B)(II), the value of which at each time in the trust's taxation year that includes the particular time represents all or substantially all of the value of its property at each such time, and

2. has been governed by terms that provide, in respect of each individual who is a beneficiary under the trust and was resident in Canada at any time while employed by one of those corporations, for a transfer of property to be made by the trust to the individual in satisfaction of a right (other than a right under an arrangement to which subsection 7(2) or (6) applies) of the individual as a beneficiary under the trust only on or after the satisfaction of the conditions, if any, attached to that right, and

(iv) the plan or the specified trust provides no benefits, other than benefits in respect of

(A) services rendered to an employer by an employee of the employer, which employee was non-resident throughout the period during which the services were rendered,

(B) services rendered to an employer by an employee of the employer, other than services that were primarily

(I) rendered in Canada,

(II) rendered in connection with a business carried on by the employer in Canada, or

(III) a combination of services described in subclauses (I) and (II),

(C) services rendered to an employer by an employee of the employer, in a particular calendar month where

(I) the employee was resident in Canada throughout no more than 60 of the 72 calendar months ending with the particular month, and

(II) the employee became a member of, or a beneficiary under, the plan or the specified trust (or a similar plan or specified trust for which the plan or the specified trust was substituted) before the end of the calendar month following the month in which the employee became resident in Canada, or

(D) any combination of services described by clauses (A) to (C);

(g) a non-resident trust (other than a prescribed trust or a trust described in paragraph (a.1) of the definition "trust" in subsection 108(1)) that, throughout the

particular period that began when it was created and ends at the particular time,

(i) has been resident in a country (other than Canada) the laws of which impose an income or profits tax, and been exempt, under the laws of that country, from the payment of income tax and profits tax to the government of that country in recognition of the purposes for which the trust is operated, and

(ii) either

(A) has been operated exclusively for the purpose of administering or providing superannuation or pension benefits that are primarily in respect of services rendered, outside Canada, by non-resident natural persons, or

(B) has

(I) been operated exclusively for the purpose of administering or providing retirement benefits in respect of a particular natural person who is, at the particular time, a resident contributor, and

(II) received no contributions other than contributions made by, or on behalf of, the particular natural person when the particular natural person was non-resident;

(h) a non-resident trust that is, at the particular time, an eligible trust under which

(i) the only beneficiaries that may for any reason receive, at or after the particular time and directly from the trust, any of the income or capital of the trust are entities that are, at the particular time, qualifying investors in respect of the trust, and

(ii) either

(A) the following conditions are met:

(I) there are at least 150 qualifying investors in respect of the trust each of whose specified fixed interests in the trust have at the particular time a fair market value of at least $500, and

(II) where the total fair market value at the particular time of the interests, of any class of specified fixed interests in the trust, held by a resident contributor to the trust or by any other entity with whom the resident contributor does not deal at arm's length is more than 10% of the total fair market value of interests of that class, it is reasonable to conclude (determined by reference to all the circumstances including the terms of the trust, an intention, the laws of a country or the existence of an agreement, a memorandum, a letter of wishes or any other arrangement) that that resident contributor is a specified contributor to the trust, or

(B) the following conditions are met:

(I) a prescribed form and a copy of the terms of the trust that apply at the particular time have been filed with the Minister by or on behalf of the trust on or before its filing due date for its taxation year that includes the particular time (or a later date that is acceptable to the Minister),

(II) it is reasonable to conclude (determined by reference to all the circumstances including the terms of the trust, an intention, the laws of a country or the existence of an agreement, a memorandum, a letter of wishes or any other arrangement) that each resident contributor (other than an indirect contributor) to the trust at the particular time is a specified contributor to the trust at the particular time, and

(III) at no time in a taxation year of the trust that begins after July 18, 2005 and that includes the particular time does the trust hold restricted property; or

(i) a trust that is, at the particular time, a prescribed trust or included in a prescribed class of trusts.

Technical Notes: An "exempt foreign trust" includes a number of different types of non-resident trusts that are exempt from the application of new subsection 94(3). The expression refers to the following types of non-resident trusts:

(a) a non-resident trust the current income (determined with reference to amended subsection 108(3)) or capital from which can be provided only to one or more physically or mentally infirm dependent individuals, provided that each such individual is at all times that they are a beneficiary under the trust during the trust's current taxation year, non-resident and that any property settled on the trust could reasonably be considered, at the time it was settled, to be necessary for the maintenance of those individuals;

(b) a non-resident trust created as a consequence of the breakdown of a marriage or common-law partnership of two individuals, the current income (determined with reference to amended subsection 108(3)) or capital from which can be provided only for the maintenance of non-resident beneficiaries of the trust who were, during that marriage or common-law partnership, children of both of the individuals, if the beneficiaries are under 21 years of age (or under 31 years of age and enrolled in a specified educational institution) and each contribution (as defined in section 94) to the trust was to provide for the maintenance of those children — note the different description of the conditions in subparagraph (b)(i) of that definition that apply for taxation years that begin on or before July 18, 2005;

(c) certain non-resident trusts that own or administer a university described in paragraph (f) of the definition "total charitable gifts" in subsection 118.1(1) and that could qualify under that definition as a recipient permitted for the purposes of the tax credit for charitable gifts;

(d) certain non-resident trusts established exclusively for charitable purposes (as those purposes are defined in the laws of Canada);

(e) a non-resident trust that is governed by an employee profit sharing plan (as defined in subsection 248(1)), by a retirement compensation arrangement (as defined in subsection 248(1)), or by a foreign retirement arrangement (as defined in subsection 248(1));

(f) certain foreign trusteed employee benefit plans or health and welfare trusts if

- at all times that the trust exists it is operated exclusively for the purposes of providing employee benefits,
- throughout the trust's current taxation year it is maintained for the benefit of natural persons the majority of whom are non-resident and at least 90% of whom are employed by a single employer entity or related group of employer-entities,
- the only benefits provided by the trust are in respect of services that are rendered to an employer by an employee of the employer and that are described in clauses (f)(iv)(A) to (D) of the definition (e.g., in general terms, services rendered while the employee was non-resident, was a short-term resident of Canada, or was commuting outside of Canada to perform the services in connection with a business of the employer carried on outside Canada), and

- the trust holds on or after July 18, 2005 no restricted property, or — if it does hold on or after July 18, 2005 (but not in the current year) restricted property — it is either
  - an employee incentive arrangement, described in clause (f)(iii)(B) of the definition, at least 90% of the value of the property of which is from the value of cash or shares of the capital stock of the employer-corporation (or related corporation), or
  - as described in clause (f)(iii)(C) of the definition, a trust created before 2001 to which no contributions are made on or after July 18, 2005 and that is at all times after 2006 a trust the only beneficiaries under which are qualifying investors (as defined in subsection 94(1) — for more detail, see the commentary below);

(g) a non-resident trust (other than a trust described in paragraph (a.1) of the definition "trust" in subsection 108(1) or a prescribed trust) that at all times since it was created has been operated exclusively for the specific purposes described below, is resident in a country other than Canada and is exempt — because it is operated for these specific purposes — from paying income tax to the government of that country; the specific purposes are:

- as described in clause (g)(ii)(A) of the definition, administering or providing superannuation or pension benefits, where those benefits are primarily in respect of services rendered outside Canada by non-resident natural persons — as a result, certain trusteed foreign pension plans or similar arrangements are intended to qualify as an exempt foreign trust under this provision, and
- as described in clause (g)(ii)(B) of the definition, administering or providing retirement benefits for a natural person who is a resident contributor to the trust, where the only contributions received by the trust are made by or on behalf of that natural person while that natural person was non-resident — as a result, certain foreign trusteed arrangements similar to Canadian trusteed RRSPs or RRIFs are intended to qualify as an exempt foreign trust under this provision;

(h) a non-resident trust that is an eligible trust (as defined in subsection 94(1)) and whose only beneficiaries with rights to receive income or capital directly from the trust are qualifying investors (as defined in subsection 94(1)) in respect of the trust if either

- there are at least 150 qualifying investors in respect of the trust each of whom holds specified fixed interests (as defined in subsection 94(1)) in the trust worth at least $500, and the only resident contributors (as defined in subsection 94(1)) to the trust that hold more than 10% of the interests of any class of specified fixed interests in the trust are specified contributors (as defined in subsection 94(1)) to the trust, or
- in any other case, each resident contributor (other than an "indirect contributor" as defined in subsection 94(1)) to the trust is a specified contributor to the trust, a copy of the current terms of the trust (and any other required information in prescribed form) has been filed with the Minister of National Revenue by or on behalf of the trust, and at no time in the current taxation year of the trust (but beginning only with the first taxation year of the trust that begins after July 18, 2005) does the trust hold restricted property; and

(i) a prescribed trust or prescribed class of trusts. (At the present time, it is not anticipated that any trust or class of trusts will be prescribed for this purpose).

A trust that qualifies as an exempt foreign trust under paragraph (f) of the definition "exempt foreign trust" will be a non-resident entity for purposes of the foreign investment entity rules in subsections 94.1 to 94.4. If the trust has not held restricted property at any time on or after July 18, 2005, it will qualify, under paragraph (a) of the definition "foreign investment entity" in subsection 94.1(1) for relief from treatment as a foreign investment entity ("FIE"). However, if the trust has held restricted property on or after July 18, 2005, then in order to avoid status as a FIE, it would have to rely upon paragraphs (b) or (c) of the "foreign investment entity" definition, as paragraph (a) of that definition would not apply to it. Where the trust is a foreign investment entity, a Canadian resident beneficiary (other than an "exempt taxpayer" within the meaning assigned by subsection 94.1(1)) under the trust would be expected to be a taxpayer to whom subsection 94.1(3) or 94.2(9) applies for a taxation year of the beneficiary in respect of their interest (i.e., "participating interest", as defined in subsection 94.1(1)) in the trust.

Paragraphs (f) and (g), as described in general terms above, of the definition "exempt foreign trust" apply in respect of a trust for its taxation years that begin after July 18, 2005, unless the trust elects under paragraph (j) of the coming-into-force provision of new section 94. Where this election is made, those paragraphs apply, as described in general terms above, to the trust for taxation years that begin after 2002. Where the election is not made, for taxation years that begin after 2002 and on or before July 18, 2005, paragraphs (f) and (g) apply to the trust at a particular time as set out in paragraph (j) of that coming-into force provision, which in general terms is as follows:

- in the case of paragraph (f), throughout the taxation year that includes the particular time, the trust must be
  - a non-resident trust that is governed by an employee benefit plan (as defined in subsection 248(1)) or a trust described in paragraph (a.1) of the definition trust in subsection 108(1),
  - maintained primarily for the benefit of non-resident individuals,
  - hold no restricted property, and
  - provides no benefits, other than benefits in respect of services described in clauses (iv)(A) to (D) of the definition;
- in the case of a paragraph (g), at all times from the time it was created until the particular time, the trust must be a non-resident trust
  - operated exclusively for the purpose of administering or providing superannuation, pension, retirement or employee benefits, and
  - that meets the conditions stipulated under paragraph (g) of the definition regarding its beneficiaries (and their rights), its property, its jurisdiction of residence, and its liability for tax under the laws of that jurisdiction;

Paragraph (h), as described in general terms above, of the definition "exempt foreign trust" applies in respect of a trust for its taxation years that begin after 2002. However, if the trust elects under paragraph (r) of the coming-into-force provision of new section 94, paragraph (h) of the definition applies to the trust, for its taxation years that begin on or before July 18, 2005, as described in paragraph (r) of that coming-into-force provision, which in general terms is as follows:

- under subparagraph (h)(i) of the definition, the trust must be a non-resident trust that is an "eligible trust" (as defined in subsection 94(1)) under which each beneficiary's (determined without regard to subsection 248(25)) interest is a specified fixed interest, under which there are at least 150 such beneficiaries each of whom holds a specified fixed interest in the trust worth at least $500, and to which the only "resident contributors" (as defined in subsection 94(1)) to the trust that hold more than 10% of the interests of any class of beneficial interests in the trust are "specified contributors" (as defined in subsection 94(1)) to the trust, and
- under subparagraph (h)(ii) of the definition, the trust must be a non-resident trust that is an eligible trust under which each beneficiary's interest is a specified fixed interest, each resident contributor (other than an indirect contributor) to which is a specified contributor and by or on behalf of which a copy of the current terms of the trust (and any other required information in prescribed form) has been filed with the Minister of National Revenue;

Paragraph (h) is intended to apply to non-resident investment trusts that are legitimately commercial. Such a trust is intended to be treated as a foreign investment entity under sections 94.1 to 94.4. A Canadian resident investor (other than an "exempt taxpayer" within the meaning assigned by subsection 94.1(1)) in the trust would be expected to be a taxpayer to whom subsection 94.1(3) or 94.2(9) applies for a taxation year of the investor in respect of their investment in the trust.

For more detail on the expressions "specified fixed interest" and "qualifying investor" defined in subsection 94(1), and the definitions "foreign investment entity" and "participating interest," see the commentary on those provisions.

Related Provisions: 94(2)(s) — Where trust manager required by securities law to acquire interest in commercial investment trust; 94(4)(e) [proposed] — Deeming non-resident trust to be resident in Canada does not apply; 94(6) [proposed] — Becoming or ceasing to be an exempt foreign trust; 94(16)(b) — Anti-avoidance rule re 150 qualifying investors; 94.1(1)"foreign investment entity"(a) — Exclusion from foreign investment entity rules; 104(24) — Whether amount payable to beneficiary; 108(3) — Meaning of "income" of trust; 233.2(4) — Exclusion from reporting requirements; 248(9.2) — Meaning of "vested indefeasibly".

Information Circulars: 84-3R5: Gifts to certain charitable organizations outside Canada.

Regulations: 3503 (prescribed universities outside Canada, for para. (c)(ii)). The Department of Finance technical notes state that it is not currently anticipated that any trusts or class of trusts will be prescribed under para. (i).

"exempt service" means a service rendered at any time by an entity (referred to in this definition as the "service provider") to, for or on behalf of, another entity (referred to in this definition as a "recipient") if

(a) the recipient is at that time a trust and the service relates to the administration of the trust; or

(b) the following conditions apply in respect of the service, namely,

(i) the service is rendered in the service provider's capacity at that time as an employee or agent of the recipient,

(ii) in exchange for the service, the recipient transfers or loans property or becomes obligated to transfer or loan property, and

(iii) it is reasonable to conclude

(A) having regard only to the service and the exchange, that the service provider would have been willing to carry out the service if the service provider had dealt at arm's length with the recipient, and

(B) that the terms and conditions, and circumstances, under which the service was provided would have been acceptable to the service provider if the service provider had dealt at arm's length with the recipient.

Technical Notes: The definition "exempt service" is relevant to new paragraph 94(2)(f), which deems the provision of certain services (other than exempt services) to be a transfer of property.

An exempt service means a service rendered at any time by an entity (the "service provider") to, for or on behalf of, another entity (a "recipient") if either

- the recipient is at that time a trust and the service relates to the administration of the trust, or
- the following conditions apply in respect of the service, namely

(i) the service is rendered in the service provider's capacity at that time as an employee or agent of the recipient,

(ii) in exchange for the service the recipient transfers or loans property, or becomes obligated to transfer or loan property, and

(iii) it is reasonable to conclude

(A) having regard only to the service and the exchange that the service provider would have been willing to carry out the service if the service provider had dealt at arm's length with the recipient, and

(B) that the terms and conditions, and circumstances, under which the service was provided would have been acceptable to the service provider if the service provider had dealt at arm's length with the recipient.

Related Provisions: 94(2)(f) — Exempt service excluded from service being a deemed transfer of property.

"exempt taxpayer", for a taxation year of the taxpayer, means

(a) a person whose taxable income for the taxation year is exempt from tax under this Part because of subsection 149(1) (otherwise than because of paragraph 149(1)(q.1), (t) or (z)); and

(b) an eligible trust that is resident in Canada at the end of the taxation year and under which

(i) the only beneficiaries that may for any reason receive, at any time and directly from the trust, any of the income or capital of the trust are persons that are qualifying investors in respect of the trust, and

(ii) each such beneficiary at each time in the taxation year is a person whose taxable income, for the period that includes all of those times in the taxation year, is exempt from tax under this Part because of subsection 149(1) (otherwise than because of paragraph 149(1)(q.1), (t) or (z)).

Technical Notes: The definition "exempt taxpayer" is relevant in determining whether a taxpayer is a "specified contributor" to a trust.

Except as indicated below, tax-exempt persons to which subsection 149(1) applies are generally qualifying exempt taxpayers. However, retirement compensation arrangements and qualifying environmental trusts for which alternative income tax rules are provided under Parts XI.3 and XII.4, and insurers to which paragraph 149(1)(t) applies, are not qualifying exempt taxpayers.

An exempt taxpayer also includes a Canadian resident trust (determined without reference to subsection 94(3)) that is an eligible trust (as defined in subsection 94(1)) under which the only beneficiaries that may for any reason receive, at or after the particular time and directly from the trust, any of the income or capital of the trust are persons that are both qualifying investors (as defined in subsection 94(1)) and qualifying exempt taxpayers described above.

For more detail on the definition "qualifying investor" in subsection 94(1), see the commentary on that provision.

Related Provisions: 94(1)"specified contributor"(d)(ii) — Exclusion from definition of specified contributor; 94(4)(a) [proposed] — Deeming non-resident trust to be resident in Canada does not apply.

"indirect contributor", to a particular trust at any time, means an entity that is at that time a contributor to the particular trust, if

(a) the entity would not at that time be a contributor to the particular trust if this section were read without reference to paragraph (2)(n);

(b) paragraph (2)(n) applies to the entity because another trust made a contribution to the particular trust; and

(c) the other trust is at that time

(i) an exempt taxpayer (determined without reference to subparagraph (b)(ii) of the definition "exempt taxpayer" in this subsection),

(ii) a qualifying investor in respect of the particular trust, and

(iii) a specified contributor to the particular trust.

Technical Notes: The definition "indirect contributor" in subsection 94(1) applies in determining whether certain foreign pooled fund investment trusts trust may qualify as exempt foreign trusts under paragraph (h) of the definition "exempt foreign trust" in subsection 94(1). Clause (h)(ii)(B) of the "exempt foreign trust" definition imposes upon a trust that seeks to so qualify the requirement that all of its resident contributors be specified contributors (as defined in subsection 94(1)); however, this requirement does not apply to indirect contributors to the trust.

An indirect contributor to a particular trust, at any time, means a particular entity that is at that time a contributor to the particular trust solely because of the application of paragraph 94(2)(n) in respect of a contribution made to the particular trust by another trust to which the particular entity is a contributor. If the particular entity is a contributor to the particular trust for any other reason — for example, because of a contribution made by the particular entity directly to the particular trust — the particular entity will not qualify as an indirect contributor.

In addition, in order for the particular entity to be an indirect contributor to the particular trust, the other trust (i.e., the trust to which the particular entity is a contributor and from which a contribution has been made to the particular trust resulting in the application of paragraph 94(2)(n) in respect of the particular entity) must be

- a qualifying investor in respect of the particular trust,
- a specified contributor to the particular trust, and

- an exempt taxpayer (determined as though a trust could qualify as an exempt taxpayer under paragraph (b) of the definition "exempt taxpayer" without regard to whether its beneficiaries were exempt, because of subsection 149(1), from tax on their taxable incomes).

"non-resident time", of an entity in respect of a contribution to a trust and a particular time, means a time (referred to in this definition as the "contribution time") at which the entity made a contribution to a trust that is before the particular time and at which the entity was non-resident, where the entity was non-resident or not in existence throughout the period that began 60 months before the contribution time (or, if the entity is an individual and the trust arose on and as a consequence of the death of the individual, 18 months before the contribution time) and ends at the earliest of

(a) the time that is 60 months after the contribution time,

(b) if the entity is an individual, the date of death of the individual, and

(c) the particular time.

Technical Notes: The definition "non-resident time" is relevant in determining whether a contributor to a trust is a "connected contributor" and whether the "look-through" rule in paragraph 94(2)(l) applies in determining whether an entity has made a contribution (i.e., is a contributor).

The "non-resident time" of an entity in respect of a contribution to a trust and a particular time means a time (referred to in this commentary as the "contribution time") at which the entity made a contribution to a trust, that is before the particular time and at which the entity was non-resident. However, such a time will qualify as a non-resident time only if the entity was non-resident (or not in existence) throughout a specified period.

As indicated in the coming-into-force provision for new section 94, where the contribution time occurs before June 23, 2000, the specified period is the period that begins 18 months before the end of the trust's taxation year that includes the contribution time and ends at the earliest of

- 60 months after the contribution time;
- where the entity is an individual, the date of the individual's death; and
- the particular time.

Where the contribution time occurs after June 22, 2000 and the trust arose on and as a consequence of the death of an individual, the specified period is the period that begins 18 months before the contribution time and ends at the earliest of

- 60 months after the contribution time;
- where the entity is an individual, the date of the individual's death; and
- the particular time.

Where the contribution time occurs after June 22, 2000 and the trust did not arise on and as a consequence of the death of an individual, the specified period is the period that begins 60 months before the contribution time and ends at the earliest of

- 60 months after the contribution time;
- where the entity is an individual, the date of the individual's death; and
- the particular time.

The measurement of the specified period by reference to any particular time is to ensure that the contributing entity and the trust may treat the contribution time as a non-resident time for the purposes of applying subsection 94(3) at a specified time (as defined in subsection 94(1)) in respect of the trust for a taxation year of the trust (generally, the end of that taxation year) if at the end of that particular year the contributor still has not become resident in Canada within the 60-month period after the contribution time.

However, new subsection 94(10) ensures that such a contributor will, for the purposes of the definition "connected contributor", be considered to have made the contribution at a time other than a non-resident time if the contributor becomes resident in Canada within the 60-month period after the contribution time. As a result, at each such specified time in respect of the trust for taxation year of the trust (generally, the end of that taxation year) following the contribution, there would be a connected contributor to the trust and, if there were a resident beneficiary under the trust, subsection 94(3) would also apply in respect of those years.

Amended subparagraph 152(4)(b)(vi) ensures that a reassessment of a taxpayer arising out of the application of subsection 94(10) may be undertaken by the Canada Customs and Revenue Agency within 3 years after the end of the taxpayer's normal reassessment period for the taxpayer's relevant taxation year.

For more information on new subsection 94(10) and amended subparagraph 152(4)(b)(vi), see the commentary on those provisions.

Related Provisions: 94(2)(j) — Where trust acquires property as a consequence of death of individual; 94(10) — Where contributor becomes resident in Canada within 60 months; 248(8) — Occurrences as a consequence of death.

"promoter", of a trust at any time, means an entity that on or before that time establishes, organizes or substantially reorganizes the undertakings of the trust.

Technical Notes: The definition "promoter" is relevant in applying new paragraph 94(2)(s), which provides that a transfer to a trust will not be considered a contribution where certain conditions, described in that paragraph, are met. For this purpose a promoter means an entity that establishes, organizes or substantially reorganizes the undertakings of the trust. For more information on paragraph 94(2)(s), see the commentary on that paragraph.

Related Provisions: 94(2)(s) — Where promoter required by securities law to acquire interest in commercial investment trust.

"qualifying investor", in respect of a trust at a particular time, means an entity

(a) that is at the particular time a beneficiary (in this definition, determined without reference to subsection 248(25)) under the trust; and

(b) whose only interests as a beneficiary under the trust are, at all times that the interests exist during the trust's taxation year that includes the particular time, specified fixed interests of the entity in the trust.

Technical Notes: The definition "qualifying investor" is relevant in applying paragraphs (g) and (h) of the definition "exempt foreign trust" in subsection 94(1), the definition "significant interest" in subsection 94.1(1), and the definitions "exempt taxpayer" in subsections 94(1) and 94.1(1).

A qualifying investor in respect of a trust at a particular time means an entity that is at the particular time a beneficiary (in this definition, determined without reference to subsection 248(25)) under the trust whose only interest as a beneficiary under the trust is, at all times that the interest exists during the trust's taxation year that includes the particular time, a specified fixed interest (as defined in subsection 94(1)) of the entity in the trust.

For more information on the definition "specified fixed interest" in subsection 94(1), see the commentary on that paragraph.

"resident beneficiary", at any time under a particular trust, means an entity (other than an entity that is at that time a specified charity, or a successor beneficiary, in respect of the particular trust) that is, at that time, a beneficiary under the particular trust where, at that time

(a) the entity is resident in Canada; and

(b) there is a connected contributor to the particular trust.

Technical Notes: Under new subsection 94(3), a particular trust is generally treated as resident in Canada for a particular taxation year of the trust if there is a "resident beneficiary" under the particular trust at a "specified time" (generally, the end of the particular year). Under new paragraph 94(3)(d), each resident beneficiary can be jointly and severally or solidarily liable with the particular trust for the particular trust's income tax liabilities under the Act for the particular year. (For further information with respect to the expression "solidarily", please refer to

the introductory commentary on new section 94.) See also the commentary on subsection 94(3).

A resident beneficiary at a particular time under a trust is an entity (other than an entity that is at that time a "specified charity" or a "successor beneficiary" in respect of the trust) that, at that time, is a beneficiary under the trust, if, at that time,

- the entity is resident in Canada; and
- there is a "connected contributor" to the trust.

The expressions "connected contributor", "specified charity", "specified time" and "successor beneficiary" are defined in new subsection 94(1). For further information, see the commentary on those definitions.

Related Provisions: 94(1)"beneficiary" — Extended meaning of "beneficiary"; 94(3)(a) — Trust with resident beneficiary deemed resident in Canada for certain purposes; 94(3)(d)(i) — Liability of resident beneficiary for trust's tax.

"resident contributor", to a particular trust at any time, means an entity that is, at that time, resident in Canada and a contributor to the particular trust, but does not include

(a) an individual (other than a trust) who has not, at that time, been resident in Canada for a period of, or periods the total of which is, more than 60 months (other than an individual who, before that time, was never non-resident); or

(b) an individual (other than a trust), if

(i) the particular trust is an *inter vivos* trust that was created before 1960 by a person who was non-resident when the trust was created, and

(ii) the individual has not, after 1959, made a contribution to the particular trust.

Technical Notes: Under new subsection 94(3), a trust is generally treated as resident in Canada for a particular taxation year of the trust if there is a "resident contributor" to the trust at a "specified time" in respect of the trust for the particular taxation year (generally, the end of the particular year). Under new paragraph 94(3)(d), a "resident contributor" can be jointly and severally or solidarily liable with the trust for the trust's income tax liabilities under the Act for the particular year. (For further information with respect to the expression "solidarily", please refer to the introductory commentary above on new section 94.)

A "resident contributor" at any time means an entity that is, at that time, resident in Canada and a "contributor" (as defined in new subsection 94(1)) to the trust. However, an exemption from treatment as a resident contributor is provided for a contributor who is:

- an individual who was resident in Canada for a period of, or periods the total of which is, not more than 60 months (but not including a trust or an individual who before that time was never non-resident); and
- an individual, if the trust is an *inter vivos* trust that was created before 1960 by a person who was non-resident when the trust was created and the individual made no contribution after 1959 to the trust.

In the context of this definition, reference should also be made to new paragraphs 94(2)(a) to (m) (which extend the circumstances in which a transfer is considered to occur for the purposes of section 94), new paragraphs 94(2)(n) to (q) and subsections 94(11) to (13) (which generally extend the circumstances in which a contribution is considered to be made for the purposes of section 94) and paragraphs 94(2)(r) to (u) (which generally narrow the circumstances in which a contribution is considered to be made for the purposes of section 94).

Letter from Dept. of Finance, September 22, 2000:

Dear [xxx]

I am responding to your faxed memo to me dated August 25, 2000 concerning the Legislative Proposals and Explanatory Notes on Taxation of Non-Resident Trusts and Foreign Investment Entities (the "Legislative Proposals") released by the Department of Finance by way of Finance Canada News Release number 2000-050, dated June 22, 2000.

In your memo, you referred to the grandfathering provision in existing clause 94(l)(b)(i)(D) of the *Income Tax Act* in relation to *inter vivos* trusts created at any time before 1960 by a person who at that time was a non-resident person. In this connection, you have suggested that a grandfathering rule be introduced in the Legislative Proposals. In particular, you have suggested that the definition "resident contributor" in new proposed subsection 94(1) of the Act be revised to exclude from that definition an individual, in the case of a particular trust, where

(i) the particular trust is an *inter vivos* trust that was created at any time before 1960 by a person who at that time was a non-resident person, and

(ii) no contribution is made to the particular trust by the individual at any time after 1959.

We are prepared to recommend to the Minister your suggested revision to that definition.

We confirm that the effect of this revision would be to save a non-resident trust from the application of the rule in proposed paragraph 94(3)(a) (which deems the trust to be resident in Canada for tax purposes) in any particular trust taxation year only if all the following conditions are met:

1. the trust is an *inter vivos* trust that was created at any time before 1960 by a person who at that time was a non-resident person,

2. no contribution is made to the trust at any time after 1959 by any individual who, at the end of the particular year, is both resident in Canada and a contributor to the trust (except an individual (other than a trust) who has not, at the end of the particular year, been resident in Canada for a period of, or periods the total of which is, more than 60 months), and

3. there are no resident beneficiaries (as defined in the Legislative Proposals) under the trust at the end of the particular year.

Thank you for writing.

Yours sincerely,

Len Farber
General Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 94(1)"connected contributor"(a) — 60-month limit; 94(3)(a) [proposed] — Trust with resident beneficiary deemed resident in Canada for certain purposes; 94(3)(d)(i) [proposed] — Liability of resident contributor for trust's tax; 94(5) [proposed] — Trust ceases to be resident in Canada once there is no resident contributor.

"restricted property" means

(a) a particular share (or a particular right to acquire a share) of the capital stock of a particular closely-held corporation if the particular share (or the particular right), or a property for which the particular share (or the particular right) was substituted, was at any time acquired as part of a transaction or series of transactions or events under which a specified share of the capital stock of a closely-held corporation was acquired by any entity in exchange for, as consideration for, or upon conversion of, any property;

(b) an indebtedness (or a right to acquire an indebtedness) owing by another entity if

(i) the other entity is a closely-held corporation,

(ii) the indebtedness (or the right), or a property for which the indebtedness (or the right) was substituted, was at any time acquired as part of a transaction or series of transactions or events under which a specified share of the capital stock of a closely-held corporation was acquired by any entity in exchange for, as consideration for, or upon conversion of, any property, and

(iii) the amount of any payment under a right (whether immediate or future, whether absolute or contingent or whether conditional on or subject to the exercise of any discretion by any entity) to receive, in any manner whatever and from any entity, amounts in respect of the indebtedness, or the value of such a right, is, directly or indirectly, determined primarily by one or more of the following criteria in respect of one or more properties of the other entity (or an entity with

which the other entity does not deal at arm's length):

(A) the fair market value of the property, production from the property or use of the property,

(B) gains or profits from the disposition of the property,

(C) income from the property, profits from the property, revenue from the property or cash flow from the property, or

(D) any other criterion similar to a criterion referred to in any of clauses (A) to (C); and

(c) any property (other than excluded property) the fair market value of which is derived in whole or in part, directly or indirectly, from a particular share, an indebtedness or a right described in paragraph (a) or (b).

Technical Notes: The expression "restricted property" is relevant in applying a number of provisions in respect of non-resident trusts, including the definitions in subsection 94(1) of "arm's length transfer" and "exempt foreign trust". The definition "restricted property" is intended to serve as an anti-avoidance provision.

More specifically, restricted property means

- under paragraph (a) of the definition, a particular share (or a right to acquire a share) of the capital stock of a particular closely-held corporation if the particular share (or right), or a property for which the particular share (or right) was substituted, was at any time acquired as part of a transaction or series of transactions under which a specified share of the capital stock of a closely-held corporation was acquired by any entity in exchange for, as consideration for, or upon conversion of any property;

- under paragraph (b) of the definition, an indebtedness (or a right to acquire indebtedness) owing by another entity if

  — the other entity is a closely-held corporation,

  — the indebtedness (or right), or a property for which the indebtedness (or right) was substituted, was at any time acquired as part of a transaction or series of transactions under which a specified share of the capital stock of a closely-held corporation was acquired by any entity in exchange for, as consideration for, or upon conversion of any property, and

  — the amount of any payment under a right (for taxation years that begin after July 18, 2005, whether immediate or future, whether absolute or contingent or whether conditional on or subject to the exercise of any discretion by any entity or individual) to receive, in any manner whatever and from any entity, amounts in respect of the indebtedness), or the value of such a right, is, directly or indirectly, determined primarily by reference to any one or more of the criteria, in respect of one or more properties of the other entity (or an entity with which the other entity does not deal at arm's length), identified in any of clauses (b)(iii)(A) to (D) of the definition; and

- under paragraph (c) of the definition, any property (other than an "excluded property", as defined in subsection 94(1)) the fair market value of which is derived in whole or in part, directly or indirectly, from a particular share, indebtedness or right described in paragraph (a) or (b) of the definition.

New subsection 94(14) may apply in some circumstances to suspend a property's characterization as restricted property. For more details, see the commentary on that provision. For more detail on the definition "excluded property" in subsection 94(1), see the commentary on that provision.

Related Provisions: 87(2)(j.95) — Amalgamation — continuing corporation; 94(14) — Restricted property — exception.

"specified charity", in respect of a trust at any particular time, is any person (referred to in this definition as the "charity") that at the particular time is a person described in any of paragraphs (a) to (e) and (g.1) of the definition "total charitable gifts" in subsection 118.1(1) other than

(a) a charity that does not, at the particular time, deal at arm's length with a specified entity in respect of the trust, and

(b) a charity that did not, at any specified prior time, deal at arm's length with a specified entity in respect of the trust,

where

(c) "specified prior time" in respect of a charity means any time, before the particular time, at which

(i) an amount was payable to the charity as a beneficiary under the trust,

(ii) an amount was received by the charity on the disposition of all or part of its interest as a beneficiary under the trust, or

(iii) a benefit was received or enjoyed by the charity from or under the trust, and

(d) "specified entity" in respect of a trust at any time means

(i) an entity that is at that time

(A) a beneficiary under the trust,

(B) a contributor to the trust,

(C) a person related to a contributor to the trust,

(D) a trustee of the trust,

(E) an entity that could reasonably be considered to have influence over the operation of the trust or the enforcement of its terms, or

(F) an entity that could reasonably be considered to have influence over the selection or appointment of an entity referred to in clause (A), (D) or (E), or

(ii) any group of entities at least one of which is described in subparagraph (i).

Technical Notes: The expression "specified charity" is used in the definitions "arm's length transfer" and "resident beneficiary" in new subsection 94(1). An arm's length transfer includes a refund, from a specified charity in respect of a trust to the trust, of a gift previously made by the trust to the charity. A resident beneficiary under a trust does not include a specified charity. For more information, see the commentary on those definitions.

A specified charity in respect of a trust at any particular time means a person (in this commentary referred to as a "charity") that at that time is described in any of paragraphs (a) to (e) and (g.1) of the definition "total charitable gifts" in subsection 118.1(1). However, a specified charity does not include:

- a charity that does not, at a particular time, deal at arm's length with a "specified entity" in respect of the trust; or

- a charity that did not, at any "specified prior time" in respect of the charity, deal at arm's length with a specified entity in respect of the trust.

For this purpose, a "specified prior time" in respect of a charity is defined in paragraph (c) of the definition "specified charity" as meaning any time, before the particular time, at which

- an amount was payable to the charity as a beneficiary under the trust,

- an amount was received by the charity on the disposition of the charity's interest in the trust, or

- a benefit was received or enjoyed by the charity from or under the trust.

Paragraph (d) of the definition "specified charity" defines a "specified entity" in respect of a trust at any time to mean

- an entity that is at that time beneficially interested in the trust, a contributor to the trust, a person related to a contributor to the trust,

a trustee of the trust, an entity that could reasonably be considered to have influence over the operation of the trust or the enforcement of its terms, or an entity that could reasonably be considered to have influence over the selection or appointment of an entity referred to above, or

- any group at least one of the members of which is described immediately above.

Related Provisions: 94(1)"resident beneficiary" — Specified charity is not a resident beneficiary; 104(24) — Whether amount payable to beneficiary.

"specified contributor", to a trust at a particular time in a taxation year of a particular entity, means the particular entity, if

(a) the particular entity is, at the particular time, both a contributor to the trust and a beneficiary (in this definition, other than in clause (d)(ii)(B), determined without reference to subsection 248(25)) under the trust;

(b) at all times, after February 16, 1999 and on or before the particular time, when it is a beneficiary under the trust, the particular entity's interest as a beneficiary under the trust is or would, if the definition "specified fixed interest" applied at those times, have been a specified fixed interest of the particular entity in the trust;

(c) it is reasonable to conclude that, at no time that is after February 16, 1999 and on or before the particular time, has

(i) the particular entity made a contribution of restricted property to the trust, or

(ii) another entity made a contribution of restricted property to the trust when that other entity was not dealing at arm's length with the particular entity; and

(d) where the particular entity is, at any time that is after February 16, 1999 and on or before the particular time, a beneficiary under the trust

(i) either

(A) a prescribed form has been filed with the Minister by or on behalf of the particular entity on or before the particular entity's filing-due date for that taxation year (or a later date that is acceptable to the Minister), or

(B) a prescribed form and a copy of the terms of the trust that apply at the particular time have been filed with the Minister by or on behalf of the trust on or before its filing due date for its taxation year that includes the particular time (or a later date that is acceptable to the Minister), and

(ii) unless the particular entity is an exempt taxpayer for the taxation year, with respect to each particular contribution made after February 16, 1999 and on before the particular time by the particular entity to the trust, it is reasonable to conclude that

(A) no consideration was received (other than property received by the particular entity that is the particular entity's interest as a beneficiary under the trust),

(B) none of the reasons (determined by reference to all the circumstances including the terms of the trust, an intention, the laws of a country or the existence of an agreement, a memorandum, a letter of wishes or any other arrangement) for the contribution is the acquisition at any time by any entity (other than the particular entity) of an interest as a beneficiary under the trust, and

(C) the fair market value of the particular contribution is equal to the fair market value, at the time of the particular contribution, of the particular entity's interest as a beneficiary under the trust acquired as a result of the particular contribution.

Technical Notes: The expression "specified contributor" is used in paragraph 94(2)(r) and paragraph (h) of the definition "exempt foreign trust" in new subsection 94(1).

Paragraph (h) of the definition "exempt foreign trust" is intended to ensure that investors in commercial investment trusts are subject to the regime for foreign investment entities in new sections 94.1 to 94.4. Where a particular investor in such a commercial investment trust sells or has redeemed a beneficial interest in the trust, paragraph 94(2)(r) may apply to ensure that the acquisition of that interest by the particular investor will, after the sale or redemption, not be treated as a contribution to the trust.

For taxation years in respect of which new section 94 applies to a trust, the definition is relevant in applying both paragraph 94(2)(r) and the definition "exempt foreign trust". For earlier taxation years, the definition "specified contributor" will generally only be relevant in determining whether an investor in the trust has ceased to be a contributor to the trust because of paragraph 94(2)(r).

An entity can only qualify as a specified contributor to a trust at any time if, at that time, it is both a beneficiary (generally determined without reference to subsection 248(25)) under, and a contributor to, the trust.

If this condition is met and that time is both before February 17, 1999 and immediately before a sale or redemption of the entity's interest as a beneficiary under the trust, then the entity will be a specified contributor in respect of that interest for the purpose of applying paragraph 94(2)(r) to that sale or redemption. If paragraph 94(2)(r) applies, then in applying section 94 to the entity after the sale or redemption, the entity is treated as not having made any contribution to the trust in respect of its acquisition of that interest.

For a particular entity that is a beneficiary under a trust at a particular time that is after February 16, 1999, the particular entity will be a specified contributor to the trust at the particular time only if

- it is, at the particular time, a contributor to the trust;
- at all times that it is a beneficiary under the trust, its interest as a beneficiary is a "specified fixed interest" (as defined in subsection 94(1)) in the trust;
- the trust is identified, in a timely fashion, by or on behalf of the particular entity, in prescribed form or a copy of the terms of the trust that apply at the particular time has, together with a prescribed form, been filed, in a timely fashion, with the Minister by or on behalf of the trust; and
- where the particular entity is not an "exempt taxpayer" (as defined in subsection 94(1)), it is reasonable to conclude, in respect of any contribution made by it to the trust after February 16, 1999 and on before the particular time, that
  - no consideration was received (other than property received by the particular entity that is the particular entity's interest as a beneficiary under the trust),
  - none of the reasons (determined by reference to all the circumstances including the terms of the trust, an intention, the laws of a country or the existence of an agreement, a memorandum, a letter of wishes or any other arrangement) for the contribution is the acquisition at any time by any entity (other than the particular entity) of an interest as a beneficiary (here as defined generally in subsection 94(1)) under the trust, and
  - the fair market value of the particular contribution is equal to the fair market value, at the time of the particular contribution, of the particular entity's interest as a beneficiary under the trust acquired as a result of the particular contribution.

Where the particular entity qualifies at any time as a specified contributor, the sale or redemption, immediately after that time, of its interest as

a beneficiary under the trust may result, as described above, in the application of paragraph 94(2)(r). In addition, if the particular entity is a resident contributor to a non-resident commercial investment trust, that was seeking to meet, at that time, the requirements of paragraph (b) of the definition "exempt foreign trust", the particular entity's contributions to the trust would not alone cause the trust to fail to meet those requirements (ignoring subsection 94(16)).

Note, however, that an entity will not qualify as a specified contributor to a trust if at any time after February 16, 1999, the entity (or another entity with which it does not deal at arm's length) contributes restricted property to the trust. As a result, even if the contribution of restricted property were in consideration for the acquisition of an interest as a beneficiary under the trust, paragraph 94(2)(r) would not apply, to expunge the contribution, upon the sale or redemption of the interest in the trust. Moreover, the entity's status as a resident contributor to the trust may jeopardize the trust's ability to qualify as an exempt foreign trust.

"specified controlled foreign affiliate", of a particular entity at any time, means an entity that would, at that time, be a controlled foreign affiliate of the particular entity if the particular entity were resident in Canada at that time.

Technical Notes: A "specified controlled foreign affiliate" of a particular entity at any time means an entity that would, at that time, be a controlled foreign affiliate of the particular entity if the particular entity were resident in Canada at that time. The definition is used for the purpose of the definition "specified party".

"specified fixed interest", at any time of an entity in a trust, means an interest of the entity as a beneficiary under the trust if

(a) the interest includes, at that time, rights of the entity as a beneficiary under the trust to receive, at or after that time and directly from the trust, income and capital of the trust;

(b) the interest was issued by the trust, at or before that time, to an entity, in circumstances that are described by subparagraph (2)(g)(ii);

(c) the only manner in which any part of the interest may cease to be the entity's is by way of a transfer (determined as if subsection (2) were read only with reference to clauses (2)(m)(ii)(B) and (D)) of that part by the entity, which transfer is a disposition (determined without reference to paragraph (i) of the definition "disposition" in subsection 248(1) and paragraph 248(8)(c)) by the entity of that part; and

(d) no amount of income or capital of the trust that any entity may receive directly from the trust at any time as a beneficiary under the trust depends on the exercise by any entity of, or the failure by any entity to exercise, a discretionary power.

Technical Notes: The expression "specified fixed interest" is relevant in applying paragraphs 94(2)(q) and (r), the definition "specified contributor" in subsection 94(1), the definition "significant interest" in subsection 94.1(1), and the definition "qualifying investor" in subsection 94(1), which in turn is relevant in applying paragraph (b) of the definitions "exempt taxpayer" in subsections 94(1) and 94.1(1), and paragraph (b) of the definition "exempt foreign trust" in subsection 94(1). These provisions are intended to apply only to commercial investment trusts.

A specified fixed interest at any time of an entity in a trust means an interest of the entity as a beneficiary under the trust, if

- the interest was issued by the trust,
- the interest includes, at that that time, rights of the entity as a beneficiary under the trust to receive, at or after that time and directly from the trust, income and capital of the trust,
- no amount of income or capital of the trust that any entity may receive directly from the trust at any time as a beneficiary under the trust depends on the exercise by any entity of, or the failure by any entity to exercise, a discretionary power — in very general terms, no entity may hold a power to appoint beneficiaries under the trust, and
- the only manner in which any part of the interest may cease to be the entity's is by way of a disposition (determined without regard to paragraphs (i) of the definition "disposition" in subsection 248(1) and 248(8)(c)) of the interest resulting from a transfer (generally determined without reference to the extended transfer rules in section 94), including (under paragraph 94(2)(m)) a deemed transfer upon the redemption of the interest.

For taxation years that begin on or before July 18, 2005, a trust may elect to have an alternative definition "specified fixed interest" apply in respect of the trust. Where that election is made, a specified fixed interest at any time of an entity in a trust means a capital interest (as defined in subsection 108(1)) of the entity in the trust, if

- the interest was issued by the trust;
- the interest includes, at that time, a right of the entity as a beneficiary under the trust to receive, at or after that time and directly from the trust, income or capital of the trust;
- no right of the entity as a beneficiary under the trust to income or capital of the trust may cease, other than because of a specified transaction or event, to be a right of the entity; and
- the trust has never been a personal trust.

Related Provisions: 94(2)(q), (r) [proposed] — Effect of acquiring specified fixed interest.

"specified party", in respect of a particular entity at any time, means an entity that is at that time

(a) an individual who is a spouse or common-law partner of the particular entity;

(b) a specified controlled foreign affiliate of

(i) the particular entity, or

(ii) if the particular entity is an individual, a spouse or common-law partner of the individual;

(c) an entity for which it is reasonable to conclude that the benefit referred to in subparagraph (8)(a)(iii) was conferred

(i) in contemplation of the entity becoming after that time a specified controlled foreign affiliate of an entity referred to in subparagraph (b)(i) or (ii), or

(ii) to avoid or minimize a liability under this Part that arose, or that would otherwise have arisen, because of the application of subsection (3) with respect to the particular entity; or

(d) a corporation in which the particular entity is a shareholder, if

(i) the corporation is on or before that time beneficially interested in a trust, and

(ii) the particular entity is a beneficiary under the trust solely because of the application of paragraph (b) of the definition "beneficiary" in this subsection to the particular entity in respect of the corporation.

Technical Notes: New subsection 94(8) provides a rule for calculating an entity's recovery limit for the purpose of determining under subsection 94(7) the extent of an entity's limitation on liability arising under a provision referred to in new paragraph 94(3)(d). A "specified party" in respect of a particular entity at any time means an entity that is at that time:

- under paragraph (a) of the definition, an individual who is a spouse or common-law partner of the particular entity;
- under paragraph (b) of the definition, a "specified controlled foreign affiliate" (as described in the commentary immediately above) of the particular entity, or of a spouse or common-law partner of the particular entity;
- under paragraph (c) of the definition, an entity for which it is reasonable to conclude that the benefit referred to in subparagraph

94(8)(a)(iii) (i.e., a benefit received or enjoyed under a trust) was conferred either

— in contemplation of the entity becoming after that time a "specified controlled foreign affiliate" of an entity referred to in subparagraph (b)(i) or (ii) of the definition, or

— to avoid or minimize a liability under this Part that arose, or that would otherwise have arisen, because of the application of subsection (3) with respect to the particular entity; or

- under paragraph (d) of the definition, a corporation in which the particular entity is a shareholder, if the corporation is or was beneficially interested in a trust, and the particular entity is a beneficiary under the trust solely because of the application of paragraph (b) of the definition "beneficiary" in subsection 94(1) to the particular entity in respect of the corporation.

Related Provisions: 87(2)(j.95) — Amalgamation — continuing corporation.

"specified property" means

(a) a share of the capital stock of a corporation;

(b) an interest as a beneficiary under a trust;

(c) an interest in a partnership;

(d) an interest in any other entity;

(e) a right to acquire property described in any of paragraphs (a) to (d); and

(f) any other property deriving its value primarily from property described in any of paragraphs (a) to (e).

Technical Notes: New subsection 94(9) can affect the calculation of the amount of a "contribution" (as defined in new section 94) to a trust of "specified property". For this purpose, "specified property" means:

- a share of the capital stock of a corporation, an interest as a beneficiary under a trust, an interest in a partnership, or an interest in any other entity;
- a right to acquire any of the above; or
- any other property deriving its value primarily from property described above.

"specified share" means a share of the capital stock of a corporation other than a share that is prescribed for the purpose of paragraph 110(1)(d).

Technical Notes: A specified share means a share of the capital stock of a corporation other than a share that is prescribed for the purpose of paragraph 110(1)(d). This expression is relevant to the definition "restricted property" in subsection 94(1). For more information, see the commentary on the definition "restricted property".

"specified time", in respect of a trust for a taxation year of the trust, means

(a) if the trust exists at the end of the taxation year, the time that is the end of that taxation year; and

(b) in any other case, the time in that taxation year that is immediately before the time at which the trust ceases to exist.

Technical Notes: A specified time, in respect of a trust for a taxation year of the trust, means

- if the trust exists at the end of the taxation year, the time that is the end of that taxation year; and
- if the trust ceases to exist after October 30, 2003, the time, in that taxation year that is immediately before the time at which the trust ceases to exist.

This expression is relevant in determining whether paragraph 94(3)(a) applies to deem the trust to be resident in Canada, for the taxation year, for a number of purposes. It also applies in respect of subsections 94(7) and (10). For more detail, see the commentary on those provisions.

"successor beneficiary", at any time in respect of a trust, means an entity that is a beneficiary under the trust solely because of a right of the beneficiary to receive any of the trust's income or capital, if under that right the entity may so receive that income or capital only on or after the death after that time of an individual who, at that time, is alive and

(a) is a contributor to the trust;

(b) is related to a contributor to the trust; or

(c) would have been related to a contributor to the trust if every individual who was alive before that time were alive at that time.

Technical Notes: The expression "successor beneficiary" is used in the definition "resident beneficiary" in new subsection 94(1). A resident beneficiary under a trust does not include a successor beneficiary. The interest of a successor beneficiary in a trust that is a foreign investment entity may, in certain circumstances, also be exempt from the application of those rules to the interest — for more detail, see the commentary on the definition "specified interest" in subsection 94.1(1).

A successor beneficiary in respect of a trust at a particular time means an entity that is a beneficiary under the trust solely because of a right of the beneficiary to receive any of the trust's income or capital, if under that right the entity may so receive that income or capital only on or after the death after that time of a specified individual. For this purpose a specified individual is an individual who is, at that time, alive and a contributor to the trust, an individual related to a contributor to the trust, or an individual who would have been related to a contributor to the trust if every individual who was alive before that time were alive at that time.

"trust" includes, for greater certainty, an estate that arose on and as a consequence of the death of an individual.

Technical Notes: A definition "trust" is provided for the purpose of applying section 94. The definition clarifies that a reference to a trust in that section includes an estate.

Related Provisions: 108(1) — Definition of "testamentary trust".

(2) Rules of application — In this section,

(a) an entity is deemed to have transferred, at any time, a property to a trust if

(i) at that time it transfers or loans property (other than by way of an arm's length transfer or a transfer or loan to which paragraph (c) applies) to another entity, and

(ii) because of that transfer or loan

(A) the fair market value of one or more properties held by the trust increases at that time, or

(B) a liability or potential liability of the trust decreases at that time;

(b) the fair market value at any time of a property deemed by paragraph (a) to be transferred at that time is deemed to be the amount of the absolute value of the increase or decrease, as the case may be, referred to in subparagraph (a)(ii) in respect of the property;

(c) an entity is deemed to have transferred, at any time, a property to a trust if

(i) at that time it transfers or loans property (other than by way of an arm's length transfer) to another entity, and

(ii) at or after that time, the trust holds property the fair market value of which is derived in whole or in part, directly or indirectly, from property held by the other entity;

(d) the fair market value at any time of a property deemed by paragraph (c) to be transferred at that time is deemed to be the fair market value of the property referred to in subparagraph (c)(i);

(e) if, at any time, a particular entity has given a guarantee on behalf of, or has provided any other financial assistance to, another entity,

(i) the particular entity is deemed to have transferred, at that time, property to that other entity, and

(ii) the property, if any, transferred to the particular entity from the other entity in exchange for the guarantee or other financial assistance is deemed to have been transferred to the particular entity in exchange for the property deemed by subparagraph (i) to have been transferred;

(f) if, at any time after June 22, 2000, a particular entity renders any service (other than an exempt service) to, for or on behalf of, another entity,

(i) the particular entity is deemed to have transferred, at that time, property to that other entity, and

(ii) the property, if any, transferred to the particular entity from the other entity in exchange for the service is deemed to have been transferred to the particular entity in exchange for the property deemed by subparagraph (i) to have been transferred;

(g) each of the following acquisitions of property by a particular entity is deemed to be a transfer of the property, at the time of the acquisition of the property, to the particular entity from the entity from which the property was acquired, namely the acquisition by the particular entity of

(i) a share of the capital stock of a corporation from the corporation,

(ii) an interest as a beneficiary under a trust (otherwise than from a beneficiary under the trust),

(iii) an interest in a partnership (otherwise than from a member of the partnership),

(iv) an interest in an entity that is not a corporation, partnership or trust (otherwise than from an entity having an interest in the entity),

(v) a debt owing by an entity from the entity, and

(vi) a right (granted after June 22, 2000 by the entity from which the right was acquired) to acquire or to be loaned property;

(h) the fair market value at any time of a property deemed by subparagraph (e)(i) or (f)(i) to have been transferred at that time is deemed to be the fair market value, at that time, of the assistance or service, as the case may be, to which the property relates;

(i) a particular entity that at any time becomes obligated to do an act that would, if done, constitute the transfer or loan of a property to another entity is deemed to have become obligated at that time to transfer or loan, as the case may be, property to that other entity;

(j) in applying at any time the definition "non-resident time", if a trust acquires property of an individual as a consequence of the death of the individual, the individual is deemed to have transferred the property to the trust immediately before the individual's death;

(k) a transfer or loan of property at any time is deemed to be made at that time jointly by a particular entity and a second entity (referred to in this paragraph as the "specified entity") if

(i) the particular entity transfers or loans property at that time to another entity,

(ii) the transfer or loan is made at the direction, or with the acquiescence, of the specified entity, and

(iii) it is reasonable to conclude that one of the reasons the transfer or loan is made is to avoid or minimize the liability, of any entity, under this Part that arose, or that would otherwise have arisen, because of the application of subsection (3);

(l) a transfer or loan of property at any time is deemed to be made at that time jointly by a particular entity and a second entity (referred to in this paragraph as the "specified entity") if

(i) the particular entity transfers or loans property at that time to another entity,

(ii) the transfer or loan is made at the direction, or with the acquiescence, of the specified entity,

(iii) that time is not, or would not be, if the transfer or loan were a contribution of the specified entity, a non-resident time of the specified entity, and

(iv) either

(A) the particular entity is, at that time, an entity that is a controlled foreign affiliate of the specified entity, or would at that time be a controlled foreign affiliate of the specified entity if the specified entity were at that time resident in Canada, or

(B) it is reasonable to conclude that the transfer or loan was made in contemplation of the particular entity becoming after that time a particular entity described in clause (A);

(m) a particular entity is deemed to have transferred, at a particular time, a particular property or particular part of it, as the case may be, to a second entity if

(i) the particular property is a share of the capital stock of a corporation held at the particular time by the particular entity, and as consideration for the disposition at or before the particular time of the share, the particular entity received at the particular time (or became entitled at the particular time to receive) from the corporation a share of the capital stock of the corporation, or

(ii) the particular property (or property for which the particular property is substituted property) was acquired, before the particular time, from the second entity by any entity, in circumstances that are described by any of subparagraphs (g)(i) to (vi) (or would be so described if it applied at the time of that acquisition) and at the particular time,

(A) the terms or conditions of the particular property change,

(B) the second entity redeems, acquires or cancels the particular property or the particular part of it,

(C) where the particular property is a debt owing by the second entity, the debt or the particular part of it is settled or cancelled, or

(D) where the particular property is a right to acquire or to be loaned property, the particular entity exercises the right;

(n) a contribution made at any time by a particular trust to another trust is deemed to have been made at that time jointly by the particular trust and by each entity that is at that time a contributor to the particular trust;

(o) a contribution made at any time by a particular partnership to a trust is deemed to have been made at that time jointly by the particular partnership and by each entity that is at that time a member of the particular partnership (other than a member of the particular partnership where the liability of the member as a member of the particular partnership is limited by operation of any law governing the partnership arrangement);

(p) subject to paragraph (q) and subsection (9), the amount of a contribution to a trust at the time it was made is deemed to be the fair market value, at that time, of the property that was the subject of the contribution;

(q) an entity that at any time acquires a specified fixed interest in a trust (or a right, issued by the trust, to acquire a specified fixed interest in the trust) from another entity (other than the trust that issued the specified fixed interest or the right) is deemed to have made at that time a contribution to the trust and the amount of the contribution is deemed to be equal to the fair market value at that time of the specified fixed interest or right, as the case may be;

(r) a particular entity that has acquired a specified fixed interest in a trust as a consequence of making a contribution to the trust — or that has made a contribution to the trust as a consequence of having acquired a specified fixed interest in the trust or a right described in paragraph (q) — is, for the purpose of applying this section at any time after the time that the particular entity transfers the specified fixed interest or the right, as the case may be, to another entity (which transfer is referred to in this paragraph as the "sale"), deemed not to have made the contribution in respect of the specified fixed interest, or right, that is the subject of the sale where

(i) immediately before the sale, the particular entity would be a specified contributor to the trust if

(A) the definition "specified contributor" were read without reference to subparagraph (d)(i) of that definition,

(B) in applying paragraph (b) of that definition, a specified fixed interest included the right, and

(C) that definition applied immediately before the sale,

(ii) in exchange for the sale, the other entity transfers or loans, or becomes obligated to transfer or loan, property (which property is referred to in subparagraph (iii) as the "consideration") to the particular entity, and

(iii) it is reasonable to conclude

(A) having regard only to the sale and the consideration that the particular entity would have been willing to make the sale if the particular entity dealt at arm's length with the other entity, and

(B) that the terms and conditions made or imposed in respect of the exchange are terms and conditions that would have been acceptable to the particular entity if the particular entity dealt at arm's length with the other entity;

(s) a transfer to a trust by a particular entity is deemed not to be, at a particular time, a contribution to the trust if

(i) the particular entity has transferred, at or before the particular time and in the ordinary course of business of the particular entity, property to the trust,

(ii) the transfer is not an arm's length transfer, but would be an arm's length transfer if the definition "arm's length transfer" were read without reference to paragraph (a), and subparagraphs (b)(i) to (iii) and (v) to (viii), of that definition,

(iii) it is reasonable to conclude that the particular entity was the only entity that acquired, in respect of the transfer, an interest as a beneficiary under the trust,

(iv) the particular entity was required, under the securities law of a country or of a political subdivision of the country in respect of the issuance by the trust of interests as a beneficiary under the trust, to acquire an interest because of the particular entity's status at the time of the transfer as a manager or promoter of the trust,

(v) at the particular time the trust is not an exempt foreign trust, but would be at that time an exempt foreign trust if it had not made an election under paragraph (g) of the definition "eligible trust", and

(vi) the particular time is before the earliest of

(A) the first time at which the trust becomes an exempt foreign trust,

(B) the first time at which the particular entity ceases to be a manager or promoter of the trust, and

(C) the time that is 24 months after the first time at which the total fair market value of consideration received by the trust in exchange for interests as a beneficiary (other than the particular entity's interest referred to in subparagraph (iii)) under the trust is greater than $500,000;

(t) a transfer, by a Canadian corporation of particular property, that is at a particular time a contribution by the Canadian corporation to a trust, is deemed not to be, after the particular time, a contribution by the Canadian corporation to the trust if

(i) either

(A) the trust acquired the particular property before the particular time from the Canadian corporation in circumstances described in subparagraph (g)(i) or (v), or

(B) another entity acquired property before the particular time from the Canadian corporation in circumstances described in subparagraph (g)(i) or (v) and because of that acquisition the Canadian corporation was deemed by paragraph (c) to have transferred the particular property to the trust,

(ii) as a result of a transfer (which transfer is referred to in this paragraph as the "sale") at the particular time by any entity (referred to in this paragraph as the "seller") to another entity (referred to in this paragraph as the "buyer") the trust ceases to hold property that is shares of the capital stock of, or debt issued by, the Canadian corporation or that is property the fair market value of which is derived in whole or in part, directly or indirectly, from shares of the capital stock of, or debt issued by, the Canadian corporation,

(iii) the buyer deals at arm's length immediately before the particular time with the Canadian corporation, the trust and the seller,

(iv) in exchange for the sale, the buyer transfers or becomes obligated to transfer property (which property is referred to in this paragraph as the "consideration"), to the seller, and

(v) it is reasonable to conclude

(A) having regard only to the sale and the consideration that the seller would have been willing to make the sale if the seller dealt at arm's length with the buyer,

(B) that the terms and conditions made or imposed in respect of the exchange are terms and conditions that would have been acceptable to the seller if the seller dealt at arm's length with the buyer, and

(C) that the value of the consideration is not, at or after the particular time, determined in whole or in part, directly or indirectly, by reference to shares of the capital stock of, or debt issued by, the Canadian corporation; and

(u) a transfer, before October 11, 2002, to a personal trust by an individual (other than a trust) of particular property is deemed not to be a contribution of the particular property by the individual to the trust if

(i) the individual identifies the trust in prescribed form filed with the Minister on or before the individual's filing-due date for the individual's 2003 taxation year (or a later date that is acceptable to the Minister), and

(ii) the Minister is satisfied that

(A) the individual (and any entity not dealing at any time at arm's length with the individual) has never loaned or transferred, directly or indirectly, restricted property to the trust,

(B) in respect of each contribution (determined without reference to this paragraph) made before October 11, 2002 by the individual to the trust, none of the reasons (determined by reference to all the circumstances including the terms of the trust, an intention, the laws of a country or the existence of an agreement, a memorandum, a letter of wishes or any other arrangement) for the contribution was to permit or facilitate, directly or indirectly, the conferral at any time of a benefit (for greater certainty, including an interest as a beneficiary under the trust) on

(I) the individual,

(II) a descendant of the individual, or

(III) any entity with whom the individual or descendant does not, at any time, deal at arm's length, and

(C) the total of all amounts each of which is the amount of a contribution (determined without reference to this paragraph) made before October 11, 2002 by the individual to the trust does not exceed the greater of

(I) 1% of the total of all amounts each of which is the amount of a contribution (determined without reference to this paragraph) made to the trust before October 11, 2002, and

(II) $500.

Technical Notes: New subsection 94(2) sets out a number of rules for use in applying section 94. These rules are primarily relevant for the purposes of determining whether a transaction constitutes a "contribution" of property to a trust. These rules are also relevant for the purposes of subsections 94(7) to (9) and the amended reporting rules in subsections 162(10.1) and 163(2.4) and section 233.2.

Paragraphs 94(2)(a) to (m) include rules that deem certain loans or transfers, the granting of options and the provision of services to be transfers of property to an entity. A deemed transfer will be considered to be a contribution to a trust if the transfer falls within the criteria of the definition "contribution" in subsection 94(1) or the deemed contribution rules. In this regard, it should be noted that a transfer or loan, unless it is deemed to be a contribution under a provision of section 94, will not be considered a contribution if it is an "arm's length transfer" (as defined in new subsection 94(1)). In addition, paragraphs 94(2)(r) to (u), may apply to deem certain transfers not to be contributions.

The rules in subsection 94(2) generally apply to taxation years of trusts that begin after 2002, but in some cases relief is provided with regard to transactions or events that occur before June 23, 2000 or October 11, 2002. In addition, trusts created in 2001 and trusts created in 2002 may elect in writing (by filing the election with the Minister of National Revenue on or before the trust's filing-due date for the trust's taxation year in which the amending legislation is assented to) to have new section 94 apply to its taxation years that begin in 2001 and 2002, as the case may be.

Deemed Transfers

Paragraph 94(2)(a) generally applies to indirect loans or transfers of property to a trust through transfers to other entities. Paragraph (a) deems a transfer of property (other than an "arm's length transfer", as defined in new subsection 94(1) or a transfer to which paragraph 94(2)(e) applies) to be a direct transfer to a trust if the property is transferred from one entity to another and, as a result of the transfer, the fair market value of the property of the trust increases or the liabilities of the trust decrease. Where paragraph (a) applies, paragraph 94(2)(b) deems the fair market value of property deemed transferred under paragraph 94(2)(a) to be the total of all amounts each of which is the absolute value of an increase in the fair market value of the trust property or a decrease in the liabilities of the trust because of the transfer.

Paragraph 94(2)(e) also applies to indirect loans or transfers of property to a trust. Paragraph (e) deems a transfer or loan of property (other than an "arm's length transfer") from an entity to another entity to be a direct transfer to a trust where the trust holds property the fair market value of which is derived from property held by the other entity. Paragraph 94(2)(d) deems the fair market value of property deemed transferred under paragraph 94(2)(e) to be the fair market value of the property referred to in subparagraph (2)(e)(i).

Paragraph 94(2)(e) deems a particular entity that provides a guarantee or other financial assistance to another entity to have transferred property to that other entity. Any property given to the particular entity by the other entity in exchange for the guarantee or other financial assistance is deemed to have been transferred to the particular entity in exchange for the property deemed by subparagraph (e)(i) to have been transferred. Under subparagraph 94(2)(h), the fair market value of the property deemed by subparagraph (e)(i) to have been transferred is deemed to be the fair market value of the assistance.

Paragraph 94(2)(f) applies where any service (other than an exempt service, as defined in subsection 94(1)) is rendered after June 22, 2000 by an entity to, for or on behalf of another entity. In these circumstances, the entity rendering the service is deemed to have transferred property to the other entity. Any property given to the particular entity by the other

entity in exchange for the service is deemed to have been transferred to the particular entity in exchange for the property deemed by subparagraph (f)(i) to have been transferred. For more information on the definition "exempt service", see the commentary on that definition.

Under paragraph 94(2)(h), the fair market value of the property deemed under subparagraph 94(2)(f)(i) to have been transferred is deemed to be equal to the fair market value of the services rendered.

For greater certainty, paragraph 94(2)(g) provides that a corporation is considered to transfer shares that it issues. Similar rules, also contained in paragraph 94(2)(g), apply to interests in a trust acquired otherwise than from a beneficiary under the trust, interests in a partnership acquired otherwise than from a member of the partnership, or interests in an other entity acquired otherwise than from an entity having an interest in the other entity, as well as to debt issued to an entity by another entity and a right (granted after June 22, 2000 by the entity from which the right was acquired) to acquire or to be loaned property.

As noted above, paragraph 94(2)(h) is relevant to determining the fair market value of property deemed under subparagraphs 94(2)(e)(i) and (f)(i) to have been transferred.

Paragraph 94(2)(i) deems an entity to have become obligated at a particular time to transfer property to another entity where the entity becomes obligated to do an act (e.g., the rendering of a service) that would constitute the transfer of a property to another entity if the act were to occur. This rule is generally relevant for the purposes of paragraph (e) of the definition "contribution" in subsection 94(1).

Paragraph 94(2)(j) applies, for the purpose of applying at any time the definition "non-resident time" in subsection (1), if a trust acquires property of an individual as a consequence of the death of the individual. In these circumstances, paragraph 94(2)(j) deems the individual to have transferred the property to the trust immediately before the individual's death.

Paragraph 94(2)(k) applies where a particular entity loans or transfers property to another entity at the direction of or with the acquiescence of a second entity (the "specified entity"). In these circumstances, if it reasonable to conclude that one of the reasons for the transfer is to avoid or minimize a liability of any entity under Part I of the Act that arose, or that would otherwise have arisen, because of the application of subsection (3), the transfer is deemed to be a transfer made jointly by the particular entity and the specified entity.

Paragraph 94(2)(l) also applies where a particular entity loans or transfers property to another entity at the direction of or with the acquiescence of a specified entity. In these circumstances, the transfer is deemed to be a transfer made jointly by the particular entity and the specified entity if

- the transfer is made at a time that is not, or would not be, if the transfer or loan were a contribution of the specified entity, a "non-resident time" (as defined in new subsection 94(1)) of the specified entity, and
- either
  - the particular entity is at the time of the transfer a controlled foreign affiliate of the specified entity (or would be a controlled foreign affiliate of the specified entity if the specified entity were resident in Canada), or
  - it is reasonable to conclude that the transfer was made in contemplation of the particular entity becoming after the time of the transfer a controlled foreign affiliate of the specified entity (or a controlled foreign affiliate of the specified entity if the specified entity were resident in Canada).

The expression "controlled foreign affiliate" is defined in subsection 248(1) as having the meaning given in subsection 95(1).

Paragraph 94(2)(m) deems a particular entity to have transferred, at a particular time, a particular property or particular part of it, as the case may be, to a second entity if

- the particular property is a share of the capital stock of a corporation held at the particular time by the particular entity, and as consideration for the disposition at or before the particular time of the share, the particular entity received at the particular time (or became entitled at the particular time to receive) from the corporation a share of the capital stock of the corporation, or
- the particular property (or property for which the particular property is substituted property) was acquired, before the particular time, from the second entity by any entity, in circumstances that are described by any of subparagraphs 94(g)(i) to (vi) (generally, the issuance by the second entity of a financial instrument) and at the particular time,
  - the terms or conditions of the particular property change,
  - the second entity redeems, acquires or cancels the particular property or the particular part of it,
  - where the particular property is a debt owing by the second entity, the debt or the particular part of it is settled or cancelled, or
  - where the particular property is a right to acquire or to be loaned property, the particular entity exercises the right.

Deemed Contributions

Paragraph 94(2)(n) applies where a particular trust makes a contribution to another trust. If this is the case, the contribution is deemed to have been made jointly by the particular trust and each other entity that is a contributor to the particular trust.

Paragraph 94(2)(o) applies where a partnership makes a contribution to a trust. Where this is the case, the contribution is deemed to have been made jointly by the partnership and by each entity that is a partnership member (other than a limited partner) at the time of the contribution. However, if a partnership has contributed to a trust, a limited partner of the partnership may also be considered to have made a contribution to the trust in respect of a transfer or loan made by the limited partner or another entity if any of the rules in subsection 94(2) so provide.

Paragraph 94(2)(p) provides, subject to paragraph 94(2)(q) and subsection 94(9), that the amount of a contribution to a trust at the time it was made is deemed to be the fair market value at that time of the property that was the subject of the contribution. The rule is useful for the purposes of new paragraph 94(2)(u), subsections 94(7) and (8), as well as the reporting penalty provisions in amended subsections 162(10.1) and 163(2.4). The rule is relevant because a contribution is defined by reference to a loan or transfer, rather than by reference to the property that was the subject of the transfer or loan.

Paragraphs 94(2)(q) and (r) apply to dealings in a "specified fixed interest" (as defined in new subsection 94(1)) in a trust and in a right, issued by the trust, to acquire such an interest. The rules for specified fixed interests apply in respect of commercial investment trusts. For more detail, see the commentary on the definitions "specified fixed interest" and "specified contributor" in subsection 94(1) and on paragraph (h) of the definition "exempt foreign trust" in subsection 94(1).

Paragraph 94(2)(q) deems an entity, that at any time acquires a specified fixed interest in a trust (or a right, issued by the trust, to acquire such an interest) from another entity (other than the trust), to have made a contribution to the trust at that time. The amount of the contribution is deemed to be the fair market value at that time of the specified fixed interest.

Transfers deemed not to be contributions

Paragraph 94(2)(r) generally applies where a particular entity has made a contribution (e.g., because of paragraph 94(2)(q)) to a trust because of acquiring a specified fixed interest in the trust or a right to acquire such an interest, or has acquired a specified fixed interest in a trust as a consequence of making a contribution to the trust, and at a later time the interest or right, as the case may be, is transferred, for arm's length consideration, to another entity (i.e., upon a sale of the interest or right, of if the other entity is the trust that issued the interest or right, upon a redemption of the interest or right). In these circumstances, the particular entity is deemed, for the purpose of applying section 94 at any time after the later time, not to have made the contribution in respect of the specified fixed interest, or right, that is the subject of the sale if immediately before the later time (i.e., the time of the sale or redemption) the particular entity is specified contributor to the trust.

Paragraph 94(2)(s), in very general terms, provides that a transfer of property to a trust by a particular entity that is a manager or promoter of the trust, in exchange for an interest as a beneficiary under the trust, will not be considered a contribution of the particular entity to the trust while the beneficial interest is acquired and held by the particular entity because of a requirement imposed under securities laws. Paragraph 94(2)(s) will be relevant in the relatively rare circumstance that a commercial investment trust cannot rely on the exemption for exempt foreign trusts in order to avoid the application of subsection 94(3). Paragraph 94(2)(s) will apply in determining under that subsection whether the trust has a resident contributor or connected contributor (i.e., and hence, a resident beneficiary).

More specifically, under paragraph 94(2)(s), a transfer to a trust by a particular entity is deemed not to be, at a particular time, a contribution to the trust if

- the particular entity has transferred, at or before the particular time and in the ordinary course of business of the particular entity, property to the trust,
- the transfer is not an arm's length transfer, but would be an arm's length transfer if the definition "arm's length transfer" in subsection 94(1) were read without reference to paragraph (a), and subparagraphs (b)(i) to (iii) and (v) to (viii), of that definition,
- it is reasonable to conclude that the particular entity was the only entity that acquired, in respect of the transfer, an interest as a beneficiary under the trust,
- the particular entity was required, under the securities law of a country or of a political subdivision of the country in respect of the issuance of beneficial interests by the trust, to acquire the interest because of the particular entity's status at the time of the transfer as a manager or promoter (as defined in subsection 94(1)) of the trust,
- at the particular time the trust is not an exempt foreign trust, but would be at that time an exempt foreign trust if it had not made an election under paragraph (g) of the definition "eligible trust", and
- the particular time is before the earliest of
  - the first time at which the trust becomes an exempt foreign trust,
  - the first time at which the particular entity ceases to be a manager or promoter of the trust, and
  - the time that is 24 months after the first time at which the total fair market value of consideration received by the trust in exchange for beneficial interests (other than the particular entity's interest referred to in subparagraph 94(2)(s)(iii)) in the trust is greater than $500,000.

Paragraph 94(2)(t) generally expunges a contribution of shares or indebtedness of a Canadian corporation from the corporation to a trust if the corporation issued (in circumstances described in subparagraph 94(2)(g)(i) or (v)) the shares or the debt to the trust (or to another entity in circumstances that resulted in the Canadian corporation being deemed by paragraph 94(2)(c) to have transferred particular property to the trust) and the trust or an other entity later sells the shares or indebtedness in circumstances in which the parties to the sale deal with each other on an arm's length basis.

However, the application of 94(2)(t) will not effect [*sic* the application of 94(2)(c) or (g) in respect of the original transfer by the corporation to the trust or the other entity; such transfers will continue to be treated as transfers under section 94. In addition, the application of 94(2)(t) will not expunge the status as a contribution to the trust of a transfer made by an entity and involving the corporation (e.g., an entity that transferred property to the corporation, and hence the trust, because of the application of paragraph 94(2)(e) and (m)).

More specifically, under paragraph 94(2)(t) a transfer, by a Canadian corporation of particular property (i.e., a share or debt), that is at a particular time a contribution by the Canadian corporation to a trust, is deemed not to be, after the particular time, a contribution by the Canadian corporation to the trust if

- either the trust acquired the particular property before the particular time from the Canadian corporation in circumstances described in subparagraph 94(2)(g)(i) or (v), or another entity acquired property before the particular time from the Canadian corporation in circumstances described in subparagraph 94(2)(g)(i) or (v) and because of that acquisition the Canadian corporation was deemed by paragraph 94(2)(c) to have transferred the particular property to the trust;
- as a result of a transfer (*i.e.*, a sale of, or a redemption by the Canadian corporation of, the issued shares or debt) at the particular time by any entity (referred to in the paragraph as the "seller") to another entity (referred to in the paragraph as the "buyer") the trust ceases to hold property that is shares of the capital stock of, or debt issued by, the Canadian corporation or the trust ceases to hold property that is property the fair market value of which is derived in whole or in part, directly or indirectly, from shares of the capital stock of, or debt issued by, the Canadian corporation;
- the purchaser deals at arm's length immediately before the particular time with the Canadian corporation, the trust and the seller;
- in exchange for the sale, the purchaser transfers or becomes obligated to transfer property (which property is referred to in the paragraph as the "consideration"), to the seller; and
- it is reasonable to conclude
  - having regard only to the sale and the consideration that the seller would have been willing to make the sale if the seller dealt at arm's length with the buyer,
  - that the terms and conditions made or imposed in respect of the exchange are terms and conditions that would have been acceptable to the seller if the seller dealt at arm's length with the buyer, and
  - that the value of the consideration is not, at or after the particular time, determined in whole or in part, directly or indirectly, by reference to shares of the capital stock of, or debt issued by, the Canadian corporation.

Paragraph 94(2)(u) applies to a transfer, before October 11, 2002, to a personal trust by an individual (other than a trust) of particular property. Where the conditions in subparagraphs 94(2)(u)(i) and (ii) are met, the transfer of the particular property is deemed not to be a contribution of the particular property by the individual to the trust. Paragraph 94(2)(u) is intended to provide relief to individuals that have transferred a relatively small amount of property to a trust (e.g., the initial settlement of a coin on the trust) where the individual can reasonably be considered not to have been involved with the use of the trust as part of what is commonly referred to as an estate freeze (i.e., see the condition in clause 94(2)(u)(ii)(A) that the trust never have acquired from the individual restricted property).

The conditions in subparagraphs 94(2)(u)(i) and (ii) are that

- the individual identifies the trust in prescribed form filed with the Minister on or before the individual's filing-due date for the individual's 2003 taxation year (or a later date that is acceptable to the Minister), and
- the Minister is satisfied that
  - the individual (and any entity not dealing at any time at arm's length with the individual) has never loaned or transferred, directly or indirectly, restricted property to the trust,
  - in respect of each contribution (determined without reference to paragraph 94(2)(u)) made before October 11, 2002 by the individual to the trust, none of the reasons (determined by reference to all the circumstances including the terms of the trust, an intention, the laws of a country or the existence of an agreement, a memorandum, a letter of wishes or any other arrangement) for the contribution was to permit or facilitate, directly or indirectly, the conferral at any time of a benefit (for greater certainty, including an interest as a beneficiary under the trust) on
    - (I) the individual,
    - (II) a descendant of the individual, or
    - (III) any entity with whom the individual or descendant does not, at any time, deal at arm's length, and
  - the total of all amounts each of which is the amount of a contribution (determined without reference to paragraph 94(2)(u)) made before October 11, 2002 by the individual to the trust does not exceed the greater of
    - (I) 1% of the total of all amounts each of which is the amount of a contribution (determined without reference to paragraph 94(2)(u)) made to the trust before October 11, 2002, and
    - (II) $500.

The examples below illustrate the operation of subsection 94(2) and the definition "contribution" in subsection 94(1).

Example 1

Donald is a long-term resident of Canada. In 2003, Donald pays higher than fair market value consideration for a property acquired from a corporation. A non-resident trust holds shares in the corporation. The fair market value of those shares increases because of the transaction.

Results

1. Under paragraph 94(2)(a), Donald is considered to have transferred property to the trust in these circumstances. The exception for arm's length transfers does not apply.

2. As a consequence, Donald is considered to have made a contribution to the trust, which results in Donald being a contributor and a resident contributor to the trust.

Example 2

1. Lucie, a long-term resident of Canada, transfers property to Canco on condition that Canco direct Canco's wholly-owned foreign subsidiary (Foreignco-1) to transfer properties to another corporation (Foreignco-2) for consideration that is less than fair market value.

2. Shares of the capital stock of Foreignco-2 are held by a non-resident trust.

3. The fair market value of the Foreignco-2 shares increases as a result of the increase in the fair market value of the property owned by Foreignco-2.

Results

1. The transfers to Canco and to Foreignco-2 are part of the same series of transactions.

2. Because of paragraph 94(2)(a), the transfer to Foreignco-2 is considered to be a transfer by Foreignco-1 to the trust. Because of paragraph 94(2)(l), the transfer by Foreignco-1 to the trust is considered to be jointly made by Foreignco-1 and Canco. (This would also be the result under paragraph 94(2)(k), if it was intended to avoid or minimize a liability under Part I.) The exception for arm's length transfers does not apply.

3. Canco is considered to have made a contribution to the non-resident trust because of paragraph (a) of the definition "contribution" in new subsection 94(1). Lucie is considered to have made a contribution to the trust under paragraph (b) of that definition. Both Lucie and Canco are therefore contributors and resident contributors to the trust.

4. Foreignco-1 is also a "contributor" to the trust, but is not a "resident contributor" as long as it does not become resident in Canada.

Related Provisions: 51(1)(c) — Exchange of convertible property for purposes of 94(2)(m); 87(2)(j.95) — Amalgamation — continuing corporation; 94(1)"arm's length transfer"(b) — Certain transfers under 94(2)(g) excluded; 94(9) — Determination of contribution amount for 94(2)(u)(ii)(C).

(3) Liabilities of non-resident trusts and others — Where at a specified time in a particular taxation year of a trust (other than a trust that is, at that time, an exempt foreign trust) the trust is non-resident (determined without reference to this subsection) and, at that time, there is a resident contributor to the trust or a resident beneficiary under the trust,

(a) the trust is deemed to be resident in Canada throughout the particular taxation year for the purposes of

(i) section 2,

(ii) computing the trust's income for the particular taxation year,

(iii) applying subsections 104(13.1) to (29) and 107(2.1), in respect of the trust and a beneficiary under the trust,

(iv) applying clause 53(2)(h)(i.1)(B), the definition "non-resident entity" in subsection 94.1(1), subsection 107(2.002) and section 115, in respect of a beneficiary under the trust,

(v) subsection 111(9),

(vi) determining an obligation of the trust to file a return under section 233.3 or 233.4,

(vii) determining the rights and obligations of the trust under Divisions I and J,

(viii) determining the liability of the trust for tax under Part I, and under Part XIII on amounts paid or credited (in this paragraph having the meaning assigned by Part XIII) to the trust,

(ix) determining the liability of a non-resident person for tax under Part XIII on an amount (other than an exempt amount) paid or credited after 2003 by the trust to the non-resident person, and

(x) determining whether a foreign affiliate of a taxpayer (other than the trust) is a controlled foreign affiliate of the taxpayer;

(b) in applying subsections 20(11) and (12) and section 126,

(i) in determining the non-business income tax (as defined by subsection 126(7)) paid by the trust for the particular taxation year to the government of a country other than Canada no amount shall be included to the extent that it can reasonably be regarded as attributable to income from a source in Canada, and

(ii) if the trust elects, by notifying the Minister in writing in its return of income for the particular taxation year, to have this paragraph apply,

(A) the trust's income for the particular taxation year (other than the portion of the income that is from sources inside Canada or that is from a source, outside Canada, that is a business carried on by the trust outside Canada) is deemed

(I) to be income of the trust from sources (other than a business carried on by the trust) in the particular country (other than Canada) in which the trust is resident (determined without reference to this subsection), and

(II) not to be from any other source, and

(B) in determining the income or profits tax paid by the trust for the particular taxation year to the government of the particular country there shall be included only the total of all amounts each of which is the amount of an income or profits tax that was paid by the trust for the particular taxation year to the government of a country (other than Canada) and that can reasonably be regarded as a tax paid on the trust's income for the particular taxation year (other than the portion of the income that is from sources inside Canada or that is from a source, outside Canada, that is a business carried on by the trust outside Canada);

(c) if the trust was non-resident throughout its taxation year (referred to in this paragraph as the "preceding year") immediately preceding the particular taxation year, the trust is deemed to have

(i) immediately before the end of the preceding year, disposed of each property (other than property described in any of subparagraphs 128.1(1)(b)(i) to (iv)) held by the trust at that time for proceeds of disposition equal to its fair market value at that time, and

(ii) at the beginning of the particular taxation year, acquired each of those properties so disposed of at a cost equal to its proceeds of disposition;

(d) each entity that at any time in the particular taxation year is a resident contributor to the trust or a resident beneficiary under the trust

(i) has jointly and severally, or solidarily, with the trust and with each other such entity, the rights and obligations of the trust in respect of the particular taxation year under Divisions I and J, and

(ii) is subject to Part XV in respect of those rights and obligations; and

(e) each entity that at any time in the particular taxation year is a beneficiary under the trust and was a person from whom an amount would be recoverable at the end of 2002 under subsection (2) (as it read in its application to taxation years that began before 2003) in respect of the trust if the entity had received before 2003 amounts described under paragraph (2)(a) or (b) in respect of the trust (as those paragraphs read in their application to taxation years that began before 2003)

(i) has, to the extent of the entity's recovery limit for the year, jointly and severally, or solidarily, with the trust and with each other such entity, the rights and obligations of the trust in respect of the taxation years, of the trust, that began before 2003 under Divisions I and J, and

(ii) is, to the extent of the entity's recovery limit for the year, subject to Part XV in respect of those rights and obligations.

Technical Notes: New subsection 94(3) applies to a non-resident trust (other than an "exempt foreign trust", as defined in subsection 94(1)) for a taxation year where, at a "specified time" in respect of the trust for the taxation year (generally, the end of the taxation year), there is a "resident contributor" to the trust or a "resident beneficiary" under the trust. All of these defined expressions are explained in detail in the commentary on new subsection 94(1).

Where subsection 94(3) applies to a non-resident trust for a taxation year, the trust is deemed to be resident in Canada throughout the year for the purposes specified in paragraph 94(3)(a). Except to the extent otherwise provided by subsection 94(4), a trust is deemed to be resident in Canada for a taxation year under subsection 94(3):

- for the purposes of applying section 2, in computing the trust's income for the year and computing the trust's liability for tax under Part I — with the result that the trust is subject to tax under that Part on its world-wide income for the year (including, for example, its income determined as a result of deemed dispositions under subsections 104(4) to (5.2) or 128.1(4) and, for example, in determining whether a foreign affiliate of the trust is its controlled foreign affiliate and whether it has FAPI);
- for the purpose of subsection 111(9), with the result that in determining the trust's losses for the taxation year, subsection 111(9) will not apply in computing its taxable income for the year;
- for the purpose of applying clause 53(2)(h)(i.1)(B) — with the result that the adjusted cost base to a beneficiary of the beneficiary's interest in a trust to which this clause applies is computed in the same way as for interests in trusts resident in Canada;
- for the purpose of applying the definition "non-resident entity" in subsection 94.1(1) — with the result that a beneficiary's interest in the trust is not treated as an interest of a beneficiary in a foreign investment entity for the purposes of new sections 94.1 to 94.4;
- for the purposes of applying subsections 104(13.1) to (29), and 107(2.1) and (2.002) and section 115 — with the result that the tax treatment of beneficiaries under the trust generally accords with the tax treatment available to beneficiaries under trusts that are resident in Canada;
- for the purposes of determining the obligation of the trust to file a return under sections 233.3 and 233.4 — with the result that the trust is required to file information returns under sections 233.3 (information return on foreign property holdings the total cost of which exceeds $100,000) and 233.4 (information return on foreign affiliates);
- for the purpose of determining the liability of the trust for tax under Part XIII — with the result that the trust is exempt from Part XIII tax on amounts paid or credited to it (for more detail, see the commentary to subsection 94(4));
- for the purpose of determining the liability of a non-resident person for tax under Part XIII on amounts paid or credited after 2003 by the trust to the non-resident person (other than exempt amounts, as defined in subsection 94(1));
- for the purpose of determining after July 18, 2005 whether a foreign affiliate of a taxpayer (other than the trust) is a controlled foreign affiliate of the taxpayer; and
- for the purpose of determining the rights and obligations of the trust under sections 150 to 180 — with the result that various administrative provisions in the Act apply in the same way as to other trusts resident in Canada. (These provisions include those with regard to the filing of returns, assessments, tax payments, arrears interest, refund interest, instalment interest, penalties, refunds and appeals.)

A trust to which subsection 94(3) applies is deemed to be resident in Canada throughout the year for the above purposes, including the computation of its income and its taxable income and section 2 of the Act. Section 2 imposes on every person resident in Canada at any time in a taxation year an obligation to pay an income tax on that person's taxable income for the year.

Under paragraph 1 of the resident article in Canada's income tax treaties, a reference in such a treaty to a "resident of a Contracting State" means any person who, under the law of that State, is liable to taxation in that State by reason of the person's domicile, residence, place of management or any other criterion of a similar nature. A person, in this context, would generally include a trust because of the definition "person" in Canada's income tax treaties. Because a trust to which subsection 94(3) applies is deemed to be resident of Canada and is liable to tax in Canada on its worldwide income, it will be considered a resident of Canada under paragraph 1 of the resident article in Canada's income tax treaties, whether it is also considered to be resident, under the applicable treaty, in another country or not.

A trust that is also resident of the other contracting state under a particular treaty would be a dual resident under the treaty. In the event of dual residency under an income tax treaty, the tie-breaker rules in the resident article applicable to individuals would not apply. The Canada Revenue Agency has expressed the view that in this context, the term "individual" is to be interpreted to mean natural person and not a trust. The Agency has indicated that this interpretation would generally prevail across most if not all of Canada's income tax treaties if the definition "person" in the particular treaty under consideration makes reference to both an "individual" and a "trust". Even if a trust were considered an individual for the purpose of an income tax treaty, it is clear from the context of the tie-breaker rule applicable to individuals that it is intended to apply only to natural persons. This is because expressions such as "personal home", "centre of vital interest" and "habitual abode" used in the tie-breaker rules have meaning only in reference to natural persons and would not be of use in clarifying the residence of a trust for the purpose of a treaty.

In this regard, paragraph 94(3)(b) applies for the purposes of applying subsections 20(11) and (12) and section 126 in respect of the trust. Paragraph 94(3)(b) allows a trust to elect for the special rules in that paragraph to apply in determining the trust's eligibility for a foreign tax credit. If the trust elects for a taxation year,

- the trust's income for the taxation year (other than the portion of the income that is from sources inside Canada or that is from a source, outside Canada, that is a business carried on by the trust outside Canada) is deemed, for the purposes of subsections 20(11) and (12) and section 126,
  - to be income of the trust from sources (other than a business carried on by the trust) in a particular country (other than Canada) in which the trust is resident (determined without reference to this subsection), and
  - not to be from any other source; and
- in determining the income or profits tax paid by the trust for the taxation year to the government of the particular country the trust can pool the total of all amounts each of which is the amount of an income or profits tax that was paid by the trust for the particular taxation year to the government of a country (other than Canada)

and that can reasonably be regarded as a tax paid on the trust's income for the taxation year (other than the portion of the income that is from sources inside Canada or that is from a source, outside Canada, that is a business carried on by the trust outside Canada).

Paragraph 94(3)(b) also provides that in determining the non-business income tax (as defined by subsection 126(7)) paid by the trust for a taxation year to the government of a country other than Canada no amount shall be included to the extent that it can reasonably be regarded as attributable to income from a source in Canada.

Paragraph 94(3)(c) provides that a non-resident trust that becomes subject to subsection 94(3) for a particular taxation year, after not being subject to either new subsection 94(3) or existing paragraph 94(1)(c) for the preceding year is deemed, immediately before the end of the preceding taxation year, to have disposed of each property (other than property described in any of subparagraphs 128.1(1)(b)(i) to (iv)) held by the trust at that time for proceeds of disposition equal to its fair market value at that time. The trust is also deemed to have, at the beginning of the particular taxation year, acquired each of those properties so disposed of at a cost equal to its proceeds of disposition

Note, in this regard, that, because of paragraph 94(4)(d), subsection 128.1(1) will not apply in the preceding taxation year only because of the application of paragraph 94(3)(a).

Paragraph 94(3)(c) is intended to ensure — in a manner similar to that for taxpayers that migrate to Canada — that certain gains or losses that accrued on certain property of the trust while the trust was non-resident are not subject to taxation in Canada.

Paragraph 94(3)(e) also complements the rule in subsection 94(6), which applies where a non-resident trust ceases to be an "exempt foreign trust" (as defined in subsection 94(1)). In this case, subsection 94(6) establishes the beginning of a new "stub" taxation year. If subsection 94(3) applies for that "stub" year, paragraph 94(3)(e) would be applicable with regard to the properties held by the trust at the beginning of that "stub" year.

Example 1

A trust is created in 2003. The trust is not at any time an exempt foreign trust. At the end of its 2003 taxation year, the trust is non-resident and there are no resident contributors to the trust and no resident beneficiaries under the trust.

On February 1, 2004, John makes a contribution to the trust. At the end of the trust's 2004 taxation year, John is a resident contributor to the trust, and the trust is non-resident.

On July 1, 2005 the sole trustee of the trust moves to Canada, becomes resident in Canada at that time and remains resident in Canada throughout the remainder of the year. Immediately before the trustee became resident in Canada, the trustee was non-resident and John remained a resident contributor to the trust.

Results

Trust's 2003 Taxation Year

1. Subsection 94(3) does not apply to deem the trust to be resident in Canada in computing its income for its 2003 taxation year.

Trust's 2004 Taxation Year

2. Paragraph 94(3)(a) applies to deem the trust to be resident in Canada, throughout its 2004 taxation year, for a number of purposes, including the computation of its income. Because the trust was non-resident throughout its 2003 taxation year, paragraph 94(3)(c) also applies to deem the trust to have disposed of its property (other than certain properties described in subparagraphs 128.1(1)(b)(i) to (iv)) for fair market value proceeds immediately before the end of its last 2003 taxation year and to have reacquired those properties at a cost equal to that fair market value at the beginning of the 2004 taxation year. Because of paragraph 94(4)(d), the application of the deemed residency rule in paragraph 94(3)(a) will not cause the trust to become resident in Canada for purposes of subsection 128.1(1).

Trust's 2005 Taxation Year

3. Because the trustee of the trust becomes resident in Canada on July 1, 2005, paragraph 128.1(1)(a) will apply to deem the trust to have a taxation year-end immediately before the change of residency. At the end of this first 2005 taxation year of the trust, paragraph 94(3)(a) applies to deem the trust to be resident in Canada, throughout that first 2005 taxation year, for a number of purposes, including the computing of its income. However, paragraph 94(3)(c) will not apply because the trust was resident in Canada (i.e. because of the application of paragraph 94(3)(a) to the trust's 2004 taxation year) throughout the year preceding the 2005 taxation year.

4. Paragraph 128.1(1)(a) also applies to deem the trust to have a new taxation year at the time the trustee becomes resident in Canada on July 1, 2005. Because the trust is resident in Canada at the end of this second 2005 taxation year, paragraph 94(3)(a) does not apply to deem the trust to be resident in Canada in computing its income for that year.

5. As the trust is resident in Canada for the first 2005 taxation year (i.e., the 2005 taxation year discussed in #3 above), subsection 128.1(1.1) suspends the application of the deemed disposition and re-acquisition rules in paragraphs 128.1(1)(b) and (c) that would otherwise apply in respect of the end of that first 2005 taxation year because of the trust becoming resident in Canada on July 1, 2005. This ensures that the trust does not realize at that end of that first 2005 taxation year any accrued gains or losses of the trust solely because the basis of the trust's residency in Canada changes.

6. Note that where subsection 128.1(1.1) applies to a trust, it suspends only the application of paragraph 128.1(1)(b) (as a result paragraph 128.1(1)(c) also has no application) to the trust. If the trust becomes resident in Canada, it would continue to be subject to paragraph 128.1(1)(a). Also note that paragraph 94(4)(d) ensures that the application of paragraph 94(3)(a) to the trust will not affect the determination of whether the trust becomes resident in Canada for the purposes of subsection 128.1(1).

Paragraph 94(3)(d) imposes liabilities for a taxation year on entities who are "resident contributors" or "resident beneficiaries". Where subsection 94(3) applies to a trust for a taxation year, each of these entities is jointly and severally, or solidarily, liable with the trust in respect of the trust's obligations under sections 150 to 180. Typically, the most significant obligation in this context is the obligation to pay tax instalments pursuant to section 156. However, the extent of the liability imposed by paragraph 94(3)(d) is limited by new subsection 94(7). For more information, see the commentary on subsections 94(7) to (9).

The expression "solidarily liable" is added to ensure that the Act appropriately reflects both the civil law of the province of Quebec and the law of other provinces.

Paragraph 94(3)(e) imposes liabilities for a taxation year on each entity that is a beneficiary under the trust and was a person from whom an amount would be recoverable at the end of 2002 under subsection 94(2) (as it read in its application to taxation years that began before 2003) in respect of the trust if the entity had received before 2003 amounts described under paragraphs 94(2)(a) or (b) in respect of the trust (as those paragraphs read in their application to taxation years that began before 2003). Where subsection 94(3) applies to the trust for a taxation year, each of these entities is, to the extent of the entity's recovery limit for the year, jointly and severally, or solidarily, liable with the trust in respect of the trust's obligations under sections 150 to 180. Note that where a trust created in 2001 or 2002 has elected under the coming-into force of new section 94 to have new section 94 apply to it for its taxation years that begin in 2001 or 2002, as the case may be, paragraph 94(3)(e) does not apply to it (i.e., because "old" section 94 would never have applied to it).

Note that subsection 94(3) generally does not result in the creation of any obligations for a trust that is subject to subsection 94(3) to withhold tax under Part XIII or to pay any tax under Part XIII.2 in respect of distributions of income earned by the trust from Canadian sources to non-resident beneficiaries.

Instead, the rules in new subsection 104(7.01) are designed so that there will be a reasonable level of Part I tax in respect of Canadian-source income received by the trust in the event the trust also distributes that income to non-resident beneficiaries in their capacity as beneficiaries. For more information, see the commentary on subsection 104(7.01).

In addition, in the event that the trust pays or credits an amount to a non-resident and that amount is not referred to in paragraph 104(7.01)(b) in respect of the trust for the taxation year, the non-resident will continue to be liable for any Part XIII tax on the amount, except to the extent that the amount is described in paragraph (b) of the definition "exempt amount" in subsection 94(1), or paid or credited before 2004.

Related Provisions: 75(3)(c.2) — Reversionary trust rules do not apply to non-resident trust; 94(4) — Excluded provisions for 94(3)(a); 94(5), (5.1) — Trust deemed to cease being resident in Canada; 94(7) — Limit to amount recoverable under 94(3)(d); 94(8) — "Recovery limit" for 94(3)(e); 104(4)(a.5) — Trusts — deemed disposition of property when no resident contributor exists; 104(7.01) — Limit to trust's deduction under 104(6); 128.1(1.1) — No deemed disposition/acquisition on

immigration of trust; 160(2.1) — Assessment of amount under 94(3)(d) or (e); 160(3) — Discharge of liability under 94(3)(d) or (e); 216(4.1) — Where trust receives rental income from property in Canada; 233.2(4) — Annual information return by contributor; 233.3(3) — Annual information return by holder of interest.

(4) Excluded provisions — Paragraph (3)(a) does not apply to deem a trust to be resident in Canada for the purposes of

(a) the definitions "arm's length transfer", "exempt foreign trust" and "exempt taxpayer" in subsection (1);

(b) paragraph (14)(b), subsections 70(6) and 73(1), the definition "Canadian partnership" in subsection 102(1), paragraph 107.4(1)(c) and paragraph (a) of the definition "mutual fund trust" in subsection 132(6);

(c) determining the liability of a person (other than the trust) that would arise under section 215;

(d) determining whether, in applying subsection 128.1(1), the trust becomes resident in Canada at a particular time;

(e) determining whether, in applying subsection 128.1(4), the trust ceases to be resident in Canada at a particular time;

(f) subparagraph (f)(i) of the definition "disposition" in subsection 248(1);

(g) determining whether subsection 107(5) applies to a distribution on or after July 18, 2005 of property to the trust; and

(h) determining whether subsection 75(2) applies to deem an amount to be an income, loss, taxable capital gain or allowable capital loss of the trust.

Technical Notes: New subsection 94(4) provides that the rules in paragraph 94(3)(a) treating non-resident trusts as resident in Canada do not apply for the purposes of:

- the definitions "arm's length transfer", "exempt taxpayer" and "exempt foreign trust" in subsection 94(1) — thus ensuring that there is no circularity in applying those definitions due to fact that those definitions impose a requirement that a trust be non-resident;
- subsections 70(6) and 73(1) and paragraph 107.4(1)(c) (other than, for transfers to trusts that occurred before February 28, 2004, subparagraph 107.4(1)(c)(i)), and paragraph (f) of the definition "disposition" in subsection 248(1) — thus ensuring that rules allowing in some cases for a rollover of property on transfers to a Canadian resident trust generally do not apply to transfers to a trust otherwise deemed to be resident in Canada by subsection 94(3));
- determining whether subsection 107(5) applies to a distribution on or after July 18, 2005 of property to the trust;
- in determining whether an amount can be attributed, under subsection 75(2), to the trust. (This rule had earlier been proposed through a modification to subsection 75(2));
- determining whether the exception, under paragraph 94(14)(b), to property that is restricted property is available in respect of property held by a non-resident trust;
- paragraph (a) of the definition "mutual fund trust" in subsection 132(6) — making it clear that a trust deemed to be resident in Canada by subsection 94(3) will not be treated as a mutual fund trust for any purpose;
- determining, for taxation years that begin after July 18, 2005, whether a partnership is a "Canadian partnership" (as defined in subsection 102(1)); and
- determining whether, in applying subsection 128.1(1), the trust becomes resident in Canada at a particular time and determining whether, in applying subsection 128.1(4), the trust ceases to be resident in Canada at a particular time — thus ensuring that the deeming of a trust to be resident under paragraph 94(3)(a) does not apply to affect a determination of whether a trust has changed residence at any time (e.g., upon a change of trustees or upon a change of residence of trustees).

Note that paragraphs 94(4)(e) and (f) are generally suspended, for a brief transitional period, in their application to a trust that is subject without interruption to "old" and "new" sections 94. That transitional period starts immediately after the end of the trust's last taxation year for which it was deemed resident by "old" section 94 and ends immediately after the beginning of the trust's first taxation year that begins after 2002 (i.e., its first taxation year in respect of which "new" section 94 applies). This is intended to ensure that section 128.1 does not apply to a trust solely because of the transition between the old and new NRT regimes. The suspension of paragraphs 94(4)(e) and (f) does not apply, however, where in the transitional period a change in the trustees of the trust occurred (e.g., the number of trustees changed, the residency of any of the trustees changed, or any of the trustees was replaced).

Furthermore, except as otherwise permitted under subsection 216(4.1), paragraph 94(3)(a) does not relieve a payer of Canadian-source income from the obligation to withhold amounts under section 215 in connection with amounts paid to a trust deemed to be resident in Canada by subsection 94(3). This is so even though such a trust is not liable for Part XIII tax on amounts paid or credited to it, because of the application of subparagraph 94(3)(a)(viii). The trust would be expected to apply for a refund of such tax, which would be given except to the extent that there are any outstanding liabilities of the trust with regard to Part I tax.

(5) Deemed cessation of residence — A trust is deemed to cease to be resident in Canada at the earliest time at which there is neither a resident contributor to the trust nor a resident beneficiary under the trust in a period that would, if this Act were read without reference to subsection 128.1(4), be a taxation year of the trust

(a) that immediately follows a taxation year of the trust throughout which it was resident in Canada;

(b) at the beginning of which there was a resident contributor to the trust or a resident beneficiary under the trust; and

(c) at the end of which the trust is non-resident.

Technical Notes: New subsection 94(5) deems a trust to have ceased to be resident in Canada at the earliest time in a specified period at which there is neither a "resident contributor" to the trust nor a "resident beneficiary" under the trust. For this purpose, the specified period is the period that would (if the Act were read without reference to subsection 128.1(4)) be a taxation year of the trust

- that immediately follows a taxation year of the trust throughout which it was resident in Canada,
- at the beginning of which there was either a resident contributor to the trust or a resident beneficiary under the trust, and
- at the end of which the trust is non-resident.

For more information on the expressions "resident contributor" and "resident beneficiary", as defined in new subsection 94(1), see the commentary on those provisions.

Where subsection 94(5) applies, the cessation of residence in Canada of a trust results in the application of subsection 128.1(4). Under that subsection, a taxation year of the trust is deemed to have ended immediately before the earliest time in the specified period described above. At that deemed taxation year-end, the criteria in subsection 94(3) are satisfied. Accordingly, the trust will be subject to tax under Part I on its worldwide income for that year because it is considered under subsection 94(3) to be resident in Canada throughout that year. Under new paragraph 94(3)(d), each "resident beneficiary" or "resident contributor" at the time of that deemed taxation year end can be jointly and severally, or solidarily, liable with the trust for the trust's income tax liabilities under the Act for that year. (For more detail on the expression "solidarily", please refer to the introductory commentary above on new section 94.)

Related Provisions: 94(3)(a) [proposed] — Trust deemed resident in Canada; 104(4)(a.5) — Trusts — effect of 94(5) on deemed disposition of property.

(6) Becoming or ceasing to be an exempt foreign trust — If at any time a trust becomes or

ceases to be an exempt foreign trust (otherwise than because of becoming resident in Canada),

(a) its taxation year that would otherwise include that time is deemed to have ended immediately before that time and a new taxation year of the trust is deemed to begin at that time; and

(b) for the purpose of determining the trust's fiscal period after that time, the trust is deemed not to have established a fiscal period before that time.

Technical Notes: New subsection 94(6) generally provides that, if a trust becomes or ceases to be an "exempt foreign trust" (as defined in new subsection 94(1)) at any time, the trust's taxation year is deemed to have ended immediately before that time, a new "stub" taxation year is deemed to have begun at that time and the trust is deemed not to have established a fiscal period before that time. However, subsection 94(6) does not apply where a trust ceases to be an exempt foreign trust because it becomes resident in Canada.

Subsection 94(3) may apply in respect of the later "stub" taxation year of the trust if the criteria set out in that subsection are satisfied at a "specified time" in respect of the trust for the taxation year (generally, the end of the taxation year). Where this is the case, the trust would be subject to tax under Part I on its world-wide income for that later "stub" year because it would be considered under subsection 94(3) to be resident in Canada for that year.

(7) Limit to amount recoverable — The maximum amount recoverable under the provisions referred to in paragraph (3)(d) at any particular time from an entity in respect of a trust (other than an entity that is deemed, by subsection (12) or (13), to be a contributor or a resident contributor to the trust) and a particular taxation year of the trust is the entity's recovery limit at the particular time in respect of the trust and the particular year if

(a) either

(i) the entity is liable under a provision referred to in paragraph (3)(d) in respect of the trust and the particular year solely because the entity was a resident beneficiary under the trust at a specified time in respect of the trust in the particular year, or

(ii) at a specified time in respect of the trust in the particular year, the total of all amounts each of which is the amount, at the time it was made, of a contribution to the trust made before the specified time by the entity, or by another entity not dealing at arm's length with the entity, is not more than the greater of

(A) $10,000 and

(B) 10% of the total of all amounts each of which was the amount, at the time it was made, of a contribution made to the trust before the specified time;

(b) except where the total determined in subparagraph (a)(ii) in respect of the entity and all entities not dealing at arm's length with it is $10,000 or less, the entity has filed on a timely basis under section 233.2 all information returns required to be filed by it before the particular time in respect of the trust (or on any later day that is acceptable to the Minister); and

(c) it is reasonable to conclude that for each transaction or event that occurred before the end of the particular year at the direction of, or with the acquiescence of, the entity

(i) none of the purposes of the transaction or event was to enable the entity to avoid or minimize any liability under a provision referred to in paragraph (3)(d) in respect of the trust, and

(ii) the transaction or event was not part of a series of transactions or events any of the purposes of which was to enable the entity to avoid or minimize any liability under a provision referred to in paragraph (3)(d) in respect of the trust.

Technical Notes: New subsection 94(7) allows for a limitation of the amount that may be recovered from an entity that would otherwise be jointly, severally, or solidarily, liable for the entire amount of a trust's tax obligations under the Act. Subsection 94(7) applies to an entity (other than an entity that is deemed, by subsection 94(12) or (13), to be a contributor or a resident contributor to the trust) in respect of a particular taxation year of the trust where three conditions are satisfied.

The first condition is satisfied in respect of a particular taxation year of the trust:

- where, under subparagraph 94(7)(a)(i), the entity is jointly and severally, or solidarily, liable with the trust only because the entity was a "resident beneficiary" (as defined in new subsection 94(1)) under the trust at a specified time in respect of the trust for the particular year, or

- where, under subparagraph 94(7)(a)(ii), at a specified time in respect of the trust for, the total amount (determined with reference to paragraph 94(2)(b), (d), (h), (p) and (q) and subsection 94(9)) of contributions made to the trust by the entity (or by another entity not dealing at arm's length with the entity) is not more than the greater of $10,000 and 10% of the total amount of all contributions to the trust.

The second condition, under paragraph 94(7)(b), requires that the entity have filed on a timely basis all information returns required to be filed by the entity in respect of the trust under section 233.2 (or on any later day that is acceptable to the Minister of National Revenue). However, the second condition need not be satisfied if the first condition is satisfied because the total determined under subparagraph 94(7)(a)(ii) (in respect of the entity and all entities not dealing at arm's length with it) is $10,000 or less.

The third condition, under paragraph 94(7)(c), is satisfied in respect of an entity and a particular taxation year of the trust where it is reasonable to conclude that each transaction or event that occurred before the end of the particular year at the direction of, or with the acquiescence of, the entity satisfied the following conditions:

- none of the purposes of the transaction or event was to enable the entity to avoid or minimize any liability under a provision referred to in paragraph 94(3)(d) in respect of the trust, and

- the transaction or event was not part of a series of transactions or events any of the purposes of which was to enable the entity to avoid or minimize any liability under a provision referred to in paragraph 94(3)(d) in respect of the trust.

There are a number of transactions or events, or series of transactions or events, that may result in a failure to satisfy the third condition (e.g., an artificial dilution of an entity's relative contribution to the trust (i.e., below the 10% level); or corporate distributions that have the effect of avoiding or minimizing the impact of the three-year rule described in subsection 94(9)).

Reference should be made in this context to the definition "contribution" in subsection 94(1), as well as to related rules in subsection 94(2).

Where subsection 94(7) applies to an entity in respect of a taxation year of a trust, the amount recoverable at any time from the entity in respect of the year is limited to the person's "recovery limit", determined under subsection 94(8), in respect of the trust and the year.

Related Provisions: 94(8) — Recovery limit; 94(9) — Determination of contribution amount.

(8) Recovery limit — The recovery limit referred to in paragraph (3)(e) and subsection (7) at a particular time of a particular entity in respect of a trust and a particular

taxation year of the trust is the amount, if any, by which the greater of

(a) the total of all amounts each of which is

(i) an amount received or receivable after 2000 and before the particular time

(A) by the particular entity on the disposition of all or part of the particular entity's interest as a beneficiary under the trust, or

(B) by another entity (that was, when the amount became receivable, a specified party in respect of the particular entity) on the disposition of all or part of the specified party's interest as a beneficiary under the trust,

(ii) an amount (other than an amount described in subparagraph (i)) made payable by the trust after 2000 and before the particular time to

(A) the particular entity because of the interest of the particular entity as a beneficiary under the trust, or

(B) another entity (that was, when the amount became payable, a specified party in respect of the particular entity) because of the interest of the specified party as a beneficiary under the trust,

(iii) an amount (other than an amount described in subparagraph (i) or (ii)) that is the fair market value of a benefit received or enjoyed, after 2000 and before the particular time, from or under the trust by

(A) the particular entity, or

(B) another entity that was, when the benefit was received or enjoyed, a specified party in respect of the particular entity, or

(iv) the maximum amount that would be recoverable from the particular entity at the end of 2002 under subsection (2) (as it read in its application to taxation years that began before 2003) if the trust had tax payable under this Part at the end of 2002 and that tax payable exceeded the total of the amounts described in respect of the entity under paragraphs (2)(a) and (b) (as they read in their application to taxation years that began before 2003), except to the extent that the amount so recoverable is in respect of an amount that is included in the particular entity's recovery limit because of subparagraph (i) or (ii), and

(b) the total of all amounts each of which is the amount, when made, of a contribution to the trust before the particular time by the particular entity,

exceeds the total of all amounts each of which is

(c) an amount recovered before the particular time from the particular entity in connection with a liability of the particular entity (in respect of the trust and the particular year or a preceding taxation year of the trust) that arose because of the application of subsection (3) (or the application of this section as it read in its application to taxation years that began before 2003),

(d) an amount (other than an amount in respect of which this paragraph has applied in respect of any other entity) recovered before the particular time from a specified party in respect of the particular entity in connection with a liability of the particular entity (in respect of the trust and the particular year or a preceding taxation year of the trust) that arose because of the application of subsection (3) (or the application of this section as it read in its application to taxation years that began before 2003), or

(e) the amount, if any, by which the particular entity's tax payable under this Part for any taxation year in which an amount described in any of subparagraphs (a)(i) to (iii) was paid, became payable, was received, became receivable or was enjoyed by the particular entity exceeds the amount that would have been the particular entity's tax payable under this Part for that taxation year if no such amount were paid, became payable, were received, became receivable or were enjoyed by the particular entity in that taxation year.

Technical Notes: Under subsection 94(8), the amount of the recovery limit that applies to a particular entity at any particular time is calculated as follows:

- ADD amounts received or receivable after 2000 and before the particular time by the particular entity on the disposition of all or part of the particular entity's interest as a beneficiary under the trust, or by another entity that was, at the time the amount became receivable, a specified party (as defined in subsection 94(1)) in respect of the particular entity on the disposition of all or part of the specified party's interest as a beneficiary under the trust;

- ADD an amount (other than an amount described in the paragraph above) made payable by the trust after 2000 and before the particular time to the particular entity because of the interest of the particular entity as a beneficiary under the trust, or another entity (that was, at the time the amount became payable, a specified party in respect of the particular entity) because of the interest of the specified party as a beneficiary under the trust;

- ADD the fair market value of benefits received or enjoyed, after 2000 and before the particular time, under the trust by the particular entity (or an entity that was, at the time the benefit was received or enjoyed, a specified party in respect of the particular entity), not otherwise taken into account above;

- ADD the maximum amount that would be recoverable from the particular entity at the end of 2002 under subsection 94(2) (as it read in its application to taxation years that began before 2003) if the trust had had tax payable under Part I of the Act at the end of 2002 in excess of the total of the amounts described in respect of the entity under paragraphs 94(2)(a) and (b) (as they read in their application to taxation years that began before 2003),

  — except to the extent that the amount so recoverable is in respect of an amount that is included in the particular entity's recovery limit because of subparagraph 94(8)(a)(i) or (ii), and

  — except where the trust was created in 2001 or 2002 and new section 94 applies to the trust for its 2001 and 2002 taxation years because of an election by the trust in the coming-into-force provision;

- ADD the total amount (determined with reference to paragraphs 94(2)(b), (d), (h), (p) and (q) and subsection 94(9)) of contributions made to the trust by the particular entity, to the extent that this amount exceeds the total of the first four amounts;

- SUBTRACT previous recoveries by the Canada Revenue Agency ("CRA") under subsection 94(3) (or under subsection 94(1) as it read in its application to taxation years that began before 2003, except where the trust was created in 2001 or 2002 and new section 94 applies to the trust for its 2001 and 2002 taxation years because of an election by the trust in the coming-into-force provision) from the particular entity in respect of the trust and the year or a preceding taxation year of the trust;

- SUBTRACT previous recoveries by the CRA under subsection 94(3) (or under subsection 94(1) as it read in its application to taxation years that began before 2003 on except where the trust was created in 2001 or 2002 and new section 94 applies to the trust for its 2001 and 2002 taxation years because of an election by the trust in the coming-into-force provision) from a specified party in respect of the particular entity in respect of the trust and the year or a preceding taxation year of the trust; and

- SUBTRACT the amount, if any, by which the particular entity's tax payable under this Part for any taxation year in which an amount described in any of subparagraphs 94(8)(a)(i) to (iii) was paid, became payable, was received, became receivable or was enjoyed by the particular entity exceeds the amount that would have been the particular entity's tax payable under this Part for that taxation year if no such amount were paid, became payable, were received, became receivable or were enjoyed by the particular entity in that taxation year.

For more information on subsections 94(11) to (13), or the expression "specified party" as defined in subsection 94(1), see the commentary on those provisions.

Related Provisions: 94(9) — Determination of contribution amount; 104(24) — Whether amount payable to beneficiary.

(9) Determination of contribution amount — special case — If a contribution is made at any time by an entity to a trust as a consequence of a transaction that is, or as a consequence of a series of transactions or events that includes, the transfer at that time to the trust of a specified property, the amount of the contribution at that time is deemed, for the purposes of clause (2)(u)(ii)(C), subparagraph (7)(a)(ii) and subsection (8), to be the greater of

(a) the amount, determined without reference to this subsection, of the contribution at that time, and

(b) the amount that is the greatest fair market value of the specified property, or property substituted for it, in the period that

(i) begins immediately after that time, and

(ii) ends at the end of the third calendar year that ends after that time.

Technical Notes: Subsection 94(9) affects the calculation of the amount of a "contribution" (as defined in new subsection 94(1)) to a trust of "specified property" (as defined in new subsection 94(11)) for the purpose of determining whether the "recovery limit" limitation applies to a contributor to the trust and of determining the amount of that recovery limit.

The amount of a contribution to a trust because of a transfer to the trust of specified property is deemed by subsection 94(9) to be the greater of:

- the amount, otherwise determined, at that time of the contribution; and
- the amount that is the greatest fair market value of the specified property (or of substituted property) in the period that begins immediately after that time and ends at the end of the third calendar year after that time.

For more information on the expression "specified property" as defined in new subsection 94(1), see the commentary on that provision.

Subsection 94(9) allows for a reasonable opportunity for recovery of tax by the CRA in the context of a transaction or series of transactions involving the transfer of specified property. Consider, for example, an estate freeze under which common shares in the capital stock of a corporation are transferred directly or indirectly to a non-resident trust. Because of the difficulties associated with valuing the common shares at the time of the transfer, it is appropriate to provide for a valuation as described above.

In conjunction with new subsection 94(9), subparagraph 152(4)(b)(vi) is amended to ensure that a reassessment of a taxpayer arising out of the application of subsection 94(9) can be undertaken by the CRA within 3 years after the normal reassessment period of the taxpayer in respect of the taxpayer's relevant taxation year.

Related Provisions: 152(4)(b)(vi) — Three-year extension to reassessment period.

(10) Where contributor becomes resident in Canada within 60 months after contributing — In applying this section at each specified time, in respect of a taxation year of a trust, that is before the particular time at which a contributor to the trust becomes resident in Canada within 60 months after making a contribution to the trust, the contribution is deemed to have been made at a time other than a non-resident time of the contributor if

(a) in applying the definition "non-resident time" in subsection (1) as of each of those specified times, the contribution was made at a non-resident time of the contributor; and

(b) in applying the definition "non-resident time" in subsection (1) immediately after the particular time, the contribution is made at a time other than a non-resident time of the contributor.

Technical Notes: New subsection 94(10) applies to determine whether there is a "connected contributor" (as defined in new subsection 94(1)) to a trust for the purposes of section 94, including in applying the definition "resident beneficiary" (as defined in new subsection 94(1)). Under new paragraph 94(3)(d), a resident beneficiary can, to an extent, be liable for the trust's income tax under Part I of the Act. For more information, see the commentary on those definitions and subsections 94(3) and (7) to (9).

A "contribution" (as defined in new subsection 94(1)) to a trust by a contributor is considered to have been made at a time other than a "non-resident time" (as defined in subsection 94(1)) if the contributor becomes resident in Canada at any time within the period (referred to in this commentary as the "60-month post period") 60 months after the time of the contribution. However, to facilitate the administration of the definition "non-resident time", paragraph (b) of the definition "connected contributor" and subsection 94(3), the definition "non-resident time" is drafted so that such a contributor and the trust may, subject to subsection 94(10), treat the time of the contribution as a non-resident time for the purposes of applying the definition "connected contributor" and subsection 94(3) at a "specified time" (as defined in new subsection 94(1)) in respect of the trust for any particular trust taxation year if at the specified time the contributor still has not become resident in Canada within the 60-month post period.

Subsection 94(10) deems (for the purpose of applying section 94 at each specified time, in respect of a trust for a taxation year of the trust, that is before the particular time at which the contributor becomes resident in Canada within the 60-month post period) the contribution to have been made at a time other than a non-resident time of the contributor if:

- in applying the definition "non-resident time" as of each of those specified times, the particular contribution was made at a non-resident time of the contributor; and
- in applying the definition "non-resident time" at the particular time, the contribution is made at a time other than a non-resident time of the contributor.

Where subsection 94(10) applies, the contributor will be considered a "connected contributor" to the trust and, if, as a result, there was a "resident beneficiary" at a specified time in the relevant prior taxation year of the trust, the trust and the resident beneficiary would, because of subsection 94(3), generally be jointly and severally, or solidarily, liable for Part I tax on the trust's income for the year. (For more details on the expression "solidarily", please refer to the introductory commentary above on new section 94.)

Subparagraph 152(4)(b)(vi) is amended to ensure that a reassessment of a taxpayer arising out of the application of subsection 94(10) can be undertaken by the Canada Customs and Revenue Agency within 3 years after the normal reassessment period of the taxpayer in respect of the taxpayer's relevant taxation year.

Related Provisions: 152(4)(b)(vi) — Three-year extension to reassessment period.

(11) Application of subsecs. (12) and (13) — Subsections (12) and (13) apply to a trust or an entity in respect of a trust if

(a) at any time property of a trust (referred to in this subsection and subsections (12) and (13) as the "original trust") is transferred or loaned, directly or indirectly, in any manner, to another trust (referred to in this subsection and subsections (12) and (13) as the "transferee trust");

(b) the original trust

(i) is deemed to be resident in Canada immediately before that time because of paragraph (3)(a),

(ii) would be deemed to be resident in Canada immediately before that time because of paragraph (3)(a) if this section were read without reference to paragraph (a) of the definition "connected contributor" in subsection (1) and paragraph (a) of the definition "resident contributor" in that subsection,

(iii) was deemed to be resident in Canada immediately before that time because of subsection (1) as it read in its application to taxation years that began before 2003, or

(iv) would have been deemed to be resident in Canada immediately before that time because of subsection (1) as it read in its application to taxation years that began before 2003 if that subsection were read in that application without reference to subclause (b)(i)(A)(III) of that subsection; and

(c) it is reasonable to conclude that one of the reasons the transfer or loan is made is to avoid or minimize a liability under this Part that arose, or that would otherwise have arisen, because of the application of subsection (3) (or the application of this section as it read in its application to taxation years that began before 2003).

Technical Notes: Subsections 94(11) to (13) provide a set of related anti-avoidance rules that apply where it is reasonable to conclude that one of the reasons for a loan or transfer of property from a trust (the "original trust"), that is deemed under paragraph 94(3)(a) to be resident in Canada (or, except where the trust was created in 2001 or 2002 and elects under the coming-into-force provision of new section 94 to have that section apply for its 2001 and 2002 taxation years, was deemed resident because of subsection (1) as it read in its application to taxation years that began before 2003 or would have been so deemed under either of those provisions if they had applied without regard to the period of time in which a contributor to the trust was resident in Canada), to another trust (the "transferee trust") is to avoid or minimize the liability, of any entity under Part I of the Act, that arose, or that would otherwise have arisen, because of the application of subsection (3) (or, except where the trust was created in 2001 or 2002 and elects under the coming-into-force provision of new section 94 to have that section apply for its 2001 and 2002 taxation years, because of subsection (1) as it read in its application to taxation years that began before 2003).

Where such a loan or transfer is made at a particular time, the original trust is deemed, under subsection 94(12), to be a resident contributor to the transferee trust for the purpose of applying this section in respect of the transferee trust.

Where such a loan or transfer is made at a particular time, an entity that is at that time a contributor to the original trust is deemed, under subsection 94(13), to be a contributor to the transferee trust and a connected contributor to the transferee trust (if at that time the entity is also a connected contributor to the original trust). For more information on the definitions "contributor" and "connected contributor" in subsection 94(1), see the commentary on those definitions.

Subsection 94(7), generally provides that the liability of a "resident contributor" is limited by that contributor's recovery limit, as determined by reference to subsections 94(7) to (9). However, subsection 94(7) does not apply to an entity that is deemed, by subsection 94(12) or (13), to be a contributor or a resident contributor to the trust. For more information on the definition "resident contributor" or subsections 94(3) and (7) to (9), see the commentary on those provisions.

(12) Deemed resident contributor — The original trust described in subsection (11) (including a trust that has ceased to exist) is deemed to be, at and after the time of the transfer or loan referred to in that subsection, a resident contributor to the transferee trust for the purpose of applying this section in respect of the transferee trust.

Technical Notes: See under 94(11).

Related Provisions: 94(11) — Application of 94(12).

(13) Deemed contributor — An entity (including any entity that has ceased to exist) that is, at the time of the transfer or loan referred to in subsection (11), a contributor to the original trust, is deemed to be at and after that time

(a) a contributor to the transferee trust; and

(b) a connected contributor to the transferee trust, if at that time the entity is a connected contributor to the original trust.

Technical Notes: See under 94(11).

Related Provisions: 94(11) — Application of 94(13).

(14) Restricted property — exception — A particular property that is, or will be, at any time held, loaned or transferred, as the case may be, by an entity is not restricted property held, loaned or transferred, as the case may be, at that time by the entity if

(a) the particular property is a share of a specified class (as defined by subsection 256(1.1)) of the shares of the capital stock of a corporation and

(i) the particular property was acquired, as part of a transaction or series of transactions or events, from the corporation in exchange for, or as consideration for, property that is money only, and

(ii) no other property (other than property that is identical to the particular property) was acquired by any entity as part of that transaction or series of transactions or events; or

(b) the particular property is identified in prescribed form, containing prescribed information, filed, by or on behalf of the entity, with the Minister on or before the entity's filing-due date (or another date that is acceptable to the Minister) for the entity's taxation year that includes that time, and

(i) the particular property (and property, if any, for which the particular property is, or is to be, substituted property) was not, and will not be, at any time acquired, held, loaned or transferred by the entity (or any entity with whom the entity does not at any time deal at arm's length) in whole or in part for the purpose of permitting any change in the value of the property of a corporation (that is, at any time, a closely-held corporation) to accrue directly or indirectly in any manner whatever to the value of property held by a non-resident trust, and

(ii) the Minister is satisfied that the particular property (and property, if any, for which it is, or is to be, substituted) is described by subparagraph (i).

Technical Notes: Subsection 94(14) operates to suspend, in limited circumstances, a particular property's status as restricted property.

Paragraph 94(14)(a) is, in general terms, intended to apply only to preferred shares of the capital stock of a corporation that are issued by the corporation only for money. More specifically, paragraph 94(14)(a) provides that a particular property, that is or will be at any time held, loaned or transferred, as the case may be, by an entity, is not restricted property held, loaned or transferred, as the case may be, at that time by the entity if

- the particular property is a share of a specified class (as defined in subsection 256(1.1)) of shares of the capital stock of a corporation,

- the particular property was issued by the corporation in exchange for, or as consideration for, money and no other property, and
- no other property (other than identical shares issued by that corporation) was acquired by any entity as part of that issuance.

Paragraph 94(14)(b) provides that a particular property (identified in prescribed form filed with the Minister of National Revenue) that is at any time held, loaned or transferred by the entity will not be treated as restricted property held, loaned or transferred at that time by the entity if

- the particular property (or property for which the particular property is, or is to be, substituted property) was not, and will not be, at any time acquired, held, loaned or transferred by the entity (or any entity with whom the entity does not at any time deal at arm's length) in whole or in part for the purpose of permitting any change in the value of the property of a corporation (that is, at any time, a closely-held corporation) to accrue directly or indirectly in any manner whatever to the value of property held by a non-resident trust; and
- the Minister is satisfied that this is the case with respect to the property (and property, if any, for which it is to be substituted).

The prescribed form in which the particular property is identified must be filed by the entity's filing-due date (or another date acceptable to the Minister) for the entity's taxation year that includes that time. The other date will generally be a date later than the entity's relevant filing due-date, but in circumstances in which the entity has no filing-due date, the other date is intended to provide the Minister with the ability to choose a filing deadline for the prescribed form.

For more details on the definitions "restricted property" and closely-held corporation", see the commentary on those provisions.

Related Provisions: 94(4)(b) — Deeming non-resident trust to be resident in Canada does not apply to para. (b); 248(12) — Identical properties.

(15) Determining arm's length dealing and related entities — In determining whether an entity and another entity are related to each other or deal at arm's length with each other, a person referred to in section 251 includes an entity.

Technical Notes: Subsection 94(15) ensures that the rules in section 251 are applicable in determining whether entities deal at arm's length with each other or are related to each other. The subsection provides in effect, that for the purposes of section 94, when determining whether a particular entity and another entity are related to each other or deal, at any time, with each other at arm's length, each reference in section 251 to the word "person" is to be read as a reference to the expression "entity" (as defined in subsection 94(1)).

(16) Anti-avoidance — 150 entities — In applying this section,

(a) if it can reasonably be considered that one of the main reasons that an entity is at any time a shareholder of a corporation is to cause the condition in paragraph (b) of the definition "closely-held corporation" in subsection (1) to be satisfied in respect of the corporation, the condition is deemed not to have been satisfied at that time in respect of the corporation;

(b) if it can reasonably be considered that one of the main reasons that an entity holds at any time an interest in a trust is to cause the condition in subclause (h)(i)(A)(I)[12] of the definition "exempt foreign trust" in subsection (1) to be satisfied in respect of the trust, the condition is deemed not to have been satisfied at that time in respect of the trust; and

(c) if it can reasonably be considered that one of the main reasons that a person holds at any time a property is to cause the condition in paragraph (c) of the definition "excluded property" in subsection (1) to be satisfied in respect of the property or an identical property held by any person, the condition is deemed not to have been satisfied at that time in respect of the property or the identical property.

Technical Notes: Subsection 94(16) is an anti-avoidance provision that is relevant to the application of the definition "closely-held corporation" in subsection 94(1), paragraph (h) of the definition "exempt foreign trust" in subsection 94(1), and the definition "excluded property" in subsection 94(1). These definitions, respectively, provide for different results based, in part, on the condition that there be at a particular time at least 150 shareholders of the capital stock of a corporation, at least 150 beneficiaries under a trust, or at least 150 persons that hold property (identical to a particular property) issued by a trust, corporation or limited partnership.

Subsection 94(16) provides that, if it can reasonably be considered that one of the main reasons that an entity is at any time a shareholder of a corporation, holds a capital interest in a trust, or holds a property is to cause the applicable above condition to be met in respect of the corporation, the trust or — in the case of the condition in the definition "excluded property" — the particular property (or an identical property), the condition is deemed not to have been met with respect to the corporation, the trust or the particular or identical property.

Where subsection 94(16) applies in respect of a particular time and in respect of the corporation or trust, in the case of the corporation, it would be treated at that time as a closely-held corporation and in the case of the trust, it would not be treated at that time as an exempt foreign trust. In the case of the definition "excluded property", the particular property and the identical property would not be excluded property.

For more detail on the definitions "closely-held corporation", "excluded property" and "exempt foreign trust", see the commentary on those definitions.

Related Provisions: 248(12) — Identical properties.

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), s. 17, will amend s. 94 to read as above, applicable to trust taxation years that begin after 2002, except that

(a) it also applies to taxation years that begin in 2001 and 2002 of a trust if the trust was created in 2001 and elects, in writing, to have s. 94 apply to those taxation years by filing the election with the Minister of National Revenue on or before the trust's filing-due date for the trust's taxation year in which the amending legislation is assented to;

(b) it also applies to taxation years that begin in 2002 of a trust if the trust was created in 2002 and elects, in writing, to have s. 94 apply to those taxation years by filing the election with the Minister of National Revenue on or before the trust's filing-due date for the trust's taxation year in which the amending legislation is assented to;

(c) any election or form referred to in s. 94 that would otherwise be required to be filed before 120 days after the amending legislation is assented to is deemed to have been filed with the Minister of National Revenue on a timely basis if it is filed with the Minister of National Revenue within 365 days after the amending legislation is assented to;

(d) the expression "if the entity is an individual and the trust arose on and as a consequence of the death of the individual, 18 months before the contribution time" in the definition "non-resident time" in subsec. 94(1) is, in respect of contributions made before June 23, 2000, to be read as the expression "if the contribution time is before June 23, 2000, 18 months before the end of the trust's taxation year that includes the contribution time";

(e) if a trust elects, by notifying the Minister of National Revenue in writing on or before its filing-due date for its taxation year that includes the day on which the amending legislation is assented to, in applying s. 94 in respect of the trust the definition "arm's length transfer" in subsec. 94(1) does not include a loan or other transfer of property that is identified in the election and that is made in a taxation year that begins before 2003;

(f) if a trust ceased to exist before October 31, 2003, the definition "specified time" in subsec. 94(1) is to be read in respect of the trust without reference to paragraph (b) of that definition;

(g) unless a trust elects, by notifying the Minister of National Revenue in writing on or before its filing-due date for its taxation year that includes the day on which the amending legislation is assented to, that this paragraph not apply, paras. (a) and (b) of the definition

[12] *Sic*. Should be (h)(ii)(A)(I) — ed.

"closely-held corporation" in subsec. 94(1) are, in respect of the trust for its taxation years that begin on or before July 18, 2005, to be read as follows:

(a) there are one or more classes of shares of its capital stock that are not a specified class within the meaning assigned by subsection 256(1.1); and

(b) it is reasonable conclude that at that time

(i) the shares of those classes (other than such a specified class) are held by at least 150 entities each of whom holds shares that have a total fair market value of at least $500, and

(ii) the total number of issued and outstanding shares of a class (other than such a specified class) held by a particular entity or by any other entity with whom the particular entity does not deal at arm's length is not more than 10% of the total number of the issued and outstanding shares of that class.

(h) if a trust elects, by notifying the Minister of National Revenue in writing on or before its filing-due date for its taxation year that includes the day on which the amending legislation is assented to, that this paragraph apply, para. (f) of the definition "eligible trust" in subsec. 94(1) is, in respect of the trust for its taxation years that begin on or before July 18, 2005, to be read as follows:

(f) that at or before that time was a personal trust; or

(i) subpara. (b)(i) of the definition "exempt foreign trust" in subsec. 94(1) is, for taxation years that begin on or before July 18, 2005, to be read as follows:

(i) the trust was created after the breakdown of a marriage or common-law partnership of two particular individuals to provide for the maintenance of a beneficiary under the trust who is a child of one of those particular individuals (which beneficiary is referred to in this paragraph as a "child beneficiary"),

(j) unless a trust elects, by notifying the Minister of National Revenue in writing on or before its filing due date for its taxation year that includes the day on which the amending legislation is assented to, that this paragraph not apply, paras. (f) and (g) of the definition "exempt foreign trust" in subsec. 94(1) are, in respect of the trust for its taxation years that begin on or before July 18, 2005, to be read as follows:

(f) a non-resident trust, if throughout the trust's taxation year that includes the particular time

(i) the trust is a trust governed by an employee benefit plan or is a trust (referred to in this paragraph as the "specified trust") described in paragraph (a.1) of the definition "trust" in subsection 108(1),

(ii) the plan or the specified trust is maintained primarily for the benefit of non-resident individuals,

(iii) the trust holds no restricted property, and

(iv) the plan or the specified trust provides no benefits, other than benefits in respect of

(A) services rendered to an employer by an employee of the employer, which employee was non-resident throughout the period during which the services were rendered,

(B) services rendered to an employer by an employee of the employer, other than services that were primarily

(I) rendered in Canada,

(II) rendered in connection with a business carried on by the employer in Canada, or

(III) a combination of services described in subclauses (I) and (II),

(C) services rendered to an employer by an employee, of the employer, in a particular calendar month where

(I) the employee was resident in Canada throughout no more than 60 of the 72 calendar months ending with the particular month, and

(II) the employee became a member of, or a beneficiary under, the plan or the specified trust (or a similar plan or specified trust for which the plan or the specified trust was substituted) before the end of the calendar month following the month in which the employee became resident in Canada, or

(D) any combination of services described by clauses (A) to (C);

(g) a non-resident trust that, throughout the particular period that began at the time it was created and ends at the particular time,

(i) has been operated exclusively for the purpose of administering or providing superannuation, pension, retirement or employee benefits,

(ii) has

(A) been maintained for the benefit of persons all or substantially all of whom are non-resident individuals, or

(B) been maintained for the benefit of persons

(I) the majority of whom are non-resident individuals, and

(II) all or substantially all of whom are employed by one corporation or by two or more corporations each of which is related to each other, and

(iii) has

(A) been resident in a country (other than Canada) the laws of which impose an income or profits tax, and been exempt, under the laws of that country, from the payment of income tax and profits tax to the government of that country in recognition of the purposes for which the trust is operated, or

(B) held cash or shares of the capital stock of one or more corporations referred to in subclause (ii)(B)(II) the value of which at any time in the particular period represents all or substantially all of the value of its property at that time, held no restricted property, and been governed by terms that provide, in respect of each individual who is a beneficiary under the trust and was resident in Canada at any time while employed by one of those corporations, for a transfer of property to be made by the trust to the individual in satisfaction of a right (other than a right under an arrangement to which subsection 7(2) or (6) applies) of the individual as a beneficiary under the trust only on or after the satisfaction of the conditions, if any, attached to that right;

(k) the opening words of subpara. (b)(iii) of the definition "restricted property" in subsec. 94(1) are, for taxation years that begin on or before July 18, 2005, to be read as follows:

(iii) the amount of any payment (under a right to receive, in any manner whatever and from any entity, amounts in respect of the indebtedness), or the value of such a right, is, directly or indirectly, determined primarily by one or more of the following criteria in respect of one or more properties of the other entity (or an entity with which the other entity does not deal at arm's length):

(l) if a trust elects, by notifying the Minister of National Revenue in writing on or before its filing-due date for its taxation year that includes the day on which the amending legislation is assented to, that this paragraph apply, in applying s. 94, in respect of the trust the definition "specified fixed interest" in subsec. 94(1) is, for its taxation years that begin on or before July 18, 2005, to be read as follows:

"specified fixed interest", at any time of an entity in a trust, means a capital interest of the entity in the trust if

(a) the interest includes, at that time, a right of the entity as a beneficiary under the trust to receive, at or after that time and directly from the trust, income or capital of the trust;

(b) the interest was acquired, at or before that time, from the trust by any entity, in circumstances that are described by subparagraph (2)(g)(ii);

(c) no right of the entity as a beneficiary under the trust to income or capital of the trust may cease to be a right of

the entity (or the entity's legal representatives) otherwise than because of

(i) a gift of that interest made by the entity, or

(ii) a transaction or event under which the entity (or the entity's legal representatives) is entitled to receive an amount equal to the fair market value, immediately before that cessation, of the right; and

(d) the trust was not at any time at or before that time a personal trust.

(m) subpara. 94(3)(a)(x) does not apply in determining on or before July 18, 2005 whether a foreign affiliate is a controlled foreign affiliate of a taxpayer;

(n) para. 94(4)(b) is

(i) subject to subpara. (ii), for taxation years that begin on or before July 18, 2005, to be read without reference to "the definition "Canadian partnership" in subsection 102(1),", and

(ii) to be read as follows in its application to a transfer, by a trust, that occurred before February 28, 2004:

(b) subsections 70(6) and 73(1), paragraph 107.4(1)(e) other than subparagraph (i) of it and paragraph (a) of the definition "mutual fund trust" in subsection 132(6);

(o) para. 94(4)(f) is in its application to a transfer by a trust that occurred before February 28, 2004 to be read as follows:

(f) determining the residency of the transferee in applying subparagraph (f)(ii) of the definition "disposition" in subsection 248(1);

(p) if a trust was for its last taxation year that began before 2003 deemed by para. 94(1)(c) (as it read in its application to that taxation year) to be resident in Canada, paras. 94(4)(e) and (f) do not apply to the trust for the period that starts immediately before the end of that last taxation year and that ends immediately after the beginning of its first taxation year that begins after 2002, unless during that period a change in the trustees of the trust occurred;

(q) if s. 94 as amended applies to a trust for its taxation years that begin in 2001 or in 2002,

(i) para. 94(3)(e), subpara. 94(8)(a)(iv) and subparas. 94(11)(b)(iii) and (iv) do not apply to the trust, and

(ii) paras. 94(8)(c) and (d) and para. 94(11)(c) in their application to the trust are to be read without reference to the expression "(or the application of this section as it read in its application to taxation years that began before 2003)"; and

(r) if a trust elects, by notifying the Minister of National Revenue in writing on or before its filing-due date for its taxation year that includes the day on which the amending legislation is assented to, that this para. apply, para. (h) of the definition "exempt foreign trust" in subsec. 94(1) is, in respect of the trust for its taxation years that begin on or before July 18, 2005, to be read as follows:

(h) a non-resident trust that is, at the particular time, an eligible trust

(i) under which the interest of each beneficiary (in this subparagraph, determined without reference to subsection 248(25)) is, at all times that the interest exists during the trust's taxation year that includes the particular time, a specified fixed interest of the beneficiary in the trust, if at the particular time

(A) there are at least 150 beneficiaries each of whom holds a specified fixed interest in the trust with a fair market value of at least $500, and

(B) where in respect of a class of interests as a beneficiary under the trust, the total fair market value of interests of that class held by a resident contributor or by any other entity with whom the resident contributor does not deal at arm's length is more than 10% of the total fair market value of interests of that class, it is reasonable to conclude (determined by reference to all the circumstances including the terms of the trust, an intention, the laws of a country or the existence of an agreement, a memorandum, a letter of wishes or any other arrangement) that that resident contributor is a specified contributor to the trust, or

(ii) under which the interest of each beneficiary under the trust is, at all times that the interest exists during the trust's taxation year that includes the particular time, a specified fixed interest of the beneficiary in the trust, if in respect of the trust

(A) a prescribed form and a copy of the terms of the trust that apply at the particular time have been filed with the Minister by or on behalf of the trust on or before its filing due date for its taxation year that includes the particular time (or a later date that is acceptable to the Minister), and

(B) it is reasonable to conclude (determined by reference to all the circumstances including the terms of the trust, an intention, the laws of a country or the existence of an agreement, a memorandum, a letter of wishes or any other arrangement) that each resident contributor (other than an indirect contributor) to the trust at the particular time is a specified contributor to the trust at the particular time; or

Notice of Ways and Means Motion, federal budget, February 16, 1999: *Non-resident trusts and foreign-based investment funds*

(8) That the provisions of the Act governing the taxation of

(a) trust beneficiaries and non-resident trusts, and

(b) taxpayers resident in Canada who hold interests in foreign-based investment funds

be modified in accordance with proposals described in the budget documents tabled by the Minister of Finance in the House of Commons on February 16, 1999.

Federal budget, Supplementary Information, February 16, 1999: *Taxation of trusts – Background*

Trusts that are resident in Canada are subject to tax in Canada annually on their undistributed income.

Beneficiaries of resident trusts are taxable on distributions received from such trusts, to the extent that the distributions are made out of the income of the trust. Distributions made out of the capital of the trust are tax-free. As a result, the Canadian tax base is protected.

Generally, non-resident trusts are not taxable in Canada and income can be accumulated in such trusts on a tax-deferred basis. When such trusts pay little or no foreign tax on their accumulated income and capital gains, taxpayers making use of such trusts may benefit either from a deferral of tax or complete avoidance of tax. Avoidance occurs where the accumulated income is transformed into the capital of the trust, which is distributed to the Canadian beneficiaries tax-free.

Issue

The anti-avoidance rules in the Act attempt to tax income earned by non-resident trusts in certain circumstances in order to ensure that they are not used to defer Canadian tax on the income accumulating in the trusts. Current rules apply only to non-resident trusts with a Canadian beneficiary. However, these rules are not fully effective and relatively little of such income is taxed in Canada.

Canadian residents are able to transfer funds to non-resident trusts under circumstances designed to circumvent the application of existing anti-avoidance rules. The trust regimes in several tax-haven jurisdictions have been specifically modified in an attempt to permit Canadians to avoid the application of the anti-avoidance rules. A feature of such schemes is to disguise the fact that the non-resident trust has a Canadian resident beneficiary. A number of tax-haven jurisdictions have modified their trust laws so that no beneficiaries need to be designated, thus facilitating tax planning by Canadians in order to defer the taxation of the income accumulating in the non-resident trust. Arrangements between the Canadian transferors and the trustee ensure that the Canadian transferors retain effective control of the trust, or are able to designate who may ultimately receive capital of the trust, including its accumulated income.

Non-resident trusts can therefore offer higher-income Canadians the opportunity to defer or avoid Canadian tax on investment income that would otherwise be taxable in Canada.

[See also the portions reproduced under 94.1(1) — ed.]

Consultations will also be initiated on the following proposed modifications to the tax rules governing non-resident trusts:

- That where a Canadian resident transfers or loans property to a non-resident trust, the trust be treated as being resident in Canada and be taxed on all of its undistributed income, subject to a number of exceptions noted below. The Canadian resident transferor would be jointly (with the trust) liable for tax. Where a foreign income tax is imposed in respect of the undistributed income of the trust, a foreign tax credit would be provided. The proposed rules would apply

whether or not the trust has a Canadian-resident beneficiary, since in practice it may not be possible to determine whether the property in the trust will be distributed to Canadian beneficiaries.

- That the proposed changes also deal with the distributions from trusts. Distributions out of current income of the trust would be taxed in the hands of the beneficiaries. As well, distributions out of any previously untaxed accumulated income of the trust would be subject to tax.
- That the following trusts be excluded from the application of the proposed rules:
  - — trusts resident in the United States and subject to United States tax provisions;
  - — non-resident trusts set up prior to immigrants' arrival in Canada, for a five-year period after immigration; and
  - — non-resident trusts set up for the benefit of individuals with disabilities or children of divorced parents where the trust and beneficiaries are resident within the same country.
- Additional exceptions could be contemplated to remove from the rules non-resident trusts that are clearly not used to avoid or defer Canadian tax, such as *bona fide* foreign charitable trusts.
- The proposed rules would apply to any taxation year commencing after 1999, with respect to non-resident trusts to which a Canadian resident transfers or loans property on or after February 16, 1999, subject to the exceptions noted above. Other non-resident trusts to which a transfer or a loan of property was made by a Canadian resident before February 16, 1999, would be subject to the proposed rules for taxation years commencing after 2000.

The proposed changes are consistent with Revenue Canada devoting more resources to the audit of taxpayers whose investment activities extend beyond Canada.

Definitions [s. 94]: "acquired for consideration" — 108(7); "amount" — 248(1); "arm's length" — 94(15), 251(1); "arm's length transfer" — 94(1); "beneficially interested" — 248(25); "beneficiary" — 94(1); "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255, *Interpretation Act* 35(1); "Canadian corporation" — 89(1), 248(1); "capital interest" — 108(1), 248(1); "child" — 252(1); "closely-held corporation" — 94(1); "common-law partner", "common-law partnership" — 248(1); "connected contributor" — 94(1); "consequence of the death" — 248(8); "contribution", "contributor" — 94(1); "controlled foreign affiliate" — 95(1), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition", "dividend" — 248(1); "eligible trust" — 94(1); "employed", "employee", "employee benefit plan" — 248(1); "employees profit sharing plan" — 144(1), 248(1); "employer" — 248(1); "entity", "excluded property", "exempt amount", "exempt foreign trust", "exempt service", "exempt taxpayer" — 94(1); "filing-due date" — 248(1); "fiscal period" — 249.1; "foreign retirement arrangement" — 248(1), Reg. 6803; "Her Majesty" — *Interpretation Act* 35(1); "identical" — 248(12); "indirect contributor" — 94(1); "individual" — 248(1); "inter vivos trust" — 108(1), 248(1); "legal representative", "majority interest partner", "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "mutual fund corporation" — 131(8), 248(1); "mutual fund trust" — 132(6)–(7), 132.2(3)(n), 248(1); "non-resident" — 248(1); "non-resident time" — 94(1); "original trust" — 94(11)(a); "paid-up capital" — 89(1), 248(1); "person", "personal trust", "prescribed" — 248(1); "prescribed stock exchange" — Reg. 3200, 3201; "promoter" — 94(1); "property" — 248(1); "qualifying investor" — 94(1); "recovery limit" — 94(8); "related" — 251(2)–(6); "resident" — 250; "resident beneficiary", "resident contributor" — 94(1); "resident in Canada" — 250; "restricted property" — 94(1), (14); "retirement compensation arrangement", "salary deferral arrangement" — 248(1); "series of transactions" — 248(10); "share", "shareholder" — 248(1); "specified charity" — 94(1); "specified class" — 256(1.1); "specified controlled foreign affiliate", "specified contributor", "specified fixed interest", "specified party", "specified property", "specified share", "specified time" — 94(1); "substituted" — 248(5); "successor beneficiary" — 94(1); "superannuation or pension benefit", "taxable income" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "testamentary trust" — 108(1), 248(1); "transferee trust" — 94(11)(a); "trust" — 94(1), 104(1), 248(1), (3); "written" — *Interpretation Act* 35(1)"writing".

94.1 (1) Offshore investment fund property — Where in a taxation year a taxpayer, other than a non-resident-owned investment corporation, holds or has an interest in property (in this section referred to as an "offshore investment fund property")

(a) that is a share of the capital stock of, an interest in, or a debt of, a non-resident entity (other than a controlled foreign affiliate of the taxpayer or a prescribed non-resident entity) or an interest in or a right or option to acquire such a share, interest or debt, and

(b) that may reasonably be considered to derive its value, directly or indirectly, primarily from portfolio investments of that or any other non-resident entity in

(i) shares of the capital stock of one or more corporations,

(ii) indebtedness or annuities,

(iii) interests in one or more corporations, trusts, partnerships, organizations, funds or entities,

(iv) commodities,

(v) real estate,

(vi) Canadian or foreign resource properties,

(vii) currency of a country other than Canada,

(viii) rights or options to acquire or dispose of any of the foregoing, or

(ix) any combination of the foregoing,

and it may reasonably be concluded, having regard to all the circumstances, including

(c) the nature, organization and operation of any non-resident entity and the form of, and the terms and conditions governing, the taxpayer's interest in, or connection with, any non-resident entity,

(d) the extent to which any income, profits and gains that may reasonably be considered to be earned or accrued, whether directly or indirectly, for the benefit of any non-resident entity are subject to an income or profits tax that is significantly less than the income tax that would be applicable to such income, profits and gains if they were earned directly by the taxpayer, and

(e) the extent to which the income, profits and gains of any non-resident entity for any fiscal period are distributed in that or the immediately following fiscal period,

that one of the main reasons for the taxpayer acquiring, holding or having the interest in such property was to derive a benefit from portfolio investments in assets described in any of subparagraphs (b)(i) to (ix) in such a manner that the taxes, if any, on the income, profits and gains from such assets for any particular year are significantly less than the tax that would have been applicable under this Part if the income, profits and gains had been earned directly by the taxpayer, there shall be included in computing the taxpayer's income for the year the amount, if any, by which

(f) the total of all amounts each of which is the product obtained when

(i) the designated cost to the taxpayer of the offshore investment fund property at the end of a month in the year

is multiplied by

(ii) the quotient obtained when the prescribed rate of interest for the period including that month is divided by 12

exceeds

(g) the taxpayer's income for the year (other than a capital gain) from the offshore investment fund property determined without reference to this subsection.

Proposed Amendment — 94.1(1)

See at end of 94.1.

Related Provisions: 53(1)(m) — Addition to ACB; 94(1)(c)(i)(D) — Income under 94.1 included in income of offshore trust; 95(1)"foreign accrual property income"C — Application to determination of FAPI.

Regulations: 4301(c) (prescribed rate of interest for 94.1(1)(f)(ii)); to date, no prescribed non-resident entities prescribed for 94.1(1)(a).

Interpretation Bulletins: IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada.

(2) Definitions — In this section,

"designated cost" to a taxpayer at any time in a taxation year of an offshore investment fund property that the taxpayer holds or has an interest in means the amount determined by the formula

$$A + B + C + D$$

where

A is the cost amount to the taxpayer of the property at that time (determined without reference to paragraphs 53(1)(m) and (q), subparagraph 53(2)(c)(i.3), paragraphs 53(2)(g) and (g.1) and section 143.2),

B is, where an additional amount has been made available by a person to another person after 1984 and before that time, whether by way of gift, loan, payment for a share, transfer of property at less than its fair market value or otherwise, in circumstances such that it may reasonably be concluded that one of the main reasons for so making the additional amount available to the other person was to increase the value of the property, the total of all amounts each of which is the amount, if any, by which such an additional amount exceeds any increase in the cost amount to the taxpayer of the property by virtue of that additional amount,

C is the total of all amounts each of which is an amount included in respect of the offshore investment fund property by virtue of this section in computing the taxpayer's income for a preceding taxation year, and

D is

(a) where the taxpayer has held or has had the interest in the property at all times since the end of 1984, the amount, if any, by which the fair market value of the property at the end of 1984 exceeds the cost amount to the taxpayer of the property at the end of 1984, or

(b) in any other case, the total of

(i) the amount, if any, by which the fair market value of the property at the particular time the taxpayer acquired the property exceeds the cost amount to the taxpayer of the property at the particular time, and

(ii) the amount, if any, by which

(A) the total of all amounts each of which is an amount that would have been included in respect of the property because of this section in computing the taxpayer's income for a taxation year that began before June 20, 1996 if the cost to the taxpayer of the property were equal to the fair market value of the property at the particular time

exceeds

(B) the total of all amounts each of which is an amount that was included in respect of the property because of this section in computing the taxpayer's income for a taxation year that began before June 20, 1996,

except that the designated cost of an offshore investment fund property that is a prescribed offshore investment fund property is nil;

Related Provisions: 94.1(3) — Pre-Feb. 15/84 property.

History: The description of A in the definition "designated cost" in subsec. 94.1(2) amended by 1998, c. 19, subsec. 121(1), applicable after September 26, 1994, except that as it applies to taxation years that ended before April 27, 1995, the description of A shall be read as follows:

A is the cost amount to the taxpayer of the property at that time (determined without reference to paragraph 53(1)(m), subparagraph 53(2)(c)(i.3) and section 143.2),

The description formerly read:

A is the cost amount to the taxpayer of the property at that time (determined without reference to paragraph 53(1)(m)),

The description of D in the definition "designated cost" in subsec. 94.1(2) amended by 1998, c. 19, subsec. 121(2), applicable to taxation years that begin after June 20, 1996. The description formerly read:

D is, where the taxpayer held or had the interest in the property at the end of 1984, the amount, if any, by which the fair market value of the property at that time exceeds the cost amount to the taxpayer of the property at that time,

Regulations: 6900 (prescribed offshore investment fund property).

"non-resident entity" means a corporation that is not resident in Canada, a partnership, organization, fund or entity that is not resident or is not situated in Canada or a trust with respect to which the rules in paragraph 94(1)(c) or (d) apply.

(3) Interpretation — Where subsection (1) is applied with respect to an offshore investment fund property that was

(a) held by the taxpayer on February 15, 1984,

(b) received as a stock dividend in respect of a share of the capital stock of a non-resident entity held by the taxpayer on February 15, 1984,

(c) received as a stock dividend in respect of a share of the capital stock of a non-resident entity that the taxpayer had previously received as described in paragraph (b), or

(d) substituted for a property held by the taxpayer on February 15, 1984 pursuant to an arrangement that existed on that date,

the reference to "1984" in the descriptions of B and D in the definition "designated cost" in subsection (2) shall be read as a reference to "1985".

Origin of subsec. 94.1(3): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the application rule in 1984, c. 45, s. 30, as amended by 1985, c. 45, s. 148).

Definitions [s. 94.1]: "amount", "annuity" — 248(1); "capital gain" — 39(1)(a), 248(1); "controlled foreign affiliate" — 95(1), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount" — 248(1); "designated cost" — 94.1(2); "fiscal period" — 249(2), 249.1; "foreign affiliate" — 95(1), 248(1); "foreign resource property" — 66(15), 248(1); "investment corporation" — 130(3), 248(1); "non-resident" — 248(1); "non-resident entity" — 94.1(2); "offshore investment fund property" — 94.1(1); "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "property", "share" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

Proposed Amendment — 94.1–94.4

Technical Notes [July 18, 2005]: *OVERVIEW*

Existing Rules

Existing section 94.1 applies where a taxpayer has invested in an offshore investment fund and one of the main reasons for the investment is to reduce or defer the tax liability that would have applied to the income generated from the underlying assets of the fund if such income had been earned directly by the taxpayer. In these circumstances, existing section 94.1 generally requires an amount to be included in computing the taxpayer's income from the investment. This amount is determined, in general terms, by multiplying the cost amount of the taxpayer's investment by a factor based on interest rates prescribed under Part XLIII of the *Income Tax Regulations*.

New Rules

Section 94.1 is replaced by provisions in new sections 94.1 to 94.4, which contain rules governing the tax treatment of interests in foreign investment entities (FIEs), tracking entities and foreign insurance policies.

In computing a taxpayer's income for a taxation year, new subsection 94.1(4) will generally require an amount to be included in computing the taxpayer's income from the investment. This amount will be determined, in general terms, by multiplying the designated cost of the taxpayer's investment by a factor based on interest rates prescribed under paragraph 4301(b) of the *Income Tax Regulations*.

If a taxpayer elects and has sufficient information to comply, either new subsection 94.2(4) or 94.3(4) will apply in place of the rules in subsection 94.1(4) for computing income from the investment. However, in the case of interest in a tracking entity, subsection 94.3(4) will not be available, and in the case of an interest in a foreign insurance policy, only subsection 94.2(4) will apply.

Under subsection 94.2(4), a taxpayer must take into account the annual increase or decrease in the fair market value of the taxpayer's interest in computing the taxpayer's income from the interest.

Under subsection 94.3(4), a taxpayer is required to include the taxpayer's share of the FIE's income for each FIE taxation year that ends in the taxpayer's taxation year.

Section 94.4 is designed to prevent double taxation with respect to amounts included in income under any of sections 94.1 to 94.3.

New sections 94.1 to 94.4 apply to taxation years that begin after 2002.

Note that under the coming-into-force provision for new sections 94.1 to 94.4, an election or form (but for greater certainty not including a return of income) referred to in any of new sections 94.1 to 94.3 made by a taxpayer is deemed to have been filed with the Minister of National Revenue

(i) on a timely basis if it is filed with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day of Royal Assent, and

(ii) in the taxpayer's return of income for the taxpayer's taxation year identified by the taxpayer in the election, if it is filed with the Minister of National Revenue in writing in the taxpayer's return of income for the taxpayer's taxation year that includes the day of Royal Assent.

For more detail on filing obligations in respect of returns of income, contact the Canada Revenue Agency.

The table below provides an overview of new sections 94.1 to 94.3 and related provisions.

Issue	Summary	References
1. Who is subject to the new FIE rules?	A. All taxpayers, except exempt taxpayers. Except as indicated in (C), below, FIE rules do not apply to non-resident taxpayers.	S. 94.1(3), 94.2(3), (9) and (11). "Exempt taxpayer" (s. 94.1(1)). Non-resident taxpayers: see also s. 94.1(3) and 94.2(5).
	B. Partnerships with members resident in Canada must allocate FIE income to those members.	Section 96, including exception in s. 96(1.9). See also s. 94.2(6) for application to cases where partnership members become resident in Canada.
	C. Controlled foreign affiliates.	New s. 95(2)(g.3).
2. What property is subject to the new FIE rules?	A. If subsection 94.1(3) applies, participating interests (other than exempt interests) in foreign investment entities. However, if no taxation year of a FIE has ended in the taxpayer's taxation year, the FIE rules do not apply to the taxpayer for the taxpayer's year in respect of the FIE.	S. 94.1(3) and the following definitions in s. 94.1(1): "entity", "non-resident entity", "foreign investment entity", "exempt interest" and "participating interest".
	B. If 94.1(3) does not apply, interests in tracking entities for which subsection 94.2(9) applies. Section 94.3 not available for such interests.	S. 94.1(4) and 94.2(3) and (9). The definition "tracking entity" in 94.2(1). See also amended s. 91(1).
	C. Interests in certain foreign insurance policies. This property is subject only to s. 94.2, not s. 94.1, 94.3 and 94.4.	S. 94.2(3), (10) and (11).
3. What is the difference in the tax treatment of FIE interests between ss. 94.1, 94.2 and 94.3?	A. Section 94.1. Investor's income inclusion based on a prescribed rate of return.	S. 94.1(4).
	B. Section 94.2. Full appreciation/decline in fair market value of the investment is recognized on an annual basis.	S. 94.2(4). S. 94.2(20).
	C. Section 94.3. Investor includes its "share" of a FIE's income (e.g., does not include FIE's share of unrealized gains).	S. 94.3(4).
4. How will foreign affiliates of taxpayers resident in Canada be treated under new FIE rules?	Subject to s. 94.2(9) (interests in tracking entities), a taxpayer's share of the capital stock of a controlled foreign affiliate is exempt from the new FIE rules. In certain cases, a taxpayer can elect to have a foreign affiliate treated as a controlled foreign affiliate. Otherwise, the FIE rules will apply to the interest in the affiliate.	Paragraph (a) of the definition "exempt interest". Paragraphs 94.1(2)(h) and (i).
5. If a non-resident corporation that is a FIE pays out dividends, how are these dividends taxed?	A. General principle: existing rules apply.	Existing s. 90 and 113.
	B. Relief provided to prevent double taxation. This relief applies to taxable distribution from other FIEs (e.g., trusts).	S. 94.4.

Issue	Summary	References
6. In what circumstances is a taxpayer subject to any of sections 94.1 to 94.3, respectively?	A. Requirement to use s. 94.1 where insufficient information to use s. 94.2 or s. 94.3.	S. 94.1(4), 94.2(3), 94.3(3).
	B. Election to use s. 94.2 available — interest must have readily ascertainable fair market value.	S. 94.2(2) and (3).
	C. Requirement to use s. 94.2 in the case of interests in foreign insurance policies.	S. 94.2(3), (10) and (11).
	D. Election to use s. 94.3 available (but not if 94.2(9) applies to the interest) — must have sufficient information.	S. 94.3(2) and (3).

Department of Finance news release, December 17, 2001: *Non-Resident Trusts and Foreign Investment Entities*

Finance Minister Paul Martin today announced a one-year delay of the effective date of income tax proposals affecting non-resident trusts and foreign investment entities. . . .

[The rest of this news release is reproduced at the beginning of proposed s. 94 — ed.]

94.1 Foreign investment entities — imputed income — (1) Definitions — The following definitions apply in this section and sections 94.2 to 94.4.

"arm's length interest", at any time in respect of a taxpayer, means a particular participating interest, of the taxpayer, in a non-resident entity, if the following conditions are met:

(a) it is reasonable to conclude that there are at least 150 persons each of which holds at that time participating interests in the non-resident entity that, at that time,

(i) are identical to the particular participating interest, and

(ii) have a total fair market value of at least $500;

(b) the total of all amounts each of which is the fair market value, at that time, of the particular participating interest (or of a participating interest in the non-resident entity that is identical to the particular participating interest and that is held, at that time, by the taxpayer or an entity or individual with whom the taxpayer does not deal at arm's length) does not exceed 10% of the total of all amounts each of which is the fair market value, at that time, of a participating interest in the non-resident entity that is held, at that time, by any entity or individual and that is identical to the particular participating interest; and

(c) it is reasonable to conclude that participating interests in the non-resident entity that are identical to the particular participating interest

(i) can normally be acquired by and sold by members of the public in the open market, or

(ii) can be acquired from and sold to the non-resident entity by members of the public.

Technical Notes: The definition "arm's length interest" is relevant in determining whether a taxpayer's particular participating interest is, under paragraph (e) of the definition "exempt interest" in subsection 94.1(1), an exempt interest and whether an interest has at any time a "readily obtainable fair market value" as defined in subsection 94.2(1). For more information, see the commentary on those definitions.

A particular participating interest in a particular non-resident entity is an arm's length interest at any time only if

- it is reasonable to conclude that there are at least 150 persons each of which holds participating interests in the particular non-resident entity that, at that time, are identical to the particular participating interest, and have a total fair market value of at least $500,
- the total of all amounts each of which is the fair market value, at that time, of the particular participating interest or of a participating interest in the non-resident entity that is identical to the particular participating interest and that is held, at that time, by the taxpayer or an entity or individual with whom the taxpayer does not deal at arm's length does not exceed 10% of the total of all amounts each of which is the fair market value, at that time, of a participating interest in the non-resident entity that is held, at that time, by any entity or individual and that is identical to the particular participating interest, and
- it is reasonable to conclude that the participating interests in the non-resident entity that are identical to the particular participating interest can
  - — normally be acquired and sold by members of the public in the open market, or
  - — can be acquired from and sold to the non-resident entity by members of the public.

Letter from Dept. of Finance, August 14, 2003:

Dear [xxx]

Thank you for your letter of May 12, 2003, concerning the application of the provisions contained in the legislative proposals on foreign investment entities ("FIE proposals") that were tabled as a Notice of Ways and Means Motion on October 11, 2002.

Under the FIE Proposals, a taxpayer would generally be required to include in computing the taxpayer's income for a taxation year certain amounts — determined under proposed section 94.1 or 94.2 of the *Income Tax Act* — in respect of a participating interest of the taxpayer in a FIE. However, these rules generally would not apply to a participating interest that is an exempt interest, as defined in proposed subsection 94.1(1) of the Act, of the taxpayer in a FIE. Proposed paragraph (e) of that definition would treat as an exempt interest a participating interest where a number of conditions are met, including that interests that are identical to it are "widely held and actively traded".

For the purposes of applying sections 94.1 to 94.3 in respect of a taxpayer's participating interest, in a non-resident entity, proposed paragraph 94.1(2)(f) of the Act is intended to provide an exhaustive definition of when participating interests are "widely held and actively traded". More particularly, in addition to the requirements of subparagraphs 94.1(2)(f)(i) and (ii), proposed subparagraph 94.1(2)(f)(iii) would require that the participating interests meet certain liquidity requirements and, in general terms, be qualified for distribution to the general public under the securities law of the country under the laws of which the nonresident entity that issued the participating interests is governed and was formed or organized.

In your letter, you describe an arrangement involving a non-resident entity the participating interests in which would be qualified for public distribution in Canada and could be purchased and sold by Canadian taxpayers in the open market. However, the participating interests would not be qualified for public distribution in the jurisdiction under which the laws of which the particular non-resident entity would be governed and formed or organized. As a result, a taxpayer's participating interest in the entity would not qualify as an exempt interest of the taxpayer under the FIE proposals.

We are prepared to recommend a modification to the requirements contained in proposed subparagraph 94.1(2)(f)(iii). In particular, the rule contained in that subparagraph under the FIE proposals would be replaced by a rule requiring that — in applying the definition in respect of a taxpayer's participating interest in a non-resident entity — participating interests in the non-resident entity, that are identical to the taxpayer's participating interest, can normally be acquired and sold by members of the public in the open market. [This is now in 94.1(1)"arm's length interest" — ed.]

Of course, we cannot offer any assurance that either the Minister of Finance or Parliament will agree with the recommendation that we intend

to make in this regard. Nonetheless, we trust that this statement of our position is helpful.

Thank you for writing.

Len Farber
General Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, December 1, 2003:

Dear [xxx]

I am responding to your letter dated November 18, 2003, concerning the application of paragraph (c) of the definition "arm's length interest" in subsection 94.1(1) of the *Income Tax Act*, found in the legislative proposals released on October 30, 2003 dealing with foreign investment entities. The definition "arm's length interest" is relevant in determining whether a taxpayer's interest in a non-resident entity is an "exempt interest" for purposes of the foreign investment entity provisions.

You have asked that proposed paragraph (c) of the definition be modified so that it applies in circumstances similar to those described in clause 94.1(2)(f)(iii)(B) of the previous iteration of the proposals, released on October 11, 2002. The differences between paragraph (c) of the definition "arm's length interest" of the 2003 legislative proposals and clause 94.1(2)(f)(iii)(B) of the 2002 legislative proposals reflect an attempt to simplify the language of the provisions. There was no intention to change the scope of that clause.

As a result of the uncertainty that this wording change has created, particularly in its relationship to similar wording in other sections of the Act and how those sections are administered, we will recommend that the wording of paragraph (c) of the definition "arm's length interest" of the October 2003 legislative proposals be modified to reflect the wording of clause 94.1(2)(f)(iii)(B) of the 2002 legislative proposals. As a result, a taxpayer would be able to comply with paragraph (c) of the definition "arm's length interest" in respect of its interest in a non-resident entity if it were reasonable to conclude that participating interests in the non-resident entity that are identical to the taxpayer's participating interest can normally be purchased from and sold to the non-resident entity by members of the public.

We thank you for bring[ing] this matter to our attention,

Yours sincerely,

Len Farber
General Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 94.1(2)(v) — Anti-avoidance rule re 150 persons; 248(12) — Identical properties.

"beneficiary" has, except for the purpose of paragraph 94.2(11)(f), the meaning assigned by subsection 94(1).

Technical Notes: A reference in sections 94.1 to 94.4 to a "beneficiary" carries, except for the purpose of paragraph 94.2(11)(f) (i.e., a beneficiary in respect of an interest in an insurance policy), the meaning assigned by subsection 94(1). For more information, see the commentary on the definition "beneficiary" in subsection 94(1).

"carrying value", at any time of property of a particular entity in respect of a taxpayer, means

(a) the fair market value at that time of the property, if

(i) the particular entity is an entity (referred to in this subparagraph as the "first entity") in which the taxpayer holds at that time a participating interest or is another entity in which the first entity holds at that time a direct or indirect interest,

(ii) the taxpayer elects, by notifying the Minister in writing in the taxpayer's return of income for the taxpayer's taxation year that includes that time to have this paragraph apply to all of the particular entity's property, and

(iii) the property is valued for the purpose of the particular entity's financial statements as of that time; and

(b) in any other case, the amount at which the property is valued for the purpose of the particular entity's financial statements as of that time.

Technical Notes: In applying sections 94.1 to 94.4 in respect of a taxpayer, the "carrying value" of a property held by a particular entity at any time means:

- the fair market value of the property at that time, if
  - — the particular entity is an entity (referred to in this note as the "first entity") in which the taxpayer holds at that time a participating interest or is another entity in which the first entity holds at that time a direct or indirect interest,
  - — the taxpayer elects, by notifying the Minister in writing in the taxpayer's return of income for the taxpayer's taxation year that includes that time to have this paragraph apply to all of the particular entity's property, and
  - — the property is property that is valued for the purpose of the entity's "financial statements" (as defined in subsection 94.1(1)) as of that time; and
- in any other case, the amount at which the property is valued for the purpose of the entity's financial statements as of that time.

The carrying value of property is relevant primarily for the purpose of determining whether a non-resident entity is a FIE. For more information, see the commentary on the definitions "foreign investment entity" and "financial statements".

It should also be noted that paragraph 94.1(2)(j) provides a "look-through" rule that can affect the properties considered to be owned by an entity and the carrying values of the entity's properties. In particular, the rule in paragraph 94.1(2)(j) can impute to an entity both ownership of property otherwise owned by certain other entities in which the entity has a significant interest, and the "net accounting income" (as defined in subsection 94.1(1)) and certain business activities of such other entities derived from such property. For the purposes of the look-through rule, the time at which the determination of carrying value is made is the end of the last "taxation year" (as defined in subsection 94.1(1)) of the first tier non-resident entity (whether lower tier entities share the same taxation year or not) that ends in a relevant taxation years of an electing taxpayer. For more information, see the commentary to new paragraph 94.1(2)(j) and the definition "taxation year".

Related Provisions: 87(2)(j.95) — Amalgamations — continuing corporation; 94.1(1)"financial statements" — Meaning of "financial statements"; 94.1(2)(j)(ii)A(A) — Where election made; 96(3) — Election under subpara. (a)(ii) by members of partnership.

"designated cost", to a taxpayer at any time of a participating interest held, at that time, by the taxpayer in a non-resident entity, is the amount determined by the formula

$$A + B + C + D + E + F - G$$

where

A is the cost amount to the taxpayer of the participating interest at that time (determined without reference to subsection 47(1), paragraphs 53(1)(m) and (q) and 53(2)(g) and (g.1) and section 143.2);

B is an amount included in respect of the participating interest because of this section in computing the taxpayer's income for a taxation year that ends after 2002 and before that time;

C is, if the participating interest was an offshore investment fund property (as defined in subsection 94.1(1) as it read in its application to taxation years that began before 2003) of the taxpayer at the end of the taxpayer's last taxation year that began before 2003, the total of all amounts each of which is the amount determined, in respect of the offshore investment fund property for that last taxation year, for B, C or D is the definition "designated cost" in subsection 94.1(2) as it read in its application to that last taxation year;

D is, if the participating interest was acquired by the taxpayer before 2003, and was not an offshore investment fund property (as defined in subsection 94.1(1) as it read in its application to taxation years

that began before 2003) of the taxpayer at the end of the taxpayer's last taxation year that began before 2003, the amount, if any, by which the fair market value of the participating interest at the end of that last taxation year exceeds the cost amount to the taxpayer of the participating interest at the end of that last taxation year;

E is, if one or more particular amounts has been made available by a person to another person after the last 2002 taxation year of the non-resident entity and before that time (whether by way of gift, loan, payment for a share, transfer of property at less than its fair market value or otherwise) in circumstances in which it can reasonably be concluded that one of the main reasons for making the particular amount available to the other person was to increase the value of the participating interest, the total of all amounts each of which is the amount, if any, by which each particular amount exceeds any increase in the cost amount to the taxpayer of the participating interest because of that particular amount;

F is, if the participating interest is acquired by the taxpayer after 2002, the amount, if any, by which the fair market value of the participating interest at the time it was so acquired exceeds the cost amount to the taxpayer of the participating interest at the time it was so acquired; and

G is, if the participating interest was last acquired by the taxpayer before 2003, and was not an offshore investment fund property (as defined in subsection 94.1(1) as it read in its application to taxation years that began before 2003) of the taxpayer at the end of the taxpayer's last taxation year that began before 2003, the amount, if any, by which the cost amount to the taxpayer of the participating interest at the end of that last taxation year exceeds the fair market value of the participating interest at the end of that last taxation year.

Technical Notes: In computing a taxpayer's income for a taxation year from a participating interest of the taxpayer in a non-resident entity, where subsection 94.1(4) applies, the taxpayer will be required to include the amount, determined under that subsection, in computing the taxpayer's income from the investment. That amount is determined by multiplying the "designated cost" of the taxpayer's investment by a factor based on the interest rate prescribed under paragraph 4301(b) of the *Income Tax Regulations*.

The designated cost to a taxpayer at any time of a participating interest held at that time by the taxpayer in a non-resident entity, is determined, in general terms, as follows:

- ADD the cost amount to the taxpayer of the participating interest at that time (determined without reference to certain provisions of the Act),
- ADD the amount of any previous income inclusions, of the taxpayer in respect of the participating interest, arising because of the application of subsection 94.1(4) for a previous taxation year that ends after 2002,
- ADD, if the participating interest was an offshore investment fund property (as defined in subsection 94.1(1) as it read in its application to taxation years that began before the 2003) of the taxpayer at the end of the taxpayer's last taxation year that began before 2003, certain amounts required to be included in computing the designated cost under "old" subsection 94.1(2),
- ADD, if the participating interest was acquired by the taxpayer before 2003, and was not an offshore investment fund property of the taxpayer at the end of the taxpayer's last taxation year that began before 2003, the amount, if any, by which the fair market value of the participating interest at the end of that last taxation year exceeds the cost amount to the taxpayer of the participating interest at the end of that last taxation year,
- ADD, if one or more particular amounts has been made available by a person to another person after the last 2002 taxation year of the non-resident entity and before that time for the main purpose of increasing the value of the taxpayer's participating interest, the total of all amounts each of which is the amount, if any, by which each particular amount exceeds any increase in the cost amount to the taxpayer of the participating interest because of that particular amount,
- ADD, if the participating interest is acquired by the taxpayer after 2002, the amount, if any, by which the fair market value of the participating interest at the time it was so acquired exceeds the cost amount to the taxpayer of the participating interest at the time it was so acquired, and
- SUBTRACT, if the participating interest was last acquired by the taxpayer before 2003, and was not an offshore investment fund property (as defined in subsection 94.1(1) as it read in its application to taxation years that began before 2003) of the taxpayer at the end of the taxpayer's last taxation year that began before 2003, the amount, if any, by which the cost amount to the taxpayer of the participating interest at the end of that last taxation year exceeds the fair market value of the participating interest at the end of that last taxation year.

Related Provisions: 94.1(2)(c) — Rules for determining designated cost; 94.1(4)A — Application of designated cost in calculation of income.

"entity" includes an association, a corporation, a fund, a joint venture, an organization, a partnership, a syndicate and a trust, but does not include a natural person.

Technical Notes: An entity includes an association, a corporation, a fund, a joint venture, an organization, a partnership, a syndicate and a trust. It does not include a natural person.

"exempt business", of an entity at any time, means a business — other than a business carried on by the entity principally with entities or individuals with whom the entity does not deal at arm's length, a business carried on by a trust that is an exempt foreign trust because of paragraph (f) or (h) of the definition "exempt foreign trust" in subsection 94(1), and a business carried on by the entity as a member, of a partnership, that is not a qualifying member of the partnership, or that would not be such a qualifying member if the entity were a person — that is carried on by the entity at that time and that, throughout the period (in its taxation year that includes that time) during which the business was carried on by the entity, is

(a) carried on by the entity as a foreign bank, a trust company, a credit union, an insurance corporation or, if the entity is controlled by a taxpayer resident in Canada that is described in subparagraph 95(2.1)(a)(i), a trader or dealer in securities or commodities, the activities of which business are regulated under

(i) the laws of

(A) in the case of each country in which the business is carried on through a permanent establishment, as defined by regulation, that country, or a political subdivision of that country, and

(B) the country, or the political subdivision of a country, under whose laws the entity is governed, and any of exists, was (unless the entity was continued in any jurisdiction) formed or organized, or was last continued,

(ii) the laws of the country, or of a political subdivision of the country, in which country the business is principally carried on, or

(iii) the laws (referred to in clause (B) as the "regulating laws") of a country that is a member of the European Union, or a political subdivision of that country, under whose laws another corporation is governed, and any of exists, was (unless the other corporation was continued in any jurisdiction) formed or organized, or was last continued, if

(A) the entity is a corporation that is related to the other corporation, and

(B) the business is principally carried on in a country, that is a member of the European Union, the laws of which, or the laws of a political subdivision of which, recognize the regulating laws; or

(b) a business the principal purpose of which is to derive income from

(i) the development and exploitation of Canadian resource property, of foreign resource property, of timber resource property or of any combination of them,

(ii) the leasing or licensing of property that the entity or another entity related to the entity manufactured, produced, developed or purchased and developed,

(iii) the leasing of machinery or equipment that is owned by the entity and that is used by the lessee principally for the purpose of manufacturing or processing goods,

(iv) the sale of real or immovable property developed by the entity, an entity related to the entity, or a partnership of which the entity or the related entity is a qualifying member (or would be a qualifying member if the entity were a person),

(v) the rental of real or immovable property held by the entity or a partnership of which the entity is a qualifying member (or would be a qualifying member if the entity were a person), if the management, maintenance, and other services in respect of the property are provided primarily by the employees of

(A) the entity,

(B) a corporation related to the entity,

(C) the partnership,

(D) a qualifying member (or an entity that would be a qualifying member if the entity were a person) of the partnership, or

(E) any combination of employers described in clauses (A) to (D), or

(vi) a combination of businesses described in subparagraphs (iv) and (v).

Technical Notes: The definition "exempt business" is relevant in determining whether a "non-resident entity" (as defined in subsection 94.1(1)) is carrying on an "investment business" (as defined in subsection 94.1(1)) and whether the non-resident is not a FIE. An investment business does not include an exempt business.

An exempt business of an entity at any time, in general terms, is a business — other than a business carried on by the entity principally with entities or individuals with whom the entity does not deal at arm's length, a business carried on by a trust that is an exempt foreign trust because of paragraph (f) (for taxation years that begin after July 18, 2005) or (h) of the definition "exempt foreign trust" in subsection 94(1), and a business carried on by the entity as a member, of a partnership, that is not a qualifying member of the partnership, or that would not be such a qualifying member if the entity were a person — that is carried on by the entity at that time and that, throughout the period (in its taxation year that includes that time) is

- carried on by the entity as a foreign bank, a trust company, a credit union, an insurance corporation or, if the entity is controlled by a taxpayer resident in Canada that is described in subparagraph 95(2.1)(a)(i), a trader or dealer in securities or commodities, the activities of which business are regulated under the laws of a specified country or a political subdivision of the country, or
- a business the principal purpose of which is to derive income from certain real estate businesses, certain leasing or licensing businesses, or businesses involved in the development of foreign and Canadian resource properties and timber resources.

The reference in this definition to a "permanent establishment" is intended to carry the meaning of that expression assigned by proposed section 8202 of the *Income Tax Regulations*. Proposed section 8202 of the Regulations was released in draft form as part of the February 27, 2004 release of draft technical amendments.

The reference in this definition to a "qualifying member" of a partnership is intended to carry the substantive meaning of that expression assigned by proposed subsection 248(1), contained in the December 20, 2002 legislative proposals relating to income tax. For more detail on the proposed definition "qualifying member" in subsection 248(1), see that provision and its commentary in the legislative proposals and explanatory notes published on February 27, 2004.

For more information generally, see the commentaries on the definitions "foreign investment entity" and "investment business" in subsection 94.1(1).

Related Provisions: 94.1(1)"investment business" — Exempt business excluded from FIE rules.

Regulations: 8202 (permanent establishment; to be prescribed).

"exempt interest", of a taxpayer in a non-resident entity at any time, means a participating interest of the taxpayer, in the non-resident entity, if

(a) the non-resident entity is throughout the period, in the non-resident entity's taxation year that includes that time, during which the taxpayer held the participating interest,

(i) a controlled foreign affiliate of the taxpayer,

(ii) a qualifying entity that is a foreign affiliate (other than a controlled foreign affiliate) of the taxpayer in respect of which the taxpayer has a qualifying interest (within the meaning assigned by paragraph 95(2)(m)), or

(iii) a partnership;

(b) the taxpayer is, throughout its taxation year that includes that time, a financial institution (within the meaning assigned by subsection 142.2(1)) and the participating interest is, at that time,

(i) a mark-to-market property (within the meaning assigned by subsection 142.2(1)), or

(ii) a property described in an inventory of a business of the taxpayer, which inventory is valued, in computing the taxpayer's income for that taxation year from the business, in accordance with section 1801 of the *Income Tax Regulations*;

(c) the participating interest is throughout the period, in the non-resident entity's taxation year that includes that time, during which the taxpayer held the participating interest, a right

(i) under an agreement referred to in subsection 7(1), to acquire a share of the capital stock of the non-resident entity,

(ii) granted by the non-resident entity, or another entity with which the non-resident entity does not deal at arm's length, and

(iii) acquired by the taxpayer, at a time when the taxpayer dealt at arm's length with the entity that

granted the right, solely because the taxpayer was an employee of an entity referred to in subparagraph (ii);

(d) both

(i) the non-resident entity is throughout the period, in the non-resident entity's taxation year that includes that time, during which the taxpayer held the participating interest, an entity (other than a trust that is an exempt foreign trust because of paragraph (f) or (h) of the definition "exempt foreign trust" in subsection 94(1)) all or substantially all of the carrying value of the property of which is attributable to the carrying value of properties that are shares of the capital stock of a corporation (that is not a foreign investment entity) that employs the taxpayer or that is related to another corporation that employs the taxpayer, and

(ii) an amount that is all or substantially all of the non-resident entity's payable net accounting income for its taxation year that includes that time becomes payable by it to its interest holders in that taxation year, or within 120 days after the end of that taxation year, and the taxpayer's share of that amount is included in computing the taxpayer's income for the taxpayer's taxation year that includes the time at which it became payable;

(e) it is reasonable to conclude that the taxpayer has, at that time, no tax avoidance motive in respect of the participating interest, and

(i) throughout the period, in the non-resident entity's taxation year that includes that time, during which the taxpayer held the participating interest,

(A) the participating interest is an arm's length interest of the taxpayer,

(B) the non-resident entity is resident in a country in which there is a prescribed stock exchange, and

(C) participating interests, in the non-resident entity, that are identical to the participating interest are listed on a prescribed stock exchange, or

(ii) both

(A) throughout that period the non-resident entity

(I) is governed by the laws of

1. a country (other than a prescribed country) with which Canada has entered into a tax treaty, or

2. a political subdivision of a country described by sub-subclause 1,

(II) exists, was (unless the entity was continued in any jurisdiction) formed or organized, or was last continued, under those laws, and

(III) while it is governed by the laws of a country, or of a political subdivision of a country, is under the tax treaty with that country resident in that country, and

(B) either

(I) throughout that period the participating interest is an arm's length interest of the taxpayer, or

(II) throughout that period the non-resident entity is, under the tax treaty with the United States of America, resident in the United States of America, and throughout the period, in the taxpayer's taxation year that includes that time, during which the taxpayer is resident in Canada, the taxpayer is a citizen of the United States of America and is liable for and subject to income tax in the United States of America for that taxation year because of that citizenship; or

(f) throughout the period, in the non-resident entity's taxation year that includes that time, during which the taxpayer held the participating interest,

(i) the participating interest is a share of the capital stock of a corporation resident in Canada,

(ii) the participating interest would not be a participating interest, in the non-resident entity, if the definition "participating interest" were read without reference to paragraph (d) of that definition, and

(iii) the participating interest is convertible into, exchangeable for, or a right to acquire only property that, if the conversion, exchange or right were exercised by the taxpayer at that time, would be a share, of the capital stock of a non-resident corporation, that is at that time an exempt interest (determined without reference to this paragraph) of the taxpayer.

Technical Notes: The FIE income inclusion rules under any of subsections 94.1(4), 94.2(4) or 94.3(4) apply to a taxpayer for a year generally only where subsection 94.1(3) applies to the taxpayer. Subsection 94.1(3) will not apply to a taxpayer for a particular taxation year of the taxpayer in respect of a participating interest of the taxpayer in a non-resident entity if at the end of a taxation year of the non-resident entity that ends in the particular taxation year the taxpayer's participating interest is an "exempt interest". An exempt interest of a taxpayer in a non-resident entity is defined to mean at any time a particular participating interest of the taxpayer in the non-resident entity if any of the following applies:

- the non-resident entity is a controlled foreign affiliate of the taxpayer (including an affiliate that is a controlled foreign affiliate because of an election under new paragraph 94.1(2)(h)), a "qualifying entity" (as defined in subsection 94.1(1)) that is a foreign affiliate (other than a controlled foreign affiliate) of the taxpayer in respect of which the taxpayer has a qualifying interest (within the meaning assigned by paragraph 95(2)(m)), or a partnership;

- the taxpayer is a financial institution (as defined in subsection 142.2(1)) and the participating interest is a mark-to-market property (as defined in that same subsection) or a property described in an inventory of a business of the taxpayer, which inventory is valued, in computing the taxpayer's income from the business, in accordance with section 1801 of the *Income Tax Regulations*;

- the participating interest is a right

  — under an agreement referred to in subsection 7(1), to acquire a share of the capital stock of the non-resident entity,

  — granted by the non-resident entity, or another entity with which the non-resident entity does not deal at arm's length,

  — acquired by the taxpayer, at a time when the taxpayer dealt at arm's length with the entity that granted the right, and

  — acquired by the taxpayer solely because the taxpayer was an employee of the non-resident entity, or another entity with which the non-resident entity does not deal at arm's length;

- the non-resident entity is an entity — other than a trust that is an exempt foreign trust because of paragraph (f) (for taxation years that begin after July 18, 2005) or (h) of the definition "exempt foreign trust" in subsection 94(1) — all or substantially all of the car-

rying value of the property of which is attributable to the carrying value of properties that are shares of the capital stock of a corporation (that is not a foreign investment entity) that employs the taxpayer or that is related to another corporation that employs the taxpayer, and an amount that is all or substantially all of the non-resident entity's "payable net accounting income" (as defined in subsection 94.1(1)) becomes payable (as determined under paragraph 94.1(2)(o)) by it to its interest holders within specified times, and the taxpayer's share of that amount is included in computing the taxpayer's income for the taxpayer's taxation year that includes the time at which it became payable;

- it is reasonable to conclude that the taxpayer had no tax avoidance motive (determined by reference to paragraphs 94.1(2)(k) to (n)) in respect of the particular participating interest, and
  - — the particular participating interest is an "arm's length interest" (as defined in subsection 94.1(1)) of the taxpayer, the non-resident entity is resident (determined by reference to paragraph 94.1(2)(g)) in a country in which there is a prescribed stock exchange, and participating interests in the non-resident entity that are identical to the particular participating interest are listed on a prescribed stock exchange, or
  - — the non-resident entity is governed by the laws of one or more countries (other than a prescribed country) with which Canada has entered into a tax treaty (or governed by the laws of a political subdivision of such a country), the non-resident entity exists, was (unless the entity was continued in any jurisdiction) formed or organized, or was last continued, under those laws, while it is governed by the laws of a country (or of is political subdivision), the non-resident entity is under the tax treaty with that country resident in that country, and either
    - (I) the participating interest is an arm's length interest of the taxpayer, or
    - (II) the non-resident entity is, under the tax treaty with the United States of America, resident in the United States of America, and throughout the period, in the taxpayer's taxation year that includes that time, during which the taxpayer is resident in Canada, the taxpayer is a citizen of the United States of America and is liable for and subject to income tax in the United States of America for that taxation year because of that citizenship; or
- the taxpayer's participating interest is a share, of the capital stock of a corporation resident in Canada, the rights under which include a right to acquire a share in a non-resident corporation, such that the participating interest would not be a participating interest in a non-resident entity if paragraph (d) of the definition "participating interest" were read without reference to rights to acquire shares of the capital stock of a non-resident corporation. However, the taxpayer's participating interest will qualify as an exempt interest under this provision only if the participating interest is convertible into, exchangeable for, or a right to acquire only property that, if the conversion, exchange or right were exercised by the taxpayer at that time, would be a participating interest, in the non-resident corporation, that is at that time an exempt interest (determined without reference to paragraph (f) of the definition "exempt interest") of the taxpayer.

The definition "exempt interest" is also relevant in applying subsection 94.2(9) in determining whether subsection 94.1(4) or 94.2(4) will apply to a taxpayer's interest in a "tracking entity" (as defined in subsection 94.2(1)). However, note that a taxpayer's interest in a controlled foreign affiliate, or a qualifying entity (other than a partnership), will not avoid being subject to subsection 94.2(9) solely because it is an exempt interest. For more information, see the commentary on those provisions.

Related Provisions: 94.1(2)(g) — Interpretation rule for subpara. (e)(i); 94.1(2)(h) — Interpretation rule for subpara. (a)(i); 94.1(2)(k)–(n) — "Tax avoidance motive" for para. (e); 94.1(3)(d) — Exempt interest excluded from EIE rules; 95(2)(g.3)(ii), (iii) — Application to FAPI rules; 96(1)(d)(iii)(A), (B) — Application to partnership; 248(1)"specified participating interest" — Participating interest other than exempt interest; 248(12) — Identical properties.

Regulations: 3201 (prescribed stock exchange for subpara. (e)(i)). No prescribed countries have been proposed for subcl. (e)(ii)(A)(I).

"exempt property", of a particular entity at any time, means, in determining whether a particular taxpayer's interest in the particular entity is a participating interest in a foreign investment entity,

(a) a property, of the particular entity, that is at that time used or held principally in a business (other than a business that is at that time an investment business carried on by the particular entity or by another entity related, otherwise than by reason of a right referred to in paragraph 251(5)(b), to the particular entity) carried on by the particular entity or another entity related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the particular entity;

(b) indebtedness owing by another entity (referred to in this paragraph as the "indebted entity"), if

(i) each of the particular entity and the indebted entity is, at that time,

(A) a foreign affiliate

(I) of the particular taxpayer, and

(II) in respect of which the particular taxpayer has a qualifying interest (within the meaning assigned by paragraph 95(2)(m)), or

(B) a foreign affiliate

(I) of another entity that is resident in Canada and of which the particular taxpayer is a controlled foreign affiliate, and

(II) in respect of which the other entity referred to in subclause (I) has a qualifying interest (within the meaning assigned by paragraph 95(2)(m)), and

(ii) the indebtedness would be excluded property (within the meaning of the definition "excluded property" in subsection 95(1)) of the particular entity, if

(A) the taxpayer referred to in that definition were the particular taxpayer and the foreign affiliate of the taxpayer referred to in that definition were the particular entity, or

(B) the taxpayer referred to in that definition were the other entity described in subclause (i)(B)(I) and the foreign affiliate of the taxpayer referred to in that definition were the particular entity; and

(c) a particular property, if

(i) the particular property (or other property for which the particular property is substituted) was acquired by the particular entity at any time within the 36-month period that ends at the particular time (or within any longer period that ends at the particular time that the Minister considers reasonable if the particular entity applies, in writing, to the Minister within 36 months after the property was acquired by the particular entity) because the particular entity

(A) issued a debt or a participating interest in the particular entity,

(B) disposed of property used principally in a business, other than an investment business, carried on by the particular entity or an entity related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the particular entity,

(C) disposed of a participating interest in another entity all or substantially all of the fair

market value of the property of which is attributable to property used principally in a business, other than an investment business, carried on by the other entity or an entity related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the other entity, or

(D) accumulated income of the particular entity derived from a business, other than an investment business, carried on by the particular entity or an entity related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the particular entity, and

(ii) the issuance, disposition or accumulation referred to in subparagraph (i) was made or amassed for the purpose of

(A) acquiring property to be used principally in, or making expenditures for the purpose of earning income from, a business, other than an investment business, carried on by the particular entity or an entity related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the particular entity, or

(B) acquiring a participating interest that is a significant interest in another entity all or substantially all of the fair market value of the property of which is attributable to property used principally in a business, other than an investment business, carried on by the other entity.

Technical Notes: The definition "exempt property" is relevant in determining whether a property is an "investment property"(as defined in subsection 94.1(1)) and whether a "non-resident entity" (as defined in subsection 94.1(1)) is not a FIE. Except for the purposes of applying the definitions "investment business" in subsection 94.1(1) and "tracking entity" in subsection 94.2(1), investment property does not include exempt property.

In general terms, exempt property of a particular entity means at any time, in determining whether a particular taxpayer's interest in the particular entity is a participating interest in a FIE,

- under paragraph (a) of the definition, a property, of the particular entity, that is at that time used or held principally in a business (other than an investment business) carried on by the particular entity or a related entity,
- under paragraph (b) of the definition, indebtedness (that would be "excluded property", as defined in subsection 95(1), of the particular entity if certain assumptions applied) owing by a debtor to the particular entity, where the particular entity and the debtor are foreign affiliates of the taxpayer or of another entity of which the taxpayer is a controlled foreign affiliate and in respect of which the taxpayer or the other entity, as the case may be, has a qualifying interest (as defined in subsection 95(2)(m)).

In addition, under paragraph (c) of the definition, exempt property means a property acquired by the particular entity within the 36 months preceding that time (or where written application has been made to the Minister of National Revenue by the taxpayer within 36 months of having acquired the property, within such longer period as the Minister considers reasonable in the circumstances) as a result of qualified activities. Those activities are

- the issuance of a debt or a participating interest in the particular entity;
- the disposition of property used in a business (other than an investment business) carried on by the particular entity or an entity related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the particular entity;
- the disposition of a participating interest in another entity all or substantially all of the fair market value of the property of which is attributable to property used principally in a business (other than an investment business) carried on by the other entity or an entity related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the other entity; and
- the accumulation of income of the particular entity derived from a business (other than an investment business) carried on by the particular entity or an entity related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the particular entity.

The qualified activities also must have been undertaken for the purpose of

- acquiring property to be used principally in or making expenditures for the purpose of earning income from a business (other than an investment business) carried on by the entity or an entity related to the entity, or
- acquiring a participating interest that is a significant interest in another entity all or substantially all of the fair market value of the property of which is attributable to property used or held principally in the course of earning income from a business, other than an investment business, carried on by the other entity.

Related Provisions: 94.1(1)"investment property" — Exempt property excluded from FIE rules; 94.1(2)(p) — Deemed not exempt property if information not provided to CRA on request.

"exempt taxpayer", for a taxation year of the taxpayer, means

(a) a person whose taxable income for a period that ends at the end of the taxation year is exempt from tax under this Part because of subsection 149(1) (otherwise than because of paragraph 149(1)(q.1), (t) or (z));

(b) an eligible trust (in this paragraph, as defined in subsection 94(1)) that is resident in Canada at the end of the taxation year and under which

(i) the only beneficiaries that may for any reason receive, at any time and directly from the trust, any of the income or capital of the trust are persons that are qualifying investors (as defined in subsection 94(1)) in respect of the trust, and

(ii) each such beneficiary at each time in the taxation year is a person whose taxable income, for the period that includes all of those times in the taxation year, is exempt from tax under this Part because of subsection 149(1) (otherwise than because of paragraph 149(1)(q.1), (t) or (z)); and

(c) an individual (other than a trust) who, before the end of the taxation year, was resident in Canada for a period of, or periods the total of which is, not more than 60 months, but not including an individual who, before the end of the taxation year, was never non-resident;

Technical Notes: The rules in new sections 94.1 to 94.4 do not apply in respect of periods during which a taxpayer is an exempt taxpayer. For more information, see the commentary on paragraph 94.1(3)(a) and subsections 94.2(9) and (10).

An individual is an "exempt taxpayer" for a taxation year where the individual, before the end of the year, was a resident of Canada for a period of, or periods the total of which is, 60 months or less. (Individuals who have never been non-resident cannot fall within the 60-month exception.) This 60-month exemption for new immigrants to Canada is similar to an exemption in the rules for non-resident trusts in existing section 94.

Except as indicated below, tax-exempt entities to which subsection 149(1) applies are also exempt taxpayers. Retirement compensation arrangements and qualifying environmental trusts for which alternative income tax rules are provided under Parts XI.3 and XII.4 and insurers to which paragraph 149(1)(t) applies are not exempt taxpayers.

An exempt taxpayer also includes a Canadian resident pooled fund trust (including a trust deemed resident by subsection 94(3)) under which the only beneficiaries that may for any reason receive, at or after the particular time and directly from the trust, any of the income or capital of the trust are persons that are both qualifying investors (as defined in subsection 94(1)) and the qualifying exempt taxpayers. Qualifying exempt tax-

payers are for this purpose, tax-exempt entities to which subsection 149(1) applies, other than retirement compensation arrangements and qualifying environmental trusts for which alternative income tax rules are provided under Parts XI.3 and XII.4 and insurers to which paragraph 149(1)(t) applies. For more detail on the definition "qualifying investor" in subsection 94(1), see the commentary on that provision.

The express reference to tax-exempt entities is generally of significance for the purposes of calculating Part I tax only in the context of the narrow circumstances to which new subsection 94.2(17) applies. That subsection contemplates a case where a taxpayer ceases to be an "exempt taxpayer" and subsequently becomes an "exempt taxpayer". However, the reference to tax-exempt entities may also be of significance in the context of Part XI (foreign property limits), given that the application of sections 94.1 to 94.4 has an impact on the cost amount of participating interests in FIEs.

Related Provisions: 94.1(3)(a) — Exempt taxpayer exempt from FIE rules; 94.2(17) — Fresh start on becoming exempt; 96(1.9) — Where exempt taxpayer is member of partnership.

"financial statements", of a particular entity for a particular taxation year of the entity and in respect of a taxpayer, means

(a) the balance sheet and the statement of income of the particular entity, if

(i) the particular entity is an entity (referred to in this subparagraph as the "first entity") in which the taxpayer holds, in the particular taxation year, a participating interest or is another entity in which the first entity has, in the particular taxation year, a direct or indirect interest,

(ii) the taxpayer elects (in the taxpayer's return of income for the taxpayer's taxation year in which the particular taxation year ends) to have this paragraph apply in respect of the particular entity and the participating interest, and

(iii) that balance sheet and statement of income would be prepared in accordance with generally accepted accounting principles used in Canada for the particular year or in accordance with generally accepted accounting principles that are substantially similar to those used in Canada if those principles did not require consolidation; and

(b) in any other case, the balance sheet and statement of income of the particular entity, if that balance sheet and statement of income are prepared for the particular taxation year in accordance with generally accepted accounting principles used for the taxation year in Canada or in accordance with generally accepted accounting principles that are substantially similar to those used for the taxation year in Canada.

Technical Notes: The definition "financial statements" is relevant primarily for the purpose of determining whether a non-resident entity is a FIE. For more information, see the commentary on the definitions "foreign investment entity" and "carrying value".

In general, the financial statements, for a taxation, of an entity will be the balance sheet and statement of income provided by the entity to its investors if they are prepared in accordance with generally accepted accounting principles used for the taxation year in Canada or in accordance with generally accepted accounting principles that are substantially similar (including by reference to paragraph 94.1(2)(b)) to those used for the taxation year in Canada. Taxpayers, will however, be allowed to elect to treat an unconsolidated balance sheet and statement of income of an entity as its financial statements if they are prepared in accordance with those principles (or would be so prepared if those principles did not require consolidation).

More precisely, in applying sections 94.1 to 94.4 to a taxpayer, the financial statements, of a particular entity for a particular taxation year of the entity, are

- the balance sheet and the statement of income of the particular entity, if
  - the particular entity is an entity (referred to in this note as the "first entity") in which the taxpayer holds, in the particular taxation year, a participating interest or is another entity in which the first entity has, in the particular taxation year, a direct or indirect interest,
  - the taxpayer elects (in the taxpayer's return of income for the taxpayer's taxation year in which the particular taxation year ends) to have this paragraph apply in respect of the particular entity and the participating interest, and
  - that balance sheet and statement of income would be prepared in accordance with generally accepted accounting principles used in Canada for the particular year or in accordance with generally accepted accounting principles that are substantially similar to those used in Canada if those principles did not require consolidation; and
- in any other case, the balance sheet and statement of income of the particular entity, if that balance sheet and statement of income are prepared for the particular taxation year in accordance with generally accepted accounting principles used for the taxation year in Canada or in accordance with generally accepted accounting principles that are substantially similar to those used for the taxation year in Canada.

Related Provisions: 96(3) — election under subpara. (a)(ii) by member of a partnership.

"foreign bank" has the meaning assigned by subsection 95(1).

Technical Notes: The definition "foreign bank" has the same meaning as in subsection 95(1). The expression is used in the definition "exempt business".

Related Provisions: 94.1(1)"exempt business"(a) — Exclusion of foreign bank from FIE rules.

"foreign investment entity", at any time, means an entity that is, at that time, a non-resident entity unless,

(a) at the end of its taxation year that includes that time, it is an exempt foreign trust (as defined in subsection 94(1)) because of any of paragraphs (a) to (e) and (g) of that definition or because of paragraph (f) of that definition (read without reference to clause (f)(iii)(B) of that definition);

(b) at the end of that taxation year, the carrying value of all of its investment property is not greater than one-half of the carrying value of all of its property; or

(c) throughout that taxation year, its principal undertaking was the carrying on of a business that is not an investment business.

Technical Notes: Under subsection 94.1(3), the new tax regime for FIEs in sections 94.1 to 94.4 generally applies only to participating interests in a "foreign investment entity" as defined in subsection 94.1(1).

A non-resident entity (as defined in subsection 94.1(1)) at any time will be a FIE at that time, unless any one of the following exceptions applies to the non-resident entity:

- at the end of its taxation year that includes that time, it is an "exempt foreign trust" (as defined in new subsection 94(1)) other than a trust that is an exempt foreign trust because of any of paragraphs (a) to (e) or (g) of that definition or because of paragraph (f) (read without reference to its clause (iii)(B)) of that definition,
- at the end of its taxation year that includes that time, the carrying value of all of its investment property is not greater than one-half of the carrying value of all of its property, or
- throughout its taxation year that includes that time, its principal undertaking was the carrying on of a business that is not an investment business.

The new rules are designed so that, in the case of partnerships, members' shares of incomes and losses are allocated in accordance with section 96 (including new subsection 96(1.9), described in the commentary below).

For more information generally, see the commentary on the definitions "entity", "exempt interest", "non-resident entity", "investment property" and "carrying value" in subsection 94.1(1) and "exempt foreign trust" in subsection 94(1). See also the commentary on paragraphs 94.1(2)(a), (b), (c) and (h) to (j) and paragraph 96(1)(d).

Related Provisions: 94.1(2)(a) — Rules when determining whether entity is an FIE; 94.1(2)(q) — Paras. (a)-(c) do not apply if information not provided to CRA on request.

"investment business", of an entity at any time, means a business (other than a business that is at that time an exempt business) carried on by the entity (including, for greater certainty, a business carried on by the entity as a member of a partnership) at that time, the principal purpose of which is to derive income or profits described in any of the following paragraphs:

(a) income (including interest, dividends, rents, royalties or any similar return on investment or any substitute for such a return) from property;

(b) income from the insurance or reinsurance of risks;

(c) income from the factoring of trade accounts receivable; or

(d) profits from the disposition of investment property.

Technical Notes: The expression "investment business" is relevant in determining whether a non-resident entity is a FIE or a "qualifying entity", as defined in subsection 94.1(1). An "investment business" of an entity at any time, means a business (other than a business that is at that time an exempt business) carried on by the entity (including, for greater certainty, a business carried on by the entity as a member of a partnership) at that time, if the principal purpose of the business is to derive any of the following income or profits:

- income (including interest, dividends, rents, royalties or any similar return on investment or any substitute for such a return) from property,
- income from the insurance or reinsurance of risks,
- income from the factoring of trade accounts receivable, or
- profits from the disposition of investment property.

Related Provisions: 87(2)(j.95) — Amalgamations — continuing corporation; 94.1(1)"foreign investment entity"(c) — Entity whose principal undertaking is investment business is not FIE; 94.1(2)(e) — Application rules when determining whether business is investment business; 94.1(2)(o) — Amount deemed not to have become "payable".

"investment property", of a particular entity at any time, includes property of the particular entity that is at that time

(a) a share of the capital stock of a corporation,

(b) an interest as a member of a partnership,

(c) an interest as a beneficiary under a trust,

(d) an interest in any other entity,

(e) indebtedness,

(f) an annuity,

(g) a commodity (or commodity future) purchased or sold, directly or indirectly in any manner whatever, on a commodities or commodities futures exchange,

(h) real or immovable property,

(i) a Canadian resource property or a foreign resource property,

(j) currency,

(k) intellectual property within the meaning of article 2 of the Convention Establishing the World Intellectual Property Organization done at Stockholm on July 14, 1967, as amended from time to time,

(l) a derivative financial product, or

(m) an interest, an option or a right in respect of property that is investment property because of any of paragraphs (a) to (l),

but does not include

(n) except for the purpose of applying the definition "investment business" in this subsection or the definition "tracking entity" in subsection 94.2(1), property that is at that time exempt property of the particular entity,

(o) except for the purpose of applying the definition "qualifying entity", property that is at that time

(i) a share of the capital stock of the particular entity,

(ii) a share of the capital stock of a corporation that is, throughout the period, in the particular entity's taxation year that includes that time, during which the particular entity holds the share, a qualifying entity if the particular entity has at that time a significant interest in that qualifying entity or that qualifying entity has at that time a significant interest in the particular entity,

(iii) an interest in a partnership that is, throughout the period, in the particular entity's taxation year that includes that time, during which the particular entity is a member of the partnership, a qualifying entity if the particular entity has at that time a significant interest in that qualifying entity or that qualifying entity has at that time a significant interest in the particular entity, or

(iv) indebtedness owing by an entity that is, throughout the period, in the particular entity's taxation year that includes that time, during which the particular entity holds the indebtedness, a qualifying entity if the particular entity has at that time a significant interest in that qualifying entity or that qualifying entity has at that time a significant interest in the particular entity,

(p) a commodity (referred to in this paragraph and paragraph (q) as an "exempt commodity") that is manufactured, produced, grown, extracted or processed by the particular entity or a person related (otherwise than because of a right referred to in paragraph 251(5)(b)) to the particular entity, and

(q) a commodity future in respect of an exempt commodity.

Technical Notes: The expression "investment property" includes a list of specified properties. Most of the specified properties (e.g., shares, partnership interests, real estate and resource properties) are also specified in the definition of the same expression in subsection 95(1). In addition to the properties also specified in the definition in subsection 95(1), "investment property" held by a particular entity includes:

- an interest in an organization, fund or other entity;
- for taxation years that begin after July 18, 2005, intellectual property;
- most derivative financial products; and
- interests, options and rights in respect of the above properties.

It should be noted, however, that investment property of an entity does not include

- except for the purpose of applying the definition "investment business" in subsection 94.1(1) or the definition "tracking entity" in subsection 94.2(1), an "exempt property" (as defined in subsection 94.1(1)),

- except for the purpose of applying the definition "qualifying entity", a "significant interest" (as defined in subsection 94.1(1)) in a "qualifying entity" (as defined in subsection 94.1(1)), an interest in a qualifying entity that has a significant interest in the entity, and debt owing by qualifying entities in which the entity has a significant interest or by a qualifying entity that has a significant interest in the entity, and

- certain exempt commodities and futures in respect of those exempt commodities.

The definition is relevant for the purpose of the determining whether a non-resident entity is a FIE. For more information, see the commentary on the definitions "investment business", "qualifying entity", "significant interest", and "exempt property" in subsection 94.1(1).

"net accounting income", of an entity for a taxation year of the entity, means its net income, before income taxes and extraordinary items, for the year reported in its financial statements for the year.

Technical Notes: The net accounting income of an entity for a taxation year means the amount that is its net income, before income taxes and extraordinary items, for the year reported in its financial statements for the year. For more information, see the commentary on the definition "financial statements" in subsection 94.1(1).

Related Provisions: 94.1(1)"financial statements" — Meaning of "financial statements"; 94.1(2)(b) — GAAP of U.S. and European Union deemed to be similar to Canada.

"non-resident entity", at any time, means

(a) a corporation or trust that is non-resident at that time; and

(b) any entity (other than a corporation or trust) that at that time

(i) exists, was (unless the entity was continued in any jurisdiction) formed or organized, or was last continued under the laws of a country or a political subdivision of a country other than Canada, or

(ii) is governed under the laws of a country or a political subdivision of a country other than Canada.

Technical Notes: One of the requirements for an entity to be a FIE to which sections 94.1 to 94.4 apply is that the entity be a "non-resident entity". In this regard, it should be noted that, under proposed subparagraph 94(3)(a)(iv), certain trusts that would otherwise be non-resident are deemed (for certain limited purposes including the definition "non-resident entity") to be resident in Canada for taxation years in which the trust has a resident contributor or a resident beneficiary. For more information, see the commentary to new subsection 94(3).

In addition to non-resident corporations and trusts, a "non-resident entity" includes at any time any other type of entity that at that time

- exists, was (unless the entity was continued in any jurisdiction) formed or organized, or was last continued under the laws of a country or a political subdivision of a country other than Canada, or

- is governed under the laws of a country or a political subdivision of a country other than Canada.

Related Provisions: 94(3)(a)(iv) [proposed] — Application to trust deemed resident in Canada.

"participating interest", of a particular entity or individual in a non-resident entity, means a property that is

(a) if the non-resident entity is a corporation, a share of the capital stock of the corporation;

(b) if the non-resident entity is a trust, a specified interest in the trust;

(c) if the non-resident entity is not a corporation or trust, an interest in the non-resident entity; and

(d) under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently, convertible into, exchangeable for, or a right to acquire, directly or indirectly,

(i) a property described in any of paragraphs (a) to (c), or

(ii) a property (other than money) the fair market value of which is determined primarily by reference to the fair market value of a property described in any of paragraphs (a) to (c).

Technical Notes: A "participating interest" in an entity means a share of the capital stock of corporation, a specified interest (as defined in subsection 94.1(1)) in a trust and an interest in any other type of entity.

It also includes a property that is (under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently) convertible into, exchangeable for, or confers a right to acquire

- such a share, specified interest or other interest, or

- a property (other than money) the fair market value of which is determined primarily by reference to the fair market value of such a share, interest as a beneficiary or other interest in an entity.

For a related rule that applies in determining whether an interest is a participating interest, see the commentary on paragraph 94.1(2)(s).

Related Provisions: 53(1)(m)(iii) — Addition to adjusted cost base of participating interest; 94.1(2) — Rules of application for participating interest; 94.1(2)(s) — Indirect participating interest deemed not to be participating interest; 94.2(13) — Cost of participating interest under mark-to-market rules; 96(1)(d)(iii) — Where partnership owns participating interest; 98(7) — Where partnership holding participating interest ceases to exist; 248(1)"specified participating interest" — Participating interest other than exempt interest; 248(9.2) — Meaning of "indefeasibly vested".

"payable net accounting income", of an entity for a taxation year of the entity, means its net income, after income taxes and extraordinary items, for the year reported in its financial statements for the year.

Technical Notes: The payable net accounting income, of an entity for a taxation year of the entity, means its net income, after income taxes and extraordinary items, for the year reported in its "financial statements" (as defined in subsection 94.1(1)) for the year.

This definition is relevant in determining whether an interest in a non-resident entity is an "exempt interest" (as defined in subsection 94.1(1)) in the entity. In particular, it is relevant in applying paragraph (d) of the definition "exempt interest" in subsection 94.1(1) and paragraphs 94.1(2)(m) and (n).

Related Provisions: 94.1(1)"financial statements" — Meaning of "financial statements".

"qualifying entity", in a period, means a particular entity that is a corporation or partnership all or substantially all of the carrying value of the property of which is, throughout the period, attributable to the carrying value of particular property that is, throughout the portion of the period that the particular property is property of the particular entity,

(a) property other than investment property;

(b) investment property that is a participating interest in or debt issued by another entity if, throughout the portion of the period that the participating interest or debt is property of the particular entity,

(i) the principal undertaking of the other entity is the carrying on of a business that is not an investment business, and

(ii) either

(A) the particular entity has a significant interest in the other entity, or

(B) the particular entity

(I) actively participates in or exercises significant influence over the governance or the management of that other entity, di-

rectly or indirectly, by reason of its status as a holder of a significant number of participating interests in that other entity (when compared to the number of participating interests held by each other holder of interests in the corporation) or by reason of an agreement in writing between the particular entity and one or more other holders of a significant number of participating interests in that other entity, or

(II) carries out a plan of action that it has established for the purpose of obtaining its objective of actively participating in or exercising significant influence over the governance or the management of that other entity, directly or indirectly, by reason of its status as a holder of a significant number of participating interests in that other entity (when compared to the number of participating interests held by each other holder of interests in the particular entity) or by reason of an agreement in writing between the particular entity and one or more other holders of a significant number of participating interests in that other entity;

(c) investment property in respect of which the particular entity establishes that the property or proceeds from the disposition of the property is to be used by the particular entity for the purpose of acquiring property described in paragraph (a) or (b); or

(d) investment property that is a particular property held by the particular entity if

(i) the particular property (or other property for which the particular property is substituted property) was last acquired by the particular entity within 36 months before the end of the period (or within any greater number of months that the Minister considers reasonable if the particular entity applies, in writing, to the Minister within the 36 months after the property was acquired by the particular entity),

(ii) the particular property was so acquired by the particular entity because it

(A) issued a debt, or a participating interest in it,

(B) disposed of property described in any of paragraphs (a) to (c), or

(C) accumulated its income, and

(iii) the issuance, disposition or accumulation referred to in subparagraph (ii) was made or amassed for the purpose of acquiring property that, if owned by the particular entity, would be property described in any of paragraphs (a) to (c).

Technical Notes: A "qualifying entity" in a period means a particular entity that is a partnership or a corporation all or substantially all of the "carrying value" (as defined in subsection 94.1(1)) of the property of which is, throughout the period, attributable to the carrying value of property that is:

- property other than "investment property" (as defined in subsection 94.1(1)),
- investment property that is a participating interest in or debt of another entity if the other entity is an entity whose principal undertaking is the carrying on of a business that is not an investment business and the particular entity has either a significant interest in the other entity or a strategic interest in the other entity,
- investment property in respect of which the particular entity establishes that the property or proceeds from the disposition of the property is to be used by the particular entity for the purpose of acquiring property described in the two paragraphs above, or
- investment property that is held by the particular entity if the particular property (or other property for which the particular property is substituted property) was last acquired by the particular entity within 36 months before the end of the period (or, where applicable conditions are met, within such longer period as the Minister considers reasonable in the circumstances), as a result of qualifying activities.

For this purpose, qualifying activities are

- the issuance of a debt or a participating interest in the entity,
- the disposition of property described in any of paragraphs (a) to (c) of the definition "qualifying entity", and
- the accumulation of income of the entity.

The qualifying activities must also have been made for the purpose of acquiring property that, if owned by the entity, would be property described in paragraph (a) to (c) of the definition of "qualifying entity".

For the purpose of applying this definition, an entity will be considered to have a strategic interest in another entity where the entity participates in or has established a plan of action for participating in the management and control of the other entity by reason of its status as a holder of a significant number (not to be confused with the "significant interest" definition) of participating interests in the other entity (in comparison with the number of participating interests held by each holder of interests in the entity) or an agreement with other such significant interest holders.

In establishing if an entity actively participates in or exercises a significant influence over the governance or the management of an other entity the following facts (among others) will be considered:

- whether the entity, alone or in alliance with others, appoints members of the board of directors and management;
- whether the entity, alone or in alliance with others, significantly influences the appointment of members of the board of directors and management; and
- whether the entity, alone or in alliance with others, is actively involved in the strategic planning for the entity.

In determining if an entity is carrying out a plan of action for the purpose of obtaining its objective of actively participating in or exercising significant influence over the governance or the management of another entity, all factors will be considered. For example, an entity's board-approved plan of action, board minutes, investment studies and other material relating to the strategic investment will be considered. As well, evidence that increasing numbers of shares of the other entity are being bought or that property is being sold in order to raise money to acquire such shares will be considered important factors. The entity's investment history and patterns will also be considered.

Finally, it should be noted that under paragraph 94.1(2)(f), the definition "qualifying entity" in subsection (1) does not apply in determining whether a taxpayer has a participating interest in a FIE, if the Minister sends a written demand to a taxpayer requesting additional information for the purpose of enabling the Minister to determine whether an entity is a qualifying entity, and information satisfactory to the Minister to make the determination is not received by the Minister within 60 days (or within such longer period as is acceptable to the Minister) after the Minister sends the demand.

For more information, see the commentary on paragraph 94.1(2)(r) and on the definitions "carrying value", "significant interest" and "investment property" in subsection 94.1(1).

Related Provisions: 87(2)(j.95) — Amalgamations — continuing corporation; 94.1(1)"exempt interest"(a)(ii) — Share of QE can be exempt interest; 94.1(2)(r) — Deemed not QE if information not provided to CRA on request.

"significant interest", of a particular entity in another entity at any particular time, means

(a) if the other entity is a corporation, a share of the capital stock of the corporation, if at the particular time the particular entity or the particular entity together with entities related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the

particular entity holds shares of the capital stock of the corporation

(i) that would give the particular entity, or the particular entity together with those related entities, 25% or more of the votes that could be cast under all circumstances at an annual meeting of shareholders of the corporation if the meeting were held at the particular time, and

(ii) that have a fair market value of 25% or more of the fair market value of all of the issued and outstanding shares of the corporation;

(b) if the other entity is a partnership, an interest of the particular entity as a member of the partnership, if at the particular time the particular entity, or the particular entity together with entities related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the particular entity, holds interests as a member of the partnership that have a fair market value of 25% or more of the fair market value of all membership interests in the partnership; and

(c) if the other entity is a trust, an interest as a beneficiary under the trust, where at the particular time

(i) the only beneficiaries that may for any reason receive, at any time and directly from the trust, any of the income or capital of the trust are persons that are qualifying investors (as defined in subsection 94(1)) in respect of the trust, and

(ii) the particular entity, or the particular entity together with entities related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the particular entity, holds such interests under the trust that have a fair market value of 25% or more of the fair market value of all the interests as beneficiaries under the trust.

Technical Notes: An entity is considered to have a significant interest in a corporation, partnership, or trust (for taxation years that begin after 2002 and on or before July 18, 2005, that is, a non-discretionary trust as defined in subsection 17(15)) if the entity or a group of entities comprised of the entity and entities related to the entity holds shares or interests in the corporation, partnership or trust that have a fair market value equal to 25% or more of the fair market value of all the shares or interests in the corporation, partnership or trust and,

- in the case of a corporation, the entity or the group of entities comprised of the entity and the entities related to the entity has shares entitling the entity to cast at least 25% of votes at an annual shareholders' meeting of the corporation, or
- in the case of a trust, for taxation years that begin after July 18, 2005, the only beneficiaries that may for any reason receive, at any time and directly from the trust, any of the income or capital of the trust are persons that are qualifying investors (as defined by subsection 94(1)) in respect of the trust.

In these circumstances, the entity's significant interest will be its share of the capital stock of the corporation, its interest as a member of the partnership or its interest as a beneficiary under the trust, as the case may be. For more detail on the definition "qualifying investor" in subsection 94(1), see the commentary on that provision.

"specified interest", at any time of an entity or individual in a trust, means an interest of the entity or individual as a beneficiary under the trust if

(a) the trust is at that time an exempt foreign trust because of paragraph (f) or (h) of the definition "exempt foreign trust" in subsection 94(1); or

(b) the entity or individual may for any reason receive as a beneficiary under the trust, at or after that time, any of the income or capital of the trust directly from the trust, unless

(i) the entity or individual would at that time be a successor beneficiary (as defined in subsection 94(1)) under the trust if the reference in the definition "successor beneficiary" in that subsection to a contributor did not include each contributor whose total amount of contributions to the trust is 10% or less of the total of all amounts each of which was the amount, at the time it was received by the trust, of a contribution made to the trust, or

(ii) every amount of income and capital of the trust that the entity or individual may receive at or after that time depends on the exercise by any entity or individual of, or the failure by any entity or individual to exercise, a discretionary power.

Technical Notes: The definition "specified interest" applies in determining whether an entity or individual has a "participating interest" (as defined in subsection 94.1(1)) in a non-resident entity that is a trust. A specified interest at any time of an entity or individual in a trust, means, an interest of the entity or individual as a beneficiary under the trust if

- The trust is at that time an exempt foreign trust because of paragraph (f) or (h) of the definition "exempt foreign trust" in subsection 94(1). As a result, an interest in a foreign commercial investment trust or in certain employee remuneration arrangements will generally be subject to the income computation requirements in sections 94.1 to 94.4 if the trusts are FIEs or tracking entities; or
- The entity or individual may for any reason receive, as a beneficiary under the trust, at or after that time any of the income or capital of the trust directly from the trust. However, such an interest will, under paragraph (b) of the definition "specified interest", not be treated as a participating interest if
  - — for taxation years that begin on or before July 18, 2005, the entity or individual is at that time a successor beneficiary (as defined by subsection 94(1)) under the trust,
  - — for taxation years that begin after July 18, 2005, the entity or individual would at that time be a successor beneficiary (as defined by subsection 94(1)) under the trust, if in applying the definition "successor beneficiary" to the entity or individual, as the case may be, contributors whose contributions were 10% or less of all contributions to the trust at that time were ignored, or
  - — every amount of income and capital of the trust that the entity or individual may receive at or after that time depends on the exercise by any entity or individual of, or the failure by any entity or individual to exercise, a discretionary power.

"specified party" in respect of a particular individual or particular entity, as the case may be, means another individual or other entity that does not deal at arm's length with the particular individual or the particular entity, as the case may be.

Technical Notes: The definition "specified party" is relevant in determining whether a taxpayer has an avoidance motive in respect of a participating interest in a FIE. This determination is relevant to applying the definition "exempt interest" in subsection 94.1(1). For more information, see the commentary on the definition "exempt interest".

A specified party in respect of a particular individual or particular entity, as the case may be, means another individual or other entity that does not deal at arm's length with the particular individual or the particular entity, as the case may be.

"taxation year", of a non-resident entity that is not a corporation or an individual, means

(a) in respect of a business or property of the non-resident entity for which the accounts of the non-resident entity are ordinarily made up, the period that would be determined under section 249.1 in respect of the non-resident entity if the non-resident entity were a corporation; and

(b) in any other case, a calendar year.

Technical Notes: The "taxation year" of a non-resident entity that is a corporation or an individual is generally determined in accordance with subsection 249(1) and paragraph 250.1(a). Where the non-resident entity is not an individual or a corporation, this definition provides that the entity's taxation year means:

- in respect of a business or property of the non-resident entity for which the accounts of the non-resident entity are ordinarily made up, the period that would be determined under section 249.1 in respect of the non-resident entity if the non-resident entity were a corporation, and
- in any other case, a calendar year.

(2) Rules of application — For the purposes of applying this section and sections 94.2 to 94.4 in respect of a particular participating interest, in a particular non-resident entity, held by a taxpayer in a particular taxation year of the taxpayer (and in respect of any other participating interests, in the particular non-resident entity, that are identical to the particular participating interest and that are held by the taxpayer in the particular taxation year),

(a) in determining whether the particular non-resident entity is a foreign investment entity, if the financial statements of an entity (referred to in this paragraph as the "first entity") for a taxation year (referred to in this paragraph as the "specified year") of the first entity reflect property, indebtedness, income or losses of another entity,

(i) the business and non-business activities for the specified year carried on by the other entity, the net accounting income for the specified year determined for the other entity from those activities, and the property and indebtedness for the specified year owned by or owed by, as the case may be, the other entity are deemed for the specified year to be carried on by, determined for, owned by or owed by, as the case may be, the first entity, and

(ii) an exempt business of the other entity at any time in the specified year is, if it is a business the activities of which are deemed by subparagraph (i) to be carried on by the first entity, deemed to be an exempt business of the first entity at that time in the specified year;

(b) generally accepted accounting principles used, for a taxation year, in the United States of America or in countries that are members of the European Union are substantially similar to those used in Canada in respect of that taxation year;

(c) in determining the designated cost to the taxpayer of the participating interest at any time in the particular taxation year,

(i) if the particular participating interest is a specified interest in a trust that is an exempt foreign trust (in this paragraph as defined by subsection 94(1)) because of paragraph (f) of that definition, the cost at that time to the taxpayer of the particular participating interest is deemed to be the greater of

(A) the cost, determined without reference to this paragraph, at that time to the taxpayer of the particular participating interest, and

(B) the total of all amounts each of which is the fair market value, immediately before it was acquired by the trust, of a property that is held by the trust at that time and that may be reasonably be considered to be held for the purpose of satisfying the rights (other than a right under an arrangement to which subsection 7(2) or (6) applies) of the taxpayer in respect of the particular participating interest, and

(ii) if the particular participating interest is an interest in a trust that is not an exempt foreign trust, the designated cost to the taxpayer of the particular participating interest is deemed to be the greater of

(A) the designated cost, determined without reference to this paragraph, at that time to the taxpayer of the particular participating interest, and

(B) the total of all amounts each of which is

(I) the fair market value, at that time, of restricted property (in this subparagraph, within the meaning of section 94) that is held at that time by the trust and that may reasonably be considered to be held for the purpose of satisfying the rights (whether immediate or future, whether absolute or contingent or whether conditional on or subject to the exercise of any discretion by any entity) of the taxpayer in respect of the particular participating interest, or

(II) the cost, at that time, to the trust of each property (other than restricted property) that is held by the trust for the purpose of satisfying the rights (whether immediate or future, whether absolute or contingent or whether conditional on or subject to the exercise of any discretion by any entity) of the taxpayer in respect of the particular participating interest;

(d) the reference in subsections (4) and 94.3(4) to "as income from property from a property that is the participating interest" is to be read as a reference to "as income from property from a property that is a source outside Canada that is the participating interest", if the taxpayer is a trust and the portion of the net accounting income of the particular non-resident entity, from sources outside Canada, for its last taxation year that ends in the particular taxation year exceeds 90% of the total net accounting income of the particular non-resident entity for that last taxation year;

(e) in determining whether the principal undertaking of an entity is, in a taxation year of the entity, the carrying on of a business that is not an investment business,

(i) subject to subparagraphs (ii) and (iii), that determination is to be by reference to the facts and circumstances including the fair market value of assets used in the activities carried on, during the entity's taxation year, by the entity, the amount of time spent by the entity's employees in carrying out those activities, the amount of expenditures incurred by the entity in respect of those activities and the revenue derived by the entity from those activities,

(ii) subject to subparagraph (iii), where the taxpayer has, by notifying the Minister in writing in the taxpayer's return of income for the particular taxation year, elected to have this subparagraph apply in respect of the entity, the principal under-

taking of the entity for the taxation year of the entity is deemed to be the carrying on of a business that is

(A) an investment business if the total net accounting income of the entity, for the entity's taxation year, derived from investment property (other than investment property used or held in the course of carrying on an investment business) and from investment businesses is equal to or greater than the total net accounting income of the entity for the entity's taxation year derived from businesses (other than investment businesses), and

(B) not an investment business if the total net accounting income of the entity for the entity's taxation year derived from investment property (other than investment property used or held in the course of carrying on an investment business) and from investment businesses is less than the total net accounting income of the entity for the entity's taxation year derived from businesses (other than investment businesses) carried on by the entity in the entity's taxation year, and

(iii) if the Minister sends a written demand to the taxpayer requesting additional information for the purpose of enabling the Minister to determine whether the principal undertaking of the entity is in the entity's taxation year the carrying on of an investment business, and information satisfactory to the Minister to make the determination is not received by the Minister within 60 days (or within any longer period that is acceptable to the Minister) after the Minister sends the demand, the principal undertaking of the entity is deemed to be the carrying on of an investment business;

(f) in determining whether an entity or natural person and another entity or natural person are related to each other or deal at arm's length with each other, a person referred to in section 251 includes an entity;

(g) in applying subparagraph (e)(i) of the definition "exempt interest" in subsection (1), if the particular non-resident entity is not a corporation, a partnership or a trust, it is deemed not to be resident in a particular country, unless

(i) the particular country is a country other than a prescribed country,

(ii) the particular non-resident entity is governed, and any of exists, was (unless the entity was continued in any jurisdiction) formed or organized, or was last continued, under the laws of the particular country or of a political subdivision of the particular country, and

(iii) the particular non-resident entity is liable, under the laws of the particular country, to pay an income or profits tax imposed by the government of the particular country on all of the particular non-resident entity's income, profits or gains;

(h) subject to paragraph (i), a non-resident entity is deemed to be a controlled foreign affiliate of the taxpayer throughout the period that begins at the earliest time, in the taxpayer's taxation year in the return of income for which the taxpayer elects in prescribed form to treat the non-resident entity as a controlled foreign affiliate of the taxpayer (referred to in this paragraph as the "taxpayer's election year"), at which the non-resident entity is a foreign affiliate of the taxpayer and that ends at the earliest subsequent time at which it is not a foreign affiliate of the taxpayer, if

(i) at any time in the taxpayer's election year

(A) the taxpayer holds a participating interest in the non-resident entity and a taxation year of the non-resident entity ends (or the first taxation year of the non-resident entity begins), or

(B) a controlled foreign affiliate of the taxpayer holds a participating interest in the non-resident entity, a taxation year of the controlled foreign affiliate ends, and a taxation year of the non-resident entity ends (or the first taxation year of the non-resident entity begins) in that taxation year of the controlled foreign affiliate,

(ii) the non-resident entity is, at the end of its taxation year referred to in subparagraph (i), a foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest (within the meaning assigned by paragraph 95(2)(m)), and

(iii) the taxpayer has not made any other election under this paragraph in respect of the non-resident entity;

(i) an election made by the taxpayer (or where the taxpayer is a partnership, by an entity that was at any time a member of the taxpayer) under paragraph (h) is, other than for the purposes of applying this paragraph and subparagraph (h)(iii), deemed never to have been made, if

(i) the Minister sends a written demand to the taxpayer requesting additional information for the purpose of enabling the Minister to determine an amount that would, if this Act were read without reference to this paragraph, be required to be added or deducted (otherwise than under subsection 104(13)) in computing the taxpayer's income for the year because of the application of section 91 and an election under paragraph (h) in respect of a foreign affiliate, and

(ii) information satisfactory to the Minister to make the determination is not received by the Minister within 60 days (or within any longer period that is acceptable to the Minister) after the Minister sends the demand;

(j) if the taxpayer has, by notifying the Minister in writing in the taxpayer's return of income for the particular taxation year, elected to have this paragraph apply in respect of the particular participating interest, the taxpayer files with that return of income prescribed information in prescribed form, an entity (referred to in this paragraph as the "specified entity") has a significant interest in another entity that is a corporation, partnership or trust, the particular non-resident entity is the specified entity or has, directly or indirectly, an interest in the specified entity, and the financial statements of the specified entity do not reflect property or indebtedness of the other entity, in determining only whether the particular non-resident entity is a foreign investment entity, and where the taxpayer so stipulates in that election,

whether the particular non-resident entity is a qualifying entity

(i) each of the following is deemed to be nil:

(A) the carrying value of each

(I) participating interest held, at the time (referred to in this paragraph as the "specified time") that is the end of the particular non-resident entity's last taxation year that ends in the particular taxation year, by the specified entity in the other entity, and

(II) debt owing at the specified time to the specified entity by the other entity (other than a debt acquired in the ordinary course of a business that is not at the specified time an investment business carried on by the specified entity), and

(B) the net accounting income of the specified entity at the specified time derived from property of the specified entity the carrying value of which is deemed to be nil under clause (A),

(ii) each property that is (or that is deemed by this subparagraph in respect of the particular participating interest to be) at the specified time property of the other entity (other than a debt owing to the other entity by the specified entity where the other entity and the specified entity are related to each other at the specified time) and that is valued for the purpose of the other entity's financial statements for its taxation year that includes the specified time (or deemed by this subparagraph to have a carrying value to the other entity) is deemed to be at the specified time property of the specified entity and is deemed to have at the specified time a carrying value to the specified entity equal to the amount determined by the formula

$$A \times B/C$$

where

A is the carrying value at the specified time to the other entity of the property,

B is the total of all amounts each of which is

(A) the fair market value at the specified time of a participating interest in the other entity held at the specified time by the specified entity, and

(B) the fair market value at the specified time of a debt (other than a debt acquired in the ordinary course of a business that is not an investment business carried on by the specified entity) that the other entity owes at the specified time to the specified entity, and

C is the total of all amounts each of which is

(A) the fair market value at the specified time of a participating interest in the other entity held at the specified time by an individual or an entity, and

(B) the fair market value at the specified time of a debt owing at the specified time by the other entity to a holder of a participating interest in the other entity (other than a debt acquired in the ordinary course of a business that is not an investment business carried on by a holder of a participating interest in the other entity),

(iii) the specified entity is deemed

(A) to have carried on the proportion obtained for the formula B/C in subparagraph (ii) (in respect of the specified entity and the other entity) of the activities carried on at the specified time by the other entity in which it used the property referred to in subparagraph (ii), and

(B) to have that proportion of the net accounting income of the other entity for the period in the taxation year of the other entity ending at the specified time that was derived from the activities referred to in clause (A), and

(iv) an exempt business of the other entity at any time in the particular non-resident entity's last taxation year that ends in the particular taxation year is, to the extent that its activities are deemed by subparagraph (iii) to be carried on by the specified entity, deemed to be an exempt business of the specified entity at that time in that last year;

(k) subject to paragraphs (m) and (n), the taxpayer has a tax avoidance motive in respect of the particular participating interest (and any participating interests of the taxpayer in the particular non-resident entity that are identical to the particular participating interest), only if it is reasonable to conclude that the main reasons for the taxpayer acquiring, holding or having the particular participating interest include

(i) the derivation of a benefit the value of which can reasonably be attributed principally, directly or indirectly, to income derived from investment property, to profits or gains from the disposition of investment property, or to an increase in value of investment property, and

(ii) the deferral or reduction of the amount of tax payable on that income or those profits or gains;

(l) in applying paragraph (k) in respect of the particular participating interest, the factors to be considered in determining the existence of a tax avoidance motive include

(i) the nature, organization and operation of

(A) the particular non-resident entity,

(B) any foreign investment entity in which the particular non-resident entity or a specified party in respect of the particular non-resident entity has a direct or indirect interest, and

(C) any foreign investment entity in which the taxpayer or a specified party in respect of the taxpayer has a direct or indirect interest,

(ii) the form of, and the terms and the conditions governing, the direct or indirect interests referred to in subparagraph (i),

(iii) the extent to which and the time at which the particular non-resident entity, or an entity in which a direct or indirect interest referred to in subparagraph (i) is held, is subject to an income or profits tax on its income, profits and gains,

(iv) the extent to which and the time at which the taxpayer, or an entity or individual that holds a direct or indirect interest referred to in subparagraph (i), is subject to an income or profits tax on the taxpayer's or entity's, as the case may be,

share of the income, profits and gains of the entity in which the direct or indirect interest is held, and

(v) the amount of tax that would have been payable by the taxpayer under this Part had the taxpayer earned the income or realized the profits or gains in respect of the investment property referred to in subparagraph (k)(i) at the time that the income was earned, or the profits or gains were realized, by the entities that owned or held the investment property;

(m) the taxpayer does not have a tax avoidance motive in respect of the particular participating interest held by the taxpayer at any time in the particular taxation year if an amount that is all or substantially all of the payable net accounting income

(i) of the particular non-resident entity for each of its taxation years that ends in the particular taxation year becomes payable by it to its interest holders in, or within 120 days after, that taxation year of the particular non-resident entity, and the taxpayer's share of that amount is included in computing the taxpayer's income for the taxpayer's taxation year that includes the time at which the amount became payable, and

(ii) of each other foreign investment entity, in which the particular non-resident entity has a direct or indirect interest, for each of the other entity's taxation years that ends in the particular taxation year becomes payable by the other entity to its interest holders in, or within 120 days after, that taxation year of the other entity, and the particular non-resident entity's share of that amount is included in computing its payable net accounting income for its taxation year that includes the time at which the amount became payable;

(n) the taxpayer does not have a tax avoidance motive in respect of the particular participating interest, if throughout the period, in the particular taxation year, during which the taxpayer held the participating interest the particular non-resident entity was a "Regulated Investment Company" for the purposes of sections 851(b) and 852(a) of the United States *Internal Revenue Code of 1986* or a "Real Estate Investment Trust" for the purposes of sections 856(c) and 857(b) of that Code and the taxpayer includes, in computing the taxpayer's income for the particular taxation year, the amount of payable net accounting income that became payable by the particular non-resident entity to the taxpayer in the particular taxation year;

(o) in applying paragraph (d) of the definition "exempt interest" in subsection (1), paragraphs (m) and (n), the definition "mark-to-market formula" in subsection 94.2(1), and subsection 94.4(2), an amount is deemed not to have become payable at any time to an entity or individual, as the case may be, unless it was paid on or before that time to the entity or individual, as the case may be, or the entity or individual, as the case may be, was entitled on or before that time to enforce payment of it;

(p) the definition "exempt property" in subsection (1) does not apply in respect of a property of the particular non-resident entity if the Minister sends a written demand to the taxpayer requesting additional information for the purpose of enabling the Minister to determine whether property is an exempt property, and information satisfactory to the Minister to make the determination is not received by the Minister within 60 days (or within any longer period that is acceptable to the Minister) after the Minister sends the demand;

(q) paragraphs (a) to (c) of the definition "foreign investment entity" in subsection (1) do not apply in respect of the particular non-resident entity if the Minister sends a written demand to the taxpayer requesting additional information for the purpose of enabling the Minister to determine whether the particular non-resident entity is a foreign investment entity, and information satisfactory to the Minister to make the determination is not received by the Minister within 60 days (or within any longer period that is acceptable to the Minister) after the Minister sends the demand;

(r) the definition "qualifying entity" in subsection (1) does not apply if the Minister sends a written demand to the taxpayer requesting additional information for the purpose of enabling the Minister to determine whether an entity is a qualifying entity, and information satisfactory to the Minister to make the determination is not received by the Minister within 60 days (or within any longer period that is acceptable to the Minister) after the Minister sends the demand;

(s) if at any time a taxpayer has a participating interest in a particular foreign investment entity and the taxpayer has at that time a participating interest (referred to in this paragraph as the "indirect participating interest") in another non-resident entity solely because the particular foreign investment entity has at that time a participating interest in that other non-resident entity, then the indirect participating interest is deemed (other than in applying this paragraph) not to be a participating interest of the taxpayer at that time;

(t) if the taxpayer is an authorized foreign bank, the taxpayer is deemed for the purposes of subsections 94.1(4), 94.2(5) to (8) and (12), 94.3(4) and 94.4(2) to be resident in Canada throughout the particular taxation year;

(u) the dispositions, if any, in the particular taxation year of the particular participating interest and any participating interests of the taxpayer in the particular non-resident entity that are identical to the particular participating interest are deemed to occur in the order in which those participating interests were acquired (determined without reference to any other provision of this Act) by the taxpayer; and

(v) if it can reasonably be considered that one of the main reasons that an entity or individual holds at any time on or after July 18, 2005 a participating interest in a non-resident entity is to cause the condition in paragraph (a) of the definition "arm's length interest" in subsection (1) to be met at that time in respect of the participating interest or an identical participating interest held by any entity or individual, the condition is deemed not to have been satisfied at that time in respect of the participating interest or identical participating interest.

Technical Notes: Subsection 94.1(2) sets out a number of rules for the purposes of applying sections 94.1 to 94.4 in respect of a particular participating interest, in a particular non-resident entity, held by a taxpayer in a particular taxation year of the taxpayer (and in respect of any

other participating interests in the particular non-resident entity that are identical to the participating interest and that are held by the taxpayer in the particular taxation year). These rules are relevant, for example, in determining whether the particular non-resident entity is a FIE and whether the particular participating interest is an "exempt interest".

Determining Whether Entity is a FIE

New paragraph 94.1(2)(a) contains rules for applying the financial statements (as defined in subsection 94.1(1)) of an entity in determining whether a particular non-resident entity, in which a taxpayer holds a particular participating interest, is a FIE.

If the financial statements of an entity (referred to in this note as the "first entity") for a taxation year (referred to in the commentary on paragraph 94.1(2)(a) as the "specified year") of the first entity reflect property, indebtedness, income or losses of another entity, then in determining whether a particular non-resident entity is a FIE:

- the business and non-business activities for the specified year carried on by the other entity, the net accounting income for the specified year determined for the other entity from those activities, and the property and indebtedness for the specified year owned by or owed by, as the case may be, the other entity are deemed for the specified year to be carried on by, determined for, owned by or owed by, as the case may be, the first entity, and

- an exempt business of the other entity at any time in the specified year is, if it is a business the activities of which are deemed by subparagraph 94.2(a)(i) to be carried on by the first entity, deemed to be an exempt business of the first entity at that time in the specified year.

Paragraph 94.1(2)(a) is relevant in applying, for example, the definition "carrying value" in subsection 94.1(1), when determining whether the non-resident entity is a FIE because of the carrying value of its investment property.

For more information, see the commentary on the definitions "carrying value", "foreign investment entity" and "investment property" in subsection 94.1(1). See also, the commentary on paragraph 94.1(2)(b), for more information on determining whether accounting principles are substantially similar to Canadian GAAP, and the commentary on paragraph 94.1(2)(j), for more information on the look-through rule for significant interests.

GAAP Substantially Similar to Canadian GAAP

Paragraph 94.1(2)(b) provides that generally accepted accounting principles used for a taxation year in the United States of America or in countries that are members of the European Union are, for greater certainty, considered to be substantially similar to those used in Canada for that taxation year.

Designated Cost

Paragraph 94.1(2)(c) applies in determining, at any time in a particular taxation year, the designated cost to a taxpayer of a participating interest of the taxpayer that is a specified interest (as defined by subsection 94.1(1)) in a trust. However, the rule only applies where the trust either is an exempt foreign trust (as defined by subsection 94(1)) because of paragraph (f) of that definition or is not otherwise an exempt foreign trust.

Under subparagraph 94.1(2)(c)(i), the cost to the taxpayer of a participating interest in a trust that is an exempt foreign trust because of paragraph (f) of that definition is deemed to be the greater of two amounts. The first amount is the cost, determined without reference to paragraph 94.1(2)(c), to the taxpayer of the participating interest — in other words, the actual cost to the taxpayer of the interest. The second amount is the total of all amounts each of which is the fair market value, immediately before it was acquired by the trust, of a specified property — for this purpose, specified property is property that is held by the trust at that time and that may be reasonably be considered to be held for the purpose of satisfying the rights (other than a right under an arrangement to which subsection 7(2) or (6) of the Act applies) of the taxpayer that are included in the participating interest.

Under subparagraph 94.1(2)(c)(ii), the designated cost to the taxpayer of a participating interest in a trust that is not an exempt foreign trust is also deemed to be the greater of two amounts. The first amount is the designated cost, determined without reference to paragraph 94.1(2)(c), at that time to the taxpayer of the participating interest. The second amount is the total of all amounts each of which is

- in the case of property that is restricted property (within the meaning of section 94), held by the trust for the purpose of satisfying the rights of the taxpayer in respect of the particular participating interest, the fair market value of the restricted property, and

- in the case of such property that is not restricted property, the cost, at that time, to the trust of the property.

Subparagraph 94.1(2)(c)(ii) applies to a taxpayer in respect of a participating interest of the taxpayer only for taxation years that begin after July 18, 2005, unless the taxpayer elects under the coming-into-force provision of sections 94.1 to have it also apply to the taxpayer for taxation years that begin after 2002.

Characterization of Income from FIE Interest

Paragraph 94.1(2)(d) provides a special rules for determining whether a taxpayer's income for a taxation year from the application of subsection 94.1(4) or 94.3(4) will be treated as income from a source outside Canada. Paragraph 94.1(2)(d) provides that in applying subsections 94.1(4) and 94.3(4) to a taxpayer (that is a trust) for a particular taxation year of the taxpayer and in respect of a participating interest of the taxpayer in a non-resident entity, the reference in those subsections to "as income from property from a property that is the participating interest" is to be read as a reference to the expression "as income from property from a property that is a source outside Canada that is the participating interest". However, this special rule applies only if the portion of the net accounting income of the non-resident entity, from sources outside Canada, for its last taxation year that ends in the particular taxation exceeds 90% of the total net accounting income of the non-resident entity for that last taxation year.

Paragraphs 94.2(2)(e) and (f) provide similar rules that apply with respect to subsection 94.2(4). For more detail, see the commentary on those paragraphs.

The application of paragraph 94.1(2)(d) and paragraphs 94.2(2)(e) and (f) in respect of a participating interest of a taxpayer will not be relevant in determining a taxpayer's eligibility for a foreign tax credit under section 126. In this regard, see the commentary below on subsections 94.3(2) and 126(1.2). Rather, these paragraphs provide relief to trusts resident in Canada that hold participating interests in a FIE and that make payable to their non-resident beneficiaries all or part of the trusts' incomes arising under any of subsections 94.1(4), 94.2(4) or 94.3(4). Where paragraph 94.1(2)(d) or 94.2(2)(e) or (f) applies and the terms of the trust permit amounts of deemed income of the trust to be made payable to beneficiaries, the amounts of such trust income arising under any of subsections 94.1(4), 94.2(4) or 94.3(4) and made payable to non-resident beneficiaries of the trust may qualify for reduced withholding if the non-resident beneficiary is resident in a country with which Canada has entered into a tax treaty and the tax treaty contains a provision permitting such a reduction in withholding.

Investment Business

Under paragraph 94.1(2)(e), a determination of whether the principal undertaking of an entity for a taxation year of the entity is the carrying on of a business that is not an investment business is made by reference to:

- subject to the rules below, the relevant facts and circumstances, including the utilization of assets and employees, expenditures made and the revenue of the entity, or

- if the taxpayer elects, by reference to the entity's "net accounting income" (as defined in subsection 94.1(1)) from investment property and investment businesses.

Under subparagraph 94.1(2)(e)(iii), if the Minister of National Revenue sends a written demand to the taxpayer requesting additional information for the purpose of enabling the Minister to determine whether the principal undertaking of the entity is in that taxation year the carrying on of a business that is an investment business, and information satisfactory to the Minister to make the determination is not received by the Minister within 60 days (or within such longer period as is acceptable to the Minister) after the Minister sends the demand, the principal undertaking of the entity for that taxation year is deemed to be the carrying on of a business that is an investment business.

Arm's Length and Related

Under paragraph 94.1(2)(f), in determining whether an entity or natural person and another entity or natural person are related to each other or deal at arm's length with each other, a person referred to in section 251 includes an entity.

Residence of an Entity — Special Case

New paragraph 94.1(2)(g) applies in determining whether a taxpayer's participating interest (as defined in subsection 94.1(1)) in a FIE is an "exempt interest"(as defined in subsection 94.1(1)). Paragraph 94.1(2)(g) provides that in applying subparagraph (e)(i) of the definition

"exempt interest", if the FIE is not a corporation, a partnership or a trust, it is deemed not to be resident in a particular country, unless

- the particular country is a country other than a prescribed country,
- the FIE is governed, and exists, was (unless the FIE was continued in any jurisdiction) formed or organized, or was last continued under the laws of, the particular country or of a political subdivision of the particular country, and
- the FIE is liable, under the laws of the particular country, to pay an income or profits tax imposed by the government of the particular country on all of its income, profits or gains.

If the paragraph 94.1(2)(g) applies so that the FIE is not considered resident in a particular country for the purpose of subparagraph (e)(i) of the definition "exempt interest", then the taxpayer would not be able to rely upon that paragraph in order to qualify the participating interest as an exempt interest.

Entity Treated as Controlled Foreign Affiliate

New paragraph 94.1(2)(h) permits a taxpayer to make an irrevocable election to treat a foreign affiliate, of the taxpayer, that is a foreign investment entity (including an affiliate the shares which are held by the taxpayer's controlled foreign affiliate) as a controlled foreign affiliate of the taxpayer for a particular taxation year and subsequent taxation years. This one-time election is available only if:

- the taxpayer elects in prescribed form in the taxpayer's tax return for the taxation year ("the election year") for which the election is to first take effect — note that, where the taxpayer is a partnership, a special rule in new clause 96(1)(d)(iii)(D) requires instead that a member of the partnership make the election in respect of the partnership's taxation year for which the election is to first take effect; a related rule in subsection 96(3) imposes conditions in determining whether the member's election is valid,
- either
  - the taxpayer holds a participating interest in the foreign affiliate and a taxation year of the foreign affiliate ends (or the first taxation year of the foreign affiliate begins) in the taxpayer's election year, or
  - a controlled foreign affiliate of the taxpayer holds a participating interest in the foreign affiliate and a taxation year of the foreign affiliate ends (or the first taxation year of the foreign affiliate begins) in a taxation year of the controlled foreign affiliate that ends in the taxpayer's election year,
- the taxpayer has a "qualifying interest" (as defined in paragraph 95(2)(m)) in the affiliate — note that where the taxpayer is a partnership, a special rule in clause 96(1)(d)(iii)(E) requires instead that each of the partnership's members (none of which can be another partnership) have a qualifying interest (as defined in paragraph 95(2)(m)) in the affiliate determined as though each of the members owned *pro rata* the partnership property consisting of the shares issued by the foreign affiliate, and
- the taxpayer (or, in the case of a partnership due to a special rule in new clause 96(1)(d)(iii)(F), a member of it) has not made any other election under paragraph (h) in respect of the foreign affiliate.

However, under paragraph 94.1(2)(i), described in the commentary below, the election may be rendered invalid in the event that the taxpayer cannot provide sufficient information to the Minister of National Revenue for the Minister to be able to determine amounts required to be included in the taxpayer's income under section 91. In addition, the election ceases to have effect if the corporation ceases to be a foreign affiliate of the taxpayer.

In the period during which an election under paragraph 94.1(2)(h) is effective, a foreign affiliate of a taxpayer is deemed to be a controlled foreign affiliate of the taxpayer. As a result, a share issued by the affiliate to the taxpayer would be an "exempt interest" under the definition in subsection 94.1(1). Sections 94.1 to 94.4 generally would not apply to the taxpayer's participating interest in the affiliate where that affiliate is a FIE. However, the foreign accrual property income (FAPI) rules would apply and the taxpayer would be required to include in income under section 91 a percentage of any FAPI derived by the affiliate in the year. In addition, notwithstanding an election under paragraph 94.1(2)(h), the FIE rules may still apply in the event that a taxpayer's interest in a controlled foreign affiliate is a participating interest to which subsection 94.2(9) applies.

Demand for Information — CFA election

Under paragraph 94.1(2)(i), an election made by a taxpayer (or in the case of a taxpayer that is a partnership, a member of it) under paragraph 94.1(2)(h) is, other than for the purposes of applying paragraph 94.1(2)(i) and subparagraph 94.1(2)(h)(iii), deemed never to have been made, if the Minister sends a written demand to the taxpayer requesting additional information for the purpose of enabling the Minister to make a determination referred to in one of those paragraphs, and information satisfactory to the Minister to make the determination is not received by the Minister within 60 days (or within such longer period as is acceptable to the Minister) after the Minister sends the demand.

The determination referred to in paragraph 94.1(2)(i) concerns an amount that would, if the Act were read without reference to that paragraph, be required to be added or deducted (otherwise than under subsection 104(13)) in computing the taxpayer's income for the year because of the application of section 91 and an election under paragraph 94.1(2)(h) in respect of a foreign affiliate.

Look-through Rule — Significant Interests

New paragraph 94.1(2)(j) applies in determining whether a particular non-resident entity is a foreign investment entity (FIE) and, in some circumstances, in determining whether the particular non-resident entity is a qualifying entity. A particular non-resident entity is a FIE at any time if none of the exceptions found in paragraphs (a) to (c) of the definition "foreign investment entity" applies to it. In this regard, paragraph 94.1(2)(j) will be, where it applies, relevant in determining whether paragraphs (b) and (c) of that definition apply to a non-resident entity.

Paragraph 94.1(2)(j) will apply in respect of a taxpayer's participating interest in a particular non-resident entity if the taxpayer has made a valid election under 94.1(2)(j) in respect of the participating interest and a specified entity (i.e., the particular non-resident entity or another entity in which the particular non-resident entity has, directly or indirectly, an interest)) has a "significant interest" (as defined in subsection 94.1(1)) in another entity ("the other entity") that is a corporation, partnership or trust. In this case, and provided that the financial statements of the specified entity do not reflect property or indebtedness of the other entity, then in determining whether the particular non-resident entity is a FIE (and, where the taxpayer so stipulates in the election, a qualifying entity):

- In determining the carrying value of the specified entity's property, the carrying values of its participating interests in the other entity are deemed to be nil. Debt owing to the specified entity by the other entity (other than debt acquired in the ordinary course of a business other than an investment business of the specified entity) is also deemed to have a carrying value to the specified entity of nil, and the net accounting income of the specified entity is also deemed to be nil to the extent that it is derived from debt or participating interests of the specified entity that are deemed to be nil.
- The specified entity is deemed to own the property of the other entity. Each such deemed owned property is deemed to have a carrying value to the specified entity based on the product obtained by multiplying the property's carrying value to the other entity by the specified entity's proportional ownership of the other entity's property. In general terms, this proportional ownership is the quotient obtained by dividing:
  - the amount that is the fair market value of the specified entity's shares and certain debt issued by the other entity, by
  - the amount that is the total fair market value of shares and certain debt issued by the other entity entity.
- In general terms, the activities carried on by the other entity (including an exempt business of the other entity) using the property deemed to be owned by the specified entity, and the other entity's net accounting income derived from those activities, are deemed to be those of the specified entity to the extent of that proportional ownership.

If the taxpayer notifies the Minister of National Revenue in writing of its intention to value the specified entity's property at its fair market value in accordance with paragraph (a) of the definition "carrying value" in subsection 94.1(1), the property of the other entity must also be valued on that basis to the extent that paragraph 94.1(2)(j) applies to deem the property to be property of the specified entity.

If there are tiers of entities each of which has a significant interest in the other, paragraph 94.1(2)(j) operates to deem each higher tier entity to own properties of the immediately lower tier entities on an iterative basis. For example, assume a non-resident entity (Foreignco-1) owns 100% of the shares in Foreignco-2, which in turn owns 100% of shares in Foreignco-3 and that Foreignco-1, Foreignco-2 and Foreignco-3 have

identical taxation year-ends. The carrying values from properties in Foreignco-3 would, under paragraph 94.1(2)(j), become the carrying values of properties in Foreignco-2. Because paragraph 94.1(2)(j) operates on an iterative basis, the carrying value of those properties would be considered to be the carrying values of properties held by Foreignco-1.

The example below illustrates the operation of paragraph 94.1(2)(j).

Example

1. Jean, who resides in Canada, holds shares in Foreignco, a non-resident corporation that is not a controlled foreign affiliate of Jean. Foreignco's principal activity is the carrying on of investment activities on behalf of its shareholders. Foreignco prepares its financial statements in accordance with accounting principles substantially similar to generally accepted accounting principles used in Canada.

2. The carrying values of Foreignco's assets at the end of its taxation year ending in Jean's year are as follows:

Guaranteed investment certificate	*$10,000*
Shares of XYZ Inc. in which Foreignco has a significant interest	*$20,000*
Shares of ABC Inc. in which Foreignco does not have a significant interest	*$ 5,000*
Cash	*$ 4,000*
Total assets	*$39,000*

3. XYZ Inc. owns assets at that time that are used in the course of carrying on an active business, with a carrying value of $80,000. It also has investment property with a carrying value of $15,000.

4. The fair market value of the shares of XYZ Inc. held by Foreignco is $40,000 while the fair market value of all the issued and outstanding shares of XYZ Inc. is $100,000 at that time.

Results

1. The guaranteed investment certificate, cash, and the shares of XYZ Inc. and ABC Inc. are all investment property by virtue of the definition "investment property" in subsection 94.1(1).

2. However, since Foreignco owns a significant interest in XYZ Inc., the special look-through rule in new paragraph 94.1(2)(j) applies. Under this look-through rule the carrying value of Foreignco's shares in XYZ Inc. is deemed to be nil. Instead, Foreignco is deemed to own a portion of the property that XYZ Inc. owns.

3. The carrying value of the XYZ property deemed to be owned by Foreignco is 40% of its carrying value to XYZ, since Foreignco's percentage ownership of shares is 40%.

4. Consequently, the carrying values of the investment property of Foreignco are:

Gguaranteed investment certificate	*$10,000*
Shares of XYZ Inc.	*nil*
Shares of AEC Inc.	*$ 5,000*
Cash	*$ 4,000*
Investment property of XYZ Inc. (40% of $15,000)	*$ 6,000*
Total	*$25,000*

5. The total carrying value of the assets of Foreignco is:

Investment property (see above)	*$ 25,000*
Assets of XYZ Inc. (other than investment property) (40% of $80,000)	*$ 32,000*
Total	*$ 57,000*

6. As a result, Foreignco is not a FIE because less than 50% of the carrying value of its property is investment property.

Tax Avoidance Motive

New paragraph 94.1(2)(k) sets out the conditions under which a taxpayer will be considered to have a tax avoidance motive in respect of a participating interest in a FIE. Subject to new paragraphs 94.1(2)(m) and (n) (described in the commentary below), a tax avoidance motive will be considered to exist only if it is reasonable to conclude that the main reasons for the taxpayer acquiring, holding or having the particular participating interest were to permit the taxpayer to achieve the following two objectives:

- to derive a benefit the value of which can be attributed principally, directly or indirectly, to income derived from investment property, to profits or gains from the disposition of investment property, or to an increase in value of investment property, and
- the deferral or reduction of the amount of tax payable on that income or those profits or gains.

Factors Considered in Tax Avoidance Motive

New paragraph 94.1(2)(l) sets out factors to be considered in determining whether there is a tax avoidance motive for a taxpayer acquiring an interest in a non-resident entity. Those factors are similar to the ones in existing subsection 94.1(1). However, the form and the terms and conditions governing the taxpayer's interest in a non-resident entity are to be taken into account as well. Note that a tax avoidance motive may exist whether the non-resident entity is resident in a "tax haven" or not. The factors are as follows:

- the nature, organization and operation of the non-resident entity and any FIE in which it or a specified party (as defined in subsection 94.1(1)) in respect of it has a direct or indirect interest,
- the nature, organization and operation of any FIE in which the taxpayer or a specified party in respect of the taxpayer has a direct or indirect interest,
- the form of and the terms and the conditions governing the direct or indirect interests described above,
- the extent to which and the time at which the particular non-resident entity, or an entity in which a direct or indirect interest described above is held, is subject to an income or profits tax on its income, profits and gains,
- the extent to which and the time at which an entity that holds a direct or indirect interest described above is subject to an income tax or profits tax on the entity's share of the income, profits and gains of the entity in which the direct or indirect interest is held, and
- the amount of tax that would have been payable by the taxpayer under this Part had the taxpayer earned the income or realized the profits or gains in respect of the investment property referred to in subparagraph 94.1(2)(k)(i) at the time that the income was earned, or the profits or gains were realized, by the entities that owned or held the investment property.

No Tax Avoidance Motive

New paragraphs 94.1(2)(m) and (n) provide two situations where a taxpayer will not be considered to have a tax avoidance motive in respect of a participating interest in a non-resident entity held by the taxpayer in a taxation year:

- if the non-resident entity (and each other foreign investment entity, in which the non-resident entity has a direct or indirect interest) makes payable (determined by reference to paragraph 94.1(2)(o)) all or substantially all of its "payable net accounting income" (as defined in subsection 94.1(1)) for its taxation year that ends in the particular taxation to its interest holders within 120 days after the end of its taxation year, and the taxpayer's share of that amount is included in computing the taxpayer's income, profit or gains for the taxpayer's taxation year that includes the time at which the amount became payable, and
- if the non-resident entity is a "Regulated Investment Company" for the purposes of sections 851(b) and 852(a) of the United States *Internal Revenue Code* or a "Real Estate Investment Trust" for the purposes of sections 856(c) and 857(b) of that Code, and the taxpayer includes, in computing the taxpayer's income for that taxation year of the taxpayer, the amount of income that became payable (determined by reference to paragraph 94.1(2)(o)) by the particular non-resident entity to the taxpayer in that taxation year of the taxpayer.

For more detail on the definition "payable net accounting income" in subsection 94.1(1), see the commentary on that definition.

Amounts Payable

Under paragraph 94.1(2)(o), an amount is deemed not to have become payable at any time to an entity or individual unless it was paid on or before that time to the entity or individual, as the case may be, or the entity or individual, as the case may be, was entitled on or before that time to enforce payment of it. This rule is relevant in applying paragraph (d) of the definition "exempt interest" in subsection 94.1(1), paragraphs 94.1(2)(m) and (n), the definition "mark-to-market formula" in subsection 94.2(1), and subsection 94.4(2).

Demands for Information

Under paragraphs 94.1(2)(p) to (r) a number of provisions in section 94.1 will not apply in respect of a taxpayer's participating interest in a non-resident entity, if the Minister sends a written demand to the tax-

payer requesting additional information for the purpose of enabling the Minister to make a determination referred to in one of those paragraphs, and information satisfactory to the Minister to make the determination is not received by the Minister within 60 days (or within such longer period as is acceptable to the Minister) after the Minister sends the demand.

The determinations referred to in paragraph 94.1(2)(p) to (r) are in respect of the definitions "exempt property", "foreign investment entity" and "qualifying entity" in subsection 94.1(1), respectively.

Participating Interests — Special Case

Paragraph 94.1(2)(s) applies in determining whether an interest is a participating interest. Under that paragraph, if at any time a taxpayer has a participating interest in a particular foreign investment entity and the taxpayer has at that time a participating interest (referred to in that paragraph and this commentary as the "indirect participating interest") in another non-resident entity solely because the particular foreign investment entity has at that time a participating interest in that other non-resident entity, then the indirect participating interest is deemed not to be a participating interest of the taxpayer at that time.

Paragraph 94.1(2)(s) provides relief only where the conditions attached to a taxpayer's participating interest in a FIE are such that the interest may also be a participating interest in another non-resident entity in which the FIE holds an interest and in which the taxpayer does not directly hold an interest. Paragraph 94.1(2)(s) would not apply to a participating interest where the taxpayer holds the participating interest directly in the other nonresident entity — in these circumstances, the taxpayer would be required to determine whether the participating interest in the other non-resident entity is a participating interest in a FIE.

Application of the FIE Rules to Taxpayers That Are Authorized Foreign Banks

Paragraph 94.1(2)(t) applies to ensure that authorized foreign banks are subject to the FIE rules in computing their income. In particular, an authorized foreign bank that holds a participating interest in a non-resident entity at any time in a taxation year is deemed, for the purposes of subsections 94.1(4), 94.2(5) to (8) and (12), 94.3(4) and 94.4(2), to be resident in Canada throughout the taxation year. For more detail on a related amendment to section 115, see the commentary below on that provision. This amendment applies for taxation years that begin after July 18, 2005.

Identical Properties

Paragraph 94.1(2)(u) provides that identical properties that were held and are disposed of by a taxpayer will be treated as having been disposed of in the order in which they were actually acquired by the taxpayer. As a result, various acquisitions that are deemed to occur under the Act (e.g., section 47) are not to be taken into account. This measure is relevant primarily for the purpose of determining the amount to be added or deducted from a taxpayer's income for a taxation year under subsection 94.2(4), especially with reference to the "deferral amount" referred to in the description of D in the "mark-to-market formula" for the year (as those expressions are defined in subsection 94.2(1)).

Anti-avoidance: 150 persons

Paragraph 94.1(2)(v) is an anti-avoidance provision that is relevant to the application of the definition "arm's length interest" in subsection 94.1(1). Paragraph (a) of that definition imposes the condition that at least 150 persons hold participating interests that are identical to a particular participating interest in order for the particular participating interest to be considered an arm's length interest in respect of a taxpayer.

Paragraph 94.1(2)(v) provides that, if it can reasonably be considered that one of the main reasons that an entity or individual holds at any time on or after July 18, 2005 a participating interest is to cause the condition in paragraph (a) of the definition "arm's length interest" to be met at that time in respect of the participating interest or an identical participating interest, the condition is deemed not to have been met at that time in respect of the participating interest or identical participating interest.

For more detail on the definition "arm's length interest", see the commentary on that definition.

Related Provisions: 87(2)(j.95) — Amalgamation — continuing corporation; 94.1(1)"carrying value"(b) — Amount under 94.1(2)(j) included in carrying value; 94.2(2)(a) — Rules in 94.1(2) apply to 94.2; 94.3(2)(a) — Rules apply to 94.3(2); 94.4(1)(b) — Rules in 94.1(2) apply to 94.4; 95(1)"controlled foreign affiliate" — deemed CFA under 94.1(2)(h) applies for entire Act; 95(2)(g.3) — Application to FAPI rules; 96(1)(d)(iii)(D)–(F) — Application of 94.1(2)(h) to partnership; 96(3) — Election under subpara. (e)(ii) or para. (h) or (j) by members of partnership; 98(7) — Where partnership holding specified participating interest ceases to exist; 248(12) — Identical properties.

(3) Conditions for application of tax regime for foreign investment entities — This subsection applies to a taxpayer for a particular taxation year of the taxpayer in respect of a participating interest in a non-resident entity if

(a) the taxpayer is not an exempt taxpayer for the particular taxation year;

(b) the participating interest is held by the taxpayer at the end of a taxation year of the non-resident entity that ends in the particular taxation year;

(c) at the end of that taxation year of the non-resident entity it is a foreign investment entity; and

(d) at the end of that taxation year of the non-resident entity the taxpayer's participating interest is not an exempt interest of the taxpayer.

Technical Notes: New subsection 94.1(3) sets out the common conditions for the application of the FIE income inclusion rules in subsections 94.1(4) (prescribed rate of return regime), 94.2(4) (mark-to-market regime) and 94.3(4) (accrual regime). For the prescribed rate of return, accrual or mark-to-market regimes to apply to a taxpayer for a particular taxation year of the taxpayer in respect of a participating interest held in the particular year by the taxpayer in a non-resident entity (other than a tracking interest or a foreign insurance product — for more information see the commentary on subsection 94.2(3)), all of the following conditions set out in subsection 94.1(3) must be satisfied:

- the taxpayer is not an "exempt taxpayer" for the taxpayer's particular taxation year;
- the taxpayer held the participating interest at the end of a taxation year of the non-resident entity that ends in the taxpayer's particular taxation year; and
- at the end of that taxation year of the non-resident entity, the interest was a participating interest in a FIE and was not an exempt interest.

Related Provisions: 87(2)(j.95) — Amalgamation — continuing corporation; 94.1(4) — Income inclusion when 94.1(3) applies; 94.2(3)(b)(i) — Application of mark-to-market method; 95(2)(g.3) — Application to FAPI rules; 108(1)"income interest"(b) — Exclusion from definition of income interest.

(4) Income inclusion — imputed income regime — If subsection (3) or 94.2(9) applies to a taxpayer resident in Canada for a taxation year of the taxpayer in respect of a participating interest and subsections 94.2(3) and 94.3(3) do not apply to the taxpayer for the taxation year in respect of the participating interest, then this subsection applies to the taxpayer for the taxation year in respect of the participating interest and there shall be included (as income from property from a property that is the participating interest) in computing the taxpayer's income for that taxation year the total of all amounts each of which is the amount, in respect of each month in that taxation year, at the end of which month the taxpayer holds the participating interest, determined by the formula

$$A \times B$$

where

A is the designated cost, to the taxpayer of the participating interest, at the end of the month; and

B is the quotient obtained when the rate of interest prescribed, in respect of amounts required by this Act to be paid by the Minister, for the quarterly period that includes that month is divided by 12.

Technical Notes: Subsection 94.1(4) applies to a taxpayer resident in Canada for a taxation year of the taxpayer in respect of a participating interest in a non-resident entity if subsection 94.1(3) or 94.2(9) applies

(and subsections 94.2(3) and 94.3(3) do not apply) to the taxpayer for the taxation year in respect of a participating interest.

Where subsection 94.1(4) applies, the taxpayer is required to include (as income from property from a property that is the participating interest) in computing the taxpayer's income for that taxation year the total of all amounts each of which, is in respect of each month in that taxation year, at the end of which month the taxpayer holds the participating interest, the product obtained by multiplying

- the designated cost (as defined in subsection 94.1(1)), to the taxpayer of the participating interest, at the end of the month,

by

- the quotient obtained when the rate of interest prescribed, in respect of amounts required by this Act to be paid by the Minister, for the quarterly period that includes that month is divided by 12.

For this purpose, the rate of interest will be that determined under paragraph 4301(b) of the Regulations. That rate, in very general terms, is the 3-month average Treasury bill rate + 2 percentage points.

For more information on the definition "designated cost" in subsection 94.1(1), see the commentary on that definition. For more information on subsection 94.2(3), see the commentary on that subsection.

Related Provisions: 53(1)(m)(iii) — Addition to adjusted cost base of participating interest; 87(2)(j.95) — Amalgamation — continuing corporation; 94.1(2)(d) — Interpretation; 94.1(2)(t) — Authorized foreign bank deemed resident in Canada; 94.1(5) — Loss on disposition of interest — reconciliation; 94.3(3)(c) — Taxation of interest in FIE where 94.1(4) does not apply; 94.4(2) — Prevention of double taxation; 95(2)(g.3) — Application to FAPI rules; 96(1)(d) — Where partnership owns participating interest; 149(10)(c) — Where corporation becomes or ceases to be exempt; 248(1)"inventory" — Property under 94.1(4) excluded from definition of inventory.

Regulations: 4301(b) (prescribed interest rate for B).

(5) Loss on disposition of interest — reconciliation — Notwithstanding any other provision of this Act, if a taxpayer disposes, at a particular time in a particular taxation year, of a participating interest of the taxpayer and subsection (4) applied for the purpose of computing the taxpayer's income, for any taxation year of the taxpayer that began on or before the particular time, in respect of the participating interest

(a) there may be deducted in computing the taxpayer's income for the particular taxation year the lesser of

(i) the amount, if any, by which

(A) the total of all amounts each of which is an amount included in respect of the participating interest because of subsection (4) in computing the taxpayer's income for

(I) the particular taxation year, or

(II) any taxation year, of the taxpayer, that ends before the particular taxation year and after the taxpayer last acquired the participating interest

exceeds

(B) the total of all amounts each of which is an amount in respect of the participating interest that is deductible under paragraph 94.4(2)(a) in computing the taxpayer's income for any of those taxation years, and

(ii) the amount that would, if this Act were read without reference to paragraph (b) and subparagraph 40(2)(g)(i), be the taxpayer's capital loss for the particular taxation year from the disposition of the participating interest; and

(b) the taxpayer's capital loss for the taxation year from the disposition of the participating interest is the amount, if any, by which

(i) the amount that would, if this Act were read without reference to this paragraph and subparagraph 40(2)(g)(i), be the taxpayer's capital loss for the particular taxation year from the disposition of the participating interest

exceeds

(ii) the amount in respect of the participating interest deducted by the taxpayer under paragraph (a) in computing the taxpayer's income for the particular taxation year.

Technical Notes: New subsection 94.1(5) applies where a taxpayer disposes of an interest in a non-resident entity at a particular time in a particular taxation year. If subsection 94.1(4) applied, for the purpose of computing the taxpayer's income, for any taxation year of the taxpayer that began on or before the particular time, in respect of the participating interest, the taxpayer may be permitted to deduct an amount equal to the lesser of

- the amount, if any, by which the total of the taxpayer's income inclusions under subsection 94.1(4) in respect of the interest (since its last acquisition by the taxpayer) exceeds the total deductions available to the taxpayer in respect of the interest under paragraph 94.4(2)(a), and

- the taxpayer's capital loss for the particular taxation year from the disposition of the participating interest (determined without reference to paragraph 94.1(5)(b) and subparagraph 40(2)(g)(i)).

Where a deduction is claimed by the taxpayer under paragraph 94.1(5)(a) in computing the taxpayer's income for the particular taxation year, the taxpayer's capital loss for the taxation year from the disposition of the participating interest (determined without reference to paragraph 94.1(5)(b) and subparagraph 40(2)(g)(i)) is reduced by the amount of that deduction.

Application [s. 94.1]: See at end of 94.4.

Definitions [s. 94.1]: "amount", "annuity" — 248(1); "arm's length" — 94.1(2)(f), 251(1); "arm's length interest" — 94.1(1); "beneficiary" — 94.1(1); "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255, *Interpretation Act* 35(1); "Canadian resource property" — 66(15), 248(1); "capital loss" — 39(1)(b), 248(1); "carrying value" — 94.1(1); "controlled foreign affiliate" — 94.1(2)(h), 95(1), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount", "credit union" — 248(1); "designated cost" — 94.1(1), 94.1(2)(e); "disposition", "dividend" — 248(1); "eligible trust" — 94(1); "employee", "employer" — 248(1); "entity" — 94.1(1); "excluded property" — 93(1.4)(a), 95(1); "exempt business" — 94.1(1); "exempt foreign trust" — 94(1); "exempt interest" — 94.1(1); "exempt property" — 94.1(1), 94.1(2)(p); "exempt taxpayer", "financial statements" — 94.1(1); "foreign affiliate" — 95(1), 248(1); "foreign bank" — 94.1(1), 95(1); "foreign investment entity" — 94.1(1), 94.1(2)(q); "foreign resource property" — 66(15), 248(1); "identical" — 248(12); "income from property" — 95(1); "individual", "insurance corporation", "inventory" — 248(1); "investment business" — 94.1(1), 94.1(2)(e); "investment property" — 94.1(1); "licensing of property" — 95(1); "mark-to-market property" — 142.2(1); "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "net accounting income" — 94.1(1); "non-resident" — 248(1); "non-resident entity", "participating interest" — 94.1(1), 94.1(2)(s), 248(1); "payable" — 94.1(2)(o); "payable net accounting income" — 94.1(1); "permanent establishment" — Reg. 8202 (to be prescribed); "person", "personal trust", "prescribed" — 248(1); "prescribed stock exchange" — Reg. 3200, 3201; "property" — 248(1); "qualifying entity" — 94.1(1); "qualifying interest" — 95(2)(m); "qualifying investor" — 94(1); "qualifying member" — 95(2)(o)–(r), 248(1); "regulation" — 248(1); "related" — 251(2)–(6); "resident", "resident in Canada" — 250; "share", "shareholder" — 248(1); "significant interest", "specified interest" — 94.1(1); "specified entity" — 94.1(2)(j); "specified party" — 94.1(1); "specified time" — 94.1(2)(j)(i)(A)(I); "substituted" — 248(5); "successor beneficiary" — 94(1); "tax avoidance motive" — 94.1(2)(k)–(n); "tax treaty", "taxable income" — 248(1); "taxation year" — 94.1(1), 249; "taxpayer" — 248(1); "timber resource property" — 13(21), 248(1); "trust" — 104(1), 248(1), (3); "trust company" — 95(1); "United States", "writing" — *Interpretation Act* 35(1); "written" — *Interpretation Act* 35(1)"writing".

94.2 Foreign investment entities — mark-to-market — (1) Definitions — The definitions in subsection 94.1(1), and the following definitions, apply in this section.

Technical Notes: New section 94.2 sets out new rules for the taxation of interests in FIEs where subsections 94.1(4) and 94.3(3) do not apply.

Except as otherwise indicated, section 94.2 applies to taxation years that begin after 2002.

New subsection 94.2(1) sets out a number of definitions and provides that those definitions and the definitions in subsection 94.1(1) apply for the purposes of section 94.2.

"deferral amount", of a taxpayer in respect of a participating interest in an entity, means, subject to subsections (6) and (14) to (18), the positive or negative amount determined by the formula

$$A \times (B - C)$$

where

A is

(a) if, immediately before the beginning of the taxpayer's first taxation year that began after 2002, the interest was capital property held by the taxpayer, 1/2, and

(b) in any other case, 1;

B is

(a) the fair market value of the interest at the first time in a particular taxation year of the taxpayer at which the taxpayer was resident in Canada where

(i) the taxpayer held the interest at the end of the preceding taxation year,

(ii) at the end of that preceding year, the taxpayer was resident in Canada or the interest was taxable Canadian property,

(iii) subsection (4) did not apply to the taxpayer for the purpose of computing the taxpayer's income in respect of the interest for any preceding taxation year, and

(iv) subsection (4) applies to the taxpayer for the purpose of computing the taxpayer's income in respect of the interest for the particular year, and

(b) nil in any other case; and

C is

(a) if paragraph (a) of the description of B applies in respect of the interest, the cost amount of the property immediately before the first time in the particular year at which the taxpayer was resident in Canada, and

(b) nil in any other case.

Technical Notes: The deferral amount of a taxpayer generally represents the gain or loss (in the event that the interest was capital property, one half of the gain or loss) in respect of the interest accrued to the time when the interest first became subject to the rules in section 94.2. The expression "deferral amount" in respect of a participating interest of a taxpayer in an entity applies principally for the purpose of determining the value of D in the "mark-to-market formula" (as defined in subsection 94.2(1)) for a taxation year of the taxpayer in respect of the participating interest. That formula applies in determining, under subsection 94.2(4), a taxpayer's income or loss (or capital gain or capital loss) from the participating interest for a taxation year. Subsection 94.2(4) generally provides for the recognition of a deferral amount in respect of a participating interest on the disposition of the interest.

Because of paragraph 94.1(2)(u), identical participating interests are considered to be disposed of in the order in which they were acquired. For a participating interest, in a non-resident entity, acquired after the beginning of the taxpayer's first taxation year that began after 2002, the deferral amount will be nil in the typical cases where the rules in section 94.2 apply to the interest for the year in which the interests were acquired.

The deferral amount is calculated, in conjunction with subsections 94.2(5) and subsection 128.1(4), so that gains and losses accruing while a taxpayer is not resident in Canada are ignored for the purposes of section 94.2, except in the unusual case where an interest in a FIE is taxable Canadian property.

Additional rules affecting the calculation of the deferral amount are contained in subsections 94.2(6) and (14) to (18), as described in the commentary below.

Related Provisions: 87(2)(j.95) — Amalgamation — continuing corporation; 94.1(2)(u) — Order of disposition of identical properties; 94.2(6)(b), (c) — Application where member of foreign partnership becomes resident in Canada; 94.2(15)–(18) — Determination of deferral amount on emigration, change of status or superficial disposition; 95(2)(g.3) — Application to FAPI rules.

"gross-up factor", for a particular deferral amount, means

(a) if the amount determined for A in the definition "deferral amount" in respect of the particular deferral amount is 1/2, 2; and

(b) in any other case, 1.

Technical Notes: The definition "gross-up factor" for a particular deferral amount is 1, except where the 1/2 factor is relevant in computing the deferral amount because the property is capital property. In the latter case, the "gross-up factor" is 2 (i.e., the reciprocal of the 1/2 factor). For more information on the relevance of this definition, see the commentary on subsection 94.2(12).

"mark-to-market formula", for a taxation year of a taxpayer in respect of a participating interest of the taxpayer in a non-resident entity, means the formula

$$(A + B + C + D) - (E + F + G)$$

where

A is the total of all amounts each of which is the taxpayer's proceeds from a disposition of the participating interest in the taxation year (other than a disposition deemed to arise because of subsection 128.1(4) or 149(10));

B is

(a) if the taxpayer held the participating interest at the end of the taxation year, the fair market value (determined before taking into account any amount payable at the end of the taxation year from the non-resident entity in respect of the participating interest) at that time of the participating interest, and

(b) in any other case, nil;

C is the total of all amounts (other than an amount to which the description of A applies) received by the taxpayer in the taxation year from the non-resident entity in respect of the participating interest;

D is

(a) the taxpayer's deferral amount in respect of the participating interest, if

(i) the deferral amount is a positive amount,

(ii) the participating interest was not disposed of by the taxpayer in the taxation year, and

(iii) the taxpayer so elects in respect of the participating interest in prescribed form filed with the Minister not later than the taxpayer's filing-due date for the taxation year,

(b) the taxpayer's deferral amount in respect of the participating interest if

(i) the taxpayer disposed of the participating interest in the taxation year, and

(ii) no election was made under paragraph (a) in respect of the participating interest by the taxpayer for a preceding taxation year, and

(c) in any other case, nil;

E is the total of all amounts each of which is the cost at which the taxpayer acquired the participating interest in the taxation year (otherwise than because of an acquisition deemed to arise because of subsection 128.1(4) or 149(10));

F is

(a) if the taxpayer held the participating interest at the beginning of the taxation year, the fair market value at that time of the participating interest (determined before taking into account any amount payable at that time from the non-resident entity in respect of the participating interest), and

(b) in any other case, nil; and

G is

(a) if the participating interest was deemed by paragraph (11)(b) to be a participating interest in an entity for the preceding taxation year of the taxpayer, the amount that would be deductible under subparagraph (4)(a)(ii) in computing the taxpayer's income for that preceding taxation year in respect of the participating interest if that subparagraph were read without reference to clause (4)(a)(ii)(A), and

(b) in any other case, nil.

Technical Notes: The definition "mark-to-market formula" provides a formula that applies, for a taxation year of a taxpayer in respect of a participating interest of the taxpayer, in determining, under subsection 94.2(4), a taxpayer's income or loss (or, where subsection 94.2(20) applies in respect of the participating interest, the capital gain or capital loss) from the participating interest for a taxation year.

The amount determined under the formula for a taxpayer's taxation year in respect of a participating interest in a non-resident entity is computed as follows:

- [A] ADD the proceeds of disposition in the year from any disposition by the taxpayer in the year of the interest (other than a disposition arising from the application of subsection 128.1(4) or 149(10), given that the value of B would take into account the fair market value of the interest at the time of such deemed dispositions);
- [B] ADD, where the taxpayer held the interest at the end of the year, the fair market value of the interest at that time (determined before taking into account the FIE's liability in respect of any amount payable from the FIE in respect of the interest);
- [C] ADD the total payments received by the taxpayer in the year from the FIE, other than payments included in the value of A;
- [D] ADD, where the taxpayer so elects for a year during which the taxpayer did not dispose of the interest, any positive deferral amount in respect of the interest;
- [D] ADD, where the taxpayer disposed of the interest in the year and the election referred to above has not been previously made, the deferral amount in respect of the interest — the value of D will reduce the amount determined under the formula in the event that the deferral amount is a negative amount;
- [E] SUBTRACT the cost of the interest on any acquisition in the year of the interest (disregarding acquisitions arising because of the application of subsection 128.1(4) or 149(10), given that these acquisitions are taken into account in the value of F);
- [F] SUBTRACT, where the taxpayer held the interest at the beginning of the year, the fair market value of the interest at the beginning of the year; and
- [G] SUBTRACT, in the case of a foreign insurance policy to which subsection 94.2(3) applies because of the operation of new subsections 94.2(10) and (11), any loss denied for the preceding year because of the operation of clause 94.2(4)(a)(ii)(A).

Ignoring the descriptions of D and G, the mark-to-market formula in effect determines the net increase or decrease in the fair market value of a taxpayer's participating interest in a non-resident entity for a taxation year.

The value of D represents a taxpayer's accrued gain or loss when a participating interest first becomes subject to section 94.2. The amount of this accrued gain or loss (or one half of it, in the event so provided in paragraph (b) of the definition "deferral amount" in subsection 94.2(1)) is included in computing income under the description of D, but only for the taxation year in which the interest is disposed of unless the taxpayer elects for earlier recognition of a positive deferral amount. (An earlier recognition of a positive deferral amount may be beneficial for a taxpayer, particularly where section 94.4 applies.) Where the taxpayer is a trust, a disposition may occur as a consequence of the application of the 21-year deemed disposition rule. See, in this regard, new subsection 104(4.1).

For more detail, see the commentary on subsections 94.2(3) and (4) and the definitions "deferral amount" and "gross-up factor" in subsection 94.2(1).

Related Provisions: 94.1(2)(o) — Amount deemed not to have become "payable"; 94.2(5)–(8) — Exclusion of periods taxpayer is non-resident; 96(3) — Election under subpara. D(a)(iii) by member of a partnership; 257 — Formula amount cannot be less than zero.

"readily obtainable fair market value", if any, at any time of a particular participating interest in a non-resident entity held at that time by a taxpayer, means the fair market value at that time of the participating interest if

(a) in respect of the particular participating interest

(i) there is a regularly published price of the amount (or of the average of the amounts each of which is the amount) at which participating interests that are identical to the particular participating interest last traded on a prescribed stock exchange on each of the latest 10 consecutive trading days of the participating interests on that stock exchange in the 30-day period that begins before the day that includes that time,

(ii) the particular participating interest would, at that time, be an arm's length interest of the taxpayer if the definition "arm's length interest" in subsection 94.1(1) were read without reference to paragraph (b) of that definition,

(iii) the identical participating interests are listed on that stock exchange throughout the period, in the taxpayer's taxation year that includes that time, during which the taxpayer held the particular participating interest, and

(iv) there are at least 10 trading days of the identical participating interests on that stock exchange in the period that begins 30 days before that time; or

(b) in respect of the particular participating interest

(i) the participating interests in the non-resident entity that are identical to the particular participating interest have, throughout the period, in the taxpayer's taxation year that includes that time, during which the taxpayer held the particular participating interest, conditions attached that require the non-resident entity to accept at the demand of the holders of the participating interests

(or that require the holders of the participating interests to accept, at the demand of the non-resident entity), at a price determined and payable in accordance with the conditions, the surrender in whole or in part of the participating interests, and

(ii) that price

(A) is determined by reference to the fair market value, at the time the participating interest is surrendered, of the property of the non-resident entity, and

(B) would have been acceptable to entities dealing at arm's length with one another.

Technical Notes: The definition "readily obtainable fair market value" is relevant in determining whether a taxpayer may elect to have subsection 94.2(3) (and, as a result, subsection 94.2(4)) apply for a taxation year in respect of a particular participating interest (as defined in subsection 94.1(1)) of the taxpayer in a non-resident entity (as defined in subsection 94.1(1)).

In general terms, the readily obtainable fair market value of a particular participating interest is, if one of two sets of conditions is met, its fair market value.

The first set of conditions requires, in respect of the particular participating interest that:

- participating interests that are identical to the particular participating interest be listed on a prescribed stock exchange throughout the period, in the taxpayer's taxation year that includes that time, during which the taxpayer held the particular participating interest,
- the particular participating interest would, at that time, be an arm's length interest of the taxpayer (determined without regard to the 10% limitation that normally applies under paragraph (b) of the definition "arm's length interest" in subsection 94.1(1)),
- there be a regularly published price of the amount (or of the average of the amounts each of which is the amount) at which participating interests that are identical to the particular participating interest last traded on that stock exchange on each of the latest 10 consecutive "trading days" (as defined in subsection 94.2(1)) of the participating interests on that stock exchange, and
- within the 30-day period that begins before the particular time there are at least 10 trading days of the identical participating interests on that stock exchange.

Note that, under paragraph 94.2(2)(b), where the identical participating interests are listed on more than one prescribed stock exchange, the taxpayer may generally elect which of the exchanges will be used in applying the definition "readily obtainable fair market value". For more information, see the commentary on paragraph 94.2(2)(b).

Where the first set of conditions is not met, the second set of conditions requires that the identical participating interests have, throughout the period, in the taxpayer's taxation year that includes that time, during which the taxpayer held the particular participating interest, conditions attached that require the non-resident entity to accept at the demand of the holders of the participating interests (or that require the holders of the participating interests to accept, at the demand of the non-resident entity), at a price ("the redemption price") determined and payable in accordance with the conditions, the surrender in whole or in part of the participating interests. In addition, the second set of conditions requires that the redemption price be determined by reference to the fair market value, at the time the participating interest is surrendered, of the property of the non-resident entity, and be a price that would have been acceptable to entities dealing at arm's length with one another.

Related Provisions: 94.2(2)(b) — Taxpayer may elect where interest is listed on more than one prescribed stock exchange; 94.2(2)(d) — Effect of failing to provide information on demand by CCRA; 94.2(3)(b)(ii) — Value required for mark-to-market method to be used; 248(12) — Identical properties.

"reconciliation amount", at a particular time in a taxation year of a taxpayer in respect of a participating interest of the taxpayer, means the amount (including a negative amount) determined at the particular time by the formula

A – B

where

A is the amount determined by the formula

C – D

where

C is the amount that would be the cost at the particular time of the participating interest to the taxpayer if this Act were read without reference to this section, and

D is

(a) if paragraph (12)(a) deems the taxpayer to have acquired the participating interest at a time in the taxation year, the cost at the particular time to the taxpayer of the participating interest, and

(b) in any other case, the taxpayer's proceeds of disposition from the last disposition in the taxation year by the taxpayer of the participating interest; and

B is the amount determined by the formula

(E + F) – G

where

E is the total of all amounts each of which is an amount, in respect of the participating interest, that is deducted, or that would if this Act were read without reference to subsection (20) have been deducted, under subsection (4) in computing the taxpayer's income for

(a) if paragraph (12)(a) deems the taxpayer to have acquired the participating interest at a time in the taxation year, a taxation year (in this definition referred to as the "preceding taxation year") of the taxpayer that precedes the taxation year, and

(b) in any other case, the taxation year or a preceding taxation year,

F is the total of all amounts each of which is an amount, in respect of the participating interest, deducted under paragraph 94.4(2)(a) in computing the taxpayer's income for

(a) if paragraph (12)(a) deems the taxpayer to have acquired the participating interest at a time in the taxation year, a preceding taxation year, and

(b) in any other case, the taxation year or a preceding taxation year, and

G is the total of all amounts each of which is an amount, in respect of the participating interest, that is included, or that would if this Act were read without reference to subsection (20) have been included, under subsection (4) in computing the taxpayer's income for

(a) if paragraph (12)(a) deems the taxpayer to have acquired the participating interest at a time in the taxation year, a preceding taxation year, and

(b) in any other case, the taxation year or a preceding taxation year.

Technical Notes: The reconciliation amount in respect of a participating interest of a taxpayer is relevant in determining what adjustments, if any, to the cost of the interest may be required under subsection 94.2(12) and what amounts, generally, may be included or deductible, under subsection 94.2(21), by the taxpayer in computing the taxpayer's

income for a taxation year in which the interest is disposed of. For more detail, see the commentary on subsections 94.2(12) and (21).

The reconciliation amount at a particular time in a taxation year of a taxpayer in respect of a participating interest of the taxpayer, means, in very general terms the amount (including a negative amount) that is the difference between the taxpayer's economic loss in respect of the interest (while the taxpayer held the interest and subsection 94.2(4) applied to it) and the taxpayer's deductions, in computing income, under sections 94.2 or 94.4 (net of income inclusions under section 94.2)) in respect of the interest.

More specifically, the reconciliation amount at a particular time in a taxation year in respect of a participating interest is the amount (including a negative amount) determined by the formula "A - B".

Under the formula, "A" is the positive amount (for more detail, see section 257) determined by subtracting from the cost of the participating interest to the taxpayer (determined without reference to section 94.2), the proceeds of disposition from the last disposition in the taxation year by the taxpayer of the participating interest (or, if paragraph 94.2(12)(a) deemed the taxpayer to have acquired the participating interest in the taxation year, the cost to the taxpayer of the participating interest).

Variable "B" is the positive amount determined by

- ADDING all amounts, in respect of the participating interest, that are, in computing the taxpayer's income for a specified year, deducted under paragraph 94.4(2)(a) or deducted, or that would if this Act were read without reference to subsection 94.2(20) have been deducted, under subsection 94.2(4), and
- SUBTRACTING all amounts in respect of the participating interest, that are, in computing the taxpayer's income for a specified year, included, or that would if this Act were read without reference to subsection 94.2(20) have been included, under subsection 94.2(4).

For this purpose, a specified year means, if paragraph 94.2(12)(a) deems the taxpayer to have acquired the participating interest at a time in the taxation year, a preceding taxation year, and in any other case, the taxation year that includes the particular time or a preceding taxation year.

For more detail, see the commentary on subsections 94.2(4), (12) and (21) and 94.4(2).

Related Provisions: 257 — Formula amounts cannot be less than zero.

"tracking entity", in respect of a particular participating interest of a taxpayer in a particular non-resident entity at a particular time, means the particular non-resident entity if

(a) the tracked properties described in paragraph (9)(d) in respect of the participating interest are at that time owned by the particular non-resident entity, and

(i) the total fair market value at that time of those tracked properties is less than 90% of the total fair market value at that time of all property owned at that time by the particular non-resident entity, and

(ii) the total fair market value at that time of those tracked properties that are at that time investment property exceeds 50% of the total fair market value at that time of those tracked properties; or

(b) any tracked property described in paragraph (9)(d) in respect of the participating interest is not at that time owned by the particular non-resident entity, the particular non-resident entity (or an entity with which the particular non-resident entity does not deal at arm's length) owns property that is at that time investment property, and it is reasonable to conclude that that investment property (or property that may be substituted for that investment property) may be used, or give rise to property used, to satisfy, directly or indirectly, the right referred to in paragraph (9)(d) in respect of the particular participating interest.

Technical Notes: The definition "tracking entity" is relevant in determining whether subsections 94.1(4) and 94.2(4) will apply for a taxation year of a taxpayer in respect of a participating interest, held by the taxpayer at the end of the year, in a non-resident entity. If the non-resident entity is, at the end of a taxation year of the non-resident entity that ends in the taxpayer's year, a tracking entity, and the other conditions described in subsection 94.2(9) are met, such that subsection 94.2(9) applies, then either of subsections 94.1(4) or 94.2(4) would generally apply for the year. Subsection 94.3(4) will not apply for the year in respect of the interest.

A particular non-resident entity is a tracking entity in respect of a particular participating interest of a taxpayer in the non-resident entity if either of paragraph (a) or (b) of the definition applies.

Under paragraph (a) of the definition, the particular non-resident entity is a tracking entity if

- the tracked properties described in paragraph 94.2(9)(d) in respect of the particular participating interest are at that time owned by the particular non-resident entity,
- the total fair market value at that time of those tracked properties is less than 90% of the total fair market value at that time of all property owned at that time by the particular non-resident entity, and
- the total fair market value at that time of those tracked properties that are at that time investment property exceeds 50% of the total fair market value at that time of those tracked properties.

Under paragraph (b) of the definition, the particular non-resident entity will be a tracking entity if

- any of the tracked property described in paragraph 94.2(9)(d) in respect of the participating interest is not at that time owned by the particular non-resident entity,
- the particular non-resident entity (or an entity with which the particular non-resident entity does not deal at arm's length) owns property that is at that time investment property, and
- it is reasonable to conclude that that investment property (or property that may be substituted for that investment property) may be used, or give rise to property used, to satisfy, directly or indirectly, the right referred to in paragraph 94.2 (9)(d) in respect of the particular participating interest.

Note that an election under paragraph 94.1(2)(j) is relevant only in determining whether an entity is a "foreign investment entity" (and where stipulated, a "qualifying entity"), as those expressions are defined in subsection 94.1(1). Thus the determination of whether property is owned or not by an entity is made, for the purposes of the definition "tracking entity", without regard to that election.

Note also that the exclusion of "exempt property" from being treated as "investment property" (as those expressions are defined in subsection 94.1(1)) does not apply for the purposes of the definition "tracking entity".

For more information on the application of this definition, see the commentary on subsections 94.1(4) and 94.2(3) and (9). For more information on paragraph 94.2(1)(j) and the definitions "exempt property" and "investment property in subsection 94.1(1), see the commentary on those provisions.

"trading day", of a participating interest on a prescribed stock exchange, means a day on which the participating interest trades on that stock exchange.

Technical Notes: The definition "trading day" is relevant in applying paragraph (a) of the definition "readily obtainable fair market value" in subsection 94.2(1). A trading day of a participating interest on a prescribed stock exchange, means a day on which the participating interest trades on that stock exchange.

(2) Rules of application — In this section,

(a) subsection 94.1(2) applies;

(b) in applying paragraph (a) of the definition "readily obtainable fair market value" in subsection (1) in respect of a particular participating interest, in a non-resident entity, held by a taxpayer in a taxation year, where participating interests, in the non-resident entity, that are identical to the particular participating interest are listed on more than one prescribed stock

exchange, the references in that paragraph to a prescribed stock exchange shall be read as references to

(i) if the taxpayer so elects, by notifying the Minister in writing in the taxpayer's return of income for that taxation year or a preceding taxation year, the prescribed stock exchange identified by the taxpayer in that election, and

(ii) if the taxpayer has not filed an election in accordance with subparagraph (i) or if participating interests that are identical to the particular participating interest are no longer listed on the stock exchange identified in the election referred to in that subparagraph, the prescribed stock exchange chosen by the Minister;

(c) paragraph (3)(b) does not apply to a taxpayer for a particular taxation year in respect of a participating interest, in a non-resident entity, held in the particular taxation year by the taxpayer if

(i) subsection (3) applied, because of an election under paragraph (3)(b), for a taxation year (referred to in this paragraph as the "preceding taxation year") that ended before the particular taxation year of the taxpayer in respect of the participating interest (or in respect of any other participating interests, in the non-resident entity, that are identical to the participating interest), and

(ii) subsection (3) did not apply for a taxation year of the taxpayer that was after the preceding taxation year and before the particular taxation year in respect of the participating interest (or in respect of any of the other participating interests);

(d) paragraph (3)(b) does not apply to a taxpayer for a particular taxation year in respect of a participating interest, in a non-resident entity, held in the particular taxation year by the taxpayer if the Minister sends a written demand to the taxpayer requesting additional information for the purpose of enabling the Minister to determine whether the participating interest has a readily obtainable fair market value and information satisfactory to the Minister to make the determination is not received by the Minister within 60 days (or within any longer period that is acceptable to the Minister) after the Minister sends the demand;

(e) in applying subparagraph (4)(a)(i) to a taxpayer, that is a trust, for a particular taxation year of the taxpayer and in respect of a participating interest of the taxpayer in a non-resident entity, the reference in that subparagraph to "as income from property from a property that is the participating interest" is to be read as a reference to "as income from property that is a source outside Canada that is the participating interest", if the portion of the net accounting income of the non-resident entity, from sources outside Canada, for its last taxation year that ends in the particular taxation year exceeds 90% of the total net accounting income of the non-resident entity for that last taxation year; and

(f) in applying subparagraph (4)(b)(i) to a taxpayer, that is a trust, for a particular taxation year of the taxpayer and in respect of a participating interest of the taxpayer in a non-resident entity, the reference in that subparagraph to "a capital gain for the year" is to be read as a reference to "a capital gain for the year from a source outside Canada", if the portion of the net accounting income of the non-resident entity, from sources outside Canada, for its last taxation year that ends in the particular taxation year exceeds 90% of the total net accounting income of the non-resident entity for that last taxation year.

Technical Notes: New subsection 94.2(2) provides rules of application for the purpose of section 94.2.

Application

Paragraph 94.2(2)(a) provides that the rules in subsection 94.1(2) also apply for the purposes of section 94.2.

Readily Obtainable Fair Market Value

Paragraph 94.2(2)(b) applies for the purpose of paragraph (a) of the definition "readily obtainable fair market value" in subsection 94.2(1), referred to in the commentary above, in respect of a particular participating interest in a non-resident entity held by a taxpayer in a taxation year. Where participating interests in the nonresident entity that are identical to the particular participating interest are listed on more than one prescribed stock exchange, the references in that definition to a prescribed stock exchange shall be read as a reference to the prescribed stock exchange in respect of which the taxpayer files an election with the Minister of National Revenue.

If the taxpayer does not so elect or participating interests that are identical to the particular participating interest are no longer listed on the stock exchange identified in the taxpayer's election referred, the references in that definition to a prescribed stock exchange shall be read as a reference to the prescribed stock exchange chosen by the Minister of National Revenue.

Restrictions on Application of Mark-to-market Rules

Paragraph 94.2(2)(c) provides that the mark-to-market regime in subsection 94.2(4) will not apply to a taxpayer in respect of certain participating interests of the taxpayer. The rule applies if the taxpayer has been subject to subsection 94.2(4) in respect of a participating interest because of an election in respect of the interest where the interest has a readily obtainable fair market value and subsection 94.2(3) ceases to apply. For example, paragraph 94.2(2)(c) would apply where the interest (other than a foreign insurance policy) ceases to have a readily obtainable fair market value or the Minister fails to receive, in response to a demand under paragraph 94.2(2)(d), information satisfactory to make a determination of whether the interest has a readily obtainable fair market value.

Where paragraph 94.2(2)(c) applies the taxpayer will become subject to 94.1(4) in respect of the participating interest if 94.1(3) continues to apply to the taxpayer in respect of the participating interest.

Note that if, subsection 94.2(4) applies to a taxpayer for a taxation year in respect of a participating interest in a tracking entity and in the immediately following year the interest ceases to be an interest in a tracking entity and becomes subject to subsection 94.1(3), then the taxpayer may elect to have subsection 94.2(4) apply for that immediately following year. In this regard, see the commentary on clause 94.2(3)(b)(ii)(B).

Paragraph 94.2(2)(d) provides that paragraph 94.2(3)(b) does not apply to a taxpayer for a particular taxation year in respect of a participating interest held in the particular taxation year by the taxpayer in a non-resident entity if the Minister sends a written demand to the taxpayer requesting additional information for the purpose of enabling the Minister to determine whether the participating interest has a readily obtainable fair market value and information satisfactory to the Minister to make the determination is not received by the Minister within 60 days (or within such longer period as is acceptable to the Minister) after the Minister sends the demand.

Characterization of Income from FIE Interest

Paragraphs 94.2(2)(e) and (f) provide special rules for determining whether a taxpayer's income for a taxation year from the application of subsection 94.2(4) will be treated as income from a source outside Canada. Paragraph 94.2(2)(e) provides that in applying subparagraph 94.2(4)(a)(i) to a taxpayer (that is a trust) for a particular taxation year of the taxpayer and in respect of a participating interest of the taxpayer in a non-resident entity, the reference in that paragraph to "as income from property that is the participating interest" shall be read as a reference to "as income from property that is a source outside Canada that is the participating interest". However, this special rule applies only if the portion of the net accounting income of the non-resident entity, from sources outside Canada, for its last taxation year that ends in the particular taxation exceeds 90% of the total net accounting income of the non-resident entity for that last taxation year.

Paragraph 94.2(2)(f) provides that in applying subparagraph 94.2(4)(b)(ii) to a taxpayer (that is a trust) for a particular taxation year of the taxpayer and in respect of a participating interest of the taxpayer in a non-resident entity, the reference in that paragraph to "a capital gain for the year" shall be read as a reference to "a capital gain for the year from a source outside Canada and". However, this special rule applies only if the portion of the net accounting income of the non-resident entity, from sources outside Canada, for its last taxation year that ends in the particular taxation year exceeds 90% of the total net accounting income of the non-resident entity for that last taxation year.

The application of paragraphs 94.2(2)(e) and (f) (and a related rule in paragraph 94.1(2)(d)) in respect of a participating interest of a taxpayer will not be relevant in determining a taxpayer's eligibility for a foreign tax credit under section 126. In this regard, see the commentary below on subsections 94.3(2) and 126(1.2). Rather, paragraph 94.2(2)(e) and (f) provide relief to trusts resident in Canada that hold participating interests in a FIE and that make payable to their non-resident beneficiaries all or part of the trusts' incomes arising under subsection 94.2(4). Where paragraph 94.2(2)(e) or (f) applies and the terms of the trust permit amounts of deemed income of the trust to be made payable to beneficiaries, the amounts of such trust income arising under subsection 94.2(4) that become payable to non-resident beneficiaries of the trust may qualify for reduced withholding if the non-resident beneficiary is resident in a country with which Canada has entered a tax treaty and the tax treaty contains a provision permitting such a reduction in withholding.

Where paragraphs 94.2(2)(e) and (f) do not apply, income and capital gains arising under subsection 94.2(4) are from a source inside Canada.

Related Provisions: 96(1)(d)(iii) — Application to partnership; 96(3) — Election under subpara. (e)(i) by members of partnership; 104(4.1) — Mark-to-market property can be capital property for trust's 21-year deemed disposition; 248(12) — Identical properties.

(3) Application of mark-to-market method — Subject to paragraphs (2)(c) and (d) and (5)(b), this subsection applies to a taxpayer for a particular taxation year of the taxpayer in respect of a participating interest held in the particular taxation year by the taxpayer

(a) if paragraph (11)(a) applies to the taxpayer for the particular taxation year in respect of the participating interest; or

(b) if

(i) subsection (9) or 94.1(3) applies to the taxpayer for the particular taxation year in respect of the participating interest,

(ii) the participating interest has, at all times in the particular taxation year at which the taxpayer held the participating interest, a readily obtainable fair market value,

(iii) either

(A) this subsection applied in respect of an identical participating interest that was held by the taxpayer at any time when the taxpayer held the participating interest, or

(B) the taxpayer has elected that this subsection apply in respect of the participating interest by notifying the Minister in writing in the taxpayer's return of income filed on or before the taxpayer's filing due-date for the first taxation year of the taxpayer for which

(I) subsection (9) or 94.1(3), as the case may be, applies to the taxpayer in respect of the participating interest, or

(II) subsection 94.1(3) applies to the taxpayer in respect of the participating interest and that immediately follows a taxation year of the taxpayer for which subsection (9) applied to the taxpayer in respect of the participating interest, and

(iv) subsection 94.3(3) has never applied to the taxpayer for a taxation year in respect of the participating interest or in respect of an identical participating interest that was held by the taxpayer at any time when the taxpayer held the participating interest.

Technical Notes: Subsection 94.2(3) sets out those circumstances where, subject to paragraphs 94.2(2)(c) and (d) and 94.2(5)(b), subsection 94.2(4) applies to a taxpayer in respect of a participating interest in a non-resident entity. For the mark-to-market regime in subsection 94.2(4) to apply for a taxation year, subsection 94.2(3) must apply for the year.

Except as described above, subsection 94.2(3) will apply to a taxpayer for a particular taxation year in respect of a participating interest, in a non-resident entity, held by the taxpayer in the year if either:

- paragraph 94.2(11)(a) (foreign insurance policies) applies to the taxpayer for the year in respect of the interest; or
- subsection 94.1(3) or 94.2(9) (interests in tracking entities) applies to the taxpayer in respect of the interest, the interest has at all times in the year at which the taxpayer held it a readily obtainable fair market value (as defined in subsection 94.2(1)), subsection 94.3(3) has never applied to the taxpayer for a taxation year in respect of the participating interest or in respect of an identical participating interest that was held by the taxpayer at any time when the taxpayer held the participating interest and either
  - the taxpayer elects, generally in the first taxation year of the taxpayer in which the taxpayer is subject to subsection 94.1(3) or 94.2(9) in respect of the participating interest (or an identical interest), to have subsection 94.3(3) apply to the participating interest or identical interest, or
  - subsection 94.2(3) applied in respect of an identical participating interest that was held by the taxpayer at any time when the taxpayer held the participating interest.

In effect, where a taxpayer has validly elected for the mark-to-market regime to apply to a participating interest for a taxation year, that regime will continue to apply to the interest and to any identical interests that are held by the taxpayer in that taxation year or a future taxation year until either all of the interests are no longer held by the taxpayer or any one of the conditions for applying subsection 94.2(3) to the interests is not met (e.g., subsection 94.1(3) and 94.2(9) no longer apply in respect of the interests or the interests no longer have a readily obtainable fair market value).

Example

1. Libby acquires 101 shares of the capital stock of ABC Inc. in 2004. At all times ABC is a FIE (and not a tracking entity) and shares of its capital stock are participating interests that do not qualify as exempt interests. ABC's taxation years end on December 30. ABC has issued only one class of shares, the shares of which are identical to each other. Libby is not an exempt taxpayer.

2. Subsection 94.1(3) applies to Libby in respect of her ABC shares for each of her taxation years at the end of which she holds the shares. Assume that the shares have a readily obtainable FMV. In her return of income for her 2004 taxation year, Libby elects under clause 94.2(3)(b)(iii)(B) to have the rules in section 94.2 apply to the shares. Assume that subsection 94.2(20) does not apply in respect of the ABC shares at any time.

3. In February 2005, Libby sells 100 of her ABC shares and continues to hold the remaining 1 share on December 30, 2005.

4. In January 2006, Libby acquires another 200 shares of the capital stock of ABC.

5. In November 2007, Libby disposes of all (i.e., 201) of her ABC shares and holds no ABC shares on December 30, 2007.

6. In July 2008, Libby buys 1000 shares of the capital stock of ABC. Libby continues to hold the shares on December 30, 2008.

Results

1. For her 2004 taxation year, Libby reports as income from property the amount determined under subsection 94.2(4) for the year in respect of her 100 ABC shares.

2. For her 2005 taxation year, clause 94.2(3)(b)(iii)(A) applies in respect of her remaining ABC share and Libby must report as income from property the amount determined under subsection 94.2(4) for the year in respect of that share.

3. For her 2006 taxation year, clause 94.2(3)(b)(iii)(A) applies in respect of Libby's 201 ABC shares and she reports as income from property the amount determined under subsection 94.2(4) for the year in respect of those shares.

4. For her 2007 taxation year, subsection 94.2(3) does not apply to Libby (because Libby holds no shares in ABC at ABC's taxation year-end that ends in Libby's 2007 taxation year) in respect of the shares that she sold in November 2007. Subsection 94.2(12) will apply to Libby in determining the amount of her gain or loss from the sale of the shares.

5. For her 2008 taxation year, clause 94.2(3)(b)(iii)(A) will not apply in respect of any of the 1000 ABC shares she acquired in 2008. Libby must elect under clause 94.2(3)(b)(iii)(B) if she wishes to have the mark-to-market regime apply in respect of the shares.

Note that under subclause 94.2(3)(b)(iii)(B)(II) a taxpayer may elect, to have subsection 94.2(3) apply, in a year other than the first taxation year in which subsection 94.1(3) or 94.2(9) applies to the taxpayer in respect of the participating interest or an identical interest, if the election is made in the taxpayer's return of income for a taxation year in which subsection 94.1(3) applies and that taxation year immediately follows a taxation year for which the interest is subject to subsection 94.2(9) (i.e., an interest of the taxpayer in a tracking entity).

Related Provisions: 39(1)(a)(ii.3) — Property excluded from capital gain calculation; 70(3.1)(f) — Property excluded from "rights or things" calculation on death; 70(5.2)(e) — Deemed disposition on death; 85(1.1)(g)(ii.1) — Property excluded from s. 85 rollover eligibility; 87(2)(j.95) — Amalgamation — continuing corporation; 94.1(4) — No income inclusion under 94.1 if 94.2(3) applies; 94.2(2)(c), (d) — Circumstances in which 94.2(3)(b) does not apply; 94.2(4) — Application of mark-to-market rule; 94.2(5)–(8) — Exclusion of periods taxpayer is non-resident; 94.2(9) — Tracked interests; 94.2(11)(a), (c) — Treatment of foreign insurance policies; 94.3(2)(b)(i) — Application where 94.2(3) applies; 94.3(3) — Taxation of interest in FIE where 94.2(3) does not apply; 95(2)(g.3) — Application to FAPI rules; 96(1)(d) — Where partnership owns participating interest; 96(3) — Election under 94.2(3)(b)(iii) by member of a partnership; 104(4.1) — Mark-to-market property can be capital property for trust's 21-year deemed disposition; 149(10)(c) — Where corporation becomes or ceases to be exempt; 248(1)"inventory" – Property under 94.2(3) excluded from definition of inventory; 248(12) — Identical properties.

(4) Income inclusion — mark-to-market regime — If subsection (3) applies to a taxpayer for a taxation year of the taxpayer in respect of a participating interest in a non-resident entity, this subsection applies and in computing the taxpayer's income for the taxation year in respect of the participating interest

(a) where subsection (20) does not apply for the taxation year in respect of the participating interest,

(i) there shall be added, as income from property from a property that is the participating interest, the positive amount, if any, determined by the mark-to-market formula for the taxation year in respect of the participating interest, and

(ii) there may be deducted, as a loss from property,

(A) if the participating interest was deemed by paragraph (11)(b) to be a participating interest in an entity for the year, nil, and

(B) in any other case, the absolute value of the negative amount, if any, determined by the mark-to-market formula for the taxation year in respect of the participating interest; and

(b) where subsection (20) applies for the taxation year in respect of the participating interest,

(i) the taxpayer is deemed to have a capital gain for the year from the disposition of capital property, that is the participating interest, in the taxation year equal to the amount, if any, by which the total of

(A) the positive amount, if any, determined by the mark-to-market formula for the taxation year in respect of the participating interest, and

(B) the positive amount, if any, that is the amount determined for D in applying the definition "mark-to-market formula" in subsection (1) for the taxation year in respect of the participating interest (where the gross-up factor for the deferral amount in respect of the participating interest is 2)

exceeds

(C) the absolute value of the negative amount, if any, that is the amount determined for D in applying the definition "mark-to-market formula" in subsection (1) for the taxation year in respect of the participating interest (where the gross-up factor for the deferral amount in respect of the participating interest is 2), and

(ii) the taxpayer is deemed to have a capital loss for the taxation year from the disposition of capital property, that is the participating interest, in the taxation year equal to

(A) if the participating interest was deemed by paragraph (11)(b) to be a participating interest in an entity for the year, nil, and

(B) in any other case, the amount, if any, by which the total of

(I) the absolute value of the negative amount, if any, determined by the mark-to-market formula for the taxation year in respect of the participating interest, and

(II) the absolute value of the negative amount, if any, that is the amount determined for D in applying the definition "mark-to-market formula" in subsection (1) for the taxation year in respect of the participating interest (where the gross-up factor for the deferral amount in respect of the participating interest is 2)

exceeds

(III) the positive amount, if any, that is the amount determined for D in applying the definition "mark-to-market formula" in subsection (1) for the taxation year in respect of the participating interest (where the gross-up factor for the deferral amount in respect of the participating interest is 2).

Technical Notes: Where subsection 94.2(3) applies (and subsection 94.2(20) does not apply) to a taxpayer's participating interest in a non-resident entity, subparagraph 94.2(4)(a)(i) requires the taxpayer to include in computing income as income from property (in this regard, see the commentary on paragraph 94.2(2)(e)) from a property that is the participating interest the positive amount resulting from the operation of the mark-to-market formula for the taxation year in respect of the participating interest. Under subparagraph 94.2(4)(a)(ii), the absolute value of any negative amount resulting from the operation of the same formula may be deducted in computing the taxpayer's income as a loss from property from a property that is the participating interest. (Note, however, that losses in respect of foreign insurance polices are denied because of clause 94.2(4)(a)(ii)(A). Instead, as described in the commentary to the definition "mark-to-market formula" in subsection 94.2(1), the denied losses are carried forward to offset later income inclusions.)

Where both subsections 94.2(3) and 94.2(20) apply to a taxpayer's participating interest in a non-resident entity, subparagraph 94.2(4)(b)(i) deems the taxpayer to have a capital gain for the year from the disposition of capital property (in this regard, see the commentary on paragraph 94.2(2)(f)), that is the participating interest, in the taxation year equal to the positive amount determined under the mark-to-market formula for the taxation year in respect of the participating interest plus or minus the positive or negative deferral amount included in "D" in that same formula in respect of the participating interest for the year. Subparagraph 94.2(4)(b)(ii) deems the taxpayer to have capital losses in the year equal to the negative amount determined under the market formula for the taxation year in respect of the participating interest plus or minus the negative or positive deferral amount included in "D" in that same formula in respect of the participating interest for the year.

The example below illustrates the operation of subsection 94.2(4) and the mark-to-market formula for a taxation year in respect of a participating interest.

Example

1. Leonard acquires a 1% interest in ABC Inc. in 1999 for $500. On December 31, 2000, it is capital property to Leonard. ABC is not a FIE in respect of the taxpayer at any time before 2004. Subsection 94.2(20) does not apply at any time in respect of the interest. ABC's taxation year end is June 30.

2. ABC becomes a FIE in April 2004 and remains a FIE at all subsequent times. Leonard elects under subparagraph 94.2(3)(b)(iii) to have the rules in section 94.2 apply. Leonard's interest in ABC does not qualify as an "exempt interest".

3. The fair market values of Leonard's participating interest at the beginning and at the end of 2004 are $800 and $1,000 respectively.

4. Leonard disposes of his shares on December 15, 2005 for $1,200. ABC does not make any distributions to Leonard during his period of ownership.

Results

1. No amount is included in Leonard's income for 2003 under any of sections 94.1 to 94.3. For 2004, Leonard is required to include $200 in income under subparagraph 94.2(4)(a)(i).

2. The $200 inclusion is determined under the mark-to-market formula and subparagraph 94.2(4)(a)(i) as follows:

- *"A" is nil, since no participating interest in ABC is disposed of in 2004,*
- *"B" is $1,000, the fair market value of the participating interest at the end of 2004,*
- *"C" is nil since no payments are received in 2004,*
- *"D" is nil since no participating interest is disposed of in 2004 and no election was otherwise made,*
- *"E" is nil since no participating interest in ABC is acquired in 2004, and*
- *"F" is $800, the fair market value of the participating interest at the beginning of 2004.*

3. Although Leonard's participating interest has appreciated by $500 since the time of its acquisition, only $200 is required to be included in income under section 94.2 for 2004.

4. For 2005, the amount included in income under the mark-to-market formula and subparagraph 94.2(4)(a)(i) is $350, computed as follows:

- *"A" is $1,200, the proceeds of disposition of the participating interest,*
- *"B" is nil since Leonard does not own any participating interest in ABC at the end of 2005,*
- *"C" is nil since no payments or distributions were received in 2005,*
- *"D" is $150, the deferral amount in respect of the interest (the "deferral amount" is one half (the one-half factor applies because Leonard's interest in ABC is capital property held by Leonard on June 22nd 2000) of the amount by which $800 (the fair market value of the interest at the beginning of 2004 which is the first year in respect of which section 94.2 applies to the interest) exceeds $500 (the cost amount of the interest)),*
- *"E" is nil since no participating interest in ABC is acquired in 2005, and*
- *"F" is $1,000, the fair market value of the participating interest at the beginning of 2005.*

Related Provisions: 52(1)(d)(i) — Exclusion from rule adding income inclusion to cost; 87(2)(j.95) — Amalgamation — continuing corporation; 94.1(2)(u) — Order of disposition of identical properties; 94.2(2)(e), (f) — Application of paras. (4)(a) and (b) to trust; 94.2(5)–(8) — Exclusion for period taxpayer is non-resident; 94.2(10), (11) — Treatment of foreign insurance policies; 94.2(12) — Change of status of entity; 94.2(13) — Cost of participating interest; 94.2(16) — Fresh start after emigration; 94.2(19) — Determination of capital dividend account where 94.2(4) applies; 94.2(20) — No application of 94.2(4) where change attributable to capital gains or losses; 94.4(2) — Prevention of double taxation; 95(2)(g.3) — Application to FAPI rules.

(5) Non-resident periods excluded — If a taxpayer is non-resident at any time in a taxation year of the taxpayer

(a) in applying subsection (4) and the definition "mark-to-market formula" in subsection (1) (other than the description of D in that definition) in respect of a participating interest of the taxpayer, the taxation year is deemed to be the period, if any, that begins at the first time in the taxation year at which the taxpayer is resident in Canada and ends at the last time in the taxation year at which the taxpayer is resident in Canada;

(b) except for the purposes of subsection (4) and paragraph (c), subsection (3) does not apply to the taxpayer at that time; and

(c) where the taxpayer is an individual (other than a trust) who was non-resident throughout a particular period that is within a taxation year (determined under paragraph (a)) of the taxpayer, at any time in the particular period the individual holds a participating interest in a non-resident entity, and subsection (3) applies to the individual throughout the particular period in respect of the participating interest,

(i) for the purpose of section 114, the income or loss of the individual in respect of the participating interest for the particular period shall be determined without reference to this section, and

(ii) in computing the amount determined under paragraph 114(a) in respect of the individual for the taxation year

(A) there shall be deducted any amount that would be included under subparagraph (4)(a)(i) in computing the individual's income in respect of the participating interest for the particular period if

(I) the amount determined for D in applying the definition "mark-to-market formula" in subsection (1) for the taxation year in respect of the participating interest were nil, and

(II) the particular period were a taxation year, and

(B) there shall be added any amount that would be deductible under subparagraph (4)(a)(ii) in computing the individual's income in respect of the participating interest for the particular period if

(I) the amount determined for D in applying the definition "mark-to-market formula" in subsection (1) for the taxation year in respect of the participating interest were nil, and

(II) the particular period were a taxation year.

Technical Notes: New subsection 94.2(5) provides special rules dealing with the application of section 94.2 for a taxation year to persons who are not resident in Canada throughout the year.

Under paragraph 94.2(5)(a), the amounts determined under section 94.2 are generally determined as if the taxation year of the taxpayer excludes the period in the year during which the taxpayer is not resident in Canada. This rule, in conjunction with section 128.1, generally ensures that the increases and decreases in fair market values that are relevant in determining income inclusions and deductions under section 94.2 are the increases and decreases occurring while the taxpayer is resident in Canada. However, this rule does not affect the calculation of the taxpayer's deferral amount: paragraph (b) of the definition "deferral amount" in subsection 94.2(1) (in conjunction with subsection 128.1(1)) already ensures that gains or losses accruing prior to becoming resident in Canada are not taken into account for the purposes of computing a taxpayer's deferral amount in respect of a participating interest in a FIE, except in the unusual case where the FIE interest is taxable Canadian property.

Paragraph 94.2(5)(a) also ensures that subsection 94.2(4) does not apply to a taxpayer for a taxation year throughout which the taxpayer is not resident in Canada.

Under paragraph 94.2(5)(b), subsection 94.2(3) generally does not apply to a taxpayer at a particular time if the taxpayer is not resident in Canada at the particular time. This has relevance for the purposes of a number of new provisions, including subparagraph 39(1)(a)(ii.3). This subparagraph has the effect of excluding, from a taxpayer's capital property, a property in respect of which subsection 94.2(3) applies (and subsection 94.2(20) does not apply). Paragraph 94.2(5)(b) ensures that a non-resident taxpayer cannot claim that a taxable Canadian property consisting of a FIE interest is not capital property on the basis of subparagraph 39(1)(a)(ii.3). (Note: non-resident taxpayers are generally subject to Canadian income tax on taxable capital gains from their dispositions of taxable Canadian properties.)

Paragraph 94.2(5)(c) applies in the unusual case where an individual changes his or her Canadian residence status more than once in the same calendar year. For example, an individual might cease to be resident in Canada near the beginning of a calendar year but become resident in Canada later in the same year. In the event that such an individual is considered not to reside in Canada during a period in the calendar year, the individual's period of non-residence would be included within the individual's taxation year and the rule in paragraph 94.2(5)(a) would have no effect. In order to not tax gains accrued while an individual was nonresident and to not provide relief for losses accrued during the same period, paragraph 94.2(5)(c) provides that:

- for the purposes of section 114, the individual's income or loss from the individual's period of non-residence is determined without reference to section 94.2, and
- in computing the individual's taxable income under section 114,
  - there is to be deducted the increase in the fair market value of an interest in a FIE to which subsection 94.2(4) applies during the non-resident period (this fair market value appreciation would be reflected in the amount determined under the mark-to-market formula (as defined in subsection 94.1(1)) in respect of the interest in computing the taxpayer's income), and
  - there is to be added the decline in the fair market value of an interest in a FIE to which subsection 94.2(4) applies that accrued during the non-resident period (this fair market value decline would be reflected in the amount determined under the mark-to-market formula in respect of the interest in computing the taxpayer's income).

The example below illustrates the operation of paragraph 94.2(5)(c).

Example

Bernard emigrates from Canada on February 1, 2003 in order to start permanent employment elsewhere. Due to unexpected changes in circumstances, he returns to Canada on December 1, 2003. Bernard owns an interest in a FIE to which section 94.2 applies. The fair market value of the interest in 2003 increases from $100 (January 1, 2003), to $105 (February 1, 2003), to $108 (December 1, 2003) and to $107 (December 31, 2003). It is assumed that Bernard establishes that he did not reside in Canada from February 1, 2003 to December 1, 2003.

Results

1. Under section 94.2(4), the amount included in computing Bernard's income for 2003 is equal to $7 (B = 107, F = 100).

2. Paragraph 94.2(5)(c) permits a deduction for the purposes of paragraph 114(a) equal to $3 (i.e., $108 - $105) equal to the appreciation in the fair market value of the interest while Bernard was not resident in Canada. As a consequence, Bernard's taxable income in respect of the FIE interest for 2003 is $4 (i.e., $7 minus $3).

Related Provisions: 94.1(2)(t) — Authorized foreign bank deemed resident in Canada; 95(2)(g.3) — Application to FAPI rules.

(6) Foreign partnership — member becoming resident — If, at a particular time in a fiscal period of a partnership, a person resident in Canada becomes a member of the partnership, or a person who is a member of the partnership becomes resident in Canada, and immediately before the particular time no member of the partnership is resident in Canada,

(a) all amounts determined under this section shall be determined as if that fiscal period began at the first time in that fiscal period (determined without reference to this paragraph) at which a member of the partnership was resident in Canada;

(b) for the purpose of the definition "deferral amount" in subsection (1), as it applies in respect of dispositions that occur after the particular time and before the first subsequent time to which this subsection applies in respect of the partnership, subsection (4) is deemed not to have applied to the partnership for any preceding fiscal period; and

(c) where a negative deferral amount would, if this Act were read without reference to this paragraph, be determined in respect of a participating interest held by the partnership immediately before the particular time, the deferral amount in respect of the interest is deemed to be nil.

Technical Notes: New subsections 94.2(6) to (8) provide special rules for partnerships having non-resident members. These subsections are analogous to rules in existing subsections 96(8) and (9) and are designed, in general terms, to prevent partnership losses that accrue while no partnership member is resident in Canada from being used in Canada. A further rule for partnership members is set out in new subsection 96(1.9).

More specifically, subsection 94.2(6) applies where a partnership begins to have members who reside in Canada. Under subsection 94.2(7), a corresponding rule applies in a similar fashion where a partnership ceases to have members who reside in Canada. In either case, for the purposes of determining amounts under section 94.2 portions of the fiscal period of the partnership in which no member is resident in Canada will generally be disregarded.

Where subsection 94.2(6) applies to a partnership at any time, the deferral amount for a FIE interest held by the partnership immediately before that time is computed with reference to the fair market value and the cost amount of the interest. However, if a negative deferral amount is otherwise determined with respect to the interest, the deferral amount is deemed to be nil.

Related Provisions: 94.1(2)(t) — Authorized foreign bank deemed resident in Canada; 94.2(8) — Application — anti-avoidance and partnership look-through rules.

(7) Foreign partnership — member ceasing to be resident — If, at a particular time in a fiscal period of a partnership, a person resident in Canada ceases to be a member of the partnership, or a person who is a member of the partnership ceases to be resident in Canada and immediately after the particular time no member of the partnership is resident in Canada, all amounts determined under this section shall be determined as if that fiscal period ended at the last time in that fiscal period (determined without reference to this subsection) at

which a member of the partnership was resident in Canada.

Technical Notes: As a consequence of subsections 94.2(6) and (7), amounts added or deductible under subsection 94.2(4) for a partnership in respect of a FIE interest will generally reflect increases or decreases in fair market value while the partnership has members resident in Canada. However, once the interest is disposed of, an amount reflecting gains accruing before any member became resident in Canada will be recognized because of the application of subsection 94.2(4).

Related Provisions: 94.1(2)(t) — Authorized foreign bank deemed resident in Canada; 94.2(8) — Application — anti-avoidance and partnership look-through rules.

(8) Application of subsecs. (6) and (7) — In subsections (6) and (7) and this subsection,

(a) if it can reasonably be considered that one of the main reasons that a member of a partnership is resident in Canada is to avoid the application of subsection (6) or (7), the member is deemed not to be resident in Canada; and

(b) if a particular partnership is a member of another partnership at any time,

(i) each person or partnership that is at that time a member of the particular partnership is deemed to be at that time a member of the other partnership,

(ii) each person or partnership that becomes at that time a member of the particular partnership is deemed to become at that time a member of the other partnership, and

(iii) each person or partnership that ceases at that time to be a member of the particular partnership is deemed to cease at that time to be a member of the other partnership.

Technical Notes: Subsection 94.2(8) contains an anti-avoidance rule, which is aimed at preventing the insertion of nominal Canadian resident partners for tax planning purposes. This rule is parallel to the rule in existing subsection 96(9).

Subsection 94.2(8) also contains a "look-through" rule. It allows for the "look-through" of one or more tiers of partnerships for the purposes of determining whether a person is a member of a partnership.

Related Provisions: 94.1(2)(t) — Authorized foreign bank deemed resident in Canada; 96(9) — Parallel rule for foreign partnerships.

(9) Tracking interests — This subsection applies to a taxpayer (other than an exempt taxpayer) for a particular taxation year of the taxpayer in respect of a particular participating interest, in a non-resident entity, held in the particular taxation year by the taxpayer (and in respect of any other participating interests that are identical to the particular participating interest and that are held by the taxpayer in the particular taxation year) only if

(a) subsection 94.1(3) does not apply to the taxpayer for the particular taxation year in respect of the particular participating interest;

(b) at the end of a taxation year of the non-resident entity that ends in the particular taxation year, the particular participating interest

(i) is held by the taxpayer, and

(ii) either

(A) is not an exempt interest in the non-resident entity, or

(B) would not be such an exempt interest if the definition "exempt interest" in subsection 94.1(1) were read without reference to subparagraph (a)(i) or (ii) of that definition;

(c) at the end of that taxation year of the non-resident entity, it is a tracking entity in respect of the particular participating interest;

(d) at any time in the particular taxation year, the amount of any payment under a right (whether immediate or future, whether absolute or contingent or whether conditional on or subject to the exercise of any discretion by any entity or individual) to receive, in any manner whatever and from any entity, amounts in respect of the particular participating interest or any identical interests, or the value of such a right, is, directly or indirectly, determined primarily by one or more of the following criteria in respect of one or more properties (such property or properties together referred to, in this subsection and the definition "tracking entity" in subsection (1), as "tracked property" or "tracked properties"):

(i) production from the property, use of the property, gains from the disposition of the property, profits from the disposition of the property, fair market value of the property,

(ii) income from the property, profits from the property, revenue from the property, cash flow from the property, or

(iii) any other criterion similar to a criterion referred to in subparagraph (i) or (ii); and

(e) throughout each taxation year of the non-resident entity that ends in the particular taxation year, all or substantially all of the fair market value of the tracked property cannot be attributed, either directly or indirectly, to the fair market value of property

(i) that is a share or shares of the capital stock of a corporation that is at that time a particular foreign affiliate of the taxpayer that if held at that time by the taxpayer would be

(A) a qualifying interest (within the meaning assigned by paragraph 95(2)(m)) of the taxpayer in the particular foreign affiliate of the taxpayer, and

(B) throughout the period, in the particular taxation year, that the taxpayer held the share or shares, a participating interest of the taxpayer in a qualifying entity, and

(ii) that is not at that time tracked property in respect of a participating interest in a non-resident entity of an entity that is not related to the taxpayer.

Technical Notes: New subsection 94.2(9) is an anti-avoidance rule intended to prevent the circumvention of subsection 94.1(3) through the use of a participating interest in a "tracking entity" (as defined in subsection 94.1(1)). Where subsection 94.2(9) applies with regard to an interest in a tracking entity for a taxation year, subsection 94.1(4) will apply to the taxpayer for that year unless subsection 94.2(3) applies for that year in respect of the interest.

Subsection 94.2(9) applies to a taxpayer (other than an exempt taxpayer, as defined in subsection 94.1(1)) for a particular taxation year of the taxpayer in respect of a particular participating interest of the taxpayer in a nonresident entity (and any participating interests of the taxpayer in the non-resident entity that are identical to the particular participating interest) if

- subsection 94.1(3) does not apply to the taxpayer for the particular taxation year in respect of the particular participating interest;
- the particular participating interest is, at the end of a taxation year of the non-resident entity that ends in the particular taxation year, held by the taxpayer, and generally not an "exempt interest" (as defined in subsection 94.1(1)); however, note that an interest of a taxpayer in a controlled foreign affiliate of the taxpayer or a "qualifying en-

tity" (as defined in subsection 94.1(1)) will not qualify as an exempt interest for this purpose, with the result that subsection 94.2(9) may apply to such interests;

- the non-resident entity is, at the end of that taxation year of the non-resident entity, a "tracking entity" (as defined in subsection 94.2(1)) in respect of the particular participating interest;
- at any time in the particular taxation year, the amount of any payment under a right (for taxation years that begin after July 18, 2005, whether immediate or future, whether absolute or contingent or whether conditional on or subject to the exercise of any discretion by any entity or individual) to receive, in any manner whatever and from any entity, amounts in respect of the particular participating interest or any identical interests, or the value of such a right, is, directly or indirectly, determined primarily by one or more of the following criteria in respect of one or more properties (such property or properties together referred to in subsection 94.2(9) and the definition "tracking entity" in subsection 94.2(1) as "tracked property" or "tracked properties"):
  - production from the property, use of the property, gains from the disposition of the property, profits from the disposition of the property, fair market value of the property,
  - income from the property, profits from the property, revenue from the property, cash flow from the property, or
  - any other criterion similar to any of the above criteria; and
- throughout each taxation year of the non-resident entity that ends in the particular taxation year, all or substantially all of the fair market value of the tracked property cannot be attributed, either directly or indirectly, to the fair market value of property:
  - that is a share or shares of the capital stock of a corporation that is at that time a particular foreign affiliate of the taxpayer that if held at that time by the taxpayer would be a qualifying interest (within the meaning assigned by paragraph 95(2)(m)) of the taxpayer in the particular foreign affiliate of the taxpayer, and a participating interest of the taxpayer in a qualifying entity, and
  - that is not at that time tracked property in respect of a participating interest in a non-resident entity of an entity that is not related to the taxpayer.

It should be noted that tracked properties can include any property, whether owned by the non-resident entity or not. For example, if the fair market value of shares issued by a non-resident entity were tracked to the worldwide price of gold bullion, the tracked properties in question would be the worldwide supply of gold bullion. Whether subsection 94.2(9) applies in this case or not would typically depend on whether the nonresident entity is a tracking entity, as defined in subsection 94.2(1).

Related Provisions: 91(1)(b) — Tracked shares ignored for FAPI income inclusion; 94.1(4) — Income inclusion — imputed income regime; 94.2(3)(b)(i) — Application of mark-to-market method; 94.3(2)(b)(vii), 94.3(3)(b)(ii) — Application where 94.2(9) applies; 108(1)"income interest"(b) — Exclusion from definition of income interest; 248(1)"specified participating interest"(b)(ii) — Where 94.2(9)(c) applies; 248(12) — Identical properties.

(10) Treatment of foreign insurance policies — This subsection applies to a taxpayer for a particular taxation year of the taxpayer in respect of an interest in an insurance policy, if

(a) the taxpayer is not an exempt taxpayer for the particular taxation year;

(b) the taxpayer holds, at any time in the particular taxation year, an interest in the insurance policy; and

(c) the insurance policy is not an insurance policy issued by an insurer in the course of carrying on an insurance business in Canada the income from which is subject to tax under this Part.

Technical Notes: New subsection 94.2(10) applies if a taxpayer (other than an exempt taxpayer, as defined in subsection 94.1(1)) holds, at any time in a particular taxation year of the taxpayer, an interest in a foreign insurance policy. For this purpose, a foreign insurance policy is one that is not issued by an insurer in the course of carrying on in Canada a business the income from which is subject to tax under Part I.

Related Provisions: 94.2(11) — Effect of subsection applying.

(11) Treatment of foreign insurance policies — If subsection (10) applies to a taxpayer for a particular taxation year of the taxpayer in respect of an interest in an insurance policy

(a) subject to paragraph (c), this paragraph applies to the taxpayer for the particular taxation year in respect of the interest, and no amount shall be included or deducted, as the case may be, under section 12.2, paragraphs 56(1)(d) and (j) and 60(a) and (s) and sections 138.1 and 148 in respect of the interest for the purpose of computing the taxpayer's income for the particular taxation year;

(b) subject to paragraph (c), in applying subsections (1) to (4) and paragraph (d.1) of the definition "specified foreign property" in subsection 233.3(1) to the taxpayer in respect of the interest for the particular taxation year,

(i) the interest is deemed at each time in the particular taxation year that it is held by the taxpayer to be a participating interest in a non-resident entity, and

(ii) the amount determined for D in applying the definition "mark-to-market formula" in subsection (1) for the taxation year in respect of the participating interest is deemed to be nil;

(c) paragraphs (a) and (b) do not apply to the taxpayer for the particular taxation year in respect of the interest if

(i) the taxpayer is an individual and the interest in the policy was acquired by the individual more than 60 months before the individual became resident in Canada unless, at any time in the period that begins 60 months before the day on which the individual became resident in Canada and that ends at the end of the particular taxation year, the individual paid premiums in respect of the policy that are in excess of the level that can reasonably be considered to have been contemplated at the time the first interest in the policy was acquired,

(ii) under the terms and conditions of the insurance policy, the taxpayer is entitled to receive only

(A) benefits payable as a consequence of the occurrence of risks insured under the policy,

(B) an experience-rated refund of premiums for a year, or

(C) a return of premiums previously paid upon the surrender, cancellation or termination of the insurance policy, or

(iii) the taxpayer can establish to the satisfaction of the Minister that

(A) the interest in the policy was, on the anniversary day of the policy that occurs in the taxation year,

(I) an exempt policy, or

(II) a prescribed annuity contract, or

(B) the taxpayer has included in computing the taxpayer's income for the particular year the amount, if any, required under section 12.2 to be included in computing the taxpayer's income for that year in respect of the interest;

(d) for the purpose of subsections (1) and (4), an interest in an insurance policy held by a taxpayer at the

end of a particular taxation year is deemed to have been acquired by the taxpayer at the beginning of the following taxation year at a cost equal to the fair market value at the end of the particular taxation year of the interest if

(i) paragraphs (a) and (b) do not apply to the taxpayer in respect of the interest for the particular year, and

(ii) paragraphs (a) and (b) apply to the taxpayer in respect of the interest for the taxpayer's following taxation year;

(e) for the purpose of subsections (1) and (4), an interest in an insurance policy held by a taxpayer at the beginning of a particular taxation year is deemed to have been disposed of by the taxpayer at the end of the taxpayer's preceding taxation year for proceeds of disposition equal to its fair market value at the end of that preceding taxation year if

(i) paragraphs (a) and (b) do not apply to the taxpayer in respect of the interest for the particular taxation year, and

(ii) paragraphs (a) and (b) applied to the taxpayer in respect of the interest for the taxpayer's preceding taxation year;

(f) for the purposes of this subsection and subsections (1) and (4), the fair market value of an interest in an insurance policy, the proceeds of disposition of an interest in an insurance policy and amounts paid to a beneficiary in respect of an interest in an insurance policy are each determined without reference to benefits paid, payable or anticipated to be payable, under the insurance policy as a consequence only of the occurrence of the risks insured under the insurance policy;

(g) for the purposes of this subsection and subsections (1) and (4),

(i) an interest in an insurance policy is deemed to have been acquired by the taxpayer in a particular taxation year (notwithstanding that the interest was held by the taxpayer at the end of the preceding taxation year), where the taxpayer made a payment described in subparagraph (ii) in respect of a premium or a loan under the policy in the particular taxation year, and

(ii) the cost to the taxpayer of an interest in an insurance policy acquired in a particular taxation year is the total of all amounts each of which is

(A) the amount of a premium paid by the taxpayer in the particular taxation year under the insurance policy to the extent that it cannot be refunded (otherwise than on termination or cancellation of the policy) and is not a payment in respect of a benefit described in subparagraphs (c)(i) to (vii) of the definition "premium" in subsection 148(9),

(B) the amount of a payment made by the taxpayer in the particular taxation year in respect of the principal amount of a loan made under the insurance policy in any taxation year to the extent that the loan was included in the amount determined for C in applying the definition "mark-to-market formula" in subsection (1) for the taxation year, in which the loan was made, in respect of the participating interest, and

(C) an amount (other than amount described in clause (A) or (B)) paid by the taxpayer, to an entity or individual other than the insurer that issued the policy, to acquire the interest from the entity or individual;

(h) if, under paragraph (d), a taxpayer is deemed to have acquired an interest in an insurance policy at the beginning of a taxation year (referred to in this paragraph as the "acquisition year"), the taxpayer may add to the cost of that interest, the amount, if any, by which

(i) the total amount of premiums paid by the taxpayer before the beginning of the acquisition year in respect of that interest at a time at which the taxpayer was resident in Canada and not an exempt taxpayer for the year in respect of the interest (to the extent that the premiums paid cannot be refunded otherwise than on termination or cancellation of the policy and are not premiums paid in respect of a benefit described in subparagraphs (c)(i) to (vii) of the definition "premium" in subsection 148(9))

exceeds

(ii) the total of the fair market value, at the beginning of the acquisition year, of that interest and the total of the amounts received by the taxpayer before the beginning of the acquisition year under the policy at a time at which the taxpayer was resident in Canada and not an exempt taxpayer for the year in respect of the interest;

(i) for the purpose of subsections (1) and (4), if the amount determined under subparagraph (h)(ii) exceeds the amount determined under subparagraph (h)(i) in respect of an interest in an insurance policy of a taxpayer described in paragraph (h), the amount of the excess shall be added in computing the taxpayer's proceeds of disposition of that interest for the taxation year in which the taxpayer disposes of the interest otherwise than because of paragraph (e); and

(j) where an interest in an insurance policy is held by a taxpayer at the beginning of a particular taxation year, paragraphs (a) and (b) do not apply to the taxpayer in respect of the interest for the particular taxation year, and paragraphs (a) and (b) applied to the taxpayer in respect of the interest for the taxpayer's preceding taxation year, the interest is deemed to have been acquired by the taxpayer at the beginning of the particular taxation year at a cost equal to the amount, if any, by which

(i) the total of

(A) the fair market value, at the end of the taxpayer's preceding taxation year, of the interest, and

(B) the amount that would be determined under subparagraph (4)(a)(ii) in respect of the interest in respect of the taxpayer for the taxpayer's preceding taxation year if that subparagraph were read without reference to its clause (A),

exceeds

(ii) the amount determined under paragraph (i) in respect of the interest in respect of the taxpayer.

Technical Notes: Subsection 94.2(11) sets out the treatment under section 94.2 of an interest in the foreign insurance policy. Where sub-

section 94.2(10) applies, paragraph 94.2(11)(a) provides, subject to paragraph 94.2(11)(c), that

- it applies to the interest, with the result that, in conjunction with paragraph 94.2(3)(a), the mark-to-market rules in subsection 94.2(4) apply to the interest, and
- no amount shall be included or deducted, as the case may be, under section 12.2, paragraphs 56(1)(d) and (j) and 60(a) and (s) and sections 138.1 and 148 in respect of the interest for the purpose of computing the taxpayer's income for the particular taxation year.

Paragraph 94.2(11)(b) generally provides that, where a taxpayer (other than an exempt taxpayer) holds an interest in a foreign insurance policy, for the purposes of subsections 94.2(1) to (4) (and a corresponding foreign property reporting rule in subsection 233.3(1)) the particular interest is deemed to be a participating interest in a non-resident entity. However, the mark-to-market regime under subsection 94.2(4) applies differently to insurance policies in three respects:

- first, no deferral amount is calculated with regard to insurance policies,
- second, losses are not deductible, but instead can be used to offset future income amounts otherwise arising under subsection 94.2(4) (as to the treatment of losses, see the commentary on the definition "mark-to-market formula" in subsection 94.2(1)), and
- third, the interest will not be a participating interest for the purposes of subsection 94.2(20), so that paragraph 94.4(2)(b) will not apply to amounts determined under the mark-to-market formula in respect of the interest.

Paragraph 94.2(11)(b) applies to treat an interest in an insurance policy as a participating interest only for the limited purposes identified in that paragraph (i.e., subsections 94.2(1) to (4) and the corresponding foreign property reporting rule in subsection 233.3(1)). For example, the interest will not be a participating interest for the purpose of subsection 94.2(19) or, as mentioned above, for the purpose of 94.2(20).

Paragraph 94.2(11)(c) provides that paragraphs 94.2(11)(a) and (b) do not apply to a taxpayer in respect of an insurance policy in the following situations:

- The taxpayer is an individual and the interest in the policy was acquired more than five years before the taxpayer became resident in Canada. However, this exception does not apply if premiums in excess of the level originally contemplated under the policy have been paid within 5 years of the policyholder becoming resident in Canada or while the policyholder was resident in Canada.
- Under the terms and conditions of the policy, the policyholder is entitled to receive only benefits payable as a consequence of the occurrence of the risks insured under the policy, an experience rated refund of premiums for a year and a return of premiums previously paid upon the surrender, cancellation or termination of the policy.
- The taxpayer can establish to the satisfaction of the Minister of National Revenue that
  - the interest in the policy was, on the anniversary day (as defined in subsection 12.2(11)) of the policy that occurs in the taxation year, an exempt policy (as defined in subsection 12.2(11)) or a prescribed annuity contract (as defined in section 304 of the *Income Tax Regulations* — in this regard, it is intended that amendments be proposed to section 304 of the Regulations to reflect this change), or
  - an appropriate amount of income has been included in the taxpayer's income under section 12.2 in respect of the policy or that the interest in the policy is an interest in an exempt policy for the purpose of that section.

In the event that new paragraphs 94.2(11)(a) and (b) do not apply to a taxpayer in respect of an interest in an insurance policy in a particular year but apply to that taxpayer in respect of that interest in the following year, paragraph 94.2(11)(d) provides that the taxpayer is deemed to have acquired the interest in the insurance policy, at its fair market value at the end of the particular year (determined with reference to paragraph 94.2(11)(f)), immediately after the beginning of the following taxation year.

In the event that paragraphs 94.2(11)(a) and (b) do not apply to a taxpayer in respect of an interest in an insurance policy for a taxation year but did apply in the preceding taxation year, paragraph 94.2(11)(e) provides that the taxpayer is deemed to have disposed of the interest in the insurance policy immediately before the end of the preceding taxation year for proceeds equal to its fair market value at that time.

Paragraph 94.2(11)(f) provides that the fair market value of an interest in an insurance policy and amounts of proceeds of disposition of an interest in an insurance policy and payments in respect of interests in insurance policy are determined without reference to benefits paid, payable or anticipated to be payable under the policy only as a consequence of the occurrence of the risks insured under the policy.

Paragraph 94.2(11)(g) provides that, where a taxpayer makes a premium or a policy loan payment in respect of an insurance policy in a taxation year, an interest in the insurance policy is deemed to have been acquired in the year. The cost of the interest is the total of the premiums paid, the payments of the principal amount of policy loans to the extent the loans were included in proceeds of disposition of the interest in prior years, and any amount paid by the taxpayer, to an entity or individual other than the insurer that issued the policy, to acquire the interest from the entity or individual.

Paragraph 94.2(11)(h) provides rules permitting additions to the deemed cost of an interest in a policy otherwise determined for a year where the actual costs exceed the fair market value of interest at the beginning of the first taxation year in which subsection 94.2(4) applies to the taxpayer in respect of these interests. The amount that may be added is the amount, if any, by which the qualifying premiums paid at or before that time in respect of the interest in the policy exceeds the fair market value of the interest at that time.

Paragraph 94.2(11)(i) provides rules adding to a taxpayer's proceeds of disposition otherwise determined of an interest in an insurance policy for the year in which it is disposed of, the amount by which the fair market value of the interest at the beginning of the first taxation year in which subsection 94.2(4) applies to the taxpayer in respect of the interest exceeds the cost of the interest at that time.

In the event that paragraphs 94.2(11)(a) and (b) do not apply to a taxpayer in respect of an interest in an insurance policy for one taxation year and did apply in the preceding year, paragraph 94.2(11)(j) deems the taxpayer to have acquired the interest at the beginning of the taxation year and provides that the cost of the interest is equal to the amount if any by which the total of the fair market value and the amount that would be determined under subparagraph 94.2(4)(a)(ii) (read without reference to its clause (A)) in respect of the interest at the end of the preceding taxation year exceeds the amount determined under paragraph 94.2(11)(i) in respect of the interest in respect of the taxpayer.

Subsections 94.2(10) and (11) apply for taxation years that begin after 2002.

Example

Assume that David, a long-term resident of Canada, pays premiums of $10,000 to an offshore insurer for a life insurance policy in 2000. The policy's fair market value is $9,000 and $10,700 at the end of 2003 and 2004 (respectively).

Results

1. For 2003, no income amount is determined under paragraph 94.2(4)(a) because the cost of the policy exceeds the fair market value at the end of 2003. The cost to David of the policy is deemed to be $10,000 ($9000 + $1000).

2. The loss for the year 2003 is $1000. ($9000 - $10,000). No claim in respect of the loss is permitted under paragraph 94.2(4)(b) of the Act. The amount of the denied loss is equal to $1,000 and is included under G in the formula in paragraph 94.2(4)(a) in year 2004.

3. For 2004, the amount included in income under paragraph 94.2(4)(a) is $700 (= $10,700 ("B"), minus $9,000 ("F"), minus $1,000 ("G")).

It is possible that the cash surrender value of a policy may be less than its fair market value.

Related Provisions: 12.2(11) — Definitions "anniversary day" and "exempt policy" apply to 94.2(11)(e)(iii)(A); 94.2(3)(a) — Application of mark-to-market method; 233.3(1)"specified foreign property"(d.1) — Annual information reporting re interest in insurance policy.

Regulations: 304 (prescribed annuity contract; to be prescribed).

(12) Change of status — If a participating interest in a non-resident entity is held by a taxpayer at a time that is the beginning of a taxation year, subsection (4) applied for the purpose of computing the taxpayer's income for the preceding taxation year in respect of the participating interest, and that subsection does not apply for the purpose of computing the taxpayer's income for

the taxation year in respect of the participating interest (otherwise than because the taxpayer became an exempt taxpayer or ceased to reside in Canada),

(a) subject to paragraph (c), the taxpayer is deemed to have acquired the participating interest at that time at a cost equal to its fair market value at that time;

(b) where the participating interest is capital property of the taxpayer, in computing the adjusted cost base after that time to the taxpayer of the interest

(i) there shall be deducted

(A) except where the taxpayer has made an election in respect of the participating interest under subparagraph (a)(iii) of the description of D in the definition "mark-to-market formula" in subsection (1) for the taxation year in respect of the participating interest, the product of the positive deferral amount, if any, in respect of the participating interest and the gross-up factor for the deferral amount, and

(B) the absolute value of the negative reconciliation amount, if any, at that time in respect of the participating interest, and

(ii) there shall be added

(A) the product of the absolute value of the negative deferral amount, if any, in respect of the participating interest and the gross-up factor for the deferral amount, and

(B) the positive reconciliation amount, if any, at that time in respect of the participating interest; and

(c) where paragraph (b) does not apply,

(i) there shall be deducted in computing the cost to the taxpayer of the participating interest

(A) except where the taxpayer has made an election in respect of the participating interest under subparagraph (a)(iii) of the description of D in the definition "mark-to-market formula" in subsection (1) for the taxation year in respect of the participating interest, the lesser of

(I) the product of the positive deferral amount, if any, in respect of the participating interest and the gross-up factor for the deferral amount, and

(II) the cost to the taxpayer of the participating interest, determined without reference to this subparagraph, and

(B) the absolute value of the negative reconciliation amount, if any, at that time in respect of the participating interest,

(ii) there shall be included in computing the taxpayer's income for the taxation year in respect of the participating interest the amount, if any, by which

(A) the amount determined under subclause (i)(A)(I) in respect of the participating interest

exceeds

(B) the amount determined under subclause (i)(A)(II) in respect of the participating interest, and

(iii) there shall be added in computing the cost to the taxpayer of the participating interest

(A) the product of the absolute value of the negative deferral amount, if any, in respect of the participating interest and the gross-up factor for the deferral amount, and

(B) the positive reconciliation amount, if any, at that time in respect of the participating interest.

Technical Notes: New subsection 94.2(12) sets out rules that apply where a taxpayer holds a participating interest in a non-resident entity at a time that is the beginning of a particular taxation year and subsection 94.2(4) applied for the purpose of computing the taxpayer's income for the preceding taxation year in respect of the participating interest, but does not apply for the particular taxation year (otherwise than because the taxpayer ceased to reside in Canada or became an exempt taxpayer as defined in subsection 94.1(1)).

Where subsection 94.2(12) applies, the taxpayer is deemed to have acquired the particular interest at the beginning of the following taxation year at a cost equal to the fair market value of the particular interest at that time.

This subsection could apply, for example, where a taxpayer's interest in a foreign investment entity ceases to have a readily obtainable fair market value (as defined in subsection 94.2(1)) or where the entity ceases to be a foreign investment entity (as defined in subsection 94.1(1)).

Since the taxpayer is deemed to have acquired the property at its fair market value at the beginning of the following year, all increases and decreases in the value of the interest from the time of its acquisition are reflected in the taxpayer's cost of the interest for tax purposes. However, only the gain or loss accruing while it was subject to subsection 94.2(4) has been brought into income. Because of the rules in respect of deferral amounts, the gain or loss in value for the period from the time of acquisition to the time it became subject to subsection 94.2(4) would not generally have been taken into consideration for tax purposes.

Accordingly, paragraph 94.2(12)(b) provides for a negative or positive adjustment to the adjusted cost base (ACB) of a participating interest held as capital property. Any positive "deferral amount" (as defined in subsection 94.2(1)) in respect of the interest is deducted in computing the ACB of the interest, but the deduction is grossed-up by a factor of two in the event that the deferral amount was calculated with reference to one-half of the accrued gains. The ACB deduction does not, however, apply in the event that a positive deferral amount has already been taken into account because of an election under the description of D in the mark-to-market formula (as defined in subsection 94.2(1)) for the taxation year in respect of the participating interest. The ACB is also reduced by the amount of any negative "reconciliation amount" (as defined in subsection 94.2(1)) in respect of the participating interest.

The absolute value of any negative deferral amount (or twice the amount if the ½ factor was used in computing the negative deferral amount) is added in computing the ACB of the interest. There is also added any positive reconciliation amount in respect of the participating interest.

Where capital property is not involved, a corresponding decrease or increase in cost (rather than adjusted cost basis) is provided under paragraph 94.2(12)(c). To the extent that the decrease in respect of the positive or negative deferral amount would otherwise result in a negative cost, the decrease is brought into the taxpayer's income under subparagraph 94.2(12)(c)(ii).

For more detail, see the commentary on paragraphs 53(1)(m.1) and 53(2)(w), the definitions "deferral amount", "mark-to-market formula" and "reconciliation amount" in subsection 94.2(1), and subsection 94.2(4).

Related Provisions: 53(1)(m.1) — Addition to adjusted cost base; 53(2)(w) — Deduction from adjusted cost base; 94.1(2)(t) — Authorized foreign bank deemed resident in Canada; 94.2(1)"reconciliation amount" — Calculation where para. (a) applies; 94.2(15) — Fresh start re change of status of entity.

(13) Cost of participating interest — If a taxpayer's participating interest in a non-resident entity is disposed of by the taxpayer at a particular time in a taxation year and subsection (4) applies for the purpose of computing the taxpayer's income for the taxation year in respect of the participating interest, in determining

the taxpayer's cost of the participating interest immediately before the particular time

(a) if the participating interest was held by the taxpayer at the beginning of the taxation year, its cost to the taxpayer immediately before the particular time is deemed to be equal to the fair market value at the beginning of the taxation year of the participating interest; and

(b) in any other case, its cost to the taxpayer immediately before the particular time is deemed to be equal to the amount that would be its cost to the taxpayer at the particular time if this Act were read without reference to this section.

Technical Notes: New subsection 94.2(13) provides a rule for determining the cost at a particular time of a participating interest in an entity for a taxation year in the event that the interest is disposed of by the taxpayer in the year.

The cost to the taxpayer immediately before the disposition of the property is deemed to be its fair market value at the beginning of the taxpayer's taxation year. In the event that the property was not held by the taxpayer at that time, its cost immediately before the disposition is its cost determined without reference to section 94.2. In identifying property for these purposes, identical properties of a taxpayer are considered to be disposed of on a "first in, first out" basis, as a consequence of the application of paragraph 94.1(2)(u).

Under new paragraph (c.2) of the definition "cost amount" in subsection 248(1), the cost determined at a particular time for a property under subsection 94.2 (13) is also the "cost amount" of the property at the particular time.

Related Provisions: 248(1)"cost amount"(c.2) — Cost amount applies for entire Act.

(14) Deferral amount where same interest reacquired — Subject to subsections (15) to (18), if a taxpayer disposes of a participating interest in an entity at any time in a taxation year of the taxpayer and subsection (4) applies for the purpose of computing the taxpayer's income for the year in respect of the participating interest, in applying subsection (4) to a disposition after that time by the taxpayer of the participating interest, the deferral amount of the taxpayer in respect of the participating interest is nil.

Technical Notes: New subsection 94.2(14) generally provides that a "deferral amount" in respect of a property of a taxpayer is deemed to be nil, after the property has been disposed of by the taxpayer at a time when the mark-to-market rules in subsection 94.2(4) applied to the property. This is of relevance to property that is reacquired by a taxpayer. However, subsection 94.2(14) is subject to the rules in subsections 94.2(15) to (18).

It should be noted that identical properties of a taxpayer are considered to be disposed of on a "first in, first out" basis as a consequence of the application of paragraph 94.1(2)(u).

Related Provisions: 87(2)(j.95) — Amalgamation — continuing corporation.

(15) Deferral amount — fresh start re change of status of entity — If a participating interest is deemed by paragraph (12)(a) to have been acquired at a particular time in a taxation year by a taxpayer, in applying subsection (4) to a disposition after the taxation year by the taxpayer of the participating interest and to an election made after the taxation year by the taxpayer under subparagraph (a)(iii) of the description of D in the definition "mark-to-market formula" in subsection (1) for the taxation year in respect of the participating interest, the deferral amount of the taxpayer in respect of the participating interest shall be determined

(a) for the purpose of subparagraph (a)(iii) of the description of B in the definition "deferral amount" in subsection (1), as if subsection (4) had not applied to the taxpayer in respect of the participating interest for taxation years that began before the particular time; and

(b) without reference to the application of subsection (14) with regard to dispositions that occurred before the particular time.

Technical Notes: New subsection 94.2(15) applies where a taxpayer's participating interest in an entity was initially subject to the rules in subsection 94.2(4) and ceases to be subject to those rules (otherwise than because of the taxpayer having become an "exempt taxpayer"). For example, subsection 94.2(15) could apply where an entity ceases to be a FIE.

In these circumstances, the deferral amount in respect of the participating interest is determined without reference to previous applications of subsections 94.2(4) and (14). This rule is relevant only in the event that the same participating interest of the taxpayer again becomes subject to the rules in subsection 94.2(4).

Parallel "fresh-start" rules are contained in subsection 94.2(16) and (17). All of these "fresh-start" rules are expected to be only rarely involved, given that more than one change in status of an investment or a taxpayer is required for the rules to become relevant. For more information on the "deferral amount" defined in subsection 94.2(1), see the commentary on that definition.

(16) Deferral amount — fresh start after emigration of taxpayer — If a taxpayer ceases at a particular time to be resident in Canada, in applying subsection (4) to a disposition after the particular time by the taxpayer of a participating interest and to an election made after the particular time by the taxpayer under subparagraph (a)(iii) of the description of D in the definition "mark-to-market formula" in subsection (1) for a taxation year in respect of the participating interest, the deferral amount of the taxpayer in respect of the participating interest shall be determined

(a) for the purpose of subparagraph (a)(iii) of the description of B in the definition "deferral amount" in subsection (1), as if subsection (4) had not applied to the taxpayer in respect of the participating interest for taxation years that began before the particular time; and

(b) without reference to the application of subsection (14) with regard to dispositions that occurred before the particular time.

Technical Notes: New subsection 94.2(16) affects the calculation of the "deferral amount" in respect of a participating interest in an entity for a taxpayer who has ceased to reside in Canada. It is relevant in the event that, at a subsequent time, the taxpayer becomes resident in Canada again.

In these circumstances, the deferral amounts in respect of the taxpayer's FIE interests are determined without reference to the previous application of subsections 94.2(4) and (14).

For further detail, see the commentary on the related fresh-start rule in subsection 94.2(15).

(17) Deferral amount — fresh start on becoming an exempt taxpayer — If a taxpayer is an exempt taxpayer for a particular taxation year of the taxpayer because of the application of paragraph (a) or (b) of the definition "exempt taxpayer" in subsection 94.1(1), and the taxpayer was not an exempt taxpayer for the taxation year of the taxpayer that preceded the particular taxation year, in applying subsection (4) to a disposition after the particular taxation year by the taxpayer of a participating interest and to an election made after the particular taxation year by the taxpayer under subparagraph (a)(iii) of the description of D in the definition "mark-to-market formula" in subsection (1) for a taxation year in respect of the participating interest, the

deferral amount of the taxpayer in respect of the participating interest shall be determined

(a) for the purpose of subparagraph (a)(iii) of the description of B in the definition "deferral amount" in subsection (1), as if subsection (4) had not applied to the taxpayer in respect of the participating interest for taxation years that ended before the particular taxation year; and

(b) without reference to the application of subsection (14) with regard to dispositions that occurred before the particular taxation year.

Technical Notes: New subsection 94.2(17) affects the calculation of the "deferral amount" in respect of an interest in an entity for a taxpayer that initially was not an "exempt taxpayer" under paragraph (a) or (b) of that definition in subsection 94.1(1) and then subsequently obtains that status.

In these circumstances, the deferral amounts in respect of the FIE interests of the taxpayer are determined without reference to previous applications of subsections 94.2(4) and (14).

For further context, see the commentary on the related fresh-start rule in subsection 94.2(15). In addition, it should be noted that amended subsection 149(10) applies to changes of tax-exempt status for taxpayers that are corporations. Where subsection 149(10) applies, the rules in subsection 94.2(17) do not apply.

(18) Superficial dispositions — If a taxpayer disposes of a participating interest, the deferral amount in respect of the participating interest would otherwise be a negative amount, and the disposition would, if the participating interest were a capital property and a loss arose on the disposition, give rise to a superficial loss (within the meaning that would be assigned by section 54 if the definition "superficial loss" in that section were read without the reference to subsection 40(3.4) in paragraph (h) of that definition),

(a) except for the purpose of applying paragraph (b) in respect of the disposition, the deferral amount of the taxpayer in respect of the participating interest is deemed to be nil; and

(b) the deferral amount of the taxpayer in respect of the property that would be the substituted property referred to in that definition if the assumptions described in this subsection applied is deemed to be equal to the deferral amount of the taxpayer in respect of the participating interest.

Technical Notes: New subsection 94.2(18) applies where a taxpayer disposes of a participating interest in an entity in respect of which a negative amount is determined under the description of D in the formula in subsection 94.2(4). This would be the case where there is a negative deferral amount associated with the interest. In these circumstances, the deferral amount is instead generally deemed to be nil if, during the period beginning 30 days before the disposition and ending 30 days after the disposition, identical property is acquired by the taxpayer or certain related persons.

Subsection 94.2(18) operates in a manner similar to the "superficial loss" rules for capital properties and is intended to prevent the premature realization of losses in respect of a property in which a taxpayer effectively retains an economic interest. "Superficial loss" has the same meaning as assigned in section 54, except that the definition for the purposes of subsection 94.2(18) does not contain the exception for transactions covered by subsection 40(3.4).

Property substituted for the particular property is, in these circumstances, considered to have the deferral amount associated with the property disposed of.

(19) Determination of capital dividend account — If an amount has been included or deducted under paragraph (4)(a) in computing the income of a corporation resident in Canada for a taxation year in respect of a participating interest, in computing the capital dividend account of the corporation

(a) the corporation is deemed to have

(i) a capital gain from a disposition at the end of the taxation year of property equal to twice the amount of the taxable capital gain determined under subparagraph (ii), and

(ii) a taxable capital gain from the disposition at the end of the taxation year of property equal to the lesser of

(A) the positive amount, if any, that is the amount determined for D in applying the definition "mark-to-market formula" in subsection (1) for the taxation year in respect of the participating interest (where the gross-up factor for the deferral amount in respect of the participating interest is 2), and

(B) the amount included in computing the income of the corporation for the taxation year under subsection (4); and

(b) the corporation is deemed to have

(i) a capital loss from a disposition at the end of the taxation year of property equal to twice the amount of the allowable capital loss determined under subparagraph (ii), and

(ii) an allowable capital loss from the disposition at the end of the taxation year of property equal to the lesser of

(A) the absolute value of the negative amount, if any, that is the amount determined for D in applying the definition "mark-to-market formula" in subsection (1) for the taxation year in respect of the participating interest (where the gross-up factor for the deferral amount in respect of the participating interest is 2), and

(B) the amount deducted in computing the income of the corporation for the taxation year under subsection (4).

Technical Notes: New subsection 94.2(19) provides rules that deem a positive or negative deferral amount in respect of a disposition of what would, but for section 94.2, be a capital property of a taxpayer that is a corporation resident in Canada, to be a taxable capital gain or an allowable capital loss, as the case may be, and twice such an amount to be a capital gain or capital loss of the corporation, as the case may be, for the purposes of computing the capital dividend account of the corporation. This rule ensures that ½ of a capital gain or a capital loss that is attributable to a deferral amount is reflected in the capital dividend account of a corporation.

Related Provisions: 95(2)(g.3)(viii) — Application to FAPI rules.

(20) Application of para. (4)(b) — This subsection applies for a taxation year of a taxpayer in respect of a participating interest, in a particular non-resident entity, held in the taxation year by the taxpayer, if

(a) the participating interest would, if paragraph 39(1)(a) and the definition "inventory" in subsection 248(1) were read without reference to this section, be a capital property of the taxpayer at the last time in the taxation year at which the taxpayer held the participating interest; and

(b) all or substantially all of the amount determined under the mark-to-market formula for the taxation

year in respect of the participating interest can be attributed to

(i) capital gains or capital losses from the disposition of capital property (other than a participating interest in a foreign investment entity) by the particular non-resident entity or by any foreign investment entity in which the particular non-resident entity has a direct or indirect interest, and

(ii) increases or decreases in the fair market value of capital property (other than a participating interest in a foreign investment entity) of the particular non-resident entity or of any foreign investment entity in which the particular non-resident entity has a direct or indirect interest.

Technical Notes: New subsection 94.2(20) provides a special rule that requires a taxpayer to report, as capital gains or losses under paragraph 94.2(4)(b) rather than as income or losses from property under paragraph 94.2(4)(a), amounts determined under the "mark-to-market formula" for a particular year in respect of a participating interest of the taxpayer in a non-resident entity.

This rule applies where two conditions are met. The first condition is that the participating interest of the taxpayer would, if the Act were read without reference to section 94.2, be a capital property of the taxpayer at the last time in the particular taxation year at which the taxpayer held the participating interest.

The second condition is that all or substantially all of the amount required to be added or deducted under the mark-to-market formula for the taxation year in respect of the participating interest, in a particular non-resident entity, can be attributed to

- capital gains or capital losses from the disposition of capital property (other than a participating interest in a foreign investment entity) by the particular non-resident entity or by any foreign investment entity in which the particular non-resident entity has a direct or indirect interest, and
- increases or decreases in the fair market value of capital property (other than a participating interest in a foreign investment entity) of the particular non-resident entity or of any foreign investment entity in which the particular non-resident entity has a direct or indirect interest.

In the event that any entity in a chain or tier of entities holds capital properties that are particular participating interests in foreign investment entities, changes in value of the particular participating interests and gains or losses from the disposition of those interests are ignored in applying the "all or substantially all" requirement. Instead, the requirement would be computed with regard to gains or losses from the disposition of, or changes in value in, capital properties of the foreign investment entities. This is intended to prevent the use of intermediary entities, contrary to the intent of subsection 94.2(20), as a means of triggering the application of paragraph 94.2(4)(b).

Related Provisions: 39(1)(a)(ii.3) — Capital gain on property to which 94.2(20) applies; 70(3.1)(f) — "Rights or things" treatment on death; 94.2(4), (21) — Effect of subsection (20) applying.

(21) Disposition of interest — reconciliation — If a taxpayer's participating interest in a non-resident entity is disposed of by the taxpayer at a particular time in a particular taxation year, and subsection (4) applies for the purpose of computing the taxpayer's income for the particular taxation year in respect of the participating interest, in computing that income

(a) where subsection (20) does not apply for the particular taxation year, and has never applied for a preceding taxation year, in respect of the participating interest,

(i) there may be deducted, as a loss from property from a property that is the participating interest, the positive reconciliation amount, if any, at that time in respect of the participating interest, and

(ii) there shall be included, as income from property from a property that is the participating interest, the absolute value of the negative reconciliation amount, if any, at that time in respect of the participating interest; and

(b) in any other case,

(i) the taxpayer is deemed to have a capital loss for the particular taxation year from the disposition of capital property that is the participating interest in the particular taxation year equal to the positive reconciliation amount, if any, at that time in respect of the participating interest, and

(ii) the taxpayer is deemed to have a capital gain for the particular taxation year from the disposition of capital property that is the participating interest in the particular taxation year equal to the absolute value of the negative reconciliation amount, if any, at that time in respect of the participating interest.

Technical Notes: New subsection 94.2(21) applies where a taxpayer disposes of an interest in a non-resident entity at a particular time in a particular taxation year. If subsection 94.2(4) applies for the purpose of computing the taxpayer's income for the particular taxation year in respect of the participating interest, in computing that income the taxpayer may be required to include an amount of income (or to have capital gains) or may be permitted to deduct as a loss (or to have capital losses) determined with regard to the reconciliation amount (as defined in subsection 94.1(1)) at that time in respect of the participating interest.

More specifically, under paragraph 94.2(21)(a), where paragraph 94.2(4)(a) applies for the particular taxation year, and subsection 94.2(20) has never applied for a preceding taxation year, in respect of the participating interest,

- there may be deducted, as a loss from property from a property that is the participating interest, the positive reconciliation amount, if any, at that time in respect of the participating interest, and
- there shall be included, as income from property from a property that is the participating interest, the absolute value of the negative reconciliation amount, if any, at that time in respect of the participating interest.

In any other case where subsection 94.2(4) applies for the purpose of computing the taxpayer's income for the particular taxation year in respect of the participating interest, paragraph 94.2(21)(b) provides that

- the taxpayer is deemed to have a capital loss for the taxation year from the disposition in the taxation year of capital property that is the participating interest equal to the positive reconciliation amount, if any, in respect of the participating interest, and
- the taxpayer is deemed to have a capital gain for the taxation year from the disposition in the taxation year of capital property that is the participating interest equal to the absolute value of the negative reconciliation amount, if any, in respect of the participating interest.

Where a taxpayer disposes of a participating interest in a taxation year of the taxpayer and subsection 94.2(21) does not apply (i.e., because subsection 94.2(4) does not apply for the purpose of computing the taxpayer's income for the particular taxation year in respect of the participating interest), subsection 94.2(12) may apply to adjust, with reference to the reconciliation amount in respect of the interest, the taxpayer's adjusted cost base (or cost) of the interest.

For more detail, see the commentary on subsection 94.2(12) and the definition "reconciliation amount" in subsection 94.2(1).

Application [s. 94.2]: See at end of 94.4.

Definitions [s. 94.2]: "adjusted cost base" — 54, 248(1); "allowable capital loss" — 38(b), 248(1); "amount" — 248(1); "anniversary day" — 12.2(11); "arm's length" — 251(1); "arm's length interest", "beneficiary" — 94.1(1); "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "capital dividend" — 83(2)–(2.4), 248(1); "capital gain" — 39(1)(a), 248(1); "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount" — 248(1); "deferral amount" — 94.2(1), (6); "disposition" — 248(1); "entity", "exempt interest" — 94.1(1); "exempt policy" — 12.2(11), Reg. 306; "exempt taxpayer" — 94.1(1); "filing-due date" — 248(1); "fiscal period" — 249.1; "foreign affiliate" — 95(1), 248(1); "foreign investment entity" — 94.1(1), 94.1(2)(q); "gross-up factor" — 94.2(1); "income from property" — 95(1); "indivi-

dual", "insurance policy", "insurer" — 248(1); "investment property" — 94.1(1); "mark-to-market formula" — 94.2(1); "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "net accounting income" — 94.1(1); "non-resident" — 248(1); "non-resident entity" — 94.1(1); "participating interest" — 94.1(1), 94.1(2)(s), 248(1); "payable" — 94.1(2)(o); "person", "prescribed" — 248(1); "prescribed annuity contract" — Reg. 304; "prescribed stock exchange" — 94.2(2)(b), 248(29), Reg. 3200, 3201; "principal amount", "property" — 248(1); "qualifying interest" — 95(2)(m); "readily obtainable fair market value", "reconciliation amount" — 94.2(1); "related" — 251(2), (6); "resident", "resident in Canada" — 250; "share" — 248(1); "substituted" — 248(5); "taxable Canadian property" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxation year" — 94.1(1), 249; "taxpayer" — 248(1); "tracked property", "tracked properties" — 94.2(9)(d); "tracking entity", "trading day" — 94.2(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1); "written" — *Interpretation Act* 35(1)"writing".

94.3 Foreign investment entities — accrual — (1) Definitions — The definitions in subsections 94.1(1) and 94.2(1), and the following definitions, apply in this section.

Technical Notes: New section 94.3 sets out new rules for the taxation of interests in FIEs where subsections 94.1(4) and 94.2(3) do not apply.

Section 94.3 applies to taxation years that begin after 2002.

New subsection 94.3(1) sets out a number of definitions and provides that those definitions and the definitions in subsections 94.1(1) and 94.2(1) apply for the purposes of section 94.2.

"fresh-start year", of a non-resident entity in respect of a taxpayer, means a taxation year of the non-resident entity

(a) that ends in a taxation year of the taxpayer that begins after 2002 if, at the end of the taxation year of the non-resident entity, the non-resident entity is a foreign investment entity and the taxpayer holds a participating interest, other than an exempt interest, in the non-resident entity; and

(b) that begins immediately after a preceding taxation year of the non-resident entity at the end of which the non-resident entity was not a foreign investment entity or the taxpayer did not hold a participating interest in the non-resident entity.

Technical Notes: The definition "fresh-start year" is relevant to calculating a taxpayer's "income allocation" (as defined in subsection 94.3(1)) in respect of a non-resident entity. In general terms, a fresh-start year of an entity in respect of a taxpayer that holds a participating interest in the entity means a taxation year of the entity at the end of which it becomes an entity in respect of which subsection 94.1(3) may apply to the taxpayer in respect of the participating interest.

For more detail, see the commentary on subsection 94.3(4) and on the definition "income allocation" in subsection 94.3(1).

Related Provisions: 95(2)(g.3)(iv) — Application to FAPI rules; 96(1)(d)(iii)(C) — Application to partnership.

"income allocation", of a particular taxpayer in respect of a particular participating interest, in a non-resident entity, held by the particular taxpayer at the end of a particular taxation year of the non-resident entity that ends in a taxation year of the taxpayer, means the amount determined by the formula

$$A \times B/C$$

where

A is the amount that would be the income of the non-resident entity for the particular taxation year if

(a) except for the purposes of subparagraph (2)(b)(ii), section 91, subsection 107.4(1) and paragraph (f) of the definition "disposition" in subsection 248(1), the non-resident entity had been a taxpayer resident in Canada throughout its existence,

(b) each property held by the non-resident entity at the particular time that is the beginning of a fresh-start year of the non-resident entity in respect of the particular taxpayer had been

(i) disposed of by the non-resident entity immediately before the particular time for proceeds equal to its fair market value at the particular time, and

(ii) reacquired by the non-resident entity at the particular time at a cost equal to that fair market value,

(c) for a fresh-start year of the non-resident entity in respect of the particular taxpayer and for each following taxation year of the non-resident entity, each deduction in computing the non-resident entity's income that is contingent on a claim by the non-resident entity had been claimed by the non-resident entity to the extent, and only to the extent, designated by the particular taxpayer in prescribed form filed with the Minister with the particular taxpayer's return of income for the particular taxpayer's taxation year in which that fresh-start year or the following year, as the case may be, ends,

(d) the non-resident entity had deducted the greatest amounts that it could have claimed or deducted as a reserve under sections 20, 138 and 140 for its taxation year that precedes a fresh-start year of the non-resident entity in respect of the particular taxpayer,

(e) in applying sections 37, 65 to 66.4 and 66.7, the non-resident entity had not existed before a fresh-start year of the non-resident entity in respect of the particular taxpayer,

(f) this Act were read without reference to subsections 20(11) and (12) and 104(4) to (6),

(g) where the non-resident entity holds at any time in the particular taxation year a participating interest in another non-resident entity, the description of D in the definition "mark-to-market formula" in subsection 94.2(1) did not apply in respect of that interest,

(h) paragraph (a) of the definition "exempt interest" in subsection 94.1(1) were read without reference to its subparagraph (i),

(i) the amount included in computing the non-resident entity's income for the particular taxation year in respect of capital gains were the amount, if any, by which the amount determined under subparagraph 3(b)(i) exceeds the amount determined under subparagraph 3(b)(ii) in respect of the non-resident entity for the particular taxation year,

(j) the amount deducted in computing the non-resident entity's income for the particular taxation year in respect of capital losses (other than business investment losses) were the amount, if any, by which the amount determined under subparagraph 3(b)(ii) exceeds the amount determined under subparagraph 3(b)(i) in respect of the non-resident entity for the particular taxation year, and

(k) the amount deducted in computing the non-resident entity's income for the particular taxation year in respect of business investment losses were the amount of its allowable business investment losses for the particular taxation year;

B is the amount that is the fair market value, at the end of the particular taxation year, of the particular participating interest; and

C is the fair market value, at the end of the particular taxation year, of all of the participating interests in the non-resident entity (other than an interest that would not be a participating interest, in the non-resident entity, if the definition "participating interest" in subsection 94.1(1) were read without reference to paragraph (d) of that definition).

Technical Notes: The definition "income allocation" applies in determining the amount to be included, under "A" of the formula in subsection 94.3(4), in computing a taxpayer's income or loss for the taxpayer's taxation year in respect of a property that is a participating interest of the taxpayer in a non-resident entity.

A taxpayer's income allocation (in respect of a participating interest in a non-resident entity held by the taxpayer at the end of a particular taxation year of the non-resident entity that ends in a taxation year of the taxpayer) is determined by the formula set out in that definition. In general terms, the taxpayer's income allocation is the proportion of the non-resident entity's income for the particular taxation year ("A" in the formula) that the fair market value of the interest ("B" in the formula) is of the fair market value of all participating interests in the non-resident entity ("C" in the formula). (Note that subsection 94.3(4) is unavailable in respect of a particular interest that would not be a participating interest if the definition "participating interest" in subsection 94.1(1) were read without reference to its paragraph (d).)

The calculation of a taxpayer's income allocation in respect of a non-resident entity depends on a calculation of income for the non-resident entity in accordance with rules set out in paragraphs (a) to (l) of "A" in the formula. This permits taxpayers to make independent calculations of a non-resident entity's income for the purpose of determining income allocations under section 94.3 for the non-resident entity's "fresh-start year" (as defined in subsection 94.3(1)) in respect of the taxpayer and subsequent years.

The special rules that apply in calculating a non-resident entity's income in respect of a taxpayer that is a participating interest holder for the non-resident entity's fresh-start year and subsequent years are as follows:

(a) Subject to three exceptions, the non-resident entity is generally treated as having been a taxpayer resident of Canada throughout its existence. First, this rule does not apply for the purposes of subsection 107.4(1) and paragraph (f) of the definition "disposition" in subsection 248(1), with the result that where the non-resident entity is a trust, property that is transferred to the non-resident entity is considered to have been transferred to the non-resident entity under subsection 69(1) at its fair market value. Second, this rule does not apply for the purpose of section 91, with the result that the non-resident entity will not itself be required to include an amount in respect of foreign accrual property income in computing the non-resident entity's income under the "income allocation" definition. It should be noted, however, that the non-resident entity will not be able to rely on subparagraph (a)(i) of the definition "exempt interest" in section 94.1 as a basis for an exemption from the FIE regime for a participating interest of the non-resident entity in a controlled foreign affiliate of it or of the investor taxpayer. Thus the non-resident entity will have FIE income for purposes of the "income allocation" definition in respect of its participating interest in the controlled foreign affiliate. Third, this rule does not apply for the purpose of subparagraph 94.3(2)(b)(ii) with the result that subsection 94.1(4) or 94.2(4) (rather than section 94.3) potentially applies in computing its income in the event that the non-resident entity owns a participating interest in another non-resident entity that is a FIE.

(b) Each property held by the non-resident entity at the beginning of the fresh-start year is deemed to have been disposed of for its fair market value immediately before that time and reacquired for the same amount at that time.

(c) Each discretionary deduction permitted in computing the non-resident entity's income for its fresh-start year and subsequent taxation years is deemed to have been claimed to the extent designated by the investor taxpayer. Thus, in calculating an income allocation in respect of the non-resident entity, the investor taxpayer will be permitted to claim deductions such as capital cost allowance.

(d) The non-resident entity is assumed to have deducted the greatest amounts permissible, for its taxation year preceding the fresh-start year, under sections 20, 138 and 140. These amounts are added in computing the non-resident entity's income for the fresh-start year, but appropriate deductions under these sections can be claimed for the fresh-start year and subsequent taxation years. In the context of the reserve for life insurers under subsection 138(3), it is intended that paragraph (c) of the definition "reported reserve" in subsection 1408(1) of the Regulations be amended so that the non-resident entity can have a "reported reserve".

(e) The non-resident entity is deemed not to have been in existence before the fresh-start year for the purposes of sections 37, 65 to 66.4 and 66.7. As a consequence, the scientific research and resource expenditure pools to which these sections refer are ignored, to the extent that these pools were generated before the fresh-start year.

(f) The non-resident entity is not permitted to deduct any amount under subsection 20(11) or (12) in respect of its foreign tax. However, foreign tax will be taken into account because the non-resident entity's specified tax allocation (as defined under subsection 94.3(1)) can offset amounts otherwise included in income under subsection 94.3(4). Further, if the non-resident entity is a trust, no amount is considered deductible under subsection 104(6) in determining its income for the year. Double taxation for the investor taxpayer is avoided through the application of new section 94.4. In addition, no deemed disposition day under subsection 104(4) is determined in respect of the trust, whether the non-resident entity falls outside the restricted meaning of "trust" for this purpose under subsection 108(1) or not.

(f.1) For taxation years that begin on or before July 18, 2005, if the investor taxpayer is a corporation resident in Canada and the non-resident entity is a foreign affiliate of the taxpayer, any dividends received by the non-resident entity from a foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest (as determined under paragraph 95(2)(m)) are not included in the non-resident entity's income. Note, that this rule does not apply in the event that the non-resident entity's interest in the foreign affiliate is subject to the mark-to-market regime in section 94.2. However, an income inclusion resulting from the application of subsection 94.2(4) for the non-resident entity can, in some cases, be offset by the deduction provided under new subsection 94.4(2).

(g) Where the non-resident entity has an interest in another non-resident entity, there is no "deferral amount" taken into account in computing the non-resident entity's income pursuant to new subsection 94.2(4). (The fresh-start rule described above eliminates the need for a "deferral amount".)

(h) Participating interests in controlled foreign affiliates of the investor taxpayer or of the non-resident entity are not treated as "exempt interests" of the non-resident entity. As a result, the FIE rules and not the FAPI rules apply in respect of such interests in computing the non-resident's income under the income allocation rules.

(i) Where the non-resident entity has net capital gains for the particular taxation year, the amount to be included in computing the non-resident entity's income in respect of the capital gains is the amount, if any, by which the amount determined under subparagraph 3(b)(i) exceeds the amount determined under subparagraph 3(b)(ii) in respect of the non-resident entity for the year.

(j) Where the non-resident entity has net capital losses for the particular taxation year the amount deductible in computing the non-resident entity's income in respect of capital losses (other business investment losses) is the amount, if any, by which the amount determined under subparagraph 3(b)(ii) exceeds the amount determined under subparagraph 3(b)(i) in respect of the non-resident entity for the year.

(k) Where the non-resident entity has business investment losses for the year the amount deducted in computing the non-resident entity's income for the year in respect of business investment losses is the amount of its allowable business investment losses for the year.

For further details, see the related commentary on the definitions "foreign investment entity", "non-resident entity" and "exempt interest" in subsection 94.1(1) and "loss allocation" and "specified tax allocation" in subsection 94.3(1).

Related Provisions: 95(2)(g.3)(xi), (xii) — Application to FAPI rules; 96(1)(d)(iii)(K) — Application to partnership.

"loss allocation", of a particular taxpayer in respect of a participating interest, in a non-resident entity, held by the taxpayer at the end of a particular taxation year of the non-resident entity that ends in a taxation year of the taxpayer, means the amount determined by the formula

$$(A - B) \times C/D$$

where

A is the total of all amounts each of which is

(a) an amount that would, if paragraphs (a) to (h) of the description of A in the definition "income allocation" applied in respect of the particular taxpayer and the participating interest, be a loss of the non-resident entity for the particular taxation year from a business or property,

(b) the amount, if any, by which the amount determined under subparagraph 3(b)(ii) exceeds the amount determined under subparagraph 3(b)(i) in respect of the non-resident entity for the particular taxation year, or

(c) an allowable business investment loss of the non-resident entity for the particular taxation year;

B is the amount that would, if paragraphs (a) to (h) of the description of A in the definition "income allocation" applied in respect of the particular taxpayer and the participating interest, be determined under paragraph 3(c) in respect of the entity for the particular taxation year;

C is the amount that is the fair market value, at the end of the particular taxation year, of the participating interest; and

D is the fair market value, at the end of the particular taxation year, of all of the participating interests in the non-resident entity (other than an interest that would not be a participating interest, in the non-resident entity, if the definition "participating interest" in subsection 94.1(1) were read without reference to paragraph (d) of that definition).

Technical Notes: The definition "loss allocation" applies in determining the amount to be included, under "B" of the formula in subsection 94.3(4), in computing a taxpayer's income or loss for the taxpayer's taxation year in respect of a property that is a participating interest of the taxpayer in a non resident entity. A taxpayer is entitled, under the formula in subsection 94.3(4), to deduct the taxpayer's loss allocation in respect the participating interest.

In general, a taxpayer's loss allocation in respect of a participating interest, in a non-resident entity, held by the taxpayer at the end of a particular taxation year of the non-resident entity that ends in a taxation year of the taxpayer, is the proportion of the non-resident entity's net loss for the particular taxation year that the fair market value of the taxpayer's participating interest in the non-resident entity is of the fair market value of all participating interests in the non-resident entity. More specifically, a taxpayer's loss allocation is determined as follows:

- ADD the amount of the entity's total losses for the particular taxation year from businesses and properties, the amount, if any, by which the amount determined under subparagraph 3(b)(ii) exceeds the amount determined under subparagraph 3(b)(i) in respect of the entity for the particular taxation year, and the amount of the entity's allowable business investment losses for the particular taxation year,
- SUBTRACT the amount determined under paragraph 3(c) for the entity for the particular taxation year (i.e., the total amount of its income from businesses and properties and taxable capital gains in excess of allowable capital losses, for the particular taxation year), and
- MULTIPLY any positive remainder by the percentage that the fair market value of the interest represents of the fair market value of all participating interests in the entity. (Note that subsection 94.3(4) is unavailable in respect of a particular interest that would not be a participating interest if the definition "participating interest" in subsection 94.1(1) were read without reference to its paragraph (d).)

The determination of a taxpayer's loss allocation is subject to the same special rules that apply for the purposes of computing a taxpayer's "income allocation" (as defined in subsection 94.3(1)). For more detail, see the commentary on the definition "income allocation".

Related Provisions: 257 — Formula cannot calculate to less than zero.

"specified tax allocation", of a taxpayer in respect of a participating interest, in a non-resident entity, held by the taxpayer at the end of a particular taxation year of the non-resident entity that ends in a taxation year of the taxpayer, means the total of all amounts each of which is the amount determined, in respect of the particular taxation year, by the formula

$$A \times (B/C) \times D$$

where

A is

(a) if that taxation year of the taxpayer begins after 2002, the income or profits tax paid by the non-resident entity in respect of the particular taxation year, to the extent that that tax can reasonably be considered to be in respect of the income or profits of the non-resident entity included in computing the amount determined in respect of the non-resident entity and the participating interest under the description of A in the definition "income allocation" for the particular taxation year or any of the five taxation years of the non-resident entity that precede the particular taxation year and that end after 2002, and

(b) in any other case, nil;

B is the amount that is the fair market value, at the end of the particular taxation year, of the participating interest;

C is the fair market value, at the end of the particular taxation year, of all of the participating interests in the non-resident entity (other than an interest that would not be a participating interest, in the non-resident entity, if the definition "participating interest" in subsection 94.1(1) were read without reference to paragraph (d) of that definition); and

D is the taxpayer's relevant tax factor (as defined by subsection 95(1)) for that taxation year of the taxpayer.

Technical Notes: The definition "specified tax allocation" applies in determining the amount to be included, under "C" of the formula in subsection 94.3(4), in computing a taxpayer's income or loss for the taxpayer's taxation year in respect of a property that is a participating interest of the taxpayer in a non-resident entity. A taxpayer is entitled to deduct, under C of the formula in subsection 94.3(4), the taxpayer's specified tax allocation in respect of the participating interest.

A taxpayer's specified tax allocation in respect of a participating interest, in a non-resident entity, held by the taxpayer at the end of a particular taxation year of the non-resident entity that ends in a taxation year of the taxpayer, means the total of all amounts each of which is the amount determined, in respect of the particular taxation year, by the formula set out in the definition.

More specifically, the taxpayer's specified tax allocation is the product obtained by the following:

- MULTIPLY, if the taxation year of the taxpayer begins after 2002, the income or profits tax paid by the non-resident entity in respect of the particular taxation year, to the extent that that tax can reason-

ably be considered to be in respect of the income or profits of the non-resident entity included in computing the amount determined in respect of the non-resident entity and the participating interest under the description of "A" in the definition "income allocation" for the particular taxation year or any of the 5 taxation years of the non-resident entity that precede the particular taxation year and that end after 2002, BY

- the percentage that the fair market value of the interest represents of the fair market value of all participating interests in the entity. (Note that subsection 94.3(4) is unavailable in respect of a particular interest that would not be a participating interest if the definition "participating interest" in subsection 94.1(1) were read without reference to its paragraph (d)), AND

- MULTIPLY any positive remainder by the taxpayer's relevant tax factor (as defined by subsection 95(1)) for that taxation year of the taxpayer.

Income or profits tax is normally expected to be tax that is paid by an entity to a foreign government. However, it could also include income tax paid to the government of Canada or a province with respect to income earned by the entity from Canadian sources. In each case, only income or profits tax payable for taxation years of entities that end in a taxation year of a taxpayer that begins after 2002 is taken into account.

(2) Rules of application — In this section,

(a) subsection 94.1(2) applies; and

(b) subsection (3) does not apply to a taxpayer for a particular taxation year of the taxpayer in respect of a particular participating interest, in a non-resident entity, held in the particular taxation year by the taxpayer (and in respect of any other participating interests, in the non-resident entity, that are identical to the particular participating interest and that are held in the particular taxation year by the taxpayer) if

(i) subsection 94.2(3) applies to the taxpayer for the particular taxation year in respect of the particular participating interest,

(ii) the taxpayer is a foreign investment entity at the end of the particular taxation year,

(iii) the Minister sends a written demand to the taxpayer requesting additional information for the purpose of enabling the Minister to determine whether an amount with respect to the particular participating interest would be required under subsection (4) to be added (or permitted under subsection (4) to be deducted) in computing the income of the taxpayer for the particular taxation year, and information satisfactory to the Minister to make the determination is not received by the Minister within 60 days (or within any longer period that is acceptable to the Minister) after the Minister sends the demand,

(iv) the particular participating interest is an interest that would not, at each time in the particular taxation year at which the taxpayer held the particular participating interest (or any of the other participating interests) and at which a taxation year of the non-resident entity ends, be a participating interest, in the non-resident entity, if the definition "participating interest" in subsection 94.1(1) were read without reference to paragraph (d) of that definition,

(v) subsection (3)

(A) applied for a taxation year (referred to in this subparagraph as the "preceding taxation year") that ended before the particular taxation year of the taxpayer in respect of the particular participating interest, and

(B) did not apply for a taxation year of the taxpayer that was after the preceding taxation year and before the particular taxation year in respect of the particular participating interest,

(vi) the particular participating interest is a specified interest in a trust that is an exempt foreign trust because of paragraph (f) of the definition "exempt foreign trust" in subsection 94(1) and the trust holds, at any time in the particular taxation year, property in respect of which it has waived a right to receive an amount,

(vii) subsection 94.2(9) applies to the taxpayer for the particular taxation year in respect of the particular participating interest,

(viii) any of the participating interests in the non-resident entity (other than an interest that would not be a participating interest, in the non-resident entity, if the definition "participating interest" in subsection 94.1(1) were read without reference to paragraph (d) of that definition) are not identical to the particular participating interest, or

(ix) where the non-resident entity is a trust, any amount of income or capital of the trust that any entity or individual may receive directly from the trust at any time as a beneficiary under the trust depends on the exercise by any entity or individual of, or the failure by any entity or individual to exercise, a discretionary power.

Technical Notes: New subsection 94.3(2) sets out rules that apply in applying section 94.3.

Paragraph 94.3(2)(a) provides that the rules of application in subsection 94.1(2) apply in section 94.3.

Paragraph 94.3(2)(b) identifies a number of circumstances in which subsection 94.3(3) (and hence subsection 94.3(4)) is not available, even though the conditions in paragraphs 94.3(3)(a) to (e) may be met, for a particular taxation year of a taxpayer in respect of a particular participating interest, in a non-resident entity, held in the particular taxation year by the taxpayer. More specifically those circumstances are:

- where, either of subsection 94.2(3) or subsection 94.2(9) (tracked interests) applies to the taxpayer in respect of the particular participating interest for the particular taxation year,

- where the taxpayer is itself a FIE,

- where the Minister of National Revenue sends a written demand to the taxpayer requesting additional information for the purpose of enabling the Minister to determine if an amount with respect to the particular participating interest would be required under subsection 94.3(4) to be added (or permitted under that subsection to be deducted) in computing the income of the taxpayer for the taxation year, and information satisfactory to the Minister to make the determination is not received by the Minister within 60 days (or within such longer period as is acceptable to the Minister) after the Minister sends the demand,

- where the particular participating interest is an interest that would not, at each time at which a taxation year of the non-resident entity ends, be a participating interest, in the non-resident entity, if the definition "participating interest" were read without reference to paragraph (d) of that definition — that is, without reference to the rule which deems a property that is convertible into, exchangeable for, or confers a right to acquire a participating interest in a FIE or a property the fair market value of which is determined primarily by reference to the fair market value of participating interests in the FIE, to be a participating interest,

- where subsection 94.3(3) applied for a taxation year (the "preceding taxation year") that ended before the particular taxation year of the taxpayer in respect of the particular participating interest, and did not apply for a taxation year of the taxpayer that was after the preceding taxation year and before the particular taxation year in respect of the particular participating interest. For example, where a taxpayer has sufficient information to apply the accrual regime in one year and in the subsequent year does not. The accrual regime

would be unavailable to the taxpayer in respect of the interest and any identical interests in the subsequent year (because of paragraph 94.3(3)(e)) and any of the following years (because of subparagraph 94.3(2)(b)(ix)),

- where the participating interest is a specified interest (as defined in subsection 94.1(1)) in a trust that is an exempt foreign trust because of paragraph (g) of the definition "exempt foreign trust" in subsection 94(1) and the trust holds, at any time in the particular taxation year, property in respect of which it has waived a right to receive an amount,

- for taxation years that begin after July 18, 2005, any of the participating interests in the non-resident entity in respect of which the accrual regime might otherwise be available are not identical to the particular participating interest — that is, the accrual regime is available in respect of participating interests in a nonresident entity only to the extent that all participating interests in the non-resident entity are identical (ignoring interests that are participating interests in the non-resident entity solely because of paragraph (d) of the definition "participating interest" in subsection 94.1(1)), or

- for taxation years that begin after July 18, 2005, where the non-resident entity is a trust, any amount of income or capital of the trust that any entity or individual may receive directly from the trust at any time as a beneficiary under the trust depends on the exercise by any entity or individual of, or the failure by any entity or individual to exercise, a discretionary power.

Related Provisions: 96(1)(d)(iii)(II) — Application of 94.3(2)(b)(iii) to partnership; 248(12) — Identical properties.

(3) Where accrual method applies — Subject to paragraph (2)(b), this subsection applies to a taxpayer for a particular taxation year of the taxpayer in respect of a particular participating interest, in a non-resident entity, held in the particular taxation year by the taxpayer if

(a) subsection 94.1(3) applies to the taxpayer for the particular taxation year in respect of the particular participating interest;

(b) either

(i) this subsection applied in respect of an identical participating interest that was held by the taxpayer at any time when the taxpayer held the particular participating interest, or

(ii) the taxpayer has elected that this subsection apply in respect of the particular participating interest, by notifying the Minister in writing in the taxpayer's return of income filed on or before the taxpayer's filing-due date for the first taxation year of the taxpayer for which

(A) subsection 94.1(3) applies to the taxpayer in respect of the particular participating interest, or

(B) subsection 94.2(9) does not apply to the taxpayer in respect of the particular participating interest and that immediately follows a taxation year for which subsection 94.2(9) applied to the taxpayer in respect of the particular participating interest;

(c) neither subsection 94.1(4) nor 94.2(3) applied to the taxpayer for a taxation year (referred to in this paragraph as the "preceding taxation year") that ended before the particular taxation year in respect of the particular participating interest (or in respect of an identical participating interest that was held by the taxpayer at any time when the taxpayer held the particular participating interest), unless subsection 94.2(9) applied for that preceding taxation year to the taxpayer in respect of the particular participating interest (or the identical participating interest);

(d) the particular participating interest is, at each time in the particular taxation year at which the taxpayer held the particular participating interest and at which a taxation year of the non-resident entity ends, capital property of the taxpayer; and

(e) the taxpayer files, with the taxpayer's return of income filed on or before the taxpayer's filing-due date for the particular taxation year, prescribed information in prescribed form.

Technical Notes: Subsection 94.3(3) provides that the accrual regime is available, subject to the limitations set out in paragraph 94.3(2)(b), to a taxpayer for a particular taxation year of the taxpayer in respect of a particular participating interest, in a non-resident entity, held in the particular taxation year by the taxpayer if

- subsection 94.1(3) applies to the taxpayer for the particular taxation year in respect of the particular participating interest;

- either

  — subsection 94.3(3) applied in respect of an identical participating interest that was held by the taxpayer at any time when the taxpayer held the particular participating interest, or

  — the taxpayer has elected that subsection 94.3(3) apply in respect of the particular participating interest, by notifying the Minister in writing in the taxpayer's return of income filed on or before the taxpayer's filing-due date for the first taxation year of the taxpayer for which

    — subsection 94.1(3) applies to the taxpayer in respect of the particular participating interest, or

    — subsection 94.2(9) does not apply to the taxpayer in respect of the particular participating interest and that immediately follows a taxation year for which subsection 94.2(9) applied to the taxpayer in respect of the particular participating interest;

- neither subsection 94.1(4) (i.e., the prescribed rate regime) nor 94.2(3) (i.e., the mark-to-market regime) applied to the taxpayer for a taxation year (referred to in this commentary as the "preceding taxation year") that ended before the particular taxation year in respect of the particular participating interest (or in respect of an identical participating interest that was held by the taxpayer at any time when the taxpayer held the particular participating interest), unless subsection 94.2(9) applied for that preceding taxation year to the taxpayer in respect of the particular participating interest (or the identical participating interests);

- the particular participating interest is, at each time in the particular taxation year at which the taxpayer held the particular participating interest and at which a taxation year of the non-resident entity ends, capital property of the taxpayer; and

- the taxpayer files, with the taxpayer's return of income filed on or before the taxpayer's filing-due date for the particular taxation year, prescribed information in prescribed form. It is contemplated that the prescribed information required would include: the entity's financial statements (as defined in subsection 94.1(1)); capital cost allowance schedules; capital gains and capital loss calculations; a detailed calculation of the taxpayer's specified tax allocation and any income allocation or loss allocation; a reconciliation of the entity's income reported in its financial statement income with its income computed under "A" of the formula in the "income allocation" provisions; and a description of reserves claimed.

Related Provisions: 94.2(3)(b)(ix) — Application of mark-to-market method; 94.3(2)(b) — Application of 94.3(3); 94.3(4) — Effect of subsection applying; 94.4(2) — Prevention of double taxation; 96(1)(d) — Where partnership owns participating interest; 96(3) — Election under 94.3(3)(b) by a partner; 149(10)(c) — Where corporation becomes or ceases to be exempt; 248(12) — Identical properties.

(4) Income inclusion or deduction — accrual method — If subsection (3) applies to a taxpayer resident in Canada for a particular taxation year of the taxpayer in respect of a participating interest in a non-resi-

dent entity, in computing the taxpayer's income for the particular taxation year

(a) there shall be added, as income from property from a property that is the participating interest, the positive amount, if any, determined by the formula

$$A - B - C - D$$

where

A is the total of all amounts each of which is the taxpayer's income allocation in respect of the participating interest for each taxation year of the non-resident entity that ends in the particular taxation year,

B is the total of all amounts each of which is the taxpayer's loss allocation in respect of the participating interest for each taxation year of the non-resident entity that ends in the particular taxation year,

C is the total of all amounts each of which is the specified tax allocation of the taxpayer in respect of the participating interest for each taxation year of the non-resident entity that ends in the particular taxation year, and

D is the amount, if any, by which

(i) the amount determined under subparagraph (b)(i) in respect of the taxpayer and the participating interest for the taxation year (referred to in this paragraph as the "preceding taxation year") of the taxpayer that immediately preceded the particular taxation year

exceeds

(ii) the amount determined under subparagraph (b)(ii) in respect of the taxpayer and the participating interest for the preceding taxation year; and

(b) there may be deducted, as a loss from a property that is the participating interest, the lesser of

(i) the absolute value of the negative amount, if any, determined by the formula in paragraph (a) in respect of the taxpayer and the participating interest for the particular taxation year, and

(ii) the amount, if any, by which

(A) the total of all amounts added under paragraph (a) in computing the taxpayer's income, from a property that is the participating interest, for a taxation year of the taxpayer that ended before the particular taxation year

exceeds

(B) the total of all amounts deductible under this paragraph in computing the taxpayer's income, from a property that is the participating interest, for a taxation year of the taxpayer that ended before the particular taxation year.

Technical Notes: If subsection (3) applies to a taxpayer resident in Canada for a particular taxation year of the taxpayer in respect of a participating interest in a non-resident entity, in computing the taxpayer's income for the particular taxation year, subsection 94.3(4) will apply in computing the taxpayer's income or loss for the particular taxation year from property from a property that is the participating interest. More specifically, under paragraph 94.3(4)(a), the taxpayer's income from property from a property that is the participating interest, is the positive amount, if any, determined as follows:

- ADD the taxpayer's "income allocation" in respect of the participating interest for each taxation year of the non-resident entity that ends in the particular taxation year;
- SUBTRACT the taxpayer's "loss allocation" in respect of the participating interest for each taxation year of the non-resident entity that ends in the particular taxation year;
- SUBTRACT the taxpayer's specified tax allocation in respect of the participating interest for each taxation year of the non-resident entity that ends in the particular taxation year; and
- SUBTRACT the net cumulative positive balance determined under paragraph 94.3(4)(b) in respect of the taxpayer for such property in respect of preceding taxation years of the non-resident entity.

Where a negative amount results in applying the formula under paragraph 94.3(4)(a), paragraph 94.3(4)(b) may permit a deduction of the negative amount, as a loss from property from a property that is the participating interest, in computing the taxpayer's income for the particular taxation year. However, the deduction is limited by net cumulative positive balance determined under subparagraph 94.3(4)(b)(ii) in respect of the taxpayer for such property in respect of preceding taxation years of the non-resident entity.

An unused loss allocation is treated as a loss from property and is carried forward to offset the total amount otherwise required to be included in computing the taxpayer's income from property under subsection 94.3(4) for a subsequent taxation year of the non-resident entity. For more detail, see the commentary on the definition "loss allocation" in subsection 94.3(1).

The following examples illustrate the operation of subsection 94.3(4).

Example 1

Canco owns shares in the capital stock of FIE-1, which like Canco has a calendar taxation year. Canco's income (loss) allocations for 2003, 2004, 2005, 2006 and 2007 are ($100), $25, $90, ($20) and $50, respectively. FIE-1 pays no income or profits taxes.

Results

1. The amount included under paragraph 94.3(4)(a) in Canco's income for 2003 is nil (B = $100). The amount determined under paragraph 94.3(4)(b) for 2002 is $100, which can be carried forward to 2004.

2. The amount included under paragraph 94.3(4)(a) in Canco's income for 2004 is nil (A = $25, D = $100). The amount determined under paragraph 94.3(4)(b) for 2004 is $75, which can be carried forward to 2005.

3. The amount included under paragraph 94.3(4)(a) in Canco's income for 2005 is $15 (A = $90, D = $75). The amount determined under paragraph 94.3(4)(b) for 2005 is nil.

4. The amount included under paragraph 94.3(4)(a) in Canco's income for 2006 is nil (B = $20, D = $0). The amount deductible under paragraph 94.3(4)(b) is $15 (= the lesser of $20 and $15). The remaining $5 unused loss allocation can be carried forward to 2007.

5. The amount included under paragraph 94.3(4)(a) in Canco's income for 2007 is $45 (A = $50, D = $5).

Example 2

Canco owns shares in the capital stock of FIE-1, which like Canco has a calendar taxation year. Canco's income (loss) allocations for 2003, 2004, 2005, 2006 and 2007 are: ($100), ($125), ($175), $300 and $150. FIE-1 pays no income or profits taxes.

Results

1. The amount included under paragraph 94.3(4)(a) in Canco's income for 2003 is nil (B = $100). The amount determined under subparagraph 94.3(4)(b)(i) for 2002 is $100 (= B), which can be carried forward to 2004.

2. The amount included under paragraph 94.3(4)(a) in Canco's income for 2004 is nil (B = $125, D = $100). The amount determined under subparagraph 94.3(4)(b)(i) for 2004 is $225 (= B+D), which can be carried forward to 2005.

3. The amount included under paragraph 94.3(4)(a) in Canco's income for 2005 is nil (B = $175, D = $225). The amount determined under subparagraph 94.3(4)(b)(i) for 2005 is $400 (= B+D).

4. The amount included under paragraph 94.3(4)(a) in Canco's income for 2006 is nil (A = $300, D = $400). The amount deductible under paragraph 94.3(4)(b) is nil (= the lesser of $100 and nil). The remaining $100 unused loss allocation (= D - A) can be carried forward to 2007.

5. The amount included under paragraph 94.3(4)(a) in Canco's income for 2007 is $50 (A = $150, D = $100).

Example 3

1. Canco, FIE-1 and ABC Inc. each have taxation years that coincide with calendar years and each issue only one class of shares.

2. Canco is a corporation resident in Canada that holds 20% of the shares of the capital stock of FIE-1.

3. FIE-1 owns 75% of the shares of the capital stock of ABC Inc.

4. ABC Inc. is not a FIE, but would be a controlled foreign affiliate of FIE-1 if FIE-1 were resident in Canada. Although ABC Inc. is a foreign affiliate of Canco, it is not a controlled foreign affiliate of Canco.

5. FIE-1 earns $5,000 in interest income in 2003. It also receives a dividend of $1,000 from ABC Inc. FIE-1 pays no income or profits taxes.

6. The fair market value of FIE-1's shares in ABC Inc. increases by $6,500 in 2003.

Results

1. Under the definition "income allocation" in subsection 94.3(1), Canco is required to compute its share of FIE-1's income. For this purpose, FIE-1's income is generally computed as if FIE-1 were resident in Canada. Canco is required, under "A" of the formula in paragraph 94.3(4)(a), to include in computing income its income allocation in respect of its shares in the capital stock of FIE-1.

2. FIE-1's income, in computing Canco's income allocation, includes the $5,000 of interest income (as per paragraph 12(1)(c)). However, the $1,000 dividend from ABC Inc. is disregarded because of paragraph (g) of "A" in the definition "income allocation".

3. Section 91 is not applicable in computing Canco's income allocation in respect of its shares in FIE-1 because of paragraph (a) of "A" in the definition "income allocation".

4. Since ABC Inc. is not a FIE, sections 94.1 to 94.4 are not applicable to FIE-1's interest in ABC Inc. in computing Canco's income allocation in respect of is shares in FIE-1.

5. Canco's income allocation, therefore, is $1,000 (i.e., 20% × $5,000). This amount is included under "A" of the formula in paragraph 94.3(4)(a).

Example 4

Same facts as in example 3, except that ABC Inc. is itself a FIE.

Results

1. Because of subparagraph 94.3(2)(b)(ii), the accrual regime will not apply in the calculation of FIE-1's income in respect of its interest in ABC Inc. Instead, FIE-1 may rely upon subsections 94.2(3) and (4), and if not applicable, subsection 94.1(4). Assume that FIE-1 qualifies, and so elects, to have subsection 94.2(3) apply to it in respect of its interest in ABC Inc. Thus, the mark-to-market regime under subsection 94.2(4) will apply to determine its FIE income from the interest.

2. For the purpose of computing Canco's income allocation in respect of its shares in FIE-1, FIE-1's income would include the $5,000 of interest (as per example 3), but not include any share of foreign accrual property income (as per example 3). However, FIE-1's income would include the $1,000 dividend paid in addition to its gain determined under subsection 94.2(4) in respect of its participating interest in ABC Inc. This gain so determined is $7,500, which is equal to the $6,500 increase in the value of shares plus the $1,000 dividend paid. However, for the purposes of computing Canco's income allocation, a deduction for the $1,000 dividend is permitted for FIE-1 because section 94.4 would have permitted the deduction if FIE-1 had been resident in Canada.

3. Consequently, Canco's income allocation in respect of its shares of the capital stock of FIE-1 is equal to $2,500 [i.e., ($5,000 + $7,500 + $1,000 - $1,000) × 20%]. This amount is required to be included in computing Canco's income under subsection 94.3(4).

Example 5

In 1999, Mireille (a resident of Canada) purchased a 30% participating interest in an entity (FIE-1) that is a FIE. The rate of foreign tax applicable to FIE-1's income is 20%. FIE-1's taxation years coincide with calendar years. For the purposes of computing Mireille's income or loss in respect of the interest under subsection 94.3(4), the income (loss) and the foreign tax of FIE-1 for taxation years 2003 to 2006 are as follows:

Year	2003	2004	2005	2006	Total
Income (loss)	*$100,000*	*($120,000)***	*$95,000*	*$130,000*	*$205,000*
Foreign tax paid	*$20,000*	*Nil*	*Nil*	*$21,000*	*$41,000*

Table notes:

* *Assume foreign tax paid in the same taxation year as liability arose.*

** *Assume that an equivalent amount is carried forward under the laws of the relevant foreign jurisdiction to reduce FIE-1's tax liabilities after 2004.*

Results

Mireille's income allocations, loss allocations and specified tax allocations are shown in the table below, as are the resulting income inclusions and deductions under subsection 94.3(4). The specified tax allocations in the table below are obtained by multiplying the related figures in the above table by 30% (Mireille's percentage interest) and 2.2 (specified tax factor for Mireille). For example, for 2003 Mireille's specified tax allocation is $13,200 ($20,000 × 30% × 2.2).

Year	2003	2004	2005	2006
A. Income/Loss allocation	*$30,000*	*($36,000)*	*$28,500*	*$39,000*
B. Specified tax allocation	*($13,200)*	*nil*	*nil*	*($13,800)*
C. Loss allocation (used)	*nil*	*($16,800)*	*nil*	*nil*
D. Carry-forward offset used	*nil*	*nil*	*($19,200)*	*nil*
E. Loss allocation/tax allocation to carry-forward	*nil*	*($19,200)*	*nil*	*nil*
Amount included in income under subsection 94.3(4) *(A − B − C − D)*	*$16,800*	*nil*	*$9,300*	*$25,200*
Amount deducted in computing income under subsection 94.3(4) *(D + C + B − A)*	*nil*	*($16,800)*	*nil*	*nil*

Related Provisions: 94.1(2)(d) — Interpretation; 94.1(2)(t) — Authorized foreign bank deemed resident in Canada; 94.3(5) — Adjustments to adjusted cost base.

(5) Adjusted cost base — In computing at any time the adjusted cost base to a taxpayer of a participating interest in a non-resident entity

(a) there shall be added the total of all amounts each of which is

(i) the amount added (or that would have been added if this Act were read without reference to subsection 56(4.1) and sections 74.1 to 75), as income from a property that is the participating interest, under paragraph (4)(a) in computing the taxpayer's income for a taxation year of the taxpayer that ended before, or includes, that time, and

(ii) the product obtained when the amount determined under paragraph (i) of the description of A in the definition "income allocation" in subsection (1) in respect of the taxpayer and the participating interest for a particular taxation year of the non-resident entity that ended in a taxation year of the taxpayer that ended before, or includes, that time and at the end of which particular taxation year the taxpayer held the participating inter-

est is multiplied by the amount that is determined by the fraction B/C described in the formula in that definition and that was used in computing the taxpayer's income allocation in respect of the participating interest for the particular taxation year; and

(b) there shall be deducted the total of all amounts each of which is

(i) the amount deducted (or that would have been deducted if this Act were read without reference to subsection 56(4.1) and sections 74.1 to 75), as a loss from a property that is the participating interest, under paragraph (4)(b) in computing the taxpayer's income for a taxation year of the taxpayer that ended before, or includes, that time,

(ii) the product obtained when the amount determined under paragraph (j) of the description of A in the definition "income allocation" in subsection (1) in respect of the taxpayer and the participating interest for a particular taxation year of the non-resident entity that ended in a taxation year of the taxpayer that ended before, or includes, that time and at the end of which particular taxation year the taxpayer held the participating interest is multiplied by the amount that is determined by the fraction C/D described in the formula in the definition "loss allocation" in subsection (1) that was used in computing the taxpayer's loss allocation in respect of the participating interest for the particular taxation year, and

(iii) the product obtained when the amount determined under paragraph (k) of the description of A in the definition "income allocation" in subsection (1) in respect of the taxpayer and the participating interest for a particular taxation year of the non-resident entity that ended in a taxation year of the taxpayer that ended before, or includes, that time and at the end of which particular taxation year the taxpayer held the participating interest is multiplied by the amount determined by the fraction C/D described in the formula in the definition "loss allocation" in subsection (1) was used in computing the taxpayer's loss allocation in respect of the participating interest for the particular taxation year.

Technical Notes: New subsection 94.3(5) provides for adjustments to the adjusted cost base (ACB) of a participating interest in an entity held by a taxpayer.

Paragraph 94.3(5)(a) provides for an addition to the ACB of a taxpayer of a participating interest, in a nonresident entity, at any time of the amount that is the total of the amount included in computing the taxpayer's income under paragraph 94.3(4)(a) for a taxation year of the taxpayer that ended before that time and the product obtained when the amount determined under paragraph (i) of the description of "A" in the definition "income allocation" in subsection 94.3(1) (taxable capital gains of the non-resident entity) in respect of the taxpayer and the participating interest for a particular taxation year of the non-resident entity that ended in a taxation year of the taxpayer that ended before that time and at the end of which particular taxation year the taxpayer held the participating interest is multiplied by the percentage that the fair market value of the interest represents of the fair market value of all participating interests in the entity.

Conversely, paragraph 94.3(5)(b) provides for a reduction to the ACB of a taxpayer of a participating interest, in a non-resident entity, at any time, of the total of three amounts. The first is the amount deducted, as a loss from a property that is the participating interest, under paragraph (4)(b) in computing the taxpayer's income for a taxation year of the taxpayer that ended before that time. The second and third amounts are the product obtained when the amount determined under paragraph (j) or (k), as the case may be, of the description of A in the definition "income allocation" (allowable capital losses of the non-resident entity and allowable business investment losses of the non-resident entity) in respect of the taxpayer and the participating interest for a particular taxation year of the non-resident entity that ended in a taxation year of the taxpayer that ended before that time and at the end of which particular taxation year the taxpayer held the participating interest is multiplied by the percentage that the fair market value of the interest represents of the fair market value of all participating interests in the entity.

For more information, see the commentary on new paragraphs 53(1)(m.1) and 53(2)(w).

Application [s. 94.3]: See at end of 94.4.

Related Provisions: 53(1)(m.1) — Addition to ACB; 53(2)(w) — Deduction from ACB; 94.4(2) — Prevention of double taxation.

Definitions [s. 94.3]: "adjusted cost base" — 54, 248(1); "allowable business investment loss" — 38(c), 248(1); "amount", "business" — 248(1); "capital gain" — 39(1)(a), 248(1); "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "controlled foreign affiliate" — 94.1(2)(b), 95(1), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "entity", "exempt interest" — 94.1(1); "filing-due date" — 248(1); "foreign affiliate" — 95(1), 248(1); "foreign investment entity" — 94.1(1), 94.1(2)(q); "fresh-start year", "income allocation" — 94.3(1); "identical" — 248(12); "income from property" — 95(1); "loss allocation" — 94.3(1); "Minister" — 248(1); "non-resident entity" — 94.1(1); "participating interest" — 94.1(1), 94.1(2)(s), 248(1); "prescribed", "property" — 248(1); "relevant tax factor" — 95(1); "resident in Canada" — 250; "specified interest" — 94.1(1); "specified tax allocation" — 94.3(1); "taxation year" — 94.1(1), 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "written" — *Interpretation Act* 35(1)"writing".

94.4 Foreign investment entities — relief from double taxation — (1) Definitions and rules of application — In this section,

(a) the definitions in subsection 94.1(1) apply; and

(b) subsection 94.1(2) applies.

Technical Notes: New section 94.4 provides rules to eliminate double taxation of income where an amount of income of a nonresident entity, in respect of which any of sections 94.1 to 94.3 has applied in calculating the income for a year of a holder of an interest in the non-resident entity, becomes payable (determined by reference to paragraph 94.1(2)(o)) to that interest holder.

Subsection 94.4(1) provides that the definitions in subsections 94.1(1), and the rules of application in subsection 94.1(2), apply in section 94.4.

(2) Prevention of double taxation — If one or more amounts become, at a particular time in a particular taxation year of a taxpayer that begins after 2002 or in a preceding taxation year of the taxpayer that begins after 2002, payable to the taxpayer from a particular entity or another entity in respect of a participating interest in the particular entity (other than an amount that is proceeds of disposition of the participating interest or of a part of it), and the taxpayer is at the particular time resident in Canada,

(a) there may be deducted in computing the taxpayer's income for the particular taxation year the lesser of

(i) the amount, if any, by which

(A) the total of all amounts each of which is an amount that is in respect of any of those amounts payable and that is included (otherwise than because of the description of C in the definition "mark-to-market formula" in subsection 94.2(1)) in computing the taxpayer's income for any of those taxation years

exceeds the total of all amounts each of which is an amount, in respect of the participating interest,

(B) that is deducted under this paragraph in computing the taxpayer's income for any of those preceding taxation years, or

(C) where subsection 94.3(3) applied to the taxpayer in respect of the participating interest for any of those taxation years, that would, if the amount determined for D in applying the definition "specified tax allocation" in subsection 94.3(1) were the taxpayer's relevant tax factor (as defined in subsection 95(1)) minus 1, be the specified tax allocation of the taxpayer in respect of the participating interest for each taxation year of the particular entity that ends in one of those taxation years for which subsection 94.3(3) applied to the taxpayer in respect of the participating interest, and

(ii) the amount, if any, by which the total of all amounts each of which is

(A) an amount, in respect of the participating interest, that is, or would if this Act were read without reference to subsection 94.2(20) have been, included under subsection 94.1(4) or 94.2(4) in computing the taxpayer's income for any of those taxation years, or

(B) the amount, if any, by which all amounts each of which is an amount required by paragraph 94.3(5)(a) to be added in computing at the particular time the adjusted cost base to the taxpayer of the participating interest,

exceeds the total of all amounts each of which is an amount, in respect of the participating interest,

(C) that is required by paragraph 94.3(5)(b) to be deducted in computing at the particular time the adjusted cost base to the taxpayer of the participating interest,

(D) that is, or would if this Act were read without reference to subsection 94.2(20) have been, deducted under subsection 94.2(4) in computing the taxpayer's income for any of those preceding taxation years, or

(E) that is deducted under this paragraph in computing the taxpayer's income for any of those preceding taxation years; and

(b) in computing after the particular time the adjusted cost base to the taxpayer of the participating interest there shall be deducted the amount deductible under paragraph (a) in computing the taxpayer's income.

Technical Notes: Under subsection 94.4(2), where an amount becomes payable at a particular time in a particular taxation year of a taxpayer that begins after 2002 or in a preceding taxation year of the taxpayer that begins after 2002 to the taxpayer from a non-resident entity in respect of a participating interest in the entity held by the taxpayer (otherwise than as consideration for the disposition of the interest), and the taxpayer is resident in Canada at the particular time, a deduction is permitted to offset (against any income included in respect of the interest under subsection 94.1(4), 94.2(4) or 94.3(4)) any net income inclusion resulting from the amount payable.

The permitted deduction under subsection 94.4(2) for the taxpayer's taxation year is equal to the lesser of two amounts. The first amount is the amount, if any, by which the total of those amounts payable that are included in computing the taxpayer's income for any of those years, exceeds the total of all amounts each of which

- is deductible in respect of the participating interest in any of those preceding years under paragraph 94.4(2)(a), or
- would, if subsection 94.3(3) applies to the taxpayer in respect of the participating interest for any of those taxation years, and the value of D in the definition "specified tax allocation" in subsection 94.3(1) were the taxpayer's relevant tax factor (as defined by subsection 95(1)) minus 1, be the specified tax allocation of the taxpayer in respect of the participating interest for each taxation year of the particular entity that ends in one of those taxation years for which subsection 94.3(3) applied to the taxpayer in respect of the participating interest.

As a result, in computing the portion of the amounts payable that may be used in computing a deduction under subsection 94.4(2), an adjustment is made to account for the extent to which the accrual system under the FIE regime has already recognized a possible incidence of taxation at Canadian-equivalent rates in the non-resident entity.

The second amount is the amount, if any, by which the total of

- the amounts included (or that, but for subsection 94.2(20), would have been included) in respect of the participating interest under subsection 94.1(4) or 94.2(4) in computing the taxpayer's income for the taxation year or a preceding taxation year, and
- the amounts required by paragraph 94.3(5)(a) to be added in computing at the particular time the adjusted cost base to the taxpayer of the participating interest

exceeds the total of all amounts each of which is an amount, in respect of the participating interest,

- that is required by paragraph 94.3(5)(b) to be deducted in computing at the particular time the adjusted cost base to the taxpayer of the participating interest,
- that is deducted (or that, but for subsection 94.2(20), would have been deducted) under subsection 94.2(4) in computing the taxpayer's income for any of those taxation years, or
- that is deductible under paragraph 94.4(2)(a) in computing the taxpayer's income for any of those preceding taxation years.

The amount deducted from income under paragraph 94.4(2)(a) in respect of the interest must also be deducted in computing after the particular time the adjusted cost base of the interest. For more information, see the commentary on new paragraph 53(2)(w).

The example below illustrates the operation of subsection 94.4(2).

Example

1. A taxpayer resident in Canada, Canco, purchases a 20% interest in Foreignco, a non-resident corporation. Foreignco is a FIE. Participating interests in Foreignco do not qualify as "exempt interests". Both Canco and Foreignco have taxation years that coincide with calendar years. Subsection 94.1(4) applies to Canco in respect of the interest.

2. Canco's income under subsection 94.1(4) in respect of its participating interest in Foreignco for 2003 is $100,000. Foreignco pays a dividend of $50,000 to Canco in 2003. Canco includes the dividend in income pursuant to section 90 and claims a deduction of $20,000 in computing its taxable income pursuant to subsection 113(1). No foreign withholding taxes were paid by Canco on the $50,000 dividend.

Results

1. Canco's deduction from income under subsection 94.4(2) is equal to $50,000, being the lesser of the income inclusion as a result of the payment (= $50,000) and the amount of the income inclusion under subsection 94.1(4) ($100,000).

2. The result would generally be the same if the $50,000 dividend were instead paid in a subsequent year.

Related Provisions: 53(2)(w) — Deduction from ACB; 87(2)(j.95) — Amalgamation — continuing corporation; 94.1(2)(t) — Authorized foreign bank deemed resident in Canada; 94.4(3) — Where foreign tax credit unavailable; 149(10)(c) — Where corporation becomes or ceases to be exempt.

(3) Prevention of double taxation — foreign tax credit unavailable — If one or more particular amounts become payable to a taxpayer in a particular taxation year of the taxpayer, the taxpayer includes the particular amounts in computing its income for the particular taxation year, and the particular amounts are included in computing, in respect of a particular participating interest of the taxpayer, an amount deducted by the taxpayer under subsection (2) in computing its income for the particular taxation year, the taxpayer may deduct in computing the taxpayer's income for the par-

ticular taxation year the amount determined by the formula

$$A \times B$$

where

A is

(a) nil, if the taxpayer is a corporation and the particular amounts are income from a share of the capital stock of a foreign affiliate of the taxpayer, and

(b) the taxpayer's relevant tax factor (as defined by subsection 95(1)) for the particular taxation year, in any other case; and

B is the lesser of

(a) 15% of the total of all amounts, if any, determined under subparagraph (2)(a)(ii) in computing the amount deductible by the taxpayer, in respect of the particular participating interest and the particular amounts, under subsection (2) in computing its income for the particular taxation year, and

(b) the amount that

(i) is the part of the non-business income tax (as defined by subsection 126(7)) paid by the taxpayer for the particular taxation year to a government of a country other than Canada that is in respect of the particular amounts, and

(ii) would be deductible under subsection 126(1) by the taxpayer from the tax for the particular taxation year otherwise payable under this Part (within the meaning assigned by paragraph (a) of the definition "tax for the taxation year otherwise payable under this Part" in subsection 126(7)) by the taxpayer if

(A) the taxpayer had not deducted an amount, in respect of the particular amounts, under subsection (2), and

(B) paragraph 126(1.2)(a) did not apply.

Technical Notes: Subsection 94.4(3) is designed to provide relief in circumstances where — because of having made, in computing its income for a taxation year, a deduction under subsection 94.4(2) in respect of a distribution from a FIE — a taxpayer does not have sufficient Part I tax payable for the year against which to claim a foreign tax credit under subsection 126(1) in respect of taxes paid to the government of a foreign country on that amount distributed from the FIE. Subsection 94.4(3) is applicable if

- one or more particular amounts become payable to a taxpayer in a taxation year of the taxpayer,
- the taxpayer includes the particular amounts in computing its income for the taxation year, and
- the particular amounts are included in computing, in respect of a participating interest of the taxpayer, an amount deducted by the taxpayer under subsection 94.4(2) in computing the taxpayer's income for the taxation year.

Where these conditions are met, subsection 94.4(3) provides that the taxpayer may deduct in computing the taxpayer's income for the taxation year the amount of the product determined by the formula "A × B" set out in subsection 94.4(3).

Under the formula, A will generally be the taxpayer's relevant tax factor (as defined by subsection 95(1)) for the taxation year. However, A is nil where the taxpayer is a corporation and the particular amounts are income from a share of the capital stock of a foreign affiliate of the taxpayer; in effect, the deduction under subsection 94.4(3) is not available in these circumstances, as the extent of any relief available to the taxpayer is not otherwise determined under section 126, but rather section 113.

Variable B in the formula is the lesser of two amounts. The first amount is 15% of the total of all amounts, if any, determined under subparagraph (2)(a)(ii) in computing the amount deductible by the taxpayer, in respect of the particular participating interest and the particular amounts, under subsection (2) in computing the taxpayer's income for the taxation year. In general terms, this will be the amount by which, in respect of the participating interest, income inclusions under the FIE regime for the taxation year exceed deductions from income made under the FIE regime for the taxation year. The second amount is the portion of the foreign tax paid in respect of the particular amounts that would — if the taxpayer had not made a deduction under subsection 94.4(2) — otherwise have been creditable by the taxpayer under subsection 126(1) for the taxation year.

Subsection 94.4(3) is relevant where a FIE distribution is made in respect of a taxpayer's participating interest and the distribution is subject to non-business income tax imposed by the government of a country in which the FIE is resident. Because of new subsection 126(1.2), described in the commentary below, a taxpayer is not entitled to a tax credit under subsection 126(1) in respect of non-business income tax paid by a taxpayer in respect of the distribution if the taxpayer made a deduction under subsection 94.4(3) in respect of the amount distributed.

Related Provisions: 87(2)(j.95) — Amalgamation — continuing corporation; 149(10)(e) — Where corporation becomes or ceases to be exempt.

Definitions [s. 94.4]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "designated cost" — 94.1(1); "disposition" — 248(1); "entity" — 94.1(1); "foreign affiliate" — 95(1), 248(1); "foreign investment entity" — 94.1(1), 94.1(2)(q); "non-business-income tax" — 126(7); "participating interest" — 94.1(1), 94.1(2)(s), 248(1); "payable" — 94.1(2)(o), 94.4(1)(b); "relevant tax factor" — 95(1); "resident in Canada" — 250; "share", "taxable income" — 248(1); "taxation year" — 94.1(1), 249; "taxpayer" — 248(1).

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), s. 18, will amend s. 94.1 to read as above, and add ss. 94.2 to 94.4, applicable to taxation years that begin after 2002, except that

(a) any election or form referred to in any of ss. 94.1 to 94.3 made by a taxpayer is deemed to have been filed with the Minister of National Revenue

(i) on a timely basis if it is filed with the Minister on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day of Royal Assent (for the July 18, 2005 draft legislation), and

(ii) in the taxpayer's return of income for the taxpayer's taxation year identified by the taxpayer in the election, if it is filed with the Minister of National Revenue in writing in the taxpayer's return of income for the taxpayer's taxation year that includes the day of Royal Assent;

(b) for taxation years that begin before October 30, 2003, subpara. (a)(ii) of the definition "exempt interest" in subsec. 94.1(1) is to be read as follows:

(ii) a qualifying entity, or

(c) subject to para. (e) below, for taxation years that begin on or before July 18, 2005, the definition "exempt business" in subsec. 94.1(1) is to be read without reference to the expression "(f) or";

(d) subject to para. (e) below, for taxation years that begin on or before July 18, 2005, subpara. (d)(i) of the definition "exempt interest" in subsec. 94.1(1) is to be read without reference to the expression "(f) or";

(e) for taxation years that begin on or before July 18, 2005, the definition "investment property" in subsec. 94.1(1) is to be read without reference to its para. (k);

(f) for taxation years that begin on or before July 18, 2005, para. (c) of the definition "significant interest" in subsec. 94.1(1) is to be read as follows:

(c) if the other entity is a non-discretionary trust (as defined in subsection 17(15)), an interest as a beneficiary under the trust, if at that time the particular entity, or the particular entity together with entities related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the particular entity, holds such interests under the trust that have a fair market value of 25% or more of the fair market value of all the interests as beneficiaries under the trust.

(g) for taxation years that begin on or before July 18, 2005, subpara. (b)(i) of the definition "specified interest" in subsec. 94.1(1) is to be read as follows:

(i) the entity or individual is at that time a successor beneficiary (as defined by subsection 94(1)) under the trust, or

(h) unless a taxpayer elects, by notifying the Minister of National Revenue in writing on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which the amending legislation is assented to, that this paragraph not apply in respect of the taxpayer and a participating interest of the taxpayer, para. 94.1(2)(c) is in respect of the taxpayer and the participating interest for the taxpayer's taxation years that begin on or before July 18, 2005 to be read without reference to its subpara. (ii);

(i) for taxation years that begin on or before July 18, 2005, subsec. 94.1(2) is to be read without reference to its para. (t);

(j) for taxation years that begin on or before July 18, 2005, para. 94.2(9)(d) is to be read without reference to the expression "(whether immediate or future, whether absolute or contingent or whether conditional on or subject to the exercise of any discretion by any entity or individual)";

(k) for taxation years that begin on or before July 18, 2005, subpara. (a)(ii) of the definition "exempt interest" in subsec. 94.1(1) is to be read without reference to "(other than a controlled foreign affiliate)";

(l) for taxation years that begin on or before July 18, 2005, the description of A in the definition "income allocation" in subsec. 94.3(1) is to be read as if its para. (f) were replaced by the following:

(f) this Act were read without reference to subsections 20(11) and (12) and 104(4) to (6),

(f.1) in the case where the particular taxpayer is a corporation resident in Canada, dividends received by the non-resident entity in the particular taxation year from a foreign affiliate of the particular taxpayer were included in computing the income of the non-resident entity for the particular taxation year only where

(i) the particular taxpayer did not have a qualifying interest (within the meaning assigned by paragraph 95(2)(m)) in the foreign affiliate at the time the dividends were received, or

(ii) taking into account the application of paragraphs (a) and (b), subsection 94.2(4) applied for the purpose of computing the non-resident entity's income for the particular taxation year in respect of the non-resident entity's participating interest in the foreign affiliate,

(m) for taxation years that begin on or before July 18, 2005, para. (b) of the description of A in the definition "income allocation" in subsec. 94.3(1) is to be read as follows:

(b) the expression "controlled foreign affiliate" in paragraph (a) of the definition "exempt interest" referred to a controlled foreign affiliate of the particular entity and not to a controlled foreign affiliate of the non-resident entity,

(n) subject to para. (o) below, for taxation years that begin on or before July 18, 2005, subparas. 94.3(2)(b)(vi) to (ix) are to be read as follows:

(vi) the particular participating interest is a specified interest in a trust that is an exempt foreign trust because of paragraph (f) of the definition "exempt foreign trust" in subsection 94(1) and the trust holds, at any time in the particular taxation year, property in respect of which it has waived a right to receive an amount, or

(vii) subsection 94.2(9) applies to the taxpayer for the particular taxation year in respect of the particular participating interest.

and

(o) unless a trust elects under para. (j) of the Application of the proposed amendment to s. 94 that that para. not apply in respect of it, for taxation years that begin on or before July 18, 2005, in applying ss. 94.1 to 94.4 in respect of an interest in the trust

(i) the reference to "paragraph (f)" is to be read as a reference to "paragraph (g)" in the definitions "exempt business", "exempt interest" and "specified interest" in subsec. 94.1(1) and in subpara. 94.1(2)(c)(i),

(ii) para. (a) of the definition "foreign investment entity" in subsec. 94.1(1) is to be read as follows:

(a) at the end of its taxation year that includes that time, it is an exempt foreign trust (as defined in subsection 94(1)) because of any of paragraphs (a) to (f) of that definition or because of paragraph (g) of that definition (read without reference to clause (g)(iii)(B) of that definition);

and

(iii) subparas. 94.3(2)(b)(vi) to (ix) are to be read as follows:

(vi) the particular participating interest is a specified interest in a trust that is an exempt foreign trust because of paragraph (g) of the definition "exempt foreign trust" in subsection 94(1) and the trust holds, at any time in the particular taxation year, property in respect of which it has waived a right to receive an amount, or

(vii) subsection 94.2(9) applies to the taxpayer for the particular taxation year in respect of the particular participating interest.

Notice of Ways and Means Motion, federal budget, February 16, 1999: *Non-resident trusts and foreign-based investment funds*

(8) That the provisions of the Act governing the taxation of

(a) trust beneficiaries and non-resident trusts, and

(b) taxpayers resident in Canada who hold interests in foreign-based investment funds

be modified in accordance with proposals described in the budget documents tabled by the Minister of Finance in the House of Commons on February 16, 1999.

Federal budget, Supplementary Information, February 16, 1999: *Non-resident trust and foreign-based investment fund rules*

Canadians have significantly increased their holdings of investments in foreign countries over the past ten years. This reflects the globalization of capital markets and recognizes the benefits of portfolio diversification. However, tax planning techniques have developed to create advantages from using foreign-based investment funds and non-resident trusts in comparison with Canadian-based investment vehicles.

The *Income Tax Act* contains provisions that are designed to prevent the use by taxpayers of foreign-based investment funds and non-resident trusts to avoid Canadian tax. The purpose of the rules is to ensure that an appropriate amount of Canadian tax is paid on the foreign investment income earned by taxpayers through such vehicles in order to provide a level playing field with Canadian-based investment vehicles.

There is growing evidence that the objectives of the current provisions of the Act are not being fully met and that high-income individuals are able, in some cases, to avoid Canadian tax by investing in foreign-based investment funds and by contributing property to non-resident trusts. Such an outcome is inconsistent with a fair and neutral tax system, erodes the Canadian tax base and is contrary to the policy intent of the current rules.

Background

Canadian investment funds are taxed annually on the income and capital gains accumulated in the funds but not allocated to investors. Investors in such funds are taxed annually on the income and capital gains of the funds allocated to them, as well as on any taxable capital gains arising on the disposition of their interest in the fund. As a result, the Canadian tax base is protected.

Investment funds located outside Canada are generally not subject to tax in Canada. Where such funds face little or no tax in their country of residence, Canadian investors holding interests in such vehicles may benefit from a significant deferral of tax on income and realized capital gains retained in the funds over the years. Furthermore, on the disposition of their interest in a foreign- based investment fund, investors may also be able to convert ordinary income to capital gains, which are taxed at a lower rate. These tax advantages have resulted in a growing number of Canadians investing in foreign-based funds.

Issue

The *Income Tax Act* contains rules that attempt to eliminate these tax advantages. Where a Canadian makes an investment in a foreign-based investment fund and one of the main reasons for acquiring, holding or having the interest in such property is to avoid Canadian tax, a notional annual allocation of income is imputed to the taxpayer and subject to tax. This notional amount is determined by multiplying the cost of the taxpayer's interest in the fund by a prescribed interest rate.

The current provision, however, has rarely been applied. Revenue Canada has had difficulty in enforcing this provision because of the frequent lack of information and the challenge of establishing that the interest in the foreign-based investment fund was acquired primarily to avoid Canadian tax. Although the provision may have been effective when first introduced in 1984, its impact has weakened over the years. When the provision has been applied, it has been criticized as subjecting to tax an arbitrary amount that may bear no relationship to the actual income accruing in the fund.

These deficiencies and the resulting erosion of the Canadian tax base necessitate the actions that the government is proposing in this budget.

[See also portions reproduced under 94 — ed.]

Proposal

The budget sets forth an approach to address the deficiencies in the current rules governing foreign-based investment funds and non-resident trusts. The objective of the proposals is to enhance fairness in the tax system in relation to the taxation of income earned from investing in foreign-based investment funds and contributing property to non-resident trusts on the one hand, and income earned from investing in similar entities resident in Canada. These proposals would not prevent Canadians from investing in foreign-based investment funds or from contributing property to non-resident trusts, but are intended to ensure that there is no tax advantage in doing so.

Consultations will be initiated on the following proposed modifications to the tax rules governing foreign-based investment funds:

- That the proposed rules apply to interests in a foreign-based investment fund, subject to a number of exceptions noted below. Taxpayers would be subject, annually, to tax on their pro-rata share of all the undistributed income of the foreign-based investment fund where they have access to sufficient information about the income of the fund (the income accrual approach that applies in respect of controlled foreign affiliates of Canadian taxpayers), subject to a foreign tax credit for foreign income taxes paid by the fund. Alternatively, taxpayers would be required to add to or deduct from their income, as the case may be, the annual increase or decrease in the market value of their interest in the fund (the "mark-to-market" approach). These rules would replace the tax motivation test that "one of the main reasons for the taxpayer acquiring, holding or having an interest in a foreign-based investment fund was to avoid Canadian taxation". The rules would not apply where the foreign-based investment fund annually distributes or allocates to Canadian investors all of the fund's income to which those investors are entitled.
- That a foreign-based investment fund be defined as any non-resident corporation, trust, fund or other entity where more than 50 per cent of the cost of the entity's assets are investment properties. Look-through rules would apply in respect of significant investments in other entities for the purpose of making this determination. Where trusts are subject to the proposed non-resident trust rules, such trusts would not be subject to these rules.
- That investment funds situated in the United States not be subject to these rules since tax avoidance and deferral opportunities are not a concern through the use of such vehicles.
- That a five-year exception for temporary residents and new immigrants apply. Additional exemptions could be contemplated to remove from the rules foreign- based investment funds that are clearly not used to avoid or defer Canadian tax.
- That the proposed rules apply to any taxation year commencing after 1999, with respect to any interest in a foreign-based investment fund (in which the taxpayer does not already own an interest) not covered by the exceptions, acquired by a Canadian resident on or after February 16, 1999. All interests in any foreign-based investment fund not covered by the exceptions would be subject to the proposed rules for taxation years commencing after 2000.

95. (1) Definitions for this subdivision — In this subdivision,

Proposed Amendment — 95(1) opening words

95. (1) Definitions re foreign affiliates — In this subdivision (other than in sections 94 to 94.4),

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 19(1), will amend the opening words of subsec. 95(1) to read as above, applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after 2002.

Technical Notes: Subsection 95(1) sets out definitions that are relevant for the purposes of sections 90 to 95.

Subsection 95(1) is amended so that these definitions do not apply for the purposes of sections 94 to 94.4, except where the definition applies for the purposes of the Act as a whole because of subsection 248(1). This amendment applies to taxation years that begin after 2002.

As set out below, various definitions in subsection 95(1) are also being amended.

"active business" of a foreign affiliate of a taxpayer means any business carried on by the affiliate other than

(a) an investment business carried on by the affiliate, or

(b) a business that is deemed by subsection (2) to be a business other than an active business carried on by the affiliate;

Related Provisions: 95(1)"income from an active business" — What income included; 248(1) — Meanings of "active business" and "business".

History: The definition "active business" added to subsec. 95(1) by 1995, c. 21, subsec. 46(3), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the new definition applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation of such foreign affiliate.

"controlled foreign affiliate", at any time, of a taxpayer resident in Canada means a foreign affiliate of the taxpayer that was, at that time, controlled by

Proposed Amendment — 95(1)"controlled foreign affiliate" opening words

"controlled foreign affiliate", at any time of a taxpayer resident in Canada, means a foreign affiliate of the taxpayer that is, at that time, a controlled foreign affiliate of the taxpayer because of paragraph 94.1(2)(h) or that is, at that time, controlled by

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 19(2), will amend the opening words of the definition "controlled foreign affiliate" in subsec. 95(1) to read as above, applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after 2002.

Technical Notes: In computing the income for a taxation year of a taxpayer resident in Canada, subsection 91(1) requires the inclusion of a specified percentage of the foreign accrual property income (FAPI) of any controlled foreign affiliate of the taxpayer. In order to eliminate overlap between the FAPI rules and the rules for foreign investment entities in sections 94.1 to 94.4, the latter rules generally do not apply in respect of a taxpayer's interest in a controlled foreign affiliate of a taxpayer resident in Canada. An election is provided under new paragraph 94.1(2)(h) under which a foreign affiliate of a taxpayer can be treated as the taxpayer's controlled foreign affiliate.

The definition "controlled foreign affiliate" is amended to refer to foreign affiliates that are deemed by paragraph 94.1(2)(h) to be controlled foreign affiliates.

(a) the taxpayer,

(b) the taxpayer and not more than four other persons resident in Canada,

(c) not more than 4 persons resident in Canada, other than the taxpayer,

(d) a person or persons with whom the taxpayer does not deal at arm's length, or

(e) the taxpayer and a person or persons with whom the taxpayer does not deal at arm's length;

Proposed Amendment — 95(1)"controlled foreign affiliate"

"controlled foreign affiliate", at any time of a taxpayer resident in Canada, means a foreign affiliate of the taxpayer that

(a) is, at that time, a controlled foreign affiliate of the taxpayer because of paragraph 94.1(2)(h),

(b) is, at that time, controlled by the taxpayer, or

(c) would, at that time, be controlled by the taxpayer if the taxpayer owned each share of the capital stock of the foreign affiliate that is owned, at that time, by

(i) the taxpayer,

(ii) each person that does not deal at arm's length with the taxpayer,

(iii) each of not more than four persons (other than the taxpayer or a person described in subparagraph (ii)) resident in Canada, and

(iv) each person that does not deal at arm's length with a person resident in Canada described in subparagraph (iii);

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(1), will amend the definition "controlled foreign affiliate" in subsec. 95(1) to read as above, applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after 1995, except that

(a) for taxation years, of a foreign affiliate of a taxpayer, that begin after 2002 and on or before February 27, 2004, the definition is to be read as follows:

"controlled foreign affiliate", at any time of a taxpayer resident in Canada, means a foreign affiliate of the taxpayer that

(a) is, at that time, a controlled foreign affiliate of the taxpayer because of paragraph 94.1(2)(h),

(b) is, at that time, controlled by the taxpayer, or

(c) would, at that time, be controlled by the taxpayer if the taxpayer owned each share of the capital stock of the foreign affiliate that is owned, at that time, by

(i) the taxpayer and not more than four other persons resident in Canada,

(ii) not more than four persons resident in Canada (other than the taxpayer or persons with whom the taxpayer does not deal at arm's length), or

(iii) the taxpayer and each person with whom the taxpayer does not deal at arm's length.

(b) for taxation years, of a foreign affiliate of a taxpayer, that begin after 1995 and before 2003, that definition is to be read as follows:

"controlled foreign affiliate", at any time of a taxpayer resident in Canada, means a foreign affiliate of the taxpayer that

(a) is, at that time, controlled by the taxpayer, or

(b) would, at that time, be controlled by the taxpayer if the taxpayer owned each share of the capital stock of the foreign affiliate that is owned, at that time, by

(i) the taxpayer and not more than four other persons resident in Canada,

(ii) not more than four persons resident in Canada (other than the taxpayer or persons with whom the taxpayer does not deal at arm's length), or

(iii) the taxpayer and each person with whom the taxpayer does not deal at arm's length.

Technical Notes: In subsection 95(1), a "controlled foreign affiliate", at any time, of a taxpayer is defined to mean a foreign affiliate of the taxpayer that is, at that time, controlled by

- the taxpayer,
- the taxpayer and not more than four other persons resident in Canada,
- not more than four persons resident in Canada, other than the taxpayer,
- a person or persons with whom the taxpayer does not deal at arm's length, or
- the taxpayer and a person or persons with whom the taxpayer does not deal at arm's length.

The definition "controlled foreign affiliate" is amended to provide that a "controlled foreign affiliate", at any time, of a taxpayer resident in Canada means a foreign affiliate of the taxpayer at that time that

- is, at that time, a controlled foreign affiliate of the taxpayer because of proposed new paragraph 94.1(2)(h),
- is, at that time, controlled by the taxpayer,
- would, at that time, be controlled by the taxpayer if the taxpayer owned each share of the capital stock of the foreign affiliate that is owned, at that time, by
  - — the taxpayer,
  - — each person that does not deal at arm's length with the taxpayer,
  - — each of not more than four persons (other than the taxpayer or a person that does not deal at arm's length with the taxpayer) resident in Canada, and
  - — each person that does not deal at arm's length with any of the four persons resident in Canada.

For information about proposed new paragraph 94.1(2)(h), see the October 30, 2003 legislative proposals released by the Department of Finance dealing with non-resident trusts and foreign investment entities.

With respect to applying the definition "controlled foreign affiliate", note the rules in proposed new paragraphs 95(2)(u) to (x). For more detail, see the commentaries for those paragraphs.

The new definition of "controlled foreign affiliate" applies to taxation years, of a foreign affiliate of a taxpayer, that begin after 1995. However, for taxation years, of a foreign affiliate of a taxpayer that begin after 2002 and on or before February 27, 2004, the term "controlled foreign affiliate" would be defined as described below:

"controlled foreign affiliate", at any time, of a taxpayer resident in Canada means a foreign affiliate of the taxpayer that

- *is, at that time, a controlled foreign affiliate of the taxpayer because of proposed new paragraph 94.1(2)(h),*
- *is, at that time, controlled by the taxpayer, or*
- *would, at that time, be controlled by the taxpayer if the taxpayer owned each share of the capital stock of the foreign affiliate that is owned, at that time, by*
  - — *the taxpayer and not more than four other persons resident in Canada,*
  - — *not more than four persons resident in Canada (other than the taxpayer or persons with whom the taxpayer does not deal at arm's length), or*
  - — *the taxpayer and each person with whom the taxpayer does not deal at arm's length.*

For taxation years, of a foreign affiliate of a taxpayer that begin after 1995 and before 2003, the term "controlled foreign affiliate" would be defined as described below:

"controlled foreign affiliate", at any time, of a taxpayer resident in Canada means a foreign affiliate of the taxpayer that

- *is, at that time, controlled by the taxpayer, or*
- *would, at that time, be controlled by the taxpayer if the taxpayer owned each share of the capital stock of the foreign affiliate that is owned, at that time, by*
  - — *the taxpayer and not more than four other persons resident in Canada,*
  - — *not more than four persons resident in Canada (other than the taxpayer or persons with whom the taxpayer does not deal at arm's length), or*
  - — *the taxpayer and each person with whom the taxpayer does not deal at arm's length.*

Related Provisions: 17(15)"controlled foreign affiliate" — Application of definition to loan by corporation to non-resident; 94(3)(a)(x) [proposed] — Application to trust deemed resident in Canada; 94.1(1)"exempt interest"(a)(i) — CFA excluded from foreign investment entity (FIE) rules; 94.1(2)(h) — Where entity deemed to be CFA and thus excluded from FIE rules; 95(2)(u) — Shares deemed owned proportionately by each shareholder; 95(2)(v)–(x) — Shares held through trust or partnership deemed owned proportionately; 128.1(1)(d) — Foreign affiliate becoming resident in Canada deemed to have been controlled foreign affiliate; 233.4(4) — Reporting requirements; 248(1)"controlled foreign affiliate" — Definition applies to entire Act; 256(6), (6.1) — Meaning of "controlled".

History: Paras. (c) to (e) of "controlled foreign affiliate" in subsec. 95(1) substituted for para. (c) by 1994, c. 7, Sch. II (1991, c. 49), subsec. 71(1), applicable to taxation years commencing after July 13, 1990. Para. (c) formerly read:

(c) a related group of which the taxpayer was a member;

Proposed Addition — 95(1)"entity"

"entity" includes an association, a corporation, a fund, a natural person, a joint venture, an organization, a partnership, a syndicate and a trust;

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(7), will add the definition "entity" to subsec. 95(1), applicable in respect of taxation years, of a foreign affiliate of a taxpayer, that end after December 19, 2002.

Technical Notes: The new definition "entity" in subsection 95(1) is relevant for proposed new subsection 95(3.6). An entity is defined as including an association, a corporation, a fund, a natural person, a joint venture, an organization, a partnership, a syndicate and a trust.

This new definition applies in respect of taxation years, of a foreign affiliate of a taxpayer, that end on or after December 20, 2002.

"excluded property" of a foreign affiliate of a taxpayer means any property of the foreign affiliate that is

(a) used or held by the foreign affiliate principally for the purpose of gaining or producing income from an active business,

(b) shares of the capital stock of another foreign affiliate of the taxpayer where all or substantially all of the property of the other foreign affiliate is excluded property, or

(c) an amount receivable the interest on which is, or would be if interest were payable thereon, income from an active business by virtue of subparagraph (2)(a)(ii),

Proposed Amendment — 95(1)"excluded property"(a)–(c.1)

(a) used or held by the foreign affiliate principally for the purpose of gaining or producing income from an active business carried on by it,

(b) shares of the capital stock of another foreign affiliate of the taxpayer where all or substantially all of the fair market value of the property of the other foreign affiliate is attributable to property, of that other foreign affiliate, that is excluded property,

(c) property all or substantially all of the income from which is, or would be, if there were income from the property, income from an active business including income that would be deemed to be income from an active business by paragraph (2)(a) if that paragraph were read without reference to subparagraph (v), or

(c.1) property arising under or as a result of an agreement that

(i) provides for the purchase, sale or exchange of currency, and

(ii) can reasonably be considered to have been made by the affiliate to reduce its risk, with respect to an amount that was receivable under an agreement that relates to the sale of excluded property or with respect to an amount that was receivable and was a property described in paragraph (c), of fluctuations in the value of the currency in which the amount receivable was denominated,

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(2), will amend paras. (a) to (c) of the definition "excluded property" in subsec. 95(1) to read as above, and add para. (c.1), applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. Paras. (a), (c) and (c.1) may, by election, be applicable to taxation years that begin after 1994: see Application note to 95(2)(a) proposed amendments.

Notwithstanding subsections 152(4) to (5) of the Act, any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year shall be made that is necessary to take the election or revocation referred to above, into account.

If a taxpayer has made what would, but for this paragraph, be a valid election as described above, and the taxpayer has, on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day that is the third anniversary of the day on which the amending Act receives Royal Assent, filed with the Minister of National Revenue a notice in writing to revoke the election, the election is deemed, otherwise than for the purpose of this paragraph, never to have been made.

Notwithstanding subsecs. 152(4) to (5) of the Act, any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year shall be made that is necessary to take an election or revocation referred to above into account.

Technical Notes: [*Global Section 95 Election* — See under 95(2)(a) — ed.]

[*Fresh Start Section 95 Election* — See under 95(1)"taxable Canadian business" — ed.]

The definition "excluded property" in subsection 95(1) of the Act is relevant for the purposes of computing the foreign accrual property income (FAPI) and the tax surpluses and deficits of a foreign affiliate of a taxpayer. Under the definition "foreign accrual property income" in subsection 95(1), capital gains and losses from the disposition of excluded property are disregarded in computing FAPI except in the circumstances set out in the description of B in the definition of FAPI.

Paragraph (a) of the definition "excluded property" provides that any property used or held by the foreign affiliate principally for the purpose of gaining or producing income from an active business is excluded property under that definition. Paragraph (a) of the definition is amended to clarify that property does not meet the requirements of that paragraph unless the property is used or held by the foreign affiliate principally for the purpose of gaining or producing income from an active business that is carried on by it.

Paragraph (b) of the definition "excluded property" provides that shares owned by a foreign affiliate of a taxpayer in the capital stock of another foreign affiliate of the taxpayer are excluded property if all or substantially all of the property of the other foreign affiliate is excluded property. Paragraph (b) of the definition is amended to clarify that shares owned by a foreign affiliate of a taxpayer in the capital stock of another foreign affiliate of the taxpayer do not meet the requirements of that paragraph unless all or substantially all of the fair market value of the property of the other foreign affiliate is attributable to property of that other foreign affiliate that is excluded property.

Paragraph (c) of the definition "excluded property" provides that an amount receivable is excluded property of a foreign affiliate of a taxpayer if the interest on the amount receivable is, or would be if interest were payable on it, income from an active business because of subparagraph 95(2)(a)(ii). Paragraph (c) of the definition is amended to broaden the meaning of "excluded property" to include property all or substantially all of the income from which would be income from an active business including income that would be deemed to be income from an active business by amended paragraph 95(2)(a) if that paragraph were read without reference to subparagraph (v). For additional information, see the commentary to paragraph 95(2)(a).

New paragraph (c.1) is added to the definition "excluded property" to include property arising under or as a result of an agreement that

- provides for the purchase, sale or exchange of currency, and

- can reasonably be considered to have been made by a foreign affiliate of a taxpayer to reduce the affiliate's risk, with respect to an amount that was receivable under an agreement that relates to the sale of excluded property or with respect to an amount that was receivable and was a property described in amended paragraph (c) of the definition, of fluctuations in the value of the currency in which the amount receivable was denominated.

New paragraph (c.1) of the definition "excluded property" will, for example, address a situation where the affiliate enters into an agreement (the "sale agreement"), relating to the sale of excluded property, in which the amount receivable under the sale agreement is denominated in a currency other than the affiliate's calculating currency, and then, in order to reduce the affiliate's risk of fluctuations in the value of the currency in which the amount receivable under the sale agreement is denominated, enters into a currency hedging agreement with respect to all or a portion of that amount receivable. In such a situation, new paragraph (c.1) ensures that the income or loss from that hedge receives the same income characterization as the income or loss from the property being hedged; i.e., the income or loss from that hedge is considered to be income or loss from the sale of excluded property.

New paragraphs (a), (c) and (c.1) of the definition "excluded property" apply to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. Those paragraphs are part of the Global Section 95 Election package described [under 95(2)(a) — ed.].

New paragraph (b) of the definition "excluded property" applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002.

and, for the purposes of the definitions "foreign affiliate" in this subsection and "direct equity percentage" in subsection (4) as they apply to this definition, where at any time a foreign affiliate of a taxpayer has an interest in a partnership,

(d) the partnership shall be deemed to be a non-resident corporation having capital stock of a single class divided into 100 issued shares, and

(e) the affiliate shall be deemed to own at that time that proportion of the issued shares of that class that

(i) the fair market value of the affiliate's interest in the partnership at that time

is of

(ii) the fair market value of all interests in the partnership at that time;

Related Provisions: 85.1(4)(a) — Exception to share-for-share exchange rules where foreign affiliate's property is substantially all excluded property; 93(1.4) — Disposition by FA of share of FA — share deemed not to be excluded property; 94.1(1)"exempt property"(b)(ii) — Excluded property exempt from foreign investment entity rules; Reg. 5907(5.1) — Rules on disposition of excluded property by FA.

History: That portion of the definition "excluded property" following para. (c) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 71(2), applicable after 1989. That portion formerly read:

and for the purpose of this definition, where a foreign affiliate of a taxpayer has an interest in a partnership and the fair market value of the interest is equal to or greater than 10% of the fair market value of all interests in the partnership, the partnership shall be deemed to be another foreign affiliate of the taxpayer and the interest of the foreign affiliate in the partnership shall be deemed to be shares of the capital stock of that other foreign affiliate;

"foreign accrual property income" of a foreign affiliate of a taxpayer, for any taxation year of the affiliate, means the amount determined by the formula

(A + A.1 + A.2 + B + C) – (D + E + F + G + H)

Proposed Amendment — 95(1)"foreign accrual property income" formula

(A + A.1 + A.2 + B) – (D + E + F + G + H)

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 19(3), will amend the formula in the definition "foreign accrual property income" in subsec. 95(1) to read as above, applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after 2002.

Technical Notes: The FAPI of a controlled foreign affiliate of a taxpayer resident in Canada must be allocated to the taxpayer in accordance with subsection 91(1). Under its definition in subsection 95(1), FAPI includes certain amounts that would be included in the affiliate's income under existing subsection 94.1(1) if that subsection were read in the manner specified in the description of C of the definition.

Existing section 94.1 is being repealed. Accordingly, the description of C in the definition "foreign accrual property income" is also repealed. There are, however, special rules in new paragraph 95(2)(g.3) with regard to the application of sections 94.1 to 94.4 to a foreign affiliate. Amounts determined under paragraph 95(2)(g.3) will be included in FAPI under the description of "A" in the definition "foreign accrual property income". For detail on paragraph 95(2)(g.3), see the commentary on that paragraph.

where

A is the amount that would, if section 80 did not apply to the affiliate for the year or a preceding taxation year, be the total of the affiliate's incomes for the year from property and businesses (other than active businesses) determined as if each amount described in clause (2)(a)(ii)(D) that was paid or payable, directly or indirectly, by the affiliate to another foreign affiliate of either the taxpayer or a person with whom the taxpayer does not deal at arm's length were nil where an amount in respect of the income derived by the other foreign affiliate from that amount that was paid or payable to it by the affiliate was added in computing its income from an active business, other than

(a) interest that would, by virtue of paragraph 81(1)(m), not be included in computing the income of the affiliate if it were resident in Canada,

(b) a dividend from another foreign affiliate of the taxpayer,

(c) a taxable dividend to the extent that the amount thereof would, if the dividend were received by the taxpayer, be deductible by the taxpayer under section 112, or

(d) any amount included because of subsection 80.4(2) in the affiliate's income in respect of indebtedness to another corporation that is a foreign affiliate of the taxpayer or of a person resident in Canada with whom the taxpayer does not deal at arm's length,

A.1 is twice the total of all amounts included in computing the affiliate's income from property or businesses (other than active businesses) for the year because of subsection 80(13),

A.2 is the amount determined for G in respect of the affiliate for the preceding taxation year,

B is such portion of the affiliate's taxable capital gains for the year from dispositions of property, other than dispositions of excluded property to which none of paragraphs (2)(c), (d) and (e) apply, as may reasonably be considered to have accrued after its 1975 taxation year,

Proposed Amendment — 95(1)"foreign accrual property income"B

B is the portion of the affiliate's income (to the extent that the income is not included under the description of A), or of the affiliate's taxable capital gains that can reasonably be considered to have accrued after

its 1975 taxation year, as the case may be, for the year

(a) from the dispositions of property other than dispositions of excluded property,

(b) from dispositions of excluded property to which any of paragraphs (2)(c), (c.2), (d), (d.1), (e), (e.1), (e.3) to (e.5) and (f.4) and 88(3)(a) applies, or

(c) arising because of a gain under subsection 40(3) in respect of a share because of a dividend on the share referred to in subparagraph (2)(e.3)(iv) or (e.4)(v),

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(3), will amend the description of B in the definition "foreign accrual property income" in subsec. 95(1) to read as above, applicable in respect of taxation years, of a foreign affiliate of a taxpayer, that end after December 19, 2002.

Technical Notes: The definition "foreign accrual property income" in subsection 95(1) is relevant for the purposes of section 91 and for the purposes of computing the tax surpluses and deficits of the foreign affiliate of a taxpayer. Section 91 provides rules for determining amounts that a taxpayer resident in Canada is to include in computing that taxpayer's income for a particular year as income from a share of a controlled foreign affiliate of that taxpayer.

First, the description of B in the definition "foreign accrual property income" in subsection 95(1) is amended to include income (other than income included in the description of A in the definition "foreign accrual property income") and capital gains, as the case may be,

- from dispositions of excluded property where any of paragraphs 88(3)(a) and 95(2)(c), (c.2), (d), (d.1), (e), (e.1), (e.3) to (e.5) and (f.4) applies in respect of the disposition and, and
- gains arising under subsection 40(3) in respect of a share because of a dividend referred to in subparagraph 95(2)(e.3)(iv) or (e.4)(v) on the share,

which income or capital gain can reasonably be considered to have accrued after the affiliate's 1975 taxation year.

Second, the description of E in the definition of "foreign accrual property income" is amended to remove the reference to dispositions of excluded property to which none of paragraphs 95(2)(c), (d) or (e) apply, and replace it with a reference to dispositions of excluded property.

C is, where the affiliate is a controlled foreign affiliate of the taxpayer, the amount that would be required to be included in computing its income for the year if

(a) subsection 94.1(1) were applicable in computing that income,

(b) the words "earned directly by the taxpayer" in that subsection were replaced by the words "earned by the person resident in Canada in respect of whom the taxpayer is a foreign affiliate",

(c) the words "other than a controlled foreign affiliate of the taxpayer or a prescribed non-resident entity" in paragraph 94.1(1)(a) were replaced by the words "other than a prescribed non-resident entity or a controlled foreign affiliate of a person resident in Canada of whom the taxpayer is a controlled foreign affiliate", and

(d) the words "other than a capital gain" in paragraph 94.1(1)(g) were replaced by the words "other than any income that would not be included in the taxpayer's foreign accrual property income for the year if the value of C in the definition "foreign accrual property income" in subsection 95(1) were nil and other than a capital gain",

Proposed Repeal — 95(1)"foreign accrual property income"C

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 19(4), will repeal the description of C in the definition "foreign accrual property income", applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after 2002.

Technical Notes: See under 95(1)"foreign accrual property income" formula above.

D is the total of the affiliate's losses for the year from property and businesses (other than active businesses) determined as if there were not included in the affiliate's income any amount described in any of paragraphs (a) to (d) of the description of A and as if each amount described in clause (2)(a)(ii)(D) that was paid or payable, directly or indirectly, by the affiliate to another foreign affiliate of either the taxpayer or a person with whom the taxpayer does not deal at arm's length were nil where an amount in respect of the income derived by the other foreign affiliate from that amount that was paid or payable to it by the affiliate was added in computing its income from an active business,

E is such portion of the affiliate's allowable capital losses for the year from dispositions of property, other than dispositions of excluded property to which none of paragraphs (2)(c), (d) and (e) apply, as may reasonably be considered to have accrued after its 1975 taxation year,

Proposed Amendment — 95(1)"foreign accrual property income"E

E is the amount of the foreign affiliate's allowable capital losses for the year from dispositions of property (other than excluded property) that may reasonably be considered to have accrued after its 1975 taxation year,

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(4), will amend the description of E in the formula in the definition "foreign accrual property income" in subsec. 95(1) to read as above, applicable in respect of taxation years, of a foreign affiliate of a taxpayer, that end on or after December 20, 2002.

Technical Notes: See under 95(1)"foreign accrual property income"B above.

F is the amount claimed by the taxpayer, which amount may not be greater than the amount prescribed to be the deductible loss of the affiliate for the year,

G is the amount, if any, by which

(a) the total of amounts determined for A.1 and A.2 in respect of the affiliate for the year, and

exceeds

(b) the total of all amounts determined for D to F in respect of the affiliate for the year, and

H is

(a) where the affiliate was a member of a partnership at the end of the fiscal period of the partnership that ended in the year and the partnership received a dividend at a particular time in that fiscal period from a corporation that was, for the purposes of sections 93 and 113, a foreign affiliate of the taxpayer at that particular time, the portion of the amount of that dividend that is included in the value of A in respect of the affiliate for the year and that is deemed by paragraph 93.1(2)(a) to have been received by the affiliate for the purposes of sections 93 and 113, and

(b) in any other case, nil;

Related Provisions: 40(3)(d) — Deemed gain where ACB would become negative; 53(1)(m) — ACB of offshore investment fund property; 95(2) — Determination of certain components of FAPI; 152(6.1) — Reassessment to apply FAPI loss carryback; 248(1)"foreign accrual property

income" — Definition applies to entire Act; 257 — Formula cannot calculate to less than zero.

History: The formula in the definition "foreign accrual property income" in subsec. 95(1) amended to add " + H" by 2001, c. 17, subsec. 73(1), applicable after November 1999.

The description of A.1 in the definition "foreign accrual property income" amended by the said c. 17, subsec. 73(2) to replace the reference to the expression "4/3 of" with a reference to the word "twice", applicable to taxation years that end after February 27, 2000 except that, where a taxation year of a foreign affiliate of a taxpayer includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, the reference to the word "twice" shall be read as a reference to the expression "the fraction that is the reciprocal of the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the foreign affiliate for the year, multiplied by".

The description of F in the definition "foreign accrual property income" amended by the said c. 17, subsec. 73(3), applicable to foreign affiliates' taxation years that begin after November 1999. The description of F formerly read:

F is the amount prescribed to be the deductible loss of the affiliate for the year and the five immediately preceding taxation years, and

The description of H in the definition "foreign accrual property income" added by the said c. 17, subsec. 73(4), applicable after November 1999.

Paras. (c) and (d) added to the description of C in the definition "foreign accrual property income" in subsec. 95(1) by 1998, c. 19, subsec. 122(2), para. (c) applicable to taxation years that end after November 1991, para. (d) applicable to taxation years that begin after June 19, 1996.

The formula in the definition "foreign accrual property income" in subsec. 95(1) amended, and the descriptions of A.1 and A.2 added, by 1995, c. 21, subsecs. 32(1), (2), applicable to taxation years that end after February 21, 1994. The formula formerly read:

$$(A + B + C) - (D + E + F)$$

The opening words of the description of A in the definition "foreign accrual property income" in subsec. 95(1) amended by 1995, c. 21, subsec. 78(2), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the amended description of A applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation year of such foreign affiliate.

In these instances, for taxation years that end after February 21, 1994, the opening words of the description of A should be read as follows (1995, c. 21, subsec. 78(1)):

A is the amount that would, if section 80 did not apply to the affiliate for the year or a preceding taxation year, be the total of the affiliate's incomes for the year from property and businesses (other than active businesses), other than

The opening words of the description of A formerly read:

A is the total of the affiliate's incomes for the year from property and businesses other than active businesses, other than

The description of D in the definition "foreign accrual property income" in subsec. 95(1) amended by 1995, c. 21, subsec. 46(2), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the amended legislation applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation of such foreign affiliate.

The description of D formerly read:

D is the total of the affiliate's losses for the year from property and businesses (other than active businesses) determined as if there were not included in the affiliate's income any amount described in any of paragraphs (a) to (d) of the description of A,

The description of G added to the definition "foreign accrual property income" in subsec. 95(1) by 1995, c. 21, subsec. 32(3), applicable to taxation years that end after February 21, 1994.

Para. (d) of the description of A in "foreign accrual property income" added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 71(3), applicable to 1987 *et seq.*

The description of D in "foreign accrual property income" amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 71(4), to parenthesize "other than active businesses" and to substitute "paragraphs (a) to (d)" for "paragraphs (a), (b) or (c)", applicable to 1987 *et seq.*

Selected Cases [95(1)"foreign accrual property income"]: *Canada Trustco Mortgage Co. v. MNR*, [1999] 2 C.T.C. 308 (FCTD) (No separate treatment for portions of total income of foreign affiliate); *Rostland Corp. v. Canada*, [1995] 2 C.T.C. 2276 (TCC) (Interest income in heavily leveraged real estate venture was income from an active business and not FAPI).

Regulations: 5903 (prescribed deductible loss); 5907(2.8) (transfer of active business income between foreign affiliates).

I.T. Application Rules: 35(1) (ITAR 26 does not apply in determining gains and losses of foreign affiliates; 35(4) (where corporation deemed to be foreign affiliate before May 7, 1974 because of election).

Interpretation Bulletins: IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada.

"foreign accrual tax" applicable to any amount included in computing a taxpayer's income by virtue of subsection 91(1) for a taxation year in respect of a particular foreign affiliate of the taxpayer means

(a) the portion of any income or profits tax that was paid by

(i) the particular affiliate, or

(ii) any other foreign affiliate of the taxpayer in respect of a dividend received from the particular affiliate

and that may reasonably be regarded as applicable to that amount, and

(b) any amount prescribed in respect of the particular affiliate to be foreign accrual tax applicable to that amount;

Regulations: 5907(1.3) (prescribed foreign accrual tax).

"foreign affiliate", at any time, of a taxpayer resident in Canada means a non-resident corporation in which, at that time,

(a) the taxpayer's equity percentage is not less than 1%, and

(b) the total of the equity percentages in the corporation of the taxpayer and of each person related to the taxpayer (where each such equity percentage is determined as if the determinations under paragraph (b) of the definition "equity percentage" in subsection (4) were made without reference to the equity percentage of any person in the taxpayer or in any person related to the taxpayer) is not less than 10%,

except that a corporation is not a foreign affiliate of a non-resident-owned investment corporation;

Related Provisions: 87(8) — Merger of foreign affiliate; 93.1 — Shares held by a partnership; 95(4) — Equity percentage; 128.1(1)(d) — Foreign affiliate becoming resident in Canada; 233.4(4) — Reporting requirements; 248(1)"foreign affiliate" — Definition applies to entire Act.

History: The definition "foreign affiliate" in subsec. 95(1) amended by 1995, c. 21, subsec. 46(1), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and

after February 22, 1994, the amended legislation applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation of such foreign affiliate.

The definition formerly read:

"foreign affiliate", at any time, of a taxpayer (other than a non-resident-owned investment corporation) resident in Canada means a corporation (other than a corporation resident in Canada), in which, at that time, the taxpayer's equity percentage was not less than 10%;

Selected Cases [subsec. 95(1)"foreign affiliate"]: *Old HW-GW Ltd. v. Canada*, [1993] 1 C.T.C. 363 (FCA); leave to appeal to SCC refused (Sept. 30, 1993), Doc. 23591 (SCC) (Puerto Rico separate country from US under subsecs. 5907(10) and (11) of Regulations; incentive to promote sales from Puerto Rico to US was "export" incentive; dividends from foreign affiliate in Puerto Rico not from "exempt surplus").

I.T. Application Rules: 35(4) (where corporation deemed to be foreign affiliate due to election made before May 6, 1974).

Interpretation Bulletins: IT-343R: Meaning of the term "corporation"; IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada.

Information Circulars: 77-9R: Books, records and other requirements for taxpayers having foreign affiliates.

Forms: T2 SCH 25: Investment in foreign affiliates.

"foreign bank" means an entity that would be a foreign bank within the meaning assigned by the definition of that expression in section 2 of the *Bank Act* if

(a) that definition were read without reference to the portion thereof after paragraph (g) thereof, and

(b) the entity had not been exempt under section 12 of that Act from being a foreign bank;

Related Provisions: 94.1(1)"exempt business"(a) — Foreign bank exempt from foreign investment entity rules.

History: The definition "foreign bank" added to subsec. 95(1) by 1995, c. 21, subsec. 46(3), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the new definition applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation of such foreign affiliate.

"income from an active business" of a foreign affiliate of a taxpayer for a taxation year includes, for greater certainty, any income of the affiliate for the year that pertains to or is incident to that business but does not include

(a) other income that is its income from property for the year, or

(b) its income for the year from a business that is deemed by subsection (2) to be a business other than an active business carried on by the affiliate;

Related Provisions: 95(1)"active business" — Businesses excluded; 95(1)"income from property" — Extended meaning of income from property.

History: The definition "income from an active business" added to subsec. 95(1) by 1995, c. 21, subsec. 46(3), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the new definition applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation of such foreign affiliate.

"income from property" of a foreign affiliate of a taxpayer for a taxation year includes its income for the year from an investment business and its income for the year from an adventure or concern in the nature of trade, but, for greater certainty, does not include its income for the year that is because of subsection (2) included in its income from an active business or in its income from a business other than an active business;

Related Provisions: 9(1) — Determination of income from property; 95(1)"investment business" — Meaning of investment business; 95(2)(l) — Income from trading or dealing in indebtedness.

History: The definition "income from property" added to subsec. 95(1) by 1995, c. 21, subsec. 46(3), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the new definition applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation of such foreign affiliate.

"investment business" of a foreign affiliate of a taxpayer means a business carried on by the affiliate in a taxation year (other than a business deemed by subsection (2) to be a business other than an active business carried on by the affiliate) the principal purpose of which is to derive income from property (including interest, dividends, rents, royalties or any similar returns or substitutes therefor), income from the insurance or reinsurance of risks, income from the factoring of trade accounts receivable, or profits from the disposition of investment property, unless it is established by the taxpayer or the affiliate that, throughout the period in the year during which the business was carried on by the affiliate,

(a) the business (other than any business conducted principally with persons with whom the affiliate does not deal at arm's length) is

(i) a business carried on by it as a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities, the activities of which are regulated in the country in which the business is principally carried on, or

Proposed Amendment — 95(1)"investment business"(a)(i)

(i) a business carried on by it as a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities, the activities of which are regulated under the laws

(A) of each country in which the business is carried on through a permanent establishment (as defined by regulation) in that country and of the country under whose laws the affiliate

is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued,

(B) of the country in which the business is principally carried on, or

(C) if the affiliate is related to a non-resident corporation, of the country under whose laws that non-resident corporation is governed and any of exists, was (unless that non-resident corporation was continued in any jurisdiction) formed or organized, or was last continued, if those regulating laws are recognized under the laws of the country in which the business is principally carried on and all of those countries are members of the European Union, or

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(5), will amend subpara. (a)(i) of the definition "investment business" in subsec. 95(1) to read as above, applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after 1999.

Technical Notes: The definition "investment business" in subsection 95(1) is relevant for the purposes of the definitions "income from property" and "foreign accrual property income" in that subsection.

Under the definition "investment business", the investment business of a foreign affiliate of a taxpayer means, in general, a business carried on by the affiliate the principal purpose of which is to derive income from property, income from the insurance or reinsurance of risks, income from the factoring of trade accounts receivable, or profits from the disposition of investment property, unless it is established that the business meets the requirements of paragraphs (a) and (b) of that definition.

Paragraph (a) of the definition "investment business" requires that the affiliate conduct the business principally with arm's length persons and that the business be either

- carried on by the affiliate as a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities, the activities of which are regulated in the country in which the business is principally carried on (subparagraph (a)(i) of the definition), or
- the development of real estate for sale, the lending of money, the leasing or licensing of property or the insurance or reinsurance of risks (subparagraph (a)(ii) of the definition).

In general terms, paragraph (b) of the definition requires that the affiliate or (as described in the preamble to paragraph (b) of the definition, where the affiliate carries on the business as a member of a partnership (except where the affiliate is a "specified member" of the partnership)), the partnership

- employs more than 5 employees full time in the active conduct of the business (subparagraph (b)(i) of the definition), or
- employs the equivalent of more than 5 employees in the active conduct of the business, taking into account only services provided by the employees of the affiliate and services provided outside Canada by employees of
  - a corporation related to the affiliate (clause (b)(ii)(A) of the definition), or
  - members of the partnership, other than a "specified member" of the partnership (clause (b)(ii)(B) of the definition).

The definition "investment business" is amended in the following ways.

First, subparagraph (a)(i) of definition is amended to refer to a business carried on by a foreign affiliate as a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities, the activities of which are regulated under the laws

- of each country in which the business is carried on through a permanent establishment (the definition, in proposed new Regulation 8202, of "permanent establishment" applies for this purpose) in that country and of the country under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued,
- of the country in which the business is principally carried on, or
- if the affiliate is related to a non-resident corporation, of the country under whose laws that non-resident corporation is governed and any of exists, was (unless that non-resident corporation was continued in any jurisdiction) formed or organized, or was last continued, if those regulating laws are recognized under the laws of the country in which the business is principally carried on and all of those countries are members of the European Union.

Second, the "preamble" to paragraph (b) of the definition "investment business" is amended so that the concept of "member of a partnership (except where the affiliate is a specified member of the partnership)" is replaced by the concept of "qualifying member of a partnership".

Third, clause (b)(ii)(B) of the definition "investment business" is replaced by new clauses (b)(ii)(B) and (C) so that, in general terms, in determining whether the affiliate or the partnership employs the equivalent of more than 5 employees full time in the active conduct of the business, there is taken into account only services provided by the employees of the affiliate and services provided outside Canada by employees of

- a corporation related to the affiliate (clause (b)(ii)(A) of the definition), or
- where the affiliate carries on the business as a member of the partnership,
  - a person who was a "qualifying member" of the partnership,
  - a designated corporation in respect of the affiliate (if the affiliate was a qualifying member of the partnership), or
  - a designated partnership in respect of the affiliate (if the affiliate was a qualifying member of the partnership), or
- where the affiliate carries on the business (otherwise than as a member of the partnership),
  - a corporation that was a "qualifying shareholder" of the affiliate,
  - a designated corporation in respect of the affiliate, or
  - a designated partnership in respect of the affiliate.

Fourth, the "postamble" to subparagraph (b)(ii) of the definition "investment business" is amended to reflect the changes to clauses (b)(ii)(B) and (C) of that definition.

The expression "qualifying member" is a newly introduced term and is defined in new paragraph 95(2)(o) for the purposes of subdivision i of Division B of Part I of the Act. That expression is, for the purposes of the Act generally, defined in amended subsection 248(1) as a person who would, at the relevant time, be determined to be a qualifying member of the partnership under paragraph 95(2)(o). For more information about the expression "qualifying member", see the commentary to paragraph 95(2)(o) and subsection 248(1).

The expressions "qualifying shareholder", "designated corporation" and "designated partnership" are also newly introduced terms and are defined in new paragraphs 95(2)(p), (s) and (t), respectively. For additional information, see the commentary to those paragraphs.

Amended subparagraph (a)(i) of the definition "investment business" applies to taxation years, of a foreign affiliate of a taxpayer, that begin after 1999.

The amendments to the "preamble" of paragraph (b), and to subclause (b)(ii)(B)(I), of the definition "investment business", in conjunction with the new definition "qualifying member", ensure that, in applying paragraph (b) of the definition "investment business", limited partners who are qualifying members of a limited partnership are treated in the same manner as general partners of a general partnership. These amendments also ensure that, even if the activities of the relevant partner do not meet the business activity requirements in new subparagraph 95(2)(o)(i), a partnership may qualify under the "preamble" to paragraph (b) of the definition "investment business" (or a partner may qualify under clause (b)(ii)(C) of that definition) if the relevant partner has an equity interest in the partnership that meets the criteria set out in new subparagraph 95(2)(o)(ii). For more detail, see the commentary to new paragraph 95(2)(o).

New clause (b)(ii)(C) of the definition "investment business", in conjunction with the new definition "qualifying shareholder", ensures that in the case where the affiliate carries on the business (other than as a member of the partnership), services that are rendered outside of Canada by a corporation that was a "qualifying shareholder" of the affiliate, and otherwise meet the conditions set out in paragraph (b) of the definition, may be taken into account in determining whether the "more than 5 employees full time" equivalency test in subparagraph (b)(ii) is met. For more detail, see the commentary to the definition "qualifying shareholder" in paragraph 95(2)(p).

New subclauses (b)(ii)(B)(II), (III) and (C)(II) and (III) expand the scope of partnerships or corporations that may be taken into account in determining whether the "more than 5 employees full time" equivalency test in subparagraph (b)(ii) is met by introducing the concepts of a designated corporation and a designated partnership. For additional information, see commentary to paragraphs 95(2)(s) and (t).

The amendments to the "preamble" of paragraph (b), to clauses (b)(ii)(B) and (C), and to the "postamble" of subparagraph (b)(ii), of the definition "investment business" apply to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. These amendments are included in the Global Section 95 Election package described [under 95(2)(a) — ed.]

(ii) the development of real estate for sale, the lending of money, the leasing or licensing of property or the insurance or reinsurance of risks, and

Proposed Amendment — 95(1)"investment business"(a)(ii)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 230(1), will amend subpara. (a)(ii) of the definition "investment business" in subsec. 95(1) by substituting "real property or immovables" for "real estate", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(b) the affiliate or, where the affiliate carries on the business as a member of a partnership (except where the affiliate is a specified member of the partnership in a fiscal period of the partnership that ends in the year), the partnership employs

(i) more than 5 employees full time in the active conduct of the business, or

(ii) the equivalent of more than 5 employees full time in the active conduct of the business taking into consideration only the services provided by its employees and the services provided outside Canada to the affiliate or the partnership by the employees of

(A) a corporation related to the affiliate (otherwise than because of a right referred to in paragraph 251(5)(b)), or

(B) members of the partnership (other than a member of the partnership that was a specified member of the partnership in a fiscal period of the partnership that ends in the year)

where the corporation or members referred to in clause (A) or (B) receive compensation from the affiliate or the partnership for the services provided to the affiliate or the partnership by those employees the value of which is not less than the cost to such corporation or members of the compensation paid or accruing to the benefit of those employees that performed the services during the time the services were performed by those employees;

Proposed Amendment — 95(1)"investment business"(b)

(b) the affiliate or, if the affiliate carries on the business as a qualifying member of a partnership (which partnership is referred to in this paragraph and paragraph (2)(t) as the "operating partnership"), the operating partnership employs

(i) more than five employees full time in the active conduct of the business, or

(ii) the equivalent of more than five employees full time in the active conduct of the business taking into consideration only the services provided by its employees and the services provided outside Canada to the affiliate or to the operating partnership by employees of

(A) a corporation related to the affiliate (otherwise than because of a right referred to in paragraph 251(5)(b)),

(B) in the case where the affiliate carries on the business as a member of the operating partnership

(I) a person (referred to in this subparagraph as a "providing member") who was a qualifying member of the operating partnership,

(II) if the affiliate was a qualifying member of the operating partnership, a designated corporation in respect of the affiliate, or

(III) if the affiliate was a qualifying member of the operating partnership, a designated partnership in respect of the affiliate, or

(C) in the case where the affiliate carries on the business (otherwise than as a member of the operating partnership),

(I) a corporation (referred to in this subparagraph as a "providing shareholder") that was a qualifying shareholder of the affiliate,

(II) a designated corporation in respect of the affiliate, or

(III) a designated partnership in respect of the affiliate,

if the corporations referred to in clause (A), the providing members referred to in subclause (B)(I), the designated corporations referred to in subclause (B)(II) or (C)(II), the designated partnerships referred to in subclause (B)(III) or (C)(III), or the providing shareholders referred to in subclause (C)(I) receive compensation from the affiliate or the operating partnership, as the case may be, for the services provided to the affiliate or to the operating partnership, as the case may be, by those employees the value of which is not less than the cost to those corporations, members, partnerships or shareholders of the compensation paid or accruing to the benefit of those employees that performed the services during the time the services were performed by those employees;

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(6), will amend para. (b) of the definition "investment business" in subsec. 95(1) to read as above, applicable to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. Para. (b) may also, by election, be applicable to taxation years that begin after 1994: see Application note to 95(2)(a) proposed amendments.

If a taxpayer has made what would, but for this paragraph, be a valid election as described above, and the taxpayer has, on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day that is the third anniversary of the day on which the amending Act receives Royal Assent, filed with the Minister of National Revenue a notice in writing to revoke the election, the election is deemed, otherwise than for the purpose of this paragraph, never to have been made.

Notwithstanding subsecs. 152(4) to (5) of the Act, any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year shall be made that is necessary to take an election or revocation referred to above into account.

Technical Notes: See under 95(1)"investment business"(a)(i) above.

Letter from Dept. of Finance, December 18, 2000:

Angelo Nikolakakis, Stikeman Elliott, Toronto

Dear Mr. Nikolakakis:

We are responding to your letters of July 19, July 26 and November 20, 2000 concerning paragraph (b) of the definition "investment business" in subsection 95(1), the interaction of subsection 95(2.2) and paragraph 95(2)(f), and the scope of paragraph 95(2)(a.3) of the *Income Tax Act* (the "Act").

In your letter of July 19, 2000, you submitted that the definition "investment business" in subsection 95(1) of the Act unfairly discriminates against certain very common forms of business organizations to which an affiliate may be a party. You requested an amendment to paragraph (b) of the definition to remove this discrimination and to treat, in the investment business definition, limited partners and limited partnerships in the same fashion as general partners and general partnerships.

We are sympathetic to your request. Consequently it will be recommended to the Minister of Finance that paragraph (b) of the definition "investment business" in subsection 95(1) of the Act be amended. The amendment will ensure that limited partners and limited partnerships are treated in the same manner as general partners and general partnerships in the investment business definition. It will be recommended that the amendment be applicable to taxation years of foreign affiliates ending after 1999. This will be achieved by modifying the definition "specified member" of a partnership, for this purpose, so that the definition in subsection 248(1) of the Act is read without reference to paragraph (a) of that definition.

. . . . .

Thank you for bringing these matters to our attention.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, March 21, 2002:

Dear [xxx]

I am writing in reply to your letter dated July 3, 2001 to Mr. Wally Conway, in which you requested amendments in connection with paragraph (b) of the definition "investment business" in subsection 95(1) of the *Income Tax Act* (the "Act").

"Specified member"

The first suggestion in your letter is that the definition "specified member" in subsection 248(1) of the Act be amended for the purpose of paragraph (b) of the definition "investment business" in subsection 95(1).

In general terms, a business carried on by a foreign affiliate in a particular taxation year is an "investment business" (as that expression is defined in subsection 95(1)) if the principal purpose of the business is to derive income from property, income from the insurance or reinsurance of risks, income from the factoring of trade accounts receivable, or profits from the disposition of investment property. The example used by you in your letter is the business of deriving income from real estate.

A business can avoid being classified as an "investment business" where the conditions described in paragraphs (a) and (b) of the investment business definition are satisfied. However, if those conditions are not satisfied and the affiliate does not, in turn, satisfy the rules in subsection 95(2) of the Act to have the income from the business deemed to be included in computing active business income, the income from the business will be included in computing the affiliate's foreign accrual property income (FAPI).

The requirement in paragraph (b) of the definition will be satisfied if the affiliate employs the equivalent of more than five employees full time in the active conduct of the business. If the affiliate carries on the business as a member of a partnership, the partnership will not satisfy the requirement in paragraph (b) unless it employs the equivalent of more than five employees full time in the active conduct of the business. The employee equivalency test takes into account only the services performed outside Canada by employees

- of a corporation related to the affiliate (see clause (b)(ii)(A) of the investment business definition), or
- of members of the partnership, other than a member of the partnership that was a "specified member" of the partnership (see clause (b)(ii)(B) of the investment business definition).

However, the preamble of paragraph (b) of the definition provides that, if the affiliate is itself a "specified member" of the partnership, the business of the partnership will *per se* be an "investment business" to the affiliate and the income from the business will be included in computing FAPI unless the provisions in subsection 95(2) apply to include the income in computing the affiliate's income from an active business.

The expression "specified member" of a partnership as employed in the preamble of paragraph (b) and in clause (b)(ii)(B) is defined in subsection 248(1) of the Act to be

- any partner of the partnership who is a limited partner within the meaning assigned by subsection 96(2.4) of the Act, and
- any partner of the partnership unless, on a regular, continuous and substantial basis, the partner

  1. is actively engaged in the activities of the partnership other than its financing, or

  2. carries on directly a similar business to that of the partnership throughout the relevant period.

As I stated in a letter dated December 18, 2000 to another tax practitioner, we will be recommending to the Minister of Finance that paragraph (b) of the definition "investment business" in subsection 95(1) of the Act be amended to ensure that, in cases where limited partners carry on directly a business similar to that of the limited partnership, limited partners and limited partnerships are treated in the same manner as general partners and general partnerships in the investment business definition. It will be recommended that the amendment be applicable to taxation years of foreign affiliates which end after 1999. This would be achieved by reading the definition "specified member", in subsection 248(1) of the Act, without reference to paragraph (a) of that definition when that definition applies for the purpose of the investment business definition.

In your letter, you have submitted that, for the purpose of the investment business definition, the definition "specified member" in subsection 248(1) should be further amended to ensure that a person who would otherwise be included in the definition "specified member" because of paragraph (b) would not be considered a "specified member" of the partnership if that person holds at least a 10% fair market value equity interest in the partnership. You argue that such an amendment would, for the purposes of the investment business definition, eliminate the distinction that might exist, for example, between a corporate structure where the real estate business in a corporate group is carried on through a United States limited liability corporation (and would therefore benefit from the relieving provision in the investment business definition) and a corporate structure where the real estate business in the corporate group is carried on through a limited partnership (and therefore would not benefit from the relieving provision in the investment business definition).

We agree that the difference in Canadian tax results as illustrated by this example is not appropriate from a Canadian tax policy perspective. We also agree that a 10% fair market value partnership equity test would be reasonable to maintain the policy objectives of the investment business definition in the context of the FAPI rules. We are therefore prepared to recommend amendments to ensure that, for the purpose of paragraph (b) of the definition "investment business" in subsection 95(1) (and for the purposes of subsection 95(2) of the Act), a member of a partnership would not be treated as a "specified member" if the member is a "qualifying member" of the partnership. A person would be a "qualifying member" of a partnership if the person holds 1% or more of the fair market value of all interests in the partnership and that person and related persons hold 10% or more of the fair market value of all interests in the partnership. For the purpose of the qualifying member definition, if an interest in a particular partnership is held by another partnership or by a non-discretionary trust (as that expression is defined in subsection 17(15) of the Act), each member of that other partnership, or each beneficiary of that trust, would be treated as holding that percentage of the interests in the particular partnership that the fair market value of the interests in that other partnership or the trust held by that member or beneficiary is of the fair market value of all the interests in that other partnership or in the trust.

If these recommendations are acted upon, I would anticipate that they would be included in the next technical bill.

We will recommend that the amendments apply to taxation years of a foreign affiliate of a taxpayer which end after 1999. However, where the taxpayer so elects in respect of all the foreign affiliates of the taxpayer, the amendments will apply to taxation years of these affiliates of the taxpayer that begin after 1994 and, notwithstanding subsections 152(4) and (5) of the Act, any assessment of a taxpayer's tax payable under the Act for any of those taxation years shall be made that is necessary to take into account the application of the amendments. The ability to elect to have the amendments apply to these earlier taxation years will be contingent on the taxpayer electing to have other amendments to the for-

eign affiliate rules to be included in the technical bill apply to the taxpayer's foreign affiliates for these earlier taxation years.

Five Employee Test

In your letter, you have suggested that the five employee test in paragraph (b) of the investment business definition should also be amended so that the qualifying employees could be aggregated within the corporate group as a whole. In particular, you have suggested that the test be modified so that the qualifying employees could be drawn (in any combination) from employees of the affiliate, any other affiliate of the taxpayer, or where either affiliate carries on business as a member of a partnership, members of the partnership (other than specified members). In support of your suggestion, you indicated that it is a common occurrence in the United States for those carrying on real estate businesses to hold separate real properties in separate corporate entities (e.g., for business reasons such as financing and risk management).

However, we are of the view that the five employee test, currently found in the Act, is appropriate in tax policy terms. In particular, it seems to us that if no single business exists in respect of which there are more than five qualifying full-time employees, the application of the current rules, to characterize the income from the activity as income from property, is appropriate.

As I indicated in the first part of this letter, we are, however, prepared to recommend amendments to the definition "specified member" of a partnership for the purpose of the investment business definition which would ensure that the current five employee test can be satisfied in a wider range of circumstances.

Thank you for writing.

Yours sincerely,

Brian Ernewein

Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 95(1)"active business"(a) — Investment business excluded from active business; 95(2)(a.2) — Income from insurance business; 95(2)(s) — Designated corporation; 95(2)(t) — Designated partnership; 95(2.1) — Whether dealing with foreign affiliate at arm's length; 125(7) — Analogous definition of "specified investment business" for small business deduction purposes.

History: The definition "investment business" added to subsec. 95(1) by 1995, c. 21, subsec. 46(3), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the new definition applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation of such foreign affiliate.

Regulations: 8202 (meaning of "permanent establishment").

"investment property" of a foreign affiliate of a taxpayer includes

(a) a share of the capital stock of a corporation other than a share of another foreign affiliate of the taxpayer that is excluded property of the affiliate,

(b) an interest in a partnership other than an interest in a partnership that is excluded property of the affiliate,

(c) an interest in a trust other than an interest in a trust that is excluded property of the affiliate,

(d) indebtedness or annuities,

(e) commodities or commodities futures purchased or sold, directly or indirectly in any manner whatever, on a commodities or commodities futures exchange (except commodities manufactured, produced, grown, extracted or processed by the affiliate or a person to whom the affiliate is related (otherwise than because of a right referred to in paragraph 251(5)(b)) or commodities futures in respect of such commodities),

(f) currency,

(g) real estate,

Proposed Amendment — 95(1)"investment property"(g)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 230(2), will amend para. (g) of the definition "investment property" in subsec. 95(1) by substituting "real property or immovables" for "real estate", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(h) Canadian and foreign resource properties,

(i) interests in funds or entities other than corporations, partnerships and trusts, and

(j) interests or options in respect of property that is included in any of paragraphs (a) to (i);

Proposed Amendment — 95(1)"investment property"(j)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 230(3), will amend para. (j) of the definition "investment property" in subsec. 95(1) by substituting "interests in, or for civil law rights in, or options in respect of," for "interests or options in respect of", to come into force on Royal Assent.

Technical Notes: See under 12(4).

History: The definition "investment property" added to subsec. 95(1) by 1995, c. 21, subsec. 46(3), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the new definition applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation of such foreign affiliate.

"lease obligation" of a person includes an obligation under an agreement that authorizes the use of or the production or reproduction of property including information or any other thing;

History: The definition "lease obligation" added to subsec. 95(1) by 1995, c. 21, subsec. 46(3), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the new definition applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation of such foreign affiliate.

"lending of money" by a person (for the purpose of this definition referred to as the "lender") includes

(a) the acquisition by the lender of trade accounts receivable (other than trade accounts receivable owing by a person with whom the lender does not deal at arm's length) from another person or the acquisition by the lender of any interest in any such accounts receivable,

(b) the acquisition by the lender of loans made by and lending assets (other than loans or lending assets owing by a person with whom the lender does not deal at arm's length) of another person or the acquisition by

the lender of any interest in such a loan or lending asset,

(c) the acquisition by the lender of a foreign resource property (other than a foreign resource property that is a rental or royalty payable by a person with whom the lender does not deal at arm's length) of another person, and

(d) the sale by the lender of loans or lending assets (other than loans or lending assets owing by a person with whom the lender does not deal at arm's length) or the sale by the lender of any interest in such loans or lending assets;

and for the purpose of this definition, the definition "lending asset" in subsection 248(1) shall be read without the words "but does not include a prescribed property";

History: Closing words added to the definition "lending of money" in subsec. 95(1) by 1998, c. 19, subsec. 122(3), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994, but where there was a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the amendment applies to taxation years of the foreign affiliate that end after 1994 unless

(a) the foreign affiliate had requested the change in writing before February 22, 1994 from the income taxation authority of the country in which the foreign affiliate was resident and subject to income taxation, or

(b) the foreign affiliate's first taxation year that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if the change had not occurred,

except that, for taxation years of a foreign affiliate that ended before October 1997, the closing words of the definition "lending of money" shall be read as follows:

and for the purpose of this definition, the definition "lending asset" in subsection 248(1) shall be read without the words "but does not include a prescribed security";

The definition "lending of money" added to subsec. 95(1) by 1995, c. 21, subsec. 46(3), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the new definition applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation of such foreign affiliate.

"licensing of property" includes authorizing the use of or the production or reproduction of property including information or any other thing;

History: The definition "licensing of property" added to subsec. 95(1) by 1995, c. 21, subsec. 46(3), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the new definition applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation of such foreign affiliate.

"participating percentage" of a particular share owned by a taxpayer of the capital stock of a corporation in respect of any foreign affiliate of the taxpayer that was, at the end of its taxation year, a controlled foreign affiliate of the taxpayer is

(a) where the foreign accrual property income of the affiliate for that year is $5,000 or less, nil, and

(b) where the foreign accrual property income of the affiliate for that year exceeds $5,000,

(i) where the affiliate and each corporation that is relevant to the determination of the taxpayer's equity percentage in the affiliate has only one class of issued shares at the end of that taxation year of the affiliate, the percentage that would be the taxpayer's equity percentage in the affiliate at that time on the assumption that the taxpayer owned no shares other than the particular share (but in no case shall that assumption be made for the purpose of determining whether or not a corporation is a foreign affiliate of the taxpayer), and

(ii) in any other case, the percentage determined in prescribed manner;

Related Provisions: 95(1) — Foreign accrual property income; 95(1) — Foreign affiliate; 95(4) — Equity percentage.

Regulations: 5904 (prescribed manner).

"relevant tax factor" means

(a) where the taxpayer is an individual, 2, or

(b) where the taxpayer is a corporation, the quotient obtained when one is divided by the percentage set out in paragraph 123(1)(a);

Proposed Amendment — 95(1)"relevant tax factor"

"relevant tax factor", of a person or partnership for a taxation year, means

(a) in the case of a corporation, or of a partnership all the members of which, other than non-resident persons, are corporations, the quotient obtained by the formula

$$1/(A - B)$$

where

A is the percentage set out in paragraph 123(1)(a), and

B is

(i) in the case of a corporation, the percentage that is the corporation's general rate reduction percentage (as defined by section 123.4) for the taxation year, and

(ii) in the case of a partnership, the percentage that would be determined under subparagraph (i) in respect of the partnership if the partnership were a corporation whose taxation year is the partnership's fiscal period, and

(b) in any other case, 2.2;

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 19(5), will amend the definition "relevant tax factor" in subsec. 95(1) to read as above, applicable to 2002 *et seq.*

Technical Notes: The definition "relevant tax factor" in subsection 95(1) is used in determining the Canadian tax relief provided in respect of foreign taxes imposed on the earnings of a foreign affiliate of a taxpayer or a foreign investment entity in which the taxpayer has a "participating interest" (as defined in subsection 94.1(1)). The existing definition provides that the relevant tax factor for a corporation (or a partnership all the resident members of which are corporations) is the reciprocal of the basic corporate tax rate (i.e., 1/.38, or 2.63). The factor for individuals and other partnerships is 2.

As part of a series of amendments reflecting recent and planned reductions in income tax rates, the definition "relevant tax factor" is amended. The relevant tax factor for a corporation (or a partnership all the resident members of which are corporations) will take account of the "general rate reduction percentage" provided in section 123.4. For example, if a corporation's taxation year is the calendar year, its relevant tax factor for 2003 will be 1/(.38 - .05), or 3.03.

Similarly, to take account of decreasing personal income tax rates, the relevant tax factor for individuals and other partnerships is increased to 2.2.

"surplus entitlement percentage", at any time, of a taxpayer in respect of a foreign affiliate has the meaning assigned by regulation; and

Regulations: 5905(13).

Proposed Addition — 95(1)"taxable Canadian business"

"taxable Canadian business", at any time of a foreign affiliate of a taxpayer resident in Canada or of a partnership of which a foreign affiliate of a taxpayer resident in Canada is a member (which foreign affiliate or partnership is referred to in this definition as the "operator"), means a business the income from which would, if there were income from the business for the operator's taxation year or fiscal period that includes that time, be income

(a) that is included in computing the foreign affiliate's taxable income earned in Canada under subparagraph 115(1)(a)(ii), and

(b) that is not, because of a tax treaty with a country, exempt from tax under Part I;

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(7), will add the definition "taxable Canadian business" to subsec. 95(1), applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002.

Fresh Start Section 95 Election — subsec. 133(69) of amending legislation

If a taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which the amending legislation is assented to, then this definition and other provisions listed below apply to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994, except that in applying para. (b) of the definition for the 1997 and preceding taxation years of all foreign affiliates of the taxpayer, the para. is to be read in respect of those affiliates as follows:

(b) that is not, because of a comprehensive agreement or convention for the elimination of double taxation on income, between the Government of Canada and the government of another country, which has the force of law in Canada at that time, exempt from tax under Part I;

Provisions subject to Fresh Start s. 95 Election:

- 95(1)"taxable Canadian business"
- 95(2)(j.1)–(k.1)
- 95(2)(k.4)–(k.7).

If a taxpayer has made what would, but for this paragraph, be a valid election as described above, and the taxpayer has, on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day that is the third anniversary of the day on which the amending Act receives Royal Assent, filed with the Minister of National Revenue a notice in writing to revoke the election, the election is deemed, otherwise than for the purpose of this paragraph, never to have been made.

Notwithstanding subsecs. 152(4) to (5) of the Act, any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year shall be made that is necessary to take an election or revocation referred to above into account.

Technical Notes: Subsection 95(1) is amended to add the new definition "taxable Canadian business". This expression is used in new paragraphs 95(2)(j.1), (k), (k.2) and (k.4). For more detail, see the commentaries to those paragraphs.

A "taxable Canadian business", at any time of a foreign affiliate of a taxpayer resident in Canada or of a partnership of which a foreign affiliate of a taxpayer resident in Canada is a member (which foreign affiliate or partnership is referred to in that definition as the "operator"), is a business the income from which, for the operator's taxation year or fiscal period that includes that time, is income

- that is included in computing the foreign affiliate's taxable income earned in Canada under subparagraph 115(1)(a)(ii), and
- that is not, because of a tax treaty with a country, exempt from tax under Part I of the Act.

In connection with the application of the definition "taxable Canadian business", note the rules in proposed new paragraph 95(2)(k.7). For more detail, see the commentary to that paragraph.

The amendment to add the new definition "taxable Canadian business" applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. This amendment is included in the Fresh Start Section 95 Election package described [below — ed.]

Also note that the definition "tax treaty" in subsection 248(1) is applicable to the 1998 and subsequent taxation years. Accordingly, these amendments ensure, in effect, that, in applying the definition "taxable Canadian business" for the 1997 and prior taxation years of all foreign affiliates of the taxpayer in the case where a taxpayer has made a Fresh Start Section 95 Election, the reference in paragraph (b) of the definition "taxable Canadian business" to the expression "tax treaty" is to be read as a reference to a "comprehensive agreement or convention for the elimination of double taxation on income, between the Government of Canada and the government of another country, which has the force of law in Canada at that time".

Fresh Start Section 95 Election

This set of proposals contains a number of amendments to section 95 of the Act, and to section 5907 of the Regulations, that apply to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. However, where a taxpayer so elects in writing and files the election (referred to in this commentary as the "Fresh Start Section 95 Election") with the Minister of National Revenue before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which these amendments are assented to, all of those amendments apply to taxation years of all foreign affiliates, of the taxpayer, that begin after 1994. This set of proposals provides that, notwithstanding subsections 152(4) to (5), the Minister of National Revenue can make any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year that is necessary to take the election into account.

Note that the Global Section 95 Election [see under 95(2)(a) — ed.] and the Fresh Start Section 95 Election are separate elections.

The following amendments to the Act and to the Regulations are covered by the Fresh Start Section 95 Election package:

- the definition "taxable Canadian business" in subsection 95(1),
- paragraphs 95(2)(j.1) and (j.2) and 95(2)(k), (k.1) and (k.4) to (k.7), and
- subsections 5907(2.9) and (2.91) of the Regulations.

See the commentary to paragraph 95(2)(k) for additional information with respect to transitional provisions.

Note that this set of proposals provides for the possibility of a total revocation of the Fresh Start Section 95 Election. If a taxpayer has made what would otherwise be a valid Fresh Start Section 95 Election, and the taxpayer has, on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day that is the third anniversary of the day on which the amending legislation enacting this set of proposals is assented to, filed with the Minister of National Revenue a notice in writing to revoke the election, the election is deemed never to have been made. This set of proposals provides that, notwithstanding subsections 152(4) to (5), the Minister of National Revenue can make any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year that is necessary to take the revocation into account.

Related Provisions: 95(2)(j.1), (k), (k.2) — Application to FAPI rules; 95(2)(k.7) — Tiers of partnerships.

"taxation year" in relation to a foreign affiliate of a taxpayer means the period for which the accounts of the foreign affiliate have been ordinarily made up, but no such period may exceed 53 weeks.

Related Provisions: 95(1) — Foreign affiliate; 249 — Taxation year.

"trust company" includes a corporation that is resident in Canada and that is a loan company as defined in subsection 2(1) of the *Canadian Payments Association Act*.

History: The definition "trust company" added to subsec. 95(1) by 1998, c. 19, subsec. 122(4), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there was a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the amendment applies to taxation years of the foreign affiliate that end after 1994 unless

(a) the foreign affiliate had requested the change in writing before February 22, 1994 from the income taxation authority of the country in which the foreign affiliate was resident and subject to income taxation; or

(b) the foreign affiliate's first taxation year that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if the change had not occurred.

(2) Determination of certain components of foreign accrual property income — For the purposes of this subdivision,

(a) **[income related to active business]** — in computing the income from an active business for a taxation year of a particular foreign affiliate of a taxpayer in respect of which the taxpayer has a qualifying interest throughout the year there shall be included any income of the affiliate for that year from sources in a country other than Canada that would otherwise be income from property of the affiliate for the year to the extent that

Proposed Amendment — 95(2) opening words

(2) Application — foreign affiliates — For the purposes of this subdivision (other than sections 94 to 94.4),

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 19(6), will amend the opening words of subsec. 95(2) to read as above, applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after 2002.

Technical Notes: Subsection 95(2) provides rules for determining the income of a foreign affiliate of a taxpayer resident in Canada. Subsection 95(2) is amended to clarify that these rules do not apply in applying sections 94 to 94.4.

(i) the income

(A) is derived by the particular affiliate from activities that can reasonably be considered to be directly related to the active business activities carried on in a country other than Canada by

(I) any other non-resident corporation to which the particular affiliate and the taxpayer are related throughout the year, or

(II) the taxpayer, where the taxpayer is a life insurance corporation resident in Canada throughout the year, and

(B) would be included in computing the amount prescribed to be the earnings or loss from an active business carried on in a country other than Canada of

(I) the non-resident corporation to which the particular affiliate and the taxpayer are related throughout the year, or

(II) the taxpayer, where the taxpayer is a life insurance corporation resident in Canada throughout the year

if it were a foreign affiliate of the taxpayer and the income were earned by it,

(ii) the income is derived from amounts that were paid or payable, directly or indirectly, to the particular affiliate or a partnership of which the particular affiliate was a member

(A) by

(I) a non-resident corporation to which the particular affiliate and the taxpayer are related throughout the year, or

(II) a partnership of which a non-resident corporation to which the particular affiliate and the taxpayer are related throughout the year is a member and of which that non-resident corporation is not a specified member at any time in a fiscal period of the partnership that ends in the year

to the extent that those amounts that were paid or payable are for expenditures that would, if the non-resident corporation or the partnership were a foreign affiliate of the taxpayer, be deductible by it in the year or a subsequent year in computing the amounts prescribed to be its earnings or loss from an active business, other than an active business carried on in Canada,

(B) by

(I) another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year, or

(II) a partnership of which another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year is a member and of which that other affiliate is not a specified member at any time in a fiscal period of the partnership that ends in the year

to the extent that those amounts that were paid or payable are for expenditures that were or would be, if the partnership were a foreign affiliate of the taxpayer, deductible in the year or a subsequent taxation year by the other affiliate or the partnership in computing the amounts prescribed to be its earnings or loss from an active business, other than an active business carried on in Canada,

(C) by a partnership of which the particular affiliate is a member and of which the particular affiliate is not a specified member at any time in a fiscal period of the partnership that ends in the year to the extent that those amounts that were paid or payable were for expenditures that would be, if the partnership were a foreign affiliate of the taxpayer, deductible in the year or a subsequent year in computing the amounts prescribed to be its earnings or loss from an active business carried on by it outside Canada,

(D) by another foreign affiliate of the taxpayer (in this clause referred to as the "second affiliate") to which the particular affiliate and the taxpayer are related throughout the year to the extent that the amounts are paid or payable by the second affiliate

(I) under a legal obligation to pay interest on borrowed money used for the purpose of earning income from property, or

(II) on an amount payable for property acquired for the purpose of gaining or producing income from property

where

(III) the property is excluded property of the second affiliate that is shares of a foreign affiliate (other than the particular affiliate) of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year (in this clause referred to as the "third affiliate"),

(IV) the second and third affiliates are resident in and subject to income taxation in the same country, and

(V) the amounts paid or payable are relevant in computing the liability for income taxes in that country of the members of a group of corporations composed of the second affiliate and one or more other foreign affiliates of the taxpayer (the shares of which are excluded property) that are resident and subject to income taxation in that country and in respect of which the taxpayer has a qualifying interest throughout the year, or

(E) by the taxpayer, where the taxpayer is a life insurance corporation resident in Canada (in this clause referred to as the "insurer"), to the extent that those amounts that were paid or payable were for expenditures that are deductible in the year or a subsequent taxation year by the insurer in computing its income or loss from carrying on its life insurance business outside Canada and are not deductible in the year or a subsequent taxation year in computing its income or loss from carrying on its life insurance business in Canada,

(iii) the income is derived by the particular affiliate from the factoring of trade accounts receivable acquired by the particular affiliate or a partnership of which the particular affiliate was a member from a non-resident corporation to which the particular affiliate and the taxpayer are related throughout the year to the extent that the accounts receivable arose in the course of an active business carried on in a country other than Canada by the non-resident corporation, or

(iv) the income is derived by the particular affiliate from loans or lending assets acquired by the particular affiliate or a partnership of which the particular affiliate was a member from a non-resident corporation to which the particular affiliate and the taxpayer are related throughout the year to the extent that the loans or lending assets arose in the course of an active business carried on in a country other than Canada by the non-resident corporation;

Proposed Amendment — 95(2)(a)

(a) **[income related to active business]** — in computing the income or loss from an active business for a taxation year of a particular foreign affiliate of a taxpayer in respect of which the taxpayer has a qualifying interest throughout the year or to which the taxpayer is related throughout the year, there shall be included any income or loss of the particular foreign affiliate for that year from sources in a country other than Canada that would otherwise be income or loss from property of the particular foreign affiliate for the year to the extent that

(i) the income or loss

(A) is derived by the particular foreign affiliate from activities that can reasonably be considered to be directly related to active business activities carried on in a country other than Canada by

(I) another non-resident corporation to which the particular foreign affiliate and the taxpayer are related throughout the year, or

(II) a life insurance corporation that is resident in Canada throughout the year and that is the taxpayer, a person who controls the taxpayer or a person controlled by the taxpayer, and

(B) would be included in computing the amount prescribed to be the earnings or loss from an active business carried on in a country other than Canada of

(I) the non-resident corporation referred to in subclause (A)(I), or

(II) the life insurance corporation referred to in subclause (A)(II)

if that non-resident corporation or that life insurance corporation were a foreign affiliate of the taxpayer and the income were earned by it,

(ii) the income or loss is derived from amounts that were paid or payable, directly or indirectly, to the particular foreign affiliate or a partnership of which the particular foreign affiliate was a member

(A) by

(I) a non-resident corporation to which the particular foreign affiliate and the taxpayer are related throughout the year, or

(II) a partnership of which a non-resident corporation to which the particular foreign affiliate and the taxpayer are related throughout the year is a qualifying member throughout each period, in the fiscal period of the partnership that ends in the year, in which that non-resident corporation was a member of the partnership

to the extent that those amounts that were paid or payable are for expenditures that would, if the non-resident corporation or the partnership were a foreign affiliate of the taxpayer, be deductible by it in the year or a subsequent taxation year in computing the amounts prescribed to be its earnings or loss from an active business, other than an active business carried on in Canada,

(B) by

(I) another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year, or

(II) a partnership of which another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year is a qualifying member throughout each period, in the fiscal period

of the partnership that ends in the year, in which that other foreign affiliate was a member of the partnership

to the extent that those amounts that were paid or payable are for expenditures that were or would be, if the partnership were a foreign affiliate of the taxpayer, deductible in the year or a subsequent taxation year by the other foreign affiliate or the partnership in computing the amounts prescribed to be its earnings or loss from an active business, other than an active business carried on in Canada,

(C) by a partnership of which the particular foreign affiliate is a qualifying member throughout each period, in the fiscal period of the partnership that ends in the year, in which the particular foreign affiliate was a member of the partnership, to the extent that those amounts that were paid or payable were for expenditures that would, if the partnership were a foreign affiliate of the taxpayer, be deductible in the year or a subsequent taxation year in computing the amounts prescribed to be its earnings or loss from an active business carried on by it outside Canada,

(D) by another foreign affiliate of the taxpayer (in this clause referred to as the "second affiliate") to which the particular foreign affiliate and the taxpayer are related throughout the year to the extent that the amounts are paid or payable by the second affiliate, in respect of any particular period in the year,

(I) under a legal obligation to pay interest on borrowed money used for the purpose of earning income from property, or

(II) on an amount payable for property acquired for the purpose of gaining or producing income from property

where

(III) the property is, throughout the particular period, excluded property of the second affiliate that is shares of a corporation (in this clause referred to as the "third affiliate") which is, throughout the particular period, a foreign affiliate (other than the particular foreign affiliate) of the taxpayer in respect of which the taxpayer has a qualifying interest or to which the taxpayer is related,

(IV) the second affiliate and the third affiliate are resident in the same country for each of their taxation years (each of which taxation years is referred to in subclause (V) as a "relevant taxation year" of the second affiliate or of the third affiliate, as the case may be) that end in the year, and

(V) in respect of each of the second affiliate and the third affiliate for each relevant taxation year of that affiliate, either

1. that affiliate is subject to income taxation in that country in that relevant taxation year, or

2. the members or shareholders of that affiliate (which, for the purpose of this sub-subclause, includes a perso n that has, directly or indirectly, an interest in a share of, or in an equity interest in, the affiliate) at the end of that relevant taxation year are subject to income taxation in that country on, in aggregate, all or substantially all of the income of that affiliate for that relevant taxation year in their taxation years in which that relevant taxation year ends or would be so subject to income taxation in that country if that affiliate had income for that relevant taxation year and the income of those members or shareholders for their taxation years in which that relevant taxation year ends consisted only of their share of income of that affiliate for that relevant taxation year, or

(E) by a life insurance corporation that is resident in Canada and that is the taxpayer, a person who controls the taxpayer or a person controlled by the taxpayer, to the extent that those amounts that were paid or payable were for expenditures that are deductible in the year or a subsequent taxation year by the life insurance corporation in computing its income or loss from carrying on its life insurance business outside Canada and are not deductible in the year or a subsequent taxation year in computing its income or loss from carrying on its life insurance business in Canada,

(iii) the income or loss is derived by the particular foreign affiliate from the factoring of trade accounts receivable acquired by the particular foreign affiliate, or a partnership of which the particular foreign affiliate was a member, from a non-resident corporation to which the particular foreign affiliate and the taxpayer are related throughout the year to the extent that the accounts receivable arose in the course of an active business carried on in a country other than Canada by the non-resident corporation,

(iv) the income or loss is derived by the particular foreign affiliate from loans or lending assets acquired by the particular foreign affiliate, or a partnership of which the particular foreign affiliate was a member, from a non-resident corporation to which the particular foreign affiliate and the taxpayer are related throughout the year to the extent that the loans or lending assets arose in the course of an active business carried on in a country other than Canada by the non-resident corporation,

(v) the income or loss is derived by the particular foreign affiliate from the disposition of excluded property that is not capital property, or

(vi) the income or loss is derived by the particular foreign affiliate under or as a result of an agreement that provides for the purchase, sale or exchange of currency and that can reasonably be considered to have been made by the particular foreign affiliate to reduce its risk, with respect to an amount required by this paragraph to be included in computing the particular foreign affiliate's income or loss from an active business, of fluctuations in the value of the currency in which the amount was denominated;

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(8), will amend para. 95(2)(a) to read as above, applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002; and subcls. (ii)(A)(II) and (B)(II) and cl. (ii)(C) of the para. are applicable to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. However, if a taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which the amending legislation is assented to, subcls. 95(2)(a)(ii)(D)(III) to (V), as amended, apply to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994.

Global Section 95 Election — subsec. 133(68) of amending legislation

If a taxpayer referred to above so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which the amending legislation is assented to, the provisions listed below are applicable to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994 and, notwithstanding subsecs. 152(4) to (5), any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year shall be made that is necessary to take the election into account.

Provisions:

- 95(1)"excluded property"(a), (c), (c.1)
- 95(1)"investment business"(b)
- 95(2)(a)(i)(A)(II), (B)(II), 95(2)(a)(ii)(A)(II), (B)(II), 95(2)(a)(ii)(C), 95(2)(a)(ii)(E), 95(2)(a)(v), (vi)
- 95(2)(f) between (ii) and (iii)
- 95(2)(f.1), (f.2)
- 95(2)(g) to (g.02)
- 95(2)(i)
- 95(2)(o)–(t)
- 95(2.1)(c)
- 95(2.2) opening words
- 95(2.41)
- 95(3)(d)

If a taxpayer has made what would, but for this paragraph, be a valid election as described above, and the taxpayer has, on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day that is the third anniversary of the day on which the amending Act receives Royal Assent, filed with the Minister of National Revenue a notice in writing to revoke the election, the election is deemed, otherwise than for the purpose of this paragraph, never to have been made.

Notwithstanding subsecs. 152(4) to (5) of the Act, any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year shall be made that is necessary to take an election or revocation referred to above into account.

Technical Notes: Subsection 95(2) provides rules for determining the income, of a foreign affiliate of a taxpayer resident in Canada, from a particular source. A foreign affiliate is considered to have three sources of income — income from property, income from a business other than an active business and income from an active business. This sourcing is important since the affiliate's income from property and the affiliate's income from a business other than an active business are included in the foreign accrual property income (FAPI) of the affiliate. Where the affiliate is a controlled foreign affiliate of the taxpayer, the taxpayer's share of the affiliate's FAPI must be included, under section 91, in the taxpayer's income for Canadian tax purposes whether or not the income is distributed. The income of a foreign affiliate of a taxpayer from an active business is included, under section 90, in the taxpayer's income for Canadian tax purposes only when paid to the shareholder as a dividend.

Paragraph 95(2)(a) characterizes, in certain circumstances, amounts that would otherwise be income from property as income from an active business. More particularly, subparagraphs 95(2)(a)(i) to (iv) provide that particular income of a foreign affiliate of a taxpayer, in respect of which the taxpayer has a qualifying interest throughout a taxation year of the affiliate, from sources in a country (other than Canada) that would otherwise be income from property of the affiliate for the year, will be included in computing the income from an active business of the affiliate for the year.

However, paragraph 95(2)(a) does not

- require amounts that would otherwise be "losses" from property of the affiliate to be included in computing the income from an active business of the affiliate, or
- require amounts that would otherwise be income or losses from property of the affiliate to be included in computing the "loss" from an active business of the affiliate.

Paragraph 95(2)(a) is amended so that throughout that paragraph, except clauses 95(2)(a)(ii)(D) and (E), the word "income" is replaced with the words "income or loss".

In general, these amendments to paragraph 95(2)(a) ensure that, provided that the conditions specified in that paragraph are satisfied,

- amounts that would otherwise be "losses" from property of the affiliate can be included in computing the income from an active business of the affiliate, and
- amounts that would otherwise be income or losses from property of the affiliate can be included in computing the "loss" from an active business of the affiliate.

The "preamble" of paragraph 95(2)(a) is also amended to broaden the scope of the paragraph to include those foreign affiliates in which the taxpayer does not have a qualifying interest but to which the taxpayer is related throughout the year. Those foreign affiliates would be controlled foreign affiliates of the taxpayer. (Refer to the commentary on new amended subclause 95(2)(a)(ii)(D)(III) for information regarding a similar change.)

These amendments to paragraph 95(2)(a) apply to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002.

In general terms, subparagraph 95(2)(a)(i) permits a particular foreign affiliate of a taxpayer, in respect of which the taxpayer has a qualifying interest, to include, in its active business income, its property income that

- is derived by it from activities that can reasonably be considered to be directly related to active business activities carried on in a country (other than Canada) by a person that is
  - — any other non-resident corporation to which the particular affiliate and the taxpayer are related throughout the year (for convenience referred to as Case 1), or
  - — the taxpayer, where the taxpayer is a life insurance corporation resident in Canada throughout the year (for convenience referred to as Case 2), and
- would, if that person were a foreign affiliate of the taxpayer and the income were earned by it, be included in computing the active business income of that person.

Case 2 deals with the situation where a foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest performs the treasury activities for the foreign branch of a Canadian multinational life insurer. The income of the treasury activities could be included in the active business income of the affiliate if the income would be active business income of the foreign branch if it were a foreign affiliate of the taxpayer and it earned the income.

However, Case 2 would not apply where, for example, a particular wholly-owned Canadian subsidiary of the taxpayer is a life insurance corporation resident in Canada that has a foreign branch and a foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest performs the treasury activities for the foreign branch. This is the case because the wholly-owned Canadian subsidiary of the taxpayer does not have a qualifying interest in the foreign affiliate of the taxpayer.

In order to address that concern, subclauses 95(2)(a)(i)(A)(II) and (B)(II) are amended to extend Case 2 to situations where the foreign branch is a foreign branch of a life insurance corporation resident in Canada that is the taxpayer, a person that controls the taxpayer or a person that is controlled by the taxpayer.

The amendments to subclauses 95(2)(a)(i)(A)(II) and (B)(II) apply to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. These amendments are included in the Global Section 95 Election package described [below, still under 95(2)(a) — ed.]

As noted in the opening commentary to paragraph 95(2)(a), amendments made to that paragraph ensure that, throughout subparagraph 95(2)(a)(i), the word "income" is replaced with the words "income or loss". For further detail on those amendments and on their coming-into-force provisions, refer to that commentary.

Subparagraph 95(2)(a)(ii) provides that income that would otherwise be income from property for a taxation year of a particular foreign affiliate of a taxpayer, in respect of which the taxpayer has a qualifying interest, will be included in the particular affiliate's income from an active business for the year to the extent that the income is derived from amounts

paid or payable, directly or indirectly, to the particular affiliate or a partnership of which it is a member

- by a non-resident corporation to which the particular affiliate and the taxpayer are related throughout the year or by a partnership of which the non-resident corporation is a member (other than where it is a specified member, as defined in subsection 248(1), of the partnership at any time in a fiscal period of the partnership that ends in the year) to the extent that those amounts paid or payable are for expenditures (either an expenditure of a current nature or an expenditure in respect of which an allowance is claimed) that would, if the non-resident corporation or the partnership were a foreign affiliate of the taxpayer, be deductible in the year or a subsequent taxation year by it in computing the amounts prescribed to be its earnings or loss from an active business, other than an active business carried on in Canada (clause 95(2)(a)(ii)(A));

- by another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year or by a partnership of which the other foreign affiliate of the taxpayer is a member (other than where the other affiliate is a specified member of the partnership at any time in a fiscal period of the partnership that ends in the year) to the extent that those amounts paid or payable are for expenditures (either an expenditure of a current nature or an expenditure in respect of which an allowance is claimed) that are or would, if the partnership were a foreign affiliate of the taxpayer, be deductible in the year or a subsequent taxation year by the other affiliate or the partnership in computing the amounts prescribed to be its earnings or loss from an active business, other than an active business carried on in Canada (clause 95(2)(a)(ii)(B));

- by a partnership where the particular affiliate is a member of the partnership (other than where it is a "specified member" of the partnership at any time in a fiscal period of the partnership that ends in the year) to the extent that those amounts paid or payable are for expenditures (either an expenditure of a current nature or an expenditure in respect of which an allowance is claimed) that would, if the partnership were a foreign affiliate of the taxpayer, be deductible in the year or a subsequent taxation year in computing the amounts prescribed to be its earnings or loss from an active business carried on by it outside Canada (clause 95(2)(a)(ii)(C));

- by another foreign affiliate of the taxpayer that is related to the particular affiliate and the taxpayer throughout the year (the "second affiliate") pursuant to a legal obligation to pay interest on borrowed money used to acquire, or on an amount payable for the acquisition of, property where

  — the property is excluded property of the second affiliate that is shares of another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year (the "third affiliate"),

  — the second affiliate and the third affiliate are resident in, and subject to income taxation in, the same country, and

  — the amounts paid or payable are relevant in computing the liability for taxes of the members of a corporate group composed of the second affiliate and one or more other foreign affiliates of the taxpayer which are resident in, and not exempt from income taxation in, the same country as the second affiliate and in respect of which the taxpayer has a qualifying interest throughout the year (clause 95(2)(a)(ii)(D)); or

- by the taxpayer, where the taxpayer is a life insurance corporation resident in Canada, to the extent that those amounts paid or payable are for expenditures that are deductible in the year or a subsequent taxation year by the life insurance corporation resident in Canada in computing its income or loss from carrying on its insurance business outside Canada and not in Canada (clause 95(2)(a)(ii)(E)).

A foreign affiliate of a taxpayer, in respect of which the taxpayer has a qualifying interest, will be precluded from using clauses 95(2)(a)(ii)(A), (B) and (C) if the relevant member of the partnership referred to in those clauses is a specified member of the partnership.

Generally, a "specified member" of a partnership in a fiscal period of the partnership is defined in subsection 248(1) as being

- a member who was a limited partner (within the meaning assigned by subsection 96(2.4)) of the partnership at any time in the fiscal period, or

- a member who, throughout that part of the fiscal period that a business of the partnership is ordinarily carried on and during which the member was a member of the partnership, was neither

  — actively engaged in the business of the partnership (otherwise than in the financing of the business), nor

  — carrying on, otherwise than as a member of a partnership, a similar business as that carried on by the partnership (otherwise than in the financing of the business).

Subparagraph 95(2)(a)(ii) is amended in the following ways.

First, clauses 95(2)(a)(ii)(A) to (C) are amended so that the condition requiring the relevant member of the partnership to be a member of the partnership (otherwise than as a specified member of the partnership) is replaced by the condition requiring the relevant member to be a "qualifying member" of the partnership throughout each period, in the fiscal period of the partnership that ends in the year, in which the relevant member was a member of the partnership. The expression "qualifying member" is a new term. It is defined in new paragraph 95(2)(o) for the purposes of subdivision i of Division B of Part I of the Act, and, defined in subsection 248(1) for the purposes of the Act generally, as being a person that would at the relevant time be determined under paragraph 95(2)(o) to be a qualifying member of the partnership. For more detail on the definition "qualifying member", see the commentary to paragraph 95(2)(o) and subsection 248(1).

The amendments to clauses 95(2)(a)(ii)(A) to (C), in conjunction with the new definition "qualifying member", ensure that, in applying those clauses, limited partners of limited partnerships that are qualifying members are treated in the same manner as general partners of general partnerships. Those provisions also ensure that, even if the activities of the relevant person do not meet the business activity requirements in new subparagraph 95(2)(o)(i), a partnership may still qualify under clause 95(2)(a)(ii)(A), (B) or (C) if the relevant person has an equity interest in the partnership that meets the criteria set out in new subparagraph 95(2)(o)(ii). For more detail, see the commentary to new paragraph 95(2)(o).

Second, clause 95(2)(a)(ii)(D) is amended to

- introduce the concept of a particular period in the "preamble" to clause 95(2)(a)(ii)(D) and in subclause 95(2)(a)(ii)(D)(III),

- provide in subclause 95(2)(a)(ii)(D)(III) that a foreign affiliate of the taxpayer to which the taxpayer is related can be a "third affiliate" defined in that subclause,

- replace current subclause 95(2)(a)(ii)(D)(IV) with new subclauses 95(2)(a)(ii)(D)(IV) and (V), and

- remove the requirement that existed in current subclause 95(2)(a)(ii)(D)(V).

The "preamble" to clause (D) is amended to describe amounts paid or payable by the "second affiliate" as being in respect of a particular period which period is then the time frame during which the shares of the "third affiliate" must be excluded property.

Under existing subclause 95(2)(a)(ii)(D)(III), a foreign affiliate of a taxpayer cannot be a "third affiliate" defined in that subclause unless the foreign affiliate is a foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest. The amendment permits a foreign affiliate of the taxpayer that is related to the taxpayer to be a "third affiliate" defined in that subclause. Related foreign affiliates would be controlled foreign affiliates of the taxpayer.

Under existing subclause 95(2)(a)(ii)(D)(IV), the "second affiliate" and the "third affiliate" must be resident in and subject to income taxation in the same country. Thus, each of those affiliates must itself be subject to income taxation in that country and cannot be a flow-through entity under the income tax laws of that country. Amended subclauses 95(2)(a)(ii)(D)(IV) and (V) are intended to accommodate the case where the second affiliate, the third affiliate, or both, are such a flow-through entity.

New subclause 95(2)(a)(ii)(D)(IV) requires that the second affiliate and the third affiliate be resident in the same country for each of their taxation years (each of which taxation years is referred to as a "relevant taxation year" of the second affiliate or of the third affiliate, as the case may be) that end in the year.

New subclause 95(2)(a)(ii)(D)(V) requires that, in respect of each of the second affiliate and the third affiliate for each relevant taxation year of that affiliate, either

- that affiliate be subject to income taxation in that country in that relevant taxation year (sub-subclause 95(2)(a)(ii)(D)(V)I.), or

- the members or shareholders of that affiliate (which, for the purpose of sub-subclause 95(2)(a)(ii)(D)(V)2.), includes a person that has, directly or indirectly, an interest in a share of, or in an equity interest in, the affiliate) at the end of that relevant taxation year be subject to income taxation in that country on, in aggregate, all or substantially all of the income of that affiliate for that relevant taxation year in their taxation years in which that relevant taxation year ends or would be so subject to income taxation in that country if that affiliate had income for that relevant taxation year and the income of those members or shareholders for their taxation years in which that relevant taxation year ends consisted only of their share of income of that affiliate for the relevant taxation year (sub-subclause 95(2)(a)(ii)(D)(V)2.).

Current subclause 95(2)(a)(ii)(D)(V) contains the requirement that the amounts paid or payable by the second affiliate to the particular affiliate must be relevant in computing the liability for income taxes in that country of a corporate group composed of the second affiliate and one or more other foreign affiliates of the taxpayer (the shares of which are excluded property) that are resident in, and subject to income taxation in, that country and in respect of which the taxpayer has a qualifying interest throughout the year. Clause 95(2)(a)(ii)(D) is amended to remove the requirement contained in current subclause 95(2)(a)(ii)(D)(V).

That is, as noted above, current clause 95(2)(a)(ii)(E) provides for the recharacterization of certain amounts paid or payable to the particular affiliate where the payer is the taxpayer and the taxpayer is a life insurance corporation resident in Canada, to the extent that those amounts are for expenditures that are deductible in the year or a subsequent taxation year by the taxpayer in computing its income or loss from carrying on its insurance business outside Canada and not in Canada.

Clause 95(2)(a)(ii)(E) is amended to provide for the recharacterization of certain amounts paid or payable to the particular affiliate, where the payer is a life insurance corporation that is resident in Canada and is the taxpayer, a person who controls the taxpayer or a person controlled by the taxpayer, to the extent that those amounts were for expenditures that are deductible in the year or in a subsequent taxation year by the life insurance corporation in computing its income or loss from carrying on its life insurance business outside Canada and are not deductible in the year or a subsequent taxation year in computing its income or loss from carrying on its life insurance business in Canada.

For additional detail, see the commentary to subclauses 95(2)(a)(i)(A)(II) and (B)(II).

Fourth, as noted in the opening commentary to paragraph 95(2)(a), the amendments to that paragraph ensure that, throughout subparagraph 95(2)(a)(ii), except clauses (D) and (E), the word "income" is replaced with the words "income or loss". For further detail on those amendments and on their coming-into-force provisions, see that commentary.

New subclauses 95(2)(a)(ii)(A)(II) and (B)(II) and new clause 95(2)(a)(ii)(C) apply to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. These amendments are included in the Global Section 95 Election package described [below, still under 95(2)(a) — ed.]

New clause 95(2)(a)(ii)(D) applies to taxation years of a foreign affiliate of a taxpayer, that begin after December 20, 2002. However, where the taxpayer elects in writing and files that election with the Minister of National Revenue on or before the filing-due date for the taxpayer's taxation year that includes the day on which these amendments are assented to, subclauses 95(2)(a)(ii)(D)(III) to (V) apply in respect of all foreign affiliates of the taxpayer for taxations years that end after 1994. This set of proposals provides that, notwithstanding subsections 152(4) to (5), the Minister of National Revenue can make any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year that is necessary to take such an election into account.

New clause 95(2)(a)(ii)(E) applies to taxation years of a foreign affiliate of a taxpayer, that begin after December 20, 2002. This amendment is included in the Global Section 95 Election package described [below, still under 95(2)(a) — ed.]

New subparagraph 95(2)(a)(v) ensures that, in computing the active business income or loss of a particular foreign affiliate, there is to be included the income or loss from property derived by the particular foreign affiliate from the disposition of excluded property that is not capital property of the particular foreign affiliate.

The amendment is consequential to the amendments made to the definition "excluded property" in subsection 95(1).

New subparagraph 95(2)(a)(vi) ensures an income or a loss is treated as active business income or loss (and not as foreign accrual property income or loss) where that income or loss is derived under or as a result of certain agreements which provide for the purchase, sale or exchange of currency and relate to currency exchange risks with respect to amounts included in active business income or loss under paragraph 95(2)(a).

New subparagraphs 95(2)(a)(v) and (vi) apply to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. These subparagraphs are included in the Global Section 95 Election package described [immediately below — ed.]

Global Section 95 Election

In this set of proposals, there are a number of amendments to section 95, and to section 5907 of the Regulations, that apply to taxation years, of a foreign affiliate of a taxpayer, that begin or end after various specified dates. However, where a taxpayer so elects in writing and files the election (referred to in this commentary as the "Global Section 95 Election") with the Minister of National Revenue before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which these amendments are assented to, all of those measures apply to taxation years of all foreign affiliates, of the taxpayer, that begin after 1994. This set of proposals provides that, notwithstanding subsections 152(4) to (5), the Minister of National Revenue can make any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year that is necessary to take the election into account.

Note that the Fresh Start Section 95 Election (described [under 95(1)"taxable Canadian business"]) and the Global Section 95 Election are separate elections. As well, it should be noted that various important amendments to section 95 have separate elections that can be made by taxpayers.

The following amendments to the Act and to the Regulations are covered by the Global Section 95 Election package:

(A) Amendments to the Act:

- paragraphs (a), (c) and (c.1) of the definition "excluded property" in subsection 95(1),
- paragraph (b) of the definition "investment business" in subsection 95(1),
- subclauses 95(2)(a)(i)(A)(II) and (B)(II) and 95(2)(a)(ii)(A)(II) and (B)(II), clause 95(2)(a)(ii)(C), clause 95(2)(a)(ii)(E) and subparagraphs 95(2)(a)(v) and (vi),
- the portion of paragraph 95(2)(f) that is after subparagraph 95(2)(f)(ii) and before subparagraph 95(2)(f)(iii),
- paragraphs 95(2)(f.1), (f.2) and (g) to (g.02),
- paragraph 95(2)(i),
- paragraphs 95(2)(o) to (t),
- paragraph 95(2.1)(c),
- preamble of subsection 95(2.2),
- subsection 95(2.41), and
- paragraph 95(3)(d).

(B) Amendments to the Regulations:

- paragraph (b) of the definition "earnings" in Regulation 5907(1),
- paragraph (b) of the definition "exempt deficit" in Regulation 5907(1),
- paragraph (a.1) of the definition "exempt earnings" in Regulation 5907(1),
- subparagraph (d)(ii) of the definition "exempt earnings" in Regulation 5907(1),
- the preamble, paragraph (c), and the "postamble", of the definition "exempt loss" in Regulation 5907(1),
- the definition "loss" in Regulation 5907(1),
- subparagraph (d)(i) of the definition "net earnings" in Regulation 5907(1),
- subparagraph (d)(i) of the definition "net loss" in Regulation 5907(1),
- paragraph (b) of the definition "taxable deficit" in Regulation 5907(1),
- subparagraphs (b)(i.1), (iv) and (v) of the definition "taxable loss" in Regulation 5907(1), and

- paragraphs 5907(2.7)(a) and (b) of the Regulations.

If a Global Section 95 Election is made by a taxpayer, the amendments to the definitions "exempt earnings" and "exempt loss" in Regulation 5907(1) that implement the new concept of "qualifying member" will apply only for foreign affiliate taxation years that end after 1999. For more detail, see the commentary to the definitions "exempt earnings" and "exempt loss" in Regulation 5907(1).

Note that this set of proposals provides for the possibility of a total revocation of the Global Section 95 Election. If a taxpayer has made what would otherwise be a valid Global Section 95 Election, and the taxpayer has, on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day that is the third anniversary of the day on which the amending legislation enacting this set of proposals is assented to, filed with the Minister of National Revenue a notice in writing to revoke the election, the election is deemed never to have been made. This set of proposals provides that, notwithstanding subsections 152(4) to (5), the Minister of National Revenue can make any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year that is necessary to take the revocation into account.

[For the Fresh Start Section 95 Election, see under 95(1)"taxable Canadian business" — ed.]

Letter from Dept. of Finance, December 20, 2001:

Dear [xxx]:

I am writing in reply to your letter dated December 17, 2001, in which you requested amendments in connection with subclause 95(2)(a)(ii)(D)(V) of the *Income Tax Act* (the "Act").

Clause 95(2)(a)(ii)(D) of the Act generally provides that income derived by a foreign affiliate (the "first affiliate") of a taxpayer from amounts paid or payable by another foreign affiliate (the "second affiliate") of the taxpayer under a legal obligation to pay interest on monies borrowed by the second affiliate to acquire shares in the capital of another foreign affiliate (the "third affiliate") of the taxpayer will be considered active business income (instead of property income) provided that certain conditions enumerated in that clause, and in other provisions in the Act, are satisfied.

You have expressed a concern about the parenthetical phrase "... (the shares of which are excluded property) ..." in existing subclause 95(2)(a)(ii)(D)(V). You argue that the impact of this parenthetical phrase is that, if the second affiliate is a member of a group of corporations that files a consolidated federal income tax return in the United States (or in another jurisdiction having a similar tax system), the share of each member of the consolidated group must qualify as "excluded property". The expression "excluded property" is defined in subsection 95(1) of the Act.

You submit that, for non-income tax reasons, many large corporate groups have, as members of a tax consolidation group, corporations that are largely inactive or that do not carry on an active business. Shares of such corporations would not qualify as excluded property. You argue that this parenthetical phrase would then deny the benefits provided for under clause 95(2)(a)(ii)(D) to the first affiliate even where all or substantially all of the total income of members of that tax consolidation group is active business income.

We agree that the tax results produced under clause 95(2)(a)(ii)(D), as illustrated by your example, are not appropriate based on the existing tax policy. We are therefore prepared to recommend to the Minister of Finance that clause 95(2)(a)(ii)(D) of the Act be amended to address this issue. We will recommend that the requirements in existing subclause 95(2)(a)(ii)(D)(V) be amended to provide that amounts paid or payable by the second affiliate to the first affiliate in a particular taxation year of the first affiliate will satisfy the requirements of that subclause if those amounts paid or payable are relevant in computing the income or loss for income tax purposes in the foreign country

- of the members of a group of corporations, if the group is composed of the second affiliate and one or more other foreign affiliates of the taxpayer that are resident in, and subject to income taxation in, that country and in respect of which the taxpayer has a qualifying interest throughout the particular year and it is reasonable to conclude that all or substantially all of the total of the incomes and losses of those members for their taxation years that end in the particular year is attributable to incomes and losses from an active business, or
- of the second affiliate, if all or substantially all of the income earned by the third affiliate in the taxation years of the third affiliate that end in the particular year is included in computing the income of the members or shareholders of the third affiliate at the end of those years and is subject to income taxation in that country, the taxpayer has a qualifying interest in the third affiliate throughout the particular year and it is reasonable to conclude that all or substantially all of the total of the incomes and losses of the third affiliate for those years is attributable to incomes and losses from an active business.

If these recommendations are acted upon, I would anticipate that they would be included in the next technical bill.

We will recommend that the amendments apply to taxation years of a foreign affiliate of a taxpayer that begin after the date of the release of the draft of the technical bill. However, where the taxpayer so elects in respect of all the foreign affiliates of the taxpayer, the amendments will apply to taxation years of those affiliates of the taxpayer that begin after 1994 and, notwithstanding subsections 152(4) and (5) of the Act, any assessment of a taxpayer's tax payable under the Act for any of those taxation years shall be made that is necessary to take into account the application of the amendments. The ability to elect to have the amendments apply to these earlier taxation years will be contingent on the taxpayer electing to have other amendments to the foreign affiliate rules to be included in the technical bill apply to the taxpayer's foreign affiliates for these earlier taxation years. We cannot provide any more details regarding the election provisions until the release of the draft of the technical bill.

Thank you for writing.

Yours sincerely,

Len Farber
General Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, October 5, 2001:

Dear [xxx]:

I am writing in reply to your letter dated August 15, 2001 (and your follow-up letter dated August 16, 2001) to Mr. Wally Conway in which you requested an amendment to clause 95(2)(a)(ii)(D) of the *Income Tax Act* (the "Act").

Our understanding of the facts stated in your correspondence is the following:

- US Holdco (a corporation resident in the United States) is a controlled foreign affiliate of Canco (a corporation resident in Canada).
- Finco is also a controlled foreign affiliate of Canco.
- Canco has a qualifying interest (within the meaning of paragraph 95(2)(m) of the Act) in respect of US Holdco and in respect of Finco.
- Canco funds Finco with equity. Finco in turn loans the money to US Holdco, which uses the money to purchase shares of a United States limited liability corporation ("US LLC"). US Holdco becomes the sole shareholder/member of US LLC.
- US LLC carries on an active business for the purposes of the foreign affiliate rules.

In your correspondence, you also note that the facts are such that, if US LLC were "subject to income taxation" in the United States, all relevant requirements of subclause 95(2)(a)(ii)(D) would have been met and the interest income received by Finco from US Holdco would be included in computing the income from an active business of Finco. However, because US LLC is treated for US tax purposes as a flow-through entity and it is thus not directly "subject to income taxation" in the United States, the requirements of subclause 95(2)(a)(ii)(D) are not met and the interest income is not included in the active business income of Finco. You noted that, since US Holdco is the sole shareholder/member of US LLC, US LLC's income is included in computing US Holdco's income in the United States and is subject to income taxation in the United States. You argue that from a Canadian tax policy viewpoint, the scope of subclause 95(2)(a)(ii)(D) should be extended to cover situations where all of the income of the third affiliate (i.e., in your case, US LLC) referred to in that subclause is fully taxable in the country of residence (i.e., the United States) of the third affiliate (i.e., US LLC) and its foreign parent (US Holdco).

We are of the view that a United States limited liability corporation (LLC) that is a flow-through entity for US tax purposes merits treatment similar to that of a corporation that is "subject to income taxation" in the United States only if all or substantially all of the income earned by the LLC is included in computing the income of the members or shareholders of the LLC and is subject to income taxation in the United States under the laws of the United States.

We are therefore prepared to recommend to the Minister of Finance that subclause 95(2)(a)(ii)(D)(IV) of the Act be amended. The recommended amendment to that sub-subclause would accommodate a "third affiliate" where the affiliate is not subject to income taxation in its country of

residence but all or substantially all of the income earned by the affiliate in all the taxation years of the affiliate that end in the taxpayer's taxation year is included in computing the income of the members or shareholders of the affiliate at the end of those years and is subject to income taxation in that country under the laws of that country.

If this recommendation is acted upon, I would anticipate that the amendment would be included in the next technical bill.

We will recommend that the amendment apply to taxation years of a foreign affiliate of a taxpayer that begin after the date of the release of the draft of the technical bill. However, where the taxpayer so elects in respect of all the foreign affiliates of the taxpayer that begin after 1994, the amendment will apply to taxation years of those affiliates of the taxpayer that begin after 1994 and notwithstanding subsections 152(4) and (5) of the Act any assessment of a taxpayer's tax payable under the Act for any of those taxation years shall be made that is necessary to take into account the application of the amendment. The ability to elect to have the amendment apply to those earlier taxation years will be contingent on the taxpayer electing to have other amendments to the foreign affiliate rules to be included in the technical bill apply to the taxpayer's foreign affiliates for those earlier taxation years. We cannot provide any more details regarding the election provisions until the release of the draft of the technical bill.

Thank you for writing.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, February 12, 2001:

Dear [xxx]

We are writing in response to your letter of December 15, 2000.

In your letter you requested that we confirm our willingness to recommend to the Minister of Finance that the *Income Tax Act* and the related Regulations thereto be amended to ensure that foreign accrual property income or losses (FAPI or FAPL) of a foreign affiliate will not arise on a disposition of excluded property by the affiliate. Currently, gains or losses from the disposition of excluded property that is eligible capital property enter into the calculation of FAPI or FAPL of a foreign affiliate because such gains and losses are not capital gains and losses. You have also requested that we confirm our willingness to recommend that the amendments apply, if so elected by taxpayers in respect of a foreign affiliate, to taxation years of the affiliate beginning in the same year that the definition of "investment business" applies.

After reviewing your submission, we have concluded that amendments to the FAPI and FAPL rules are warranted.

Some amendments are needed to clarify when eligible capital property is to be considered to be excluded property. Eligible capital property that is used or held by a foreign affiliate principally for the purpose of earning income from an active business carried on by it should be considered to be excluded property. Eligible capital property that is not used or held principally for the purpose of earning income from an active business carried on by it should be considered to be excluded property if all the income derived from the property is deemed to be active business income under paragraph 95(2)(a). In any other case, it is not clear to us that it would be appropriate to treat eligible capital property as excluded property.

Other amendments are needed to remove from FAPI or FAPL of a foreign affiliate any income, gains or losses arising from the disposition of excluded property that is not capital property. Consequential amendments to the surplus calculation provisions of the *Income Tax Regulations* will also be required. Any income, gain or loss arising on the disposition of excluded property that is eligible capital property that is included or deducted in computing the active business income or loss of the foreign affiliate should be included in the exempt earnings or exempt loss of the affiliate and in the exempt surplus or exempt deficit of the affiliate. Adjustments to the exempt earnings and loss definitions will also be required for the non-taxable portion of the gains or losses arising on the disposition of eligible capital property. This occurs because the proceeds of disposition of eligible capital property exceed the resultant eligible capital amount and the cost of eligible property exceeds the resultant eligible capital expenditure.

Income tax amendments are normally made prospectively, and as a consequence, the amendments such as those described above would normally be made effective for taxation years commencing after the announcement date. However, there is some justification for a retroactive application date that would be the same as the effective date for the FAPI and FAPL rules modified in 1994. Taxpayers wishing for the retroactive application date will be expected to perform an election in writing within one year of the announcement date and the election will have to be in respect of all the taxpayer's affiliates.

As requested, we are willing to confirm that we are prepared to recommend to the Minister that amendments be made to the Act and Regulations such as those described above. We are also prepared to recommend an application date as described above.

Thank you for bringing this matter to our attention.

Yours sincerely,

Len Farber
General Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 20(3) — Purpose for which borrowed money deemed to have been used; 95(2)(n) — Deemed FA and deemed qualifying interest; 95(2)(r) — FA deemed to be qualifying member of partnership; 95(2.2), (2.21) — Interpretation rules; 95(6) — Anti-avoidance rules; 253 — Whether business carried on in Canada.

Regulations: 5907(1)"earnings"(b) (increase in earnings from an active business); 5907(1)"exempt earnings"(d) (inclusion in exempt earnings); 5907(1)"exempt loss"(c) (inclusion in exempt loss); 5907(1)"loss"(b) (increase in loss from an active business); 5907(2.7), (2.8) (where amount included in 95(2)(a)(i) or (ii)).

Interpretation Bulletins: IT-392: Meaning of term "share".

Information Circulars: 77-9R: Books, records and other requirements for taxpayers having foreign affiliates.

(a.1) **[income from sale of property]** — in computing the income from a business other than an active business for a taxation year of a foreign affiliate of a taxpayer there shall be included the income of the affiliate for the year from the sale of property (which, for the purposes of this paragraph, includes the income of the affiliate for the year from the performance of services as an agent in relation to a purchase or sale of property) where

(i) it is reasonable to conclude that the cost to any person of the property (other than property that was manufactured, produced, grown, extracted or processed in Canada by the taxpayer or a person with whom the taxpayer does not deal at arm's length in the course of carrying on a business in Canada and that was sold to non-resident persons other than the affiliate or sold to the affiliate for sale to non-resident persons) is relevant in computing the income from a business carried on by the taxpayer or a person resident in Canada with whom the taxpayer does not deal at arm's length or is relevant in computing the income from a business carried on in Canada by a non-resident person with whom the taxpayer does not deal at arm's length, and

Proposed Amendment — 95(2)(a.1)(i)

(i) it is reasonable to conclude that the cost to any person of the property (other than property that is designated property and that was sold to non-resident persons other than the affiliate or sold to the affiliate for sale to non-resident persons) is relevant in computing the income from a business carried on by the taxpayer or by a person resident in Canada with whom the taxpayer does not deal at arm's length or is relevant in computing the income from a business carried on in Canada by a non-resident person with whom the taxpayer does not deal at arm's length, and

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(9), will amend subpara. 95(2)(a.1)(i) to read as above, applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. However, if a taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year

that includes the day on which this Act is assented to, the amendment applies to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994.

Technical Notes: Paragraph 95(2)(a.1) includes in the income from a business other than an active business (and thus the foreign accrual property income (FAPI) of a foreign affiliate) of a taxpayer resident in Canada, the income of the affiliate from the sale of property (including the income derived from services as agent provided in relation to a purchase or sale of property) if

- it is reasonable to conclude that the cost to any person of the property (other than property that was manufactured, produced, grown, extracted or processed in Canada by the taxpayer or a person with which the taxpayer does not deal at arm's length in the course of carrying on a business in Canada and that was subsequently sold to non-resident persons other than the affiliate or to the affiliate for sale to non-resident persons) is relevant in computing the income from a business carried on by the taxpayer or a person resident in Canada that does not deal at arm's length with the taxpayer or is relevant in computing the income from a business carried on in Canada by a non-resident person with whom the taxpayer does not deal at arm's length (subparagraph 95(2)(a.1)(i)), and

- the property was not manufactured, produced, grown, extracted or processed in the country under whose laws the affiliate was formed (or continued) and exists and is governed, and the affiliate's business was principally carried on in that country (subparagraph 95(2)(a.1)(ii)).

The rule does not apply where more than 90% of the gross income of the affiliate from the sale of property is derived from sales of property (other than property that falls within the exclusions described above) to persons that deal at arm's length with the affiliate, which, for this purpose, includes a sale of property to a related non-resident corporation for sale by it to arm's length persons. Where the rule applies to the foreign affiliate of the taxpayer, the selling of the property is deemed to be a separate business other than an active business of the affiliate. Any income that pertains to or is incident to that business is also deemed to be income of the affiliate from a business other than an active business of the affiliate.

Subparagraph 95(2)(a.1)(i) is amended to replace the description of the property that is excluded from the application of that subparagraph with a new description for that property. Under the new description, property will qualify for the exclusion if it is "designated property" and was subsequently sold to non-resident persons other than the affiliate or to the affiliate for sale to non-resident persons.

The definition "designated property" is provided in new subsection 95(3.1). Property is designated property if it is property that is described in the "preamble" of paragraph 95(2)(a.1) and that meets one of the three tests set out in paragraphs (a), (b) and (c), respectively, of that definition.

Under the first test (paragraph (a) of the definition), property is designated property if it is

- property that was — in the course of carrying on a business in Canada — manufactured, produced, grown, extracted or processed in Canada by the taxpayer, or by a person with whom the taxpayer does not deal at arm's length, or

- property that was — in the course of a business carried on by a foreign affiliate of the taxpayer outside Canada — manufactured or processed from tangible property that, at the time of the manufacturing or processing, was owned by the taxpayer or by a person related to the taxpayer and used or held by the owner in the course of carrying on a business in Canada, if the manufacturing or processing was in accordance with the specifications of the owner of the tangible property and under a contract between that owner and the foreign affiliate.

Under the second test (paragraph (b) of the definition), property is designated property if it was acquired, in the course of carrying on a business in Canada, by a purchaser from a vendor if

- the purchaser is the taxpayer or is a person resident in Canada with whom the taxpayer does not deal at arm's length, and

- the vendor is a person
  - — with whom the taxpayer deals at arm's length,
  - — who is not a foreign affiliate of the taxpayer, and
  - — who is not a foreign affiliate of a person resident in Canada with whom the taxpayer does not deal at arm's length.

Under the third test (paragraph (c) of the definition), property is designated property if it was acquired by a purchaser from a vendor if

- the purchaser is the taxpayer or is a person resident in Canada with whom the taxpayer does not deal at arm's length,

- the vendor is a foreign affiliate of
  - — the taxpayer, or
  - — a person resident in Canada with whom the taxpayer does not deal at arm's length, and

- the property was manufactured, produced, grown, extracted or processed in the country under whose laws the vendor is governed and any of exists, was (unless the vendor was continued in any jurisdiction) formed or organized, or was last continued, and in which the vendor's business is principally carried on.

The amendment to subparagraph 95(2)(a.1)(i) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. Where the taxpayer elects in writing and files that election with the Minister of National Revenue on or before the filing-due date for the taxpayer's taxation year in which these amendments are assented to, new subparagraph 95(2)(a.1)(i) and the new definition "designated property" in new subsection 95(3.1) apply in respect of all foreign affiliates of the taxpayer for taxations years that end after 1994.

Example 1

Facts:

1. Canco is a corporation resident in Canada.

2. Forco is a controlled foreign affiliate of Canco.

3. XYZ is a corporation resident in Canada with whom Canco deals at arm's length.

4. Forco sells property to arm's length purchasers situated outside Canada. All the gross revenue and income of Forco is derived from the sale of property acquired from Canco. That property was acquired by Canco from XYZ and was manufactured in Canada by XYZ.

Application of paragraph 95(2)(a.1)

Forco's income from the sale of the property that Forco had acquired from Canco would, because of existing paragraph 95(2)(a.1), be included in Forco's income from a business other than an active business and thus the FAPI of Forco. This is because existing subparagraph 95(2)(a.1)(i) exempts property manufactured in Canada only if it was manufactured by Canco or by a person with whom the Canco does not deal at arm's length. In this case, the manufacturer is XYZ, an arm's length corporation.

However, because of amended subparagraph 95(2)(a.1)(i) and paragraph (b) of the definition "designated property" in new subsection 95(3.1), Forco's income from the sale of the property acquired by Forco from Canco will not be recharacterized by paragraph 95(2)(a.1) as income from a business other than an active business.

Example 2

Facts:

1. Canco is a corporation resident in Canada.

2. FA1 is a controlled foreign affiliate of Canco that was formed, exists and is governed under the laws of foreign Country A. FA1's manufacturing business is principally carried on in that country. The gross revenue and income of FA1 is derived from the sale, to Canco, of the property that FA1 manufactures.

3. FA2 is a controlled foreign affiliate of Canco. FA2 was formed, exists and is governed under the laws of foreign Country B. FA2's business is principally carried on in that country. FA2 purchases, from Canco, property that was manufactured in Country A by FA1. FA2 sells the property to purchasers outside of Canada.

Application of paragraph 95(2)(a.1)

The income from the sale of the property acquired by FA2 from Canco would, because of existing paragraph 95(2)(a.1), be included in FA2's income from a business other than an active business and thus the FAPI of FA2. This is because existing subparagraph 95(2)(a.1)(i) exempts property manufactured, produced, grown, extracted or processed in Canada only where the property was manufactured, produced, grown, extracted or processed in Canada by Canco, or by a person with whom Canco does not deal at arm's

length. In this case, the property was manufactured outside of Canada by FA1.

However, because of amended subparagraph 95(2)(a.1)(i) and paragraph (c) of the definition of "designated property" in new subsection 95(3.1), FA2's income from the sale of the property acquired by FA2 from Canco will not be recharacterized by paragraph 95(2)(a.1) as income from a business other than an active business.

(ii) the property was not manufactured, produced, grown, extracted or processed in the country under whose laws the affiliate was formed or continued and exists and is governed and in which the affiliate's business is principally carried on,

unless more than 90% of the gross revenue of the affiliate for the year from the sale of property is derived from the sale of such property (other than a property described in subparagraph (ii) the cost of which to any person is a cost referred to in subparagraph (i)) to persons with whom the affiliate deals at arm's length (which, for this purpose, includes a sale of property to a non-resident corporation with which the affiliate does not deal at arm's length for sale to persons with whom the affiliate deals at arm's length) and, where this paragraph applies to include income of the affiliate from the sale of property in the income of the affiliate from a business other than an active business,

(iii) the sale of such property shall be deemed to be a separate business, other than an active business, carried on by the affiliate, and

(iv) any income of the affiliate that pertains to or is incident to that business shall be deemed to be income from a business other than an active business;

Related Provisions: 95(2)(k.7) — Tiers of partnerships; 95(2)(n) — Deemed FA and deemed qualifying interest; 95(2.3) — Application of 95(2)(a.1); 95(3.1) — Designated property; 253 — Whether business carried on in Canada.

(a.2) **[income from insurance]** — in computing the income from a business other than an active business for a taxation year of a foreign affiliate of a taxpayer there shall be included the income of the affiliate for the year from the insurance of a risk (which, for the purposes of this paragraph, includes income of the affiliate for the year from the reinsurance of a risk) where the risk was in respect of

(i) a person resident in Canada,

(ii) a property situated in Canada, or

(iii) a business carried on in Canada

unless more than 90% of the gross premium revenue of the affiliate for the year from the insurance of risks (net of reinsurance ceded) was in respect of the insurance of risks (other than risks in respect of a person, a property or a business described in subparagraphs (i) to (iii)) of persons with whom the affiliate deals at arm's length and, where this paragraph applies to include income of the affiliate from the insurance of risks in the income of the affiliate from a business other than an active business,

(iv) the insurance of those risks shall be deemed to be a separate business, other than an active business, carried on by the affiliate, and

(v) any income of the affiliate that pertains to or is incident to that business shall be deemed to be income from a business other than an active business;

Related Provisions: 95(2)(k.7) — Tiers of partnerships; 95(2)(n) — Deemed FA and deemed qualifying interest; 253 — Whether business carried on in Canada.

(a.3) **[income from Canadian debt and lease obligations]** — in computing the income from a business other than an active business for a taxation year of a foreign affiliate of a taxpayer there shall be included the income of the affiliate for the year derived directly or indirectly from indebtedness and lease obligations (which, for the purposes of this paragraph, includes the income of the affiliate for the year from the purchase and sale of indebtedness and lease obligations on its own account, but does not include excluded income)

(i) of persons resident in Canada, or

(ii) in respect of businesses carried on in Canada

unless more than 90% of the gross revenue of the affiliate derived directly or indirectly from indebtedness and lease obligations (other than excluded revenue) was derived directly or indirectly from indebtedness and lease obligations of non-resident persons with whom the affiliate deals at arm's length and, where this paragraph applies to include income of the affiliate for the year in the income of the affiliate from a business other than an active business,

(iii) those activities carried out to earn such income shall be deemed to be a separate business, other than an active business, carried on by the affiliate, and

(iv) any income of the affiliate that pertains to or is incident to that business shall be deemed to be income from a business other than an active business;

Related Provisions: 95(2)(k.7) — Tiers of partnerships; 95(2)(n) — Deemed FA and deemed qualifying interest; 95(2.4), (2.41) — Application of 95(2)(a.3); 95(2.5) — Definitions for 95(2)(a.3).

Regulations: 7900(1), (2) (prescribed financial institutions); 8201 (meaning of "permanent establishment").

(a.4) **[income from partnership debt and lease obligations]** — in computing the income from a business other than an active business for a taxation year of a foreign affiliate of a taxpayer there shall be included (to the extent not included under paragraph (a.3) in such income of the affiliate for the year) that proportion of the income of the affiliate for the year derived directly or indirectly from indebtedness and lease obligations (which, for the purposes of this paragraph, includes the income of the affiliate for the year from the purchase and sale of indebtedness and lease obligations on its own account) in respect of a business carried on outside Canada by a partnership (any portion of the income or loss of which for fiscal periods of the partnership that end in the year is included or would, if the partnership had an income or loss for such fiscal periods, be included directly or indirectly in computing the income or loss of the taxpayer or a person resident in Canada with whom the taxpayer does not deal at arm's length) that

(i) the total of all amounts each of which is the income or loss of the partnership for fiscal periods of the partnership that end in the year that are included directly or indirectly in computing the income or loss of the taxpayer or a person resident in Canada with whom the taxpayer does not deal at arm's length

is of

(ii) the total of all amounts each of which is the income or loss of the partnership for fiscal periods of the partnership that end in the year

unless more than 90% of the gross revenue of the affiliate derived directly or indirectly from indebtedness and lease obligations was derived directly or indirectly from indebtedness and lease obligations of non-resident persons with whom the affiliate deals at arm's length (other than indebtedness and lease obligations of a partnership described in this paragraph) and where this paragraph applies to include a proportion of the income of the affiliate for the year in the income of the affiliate from a business other than an active business

(iii) those activities carried out to earn such income of the affiliate for the year shall be deemed to be a separate business, other than an active business, carried on by the affiliate, and

(iv) any income of the affiliate that pertains to or is incident to that business shall be deemed to be income from a business other than an active business

and for the purpose of this paragraph, where the income or loss of a partnership for a fiscal period that ends in the year is nil, the proportion of the income of the affiliate that is to be included in the income of the affiliate for the year from a business other than an active business shall be determined as if the partnership had income of $1,000,000 for that fiscal period;

Related Provisions: 95(2)(k.7) — Tiers of partnerships; 95(2)(n) — Deemed FA and deemed qualifying interest; 253 — Whether business carried on in Canada.

(b) **[services deemed not active business]** — where a controlled foreign affiliate of a taxpayer provides services or an undertaking to provide services and

(i) the amount paid or payable in consideration therefor

(A) is deductible in computing the income from a business carried on in Canada by any person in relation to whom the affiliate is a controlled foreign affiliate or by a person related to that person, or

(B) was paid or payable by a person other than the taxpayer and can reasonably be considered to relate to an amount that was deductible by the taxpayer or a person related to the taxpayer in computing the income of that taxpayer or person from a business carried on in Canada, or

(ii) the services are performed or are to be performed by any person referred to in subparagraph (i) who is an individual resident in Canada,

the provision of those services or the undertaking to provide those services shall be deemed to be a separate business, other than an active business, carried on by the affiliate, and any income from that business or that pertains to or is incident to that business shall be deemed to be income from a business other than an active business;

Proposed Amendment — 95(2)(b)

(b) **[services deemed not active business]** — the provision, by a foreign affiliate of a taxpayer, of services or of an undertaking to provide services is deemed to be a separate business, other than an active business, carried on by the affiliate, and any income from that business or that pertains to or is incident to that business is deemed to be income from a business other than an active business, if

(i) the amount paid or payable in consideration for those services or for the undertaking to provide those services

(A) is deductible, or can reasonably be considered to relate to an amount that is deductible, in computing the income from a business carried on in Canada, by

(I) any taxpayer of whom the affiliate is a foreign affiliate, or

(II) another taxpayer who does not deal at arm's length with any taxpayer of whom the affiliate is a foreign affiliate, or

(B) is deductible, or can reasonably be considered to relate to an amount that is deductible, in computing the foreign accrual property income of a foreign affiliate of

(I) any taxpayer of whom the affiliate is a foreign affiliate, or

(II) another taxpayer who does not deal at arm's length with any taxpayer of whom the affiliate is a foreign affiliate, or

(ii) the services are, or are to be, performed by

(A) the taxpayer,

(B) a person resident in Canada with whom the taxpayer does not deal at arm's length,

(C) a partnership any member of which is a person described in clause (A) or (B), or

(D) a partnership in which any person or partnership described in any of clauses (A) to (C) has, directly or indirectly, a partnership interest;

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(10), will amend para. 95(2)(b) to read as above, applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002, except that, in applying para. 95(2)(b) to taxation years, of a foreign affiliate of the taxpayer, that begin after December 20, 2002 and before February 28, 2004, para. 95(2)(b) is to be read as follows:

(b) the provision, by a foreign affiliate of a taxpayer, of services or of an undertaking to provide services is deemed to be a separate business, other than an active business, carried on by the affiliate, and any income from that business or that pertains to or is incident to that business is deemed to be income from a business other than an active business, if

(i) the amount paid or payable in consideration for those services or for the undertaking to provide those services

(A) is deductible, or can reasonably be considered to relate to an amount that is deductible, in computing the income from a business carried on in Canada, by

(I) any taxpayer of whom the affiliate is a controlled foreign affiliate, or

(II) another person who is related to any taxpayer of whom the affiliate is a controlled foreign affiliate, or

(B) is deductible, or can reasonably be considered to relate to an amount that is deductible, in computing the foreign accrual property income of a controlled foreign affiliate of

(I) any taxpayer of whom the affiliate is a controlled foreign affiliate, or

(II) another person who is related to any taxpayer of whom the affiliate is a controlled foreign affiliate, or

(ii) the services are, or are to be, performed by

(A) any taxpayer of whom the affiliate is a controlled foreign affiliate and who is an individual resident in Canada, or

(B) another person who is related to any taxpayer of whom the affiliate is a controlled foreign affiliate and who is an individual resident in Canada;

Technical Notes: Paragraph 95(2)(b) provides that if, in any of the specified circumstances referred to in that paragraph, a particular controlled foreign affiliate of a taxpayer provides services (or an undertaking to provide services), the provision of those services (or the undertaking) is deemed to be a separate business, other than an active business, carried on by the particular affiliate and any income from that business or that pertains to or is incident to that business is deemed to be income from a business other than an active business. Such income is therefore included in computing the particular affiliate's foreign accrual property income (FAPI).

The "preamble" of paragraph 95(2)(b) is amended to provide that if, in any of the circumstances referred to in that paragraph, any particular foreign affiliate of a taxpayer (whether or not that affiliate is a controlled foreign affiliate of the taxpayer) provides services (or an undertaking to provide services), the provision of those services (or the undertaking) is deemed to be a separate business, other than an active business, carried on by the particular affiliate and any income from that business or that pertains to or is incident to that business is deemed to be income from a business other than an active business.

Paragraph 95(2)(b) is amended in three ways.

First, clauses (A) and (B) of subparagraph 95(2)(b)(i) are replaced by new clause (A). That new clause ensures that income will be considered to be income from an business other than an active business of a foreign affiliate of a taxpayer, if the amount paid or payable in consideration for those services (or the undertaking to provide those services) is deductible, or can reasonably be considered to relate to an amount that is deductible, in computing the income from a business carried on in Canada, by

- any taxpayer of whom the affiliate is a foreign affiliate, or
- another taxpayer who does not deal at arm's length with any taxpayer of whom the affiliate is a foreign affiliate.

Second, a new clause (B) is added to subparagraph 95(2)(b)(i). That new clause ensures that, if a particular foreign affiliate of a taxpayer provides services (or an undertaking to provide services) and the amount paid or payable in consideration for those services (or the undertaking) is deductible, or can reasonably be considered to relate to an amount that is deductible, in computing the FAPI of a foreign affiliate of any taxpayer of whom the particular affiliate is a foreign affiliate or in computing the FAPI of a foreign affiliate of another taxpayer who does not deal at arm's length with any taxpayer of whom the affiliate is a foreign affiliate,

- the provision of those services (or the undertaking) is deemed to be a separate business, other than an active business, carried on by the particular affiliate, and
- any income from that business or that pertains to or is incident to that business is included in computing the particular affiliate's FAPI.

For example, new clause 95(2)(b)(i)(B) provides that, within a corporate group, income that would otherwise be income from an investment business (and therefore included in computing FAPI) of one foreign corporation in the group cannot be converted to active business income by the payment of fees to another foreign corporation in the group for services rendered to that investment business.

Third, subparagraph 95(2)(b)(ii) is amended to ensure that, if a particular foreign affiliate of a taxpayer provides services (or an undertaking to provide services) and those services are, or are to be, performed by a described party,

- the provision of those services (or the undertaking) is deemed to be a separate business, other than an active business, carried on by the particular affiliate, and
- any income from that business or that pertains to or is incident to that business is included in computing the particular affiliate's FAPI.

A described party is

- the taxpayer,
- a person resident in Canada with whom the taxpayer does not deal at arm's length,
- a partnership any member of which is a person described above, or
- a partnership in which any person or partnership described above has, directly or indirectly, a partnership interest.

These amendments to paragraph 95(2)(b) apply to taxation years of a foreign affiliate of a taxpayer that begin after December 20, 2002 except that, in applying paragraph 95(2)(b) to a foreign affiliate of the taxpayer for taxation years of the foreign affiliate that begin after December 20, 2002 and on or before February 27, 2004, that paragraph is to be read as follows:

(b) the provision, by a foreign affiliate of a taxpayer, of services or of an undertaking to provide services is deemed to be a separate business, other than an active business, carried on by the affiliate, and any income from that business or that pertains to or is incident to that business is deemed to be income from a business other than an active business, if

(i) the amount paid or payable in consideration for those services or for the undertaking to provide those services

(A) is deductible, or can reasonably be considered to relate to an amount that is deductible, in computing the income from a business carried on in Canada, by

(I) any taxpayer of whom the affiliate is a controlled foreign affiliate, or

(II) another person who is related to any taxpayer of whom the affiliate is a controlled foreign affiliate, or

(B) is deductible, or can reasonably be considered to relate to an amount that is deductible, in computing the foreign accrual property income of a controlled foreign affiliate of

(I) any taxpayer of whom the affiliate is a controlled foreign affiliate, or

(II) another person who is related to any taxpayer of whom the affiliate is a controlled foreign affiliate, or

(ii) the services are, or are to be, performed by

(A) any taxpayer of whom the affiliate is a controlled foreign affiliate and who is an individual resident in Canada, or

(B) another person who is related to any taxpayer of whom the affiliate is a controlled foreign affiliate and who is an individual resident in Canada;

Related Provisions: 95(2)(k.7) — Tiers of partnerships; 95(2)(n) — Deemed FA and deemed qualifying interest; 95(2.2) — Interpretation rules; 95(3) — "Services" defined; 253 — Whether business carried on in Canada.

(c) **[rollover of FA shares to another FA]** — where a foreign affiliate of a taxpayer (in this paragraph referred to as the "disposing affiliate") has disposed of capital property that was shares of the capital stock of another foreign affiliate of the taxpayer (in this paragraph referred to as the "shares disposed of") to any corporation that was, immediately following the disposition, a foreign affiliate of the taxpayer (in this paragraph referred to as the "acquiring affiliate") for consideration including shares of the capital stock of the acquiring affiliate,

(i) the cost to the disposing affiliate of any property (other than shares of the capital stock of the acquiring affiliate) receivable by the disposing affiliate as consideration for the disposition shall be deemed to be the fair market value of the property at the time of the disposition,

(ii) the cost to the disposing affiliate of any shares of any class of the capital stock of the acquiring affiliate receivable by the disposing affiliate as consideration for the disposition shall be deemed to be that proportion of the amount, if any, by which the total of the relevant cost bases to it, immedi-

ately before the disposition, of the shares disposed of exceeds the fair market value at that time of the consideration receivable for the disposition (other than shares of the capital stock of the acquiring affiliate) that

(A) the fair market value, immediately after the disposition, of those shares of the acquiring affiliate of that class

is of

(B) the fair market value, immediately after the disposition, of all shares of the capital stock of the acquiring affiliate receivable by the disposing affiliate as consideration for the disposition,

(iii) the disposing affiliate's proceeds of disposition of the shares shall be deemed to be an amount equal to the cost to it of all shares and other property receivable by it from the acquiring affiliate as consideration for the disposition, and

(iv) the cost to the acquiring affiliate of the shares acquired from the disposing affiliate shall be deemed to be an amount equal to the disposing affiliate's proceeds of disposition referred to in subparagraph (iii);

Related Provisions: 53(1)(c) — Addition to ACB of share; 95(1)"foreign accrual property income"B(b) — Inclusion in FAPI; 95(2)(f.6)(i) — No rollover where 95(2)(c) applies; 95(2)(n) — Deemed FA and deemed qualifying interest; 95(6) — Anti-avoidance rules.

Regulations: 5907(1)"net earnings"(d)(i), "net loss"(d)(i), "taxable earnings"(b)(v), "taxable loss"(b)(v) (exclusions from reduction); 5907(5.3)(b) (Reg. 5907(5.1) does not apply to disposition).

Interpretation Bulletins: IT-392: Meaning of term "share".

Proposed Addition — 95(2)(c.1)–(c.6)

Technical Notes: New paragraphs 95(2)(c.1) to (c.6) put into place a regime that, in general terms, is intended to suspend the recognition of the capital gain that would have arisen upon an internal disposition by a foreign affiliate of a corporation resident in Canada (or a partnership of which the foreign affiliate is a member) of a share of another foreign affiliate of a corporation resident in Canada that is excluded property to the vendor (or would be excluded property to the vendor if the vendor were a foreign affiliate of the taxpayer) if such a disposition would otherwise result in a gain. Generally, this "suspended gain" is recognized when there is an external disposition of the share. See the definitions "specified vendor" and "specified purchaser" in proposed new subsection 95(3.2) to determine when a disposition of a share of the capital stock of a foreign affiliate of a corporation resident in Canada is an internal disposition. These provisions replace proposed subsections 93(1.4) to (1.6) that were found in the December 20, 2002 proposals.

New paragraphs 95(2)(c.1) to (c.6) will apply to dispositions that occur after December 20, 2002. However, those paragraphs will not apply to a disposition of a share of the capital stock of a foreign affiliate of a corporation resident in Canada by a vendor

- if the disposition of the share is required to be made under an agreement in writing made by the vendor on or before December 20, 2002, or
- if the disposition of the share occurs on or before February 27, 2004 and a valid election in respect of the vendor is made under subsection 133(40) of the enacting legislation.

Where such an election is made, the special rules set out under subsection 133(40) of the enacting legislation will apply. Generally, a modified version of the proposed subsections 93(1.4) to (1.6) that were part of the December 20, 2002 proposals will apply. For details about the election and about those special rules, see the draft enacting legislation that this commentary accompanies. Note also that this current set of proposals provides that, notwithstanding subsections 152(4) to (5), the Minister of National Revenue can make any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year that is necessary to take such an election into account.

(c.1) **[application of para. (c.2)]** — paragraph (c.2) applies to a specified vendor, in respect of a particular corporation resident in Canada referred to in the definition "specified vendor" in subsection (3.2), (which specified vendor is referred to in this paragraph and paragraph (c.2) as the "vendor") if

(i) the vendor disposes at any time of a share of the capital stock of a foreign affiliate, of the particular corporation, (which share is referred to in this paragraph, paragraphs (c.2) to (c.4) and subsection (3.3) as the "specified share", which time is referred to in this paragraph and paragraphs (c.2) to (c.4) as the "original disposition time" of the specified share and which foreign affiliate is referred to in paragraphs (c.4) and (c.6) and in subsection (3.3) as the "disposed foreign affiliate") to a person or partnership (referred to in this paragraph as the "purchaser") that is, immediately after that time, a specified purchaser in respect of the particular corporation,

(ii) immediately before the original disposition time, the specified share is excluded property of the vendor (or would be excluded property of the vendor if the vendor were, immediately before the original disposition time, a foreign affiliate of the particular corporation),

(iii) the vendor would, were this Act read without reference to paragraph (c.2), have a taxable capital gain from the disposition of the specified share, and

(iv) none of paragraphs (2)(c), (d) to (e.1) and (e.3) to (e.5) and 88(3)(a) applies to the vendor in respect of the disposition of the share;

Technical Notes: New paragraph 95(2)(c.1) sets out the circumstances under which new paragraph 95(2)(c.2) will apply. Generally, new paragraph 95(2)(c.2) applies to a specified vendor (defined in new subsection 95(3.2)), in respect of a corporation resident in Canada, if:

- the specified vendor disposes of, at any time, a share of the capital stock of a foreign affiliate of the corporation resident in Canada, (referred to here as the "specified share", and which time is referred to here as the "original disposition time" of the specified share and which foreign affiliate is referred to here as the "disposed foreign affiliate") to a person or partnership that is, immediately after that time, a specified purchaser (defined in new subsection 95(3.2)) in respect of the corporation resident in Canada);
- immediately before the original disposition time, the specified share is excluded property of the specified vendor (or would be excluded property of the specified vendor if the specified vendor were, immediately before the original disposition time, a foreign affiliate of the corporation resident in Canada);
- if the Act were read without reference to paragraph 95(2)(c.2), the specified vendor would have a taxable capital gain from the disposition of the specified share; and
- none of paragraphs 88(3)(a) and 95(2)(c), (d) to (e.1) and (e.3) to (e.5) applies to the specified vendor in respect of the disposition of the share.

Related Provisions: 92(1.4) — Determining ACB of share of foreign affiliate; 95(2)(e.1)(ii) — Windup — continuation of affiliate; 95(2)(n) — Deemed FA and deemed qualifying interest; 95(3.2), (3.3) — Definitions; 95(3.6) — Partnerships and trusts.

(c.2) **[suspended gain on internal disposition of FA]** — if this paragraph applies to a vendor, the following rules apply:

(i) where the vendor is not a partnership, the vendor's proceeds of disposition (determined without reference to subsection 93(1)) from the disposition of the specified share are deemed to be an amount that is equal to

(A) if clause (B) does not apply to the vendor in respect of the disposition, the total of the

vendor's adjusted cost base of the specified share and the amount, if any, that would be designated under subsection 93(1) because of subsection 93(1.1) in respect of the specified share if the specified share was disposed of for consideration equal to its fair market value at the original disposition time of the specified share, or

(B) if the vendor is a controlled foreign affiliate of the particular corporation resident in Canada at the end of the vendor's taxation year that includes the original disposition time of the specified share and the particular corporation so elects in respect of the disposition in prescribed manner and within the prescribed time, the greater of

(I) the amount determined by clause (A) in respect of the specified share, and

(II) the amount that is the lesser of the fair market value of the consideration received by the vendor in respect of the disposition and the amount that the particular corporation designates in the election,

(ii) where the vendor is a partnership of which a particular foreign affiliate of the particular corporation referred to in the definition "specified vendor" in subsection (3.2) is a member, for the purpose of computing the particular foreign affiliate's taxable capital gain from the disposition by the partnership of the specified share, the vendor's proceeds of disposition from the disposition of the specified share are deemed to be an amount that is equal to

(A) if clause (B) does not apply to the vendor in respect of the disposition, the total of the vendor's adjusted cost base of the specified share and the amount of a dividend, if any, that would be deemed by subsection 93(1.2) to have been received immediately before the original disposition time because of subsection 93(1.3) in respect of the specified share in respect of the particular foreign affiliate on the assumptions that

(I) the specified share is a share referred to in subsection 93(1.3) in respect of the particular foreign affiliate,

(II) no other share of the disposed foreign affiliate was disposed of at the original disposition time of the specified share,

(III) the particular foreign affiliate was the only member of the partnership, and

(IV) the specified share was disposed of for consideration equal to its fair market value at the original disposition time of the specified share, or

(B) if the particular foreign affiliate is a controlled foreign affiliate of the particular corporation resident in Canada at the end of particular foreign affiliate's taxation year that includes the original disposition time of the specified share and the particular corporation so elects in respect of the disposition in prescribed manner and within the prescribed time, the greater of

(I) the amount determined by clause (A) in respect of the specified share, and

(II) the amount that is the lesser of the fair market value of the consideration received by the vendor in respect of the disposition and the amount that the particular corporation designates in the election,

(iii) the purchaser's cost of the specified share is deemed to be an amount that is equal to the fair market value, at the original disposition time, of the specified share,

(iv) the vendor's cost of a property that was received as consideration for the disposition of the specified share is deemed to be an amount that is equal to the fair market value of the property at the original disposition time of the specified share, and

(v) the vendor that is a foreign affiliate of the particular corporation resident in Canada or a foreign affiliate of the particular corporation resident in Canada that is a member of a partnership that is the vendor (which vendor or foreign affiliate is referred to in this subparagraph and paragraph (c.3) as the "relevant foreign affiliate") is deemed to have an unadjusted suspended gain in respect of a specified share disposed of, at the original disposition time, by the vendor that is equal to twice the amount, if any, by which

(A) the amount that would, but for the application of this paragraph, have been the relevant foreign affiliate's taxable capital gain in respect of that disposition, if the vendor's proceeds of disposition in respect of that disposition were equal to the fair market value of the consideration received by the vendor in respect of that disposition,

exceeds

(B) the amount of the relevant foreign affiliate's taxable capital gain in respect of that disposition;

Technical Notes: New paragraph 95(2)(c.2) sets out various rules that will apply to the specified vendor and the specified purchaser in respect of the corporation resident in Canada. The rules can be summarized as follows:

- Where the specified vendor is not a partnership, the proceeds of disposition (determined without reference to subsection 93(1)) from the disposition of the specified share (referred to in new subsection 95(2)(c.1)) are deemed to be an amount equal to one of the following two amounts:
  - the total of the specified vendor's adjusted cost base of the specified share and the amount, if any, that would be designated under subsection 93(1) because of subsection 93(1.1) in respect of the specified share if the specified share was disposed of for consideration equal to its fair market value at the original disposition time (referred to in new subsection 95(2)(c.1)) of the specified share (such aggregate referred to here as the "specified amount"), or
  - if the specified vendor is a controlled foreign affiliate of the particular corporation resident in Canada at the end of the specified vendor's taxation year that includes the original disposition time of the specified share and the particular corporation elects in prescribed manner and within the prescribed time (see proposed new section 5915 of the Regulations), the greater of the specified amount and the amount that is the lesser of the fair market value of the consideration received by the specified ven-

dor in respect of the disposition and the amount that the particular corporation designates in the election.

- Where the specified vendor is a partnership of which a particular foreign affiliate of the particular corporation referred to in the definition "specified vendor" in new subsection 95(3.2) is a member, in computing the particular foreign affiliate's taxable capital gain from the disposition by the partnership of the specified share, the specified vendor's proceeds of disposition from the disposition of the specified share are deemed to be an amount that is equal to one of the following amounts:

  — the total of the specified vendor's adjusted cost base of the specified share and the amount of a dividend, if any, that would be deemed by subsection 93(1.2) to have been received immediately before the original disposition time because of subsection 93(1.3) in respect of the specified share in respect of the particular foreign affiliate on the assumptions that the specified share is a share referred to in subsection 93(1.3) in respect of the particular foreign affiliate, no other share of the disposed foreign affiliate was disposed of at the original disposition time of the specified share, the particular foreign affiliate was the only member of the partnership, and the specified share was disposed of for consideration equal to its fair market value at the original disposition time of the specified share (referred to here as the "clause (A) amount"), or

  — if the particular foreign affiliate is a controlled foreign affiliate of the particular corporation resident in Canada at the end of the particular foreign affiliate's taxation year that includes the original disposition time of the specified share and the particular corporation elects in prescribed manner and within the prescribed time (see proposed section 5915 of the Regulations), the greater of the Clause (A) amount and the amount that is the lesser of the fair market value of the consideration received by the vendor in respect of the disposition and the amount that the particular corporation designates in the election.

- The specified purchaser's cost of the specified share is deemed to be the fair market value at the original disposition time of the specified share.

- The specified vendor's cost of property received as consideration for the disposition of the specified share is deemed to be the fair market value of the property at the original disposition time of the specified share.

- The specified vendor that is a foreign affiliate of the particular corporation resident in Canada or a foreign affiliate of the particular corporation resident in Canada that is a member of a partnership that is the specified vendor (here and in the commentary to paragraph 95(2)(c.3) referred to as the "relevant foreign affiliate") is deemed to have an unadjusted suspended gain in respect of a specified share disposed of, at the original disposition time, by the specified vendor that is equal to twice the amount, if any, by which

  — the amount of the taxable capital gain that, but for the application of this paragraph, would have been realized by the relevant foreign affiliate in respect of that disposition, if the specified vendor's proceeds of disposition in respect of that disposition were equal to the fair market value of the consideration received by the specified vendor in respect of the disposition,

  exceeds

  — the amount of the taxable capital gain that was realized by the relevant foreign affiliate in respect of that disposition.

Related Provisions: 92(1.4) — Determining ACB of share of foreign affiliate; 95(1)"foreign accrual property income"B(b) — Inclusion in FAPI; 95(2)(c.1) — Conditions for para. (c.2) to apply; 95(2)(c.3) — Deemed capital gain for relevant foreign affiliate; 95(2)(e.1)(ii) — Windup — continuation of affiliate; 95(2)(f.6)(i) — No rollover where 95(2)(c.2) applies; 95(2)(n) — Deemed FA and deemed qualifying interest; 95(3.2), (3.3) — Definitions; 95(3.6) — Partnerships and trusts.

Regulations: 5907(2.01) (determining earnings derived from disposition); 5915 (prescribed manner of making election under 95(2)(c.2)).

(c.3) **[deemed capital gain later]** — the relevant foreign affiliate referred to in paragraph (c.2) is deemed to have a capital gain from the disposition of the specified share equal to the amount prescribed to be the adjusted suspended gain in respect of the specified share and to have paid to the government of a country an amount equal to the amount prescribed to be the adjusted allocable tax in respect of the adjusted suspended gain in respect of the specified share at the earlier of

(i) the first time, after the original disposition time, that a specified purchaser in respect of the particular corporation that holds, immediately before that first time, the specified share makes a triggering disposition of the specified share, and

(ii) the first time, after the original disposition time, that a specified purchaser in respect of the particular corporation (which specified purchaser is referred to in this subparagraph as the "current holder") that holds, immediately before that first time, the specified share ceases to be a specified purchaser in respect of the particular corporation otherwise than because of a specified discontinuance of the current holder;

Technical Notes: New subsection 95(2)(c.3) deems the specified vendor referred to in paragraph 95(2)(c.1) to have a capital gain from the disposition of the specified share (defined in new paragraph 95(2)(c.1)) equal to the amount of the adjusted suspended gain (see new section 5912 of the Regulations) in respect of the specified share and to have paid to the government of a country an amount equal to the adjusted allocable tax (see new section 5912 of the Regulations) in respect of the adjusted suspended gain at the earlier of

- the first time, after the original disposition time (defined in new paragraph 95(2)(c.1)), that a specified purchaser (defined in new subsection 95(3.2)) in respect of the particular corporation that holds, immediately before that first time, the specified share makes a triggering disposition (defined in new subsection 95(3.3)) of the specified share; and

- the first time, after the original disposition time, that a specified purchaser (the "current holder") in respect of the particular corporation that holds, immediately before that first time, the specified share ceases to be a specified purchaser in respect of the particular corporation otherwise than because of a specified discontinuance (defined in new subsection 95(3.2)) of the current holder.

Related Provisions: 92(1.4) — Determining ACB of share of foreign affiliate; 95(2)(c.4) — Where specified share redeemed, acquired or cancelled; 95(2)(c.5) — Where specified share ceases to exist; 95(2)(c.6) — Where specified share exchanged for another share; 95(2)(e.1)(ii) — Windup — continuation of affiliate; 95(2)(n) — Deemed FA and deemed qualifying interest; 95(2)(y) — Meaning of "government of a country"; 95(3.2), (3.3) — Definitions; 95(3.6) — Partnerships and trusts.

Regulations: 5912(1) (amount prescribed to be adjusted suspended gain); 5912(2) (amount prescribed to be adjusted allocable tax).

(c.4) **[where specified share redeemed, etc.]** — for the purpose of paragraph (c.3), if a specified purchaser (referred to in this paragraph as the "current holder") in respect of a particular corporation resident in Canada holds the specified share and that share is redeemed, acquired or cancelled (otherwise than on a dividend-like redemption of that share) by the disposed foreign affiliate, the specified share is deemed to continue to exist, and the current holder is deemed to continue to hold that share, until the time that the current holder ceases to be a specified purchaser in respect of the particular corporation otherwise than because of a specified discontinuance of the current holder;

Technical Notes: New paragraph 95(2)(c.4) provides, for the purpose of paragraph 95(2)(c.3), that — if a specified purchaser (defined in new subsection 95(3.2) and referred to here as a "current holder") in respect of a corporation resident in Canada holds the specified share (defined in paragraph 95(2)(c.1)) and that share is redeemed, acquired or cancelled (otherwise than on a "dividend like redemption" of that share defined in new subsection 95(3.2)) by the disposed foreign affiliate (defined in new paragraph 95(2)(c.1)) — the specified share is deemed to continue to exist, and the current holder is deemed to continue to hold the share, until

the time that the current holder ceases to be a specified purchaser in respect of the corporation resident in Canada otherwise than because of a specified discontinuance (defined in new subsection 95(3.3)) of the current holder.

Related Provisions: 92(1.4) — Determining ACB of share of foreign affiliate; 95(2)(e.1)(ii) — Windup — continuation of affiliate; 95(2)(n) — Deemed FA and deemed qualifying interest; 95(3.2), (3.3) — Definitions; 95(3.6) — Partnerships and trusts.

(c.5) **[where specified share ceases to exist]** — for the purpose of paragraph (c.3), if a specified purchaser (referred to in this paragraph as a "current holder") in respect of a particular corporation resident in Canada holds a specified share in respect of the particular corporation and the specified share ceases to exist as a result of a dissolution, winding-up, cessation of existence, merger or combination described in paragraph (a) or (b) of the definition "specified discontinuance" in subsection (3.3) or subparagraph (a)(i) or (ii) of the definition "triggering disposition" in subsection (3.3), the specified share is deemed to continue to exist, and the current holder is deemed to continue to hold that share, until the time that the current holder ceases to be a specified purchaser in respect of the particular corporation otherwise than because of a specified discontinuance of the current holder;

Technical Notes: New paragraph 95(2)(c.5) provides, for the purpose of paragraph 95(2)(c.3), that — if a specified purchaser (defined in new subsection 95(3.2) and referred to here as a "current holder") in respect of a corporation resident in Canada holds a specified share (described in new paragraph 95(2)(c.1)) in respect of the corporation resident in Canada and the specified share ceases to exist as a result of a dissolution, winding-up, cessation of existence, merger or combination described in paragraph (a) or (b) of the definition "specified discontinuance" in subsection 95(3.3) or subparagraph (a)(i) or (ii) of the definition "triggering disposition" in subsection 95(3.3) — the specified share is deemed to continue to exist, and the current holder is deemed to continue to hold the share, until the current holder ceases to be a specified purchaser in respect of the corporation resident in Canada otherwise than because of a specified discontinuance of the current holder.

Related Provisions: 92(1.4) — Determining ACB of share of foreign affiliate; 95(2)(e.1)(ii) — Windup — continuation of affiliate; 95(2)(n) — Deemed FA and deemed qualifying interest; 95(3.2), (3.3) — Definitions; 95(3.6) — Partnerships and trusts.

(c.6) **[where specified share exchanged]** — for the purpose of paragraph (c.3), where a specified share in respect of a particular corporation resident in Canada is exchanged for another share of the disposed foreign affiliate, the other share is deemed to be the specified share in respect of the corporation resident in Canada;

Technical Notes: New paragraph 95(2)(c.6) provides, for the purpose of paragraph 95(2)(c.3), that if a specified share (described in new paragraph 95(2)(c.1)) in respect of a corporation resident in Canada is exchanged for another share of the disposed foreign affiliate (described in new paragraph 95(2)(c.1)) the other share is deemed to be the specified share in respect of the corporation resident in Canada.

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(11), will add paras. 95(2)(c.1) to (c.6), applicable to dispositions that occur after December 20, 2002 (other than dispositions required to be made under an agreement in writing made by a vendor before December 21, 2002), except that if, in respect of all of the foreign affiliates of a taxpayer, the taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which the amending legislation is assented to

(a) paras. (c.1) to (c.6) do not apply, in respect of the taxpayer, to dispositions that occur after December 20, 2002 and before February 28, 2004; and

(b) with respect to the dispositions referred to in para. (a), the Act shall, in respect of the taxpayer, be read as though it contained subsecs. 93(1.4) to (1.6) that read as follows:

(1.4) Disposition of foreign affiliate shares — If a specified vendor, in respect of a particular corporation resident in Canada, disposes of a share of the capital stock of a foreign affiliate of the particular corporation to a specified purchaser that would otherwise result in a capital gain to the specified vendor,

(a) the share is deemed not to be excluded property of the vendor unless any of subsection 88(3) or paragraphs 95(2)(c), (d) and (e) applied to the disposition of the share; and

(b) the cost amount of the share to the purchaser is deemed to be equal to the proceeds of disposition of the share to the vendor.

(1.5) Specified vendors — foreign affiliates — A specified vendor referred to in subsection (1.4) is

(a) a foreign affiliate of the particular corporation; or

(b) a partnership of which a foreign affiliate of the particular corporation is a member.

(1.6) Specified purchasers — foreign affiliates — A specified purchaser referred to in subsection (1.4) is

(a) the particular corporation;

(b) a corporation resident in Canada with which the particular corporation does not deal at arm's length;

(c) a foreign affiliate of either of those corporations; or

(d) a partnership any member of which is described in any of paragraphs (a) to (c).

Notwithstanding subsecs. 152(4) to (5) of the Act, any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year shall be made that is necessary to take an election or revocation referred to above into account.

Related Provisions: 92(1.4) — Determining ACB of share of foreign affiliate; 95(2)(e.1)(ii) — Windup — continuation of affiliate; 95(2)(n) — Deemed FA and deemed qualifying interest; 95(3.2), (3.3) — Definitions.

(d) **[foreign merger]** — where there has been a foreign merger in which the shares owned by a foreign affiliate of a taxpayer of the capital stock of a corporation that was a predecessor foreign corporation immediately before the merger were exchanged for or became shares of the capital stock of the new foreign corporation or the foreign parent corporation, subsection 87(4) applies to the foreign affiliate as if the references in that subsection to

(i) "amalgamation" were read as "foreign merger",

(ii) "predecessor corporation" were read as "predecessor foreign corporation",

(iii) "new corporation" were read as "new foreign corporation or the foreign parent corporation", and

(iv) "adjusted cost base" were read as "relevant cost base";

Proposed Amendment — 95(2)(d)

(d) **[foreign merger]** — if there has been a foreign merger (within the meaning of subsection 87(8.1)) of two or more predecessor foreign corporations (other than a foreign merger to which paragraph (d.1) applies) to form a new foreign corporation that was, immediately after the foreign merger, a foreign affiliate of a corporation resident in Canada, and a particular foreign predecessor corporation to the foreign merger was, immediately before the foreign merger, a foreign affiliate of the corporation resident in Canada, the following rules apply:

(i) each property of the new foreign corporation that was a property of the particular foreign pred-

ecessor corporation immediately before the foreign merger is deemed to have been disposed by the particular foreign predecessor corporation to the new foreign corporation for proceeds of disposition equal to

(A) where the property was excluded property of the particular foreign predecessor corporation immediately before the foreign merger, an amount that is equal to the relevant cost base, immediately before the foreign merger, of the property to the particular foreign predecessor corporation, or

(B) in any other case, an amount equal to the fair market value, immediately before the foreign merger, of the property,

(ii) the cost of the property to the new foreign corporation immediately after the foreign merger is deemed to be an amount equal to the particular foreign predecessor corporation's proceeds of disposition of the property determined by subparagraph (i),

(iii) each shareholder of the particular foreign predecessor corporation that was, immediately before the foreign merger, a specified vendor in respect of the corporation resident in Canada

(A) is deemed to have disposed, on the foreign merger, of each share of the particular foreign predecessor corporation that, immediately before the foreign merger, was held by the shareholder and was excluded property of the shareholder, for proceeds of disposition that are equal to

(I) unless a valid election is made under subclause (II), the adjusted cost base, immediately before the foreign merger, of the share, to the shareholder, and

(II) the amount that the corporation resident in Canada elects in respect of the disposition in the prescribed manner and in the prescribed time, which amount may not be less than the adjusted cost base, immediately before the foreign merger, of the share, to the shareholder and may not be greater than the fair market value, immediately before the foreign merger, of the share, and

(B) is deemed to have acquired each share of the new foreign corporation received on the foreign merger by the shareholder in exchange for a share described in clause (A) at a cost equal to the amount determined by the formula

$$A \times B/C$$

where

A is the total of all amounts each of which is the shareholder's proceeds of disposition of a share described in clause (A),

B is the fair market value, immediately after the foreign merger, of the particular share of the new foreign corporation, and

C is the fair market value, immediately after the foreign merger, of all shares of the new foreign corporation received on the foreign merger by the shareholder, and

(iv) the new foreign corporation is deemed to be the same person as, and a continuation of, the particular foreign predecessor corporation

(A) for the purposes of paragraphs (c.1) to (c.6), in respect of the disposition of a specified share received on the foreign merger by the new foreign corporation and disposed of, on the foreign merger, to the new foreign corporation by the particular foreign predecessor corporation,

(B) for the purposes of paragraphs (f.3) to (f.93), in respect of the disposition of a specified property received on the foreign merger by the new foreign corporation and disposed of, on the foreign merger, to the new foreign corporation by the particular foreign predecessor corporation, and

(C) for the purposes of paragraphs (h) to (h.5), in respect of the disposition of a specified property received on the foreign merger by the new foreign corporation and disposed of, on the foreign merger, to the new foreign corporation by the particular foreign predecessor corporation,

(v) the taxation year of the particular predecessor foreign corporation that would otherwise include the time of the foreign merger is deemed to have ended immediately before that time, and

(vi) where the fair market value of the share referred to in clause (iii)(A), immediately before the foreign merger, exceeds the fair market value of the share referred to in clause (iii)(B), immediately after the foreign merger, and it can reasonably be considered that all or any portion of the excess is a benefit that that shareholder desired to have conferred on another shareholder of the new corporation,

(A) the amount of the benefit is deemed to be income from property that is the shares of the new foreign corporation of the other shareholder on whom the benefit was conferred that was received, immediately after the foreign merger, and

(B) where the shares of the new foreign corporation held by the other shareholder on whom the benefit is conferred are excluded property to that shareholder or would be excluded property to that shareholder if that shareholder were a foreign affiliate of the corporation resident in Canada, the amount of the benefit is to be added, immediately after the foreign merger, in computing the adjusted cost base of the shares of the new corporation held at that time by that shareholder;

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(11), will amend para. 95(2)(d) to read as above, applicable to foreign mergers that occur after February 27, 2004.

Technical Notes: Paragraph 95(2)(d) provides rules that apply to a foreign affiliate of a taxpayer that is a shareholder of another foreign affiliate (a "predecessor foreign affiliate") of the taxpayer that participates in a foreign merger and that shareholder receives shares of a new foreign corporation formed on the foreign merger or the foreign parent corporation, as the case may be, in exchange for its shares in the predecessor foreign affiliate.

Paragraph 95(2)(d) is amended to provide the following rules in cases where there has been a foreign merger (other than a foreign merger to which proposed paragraph 95(2)(d.1) applies) of two or more predeces-

sor foreign corporations to form a new foreign corporation that was, immediately after the foreign merger, a foreign affiliate of a corporation resident in Canada, and a particular foreign predecessor corporation to the foreign merger was, immediately before the foreign merger, a foreign affiliate of the corporation resident in Canada.

- each property of the particular foreign predecessor corporation that became property of the new foreign corporation as a result of the foreign merger is deemed to have been disposed by the particular foreign predecessor corporation to the new foreign corporation for proceeds of disposition equal to
  - — if the property is excluded property of the particular foreign predecessor corporation immediately before the foreign merger, an amount that is equal to the relevant cost base, immediately before the foreign merger, of the property to the particular foreign predecessor corporation, or
  - — in any other case, an amount equal to the fair market value, immediately before the foreign merger, of the property,
- the cost of the property to the new foreign corporation, immediately after the foreign merger, is deemed to be equal to the amount so determined to be the particular foreign predecessor corporation's proceeds of disposition of the property,
- each shareholder of the particular foreign predecessor corporation that was, immediately before the foreign merger, a specified vendor in respect of the corporation resident in Canada
  - — is deemed to have disposed, on the foreign merger, of each share of the particular foreign predecessor corporation that, immediately before the foreign merger, was held by the shareholder and was excluded property of the shareholder, for proceeds of disposition that are equal to such amount as the corporation resident in Canada elects, in prescribed manner and within the prescribed time (see proposed section 5916 of the Regulations), in respect of the share, that is not less than the adjusted cost base, immediately before the foreign merger, of the share, to the shareholder and is not more than the fair market value, immediately before the foreign merger, of the share,
  - — is deemed to have acquired each particular share of the new foreign corporation received on the foreign merger by the shareholder in exchange for a share described in clause (A) for a cost equal to the amount determined by the formula

    $$A \times B / C$$

    where
    - A is the total of all amounts each of which is the proceeds of disposition of a share of the predecessor determined above,
    - B is the fair market value, immediately after the foreign merger, of the particular share of the new foreign corporation, and
    - C is the fair market value, immediately after the foreign merger, of all shares of the new foreign corporation received on the foreign merger by the shareholder,
- the new foreign corporation is deemed to be the same person as, and a continuation of, the particular foreign predecessor corporation
  - — for the purposes of paragraphs 95(2)(c.1) to (c.6), in respect of the disposition of a specified share received on the foreign merger by the new foreign corporation and disposed of, on the foreign merger, to the new foreign corporation by the particular foreign predecessor corporation,
  - — for the purposes of paragraphs 95(2)(f.3) to (f.93), in respect of the disposition of a specified property received on the foreign merger by the new foreign corporation and disposed of, on the foreign merger, to the new foreign corporation by the particular foreign predecessor corporation, and
  - — for the purposes of paragraphs 95(2)(h) *to* (h.5), *in respect of the disposition of a specified property received on the foreign merger by the new foreign corporation and disposed of, on the foreign merger, to the new foreign corporation by the particular foreign predecessor corporation*,
- the taxation year of the particular predecessor foreign corporation that would otherwise include the time of the foreign merger is deemed to have ended immediately before that time, and
- where the fair market value of the share of the predecessor corporation exchanged by the shareholder on the foreign merger exceeds the fair market value of the share of the new foreign corporation received on the foreign merger for the exchanged share and it is reasonable to consider all or any portion of the excess as a benefit that the shareholder desired to have conferred on another shareholder of the new foreign corporation, the amount of the benefit
  - — is deemed to be income from property that is the shares of the new foreign corporation of the other shareholder, and
  - — is to be added to the adjusted cost base of the shares of the new foreign corporation of the other shareholder if they are excluded property.

Related Provisions: 87(8.1) — Foreign merger; 92(1.4) — Determining ACB of share of foreign affiliate; 93(1.4) — No election allowed on disposing of share of foreign affiliate; 95(1)"foreign accrual property income"B(b) — Inclusion in FAPI; 95(2)(f.6)(i) — No rollover where 95(2)(d) applies; 95(2)(n) — Deemed FA and deemed qualifying interest; 95(3.8) — Exclusion from exempt surplus of foreign affiliate.

Regulations: 5907(1)"net earnings"(d)(i), "net loss"(d)(i), "taxable earnings"(b)(v), "taxable loss"(b)(v) (exclusions from reduction); 5907(2.01) (determining earnings derived from disposition); 5907(5.3)(b) (Reg. 5907(5.1) does not apply to disposition); 5916 (prescribed manner of making election under 95(2)(d)(iii)(A)).

Interpretation Bulletins: IT-392: Meaning of term "share".

(d.1) **[foreign merger]** — where there has been a foreign merger of two or more predecessor foreign corporations, in respect of each of which a taxpayer's surplus entitlement percentage was not less than 90% immediately before the merger, to form a new foreign corporation in respect of which the taxpayer's surplus entitlement percentage immediately after the merger was not less than 90%, other than a foreign merger where, under the income tax law of the country in which the predecessor foreign corporations were resident immediately before the merger, a gain or loss was recognized in respect of any capital property of a predecessor foreign corporation that became capital property of the new foreign corporation in the course of the merger,

(i) each capital property of the new foreign corporation that was a capital property of a predecessor foreign corporation immediately before the merger shall be deemed to have been disposed of by the predecessor foreign corporation immediately before the merger for proceeds of disposition equal to the cost amount of the property to the predecessor foreign corporation at that time; and

(ii) for the purposes of this subsection and the definition "foreign accrual property income" in subsection (1), the new foreign corporation shall, with respect to any disposition by it of any capital property to which subparagraph (i) applied, be deemed to be the same corporation as, and a continuation of, the predecessor foreign corporation that owned the property immediately before the merger,

but for greater certainty nothing in this paragraph shall affect the determination of whether any property of a predecessor foreign corporation is disposed of on a foreign merger other than one to which this paragraph applies;

Proposed Amendment — 95(2)(d.1)

(d.1) **[foreign merger]** — if there has been a foreign merger (within the meaning of subsection 87(8.1)) of two or more predecessor foreign corporations, in respect of each of which a taxpayer's surplus entitlement percentage was not less than 90%

immediately before the merger, to form a new foreign corporation in respect of which the taxpayer's surplus entitlement percentage immediately after the merger was not less than 90% (other than a foreign merger where, under the income tax law of the country in which the predecessor foreign corporations were resident immediately before the merger, any income, gain or loss was recognized in respect of any property of a predecessor foreign corporation that became property of the new foreign corporation in the course of the merger)

(i) each property of the new foreign corporation that was a property of a predecessor foreign corporation immediately before the merger is deemed to have been disposed of by the predecessor foreign corporation immediately before the merger for proceeds of disposition equal to the cost amount of the property to the predecessor foreign corporation at that time,

(ii) the new foreign corporation is deemed to be the same corporation as, and a continuation of, the predecessor foreign corporation for the purposes of

(A) this subsection and the definition "foreign accrual property income" in subsection (1), with respect to any disposition by the new foreign corporation of property owned by the predecessor corporation immediately before the merger, and

(B) paragraphs (c.1) to (c.6), (f.1) to (f.93) and (h) to (h.5),

(iii) for greater certainty, nothing in this paragraph affects the determination of whether any property of a predecessor foreign corporation is disposed of on a foreign merger other than a foreign merger to which this paragraph applies, and

(iv) subsection 87(4) applies to each foreign affiliate of the taxpayer that, immediately before the merger, owned shares of the capital stock of a predecessor foreign corporation as if the reference in that subsection to

(A) the word "amalgamation" were a reference to the expression "foreign merger" and with any other modifications that the circumstances require,

(B) the expression "predecessor corporation" were a reference to the expression "predecessor foreign corporation" and with any other modifications that the circumstances require,

(C) the expression "new corporation" were a reference to the expression "new foreign corporation" and with any other modifications that the circumstances require, and

(D) the expression "adjusted cost base" were a reference to the expression "relevant cost base" and with any other modifications that the circumstances require;

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(11), will amend para. 95(2)(d.1) to read as above, applicable to foreign mergers that occur after December 20, 2002.

Technical Notes: Paragraph 95(2)(d.1) provides for the rollover of capital property on a foreign merger where certain conditions have been met. One of these conditions (referred to as the "non-recognition condition") is that no gain or loss was recognized, under the income tax law of the country in which the predecessor foreign corporations were resident, in respect of any capital property of a predecessor foreign corporation that became capital property of the new foreign corporation in the course of the foreign merger.

Paragraph 95(2)(d.1) is amended in a number of ways.

First, paragraph 95(2)(d.1) is amended to provide for the rollover of property (including, but not restricted to capital property) on a foreign merger where certain conditions have been met. In addition, the non-recognition condition is amended to require that no income, gain or loss was recognized, under the income tax law of the country in which the predecessor foreign corporations were resident, in respect of any property of a predecessor foreign corporation that became property of the new foreign corporation in the course of the foreign merger.

Second, the amendments to subparagraph 95(2)(d.1)(ii) treat (for the purposes of paragraphs 95(2)(c.1) to (c.6), (f.1) to (f.93) and (h) to (h.5)) the new foreign corporation as the same corporation as and as a continuation of the predecessor foreign corporation.

Third, new subparagraph 95(2)(d.1)(iv) is a consequential to the amendments to paragraph 95(2)(d) and makes subsection 87(4) applicable to the shareholders of the predecessor foreign corporation that are foreign affiliates of the corporation resident in Canada.

Related Provisions: 87(8.1) — Foreign merger; 92(1.4) — Determining ACB of share of foreign affiliate; 93(1.4) — No election allowed on disposing of share of foreign affiliate; 95(1)"foreign accrual property income"B(b) — Inclusion in FAPI; 95(2)(f.6)(i) — No rollover where 95(2)(d.1) applies; 95(2)(n) — Deemed FA and deemed qualifying interest.

Regulations: 5907(2.01) (determining earnings derived from disposition).

Interpretation Bulletins: IT-392: Meaning of term "share".

(e) **[windup of foreign affiliate]** — except as otherwise provided in paragraph (e.1), where on the dissolution of a foreign affiliate of a taxpayer (in this paragraph referred to as the "disposing affiliate") one or more shares of the capital stock of another foreign affiliate of the taxpayer have been disposed of to a shareholder that is another foreign affiliate of the taxpayer,

(i) the disposing affiliate's proceeds of disposition of each such share and the cost thereof to the shareholder shall be deemed to be an amount equal to the relevant cost base to the disposing affiliate of the share immediately before the dissolution, and

(ii) the shareholder's proceeds of disposition of the shares of the disposing affiliate shall be deemed to be the amount, if any, by which the total of

(A) the cost to the shareholder of the shares of the other foreign affiliate, as determined in subparagraph (i), and

(B) the fair market value of any property (other than the shares referred to in clause (A)) disposed of by the disposing affiliate to the shareholder on the dissolution,

exceeds

(C) the total of all amounts each of which is the amount of any debt owing by the disposing affiliate, or of any other obligation of the disposing affiliate to pay any amount, that was outstanding immediately before the dissolution and that was assumed or cancelled by the shareholder on the dissolution;

Proposed Amendment — 95(2)(e)

(e) **[windup of foreign affiliate]** — if, at a particular time, a shareholder (other than a person resident in Canada) of a foreign affiliate (referred to in this paragraph as the "disposed foreign affiliate") of a particular corporation resident in Canada that is a specified purchaser in respect of the particular cor-

poration receives, in the course of a liquidation and dissolution (other than a liquidation and dissolution to which paragraph (e.1) applies) of the disposed foreign affiliate, a property from the disposed foreign affiliate, the following rules apply:

(i) the disposed foreign affiliate's proceeds of disposition of the property are deemed to be

(A) if the property is excluded property of the disposed foreign affiliate at the particular time, an amount that is equal to the relevant cost base, immediately before the particular time, of the property to the disposed foreign affiliate, or

(B) in any other case, an amount equal to the fair market value, immediately before the particular time, of the property,

(ii) the cost of the property to the shareholder immediately after the particular time is deemed to be an amount equal to the disposed foreign affiliate's proceeds of disposition of the property determined by subparagraph (i),

(iii) the property is deemed to have been received by the shareholder as proceeds of disposition of shares of the disposed foreign affiliate disposed of by the shareholder in the course of the liquidation and dissolution,

(iv) each particular share of the disposed foreign affiliate disposed of by the shareholder in the course of the liquidation and dissolution is deemed to have been disposed of for proceeds that are equal to the amount determined by the formula

$$(A - B) \times C/D$$

where

A is the total of all amounts each of which is the cost to the shareholder, immediately after the particular time, of a property received by the shareholder as consideration for the disposition of the shares of the disposed foreign affiliate disposed of in the course of the liquidation and dissolution,

B is the total of all amounts each of which is the amount of a debt that was owing by the disposed foreign affiliate, or any other obligation of the disposed foreign affiliate to pay an amount that was outstanding, immediately before it was assumed or cancelled, as the case may be, by the shareholder,

C is the fair market value, immediately before the commencement of the liquidation and dissolution, of the particular share, and

D is the fair market value, immediately before the commencement of the liquidation and dissolution, of all the shares of the disposed foreign affiliate disposed of by that shareholder,

(v) any gain from the disposition of the shares of the disposed foreign affiliate disposed of by the shareholder in the course of the liquidation and dissolution that, but for this subparagraph, would be a gain from the disposition of excluded property of the shareholder, is deemed to be the lesser of

(A) the amount of the gain as otherwise determined, and

(B) such amount, not exceeding the amount referred to in clause (A), as the particular corporation resident in Canada elects in prescribed manner and within the prescribed time, and

(vi) the shareholder is deemed to be the same person as, and a continuation of, the disposed foreign affiliate

(A) for the purposes of paragraphs (c.1) to (c.6), in respect of the disposition of a specified share received by the shareholder and disposed of, to the shareholder, by the disposed foreign affiliate in the course of the liquidation and dissolution,

(B) for the purposes of paragraphs (f.3) to (f.93), in respect of the disposition of a specified property received by the shareholder and disposed of, to the shareholder, by the disposed foreign affiliate in the course of the liquidation and dissolution, and

(C) for the purposes of paragraphs (h) to (h.5), in respect of the disposition of a specified property received by the shareholder and disposed of, to the shareholder, by the disposed foreign affiliate in the course of the liquidation and dissolution, and

(vii) the taxation year of the disposed foreign affiliate that would otherwise include the time that the disposed foreign affiliate is dissolved is deemed to have ended immediately before that time;

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(11), will amend para. 95(2)(e) to to read as above, applicable to liquidations that begin after February 27, 2004.

Technical Notes: Paragraph 95(2)(e) provides rules for determining foreign accrual property income that apply when a foreign affiliate of a taxpayer dissolves and, on the dissolution, disposes of shares of a foreign affiliate of the taxpayer a to another foreign affiliate of the taxpayer.

Paragraph 95(2)(e) is amended to provide for the following rules if, at a particular time, a shareholder (other than a person resident in Canada) of a foreign affiliate (referred to in this paragraph as the "disposed foreign affiliate") of a particular corporation resident in Canada that is a specified purchaser in respect of the particular corporation receives, in the course of a liquidation and dissolution (other than a liquidation and dissolution to which paragraph 95(2)(e.1) applies) of the disposed foreign affiliate, a property from the disposed foreign affiliate:

- the disposed foreign affiliate's proceeds of disposition of the property are deemed to be
  - — if the property is excluded property of the disposed foreign affiliate at the particular time, an amount that is equal to the relevant cost base (defined in current subsection 95(4)), immediately before the particular time, of the property to the disposed foreign affiliate, or
  - — in any other case, an amount equal to the fair market value, immediately before the particular time, of the property,
- the cost of the property to the shareholder immediately after the particular time is deemed to be an amount equal to the disposed foreign affiliate's proceeds of disposition of the property determined above,
- the property is deemed to have been received by the shareholder as proceeds of disposition of shares of the disposed foreign affiliate disposed of by the shareholder in the course of the liquidation and dissolution,
- each particular share of the disposed foreign affiliate disposed of by the shareholder in the course of the liquidation and dissolution is deemed to have been disposed of for proceeds that are equal to the amount determined by the formula

$$(A - B) \times C/D$$

where

A is the total of all amounts each of which is the cost to the shareholder, immediately after the particular time, of a property received by the shareholder as consideration for the disposition of the shares of the disposed foreign affiliate disposed of in the course of the liquidation and dissolution,

B is the total of all amounts each of which is the amount of a debt that was owing by the disposed foreign affiliate, or any other obligation of the disposed foreign affiliate to pay an amount that was outstanding, immediately before it was assumed or cancelled, as the case may be, by the shareholder,

C is the fair market value, immediately before the commencement of the liquidation and dissolution, of the particular share, and

D is the fair market value, immediately before the commencement of the liquidation and dissolution, of all the shares of the disposed foreign affiliate disposed of by that shareholder,

- any gain from the disposition of the shares of the disposed foreign affiliate disposed of by the shareholder in the course of the liquidation and dissolution that, but for this subparagraph, would be a gain from the disposition of excluded property of the shareholder, is deemed to be the lesser of
  - the amount of the gain as otherwise determined, and
  - such amount, not exceeding the amount of the gain as otherwise determined, as the particular corporation resident in Canada elects in prescribed manner and within the prescribed time (see proposed new section 5916 of the Regulations), and
- the shareholder is deemed to be the same person as, and a continuation of, the disposed foreign affiliate
  - for the purposes of paragraphs 95(2)(c.1) to (c.6), in respect of the disposition of a specified share received by the shareholder and disposed of, to the shareholder, by the disposed foreign affiliate in the course of the liquidation and dissolution,
  - for the purposes of paragraphs 95(2)(f.3) to (f.93), in respect of the disposition of a specified property received by the shareholder and disposed of, to the shareholder, by the disposed foreign affiliate in the course of the liquidation and dissolution, and
  - for the purposes of paragraphs 95(2)(h) to (h.5), in respect of the disposition of a specified property received by the shareholder and disposed of, to the shareholder, by the disposed foreign affiliate in the course of the liquidation and dissolution, and
- the taxation year of the disposed foreign affiliate that would otherwise include the time that the disposed foreign affiliate is dissolved is deemed to have ended immediately before that time.

A "specified purchaser" in respect of a corporation resident in Canada is defined in proposed new subsection 95(3.2).

Related Provisions: 92(1.4) — Determining ACB of share of foreign affiliate; 93(1.4) — No election allowed on disposing of share of foreign affiliate; 95(1)"foreign accrual property income"B(b) — Inclusion in FAPI; 95(2)(e.6) — Where shareholder is a partnership; 95(2)(f.6)(i) — No rollover where 95(2)(e) applies; 95(2)(n) — Deemed FA and deemed qualifying interest; 95(3.8) — Exclusion from exempt surplus of foreign affiliate; 257 — Formula amount cannot calculate to less than zero.

Regulations: 5905(7) (computation of balances where 95(2)(e) applies); 5907(1)"net earnings"(d)(i), "net loss"(d)(i), "taxable earnings"(b)(v), "taxable loss"(b)(v) (exclusions from reduction); 5907(2.01) (determining earnings derived from disposition); 5907(5.3)(b) (Reg. 5907(5.1) does not apply to disposition); 5907(9) (dissolution); 5916 (prescribed manner of making election under 95(2)(e)(v)(B)).

Interpretation Bulletins: IT-392: Meaning of term "share".

(e.1) **[windup of foreign affiliate]** — where there has been a liquidation and a dissolution of a foreign affiliate (in this paragraph referred to as the "disposing affiliate") of a taxpayer in respect of which, immediately before the liquidation, the taxpayer's surplus entitlement percentage was not less than 90%, other than a liquidation and a dissolution where, under the income tax law of the country in which the disposing affiliate was resident immediately before the liquidation, a gain or loss was recognized by the disposing affiliate in respect of any capital property distributed by it in the course of the liquidation to another foreign affiliate of the taxpayer resident in that country, the following rules apply:

(i) each capital property of the disposing affiliate that was so distributed to another foreign affiliate of the taxpayer shall be deemed to have been disposed of by the disposing affiliate for proceeds of disposition equal to the cost amount of the property to the disposing affiliate immediately before the distribution,

(ii) for the purposes of this subsection and the definition "foreign accrual property income" in subsection (1), the other affiliate shall, with respect to any disposition by it of capital property to which subparagraph (i) applied, be deemed to be the same corporation as, and a continuation of, the disposing affiliate, and

(iii) the other affiliate's proceeds of disposition of the shares of the capital stock of the disposing affiliate disposed of in the course of the liquidation shall be deemed to be the adjusted cost base of those shares to the other affiliate immediately before the disposition;

Proposed Amendment — 95(2)(e.1)

(e.1) **[windup of foreign affiliate]** — if there has been a liquidation and a dissolution of a foreign affiliate (in this paragraph referred to as the "disposing affiliate") of a taxpayer in respect of which, immediately before the liquidation, the taxpayer's surplus entitlement percentage was not less than 90% (other than a liquidation and a dissolution where, under the income tax law of the country in which the disposing affiliate was resident immediately before the liquidation, any income, gain or loss was recognized by the disposing affiliate in respect of any property distributed by it in the course of the liquidation to another foreign affiliate of the taxpayer):

(i) each property of the disposing affiliate that was so distributed to another foreign affiliate of the taxpayer is deemed to have been disposed of by the disposing affiliate for proceeds of disposition equal to the cost amount of the property to the disposing affiliate immediately before the distribution,

(ii) the other affiliate is deemed to be the same corporation as, and a continuation of, the disposing affiliate for the purposes of

(A) this subsection and the definition "foreign accrual property income" in subsection (1), with respect to any disposition by the other affiliate of property owned by the disposing affiliate immediately before the liquidation, and

(B) paragraphs (c.1) to (c.6), (f.1) to (f.93) and (h) to (h.5), and

(iii) the other affiliate's proceeds of disposition of the shares of the capital stock of the disposing affiliate disposed of in the course of the liquidation is deemed to be the adjusted cost base of those shares to the other affiliate immediately before the disposition;

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(11), will amend para. 95(2)(e.1) to read as above, applicable to liquidations that begin after December 20, 2002.

Technical Notes: Paragraph 95(2)(e.1) provides for the rollover of capital property on a liquidation and a dissolution of a foreign affiliate of a taxpayer where certain conditions have been met. One of these conditions (referred to as the "non-recognition condition") is that no gain or loss was recognized, under the income tax law of the country in which the disposing affiliate was resident, by the disposing affiliate in respect of any property of the disposing affiliate that was distributed by the disposing affiliate in the course of the liquidation to another foreign affiliate, of the taxpayer, resident in that country.

Paragraph 95(2)(e.1) is amended in the following ways.

First, paragraph 95(2)(e.1) is amended to provide for the rollover of property (including, but not restricted to, capital property) on a liquidation and a dissolution of a foreign affiliate of a taxpayer where certain conditions have been met.

Second, the non-recognition condition in paragraph 95(2)(e.1) is amended to require that no income, gain or loss was recognized, under the income tax law of the country in which the disposing affiliate was resident, by the disposing affiliate in respect of any property of the disposing affiliate that was distributed by the disposing affiliate in the course of the liquidation and dissolution to another foreign affiliate of the taxpayer. The non-recognition condition no longer requires that this other foreign affiliate be resident in the same country as the disposing affiliate.

Third, the amendments to subparagraph 95(2)(e.1)(ii) treat (for the purposes of paragraphs 95(2)(e.1) to (e.6), (f.1) to (f.93) and (h) to (h.5)) the shareholder of the disposing affiliate as the same corporation as the disposing affiliate.

Related Provisions: 92(1.4) — Determining ACB of share of foreign affiliate; 93(1.4) — No election allowed on disposing of share of foreign affiliate; 95(1)"foreign accrual property income"B(b) — Inclusion in FAPI; 95(2)(e.2) — Where redemption, acquisition or cancellation deemed to be liquidation and dissolution; 95(2)(f.6)(i) — No rollover where 95(2)(e.1) applies; 95(2)(n) — Deemed FA and deemed qualifying interest.

Regulations: 5905(7) (computation of balances where 95(2)(e.1) applies); 5907(2.01) (determining earnings derived from disposition); 5907(9) (dissolution where 95(2)(e.1) does not apply).

Interpretation Bulletins: IT-392: Meaning of term "share".

Proposed Addition — 95(2)(e.2)–(e.6)

(e.2) **[application of para. (e.1)]** — for the purpose of paragraph (e.1), a redemption, an acquisition or a cancellation of shares of a foreign affiliate of a corporation resident in Canada is deemed to be a liquidation and a dissolution of the foreign affiliate, if

(i) the surplus entitlement percentage of the corporation resident in Canada, in respect of the foreign affiliate, immediately before the redemption, acquisition or cancellation, is more than 90%, the surplus entitlement percentage of the corporation resident in Canada, in respect of the foreign affiliate is, immediately after the redemption, acquisition or cancellation, nil, and the foreign affiliate has no issued and outstanding shares immediately after the redemption, acquisition or cancellation, or

(ii) in the course of the redemption, acquisition or cancellation, property that has a fair market value equal to or greater than 90% of the fair market value, immediately before the redemption, acquisition or cancellation, of the property owned by the foreign affiliate is, because of the redemption, acquisition or cancellation, distributed to the shareholders of the foreign affiliate;

Technical Notes: New paragraph 95(2)(e.2) provides that, for the purpose of new paragraph 95(2)(e.1), a redemption, acquisition or cancellation of the shares of a foreign affiliate of a corporation resident in Canada will be treated as a liquidation and a dissolution of the foreign affiliate if:

- the surplus entitlement percentage of the corporation resident in Canada, in respect of the foreign affiliate, immediately before the redemption, acquisition or cancellation is more than 90%, and the surplus entitlement percentage of the corporation resident in Canada, in respect of the foreign affiliate is, immediately after the redemption, acquisition or cancellation, nil, and the foreign affiliate has no issued and outstanding shares immediately after the redemption, acquisition or cancellation; or

- in the course of the redemption, acquisition or cancellation, property having a fair market value equal to or greater than 90% of the fair market value, immediately before the redemption, acquisition or cancellation, of the property owned by the foreign affiliate is, because of the redemption, acquisition or cancellation, distributed to the shareholders of the foreign affiliate.

New paragraph 95(2)(e.2) applies to redemptions, acquisitions or cancellations that occur after February 27, 2004 other than a redemption, an acquisition or a cancellation of shares of a holder of shares that are required to be made under an agreement in writing made by the holder on or before February 27, 2004.

Related Provisions: 92(1.4) — Determining ACB of share of foreign affiliate; 93(1.4) — No election allowed on disposing of share of foreign affiliate; 95(2)(n) — Deemed FA and deemed qualifying interest; 95(3.2) — Definitions.

(e.3) **[rollover to specified purchaser]** — if, at a particular time, a shareholder (other than a person resident in Canada), of a foreign affiliate of a particular corporation resident in Canada, that is a specified purchaser in respect of the particular corporation receives (otherwise than in the course of a liquidation and a dissolution of the foreign affiliate or a merger or combination of corporations involving the foreign affiliate) a property from the foreign affiliate as a dividend or distribution on a share of the foreign affiliate, notwithstanding subsection 52(2), the following rules apply:

(i) the foreign affiliate's proceeds of disposition of the property are deemed to be

(A) if the property is excluded property of the foreign affiliate at the particular time, an amount that is equal to the relevant cost base of the property to the foreign affiliate immediately before the particular time, or

(B) in any other case, an amount equal to the fair market value, immediately before the particular time, of the property,

(ii) the cost of the property to the shareholder immediately after the particular time is deemed to be an amount equal to the foreign affiliate's proceeds of disposition of the property determined by subparagraph (i),

(iii) the amount of that dividend or distribution, in respect of the property, is deemed to be equal to the amount of the foreign affiliate's proceeds of disposition of the property determined by subparagraph (i), and

(iv) where, but for this subparagraph, the shareholder would, because of subsection 40(3), have a gain in respect of the share because of the dividend or distribution and the share is excluded property of the shareholder (or would be excluded property of the shareholder if the shareholder were a foreign affiliate of the particular corporation), for the purpose of applying subsection 40(3), the amount prescribed by paragraph 5900(1)(c) of the Regulations to have been paid out of the pre-acquisition surplus of the particular

corporation's foreign affiliate from which the property was received, otherwise determined, in respect of the dividend or distribution in respect of the share is deemed to be the lesser of

(A) the amount that, but for this subparagraph, would be so prescribed, and

(B) the amount, not exceeding the amount referred to in clause (A), that the particular corporation elects in prescribed manner and within the prescribed time;

Technical Notes: New paragraphs 95(2)(e.3) to (e.6) put into place a regime that, in general terms, is intended to provide to a foreign affiliate of a corporation resident in Canada the possibility of rollover treatment (and avoidance of gains that will be included in foreign accrual property income) for dispositions of excluded property of the foreign affiliate to a specified purchaser in respect of the corporation resident in Canada. A "specified purchaser" in respect of a corporation resident in Canada is defined in proposed new subsection 95(3.2).

Paragraphs 95(2)(e.3) to (e.6) apply to a receipt, after February 27, 2004, by a specified purchaser in respect of the corporation resident in Canada from a foreign affiliate of the corporation resident in Canada of property as a dividend or distribution in respect of a share of the foreign affiliate or as consideration in respect of a redemption, purchase or acquisition of a share of the foreign affiliate. The paragraphs do not apply where the property was received because of a legal obligation of the foreign affiliate that arose on or before February 27, 2004 to pay the dividend or make the distribution, redemption, purchase or acquisition.

New paragraph 95(2)(e.3) provides for the following rules (notwithstanding subsection 52(2)), if, at a particular time, a shareholder (other than a person resident in Canada), of a foreign affiliate of a corporation resident in Canada, that is a specified purchaser (defined in new subsection 95(3.2)) in respect of the corporation resident in Canada receives (otherwise than in the course of a liquidation and dissolution of the foreign affiliate or a merger or combination of corporations involving the foreign affiliate) a property from the foreign affiliate as a dividend or distribution on a share of the foreign affiliate.

- The foreign affiliate's proceeds of disposition of the property are deemed to be:
  - if the property is excluded property of the foreign affiliate at the particular time, an amount that is equal to the relevant cost base (defined in subsection 95(4)) of the property to the foreign affiliate immediately before the particular time; or
  - in any other case, an amount that is equal to the fair market value, immediately before the particular time, of the property.
- The cost of the property to the shareholder, immediately after the particular time, is deemed to be an amount equal to the foreign affiliate's proceeds of disposition of the property determined above.
- The amount of that dividend or distribution, in respect of the property, is deemed to be equal to the foreign affiliate's proceeds of disposition of the property determined above.
- Where, but for subparagraph 95(2)(e.3)(iv) (the provision described by this paragraph), the shareholder would, because of subsection 40(3), have a gain in respect of the share of the foreign affiliate on or in respect of which the dividend or distribution was received and the share of the foreign affiliate is excluded property of the shareholder (or would be excluded property of the shareholder if the shareholder were a foreign affiliate of the particular corporation), for the purposes of applying subsection 40(3), the amount prescribed by paragraph 5900(1)(c) of the Regulations to have been paid out of the pre acquisition surplus of the particular foreign corporation's foreign affiliate from which the property was received, otherwise determined, in respect of the dividend or distribution in respect of the share shall be deemed to be the lesser of:
  - the amount that, if subparagraph 95(2)(e.3)(iv) did not exist, would be so prescribed; and
  - the amount — not exceeding the amount that would, if subparagraph 95(2)(e.3)(iv) did not exist, be so prescribed — that the particular corporation elects in prescribed manner and within the prescribed time (see proposed new section 5916 of the Regulations).

Related Provisions: 92(1.4) — Determining ACB of share of foreign affiliate; 93(1.4) — No election allowed on disposing of share of foreign affiliate; 95(1)"foreign accrual property income"B(b) — Inclusion in FAPI; 95(2)(e.6) — Where shareholder is a partnership; 95(2)(f.6)(i) — No rollover where 95(2)(e.3) applies; 95(2)(n) — Deemed FA and deemed qualifying interest; 95(3.2) — Definitions; 95(3.6) — Partnerships and trusts; 95(3.8) — Exclusion from exempt surplus of foreign affiliate.

Regulations: 5907(2.01) (determining earnings derived from disposition); 5916 (prescribed manner of making election under 95(2)(e.3)(iv)(B)).

(e.4) **[rollover to specified purchaser]** — if, at a particular time, a shareholder (other than a person resident in Canada), of a foreign affiliate of a particular corporation resident in Canada, that is a specified purchaser in respect of the particular corporation receives (otherwise than in the course of the liquidation and dissolution of the foreign affiliate or a merger or combination of corporations that includes the foreign affiliate) a property from the foreign affiliate as consideration in respect of a dividend-like redemption of a share of the foreign affiliate by the foreign affiliate, the following rules apply:

(i) the foreign affiliate's proceeds of disposition of the property are deemed to be

(A) where the property is excluded property of the foreign affiliate at the particular time, an amount that is equal to the relevant cost base of the property to the foreign affiliate immediately before the particular time, or

(B) in any other case, an amount equal to the fair market value, immediately before the particular time, of the property,

(ii) the cost immediately after the particular time of the property to the shareholder is deemed to be an amount equal to the amount of the foreign affiliate's proceeds of disposition of the property determined by subparagraph (i),

(iii) the property is deemed to have been received by the shareholder as a dividend on the share and the amount of that dividend, in respect of the property, is deemed to be equal to the amount of the proceeds of disposition of the property determined by subparagraph (i),

(iv) if the share is excluded property of the shareholder (or would be excluded property of the shareholder if the shareholder were a foreign affiliate of the particular corporation), the shareholder is deemed to have disposed of the share for proceeds of disposition of an amount equal to the cost amount of the share to the shareholder immediately before the disposition, and

(v) where, but for this subparagraph, the shareholder would, because of subsection 40(3), have a gain in respect of the share referred to in subparagraph (iv) because of the dividend referred to in subparagraph (iii) received by the shareholder in respect of the redemption of the share, for the purposes of applying subsection 40(3), the amount prescribed by paragraph 5900(1)(c) of the Regulations to have been paid out of the pre-acquisition surplus of the foreign affiliate — of the corporation resident in Canada — from which the property was received, otherwise determined, in respect of the dividend referred to in subparagraph (iii) in respect of the share is deemed to be the lesser of

(A) the amount that, but for this subparagraph, would be so prescribed, and

(B) the amount, not exceeding the amount referred to in clause (A), that the corporation resident in Canada elects in prescribed manner and within the prescribed time;

Technical Notes: New subparagraph 95(2)(e.4) provides for the following rules if, at a particular time, a shareholder (other than a person resident in Canada), of a foreign affiliate of a corporation resident in Canada, that is a specified purchaser in respect of the corporation resident in Canada, receives (otherwise than in the course of the liquidation and dissolution of the foreign affiliate or a merger or combination of corporations that includes the foreign affiliate) a property from the foreign affiliate as consideration in respect of a dividend-like redemption (defined in subsection 95(3.2)) of a share of the foreign affiliate by the foreign affiliate.

- The foreign affiliate's proceeds of disposition of the property are deemed to be
  - where the property is excluded property of the foreign affiliate at the particular time, an amount that is equal to the relevant cost base (defined in subsection 95(4)) of the property to the foreign affiliate immediately before the particular time, or
  - in any other case, an amount equal to the fair market value, immediately before the particular time, of the property.
- The cost of the property immediately after the particular time to the shareholder is deemed to be an amount equal to the amount of the foreign affiliate's proceeds of disposition of the property determined above.
- The property is deemed to have been received by the shareholder as a dividend on the share and the amount of that dividend, in respect of the property, is deemed to be equal to the amount of the foreign affiliate's proceeds of disposition of the property determined above.
- Where the share of the foreign affiliate redeemed is excluded property of the shareholder (or would be excluded property of the shareholder if the shareholder were a foreign affiliate of the particular corporation), the shareholder is deemed to have disposed of the share for proceeds of disposition equal to the cost amount of the share to the shareholder immediately before the disposition.
- Where, but for subparagraph 95(2)(e.4)(v) (the provision described by this paragraph), the shareholder would, because of subsection 40(3), have a gain in respect of the share of the foreign affiliate because of the dividend received by the shareholder in respect of the redemption of the share, for the purposes of applying subsection 40(3), the amount prescribed by paragraph 5900(1)(c) of the Regulations to have been paid out of the pre-acquisition surplus of the foreign affiliate — of the corporation resident in Canada — from which the property was received, otherwise determined, in respect of the deemed dividend described above in respect of the share is deemed to be the lesser of
  - the amount that, but for subparagraph 95(2)(e.4)(v), would be so prescribed, and
  - the amount — not exceeding the amount that, but for subparagraph 95(2)(e.4)(v), would be so prescribed — that the corporation resident in Canada elects in prescribed manner and within the prescribed time (see proposed new subsection 5916 of the Regulations).

Related Provisions: 92(1.4) — Determining ACB of share of foreign affiliate; 93(1.4) — No election allowed on disposing of share of foreign affiliate; 95(1)"foreign accrual property income"B(b) — Inclusion in FAPI; 95(2)(e.6); — Where shareholder is a partnership; 95(2)(f.6)(i) — No rollover where 95(2)(e.4) applies; 95(2)(m) — Deemed FA and deemed qualifying interest; 95(3.2) — Definitions; 95(3.6) — Partnerships and trusts; 95(3.8) — Exclusion from exempt surplus of foreign affiliate.

Regulations: 5907(2.01) (determining earnings derived from disposition); 5916 (prescribed manner of making election under 95(2)(e.4)(v)(B)).

(e.5) **[rollover to specified purchaser]** — if, at a particular time, a shareholder (other than a person resident in Canada), of a foreign affiliate of a corporation resident in Canada, that is a specified purchaser in respect of the corporation resident in Canada receives (otherwise than in the course of a dividend-like redemption, a liquidation and dissolution of the foreign affiliate or a merger or combination of corporations that includes the foreign affiliate) a property from the foreign affiliate as consideration in respect of a redemption, acquisition or cancellation (in this paragraph referred to as the "particular redemption") of a particular share of the foreign affiliate by the foreign affiliate as part of a redemption, acquisition or cancellation (in this paragraph referred to as the "total redemption") of one or more shares (including the particular share) of the foreign affiliate held by the shareholder, the following rules apply:

(i) the foreign affiliate's proceeds of disposition of the property are deemed to be

(A) where the property is excluded property of the foreign affiliate at the particular time, an amount that is equal to the relevant cost base, immediately before the particular time, of the property to the foreign affiliate, or

(B) in any other case, an amount equal to the fair market value, immediately before the particular time, of the property,

(ii) the cost of the property to the shareholder immediately after the particular time is deemed to be an amount equal to the foreign affiliate's proceeds of disposition of the property determined by subparagraph (i),

(iii) the property is deemed to have been received by the shareholder as proceeds of disposition of shares of the foreign affiliate disposed of by the shareholder in the course of the particular redemption,

(iv) the particular share disposed of to the foreign affiliate because of the particular redemption is deemed to have been disposed of for proceeds that are equal to the amount determined by the formula

$$(A - B) \times C/D$$

where

A is the total of all amounts each of which is the cost, determined in subparagraph (ii), to the shareholder, of a property received by the shareholder as consideration for the disposition by the shareholder of a share or shares of the foreign affiliate redeemed in the course of the total redemption,

B is the total of all amounts each of which the amount of a debt that was owing by the foreign affiliate, or any other obligation of the foreign affiliate to pay an amount that was outstanding, immediately before it was assumed or cancelled, as the case may be, by the shareholder in respect of the total redemption,

C is

(A) where the particular share was held by the shareholder at the time immediately before the commencement of the total redemption, the fair market value, at that time, of the particular share, and

(B) where the particular share was acquired by the shareholder after the commencement of the total redemption, the fair market value, at the time of its acquisition, of the particular share, and

D is the total of

(A) the fair market value, immediately before the commencement of the total redemption, of all shares of the foreign affiliate held by the shareholder before the commencement of the total redemption and redeemed as part of the total redemption while held by the shareholder, and

(B) the total of all amounts each of which is the fair market value at the time of acquisition of a share of the foreign affiliate acquired after the commencement of the total redemption by the shareholder and redeemed as part of the total redemption while held by the shareholder, and

(v) any gain from the disposition of a particular share of the foreign affiliate disposed of by the shareholder in the course of the total redemption that, but for this subparagraph, would be a gain from the disposition of excluded property of the shareholder, is deemed to be the lesser of

(A) the amount of the gain as otherwise determined, and

(B) the amount, not exceeding the amount referred to in clause (A), that the corporation resident in Canada elects in prescribed manner and within the prescribed time;

Technical Notes: New paragraph 95(2)(e.5) provides the following rules if, at a particular time, a shareholder (other than a person resident in Canada), of a foreign affiliate of a corporation resident in Canada, that is a specified purchaser (defined in new paragraph 95(3.2)) in respect of the corporation resident in Canada receives (otherwise than in the course of a dividend-like redemption (defined in subsection 95(3.2)), a liquidation and dissolution of the foreign affiliate, or a merger or combination of corporations that includes the foreign affiliate) a property from the foreign affiliate as consideration in respect of a redemption, acquisition or cancellation (the "particular redemption") of a particular share of the foreign affiliate by the foreign affiliate as part of a redemption, acquisition or cancellation (the "total redemption") of one or more shares (including the particular share) of the foreign affiliate held by the shareholder.

- The foreign affiliate's proceeds of disposition of the property are deemed to be:
  - if the property is excluded property of the foreign affiliate at the particular time, an amount that is equal to the relevant cost base (defined in subsection 95(4)), immediately before the particular time, of the property to the foreign affiliate; or
  - in any other case, an amount that is equal to the fair market value, immediately before the particular time, of the property.
- The cost of the property to the shareholder immediately after the particular time is deemed to be the foreign affiliate's proceeds of disposition of the property. (Subparagraph 95(2)(e.5)(ii))
- The property is deemed to have been received by the shareholder as proceeds of disposition of shares of the foreign affiliate disposed of by the shareholder in the course of the particular redemption.
- The particular share disposed of to the foreign affiliate because of the particular redemption is deemed to have been disposed of for proceeds that are equal to the amount determined by the formula

$$(A - B) \times C/D$$

where

A is the total of all amounts each of which is the cost, determined in subparagraph 95(2)(e.5)(ii), to the shareholder, of a property received by the shareholder as consideration for the disposition by the shareholder of a share or shares of the foreign affiliate redeemed in the course of the total redemption;

B is the total of all amounts each of which the amount of a debt that was owing by the foreign affiliate, or any other obligation of the foreign affiliate to pay an amount that was outstanding, immediately before it was assumed or cancelled by the shareholder in respect of the total redemption;

C is

- if the particular share was held by the shareholder at the time immediately before the commencement of the total redemption, the fair market value, at that time, of the particular share; and
- if the particular share was acquired by the shareholder after the commencement of the total redemption, the fair market value, at the time of its acquisition, of the particular share.

D is the total of

- the fair market value, immediately before the commencement of the total redemption, of all shares of the foreign affiliate held by the shareholder before the commencement of the total redemption and redeemed as part of the total redemption while held by the shareholder; and
- the total of all amounts each of which is the fair market value at the time of acquisition of a share of the foreign affiliate acquired after the commencement of the total redemption by the shareholder and redeemed as part of the total redemption while held by the shareholder.

- Any gain from the disposition of a particular share of the foreign affiliate disposed of by the shareholder in the course of the total redemption that, but for subparagraph 95(2)(e.5)(v) (the provision described by this bullet), would be a gain from the disposition of excluded property of the shareholder, is deemed to be the lesser of:
  - the amount of the gain as otherwise determined; and
  - such amount, not exceeding the amount of the gain as otherwise determined, as the corporation resident in Canada elects in prescribed manner and within the prescribed time (see proposed section 5916 of the Regulations).

Related Provisions: 92(1.4) — Determining ACB of share of foreign affiliate; 93(1.4) — No election allowed on disposing of share of foreign affiliate; 95(1)"foreign accrual property income"B(b) — Inclusion in FAPI; 95(2)(e.6) — Where shareholder is a partnership; 95(2)(f.6)(i) — No rollover where 95(2)(e.5) applies; 95(2)(n) — Deemed FA and deemed qualifying interest; 95(3.2) — Definitions; 95(3.6) — Partnerships and trusts; 95(3.8) — Exclusion from exempt surplus of foreign affiliate; 257 — Formula amount cannot calculate to less than zero.

Regulations: 5907(2.01) (determining earnings derived from disposition); 5916 (prescribed manner of making election under 95(2)(e.5)(v)(B)).

(e.6) **[application rule for paras. (e), (e.3)–(e.5)]** — for the purposes of paragraphs (e) and (e.3) to (e.5), if the shareholder is a partnership, and a foreign affiliate of a corporation resident in Canada is, at any time, a member of the partnership, for the purposes of determining the foreign affiliate's income from the partnership

(i) shares of a foreign affiliate of the corporation resident in Canada that are property of the partnership, or are deemed under this paragraph to be property of the partnership, are deemed to be owned at that time by each member of the partnership in a proportion equal to the proportion of the shares that

(A) the fair market value, at that time, of the member's partnership interest in the partnership

is of

(B) the fair market value, at that time, of all partnership interests in the partnership,

(ii) each amount determined under any of paragraphs (e) and (e.3) to (e.5) in respect of the partnership in respect of the shares of the foreign affiliate described in subparagraph (i) is deemed to be the amount determined under that paragraph

in respect of the foreign affiliate in respect of those shares, and

(iii) the income, gain or loss derived by the partnership, while the foreign affiliate is a member of the partnership, in respect of the shares deemed by subparagraph (i) to be owned by the foreign affiliate

(A) is to be determined as if the partnership were the foreign affiliate, and

(B) is deemed to be an income or a loss or a taxable capital gain or an allowable capital loss, as the case may be, of the foreign affiliate from the partnership and not to be an income or a loss or a taxable capital gain or an allowable capital loss of any other member of the partnership;

Technical Notes: New paragraph 95(2)(e.6) provides the following rules, for the purposes of applying paragraphs 95(2)(e) and (e.3) to (e.5) for the purposes of determining a foreign affiliate's income from the partnership, if the shareholder of the foreign affiliate of the corporation resident in Canada referred to in those paragraphs is the partnership and the foreign affiliate of the corporation resident in Canada is a member of the partnership.

- Shares of a foreign affiliate of the corporation resident in Canada referred to in those paragraphs that are property of the partnership, or are deemed under paragraph 95(2)(e.6) to be property of the partnership, are deemed to be owned at that time by each member of the partnership in a proportion equal to the proportion of the shares that:
  - the fair market value at that time of the member's partnership interest in the partnership

  is of
  - the fair market value at that time of all member's partnership interests in the partnership.
- Each amount determined under any of paragraphs 95(2)(e) and (e.3) to (e.5) in respect of the partnership in respect of the shares of the foreign affiliate deemed above to be owned by a member of the partnership that is a foreign affiliate of the corporation resident in Canada is deemed to be the amount determined under that paragraph in respect of the member in respect of those shares.
- The income, gain or loss derived by the partnership, while a foreign affiliate of the corporation resident in Canada is a member of the partnership, in respect of the shares deemed above to be owned by the foreign affiliate
  - is to be determined as if the partnership were the foreign affiliate, and
  - is deemed to be an income or a loss or a taxable capital gain or an allowable capital loss, as the case may be, of the foreign affiliate from the partnership and not to be an income or a loss or a taxable capital gain or an allowable capital loss of any other member of the partnership.

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(11), will add paras. 95(2)(e.2) to (e.6), para. (e.2) applicable to redemptions, acquisitions and cancellations that occur after February 27, 2004 other than redemptions, acquisitions or cancellations of shares of a holder of shares that are required to be made under an agreement in writing made by the holder before February 28, 2004; and paras. (e.3) to (e.6) applicable to a receipt, after February 27, 2004, from the foreign affiliate of property as a dividend or distribution on a share of the foreign affiliate, or as consideration in respect of a redemption, purchase or acquisition of a share of the foreign affiliate, other than property received because of a legal obligation, of the foreign affiliate, that arose before February 28, 2004 to pay the dividend or make the distribution, redemption, purchase or acquisition.

Related Provisions: 92(1.4) — Determining ACB of share of foreign affiliate; 95(2)(n) — Deemed F.A and deemed qualifying interest.

(f) **[capital gains and losses of foreign affiliate]** — except as otherwise provided in this subsection, each taxable capital gain and each allowable capital loss of a foreign affiliate of a taxpayer from the disposition of property shall be computed in accordance with Part I, read without reference to section 26 of the *Income Tax Application Rules*, as though the affiliate were resident in Canada

(i) where that gain or loss is the gain or loss of a controlled foreign affiliate from the disposition of property to which paragraph (c), (d) or (e) or 88(3)(a) applies or from any other disposition of property (other than excluded property), in Canadian currency, and

Proposed Amendment — 95(2)(f) before (ii)

(f) except as otherwise provided in this subsection, each capital gain, capital loss, taxable capital gain and allowable capital loss of a foreign affiliate of the taxpayer from the disposition of property by a person or partnership is to be computed in respect of the taxpayer in accordance with this Part, read without reference to section 26 of the *Income Tax Application Rules*, as though the affiliate were resident in Canada,

(i) if that gain or loss is the gain or loss of a foreign affiliate from the disposition of property to which any of paragraphs (c), (c.2), (d) to (e), (e.3) to (e.5), (f.4) and 88(3)(a) applies or from any other disposition of property (other than excluded property), in Canadian currency, and

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(12), will amend the portion of para. 95(2)(f) before subpara. (ii) to read as above, the opening words applicable to taxation years, of a foreign affiliate of a taxpayer, that end after 1999, and subpara. (i) applicable to taxation years, of a foreign affiliate of a taxpayer, that end after December 19, 2002.

Technical Notes: Paragraph 95(2)(f) sets out rules for computing a taxable capital gain and an allowable capital loss of a foreign affiliate of a taxpayer resident in Canada from a disposition of a property. The rules in paragraph 95(2)(f) address the computation of a gain or loss from a disposition of property whether the disposition is made by the foreign affiliate itself or by a partnership of which the foreign affiliate is a member.

That paragraph also provides a relieving provision (contained in that portion of that paragraph that is between subparagraphs (ii) and (iii)) that provides that, in computing any such gain or loss from the disposition of property that was owned by the foreign affiliate at the last time that the foreign affiliate became a foreign affiliate of the taxpayer resident in Canada, there is not to be included such portion of the gain or loss, as the case may be, as can reasonably be considered to have accrued during the period that the foreign affiliate was not a foreign affiliate of the taxpayer resident in Canada or of a person specified in any of subparagraphs 95(2)(f)(iv) to (vii).

Paragraph 95(2)(f) is amended in the following ways:

- The "preamble" of paragraph 95(2)(f) is amended to clarify that the rules in that paragraph apply in respect of the taxpayer in computing the foreign affiliate's capital gains and capital losses from a disposition of property by the affiliate or a partnership. This amendment to paragraph 95(2)(f) will, for example, preclude the recognition of capital gains or capital losses from the disposition of property by a foreign affiliate or a partnership to the extent that the gain or loss can reasonably be considered to have accrued during the period that the affiliate was not a foreign affiliate of the taxpayer or a person or partnership specified in paragraph 95(2)(f). This is relevant for the purpose of computing the tax surpluses and deficits of the affiliate in respect of the taxpayer and computing the affiliate's foreign accrual property income or loss of the affiliate in respect of the taxpayer.
- Subparagraph 95(2)(f)(i) is amended to add references to new paragraphs 95(2)(e.2), (d.1), (e.3) to (e.5) and (f.4). For information about those paragraphs, see the commentaries for those paragraphs.
- The "mid-amble" of paragraph 95(2)(f) is amended to replace the words "owned by the affiliate" with the words "owned by the person or partnership". This amendment addresses situations where the property disposed of was owned by a partnership of which the foreign affiliate of the taxpayer is a member. This amendment also en-

sures that, in computing a gain or loss from the disposition of property, no portion of the gain or loss, as the case may be, that can reasonably be considered to have accrued during the period that the affiliate was not a foreign affiliate of the taxpayer or of a person specified in subparagraphs 95(2)(f)(iv) to (viii) is included.

- The "mid-amble" of paragraph 95(2)(f) is further amended to delete the words "at the time it last became a foreign affiliate of the taxpayer". This requirement was unnecessary for the operation of paragraph 95(2)(f).

- New subparagraph 95(2)(f)(viii) is added to include, in the listed parties, a partnership, where the total of all amounts each of which is the fair market value of a partnership interest in the partnership owned by a person described in any of subparagraphs 95(2)(f)(iii) to (vii) is greater than or equal to 90% of the fair market value of all partnership interests in the partnership.

The amendments to the "preamble" of paragraph 95(2)(f) apply to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. The amendment to subparagraph 95(2)(f)(i) applies to taxation years, of a foreign affiliate of a taxpayer, that end after December 20, 2002. The amendment to the "mid-amble" of paragraph 95(2)(f) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. However, see the commentary to new subsection 95(2.2) for details of an election to apply the amendments to the "mid-amble" of paragraph 95(2)(f) to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994. Note also that the amendments to the "mid-amble" of the paragraph 95(2)(f) are part of the Global Section 95 Election package described [under 95(2)(a) — ed.]

The enactment of new subparagraph 95(2)(f)(viii) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after February 27, 2004.

(ii) in any other case, on the assumption that the currency of the country in which the affiliate is resident or such other currency as is reasonable in the circumstances (in this subparagraph referred to as the "calculating currency") were the currency of Canada and, where subsection 39(2) is applicable, on the further assumptions that

(A) the reference in that subsection to "the currency or currencies of one or more countries other than Canada relative to Canadian currency" were read as a reference to "one or more currencies other than the calculating currency relative to the calculating currency", and

(B) the references therein to "of a country other than Canada" were read as references to "of a country other than the country of the calculating currency",

except that in computing any such gain or loss from the disposition of property owned by the affiliate at the time it last became a foreign affiliate of the taxpayer there shall not be included such portion of the gain or loss, as the case may be, as may reasonably be considered to have accrued during the period that the affiliate was not a foreign affiliate of

Proposed Amendment — 95(2)(f) between (ii) and (iii)

except that in computing any such gain or loss from the disposition of property owned by the person or partnership there shall not be included such portion of the gain or loss, as the case may be, that can reasonably be considered to have accrued during the period that the affiliate was not a foreign affiliate of

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(13), will amend the portion of para. 95(2)(f) between subparas. (ii) and (iii) to read as above, applicable to taxation years, of a foreign affiliate of a taxpayer, that end after December 19, 2002. The portion may also, by election, be applicable to taxation years that begin after 1994: see Application note to 95(2)(a) proposed amendments.

If a taxpayer has made what would, but for this paragraph, be a valid election as described above, and the taxpayer has, on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day that is the third anniversary of the day on which the amending Act receives Royal Assent, filed with the Minister of National Revenue a notice in writing to revoke the election, the election is deemed, otherwise than for the purpose of this paragraph, never to have been made.

Notwithstanding subsecs. 152(4) to (5) of the Act, any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year shall be made that is necessary to take an election or revocation referred to above into account.

Technical Notes: See under 95(2)(f) before (ii) above.

Letter from Dept. of Finance, December 18, 2000:

Angelo Nikolakakis, Stikeman Elliott, Toronto

Dear Mr. Nikolakakis:

We are responding to your letters of July 19, July 26 and November 20, 2000 concerning paragraph (b) of the definition "investment business" in subsection 95(1), the interaction of subsection 95(2.2) and paragraph 95(2)(f), and the scope of paragraph 95(2)(a.3) of the *Income Tax Act* (the "Act").

. . . . .

In your letter of July 26, 2000, you informed us that, in administering subsection 95(2)(f) of the Act, the Canada Customs and Revenue Agency was not applying subsection 95(2.2) of the Act. While the scope of subsection 95(2.2) of the Act appears to encompass paragraph 95(2)(f), the provision is not completely suitable for that paragraph. Consequently, you have requested that we recommend an amendment to the Act that would introduce a new subsection similar to subsection 95(2.2) that would be more suitable for paragraph 95(2)(f) of the Act. You have also requested that we confirm our willingness to recommend such an amendment to the Minister of Finance.

For the reasons cited in your letter, we are prepared to recommend to the Minister of Finance that the Act be amended to introduce a new subsection which will specifically address the situation outlined in your letter. The effect of this provision would be to treat a non-resident corporation as becoming a foreign affiliate of the taxpayer at the beginning of the non-resident corporation's taxation year in which it last became a foreign affiliate of the taxpayer. This provision would apply where it became a foreign affiliate as a result of an acquisition of shares and it remained a foreign affiliate at the end of the year. It will not apply for the purpose of determining if any taxable capital gain or allowable capital loss realized by the non-resident corporation in that year or a subsequent year may reasonably be considered to have accrued during the period that the non-resident corporation was not a foreign affiliate of the persons described in subparagraphs 95(2)(f)(iii) to (vii) of the Act. It will be recommended that this new provision have application to taxation years of foreign affiliates ending after 1999. . . .

Thank you for bringing these matters to our attention.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

(iii) the taxpayer,

(iv) any person with whom the taxpayer was not dealing at arm's length,

(v) any person with whom the taxpayer would not have been dealing at arm's length if the person had been in existence after the taxpayer came into existence,

(vi) any predecessor corporation (within the meaning assigned by subsection 87(1)) of the taxpayer or of a person described in subparagraph (iv) or (v), or

(vii) any predecessor corporation (within the meaning assigned by paragraph 87(2)(l.2)) of the taxpayer or of a person described in subparagraph (iv) or (v);

Proposed Addition — 95(2)(f)(viii)

(viii) a partnership if the total of all amounts each of which is the fair market value of a partnership

interest in the partnership owned by a person described in any of subparagraphs (iii) to (vii) is greater than or equal to 90% of the fair market value of all partnership interests in the partnership;

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(14), will add subpara. 95(2)(f)(viii), applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after February 27, 2004.

Technical Notes: See under 95(2)(f) before (ii) above.

Related Provisions: 92(1.4) — Determining ACB of share of foreign affiliate; 95(2)(n) — Deemed FA and deemed qualifying interest; 248(10) — Series of transactions or events.

Regulations: 5903(1), (3) (deductible loss); 5907(5) (capital gain rules to be used).

Proposed Addition — 95(2)(f.1)–(f.94)

(f.1) **[income to be computed in Canadian currency]** — the income or loss of a foreign affiliate of a taxpayer from property, or the income or loss of a foreign affiliate of a taxpayer from a business other than an active business, is to be computed in respect of the taxpayer as if

(i) the foreign affiliate were resident in Canada,

(ii) the Act were read without reference to subsections 14(1.01) to (1.03), 17(1) and 18(4) and section 91,

(iii) the income or loss were computed in Canadian currency, and

(iv) there were not included in computing the income or loss the portion of the income or loss that can reasonably be considered to have been realized or to have accrued during any period throughout which the affiliate was not a foreign affiliate of the taxpayer, of a person described in any of subparagraphs (f)(iii) to (vii) or of a partnership described in subparagraph (f)(viii);

Technical Notes: New paragraph 95(2)(f.1) provides rules that apply in computing the income or loss of a foreign affiliate of a taxpayer from property, or the income or loss from a business other than an active business of a foreign affiliate of a taxpayer resident in Canada, in respect of the taxpayer. The rules can be summarized as follows:

- the income or loss is computed in respect of the taxpayer in Canadian currency, as though the foreign affiliate were resident in Canada and as though the Act were read without reference to subsections 14(1.01) to (1.03), 17(1) and 18(4) and section 91, and
- the income or loss is to be computed as if it does not include any income or loss that can reasonably be considered to have been realized or to have accrued during any period throughout which the affiliate was not a foreign affiliate of the taxpayer or of another person or partnership described in any of subparagraphs 95(2)(f)(iii) to (viii).

Related rules can be found in proposed new paragraphs 95(2)(f.91) to (f.93).

For details about new amended subsection 14(1.01) and new subsections 14(1.02) and (1.03), see the commentary to those subsections.

New paragraph 95(2)(f.1) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002, except that for those taxation years that begin on or before February 27, 2004, subparagraph 95(2)(f.1)(iv) is to be read as follows:

(iv) there were not included in computing the income or loss the portion of the income or loss that can reasonably be considered to have been realized or to have accrued during any period throughout which the affiliate was not a foreign affiliate of the taxpayer or of a person described in any of subparagraphs (f)(iii) to (vii);

Note that new paragraph 95(2)(f.1) is part of the Global Section 95 Election package described [under 95(2)(a) — ed.]

Related Provisions: 95(2)(e.1)(ii) — Windup — continuation of affiliate; 95(2)(f.2) — Certain income to be computed in foreign currency; 95(2)(n) — Deemed FA and deemed qualifying interest.

(f.2) **[certain income to be computed in foreign currency]** — the income or loss of a foreign affiliate of a taxpayer arising from the disposition of excluded property that is not a capital property (other than a disposition of property to which any of paragraphs (d) to (e.1), (e.3) to (e.5) and (f.4) and 88(3)(a) applies) is to be computed in respect of the taxpayer in the currency of the country in which the affiliate is resident or in another currency that is reasonable in the circumstances;

Technical Notes: New paragraph 95(2)(f.2) provides that the income or loss of a foreign affiliate of a taxpayer arising from the disposition of excluded property which is not capital property (other than a disposition of property to which any of paragraphs 95(2)(d) to (e.1), (e.3) to (e.5) and (f.4) and 88(3)(a) of the Act applies) is to be computed in respect of the taxpayer in the currency of the country in which the foreign affiliate is resident or in another currency that is reasonable in the circumstances. (The expression "excluded property" is defined in subsection 95(1).) The calculations provided for in new paragraph 95(2)(f.2) are comparable to those provided for in the rule in subsection 5907(6) of the Regulations.

New subparagraph 95(2)(f.2) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. Note that new paragraph 95(2)(f.2) is part of the Global Section 95 Election package described [under 95(2)(a) — ed.]

Related Provisions: 95(2)(e.1)(ii) — Windup — continuation of affiliate; 95(2)(n) — Deemed FA and deemed qualifying interest.

(f.3) **[application of para. (f.4)]** — paragraph (f.4) applies to a specified vendor, in respect of a particular corporation resident in Canada referred to in the definition "specified vendor" in subsection (3.2), (which specified vendor is referred to in this paragraph and paragraphs (f.4), (f.8) and (f.9) as the "vendor") if

(i) the vendor disposes at any time of a property (which property is referred to in this paragraph and paragraphs (f.4) and (f.5) and (f.7) to (f.9) as the "specified property" and which time is referred to in this paragraph and paragraphs (f.4), (f.5), (f.8) and (f.9) as the "original disposition time" of the specified property) to a person or partnership (in this paragraph referred to as the "purchaser") that is, immediately after that time, a specified purchaser in respect of the particular corporation,

(ii) immediately before the original disposition time, the specified property is excluded property of the vendor (or would be excluded property of the vendor if the vendor were, immediately before the original disposition time, a foreign affiliate of the particular corporation), and

(iii) the vendor would, were this Act read without reference to paragraph (f.4), have income or a taxable capital gain from the disposition of the specified property;

Technical Notes: New paragraphs 95(2)(f.3) to (f.9) put into place a regime that, in general terms, is designed to suspend the recognition of the income or capital gain that would otherwise arisen upon an internal disposition of an excluded property. Generally, this "suspended gain" is recognized at the time the property is disposed of in an external disposition. This regime replaces the rules found in existing subsection 5907(5.1) of the Regulations and the rules found in proposed subsections 5907(5.1) to (5.3) of the Regulations that were part of the December 20, 2002 proposals.

New paragraphs 95(2)(f.3) to (f.9) will apply to dispositions of property that occur after February 27, 2004. However, those paragraphs will not apply to a disposition by a vendor that is required to be made under an

agreement in writing made by the vendor on or before February 27, 2004.

New paragraph 95(2)(f.3) provides the circumstances under which new paragraph 95(2)(f.4) applies to a specified vendor (defined in new subsection 95(3.2)) in respect of a particular corporation resident in Canada if the following conditions are met:

- the specified vendor disposes at any time of a property that, at that time, is excluded property of the vendor (or would be excluded property of the vendor if the vendor were, at that time, a foreign affiliate of the particular corporation) to a person or partnership that is, immediately after that time, a specified purchaser (defined in new subsection 95(3.2)) in respect of the particular corporation, and
- if this Act were read without reference to paragraph 95(2)(f.4), the specified vendor would have income or a taxable capital gain from the disposition of the property.

In new paragraphs 95(2)(f.4) and (f.5) and (f.7) to (f.9), the specified vendor is referred to as the "vendor", the time of the disposition of the excluded property is referred to as the "original disposition time" and the property is referred to as the "specified property".

Related Provisions: 95(2)(e.1)(ii) — Windup — continuation of affiliate; 95(2)(f.6)(i) — Exclusion of para. (f.3); 95(2)(f.7) — Designated replacement property deemed continuation of specified property; 95(2)(f.8) — Where part of specified property disposed of; 95(2)(f.9) — Designated replacement property acquired by specified purchaser; 95(2)(n) — Deemed FA and deemed qualifying interest; 95(3.2), (3.4) — Definitions; 95(3.6) — Partnerships and trusts.

(f.4) **[suspended gain on internal disposition of excluded property]** — if this paragraph applies to a vendor in respect of a particular disposition of specified property referred to in paragraph (f.3), the following rules apply:

(i) the vendor's proceeds from the disposition of the specified property are deemed to be

(A) if clause (B) does not apply to the vendor in respect of the disposition, an amount equal to the vendor's adjusted cost base of the specified property at the original disposition time, or

(B) if the vendor that is a foreign affiliate of the particular corporation resident in Canada is a controlled foreign affiliate of the particular corporation resident in Canada at the end of that vendor's taxation year that includes the original disposition time of the specified property and the particular corporation so elects in respect of the disposition in prescribed manner and within the prescribed time, the greater of

(I) the amount determined by clause (A) in respect of the specified property, and

(II) the amount that is the lesser of the fair market value of the consideration received by that vendor in respect of the disposition and the amount that the particular corporation designates in the election,

(ii) the purchaser's cost of the specified property is deemed to be an amount that is equal to the fair market value of the specified property at the original disposition time,

(iii) the vendor's cost of a particular property that was received as consideration for the disposition of the specified property is deemed to be the fair market value of the particular property at the original disposition time, and

(iv) the vendor that is a foreign affiliate of the particular corporation resident in Canada or a foreign affiliate of the particular corporation resident in Canada that is a member of a partnership that is the vendor (which vendor or foreign affiliate is referred to in this subparagraph and subparagraph (f.5) as the "relevant foreign affiliate") is deemed to have an unadjusted suspended income or gain in respect of a specified property disposed of, at the original disposition time, by the specified vendor that is equal to the amount, if any, by which

(A) the amount that is the income or twice the amount of the taxable capital gain, as the case may be, that, but for the application of this paragraph, would have been realized by the relevant foreign affiliate in respect of that disposition,

exceeds

(B) the amount that is the income or twice the amount of the taxable capital gain, as the case may be, that was realized by the relevant foreign affiliate in respect of that disposition;

Technical Notes: New paragraph 95(2)(f.4) sets out rules that apply to a vendor and a purchaser in respect of a particular disposition of specified property referred to in new paragraph 95(2)(f.3). In new paragraph 95(2)(f.4), the specified vendor is referred to as the "vendor", the time of the disposition of the excluded property is referred to as the "original disposition time" and the property is referred to as the "specified property". The rules can be summarized as follows:

- The vendor's proceeds from the disposition of the specified property are deemed to be equal to the vendor's adjusted cost base of the specified property at the original disposition time (referred to in here in this commentary as the "relevant ACB amount") or, if the vendor that is a foreign affiliate of the particular corporation resident in Canada is a controlled foreign affiliate of the particular corporation resident in Canada at the end of that vendor's taxation year that includes the original disposition time of the specified property and the particular corporation resident in Canada so elects in prescribed manner and within the prescribed time (see proposed new section 5916 of the Regulations), the proceeds from the disposition of the property can be equal to an amount greater than the relevant ACB amount, but cannot exceed the fair market value of the specified property at the original disposition time.
- The cost to the purchaser of the specified property is deemed to be equal to the fair market value of the specified property at the original disposition time.
- The cost to the vendor of a particular property that was received as consideration for the disposition of the specified property is deemed to be the fair market value of the particular property at the original disposition time.
- The foreign affiliate of the particular corporation resident in Canada that is the vendor or that is a member of a partnership that is the vendor (which foreign affiliate is referred to in subparagraph 95(2)(f.4)(iv) and in paragraph 95(2)(f.5) as the "relevant foreign affiliate") is deemed to have an unadjusted suspended income or gain in respect of a specified property disposed of, at the original disposition time, equal to the amount, if any, by which
  - the amount that is the income or twice the amount of the taxable capital gain, as the case may be, that, but for the application of this paragraph, would have been realized by the relevant foreign affiliate in respect of that disposition,

  exceeds
  - the amount that is the income or twice the amount of the taxable capital gain, as the case may be, that was realized by the relevant foreign affiliate in respect of that disposition.

Related Provisions: 95(1)"foreign accrual property income"B(b) — Inclusion in FAPI; 95(2)(e.1)(ii) — Windup — continuation of affiliate; 95(2)(f.3) — Conditions for para. (f.4) to apply; 95(2)(f.5) — Deemed gain later; 95(2)(f.7) — Designated replacement property deemed continuation of specified property; 95(2)(f.8) — Where part of specified property disposed of; 95(2)(f.9) — Designated replacement property acquired by specified purchaser; 95(2)(n) — Deemed FA and deemed qualifying interest; 95(3.2), (3.4) — Definitions; 95(3.6) — Partnerships and trusts.

Regulations: 5907(2.01) (determining earnings derived from disposition); 5917 (prescribed manner of making election under 95(2)(f.4)).

(f.5) **[deemed gain later]** — the relevant foreign affiliate referred to in subparagraph (f.4)(iv) is deemed to have income or a capital gain from the disposition of the specified property equal to the amount prescribed to be the adjusted suspended income or gain in respect of the specified property and to have paid to the government of a country an amount equal to the amount prescribed to be the adjusted allocable tax in respect of the adjusted suspended income or gain in respect of the specified property at the earlier of

(i) the first time, after the original disposition time, that a specified purchaser in respect of the particular corporation that holds, immediately before that first time, the specified property makes a triggering disposition of the specified property, and

(ii) the first time, after the original disposition time, that a specified purchaser in respect of the particular corporation (which specified purchaser is referred to in this paragraph and paragraphs (f.8) and (f.9) as the "current holder") that holds, immediately before that first time, the specified property ceases to be a specified purchaser in respect of the particular corporation otherwise than because of a specified discontinuance of the current holder;

Technical Notes: New paragraph 95(2)(f.5) deems the relevant foreign affiliate referred to in subparagraph 95(2)(f.4)(iv) to have income or a taxable capital gain from the disposition of the specified property equal to the amount prescribed to be the adjusted suspended income or gain (see proposed new subsection 5913(1) of the Regulations) in respect of the specified property and to have paid to the government of a country an amount equal to the amount prescribed by regulation to be the adjusted allocable tax (see proposed new subsection 5913(2) of the Regulations) in respect of the adjusted suspended income or gain in respect of the specified property at the earlier of

- the first time, after the original disposition time, that a specified purchaser in respect of the particular corporation that holds, immediately before that first time, the specified property and makes a triggering disposition (see definition in subsection 95(3.4)) of the specified property, or
- the first time, after the original disposition time, that a specified purchaser in respect of the particular corporation (which specified purchaser is referred to here and in paragraphs 95(2)(f.8) and (f.9) as the "current holder") that holds, immediately before that first time, the specified property, and ceases, at that first time, to be a specified purchaser in respect of the particular corporation otherwise than because of a specified discontinuance of the current holder.

Related Provisions: 95(2)(e.1)(ii) — Windup — continuation of affiliate; 95(2)(f.7) — Designated replacement property deemed continuation of specified property; 95(2)(f.8) — Where part of specified property disposed of; 95(2)(f.9) — Designated replacement property acquired by specified purchaser; 95(2)(f.94) — Where relevant FA wound up or merged; 95(2)(n) — Deemed FA and deemed qualifying interest; 95(2)(y) — Meaning of "government of a country"; 95(3.2), (3.4) — Definitions; 95(3.6) — Partnerships and trusts.

Regulations: 5913(1) (amount prescribed to be adjusted suspended income or gain); 5913(2) (amount prescribed to be adjusted allocable tax).

(f.6) **[exclusion of para. (f.3)]** — paragraph (f.3) does not apply to a disposition of a property by a person or partnership if

(i) any of paragraphs (2)(c), (c.2), (d), (d.1) (e), (e.1), and (e.3) to (e.5) and subsections 85.1(5) and 88(3) applies to the person or partnership in respect of the disposition of the property, or

(ii) the property was disposed of

(A) in the ordinary course of an active business of the person or partnership, or

(B) as an adventure or concern in the nature of trade;

Technical Notes: New paragraph 95(2)(f.6) ensures that paragraph 95(2)(f.3) will not apply to a disposition of a property by a person or partnership if

- any of subsections 85.1(5) and 88(3) and paragraphs 95(2)(c), (c.2), (d), (d.1), (e), (e.1), (e.3), (e.4) and (e.5) applies to the person or partnership in respect of the disposition of the property, or
- the property was disposed of in the ordinary course of an active business of the person or partnership or was disposed of as an adventure or concern in the nature of trade.

Related Provisions: 95(2)(e.1)(ii) — Windup — continuation of affiliate; 95(2)(f.7) — Designated replacement property deemed continuation of specified property; 95(2)(f.8) — Where part of specified property disposed of; 95(2)(f.9) — Designated replacement property acquired by specified purchaser; 95(2)(n) — Deemed FA and deemed qualifying interest; 95(3.2), (3.4) — Definitions; 95(3.6) — Partnerships and trusts.

(f.7) **[designated replacement property deemed continuation of specified property]** — for the purposes of paragraphs (f.3) to (f.6) and (f.8) and (f.9) and subsection (3.4), a designated replacement property referred to in clause (b)(ii)(A), (B) or (C) of the definition "triggering disposition" in subsection (3.4) is deemed to be the same property as and a continuation of the specified property referred to in that clause;

Technical Notes: New paragraph 95(2)(f.7) provides that for the purposes of paragraphs 95(2)(f.3) to (f.6) and (f.8) and (f.9) and subsection 95(3.4), a designated replacement property referred to in clause (b)(ii)(A), (B) or (C) of the definition "triggering disposition" in new subsection 95(3.4) is deemed to be the same property as the specified property referred to in that clause.

Related Provisions: 95(2)(e.1)(ii) — Windup — continuation of affiliate; 95(2)(f.8) — Where part of specified property disposed of; 95(2)(f.9) — Designated replacement property acquired by specified purchaser; 95(2)(n) — Deemed FA and deemed qualifying interest; 95(3.2), (3.4) — Definitions; 95(3.6) — Partnerships and trusts.

(f.8) **[where part of specified property disposed of]** — for the purposes of paragraphs (f.3) to (f.7) and (f.9) and subsection (3.4), if, at any time, part of a specified property (which specified property is referred to in this paragraph as the "initial specified property") is disposed of by a current holder and the remaining part of the specified property is retained by the current holder,

(i) the part (referred to in this paragraph as the "part interest") of the initial specified property disposed of, at that time, is deemed to be a specified property of the current holder,

(ii) the portion of the unadjusted suspended income or gain attributable to the part interest is deemed to be that proportion of the adjusted suspended income or gain in respect of the whole of the initial specified property that the fair market value at that time of the part interest is of the fair market value at that time of the initial specified property,

(iii) the part (referred to in this paragraph as the "remaining interest") of the initial specified property not disposed of at that time is deemed to be a specified property of the current holder that was disposed of at the original disposition time, and

(iv) the amount of income or gain that would have been realized on the disposition of the remaining interest at the original disposition time is

deemed to be the amount, if any, by which the unadjusted suspended income or gain in respect of the initial specified property exceeds the amount determined by subparagraph (ii) to be the unadjusted suspended income or gain in respect of the part interest;

Technical Notes: New paragraph 95(2)(f.8) provides that for the purposes of paragraph 95(2)(f.3) to (f.7) and (f.9) and subsection 95(3.4), where, at any time, part of a specified property (referred to here as the "initial specified property") is disposed of by a current holder (defined in new paragraph 95(2)(f.5)) and the remaining part of the specified property is retained by the current holder, the following rules apply:

- The part (referred to here as the "part interest") of the initial specified property disposed of, at that time, is deemed to be a specified property of the current holder.
- The portion of the unadjusted suspended income or gain attributable to the part interest is deemed to be that proportion of the adjusted suspended income or gain in respect of the whole of the initial specified property that the fair market value at that time of the part interest is of the fair market value at that time of the initial specified property.
- The part (referred to here as the "remaining interest") of the initial specified property not disposed of at that time is deemed to be a specified property of the current holder that was disposed of at the original disposition time.
- The amount of income or gain that would have been realized on the disposition of the remaining interest at the original disposition time is deemed to be the amount, if any, by which the unadjusted suspended income or gain in respect of the initial specified property exceeds the amount determined to be the unadjusted suspended income or gain in respect of the part interest.

Related Provisions: 95(2)(e.1)(ii) — Windup — continuation of affiliate; 95(2)(f.7) — Designated replacement property deemed continuation of specified property; 95(2)(f.9) — Designated replacement property acquired by specified purchaser; 95(2)(n) — Deemed FA and deemed qualifying interest; 95(3.4) — Definitions; 95(3.6) — Partnerships and trusts.

(f.9) **[replacement of specified property]** — for the purposes of paragraphs (f.3) to (f.8), if a current holder disposes, at a particular time, of the whole of a specified property (referred to in this paragraph as the "initial specified property") and as part of a transaction, or series of transactions or events, that includes the disposition of the initial specified property, a specified purchaser in respect of the particular corporation acquires a designated replacement property in respect of the initial specified property,

(i) the designated replacement property (referred to in this paragraph as the "remaining interest") is deemed to be a specified property of the current holder that was disposed of at the original disposition time,

(ii) the unadjusted suspended income or gain in respect of the remaining interest is deemed to be that proportion of the unadjusted suspended income or gain in respect of the whole of the initial specified property (determined without reference to subparagraph (iii)) that the fair market value of the remaining interest, at the time it was acquired, is of the fair market value, at the particular time, of the initial specified property, and

(iii) the unadjusted suspended income or gain in respect of the initial specified property is deemed to be the amount, if any, by which the unadjusted suspended income or gain in respect of the initial specified property (determined without reference to this subparagraph) exceeds the amount determined by subparagraph (ii) to be the unadjusted suspended income or gain in respect of the remaining interest;

Technical Notes: New paragraph 95(2)(f.9) provides that for the purposes of paragraphs 95(2)(f.3) to (f.8), if a current holder (defined in new paragraph 95(2)(f.5)) disposes, at any particular time, of the whole of a specified property (referred to here as the "initial specified property") and as part of a transaction, or series of transactions or events, that includes the disposition of the initial specified property, a specified purchaser (defined in new subsection 95(3.2)) in respect of the particular corporation acquires a designated replacement property (referred to here as the "remaining interest") in respect of the initial specified property, the following rules apply:

- The remaining interest is deemed to be a specified property of the current holder that was disposed of at the original disposition time. (Subparagraph 95(2)(f.9)(i))
- The unadjusted suspended income or gain in respect of the remaining interest is deemed to be that portion of the unadjusted suspended income or gain in respect of the whole of the initial specified property (determined without reference to subparagraph 95(2)(f.9)(iii)) that the fair market value of the remaining interest, at the time it was acquired, is of the fair market value, at the particular time, of the initial specified property. (Subparagraph 95(2)(f.9)(ii))
- The unadjusted suspended income or gain in respect of the initial specified property is deemed to be the amount, if any, by which the unadjusted suspended income or gain in respect of the initial specified property (determined without reference to subparagraph 95(2)(f.9)(iii)) exceeds the amount determined by subparagraph 95(2)(f.9)(ii) to be the unadjusted suspended income or gain in respect of the remaining interest. (Subparagraph 95(2)(f.9)(iii))

Related Provisions: 95(2)(e.1)(ii) — Windup — continuation of affiliate; 95(2)(f.7) — Designated replacement property deemed continuation of specified property; 95(2)(f.8) — Where part of specified property disposed of; 95(2)(n) — Deemed FA and deemed qualifying interest; 95(3.4) — Definitions; 95(3.6) — Partnerships and trusts; 248(10) — Series of transactions or events.

(f.91) **[eligible capital property and depreciable property]** — if, at a particular time, a non-resident corporation that, immediately before the particular time, was not a foreign affiliate of a particular taxpayer resident in Canada, or of a person or partnership that would — if the particular taxpayer were a taxpayer referred to in paragraphs (2)(f)(iii) to (viii) — be described by any of those subparagraphs (the particular taxpayer or each of those persons or partnerships being referred to in this paragraph and paragraphs (f.92), (f.93) and (f.94) as a "particular Canadian shareholder", the non-resident corporation being referred to in this paragraph and paragraph (f.92) as a "particular foreign affiliate" in respect of the particular Canadian shareholder and the particular time being referred to in this paragraph and paragraph (f.92) as the "status change time" in respect of the particular foreign affiliate of the particular Canadian shareholder) becomes a foreign affiliate of the particular Canadian shareholder, the following rules apply in computing the particular foreign affiliate's foreign accrual property income in respect of the particular Canadian shareholder or a person or partnership that would — if the person or partnership were a taxpayer referred to in subparagraphs (2)(f)(iii) to (viii) — be described by any of those subparagraphs (the particular Canadian shareholder or each of those persons or partnerships is referred to in paragraph (f.92) as a "relevant shareholder") for any taxation year of the particular foreign affiliate that ends after the status change time:

(i) for the purpose of determining the cumulative eligible capital of the particular foreign affiliate, at the beginning of its taxation year that includes

the status change time in respect of the particular foreign affiliate in respect of the particular Canadian shareholder, in respect of each business other than an active business carried on by the particular foreign affiliate in that taxation year, the particular foreign affiliate is deemed to have disposed, immediately before the beginning of that taxation year, of each eligible property at that time of the particular foreign affiliate in respect of each business carried on by the particular foreign affiliate that is, at that time, a business other than an active business, for proceeds equal to the cost to the particular foreign affiliate of the eligible property at the time of that disposition,

(ii) for the purpose of determining the cost of eligible property to the particular foreign affiliate, and the cumulative eligible capital of the particular foreign affiliate, for its taxation year that includes the status change time in respect of the particular foreign affiliate in respect of the particular Canadian shareholder and for each subsequent taxation year, in respect of each business other than an active business carried on by the particular foreign affiliate in that taxation year or subsequent taxation year, the particular foreign affiliate is deemed to have acquired, immediately after the beginning of its particular taxation year that includes the status change time in respect of the particular foreign affiliate in respect of the particular Canadian shareholder, each eligible property of the particular foreign affiliate, immediately before the beginning of the particular year, in respect of each business carried on by the particular foreign affiliate that is immediately before the beginning of the particular year a business, other than an active business, at a cost equal to the lesser of

(A) the fair market value of the eligible property at the status change time, and

(B) the cost to the particular foreign affiliate of the eligible property immediately before the beginning of the particular year,

(iii) eligible property, in respect of a business carried on by the particular foreign affiliate, means a property, right or thing in respect of which the particular foreign affiliate has, after 1971 and before the status change time, made an eligible capital expenditure in respect of the business,

(iv) for the purpose of determining the undepreciated capital cost to the particular foreign affiliate, at the beginning of its taxation year that includes the status change time in respect of the particular foreign affiliate in respect of the particular Canadian shareholder, of its depreciable capital property used or held in the course of carrying on a business, other than an active business, of the particular foreign affiliate in that taxation year,

(A) the particular foreign affiliate is deemed to have disposed, immediately before the beginning of that taxation year, of each depreciable capital property of the particular foreign affiliate, held by the particular foreign affiliate and used or held in the course of carrying on a business of the particular foreign affiliate that is a business other than an active business immediately before the beginning of that year, for proceeds equal to the capital cost to the particular foreign affiliate of the depreciable property at the beginning of that year, and

(B) at the time that is immediately after the time of that disposition, the particular foreign affiliate's undepreciated capital cost of its depreciable capital property, in respect of each such business that is a business other than an active business, is deemed to be nil, and

(v) for the purpose of determining the capital cost and undepreciated capital cost to the particular foreign affiliate of its depreciable capital property used or held in the course of carrying on each business other than an active business carried on by the particular foreign affiliate, for its taxation year that includes the status change time in respect of the particular foreign affiliate in respect of the particular Canadian shareholder and for subsequent taxation years, the particular foreign affiliate is deemed to have acquired, at the time that is immediately after the beginning of its particular taxation year that includes the status change time in respect of the particular foreign affiliate in respect of the particular Canadian shareholder, each depreciable capital property (each such depreciable capital property referred to in this subparagraph and paragraph (f.93) as a "specified depreciable property") that was owned by the particular foreign affiliate and used or held by the particular foreign affiliate, at the time that is immediately before the beginning of the particular taxation year, in the course of the carrying on of a business, other than an active business, of the particular foreign affiliate, at that time, at a capital cost equal to the lesser of

(A) the fair market value of the specified depreciable property at the status change time, and

(B) the capital cost to the particular foreign affiliate of the specified depreciable property at the time immediately before the beginning of the particular taxation year;

Technical Notes: In general terms, new paragraphs 95(2)(f.91) to (f.93) introduce rules relating to the determination of the cost of eligible capital property, and the capital cost and the undepreciated capital cost of depreciable capital property, of a non-resident corporation that becomes a foreign affiliate of a taxpayer resident in Canada for the purposes of computing the foreign affiliate's foreign accrual property income in respect of the taxpayer resident in Canada or in respect of a specified party in respect of the taxpayer resident in Canada. These rules complement the rules in new paragraph 95(2)(f.2) and are comparable to but not the same as the rules, in existing subsections 111(5.1) and (5.2), that apply when control of a corporation has been acquired.

New paragraph 95(2)(f.91) provides certain additional rules for computing the foreign accrual property income of a foreign affiliate of a taxpayer in respect of the taxpayer.

New paragraph 95(2)(f.91) applies if, at a particular time, a non-resident corporation that, immediately before the particular time, was not a foreign affiliate of a particular taxpayer resident in Canada, or of a person or partnership that would — if the particular taxpayer were a taxpayer referred to in paragraphs 95(2)(f)(iii) to (viii) — be described by any of those subparagraphs (the particular taxpayer or each of those persons or partnerships being referred to in this paragraph and new paragraphs 95(2)(f.92), (f.93) and (f.94) as a "particular Canadian shareholder") becomes a foreign affiliate of the particular Canadian shareholder.

The non-resident corporation is referred to in this paragraph and paragraph 95(2)(f.92) as a "particular foreign affiliate" in respect of the particular Canadian shareholder. The particular time is referred to in this

paragraph and in paragraph 95(2)(f.92) as the "status change time" in respect of the particular foreign affiliate of the particular Canadian shareholder.

New paragraph 95(2)(f.91) provides rules that apply in computing the particular foreign affiliate's foreign accrual property income in respect of the particular Canadian shareholder or a person or partnership that would — if the person or partnership were a taxpayer referred to in subparagraphs 95(2)(f)(iii) to (viii) — be described by any of those subparagraphs (the particular Canadian shareholder or each of those persons or partnerships being referred to in paragraph 95(2)(f.92) as a "relevant shareholder") for any taxation year of the particular foreign affiliate that ends after the status change time.

Those rules can be summarized as follows:

- For the purpose of determining the cumulative eligible capital of the particular foreign affiliate in respect of the particular Canadian shareholder, at the beginning of the particular foreign affiliate's taxation year that includes the status change time, in respect of each business (other than an active business) carried on by the particular foreign affiliate in that taxation year, the particular affiliate is deemed to have disposed, immediately before the beginning of that taxation year, of each "eligible property" (see third paragraph, below) of the particular foreign affiliate, at the time of that disposition, in respect of each business (other than an active business) carried on by the particular foreign affiliate at the time of that disposition, for proceeds equal to the cost to the particular foreign affiliate of the eligible property at the time of that disposition.

- For the purpose of determining the cost of eligible property to the particular foreign affiliate in respect of the particular Canadian shareholder, and the cumulative eligible capital of the particular foreign affiliate in respect of the particular Canadian shareholder, for its taxation year that includes the status change time in respect of the particular foreign affiliate in respect of the particular Canadian shareholder and for each subsequent taxation year, in respect of each business (other than an active business) of the particular foreign affiliate in that taxation year or subsequent taxation year, the particular foreign affiliate is deemed to have acquired, immediately after the beginning of its particular taxation year that includes the status change time in respect of the particular foreign affiliate in respect of the particular Canadian shareholder, each eligible property of the particular foreign affiliate, immediately before the beginning of the particular year, in respect of each business carried on by the particular foreign affiliate that is, immediately before the beginning of the particular year, a business (other than an active business) of the particular foreign affiliate, at a cost equal to the lesser of

  — the fair market value of the eligible property at the status change time, and

  — the cost to the particular foreign affiliate of the eligible property immediately before the beginning of the particular year.

- "Eligible property" in respect of a business carried on by the particular foreign affiliate is a property, right or thing in respect of which the particular foreign affiliate has, after 1971 and before the status change time, made an eligible capital expenditure in respect of the business.

- For the purpose of determining, at the beginning of the particular foreign affiliate's taxation year that includes the status change time in respect of the foreign affiliate in respect of the particular Canadian shareholder, the undepreciated capital cost to the particular foreign affiliate of a depreciable capital property used or held by the particular foreign affiliate in the course of carrying on a business other than an active business of the particular foreign affiliate in that taxation year,

  — the particular foreign affiliate is deemed to have disposed, immediately before the beginning of that taxation year, of each depreciable capital property of the particular foreign affiliate, held by the particular foreign affiliate and used or held in the course of carrying on a business of the particular foreign affiliate that is a business (other than an active business) immediately before the beginning of that taxation year, for proceeds equal to the capital cost to the particular foreign affiliate of the depreciable property at the beginning of that year, and

  at the time that is immediately after the time of that disposition, the particular foreign affiliate's undepreciated capital cost of its depreciable capital property, in respect of each such business that is a business other than an active business, is deemed to be nil.

- For the purpose of determining the capital cost and undepreciated capital cost to the particular foreign affiliate in respect of the particular Canadian shareholder of its depreciable capital property used or held in the course of carrying on each business (other than an active business) carried on by the particular foreign affiliate, for the particular foreign affiliate's taxation year that includes the status change time in respect of the particular foreign affiliate in respect of the particular Canadian shareholder and for its subsequent taxation years, the particular foreign affiliate is deemed to have acquired, at the time that is immediately after the beginning of its taxation year that includes the status change time, each depreciable capital property (each such depreciable capital property referred to in this subparagraph and paragraph 95(2)(f.93) as a "specified depreciable property") that was owned by the particular foreign affiliate and used or held by the particular foreign affiliate, immediately before the beginning of the foreign affiliate's taxation year that includes the status change time, in the course of carrying on a business of the particular foreign affiliate other than an active business, at a capital cost equal to the lesser of

  — the fair market value of the specified depreciable property at the status change time, and

  — the capital cost to the particular foreign affiliate of the specified depreciable property immediately before the beginning of the foreign affiliate's taxation year that includes the status change time.

New paragraph 95(2)(f.91) applies in respect of non-resident corporations that become foreign affiliates of a particular taxpayer resident in Canada after February 27, 2004.

Related Provisions: 95(2)(e.1)(ii) — Windup — continuation of affiliate; 95(2)(f.94) — Where relevant FA wound up or merged; 95(2)(n) — Deemed FA and deemed qualifying interest.

(f.92) **[cumulative eligible capital]** — in applying paragraph (a) of the description of E in the definition "cumulative eligible capital" in subsection 14(5) in respect of a particular disposition, that occurs after the beginning of the taxation year of a particular foreign affiliate of a relevant shareholder that includes the status change time in respect of the particular foreign affiliate in respect of the particular Canadian shareholder, by the particular foreign affiliate of a relevant shareholder, in respect of which a particular consideration (that was eligible property that was in existence at the time immediately before the status change time) was provided by the particular foreign affiliate, the particular foreign affiliate's proceeds from the particular disposition, are deemed to be the amount, if any, determined by the formula

$$A - (B + C)$$

where

A is the particular foreign affiliate's proceeds from the particular disposition, as otherwise determined,

B is the lesser of

(i) the amount, if any, by which

(A) the fair market value, of the eligible property, immediately before the status change time in respect of the particular Canadian shareholder

exceeds

(B) the particular foreign affiliate's cost, of the eligible property, immediately before the particular disposition, and

(ii) the amount, if any, by which the particular foreign affiliate's proceeds from the particular disposition, as otherwise determined, exceeds the particular foreign affiliate's cost of the eli-

gible property immediately before the particular disposition, and

C is the lesser of

(i) the amount, if any, by which

(A) the particular foreign affiliate's cost, of the eligible property, immediately before the beginning of the taxation year of the particular foreign affiliate that included the status change time in respect of the particular Canadian shareholder

exceeds

(B) the fair market value of the eligible property immediately before the status change time in respect of the particular Canadian shareholder, and

(ii) the amount, if any, by which the particular foreign affiliate's proceeds from the particular disposition, as otherwise determined, exceeds the particular foreign affiliate's cost of the eligible property immediately before the particular disposition;

Technical Notes: New paragraph 95(2)(f.92) is consequential to new paragraph 95(2)(f.91). It provides that, in applying paragraph (a) of the description of E in the definition "cumulative eligible capital" in subsection 14(5) in respect of a particular disposition that occurs after the beginning of the taxation year of a the particular foreign affiliate that includes the status change time (defined in paragraph 95(2)(f.91)) in respect of the particular foreign affiliate in respect of the particular Canadian shareholder, (defined in paragraph 95(2)(f.91)), by the particular foreign affiliate (defined in paragraph 95(2)(f.91)) of a relevant shareholder (defined in paragraph 95(2)(f.91)), in respect of which a particular consideration (that was eligible property defined in paragraph 95(2)(f.91) that was in existence at the time immediately before the status change time was provided by the particular foreign affiliate, the particular foreign affiliate's proceeds from the particular disposition, are deemed to be the amount, if any, determined by the formula

$$A - (B + C)$$

where

A is the particular foreign affiliate's proceeds from the particular disposition, as otherwise determined,

B is the lesser of

— the amount, if any, by which

- the fair market value, of the eligible property, immediately before the status change time in respect of the particular Canadian shareholder

exceeds

- the particular foreign affiliate's cost, of the eligible property, immediately before the particular disposition, and

— the amount, if any, by which the particular foreign affiliate's proceeds from the particular disposition, as otherwise determined, exceeds the particular foreign affiliate's cost of the eligible property, immediately before the particular disposition, and

C is the lesser of

— the amount, if any, by which

- the particular foreign affiliate's cost, of the eligible property, immediately before the beginning of the taxation year of the particular foreign affiliate that included the status change time in respect of the particular Canadian shareholder

exceeds

- the fair market value, of the eligible property, immediately before the status change time in respect of the particular Canadian shareholder, and

— the amount, if any, by which the particular foreign affiliate's proceeds from the particular disposition, as otherwise determined, exceeds the particular foreign affiliate's cost of the eligible property, immediately before the disposition.

New paragraph 95(2)(f.92) applies in respect of non-resident corporations that become foreign affiliates after February 27, 2004.

Related Provisions: 95(2)(e.1)(ii) — Windup — continuation of affiliate; 95(2)(f.94) — Where relevant FA wound up or merged; 95(2)(n) — Deemed FA and deemed qualifying interest; 257 — Formula amount cannot calculate to less than zero.

(f.93) **[disposition of depreciable property]** — if, at any time after the beginning of the taxation year of the particular foreign affiliate that includes the status change time in respect of the particular foreign affiliate in respect of the particular Canadian shareholder, the particular foreign affiliate disposes of a particular specified depreciable property, the particular foreign affiliate's proceeds from the disposition of the particular specified depreciable property are deemed to be the amount, if any, determined by the formula

$$A - (B + C)$$

where

A is the particular foreign affiliate's proceeds of disposition in respect of the disposition of the particular specified depreciable property, as otherwise determined,

B is the lesser of

(i) the amount, if any, by which

(A) the fair market value, of the particular specified depreciable property, immediately before the status change time in respect of the particular Canadian shareholder

exceeds

(B) the particular foreign affiliate's capital cost of the particular specified depreciable property, immediately before the disposition, and

(ii) the amount, if any, by which the particular foreign affiliate's proceeds from the disposition of the particular specified depreciable property, as otherwise determined, exceed the particular foreign affiliate's capital cost of the specified depreciable property at the time immediately before the time of the disposition, and

C is the lesser of

(i) the amount, if any, by which

(A) the particular foreign affiliate's capital cost of the particular specified depreciable property immediately before the beginning of the taxation year of the particular foreign affiliate that includes the status change time in respect of the particular Canadian shareholder

exceeds

(B) the fair market value of the particular specified depreciable property at the time immediately before the status change time in respect of the particular Canadian shareholder, and

(ii) the amount, if any, by which the particular foreign affiliate's proceeds from the disposition of the particular specified depreciable property, as otherwise determined, exceed the particular foreign affiliate's capital cost of the

particular specified depreciable property, immediately before the disposition;

Technical Notes: New paragraph 95(2)(f.93) is consequential to new paragraph 95(2)(f.91). It provides that if, at any time after the beginning of the taxation year of the particular foreign affiliate (defined in paragraph 95(2)(f.91)) that includes the status change time (defined in paragraph 95(2)(f.91)) in respect of the particular foreign affiliate in respect of the particular Canadian shareholder (defined in paragraph 95(2)(f.91)), the particular foreign affiliate disposes of a particular specified depreciable property (defined in paragraph 95(2)(f.91)), the particular foreign affiliate's proceeds from the disposition of the particular specified depreciable property are deemed to be the amount, if any, determined by the formula

$$A - (B + C)$$

where

A is the particular foreign affiliate's proceeds of disposition in respect of the disposition of the particular specified depreciable property, as otherwise determined,

B is the lesser of

— the amount, if any, by which

- the fair market value, of the particular specified depreciable property, immediately before the status change time in respect of the particular Canadian shareholder

exceeds

- the particular foreign affiliate's capital cost of the particular specified depreciable property, immediately before the disposition, and

— the amount, if any, by which the particular foreign affiliate's proceeds from the disposition of the particular specified depreciable property, as otherwise determined, exceed the particular foreign affiliate's capital cost of the particular specified depreciable property immediately before the time of the disposition, and

C is the lesser of

– the amount, if any, by which

- the particular foreign affiliate's capital cost of the particular specified depreciable property immediately before the beginning of the taxation year of the particular foreign affiliate that includes the status change time in respect of the particular Canadian shareholder

exceeds

- the fair market value of the particular specified depreciable property at the time immediately before the status change time in respect of the particular Canadian shareholder, and

— the amount, if any, by which the particular foreign affiliate's proceeds from the disposition of the particular specified depreciable property, as otherwise determined, exceed the particular foreign affiliate's capital cost of the particular specified depreciable property, immediately before the disposition.

New paragraph 95(2)(f.93) applies in respect of non-resident corporations that become foreign affiliates after February 27, 2004.

Related Provisions: 95(2)(e.1)(ii) — Windup — continuation of affiliate; 95(2)(f.91)(v) — Meaning of "specified depreciable property"; 95(2)(f.94) – Where relevant FA wound up or merged; 95(2)(n) — Deemed FA and deemed qualifying interest; 257 — Formula amount cannot calculate to less than zero.

(f.94) **[where relevant foreign affiliate wound up or merged]** — for the purposes of paragraphs (f.5) and (f.91) to (f.93), if the relevant foreign affiliate referred to in paragraph (f.5) or the particular foreign affiliate referred to in any of paragraphs (f.91) to (f.93) (which relevant foreign affiliate or particular foreign affiliate, as the case may be, is referred to in this paragraph as the "specified foreign affiliate") has been wound up into another non-resident corporation (referred to in this paragraph as the "foreign parent corporation") or merged or combined with one or more other non-resident corporations to form one non-resident corporate entity (referred to in this paragraph as the "new foreign corporation"), the foreign parent corporation or the new foreign corporation, as the case may be, is deemed to be the same corporation as and a continuation of the specified foreign affiliate, if

(i) the surplus entitlement percentage of the particular corporation resident in Canada, immediately before the merger or combination or the winding-up, in respect of the specified foreign affiliate is not less than 90%, and

(ii) the surplus entitlement percentage of the particular corporation resident in Canada, immediately after the merger or combination or the winding-up, in respect of the foreign parent corporation or new foreign corporation, as the case may be, is not less than 90%;

Technical Notes: New paragraph 95(2)(f.94) provides that, for the purposes of paragraphs 95(2)(f.5) and (f.91) to (f.93), if the relevant foreign affiliate referred to in paragraph 95(2)(f.5) or the particular foreign affiliate referred to in any of paragraphs 95(2)(f.91) to (f.93) (in either case, the "specified foreign affiliate") has been wound up into another non-resident corporation (the "foreign parent corporation") or merged or combined with one or more other non-resident corporations to form one non-resident corporate entity (the "new foreign corporation"), the foreign parent corporation or the new foreign corporation, as the case may be, is deemed to be the same corporation as and a continuation of the specified foreign affiliate, if

- the surplus entitlement percentage of the particular corporation resident in Canada, immediately before the merger or combination or the winding-up, in respect of the specified foreign affiliate is not less than 90%, and

- the surplus entitlement percentage of the particular corporation resident in Canada, immediately after the merger or combination or the winding-up, in respect of the foreign parent corporation or new foreign corporation, as the case may be, is not less than 90%.

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(15), will add paras. 95(2)(f.1) to (f.94), applicable as follows:

(a) paras. (f.1) and (f.2), to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002, except that, for those taxation years that begin before February 28, 2004, subpara. (f.1)(iv) is to be read as follows:

(iv) there were not included in computing the income or loss the portion of the income or loss that can reasonably be considered to have been realized or to have accrued during any period throughout which the affiliate was not a foreign affiliate of the taxpayer or of a person described in any of subparagraphs (f)(iii) to (vii);

Paras. (f.1) and (f.2) may also, by election, be applicable to taxation years that begin after 1994: see Application note to 95(2)(a) proposed amendments.

If a taxpayer has made what would, but for this paragraph, be a valid election as described above, and the taxpayer has, on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day that is the third anniversary of the day on which the amending Act receives Royal Assent, filed with the Minister of National Revenue a notice in writing to revoke the election, the election is deemed, otherwise than for the purpose of this paragraph, never to have been made.

Notwithstanding subsecs. 152(4) to (5) of the Act, any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year shall be made that is necessary to take an election or revocation referred to above into account.

(b) paras. (f.3) to (f.9), to dispositions of property that occur after February 27, 2004, except that those paras. do not apply in respect of a disposition of property that is required to be made under an agreement in writing made by the vendor of the property before February 28, 2004;

(c) paras. (f.91) to (f.93), in respect of non-resident corporations that become foreign affiliates after February 27, 2004; and

(d) para. (f.94), after February 27, 2004.

(g) **[currency fluctuation]** — where, because of a fluctuation in the value of the currency of a country other than Canada relative to the value of Canadian currency, a particular foreign affiliate of a taxpayer in respect of which the taxpayer has a qualifying interest throughout a taxation year of the particular affiliate has earned income or incurred a loss or realized a capital gain or a capital loss in the year, in reference to

(i) a debt obligation that was owing to

(A) another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year or any other non-resident corporation to which the particular affiliate and the taxpayer are related throughout the year (referred to in this paragraph as a "qualified foreign corporation"), or

(B) the particular affiliate by a qualified foreign corporation,

(ii) the redemption, cancellation or acquisition of a share of the capital stock of, or the reduction of the capital of, the particular affiliate or another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year, or

(iii) the disposition to a qualified foreign corporation of a share of the capital stock of another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year,

that income, gain or loss, as the case may be, is deemed to be nil;

Proposed Amendment — 95(2)(g)

(g) **[currency fluctuation]** — income earned, a loss incurred or a capital gain or captial loss realized, as the case may be, in a taxation year by a particular foreign affiliate of a taxpayer in respect of which the taxpayer has a qualifying interest throughout the taxation year or to which the taxpayer is related throughout the taxation year, because of a fluctuation in the value of the currency of a country other than Canada relative to the value of Canadian currency, is deemed to be nil if it is earned, incurred or realized in reference to any of the following sources:

(i) a debt obligation that was owing to

(A) another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year or any other non-resident corporation to which the particular affiliate and the taxpayer are related throughout the year (which other foreign affiliate or other non-resident corporation is referred to in this paragraph as a "qualified foreign corporation"), or

(B) the particular affiliate by a qualified foreign corporation,

(ii) the redemption, cancellation or acquisition of a share of the capital stock of, or the reduction of the capital of, the particular affiliate or a qualified foreign corporation, or

(iii) the disposition to a qualified foreign corporation of a share of the capital stock of another qualified foreign corporation;

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(15), will amend para. 95(2)(g) to read as above, applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002.

If a taxpayer has made what would, but for this paragraph, be a valid election as described above, and the taxpayer has, on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day that is the third anniversary of the day on which the amending Act receives Royal Assent, filed with the Minister of National Revenue a notice in writing to revoke the election, the election is deemed, otherwise than for the purpose of this paragraph, never to have been made.

Notwithstanding subsecs. 152(4) to (5) of the Act, any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year shall be made that is necessary to take an election or revocation referred to above into account.

Technical Notes: Paragraph 95(2)(g) provides that where, because of a fluctuation in the value of the currency of a country other than Canada relative to the value of Canadian currency, a foreign affiliate of a taxpayer in respect of which the taxpayer has a qualifying interest throughout a taxation year of the affiliate has earned income or incurred a loss or realized a capital gain or a capital loss in the year, in reference to certain debt and share transactions of the affiliate, the income, gain or loss, as the case may be, is nil.

Paragraph 95(2)(g) is amended to expand its scope of application to not only foreign affiliates of a taxpayer in respect of which the taxpayer has a qualifying interest throughout the taxation year, but also to foreign affiliates to which the taxpayer is related throughout the taxation year.

The amendment to paragraph 95(2)(g) applies to taxation years of a foreign affiliate of a taxpayer that begin after December 20, 2002.

Note that this amendment is part of the Global Section 95 Election package described [under 95(2)(a) — ed.]

Related Provisions: 95(2)(g.01) — Currency hedging; 95(2)(g.02) — Application of 39(2) to foreign affiliate; 95(2)(n) — Deemed FA and deemed qualifying interest.

Interpretation Bulletins: IT-392: Meaning of term "share".

I.T. Technical News: 15 (tax consequences of the adoption of the "euro" currency).

Proposed Addition — 95(2)(g.01), (g.02)

(g.01) **[income from hedging foreign currency]** — any income, loss, capital gain or capital loss, derived by a foreign affiliate of a taxpayer under or as a result of an agreement that provides for the purchase, sale or exchange of currency and that can reasonably be considered to have been made by the affiliate to reduce its risk (with respect to any source, any particular income, gain or loss determined in reference to which is deemed by paragraph (g) to be nil) of fluctuations in the value of currency, is, to the extent of the absolute value of the particular income, gain or loss, deemed to be nil;

Technical Notes: New paragraph 95(2)(g.01) deals with foreign currency hedging agreements. In general terms, that paragraph provides that a foreign currency income, gain or loss derived under or as a result of an agreement that provides for the purchase, sale or exchange of currency where the agreement can reasonably be considered to have been made by a foreign affiliate of a taxpayer to reduce the affiliate's risk (with respect to any source, any particular income, gain or loss determined in reference to which is deemed by paragraph 95(2)(g) to be nil) of fluctuations in the value of currency is, to the extent of the absolute value of the particular income, gain or loss, deemed to be nil. This amendment ensures that income, a gain or a loss from a hedge is deemed to be nil if the hedged income, loss or gain is deemed to be nil.

New paragraph 95(2)(g.01) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. Note that new paragraph 95(2)(g.01) is part of the Global Section 95 Election package described [under 95(2)(a) — ed.]

Letter from Dept. of Finance, February 12, 2001:

Angelo Nikolakakis, Stikeman Elliott, Toronto

Dear Mr. Nikolakakis:. . .

Scope of 95(2)(g)

Foreign Currency Reporters

You are concerned that paragraph 95(2)(g) might not apply to treat as nil any foreign exchange gain or loss realized by a foreign affiliate

where the affiliate's calculating currency and the currency in which the relevant loan or other instrument are both foreign currencies. This would have an impact on the surpluses of a foreign affiliate in respect of a corporation resident in Canada.

You have requested the extension of paragraph 95(2)(g) to cover foreign-to-foreign currency fluctuations. However, it is not clear to us that the rationale for paragraph 95(2)(g), which was intended to provide relief in respect of foreign exchange gains that would otherwise be considered to arise upon the conversion into Canadian currency, extends to cases involving the affiliate's calculating currency.

Hedging Arrangements

You are concerned that although paragraph 95(2)(g) applies to foreign exchange gains and losses arising in respect of the primary transaction, it does not apply in respect of any hedging arrangements intended to neutralize the foreign exchange exposure arising in connection with such transactions. You feel this is inappropriate and to address this concern the scope of paragraph 95(2)(g) ought to be expanded to cover hedging arrangements connected to the primary transaction.

We agree, and are prepared to recommend an amendment to the Act comparable to paragraph 95(2)(g) which would apply to deem foreign currency hedging gains and losses to be nil where they are connected to foreign currency gains and losses deemed to be nil under paragraph 95(2)(g).

. . . . .

Effective Date

It will be recommended that the amendments be made effective for taxation years commencing after announcement date. It will also be recommended that taxpayer be permitted to elect to have the amendments apply to the 1994 and subsequent taxation years of foreign affiliates where the taxpayer so elects in respect of all the taxpayer's foreign affiliates.

Thank you for taking the time to express your concerns and we trust this letter addresses most of them.

Yours sincerely,

Brian Ernewein

Director, Tax Legislation Division, Tax Policy Branch

(g.02) **[foreign exchange gain or loss]** — in applying subsection 39(2) for the purpose of this subdivision, the gains and losses of a foreign affiliate of a taxpayer in respect of excluded property is to be computed in respect of the taxpayer separately from the gains and losses of the affiliate in respect of property that is not excluded property;

Technical Notes: New paragraph 95(2)(g.02) ensures that foreign exchange gains and losses of a foreign affiliate of a taxpayer determined under subsection 39(2) in respect of excluded property (as defined in subsection 95(1)) are computed separately from the affiliate's foreign exchange gains and losses in respect of other property. This amendment facilitates the computation of the foreign accrual property income and the tax surpluses and deficits of a foreign affiliate of a taxpayer.

New paragraph 95(2)(g.02) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. Note that new paragraph 95(2)(g.02) is part of the Global Section 95 Election package described [under 95(2)(a) — ed.]

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(15), will add paras. (g.01) and (g.02), applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. Paras. (g.01) and (g.02) may also, by election, be applicable to taxation years that begin after 1994: see Application note to 95(2)(a) proposed amendments.

If a taxpayer has made what would, but for this paragraph, be a valid election as described above, and the taxpayer has, on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day that is the third anniversary of the day on which the amending Act receives Royal Assent, filed with the Minister of National Revenue a notice in writing to revoke the election, the election is deemed, otherwise than for the purpose of this paragraph, never to have been made.

Notwithstanding subsecs. 152(4) to (5) of the Act, any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year shall be made that is necessary to take an election or revocation referred to above into account.

(g.1) **[debt forgiveness rules]** — in computing the foreign accrual property income of a foreign affiliate of a taxpayer the Act shall be read

(i) as if the expression "income, taxable income or taxable income earned in Canada, as the case may be" in the definition "commercial debt obligation" in subsection 80(1) were read as "foreign accrual property income (within the meaning assigned by subsection 95(1))", and

(ii) without reference to subsections 80(3) to (12) and (15) and 80.01(5) to (11) and sections 80.02 to 80.04;

(g.2) **[foreign spin-off election]** — for the purpose of computing the foreign accrual property income of a foreign affiliate of any taxpayer resident in Canada for a taxation year of the affiliate, an election made pursuant to paragraph 86.1(2)(f) in respect of a distribution received by the affiliate in a particular taxation year of the affiliate is deemed to have been filed under that paragraph by the affiliate if

(i) where there is only one taxpayer resident in Canada in respect of whom the affiliate is a controlled foreign affiliate, the election is filed by the taxpayer with the taxpayer's return of income for the taxpayer's taxation year in which the particular year of the affiliate ends, and

(ii) where there is more than one taxpayer resident in Canada in respect of whom the affiliate is a controlled foreign affiliate, all of those taxpayers jointly elect in writing and each of them files the joint election with the Minister with their return of income for their taxation year in which the particular year of the affiliate ends;

Related Provisions: 96(3) — Election by members of partnership.

Proposed Addition — 95(2)(g.3)

(g.3) **[application of foreign investment entity rules]** — if in a particular taxation year of a particular foreign affiliate of a particular taxpayer, the particular foreign affiliate holds a participating interest, in a particular non-resident entity (in this paragraph as defined by subsection 94.1(1)), sections 94.1 to 94.4 apply to the particular foreign affiliate in respect of the participating interest as if

(i) the particular foreign affiliate were a taxpayer resident in Canada throughout the particular taxation year,

(ii) paragraph (a) of the definition "exempt interest" in subsection 94.1(1) were read without reference to its subparagraph (i), unless, at the end of the particular non-resident entity's taxation year that ends in the particular taxation year,

(A) where the particular taxpayer is not a partnership,

(I) the particular foreign affiliate is a controlled foreign affiliate of the particular taxpayer,

(II) the particular non-resident entity is a controlled foreign affiliate of the particular taxpayer, and

(III) the particular non-resident entity would, were the particular foreign affiliate a corporation resident in Canada, be a controlled foreign affiliate of the particular foreign affiliate, or

(B) where the particular taxpayer is a partnership,

(I) the particular foreign affiliate is a controlled foreign affiliate of the partnership,

(II) the particular non-resident entity is a controlled foreign affiliate of the partnership, and

(III) the particular non-resident entity is a controlled foreign affiliate of each taxpayer resident in Canada

1. that has, directly or indirectly, a partnership interest in the partnership, or

2. a controlled foreign affiliate of which is a member of the partnership,

(iii) an exempt interest (in this paragraph, as defined by subsection 94.1(1)) of the particular foreign affiliate in a non-resident entity included a participating interest

(A) that is held, in the particular taxation year, by the particular foreign affiliate, and

(B) that is, throughout the period, in the particular taxation year, during which the particular foreign affiliate held the participating interest, property used or held by the particular foreign affiliate principally for the purpose of gaining or producing income from a business that is not an investment business,

(iv) the definition "fresh-start year" in subsection 94.3(1) did not apply and a reference in section 94.3 to a fresh-start year, of the particular non-resident entity in respect of the particular foreign affiliate, were a reference to a taxation year of the particular non-resident entity

(A) that ends in a taxation year of the particular foreign affiliate that begins after 2002,

(B) that begins immediately after a preceding taxation year of the particular non-resident entity at the end of which

(I) the particular non-resident entity was not a foreign investment entity,

(II) the particular foreign affiliate did not hold a participating interest in the particular non-resident entity (other than an exempt interest), or

(III) the particular foreign affiliate was not a controlled foreign affiliate of the particular taxpayer,

(C) at the end of which the particular non-resident entity is a foreign investment entity in which the particular foreign affiliate holds a participating interest that is not an exempt interest, and

(D) at any time in which the particular foreign affiliate is a controlled foreign affiliate of the particular taxpayer,

(v) an election for the particular taxation year made under paragraph (a) of the definition "carrying value", or paragraph (a) of the definition "financial statements", in subsection 94.1(1), paragraph 94.1(2)(e), (h) or (j), subparagraph (a)(iii) of the description of D in the definition "mark-to-market formula" in subsection 94.2(1), subparagraph 94.2(2)(b)(i) or 94.2(3)(b)(iii) or paragraph 94.3(3)(b) were required to be filed under that provision in respect of the particular foreign affiliate, by, and only by, the particular taxpayer, with the Minister on or before the filing-due date of the particular taxpayer for the particular taxpayer's taxation year in which the particular taxation year ends,

(vi) the Minister were required, in sending a written demand under subparagraph 94.1(2)(e)(iii), any of paragraphs 94.1(2)(i) or (p) to (r) or 94.2(2)(d), or subparagraph 94.3(2)(b)(iii), to send the demand to the particular taxpayer,

(vii) the amount determined under the definition "deferral amount" in subsection 94.2(1) did not include the portion of that amount that can reasonably be considered to have accrued during the period that the particular foreign affiliate was not a foreign affiliate of any person described in any of subparagraphs (f)(iii) to (vii),

(viii) the reference in subsection 94.2(19) to "in computing the capital dividend account of the corporation" were read in respect of the particular foreign affiliate as a reference to "and the corporation is a foreign affiliate, of a taxpayer, to which paragraph 95(2)(g.3) applies, in computing the amount prescribed to be the foreign affiliate's exempt surplus and taxable surplus in respect of the taxpayer",

(ix) any form, information or notification, in respect of a participating interest in a non-resident entity held in the particular taxation year by the particular foreign affiliate, that is required under any of sections 94.1 to 94.4 to be filed or included with the particular foreign affiliate's return of income for the particular taxation year were required to be filed or included with, and only with, the particular taxpayer's return of income for the particular taxpayer's taxation year in which the particular taxation year ends,

(x) designations and notifications made, and information provided, by the particular taxpayer in a form referred to in subparagraph (ix) were made or provided by the particular foreign affiliate,

(xi) for taxation years that begin on or before July 18, 2005, in applying paragraph (f.1) of the description of A in the definition "income allocation" in subsection 94.3(1)

(A) the expression "the particular taxpayer" referred to the particular taxpayer rather than to the particular foreign affiliate, and

(B) the expression "foreign affiliate" referred to a foreign affiliate of the particular taxpayer and not to a foreign affiliate of the particular foreign affiliate, and

(xii) for taxation years that begin on or before July 18, 2005, the definition "income allocation" in subsection 94.3(1) were read without reference to paragraph (h) of the description of A in that definition;

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 19(7), will add para. 95(2)(g.3), applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after 2002, except that for taxation years that begin on or before July 18, 2005, subpara. 95(2)(g.3)(ii) is to be read as follows:

(ii) the expression "controlled foreign affiliate of the taxpayer" in paragraph (a) of the definition "exempt interest" in subsection

94.1(1) referred to a controlled foreign affiliate of the particular taxpayer and not to a controlled foreign affiliate of the particular foreign affiliate.

Technical Notes: New paragraph 95(2)(g.3) applies to a particular foreign affiliate of a particular taxpayer for a particular taxation year of the particular foreign affiliate, in respect of a property that is a participating interest, in a particular non-resident entity held by the particular foreign affiliate in the particular taxation year. In this case, the amount required under sections 94.1 to 94.4 to be included (or that may be deducted) in computing the particular foreign affiliate's income from a property that is the participating interest, is to be computed as if

- the particular affiliate were a taxpayer resident in Canada throughout the particular year;
- Paragraph (a) of the definition "exempt interest" in subsection 94.1(1) were read without reference to its subparagraph (i), unless
  - the particular foreign affiliate is a controlled foreign affiliate of the particular taxpayer and the particular non-resident entity is a controlled foreign affiliate of both the particular taxpayer and the particular foreign affiliate, or
  - where the particular taxpayer is a partnership, the particular foreign affiliate is a controlled foreign affiliate of the partnership, the particular non-resident entity is a controlled foreign affiliate of the partnership, and the particular non-resident entity is a controlled foreign affiliate of each taxpayer resident in Canada
    1. that has, directly or indirectly, a partnership interest in the partnership, or
    2. a controlled foreign affiliate of which is a member of the partnership;
- an exempt interest of particular affiliate in a non-resident entity included a participating interest held, in the particular taxation year, by the particular foreign affiliate, and used or held by the particular foreign affiliate principally for the purpose of gaining or producing income from an active business;
- a "fresh-start year" (relevant in computing the foreign affiliate's "income allocation" and "loss allocation" under the accrual regime in section 94.3) of the particular non-resident entity in respect of the particular affiliate were its taxation year (at the end of which the particular affiliate holds an interest in it and it is a foreign investment entity and at any time in which the particular affiliate is a CFA of the Canadian taxpayer) that ends in a taxation year of the particular affiliate that begins after 2002 and that immediately follows a taxation year of the particular non-resident entity in respect of which subsection 94.1(3) would not have been applicable to the foreign affiliate;
- for taxation years that begin on or before July 18, 2005, the exclusion of dividends under paragraph (f.1) of the description of A in the definition "income allocation" in subsection 94.3(1) applies only where the Canadian taxpayer is resident in Canada, in connection with dividends received by the particular affiliate from foreign affiliates of the Canadian taxpayer (not of the particular affiliate);
- the Canadian taxpayer (rather than the particular affiliate) were required to make a number of the elections, designations, notifications and provisions of information under sections 94.1 to 94.4 in connection with the particular affiliate's participating interests in foreign investment entities. In addition, the Minister in sending a demand for information to the particular affiliate under subparagraph 94.1(2)(e)(iii) or 94.3(2)(b)(iii), or any of paragraphs 94.1(2)(i) or (p) to (r) or 94.2(2)(d), is required to send the demand also to the Canadian taxpayer in connection with the particular affiliate's participating interests in foreign investment entities;
- for taxation years that begin on or before July 18, 2005, the definition "income allocation" in subsection 94.3(1) were read without reference to paragraph (h) of the description of "A";
- the particular affiliate's "deferral amount" determined under the definition of that expression in subsection 94.2(1) does not include the portion of the amount that can reasonably be considered to have accrued during the period that the particular affiliate was not a foreign affiliate of the Canadian taxpayer and certain other specified persons; and
- the reference in subsection 94.2(19) to the expression "in computing the capital dividend account of the corporation" were read in respect of the affiliate as a reference to the expression "in computing the amount prescribed to be the particular affiliate's exempt surplus and taxable surplus in respect of the taxpayer".

Letter from Dept. of Finance, August 11, 2003:

Dear [xxx]

Thank you for your letter of April 23, 2003, concerning the application, to property held by a foreign affiliate of a taxpayer, of the provisions contained in the legislative proposals on foreign investment entities ("FIE proposals") that were tabled as a Notice of Ways and Means Motion on October 11, 2002.

Under the FIE Proposals, a taxpayer would generally be required to include in computing the taxpayer's income for a taxation year certain amounts — determined under proposed section 94.1 or 94.2 of the *Income Tax Act* — in respect of a participating interest of the taxpayer in a FIE. However, these rules generally would not apply to a participating interest that is an exempt interest, as defined in proposed subsection 94.1(1) of the Act, of the taxpayer in a FIE. You are concerned that proposed paragraph 95(2)(g.3) of the Act — which would determine the manner in which sections 94.1 to 94.3 would apply in computing the foreign accrual property income ("FAPI") of a foreign affiliate, of a taxpayer, that holds a participating interest in a FIE — may apply to include in computing the foreign affiliate's FAPI an amount that would otherwise be treated as "income from an active business" as defined by subsection 95(1) of the Act.

We are prepared to recommend a modification to the provisions contained in the FIE Proposals. Proposed paragraph 95(2)(g.3) would be modified so that, in computing the FAPI of a foreign affiliate, sections 94.1 to 94.3 would apply as if an "exempt interest" of the foreign affiliate in a FIE included a participating interest in the FIE that is, throughout the period that it is held by the foreign affiliate, used or held by the foreign affiliate principally for the purpose of gaining or producing income from a business that is not an investment business, within the meaning of subsection 95(1) of the Act. As a result, proposed subsection 94.1(3) of the Act would not apply in respect of such a participating interest to cause the foreign affiliate to have income under proposed sections 94.1 or 94.2 that would be included in computing the foreign affiliate's FAPI. We will recommend that these modifications be effective for the same period as the FIE proposals generally.

Of course, we cannot offer any assurance that either the Minister of Finance or Parliament will agree with the recommendation that we intend to make in this regard. Nonetheless, we trust that this statement of our position is helpful.

Thank you for writing.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

(h) [Repealed]

Proposed Addition — 95(2)(h)–(h.5)

(h) **[application of para. (h.1)]** — paragraph (h.1) applies to a specified vendor in respect of a particular taxpayer resident in Canada (which specified vendor is referred to in this paragraph and paragraphs (h.1) and (h.2) as the "vendor") if

(i) the vendor disposes at any time of a property (which property is referred to in this paragraph and paragraphs (h.1) to (h.5) as the "specified property" and which time is referred to in this paragraph and paragraphs (h.1) to (h.5) as the "original disposition time" of the specified property) that, at that time, is not depreciable property, eligible capital property or an excluded property, of the vendor (or would not be excluded property of the vendor if the vendor were, at that time, a foreign affiliate of the particular taxpayer) to a person or partnership (referred to in paragraph (h.1) as the "purchaser") that is, immediately after that time, a specified purchaser in respect of the particular taxpayer, and

(ii) the vendor would, were this Act read without reference to paragraph (h.1), have a loss or allow-

able capital loss from the disposition of the specified property;

Technical Notes: New paragraphs 95(2)(h) to (h.5) put into place a regime that, in general terms, is designed to suspend the recognition of the loss that would otherwise be incurred upon an internal disposition of a property that is not an excluded property, a depreciable property or an eligible capital property. Generally, this "suspended loss" is recognized at the time the property is disposed of in an external disposition. The rules are comparable to but not the same as the rules found in subsection 40(3.4). See the definitions "specified vendor" and "specified purchaser" in proposed new subsection 95(3.5) to determine when a disposition is an internal disposition.

New paragraphs 95(2)(h) to (h.5) apply to dispositions of property after February 27, 2004 other than where the disposition of property is required to be made under a written agreement made by the vendor of the property on or before February 27, 2004.

New paragraph 95(2)(h) provides that new paragraph 95(2)(h.1) applies to a specified vendor in respect of a particular taxpayer resident in Canada (see definition of "specified vendor" in subsection 95(3.5) and such specified vendor referred in here and paragraph (h.1) as the "vendor") if

- the vendor disposes at any time (referred to here and in paragraphs 95(2)(h.1) to (h.5) as the "original disposition time") of a property (referred to here and in paragraphs 95(2)(h.1) to (h.5) as the "specified property") that, at that time, is not a depreciable property, eligible capital property or an excluded property of the vendor (or would not be excluded property of the vendor if the vendor were, at that time, a foreign affiliate of the particular taxpayer) to a person or partnership (referred to here as the "purchaser") that is, immediately after that time, a specified purchaser in respect of the particular taxpayer, and

- the vendor would have a loss or an allowable capital loss from the disposition of the specified property, if this Act were read without reference to paragraph 95(2)(h.1).

The expressions "original disposition time", "specified property", "vendor" and "purchaser" are described in new paragraph 95(2)(h) and are then referred to throughout new paragraphs 95(2)(h.1) to 95(2)(h.5).

Related Provisions: 95(3.5) — Definitions; 95(3.6) — Partnerships and trusts.

(h.1) **[suspended loss on internal disposition of excluded property]** — if this paragraph applies to a vendor in respect of a disposition of specified property referred to in paragraph (h), the following rules apply:

(i) the vendor's proceeds from the disposition of the specified property are deemed to be an amount that is equal to the vendor's adjusted cost base of the specified property at the original disposition time,

(ii) the purchaser's cost of the specified property is deemed to be an amount that is equal to the fair market value of the specified property at the original disposition time,

(iii) the vendor's cost of a particular property that was received as consideration for the disposition of the specified property is deemed to be the fair market value of the particular property at the original disposition time,

(iv) the vendor that is a foreign affiliate of the particular taxpayer resident in Canada or a foreign affiliate of the particular taxpayer resident in Canada that is a member of a partnership that is the vendor (which vendor or foreign affiliate is referred to in this subparagraph as the "relevant foreign affiliate") is deemed to have an unadjusted suspended loss or capital loss in respect of the specified property disposed of, at the original disposition time, by the vendor that is equal to the amount, that is the loss or twice the amount of the allowable capital loss, as the case may be, that, but for the application of this paragraph, would have been realized by the relevant foreign affiliate in respect of that disposition, and

(v) notwithstanding subsection 40(3.3), subsection 40(3.4) does not apply to the vendor in respect of the disposition of the specified property;

Technical Notes: New paragraph 95(2)(h.1) provides the following rules for the vendor in respect of the disposition of the specified property.

- The vendor's proceeds from the disposition of the specified property are deemed to be an amount that is equal to the vendor's adjusted cost base of the specified property at the original disposition time (see paragraph 95(2)(h)).

- The purchaser's cost of the specified property is deemed to be an amount that is equal to the fair market value of the specified property at the original disposition time.

- The vendor's cost of a particular property that was received as consideration for the disposition of the specified property is deemed to be the fair market value of the particular property at the original disposition time.

- The vendor that is a foreign affiliate of the particular taxpayer or a foreign affiliate of the particular taxpayer that is a member of a partnership that is the vendor (referred to here as the "relevant foreign affiliate") is deemed to have an unadjusted suspended loss or capital loss in respect of the specified property, at the original disposition time, by the vendor that is equal to the amount, that, but for the application of this paragraph, would have been the relevant foreign affiliate's loss or twice the amount of the allowable capital loss, as the case may be, in respect of that disposition, if the vendor's proceeds of disposition in respect of that disposition were equal to the fair market value of the specified property.

- Notwithstanding subsection 40(3.3), subsection 40(3.4) does not apply to the vendor in respect of the disposition of the specified property.

Related Provisions: 95(2)(h) — Conditions for para. (h.1) to apply; 95(2)(h.2) — Timing of deemed loss for relevant foreign affiliate; 95(2)(h.3) — Designated replacement property deemed to be specified property; 95(2)(h.4) — Where part of specified property disposed of; 95(2)(h.5) — Designated replacement property acquired by specified purchaser; 95(3.5) — Definitions; 95(3.6) — Partnerships and trusts.

(h.2) **[timing of deemed loss]** — the relevant foreign affiliate referred to in paragraph (h.1) is deemed to have a loss or capital loss from the disposition of the specified property equal to the amount prescribed to be the adjusted suspended loss or capital loss in respect of the specified property and to have received from the government of a country an amount equal to the amount prescribed to be the adjusted allocable tax refund in respect of the adjusted suspended loss or capital loss in respect of the specified property at the earlier of

(i) the first time, after the original disposition time, that a specified purchaser in respect of the particular taxpayer (which specified purchaser is referred to in paragraphs (h.4) and (h.5) as the "current vendor") that holds, immediately before that first time, the specified property makes a triggering disposition of the specified property, and

(ii) the first time, after the original disposition time, that a specified purchaser in respect of the particular taxpayer (which specified purchaser is referred to in this subparagraph as the "current holder") that holds, immediately before that first time, the specified property ceases to be a specified purchaser in respect of the particular taxpayer otherwise than because of a specified discontinuance of the current holder;

Technical Notes: New paragraph 95(2)(h.2) provides that the relevant foreign affiliate referred to in paragraph 95(2)(h.1) is deemed to have a loss or capital loss from the disposition of the specified property equal to the amount prescribed by regulation to be the adjusted suspended loss or capital loss (see proposed new subsection 5914(1) of the Regulations) in respect of the specified property. New paragraph 95(2)(h.2) also provides that the relevant foreign affiliate referred to in paragraph 95(2)(h.1) is deemed to have received from the government of a country an amount equal to the amount prescribed by regulation to be the adjusted allocable tax refund (see proposed new subsection 5914(2) of the Regulations) in respect of the adjusted suspended loss or capital loss in respect of the specified property. The adjusted suspended loss or capital loss and the adjusted allocable tax refund will arise at the earlier of

- the first time, after the original disposition time, that a specified purchaser (see subsection 95(3.5)) in respect of the particular taxpayer (referred to in paragraphs 95(2)(h.4) and (h.5) as the "current vendor") that holds, immediately before that first time, the specified property makes a triggering disposition (see subsection 95(3.5)) of the specified property.

or

- the first time, after the original disposition time, that a specified purchaser in respect of the particular taxpayer (referred to here as the "current holder") that holds, immediately before that first time, the specified property, ceases at that time to be a specified purchaser in respect of the particular taxpayer otherwise than because of a specified discontinuance (see subsection 95(3.5)) of the current holder.

Related Provisions: 95(2)(h.3) — Designated replacement property deemed to be specified property; 95(2)(h.4) — Where part of specified property disposed of; 95(2)(h.5) — Designated replacement property acquired by specified purchaser; 95(2)(y) — Meaning of "government of a country"; 95(3.5) — Definitions; 95(3.6) — Partnerships and trusts.

Regulations: 5914(1) (amount prescribed to be adjusted suspended loss or capital loss); 5914(2) (amount prescribed to be adjusted allocable tax refund).

(h.3) **[designated replacement property deemed to be specified property]** — for the purposes of paragraphs (h.1), (h.2), (h.4) and (h.5) and subsection (3.5), a designated replacement property referred to in clause (b)(ii)(A), (B) or (C) of the definition "triggering disposition" in subsection (3.5) is deemed to be the specified property referred to in that clause;

Technical Notes: New paragraph 95(2)(h.3) provides that for the purposes of paragraphs 95(2)(h.1), (h.2), (h.4) and (h.5) and subsection 95(3.5), a designated replacement property referred to in clause (b)(ii)(A), (B) or (C) of the definition "triggering disposition" in subsection 95(3.5) is deemed to be the same property as the specified property referred to in that clause.

Related Provisions: 95(2)(h.4) — Where part of specified property disposed of; 95(2)(h.5) — Designated replacement property acquired by specified purchaser; 95(3.5) — Definitions; 95(3.6) — Partnerships and trusts.

(h.4) **[where part of specified property disposed of]** — for the purposes of paragraphs (h.1) to (h.3) and (h.5) and subsection (3.5) if, at any time, part of a specified property (which specified property is referred to in this paragraph as the "initial specified property") is disposed of by a current vendor and the remaining part of the specified property is retained by the current vendor,

(i) the part (referred to in this paragraph as the "part interest") of the initial specified property disposed of, at that time, is deemed to be a specified property of the current vendor,

(ii) the portion of the unadjusted suspended loss or capital loss attributable to the part interest is deemed to be that proportion of the adjusted suspended loss or capital loss in respect of the whole of the initial specified property that the fair market value at that time of the part interest is of the fair market value at that time of the initial specified property,

(iii) the part (referred to in this paragraph as the "remaining interest") of the initial specified property not disposed of at that time is deemed to be a specified property of the current vendor that was disposed of at the original disposition time, and

(iv) the amount of loss or capital loss that would have been realized on the disposition of the remaining interest at the original disposition time is deemed to be the amount, if any, by which the unadjusted suspended loss or capital loss in respect of the initial specified property exceeds the amount determined by subparagraph (ii) to be the unadjusted suspended loss or capital loss in respect of the part interest;

Technical Notes: New paragraph 95(2)(h.4) provides that for the purposes of paragraphs 95(2)(h.1) to (h.3) and (h.5) and subsection 95(3.5), where at any time, part of a specified property (referred to here as the "initial specified property") is disposed of by a current vendor and the remaining part of the specified property is retained by the current vendor, the following rules apply:

- The part (referred to here as the "part interest") of the initial specified property disposed of, at that time, shall be deemed to be a specified property of the current vendor.
- The portion of the unadjusted suspended loss or capital loss attributable to the part interest is deemed to be that proportion of the adjusted suspended loss or capital loss in respect of the whole of the initial specified property that the fair market value at that time of the part interest is of the fair market value at that time of the initial specified property. (Subparagraph 95(2)(h.4)(ii))
- The part (referred to here as the "remaining interest") of the initial specified property not disposed of at that time is deemed to be a specified property of the current vendor that was disposed of at the original disposition time.
- The amount of loss or capital loss that would have been realized on the disposition of the remaining interest at the original disposition time is deemed to be the amount, if any, by which the unadjusted suspended loss or capital loss in respect of the initial specified property exceeds the amount determined by subparagraph 95(2)(h.4)(ii) to be the unadjusted suspended loss or capital loss in respect of the part interest.

Related Provisions: 95(2)(h.3) — Designated replacement property deemed to be specified property; 95(2)(h.5) — Designated replacement property acquired by specified purchaser; 95(3.5) — Definitions; 95(3.6) — Partnerships and trusts.

(h.5) **[designated replacement property acquired by specified purchaser]** — for the purposes of paragraphs (h.1) to (h.4) and subsection (3.5), if a current vendor disposes, at any particular time, of the whole of a specified property (referred to in this paragraph as the "initial specified property") and as part of a transaction, or series of transactions or events, that includes the disposition of the initial specified property, a specified purchaser in respect of the particular taxpayer acquires a designated replacement property in respect of the initial specified property,

(i) the designated replacement property (referred to in this paragraph as the "remaining interest") is deemed to be a specified property of the current vendor that was disposed of at the original disposition time,

(ii) the unadjusted suspended loss or capital loss in respect of the remaining interest is deemed to be that proportion of the unadjusted suspended loss or capital loss in respect of the whole of the initial specified property (determined without ref-

erence to subparagraph (iii)) that the fair market value of the remaining interest, at the time it was acquired, is of the fair market value, at the particular time, of the initial specified property, and

(iii) the unadjusted suspended loss or capital loss in respect of the initial specified property is deemed to be the amount, if any, by which the unadjusted suspended loss or capital loss in respect of the initial specified property (determined without reference to this subparagraph) exceeds the amount determined by subparagraph (ii) to be the unadjusted suspended loss or capital loss in respect of the remaining interest;

Technical Notes: New paragraph 95(2)(h.5) provides that for the purposes of paragraphs 95(2)(h.1) to (h.4) and subsection 95(3.5), if a current vendor disposes, at any particular time, of the whole of a specified property (referred to here as the "initial specified property") and as part of a transaction, or series of transactions or events, that includes the disposition of the initial specified property, a specified purchaser in respect of the taxpayer acquires a designated replacement property (see the definition "triggering disposition" in subsection 95(3.5)) in respect of the initial specified property, the following rules apply:

- The designated replacement property (referred to here as "the remaining interest") is deemed to be a specified property of the current vendor that was disposed of at the original disposition time. (Subparagraph 95(2)(h.5)(i))
- The unadjusted suspended loss or capital loss in respect of the remaining interest is deemed to be that portion of the unadjusted suspended loss or capital loss in respect of the whole of the initial specified property (determined without reference to subparagraph 95(2)(h.5)(iii)) that the fair market value of the remaining interest, at the time it was acquired, is of the fair market value, at the particular time, of the initial specified property. (Subparagraph 95(2)(h.5)(ii))
- The unadjusted suspended loss or capital loss in respect of the initial specified property is deemed to be the amount, if any, by which the unadjusted suspended loss or capital loss in respect of the initial specified property (determined without reference to subparagraph 95(2)(h.5)(iii)) minus the amount determined by subparagraph 95(2)(h.5)(ii) to be the unadjusted suspended loss or capital loss in respect of the remaining interest. (Subparagraph 95(2)(h.5)(iii))

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(16), will add paras. 95(2)(h) to (h.5), applicable to dispositions of property that occur after February 27, 2004, except that those paragraphs do not apply in respect of a disposition of property that is required to be made under an agreement in writing made by the vendor of the property before February 28, 2004.

Related Provisions: 95(2)(h.3) — Designated replacement property deemed to be specified property; 95(2)(h.4) — Where part of specified property disposed of; 95(3.5) — Definitions; 95(3.6) — Partnerships and trusts; 248(10) — Series of transactions or events.

(i) **[settlement of debt relating to excluded property]** — any gain or loss of a foreign affiliate of a taxpayer from the settlement or extinguishment of a debt that related at all times to the acquisition of excluded property shall be deemed to be a gain or loss from the disposition of excluded property;

Proposed Amendment — 95(2)(i)

(i) **[settlement of debt relating to excluded property]** — any gain or loss determined in accordance with subsection 39(2) of a foreign affiliate of a taxpayer is deemed to be a gain or loss, as the case may be, from the disposition of an excluded property if the gain or loss is

(i) derived from the settlement or extinguishment of a debt all or substantially all of the proceeds from which were used at all times to acquire excluded property or to earn income from an active business or for a combination of those uses, or

(ii) derived under or as a result of an agreement that provides for the purchase, sale or exchange of currency and that can reasonably be considered to have been made by the affiliate to reduce its risk, with respect to a debt referred to in subparagraph (i), of fluctuations in the value of the currency in which the debt was denominated;

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(16), will amend para. 95(2)(i) to read as above, applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. The amended para. may also, by election, be applicable to taxation years that begin after 1994: see Application note to 95(2)(a) proposed amendments.

If a taxpayer has made what would, but for this paragraph, be a valid election as described above, and the taxpayer has, on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day that is the third anniversary of the day on which the amending Act receives Royal Assent, filed with the Minister of National Revenue a notice in writing to revoke the election, the election is deemed, otherwise than for the purpose of this paragraph, never to have been made.

Notwithstanding subsecs. 152(4) to (5) of the Act, any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year shall be made that is necessary to take an election or revocation referred to above into account.

Technical Notes: Paragraph 95(2)(i) provides a rule under which certain gains or losses (determined in accordance with subsection 39(2)) of a foreign affiliate of a taxpayer are deemed to be a gain or loss, as the case may be, from the disposition of an excluded property (as defined in subsection 95(1)) and are therefore not included in computing the affiliate's foreign accrual property income. Under this paragraph, the gain or loss that is eligible for this treatment is a gain or loss of the affiliate from the settlement or extinguishment of a debt that related at all times to the acquisition of an excluded property. This paragraph is amended in three ways.

First, it is amended so that the gain or loss from the settlement or extinguishment of a debt is eligible for this treatment if all or substantially all of the proceeds from the debt were used at all times to acquire excluded property or to earn income from an active business or a combination of those uses.

Second, it is amended to ensure that a gain or loss of a foreign affiliate is also eligible for this treatment if it is a gain or loss derived under or as a result of an agreement that provides for the purchase, sale or exchange of currency, where the agreement can reasonably be considered to have been made by the affiliate to reduce its risk (with respect to the debt) of fluctuations in the value of the currency in which the debt was denominated.

Third, it is amended so that its "preamble" contains a specific reference to gains and losses, determined in accordance with subsection 39(2), which provides the general rules for the calculation of foreign currency gains and losses.

These amendments to paragraph 95(2)(i) clarify the relationship between paragraph 95(2)(f) and subsection 39(2) and expand the scope of paragraph 95(2)(i) so that it applies more broadly to indebtedness used to fund active business operations. It also applies to certain foreign currency hedging agreements that are related to that indebtedness.

These amendments to paragraph 95(2)(i) apply to taxation years of a foreign affiliate, of a taxpayer, that begin after December 20, 2002. Note that these amendments are part of the Global Section 95 Election package described [under 95(2)(a) — ed.]

Letter from Dept. of Finance, February 12, 2001:

Angelo Nikolakakis, Stikeman Elliott, Toronto

Dear Mr. Nikolakakis:. . .

Relationship between 39(2) and 95(2)(f)

You have requested that the relationship between subsection 39(2) and paragraph 95(2)(f) of the Act be clarified.

Where subsection 39(2) applies, it deems the taxpayer to have a gain or loss from the disposition of "currency". You point out that it is not clear how paragraph 95(2)(f) applies in respect of such a gain, since it is not clear that the "currency" referred to in subsection 39(2) would be regarded as excluded property. Paragraph 95(2)(i) deems any gain or loss of a foreign affiliate from the settlement or extinguishment of a debt that related to the acquisition of excluded property to be a gain or loss from

the disposition of excluded property. Subsection 39(2) and paragraph 95(2)(i) could both apply to the same transaction.

You have requested that we amend the Act to require a separate calculation of foreign exchange gains or losses with respect to excluded property.

We are prepared to recommend an amendment to paragraph 95(2)(i) that would deem any gain or loss of a foreign affiliate arising under subsection 39(2) to be a gain or loss from the disposition of excluded property where the gain or loss is from the settlement or extinguishment of a debt related to excluded property or of related hedging agreements. We are also prepared to recommend a new paragraph in subsection 95(2) that would require a separate determination of foreign exchange gains and losses under subsection 39(2) for excluded property and other property.

Scope of 95(2)(i)

You are also concerned that paragraph 95(2)(i) does not apply where loan proceeds were used for legitimate active business purposes other than to acquire excluded property. You are requesting that we amend paragraph 95(2)(i) to include indebtedness that was used "principally for the purpose of producing income from an active business".

We will recommend an amendment to paragraph 95(2)(i) of the Act which will treat debt as excluded property where all or substantially all of the proceeds of the indebtedness was used for earning active business income, acquiring excluded property or a combination thereof.

. . . . .

Effective Date

It will be recommended that the amendments be made effective for taxation years commencing after announcement date. It will also be recommended that taxpayer be permitted to elect to have the amendments apply to the 1994 and subsequent taxation years of foreign affiliates where the taxpayer so elects in respect of all the taxpayer's foreign affiliates [see "Global Section 95 Election" under 95(2)(a) — ed.].

Thank you for taking the time to express your concerns and we trust this letter addresses most of them.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

(j) **[ACB of partnership interest]** — the adjusted cost base to a foreign affiliate of a taxpayer of an interest in a partnership at any time shall be such amount as is prescribed by regulation;

Regulations: 5907(12) (ACB to foreign affiliate of interest in partnership).

Proposed Addition — 95(2)(j.1), (j.2)

(j.1) **[conditions for para. (j.2) to apply]** — paragraph (j.2) applies in respect of a particular taxation year of a foreign affiliate of a taxpayer and in respect of a particular fiscal period of a partnership at the end of which a foreign affiliate of a taxpayer is a member of the partnership (which foreign affiliate or partnership is referred to in this paragraph and paragraph (j.2) as the "operator" and which particular taxation year or particular fiscal period is referred to in this paragraph and paragraph (j.2) as the "specified taxation year") if in the specified taxation year

(i) the operator carries on a business (referred to in this paragraph and paragraph (j.2) as a "foreign business"),

(ii) the foreign business includes the insuring of risks,

(iii) the foreign business is not, at any time, a taxable Canadian business,

(iv) the foreign business is

(A) an investment business, or

(B) a business whose activities include activities deemed by paragraph (a.2) or (b) to be a separate business, other than an active business, carried on by the affiliate, and

(v) in respect of the foreign business, the operator would, were it a corporation carrying on the foreign business in Canada, be required by law to report to, and be subject to the supervision of, a regulatory authority that is the Superintendent of Financial Institutions or a similar authority of a province;

Related Provisions: 95(2)(k.7) — Tiers of partnerships.

(j.2) **[policy reserves in respect of insurance business]** — if this paragraph applies in respect of a specified taxation year of an operator, in computing the operator's income or loss from the foreign business for the specified taxation year and each subsequent taxation year or fiscal period in which the foreign business is carried on by the operator

(i) the operator is deemed to carry on the foreign business in Canada throughout that part of the specified taxation year, and of each of those subsequent taxation years or fiscal periods, in which the foreign business is carried on by the operator, and

(ii) for the purposes of Part XIV of the Regulations,

(A) the operator is deemed to be required by law to report to, and to have been subject to the supervision of, the regulatory authority referred to in subparagraph (j.1)(v), and

(B) where the operator is a life insurer and the foreign business is a life insurance business, the life insurance policies issued in the conduct of that business are deemed to be life insurance policies in Canada;

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(17), will add paras. 95(2)(j.1) and (j.2), applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002 (or after 1994 if the Fresh Start s. 95 Election is filed — see Application note to 95(1)"taxable Canadian business").

Technical Notes: New paragraphs 95(2)(j.1) and (j.2) ensure that a foreign affiliate of a taxpayer resident in Canada that carries on an insurance business is eligible to claim certain policy reserves in connection with an insurance business in computing its foreign accrual property income.

New paragraph 95(2)(j.1) provides that new paragraph 95(2)(j.2) applies in respect of a particular taxation year of a foreign affiliate of a taxpayer and in respect of a particular fiscal period of a partnership at the end of which a foreign affiliate of a taxpayer is a member of the partnership (which foreign affiliate or partnership is referred to as the "operator" and which particular taxation year or particular fiscal period is referred to as the "specified taxation year") if in the specified taxation year

- the operator carries on a business (referred to as a "foreign business"),
- the foreign business includes the insuring of risks,
- the foreign business is not, at any time, a "taxable Canadian business" (as newly defined in subsection 95(1)),
- the foreign business is
  - an investment business, or
  - a business the activities of which include activities deemed by paragraph 95(2)(a.2) or (b) to be a separate business, other than an active business, carried on by the affiliate, and
- in respect of the foreign business, the operator would, if it were a corporation carrying on the foreign business in Canada, be required by law to report to, and be subject to the supervision of, a regulatory authority that is the Superintendent of Financial Institutions or a similar authority of a province.

New paragraph 95(2)(j.2) provides that in computing an operator's income or loss from the foreign business for the specified taxation year

and each subsequent taxation year or fiscal period in which the foreign business is carried on by the operator

- the operator is deemed to carry on the foreign business in Canada throughout that part of the specified taxation year, and of each of those subsequent taxation years or fiscal periods, in which the foreign business is carried on by the operator, and
- for the purposes of Part XIV of the Regulations,
  - the operator is deemed to be required by law to report to, and to have been subject to the supervision of, the regulatory authority referred to in subparagraph 95(2)(j.1)(v), and
  - if the operator is a life insurer and the foreign business is a life insurance business, the life insurance policies issued in the conduct of that business are deemed to be life insurance policies in Canada.

For information about the new definition "taxable Canadian business", see the commentary to subsection 95(1).

In connection with the application of these new paragraphs, note the rule in new paragraph 95(2)(k.7). For detail, see the commentary for paragraph 95(2)(k.7).

These new paragraphs apply to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. These amendments are included in the Fresh Start Section 95 Election package described [under 95(1)"taxable Canadian business" — ed.]

Absent a Fresh Start Section 95 Election by a taxpayer resident in Canada in respect of the taxpayer's foreign affiliate, subsection 1402(2) of the Regulations (which was repealed by P.C. 1999-1154, SOR/99-269, dated June 23, 1999) ensures, if the foreign affiliate of the taxpayer resident in Canada itself is the operator, that a result similar to the result afforded the foreign affiliate by new paragraphs 95(2)(j.1) and (j.2) is afforded the foreign affiliate for the 1995 and prior taxation years of the foreign affiliate of the taxpayer resident in Canada.

Related Provisions: 95(2)(k.7) — Tiers of partnerships.

(k) **[change in business — fresh start rule]** — where, in a particular taxation year, a foreign affiliate of a taxpayer

(i) carries on an investment business outside Canada and, in the preceding taxation year, that business was not an investment business of the affiliate (or the definition "investment business" in subsection (1) did not apply in respect of the business in the preceding taxation year), or

(ii) is deemed by paragraph (a.1), (a.2), (a.3) or (a.4) to carry on a separate business, other than an active business, and, in the preceding taxation year, that paragraph did not apply to deem the affiliate to be carrying on that separate business,

for the purpose of computing the income of the affiliate from the investment business or the separate business as the case may be (in this subsection referred to as the "foreign business") for the particular year and each subsequent taxation year in which the foreign business is carried on,

(iii) the affiliate shall be deemed

(A) to have begun to carry on the foreign business in Canada at the later of the time the particular year began or the time that it began to carry on the foreign business, and

(B) to have carried on the foreign business in Canada throughout that part of the particular year and each such subsequent taxation year in which the foreign business was carried on by it,

(iv) where the foreign business of the affiliate is a business in respect of which, if the foreign business were carried on in Canada, the affiliate would be required by law to report to a regulating authority in Canada such as the Superintendent of Financial Institutions or a similar authority of a province, the affiliate shall be deemed to have been required by law to report to and to have been subject to the supervision of such regulating authority, and

(v) paragraphs 138(11.91)(c) to (f) apply to the affiliate for the particular year in respect of the foreign business as if

(A) the affiliate were the insurer referred to in subsection 138(11.91),

(B) the particular year of the affiliate were the particular year of the insurer referred to in that subsection, and

(C) the foreign business of the affiliate were the business of the insurer referred to in that subsection;

Proposed Amendment — 95(2)(k)

(k) **[conditions for para. (k.1) to apply]** — paragraph (k.1) applies in respect of a particular taxation year of a foreign affiliate of a taxpayer and in respect of a particular fiscal period of a partnership at the end of which a foreign affiliate of a taxpayer is a member of the partnership (which foreign affiliate or partnership is referred to in this paragraph and paragraph (k.1) as the "operator" and which particular taxation year or particular fiscal period is referred to in this paragraph and paragraph (k.1) as the "specified taxation year") if

(i) in the specified taxation year, the operator carries on a business (referred to in this paragraph and, subject to paragraph (k.6), in paragraph (k.1), as a "foreign business"),

(ii) the foreign business is not, at any time in the specified taxation year, a taxable Canadian business,

(iii) in the specified taxation year, the foreign business is

(A) an investment business,

(B) a business whose activities include activities deemed by any of paragraphs (a.1) to (b) to be a separate business, other than an active business, carried on by the affiliate, or

(C) a business the income from which is included by paragraph (l) in computing the affiliate's income from property for the specified taxation year, and

(iv) in the taxation year of the affiliate or the fiscal period of the partnership that includes the day that is immediately before the beginning of the specified taxation year,

(A) the affiliate or partnership carried on the foreign business,

(B) the foreign business was not, at any time, a taxable Canadian business, and

(C) the foreign business was not described in any of clauses (iii)(A) to (C);

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(17), will amend para. 95(2)(k) to read as above, applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002 (or after 1994 if the Fresh Start s. 95 Election is filed — see Application note to 95(1)"taxable Canadian business").

If the Fresh Start s. 95 Election is made, then in applying cl. 95(2)(k)(iv)(C) for taxation years, of all foreign affiliates of the tax-

payer, that begin before December 21, 2002, that clause is to be read in respect of those affiliates as follows:

(C) either

(D) the foreign business was not described in any of clauses (iii)(A) to (C), or

(II) the definition "investment business" in subsection (1) did not apply in respect of the foreign business in the specified taxation year;

In applying subpara. 95(2)(k)(iv) (as enacted, before the amendment above) to taxation years, of foreign affiliates of a taxpayer, that end after 1999 and begin before December 21, 2002, that subpara. is, unless the taxpayer makes the Fresh Start s. 95 Election, to be read as follows:

(iv) if the foreign business of the affiliate is a business in respect of which the affiliate would, if the foreign business were carried on in Canada, be required by law to report to a regulating authority in Canada such as the Superintendent of Financial Institutions or a similar authority of a province,

(A) the affiliate is deemed to be required by law to report to and to be subject to the supervision of such regulating authority, and

(B) if the affiliate is a life insurer and the foreign business of the affiliate is a life insurance business, the life insurance policies issued in the conduct of that business are deemed to be life insurance policies in Canada, and

Technical Notes: Paragraph 95(2)(k) provides fresh start rules that, in general terms, are triggered if there is one of two types of changes to the business activities of a foreign affiliate of a taxpayer resident in Canada, namely:

- in a particular taxation year, the foreign affiliate of the taxpayer resident in Canada carries on an investment business outside Canada and, in the preceding taxation year, that business was not an investment business (as defined in subsection 95(1)) of the foreign affiliate, or

- in a particular taxation year, the foreign affiliate of the taxpayer resident in Canada is deemed by paragraph 95(2)(a.1), (a.2), (a.3) or (a.4) to carry on a separate business, other than an active business, and, in the preceding taxation year, the foreign affiliate was not deemed by that paragraph to be carrying on that separate business.

Paragraph 95(2)(k) refers to that investment business or that separate business as the "foreign business".

The fresh start rules, set out in paragraph 95(2)(k), also apply where a foreign affiliate of a taxpayer resident in Canada begins to carry on a particular business in the particular year and the particular business was an investment business of the foreign affiliate (or was comprised of activities deemed by paragraph 95(2)(a.1), (a.2), (a.3) or (a.4) to be a separate business, other than an active business, carried on by the foreign affiliate).

These fresh start rules apply for the purpose of computing the foreign accrual property income (FAPI), of a foreign affiliate of a taxpayer resident in Canada in respect of the taxpayer, from a foreign business for a particular taxation year of the foreign affiliate and for each subsequent taxation year in which the foreign business is considered to be carried on. In general terms, the fresh start rules provide for the following in computing the foreign affiliate's FAPI in respect of the taxpayer from the foreign business for those years:

- The foreign affiliate is deemed to have begun to carry on the foreign business in Canada at the later of the time the particular taxation year began and the time the foreign affiliate began carrying on the foreign business. The foreign affiliate is also deemed to have carried on the foreign business in Canada throughout that part of the particular taxation year and each subsequent taxation year in which the foreign business is considered to be carried on by the foreign affiliate.

- Where the foreign business is a business in respect of which the foreign affiliate would, if the foreign business were carried on in Canada, be required by law to report to a regulating authority such as the federal Superintendent of Financial Institutions or a similar authority of a province, the foreign affiliate is deemed to have been subject to the supervision of such a regulating authority.

- Paragraphs 138(11.91)(c) to (f) apply to the foreign affiliate in respect of the foreign business as if the foreign affiliate were the insurer referred to in subsection 138(11.91), the particular taxation year were the particular year referred to in those paragraphs and the foreign business were the business of the insurer referred to in those paragraphs.

The fresh start rules in subparagraph 95(2)(k) ensure that the income of the foreign affiliate from the foreign business is calculated using Canadian tax rules. For example, the rule deeming the foreign affiliate to be subject to the supervision of a regulating authority permits the foreign affiliate to claim certain reserves in respect of insurance policies in connection with the foreign business. As well, there is a deemed disposition and reacquisition of property used or held in the foreign business immediately before the beginning of the particular taxation year. The fresh start rules ensure that income or losses accruing in prior periods do not enter into the income calculations for the foreign business in the particular taxation year or in subsequent taxation years.

A number of amendments are made to these fresh start rules. Note that paragraph 95(2)(k) is being divided into amended paragraph 95(2)(k) and new paragraph 95(2)(k.1). Amended paragraph 95(2)(k) defines the circumstances to which the fresh start rules apply, and new paragraph 95(2)(k.1) contains the substantive provisions of the fresh start rules.

Amended paragraph 95(2)(k) provides that new paragraph 95(2)(k.1) applies in respect of a particular taxation year of a foreign affiliate of a taxpayer resident in Canada and in respect of a particular fiscal period of a partnership at the end of which a foreign affiliate of a taxpayer resident in Canada is a member of the partnership (which foreign affiliate or partnership is referred to as the "operator" and which particular taxation year or particular fiscal period is referred to as the "specified taxation year") if the following four conditions are met:

- in the specified taxation year, the operator carries on a business (referred to in amended paragraph 95(2)(k) and, subject to new paragraph 95(2)(k.6), in new paragraph 95(2)(k.1), as a "foreign business"),

- the foreign business is not, at any time in the specified taxation year, a "taxable Canadian business",

- in the specified taxation year, the foreign business is

  — an investment business (clause 95(2)(k)(iii)(A)),

  — a business the activities of which include activities deemed by any of paragraphs 95(2)(a.1) to (b) to be a separate business, other than an active business, carried on by the foreign affiliate (clause 95(2)(k)(iii)(B)), or

  — a business the income from which is included by paragraph 95(2)(f) in computing the foreign affiliate's income from property for the specified taxation year (clause 95(2)(k)(iii)(C)),

and

- in the taxation year of the foreign affiliate, or fiscal period of the partnership, that includes the day that is immediately before the beginning of the specified taxation year)

  — the foreign affiliate or the partnership carried on the foreign business,

  — the foreign business was not, at any time, a "taxable Canadian business", and

  — the foreign business was not described in any of clauses 95(2)(k)(iii)(A), (B) and (C).

In connection with the first of these conditions, see the commentary to new subparagraph 95(2)(k.6).

Letter from Dept. of Finance, January 8, 2001:

Dear [xxx]. . .

You have also requested amendments to paragraph 95(2)(k) of the Act. The purpose of these amendments would be to permit a foreign affiliate of a Canadian multinational insurer to deduct reserves in respect of foreign life insurance policies in computing its foreign accrual property income derived from carrying on a foreign life insurance business. We are sympathetic to this request. Consequently, we will recommend such amendments to the Minister of Finance. The amendments will be similar to those suggested in your letter and will be effective for taxation years ending after 1999.

Thank you for bringing these matters to our attention.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 95(2)(k.7) — Tiers of partnerships; 253 — Whether business carried on in Canada.

Regulations: 5907(2.9) (computation of earnings for preceding taxation year).

Proposed Addition — 95(2)(k.1)–(k.6)

(k.1) **[change in business — fresh start rule]** — if this paragraph applies in respect of a specified taxation year of an operator, in computing the operator's income or loss from the foreign business, and in computing the operator's capital gain or capital loss from the disposition of property used or held in the course of carrying on the foreign business, for the specified taxation year and each subsequent taxation year or fiscal period in which the foreign business is carried on by the operator

(i) the operator is deemed

(A) to have begun to carry on the foreign business in Canada at the beginning of the specified taxation year, and

(B) to carry on the foreign business in Canada throughout that part of the specified taxation year, and of each of those subsequent taxation years or fiscal periods, in which the foreign business is carried on by the operator,

(ii) where, in respect of the foreign business, the operator would, if it were a corporation carrying on the foreign business in Canada, be required by law to report to, and be subject to the supervision of, a regulatory authority that is the Superintendent of Financial Institutions or a similar authority of a province,

(A) the operator is deemed to be required by law to report to, and to have been subject to the supervision of, such regulating authority, and

(B) if the operator is a life insurer and the foreign business is a life insurance business, the life insurance policies issued in the conduct of that business are deemed to be life insurance policies in Canada,

(iii) paragraphs 138(11.91)(c) to (e) apply to the operator for the specified taxation year in respect of the foreign business as if

(A) the operator were the insurer referred to in subsection 138(11.91),

(B) the specified taxation year of the operator were the particular taxation year of the insurer referred to in that subsection,

(C) the foreign business of the operator were the business of the insurer referred to in that subsection, and

(D) the reference in paragraph 138(11.91)(e) to "property owned by it at that time that is designated insurance property in respect of the business" were read as a reference to "property owned or held by it at that time that is used or held by it in the particular taxation year in the course of carrying on the insurance business", and

(iv) if a particular property is deemed, because of the application of subparagraph (iii) and paragraph 138(11.91)(e), to have been disposed of in the preceding taxation year by the operator (which disposition is referred to in this subparagraph as a "particular disposition" of the particular property),

(A) the amount of the foreign affiliate's income, gain or loss (which income, gain or loss is referred to in this subparagraph as the "deferred amount") derived from the operator's income, gain or loss from the particular disposition of the particular property

(I) is to be included in computing the foreign affiliate's income, gain or loss for its taxation year that includes the last day of the operator's taxation year or fiscal period in which the particular property is disposed of by the operator in a disposition that is not the particular disposition, and

(II) is not to be included in computing the foreign affiliate's income, gain or loss for its taxation year that includes the last day of the operator's taxation year that includes the time of the particular disposition of the particular property, and

(B) the portion of the income taxes paid by the foreign affiliate to, or recovered by the foreign affiliate from, the government of a country other than Canada that may reasonably be considered to relate to the deferred amount is not to be included in determining income taxes paid to or recovered in respect of any other income, gain or loss of the foreign affiliate;

Technical Notes: New paragraph 95(2)(k.1) provides that, in computing the operator's income or loss from the foreign business, and in computing the operator's capital gain or capital loss from the disposition of property used or held in the course of carrying on the foreign business, for the specified taxation year and each subsequent taxation year or fiscal period in which the foreign business is carried on by the operator,

- the operator is deemed
  - to have begun to carry on the foreign business in Canada at the beginning of the specified taxation year, and
  - to carry on the foreign business in Canada throughout that part of the specified taxation year, and of each of those subsequent taxation years or fiscal periods, in which the foreign business is carried on by the operator,

  (subparagraph 95(2)(k.1)(i))
- where, in respect of the foreign business, the operator would, if it were a corporation carrying on the foreign business in Canada, be required by law to report to, and be subject to the supervision of, a regulatory authority that is the Superintendent of Financial Institutions or a similar authority of a province,
  - the operator is deemed to have been required by law to report to, and to have been subject to the supervision of, such regulating authority, and
  - if the operator is a life insurer and the foreign business is a life insurance business, the life insurance policies issued in the conduct of that business are deemed to be life insurance policies in Canada,

  (subparagraph 95(2)(k.1)(ii))
- paragraphs 138(11.91)(c) to (e) apply to the operator for the specified taxation year in respect of the foreign business as if
  - the operator were the insurer referred to in subsection 138(11.91),
  - the specified taxation year of the operator were the particular taxation year of the insurer referred to in that subsection,
  - the foreign business of the operator were the business of the insurer referred to in that subsection, and
  - the reference in paragraph 138(11.91)(e) to "property owned by it at that time is designated insurance property in respect of the

business" were read as a reference to "property owned or held by it at that time used or held by it in the particular taxation year in the course of carrying on the insurance business", (subparagraph 95(2)(k.1)(iii))

and

- if a particular property is deemed, because of the application of subparagraph 95(2)(k.1)(iii) and paragraph 138(11.91)(e), to have been disposed of in the preceding taxation year by the operator (which disposition is referred to in this subparagraph as a "particular disposition" of the particular property),

  — the amount of the foreign affiliate's income, gain or loss (which income, gain or loss is referred to in this subparagraph as the "deferred amount") derived from the operator's income, gain or loss from the particular disposition of the particular property

  - is to be included in computing the foreign affiliate's income, gain or loss for its taxation year that includes the last day of the operator's taxation year or fiscal period in which the particular property is disposed of by the operator in a disposition that is not the particular disposition, and

  - is not to be included in computing the foreign affiliate's income, gain or loss for its taxation year that includes the last day of the operator's taxation year that includes the time of the particular disposition of the particular property, and

  — the portion of the income taxes paid by the foreign affiliate to, or recovered by the foreign affiliate from, the government of a country other than Canada that may reasonably be considered to relate to the deferred amount is not to be included in determining income taxes paid to or recovered in respect of any other income, gain or loss of the foreign affiliate.

(subparagraph 95(2)(k.1)(iv))

In general terms, the amendments to paragraphs 95(2)(k) and (k.1) can be summarized as follows:

First, the amendments ensure that the fresh start rules apply not only if the particular business is carried on by a foreign affiliate of a taxpayer resident in Canada, but also if the particular business is carried on by a partnership of which a foreign affiliate of a taxpayer resident in Canada is a member. These amendments ensure, in the case of partnerships, that the fresh start rules will work on the basis of fiscal periods of the partnership and will therefore be relevant in the computation of the foreign affiliate 's foreign accrual property income for the foreign affiliate's taxation year that includes a fiscal period to which the fresh start rules apply. In amended paragraph 95(2)(k) and new paragraph 95(2)(k.1), the expression "operator" refers to the foreign affiliate (if the foreign affiliate directly carries on the particular business) or to the partnership (if the foreign affiliate carries on the particular business through the partnership).

Second, the amendments ensure that the fresh start rules are no longer triggered if the operator begins to carry on the particular business in the specified taxation year and did not carry on the particular business in the preceding taxation year. However, it is possible that, in such a situation, new paragraphs 95(2)(j.1) and (j.2) may apply. For further detail, see the commentary to new paragraphs 95(2)(j.1) and (j.2).

Third, the amendments ensure that the type of change in business activities that triggers the fresh start rules is a change that meets the following conditions:

- in the specified taxation year, the operator carries on a business (a "foreign business"),

- in the specified taxation year, the foreign business is

  — an investment business,

  — a business whose activities include activities deemed by any of paragraphs 95(2)(a.1) to (b) to be a separate business (other than an active business) carried on by the foreign affiliate, or

  — a business the income from which is included by paragraph 95(2)(l) in computing the foreign affiliate's income from property for the specified taxation year,

- in the preceding taxation year or fiscal period, the foreign affiliate or the partnership carried on the foreign business, and

- in that preceding taxation year or fiscal period, the foreign business was not described in any of clauses 95(2)(k)(iii)(A), (B) and (C).

Fourth, new paragraph 95(2)(k) provides that, in order for the fresh start rules to be triggered, the foreign business of the operator

- cannot, at any time in the specified taxation year, be a taxable Canadian business of the operator, and

- cannot, at any time in the preceding taxation year or fiscal period, have been a taxable Canadian business of the foreign affiliate or the partnership.

For more detail, see the commentary to the new definition "taxable Canadian business" in subsection 95(1).

Fifth, new paragraph 95(2)(k.1) provides that life insurance policies issued by a foreign business of a foreign affiliate of a taxpayer resident in Canada in the conduct of that business are deemed to be life insurance policies in Canada if

- the operator would be required by law to report to the Superintendent of Financial Institutions or to a similar authority of a province in respect of the foreign business if the operator were a corporation carrying on the foreign business,

- the foreign business is a life insurance business, and

- the operator is a life insurer.

This new rule ensures that the operator is eligible to claim certain policy reserves in connection with the life insurance business.

Sixth, new paragraph 95(2)(k.1) makes it clear that, in applying paragraph 138(11.91)(e) to the fresh start rules, the reference in paragraph 138(11.91)(e) to "property owned by it at that time that is designated insurance property in respect of the business" is to be read as a reference to "property owned or held by it at that time that is used or held by the insurer in the particular taxation year in the course of carrying on the insurance business".

Seventh, consequential to the repeal of paragraph 138(11.91)(f), the reference, in the fresh start rules, to "paragraphs 138(11.91)(c) to (f)" is changed to read "paragraphs 138(11.91)(c) to (e)". For more detail, see the commentary to subsection 138(11.91).

Eighth, subparagraph 95(2)(k.1)(iv) provides that the income, gain or loss from the deemed disposition of a particular property under subparagraph 95(2)(k.1)(iii) is only to be included in computing the foreign affiliate's income, gain or loss in the taxation year in which the property is disposed of in a transaction other than the deemed disposition. The recognition of foreign income tax recoveries paid or recovered that is related to the deferred income, gain or loss is to matched with the recognition of that income, gain or loss.

New paragraphs 95(2)(k) and (k.1) apply to taxation years of foreign affiliates of a taxpayer resident in Canada that begin after December 20, 2002. These amendments are included in the Fresh Start Section 95 Election package described [under 95(1)"taxable Canadian business" — ed.]

However, note that this set of proposals sets out a number of transitional rules with respect to the application of paragraphs 95(2)(k) and (k.1).

First, in applying new paragraph 95(2)(k.1) for taxation years, of a foreign affiliate of the taxpayer, that begin on or before February 27, 2004, that paragraph is to be read without reference to subparagraph 95(2)(k.1)(iv).

Second, in the case where the taxpayer has made a valid Fresh Start Section 95 Election, in applying new clause 95(2)(k)(iv)(C), for taxation years, of all foreign affiliates of the taxpayer, that begin before December 21, 2002, that clause is to be read in respect of those affiliates as follows:

(C) either

(I) the foreign business was not described in any of clauses (iii)(A) to (C), or

(II) the definition "investment business" in subsection (1) did not apply in respect of the foreign business in the specified taxation year;

Third, in applying existing subparagraph 95(2)(k)(iv) to taxation years, of foreign affiliates of a taxpayer, that end after 1999 and begin before December 21, 2002, that subparagraph is, unless the taxpayer makes a valid Fresh Start Section 95 Election, to be read as follows:

(iv) if the foreign business of the affiliate is a business in respect of which the affiliate would, if the foreign business were carried on in Canada, be required by law to report to a regulating author-

ity in Canada such as the Superintendent of Financial Institutions or a similar authority of a province,

(A) the affiliate is deemed to be required by law to report to and to be subject to the supervision of such regulating authority, and

(B) if the affiliate is a life insurer and the foreign business of the affiliate is a life insurance business, the life insurance policies issued in the conduct of that business are deemed to be life insurance policies in Canada, and

Example

Facts

Forco, a wholly-owned foreign affiliate of Canco, is deemed to carry on an investment business. The principal purpose of Forco's business is to derive income from trading or dealing in securities. The particular taxation year of Forco in respect of which paragraphs 95(2)(k) and (k.1) apply to the investment business is its taxation year ended December 31, 1995 (its "1995 taxation year"). Forco had acquired only one security for $10 million. The fair market value of the security was $12 million at the end of its taxation year that ended on December 31, 1994 (its "1994 taxation year"). Assume, for the purposes of this example, that Canco has made a valid Fresh Start Section 95 Election.

Application of paragraphs 95(2)(k) and (k.1)

Forco is deemed to have, at the end of its 1994 taxation year, disposed of all the securities used or held by it in respect of the investment business. The amount of $2 million (i.e., $12 million minus $10 million) would be added to the "earnings" of Forco in the taxation year in which it disposed of the securities. Following the deemed reacquisition of the securities at the beginning of its 1995 taxation year, Forco would have $12 million as the cost of its securities for the purposes of computing its income from the investment business. For additional detail, refer to the commentary to subsection 5907(2.9) of the Regulations.

Related Provisions: 95(2)(k.7) — Tiers of partnerships; 95(2)(y) — Meaning of "government of a country"; 253 — Whether business carried on in Canada.

Regulations: 5907(2.9) (computation of earnings for preceding taxation year); 5907(2.91) (property deemed disposed of and reacquired).

(k.2) **[conditions for para. (k.3) to apply]** — paragraph (k.3) applies in respect of a particular taxation year of a foreign affiliate of a taxpayer or in respect of a particular fiscal period of a partnership at the end of which a foreign affiliate of a taxpayer is a member of the partnership (which foreign affiliate or partnership is referred to in this paragraph and paragraph (k.3) as the "operator" and which particular taxation year or particular fiscal period is referred to in this paragraph and paragraph (k.3) as the "specified taxation year") if

(i) in the taxation year of the affiliate, or fiscal period of the partnership, (which taxation year or fiscal period is referred to in this paragraph and paragraph (k.3) as "the preceding taxation year") that includes the day immediately before the beginning of the specified taxation year, the affiliate or partnership carried on a business (which is referred to in this paragraph and, subject to paragraph (k.6), in paragraph (k.3), as a "foreign business"),

(ii) the foreign business was not, at any time in the preceding taxation year, a taxable Canadian business,

(iii) in the preceding taxation year, the foreign business was

(A) an investment business,

(B) a business whose activities included activities deemed by any of paragraphs (a.1) to (b) to be a separate business, other than an active business, carried on by the affiliate, or

(C) a business the income from which is included by paragraph (l) in computing the affiliate's income from property for the preceding taxation year, and

(iv) either

(A) at any time in the specified taxation year, the operator carries on the foreign business and

(I) the foreign business is an active business that is not a taxable Canadian business, or

(II) all or substantially all of the fair market value of the property of the operator used or held by the operator in the course of carrying on the foreign business is attributable to property of the operator that is excluded property, or

(B) at no time in the specified taxation year does the operator carry on the foreign business;

Technical Notes: New paragraphs 95(2)(k.2) and (k.3) operate together and, in general terms, provide for fresh start rules that are triggered if a business carried on that is not an active business of a foreign affiliate of a taxpayer resident in Canada (or a business of a partnership of which the foreign affiliate is a member) becomes, in a particular taxation year of the foreign affiliate or in a particular fiscal period of the partnership (as the case may be), an active business. These fresh start rules apply in computing the foreign affiliate's foreign accrual property income (FAPI) in respect of the taxpayer from that business for the preceding taxation year or fiscal period.

Paragraph 95(2)(k.2) provides that paragraph 95(2)(k.3) applies in respect of a particular taxation year of a foreign affiliate of a taxpayer or in respect of a particular fiscal period of a partnership at the end of which a foreign affiliate of a taxpayer is a member of the partnership (which foreign affiliate or partnership is referred to as the "operator" and which particular taxation year or particular fiscal period is referred to as the "specified taxation year") if the following four conditions are met:

- in the preceding taxation year of the foreign affiliate or fiscal period of the partnership (which taxation year or fiscal period is referred to in this paragraph and paragraph (k.3) as the "preceding taxation year") that includes the day immediately before the beginning of the specified taxation year, the foreign affiliate or the partnership carried on a business (which is referred to in paragraph 95(2)(k.2) and, subject to paragraph (k.6), in paragraph 95(2)(k.3), as the "foreign business"),
- the foreign business was not, at any time in the preceding taxation year, a "taxable Canadian business",
- in the preceding taxation year, the foreign business was
  - an investment business (clause 95(2)(k.2)(iii)(A)),
  - a business whose activities included activities deemed by any of paragraphs 95(2)(a.1) to (b) to be a separate business, other than an active business, carried on by the affiliate (clause 95(2)(k.2)(iii)(B)), or
  - a business the income from which is included by paragraph 95(2)(l) in computing the affiliate's income from property for that preceding taxation year or fiscal period (clause 95(2)(k.2)(iii)(C)), and
- either
  - at any time in the specified taxation year the operator carries on the foreign business, and
    - the foreign business is an active business that is not a "taxable Canadian business" (subclause 95(2)(k.2)(iv)(A)(I)), or
    - all or substantially all of the fair market value of the property of the operator used or held by the operator in the course of carrying on the foreign business is attributable to property of the operator that is excluded property (subclause 95(2)(k.2)(iv)(A)(II)), or

— at no time in the specified taxation year does the operator carry on the foreign business.

In connection with the first of these four conditions, see the commentary on new subparagraph 95(2)(k.6).

For detail on the new definition "taxable Canadian business", see the commentary to subsection 95(1).

The fresh start rules in paragraph 95(2)(k.3) provide that, in computing the operator's income or loss from the foreign business and in computing the operator's capital gain or capital loss from the disposition of property used or held in the course of carrying on the foreign business, for the preceding taxation year or fiscal period referred to in paragraph 95(2)(k.2) and for the specified taxation year of the operator and the operator's subsequent taxation years or fiscal periods,

- the operator is deemed to have ceased to carry on the foreign business in Canada at the beginning of the specified taxation year, and
- subject to subparagraph 95(2)(k.3)(iii), paragraphs 138(11.91)(c) to (e) apply to the operator for the specified taxation year in respect of the foreign business as if
  - the operator were the "insurer" referred to in subsection 138(11.91),
  - the specified taxation year of the operator were the "particular taxation year" of the insurer referred to in that subsection,
  - the foreign business of the operator were the business of the insurer referred to in that subsection,
  - the reference in paragraph 138(11.91)(e) to "property owned by it at that time that is designated insurance property in respect of the business" were read as a reference to "property owned or held by it at that time that is used or held by the insurer in the particular taxation year in the course of carrying on the insurance business", and
  - where, under subparagraph 95(2)(k.3)(iii), the taxpayer elects in prescribed manner and within the prescribed time (see proposed new section 5918 of the Regulations), to have that subparagraph apply in respect of every property that is deemed, because of the application of subparagraph 95(2)(k.3)(ii) and paragraph 138(11.91)(e), to have been disposed of in the specified taxation year by the operator (each such property referred to as the "particular property" and each such disposition referred to as the "particular disposition" of the particular property), the following rules apply:
    - the amount of the foreign affiliate's income, gain or loss (which income, gain or loss is referred to as the "deferred amount") derived from the operator's income, gain or loss from a particular disposition of a particular property
      - is to be included in computing the foreign affiliate's foreign accrual property income in respect of the taxpayer for the foreign affiliate's taxation year that includes the last of the operator's taxation year or fiscal period in which the particular property is disposed of by the operator in a disposition that is not the particular disposition, and
      - is not to be included in computing the foreign affiliate's foreign accrual property income in respect of the taxpayer for the foreign affiliate's taxation year that includes the last day of the operator's taxation year or fiscal period that includes the time of the particular disposition of the particular property, and
    - the portion, of the income taxes paid by the foreign affiliate to, or recovered by the foreign affiliate from, the government of a country other than Canada that may reasonably be considered to relate to the deferred amount is not to be included in determining income taxes paid to or recovered in respect of any other income, gain or loss of the foreign affiliate.

Paragraphs 95(2)(k.2) and (k.3) ensure that, if a foreign business that is an active business in the specified taxation year was not an active business in the immediately preceding taxation year or fiscal period, as the case may be, any accrued gains will be included in computing the FAPI of the foreign affiliate in that preceding taxation year or fiscal period. The active business income of the foreign affiliate will reflect income, gains and losses accruing in the specified taxation year and in subsequent taxation years or fiscal periods, as the case may be. The reference, in subsection 95(2)(k.3), to paragraphs 138(11.91)(c) to (e), ensures that, immediately before the beginning of the specified taxation year, there is a deemed disposition and deemed reacquisition of property used or held in the foreign business.

New paragraphs 95(2)(k.2) and (k.3) apply to taxation years of a foreign affiliate of a taxpayer that begin after December 20, 2002. However, this set of proposals provides that, in applying new paragraph 95(2)(k.2) for taxation years, of a foreign affiliate of the taxpayer, that begin on or before February 27, 2004, that paragraph is to be read without reference to subclause 95(2)(k.2)(iv)(A)(II).

Example

Facts

Forco, a wholly-owned foreign affiliate of Canco, carried on a particular business that was an investment business throughout its taxation year that ended December 31, 2004. Forco is resident in a country that is a designated treaty country for the purposes of Part LIX of the Regulations. In its taxation year that ended December 31, 2005 (its "2005 taxation year"), business activities constitute an active business.

At the end of its 2004 taxation year, Forco owned capital property with a cost amount of $6 million, and inventory with a cost amount of $2 million, that was property used or held in the course of carrying on this business. At the end of that taxation year, the fair market value of Forco's capital property was $10 million and the fair market value of its inventory was $4 million.

Application of paragraphs 95(2)(k.2) and (k.3)

Forco would be deemed to have, immediately before the end of its 2004 taxation year, disposed of all of its property for proceeds equal to fair market value of that property at that time.

In connection with the deemed disposition of the capital property, Forco would be deemed to have a capital gain of $4 million (i.e., $10 million minus $6 million). Therefore, the taxable capital gain would be $2 million. Subject to a taxpayer election described below, the $2 million of taxable capital gains will be included in computing Forco's FAPI for the 2004 taxation year. Following the deemed reacquisition of the capital property at the end of its 2004 taxation year, Forco would have a cost in the amount of $10 million for the capital property.

Subject to a taxpayer election described below, in connection with the deemed disposition of the inventory, Forco would be deemed to have income of $2 million that would be included in computing the foreign accrual property income of Forco for its 2004 taxation year. Following the deemed reacquisition of the inventory at the end of its 2004 taxation year, Forco would have a cost in the amount of $4 million for the inventory.

For fresh starts in taxation years of a foreign affiliate of a taxpayer resident in Canada commencing after December 20, 2002, where the taxpayer elects (subparagraph 95(2)(k.3)(iv)), the gain and income arising because of the application of paragraph 95(2)(k.3) can be recognized by the foreign affiliate in the year the property is disposed of by foreign affiliate in a disposition other a disposition deemed, because of the application of subparagraph 95(2)(k.3)(ii) and paragraph 138(11.91)(e), to have occurred.

Related Provisions: 95(2)(k.7) — Tiers of partnerships.

(k.3) **[fresh start rule where business becomes active business]** — if this paragraph applies in respect of a specified taxation year of an operator, in computing the operator's income or loss from the foreign business, and in computing the operator's capital gain or capital loss from the disposition of property used or held in the course of carrying on the foreign business, for the preceding taxation year or fiscal period referred to in paragraph (k.2) and for the specified taxation year of the operator and the operator's subsequent taxation years or fiscal periods

(i) the operator is deemed to have ceased to carry on the foreign business in Canada at the beginning of the specified taxation year,

(ii) subject to subparagraph (iii), paragraphs 138(11.91)(c) to (e) apply to the operator for the

specified taxation year in respect of the foreign business as if

(A) the operator were the insurer referred to in subsection 138(11.91),

(B) the specified taxation year of the operator were the particular taxation year of the insurer referred to in that subsection,

(C) the foreign business of the operator were the business of the insurer referred to in that subsection,

(D) the reference in paragraph 138(11.91)(e) to "property owned by it at that time that is designated insurance property in respect of the business" were read as a reference to "property owned or held by it at that time that is used or held by it in the particular taxation year in the course of carrying on the insurance business", and

(iii) where the taxpayer so elects, in prescribed manner and within the prescribed time, to have this subparagraph apply in respect of each property that is deemed, because of the application of subparagraph (ii) and paragraph 138(11.91)(e), to have been disposed of in the specified taxation year by the operator (each such property referred to in this subparagraph as a "particular property" and each such disposition of a particular property referred to in this subparagraph as a "particular disposition" of the particular property)

(A) the amount of the foreign affiliate's income, gain or loss (which income, gain or loss is referred to in this subparagraph as the "deferred amount") derived from the operator's income, gain or loss from a particular disposition of a particular property

(I) is to be included in computing the foreign affiliate's foreign accrual property income in respect of the taxpayer for the foreign affiliate's taxation year that includes the last day of the operator's taxation year or fiscal period in which the particular property is disposed of by the operator in a disposition that is not the particular disposition, and

(II) is not to be included in computing the foreign affiliate's foreign accrual property income in respect of the taxpayer for the foreign affiliate's taxation year that includes the last day of the operator's taxation year or fiscal period that includes the time of the particular disposition of the particular property, and

(B) the portion of the income taxes paid by the foreign affiliate to, or recovered by the foreign affiliate from, the government of a country other than Canada that may reasonably be considered to relate to the deferred amount is not to be included in determining income taxes paid to or recovered in respect of any other income, gain or loss of the foreign affiliate;

Technical Notes: See under 95(2)(k.2) above.

Related Provisions: 95(2)(k.7) — Tiers of partnerships; 95(2)(y) — Meaning of "government of a country".

Regulations: 5907(2.91) (property deemed disposed of and reacquired); 5918 (prescribed manner of making election under 95(2)(k.3)(iii)).

(k.4) **[fresh start rule where income partly taxed in Canada]** — if at any time a foreign affiliate of a taxpayer resident in Canada, or a partnership at the end of the fiscal period of which includes that time a foreign affiliate of a taxpayer resident in Canada is a member of the partnership, (which foreign affiliate or partnership is referred to in this paragraph as the "operator"), carries on a business both outside Canada and in Canada and income from the particular part of that business that is carried on in Canada is income from a taxable Canadian business, the following rules apply for the purposes of paragraphs (k) to (k.3):

(i) the particular part of the business is deemed to be, at that time, a separate business,

(ii) the assets used, or held, at that time primarily in the course of carrying on the particular part of the business are deemed to be, at that time, used or held in the course of carrying on the separate business,

(iii) any liability incurred, and any reserve established, at that time in the course of carrying on the particular part of the business are deemed to be, at that time, incurred or established in the course of carrying on the separate business, and

(iv) the transactions conducted at that time in the particular part of the business are deemed to be transactions conducted, at that time, in the separate business;

Technical Notes: The fresh start rules provided for in new paragraphs 95(2)(k) and (k.1) and in new paragraphs 95(2)(k.2) and (k.3), respectively, do not apply to a business the income from which is subject to tax under Part I of the Act. New paragraph 95(2)(k.4) provides for a rule to deal with the situation where income from part of the business is subject to tax under Part I of the Act.

New paragraph 95(2)(k.4) provides that, if at any time a foreign affiliate of a taxpayer resident in Canada, or a partnership at the end of the fiscal period of which includes that time a foreign affiliate of a taxpayer resident in Canada is a member of the partnership, (which foreign affiliate or partnership is referred to as the "operator"), carries on a business both outside Canada and in Canada and income from that particular part of that business that is carried on in Canada is income from a taxable Canadian business, the following rules apply for the purposes of paragraphs 95(2)(k) to (k.3):

- the particular part of the business is deemed to be, at that time, a separate business,
- the assets used, or held, at that time primarily in the course of carrying on the particular part of the business are deemed to be, at that time, used or held in the course of carrying on the separate business,
- any liability incurred, and any reserve established, at that time in the course of carrying on the particular part of the business are deemed to be, at that time, incurred or established in the course of carrying on the separate business, and
- the transactions conducted at that time in the particular part of the business are deemed to be transactions conducted, at that time, in the separate business.

New paragraph 95(2)(k.4) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. This new paragraph is included in the Fresh Start Section 95 Election package described [under 95(1)"taxable Canadian business" — ed.]

Related Provisions: 95(2)(k.7) — Tiers of partnerships; 253 — Whether business carried on in Canada.

(k.5) **[conditions for para. (k.6) to apply]** — paragraph (k.6) applies for the purposes of

paragraphs (k.1) and (k.3) in respect of a particular business of an operator if

(i) the particular business is the operator's foreign business for the specified taxation year described in paragraph (k) or for the preceding taxation year described in subparagraph (k.2)(i), and

(ii) the activities of the particular business for that specified or preceding taxation year include particular activities deemed by any of paragraphs (a.1) to (b) to be a separate business, other than an active business, carried on by the foreign affiliate for that specified or preceding taxation year and the particular activities were not all the activities of the particular business in that specified or preceding taxation year;

Technical Notes: New paragraph 95(2)(k.6), in combination with new paragraph 95(2)(k.5), provides application rules for the purposes of new paragraphs 95(2)(k.1) and (k.3).

New paragraph 95(2)(k.5) provides that new paragraph 95(2)(k.6) applies for the purpose of paragraphs 95(2)(k.1) and (k.3) in respect of a particular business of an operator if

- the particular business is the operator's foreign business for that specified or preceding taxation year, and
- the activities of the particular business for that specified or preceding taxation year include particular activities deemed by any of paragraphs 95(2)(a.1) to (b) to be a separate business, other than an active business, carried on by the foreign affiliate and the particular activities were not all the activities of the particular business in that specified or preceding taxation year.

New subparagraph 95(2)(k.6) provides that, in applying paragraphs 95(2)(k.1) and (k.3),

- the part of the particular business that consists of activities deemed by any of paragraphs 95(2)(a.1) to (b) to be a separate business, other than an active business, carried on by the foreign affiliate for a taxation year or fiscal period referred to in paragraph 95(2)(k.1) or (k.3), of the operator, is deemed to be the operator's foreign business carried on in that taxation year or fiscal period (subparagraph 95(2)(k.6)(i)),
- the assets used or held by the operator primarily in the course of carrying on activities deemed by any of paragraphs 95(2)(a.1) to (b) to be a separate business, other than an active business, carried on by the foreign affiliate for a taxation year or fiscal period, referred to in paragraph 95(2)(k) or (k.2), of the operator, are deemed to be assets used or held by the operator in the course of carrying on the foreign business in that taxation year or fiscal period (subparagraph 95(2)(k.6)(ii)),
- the portion of the liabilities incurred and the portion of the reserves established, in the course of carrying on activities deemed by any of paragraphs 95(2)(a.1) to (b) to be a separate business, other than an active business, carried on by the foreign affiliate for a taxation year or fiscal period, referred to in paragraph 95(2)(k) or (k.2), of the operator, are deemed to be liabilities incurred and reserves established in the course of carrying on the foreign business in that taxation year or fiscal period (subparagraph 95(2)(k.6)(iii)), and
- subject to subparagraphs 95(2)(k.6)(ii) and (iii), the transactions conducted in the course of carrying on activities deemed by any of paragraphs (a.1) to (b) to be a separate business, other than an active business, carried on by the foreign affiliate for a taxation year or fiscal period, referred to in paragraph 95(2)(k) or (k.2), of the operator, are, to the extent that those transactions relate to those activities, deemed to be transactions conducted in the course of carrying on the foreign business in that taxation year or fiscal period (subparagraph 95(2)(k.6)(iv)).

New paragraphs 95(2)(k.5) and (k.6) apply to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002.

These new paragraphs are included in the Fresh Start Section 95 Election package described [under 95(1)"taxable Canadian business" — ed.]

Related Provisions: 95(2)(k.7) — Tiers of partnerships.

(k.6) **[application rule for para. (k.1) or (k.3)]** — if this paragraph applies in respect of the particular business of the operator, in applying paragraphs (k.1) and (k.3),

(i) that part of the particular business that consists of activities deemed by any of paragraphs (a.1) to (b) to be a separate business, other than an active business, carried on by the foreign affiliate for a taxation year or for a fiscal period, referred to in paragraph (k.1) or (k.3), of the operator, is deemed to be the operator's foreign business carried on in that taxation year or fiscal period,

(ii) the assets used or held by the operator primarily in the course of carrying on activities deemed by any of paragraphs (a.1) to (b) to be a separate business, other than an active business, carried on by the foreign affiliate for a taxation year or for a fiscal period, referred to in paragraph (k) or (k.2), of the operator, are deemed to be assets used or held by the operator in the course of carrying on the foreign business in that taxation year or fiscal period,

(iii) the portion of the liabilities incurred, and the portion of the reserves established, in the course of carrying onactivities deemed by any of paragraphs (a.1) to (b) to be a separate business, other than an active business, carried on by the foreign affiliate for a taxation year or for a fiscal period, referred to in paragraph (k) or (k.2), of the operator, are deemed to be liabilities incurred and reserves established in the course of carrying on the foreign business in that taxation year or fiscal period, and

(iv) subject to subparagraphs (ii) and (iii), the transactions conducted in the course of carrying on activities deemed by any of paragraphs (a.1) to (b) to be a separate business, other than an active business, carried on by the foreign affiliate for a taxation year or for a fiscal period, referred to in paragraph (k) or (k.2), of the operator, are, to the extent that those transactions relate to those activities, deemed to be transactions conducted in the course of carrying on the foreign business in that taxation year or fiscal period;

Technical Notes: See under para. (k.5) above.

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(17), will add paras. 95(2)(k.1) to (k.6), applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002 (or after 1994 if the Fresh Start s. 95 Election is filed [not applicable to paras. (k.2), (k.3)] — see Application note to 95(1)"taxable Canadian business"), except that in applying paras. 95(2)(k.1) and (k.2) for taxation years, of a foreign affiliate of the taxpayer, that begin before February 28, 2004, para. (k.1) is to be read without reference to subpara. (iv), and para. (k.2) is to be read without reference to subcl. (iv)(A)(II).

Related Provisions: 95(2)(k.7) — Tiers of partnerships.

Proposed Addition — 95(2)(k.7)

(k.7) **[tiers of partnerships]** — if a person is (or is deemed by this paragraph to be) a member of a partnership and that partnership is a member of another partnership,

(i) in applying paragraphs (a.1) to (b), (j.1) to (k.6) and (l) and the definition "taxable Canadian business" in subsection (1), the person is deemed to be a member of the other partnership, and

(ii) in applying the definition "taxable Canadian business" in subsection (1), the person's share of the income or loss of the other partnership is

deemed to be equal to the portion of that income or loss to which the person is directly or indirectly entitled;

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(17), will add para. 95(2)(k.7), applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002 (or after 1994 if the Fresh Start s. 95 Election is filed — see Application note to 95(1)"taxable Canadian business").

Technical Notes: New paragraph 95(2)(k.7) contains rules for the purposes of applying paragraphs 95(2)(a.1) to (b), (j.1) and (j.2), (k) to (k.6) and (l) and the definition "taxable Canadian business" in subsection 95(1).

This new paragraph provides that, if a person is (or is deemed by that paragraph to be) a member of a partnership and that partnership is a member of another partnership,

(i) in applying paragraphs 95(2)(a.1) to (b), (j.1) and (j.2), (k) to (k.6) and (l) and the definition "taxable Canadian business" in subsection 95(1), the person is deemed to be a member of the other partnership, and

(ii) in applying the definition "taxable Canadian business" in subsection 95(1), the person's share of the income or loss of the other partnership is deemed to be equal to the portion of that income or loss to which the person is directly or indirectly entitled.

Note that these deeming rules do not deem the actual or previously-deemed member not to be a member, nor do they deem such a member not to have the share of the income or loss.

New paragraph 95(2)(k.7) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. This new paragraph is included in the Fresh Start Section 95 Election package described [under 95(1)"taxable Canadian business" — ed.]

(l) **[trading or dealing in debt]** — in computing the income from property for a taxation year of a foreign affiliate of a taxpayer there shall be included the income of the affiliate for the year from a business (other than an investment business of the affiliate) the principal purpose of which is to derive income from trading or dealing in indebtedness (which for the purpose of this paragraph includes the earning of interest on indebtedness) other than

(i) indebtedness owing by persons with whom the affiliate deals at arm's length who are resident in the country in which the affiliate was formed or continued and exists and is governed and in which the business is principally carried on, or

(ii) trade accounts receivable owing by persons with whom the affiliate deals at arm's length,

unless

(iii) the business is carried on by the affiliate as a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities, the activities of which are regulated in the country under whose laws the affiliate was formed or continued and exists and is governed and in which the business is principally carried on, and

Proposed Amendment — 95(2)(l)(iii)

(iii) the business is carried on by the affiliate as a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities, the activities of which are regulated under the laws

(A) of each country in which the business is carried on through a permanent establishment (as defined by regulation) in that country and of the country under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued,

(B) of the country in which the business is principally carried on, or

(C) if the affiliate is related to a non-resident corporation, of the country under whose laws that non-resident corporation is governed and any of exists, was (unless that non-resident corporation was continued in any jurisdiction) formed or organized, or was last continued, if those regulating laws are recognized under the laws of the country in which the business is principally carried on and all of those countries are members of the European Union, and

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(18), will amend subpara. 95(2)(l)(iii) to read as above, applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after 1999.

Technical Notes: Paragraph 95(2)(l) includes in the income, of a foreign affiliate of a taxpayer, from property the affiliate's income derived from a business the principal purpose of which is to derive income from trading or dealing in certain indebtedness. Where the business of the affiliate is described in subparagraph 95(2)(l)(iii) and the taxpayer is described in subparagraph 95(2)(l)(iv), paragraph 95(2)(l) does not apply to the affiliate.

Subparagraph 95(2)(l)(iii) refers to a business that is carried on by the affiliate as a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities, the activities of which are regulated in the country under whose laws the affiliate was formed or continued and exists and is governed and in which the business is principally carried on.

Subparagraph 95(2)(l)(iii) is amended to refer to a business that is carried on by the affiliate as a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities, the activities of which are regulated under the laws

- of each country in which the business is carried on through a permanent establishment (as defined by proposed new section 8202 of the Regulations) in that country and of the country under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued,
- of the country in which the business is principally carried on, or
- if the affiliate is related to a non-resident corporation, of the country under whose laws that non-resident corporation is governed and any of exists, was (unless that non-resident corporation was continued in any jurisdiction) formed or organized, or was last continued, if those regulating laws are recognized under the laws of the country in which the business is principally carried on and all of those countries are members of the European Union.

Amended subparagraph 95(2)(l)(iii) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after 1999.

Related Provisions: 253 — Whether business carried on in Canada.

(iv) the taxpayer is

(A) a bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities resident in Canada, the business activities of which are subject by law to the supervision of a regulating authority such as the Superintendent of Financial Institutions or a similar authority of a province,

(B) a subsidiary wholly-owned corporation of a corporation described in clause (A), or

(C) a corporation of which a corporation described in clause (A) is a subsidiary wholly-owned corporation; and

Related Provisions: 95(2)(k.7) — Tiers of partnerships.

Regulations: 8202 (meaning of "permanent establishment" for proposed 95(2)(l)(iii)).

(m) **["qualifying interest"]** — a taxpayer has a qualifying interest in respect of a foreign affiliate of the taxpayer at any time if, at that time, the taxpayer owned

(i) not less than 10% of the issued and outstanding shares (having full voting rights under all circumstances) of the affiliate, and

(ii) shares of the affiliate having a fair market value of not less than 10% of the fair market value of all the issued and outstanding shares of the affiliate

and for the purpose of this paragraph

(iii) where, at any time, shares of a corporation are owned or are deemed for the purposes of this paragraph to be owned by another corporation (in this paragraph referred to as the "holding corporation"), those shares shall be deemed to be owned at that time by each shareholder of the holding corporation in a proportion equal to the proportion of all such shares that

(A) the fair market value of the shares of the holding corporation owned at that time by the shareholder

is of

(B) the fair market value of all the issued shares of the holding corporation outstanding at that time,

(iv) where, at any time, shares of a corporation are property of a partnership or are deemed for the purposes of this paragraph to be property of a partnership, those shares shall be deemed to be owned at that time by each member of the partnership in a proportion equal to the proportion of all such shares that

(A) the member's share of the income or loss of the partnership for its fiscal period that includes that time

is of

(B) the income or loss of the partnership for its fiscal period that includes that time

and for the purpose of this subparagraph, where the income and loss of the partnership for its fiscal period that includes that time are nil, that proportion shall be computed as if the partnership had income for the period in the amount of $1,000,000, and

(v) where, at any time, a person is a holder of convertible property issued by the affiliate before June 23, 1994 the terms of which confer on the holder the right to exchange the convertible property for shares of the affiliate and the taxpayer elects in its return of income for its first taxation year that ends after 1994 to have the provisions of this subparagraph apply to the taxpayer in respect of all the convertible property issued by the affiliate and outstanding at that time, each holder shall, in respect of the convertible property held by it at that time, be deemed to have, immediately before that time,

(A) exchanged the convertible property for shares of the affiliate, and

(B) acquired shares of the affiliate in accordance with the terms and conditions of the convertible property.

Regulations: 5907(1)"exempt loss"(c)(ii)(H)(IV) (exempt loss).

Interpretation Bulletins: IT-392: Meaning of term "share".

Proposed Addition — 95(2)(n)–(y)

(n) **["qualifying interest"]** — in applying paragraphs (2)(a) and (g) and subsections (2.2) and (2.21) and in applying paragraph (d) of the definition "exempt earnings", and paragraph (c) of the definition "exempt loss", in subsection 5907(1) of the Regulations, a non-resident corporation is deemed to be, at any time, a foreign affiliate of a particular corporation resident in Canada, and a foreign affiliate of the particular corporation in respect of which the particular corporation has a qualifying interest, if at that time

(i) the non-resident corporation is a foreign affiliate of another corporation that is resident in Canada and that is related (otherwise than because of a right referred to in paragraph 251(5)(b)) to the particular corporation, and

(ii) that other corporation has a qualifying interest in respect of the non-resident corporation;

Technical Notes: Paragraph 95(2)(a) includes, in computing the income from an active business for a taxation year of a foreign affiliate of a taxpayer resident in Canada in respect of which the taxpayer has a "qualifying interest" throughout the year, certain amounts (described in the various subparagraphs of paragraph 95(2)(a)) that would otherwise be the foreign affiliate's income from property.

For example, subparagraph 95(2)(a)(ii) deals with the situation where the foreign affiliate derives income from certain amounts paid or payable to it by another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year (or from a partnership of which that other foreign affiliate is a member at the end of the year).

Paragraph 95(2)(m) determines whether a taxpayer has a "qualifying interest" in respect of a non-resident corporation that is a foreign affiliate of the taxpayer. This paragraph will not apply if the non-resident corporation is not a foreign affiliate of the taxpayer.

New paragraph 95(2)(n) accommodates a wider variety of corporate structures where the taxpayer has an indirect interest in a non-resident corporation.

New paragraph 95(2)(n) provides that, in applying paragraphs 95(2)(a) and (g) and subsections 95(2.2) and (2.21) and in applying paragraph (d) of the definition "exempt earnings", and paragraph (c) of the definition "exempt loss", in subsection 5907(1) of the Regulations, a non-resident corporation is deemed to be, at any time, a foreign affiliate of a particular corporation resident in Canada, and a foreign affiliate of the particular corporation resident in Canada in respect of which the particular corporation resident in Canada has a qualifying interest, if at that time

- the non-resident corporation is a foreign affiliate of another corporation that is resident in Canada and that is related (otherwise than because of a right referred to in paragraph 251(5)(b)) to the particular corporation, and
- that other corporation has a qualifying interest in respect of the non-resident corporation.

New paragraph 95(2)(n) applies to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. Where the taxpayer elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which these amendments are assented to, this new paragraph applies to the taxation years, of all foreign affiliates of the taxpayer, that begin after 1994.

Example

Facts:

1. Canco1 is a corporation resident in Canada.

2. FA1 is a non-resident corporation. Canco1 owns all of the issued and outstanding shares in FA1.

3. Canco2 is a corporation resident in Canada. Canco1 owns all of the issued and outstanding shares in Canco2.

4. FA2 is a non-resident corporation. Canco2 owns all of the issued and outstanding shares of FA2.

Application of paragraph 95(2)(n):

In the absence of paragraph 95(2)(n), FA1 would not be a "foreign affiliate of Canco2 in respect of which Canco2 has a qualifying interest" because FA1 is not a foreign affiliate of Canco2 within the meaning of the definition "foreign affiliate" in subsection 95(1). Paragraph 95(2)(m) is of no assistance in this regard. Thus, income derived by FA2 from amounts paid or payable to it by FA1 could not satisfy subparagraph 95(2)(a)(ii) in respect of Canco2.

Under paragraph 95(2)(n), and only for the limited purposes outlined in paragraph 95(2)(n), FA1 is deemed to be a foreign affiliate of Canco2 and is deemed to be a foreign affiliate of Canco2 in respect of which Canco2 has a qualifying interest because

- *Canco1 and Canco2 are related,*
- *FA1 is a foreign affiliate of Canco1, and*
- *Canco1 has, because of paragraph 95(2)(m), a qualifying interest in respect of FA1.*

Letter from Dept. of Finance, October 5, 2001:

Dear [xxx]:

I am writing in reply to your letter dated September 6, 2001 to Mr. Wallace G. Conway in which you requested an amendment to subsection 95(2) of the *Income Tax Act* (the "Act").

Paragraph 95(2)(a) deems certain amounts to be active business income of a foreign affiliate of a taxpayer which would otherwise be the affiliate's income from property. In order for income from property to be deemed to be active business income, various tests described in that paragraph must be met. One of the required tests is that the taxpayer's interest in respect of the affiliate must be a "qualifying interest" throughout the affiliate's relevant taxation year. If the affiliate's income is active business income (rather than income from property), then the affiliate's income would not be included in computing foreign accrual property income (FAPI) of the affiliate for the purposes of the FAPI rules in the Act.

In your letter, you expressed the concern that paragraph 95(2)(a) of the Act does not deal with situations where a taxpayer resident in Canada owns its foreign affiliates indirectly through two or more corporations resident in Canada and, as a result, while all the corporations may be related to one another, one or more of non-resident corporations may not be foreign affiliates of a particular corporation resident in Canada. You noted that this may result in certain payments made between non-resident corporations that are related to a taxpayer resident in Canada not having the benefit of the rule in paragraph 95(2)(a). You are asking that we recommend an appropriate amendment to address this issue.

We agree that this issue should be addressed. We are therefore prepared to recommend to the Minister of Finance that section 95 of the Act be amended. The recommended amendment to section 95 would provide that a non-resident corporation is deemed, for the purpose of paragraph 95(2)(a), to be, at a particular time, a foreign affiliate of a particular corporation resident in Canada in respect of which the particular corporation has a qualifying interest if, at the particular time,

- the non-resident corporation is a foreign affiliate of another corporation that is resident in Canada and that is related (otherwise than because of a right referred to in paragraph 251(5)(b)) to the particular corporation, and
- that other corporation has a qualifying interest in respect of the non-resident corporation.

If this recommendation is acted upon, I would anticipate that the amendment would be included in the next technical bill.

We will recommend that the amendment apply to taxation years of a foreign affiliate of a taxpayer that begin after the date of the release of the draft of the technical bill. However, where the taxpayer so elects in respect of all the foreign affiliates of the taxpayer that begin after 1994, the amendments will apply to taxation years of these affiliates of the taxpayer that begin after 1994 and notwithstanding subsections 152(4) and (5) of the Act any assessment of a taxpayer's tax payable under the Act for any of those taxation years shall be made that is necessary to take into account the application of the amendments. The ability to elect to have the amendments apply to these earlier taxation years will be contingent on the taxpayer electing to have other amendments to the foreign affiliate rules to be included in the technical bill apply to the taxpayer's foreign affiliates for these earlier taxation years. We cannot provide any more details regarding the election provisions until the release of the draft of the technical bill.

Thank you for writing.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, March 22, 2001:

Dear [xxx]

We are responding to your letter of February 27, 2001 concerning what you feel is an anomaly in paragraph 95(2)(m) of the Act.

Paragraph 95(2)(m) of the Act defines when a taxpayer has a qualifying interest in a foreign affiliate. This is relevant for the purposes of paragraph 95(2)(a) of the Act. You are concerned that although the qualifying interest test in paragraph 95(2)(m) looks through holding corporations to include indirect interests, it does not include any direct or indirect interests in a foreign affiliate of a Canadian parent or sister corporation.

After reviewing your submission and example therein we are prepared to recommend an amendment to the Minister of Finance. The amendment would provide that, for the purposes of paragraph 95(2)(a) of the Act, where a non-resident corporation is a foreign affiliate of two or more corporations resident in Canada that are related (otherwise than because of a right referred to in paragraph 251(5)(b)) and one of those related corporations has a qualifying interest in the foreign affiliate, each of those related corporations will be considered to have a qualifying interest in the foreign affiliate. The amendment would be applicable for the 2001 and subsequent taxation years.

Thank you for bringing this matter to our attention.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

(o) **["qualifying member"]** — a particular person is a qualifying member of a partnership at a particular time if, at that time, the particular person is a member of the partnership and

(i) throughout the period, in the fiscal period of the partnership that includes the particular time, during which the member was a member of the partnership, the particular person is, on a regular, continuous and substantial basis

(A) actively engaged in those activities, of the principal business of the partnership carried on in that fiscal period by the partnership, that are other than activities connected with the provision of or the acquisition of funds required for the operation of that principal business, or

(B) actively engaged in those activities, of a particular business carried on in that fiscal period by the particular person (otherwise than as a member of a partnership) that is similar to the principal business carried on in that fiscal period by the partnership, that are other than activities connected with the provision of or the acquisition of funds required for the operation of the particular business, or

(ii) throughout the period, in the fiscal period of the partnership that includes the particular time, during which the member was a member of the partnership

(A) the total of the fair market value of all partnership interests in the partnership owned by the particular person was equal to or greater than 1% of the total of the fair market value of all partnership interests in the partnership owned by all members of the partnership, and

(B) the total of the fair market value of all partnership interests in the partnership owned by the particular person or persons (other than trusts) related to the particular person was

equal to or greater than 10% of the total of the fair market value of all partnership interests in the partnership owned by all members of the partnership;

Technical Notes: New paragraph 95(2)(o) defines the expression "qualifying member" of a partnership. This new definition is relevant for the amended definition "investment business" in subsection 95(1) and for amended subparagraph 95(2)(a)(ii). For more detail, see the commentaries to subsection 95(1) and paragraph 95(2)(a).

The definition "qualifying member" in paragraph 95(2)(o) is also the basis for the new definition "qualifying member" in subsection 248(1). That definition is relevant for the purpose of the new definition "exempt earnings" in new subsection 5907(1) of the Regulations. For more detail, see the commentary to subsection 248(1) and subsection 5907(1) of the Regulations.

New paragraph 95(2)(o) provides that a particular person is a "qualifying member" of a partnership at a particular time if, at the particular time, the particular person is a member of the partnership and

- throughout the period, in the fiscal period of the partnership that includes the particular time, during which the member is a member of the partnership, the particular person is, on a regular, continuous and substantial basis
  - — actively engaged in those activities, of the principal business of the partnership carried on in that fiscal period by the partnership, that are other than activities connected with the provision of or the acquisition of funds required for the operation of that principal business (clause 95(2)(o)(i)(A)), or
  - — actively engaged in those activities, of a particular business carried on in that fiscal period by the particular person (otherwise than as a member of a partnership) that is similar to the principal business carried on in that fiscal period by the partnership, that are other than activities connected with the provision of or the acquisition of funds required for the operation of the particular business (clause 95(2)(o)(i)(B)), or
- throughout the period, in the fiscal period of the partnership that includes the particular time, during which the member was a member of the partnership
  - — the total of the fair market value of all partnership interests in the partnership owned by the particular person was equal to or greater than 1% of the total of the fair market value of all partnership interests in the partnership owned by all members of the partnership (clause 95(2)(o)(ii)(A)), and
  - — the total of the fair market value of all partnership interests in the partnership owned by the particular person or by persons (other than trusts) related to the particular person was equal to or greater than 10% of the total of the fair market value of all partnership interests in the partnership owned by all members of the partnership (clause 95(2)(o)(ii)(B)).

New paragraph 95(2)(q) provides look-through rules that apply where partnership interests in a partnership are owned by another partnership or by a "non-discretionary trust" (within the meaning assigned by subsection 17(15)). See the commentary to paragraph 95(2)(q) for more detail.

New paragraph 95(2)(o) applies to taxation years that end after 1999. New paragraph 95(2)(o) is included in the Global Section 95 Election package described [under 95(2)(a) — ed.]

Letter from Dept. of Finance, March 21, 2002: See under 95(1)"investment business"(b).

Regulations: 5907(1)"exempt earnings"(a.1) (exempt earnings).

(p) **["qualifying shareholder"]** — a particular person is a qualifying shareholder of a corporation at any time if throughout the period, in the taxation year of the corporation that includes that time, during which the particular person was a shareholder of the corporation

(i) the particular person owned 1% or more of the issued and outstanding shares (having full voting rights under all circumstances) in the capital of the corporation,

(ii) the particular person, or the particular person and persons (other than trusts) related to the particular person, owned 10% or more of the issued and outstanding shares (having full voting rights under all circumstances) in the capital of the corporation,

(iii) the total of the fair market value of all the issued and outstanding shares of the corporation owned by the particular person is 1% or more of the total fair market value of all the issued and outstanding shares of the corporation, and

(iv) the total of the fair market value of all the issued and outstanding shares of the corporation owned by the particular person or by persons (other than trusts) related to the particular person is 10% or more of the total fair market value of all the issued and outstanding shares of the corporation;

Technical Notes: New paragraph 95(2)(p) provides a definition for the expression "qualifying shareholder" of a corporation. This new expression is relevant for the amended definition "investment business" in subsection 95(1). For more detail, see the commentary for the amendments to that definition.

New paragraph 95(2)(p) provides that a particular person is a "qualifying shareholder" of a corporation at any time if throughout the period, in the taxation year of the corporation that includes that time, during which the particular person is a shareholder of the corporation,

- the particular person owns 1% or more of the issued and outstanding shares (having full voting rights under all circumstances) in the corporation,
- the particular person, or the particular person and persons (other than trusts) related to the particular person, own 10% or more of the issued and outstanding shares (having full voting rights under all circumstances) in the corporation,
- the total of the fair market value of all the issued and outstanding shares of the corporation owned by the particular person is 1% or more of the total fair market value of all the issued and outstanding shares in the corporation, and
- the total of the fair market value of all the issued and outstanding shares of the corporation owned by the particular person or by persons (other than trusts) related to the particular person is 10% or more of the total fair market value of all the issued and outstanding shares in the corporation.

New paragraph 95(2)(q) provides look-through rules that apply if shares in the corporation are owned by a partnership or by a "non-discretionary trust" (within the meaning assigned by subsection 17(15)). See the commentary to paragraph 95(2)(q) for more detail.

New paragraph 95(2)(p) applies to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. New paragraph 95(2)(p) is included in the Global Section 95 Election package described [under 95(2)(a) — ed.]

Interpretation Bulletins: IT-392: Meaning of term "share".

(q) **[look-through rules for paras. (o) and (p)]** — in applying paragraphs (o) and (p)

(i) where interests in a partnership or shares of a corporation (which interests or shares are referred to in this subparagraph as "equity interests") are, at any time, property of a partnership or are deemed under this paragraph to be, at any time, property of the partnership, the equity interests are deemed to be owned at that time by each member of the partnership in a proportion equal to the proportion of the equity interests that

(A) the fair market value at that time of the member's partnership interest in the partnership

is of

(B) the fair market value at that time of all members' partnership interests in the partnership, and

(ii) where interests in a partnership or shares of a corporation (which interests or shares are referred to in this subparagraph as "equity interests") are, at any time, property of a non-discretionary trust (within the meaning assigned by subsection 17(15)) or are deemed under this paragraph to be, at any time, property of such a non-discretionary trust, the equity interests are deemed to be owned at that time by each beneficiary under that trust in a proportion equal to that proportion of the equity interests that

(A) the fair market value at that time of the beneficiary's beneficial interest in the trust

is of

(B) the fair market value at that time of all beneficial interests in the trust;

Technical Notes: New paragraph 95(2)(q) provides look-through rules for the purposes of

- applying new paragraph 95(2)(o) if partnership interests in the partnership referred to in paragraph 95(2)(o) are owned by another partnership or by a "non-discretionary trust" (within the meaning assigned by subsection 17(15)), and
- applying new paragraph 95(2)(p) if shares in the corporation referred to in paragraph 95(2)(p) are owned by a partnership or by such a "non-discretionary trust".

New paragraph 95(2)(q) provides that, in applying paragraphs 95(2)(o) and (p),

- if interests in a partnership or shares of a corporation (such interests or shares referred to as "equity interests") are, at any time, property of a partnership or are deemed by paragraph 95(2)(q) to be, at any time, property of the partnership, the equity interests are deemed to be owned at that time by each member of the partnership in a proportion equal to the proportion of the equity interests that
  - the fair market value at that time of the member's partnership interest in the partnership

  is of
  - the fair market value at that time of all partnership interests in the partnership; and
- if interests in a partnership or shares of a corporation (which interests or shares are referred to as "equity interests") are, at any time, property of a non-discretionary trust (within the meaning assigned by subsection 17(15)) or are deemed under paragraph 95(2)(q) to be, at any time, property of a non-discretionary trust, the equity interests are deemed to be owned at that time by each beneficiary under that trust in a proportion equal to that proportion of the equity interests that
  - the fair market value at that time of the beneficiary's beneficial interest in the trust

  is of
  - the fair market value at that time of all beneficial interests in the trust.

New paragraph 95(2)(q) applies to taxation years that end after 1999. New paragraph 95(2)(q) is included in the Global Section 95 Election package described [under 95(2)(a) — ed.]

Interpretation Bulletins: IT-392: Meaning of term "share".

(r) **["qualifying interest"]** — in applying paragraph (a), a partnership is deemed to be, at any time, a partnership of which a foreign affiliate — of a particular corporation resident in Canada and in respect of which foreign affiliate the particular corporation has a qualifying interest — is a qualifying member, if at that time

(i) a particular foreign affiliate — of another corporation that is resident in Canada and that is related (otherwise than because of a right referred to in paragraph 251(5)(b)) to the particular corporation — is a member of the partnership,

(ii) that other corporation has a qualifying interest in respect of the particular foreign affiliate, and

(iii) the particular foreign affiliate is a qualifying member of the particular partnership;

Technical Notes: New paragraph 95(2)(r) provides that, in applying paragraph 95(2)(a), a partnership is deemed to be, at any time, a partnership of which a foreign affiliate — of a particular corporation resident in Canada and in respect of which foreign affiliate the particular corporation has a qualifying interest — is a qualifying member if, at that time,

- a particular foreign affiliate, of another corporation that is resident in Canada and that is related (otherwise than because of a right referred to in paragraph 251(5)(b)) to the particular corporation, is a member of the partnership,
- that other corporation resident in Canada has a qualifying interest in respect of the particular foreign affiliate, and
- the particular foreign affiliate is a qualifying member of the particular partnership.

New paragraph 95(2)(r) applies to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. Note that new paragraph 95(2)(r) is part of the Global Section 95 Election package described [under 95(2)(a) — ed.]

Example

Facts

1. Canco owns all the shares of Cansub.

2. Cansub owns all the shares of FA1.

3. FA1 is a "qualifying member" (as defined in paragraph 95(2)(o)) of the partnership "P".

4. Canco owns all the shares of FA2.

Application of Paragraph 95(2)(r)

Partnership P is deemed to be a partnership of which FA2 (the particular foreign affiliate) is a qualifying member because:

- *Canco (the particular corporation) has a qualifying interest in FA2 (condition in "preamble" to 95(2)(r)),*
- *FA1 (the particular foreign affiliate) is a member of P (condition in subparagraph 95(2)(r)(i)),*
- *FA1 is a foreign affiliate of Cansub, which is a corporation resident in Canada that is related to Canco (condition in subparagraph 95(2)(r)(ii)),*
- *Cansub has a qualifying interest in FA1 (condition in subparagraph 95(2)(r)(ii)), and*
- *FA1 is a qualifying member of P (condition in subparagraph 95(2)(r)(iii)).*

(s) **["designated corporation"]** — in applying the definition "investment business" in subsection (1), a particular corporation is, at any time, a designated corporation in respect of a foreign affiliate of a taxpayer if, at that time,

(i) a qualifying shareholder of the foreign affiliate or a person related to such a qualifying shareholder is a qualifying shareholder of the particular corporation,

(ii) the particular corporation

(A) is controlled by a qualifying shareholder of the foreign affiliate, or

(B) would be controlled by a particular qualifying shareholder of the foreign affiliate if the particular qualifying shareholder of the foreign affiliate owned each share of the capital stock of the particular corporation that is owned by a qualifying shareholder of the foreign affiliate or by a person related to a qualifying shareholder of the foreign affiliate, and

(iii) the total of all amounts each of which is the fair market value of a share of the capital stock of the particular corporation owned by a qualifying

shareholder of the foreign affiliate or by a person related to a qualifying shareholder of the foreign affiliate is greater than 50% of the total fair market value of all the issued and outstanding shares of the capital stock of the particular corporation;

Technical Notes: New paragraph 95(2)(s) provides that, in applying the definition "investment business" in subsection 95(1), a particular corporation is, at any time, a designated corporation in respect of a foreign affiliate of a taxpayer if, at that time,

- a qualifying shareholder of the foreign affiliate or a person related to such a qualifying shareholder is a qualifying shareholder of the particular corporation,
- the particular corporation
  - is controlled by a qualifying shareholder of the foreign affiliate, or
  - would be controlled by a particular qualifying shareholder of the foreign affiliate if the particular qualifying shareholder of the foreign affiliate owned each share of the capital stock of the particular corporation that is owned by a qualifying shareholder of the foreign affiliate or by a person related to a qualifying shareholder of the foreign affiliate, and
- the total of all amounts each of which is the fair market value of a share of the capital stock of the particular corporation owned by a qualifying shareholder of the foreign affiliate or by a person related to a qualifying shareholder of the foreign affiliate is greater than 50% of the total fair market value of all the issued and outstanding shares of the capital stock of the particular corporation.

New paragraph 95(2)(s) applies to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. Note that this new paragraph is included in the Global Section 95 Election package described [under 95(2)(a) — ed.]

Example

Facts

1. Corporation 1 controls Corporations 2 and 3.

2. Corporation 2 is a qualifying shareholder of FA1.

3. Corporation 1 owns shares that represent more than 50% of the fair market value of all issued shares of Corporations 2 and 3.

4. Corporation 1 is a qualifying shareholder of Corporation 3.

Application of Paragraph 95(2)(s)

Corporation 3 (the particular corporation) is a designated corporation in respect of FA1 because

- *Corporation 1 is related to Corporation 2 and is a qualifying shareholder of Corporation 3, and*
- *Corporation 3 would be controlled by Corporation 2 if Corporation 2 owned each share of Corporation 3 that is owned by Corporation 1, and*
- *Corporation 1 owns shares that represent more than 50% of the fair market value of all issued shares of Corporation 3.*

(t) **["designated partnership"]** — in applying the definition "investment business" in subsection (1), a particular partnership is, at any time, a designated partnership in respect of a foreign affiliate of a taxpayer if, at that time,

(i) the foreign affiliate or a person related to the foreign affiliate is a qualifying member of the particular partnership, and

(ii) the total of all amounts each of which is the fair market value of a partnership interest in the particular partnership held by the foreign affiliate, by a person related to the foreign affiliate or by a qualifying member of the operating partnership (described in that definition) is greater than 50% of the total fair market value of all partnership interests in the particular partnership owned by all members of the particular partnership;

Technical Notes: New paragraph 95(2)(t) provides that, in applying the definition "investment business" in subsection 95(1), a particular partnership is, at any time, a designated partnership in respect of a foreign affiliate of a taxpayer if, at that time,

- the foreign affiliate or a person related to the foreign affiliate is a qualifying member of the particular partnership, and
- the total of all amounts each of which is the fair market value of a partnership interest in the particular partnership held by the foreign affiliate, by a person related to the foreign affiliate or by a qualifying member of the operating partnership (described in the investment business definition) is greater than 50% of the total fair market value of all partnership interests in the particular partnership owned by all members of the particular partnership.

New paragraph 95(2)(t) applies to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. Note that this new paragraph is included in the Global Section 95 Election package described [under 95(2)(a) — ed.]

(u) **[shares deemed owned proportionately]** — in applying the definition "controlled foreign affiliate" in subsection (1), shares of the capital stock of a corporation that are at any time owned by, or that are deemed by this subsection to be at any time owned by, another corporation are deemed to be, at that time, owned by, or property of, as the case may be, each shareholder of the other corporation in the proportion that

(i) the fair market value at that time of the shares of the capital stock of the other corporation that, at that time, are owned by, or are property of, the shareholder

is of

(ii) the fair market value at that time of all the issued and outstanding shares of the capital stock of the other corporation;

Technical Notes: New paragraph 95(2)(u) provides that, in applying the definition "controlled foreign affiliate" in subsection 95(1), shares of the capital stock of a corporation, that are at any time owned by, or that are deemed by subsection 95(2) to be at any time owned by, another corporation, are deemed to be, at that time, owned by, or property of, as the case may be, each shareholder of the other corporation in the proportion that

- the fair market value at that time of the shares of the capital stock of the other corporation that, at that time, are owned by, or are property of, the shareholder

is of

- the fair market value at that time of all the issued and outstanding shares of the capital stock of the other corporation.

Note that this deeming rule does not deem the actual or previously-deemed owner not to own the shares.

See the commentary to the definition "controlled foreign affiliate" for details about amendments to that definition.

New paragraph 95(2)(u) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after February 27, 2004.

(v) **[shares held through partnership deemed owned proportionately]** — in applying the definition "controlled foreign affiliate" in subsection (1), shares of the capital stock of a corporation that are, or are deemed by this subsection to be, at any time, property of a partnership, are deemed to be, at that time, owned by, or property of, as the case may be, each member of the partnership in the proportion that

(i) the fair market value at that time of the member's partnership interest in the partnership

is of

(ii) the fair market value at that time of all partnership interests in the partnership;

Technical Notes: New paragraph 95(2)(v) provides that, in applying the definition "controlled foreign affiliate" in subsection 95(1), shares of the capital stock of a corporation that are, or are deemed by subsection 95(2) to be, at any time, property of a partnership, are deemed to be, at that time, owned by, or property of, as the case may be, each member of the partnership in the proportion that

- the fair market value at that time of the member's partnership interest in the partnership

is of

- the fair market value at that time of all partnership interests in the partnership.

Note that this deeming rule does not deem the actual or previously-deemed owner not to own the shares.

See the commentary to the definition "controlled foreign affiliate" for details about amendments to that definition.

New paragraph 95(2)(v) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after February 27, 2004.

(w) **[shares held through trust deemed owned proportionately]** — in applying the definition "controlled foreign affiliate" in subsection (1), shares of the capital stock of a corporation that are at any time owned by, or that are deemed by this subsection to be at any time owned by, a non-discretionary trust (within the meaning assigned by subsection 17(15)) other than an exempt trust (within the meaning assigned by subsection (3.2)) are deemed to be, at that time, owned by, or property of, as the case may be, each beneficiary of the trust in the proportion that

(i) the fair market value at that time of the beneficiary's beneficial interest in the trust

is of

(ii) the fair market value at that time of all beneficial interests in the trust;

Technical Notes: New paragraph 95(2)(w) provides that, in applying the definition "controlled foreign affiliate" in subsection 95(1), shares of the capital stock of a corporation, that are at any time owned by, or that are deemed by subsection 95(2) to be at any time owned by, a non-discretionary trust (within the meaning assigned by subsection 17(15)) other than an exempt trust (within the meaning assigned by subsection 95(3.2)) are deemed to be, at that time, owned by, or property of, as the case may be, each beneficiary of the trust in the proportion that

- the fair market value at that time of the beneficiary's beneficial interest in the trust

is of

- the fair market value at that time of all beneficial interests in the trust.

Note that this deeming rule does not deem the actual or previously-deemed owner not to own the shares.

See the commentary to the definition "controlled foreign affiliate" for details about amendments to that definition.

New paragraph 95(2)(w) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after February 27, 2004.

(x) **[shares held through trust deemed owned proportionately]** — in applying the definition "controlled foreign affiliate" in subsection (1), all of the shares of the capital stock of a corporation that are at any time owned by, or that are deemed by this subsection to be at any time owned by, a particular trust (other than an exempt trust within the meaning assigned by subsection (3.2) or a non-discretionary trust within the meaning assigned by subsection 17(15)) are deemed to be, at that time, owned by, or property of, as the case may be,

(i) each beneficiary of the particular trust at that time, and

(ii) each settlor (within the meaning assigned by subsection 17(15)) in respect of the particular trust at that time; and

Technical Notes: New paragraph 95(2)(x) provides that, in applying the definition "controlled foreign affiliate" in subsection 95(1), all of the shares of the capital stock of a corporation, that are owned at any time by, or deemed by subsection 95(2) to be owned at any time by, a particular trust (other than an exempt trust within the meaning assigned by subsection 95(3.2) or a non-discretionary trust within the meaning assigned by subsection 17(15)), are deemed to be, at that time, owned by, or property of, as the case may be,

(i) each beneficiary of the particular trust at that time, and

(ii) each settlor (within the meaning assigned by subsection 17(15)) in respect of the particular trust at that time.

Note that this deeming rule does not deem the actual or previously-deemed owner not to own the shares.

See the commentary to the definition "controlled foreign affiliate" for details about amendments to that definition.

New paragraph 95(2)(x) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after February 27, 2004.

(y) **["government of a country"]** — in paragraphs (c.3), (f.5) and (h.2) and clauses (k.1)(iv)(B) and (k.3)(iii)(B), the expression "government of a country" includes the government of a province, state or other political subdivision of that country.

Technical Notes: New paragraph 95(2)(y) provides that, in new paragraphs 95(2)(c.3), (f.5) and (h.2) and new clauses 95(2)(k.1)(iv)(B) and (k.3)(iii)(B), the expression "government of a country" includes the government of a province, state or other political subdivision of that country.

New paragraph 95(2)(y) applies after December 20, 2002.

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(19), will add paras. 95(2)(n) to (y), applicable as follows:

(i) para. 95(2)(n), to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. However, if a taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which the amending legislation is assented to, para. 95(2)(n) applies to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994;

(ii) paras. 95(2)(p) and (r) to (t), to taxation years, of a foreign affiliate of a taxpayer, that end after 1999;

(iii) paras. 95(2)(o) and (q), to taxation years that end after 1999;

(iv) paras. 95(2)(u) to (x), to taxation years, of a foreign affiliate of a taxpayer, that begin after February 27, 2004; and

(iv) para. 95(2)(y), after December 20, 2002.

Paras. (o) to (t) may also, by election, be applicable to taxation years that begin after 1994: see Application note to 95(2)(a) proposed amendments.

If a taxpayer has made what would, but for this paragraph, be a valid election as described above (re paras. (o)–(t)), and the taxpayer has, on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day that is the third anniversary of the day on which the amending Act receives Royal Assent, filed with the Minister of National Revenue a notice in writing to revoke the election, the election is deemed, otherwise than for the purpose of this paragraph, never to have been made.

Notwithstanding subsecs. 152(4) to (5) of the Act, any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year shall be made that is necessary to take an election or revocation referred to in para. (m), (p), (r), (s) or (t) into account.

History: The portion of para. 95(2)(a.3) before subpara. (iii) amended by 2001, c. 17, subsec. 73(5), applicable to taxation years of foreign affiliates that begin after 1999 except that, where a taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxation year that includes June 14, 2001, para. 95(2)(a.3) applies to taxation years, of all of the taxpayer's foreign affiliates, that begin after 1994 except that, where there has been a change in the taxation year of a particular foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the enacted provisions apply to taxation

years of the particular foreign affiliate of the taxpayer that end after 1994, unless

(a) the particular foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of the particular foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that it would have begun if there had not been that change in the taxation year of the particular foreign affiliate,

and, notwithstanding subsections 152(4) to (5), any assessment of a taxpayer's tax payable under the Act for any of those taxation years shall be made that is necessary to take into account the application of this amendment. The portion of para. 95(2)(a.3) before subpara. (iii) formerly read:

(a.3) in computing the income from a business other than an active business for a taxation year of a foreign affiliate of a taxpayer there shall be included the income of the affiliate for the year derived directly or indirectly from indebtedness (other than a specified deposit with a prescribed financial institution) and lease obligations (which, for the purposes of this paragraph, includes the income of the affiliate for the year from the purchase and sale of indebtedness and lease obligations on its own account)

(i) of persons resident in Canada, or

(ii) in respect of businesses carried on in Canada

unless more than 90% of the gross revenue of the affiliate derived directly or indirectly from indebtedness (other than a specified deposit with a prescribed financial institution) and lease obligations was derived directly or indirectly from indebtedness and lease obligations of non-resident persons with whom the affiliate deals at arm's length and, where this paragraph applies to include income of the affiliate for the year in the income of the affiliate from a business other than an active business,

Para. 95(2)(g) amended by the said c. 17, subsec. 73(6), applicable on the same basis as the repeal of 95(2)(h) below. Para. 95(2)(g) formerly read:

(g) [debt settlement — currency fluctuation] — where, by virtue of a fluctuation in the value of the currency of a country other than Canada relative to the value of the Canadian dollar, a foreign affiliate of a taxpayer has realized a taxable capital gain or an allowable capital loss in a taxation year on the settlement of a debt that was owing to

(i) another foreign affiliate of the taxpayer or any other non-resident corporation with which the taxpayer does not deal at arm's length, or

(ii) the affiliate by another foreign affiliate of the taxpayer or any other non-resident corporation with which the taxpayer does not deal at arm's length,

such gain or loss, as the case may be, shall be deemed to be nil;

Para. 95(2)(g.2) added by the said c. 17, subsec. 73(7), applicable to distributions received after 1997 except that the election referred to in para. 95(2)(g.2) is deemed to be filed on a timely basis if it is filed with the Minister of National Revenue before September 12, 2001 (90 days after Royal Assent).

Para. 95(2)(h) repealed by the said c. 17, subsec. 73(8), applicable to taxation years of a foreign affiliate of a taxpayer that begin after November 1999 except that, where the taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the day of the taxpayer's filing-due date for the taxation year that includes June 14, 2001, the amendment applies to taxation years, of all of its foreign affiliates, that began after 1994 and, notwithstanding subsecs. 152(4) to (5), any assessment of a taxpayer's tax payable under the Act for any of those taxation years shall be made that is necessary to take into account the application of the amendment. Para. 95(2)(h) formerly read:

(h) [share transactions — currency fluctuation] — where, by virtue of a fluctuation in the value of the currency of a country other than Canada relative to the value of the Canadian dollar, a foreign affiliate of a taxpayer has realized a taxable capital gain or an allowable capital loss in a taxation year on

(i) the redemption, cancellation or acquisition of a share of the capital stock of, or the reduction of the capital of, another foreign affiliate of the taxpayer, or

(ii) the disposition to a person with whom the taxpayer does not deal at arm's length of a share of the capital stock of another foreign affiliate of the taxpayer,

that gain or loss, as the case may be, shall be deemed to be nil;

Para. 95(2)(d) amended by 1999, c. 22, subsec. 25(1), applicable to a taxpayer in respect of a merger or combination of foreign corporations

(a) that occurs after February 24, 1998, or

(b) that occurred

(i) before February 25, 1998 and in a taxation year of the taxpayer for which the taxpayer's normal reassessment period, as defined in subsec. 152(3.1), has not ended before 1999, or

(ii) after 1994 and before February 25, 1998 and in a taxation year of the taxpayer in which the taxpayer was exempt from tax under s. 149,

unless the taxpayer elects by notifying the Minister of National Revenue in writing, before January 1, 2000, that the amendment not apply to the taxpayer in respect of the merger or combination.

The para. formerly read:

(d) where there has been a foreign merger in which the shares owned by a foreign affiliate of a taxpayer of the capital stock of a corporation that was a predecessor foreign corporation immediately before the merger were exchanged for or became shares of the capital stock of the new foreign corporation, subsection 87(4) applies to the foreign affiliate as if the references in that subsection to

(i) "amalgamation" were read as "foreign merger",

(ii) "predecessor corporation" were read as "predecessor foreign corporation",

(iii) "new corporation" were read as "new foreign corporation",

(iv) "adjusted cost base" were read as "relevant cost base", and

(v) "May 6, 1974" were read as "November 12, 1981";

Subpara. 95(2)(g.1)(ii) amended by 1998, c. 19, subsec. 122(5), applicable to taxation years that end after February 21, 1994. The subpara. formerly read:

(ii) without reference to subsections 80(3) to (12), (15) and (17) and 80.01(5) to (11) and sections 80.02 to 80.04;

Para. 95(2)(a) amended, paras. 95(2)(a.1) to (a.4) added, by 1995, c. 21, subsec. 46(4), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the amended legislation applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation of such foreign affiliate.

Para. (a) formerly read:

(a) in computing the income from an active business of a foreign affiliate of a taxpayer there shall be included

(i) any income from sources in a country other than Canada that would otherwise be income from property or a business other than an active business, to the extent that it pertains to or is incident to an active business carried on in a country other than Canada by the affiliate or any other non-resident corporation with which the taxpayer does not deal at arm's length, and

(ii) any amount paid or payable to the affiliate by, and, where the affiliate is a member of a partnership, the affiliate's share of any amount paid or payable to the partnership by,

(A) another foreign affiliate of the taxpayer, or

(B) any other non-resident corporation with which the taxpayer does not deal at arm's length

to the extent that, in computing the amount prescribed to be its earnings from an active business other than a business carried on by it in Canada, that amount is deductible or would be deductible if the non-resident corporation were a foreign affiliate of the taxpayer;

Para. 95(2)(g.1) added by 1995, c. 21, subsec. 32(4), applicable to taxation years that end after February 21, 1994.

Paras. 95(2)(k) to (m) added by 1995, c. 21, subsec. 46(5), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the new

paragraphs apply to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation year of such foreign affiliate.

Subpara. 95(2)(h)(i) substituted by 1994, c. 21, s. 43, applicable to redemptions, cancellations, acquisitions and reductions occurring after December 21, 1992. That subpara. formerly read:

(i) the redemption, cancellation or acquisition of shares of the capital stock of, or the reduction of the capital of, the affiliate or another foreign affiliate of the taxpayer, or

That portion of subpara. 95(2)(a)(ii) preceding cl. (A) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 71(5), applicable to 1987 *et seq*. That portion formerly read:

(ii) any amount paid or payable to the affiliate by

Para. 95(2)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 71(6), applicable to taxation years beginning after July 13, 1990. Para. 95(2)(b) formerly read:

(b) the income of a controlled foreign affiliate of a taxpayer from services or an undertaking to provide services shall be deemed to be income from a business other than an active business if

(i) the amount paid or payable in consideration therefor

(A) is deductible in computing the income from a business carried on in Canada by any person in relation to which the affiliate is a controlled foreign affiliate or by a person related to that person, or

(B) was paid or payable by a person other than the taxpayer and may reasonably be considered to relate to an amount that was deductible by the taxpayer or a person related to the taxpayer in computing the income of that taxpayer or person from a business carried on in Canada, or

(ii) the services are performed or are to be performed by any person referred to in subparagraph (i) who is an individual resident in Canada;

That portion of para. 95(2)(d.1) preceding subpara. (i) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 71(7), applicable to foreign mergers occurring after 1989. That portion formerly read:

(d.1) where there has been a foreign merger of two or more predecessor foreign corporations in respect of each of which a taxpayer's surplus entitlement percentage was not less than 90% immediately before the merger to form a new foreign corporation in respect of which the taxpayer's surplus entitlement percentage immediately after the merger was not less than 90% and, under the income tax law of the country in which the predecessor foreign corporations were resident immediately before the merger, no gain or loss was recognized in respect of any capital property of a predecessor foreign corporation that became capital property of the new foreign corporation in the course of the merger, the following rules apply:

That portion of para. 95(2)(e.1) preceding subpara. (i) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 71(8), applicable to liquidations commencing after 1989. That portion formerly read:

(e.1) where there has been a liquidation and a dissolution of a foreign affiliate (in this paragraph referred to as the "disposing affiliate") of a taxpayer in respect of which, immediately before the liquidation, the taxpayer's surplus entitlement percentage was not less than 90% and, under the income tax law of the country in which the disposing affiliate was resident immediately before the liquidation, no gain or loss was recognized by the disposing affiliate in respect of any capital property distributed by it in the course of the liquidation to another foreign affiliate of the taxpayer resident in that country, the following rules apply:

Subpara. 95(2)(f)(i) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 71(9), applicable to dispositions after July 13, 1990. Subpara. (f)(i) formerly read:

(i) where that gain or loss is the gain or loss of a controlled foreign affiliate from the disposition of property other than excluded property, in Canadian currency, and

Selected Cases [subsec. 95(2)]: *Rostland Corp. v. Canada*, [1995] 2 C.T.C. 2276 (TCC) (Interest income in heavily leveraged real estate venture was income from an active business and not FAPI).

Regulations [subsec. 95(2)]: 5910 (production sharing rules).

(2.1) Rule for definition "investment business" — For the purposes of the definition "investment business" in subsection (1), a foreign affiliate of a taxpayer, the taxpayer and, where the taxpayer is a corporation all the issued shares of which are owned by a corporation described in subparagraph (a)(i), such corporation described in subparagraph (a)(i) shall be considered to be dealing with each other at arm's length in respect of the entering into of agreements that provide for the purchase, sale or exchange of currency and the execution of such agreements where

(a) the taxpayer is

(i) a bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities resident in Canada, the business activities of which are subject by law to the supervision of a regulating authority such as the Superintendent of Financial Institutions or a similar authority of a province, or

(ii) a subsidiary wholly-owned corporation of a corporation described in subparagraph (i);

(b) the agreements are swap agreements, forward purchase or sale agreements, forward rate agreements, futures agreements, options or rights agreements or similar agreements;

(c) the agreements are entered in the course of a business carried on by the affiliate principally with persons with whom the affiliate deals at arm's length in the country under whose laws the affiliate was formed or continued and exists and is governed and in which the business is principally carried on; and

Proposed Amendment — 95(2.1)(c)

(c) the affiliate entered into the agreements

(i) in the course of carrying on, principally with persons with whom the affiliate deals at arm's length, a business (other than a life insurance business) principally carried on in the country (other than Canada) under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued, or

(ii) in the course of a life insurance business carried on by the affiliate principally in a country other than Canada and principally with persons with whom the affiliate deals at arm's length if

(A) that country is

(I) the country in which the business is principally carried on, or

(II) the country under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued, and

(B) the business activities of the affiliate are regulated in each of the countries described in clause (A); and

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(20), will amend para. 95(2.1)(c) to read as above, applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after 1999. The amendment may also, by election, be applicable to

taxation years that begin after 1994: see Application note to 95(2)(a) proposed amendments.

If a taxpayer has made what would, but for this paragraph, be a valid election as described above, and the taxpayer has, on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day that is the third anniversary of the day on which the amending Act receives Royal Assent, filed with the Minister of National Revenue a notice in writing to revoke the election, the election is deemed, otherwise than for the purpose of this paragraph, never to have been made.

Notwithstanding subsecs. 152(4) to (5) of the Act, any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year shall be made that is necessary to take an election or revocation referred to above into account.

Technical Notes: Subsection 95(2.1) provides a rule for the purpose of the arm's length test in paragraph (a) of the definition "investment business" in subsection 95(1). Under this rule, a foreign affiliate of a taxpayer, the taxpayer and, in certain circumstances, a regulated financial institution in Canada of which the taxpayer is a subsidiary wholly-owned corporation, are considered to be dealing with each other at arm's length in respect of the entering into (and the execution of) agreements that provide for the purchase or sale, or exchange, of currency where all four of the conditions specified in paragraphs 95(2.1)(a) to (d) are satisfied.

The first condition, as specified in paragraph 95(2.1)(a), is that the taxpayer be (or be a corporation all of the issued shares of which are owned by a corporation that is) a bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities, the business activities of which are by law subject to the supervision of the Superintendent of Financial Institutions or a similar provincial authority.

The second condition, as specified in paragraph 95(2.1)(b), is that the agreements be swap agreements, forward purchase or sale agreements, forward rate agreements, futures agreements, options or rights agreements or similar agreements.

The third condition, as specified in paragraph 95(2.1)(c), is that the foreign affiliate entered into the agreements in the course of a business carried on principally with arm's length persons in the country in which the affiliate was formed (or continued) and exists and is governed, and in which the business is principally carried on by it.

The fourth condition, as specified in paragraph 95(2.1)(d), is that the terms and conditions of the sale or exchange be arm's length terms and conditions.

Subsection 95(2.1) permits a foreign affiliate of a taxpayer to deal with Canadian financial institutions in currency transactions entered into in the course of a business carried on by the affiliate principally with arm's length persons in the foreign country under whose laws the affiliate was incorporated, exists and is governed, and in which the business is principally carried on. Such currency transactions of the affiliate are afforded the same tax treatment as that given to similar transactions conducted with foreign financial institutions.

Paragraph 95(2.1)(c) is amended to require that the foreign affiliate entered into the agreements

- in the course of carrying on, principally with persons with whom the affiliate deals at arm's length, a business (other than a life insurance business) principally carried on in the country (other than Canada) under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued, or
- in the course of a life insurance business carried on by the affiliate principally in a country other than Canada and principally with persons with whom the affiliate deals at arm's length if
  - — that country is the country in which the business is principally carried on or is the country under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued (new clause 95(2.1)(c)(ii)(A)), and
  - — the business activities of the affiliate are regulated in each of the countries described in new clause 95(2.1)(c)(ii)(A).

Amended subsection 95(2.1) will, for example, accommodate currency transactions of certain regulated foreign affiliates, of regulated life insurance corporations resident in Canada, that carry on an arm's length foreign life insurance business principally in a country different from their country of incorporation or continuation if the business activities are regulated in the country in which the business is principally carried on and in the country under whose laws the affiliate was incorporated or last continued.

The amendment to paragraph 95(2.1)(c) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after 1999. However, see the commentary to new subsection 95(2.2) for details of an election to apply the amendments to amendment to paragraph 95(2.1)(c) to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994. Note also that the amendment to paragraph 95(2.1)(c) is included in the Global Section 95 Election package described [under 95(2)(a) — ed.]

Letter from Dept. of Finance, October 12, 2000: See under 95(2.41).

(d) the terms and conditions of such agreements are substantially the same as the terms and conditions of similar agreements made by persons dealing at arm's length.

Related Provisions: 95(2.41) — Foreign affiliate of life insurer.

History: Subsec. 95(2.1) added by 1995, c. 21, subsec. 46(6), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the new subsection applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation of such foreign affiliate.

(2.2) Rule for subsec. (2) — For the purpose of subsection (2),

Proposed Amendment — 95(2.2) opening words

(2.2) Rule for subsection (2) — For the purpose of subsection (2), other than paragraphs (2)(f) and (f.1),

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(21), will amend the opening words of subsec. 95(2.2) to read as above, applicable to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. The amendment may also, by election, be applicable to taxation years that begin after 1994: see Application note to 95(2)(a) proposed amendments.

If a taxpayer has made what would, but for this paragraph, be a valid election as described above, and the taxpayer has, on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day that is the third anniversary of the day on which the amending Act receives Royal Assent, filed with the Minister of National Revenue a notice in writing to revoke the election, the election is deemed, otherwise than for the purpose of this paragraph, never to have been made.

Notwithstanding subsecs. 152(4) to (5) of the Act, any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year shall be made that is necessary to take an election or revocation referred to above into account.

Technical Notes: Subsection 95(2.2) provides rules, in paragraphs 95(2.2)(a) and (b), for the purpose of subsection 95(2).

Paragraph 95(2.2)(a) provides that, in certain circumstances, a non-resident corporation that was not a "foreign affiliate of a taxpayer in respect of which the taxpayer had a qualifying interest throughout a taxation year" but was such a foreign affiliate at the beginning or end of that year is deemed to be such a foreign affiliate of the taxpayer throughout that year. Those circumstances are that a person has, in that year, acquired or disposed of shares of that non-resident corporation or any other corporation and, because of that disposition or acquisition, that non-resident corporation became or ceased to be a foreign affiliate of the taxpayer in respect of which the taxpayer had a qualifying interest.

Paragraph 95(2.2)(b) provides that, in certain circumstances, a non-resident corporation that was not related to a taxpayer and to a foreign affiliate of the taxpayer throughout a taxation year but was so related at the beginning or end of that year is deemed to be related throughout that year to the taxpayer and to the foreign affiliate. Those circumstances are that a person has, in that year, acquired or disposed of shares of that non-resident corporation or any other corporation and, because of that disposition or acquisition, that non-resident corporation became or

ceased to be a non-resident corporation that was related to the foreign affiliate and the taxpayer.

Subsection 95(2.2) is amended in the following ways.

First, the "preamble" of subsection 95(2.2) is amended to ensure that that subsection does not apply for the purpose of paragraph 95(2)(f). This amendment is consequential to the introduction of new subsection 95(2.22). For additional detail, see the commentary to subsection 95(2.22).

Second, paragraph 95(2.2)(b) is amended so that the rule in that paragraph also applies if, because of the acquisition, that non-resident corporation would have become (if paragraph 251(5)(b) did not apply to rights contained in the agreement under which the person acquired the shares) a non-resident corporation that was related to the taxpayer or to the taxpayer and the foreign affiliate. The addition of the reference to paragraph 251(5)(b) permits paragraph 95(2.2)(b) to apply where the relevant commercial arrangements involve a right to acquire shares which is then exercised.

The amendments to paragraph 95(2.2)(b) and to the "preamble" of subsection 95(2.2) apply to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. However, if a taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this set of amendments is assented to, the following apply to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994:

- the amendments to the portion of paragraph 95(2)(f) after subparagraph (ii) and before subparagraph (iii),
- the amendments to paragraph 95(2.1)(c),
- the amendments to the "preamble" to subsection 95(2.2),
- the amendments to paragraph 95(2.2)(b), and
- new subsection 95(2.21).

This set of proposals provides that, notwithstanding subsections 152(4) to (5), the Minister of National Revenue can make any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year that is necessary to take such an election into account.

Note also that the amendment to the "preamble" of subsection 95(2.2) is included in the Global Section 95 Election package described [under 95(2)(a) — ed.]

Letter from Dept. of Finance, February 12, 2001: See under 95(2.2)(b).

(a) a non-resident corporation that was not a foreign affiliate of a taxpayer in respect of which the taxpayer had a qualifying interest throughout a particular taxation year shall be deemed to be a foreign affiliate of a taxpayer in respect of which the taxpayer had a qualifying interest throughout that year where

(i) a person has, in that year, acquired or disposed of shares of that non-resident corporation or any other corporation and, because of that acquisition or disposition, that non-resident corporation became or ceased to be a foreign affiliate of the taxpayer in respect of which the taxpayer had a qualifying interest, and

(ii) at the beginning of that year or at the end of that year, the non-resident corporation was a foreign affiliate of the taxpayer in respect of which the taxpayer had a qualifying interest; and

(b) a non-resident corporation that was not related to a foreign affiliate of a taxpayer and the taxpayer throughout a particular taxation year shall be deemed to be related to the foreign affiliate of the taxpayer and that taxpayer throughout that year where

(i) a person has, in that year, acquired or disposed of shares of that non-resident corporation or any other corporation and, because of that acquisition or disposition, that non-resident corporation became or ceased to be a non-resident corporation that was related to the foreign affiliate of the taxpayer and the taxpayer, and

(ii) at the beginning of that year or at the end of that year, the non-resident corporation was related to the foreign affiliate of the taxpayer and the taxpayer.

Proposed Amendment — 95(2.2)(b)

(b) a non-resident corporation that was not related to a taxpayer or to a taxpayer and a foreign affiliate of the taxpayer, as the case may be, throughout a particular taxation year is deemed to be related to the taxpayer or to the taxpayer and the foreign affiliate of the taxpayer throughout that year if

(i) a person has, in that year, acquired or disposed of shares of the non-resident corporation or any other corporation and, because of that acquisition or disposition, the non-resident corporation became (or would have become, if paragraph 251(5)(b) did not apply to rights contained in the agreement under which the person acquired the shares), or ceased to be, a non-resident corporation that was related to the taxpayer or to the taxpayer and the foreign affiliate of the taxpayer, and

(ii) at the beginning, or at the end, of that year, the non-resident corporation was related to the taxpayer or to the taxpayer and the foreign affiliate of the taxpayer.

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(22), will amend para. 95(2.2)(b) to read as above, applicable to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. However, if a taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which the amending legislation is assented to, the amendment applies to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994.

Notwithstanding subsecs. 152(4) to (5) of the Act, any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year shall be made that is necessary to take an election or revocation referred to above into account.

Technical Notes: See under 95(2.2) opening words above.

Letter from Dept. of Finance, February 12, 2001:

Angelo Nikolakakis, Stikeman Elliott, Toronto

Dear Mr. Nikolakakis:. . .

Relationship between 95(2.2)(b) and 251(5)(b)

You are concerned that the application of paragraph 251(5)(b) to a right to acquire shares makes paragraph 95(2.2)(b) of the Act ineffective once the right is exercised and control of non-resident corporation is acquired in a taxation year. Paragraph 95(2.2)(b) is intended to address the "related throughout the year" requirement in paragraph 95(2)(a) of the Act in respect of certain non-resident corporations which have become, or have ceased to be related to a particular corporation resident in Canada and a foreign affiliate of such a corporation during the taxation year. You are requesting that we amend paragraph 95(2.2)(b) so that it would no longer be subject to paragraph 251(5)(b) as it applies in respect of the right that results in the acquisition of the shares.

We are prepared to recommend to the Minister that paragraph 95(2.2)(b) be amended to deal with this concern. The amendment would ensure that the existence of a right to acquire shares of a non-resident corporation referred to in paragraph 251(5)(b) of the Act that was exercised and the exercise of which resulted in the non-resident corporation becoming related in the year to the corporation resident in Canada would not preclude subsection 95(2.2)(b) from deeming the non-resident to be related to the corporation resident in Canada throughout the year.

Precise effect of 95(2.2)

You are concerned that the scope of paragraph 95(2.2) of the Act is not adequately defined. As a consequence, you are recommending that the subsection be amended to ensure that it does not apply for the purposes

of paragraph 95(2)(a) of the Act in respect of transactions occurring before a non-resident corporation actually becomes related to the corporation resident in Canada.

We agree that clarification would be helpful and are prepared to recommend another amendment to subsection 95(2.2) of the Act, whereby transactions described in paragraph 95(2)(a) that occur before a non-resident corporation becomes related are excluded from the scope of subsection 95(2.2). . .

Effective Date

It will be recommended that the amendments be made effective for taxation years commencing after announcement date. It will also be recommended that taxpayer be permitted to elect to have the amendments apply to the 1994 and subsequent taxation years of foreign affiliates where the taxpayer so elects in respect of all the taxpayer's foreign affiliates.

Thank you for taking the time to express your concerns and we trust this letter addresses most of them.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 95(2)(n) — Deemed FA and deemed qualifying interest; 95(2.21) — Exception.

History: The opening words of subsec. 95(2.2) amended by 2001, c. 17, subsec. 73(9) to replace "paragraph (2)(a)" with "subsection (2)", applicable to taxation years of a foreign affiliate of a taxpayer that begin after November 1999 except that, where the taxpayer so elects in writing and files the election with the Minister of National Revenue before the day of the taxpayer's filing-due date for the taxation year that includes June 14, 2001, the amendment applies to taxation years, of all of its foreign affiliates, that began after 1994 and, notwithstanding subsecs. 152(4) to (5), any assessment of a taxpayer's tax payable under the Act for any of those taxation years shall be made that is necessary to take into account the application of the amendment.

Subsec. 95(2.2) added by 1995, c. 21, subsec. 46(6), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the new subsection applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation of such foreign affiliate.

Proposed Addition — 95(2.21)

(2.21) Rule re subsection (2.2) — Subsection (2.2) does not apply for the purpose of paragraph (2)(a) in respect of any income or loss referred to in that paragraph, of a particular foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the taxation year of that particular affiliate or to which the taxpayer is related throughout the taxation year, to the extent that that income or loss relates to a transaction or event

(a) that occurred before that particular affiliate became, as determined without reference to subsection (2.2), a foreign affiliate of the taxpayer in respect of which the taxpayer had a qualifying interest or to which the taxpayer is related; or

(b) that occurred before a non-resident corporation (other than that particular affiliate), or a foreign affiliate of the taxpayer (other than that particular affiliate), referred to in paragraph (2)(a) became, as determined without reference to subsection (2.2)

(i) a foreign affiliate of the taxpayer in respect of which the taxpayer had a qualifying interest, or

(ii) related to the taxpayer and to that particular affiliate.

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(23), will add subsec. 95(2.21), applicable to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. However, if a taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which the amending legislation is assented to, the amendment applies to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994.

Notwithstanding subsecs. 152(4) to (5) of the Act, any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year shall be made that is necessary to take an election or revocation referred to above into account.

Technical Notes: New subsection 95(2.21) ensures that the application of the rules in subsection 95(2.2) will not result in the provisions of paragraph 95(2)(a) recharacterizing, as an income or a loss from an active business, any income or loss from property of a particular foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest or is related throughout the taxation year of that particular affiliate, that relates to a transaction or event

- that occurred before that particular affiliate became, as determined without reference to subsection 95(2.2), a foreign affiliate of the taxpayer in respect of which the taxpayer had a qualifying interest or to which the taxpayer is related; or
- that occurred before a non-resident corporation (other than that particular affiliate), or a foreign affiliate of the taxpayer (other than that particular affiliate), referred to in paragraph 95(2)(a) became, as determined without reference to subsection 95(2.2),
  - — a foreign affiliate of a taxpayer in respect of which the taxpayer had a qualifying interest, or
  - — related to the taxpayer and to that particular affiliate.

New subsection 95(2.21) applies to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. However, see the commentary to new subsection 95(2.2) for details of an election to apply new subsection 95(2.21) to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994. Note also that new subsection 95(2.21) is included in the Global Section 95 Election package described [under 95(2)(a) — ed.]

Letter from Dept. of Finance, June 4, 2001:

Dear [xxx]

We are responding to your letter of May 28, 2001, asking us to confirm our intention to recommend to the Minister of Finance that an amendment be made to paragraph 95(2)(f) of the *Income Tax Act* (the "Act").

We will recommend to the Minister that an amendment be made to paragraph 95(2)(f) of the Act that will, if adopted, have the effect of excluding from the foreign accrual property income (FAPI) of a foreign affiliate of a taxpayer the income of the foreign affiliate that was accrued or realized before it becomes a foreign affiliate of a taxpayer, whether such FAPI arises from dispositions of capital property or otherwise. It will be recommended that this amendment, if adopted, apply to taxation years of foreign affiliates commencing after 2000.

I trust that this meets your requirements.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, February 12, 2001:

Angelo Nikolakakis, Stikeman Elliott, Toronto

Dear Mr. Nikolakakis:. . .

Scope of Paragraph 95(2)(f)

You are also concerned that pre-acquisition transactions on income account rather than on capital account can result in FAPI in the year in which a non-resident corporation becomes a foreign affiliate. You are concerned that paragraph 95(2)(k) does not fully address this concern and as a result you are requesting an amendment to paragraph 95(2)(f) of the Act. You want to extend the scope of paragraph 95(2)(f) so that FAPI will not include income accruing or realised before a particular non-resident corporation becomes a foreign affiliate of a taxpayer resident in Canada.

Your request has merit and, consequently, we will recommend to the Minister of Finance (the "Minister") that an amendment be made to paragraph 95(2)(f) of the Act. This amendment will have the effect of ex-

cluding from the FAPI of a foreign affiliate of a taxpayer the income of the foreign affiliate that is accrued or realised before it becomes a foreign affiliate of a taxpayer.

[See also under 95(2)(i) — ed.]

Effective Date

It will be recommended that the amendments be made effective for taxation years commencing after announcement date. It will also be recommended that taxpayer be permitted to elect to have the amendments apply to the 1994 and subsequent taxation years of foreign affiliates where the taxpayer so elects in respect of all the taxpayer's foreign affiliates.

Thank you for taking the time to express your concerns and we trust this letter addresses most of them.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 95(2)(n) — Deemed FA and deemed qualifying interest.

(2.3) Application of para. (2)(a.1) — Paragraph (2)(a.1) does not apply to a foreign affiliate of a taxpayer in respect of a sale or exchange of property that is currency or a right to purchase, sell or exchange currency where

(a) the taxpayer is

(i) a bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities resident in Canada, the business activities of which are subject by law to the supervision of a regulating authority such as the Superintendent of Financial Institutions or a similar authority of a province, or

(ii) a subsidiary wholly-owned corporation of a corporation described in subparagraph (i);

(b) the sale or exchange was made in the course of a business carried on by the affiliate principally with persons with whom the affiliate deals at arm's length in the country under whose laws the affiliate was formed or continued and exists and is governed and in which the business is principally carried on by it; and

Proposed Amendment — 95(2.3)(b)

(b) the sale or exchange was made by the affiliate in the course of a business conducted principally with persons with whom the affiliate deals at arm's length, if

(i) the business is principally carried on in the country (other than Canada) under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued, or

(ii) the affiliate is a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities and the activities of the business are regulated

(A) under the laws of the country under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued, and under the laws of each country in which the business is carried on through a permanent establishment (as defined by regulation) in that country,

(B) under the laws of the country (other than Canada) in which the business is principally carried on, or

(C) under the laws of the country in which a particular corporation related to the affiliate is governed and any of exists, was (unless the particular corporation was continued in any jurisdiction) formed or organized, or was last continued, where those laws are recognized under the laws of the country in which the business is principally carried on and all of those countries are members of the European Union; and

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(24), will amend para. 95(2.3)(b) to read as above, applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after 1999.

Technical Notes: Subsection 95(2.3) exempts a foreign affiliate from the application of paragraph 95(2)(a.1) with respect to the sale or exchange of property that is currency when the conditions in that subsection are met.

One condition, found in paragraph 95(2.3)(b), is that the sale or exchange of property that is currency is made in course of a business carried on by the affiliate principally with arm's length persons in the country in which the affiliate is formed or organized and exists and is governed and in the country in which the business is principally carried on.

Paragraph 95(2.3)(b) is modified to require the sale or exchange to be made by the foreign affiliate in the course of a business conducted principally with arm's length persons. As well, the following conditions must be met:

- the business must be principally carried on in the country under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued, or
- if the affiliate is a foreign bank, a trust company, a credit union, an insurance corporation, or a trader or dealer in securities or commodities and the activities of the business are regulated
  - under the laws of the country under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued and under the laws of each country in which the business is carried on through a permanent establishment (as defined by proposed new Regulation 8202) in that country,
  - under the laws of the country in which the business is principally carried on, or
  - if the affiliate is related to a particular corporation, under the laws of the country under the laws of which the particular corporation is governed and any of exists, was (unless the particular corporation was continued in any jurisdiction) formed or organized, or was last continued, if those regulating laws are recognized under the laws of the country in which the business is principally carried on and all of those countries are members of the European Union.

Amended paragraph 95(2.3)(b) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after 1999.

Letter from Dept. of Finance, September 19, 2002:

Dear [xxx]

I am writing in reply to your letter dated August 16, 2002, in which you requested amendments to subsection 95(2.3) of the *Income Tax Act* (the "Act") and to the definition "indebtedness" in subsection 95(2.5) of the Act.

In your letter, you mention that the [xxx] ("Canco") has established a corporation under the [xxx] ("Forco"). We understand that Forco is a controlled foreign affiliate of Canco. Canco is a corporation resident in Canada, and its business activities are subject by law to supervision by the Superintendent of Financial Institutions. You have asked us to assume that Forco is resident in [xxx] for the purposes of the *Canada-[xxx] Income Tax Convention* and under the common law "mind and management" test. Forco intends to establish a branch in another foreign county, i.e., the United States, through which it will carry on business as a trader or dealer in securities. Forco's business activities will be regulated in that country. Forco's business will be principally carried on in that country and will employ more than [xxx]. You also mention that, as part of its financing arrangements, it is anticipated that Forco will enter

into [xxx] foreign exchange swaps with Canco in respect of its Canadian dollar borrowings as the functional currency of Forco is currency of that country.

In your letter, you expressed your concern that, as a result of these foreign exchange swaps, Forco will be considered to have sold property to Canco within the meaning of paragraph 95(2)(a.1) of the Act. The exception given by subsection 95(2.3) will not be available because the requirement in paragraph 95(2.3)(b) will not be met. Paragraph 95(2.3)(b) requires that the sale or exchange of currency was made in the course of a business carried on by Forco principally with persons with whom it deals at arm's length "in the country under whose laws (Forco) was formed or continued and exists and is governed and in which the business is principally carried on by it". This requirement will not be met because Forco carries on business principally in a jurisdiction other than its place of formation (or continuation). From a tax policy point of view, we agree with you that the scope of this requirement is too narrow and could be extended within the parameters established under related provisions in subsection 95. We are, therefore, prepared to recommend to the Minister of Finance that paragraph 95(2.3)(b) be amended so that the test in that paragraph is satisfied where the sale or exchange was made by the affiliate in the course of a business conducted principally with persons with whom the affiliate deals at arm's length, if

- the business is principally carried on in the country (other than Canada) under whose laws the affiliate is governed and exists, is governed and was (unless the affiliate was continued in any jurisdiction) formed or organized, or is governed and was last continued, or
- the affiliate is a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities and one of three alternative conditions is met.

The first of those alternative conditions is that the activities of the business are regulated: under the laws of the country under whose laws the affiliate is governed and exists, is governed and was (unless the affiliate was continued in any jurisdiction) formed or organized, or is governed and was last continued; and under the laws of each country in which the business is carried on.

The second of those alternative conditions is that the activities of the business are regulated under the laws of the country (other than Canada) in which the business is principally carried on.

The third of those alternative conditions is that the activities of the business are regulated under the laws of the country in which a corporation related to the affiliate is governed and exists, is governed and was (unless the non-resident corporation was continued in any jurisdiction) formed or organized, or is governed and was last continued, where those laws are recognized under the laws of the country in which the business is principally carried on and all of those countries are members of the European Union.

In your letter, you also expressed your concern that these foreign exchange swaps entered into between Forco and Canco may give rise to "indebtedness" of Canco for the purposes of paragraph 95(2)(a.3) of the Act. The exception given by way of the definition "indebtedness" in subsection 95(2.5) will not be available because the test in Paragraph (c) of that definition is not met. That paragraph requires that Forco's agreement with Canco providing for the purchase, sale or exchange of currency was entered into by Forco in the course of a business carried on by Forco principally with persons with whom it deals at arm's length "in the country under whose laws [Forco] was formed or continued and exists and is governed and in which the business is principally carried on by it". This requirement will not be met because Forco carries on business principally in a jurisdiction other than its place of formation (or continuation). From a tax policy point of view, we agree with you that the scope of this requirement is too narrow and could be extended within the parameters established under related provisions in subsection 95. We are, therefore, prepared to recommend to the Minister of Finance that paragraph (c) of the definition "indebtedness" in subsection 95(2.5) be amended so that the test in that paragraph is met where the agreements are entered into by the non-resident corporation with a person in the course of a business conducted principally with persons with whom the non-resident corporation deals at arm's length, if

- the business is principally carried on in the country (other than Canada) under whose laws the non-resident corporation is governed and exists, is governed and was (unless the non-resident corporation was continued in any jurisdiction) formed or organized, or is governed and was last continued, or
- the non-resident corporation is a foreign affiliate of the person and all of three particular conditions are met.

The first particular condition is that the person that entered into the agreement with the non-resident corporation is a taxpayer described in paragraph 95(2.3)(a).

The second particular condition is that the non-resident corporation is a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities.

The third particular condition is that the activities of the business

1. are regulated: under the laws of the country under whose laws the non-resident corporation is governed and exists, is governed and was (unless the non-resident corporation was continued in any jurisdiction) formed or organized, or is governed and was last continued; and under the laws of each country in which the business is carried on;

2. are regulated under the laws of the country (other than Canada) in which the business is principally carried on; or

3. are regulated under the laws of the country in which a corporation related to the non-resident corporation is governed and exists, is governed and was (unless the non-resident corporation was continued in any jurisdiction) formed or organized, or is governed and was last continued, where those laws are recognized under the laws of the country in which the business is principally carried on and all of those countries are members of the European Union.

We will recommend that these amendments be applicable to taxation years of foreign affiliates of taxpayers that begin after 1999. If the recommendation is acted upon, we anticipate that the amendments would be included in a future technical bill.

Thank you for writing.

Yours sincerely,

Len Farber
General Director, Tax Legislation Division, Tax Policy Branch

(c) the terms and conditions of the sale or exchange of such property are substantially the same as the terms and conditions of similar sales or exchanges of such property by persons dealing at arm's length.

History: Subsec. 95(2.3) added by 1995, c. 21, subsec. 46(6), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the new subsection applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation of such foreign affiliate.

Regulations: 8202 (meaning of "permanent establishment" for 95(2.3)(b)).

(2.4) Application of para. (2)(a.3) — Paragraph (2)(a.3) does not apply to a foreign affiliate of a taxpayer in respect of its income derived directly or indirectly from indebtedness to the extent that

(a) the income is derived by the affiliate in the course of a business conducted principally with persons with whom the affiliate deals at arm's length carried on by it as a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities, the activities of which are regulated in the country under whose laws the affiliate was formed or continued and exists and is governed and in which the business is principally carried on, and

Proposed Amendment — 95(2.4)(a)

(a) the income is derived by the affiliate in the course of a business conducted principally with persons with whom the affiliate deals at arm's length carried on by it as a foreign bank, a trust company, a credit union, an insurance corporation or a trader or

dealer in securities or commodities, the activities of which are regulated under the laws

(i) of the country under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued and of each country in which the business is carried on through a permanent establishment (as defined by regulation) in that country,

(ii) of the country in which the business is principally carried on, or

(iii) if the affiliate is related to a corporation, of the country under the laws of which that related corporation is governed and any of exists, was (unless that related corporation was continued in any jurisdiction) formed or organized, or was last continued, if those regulating laws are recognized under the laws of the country in which the business is principally carried on and all of those countries are members of the European Union, and

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(25), will amend para. 95(2.4)(a) to read as above, applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after 1999.

Technical Notes: In general terms, paragraph 95(2)(a.3) deems income of a foreign affiliate of a taxpayer from Canadian source indebtedness, or from Canadian source lease obligations, to be income from a business other than an active business. Therefore, this income will be included in computing the affiliate's foreign accrual property income (FAPI).

Subsection 95(2.4) provides that paragraph 95(2)(a.3) will not apply in respect of income derived by a foreign affiliate of a taxpayer directly or indirectly from indebtedness to the extent that

- the income was derived by the affiliate in the course of a business that was conducted principally with persons with whom the affiliate deals at arm's length, and that was carried on by the affiliate as a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities, the activities of which are regulated in the jurisdiction in which it was formed or continued and exists and is governed, and in which the business was principally carried (paragraph 95(2.4)(a)), and

- the income was derived from the trading or dealing in such indebtedness with arm's length persons resident in a country other than Canada in which the affiliate and its similarly regulated competitors compete and have a substantial market presence (paragraph 95(2.4)(b)).

Paragraph 95(2.4)(a) is amended to refer to income derived by the affiliate in the course of a business that was conducted principally with persons with whom the affiliate deals at arm's length, and that was carried on by the affiliate as a foreign bank, a trust company, a credit union, an insurance corporation, or a trader or dealer in securities or commodities, the activities of which are regulated under the laws

- of the country under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued and of each country in which the business is carried on through a permanent establishment (as defined by proposed new Regulation 8202) in that country,

- of the country in which the business is principally carried on, or

- if the affiliate is related to a corporation, of the country under the laws of which that related corporation is governed and any of exists, was (unless that related corporation was continued in any jurisdiction) formed or organized, or was last continued, if those regulating laws are recognized under the laws of the country in which the business is principally carried on and all of those countries are members of the European Union.

Amended paragraph 95(2.4)(a) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after1999.

Letter from Dept. of Finance, September 19, 2002: See under 95(2.3)(b).

(b) the income is derived by the affiliate from trading or dealing in the indebtedness (which, for this purpose, consists of income from the actual trading or dealing in the indebtedness and interest earned by the affiliate during a short term holding period on indebtedness acquired by it for the purpose of the trading or dealing) with persons (in this subsection referred to as "regular customers") with whom it deals at arm's length who were resident in a country other than Canada in which it and any competitor (which is resident in the country in which the affiliate is resident and regulated in the same manner the affiliate is regulated in the country under whose laws the affiliate was formed or continued and exists and is governed and in which its business is principally carried on) compete and have a substantial market presence,

and, for the purpose of this subsection, an acquisition of indebtedness from the taxpayer shall be deemed to be part of the trading or dealing in indebtedness described in paragraph (b) where the indebtedness is acquired by the affiliate and sold to regular customers and the terms and conditions of the acquisition and the sale are substantially the same as the terms and conditions of similar acquisitions and sales made by the affiliate in transactions with persons with whom it deals at arm's length.

History: Subsec. 95(2.4) added by 1995, c. 21, subsec. 46(6), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the new subsection applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation of such foreign affiliate.

Regulations: 8202 (meaning of "permanent establishment" for 95(2.4)(a)).

Proposed Addition — 95(2.41)

(2.41) Exception re paragraph (2)(a.3) — Paragraph (2)(a.3) does not apply to a foreign affiliate of a taxpayer resident in Canada in respect of the affiliate's income for a taxation year derived, directly or indirectly, from indebtedness of persons resident in Canada or from indebtedness in respect of businesses carried on in Canada (referred to in this subsection as the "Canadian indebtedness") if

(a) the taxpayer is, at the end of the affiliate's taxation year

(i) a life insurance corporation resident in Canada, the business activities of which are subject by law to the supervision of the Superintendent of Financial Institutions or a similar authority of a province, or

(ii) a corporation resident in Canada that is a subsidiary controlled corporation of a corporation described in subparagraph (i);

(b) the Canadian indebtedness is used or held by the affiliate, throughout the period in the taxation year that that indebtedness was used or held by the affiliate, in the course of carrying on a business (referred to in this subsection as the "foreign life insurance business") that is a life insurance business carried on outside Canada (other than a business deemed by

paragraph (2)(a.2) to be a separate business other than an active business), the activities of which are regulated

(i) in the country under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued, and

(ii) in the country, if any, in which the business is principally carried on;

(c) more than 90% of the gross premium revenue of the affiliate for the taxation year in respect of the foreign life insurance business was derived from the insurance or reinsurance of risks (net of reinsurance ceded) in respect of persons

(i) that were non-resident at the time that the policies in respect of those risks were issued or effected, and

(ii) that were at that time dealing at arm's length with the affiliate, the taxpayer and all persons that were related at that time to the affiliate or the taxpayer; and

(d) it is reasonable to conclude that the affiliate used or held the Canadian indebtedness

(i) to fund a liability or reserve of the foreign life insurance business, or

(ii) as capital that can reasonably be considered to have been required for the foreign life insurance business.

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(26), will add subsec. 95(2.41), applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after 1999. The subsec. may also, by election, be applicable to taxation years that begin after 1994: see Application note to 95(2)(a) proposed amendments.

If a taxpayer has made what would, but for this paragraph, be a valid election as described above, and the taxpayer has, on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day that is the third anniversary of the day on which the amending Act receives Royal Assent, filed with the Minister of National Revenue a notice in writing to revoke the election, the election is deemed, otherwise than for the purpose of this paragraph, never to have been made.

Notwithstanding subsecs. 152(4) to (5) of the Act, any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year shall be made that is necessary to take an election or revocation referred to above into account.

Technical Notes: In general terms, paragraph 95(2)(a.3) deems income of a foreign affiliate of a taxpayer from Canadian source indebtedness, or from Canadian source lease obligations, to be income from a business other than an active business. This income will therefore be included in computing the affiliate's FAPI. In general terms, new subsection 95(2.41) provides that paragraph 95(2)(a.3) will not apply to income of a foreign affiliate of a taxpayer from Canadian source indebtedness held by that affiliate where that indebtedness is used or held

- to fund a liability or reserve of the foreign life insurance business of the affiliate, or
- as capital that can reasonably be considered to have been required for that life insurance business.

More specifically, new subsection 95(2.41) provides that, where four conditions are met, paragraph 95(2)(a.3) does not apply to a foreign affiliate of a taxpayer resident in Canada in respect of the affiliate's income for a taxation year derived, directly or indirectly, from indebtedness of persons resident in Canada or from indebtedness in respect of businesses carried on in Canada (referred to as the "Canadian indebtedness").

The first condition, set out in paragraph 95(2.41)(a), is that the taxpayer be at the end of the affiliate's taxation year

- a life insurance corporation resident in Canada, the business activities of which are subject by law to the supervision of the Superintendent of Financial Institutions or a similar authority of a province, or
- a corporation resident in Canada that is a subsidiary controlled corporation of such a life insurance corporation.

The second condition, set out in paragraph 95(2.41)(b), is that the Canadian indebtedness be used or held by the affiliate, throughout the period (in the taxation year) that it was used or held by the affiliate, in the course of carrying on a business (referred to as the "foreign life insurance business") that is a life insurance business carried on outside Canada (other than a business deemed by paragraph 95(2)(a.2) to be a "separate business other than an active business"), the activities of which are regulated

- in the country under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued, and
- in the country, if any, in which the business is principally carried on.

The third condition, set out in paragraph 95(2.41)(c), is that more than 90% of the gross premium revenue of the affiliate for the taxation year in respect of the foreign life insurance business be derived from the insurance or reinsurance of risks (net of reinsurance ceded) in respect of persons

- that were non-resident at the time that the policies in respect of those risks were issued or effected, and
- that were at that time dealing at arm's length with the affiliate, the taxpayer and all persons that were related at that time to the affiliate or the taxpayer.

The fourth condition, set out in paragraph 95(2.41)(d), is that it be reasonable to conclude that the affiliate used or held the Canadian indebtedness

- to fund a liability or reserve of the foreign life insurance business, or
- as capital that can reasonably be considered to have been required for the foreign life insurance business.

In general terms, new subsection 95(2.41) ensures that a life insurer can hold Canadian source indebtedness in its foreign life insurance business without causing the income from that indebtedness to be treated as FAPI of the foreign affiliate.

New subsection 95(2.41) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after 1999. New subsection 95(2.41) is included in the Global Section 95 Election package described [under 95(2)(a) — ed.]

Letter from Dept. of Finance, December 18, 2000:

Angelo Nikolakakis, Stikeman Elliott, Toronto

Dear Mr. Nikolakakis:

We are responding to your letters of July 19, July 26 and November 20, 2000 concerning paragraph (b) of the definition "investment business" in subsection 95(1), the interaction of subsection 95(2.2) and paragraph 95(2)(f), and the scope of paragraph 95(2)(a.3) of the *Income Tax Act* (the "Act")...

In your letter of November 20, 2000, you requested that we amend subsection 95(2)(a.3) to preclude its application in respect of an affiliate's income from lease obligations relating to the use of property outside of Canada by persons having no material connection with the relevant taxpayer. You also requested that we confirm our willingness to recommend such an amendment to the Minister of Finance.

We are sympathetic to your request. Therefore, it will be recommended to the Minister of Finance that the Act be amended. The amendment will provide that paragraph 95(2)(a.3) of the Act does not apply to the income derived by a foreign affiliate of a taxpayer from lease obligations of persons (other than the taxpayer or persons that do not deal at arm's length with the taxpayer) relating to the use of property outside of Canada. It will be recommended that the amendment be made effective for taxation years of foreign affiliates that begin after 1999. It will also be recommended that a taxpayer be permitted to elect to have the amendment apply in respect of all the foreign affiliates of the taxpayer in respect of their taxation years commencing after 1994, which was the application date when it was first introduced.

Thank you for bringing these matters to our attention.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, October 12, 2000:

Dear [xxx]

I am responding to your letters of August 6, 1999, April 27, 2000, June 7, 2000, June 20, 2000 and July 10, 2000 regarding proposed amendments to section 95 of the *Income Tax Act* (the "Act").

First, you have proposed a new exception from paragraph 95(2)(a.3) of the Act for certain regulated foreign affiliates of certain regulated life insurance corporations resident in Canada. This exception would apply in respect of the income of those affiliates that is derived from certain Canadian indebtedness used or held in the course of carrying on a foreign life insurance business.

Second, you have requested that paragraph 95(2.1)(c) of the Act be amended to accommodate certain regulated foreign affiliates of certain regulated life insurance corporations resident in Canada where those affiliates carry on a foreign life insurance business in a country different from their country of incorporation or continuation.

We have reviewed your submissions and have concluded that they have merit. Consequently, we are prepared to recommend to the Minister of Finance that section 95 of the Act be amended to add a proposed new subsection 95(2.41) and a proposed new paragraph 95(2.1)(c). The specific changes we are contemplating in this connection are along the lines of the draft outline prepared by Wally Conway, and attached [changed slightly on public release of draft legislation — ed.] for your comment.

Thank you for bringing these matters to our attention.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 95(2.1)(c) — Rule for definition of "investment business".

(2.5) Definitions for para. (2)(a.3) — For the purpose of paragraph (2)(a.3),

"excluded income" and **"excluded revenue"** for a taxation year in respect of a foreign affiliate of a taxpayer mean, respectively, income or revenue, that is

(a) derived directly or indirectly from a specified deposit with a prescribed financial institution,

(b) derived directly or indirectly from a lease obligation of a person (other than the taxpayer or a person that does not deal at arm's length with the taxpayer) relating to the use of property outside Canada, or

(c) included in computing the affiliate's income for the year from carrying on a business through a permanent establishment in Canada;

Regulations: 8201 (meaning of "permanent establishment").

"indebtedness" does not include obligations of a person under agreements with non-resident corporations providing for the purchase, sale or exchange of currency where

(a) the agreements are swap agreements, forward purchase or sale agreements, forward rate agreements, futures agreements, options or rights agreements, or similar agreements,

(b) the person is a bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities resident in Canada, the business activities of which are subject by law to the supervision of a regulating authority in Canada such as the Superintendent of Financial Institutions or a similar authority of a province,

(c) the agreements are entered into by the non-resident corporation in the course of a business carried on by it principally with persons with which it deals at arm's length in the country under whose laws the non-resident corporation was formed or continued and exists and is governed and in which the business is principally carried on by it, and

Proposed Amendment — 95(2.5)"indebtedness"(c)

(c) the agreements are entered into by the non-resident corporation in the course of a business conducted principally with persons with whom the non-resident corporation deals at arm's length, if

(i) the business is principally carried on in the country (other than Canada) under whose laws the non-resident corporation is governed and any of exists, was (unless the non-resident corporation was continued in any jurisdiction) formed or organized, or was last continued, or

(ii) the non-resident corporation is a foreign affiliate of the person and

(A) the person is a taxpayer described in paragraph (2.3)(a),

(B) the non-resident corporation is a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities, and

(C) the activities of the business are regulated

(I) under the laws of the country under whose laws the non-resident corporation is governed and any of exists, was (unless the non-resident corporation was continued in any jurisdiction) formed or organized, or was last continued and under the laws of each country in which the business is carried on through a permanent establishment (as defined by regulation) in that country,

(II) under the laws of the country (other than Canada) in which the business is principally carried, or

(III) under the laws of the country under whose laws a corporation related to the non-resident corporation is governed and any of exists, was (unless that related corporation was continued in any jurisdiction) formed or organized, or was last continued, where those laws are recognized under the laws of the country in which the business is principally carried on and all of those countries are members of the European Union, and

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(27), will amend para. (c) of the definition "indebtedness" in subsec. 95(2.5) to read as above, applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after 1999.

Technical Notes: The definition "indebtedness" in subsection 95(2.5) provides an exception for a foreign affiliate of a certain Canadian taxpayers from the rules in subsection 95(2)(a.3) for indebtedness arising under agreements providing for the purchase, sale or exchange of currency if the conditions set out that definition are met.

One condition, found in paragraph (c) of the definition, is that agreements providing for the purchase, sale or exchange of currency must be entered into in the course of a business carried on by the foreign affiliate principally with arm's length persons in the country under whose laws the affiliate is formed or organized and exists and is governed and in the country in which the business is principally carried on.

Paragraph (c) is modified to require that the agreements providing for the purchase, sale or exchange of currency must be entered into in the course of a business conducted principally with arm's length persons. As well, the following conditions must be met:

- the business must be carried on principally in the country under whose laws the foreign affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued; or

- the foreign affiliate must be a foreign affiliate of a person described in paragraph 95(2.3)(a), and that person must be a foreign bank, a trust company, a credit union, an insurance corporation, or a trader or dealer in securities or commodities, and the activities of the business must be regulated
  - — under the laws of the country under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued and under the laws of each country in which the business is carried on through a permanent establishment (as defined by proposed new Regulation 8202) in that country,
  - — under the laws of the country in which the business is principally carried on, or
  - — under the laws of the country under whose laws a corporation related to the non-resident corporation is governed and any of exists, was (unless that related corporation was continued in any jurisdiction) formed or organized, or was last continued, if those regulating laws are recognized under the laws of the country in which the business is principally carried on and all of those countries are members of the European Union.

The amendments apply to taxation years, of a foreign affiliate of a taxpayer, that begin after 1999.

Letter from Dept. of Finance, September 19, 2002: See under 95(2.3)(b).

(d) the terms and conditions of such agreements are substantially the same as the terms and conditions of similar agreements made by persons dealing at arm's length;

"specified deposit" means a deposit of a foreign affiliate of a taxpayer resident in Canada with a prescribed financial institution resident in Canada where

(a) the income from the deposit is income of the affiliate for the year that would, but for paragraph (2)(a.3), be income from an active business carried on by it in a country other than Canada (other than a business the principal purpose of which is to derive income from property including interest, dividends, rents, royalties or similar returns or substitutes therefor or profits from the disposition of investment property), or

(b) the income from the deposit is income of the affiliate for the year that would, but for paragraph (2)(a.3), be income from an active business carried on by the affiliate principally with persons with whom the affiliate deals at arm's length in the country under whose laws the affiliate was formed or continued and exists and is governed and in which the business is principally carried on by it and the deposit was held by the affiliate in the course of carrying on that part of the business conducted with non-resident persons with whom the affiliate deals at arm's length or that part of the business conducted with a person with whom the affiliate was related where it can be demonstrated that the related person used or held the funds deposited in the course of a business carried on by the related person with non-resident persons with whom the related person and the affiliate deal at arm's length.

History: The definitions "excluded income" and "excluded revenue" added to subsec. 95(2.5) by 2001, c. 17, subsec. 73(10), applicable to taxation years of foreign affiliates that begin after 1999 except that, where a taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxation year that includes June 14, 2001, subsec. 95(2.5) applies to taxation years, of all of the taxpayer's foreign affiliates, that begin after 1994 except that, where there has been a change in the taxation year of a particular foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the enacted provisions apply to taxation years of the particular foreign affiliate of the taxpayer that end after 1994, unless

(a) the particular foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of the particular foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that it would have begun if there had not been that change in the taxation year of the particular foreign affiliate,

and, notwithstanding subsections 152(4) to (5), any assessment of a taxpayer's tax payable under the Act for any of those taxation years shall be made that is necessary to take into account the application of this amendment.

Subsec. 95(2.5) added by 1995, c. 21, subsec. 46(6), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the new subsection applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation of such foreign affiliate.

Regulations: 7900 (prescribed financial institution).

(3) Definition of "services" — For the purposes of paragraph (2)(b), "services" includes the insurance of Canadian risks but does not include

(a) the transportation of persons or goods; or

(b) services performed in connection with the purchase or sale of goods.

Proposed Addition — 95(3)(c), (d)

(c) the transmission of electronic signals or electricity along a transmission system located outside Canada; or

(d) the manufacturing or processing outside Canada, in accordance with the taxpayer's specifications and under a contract between the taxpayer and the affiliate, of tangible property that is owned by the taxpayer if the property resulting from the manufacturing or processing is used or held by the taxpayer in the ordinary course of the taxpayer's business carried on in Canada.

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(28), will add paras. 95(3)(c) and (d), applicable to 2001 *et seq.* of a foreign affiliate of a taxpayer. The paras. may also, by election, be applicable to taxation years that begin after 1994: see Application note to 95(2)(a) proposed amendments.

If a taxpayer has made what would, but for this paragraph, be a valid election as described above (re para. (d)), and the taxpayer has, on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day that is the third anniversary of the day on which the amending Act receives Royal Assent, filed with the Minister of National Revenue a notice in writing to revoke the election, the election is deemed, otherwise than for the purpose of this paragraph, never to have been made.

Notwithstanding subsecs. 152(4) to (5) of the Act, any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year shall be made that is necessary to take an election or revocation referred to above into account.

Technical Notes: Paragraph 95(2)(b) provides that service income of a controlled foreign affiliate of a taxpayer will, under certain circumstances, be treated as income from a business other than an active business.

Subsection 95(3) provides that, for the purpose of paragraph 95(2)(b), "services" includes the insurance of Canadian risks but does not include

- the transportation of persons or goods (paragraph 95(3)(a)), or
- services performed in connection with the purchase or sale of goods (paragraph 95(3)(b)).

New paragraph 95(3)(c) ensures that, for the purpose of paragraph 95(2)(b), the transmission of electronic signals or electricity along a transmission system located outside Canada does not constitute "services".

New paragraph 95(3)(d) accommodates certain types of contract manufacturing services provided by a foreign affiliate of a taxpayer. That paragraph ensures that, for the purpose of paragraph 95(2)(b), manufacturing or processing does not constitute "services" where it consists of manufacturing or processing outside Canada, in accordance with the taxpayer's specifications and under a contract between the taxpayer and the affiliate, of tangible property that is owned by the taxpayer if the property resulting from the manufacturing or processing is used or held by the taxpayer in the ordinary course of the taxpayer's business carried on in Canada.

New paragraphs 95(3)(c) and (d) apply to the 2001 and subsequent taxation years of a foreign affiliate of a taxpayer. However, if the taxpayer elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which these amendments are assented to, new paragraphs 95(3)(c) and (d) apply to the taxation years, of all foreign affiliates of the taxpayer, that begin after 1994. Note, also, that new paragraph 95(3)(d) is included in the Global Section 95 Election package described [under 95(2)(a) — ed.]

Letter from Dept. of Finance, September 14, 2001:

Dear [xxx]

I am writing in reply to your letter to Mr. Wally Conway dated July 18, 2001 in which you requested an amendment to the *Income Tax Act* (the "Act") to extend the scope of paragraph 95(3)(a) of the Act.

In your letter, you argue the following:

- Paragraph 95(2)(b) of the Act can apply, *inter alia*, to the provision of services provided by a controlled foreign affiliate of a taxpayer where the amount paid or payable in consideration for those services is deducted in computing the income from a business carried on in Canada by any person in relation to whom the affiliate is a controlled foreign affiliate or a person related to the controlled foreign affiliate.
- Where applicable, paragraph 95(2)(b) of the Act deems the provision of such services to be a separate business other than an active business carried on by the affiliate. The main consequence of this characterization is that the income earned by the affiliate from the provision of the services is deemed to be foreign accrual property income (FAPI) of the affiliate.
- Subsection 95(3) provides an exception to paragraph 95(2)(b). Subsection 95(3) excludes certain activities from constituting "services" for the purpose of paragraph 95(2)(b).
- In particular, paragraph 95(3)(a) ensures that "the transportation of persons or goods" is excluded from constituting "services" for the purpose of paragraph 95(2)(b). The provisions of paragraph 95(3)(a) do not offend paragraph 95(2)(b), as there is no erosion of the tax base or diversion of income from Canada if the services are *required* by their very nature to be performed outside Canada. Specifically, the transportation of persons or goods outside Canada is, by its very nature, a service that must be performed outside Canada and is therefore markedly different from services that otherwise could have been performed in Canada.

Based on this policy rationale underlying paragraph 95(3)(a), you submit in your letter that subsection 95(3) should be expanded in scope to ensure also that the transmission of electronic signals or electricity along a transmission system located outside Canada be excluded from being "services" for the purpose of paragraph 95(2)(b). We agree with this submission from a tax policy standpoint, and are therefore prepared to recommend to the Minister of Finance that paragraph 95(3)(a) be amended to ensure that the transmission of electronic signals or electricity along a transmission system located outside Canada be excluded from being "services" for the purpose of paragraph 95(2)(b). We will recommend that the amendment be effective for the 2001 and subsequent taxation years of foreign affiliates. If the recommendation is acted upon, I would anticipate that such an amendment would be included in the next technical bill.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Proposed Addition — 95(3.1)–(3.8)

(3.1) Designated property — subparagraph (2)(a.1)(i) — Designated property referred to in subparagraph (2)(a.1)(i) is property that is described in the portion of paragraph (2)(a.1) that is before subparagraph (i) that is

(a) property that

(i) was — in the course of carrying on a business in Canada — manufactured, produced, grown, extracted or processed in Canada by the taxpayer, or by a person with whom the taxpayer does not deal at arm's length, or

(ii) was — in the course of a business carried on by a foreign affiliate of the taxpayer outside Canada — manufactured or processed from tangible property that, at the time of the manufacturing or processing, was owned by the taxpayer or by a person related to the taxpayer and used or held by the owner in the course of carrying on a business in Canada, if the manufacturing or processing was in accordance with the specifications of the owner of the tangible property and under a contract between that owner and that foreign affiliate;

(b) property that was acquired, in the course of carrying on a business in Canada, by a purchaser from a vendor if

(i) the purchaser is the taxpayer or is a person resident in Canada with whom the taxpayer does not deal at arm's length, and

(ii) the vendor is a person

(A) with whom the taxpayer deals at arm's length,

(B) who is not a foreign affiliate of the taxpayer, and

(C) who is not a foreign affiliate of a person resident in Canada with whom the taxpayer does not deal at arm's length; or

(c) property that was acquired by a purchaser from a vendor if

(i) the purchaser is the taxpayer or is a person resident in Canada with whom the taxpayer does not deal at arm's length,

(ii) the vendor is a foreign affiliate of

(A) the taxpayer, or

(B) a person resident in Canada with whom the taxpayer does not deal at arm's length, and

(iii) that property was manufactured, produced, grown, extracted or processed in the country under whose laws the vendor is governed and any of exists, was (unless the vendor was continued in any jurisdiction) formed or organized, or was last continued and in which the vendor's business is principally carried on.

Technical Notes: New subsection 95(3.1) provides, for the purpose of amended subparagraph 95(2)(a.1)(i), a definition of the expression "designated property". For more detail about that definition, see the commentary to subparagraph 95(2)(a.1)(i).

New subsection 95(3.1) applies after to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. However, a taxpayer may elect to apply this amendment to taxation years that begin after 1994. For details about the election, refer to the commentary to subparagraph 95(2)(a.1)(i).

(3.2) Definitions — The following definitions apply for the purposes of this subsection and paragraphs (2)(c.1) to (c.6), (e.2) to (e.5) and (f.3) to (f.7) and subsections (3.3) to (3.6).

"dividend-like redemption", of a share of the capital stock of a foreign affiliate (referred to in this definition as the "issuing foreign affiliate") of a corporation resident in Canada, means a redemption, an acquisition or a cancellation (in this definition referred to as the "redemption") of the share if

(a) the share is (or would, if held by a foreign affiliate of the corporation resident in Canada, be) excluded property of another foreign affiliate of the corporation resident in Canada that, immediately before the redemption, held the share; and

(b) the surplus entitlement percentage of the corporation resident in Canada, in respect of the issuing foreign affiliate, immediately before the redemption, is equal to the surplus entitlement percentage of the corporation resident in Canada, in respect of the issuing foreign affiliate, immediately after the redemption.

Technical Notes: New subsection 95(3.2) provides definitions for the purposes of new subsections 95(3.2), (3.3) to (3.6) and new paragraphs 95(2)(c.1) to (c.6), (e.2) to (e.5), and (f.3) to (f.9).

See the commentary for those proposed new subsections and paragraphs for further detail.

Note also that the expression "exempt trust", as defined in subsection 95(3.2), is also used in new paragraphs 95(2)(w) and (x) by reference. For detail, see the commentary to those paragraphs.

"Dividend-like redemption" of a share of a foreign affiliate (referred to here as the "issuing foreign affiliate") of a corporation resident in Canada is a redemption, an acquisition or a cancellation (referred to here as the "redemption") of the share if

- the share is excluded property (or would be excluded property if the holder of the share were a foreign affiliate of the corporation resident in Canada) of another foreign affiliate, of the corporation resident in Canada, that, immediately before the redemption, held the share, and
- the surplus entitlement percentage of the corporation resident in Canada, in respect of the issuing foreign affiliate, immediately before the redemption, is equal to the surplus entitlement percentage of the corporation resident in Canada, in respect of the issuing foreign affiliate, immediately after the redemption.

Related Provisions: 95(3.6) — Partnerships and trusts.

"eligible trust", at any time, means a trust other than

(a) a trust created or maintained for charitable purposes;

(b) a trust governed by an employee benefit plan;

(c) a trust described in paragraph (a.1) of the definition "trust" in subsection 108(1);

(d) a trust governed by a salary deferral arrangement;

(e) a trust operated for the purpose of administering or providing superannuation, pension, retirement or employee benefits; or

(f) a trust that at or before that time was a personal trust.

Technical Notes: "Eligible trust", at any time, is a trust other than

- a trust created or maintained for charitable purposes,
- a trust governed by an employee benefit plan,
- a trust described in paragraph (a.1) of the definition "trust" in subsection 108(1),
- a trust governed by a salary deferral arrangement,
- a trust established for the purpose of administering a superannuation, pension, retirement, or employee benefits plan, or
- a trust that, at or before the time, was a personal trust.

Related Provisions: 95(3.6) — Partnerships and trusts.

"exempt trust", at a particular time in respect of a taxpayer resident in Canada, means a trust that, at that time, is a trust under which the interest of each beneficiary (in this definition determined without reference to subsection 248(25)) under the trust is, at all times that the interest exists during the trust's taxation year that includes the particular time, a specified fixed interest of the beneficiary in the trust, if at the particular time

(a) the trust is an eligible trust;

(b) there are at least 150 beneficiaries each of whom holds a specified fixed interest in the trust with a fair market value of at least $500; and

(c) the total of all amounts each of which is the fair market value of an interest as a beneficiary under the trust held by a specified purchaser in respect of the taxpayer resident in Canada is not more than 10% of the total fair market value of all interests as a beneficiary under the trust.

Technical Notes: "Exempt trust", at a particular time, in respect of a taxpayer resident in Canada, is a trust that, at that time, is a trust under which the interest of each beneficiary (in this definition determined without reference to subsection 248(25)) under the trust is, at all times that the interest exists during the trust's taxation year that includes the particular time, a specified fixed interest of the beneficiary in the trust, if at the particular time

- the trust is an eligible trust,
- there are at least 150 beneficiaries each of whom holds a specified fixed interest in the trust with a fair market value of at least $500, and
- the total of all amounts each of which is the fair market value of an interest as a beneficiary under the trust held by a specified purchaser in respect of the taxpayer resident in Canada is not more than 10% of the total fair market value of all interests as a beneficiary under the trust.

Related Provisions: 95(3.6) — Partnerships and trusts; 95(3.7) — Anti-avoidance rule re 150 beneficiaries.

"participating interest", in an entity, means

(a) if the entity is a corporation, a share of the capital stock of the corporation;

(b) if the entity is a trust, an interest as a beneficiary under the trust;

(c) if the entity is a partnership, a partnership interest in the partnership; and

(d) a property that is, under a contract, in equity or otherwise, either immediately or in the future, and absolutely or contingently, convertible into, exchangeable for, or a right to acquire, directly or indirectly,

(i) a share or interest described in any of paragraphs (a) to (c), or

(ii) a property (other than money) the fair market value of which is determined primarily by reference to the fair market value of those shares or interests.

Technical Notes: "Participating interest" in a corporation, trust or partnership, as the case may be, (referred to here as the "entity") is a property that is

- where the entity is a corporation, a share of the capital stock of that corporation,
- where the entity is a trust, an interest as a beneficiary under that trust,

- where the entity is a partnership, an interest in that partnership, and
- under a contract, in equity or otherwise, either immediately or in the future, and absolutely or contingently, convertible into, exchangeable for or a right to acquire, directly or indirectly, a property described in paragraphs (a) to (c) of this definition, or a property the fair market value of which is determined principally by reference to those properties.

The expression "entity" is defined in new amended subsection 95(1). See the commentary to subsection 95(1) for more detail.

Related Provisions: 95(3.6) — Partnerships and trusts; 248(1)"participating interest" — Definition in 94.1(1) applies to the Act as a whole.

"specified fixed interest", at a particular time in a trust, means a capital interest in the trust if

(a) the interest includes, at the particular time, a right of the interest holder as a beneficiary under the trust to receive, at or after the particular time and directly from the trust, income or capital of the trust;

(b) the interest was acquired, at or before the particular time, from the trust by any interest holder for consideration equal to its fair market value at the time of the acquisition; and

(c) no right of the interest holder as a beneficiary under the trust to any income or capital of the trust may cease to be a right of the interest holder otherwise than because of a disposition of the interest for consideration equal to the fair market value of the interest at the time of disposition or because of the disposition of the interest as a gift.

Technical Notes: "Specified fixed interest", at a particular time, in a trust is a capital interest in the trust if

- the interest includes, at the particular time, a right of the interest holder as a beneficiary under the trust to receive, at or after the particular time and directly from the trust, income or capital of the trust,
- the interest was acquired, at or before the particular time, from the trust by any interest holder for consideration equal to its fair market value at the time of that acquisition, and
- no right as a beneficiary under the trust to any income or capital of the trust may cease to be a right of the interest holder otherwise than because of a disposition of the interest for consideration equal to the fair market value of the interest at the time of disposition or because of the disposition of the interest as a gift.

Related Provisions: 95(3.6) — Partnerships and trusts.

"specified purchaser", at any time in respect of a particular corporation resident in Canada, means a person or partnership that is, at that time,

(a) the particular corporation;

(b) a taxpayer resident in Canada with which the particular corporation does not deal at arm's length;

(c) a foreign affiliate of a person described in paragraph (a) or (b);

(d) a non-resident person with which a person described in any of paragraphs (a) to (c) does not deal at arm's length;

(e) a trust (other than an exempt trust) in which a person or partnership described in any of paragraphs (a) to (d) and (f) is beneficially interested; or

(f) a partnership in which a person or partnership described in any of paragraphs (a) to (e) has, directly or indirectly in any manner whatever, a partnership interest.

Technical Notes: "Specified purchaser", at any time, in respect of a particular corporation resident in Canada is a person or partnership that is, at that time,

- the particular corporation,
- a taxpayer resident in Canada with which the particular corporation does not deal at arm's length,
- a foreign affiliate of a person described above,
- a non-resident taxpayer with which a person described above does not deal at arm's length,
- a trust (other than an exempt trust) in which any person or partnership described above or below has a beneficial interest, or
- a partnership in which a person or partnership described above has, directly or indirectly, in any manner whatever, a partnership interest.

Related Provisions: 95(3.5)"specified purchaser" — Definition for other purposes; 95(3.6) — Partnerships and trusts.

"specified vendor", at any time in respect of a particular corporation resident in Canada, means a person or partnership that is, at that time,

(a) a foreign affiliate of the particular corporation;

(b) a foreign affiliate of a partnership of which the particular corporation is a member;

(c) a partnership a member of which is a person described in paragraph (a) or (b); or

(d) a partnership in which a person or partnership described in any of paragraphs (a) to (c) has, directly or indirectly in any manner whatever, a partnership interest.

Technical Notes: "Specified vendor", at any time, in respect of a particular corporation resident in Canada, is a person or partnership that is, at that time,

- a foreign affiliate of the particular corporation,
- a foreign affiliate of a partnership of which the particular corporation is a member,
- a partnership a member of which is a person described above, or
- a partnership in which any person or partnership described above has, directly or indirectly, in any manner whatever, a partnership interest.

Subsection 95(3.2) applies after December 20, 2002.

Related Provisions: 95(3.5)"specified vendor" — Definition for other purposes; 95(3.6) — Partnerships and trusts.

(3.3) Definitions for paragraphs (2)(c.1) to (c.6) — The following definitions apply for the purposes of this subsection and paragraphs (2)(c.1) to (c.6).

"contributed property" means a property

(a) that was held by the disposed foreign affiliate at the original disposition time, and was held by a person or partnership that was not a specified purchaser in respect of the particular corporation resident in Canada immediately after a transaction or an event that is, or a series of transactions or events that includes,

(i) a particular disposition described in clause (a)(i)(A) or (ii)(B) of the definition "triggering disposition",

(ii) the dissolution, winding-up, or cessation of the existence, described in paragraph (a) of the definition "specified discontinuance", or

(iii) a merger or combination described in paragraph (b) of the definition "specified discontinuance"; and

(b) for which it is reasonable to conclude that one of the main reasons for holding the property at the original disposition time was

(i) to avoid the disqualification of the particular disposition as a triggering disposition, or

(ii) to avoid the characterization of a particular dissolution, winding-up, or cessation of the existence, of a specified purchaser in respect of a particular corporation resident in Canada as a specified discontinuance.

Technical Notes: New subsection 95(3.3) provides definitions for the purposes of subsection 95(3.3) and paragraphs (2)(c.1) to (c.6). See the commentary for those proposed new paragraphs for further detail.

"Contributed property" is a property

- that was held by the disposed foreign affiliate at the original disposition time, and was held by a person or partnership that was not a specified purchaser in respect of the particular corporation resident in Canada immediately after a transaction or event, or series of transactions or events that includes,
  - a particular disposition described in clauses (a)(i)(A) and (ii)(B) of the definition "triggering disposition",
  - the dissolution, winding-up, or cessation of the existence, described in paragraph (a) of the definition "specified discontinuance", or
  - a merger or combination described in paragraph (b) of the definition "specified discontinuance", and
- for which it is reasonable to conclude that one of the main reasons for holding the property at the original disposition time was
  - to avoid the disqualification of the particular disposition as a triggering disposition, or
  - to avoid the characterization of a particular dissolution, winding-up, or cessation of the existence, of a specified purchaser in respect of a particular corporation resident in Canada as a specified discontinuance.

Related Provisions: 95(3.2) — Definitions; 95(3.6) — Partnerships and trusts; 248(5) — Substituted property; 248(10) — Series of transactions or events.

"specified discontinuance", of a current holder in respect of a particular corporation resident in Canada, means

(a) a dissolution, winding-up, or cessation of the existence, of a corporation or partnership if, immediately after a transaction or an event that is, or a series of transactions or events that includes, the dissolution, winding-up or cessation, a person or partnership that is a specified purchaser, in respect of the particular corporation resident in Canada,

(i) holds the specified share, or

(ii) holds property that, immediately before the commencement of the transaction or event or of the series, was property (or property substituted for such property) of the disposed foreign affiliate that, immediately before that commencement, had a total fair market value that was greater than 50% of the total fair market value, immediately before that commencement, of all of the property (other than contributed property) of the disposed foreign affiliate;

(b) a merger or combination of corporations or partnerships if, immediately after a transaction or an event that is, or a series of transactions or events that includes, the merger or combination, a specified purchaser in respect of the particular corporation resident in Canada

(i) holds the specified share, or

(ii) holds property that, immediately before the commencement of the transaction or event or of the series, was property (or property substituted for such property) of the disposed foreign affiliate that, immediately before that commencement, had a total fair market value that was greater than 50% of the total fair market value, immediately before that commencement, of all of the property (other than contributed property) of the disposed foreign affiliate; or

(c) a disposition of a participating interest in the current holder if, in the course of a transaction or an event that is, or a series of transactions or events that includes, the disposition of the participating interest, the specified share (or any portion of the specified share) or a right to, or an interest in, the specified share (or any portion of the interest in the specified share) becomes property of a person or partnership that is a specified purchaser in respect of the particular corporation resident in Canada.

Technical Notes: "Specified discontinuance" of a current holder in respect of a particular corporation resident in Canada is

- a dissolution, winding-up, or a cessation of the existence, of a corporation or partnership if, immediately after a transaction or event, or series of transactions or events that includes the dissolution, winding-up or cessation, a person or partnership that is a specified purchaser in respect of the particular corporation resident in Canada,
  - holds the specified share, or
  - holds property that, immediately after the commencement of the transaction or event or of the series, was property (or property substituted for such property) of the disposed foreign affiliate that, immediately before that commencement, had a total fair market value that was greater than 50% of the total fair market value, immediately before that commencement, of all of the property (other than contributed property) of the disposed foreign affiliate,
- a merger or combination of corporations or partnerships if, immediately after a transaction or event that is, or series of transactions or events that includes, the merger or combination, a person or partnership that is a specified purchaser in respect of the particular corporation resident in Canada,
  - holds the specified share, or
  - holds property that, immediately before the commencement of the transaction or event or of the series, was property (or property substituted for such property) of the disposed foreign affiliate that, immediately before that commencement, had a total fair market value that was greater than 50% of the total fair market value of all of the property (other than contributed property) of the disposed foreign affiliate, or
- a disposition of a participating interest in the current holder if, in the course of a transaction or event that is, or series of transactions or events that includes, the disposition of the participating interest, the specified share (or any portion of the specified share) or a right to or an interest in the specified share (or any portion of the interest in the specified share) becomes property of a person or partnership that is a specified purchaser in respect of the particular corporation resident in Canada.

Note that the expression "contributed property" is defined in new subsection 95(3.3).

Related Provisions: 95(3.2) — Definitions; 95(3.4)"specified discontinuance", 95(3.5)"specified discontinuance" — Definitions for other purposes; 95(3.6) — Partnerships and trusts; 248(5) — Substituted property; 248(10) — Series of transactions or events.

"triggering disposition", of a specified share in respect of a particular corporation resident in Canada, means the first disposition, after the original disposition time, of the specified share to a person or partnership that is, immediately after that first disposition, not a specified

purchaser in respect of the particular corporation resident in Canada, but does not include

(a) a disposition of the specified share in respect of the particular corporation resident in Canada that arises in the course of

(i) a dissolution, winding-up, or cessation of the existence, of

(A) the disposed foreign affiliate if, immediately after a transaction or an event that is, or a series of transactions or events that includes, the dissolution, winding-up or cessation, a specified purchaser in respect of the particular corporation resident in Canada holds property that, immediately before the commencement of the transaction or event or of the series, was property (or property substituted for such property) of the disposed foreign affiliate that, immediately before that commencement, had a total fair market value that was greater than 50% of the total fair market value, immediately before that commencement, of all of the property (other than contributed property) of the disposed foreign affiliate, or

(B) a current holder in respect of the particular corporation resident in Canada if, immediately after a transaction or an event that is, or a series of transactions or events that includes, the dissolution, winding-up or cessation, a specified purchaser in respect of the particular corporation resident in Canada holds the specified share (or any portion of the specified share) or a right to, or an interest in, the specified share (or any portion of the right to or interest in the specified share), or

(ii) a merger or combination of corporations or partnerships if, immediately after a transaction or an event that is, or a series of transactions or events that includes, the merger or combination, a specified purchaser in respect of the particular corporation resident in Canada holds

(A) the specified share (or any portion of the specified share) or a right to, or an interest in, the specified share (or any portion of the right to or interest in the specified share), or

(B) property that, immediately before the commencement of the transaction or event or of the series, was property (or property substituted for such property) of the disposed foreign affiliate that, immediately before that commencement, had a total fair market value that was greater than 50% of the total fair market value, immediately before that commencement, of all of the property (other than contributed property) of the disposed foreign affiliate;

(b) a disposition of the specified share in respect of the particular corporation resident in Canada that is part of a series of transactions or events that includes

(i) the disposition of the specified share to a person or partnership that is not a specified purchaser in respect of the particular corporation resident in Canada, and

(ii) the acquisition, by a specified purchaser in respect of the particular corporation resident in Canada, of

(A) the specified share (or any portion of the specified share) or a right to, or an interest in, the specified share (or any portion of the right to or interest in the specified share),

(B) a share, a right to a share, or a right to acquire a share (which share or right is referred to in this subparagraph as a "substituted share") of the same or a substantially similar class of shares of the capital stock of the disposed foreign affiliate as the specified share or a substituted share, or

(C) a property the fair market value of which is determined primarily by reference to property that is the specified share (or a substituted share) or to property that, at the original disposition time, was property (or property substituted for it) of the disposed foreign affiliate, or to any combination of those properties; or

(c) a particular disposition of the specified share in respect of the particular corporation resident in Canada if, immediately after a transaction or an event that is, or a series of transactions or events that includes, the particular disposition

(i) a specified purchaser in respect of the particular corporation resident in Canada holds property (other than contributed property) the fair market value of which is derived primarily from property that was, immediately before the original disposition time,

(A) property of the disposed foreign affiliate,

(B) property from which property of the disposed foreign affiliate primarily derived its fair market value,

(C) properties substituted for properties described in clause (A) or (B), or

(D) any combination of properties described in any of clauses (A) to (C), and

(ii) the fair market value of the properties described in subparagraph (i) is greater than 50% of the fair market value, immediately before the original disposition time, of all of the property of the disposed foreign affiliate.

Technical Notes: "Triggering disposition" of a specified share in respect of a particular corporation resident in Canada is the first disposition, after the original disposition time, of the specified share to a person or partnership that is, immediately after that first disposition, not a specified purchaser in respect of the particular corporation resident in Canada, but does not include

- a disposition of the specified share in respect of the particular corporation resident in Canada that arises in the course of
  - a dissolution, winding-up, or a cessation of the existence, of
    - the disposed foreign affiliate if, immediately after a transaction or event that is, or series of transactions or events that includes, the dissolution, winding-up or cessation, a specified purchaser in respect of the particular corporation resident in Canada holds property that, immediately before the commencement of the transaction or event or of the series, was property (or property substituted for such property) of the disposed foreign affiliate that, immediately before that commencement, had a total fair market value that was greater than 50% of the total fair market value, immediately before that commencement, of all the property

(other than contributed property) of the disposed foreign affiliate, or

- a current holder in respect of the particular corporation resident in Canada if, immediately after a transaction or event that is, or series of transactions or events that includes, the dissolution, winding-up or cessation, a specified purchaser in respect of the particular corporation resident in Canada holds the specified share (or any portion of the specified share) or a right to or an interest in the specified share (or any portion of the right to or interest in the specified share), or

— a merger or combination of corporations or partnerships if, immediately after a transaction or event that is, or series of transactions or events that includes, the merger or combination, a specified purchaser in respect of the particular corporation resident in Canada holds

- the specified share (or any portion of the specified share) or a right to or an interest in the specified share (or any portion of the right to or interest in the specified share), or

- property that, immediately before the commencement of the transaction or event or of the series, was property (or property substituted for such property) of the disposed foreign affiliate that, immediately before that commencement, had a total fair market value that was greater than 50% of the total fair market value, immediately before that commencement, of all of the property (other than contributed property) of the disposed foreign affiliate;

- a disposition of the specified share in respect of the particular corporation resident in Canada that is part of a series of transactions or events that includes

— the disposition of the specified share to a person or partnership that is not an a specified purchaser in respect of the particular corporation resident in Canada, and

— the acquisition, by a specified purchaser in respect of the particular corporation resident in Canada, of

- the specified share (or any portion of the specified share) or a right to or an interest in the specified share (or any portion of the right to or interest in the specified share),

- a share, a right to a share, or a right to acquire a share (which share or right is referred to here as a "substituted share") of the same or a substantially similar class of shares of the disposed foreign affiliate as the specified share or a substituted share, or

- a property the fair market value of which is determined primarily by reference to property that is the specified share (or a substituted share) or to property that, at the original disposition time, was property (or property substituted for it) of the disposed foreign affiliate, or to any combination of those properties; or

- a particular disposition of the specified share in respect of the particular corporation resident in Canada if, immediately after a transaction or event that is, or series of transactions or events that includes, the particular disposition,

— a specified purchaser in respect of the particular corporation resident in Canada holds property (other than contributed property) the fair market value of which is derived primarily from property that was, immediately before the original disposition time,

- property of the disposed foreign affiliate,

- property from which property of the disposed foreign affiliate primarily derived its fair market value, or

- any combinations of such properties or properties substituted for such properties, and

— the fair market value of those properties is greater than 50% of the fair market value, immediately before the original disposition time, of all of the property the disposed foreign affiliate.

Subsection 95(3.3) applies after December 20, 2002.

Letter from Department of Finance, May 11, 2005:

Dear [xxx]

I am writing in response to your correspondence dated April 4, 2005 to Mr. Wallace Conway in which you express your concern with respect to the wording of the definition "triggering disposition" in proposed subsection 95(3.3) of the *Income Tax Act*. That proposed subsection is contained in the proposals announced by the Minister of Finance on February 27, 2004 in connection with foreign affiliates.

In the example provided in your correspondence, a foreign affiliate (FA1) of a corporation resident in Canada holds shares ("specified shares" within the meaning of proposed paragraph 95(2)(c.1) of the Act) of the capital stock of another foreign affiliate (FA2) of the corporation resident in Canada that are excluded property. FA1 disposes of those specified shares of FA2 to another foreign affiliate (FA3) of the corporation resident in Canada. As part of the same series of transactions that includes that first disposition (the internal disposition), those specified shares of FA2 are disposed of by FA3 to an arm's length party (the external disposition) that is not a "specified purchaser" in respect of the corporation resident in Canada.

As you note in your correspondence, the internal disposition of the specified shares (i.e., the disposition by FA1 to FA3) would be subject to the rules in proposed paragraphs 95(2)(c.2) and (c.3) which suspend, in certain circumstances, gains that, but for those paragraphs, would have otherwise been derived from the internal disposition of the specified shares. You indicate that the external disposition of the specified shares (i.e., the disposition by FA3 to the arm's length party) should be a "triggering disposition" in respect of the internal disposition. However, you are concerned that the current wording of paragraph (b) of the definition "triggering disposition" in proposed subsection 95(3.3) would not produce that result. That paragraph results in a particular disposition of a specified share not being a triggering disposition of the specified share if that particular disposition of the specified share is part of a series of transactions or events that includes the acquisition, by a specified purchaser in respect of the particular corporation resident in Canada, of the specified share. Since, in your example, the internal disposition by FA1 to FA3 of the specified shares and the external disposition by FA3 to the arm's length party of the specified shares are part of the same series of transactions or events, the external disposition would be disqualified from being a triggering disposition in respect of the internal disposition that would permit the release of the suspended gains. You submit that such a result would not be appropriate if, as in your example, at the end of that series of transactions or events, the arm's length party is the holder of the specified shares and is not a specified purchaser in respect of the corporation resident in Canada and, at that time, no entity that is a specified purchaser in respect of the corporation resident in Canada holds any right or interest in respect of the specified shares or any property the value of which tracks the value of the specified shares.

From a tax policy perspective, we agree that, in the circumstances described in your example, the external disposition of the specified shares by FA3 to the arm's length party should qualify as a triggering disposition and result in a release of the suspended gains in respect of the internal disposition of the specified shares. Accordingly, we are prepared to recommend that paragraph (b) of the definition "triggering disposition" contained in proposed subsection 95(3.3) of the Act be revised. Under our recommendation, the revised wording of that paragraph (which describes a non-triggering disposition) would include a requirement that, at the end of the series of transactions or events that includes the internal and external dispositions of the specified shares, a specified purchaser (in respect of the particular corporation resident in Canada referred to in that paragraph) holds the specified shares or, in general terms, some other right or interest in respect of the specified shares or any property the value of which tracks the value of the specified shares.

In your correspondence, you also note that similar concerns arise in connection with paragraph (b) of the definitions of "triggering disposition" in proposed subsections 95(3.4) and (3.5) of the Act in the February 2004 proposals. A recommendation will be made that those definitions be revised in the same fashion.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 95(3.2) — Definitions; 95(3.4)"triggering disposition", 95(3.5)"triggering disposition" — Definitions for other purposes; 95(3.6) — Partnerships and trusts; 248(5) — Substituted property; 248(10) — Series of transactions or events.

(3.4) Definitions for paragraphs (2)(f.3) to (f.9) — The following definitions apply for the purposes of this subsection and paragraphs (2)(f.3) to (f.9),

"specified discontinuance", of a current holder described in paragraph (2)(f.5), means

(a) a dissolution, winding-up, or cessation of the existence, of a corporation or partnership if, immediately after a transaction or an event that is, or a series of transactions or events that includes, the dissolution, winding-up or cessation, a specified purchaser, in respect of the particular corporation, holds the specified property;

(b) a merger or combination of corporations or partnerships if, immediately after a transaction or an event that is, or a series of transactions or events that includes, the merger or combination, a person or partnership that is a specified purchaser, in respect of the particular corporation, holds the specified property; or

(c) a disposition of a participating interest in the current holder if, in the course of a transaction or an event that is, or a series of transactions or events that includes, the disposition of the participating interest, the specified property (or any portion of the specified property) or a right to, or an interest in, the specified property (or any portion of the specified property) becomes property of a specified purchaser in respect of the particular corporation.

Technical Notes: New subsection 95(3.4) provides definitions for the purposes of proposed new paragraphs 95(2)(f.3) to (f.9). See the commentary for those proposed new paragraphs for further detail.

"Specified discontinuance" of a current holder described in paragraph 95(2)(f.5) is

- a dissolution, winding-up, or cessation of the existence, of a corporation or partnership if, immediately after a transaction or event that is, or series of transactions or events that includes, the dissolution, winding-up or cessation, a specified purchaser, in respect of the particular corporation, holds the specified property,
- a merger or combination of corporations or partnerships if, immediately after a transaction or event that is, or series of transactions or events that includes, the merger or combination, a specified purchaser, in respect of the particular corporation, holds the specified property, or
- a disposition of a participating interest in the current holder if, in the course of a transaction or event that is, or series of transactions or events that includes, the disposition of the participating interest, the specified property (or any portion of the specified property) or a right to or an interest in the specified property (or any portion of the specified property) becomes property of a specified purchaser in respect of the particular corporation.

Related Provisions: 95(2)(f.7) — Designated replacement property deemed continuation of specified property; 95(2)(f.8) — Where part of specified property disposed of; 95(3.2) — Definitions; 95(3.3)"specified discontinuance". 95(3.5)"specified discontinuance" — Definitions for other purposes; 95(3.6) — Partnerships and trusts; 248(5) — Substituted property; 248(10) — Series of transactions or events.

"triggering disposition", of a specified property in respect of a particular corporation resident in Canada, means the first disposition, after the original disposition time, of the specified property to a person or partnership that is, immediately after that first disposition, not a specified purchaser in respect of the particular corporation resident in Canada, but does not include

(a) a disposition of the specified property in respect of the particular corporation resident in Canada that occurs in the course of

(i) a dissolution, winding-up, or cessation of the existence, of a corporation or partnership if, immediately after a transaction or an event that is, or a series of transactions or events that includes, the dissolution, winding-up or cessation, a specified purchaser in respect of the particular corporation holds the specified property, or

(ii) a merger or combination of corporations or partnerships if, immediately after a transaction or an event that is, or a series of transactions or events that includes, the merger or combination, a specified purchaser in respect of the particular corporation holds the specified property; or

(b) a disposition of the specified property in respect of the particular corporation resident in Canada that is part of a series of transactions or events that includes

(i) the disposition of the specified property to a person or partnership that is not a specified purchaser in respect of the particular corporation resident in Canada, and

(ii) the acquisition, by a specified purchaser in respect of the particular corporation resident in Canada, of

(A) the specified property (or any portion of the specified property) or a right to, or an interest in, the specified property (or any portion of the right to or interest in the specified property) (which right, interest or portion is referred to for the purposes of paragraphs (2)(f.7) and (f.9) as a "designated replacement property"),

(B) a property or a right to acquire a property (which property or right is referred to in this clause and for the purposes of paragraphs (2)(f.7) and (f.9) as a "designated replacement property") that is substantially similar to the specified property or to the designated replacement property, or

(C) a property (referred to for the purposes of paragraphs (2)(f.7) and (f.9) as a "designated replacement property") the fair market value of which is determined primarily by reference to property that is the specified property or properties from which the specified property primarily derived its fair market value at the original disposition time.

Technical Notes: "Triggering disposition", of a specified property in respect of a particular corporation resident in Canada, is the first disposition, after the original disposition time, of the specified property to a person or partnership that is, immediately after that first disposition, not a specified purchaser in respect of the particular corporation, but does not include

- a disposition of the specified property in respect of the particular corporation resident in Canada that arises in the course of
  - a dissolution, winding-up, or cessation of the existence, of a corporation or partnership if, immediately after a transaction or event that is, or series of transactions or events that includes, the dissolution, winding-up or cessation, a specified purchaser in respect of the particular corporation holds the specified property, and
  - a merger or combination of corporations or partnerships if, immediately after a transaction or event that is, or series of transactions or events that includes, the merger or combination, a specified purchaser in respect of the particular corporation holds the specified property, or
- a disposition of the specified property in respect of the particular corporation resident in Canada that is part of a series of transactions or events that includes
  - the disposition of the specified property to a person or partnership other than a specified purchaser in respect of the particular corporation resident in Canada, and

— the acquisition, by a specified purchaser in respect of the particular corporation, of

- the specified property (or any portion of the specified property) or a right to or an interest in the specified property (or any portion of the right to or interest in the specified property) (which right, interest or portion is referred to for the purposes of paragraphs 95(2)(f.7) and (f.9) as a "designated replacement property"),
- a property or a right to acquire a property (which property or right is referred to here and for the purposes of paragraphs 95(2)(f.7) and (f.9) as a "designated replacement property") that is substantially similar to the specified property or to the designated replacement property, or
- a property (referred to for the purposes of paragraphs 95(2)(f.7) and (f.9) as a "designated replacement property") the fair market value of which is determined primarily by reference to property that is the specified property or properties from which the specified property primarily derived its fair market value at the original disposition time.

Subsection 95(3.4) applies after December 20, 2002.

Related Provisions: 95(2)(f.7) — Designated replacement property deemed continuation of specified property; 95(2)(f.8) — Where part of specified property disposed of; 95(3.2) — Definitions; 95(3.3)"triggering disposition", 95(3.5)"triggering disposition" — Definitions for other purposes; 95(3.6) — Partnerships and trusts; 248(5) — Substituted property; 248(10) — Series of transactions or events.

(3.5) Definitions for paragraphs (2)(h) to (h.5) — The following definitions apply for the purposes of this subsection and paragraphs (2)(h) to (h.5).

"specified discontinuance", of a current holder described in paragraph (2)(h.2), means

(a) a dissolution, winding-up, or cessation of the existence, of a corporation or partnership if, immediately after a transaction or an event that is, or a series of transactions or events that includes, the dissolution, winding-up or cessation, a specified purchaser in respect of the particular taxpayer holds the specified property;

(b) a merger or combination of corporations or partnerships if, immediately after a transaction or an event that is, or a series of transactions or events that includes, the merger or combination, a specified purchaser in respect of the particular taxpayer holds the specified property; or

(c) a disposition of a participating interest in the current holder if, in the course of a transaction or an event that is, or a series of transactions or events that includes, the disposition of the participating interest, the specified property (or any portion of the specified property) or a right to, or an interest in, the specified property (or any portion of the specified property) becomes property of a specified purchaser in respect of the particular taxpayer.

Technical Notes: New subsection 95(3.5) provides definitions for the purposes of paragraphs 95(2)(h) to (h.5). See the commentary for those proposed new paragraphs for further detail.

"Specified discontinuance", of a current holder described in paragraph 95(2)(h.2), is

- a dissolution, winding-up, or cessation of the existence, of a corporation or partnership if, immediately after a transaction or event that is, or series of transactions or events that includes, the dissolution, winding-up or cessation, a specified purchaser in respect of the particular taxpayer holds the specified property,
- a merger or combination of corporations or partnerships if, immediately after a transaction or event that is, or series of transactions or events that includes, the merger or combination, a person or partnership that is a specified purchaser in respect of the particular taxpayer holds the specified property, or
- a disposition of a participating interest in the current holder if, in the course of a transaction or event that is, or series of transactions or events that includes, the disposition of the participating interest, the specified property (or any portion of the specified property) or a right to, or an interest in, the specified property (or any portion of the specified property) becomes property of a specified purchaser in respect of the particular taxpayer.

Related Provisions: 95(2)(h.3) — Designated replacement property deemed to be specified property; 95(2)(h.4) — Where part of specified property disposed of; 95(2)(h.5) — Designated replacement property acquired by specified purchaser; 95(3.2) — Definitions; 95(3.3)"specified discontinuance", 95(3.4)"specified discontinuance" — Definitions for other purposes; 95(3.6) — Partnerships and trusts; 248(10) — Series of transactions or events.

"specified purchaser", at any time in respect of a particular taxpayer resident in Canada, means a person or partnership that is, at that time,

(a) the particular taxpayer;

(b) a taxpayer resident in Canada with which the particular taxpayer does not deal at arm's length;

(c) a foreign affiliate of a person described in paragraph (a) or (b);

(d) a non-resident taxpayer with which a person described in any of paragraphs (a) to (c) does not deal at arm's length;

(e) a trust (other than an exempt trust) in which a person or partnership described in any of paragraphs (a) to (d) and (f) is beneficially interested; or

(f) a partnership in which a person or partnership described in any of paragraphs (a) to (e) has, directly or indirectly in any manner whatever, a partnership interest.

Technical Notes: "Specified purchaser", at any time, in respect of a particular taxpayer resident in Canada, is a person or partnership that is, at that time,

- the particular taxpayer,
- a taxpayer resident in Canada with which the particular taxpayer does not deal at arm's length,
- a foreign affiliate of a person described above,
- a non-resident taxpayer with which a person described above does not deal at arm's length,
- a trust (other than an exempt trust) in which a person or partnership described above or below is beneficially interested, or
- a partnership in which a person or partnership described above has, directly or indirectly in any manner whatever, a partnership interest.

Related Provisions: 95(2)(h.3) — Designated replacement property deemed to be specified property; 95(2)(h.4) — Where part of specified property disposed of; 95(2)(h.5) — Designated replacement property acquired by specified purchaser; 95(3.2) — Definitions; 95(3.2)"specified purchaser" — Definitions for other purposes; 95(3.6) — Partnerships and trusts.

"specified vendor", at any time in respect of a particular taxpayer resident in Canada, means a person or partnership that is, at that time,

(a) a foreign affiliate of the particular taxpayer;

(b) a foreign affiliate of a partnership of which the particular taxpayer is a member;

(c) a partnership a member of which is a person described in paragraph (a) or (b); or

(d) a partnership in which a person or partnership described in any of paragraphs (a) to (c) has, directly or indirectly in any manner whatever, a partnership interest.

Technical Notes: "Specified vendor", at any time, in respect of a particular taxpayer resident in Canada, is a person or partnership that is, at that time,

- a foreign affiliate of the particular taxpayer,
- a foreign affiliate of a partnership of which the particular taxpayer is a member,
- a partnership a member of which is a person described above, or
- a partnership in which any person or partnership described above has, directly or indirectly in any manner whatever, a partnership interest.

Related Provisions: 95(2)(h.3) — Designated replacement property deemed to be specified property; 95(2)(h.4) — Where part of specified property disposed of; 95(2)(h.5) — Designated replacement property acquired by specified purchaser; 95(3.2) — Definitions: 95(3.2)"specified vendor" — Definitions for other purposes; 95(3.6) — Partnerships and trusts.

"triggering disposition", of a specified property in respect of a particular taxpayer resident in Canada, means the first disposition, after the original disposition time, of the specified property, to a person or partnership that is, immediately after that first disposition, not a specified purchaser in respect of the particular taxpayer, but does not include

(a) a disposition of the specified property in respect of the particular taxpayer resident in Canada that occurs in the course of

(i) a dissolution, winding-up, or cessation of the existence, of a corporation or partnership if, immediately after a transaction or an event that is, or a series of transactions or events that includes, the dissolution, winding-up or cessation, a specified purchaser in respect of the particular taxpayer holds the specified property, or

(ii) a merger or combination of corporations or partnerships if, immediately after a transaction or an event that is, or a series of transactions or events that includes, the merger or combination, a specified purchaser in respect of the particular taxpayer holds the specified property; or

(b) a disposition of the specified property in respect of the particular taxpayer resident in Canada that is part of a series of transactions or events that includes

(i) the disposition of the specified property to a person or partnership that is not a specified purchaser in respect of the particular taxpayer resident in Canada, and

(ii) the acquisition, by a specified purchaser in respect of the particular taxpayer resident in Canada, of

(A) the specified property (or any portion of the specified property) or a right to, or an interest in, the specified property (or any portion of the right to or interest in the specified property) (which right, interest or portion is referred to for the purposes of paragraphs (2)(h.3) and (h.5) as a "designated replacement property"),

(B) a property or a right to acquire a property (which property or right is referred to in this clause and for the purposes of paragraphs (2)(h.3) and (h.5) as a "designated replacement property") that is substantially similar to the specified property or to the designated replacement property, or

(C) a property (which property is referred to for the purposes of paragraphs (2)(h.3) and (h.5) as a "designated replacement property") the fair market value of which is determined primarily by reference to property that is the specified property or properties from which the specified property primarily derived its fair market value at the original disposition time.

Technical Notes: "Triggering disposition", of a specified property in respect of a particular taxpayer resident in Canada, is the first disposition, after the original disposition time, of the specified property, to a person or partnership that is, immediately after that first disposition, not a specified purchaser in respect of the particular taxpayer, but does not include

- a disposition of the specified property in respect of the particular taxpayer resident in Canada that occurs in the course of
  - — a dissolution, winding-up, or cessation of the existence, of a corporation or partnership if, immediately after a transaction or event that is, or series of transactions or events that includes, the dissolution, winding-up or cessation, a specified purchaser in respect of the particular taxpayer holds the specified property, or
  - — a merger or combination of corporations or partnerships if, immediately after a transaction or event that is, or series of transactions or events that includes, the merger or combination, a specified purchaser in respect of the particular taxpayer holds the specified property, and
- a disposition of the specified property in respect of the particular taxpayer resident in Canada that is part of a series of transactions or events that includes
  - — the disposition of the specified property to a person or partnership other than a specified purchaser in respect of the particular taxpayer resident in Canada, and
  - — the acquisition by, a specified purchaser in respect of the particular taxpayer resident in Canada, of
- the specified property (or any portion of the specified property) or a right to or an interest in the specified property (or any portion of the right to or interest in the specified property) (which right, interest or portion is referred to for the purposes of paragraphs 95(2)(h.3) and (h.5) as a "designated replacement property"),
- a property or a right to acquire a property (which property or right is referred to here and for the purposes of paragraphs 95(2)(h.3) and (h.5) as a "designated replacement property") that is substantially similar to the specified property or to the designated replacement property, or
- a property (which property is referred to for the purposes of paragraphs 95(2)(h.3) and (h.5) as a "designated replacement property") the fair market value of which is determined primarily by reference to property that is the specified property or properties from which the specified property primarily derived its fair market value at the original disposition time.

Subsection 95(3.5) applies after December 20, 2002.

Related Provisions: 95(2)(h.3) — Designated replacement property deemed to be specified property; 95(2)(h.4) — Where part of specified property disposed of; 95(2)(h.5) — Designated replacement property acquired by specified purchaser; 95(3.2) — Definitions: 95(3.3)"triggering disposition", 95(3.4)"triggering disposition" — Definitions for other purposes; 95(3.6) — Partnerships and trusts; 248(10) — Series of transactions or events.

(3.6) Partnerships and trusts — For the purposes of paragraphs (2)(c.1) to (c.5), (e.3) to (e.5), (f.3) to (f.9) and (h) to (h.5) and subsections (3.2) to (3.5), in determining if a non-resident corporation is a foreign affiliate of a particular corporation resident in Canada or of a particular taxpayer resident in Canada, as the case may be, in circumstances where, at any time, a person or partnership (referred to in this subsection as the

"holder") is a member of a partnership, or has a beneficial interest in a trust (other than an exempt trust),

(a) the partnership or the trust, as the case may be, is deemed to be a non-resident corporation having capital stock of a single class divided into 100 issued shares;

(b) the holder is deemed to own at that time that proportion of the issued shares of that class that

(i) the fair market value, at that time, of the holder's partnership interest in the partnership or of the holder's beneficial interest in the trust, as the case may be,

is of

(ii) the fair market value, at that time, of all partnership interests in the partnership or of all beneficial interests in the trust; and

(c) for the purpose of paragraph (b), the fair market value, at any time, of the holder's beneficial interest in a trust (other than a non-discretionary trust within the meaning assigned by subsection 17(15)) is deemed to be the fair market value, at that time, of all beneficial interests in the trust.

Technical Notes: New subsection 95(3.6) provides rules to be used in determining if a non-resident corporation is a foreign affiliate of a particular corporation resident in Canada or of a particular taxpayer resident in Canada for the purposes of paragraphs 95(2)(c.1) to (c.5), (e.3) to (e.5), (f.3) to (f.9) and (h) to (h.5) and subsections 95(3.2) to (3.5) where a person or partnership is a member of a partnership or a beneficiary under a trust.

New subsection 95(3.6) provides that in determining if a non-resident corporation is a foreign affiliate of a particular corporation resident in Canada or of a particular taxpayer resident in Canada, as the case may be, in circumstances where, at any time, a person or partnership (which person or partnership is referred to here as the "holder") is a member of a partnership, or has a beneficial interest in a trust (other than an exempt trust),

- the partnership or trust, as the case may be, is deemed to be a non-resident corporation having capital stock of a single class divided into 100 issued shares,
- the holder is deemed to own at that time that proportion of the issued shares of that class that the fair market value of the holder's partnership interest in the partnership or of the holder's beneficial interest in the trust, as the case may be, is of the fair market value at that time of all partnership interests in the partnership or of all beneficial interests in the trust, as the case may be, and
- the fair market value, at any time, of the holder's beneficial interest in a trust (other than a non-discretionary trust within the meaning assigned by subsection 17(15)) is deemed to be the fair market value, at that time, of all beneficial interests in the trust.

Subsection 95(3.6) applies after December 20, 2002.

Related Provisions: 95(3.2) — Definitions.

(3.7) Anti-avoidance — 150 beneficiaries — If it can be reasonably considered that one of the main reasons that an entity holds, at any time, a capital interest in a trust is to cause the trust to satisfy the condition in paragraph (b) of the definition "exempt trust" in subsection (3.2), the trust is deemed not to have satisfied at that time that condition.

Technical Notes: New subsection 95(3.7) provides that if it can be reasonably considered that one of the main reasons that an entity holds, at any time, a capital interest in a trust is to cause the trust to satisfy the condition in paragraph (b) of the definition "exempt trust" in subsection 95(3.2), the trust is deemed not to have satisfied at that time that condition.

Subsection 95(3.7) applies after December 20, 2002.

(3.8) Computing exempt surplus — No amount is to be included in computing the exempt surplus of a foreign affiliate (other than a controlled foreign affiliate) of a particular corporation resident in Canada in respect of a gain of that foreign affiliate arising on a disposition, described in any of paragraphs (2)(d) and (e) and (e.3) to (e.5), of excluded property if it may reasonably be considered that one of the main reasons for the claiming of a relevant cost base, or for electing proceeds of disposition, in excess of the adjusted cost base of the excluded property disposed of was the creation of exempt surplus of that foreign affiliate in respect of the particular corporation resident in Canada (or in respect of a corporation resident in Canada with which the particular corporation resident in Canada does not deal at arm's length), having regard to, amongst other things, the following:

(a) the amount of any foreign income tax paid by that foreign affiliate in respect of the gain arising on the disposition;

(b) the amount of any distribution made, or dividend paid, on or after the disposition, to the particular corporation resident in Canada or a corporation resident in Canada with which the particular corporation resident in Canada does not deal at arm's length; and

(c) the amount of any election under section 93 made in respect of a disposition of a share of a foreign affiliate of the particular corporation resident in Canada or of a share of a foreign affiliate of a corporation resident in Canada with which the particular corporation resident in Canada does not deal at arm's length.

Technical Notes: New subsection 95(3.8) is an anti-avoidance rule to prevent the premature recognition of exempt surplus (the non-taxable portion of a capital gain) on an internal sale of excluded property to which any of proposed new paragraphs 95(2)(d) and (e) and (e.3) to (e.5) applies. Although capital gains on internal sales of excluded property, to which those paragraphs apply, create foreign accrual property income, where the foreign affiliate is not a controlled foreign affiliate of the particular corporation resident in Canada the particular corporation resident in Canada is not subjected to Canadian tax on that foreign accrual property income. Therefore, the particular corporation resident in Canada can be advantaged on an internal disposition of excluded property by claiming a relevant cost base, or electing proceeds of disposition, greater than the adjusted cost base of the property disposed of, in particular where the foreign jurisdiction does not tax capital gains. Where the foreign jurisdiction does tax capital gains, the particular corporation resident in Canada may wish to recognize gains because of the foreign taxes paid and the desire to create taxable surplus to match the related taxes, which would be appropriate where the amount of tax reflects Canadian tax rates on capital gains.

New subsection 95(3.8) provides that no amount may be added to the exempt surplus of a foreign affiliate of a particular corporation resident in Canada in respect of the gain arising on the internal disposition of excluded property if it is reasonable to conclude that one of the main reasons for claiming a relevant cost base, or electing proceeds of disposition, greater than the adjusted cost base of the property disposed of on that internal disposition was the creation of exempt surplus in respect of the particular corporation resident in Canada or in respect of a corporation resident in Canada with which the particular corporation resident in Canada does not deal at arm's length.

The factors to consider in making this determination include the following:

- the amount of foreign income tax paid,
- the amount of distribution made, or dividend paid, to the particular corporation resident in Canada or to a corporation resident in Canada with which the particular corporation resident in Canada does not deal at arm's length, and
- the amount of any election under section 93 made in respect of a disposition of a share of a foreign affiliate of the particular corporation resident in Canada or of a share of a foreign affiliate of a corporation resident in Canada with which the particular corporation resident in Canada does not deal at arm's length.

Subsection 95(3.8) applies after December 20, 2002.

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), subsec. 133(29), will add subsecs. 95(3.1) to (3.8), applicable as follows:

(i) subsec. (3.1), to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. However, if a taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act is assented to, the subsec. applies to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994;

(ii) subsecs. (3.2) to (3.7), after December 20, 2002; and

(iii) subsec. (3.8), to dispositions that occur after February 27, 2004.

(4) Definitions — In this section,

"direct equity percentage" at any time of any person in a corporation is the percentage determined by the following rules:

(a) for each class of the issued shares of the capital stock of the corporation, determine the proportion of 100 that the number of shares of that class owned by that person at that time is of the total number of issued shares of that class at that time, and

(b) select the proportion determined under paragraph (a) for that person in respect of the corporation that is not less than any other proportion so determined for that person in respect of the corporation at that time,

and the proportion selected under paragraph (b), when expressed as a percentage, is that person's direct equity percentage in the corporation at that time;

Interpretation Bulletins: IT-392: Meaning of term "share".

"equity percentage" at any time of a person, in any particular corporation, is the total of

(a) the person's direct equity percentage at that time in the particular corporation, and

(b) all percentages each of which is the product obtained when the person's equity percentage at that time in any corporation is multiplied by that corporation's direct equity percentage at that time in the particular corporation

except that for the purposes of the definition "participating percentage" in subsection (1), paragraph (b) shall be read as if the reference to "any corporation" were a reference to "any corporation other than a corporation resident in Canada";

Related Provisions: 94(1)(d) — Deemed ownership in trust deemed to be corporation for FAPI purposes.

"relevant cost base" to a foreign affiliate of property at any time means the adjusted cost base to the affiliate of the property at that time or such greater amount as the taxpayer claims not exceeding the fair market value of the property at that time.

(4.1) Application of subsec. 87(8.1) — In this section, the expressions "foreign merger", "predecessor foreign corporation", "new foreign corporation" and "foreign parent corporation" have the meanings assigned by subsection 87(8.1).

Origin of subsec. 95(4.1): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsec. 87(8.1)).

History: Subsec. 95(4.1) amended by 1999, c. 22, subsec. 25(2), applicable to a taxpayer in respect of a merger or combination of foreign corporations

(a) that occurs after February 24, 1998, or

(b) that occurred

(i) before February 25, 1998 and in a taxation year of the taxpayer for which the taxpayer's normal reassessment period, as defined in subsec. 152(3.1), has not ended before 1999, or

(ii) after 1994 and before February 25, 1998 and in a taxation year of the taxpayer in which the taxpayer was exempt from tax under s. 149,

unless the taxpayer elects by notifying the Minister of National Revenue in writing, before January 1, 2000, that the amendment not apply to the taxpayer in respect of the merger or combination.

The subsec. formerly read:

(4.1) In this section, the expressions "foreign merger", "predecessor foreign corporation" and "new foreign corporation" have the meanings assigned by subsection 87(8.1).

(5) Income bonds or debentures issued by foreign affiliates — For the purposes of this subdivision, an income bond or income debenture issued by a corporation (other than a corporation resident in Canada) shall be deemed to be a share of the capital stock of the corporation unless any interest or other similar periodic amount paid by the corporation on or in respect of the bond or debenture was, under the laws of the country in which the corporation was resident, deductible in computing the amount for the year on which the corporation was liable to pay income or profits tax imposed by the government of that country.

Proposed Amendment — 95(5)

(5) Income bonds or debentures issued by foreign affiliates — For the purposes of this subdivision (other than sections 94 to 94.4), an income bond or income debenture issued by a non-resident corporation is deemed to be a share of the capital stock of the corporation unless any interest or other similar periodic amount paid by the corporation on or in respect of the bond or debenture was, under the laws of the country in which the corporation was resident, deductible in computing the amount on which the corporation was liable to pay income or profits tax imposed by the government of that country.

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 19(8), will amend subsec. 95(5) to read as above, applicable to taxation years that begin after July 18, 2005.

Technical Notes: Subsections 95(5) to (7) contain special rules of application that apply for purposes of the foreign affiliate and controlled foreign affiliate regimes.

These subsections are amended so that they do not apply for purposes of the non-resident trust and foreign investment entity regimes in new sections 94 to 94.4.

Interpretation Bulletins: IT-388: Income bonds issued by foreign corporations (archived).

(6) Where rights or shares issued, acquired or disposed of to avoid tax — For the purposes of this subdivision (other than section 90),

Proposed Amendment — 95(6) opening words

(6) Where rights or shares issued, acquired or disposed of to avoid tax — For the purposes of this subdivision (other than sections 90 and 94 to 94.4),

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 19(9), will amend the opening words of subsec. 95(6) to read as above, applicable to taxation years that begin after July 18, 2005.

Technical Notes: See under 95(5).

(a) where any person or partnership has a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently, to,

or to acquire, shares of the capital stock of a corporation or interests in a partnership and

(i) it can reasonably be considered that the principal purpose for the existence of the right is to cause 2 or more corporations to be related for the purpose of paragraph (2)(a), those corporations shall be deemed not to be related for that purpose, or

(ii) it can reasonably be considered that the principal purpose for the existence of the right is to permit any person to avoid, reduce or defer the payment of tax or any other amount that would otherwise be payable under this Act, those shares or partnership interests, as the case may be, are deemed to be owned by that person or partnership; and

(b) where a person or partnership acquires or disposes of shares of the capital stock of a corporation or interests in a partnership, either directly or indirectly, and it can reasonably be considered that the principal purpose for the acquisition or disposition is to permit a person to avoid, reduce or defer the payment of tax or any other amount that would otherwise be payable under this Act, that acquisition or disposition is deemed not to have taken place, and where the shares or partnership interests were unissued by the corporation or partnership immediately before the acquisition, those shares or partnership interests, as the case may be, are deemed not to have been issued.

Related Provisions: 17(14) — Similar rule re loans to non-residents; 256(5.1) — Controlled directly or indirectly — control in fact.

History: The opening words of subsec. 95(6) amended by 2001, c. 17, subsec. 73(11) to add the words "or interests in a partnership", applicable after November 1999.

Subpara. 95(6)(a)(ii) amended by the said c. 17, subsec. 73(12), applicable after November 1999. The subpara. formerly read:

(ii) it can reasonably be considered that the principal purpose for the existence of the right is to permit any person to avoid, reduce or defer the payment of tax or any other amount that would otherwise be payable under this Act, those shares shall be deemed to be owned by that person or partnership; and

Para. 95(6)(b) amended by the said c. 17, subsec. 73(13), applicable after November 1999. The para. formerly read:

(b) where a person or partnership acquires or disposes of shares of the capital stock of a corporation, either directly or indirectly, and it can reasonably be considered that the principal purpose for the acquisition or disposition of the shares is to permit a person to avoid, reduce or defer the payment of tax or any other amount that would otherwise be payable under this Act, those shares shall be deemed not to have been acquired or disposed of, as the case may be, and where the shares were unissued by the corporation immediately prior to the acquisition, those shares shall be deemed not to have been issued.

Subsec. 95(6) amended by 1995, c. 21, subsec. 46(7), applicable (as amended by 1998, c. 19, subsec. 305(1), deemed to have come into force on June 22, 1995) to rights acquired and shares acquired or disposed of in taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the amendment applies to rights acquired and shares acquired or disposed of in taxation years of the foreign affiliate that end after 1994, unless

(a) the foreign affiliate had requested the change in writing before February 22, 1994 from the income taxation authority of the country in which the foreign affiliate was resident and subject to income taxation; or

(b) the foreign affiliate's first taxation year that began after 1994 began at a time in 1995 that is earlier than the time at which that taxation year would have begun if the change had not occurred.

Subsec. (6) formerly read:

(6) Where rights or shares issued to avoid tax — For the purposes of this subdivision,

(a) where any person has a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently, to, or to acquire, shares of the capital stock of a corporation, those shares shall, if one of the main reasons for the existence of the right may reasonably be considered to be the reduction or postponement of the amount of taxes that would otherwise be payable under this Act, be deemed to be owned by that person; and

(b) where any foreign affiliate of a taxpayer or any non-resident corporation controlled, directly or indirectly in any manner whatever, by the taxpayer or by a related group of which the taxpayer was a member has issued shares of a class of its capital stock and one of the main reasons for the existence or issuance of one or more of the shares of that class may reasonably be considered to be the reduction or postponement of the amount of taxes that would otherwise be payable under this Act, those shares shall be deemed not to have been issued.

I.T. Technical News: 32 (subsec. 95(6): scope of application).

(7) Stock dividends from foreign affiliates — For the purposes of this subdivision and subsection 52(3), the amount of any stock dividend paid by a foreign affiliate of a corporation resident in Canada shall, in respect of the corporation, be deemed to be nil.

Proposed Amendment — 95(7)

(7) Stock dividends from foreign affiliates — For the purposes of subsection 52(3) and this subdivision (other than sections 94 to 94.4), the amount of any stock dividend paid by a foreign affiliate of a corporation resident in Canada is deemed to be, in respect of the corporation, nil.

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 19(10), will amend subsec. 95(7) to read as above, applicable to taxation years that begin after July 18, 2005.

Technical Notes: See under 95(5).

Interpretation Bulletins [subsec. 95(7)]: IT-88R2: Stock dividends.

Definitions [s. 95]: "active business" — 95(1); "adjusted allocable tax" — Reg. 5912(2), 5913(2); "adjusted allocable tax refund" — Reg. 5914(2); "adjusted cost base" — 54, 248(1); "adjusted suspended gain" — Reg. 5912(1); "adjusted suspended income" — Reg. 5913(1); "adjusted suspended loss" — Reg. 5914(1); "allowable capital loss" — 38(b), 248(1); "amount" — 95(7), 248(1); "annuity" — 248(1); "arm's length" — 95(2.1), 251(1); "bank" — 248(1); "beneficially interested" — 248(25); "borrowed money", "business" — 248(1); "business carried on in Canada" — 253; "Canada" — 253, 255, *Interpretation Act* 35(1); "Canadian resource property" — 66(15), 248(1); "capital gain" — 39(1), 248(1); "capital interest" — 108(1), 248(1); "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "carrying on a business in Canada" — 253; "class" — of shares 248(6); "contributed property" — 95(3.3); "controlled" — 256(6), (6.1); "controlled directly or indirectly" — 256(5.1), (6.2); "controlled foreign affiliate" — 94.1(2)(h), 95(1), 248(1); "corporation" — 94(1)(d), 248(1), *Interpretation Act* 35(1); "cost amount" — 248(1); "credit union" — 137(6), 248(1); "cumulative eligible capital" — 14(5), 248(1); "current vendor" — 95(2)(h.2)(i); "depreciable property" — 13(21), 248(1); "designated corporation" — 95(2)(s); "designated partnership" — 95(2)(t); "designated property" — 95(3.1); "direct equity percentage" — 95(4); "disposed foreign affiliate" — 95(2)(c.1)(i); "disposition", "dividend" — 248(1); "dividend-like redemption" — 95(3.2); "eligible capital expenditure" — 14(5), 248(1); "eligible capital property" — 54, 248(1); "eligible property" — 95(2)(f.91)(iii); "eligible trust" — 95(3.2); "employee" — 248(1); "employee benefit plan" — 248(1); "entity" — 95(1); "equity percentage" — 95(4); "excluded income" — 95(2.5); "excluded property" — 93(1.4)(a), 95(1); "excluded revenue" — 95(2.5); "exempt interest" — 94.1(1); "exempt surplus" — 113(1)(a); "exempt trust" — 95(3.2); "fiscal period" — 249(2)(b), 249.1; "foreign accrual property income" — 95(1), 95(2), 248(1); "foreign affiliate" — 93.1(1), 94(1)(d), 95(1), 248(1); "foreign bank" — 95(1); "foreign business" — 95(2)(j.1)(i), 95(2)(k)(i), 95(2)(k.2)(i); "foreign investment entity" — 94.1(1), 248(1); "foreign merger", "foreign parent corporation" — 87(8.1), 95(4.1); "foreign resource property" — 66(15), 248(1); "government of a country" — 95(2)(y); "holding corporation" —

95(2)(m)(iii); "immovable" — Quebec *Civil Code* art. 900–907; "income bond", "income debenture" — 248(1); "income from an active business" — 95(1); "income from property" — 9(1), 95(1); "indebtedness" — 95(2.5); "insurance corporation", "insurer" — 248(1); "investment business", "investment property", "lease obligation" — 95(1); "lending asset" — 95(1)"lending of money", 248(1); "lending of money", "licensing of property" — 95(1); "life insurance business", "life insurance corporation" — 248(1); "life insurance policy" — 138(12), 248(1); "life insurer", "Minister" — 248(1); "new foreign corporation" — 87(8.1), 95(4.1); "new foreign corporation" — 87(8.1), 95(4.1); "non-discretionary trust" — 17(15); "non-resident" — 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "operating partnership" — 95(1)"investment business"(b); "operator" — 95(2)(j.1), 95(2)(k), 95(2)(k.2), 95(2)(k.4); "original disposition time" — 95(2)(c.1)(i), 95(2)(f.3)(i), 95(2)(h)(i); "participating interest" — 94.1(1), 94.1(2)(s), 95(3.2), 248(1); "permanent establishment" — Reg. 8201, 8202; "person" — 248(1); "personal trust" — 248(1); "predecessor foreign corporation" — 87(8.1), 95(4.1); "prescribed" — 248(1); "prescribed financial institution" — Reg. 7900(1), (2); "property" — 248(1); "province" — *Interpretation Act* 35(1); "qualifying interest" — 95(2)(m), (n), 95(2.2); "qualifying member" — 95(2)(o)–(r), 248(1); "qualifying shareholder" — 95(2)(p), (q); "regulation" — 248(1); "related" — 95(2.2)(b), 95(6)(a)(i), 251(2); "related group" — 251(4); "relevant cost base" — 95(4); "relevant foreign affiliate" — 95(2)(c.2)(v), 95(2)(f.4)(iv); "resident", "resident in Canada" — 94(3)(a)(viii), 250; "salary deferral arrangement" — 248(1); "series of transactions" — 248(10); "services" — 95(3); "share", "shareholder" — 248(1); "specified deposit" — 95(2.5); "specified depreciable property" — 95(2)(f.91)(v); "specified discontinuance" — 95(3.3), (3.4), (3.5); "specified fixed interest" — 95(3.2); "specified member" — 248(1); "specified property" — 95(2)(f.3)(i), 95(2)(h)(i); "specified purchaser " — 95(3.2), (3.5); "specified share" — 95(2)(c.1)(i); "specified taxation year" — 95(2)(j.1), 95(2)(k), 95(2)(k.2); "specified vendor" — 95(3.2), (3.5); "status change time" — 95(2)(f.91); "subsidiary controlled corporation", "subsidiary wholly-owned corporation" — 248(1); "surplus entitlement percentage" — 95(1); "tax treaty" — 248(1); "taxable Canadian business" — 95(1); "taxable capital gain" — 38(a), 248(1); "taxable dividend" — 89(1), 248(1); "taxable income earned in Canada" — 248(1); "taxation year" — 95(1), 249; "taxpayer" — 248(1); "triggering disposition" — 95(3.3), (3.4), (3.5); "trust" — 104(1), 248(1), (3); "trust company" — 95(1); "undepreciated capital cost" — 13(21), 248(1); "writing" — *Interpretation Act* 35(1); "written" — *Interpretation Act* 35(1)"writing".

Subdivision j — Partnerships and Their Members

96. (1) General rules — Where a taxpayer is a member of a partnership, the taxpayer's income, non-capital loss, net capital loss, restricted farm loss and farm loss, if any, for a taxation year, or the taxpayer's taxable income earned in Canada for a taxation year, as the case may be, shall be computed as if

(a) the partnership were a separate person resident in Canada;

(b) the taxation year of the partnership were its fiscal period;

(c) each partnership activity (including the ownership of property) were carried on by the partnership as a separate person, and a computation were made of the amount of

(i) each taxable capital gain and allowable capital loss of the partnership from the disposition of property, and

(ii) each income and loss of the partnership from each other source or from sources in a particular place,

for each taxation year of the partnership;

(d) each income or loss of the partnership for a taxation year were computed as if

(i) this Act were read without reference to paragraphs 12(1)(z.5) and 20(1)(v.1), section 34.1, subsection 59(1), paragraph 59(3.2)(c.1) and subsections 66.1(1), 66.2(1) and 66.4(1), and

Amendment [effective 2007] — 96(1)(d)(i)

Application: S.C. 2003, c. 28 (Bill C-48, Royal Assent November 7, 2003), s. 10, amends subpara. 96(1)(d)(i) to delete "paragraphs 12(1)(z.5) and 20(1)(v.1)", applicable to taxation years that begin after 2006.

(ii) no deduction were permitted under any of section 29 of the *Income Tax Application Rules*, subsections 34.2(4) and 65(1) and sections 66, 66.1, 66.2, 66.21 and 66.4;

Proposed Addition — 96(1)(d)(iii)

(iii) where at any time in a particular taxation year of the partnership the partnership's property includes a participating interest in a particular non-resident entity (in this subparagraph as defined by subsection 94.1(1)), in applying sections 94.1 to 94.4 to the partnership for the particular taxation year in respect of the participating interest

(A) paragraph (a) of the definition "exempt interest" in subsection 94.1(1) were read without reference to its subparagraph (i), unless

(I) the taxpayer is a foreign affiliate of another taxpayer resident in Canada and the particular non-resident entity

1. is a controlled foreign affiliate of the other taxpayer, and

2. would, were the taxpayer resident in Canada, be a controlled foreign affiliate of the taxpayer, or

(II) the particular non-resident entity is a controlled foreign affiliate of the taxpayer and the taxpayer is not a foreign affiliate of another taxpayer resident in Canada,

(B) where the taxpayer is a foreign affiliate of another taxpayer resident in Canada, an exempt interest (in this subparagraph, as defined by subsection 94.1(1)) of the partnership in a non-resident entity included a participating interest

(I) that is, in the particular taxation year, the partnership's property, and

(II) that is, throughout the period, in the particular taxation year, during which the participating interest was the partnership's property, property used or held by the partnership principally for the purpose of gaining or producing income from a business that is not an investment business (in this subclause, within the meaning assigned by section 95),

(C) the definition "fresh-start year" in subsection 94.3(1) did not apply and a reference in section 94.3 to a fresh-start year, of the particular non-resident entity in respect of the partnership, were a reference to a taxation year of the particular non-resident entity

(I) that ends in a taxation year of the partnership that begins after 2002,

(II) that begins immediately after a preceding taxation year of the particular non-resident entity, at the end of which the particu-

lar non-resident entity was not a foreign investment entity or at the end of which the partnership property did not include a participating interest in the particular non-resident entity (other than an exempt interest, in this subparagraph as defined in subsection 94.1(1) as modified by this subparagraph), and

(III) at the end of which the particular non-resident entity is a foreign investment entity in which the partnership owns a participating interest that is not an exempt interest,

(D) the expression "in the return of income for which the taxpayer elects" in paragraph 94.1(2)(h) were replaced by the expression "in respect of which a member of the taxpayer elects",

(E) subparagraph 94.1(2)(h)(ii) were replaced by the following:

(ii) the non-resident entity would, if subsection 93.1(1) applied in respect of each member (resident in Canada) of the taxpayer at the end of the non-resident entity's taxation year referred to in subparagraph (i), be a foreign affiliate of each such member in respect of which each such member would have a qualifying interest (within the meaning assigned by paragraph 95(2)(m)), and

(F) subparagraph 94.1(2)(h)(iii) were replaced by the following:

(iii) an entity that was at any time a member of the taxpayer has not made in respect of the taxpayer any other election under this paragraph in respect of the non-resident entity and no member of the taxpayer is a partnership;

(G) an election for a particular taxation year of the partnership made under paragraph (a) of the definition "carrying value", or paragraph (a) of the definition "financial statements", in subsection 94.1(1), paragraph 94.1(2)(e), (h) or (j), subparagraph (a)(iii) of the description of D in the definition "mark-to-market formula" in subsection 94.2(1), subparagraph 94.2(2)(b)(i) or (3)(b)(iii), or paragraph 94.3(3)(b), were required to be filed under that provision in respect of the partnership by the taxpayer with the Minister on or before the taxpayer's filing-due date for the taxpayer's taxation year in which the particular taxation year ends,

(H) the Minister were required, in sending a written demand under subparagraph 94.1(2)(e)(iii), any of paragraphs 94.1(2)(i) or (p) to (r) or 94.2(2)(d), or subparagraph 94.3(2)(b)(iii), to send the demand to the taxpayer,

(I) any form, information or notification, in respect of a participating interest, in a non-resident entity, that is partnership property in the particular taxation year, that is required under any of sections 94.1 to 94.4 to be filed or included with a return of income were required to be filed or included with the taxpayer's return of income for the taxpayer's taxation year in which the particular taxation year ends,

(J) designations and notifications made, and information provided, by the taxpayer in the form referred to in clause (I) were made or provided by the partnership, and

(K) for taxation years that begin on or before July 18, 2005, the definition "income allocation" in subsection 94.3(1) were read without reference to paragraph (h) of the description of A;

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 20(1), will add subpara. 96(1)(d)(iii), applicable to fiscal periods that begin after 2002, except that for fiscal periods that begin on or before July 18, 2005,

(a) cl. 96(1)(d)(iii)(A) is to be read as follows:

(B) [should be "(A)" — ed.] the expression "controlled foreign affiliate of the taxpayer" in paragraph (a) of the definition "exempt interest" in subsection 94.1(1) referred to a controlled foreign affiliate of the taxpayer and not to a controlled foreign affiliate of the partnership,

and

(b) cl. 96(1)(d)(iii)(F) is to be read as follows:

(F) the expression "the taxpayer has not made any other election" in subparagraph 94.1(2)(h)(iii) were replaced by the expression "a member of the taxpayer has not made in respect of the taxpayer any other election",

.

Technical Notes: Under subsection 96(1), the income earned and losses incurred by a partnership are generally calculated at the partnership level and attributed to partners in accordance with their respective interests in the partnership.

Paragraph 96(1)(d) is amended so that, where at any time in a particular taxation year of the partnership the partnership's property includes a participating interest in a particular non-resident entity, sections 94.1 to 94.4 apply to the partnership for the particular taxation year in respect of the participating interest as if

- Paragraph (a) of the definition "exempt interest" in subsection 94.1(1) were read without reference to its subparagraph (i), unless
  - — the taxpayer (i.e. the member of the partnership) is a foreign affiliate of another taxpayer resident in Canada, the particular non-resident entity is a controlled foreign affiliate of the other taxpayer and would be a controlled foreign affiliate of the first taxpayer if the first taxpayer were resident in Canada, or
  - — where the taxpayer (i.e., the member of the partnership) is not a foreign affiliate of another taxpayer resident in Canada, the particular non-resident entity is a controlled foreign affiliate of the taxpayer;
- where the taxpayer (i.e., the member of the partnership) is a foreign affiliate of another taxpayer resident in Canada, the participating interest in the particular non-resident entity is an exempt interest of the partnership if, throughout the period in the year during which it was partnership property, the participating interest was used or held by the partnership for the purpose of gaining or producing income from a business that is not an "investment business" (as defined in section 95);
- a "fresh-start year" (relevant in computing the partnership's "income allocation" and "loss allocation" under the accrual regime in section 94.3) of the particular non-resident entity in respect of the partnership were its taxation year (at the end of which the partnership holds an interest in it and it is a foreign investment entity) that ends in a taxation year of the particular affiliate that begins after 2002 and that immediately follows a taxation year of the particular non-resident entity in respect of which subsection 94.1(3) would not have been applicable to the particular;
- an election under paragraph 94.1(2)(h) — to treat a foreign affiliate of the partnership as its controlled foreign affiliate — is to be made

by a member of the partnership and not by the partnership, and can be made only if

— all of the members of the partnership that were resident in Canada would have qualifying interests (as defined in paragraph 95(2)(m)) in the foreign affiliate based on certain assumptions,

— an entity that was at any time a member of the partnership has not made in respect of the partnership any other election under paragraph 94.1(2)(h) in respect of the non-resident entity, and

— none of the members of the partnership is a partnership;

- a member of the partnership (rather than the partnership) is required to make a number of the elections, designations, notifications and provisions of information under sections 94.1 to 94.4 in connection with the partnership's participating interests in non-resident entities. In addition, the Minister in sending a demand for information to the particular affiliate under subparagraph 94.1(2)(e)(iii) or 94.3(2)(b)(iii), or any of paragraphs 94.1(2)(i) or (p) to (r) or 94.2(2)(d), is required to send the demand also to the member in connection with the partnership's participating interests in non-resident entities; and
- for taxation years that begin on or July 18, 2005, the definition "income allocation" in subsection 94.3(1) were read without reference to paragraph (h) of the description of "A".

(e) each gain of the partnership from the disposition of land used in a farming business of the partnership were computed as if this Act were read without reference to paragraph 53(1)(i);

(e.1) the amount, if any, by which

(i) the total of all amounts determined under paragraphs 37(1)(a) to (c.1) in respect of the partnership at the end of the taxation year

exceeds

(ii) the total of all amounts determined under paragraphs 37(1)(d) to (g) in respect of the partnership at the end of the year

were deducted under subsection 37(1) by the partnership in computing its income for the year;

(f) the amount of the income of the partnership for a taxation year from any source or from sources in a particular place were the income of the taxpayer from that source or from sources in that particular place, as the case may be, for the taxation year of the taxpayer in which the partnership's taxation year ends, to the extent of the taxpayer's share thereof; and

(g) the amount, if any, by which

(i) the loss of the partnership for a taxation year from any source or sources in a particular place,

exceeds

(ii) in the case of a specified member (within the meaning of the definition "specified member" in subsection 248(1) if that definition were read without reference to paragraph (b) thereof) of the partnership in the year, the amount, if any, deducted by the partnership by virtue of section 37 in calculating its income for the taxation year from that source or sources in the particular place, as the case may be, and

(iii) in any other case, nil

were the loss of the taxpayer from that source or from sources in that particular place, as the case may be, for the taxation year of the taxpayer in which the partnership's taxation year ends, to the extent of the taxpayer's share thereof.

Related Provisions: 12(1)(l) — Inclusion of partnership income; 12(1)(y) — Auto provided to partner; 33.1(2)(a) — "person" includes partnership for international banking centre rules; 39.1(2)B(b), 39.1(4), (5) — Election to trigger capital gains exemption; 53(1)(e), 53(2)(c) — ACB of partnership interest; 66(16) — "person" includes partnership for flow-through share rules; 66(18) — Resource expenditures claimed by members of partnerships; 66.1(7), 66.2(6), (7), 66.4(6), (7), 66.7(11) — Resource expenses; 79(1), 79.1(1) — "person" includes partnership for rules re seizure of property by creditor; 80(1)"forgiven amount"B(k) — Debt forgiveness rules do not apply to debt forgiven by partnership to active partner; 80(1), 80.01(1) — "person" includes partnership for debt forgiveness rules; 80(15) — Application of debt forgiveness rules to partners; 87(2)(e.1) — Amalgamation — partnership interest; 93(1.2) — Disposition of share of foreign affiliate; 93.1 — Shares of foreign affiliate held by partnership; 96(1.01)(a) — Income allocation to former partner; 96(1.1) — Allocation of income share to retiring partner; 96(1.7) — Gains and losses; 96(1.9) — Foreign trusts and other foreign investment entities; 96(2.1) — Limited partnership losses; 100(2.1) — Disposition of interest in partnership; 107(1)(d) — Stop-loss rule on disposition by partnership of interest in trust that flowed out dividends; 112(3.1) — Stop-loss rule for partner on disposition by partnership of share on which dividends paid; 118.1(8) — Donations made by partnership; 120.4(1)"split income"(b) — Certain partnership income of children subject to income splitting tax; 127(8), (8.1) — Investment tax credit of partnership or limited partner; 127.52(1)(c.1) — Minimum tax — no deduction for losses of limited partner; 127.52(2) — Application of partnership income and loss for minimum tax purposes; 139.1(1) — "person" includes partnership for purposes of insurance demutualization; 152(1.4)–(1.8) — Determination by CCRA of partnership income or loss; 162(8.1) — Rules where partnership liable to penalty; 187.4(c) — "person" includes partnership for Part IV.1 tax; 209(6) — "person" includes partnership for tax on carved-out income; 210 — Partnership as designated beneficiary; 212(13.1) — Non-resident withholding tax where payer or payee is a partnership; 227(5.2) — Partnership liable for obligations re withholding tax; 227(15) — Assessment of partnership for Part XIII tax; 237.1(1) — "person" includes partnership for tax shelter identification rules; 244(20) — Notice to members of partnerships; 251.1(4)(b) — "person" includes partnership for definition of affiliated persons; *Income Tax Conventions Interpretation Act* 6.2 — Partnership with Canadian resident partner cannot be resident in another country.

History: Para. 96(1)(d) amended by 2001, c. 17, subsec. 74(1), applicable to fiscal periods that begin after 2000. Para. (d) formerly read:

(d) each income or loss of the partnership for a taxation year were computed as if this Act were read without reference to paragraphs 12(1)(z.5) and 20(1)(v.1), section 34.1 and subsections 66.1(1), 66.2(1) and 66.4(1) and as if no deduction were permitted under any of section 29 of the *Income Tax Application Rules*, subsections 34.2(4) and 65(1) and sections 66, 66.1, 66.2 and 66.4;

Para. 96(1)(d) amended by 1997, c. 25, s. 21, applicable to fiscal periods that begin after 1996. Para. (d) formerly read:

(d) each income or loss of the partnership for a taxation year were computed as if this Act were read without reference to paragraph 20(1)(v.1), section 34.1 and subsections 66.1(1), 66.2(1) and 66.4(1) and as if no deduction were permitted under any of section 29 of the *Income Tax Application Rules*, subsections 34.2(4) and 65(1) and sections 66, 66.1, 66.2 and 66.4;

Para. 96(1)(d) amended by 1996, c. 21, subsec. 17(1), applicable after 1994. The para. formerly read:

(d) each income or loss of the partnership for a taxation year were computed as if this Act were read without reference to paragraph 20(1)(v.1) and subsections 66.1(1), 66.2(1) and 66.4(1) and as if no deduction were permitted by section 29 of the *Income Tax Application Rules*, subsection 65(1) or section 66, 66.1, 66.2 or 66.4;

Para. 96(1)(d) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 40(1), applicable to partnership fiscal periods commencing after December 20, 1991. Para. (d) formerly read:

(d) each income or loss of the partnership for a taxation year were computed as if this Act were read without reference to subsections 66.1(1), 66.2(1) and 66.4(1) and as if no deduction were permitted by section 29 of the *Income Tax Application Rules*, subsection 65(1) or section 66, 66.1, 66.2 or 66.4;

Selected Cases [subsec. 96(1)]: *Canadian Solifuels Inc.*, [2001] 4 C.T.C. 161 (FCA) (Provisions of subsec. 127(8) sufficient to deal with ITCs for partnerships without reference to computation rules in subsec. 96(1)); *Spire Freezers Ltd. v. R.*, [1998] 2 C.T.C. 2764 (TCC); aff'd [1999] 3 C.T.C. 476 (FCA); rev'd [2001] 2 C.T.C. 40 (SCC) (Partnership did not exist because it was not created with a view to profit); *Goldstein v. Canada*, [1995] 2 C.T.C. 2036 (TCC) (Income retains its character as it flows through partnership); *Signum Communications Inc. v. Canada*,

[1991] 2 C.T.C. 31 (FCA) (Limited partner allowed losses greater than amount of capital contribution); *Laxton v. Canada*, [1989] 2 C.T.C. 85 (FCA) (Joint venture not separate person); *R. v. CFTO TV Ltd.*, [1982] C.T.C. 147 (FCTD) (Contractual right of partner to buy out taxpayer does not preclude deduction of partnership losses).

Regulations: 229 (partnership information return); 1101(1ab), 1102(1a) (depreciable property of partnership); 1210 (partner's share of resource allowances).

I.T. Application Rules: 20(3) (depreciable property of partnership held since before 1972).

Interpretation Bulletins: IT-123R6: Transactions involving eligible capital property; IT-259R4: Exchanges of property; IT-278R2: Death of a partner or of a retired partner; IT-346R: Commodity futures and certain commodities; IT-353R2: Partnership interests — some adjustments to cost base (archived); IT-406R2: Tax payable by an *inter vivos* trust. See also list at end of s. 96.

Information Circulars: 73-13: Investment clubs; 89-5R: Partnership information return.

I.T. Technical News: 3 (use of a partner's assets by a partnership); 6 (expenses paid personally by partner where fiscal years do not coincide — policy in para. 14 of IT-138R reversed); 25 (partnership issues); 30 (computation/allocation of partnership income and losses).

Advance Tax Rulings: ATR-59: Financing exploration and development through limited partnerships; ATR-62: Mutual fund distribution limited partnership — amortization of selling commissions.

Application Policies: SR&ED 2004-02: Filing requirements for claiming SR&ED carried out in Canada.

Forms: T1229: Statement of exploration and development expenses and depletion allowances; T2032: Statement of professional activities; T2121: Statement of fishing activities; T2124: Statement of business activities; T4068: Guide for the partnership information return; T5013 Summ: Partnership information return; T5014: Partnership capital cost allowance schedule; T5015: Reconciliation of partner's capital account; T5017: Calculation of deduction for cumulative eligible capital of a partnership.

Proposed Addition — 96(1.01)

(1.01) Income allocation to former member — If, at any time in a fiscal period of a partnership, a taxpayer ceases to be a member of the partnership

(a) for the purposes of subsection (1) and sections 34.1, 34.2, 101, 103 and 249.1, and notwithstanding paragraph 98.1(1)(d), the taxpayer is deemed to be a member of the partnership at the end of the fiscal period; and

(b) for the purposes of the application of paragraph (2.1)(b) and subparagraphs 53(1)(e)(i) and (viii) and (2)(c)(i) to the taxpayer, the fiscal period of the partnership is deemed to end

(i) immediately before the time at which the taxpayer is deemed by subsection 70(5) to have disposed of the interest in the partnership, where the taxpayer ceased to be a member of the partnership because of the taxpayer's death, and

(ii) immediately before the time that is immediately before the time that the taxpayer ceased to be a member of the partnership, in any other case.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 90(1), will add subsec. 96(1.01), applicable in respect of a taxpayer, in the case where the taxpayer ceases to be a member of a partnership because of the taxpayer's death, to 2003 *et seq.*; and in any other case, to 1995 *et seq.*

Technical Notes: New subsection 96(1.01) generally applies to the 1995 and subsequent taxation years. Paragraph 96(1.01)(a) deems a taxpayer who is a former member of a partnership to be a member at the end of the fiscal period in which the taxpayer ceased to be a member, for the purpose of allocating partnership income or loss for that period. This new provision clarifies that, although a taxpayer may have ceased to be a member of a partnership before the end of the partnership's fiscal period, an amount of the income or loss of the partnership is allocable to the taxpayer under subsection 96(1). The amount so allocated is relevant to certain calculations relating to partnership income or loss, including the calculation of the adjusted cost base of the former member of the partnership immediately before the taxpayer ceased to be member.

New subsection 96(1.01) applies notwithstanding the rule in paragraph 98.1(1)(d) that would otherwise deem a former partnership member with a residual interest not to be a member of the partnership for the purposes of certain provisions of the Act.

New paragraph 96(1.01)(a) does not require that partnership income or loss be calculated immediately after a member leaves the partnership. The income or loss allocation, including that of the former member, continues to be calculated after the end of the partnership's fiscal period. In some circumstances the fiscal period of a partnership may end in a taxation year of the former member that is after the taxation year in which the partnership interest was disposed of. It is, therefore, possible that a member will not be required to report a partnership income allocation until the taxation year following that in which a capital gain or loss on the disposition of the partnership interest is required to be reported.

New paragraph 96(1.01)(b) clarifies that an income or loss allocation for the "stub period" during which a taxpayer was a member is included in the calculation of the adjusted cost base of the partnership interest at the time the former member disposes of the interest or a residual interest. The income or loss allocation will affect the calculation of a capital loss under paragraph 98.1(1)(c) or subsection 100(2). Subsection 96(1.01) may ameliorate certain situations where, under the existing provisions of the Act, a former member may have been required to report a capital gain in the year that the person left the partnership, only to be offset by a capital loss in a subsequent year.

Example

Ms. Brown was a partner in XYZ Partnership until June 30. The fiscal period end of the partnership ends December 31. The adjusted cost base of her partnership interest on January 1 was Nil. From January to June 30 she withdrew $16,000 in capital.

Just before the end of the partnership's fiscal period, all the partners agree that Ms. Brown's share of income for the period was $20,000. On December 30 she was paid $4,000 in satisfaction of her residual interest.

A summary of Ms. Brown's adjusted cost base is as follows:

		Adjusted Cost Base
January 1, Year 1:		Nil
January 31, Drawings	$<16,000>	<16,000>
Retirement of Ms. Brown, June 30		
December 30		
— Share of income for 6 months	20,000	4,000
— Payout of rights to equity	4,000	Nil
December 31 — Fiscal period ends		

In the result, Ms. Brown is allocated $20,000 income under subsection 96(1.01). The adjusted cost base of her interest immediately before she retired on June 30 was $4,000 (i.e., $20,000 less $16,000). She is deemed by paragraph 98.1(1)(b) to have disposed of her residual interest on December 31 for proceeds of disposition of $4,000, such that she has no capital gain or loss on the disposition.

Subparagraph 53(1)(e)(v) requires that "rights or things" (referred to in subsection 70(2)) in respect of the partnership interest of a deceased partner be included in the adjusted cost base of the partnership interest of the deceased. This provision is no longer relevant to income of the partnership to which a partner is entitled at the time of death, since new subsection 96(1.01) applies to the allocation of partnership income for the fiscal period in which the taxpayer dies. However, subparagraph 53(1)(e)(v) continues to apply in respect of other rights or things, if any, to which the deceased taxpayer is entitled through the partnership that are required to be included in the income of the deceased taxpayer under subsection 70(2).

Related Provisions: 96(3) — Election by members of partnership.

(1.1) Allocation of share of income to retiring partner — For the purposes of subsection (1) and sections 34.1, 34.2, 101, 103 and 249.1,

(a) where the principal activity of a partnership is carrying on a business in Canada and its members have entered into an agreement to allocate a share of the income or loss of the partnership from any source or from sources in a particular place, as the case may be,

to any taxpayer who at any time ceased to be a member of

(i) the partnership, or

(ii) a partnership that at any time has ceased to exist or would, but for subsection 98(1), have ceased to exist, and either

(A) the members of that partnership, or

(B) the members of another partnership in which, immediately after that time, any of the members referred to in clause (A) became members

have agreed to make such an allocation

or to the taxpayer's spouse, common-law partner, estate or heirs or to any person referred to in subsection (1.3), the taxpayer, spouse, common-law partner, estate, heirs or person, as the case may be, shall be deemed to be a member of the partnership; and

(b) all amounts each of which is an amount equal to the share of the income or loss referred to in this subsection allocated to a taxpayer from a partnership in respect of a particular fiscal period of the partnership shall, notwithstanding any other provision of this Act, be included in computing the taxpayer's income for the taxation year in which that fiscal period of the partnership ends.

Related Provisions: 53(2)(c) — ACB of partnership interest; 96(1.2) — Disposal of right to share in income; 96(1.3) — Deductions; 96(1.4) — Right deemed not to be capital property; 96(1.5) — Disposition by virtue of death of taxpayer; 96(1.6) — Deemed members of partnership are deemed to carry on business.

History: Subsec. 96(1.1) amended by 2000, c. 12, Sch. 2, s. 8, to replace "spouse,"with "spouse, common-law partner," applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

The opening words of subsec. 96(1.1) amended by 1996, c. 21, subsec. 17(2), applicable after 1994. The opening words formerly read:

(1.1) For the purposes of subsection (1) and sections 101 and 103,

Selected Cases [subsec. 96(1.1)]: *CSI Development Corp. v. R.*, [1999] 3 C.T.C. 2421 (TCC) (Partnership has no capital dividend account); *Sauriol v. Canada*, [1994] 2 C.T.C. 244 (FCA) ("Allocate" used in ordinary sense of assigning or setting aside and creating real right for recipient); *Lachance v. Canada*, [1994] 2 C.T.C. 185 (FCA) (Provision requires allocation of retired partner's income among provincial sources); *Dacen v. MNR*, [1989] 2 C.T.C. 44 (FCTD) (Income improperly allocated to former partner when agreement unilaterally altered by remaining partners); *Delesalle v. R.; R. v. Cohos*, [1986] 1 C.T.C. 58 (FCTD) (Part of sum paid to retiring partner representing work in progress was capital repayment); *Laferrière v. R.*, [1985] 2 C.T.C. 190 (FCTD); appealed to FCA (Sept. 9, 1985), File A-725-85 (Sale price for partnership interest including amounts for work in progress and accounts receivable was capital).

Interpretation Bulletins: IT-278R2: Death of a partner or of a retired partner; IT-338R2: Partnership interests — effects on adjusted cost base resulting from the admission or retirement of a partner (archived). See also list at end of s. 96.

(1.2) Disposal of right to share in income, etc — Where in a taxation year a taxpayer who has a right to a share of the income or loss of a partnership under an agreement referred to in subsection (1.1) disposes of that right,

(a) there shall be included in computing the taxpayer's income for the year the proceeds of the disposition; and

(b) for greater certainty, the cost to the taxpayer of each property received by the taxpayer as consideration for the disposition is the fair market value of the property at the time of the disposition.

Related Provisions: 96(1.3) — Deductions.

Interpretation Bulletins: See list at end of s. 96.

(1.3) Deductions — Where, by virtue of subsection (1.1) or (1.2), an amount has been included in computing a taxpayer's income for a taxation year, there may be deducted in computing the taxpayer's income for the year the lesser of

(a) the amount so included in computing the taxpayer's income for the year, and

(b) the amount, if any, by which the cost to the taxpayer of the right to a share of the income or loss of a partnership under an agreement referred to in subsection (1.1) exceeds the total of all amounts in respect of that right that were deductible by virtue of this subsection in computing the taxpayer's income for previous taxation years.

Interpretation Bulletins: IT-278R2: Death of a partner or of a retired partner; IT-338R2: Partnership interests — effects on adjusted cost base resulting from the admission or retirement of a partner (archived). See also list at end of s. 96.

(1.4) Right deemed not to be capital property — For the purposes of this Act, a right to a share of the income or loss of a partnership under an agreement referred to in subsection (1.1) shall be deemed not to be capital property.

Interpretation Bulletins: IT-338R2: Partnership interests — effects on adjusted cost base resulting from the admission or retirement of a partner (archived).

(1.5) Disposition by virtue of death of taxpayer — Where, at the time of a taxpayer's death, the taxpayer has a right to a share of the income or loss of a partnership under an agreement referred to in subsection (1.1), subsections 70(2) to (4) apply.

Related Provisions: 53(1)(e)(v) — Adjustments to cost base.

Interpretation Bulletins: IT-212R3: Income of deceased persons — rights or things; IT-278R2: Death of a partner or of a retired partner. See also list at end of s. 96.

(1.6) Members of partnership deemed to be carrying on business in Canada — Where a partnership carries on a business in Canada at any time, each taxpayer who is deemed by paragraph (1.1)(a) to be a member of the partnership at that time is deemed to carry on the business in Canada at that time for the purposes of subsection 2(3), sections 34.1 and 150 and (subject to subsection 34.2(7)) section 34.2.

History: Subsec. 96(1.6) amended by 1996, c. 21, subsec. 17(3), applicable after 1993. The subsec. formerly read:

(1.6) Where a partnership carries on a business in Canada in a taxation year, each taxpayer who is deemed by paragraph (1.1)(a) to be a member of the partnership shall, for the purposes of subsection 2(3), be deemed to carry on that business in Canada in that year.

Interpretation Bulletins: See list at end of s. 96.

(1.7) Gains and losses — Notwithstanding subsection (1) or section 38, where in a particular taxation year of a taxpayer, the taxpayer is a member of a partnership with a fiscal period that ends in the particular year, the amount of a taxable capital gain (other than that part of the amount that can reasonably be attributed to an amount deemed under subsection 14(1.1) to be a taxable capital gain of the partnership), allowable capital loss or allowable business investment loss of the taxpayer for the particular year determined in respect of the partnership is the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount of the taxpayer's taxable capital gain (other than that part of the amount that can be attributed to an amount deemed under subsection 14(1.1) to be a taxable capital gain of the partnership), allowable capital loss or allowable business investment loss, as the case may be, for the particular year otherwise determined under this section in respect of the partnership;

B is the relevant fraction that applies under paragraph 38(a), (a.1), (a.2), (b) or (c) for the particular year in respect of the taxpayer; and

C is the fraction that was used under section 38 for the fiscal period of the partnership.

Related Provisions: 96(1.71) — Transitional rule for 2000.

History: The opening words of subsec. 96(1.7) amended by 2001, c. 17, subsec. 74(2), applicable to taxation years that end after February 27, 2000. The opening words formerly read:

(1.7) Notwithstanding subsection (1) or section 38, where in a particular taxation year of a taxpayer (other than an individual who is not a testamentary trust) commencing before 1990, the taxpayer is a member of a partnership with a fiscal period ending in the particular year, the amount of its taxable capital gain (other than that part of the amount that can be attributed to an amount deemed under subsection 14(1) to be a taxable capital gain of the partnership), allowable capital loss or allowable business investment loss for the particular year determined in respect of the partnership shall be the amount determined by the formula

The descriptions of A and B in subsec. 96(1.7) amended by the said c. 17, subsec. 74(3), applicable to fiscal periods that begin after 2000. The descriptions formerly read:

A is the amount of the taxpayer's taxable capital gain (other than that part of the amount that can be attributed to an amount deemed under subsection 14(1) to be a taxable capital gain of the partnership) allowable capital loss or allowable business investment loss, as the case may be, for the particular year otherwise determined under this section in respect of the partnership;

B is the fraction that would be used under section 38 for the particular year in respect of the taxpayer if the taxpayer had a capital gain for the particular year; and

Proposed Amendment — Election that 96(1.7) not apply for 2000

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 90(5), will enact the transitional rule below for subsec. 96(1.7):

40. (5) If a taxpayer, who is a member of a partnership at the end of a particular fiscal period, of the partnership, that ends in the taxpayer's 2000 taxation year, so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year in which the amending legislation is assented to,

(a) subsection 96(1.7) of the *Income Tax Act* does not apply to the taxpayer's 2000 taxation year;

(b) the taxpayer is deemed to have a capital gain, a capital loss or a business investment loss in respect of the partnership for the particular fiscal period equal to the amount of the taxable capital gain, the allowable capital loss or the allowable business investment loss in respect of the partnership for the particular fiscal period, as the case may be, multiplied by the reciprocal of the fraction in paragraph 38(a) of the *Income Tax Act* that applies to the partnership for the particular fiscal period;

(c) the amount of a capital gain, a capital loss or a business investment loss determined under paragraph (b) is deemed to be a capital gain, a capital loss or a business investment loss, as the case may be, of the taxpayer from a disposition of a capital property on the day that the particular fiscal period ends; and

(d) except as provided by this subsection, no amount shall be included in computing the taxpayer's taxable capital gains, allowable capital losses and allowable business investment losses in respect of the taxable capital gains, allowable capital losses and allowable business investment losses of the partnership for the particular fiscal period.

Technical Notes: The calculation of the capital gains inclusion rate of a taxpayer for the 2000 taxation year takes into account the net capital gains or losses of the taxpayer for the year 2000 other than those allocated by a partnership. It is the inclusion rate of the taxpayer, determined without reference to the allocated partnership gains, that is applied to the taxpayer's share of the partnership gains in determining the taxable capital gains of the taxpayer derived from the partnership capital gains. As a result, taxpayers with different inclusion rates report different amounts of taxable capital gains in respect of capital gains allocated to the taxpayer by a partnership.

Subclause 40(7) [now 90(5) — ed.] of the legislation introduces a special transitional rule under which members of a partnership may elect to treat capital gains and losses allocated to them by a partnership as their own capital gains and losses for the purpose of calculating the taxpayer's capital gains inclusion rate for the year 2000. The gains and losses will be considered to have been realized by the taxpayer on the day on which the fiscal period of the partnership ends.

If a taxpayer so elects, subsection 96(1.7) will not apply. The taxpayer will be deemed to have realized (on the day on which the fiscal period of the partnership ends in the taxpayer's 2000 taxation year) a capital gain, a capital loss or a business investment loss in respect of the partnership equal to the amount of the taxable capital gain, the allowable capital loss or the allowable business investment loss, as the case may be, of the partnership allocated to the taxpayer, multiplied by the reciprocal of the fraction in paragraph 38(a) that applied to the partnership for the particular fiscal period. Where the inclusion rate for the partnership cannot be determined, the rules in subsection 96(1.7) apply to determine the inclusion rate of the partnership. This capital gain, capital loss or business investment loss is deemed to be a capital gain, capital loss or business investment loss, as the case may be, of the taxpayer from a disposition of a capital property on the day that the particular fiscal period ends.

Interpretation Bulletins: See list at end of s. 96.

(1.71) Application — Where the fraction referred to in the description of C in subsection (1.7) cannot be determined by a taxpayer in respect of a fiscal period of a partnership that ended before February 28, 2000, or includes February 28, 2000 or October 17, 2000, for the purposes of subsection (1.7), the fraction is deemed to be

(a) where the fiscal period ended before or began before February 28, 2000, 3/4;

(b) where the fiscal period began after February 27, 2000 and before October 18, 2000, 2/3; and

(c) in any other case, 1/2.

History: Subsec. 96(1.71) added by 2001, c. 17, subsec. 74(4), applicable to fiscal periods that begin after 2000.

(1.8) Loan of property — For the purposes of subsection 56(4.1) and sections 74.1 and 74.3, where an individual has transferred or lent property, either directly or indirectly, by means of a trust or by any other means whatever, to a person and the property or property substituted therefor is an interest in a partnership, the person's share of the amount of any income or loss of the partnership for a fiscal period in which the person was a specified member of the partnership shall be deemed to be income or loss, as the case may be, from the property or substituted property.

Related Provisions: 248(5) — Substituted property.

Interpretation Bulletins: IT-511R: Interspousal and certain other transfers and loans of property. See also list at end of s. 96.

Proposed Addition — 96(1.9)

(1.9) Application of ss. 94.1 to 94.4 — If an exempt taxpayer (as defined in subsection 94.1(1)) for a taxation year is a member of a partnership at any time in the year, in applying paragraphs (1)(f) and (g) and 53(1)(e) and (2)(c) to the taxpayer for a fiscal period of the partnership that ends in the year this Act is to be read without reference to sections 94.1 to 94.4.

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 20(2), will add subsec. 96(1.9), applicable to fiscal periods that begin after 2002.

Technical Notes: New subsection 96(1.9) is relevant where an "exempt taxpayer" (in general, an individual who has been resident in Canada for fewer than 60 months or certain persons exempted by subsection 149(1) from tax on their taxable incomes) is a member of a partnership and the partnership invests in a foreign investment entity. In these circumstances, the exempt taxpayer's share of the partnership's income or loss is computed without regard to sections 94.1 to 94.4. For further details on the application of section 94.2 to partnerships, see the commentary on new subsections 94.2(6) to (8).

(2) Construction — The provisions of this subdivision shall be read and construed as if each of the assumptions in paragraphs (1)(a) to (g) were made.

(2.1) Limited partnership losses [at-risk rule] — Notwithstanding subsection (1), where a taxpayer is, at any time in a taxation year, a limited partner of a partnership, the amount, if any, by which

(a) the total of all amounts each of which is the taxpayer's share of the amount of any loss of the partnership, determined in accordance with subsection (1), for a fiscal period of the partnership ending in the taxation year from a business (other than a farming business) or from property

exceeds

(b) the amount, if any, by which

(i) the taxpayer's at-risk amount in respect of the partnership at the end of the fiscal period

exceeds the total of

(ii) the amount required by subsection 127(8) in respect of the partnership to be added in computing the investment tax credit of the taxpayer for the taxation year,

(iii) the taxpayer's share of any losses of the partnership for the fiscal period from a farming business, and

(iv) the taxpayer's share of

(A) the foreign resource pool expenses, if any, incurred by the partnership in the fiscal period,

(B) the Canadian exploration expense, if any, incurred by the partnership in the fiscal period,

(C) the Canadian development expense, if any, incurred by the partnership in the fiscal period, and

(D) the Canadian oil and gas property expense, if any, incurred by the partnership in the fiscal period,

shall

(c) not be deducted in computing the taxpayer's income for the year,

(d) not be included in computing the taxpayer's non-capital loss for the year, and

(e) be deemed to be the taxpayer's limited partnership loss in respect of the partnership for the year.

Related Provisions: 66.8(1) — Resource expenses of limited partner; 87(2.1)(a) — Amalgamation — limited partnership loss carried forward; 96(1.01)(b) — Deemed end of fiscal period when taxpayer ceases to be partner; 96(2.2) — At-risk amount; 111(1)(e) — Carryforward of non-deductible limited partnership losses; 111(9) — Limited partnership loss where taxpayer not resident in Canada; 127.52(1)(i)(ii)(B) — Calculation of previous year's limited partnership loss for minimum tax purposes; 128.1(4)(f) — Limited partnership loss limitation on becoming non-resident; 152(1.1)–(1.3) — Determination of losses; 248(1)"limited partnership loss" — Definition applies to entire Act.

History: Cl. 96(2.1)(b)(iv)(A) amended by 2001, c. 17, subsec. 74(5), applicable to fiscal periods that begin after 2000. The cl. formerly read:

(A) the foreign exploration and development expenses, if any, incurred by the partnership in the fiscal period,

Selected Cases [subsec. 96(2.1)]: *Foley v. R.*, [2004] 1 C.T.C. 2795 (TCC) (Limited partners argued that they should be general partners); *Signum Communications Inc. v. Canada*, [1991] 2 C.T.C. 31 (FCA) (Limited partner allowed losses greater than amount of capital contribution to partnership).

Interpretation Bulletins: IT-232R3: Losses — their deductibility in the loss year or in other years; IT-262R2: Losses of non-residents and part-year residents; IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987. See also list at end of s. 96.

I.T. Technical News: 5 (adjusted cost base of partnership interest).

Advance Tax Rulings: ATR-51: Limited partner at-risk rules; ATR-59: Financing exploration and development through limited partnerships.

(2.2) At-risk amount — For the purposes of this section and sections 111 and 127, the at-risk amount of a taxpayer, in respect of a partnership of which the taxpayer is a limited partner, at any particular time is the amount, if any, by which the total of

(a) the adjusted cost base to the taxpayer of the taxpayer's partnership interest at that time, computed in accordance with subsection (2.3) where applicable,

(b) where the particular time is the end of the fiscal period of the partnership, the taxpayer's share of the income of the partnership from a source for that fiscal period computed under the method described in subparagraph 53(1)(e)(i), and

(b.1) where the particular time is the end of the fiscal period of the partnership, the amount referred to in subparagraph 53(1)(e)(viii) in respect of the taxpayer for that fiscal period

exceeds the total of

(c) all amounts each of which is an amount owing at that time to the partnership, or to a person or partnership not dealing at arm's length with the partnership, by the taxpayer or by a person or partnership not dealing at arm's length with the taxpayer, other than any amount deducted under subparagraph 53(2)(c)(i.3) in computing the adjusted cost base, or under section 143.2 in computing the cost, to the taxpayer of the taxpayer's partnership interest at that time, and

Proposed Amendment — Application of 66.8 to at-risk rules

Letter from Dept. of Finance, October 18, 2004: See under 66.8(1).

(d) any amount or benefit that the taxpayer or a person not dealing at arm's length with the taxpayer is entitled, either immediately or in the future and either absolutely or contingently, to receive or to obtain, whether by way of reimbursement, compensation, revenue guarantee, proceeds of disposition, loan or any other form of indebtedness or in any other form or manner whatever, granted or to be granted for the purpose of reducing the impact, in whole or in part, of any loss that the taxpayer may sustain because the taxpayer is a member of the partnership or holds or disposes of an interest in the partnership, except to the extent that the amount or benefit is included in the determination of the value of J in the definition "cumulative Canadian exploration expense" in subsection 66.1(6), of M in the definition "cumulative Canadian development expense" in subsection 66.2(5) or of I in the definition "cumulative Canadian oil and gas pro-

perty expense" in subsection 66.4(5) in respect of the taxpayer, or the entitlement arises

(i) by virtue of a contract of insurance with an insurance corporation dealing at arm's length with each member of the partnership under which the taxpayer is insured against any claim arising as a result of a liability incurred in the ordinary course of carrying on the partnership business,

(ii) [Repealed]

(iii) as a consequence of the death of the taxpayer,

(iv), (v) [Repealed]

(vi) in respect of an amount not included in the at-risk amount of the taxpayer determined without reference to this paragraph, or

(vii) because of an excluded obligation (as defined in subsection 6202.1(5) of the *Income Tax Regulations*) in relation to a share issued to the partnership by a corporation,

and, for the purposes of this subsection,

(e) where the amount or benefit to which the taxpayer or the person is entitled at any time is provided by way of an agreement or other arrangement under which the taxpayer or the person has a right, either immediately or in the future and either absolutely or contingently (otherwise than as a consequence of the death of the taxpayer), to acquire other property in exchange for all or any part of the partnership interest, for greater certainty the amount or benefit to which the taxpayer or the person is entitled under the agreement or arrangement is considered to be not less than the fair market value of the other property at that time, and

(f) where the amount or benefit to which the taxpayer or the person is entitled at any time is provided by way of a guarantee, security or similar indemnity or covenant in respect of any loan or other obligation of the taxpayer or the person, for greater certainty the amount or benefit to which the taxpayer or the person is entitled under the guarantee or indemnity at any particular time is considered to be not less than the total of the unpaid amount of the loan or obligation at that time and all other amounts outstanding in respect of the loan or obligation at that time.

Related Provisions: 40(3.14)(b) — Meaning of "limited partner" re negative ACB of partnership interest; 66.8 — Resource expenses of limited partner; 96(2.3) — Computation of at-risk amount; 96(2.6) — Artificial transactions; 96(2.7) — Non-arm's length contribution of capital to partnership; 143.2(2), (6) — At-risk adjustment to tax shelter investment; 248(8) — Occurrences as a consequence of death.

History: Para. 96(2.2)(c) and the opening words of para. 96(2.2)(d) amended by 1998, c. 19, subsec. 123(1), applicable after November 1994. Para. (c) and the opening words of para. (d) formerly read:

(c) the total of all amounts each of which is an amount owing at that time to the partnership or to a person or partnership with whom or which the partnership does not deal at arm's length by the taxpayer or by a person or partnership with whom or which the taxpayer does not deal at arm's length other than any such amount deducted under subparagraph 53(2)(c)(i.3) in computing the adjusted cost base to the taxpayer of the taxpayer's partnership interest at that time; and

. . . . .

(d) where the taxpayer or a person with whom the taxpayer does not deal at arm's length is entitled, either immediately or in the future and either absolutely or contingently, to receive or obtain any amount or benefit, whether by way of reimbursement, compensation, revenue guarantee or proceeds of disposition or in any other form or manner whatever, granted or to be granted for the purpose of reducing the impact, in whole or in part, of any loss that the taxpayer may sustain because the taxpayer is a member of the partnership or holds or disposes of an interest in the partnership, the amount or benefit, as the case may be, that the taxpayer or the person is or will be so entitled to receive or obtain, except to the extent that the amount or benefit is included in the determination of J in the definition "cumulative Canadian exploration expense" in subsection 66.1(6), of M in the definition "cumulative Canadian development expense" in subsection 66.2(5) or of I in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5) in respect of the taxpayer or the entitlement arises

Subparas. 96(2.2)(d)(iv) and (v) repealed by 1998, c. 19, subsec. 123(3), applicable to partnership interests acquired by a taxpayer after April 26, 1995, other than where

(a) the interest in the partnership is acquired by the taxpayer under the terms of an agreement in writing entered into by the taxpayer before April 27, 1995, or the interest was acquired by the taxpayer

(i) before 1996 where

(A) all or substantially all of the property of the partnership is

(I) a film production prescribed for the purpose of subpara. 96(2.2)(d)(ii), or

(II) an interest in one or more partnerships all or substantially all of the property of which is a film production prescribed for the purpose of subpara. 96(2.2)(d)(ii),

(B) the principal photography of the production began before 1996, or, in the case of a production that is a television series, the principal photography of one episode of the series began before 1996, and

(C) the principal photography of the production was completed before March 1996,

(ii) before 1996 where it can reasonably be considered that the funds raised by the partnership through the issue of the interest were used by the partnership to acquire before 1996 property included in Class 24, 27 or 34 in Schedule II to the *Income Tax Regulations* and the property was

(A) acquired under an agreement in writing entered into by the partnership before April 27, 1995, or

(B) under construction by or on behalf of the partnership on April 26, 1995,

(iii) before July 1995 under the terms of a document that is a prospectus, preliminary prospectus or registration statement filed before April 27, 1995 with a public authority in Canada under and in accordance with the securities legislation of Canada or of any province and, where required by law, accepted for filing by the public authority, and the funds so raised were expended before 1996 on expenditures contemplated by the document, or

(iv) before July 1995 under the terms of an offering memorandum distributed as part of an offering of securities where

(A) the memorandum contained a complete or substantially complete description of the securities contemplated in the offering as well as the terms and conditions of the offering,

(B) the memorandum was distributed before April 27, 1995,

(C) solicitations in respect of the sale of the securities contemplated by the memorandum were made before April 27, 1995,

(D) the sale of the securities was substantially in accordance with the memorandum, and

(E) the funds were spent before 1996 in accordance with the memorandum; and

(b) the following conditions are met:

(i) in the case of an interest

(A) acquired by the taxpayer under the terms of an agreement in writing entered into by the taxpayer before April 27, 1995, or

(B) to which subparagraph (a)(iii) or (iv) applies

that is a tax shelter for which s. 237.1 requires an identification number to be obtained, an identification number was obtained before April 27, 1995, and

(ii) there is no agreement or other arrangement under which the taxpayer's obligations with respect to the interest can be changed, reduced or waived if there is a change to the Act or if there is an adverse assessment under the Act.

The subparas. formerly read:

(iv) by virtue of an agreement under which the taxpayer may dispose of the partnership interest for an amount not exceeding its fair market value, determined without reference to the agreement, at the time of the disposition,

(v) by virtue of a revenue guarantee or other agreement in respect of which gross revenue is earned by the partnership except to the extent that the revenue guarantee or other agreement may reasonably be considered to ensure that the taxpayer or person will receive a return of a portion of the taxpayer's investment,

The portion of subsec. 96(2.2) after para. (d) amended by 1998, c. 19, subsec. 123(4), applicable to partnership interests acquired by a taxpayer after April 26, 1995, except that it does not apply where

(a) the interest was acquired by the taxpayer

(i) under the terms of an agreement in writing entered into by the taxpayer before April 27, 1995,

(ii) before July 1995 under the terms of a document that is a prospectus, preliminary prospectus or registration statement filed before April 27, 1995 with a public authority in Canada under and in accordance with the securities legislation of Canada or of any province and, where required by law, accepted for filing by the public authority, and the funds so raised were expended before 1996 on expenditures contemplated by the document, or

(iii) before July 1995 under the terms of an offering memorandum distributed as part of an offering of securities where

(A) the memorandum contained a complete or substantially complete description of the securities contemplated in the offering as well as the terms and conditions of the offering,

(B) the memorandum was distributed before April 27, 1995,

(C) solicitations in respect of the sale of the securities contemplated by the memorandum were made before April 27, 1995,

(D) the sale of the securities was substantially in accordance with the memorandum, and

(E) the funds were spent before 1996 in accordance with the memorandum; and

(b) the following conditions are met:

(i) in the case of an interest that is a tax shelter for which s. 237.1 requires an identification number to be obtained, an identification number was obtained before April 27, 1995, and

(ii) there is no agreement or other arrangement under which the taxpayer's obligations with respect to the interest can be changed, reduced or waived if there is a change to the Act or if there is an adverse assessment under the Act.

That portion formerly read:

and, for the purposes of this subsection, where the amount or benefit to which the taxpayer is at any time entitled is provided

(e) by way of an agreement or other arrangement under which the taxpayer has a right, either absolutely or contingently (otherwise than as a consequence of the death of the taxpayer), to acquire other property in exchange for all or any part of the partnership interest, for greater certainty the amount or benefit to which the taxpayer is entitled under the agreement or arrangement shall be not less than the fair market value of that other property at that time, or

(f) by way of a guarantee, security or similar indemnity or covenant in respect of any loan or other obligation of the taxpayer, by the partnership or a person or partnership with whom or which the partnership does not deal at arm's length, for greater certainty the amount or benefit to which the taxpayer is entitled under the guarantee or indemnity at any particular time shall not be less than the total of the unpaid amount of the loan or obligation at that time and all other amounts outstanding in respect of the loan or obligation at that time.

Subpara. 96(2.2)(d)(ii) repealed by 1996, c. 21, subsec. 17(4), applicable to revenue guarantees granted after 1995. The subpara. formerly read:

(ii) by virtue of a prescribed revenue guarantee in respect of a prescribed film production,

Para. 96(2.2)(c) amended by 1995, c. 3, s. 25, applicable after September 26, 1994. Para. (c) formerly read:

(c) the total of all amounts each of which is an amount owing at that time to the partnership or to a person or partnership with whom or which the partnership does not deal at arm's length by the taxpayer or by a person with whom the taxpayer does not deal at arm's length, and

That portion of para. 96(2.2)(d) preceding subpara. (i) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 72(1), applicable to taxation years ending after June 17, 1987. That portion formerly read:

(d) where the taxpayer or a person with whom the taxpayer does not deal at arm's length is entitled, either immediately or in the future, either absolutely or contingently, to receive or obtain any amount or benefit, whether by way of reimbursement, compensation, revenue guarantee or proceeds of disposition or in any other form or manner whatever, granted or to be granted for the purpose of reducing the impact, in whole or in part, of any loss that the taxpayer may sustain by virtue of the taxpayer's being a member of the partnership or by virtue of the taxpayer's holding or disposing of the taxpayer's partnership interest, the amount or benefit, as the case may be, that the taxpayer or the person is or will be so entitled to receive or obtain, except to the extent that the entitlement arises

Subpara. 96(2.2)(d)(vii) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 72(2), applicable to taxation years ending after June 17, 1987.

Selected Cases [subsec. 96(2.2)]: *Goren v. R.*, [1997] 3 C.T.C. 2025 (TCC) (At-risk rules applied where no commercial activity whatsoever); *Central Supply Company (1972) v. R.*, [1997] 3 C.T.C. 102 (FCA); rev'g [1995] 2 C.T.C. 2320 (TCC) (Deductions permitted under specific provisions of the *Act* may nevertheless unduly or artificially reduce income); *Hazelwood v. Canada*, [1990] 1 C.T.C. 5 (FCTD) (Deductions for losses and capital cost allowance by limited partner permitted to the extent of capital contribution).

Regulations: 7500 (prescribed film production, prescribed revenue guarantee).

Interpretation Bulletins: IT-232R3: Losses — their deductibility in the loss year or in other years. See also list at end of s. 96.

I.T. Technical News: 5 (adjusted cost base of partnership interest); 12 (adjusted cost base of partnership interest).

Advance Tax Rulings: ATR-51: Limited partner at-risk rules; ATR-59: Financing exploration and development through limited partnerships.

(2.3) Idem — For the purposes of subsection (2.2), where a taxpayer has acquired the taxpayer's partnership interest at any time from a transferor other than the partnership, the adjusted cost base to the taxpayer of that interest shall be computed as if the cost to the taxpayer of the interest were the lesser of

(a) the taxpayer's cost otherwise determined, and

(b) the greater of

(i) the adjusted cost base of that interest to the transferor immediately before that time, and

(ii) nil,

and where the adjusted cost base of the transferor cannot be determined, it shall be deemed to be equal to the total of the amounts determined in respect of the taxpayer under paragraphs (2.2)(c) and (d) immediately after that time.

(2.4) Limited partner — For the purposes of this section and sections 111 and 127, a taxpayer who is a member of a partnership at a particular time is a limited partner of the partnership at that time if the member's partnership interest is not an exempt interest (within the meaning assigned by subsection (2.5)) at that time and if, at that time or within 3 years after that time,

(a) by operation of any law governing the partnership arrangement, the liability of the member as a member of the partnership is limited (except by operation of a provision of a statute of Canada or a province that limits the member's liability only for debts, obligations and liabilities of the partnership, or any member of the partnership, arising from negligent acts or omissions or misconduct that another member of the partnership or an employee, agent or representative of the partner-

ship commits in the course of the partnership business while the partnership is a limited liability partnership);

Proposed Amendment — 96(2.4)(a)

(a) by operation of any law governing the partnership arrangement, the liability of the member as a member of the partnership is limited (except by operation of a provision of a statute of Canada or a province that limits the member's liability only for debts, obligations and liabilities of the partnership, or any member of the partnership, arising from negligent acts or omissions, from misconduct or from fault of another member of the partnership or an employee, an agent or a representative of the partnership in the course of the partnership business while the partnership is a limited liability partnership);

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 90(2), will amend para. 96(2.4)(a) to read as above, applicable after June 20, 2001.

Technical Notes: Subsection 96(2.4) provides an extended definition of "limited partner" for the purpose of applying the limited partnership at-risk rules in subsection 96(2.2).

Paragraph 96(2.4)(a) provides that a member of a partnership is a "limited partner" if, by operation of law governing the partnership agreement, the liability of the member as a member is limited. However, paragraph 96(2.4)(a) does not apply in cases where a member's liability is limited by operation of a statutory provision of Canada or of a province that limits the member's liability only for the debts, obligations and liabilities of a limited liability partnership (or of any member of the partnership) arising from negligent acts or omissions of another member of the partnership (or of an employee, agent or representative of the partnership) in the course of the partnership business and while the partnership is a limited liability partnership.

The Province of Quebec has amended its legislation concerning partnerships to allow partners to carry on their activities within a limited liability partnership. That legislation refers to the civil law concept of "fault/fautes". The English version of paragraph 96(2.4)(a) does not refer to the civil law concept of "fault" and is amended to do so, effective after June 20, 2001.

Proposed Amendment — 96(2.4)(a) — ACB adjustment

Letter from Dept. of Finance, July 11, 2003: See under 40(3.1).

(b) the member or a person not dealing at arm's length with the member is entitled, either immediately or in the future and either absolutely or contingently, to receive an amount or to obtain a benefit that would be described in paragraph (2.2)(d) if that paragraph were read without reference to subparagraphs (ii) and (vi);

(c) one of the reasons for the existence of the member who owns the interest

(i) can reasonably be considered to be to limit the liability of any person with respect to that interest, and

(ii) cannot reasonably be considered to be to permit any person who has an interest in the member to carry on that person's business (other than an investment business) in the most effective manner; or

(d) there is an agreement or other arrangement for the disposition of an interest in the partnership and one of the main reasons for the agreement or arrangement can reasonably be considered to be to attempt to avoid the application of this subsection to the member.

Related Provisions: 40(3.14) — Definition of limited partner for purposes of negative ACB rules; 66.8 — Resource expenses of limited partner; 96(2.5) — Exempt interest in a partnership; 127.52(3) — Definition for minimum tax purposes; 143.2(1)"tax shelter investment"(b) — Whether limited partnership interest is tax shelter investment.

History: Para. 96 (2.4)(a) amended by 2001, c. 17, subsec. 74(6), applicable after 1997. The para. formerly read:

(a) by operation of any law governing the partnership arrangement, the liability of the member as a member of the partnership is limited;

Subsec. 96(2.4) amended by 1998, c. 19, subsec. 123(5), applicable to fiscal periods that end after November 1994. The subsec. formerly read:

(2.4) For the purposes of this section and sections 111 and 127, a taxpayer who is a member of a partnership at a particular time is a limited partner of that partnership at that time if the taxpayer's partnership interest is not an exempt interest at that time (within the meaning assigned by subsection (2.5)) and if, at that time or within three years after that time,

(a) by operation of any law which governs the partnership arrangement, the liability of the taxpayer in the taxpayer's capacity as a member of the partnership, is limited;

(b) the taxpayer or a person with whom the taxpayer does not deal at arm's length is entitled to receive an amount or obtain a benefit that would be described in paragraph (2.2)(d) if it were read without reference to subparagraphs (2.2)(d)(ii) and (vi);

(c) one of the reasons for the existence of the taxpayer who owns the interest

(i) may reasonably be considered to be to limit the liability of any other person with respect to that interest, and

(ii) may not reasonably be considered to be to permit any person who has an interest in the taxpayer to carry on that person's business (other than an investment business) in the most effective manner; or

(d) there is an agreement or other arrangement for the disposition of an interest in the partnership and one of the main reasons for the agreement or arrangement may reasonably be considered to be to attempt to avoid the application of this subsection to the taxpayer.

Selected Cases [subsec. 96(2.4)]: *Docherty v. R.*, [2005] 2 C.T.C. 97 (FCA) (At-risk rules applied where benefits obtainable from limited partnership); *Foley v. R.*, [2004] 1 C.T.C. 2795 (TCC) (Limited partners argued that they should be general partners).

Interpretation Bulletins: IT-232R3: Losses — their deductibility in the loss year or in other years. See also list at end of s. 96.

(2.5) Exempt interest — For the purposes of subsection (2.4), an exempt interest in a partnership at any time means a prescribed partnership interest or an interest in a partnership that was actively carrying on business on a regular and a continuous basis immediately before February 26, 1986 and continuously thereafter until that time or that was earning income from the rental or leasing of property immediately before February 26, 1986 and continuously thereafter until that time, where there has not after February 25, 1986 and before that time been a substantial contribution of capital to the partnership or a substantial increase in the indebtedness of the partnership and, for this purpose, an amount will not be considered to be substantial where

(a) the amount was used by the partnership to make an expenditure required to be made pursuant to the terms of a written agreement entered into by it before February 26, 1986, or to repay a loan, debt or contribution of capital that had been received or incurred in respect of any such expenditure,

(b) the amount was raised pursuant to the terms of a prospectus, preliminary prospectus or registration statement filed before February 26, 1986 with a public authority in Canada pursuant to and in accordance with the securities legislation of Canada or of any province, and, where required by law, accepted for filing by that public authority, or

(c) the amount was used for the activity that was carried on by the partnership on February 25, 1986 but was not used for a significant expansion of the activity

and, for the purposes of this subsection,

(d) a partnership in respect of which paragraph (b) applies shall be considered to have been actively carrying on a business on a regular and a continuous basis immediately before February 26, 1986 and continuously thereafter until the earlier of the closing date, if any, stipulated in the document referred to that paragraph and January 1, 1987, and

(e) an expenditure shall not be considered to have been required to be made pursuant to the terms of an agreement where the obligation to make the expenditure is conditional in any way on the consequences under this Act relating to the expenditure and the condition has not been satisfied or waived before June 12, 1986.

Selected Cases [subsec. 96(2.5)]: *Goren v. R.*, [1997] 3 C.T.C. 2025 (TCC) (At-risk rules applied where no commercial activity whatsoever).

Regulations: No prescribed partnership interests to date.

(2.6) Artificial transactions — For the purposes of paragraph (2.2)(c), where at any time an amount owing by a taxpayer or a person with whom the taxpayer does not deal at arm's length is repaid and it is established, by subsequent events or otherwise, that the repayment was made as part of a series of loans or other transactions and repayments, the amount owing shall be deemed not to have been repaid.

Related Provisions: 248(10) — Series of transactions.

(2.7) Idem — For the purposes of paragraph (2.2)(a), where at any time a taxpayer makes a contribution of capital to a partnership and the partnership or a person or partnership with whom or which the partnership does not deal at arm's length makes a loan to the taxpayer or to a person with whom the taxpayer does not deal at arm's length or repays the contribution of capital, and it is established, by subsequent events or otherwise, that the loan or repayment, as the case may be, was made as part of a series of loans or other transactions and repayments, the contribution of capital shall be deemed not to have been made to the extent of the loan or repayment, as the case may be.

Related Provisions: 248(10) — Series of transactions.

Interpretation Bulletins: See list at end of s. 96.

(3) Agreement or election of partnership members — Where a taxpayer who was a member of a partnership at any time in a fiscal period has, for any purpose relevant to the computation of the taxpayer's income from the partnership for the fiscal period, made or executed an agreement, designation or election under or in respect of the application of any of subsections 13(4) and (16) and 14(6), section 15.2, subsections 20(9) and 21(1) to (4), section 22, subsection 29(1), section 34, clause 37(8)(a)(ii)(B), subsections 44(1) and (6), 50(1) and 80(5), (9), (10) and (11), section 80.04, subsections 86.1(2), 97(2), 139.1(16) and (17) and 249.1(4) and (6) that, but for this subsection, would be a valid agreement, designation or election,

Proposed Amendment — 96(3) opening words

(3) Agreement or election of partnership members — If a taxpayer who was a member of a partnership at any time in a fiscal period has, for any purpose relevant to the computation of the taxpayer's income from the partnership for the fiscal period, made or executed an agreement, designation or election under or in respect of the application of any of subsections 13(4), (4.2) and (16) and 14(1.01), (1.02) and (6), section 15.2, subsections 20(9) and 21(1) to (4), section 22, subsection 29(1), section 34, clause 37(8)(a)(ii)(B), subsections 44(1) and (6), 50(1) and 80(5), (9), (10) and (11), section 80.04, subsection 86.1(2), sections 94.1 to 94.3, paragraph 95(2)(g.2) and subsections 97(2), 139.1(16) and (17) and 249.1(4) and (6) that, if this Act were read without reference to this subsection, would be a valid agreement, designation or election,

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 20(3), will amend the opening words of subsec. 96(3) to read as above, applicable to taxation years that end after February 27, 2000. However, the amended subsec. is

before December 21, 2002, to be read without reference to ", (4.2)"; and

before 2003, to be read without reference to "subsections 94.1 to 94.3, paragraph 95(2)(g.2)".

Technical Notes: Subsection 96(3) provides rules that apply if a member of a partnership makes an election under certain provisions of the Act for a purpose that is relevant to the computation of the member's income from the partnership. In such a case, the election will be valid only if it is made on behalf of all the members of the partnership and the member had authority to act for the partnership.

Subsection 96(3) is amended, generally for taxation years that end after February 27, 2000, to apply for the purposes of an election under subsections 14(1.01) and (1.02) in respect of the disposition of an eligible capital property.

Subsection 96(3) is also amended so that

- after 2002, it applies for the purposes of elections under new sections 94.1 to 94.3 and paragraph 95(2)(g.2); and
- after December 20, 2002, it applies for the purposes of elections under subsection 13(4.2).

(a) the agreement, designation or election is not valid unless

(i) it was made or executed on behalf of the taxpayer and each other person who was a member of the partnership during the fiscal period, and

(ii) the taxpayer had authority to act for the partnership;

(b) unless the agreement, designation or election is invalid because of paragraph (a), each other person who was a member of the partnership during the fiscal period shall be deemed to have made or executed the agreement, designation or election; and

(c) notwithstanding paragraph (a), any agreement, designation or election deemed by paragraph (b) to have been made or executed by any person shall be deemed to be a valid agreement, designation or election made or executed by that person.

Related Provisions: 244(20) — Members of partnerships.

History: The opening words of subsec. 96(3) amended by 2001, c. 17, subsec. 74(7), applicable after 1999. The opening words formerly read:

(3) Where a taxpayer who was a member of a partnership during a fiscal period has, for any purpose relevant to the computation of the taxpayer's income from the partnership for the fiscal period, made or executed an agreement, designation or an election under or in respect of the application of any of subsections 13(4), (15) and (16) and 14(6), section 15.2, subsections 20(9) and 21(1) to (4), section 22, subsection 29(1), section 34, clause 37(8)(a)(ii)(B), subsections 44(1) and (6), 50(1) and 80(5), (9), (10) and (11), section 80.04 and subsections 97(2), 139.1(16) and (17) and 249.1(4) and (6) that, but for this subsection, would be a valid agreement, designation or election,

The opening words of subsec. 96(3) amended by 2000, c. 19, s. 15, applicable to fiscal periods that end after December 15, 1998. The opening words formerly read:

(3) Where a taxpayer who was a member of a partnership during a fiscal period has, for any purpose relevant to the computation of the

taxpayer's income from the partnership for the fiscal period, made or executed an agreement, designation or an election under or in respect of the application of any of subsections 13(4), (15) and (16) and 14(6), section 15.2, subsections 20(9) and 21(1) to (4), section 22, subsection 29(1), section 34, clause 37(8)(a)(ii)(B), subsections 44(1) and (6), 50(1) and 80(5), (9), (10) and (11), section 80.04 and subsections 97(2) and 249.1(4) and (6) that, but for this subsection, would be a valid agreement, designation or election,

The opening words of subsec. 96(3) amended by 1998, c. 19, subsec. 123(6), applicable to fiscal periods that end after December 2, 1992, except that

(a) with respect to fiscal periods that ended after that day and before February 22, 1994, the opening words of subsec. 96(3) shall be read as follows:

(3) Where a taxpayer who was a member of a partnership during a fiscal period has, for any purpose relevant to the computation of the taxpayer's income from the partnership for the fiscal period, made or executed an election under or in respect of the application of any of subsections 13(4), (15) and (16) and 14(6), section 15.2, subsections 20(9) and 21(1) to (4), section 22, subsection 29(1), section 34, clause 37(8)(a)(ii)(B) and subsections 44(1) and (6), 50(1) and 97(2) that, but for this subsection, would be a valid election,

and

(b) before 1995, the opening words shall be read without reference to subsections 249.1(4) and (6) of the Act.

The opening words formerly read:

(3) Where a taxpayer who was a member of a partnership in a fiscal period has, for any purpose relevant to the computation of the taxpayer's income from the partnership for the fiscal period, made or executed an agreement, a designation or an election under or in respect of the application of any of subsections 13(4), (15) and (16), 14(6) [section 15.2, subsections], 20(9) and 21(1) to (4), section 22, subsection 29(1), section 34, clause 37(8)(a)(ii)(B), subsections 44(1) and (6), 50(1) and 80(5), (9), (10) and (11), section 80.04 and subsections 97(2) and 249.1(4) and (6) that, but for this subsection, would be a valid agreement, designation or election,

The opening words of subsec. 96(3) amended by 1996, c. 21, subsec. 17(5), applicable after 1994. The opening words formerly read:

(3) Where a taxpayer who was a member of a partnership during a fiscal period has, for any purpose relevant to the computation of the taxpayer's income from the partnership for the fiscal period, made or executed an agreement, a designation or an election under or in respect of the application of any of subsections 13(4), (15) and (16), 14(6), [section 15.2, subsections] 20(9) and 21(1) to (4), section 22, subsection 29(1), section 34, clause 37(8)(a)(ii)(B), subsections 44(1) and (6), 50(1) and 80(5), (9), (10) and (11), section 80.04 and subsection 97(2) that, but for this subsection, would be a valid agreement, designation or election,

Subsec. 96(3) amended by 1995, c. 21, s. 33, applicable to fiscal periods that end after February 21, 1994. Subsec. (3) formerly read:

(3) Election by members — Where a taxpayer who was a member of a partnership during a fiscal period has, for any purpose relevant to the computation of the taxpayer's income from the partnership for the fiscal period, made or executed an election under or in respect of the application of any of subsections 13(4), (15) and (16), 14(6), [section 15.2, subsections] 20(9) and 21(1) to (4), section 22, subsection 29(1), section 34, clause 37(8)(a)(ii)(B) and subsections 44(1) and (6), 50(1) and 97(2) that, but for this subsection, would be a valid election,

(a) the election is not valid unless

(i) it was made or executed on behalf of the taxpayer and each other person who was a member of the partnership during the fiscal period, and

(ii) the taxpayer had authority to act for the partnership;

(b) unless the election is invalid by virtue of paragraph (a), each other person who was a member of the partnership during the fiscal period shall be deemed to have made or executed the election; and

(c) notwithstanding paragraph (a), any election deemed by paragraph (b) to have been made or executed by any person shall be deemed to be a valid election made or executed by that person.

The opening words of subsec. 96(3) amended by 1994, c. 8, s. 11, applicable to fiscal periods ending after December 2, 1992. [However, 1994, c. 8 unintentionally deleted the reference to 15.2. Officials at the Department of Finance have confirmed that the reference to section 15.2 will be retroactively reinstated in a future bill, and therefore that the subsec. should be read as if it were present.] They formerly read:

(3) Where a taxpayer who was a member of a partnership during a fiscal period has, for any purpose relevant to the computation of the taxpayer's income from the partnership for the fiscal period, made or executed an election under or in respect of the application of any of subsections 13(4), (15) and (16) and 14(6), section 15.2, subsections 20(9) and 21(1) to (4), section 22, subsection 29(1), section 34 and subsections 44(1) and (6), 50(1) and 97(2) that, but for this subsection, would be a valid election,

That portion of subsec. 96(3) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 40(2), applicable after February 25, 1992. That portion formerly read:

(3) Where a taxpayer who was a member of a partnership during a fiscal period has, for any purpose relevant to the computation of the taxpayer's income from the partnership for the fiscal period, made or executed an election under or in respect of the application of any of subsections 13(4), (15) and (16), 14(6), 20(9) and 21(1) to (4), section 22, subsection 29(1), section 34 and subsections 44(1) and (6), 50(1) and 97(2) that, but for this subsection, would be a valid election, the following rules apply:

That portion of subsec. 96(3) preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 72(3), applicable to dispositions occurring after July 13, 1990 and with respect to elections made in respect of the application of subsec. 50(1), as amended, to the 1985 to 1989 taxation years and, notwithstanding subsecs. 152(4) to (5), such assessments of tax, interest and penalties payable for the 1985 to 1989 taxation years shall be made as are necessary to give effect to those elections. That portion of subsec. 96(3) formerly read:

(3) Where a taxpayer who was a member of a partnership during a fiscal period thereof that ended after 1971 has, for any purpose relevant to the computation of the taxpayer's income from the partnership for the fiscal period, made or executed an election under any of subsections 13(4), (15) and (16), 14(6), 20(9) and 21(1) to (4), section 22, subsection 29(1), section 34 and subsections 39(4), 44(1) and (6) and 97(2) that, but for this subsection, would be a valid election, the following rules apply:

Interpretation Bulletins: IT-278R2: Death of a partner or of a retired partner; IT-413R: Election by members of a partnership under subsection 97(2); IT-457R: Election by professionals to exclude work in progress from income. See also list at end of s. 96.

(4) Election — Any election under subsection 97(2) or 98(3) shall be made on or before the day that is the earliest of the days on or before which any taxpayer making the election is required to file a return of income pursuant to section 150 for the taxpayer's taxation year in which the transaction to which the election relates occurred.

Related Provisions: 96(5) — Late filing; 96(6) — Penalty for late filing; 96(7) — Unpaid balance of penalty.

Interpretation Bulletins: IT-413R: Election by members of a partnership under subsection 97(2). See also list at end of s. 96.

Forms: T2060: Election for disposition of property upon cessation of partnership.

(5) Late filing — Where an election referred to in subsection (4) was not made on or before the day on or before which the election was required by that subsection to be made and that day was after May 6, 1974, the election shall be deemed to have been made on that day if, on or before the day that is 3 years after that day,

(a) the election is made in prescribed form; and

(b) an estimate of the penalty in respect of that election is paid by the taxpayer referred to in subsection 97(2) or by the persons referred to in subsection 98(3), as the case may be, when that election is made.

Interpretation Bulletins: IT-413R: Election by members of a partnership under subsection 97(2). See also list at end of s. 96.

(5.1) Special cases — Where, in the opinion of the Minister, the circumstances of a case are such that it would be just and equitable

(a) to permit an election under subsection 97(2) or 98(3) to be made after the day that is 3 years after the day on or before which the election was required by subsection (4) to be made, or

(b) to permit an election made under subsection 97(2) to be amended,

the election or amended election shall be deemed to have been made on the day on or before which the election was so required to be made if

(c) the election or amended election is made in prescribed form, and

(d) an estimate of the penalty in respect of the election or amended election is paid by the taxpayer referred to in subsection 97(2) or by the persons referred to in subsection 98(3), as the case may be, when the election or amended election is made,

and where this subsection applies to the amendment of an election, that election shall be deemed not to have been effective.

Interpretation Bulletins: IT-413R: Election by members of a partnership under subsection 97(2). See also list at end of s. 96.

(6) Penalty for late-filed election — For the purposes of this section, the penalty in respect of an election or an amended election referred to in paragraph (5)(a) or (5.1)(c) is

(a) where the election or amended election is made under subsection 97(2), an amount equal to the lesser of

(i) 1/4 of 1% of the amount by which the fair market value of the property disposed of by the taxpayer referred to therein at the time of disposition exceeds the amount agreed on by the taxpayer and the members of the partnership in the election or amended election, for each month or part of a month during the period commencing with the day on or before which the election is required by subsection (4) to be made and ending on the day the election or amended election is made, and

(ii) an amount, not exceeding $8,000, equal to the product obtained by multiplying $100 by the number of months each of which is a month all or part of which is during the period referred to in subparagraph (i); and

(b) where the election is made under subsection 98(3), an amount equal to the lesser of

(i) 1/4 of 1% of the amount by which

(A) the total of all amounts of money and the fair market value of partnership property received by the persons referred to therein as consideration for their interests in the partnership at the time that the partnership ceased to exist

exceeds

(B) the total of each such person's proceeds of disposition of that person's interest in the partnership as determined under paragraph 98(3)(a),

for each month or part of a month during the period commencing with the day on or before which the election is required by subsection (4) to be made and ending on the day the election or amended election is made, and

(ii) an amount, not exceeding $8,000, equal to the product obtained by multiplying $100 by the number of months each of which is a month all or part of which is during the period referred to in subparagraph (i).

Related Provisions: 96(7) — Assessment of penalty; 220(3.1) — Waiver of penalty by CCRA.

Interpretation Bulletins: IT-413R: Election by members of a partnership under subsection 97(2). See also list at end of s. 96.

(7) Unpaid balance of penalty — The Minister shall, with all due dispatch, examine each election and amended election referred to in paragraph (5)(a) or (5.1)(c), assess the penalty payable and send a notice of assessment to the taxpayer or persons, as the case may be, and the taxpayer or persons, as the case may be, shall pay forthwith to the Receiver General the amount, if any, by which the penalty so assessed exceeds the total of all amounts previously paid on account of that penalty.

(8) Foreign partnerships — For the purposes of this Act, where at a particular time a person resident in Canada becomes a member of a partnership, or a person who is a member of a partnership becomes resident in Canada, and immediately before the particular time no member of the partnership is resident in Canada, the following rules apply for the purpose of computing the partnership's income for fiscal periods ending after the particular time:

(a) where, at or before the particular time, the partnership held depreciable property of a prescribed class (other than taxable Canadian property),

(i) no amount shall be included in determining the amounts for any of A, C, D and F to I in the definition "undepreciated capital cost" in subsection 13(21) in respect of the acquisition or disposition before the particular time of the property, and

(ii) where the property is the partnership's property at the particular time, the property shall be deemed to have been acquired, immediately after the particular time, by the partnership at a capital cost equal to the lesser of its fair market value and its capital cost to the partnership otherwise determined;

(b) in the case of the partnership's property that is inventory (other than inventory of a business carried on in Canada) or non-depreciable capital property (other than taxable Canadian property) of the partnership at the particular time, its cost to the partnership shall be deemed to be, immediately after the particular time, equal to the lesser of its fair market value and its cost to the partnership otherwise determined;

(c) any loss in respect of the disposition of a property (other than inventory of a business carried on in Canada or taxable Canadian property) by the partnership before the particular time shall be deemed to be nil; and

(d) where 4/3 of the cumulative eligible capital in respect of a business carried on at the particular time outside Canada by the partnership exceeds the total of the fair market value of each eligible capital property in respect of the business at that time, the partnership shall be deemed to have, immediately after that time, disposed of an eligible capital property in respect of the business for proceeds equal to the excess and to have received those proceeds.

Related Provisions: 96(9) — Anti-avoidance.

History: Subsec. 96(8) added by 1994, c. 21, s. 44, applicable to a particular partnership where a person or partnership becomes a member of the

particular partnership after December 21, 1992, or where a member of the particular partnership becomes resident in Canada after August 30, 1993, except that before May 1994, the subsec. shall be read without reference to para. (d).

(9) Idem — For the purpose of applying subsection (8), where it can reasonably be considered that one of the main reasons that there is a member of the partnership who is resident in Canada is to avoid the application of that subsection, the member shall be deemed not to be resident in Canada.

Proposed Amendment — 96(9)

(9) Application of foreign partnership rule — For the purposes of applying subsection (8) and this subsection,

(a) where it can reasonably be considered that one of the main reasons that a member of a partnership is resident in Canada is to avoid the application of subsection (8), the member is deemed not to be resident in Canada; and

(b) where at any time a particular partnership is a member of another partnership,

(i) each person or partnership that is, at that time, a member of the particular partnership is deemed to be a member of the other partnership at that time,

(ii) each person or partnership that becomes a member of the particular partnership at that time is deemed to become a member of the other partnership at that time, and

(iii) each person or partnership that ceases to be a member of the particular partnership at that time is deemed to cease to be a member of the other partnership at that time.

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 20(4), will amend subsec. 96(9) to read as above, applicable to fiscal periods that begin after June 22, 2000.

Technical Notes: Subsection 96(8) provides rules that apply where, at a particular time, a Canadian resident becomes a member of a partnership, or a person who is a member of such a partnership becomes a resident of Canada. Where, immediately before the particular time no member of the partnership was resident in Canada, these rules apply in computing the income of the partnership for fiscal periods ending after the particular time. In general terms, the rules in subsection 96(8) are designed to prevent losses accrued while a partnership had no Canadian resident partners from being used to reduce Canadian income tax liabilities.

Subsection 96(9) provides that, where one of the main reasons that there is a member of the partnership who is resident in Canada is to avoid the application of subsection 96(8), that member will, for the purpose of applying subsection 96(8), be considered not to be resident in Canada.

Subsection 96(9) is amended to provide an explicit look-through rule for the purposes of subsection 96(8) so that members of partnerships may be identified through one or more tiers of partnerships that are members of other partnerships. Amended subsection 96(9) is consistent with new subsection 94.2(8).

Related Provisions: 94.2(8) — Parallel rule for foreign investment entities.

History: Subsec. 96(9) added by 1994, c. 21, s. 44, applicable to a particular partnership where a person or partnership becomes a member of the particular partnership after December 21, 1992, or where a member of the particular partnership becomes resident in Canada after August 30, 1993.

Selected Cases [s. 96]: *Backman v. R.*, [2001] 2 C.T.C. 11 (SCC) (No valid partnership exists if no intention to earn profit); *Spire Freezers Ltd. v. R.*, [2001] 2 C.T.C. 40 (SCC) (Intention to earn profit can be ancillary without preventing existence of partnership); *Madsen v. R.*, [2001] 1 C.T.C. 244 (FCA) (Provisions of subsec. 69(1) apply to partnerships even though partnerships are not taxpayers).

Definitions [s. 96]: "adjusted cost base" — 54, 248(1); "allowable business investment loss", "allowable capital loss" — 38, 248(1); "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 250, 255; "Canadian development expense" — 66.2(5), 248(1); "Canadian exploration expense" — 66.1(6), 248(1); "Canadian oil and gas property expense" — 66.4(5), 248(1); "Canadian partnership" — 102(1); "capital cost" — of depreciable property 13(7); "capital property" — 54, 248(1); "carried on in Canada", "carries on a business in Canada", "carrying on a business in Canada" — 253; "common-law partner" — 248(1); "consequence of the death" — 248(8); "controlled foreign affiliate" — 94.1(2)(h), 95(1), 248(1); "cost" — 96(8); "cumulative eligible capital" — 14(5), 248(1); "depreciable property" — 13(21), 248(1); "disposition" — 13(21), 248(1); "eligible capital property" — 54, 248(1); "employee" — 248(1); "farm loss" — 111(8), 248(1); "farming", "filing-due date" — 248(1); "fiscal period" — 249(2)(b), 249.1; "foreign investment entity" — 94.1(1), 248(1); "foreign resource pool expense", "gross revenue", "insurance corporation", "inventory" — 248(1); "investment tax credit" — 127(9), 248(1); "limited partner" — 96(2.4); "limited partnership loss" — 96(2.1), 248(1); "member" — 102(2); "Minister" — 248(1); "net capital loss", "non-capital loss" — 111(8), 248(1); "non-resident" — 248(1); "participating interest" — 94.1(1), 94.1(2)(s), 248(1); "person", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "resident in Canada" — 250; "restricted farm loss" — 31, 248(1); "series of loans", "series of transactions" — 248(10); "share", "specified member" — 248(1); "substituted property" — 248(5); "taxable Canadian property" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 11(2), 96(1)(b), 249; "taxpayer" — 248(1); "testamentary trust" — 108(1), 248(1); "trust" — 104(1), 248(1), (3); "written" — *Interpretation Act* 35(1)"writing".

Interpretation Bulletins [s. 96]: IT-81R: Partnerships — income of non-resident partners; IT-90: What is a partnership?; IT-151R5: Scientific research and experimental development expenditures; IT-242R: Retired partners.

97. (1) Contribution of property to partnership — Where at any time after 1971 a partnership has acquired property from a taxpayer who was, immediately after that time, a member of the partnership, the partnership shall be deemed to have acquired the property at an amount equal to its fair market value at that time and the taxpayer shall be deemed to have disposed of the property for proceeds equal to that fair market value.

Related Provisions: 13(21.2)(d) — No application on certain transfers of depreciable property where u.c.c. exceeds fair market value; 96(2) — Construction; 97(2) — Election for rollover on transfer of property to partnership.

Interpretation Bulletins: IT-457R: Election by professionals to exclude work in progress from income; IT-471R: Merger of partnerships.

I.T. Technical News: 3 (use of a partner's assets by a partnership).

(2) Rules where election by partners — Notwithstanding any other provision of this Act other than subsection 13(21.2), where a taxpayer at any time disposes of any property that is a capital property, Canadian resource property, foreign resource property, eligible capital property or inventory of the taxpayer to a partnership that immediately after that time is a Canadian partnership of which the taxpayer is a member, if the taxpayer and all the other members of the partnership jointly so elect in prescribed form within the time referred to in subsection 96(4),

Proposed Amendment — 97(2) opening words

(2) Rules where election by partners — Notwithstanding any other provision of this Act other than subsection 13(21.2), where a taxpayer at any time in a taxation year disposes of any property (other than a specified participating interest) that is a capital property, Canadian resource property, foreign resource property, eligible capital property or inventory of the taxpayer to a partnership that immediately after that time is a Cana-

dian partnership of which the taxpayer is a member, if the taxpayer and all the other members of the partnership jointly so elect in prescribed form within the time referred to in subsection 96(4),

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), s. 21, will amend the opening words of subsec. 97(2) to read as above, applicable to dispositions that occur in taxation years that begin after 2002.

Technical Notes: Subsection 97(2) provides rules that allow a person to transfer certain types of property on a taxdeferred "rollover" basis to a partnership.

Subsection 97(2) is amended so that it does not apply to a transfer of property that is a specified participating interest. The concept of a specified participating interest is generally relevant in the context of the foreign investment entity rules in sections 94.1 to 94.4. For more information on the definition "specified participating interest" in subsection 248(1), see the commentary on that definition.

(a) the provisions of paragraphs 85(1)(a) to (f) apply to the disposition as if

(i) the reference therein to "corporation's cost" were read as a reference to "partnership's cost",

(ii) the references therein to "other than any shares of the capital stock of the corporation or a right to receive any such shares" and to "other than shares of the capital stock of the corporation or a right to receive any such shares" were read as references to "other than an interest in the partnership",

(iii) the references therein to "shareholder of the corporation" were read as references to "member of the partnership",

(iv) the references therein to "the corporation" were read as references to "all the other members of the partnership", and

(v) the references therein to "to the corporation" were read as references to "to the partnership";

(b) in computing, at any time after the disposition, the adjusted cost base to the taxpayer of the taxpayer's interest in the partnership immediately after the disposition,

(i) there shall be added the amount, if any, by which the taxpayer's proceeds of disposition of the property exceed the fair market value, at the time of the disposition, of the consideration (other than an interest in the partnership) received by the taxpayer for the property, and

(ii) there shall be deducted the amount, if any, by which the fair market value, at the time of the disposition, of the consideration (other than an interest in the partnership) received by the taxpayer for the property so disposed of by the taxpayer exceeds the fair market value of the property at the time of the disposition; and

(c) where the property so disposed of by the taxpayer to the partnership is taxable Canadian property of the taxpayer, the interest in the partnership received by the taxpayer as consideration therefor shall be deemed to be taxable Canadian property of the taxpayer.

Related Provisions: 13(21.2)(d) — No election allowed on certain transfers of depreciable property where u.c.c. exceeds fair market value; 40(3.3), (3.4) — Limitation on loss where share acquired by affiliated person; 53(4) — Effect on ACB of share, partnership interest or trust interest; 96(2) — Construction; 96(3) — Election by members; 96(4)–(7) Elections; 97(4) — Where capital cost to partner exceeds proceeds of disposition; 98.1(2) — Continuation of original partnership; 107(2)(d.1)(iii), 107.4(3)(f) — Deemed taxable Canadian property retains status when rolled out of trust or into trust; 248(25.1) — Deemed taxable Canadian property retains status through trust-to-trust transfer; Canada-U.S. Tax Treaty:Art. XIII:8 — Deferral of tax for U.S. resident transferor.

History: The opening words of subsec. 97(2) amended by 1998, c. 19, subsec. 124(1), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995. The opening words formerly read:

(2) Notwithstanding any other provision of this Act, other than subsection 85(5.1), where at any time after November 12, 1981 a taxpayer has disposed of any capital property, a Canadian resource property, a foreign resource property, an eligible capital property or an inventory to a partnership that immediately after that time was a Canadian partnership of which the taxpayer was a member, if the taxpayer and all the other members of the partnership have jointly so elected in prescribed form and within the time referred to in subsection 96(4), the following rules apply:

Selected Cases [subsec. 97(2)]: *Pinot Holdings Ltd. v. R.*, [2000] 1 C.T.C. 258 (FCA) (Legal character of amounts paid is function of obligation being discharged, not particular means of funding the payment); *Continental Bank of Canada v. R.*, [1998] 4 C.T.C. 119 (SCC) (Leasing company in which bank had interest nevertheless entitled to election).

I.T. Application Rules: 20(1.2) (where transferred depreciable property was owned by the transferor since before 1972).

Interpretation Bulletins: IT-338R2: Partnership interests — effects on adjusted cost base resulting from the admission or retirement of a partner (archived); IT-413R: Election by members of a partnership under subsection 97(2); IT-457R: Election by professionals to exclude work in progress from income; IT-471R: Merger of partnerships.

Information Circulars: 76-19R3: Transfer of property to a corporation under section 85; 88-2, paras. 12, 22: General anti-avoidance rule — section 245 of the *Income Tax Act*.

I.T. Technical News: 16 (*Continental Bank* case).

Forms: T2059: Election on disposition of property by a taxpayer to a Canadian partnership.

(3) [Repealed]

History: Subsec. 97(3) repealed by 1998, c. 19, subsec. 124(2), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995. The subsec. formerly read:

(3) Where property acquired from majority interest partner — Where, at any time after November 12, 1981, a taxpayer has disposed of any capital property to a partnership and, immediately after the disposition, the taxpayer was a majority interest partner of the partnership and, but for this subsection, the taxpayer would have had a capital loss therefrom, the following rules apply:

(a) notwithstanding any other provision of this Act, the taxpayer's capital loss therefrom shall be deemed to be nil; and

(b) except where the property so disposed of was, immediately after the disposition, an obligation that was payable to the partnership by a corporation that is related to the taxpayer or by a corporation or partnership that would be related to the taxpayer if paragraph 80(2)(j) applied for the purposes of this paragraph, in computing at any time after the disposition the adjusted cost base to the taxpayer of the taxpayer's interest in the partnership immediately after the disposition, there shall be added the amount, if any, by which

(i) the cost amount to the taxpayer, immediately before the disposition, of the property

exceeds

(ii) the taxpayer's proceeds of disposition of the property.

The opening words of para. 97(3)(b) amended by 1995, c. 21, s. 34, applicable to property disposed of after July 12, 1994, other than property disposed of pursuant to an agreement in writing entered into before July 13, 1994. The opening words of para. (b) formerly read:

(b) in computing at any time after the disposition the adjusted cost base to the taxpayer of the taxpayer's interest in the partnership immediately after the disposition, there shall be added the amount, if any, by which

(3.1) [Repealed]

History: Subsec. 97(3.1) repealed by 1998, c. 19, subsec. 124(2), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s.

260), to dispositions of property that occur after April 26, 1995. The subsec. formerly read:

> (3.1) Deemed majority interest partner — For the purposes of subsection (3), a taxpayer shall be deemed to be a majority interest partner of a partnership at any time if
>
> (a) the total of the taxpayer's share, the share of the taxpayer's spouse and the share of a person or group of persons that, directly or indirectly in any manner whatever, controlled or was controlled by the taxpayer, of the income of the partnership from any source for the fiscal period of the partnership that includes that time exceeds ½ of the income of the partnership from the source for that period; or
>
> (b) the total of the taxpayer's share, the share of the taxpayer's spouse and the share of a person or group of persons that, directly or indirectly in any manner whatever, controlled or was controlled by the taxpayer, of the total amount that would be paid to all members of the partnership (otherwise than as the share of any income of the partnership) if it were wound up at that time exceeds ½ of that amount.

(4) Where capital cost to partner exceeds proceeds of disposition — Where subsection (2) has been applicable in respect of the acquisition of any depreciable property by a partnership from a taxpayer who was, immediately after the taxpayer disposed of the property, a member of the partnership and the capital cost to the taxpayer of the property exceeds the taxpayer's proceeds of the disposition, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a)

(a) the capital cost to the partnership of the property shall be deemed to be the amount that was the capital cost thereof to the taxpayer; and

(b) the excess shall be deemed to have been allowed to the partnership in respect of the property under regulations made under paragraph 20(1)(a) in computing income for taxation years before the acquisition by the partnership of the property.

Related Provisions: 13(7)(e) — Non-arm's length transfer of depreciable property.

(5) Acquisition of apprentice tools, re capital cost and deemed depreciation — If subsection (2) has applied in respect of the acquisition at any particular time of any depreciable property by a partnership from an individual, the cost of the property to the individual was included in computing an amount under paragraph 8(1)(r) in respect of the individual, and the amount that would be the cost of the property to the individual immediately before the transfer if this Act were read without reference to subsection 8(7) (which amount is in this subsection referred to as the "individual's original cost") exceeds the individual's proceeds of disposition of the property,

(a) the capital cost to the partnership of the property is deemed to be equal to the individual's original cost; and

(b) the amount by which the individual's original cost exceeds the individual's proceeds of disposition in respect of the property is deemed to have been deducted by the partnership under paragraph 20(1)(a) in respect of the property in computing income for taxation years that ended before that particular time.

Related Provisions: 56(1)(k) — Income inclusion where tools disposed of without rollover; 85(5.1) — Parallel rule for rollover to corporation.

History: Subsec. 97(5) added by 2002, c. 9, s. 32, applicable to dispositions that occur after 2001.

Definitions [s. 97]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "Canadian partnership" — 102(1), 248(1); "Canadian resource property" — 66(15), 248(1); "depreciable property" — 13(21), 248(1); "fiscal period" — 249(2)(b), 249.1; "foreign resource property" — 66(15), 248(1); "majority interest partner" — 248(1); "member" — 102(2); "net capital loss", "non-capital loss" — 111(8), 248(1); "person", "prescribed", "property", "regulation" — 248(1); "restricted farm loss" — 31, 248(1); "specified participating interest", "taxable Canadian property" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 97]: IT-188R: Sale of accounts receivable.

98. (1) Disposition of partnership property — For the purposes of this Act, where, but for this subsection, at any time after 1971 a partnership would be regarded as having ceased to exist, the following rules apply:

(a) until such time as all the partnership property and any property substituted therefor has been distributed to the persons entitled by law to receive it, the partnership shall be deemed not to have ceased to exist, and each person who was a partner shall be deemed not to have ceased to be a partner,

(b) the right of each such person to share in that property shall be deemed to be an interest in the partnership, and

(c) notwithstanding subsection 40(3), where at the end of a fiscal period of the partnership, in respect of an interest in the partnership,

(i) the total of all amounts required by subsection 53(2) to be deducted in computing the adjusted cost base to the taxpayer of the interest at that time

exceeds

(ii) the total of the cost to the taxpayer of the interest determined for the purpose of computing the adjusted cost base to the taxpayer of that interest at that time and all amounts required by subsection 53(1) to be added to the cost to the taxpayer of the interest in computing the adjusted cost base to the taxpayer of that interest at that time,

the amount of the excess shall be deemed to be a gain of the taxpayer for the taxpayer's taxation year that includes that time from a disposition at that time of that interest.

Related Provisions: 20(1)(e)(vi) — Expenses re financing; 40(3.2) — Para. 98(1)(c) takes precedence over subsec. 40(3.1); 98(3) — Rules where partnership ceases to exist; 98.1(2) — Continuation of original partnership; 99(1) — Fiscal period of terminated partnership; 99(2) — Fiscal period for individual member of terminated partnership; 248(5) — Substituted property.

History: The closing words of para. 98(1)(c) amended by 1995, c. 3, subsec. 26(1), applicable to 1994 *et seq.* except that, in its application to the 1994 and 1995 taxation years, the closing words shall be read as follows:

> the amount of the excess shall be deemed to be a gain of the taxpayer for the taxpayer's taxation year that includes that time from a disposition at that time of that interest and, for the purposes of section 110.6, that interest shall be deemed to have been disposed of by the taxpayer at that time.

The closing words formerly read:

> 98(1) the amount of the excess shall be deemed to be a gain of the taxpayer for the taxation year of the taxpayer that includes that time from a disposition at that time of that interest and, for the purposes of section 110.6, that interest shall be deemed to have been disposed of by the taxpayer in that year.

That portion of para. 98(1)(c) following subpara. (ii) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 73(1), applicable to 1985 *et seq.* That portion formerly read:

> the amount of the excess shall be deemed to be a gain of the taxpayer for the year from a disposition at that time of that interest and, for the purposes of section 110.6, that interest shall be deemed to have been disposed of by the taxpayer in the year.

I.T. Application Rules: 23(4.1)(a) (where professional business carried on in partnership since before 1972).

Interpretation Bulletins: IT-338R2: Partnership interests — effects on ACB resulting from admission or retirement of a partner (archived).

(2) Deemed proceeds — Subject to subsections (3) and (5) and 85(3), where at any time after 1971 a partnership has disposed of property to a taxpayer who was, immediately before that time, a member of the partnership, the partnership shall be deemed to have disposed of the property for proceeds equal to its fair market value at that time and the taxpayer shall be deemed to have acquired the property at an amount equal to that fair market value.

Related Provisions: 53(4) — Effect on ACB of share, partnership interest or trust interest.

Interpretation Bulletins: IT-338R2: Partnership interests — effects on ACB resulting from admission or retirement of a partner (archived); IT-457R: Election by professionals to exclude work in progress from income.

(3) Rules applicable where partnership ceases to exist [rollout] — Where at any particular time after 1971 a Canadian partnership has ceased to exist and all of the partnership property has been distributed to persons who were members of the partnership immediately before that time so that immediately after that time each such person has, in each such property, an undivided interest that, when expressed as a percentage (in this subsection referred to as that person's "percentage") of all undivided interests in the property, is equal to the person's undivided interest, when so expressed, in each other such property, if each such person has jointly so elected in respect of the property in prescribed form and within the time referred to in subsection 96(4), the following rules apply:

Proposed Amendment — 98(3) opening words

(3) Rules applicable where partnership ceases to exist [rollout] — Where at any particular time after 1971 a Canadian partnership has ceased to exist and all the partnership property has been distributed to persons who were members of the partnership immediately before that time so that immediately after that time each such person has, in each such property, an undivided interest, or for civil law an undivided right, (which undivided interest or undivided right is referred to in this subsection as an "undivided interest or right", as the case may be) that, when expressed as a percentage (referred to in this subsection as that person's "percentage") of all undivided interests or rights in the property, is equal to the person's undivided interest or right, when so expressed, in each other such property, if each such person has jointly so elected in respect of the property in prescribed form and within the time referred to in subsection 96(4), the following rules apply:

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 231(1), will amend the opening words of subsec. 98(3) to read as above, to come into force on Royal Assent.

Technical Notes: See under 12(4).

(a) each such person's proceeds of the disposition of the person's interest in the partnership shall be deemed to be an amount equal to the greater of

(i) the adjusted cost base to the person, immediately before the particular time, of the person's interest in the partnership, and

(ii) the amount of any money received by the person on the cessation of the partnership's existence, plus the person's percentage of the total of amounts each of which is the cost amount to the partnership of each such property immediately before its distribution;

(b) the cost to each such person of that person's undivided interest in each such property shall be deemed to be an amount equal to the total of

Proposed Amendment — 98(3)(b) opening words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 231(2), will amend the opening words of para. 98(3)(b) by substituting "interest or right" for "interest", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(i) that person's percentage of the cost amount to the partnership of the property immediately before its distribution,

(i.1) where the property is eligible capital property, that person's percentage of 4/3 of the amount, if any, determined for F in the definition "cumulative eligible capital" in subsection 14(5) in respect of the partnership's business immediately before the particular time, and

(ii) where the amount determined under subparagraph (a)(i) exceeds the amount determined under subparagraph (a)(ii), the amount determined under paragraph (c) in respect of the person's undivided interest in the property;

Proposed Amendment — 98(3)(b)(ii)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 231(3), will amend subpara. 98(3)(b)(ii) by substituting "interest or right" for "interest", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(c) the amount determined under this paragraph in respect of each such person's undivided interest in each such property that was a capital property (other than depreciable property) of the partnership is such portion of the excess, if any, described in subparagraph (b)(ii) as is designated by the person in respect of the property, except that

(i) in no case shall the amount so designated in respect of the person's undivided interest in any such property exceed the amount, if any, by which the person's percentage of the fair market value of the property immediately after its distribution exceeds the person's percentage of the cost amount to the partnership of the property immediately before its distribution, and

(ii) in no case shall the total of amounts so designated in respect of the person's undivided interests in all such capital properties (other than depreciable property) exceed the excess, if any, described in subparagraph (b)(ii);

Proposed Amendment — 98(3)(c)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 231(4), will amend para. 98(3)(c) by substituting "interest(s) or right(s)" for "interest(s)" in three places, to come into force on Royal Assent.

Technical Notes: See under 12(4).

(d) [Repealed under former Act]

(e) where the property so distributed by the partnership was depreciable property of the partnership of a prescribed class and any such person's percentage of the amount that was the capital cost to the partnership of that property exceeds the amount determined under paragraph (b) to be the cost to the person of the person's undivided interest in the property, for the pur-

poses of sections 13 and 20 and any regulations made under paragraph 20(1)(a)

(i) the capital cost to the person of the person's undivided interest in the property shall be deemed to be the person's percentage of the amount that was the capital cost to the partnership of the property, and

(ii) the excess shall be deemed to have been allowed to the person in respect of the property under regulations made under paragraph 20(1)(a) in computing income for taxation years before the acquisition by the person of the undivided interest;

Proposed Amendment — 98(3)(e)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 231(5), will amend para. 98(3)(e) by substituting "interest or right" for "interest" in three places, to come into force on Royal Assent.

Technical Notes: See under 12(4).

(f) the partnership shall be deemed to have disposed of each such property for proceeds equal to the cost amount to the partnership of the property immediately before its distribution; and

(g) where the property so distributed by the partnership was eligible capital property in respect of the business,

(i) for the purposes of determining under this Act any amount relating to cumulative eligible capital, an eligible capital amount, an eligible capital expenditure or eligible capital property, each such person shall be deemed to have continued to carry on the business, in respect of which the property was eligible capital property and that was previously carried on by the partnership, until the time that the person disposes of the person's undivided interest in the property,

Proposed Amendment — 98(3)(g)(i)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 231(6), will amend subpara. 98(3)(g)(i) by substituting "interest or right" for "interest", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(ii) for the purposes of determining the person's cumulative eligible capital in respect of the business, an amount equal to ¾ of the amount determined under subparagraph (b)(i.1) in respect of the business shall be added to the amount otherwise determined in respect thereof for P in the definition "cumulative eligible capital" in subsection 14(5), and

(iii) for the purpose of determining after the particular time the amount required by paragraph 14(1)(b) to be included in computing the person's income in respect of any subsequent disposition of property of the business, the value determined for Q in the definition "cumulative eligible capital" in subsection 14(5) is deemed to be the amount, if any, of that person's percentage of the value determined for Q in that definition in respect of the partnership's business immediately before the particular time.

Related Provisions: 24(3) — Where partnership has ceased to exist; 53(4) — Effect on ACB of partnership interest; 69(11)(a)(i) — Exception to rule deeming proceeds at FMV where capital gains exemption claimed after dissolution of partnership; 80.03(1), (3)(c) — Capital gain where para. 98(3)(a) applies to partnership interest on disposition following debt forgiveness; 85(3) — Alternative provision where partnership wound up; 96(4) — Election; 96(6) — Penalty for late filed election; 98(2) — Deemed proceeds; 98(4) — Application.

History: Subpara. 98(3)(g)(iii) amended by 2001, c. 17, subsec. 75(1), applicable in respect of taxation years that end after February 27, 2000. The subpara. formerly read:

(iii) for the purposes of determining after the particular time

(A) the amount deemed under subparagraph 14(1)(a)(v) to be the person's taxable capital gain, and

(B) the amount to be included under subparagraph 14(1)(a)(v) or paragraph 14(1)(b) in computing the person's income

in respect of any subsequent disposition of the property of the business, the amount determined for Q in the definition "cumulative eligible capital" in subsection 14(5) shall be deemed to be the amount, if any, of that person's percentage of the amount determined under that clause in respect of the partnership's business immediately before the particular time.

Cl. 98(3)(g)(iii)(B) amended by 1995, c. 3, subsec. 26(2), applicable to acquisitions of property that occur after February 22, 1994. Cl. (B) formerly read:

(B) the amount to be included under paragraph 14(1)(b) in computing the income of the person

All that portion of para. 98(3)(b) preceding subpara. (ii) amended, and para. (g) added, by 1994, c. 7, Sch. VIII (1993, c. 24), subsecs. 41(1) and (2), applicable to acquisitions of property occurring as a result of a partnership ceasing to exist after the beginning of its first fiscal period beginning after 1987. That portion of para. (b) formerly read:

(b) the cost to each such person of the person's undivided interest in each such property shall be deemed to be an amount equal to

(i) the person's percentage of the cost amount to the partnership of the property immediately before its distribution

plus

Regulations: 230(3) (no information return required).

I.T. Application Rules: 20(1.2) (where transferred depreciable property was owned by transferor since before 1972).

Interpretation Bulletins: IT-338R2: Partnership interests — effects on ACB resulting from admission or retirement of a partner (archived); IT-442R: Bad debts and reserves for doubtful debts; IT-457R: Election by professionals to exclude work in progress from income; IT-471R: Merger of partnerships.

I.T. Technical News: 12 (adjusted cost base of partnership interest).

Information Circulars: 76-19R3: Transfer of property to a corporation under section 85.

Forms: T2060: Election for disposition of property upon cessation of partnership.

(4) Where subsec. (3) does not apply — Subsection (3) is not applicable in any case in which subsection (5) or 85(3) is applicable.

(5) Where partnership business carried on as sole proprietorship — Where at any particular time after 1971 a Canadian partnership has ceased to exist and within 3 months after the particular time one, but not more than one, of the persons who were, immediately before the particular time, members of the partnership (which person is in this subsection referred to as the "proprietor", whether an individual, a trust or a corporation) carries on alone the business that was the business of the partnership and continues to use, in the course of the business, any property that was, immediately before the particular time, partnership property and that was received by the proprietor as proceeds of disposition of the proprietor's interest in the partnership, the following rules apply:

(a) the proprietor's proceeds of disposition of the proprietor's interest in the partnership shall be deemed to be an amount equal to the greater of

(i) the total of the adjusted cost base to the proprietor, immediately before the particular time, of the proprietor's interest in the partnership, and the ad-

justed cost base to the proprietor of each other interest in the partnership deemed by paragraph (g) to have been acquired by the proprietor at the particular time, and

(ii) the total of

(A) the cost amount to the partnership, immediately before the particular time, of each such property so received by the proprietor, and

(B) the amount of any other proceeds of the disposition of the proprietor's interest in the partnership received by the proprietor;

(b) the cost to the proprietor of each such property shall be deemed to be an amount equal to the total of

(i) the cost amount to the partnership of the property immediately before that time,

(i.1) where the property is eligible capital property, 4/3 of the amount, if any, determined for F in the definition "cumulative eligible capital" in subsection 14(5) in respect of the partnership's business immediately before the particular time, and

(ii) where the amount determined under subparagraph (a)(i) exceeds the amount determined under subparagraph (a)(ii), the amount determined under paragraph (c) in respect of the property;

(c) the amount determined under this paragraph in respect of each such property so received by the proprietor that is a capital property (other than depreciable property) of the proprietor is such portion of the excess, if any, described in subparagraph (b)(ii) as is designated by the proprietor in respect of the property, except that

(i) in no case shall the amount so designated in respect of any such property exceed the amount, if any, by which the fair market value of the property immediately after the particular time exceeds the cost amount to the partnership of the property immediately before that time, and

(ii) in no case shall the total of amounts so designated in respect of all such capital properties (other than depreciable property) exceed the excess, if any, described in subparagraph (b)(ii);

(d) [Repealed under former Act]

(e) where any such property so received by the proprietor was depreciable property of a prescribed class of the partnership and the amount that was the capital cost to the partnership of that property exceeds the amount determined under paragraph (b) to be the cost to the proprietor of the property, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a)

(i) the capital cost to the proprietor of the property shall be deemed to be the amount that was the capital cost to the partnership of the property, and

(ii) the excess shall be deemed to have been allowed to the proprietor in respect of the property under regulations made under paragraph 20(1)(a) in computing income for taxation years before the acquisition by the proprietor of the property;

(f) the partnership shall be deemed to have disposed of each such property for proceeds equal to the cost amount to the partnership of the property immediately before the particular time;

(g) where, at the particular time, all other persons who were members of the partnership immediately before that time have disposed of their interests in the partnership to the proprietor, the proprietor shall be deemed at that time to have acquired partnership interests from those other persons and not to have acquired any property that was property of the partnership; and

(h) where the property so received by the proprietor is eligible capital property in respect of the business,

(i) for the purpose of determining the proprietor's cumulative eligible capital in respect of the business, an amount equal to 3/4 of the amount determined under subparagraph (b)(i.1) in respect of the business shall be added to the amount otherwise determined in respect thereof for P in the definition "cumulative eligible capital" in subsection 14(5), and

(ii) for the purpose of determining after the particular time the amount required by paragraph 14(1)(b) to be included in computing the proprietor's income in respect of any subsequent disposition of property of the business, the value determined for Q in the definition "cumulative eligible capital" in subsection 14(5) is deemed to be the value, if any, determined for Q in that definition in respect of the partnership's business immediately before the particular time.

Related Provisions: 24(3) — Where partnership has ceased to exist; 53(4) — Effect on ACB of partnership interest; 80.03(1), (3)(c) — Capital gain where para. 98(5)(a) applies to partnership interest on disposition following debt forgiveness; 88(1)(a.2) — Winding-up; 98(2) — Deemed proceeds; 98(4) — Subsec. 98(3) does not apply.

History: Subpara. 98(5)(h)(ii) amended by 2001, c. 17, subsec. 75(2), applicable in respect of taxation years that end after February 27, 2000. The subpara. formerly read:

(ii) for the purposes of determining after the particular time

(A) the amount deemed under subparagraph 14(1)(a)(v) to be the proprietor's taxable capital gain, and

(B) the amount to be included under subparagraph 14(1)(a)(v) or paragraph 14(1)(b) in computing the proprietor's income

in respect of any subsequent disposition of property of the business, the amount determined for Q in the definition "cumulative eligible capital" in subsection 14(5) shall be deemed to be the amount, if any, determined for Q in that definition in respect of the partnership's business immediately before the particular time.

Cl. 98(5)(h)(ii)(B) amended by 1995, c. 3, subsec. 26(3), applicable to acquisitions of property that occur after February 22, 1994. Cl. (B) formerly read:

(B) the amount to be included under paragraph 14(1)(b) in computing the proprietor's income

All that portion of para. 98(5)(b) preceding subpara. (ii) amended, and para. (h) added, by 1994, c. 7, Sch. VIII (1993, c. 24), subsecs. 41(3) and (4), applicable to acquisitions of property occurring as a result of a partnership ceasing to exist after the beginning of its first fiscal period beginning after 1987. That portion of para. (b) formerly read:

(b) the cost to the proprietor of each such property so received by the proprietor shall be deemed to be an amount equal to

(i) the cost amount to the partnership of the property immediately before that time,

plus

Subpara. 98(5)(a)(i) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 73(2), applicable to partnerships ceasing to exist after January 15, 1987. Subpara. (a)(i) formerly read:

(i) the total of the adjusted cost base to the proprietor, immediately before the particular time, of the proprietor's interest in the partnership, and the cost to the proprietor of all interests in the partnership deemed by paragraph (g) to have been acquired by the proprietor at the particular time, and

Selected Cases [subsec. 98(5)]: *Bow River Pipe Lines Ltd. v. Canada*, [1997] 1 C.T.C. 2306 (TCC) (Rollover denied where taxpayer unable to establish that it was member of partnership).

I.T. Application Rules: 20(1.2) (where transferred depreciable property was owned by transferor since before 1972).

Interpretation Bulletins: IT-338R2: Partnership interests — effects on ACB resulting from admission or retirement of a partner (archived); IT-457R: Election by professionals to exclude work in progress from income; IT-474R: Amalgamations of Canadian corporations.

Information Circulars: 88-2, para. 22: General anti-avoidance rule — section 245 of the *Income Tax Act*.

(6) Continuation of predecessor partnership by new partnership — Where a Canadian partnership (in this subsection referred to as the "predecessor partnership") has ceased to exist at any particular time after 1971 and, at or before that time, all of the property of the predecessor partnership has been transferred to another Canadian partnership (in this subsection referred to as the "new partnership") the only members of which were members of the predecessor partnership, the new partnership shall be deemed to be a continuation of the predecessor partnership and any member's partnership interest in the new partnership shall be deemed to be a continuation of the member's partnership interest in the predecessor partnership.

Related Provisions: 53(4) — Effect on ACB of share, partnership interest or trust interest; Reg. 8103(5) — Mark-to-market transition — inclusion; Reg. 9204(4) — Residual portion of specified debt obligation.

Regulations: 230(3) (no information return required).

Interpretation Bulletins [subsec. 98(6)]: IT-338R2: Partnership interests — effects on ACB resulting from admission or retirement of a partner (archived); IT-457R: Election by professionals to exclude work in progress from income; IT-474R: Amalgamations of Canadian corporations.

Proposed Addition — 98(7)

(7) **Where a partnership property is a specified participating interest** — If at a particular time a partnership ceases to exist, the partnership is, at the time (in this subsection referred to as the "disposition time") that is immediately before the time that is immediately before the time that is immediately before the particular time, deemed

(a) to have disposed of each of its properties that is at the disposition time a specified participating interest for proceeds of disposition equal to the property's fair market value at the disposition time; and

(b) to have acquired the property immediately after the disposition time at a cost equal to that fair market value.

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), s. 22, will add subsec. 98(7), applicable to fiscal periods that begin after 2002.

Technical Notes: New subsection 98(7) applies if at a particular time a partnership ceases to exist. In this case, the partnership is, at a time (the "disposition time") that is three instants before the particular time, deemed

- to have disposed of each of its properties that is at the disposition time a specified participating interest for proceeds of disposition equal to the property's fair market value at the disposition time; and
- to have acquired the property immediately after the disposition time at a cost equal to that fair market value.

Definitions [s. 98]: "adjusted cost base" — 54, 248(1); "amount", "business" — 248(1); "Canadian partnership" — 102(1), 248(1); "capital property" — 54, 248(1); "cost amount" — 248(1); "cumulative eligible capital" — 14(5), 248(1); "depreciable property" — 13(21), 248(1); "eligible capital amount" — 14(1), 248(1); "eligible capital expenditure" — 14(5), 248(1); "eligible capital property" — 54, 248(1); "member" — 102(2); "person", "property", "regulation", "specified participating interest" — 248(1); "substituted property" — 248(5); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

98.1 (1) Residual interest in partnership — Where, but for this subsection, at any time after 1971 a taxpayer has ceased to be a member of a partnership of which the taxpayer was a member immediately before that time, the following rules apply:

(a) until such time as all the taxpayer's rights (other than a right to a share of the income or loss of the partnership under an agreement referred to in subsection 96(1.1)) to receive any property of or from the partnership in satisfaction of the taxpayer's interest in the partnership immediately before the time at which the taxpayer ceased to be a member of the partnership are satisfied in full, that interest (in this section referred to as a "residual interest") is, subject to sections 70, 110.6 and 128.1 but notwithstanding any other section of this Act, deemed not to have been disposed of by the taxpayer and to continue to be an interest in the partnership;

(b) where all of the taxpayer's rights described in paragraph (a) are satisfied in full before the end of the fiscal period of the partnership in which the taxpayer ceased to be a member thereof, the taxpayer shall, notwithstanding paragraph (a), be deemed not to have disposed of the taxpayer's residual interest until the end of that fiscal period;

(c) notwithstanding subsection 40(3), where at the end of a fiscal period of the partnership, in respect of a residual interest in the partnership,

(i) the total of all amounts required by subsection 53(2) to be deducted in computing the adjusted cost base to the taxpayer of the residual interest at that time

exceeds

(ii) the total of the cost to the taxpayer of the residual interest determined for the purpose of computing the adjusted cost base to the taxpayer of that interest at that time and all amounts required by subsection 53(1) to be added to the cost to the taxpayer of the residual interest in computing the adjusted cost base to the taxpayer of that interest at that time

the amount of the excess shall be deemed to be a gain of the taxpayer, for the taxpayer's taxation year that includes that time, from a disposition at that time of that residual interest; and

(d) where a taxpayer has a residual interest

(i) by reason of paragraph (b), the taxpayer shall, except for the purposes of subsections 110.1(4), 118.1(8) and 127(4.2), be deemed not to be a member of the partnership, and

(ii) in any other case, the taxpayer shall, except for the purposes of subsection 85(3), be deemed not to be a member of the partnership.

Related Provisions: 40(3.2) — Para. 98.1(1)(c) takes precedence over subsec. 40(3.1); 96(1.01)(a) — Income allocation to former partner; 98.1(2) — Continuation of original partnership; 98.2 — Transfer of interest on death.

History: Para. 98.1(1)(a) amended by 1998, c. 19, s. 125, applicable to 1994 *et seq.* The para. formerly read:

(a) until such time as all the taxpayer's rights (other than a right to a share of the income or loss of the partnership under an agreement referred to in subsection 96(1.1)) to receive any property of or from the partnership in satisfaction of the taxpayer's interest in the partnership immediately before the time that the taxpayer ceased to be a member of the partnership are satisfied in full, that interest (in this section referred to as a "residual interest") shall, subject to sections 70 and 128.1 but notwithstanding any other section of this Act, be

deemed not to have been disposed of by the taxpayer and to continue to be an interest in the partnership;

The closing words of para. 98.1(1)(c) amended by 1995, c. 3, s. 27, applicable to 1994 *et seq.* except that, in its application to the 1994 and 1995 taxation years, the closing words shall be read as follows:

the amount of the excess shall be deemed to be a gain of the taxpayer, for the taxpayer's taxation year that includes that time, from a disposition at that time of that residual interest and, for the purposes of section 110.6, the residual interest shall be deemed to have been disposed of by the taxpayer at that time; and

The closing words formerly read:

the amount of the excess shall be deemed to be a gain of the taxpayer, for the taxation year of the taxpayer that includes that time, from a disposition at that time of that residual interest and, for the purposes of section 110.6, the residual interest shall be deemed to have been disposed of by the taxpayer in that year; and

Para. 98.1(1)(a) substituted by 1994, c. 21, s. 45, applicable after 1992 except that, where a corporation elects in accordance with para. 111(4)(a) of 1994, c. 21, the amended para. applies to the corporation from the time at which the corporation was first granted articles of continuation (or similar constitutional documents) in another jurisdiction. Para. 98.1(1)(a) formerly read:

(a) until such time as all the taxpayer's rights (other than a right to a share of the income or loss of the partnership under an agreement referred to in subsection 96(1.1)) to receive any property of or from the partnership in satisfaction of the taxpayer's interest in the partnership immediately before the time that the taxpayer ceased to be a member of the partnership are satisfied in full, that interest (in this section referred to as a "residual interest") shall, subject to sections 48 and 70 but notwithstanding any other section of this Act, be deemed not to have been disposed of by the taxpayer and to continue to be an interest in the partnership;

That portion of para. 98.1(1)(c) following subpara. (ii) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 74, applicable to 1985 *et seq.* That portion formerly read:

the amount of the excess shall be deemed to be a gain of the taxpayer for the year from a disposition at that time of that residual interest; and

I.T. Application Rules: 23(4.1)(b) (where professional practice carried on in partnership since before 1972).

Interpretation Bulletins: IT-242R: Retired partners; IT-278R2: Death of a partner or of a retired partner.

(2) Continuation of original partnership — Where a partnership (in this subsection referred to as the "original partnership") has or would but for subsection 98(1) have ceased to exist at a time when a taxpayer had rights described in paragraph (1)(a) in respect of that partnership and the members of another partnership agree to satisfy all or part of those rights, that other partnership shall, for the purposes of that paragraph, be deemed to be a continuation of the original partnership.

Interpretation Bulletins: IT-278R2: Death of a partner or of a retired partner.

Definitions [s. 98.1]: "amount" — 248(1); "property" — 248(1); "residual interest" — 98.1(1)(a); "taxpayer" — 248(1).

98.2 Transfer of interest on death — Where by virtue of the death of an individual a taxpayer has acquired a property that was an interest in a partnership to which, immediately before the individual's death, section 98.1 applied,

(a) the taxpayer shall be deemed to have acquired a right to receive partnership property and not to have acquired an interest in a partnership;

(b) the taxpayer shall be deemed to have acquired the right referred to in paragraph (a) at a cost equal to the amount determined to be the proceeds of disposition of the interest in the partnership to the deceased individual by virtue of paragraph 70(5)(a) or (6)(d), as the case may be; and

(c) section 43 is not applicable to the right.

Related Provisions: 53(2)(o) — Deductions from ACB; 248(8) — Occurrences as a consequence of death.

Definitions [s. 98.2]: "amount", "individual" — 248(1); "property", "taxpayer" — 248(1).

Interpretation Bulletins [s. 98.2]: IT-242R: Retired partners; IT-278R2: Death of a partner or of a retired partner; IT-349R3: Intergenerational transfers of farm property on death.

99. (1) Fiscal period of terminated partnership — Except as provided in subsection (2), where, at any time in a fiscal period of a partnership, the partnership would, but for subsection 98(1), have ceased to exist, the fiscal period shall be deemed to have ended immediately before that time.

Proposed Amendment — 99(1)

99. Fiscal period of terminated partnership — (1) Subject to subsection (2), if, at any particular time in a fiscal period of a partnership, the partnership would, if this Act were read without reference to subsection 98(1), have ceased to exist, the fiscal period is deemed to have ended immediately before the time that is immediately before that particular time.

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 91, will amend subsec. 99(1) to read as above, in force on Royal Assent.

Technical Notes: Subsection 99(1) provides that, generally, a fiscal period of a partnership is considered to end immediately before the particular time that the partnership ceases to exist. In order to accommodate the calculation of adjusted cost base immediately before the particular time, under section 53, subsection 99(1) is amended to provide that fiscal period of a partnership is considered to end immediately before the time that is immediately before the particular time.

Related Provisions: 127.52(1)(c.1), (c.2) — Exclusion from triggering minimum tax.

(2) Fiscal period of terminated partnership for individual member — Where an individual was a member of a partnership that, at any time in a fiscal period of a partnership, has or would have, but for subsection 98(1), ceased to exist, for the purposes of computing the individual's income for a taxation year the partnership's fiscal period may, if the individual so elects and subsection 249.1(4) does not apply in respect of the partnership, be deemed to have ended immediately before the time when the fiscal period of the partnership would have ended if the partnership had not so ceased to exist.

Related Provisions: 25(1) — Parallel rule for individuals; 99(3), (4) — Validity of election.

History: Subsec. 99(2) amended by 1996, c. 21, s. 17.1, applicable to fiscal periods that begin after 1994. The subsec. formerly read:

(2) Fiscal period for individual member of terminated partnership — Where an individual was a member of a partnership that, at any time in a fiscal period of the partnership, has or would have, but for subsection 98(1), ceased to exist, for the purposes of computing the individual's income for a taxation year the partnership's fiscal period may, if the individual so elects, be deemed to have ended immediately before the time when the fiscal period of the partnership would have ended if the partnership had not so ceased to exist.

Interpretation Bulletins: IT-179R: Change of fiscal period.

Information Circulars: 76-19R3: Transfer of property to a corporation under section 85.

(3) Validity of election — An election under subsection (2) is not valid unless the individual was resident in Canada at the time when the fiscal period of the partnership would, if the election were valid, be deemed to have ended.

Related Provisions: 96(4)–(7) — Elections.

(4) Idem — An election under subsection (2) is not valid if, for the individual's taxation year in which a fiscal period of the partnership would not, if the election were valid, be deemed to have ended but in which it would otherwise have ended, the individual elects to have applicable the rules set out in the *Income Tax Application Rules* that apply when two or more fiscal periods of a partnership end in the same taxation year.

Definitions [s. 99]: "Canada" — 255; "fiscal period" — 99(1), (2), 249.1; "individual" — 248(1); "member" — 102(2); "resident in Canada" — 94(3)(a)(viii), 250; "taxation year" — 11(2), 249; "taxpayer" — 248(1).

100. (1) Disposition of an interest in a partnership — Notwithstanding paragraph 38(a), a taxpayer's taxable capital gain for a taxation year from the disposition of an interest in a partnership to any person exempt from tax under section 149 shall be deemed to be

(a) ½ of such portion of the taxpayer's capital gain for the year therefrom as may reasonably be regarded as attributable to increases in the value of any partnership property of the partnership that is capital property other than depreciable property,

plus

(b) the whole of the remaining portion of that capital gain.

Related Provisions: 100(5) — Deemed capital loss on amount paid following disposition of partnership interest.

History: Para. 100(1)(a) amended by 2001, c. 17, s. 76 to replace the reference to the fraction "3/4" with a reference to the fraction "1/2", applicable to taxation years that end after February 27, 2000 except that, where a taxation year of a taxpayer includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, the reference to the fraction "1/2" shall be read as a reference to the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the taxpayer for the year.

(2) Gain from disposition of interest in partnership — In computing a taxpayer's gain for a taxation year from the disposition of an interest in a partnership, there shall be included, in addition to the amount thereof determined under subsection 40(1), the amount, if any, by which

(a) the total of all amounts required by subsection 53(2) to be deducted in computing the adjusted cost base to the taxpayer, immediately before the disposition, of the interest in the partnership,

exceeds

(b) the total of

(i) the cost to the taxpayer of the interest in the partnership determined for the purpose of computing the adjusted cost base to the taxpayer of that interest at that time, and

(ii) all amounts required by subsection 53(1) to be added to the cost to the taxpayer of that interest in computing the adjusted cost base to the taxpayer of that interest at that time.

Related Provisions: 100(5) — Deemed capital loss on amount paid following disposition of partnership interest.

Selected Cases [subsec. 100(2)]: *Stursberg (R.K.G.) v. MNR*, [1993] 2 C.T.C. 76 (FCA) (Transactions resulting in reduction of partner's share and corresponding increase of another partner's share was disposition of part of first partner's interest, not distribution of capital).

Interpretation Bulletins: IT-268R4: *Inter vivos* transfer of farm property to child; IT-278R2: Death of a partner or of a retired partner.

(2.1) Idem — Where, as a result of an amalgamation or merger, an interest in a partnership owned by a predecessor corporation has become property of the new corporation formed as a result of the amalgamation or merger and the predecessor corporation was not related to the new corporation, the predecessor corporation shall be deemed to have disposed of the interest in the partnership to the new corporation immediately before the amalgamation or merger for proceeds of disposition equal to the adjusted cost base to the predecessor corporation of the interest in the partnership at the time of the disposition and the new corporation shall be deemed to have acquired the interest in the partnership from the predecessor corporation immediately after that time at a cost equal to the proceeds of disposition.

Related Provisions: 87(2)(e.1) — Partnership interest.

(3) Transfer of interest on death — Where by virtue of the death of an individual a taxpayer has acquired a property that was an interest in a partnership immediately before the individual's death (other than an interest to which, immediately before the individual's death, section 98.1 applied) and the taxpayer is not a member of the partnership and does not become a member of the partnership by reason of that acquisition,

(a) the taxpayer shall be deemed to have acquired a right to receive partnership property and not to have acquired an interest in a partnership;

(b) the taxpayer shall be deemed to have acquired the right referred to in paragraph (a) at a cost equal to the amount determined to be the proceeds of disposition of the interest in the partnership to the deceased individual by virtue of paragraph 70(5)(a) or (6)(d), as the case may be; and

(c) section 43 is not applicable to the right.

Related Provisions: 53(2)(o) — Deduction from ACB; 248(8) — Occurrences as a consequence of death.

Interpretation Bulletins: IT-278R2: Death of a partner or of a retired partner; IT-349R3: Intergenerational transfers of farm property on death.

(4) Loss re interest in partnership — Notwithstanding paragraph 39(1)(b), the capital loss of a taxpayer from the disposition at any time of an interest in a partnership is deemed to be the amount of the loss otherwise determined minus the total of all amounts each of which is the amount by which the taxpayer's share of the partnership's loss, in respect of a share of the capital stock of a corporation that was property of a particular partnership at that time, would have been reduced under subsection 112(3.1) if the fiscal period of every partnership that includes that time had ended immediately before that time and the particular partnership had disposed of the share immediately before the end of that fiscal period for proceeds equal to its fair market value at that time.

Related Provisions: 40(3.7) — Application to non-resident individual; 53(2)(c)(i)(C) — Reduction in ACB; 100(5) — Deemed capital loss on amount paid following disposition of partnership interest; 107.4(3)(b)(ii) — Application of stop-loss rule to qualifying disposition.

History: Subsec. 100(4) amended by 1998, c. 19, s. 126, applicable to dispositions that occur after April 26, 1995. The subsec. formerly read:

> (4) Notwithstanding paragraph 39(1)(b), the capital loss of a corporation from the disposition at any time of an interest in a partnership shall be deemed to be the amount of the loss otherwise determined minus the total of all amounts each of which is the amount by which the corporation's share of the partnership's loss, in respect of a share of the capital stock of a corporation that was property of the partnership at that time, would have been reduced pursuant to subsection 112(3.1) or (4.2) had the fiscal period of the partnership ended immediately before that time and had the partnership disposed of the share immediately before the end of that fiscal period for its fair market value at that time.

Proposed Addition — 100(5)

(5) Replacement of partnership capital — A taxpayer who pays an amount at any time in a taxation year is deemed to have a capital loss from a disposition of property for the year if

(a) the taxpayer disposed of an interest in a partnership before that time or, because of subsection (3), acquired before that time a right to receive property of a partnership;

(b) that time is after the disposition or acquisition, as the case may be;

(c) the amount would have been described in subparagraph 53(1)(e)(iv) had the taxpayer been a member of the partnership at that time; and

(d) the amount is paid pursuant to a legal obligation of the taxpayer to pay the amount.

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 92, will add subsec. 100(5), applicable to 1995 *et seq.*

Technical Notes: Section 100 contains rules relevant to the calculation of capital gains and losses in respect of an interest in a partnership. There may be circumstances under which a former member of a partnership or an heir of a deceased member is required to pay an amount to the partnership to cover a deficit in the former member's equity account. Such a situation could arise, for instance, where the partnership has a net loss for the partnership's fiscal period in which the taxpayer ceased to be a member. The former member may have been deemed to have realized a capital gain under subsection 100(2) upon disposition of the partnership interest, if the former member had at that time a "negative" adjusted cost base under section 54 (if such a negative balance were allowed under that section).

New subsection 100(5), which generally applies to the 1995 and subsequent taxation years, deems a taxpayer to have a capital loss from the payment by the taxpayer of an amount after the time of disposition of the partnership interest, if that amount would have been a capital contribution to the partnership if the taxpayer had still been a member at the time of the payment. The loss is available to the former member or to an heir who has been deemed by subsection 100(3) to have acquired a right to acquire partnership property.

Example

Mr. Green was a partner in XYZ Partnership until June 30. The fiscal period end of the partnership was December 31. The adjusted cost base of his partnership interest on January 1 was Nil. From January to June 30 he withdrew $16,000 in capital.

Shortly after the fiscal period end, all the partners agree that Mr. Green's share of the partnership loss for the period was $20,000. During the following year he paid $36,000 owing by him to the partnership in satisfaction of his obligation.

A summary of Mr. Green's adjusted cost base is as follows:

	Adjusted Cost Base	
January 1, Year 1		Nil
January 31, Drawings	$<16,000>	<16,000>
Retirement of Mr. Green, June 30		
December 31, Year 1,		
Share of loss for 6 months	<20,000>	<36,000>
March 31 — Repayment of partnership capital	36,000	Nil

Mr. Green is entitled to claim a partnership loss of $20,000 for the taxation year in which he retired ("Year 1"). He had a $36,000 "negative" adjusted cost base for his partnership interest as at the time that he left the partnership, giving rise to a deemed capital gain under subsection 100(2) for Year 1. However, he will be allowed a $36,000 capital loss under subsection 100(5) for the taxation year in which he repaid the deficit.

Definitions [s. 100]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "capital gain" — 39(1)(a), 248(1); "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "depreciable property" — 13(21), 248(1); "disposition" — 248(1); "fiscal period" — 249(2)(b), 249.1; "member" — 102(2); "person" — 248(1); "property" — 248(1); "share" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxation year" — 249; "taxpayer" — 248(1).

101. Disposition of farmland by partnership — Where a taxpayer was a member of a partnership at the end of a taxation year of the partnership in which the partnership disposed of land used in a farming business of the partnership, there may be deducted in computing the taxpayer's income for the taxpayer's taxation year in which the taxation year of the partnership ended, 1/2 of the total of all amounts each of which is an amount in respect of that taxation year of the taxpayer or any preceding taxation year of the taxpayer ending after 1971, equal to the taxpayer's loss, if any, for the year from the farming business, to the extent that the loss

(a) was, by virtue of section 31, not deductible in computing the taxpayer's income for the year;

(b) was not deducted for the purpose of computing the taxpayer's taxable income for the taxpayer's taxation year in which the partnership's taxation year in which the land was disposed of ended, or for any preceding taxation year of the taxpayer;

(c) did not exceed that proportion of the total of

(i) taxes (other than income or profits taxes or taxes imposed by reference to the transfer of the property) paid by the partnership in its taxation year ending in the year or payable by it in respect of that taxation year to a province or a Canadian municipality in respect of the property, and

(ii) interest paid by the partnership in its taxation year ending in the year or payable by it in respect of that taxation year, pursuant to a legal obligation to pay interest on borrowed money used to acquire the property or on any amount as consideration payable for the property,

(to the extent that the taxes and interest were included in computing the loss of the partnership for that taxation year from the farming business), that

(iii) the taxpayer's loss from the farming business for the year

is of

(iv) the partnership's loss from the farming business for its taxation year ending in the year; and

(d) did not exceed the remainder obtained when

(i) the total of each of the taxpayer's losses from the farming business for taxation years preceding the year (to the extent that those losses are included in computing the amount determined under this section in respect of the taxpayer)

is deducted from

(ii) twice the amount of the taxpayer's taxable capital gain from the disposition of the land.

Related Provisions: 53(1)(i) — Corresponding rule for non-partnerships — addition to ACB; 96(1.01)(a) — Income allocation to former partner; 96(1.1) — Allocation of share of income to retiring partner; 111(7) — Limitation.

History: S. 101 amended by 2001, c. 17, s. 77 to replace the reference to the fraction "3/4" with a reference to the fraction "1/2" and by replacing the reference to the expression "4/3 of" with a reference to the word "twice", applicable to taxation years that end after February 27, 2000 except that, in applying it to a taxpayer's taxation year that includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000,

(a) the reference to the fraction "1/2" shall be read as a reference to the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the taxpayer for the year; and

(b) the reference to the word "twice" shall be read as a reference to the expression "the fraction that is the reciprocal of the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the taxpayer for the year, multiplied by".

Definitions [s. 101]: "amount", "borrowed money", "business", "farming" — 248(1); "member" — 102(2); "property" — 248(1); "province" — *Interpretation Act* 35(1); "taxable capital gain" — 38(a), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1).

102. (1) Definition of "Canadian partnership" — In this subdivision, "Canadian partnership" means a partnership all of the members of which were, at any time in respect of which the expression is relevant, resident in Canada.

Related Provisions: 80(1) — "Eligible Canadian partnership"; 94(4)(b) [proposed] — Deeming non-resident trust to be resident in Canada does not apply to para. (b); 96(8) — Anti-avoidance rules; 212(13.1)(b) — Non-Canadian partnership deemed non-resident for withholding tax purposes; 248(1)"Canadian partnership" — Definition applies to entire Act; *Income Tax Conventions Interpretation Act* 6.2 — Partnership with Canadian resident partner cannot be resident in another country.

(2) Member of a partnership — In this subdivision, a reference to a person or a taxpayer who is a member of a particular partnership shall include a reference to another partnership that is a member of the particular partnership.

Selected Cases [s. 102]: *Randall v. R.*, [1985] 1 C.T.C. 268 (FCTD) (Non-resident member not actively participating in business taxed as if carrying on business in Canada where participating in profits).

Definitions [s. 102]: "Canada" — 255; "person" — 248(1); "resident in Canada" — 250; "taxpayer" — 248(1).

Interpretation Bulletins [s. 102]: IT-123R6: Transactions involving eligible capital property; IT-338R2: Partnership interests — effects on adjusted cost base resulting from the admission or retirement of a partner (archived); IT-413R: Election by members of a partnership under subsection 97(2); IT-417R: Merger of partnerships.

103. (1) Agreement to share income, etc., so as to reduce or postpone tax otherwise payable — Where the members of a partnership have agreed to share, in a specified proportion, any income or loss of the partnership from any source or from sources in a particular place, as the case may be, or any other amount in respect of any activity of the partnership that is relevant to the computation of the income or taxable income of any of the members thereof, and the principal reason for the agreement may reasonably be considered to be the reduction or postponement of the tax that might otherwise have been or become payable under this Act, the share of each member of the partnership in the income or loss, as the case may be, or in that other amount, is the amount that is reasonable having regard to all the circumstances including the proportions in which the members have agreed to share profits and losses of the partnership from other sources or from sources in other places.

Related Provisions: 96(1.01)(a) — Income allocation to former partner; 103(2) — Meaning of "losses"; 248(1) — Definition of "specified proportion".

Selected Cases [subsec. 103(1)]: *Signum Communications Inc. v. Canada*, [1991] 2 C.T.C. 31 (FCA) (Limited partner's losses not limited by amount of capital contribution).

I.T. Technical News: 30 (computation/allocation of partnership income and losses).

(1.1) Agreement to share income, etc., in unreasonable proportions — Where two or more members of a partnership who are not dealing with each other at arm's length agree to share any income or loss of the partnership or any other amount in respect of any activity of the partnership that is relevant to the computation of the income or taxable income of those members and the share of any such member of that income, loss or other amount is not reasonable in the circumstances having regard to the capital invested in or work performed for the partnership by the members thereof or such other factors as may be relevant, that share shall, notwithstanding any agreement, be deemed to be the amount that is reasonable in the circumstances.

Related Provisions: 96(1.01)(a) — Income allocation to former partner.

Selected Cases [subsec. 103(1.1)]: *Archbold v. Canada*, [1995] 1 C.T.C. 2872 (TCC) (No legal impediment to partner's drawing salary from partnership).

Interpretation Bulletins: IT-231R2: Partnerships — partners not dealing at arm's length.

(2) Definition of "losses" — For the purposes of this section, the word "losses" when used in the expression "profits and losses" means losses determined without reference to other provisions of this Act.

Related Provisions: 96(1.1) — Allocation of share of income to retiring partner.

Definitions [s. 103]: "amount" — 248(1); "arm's length" — 251(1); "assessment" — 248(1); "losses" — 103(2); "member" — 102(2); "specified proportion" — 248(1); "taxable income" — 2(2), 248(1).

Interpretation Bulletins: IT-338R2: Partnership interests — effects on adjusted cost base resulting from the admission or retirement of a partner (archived).

Subdivision k — Trusts and Their Beneficiaries

104. (1) Reference to trust or estate — In this Act, a reference to a trust or estate (in this subdivision referred to as a "trust") shall, unless the context otherwise requires, be read to include a reference to the trustee, executor, administrator, liquidator of a succession, heir or other legal representative having ownership or control of the trust property, but, except for the purposes of this subsection, subsection (1.1), subparagraph (b)(v) of the definition "disposition" in subsection 248(1) and paragraph (k) of that definition, a trust is deemed not to include an arrangement under which the trust can reasonably be considered to act as agent for all the beneficiaries under the trust with respect to all dealings with all of the trust's property unless the trust is described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1).

Related Provisions: 75(2) — Revocable or reversionary trust; 94(3) — Non-resident trust deemed resident in Canada; 94(3)(a) [proposed] — Trust deemed resident in Canada; 104(1.1) — Restricted meaning of "beneficiary"; 108(1) — Meaning of "trust"; 122(1) — High rate of tax for *inter vivos* trusts; 128(1)(b), 128(2)(b) — Estate of bankrupt deemed not to be a trust or estate; 146.1(1)"trust" — RESPs — meaning of "trust"; 233.2(4) — Reporting requirement re transfers to foreign trust; 233.6(1) — Reporting requirement re distributions from foreign trust; 248(1)"disposition"(b)(v) — Where trustee ceasing to act as agent of beneficiary; 248(1)"estate" — Definition applies to entire Act; 248(1)"trust" — Definition applies to entire Act; 248(3) — Deemed trusts in Quebec; 251(1)(b) — Personal trust and beneficiary deemed not to deal at arm's length.

History: Subsec. 104(1) amended by 2001, c. 17, subsec. 78(1), applicable to 1998 *et seq.*, except that in connection with transfers of property that occur before December 24, 1998, subsec. 104(1) shall be read as follows:

(1) In this Act, a reference to a trust or estate (in this subdivision referred to as a "trust") shall, unless the context otherwise requires, be read to include a reference to the trustee, executor, administrator, liquidator of the succession, heir or other legal representative having ownership or control of the trust property.

Subsec. 104(1) formerly read:

(1) In this Act, a reference to a trust or estate (in this subdivision referred to as a "trust") shall be read as a reference to the trustee or

the executor, administrator, heir or other legal representative having ownership or control of the trust property.

Interpretation Bulletins: IT-216: Corporation holding property as agent for shareholder (archived); IT-447: Residence of a trust or estate.

I.T. Technical News: 7 (revocable living trusts, protective trusts, bare trusts).

(1.1) Restricted meaning of "beneficiary" — Notwithstanding subsection 248(25.1) and for the purposes of subsection (1), paragraph (4)(a.4), subparagraph 73(1.02)(b)(ii) and paragraph 107.4(1)(e), a person or partnership is deemed not to be a beneficiary under a trust at a particular time where the person or partnership is beneficially interested in the trust at the particular time solely because of

Proposed Amendment — 104(1.1) opening words

(1.1) Restricted meaning of "beneficiary" — Notwithstanding subsection 248(25), for the purposes of subsection (1), paragraph (4)(a.4), subparagraph 73(1.02)(b)(ii) and paragraph 107.4(1)(e), a person or partnership is deemed not to be a beneficiary under a trust at a particular time if the person or partnership is beneficially interested in the trust at the particular time solely because of

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 93(1), will amend the opening words of subsec. 104(1.1) to read as above, applicable to 1998 *et seq.*

Technical Notes: Subsection 104(1.1) applies for the purpose of identifying beneficiaries under a trust for the purposes of subsection 104(1), subparagraph 73(1.02)(b)(ii) and paragraphs 104(4)(a.4) and 107.4(1)(e).

Subsection 104(1.1) is amended to clarify that it applies notwithstanding subsection 248(25). Subsection 248(25) describes, for other purposes of the Act, the circumstances in which a person or partnership is considered to be "beneficially interested" in a trust.

(a) a right that may arise as a consequence of the terms of the will or other testamentary instrument of an individual who, at the particular time, is a beneficiary under the trust;

(b) a right that may arise as a consequence of the law governing the intestacy of an individual who, at that time, is a beneficiary under the trust;

(c) a right as a shareholder under the terms of the shares of the capital stock of a corporation that, at the particular time, is a beneficiary under the trust;

(d) a right as a member of a partnership under the terms of the partnership agreement, where, at the particular time, the partnership is a beneficiary under the trust; or

(e) any combination of rights described in paragraphs (a) to (d).

History: Subsec. 104(1.1) added by 2001, c. 17, subsec. 78(1), applicable to 1998 *et seq.*.

(2) Taxed as individual — A trust shall, for the purposes of this Act, and without affecting the liability of the trustee or legal representative for that person's own income tax, be deemed to be in respect of the trust property an individual, but where there is more than one trust and

(a) substantially all of the property of the various trusts has been received from one person, and

(b) the various trusts are conditioned so that the income thereof accrues or will ultimately accrue to the same beneficiary, or group or class of beneficiaries,

such of the trustees as the Minister may designate shall, for the purposes of this Act, be deemed to be in respect of all the trusts an individual whose property is the property of all the trusts and whose income is the income of all the trusts.

Related Provisions: 127.53(2), (3) — Multiple trusts must share minimum tax exemption; 248(1)"individual" — Trust is an individual.

Regulations: 204 (information return).

Interpretation Bulletins: IT-406R2: Tax payable by an *inter vivos* trust; IT-447: Residence of a trust or estate.

Forms: T3: Statement of trust income allocations and designations; T3 SCH 9: Income allocations and designations to beneficiaries.

(3) [Repealed under former Act]

(4) Deemed disposition by trust — Every trust is, at the end of each of the following days, deemed to have disposed of each property of the trust (other than exempt property) that was capital property (other than excluded property or depreciable property) or land included in the inventory of a business of the trust for proceeds equal to its fair market value (determined with reference to subsection 70(5.3)) at the end of that day and to have reacquired the property immediately after that day for an amount equal to that fair market value, and for the purposes of this Act those days are

(a) where the trust

(i) is a trust that was created by the will of a taxpayer who died after 1971 and that, at the time it was created, was a trust,

(i.1) is a trust that was created by the will of a taxpayer who died after 1971 to which property was transferred in circumstances to which paragraph 70(5.2)(b) or (d) or (6)(d) applied and that, immediately after any such property vested indefeasibly in the trust as a consequence of the death of the taxpayer, was a trust,

Proposed Amendment — 104(4)(a)(i.1)

(i.1) is a trust that was created by the will of a taxpayer who died after 1971 to which property was transferred in circumstances to which paragraph 70(5.2)(b) or (d) (as those paragraphs read in their application to taxation years that began before 2003), (5.2)(c) or (6)(d) applied and that, immediately after any such property vested indefeasibly in the trust as a consequence of the death of the taxpayer, was a trust,

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 23(1), will amend subpara. 104(4)(a)(i.1) to read as above, applicable to trust taxation years that begin after 2002.

Technical Notes: Subsection 104(4) sets out what is generally referred to as the "21-year deemed realization rule" for trusts. The purpose of subsection 104(4) is to prevent the use of trusts to defer indefinitely the recognition for tax purposes of gains accruing on capital property. Subsection 104(4) generally treats capital property of a trust (other than certain trusts for the benefit of a spouse or common-law partner) as having been disposed of and reacquired by the trust every 21 years at the property's fair market value.

Subparagraph 104(4)(a)(i.1) is amended to apply to a trust to which property is transferred in circumstances to which paragraph 70(5.2)(c) applied. It is also amended to ensure that it continues to apply to a trust to which property was transferred in circumstances to which paragraph 70(5.2)(b) or (d) applied as those paragraphs read in their application to taxation years that began before 2003.

(ii) is a trust that was created after June 17, 1971 by a taxpayer during the taxpayer's lifetime that, at any time after 1971, was a trust, or

(ii.1) is a trust (other than a trust the terms of which are described in clause (iv)(A) that elects in its return of income under this Part for its first taxation year that this subparagraph not apply) that was created after 1999 by a taxpayer during the taxpayer's lifetime and that, at any time after 1999, was a trust

under which

(iii) the taxpayer's spouse or common-law partner was entitled to receive all of the income of the trust that arose before the spouse's or common-law partner's death and no person except the spouse or common-law partner could, before the spouse's or common-law partner's death, receive or otherwise obtain the use of any of the income or capital of the trust, or

(iv) in the case of a trust described in subparagraph (ii.1) created by a taxpayer who had attained 65 years of age at the time the trust was created,

(A) the taxpayer was entitled to receive all of the income of the trust that arose before the taxpayer's death and no person except the taxpayer could, before the taxpayer's death, receive or otherwise obtain the use of any of the income or capital of the trust,

(B) the taxpayer or the taxpayer's spouse was, in combination with the spouse or the taxpayer, as the case may be, entitled to receive all of the income of the trust that arose before the later of the death of the taxpayer and the death of the spouse and no other person could, before the later of those deaths, receive or otherwise obtain the use of any of the income or capital of the trust, or

(C) the taxpayer or the taxpayer's common-law partner was, in combination with the common-law partner or the taxpayer, as the case may be, entitled to receive all of the income of the trust that arose before the later of the death of the taxpayer and the death of the common-law partner and no other person could, before the later of those deaths, receive or otherwise obtain the use of any of the income or capital of the trust,

the day on which the death or the later death, as the case may be, occurs;

(a.1) where the trust is a pre-1972 spousal trust on January 1, 1993 and the spouse or common-law partner referred to in the definition "pre-1972 spousal trust" in subsection 108(1) in respect of the trust was

(i) in the case of a trust created by the will of a taxpayer, alive on January 1, 1976, and

(ii) in the case of a trust created by a taxpayer during the taxpayer's lifetime, alive on May 26, 1976,

the day that is the later of

(iii) the day on which that spouse or common-law partner dies, and

(iv) January 1, 1993;

(a.2) where the trust makes a distribution to a beneficiary in respect of the beneficiary's capital interest in the trust, it is reasonable to conclude that the distribution was financed by a liability of the trust and one of the purposes of incurring the liability was to avoid taxes otherwise payable under this Part as a consequence of the death of any individual, the day on which the distribution is made (determined as if a day ends for the trust immediately after the time at which each distribution is made by the trust to a beneficiary in respect of the beneficiary's capital interest in the trust);

(a.3) where property (other than property described in any of subparagraphs 128.1(4)(b)(i) to (iii)) has been transferred by a taxpayer after December 17, 1999 to the trust in circumstances to which subsection 73(1) applied, it is reasonable to conclude that the property was so transferred in anticipation that the taxpayer would subsequently cease to reside in Canada and the taxpayer subsequently ceases to reside in Canada, the first day after that transfer during which the taxpayer ceases to reside in Canada (determined as if a day ends for the trust immediately after each time at which the taxpayer ceases to be resident in Canada);

(a.4) where the trust is a trust to which property was transferred by a taxpayer who is an individual (other than a trust) in circumstances in which section 73 or subsection 107.4(3) applied, the transfer did not result in a change in beneficial ownership of that property and no person (other than the taxpayer) or partnership has any absolute or contingent right as a beneficiary under the trust (determined with reference to subsection (1.1)), the day on which the death of the taxpayer occurs;

Proposed Addition — 104(4)(a.5)

(a.5) where the trust is deemed by subsection 94(3) to be resident in Canada for a taxation year for the purpose of computing the trust's income for the taxation year, the day (in that taxation year) on which, because a contributor (in this paragraph, as defined by subsection 94(1)) either ceases to be resident in Canada or ceases to be a contributor to the trust because of the application at any time of paragraph 94(2)(t), there is no resident contributor (in this paragraph, as defined by subsection 94(1)) to the trust (or the only resident contributors to the trust are entities (in this paragraph, as defined by subsection 94(1)) each of which is an entity the maximum amount recoverable from which under the provisions referred to in paragraph 94(3)(d) is limited to the entities' recovery limits determined under subsection 94(8)), unless subsection 94(5) applies in respect of the contributor ceasing on the day to be a resident contributor to the trust;

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 23(2), will add para. 104(4)(a.5), applicable to trust taxation years that begin after 2002, and to trust taxation years that begin

(a) after 2000, if the trust makes a valid election under para. (a) of the Application of the amendment to s. 94; and

(b) after 2001, if the trust makes a valid election under para. (a) or (b) of the Application of the amendment to s. 94.

Technical Notes: Paragraph 104(4)(a.5) is introduced to provide for a deemed disposition day for a trust that is deemed by subsection 94(3) to be resident in Canada for a taxation year for the purpose of computing the trust's income for the year. The deemed disposition day is the day (in that taxation year) on which, because a "contributor" (as defined in subsection 94(1)) to the trust either ceases to be resident in Canada or ceases to be a contributor to the trust because of the application at any time of paragraph 94(2)(t), there is no resident contributor to the trust (or the only resident contributors to the trust are entities each of which is an entity the maximum amount recoverable from which under the provisions referred to in paragraph 94(3)(d) is limited to the entities' recovery limits determined under subsection 94(8)). However, no deemed disposition will occur under paragraph 104(4)(a.5) if subsection 94(5) applies in respect of the contributor ceasing on that day to be a resident contributor of the trust. For more information on section 94, see the commentary on that section.

(b) the day that is 21 years after the latest of

(i) January 1, 1972,

(ii) the day on which the trust was created, and

(iii) where applicable, the day determined under paragraph (a), (a.1) or (a.4) as those paragraphs applied from time to time after 1971; and

(c) the day that is 21 years after any day (other than a day determined under any of paragraphs (a) to (a.4)) that is, because of this subsection, a day on which the trust is deemed to have disposed of each such property.

Proposed Amendment — 104(4)(c)

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 23(3), will amend para. 104(4)(c) to replace "(a.4)" with "(a.5)", applicable on the same basis as the addition of para. 104(4)(a.5).

Technical Notes: Paragraph 104(4)(c) is amended so that there is not a deemed disposition day for a trust 21 years after any day determined under new paragraph 104(4)(a.5). In effect, the time from which 21 years is counted under paragraph 104(4)(c) is determined without regard to days determined without regard to days determined under any of paragraphs 104 (4)(a) to (a.5)

Related Provisions: 53(4) — Effect on ACB of share, partnership interest or trust interest; 54"superficial loss"(c) — Superficial loss rule does not apply; 70(5.3) — Value of property that depends on life insurance policy; 70(6)(a) — Where transfer or distribution to spouse or trust; 70(9.1) — Transfer of farm property from spouse's trust to settlor's children; 73(1.01) — *Inter vivos* transfer of property to spouse trust; 94 — Certain non-resident trusts deemed resident; 104(1.1) — Restricted meaning of "beneficiary" for 104(4)(a.4); 104(4.1) — Mark-to-market property can be capital property for 104(4); 104(5) — Deemed disposition of depreciable property; 104(5.3) — Election to postpone deemed disposition to 1999; 104(5.8) — Trust transfers; 104(6) — Deduction in computing income of trust; 104(15)(a) — Allocable amount for preferred beneficiary election; 107(4) — Distributions from trust; 107.4(3)(h) — Qualifying disposition to a trust; 108(1) — "accumulating income"; 108(1)"cost amount"(a.1) — Cost amount before death of taxpayer; 108(1)"trust" — Exclusions to meaning of "trust"; 108(3) — Meaning of "income" of trust; 108(4) — Trust payment of duties and taxes; 108(6) — Where terms of trust are varied; 127.55(e) — Application of minimum tax; 132.11(4) — Amounts paid from December 16-31 by mutual fund trust to beneficiary; 138.1(1) — Rules re segregated funds; 139.1(5) — Value of ownership rights in insurer during demutualization; 159(6.1) — Election to postpone payment of tax on deemed disposition; 248(1)"*alter ego* trust" — Name for trust described in 104(4)(a)(iv)(A); 248(1)"joint spousal or common-law partner trust" — Name for trust described in 104(4)(a)(iv)(B); 248(8) — Occurrences as a consequence of death; 248(9.1) — Whether trust created by taxpayer's will; 248(9.2) — Meaning of "vested indefeasibly"; 252(3) — Extended meaning of "spouse".

History: The opening words of subsec. 104(4) amended by 2001, c. 17, subsec. 78(2), applicable

(a) to days after December 23, 1998 that are determined in respect of a trust under subsec. 104(4), as amended; and

(b) for the purpose of determining the cost amount to a trust after December 23, 1998 of property, to days after 1992 that are determined in respect of the trust under subsec. 104(4), as amended.

The opening words formerly read:

(4) Every trust shall, at the end of each of the following days, be deemed to have disposed of each property of the trust that was capital property (other than excluded property or depreciable property) or land included in the inventory of the trust for proceeds equal to its fair market value at the end of that day and to have reacquired the property immediately thereafter for an amount equal to that fair market value, and for the purposes of this Act those days are

Subpara. 104(4)(a)(ii.1) added and the portion of para. 104(4)(a) after subpara. (ii) amended by the said c. 17, subsec. 78(3), applicable to 2000 *et seq.* except that, with regard to a trust created by a taxpayer at a particular time in 2000 for the benefit of another individual, subparas. 104(4)(a)(iii) and (iv) shall be read without reference to the words "or common-law partner" and "or common-law partner's" and to cl. 104(4)(a)(iv)(C), unless, because of an election under s. 144 of 2000, c. 12 [see History to 248(1)"common-law partner"], ss. 130 to 142 of that Act applied at the particular time to the taxpayer and the other individual. The portion after subpara. (ii) formerly read:

under which

(iii) the taxpayer's spouse or common-law partner was entitled to receive all of the income of the trust that arose before the spouse's or common-law partner's death, and

(iv) no person except the spouse or common-law partner could, before the spouse's or common-law partner's death, receive or otherwise obtain the use of any of the income or capital of the trust,

the day on which the spouse or common-law partner dies;

Paras. 104(4)(a.2) to (a.4) added by the said c. 17, subsec. 78(4), paras. (a.2) and (a.3) applicable to days after December 17, 1999 that are determined in respect of the trust under subsection 104(4), as amended; and para. (a.4) applicable to 2000 *et seq.*, and, where a trust elects in writing and files the election with the Minister of National Revenue on or before March 31, 2001 (or at any later time that is acceptable to the Minister), applicable after December 23, 1998.

Subpara. 104(4)(b)(iii) amended by the said c. 17, subsec. 78(5), applicable to 2000 *et seq.*, and, where a trust elects in writing and files the election with the Minister of National Revenue on or before March 31, 2001 (or at any later time that is acceptable to the Minister), applicable after December 23, 1998. The subpara. formerly read:

(iii) where applicable, the day determined under paragraph (a) or (a.1) as those paragraphs applied from time to time after 1971; and

Para. 104(4)(c) amended by the said c. 17, subsec. 78(6), applicable to 2000 *et seq.* The para. formerly read:

(c) the day that is 21 years after any day (other than a day determined under paragraph (a) or (a.1)) that is, because of this subsection, a day on which the trust is deemed to have disposed of each such property.

Subsec. 104(4) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", and by Sch. 2, s. 7 to replace "spouse's"with "spouse's or common-law partner's", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subpara. 104(4)(a)(i.1) amended by 1998, c. 19, subsec. 127(1), applicable to acquisitions and dispositions that occur after 1992. Subpara. 104(4)(a)(i.1) formerly read:

(i.1) is a trust that was created by the will of a taxpayer who died after 1971 to which property was transferred in circumstances to which paragraph 70(5.2)(d) or (f) or (6)(d) applied and that, immediately after any such property vested indefeasibly in the trust as a consequence of the death of the taxpayer, was a trust, or

Para. 104(4)(a.1) amended by 1996, c. 21, subsec. 18(1), applicable to trust taxation years that end after February 11, 1991. The para. formerly read:

(a.1) where the trust is a pre-1972 spousal trust on January 1, 1993, the day that is the later of

(i) the day on which the spouse referred to in the definition "pre-1972 spousal trust" in subsection 108(1) in respect of the trust dies, and

(ii) January 1, 1993;

Subpara. 104(4)(b)(iii) amended by 1996, c. 21, subsec. 18(2), applicable to trust taxation years that end after February 11, 1991. The subpara. formerly read:

(iii) where applicable, the day determined under paragraph (a) or (a.1); and

Subsec. 104(4) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 42(1), applicable to taxation years of trusts ending after February 11, 1991 except that para. 104(4)(a) as amended does not apply in respect of any trust described therein because of subpara. (i.1) thereof where the spouse who was the beneficiary of that trust died before December 21, 1991. Subsec. (4) formerly read:

(4) Deemed disposition by a trust — Every trust shall, on each of the following days, be deemed to have disposed of each property of the trust that was capital property (other than depreciable property) or land included in the inventory of the trust for proceeds equal to its fair market value on that day and to have reacquired the property

immediately thereafter for an amount equal to that fair market value, and for the purposes of this Act those days are

(a) where the trust

(i) is a trust created by the will of a taxpayer who died after December 31, 1971 and that, at the time it was created, was a trust, or

(ii) is a trust created by a taxpayer during the taxpayer's lifetime, other than a trust described in subsection 122(2), that, at any time after 1971, was a trust

under which

(iii) the taxpayer's spouse was entitled to receive all of the income of the trust that arose before the spouse's death, and

(iv) no person except the spouse could, before the spouse's death, receive or otherwise obtain the use of any of the income or capital of the trust,

the day on which the spouse dies;

(b) the day that is 21 years after the latest of

(i) January 1, 1972,

(ii) the day on which the trust was created, and

(iii) where applicable, the day referred to in paragraph (a); and

(c) the day that is 21 years after any day that is, by virtue of this subsection, a day on which the trust is deemed to have disposed of each such property.

Interpretation Bulletins: IT-120R6: Principal residence; IT-286R2: Trusts — amounts payable; IT-325R2: Property transfers after separation, divorce and annulment; IT-349R3: Intergenerational transfers of farm property on death; IT-370: Trusts — capital property owned on December 31, 1971 (archived); IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-394R2: Preferred beneficiary election; IT-449R: Meaning of "vested indefeasibly" (archived); IT-465R — Non-resident beneficiaries of trusts.

Advance Tax Rulings: ATR-38: Distribution of all of the property of an estate.

Forms: T1055: Summary of deemed realizations.

Proposed Addition — 104(4.1)

(4.1) Mark-to-market property — In determining whether property is capital property for the purpose of subsection (4), this Act is to be read without reference to subparagraph 39(1)(a)(ii.3).

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 23(4), will add subsec. 104(4.1), applicable to trust taxation years that begin after 2002.

Technical Notes: New subsection 104(4.1) provides that, for the purposes of the deemed disposition rule in subsection 104(4), a property's status as capital property is determined without reference to new subparagraph 39(1)(a)(ii.3). As a result, if subsection 94.2(3) applies for a taxation year to a taxpayer that is a trust in respect of a participating interest of the trust and the trust is deemed to have disposed of the interest because of the application of subsection 104(4), there is a recognition of the "deferral amount" in applying subsection 94.2(4).

(5) Depreciable property [deemed disposition] — Every trust is, at the end of each day determined under subsection (4) in respect of the trust, deemed to have disposed of each property of the trust (other than exempt property) that was a depreciable property of a prescribed class of the trust for proceeds equal to its fair market value at the end of that day and to have reacquired the property immediately after that day at a capital cost (in this subsection referred to as the "deemed capital cost") equal to that fair market value, except that

(a) where the amount that was the capital cost to the trust of the property immediately before the end of the day (in this paragraph referred to as the "actual capital cost") exceeds the deemed capital cost to the trust of the property, for the purpose of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a) as they apply in respect of the property at any subsequent time,

(i) the capital cost to the trust of the property on its reacquisition shall be deemed to be the amount that was the actual capital cost to the trust of the property, and

(ii) the excess shall be deemed to have been allowed under paragraph 20(1)(a) to the trust in respect of the property in computing its income for taxation years that ended before the trust reacquired the property;

(b) for the purposes of this subsection, the reference to "at the end of a taxation year" in subsection 13(1) shall be read as a reference to "at the particular time a trust is deemed by subsection 104(5) to have disposed of depreciable property of a prescribed class"; and

(c) for the purpose of computing the excess, if any, referred to in subsection 13(1) at the end of the taxation year of a trust that included a day on which the trust is deemed by this subsection to have disposed of a depreciable property of a prescribed class, any amount that, on that day, was included in the trust's income for the year under subsection 13(1) as it reads because of paragraph (b), shall be deemed to be an amount included under section 13 in the trust's income for a preceding taxation year.

Related Provisions: 70(9.1) — Transfer of farm property from spouse's trust to settlor's children; 104(5.3) — Election by trust to postpone deemed disposition; 104(5.8) — Trust transfers; 104(6) — Deduction in computing income of trust; 108(1) — "accumulating income"; 108(1)"cost amount"(a.1) — Cost amount before death of taxpayer; 108(1)"trust" — Exclusions to meaning of "trust"; 108(6) — Where terms of trust are varied.

History: The opening words of subsec. 104(5) amended by 2001, c. 17, subsec. 78(7), applicable to days after December 23, 1998 that are determined under subsection 104(4), as amended. The opening words formerly read:

(5) Idem [depreciable property] — Every trust shall, at the end of each day determined under subsection (4) in respect of the trust, be deemed to have disposed of each property of the trust that was a depreciable property of a prescribed class of the trust for proceeds equal to its fair market value at the end of that day and to have reacquired the property immediately thereafter at a capital cost (in this subsection referred to as the "deemed capital cost") equal to that fair market value, except that

Subparas. 104(5)(a)(i) and (ii) substituted by 1994, c. 21, subsec. 46(1), applicable to days determined under subsec. 104(4) that are after 1992. Those subparas. formerly read:

(i) the capital cost to the trust of the property shall be deemed to be the amount that was the actual capital cost to the trust of the property, and

(ii) the excess shall be deemed to have been allowed to the trust in respect of the property under paragraph 20(1)(a) in computing income for taxation years before the reacquisition by the trust of the property, and any other amount allowed to the trust in respect of the property under that paragraph in computing income for those years shall be deemed to be nil;

Subsec. 104(5) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 42(1), applicable to taxation years of trusts ending after February 11, 1991 except that with respect to those days determined under subsec. 104(4) (as amended) that are before 1993, subsec. 104(5) shall be read without reference to the amendments made by subsection (1), and the portion of subsec. 104(5) preceding para. (c) shall be read as follows:

(5) Every trust shall, at the end of each day determined under subsection (4) in respect of the trust, be deemed to have disposed of all depreciable property of a prescribed class of the trust for proceeds equal to

(a) where the fair market value of that property at the end of the day exceeds the undepreciated capital cost thereof to the trust at the end of the day, the amount of that undepreciated capital cost plus ½ of the excess, and

(b) in any other case, the fair market value of that property at the end of that day plus ½ of the amount, if any, by which the undepreciated capital cost thereof to the trust at the end of that day exceeds that fair market value,

and to have reacquired each such depreciable property of that class immediately thereafter at a capital cost (in this subsection referred to as the "deemed capital cost") equal to that proportion of the proceeds determined under paragraph (a) or (b), as the case may be, that the amount that was the fair market value of that property is of the total of the amounts that were the fair market values of all properties of that class at the end of that day, except that

Subsec. 104(5) formerly read:

(5) Idem — Every trust shall, on each day determined under subsection (4) in respect of the trust, be deemed to have disposed of all depreciable property of a prescribed class of the trust for proceeds equal to,

(a) where the fair market value of that property on that day exceeds the undepreciated capital cost thereof to the trust on that day, the amount of that undepreciated capital cost plus ½ of the amount of the excess, and

(b) in any other case, the fair market value of that property on that day plus ½ of the amount, if any, by which the undepreciated capital cost thereof to the trust on that day exceeds that fair market value,

and to have reacquired each such depreciable property of that class immediately thereafter at a capital cost (in this subsection referred to as the "deemed capital cost") equal to that proportion of the proceeds determined under paragraph (a) or (b), as the case may be, that the amount that was the fair market value of that property on that day is of the total of the amounts that were the fair market values of all properties of that class on that day, except that

(c) where the amount that was the capital cost to the trust of any particular property of that class exceeds the deemed capital cost to the trust of the property, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a) as they apply in respect of the property at any subsequent time,

(i) the capital cost to the trust of the property shall be deemed to be the amount that was the capital cost to the trust of the property, and

(ii) the excess shall be deemed to have been allowed to the trust in respect of the property under paragraph 20(1)(a) in computing income for taxation years before the reacquisition by the trust of the property, and any other amount allowed to the trust in respect of the property under that paragraph in computing income for those years shall be deemed to be nil,

(d) for the purposes of this subsection, the words "at the end of a taxation year," in subsection 13(1) shall be deemed to read "at the particular time a trust is deemed by subsection 104(5) to have disposed of depreciable property of a prescribed class," and

(e) for the purpose of computing the excess, if any, referred to in subsection 13(1) at the end of the taxation year of a trust that included a day on which the trust is deemed by this subsection to have disposed of all depreciable property of a prescribed class, any amount that, on that day, was included in the trust's income for the year by virtue of subsection 13(1) as it reads by virtue of paragraph (d), shall be deemed to be an amount included in the taxpayer's income by virtue of section 13 for a prior taxation year.

Interpretation Bulletins: IT-286R2: Trusts — amount payable; IT-349R3: Intergenerational transfers of farm property on death; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-394R2: Preferred beneficiary election; IT-465R: Non-resident beneficiaries of trusts.

Forms: T1055: Summary of deemed realizations.

(5.1) Idem [NISA Fund No. 2] — Every trust that holds an interest in a NISA Fund No. 2 that was transferred to it in circumstances to which paragraph 70(6.1)(b) applied shall be deemed, at the end of the day on which the spouse or common-law partner referred to in that paragraph dies (in this subsection referred to as the "spouse or common-law partner"), to have been paid an amount out of the fund equal to the amount, if any, by which

(a) the balance at the end of that day in the fund so transferred

exceeds

(b) such portion of the amount described in paragraph (a) as is deemed by subsection (14.1) to have been paid to the spouse or common-law partner.

Related Provisions: 104(5.8) — Trust transfers; 104(6) — Deduction in computing income of trust; 252(3) — Extended meaning of "spouse".

History: Subsec. 104(5.1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subsec. 104(5.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 42(2), applicable to 1991 *et seq.*

Forms: T1055: Summary of deemed realizations.

(5.2) Resource property [deemed disposition] — Where at the end of a day determined under subsection (4) in respect of a trust, the trust owns a Canadian resource property (other than an exempt property) or a foreign resource property (other than an exempt property),

(a) for the purposes of determining the amounts under subsection 59(1), paragraphs 59(3.2)(c) and (c.1), subsections 66(4) and 66.2(1), the definition "cumulative Canadian development expense" in subsection 66.2(5), the definition "cumulative foreign resource expense" in subsection 66.21(1), subsection 66.4(1) and the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5), the trust is deemed

(i) to have a taxation year (in this subsection referred to as the "old taxation year") that ended at the end of that day and a new taxation year that begins immediately after that day, and

(ii) to have disposed, immediately before the end of the old taxation year, of each of those properties for proceeds that became receivable at that time equal to its fair market value at that time and to have reacquired, at the beginning of the new taxation year, each such property for an amount equal to that fair market value; and

(b) for the particular taxation year of the trust that included that day, the trust shall

(i) include in computing its income for the particular taxation year the amount, if any, determined under paragraph 59(3.2)(c) in respect of the old taxation year and the amount so included shall, for the purposes of the determination of B in the definition "cumulative Canadian development expense" in subsection 66.2(5), be deemed to have been included in computing its income for a preceding taxation year,

(i.1) include in computing its income for the particular taxation year the amount, if any, determined under paragraph 59(3.2)(c.1) in respect of the old taxation year and the amount so included is, for the purpose of determining the value of B in the definition "cumulative foreign resource expense" in subsection 66.21(1), deemed to have been included in computing its income for a preceding taxation year, and

(ii) deduct in computing its income for the particular taxation year the amount, if any, determined under subsection 66(4) in respect of the old taxa-

tion year and the amount so deducted shall, for the purposes of paragraph 66(4)(a), be deemed to have been deducted for a preceding taxation year.

Related Provisions: 104(5.3) — Election; 104(5.8) — Trust transfers; 104(6) — Deduction in computing income of trust; 108(1) — "accumulating income"; 108(1) — "trust"; 108(6) — Where terms of trust are varied.

History: The portion of subsec. 104(5.2) before para. (b) amended by 2001, c. 17, subsec. 78(8), applicable to days after December 23, 1998 that are determined under subsec. 104(4), as amended, except that in applying para. 104(5.2)(a) to days that are in taxation years that begin before 2001 and that are determined under subsec. 104(4), that paragraph shall be read without the references to para. 59(3.2)(c.1) and the definition "cumulative foreign resource expense" in subsec. 66.21(1). The portion before para. (b) formerly read:

(5.2) Rules for trusts [resource property] — Where on a day determined under subsection (4) in respect of a trust the trust owns a Canadian resource property or a foreign resource property, the following rules apply:

(a) for the purpose of determining the amounts under subsection 59(1), paragraph 59(3.2)(c), subsections 66(4) and 66.2(1), the definition "cumulative Canadian development expense" in subsection 66.2(5), subsection 66.4(1) and the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5), the trust shall be deemed

(i) to have a taxation year (in this subsection referred to as the "old taxation year") that ended on that day and a new taxation year (in this subsection referred to as the "new taxation year") that commenced immediately after that day, and

(ii) to have disposed, immediately before the end of the old taxation year, of each of its Canadian resource properties and foreign resource properties for proceeds that become receivable at that time equal to its fair market value at that time and to have reacquired, at the beginning of the new taxation year, each such property for an amount equal to that fair market value; and

Subpara. 104(5.2)(b)(i.1) added by the said c. 17, subsec. 78(9), applicable to taxation years that begin after 2000.

Interpretation Bulletins: IT-394R2: Preferred beneficiary election.

(5.3) Election [before 1999] — Where a trust files an election under this subsection in prescribed form with the Minister within 6 months after the end of a taxation year of the trust that includes a day before 1999 (in this subsection referred to as the "disposition day") that would, but for this subsection, be determined in respect of the trust under paragraph (4)(a.1) in the case of a trust described in that paragraph, or under paragraph (4)(b) in any other case, and there is an exempt beneficiary under the trust on the disposition day,

(a) for the purposes of subsections (4) to (5.2), paragraph (6)(b) and subsection 159(6.1), the day determined under paragraph (4)(a.1) or (b), as the case may be, in respect of the trust is deemed to be the earlier of

(i) January 1, 1999, and

(ii) the first day of the trust's first taxation year that begins after the first day after the disposition day throughout which there is no exempt beneficiary under the trust;

(b) subsection 107(2) does not apply to a distribution made by the trust during the period

(i) beginning immediately after the disposition day, and

(ii) ending at the end of the first day after the disposition day that is determined in respect of the trust under subsection (4)

to any beneficiary (other than an individual who is an exempt beneficiary under the trust immediately before the time of the distribution);

(b.1) where the trust filed the form before March 1995, paragraph (b) does not apply to distributions made by the trust after February 1995; and

(c) subsection 107.4(3) does not apply to a disposition by the trust during the period

(i) beginning immediately after the disposition day, and

(ii) ending at the end of the first day after the disposition day that is determined in respect of the trust under subsection (4).

(d) [Repealed]

Related Provisions: 104(5.31) — Revocation of election; 104(5.4) — Exempt beneficiary; 104(5.8) — Trust transfers; 107(2) — Rollout of property to beneficiaries where election not available; 108(1) — "trust"; 110.6(12) — Spousal trust deduction; 220(3.2), Reg. 600(b) — Late filing or revocation of election; 248(25.1) — Trust-to-trust transfers.

History: The opening words of para. 104(5.3)(c) amended by 2001, c. 17, subsec. 78(10), applicable to transfers made after December 23, 1998. The opening words formerly read:

(c) subject to paragraph (d), paragraph (e) of the definition "disposition" in section 54 does not apply to a transfer by the trust after the disposition day during the period

Para. 104(5.3)(d) repealed by the said c. 17, subsec. 78(11), applicable to transfers made after December 23, 1998. Para. (d) formerly read:

(d) where

(i) property is transferred from the trust to another trust in circumstances to which paragraph (e) of the definition "disposition" in section 54 would, but for paragraph (c), apply,

(ii) the other trust held no property immediately before the transfer, and

(iii) the terms of the trust immediately before the transfer are identical to the terms of the other trust immediately after the transfer,

paragraph (e) of the definition "disposition" in section 54 applies to the transfer and the other trust shall be deemed to be the same trust as, and a continuation of, the trust.

The portion of subsec. 104(5.3) before para. (b) amended and para. (b.1) added by 1996, c. 21, subsecs. 18(3) and (4), applicable after February 11, 1991. That portion before para. (b) formerly read:

(5.3) Election — Where a trust so elects in prescribed form filed with the Minister within 6 months after the end of a taxation year of the trust that includes a day (in this subsection referred to as the "disposition day") that would, but for this subsection, be determined in respect of the trust under paragraph (4)(a.1) in the case of a trust described in that paragraph, or under paragraph (4)(b) in any other case, and there is an exempt beneficiary under the trust on the disposition day,

(a) for the purposes of subsections (4) to (5.2), paragraph (6)(b) and subsection 159(6.1), the day determined under paragraph (4)(a.1) or (b), as the case may be, in respect of the trust shall be deemed to be the first day of the first taxation year of the trust beginning after the first day after the disposition day throughout which there is no exempt beneficiary under the trust;

Subsec. 104(5.3) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 42(3), applicable after February 11, 1991.

Interpretation Bulletins: IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-394R2: Preferred beneficiary election.

(5.31) Revocation of election — Where a trust that has filed an election under subsection (5.3) before July 1995 applies before 1997 to the Minister in writing for permission to revoke the election and the Minister grants permission to revoke the election,

(a) the election is deemed, otherwise than for the purposes of this subsection, never to have been made;

(b) the trust is not liable to any penalty under this Act to the extent that the liability would, but for this para-

graph, have increased because of the revocation of the election; and

(c) notwithstanding subsections 152(4) to (5), such assessments of tax, interest and penalties under this Act shall be made as are necessary to take into account the consequences of the revocation of the election.

History: Subsec. 104(5.31) added by 1996, c. 21, subsec. 18(5), applicable on June 20, 1996.

(5.4) Exempt beneficiary — For the purpose of subsection (5.3), an "exempt beneficiary" under a trust at a particular time is an individual who is alive and a beneficiary under the trust at the particular time, where

(a) in the case of a trust that was created after February 11, 1991, the individual, or an individual who, otherwise than because of subsection 252(2), is the brother or sister of the individual, was alive at the earlier of

(i) the time the trust was created, and

(ii) the earliest of all times each of which is the time that another trust was created that, before the particular time and the end of the day that would, but for subsection (5.3), be determined in respect of the trust under paragraph (4)(a.1) or (b), transferred property to the trust either

(A) directly, or

(B) indirectly through one or more trusts,

in circumstances in which subsection (5.8) applies; and

(b) the individual or the individual's spouse or common-law partner or former spouse or common-law partner was

(i) the designated contributor in respect of the trust, or

(ii) a grandparent, parent, brother, sister, child, niece or nephew

(A) of the designated contributor in respect of the trust, or

(B) of the spouse or common-law partner or former spouse or common-law partner of the designated contributor in respect of the trust.

Related Provisions: 104(5.5) — Beneficiary; 104(5.6) — Designated contributor; 252(3) — Extended meaning of "spouse".

History: Subsec. 104(5.4) amended by 2000, c. 12, Sch. 2, s. 2, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subsec. 104(5.4) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 42(3), applicable after February 11, 1991.

(5.5) Beneficiary — For the purpose of subsection (5.4), a beneficiary under a trust is an individual who is beneficially interested in the trust, except that an individual shall be deemed not to be a beneficiary under a trust at a particular time

(a) where

(i) the interests in the trust at the particular time of all individuals who would, if this Act were read without reference to this paragraph, be exempt beneficiaries under the trust are conditional on or subject to the exercise of a discretionary power by a person,

(ii) by the exercise of (or the failure to exercise) such power under the terms of the trust after the particular time, all interests in the trust of

(A) those individuals, and

(B) other individuals who are children of deceased individuals who, if this Act were read without reference to this paragraph, would have been exempt beneficiaries under the trust at any time before the particular time

may terminate before the time at which the last of those individuals and the other individuals dies and without any of those individuals or the other individuals enjoying any benefit under the trust after the particular time, and

(iii) the trust was created after February 11, 1991 or subparagraph (ii) applies in respect of the trust because of a variation of the terms of the trust occurring after February 11, 1991; or

(b) where it is reasonable to consider that one of the main purposes for the creation of the interest of the individual in the trust was to defer the day determined under paragraph (4)(a.1) or (b) in respect of the trust.

Related Provisions: 248(25) — Beneficially interested.

History: Subsec. 104(5.5) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 42(3), applicable after February 11, 1991.

(5.6) Designated contributor — For the purpose of subsection (5.4), a designated contributor in respect of a trust is

(a) where the trust is described in paragraph (4)(a) or was, on December 20, 1991, a pre-1972 spousal trust, the individual who created (or whose will created) the trust;

(b) where paragraph (a) does not apply and the trust is a testamentary trust at the end of the taxation year for which it makes an election under subsection (5.3), the individual as a consequence of whose death the trust was created; and

(c) in the case of any other trust, the individual who was, or who was related to, an individual beneficially interested in the trust and who is designated by the trust in its election under subsection (5.3)

(i) where, at each time in the relevant period, the total amount of property transferred or loaned before that time by the designated individual (either directly or through another trust) to the trust

(A) exceeded the total amount of property so transferred or loaned before that time by each other individual who was born before the designated individual and who, at any time, was related to any individual beneficially interested in the trust, and

(B) was not less than the total amount of property so transferred or loaned before that time by each other individual who was born after the designated individual and who, at any time, was related to any individual beneficially interested in the trust,

(ii) where

(A) no individual may be designated in respect of the trust because of subparagraph (i),

(B) the designated individual transferred or loaned property (either directly or through another trust) to the trust at any time before the end of the relevant period, and

(C) the designated individual was born before all other individuals who

(I) at any time were related to any individual beneficially interested in the trust or to any individual who transferred or loaned property to the trust before the end of the relevant period, and

(II) transferred or loaned property (either directly or through another trust) to the trust at any time before the end of the relevant period, or

(iii) where throughout the relevant period the property of the trust consisted primarily of

(A) shares of the capital stock of a corporation

(I) controlled, on the day that the trust was created or at the beginning of the relevant period, by the designated individual or by the designated individual and one or more other individuals born after, and related to, the designated individual, or

(II) all or substantially all of the value of which throughout the relevant period derived from property transferred to the corporation by the designated individual or by the designated individual and one or more other individuals born after, and related to, the designated individual,

(B) shares of the capital stock of a corporation all or substantially all of the value of which, throughout the part of the relevant period throughout which the shares were held by the trust, derived from shares described in clause (A),

(C) property substituted for the shares described in clause (A) or (B),

(D) property attributable to profits, gains or distributions in respect of property described in clause (A), (B) or (C), or

(E) any combination of the properties described in clauses (A) to (D).

Related Provisions: 104(5.7) — Designated contributor; 248(5) — Substituted property; 248(9.1) — Trust created by will.

History: Subsec. 104(5.6) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 42(3), applicable after February 11, 1991.

(5.7) Idem — For the purposes of subsection (5.6),

(a) the relevant period in respect of a trust is the period that begins one year after the day on which the trust was created and ends at the end of the day that would, but for the election of the trust under subsection (5.3), be determined in respect of the trust under paragraph (4)(a.1) or (b), as the case may be;

(b) 2 individuals shall be deemed to be related to each other where one of them is the aunt, great aunt, uncle or great uncle of the other individual;

(c) an individual shall be deemed not to be a designated contributor in respect of a trust where it is reasonable to consider that one of the main purposes of a series of transactions or events that includes

(i) an individual becoming a trustee in respect of trust property, or

(ii) an acquisition of property or a borrowing by any individual

was to defer the day determined under paragraph (4)(b) in respect of the trust; and

(d) in determining whether all or substantially all of the value of shares of the capital stock of a corporation is derived from other property, the other property shall be deemed to include property substituted for the other property and property attributable to profits, gains or distributions in respect of the other property and the substituted property.

Related Provisions: 248(5) — Substituted property; 248(10) — Series of transactions or events.

History: Subsec. 104(5.7) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 42(3), applicable after February 11, 1991.

(5.8) Trust transfers — Where capital property (other than excluded property), land included in inventory, Canadian resource property or foreign resource property is transferred at a particular time by a trust (in this subsection referred to as the "transferor trust") to another trust (in this subsection referred to as the "transferee trust") in circumstances in which subsection 107(2) or 107.4(3) or paragraph (f) of the definition "disposition" in subsection 248(1) applies,

(a) for the purposes of applying subsections (4) to (5.2) after the particular time,

(i) subject to paragraphs (b) to (b.3), the first day (in this subsection referred to as the "disposition day") that ends at or after the particular time that would, if this section were read without reference to paragraph (4)(a.2) and (a.3), be determined in respect of the transferee trust is deemed to be the earliest of

(A) the first day ending at or after the particular time that would be determined under subsection (4) in respect of the transferor trust without regard to the transfer and any transaction or event occurring after the particular time,

(B) the first day ending at or after the particular time that would otherwise be determined under subsection (4) in respect of the transferee trust without regard to any transaction or event occurring after the particular time,

(C) the first day that ends at or after the particular time, where

(I) the transferor trust is a joint spousal or common-law partner trust, a post-1971 spousal or common-law partner trust or a trust described in the definition "pre-1972 spousal trust" in subsection 108(1), and

(II) the spouse or common-law partner referred to in paragraph (4)(a) or in the definition "pre-1972 spousal trust" in subsection 108(1) is alive at the particular time,

(C.1) the first day that ends at or after the particular time, where

(I) the transferor trust is an *alter ego* trust, a trust to which paragraph (4)(a.4) applies or a joint spousal or common-law partner trust; and

(II) the taxpayer referred to in paragraph (4)(a) or (a.4), as the case may be, is alive at the particular time, and

(D) where

(I) the disposition day would, but for the application of this subsection to the transfer, be

determined under paragraph (5.3)(a) in respect of the transferee trust, and

(II) the particular time is after the day that would, but for subsection (5.3), be determined under paragraph (4)(b) in respect of the transferee trust,

the first day ending at or after the particular time, and

(ii) where the disposition day determined in respect of the transferee trust under subparagraph (i) is earlier than the day referred to in clause (i)(B) in respect of the transferee trust, subsections (4) to (5.2) do not apply to the transferee trust on the day referred to in clause (i)(B) in respect of the transferee trust;

(b) paragraph (a) does not apply in respect of the transfer where

(i) the transferor trust is a post-1971 spousal or common-law partner trust or a trust described in the definition "pre-1972 spousal trust" in subsection 108(1),

(ii) the spouse or common-law partner referred to in paragraph (4)(a) or in the definition "pre-1972 spousal trust" in subsection 108(1) is alive at the particular time, and

(iii) the transferee trust is a post-1971 spousal or common-law partner trust or a trust described in the definition "pre-1972 spousal trust" in subsection 108(1);

(b.1) paragraph (a) does not apply in respect of the transfer where

(i) the transferor trust is an *alter ego* trust,

(ii) the taxpayer referred to in paragraph (4)(a) is alive at the particular time, and

(iii) the transferee trust is an *alter ego* trust;

(b.2) paragraph (a) does not apply in respect of the transfer where

(i) the transferor trust is a joint spousal or common-law partner trust,

(ii) either the taxpayer referred to in paragraph (4)(a), or the spouse or common-law partner referred to in that paragraph, is alive at the particular time, and

(iii) the transferee trust is a joint spousal or common-law partner trust;

(b.3) paragraph (a) does not apply in respect of the transfer where

(i) the transferor trust is a trust to which paragraph (4)(a.4) applies,

(ii) the taxpayer referred to in paragraph (4)(a.4) is alive at the particular time, and

(iii) the transferee trust is a trust to which paragraph (4)(a.4) applies; and

(c) for the purposes of subsection (5.3), unless a day ending before the particular time has been determined under paragraph (4)(a.1) or (b) or would, but for subsection (5.3), have been so determined, a day determined under subparagraph (a)(i) shall be deemed to be a day determined under paragraph (4)(a.1) or (b), as the case may be, in respect of the transferee trust.

Related Provisions: 248(25.1) — Trust-to-trust transfers.

History: The opening words of subsec. 104(5.8) amended by 2001, c. 17, subsec. 78(12), applicable to transfers made after February 11, 1991 except that, for transfers made before December 24, 1998, the opening words shall be read as follows:

(5.8) Where capital property (other than excluded property), land included in inventory, Canadian resource property or foreign resource property is transferred at a particular time by a trust (in this subsection referred to as the "transferor trust") to another trust (in this subsection referred to as the "transferee trust") in circumstances in which paragraph (e) of the definition "disposition" in section 54 or subsection 107(2) applies and the transferee trust is not described in paragraph (g) of the definition "trust" in subsection 108(1),

The opening words formerly read:

(5.8) Where capital property (other than excluded property), land included in inventory, Canadian resource property or foreign resource property is transferred at a particular time by a trust (in this subsection referred to as the "transferor trust") to another trust (in this subsection referred to as the "transferee trust") in circumstances in which paragraph (e) of the definition "disposition" in section 54 or subsection 107(2) applies,

The opening words of subpara. 104(5.8)(a)(i) amended by the said c. 17, subsec. 78(13), applicable to transfers made after December 17, 1999. The opening words formerly read:

(i) subject to paragraph (b), the first day (in this subsection referred to as the "disposition day") ending at or after the particular time determined under subsection (4) in respect of the transferee trust shall be deemed to be the earliest of

Cl. 104(5.8)(a)(i)(C) amended and cl. (C.1) added by the said c. 17, subsec. 78(14), applicable to transfers made after 1999. Cl. (C) formerly read:

(C) where the transferor trust is a trust that is described in paragraph (4)(a) or the definition "pre-1972 spousal trust" in subsection 108(1) and the spouse or common-law partner referred to in that paragraph or definition is alive at the particular time, the first day ending at or after the particular time, and

Para. 104(5.8)(b) amended, and paras. (b.1) to (b.3) added, by the said c. 17, subsec. 78(15), applicable to transfers made after 1999. Para. (b) formerly read:

(b) where the transferor trust is a trust (in this paragraph referred to as an "eligible trust") that is described in paragraph (4)(a) or the definition "pre-1972 spousal trust" in subsection 108(1) and the spouse or common-law partner referred to in that paragraph or definition is alive at the particular time, paragraph (a) does not apply in respect of the transfer where the transferee trust is an eligible trust; and

Subsec. 104(5.8) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subsec. 104(5.8) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 42(3), applicable to property transferred after February 11, 1991 except that para. 104(5.8)(b) as it applies to property transferred before December 21, 1991 shall be read as follows:

(b) where the transferor trust or the transferee trust is a trust that is described in paragraph (4)(a) or the definition "pre-1972 spousal trust" in subsection 108(1) and the spouse referred to therein is alive at the particular time, paragraph (a) does not apply in respect of the transfer; and

(6) Deduction in computing income of trust — For the purposes of this Part, there may be deducted in computing the income of a trust for a taxation year

Proposed Amendment — 104(6) opening words

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 23(5), will amend the opening words of subsec. 104(6) to add "Subject to subsections (7) to (7.1)," applicable on the same basis as subsec. 104(7.01).

Technical Notes: Subsection 104(6) generally permits a trust to deduct, in computing income for a taxation year, any income payable to a beneficiary under the trust.

Subsection 104(6) is amended so that it is expressly subject to subsections 104(7) to 104(7.1).

(a) in the case of an employee trust, the amount by which the amount that would, but for this subsection,

be its income for the year exceeds the amount, if any, by which

(i) the total of all amounts each of which is its income for the year from a business

exceeds

(ii) the total of all amounts each of which is its loss for the year from a business;

(a.1) in the case of a trust governed by an employee benefit plan, such part of the amount that would, but for this subsection, be its income for the year as was paid in the year to a beneficiary;

(a.2) where the taxable income of the trust for the year is subject to tax under this Part because of paragraph 146(4)(c) or subsection 146.3(3.1), the part of the amount that, but for this subsection, would be the income of the trust for the year that was paid in the year to a beneficiary;

(a.3) in the case of an *inter vivos* trust deemed by subsection 143(1) to exist in respect of a congregation that is a constituent part of a religious organization, such part of its income for the year as became payable in the year to a beneficiary; and

(b) in any other case, such amount as the trust claims not exceeding the amount, if any, by which

(i) such part of the amount that, but for

(A) this subsection,

(B) subsections (5.1), (12), and 107(4),

(C) the application of subsections (4), (5) and (5.2) in respect of a day determined under paragraph (4)(a), and

(D) subsection 12(10.2), except to the extent that that subsection applies to amounts paid to a trust described in paragraph 70(6.1)(b) and before the death of the spouse or common-law partner referred to in that paragraph,

would be its income for the year as became payable in the year to a beneficiary or was included under subsection 105(2) in computing the income of a beneficiary

exceeds

(ii) where the trust

(A) is a post-1971 spousal or common-law partner trust that was created after December 20, 1991, or

(B) would be a post-1971 spousal or common-law partner trust if the reference in paragraph (4)(a) to "at the time it was created" were read as "on December 20, 1991",

and the spouse or common-law partner referred to in paragraph (4)(a) in respect of the trust is alive throughout the year, such part of the amount that, but for

(C) this subsection,

(D) subsections (12) and 107(4), and

(E) subsection 12(10.2), except to the extent that that subsection applies to an amount paid to a trust described in paragraph 70(6.1)(b) and before the death of the spouse or common-law partner referred to in that paragraph,

would be its income for the year as became payable in the year to a beneficiary (other than the spouse or common-law partner) or was included under subsection 105(2) in computing the income of a beneficiary (other than the spouse or common-law partner),

(ii.1) where the trust is an *alter ego* trust or a joint spousal or common-law partner trust and the death or later death, as the case may be, referred to in subparagraph (4)(a)(iv) has not occurred before the end of the year, such part of the amount that, but for this subsection and subsections (12), 12(10.2) and 107(4), would be its income as became payable in the year to a beneficiary (other than a taxpayer, spouse or common-law partner referred to in clause (4)(a)(iv)(A), (B) or (C)) or was included under subsection 105(2) in computing the income of a beneficiary (other than such a taxpayer, spouse or common-law partner), and

(iii) where the trust is an *alter ego* trust, a joint spousal or common-law partner trust, a trust to which paragraph (4)(a.4) applies or a post-1971 spousal or common-law partner trust and the death or the later death, as the case may be, referred to in paragraph (4)(a) in respect of the trust occurred on a day in the year, the amount, if any, by which

(A) the maximum amount that would be deductible under this subsection in computing the trust's income for the year if this subsection were read without reference to this subparagraph

exceeds the total of

(B) the amount that, but for this subsection and subsections (12), 12(10.2) and 107(4), would be its income that became payable in the year to the taxpayer, spouse or common-law partner referred to in subparagraph (4)(a)(iii), clause (4)(a)(iv)(A), (B) or (C) or paragraph (4)(a.4), as the case may be, and

(C) the amount that would be the trust's income for the year if that income were computed without reference to this subsection and subsection (12) and as if the year began immediately after the end of the day,

Related Provisions: 4(3)(b) — Whether deductions under 104(6) are applicable to a particular source; 104(5.3) — Election by trust to postpone deemed disposition; 104(7) — Non-resident beneficiary; 104(7.01) — Limitation where non-resident trust deemed resident in Canada; 104(7.1) — Deduction denied — capital interest greater than income interest; 104(10) — Property owned for non-resident; 104(13) — Income inclusion to beneficiary; 104(13.1), (13.2) — Designation of income distributed to beneficiary; 104(18) — Trust for minor; 104(24) — Whether amount payable; 104(29) — Amounts deemed to be payable to beneficiaries; 107(2.11) — Election to not flow out gain on distribution to beneficiaries; 107.1 — Distribution by employee trust or benefit plan; 108(5) — Restriction on deduction for beneficiary; 120.4 — Kiddie tax on beneficiary's income; 132.11(6) — Additional income of mutual fund trust electing for December 15 year-end; 138.1(1) — Rules re segregated funds; 149.1(12) — Rules — charities; 210.2 — Tax on income of trust.

History: Para. 104(6)(a.3) added by 2001, c. 17, subsec. 78(16), applicable to 1998 *et seq.*

Cls. 104(6)(b)(ii)(A) and (B) amended by the said c. 17, subsec. 78(17), applicable to 2000 *et seq.* The cls. formerly read:

(A) is described in paragraph (4)(a) and was created after December 20, 1991, or

(B) would be described in paragraph (4)(a) if the reference therein to "at the time it was created" were read as "on December 20, 1991"

Subpara. 104(6)(b)(ii.1) added and subpara. (iii) amended by the said c. 17, subsec. 78(18), applicable to 2000 *et seq.* Subpara. (iii) formerly read:

(iii) where the trust is described in paragraph (4)(a) and the spouse or common-law partner referred to in paragraph (4)(a) in respect of

the trust died on a day in the year, the part of the amount that, but for

(A) this subsection, and

(B) subsections (12) and 107(4)

would be the part of its income for the year that became payable in the year to a beneficiary (other than the spouse or common-law partner) and as is attributable to one or more dispositions by the trust before the end of that day of capital properties (other than excluded properties), land described in an inventory of the trust, Canadian resource properties or foreign resource properties.

Subsec. 104(6) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Para. 104(6)(a.2) added by 1998, c. 19, subsec. 127(2), applicable to 1996 *et seq.*

Subpara. 104(6)(b)(iii) added by 1996, c. 21, subsec. 18(6), applicable to trust taxation years that end after July 19, 1995.

Para. 104(6)(b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 42(4), applicable to 1991 *et seq.*, except that for taxation years of trusts ending after 1990 and before December 21, 1991, the para. shall be read as follows:

(b) in any other case, such amount as the trust claims not exceeding such part of the amount that, but for

(i) this subsection,

(ii) subsections (5.1) and (12),

(iii) subsections (4), (5) and (5.2) and 107(4), where the trust is a trust described in paragraph (4)(a), and

(iv) subsection 12(10.2), except to the extent that that subsection applies to amounts paid to a trust described in paragraph 70(6.1)(b) and before the death of the spouse referred to in that paragraph,

would be its income for the year as became payable in the year to a beneficiary or was included under subsection 105(2) in computing the income of a beneficiary.

Para. 104(6)(b) formerly read:

(b) in any other case, such amount as the trust may claim not exceeding such part of the amount that, but for this subsection, subsection (12) and, where the trust is a trust described in paragraph (4)(a), subsections (4), (5), (5.2) and 107(4), would be its income for the year as became payable in the year to a beneficiary or was included in computing the income of a beneficiary for the year by reason of subsection 105(2).

Selected Cases [subsec. 104(6)]: *Cockeram v. R.*, [2004] 3 C.T.C. 2457 (TCC) (Mere intention does not create a trust); *Langer Family Trust v. MNR*, [1992] 1 C.T.C. 2119 (TCC); appealed to FCTD (April 16, 1992), File T-907-92 (No deduction where income not "paid in the year to the person"); *Brown v. R.*, [1979] C.T.C. 476 (FCTD) (Taxpayer required to include income received even though estate not claiming deduction).

Interpretation Bulletins: IT-85R2: Health and welfare trusts for employees; IT-286R2: Trusts — amount payable; IT-342R: Trusts — income payable to beneficiaries; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-394R2: Preferred beneficiary election; IT-465R — Non-resident beneficiaries of trusts; IT-493: Agency cooperative corporations; IT-500R: RRSPs — death of annuitant; IT-502: Employee benefit plans and employee trusts.

I.T. Technical News: 11 (payments made by a trust for the benefit of a minor beneficiary); 25 (health and welfare trusts).

Advance Tax Rulings: ATR-65: Reduction to management fees for large investments in a mutual fund.

(7) Non-resident beneficiary — No deduction may be made under subsection (6) in computing the income for a taxation year of a trust in respect of such part of an amount that would otherwise be its income for the year as became payable in the year to a beneficiary who was, at any time in the year, a designated beneficiary of the trust (as that expression applies for the purposes of section 210.3) unless, throughout the year, the trust was resident in Canada.

Related Provisions: 104(24) — Whether amount payable; 212(1)(c) — Withholding tax on payment to non-resident beneficiary; 250(6.1) — Trust that ceases to exist deemed resident throughout year.

Interpretation Bulletins: IT-393R2: Election re tax on rents and timber royalties — non-residents.

Proposed Addition — 104(7.01)

(7.01) Trusts deemed to be resident in Canada — If a trust is deemed by subsection 94(3) to be resident in Canada for a taxation year for the purpose of computing the trust's income for the year, the maximum amount deductible under subsection (6) in computing its income for the year is the amount, if any, by which

(a) the maximum amount that, if this Act were read without reference to this subsection, would be deductible under subsection (6) in computing its income for the year,

exceeds

(b) the total of

(i) the portion of the trust's designated income for the year (within the meaning assigned by section 210) that became payable in the year to a non-resident beneficiary under the trust in respect of an interest of the non-resident as a beneficiary under the trust, and

(ii) all amounts each of which is determined by the formula

$$A \times B$$

where

A is an amount (other than an amount described in subparagraph (i)) that

(A) is paid or credited in the year to the trust,

(B) would, if this Act were read without reference to subparagraph 94(3)(a)(viii) and sections 216 and 217, be an amount as a consequence of the payment or crediting of which the trust would have been liable to tax under Part XIII, and

(C) is payable in the year by the trust to a non-resident beneficiary under the trust in respect of an interest of the non-resident as a beneficiary under the trust, and

B is

(A) 0.35, if the trust can establish to the satisfaction of the Minister that the non-resident beneficiary to whom the amount described in the description of A is payable is resident in a country with which Canada has a tax treaty under which the income tax that Canada may impose on the beneficiary in respect of the amount is limited, and

(B) 0.6, in any other case.

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 23(6), will add subsec. 104(7.01), applicable to trust taxation years that begin after 2002, and to trust taxation years that begin

(a) after 2000, if the trust makes a valid election under para. (a) of the Application of the amendment to s. 94; and

(b) after 2001, if the trust makes a valid election under para. (a) or (b) of the Application of the amendment to s. 94.

Technical Notes: Subsection 104(6) generally permits a trust to deduct, in computing income for a taxation year, an amount not exceeding the portion of its income for the year that becomes payable in the year to a beneficiary under the trust. Because of subsection 104(24), trust in-

come is deemed not to have become payable in the year to a beneficiary unless it is paid in the year to the beneficiary or the beneficiary was entitled in the year to enforce payment of the amount.

New subsection 104(7.01) restricts the amount that a trust, that is deemed by subsection 94(3) to be resident in Canada (referred to in this commentary as a "subsection 94(3) trust"), can deduct under subsection 104(6) in computing its income in the event that the trust has Canadian-source income and makes distributions to beneficiaries not resident in Canada.

In effect, subsection 104(7.01) acts as a proxy for taxes under Parts XII.2 and XIII of the Act in connection with Canadian-source income earned by a subsection 94(3) trust that has become payable by the trust to its nonresident beneficiaries.

New subsection 94(3) deems a trust to which it applies to be resident in Canada for certain purposes, not including Part XII.2. Accordingly, a trust that is resident in Canada solely because of the deeming provision in subsection 94(3) would generally be non-resident for purposes of Part XII.2. Because of an existing exemption for non-resident trusts in Part XII.2, a tax under that Part does not apply to such a trust.

A subsection 94(3) trust is also exempt from Part XIII withholding obligations on Canadian-source income earned by it that becomes payable by it in the year to non-resident persons.

However, to ensure that subsection 94(3) trusts are not inappropriately used to distribute Canadian-source income free of tax to non-resident beneficiaries, subsection 104(7.01) limits the amount of any trust deduction under subsection 104(6) for such distributions, thereby ensuring the income is subject to Part I tax in the trust.

(It should also be noted that persons that pay or credit an amount to a subsection 94(3) trust are still liable for a withholding obligation under section 215 notwithstanding that the trust itself is exempt from Part XIII tax. This is because new paragraph 94(4)(b) provides that the deemed Canadian residence under subsection 94(3) does not apply for the purposes of determining withholding obligations under section 215. The Canada Revenue Agency will hold the withholding taxes paid and apply them on account of the trust's Part I tax liability. The existing provisions of the Act do not expressly give a Part XIII exemption in this regard to trusts that are subject to existing subsection 94(1). Instead, existing subparagraph 94(1)(c)(ii) allows a tax credit to be claimed by those trusts under section 126 in connection with Part XIII tax on payments made to those trusts.)

As mentioned above, subsection 104(7.01) reduces the maximum deduction under subsection 104(6). More specifically, the amount by which the maximum deduction under subsection 104(6) for a taxation year is reduced under subsection 104(7.01) is equal to the total of:

- the portion of the trust's "designated income" for the year (as defined in Part XII.2) that became payable in the year to a non-resident beneficiary under the trust in respect of an interest of the non-resident as a beneficiary under the trust, and

- all amounts each of which is the product obtained by multiplying a specified factor by each particular amount that is paid or credited in the year to the trust that would, disregarding express provisions to the contrary in the Act, be subject to Part XIII tax and that is payable in the year to a non-resident beneficiary under the trust in respect of an interest of the non-resident as a beneficiary under the trust.

The specified factor in respect of each particular amount described in the second paragraph above is 0.35, if the trust can establish to the satisfaction of the Minister of National Revenue that the non-resident beneficiary to whom the particular amount is payable is resident in a country with which Canada has a tax treaty under which the income tax that Canada may impose on the beneficiary in respect of the amount is limited. In any other case, the specified factor is 0.6.

This amendment applies to trust taxation years that begin after 2002. It also applies to trust taxation years that begin after 2000, or after 2001, if the trust makes the appropriate election under the coming-into-force provision for new section 94.

The example below illustrates the operation of new subsection 104(7.01).

Example

1. Trust X is an offshore trust established by Stefan, a long-term resident of Canada. The primary beneficiaries under the trust are Linda (a resident of Canada), Tim (a resident of non-Treatyland) and Bart (a resident of the United States).

2. Trust X receives $1,600 of income in its 2003 taxation year. This income consists of $400 of taxable dividends received from a taxable Canadian corporation. The remaining $1,200 of income is from other sources, none of which is "designated income" (as defined in Part XII.2) of the trust.

3. $1,050 of Trust X's income for 2003 is made payable in the year to Bart. Of this amount, $100 represents the taxable dividends. Trust X makes payable $200 of its income to Tim. Of this amount, $200 represents the taxable dividends. The remaining $350 of the trust's income is made payable in the year to Linda. Of this amount, $100 represents the taxable dividends.

4. Trust X is assumed to have designated the $400 of taxable dividends under subsection 104(19). (Where a designation under subsection 104(19) is available and the designation is made, the designated portion of the dividend income of the trust will, for the purposes of the Act (other than Part XIII), maintain its character, as dividend income, in the hands of the beneficiary.)

Results

1. Because Trust X has a resident contributor at the end of its 2003 taxation year, the trust is deemed by new subsection 94(3) to be resident in Canada for the purposes of computing its income.

2. Before taking into account any deduction under subsection 104(6), Trust X's income is $1,600. Note that the $400 in dividends is included in computing the trust's income.

3. Before taking into account new subsection 104(7.01), the maximum deduction under subsection 104(6) is also $1,600.

4. Because of subsection 104(7.01), the maximum deduction under subsection 104(6) is reduced to $1,445 (i.e., $1,600 minus the total of: nil + ((.60 × $200) and (0.35 × $100))).

5. Assuming that the trust claims a deduction of $1,445 under subsection 104(6), the trust would consequently have income of $155. If a tax rate of 42.92% were assumed (i.e., combined federal rates of 29% (because of subsections 122(1) and 117(2) and 13.92% (because of subsection 120(1)), the trust would be liable for Canadian income tax of approximately $67. Note that the trust is exempt from having to collect a Part XIII tax in respect of the amounts made payable to Bart and Tim that are referred to in paragraph 104(7.01)(b) in respect of the trust for the particular taxation year, because these are exempt amounts for the purposes of subparagraph 94(3)(a)(ix). Disregarding this exemption, the Part XIII tax that would have had to have been collected by the trust in respect of the amounts made payable to Bart and Tim would have been $65 (i.e., 25% of $200 and 15% of $100).

Related Provisions: 94(1)"exempt amount" — Amount under 104(7.01)(b) is exempt amount for non-resident trust rules; 104(24) — Whether amount payable.

(7.1) Capital interest greater than income interest — Where it is reasonable to consider that one of the main purposes for the existence of any term, condition, right or other attribute of an interest in a trust (other than a personal trust) is to give a beneficiary a percentage interest in the property of the trust that is greater than the beneficiary's percentage interest in the income of the trust, no amount may be deducted under paragraph (6)(b) in computing the income of the trust.

Related Provisions: 104(7.2) — Anti-avoidance rule.

Interpretation Bulletins: IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries.

Advance Tax Rulings: ATR-65: Reduction to management fees for large investments in a mutual fund.

(7.2) Avoidance of subsec. (7.1) — Notwithstanding any other provision of this Act, where

(a) a taxpayer has acquired a right to or to acquire an interest in a trust, or a right to or to acquire a property of a trust, and

(b) it is reasonable to consider that one of the main purposes of the acquisition was to avoid the application of subsection (7.1) in respect of the trust,

on a disposition of the right (other than pursuant to the exercise thereof), the interest or the property, there shall

be included in computing the income of the taxpayer for the taxation year in which the disposition occurs the amount, if any, by which

(c) the proceeds of disposition of the right, interest or property, as the case may be,

exceed

(d) the cost amount to the taxpayer of the right, interest or property, as the case may be.

(8) [Repealed under former Act]

(9) [Repealed under former Act]

(10) Where property owned for non-residents [income from NRO] — Where all the property of a trust is owned by the trustee for the benefit of non-resident persons or their unborn issue, in addition to the amount that may be deducted under subsection (6), there may be deducted in computing the income of the trust for a taxation year for the purposes of this Part, such part of the dividends and interest received by the trust in a year from a non-resident-owned investment corporation as are not deductible under that subsection in computing the income of the trust for the year.

Related Provisions: 104(11) — Dividend received from non-resident-owned investment corporation; 134.1 — Transitional rule re elimination of NROs; 212(9) — Exemptions from withholding tax.

(11) Dividend received from non-resident-owned investment corporation — Where any part of the dividends received in a taxation year by a trust described in subsection (10) from a non-resident-owned investment corporation are deductible under that subsection in computing the income of the trust for the year, for the purposes of Part XIII the trust shall be deemed to have paid to a non-resident person on the last day of the year an amount equal to that part, as income of the non-resident person from the trust.

Related Provisions: 134.1 — Transitional rule re elimination of NROs; 212(1)(c) — Estate or trust income; 212(9) — Exemptions from non-resident withholding tax.

(12) Deduction of amounts included in preferred beneficiaries' incomes — There may be deducted in computing the income of a trust for a taxation year the lesser of

(a) the total of all amounts designated under subsection (14) by the trust in respect of the year, and

(b) the accumulating income of the trust for the year.

Related Provisions: 4(3)(b) — Whether deductions under 104(12) are applicable to a particular source; 104(6) — Deduction in computing trust income; 104(13) — Income payable to beneficiary; 108(1) — Accumulating income defined; 108(5) — Restriction on deduction for beneficiary; 149.1(12) — Rules — charities.

History: Subsec. 104(12) amended by 1996, c. 21, subsec. 18(7), applicable to trust taxation years that begin after 1995. The subsec. formerly read:

(12) Deduction of part of accumulating income included in preferred beneficiary's income — For the purposes of this Part, there may be deducted in computing the income of a trust for a taxation year such part of its accumulating income for the year as was required by subsection (14) to be included in computing the income of a preferred beneficiary.

Interpretation Bulletins: IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-394R2: Preferred beneficiary election; IT-465R: Non-resident beneficiaries of trusts; IT-500R: RRSPs — death of an annuitant.

Advance Tax Rulings: ATR-34: Preferred beneficiary's election.

(13) Income of beneficiary — There shall be included in computing the income for a particular taxation year of a beneficiary under a trust such of the following amounts as are applicable:

(a) in the case of a trust (other than a trust referred to in paragraph (a) of the definition "trust" in subsection 108(1)), such part of the amount that, but for subsections (6) and (12), would be the trust's income for the trust's taxation year that ended in the particular year as became payable in the trust's year to the beneficiary; and

(b) in the case of a trust governed by an employee benefit plan to which the beneficiary has contributed as an employer, such part of the amount that, but for subsections (6) and (12), would be the trust's income for the trust's taxation year that ended in the particular year as was paid in the trust's year to the beneficiary.

Related Provisions: 6(1)(h) — Income from employee trust; 12(1)(m) — Income inclusion — benefits from trusts; 53(2)(h) — Reduction of ACB of beneficiary's interest re amount paid or payable by trust; 104(13.1), (13.2) — Designation of distributed income by trust; 104(18) — Trust for minor; 104(19) — Portion of taxable dividends deemed received by beneficiary; 104(21) — Portion of taxable capital gains deemed gain of beneficiary; 104(22)–(22.4) — Foreign tax credit allocation to beneficiary; 104(24) — Whether amount payable; 104(27) — Pension benefits; 104(29) — Flow-out of resource amounts; 104(30), (31) — Deduction for Part XII.2 tax; 106(1) — Income interest in trust; 106(2)(a)(ii) — Reduction of income inclusion on disposition of income interest; 107(2.11) — Election to not flow out gain to beneficiaries on distribution; 107.1 — Distribution by employee trust or benefit plan; 107.3(4) — No application to qualifying environmental trusts; 108(5) — Amount deemed to be income from trust; 120.4(1)"split income"(c) — Kiddie tax on certain trust income of children; 132.11(4) — Amounts paid from Dec. 16-31 by mutual fund trust to beneficiary; 132.11(6) — Additional income of MFT electing for Dec. 15 year-end; 146(8.1) — RRSP — deemed receipt of refund of premiums; 210.2 — Tax on income of trust; 212(1)(c) — Non-resident withholding tax; 214(3)(f) — Non-resident withholding tax — deemed payments; 250(6.1) — Trust that ceases to exist deemed resident throughout year; 250.1(b) — Non-resident trust deemed to have income calculated under the Act.

History: Subsec. 104(13) amended by 2001, c. 17, subsec. 78(19), applicable to 2000 *et seq.* The subsec. formerly read:

(13) There shall be included in computing the income for a taxation year of a beneficiary under a trust such of the following amounts as are applicable:

(a) in the case of a trust (other than a trust referred to in paragraph (a) of the definition "trust" in subsection 108(1)) that was resident in Canada throughout its particular taxation year that ended in the year, such part of the amount that, but for subsections (6) and (12), would be the trust's income for the particular year as became payable in the particular year to the beneficiary;

(b) in the case of a trust governed by an employee benefit plan to which the beneficiary has contributed as an employer, such part of the amount that, but for subsections (6) and (12), would be the income of the trust for its particular taxation year that ended in the year as was paid in the particular year to the beneficiary; and

(c) in the case of a trust (other than a trust referred to in paragraph (a) or paragraph (a) of the definition "trust" in subsection 108(1)), all amounts that became payable in the year by the trust to the beneficiary in respect of the beneficiary's interest in the trust, otherwise than

(i) as proceeds of disposition of the beneficiary's interest or part thereof, or

(ii) an amount paid as a distribution of capital by a personal trust.

Para. 104(13)(b) substituted by 1984, c. 1, subsec. 45(5), to substitute "in any case other than that of a trust governed by an employee benefit plan" for "in any other case", applicable to 1980 *et seq.*

Subsec. 104(13) substituted by 1980-81-82-83, c. 140, subsec. 60(4), applicable to 1980 *et seq.* Subsec. 140(13) formerly read:

(13) Such part of the amount that would be the income of a trust (other than a trust governed by an employee benefit plan) for a taxation year if no deduction were made under subsection (6), (12) or 20(16) or under regulations made under paragraph 20(1)(a) as was

payable in the year to a beneficiary shall be included in computing the income of the person to whom it so became payable whether or not it was paid to him in that year and shall not be included in computing his income for a subsequent year in which it was paid.

Subsec. 104(13) substituted by 1980-81-82-83, c. 48, subsec. 54(2), to add "(other than a trust governed by an employee benefit plan)", applicable to 1980 *et seq.*

Subsec. 104(13) substituted by 1977-78, c. 1, subsec. 49(4), applicable to taxation years commencing after May 25, 1976 and ending after March 1977, to add reference to subsec. 20(16).

Selected Cases [subsec. 104(13)]: *Brown v. R.*, [1979] C.T.C. 476 (FCTD) (Taxpayer required to include income received even though estate not claiming deduction).

Interpretation Bulletins: IT-75R4: Scholarships, fellowships, bursaries, prizes, research grants and financial assistance; IT-201R2: Foreign tax credit — trust and beneficiaries; IT-243R4: Dividend refund to private corporations; IT-286R2: Trusts — amount payable; IT-342R: Trusts — income payable to beneficiaries; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-385R2: Disposition of an income interest in a trust; IT-465R: Non-resident beneficiaries of trusts; IT-500R: RRSPs — death of an annuitant; IT-502: Employee benefit plans and employee trusts; IT-524: Trusts — flow-through of taxable dividends to a beneficiary — after 1987; IT-531: Eligible funeral arrangements.

I.T. Technical News: 11 (payments made by a trust for the benefit of a minor beneficiary).

Forms: T4011: Preparing returns for deceased persons [guide].

(13.1) Amounts deemed not paid — Where a trust, in its return of income under this Part for a taxation year throughout which it was resident in Canada and not exempt from tax under Part I by reason of subsection 149(1), designates an amount in respect of a beneficiary under the trust, not exceeding the amount determined by the formula

$$\frac{A}{B} \times (C - D - E)$$

where

A is the beneficiary's share of the income of the trust for the year computed without reference to this Act,

B is the total of all amounts each of which is a beneficiary's share of the income of the trust for the year computed without reference to this Act,

C is the total of all amounts each of which is an amount that, but for this subsection or subsection (13.2), would be included in computing the income of a beneficiary under the trust by reason of subsection (13) or 105(2) for the year,

D is the amount deducted under subsection (6) in computing the income of the trust for the year, and

E is equal to the amount determined by the trust for the year and used as the value of C for the purposes of the formula in subsection (13.2) or, if no amount is so determined, nil,

the amount so designated shall be deemed, for the purposes of subsections (13) and 105(2), not to have been paid or to have become payable in the year to or for the benefit of the beneficiary or out of income of the trust.

Related Provisions: 94(3)(a)(iii) [proposed] — Application to trust deemed resident in Canada; 108(1) — "trust"; 250(6.1) — Trust that ceases to exist deemed resident throughout year; 257 — Formula cannot calculate to less than zero.

Selected Cases [subsec. 104(13.1)]: *Lussier v. R.*, [2000] 2 C.T.C. 2147 (TCC) (No statutory limitation regarding election to attribute income).

Interpretation Bulletins: IT-342R: Trusts — income payable to beneficiaries; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-394R2: Preferred beneficiary election.

(13.2) Idem — Where a trust, in its return of income under this Part for a taxation year throughout which it was resident in Canada and not exempt from tax under Part I by reason of subsection 149(1), designates an amount in respect of a beneficiary under the trust, not exceeding the amount determined by the formula

$$\frac{A}{B} \times C$$

where

A is the amount designated by the trust for the year in respect of the beneficiary under subsection (21),

B is the total of all amounts each of which has been designated for the year in respect of a beneficiary of the trust under subsection (21), and

C is the amount determined by the trust and used in computing all amounts each of which is designated by the trust for the year under this subsection, not exceeding the amount by which

(i) the total of all amounts each of which is an amount that, but for this subsection or subsection (13.1), would be included in computing the income of a beneficiary under the trust by reason of subsection (13) or 105(2) for the year

exceeds

(ii) the amount deducted under subsection (6) in computing the income of the trust for the year,

the amount so designated shall

(a) for the purposes of subsections (13) and 105(2) (except in the application of subsection (13) for the purposes of subsection (21)), be deemed not to have been paid or to have become payable in the year to or for the benefit of the beneficiaries or out of income of the trust; and

(b) except for the purposes of subsection (21) as it applies for the purposes of subsections (21.1) and (21.2), reduce the amount of the taxable capital gains of the beneficiary otherwise included in computing the beneficiary's income for the year by reason of subsection (21).

Related Provisions: 94(3)(a)(iii) [proposed] — Application to trust deemed resident in Canada; 250(6.1) — Trust that ceases to exist deemed resident throughout year.

Interpretation Bulletins: IT-342R: Trusts — income payable to beneficiaries; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries.

(14) Election by trust and preferred beneficiary — Where a trust and a preferred beneficiary under the trust for a particular taxation year of the trust jointly so elect in respect of the particular year in prescribed manner, such part of the accumulating income of the trust for the particular year as is designated in the election, not exceeding the allocable amount for the preferred beneficiary in respect of the trust for the particular year, shall be included in computing the income of the preferred beneficiary for the beneficiary's taxation year in which the particular year ended and shall not be included in computing the income of any beneficiary of the trust for a subsequent taxation year.

Related Provisions: 12(1)(m) — Income inclusion — benefits from trusts; 94(3)(a)(iii) [proposed] — Application to trust deemed resident in Canada; 104(12) — Deduction for amount included in preferred beneficiary's income; 104(14.01), (14.02) — Late, amended or revoked election made with capital gains exemption election; 104(15) — Allocable amount; 104(19) — Portion of net taxable dividends deemed received by beneficiary; 104(21) — Portion of taxable capital gains deemed gain of benefici-

ary; 108(5) — Interpretation; 146(8.1) — RRSP — deemed receipt of refund premiums; 220(3.2), Reg. 600(b) — Late filing or revocation of election.

History: Subsec. 104(14) amended by 1996, c. 21, subsec. 18(8), applicable to trust taxation years that begin after 1995. The subsec. formerly read:

> (14) Where a trust and a preferred beneficiary thereunder jointly so elect in respect of a taxation year in prescribed manner and within prescribed time, such part of the accumulating income of the trust for the year as is designated in the election, not exceeding the preferred beneficiary's share therein, shall be included in computing the income of the preferred beneficiary for the year, and shall not be included in computing the income of any beneficiary of the trust for a subsequent year in which it was paid.

Selected Cases [subsec. 104(14)]: *Muzich Family Trust v. MNR*, [1993] 1 C.T.C. 2330 (TCC) (Preferred beneficiary election not valid where not filed in prescribed form nor within prescribed time).

Regulations: 2800(1), (2) (prescribed manner, prescribed time).

Interpretation Bulletins: IT-201R2: Foreign tax credit — trust and beneficiaries; IT-243R4: Dividend refund to private corporations; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-394R2: Preferred beneficiary election; IT-500R: RRSPs — death of an annuitant; IT-524: Trusts — flow-through of taxable dividends to a beneficiary — after 1987.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

Advance Tax Rulings: ATR-30: Preferred beneficiary election on accumulating income of estate; ATR-34: Preferred beneficiary's election.

(14.01) Late, amended or revoked election — A trust and a preferred beneficiary under the trust may jointly make an election, or amend or revoke an election made, under subsection (14) where the election, amendment or revocation

(a) is made solely because of an election or revocation to which subsection 110.6(25), (26) or (27) applies; and

(b) is filed in prescribed manner with the Minister when the election or revocation referred to in paragraph (a) is filed.

Related Provisions: 104(14.02) — Effect of election.

History: Subsec. 104(14.01) added by 1998, c. 19, subsec. 127(3), applicable to taxation years that include February 22, 1994.

(14.02) Late, amended or revoked election — Where a trust and a preferred beneficiary under the trust have made an election or amended or revoked an election in accordance with subsection (14.01),

(a) the election or the amended election, as the case may be, is deemed to have been made on time for the purpose of subsection (14); and

(b) the election that was revoked is deemed, otherwise than for the purposes of this subsection and subsection (14.01), never to have been made.

History: Subsec. 104(14.02) added by 1998, c. 19, subsec. 127(3), applicable to taxation years that include February 22, 1994.

(14.1) NISA election — Where, at the end of the day on which a taxpayer dies and as a consequence of the death, an amount would, but for this subsection, be deemed by subsection (5.1) to have been paid to a trust out of the trust's interest in a NISA Fund No. 2 and the trust and the legal representative of the taxpayer so elect in prescribed manner, such portion of the amount as is designated in the election shall be deemed to have been paid to the taxpayer out of a NISA Fund No. 2 of the taxpayer immediately before the end of the day and, for the purpose of paragraph (a) of the description of B in subsection 12(10.2) in respect of the trust, the amount shall be deemed to have been paid out of the trust's NISA Fund No. 2 immediately before the end of the day.

Related Provisions: 248(8) — Occurrences as a consequence of death.

History: Subsec. 104(14.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 42(5), applicable to 1991 *et seq.*

(15) Allocable amount for preferred beneficiary — For the purpose of subsection (14), the allocable amount for a preferred beneficiary under a trust in respect of the trust for a taxation year is

(a) where the trust is an *alter ego* trust, a joint spousal or common-law partner trust, a post-1971 spousal or common-law partner trust or a trust described in the definition "pre-1972 spousal trust" in subsection 108(1) at the end of the year and a beneficiary, referred to in paragraph (4)(a) or in that definition, is alive at the end of the year, an amount equal to

(i) if the preferred beneficiary is a beneficiary so referred to, the trust's accumulating income for the year, and

(ii) in any other case, nil;

(b) where paragraph (a) does not apply and the preferred beneficiary's interest in the trust is not solely contingent on the death of another beneficiary who has a capital interest in the trust and who does not have an income interest in the trust, the trust's accumulating income for the year; and

(c) in any other case, nil.

Related Provisions: 94(3)(a)(iii) [proposed] — Application to trust deemed resident in Canada; 108(1) — Trust defined; 138.1(1) — Rules re segregated funds; 250(6.1) — Trust that ceases to exist deemed resident throughout year.

History: Paras. 104(15)(a) and (b) amended by 2001, c. 17, subsec. 78(20), applicable to 2000 *et seq.* The paras. formerly read:

> (a) where the trust is a trust described in the definition "pre-1972 spousal trust" in subsection 108(1) at the end of the year or a trust described in paragraph (4)(a) and the taxpayer's spouse or common-law partner referred to in that definition or paragraph is alive at the end of the year, an amount equal to
>
> (i) if the beneficiary is that spouse or common-law partner, the trust's accumulating income for the year, and
>
> (ii) in any other case, nil;
>
> (b) where paragraph (a) does not apply and the beneficiary's interest in the trust is not solely contingent on the death of another beneficiary who has a capital interest in the trust and who does not have an income interest in the trust, the trust's accumulating income for the year; and

Subsec. 104(15) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subsec. 104(15) amended by 1996, c. 21, subsec. 18(9), applicable to trust taxation years that begin after 1995. The subsec. formerly read:

> (15) Preferred beneficiary's share — The share of a particular preferred beneficiary under a trust in the accumulating income of the trust for a taxation year is,
>
> (a) where the trust is a trust described in the definition "pre-1972 spousal trust" in subsection 108(1) at the end of the year or a trust described in paragraph (4)(a) and the taxpayer's spouse referred to in that definition or paragraph is alive at the end of the year, an amount equal to
>
> (i) if the particular preferred beneficiary is the taxpayer's spouse, the trust's accumulating income for the year, and
>
> (ii) in any other case, nil;
>
> (b) in any case not referred to in paragraph (a), where the shares in which the accumulating income of the trust would be payable to the beneficiaries thereunder do not depend on the exercise by any person of, or the failure by any person to exercise, any discretionary power,
>
> (i) if at the end of the year the particular beneficiary was a member of a class of beneficiaries under the trust each of whom was entitled, as a member of that class, to share

equally in any income of the trust, the portion of the trust's accumulating income for the year that may reasonably be regarded as having been earned for the benefit of beneficiaries of that class, divided by the number of beneficiaries (other than registered charities) of that class in existence at the end of the year, and

(ii) in any other case, the portion of the trust's accumulating income for the year that may reasonably be regarded as having been earned for the benefit of the particular preferred beneficiary;

(c) in any case not referred to in paragraph (a) or (b), where each beneficiary under the trust whose share of the accumulating income of the trust depends on the exercise by any person of, or the failure by any person to exercise, any discretionary power, is a preferred beneficiary, or would be a preferred beneficiary if the beneficiary were resident in Canada, or is a registered charity, the portion of the trust's accumulating income for the year equal to the amount determined in prescribed manner to be the beneficiary's discretionary share of the trust's accumulating income for the year; and

(d) in any case not referred to in paragraph (a), (b) or (c), nil.

That portion of para. 104(15)(a) preceding subpara. (i) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 42(6), applicable to taxation years of trusts ending after December 20, 1991. That portion formerly read:

(a) where the trust is a trust described in paragraph (4)(a) and the taxpayer's spouse referred to in that paragraph is alive at the end of the year, an amount equal to,

Regulations: 2800(3), (4) (prescribed manner for 104(15)(c)).

Interpretation Bulletins: IT-394R2: Preferred beneficiary election.

Advance Tax Rulings: ATR-30: Preferred beneficiary election on accumulating income of estate; ATR-34: Preferred beneficiary's election.

(16)–(17.2) [Repealed under former Act]

(18) Trust for minor — Where any part of the amount that, but for subsections (6) and (12), would be the income of a trust for a taxation year throughout which it was resident in Canada

(a) has not become payable in the year,

(b) was held in trust for an individual who did not attain 21 years of age before the end of the year,

(c) the right to which vested at or before the end of the year otherwise than because of the exercise by any person of, or the failure of any person to exercise, any discretionary power, and

(d) the right to which is not subject to any future condition (other than a condition that the individual survive to an age not exceeding 40 years),

notwithstanding subsection (24), that part of the amount is, for the purposes of subsections (6) and (13), deemed to have become payable to the individual in the year.

Related Provisions: 94(3)(a)(iii) [proposed] — Application to trust deemed resident in Canada; 250(6.1) — Trust that ceases to exist deemed resident throughout year.

History: Subsec. 104(18) amended by 1996, c. 21, subsec. 18(10), applicable to trust taxation years that begin after 1995. The subsec. formerly read:

(18) Where all or any part of the income of a trust for a taxation year has not become payable in the year and was held in trust for a minor whose right thereto has vested and the only reason that it has not become payable in the year was that the beneficiary was a minor, it shall, for the purposes of subsections (6) and (13) be deemed to have become payable to the minor in the year.

Interpretation Bulletins: IT-286R2: Trusts — amount payable; IT-342R: Trusts — income payable to beneficiaries; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-394R2: Preferred beneficiary election.

I.T. Technical News: 11 (payments made by a trust for the benefit of a minor beneficiary).

(19) Taxable dividends — Such portion of a taxable dividend received by a trust in a taxation year throughout which it was resident in Canada on a share of the capital stock of a taxable Canadian corporation as

(a) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of the amount that, by reason of subsection (13) or (14) or section 105, as the case may be, was included in computing the income for a particular taxation year of a beneficiary under the trust, and

(b) was not designated by the trust in respect of any other beneficiary under the trust

is, if so designated by the trust in respect of the beneficiary in its return of income for the year, deemed, for the purposes of paragraphs 82(1)(b) and 107(1)(c) and (d) and section 112, not to have been received by the trust, and for the purposes of this Act (other than Part XIII), to be a taxable dividend on the share received by the beneficiary in the particular year from the corporation.

Proposed Amendment — 104(19)

(19) Designation in respect of taxable dividends — A portion of a taxable dividend received by a trust, in a particular taxation year of the trust, on a share of the capital stock of a taxable Canadian corporation is, for the purposes of this Act other than Part XIII, deemed to be a taxable dividend on the share received by a taxpayer, in the taxpayer's taxation year in which the particular taxation year ends, and is, for the purposes of paragraphs 82(1)(b) and 107(1)(c) and (d) and section 112, deemed not to have been received by the trust, if

(a) an amount equal to that portion

(i) is designated by the trust, in respect of the taxpayer, in the trust's return of income under this Part for the particular taxation year, and

(ii) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust) to be part of the amount that, because of paragraph (13)(a) or subsection (14) or section 105, was included in computing the income for that taxation year of the taxpayer;

(b) the taxpayer is in the particular taxation year a beneficiary under the trust;

(c) the trust is, throughout the particular taxation year, resident in Canada; and

(d) the total of all amounts each of which is an amount designated, under this subsection, by the trust in respect of a beneficiary under the trust in the trust's return of income under this Part for the particular taxation year is not greater than the total of all amounts each of which is the amount of a taxable dividend, received by the trust in the particular taxation year, on a share of the capital stock of a taxable Canadian corporation.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 93(4), will amend subsec. 104(19) to read as above, applicable to taxation years that end after February 27, 2004 except that, for taxation years that end on or before July 18, 2005, the reference to "paragraph (13)(a)" in subpara. 104(19)(a)(ii) is to be read as "subsection (13)".

Technical Notes: Subsection 104(19) permits a trust to designate a taxable dividend received by it in a taxation year on the share of a taxable Canadian corporation. Where the designation is made in respect of a beneficiary under the trust, the dividend is treated, for the purposes of the Act (other than Part XIII), as a taxable dividend received by the beneficiary from the corporation, and is treated, for the purposes of the divi-

dend gross-up in paragraph 82(1)(b) and stop-loss rules in paragraphs 107(1)(c) and (d) and section 112, as not having been received by the trust.

Subsection 104(19) is amended to clarify that where a designation, in respect of a taxpayer, is made by a trust in respect of a taxable dividend received by the trust in a particular taxation year of the trust, on a share of the capital stock of a taxable Canadian corporation, the portion of the dividend in respect of which the designation is made is

- for the purposes of paragraphs 82(1)(b) and 107(1)(c) and (d) and section 112, deemed not to have been received by the trust, and
- for the purposes of the Act other than Part XIII, deemed to be a taxable dividend on the share received by the taxpayer in the taxpayer's taxation year in which the particular taxation year of the trust ends.

These deeming rules do not apply, however, unless a number of conditions are met. One of these conditions — that a designated amount not be made in respect of more than one beneficiary under the trust — is replaced with a new requirement that the total of all amounts designated by the trust under subsection 104(19) for the particular taxation year of the trust not exceed the total of all amounts each of which is the amount of a taxable dividend received by the trust in the particular taxation year on a share of the capital stock of a taxable Canadian corporation.

The deeming rules under subsection 104(19) apply, in respect of a beneficiary under the trust, only to the portion of the amount, designated under that subsection, that may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of the amount that, by reason of subsection 104(13) or (14) or section 105, as the case may be, was included in computing the income for a particular taxation year of a beneficiary under the trust. This condition is also amended and now provides that the portion of a taxable dividend designated by a trust is deemed to be a taxable dividend of a taxpayer who is a beneficiary of the trust (and not to be a dividend received by the trust) only if an amount equal to the amount of the designated portion may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust) to be part of the amount that, because of paragraph 104(13)(a) or subsection 104(14) or section 105, was included in computing the income of that taxpayer (*i.e.*, the taxpayer in respect of whom the amount is designated).

The amended reference in the above rule to paragraph 104(13)(a), instead of subsection 104(13), applies to taxation years that end after July 18, 2005. This change clarifies that the deeming rules do not apply to taxable dividends received by a trust governed by an employee benefit plan and paid to an employer under the plan. This is intended to ensure the appropriate characterization of such amounts for purposes of the rules relating to employee benefit plans. For taxation years that end after February 27, 2004 and on or before July 18, 2005, the referenced provision is subsection 104(13).

Related Provisions: 82(1) — Taxable dividends received; 94(3)(a)(iii) [proposed] — Application to trust deemed resident in Canada; 107(1)(c), (d) — Loss on disposition of capital interest in trust; 112(3.12) — Exclusion from stop-loss rule where beneficiary is partnership or trust; 112(3.2) — Stop-loss rule; 112(5.2)B(b)(iii) — Adjustment for dividends received on mark-to-market property; 250(6.1) — Trust that ceases to exist deemed resident throughout year.

History: The closing words of subsec. 104(19) amended by 2001, c. 17, subsec. 78(21), applicable to taxation years that end after 2000. The closing words formerly read:

> shall, if so designated by the trust in respect of the beneficiary in the return of its income for the year under this Part, be deemed, for the purposes of this Act, other than Part XIII, not to have been received by the trust and to be a taxable dividend on the share received by the beneficiary in the particular year from the corporation.

Subsec. 104(19) substituted by 1980-81-82-83, c. 140, subsec. 60(6), applicable with respect to designations made after November 12, 1981. Subsec. 104(19) formerly read:

> (19) Such portion of
>
> (a) the aggregate of taxable dividends received by a trust in a taxation year on shares of the capital stock of taxable Canadian corporations,
>
> as
>
> (b) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of the amount that, by virtue of subsection (13) or (14) or section 105, as the case may be, was included in computing the income for the year of a particular beneficiary under the trust, and
>
> (c) was not designated by the trust in respect of any other beneficiary thereunder,
>
> shall, if so designated by the trust in respect of the particular beneficiary in the return of its income for the year under this Part, be deemed, for the purposes of section 82 and this subsection, to be a taxable dividend received by the particular beneficiary in the year from a taxable Canadian corporation, and not to be a taxable dividend received by the trust in the year from a taxable Canadian corporation.

Interpretation Bulletins: IT-328R3: Losses on shares on which dividends have been received; IT-524: Trusts — flow-through of taxable dividends to a beneficiary — after 1987.

(20) Designation in respect of non-taxable dividends — The portion of the total of all amounts, each of which is the amount of a dividend (other than a taxable dividend) paid on a share of the capital stock of a corporation resident in Canada to a trust during a taxation year of the trust throughout which the trust was resident in Canada, that can reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of an amount that became payable in the year to a particular beneficiary under the trust shall be designated by the trust in respect of the particular beneficiary in the return of the trust's income for the year for the purposes of subclause 53(2)(h)(i.1)(B)(II), paragraphs 107(1)(c) and (d) and subsections 112(3.1), (3.2), (3.31) and (4.2).

Related Provisions: 83(2) — Capital dividends; 89(1)"capital dividend account"(g) — Addition to CDA for capital dividends allocated by trust to corporate beneficiary; 94(3)(a)(iii) [proposed] — Application to trust deemed resident in Canada; 107(1)(c) — Stop-loss rule where beneficiary is corporation; 104(24) — Whether amount payable; 112(3.2) — Stop-loss rule; 112(4.3) — Limitation on loss on disposition of share by trust; 132(3) — Application to a mutual fund trust; 248(1)"disposition"(i)(ii) — Payment in respect of capital interest in a trust; 250(6.1) — Trust that ceases to exist deemed resident throughout year.

History: Subsec. 104(20) amended by 1998, c. 19, subsec. 127(4), applicable after April 26, 1995. Subsec. 104(20) formerly read:

> (20) Such portion of the total of all amounts each of which is the amount of a dividend (other than a taxable dividend) paid on a share of the capital stock of a corporation resident in Canada to a trust during a taxation year of the trust throughout which the trust was resident of Canada as may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of an amount that became payable in the year to a particular beneficiary under the trust, shall be designated by the trust in respect of the particular beneficiary in the return of the trust's income for the year for the purposes of subclause 53(2)(h)(i.1)(B)(II), paragraph 107(1)(c) and subsections 112(3.2) and (4.3).

Interpretation Bulletins: IT-328R3: Losses on shares on which dividends have been received.

(21) Taxable capital gains — Such portion of the net taxable capital gains of a trust for a taxation year throughout which it was resident in Canada as

> (a) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of the amount that, by virtue of subsection (13) or (14) or section 105, as the case may be, was included in computing the income for the taxation year of
>
> (i) a particular beneficiary under the trust, if the trust is a mutual fund trust, or
>
> (ii) a particular beneficiary under the trust who is resident in Canada, if the trust is not a mutual fund trust, and

(b) was not designated by the trust in respect of any other beneficiary under the trust,

shall, if so designated by the trust in respect of the particular beneficiary in the return of its income for the year under this Part, be deemed, for the purposes of sections 3 and 111, except as they apply for the purpose of section 110.6, and subject to paragraph 132(5.1)(b), to be a taxable capital gain for the year of the particular beneficiary from the disposition by that beneficiary of capital property.

Proposed Amendment — 104(21)

(21) Designation in respect of taxable capital gains — For the purposes of sections 3 and 111, except as they apply for the purposes of section 110.6, and subject to paragraph 132(5.1)(b), an amount in respect of a trust's net taxable capital gains for a particular taxation year of the trust is deemed to be a taxable capital gain, for the taxation year of a taxpayer in which the particular taxation year ends, from the disposition by the taxpayer of capital property if

(a) the amount

(i) is designated by the trust, in respect of the taxpayer, in the trust's return of income under this Part for the particular taxation year, and

(ii) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust) to be part of the amount that, because of paragraph (13)(a) or subsection (14) or section 105, was included in computing the income for that taxation year of the taxpayer;

(b) the taxpayer is

(i) in the particular taxation year, a beneficiary under the trust, and

(ii) resident in Canada, unless the trust is, throughout the particular taxation year, a mutual fund trust;

(c) the trust is, throughout the particular taxation year, resident in Canada; and

(d) the total of all amounts each of which is an amount designated, under this subsection, by the trust in respect of a beneficiary under the trust in the trust's return of income under this Part for the particular taxation year is not greater than the trust's net taxable capital gains for the particular taxation year.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 93(5), will amend subsec. 104(21) to read as above, applicable to taxation years that end after February 27, 2004 except that, for taxation years that end on or before July 18, 2005, the reference to "paragraph (13)(a)" in subpara. 104(21)(a)(ii) is to be read as "subsection (13)".

Technical Notes: Subsection 104(21) permits a trust to designate, in respect of a beneficiary under the trust, a portion of its net taxable capital gains. Where the designation is made, the amount designated is deemed, for the purposes of sections 3 and 111 (except as they apply for the purposes of determining whether a beneficiary is entitled to claim a capital gains exemption under section 110.6 and subject to paragraph 132(5.1)(b)), to be a taxable capital gain for the year of the beneficiary from the disposition of capital property.

Subsection 104(21) is amended to clarify that where a designation, in respect of a taxpayer, is made by a trust in respect of its net taxable capital gains for a particular taxation year of the trust, the designated amount is deemed to be a taxable capital gain, for the taxation year of the taxpayer in which the particular taxation year ends, from the disposition by the taxpayer of capital property.

The deeming rule does not apply, however, unless a number of conditions are met. One of these conditions — that a designated amount not be made in respect of more than one beneficiary under the trust — is replaced with a new requirement that the total amounts designated under subsection 104(21) by the trust for a particular taxation year of the trust not exceed the trust's net taxable capital gains for the particular taxation year.

The deeming rule under subsection 104(21) applies, in respect of a beneficiary under a trust, only to the portion of the net taxable gains of the trust that may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of the amount that, by reason of subsection 104(13) or 104(14) or section 105, as the case may be, was included in computing the income of a beneficiary under the trust. This condition is also amended and now provides that an amount, in respect of the trust's net taxable capital gains, is deemed to be a taxable capital gain from the disposition by a taxpayer of capital property only if the amount may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust) to be part of the amount that, because of paragraph 104(13)(a) or subsection 104(14) or section 105, was included in computing the income of that taxpayer (*i.e.*, the taxpayer in respect of whom the amount is designated).

The amended reference in the above rule to paragraph 104(13)(a), instead of subsection 104(13), applies to taxation years that end after July 18, 2005. This change clarifies that the deeming rule does not apply to employee benefit plan trusts and ensures consistency with amended subsection 104(19). For taxation years that end after February 27, 2004 and on or before July 18, 2005, the referenced provision is subsection 104(13).

Subsection 104(21) is also amended to clarify that the deeming rule does not apply to a designation made by a trust, for a particular taxation year of the trust, in respect of a non-resident beneficiary, unless the trust is a mutual fund trust throughout the particular taxation year.

Related Provisions: 39.1(2)B(a), 39.1(3) — Reduction in gain to reflect capital gains exemption election; 89(1)"capital dividend account"(f) — Addition to CDA for capital gains allocated by trust to corporate beneficiary; 94(3)(a)(iii) [proposed] — Application to trust deemed resident in Canada; 104(13.2) — Designation of amount by trust; 104(21.01), (21.02) — Late, amended or revoked designation made with capital gains exemption election; 104(21.1) — Beneficiary's taxable capital gain; 104(21.2) — Beneficiary's taxable capital gain from trust; 104(21.3) — Determination of net taxable capital gains; 104(21.4)–(21.7) — Transitional rule for 2000 capital gains rate changes; 110.6(19), (20) — Election to trigger capital gains exemption; 127.52(1)(d)(ii), 127.52(1)(g)(ii) — Adjusted taxable income (for minimum tax); 132(5.1), (5.2) — Mutual fund trust — distribution of gain on taxable Canadian property; 212(1)(c) — Estate or trust income — non-residents; 250(6.1) — Trust that ceases to exist deemed resident throughout year.

History: The closing words of subsec. 104(21) amended by 2005, c. 19, subsec. 17(2), applicable after March 22, 2004. The closing words formerly read:

> shall, if so designated by the trust in respect of the particular beneficiary in the return of its income for the year under this Part, be deemed, for the purposes of sections 3 and 111 except as they apply for the purposes of section 110.6, to be a taxable capital gain for the year of the particular beneficiary from the disposition by that beneficiary of capital property.

Interpretation Bulletins: IT-123R6: Transactions involving eligible capital property; IT-342R: Trusts — income payable to beneficiaries; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-394R2: Preferred beneficiary election; IT-465R: Non-resident beneficiaries of trusts; IT-493: Agency cooperative corporations.

Advance Tax Rulings: ATR-34: Preferred beneficiary's election.

Forms: RC4169: Tax treatment of mutual funds for individuals [guide]; T3 SCH 3: Eligible taxable capital gains.

(21.01) Late, amended or revoked designation — A trust that has filed its return of income for its taxation year that includes February 22, 1994 may subsequently designate an amount under subsection (21), or amend or revoke a designation made under that subsection where the designation, amendment or revocation

(a) is made solely because of an increase or decrease in the net taxable capital gains of the trust for the year that results from an election or revocation to which subsection 110.6(25), (26) or (27) applies; and

(b) is filed with the Minister, with an amended return of income for the year, when the election or revocation referred to in paragraph (a) is filed with the Minister.

Related Provisions: 104(21.02) — Restriction; 104(21.03) — Effect of designation.

History: Subsec. 104(21.01) added by 1998, c. 19, subsec. 127(5), applicable to taxation years that include February 22, 1994.

(21.02) Late, amended or revoked designation — A designation, amendment or revocation under subsection (21.01) that affects an amount determined in respect of a beneficiary under subsection (21.2) may be made only where the trust

(a) designates an amount, or amends or revokes a designation made, under subsection (21.2) in respect of the beneficiary; and

(b) files the designation, amendment or revocation referred to in paragraph (a) with the Minister when required by paragraph (21.01)(b).

History: Subsec. 104(21.02) added by 1998, c. 19, subsec. 127(5), applicable to taxation years that include February 22, 1994.

(21.03) Late, amended or revoked designation — Where a trust designates an amount, or amends or revokes a designation, under subsection (21) or (21.2) in accordance with subsection (21.01),

(a) the designation or amended designation, as the case may be, is deemed to have been made in the trust's return of income for the trust's taxation year that includes February 22, 1994; and

(b) the designation that was revoked is deemed, other than for the purposes of this subsection and subsections (21.01) and (21.02), never to have been made.

History: Subsec. 104(21.03) added by 1998, c. 19, subsec. 127(5), applicable to taxation years that include February 22, 1994.

(21.1) Beneficiary's taxable capital gain — Notwithstanding subsection (21) or section 38, where in a particular taxation year, commencing before 1990, of a taxpayer (other than an individual who is not a testamentary trust) the taxpayer is a beneficiary of a trust with a taxation year ending in the particular year, the amount (other than that part of the amount that can be attributed to an amount deemed under subsection 14(1) to be a taxable capital gain of the trust) deemed by subsection (21) to be a taxable capital gain of the taxpayer for the particular year in respect of the trust shall be the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount, if any, by which the amount (other than that part of the amount that can be attributed to an amount deemed under subsection 14(1) to be a taxable capital gain of the trust) deemed by subsection (21) to be the taxpayer's taxable capital gain for the particular year in respect of the trust exceeds the amount (other than that part of the amount that can be attributed to an amount deemed under subsection 14(1) to be a taxable capital gain of the trust) designated by the trust for the particular year in respect of the taxpayer under subsection (13.2);

B is the fraction that would be used under section 38 for the particular year in respect of the taxpayer if the taxpayer had a capital gain for the particular year; and

C is the fraction that is used under section 38 for the year of the trust.

Related Provisions: 94(3)(a)(iii) [proposed] — Application to trust deemed resident in Canada.

(21.2) Beneficiaries' taxable capital gain — Where, for the purposes of subsection (21), a personal trust or a trust referred to in subsection 7(2) designates an amount in respect of a beneficiary in respect of its net taxable capital gains for a taxation year (in this subsection referred to as the "designation year"),

(a) the trust shall in its return of income under this Part for the designation year designate an amount in respect of its eligible taxable capital gains, if any, for the designation year in respect of the beneficiary equal to the amount determined in respect of the beneficiary under each of subparagraphs (b)(i) and (ii); and

(b) the beneficiary shall, for the purposes of sections 3, 74.3 and 111 as they apply for the purposes of section 110.6, be deemed to have a taxable capital gain for the beneficiary's taxation year in which the designation year ends

(i) from a disposition of capital property that is qualified farm property of the beneficiary equal to the amount determined by the formula

$$\frac{A \times B \times C}{D \times E}$$

and

(ii) from a disposition of capital property that is a qualified small business corporation share of the beneficiary equal to the amount determined by the formula

$$\frac{A \times B \times F}{D \times E}$$

where

A is the lesser of

(iii) the amount determined by the formula

$$G - H$$

where

G is the total of amounts designated under subsection (21) for the designation year by the trust, and

H is the total of amounts designated under subsection (13.2) for the designation year by the trust, and

(iv) the trust's eligible taxable capital gains for the designation year,

B is the amount, if any, by which the amount designated under subsection (21) for the designation year by the trust in respect of the beneficiary exceeds the amount designated under subsection (13.2) for the year by the trust in respect of the beneficiary,

C is the amount, if any, that would be determined under paragraph 3(b) for the designation year in respect of the trust's capital gains and capital losses if the only properties referred to in that paragraph were qualified farm properties of the trust disposed of by it after 1984,

D is the total of all amounts each of which is the amount determined for B for the designation year in respect of a beneficiary under the trust,

E is the total of the amounts determined for C and F for the designation year in respect of the beneficiary, and

F is the amount, if any, that would be determined under paragraph 3(b) for the designation year in respect of the trust's capital gains and capital losses if the only properties referred to in that paragraph were qualified small business corporation shares of the trust, other than qualified farm property, disposed of by it after June 17, 1987,

and for the purposes of section 110.6, those capital properties shall be deemed to have been disposed of by the beneficiary in that taxation year of the beneficiary.

Related Provisions: 39(10) — Reduction of business investment loss; 94(3)(a)(iii) [proposed] — Application to trust deemed resident in Canada; 104(21.01), (21.02) — Late, amended or revoked designation made with capital gains exemption election; 104(21.3) — Determination of net taxable capital gains; 110.6(11) — No capital gains exemption allowed in certain cases; 110.6(12) — Spousal trust deduction; 110.6(14)(c) — Related persons, etc.; 110.6(20) — Election to trigger capital gains exemption; 257 — Formula amount cannot calculate to less than zero.

History: The opening words of subsec. 104(21.2) amended to add the words "or a trust referred to in subsection 7(2)" by 2001, c. 17, subsec. 78(22), applicable to trusts' taxation years that begin after February 22, 1994.

Subsec. 104(21.2) amended by 1995, c. 3, s. 28, applicable to trusts' taxation years that begin after February 22, 1994; and, in applying subsec. 104(21.2) to a trust's taxation year that includes that day,

(a) the opening words of subsec. 104(21.2) shall be read as follows:

(21.2) Where, for the purposes of subsection (21), a trust (other than a mutual fund trust) designates an amount in respect of a beneficiary in respect of its net taxable capital gains for a taxation year (in this subsection referred to as the "designation year"),

(b) the descriptions of A, B and C in para. 104(21.2)(b) shall be read as follows:

A is the lesser of

(i) the amount determined by the formula

$$H - I$$

where

H is the total of amounts designated under subsection (21) for the designation year by the trust, and

I is the total of amounts designated under subsection (13.2) for the designation year by the trust, and

(ii) the trust's eligible taxable capital gains for the designation year,

B is the amount, if any, by which the amount designated under subsection (21) for the designation year by the trust in respect of the beneficiary exceeds the amount designated under subsection (13.2) for the year by the trust in respect of the beneficiary,

C is the total of all amounts each of which is the amount determined for B for the designation year in respect of a beneficiary under the trust,

and

(c) the closing words of subsec. 104(21.2) shall be read as follows:

and for the purposes of section 110.6, each such taxable capital gain of a beneficiary shall be deemed to be a taxable capital gain of the beneficiary for the beneficiary's taxation year in which the designation year ends from the disposition of a property that occurred on February 22, 1994.

Subsec. 104(21.2) formerly read:

(21.2) Beneficiary's taxable capital gain from trust — Where a trust has, for the purposes of subsection (21), designated an amount (in this subsection referred to as the "designated amount") in respect of a beneficiary of the trust in respect of its net taxable capital gains for a taxation year (in this subsection referred to as the "designation year") and by virtue thereof the designated amount is deemed, for the purposes described in that subsection, to be a taxable capital gain for the year of the beneficiary from the disposition by the beneficiary of capital property,

(a) the trust shall in its return of income for the designation year designate an amount in respect of its eligible taxable capital gains for the designation year in respect of the beneficiary equal to the amount determined in respect of the beneficiary under each of subparagraphs (b)(i), (ii) and (iii), and

(b) the beneficiary shall, for the purposes of sections 3, 74.3 and 111 as they apply for the purposes of section 110.6, be deemed to have a taxable capital gain for the year

(i) from the disposition of capital property that is qualified farm property of the beneficiary equal to the amount determined by the formula

$$\left(A \times \frac{B}{C}\right) \times \frac{D}{G}$$

(ii) from the disposition of capital property that is a qualified small business corporation share of the beneficiary equal to the amount determined by the formula

$$\left(A \times \frac{B}{C}\right) \times \frac{E}{G}$$

and

(iii) from the disposition of capital property, other than properties referred to in subparagraphs (i) or (ii), equal to the amount determined by the formula

$$\left(A \times \frac{B}{C}\right) \times \frac{F}{G}$$

where

A is the eligible taxable capital gains of the trust for the designation year,

B is the amount, if any, by which the designated amount exceeds the amount designated in respect of the beneficiary for the designation year under subsection (13.2),

C is the greater of

(i) the total of all amounts each of which is the amount used for B under this paragraph in respect of a beneficiary of the trust for the designation year, and

(ii) the amount, if any, by which the net taxable capital gains of the trust for the designation year exceed the amount, if any, by which

(A) the investment expense (within the meaning assigned by subsection 110.6(1)) of the trust for the designation year

exceeds

(B) the investment income (within the meaning assigned by subsection 110.6(1)) of the trust for the designation year,

D is the amount, if any, that would be determined in respect of the trust for the designation year under paragraph 3(b) in respect of capital gains and capital losses if the only properties referred to in that paragraph were qualified farm properties of the trust disposed of by it after 1984,

E is the amount, if any, that would be determined in respect of the trust for the designation year under paragraph 3(b) in respect of capital gains and capital losses if the only properties referred to in that paragraph were qualified small business corporation shares of the trust, other than qualified farm property, disposed of by it after June 17, 1987,

F is the lesser of

(i) the amount, if any, that would be determined under paragraph 3(b) in respect of capital gains and capital losses in respect of the trust for the designation year if

(A) the only properties referred to in that paragraph were properties disposed of by it after 1984, other than qualified farm properties and other than qualified small business corporation shares disposed of by it after June 17, 1987, and

(B) the trust's capital gains and capital losses for the year from dispositions of non-qualifying real property of the trust were equal to its eligible real

property gains and eligible real property losses, respectively, for the year from those dispositions, and

(ii) the amount that would be determined under subparagraph (i) if that subparagraph were read without reference to clause (i)(B), and

G is the total of the amounts used for D, E and F under this paragraph in respect of the beneficiary for the year,

and for the purposes of section 110.6, those capital properties shall be deemed to have been disposed of by the beneficiary in the year.

The description of F in para. 104(21.2)(b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 42(7), applicable to 1992 *et seq.* That description formerly read:

F is the amount, if any, that would be determined in respect of the trust for the designation year under paragraph 3(b) in respect of capital gains and capital losses if the only properties referred to in that paragraph were properties disposed of by it after 1984, other than qualified farm properties and other than qualified small business corporation shares disposed of by it after June 17, 1987, and

The description of C in para. 104(21.2)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 75, applicable to 1988 *et seq.* The description of C formerly read:

C is the net taxable capital gains of the trust for the designation year,

Interpretation Bulletins: IT-123R6: Transactions involving eligible capital property; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries.

Advance Tax Rulings: ATR-34: Preferred beneficiary's election.

Forms: T3 SCH 3: Eligible taxable capital gains; T3 SCH 4: Cumulative net investment loss; T3 SCH 9: Income allocations and designations to beneficiaries.

(21.3) Net taxable capital gains of trust determined — For the purposes of this section, the net taxable capital gains of a trust for a taxation year is the amount, if any, by which the total of the taxable capital gains of the trust for the year exceeds the total of

(a) its allowable capital losses for the year, and

Proposed Amendment — 104(21.3)(a)

(a) the total of all amounts each of which is an allowable capital loss (other than an allowable business investment loss) of the trust for the year from the disposition of a capital property, and

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 23(7), will amend para. 104(21.3)(a) to read as above, applicable to trust taxation years that begin after 2000.

Technical Notes: Subsection 104(21.3) defines the expression "net taxable capital gains". The expression is used in subsections 104(21) and (21.2), which permit a trust to flow through its taxable capital gains realized in a year to a beneficiary to whom an amount of the trust's income for the year has been made payable. The trust can flow through its taxable capital gains to beneficiaries only to the extent of its net taxable capital gains for the year.

Under subsection 104(21.3), the amount of a trust's net taxable capital gains for a taxation year equals the amount, if any, by which its total taxable capital gains for the year exceeds the total of two amounts:

- its total allowable capital losses for the year, and
- the amount deducted by it under paragraph 111(1)(b) in computing its taxable income for the year (i.e., deduction of carried-over net capital losses for preceding years and for the three following years).

Subsection 104(21.3) is amended so that allowable business investment losses (ABILs) are disregarded for the purpose of the first of the two amounts. Accordingly, ABILs will not result in a reduction of taxable capital gains that may be flowed through to beneficiaries under trusts and against which allowable capital losses can be claimed.

(b) the amount, if any, deducted under paragraph 111(1)(b) in computing its taxable income for the year.

Interpretation Bulletins: IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries.

Forms: T3 SCH 3: Eligible taxable capital gains.

(21.4) Deemed gains [transitional for 2000] — Where an amount is designated in respect of a beneficiary by a trust for a particular taxation year of the trust that includes February 28, 2000 or October 17, 2000 and that amount is, because of subsection (21), deemed to be a taxable capital gain of the beneficiary from the disposition of capital property for the taxation year of the beneficiary in which the particular taxation year of the trust ends (in this subsection referred to as the "allocated gain"),

(a) the beneficiary is deemed to have realized capital gains (in this subsection referred to as the "deemed gains") from the disposition of capital property in the beneficiary's taxation year in which the particular taxation year ends equal to the amount, if any, by which

(i) the amount determined when the amount of the allocated gain is divided by the fraction in paragraph 38(a) that applies to the trust for the particular taxation year

exceeds

(ii) the amount claimed by the beneficiary not exceeding the beneficiary's exempt capital gains balance for the year in respect of the trust;

(b) notwithstanding subsection (21) and except as a consequence of the application of paragraph (a), the amount of the allocated gain shall not be included in computing the beneficiary's income for the beneficiary's taxation year in which the particular taxation year ends;

(c) the trust shall disclose to the beneficiary in prescribed form the portion of the deemed gains that are in respect of capital gains realized on dispositions of property that occurred before February 28, 2000, after February 27, 2000 and before October 18, 2000, and after October 17, 2000 and, if it does not do so, the deemed gains are deemed to be in respect of capital gains realized on dispositions of property that occurred before February 28, 2000; and

(d) where a trust so elects under this paragraph in its return of income for the year,

(i) the portion of the deemed gains that are in respect of capital gains from dispositions of property that occurred before February 28, 2000 is deemed to be that proportion of the deemed gains that the number of days that are in the particular year and before February 28, 2000 is of the number of days that are in the particular year,

(ii) the portion of the deemed gains that are in respect of capital gains from dispositions of property that occurred in the year and in the period that began at the beginning of February 28, 2000 and ended at the end of October 17, 2000, is deemed to be that proportion of the deemed gains that the number of days that are in the year and in that period is of the number of days that are in the particular year, and

(iii) the portion of the deemed gains that are in respect of capital gains from dispositions of property that occurred in the year and in the period that begins at the beginning of October 18, 2000 and ends at the end of the particular year, is deemed to be that proportion of the deemed gains that the num-

ber of days that are in the year and in that period is of the number of days that are in the particular year; and

(e) no amount may be claimed by the beneficiary under subsection 39.1(3) in respect of the allocated gain.

Related Provisions: 89(1)"capital dividend account"(f)(i)(B) — Amounts designated under 104(21.4) not added to CDA of corporate beneficiary; 104(21.5)–(21.7) — Further transitional rules for 2000.

History: Subsec. 104(21.4) added by 2001, c. 17, subsec. 78(23), applicable to taxation years that end after February 27, 2000.

(21.5) Deemed gains [transitional for 2000] — Where no amount is designated by a trust under subsection (21) in respect of its net taxable capital gains for a taxation year that includes February 28, 2000 or October 17, 2000, the trust has net capital gains or net capital losses from the disposition of property in the year, and the trust so elects under this subsection in its return of income for the year

(a) the portion of the net capital gains or net capital losses that are in respect of capital gains and losses from dispositions of property that occurred before February 28, 2000 is deemed to be that proportion of the net capital gains or net capital losses, as the case may be, that the number of days that are in the year and before February 28, 2000 is of the number of days that are in the year,

(b) the portion of the net capital gains or net capital losses that are in respect of capital gains and losses from dispositions of property that occurred in the year and in the period that began at the beginning of February 28, 2000 and ended at the end of October 17, 2000, is deemed to be that proportion of the net capital gains or net capital losses, as the case may be, that the number of days that are in the year and in that period is of the number of days that are in the year, and

(c) the portion of the net capital gains or net capital losses that are in respect of capital gains and losses from dispositions of property that occurred in the year and in the period that began at the beginning of October 18, 2000 and ended at the end of the year, is deemed to be that proportion of the net capital gains or net capital losses, as the case may be, that the number of days that are in the year and in that period is of the number of days that are in the year,

and, for the purpose of this subsection,

(d) the net capital gains of a trust from dispositions of property in a year is the amount, if any, by which the trust's capital gains from dispositions of property in the year exceeds the trust's capital losses from dispositions of property in the year, and

(e) the net capital losses of a trust from dispositions of property in a year is the amount, if any, by which the trust's capital losses from dispositions of property in the year exceeds the trust's capital gains from dispositions of property in the year.

History: Subsec. 104(21.5) added by 2001, c. 17, subsec. 78(23), applicable to taxation years that end after February 27, 2000.

(21.6) Deemed gains [transitional for 2000] — [where] subsec. (21.4) applies — Where a taxpayer is deemed by subsection (21.4) to have realized capital gains from the disposition of capital property in a taxation year of the taxpayer in respect of dispositions of property by a trust of which the taxpayer is a beneficiary,

(a) if the deemed gains are in respect of capital gains of the trust from dispositions of property before February 28, 2000 and the taxation year of the taxpayer includes February 27, 2000, the deemed gains are deemed to be a capital gain of the taxpayer from the disposition by the taxpayer of capital property in the taxpayer's taxation year and before February 28, 2000;

(b) if the deemed gains are in respect of capital gains of the trust from dispositions of property before February 28, 2000 and the taxation year of the taxpayer began after February 27, 2000 and ended before October 18, 2000, 9/8 of the deemed gains is deemed to be a capital gain of the taxpayer from the disposition by the taxpayer of capital property in the taxpayer's taxation year;

(c) if the deemed gains are in respect of capital gains of the trust from dispositions of property before February 28, 2000 and the taxation year of the taxpayer began after February 27, 2000 and ended after October 17, 2000, 9/8 of the deemed gains is deemed to be a capital gain of the taxpayer from the disposition by the taxpayer of capital property in the taxpayer's taxation year and before October 18, 2000;

(d) if the deemed gains are in respect of capital gains of the trust from dispositions of property before February 28, 2000 and the taxation year of the taxpayer began after October 17, 2000, 3/2 of the deemed gains is deemed to be a capital gain of the taxpayer from the disposition by the taxpayer of capital property in the taxpayer's taxation year;

(e) if the deemed gains are in respect of capital gains of the trust from dispositions of property after February 27, 2000 and before October 18, 2000, and the taxation year of the taxpayer began after October 17, 2000, 4/3 of the deemed gains is deemed to be a capital gain of the taxpayer from the disposition by the taxpayer of capital property in the taxpayer's taxation year;

(f) if the deemed gains are in respect of capital gains of the trust from dispositions of property after February 27, 2000 and before October 18, 2000 and the taxation year of the taxpayer includes February 28, 2000 and October 17, 2000, the deemed gains are deemed to be a capital gain of the taxpayer from the disposition by the taxpayer of capital property in the taxpayer's taxation year and in the period that began after February 27, 2000 and ended before October 18, 2000;

Proposed Amendment — 104(21.6)(f.1)

(f.1) if the deemed gains are in respect of capital gains of the trust from dispositions of property after February 27, 2000 and before October 17, 2000 and the taxation year of the taxpayer began after February 27, 2000 and ended after October 17, 2000, the deemed gains are deemed to be a capital gain of the taxpayer from the disposition by the taxpayer of capital property in the taxpayer's taxation year and in the period that began after February 27, 2000 and ended before October 18, 2000;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 93(6), will add para. 104(21.6)(f.1), applicable to taxation years that end after February 27, 2000.

Technical Notes: Subsection 104(21.6) provides rules for the determination of the inclusion rate to be used by a taxpayer for capital gains realized by a trust in 2000. This subsection applies to a taxpayer who

has a taxation year that begins after October 17, 2000 and who is deemed by subsection 104(21.4) to have capital gains from the disposition of capital property in the year in respect of dispositions of property by a trust of which the taxpayer is a beneficiary.

This subsection ensures that the inclusion rate for capital gains realized on property disposed of by a trust prior to February 27, 2000 is ¾, and is ⅔ in respect of property disposed of by a trust after February 27, 2000 and before October 18, 2000.

Subsection 104(21.6) is amended by adding new paragraph (f.1) to ensure that where the deemed gains are in respect of capital gains from dispositions of property by the trust that occurred after February 27, 2000 and before October 17, 2000 in circumstances where the taxation year of the taxpayer began after February 27, 2000 and ended after October 17, 2000, the gains are deemed to be a capital gain of the taxpayer from the disposition by the taxpayer of capital property in the taxpayer's taxation year and in the period that began after February 27, 2000 and ended before October 18, 2000. This amendment applies to taxation years that end after February 27, 2000.

(g) if the deemed gains are in respect of capital gains of the trust from dispositions of property after February 27, 2000 and before October 17, 2000 and the taxation year of the taxpayer began after February 27, 2000 and ended before October 17, 2000, the deemed gains are deemed to be a capital gain of the taxpayer from the disposition by the taxpayer of capital property in the taxpayer's taxation year; and

Proposed Amendment — 104(21.6)(g)

(g) if the deemed gains are in respect of capital gains of the trust from dispositions of property after February 27, 2000 and before October 17, 2000 and the taxation year of the taxpayer began after February 27, 2000 and ended before October 18, 2000, the deemed gains are deemed to be a capital gain of the taxpayer from the disposition by the taxpayer of capital property in the taxpayer's taxation year; and

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 93(6), will amend para. 104(21.6)(g) to read as above, applicable to trust taxation years that end after December 20, 2002.

Technical Notes: Paragraph 104(21.6)(g) is amended to correct a technical deficiency in a reference to a date. The reference to "October 17, 2000" is changed to "October 18, 2000" which reflects the date on which the reduction of the capital gain inclusion rate from ⅔ to ½ was announced. This amendment applies to trust taxation years that end after December 20, 2002.

(h) in any other case, the deemed gains are deemed to be a capital gain of the taxpayer from the disposition of capital property by the taxpayer in the taxpayer's taxation year and after October 17, 2000.

Related Provisions: 127.52(1)(d)(iii) — 104(21.6) ignored for minimum tax purposes.

History: Subsec. 104(21.6) added by 2001, c. 17, subsec. 78(23), applicable to taxation years that end after February 27, 2000.

(21.7) Deemed gains [transitional for 2000] — [where] subsec. (21.4) does not apply — Where an amount is designated under subsection (21) in respect of a beneficiary by a trust for a particular taxation year of the trust that ends in a taxation year of the beneficiary that includes February 28, 2000 or October 17, 2000 and subsection (21.4) does not apply in respect of the designated amount,

(a) notwithstanding subsection (21) and except as a consequence of the application of paragraph (b), the designated amount shall not be included in computing the beneficiary's income;

(b) the beneficiary is deemed to have a capital gain from the disposition by the beneficiary of capital property on the day on which the particular taxation year ends equal to the amount, if any, by which

(i) the amount determined by dividing the designated amount by the fraction in paragraph 38(a) that applies to the trust for the particular taxation year

exceeds

(ii) the amount claimed by the beneficiary, which amount may not be greater than the beneficiary's exempt capital gains balance for the year in respect of the trust; and

(c) no amount may be claimed under subsection 39.1(3) by the beneficiary in respect of the designated amount.

History: Subsec. 104(21.7) added by 2001, c. 17, subsec. 78(23), applicable to taxation years that end after February 27, 2000.

(22) Designation of foreign source income by trust — For the purposes of this subsection, subsection (22.1) and section 126, such portion of a trust's income for a taxation year (in this subsection referred to as "that year") throughout which it is resident in Canada from a source in a country other than Canada as

(a) can reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of the income that, because of subsection (13) or (14), was included in computing the income for a particular taxation year of a particular beneficiary under the trust, and

(b) is not designated by the trust in respect of any other beneficiary thereunder

shall, if so designated by the trust in respect of the particular beneficiary in its return of income under this Part for that year, be deemed to be the particular beneficiary's income for the particular year from that source.

Proposed Amendment — 104(22)

(22) Designation in respect of foreign source income — For the purposes of this subsection, subsection (22.1) and section 126, an amount in respect of a trust's income for a particular taxation year of the trust from a source in a country other than Canada is deemed to be income of a taxpayer, for the taxation year of the taxpayer in which the particular taxation year ends, from that source if

(a) the amount

(i) is designated by the trust, in respect of the taxpayer, in the trust's return of income under this Part for the particular taxation year, and

(ii) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust) to be part of the amount that, because of paragraph (13)(a) or subsection (14), was included in computing the income for that taxation year of the taxpayer;

(b) the taxpayer is in the particular taxation year a beneficiary under the trust;

(c) the trust is, throughout the particular taxation year, resident in Canada; and

(d) the total of all amounts each of which is an amount designated, under this subsection in respect of that source, by the trust in respect of a beneficiary under the trust in the trust's return of income under this Part for the particular taxation year is not greater

than the trust's income for the particular taxation year from that source.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 93(7), will amend subsec. 104(22) to read as above, applicable to taxation years that end after February 27, 2004 except that, for taxation years that end on or before July 18, 2005, the reference to "paragraph (13)(a)" in subpara. 104(22)(a)(ii) is to be read as "subsection (13)".

Technical Notes: Subsection 104(22) permits a trust to designate, in respect of a beneficiary under the trust, an amount of its foreign income. Such a designation is made by the trust on a source-by-source basis. Where the designation is made, the amount designated is deemed, for the purpose of subsections 104(22) and (22.1) and section 126, to be the beneficiary's income for the year from that source.

Subsection 104(22) is amended to clarify that where an amount is designated, in respect of a taxpayer, by a trust in respect of the trust's income for a particular taxation year of the trust from a source in a country other than Canada, the designated amount is deemed to be income of the taxpayer, for the taxation year of the taxpayer in which the particular taxation year of the trust ends, from that source.

The deeming rule does not apply, however, unless a number of conditions are met. One of these conditions — that a designated amount not be made in respect of more than one beneficiary under the trust — is replaced with a new requirement that the total amounts designated, in respect of the trust's income from a particular foreign source, under subsection 104(22) by the trust for a particular taxation year of the trust not exceed the trust's income for the particular taxation year from that source.

The deeming rule under subsection 104(22) applies, in respect of a beneficiary under a trust, only to the portion of the trust's income, from a source in a country other than Canada, that may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of the amount that, by reason of subsection 104(13) or 104(14) or section 105, as the case may be, was included in computing the income of a beneficiary under the trust. This condition is also amended and now provides that an amount, in respect of the trust's income from a source in a country other than Canada, is deemed to be income, from that source, only if the amount may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust) to be part of the amount that, because of paragraph 104(13)(a) or subsection 104(14) or section 105, was included in computing the income of that taxpayer (*i.e.*, the taxpayer in respect of whom the amount is designated).

The amended reference in the above rule to paragraph 104(13)(a), instead of subsection 104(13), applies to taxation years that end after July 18, 2005. This change clarifies that the deeming rule does not apply to employee benefit plan trusts and ensures consistency with amended subsection 104(19). For taxation years that end after February 27, 2004 and on or before July 18, 2005, the referenced provision is subsection 104(13).

Related Provisions: 4(3) — Whether deductions are applicable to a particular source; 94(3)(a)(iii) [proposed] — Application to trust deemed resident in Canada; 104(22.2), (22.3) — Recalculation of trust's foreign-source income and foreign tax; 250(6.1) — Trust that ceases to exist deemed resident throughout year.

History: Subsec. 104(22) substituted by 1994, c. 21, subsec. 46(2), applicable to taxation years ending after November 12, 1981 except that, with respect to taxation years of trusts that began before 1988, the opening words of subsec. 104(22) shall be read as follows:

> (22) For the purposes of this subsection, subsection (22.1) and section 126, such portion of a trust's income for a taxation year (in this subsection referred to as "that year") from a source in a country other than Canada as

Subsec. 104(22) formerly read:

> (22) Deduction for foreign taxes — For the purposes of this subsection and section 126, the following rules apply:
>
> (a) such portion of the income of a trust for a taxation year throughout which it was resident in Canada (before making any deduction under subsection (6) or (12)) from sources in a foreign country as
>
> (i) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of the income that, by virtue of subsection (13) or (14), as the case may be, was included in computing the income for a taxation year of a particular beneficiary under the trust, and
>
> (ii) was not designated by the trust in respect of any other beneficiary thereunder,
>
> shall, if so designated by the trust in respect of the particular beneficiary in its return of income for the year under this Part, be deemed to be income of the particular beneficiary for the taxation year from sources in that country;
>
> (b) a beneficiary under a trust shall be deemed to have paid as income tax for a taxation year, on the income that the beneficiary is deemed by paragraph (a) to have for the year from sources in a foreign country, to the government of that country an amount equal to that proportion of the income or profits tax paid by the trust for the year to the government of that country or to the government of a state, province or other political subdivision of that country (except such portion of that tax as was deductible under subsection 20(11) or deducted under subsection 20(12) in computing its income for the year) that
>
> (i) such portion of the amount included in computing the beneficiary's income for the year by virtue of subsection (13) or (14), as the case may be, as is deemed by paragraph (a) to be income for the year from sources in that country,
>
> is of
>
> (ii) the income of the trust for the year from sources in that country (before making any deduction under subsection (6) or (12));
>
> (c) the income of a trust from sources in a foreign country for a taxation year shall be deemed to be its actual income from those sources for the year minus the total of the amounts deemed by paragraph (a) to be the income therefrom for the year of all beneficiaries under the trust; and
>
> (d) a trust shall be deemed to have paid as income tax to the government of a foreign country for a taxation year an amount equal to the income or profits tax actually paid by it for the year to the government of that country, or to the government of a state, province or other political subdivision of that country (except such portion of that tax as was deductible under subsection 20(11) or deducted under subsection 20(12) in computing its income for the year), minus the total of amounts deemed by paragraph (b) to have been paid to the government of that country for the year by all beneficiaries under the trust.

Interpretation Bulletins: IT-201R2: Foreign tax credit — trust and beneficiaries; IT-506: Foreign income taxes as a deduction from income.

(22.1) Foreign tax deemed paid by beneficiary — Where a taxpayer is a beneficiary under a trust, for the purposes of this subsection and section 126, the taxpayer shall be deemed to have paid as business-income tax or non-business-income tax, as the case may be, for a particular taxation year in respect of a source the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount that, but for subsection (22.3), would be the business-income tax or non-business-income tax, as the case may be, paid by the trust in respect of the source for a taxation year (in this subsection referred to as "that year") of the trust that ends in the particular year;

B is the amount deemed, because of a designation under subsection (22) for that year by the trust, to be the taxpayer's income from the source; and

C is the trust's income for that year from the source.

Related Provisions: 4(3) — Whether deductions are applicable to a particular source; 94(3)(a)(iii) [proposed] — Application to trust deemed resident in Canada; 126(2.22) — Foreign tax credit to trust on disposition of property by non-resident beneficiary.

History: Subsec. 104(22.1) added by 1994, c. 21, subsec. 46(2), applicable to taxation years ending after November 12, 1981.

Interpretation Bulletins: IT-201R2: Foreign tax credit — trust and beneficiaries.

(22.2) Recalculation of trust's foreign source income — For the purpose of section 126, there shall be deducted in computing a trust's income from a source for a taxation year the total of all amounts deemed, because of designations under subsection (22) by the trust for the year, to be income of beneficiaries under the trust from that source.

Related Provisions: 94(3)(a)(iii) [proposed] — Application to trust deemed resident in Canada.

History: Subsec. 104(22.2) added by 1994, c. 21, subsec. 46(2), applicable to taxation years ending after November 12, 1981.

Interpretation Bulletins: IT-201R2: Foreign tax credit — trust and beneficiaries.

(22.3) Recalculation of trust's foreign tax — For the purpose of section 126, there shall be deducted in computing the business-income tax or non-business-income tax paid by a trust for a taxation year in respect of a source the total of all amounts deemed, because of designations under subsection (22) by the trust for the year, to be paid by beneficiaries under the trust as business-income tax or non-business-income tax, as the case may be, in respect of the source.

Related Provisions: 94(3)(a)(iii) [proposed] — Application to trust deemed resident in Canada; 126(7)"non-business-income tax"(c.1) — Amount deducted under 104(22.3) from business-income tax excluded from non-business-income tax.

History: Subsec. 104(22.3) added by 1994, c. 21, subsec. 46(2), applicable to taxation years ending after November 12, 1981.

Interpretation Bulletins: IT-201R2: Foreign tax credit — trust and beneficiaries.

(22.4) Definitions — For the purposes of subsections (22) to (22.3), the expressions "business-income tax" and "non-business-income tax" have the meanings assigned by subsection 126(7).

History: Subsec. 104(22.4) added by 1994, c. 21, subsec. 46(2), applicable to taxation years ending after November 12, 1981.

Interpretation Bulletins: IT-201R2: Foreign tax credit — trust and beneficiaries.

(23) Testamentary trusts — In the case of a testamentary trust, notwithstanding any other provision of this Act, the following rules apply:

(a) the taxation year of the trust is the period for which the accounts of the trust are made up for purposes of assessment under this Act, but no such period may exceed 12 months and no change in the time when such a period ends may be made for the purposes of this Act without the concurrence of the Minister;

(b) when a taxation year is referred to by reference to a calendar year, the reference is to the taxation year or years coinciding with, or ending in, that year;

Proposed Repeal — 104(23)(a), (b)

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 93(8), will repeal paras. 104(23)(a) and (b), applicable after December 20, 2002.

Technical Notes: Subsection 104(23) provides special rules that apply to testamentary trusts. Paragraph 104(23)(a) defines the taxation year of a testamentary trust to be the period for which the accounts of the trust are made up for purposes of assessment under the *Income Tax Act*. For this purpose, that paragraph also provides that no such period may exceed 12 months and no change in the time when such a period ends may be made for the purposes of the Act without the concurrence of the Minister of National Revenue. Paragraph 104(23)(b) provides that, in the case of a testamentary trust when a taxation year is referred to by reference to a calendar year, the reference is to the taxation year or years coinciding with, or ending in, that year.

Paragraphs 104(23)(a) and (b) are repealed.

For a related set of amendments, see the commentary on section 249 and the definition "testamentary trust" in subsection 108(1).

(c) the income of a person for a taxation year from the trust shall be deemed to be the person's benefits from or under the trust for the taxation year or years of the trust that ended in the year determined as provided by this section and section 105;

(d) where an individual having income from the trust died after the end of a taxation year of the trust but before the end of the calendar year in which the taxation year ended, the individual's income from the trust for the period commencing immediately after the end of the taxation year and ending at the time of death shall be included in computing the individual's income for the individual's taxation year in which the individual died unless the individual's legal representative has elected otherwise, in which case the legal representative shall file a separate return of income for the period under this Part and pay the tax for the period under this Part as if

(i) the individual were another person,

(ii) the period were a taxation year,

(iii) that other person's only income for the period were the individual's income from the trust for that period, and

(iv) subject to sections 114.2 and 118.93, that other person were entitled to the deductions to which the individual was entitled under sections 110, 118 to 118.7 and 118.9 for the period in computing the individual's taxable income or tax payable under this Part, as the case may be, for the period; and

(e) in lieu of making the payments required by sections 155, 156 and 156.1, the trust shall pay to the Receiver General within 90 days after the end of each taxation year, the tax payable under this Part by it for the year.

Related Provisions: 94(3)(a)(iii) [proposed] — Application to trust deemed resident in Canada; 114.2 — Deductions in separate returns; 118.93 — Credits in separate returns; 120.2(4)(a) — No minimum tax carryover on special return under 104(23)(d); 127.1(1)(a) — No refundable investment tax credit on special return; 127.55 — Minimum tax not applicable; 249(1)(c), (5), (6) — Taxation year of testamentary trust.

History: Para. 104(23)(a) amended by 1996, c. 21, subsec. 18(11), applicable after 1994. The para. formerly read:

(a) the taxation year of the trust is the period for which the accounts of the trust have been ordinarily made up and accepted for purposes of assessment under this Act and, in the absence of an established practice, the period adopted by the trust for that purpose (but no such period may exceed 12 months and a change in a usual and accepted period may not be made for the purpose of this Act without the concurrence of the Minister);

Para. 104(23)(e) amended by 1994, c. 8, s. 12, applicable to 1994 *et seq.* Para. (e) formerly read:

(e) in lieu of making the payments required by section 156, the trust shall pay to the Receiver General within 90 days from the end of each taxation year, the tax for the year as estimated under section 151.

Interpretation Bulletins: IT-179R: Change of fiscal period; IT-326R3: Returns of deceased persons as "another person".

Forms: T4011: Preparing returns for deceased persons [guide].

(24) Amount payable — For the purposes of subparagraph 53(2)(h)(i.1) and subsections (6), (7), (13) and (20), an amount shall be deemed not to have become payable to a beneficiary in a taxation year unless it was paid in the year to the beneficiary or the beneficiary was entitled in the year to enforce payment of the amount.

Proposed Amendment — 104(24)

(24) Amount payable — For the purposes of subparagraph 53(2)(h)(i.1), paragraph (c) of the definition "specified charity" in subsection 94(1), subsection 94(8) and subsections (6), (7), (7.01), (13) and (20), an amount is deemed not to have become payable to a beneficiary in a taxation year unless it was paid in the year to the beneficiary or the beneficiary was entitled in the year to enforce payment of it.

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 23(8), will amend subsec. 104(24) to read as above, applicable to trust taxation years that begin after 2002, and to trust taxation years that begin

(a) after 2000, if the trust makes a valid election under para. (a) of the Application of the amendment to s. 94; and

(b) after 2001, if the trust makes a valid election under para. (a) or (b) of the Application of the amendment to s. 94.

Technical Notes: The determination of when an amount becomes payable in a taxation year is relevant for a number of purposes, including the determination of the amount deductible under subsection 104(6). Under subsection 104(24), an amount is deemed not to have become payable in the year to a beneficiary unless it was paid in the year to the beneficiary or the beneficiary was entitled in the year to enforce payment of the amount.

Subsection 104(24) is amended so that it also applies for the purposes of paragraph (c) of the definition "specified charity" in subsection 94(1), subsection 94(8) and subsection 104(7.01). For more information, see the commentary on those provisions.

This amendment applies to trust taxation years that begin after 2002. It also applies to trust taxation years that begin after 2000, or after 2001, if the trust makes the appropriate election under the coming-into-force provision for new section 94.

Related Provisions: 94(3)(a)(iii) [proposed] — Application to trust deemed resident in Canada; 94(4) — FAPI does not include "amount payable" to beneficiary; 104(18) — Trust for person under age 21.

Selected Cases [subsec. 104(24)]: *Langer Family Trust v. MNR*, [1992] 1 C.T.C. 2119 (TCC); appealed to FCTD (April 16, 1992), File T-907-92 (No deduction where income not "paid in the year to the person").

Interpretation Bulletins: IT-286R2: Trusts — amount payable; IT-342R: Trusts — income payable to beneficiaries; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries.

I.T. Technical News: 11 (payments made by a trust for the benefit of a minor beneficiary).

(25), (25.1), (26) [Repealed under former Act]

(27) Pension benefits — Where a testamentary trust has, in a taxation year throughout which it was resident in Canada, received a superannuation or pension benefit or a benefit out of or under a foreign retirement arrangement and has designated, in the return of its income for the year under this Part, an amount in respect of a beneficiary under the trust equal to such portion (in this subsection referred to as the "beneficiary's share") of the benefit as

(a) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of the amount that, by reason of subsection (13), was included in computing the income for a particular taxation year of the beneficiary, and

(b) was not designated by the trust in respect of any other beneficiary under the trust,

the following rules apply:

(c) where

(i) the benefit is an amount described in subparagraph (a)(i) of the definition "pension income" in subsection 118(7), and

(ii) the beneficiary was a spouse or common-law partner of the settlor of the trust,

the beneficiary's share of the benefit shall be deemed, for the purposes of subsections 118(3) and (7), to be a payment described in subparagraph (a)(i) of the definition "pension income" in subsection 118(7) that is included in computing the beneficiary's income for the particular year,

(d) where the benefit

(i) is a single amount (within the meaning assigned by subsection 147.1(1)), other than an amount that relates to an actuarial surplus, paid by a registered pension plan to the trust as a consequence of the death of the settlor of the trust who was, at the time of death, a spouse or common-law partner of the beneficiary, or

(ii) would be an amount included in the total determined under paragraph 60(j) in respect of the beneficiary for the taxation year of the beneficiary in which the benefit was received by the trust if the benefit had been received by the beneficiary at the time it was received by the trust,

the beneficiary's share of the benefit is, for the purposes of paragraph 60(j), an eligible amount in respect of the beneficiary for the particular year, and

(e) where the benefit is a single amount (within the meaning assigned by subsection 147.1(1)) paid by a registered pension plan to the trust as a consequence of the death of the settlor of the trust,

(i) if the beneficiary was, immediately before the settlor's death, a child or grandchild of the settlor who, because of mental or physical infirmity, was financially dependent on the settlor for support, the beneficiary's share of the benefit (other than any portion of it that relates to an actuarial surplus) is deemed, for the purposes of paragraph 60(l), to be an amount from a registered pension plan included in computing the beneficiary's income for the particular year as a payment described in clause 60(l)(v)(B.01), and

(ii) if the beneficiary was, at the time of the settlor's death, under 18 years of age and a child or grandchild of the settlor, the beneficiary's share of the benefit (other than any portion of it that relates to an actuarial surplus) is deemed, for the purposes of paragraph 60(l), to be an amount from a registered pension plan included in computing the beneficiary's income for the particular year as a payment described in subclause 60(l)(v)(B.1)(II).

Related Provisions: 60(l)(v)(B.1) — Rollover of RRSP/RRIF designated benefits to child or grandchild on death; 94(3)(a)(iii) [proposed] — Application to trust deemed resident in Canada; 146(1.1) — Where child presumed not financially dependent for 104(27)(e)(i); 248(8) — Occurrences as a consequence of death; 250(6.1) — Trust that ceases to exist deemed resident throughout year.

History: Para. 104(27)(e) amended by 2003, c. 15, subsec. 72(2), applicable in respect of deaths that occur after 2002. Para. (e) formerly read:

(e) where the benefit is a single amount (within the meaning assigned by subsection 147.1(1)) paid by a registered pension plan to the trust as a consequence of the death of the settlor of the trust and the beneficiary was, at the time of the settlor's death, under 18 years of age and a child or grandchild of the settlor, the beneficiary's share of the benefit (other than any portion thereof that relates to an actuarial surplus) shall be deemed, for the purposes of paragraph 60(l), to be an amount from a registered pension plan included in computing the beneficiary's income for the particular year as a payment described in subclause 60(l)(v)(B.1)(II).

Subsec. 104(27) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Paras. 104(27)(c) and (d) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 42(8), applicable after 1992. Paras. (c) and (d) formerly read:

(c) where

(i) the benefit is an amount described in subparagraph (a)(i) of the definition "pension income" in subsection 118(7), and

(ii) the beneficiary was a spouse (in this subsection having the meaning assigned by subsection 146(1.1)) of the settlor of the trust,

the beneficiary's share of the benefit shall be deemed, for the purposes of subsections 118(3) and (7), to be a payment described in subparagraph (a)(i) of the definition "pension income" in subsection 118(7) that is included in computing the beneficiary's income for the particular year,

(d) where the benefit

(i) is a single amount (within the meaning assigned by subsection 147.1(1)), other than an amount that relates to an actuarial surplus, paid by a registered pension plan to the trust as a consequence of the death of the settlor of the trust who was, at the time of the settlor's death, a spouse of the beneficiary, or

(ii) would be an amount included in the total determined under paragraph 60(j) in respect of the beneficiary for the taxation year of the beneficiary in which the benefit was received by the trust if the benefit had been received by the beneficiary at the time it was received by the trust,

the beneficiary's share of the benefit is, for the purposes of paragraph 60(j), an eligible amount in respect of the beneficiary for the particular year, and

That portion of subsec. 104(27) preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 75(2), applicable to 1990 *et seq.* That portion formerly read:

(27) Pension benefits — Where a testamentary trust has received a superannuation or pension benefit in a taxation year throughout which it was resident in Canada and has designated, in the return of its income for the year under this Part, an amount in respect of a beneficiary under the trust equal to such portion (in this subsection referred to as the "beneficiary's share") of the benefit as

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-528: Transfers of funds between registered plans.

Forms: T3 SCH 7: Pension income allocations or designations; T3 SCH 9: Income allocations and designations to beneficiaries.

(27.1) DPSP benefits — Where

(a) a testamentary trust has received in a taxation year (in this subsection referred to as the "trust year") throughout which it was resident in Canada an amount from a deferred profit sharing plan as a consequence of the death of the settlor of the trust,

(b) the settlor was an employee of an employer who participated in the plan on behalf of the settlor, and

(c) the amount is not part of a series of periodic payments,

such portion of the amount as

(d) is included under subsection 147(10) in computing the income of the trust for the trust year,

(e) can reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of the amount that was included under subsection (13) in computing the income for a particular taxation year of a beneficiary under the trust who was, at the time of the settlor's death, a spouse or common-law partner of the settlor, and

(f) is designated by the trust in respect of the beneficiary in the trust's return of income under this Part for the trust year

is, for the purposes of paragraph 60(j), an eligible amount in respect of the beneficiary for the particular year.

Related Provisions: 94(3)(a)(iii) [proposed] — Application to trust deemed resident in Canada; 248(8) — Occurrences as a consequence of death; 250(6.1) — Trust that ceases to exist deemed resident throughout year.

History: Subsec. 104(27.1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Para. 104(27.1)(e) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 42(9), applicable after 1992. Para. (e) formerly read:

(e) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of the amount that, by reason of subsection (13), was included in computing the income for a particular taxation year of a beneficiary under the trust who was, at the time of the settlor's death, a spouse (within the meaning assigned by subsection 146(1.1)) of the settlor, and

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-528: Transfers of funds between registered plans.

(28) [Death benefit deemed received by beneficiary] — Such portion of any amount received by a testamentary trust in a taxation year on or after the death of an employee in recognition of the employee's service in an office or employment as may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be paid or payable at a particular time to a particular beneficiary under the trust shall be deemed to be an amount received by the particular beneficiary at the particular time on or after the death of the employee in recognition of the employee's service in an office or employment and not to have been received by the trust.

Related Provisions: 56(1)(a)(iii) — Death benefit included in income; 94(3)(a)(iii) [proposed] — Application to trust deemed resident in Canada; 250(6.1) — Trust that ceases to exist deemed resident throughout year.

Interpretation Bulletins: IT-508R: Death benefits.

(29) Amounts deemed payable to beneficiaries [resource income] — For the purposes of this section, an amount designated by a trust in its return of income for a taxation year throughout which it was resident in Canada is deemed to have become, in the proportions that the trust designates in that return of income, payable by the trust to particular beneficiaries under the trust in the year if

(a) the designated amount does not exceed the amount determined by the formula

$$(A - B) \times C/D$$

where

A is the total of all amounts each of which is

(i) an amount that is not deductible in computing the trust's income for the year, but that would be deductible in computing that income if this Act were read without reference to paragraph 18(1)(m),

(ii) an amount that is required by paragraph 12(1)(o) or by subsection 69(6) or (7) to be included in computing that income, or

(iii) an amount that is required to be included in computing that income because of an amount designated under this subsection by another trust,

B is the total of all amounts each of which is

(i) an amount that is deductible (otherwise than because of the membership of the trust in a

partnership) under paragraph 20(1)(v.1) in computing the trust's income for the year, or

(ii) an amount that is not included in computing that income, but that would be included in computing that income if this Act were read without reference to section 80.2,

C is the total of all amounts each of which is a portion of the trust's income for the year computed without reference to the provisions of this Act (in this subsection referred to as the "trust-purpose income of the trust for the year") that

(i) was payable in the year to a beneficiary under the trust, or

(ii) was required by subsection 105(2) to be included in computing the income of a beneficiary under the trust, and

D is the trust-purpose income of the trust for the year; and

(b) the designated proportions are reasonable having regard to the portions of the trust-purpose income of the trust for the year that are included in computing the beneficiaries' incomes for the year.

Repeal [effective 2007] — 104(29)

Application: S.C. 2003, c. 28 (Bill C-48, Royal Assent November 7, 2003), subsec. 11(2), repeals subsec. 104(29), applicable to trust taxation years that begin after 2006.

Related Provisions: 94(3)(a)(iii) [proposed] — Application to trust deemed resident in Canada; 250(6.1) — Trust that ceases to exist deemed resident throughout year; 257 — Formula cannot calculate to less than zero.

History: Subsec. 104(29) amended by 2003, c. 28, subsec. 11(1), applicable to trust taxation years that end after December 20, 2002. The subsec. formerly read:

(29) Where a trust, in its return of income under this Part for a taxation year throughout which it was resident in Canada, designates an amount not exceeding the proportion of the amount, if any, by which

(a) the total of all amounts each of which is an amount that would, but for paragraph 18(1)(l.1) or (m), be deductible in computing the income of the trust for the year or that is required to be included in computing its income for the year by reason of paragraph 12(1)(o) or subsection 69(6) or (7)

exceeds

(b) the total of all amounts each of which is an amount that is deductible (otherwise than because of the membership of the trust in a partnership) under paragraph 20(1)(v.1) in computing the income of the trust for the year or that would, but for section 80.2, be included in computing its income for the year,

that

(c) the total of all amounts each of which is a part of the income of the trust for the year computed without reference to the provisions of this Act (in this subsection referred to as the "trust-purpose income" for the year) that was payable in the year to a beneficiary of the trust or was included in computing the income of a beneficiary of the trust for the year by virtue of subsection 105(2)

is of

(d) the trust-purpose income of the trust for the year,

that designated amount shall, for the purposes of this section, be deemed to have become payable by the trust to particular beneficiaries of the trust in the year in such proportions as are designated by the trust in that return of income, provided that those proportions are reasonable having regard to the shares of the trust-purpose income of the trust for the year included in computing their incomes for the year.

Para. 104(29)(b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 42(10), applicable to taxation years ending after December 20, 1991. Para. (b) formerly read:

(b) the total of all amounts each of which is an amount deductible in computing the income of the trust for the year under paragraph 20(1)(v.1) or that would, but for section 80.2, be included in computing its income for the year,

Interpretation Bulletins: IT-342R: Trusts — income payable to beneficiaries.

(30) Tax under Part XII.2 — For the purposes of this Part, there shall be deducted in computing the income of a trust for a taxation year the tax paid by the trust for the year under Part XII.2.

Related Provisions: 18(1)(t) — Tax under Part XII.2 is deductible.

(31) Idem — The amount in respect of a taxation year of a trust that is deemed under subsection 210.2(3) to have been paid by a beneficiary under the trust on account of the beneficiary's tax under this Part shall, for the purposes of subsection (13), be deemed to be an amount in respect of the income of the trust for the year that has become payable by the trust to the beneficiary at the end of the year.

Interpretation Bulletins: IT-342R: Trusts — income payable to beneficiaries.

Selected Cases [s. 104]: *De Mond v. R.*, [1999] 4 C.T.C. 2007 (TCC) (Existence of trust did not prevent taxpayer from deducting partnership losses).

Definitions [s. 104]: "accumulating income" — 108(1); "allocable amount" — 104(15); "allocated gain" — 104(21.4); "allowable business investment loss" — 38(c), 248(1); "allowable capital loss" — 38(b), 248(1); "*alter ego* trust", "amount", "assessment" — 248(1); "aunt" — 252(2)(e); "beneficially interested" — 248(25); "beneficiary" — 104(1.1), (5.5), 108(1); "brother" — 252(2); "business" — 248(1); "business-income tax" — 104(22.4), 126(7); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255, *Interpretation Act* 35(1); "Canadian resource property" — 66(15), 248(1); "capital gain" — 39(1)(a), 248(1); "capital interest" — 108(1), 248(1); "capital loss" — 39(1), 248(1); "capital property" — 54, 104(4.1), 248(1); "child" — 252(1); "common-law partner" — 248(1); "consequence of the death", "consequence of whose death" — 248(8); "contributor" — 94(1); "controlled" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount" — 107(1)(e), 108(1); "created by the taxpayer's will" — 248(9.1); "deemed capital cost" — 104(5); "deemed gain" — 104(21.4)(a); "deferred profit sharing plan" — 147(1), 248(1); "depreciable property" — 13(21), 248(1); "designated beneficiary" — 210; "designated contributor" — 104(5.6), (5.7)(c); "designated income" — 210; "designation year" — 104(21.2); "disposition" — 248(1); "disposition day" — 104(5.3), (5.8); "dividend" — 248(1); "eligible taxable capital gains" — 108(1); "employee", "employee benefit plan", "employer", "employment" — 248(1); "estate" — 104(1), 248(1); "excluded property" — 108(1); "exempt beneficiary" — 104(5.4); "exempt property" — 108(1); "financially dependent" — 146(1.1); "foreign resource property" — 66(15), 248(1); "foreign retirement arrangement" — 248(1); "former spouse" — 252(3); "grandparent" — 252(2); "great-aunt", "great-uncle" — 252(2)(f); "income" — of trust 108(3); "income interest" — 108(1), 248(1); "individual" — 248(1); "*inter vivos* trust" — 108(1), 248(1); "inventory" — 248(1); "investment tax credit" — 127(9), 248(1); "joint spousal or common-law partner trust", "legal representative", "Minister" — 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q) [to be repealed], 132.2(3)(n) [draft], 248(1); "net capital gains" — 104(21.5)(d); "net capital losses" — 104(21.5)(e), 248(1); "net taxable capital gains" — 104(21.3); "NISA Fund No. 2" — 248(1); "non-business-income tax" — 104(22.4), 126(7); "non-resident" — 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "office" — 248(1); "parent" — 252(2); "payable" — 104(24); "person", "personal trust", "post-1971 spousal or common-law partner trust" — 248(1); "pre-1972 spousal trust", "preferred beneficiary" — 108(1); "preferred beneficiary's share" — 104(15); "prescribed", "property" — 248(1); "qualified farm property", "qualified small business corporation share" — 108(1), 110.6(1); "received" — 248(7); "registered charity", "registered pension plan" — 248(1); "related" — 104(5.7)(b), 251(2); "relevant period" — 104(5.7); "resident contributor" — 94(1); "resident in Canada" — 94(3)(a)(viii), 250; "series" — 248(10); "settlor" — 108(1); "share", "shareholder" — 248(1); "single amount" — 147.1(1); "sister" — 252(2); "small business corporation" —

248(1); "spouse" — 252(3); "substituted property" — 248(5); "superannuation or pension benefit" — 248(1); "tax treaty" — 248(1); "taxable Canadian corporation" — 89(1), 248(1); "taxable capital gain" — 38(a), 248(1); "taxable dividend" — 89(1), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 104(23)(a) [to be repealed], 249; "taxpayer" — 248(1); "testamentary trust" — 108(1), 248(1); "trust" — 104(1), (3), 108(1), 248(1); "trust-purpose income" — 104(29)(c); "uncle" — 252(2)(e); "vested indefeasibly" — 248(9.2).

105. (1) Benefits under trust — The value of all benefits to a taxpayer during a taxation year from or under a trust, irrespective of when created, shall, subject to subsection (2), be included in computing the taxpayer's income for the year except to the extent that the value

(a) is otherwise required to be included in computing the taxpayer's income for a taxation year; or

(b) has been deducted under paragraph 53(2)(h) in computing the adjusted cost base of the taxpayer's interest in the trust or would be so deducted if that paragraph

(i) applied in respect of the taxpayer's interest in the trust, and

(ii) were read without reference to clause 53(2)(h)(i.1)(B).

Related Provisions: 104(19) — Portion of dividends deemed received by beneficiary; 104(21) — Portion of capital gains deemed gain of beneficiary; 104(23) — Testamentary trusts; 107.3(4) — No application to qualifying environmental trusts; 108(5) — Interpretation.

Selected Cases [subsec. 105(1)]: *Cooper v. MNR*, [1989] 1 C.T.C. 66 (FCTD) (Interest-free loan to beneficiary by trust not taxable).

Interpretation Bulletins: IT-75R4: Scholarships, fellowships, bursaries, prizes, research grants and financial assistance; IT-243R4: Dividend refund to private corporations; IT-524: Trusts — flow-through of taxable dividends to a beneficiary — after 1987.

I.T. Technical News: 11 (payments made by a trust for the benefit of a minor beneficiary; taxable benefit for use of personal-use property).

(2) Upkeep, etc. — Such part of an amount paid by a trust out of income of the trust for the upkeep, maintenance or taxes of or in respect of property that, under the terms of the trust arrangement, is required to be maintained for the use of a tenant for life or a beneficiary as is reasonable in the circumstances shall be included in computing the income of the tenant for life or other beneficiary from the trust for the taxation year for which it was paid.

Related Provisions: 104(6) — Deduction in computing trust income; 104(13.1), (13.2) — Designation of distributed income by trust; 104(23) — Testamentary trusts; 104(29) — Amounts deemed to be payable to beneficiaries; 108(5) — Interpretation; 120.4(1)"split income"(c) — Certain trust income of children subject to income splitting tax.

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations; IT-342R: Trusts — income payable to beneficiaries; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-465R: Non-resident beneficiaries of trusts; IT-524: Trusts — flow-through of taxable dividends to a beneficiary — after 1987.

I.T. Technical News: 11 (taxable benefit for use of personal-use property).

Definitions [s. 105]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "beneficiary" — 108(1); "property" — 248(1); "taxation year" — 104(23)(a) [to be repealed], 249; "taxpayer" — 248(1); "trust" — 104(1), 108(1), 248(1), (3).

106. (1) Income interest in trust — Where an amount in respect of a taxpayer's income interest in a trust has been included in computing the taxpayer's income for a taxation year by reason of subsection (2) or 104(13), except to the extent that an amount in respect of that income interest has been deducted in computing the taxpayer's taxable income pursuant to subsection 112(1) or 138(6), there may be deducted in computing the taxpayer's income for the year the lesser of

(a) the amount so included in computing the taxpayer's income for the year, and

(b) the amount, if any, by which the cost to the taxpayer of the income interest exceeds the total of all amounts in respect of the interest that were deductible under this subsection in computing the taxpayer's income for previous taxation years.

Related Provisions: 106(1.1) — Cost of income interest; 108(1) — Exclusions from definition of "trust"; 115(1)(a)(iv) — Non-residents' taxable income earned in Canada; 128.1(10)"excluded right or interest"(j), (k) — Emigration — whether a deemed disposition of income interest.

Interpretation Bulletins: IT-385R2: Disposition of an income interest in a trust.

(1.1) Cost of income interest in a trust — The cost to a taxpayer of an income interest of the taxpayer in a trust is deemed to be nil unless

(a) any part of the interest was acquired by the taxpayer from a person who was the beneficiary in respect of the interest immediately before that acquisition; or

(b) the cost of any part of the interest would otherwise be determined not to be nil under paragraph 128.1(1)(c) or (4)(c).

Related Provisions: 108(1) — Exclusions from definition of "trust".

History: Subsec. 106(1.1) amended by 2001, c. 17, subsec. 79(1), applicable to 2000 *et seq.* The subsec. formerly read:

(1.1) For the purposes of subsection (1) and notwithstanding paragraph 69(1)(c), the cost to a taxpayer of an income interest in a trust, other than an interest acquired by the taxpayer from a person who was the beneficiary in respect of the interest immediately before the acquisition thereof by the taxpayer, shall be deemed to be nil.

Interpretation Bulletins: IT-385R2: Disposition of an income interest in a trust.

(2) Disposition by taxpayer of income interest — Where in a taxation year a taxpayer disposes of an income interest in a trust,

(a) except where subsection (3) applies to the disposition, there shall be included in computing the taxpayer's income for the year the amount, if any, by which

(i) the proceeds of disposition

exceed

(ii) where that interest includes a right to enforce payment of an amount by the trust, the amount in respect of that right that has been included in computing the taxpayer's income for a taxation year because of subsection 104(13);

(b) any taxable capital gain or allowable capital loss of the taxpayer from the disposition shall be deemed to be nil; and

(c) for greater certainty, the cost to the taxpayer of each property received by the taxpayer as consideration for the disposition is the fair market value of the property at the time of the disposition.

Related Provisions: 107.3(4) — No application to qualifying environmental trusts; 107.4(3)(n) — No disposition of income interest in trust on qualifying disposition; 108(1) — Exclusions from definition of "trust"; 115(1)(a)(iv) — Non-residents' taxable income earned in Canada.

History: Para. 106(2)(a) amended by 2001, c. 17, subsec. 79(2), applicable to 2000 *et seq.* The para. formerly read:

(a) except where subsection (3) is applicable, there shall be included in computing the taxpayer's income for the year the proceeds of the disposition;

Interpretation Bulletins: IT-385R2: Disposition of an income interest in a trust.

Advance Tax Rulings: ATR-3: Winding-up of an estate.

(3) Proceeds of disposition of income interest — For greater certainty, where at any time any property of a trust has been distributed by the trust to a taxpayer who was a beneficiary under the trust in satisfaction of all or any part of the taxpayer's income interest in the trust, the trust shall be deemed to have disposed of the property for proceeds of disposition equal to the fair market value of the property at that time.

Interpretation Bulletins: IT-385R2: Disposition of an income interest in a trust.

Definitions [s. 106]: "allowable capital loss" — 38(b), 248(1); "amount" — 248(1); "beneficiary" — 108(1); "cost" — 106(1.1); "income interest" — 108(1), 248(1); "person" — 248(1); "proceeds of disposition" — 54, 106(3); "property" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 104(23)(a) [to be repealed], 249; "taxpayer" — 248(1); "trust" — 104(1), 108(1), 248(1), (3).

107. (1) Disposition by taxpayer of capital interest — Where a taxpayer has disposed of all or any part of the taxpayer's capital interest in a trust,

(a) where the trust is a personal trust or a prescribed trust, for the purpose of computing the taxpayer's capital gain, if any, from the disposition, the adjusted cost base to the taxpayer of the interest or the part of the interest, as the case may be, immediately before the disposition is, unless any part of the interest has ever been acquired for consideration and, at the time of the disposition, the trust is non-resident, deemed to be the greater of

(i) its adjusted cost base, otherwise determined, to the taxpayer immediately before the disposition, and

(ii) the amount, if any, by which

(A) its cost amount to the taxpayer immediately before the disposition

exceeds

(B) the total of all amounts deducted under paragraph 53(2)(g.1) in computing its adjusted cost base to the taxpayer immediately before the disposition;

(b) [Repealed]

(c) where the taxpayer is not a mutual fund trust, the taxpayer's loss from the disposition is deemed to be the amount, if any, by which the amount of that loss otherwise determined exceeds the amount, if any, by which

(i) the total of all amounts each of which was received or would, but for subsection 104(19), have been received by the trust on a share of the capital stock of a corporation before the disposition (and, where the trust is a unit trust, after 1987) and

(A) where the taxpayer is a corporation,

(I) was a taxable dividend designated under subsection 104(19) by the trust in respect of the taxpayer, to the extent of the amount of the dividend that was deductible under section 112 or subsection 115(1) or 138(6) in computing the taxpayer's taxable income or taxable income earned in Canada for any taxation year, or

(II) was an amount designated under subsection 104(20) by the trust in respect of the taxpayer,

(B) where the taxpayer is another trust, was an amount designated under subsection 104(19) or (20) by the trust in respect of the taxpayer, and

(C) where the taxpayer is not a corporation, trust or partnership, was an amount designated under subsection 104(20) by the trust in respect of the taxpayer

exceeds

(ii) the portion of the total determined under subparagraph (i) that can reasonably be considered to have resulted in a reduction, under this paragraph, of the taxpayer's loss otherwise determined from a previous disposition of an interest in the trust, and

(d) where the taxpayer is a partnership, the share of a person (other than another partnership or a mutual fund trust) of any loss of the partnership from the disposition is deemed to be the amount, if any, by which that loss otherwise determined exceeds the amount, if any, by which

(i) the total of all amounts each of which is a dividend that was received or would, but for subsection 104(19), have been received by the trust on a share of the capital stock of a corporation before the disposition (and, where the trust is a unit trust, after 1987) and

(A) where the person is a corporation,

(I) was a taxable dividend that was designated under subsection 104(19) by the trust in respect of the taxpayer, to the extent of the amount of the dividend that was deductible under section 112 or subsection 115(1) or 138(6) in computing the person's taxable income or taxable income earned in Canada for any taxation year, or

(II) was a dividend designated under subsection 104(20) by the trust in respect of the taxpayer and was an amount received by the person,

(B) where the person is an individual other than a trust, was a dividend designated under subsection 104(20) by the trust in respect of the taxpayer and was an amount received by the person, and

(C) where the person is another trust, was a dividend designated under subsection 104(19) or (20) by the trust in respect of the taxpayer and was an amount received by the person (or that would have been received by the person if this Act were read without reference to subsection 104(19)),

exceeds

(ii) the portion of the total determined under subparagraph (i) that can reasonably be considered to have resulted in a reduction, under this paragraph, of the person's loss otherwise determined from a previous disposition of an interest in the trust.

Proposed Addition — 107(1)(e)

(e) if the capital interest is not a capital property of the taxpayer, notwithstanding the definition "cost amount" in subsection 108(1), its cost amount is deemed to be the amount, if any, by which

(i) the amount that would, if this Act were read without reference to this paragraph and the definition "cost amount" in subsection 108(1), be its cost amount exceeds

(ii) the total of all amounts, each of which is an amount in respect of the capital interest that has become payable to the taxpayer before the disposition and that would be described in subparagraph 53(2)(h)(i.1) if that subparagraph were read without reference to its subclause (B)(I).

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 95(1), will add para. 107(1)(e), applicable to dispositions that occur, and valuations made,

(a) after 2001 in respect of a qualified trust unit, as defined in subsec. 260(1), in respect of

(i) amounts that are described in para. 260(5.1)(b), as amended, or that would have been so described had no election been made under subsec. 192(10), and

(ii) amounts that are received by borrowers under securities lending arrangements from trusts; and

(b) after February 27, 2004, in any other case except that, subject to para. (a), the amendment does not apply to a disposition of property by a taxpayer after February 27, 2004 and before 2005 pursuant to an agreement in writing made by the taxpayer on or before February 27, 2004.

Technical Notes: Subsection 107(1) contains special rules applicable to the disposition of an interest in a trust. A trust can distribute non-taxable amounts, such as returns of capital and the non-taxable portion of a capital gain, to the holders of interests in the trust. Currently, the Act requires a return of capital to be accounted for by reducing the recipient's adjusted cost base of the interest in the trust. While the effect of this general rule is clear where the interest is held as capital property, it is not as clear where the property is held as inventory.

New paragraph 107(1)(e) applies when an interest in a trust that is not held as capital property is disposed of. The paragraph deems the cost amount of that interest to be the cost amount used for inventory valuation purposes less the total of all returns of capital and non-taxable capital gains received prior to the disposition. This is to recognize that all receipts for a property held on income account should be treated as either income or a reduction in the cost of the property to the holder.

The new paragraph applies to dispositions after 2001 if the trust interest is a qualified security, as defined in subsection 260(1) of the *Act*, and an SLA compensation payment or a dealer compensation payment, as defined in subsection 260(1) of the *Act* has been received in respect of the trust unit. Otherwise, the new rule applies to dispositions after February 27, 2004, except that it will not apply to a disposition to take place after February 27, 2004 and before 2005, if the taxpayer has on or before February 27, 2004 entered into an agreement in writing for the disposition of the interest.

Related Provisions: 40(3.7) — Application to non-resident individual; 104(19) — Taxable dividends flowed through trust; 107(1.1) — Cost of capital interest; 107.3(4) — No application to qualifying environmental trusts; 107.4(3)(b)(ii) — Application of stop-loss rule to qualifying disposition; 108(6) — Where terms of trust are varied; 108(7) — Meaning of "acquired for consideration"; 128.1(10)"excluded right or interest"(j), (k) — Emigration — whether a deemed disposition of capital interest; 248(1)"disposition"(d), (h) — Whether transfer by trust is a disposition of capital interest; 248(25.4) — Addition to cost of capital interest in trust.

History: The opening words of para. 107(1)(a) amended, para. 107(1)(b) and the closing words of para. 107(1)(d) repealed, by 2001, c. 17, subsecs. 80(1) to (3), applicable to 2000 *et seq.* except that, in respect of transfers in 2000 or 2001, for the purposes of subsec. 107(1), as amended, the residence of a transferee trust shall be determined without reference to s. 94, as it read before 2002. Those portions formerly read:

(a) where the trust is a personal trust or a prescribed trust, for the purpose of computing the taxpayer's taxable capital gain, if any, from the disposition, the adjusted cost base to the taxpayer of the interest, or the part of the interest, as the case may be, immediately before the disposition shall be deemed to be the greater of

. . . . .

(b) for greater certainty, for the purposes of computing the taxpayer's allowable capital loss, if any, from the disposition of the interest or part thereof, as the case may be, the adjusted cost base to the taxpayer of the interest or part thereof immediately before the disposition is the adjusted cost base to the taxpayer thereof immediately before that time as determined under this Act without reference to paragraph (a),

. . . . .

except that where the interest was an interest in an *inter vivos* trust not resident in Canada that was purchased by the taxpayer, paragraph (a) does not apply in respect of the disposition of all or any part thereof except where subsection (2) is applicable in respect of any distribution of property by the trust to the taxpayer in satisfaction of that interest or that part thereof, as the case may be.

Proposed Amendment — Application of S.C. 2001, c. 17, s. 80

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), s. 46, will amend the application of the amendments made to subsec. 107(1) by S.C. 2001, c. 17, subsecs. 80(1) to (3), deemed in force on June 14, 2001, to read as follows:

The opening words of para. 107(1)(a) amended, para. 107(1)(b) and the closing words of para. 107(1)(d) repealed, by 2001, c. 17, subsecs. 80(1) to (3), applicable to 2000 and subsequent taxation years except that, in respect of transfers in 2000, 2001 or 2002, for the purposes of subsec. 107(1), as amended, the residence of a transferee trust shall be determined without reference to s. 94, in its application to taxation years that began before 2003.

Technical Notes: Paragraph 107(1)(a) applies for the purpose of computing a taxpayer's taxable capital gain from the disposition of a capital interest in a personal trust (or a prescribed trust described in section 4800.1 of the *Income Tax Regulations*), except where the interest was an interest in a non-resident *inter vivos* trust purchased by the taxpayer and the disposition was not by way of a distribution to which subsection 107(2) applies. For this purpose the residency of the trust is to be determined without reference to section 94 as it read before 2002.

This amendment to the *Income Tax Amendments Act, 2000*, ensures that, in applying subsection 107(1) in respect of transfers that occur in 2000, 2001 or 2002, the residence of a transferee trust will be determined without reference to section 94, as it reads in its application to taxation years that began before 2003.

Para. 107(1)(c) amended, and para. (d) added by 1998, c. 19, subsec. 128(1), applicable to dispositions that occur after April 26, 1995 except that, for dispositions that occur before 1998, the first reference to "loss" in para. 107(1)(c) shall be read as "capital loss". Para. 107(1)(c) formerly read:

(c) where the taxpayer is a corporation and the interest is not an interest in a prescribed trust, its capital loss from the disposition at any time of the interest or part thereof shall be deemed to be the amount, if any, by which the amount of its loss otherwise determined exceeds the amount, if any, by which

(i) the total of all amounts each of which was received by the trust before that time (and, where the trust is a unit trust, after 1987) and designated by it under subsection 104(19) or (20) in respect of the corporation

exceeds

(ii) such portion of the total referred to in subparagraph (i) as can reasonably be considered to have resulted in a reduction under this paragraph of its capital loss otherwise determined from the disposition before that time of an interest in the trust,

Para. 107(1)(a) amended by 1995, c. 21, s. 35, applicable to taxation years that end after February 21, 1994. Para. (a) formerly read:

(a) where the trust is a personal trust or a prescribed trust, for the purposes of computing the taxpayer's taxable capital gain, if any, from the disposition of the interest or part thereof, as the case may be, the adjusted cost base to the taxpayer thereof immediately before the disposition shall be deemed to be an amount equal to the greater of the adjusted cost base to the taxpayer thereof otherwise determined immediately before that time and the cost amount to the taxpayer thereof immediately before that time,

Para. 107(1)(c) substituted by 1994, c. 21, s. 47, applicable to 1988 *et seq.* That para. formerly read:

(c) where the taxpayer is a corporation and the interest is not an interest in a prescribed trust, its capital loss from the disposition at any time of the interest or part thereof shall be deemed to be the amount of its loss otherwise determined minus the total of all amounts each of which is an amount received by the trust before that time and designated by it in respect of the corporation under subsection 104(19) or (20),

Para. 107(1)(a) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 76(1), to add "or a prescribed trust", applicable to dispositions occurring after 1987, other than a disposition of an interest in a trust, the units of which were listed on October 1, 1987 on a prescribed stock exchange, occurring before the earlier of

(a) January 1, 1991, and

(b) any date after October 1, 1987 on which a beneficial interest in the trust was or is issued.

Regulations: 4800.1 (prescribed trust).

Advance Tax Rulings: ATR-38: Distribution of all of the property of an estate.

(1.1) Cost of capital interest in a trust — The cost to a taxpayer of a capital interest of the taxpayer in a personal trust or a prescribed trust is deemed to be,

(a) where the taxpayer elected under subsection 110.6(19) in respect of the interest and the trust does not elect under that subsection in respect of any property of the trust, the taxpayer's cost of the interest determined under paragraph 110.6(19)(a); and

(b) in any other case, nil, unless

(i) any part of the interest was acquired by the taxpayer from a person who was the beneficiary in respect of the interest immediately before that acquisition, or

(ii) the cost of any part of the interest would otherwise be determined not to be nil under section 48 as it read in its application before 1993 or under paragraph 111(4)(e) or 128.1(1)(c) or (4)(c).

Proposed Addition — 107(1.1)(b)(iii)

(iii) the interest is a participating interest in a foreign investment entity.

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 24(1), will add subpara. 107(1.1)(b)(iii), applicable to taxation years that begin after 2002.

Technical Notes: Subsection 107(1.1) provides rules for computing the cost to a taxpayer of a capital interest in a personal trust or a prescribed trust. Paragraph 107(1.1)(b) provides that the cost is nil, except where certain conditions apply.

Paragraph 107(1.1)(b) is amended so that if a capital interest in a personal trust or prescribed trust is a participating interest in a foreign investment entity, the cost of the capital interest will not be deemed by that paragraph to be nil. For more details, see the commentary on new sections 94.1 to 94.4.

Related Provisions: 107.4(3)(k)–(m) — Cost of capital interest in trust following qualifying disposition; 107.4(4) — Fair market value of capital interest in trust; 248(25.4) — Addition to cost of capital interest in trust.

History: Subsec. 107(1.1) amended by 2001, c. 17, subsec. 80(4), applicable to 2000 *et seq.* The subsec. formerly read:

(1.1) For the purpose of subsection (1) and notwithstanding paragraph 69(1)(c), the cost to a taxpayer of a capital interest in a trust, other than an interest acquired by the taxpayer from a person who was the beneficiary in respect of the interest immediately before its acquisition by the taxpayer or an interest issued to the taxpayer for consideration paid by the taxpayer that is equal to the fair market value of the interest at the time of issuance, is deemed to be

(a) where the taxpayer elects under subsection 110.6(19) in respect of the interest and the trust does not elect under that subsection in respect of any property of the trust, the taxpayer's cost of the interest determined under paragraph 110.6(19)(a); and

(b) in any other case, nil.

Subsec. 107(1.1) amended by 1998, c. 19, subsec. 128(2), applicable to 1994 *et seq.* Subsec. 107(1.1) formerly read:

(1.1) For the purposes of subsection (1) and notwithstanding paragraph 69(1)(c), the cost to a taxpayer of a capital interest in a trust, other than an interest acquired by the taxpayer from a person who was the beneficiary in respect of the interest immediately before the acquisition thereof by the taxpayer or an interest issued to the taxpayer for consideration paid by the taxpayer that is equal to the fair market value thereof at the time of issuance, shall be deemed to be nil.

Regulations: 4800.1 (prescribed trust).

Proposed Addition — 107(1.2)

(1.2) Deemed fair market value — non-capital property — For the purpose of section 10, the fair market value at any time of a capital interest in a trust is deemed to be equal to the amount that is the total of

(a) the amount that would, if this Act were read without reference to this subsection, be its fair market value at that time, and

(b) the total of all amounts, each of which is an amount that would be described, in respect of the capital interest, in subparagraph 53(2)(h)(i.1) if that paragraph were read without reference to its subclause (B)(I), that has become payable to the taxpayer before that time.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 95(2), will add subsec. 107(1.2), applicable to dispositions that occur, and valuations made,

(a) after 2001 in respect of a qualified trust unit, as defined in subsec. 260(1), in respect of

(i) amounts that are described in para. 260(5.1)(b), as amended, or that would have been so described had no election been made under subsec. 192(10), and

(ii) amounts that are received by borrowers under securities lending arrangements from trusts; and

(b) after February 27, 2004, in any other case.

Technical Notes: Where an interest in a trust is held as an inventory, the fair market value of the interest at valuation for the purpose of section 10 can be affected by non-taxable distributions from the trust, potentially producing a tax loss to the holder of the interest even though the holder had suffered no economic loss (thanks to the non-taxable distribution the holder has already received).

New subsection 107(1.2) requires that at any particular valuation time the fair market value of an interest in a trust be deemed to be the total of the fair market value otherwise determined and the sum of any returns of capital and non-taxable capital gains payable before that time.

The new subsection applies to valuations of trust interest that take place after February 27, 2004, and to valuations after 2001 if the trust interest in question is a qualified security, as defined in subsection 260(1) of the Act, and an SLA compensation payment or a dealer compensation payment, as defined in subsection 260(1) of the Act, has been received in respect of the trust unit.

Related Provisions: 107.4(4) — Fair market value of vested capital interest in trust.

(2) Distribution by personal trust — Subject to subsections (2.001), (2.002) and (4) to (5), where at any time a property of a personal trust or a prescribed trust is distributed by the trust to a taxpayer who was a beneficiary under the trust and there is a resulting disposition of all or any part of the taxpayer's capital interest in the trust,

(a) the trust shall be deemed to have disposed of the property for proceeds of disposition equal to its cost amount to the trust immediately before that time;

(b) subject to subsection (2.2), the taxpayer is deemed to have acquired the property at a cost equal to the total of its cost amount to the trust immediately before

that time and the specified percentage of the amount, if any, by which

(i) the adjusted cost base to the taxpayer of the capital interest or part of it, as the case may be, immediately before that time (determined without reference to paragraph (1)(a))

exceeds

(ii) the cost amount to the taxpayer of the capital interest or part of it, as the case may be, immediately before that time;

(b.1) for the purpose of paragraph (b), the specified percentage is,

(i) where the property is capital property (other than depreciable property), 100%,

(ii) where the property is eligible capital property in respect of a business of the trust, 100%, and

(iii) in any other case, 75%;

Proposed Amendment — 107(2)(b.1)(iii)

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 95(4), will amend subpara. 107(2)(b.1)(iii) to replace "75%" with "50%", applicable to distributions made after December 20, 2002.

Technical Notes: Subsection 107(2) applies where a personal trust or a prescribed trust described in section 4800.1 of the Regulations distributes property to a beneficiary and there is a resulting disposition of part or all of the beneficiary's capital interest in the trust. Under paragraph 107(2)(a), the trust is deemed to have disposed of the property for proceeds of disposition equal to the property's cost amount. Under paragraph 107(2)(b), the property is deemed to have been acquired by the beneficiary for an amount equal to the total of the amount described in paragraph 107(2)(a) and a "bump" equal to the specified percentage of any excess of the adjusted cost base to the beneficiary of the capital interest over its cost amount (as defined by subsection 108(1)) to the beneficiary of the interest. Under subparagraph 107(2)(b.1)(iii), the specified percentage for property (other than non-depreciable capital property and eligible capital property) is 75%. Where subsection 107(2) applies, paragraph 107(2)(c) provides that the beneficiary is deemed to have disposed of all or part, as the case may be, of the capital interest for proceeds equal to the amount determined under that paragraph.

Subparagraph 107(2)(b.1)(iii) is amended to replace the reference to 75% with a reference to 50%, consistent with the current capital gains inclusion rate.

(c) the taxpayer is deemed to have disposed of all or part, as the case may be, of the capital interest for proceeds equal to the amount, if any, by which

Proposed Amendment — 107(2)(c) opening words

(c) the taxpayer's proceeds of disposition of the capital interest in the trust (or of the part of it) disposed of by the taxpayer on the distribution are deemed to be equal to the amount, if any, by which

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 95(5), will amend the opening words of para. 107(2)(c) to read as above, applicable to distributions made after 1999.

Technical Notes: Paragraph 107(2)(c) is amended to clarify that it applies to determine a taxpayer's proceeds of disposition of the capital interest in a trust (or of the part of it) disposed of by the taxpayer on a distribution, to which subsection 107(2) applies, of property by the trust.

(i) the cost at which the taxpayer would be deemed by paragraph (b) to have acquired the property if the specified percentage referred to in that paragraph were 100%

exceeds

(ii) the total of all amounts each of which is an eligible offset at that time of the taxpayer in respect of the capital interest or the part of it;

(d) where the property so distributed was depreciable property of a prescribed class of the trust and the amount that was the capital cost to the trust of that property exceeds the cost at which the taxpayer is deemed by this section to have acquired the property, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a)

(i) the capital cost to the taxpayer of the property shall be deemed to be the amount that was the capital cost of the property to the trust, and

(ii) the excess shall be deemed to have been allowed to the taxpayer in respect of the property under regulations made under paragraph 20(1)(a) in computing income for taxation years before the acquisition by the taxpayer of the property;

(d.1) the property is deemed to be taxable Canadian property of the taxpayer where

(i) the taxpayer is non-resident at that time,

(ii) that time is before October 2, 1996, and

(iii) the property was deemed by paragraph 51(1)(f), 85(1)(i) or 85.1(1)(a), subsection 87(4) or (5) or paragraph 97(2)(c) to be taxable Canadian property of the trust; and

Proposed Amendment — 107(2)(d.1)(iii)

(iii) the property was deemed by paragraph 51(1)(f), 85(1)(i) or 85.1(1)(a), subsection 85.1(5) or 87(4) or (5) or paragraph 97(2)(c) to be taxable Canadian property of the trust; and

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 95(7), will amend subpara. 107(2)(d.1)(iii) to read as above, applicable in determining after October 1, 1996 whether property is taxable Canadian property.

Technical Notes: Paragraph 107(2)(d.1) determines the tax consequences of the disposition of taxable Canadian property by a trust to a non-resident beneficiary before October 2, 1996. In the event that the property was explicitly deemed to have been taxable Canadian property under a number of specified provisions of the Act, paragraph 107(2)(d.1) ensures that it continues to be taxable Canadian property of the beneficiary.

Paragraph 107(2)(d.1) is amended by adding to the list of specified provisions, that explicitly deem property to be taxable Canadian property, a reference to subsection 85.1(5).

(e) [Repealed]

(f) where the property so distributed was eligible capital property of the trust in respect of a business of the trust,

(i) where the eligible capital expenditure of the trust in respect of the property exceeds the cost at which the taxpayer is deemed by this subsection to have acquired the property, for the purposes of sections 14, 20 and 24,

(A) the eligible capital expenditure of the taxpayer in respect of the property shall be deemed to be the amount that was the eligible capital expenditure of the trust in respect of the property, and

(B) ¾ of the excess shall be deemed to have been allowed under paragraph 20(1)(b) to the taxpayer in respect of the property in computing income for taxation years ending

(I) before the acquisition by the taxpayer of the property, and

(II) after the adjustment time of the taxpayer in respect of the business, and

(ii) for the purpose of determining after that time the amount required by paragraph 14(1)(b) to be included in computing the taxpayer's income in respect of any subsequent disposition of property of the business, there shall be added to the value otherwise determined for Q in the definition "cumulative eligible capital" in subsection 14(5) the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount, if any, determined for Q in that definition in respect of the business of the trust immediately before the distribution,

B is the fair market value of the property so distributed immediately before the distribution, and

C is the fair market value immediately before the distribution of all eligible capital property of the trust in respect of the business.

Related Provisions: 43(2) — No capital loss on payment out of trust's income or gains; 53(4) — Effect on ACB of trust interest; 69(11) — Deemed proceeds of disposition; 80.03(1), (3)(b) — Capital gain where subsec. 107(2) applies to trust interest on disposition following debt forgiveness; 104(4)(a.2) — Anti-avoidance rule where trust distributes property before death; 104(5.8) — Trust transfers; 107(2.01) — Principal residence distribution by personal trust; 107(2.1) — Application where trust elects out of 107(2); 107(4) — Where trust in favour of spouse or self; 107(4.1) — Where subsec. 75(2) applicable to trust; 107(4.2) — Application of subsec. (2.1) instead of subsec. (2); 107(5) — Distribution to non-resident; 107.4(3) — Rollover of property to trust where no change in beneficial ownership; 107.4(4) — Fair market value of capital interest in trust; 126(2.22) — Foreign tax credit to trust on disposition of property by non-resident beneficiary; 220(4.6)–(4.63) — Security for tax on distribution of taxable Canadian property to non-resident beneficiary; 248(1)"disposition"(d), (h) — Whether transfer by trust is a disposition of capital interest; 248(25.1) — Deemed taxable Canadian property retains status through trust-to-trust transfer.

History: The opening words of subsec. 107(2) amended by 2001, c. 17, subsec. 80(6), applicable to distributions made after 1999. The opening words formerly read:

(2) Subject to subsection (2.001), where at any time a property of a personal trust or a prescribed trust is distributed by the trust to a taxpayer who was a beneficiary under the trust in satisfaction of all or any part of the taxpayer's capital interest in the trust,

The opening words of subsec. 107(2) amended by the said c. 17, subsec. 80(5), applicable to distributions made after October 1, 1996. The opening words formerly read:

(2) Capital interest distribution by personal or prescribed trust — Where at any time any property of a personal trust or a prescribed trust has been distributed by the trust to a taxpayer who was a beneficiary under the trust in satisfaction of all or any part of the taxpayer's capital interest in the trust, the following rules apply:

Paras. 107(2)(b) and (c) amended, and para. (b.1) added, by the said c. 17, subsec. 80(7), applicable to distributions made after 1999. Paras. (b) and (c) formerly read:

(b) the taxpayer is, subject to subsection (2.2), deemed to have acquired the property at a cost equal to the total of its cost amount to the trust immediately before that time and the amount, if any, by which

(i) the adjusted cost base to the taxpayer of the capital interest or part thereof, as the case may be, immediately before that time as determined for the purposes of paragraph (1)(b)

exceeds

(ii) the cost amount to the taxpayer of the capital interest or part thereof, as the case may be, immediately before that time;

(c) the taxpayer shall be deemed to have disposed of all or part, as the case may be, of the capital interest for proceeds equal to the cost at which the taxpayer is deemed by paragraph (b) to have acquired the property, minus the amount of any debt assumed by the taxpayer or of any other legal obligation assumed by the taxpayer to pay any amount, if the distribution of the property to the taxpayer was conditional on the assumption by the taxpayer of the debt or obligation;

Para. 107(2)(d.1) added by the said c. 17, subsec. 80(8), applicable in determining after October 1, 1996 whether property is taxable Canadian property.

The portion of subpara. 107(2)(f)(ii) before the formula amended by the said c. 17, subsec. 80(9), applicable to taxation years that end after February 27, 2000. The portion formerly read:

(ii) for the purposes of determining after that time

(A) the amount deemed under subparagraph 14(1)(a)(v) to be the taxpayer's taxable capital gain, and

(B) the amount to be included under subparagraph 14(1)(a)(v) or paragraph 14(1)(b) in computing the taxpayer's income

in respect of any subsequent disposition of the property of the business, there shall be added to the amount otherwise determined for Q in the definition "cumulative eligible capital" in subsection 14(5) the amount determined by the formula

The opening words of para. 107(2)(b) amended by 1998, c. 19, subsec. 128(3), applicable to distributions made after 1993. The opening words formerly read:

(b) the taxpayer shall be deemed to have acquired the property at a cost equal to the total of its cost amount to the trust immediately before that time and the amount, if any, by which

Cl. 107(2)(f)(ii)(B) amended by 1995, c. 3, s. 29, applicable to distributions of property made after February 22, 1994. Cl. (B) formerly read:

(B) the amount to be included under paragraph 14(1)(b) in computing the income of the taxpayer

Para. 107(2)(e) repealed by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 43(1), applicable to distributions occurring after July 13, 1990. Para. (e) formerly read:

(e) where the property so distributed was eligible capital property of the trust in respect of a business of the trust,

(i) the references to "its cost amount" in paragraphs (a) and (b) shall be read as references to "4/3 of its cost amount", and

(ii) where the eligible capital expenditure of the trust in respect of the property exceeds the cost at which the taxpayer is deemed by this subsection to have acquired the property, for the purposes of sections 14, 20 and 24,

(A) the eligible capital expenditure of the taxpayer in respect of the property shall be deemed to be the amount that was the eligible capital expenditure of the trust in respect of the property, and

(B) 3/4 of the excess shall be deemed to have been allowed to the taxpayer in respect of the property under paragraph 20(1)(b) in computing income for taxation years ending

(I) before the acquisition by the taxpayer of the property, and

(II) after the adjustment time of the taxpayer in respect of the business.

Para. 107(2)(f) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 43(2), applicable to distributions occurring after 1987.

Para. 107(2)(e) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 76(2), applicable with respect to distributions made after July 13, 1990.

Regulations: 3200 (prescribed stock exchange, for application before 1991); 4800.1 (prescribed trust).

Interpretation Bulletins: IT-120R6: Principal residence; IT-209R: *Inter vivos* gifts of capital property to individuals directly or through trusts; IT-349R3: Intergenerational transfers of farm property on death; IT-393R2: Election re tax on rents and timber royalties — non-residents.

Advance Tax Rulings: ATR-38: Distribution of all of the property of an estate; ATR-70: Distribution of taxable Canadian property by a trust to a non-resident.

(2.001) No rollover on election by a trust — Where a trust makes a distribution of a property to a beneficiary of the trust in full or partial satisfaction of the beneficiary's capital interest in the trust and so elects in prescribed form filed with the Minister with the trust's return of income for its taxation year in which the distribution

occurred, subsection (2) does not apply to the distribution if

(a) the trust is resident in Canada at the time of the distribution;

(b) the property is taxable Canadian property; or

(c) the property is capital property used in, eligible capital property in respect of, or property described in the inventory of, a business carried on by the trust through a permanent establishment (as defined by regulation) in Canada immediately before the time of the distribution.

Related Provisions: 107(2.002) — Election by beneficiary; 248(1)"taxable Canadian property"(m)–(q) — Extended meaning of TCP.

History: Subsec. 107(2.001) added by 2001, c. 17, subsec. 80(10), applicable to distributions made after October 1, 1996, except that for distributions made from a trust before June 14, 2001, an election under subsec. 107(2.001) is deemed to have been made in a timely manner if it is made on or before the trust's filing-due date for the taxation year that includes June 14, 2001.

Regulations: No regulation defining "permanent establishment" as yet (though Reg. 8201 would be the logical choice).

(2.002) No rollover on election by a beneficiary — Where a non-resident trust makes a distribution of a property (other than a property described in paragraph (2.001)(b) or (c)) to a beneficiary of the trust in full or partial satisfaction of the beneficiary's capital interest in the trust and the beneficiary makes an election under this subsection in prescribed form filed with the Minister with the beneficiary's return of income for the beneficiary's taxation year in which the distribution occurred,

(a) subsection (2) does not apply to the distribution; and

(b) for the purpose of subparagraph (1)(a)(ii), the cost amount of the interest to the beneficiary is deemed to be nil.

Related Provisions: 94(3)(a)(iv) [proposed] — Application to trust deemed resident in Canada; 107(2.001) — Election by trust.

History: Subsec. 107(2.002) added by 2001, c. 17, subsec. 80(10), applicable to distributions made after 1999, except that for distributions made to a beneficiary before June 14, 2001, an election under subsec. 107(2.002) is deemed to have been made in a timely manner if it is made on or before the beneficiary's filing-due date for the taxation year that includes June 14, 2001.

(2.01) Distribution of principal residence — Where property that would, if a personal trust had designated the property under paragraph (c.1) of the definition "principal residence" in section 54, be a principal residence (within the meaning of that definition) of the trust for a taxation year, is at any time (in this subsection referred to as "that time") distributed by the trust to a taxpayer in circumstances to which subsection (2) applies and the trust so elects in its return of income for the taxation year that includes that time,

(a) the trust shall be deemed to have disposed of the property immediately before the particular time that is immediately before that time for proceeds of disposition equal to the fair market value of the property at that time; and

(b) the trust shall be deemed to have reacquired the property at the particular time at a cost equal to that fair market value.

History: The opening words of subsec. 107(2.01) amended by 2001, c. 17, subsec. 80(11), applicable to distributions made after 1999. The opening words formerly read:

(2.01) Where a property that would, if a personal trust had designated the property under paragraph (c.1) of the definition "principal residence" in section 54, be a principal residence (within the meaning of that definition) of the trust for a taxation year, is at any time (in this subsection referred to as "that time") distributed by the trust to a taxpayer in circumstances to which subsection (2) applies and subsection (4) does not apply and the trust so elects in its return of income under this Part for the taxation year that includes that time,

That portion of subsec. 107(2.01) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 43(3), applicable to distributions occurring after 1990, except that an election by a trust (other than a trust described in subsec. 70(6) or 73(1)) to have subsec. 107(2.01), as amended, apply to a distribution by the trust occurring after 1990 and before June 11, 1993 may be made by the trust by notifying the Minister of National Revenue in writing before December 11, 1993. That portion formerly read:

(2.01) Principal residence distribution by spousal trust — Where at any time (in this subsection referred to as "that time") a property has been distributed by a trust described in subsection 70(6) or 73(1) to a taxpayer in circumstances in which subsection (2) applies and subsection (4) does not apply and the property would, if the trust had designated the property under paragraph 54(g), be a principal residence (within the meaning assigned by that paragraph) of the trust for a taxation year, the following rules apply where the trust so elects in its return of income under this Part for the taxation year that includes that time:

Subsec. 107(2.01) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 76(3), applicable to distributions occurring after May 9, 1985, except that an election to have the subsec. apply in respect of a distribution by trust occurring after May 9, 1985 and before December 18, 1991, that is made by the trust so notifying the Minister of National Revenue in writing before April 1992 shall be deemed to have been made in accordance with the subsec.; and, notwithstanding subsecs. 152(4) to (5), such assessments of tax, interest and penalties shall be made as are necessary to give effect to the election.

Interpretation Bulletins: IT-120R6: Principal residence.

(2.1) Other distributions — Where at any time a property of a trust is distributed by the trust to a beneficiary under the trust, there would, if this Act were read without reference to paragraphs (h) and (i) of the definition "disposition" in subsection 248(1), be a resulting disposition of all or any part of the beneficiary's capital interest in the trust (which interest or part, as the case may be, is in this subsection referred to as the "former interest") and the rules in subsection (2) and section 132.2 do not apply in respect of the distribution,

(a) the trust is deemed to have disposed of the property for proceeds equal to its fair market value at that time;

(b) the beneficiary is deemed to have acquired the property at a cost equal to the proceeds determined under paragraph (a);

(c) subject to paragraph (e), the beneficiary's proceeds of disposition of the portion of the former interest disposed of by the beneficiary on the distribution are deemed to be equal to the amount, if any, by which

(i) the proceeds determined under paragraph (a) (other than the portion, if any, of the proceeds that is a payment to which paragraph (h) or (i) of the definition "disposition" in subsection 248(1) applies),

exceed the total of

(ii) where the property is not a Canadian resource property or foreign resource property, the amount, if any, by which

(A) the fair market value of the property at that time

exceeds the total of

(B) the cost amount to the trust of the property immediately before that time, and

(C) the portion, if any, of the excess that would be determined under this subparagraph if this

subparagraph were read without reference to this clause that represents a payment to which paragraph (h) or (i) of the definition "disposition" in subsection 248(1) applies, and

(iii) all amounts each of which is an eligible offset at that time of the taxpayer in respect of the former interest;

(d) notwithstanding paragraphs (a) to (c), where the trust is non-resident at that time, the property is not described in paragraph (2.001)(b) or (c) and, if this Act were read without reference to this paragraph, there would be no income, loss, taxable capital gain or allowable capital loss of a taxpayer in respect of the property because of the application of subsection 75(2) to the disposition at that time of the property,

(i) the trust is deemed to have disposed of the property for proceeds equal to the cost amount of the property,

(ii) the beneficiary is deemed to have acquired the property at a cost equal to the fair market value of the property, and

(iii) the beneficiary's proceeds of disposition of the portion of the former interest disposed of by the beneficiary on the distribution are deemed to be equal to the amount, if any, by which

(A) the fair market value of the property

exceeds the total of

(B) the portion, if any, of the amount of the distribution that is a payment to which paragraph (h) or (i) of the definition "disposition" in subsection 248(1) applies, and

(C) all amounts each of which is an eligible offset at that time of the taxpayer in respect of the former interest; and

(e) where the trust is a mutual fund trust, the distribution occurs in a taxation year of the trust before its 2003 taxation year, the trust has elected under subsection (2.11) in respect of the year and the trust so elects in respect of the distribution in prescribed form filed with the trust's return of income for the year,

(i) this subsection shall be read without reference to paragraph (c), and

(ii) the beneficiary's proceeds of disposition of the portion of the former interest disposed of by the beneficiary on the distribution are deemed to be equal to the amount determined under paragraph (a).

Related Provisions: 43(2) — No capital loss on payment out of trust's income or gains; 53(2)(h)(i.2) — Reduction in ACB of interest in trust; 94(3)(a)(iii) [proposed] — Application to trust deemed resident in Canada; 107(2.11) — Election not to flow out gains to beneficiaries; 107(4.01) — 107(2.1) applies to distribution of specified participating interest; 107(4.2) — Application of subsec. (2.1); 107(5) — 107(2.1) applies to capital distribution to non-resident beneficiary; 107.4(4) — Fair market value of capital interest in trust; 248(1)"disposition"(d), (h) — Whether transfer by trust is a disposition of capital interest.

History: Subsec. 107(2.1) amended by 2001, c. 17, subsec. 80(12), applicable to distributions made after 1999, except that

(a) the amendment does not apply to distributions made before March 2000 in satisfaction of rights described in subsec. 52(6) that were acquired before 2000; and

(b) for distributions made from a trust before June 14, 2001, an election under that subsec. 107(2.1) is deemed to have been made in a timely manner if it is made on or before the trust's filing-due date for the taxation year that includes June 14, 2001.

Subsec. 107(2.1) formerly read:

(2.1) Where at any time any property of a trust is distributed by the trust to a beneficiary under the trust in satisfaction of all or any part of the beneficiary's capital interest in the trust or in satisfaction of a right described in subsection 52(6), and subsection (2) does not apply in respect of the distribution, notwithstanding any other provision of this Act other than section 132.2,

(a) the trust shall be deemed to have disposed of the property for proceeds equal to its fair market value at that time;

(b) the beneficiary shall be deemed to have acquired the property at a cost equal to that fair market value; and

(c) the beneficiary shall be deemed to have disposed of the interest or part thereof in the trust or the right, as the case may be, for proceeds of disposition equal to the cost at which the beneficiary is deemed by paragraph (b) to have acquired the property.

The opening words of subsec. 107(2.1) amended by 1998, c. 19, subsec. 128(4), applicable to distributions made after June 1994. The opening words formerly read:

(2.1) Where at any time any property of a trust has been distributed by the trust to a beneficiary under the trust in satisfaction of all or any part of the beneficiary's capital interest in the trust or in satisfaction of a right described in subsection 52(6) and subsection (2) is not applicable in respect of the distribution, notwithstanding any other provision of this Act, the following rules apply:

(2.11) Gains not distributed to beneficiaries — Where a trust makes one or more distributions of property in a taxation year in circumstances in which subsection (2.1) applies (or, in the case of property distributed after October 1, 1996 and before 2000, in circumstances in which subsection (5) applied)

(a) where the trust is resident in Canada at the time of each of those distributions and has so elected in prescribed form filed with the trust's return for the year or a preceding taxation year, the income of the trust for the year (determined without reference to subsection 104(6)) shall, for the purposes of subsections 104(6) and (13), be computed without regard to all of those distributions to non-resident persons (including a partnership other than a Canadian partnership); and

(b) where the trust is resident in Canada at the time of each of those distributions and has so elected in prescribed form filed with the trust's return for the year or a preceding taxation year, the income of the trust for the year (determined without reference to subsection 104(6)) shall, for the purposes of subsections 104(6) and (13), be computed without regard to all of those distributions.

Proposed Amendment — 107(2.11)

Letter from Dept. of Finance, March 15, 2002:

Dear [xxx]

Thank you for your letters of April 4, 2001 and October 19, 2001, concerning the application of the *Income Tax Act* ("the Act") to a distribution of property by a mutual fund trust. I would also like to acknowledge your conversations with Mr. Grant Nash of this Division.

You have raised an issue concerning the possible taxation of income at the trust level where a trust, that has elected under subsection 107(2.11) in respect of the distribution of its property, makes a cash payment to unitholders out of the trust's income or capital gains. You submit that the effect of the election under subsection 107(2.11) extends to all of the trust's distributions, including cash payments to beneficiaries out of trust income or capital gains. If, as a result of subsection 107(2.11), the payments out of income or capital gains were ignored for the purposes of subsection 104(6) and (13), you submit that the corresponding amounts of income and capital gains would be recognized at the trust level. We confirm that such a result would be unintended.

The purpose of subsection 107(2.11) is to provide trusts with a mechanism of ensuring that capital gains, that arguably would otherwise be considered to be paid out to a unitholder upon a distribution of property from the trust to the unitholder, are not paid out on the distribution. Given this policy, the provision should generally apply only to distribu-

tions of property that would be expected to result in the realization at the trust level of such capital gains. Accordingly, the effect of an election under subsection 107(2.11) should not extend to distributions of cash denominated in Canadian dollars.

We are prepared to recommend amendments to subsection 107(2.11) of the Act to clarify its intended application in the circumstances described above. In addition, we are prepared to recommend that such an amendment apply to distributions of property made by a mutual fund trust after 2001, and, where the trust so elects, to distributions made by a mutual fund trust after 1999.

Thank you for writing.

Yours sincerely,

Brian Ernewein

Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 43(2) — No capital loss on payment out of trust's income or gains; 107(2.12) — Whether election applies for 2003 and later years.

History: Subsec. 107(2.11) added by 2001, c. 17, subsec. 80(12), applicable to distributions made after October 1, 1996, except that for distributions made from a trust before June 14, 2001, an election under subsec. 107(2.11) is deemed to have been made in a timely manner if it is made on or before the trust's filing-due date for the taxation year that includes June 14, 2001.

(2.12) Election — subsec. (2.11) — An election made under subsection (2.11) by a mutual fund trust is deemed, for the trust's 2003 and subsequent taxation years, not to have been made if

(a) the election is made after December 20, 2000 and applies to any taxation year that ends before 2003; and

(b) the proceeds of disposition of a beneficiary's interest in the trust have been determined under paragraph (2.1)(e).

History: Subsec. 107(2.12) added by 2001, c. 17, subsec. 80(12), in force June 14, 2001.

(2.2) Flow-through entity — Where at any time before 2005 a beneficiary under a trust described in paragraph (h), (i) or (j) of the definition "flow-through entity" in subsection 39.1(1) received a distribution of property from the trust in satisfaction of all or a portion of the beneficiary's interests in the trust and the beneficiary files with the Minister on or before the beneficiary's filing-due date for the taxation year that includes that time an election in respect of the property in prescribed form, there shall be included in the cost to the beneficiary of a particular property (other than money) received by the beneficiary as part of the distribution of property the least of

(a) the amount, if any, by which the beneficiary's exempt capital gains balance (as defined in subsection 39.1(1)) in respect of the trust for the beneficiary's taxation year that includes that time exceeds the total of all amounts each of which is

(i) an amount by which a capital gain is reduced under section 39.1 in the year because of the beneficiary's exempt capital gains balance in respect of the trust,

(ii) twice an amount by which a taxable capital gain is reduced under section 39.1 in the year because of the beneficiary's exempt capital gains balance in respect of the trust, or

(iii) an amount included in the cost to the beneficiary of another property received by the beneficiary at or before that time in the year because of this subsection,

(b) the amount by which the fair market value of the particular property at that time exceeds the adjusted cost base to the trust of the particular property immediately before that time, and

(c) the amount designated in respect of the particular property in the election.

Related Provisions: 39.1(1)"exempt capital gains balance"F(a) — Exempt capital gains balance of flow-through entity.

History: Subpara. 107(2.2)(a)(ii) amended by 2001, c. 17, subsec. 80(13), to replace the reference to the expression "4/3 of" with a reference to the word "twice", applicable to taxation years that end after February 27, 2000 except that, for a beneficiary's taxation year that includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, the reference to the word "twice" shall be read as a reference to the expression "the fraction that is the reciprocal of the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the beneficiary for the year, multiplied by".

Subsec. 107(2.2) added by 1998, c. 19, subsec. 128(5), applicable to distributions made after 1993, and a prescribed form filed under subsec. 107(2.2) before January 1999 is deemed to be filed on time.

(3) [Repealed]

History: Subsec. 107(3) repealed by 2001, c. 17, subsec. 80(14), applicable to distributions made after 1999. The subsec. formerly read:

(3) Cost of property other than non-depreciable capital property — Where the property referred to in subsection (2) that was distributed by a trust to a taxpayer was property other than capital property that was not depreciable property, for the purpose of determining the cost to the taxpayer of the property under paragraph (2)(b) (except for the purposes of that paragraph as it applies to determine the taxpayer's proceeds of disposition of the taxpayer's capital interest under paragraph (2)(c)), the reference in paragraph (2)(b) to "the amount" shall be read as a reference to "½ of the amount".

(4) Trusts in favour of spouse, common-law partner or self — Subsection (2.1) applies (and subsection (2) does not apply) at any time to property distributed to a beneficiary by a trust described in paragraph 104(4)(a) where

(a) the beneficiary is not

(i) in the case of a post-1971 spousal or common-law partner trust, the spouse or common-law partner referred to in paragraph 104(4)(a),

(ii) in the case of an *alter ego* trust, the taxpayer referred to in paragraph 104(4)(a), and

(iii) in the case of a joint spousal or common-law partner trust, the taxpayer, spouse or common-law partner referred to in paragraph 104(4)(a); and

(b) a taxpayer, spouse or common-law partner referred to in subparagraph (a)(i), (ii), or (iii), as the case may be, is alive on the day of the distribution.

Related Provisions: 53(4) — Effect on ACB of share, partnership interest or trust interest; 104(6) — Deduction in computing income of trust; 107(5) — Distribution to non-resident beneficiary; 108(1) — "accumulating income".

History: Subsec. 107(4) amended by 2001, c. 17, subsec. 80(15), applicable to distributions made after 1999. The subsec. formerly read:

(4) Where trust in favour of spouse [or common-law partner] — Where

(a) at any time property of a trust is distributed by the trust to a beneficiary in circumstances to which subsection (2) would, but for this subsection, apply,

(a.1) the trust is described in paragraph 104(4)(a),

(a.2) the property so distributed by the trust was capital property, a Canadian resource property, a foreign resource property or property that was land included in the inventory of the trust,

(b) the taxpayer to whom the property is so distributed is a person other than the spouse or common-law partner referred to in paragraph 104(4)(a) in respect of the trust, and

(c) that spouse or common-law partner is alive on the day the property is so distributed,

notwithstanding paragraphs (2)(a) to (c), the following rules apply:

(d) the trust shall be deemed to have disposed of the property and to have received proceeds of disposition therefor equal to its fair market value at that time,

(e) the taxpayer shall be deemed to have acquired the property at a cost equal to those proceeds, and

(f) the taxpayer shall be deemed to have disposed of all or part, as the case may be, of the taxpayer's capital interest in the trust for proceeds of disposition equal to the cost at which, but for this subsection, the taxpayer would be deemed by paragraph (2)(b) to have acquired the property, minus the amount of any debt assumed by the taxpayer or of any other legal obligation assumed by the taxpayer to pay any amount, if the distribution of the property to the taxpayer was conditional on the assumption by the taxpayer of the debt or obligation.

Subsec. 107(4) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

All that portion of subsec. 107(4) preceding para. (e) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 43(4), applicable to distributions occurring after December 20, 1991 except that para. (d) as amended does not apply to distributions occurring before 1993. That portion formerly read:

(4) Where trust in favour of spouse — Where the trust referred to in subsection (2) was a trust described in paragraph 104(4)(a) and

(a) the property so distributed by the trust was capital property, a Canadian resource property, a foreign resource property or property that was land included in the inventory of the trust,

(b) the taxpayer to whom the property was so distributed was a person other than the spouse, and

(c) the spouse was alive at the time the property was so distributed,

notwithstanding paragraphs (2)(a) to (c), the following rules apply:

(d) the trust shall be deemed to have disposed of the property and to have received proceeds of disposition therefor equal to,

(i) where the property was depreciable property of the trust of a prescribed class and the fair market value of that property at that time exceeds its cost amount to the trust at that time, the amount of that cost amount plus ½ of the amount of the excess,

(ii) where the property was depreciable property of the trust of a prescribed class and the cost amount of that property to the trust at that time exceeds its fair market value at that time, the amount of that fair market value plus ½ of the amount of the excess, and

(iii) in any other case, its fair market value at that time,

Interpretation Bulletins: IT-120R6: Principal residence; IT-286R2: Trusts — amount payable; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-465R: Non-resident beneficiaries of trusts.

Proposed Addition — 107(4.01)

(4.01) Specified participating interest — Subsection (2.1) applies (and subsection (2) does not apply) at any time to a distribution to a beneficiary by a trust of a property that is at that time a specified participating interest.

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 24(2), will add subsec. 107(4.01), applicable to distributions that occur in taxation years that begin after 2002.

Technical Notes: New subsection 107(4.01) provides that subsection 107(2.1) applies (and subsection 107(2) does not apply) to a distribution to a beneficiary by a trust of a property that is a specified participating interest. The concept of a specified participating interest is generally relevant in the context of the foreign investment entity rules in sections 94.1 to 94.4. For more information on the definition "specified participating interest" in subsection 248(1), see the commentary on that definition.

(4.1) Where subsec. 75(2) applicable to trust — Subsection (2.1) applies (and subsection (2) does not apply) in respect of a distribution of any property of a particular personal trust or prescribed trust by the particular trust to a taxpayer who was a beneficiary under the particular trust where

(a) the distribution was in satisfaction of all or any part of the taxpayer's capital interest in the particular trust;

(b) subsection 75(2) was applicable at a particular time in respect of any property of

(i) the particular trust, or

(ii) a trust the property of which included a property that, through one or more dispositions to which subsection 107.4(3) applied, became a property of the particular trust, and the property was not, at any time after the particular time and before the distribution, the subject of a disposition for proceeds of disposition equal to the fair market value of the property at the time of the disposition;

(c) the taxpayer was neither

(i) the person (other than a trust described in subparagraph (b)(ii)) from whom the particular trust directly or indirectly received the property, or property for which the property was substituted, nor

(ii) an individual in respect of whom subsection 73(1) would be applicable on the transfer of capital property from the person described in subparagraph (i); and

(d) the person described in subparagraph (c)(i) was in existence at the time the property was distributed.

Related Provisions: 248(5) — Substituted property.

History: Subsec. 107(4.1) amended by 2001, c. 17, subsec. 80(17), applicable to distributions made after March 16, 2001. The subsec. formerly read:

(4.1) Where any property of a personal trust or a prescribed trust is distributed by the trust to a taxpayer who was a beneficiary under the trust in satisfaction of all or any part of the taxpayer's capital interest in the trust and

(a) subsection 75(2) was applicable at any time in respect of any property of the trust,

(b) the taxpayer was a person other than

(i) the person from whom the trust directly or indirectly received the property, or property for which the property was substituted, or

(ii) an individual in respect of whom subsection 73(1) would be applicable on the transfer of capital property from the person described in subparagraph (i), and

(c) the person described in subparagraph (b)(i) was alive at the time the property was distributed,

subsection (2.1) applies (and subsection (2) does not apply) in respect of the distribution.

The closing words of subsec. 107(4.1) amended by the said c. 17, subsec. 80(16), applicable to distributions made after 1999. The closing words formerly read:

notwithstanding paragraphs (2)(a) to (c), the rules described in paragraphs (4)(d) to (f) apply.

Regulations: 4800.1 (prescribed trust).

Proposed Addition — 107(4.2)

(4.2) Distribution of property received on qualifying disposition — Subsection (2.1) applies (and subsection (2) does not apply) at any time to property distributed after December 20, 2002 to a beneficiary by a personal trust or a trust prescribed for the purpose of subsection (2), if

(a) at a particular time before December 21, 2002 there was a qualifying disposition (within the meaning assigned by subsection 107.4(1)) of the property, or of other property for which the property is substi-

tuted, by a particular partnership or a particular corporation, as the case may be, to a trust; and

(b) the beneficiary is neither the particular partnership nor the particular corporation.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 95(24), will add subsec. 107(4.2), applicable to distributions made after December 20, 2002.

Technical Notes: New subsection 107(4.2) prevents a tax-deferred distribution of property after December 20, 2002 from a personal trust or a trust prescribed for the purpose of subsection 107(2) to a beneficiary of the trust if specified conditions are met. The specified conditions are that:

- at a particular time before December 21, 2002 there was a qualifying disposition (within the meaning assigned by subsection 107.4(1)) of the property, or of other property for which the property is substituted, by a particular partnership or a particular corporation, as the case may be, to any trust; and
- the beneficiary is neither the particular partnership nor the particular corporation.

Where the specified conditions are met, subsection 107(2.1) will apply so that the trust is deemed to have disposed of the property for proceeds equal to the property's fair market value at the time of distribution.

Related Provisions: 248(5) — Substituted property.

(5) Distribution to non-resident — Subsection (2.1) applies (and subsection (2) does not apply) in respect of a distribution of a property (other than a share of the capital stock of a non-resident-owned investment corporation or property described in any of subparagraphs 128.1(4)(b)(i) to (iii)) by a trust resident in Canada to a non-resident taxpayer (including a partnership other than a Canadian partnership) in satisfaction of all or part of the taxpayer's capital interest in the trust.

Proposed Amendment — 107(5)

(5) Distribution to non-resident — Subsection (2.1) applies (and subsection (2) does not apply) in respect of a distribution of a property (other than a share of the capital stock of a non-resident-owned investment corporation or property described in any of subparagraphs 128.1(4)(b)(i) to (iii)) by a trust to a non-resident taxpayer (including a partnership other than a Canadian partnership) in satisfaction of all or part of the taxpayer's capital interest in the trust.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 95(24), will amend subsec. 107(5) to read as above, applicable to distributions made after February 27, 2004.

Technical Notes: Subsection 107(5) applies to the distribution of property (other than shares in non-resident-owned investment corporations or property described in any of subparagraphs 128.1(4)(b)(i) to (iii))) by a trust resident in Canada to a non-resident beneficiary (note that new paragraph 94(3)(a) does not apply in determining the residency of the beneficiary where it is a trust). In these circumstances, the rollover under subsection 107(2) is not available and instead subsection 107(2.1) will apply to determine the Canadian income tax consequences of the distribution to the trust and the beneficiary.

Subsection 107(5) is amended so that it applies whether the trust making the distribution is resident in Canada or not.

Related Provisions: 53(4) — Effect on ACB of share, partnership interest or trust interest; 94(4)(h) [proposed] — Deeming non-resident trust to be resident in Canada does not apply to 107(5); 107(2.11) — Election for gain not to be flowed out to beneficiary; 107(5.1) — Gain does not increase instalment requirements; 126(2.22) — Foreign tax credit to trust on disposition of property by non-resident beneficiary; 212(11) — Payment to non-resident beneficiary deemed paid as income of trust for withholding tax purposes; 220(4.6)–(4.63) — Security for tax on distribution of taxable Canadian property to non-resident beneficiary.

History: Subsec. 107(5) amended by 2001, c. 17, subsec. 80(18), applicable to distributions made after October 1, 1996, except that for distributions made after October 1, 1996 and before 2000, subsec. 107(5) shall be read as follows:

(5) Where subsection (2) applies to a distribution at any time by a trust resident in Canada of a property (other than a share of the capital stock of a non-resident-owned investment corporation or property described in any of subparagraphs 128.1(4)(b)(i) to (iii)) to a non-resident taxpayer (including a partnership other than a Canadian partnership) who is a beneficiary under the trust in satisfaction of the taxpayer's capital interest in the trust, notwithstanding paragraphs (2)(a) to (c),

(a) the trust is deemed to have disposed of the property for proceeds equal to its fair market value at that time;

(b) the taxpayer is deemed to have acquired the property at a cost equal to that fair market value; and

(c) the taxpayer is deemed to have disposed of all or part, as the case may be, of the taxpayer's capital interest in the trust, for proceeds of disposition equal to the adjusted cost base to the taxpayer of that interest or part of the interest, as the case may be, immediately before that time.

Subsec. 107(5) formerly read:

(5) Where subsection (2) applies to the distribution by a trust of any property (other than a Canadian resource property, excluded property or property that would, if at no time in the taxation year of the trust in which it is so distributed the trust is resident in Canada, be taxable Canadian property) to a non-resident taxpayer (including a partnership other than a Canadian partnership) who is a beneficiary under the trust, notwithstanding paragraphs (2)(a) to (c),

(a) the trust shall be deemed to have disposed of the property for proceeds equal to its fair market value at that time;

(b) the taxpayer shall be deemed to have acquired the property at a cost equal to that fair market value; and

(c) the taxpayer shall be deemed to have disposed of all or part, as the case may be, of the taxpayer's interest in the trust, for proceeds of disposition equal to the adjusted cost base to the taxpayer of the interest or part thereof, as the case may be, immediately before the property was so distributed.

That portion of subsec. 107(5) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 43(5), applicable to distributions occurring after 1991. That portion formerly read:

(5) Where subsection (2) is applicable in respect of the distribution by a trust of any property (other than a Canadian resource property or property that is or would, if at no time in the taxation year of the trust in which it was so distributed the trust had been resident in Canada, be taxable Canadian property) to a non-resident taxpayer (including a partnership other than a Canadian partnership) who was a beneficiary under the trust, notwithstanding paragraphs (2)(a) to (c), the following rules apply:

Advance Tax Rulings: ATR-70: Distribution of taxable Canadian property by a trust to a non-resident.

(5.1) Instalment interest — Where, solely because of the application of subsection (5), paragraphs (2)(a) to (c) do not apply to a distribution in a taxation year of taxable Canadian property by a trust, in applying sections 155, 156 and 156.1 and subsections 161(2), (4) and (4.01) and any regulations made for the purpose of those provisions, the trust's total taxes payable under this Part and Part I.1 for the year are deemed to be the lesser of

(a) the trust's total taxes payable under this Part and Part I.1 for the year, determined before taking into consideration the specified future tax consequences for the year, and

(b) the amount that would be determined under paragraph (a) if subsection (5) did not apply to each distribution in the year of taxable Canadian property to which the rules in subsection (2) do not apply solely because of the application of subsection (5).

History: Subsec. 107(5.1) added by 2001, c. 17, subsec. 80(18), applicable to distributions made after October 1, 1996.

(6) Loss reduction — Notwithstanding any other provision of this Act, where a person or partnership (in this

subsection referred to as the "vendor") has disposed of property and would, but for this subsection, have had a loss from the disposition, the vendor's loss otherwise determined in respect of the disposition shall be reduced by such portion of that loss as may reasonably be considered to have accrued during a period in which

(a) the property or property for which it was substituted was owned by a trust; and

(b) neither the vendor nor a person that would, if section 251.1 were read without reference to the definition "controlled" in subsection 251.1(3), be affiliated with the vendor had a capital interest in the trust.

Related Provisions: 248(5) — Substituted property.

History: Para. 107(6)(b) amended by 1998, c. 19, subsec. 128(6), applicable after April 26, 1995. Para. 107(6)(b) formerly read:

(b) neither

(i) the vendor, nor

(ii) any person related to the vendor, nor

(iii) any partnership of which the vendor or a person related to the vendor was a majority interest partner (within the meaning assigned by subsection 97(3.1))

had a capital interest in the trust.

Definitions [s. 107]: "acquired for consideration" — 108(7); "adjusted cost base" — 54, 248(1); "affiliated" — 251.1; "*alter ego* trust" — 248(1); "allowable capital loss" — 38(b), 248(1); "amount" — 248(1); "beneficiary" — 108(1); "business" — 248(1); "Canada" — 255; "Canadian partnership" — 102(1), 248(1); "Canadian resource property" — 66(15), 248(1); "capital gain" — 39(1), 248(1); "capital interest" — 108(1), 248(1); "capital loss" — 39(1)(b), 107(1)(c), 248(1); "capital property" — 54, 248(1); "common-law partner" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "cost" — 107(1.1); "cost amount" — 107(1)(e), 108(1); "depreciable property" — 13(21), 248(1); "disposition" — 248(1); "eligible capital expenditure" — 14(5), 248(1); "eligible capital property" — 54, 248(1); "eligible offset", "excluded property" — 108(1); "fair market value" — 107.4(4); "foreign investment entity" — 94.1(1), 248(1); "foreign resource property" — 66(15), 248(1); "inventory", "insurance corporation" — 248(1); "*inter vivos* trust" — 108(1), 248(1); "inventory", "joint spousal or common-law partner trust" — 248(1); "Minister" — 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q) [to be repealed], 132.2(3)(n) [draft], 248(1); "non-resident" — 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "participating interest" — 94.1(1), 94.1(2)(s), 248(1); "person", "personal trust", "post-1971 spousal or common-law partner trust", "prescribed" — 248(1); "prescribed trust" — Reg. 4800.1; "property", "regulation" — 248(1); "qualifying disposition" — 107.4(1); "related" — 251(2); "resident in Canada" — 94(3)(a)(viii), 250; "share", "specified future tax consequence", "specified participating interest" — 248(1); "specified percentage" — 107(2)(b.1); "substituted" — 248(5); "taxable Canadian property" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxation year" — 104(23)(a) [to be repealed], 249; "taxpayer" — 248(1); "testamentary trust" — 108(1), 248(1); "trust" — 104(1), 108(1), 248(1), (3); "unit trust" — 108(2), 248(1).

107.1 Distribution by employee trust, employee benefit plan or similar trust — Where at any time any property of an employee trust, a trust governed by an employee benefit plan or a trust described in paragraph (a.1) of the definition "trust" in subsection 108(1) has been distributed by the trust to a taxpayer who was a beneficiary under the trust in satisfaction of all or any part of the taxpayer's interest in the trust, the following rules apply:

(a) in the case of an employee trust or a trust described in paragraph (a.1) of the definition "trust" in subsection 108(1),

(i) the trust shall be deemed to have disposed of the property immediately before that time for proceeds of disposition equal to its fair market value at that time, and

(ii) the taxpayer shall be deemed to have acquired the property at a cost equal to its fair market value at that time;

(b) in the case of a trust governed by an employee benefit plan,

(i) the trust shall be deemed to have disposed of the property for proceeds of disposition equal to its cost amount to the trust immediately before that time, and

(ii) the taxpayer shall be deemed to have acquired the property at a cost equal to the greater of

(A) its fair market value at that time, and

(B) the adjusted cost base to the taxpayer of the taxpayer's interest or part thereof, as the case may be, immediately before that time;

(c) the taxpayer shall be deemed to have disposed of the taxpayer's interest or part thereof, as the case may be, for proceeds of disposition equal to the adjusted cost base to the taxpayer of that interest or part thereof immediately before that time; and

(d) where the property was depreciable property of a prescribed class of the trust and the amount that was the capital cost to the trust of that property exceeds the cost at which the taxpayer is deemed by this section to have acquired the property, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a),

(i) the capital cost to the taxpayer of the property shall be deemed to be the amount that was the capital cost of the property to the trust, and

(ii) the excess shall be deemed to have been allowed to the taxpayer in respect of the property under regulations made under paragraph 20(1)(a) in computing income for taxation years before the acquisition by the taxpayer of the property.

Related Provisions: 6(1)(g) — Income from employee benefit plan; 6(1)(h) — Income from employee trust; 18(1)(o) — No deduction for employee benefit plan contributions; 32.1 — Employee benefit plan deductions; 104(6) — Deduction in computing income of trust; 104(13) — Income payable to beneficiary.

History: The portion of s. 107.1 before subpara. (a)(i) amended by 2001, c. 17, s. 81, applicable to 1999 *et seq.* The portion formerly read:

107.1 Distribution by employee trust or employee benefit plan — Where at any time any property of an employee trust or a trust governed by an employee benefit plan has been distributed by the trust to a taxpayer who was a beneficiary under the trust in satisfaction of all or any part of the taxpayer's interest in the trust, the following rules apply:

(a) in the case of an employee trust,

Definitions [s. 107.1]: "adjusted cost base" — 54, 248(1); "amount" — 108(1), 248(1); "cost amount" — 107(1)(e), 108(1); "depreciable property" — 13(21), 248(1); "employee benefit plan", "employee trust", "prescribed", "property", "regulation" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 108(1), 248(1), (3).

Interpretation Bulletins: IT-502: Employee benefit plans and employee trusts.

107.2 Distribution by a retirement compensation arrangement — Where, at any time, any property of a trust governed by a retirement compensation arrangement has been distributed by the trust to a taxpayer who was a beneficiary under the trust in satisfaction of all or any part

of the taxpayer's interest in the trust, for the purposes of this Part and Part XI.3, the following rules apply:

(a) the trust shall be deemed to have disposed of the property for proceeds of disposition equal to its fair market value at that time;

(b) the trust shall be deemed to have paid to the taxpayer as a distribution an amount equal to that fair market value;

(c) the taxpayer shall be deemed to have acquired the property at a cost equal to that fair market value;

(d) the taxpayer shall be deemed to have disposed of the taxpayer's interest or part thereof, as the case may be, for proceeds of disposition equal to the adjusted cost base to the taxpayer of that interest or part thereof immediately before that time; and

(e) where the property was depreciable property of a prescribed class of the trust and the amount that was the capital cost to the trust of that property exceeds the cost at which the taxpayer is deemed by this section to have acquired the property, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a),

(i) the capital cost to the taxpayer of the property shall be deemed to be the amount that was the capital cost of the property to the trust, and

(ii) the excess shall be deemed to have been allowed to the taxpayer in respect of the property under regulations made under paragraph 20(1)(a) in computing the taxpayer's income for taxation years before the acquisition by the taxpayer of the property.

Related Provisions: 56(1)(x)–(z) — Benefits from retirement compensation arrangement; 60(t) — Amount included under para. 56(1)(x) or (z) or subsec. 70(2); 60(u) — Amount included under para. 56(1)(y); 153(1)(q) — Withholding required on distribution by RCA; Part XI.3 — Tax in respect of retirement compensation arrangements.

Definitions [s. 107.2]: "adjusted cost base" — 54, 248(1); "depreciable property" — 13(21), 248(1); "prescribed", "property", "regulation", "retirement compensation arrangement" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 108(1), 248(1), (3).

107.3 (1) Treatment of beneficiaries under qualifying environmental trusts — Where a taxpayer is a beneficiary under a qualifying environmental trust in a taxation year of the trust (in this subsection referred to as the "trust's year") that ends in a particular taxation year of the taxpayer,

(a) subject to paragraph (b), the taxpayer's income, non-capital loss and net capital loss for the particular year shall be computed as if the amount of the income or loss of the trust for the trust's year from any source or from sources in a particular place were the income or loss of the taxpayer from that source or from sources in that particular place for the particular year, to the extent of the portion thereof that can reasonably be considered to be the taxpayer's share of such income or loss; and

(b) if the taxpayer is non-resident at any time in the particular year and an income or loss described in paragraph (a) or an amount to which paragraph 12(1)(z.1) or (z.2) applies would not otherwise be included in computing the taxpayer's taxable income or taxable income earned in Canada, as the case may be, notwithstanding any other provision of this Act, the income, the loss or the amount shall be attributed to the carrying on of business in Canada by the taxpayer through a fixed place of business located in the province in which the site to which the trust relates is situated.

Related Provisions: 12(1)(z.1) — Inclusion in income of amount received from trust; 87(2)(j.93) — Amalgamations — continuing corporation; 107.3(2) — Where property transferred to beneficiary.

History: The opening words of subsec. 107.3(1) and para. 107.3(1)(b) amended by 1998, c. 19, subsecs. 18(1), (2), applicable to taxation years that end after February 18, 1997. The opening words and para. (b) formerly read:

> 107.3 (1) Treatment of beneficiaries under mining reclamation trusts — Where a taxpayer is a beneficiary under a mining reclamation trust in a taxation year of the trust (in this subsection referred to as the "trust's year") that ends in a particular taxation year of the taxpayer,
>
> . . . . .
>
> (b) where the taxpayer is non-resident at any time in the particular year and an income or loss described in paragraph (a) or an amount to which paragraph 12(1)(z.1) or (z.2) applies would not otherwise be included in computing the taxpayer's taxable income or taxable income earned in Canada, as the case may be, notwithstanding any other provision of this Act the income, the loss or the amount shall be attributed to the carrying on of business in Canada by the taxpayer through a fixed place of business located in the province in which the mine to which the trust relates is situated.

Subsec. 107.3(1) added by 1995, c. 3, s. 30, applicable to taxation years that end after February 22, 1994.

(2) Transfers to beneficiaries — Where property of a qualifying environmental trust is transferred at any time to a beneficiary under the trust in satisfaction of all or any part of the beneficiary's interest as a beneficiary under the trust,

(a) the trust shall be deemed to have disposed of the property at that time for proceeds of disposition equal to its fair market value at that time; and

(b) the beneficiary shall be deemed to have acquired the property at that time at a cost equal to its fair market value at that time.

Related Provisions: 87(2)(j.93) — Amalgamations — continuing corporation; 107.3(1) — Income or loss flowed through to beneficiaries.

History: The opening words of subsec. 107.3(2) amended by 1998, c. 19, subsec. 18(3), applicable to taxation years that end after February 18, 1997. The opening words formerly read:

> (2) Where property of a mining reclamation trust is transferred at any time to a beneficiary under the trust in satisfaction of all or any part of the beneficiary's interest as a beneficiary under the trust,

Subsec. 107.3(2) added by 1995, c. 3, s. 30, applicable to taxation years that end after February 22, 1994.

(3) Ceasing to be a qualifying environmental trust — Where a trust ceases at any time to be a qualifying environmental trust,

(a) the taxation year of the trust that would otherwise have included that time is deemed to have ended immediately before that time and a new taxation year of the trust is deemed to have begun at that time;

(b) the trust shall be deemed to have disposed immediately before that time of each property held by the trust immediately after that time for proceeds of disposition equal to its fair market value at that time and to have reacquired immediately after that time each such property for an amount equal to that fair market value;

(c) each beneficiary under the trust immediately before that time shall be deemed to have received at that time from the trust an amount equal to the percentage of the fair market value of the properties of the trust immediately after that time that can reasonably be considered to be the beneficiary's interest in the trust; and

(d) each beneficiary under the trust shall be deemed to have acquired immediately after that time an interest in the trust at a cost equal to the amount deemed by paragraph (c) to have been received by the beneficiary from the trust.

Related Provisions: 87(2)(j.93) — Amalgamations — continuing corporation.

History: The portion of subsec. 107.3(3) before para. (b) amended by 1998, c. 19, subsec. 18(4), applicable to taxation years that end after February 18, 1997. The portion formerly read:

(3) Ceasing to be a mining reclamation trust — Where a trust ceases at any time to be a mining reclamation trust,

(a) the taxation year of the trust that would otherwise have included that time shall be deemed to have ended at that time and a new taxation year of the trust shall be deemed to have begun immediately after that time;

Subsec. 107.3(3) added by 1995, c. 3, s. 30, applicable to taxation years that end after February 22, 1994.

(4) Application — Subsection 104(13) and sections 105 to 107 do not apply to a trust with respect to a taxation year during which it is a qualifying environmental trust.

Related Provisions: 12(1)(z.1) — Income inclusion in lieu of application of 104(13); 75(3)(c.1) — Reversionary trust rules do not apply.

History: Subsec. 107.3(4) amended by 1998, c. 19, subsec. 18(5), applicable to taxation years that end after February 18, 1997, and amended by 1997 Budget, effective for taxation years that end after February 18, 1997, to change "mining reclamation trust" to "qualifying environmental trust". Subsec. 107.3(4) formerly read:

(4) Subsection 104(13) and sections 105 to 107 do not apply to a trust with respect to a taxation year during which it is a mining reclamation trust.

Subsec. 107.3(4) added by 1995, c. 3, s. 30, applicable to taxation years that end after February 22, 1994.

Definitions [s. 107.3]: "business" — 248(1), 253; "net capital loss", "non-capital loss" — 111(8), 248(1); "non-resident" — 248(1); "property" — 248(1); "province" — *Interpretation Act* 35(1); "qualifying environmental trust" — 248(1); "resident in Canada" — 94(3)(a)(viii), 250; "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 248(1); "taxation year" — 11(2), 107.3(3)(a), 249; "taxpayer" — 248(1); "trust's year" — 107.3(1).

107.4 (1) Qualifying disposition — For the purpose of this section, a "qualifying disposition" of a property means a disposition of the property by a person or partnership (in this subsection referred to as the "contributor") as a result of a transfer of the property to a particular trust where

Proposed Amendment — 107.4(1) opening words

107.4 (1) Qualifying disposition — In this section, a "qualifying disposition" of a property means a disposition of the property before December 21, 2002 by a person or partnership, and a disposition of property after December 20, 2002 by an individual, (which person, partnership or individual is referred to in this subsection as the "contributor") as a result of a transfer of the property to a particular trust where

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 98(1), will amend the opening words of subsec. 107.4(1) to read as above, deemed to have come into force on December 20, 2002.

Technical Notes: Subsection 107.4(3) generally provides for a rollover of property to a trust where the property is transferred to the trust by way of a qualifying disposition. For this purpose, subsection 107.4(1) defines "qualifying disposition" to be a disposition of property to a trust that does not result in any change in the beneficial ownership of the property and that otherwise meets the conditions set out in that subsection. A partnership, corporation or individual (including a trust) are all qualified transferors for the purpose of applying the definition "qualifying disposition" in subsection 107.4(1). Where the transferee trust is a non-resident trust, a qualifying disposition will occur only where the conditions in paragraph 107.4(1)(c) are satisfied. Another condition that must be met for there to be a qualifying disposition is found in paragraph 107.4(1)(d), which requires that the disposition not be by a partnership, if the disposition is part of a series of transactions or events that begins after December 17, 1999 and includes the cessation of the partnership's existence and a subsequent distribution from a personal trust to a former member of the partnership in circumstances to which subsection 107(2) applies.

Subsection 107.4(1) is amended so that after December 20, 2002 only an individual (including a trust) may make a qualifying disposition to a trust. As a result, paragraph 107.4(1)(d) is repealed.

For a related amendment, see the commentary to new subsection 107(4.2).

(a) the disposition does not result in a change in the beneficial ownership of the property;

(b) the proceeds of disposition would, if this Act were read without reference to this section and sections 69 and 73, not be determined under any provision of this Act;

(c) if the particular trust is non-resident, the disposition is not

(i) by a person resident in Canada or by a partnership (other than a partnership each member of which is non-resident), or

(ii) a transfer of taxable Canadian property from a non-resident person who was resident in Canada in any of the ten calendar years preceding the transfer;

Proposed Amendment — 107.4(1)(c)

(c) the particular trust is resident in Canada at the time of the transfer;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 98(2), will amend para. 107.4(1)(c) to read as above, applicable to dispositions that occur after February 27, 2004.

Technical Notes: In addition, paragraph 107.4(1)(c) is amended so that a qualifying disposition can only be made where the transferee trust is resident in Canada at the time of the transfer. This amendment applies to dispositions that occur after February 27, 2004. For this purpose, the residency of a trust is determined without regard to new paragraph 94(3)(a). For more detail, see the commentary to new paragraph 94(4)(b).

(d) the contributor is not a partnership, if the disposition is part of a series of transactions or events that begin after December 17, 1999 that includes the cessation of the partnership's existence and a subsequent distribution from a personal trust to a former member of the partnership in circumstances to which subsection 107(2) applies;

Proposed Repeal — 107.4(1)(d)

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 98(3), will repeal para. 107.4(1)(d), deemed to have come into force on December 20, 2002.

Technical Notes: See under 107.4(1) opening words above.

(e) unless the contributor is a trust, there is immediately after the disposition no absolute or contingent right of a person or partnership (other than the contributor or, where the property was co-owned, each of the joint contributors) as a beneficiary (determined with reference to subsection 104(1.1)) under the particular trust;

(f) the contributor is not an individual (other than a trust described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1)), if the particular trust is described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1);

(g) the disposition is not part of a series of transactions or events

(i) that begins after December 17, 1999 and that includes the subsequent acquisition, for consideration given to a personal trust, of a capital interest or an income interest in the trust,

(ii) that begins after December 17, 1999 and that includes the disposition of all or part of a capital interest or an income interest in a personal trust, other than a disposition solely as a consequence of a distribution from a trust to a person or partnership in satisfaction of all or part of that interest, or

(iii) that begins after June 5, 2000 and that includes the transfer to the particular trust of particular property as consideration for the acquisition of a capital interest in the particular trust, if the particular property can reasonably be considered to have been received by the particular trust in order to fund a distribution (other than a distribution that is proceeds of disposition of a capital interest in the particular trust);

(h) the disposition is not, and is not part of, a transaction

(i) that occurs after December 17, 1999, and

(ii) that includes the giving to the contributor, for the disposition, of any consideration (other than consideration that is an interest of the contributor as a beneficiary under the particular trust or that is the assumption by the particular trust of debt for which the property can, at the time of the disposition, reasonably be considered to be security);

(i) subsection 73(1) does not apply to the disposition and would not apply to the disposition if

(i) no election had been made under that subsection, and

(ii) section 73 were read without reference to subsection 73(1.02); and

(j) if the contributor is an amateur athlete trust, a cemetery care trust, an employee trust, an *inter vivos* trust deemed by subsection 143(1) to exist in respect of a congregation that is a constituent part of a religious organization, a related segregated fund trust (as defined by section 138.1), a trust described in paragraph 149(1)(o.4) or a trust governed by an eligible funeral arrangement, an employees profit sharing plan, a registered education savings plan or a registered supplementary unemployment benefit plan, the particular trust is the same type of trust.

Proposed Addition — 107.4(1)(k)

(k) the property is not, immediately before the disposition, a specified participating interest.

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), s. 25, will add para. 107.4(1)(k), applicable to dispositions that occur in taxation years that begin after 2002.

Technical Notes: Subsection 107.4(1) defines a qualifying disposition of property to a trust to be a disposition of property to the trust that does not result in any change in the beneficial ownership of the property and that otherwise meets the conditions set out in that subsection. Under subsection 107.4(3), a qualifying disposition generally qualifies for a tax-deferred "rollover" of the property to the trust.

New paragraph 107.4(1)(k) provides that a disposition of property to a trust does not include a disposition of property that is, immediately before the disposition, a specified participating interest.

Related Provisions: 75(2) — Revocable or reversionary trust; 94(4)(b) [proposed] — Application of rule deeming non-resident trust to be resident in Canada; 104(1.1) — Restricted meaning of "beneficiary"; 107(4.2) — Application of subsec. 107(2.1); 107.4(2) — Application of para. (1)(a); 107.4(3) — Tax consequences of qualifying dispositions; 248(1)"disposition" — Whether transfer to a trust is a disposition; 248(10) — Series of transactions or events.

History: Subsec. 107.4(1) added by 2001, c. 17, s. 82, applicable

(a) to dispositions that occur after December 23, 1998; and

(b) in respect of 1993 *et seq.*, to transfers of capital property that occurred before December 24, 1998, except that, in its application to transfers before December 24, 1998, subsec. 107.4(1) shall be read as follows:

107.4 (1) For the purpose of this section, a "qualifying disposition" of a property means a transfer of the property to a particular trust that was not a disposition of the property for the purpose of subdivision c because of paragraph (e) of the definition "disposition" in section 54, except where

(a) if the transfer is from another trust to the particular trust,

(i) each trust can reasonably be considered to act as agent for the same beneficiary or beneficiaries in respect of the property transferred, or

(ii) the transferee trust can reasonably be considered to act as agent for the transferor trust in respect of the property transferred; and

(b) in any other case, it is reasonable to consider that the particular trust acts as agent in respect of the property transferred.

(2) Application of paragraph (1)(a) — For the purpose of paragraph (1)(a),

(a) except where paragraph (b) applies, where a trust (in this paragraph and subsection (2.1) referred to as the "transferor trust"), in a period that does not exceed one day, disposes of one or more properties in the period to one or more other trusts, there is deemed to be no resulting change in the beneficial ownership of those properties if

(i) the transferor trust receives no consideration for the disposition, and

(ii) as a consequence of the disposition, the value of each beneficiary's beneficial ownership at the beginning of the period under the transferor trust in each particular property of the transferor trust (or group of two or more properties of the transferor trust that are identical to each other) is the same as the value of the beneficiary's beneficial ownership at the end of the period under the transferor trust and the other trust or trusts in each particular property (or in property that was immediately before the disposition included in the group of identical properties referred to above); and

(b) where a trust (in this paragraph referred to as the "transferor") governed by a registered retirement savings plan or by a registered retirement income fund transfers a property to a trust (in this paragraph referred to as the "transferee") governed by a registered retirement savings plan or by a registered retirement income fund, the transfer is deemed not to result in a change in the beneficial ownership of the property if the annuitant of the plan or fund that governs the transferor is also the annuitant of the plan or fund that governs the transferee.

Related Provisions: 107.4(2.1) — Fractional interest in a share.

History: Subsec. 107.4(2) added by 2001, c. 17, s. 82, applicable to dispositions that occur after December 23, 1998.

(2.1) Fractional interests — For the purpose of applying paragraph (2)(a) in respect of a transfer by a transferor trust of property that includes a share and money, the other trust or trusts referred to in that paragraph may re-

ceive, in lieu of a transfer of a fractional interest in a share that would otherwise be required, a disproportionate amount of money or interest in the share (the value of which does not exceed the lesser of $200 and the fair market value of the fractional interest).

History: Subsec. 107.4(2.1) added by 2001, c. 17, s. 82, applicable to dispositions that occur after December 23, 1998.

(3) Tax consequences of qualifying dispositions — Where at a particular time there is a qualifying disposition of a property by a person or partnership (in this subsection referred to as the "transferor") to a trust (in this subsection referred to as the "transferee trust"),

(a) the transferor's proceeds of disposition of the property are deemed to be

(i) where the transferor so elects in writing and files the election with the Minister on or before the transferor's filing-due date for its taxation year that includes the particular time, or at any later time that is acceptable to the Minister, the amount specified in the election that is not less than the cost amount to the transferor of the property immediately before the particular time and not more than the fair market value of the property at the particular time, and

(ii) in any other case, the cost amount to the transferor of the property immediately before the particular time;

(b) the transferee trust's cost of the property is deemed to be the amount, if any, by which

(i) the proceeds determined under paragraph (a) in respect of the qualifying disposition

exceed

(ii) the amount by which the transferor's loss otherwise determined from the qualifying disposition would be reduced because of subsection 100(4), paragraph 107(1)(c) or (d) or any of subsections 112(3) to (4.2), if the proceeds determined under paragraph (a) were equal to the fair market value of the property at the particular time;

(c) [Repealed

(d) if the property was depreciable property of a prescribed class of the transferor and its capital cost to the transferor exceeds the cost at which the transferee trust is deemed by this subsection to have acquired the property, for the purposes of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a),

(i) the capital cost of the property to the transferee trust is deemed to be the amount that was the capital cost of the property to the transferor, and

(ii) the excess is deemed to have been allowed to the transferee trust in respect of the property under regulations made for the purpose of paragraph 20(1)(a) in computing income for taxation years that ended before the particular time;

(e) if the property was eligible capital property of the transferor in respect of a business of the transferor,

(i) where the eligible capital expenditure of the transferor in respect of the property exceeds the cost at which the transferee trust is deemed by this subsection to have acquired the property, for the purposes of sections 14, 20 and 24,

(A) the eligible capital expenditure of the transferee trust in respect of the property is deemed to be the amount that was the eligible capital expenditure of the transferor in respect of the property, and

(B) 3/4 of the excess is deemed to have been allowed under paragraph 20(1)(b) to the transferee trust in respect of the property in computing income for taxation years that ended

(I) before the particular time, and

(II) after the adjustment time of the transferee trust in respect of the business, and

(ii) for the purpose of determining after the particular time the amount required by paragraph 14(1)(b) to be included in computing the transferee trust's income in respect of any subsequent disposition of the property of the business, there shall be added to the value otherwise determined for Q in the definition "cumulative eligible capital" in subsection 14(5) the amount determined by the formula

$$A \times (B/C)$$

where

A is the amount, if any, determined for Q in that definition in respect of the business of the transferor immediately before the particular time,

B is the fair market value of the property immediately before the particular time, and

C is the fair market value immediately before the particular time of all eligible capital property of the transferor in respect of the business;

(f) if the property was deemed to be taxable Canadian property of the transferor by this paragraph or paragraph 51(1)(f), 85(1)(i) or 85.1(1)(a), subsection 87(4) or (5) or paragraph 97(2)(c) or 107(2)(d.1), the property is deemed to be taxable Canadian property of the transferee trust;

Proposed Amendment — 107.4(3)(f)

(f) if the property was deemed to be taxable Canadian property of the transferor by this paragraph or paragraph 44.1(2)(c), 51(1)(f), 85(1)(i) or 85.1(1)(a), subsection 85.1(5) or 87(4) or (5) or paragraph 97(2)(c) or 107(2)(d.1), the property is deemed to be taxable Canadian property of the transferee trust;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 98(5), will amend para. 107.4(3)(f) to read as above, applicable

(a) to dispositions that occur after that occur after December 23, 1998; and

(b) in respect of 1996 *et seq.*, to transfers of capital property that occurred before December 24, 1998.

Technical Notes: Subsection 107.4(3) provides a number of income tax consequences that apply in respect of a "qualifying disposition" (as defined in subsection 107.4(1)) of property to a trust. Paragraph 107.4(3)(f) ensures that, in the event that the property was explicitly deemed to have been taxable Canadian property under a number of specified provisions of the Act, the property continues to be taxable Canadian property of the trust.

Paragraph 107.4(3)(f) is amended by adding to the list of specified provisions, that explicitly deem property to be taxable Canadian property, a reference to paragraph 44.1(2)(c) and to subsection 85.1(5).

(g) where the transferor is a related segregated fund trust (in this paragraph having the meaning assigned by section 138.1),

(i) paragraph 138.1(1)(i) does not apply in respect of a disposition of an interest in the transferor that occurs in connection with the qualifying disposition, and

(ii) in computing the amount determined under paragraph 138.1(1)(i) in respect of a subsequent disposition of an interest in the transferee trust where the interest is deemed to exist in connection with a particular life insurance policy, the acquisition fee (as defined by subsection 138.1(6)) in respect of the particular policy shall be determined as if each amount determined under any of paragraphs 138.1(6)(a) to (d) in respect of the policyholder's interest in the transferor had been determined in respect of the policyholder's interest in the transferee trust;

(h) if the transferor is a trust to which property had been transferred by an individual (other than a trust),

(i) where subsection 73(1) applied in respect of the property so transferred and it is reasonable to consider that the property was so transferred in anticipation of the individual ceasing to be resident in Canada, for the purposes of paragraph 104(4)(a.3) and the application of this paragraph to a disposition by the transferee trust after the particular time, the transferee trust is deemed after the particular time to be a trust to which the individual had transferred property in anticipation of the individual ceasing to reside in Canada and in circumstances to which subsection 73(1) applied, and

(ii) for the purposes of paragraph (j) of the definition "excluded right or interest" in subsection 128.1(10) and the application of this paragraph to a disposition by the transferee trust after the particular time, where the property so transferred was transferred in circumstances to which this subsection would apply if subsection (1) were read without reference to paragraphs (1)(h) and (i), the transferee trust is deemed after the particular time to be a trust an interest in which was acquired by the individual as a consequence of a qualifying disposition;

(i) if the transferor is a trust (other than a personal trust or a trust prescribed for the purposes of subsection 107(2)), the transferee trust is deemed to be neither a personal trust nor a trust prescribed for the purposes of subsection 107(2);

(j) if the transferor is a trust and a taxpayer disposes of all or part of a capital interest in the transferor because of the qualifying disposition and, as a consequence, acquires a capital interest or part of it in the transferee trust

(i) the taxpayer is deemed to dispose of the capital interest or part of it in the transferor for proceeds equal to the cost amount to the taxpayer of that interest or part of it immediately before the particular time, and

(ii) the taxpayer is deemed to acquire the capital interest or part of it in the transferee trust at a cost equal to the amount, if any, by which

(A) that cost amount

exceeds

(B) the amount by which the taxpayer's loss otherwise determined from the disposition referred to in subparagraph (i) would be reduced because of paragraph 107(1)(c) or (d) if the proceeds under that subparagraph were equal to the fair market value of the capital interest or part of it in the transferor immediately before the particular time;

(k) where the transferor is a trust, a taxpayer's beneficial ownership in the property ceases to be derived from the taxpayer's capital interest in the transferor because of the qualifying disposition and no part of the taxpayer's capital interest in the transferor was disposed of because of the qualifying disposition, there shall, immediately after the particular time, be added to the cost otherwise determined of the taxpayer's capital interest in the transferee trust, the amount determined by the formula

$$A \times [(B - C)/B] - D$$

where

A is the cost amount to the taxpayer of the taxpayer's capital interest in the transferor immediately before the particular time,

B is the fair market value immediately before the particular time of the taxpayer's capital interest in the transferor,

C is the fair market value at the particular time of the taxpayer's capital interest in the transferor (determined as if the only property disposed of at the particular time were the particular property), and

D is the lesser of

(i) the amount, if any, by which the cost amount to the taxpayer of the taxpayer's capital interest in the transferor immediately before the particular time exceeds the fair market value of the taxpayer's capital interest in the transferor immediately before the particular time, and

(ii) the maximum amount by which the taxpayer's loss from a disposition of a capital interest otherwise determined could have been reduced because of paragraph 107(1)(c) or (d) if the taxpayer's capital interest in the transferor had been disposed of immediately before the particular time;

(l) where paragraph (k) applies to the qualifying disposition in respect of a taxpayer, the amount that would be determined under that paragraph in respect of the qualifying disposition if the amount determined for D in that paragraph were nil shall, immediately after the particular time, be deducted in computing the cost otherwise determined of the taxpayer's capital interest in the transferor;

(m) where paragraphs (j) and (k) do not apply in respect of the qualifying disposition, the transferor is deemed to acquire the capital interest or part of it in the transferee trust that is acquired as a consequence of the qualifying disposition

(i) where the transferee trust is a personal trust, at a cost equal to nil, and

(ii) in any other case, at a cost equal to the excess determined under paragraph (b) in respect of the qualifying disposition; and

(n) if the transferor is a trust and a taxpayer disposes of all or part of an income interest in the transferor because of the qualifying disposition and, as a consequence, acquires an income interest or a part of an income interest in the transferee trust, for the purpose of subsection 106(2), the taxpayer is deemed not to dispose of any part of the income interest in the transferor at the particular time.

Related Provisions: 53(4) — Effect on ACB of trust interest; 104(4)(a.4) — Deemed disposition by trust after 107.4(3) applied; 104(5.3)(c) — No application where election in effect to postpone deemed disposition; 104(5.8) — Where property transferred from one trust to another; 107(4.1)(b)(ii) — Application to subsequent distribution by trust; 107.4(4) — Fair market value of capital interest in trust; 257 — Formula cannot calculate to less than zero.

History: Opening words of para. 107.4(3)(b) amended by 2005, c. 30, subsec. 4(1), applicable to dispositions that occur after 2004. The opening words formerly read:

(b) except as otherwise provided under paragraph (c), the transferee trust's cost of the property is deemed to be the amount, if any, by which

Para. 107.4(3)(c) repealed by the said c. 30, subsec. 4(2), applicable to dispositions that occur after 2004. The para. formerly read:

(c) notwithstanding subsection 206(4), for the purposes of Part XI and regulations made for the purposes of that Part, the transferee trust's cost of the property is deemed to be

(i) the cost amount to the transferor immediately before the particular time where

(A) the particular time is before 2000,

(B) the transferor is a trust governed by a registered retirement savings plan or a registered retirement income fund,

(C) the transferee trust is governed by a registered retirement savings plan or a registered retirement income fund,

(D) the transferee trust files a written election with the Minister on or before the later of March 31, 2001 and its filing-due date for its taxation year that includes the particular time (or at such later date that is acceptable to the Minister) that this subparagraph apply, and

(E) it can reasonably be considered that the election was not made for the purpose of avoiding tax under Part XI,

(ii) the fair market value of the property at the particular time where

(A) subparagraph (iii) does not apply,

(B) the transferee trust files a written election with the Minister on or before the later of March 31, 2001 and its filing due-date for its taxation year that includes the particular time (or at such later date as is acceptable to the Minister) that this subparagraph apply, and

(C) it can reasonably be considered that the election was not made for the purpose of avoiding tax under Part XI,

(iii) the fair market value of the property at the particular time where

(A) subparagraph (i) does not apply to the qualifying disposition,

(B) the particular time is before 2000,

(C) the transferor is a trust governed by a registered retirement savings plan or a registered retirement income fund, and

(D) the transferee trust is governed by a registered retirement savings plan or a registered retirement income fund, and

(iv) the cost amount to the transferor of the property immediately before the particular time, in any other case;

Subsec. 107.4(3) added by 2001, c. 17, s. 82, applicable

(a) to dispositions that occur after December 23, 1998 except that, in its application to dispositions that occurred in taxation years that ended before February 28, 2000, the reference to "paragraph 14(1)(b)" in subpara. 107.4(3)(e)(ii) shall be read as a reference to "subparagraph 14(1)(a)(v) or paragraph 14(1)(b)"; and

(b) re 1993 *et seq.*, to transfers of capital property that occurred before December 24, 1998, except that, in its application to transfers before December 24, 1998,

(i) the opening words of subsec. 107.4(3) shall be read as follows:

(3) Where at a particular time there is a qualifying disposition of a property by a person or partnership (in this subsection referred to as the "transferor") to a trust (in this subsection referred to as the "transferee trust"), except for the purposes of Part XI and regulations made for the purposes of that Part

(ii) subsec. 107.4(3) shall be read without reference to paras. (a), (c), (g) and (h);

(iii) para. 107.4(3)(b) shall be read as follows:

(b) the transferee trust's cost of the property is deemed to be the cost amount to the transferor of the property immediately before the particular time;

(iv) subsec. 107.4(3) shall be read as if each amount determined under cl. 107.4(3)(j)(ii)(B) and the description of D in para. 107.4(3)(k) were nil; and

(v) subpara. 107.4(3)(m)(ii) shall be read as follows:

(ii) in any other case, at a cost equal to the amount determined under paragraph (b) in respect of the qualifying disposition.

(4) Fair market value of vested interest in trust — Where

(a) a particular capital interest in a trust is held by a beneficiary at any time,

(b) the particular interest is vested indefeasibly at that time,

(c) the trust is not described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1), and

(d) interests under the trust are not ordinarily disposed of for consideration that reflects the fair market value of the net assets of the trust,

the fair market value of the particular interest at that time is deemed to be not less than the amount determined by the formula

$$(A - B) \times (C/D)$$

where

A is the total fair market value at that time of all properties of the trust,

B is the total of all amounts each of which is the amount of a debt owing by the trust at that time or the amount of any other obligation of the trust to pay any amount that is outstanding at that time,

C is the fair market value at that time of the particular interest (determined without reference to this subsection), and

D is the total fair market value at that time of all interests as beneficiaries under the trust (determined without reference to this subsection).

Related Provisions: 107(1.2) — Fair market value of capital interest in trust for purposes of valuation as inventory; 248(9.2) — Meaning of "vested indefeasibly"; 257 — Formula cannot calculate to less than zero.

History: Subsec. 107.4(4) added by 2001, c. 17, s. 82, applicable to dispositions that occur after December 23, 1998.

Definitions [s. 107.4]: "adjustment time" — 14(5), 248(1); "amateur athlete trust" — 143.1(1), 248(1); "amount" — 248(1); "beneficiary" — 104(1.1), 108(1); "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "capital interest" — 108(1), 248(1); "capital property" — 54, 248(1); "cemetery care trust" — 148.1(1), 248(1); "contributor" — 107.4(1); "cost amount" — 107(1)(e), 248(1); "depreciable property" — 13(21), 248(1); "disposition" — 248(1); "eligible capital expenditure" — 14(5), 248(1); "eligible capital property" — 54, 248(1); "eligible funeral arrangement" — 148.1(1), 248(1); "employee trust" — 248(1); "employees profit sharing plan" — 144(1), 248(1); "fair market value" — 107.4(4); "filing-due date" — 248(1); "income interest" — 108(1), 248(1); "individual" — 248(1); "*inter vivos* trust" — 108(1), 248(1); "life insurance policy" — 138(12), 248(1); "Minister", "non-resident" — 248(1); "person", "personal trust", "prescribed", "property" — 248(1); "registered education savings plan" — 146.1(1), 248(1); "registered supplementary unemployment benefit plan" — 145(1), 248(1); "regulation" — 248(1); "related" — 251(2)–(6); "resident in Canada" — 94(3)(a)(viii), 250; "series of transactions" — 248(10); "security" — *Interpretation Act* 35(1); "specified participating interest", "taxable Canadian property" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "transferor trust" — 107.4(2)(a); "trust" — 104(1), (3), 108(1), 248(1); "vested indefeasibly" — 248(9.2); "writing" — *Interpretation Act* 35(1).

108. (1) Definitions — In this subdivision,

"accumulating income" of a trust for a taxation year means the amount that would be the income of the trust for the year if that amount were computed

(a) without reference to paragraphs 104(4)(a) and (a.1) and subsections 104(5.1), (5.2) and (12) and 107(4),

(b) as if the greatest amount that the trust was entitled to claim under subsection 104(6) in computing its income for the year were so claimed, and

(c) without reference to subsection 12(10.2), except to the extent that that subsection applies to amounts paid to a trust to which paragraph 70(6.1)(b) applies and before the death of the spouse or common-law partner referred to in that paragraph;

History: The definition "accumulating income" in subsec. 108(1) amended by 2001, c. 17, subsec. 83(1), applicable to 2000 *et seq.* The definition formerly read:

> "accumulating income" of a trust for a taxation year means the amount that would be the income of the trust for the year if that amount were
>
> (a) computed without reference to subsections 104(5.1) and (12),
>
> (b) computed as if the greatest amount that the trust was entitled to claim under subsection 104(6) in computing its income for the year were so claimed,
>
> (c) where the trust
>
> (i) is a pre-1972 spousal trust at the end of the year,
>
> (ii) is described in paragraph 104(4)(a), or
>
> (iii) elected under subsection 104(5.3) for a preceding taxation year,
>
> computed without reference to subsections 104(4), (5) and (5.2) and 107(4),
>
> (d) where the trust is described in paragraph 104(4)(a) and the taxpayer's spouse or common-law partner referred to in that paragraph died on a day in that year, computed as if any disposition by the trust before the end of that day of capital property, land described in an inventory of the trust, Canadian resource property or foreign resource property had not occurred, and
>
> (e) computed without reference to subsection 12(10.2), except to the extent that that subsection applies to amounts paid to a trust to which paragraph 70(6.1)(b) applies and before the death of the spouse or common-law partner referred to in that paragraph;

The definition "accumulating income" in subsec. 108(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

The definition "accumulating income" in subsec. 108(1) amended by 1996, c. 21, subsec. 19(1), applicable to trust taxation years that end after July 19, 1995. The definition formerly read:

> "accumulating income" of a trust for a taxation year means the amount that would be the income of the trust for the year if this Act were read without reference to
>
> (a) subsections 104(5.1) and (12),
>
> (b) where the trust
>
> (i) is a pre-1972 spousal trust at the end of the year,
>
> (ii) is described in paragraph 104(4)(a), or
>
> (iii) elected under subsection 104(5.3) for a preceding taxation year,
>
> subsections 104(4), (5), (5.2) and 107(4), and
>
> (c) subsection 12(10.2), except to the extent that that subsection applies to amounts paid to a trust to which paragraph 70(6.1)(b) applies and before the death of the spouse referred to in that paragraph;

The definition "accumulating income" in subsec. 108(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 44(1), applicable to 1991 *et seq.* The definition formerly read:

> "accumulating income" of a trust for a taxation year means the amount that would, but for subsection 104(12) and, where the trust is a trust described in paragraph 104(4)(a), subsections 104(4), (5), (5.2) and 107(4), be its income for the year;

Interpretation Bulletins: IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-394R2: Preferred beneficiary election.

Advance Tax Rulings: ATR-34: Preferred beneficiary's election.

"beneficiary" under a trust includes a person beneficially interested therein;

Related Provisions: 104(1.1) — Restricted meaning of "beneficiary" for certain purposes; 104(5.5) — Meaning of "beneficiary" for purposes of election to postpone deemed disposition; 143.1(1)(e) — Deemed beneficiary of amateur athletes' reserve fund; 248(3) — Rules applicable in Quebec; 248(13) — Deemed beneficiary for certain purposes; 248(25) — Meaning of "beneficially interested".

"capital interest" of a taxpayer in a trust means all rights of the taxpayer as a beneficiary under the trust, and after 1999 includes a right (other than a right acquired before 2000 and disposed of before March 2000) to enforce payment of an amount by the trust that arises as a consequence of any such right, but does not include an income interest in the trust;

Related Provisions: 53(2)(h), (i) — Reduction in ACB of capital interest; 248(1)"capital interest" — Definition applies to entire Act; 248(1)"disposition"(d), (h) — Whether transfer by trust is a disposition of capital interest.

History: The definition "capital interest" in subsec. 108(1) amended by 2001, c. 17, subsec. 83(2), applicable after 1999. The definition formerly read:

> "capital interest" of a taxpayer in a trust means
>
> (a) in the case of a personal trust or a prescribed trust, a right (whether immediate or future and whether absolute or contingent) of the taxpayer as a beneficiary under the trust to, or to receive, all or any part of the capital of the trust, and
>
> (b) in any other case, a right of the taxpayer as a beneficiary under the trust;

"cost amount" to a taxpayer at any time of a capital interest or part of the interest, as the case may be, in a trust (other than a trust that is a foreign affiliate of the taxpayer) means, except for the purposes of section 107.4 and notwithstanding subsection 248(1),

Proposed Amendment — 108(1)"cost amount" opening words

"cost amount" to a taxpayer at any time of a capital interest or part of it, as the case may be, in a trust, means (notwithstanding subsection 248(1) and except for the purposes of section 107.4 and, if that time is in a taxation year of the trust that began before 2003, except in respect of a capital interest in a trust that is at that time a foreign affiliate of the taxpayer),

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 26(2), will amend the opening words of the definition "cost amount" in subsec. 108(1) to read as above, applicable after 2001.

Technical Notes: The definition "cost amount" in subsection 108(1) applies, for the purposes of sections 104 to 108 (except section 107.4), in determining the cost amount to a taxpayer of the taxpayer's capital interest (and any part of it relevant in the circumstances) in a trust. However, where the trust is a foreign affiliate of the taxpayer this definition of "cost amount" does not apply. (A trust may be a foreign affiliate of a taxpayer because of the operation of paragraph 94(1)(d), which can deem a trust to be in certain circumstances a non-resident corporation in which the taxpayer own shares.)

The definition "cost amount" in subsection 108(1) is amended to reflect the repeal of paragraph 94(1)(d).

Note that, while the cost amount to a taxpayer of its capital interest in a trust may be relevant in applying sections 94.1 to 94.4 to the taxpayer where the trust is a "foreign investment entity" (as defined in new subsection 94.1(1)) in which the taxpayer's capital interest is a "participating interest" (as defined in new subsection 94.1(1)), the definition cost amount in subsection 108(1) does not apply for these purposes.

(a) where any money or other property of the trust has been distributed by the trust to the taxpayer in satisfaction of all or part of the taxpayer's capital interest (whether on the winding-up of the trust or otherwise), the total of

(i) the money so distributed, and

(ii) all amounts each of which is the cost amount to the trust, immediately before the distribution, of each such other property,

(iii) [Repealed]

(a.1) where that time is immediately before the time of the death of the taxpayer and subsection 104(4) or (5) deems the trust to dispose of property at the end of the day that includes that time, the amount that would be determined under paragraph (b) if the taxpayer had died on a day that ended immediately before that time, and

(b) in any other case, the amount determined by the formula

$$(A - B) \times \frac{C}{D}$$

where

A is the total of

(i) all money of the trust on hand immediately before that time, and

(ii) all amounts each of which is the cost amount to the trust, immediately before that time, of each other property of the trust,

B is the total of all amounts each of which is the amount of any debt owing by the trust, or of any other obligation of the trust to pay any amount, that was outstanding immediately before that time,

C is the fair market value at that time of the capital interest or part thereof, as the case may be, in the trust, and

D is the fair market value at that time of all capital interests in the trust;

Related Provisions: 107(1)(e) — Cost amount of capital interest in trust that is not capital property; 206(1)"cost amount" — Meaning of cost amount of capital interest in a trust for foreign-property rules; 248(1) — Definition of "cost amount" for other purposes; 248(25.3) — Deemed cost of trust units; 257 — Formula cannot calculate to less than zero.

History: The opening words of the definition "cost amount" in subsec. 108(1) amended by 2001, c. 17, subsec. 83(4), applicable to 1993 *et seq.* The opening words formerly read:

"cost amount" to a taxpayer at any time of a capital interest or part thereof, as the case may be, in a trust (other than a trust that is a foreign affiliate of the taxpayer) means, notwithstanding the definition of "cost amount" in subsection 248(1),

Para. (a.1) of the definition "cost amount" in subsec. 108(1) added by the said c. 17, subsec. 83(5), applicable to deaths that occur after 1999 and, where a day before the 2000 taxation year is determined under paragraph 104(4)(a.4), as amended, in respect of a trust, it applies to deaths that occur after December 23, 1998.

Subpara. (a)(ii) of the definition "cost amount" in subsec. 108(1) substituted, and subpara. (iii) repealed, by 1994, c. 21, subsec. 48(2), applicable after July 13, 1990. Subparas. (a)(ii) and (iii) formerly read:

(ii) all amounts each of which is the cost amount to the trust, immediately before the distribution, of each such other property (other than eligible capital property in respect of a business of the trust), and

(iii) all amounts each of which is 4/3 of the cost amount to the trust, immediately before the distribution, of each such other property that is eligible capital property in respect of a business of the trust, and

The description of A in para. (b) of the definition "cost amount" in subsec. 108(1) substituted by 1994, c. 21, subsec. 48(3), applicable after July 13, 1990. That description formerly read:

A is the total of

(i) all money of the trust on hand immediately before that time,

(ii) all amounts each of which is the cost amount to the trust, immediately before that time, of each other property of the trust (other than eligible capital property in respect of a business of the trust), and

(iii) 4/3 of the total of all amounts each of which is the cumulative eligible capital of the trust, immediately before that time, in respect of a business of the trust,

Paras. (a), (b) of "cost amount" substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 77(1), applicable after July 13, 1990. Those paras. formerly read:

(a) in any case where any money or property of the trust has been distributed by the trust to the taxpayer in satisfaction of the whole or part of the taxpayer's capital interest, as the case may be (whether on the winding-up of the trust or otherwise), the total of the money so distributed and all amounts each of which is the cost amount to the trust, immediately before the distribution, of a property so distributed to the taxpayer, and

(b) in any other case, that proportion of the amount, if any, by which the total of all money of the trust on hand immediately before that time and all amounts each of which is the cost amount to the trust, immediately before that time, of a property of the trust exceeds the total of all amounts each of which is the amount of a debt owing by the trust, or of any other obligation of the trust to pay any amount, that was outstanding immediately before that time, that

(i) the fair market value at that time of the capital interest or part thereof, as the case may be, in the trust,

is of

(ii) the fair market value at that time of all capital interests in the trust;

Advance Tax Rulings: ATR-38: Distribution of all of the property of an estate.

"designated income [para. 108(1)(d.1)]" — [Repealed under former Act]

"eligible offset" at any time of a taxpayer in respect of all or part of the taxpayer's capital interest in a trust is the portion of any debt or obligation that is assumed by the taxpayer and that can reasonably be considered to be applicable to property distributed at that time in satisfaction of the interest or part of the interest, as the case may be, if the distribution is conditional upon the assumption by the taxpayer of the portion of the debt or obligation;

History: The definition "eligible offset" in subsec. 108(1) added by 2001, c. 17, subsec. 83(8), applicable after 1999.

"eligible real property gain" — [Repealed]

History: The definition "eligible real property gain" in subsec. 108(1) repealed by 1995, c. 3, subsec. 31(1), applicable to taxation years that begin after February 22, 1994. The definition formerly read:

"eligible real property gain" of a trust has the meaning that would be assigned by the definition of that expression in subsection 110.6(1) if the reference in that definition to "non-qualifying real property" were read as "non-qualifying real property as defined in subsection 108(1)";

The definition "eligible real property gain" in subsec. 108(1) substituted by 1994, c. 21, subsec. 48(1), applicable to 1992 *et seq.* That definition formerly read:

"eligible real property gain" of a trust has the meaning assigned by subsection 110.6(1);

The definition "eligible real property gain" added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 44(2), applicable to 1992 *et seq.*

"eligible real property loss" — [Repealed]

History: The definition "eligible real property loss" in subsec. 108(1) repealed by 1995, c. 3, subsec. 31(1), applicable to taxation years that begin after February 22, 1994. The definition formerly read:

> "eligible real property loss" of a trust has the meaning that would be assigned by the definition of that expression in subsection 110.6(1) if the reference in that definition to "non-qualifying real property" were read as "non-qualifying real property as defined in subsection 108(1)";

The definition "eligible real property loss" in subsec. 108(1) substituted by 1994, c. 21, subsec. 48(1), applicable to 1992 *et seq.* That definition formerly read:

> "eligible real property loss" of a trust has the meaning assigned by subsection 110.6(1);

The definition "eligible real property loss" added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 44(2), applicable to 1992 *et seq.*

"eligible taxable capital gains" of a personal trust for a taxation year means the lesser of

(a) its annual gains limit (within the meaning assigned by subsection 110.6(1)) for the year, and

(b) the amount determined by the formula

A – B

where

A is its cumulative gains limit (within the meaning assigned by subsection 110.6(1)) at the end of the year, and

B is the total of all amounts designated under subsection 104(21.2) by the trust in respect of beneficiaries for taxation years before that year;

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: The definition "eligible taxable capital gains" in subsec. 108(1) amended by 1995, c. 3, subsec. 31(2), applicable to taxation years that begin after February 22, 1994. The definition formerly read:

> "eligible taxable capital gains" of a trust for a taxation year means the lesser of
>
> (a) its annual gains limit for the year (within the meaning that would be assigned by the definition of that expression in subsection 110.6(1) if the reference in that definition to "non-qualifying real property" were read as "non-qualifying real property as defined in subsection 108(1))", and
>
> (b) the amount determined by the formula
>
> A – B
>
> where
>
> A is its cumulative gains limit at the end of the year (within the meaning that would be assigned by the definition of that expression in subsection 110.6(1) if the reference in that definition to "non-qualifying real property" were read as "non-qualifying real property as defined in subsection 108(1))", and
>
> B is the total of all amounts designated under subsection 104(21.2) by the trust in respect of beneficiaries in taxation years before that year;

The definition "eligible taxable capital gains" in subsec. 108(1) substituted by 1994, c. 21, subsec. 48(1), applicable to 1992 *et seq.* That definition formerly read:

> "eligible taxable capital gains" of a trust for a taxation year means the lesser of
>
> (a) the annual gains limit (within the meaning assigned by the definition of that expression in subsection 110.6(1)) of the trust for the year, and
>
> (b) the amount determined by the formula
>
> A – B
>
> where
>
> A is the cumulative gains limit (within the meaning assigned by the definition of that expression in subsection 110.6(1) if that definition were read without reference to paragraph (c) thereof) of the trust at the end of the year, and
>
> B the total of all amounts each of which is an amount designated by the trust under subsection 104(21.2) in respect of a beneficiary in a taxation year preceding that year;

Interpretation Bulletins: IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries.

Forms: T3 SCH 3: Eligible taxable capital gains.

"excluded property" means a share of the capital stock of a non-resident-owned investment corporation that is not taxable Canadian property;

History: The definition "excluded property" amended by 1998, c. 19, subsec. 129(1), applicable after April 26, 1995. It formerly read:

> "excluded property" at a particular time means a share of the capital stock of a non-resident-owned investment corporation if, on the first day of the first taxation year of the corporation that ends at or after the particular time, the corporation does not own property referred to in any of clauses 115(1)(b)(v)(A) to (D);

The definition "excluded property" added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 44(2), applicable after February 11, 1991.

"exempt property" of a taxpayer at any time means property any income or gain from the disposition of which by the taxpayer at that time would, because the taxpayer is non-resident or because of a provision contained in a tax treaty, not cause an increase in the taxpayer's tax payable under this Part;

Related Provisions: 94(3)(a)(iii) [proposed] — Application to trust deemed resident in Canada.

History: The definition "exempt property" in subsec. 108(1) added by 2001, c. 17, subsec. 83(8), applicable after 1992, except that before 1999, the words "tax treaty" shall be read as "convention or agreement with another country that has the force of law in Canada".

"income interest" of a taxpayer in a trust means a right (whether immediate or future and whether absolute or contingent) of the taxpayer as a beneficiary under a personal trust to, or to receive, all or any part of the income of the trust and, after 1999, includes a right (other than a right acquired before 2000 and disposed of before March 2000) to enforce payment of an amount by the trust that arises as a consequence of any such right;

Proposed Amendment — 108(1)"income interest"

"income interest", of a taxpayer in a trust, means a right (whether immediate or future and whether absolute or contingent) of the taxpayer as a beneficiary under a personal trust to, or to receive, all or any part of the income of the trust and, at any time after 1999

(a) subject to paragraph (b), includes a right (other than a right acquired before 2000 and disposed of before March 2000) to enforce payment of an amount by the trust that arises as a consequence of any such right; and

(b) does not include a participating interest in respect of which subsection 94.1(3) or 94.2(9) applies to the taxpayer for the taxpayer's taxation year that includes that time;

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 26(1), will amend the definition "income interest" in subsec. 108(1) to read as above, applicable to trust taxation years that begin after 2002.

Technical Notes: Subsection 108(1) contains the definition "income interest". It is defined as a right of a taxpayer as a beneficiary under a personal trust to, or to receive, all or any part of the income of the trust and after 1999 includes a right (other than a right acquired before 2000 and disposed of before March 2000) to enforce payment by the trust that arises as a consequence of a right that is an income interest.

Under subsection 108(3), "income" for this purpose is determined without reference to the provisions of the Act.

The definition "income interest" is amended to provide that it does not include a participating interest in a foreign investment entity. For more details on foreign investment entities, see the commentary on sections 94.1 to 94.4.

Related Provisions: 108(3) — Meaning of "income" of trust; 248(1)"income interest" — Definition applies to entire Act.

History: The definition "income interest" in subsec. 108(1) amended by 2001, c. 17, subsec. 83(3), applicable in respect of interests created or materially altered after January 1987 that were acquired after 10 p.m. EST, February 6, 1987. The definition formerly read:

> "income interest" of a taxpayer in a trust means a right (whether immediate or future and whether absolute or contingent) of the taxpayer as a beneficiary under a personal trust to, or to receive, all or any part of the income of the trust;

Interpretation Bulletins: IT-385R2: Disposition of an income interest in a trust.

"inter vivos trust" means a trust other than a testamentary trust;

Related Provisions: 143(1) — Communal religious congregation deemed to be *inter vivos* trust; 143.1(1)(a) — Amateur athletes' reserve fund deemed to be *inter vivos* trust; 146.1(11) — RESP deemed to be *inter vivos* trust for certain purposes; 149(5) — Exception re investment income of certain clubs; 207.6(1) — Retirement compensation arrangement deemed to be *inter vivos* trust; 248(1)"*inter vivos* trust" — Definition applies to entire Act.

"non-qualifying real property" — [Repealed]

History: The definition "non-qualifying real property" in subsec. 108(1) repealed by 1995, c. 3, subsec. 31(1), applicable to taxation years that begin after February 22, 1994. The definition formerly read:

> "non-qualifying real property"
>
> (a) of a trust that is a personal trust has the meaning assigned by subsection 110.6(1), and
>
> (b) of a trust that is not a personal trust has the meaning assigned by subsection 131(6);

The definition "non-qualifying real property" in subsec. 108(1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 44(2), applicable to 1992 *et seq.*

"pre-1972 spousal trust" at a particular time means a trust that was

(a) created by the will of a taxpayer who died before 1972, or

(b) created before June 18, 1971 by a taxpayer during the taxpayer's lifetime

that, throughout the period beginning at the time it was created and ending at the earliest of January 1, 1993, the day on which the taxpayer's spouse or common-law partner died and the particular time, was a trust under which the taxpayer's spouse or common-law partner was entitled to receive all of the income of the trust that arose before the spouse's or common-law partner's death, unless a person other than the spouse or common-law partner received or otherwise obtained the use of any of the income or capital of the trust before the end of that period;

Related Provisions: 104(4)(a.1) — Deemed disposition by a trust; 104(15) — Preferred beneficiary's share; 104(15)(a) — Allocable amount for preferred beneficiary election; 108(3) — Meaning of "income" of trust; 108(4) — Trust not disqualified by reason only of payment of certain duties and taxes; 248(9.1) — Whether trust created by taxpayer's will; 252(3) — Extended meaning of "spouse".

History: The closing words of the definition "pre-1972 spousal trust" in subsec. 108(1) amended by 2001, c. 17, s. 241, applicable to 2001 *et seq.* except that, if a taxpayer and a person have jointly elected pursuant to s. 144 of 2000, c. 12 in respect of the 1998, 1999 or 2000 taxation years, the amendment applies to the taxpayer and the person in respect of the applicable taxation year and subsequent taxation years. The closing words formerly read:

> that, throughout the period beginning at the time it was created and ending at the earliest of January 1, 1993, the day on which the taxpayer's spouse or common-law partner died and the particular time, was a trust under which the taxpayer's spouse or common-law partner was entitled to receive all of the income of the trust that arose before the spouse or common-law partner's death, unless a person other than the spouse or common-law partner received or otherwise obtained the use of any of the income or capital of the trust before the end of that period;

The definition "pre-1972 spousal trust" in subsec. 108(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

The definition "pre-1972 spousal trust" in subsec. 108(1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 44(2), applicable after February 11, 1991.

Interpretation Bulletins: IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gain to beneficiaries.

"preferred beneficiary" under a trust for a particular taxation year of the trust means a beneficiary under the trust at the end of the particular year who is resident in Canada at that time if

(a) the beneficiary is

(i) an individual in respect of whom paragraphs 118.3(1)(a) to (b) apply for the individual's taxation year (in this definition referred to as the "beneficiary's year") that ends in the particular year, or

(ii) an individual

(A) who attained the age of 18 years before the end of the beneficiary's year, was a dependant (within the meaning assigned by subsection 118(6)) of another individual for the beneficiary's year and was dependent on the other individual because of mental or physical infirmity, and

(B) whose income (computed without reference to subsection 104(14)) for the beneficiary's year does not exceed the amount used under paragraph (c) of the description of B in subsection 118(1) for the year, and

(b) the beneficiary is

(i) the settlor of the trust,

(ii) the spouse or common-law partner or former spouse or common-law partner of the settlor of the trust, or

(iii) a child, grandchild or great grandchild of the settlor of the trust or the spouse or common-law partner of any such person;

Related Provisions: 104(14) — Preferred beneficiary election.

History: The definition "preferred beneficiary" in subsec. 108(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Cl. (a)(ii)(B) of the definition "preferred beneficiary" amended by 2000, c. 19, subsec. 16(1), applicable to 1998 *et seq.*, except that the reference to "the amount used under paragraph (c) of the description of B in subsection 118(1) for the year" shall be read as a reference to

(a) "$6,956" for the 1998 taxation year; and

(b) "$7,044" for the 1999 taxation year.

The clause formerly read:

> (B) whose income (computed without reference to subsection 104(14)) for the beneficiary's year does not exceed $6,456, and

The definition "preferred beneficiary" amended by 1998, c. 19, s. 19, applicable to trust taxation years that end after 1996. It formerly read:

> "preferred beneficiary" under a trust for a particular taxation year of the trust means an individual
>
> (a) who is resident in Canada and a beneficiary under the trust at the end of the particular year,
>
> (b) in respect of whom paragraphs 118.3(1)(a) to (b) apply for the individual's taxation year in which the particular year ends, and
>
> (c) who is
>
> (i) the settlor of the trust,
>
> (ii) the spouse or former spouse of the settlor of the trust, or
>
> (iii) a child, grandchild or great grandchild of the settlor of the trust, or the spouse of any such person;

The definition "preferred beneficiary" in subsec. 108(1) amended by 1996, c. 21, subsec. 19(2), applicable to trust taxation years that begin after 1995. The definition formerly read:

> "preferred beneficiary" under any trust means an individual resident in Canada who is a beneficiary under the trust and is
>
> (a) the settlor of the trust,
>
> (b) the spouse or former spouse of the settlor of the trust, or
>
> (c) a child, grandchild or great grandchild of the settlor of the trust, or the spouse of any such person;

Interpretation Bulletins: IT-374: Meaning of "settlor" (archived); IT-381R3: Trusts — capital gains and losses and the flow-through of taxable gains to beneficiaries; IT-394R2: Preferred beneficiary election.

"qualified farm property" of an individual has the meaning assigned by subsection 110.6(1);

"qualified small business corporation share" of an individual has the meaning assigned by subsection 110.6(1);

"settlor",

(a) in relation to a testamentary trust, means the individual referred to in the definition "testamentary trust" in this subsection, and

(b) in relation to an *inter vivos* trust,

(i) if the trust was created by the transfer, assignment or other disposition of property thereto (in this paragraph referred to as property "contributed") by not more than one individual and the fair market value of such of the property of the trust as was contributed by the individual at the time of the creation of the trust or at any subsequent time exceeds the fair market value of such of the property of the trust as was contributed by any other person or persons at any subsequent time (such fair market values being determined at the time of the making of any such contribution), means that individual, and

(ii) if the trust was created by the contribution of property thereto jointly by an individual and the individual's spouse or common-law partner and by no other person and the fair market value of such of the property of the trust as was contributed by them at the time of the creation of the trust or at any subsequent time exceeds the fair market value of such of the property of the trust as was contributed by any other person or persons at any subsequent time (such fair market values being determined at the time of the making of any such contribution), means that individual and the spouse or common-law partner;

Related Provisions: 17(15)"settlor" — Alternate definition for purposes of loan by corporation to non-resident; 104(5.6) — Designated contributor.

History: The definition "settlor" in subsec. 108(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Interpretation Bulletins: IT-374: Meaning of "settlor" (archived); IT-394R2: Preferred beneficiary election.

"testamentary trust" in a taxation year means a trust or estate that arose on and as a consequence of the death of an individual (including a trust referred to in subsection 248(9.1)), other than

Proposed Amendment — 108(1)"testamentary trust" opening words

"testamentary trust", in a taxation year, means a trust that arose on and as a consequence of the death of an individual (including a trust referred to in subsection 248(9.1)), other than

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 99(1), will amend the opening words of the definition "testamentary trust" in subsec. 108(1) to read as above, applicable to taxation years that end after December 20, 2002.

Technical Notes: Subsection 108(1) defines "testamentary trust" generally as a trust or estate that arose on and in consequence of the death of an individual, and provides some exceptions to that definition.

Subsection 104(1) provides that references to a "trust" in subdivision k (i.e., sections 104 to 108) of Division B of Part I of the Act include a trust or estate. The definition "testamentary trust" in subsection 108(1) is therefore amended to remove the reference to "estate" because the references in that definition to a "trust" include an estate.

(a) a trust created by a person other than the individual,

(b) a trust created after November 12, 1981 if, before the end of the taxation year, property has been contributed to the trust otherwise than by an individual on or after the individual's death and as a consequence thereof, and

(c) a trust created before November 13, 1981 if

(i) after June 28, 1982 property has been contributed to the trust otherwise than by an individual on or after the individual's death and as a consequence thereof, or

(ii) before the end of the taxation year, the total fair market value of the property owned by the trust that was contributed to the trust otherwise than by an individual on or after the individual's death and as a consequence thereof and the property owned by the trust that was substituted for such property exceeds the total fair market value of the property owned by the trust that was contributed by an individual on or after the individual's death and as a consequence thereof and the property owned by the trust that was substituted for such property, and for the purposes of this paragraph the fair market value of any property shall be determined as at the time it was acquired by the trust; and

Proposed Addition — 108(1)"testamentary trust"(d)

(d) a trust that, at any time after December 20, 2002 and before the end of the taxation year, incurs a debt or any other obligation owed to, or guaranteed by, a beneficiary or any other person or partnership (which beneficiary, person or partnership is referred to in this paragraph as the "specified party") with

whom any beneficiary of the trust does not deal at arm's length, other than a debt or other obligation

(i) incurred by the trust in satisfaction of the specified party's right as a beneficiary under the trust

(A) to enforce payment of an amount of the trust's income or capital gains payable at or before that time by the trust to the specified party, or

(B) to otherwise receive any part of the capital of the trust,

(ii) owed to the specified party, if the debt or other obligation arose because of a service (for greater certainty, not including any transfer or loan of property) rendered by the specified party to, for or on behalf of the trust, or

(iii) owed to the specified party, if

(A) the debt or other obligation arose because of a payment made by the specified party for or on behalf of the trust,

(B) in exchange for the payment, the trust transfers property, the fair market value of which is not less than the principal amount of that debt or other obligation, to the specified party within 12 months after the payment was made (or, where written application has been made to the Minister by the trust within that 12 months, within any longer period that the Minister considers reasonable in the circumstances), and

(C) it is reasonable to conclude that the specified party would have been willing to make the payment if the specified party dealt at arm's length with the trust, except where the trust is the individual's estate and that payment was made within the first 12 months after the individual's death (or, where written application has been made to the Minister by the estate within that 12 months, within any longer period that the Minister considers reasonable in the circumstances);

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 99(2), will add para. (d) to the definition "testamentary trust" in subsec. 108(1), applicable to taxation years that end after December 20, 2002, except that

(a) a transfer that is required, by cl. (d)(iii)(B) of the definition "testamentary trust" in subsec. 108(1), as amended, to be made within 12 months after a payment was made is deemed to be made in a timely manner if it is made within 12 months after the amending legislation is assented to; and

(b) for those taxation years that end before the day on which the amending legislation is assented to, the reference to "the individual's death" in cl. (d)(iii)(C) of the definition "testamentary trust" in subsec. 108(1), as amended, shall be read as a reference to "the day on which the *Income Tax Amendments Act, 2005* is assented to".

Technical Notes: New paragraph (d) of the definition "testamentary trust" is an anti-avoidance rule. That new paragraph provides that a testamentary trust in a taxation year does not include a trust (in the commentary on this amendment, references to "trust" include an estate) that incurs, after December 20, 2002 and before the end of the taxation year, a debt or any other obligation to pay an amount to, or guaranteed by, a beneficiary or any other person or partnership (referred to in this commentary as the "specified party") with whom any beneficiary of the trust does not deal at arm's length. However, such a debt will not affect the status of the trust as a testamentary trust if it is a debt or other obligation owed to the specified party and

- it is incurred by the trust in satisfaction of the specified party's right as a beneficiary under the trust to enforce payment of an amount of income or capital gains payable by the trust to the specified party or to otherwise receive any part of the capital of the trust,
- it arose because of a service (for greater certainty, not including any transfer or loan of property) rendered by the specified party to, for or on behalf of the trust; for example, this would include debts or other obligations arising in respect of services rendered in a person's capacity as an executor or administrator of an estate, as a liquidator of succession or as a trustee of a trust, or
- it arose because of a payment made by the specified party for or on behalf of (but not to) the trust; for example, a payment of funeral expenses on behalf of the deceased's estate. However, to qualify under this provision, additional conditions must be satisfied. In very general terms, these conditions are that the trust fully reimburse the specified party within a year of the specified party making the payment. More precisely, in exchange for the payment the trust must transfer property (the fair market value of which is not less than the principal amount of that debt or other obligation that arose because of the payment) to the specified party within 12 months after the specified party made the payment (or, where written application has been made to the Minister by the trust within that 12 months, within any longer period that the Minister considers reasonable in the circumstances). A transfer of property, within the required period by the trust to the specified party, which does not result in the settlement or cancellation of that debt or obligation would not satisfy this requirement. It must also be reasonable to conclude that the specified party would have been willing to make the payment if the specified party dealt at arm's length with the trust. This third requirement is suspended, however, where the trust is an individual's estate and the payment giving rise to the debt or obligation was made within the first 12 months after the individual's death (or, where written application has been made to the Minister of National Revenue by the estate within that 12 months, within any longer period that the Minister considers reasonable in the circumstances).

These amendments apply to trust taxation years that end after December 20, 2002. However, a transfer that is required, by clause (d)(iii)(B) of the definition "testamentary trust" in subsection 108(1) to be made within 12 months after a payment was made, is deemed to have been made in a timely manner if it is made within 12 months after this amended definition receives Royal Assent. In effect, the deadline imposed by that clause for the full reimbursement of the specified party by the trust or estate is extended, without need for written application, provided that the full reimbursement is made within 12 months after Royal Assent.

In addition, for taxation years that end before Royal Assent, the exception from the arm's length condition for obligations owed by an estate (which condition and exception are set out in clause (d)(iii)(C) of the definition) will apply so that a payment that is made by a specified party for or on behalf of the estate and that is described in clause (d)(iii)(A) will not be subject to the arm's length requirement where the payment is made at any time within 12 months after Royal Assent. For these taxation years, if such a qualifying payment is not made within 12 months after Royal Assent, then the Minister may grant a further extension of the period, beyond 12 months after Royal Assent, if written application is made to the Minister by the estate within 12 months after Royal Assent.

Letter from Dept. of Finance, April 28, 2004:

Dear [xxx]

Thank you for your letter of March 3, 2004, concerning proposed paragraph (d) of the definition "testamentary trust" in subsection 108(1) of the *Income Tax Act*, contained in the Legislative Proposals and Draft Regulations relating to Income Tax ("Legislative Proposals"), released by the Minister of Finance on February 27, 2004.

Subsection 108(1) of the Act defines "testamentary trust" generally as a trust that arose on and as a consequence of the death of an individual, and provides some exceptions to that definition. A reference in that definition to a trust includes an estate.

Proposed paragraph (d) of the definition "testamentary trust" is an anti-avoidance rule that is intended to respond to the use of testamentary trusts as vehicles for income splitting. That new paragraph provides that a testamentary trust in a taxation year does not include a trust or estate that incurs, after December 20, 2002 and before the end of the taxation year, a debt or any other obligation to pay an amount to, or guaranteed by, a beneficiary or any other person or partnership (referred to in the proposed definition as the "specified party") with whom any beneficiary of the trust or estate does not deal at arm's length.

Certain of such debts and obligations would, however, not cause a trust or estate to lose its status as a testamentary trust. For example, under proposed subparagraph (d)(iii) of the definition, a debt or obligation would not affect the status of a trust or estate as a testamentary trust if it is a debt or other obligation owed to the specified party, it arose because of a payment made by the specified party for or on behalf of the trust or estate, the trust or estate fully reimburses the specified party within a year of the specified party making the payment and it is reasonable to conclude that the specified party would have been willing to make the payment if the specified party dealt at arm's length with the trust or estate.

In your letter you have expressed concern that the last condition in subparagraph (d)(iii) of that definition — that the specified party would have been willing to make the payment if the specified party dealt at arm's length with the trust or estate — will, in practice, not be satisfied in the case of the vast majority of estates of deceased individuals. We understand from your letter that this is because of the legal limitations placed on the estate executor's ability to deal with property of the estate, such that family members of a deceased individual will often undertake to make payments on behalf of the estate — for example, the payment of funeral expenses or a tax liability — without any expectation, or arrangement to the effect, that the reimbursement by the estate of such payments include an arm's length amount of interest. As a result, under that proposed paragraph of the definition "testamentary trust" the estate would lose its status under the Act as a testamentary trust.

We are of the view that the loss of an estate's status as a testamentary trust, in these circumstances, would be inconsistent with the policy objectives of proposed paragraph (d) of the definition. Therefore, we are prepared to recommend a modification to proposed subparagraph (d)(iii) of the definition "testamentary trust", to provide that the requirement in clause (C) of that subparagraph — that the specified party would have been willing to make the payment if the specified party dealt at arm's length with an individual's estate — not apply where the payment for or on behalf of an estate is made within the first 12 months after the individual's death (or, where written application has been made to the Minister of National Revenue by the estate within that 12 months, within any longer period that that Minister considers reasonable in the circumstances). As a result, where the remaining conditions of proposed subparagraph (d)(iii) of that definition are satisfied, to the extent that the circumstances do not involve an attempt to use the estate as a vehicle for income splitting, the anti-avoidance provisions of the Act would not be expected to apply to cause the estate to lose its status as a testamentary trust.

For these purposes, we will also recommend that an application, otherwise required to be filed before 120 days after the amending legislation containing that proposed subparagraph (d)(iii) receives Royal Assent, be deemed to have been filed on a timely basis if it is filed in writing with the Minister of National Revenue within 120 days after that Royal Assent.

Thank you for writing.

Yours sincerely,

Brian Ernewein

Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 94(1)"trust" — Non-resident trust rules apply to testamentary trusts; 104(23) — Rules for testamentary trusts; 210.1(a) — Part XII.2 does not apply to testamentary trust; 248(1)"testamentary trust" — Definition applies to entire Act; 248(8) — Occurrences as a consequence of death; 249(1)(c), (5) — Taxation year of testamentary trust; 249(6) — Deemed year-end on loss of testamentary trust status.

History: The opening words of the definition "testamentary trust" in subsec. 108(1) substituted by 1994, c. 21, subsec. 48(4), applicable to 1990 *et seq.* The opening words of that definition formerly read:

> "testamentary trust" in a taxation year means a trust or estate that arose upon and in consequence of the death of an individual (including a trust referred to in subsection 70(6.1)), other than

Interpretation Bulletins: IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries.

"trust" includes an *inter vivos* trust and a testamentary trust but in subsections 104(4), (5), (5.2), (12), (13.1), (13.2), (14) and (15) and sections 105 to 107 does not include

(a) an amateur athlete trust, an employee trust, a trust described in paragraph 149(1)(o.4) or a trust governed by a deferred profit sharing plan, an employee benefit plan, an employees profit sharing plan, a foreign retirement arrangement, a registered education savings plan, a registered pension plan, a registered retirement income fund, a registered retirement savings plan or a registered supplementary unemployment benefit plan,

(a.1) a trust, other than a trust described in paragraph (a) or (d), all or substantially all of the property of which is held for the purpose of providing benefits to individuals each of whom is provided with benefits in respect of, or because of, an office or employment or former office or employment of any individual,

Proposed Amendment — 108(1)"trust"(a.1)

(a.1) a trust (other than a trust described in paragraph (a) or (d), a trust to which subsection 7(2) or (6) applies or a trust prescribed for the purpose of subsection 107(2)) all or substantially all of the property of which is held for the purpose of providing benefits to individuals each of whom is provided with benefits in respect of, or because of, an office or employment or former office or employment of any individual,

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 26(3), will amend para. (a.1) of the definition "trust" in subsec. 108(1), applicable to trust taxation years that begin after 2002, and to trust taxation years that begin

(a) after 2000, if the trust makes a valid election under para. (a) of the Application of the amendment to s. 94; and

(b) after 2001, if the trust makes a valid election under para. (a) or (b) of the Application of the amendment to s. 94.

Technical Notes: Subsection 108(1) defines "trust", for the purposes of the 21-year deemed disposition rule and other specified measures, to exclude certain listed trusts.

Paragraph (a.1) of that definition is amended to clarify that its intended application should be limited to health and welfare trusts.

(b) a related segregated fund trust (within the meaning assigned by section 138.1),

(c) an *inter vivos* trust deemed by subsection 143(1) to exist in respect of a congregation that is a constituent part of a religious organization,

(d) an RCA trust (within the meaning assigned by subsection 207.5(1)),

(e) a trust each of the beneficiaries under which was at all times after it was created a trust referred to in paragraph (a), (b) or (d) or a person who is a beneficiary of the trust only because of being a beneficiary under a trust referred to in any of those paragraphs, or

(e.1) a cemetery care trust or a trust governed by an eligible funeral arrangement,

and, in applying subsections 104(4), (5), (5.2), (12), (14) and (15) and section 106 at any time, does not include

Proposed Amendment — 108(1)"trust" between (e.1) and (f)

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 99(3), will delete "and section 106" from the portion of the definition "trust" in subsec. 108(1) between paras. (e.1) and (f), applicable to 1998 *et seq.*

Technical Notes: For the purposes of the 21-year deemed disposition rule and other specified measures, subsection 108(1) defines "trust" to exclude certain listed trusts.

For these purposes, paragraph (f) of the definition excludes unit trusts (as defined in subsection 108(2)) and paragraph (g) excludes, except as specified, trusts all interests in which have vested indefeasibly.

This definition is amended so that section 106 is not a provision for the purposes of which paragraphs (f) and (g) of the definition apply. Section 106 provides rules in respect of an "income interest" (as defined in subsection 108(1)) in a "personal trust" (as defined in subsection 248(1)). As a

result of this amendment, for the purpose of section 106, references to a trust will include a trust described in paragraph (g) of the definition "trust" in subsection 108(1). (As the definition "personal trust" expressly excludes a unit trust, paragraph (f) of the definition "trust" in subsection 108(1) is not relevant for this purpose.)

(f) a trust that, at that time, is a unit trust, or

(g) a trust all interests in which, at that time, have vested indefeasibly, other than

(i) an *alter ego* trust, a joint spousal or common-law partner trust, a post-1971 spousal or common-law partner trust or a trust to which paragraph 104(4)(a.4) applies,

(ii) a trust that has elected under subsection 104(5.3),

(iii) a trust that has, in its return of income under this Part for its first taxation year that ends after 1992, elected that this paragraph not apply,

(iv) a trust that is at that time resident in Canada where the total fair market value at that time of all interests in the trust held at that time by beneficiaries under the trust who at that time are non-resident is more than 20% of the total fair market value at that time of all interests in the trust held at that time by beneficiaries under the trust,

(v) a trust under the terms of which, at that time, all or part of a person's interest in the trust is to be terminated with reference to a period of time (including a period of time determined with reference to the person's death), otherwise than as a consequence of terms of the trust under which an interest in the trust is to be terminated as a consequence of a distribution to the person (or the person's estate) of property of the trust if the fair market value of the property to be distributed is required to be commensurate with the fair market value of that interest immediately before the distribution, or

(vi) a trust that, before that time and after December 17, 1999, has made a distribution to a beneficiary in respect of the beneficiary's capital interest in the trust, if the distribution can reasonably be considered to have been financed by a liability of the trust and one of the purposes of incurring the liability was to avoid taxes otherwise payable under this Part as a consequence of the death of any individual;

Related Provisions: 75(2) — Revocable or reversionary trust; 94(1)"exempt foreign trust"(f) — Trust under (a.1) excluded from non-resident trust rules; 94(3) — Non-resident trust deemed resident in Canada; 104(1) — Reference to trust or estate; 107.4(4) — Fair market value of capital interest in trust; 146.1(1)"trust" — Meaning of "trust" for RESP; 210.1(d) — Certain trusts not subject to Part XII.2 tax; 233.2(4) — Reporting requirement re transfers to foreign trust; 233.6(1) — Reporting requirement re distributions from foreign trust; 248(1)"disposition"(b)(v) — Where trustee ceasing to act as agent of beneficiary; 248(1)"trust" — Definition outside subdiv. k is that in 104(1); 248(3) — Deemed trusts in Quebec; 248(9.2) — Meaning of "vested indefeasibly"; 248(25.1) — Trust-to-trust transfers — deemed same trust; 251(1)(b) — Personal trust and beneficiary deemed not to deal at arm's length.

History: Para. (a.1) of the definition "trust" in subsec. 108(1) added by 2001, c. 17, subsec. 83(6), applicable to 1999 *et seq.*

The portion of the definition "trust" in subsec. 108(1) after para. (e.1) amended by the said c. 17, subsec. 83(7), applicable to 1998 *et seq.*, except that

(a) it does not apply for the purpose of applying subpara. (g)(iv) of the definition before December 24, 1998; and

(b) where the trust so elects in writing and files the election with the Minister of National Revenue on or before the trust's filing-due date for the taxation year of the trust that includes June 14, 2001 (or any later day that is acceptable to the Minister), subpara. (g)(v) of the definition, as it applies before 2001, shall be read as follows:

(v) a trust any interest in which may become effective in the future, or

The portion after para. (e.1) formerly read:

and, in subsections 104(4), (5), (5.2), (12), (14) and (15), does not include

(f) a unit trust, or

(g) a trust (other than a trust described in paragraph 104(4)(a), a trust that has elected under subsection 104(5.3), or a trust that, in its return of income under this Part for its first taxation year ending after 1992, has elected that this subparagraph not apply) all interests in which have vested indefeasibly and no interest in which may become effective in the future.

Para. (e.1) of the definition "trust" in subsec. 108(1) amended by 1998, c. 19, subsec. 129(2), applicable to 1993 *et seq.* Para. (e.1) formerly read:

(e.1) a trust governed by an eligible funeral arrangement,

Para. (e.1) added to the definition "trust" in subsec. 108(1) by 1995, c. 21, s. 61, applicable to 1993 *et seq.*

The preamble to the definition "trust" amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 44(4), applicable to 1993 *et seq.* That portion formerly read:

"trust" includes an *inter vivos* trust and a testamentary trust but, in subsections 104(4), (5), (5.2), (12), (14) and (15), does not include a unit trust and, in subsections 104(4), (5), (5.2), (12), (13.1), (13.2), (14) and (15) and sections 105 to 107, does not include

Para. (a) of "trust" amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 44(5), applicable to 1988 *et seq.* except that, in its application to the 1988 and 1989 taxation years, the para. shall be read without reference to the expression "a foreign retirement arrangement". Para. (a) formerly read:

(a) a trust governed by a registered pension plan, a foreign retirement arrangement, an employees profit sharing plan, a registered supplementary unemployment benefit plan, a registered retirement savings plan, a deferred profit sharing plan, a registered education savings plan, a registered retirement income fund, an employee benefit plan, an employee trust or a trust described in paragraph 149(1)(o.4),

Paras. (e) and (g) of "trust" added and the portion between those paras. moved from the preamble by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 44(6), applicable to 1993 *et seq.*

Para. (a) of "trust" amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 77(2), to add "a foreign retirement arrangement", applicable to 1990 *et seq.*

Interpretation Bulletins [subsec. 108(1)"trust"]: IT-394R2: Preferred beneficiary election; IT-449R: Meaning of "vested indefeasibly" (archived); IT-502: Employee benefit plans and employee trusts; IT-531: Eligible funeral arrangements.

Related Provisions [subsec. 108(1)]: 104(4), (5), (5.2) — Exempt property excluded from 21-year deemed disposition.

Selected Cases [subsec. 108(1)]: *Greenberg v. R.*, [1997] 3 C.T.C. 2859 (TCC) (Contribution of property to trust caused it to cease to be testamentary trust).

(2) **Where trust is a unit trust** — For the purposes of this Act, a trust is a unit trust at any particular time if, at that time, it was an *inter vivos* trust the interest of each beneficiary under which was described by reference to units of the trust, and

(a) the issued units of the trust included

(i) units having conditions attached thereto that included conditions requiring the trust to accept, at the demand of the holder thereof and at prices determined and payable in accordance with the conditions, the surrender of the units, or fractions or parts thereof, that are fully paid, or

(ii) units qualified in accordance with prescribed conditions relating to the redemption of the units by the trust,

and the fair market value of such of the units as had conditions attached thereto that included such condi-

tions or as were so qualified, as the case may be, was not less than 95% of the fair market value of all of the issued units of the trust (such fair market values being determined without regard to any voting rights attaching to units of the trust),

(b) each of the following conditions was satisfied:

(i) throughout the taxation year that includes the particular time (in this paragraph referred to as the "current year"), the trust was resident in Canada,

(ii) throughout the period or periods (in this paragraph referred to as the "relevant periods") that are in the current year and throughout which the conditions in paragraph (a) are not satisfied in respect of the trust, its only undertaking was

(A) the investing of its funds in property (other than real property or an interest in real property),

(B) the acquiring, holding, maintaining, improving, leasing or managing of any real property or an interest in real property, that is capital property of the trust, or

Proposed Amendment — 108(2)(b)(ii)(A), (B)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 232(1), will amend cls. 108(2)(b)(ii)(A) and (B) by substituting "interest in real property or an immovable or a real right in an immovable" for "interest in real property" in cl. (A) and "interest in real property, or of any immovable or a real right in immovables," for "interest in real property," in cl. (B), to come into force on Royal Assent.

Technical Notes: See under 12(4).

(C) any combination of the activities described in clauses (A) and (B),

(iii) throughout the relevant periods at least 80% of its property consisted of any combination of

(A) shares,

(B) any property that, under the terms or conditions of which or under an agreement, is convertible into, is exchangeable for or confers a right to acquire, shares,

(C) cash,

(D) bonds, debentures, mortgages, hypothecary claims, notes and other similar obligations,

(E) marketable securities,

(F) real property situated in Canada and interests in real property situated in Canada, and

(G) rights to and interests in any rental or royalty computed by reference to the amount or value of production from a natural accumulation of petroleum or natural gas in Canada, from an oil or gas well in Canada or from a mineral resource in Canada,

Proposed Amendment — 108(2)(b)(iii)(F), (G)

(F) real property situated in Canada, and interests in such real property, or immovables situated in Canada and real rights in such immovables, and

(G) rights to and interests in — or, for civil law, rights in or to — any rental or royalty computed by reference to the amount or value of production from a natural accumulation of petroleum or natural gas in Canada, from an oil or gas well in Canada or from a mineral resource in Canada,

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 232(2), will amend cls. 108(2)(b)(iii)(F) and (G) to read as above, to come into force on Royal Assent.

Technical Notes: See under 12(4).

(iv) either

(A) not less than 95% of its income for the current year (computed without regard to subsections 49(2.1) and 104(6)) was derived from, or from the disposition of, investments described in subparagraph (iii), or

(B) not less than 95% of its income for each of the relevant periods (computed without regard to subsections 49(2.1) and 104(6) and as though each of those periods were a taxation year) was derived from, or from the disposition of, investments described in subparagraph (iii),

Proposed Amendment — 108(2)(b)(iv)

Letter from Dept. of Finance, March 7, 2003:

Dear [xxx]

Thank you for your letter of October 17, 2002, concerning the interaction of paragraph 108(2)(b) and subsection 39(2) of the *Income Tax Act*.

As you know, if the issued units of a trust do not meet the conditions of paragraph 108(2)(a) of the Act, the trust must at that time meet the requirements of paragraph 108(2)(b) or (c) in order to qualify at any time as a "unit trust" under the Act. For a trust that relies upon paragraph 108(2)(b), subparagraph 108(2)(b)(iii) imposes upon the trust the condition that at least 80% of the trust's property consist of any combination of property described in clauses 108(2)(b)(iii)(A) to (G). Subparagraph 108(2)(b)(iv) requires, in general terms, that at least 95% of the trust's income over certain periods of time be derived from investments, or dispositions of investments, in property described in subparagraph (iii).

Subsection 39(2) of the Act deems certain gains resulting from the fluctuation in value of foreign currency to be capital gains from the disposition of foreign currency.

In your letter, you describe a trust that seeks to rely on paragraph 108(2)(b) to qualify as a unit trust. Some of the trust's property may consist of foreign investments. The trust may seek to minimize its risk of foreign currency fluctuations by funding its foreign investments with debt denominated in the foreign currency in which those foreign investments are denominated. We assume that the trust carries on, at all relevant times, these activities in a manner that permits it to satisfy the limitations, in subparagraph 108(2)(b)(ii), on its undertaking.

You are concerned that the portion, if any, of the trust's income in a given year that arises from the application of subsection 39(2) would not be income derived from investments, or the disposition of investments, described in subparagraph 108(2)(b)(iii), such that the trust might not be able to satisfy the conditions of subparagraph 108(2)(b)(iv). As a result, you are seeking an amendment to subparagraph 108(2)(b)(iv) so that the trust's income would be computed without regard to subsection 39(2).

In our view, the deemed capital gains that arise because of the application of subsection 39(2) should not be included in computing the income of a trust for the purpose of subparagraph 108(2)(b)(iv). We are, therefore, prepared to recommend a clarifying amendment to the Act so that, in applying subparagraph 108(2)(b)(iv), the trust's income would be computed without regard to subsection 39(2). We will also recommend that such an amendment apply for the 2003 and subsequent taxation years.

Of course, we cannot offer any assurance that either the Minister of Finance or Parliament will agree with the recommendation that we intend to make in this regard. Nonetheless, we trust that this statement of our position is helpful.

Thank you for writing.

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

(v) throughout the relevant periods, not more than 10% of its property consisted of bonds, securities or shares in the capital stock of any one corporation or debtor other than Her Majesty in right of

Canada or a province or a Canadian municipality, and

(vi) where the trust would not be a unit trust at the particular time if this paragraph were read without reference to this subparagraph and subparagraph (iii) were read without reference to clause (F), the units of the trust are listed at any time in the current year or in the following taxation year on a prescribed stock exchange in Canada, or

(c) the fair market value of the property of the trust at the end of 1993 was primarily attributable to real property (or an interest in real property), the trust was a unit trust throughout any calendar year that ended before 1994 and the fair market value of the property of the trust at the particular time is primarily attributable to property described in paragraph (a) or (b) of the definition "qualified investment" in section 204, real property (or an interest in real property) or any combination of those properties.

Proposed Amendment — 108(2)(c)

(c) the fair market value of the property of the trust at the end of 1993 was primarily attributable to real property or an interest in real property — or to immovables or a real right in immovables — and the trust was a unit trust throughout any calendar year that ended before 1994 and the fair market value of the property of the trust at the particular time is primarily attributable to property described in paragraph (a) or (b) of the definition "qualified investment" in section 204, real property or an interest in real property — or immovables or a real right in immovables — or any combination of those properties.

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 232(3), will amend para. 108(2)(c) to read as above, to come into force on Royal Assent.

Technical Notes: See under 12(4).

Related Provisions: 20(1)(e)(i) — Deduction for expenses relating to sale of units; 53(1)(d.1), 53(2)(h), (j) — ACB of units; 108(1)"trust"(f) — Unit trusts excluded from many trust rules; 132(6) — Meaning of "mutual fund trust"; 132(6.2) — Mutual fund trust — retention of status; 248(1)"unit trust" — Definition applies to entire Act; 248(4.1) — Meaning of "real right in an immovable"; 250(6.1) — Trust that ceases to exist deemed resident throughout year; 253.1 — Limited partner not considered to carry on business of partnership.

History: Para. 108(2)(b) amended by 2001, c. 17, subsec. 83(9), applicable to 1998 *et seq.* The para. formerly read:

(b) throughout the taxation year in which the particular time occurred

(i) it was resident in Canada,

(ii) its only undertaking was

(A) the investing of its funds in property (other than real property or an interest in real property),

(B) the acquiring, holding, maintaining, improving, leasing or managing of any real property, or interest in real property, that is capital property of the trust, or

(C) any combination of the activities described in clauses (A) and (B),

(iii) at least 80% of its property consisted of any combination of

(A) shares,

(B) any property that, under the terms or conditions of which or under an agreement, is convertible into, is exchangeable for or confers a right to acquire, shares,

(C) cash,

(D) bonds, debentures, mortgages, notes and other similar obligations,

(E) marketable securities,

(F) real property situated in Canada and interests in such property, and

(G) rights to and interests in any rental or royalty computed by reference to the amount or value of production from a natural accumulation of petroleum or natural gas in Canada, from an oil or gas well in Canada or from a mineral resource in Canada,

(iv) not less than 95% of its income (determined without reference to subsections 49(2.1) and 104(6)) for the year was derived from, or from the disposition of, investments described in subparagraph (iii), and

(v) not more than 10% of its property consisted of bonds, securities or shares in the capital stock of any one corporation or debtor other than Her Majesty in right of Canada or a province or a Canadian municipality,

and, where the trust would not be a unit trust at the particular time if subparagraph (iii) were read without reference to the words "real property (or interests in real property) situated in Canada", the units of the trust are listed at any time in the year or in the following taxation year on a prescribed stock exchange in Canada, or

Cls. 108(2)(b)(ii)(A) and (B), subpara. 108(2)(b)(iii), and the closing words of para. 108(2)(b) amended, para. 108(2)(c) added, by 1998, c. 19, subsecs. 129(3)–(6), applicable to 1994 *et seq.* Cls. 108(2)(b)(ii)(A) and (B), subpara. 108(2)(b)(iii) and the closing words of para. 108(2)(b) formerly read:

(A) the investing of its funds in property (other than real property),

(B) the acquiring, holding, maintaining, improving, leasing or managing of any real property that is capital property of the trust, or

. . . . .

(iii) at least 80% of its property consisted of any combination of shares, bonds, mortgages, marketable securities, cash, real property situated in Canada or rights to or interests in any rental or royalty computed by reference to the amount or value of production from a natural accumulation of petroleum or natural gas in Canada, from an oil or gas well in Canada or from a mineral resource in Canada,

. . . . .

and, where the trust would not be a unit trust at the particular time if subparagraph (iii) were read without reference to the words "real property situated in Canada", the units of the trust are listed at any time in the year or in the following taxation year on a prescribed stock exchange in Canada.

Para. 108(2)(b) amended by 1995, c. 21, s. 66, applicable to 1994 *et seq.* Para. (b) formerly read:

(b) throughout the taxation year in which the particular time occurred it complied with the following conditions:

(i) it was resident in Canada,

(ii) its only undertaking was the investing of funds of the trust,

(iii) at least 80% of its property throughout the year consisted of shares, bonds, mortgages, marketable securities, cash or rights to or interests in any rental or royalty computed by reference to the amount or value of production from a natural accumulation of petroleum or natural gas in Canada, from an oil or gas well in Canada or from a mineral resource in Canada,

(iv) not less than 95% of its income (determined without reference to subsections 49(2.1) and 104(6)) for the year was derived from, or from dispositions of, investments described in subparagraph (iii),

(v) at no time in the year did more than 10% of its property consist of shares, bonds or securities of any one corporation or debtor other than Her Majesty in right of Canada or a province or a Canadian municipality, and

(vi) where there were prescribed for the purposes of this subparagraph conditions relating to the number of unit holders, dispersal of ownership of its units or public trading of its units, all holdings of and transactions in its units accorded with those conditions.

Subpara. 108(2)(b)(iv) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 77(3), to add "(determined without reference to subsections 49(2.1) and 104(6))", applicable to 1990 *et seq.*

Regulations: 3200 (prescribed stock exchange).

I.T. Technical News: 6 (mutual funds trading — meaning of "investing its funds in property" in 108(2)(b)(ii)(A)).

(3) Income of a trust in certain provisions — For the purposes of the definition "income interest" in subsection (1), the income of a trust is its income computed without reference to the provisions of this Act and, for the purposes of the definition "pre-1972 spousal trust" in subsection (1) and paragraphs 70(6)(b) and (6.1)(b), 73(1.01)(c) and 104(4)(a), the income of a trust is its income computed without reference to the provisions of this Act, minus any dividends included in that income

Proposed Amendment — 108(3) opening words

(3) Income of a trust in certain provisions — For the purposes of the definitions "income interest" in subsection (1), "lifetime benefit trust" in subsection 60.011(1) and "exempt foreign trust" in subsection 94(1), the income of a trust is its income computed without reference to the provisions of this Act and, for the purposes of the definition "pre-1972 spousal trust" in subsection (1) and paragraphs 70(6)(b) and (6.1)(b), 73(1.01)(c) and 104(4)(a), the income of a trust is its income computed without reference to the provisions of this Act, minus any dividends included in that income

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 26(4), will amend the opening words of subsec. 108(3) to read as above, applicable to trust taxation years that begin after 2000.

Technical Notes: Subsection 108(3) provides that, for the purposes of the definition "income interest" in subsection 108(1), the income of a trust is its income computed without reference to the provisions of the Act.

Subsection 108(3) is amended so that the rule described above also applies for the purposes of the definitions "life-time benefit trust" in subsection 60.011(1) and "exempt foreign trust" in new subsection 94(1).

(a) that are amounts not included by reason of section 83 in computing the income of the trust for the purposes of the other provisions of this Act;

(b) that are described in subsection 131(1); or

(c) to which subsection 131(1) applies by reason of subsection 130(2).

Related Provisions: 108(5) — Interpretation.

History: The opening words of subsec. 108(3) amended by 2001, c. 17, subsec. 83(10), applicable to 2000 *et seq.*, except for the purpose of applying s. 73 to transfers that occur before 2000. The opening words formerly read:

(3) For the purposes of the definition "income interest" in subsection (1), the income of a trust is its income computed without reference to the provisions of this Act and, for the purposes of the definition "pre-1972 spousal trust" in subsection (1) and paragraphs 70(6)(b) and (6.1)(b), 73(1)(c) and 104(4)(a), the income of a trust is its income computed without reference to the provisions of this Act, minus any dividends included therein

That portion of subsec. 108(3) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 44(7), applicable to 1991*et seq.* That portion formerly read:

(3) For the purposes of the definition "income interest" in subsection (1), the income of a trust is its income computed without reference to the provisions of this Act and, for the purposes of subparagraphs 70(6)(b)(i), 73(1)(c)(i) and 104(4)(a)(iii), the income of a trust is its income computed without reference to the provisions of this Act, minus any dividends included therein

Interpretation Bulletins: IT-305R4: Testamentary spouse trusts; IT-385R2: Disposition of an income interest in a trust.

(4) Trust not disqualified — For the purposes of the definition "pre-1972 spousal trust" in subsection (1), subparagraphs 70(6)(b)(ii) and (6.1)(b)(ii) and paragraphs 73(1.01)(c) and 104(4)(a), where a trust was created by a taxpayer whether by the taxpayer's will or otherwise, no person is deemed to have received or otherwise obtained or to be entitled to receive or otherwise obtain the use of any income or capital of the trust solely because of the payment, or provision for payment, as the case may be, by the trust of

(a) any estate, legacy, succession or inheritance duty payable, in consequence of the death of the taxpayer or a spouse or common-law partner of the taxpayer who is a beneficiary under the trust, in respect of any property of, or interest in, the trust; or

(b) any income or profits tax payable by the trust in respect of any income of the trust.

Related Provisions: 248(8) — Occurrences as a consequence of death; 248(9.1) — Whether trust created by taxpayer's will.

History: Subsec. 108(4) amended by 2001, c. 17, subsec. 83(11), applicable to 2000 *et seq.*, except for the purpose of applying s. 73 to transfers that occur before 2000. The subsec. formerly read:

(4) For the purposes of the definition "pre-1972 spousal trust" in subsection (1) and subparagraphs 70(6)(b)(ii) and (6.1)(b)(ii), 73(1)(c)(ii) and 104(4)(a)(iv), where a trust was created by a taxpayer whether by the taxpayer's will or otherwise, a person, other than the taxpayer's spouse or common-law partner, shall be deemed not to have received or otherwise obtained or to be entitled to receive or otherwise obtain the use of any income or capital of the trust solely because of the payment, or provision for payment, as the case may be, by the trust of

(a) any estate, legacy, succession or inheritance duty payable, in consequence of the taxpayer's death, in respect of any property of, or interest in, the trust; or

(b) any income or profits tax payable by the trust in respect of any income of the trust.

Subsec. 108(4) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

That portion of subsec. 108(4) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 44(8), applicable to 1991 *et seq.* That portion formerly read:

(4) Trust not disqualified by reason only of payment of certain duties and taxes — For greater certainty, for the purposes of subparagraphs 70(6)(b)(ii), 73(1)(c)(ii) and 104(4)(a)(iv), where a trust has been created by a taxpayer whether by the taxpayer's will or otherwise, a person, other than the taxpayer's spouse, shall be deemed not to have received or otherwise obtained or to be entitled to receive or otherwise obtain the use of any of the income or capital of the trust, by reason only of the payment, or provision for payment, by the trust of

Interpretation Bulletins: IT-305R4: Testamentary spouse trusts.

(5) Interpretation — Except as otherwise provided in this Part,

(a) an amount included in computing the income for a taxation year of a beneficiary of a trust under subsection 104(13) or (14) or section 105 shall be deemed to be income of the beneficiary for the year from a property that is an interest in the trust and not from any other source, and

(b) an amount deductible in computing the amount that would, but for subsections 104(6) and (12), be the income of a trust for a taxation year shall not be deducted by a beneficiary of the trust in computing the beneficiary's income for a taxation year,

but, for greater certainty, nothing in this subsection shall affect the application of subsection 56(4.1), sections 74.1 to 75 and 120.4 and subsection 160(1.2) of this Act and section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952.

Related Provisions: 3 — Calculation of income; 129(4) — "Canadian investment income" and "foreign investment income" defined.

History: the closing words of subsec. 108(5) amended by 2000, c. 19, subsec. 16(2), applicable to 2000 *et seq.* The closing words formerly read:

but, for greater certainty, nothing in this subsection shall affect the application of subsection 56(4.1) and sections 74.1 to 75 of this Act and section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations.

(6) Variation of trusts — Where at any time the terms of a trust are varied

(a) for the purposes of subsections 104(4), (5) and (5.2) and subject to paragraph (b), the trust is, at and after that time, deemed to be the same trust as, and a continuation of, the trust immediately before that time;

(b) for greater certainty, paragraph (a) does not affect the application of paragraph 104(4)(a.1); and

(c) for the purposes of paragraph 53(2)(h), subsection 107(1), paragraph (j) of the definition "excluded right or interest" in subsection 128.1(10) and the definition "personal trust" in subsection 248(1), no interest of a beneficiary under the trust before it was varied is considered to be consideration for the interest of the beneficiary in the trust as varied.

History: Subsec. 108(6) amended by 2001, c. 17, subsec. 83(12), applicable to 2000 *et seq.* The subsec. formerly read:

(6) For the purposes of subsections 104(4), (5) and (5.2), where at any time the terms of a trust are varied, the trust shall at and after that time be deemed to be the same trust as, and a continuation of, the trust immediately before that time, but, for greater certainty, nothing in this subsection affects the application of paragraph 104(4)(a.1).

Subsec. 108(6) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 44(9), applicable to variations occurring after February 11, 1991.

(7) Interests acquired for consideration — For the purposes of paragraph 53(2)(h), subsection 107(1), paragraph (j) of the definition "excluded right or interest" in subsection 128.1(10) and the definition "personal trust" in subsection 248(1),

Proposed Amendment — 108(7) opening words

(7) Interests acquired for consideration — For the purposes of paragraph 53(2)(h), paragraph (b) of the definition "exempt amount" in subsection 94(1), subsection 107(1), paragraph (j) of the definition "excluded right or interest" in subsection 128.1(10) and paragraph (b) of the definition "personal trust" in subsection 248(1),

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 26(5), will amend the opening words of subsec. 108(7) to read as above, applicable in determining after 2003 whether an interest in a trust has been acquired for consideration.

Technical Notes: Subsection 108(7) contains a rule that, in general terms, provides that a person (or two or more related persons) can make a contribution to a trust and retain an interest under the trust without the interest being considered to have been acquired for consideration. This rule applies for the purposes of paragraph 53(2)(h), subsection 107(1), paragraph (j) of the definition "excluded right or interest" in subsection 128.1(10) and the definition "personal trust" in subsection 248(1).

Subsection 108(7) is amended so that it also applies for the purpose of paragraph (b) of the definition "exempt amount" in subsection 94(1). For more detail on that definition, see the commentary above.

(a) an interest in a trust is deemed not to be acquired for consideration solely because it was acquired in satisfaction of any right as a beneficiary under the trust to enforce payment of an amount by the trust; and

(b) where all the beneficial interests in a particular *inter vivos* trust acquired by way of the transfer, assignment or other disposition of property to the particular trust were acquired by

(i) one person, or

(ii) two or more persons who would be related to each other if

(A) a trust and another person were related to each other, where the other person is a beneficiary under the trust or is related to a beneficiary under the trust, and

(B) a trust and another trust were related to each other, where a beneficiary under the trust is a beneficiary under the other trust or is related to a beneficiary under the other trust,

any beneficial interest in the particular trust acquired by such a person is deemed to have been acquired for no consideration.

History: Subsec. 108(7) added by 2001, c. 17, subsec. 83(12), applicable after December 23, 1998.

Definitions [s. 108]: "*alter ego* trust" — 248(1); "amateur athlete trust" — 143.1(1)(a), 248(1); "amount" — 248(1); "arm's length" — 251(1); "beneficially interested" — 248(25); "beneficiary" — 108(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255, *Interpretation Act* 35(1); "capital gain" — 39(1)(a), 248(1); "capital interest" — 108(1), 248(1); "capital property" — 54, 248(1); "cemetery care trust", "common-law partner" — 248(1); "common-law partner" — 248(1); "consequence" — 248(8); "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount" — 107(1)(e), 108(1); "created by the taxpayer's will" — 248(9.1); "deferred profit sharing plan" — 147(1), 248(1); "disposition" — 248(1); "dividend" — 248(1); "eligible capital property" — 54, 248(1); "eligible funeral arrangement" — 148.1(1), 248(1); "employee benefit plan", "employee trust" — 248(1); "estate" — 104(1), 248(1); "employees profit sharing plan" — 144(1), 248(1); "fair market value" — 107.4(4); "foreign affiliate" — 95(1), 248(1); "foreign investment entity" — 94.1(1), 248(1); "foreign retirement arrangement" — 248(1); "Her Majesty" — *Interpretation Act* 35(1); "immovable" — Quebec *Civil Code* art. 900–907; "income of beneficiary" — 108(5); "income of trust" — 108(3); "income interest" — 108(1), 248(1); "individual" — 248(1); "*inter vivos* trust" — 108(1), 248(1); "joint spousal or common-law partner trust", "mineral resource", "Minister" — 248(1); "month" — *Interpretation Act* 28, 35(1); "non-resident" — 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "oil or gas well" — 248(1); "participating interest" — 94.1(1), 94.1(2)(s), 248(1); "person", "personal trust", "post-1971 spousal or common-law partner trust" — 248(1); "pre-1972 spousal trust" — 108(1); "prescribed" — 248(1); "prescribed stock exchange in Canada" — Reg. 3200; "prescribed trust" — Reg. 4800.1; "property" — 248(1); "province" — *Interpretation Act* 35(1); "real right in an immovable" — 248(4.1); "registered education savings plan" — 146.1(1), 248(1); "registered pension plan" — 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "registered supplementary unemployment benefit plan" — 145(1), 248(1); "related" — 251(2)–(6); "relevant periods" — 108(2)(b)(ii); "resident in Canada" — 94(3)(a)(viii), 250; "retirement compensation arrangement", "share" — 248(1); "spouse" — 252(3); "tax treaty" — 248(1); "taxation year" — 104(23)(a) [to be repealed], 249; "taxpayer" — 248(1); "testamentary trust" — 108(1), 248(1); "trust" — 104(1), (3), 108(1), 248(1); "undertaking" — 253.1(a); "unit trust" — 108(2), 248(1); "vested indefeasibly" — 248(9.2); "written" — *Interpretation Act* 35(1)"writing".

DIVISION C — COMPUTATION OF TAXABLE INCOME

109. [Repealed under former Act]

110. (1) Deductions permitted — For the purpose of computing the taxable income of a taxpayer for a taxation year, there may be deducted such of the following amounts as are applicable:

(a) [Repealed under former Act]

Selected Cases [para. 110(1)(a)]: *Bradley v. R.*, [1998] 3 C.T.C. 393 (FCA) (Forgiveness of non-existent loan could not be part of carry forward).

(b)–(b.1) [Repealed under former Act]

Selected Cases [para. 110(1)(b.1)]: *Friedberg v. Canada*, [1992] 1 C.T.C. 1 (FCA); leave to appeal to SCC refused (July 2, 1992), Doc. 22990 [unreported] (No deduction was permitted in respect of a gift where taxpayer had no title to property when he donated it).

(c) [Repealed under former Act]

Selected Cases [para. 110(1)(c)]: *Brown v. Canada*, [1995] 1 C.T.C. 208 (FCTD) ("Designed" can be read as meaning "intended". Air conditioner deductible as medical expense).

(d) **employee [stock] options** — an amount equal to 1/2 of the amount of the benefit deemed by subsection 7(1) to have been received by the taxpayer in the year in respect of a security that a particular qualifying person has agreed after February 15, 1984 to sell or issue under an agreement, or in respect of the transfer or other disposition of rights under the agreement, if

(i) the security

(A) is a prescribed share at the time of its sale or issue, as the case may be,

(B) would have been a prescribed share if it were issued or sold to the taxpayer at the time the taxpayer disposed of rights under the agreement,

(C) would have been a unit of a mutual fund trust at the time of its sale or issue if those units issued by the trust that were not identical to the security had not been issued, or

(D) would have been a unit of a mutual fund trust if

(I) it were issued or sold to the taxpayer at the time the taxpayer disposed of rights under the agreement, and

(II) those units issued by the trust that were not identical to the security had not been issued,

(ii) where rights under the agreement were not acquired by the taxpayer as a result of a disposition of rights to which subsection 7(1.4) applied,

(A) the amount payable by the taxpayer to acquire the security under the agreement is not less than the amount by which

(I) the fair market value of the security at the time the agreement was made

exceeds

(II) the amount, if any, paid by the taxpayer to acquire the right to acquire the security, and

(B) at the time immediately after the agreement was made, the taxpayer was dealing at arm's length with

(I) the particular qualifying person,

(II) each other qualifying person that, at the time, was an employer of the taxpayer and was not dealing at arm's length with the particular qualifying person, and

(III) the qualifying person of which the taxpayer had, under the agreement, a right to acquire a security, and

(iii) where rights under the agreement were acquired by the taxpayer as a result of one or more dispositions to which subsection 7(1.4) applied,

(A) the amount payable by the taxpayer to acquire the security under the agreement is not less than the amount that was included, in respect of the security, in the amount determined under subparagraph 7(1.4)(c)(ii) with respect to the most recent of those dispositions,

(B) at the time immediately after the agreement the rights under which were the subject of the first of those dispositions (in this subparagraph referred to as the "original agreement") was made, the taxpayer was dealing at arm's length with

(I) the qualifying person that made the original agreement,

(II) each other qualifying person that, at the time, was an employer of the taxpayer and was not dealing at arm's length with the qualifying person that made the original agreement, and

(III) the qualifying person of which the taxpayer had, under the original agreement, a right to acquire a security,

(C) the amount that was included, in respect of each particular security that the taxpayer had a right to acquire under the original agreement, in the amount determined under subparagraph 7(1.4)(c)(iv) with respect to the first of those dispositions was not less than the amount by which

(I) the fair market value of the particular security at the time the original agreement was made

exceeded

(II) the amount, if any, paid by the taxpayer to acquire the right to acquire the security, and

(D) for the purpose of determining if the condition in paragraph 7(1.4)(c) was satisfied with respect to each of the particular dispositions following the first of those dispositions,

(I) the amount that was included, in respect of each particular security that could be acquired under the agreement the rights under which were the subject of the particular disposition, in the amount determined under subparagraph 7(1.4)(c)(iv) with respect to the particular disposition

was not less than

(II) the amount that was included, in respect of the particular security, in the amount determined under subparagraph 7(1.4)(c)(ii) with respect to the last of those dispositions preceding the particular disposition;

Related Provisions: 7(1.4) — Rules where options exchanged; 7(1.5) — Rules where securities exchanged; 7(1.7) — Deemed disposition where rights cease to be exercisable; 7(2) — Securities held by trustee; 7(6)(a) — Sale to trustee for employees; 7(7) — Definitions; 7(14) — Deferral deemed valid at CCRA's discretion; 110(1)(d.01) — Deduction on donating employee stock-option shares to charity; 110(1)(d.1) — Alternative deduction; 110(1.5) — Determination of amounts; 110(1.7), (1.8) — Reduction in exercise price of stock option; 110.1(3)(b)(i) — Reduced recapture on donation of property to charity; 111(8)"non-capital loss"A:E — Amount included in non-capital loss; 111.1 — Order of ap-

plying provisions; 114.2 — Deductions in separate returns; 127.52(1)(h)(ii) — Deduction partly allowed for minimum tax purposes; 164(6.1) — Exercise or disposition of employee stock option by legal representative of deceased employee.

History: The opening words of para. 110(1)(d) amended by 2001, c. 17, subsec. 84(1) to replace the fraction "1/4" with "1/2", applicable to 2000 *et seq.* except that, for the 2000 taxation year, the reference shall be read as a reference to

(a) the fraction "1/4", if the transaction, event or circumstance as a result of which a benefit is deemed by subsec. 7(1), as amended, to have been received by a taxpayer occurred before February 28, 2000, and

(b) the fraction "1/3", if the transaction, event or circumstance as a result of which a benefit is deemed by subsec. 7(1), as amended, to have been received by a taxpayer occurred after February 27, 2000 and before October 18, 2000.

Subparas. 110(1)(d)(ii) and (iii) amended by the said c. 17, subsec. 84(2), applicable to 1998 *et seq.* The subparas. formerly read:

(ii) where rights under the agreement were not acquired by the taxpayer as a result of the disposition of rights to which subsection 7(1.4) applied,

(A) the amount payable by the taxpayer to acquire the security under the agreement (determined without reference to any change in the value of a currency of a country other than Canada relative to Canadian currency during the period between the time the agreement was made and the time the security was acquired) is not less than the amount by which

(I) the fair market value of the security at the time the agreement was made

exceeds

(II) the amount, if any, paid by the taxpayer to acquire the right to acquire the security, and

(B) immediately after the agreement was made, the taxpayer was dealing at arm's length with the particular person and with each qualifying person with which the particular person was not dealing at arm's length, and

(iii) where rights under the agreement were acquired by the taxpayer as a result of one or more dispositions to which subsection 7(1.4) applied,

(A) the amount payable by the taxpayer, to acquire the old security under the exchanged option in respect of the first of those dispositions (determined without reference to any change in the value of a currency of a country other than Canada relative to Canadian currency during the period between the time the agreement was made and the time the security was acquired), was not less than the amount by which

(I) the fair market value of the old security at the time the agreement in respect of the exchanged option was made

exceeds

(II) the amount, if any, paid by the taxpayer to acquire the right to acquire the old security, and

(B) immediately after each of those dispositions, the taxpayer was dealing at arm's length with

(I) the qualifying person with whom the taxpayer entered into an agreement to receive consideration in respect of the disposition, and

(II) each qualifying person with which the qualifying person described in subclause (I) did not deal at arm's length;

Para. 110(1)(d) amended by 1999, c. 22, s. 26, applicable to 1998 *et seq.* It formerly read:

(d) **employee stock options** — where, after February 15, 1984,

(i) a corporation has agreed to sell, issue or cause to be issued to the taxpayer a share of its capital stock or of the capital stock of another corporation with which it does not deal at arm's length,

(ii) the share was a prescribed share at the time of its sale or issue, as the case may be, or, where the taxpayer has disposed of rights under the agreement, the share would have been a prescribed share if it were issued or sold to the taxpayer at the time the taxpayer disposed of such rights,

(iii) the amount payable by the taxpayer to acquire the share under the agreement (determined without reference to any change in the value of a currency of a country other than Canada relative to Canadian currency during the period between the time the agreement was made and the time the share was acquired) is not less than the amount by which

(A) the fair market value of the share at the time the agreement was made

exceeds

(B) the amount, if any, paid by the taxpayer to acquire the right to acquire the share,

or where the rights under the agreement were acquired by the taxpayer as a result of one or more dispositions of rights to which subsection 7(1.4) applied, the amount payable by the taxpayer to acquire the old share under the original option (determined without reference to any change in the value of a currency of a country other than Canada relative to Canadian currency during the period between the time the agreement was made and the time the share was acquired) that was disposed of in consideration for a new option in the first such disposition was not less than the amount by which

(C) the fair market value of the old share at the time the agreement in respect of the original option was made

exceeds

(D) the amount, if any, paid by the taxpayer to acquire the right to acquire the old share, and

(iv) at the time immediately after the agreement was made and, where the rights under the agreement were acquired by the taxpayer as a result of one or more dispositions to which subsection 7(1.4) applied, at the time the agreement in respect of the original option was made and at the time immediately after each disposition, the taxpayer was dealing at arm's length with the corporation, the other corporation and the corporation of which the taxpayer is an employee,

an amount equal to 1/4 of the amount of the benefit deemed by subsection 7(1) to have been received by the taxpayer in the year in respect of the share or the transfer or other disposition of the rights under the agreement;

Subpara. 110(1)(d)(iii) substituted by 1994, c. 21, subsec. 49(1), applicable to 1992 *et seq.* That subpara. formerly read:

(iii) the amount payable by the taxpayer to acquire the share under the agreement is not less than the amount by which

(A) the fair market value of the share at the time the agreement was made

exceeds

(B) the amount, if any, paid by the taxpayer to acquire the right to acquire the share,

or where the rights under the agreement were acquired by the taxpayer as a result of one or more dispositions of rights to which subsection 7(1.4) applied, the amount payable by the taxpayer to acquire the old share under the original option that was disposed of in consideration for a new option in the first such disposition was not less than the amount by which

(C) the fair market value of the old share at the time that the agreement in respect of the original option was made

exceeds

(D) the amount, if any, paid by the taxpayer to acquire the right to acquire the old share, and

Para. 110(1)(d) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 78(1), to substitute subparas. (i) to (iv), applicable to 1988 *et seq.*, except that, in the application of the para. with respect to shares acquired or rights in respect of shares transferred or otherwise disposed of before 1990, the reference therein to "1/4" shall be read as "1/3". Subparas. (i) to (iv) formerly read:

(i) a corporation has agreed to sell or issue to the taxpayer a share of its capital stock or the capital stock of another corporation with which it does not deal at arm's length,

(ii) the share was a prescribed share at the time of its sale or issue, as the case may be, or, in circumstances where the taxpayer has disposed of the taxpayer's rights under the agreement, the share would have been a prescribed share if it were issued or sold to the taxpayer at the time the taxpayer disposed of his rights,

(iii) the amount payable by the taxpayer to acquire the share under the agreement is not less than the fair market value of the share at the time the agreement was made, and

(iv) at the time immediately after the agreement was made the taxpayer was dealing at arm's length with the corporation, the other corporation and the corporation of which the taxpayer is an employee,

Selected Cases [para. 110(1)(d)]: *McAnulty v. R.*, [2002] 1 C.T.C. 2035 (TCC) (Option granted when officer with ostensible authority committed to it; board resolutions merely confirmatory).

Regulations: 6204 (prescribed share).

Interpretation Bulletins: IT-113R4: Benefits to employees — stock options; IT-151R5: Scientific research and experimental development expenditures.

I.T. Technical News: 7 (stock options plans — receipt of cash in lieu of shares); 19 (Securities option plan — disposal of securities option rights for shares).

(d.01) **charitable donation of employee option securities** — subject to subsection (2.1), where the taxpayer disposes of a security acquired in the year by the taxpayer under an agreement referred to in subsection 7(1) by making a gift of the security to a qualified donee (other than a private foundation), an amount in respect of the disposition of the security equal to 1/4 of the lesser of the benefit deemed by paragraph 7(1)(a) to have been received by the taxpayer in the year in respect of the acquisition of the security and the amount that would have been that benefit had the value of the security at the time of its acquisition by the taxpayer been equal to the value of the security at the time of the disposition, if

(i) the security is a security described in subparagraph 38(a.1)(i),

(ii) [Repealed]

(iii) the gift is made in the year and on or before the day that is 30 days after the day on which the taxpayer acquired the security, and

(iv) the taxpayer is entitled to a deduction under paragraph (d) in respect of the acquisition of the security;

Related Provisions: 7(1.3) — Order of disposition of securities; 7(2) — Securities held by trustee; 7(6)(a) — Sale to trustee for employees; 38(a.1) — Parallel inclusion rate for capital gains on donated shares; 110(2.1) — Donation made with proceeds of sale; 111(8)"non-capital loss"A:E — Amount included in non-capital loss; 127.52(1)(h)(iii) — Deduction allowed for minimum tax purposes.

History: Subpara. 110(1)(d.01)(ii) repealed by 2002, c. 9, subsec. 33(1), applicable to dispositions that occur after 2001. The subpara. formerly read:

(ii) the taxpayer acquired the security after February 27, 2000 and before 2002,

Para. 110(1)(d.01) added by 2001, c. 17, subsec. 84(3), applicable to 2000 *et seq.* except that, for the 2000 taxation year, the reference to the fraction "1/4" shall be read as a reference to the fraction "1/3" if the transaction, event or circumstance as a result of which a benefit is deemed by subsec. 7(1), as amended by 2001, c. 17, to have been received by a taxpayer occurred after February 27, 2000 and before October 18, 2000.

(d.1) **idem** — where the taxpayer

(i) is deemed, under paragraph 7(1)(a) by virtue of subsection 7(1.1), to have received a benefit in the year in respect of a share acquired by the taxpayer after May 22, 1985,

(ii) has not disposed of the share (otherwise than as a consequence of the taxpayer's death) or exchanged the share within two years after the date the taxpayer acquired it, and

(iii) has not deducted an amount under paragraph (d) in respect of the benefit in computing the taxpayer's taxable income for the year,

an amount equal to 1/2 of the amount of the benefit;

Related Provisions: 7(1.3) — Order of disposition of securities; 7(1.5) — Rules where securities exchanged; 7(1.6) — Emigration does not trigger disposition for purposes of 110(1)(d.1); 7(2) — Securities held by trustee; 7(6)(a) — Sale to trustee for employees; 110(1)(d) — Alternative deduction; 111(8)"non-capital loss"A:E — Amount included in non-capital loss; 111.1 — Order of applying provisions; 114.2 — Deductions in separate returns; 127.52(1)(h)(iv) — Deduction partly allowed for minimum tax purposes; 248(8) — Occurrences as a consequence of death.

History: Para. 110(1)(d.1) amended to replace the reference to "1/4" with "1/2" by 2001, c. 17, subsec. 84(4), applicable in respect of dispositions and exchanges that occur after February 27, 2000 except that, for dispositions and exchanges that occurred after February 27, 2000 and before October 18, 2000, the reference to the fraction "1/2" shall be read as a reference to the fraction "1/3".

Interpretation Bulletins: IT-113R4: Benefits to employees — stock options.

(d.2) **prospector's and grubstaker's shares** — where the taxpayer has, under paragraph 35(1)(d), included an amount in the taxpayer's income for the year in respect of a share received after May 22, 1985, an amount equal to 1/2 of that amount unless that amount is exempt from income tax in Canada by reason of a provision contained in a tax convention or agreement with another country that has the force of law in Canada;

Related Provisions: 111(8)"non-capital loss"A:E — Amount included in non-capital loss; 111.1 — Order of applying provisions; 114.2 — Deductions in separate returns; 127.52(1)(h)(iv) — Deduction partly allowed for minimum tax purposes.

History: Para. 110(1)(d.2) amended to replace the reference to "1/4" with "1/2" by 2001, c. 17, subsec. 84(4), applicable in respect of dispositions and exchanges that occur after February 27, 2000 except that, for dispositions and exchanges that occurred after February 27, 2000 and before October 18, 2000, the reference to the fraction "1/2" shall be read as a reference to the fraction "1/3".

(d.3) **employer's shares [where election made re DPSP]** — where the taxpayer has, under subsection 147(10.4), included an amount in computing the taxpayer's income for the year, an amount equal to 1/2 of that amount;

Related Provisions: 111(8)"non-capital loss"A:E — Amount included in non-capital loss; 111.1 — Order of applying provisions; 114.2 — Deductions in separate returns; 127.52(1)(h)(iv) — Deduction partly allowed for minimum tax purposes.

History: Para. 110(1)(d.3) amended to replace the reference to "1/4" with "1/2" by 2001, c. 17, subsec. 84(4), applicable in respect of dispositions and exchanges that occur after February 27, 2000 except that, for dispositions and exchanges that occurred after February 27, 2000 and before October 18, 2000, the reference to the fraction "1/2" shall be read as a reference to the fraction "1/3".

Interpretation Bulletins: IT-281R2: Elections on single payments from a deferred profit-sharing plan (archived).

(e)–(e.2) [Repealed under former Act]

(f) **deductions for payments** — any social assistance payment made on the basis of a means, needs or income test and included because of clause 56(1)(a)(i)(A) or paragraph 56(1)(u) in computing the taxpayer's income for the year or any amount that is

(i) an amount exempt from income tax in Canada because of a provision contained in a tax convention or agreement with another country that has the force of law in Canada,

(ii) compensation received under an employees' or workers' compensation law of Canada or a province in respect of an injury, disability or death, except any such compensation received by a person as the employer or former employer of the person in respect of whose injury, disability or death the compensation was paid,

(iii) income from employment with a prescribed international organization,

(iv) the taxpayer's income from employment with a prescribed international non-governmental organization, where the taxpayer

(A) was not, at any time in the year, a Canadian citizen,

(B) was a non-resident person immediately before beginning that employment in Canada, and

(C) if the taxpayer is resident in Canada, became resident in Canada solely for the purpose of that employment, or

(v) the lesser of

(A) the employment income earned by the taxpayer as a member of the Canadian Forces, or as a police officer, while serving on

(I) a deployed operational mission (as determined by the Department of National Defence) that is assessed for risk allowance at level 3 or higher (as determined by the Department of National Defence),

(II) a prescribed mission that is assessed for risk allowance at level 2 (as determined by the Department of National Defence), or

(III) any other mission that is prescribed, and

(B) the employment income that would have been so earned by the taxpayer if the taxpayer had been paid at the maximum rate of pay that applied, from time to time during the mission, to a non-commissioned member of the Canadian Forces;

to the extent that it is included in computing the taxpayer's income for the year;

Related Provisions: 56(1)(u) — Social assistance payments; 56(1)(v) — Workers' compensation; 60(j) — Transfer of superannuation benefits; 81(1)(a) — Amounts not included in income; 111(8)"non-capital loss"A:E — Amount included in non-capital loss; 111.1 — Order of applying provisions; 114.2 — Deductions in separate returns; 126(7)"tax-exempt income" — Income exempted by tax treaty; 127.52(1)(h)(v) — Application of deduction for minimum tax purposes; 146(1)"earned income"(c) — Income exempted by tax treaty is not earned income of a non-resident for RRSP purposes; 150(1)(a)(ii) — Requirement for non-resident corporation claiming treaty exemption to file tax return; 153(1.1) — Application for reduced source withholding where amount exempt from tax under treaty; 248(1)"treaty-protected business", "treaty-protected property" — Amounts exempted by tax treaty.

History: Subpara. 110(1)(f)(v) added by 2005, c. 19, s. 18, applicable to 2004 *et seq.*

Subpara. 110(1)(f)(iv) added by 1994, c. 21, subsec. 49(3), applicable to 1993 *et seq.*

Subpara. 110(1)(f)(iii) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 45, applicable to 1991 *et seq.*

Para. 110(1)(f) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 78(2), applicable to 1991 *et seq.* Para. (f) formerly read:

(f) any amount that is

(i) an amount exempt from income tax in Canada by virtue of a provision contained in a tax convention or agreement with another country that has the force of law in Canada,

(ii) compensation received under an employees' or workers' compensation law of Canada or a province in respect of an injury, disability or death, except any such compensation received by a person as the employer or former employer of the person in respect of whose injury, disability or death the compensation was paid, or

(iii) a social assistance payment made on the basis of a means, needs or income test by a registered charity or under a program (other than a prescribed program) provided for by an Act of Parliament or a law of a province where the payment is received by the individual in respect of whom the social assistance was provided or by a person who, at the time the payment was made, resided with the individual;

Selected Cases [para. 110(1)(f)]: *Cloutier v. R.*, [2003] 3 C.T.C. 2075 (TCC) (Mere employment by government not equivalent to performance of government function); *Whitney v. R.*, [2002] 3 C.T.C. 476 (FCA) (Amounts received pursuant to collective agreement are income from employment, not compensation received under compensation law); *Hughes v. R.*, [2002] 3 C.T.C. 2184 (TCC) (Pension exempt from tax in U.K. nevertheless taxable in Canada); *Cai v. Canada*, [1996] 3 C.T.C. 2724 (TCC) (Taxpayer's presence in Canada was more than just as student).

Regulations: 102(6) (no source withholding on 110(1)(f)(v) amounts); 232, 233 (information return); 7400 (prescribed missions for 110(1)(f)(v)); 8900(1) (prescribed international organization for 110(1)(f)(iii); 8900(2) (prescribed international non-governmental organization for 110(1)(f)(iv)).

Interpretation Bulletins: IT-202R2: Employees' or workers' compensation; IT-499R: Superannuation or pension benefits; IT-528: Transfers of funds between registered plans.

(g) **financial assistance [adult basic education]** — any amount that

(i) is received by the taxpayer in the year under a program referred to in subparagraph 56(1)(r)(ii) or (iii), a program established under the authority of the *Department of Human Resources Development Act* or a prescribed program,

Proposed Amendment — 110(1)(g)(i)

Application: S.C. 2005, c. 34 (Bill C-23, Royal Assent July 20, 2005), para. 81(a), amended subpara. 110(1)(g)(i) to replace "*Department of Human Resources Development Act*" with "*Department of Human Resources and Skills Development Act*", in force on a day to be proclaimed by the Governor in Council.

(ii) is financial assistance for the payment of tuition fees of the taxpayer that are not included in computing an amount deductible under subsection 118.5(1) in computing the taxpayer's tax payable under this Part for any taxation year,

(iii) is included in computing the taxpayer's income for the year, and

(iv) is not otherwise deductible in computing the taxpayer's taxable income for the year;

Related Provisions: 60(n) — No second deduction if amount repaid; 111(8)"non-capital loss"A:E — Amount included in non-capital loss; 127.52(1)(h)(vi) — Deduction allowed for minimum tax purposes.

History: Para. 110(1)(g) added by 2002, c. 9, subsec. 33(2), applicable to 1997 *et seq.* and, notwithstanding subsecs. 152(4) to (5), any assessment of a taxpayer's tax, interest or penalty for any taxation year shall be made that is necessary to give effect to the paragraph.

Interpretation Bulletins: IT-75R4: Scholarships, fellowships, bursaries, prizes, research grants and financial assistance.

(h) [Repealed under former Act]

(i) [Repealed]

History: Para. 110(1)(i) repealed by 1994, c. 7, Sch. II (1991, c. 49), subsec. 78(3), applicable to 1989 *et seq.* Para. (i) formerly read:

(i) unemployment insurance benefit repayment — any benefit repayment payable by the taxpayer under Part VII of the *Unemployment Insurance Act* on or before April 30 of the following year to the extent that the amount was not deductible in computing the taxpayer's taxable income for any previous taxation year;

Para. 110(1)(i) added by 1979, c. 5, s. 33, applicable to 1979 *et seq.*

(j) **home relocation loan** — where the taxpayer has, by virtue of section 80.4, included an amount in the taxpayer's income for the year in respect of a ben-

efit received by the taxpayer in respect of a home relocation loan, the least of

(i) the amount of the benefit that would have been deemed to have been received by the taxpayer under section 80.4 in the year if that section had applied only in respect of the home relocation loan,

(ii) the amount of interest for the year that would be computed under paragraph 80.4(1)(a) in respect of the home relocation loan if that loan were in the amount of $25,000 and were extinguished on the earlier of

(A) the day that is five years after the day on which the home relocation loan was made, and

(B) the day on which the home relocation loan was extinguished, and

(iii) the amount of the benefit deemed to have been received by the taxpayer under section 80.4 in the year; and

Related Provisions: 80.4(4) — Interest on home relocation loan; 110(1.4) — Replacement of home relocation loan; 111(8)"non-capital loss"A:E — Amount included in non-capital loss; 111.1 — Order of applying provisions; 114.2 — Deductions in separate returns; 127.52(1)(h) — Deduction disallowed for minimum tax purposes.

Interpretation Bulletins: IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt.

I.T. Technical News: 6 (payment of mortgage interest subsidy by employer).

(k) **Part VI.1 tax** — ¾ of the tax payable under subsection 191.1(1) by the taxpayer for the year.

Proposed Amendment — 110(1)(k)

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 100(1), will amend para. 110(1)(k) to replace "¾ of" with "three times", applicable to 2003 *et seq.*

Technical Notes: Paragraph 110(1)(k) provides a deduction in computing a corporation's taxable income equal to a multiple of the amount of any tax payable by it for the year under Part VI.1 of the Act on dividends it paid on taxable preferred shares. The deduction approximates the income that would have generated an amount of income tax equal to the Part VI.1 tax. The multiple used to produce this result is currently ¾, which implies a total federal and provincial income tax rate of 44.44%.

As part of a series of amendments reflecting recent and planned reductions in income tax rates, the multiple in paragraph 110(1)(k) is increased to 3. This amendment, which applies for the 2003 and subsequent taxation years, implies a total tax rate of 33.3%.

Letter from Dept. of Finance, August 2, 2002: See under 191.1(1)(a)(i).

Related Provisions: 111(5) — Change in control of corporation; 111(8)"non-capital loss"A:E — Amount included in non-capital loss; 191.3(4) — Related corporations.

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987.

Forms: T2 SCH 43: Calculation of Parts IV.1 and VI.1 taxes.

(1.1)–(1.3) [Repealed under former Act]

Selected Cases [subsec. 110(1.2)]: *O'Brien Estate v. MNR*, [1991] 2 C.T.C. 2747 (TCC) (Donation of remainder of trust to charity upon death of beneficiary who had life interest deductible since executors' encroachment powers did not undermine absolute nature of gift).

(1.4) Replacement of home relocation loan — For the purposes of paragraph (1)(j), a loan received by a taxpayer that is used to repay a home relocation loan shall be deemed to be the same loan as the relocation loan and to have been made on the same day as the relocation loan.

Interpretation Bulletins: IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt.

(1.5) Determination of amounts relating to employee security [stock] options — For the purpose of paragraph (1)(d),

(a) the amount payable by a taxpayer to acquire a security under an agreement referred to in subsection 7(1) shall be determined without reference to any change in the value of a currency of a country other than Canada, relative to Canadian currency, occurring after the agreement was made;

(b) the fair market value of a security at the time an agreement in respect of the security was made shall be determined on the assumption that all specified events associated with the security that occurred after the agreement was made and before the sale or issue of the security or the disposition of the taxpayer's rights under the agreement in respect of the security, as the case may be, had occurred immediately before the agreement was made; and

(c) in determining the amount that was included, in respect of a security that a qualifying person has agreed to sell or issue to a taxpayer, in the amount determined under subparagraph 7(1.4)(c)(ii) for the purpose of determining if the condition in paragraph 7(1.4)(c) was satisfied with respect to a particular disposition, an assumption shall be made that all specified events associated with the security that occurred after the particular disposition and before the sale or issue of the security or the taxpayer's subsequent disposition of rights under the agreement in respect of the security, as the case may be, had occurred immediately before the particular disposition.

Related Provisions: 110(1.6) — Meaning of "specified event"; 110(1.7) — Definitions in 7(7) apply.

History: Subsec. 110(1.5) amended by 2001, c. 17, subsec. 84(5), applicable to 1998 *et seq.* The subsec. formerly read:

(1.5) Value of share under stock option — For the purpose of subparagraph (1)(d)(iii), the fair market value of a share of the capital stock of a corporation at the time an agreement in respect of the share was made shall be determined on the assumption that

(a) any subdivision or consolidation of shares of the capital stock of the corporation,

(b) any reorganization of share capital of the corporation, and

(c) any stock dividend of the corporation

occurring after the agreement was made and before the share was acquired had taken place immediately before the agreement was made.

Subsec. 110(1.5) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 78(4), applicable to 1988 *et seq.*

Interpretation Bulletins: IT-113R4: Benefits to employees — stock options.

(1.6) Meaning of "specified event" — For the purpose of subsection (1.5), a specified event associated with a security is,

(a) where the security is a share of the capital stock of a corporation,

(i) a subdivision or consolidation of shares of the capital stock of the corporation,

(ii) a reorganization of share capital of the corporation, and

(iii) a stock dividend of the corporation; and

(b) where the security is a unit of a mutual fund trust,

(i) a subdivision or consolidation of the units of the trust, and

(ii) an issuance of units of the trust as payment, or in satisfaction of a person's right to enforce pay-

ment, out of the trust's income (determined before the application of subsection 104(6)) or out of the trust's capital gains.

Related Provisions: 110(1.7) — Definitions in 7(7) apply.

History: Subsec. 110(1.6) added by 2001, c. 17, subsec. 84(5), applicable to 1998 *et seq.*

(1.7) Definitions in subsection 7(7) — The definitions in subsection 7(7) apply for the purposes of subsections (1.5) and (1.6).

Proposed Amendment — 110(1.7), (1.8)

(1.7) Reduction in exercise price — If the amount payable by a taxpayer to acquire securities under an agreement referred to in subsection 7(1) is reduced at any particular time and the conditions in subsection (1.8) are satisfied in respect of the reduction,

(a) the rights (referred to in this subsection and subsection (1.8) as the "old rights") that the taxpayer had under the agreement immediately before the particular time are deemed to have been disposed of by the taxpayer immediately before the particular time;

(b) the rights (referred to in this subsection and subsection (1.8) as the "new rights") that the taxpayer has under the agreement at the particular time are deemed to be acquired by the taxpayer at the particular time; and

(c) the taxpayer is deemed to receive the new rights as consideration for the disposition of the old rights.

(1.8) Conditions for subsec. (1.7) to apply — The following are the conditions in respect of the reduction:

(a) that the taxpayer would not be entitled to a deduction under paragraph (1)(d) if the taxpayer acquired securities under the agreement immediately after the particular time and this section were read without reference to subsection (1.7); and

(b) that the taxpayer would be entitled to a deduction under paragraph (1)(d) if the taxpayer

(i) disposed of the old rights immediately before the particular time,

(ii) acquired the new rights at the particular time as consideration for the disposition, and

(iii) acquired securities under the agreement immediately after the particular time.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 100(2), will amend subsec. 110(1.7) to read as above and add subsec. (1.8), applicable to reductions that occur after 1998.

An election by a taxpayer under subsec. 7(10) to have subsec. 7(8) apply is deemed to have been filed in a timely manner if

(a) it is filed on or before the 60th day after the amending legislation is assented to;

(b) it is in respect of a security acquired by the taxpayer before the amending legislation is assented to;

(c) the taxpayer is entitled to a deduction under para. 110(1)(d) in respect of the acquisition; and

(d) the taxpayer would not have been so entitled if subsec. 110(1.7), as amended, did not apply.

Technical Notes: Subsection 110(1.7) provides that the definitions in subsection 7(7) relating to employee security options also apply for the purposes of subsections 110(1.5) and 110(1.6). Since subsection 7(7) also provides for the definitions to so apply, existing subsection 110(1.7) is unnecessary and is repealed.

A new subsection 110(1.7) is added that applies in circumstances where there is a reduction in the amount (referred to in these notes as the "exercise price") payable by an employee to acquire securities under an employee security option and the conditions in new subsection 110(1.8) are satisfied.

This new subsection ensures that a reduction in the exercise price under an employee security option does not disqualify the employee from claiming the security option deduction under paragraph 110(1)(d), if the reduction could have been effected by way of an exchange of options without jeopardizing the employee's eligibility for the deduction.

Paragraph 110(1)(d) provides a deduction in computing taxable income in circumstances where subsection 7(1) deems an employee to have received a benefit from employment in connection with the exercise or disposition of rights under an employee option agreement. The deduction is currently equal to one-half of the amount of the employment benefit, and the effect of the deduction is to tax the benefit at a rate equivalent to the capital gains inclusion rate.

Paragraph 110(1)(d) sets out certain conditions that must be satisfied in order to qualify for the security option deduction. These conditions include a minimum exercise price requirement under the option giving rise to the benefit under subsection 7(1) and, if that option was acquired as a consequence of one or more qualifying exchanges of options, under each of the previous options. Thus, if a reduction in the exercise price under an employee security option causes the exercise price to fall below the minimum threshold established under paragraph 110(1)(d) for that option, the employee will not be entitled to claim the security option deduction.

However, there are situations in which an otherwise disqualifying reduction in an option exercise price could be effected by way of an exchange of options without jeopardizing the employee's eligibility for the deduction. This would be the case, for example, if the exercise price had originally been set at the fair market value (FMV) of the underlying securities at the time of grant, there is a subsequent decline in the FMV of the securities and the exercise price is adjusted to that lower FMV. The combined effect of subsections 110(1.7) and (1.8) is to deem such a reduction to have been effected by way of an exchange, thus ensuring that the employee remains eligible for the security option deduction.

In particular, new subsection 110(1.7) provides that, where there is a reduction in the exercise price under an employee security option and the conditions in subsection 110(1.8) are satisfied, the employee is deemed to have disposed of the rights under the option immediately before the reduction and to have acquired the amended rights immediately thereafter as consideration for the disposition.

New subsection 110(1.8) sets out two conditions that must be satisfied in order for new subsection 110(1.7) to apply.

- First, the employee would not qualify for the security option deduction if the option were exercised immediately after the exercise price reduction (and subsection 110(1.7) were disregarded).
- Second, the employee would have been eligible for the deduction had there, in fact, been an exchange of options and the employee exercised the option immediately after the exchange.

These conditions ensure that the provisions of subsection 110(1.7) apply only where an otherwise disqualifying reduction in the exercise price under an employee security option could have been effected by way of an exchange of options without so disqualifying the employee.

Example:

Pierre is granted an option to acquire ten shares of Company A at an exercise price of $100 a share, which is the FMV of such a share at that time. After a downturn of the business, the Company amends the option to reduce the exercise price to $30 a share, which is the new FMV of such a share.

Results:

Without the benefit of subsection 110(1.7), paragraph 110(1)(d) would require that the exercise price under the option at the time of exercise be no less than the FMV of the underlying share at the time the option was granted. Since the exercise price of $30 would be less than the FMV of $100 at the time the option was issued, this condition would not be met and Pierre would not be eligible for the security option deduction.

If the reduction had been effected by way of an exchange of options, there would have been no increase in the net benefit associated with the option (i.e., the difference between the FMV of the shares under the "new option" and the "new exercise price" ($300 - $300 = $0) would have been no greater than the difference between the FMV of the shares under the "old option" and the "old exercise price" ($300 - $1,000 = $0)). Thus, the exchange would have been an exchange to which subsection 7(1.4) applied.

If Pierre had exercised the new option immediately after the exchange, paragraph 110(1)(d) would have required that the following exercise price tests be met:

- *The exercise price under the old option at the time it was disposed of would have to be not less than the FMV of the underlying shares when the option was granted. Since the exercise price of $100 was equal to the FMV at the date of grant, this condition would have been met.*
- *The exercise price under the new option at the time of exercise would have to be not less than the exercise price set when the new option was acquired. Since Pierre would have paid $30 a share on exercise, which was the exercise price established when the new option was acquired, this condition would have been met.*

Thus, if the reduction had been effected by way of an exchange and Pierre had exercised the option immediately after the exchange, he would have been eligible for the security option deduction.

Since the requirements of subsection 110(1.8) are satisfied, subsection 110(1.7) applies to deem the reduction to have been effected by way of an exchange. Consequently, the reduction will not disqualify Pierre from claiming the stock option deduction.

Extended Deadline for Deferral Election

Where certain conditions are satisfied, subsection 7(8) allows an employee to defer taxation of a security option benefit to the year in which the employee disposes of the security. One condition is that the employee be eligible to claim the deduction under paragraph 110(1)(d) in respect of the benefit. Another condition is that the employee files an election to defer before January 16th of the year following the year in which the option is exercised (or before August 14, 2001 for securities acquired in 2000).

The coming-into-force provisions for subsections 110(1.7) and (1.8) extend the deferral election deadline for securities which are acquired before this legislation receives Royal Assent, and which become qualified for the deduction under paragraph 110(1)(d) only by reason of amended subsection 110(1.7), to the later of

- the election deadline that would otherwise apply, and
- the day that is 60 days after Royal Assent.

Letter from Dept. of Finance, July 13, 2001:

Dear [xxx]

This is in response to your letters of August 5, 1999 and October 3, 2000 concerning the stock option deduction provided under paragraph 110(1)(d) of the *Income Tax Act* (Act).

As you know, we are prepared to recommend that the Act be amended to ensure that an employee is not disqualified from claiming the stock option deduction because of a reduction in the option exercise price to an amount below the value of the underlying share when the option was granted, provided the reduction could have been accomplished by way of an exchange of options to which subsection 7(1.4) of the Act would have applied. The effect of the amendment would be to allow paragraph 110(1)(d) to apply as though there had, in fact, been such an exchange of options. By requiring that the hypothetical option exchange satisfy the conditions of subsection 7(1.4), this relief would be limited to those situations in which the reduction in exercise price provides no immediate increase in the net benefit associated with the option. We will recommend that this amendment, if adopted, apply to reductions in exercise price occurring after 1998.

We are also prepared to recommend the [*sic*] section 6204 of the *Income Tax Regulations* be amended. That section sets out certain conditions that must be met in order for an employee who has acquired a stock option share to be eligible for the stock option deduction. One of the conditions [Reg. 6204(1)(b) — ed.] is that there be no reasonable expectation, at the time the share is acquired, that the paid-up capital (PUC) of the share will be reduced in the following two years, although an exception is made for a reduction in PUC that may be expected to occur in the context of an amalgamation or wind-up of a subsidiary.

We will recommend that an exception also be made for a reduction in PUC that may be expected to occur in the context of a distribution which, because of subsection 84(2) of the Act, would not be recharacterized as a dividend for tax purposes. This would ensure that an employee who acquires a stock option share of a Canadian-resident corporation, while the corporation is in the process of a reorganization, discontinuance or wind-up, is not precluded from claiming the stock option deduction simply because that activity may give rise to a reasonable expectation of a distribution by the corporation and an associated reduction in PUC. We will recommend that this amendment, if adopted, apply with respect to options exercised after 1998.

Thank you for bringing these matters to our attention.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, May 29, 2002:

Dear [xxx]

This is in response to your letter of March 12, 2002 concerning proposed amendments to the *Income Tax Act* to ensure that an employee is not disqualified from claiming the stock option deduction under paragraph 110(1)(d) of the Act because of a reduction in the option exercise price.

As you know, it is intended that the proposed relief be provided in those situations where a disqualifying reduction in exercise price could have been effected by way of an exchange of options without jeopardizing an employee's eligibility for the stock option deduction. This would require that the hypothetical exchange satisfy the conditions of subsection 7(1.4) of the Act, which means that there must be no immediate increase in the net benefit associated with the option. We expect to recommend that relief be provided in these situations by deeming the amendment to have been effected by way of an exchange of options.

You have noted that, in order to reflect a diminishment in share value following a spin-off transaction, a corporation will commonly amend outstanding employee stock options to both reduce the exercise price and increase the number of shares, and that such amendments are structured so that there is no increase in the net benefit associated with the stock option. You have asked if the proposed relieving provision is meant to apply in such a situation, or if the fact that there is a share increase in conjunction with the exercise price reduction will serve to deny access to the provision.

I wish to confirm that there is no intent to preclude the application of the relieving provision to an amendment that reduces the exercise price under a stock option simply because the amendment also increases the number of shares covered by the option. However, as with a simple reduction in exercise price, the proposed relieving provision is intended to apply only if the stock option amendment could have been effected by way of an exchange of options without jeopardizing access to the stock option deduction. Consequently, a prerequisite for the proposed provision to apply is that the combined changes not result in an increase in the net benefit associated with the option.

I wish to thank you for writing and trust that this letter provides you with the clarification you require.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

History: Subsec. 110(1.7) added by 2001, c. 17, subsec. 84(5), applicable to 1998 *et seq.*

(2) Charitable gifts [vow of perpetual poverty] — Where an individual is, during a taxation year, a member of a religious order and has, as such, taken a vow of perpetual poverty, the individual may deduct in computing the individual's taxable income for the year an amount equal to the total of the individual's superannuation or pension benefits and the individual's earned income for the year (within the meaning assigned by section 63) if, of the individual's income, that amount is paid in the year to the order.

Related Provisions: 118.1(1) — "Total charitable gifts"; 118.1(3) — Deduction from tax; 127.52(1)(h)(i) — Deduction allowed for minimum tax purposes.

Selected Cases [subsec. 110(2)]: *Aubry v. R.*, [1976] C.T.C. 598 (FCTD) (Personal living expenses of member of Jesuit Order residing away from group's house of retreat not charitable gift).

Interpretation Bulletins: IT-86R: Vow of perpetual poverty; IT-141R: Clergy residence deduction.

Information Circulars: 78-5R3: Communal organizations.

(2.1) Charitable donation — proceeds of disposition of employee option securities — Where a taxpayer, in exercising a right to acquire a secur-

ity that a particular qualifying person has agreed to sell or issue to the taxpayer under an agreement referred to in subsection 7(1), directs a broker or dealer appointed or approved by the particular qualifying person (or by a qualifying person that does not deal at arm's length with the particular qualifying person) to immediately dispose of the security and pay all or a portion of the proceeds of disposition of the security to a qualified donee,

(a) if the payment is a gift, the taxpayer is deemed, for the purpose of paragraph (1)(d.01), to have disposed of the security by making a gift of the security to the qualified donee at the time the payment is made; and

(b) the amount deductible under paragraph (1)(d.01) by the taxpayer in respect of the disposition of the security is the amount determined by the formula

$$A \times B/C$$

where

A is the amount that would be deductible under paragraph (1)(d.01)in respect of the disposition of the security if this subsection were read without reference to this paragraph,

B is the amount of the payment, and

C is the amount of the proceeds of disposition of the security.

Related Provisions: 7(1.3) — Order of disposition of securities.

History: S. 110(2.1) added by 2001, c. 17, subsec. 84(6), applicable to 2000 *et seq.*

Selected Cases [former subsec. 110(2.1)]: *O'Brien Estate v. MNR*, [1991] 2 C.T.C. 2747 (TCC) (Donation of remainder of trust to charity upon death of beneficiary who had life interest deductible since executors' encroachment powers did not undermine absolute nature of gift).

(2.2)–(9) [Repealed under former Act]

Definitions [s. 110]: "amount" — 248(1); "arm's length" — 251(1); "associated" — 256; "Canada" — 255; "capital gain" — 39(1)(a), 248(1); "consequence of the taxpayer's death" — 248(8); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition", "employee", "employer", employment — 248(1); "exchanged option" — 7(1.4)(a); "home relocation loan" — 110(1.4), 248(1); "individual" — 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q) [to be repealed], 132.2(3)(n) [draft], 248(1); "new option", "new share" — 7(1.4); "new rights" — 110(1.7)(b); "non-resident" — 248(1); "old rights" — 110(1.7)(a); "old share" — 7(1.4)(a); "person", prescribed — 248(1); "private foundation" — 149.1(1), 248(1); "province" — *Interpretation Act* 35(1); "qualified donee" — 149.1(1), 248(1); "qualifying person" — 7(7); "resident in Canada" — 94(3)(a)(viii), 250; "security" — 7(7); "share" — 248(1); "specified event" — 110(1.6); "stock dividend" — 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

Interpretation Bulletins: IT-326R3: Returns of deceased persons as "another person".

110.1 (1) Deduction for gifts [by corporation] — For the purpose of computing the taxable income of a corporation for a taxation year, there may be deducted such of the following amounts as the corporation claims:

(a) **charitable gifts** — the total of all amounts each of which is the fair market value of a gift (other than a gift described in paragraph (b), (c) or (d)) made by the corporation in the year or in any of the 5 preceding taxation years to

Proposed Amendment — 110.1(1)(a) opening words

(a) **charitable gifts** — the total of all amounts each of which is the eligible amount of a gift (other than a gift described in paragraph (b), (c) or (d)) made by the corporation in the year or in any of the five preceding taxation years to

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 101(1), will amend the opening words of para. 110.1(1)(a) to read as above, applicable to gifts made after December 20, 2002.

Technical Notes: Section 110.1 provides a deduction in computing taxable income in respect of gifts made by corporations to registered charities and to certain other entities. Section 110.1 is amended to expand the entities referred to in this section to include municipal or public bodies performing a function of government in Canada. This amendment is in response to the Quebec Court of Appeal decision in *Tawich Development Corporation v. Deputy Minister of Revenue of Quebec*, 2001 D.T.C. 5144. For additional information, see the commentary to paragraph 149(1)(d.5).

Section 110.1 is also amended as a consequence of the addition of new subsections 248(30) to (38). Generally, those subsections clarify the circumstances under which a transfer of property will be considered a gift notwithstanding that the transferor may be entitled to receive an advantage or benefit in respect of the property. New subsection 248(31) generally provides that the "eligible amount" of the gift is the excess of the fair market value of a property transferred by way of gift over the value of the advantage or benefit, if any, to which the transferor is entitled. For additional information, see the commentary to new subsections 248(30) to (39).

Paragraphs 110.1(1)(a) to (d) provide, respectively, for the deduction by a corporation of amounts in respect of "charitable gifts", "gifts to Her Majesty", "gifts to institutions" and "ecological gifts". The amount deductible by the corporation is generally the fair market value of the gift. These paragraphs are amended, consequential to the addition of new subsection 248(31), to provide that the amount deductible by the corporation is generally the "eligible amount" of a gift.

In addition, paragraphs 110.1(1)(a) and 110.1(1)(d) are expanded to provide that a deduction is available in respect of gifts made by corporations to municipal or public bodies performing a function of government in Canada.

Paragraph 110.1(1)(d) is also amended to clarify its application to "real servitudes" under the *Civil Code of Quebec*.

(i) a registered charity,

(ii) a registered Canadian amateur athletic association,

(iii) a corporation resident in Canada and described in paragraph 149(l)(i),

(iv) a municipality in Canada,

Proposed Addition — 110.1(1)(a)(iv.1)

(iv.1) a municipal or public body performing a function of government in Canada,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 101(2), will add subpara. 110.1(1)(a)(iv.1), applicable to gifts made after May 8, 2000.

Technical Notes: See under 110.1(1)(a) opening words above.

Letter from Dept. of Finance, September 10, 2002: See under 149(1)(d.5).

(v) the United Nations or an agency thereof,

(vi) a university outside Canada that is prescribed to be a university the student body of which ordinarily includes students from Canada,

(vii) a charitable organization outside Canada to which Her Majesty in right of Canada has made a gift in the year or in the 12-month period preceding the year, or

(viii) Her Majesty in right of Canada or a province,

not exceeding the lesser of the corporation's income for the year and the amount determined by the formula

$$0.75A + 0.25 (B + C + D)$$

where

A is the corporation's income for the year computed without reference to subsection 137(2),

B is the total of all amounts each of which is a taxable capital gain of the corporation for the year from a disposition that is the making of a gift made by the corporation in the year and described in this paragraph,

Proposed Amendment — 110.1(1)(a)B

B is the total of all amounts, each of which is that proportion of the corporation's taxable capital gain for the taxation year in respect of a gift made by the corporation in the taxation year (in respect of which gift an eligible amount is described in this paragraph for the taxation year) that the eligible amount of the gift is of the corporation's proceeds of disposition in respect of the gift,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 101(3), will amend the description of B in para. 110.1(1)(a) to read as above, applicable to gifts made after December 20, 2002.

Technical Notes: See under 110.1(1)(a) opening words above.

C is the total of all amounts each of which is a taxable capital gain of the corporation for the year, because of subsection 40(1.01), from a disposition of a property in a preceding taxation year, and

D is the total of all amounts each of which is determined in respect of the corporation's depreciable property of a prescribed class and equal to the lesser of

(A) the amount included under subsection 13(1) in respect of the class in computing the corporation's income for the year, and

(B) the total of all amounts each of which is determined in respect of a disposition that is the making of a gift of property of the class made by the corporation in the year that is described in this paragraph and equal to the lesser of

(I) the proceeds of disposition of the property minus any outlays and expenses to the extent that they were made or incurred by the corporation for the purpose of making the disposition, and

(II) the capital cost to the corporation of the property;

Proposed Amendment — 110.1(1)(a)D(B)

(B) the total of all amounts each of which is determined in respect of a disposition that is the making of a gift of property of the class by the corporation in the year (in respect of which gift an eligible amount is described in this paragraph for the taxation year) equal to the lesser of

(I) that proportion, of the amount by which the proceeds of disposition of the property exceeds any outlays and expenses, to the extent that they were made or incurred by the corporation for the purpose of making the disposition, that the eligible amount of the gift is of the corporation's proceeds of disposition in respect of the gift, and

(II) that proportion, of the capital cost to the corporation of the property, that the eligible amount of the gift is of the corporation's proceeds of disposition in respect of the gift;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 101(4), will amend cl. (B) of the description of D in para. 110.1(1)(a) to read as above, applicable to gifts made after December 20, 2002.

Technical Notes: See under 110.1(1)(a) opening words above.

(b) **gifts to Her Majesty** — the total of all amounts each of which is the fair market value of a gift (other than a gift described in paragraph (c) or (d)) made by the corporation to Her Majesty in right of Canada or a province

Proposed Amendment — 110.1(1)(b) opening words

(b) **gifts to Her Majesty** — the total of all amounts each of which is the eligible amount of a gift (other than a gift described in paragraph (c) or (d)) made by the corporation to Her Majesty in right of Canada or of a province

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 101(5), will amend the opening words of para. 110.1(1)(b) to read as above, applicable to gifts made after December 20, 2002.

Technical Notes: See under 110.1(1)(a) opening words above.

(i) in the year or in any of the 5 preceding taxation years, and

(ii) before February 19, 1997 or under a written agreement made before that day;

(c) **gifts to institutions** — the total of all amounts each of which is the fair market value of a gift (other than a gift described in paragraph (d)) of an object that the Canadian Cultural Property Export Review Board has determined meets the criteria set out in paragraphs 29(3)(b) and (c) of the *Cultural Property Export and Import Act*, which gift was made by the corporation in the year or in any of the 5 preceding taxation years to an institution or a public authority in Canada that was, at the time the gift was made, designated under subsection 32(2) of that Act either generally or for a specified purpose related to that object; and

Proposed Amendment — 110.1(1)(c)

(c) **gifts to institutions** — the total of all amounts each of which is the eligible amount of a gift (other than a gift described in paragraph (d)) of an object that the Canadian Cultural Property Export Review Board has determined meets the criteria set out in paragraphs 29(3)(b) and (c) of the *Cultural Property Export and Import Act*, which gift was made by the corporation in the year or in any of the five preceding taxation years to an institution or a public authority in Canada that was, at the time the gift was made, designated under subsection 32(2) of that Act either generally or for a specified purpose related to that object; and

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 101(6), will amend para. 110.1(1)(c) to read as above, applicable to gifts made after December 20, 2002.

Technical Notes: See under 110.1(1)(a) opening words above.

(d) **ecological gifts** — the total of all amounts each of which is the fair market value of a gift of land, including a servitude for the use and benefit of a dominant land, a covenant or an easement, the fair market value of which is certified by the Minister of the Environment and that is certified by that Minister, or by a person designated by that Minister, to be ecologically

sensitive land, the conservation and protection of which is, in the opinion of that Minister, or that person, important to the preservation of Canada's environmental heritage, which gift was made by the corporation in the year or in any of the five preceding taxation years to

(i) Her Majesty in right of Canada or a province or a municipality in Canada, or

(ii) a registered charity one of the main purposes of which is, in the opinion of that Minister, the conservation and protection of Canada's environmental heritage, and that is approved by that Minister or that person in respect of the gift.

Proposed Amendment — 110.1(1)(d)

(d) **ecological gifts** — the total of all amounts each of which is the eligible amount of a gift of land (including a covenant or an easement to which land is subject or, in the case of land in the Province of Quebec, a real servitude) if

(i) the fair market value of the gift is certified by the Minister of the Environment,

(ii) the land is certified by that Minister, or by a person designated by that Minister, to be ecologically sensitive land, the conservation and protection of which is, in the opinion of that Minister or that person, important to the preservation of Canada's environmental heritage, and

(iii) the gift was made by the corporation in the year or in any of the five preceding taxation years to

(A) Her Majesty in right of Canada or of a province,

(B) a municipality in Canada,

(C) a municipal or public body performing a function of government in Canada, or

(D) a registered charity one of the main purposes of which is, in the opinion of that Minister, the conservation and protection of Canada's environmental heritage, and that is approved by that Minister or that person in respect of the gift.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 101(6), will amend para. 110.1(1)(d) to read as above, applicable to gifts made after December 20, 2002. For gifts made after May 8, 2000 and before December 21, 2002, subpara. 110.1(1)(d)(i) is to be read as follows:

(i) Her Majesty in right of Canada or of a province, a municipality in Canada or a municipal or public body performing a function of government in Canada, or

Technical Notes: See under 110.1(1)(a) opening words above.

Letter from Dept. of Finance, September 10, 2002: See under 149(1)(d.5).

Related Provisions: 37(5) — R&D expenditures not deductible under 110.1; 46(1), (5) — Capital gain on certain donations of art and other property; 87(2)(v) — Amalgamations — gifts; 88(1)(e.6), 88(1.3) — Effect of winding-up; 110.1(1.1)(a) — Gifts not deductible if previously deducted; 110.1(1.2) — No carryforward of deduction after change in control of corporation; 110.1(3) — Gift of capital property; 110.1(5) — Fair market value of ecological servitude, covenant or easement; 118.1(1) — Parallel rules for donations by individuals; 118.1(10)–(10.5) — Determination of value of ecological or cultural property; 149.1(6.4) — Donations to registered national arts service organization; 188.2(3)(a)(i) — Effect of suspension of charity's receipting privileges; 207.3 — Tax on institution that disposes of cultural property; 207.31 — Tax if donee of ecological property disposes of it; 230(2) — Records of donations; 237.1(1)"gifting arrangement", "tax shelter" — Tax shelter registration requirement; 248(30)–(33) — Determination of eligible amount; 248(35)–(39) — Value of gift limited to cost if acquired within 3 years or as tax shelter; 248(40) — Donee must make inquiry re circumstances of donation over $5,000; 248(41) — Donation value deemed nil if taxpayer does not inform donee of circumstances requiring reduction; Canada-U.S. Tax Treaty:Art. XXI:6 — Donations to U.S. charities.

History: The opening words of para. 110.1(1)(d) amended by 2001, c. 17, subsec. 85(1), applicable in respect of gifts made after February 27, 2000. The opening words formerly read:

(d) the total of all amounts each of which is the fair market value of a gift of land, including a servitude for the use and benefit of a dominant land, a covenant or an easement, that is certified by the Minister of the Environment, or a person designated by that Minister, to be ecologically sensitive land, the conservation and protection of which is, in the opinion of that Minister, or that person, important to the preservation of Canada's environmental heritage, which gift was made by the corporation in the year or in any of the 5 preceding taxation years to

1999, c. 22, s. 33 provides the following special rule, applicable to taxation years that ended after November 15, 1997 and before 1998.

For the purposes of the Act, if

(a) a taxpayer made a gift at any particular time before February 1998, and after the end of a taxation year that ended after November 15, 1997 and before 1998, that would be deductible under section 110.1 or 118.1 of the Act in computing the taxpayer's taxable income or tax payable under Part I of the Act for the year if it were made immediately before the end of the year,

(b) the gift was a gift of tangible property (other than real property) or a gift by cash, cheque, credit card or money order,

(c) the gift was not made

(i) through a payroll deduction, or

(ii) where the taxpayer died after 1997, by the taxpayer's will, and

(d) the taxpayer so elects in the taxpayer's return of income under the Act for the year or by notifying the Minister of National Revenue in writing before 1999,

the taxpayer is deemed to have made the gift and, in the case of a gift of tangible property, to have disposed of the property immediately before the end of the taxpayer's taxation year that ended before 1998 and not to have done so at the particular time.

Subsec. 110.1(1) amended by 1998, c. 19, subsec. 20(1), applicable to taxation years that begin after 1996. Subsec. 110.1(1) formerly read:

(1) For the purpose of computing the taxable income of a corporation for a taxation year, there may be deducted such of the following amounts as are applicable:

(a) the total of all amounts each of which is the fair market value of a gift made by the corporation in the year (or in any of the 5 immediately preceding taxation years to the extent that the amount thereof was not deducted in computing its taxable income for any preceding taxation year) to

(i) a registered charity,

(ii) a registered Canadian amateur athletic association,

(iii) a housing corporation resident in Canada and exempt from tax under this Part because of paragraph 149(1)(i),

(iv) a Canadian municipality,

(v) the United Nations or an agency thereof,

(vi) a university outside Canada that is prescribed to be a university the student body of which ordinarily includes students from Canada, or

(vii) a charitable organization outside Canada to which Her Majesty in right of Canada has made a gift during the corporation's taxation year or the 12 months immediately preceding that taxation year,

not exceeding the amount determined by the formula

$$0.5(A + B)$$

where

A is its income for the year computed without reference to subsection 137(2), and

B is the total of all amounts each of which is the amount of a taxable capital gain from a gift of property made by it in the year to a donee described in this paragraph;

(b) the total of all amounts each of which is the fair market value of a gift made by the corporation in the year (or in any of the 5 immediately preceding taxation years to the extent that the amount thereof was not deducted in computing its taxable income for any preceding taxation year) to Her Majesty in right of Canada or a province, not exceeding the amount remaining, if any, after the amount deducted for the year under paragraph (a) by the corporation is deducted in computing its taxable income for the year;

(c) the total of all amounts each of which is the fair market value of a gift (other than a gift in respect of which an amount is or was deducted under paragraph (a) or (b)) of an object that the Canadian Cultural Property Export Review Board has determined meets the criteria set out in paragraphs 29(3)(b) and (c) of the *Cultural Property Export and Import Act*, which gift was made by the corporation in the year (or in any of the 5 immediately preceding taxation years to the extent that the amount thereof was not deducted in computing its taxable income for any preceding taxation year) to an institution or a public authority in Canada that was, at the time the gift was made, designated under subsection 32(2) of that Act either generally or for a specified purpose related to that object, not exceeding the amount remaining, if any, after the amounts deducted for the year under paragraphs (a) and (b) by the corporation are deducted in computing its taxable income for the year; and

(d) the total of all amounts each of which is the fair market value of a gift (other than a gift in respect of which an amount is or was deducted under paragraph (a), (b) or (c)) of land, including a servitude for the use and benefit of a dominant land, a covenant or an easement, that is certified by the Minister of the Environment, or a person designated by that Minister, to be ecologically sensitive land, the conservation and protection of which is, in the opinion of that Minister, or that person, important to the preservation of Canada's environmental heritage, which gift was made by the corporation in the year (or in any of the 5 immediately preceding taxation years to the extent that the amount was not deducted in computing its taxable income for any preceding taxation year) to

(i) a Canadian municipality, or

(ii) a registered charity one of the main purposes of which is, in the opinion of the Minister of the Environment, the conservation and protection of Canada's environmental heritage, and that is approved by that Minister, or that person, in respect of that gift,

and not exceeding the amount remaining, if any, after the amounts deducted for the year under paragraphs (a), (b) and (c) are deducted in computing the corporation's taxable income for the year.

The portion of para. 110.1(1)(a) after subpara. (vii) amended by 1997, c. 25, s. 22, applicable to 1996 *et seq.* That portion formerly read:

(a) not exceeding 20% of its income for the year computed without reference to subsection 137(2);

Para. 110.1(1)(d) added by 1996, c. 21, subsec. 20(1), applicable to gifts made after February 27, 1995.

Paras. 110.1(1)(a) to (c) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 79, applicable after December 11, 1988. Paras. (a) to (c) formerly read:

(a) the total of gifts made by the corporation in the year (and in the 5 immediately preceding taxation years to the extent of the amount thereof that was not deducted in computing its taxable income for any preceding taxation year) to

(i) registered charities,

(ii) registered Canadian amateur athletic associations,

(iii) housing corporations resident in Canada and exempt from tax under this Part by paragraph 149(1)(i),

(iv) Canadian municipalities,

(v) the United Nations or agencies thereof,

(vi) universities outside Canada prescribed to be universities the student body of which ordinarily includes students from Canada, and

(vii) charitable organizations outside Canada to which Her Majesty in right of Canada has made a gift during the corporation's taxation year or the 12 months immediately preceding that taxation year,

not exceeding 20% of its income for the year computed without reference to subsection 137(2);

(b) the total of gifts made by the corporation in the year (and in the 5 immediately preceding taxation years to the extent of the amount thereof that was not deducted in computing its taxable income for any preceding taxation year) to Her Majesty in right of Canada and Her Majesty in right of the provinces, not exceeding the amount remaining, if any, when the amount deducted for the year under paragraph (a) by the corporation is deducted from its income for the year; and

(c) the total of gifts (other than gifts in respect of which amounts are or were deducted under paragraph (a) or (b)) of objects that the Canadian Cultural Property Export Review Board has determined meet all of the criteria set out in paragraphs 29(3)(b) and (c) of the *Cultural Property Export and Import Act*, which gifts were made by the corporation in the year (and in the 5 immediately preceding taxation years to the extent of the amount thereof not deducted under this Act in computing its taxable income for any preceding taxation year) to institutions or public authorities in Canada that were, at the time the gifts were made, designated under subsection 32(2) of that Act either generally or for a purpose related to those objects, not exceeding the amount remaining, if any, when the amounts deducted for the year under paragraphs (a) and (b) by the corporation are deducted from its income for the year.

Regulations: 3503, Sch. VIII (prescribed universities outside Canada).

Interpretation Bulletins: IT-110R3: Gifts and official donation receipts; IT-151R5: Scientific research and experimental development expenditures; IT-226R: Gift to a charity of a residual interest in real property or an equitable interest in a trust; IT-244R3: Gifts of life insurance policies as charitable donations; IT-288R2: Gifts of capital properties to a charity and others; IT-297R2: Gifts in kind to charity and others; IT-385R2: Disposition of an income interest in a trust; IT-407R4: Dispositions of cultural property to designated Canadian institutions.

Information Circulars: 84-3R5: Gifts to certain charitable organizations outside Canada.

Advance Tax Rulings: ATR-63: Donations to agents of the Crown.

Forms: RC4142: Tax advantages of donating to a charity [guide]; T2 SCH 2: Charitable donations and gifts; T1236: Qualified donees worksheet.

I.T. Technical News: 17 (loan of property as a gift).

Registered Charities Newsletters: See under 118.1(1)"total charitable gifts".

(1.1) Limitation on deductibility — For the purpose of determining the amount deductible under subsection (1) in computing a corporation's taxable income for a taxation year,

(a) an amount in respect of a gift is deductible only to the extent that it exceeds amounts in respect of the gift deducted under that subsection in computing the corporation's taxable income for preceding taxation years; and

(b) no amount in respect of a gift made in a particular taxation year is deductible under any of paragraphs (1)(a) to (d) until amounts deductible under that paragraph in respect of gifts made in taxation years preceding the particular year have been deducted.

Related Provisions: 118.1(2.1) — Ordering rule parallel to 110.1(1.1)(b).

History: Subsec. 110.1(1.1) added by 1998, c. 19, subsec. 20(1), applicable to taxation years that begin after 1996.

(1.2) Where control acquired — Notwithstanding paragraph 88(1)(e.6), if control of a particular corporation is acquired at any time by a person or group of persons,

(a) no amount is deductible under any of paragraphs (1)(a) to (d) in computing any corporation's taxable income for a taxation year that ends on or after that time in respect of a gift made by the particular corporation before that time; and

(b) no amount is deductible under any of paragraphs (1)(a) to (d) in computing any corporation's taxable income for a taxation year that ends on or after that time in respect of a gift made by any corporation on or after that time if the property that is the subject of the gift was acquired by the particular corporation under an arrangement under which it was expected that control of the particular corporation would be so acquired by a person or group of persons, other than a qualified donee that received the gift, and the gift would be so made.

Related Provisions: 111(4), (5) — Change of control rules for losses; 256(6)–(9) — Whether control acquired.

History: Subsec. 110.1(1.2) added by 2005, c. 19, s. 19, applicable in respect of gifts made after March 22, 2004.

(2) Proof of gift — A gift shall not be included for the purpose of determining a deduction under subsection (1) unless the making of the gift is proven by filing with the Minister

Proposed Amendment — 110.1(2) opening words

(2) Proof of gift — An eligible amount of a gift shall not be included for the purpose of determining a deduction under subsection (1) unless the making of the gift is evidenced by filing with the Minister

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 101(7), will amend the opening words of subsec. 110.1(2) to read as above, applicable to gifts made after December 20, 2002.

Technical Notes: Subsection 110.1(2) provides that a corporation may not deduct an amount in respect of a gift unless the gift is evidenced by a receipt containing prescribed information. The subsection is amended, concurrently with subsection 110.1(1), to refer to the "eligible amount" of a gift.

It is proposed that subsections 3501(1), (1.1) and (6) of the Regulations be amended to provide that every official receipt issued by a registered organization in respect of a gift contain, in addition to the information already prescribed, a description and the amount of the advantage, if any, and the eligible amount of the gift.

For additional details, see the commentary to new subsections 248(31) and (32) regarding the eligible amount and the amount of the advantage in respect of a gift.

These amendments to subsection 110.1(2) and subsections 3501(1), (1.1) and (6) of the Regulations are to be effective in respect of gifts made after December 20, 2002.

(a) a receipt for the gift that contains prescribed information;

(b) in the case of a gift described in paragraph (1)(c), the certificate issued under subsection 33(1) of the *Cultural Property Export and Import Act*; and

(c) in the case of a gift described in paragraph (1)(d), both certificates referred to in that paragraph.

Related Provisions: 118.1(2) — Parallel rule for individuals; 149.1(1)"disbursement quota"A — Charity must spend 80% of gifts on charitable purposes; 188 — Revocation tax where registration of charity is revoked; 248(30)–(33) — Determination of eligible amount; 248(40) — Donee must make inquiry re circumstances of donation over $5,000; 248(41) — Donation value deemed nil if taxpayer does not inform donee of circumstances requiring reduction.

History: Subsec. 110.1(2) amended by 2001, c. 17, subsec. 85(2), applicable in respect of gifts made after February 27, 2000, except that it shall be read without reference to para. (b) in respect of gifts made before December 21, 2000. The subsec. formerly read:

> (2) A gift shall not be included for the purpose of determining a deduction under subsection (1) unless the making of the gift is proven by filing with the Minister a receipt therefor that contains prescribed information.

Regulations: 3500–3502 (prescribed information).

Advance Tax Rulings: ATR-63: Donations to agents of the Crown.

Forms: T2 SCH 2: Charitable donations and gifts; RC4108: Registered charities and the *Income Tax Act* [guide].

(3) Gifts of capital property — Where at any time

(a) a corporation makes a gift of

(i) capital property to a donee described in paragraph (1)(a), (b) or (d), or

(ii) in the case of a corporation not resident in Canada, real property situated in Canada to a prescribed donee who provides an undertaking, in a form satisfactory to the Minister, to the effect that the property will be held for use in the public interest, and

(b) the fair market value of the property at that time exceeds its adjusted cost base to the corporation,

such amount, not greater than the fair market value otherwise determined and not less than the adjusted cost base to the corporation of the property at that time, as the corporation designates in its return of income under section 150 for the year in which the gift is made is, if the making of the gift is proven by filing with the Minister a receipt containing prescribed information, deemed to be its proceeds of disposition of the property and, for the purposes of subsection (1), the fair market value of the gift made by the corporation.

Proposed Amendment — 110.1(2.1), (3)

(2.1) Where subsection (3) applies — Subsection (3) applies in circumstances where

(a) a corporation makes a gift at any time of

(i) capital property to a donee described in paragraph (1)(a), (b) or (d), or

(ii) in the case of a corporation not resident in Canada, real or immovable property situated in Canada to a prescribed donee who provides an undertaking, in a form satisfactory to the Minister, to the effect that the property will be held for use in the public interest; and

(b) the fair market value of the property otherwise determined at that time exceeds

(i) in the case of depreciable property of a prescribed class, the lesser of the undepreciated capital cost of that class at the end of the taxation year of the corporation that includes that time (determined without reference to the proceeds of disposition designated in respect of the property under subsection (3)) and the adjusted cost base to the corporation of the property immediately before that time, and

(ii) in any other case, the adjusted cost base to the corporation of the property immediately before that time.

Related Provisions: 118.1(5.4) — Parallel rule for individuals; 248(35)–(39) — Value of gift limited to cost if acquired within 3 years or as tax shelter.

(3) Gifts of capital property — If this subsection applies in respect of a gift by a corporation of property, and the corporation designates an amount in respect of the gift in its return of income under section 150 for the year in which the gift is made, the amount so designated is deemed to be its proceeds of disposition of the property and, for the purpose of subsection 248(31), the fair market value of the gift, but the amount so designated may not exceed the fair market value of the property

otherwise determined and may not be less than the greater of

(a) in the case of a gift made after December 20, 2002, the amount of the advantage, if any, in respect of the gift, and

(b) the amount determined under subparagraph (2.1)(b)(i) or (ii), as the case may be, in respect of the property.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 101(8), will add subsec. 110.1(2.1) and amend subsec. (3) to read as above, applicable to gifts made after 1999 except that, for gifts made after 1999 and before December 21, 2002, the expression "subsection 248(30)" in subsec. 110.1(3) shall be read as "subsection (1)".

Technical Notes: Subsection 110.1(3) provides that, if a corporation donates capital property to a charity, it may designate a value between the adjusted cost base and the fair market value of the donated property to be treated both as the proceeds of disposition for the purpose of calculating its capital gain and the amount of the gift for the purpose of the deduction allowed for charitable donations under subsection 110.1(1).

Subsection 110.1(3) is restructured as new subsection 110.1(2.1) and revised subsection 110.1(3). New subsection 110.1(2.1) describes the circumstances under which amended subsection 110.1(3), which remains generally unchanged, will apply. However, where the property is depreciable property, subsection 110.1(2.1) includes those situations where the actual value of the gifted property is between the undepreciated capital cost of that class at the end of the taxation year of the corporation and the fair market value of the donated property.

Amended subsection 110.1(3) provides for the amount that may be designated by the corporation. As with the former provision, the amount designated is considered to be the corporation's proceeds of disposition of the gift. The subsection also continues to provide that the amount designated is treated as the fair market value of the property transferred by way of gift. However, under the amended version, this is for the purpose of new subsection 248(31) instead of for subsection 110.1(1). New subsection 248(31) generally provides that the "eligible amount" of a gift is the excess of the fair market value of a property transferred by way of gift over the value of the advantage or benefit, if any, to which the transferor is entitled. The "eligible amount" is relevant to the determination of the amount deductible under subsection 110.1(1) by the corporation.

Finally, amended subsection 110.1(3) allows a corporation to reduce the amount of recaptured depreciation that might otherwise be calculated in respect of a gift of depreciable property, with a corresponding reduction to the eligible amount deductible under subsection 110.1(1) in respect of the gift. However, the designated amount may not be lower than the amount of any actual proceeds of disposition in respect of the property (or, more specifically, the amount of the advantage in respect of the gift, as defined in new subsection 248(32)).

In particular, the amount designated by the corporation in respect of the property transferred may not exceed the fair market value of the property otherwise determined, and may not be less than the greater of

- the amount of the advantage, if any, in respect of the gift, and
- the adjusted cost base of the property or, if the property is depreciable property of the corporation, the undepreciated capital cost of the class of the property at the end of the corporation's taxation year (determined without reference to the proceeds of disposition designated in respect of the property).

See also the example in the commentary to subsections 118.1(5.4) and (6), which apply similarly to individuals as do subsections 110.1(2.1) and (3) to corporations.

Subsections 110.1(2.1) and (3) (as amended) generally apply in respect of gifts made after 1999. For additional details regarding the eligible amount and the amount of the advantage in respect of a gift, see the commentary to new subsections 248(31) and (32).

Letter from Dept. of Finance, February 15, 2000: See under 118.1(5.4), (6).

Related Provisions: 248(35)–(37) — Value of gift limited to cost if acquired within 3 years or as tax shelter.

Related Provisions: 118.1(6) — Parallel rule for individuals; 248(32) — Determination of amount of advantage.

History: The closing words of subsec. 110.1(3) amended by 2001, c. 17, subsec. 85(3), applicable in respect of gifts made after February 27, 1995. The closing words formerly read:

such amount, not greater than the fair market value and not less than the adjusted cost base to the corporation of the property at that time, as the corporation designates in its return of income under section 150 for the year in which the gift is made shall, if the making of the gift is proven by filing with the Minister a receipt containing prescribed information, be deemed to be its proceeds of disposition of the property and, for the purposes of subsection (1), the fair market value of the gift made by the corporation.

Subpara. 110.1(3)(a)(i) amended by 1996, c. 21, subsec. 20(2), applicable to gifts made after February 27, 1995. The subpara. formerly read:

(i) capital property to a donee described in paragraph (1)(a) or (b), or

That portion of subsec. 110.1(3) following para. (b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 46, applicable to gifts made after December 11, 1988. That portion formerly read:

such amount, not greater than the fair market value and not less than the adjusted cost base to the corporation of the property at that time, as is designated by the corporation in its return of income under section 150 for the year in which the gift is made shall, if payment thereof is proven by filing with the Minister a receipt containing prescribed information, be deemed to be its proceeds of disposition of the property and the amount of the gift made by the corporation.

Regulations: 3500 to 3502 (prescribed information); 3504 (prescribed donee).

Interpretation Bulletins: IT-288R2: Gifts of capital properties to a charity and others.

(4) Gifts made by partnership — Where a corporation is, at the end of a fiscal period of a partnership, a member of the partnership, its share of any amount that would, if the partnership were a person, be a gift made by the partnership to any donee shall, for the purposes of this section, be deemed to be a gift made to that donee by the corporation in its taxation year in which the fiscal period of the partnership ends.

Proposed Amendment — 110.1(4)

(4) Gifts made by partnership — If at the end of a fiscal period of a partnership a corporation is a member of the partnership, its share of any amount that would, if the partnership were a person, be the eligible amount of a gift made by the partnership to any donee is, for the purpose of this section, deemed to be the eligible amount of a gift made to that donee by the corporation in its taxation year in which the fiscal period of the partnership ends.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 101(9), will amend subsec. 110.1(4) to read as above, applicable to gifts made after December 20, 2002.

Technical Notes: Subsection 110.1(4) allows the attribution of gifts made by a partnership to its corporate members, according to each member's share in the partnership. Subsection 110.1(4) is amended, consequential to the addition of new subsection 248(31), in respect of gifts made by a partnership after December 20, 2002, to refer to the "eligible amount" of a gift made because of a corporation's membership in a partnership.

Related Provisions: 53(2)(c)(iii) — Deduction from ACB of partnership interest; 118.1(8) — Parallel rule for individuals; 248(30)–(33) — Determination of eligible amount.

(5) Ecological gifts — For the purposes of applying subparagraph 69(1)(b)(ii), this section and section 207.31 in respect of a gift described in paragraph (1)(d) that is made by a taxpayer, the amount that is the fair market value (or, for the purpose of subsection (3), the fair market value otherwise determined) of the gift at the time the gift was made and, subject to subsection (3), the taxpayer's proceeds of disposition of the gift, is deemed to

be the amount determined by the Minister of the Environment to be

(a) where the gift is land, the fair market value of the gift; or

(b) where the gift is a servitude, covenant or easement to which land is subject, the greater of

Proposed Amendment — 110.1(5)(b) opening words

(b) where the gift is a covenant or an easement to which land is subject or, in the case of land in the Province of Quebec, a real servitude, the greater of

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 101(10), will amend the opening words of para. 110.1(5)(b) to read as above, applicable to gifts made after December 20, 2002.

Technical Notes: Subsection 110.1(5) provides that the fair market value of a gift of ecologically sensitive land (or a covenant, easement or servitude in respect of ecologically sensitive land) is deemed to be the amount determined by the Minister of the Environment. Paragraph 110.1(5)(b) provides that the amount so determined in respect of a covenant, easement or servitude will not be considered to be less than the decrease in value of the subject land that resulted from the making of the gift.

Paragraph 110.1(5)(b) is amended to clarify its application to "real servitudes" under the *Civil Code of Quebec*.

(i) the fair market value otherwise determined of the gift, and

(ii) the amount by which the fair market value of the land is reduced as a result of the making of the gift.

Related Provisions: 43(2) — calculation for 110.1(5) also applies for determining capital gain or loss on disposition; 118.1(12) — Parallel rule for individuals.

History: Subsec. 110.1(5) amended by 2001, c. 17, subsec. 85(5), applicable in respect of gifts made after February 27, 2000. The subsec. formerly read:

(5) For the purposes of applying subparagraph 69(1)(b)(ii), section 207.31 and this section in respect of a gift described in paragraph (1)(d) that is made by a taxpayer and that is a servitude, covenant or easement to which land is subject, the greater of

(a) the fair market value otherwise determined of the gift, and

(b) the amount by which the fair market value of the land is reduced as a result of the making of the gift

is deemed to be the fair market value (or, for the purpose of subsection (3), the fair market value otherwise determined) of the gift at the time the gift was made and, subject to subsection (3), to be the taxpayer's proceeds of disposition of the gift.

Subsec. 110.1(5) amended by the said c. 17, subsec. 85(4), applicable in respect of gifts made after February 27, 1995 and before February 28, 2000. The subsec. formerly read:

(5) For the purposes of paragraph (1)(d) and section 207.31, the fair market value of a gift of a servitude, a covenant or an easement to which land is subject is deemed to be the greater of its fair market value otherwise determined and the amount by which the fair market value of the land is reduced as a consequence of the making of the gift.

Subsec. 110.1(5) added by 1998, c. 19, subsec. 20(2), applicable to gifts made after February 27, 1995

(6) Non-qualifying securities — Subsections 118.1(13), and (14) and (16) to (20) apply to a corporation as if the references in those subsections to an individual were read as references to a corporation and as if a non-qualifying security of a corporation included a share (other than a share listed on a prescribed stock exchange) of the capital stock of the corporation.

Related Provisions: 40(1.01) — Capital gains reserve on disposition of non-qualifying security; 88(1)(e.61) — Winding-up of subsidiary — gift deemed made by parent corporation; 110.1(7) — Where corporation ceases to exist after making donation of non-qualifying securities; 118.1(18) — Definition of non-qualifying security.

History: Subsec. 110.1(6) added by 1998, c. 19, subsec. 20(2), applicable after July 1997.

Regulations: 3200 (prescribed stock exchange).

(7) Corporation ceasing to exist — If, but for this subsection, a corporation (other than a corporation that was a predecessor corporation in an amalgamation to which subsection 87(1) applied or a corporation that was wound up in a winding-up to which subsection 88(1) applied) would be deemed by subsection 118.1(13) to have made a gift after the corporation ceased to exist, for the purpose of this section, the corporation is deemed to have made the gift in its last taxation year, except that the amount of interest payable under any provision of this Act is the amount that it would be if this subsection did not apply to the gift.

History: Subsec. 110.1(7) added by 1998, c. 19, subsec. 20(2), applicable after July 1997.

Definitions [s. 110.1]: "adjusted cost base" — 54, 248(1); "advantage" — 248(32); "amount" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "capital property" — 54, 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "depreciable property" — 13(21), 248(1); "eligible amount" — 248(31), (41); "fair market value" — 110.1(5), 118.1(10), 248(35); "fiscal period" — 249(2)(b), 249.1; "Her Majesty" — *Interpretation Act* 35(1); "immovable" — Quebec *Civil Code* art. 900–907; "Minister" — 248(1); "person", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "qualified donee" — 149.1(1), 248(1); "real servitude" — Quebec *Civil Code* art. 1177; "registered Canadian amateur athletic association", "registered charity" — 248(1); "resident in Canada" — 250; "taxable income" — 2(2), 248(1); "taxation year" — 249; "undepreciated capital cost" — 13(21), 248(1); "written" — *Interpretation Act* 35(1) ["writing"].

110.2 [Lump-sum averaging] — (1) Definitions — The definitions in this subsection apply in this section and section 120.31.

"eligible taxation year", in respect of a qualifying amount received by an individual, means a taxation year

(a) that ended after 1977 and before the year in which the individual received the qualifying amount;

(b) throughout which the individual was resident in Canada;

(c) that did not end in a calendar year in which the individual became a bankrupt; and

(d) that was not included in an averaging period, within the meaning assigned by section 119 (as it read in its application to the 1987 taxation year), pursuant to an election that was made and not revoked by the individual under that section.

"qualifying amount" received by an individual in a taxation year means an amount (other than the portion of the amount that can reasonably be considered to be received as, on account of, in lieu of payment of or in satisfaction of, interest) that is included in computing the individual's income for the year and is

(a) an amount

(i) that is received pursuant to an order or judgment of a competent tribunal, an arbitration award or a contract by which the payor and the individual terminate a legal proceeding, and

(ii) that is

(A) included in computing the individual's income from an office or employment, or

(B) received as, on account of, in lieu of payment of or in satisfaction of, damages in respect

of the individual's loss of an office or employment,

(b) a superannuation or pension benefit (other than a benefit referred to in clause 56(1)(a)(i)(B)) received on account of, in lieu of payment of or in satisfaction of, a series of periodic payments (other than payments that would have otherwise been made in the year or in a subsequent taxation year),

(c) an amount described in paragraph 6(1)(f), subparagraph 56(1)(a)(iv) or paragraph 56(1)(b), or

(d) a prescribed amount or benefit,

except to the extent that the individual may deduct for the year an amount under paragraph 8(1)(b), (n) or (n.1), 60(n) or (o.1) or 110(1)(f) in respect of the amount so included.

"specified portion", in relation to an eligible taxation year, of a qualifying amount received by an individual means the portion of the qualifying amount that relates to the year, to the extent that the individual's eligibility to receive the portion existed in the year.

Related Provisions: 120.31(1) — Definitions apply to 120.31.

(2) Deduction for lump-sum payments — There may be deducted in computing the taxable income of an individual (other than a trust) for a particular taxation year the total of all amounts each of which is a specified portion of a qualifying amount received by the individual in the particular year, if that total is $3,000 or more.

Related Provisions: 120.31 — Tax payable for other years.

History: S. 110.2 added by 2000, c. 19, s. 17, applicable to amounts received by an individual after 1994 (other than an amount in respect of which tax has been remitted to the individual under subsec. 23(2) of the *Financial Administration Act*) and, notwithstanding subsecs. 152(4) to (5) of the *Income Tax Act*, any assessment of the individual's tax payable under that Act for any taxation year that ended before 1999 shall be made as is necessary to take into account the application of s. 110.2.

Selected Cases [s. 110.2]: *Côté v. R.*, [2002] 4 C.T.C. 2025 (TCC) (Provision intended to reduce anomalies in income and reference was to taxable income, not adjusted income).

Definitions [s. 110.2]: "amount", "bankrupt" — 248(1); "eligible taxation year" — 110.2(1); "employment", "individual", "non-resident", "office", "prescribed" — 248(1); "qualifying amount" — 110.2(1); "resident in Canada" — 250; "specified portion" — 110.2(1); "superannuation or pension benefit", "taxable income" — 248(1); "taxation year" — 249; "trust" — 104(1), 248(1), 248(3).

Forms: T1198: Statement of qualifying retroactive lump-sum payment.

110.3 [Repealed under former Act]

110.4 [Repealed]

History: S. 110.4 repealed by 2000, c. 19, s. 18, applicable to 1998 *et seq.* S. 110.4 formerly read:

110.4 (1) [Repealed under former Act]

(2) Election — Where an individual files with the individual's return under this Part for a taxation year ending before 1998 and throughout which the individual was resident in Canada an election in prescribed form on or before the day on or before which the individual was, or would have been if tax had been payable under this Part by the individual for the year, required to file a return of income under this Part for the year, there shall be added in computing the individual's taxable income for the year the amount, if any, by which

(a) such portion of the individual's accumulated averaging amount at the end of the immediately preceding taxation year as is specified by the individual in the election

exceeds

(b) the total of amounts that would be the individual's farm loss or non-capital loss for the year if the amount determined for B in the definition "farm loss" or for C in the definition "non-capital loss" in subsection 111(8) were zero.

(3) [Repealed under former Act]

(4) Death of a taxpayer — For the purposes of subsection (2), where an individual was resident in Canada throughout the period beginning on the first day of the taxation year in which the individual died and ending at the time of the individual's death, the individual shall be deemed to have been resident in Canada throughout that year.

(5) Exception — Subsection (2) does not apply with respect to a return of income filed under subsection 70(2) or 150(4) or paragraph 104(23)(d).

(6) [Repealed under former Act]

(6.1) Revocation of election — An election filed by an individual under subsection (2) for a taxation year may be revoked,

(a) where the individual died in the year in which the election was filed, by the individual or the individual's legal representative filing with the Minister a notice of revocation in writing not later than the day on or before which the individual's return of income for the year of death is required to be filed, or would be required to be filed if tax under this Part were payable for the year of death; and

(b) in any other case, by the individual or the legal representative filing with the Minister a notice of revocation in writing not later than the 30th day following the day of mailing of a notice of assessment of an amount payable by the individual under this Part for the year.

(7) [Repealed under former Act]

(8) Accumulated averaging amount — In this section and section 120.1, the accumulated averaging amount of an individual

(a) at the end of any taxation year before 1998 (other than a taxation year in which the individual dies) is the product obtained when

(i) the amount, if any, by which

(A) the individual's accumulated averaging amount at the end of the immediately preceding taxation year

exceeds

(B) the amount specified under subsection (2) by the individual in the individual's election for the year

is multiplied by

(ii) the ratio (adjusted in such manner as may be prescribed and rounded to the nearest one-thousandth or, where the ratio is equidistant from two consecutive one-thousandths, to the higher thereof) that the Consumer Price Index of the 12 month period that ended on September 30 of that year bears to the Consumer Price Index for the 12 month period that ended on September 30 of the immediately preceding year;

(b) at the end of the taxation year before 1998 and in which the individuals dies is

(i) nil, where the individual's tax payable under this Part for the year is computed under section 119, or

(ii) the amount determined under subparagraph (a)(i) for the year, in any other case; and

(c) at any time after 1997 is nil.

Subpara. 110.4(8)(b)(ii) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 80, to substitute "subparagraph (a)(i)" for "paragraph (a)", applicable to 1988 *et seq.*

110.5 Additions for foreign tax deductions — There shall be added to a corporation's taxable income otherwise determined for a taxation year such amount as the corporation may claim to the extent that the addition thereof

(a) increases any amount deductible by the corporation under subsection 126(1) or (2) for the year; and

(b) does not increase an amount deductible by the corporation under any of sections 125, 125.1, 127, 127.2 and 127.3 for the year.

Related Provisions: 111(8)"non-capital loss"B — Carryforward of amount determined under 110.5; 115(1)(a)(vii) — Parallel rule for authorized foreign bank.

Definitions [s. 110.5]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "taxable income" — 2(2), 248(1); "taxation year" — 249.

Interpretation Bulletins [s. 110.5]: IT-232R3: Losses — their deductibility in the loss year or in other years; IT-270R3: Foreign tax credit; IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987.

110.6 (1) [Capital gains exemption —] Definitions — For the purposes of this section,

"annual gains limit" of an individual for a taxation year means the amount determined by the formula

A – B

where

A is the lesser of

(a) the amount determined in respect of the individual for the year under paragraph 3(b) in respect of capital gains and capital losses, and

(b) the amount that would be determined in respect of the individual for the year under paragraph 3(b) in respect of capital gains and losses if the only properties referred to in that paragraph were qualified farm properties disposed of by the individual after 1984 and qualified small business corporation shares disposed of by the individual after June 17, 1987, and

B is the total of

(a) the amount, if any, by which

(i) the individual's net capital losses for other taxation years deducted under paragraph 111(1)(b) in computing the individual's taxable income for the year

exceeds

(ii) the amount, if any, by which the amount determined in respect of the individual for the year under paragraph 3(b) in respect of capital gains and capital losses exceeds the amount determined for A in respect of the individual for the year, and

(b) all of the individual's allowable business investment losses for the year;

Related Provisions: 110.6(13) — Meaning of "amount determined under para. 3(b)"; 257 — Formula cannot calculate to less than zero. See also at end of s. 110.6.

History: Para. (b) of the description of A in the definition "annual gains limit" in subsec. 110.6(1) amended by 1995, c. 3, subsec. 32(2), applicable to 1994 *et seq.* except that, for the 1994 and 1995 taxation years, it shall be read as follows:

(b) the amount that would be determined in respect of the individual for the year under paragraph 3(b) in respect of capital gains and capital losses if

(i) the only properties referred to in paragraph 3(b) were properties disposed of by the individual after 1984 and, except where the property was at the time of the disposition a qualified small business corporation share or qualified farm property of the individual, before February 23, 1994,

(i.1) no amount were included under paragraph 3(b) in respect of

(A) a taxable capital gain of the individual that resulted from an election made under subsection (19) by a personal trust unless the individual was a beneficiary under the trust on February 22, 1994, and

(B) that portion of a taxable capital gain referred to in clause (A) that can reasonably be regarded as being in respect of an amount that is included in computing the individual's income because of an interest in the trust that was acquired by the individual after February 22, 1994,

(i.2) except for the purpose of determining the individual's share of a taxable capital gain of a partnership for its fiscal period that includes February 22, 1994 or a taxable capital gain of the individual resulting from a designation made under section 104 by a trust for its taxation year that includes that day, in determining the individual's taxable capital gain for the 1995 taxation year from the disposition of a property (other than a qualified small business corporation share or qualified farm property), this Act were read without reference to subparagraphs 40(1)(a)(ii) and 44(1)(e)(ii), and

(ii) the individual's capital gains and capital losses for the year from dispositions of non-qualifying real property of the individual were equal to the individual's eligible real property gains and eligible real property losses, respectively, for the year from those dispositions, and

Para. (b) of the description of A formerly read:

(b) the amount that would be determined in respect of the individual for the year under paragraph 3(b) in respect of capital gains and capital losses if

(i) the only properties referred to in paragraph 3(b) were properties disposed of by the individual after 1984, and

(ii) the individual's capital gains and capital losses for the year from dispositions of non-qualifying real property of the individual were equal to the individual's eligible real property gains and eligible real property losses, respectively, for the year from those dispositions, and

"Annual gains limit" in subsec. 110.6(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 47(1), applicable (as amended by 1994, c. 21, subsec. 50(6)) to 1985 *et seq.* except that in its application to the 1985 to 1991 taxation years para. (b) of the description of A shall be read as follows:

(b) the amount that would be determined in respect of the individual for the year under paragraph 3(b) in respect of capital gains and capital losses if the only properties referred to in paragraph 3(b) were properties disposed of by the individual after 1984, and

That definition formerly read:

"annual gains limit" of an individual for a taxation year means the amount, if any, by which

(a) the amount that would be determined in respect of the individual for the year under paragraph 3(b) in respect of capital gains and capital losses if the only properties referred to in that paragraph were properties disposed of by the individual after 1984

exceeds the total of

(b) the amount of the individual's net capital losses for other taxation years deducted in computing the individual's taxable income for the year under paragraph 111(1)(b), and

(c) the total of all the individual's allowable business investment losses for the year;

Interpretation Bulletins: IT-236R4: Reserves — disposition of capital property (archived).

Forms: See list at end of s. 110.6.

"child" has the meaning assigned by subsection 70(10);

"cumulative gains limit" of an individual at the end of a taxation year means the amount, if any, by which

(a) the total of all amounts determined in respect of the individual for the year or preceding taxation years that end after 1984 for A in the definition "annual gains limit"

exceeds the total of

(b) all amounts determined in respect of the individual for the year or preceding taxation years that end after 1984 for B in the definition "annual gains limit",

(c) the amount, if any, deducted under paragraph 3(e) in computing the individual's income for the 1985 taxation year,

(d) all amounts deducted under this section in computing the individual's taxable incomes for preceding taxation years, and

(e) the individual's cumulative net investment loss at the end of the year;

History: The definition "cumulative gains limit" in subsec. 110.6(1) substituted by 1994, c. 21, subsec. 49(1), applicable to 1985 *et seq.*; and, notwithstanding subsections 152(4) to (5), such assessments and determinations in respect of any taxation years may be made as are necessary to give effect to the amended definition. That definition formerly read:

"cumulative gains limit" of an individual at the end of a taxation year means the amount, if any, by which

(a) the total of all amounts each of which is

(i) the amount determined in respect of the individual for the year or a preceding taxation year ending after 1987 for A in the definition "annual gains limit", or

(ii) the amount determined in respect of the individual for a preceding taxation year ending after 1984 and before 1988 under paragraph (a) of the definition "annual gains limit" as it read in its application to those years

exceeds the total of

(b) all amounts each of which is

(i) the amount determined in respect of the individual for the year or a preceding taxation year ending after 1987 under paragraph (a) or (b) of the description of B in the definition "annual gains limit",

(ii) the amount determined in respect of the individual for a preceding taxation year ending after 1984 and before 1988 under paragraph (b) or (c) of the definition "annual gains limit" as it read in its application to those years, or

(iii) an amount deducted under paragraph 3(e) by the individual for the individual's 1985 taxation year,

(c) all amounts deducted under this section in computing the individual's taxable income for a preceding taxation year, and

(d) the individual's cumulative net investment loss at the end of the year;

"Cumulative gains limit" in subsec. 110.6(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 47(1), applicable to 1988 *et seq.* That definition formerly read:

"cumulative gains limit" of an individual at the end of a taxation year means the amount, if any, by which

(a) the total of all amounts each of which is the amount determined in respect of the individual for the year or a preceding taxation year ending after 1984 under paragraph (a) of the definition "annual gains limit" in this subsection

exceeds the total of

(b) the total of all amounts each of which is the amount determined in respect of the individual for the year or a preceding taxation year ending after 1984 under paragraph (b) or (c) of the definition "annual gains limit" in this subsection or an amount deducted by the individual under paragraph 3(e) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, for the individual's 1985 taxation year,

(c) the total of all amounts each of which is an amount deducted by the individual under this section in computing the individual's taxable income for a preceding taxation year, and

(d) the individual's cumulative net investment loss at the end of the year;

Selected Cases [110.6(1)"cumulative gains limit"]: *Hunter v. R.*, [1997] 3 C.T.C. 3104 (TCC) (Minister entitled to take into account events in earlier years in determining cumulative gains limit).

"cumulative net investment loss" of an individual at the end of a taxation year means the amount, if any, by which

(a) the total of all amounts each of which is the investment expense of the individual for the year or a preceding taxation year ending after 1987

exceeds

(b) the total of all amounts each of which is the investment income of the individual for the year or a preceding taxation year ending after 1987;

Forms: T936: Calculation of cumulative net investment loss.

"eligible real property gain" — [Repealed]

History: The definition "eligible real property gain" in subsec. 110.6(1) repealed by 1995, c. 3, subsec. 32(1), applicable after 1995. The definition formerly read:

"eligible real property gain" of an individual for a taxation year from a disposition of a non-qualifying real property of the individual means the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the individual's capital gain for the year from the disposition,

B is the number of calendar months in the period that begins with the later of the calendar month in which the property was last acquired by the individual and January 1972 and ends with February 1992, and

C is the number of calendar months in the period that begins with the later of the calendar month in which the property was last acquired by the individual and January 1972 and ends with the calendar month in which the property was disposed of by the individual;

"Eligible real property gain" added to subsec. 110.6(1) by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 47(6), applicable to 1992 *et seq.*

"eligible real property loss" — [Repealed]

History: The definition "eligible real property loss" in subsec. 110.6(1) repealed by 1995, c. 3, subsec. 32(1), applicable after 1995. The definition formerly read:

"eligible real property loss" of an individual for a taxation year from a disposition of a non-qualifying real property of the individual means the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the individual's capital loss for the year from the disposition,

B is the number of calendar months in the period that begins with the later of the calendar month in which the property was last acquired by the individual and January 1972 and ends with February 1992, and

C is the number of calendar months in the period that begins with the later of the calendar month in which the property was last acquired by the individual and January 1972 and ends with the calendar month in which the property was disposed of by the individual;

"Eligible real property loss" added to subsec. 110.6(1) by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 47(6), applicable to 1992 *et seq.*

"interest in a family farm partnership" of an individual (other than a trust that is not a personal trust) at any time means an interest owned by the individual at that time in a partnership where

(a) throughout any 24-month period ending before that time, more than 50% of the fair market value of the property of the partnership was attributable to

(i) property that was used by

(A) the partnership,

(B) the individual,

(C) where the individual is a personal trust, a beneficiary of the trust,

(D) a spouse, common-law partner, child or parent of the individual or of a beneficiary referred to in clause (C), or

(E) a corporation a share of the capital stock of which was a share of the capital stock of a family farm corporation of the individual, a beneficiary referred to in clause (C) or a spouse, common-law partner, child or parent of the individual or of a beneficiary referred to in clause (C),

principally in the course of carrying on the business of farming in Canada in which the individual, a beneficiary referred to in clause (C) or a spouse, common-law partner, child or parent of the individual or of a beneficiary referred to in clause (C) was actively engaged on a regular and continuous basis,

(ii) shares of the capital stock or indebtedness of one or more corporations all or substantially all of the fair market value of the property of which was attributable to properties described in subparagraph (iii), or

(iii) properties described in either subparagraph (i) or (ii), and

(b) at that time, all or substantially all of the fair market value of the property of the partnership was attributable to

(i) property that was used principally in the course of carrying on the business of farming in Canada by the partnership or a person referred to in subparagraph (a)(i),

(ii) shares of the capital stock or indebtedness of one or more corporations described in subparagraph (a)(ii), or

(iii) properties described in subparagraph (i) or (ii).

Related Provisions: See Related Provisions at end of s. 110.6.

History: The definition "interest in a family farm partnership" in subsec. 110.6(1) amended by 2001, c. 17, s. 242 and 2000, c. 12, Sch. 2, s. 8, to replace "spouse," with "spouse, common-law partner," applicable to 2001 *et seq.* except that, if a taxpayer and a person have jointly elected pursuant to s. 144 of 2000, c. 12 in respect of the 1998, 1999 or 2000 taxation year, the amendment applies to the taxpayer and the person in respect of the applicable taxation year and subsequent taxation years.

"Interest in a family farm partnership" in subsec. 110.6(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 47(2), applicable to 1992 *et seq.* That definition formerly read:

"interest in a family farm partnership" of an individual (other than a trust that is not a personal trust) at any time means an interest owned by the individual at that time in a partnership where,

(a) throughout any 24-month period ending before that time, more than 50% of the fair market value of the property of the partnership was attributable to property used by

(i) the partnership,

(ii) the individual,

(iii) where the individual is a personal trust, a beneficiary of the trust,

(iv) a spouse, child or parent of the individual or of a beneficiary referred to in subparagraph (iii), or

(v) a corporation a share of the capital stock of which was a share of the capital stock of a family farm corporation of the individual, a beneficiary referred to in subparagraph (iii) or a spouse, child or parent of the individual or of such a beneficiary

principally in the course of carrying on the business of farming in Canada in which the individual, a beneficiary referred to in subparagraph (iii) or a spouse, child or parent of the individual or of such a beneficiary was actively engaged on a regular and continuous basis, and

(b) at that time, all or substantially all of the fair market value of the property of the partnership was attributable to property that has been used principally in the course of carrying on the business of farming in Canada by the partnership or a person referred to in paragraph (a);

"Interest in a family farm partnership" substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 81(1), applicable to 1988 *et seq.* That definition formerly read:

"interest in a family farm partnership" of an individual (other than a trust that is not a personal trust) at any time means an interest owned by the individual at that time in a partnership all or substantially all of the property of which was, at that time, property used by

(a) the partnership,

(b) the individual,

(c) where the individual is a personal trust, a beneficiary of the trust,

(d) a spouse, child or parent of a person referred to in paragraph (b) or (c), or

(e) a corporation, a share of the capital stock of which was a share of the capital stock of a family farm corporation of an individual referred to in paragraph (b), (c) or (d)

throughout a period of at least 24 months before that time in the course of carrying on the business of farming in Canada in which any individual referred to in paragraph (b), (c) or (d) was actively engaged on a regular and continuous basis;

"investment expense" of an individual for a taxation year means the total of

(a) all amounts deducted in computing the individual's income for the year from property (except to the extent that the amounts were otherwise taken into account in computing the individual's investment expense or investment income for the year) other than any amounts deducted under

(i) paragraph 20(1)(c), (d), (e), or (e.1) of this Act or paragraph 20(1)(k) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in respect of borrowed money that was used by the individual, or that was used to acquire property that was used by the individual,

(A) to make a payment as consideration for an income-averaging annuity contract,

(B) to pay a premium under a registered retirement savings plan, or

(C) to make a contribution to a registered pension plan or a deferred profit sharing plan, or

(ii) paragraph 20(1)(j) or subsection 65(1), 66(4), 66.1(3), 66.2(2), 66.21(4) or 66.4(2),

(b) the total of

(i) all amounts deducted under paragraph 20(1)(c), (d), (e), (e.1), (f) or (bb) of this Act or paragraph 20(1)(k) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in computing the individual's income for the year from a partnership of which the individual was a specified member in the fiscal period of the partnership ending in the year, and

(ii) all amounts deducted under subparagraph 20(1)(e)(vi) in computing the individual's income for the year in respect of an expense incurred by a partnership of which the individual was a specified member in the fiscal period of the partnership ending immediately before it ceased to exist,

(c) the total of

(i) all amounts (other than allowable capital losses) deducted in computing the individual's income for the year in respect of the individual's share of the amount of any loss of a partnership of which the individual was a specified member in the partnership's fiscal period ending in the year, and

(ii) all amounts each of which is an amount deducted under paragraph 111(1)(e) in computing the individual's taxable income for the year,

(d) 50% of the total of all amounts each of which is an amount deducted under subsection 66(4), 66.1(3), 66.2(2), 66.21(4) or 66.4(2) in computing the individual's income for the year in respect of expenses

(i) incurred and renounced under subsection 66(12.6), (12.601), (12.62) or (12.64) by a corporation, or

(ii) incurred by a partnership of which the individual was a specified member in the fiscal period of the partnership in which the expense was incurred, and

(e) the total of all amounts each of which is the amount of the individual's loss for the year from

(i) property, or

(ii) renting or leasing a rental property (within the meaning assigned by subsection 1100(14) of the *Income Tax Regulations*) or a property described in Class 31 or 32 of Schedule II to the *Income Tax Regulations*

owned by the individual or by a partnership of which the individual was a member, other than a partnership of which the individual was a specified member in the partnership's fiscal period ending in the year, and

(f) the amount, if any, by which the total of the individual's net capital losses for other taxation years deducted under paragraph 111(1)(b) in computing the individual's taxable income for the year exceeds the amount determined in respect of the individual for the year under paragraph (a) of the description of B in the definition "annual gains limit";

History: Subpara. (a)(ii) of the definition "investment expense" in subsec. 110.6(1) amended by 2001, c. 17, subsec. 86(1), to add reference to subsec. 66.21(4), applicable to taxation years that begin after 2000.

Para. (d) of the definition "investment expense" in subsec. 110.6(1) amended by the said c. 17, subsec. 86(2), applicable to taxation years that begin after 2000. The para. formerly read:

(d) 50% of the total of all amounts each of which is an amount deducted under subsection 66(4), 66.1(3), 66.2(2) or 66.4(2) in computing the individual's income for the year in respect of expenses incurred and renounced under subsection 66(12.6), (12.601), (12.62) or (12.64) by a corporation or incurred by a partnership of which the individual was a specified member in the fiscal period of the partnership in which the expense was incurred, and

Para. (d) of the definition "investment expense" in subsec. 110.6(1) amended by 1994, c. 8, s. 13, to add reference to subsec. 66(12.601), applicable to 1992 *et seq.*

Para. (f) of "investment expense" in subsec. 110.6(1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 47(3), applicable to 1992 *et seq.*

Paras. (a), (b) of "investment expense" in subsec. 110.6(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 81(2), applicable to 1988 *et seq.* except that

(a) para. (a) does not apply before 1989 to amounts deducted under para. 20(1)(a) in respect of a certified production (within the meaning assigned by subsec. 1104(2) of the Regulations) of a taxpayer or a partnership that is property included in para. (n) in Cl. 12 of Sch. II to the Regulations, and

(b) in its application to a taxpayer who so elects by notifying the Minister of National Revenue in writing before 1993, subpara. (a)(ii) shall, in respect of the taxpayer's 1988 and 1989 taxation years, be read as follows:

(ii) paragraph 20(1)(j), to the extent that the total of all amounts deducted under that paragraph by the taxpayer in the year or a preceding taxation year ending after 1987 exceeds the total of all amounts each of which is an amount that

(A) was included in the taxpayer's investment income for the taxpayer's 1988 or 1989 taxation year, and

(B) was included under subsection 15(2) in the taxpayer's income for the taxpayer's 1988 or 1989 taxation year,

or subsection 65(1), 66(4), 66.1(3), 66.2(2) or 66.4(2),

Paras. (a), (b) formerly read:

(a) the total of all amounts each of which is an amount (other than an amount deducted under subsection 65(1), 66(4), 66.1(3), 66.2(2) or 66.4(2)) deducted in computing the individual's income for the year from property, except to the extent that the amount was included in computing the individual's investment expense for the year under paragraph (b), (c) or (e),

(b) the total of all amounts each of which is an amount deducted under paragraph 20(1)(c), (d), (e), (f) or (bb) of this Act or paragraph 20(1)(k) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in computing the individual's income for the year from a partnership of which the individual was a specified member in the fiscal period of the partnership ending in the year,

Subpara. (c)(i) of "investment expense" in subsec. 110.6(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 81(3), applicable to 1988 *et seq.* Subpara. (c)(i) formerly read:

(i) all amounts each of which is an amount deducted in computing the individual's income for the year as the individual's share of the amount of any loss of a partnership of which the individual was a specified member in the fiscal period of the partnership ending in the year, and

That portion of para. (e) of "investment expense" following subpara. (ii) in subsec. 110.6(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 81(4), applicable to 1988 *et seq.*, except that the para. does not apply before 1989 to amounts deducted under para. 20(1)(a) in respect of a certified production (within the meaning assigned by subsec. 1104(2) of the Regulations) of a taxpayer or a partnership that is property included in para. (n) in Cl. 12 of Sched. II to the Regulations. That portion of para. (e) formerly read:

owned by the individual or by a partnership of which the individual was a member, except to the extent that the amount was included in computing the individual's investment expense for the year under paragraph (c);

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

"investment income" of an individual for a taxation year means the total of

(a) all amounts included in computing the individual's income for the year from property (other than an amount included under subsection 15(2) or paragraph 56(1)(d) of this Act or paragraph 56(1)(d.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952), including, for greater certainty, any amount so included under subsection 13(1) in respect of a property any income from which would be income from property (except to the extent that the amount was otherwise taken into account in computing the individual's investment income or investment expense for the year),

(b) all amounts (other than taxable capital gains) included in computing the individual's income for the year in respect of the individual's share of the income of a partnership of which the individual was a specified member in the partnership's fiscal period ending in the year, including, for greater certainty, the individual's share of all amounts included under subsection 13(1) in computing the income of the partnership,

(c) 50% of all amounts included under subsection 59(3.2) in computing the individual's income for the year,

(d) all amounts each of which is the amount of the individual's income for the year from

(i) a property, or

(ii) renting or leasing a rental property (within the meaning assigned by subsection 1100(14) of the *Income Tax Regulations*) or a property described in Class 31 or 32 of Schedule II to the *Income Tax Regulations*

owned by the individual or by a partnership of which the individual was a member (other than a partnership of which the individual was a specified member in the partnership's fiscal period ending in the year), including, for greater certainty, any amount included under subsection 13(1) in computing the individual's income for the year in respect of a rental property of the individual or the partnership or in respect of a property any income from which would be income from property,

(e) the amount, if any, by which

(i) the total of all amounts (other than amounts in respect of income-averaging annuity contracts or annuity contracts purchased under deferred profit sharing plans or plans referred to in subsection 147(15) as revoked plans) included under paragraph 56(1)(d) of this Act or paragraph 56(1)(d.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in computing the individual's income for the year

exceeds

(ii) the total of all amounts deducted under paragraph 60(a) in computing the individual's income for the year, and

(f) the amount, if any, by which the total of all amounts included under paragraph 3(b) in respect of capital gains and capital losses in computing the individual's income for the year exceeds the amount determined in respect of the individual for the year for A in the definition "annual gains limit";

History: Para. (f) of "investment income" in subsec. 110.6(1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 47(4), applicable to 1992 *et seq.*

"Investment income" amended to substitute paras. (a) to (e) for (a) to (d) by 1994, c. 7, Sch. II (1991, c. 49), subsec. 81(5), applicable to 1988 *et seq.* except that in its application to a taxpayer who so elects by notifying the Minister of National Revenue in writing before 1993, para. (a) shall be read without reference to "subsection 15(2) or" in respect of the taxpayer's 1988 and 1989 taxation years. Paras. (a) to (d) formerly read:

(a) the total of all amounts included in computing the individual's income for the year from property, including, for greater certainty, any amount included under subsection 13(1) in respect of a property the income from which would be income from property, except to the extent that the amount was included in computing the individual's investment income for the year under paragraph (b) or (d),

(b) the total of all amounts each of which is an amount included in computing the individual's income for the year as the individual's share of the income of a partnership of which the individual was a specified member in the fiscal period of the partnership ending in the year, including, for greater certainty, the individual's share of all amounts included under subsection 13(1) in computing the income of the partnership,

(c) 50% of the total of all amounts included in computing the individual's income for the year under subsection 59(3.2), and

(d) the total of all amounts each of which is an amount included in computing the individual's income for the year from

(i) property, or

(ii) renting or leasing a rental property (within the meaning assigned by subsection 1100(14) of the *Income Tax Regulations*) or a property described in Class 31 or 32 of Schedule II to the *Income Tax Regulations*

owned by the individual or by a partnership of which the individual was a member, except to the extent that the amount was included in computing the individual's investment income for the year under paragraph (b), including, for greater certainty, any amount included under subsection 13(1) in computing the individual's income for the year in respect of rental property or in respect of a property the income from which would be income from property;

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

"non-qualifying real property" — [Repealed]

History: The definition "non-qualifying real property" in subsec. 110.6(1) repealed by 1995, c. 3, subsec. 32(1), applicable after 1995. The definition formerly read:

"non-qualifying real property" of an individual (other than a trust that is not a personal trust) means property disposed of after February 1992 by the individual, or a partnership any of the income of which is required to be included in computing the income of the individual, that at the time of its disposition (in this definition referred to as the "determination time") is

(a) real property, other than

(i) qualified farm property of the individual,

(ii) real property owned by the individual or the individual's spouse that was used

(A) throughout that part of the 24-month period preceding the determination time during which it was owned by the individual or the individual's spouse, or

(B) throughout all or substantially all of the time in the period preceding the determination time during which it was owned by the individual or the individual's spouse,

principally in an active business carried on by

(C) the individual (otherwise than as a member of a partnership),

(D) where the individual is a personal trust, a preferred beneficiary (within the meaning assigned by subsection 108(1)) under the trust (otherwise than as a member of a partnership),

(E) a spouse, child or parent of the individual or of a preferred beneficiary described in clause (D) (otherwise than as a member of a partnership),

(F) a corporation (otherwise than as a member of a partnership) where shares representing all or substantially all of the fair market value of all the issued and outstanding shares of its capital stock were owned by one or more persons described in this subparagraph,

(G) one or more persons as members of a partnership where interests representing all or substantially all of the fair market value of all partnership interests in the partnership were owned by one or more persons described in this subparagraph, or

(H) a personal trust (otherwise than as a member of a partnership) where interests representing all or substantially all of the fair market value of all beneficial interests in the trust were owned by one or more persons described in this subparagraph, and

(iii) real property of the partnership (except where the individual is a specified member of the partnership or, if a taxable capital gain of the individual's spouse from the disposition of property of the partnership would be a taxable capital gain of the individual, the individual's spouse is a specified member of the partnership) that was used

(A) throughout that part of the 24-month period preceding the determination time during which it was property of the partnership, the individual or the individual's spouse, or

(B) throughout all or substantially all of the time in the period preceding the determination time during which it was property of the partnership, the individual or the individual's spouse,

principally in an active business carried on by

(C) the individual,

(D) where the individual is a personal trust, a preferred beneficiary (within the meaning assigned by subsection 108(1)) under the trust,

(E) a spouse, child or parent of the individual or of a preferred beneficiary described in clause (D),

(F) a corporation where shares representing all or substantially all of the fair market value of all the issued and outstanding shares of its capital stock were owned by one or more persons described in this subparagraph, or

(G) a personal trust where interests representing all or substantially all of the fair market value of all beneficial interests in the trust were owned by one or more persons described in this subparagraph,

(b) a share of the capital stock of a corporation (other than a qualified small business corporation share of the individual or a share of the capital stock of a family farm corporation of the individual) the fair market value of which is derived principally from real property, other than real property that was used

(i) throughout that part of the 24-month period preceding the determination time during which it was owned by the corporation or by persons described in any of clauses (a)(ii)(C) to (H), or

(ii) throughout all or substantially all of the time in the period preceding the determination time during which it was owned by the corporation or by persons described in any of clauses (a)(ii)(C) to (H),

principally in an active business carried on by the corporation or by persons described in any of clauses (a)(ii)(C) to (H), but not including a share of the capital stock of a corporation the fair market value of which is derived principally from real property owned by another corporation, a partnership or a trust, or any combination thereof, the shares of the capital stock of which, or the interests in which, as the case may be, would, if they were disposed of at the determination time by the individual, not be non-qualifying real property of the individual,

(c) an interest in a partnership (other than an interest in a family farm partnership of the individual) the fair market value of which is derived principally from real property, other than real property that was used

(i) throughout that part of the 24-month period preceding the determination time during which it was property of the partnership or persons described in any of clauses (a)(ii)(C) to (H), or

(ii) throughout all or substantially all of the time in the period preceding the determination time during which it was property of the partnership or persons described in any of clauses (a)(ii)(C) to (H),

principally in an active business carried on by one or more persons as members of the partnership or by persons described in any of clauses (a)(ii)(C) to (H), but not including an interest in a partnership the fair market value of which is derived principally from real property owned by another partnership, a corporation or a trust, or any combination thereof, the shares of the capital stock of which or the interests in which, as the case may be, would, if they were disposed of at the determination time by the individual, not be non-qualifying real property of the individual,

(d) an interest in a trust the fair market value of which is derived principally from real property, other than real property that was used

(i) throughout that part of the 24-month period preceding the determination time during which it was owned by the trust or persons described in any of clauses (a)(ii)(C) to (H), or

(ii) throughout all or substantially all of the time in the period preceding the determination time during which it was owned by the trust or persons described in any of clauses (a)(ii)(C) to (H),

principally in an active business carried on by the trust or by persons described in any of clauses (a)(ii)(C) to (H), but not including an interest in a trust the fair market value of which is derived principally from real property owned by another trust, a corporation or a partnership, or any combination thereof, the shares of the capital stock of which or the interests in which, as the case may be, would, if they were disposed of at the determination time by the individual, not be non-qualifying real property of the individual, or

(e) an interest or an option in respect of property described in any of paragraphs (a) to (d),

and, for the purposes of this definition, an "active business" carried on by a person at any time means any business carried on by the person at that time other than a business (other than a business carried on by a credit union or a business of leasing property that is not real property) the principal purpose of which is to derive income from property (including interest, dividends, rents or royalties), unless the person or, where the person carries on the business as a member of a partnership, the partnership

(f) employs in the business at that time more than 5 individuals on a full-time basis, or

(g) in the course of carrying on the business has managerial, administrative, financial, maintenance or other similar services provided to it at that time and the person or partnership could reasonably be expected to require more than 5 full-time employees if those services had not been so provided;

The closing words of paras. (b), (c) and (d) of the definition "non-qualifying real property" in subsec. 110.6(1) substituted by 1994, c. 21, subsecs. 50(2), (3) and (4), applicable to 1992 *et seq.* The closing words of those paras. formerly read:

principally in an active business carried on by the corporation or by persons described in any of clauses (a)(ii)(C) to (H),

. . . . .

principally in an active business carried on by one or more persons as members of the partnership or by persons described in any of clauses (a)(ii)(C) to (H),

. . . . .

principally in an active business carried on by the trust or by persons described in any of clauses (a)(ii)(C) to (H), or

"Non-qualifying real property" added to subsec. 110.6(1) by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 47(6), applicable to 1992 *et seq.*

Selected Cases [110.6(1)"non-qualifying real property"]: *Boudreau v. R.*, [1997] 2 C.T.C. 2489 (TCC) ("One or more persons described in this subparagraph" not restricted to related persons).

"qualified farm property" of an individual (other than a trust that is not a personal trust) at any particular time means a property owned at that time by the individual, the spouse or common-law partner of the individual or a partnership, an interest in which is an interest in a family farm partnership of the individual or the individual's spouse or common-law partner that is

(a) real property that was used by

Proposed Amendment — 110.6(1)"qualified farm property"(a) opening words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), s. 233, will amend the opening words of para. (a) of the definition "qualified farm property" in subsec. 110.6(1) by substituting "real or immovable property" for "real property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(i) the individual,

(ii) where the individual is a personal trust, a beneficiary referred to in paragraph 104(21.2)(b) of the trust,

Proposed Amendment — 110.6(1)"qualified farm property"(a)(ii)

Letter from Dept. of Finance, August 20, 2004:

Dear [xxx]

Thank you for your letter of February 10, 2003 regarding the definition "qualified farm property" in subsection 110.6(1) of the *Income Tax Act* (the "Act"). I apologize for my delay in providing you with my comments.

Subsection 110.6(2) of the Act provides to individuals an exemption of up to $500,000 for capital gains realized on the disposition of "qualified farm property". "Qualified farm property" is defined as real property owned by an individual or an individual's spouse or a family farm partnership in which the individual or spouse has an interest. Under paragraph (a) of that definition, the real property is required to have been used in a farming business by the individual, the individual's spouse or any of their children, by a family farm corporation or family farm partnership in which the individual or the individual's spouse or any of their children has a share or

interest or, where the individual is a personal trust, by a beneficiary of the trust who is referred to in paragraph 104(21.2)(b) of the Act.

Your letter notes that in the case of a spousal trust, the only beneficiary that could be referred to in paragraph 104(21.2)(b) is the spouse and only if the spouse did in fact encroach on capital and was designated an amount under that paragraph. This narrow definition of beneficiary would result in very few circumstances where the capital gains exemption is available to the trust on the day the spouse dies. The circumstances would include situations where a capital gain was designated to the spouse in a prior taxation year or if the trust used the land in the business of farming.

In your letter, you have requested that subparagraph (a)(ii) of the definition "qualified farm property" be amended to refer to a beneficiary of the trust instead of a beneficiary referred to in paragraph 104(21.2)(b).

It seems appropriate to permit any beneficiary of a personal trust to qualify as a qualified user under that definition. This treatment would be comparable to the treatment of real property owned by a family farm corporation or a family farm partnership. Consequently, we are prepared to recommend to the Minister of Finance that the amendment to the definition "qualified farm property" that you requested be made. In the absence of any information suggesting that this issue has arisen in the past, we would recommend that such a change apply prospectively. If this recommendation is acted upon, the amendment will be included in a future technical bill.

Thank you for bringing this matter to our attention.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

(iii) a spouse, common-law partner, child or parent of a person referred to in subparagraph (i) or (ii),

(iv) a corporation, a share of the capital stock of which is a share of the capital stock of a family farm corporation of an individual referred to in any of subparagraphs (i) to (iii), or

(v) a partnership, an interest in which is an interest in a family farm partnership of an individual referred to in any of subparagraphs (i) to (iii),

in the course of carrying on the business of farming in Canada and, for the purpose of this paragraph, property will not be considered to have been used in the course of carrying on the business of farming in Canada unless

(vi) the property or property for which the property was substituted (in this subparagraph referred to as "the property") was owned by a person who was the individual, a beneficiary referred to in subparagraph (ii) or a spouse, common-law partner, child or parent of the individual or of such a beneficiary, by a personal trust from which the individual acquired the property or by a partnership referred to in subparagraph (v) throughout the period of at least 24 months immediately preceding that time and

(A) in at least 2 years while the property was so owned the gross revenue of such a person, or of a personal trust from which the individual acquired the property, from the farming business carried on in Canada in which the property was principally used and in which such a person or, where the individual is a personal trust, a beneficiary of the trust was actively engaged on a regular and continuous basis exceeded the income of the person from all other sources for the year, or

(B) the property was used by a corporation referred to in subparagraph (iv) or a partnership referred to in subparagraph (v) principally in the course of carrying on the business of farming in Canada throughout a period of at least 24 months during which time the individual, a beneficiary referred to in subparagraph (ii) or a spouse, common-law partner, child or parent of the individual or of such a beneficiary was actively engaged on a regular and continuous basis in the farming business in which the property was used, or

(vii) where the property is a property last acquired by the individual or partnership before June 18, 1987, or after June 17, 1987 under an agreement in writing entered into before that date, the property or property for which the property was substituted (in this subparagraph referred to as "the property") was used by the individual, a beneficiary referred to in subparagraph (ii) or a spouse, common-law partner, child or parent of the individual or of such a beneficiary, a corporation referred to in subparagraph (iv) or a partnership referred to in subparagraph (v) or by a personal trust from which the individual acquired the property principally in the course of carrying on the business of farming in Canada

(A) in the year the property was disposed of by the individual, or

(B) in at least 5 years during which the property was owned by the individual, a beneficiary referred to in subparagraph (ii) or a spouse, common-law partner, child or parent of the individual or of such a beneficiary, by a personal trust from which the individual acquired the property or by a partnership referred to in subparagraph (v),

(b) a share of the capital stock of a family farm corporation of the individual or the individual's spouse or common-law partner,

(c) an interest in a family farm partnership of the individual or the individual's spouse or common-law partner, or

(d) an eligible capital property used by a person or partnership referred to in any of subparagraphs (a)(i) to (v), or by a personal trust from which the individual acquired the property, in the course of carrying on the business of farming in Canada and, for the purpose of this paragraph, eligible capital property

(i) will not be considered to have been used in the course of carrying on the business of farming in Canada unless the conditions set out in subparagraph (a)(vi) or (vii), as the case may be, are met, and

(ii) shall be deemed to include capital property to which paragraph 70(5.1)(b) or 73(3)(d.1) applies;

Related Provisions: 14(1.1) — Eligible capital property inclusion deemed to be taxable capital gain for exemption purposes; 70(9.8) — Farm property used by corporation or partnership; 80.03(8) — Deemed qualified farm property where capital gain deemed on disposition following debt forgiveness; 108(1)"qualified farm property" — Definition applies to trusts; 248(5) — Substituted property. See also at end of s. 110.6.

History: The definition "qualified farm property" in subsec. 110.6(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", and by Sch. 2, s. 8, to replace "spouse,"with "spouse, common-law partner,", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Those portions of para. (a) of "qualified farm property" preceding subpara. (i) and following subpara. (v), and para. (d) in subsec. 110.6(1) substituted

by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 81(6) to (8), applicable to 1988 *et seq.* Those portions and that para. formerly read:

(a) real property used by

. . . . .

in the course of carrying on the business of farming in Canada and, for the purposes of this paragraph, property will not be considered to have been used in the course of carrying on the business of farming in Canada at that time unless

(vi) where the property is a property other than a property referred to in subparagraph (vii), the property or property for which the property was substituted was used by a person or partnership referred to in any of subparagraphs (i) to (v) or by a personal trust from which the individual acquired the property in the course of carrying on the business of farming in Canada

(A) in the year the property was disposed of by the individual, or

(B) in at least five years during which the property was owned by an individual referred to in any of subparagraphs (i) to (iii), by a personal trust from which the individual acquired the property or by a partnership referred to in subparagraph (v),

(vii) where the property is a property acquired by the individual or a partnership after June 17, 1987 otherwise than pursuant to an agreement in writing entered into on or before that date, the property or property for which the property was substituted was owned by an individual referred to in any of subparagraphs (i) to (iii), by a personal trust from which the individual acquired the property or by a partnership referred to in subparagraph (v) throughout the period of at least 24 months immediately preceding that time and

(A) in at least 2 years while the property was so owned, the gross revenue of an individual referred to in any of subparagraphs (i) to (iii) or of a personal trust from which the individual acquired the property from the farming business carried on in Canada in which the individual used the property and in which the individual or, where the individual is a personal trust, a beneficiary of the trust was actively engaged on a regular and continuous basis exceeded the individual's income from all other sources for the year, or

(B) the property was used by a corporation referred to in subparagraph (iv) or a partnership referred to in subparagraph (v) in the course of carrying on the business of farming in Canada throughout a period of at least 24 months during which time an individual referred to in any of subparagraphs (i) to (iii) was actively engaged on a regular and continuous basis in the farming business in which the property was used,

. . . . .

(d) an eligible capital property used by a person or partnership referred to in any of subparagraphs (a)(i) to (v) or by a personal trust from which the individual acquired the property in the course of carrying on the business of farming in Canada and, for the purpose of this definition, eligible capital property will not be considered to have been used in the course of carrying on the business of farming in Canada unless the conditions set out in subparagraph (a)(vi) or (vii), as the case may be, are met;

Selected Cases [110.6(1)"qualified farm property"]: *Desrosiers (Succession de) v. R.*, [2000] 3 C.T.C. 2200 (TCC) (Exemption for qualified farm property available even though taxpayer had taken position during lifetime that property was timber limit).

Interpretation Bulletins: IT-236R4: Reserves — disposition of capital property (archived). See also list at end of s. 110.6.

"qualified small business corporation share" of an individual (other than a trust that is not a personal trust) at any time (in this definition referred to as the "determination time") means a share of the capital stock of a corporation that,

(a) at the determination time, is a share of the capital stock of a small business corporation owned by the individual, the individual's spouse or common-law partner or a partnership related to the individual,

(b) throughout the 24 months immediately preceding the determination time, was not owned by anyone other than the individual or a person or partnership related to the individual, and

(c) throughout that part of the 24 months immediately preceding the determination time while it was owned by the individual or a person or partnership related to the individual, was a share of the capital stock of a Canadian-controlled private corporation more than 50% of the fair market value of the assets of which was attributable to

(i) assets used principally in an active business carried on primarily in Canada by the corporation or by a corporation related to it,

(ii) shares of the capital stock or indebtedness of one or more other corporations that were connected (within the meaning of subsection 186(4) on the assumption that each of the other corporations was a "payer corporation" within the meaning of that subsection) with the corporation where

(A) throughout that part of the 24 months immediately preceding the determination time that ends at the time the corporation acquired such a share or indebtedness, the share or indebtedness was not owned by anyone other than the corporation, a person or partnership related to the corporation or a person or partnership related to such a person or partnership, and

(B) throughout that part of the 24 months immediately preceding the determination time while such a share or indebtedness was owned by the corporation, a person or partnership related to the corporation or a person or partnership related to such a person or partnership, it was a share or indebtedness of a Canadian-controlled private corporation more than 50% of the fair market value of the assets of which was attributable to assets described in subparagraph (iii), or

(iii) assets described in either of subparagraph (i) or (ii)

except that

(d) where, for any particular period of time in the 24-month period ending at the determination time, all or substantially all of the fair market value of the assets of a particular corporation that is the corporation or another corporation that was connected with the corporation cannot be attributed to assets described in subparagraph (c)(i), shares or indebtedness of corporations described in clause (c)(ii)(B), or any combination thereof, the reference in clause (c)(ii)(B) to "more than 50%" shall, for the particular period of time, be read as a reference to "all or substantially all" in respect of each other corporation that was connected with the particular corporation and, for the purpose of this paragraph, a corporation is connected with another corporation only where

(i) the corporation is connected (within the meaning of subsection 186(4) on the assumption that the corporation was a "payer corporation" within the meaning of that subsection) with the other corporation, and

(ii) the other corporation owns shares of the capital stock of the corporation and, for the purpose of this subparagraph, the other corporation shall be

deemed to own the shares of the capital stock of any corporation that are owned by a corporation any shares of the capital stock of which are owned or are deemed by this subparagraph to be owned by the other corporation,

(e) where, at any time in the 24-month period ending at the determination time, the share was substituted for another share, the share shall be considered to have met the requirements of this definition only where the other share

(i) was not owned by any person or partnership other than a person or partnership described in paragraph (b) throughout the period beginning 24 months before the determination time and ending at the time of substitution, and

(ii) was a share of the capital stock of a corporation described in paragraph (c) throughout that part of the period referred to in subparagraph (i) during which such share was owned by a person or partnership described in paragraph (b), and

(f) where, at any time in the 24-month period ending at the determination time, a share referred to in subparagraph (c)(ii) is substituted for another share, that share shall be considered to meet the requirements of subparagraph (c)(ii) only where the other share

(i) was not owned by any person or partnership other than a person or partnership described in clause (c)(ii)(A) throughout the period beginning 24 months before the determination time and ending at the time of substitution, and

(ii) was a share of the capital stock of a corporation described in paragraph (c) throughout that part of the period referred to in subparagraph (i) during which the share was owned by a person or partnership described in clause (c)(ii)(A);

Related Provisions: 80.03(8) — Deemed qualified small business corporation share where capital gain deemed on disposition following debt forgiveness; 108(1)"qualified small business corporation share" — Trusts; 110.6(1.1) — Fair market value of net income stabilization account; 110.6(14) — Various rules of interpretation; 110.6(15) — Value of assets of corporation; 110.6(16) — Personal trust; 186(7) — Interpretation of "connected" for subparas. (c)(ii), (d)(i); 248(5) — Substituted property. See also at end of s. 110.6.

History: The definition "qualified small business corporation share" in subsec. 110.6(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subparas. (c)(i), (ii) and paras. (d) to (f) of "qualified small business corporation share" in subsec. 110.6(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 81(9), (10), applicable to dispositions of shares occurring after June 17, 1987. Those subparas. and paras. formerly read:

(i) assets used in an active business carried on primarily in Canada by the corporation or by a corporation related to it,

(ii) shares of the capital stock of or bonds, debentures, bills, notes, mortgages or similar obligations issued by one or more other corporations that were connected with the corporation (within the meaning of subsection 186(4) on the assumption that in each case the connected other corporation was at that time a "payer corporation" within the meaning of that subsection) where

(A) throughout that part of the 24 months immediately preceding the determination time that ends at the time the corporation acquired those shares or obligations, the shares or obligations were not owned by anyone other than the corporation or a person or partnership related to it, and

(B) throughout that part of the 24 months immediately preceding the determination time while those shares or obligations were owned by the corporation or a person or partnership related to it, they were shares or obligations of Canadian-controlled private corporations more than 50% of the fair market value of the assets of which was attributable to assets described in subparagraph (iii), or

. . . . .

(d) where, for any period of time in the 24 month period ending at the determination time, all or substantially all of the fair market value of the assets of a corporation cannot be attributed to assets described in subparagraph (c)(i) or shares or obligations of corporations described in clause (c)(ii)(B), the reference in clause (c)(ii)(B) to "more than 50%" shall, for that period of time, be read as a reference to "all or substantially all" in respect of other corporations connected with the corporation (within the meaning of subsection 186(4) on the assumption that in each case the connected other corporation was at that time a "payer corporation" within the meaning of that subsection)

(e) where, at any time in the 24 month period ending at the determination time, the share was substituted for another share, the share shall be considered to have met the requirements of this definition only where the other share

(i) was not owned by any person or partnership other than a person or partnership described in paragraph (b), and

(ii) was a share of the capital stock of a corporation described in paragraph (c),

throughout that part of that 24 month period ending at the determination time that ends at the time of substitution, and

(f) where, at any time in the 24-month period ending at the determination time, a share referred to in subparagraph (c)(ii) is substituted for another share, that share shall be considered to have met the requirements of that subparagraph only where the other share

(i) was not owned by any person or partnership other than a person or partnership described in clause (c)(ii)(A), and

(ii) was a share of the capital stock of a corporation described in paragraph (c),

throughout that part of that 24 month period ending at the determination time that ends at the time of substitution;

Interpretation Bulletins: See list at end of s. 110.6.

Information Circulars: 88-2, para. 15: General anti-avoidance rule — section 245 of the *Income Tax Act*; 88-2 Supplement, paras. 3, 4: General anti-avoidance rule — section 245 of the *Income Tax Act*.

Advance Tax Rulings: ATR-53: Purification of a small business corporation; ATR-55: Amalgamation followed by sale of shares.

"share of the capital stock of a family farm corporation" of an individual (other than a trust that is not a personal trust) at any time means a share of the capital stock of a corporation owned by the individual at that time where

(a) throughout any 24-month period ending before that time, more than 50% of the fair market value of the property owned by the corporation was attributable to

(i) property that was used by

(A) the corporation,

(B) the individual,

(C) where the individual is a personal trust, a beneficiary of the trust,

(D) a spouse, common-law partner, child or parent of the individual or of a beneficiary referred to in clause (C), or

(E) a partnership, an interest in which was an interest in a family farm partnership of the individual, a beneficiary referred to in clause (C) or a spouse, common-law partner, child or parent of the individual or of such a beneficiary,

principally in the course of carrying on the business of farming in Canada in which the individual, a beneficiary referred to in clause (C) or a spouse, common-law partner, child or parent of the individual or of such a beneficiary, was actively engaged on a regular and continuous basis,

(ii) shares of the capital stock or indebtedness of one or more corporations all or substantially all of the fair market value of the property of which was attributable to property described in subparagraph (iii), or

(iii) properties described in either subparagraph (i) or (ii), and

(b) at that time, all or substantially all of the fair market value of the property owned by the corporation was attributable to

(i) property that was used principally in the course of carrying on the business of farming in Canada by the corporation or a person or partnership referred to in subparagraph (a)(i),

(ii) shares of the capital stock or indebtedness of one or more corporations all or substantially all of the fair market value of the property of which was attributable to property described in subparagraph (iii), or

(iii) properties described in either subparagraph (i) or (ii).

Proposed Amendment — 110.6(1)"share of the capital stock of a family farm corporation"

Letter from Dept. of Finance, July 29, 2002:

Dear [xxx]

Thank you for your letter of February 7, 2002 regarding the definition "share of the capital stock of a family farm corporation" in subsection 110.6(1) of the *Income Tax Act*.

An individual's share of the capital stock of a family farm corporation constitutes a qualified farm property of that individual and, as such, capital gains realized on the disposition of that share will be eligible for the capital gains deduction provided under subsection 110.6(2) of the Act. In your letter, you have requested that paragraph (a)(i) of the definition be amended to include a reference to another corporation that is related to the corporation whose shares are being tested under the definition, where the shares of that related corporation would qualify as shares of the capital stock of a family farm corporation of the individual, the child or the spouse of the individual referred to in that paragraph. The related corporation would then become an eligible user of the property of the corporation whose shares are being tested under the definition.

It would seem appropriate to permit a corporation that is related to a family farm corporation to qualify as an eligible user of the property of the family farm corporation where shares of the related corporation that are owned by the persons referred to in clauses (a)(i) (B) to (D) of the definition are shares of the capital stock of a family farm corporation of those persons. This treatment would be comparable to the treatment of family farm partnerships in the definition.

Consequently, we are prepared to recommend to the Minister of Finance that such an amendment be made to the definition. It will be recommended that this amendment apply to dispositions of shares that occur after 2001.

Thank you for bringing this matter to our attention.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Related Provisions [subsec. 110.6(1)]: 110.6(1.1) — Fair market value of net income stabilization account; 110.6(15) — Value of assets of corporation; 257 — Formula cannot calculate to less than zero. See also at end of s. 110.6.

History: The definition "share of the capital stock of a family farm corporation" in subsec. 110.6(1) amended by 2000, c. 12, Sch. 2, s. 8, to replace "spouse,"with "spouse, common-law partner,", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

That portion of subpara. (a)(i) of "share of the capital stock of a family farm corporation" preceding cl. (A) in subsec. 110.6(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 47(5), applicable to 1992 *et seq.* That portion formerly read:

(i) property used by

"Share of a capital stock of a family farm corporation" in subsec. 110.6(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 81(11), applicable to 1988 *et seq.* That definition formerly read:

"share of the capital stock of a family farm corporation" of an individual (other than a trust that is not a personal trust) at any time means a share of the capital stock of a corporation owned by the individual at that time where, at that time, all or substantially all of the property owned by the corporation was

(a) property used by

(i) the corporation,

(ii) the individual,

(iii) where the individual is a personal trust, a beneficiary of the trust,

(iv) a spouse, child or parent of an individual referred to in subparagraph (ii) or (iii), or

(v) a partnership, an interest in which was an interest in a family farm partnership of an individual referred to in subparagraph (ii), (iii) or (iv)

throughout a period of at least 24 months before that time in the course of carrying on the business of farming in Canada in which any individual referred to in subparagraph (ii), (iii) or (iv) was actively engaged on a regular and continuous basis,

(b) shares of the capital stock of one or more corporations all or substantially all of the property of which was property described in paragraph (a) or bonds, debentures, bills, notes, mortgages or similar obligations issued by such a corporation, or

(c) properties described in either of paragraph (a) or (b).

Advance Tax Rulings: ATR-56: Purification of a family farm corporation.

(1.1) Idem [value of NISA] — For the purposes of the definitions "qualified small business corporation share" and "share of the capital stock of a family farm corporation" in subsection (1), the fair market value of a net income stabilization account shall be deemed to be nil.

History: Subsec. 110.6(1.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 47(7), applicable to 1991 *et seq.*

(2) Capital gains deduction — qualified farm property — In computing the taxable income for a taxation year of an individual (other than a trust) who was resident in Canada throughout the year and who disposed of qualified farm property in the year or a preceding taxation year ending after 1984, there may be deducted such amount as the individual may claim not exceeding the least of

(a) the amount determined by the formula

$$[\$250{,}000 - (A + B + C + D)] \times E$$

where

A is the total of all amounts each of which is an amount deducted under this section in computing the individual's taxable income for a preceding taxation year that ended before 1988,

B is the total of all amounts each of which is

(i) 3/4 of an amount deducted under this section in computing the individual's taxable income for a preceding taxation year that ended after 1987 and before 1990 (other than amounts deducted under this section for a taxation year in respect of an amount that was included in computing an individual's income for that year because of subparagraph 14(1)(a)(v) as that subparagraph applied for taxation years that ended before February 28, 2000), or

(ii) 3/4 of an amount deducted under this section in computing the individual's taxable income for a preceding taxation year that began after February 27, 2000 and ended before October 18, 2000,

C is 2/3 of the total of all amounts each of which is an amount deducted under this section in computing the individual's taxable income

(i) for a preceding taxation year that ended after 1989 and before February 28, 2000, or

(ii) in respect of an amount that was included because of subparagraph 14(1)(a)(v) (as that subparagraph applied for taxation years that ended before February 28, 2000) in computing the individual's income for a taxation year that began after 1987 and ended before 1990,

D is the product obtained when the reciprocal of the fraction determined for E that applied to the taxpayer for a preceding taxation year that began before and included February 28, 2000 or October 17, 2000 is multiplied by the amount deducted under this subsection in computing the individual's taxable income for that preceding year, and

E is

(i) in the case of a taxation year that includes February 28, 2000 or October 17, 2000, the amount determined by the formula

$$2 \times (F + G)/H$$

where

F is the amount deemed by subsection 14(1.1) to be a taxable capital gain of the taxpayer for the taxation year;

G is the amount by which the amount determined in respect of the taxpayer for the year under paragraph 3(b) exceeds the amount determined for F; and

H is the total of

(A) the amount deemed by subsection 14(1.1) to be a taxable capital gain of the taxpayer for the taxation year multiplied by

(I) where that amount is determined by reference to paragraph 14(1.1)(a), the reciprocal of the fraction obtained by multiplying the fraction 3/4 by the fraction in paragraph 14(1)(b) that applies to the taxpayer for the taxation year,

(II) where that amount is determined by reference to paragraph 14(1.1)(b), and the taxation year does not end after February 27, 2000 and before October 18, 2000, 2, and

(III) where that amount is determined by reference to paragraph 14(1.1)(b), and the taxation year ends after February 27, 2000 and before October 18, 2000, 3/2, and

(B) the amount determined for G multiplied by the reciprocal of the fraction in paragraph 38(a) that applies to the taxpayer for the taxation year; and

(ii) in any other case, 1,

(b) the individual's cumulative gains limit at the end of the year,

(c) the individual's annual gains limit for the year, and

(d) the amount that would be determined in respect of the individual for the year under paragraph 3(b) in respect of capital gains and capital losses if the only properties referred to in that paragraph were qualified farm properties disposed of by the individual after 1984.

Related Provisions: 14(1.1) — Eligible capital property inclusion deemed to be taxable capital gain for exemption purposes; 40(1.1) — extended capital gains reserve where farm property disposed of to child; 40(3.1) — Deemed disposition where negative ACB of partnership interest creates deemed gain; 73(3) — Intergenerational rollover of farm property; 110.6(4) — Maximum deduction; 110.6(5) — Individual deemed resident in Canada throughout year; 110.6(6) — Failure to report gain; 110.6(7)–(11) — Restrictions; 110.6(13) — Meaning of "amount determined under para. 3(b)"; 110.6(17) — Order of deduction; 127.52(1)(h)(i) — Deduction allowed for minimum tax purposes; 257 — Formula cannot calculate to less than zero. See also at end of s. 110.6.

History: Para. 110.6(2)(a) amended by 2001, c. 17, subsec. 86(3), applicable to taxation years that end after February 27, 2000. The para. formerly read:

(a) the amount, if any, by which $375,000 exceeds the total of

(i) the total of all amounts each of which is an amount deducted by the individual under this section in computing the individual's taxable income for a preceding taxation year,

(ii) where the taxation year ended after 1987, 1/3 of the total of all amounts each of which is an amount deducted under this section in computing the individual's taxable income for a taxation year ending before 1988, and

(iii) where the taxation year ended after 1989, 1/8 of the total of

(A) all amounts deducted under this section in computing the individual's taxable income for a taxation year ending before 1990 (other than amounts deducted under this section for a taxation year in respect of an amount that was included in computing the individual's income for that year because of subparagraph 14(1)(a)(v)), and

(B) the amount determined under subparagraph (ii) in respect of the individual for the year,

1995, c. 3, para. 32(15)(a), states that in applying the Act to the 1994 and 1995 taxation years, para. 110.6(2)(d) shall be read as follows:

(d) the amount that would be determined in respect of the individual for the year under paragraph 3(b) in respect of capital gains and capital losses if the only properties referred to in that paragraph were qualified farm properties disposed of by the individual after 1984 otherwise than because of an election made under subsection (19).

Cl. 110.6(2)(a)(iii)(A) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 47(8), applicable to 1990 *et seq.* That cl. formerly read:

(A) the total of all amounts each of which is an amount deducted under this section in computing the individual's taxable income for a taxation year ending before 1990, and

Selected Cases [subsec. 110.6(2)]: *Larsen v. R.*, [2000] 1 C.T.C. 209 (FCA) (Timber stand may be farm property).

Interpretation Bulletins: IT-426R: Shares sold subject to an earnout agreement. Also see list at end of s. 110.6.

Advance Tax Rulings: ATR-28: Redemption of capital stock of family farm corporation; ATR-56: Purification of a family farm corporation.

Forms: T657: Calculation of capital gains deduction; T1237: Saskatchewan farm and small business capital gains tax credit. See also list at end of s. 110.6.

(2.1) Capital gains deduction — qualified small business corporation shares — In computing the taxable income for a taxation year of an individual (other than a trust) who was resident in Canada throughout the year and who disposed of a share of a corporation in the year or a preceding taxation year and after June 17, 1987 that, at the time of disposition, was a qualified small business corporation share of the individual, there may be deducted such amount as the individual may claim not exceeding the least of

(a) the amount determined by the formula in paragraph (2)(a) in respect of the individual for the year,

(b) the amount, if any, by which the individual's cumulative gains limit at the end of the year exceeds the amount deducted under subsection (2) in computing the individual's taxable income for the year,

(c) the amount, if any, by which the individual's annual gains limit for the year exceeds the amount deducted under subsection (2) in computing the individual's taxable income for the year, and

(d) the amount that would be determined in respect of the individual for the year under paragraph 3(b) (other than an amount included in determining the amount in respect of the individual under paragraph (2)(d)) in respect of capital gains and capital losses if the only properties referred to in paragraph 3(b) were qualified small business corporation shares disposed of by the individual after June 17, 1987.

Related Provisions: 40(1.1)(c) — extended capital gains reserve where small business corporation disposed of to child; 48.1 — Deemed disposition to trigger exemption before small business corporation goes public; 69(11)(a)(i) — Exception to rule deeming proceeds at FMV where CG deduction claimed after incorporation or dissolution of partnership; 110.6(4) — Maximum deduction; 110.6(5) — Individual deemed resident in Canada throughout year; 110.6(6) — Failure to report gain; 110.6(7)–(11) — Restrictions; 110.6(13) — Meaning of "amount determined under para. 3(b)"; 127.52(1)(h)(i) — Deduction allowed for minimum tax purposes. See also at end of s. 110.6.

History: Para. 110.6(2.1)(a) amended by 2001, c. 17, subsec. 86(4), applicable to taxation years that end after February 27, 2000. The para. formerly read:

(a) the amount, if any, by which $375,000 exceeds the total of

(i) the total of all amounts each of which is an amount deducted by the individual under this section in computing the individual's taxable income for a preceding taxation year,

(ii) where the taxation year ended after 1987, the amount determined under subparagraph (2)(a)(ii) in respect of the individual for the year, and

(iii) where the taxation year ended after 1989, the amount determined under subparagraph (2)(a)(iii) in respect of the individual for the year,

Para. 110.6(2.1)(d) amended by 1998, c. 19, subsec. 130(1), applicable to 1996 *et seq.* Para. 110.6(2.1)(d) formerly read:

(d) the amount that would be determined in respect of the individual for the year under paragraph 3(b) (other than an amount included in determining the amount in respect of the individual under paragraph (2)(d)) in respect of capital gains and capital losses if the only properties referred to in that paragraph were qualified small business corporation shares disposed of by the individual after June 17, 1987.

1995, c. 3, para. 32(15)(b), states that in applying the Act to the 1994 and 1995 taxation years, para. 110.6(2.1)(d) shall be read as follows:

(d) the amount that would be determined in respect of the individual for the year under paragraph 3(b) (other than an amount included in determining the amount in respect of the individual under paragraph (2)(d)) in respect of capital gains and capital losses if the only properties referred to in paragraph 3(b) were qualified small business corporation shares disposed of by the individual after June 17, 1987 otherwise than because of an election made under subsection (19).

Selected Cases [subsec. 110.6(2.1)]: *Harquail v. R.*, [2002] 1 C.T.C. 25 (FCA) (Not necessary for complete agreement on all elements before a business exists); *Ast (H.) Estate v. Canada*, [1992] 2 C.T.C. 2251 (TCC) (Capital gains deduction validly claimed in year subsequent to disposition).

Interpretation Bulletins: IT-426R: Shares sold subject to an earnout agreement. Also see list at end of s. 110.6.

Information Circulars: 88-2, para. 15: General anti-avoidance rule — section 245 of the *Income Tax Act*; 88-2 Supplement, paras. 3, 4: General anti-avoidance rule — section 245 of the *Income Tax Act*.

Advance Tax Rulings: ATR-42: Transfer of shares; ATR-53: Purification of a small business corporation; ATR-55: Amalgamation followed by sale of shares.

Forms: T657: Calculation of capital gains deduction; T1237: Saskatchewan farm and small business capital gains tax credit. See also list at end of s. 110.6.

(3) [Repealed]

History: Subsec. 110.6(3) repealed by 1995, c. 3, subsec. 32(3), applicable to 1996 *et seq.*; and, in applying subsec. 110.6(3) to the 1994 and 1995 taxation years, the opening words of subsec. (3) shall be read as follows:

(3) In computing the taxable income for a taxation year of an individual (other than a trust) who was resident in Canada throughout the year and who disposed of property (other than property the capital gain or capital loss from the disposition of which is included in determining an amount under paragraph (2)(d) or (2.1)(d)) there may be deducted such amount as the individual claims, not exceeding the least of

Subsec. 110.6(3) formerly read:

(3) Capital gains deduction — other property — In computing the taxable income for a taxation year of an individual (other than a trust) who was resident in Canada throughout the year and who disposed of property (other than a disposition of property to which subsection (2) or (2.1) applies) there may be deducted such amount as the individual may claim not exceeding the least of

(a) the amount, if any, by which $75,000 exceeds the total of

(i) the total of all amounts each of which is an amount deducted by the individual under this subsection in computing the individual's taxable income for a preceding taxation year,

(ii) where the taxation year ended after 1987, ⅓ of the total of all amounts each of which is an amount deducted under this subsection in computing the individual's taxable income for a taxation year ending before 1988, and

(iii) where the taxation year ended after 1989, ⅛ of the total of

(A) all amounts deducted under this subsection in computing the individual's taxable income for a taxation year ending before 1990 (other than amounts deducted under this subsection for a taxation year in respect of an amount that was included in computing the individual's income for that year because of subparagraph 14(1)(a)(v)), and

(B) the amount determined under subparagraph (ii) in respect of the individual for the year,

(b) the amount, if any, by which the individual's cumulative gains limit at the end of the year exceeds the total of all amounts each of which is an amount deducted under subsection (2) or (2.1) in computing the individual's taxable income for the year, and

(c) the amount, if any, by which the individual's annual gains limit for the year exceeds the total of all amounts each of which is an amount deducted under subsection (2) or (2.1) in computing the individual's taxable income for the year.

Cl. 110.6(3)(a)(iii)(A) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 47(9), applicable to 1990 *et seq.* That cl. formerly read:

(A) the total of all amounts each of which is an amount deducted under this subsection in computing the individual's taxable income for a taxation year ending before 1990, and

Selected Cases [subsec. 110.6(3)]: *Cardin v. R.*, [1998] 3 C.T.C. 22 (FCA) (Capital gain (not just taxable portion) to be included in income for purposes of calculation for old age pension).

(4) Maximum capital gains deduction — Notwithstanding subsection[13] (2) and (2.1), the total amount that may be deducted under this section in computing an individual's income for a taxation year shall not exceed the amount determined by the formula in paragraph (2)(a) in respect of the individual for the year.

[13] *Sic.* Should be "subsections" — ed.

History: Subsec. 110.6(4) amended by 2001, c. 17, subsec. 86(5), applicable to taxation years that end after February 27, 2000. The subsec. formerly read:

> (4) Notwithstanding subsections (2) and (2.1), the total amount that may be deducted under this section in computing an individual's taxable income for a taxation year shall not exceed the amount, if any, by which $375,000 exceeds the total of
>
> (a) the total of all amounts each of which is an amount deducted by the individual under this section in computing the individual's taxable income for a preceding taxation year,
>
> (b) where the taxation year ended after 1987, the amount determined under subparagraph (2)(a)(ii) in respect of the individual for the year, and
>
> (c) where the taxation year ended after 1989, the amount determined under subparagraph (2)(a)(iii) in respect of the individual for the year.

The opening words of subsec. 110.6(4) amended by 1995, c. 3, subsec. 32(4), applicable to 1996 *et seq.* The opening words formerly read:

> (4) Notwithstanding subsections (2) and (2.1), the total amount that may be deducted under this section in computing an individual's taxable income for a taxation year shall not exceed the amount, if any, by which $375,000 exceeds the total of

(5) Deemed resident in Canada — Where an individual was resident in Canada at any time in a particular taxation year and throughout

(a) the immediately preceding taxation year, or

(b) the immediately following taxation year,

for the purposes of subsections (2) and (2.1) the individual shall be deemed to have been resident in Canada throughout the particular year.

Related Provisions: 14(8) — Parallel rule for cumulative eligible capital recapture. See also at end of s. 110.6.

History: The closing words of subsec. 110.6(5) amended by 1995, c. 3, subsec. 32(5), applicable to 1996 *et seq.* The closing words formerly read:

> for the purposes of subsections (2), (2.1) and (3) the individual shall be deemed to have been resident in Canada throughout the particular year.

(6) Failure to report capital gain — Notwithstanding subsections (2) and (2.1), where an individual has a capital gain for a taxation year from the disposition of a capital property and knowingly or under circumstances amounting to gross negligence

(a) fails to file a return of the individual's income for the year within one year after the day on or before which the individual is required to file a return of the individual's income for the year pursuant to section 150, or

(b) fails to report the capital gain in the individual's return of income for the year required to be filed pursuant to section 150,

no amount may be deducted under this section in respect of the capital gain in computing the individual's taxable income for that or any subsequent taxation year and the burden of establishing the facts justifying the denial of such an amount under this section is on the Minister.

History: The opening words of subsec. 110.6(6) amended by 1995, c. 3, subsec. 32(6), applicable to 1996 *et seq.* The opening words formerly read:

> (6) Notwithstanding subsections (2), (2.1) and (3), where an individual has a capital gain for a taxation year from the disposition of a capital property and knowingly or under circumstances amounting to gross negligence

Selected Cases [subsec. 110.6(6)]: *Foisy v. R.*, [2001] 1 C.T.C. 2606 (TCC) (Failure to declare gain did not result in loss of exemption or imposition of penalty).

(7) Deduction not permitted — Notwithstanding subsections (2) and (2.1), where an individual has a capital gain for a taxation year from the disposition of property as part of a series of transactions or events

(a) to which subsection 55(2) would, but for paragraph 55(3)(b), apply, or

(b) in which any property is acquired by a corporation or partnership for consideration that is significantly less than the fair market value of the property at the time of acquisition (other than an acquisition as the result of an amalgamation or merger of corporations or the winding-up of a corporation or partnership or a distribution of property of a trust in satisfaction of all or part of a corporation's capital interest in the trust),

no amount in respect of that capital gain shall be deducted under this section in computing the individual's taxable income for the year.

Related Provisions: 248(10) — Series of transactions or events. See also at end of s. 110.6.

History: The opening words of subsec. 110.6(7) amended by 1995, c. 3, subsec. 32(7), applicable to 1996 *et seq.* The opening words formerly read:

> (7) Where deduction not permitted — Notwithstanding subsections (2), (2.1) and (3), where an individual has a capital gain for a taxation year from the disposition of property as part of a series of transactions or events each of which is effected or to be effected after November 21, 1985

Advance Tax Rulings: ATR-56: Purification of a family farm corporation.

(8) Deduction not permitted — Notwithstanding subsections (2) and (2.1), where an individual has a capital gain for a taxation year from the disposition of a property and it can reasonably be concluded, having regard to all the circumstances, that a significant part of the capital gain is attributable to the fact that dividends were not paid on a share (other than a prescribed share) or that dividends paid on such a share in the year or in any preceding taxation year were less than 90% of the average annual rate of return thereon for that year, no amount in respect of that capital gain shall be deducted under this section in computing the individual's taxable income for the year.

Related Provisions: 110.6(9) — Average annual rate of return; 183.1(7) — Tax on corporate distributions — application of s. 110.6(8). See also at end of s. 110.6.

History: Subsec. 110.6(8) amended by 1995, c. 3, subsec. 32(8), applicable to 1996 *et seq.* Subsec. (8) formerly read:

> (8) Idem — Notwithstanding subsections (2), (2.1) and (3), where an individual has a capital gain for a taxation year from the disposition, after November 21, 1985, of a property and it may reasonably be concluded, having regard to all the circumstances, that a significant part of the capital gain is attributable to the fact that dividends were not paid on a share (other than a prescribed share) of a corporation or that dividends paid on such a share in the year or in any preceding taxation year were less than 90% of the average annual rate of return thereon for that year, no amount in respect of that capital gain shall be deducted under this section in computing the individual's taxable income for the year.

Regulations: 6205 (prescribed share).

(9) Average annual rate of return — For the purpose of subsection (8), the average annual rate of return on a share (other than a prescribed share) of a corporation for a taxation year is the annual rate of return by way of dividends that a knowledgeable and prudent investor who purchased the share on the day it was issued would expect to receive in that year, other than the first year after the issue, in respect of the share if

(a) there was no delay or postponement of the payment of dividends and no failure to pay dividends in respect of the share;

(b) there was no variation from year to year in the amount of dividends payable in respect of the share (other than where the amount of dividends payable is expressed as an invariant percentage of or by reference to an invariant difference between the dividend expressed as a rate of interest and a generally quoted market interest rate); and

(c) the proceeds to be received by the investor on the disposition of the share are the same amount the corporation received as consideration on the issue of the share.

Regulations: 6205 (prescribed share).

(10) [Repealed under former Act]

(11) Where deduction not permitted — Where it is reasonable to consider that one of the main reasons for an individual acquiring, holding or having an interest in a partnership or trust (other than an interest in a personal trust) or a share of an investment corporation, mortgage investment corporation or mutual fund corporation, or for the existence of any terms, conditions, rights or other attributes of the interest or share, is to enable the individual to receive or have allocated to the individual a percentage of any capital gain or taxable capital gain of the partnership, trust or corporation that is larger than the individual's percentage of the income of the partnership, trust or corporation, as the case may be, notwithstanding any other provision of this Act,

(a) no amount may be deducted under this section by the individual in respect of any such gain allocated or distributed to the individual after November 21, 1985; and

(b) where the individual is a trust, any such gain allocated or distributed to it after November 21, 1985 shall not be included in computing its eligible taxable capital gain (within the meaning assigned by subsection 108(1)).

(12) Trust deduction — Notwithstanding any other provision of this Act, a trust described in paragraph 104(4)(a) or (a.1) (other than a trust that elected under subsection 104(5.3), an *alter ego* trust or a joint spousal or common-law partner trust) may, in computing its taxable income for its taxation year that includes the day determined under paragraph 104(4)(a) or (a.1), as the case may be, in respect of the trust, deduct under this section an amount equal to the least of

(a) the amount, if any, by which the eligible taxable capital gains (within the meaning assigned by subsection 108(1)) of the trust for that year exceeds the amount, if any, by which

(i) the total of all amounts each of which is the amount, if any, determined under paragraph (b) or (d) of the definition "cumulative gains limit" in subsection (1) in respect of the taxpayer's spouse or common-law partner at the end of the taxation year in which the spouse or common-law partner died

exceeds

(ii) the amount if any, determined under paragraph (a) of the definition "cumulative gains limit" in subsection (1) in respect of the taxpayer's spouse or common-law partner at the end of the taxation year in which the spouse or common-law partner died,

(b) the amount, if any, that would be determined in respect of the trust for that year under paragraph 3(b) in respect of capital gains and capital losses if the only properties referred to in that paragraph were qualified farm properties disposed of by it after 1984 and qualified small business corporation shares disposed of by it after June 17, 1987, and

(c) the amount, if any, by which the amount determined by the formula in paragraph (2)(a) in respect of the taxpayer's spouse or common-law partner for the taxation year in which that spouse or common-law partner died exceeds the amount deducted under this section for that taxation year by that spouse or common-law partner.

Related Provisions: 104(21.1) — Beneficiary's taxable capital gain from trust; 110.6(13) — Meaning of "amount determined under para. 3(b)"; 127.52(1)(h)(i) — Deduction allowed for minimum tax purposes. See also at end of s. 110.6.

History: The opening words of subsec. 110.6(12) amended by 2001, c. 17, subsec. 86(6), applicable to 2000 *et seq.* The opening words formerly read:

(12) Spousal trust deduction — Notwithstanding any other provision of this Act, a trust described in paragraph 104(4)(a) or (a.1) (other than a trust that elected under subsection 104(5.3)) may, in computing its taxable income for its taxation year that includes the day determined under paragraph 104(4)(a) or (a.1), as the case may be, in respect of the trust, deduct under this section an amount equal to the least of

Para. 110.6(12)(c) amended by the said c. 17, subsec. 86(7), applicable to taxation years that end after February 27, 2000, except that the amount determined under the para., in computing a trust's taxable income for its particular taxation year that includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, is deemed to be equal to the amount determined under that para. (without reference to this application) multiplied by the quotient obtained when the fraction in para. 38(a), as amended, that applies to the trust for its particular year is divided by the fraction in para. 38(a), as amended, that applies to the taxpayer's spouse or common-law partner for the taxation year in which the spouse or common-law partner died. The para. formerly read:

(c) the amount, if any, by which $375,000 exceeds the total of

(i) the total of all amounts each of which is an amount deducted by the taxpayer's spouse or common-law partner under this section for the taxation year in which the spouse or common-law partner died or a preceding taxation year, and

(ii) the total of all amounts each of which is an amount determined under subparagraph (2)(a)(ii) or (iii) in respect of the taxpayer's spouse or common-law partner for the taxation year in which the spouse or common-law partner died.

Subsec. 110.6(12) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Para. 110.6(12)(b) amended by 1995, c. 3, subsec. 32(9), applicable to taxation years that end after February 22, 1994 except that, for taxation years that end after that day and before 1997, it shall be read as follows:

(b) the total of

(i) the least of

(A) the amount, if any, determined in respect of the trust for that year under paragraph 3(b) in respect of capital gains and losses,

(A.1) the amount, if any, that would be determined in respect of the trust for that year under paragraph 3(b) in respect of capital gains and losses if

(I) the only properties referred to in that paragraph were properties (other than properties referred to in subparagraph (ii)) disposed of by it after 1984 and before February 23, 1994,

(II) the trust's capital gains and capital losses for the year from dispositions of non-qualifying real property of the trust were equal to its eligible real property gains

and eligible real property losses, respectively, for that year from those dispositions,

(III) no amount were included under paragraph 3(b) in respect of a capital gain of the trust that resulted from an election made under subsection (19) by another trust unless the trust was a beneficiary under the other trust on February 22, 1994, and

(IV) except for the purpose of determining the trust's share of a taxable capital gain of a partnership for the partnership's fiscal period that includes February 22, 1994 or a taxable capital gain of the trust resulting from a designation made under section 104 by another trust for the other trust's taxation year that includes that day, in determining the trust's taxable capital gain for a taxation year that begins after that day from the disposition of a property (other than a qualified small business corporation share or qualified farm property), this Act were read without reference to subparagraphs 40(1)(a)(ii) and 44(1)(e)(ii), and

(B) the amount, if any, by which $75,000 exceeds the total of

(I) the total of all amounts each of which is an amount deducted under subsection (3) in computing the taxable income of the taxpayer's spouse for the taxation year in which the spouse died or a preceding taxation year, and

(II) the total of all amounts each of which is an amount determined under subparagraph (3)(a)(ii) or (iii) in respect of the taxpayer's spouse for the taxation year in which the spouse died, and

(ii) the amount, if any, that would be determined in respect of the trust for that year under paragraph 3(b) in respect of capital gains and losses if the only properties referred to in that paragraph were qualified farm properties disposed of by it after 1984 and qualified small business corporation shares disposed of by it after June 17, 1987; and

Para. (b) formerly read:

(b) the total of

(i) the least of

(A) the amount, if any, determined under paragraph 3(b) in respect of the trust for that year in respect of capital gains and capital losses,

(A.1) the amount, if any, that would be determined under paragraph 3(b) in respect of the trust for that year in respect of capital gains and capital losses if

(I) the only properties referred to in that paragraph were properties disposed of by it after 1984, other than properties referred to in subparagraph (ii), and

(II) the trust's capital gains and capital losses for that year from dispositions of non-qualifying real property of the trust were equal to its eligible real property gains and eligible real property losses, respectively, for that year from those dispositions, and

(B) the amount, if any, by which $75,000 exceeds the total of

(I) the total of all amounts each of which is an amount deducted by the taxpayer's spouse under subsection (3) for the taxation year in which the spouse died or a preceding taxation year, and

(II) the total of all amounts each of which is an amount determined under subparagraph (3)(a)(ii) or (iii) in respect of the taxpayer's spouse for the taxation year in which the spouse died, and

(ii) the amount, if any, that would be determined in respect of the trust for that year under paragraph 3(b) in respect of capital gains and capital losses if the only properties referred to in that paragraph were qualified farm properties disposed of by it after 1984 and qualified small business corporation shares disposed of by it after June 17, 1987, and

That portion of subsec. 110.6(12) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 47(10), applicable to 1993 *et seq.* That portion formerly read:

(12) Notwithstanding any other provision of this Act, a trust described in paragraph 104(4)(a) may, in computing its taxable income for its taxation year in which the taxpayer's spouse referred to in that paragraph died, deduct under this section an amount equal to the least of

All that portion of para. 110.6(12)(b) preceding cl. (i)(B) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 47(11), applicable to 1992 *et seq.* That portion formerly read:

(b) the total of

(i) the lesser of

(A) the amount, if any, that would be determined in respect of the trust for that year under paragraph 3(b) in respect of capital gains and capital losses if the only properties referred to in that paragraph were properties disposed of by it after 1984, other than properties referred to in subparagraph (ii), and

Forms: T3 SCH 5: Spousal or common-law partner trust's capital gains deduction in year of beneficiary's death.

(13) Determination under para. 3(b) — For the purposes of this section, the amount determined under paragraph 3(b) in respect of an individual for a period throughout which the individual was not resident in Canada is nil.

Related Provisions: 74.2(2) — Deemed gain or loss under attribution rules; 104(21), (21.2) — Beneficiary's taxable capital gain from trust. See also at end of s. 110.6.

(14) Related persons, etc. [miscellaneous rules re shares] — For the purposes of the definition "qualified small business corporation share" in subsection (1),

(a) a taxpayer shall be deemed to have disposed of shares that are identical properties in the order in which the taxpayer acquired them;

(b) in determining whether a corporation is a small business corporation or a Canadian-controlled private corporation at any time, a right referred to in paragraph 251(5)(b) shall not include a right under a purchase and sale agreement relating to a share of the capital stock of a corporation;

(c) a personal trust shall be deemed

(i) to be related to a person or partnership for any period throughout which the person or partnership was a beneficiary of the trust, and

(ii) in respect of shares of the capital stock of a corporation, to be related to the person from whom it acquired those shares where, at the time the trust disposed of the shares, all of the beneficiaries (other than registered charities) of the trust were related to that person or would have been so related if that person were living at that time;

(d) a partnership shall be deemed to be related to a person for any period throughout which the person was a member of the partnership;

Proposed Addition — 110.6(14)(d.1)

(d.1) a person who is a member of a partnership that is a member of another partnership is deemed to be a member of the other partnership;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 102(2), will add para. 110.6(14)(d.1), applicable to dispositions that occur after December 20, 2002; and to dispositions made by a taxpayer after 1999, if the taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year in which the amending legislation is assented to.

Technical Notes: Subsection 110.6(14) provides certain rules that apply for the purposes of the definition "qualified small business corporation share" in subsection 110.6(1) and the capital gains exemption in respect of such shares. This subsection is amended to add new paragraph 110.6(14)(d.1).

New paragraph 110.6(14)(d.1) deems a person who is a member of a partnership that is a member of another partnership (a lower-tiered partnership) to be a member of the lower-tiered partnership. This amendment will permit such a taxpayer to have access to the deduction for taxable capital gains arising on the disposition of a qualified small business corporation share by the lower-tiered partnership.

This amendment applies to dispositions that occur after December 20, 2002 and, if a taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year in which this amendment is assented to, to dispositions made by the taxpayer after 1999.

Letter from Dept. of Finance, August 17, 2001:

Monsieur,

La présente fait suite à votre lettre du 18 janvier 2001 relativement à la déduction pour gains en capital pour les actions admissibles de petite entreprise.

Les commentaires que vous avez formulés soulignent le caractère restrictif de l'alinéa 110.6(14)(d) de la *Loi de l'impôt sur le revenu* (LIR). Présentement la LIR stipule qu'une société de personnes est réputée liée à une personne pendant chaque période tout au long de laquelle cette personne est une associé de la société de personnes. Elle ne permet donc pas à un particulier qui est l'associé d'une société de personnes, qui elle-même est l'associée d'une autre société de personnes qui dispose d'actions admissibles de petite entreprise, de bénéficier de la déduction pour gain en capital prévue au paragraphe 110.6(2.1) de la LIR puisque cet associé n'est pas réputé lié à cette dernière.

La politique fiscale qui sous-tend cette mesure m'amène toutefois à considérer que la déduction pour gains en capital pour les actions admissibles de petite entreprise ne devrait pas être refusée dans le cas susmentionné. Par conséquent, je suis disposé à recommander que la LIR soit modifiée en ce sens.

Veuillez agréer, Monsieur, l'expression de mes sentiments les meilleurs.

Le directeur de la Division de la législation de l'impôt,
Brian Ernewein

(e) where a corporation acquires shares of a class of the capital stock of another corporation from any person, it shall be deemed in respect of those shares to be related to the person where all or substantially all the consideration received by that person from the corporation in respect of those shares was common shares of the capital stock of the corporation;

(f) shares issued after June 13, 1988 by a corporation to a particular person or partnership shall be deemed to have been owned immediately before their issue by a person who was not related to the particular person or partnership unless the shares were issued

(i) as consideration for other shares,

(ii) as part of a transaction or series of transactions in which the person or partnership disposed of property to the corporation that consisted of

(A) all or substantially all the assets used in an active business carried on by that person or the members of that partnership, or

(B) an interest in a partnership all or substantially all the assets of which were used in an active business carried on by the members of the partnership, or

(iii) as payment of a stock dividend; and

(g) where, immediately before the death of an individual, or, in the case of a deemed transfer under subsection 248(23), immediately before the time that is immediately before the death of an individual, a share would, but for paragraph (a) of the definition "qualified small business corporation share" in subsection (1), be a qualified small business corporation share of the individual, the share shall be deemed to be a qualified small business corporation share of the individual if it was a qualified small business corporation share of the individual at any time in the 12-month period immediately preceding the death of the individual.

Related Provisions: 54.2 — Sale of shares after incorporation of business; 110.6(16) — Personal trust; 248(1) — "business" does not include adventure or concern under 110.6(14)(f); 248(5)(b) — Effect of stock dividend; 248(10) — Series of transactions or events; 248(12) — Identical properties. See also at end of 110.6.

History: Subpara. 110.6(14)(f)(iii) added by 1998, c. 19, subsec. 130(2), applicable to dispositions of shares that occur after June 17, 1987.

Para. 110.6(14)(c) substituted and (g) added by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 81(12), (13), applicable to 1988 *et seq.* Para. (c) formerly read:

(c) a personal trust shall be deemed to be related to a person or partnership for any period throughout which the person or partnership was a beneficiary of the trust;

Advance Tax Rulings: ATR-55: Amalgamation followed by sale of shares.

(15) Value of assets of corporations — For the purposes of the definitions "qualified small business corporation share" and "share of the capital stock of a family farm corporation" in subsection (1), the definition "share of the capital stock of a family farm corporation" in subsection 70(10) and the definition "small business corporation" in subsection 248(1),

(a) where a person (in this subsection referred to as the "insured"), whose life was insured under an insurance policy owned by a particular corporation, owned shares of the capital stock (in this subsection referred to as the "subject shares") of the particular corporation, any corporation connected with the particular corporation or with which the particular corporation is connected or any corporation connected with any such corporation or with which any such corporation is connected (within the meaning of subsection 186(4) on the assumption that the corporation referred to in this subsection was a payer corporation within the meaning of that subsection),

(i) the fair market value of the life insurance policy shall, at any time before the death of the insured, be deemed to be its cash surrender value (within the meaning assigned by subsection 148(9)) at that time, and

(ii) the total fair market value of assets (other than assets described in subparagraph (c)(i), (ii) or (iii) of the definition "qualified small business corporation share" in subsection (1), subparagraph (b)(i), (ii) or (iii) of the definition "share of the capital stock of a family farm corporation" in subsection (1) or paragraph (a), (b) or (c) of the definition "small business corporation" in subsection 248(1), as the case may be) of any of those corporations that are

(A) the proceeds, the right to receive the proceeds or attributable to the proceeds, of the life insurance policy of which the particular corporation was a beneficiary, and

(B) used, directly or indirectly, within the 24-month period beginning at the time of the death of the insured or, where written application therefor is made by the particular corporation within that period, within such longer period as the Minister considers reasonable in the circumstances, to redeem, acquire or cancel the subject shares owned by the insured immediately before the death of the insured,

not in excess of the fair market value of the assets immediately after the death of the insured, shall, until the later of

(C) the redemption, acquisition or cancellation, and

(D) the day that is 60 days after the payment of the proceeds under the policy,

be deemed not to exceed the cash surrender value (within the meaning assigned by subsection 148(9)) of the policy immediately before the death of the insured; and

(b) the fair market value of an asset of a particular corporation that is a share of the capital stock or indebtedness of another corporation with which the particular corporation is connected shall be deemed to be nil and, for the purpose of this paragraph, a particular corporation is connected with another corporation only where

(i) the particular corporation is connected (within the meaning assigned by paragraph (d) of the definition "qualified small business corporation share" in subsection (1)) with the other corporation, and

(ii) the other corporation is not connected (within the meaning of subsection 186(4) as determined without reference to subsection 186(2) and on the assumption that the other corporation is a payer corporation within the meaning of subsection 186(4)) with the particular corporation,

except that this paragraph applies only in determining whether a share of the capital stock of another corporation with which the particular corporation is connected is a qualified small business corporation share or a share of the capital stock of a family farm corporation and in determining whether the other corporation is a small business corporation.

Related Provisions: 186(7) — Interpretation of "connected" for para. (a).

History: Subsec. 110.6(15) substituted by 1994, c. 21, subsec. 50(5), applicable to dispositions occurring after 1991. That subsec. formerly read:

(15) Life insurance policy of corporation — For the purposes of the definitions "qualified small business corporation share" and "share of the capital stock of a family farm corporation" in subsection (1) and the definition "small business corporation" in subsection 248(1), where a person (in this subsection referred to as the "insured"), whose life was insured under an insurance policy owned by a particular corporation, owned shares of the capital stock (in this subsection referred to as the "subject shares") of the particular corporation, any corporation connected with the particular corporation or with which the particular corporation is connected or any corporation connected with any such corporation or with which any such corporation is connected (within the meaning of subsection 186(4) on the assumption that the corporation referred to in this subsection was a payer corporation within the meaning of that subsection),

(a) the fair market value of the life insurance policy shall, at any time before the death of the insured, be deemed to be its cash surrender value (within the meaning assigned by subsection 148(9)) at that time; and

(b) the total fair market value of assets (other than assets described in subparagraph (c)(i), (ii) or (iii) of the definition "qualified small business corporation share" in subsection (1), subparagraph (b)(i), (ii) or (iii) of the definition "share of the capital stock of a family farm corporation" in subsection (1) or paragraph (a), (b) or (c) of the definition "small business corporation" in subsection 248(1), as the case may be) of any of those corporations that are

(i) the proceeds, the right to receive the proceeds or attributable to the proceeds, of the life insurance policy of which the particular corporation was a beneficiary, and

(ii) used, directly or indirectly, within the 24-month period beginning at the time of the death of the insured or, where written application therefor is made by the particular corporation within that period, within such longer period as the Minister considers reasonable in the circumstances, to redeem, acquire or cancel the subject shares owned by the insured immediately before the death of the insured,

not in excess of the fair market value of the assets immediately after the death of the insured shall, until the later of

(iii) the redemption, acquisition or cancellation, and

(iv) the date that is 60 days after the payment of the proceeds under the policy,

be deemed not to exceed the cash surrender value (within the meaning assigned by subsection 148(9)) of the policy immediately before the death of the insured.

Subsec. 110.6(15) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 81(14), applicable to dispositions occurring after June 17, 1987, except that, with respect to dispositions occurring before July 13, 1990, the reference to "within the 24-month period commencing at the time of the death of the insured or, where written application therefor is made by the particular corporation within that period, within such longer period [as the Minister considers reasonable in the circumstances]" in subpara. 110.6(15)(b)(ii) shall be read as "before July 13, 1991 or, where written application therefor is made by the particular corporation before that date, before date".

(16) Personal trust — For the purposes of the definition "qualified small business corporation share" in subsection (1) and of paragraph (14)(c), a personal trust shall be deemed to include a trust described in subsection 7(2).

History: Subsec. 110.6(16) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 81(14), applicable to dispositions occurring after June 17, 1987.

(17) Order of deduction — For the purpose of clause (2)(a)(iii)(A), amounts deducted under this section in computing an individual's taxable income for a taxation year that ended before 1990 shall be deemed to have first been deducted in respect of amounts that were included in computing the individual's income under this Part for the year because of subparagraph 14(1)(a)(v) before being deducted in respect of any other amounts that were included in computing the individual's income under this Part for the year.

History: Subsec. 110.6(17) amended by 1995, c. 3, subsec. 32(10), applicable to 1996 *et seq.* Subsec. (17) formerly read:

(17) For the purposes of clauses (2)(a)(iii)(A) and (3)(a)(iii)(A), amounts deducted by an individual under this section in computing the individual's taxable income for a taxation year ending before 1990 shall be deemed to have first been deducted in respect of any amounts that were included in computing the individual's income for that year because of paragraph 14(1)(a)(v) before being deducted in respect of any other amounts that were included in computing the individual's income for that year.

Subsec. 110.6(17) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 47(12), applicable to 1990 *et seq.*

(18) [Repealed]

History: Subsec. 110.6(18) repealed by 1995, c. 3, subsec. 32(11), applicable to 1996 *et seq.* Subsec. (18) formerly read:

(18) Eligible real property gains and losses — For the purposes of the definitions "eligible real property gain" and "eligible real property loss" in subsection (1),

(a) an individual shall be deemed to have disposed of identical properties in the order in which they were acquired;

(b) where paragraph 74.2(2)(b) applies for the purposes of this section to deem a property disposed of by another person to have been disposed of by an individual in a taxation year, the individual shall be deemed to have last acquired that property at the time at which the other person last acquired it and to have disposed of it at the time at which the other person disposed of it;

(c) where an individual is deemed by subsection 70(6), (9), (9.1), (9.2) or (9.3), 73(1), (3) or (4), 98(3) or (5) or 107(2) to have acquired property for an amount that is not greater than

the adjusted cost base to the person or partnership from whom it was acquired, the individual shall be deemed to have acquired the property at the time it was last acquired by the person or partnership;

(d) the number of calendar months in a period shall be determined without reference to any such month that is in a taxation year of the individual or the individual's spouse for which the property in respect of which the eligible real property gain or eligible real property loss is computed was a principal residence (within the meaning assigned by section 54) of the individual or the individual's spouse; and

(e) where the eligible real property gain or eligible real property loss of an individual is computed in respect of a gain or loss from a disposition of property by a partnership, the individual shall be deemed to have last acquired the property at the time it was last acquired by the partnership and to have disposed of the property at the time it was disposed of by the partnership except that, where the individual had disposed of that property to the partnership and an election had been filed under subsection 97(2) in respect of that disposition, the individual shall be deemed to have last acquired the property at the time it was last acquired by the individual before that disposition if the amount agreed on in that election in respect of the property was not greater than the adjusted cost base to the individual of the property at the time of that disposition.

Subsec. 110.6(18) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 47(12), applicable to 1992 *et seq.*

(19) Election for property owned on February 22, 1994 — Subject to subsection (20), where an individual (other than a trust) or a personal trust (each of which is referred to in this subsection and subsections (20) to (29) as the "elector"), elects in prescribed form to have the provisions of this subsection apply in respect of

(a) a capital property (other than an interest in a trust referred to in any of paragraphs (f) to (j) of the definition "flow-through entity" in subsection 39.1(1)) owned at the end of February 22, 1994 by the elector, the property shall be deemed, except for the purposes of sections 7 and 35 and subparagraph 110(1)(d.1)(ii),

(i) to have been disposed of by the elector at that time for proceeds of disposition equal to the greater of

(A) the amount determined by the formula

A – B

where

A is the amount designated in respect of the property in the election, and

B is the amount, if any, that would, if the disposition were a disposition for the purpose of section 7 or 35, be included under that section as a result of the disposition in computing the income of the elector, and

(B) the adjusted cost base to the elector of the property immediately before the disposition, and

(ii) to have been reacquired by the elector immediately after that time at a cost equal to

(A) where the property is an interest in or a share of the capital stock of a flow-through entity (within the meaning assigned by subsection 39.1(1)) of the elector, the cost to the elector of the property immediately before the disposition referred to in subparagraph (i),

(B) where an amount would, if the disposition referred to in subparagraph (i) were a disposition for the purpose of section 7 or 35, be included under that section as a result of the disposition in computing the income of the elector, the lesser of

(I) the elector's proceeds of disposition of the property determined under subparagraph (i), and

(II) the amount determined by the formula

A – B

where

A is the amount, if any, by which the fair market value of the property at that time exceeds the amount that would, if the disposition referred to in subparagraph (i) were a disposition for the purpose of section 7 or 35, be included under that section as a result of the disposition in computing the income of the elector, and

B is the amount that would be determined by the formula in subclause (C)(II) in respect of the property if clause (C) applied to the property, and

(C) in any other case, the lesser of

(I) the designated amount, and

(II) the amount, if any, by which the fair market value of the property at that time exceeds the amount determined by the formula

A – 1.1B

where

A is the designated amount, and

B is the fair market value of the property at that time;

(b) a business carried on by the elector (otherwise than as a member of a partnership) on February 22, 1994,

(i) the amount that would be determined under subparagraph 14(1)(a)(v) at the end of that day in respect of the elector if

(A) all the eligible capital property owned at that time by the elector in respect of the business were disposed of by the elector immediately before that time for proceeds of disposition equal to the amount designated in the election in respect of the business, and

(B) the fiscal period of the business ended at that time

shall be deemed to be a taxable capital gain of the elector for the taxation year in which the fiscal period of the business that includes that time ends from the disposition of a particular property and, for the purposes of this section, the particular property shall be deemed to have been disposed of by the elector at that time, and

(ii) for the purpose of paragraph 14(3)(b), the amount of the taxable capital gain determined under subparagraph (i) shall be deemed to have been claimed, by a person who does not deal at arm's length with each person or partnership that does not deal at arm's length with the elector, as a deduction under this section in respect of a disposition at that time of the eligible capital property; and

(c) an interest owned at the end of February 22, 1994 by the elector in a trust referred to in any of paragraphs (f) to (j) of the definition "flow-through entity" in subsection 39.1(1), the elector shall be

deemed to have a capital gain for the year from the disposition on February 22, 1994 of property equal to the lesser of

(i) the total of amounts designated in elections made under this subsection by the elector in respect of interests in the trust, and

(ii) 4/3 of the amount that would, if all of the trust's capital properties were disposed of at the end of February 22, 1994 for proceeds of disposition equal to their fair market value at that time and that portion of the trust's capital gains and capital losses or its net taxable capital gains, as the case may be, arising from the dispositions as can reasonably be considered to represent the elector's share thereof were allocated to or designated in respect of the elector, be the increase in the annual gains limit of the elector for the 1994 taxation year as a result of the dispositions.

Related Provisions: 13(7)(e.1) — Depreciable capital property; 13(21)"undepreciated capital cost"F — No recapture of CCA on election; 14(1)(a)(v)D, 14(5)"cumulative eligible capital"B, 14(9) — Cumulative eligible capital; 39.1 — Holdings in flow-through entities; 40(2)(b)A, D, 40(7.1) — Principal residence; 49(3.2) — Options; 53(1)(r) — Increase in ACB immediately before disposing of all interests or shares of a flow-through entity; 54"adjusted cost base"(c) — ACB adjustment of flow-through entity preserved through disposition and reacquisition; 84.1(2.01)(a) — Share deemed acquired not at arm's length (cost base preserved) for purposes of later non-arm's length sale; 107(1.1)(a) — Cost of capital interest in a trust when election made; 110.6(20) — Application of election; 110.6(21) — Non-qualifying real property; 110.6(23) — Partnership interest; 110.6(24)–(30) — Time for election and late-filed elections; 257 — Formulas cannot calculate to less than zero; Reg. 2800(2.1) — Extended deadline for preferred beneficiary election. See also at end of s. 110.6.

History: Subsec. 110.6(19) added by 1995, c. 3, subsec. 32(12), applicable to 1994 *et seq.*

Selected Cases [subsec. 110.6(19)]: *Holder v. R.*, [2004] 3 C.T.C. 207 (FCA) (Effect of error in election triggered application of adjustments); *Champagne v. R.*, [2003] 3 C.T.C. 2318 (TCC) ("Shall" has imperative meaning); *Smedley v. R.*, [2003] 2 C.T.C. 2658 (TCC) (Remission order recommended where taxpayer unaware of election).

Remission Orders: *Karen Smedley and George Smedley Remission Order*, P.C. 2004-264 (remission of tax where CRA failed to advise that election could be amended under 110.6(27)).

I.T. Application Rules: 20(1)(c) (where depreciable property owned since before 1972); 26(29) (following election, property deemed not owned at end of 1971 so ITAR 26(3) will not apply).

Interpretation Bulletins: IT-120R6: Principal residence; IT-217R: Depreciable property owned on December 31, 1971 (archived); IT-379R: Employees profit sharing plans — allocations to beneficiaries.

I.T. Technical News: 7 (principal residence and the capital gains election).

(20) Application of subsec. (19) — Subsection (19) applies to a property or to a business, as the case may be, of an elector only if

(a) where the elector is an individual (other than a trust),

(i) its application to all of the properties in respect of which elections were made under that subsection by the elector or a spouse or common-law partner of the elector and to all the businesses in respect of which elections were made under that subsection by the elector

(A) would result in an increase in the amount deductible under subsection (3) in computing the taxable income of the elector or a spouse or common-law partner of the elector, and

(B) in respect of each of the 1994 and 1995 taxation years,

(I) where no part of the taxable capital gain resulting from an election by the elector is included in computing the income of a spouse or common-law partner of the elector, would not result in the amount determined under paragraph (3)(a) for the year in respect of the elector being exceeded by the lesser of the amounts determined under paragraphs (3)(b) and (c) for the year in respect of the elector, and

(II) where no part of the taxable capital gain resulting from an election by the elector is included in computing the income of the elector, would not result in the amount determined under paragraph (3)(a) for the year in respect of a spouse or common-law partner of the elector being exceeded by the lesser of the amounts determined under paragraphs (3)(b) and (c) for the year in respect of the spouse or common-law partner,

(ii) the amount designated in the election in respect of the property exceeds 11/10 of its fair market value at the end of February 22, 1994, or

(iii) the amount designated in the election in respect of the business is $1.00 or exceeds 11/10 of the fair market value at the end of February 22, 1994 of all the eligible capital property owned at that time by the elector in respect of the business; and

(b) where the elector is a personal trust, its application to all of the properties in respect of which an election was made under that subsection by the elector would result in

(i) an increase in the amount deemed by subsection 104(21.2) to be a taxable capital gain of an individual (other than a trust) who was a beneficiary under the trust at the end of February 22, 1994 and resident in Canada at any time in the individual's taxation year in which the trust's taxation year that includes that day ends, or

(ii) where subsection (12) applies to the trust for the trust's taxation year that includes that day, an increase in the amount deductible under that subsection in computing the trust's taxable income for that year.

History: Subsec. 110.6(20) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subsec. 110.6(20) added by 1995, c. 3, subsec. 32(12), applicable to 1994 *et seq.*

(21) Effect of election on non-qualifying real property — Where an elector is deemed by subsection (19) to have disposed of a non-qualifying real property,

(a) in computing the elector's taxable capital gain from the disposition, there shall be deducted the amount determined by the formula

$$0.75(A - B)$$

where

A is the elector's capital gain from the disposition, and

B is the elector's eligible real property gain from the disposition; and

(b) in determining at any time after the disposition the capital cost to the elector of the property where it is a depreciable property and the adjusted cost base to the elector of the property in any other case (other than where the property was at the end of February 22, 1994 an interest in or a share of the capital stock of a flow-through entity within the meaning assigned by subsection 39.1(1)), there shall be deducted 4/3 of the amount determined under paragraph (a) in respect of the property.

Related Provisions: 13(7)(e)(i)(B)(IV) — Reduction in capital cost reflected for CCA purposes; 53(2)(u) — Reduction in adjusted cost base; 127.52(1)(h.1) — Calculation for purposes of minimum tax; 257 — Formula cannot calculate to less than zero. See also at end of s. 110.6.

History: Subsec. 110.6(21) added by 1995, c. 3, subsec. 32(12), applicable to 1994 *et seq.*

Selected Cases [subsec. 110.6(21)]: *Holder v. R.*, [2004] 3 C.T.C. 207 (FCA) (Effect of error in election triggered application of adjustments).

(22) Adjusted cost base — Where an elector is deemed by paragraph (19)(a) to have reacquired a property, there shall be deducted in computing the adjusted cost base to the elector of the property at any time after the reacquisition the amount, if any, by which

(a) the amount determined by the formula

$$A - 1.1B$$

where

A is the amount designated in the election under subsection (19) in respect of the property, and

B is the fair market value of the property at the end of February 22, 1994

exceeds

(b) where the property is an interest in or a share of the capital stock of a flow-through entity (within the meaning assigned by subsection 39.1(1)), 4/3 of the taxable capital gain that would have resulted from the election if the amount designated in the election were equal to the fair market value of the property at the end of February 22, 1994 and, in any other case, the fair market value of the property at the end of February 22, 1994.

Related Provisions: 14(9) — Further effects of excessive election; 53(2)(v) — Reduction in ACB; 110.6(19)(a)(ii)(C)(II), 110.6(28) — Further effects of excessive election; 257 — Formula cannot calculate to less than zero. See also at end of s. 110.6.

History: Subsec. 110.6(22) added by 1995, c. 3, subsec. 32(12), applicable to 1994 *et seq.*

Selected Cases [subsec. 110.6(22)]: *Holder v. R.*, [2004] 3 C.T.C. 207 (FCA) (Effect of error in election triggered application of adjustments).

(23) Disposition of partnership interest — Where an elector is deemed by subsection (19) to have disposed of an interest in a partnership, in computing the adjusted cost base to the elector of the interest immediately before the disposition

(a) there shall be added the amount determined by the formula

$$(A - B) \times \frac{C}{D} + E$$

where

A is the total of all amounts each of which is the elector's share of the partnership's income (other than a taxable capital gain from the disposition of a property) from a source or from sources in a particular place for its fiscal period that includes February 22, 1994,

B is the total of all amounts each of which is the elector's share of the partnership's loss (other than an allowable capital loss from the disposition of a property) from a source or from sources in a particular place for that fiscal period,

C is the number of days in the period that begins the first day of that fiscal period and ends February 22, 1994,

D is the number of days in that fiscal period, and

E is 4/3 of the amount that would be determined under paragraph 3(b) in computing the elector's income for the taxation year in which that fiscal period ends if the elector had no taxable capital gains or allowable capital losses other than those arising from dispositions of property by the partnership that occurred before February 23, 1994; and

(b) there shall be deducted the amount that would be determined under paragraph (a) if the formula in that paragraph were read as

$$(B - A) \times \frac{C}{D} - E$$

Related Provisions: 53(1)(e)(xii) — Addition to ACB; 53(2)(c)(xi) — Reduction in ACB; 257 — Formulas cannot calculate to less than zero. See also at end of s. 110.6.

History: Subsec. 110.6(23) added by 1995, c. 3, subsec. 32(12), applicable to 1994 *et seq.*

(24) Time for election — An election made under subsection (19) shall be filed with the Minister

(a) where the elector is an individual (other than a trust),

(i) if the election is in respect of a business of the elector, on or before the individual's filing-due date for the taxation year in which the fiscal period of the business that includes February 22, 1994 ends, and

(ii) in any other case, on or before the individual's balance-due day for the 1994 taxation year; and

(b) where the elector is a personal trust, on or before March 31 of the calendar year following the calendar year in which the taxation year of the trust that includes February 22, 1994 ends.

Related Provisions: 110.6(26)–(30) — Late and amended elections. See also at end of s. 110.6.

History: Subpara. 110.6(24)(a)(i) amended by 1996, c. 21, s. 21, applicable to 1995 *et seq.* The subpara. formerly read:

(i) if the election is in respect of a business of the elector, on or before the individual's balance-due day for the taxation year in which the fiscal period of the business that includes February 22, 1994 ends, and

Subsec. 110.6(24) added by 1995, c. 3, subsec. 32(12), applicable to 1994 *et seq.*

(25) Revocation of election — Subject to subsection (28), an elector may revoke an election made under subsection (19) by filing a written notice of the revocation with the Minister before 1998.

Related Provisions: 104(14.01) — Revocation of preferred beneficiary election at same time; 104(21.01) — Revocation of trust's taxable capital gains designation at same time. See additional Related Provisions and Definitions at end of s. 110.6.

History: Subsec. 110.6(25) added by 1995, c. 3, subsec. 32(12), applicable to 1994 *et seq.*

I.T. Technical News: 7 (principal residence and the capital gains election).

(26) Late election — Where an election made under subsection (19) is filed with the Minister after the day (referred to in this subsection and subsections (27) and (29) as the "election filing date") on or before which the election is required by subsection (24) to have been filed and on or before the day that is 2 years after the election filing date, the election shall be deemed for the purposes of this section (other than subsection (29)) to have been filed on the election filing date if an estimate of the penalty in respect of the election is paid by the elector when the election is filed with the Minister.

Related Provisions: 104(14.01) — Late preferred beneficiary election filed at same time; 104(21.01) — Late filing of trust's taxable capital gains designation at same time; 110.6(29) — Amount of penalty. See also at end of s. 110.6.

History: Subsec. 110.6(26) added by 1995, c. 3, subsec. 32(12), applicable to 1994 *et seq.*

(27) Amended election — Subject to subsection (28), an election under subsection (19) in respect of a property or a business is deemed to be amended and the election, as amended, is deemed for the purpose of this section (other than subsection (29)) to have been filed on the election filing date if

(a) an amended election in prescribed form in respect of the property or the business is filed with the Minister before 1998; and

(b) an estimate of the penalty, if any, in respect of the amended election is paid by the elector when the amended election is filed with the Minister.

Related Provisions: 104(14.01) — Amended preferred beneficiary election filed at same time; 104(21.01) — Amendment of trust's taxable capital gains designation at same time; 110.6(26) — Election filing date; 110.6(29) — Amount of penalty. See also at end of s. 110.6.

History: The opening words of subsec. 110.6(27) amended by 1998, c. 19, subsec. 130(3), applicable to 1994 *et seq.* The opening words formerly read:

(27) Subject to subsection (28), an election made under subsection (19) in respect of a property or a business shall be deemed to be amended and the election, as amended, shall be deemed to have been filed on the election filing date if

Subsec. 110.6(27) added by 1995, c. 3, subsec. 32(12), applicable to 1994 *et seq.*

Remission Orders: *Karen Smedley and George Smedley Remission Order*, P.C. 2004-264 (remission of tax where CRA failed to advise that election could be amended).

(28) Election that cannot be revoked or amended — An election under subsection (19) cannot be revoked or amended where the amount designated in the election exceeds 11/10 of

(a) if the election is in respect of a property other than an interest in a partnership, the fair market value of the property at the end of February 22, 1994;

(b) if the election is in respect of an interest in a partnership, the greater of $1 and the fair market value of the property at the end of February 22, 1994; and

(c) if the election is in respect of a business, the greater of $1 and the fair market value at the end of February 22, 1994 of all the eligible capital property owned at that time by the elector in respect of the business.

Related Provisions: 14(9), 110.6(19)(a)(ii)(C)(II), 110.6(22)(a)B — Further effects of excessive election; 40(3)(a) — Partnership interest can have negative ACB. See also at end of s. 110.6.

History: Subsec. 110.6(28) amended by 1998, c. 19, subsec. 130(4), applicable to 1994 *et seq.* Subsec. 110.6(28) formerly read:

(28) An election made under subsection (19) cannot be revoked or amended where the amount designated in the election exceeds 11/10 of

(a) if the election is in respect of a property, the fair market value of the property at the end of February 22, 1994; and

(b) if the election is in respect of a business, the fair market value at the end of February 22, 1994 of all the eligible capital property owned at that time by the elector in respect of the business.

Subsec. 110.6(28) added by 1995, c. 3, subsec. 32(12), applicable to 1994 *et seq.*

(29) Amount of penalty — The penalty in respect of an election to which subsection (26) or (27) applies is the amount determined by the formula

$$\frac{A \times B}{300}$$

where

A is the number of months each of which is a month all or part of which is during the period that begins the day after the election filing date and ends the day the election or amended election is filed with the Minister; and

B is the total of all amounts each of which is the taxable capital gain of the elector or a spouse or common-law partner of the elector that results from the application of subsection (19) to the property or the business in respect of which the election is made less, where subsection (27) applies to the election, the total of all amounts each of which would, if the Act were read without reference to subsections (20) and (27), be the taxable capital gain of the elector or a spouse or common-law partner of the elector that resulted from the application of subsection (19) to the property or the business.

Related Provisions: 110.6(26) — Election filing date; 220(3.1) — Waiver of penalty by CCRA. See also at end of s. 110.6.

History: Subsec. 110.6(29) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subsec. 110.6(29) added by 1995, c. 3, subsec. 32(12), applicable to 1994 *et seq.*

(30) Unpaid balance of penalty — The Minister shall, with all due dispatch, examine each election to which subsection (26) or (27) applies, assess the penalty payable and send a notice of assessment to the elector who made the election, and the elector shall pay forthwith to the Receiver General the amount, if any, by which the penalty so assessed exceeds the total of all amounts previously paid on account of that penalty.

History: Subsec. 110.6(30) added by 1995, c. 3, subsec. 32(12), applicable to 1994 *et seq.*

Related Provisions [s. 110.6]: 14(1)(a)(v) — Excess exceeding eligible capital amount deemed to be taxable capital gain; 39(9) — Reduction of business investment loss; 39(11) — Bad debt recovery; 39(13) — Repayment of assistance; 40(3) — Deemed gain when ACB adjusted below nil; 42 — Deemed loss on warranty; 70(2) — Rollovers on death; 98(1)(c) — Disposition of partnership property; 111(8)"non-capital loss"A:E — Carryforward of exemption deduction as non-capital loss; 111(8)"pre-1986 capital loss balance"C, D, E — Balance reduced by exemption claims; 111.1 — Order of applying provisions; 131(1)(b) — Election re capital gains dividend.

Definitions [s. 110.6]: "active business" — 248(1); "adjusted cost base" — 54, 248(1); "allowable business investment loss" — 38(c), 248(1); "*alter ego* trust", "amount" — 248(1); "annual gains limit" — 110.6(1); "assessment" — 248(1); "average annual rate of return" —

110.6(9); "borrowed money", "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "Canadian-controlled private corporation" — 125(7), 248(1); "capital gain" — 39(1)(a), 248(1); "capital interest" — in a trust 108(1), 248(1); "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "carrying on business" — 253; "child" — 70(10), 110.6(1), 252(1); "class of shares" — 248(6); "common-law partner", "common share" — 248(1); "connected" — 186(4), (7); "corporation" — 248(1), *Interpretation Act* 35(1); "credit union" — 137(6), 248(1); "cumulative gains limit", "cumulative net investment loss" — 110.6(1); "deferred profit sharing plan" — 147(1), 248(1); "dividend" — 248(1); "election filing date" — 110.6(26); "elector" — 110.6(19); "eligible capital property" — 54, 248(1); "eligible real property loss" — 110.6(1); "employee", "farming" — 248(1); "filing-due date" — 150(1), 248(1); "fiscal period" — 249(2)(b), 249.1; "gross revenue" — 248(1); "identical" — 248(12); "immovable" — Quebec *Civil Code* art. 900–907; "income-averaging annuity contract" — 61(4), 248(1); "individual", "insurance policy" — 248(1); "interest in a family farm partnership" — 110.6(1); "investment corporation" — 130(3)(a), 248(1); "investment expense", "investment income" — 110.6(1); "joint spousal or common-law partner trust", "Minister" — 248(1); "mortgage investment corporation" — 130.1(6), 248(1); "mutual fund corporation" — 131(8), 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q) [to be repealed], 132.2(3)(n) [draft], 248(1); "net capital loss" — 111(8), 248(1); "net income stabilization account" — 110.6(1.1), 248(1); "non-qualifying real property" — 110.6(1), 248(1); "parent" — 252(2); "person" — 248(1); "personal trust" — 110.6(16), 248(1); "prescribed" — 248(1); "prescribed stock exchange" — 248(29), Reg. 3200, 3201; "property" — 248(1); "qualified farm property", "qualified small business corporation share" — 110.6(1); "registered charity", "registered pension plan" — 248(1); "registered retirement savings plan" — 146(1), 248(1); "related" — 110.6(14)(c)–(e), 251(2); "related segregated fund trust" — 138.1(1)(a); "resident in Canada" — 110.6(5), 250; "series of transactions" — 248(10); "share" — 248(1); "share of the capital stock of a family farm corporation" — 110.6(1); "small business corporation" — 110.6(14)(b), 248(1); "specified member" — 248(1); "stock dividend" — 248(1); "substituted property" — 248(5); "taxable capital gain" — 38(a), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "testamentary trust" — 108(1), 248(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [s. 110.6]: IT-120R6: Principal residence; IT-123R6: Transactions involving eligible capital property; IT-236R4: Reserves — disposition of capital property (archived); IT-242R: Retired partners; IT-268R3: *Inter vivos* transfer of farm property to child; IT-268R4: *Inter vivos* transfer of farm property to child; IT-278R2: Death of a partner or of a retired partner; IT-281R2: Elections on single payments from a deferred profit-sharing plan (archived); IT-330R: Dispositions of capital property subject to warranty, covenant, etc. (archived); IT-369R: Attribution of trust income to settlor; IT-373R2: Woodlots; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-442R: Bad debts and reserves for doubtful debts; IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada; IT-504R2: Visual artists and writers.

Forms [s. 110.6]: T1 SCH 3: Capital gains (or losses); T3 SCH 3: Eligible taxable capital gains; T657: Calculation of capital gains deduction; T936: Calculation of cumulative net investment loss; T1161: List of properties by an emigrant of Canada.

110.7 (1) Residing in prescribed zone [northern Canada deduction] — Where, throughout a period (in this section referred to as the "qualifying period") of not less than 6 consecutive months beginning or ending in a taxation year, a taxpayer who is an individual has resided in one or more particular areas each of which is a prescribed northern zone or prescribed intermediate zone for the year and files for the year a claim in prescribed form, there may be deducted in computing the taxpayer's taxable income for the year

(a) the total of all amounts each of which is the product obtained by multiplying the specified percentage for a particular area for the year in which the taxpayer so resided by an amount received, or the value of a benefit received or enjoyed, in the year by the taxpayer in respect of the taxpayer's employment in the particular area by a person with whom the taxpayer was dealing at arm's length in respect of travel expenses incurred by the taxpayer or another individual who was a member of the taxpayer's household during the part of the year in which the taxpayer resided in the particular area, to the extent that

(i) the amount received or the value of the benefit, as the case may be,

(A) does not exceed a prescribed amount in respect of the taxpayer for the period in the year in which the taxpayer resided in the particular area,

(B) is included and is not otherwise deducted in computing the taxpayer's income for the year or any other taxation year, and

(C) is not included in determining an amount deducted under subsection 118.2(1) for the year or any other taxation year,

(ii) the travel expenses were incurred in respect of trips made in the year by the taxpayer or another individual who was a member of the taxpayer's household during the part of the year in which the taxpayer resided in the particular area, and

(iii) neither the taxpayer nor a member of the taxpayer's household is at any time entitled to a reimbursement or any form of assistance (other than a reimbursement or assistance included in computing the income of the taxpayer or the member) in respect of travel expenses to which subparagraph (ii) applies; and

(b) the lesser of

(i) 20% of the taxpayer's income for the year, and

(ii) the total of all amounts each of which is the product obtained by multiplying the specified percentage for a particular area for the year in which the taxpayer so resided by the total of

(A) $7.50 multiplied by the number of days in the year included in the qualifying period in which the taxpayer resided in the particular area, and

(B) $7.50 multiplied by the number of days in the year included in that portion of the qualifying period throughout which the taxpayer maintained and resided in a self-contained domestic establishment in the particular area (except any day included in computing a deduction claimed under this paragraph by another person who resided on that day in the establishment).

Related Provisions: 6(6) — Employment at special work site or remote area — non-taxable benefits; 111.1 — Order of applying provisions; 127.52(1)(h)(i) — Deduction allowed for minimum tax purposes.

Interpretation Bulletins: IT-91R4: Employment at special work sites or remote work locations; IT-178R3: Moving expenses.

Regulations: 100(3.1) (deduction reduces source withholdings); 7303.1 (prescribed northern zone, prescribed intermediate zone).

Forms: RC4054: Ceiling amounts for housing benefits paid in prescribed zones [information sheet]; T2222: Northern residents deductions.

(2) Specified percentage — For the purpose of subsection (1), the specified percentage for a particular area for a taxation year is

(a) where the area is a prescribed northern zone for the year, 100%; and

(b) where the area is a prescribed intermediate zone for the year, 50%.

Regulations: 7303.1 (prescribed northern zone, prescribed intermediate zone).

Interpretation Bulletins: IT-91R4: Employment at special work sites or remote work locations.

(3) Restriction — The total determined under paragraph (1)(a) for a taxpayer in respect of travel expenses incurred in a taxation year in respect of an individual shall not be in respect of more than 2 trips made by the individual in the year, other than trips to obtain medical services that are not available in the locality in which the taxpayer resided.

Related Provisions [s. 110.7(3)]: 118.2(2)(g), (h) — Medical expense credit for travel expenses.

(4) Board and lodging allowances, etc. — The amount determined under subparagraph (1)(b)(ii) for a particular area for a taxpayer for a taxation year shall not exceed the amount by which the amount otherwise determined under that subparagraph for the particular area for the year exceeds the value of, or an allowance in respect of expenses incurred by the taxpayer for, the taxpayer's board and lodging in the particular area (other than at a work site described in paragraph 67.1(2)(e)) that

(a) would, but for subparagraph 6(6)(a)(i), be included in computing the taxpayer's income for the year; and

(b) can reasonably be considered to be attributable to that portion of the qualifying period that is in the year and during which the taxpayer maintained a self-contained domestic establishment as the taxpayer's principal place of residence in an area other than a prescribed northern zone or a prescribed intermediate zone for the year.

Regulations: 7303.1 (prescribed northern zone, prescribed intermediate zone).

Interpretation Bulletins: IT-91R4: Employment at special work sites or remote work locations; IT-178R3: Moving expenses.

Forms: RC4054: Ceiling amounts for housing benefits paid in prescribed zones [information sheet].

(5) Idem — Where on any day an individual resides in more than one particular area referred to in subsection (1), for the purpose of that subsection, the individual shall be deemed to reside in only one such area on that day.

History [s. 110.7]: The opening words of subsec. 110.7(4) amended by 1999, c. 22, s. 27, applicable to 1998 *et seq.* The opening words formerly read:

(4) Idem — The amount determined under subparagraph (1)(b)(ii) for a particular area for a taxpayer for a taxation year shall not exceed the amount by which the amount otherwise determined under that subparagraph for that particular area for the year exceeds the value of, or an allowance in respect of expenses incurred by the taxpayer for, the taxpayer's board and lodging in the particular area that

Subpara. 110.7(1)(a)(iii) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 48, applicable to 1992 *et seq.*

S. 110.7 substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 82, applicable to 1988 *et seq.* except that

(a) for the 1988 to 1990 taxation years,

(i) para. 110.7(1)(b) shall be read as follows:

(b) subject to subsections (4) and (6), the total of all amounts each of which is the product obtained by multiplying the specified percentage for a particular area for the year in which the taxpayer so resided by the lesser of

(i) 20% of the taxpayer's income for the year, and

(ii) the total of

(A) $450 multiplied by the quotient obtained when the number of days in the year included in that portion of the qualifying period throughout which the taxpayer maintained and resided in a self-contained domestic establishment in the particular area (except any day included in computing a deduction claimed under this paragraph by another person who resided on that day in the establishment) is divided by 30, and

(B) $225 multiplied by the amount, if any, by which

(I) the quotient obtained when the number of days in the year included in the qualifying period in which the taxpayer resided in the particular area is divided by 30

exceeds

(II) the quotient determined under clause (A),

(ii) the section shall be read as including the following subsections:

(6) Subject to subsection (7), where a quotient determined under paragraph (1)(b) is not a whole number, it shall be rounded to the nearest whole number or, where it is equidistant from 2 such consecutive whole numbers, it shall be rounded to the higher thereof.

(7) Where, in a taxation year, a taxpayer resided in more than one particular area each of which is an area referred to in subsection (2) for the year, for the purpose of computing the amount deductible under subsection (1) in computing the taxpayer's taxable income for the year, the total of all amounts each of which is a quotient determined under paragraph (1)(b) in respect of any such area for the year shall not exceed the total of such amounts that would have been obtained for the year if the taxpayer had resided in only one such area throughout the portion of the qualifying period included in the year.

(8) Where 2 or more taxpayers not dealing with each other at arm's length resided in the same self-contained domestic establishment for periods in a taxation year, for the purpose of computing the amounts deductible under subsection (1) in computing the taxable incomes of those taxpayers for the year, the total of all quotients determined for the year under clause (1)(b)(ii)(A) in respect of the establishment shall not exceed the amount that would be the quotient determined under that clause in respect of the establishment for the year if the establishment had been maintained by only one such taxpayer for the total of those periods;

(b) for the 1988 to 1994 taxation years,

(i) that portion of subsec. 110.7(1) preceding para. (a) shall be read as follows:

110.7 (1) Where, throughout a period (in this section referred to as the "qualifying period") of not less than 6 consecutive months beginning or ending in a taxation year, a taxpayer who is an individual has resided in one or more particular areas each of which is a prescribed area for the year or for one of the 2 preceding taxation years or a prescribed northern zone or prescribed intermediate zone for the year, and the taxpayer files for the year a claim in prescribed form, there may be deducted in computing the taxpayer's taxable income for the year,

(ii) subsection 110.7(2) shall be read as follows:

(2) For the purpose of subsection (1), the specified percentage for a particular area for a taxation year is

(a) where the area is a prescribed area for the year or a prescribed northern zone for the year, 100%;

(b) except as otherwise provided in paragraph (a), where the area was a prescribed area for the immediately preceding taxation year, 66⅔%;

(c) except as otherwise provided in paragraph (a) or (b), where the area is a prescribed intermediate zone for the year, 50%; and

(d) except as otherwise provided in paragraph (a), (b) or (c), where the area was a prescribed area for the second preceding taxation year, 33⅓%,

(iii) paragraph 110.7(4)(b) shall be read as follows:

(b) can reasonably be considered to be attributable to that portion of the qualifying period that is in the year and during which the taxpayer maintained a self-contained domestic establishment as the taxpayer's principal place of residence in an area other than a prescribed area, prescribed northern zone or prescribed intermediate zone for the year.

S. 110.7 formerly read:

110.7 (1) Residing in prescribed area — In computing the taxable income for a taxation year of an individual who, throughout a period of not less than 6 months commencing or ending in the year, resided in an area that was a prescribed area for the year or for one of the 2 preceding taxation years and who files a claim in prescribed form with the individual's return of income for the year pursuant to section 150, there may be deducted

(a) where the area was a prescribed area for the year, 100%,

(b) where the area was not a prescribed area for the year but was a prescribed area for the immediately preceding taxation year, 2/3, and

(c) where the area was not a prescribed area for the year or the immediately preceding taxation year but was a prescribed area for the second preceding taxation year, 1/3

of such of the following amounts as are applicable:

(d) an amount received, or the value of a benefit received or enjoyed, in the year by the individual in respect of the individual's employment in the area by a person with whom the individual was dealing at arm's length in respect of travel expenses incurred by the individual, to the extent that

(i) the amount received or the value of the benefit, as the case may be,

(A) does not exceed a prescribed amount,

(B) is included and is not otherwise deducted in computing the individual's income for the year, and

(C) is not included in determining an amount deducted under subsection 118.2(1) for the year or any other taxation year, and

(ii) the travel expenses were incurred in connection with

(A) a trip made in the year for the purpose of obtaining medical services not available in the locality in which the individual resided, or

(B) not more than two trips made in the year for a purpose other than to obtain medical services not available in the locality in which the individual resided; and

(e) subject to subsection (2), the lesser of

(i) 20% of the individual's income for the year, and

(ii) the total of

(A) $450 multiplied by the quotient obtained when the number of days in the year included in that portion of the period throughout which the individual maintained and resided in a self-contained domestic establishment (except any day included in computing a deduction claimed under this paragraph by another person who resided on that day in the establishment) is divided by 30, and

(B) $225 multiplied by the amount, if any, by which

(I) the quotient obtained when the number of days in the year included in the period is divided by 30

exceeds

(II) the quotient determined under clause (A).

(2) Restriction — The amount deductible under paragraph (1)(e) shall not exceed the amount by which the total determined under that paragraph exceeds the value of, or an allowance in respect of expenses incurred by the individual referred to in subsection (1) for, the individual's board and lodging

(a) that would, but for subparagraph 6(6)(a)(i), be included in computing his income for the year, and

(b) that can reasonably be considered to be attributable to that portion of the period referred to in subsection (1) during which the individual maintained a self-contained domestic establishment as the individual's principal place of residence in an area other than a prescribed area.

(3) Whole number — For the purposes of subparagraph (1)(e)(ii), where a quotient is not a whole number, it shall be rounded to the nearest whole number or where it is equidistant from two consecutive whole numbers, it shall be rounded to the higher thereof.

Definitions [s. 110.7]: "amount" — 248(1); "arm's length" — 251(1); "employment", "individual", "person", "prescribed" — 248(1); "prescribed intermediate zone" — Reg. 7303.1(2); "prescribed northern zone" — Reg. 7303.1(1); "qualifying period" — 110.7(1); "self-contained domestic establishment" — 248(1); "specified percentage" — 110.7(2); "taxable income" — 2(2), 248(1); "taxation year" — 249.

111. (1) Losses deductible — For the purpose of computing the taxable income of a taxpayer for a taxation year, there may be deducted such portion as the taxpayer may claim of the taxpayer's

(a) **non-capital losses** — non-capital losses for the 10 taxation years immediately preceding and the 3 taxation years immediately following the year;

Related Provisions: 88(1.1) — Windup — non-capital losses of subsidiary; 88(1.3) — Windup — rules relating to computation of income and tax of parent; 111(7.2) — Non-capital loss of life insurer; 115(1)(c), (d) — Application of losses to non-resident; 127.52(1)(i)(i) — Limitation on deduction for minimum tax purposes; 186(1)(d)(i) — Application of non-capital loss to Part IV tax. See also at end of subsec. 111(1) and s. 111.

Selected Cases [para. 111(1)(a)]: *Duha Printers (Western) Ltd. v. R.*, [1998] 3 C.T.C. 303 (SCC); Reversed [1996] 3 C.T.C. 19 (FCA) (Shareholder agreement did not result in *de jure* control); *Allcann Wood Suppliers Inc. v. Canada*, [1994] 2 C.T.C. 2079 (TCC) (Challenge of Minister's calculation of taxable income can bring other years into play if losses in such years affect taxable income in year under appeal); *R. v. Merali*, [1988] 1 C.T.C. 320 (FCA) (Rental losses incurred by non-resident electing to be taxed as resident carried forward and deducted from subsequent income earned as resident); *Oceanspan Carriers Ltd. v. R.*, [1987] 1 C.T.C. 210 (FCA) (Losses incurred by corporation before becoming resident not deductible); *AIM Steel Ltd. v. MNR*, [1969] C.T.C. 479 (Exch.) (Accumulated losses deductible for previously inactive subsidiary to which business transferred; subsidiary not division of parent); *MNR v. Wahn*, [1969] C.T.C. 61 (SCC) (Partnership losses must be deducted from other income sources before carry back provisions available).

Interpretation Bulletins: IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-484R2: Business investment losses. See also list at end of s. 111.

Information Circulars: 88-2, para. 8: General anti-avoidance rule — section 245 of the *Income Tax Act*.

I.T. Technical News: 3 (loss utilization within a corporate group); 25 (refreshing losses).

Advance Tax Rulings: ATR-44: Utilization of deductions and credits within a related corporate group.

Forms: T1A: Request for loss carryback; T3A: Request for loss carryback by a trust.

(b) **net capital losses** — net capital losses for taxation years preceding and the three taxation years immediately following the year;

Related Provisions: 88(1.2) — Wind-up — net capital losses of subsidiary; 88(1.3) — Wind-up — computation of income of parent; 104(21)(a) — Trusts — portion of taxable capital gains deemed gain of beneficiary; 110.6(1) — "annual gains limit"; 111(1.1) — Adjustments to net capital losses; 111(2) — Net capital losses when taxpayer dies; 115(1)(c), (d) — Application of losses to non-resident; 127.52(1)(i)(i) — Limitation on deduction for minimum tax purposes; 129(3) — Refundable dividend tax on hand. See also at end of subsec. 111(1) and s. 111.

Selected Cases [para. 111(1)(b)]: *Placements Bourget Inc. v. R.*, [1988] 2 C.T.C. 8 (FCTD) (Capital losses not deductible from income from disposition of shares held by trader).

Interpretation Bulletins: IT-98R2: Investment corporations (archived); IT-243R4: Dividend refund to private corporations; IT-395R2: Foreign tax credit — foreign-source capital gains and losses; IT-484R2: Business investment losses. See also list at end of s. 111.

Forms: T3A: Request for loss carryback by a trust.

(c) **restricted farm losses** — restricted farm losses for the 10 taxation years immediately preceding and the 3 taxation years immediately following the year, but no amount is deductible for the year in respect of restricted farm losses except to the extent of the taxpayer's incomes for the year from all farming businesses carried on by the taxpayer;

Related Provisions: 31 — Loss from farming where chief source of income not from farming; 53(1)(i) — Addition to ACB of farmland; 88(1.3) — Winding-up — computation of income and tax payable by par-

ent; 101 — Loss carryforward claimed on disposition of farmland by partnership; 115(1)(c), (d) — Application of losses to non-resident; 127.52(1)(i)(i) — Limitation on deduction for minimum tax purposes. See also at end of subsec. 111(1) and s. 111.

Interpretation Bulletins: See list at end of s. 111.

Forms: T3A: Request for loss carryback by a trust.

(d) **farm losses** — farm losses for the 10 taxation years immediately preceding and the 3 taxation years immediately following the year; and

Related Provisions: 53(1)(i) — Addition to ACB of farmland; 101 — Claim of loss after disposition of farmland by partnership; 127.52(1)(i)(i) — Limitation on deduction for minimum tax purposes.

Forms: T3A: Request for loss carryback by a trust.

(e) **limited partnership losses** — limited partnership losses in respect of a partnership for taxation years preceding the year, but no amount is deductible for the year in respect of a limited partnership loss except to the extent of the amount by which

(i) the taxpayer's at-risk amount in respect of the partnership (within the meaning assigned by subsection 96(2.2)) at the end of the last fiscal period of the partnership ending in the taxation year

exceeds

(ii) the total of all amounts each of which is

(A) the amount required by subsection 127(8) in respect of the partnership to be added in computing the investment tax credit of the taxpayer for the taxation year,

(B) the taxpayer's share of any losses of the partnership for that fiscal period from a business or property, or

(C) the taxpayer's share of

(I) the foreign resource pool expenses, if any, incurred by the partnership in that fiscal period,

(II) the Canadian exploration expense, if any, incurred by the partnership in that fiscal period,

(III) the Canadian development expense, if any, incurred by the partnership in that fiscal period, and

(IV) the Canadian oil and gas property expense, if any, incurred by the partnership in that fiscal period.

Related Provisions [para. 111(1)(e)]: 88(1.1) — Wind-up — non-capital losses of subsidiary; 96(2.1) — Determination of limited partnership losses; 96(2.4) — Limited partner — extended definition; 127.52(1)(i)(i) — Limitation on deduction for minimum tax purposes. See also at end of subsec. 111(1) and s. 111.

Related Provisions [subsec. 111(1)]: 111(3) — Limitations on deductibility; 111(4), (5) — Limitations where change of control; 111(9) — Where taxpayer not resident in Canada; 152(6)(c) — CCRA required to reassess earlier year to allow carryback; 164(5), (5.1) — Effect of carryback of loss; 164(6) — Carryback of losses of estate to deceased's year of death; 256(7) — Where control deemed not to have been acquired; 256(8) — Where share deemed to have been acquired. See also at end of s. 111. For other carryovers, see under "carryforward" in Topical Index.

History: Para. 111(1)(a) amended by 2005, c. 19, subsec. 20(1) to replace "7 taxation years" with "10 taxation years", applicable in respect of losses that arise in taxation years that end after March 22, 2004.

Subcl. 111(1)(e)(ii)(C)(I) amended by 2001, c. 17, subsec. 87(1), applicable to taxation years that begin after 2000. The subcl. formerly read:

(I) the foreign exploration and development expenses, if any, incurred by the partnership in that fiscal period,

Interpretation Bulletins [subsec. 111(1)]: IT-151R5: Scientific research and experimental development expenditures; IT-232R3: Losses — their deductibility in the loss year or in other years; IT-262R2: Losses of non-residents and part-year residents; IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987. See also list at end of s. 111.

Forms [subsec. 111(1)]: T1A: Request for loss carryback; T2 SCH 4: Corporation loss continuity and application; T3A: Request for loss carryback by a trust.

(1.1) [Adjustments to] Net capital losses — Notwithstanding paragraph (1)(b), the amount that may be deducted under that paragraph in computing a taxpayer's taxable income for a particular taxation year is the total of

(a) the lesser of

(i) the amount, if any, determined under paragraph 3(b) in respect of the taxpayer for the particular year, and

(ii) the total of all amounts each of which is an amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount claimed under paragraph (1)(b) for the particular year by the taxpayer in respect of a net capital loss for a taxation year (in this paragraph referred to as the "loss year"),

B is the fraction that would be used for the particular year under section 38 in respect of the taxpayer if the taxpayer had a capital loss for the particular year, and

C is the fraction required to be used under section 38 in respect of the taxpayer for the loss year; and

(b) where the taxpayer is an individual, the least of

(i) $2,000,

(ii) the taxpayer's pre-1986 capital loss balance for the particular year, and

(iii) the amount, if any, by which

(A) the amount claimed under paragraph (1)(b) in respect of the taxpayer's net capital losses for the particular year

exceeds

(B) the total of the amounts in respect of the taxpayer's net capital losses that, using the formula in subparagraph (a)(ii), would be required to be claimed under paragraph (1)(b) for the particular year to produce the amount determined under paragraph (a) for the particular year.

Proposed Addition — 111(1.1)(c)

(c) the amount, if any, that the Minister determines to be reasonable in the circumstances, after considering the application of subsections 104(21.6), 130.1(4), 131(1) and 138.1(3.2) to the taxpayer for the particular year.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 103(1), will add para. 111(1.1)(c), applicable to 2000 *et seq.*

Technical Notes: Subsection 111(1.1) determines the amount that a taxpayer may deduct in respect of a net capital loss claimed under paragraph 111(1)(b). The 2000 Budget and the 2000 Economic Statement provided for the reduction of the capital gains inclusion rate from ¾ to ⅔ and then to ½, respectively. This reduction in the inclusion rate gave rise to changes to the adjusting factors in subsection 111(1.1). An additional amendment is made to subsection 111(1.1) to permit the Minister of National Revenue to determine a reasonable amount of deduction in

respect of net capital loss carryovers where the other rules in that subsection produce inappropriate results.

Related Provisions: 111(2) — Year of death. See also at end of s. 111.

History: Subsec. 111(1.1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 83(1), applicable to the computation of taxable income for 1985 *et seq.* Subsec. 111(1.1) formerly read:

> (1.1) Notwithstanding paragraph (1)(b), where a taxpayer has claimed an amount under that paragraph for a particular taxation year in respect of the taxpayer's net capital losses, the amount that may be deducted under that paragraph in respect of those losses for that year is the lesser of
>
> (a) the total of
>
> (i) the amount, if any, determined under paragraph 3(b) in respect of the taxpayer for the particular year, and
>
> (ii) where the taxpayer is an individual, the lesser of
>
> (A) $2,000, and
>
> (B) the taxpayer's pre-1986 capital loss balance for the particular year; and
>
> (b) the total of all amounts each of which is an amount determined by the formula
>
> $$A \times \frac{B}{C}$$
>
> where
>
> A is the amount of a net capital loss for a taxation year (in this paragraph referred to as a "loss year") claimed under paragraph (1)(b),
>
> B is the fraction that would be used for the particular year under section 38 in respect of the taxpayer if the taxpayer had a capital loss for that year, and
>
> C is the fraction required to be used under section 38 in respect of the taxpayer for the loss year.

Interpretation Bulletins: IT-232R3: Losses — their deductibility in the loss year or in other years; IT-262R2: Losses of non-residents and part-year residents. See also list at end of s. 111.

(2) Year of death — Where a taxpayer dies in a taxation year, for the purpose of computing the taxpayer's taxable income for that year and the immediately preceding taxation year, the following rules apply:

(a) paragraph (1)(b) shall be read as follows:

"(b) the taxpayer's net capital losses for all taxation years not claimed for the purpose of computing the taxpayer's taxable income for any other taxation year;"; and

(b) paragraph (1.1)(b) shall be read as follows:

"(b) the amount, if any, by which

(i) the amount claimed under paragraph (1)(b) in respect of the taxpayer's net capital losses for the particular year

exceeds the total of

(ii) all amounts in respect of the taxpayer's net capital losses that, using the formula in subparagraph (a)(ii), would be required to be claimed under paragraph (1)(b) for the particular year to produce the amount determined under paragraph (a) for the particular year, and

(iii) all amounts each of which is an amount deducted under section 110.6 in computing the taxpayer's taxable income for a taxation year, except to the extent that, where the particular year is the year in which the taxpayer died, the amount, if any, by which the amount determined under subparagraph (i) in respect of the taxpayer for the immediately preceding taxation year exceeds the amount so determined under subparagraph (ii)."

History: Subsec. 111(2) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 83(1), applicable to the computation of taxable income for 1985 *et seq.* Subsec. 111(2) formerly read:

> (2) Where a taxpayer dies in a taxation year, for the purposes of computing the taxpayer's taxable income for that year and the immediately preceding taxation year, subsection (1.1) shall be read as follows:
>
> "(1.1) Notwithstanding paragraph (1)(b), where a taxpayer has claimed an amount under that paragraph for a particular year in respect of the taxpayer's net capital losses, the amount that may be deducted under that paragraph in respect of those losses (to the extent they are not deducted in computing the taxpayer's income for any other taxation year) for that year is the total of
>
> (a) an amount not exceeding the amount, if any, determined under paragraph 3(b) in respect of the taxpayer for the particular year, equal to the total of all amounts each of which is an amount determined by the formula
>
> $$A \times \frac{B}{C}$$
>
> where
>
> A is the net capital losses for a taxation year (in this paragraph referred to as a "loss year") claimed under paragraph (1)(b),
>
> B is the fraction that would be used for the particular year under section 38 in respect of the taxpayer if the taxpayer had a capital loss for that year, and
>
> C is the fraction required to be used under section 38 in respect of the taxpayer for the loss year; and
>
> (b) the amount, if any, by which
>
> (i) the amount of the taxpayer's net capital losses claimed under paragraph (1)(b) for the particular year
>
> exceeds the total of
>
> (ii) the amount of the taxpayer's net capital losses claimed under paragraph (1)(b) that was determined under paragraph (a) for the particular year, and
>
> (iii) the total of all amounts each of which is an amount deducted by the taxpayer under section 110.6 in computing the taxpayer's taxable income for a taxation year."

Interpretation Bulletins: IT-232R3: Losses — their deductibility in the loss year or in other years. See also list at end of s. 111.

(3) Limitation on deductibility — For the purposes of subsection (1),

(a) an amount in respect of a non-capital loss, restricted farm loss, farm loss or limited partnership loss, as the case may be, for a taxation year is deductible, and an amount in respect of a net capital loss for a taxation year may be claimed, in computing the taxable income of a taxpayer for a particular taxation year only to the extent that it exceeds the total of

(i) amounts deducted under this section in respect of that non-capital loss, restricted farm loss, farm loss or limited partnership loss in computing taxable income for taxation years preceding the particular taxation year,

(i.1) the amount that was claimed under paragraph (1)(b) in respect of that net capital loss for taxation years preceding the particular taxation year, and

(ii) amounts claimed in respect of that loss under paragraph 186(1)(c) for the year in which the loss was incurred or under paragraph 186(1)(d) for the particular taxation year and taxation years preceding the particular taxation year, and

(b) no amount is deductible in respect of a non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss, as the case may be, for a taxation year until

(i) in the case of a non-capital loss, the deductible non-capital losses,

(ii) in the case of a net capital loss, the deductible net capital losses,

(iii) in the case of a restricted farm loss, the deductible restricted farm losses,

(iv) in the case of a farm loss, the deductible farm losses, and

(v) in the case of a limited partnership loss, the deductible limited partnership losses,

for preceding taxation years have been deducted.

Related Provisions: 87(2.1)(b) — Determining loss after amalgamation; 88(1.1) — Non-capital losses of subsidiary; 88(1.2) — Net capital losses of subsidiary; 88(1.3) — Winding-up — computation of income and tax payable by parent; 149(10)(c) — Restriction on carry-forward of losses on change of corporate tax status. See additional Related Provisions and Definitions at end of s. 111.

History: That portion of para. 111(3)(a) preceding subpara. (i) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 83(2), applicable to the computation of taxable income for 1985 *et seq.* That portion formerly read:

(a) an amount in respect of a non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss, as the case may be, for a taxation year is deductible by a taxpayer in computing taxable income for a particular taxation year only to the extent that it exceeds the total of

Interpretation Bulletins: IT-232R3: Losses — their deductibility in the loss year or in other years; IT-262R2: Losses of non-residents and part-year residents; IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987. See also list at end of s. 111.

(4) Acquisition of control [capital losses] — Notwithstanding subsection (1), where, at any time (in this subsection referred to as "that time"), control of a corporation has been acquired by a person or group of persons

(a) no amount in respect of a net capital loss for a taxation year ending before that time is deductible in computing the corporation's taxable income for a taxation year ending after that time, and

(b) no amount in respect of a net capital loss for a taxation year ending after that time is deductible in computing the corporation's taxable income for a taxation year ending before that time,

and where, at that time, the corporation neither became nor ceased to be exempt from tax under this Part on its taxable income,

(c) in computing the adjusted cost base to the corporation at and after that time of each capital property, other than a depreciable property, owned by the corporation immediately before that time, there shall be deducted the amount, if any, by which the adjusted cost base to the corporation of the property immediately before that time exceeds its fair market value immediately before that time,

(d) each amount required by paragraph (c) to be deducted in computing the adjusted cost base to the corporation of a property shall be deemed to be a capital loss of the corporation for the taxation year that ended immediately before that time from the disposition of the property,

(e) each capital property owned by the corporation immediately before that time (other than a property in respect of which an amount would, but for this paragraph, be required by paragraph (c) to be deducted in computing its adjusted cost base to the corporation or a depreciable property of a prescribed class to which, but for this paragraph, subsection (5.1) would apply) as is designated by the corporation in its return of income under this Part for the taxation year that ended immediately before that time or in a prescribed form filed with the Minister on or before the day that is 90 days after the day on which a notice of assessment of tax payable for the year or notification that no tax is payable for the year is mailed to the corporation, shall be deemed to have been disposed of by the corporation immediately before the time that is immediately before that time for proceeds of disposition equal to the lesser of

(i) the fair market value of the property immediately before that time, and

(ii) the greater of the adjusted cost base to the corporation of the property immediately before the disposition and such amount as is designated by the corporation in respect of the property,

and shall be deemed to have been reacquired by it at that time at a cost equal to the proceeds of disposition thereof, except that, where the property is depreciable property of the corporation the capital cost of which to the corporation immediately before the disposition time exceeds those proceeds of disposition, for the purposes of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a),

(iii) the capital cost of the property to the corporation at that time shall be deemed to be the amount that was its capital cost immediately before the disposition, and

(iv) the excess shall be deemed to have been allowed to the corporation in respect of the property under regulations made for the purpose of paragraph 20(1)(a) in computing its income for taxation years ending before that time, and

(f) each amount that by virtue of paragraph (d) or (e) is a capital loss or gain of the corporation from a disposition of a property for the taxation year that ended immediately before that time shall, for the purposes of the definition "capital dividend account" in subsection 89(1), be deemed to be a capital loss or gain, as the case may be, of the corporation from the disposition of the property immediately before the time that a capital property of the corporation in respect of which paragraph (e) would be applicable would be deemed by that paragraph to have been disposed of by the corporation.

Related Provisions: 13(7)(f) — Rules applicable to depreciable property; 53(2)(b.2) — Reduction in ACB; 53(4) — Effect on ACB of share, partnership interest or trust interest; 87(2.1)(b) — Determining loss after amalgamation; 107(1.1)(b)(ii) — Deemed cost of income interest in trust; 110.1(1.2) — Parallel rule for charitable donation credits; 111(5) — Parallel rule for non-capital losses; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 249(4) — Deemed year end where change of control occurs; 256(6)–(9) — Whether control acquired. See also at end of s. 111. See also under "Control of corporation: change of" in Topical Index.

History: Para. 111(4)(e) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 83(3), applicable to acquisitions of control occurring after July 13, 1990, other than acquisitions of control where the persons acquiring control were obliged on that day to acquire control pursuant to the terms of agreements in writing entered into on or before that day. Para. 111(4)(e) formerly read:

(e) each capital property owned by the corporation immediately before that time, other than a property in respect of which an

amount would, but for this paragraph, be required by paragraph (c) to be deducted in computing its adjusted cost base to the corporation, as is designated by the corporation in its return of income under this Part for the taxation year that ended immediately before that time or in a prescribed form filed with the Minister on or before the day that is 90 days after the day on which a notice of assessment of tax payable for the year or notification that no tax is payable for the year is mailed to the corporation, shall be deemed to have been disposed of by the corporation immediately before the time that is immediately before that time for proceeds of disposition equal to the greater of

(i) the adjusted cost base to the corporation of the property immediately before that time, and

(ii) the lesser of the fair market value of the property immediately before that time and such amount as is designated by the corporation in respect of the property

and shall be deemed to have been reacquired by it at that time at a cost equal to the proceeds of disposition thereof, and

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987. See also list at end of s. 111.

I.T. Technical News: 7 (control by a group — 50/50 arrangement); 9 (loss consolidation within a corporate group); 30 (corporate loss utilization transactions).

Forms: T2 SCH 6: Summary of dispositions of capital property.

(5) Idem [business or property losses] — Where, at any time, control of a corporation has been acquired by a person or group of persons, no amount in respect of its non-capital loss or farm loss for a taxation year ending before that time is deductible by the corporation for a taxation year ending after that time and no amount in respect of its non-capital loss or farm loss for a taxation year ending after that time is deductible by the corporation for a taxation year ending before that time except that

(a) such portion of the corporation's non-capital loss or farm loss, as the case may be, for a taxation year ending before that time as may reasonably be regarded as its loss from carrying on a business and, where a business was carried on by the corporation in that year, such portion of the non-capital loss as may reasonably be regarded as being in respect of an amount deductible under paragraph 110(1)(k) in computing its taxable income for the year is deductible by the corporation for a particular taxation year ending after that time

(i) only if that business was carried on by the corporation for profit or with a reasonable expectation of profit throughout the particular year, and

(ii) only to the extent of the total of the corporation's income for the particular year from that business and, where properties were sold, leased, rented or developed or services rendered in the course of carrying on that business before that time, from any other business substantially all the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services; and

(b) such portion of the corporation's non-capital loss or farm loss, as the case may be, for a taxation year ending after that time as may reasonably be regarded as its loss from carrying on a business and, where a business was carried on by the corporation in that year, such portion of the non-capital loss as may reasonably be regarded as being in respect of an amount deductible under paragraph 110(1)(k) in computing its taxable income for the year is deductible by the corporation for a particular year ending before that time

(i) only if throughout the taxation year and in the particular year that business was carried on by the corporation for profit or with a reasonable expectation of profit, and

(ii) only to the extent of the corporation's income for the particular year from that business and, where properties were sold, leased, rented or developed or services rendered in the course of carrying on that business before that time, from any other business substantially all the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services.

Related Provisions: 10(11) — Adventure in the nature of trade deemed to be business carried on by corporation; 69(11) — Restriction on loss consolidation outside corporate group; 87(2.1)(b) — Determining loss after amalgamation; 110.1(1.2) — Parallel rule for charitable donation credits; 111(4) — Parallel rule for capital losses; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 249(4) — Deemed year end when change of control occurs; 256(6)–(9) — Whether control acquired. See also at end of s. 111.

Selected Cases [subsec. 111(5)]: *Garage Montplaisir Ltée v. MNR*, [2000] 4 C.T.C. 22 (FCA); aff'g [1998] 1 C.T.C. 51 (FCTD) (Business of company must still be a going concern after takeover for losses to be available); *Duha Printers (Western) Ltd. v. R.*, [1998] 3 C.T.C. 303 (SCC); Reversed [1996] 3 C.T.C. 19 (FCA) (Shareholder agreement did not result in *de jure* control); *Wigmar Holdings Ltd. v. R.*, [1997] 2 C.T.C. 263 (FCA) (Word "and" between clauses (A) and (B) in subpara. 111(5)(a)(i) to be read disjunctively, not cumulatively); *Yarmouth Industrial Leasing Ltd. v. R.*, [1985] 2 C.T.C. 67 (FCTD) (Losses of inactive subsidiary not carried forward where new type of business subsequently assumed; control changed when 60% of parent sold).

Interpretation Bulletins: IT-206R: Separate businesses; IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987. See also list at end of s. 111.

I.T. Technical News: 7 (control by a group — 50/50 arrangement); 9 (loss consolidation within a corporate group); 16 (*Duha Printers* case); 25 (refreshing losses); 30 (corporate loss utilization transactions).

Advance Tax Rulings: ATR-7: Amalgamation involving losses and control.

(5.1) Computation of undepreciated capital cost — Where, at any time, control of a corporation (other than a corporation that at that time became or ceased to be exempt from tax under this Part on its taxable income) has been acquired by a person or group of persons and, if this Act were read without reference to subsection 13(24), the undepreciated capital cost to the corporation of depreciable property of a prescribed class immediately before that time would have exceeded the total of

(a) the fair market value of all the property of that class immediately before that time, and

(b) the amount in respect of property of that class otherwise allowed under regulations made under paragraph 20(1)(a) or deductible under subsection 20(16) in computing the corporation's income for the taxation year ending immediately before that time,

the excess shall be deducted in computing the income of the corporation for the taxation year ending immediately before that time and shall be deemed to have been allowed in respect of property of that class under regulations made under paragraph 20(1)(a).

Related Provisions: 87(2.1)(b) — Determining loss after amalgamation; 95(2)(f.91)–(f.93) — Parallel rules for FAPI; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired. See also at end of s. 111.

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987. See also list at end of s. 111.

I.T. Technical News: 7 (control by a group — 50/50 arrangement); 9 (loss consolidation within a corporate group); 30 (corporate loss utilization transactions).

(5.2) Computation of cumulative eligible capital — Where, at any time, control of a corporation (other than a corporation that at that time became or ceased to be exempt from tax under this Part on its taxable income) has been acquired by a person or group of persons and immediately before that time the corporation's cumulative eligible capital in respect of a business exceeded the total of

(a) ¾ of the fair market value of the eligible capital property in respect of the business, and

(b) the amount otherwise deducted under paragraph 20(1)(b) in computing the corporation's income from the business for the taxation year ending immediately before that time,

the excess shall be deducted under paragraph 20(1)(b) in computing the corporation's income from the business for the taxation year ending immediately before that time.

Related Provisions: 87(2.1)(b) — Determining loss after amalgamation; 95(2)(f.91)–(f.93) — Parallel rules for FAPI; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired. See also at end of s. 111.

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987. See also list at end of s. 111.

I.T. Technical News: 7 (control by a group — 50/50 arrangement); 9 (loss consolidation within a corporate group); 30 (corporate loss utilization transactions).

(5.3) Doubtful debts and bad debts — Where, at any time, control of a corporation (other than a corporation that at that time became or ceased to be exempt from tax under this Part on its taxable income) has been acquired by a person or group of persons, no amount may be deducted under paragraph 20(1)(l) in computing the corporation's income for its taxation year ending immediately before that time and each amount that is the greatest amount that would, but for this subsection and subsection 26(2) of this Act and subsection 33(1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, have been deductible under paragraph 20(1)(l) in respect of a debt owing to the corporation immediately before that time shall be deemed to be a separate debt and shall, notwithstanding any other provision of this Act, be deducted as a bad debt under paragraph 20(1)(p) in computing the corporation's income for the year and the amount by which the debt exceeds that separate debt shall be deemed to be a separate debt incurred at the same time and under the same circumstances as the debt was incurred.

Related Provisions: 50(1)(a) — Deemed disposition where debt becomes bad debt; 87(2.1)(b) — Determining loss after amalgamation; 88(1.1) — Non-capital losses, etc., of subsidiary; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired. See also at end of s. 111.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987.

I.T. Technical News: 7 (control by a group — 50/50 arrangement); 9 (loss consolidation within a corporate group).

(5.4) Non-capital loss — Where, at any time, control of a corporation has been acquired by a person or persons, such portion of the corporation's non-capital loss for a taxation year ending before that time as

(a) was not deductible in computing the corporation's income for a taxation year ending before that time, and

(b) can reasonably be considered to be a non-capital loss of a subsidiary corporation (in this subsection referred to as the "former subsidiary corporation") from carrying on a particular business (in this subsection referred to as the "former subsidiary corporation's loss business") that was deemed by subsection 88(1.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read on November 12, 1981 to be the non-capital loss of the corporation for the taxation year of the corporation in which the former subsidiary corporation's loss year ended

shall be deemed to be a non-capital loss of the corporation from carrying on the former subsidiary corporation's loss business.

Related Provisions: 87(2.1)(b) — Determining loss after amalgamation; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired. See also at end of s. 111.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987. See also list at end of s. 111.

I.T. Technical News: 7 (control by a group — 50/50 arrangement); 9 (loss consolidation within a corporate group).

(5.5) Restriction — Where control of a corporation has been acquired by a person or group of persons and it may reasonably be considered that the main reason for the acquisition of control was to cause paragraph (4)(d) or subsection (5.1), (5.2) or (5.3) to apply with respect to the acquisition,

(a) that provision and paragraph (4)(e), and

(b) where that provision is paragraph (4)(d), paragraph (4)(c)

shall not apply with respect to the acquisition.

Related Provisions: 87(2.1)(b) — Determining loss after amalgamation; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired.

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987. See also list at end of s. 111.

(6) Limitation — For the purposes of this section and paragraph 53(1)(i), any loss of a taxpayer for a taxation year from a farming business shall, after the taxpayer disposes of the land used in that farming business and to the extent that the amount of the loss is required by paragraph 53(1)(i) to be added in computing the adjusted cost base to the taxpayer of the land immediately before the disposition, be deemed not to be a loss.

(7) Idem — For the purposes of this section, any loss of a taxpayer for a taxation year from a farming business shall, to the extent that the loss is included in the amount of any deduction permitted by section 101 in computing the taxpayer's income for any subsequent taxation year, be deemed not to be a loss of the taxpayer for the purpose of computing the taxpayer's taxable income for that subsequent year or any taxation year subsequent thereto.

(7.1) Effect of election by insurer under subsec. 138(9) in respect of 1975 taxation year — Where an insurer has made an election under subsection 138(9) in respect of its 1975 taxation year, for the purpose of determining the amount deductible in computing its taxable in-

come for its 1977 and subsequent taxation years in respect of the non-capital loss, if any, for the 1972 and each subsequent taxation year ending before 1977, a portion of the non-capital loss for each such year equal to the lesser of

(a) the portion of the non-capital loss for the year (determined without reference to this subsection) that would be deductible in computing the insurer's taxable income for its 1977 taxation year if the insurer had sufficient income for that year, and

(b) the amount, if any, by which

(i) its 1975 branch accounting election deficiency

exceeds

(ii) the total of

(A) the amount determined under subparagraph 138(4.1)(d)(ii) in respect of the insurer,

(B) the total of all amounts each of which is an amount determined under paragraph 13(22)(b) with respect to depreciable property of a prescribed class of the insurer, and

(C) the total of all amounts each of which is the portion determined under this subsection in respect of the non-capital loss for a taxation year after 1971 and preceding the year

shall, for the purposes of this section, be deemed to have been deductible under this section in computing the insurer's taxable income for a taxation year ending before 1977.

Related Provisions: 111(7.11) — Definitions in 138(12) apply. See also Related Provisions at end of s. 111.

Interpretation Bulletins: See list at end of s. 111.

(7.11) Application of subsec. 138(12) — The definitions in subsection 138(12) apply to subsection (7.1).

Origin of subsec. 111(7.11): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsec. 138(12)).

(7.2) Non-capital loss of life insurer — Notwithstanding paragraph (1)(a), in the case of a life insurer the amount deductible in computing its taxable income for its 1978 and subsequent taxation years,

(a) in respect of its non-capital loss for each taxation year ending before 1977 shall be deemed to be nil; and

(b) in respect of its non-capital loss for its 1977 taxation year shall be deemed to be the amount, if any, by which

(i) the amount referred to in subparagraph 138(4.2)(a)(iv)

exceeds the total of

(ii) the amount of the reserve determined for the purpose of subparagraph 138(4.2)(a)(i),

(iii) in any case where subparagraph 138(4.2)(a)(ii) applies, the total of amounts referred to in that subparagraph, and

(iv) in any case where subparagraph 138(4.2)(a)(iii) applies, the amount referred to in that subparagraph.

Interpretation Bulletins: See list at end of s. 111.

(8) Definitions — In this section,

"farm loss" of a taxpayer for a taxation year means the amount determined by the formula

$$A - C$$

where

A is the lesser of

(a) the amount, if any, by which

(i) the total of all amounts each of which is the taxpayer's loss for the year from a farming or fishing business

exceeds

(ii) the total of all amounts each of which is the taxpayer's income for the year from a farming or fishing business, and

(b) the amount that would be the taxpayer's non-capital loss for the year if each of the amounts determined for C and D in the definition "non-capital loss" in this subsection were zero, and

B [Repealed]

C is the total of all amounts by which the farm loss of the taxpayer for the year is required to be reduced because of section 80;

Related Provisions: 31(1), (1.1) — Restricted farm loss; 53(1)(i) — Addition to ACB of farmland; 80(3)(b) — Reduction in farm loss on debt forgiveness; 87(2.1)(a) — Amalgamation — farm loss carried forward; 96(1) — Farm loss of partner; 111(9) — Farm loss where taxpayer not resident in Canada; 127.52(1)(i)(ii)(B) — Calculation of previous year's farm loss for minimum tax purposes; 128.1(4)(f) — Farm loss limitation on becoming non-resident; 133(2) — Non-resident-owned investment corporations; 161(7) — Effect of carryback of loss; 248(1)"farm loss" — Definition applies to entire Act; 257 — Formula cannot calculate to less than zero. See also at end of s. 111.

History: The formula in the definition "farm loss" in subsec. 111(8) amended to remove reference to B and the description of B repealed by 2000, c. 19, subsecs. 19(1) and (2), applicable to 1998 *et seq.* The description of B formerly read:

B is the amount, if any, by which any amount specified by the taxpayer in the taxpayer's election for the year under subsection 110.4(2) exceeds the amount that would be the taxpayer's non-capital loss for the year if the amount determined for C in the definition "non-capital loss" in this subsection were zero, and

The formula in the definition "farm loss" in subsec. 111(8) amended to add C, and the description of C added, by 1995, c. 21, subsecs. 36(1), (2), applicable to taxation years that end after February 21, 1994.

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987; IT-322R: Farm losses. See also list at end of s. 111.

"net capital loss" of a taxpayer for a taxation year means the amount determined by the formula

$$A - B + C - D$$

where

A is the amount, if any, determined under subparagraph 3(b)(ii) in respect of the taxpayer for the year,

B is the lesser of the total determined under subparagraph 3(b)(i) in respect of the taxpayer for the year and the amount determined for A in respect of the taxpayer for the year,

C is the least of

(a) the amount of the allowable business investment losses of the taxpayer for the taxpayer's tenth preceding taxation year,

(b) the amount, if any, by which the amount of the non-capital loss of the taxpayer for the taxpayer's tenth preceding taxation year exceeds the total of all amounts in respect of that non-capital loss deducted in computing the taxpayer's taxable income or claimed by the taxpayer under paragraph

186(1)(c) or (d) for the year or for any preceding taxation year, and

(c) if the taxpayer is a corporation the control of which was acquired by a person or group of persons before the end of the year and after the end of the taxpayer's tenth preceding taxation year, nil, and

D is the total of all amounts by which the net capital loss of the taxpayer for the year is required to be reduced because of section 80;

Related Provisions: 80(4)(b) — Reduction in net capital loss on debt forgiveness; 87(2.1)(a) — Amalgamation — net capital loss carried forward; 96(1) — Net capital loss of partner; 96(8)(b) — Loss of partnership that previously had only non-resident partners; 96(8)(c) — Disposition of property by partnership that previously had only non-resident partners; 111(1)(b) — Application of net capital loss; 111(7.2) — Non-capital loss of life insurer; 111(9) — Net capital loss of non-resident; 127.52(1)(i)(ii) — Calculation of previous year's loss for minimum tax purposes; 128.1(4)(f) — Net capital loss limitation on becoming non-resident; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 142.7(12)(f) — Net capital loss on conversion of foreign bank affiliate to branch; 161(7) — Effect of carryback of loss; 248(1)"net capital loss" — Definition applies to entire Act; 256(6)–(9) — Whether control acquired; 257 — Formula cannot calculate to less than zero. See also at end of s. 111.

History: The description of C in the definition "net capital loss" in subsec. 111(8) amended by 2005, c. 19, subsec. 20(2), applicable in respect of losses that arise in taxation years that end after March 22, 2004, except that, for a taxation year of a taxpayer before the taxpayer's 8th taxation year that ends after that date, para. (c) of the description of C is to be read as follows:

(c) where the taxpayer is a corporation the control of which was acquired by a person or group of persons before the end of the year and after the end of the taxpayer's seventh preceding taxation year, nil, and

The description of C formerly read:

C is the least of

(a) the amount of the allowable business investment losses of the taxpayer for the taxpayer's seventh preceding taxation year,

(b) the amount, if any, by which the amount of the non-capital loss of the taxpayer for the taxpayer's seventh preceding taxation year exceeds the total of all amounts in respect of that non-capital loss deducted in computing the taxpayer's taxable income or claimed by the taxpayer under paragraph 186(1)(c) or (d) for the year or for any preceding taxation year, and

(c) where the taxpayer is a corporation the control of which was acquired by a person or group of persons before the end of the year and after the end of the taxpayer's seventh preceding taxation year, nil, and

The definition "net capital loss" in subsec. 111(8) amended by 1995, c. 21, subsec. 36(3), applicable to taxation years that end after February 21, 1994. The definition formerly read:

"net capital loss" of a taxpayer for a taxation year means the total of

(a) the amount determined by the formula

A – B

where

A is the amount, if any, determined under subparagraph 3(b)(ii) in respect of the taxpayer for the year, and

B is the total determined under subparagraph 3(b)(i) in respect of the taxpayer for the year, and

(b) the amount that is equal to the lesser of

(i) the amount of the allowable business investment losses of the taxpayer for the taxpayer's seventh preceding taxation year, and

(ii) the amount, if any, by which the amount of the non-capital loss of the taxpayer for the taxpayer's seventh preceding taxation year exceeds the total of amounts in respect of that non-capital loss deducted by the taxpayer in computing the taxpayer's taxable income or claimed by the taxpayer under paragraph 186(1)(c) or (d) for the year or for any preceding taxation year

except that where the taxpayer is a corporation the control of which was acquired by a person or group of persons before the end of the year and after the end of the taxpayer's seventh preceding taxation year, the amount determined under this paragraph in respect of the taxpayer for the year shall be deemed to be nil;

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987; IT-484R2: Business investment losses. See also list at end of s. 111.

"non-capital loss" of a taxpayer for a taxation year means the amount determined by the formula

(A + B) – (D + D.1 + D.2)

where

A is the amount determined by the formula

E – F

where

E is the total of all amounts each of which is the taxpayer's loss for the year from an office, employment, business or property, the taxpayer's allowable business investment loss for the year, an amount deducted under paragraph (1)(b) or section 110.6 in computing the taxpayer's taxable income for the year or an amount that may be deducted under any of paragraphs 110(1)(d) to (d.3), (f), (g), (j) and (k), section 112 and subsections 113(1) and 138(6) in computing the taxpayer's taxable income for the year, and

Proposed Amendment — 111(8)"non-capital loss"E

E is the total of all amounts each of which is the taxpayer's loss for the year from a source that is an office, employment, business or property, the taxpayer's allowable business investment loss for the year, an amount deducted under paragraph (1)(b) or section 110.6 in computing the taxpayer's taxable income for the year or an amount that may be deducted under any of paragraphs 110(1)(d) to (d.3), (f), (g), (j) and (k), section 112 and subsections 113(1) and 138(6) in computing the taxpayer's taxable income for the year, and

Application: The October 31, 2003 draft legislation (REOP), s. 4, will amend the description of E in the definition "non-capital loss" in subsec. 111(8) to read as above, applicable to taxation years that begin after 2004. However, see Notes to 9(2).

Technical Notes: Both of these changes [see also 3(d) — ed.] are consequential amendments to proposed new subsection 3.1(1), and clarify that it is only losses that are from a source that may be deducted in computing a taxpayer's income or considered to be non-capital losses under subsection 111(8).

F is the amount determined under paragraph 3(c) in respect of the taxpayer for the year,

B is the amount, if any, determined in respect of the taxpayer for the year under section 110.5 or subparagraph 115(1)(a)(vii),

C [Repealed]

D is the amount that would be the taxpayer's farm loss for the year if the amount determined for B in the definition "farm loss" in this subsection were zero,

D.1 is the total of all amounts deducted under subsection (10) in respect of the taxpayer for the year, and

D.2 is the total of all amounts by which the non-capital loss of the taxpayer for the year is required to be reduced because of section 80;

Related Provisions: 3.1 — Reasonable expectation of profit required for taxpayer to have loss from business or property; 80(3)(a), 80(4)(a) — Reduction in non-capital loss on debt forgiveness; 87(2.1)(a) — Amalgamation — non-capital loss carried forward; 96(1) — Non-capital loss of partner; 96(8)(b), (c) — Loss of partnership that previously had only non-resident partners; 111(1)(a) — Application of non-capital loss; 111(5.4) — Non-capital loss following change of control; 111(9) — Non-capital loss where taxpayer not resident in Canada; 111(10), (11) — Fuel tax rebate loss abatement; 127.52(1)(i)(ii)(B) — Calculation of previous year's non-capital loss for minimum tax purposes; 128.1(4)(f) — Non-capital loss limitation on becoming non-resident; 142.7(12)(d) — Non-capital loss on conversion of foreign bank affiliate to branch; 161(7) — Effect of carryback of loss; 248(1)"non-capital loss" — Definition applies to entire Act; 257 — Formula amounts cannot calculate to less than zero. See also at end of s. 111.

History: The description of E in the definition "non-capital loss" in subsec. 111(8) amended by 2002, c. 9, s. 34, applicable to 1997 *et seq.* and, notwithstanding subsecs. 152(4) to (5), any assessment of a taxpayer's tax, interest or penalty for any taxation year shall be made that is necessary to give effect to the amendment. The description formerly read:

E is the total of all amounts each of which is the taxpayer's loss for the year from an office, employment, business or property, the taxpayer's allowable business investment loss for the year, an amount deducted under paragraph (1)(b) or section 110.6 in computing the taxpayer's taxable income for the year or an amount that may be deducted under any of paragraphs 110(1)(d) to (d.3), (f), (j) and (k), section 112 and subsections 113(1) and 138(6) in computing the taxpayer's taxable income for the year, and

The description of E in the definition "non-capital loss" in subsec. 111(8) amended by 2001, c. 17, subsec. 87(2), applicable to 2000 *et seq.* The description formerly read:

E is the total of all amounts each of which is the taxpayer's loss for the year from an office, employment, business or property, the taxpayer's allowable business investment loss for the year, an amount deducted under paragraph (1)(b) or section 110.6 in computing the taxpayer's taxable income for the year or an amount that may be deducted under paragraph 110(1)(d), (d.1), (d.2), (d.3), (f), (j) or (k), section 112 or subsection 113(1) or 138(6) in computing the taxpayer's taxable income for the year [, and]

The description of B in the definition "non-capital loss" in subsec. 111(8) amended by the said c. 17, subsec. 87(3) to add reference to subparagraph 115(1)(a)(vii), applicable after June 27, 1999.

The first formula in the definition "non-capital loss" in subsec. 111(8) amended to remove reference to C and the description of C repealed by 2000, c. 19, subsecs. 19(3) and (4), applicable to 1998 *et seq.* The formula and the description of C formerly read:

$$(A + B) - (C + D + D.1 + D.2)$$

. . . . .

C is any amount specified by the taxpayer in the taxpayer's election for the year under subsection 110.4(2),

The first formula in the definition "non-capital loss" in subsec. 111(8) amended to add D.2, and the description of D.2 added, by 1995, c. 21, subsecs. 36(4), (5), applicable to taxation years that end after February 21, 1994.

The description of E in the definition "non-capital loss" in subsec. 111(8) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 49(1), applicable to 1991 *et seq.* That description formerly read:

E is the total of all amounts each of which is the taxpayer's loss for the year from an office, employment, business or property, the taxpayer's allowable business investment loss for the year, an amount deducted under section 110.6 or an amount deductible under paragraph 110(1)(d), (d.1), (d.2), (d.3), (f), (j) or (k), section 112 or subsection 113(1) or 138(6) in computing the taxpayer's taxable income for the year, and

D.1 and its description in "non-capital loss" in subsec. 111(8) added by 1994, c. 7, Sch. VI (1992, c. 29), subsecs. 5(1) and (1.1), applicable to amounts received after 1991.

Selected Cases [subsec. 111(8)"non-capital loss"]: *Taylor v. Canada*, [1991] 1 C.T.C. 304 (FCA) (No carryforward of "non-capital loss of other years" incurred during non-residency).

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987; IT-484R2: Business investment losses. See also list at end of s. 111.

I.T. Technical News: 25 (refreshing losses).

Forms: T1A: Request for loss carryback.

"pre-1986 capital loss balance" of an individual for a particular taxation year means the amount determined by the formula

$$(A + B) - (C + D + E + E.1)$$

where

A is the total of all amounts each of which is an amount determined by the formula

$$F - G$$

where

F is the individual's net capital loss for a taxation year ending before 1985, and

G is the total of all amounts claimed under this section by the individual in respect of that loss in computing the individual's taxable income for taxation years preceding the particular taxation year, and

B is the amount determined by the formula

$$H - I$$

where

H is the lesser of

(a) the amount of the individual's net capital loss for the 1985 taxation year, and

(b) the amount, if any, by which the amount determined under subparagraph 3(e)(ii) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in respect of the individual for the 1985 taxation year exceeds the amount deductible by reason of paragraph 3(e) of that Act in computing the individual's taxable income for the 1985 taxation year, and

I is the total of all amounts claimed under this section by the individual in respect of the individual's net capital loss for the 1985 taxation year in computing the individual's taxable income for taxation years preceding the particular taxation year,

C is the total of all amounts deducted under section 110.6 in computing the individual's taxable income for taxation years that end before 1988 or after October 17, 2000,

Proposed Amendment — 111(8)"pre-1986 capital loss balance"C

C is the total of all amounts deducted under section 110.6 in computing the individual's taxable income for taxation years that ended before 1988 or begin after October 17, 2000,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 103(2), will amend the description of C in the definition "pre-1986 capital loss balance" in subsec. 111(8) to read as above, applicable to 2000 *et seq.*

Technical Notes: An individual's "pre-1986 capital loss balance" for a taxation year is relevant for the purpose of paragraph 111(1.1)(b) and represents the individual's unused pre-1986 capital losses that the individual can deduct, to a maximum of $2,000 per year, from income other than capital gains of the individual. The reference in the description of C in the definition to "taxation years that end before 1988 or after October

17, 2000" is corrected to refer to "taxation years that end before 1988 or begin after October 17, 2000".

D is 3/4 of the total of all amounts each of which is an amount deducted under section 110.6 in computing the individual's taxable income for a taxation year, preceding the particular year, that

(a) ended after 1987 and before 1990, or

(b) began after February 27, 2000 and ended before October 18, 2000,

E is 2/3 of the total of all amounts deducted under section 110.6 in computing the individual's taxable income for taxation years, preceding the particular year, that ended after 1989 and before February 28, 2000, and

E.1 is amount determined by the formula

$$J \times (0.5/K)$$

where

J is the amount deducted by the individual under section 110.6 for a taxation year of the individual, preceding the particular year, that includes February 28, 2000 or October 17, 2000, and

K is the fraction in paragraph 38(a) that applies to the individual for the individual's taxation year referred to in the description of J.

Related Provisions: 161(7) — Effect of carryback of loss; 257 — Formula amounts cannot calculate to less than zero. See also at end of s. 111.

History: The first formula in the definition "pre-1986 capital loss balance" in subsec. 111(8) amended by 2001, c. 17, subsec. 87(4) to add "+ E.1", applicable to taxation years that end after February 27, 2000.

The descriptions of C to E in the definition "pre-1986 capital loss balance" in subsec. 111(8) amended, and the description of E.1 added, by the said c. 17, subsec. 87(5), applicable to taxation years that end after February 27, 2000. The descriptions of C to E formerly read:

C is the total of all amounts deducted under section 110.6 in computing the individual's taxable income for taxation years preceding 1988,

D is 3/4 of the total of all the amounts deducted under section 110.6 in computing the individual's taxable income for taxation years preceding the particular year and ending after 1987 and before 1990, and

E is 2/3 of the total of all the amounts deducted under section 110.6 in computing the individual's taxable income for taxation years preceding the particular year and ending after 1989.

The descriptions of G and I in "pre-1986 capital loss balance" in subsec. 111(8) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 83(4), (5), applicable to the computation of taxable income for 1985 *et seq.* Those descriptions formerly read:

G is the total of all amounts deducted by the individual under this section in respect of that loss in computing the individual's taxable income for taxation years preceding the particular taxation year,

. . . . .

I is the total of all amounts deducted by the individual under this section in respect of the individual's net capital loss for the 1985 taxation year in computing the individual's taxable income for taxation years preceding the particular taxation year,

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-232R3: Losses — their deductibility in the loss year or in other years; IT-262R2: Losses of non-residents and part-year residents. See also list at end of s. 111.

(9) Exception [non-residents] — In this section, a taxpayer's non-capital loss, net capital loss, restricted farm loss, farm loss and limited partnership loss for a taxation year during which the taxpayer was not resident in Canada shall be determined as if

(a) in the part of the year throughout which the taxpayer was non-resident, if section 114 applies to the taxpayer in respect of the year, and

(b) throughout the year, in any other case,

the taxpayer had no income other than income described in any of subparagraphs 115(1)(a)(i) to (vi), the taxpayer's only taxable capital gains, allowable capital losses and allowable business investment losses were from dispositions of taxable Canadian property (other than treaty-protected property) and the taxpayer's only other losses were losses from the duties of an office or employment performed by the taxpayer in Canada and businesses (other than treaty-protected businesses) carried on by the taxpayer in Canada.

Related Provisions: 80(1)"excluded property" — Properties to which debt forgiveness rules do not apply; 94(3)(a)(v) [proposed] — Application to trust deemed resident in Canada; 115(1)(c) — Treaty-protected business losses not usable against Canadian business profits; 161(7) — Effect of carryback of loss. See also at end of s. 111.

History: Para. 111(9)(a) amended by 2001, c. 17, subsec. 87(6), applicable to 1998 *et seq.* The para. formerly read:

(a) throughout the portion of the year referred to in paragraph 114(b), where section 114 applies to the taxpayer in respect of the year, and

The closing words of subsec. 111(9) amended by 1999, c. 22, s. 28, applicable for the purpose of computing taxable income and taxable income earned in Canada for 1998 *et seq.* The closing words formerly read:

the taxpayer had no income other than income described in subparagraphs 115(1)(a)(i) to (vi), the taxpayer's only taxable capital gains and allowable capital losses were taxable capital gains and allowable capital losses from the disposition of taxable Canadian property and the taxpayer's only losses were allowable business investment losses and losses from duties of an office or employment performed by the taxpayer in Canada and businesses carried on by the taxpayer in Canada.

That portion of subsec. 111(9) following para. (b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 49(2), applicable to 1991 *et seq.* and with respect to the computation of taxable income and taxable income earned in Canada for those years. That portion formerly read:

the taxpayer had no income other than income described in subparagraphs 115(1)(a)(i) to (vi), the taxpayer's only taxable capital gains and allowable capital losses were taxable capital gains and allowable capital losses from the disposition of taxable Canadian property and the taxpayer's only losses were losses from businesses carried on by the taxpayer in Canada.

Interpretation Bulletins: IT-262R2: Losses of non-residents and part-year residents; IT-393R2: Election re tax on rents and timber royalties — non-residents.

(10) Fuel tax rebate loss abatement — Where in a particular taxation year a taxpayer received an amount (in this subsection referred to as a "rebate") as a fuel tax rebate under subsection 68.4(2) or (3.1) of the *Excise Tax Act*, in computing the taxpayer's non-capital loss for a taxation year (in this subsection referred to as the "loss year") that is one of the 7 taxation years preceding the particular year, there shall be deducted the lesser of

(a) the amount determined by the formula

$$10 (A - B) - C$$

where

A is the total of all rebates received by the taxpayer in the particular year,

B is the total of all amounts, in respect of rebates received by the taxpayer in the particular year, repaid by the taxpayer under subsection 68.4(7) of that Act, and

C is the total of all amounts, in respect of rebates received in the particular year, deducted under this subsection in computing the taxpayer's non-capital losses for other taxation years; and

(b) such amount as the taxpayer claims, not exceeding that portion of the taxpayer's non-capital loss for the loss year (determined without reference to this subsection) that would be deductible in computing the taxpayer's taxable income for the particular year if the taxpayer had sufficient income for the particular year from businesses carried on by the taxpayer in the particular year.

Related Provisions: 12(1)(x.1) — Income inclusion — fuel tax rebates; 111(8)"non-capital loss"D.1 — Claim under 111(10) reduces non-capital loss; 111(11) — Fuel tax rebate loss abatement — partnerships; 257 — Formula cannot calculate to less than zero.

History: That portion of subsec. 111(10) before para. (b) amended by 1997, c. 26, subsec. 84(1), applicable to 1997 *et seq.* That portion formerly read:

(10) Where, in a particular taxation year, a taxpayer received an amount (in this subsection referred to as a "rebate") as a fuel tax rebate under subsection 68.4(2) of the *Excise Tax Act*, in computing the amount of the taxpayer's non-capital loss for a taxation year (in this subsection referred to as the "loss year") that is one of the 7 taxation years preceding the particular year, there shall be deducted the lesser of

(a) the amount, if any, by which

(i) 10 times the amount, if any, by which

(A) the total of all rebates received by the taxpayer in the particular year

exceeds

(B) the total of all amounts, in respect of rebates received by the taxpayer in the particular year, repaid by the taxpayer under subsection 68.4(7) of that Act

exceeds

(ii) the total of all amounts, in respect of rebates received in the particular year, deducted under this subsection in computing the taxpayer's non-capital losses for other taxation years, and

Subsec. 111(10) added by 1994, c. 7, Sch. VI (1992, c. 29), subsec. 5(2), applicable to amounts received after 1991 (originally added as subsec. (9) before R.S.C. 1985 (5th Supp.) consolidation).

Interpretation Bulletins: IT-232R3: Losses — their deductibility in the loss year or in other years.

(11) Fuel tax rebate — partnerships — Where a taxpayer was a member of a partnership at any time in a fiscal period of the partnership during which it received a fuel tax rebate under subsection 68.4(2), (3) or (3.1) of the *Excise Tax Act*, the taxpayer is deemed

(a) to have received at that time as a rebate under subsection 68.4(2), (3) or (3.1), as the case may be, of that Act an amount equal to that proportion of the amount of the rebate received by the partnership that the member's share of the partnership's income or loss for that fiscal period is of the whole of that income or loss, determined without reference to any rebate under section 68.4 of that Act; and

(b) to have paid as a repayment under subsection 68.4(7) of that Act an amount equal to that proportion of all amounts repaid under subsection 68.4(7) of that Act in respect of the rebate that the member's share of the partnership's income or loss for that fiscal period is of the whole of that income or loss, determined without reference to any rebate under section 68.4 of that Act.

Related Provisions: 12(1)(x.1) — Income inclusion — fuel tax rebates.

History: That portion of subsec. 111(11) before para. (b) amended by 1997, c. 26, subsec. 84(2), applicable to 1997 *et seq.* That portion formerly read:

(11) Idem — partnerships — Where a taxpayer was a member of a partnership at any time in a fiscal period during which the partnership received a fuel tax rebate under subsection 68.4(2) or (3) of the *Excise Tax Act*, the taxpayer is deemed

(a) to have received at that time as a rebate under subsection 68.4(2) or (3), as the case may be, of that Act an amount equal to that proportion of the amount of the rebate received by the partnership that the member's share of the partnership's income or loss for that fiscal period is of the whole of that income or loss, determined without reference to any rebate under section 68.4 of that Act; and

Subsec. 111(11) added by 1994, c. 7, Sch. VI (1992, c. 29), subsec. 5(2), applicable to amounts received after 1991 (originally added as subsec. (10) before R.S.C. 1985 (5th Supp.) consolidation).

Related Provisions [s. 111]: 31(1) — Loss from farming where chief source of income not farming; 66.8(1) — Resource expenses of limited partner; 87(2.1) — Non-capital loss, net capital loss, restricted farm loss and farm loss of predecessor corporation; 87(2.11) — Losses, etc., on amalgamation with subsidiary wholly-owned corporation; 88.1 — Non-capital loss, net capital loss, restricted farm loss, and farm loss of subsidiary; 96(2.2) — At-risk amount; 104(21) — Portion of taxable capital gains deemed gain of beneficiary; 111.1 — Ordering of applying provisions; 127.52(1) — Adjusted taxable income determined; 128(1)(g), 128(2)(g) — Where corporation or individual is bankrupt; 152(1.1)–(1.3) — Determination of losses; 152(6) — Reassessment; 164(6) — Where disposition of property by legal representative of deceased taxpayer; 256(8) — Deemed acquisition of shares.

Selected Cases [s. 111]: *Burleigh v. R.*, [2004] 2 C.T.C. 2797 (TCC) (Processing of return or determination of loss immaterial to claim for loss in tax return).

Definitions [s. 111]: "acquired" — 256(7)–(9); "active business" — 248(1); "adjusted cost base" — 54, 248(1); "allowable business investment loss" — 38(c), 248(1); "allowable capital loss" — 38(b), 248(1); "amount" — 248(1); "arm's length" — 251(1); "assessment", "business" — 248(1); "Canada" — 255; "Canadian development expense" — 66.2(5), 248(1); "Canadian exploration expense" — 66.1(6), 248(1); "Canadian oil and gas property expense" — 66.4(5), 248(1); "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "carrying on business" — 253; "control" — 256(6)–(9); "corporation" — 248(1), *Interpretation Act* 35(1); "cumulative eligible capital" — 14(5), 248(1); "depreciable property" — 13(21), 248(1); "eligible capital property" — 54, 248(1); "employment", "farming" — 248(1); "farm loss" — 111(8), 248(1); "fiscal period" — 249(2)(b), 249.1; "fishing" — 248(1); "foreign resource pool expense", "individual", "insurer" — 248(1); "investment tax credit" — 127(9), 248(1); "life insurer" — 248(1); "limited partner" — 96(2.4); "limited partnership loss" — 96(2.1)(e), 248(1); "Minister" — 248(1); "net capital loss" — 111(8), 248(1); "1975 branch accounting election deficiency" — 111(7.11), 138(12); "non-capital loss" — 111(8), 248(1); "non-resident", "office", "person", "prescribed", "property", "regulation" — 248(1); "resident in Canada" — 94(3)(a)(viii), 250; "restricted farm loss" — 31, 248(1); "tax payable" — 248(2); "taxable capital gain" — 38, 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer", "treaty-protected business", "treaty-protected property" — 248(1); "undepreciated capital cost" — 13(21), 248(1).

Interpretation Bulletins [s. 111]: IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits (archived); IT-322R: Farm losses; IT-373R2: Woodlots; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-474R: Amalgamations of Canadian corporations.

111.1 Order of applying provisions — In computing an individual's taxable income for a taxation year, the provisions of this Division shall be applied in the following order: sections 110, 110.2, 111, 110.6 and 110.7.

History: S. 111.1 amended by 2000, c. 19, s. 20, applicable to 1998 *et seq.* S. 111.1 formerly read:

111.1 In computing the taxable income of an individual for a taxation year, the provisions of this Division shall be applied in the following order: subsection 110.4(2) and sections 110, 111, 110.6 and 110.7.

Definitions [s. 111.1]: "individual" — 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249.

Interpretation Bulletins: IT-232R3: Losses — their deductibility in the loss year or in other years; IT-523: Order of provisions applicable in computing an individual's taxable income and tax payable.

112. (1) Deduction of taxable dividends received by corporation resident in Canada — Where a corporation in a taxation year has received a taxable dividend from

(a) a taxable Canadian corporation, or

(b) a corporation resident in Canada (other than a non-resident-owned investment corporation or a corporation exempt from tax under this Part) and controlled by it,

an amount equal to the dividend may be deducted from the income of the receiving corporation for the year for the purpose of computing its taxable income.

Related Provisions: 55(2) — Capital gains stripping; 104(19) — Taxable dividends flowed through trust; 111(8)"non-capital loss"A:E — Amount included in non-capital loss; 112(2) — Dividends received from non-resident corporation; 112(2.1)–(2.6) — Where no deduction permitted; 112(3)–(3.32) — Denial of capital loss on share where intercorporate dividend previously paid; 112(4)–(4.3) — Loss on share held as inventory; 112(5.2)B(b)(i), (ii) — Adjustment for dividends received on mark-to-market property; 115(1)(d.1) — Deduction from income of non-resident; 137(5.2) — Credit union — allocations of taxable dividends and capital gains; 138(6) — Life insurer; 186(1) — Tax payable on certain taxable dividends; 186(3)"assessable dividend" — Part IV tax; 219(1)(b) — Branch tax on non-resident corporations; 256(6), (6.1) — Meaning of "controlled". See also at end of s. 112.

Interpretation Bulletins: IT-88R2: Stock dividends; IT-98R2: Investment corporations (archived); IT-269R3: Part IV tax on dividends received by a private corporation or a subject corporation; IT-328R3: Losses on shares on which dividends have been received; IT-385R2: Disposition of an income interest in a trust; IT-524: Trusts — flow-through of taxable dividends to a beneficiary — after 1987.

Information Circulars: 88-2, para. 13: General anti-avoidance rule — section 245 of the *Income Tax Act*.

Advance Tax Rulings: ATR-16: Inter-company dividends and interest expense; ATR-18: Term preferred shares; ATR-22R: Estate freeze using share exchange; ATR-27: Exchange and acquisition of interests in capital properties through rollovers and winding-up ("butterfly"); ATR-32: Rollover of fixed assets from Opco into Holdco; ATR-35: Partitioning of assets to get specific ownership — "butterfly"; ATR-46: Financial difficulty; ATR-57: Transfer of property for estate planning purposes; ATR-58: Divisive reorganization.

(2) Dividends received from non-resident corporation — Where a taxpayer that is a corporation has, in a taxation year, received a dividend from a corporation (other than a foreign affiliate of the taxpayer) that was taxable under subsection 2(3) for the year and that has, throughout the period from June 18, 1971 to the time when the dividend was received, carried on a business in Canada through a permanent establishment as defined by regulation, an amount equal to that proportion of the dividend that the paying corporation's taxable income earned in Canada for the immediately preceding year is of the whole of the amount that its taxable income for that year would have been if it had been resident in Canada throughout that year, may be deducted from the income of the receiving corporation for the taxation year for the purpose of computing its taxable income.

Related Provisions: 55(2) — Capital gains stripping; 112(2.1)–(2.6) — Where no deduction permitted; 112(5.2)B(b)(i), (ii) — Adjustment for dividends received on mark-to-market property; 113(1) — Deduction for dividend from foreign affiliate; 115(1)(d.1) — Deduction from income of non-resident; 137(5.2) — Credit union — allocations of taxable dividends and capital gains; 186(3)"assessable dividend" — Part IV tax; 247(1) — Dividend stripping. See also at end of s. 112.

Regulations: 400(2) (meaning of "permanent establishment" until April 26, 1989); 8201 (meaning of "permanent establishment" effective 10:00 p.m., April 26, 1989).

(2.1) Where no deduction permitted — No deduction may be made under subsection (1) or (2) in computing the taxable income of a specified financial institution in respect of a dividend received by it on a share that was, at the time the dividend was paid, a term preferred share, other than a dividend paid on a share of the capital stock of a corporation that was not acquired in the ordinary course of the business carried on by the institution, and for the purposes of this subsection, where a restricted financial institution received the dividend on a share of the capital stock of a mutual fund corporation or an investment corporation at any time after that mutual fund corporation or investment corporation has elected pursuant to subsection 131(10) not to be a restricted financial institution, the share shall be deemed to be a term preferred share acquired in the ordinary course of business.

Related Provisions: 84(4.2) — Deemed dividend where paid-up capital of term preferred share reduced; 191(4) — Subsection 112(2.1) deemed not to apply; 248(1) — "amount" of a stock dividend; 248(14) — Specified financial institution — corporations deemed related; 258(2) — Deemed dividend on term preferred share. See also at end of s. 112.

Selected Cases [subsec. 112(2.1)]: *Banner Pharmacaps NRO Ltd. v. R.*, [2003] 3 C.T.C. 2022 (TCC) (NRO status remained where no revocation of election); *Citibank Canada v. R.*, [2002] 2 C.T.C. 171 (FCA); aff'g [2001] 2 C.T.C. 2260 (TCC) (Instruments did not have character of debt, such as repayment, default).

Interpretation Bulletins: IT-52R4: Income bonds and income debentures (archived); IT-88R2: Stock dividends.

Advance Tax Rulings: ATR-10: Issue of term preferred shares; ATR-16: Inter-company dividends and interest expense; ATR-18: Term preferred shares; ATR-46: Financial difficulty.

(2.2) Guaranteed shares — No deduction may be made under subsection (1), (2) or 138(6) in computing the taxable income of a particular corporation in respect of a dividend received on a share of the capital stock of a corporation that was issued after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 where

(a) a person or partnership (in this subsection and subsection (2.21) referred to as the "guarantor") that is a specified financial institution or a specified person in relation to any such institution, but that is not the issuer of the share or an individual other than a trust, is, at or immediately before the time the dividend is paid, obligated, either absolutely or contingently and either immediately or in the future, to effect any undertaking (in this subsection and subsections (2.21) and (2.22) referred to as a "guarantee agreement"), including any guarantee, covenant or agreement to purchase or repurchase the share and including the lending of funds to or the placing of amounts on deposit with, or on behalf of, the particular corporation or any specified person in relation to the particular corporation given to ensure that

(i) any loss that the particular corporation or a specified person in relation to the particular corporation may sustain by reason of the ownership, holding or disposition of the share or any other property is limited in any respect, or

(ii) the particular corporation or a specified person in relation to the particular corporation will derive earnings by reason of the ownership, holding or disposition of the share or any other property; and

(b) the guarantee agreement was given as part of a transaction or event or a series of transactions or events that included the issuance of the share.

Related Provisions: 84(4.3) — Deemed dividend where paid-up capital of guaranteed share reduced; 87(4.2) — Amalgamations; 112(2.21) — Exceptions; 112(2.22) — Interpretation; 248(1) — "amount" of a stock dividend; 248(10) — Series of transactions; 248(14) — Specified financial institution — corporations deemed related; 258(3) — Deemed interest on preferred shares. See also at end of s. 112.

History: Subsec. 112(2.2) amended by 2001, c. 17, subsec. 88(1), applicable in respect of dividends received after 1998. The subsec. formerly read:

(2.2) Idem — No deduction may be made under subsection (1), (2) or 138(6) in computing the taxable income of a particular corporation in respect of a dividend received on a share of the capital stock of a corporation that was issued after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 where a person or partnership (other than the issuer of the share or an individual other than a trust) that is a specified financial institution or a specified person in relation to any such institution was, at or immediately before the time the dividend was paid, obligated, either absolutely or contingently and either immediately or in the future, to effect any undertaking (in this subsection referred to as a "guarantee agreement"), including any guarantee, covenant or agreement to purchase or repurchase the share and including the lending of funds to or the placing of amounts on deposit with, or on behalf of, the particular corporation or any specified person in relation to the particular corporation given to ensure that

(a) any loss that the particular corporation or a specified person in relation to the particular corporation may sustain by reason of the ownership, holding or disposition of the share or any other property is limited in any respect, or

(b) the particular corporation or a specified person in relation to the particular corporation will derive earnings by reason of the ownership, holding or disposition of the share or any other property,

and the guarantee agreement was given as part of a transaction or event or a series of transactions or events that included the issuance of the share, except that this subsection does not apply to a dividend received on

(c) a share that was at the time the dividend was received a share described in paragraph (e) of the definition "term preferred share" in subsection 248(1) during the applicable time period referred to in that paragraph,

(d) a grandfathered share, a taxable preferred share issued before December 16, 1987 or a prescribed share, or

(e) a taxable preferred share issued after December 15, 1987 and of a class of the capital stock of a corporation that is listed on a prescribed stock exchange where all guarantee agreements in respect of the share were given by the issuer of the share, by one or more persons that would be related to the issuer if this Act were read without reference to paragraph 251(5)(b) or by the issuer and one or more such persons unless at the time the dividend is received the shareholder or the shareholder and specified persons in relation to the shareholder receive dividends in respect of more than 10 per cent of the issued and outstanding shares to which the guarantee agreement applies,

and for the purposes of this subsection

(f) where a guarantee agreement in respect of a share is given at any particular time after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987, otherwise than pursuant to a written arrangement to do so entered into before 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987, the share shall be deemed to have been issued at the particular time and the guarantee agreement shall be deemed to have been given as part of a series of transactions that included the issuance of the share, and

(g) "specified person" has the meaning assigned by paragraph (h) of the definition "taxable preferred share" in subsection 248(1).

Regulations: 3200 (prescribed stock exchange); 6201(3) (prescribed share for 112(2.2)(g)); 6201(8) (prescribed share for 112(2.2)(d)).

Advance Tax Rulings: ATR-16: Inter-company dividends and interest expense; ATR-46: Financial difficulty.

(2.21) Exceptions — Subsection (2.2) does not apply to a dividend received by a particular corporation on

(a) a share that is at the time the dividend is received a share described in paragraph (e) of the definition "term preferred share" in subsection 248(1);

(b) a grandfathered share, a taxable preferred share issued before December 16, 1987 or a prescribed share;

(c) a taxable preferred share issued after December 15, 1987 and of a class of the capital stock of a corporation that is listed on a prescribed stock exchange where all guarantee agreements in respect of the share were given by one or more of the issuer of the share and persons that are related (otherwise than because of a right referred to in paragraph 251(5)(b)) to the issuer unless, at the time the dividend is paid to the particular corporation, dividends in respect of more than 10 per cent of the issued and outstanding shares to which the guarantee agreement applies are paid to the particular corporation or the particular corporation and specified persons in relation to the particular corporation; or

(d) a share

(i) that was not acquired by the particular corporation in the ordinary course of its business,

(ii) in respect of which the guarantee agreement was not given in the ordinary course of the guarantor's business, and

(iii) the issuer of which is, at the time the dividend is paid, related (otherwise than because of a right referred to in paragraph 251(5)(b)) to both the particular corporation and the guarantor.

Related Provisions: 112(2.22) — Interpretation. See also at end of s. 112.

History: Subsec. 112(2.21) added by 2001, c. 17, subsec. 88(1), applicable in respect of dividends received after 1998.

(2.22) Interpretation — For the purposes of subsections (2.2) and (2.21),

(a) where a guarantee agreement in respect of a share is given at any particular time after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987, otherwise than under a written arrangement to do so entered into before 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987, the share is deemed to have been issued at the particular time and the guarantee agreement is deemed to have been given as part of a series of transactions that included the issuance of the share; and

(b) "specified person" has the meaning assigned by paragraph (h) of the definition "taxable preferred share" in subsection 248(1).

Related Provisions: 248(1)"grandfathered share" — Share deemed not to be grandfathered share; 258(3) — Deemed interest on preferred share. See also at end of s. 112.

History: Subsec. 112(2.22) added by 2001, c. 17, subsec. 88(1), applicable in respect of dividends received after 1998.

(2.3) Idem — No deduction may be made under subsection (1) or (2) or 138(6) in computing the taxable income of a particular corporation in respect of a dividend received on a share of the capital stock of a corporation as part of a dividend rental arrangement of the particular corporation.

Related Provisions: 126(4.2) — No foreign tax credit on short-term securities acquisitions; 248(1)"dividend rental arrangement"(c) [to be repealed], (b) [draft] — Dividend rental arrangement includes arrangement where 112(2.3) applies; 260(6.1) — Deductible amount under securities lending arrangement. See also at end of s. 112.

Advance Tax Rulings: ATR-16: Inter-company dividends and interest expense.

(2.4) Where no deduction permitted — No deduction may be made under subsection (1) or (2) or subsection 138(6) in computing the taxable income of a particular corporation in respect of a dividend received on a share (in this subsection referred to as the "subject share"), other than an exempt share, of the capital stock of another corporation where

(a) any person or partnership was obligated, either absolutely or contingently, to effect an undertaking, including any guarantee, covenant or agreement to purchase or repurchase the subject share, under which an investor is entitled, either immediately or in the future, to receive or obtain any amount or benefit for the purpose of reducing the impact, in whole or in part, of any loss that an investor may sustain by virtue of the ownership, holding or disposition of the subject share, and any property is used, in whole or in part, either directly or indirectly in any manner whatever, to secure the undertaking; or

(b) the consideration for which the subject share was issued or any other property received, either directly or indirectly, by an issuer from an investor, or any property substituted therefor, is or includes

(i) an obligation of an investor to make payments that are required to be included, in whole or in part, in computing the income of the issuer, other than an obligation of a corporation that, immediately before the subject share was issued, would be related to the corporation that issued the subject share if this Act were read without reference to paragraph 251(5)(b), or

(ii) any right to receive payments that are required to be included, in whole or in part, in computing the income of the issuer where that right is held on condition that it or property substituted therefor may revert or pass to an investor or a person or partnership to be determined by an investor,

where that obligation or right was acquired by the issuer as part of a transaction or event or a series of transactions or events that included the issuance or acquisition of the subject share, or a share for which the subject share was substituted.

Related Provisions: 87(4.2) — Amalgamations; 112(2.5) — Application of subsec. (2.4); 112(2.6) — Definitions; 112(2.8) — Loss sustained by investor; 112(2.9) — Related corporations; 248(1) — "amount" of a stock dividend; 248(5) — Substituted property; 248(10) — Series of transactions. See also at end of s. 112.

History: Subpara. 112(2.4)(b)(i) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 84(1), to substitute "a corporation that, immediately" for "a corporation, that immediately", applicable after 5 p.m. EST, November 27, 1986.

Interpretation Bulletins: IT-88R2: Stock dividends.

(2.5) Application of subsec. (2.4) — Subsection (2.4) applies only in respect of a dividend on a share where, having regard to all the circumstances, it may reasonably be considered that the share was issued or acquired as part of a transaction or event or a series of transactions or events that enabled any corporation to earn investment income, or any income substituted therefor, and, as a result, the amount of its taxes payable under this Act for a taxation year is less than the amount that its taxes payable under this Act would be for the year if that investment income were the only income of the corporation for the year and all other taxation years and no amount were deductible under subsections 127(5) and 127.2(1) in computing its taxes payable under this Act.

Related Provisions: 248(10) — Series of transactions.

(2.6) Definitions — For the purposes of this subsection and subsection (2.4),

"exempt share" means

(a) a prescribed share,

(b) a share of the capital stock of a corporation issued before 5:00 p.m. Eastern Standard Time, November 27, 1986, other than a share held at that time

(i) by the issuer, or

(ii) by any person or partnership where the issuer may become entitled to receive any amount after that time by way of subscription proceeds or contribution of capital with respect to that share pursuant to an agreement made before that time, or

(c) a share that was, at the time the dividend referred to in subsection (2.4) was received, a share described in paragraph (e) of the definition "term preferred share" in subsection 248(1) during the applicable time period referred to in that paragraph;

History: Para. (c) of "exempt share" in subsec 112(2.6) added by 1994, c. 21, subsec. 51(1), applicable after December 21, 1992.

"investor" means the particular corporation referred to in subsection (2.4) and a person with whom that corporation does not deal at arm's length and any partnership or trust of which that corporation, or a person with whom that corporation does not deal at arm's length, is a member or beneficiary, but does not include the other corporation referred to in that subsection;

"issuer" means the other corporation referred to in subsection (2.4) and a person with whom that corporation does not deal at arm's length and any partnership or trust of which that corporation, or a person with whom that corporation does not deal at arm's length, is a member or beneficiary, but does not include the particular corporation referred to in that subsection.

Related Provisions: 112(2.7) — Change in agreement or condition; 248(13) — Interests in trusts and partnerships. See also at end of s. 112.

(2.7) Change in agreement or condition — For the purposes of the definition "exempt share" in subsection (2.6), where at any time after 5:00 p.m. Eastern Standard Time, November 27, 1986 the terms or conditions of a share of the capital stock of a corporation have been changed or any agreement in respect of the share has been changed or entered into by the corporation, the share shall be deemed to have been issued at that time.

(2.8) Loss sustained by investor — For the purposes of paragraph (2.4)(a), any loss that an investor may sustain by virtue of the ownership, holding or disposition of the subject share referred to in that paragraph shall be deemed to include any loss with respect to an obligation or share that was issued or acquired as part of a transaction or event or a series of transactions or events that included the issuance or acquisition of the subject share, or a share for which the subject share was substituted.

Related Provisions: 248(10) — Series of transactions.

(2.9) Related corporations — For the purposes of subparagraph (2.4)(b)(i), where it may reasonably be considered having regard to all the circumstances that a corporation has become related to any other corporation for the purpose of avoiding any limitation upon the deduction of a dividend under subsection (1), (2) or 138(6), the cor-

poration shall be deemed not to be related to the other corporation.

Related Provisions: 87(2)(rr) — Amalgamations — tax on taxable preferred shares. See also at end of s. 112.

(3) Loss on share that is capital property — Subject to subsections (5.5) and (5.6), the amount of any loss of a taxpayer (other than a trust) from the disposition of a share that is capital property of the taxpayer (other than a share that is property of a partnership) is deemed to be the amount of the loss determined without reference to this subsection minus,

(a) where the taxpayer is an individual, the lesser of

(i) the total of all amounts each of which is a dividend received by the taxpayer on the share in respect of which an election was made under subsection 83(2) where subsection 83(2.1) does not deem the dividend to be a taxable dividend, and

(ii) the loss determined without reference to this subsection minus all taxable dividends received by the taxpayer on the share; and

(b) where the taxpayer is a corporation, the total of all amounts received by the taxpayer on the share each of which is

(i) a taxable dividend, to the extent of the amount of the dividend that was deductible under this section or subsection 115(1) or 138(6) in computing the taxpayer's taxable income or taxable income earned in Canada for any taxation year,

(ii) a dividend in respect of which an election was made under subsection 83(2) where subsection 83(2.1) does not deem the dividend to be a taxable dividend, or

(iii) a life insurance capital dividend.

Related Provisions: 40(2)(g) — Restriction on capital losses; 40(3.3), (3.4) — Limitation on loss where share acquired by affiliated person; 40(3.7) — Application to non-resident individual; 53(1)(f) — Addition to ACB; 87(2)(x) — Amalgamations — flow-through to new corporation; 107(1)(c), (d) — Parallel stop-loss rule on disposition of interest in trust that flowed dividends out to corporation; 107.4(3)(b)(ii) — Application of stop-loss rule to qualifying disposition; 112(3.01) — Exclusion for certain dividends; 112(3.1), (3.2) — Loss on share that is capital property of partnership or trust; 112(4)–(4.22) — Shares held as inventory; 112(5.2)C(b) — Adjustment for dividends received on mark-to-market property; 112(7) — Rules where shares exchanged. See also at end of s. 112.

History: Subpara. (b)(iv) of the amendment in 1998, c. 19, subsec. 131(11) (see below) amended by 2001, c. 17, s. 251, applicable to 2000 *et seq.*, and

(a) in respect of the 1998 and 1999 taxation years, where a taxpayer and a person who would have been the taxpayer's common-law partner in the 1998 or 1999 taxation year jointly elect under s. 144 of 2000, c. 12 to have ss. 130 to 142 of that Act apply, if applicable, to the 1998 or 1999 taxation year, subpara. 131(11)(b)(iv), as amended, shall be read as follows for the applicable year:

(iv) the disposition is made by

(A) the individual or the individual's spouse or common-law partner,

(B) the estate of the individual or of the individual's spouse or common-law partner within the estate's first taxation year,

(C) the particular trust where it is a trust described in paragraph 104(4)(a) or (a.1) of the *Income Tax Act* in respect of a spouse or common-law partner, the spouse or common-law partner is the beneficiary referred to in subparagraph (i) and the disposition occurs before the end of the trust's third taxation year that begins after the death of the spouse or common-law partner, or

(D) a trust described in paragraph 73(1)(c) of that Act created by the individual in respect of the individual's spouse or common-law partner, or a trust described in paragraph 70(6)(b) of that Act created by the individual's will in respect of the individual's spouse or common-law partner, before the end of the trust's third taxation year that begins after the death of the spouse or common-law partner;

(b) in respect of the 2000 taxation year, where a joint election has not been filed by the taxpayer and a person who would have been the taxpayer's common-law partner in the year 2000 to have ss. 130 to 142 of the *Modernization of Benefits and Obligations Act* apply to the year 2000, subpara. 131(11)(b)(iv), as amended, shall be read as follows for that year:

(iv) the disposition is made by

(A) the individual or the individual's spouse,

(B) the estate of the individual or of the individual's spouse within the estate's first taxation year,

(C) the particular trust where it is a post-1971 spousal or common-law partner trust or a trust described in paragraph 104(4)(a.1) of the *Income Tax Act*, the individual or the individual's spouse, as the case may be, is the beneficiary referred to in subparagraph (i) and the disposition occurs before the end of the trust's third taxation year that begins after the death of the individual or the individual's spouse, as the case may be, or

(D) a trust described in paragraph 73(1.01)(c) of that Act created by the individual, or a trust described in paragraph 70(6)(b) of that Act created by the individual's will in respect of the individual's spouse, before the end of the trust's third taxation year that begins after the death of the individual or the individual's spouse, as the case may be;

Subsec. 112(3) amended by 1998, c. 19, subsec. 131(1), applicable (by 131(11)) to dispositions that occur after April 26, 1995, other than

(a) a disposition that occurs pursuant to an agreement in writing made before April 27, 1995;

(b) a disposition of a share of the capital stock of a corporation that is made to the corporation if

(i) on April 26, 1995 the share was owned by an individual (other than a trust) or by a particular trust under which an individual (other than a trust) was a beneficiary,

(ii) on April 26, 1995 a corporation, or a partnership of which a corporation is a member, was a beneficiary of a life insurance policy that insured the life of the individual or the individual's spouse,

(iii) it was reasonable to conclude on April 26, 1995 that a main purpose of the life insurance policy was to fund, directly or indirectly, in whole or in part, a redemption, acquisition or cancellation of the share by the corporation that issued the share, and

(iv) [as amended by 2001, c. 17; see above] the disposition is made by

(A) the individual or the individual's spouse or common-law partner,

(B) the estate of the individual or of the individual's spouse or common-law partner within the estate's first taxation year,

(C) the particular trust where it is a post-1971 spousal or common-law partner trust or a trust described in para. 104(4)(a.1) of the Act, the individual's spouse or common-law partner, as the case may be, is the beneficiary referred to in subpara. (i) and the disposition occurs before the end of the trust's third taxation year that begins after the death of the individual's spouse or common-law partner, as the case may be, or

(D) a trust described in para. 73(1.01)(c) of the Act created by the individual, or a trust described in para. 70(6)(b) of the Act created by the individual's will in respect of the individual's spouse or common-law partner, before the end of the trust's third taxation year that begins after the death of the individual or the individual's spouse or common-law partner, as the case may be;

(c) a disposition of a share of the capital stock of a corporation owned by an individual on April 26, 1995 that was made by the individual's estate before 1997;

(d) a disposition of a share of the capital stock of a corporation owned by an estate on April 26, 1995, the first taxation year of which ended after that day, that was made by the estate before 1997; or

(e) a disposition of a share of the capital stock of a corporation owned by an individual on April 26, 1995 where the individual is a trust described in para. 104(4)(a) or (a.1) of the Act in respect of a spouse, that was made by the trust after the spouse's death and before 1997.

Subsec. 131(12) of the said c. 19 provides:

(12) For the purposes of paragraph [(b) above] and this subsection, a share of the capital stock of a corporation acquired in exchange for another share in a transaction to which section 51, 85, 86 or 87 of the Act applies is deemed to be the same share as the other share.

Subsec. 112(3) formerly read:

(3) Loss on share that is capital property — Subject to subsections (5.5) and (5.6), where a corporation owns a share that is a capital property and receives a taxable dividend, a capital dividend or a life insurance capital dividend in respect of that share, the amount of any loss of the corporation arising from transactions with reference to the share on which the dividend was received shall, unless it is established by the corporation that

(a) the corporation owned the share 365 days or longer before the loss was sustained, and

(b) the corporation and persons with whom the corporation was not dealing at arm's length did not, at the time the dividend was received, own in the aggregate more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received,

be deemed to be the amount of that loss otherwise determined, minus the total of all amounts each of which is an amount received by the corporation in respect of

(c) a taxable dividend on the share to the extent that the amount of the dividend was deductible from the corporation's income for any taxation year by virtue of this section or subsection 138(6) and was not an amount on which the corporation was required to pay tax under Part VII of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read on March 31, 1977,

(d) a capital dividend on the share, or

(e) a life insurance capital dividend on the share.

The opening words of subsec. 112(3) amended by 1995, c. 21, subsec. 56(1), applicable to dispositions occurring after October 30, 1994. The opening words formerly read:

(3) Loss on share that is capital property — Where a corporation owns a share that is a capital property and receives a taxable dividend, a capital dividend or a life insurance capital dividend in respect of that share, the amount of any loss of the corporation arising from transactions with reference to the share on which the dividend was received shall, unless it is established by the corporation that

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-88R2: Stock dividends; IT-328R3: Losses on shares on which dividends have been received.

I.T. Technical News: 12 (stop-loss provisions — grandfathering).

(3.01) Loss on share that is capital property — excluded dividends — A dividend shall not be included in the total determined under subparagraph (3)(a)(i) or paragraph (3)(b) where the taxpayer establishes that

(a) it was received when the taxpayer and persons with whom the taxpayer was not dealing at arm's length did not own in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received; and

(b) it was received on a share that the taxpayer owned throughout the 365-day period that ended immediately before the disposition.

Related Provisions: 87(2)(x) — Amalgamations — flow-through to new corporation; 112(5.6) — Stop-loss rules restricted.

History: Subsec. 112(3.01) added by 1998, c. 19, subsec. 131(1), applicable on the same basis as subsec. 112(3).

(3.1) Loss on share held by partnership — Subject to subsections (5.5) and (5.6), where a taxpayer (other than a partnership or a mutual fund trust) is a member of a partnership, the taxpayer's share of any loss of the partnership from the disposition of a share that is held by a particular partnership as capital property is deemed to be that share of the loss determined without reference to this subsection minus,

(a) where the taxpayer is an individual, the lesser of

(i) the total of all amounts each of which is a dividend received by the taxpayer on the share in respect of which an election was made under subsection 83(2) where subsection 83(2.1) does not deem the dividend to be a taxable dividend, and

(ii) that share of the loss determined without reference to this subsection minus all taxable dividends received by the taxpayer on the share;

(b) where the taxpayer is a corporation, the total of all amounts received by the taxpayer on the share each of which is

(i) a taxable dividend, to the extent of the amount of the dividend that was deductible under this section or subsection 115(1) or 138(6) in computing the taxpayer's taxable income or taxable income earned in Canada for any taxation year,

(ii) a dividend in respect of which an election was made under subsection 83(2) where subsection 83(2.1) does not deem the dividend to be a taxable dividend, or

(iii) a life insurance capital dividend; and

(c) where the taxpayer is a trust, the total of all amounts each of which is

(i) a taxable dividend, or

(ii) a life insurance capital dividend

received on the share and designated under subsection 104(19) or (20) by the trust in respect of a beneficiary that was a corporation, partnership or trust.

Related Provisions: 40(3.3), (3.4) — Limitation on loss where share acquired by affiliated person; 40(3.7) — Application to non-resident individual; 53(1)(f) — Addition to ACB; 87(2)(x) — Amalgamations — flow-through to new corporation; 100(4) — Application of stop-loss rule to disposition of interest in partnership; 104(20) — Designation re non-taxable dividends; 107.4(3)(b)(ii) — Application of stop-loss rule to qualifying disposition; 112(3.11) — Exclusion for certain dividends; 112(3.12) — Amount designated by trust to beneficiary that is a partnership or trust; 112(5.2)C(c) — Adjustment for dividends received on mark-to-market property; 112(7) — Rules where shares exchanged. See also at end of s. 112.

History: Subsec. 112(3.1) amended by 1998, c. 19, subsec. 131(1), applicable on the same basis as subsec. 112(3). Subsec. 112(3.1) formerly read:

(3.1) Loss on share that is capital property of partnership — Subject to subsections (5.5) and (5.6), where a corporation is a member of a partnership and the corporation receives a taxable dividend, a capital dividend or a life insurance capital dividend in respect of a share that is a capital property of the partnership, the corporation's share of any loss of the partnership arising with respect to the share on which the dividend was received shall, unless it is established by the corporation that

(a) the partnership held the share 365 days or longer before the loss was sustained, and

(b) the partnership, the corporation and persons with whom the corporation was not dealing at arm's length did not, at the time the dividend was received, hold in the aggregate more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received,

be deemed to be the amount of that loss otherwise determined, minus the total of all amounts each of which is an amount received by the corporation in respect of

(c) a taxable dividend on the share to the extent that the amount of the dividend was deductible from the corporation's income for any taxation year by virtue of this section or subsection

138(6) and was not an amount on which the corporation was required to pay tax under Part VII of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read on March 31, 1977,

(d) a capital dividend on the share, or

(e) a life insurance capital dividend on the share.

The opening words of subsec. 112(3.1) amended by 1995, c. 21, subsec. 56(2), applicable to dispositions occurring after October 30, 1994. The opening words formerly read:

(3.1) Idem — Where a corporation is a member of a partnership and the corporation receives a taxable dividend, a capital dividend or a life insurance capital dividend in respect of a share that is a capital property of the partnership, the corporation's share of any loss of the partnership arising with respect to the share on which the dividend was received shall, unless it is established by the corporation that

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-88R2: Stock dividends; IT-328R3: Losses on shares on which dividends have been received.

I.T. Technical News: 12 (stop-loss provisions — grandfathering).

(3.11) Loss on share held by partnership — excluded dividends — A dividend shall not be included in the total determined under subparagraph (3.1)(a)(i) or paragraph (3.1)(b) or (c) where the taxpayer establishes that

(a) it was received when the particular partnership, the taxpayer and persons with whom the taxpayer was not dealing at arm's length did not hold in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received; and

(b) it was received on a share that the particular partnership held throughout the 365-day period that ended immediately before the disposition.

Related Provisions: 87(2)(x) — Amalgamations — flow-through to new corporation; 112(5.6) — Stop-loss rules restricted.

History: Subsec. 112(3.11) added by 1998, c. 19, subsec. 131(1), applicable on the same basis as subsec. 112(3).

(3.12) Loss on share held by partnership — excluded dividends — A taxable dividend received on a share and designated under subsection 104(19) by a particular trust in respect of a beneficiary that was a partnership or trust shall not be included in the total determined under paragraph (3.1)(c) where the particular trust establishes that the dividend was received by an individual (other than a trust).

History: Subsec. 112(3.12) added by 1998, c. 19, subsec. 131(1), applicable on the same basis as subsec. 112(3).

(3.2) Loss on share held by trust — Subject to subsections (5.5) and (5.6), the amount of any loss of a trust (other than a mutual fund trust) from the disposition of a share of the capital stock of a corporation that is capital property of the trust is deemed to be the amount of the loss determined without reference to this subsection minus the total of

(a) the amount, if any, by which the lesser of

(i) the total of all amounts each of which is a dividend received by the trust on the share in respect of which an election was made under subsection 83(2) where subsection 83(2.1) does not deem the dividend to be a taxable dividend, and

(ii) the loss determined without reference to this subsection minus the total of all amounts each of which is the amount of a taxable dividend

(A) received by the trust on the share,

(B) received on the share and designated under subsection 104(19) by the trust in respect of a beneficiary who is an individual (other than a trust), or

(C) received on the share and designated under subsection 104(19) by the trust in respect of a beneficiary that was a corporation, partnership or another trust where the trust establishes that

(I) it owned the share throughout the 365-day period that ended immediately before the disposition, and

(II) the dividend was received while the trust, the beneficiary and persons not dealing at arm's length with the beneficiary owned in total less than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received

exceeds

(iii) where the trust is an individual's estate, the share was acquired as a consequence of the individual's death and the disposition occurs during the trust's first taxation year, 1/2 of the lesser of

(A) the loss determined without reference to this subsection, and

(B) the individual's capital gain from the disposition of the share immediately before the individual's death, and

(b) the total of all amounts each of which is

(i) a taxable dividend, or

(ii) a life insurance capital dividend

received on the share and designated under subsection 104(19) or (20) by the trust in respect of a beneficiary that was a corporation, partnership or trust.

Related Provisions: 40(3.7) — Application to non-resident individual; 53(1)(f) — Addition to ACB; 87(2)(x) — Amalgamations — flow-through to new corporation; 104(20) — Designation re non-taxable dividends; 107.4(3)(b)(ii) — Application of stop-loss rule to qualifying disposition; 112(3.3), (3.31) — Exceptions; 112(5.2)C(b) — Adjustment for dividends received on mark-to-market property; 112(5.6) — Stop-loss rules restricted; 112(7) — Rules where shares exchanged. See also at end of s. 112.

History: Subpara. 112(3.2)(a)(iii) amended to replace the fraction "1/4" with "1/2" by 2001, c. 17, subsec. 88(2), applicable to dispositions that occur after February 27, 2000 except that, for dispositions that occurred before October 18, 2000, the reference to "1/2" shall be read as a reference to "1/3".

Subsec. 112(3.2) amended by 1998, c. 19, subsec. 131(1), applicable on the same basis as subsec. 112(3). Subsec. 112(3.2) formerly read:

(3.2) Loss on share that is capital property of trust — Subject to subsections (5.5) and (5.6), where a corporation is a beneficiary of a trust (other than a prescribed trust) that owns a share that is capital property and the corporation receives a taxable dividend in respect of that share pursuant to a designation under subsection 104(19) or the trust has made a designation under subsection 104(20) in respect of the corporation for a capital dividend or a life insurance capital dividend on that share, the amount of any loss of the trust arising with respect to the share on which the dividend was subject to a designation shall, unless it is established by the corporation that

(a) the trust owned the share 365 days or longer before the loss was sustained, and

(b) the trust, the corporation and persons with whom the corporation was not dealing at arm's length did not, at the time the dividend was received, own in the aggregate more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received,

be deemed to be the amount of that loss otherwise determined, minus the total of all amounts each of which is a taxable dividend, a capital dividend or a life insurance capital dividend in respect of

that share that was designated under subsection 104(19) or (20) in respect of a beneficiary that was a corporation.

The opening words of subsec. 112(3.2) amended by 1995, c. 21, subsec. 56(3), applicable to dispositions occurring after October 30, 1994. The opening words formerly read:

(3.2) Idem — Where a corporation is a beneficiary of a trust (other than a prescribed trust) that owns a share that is capital property and the corporation receives a taxable dividend in respect of that share pursuant to a designation under subsection 104(19) or the trust has made a designation under subsection 104(20) in respect of the corporation for a capital dividend or a life insurance capital dividend on that share, the amount of any loss of the trust arising with respect to the share on which the dividend was subject to a designation shall, unless it is established by the corporation that

Interpretation Bulletins: IT-88R2: Stock dividends; IT-328R3: Losses on shares on which dividends have been received.

I.T. Technical News: 12 (stop-loss provisions — grandfathering).

(3.3) Loss on share held by trust — special cases — Notwithstanding subsection (3.2), where a trust has at any time acquired a share of the capital stock of a corporation because of subsection 104(4), the amount of any loss of the trust from a disposition after that time is deemed to be the amount of the loss determined without reference to subsection (3.2) and this subsection minus the total of

(a) the amount, if any, by which the lesser of

(i) the total of all amounts each of which is a dividend received after that time by the trust on the share in respect of which an election was made under subsection 83(2) where subsection 83(2.1) does not deem the dividend to be a taxable dividend, and

(ii) the loss determined without reference to subsection (3.2) and this subsection minus the total of all amounts each of which is the amount of a taxable dividend

(A) received by the trust on the share after that time,

(B) received on the share after that time and designated under subsection 104(19) by the trust in respect of a beneficiary who is an individual (other than a trust), or

(C) received on the share after that time and designated under subsection 104(19) by the trust in respect of a beneficiary that was a corporation, partnership or another trust where the trust establishes that

(I) it owned the share throughout the 365-day period that ended immediately before the disposition, and

(II) the dividend was received when the trust, the beneficiary and persons not dealing at arm's length with the beneficiary owned in total less than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received

exceeds

(iii) ½ of the lesser of

(A) the loss from the disposition, determined without reference to subsection (3.2) and this subsection, and

(B) the trust's capital gain from the disposition immediately before that time of the share because of subsection 104(4), and

(b) the total of all amounts each of which is a taxable dividend received on the share after that time and designated under subsection 104(19) by the trust in respect of a beneficiary that was a corporation, partnership or trust.

Related Provisions: 40(3.7) — Application to non-resident individual; 87(2)(x) — Amalgamations — flow-through to new corporation; 107.4(3)(b)(ii) — Application of stop-loss rule to qualifying disposition; 112(3.31), (3.32) — Excluded dividends; 112(5.6) — Stop-loss rules restricted; 112(7) — Rules where shares exchanged.

History: Subpara. 112(3.3)(a)(iii) amended to replace the fraction "¼" with "½" by 2001, c. 17, subsec. 88(2), applicable to dispositions that occur after February 27, 2000 except that, for dispositions that occurred before October 18, 2000, the reference to "½" shall be read as a reference to "⅓".

Subsec. 112(3.3) added by 1998, c. 19, subsec. 131(1), applicable on the same basis as subsec. 112(3).

(3.31) Loss on share held by trust — excluded dividends — No dividend received by a trust shall be included under subparagraph (3.2)(a)(i) or (b)(ii) or (3.3)(a)(i) where the trust establishes that the dividend

(a) was received,

(i) in any case where the dividend was designated under subsection 104(19) or (20) by the trust, when the trust, the beneficiary and persons with whom the beneficiary was not dealing at arm's length did not own in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received, or

(ii) in any other case, when the trust and persons with whom the trust was not dealing at arm's length did not own in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received, and

(b) was received on a share that the trust owned throughout the 365-day period that ended immediately before the disposition.

Related Provisions: 87(2)(x) — Amalgamations — flow-through to new corporation; 104(20) — Designation re non-taxable dividends; 112(5.6) — Stop-loss rules restricted; 112(7) — Rules where shares exchanged.

History: Subsec. 112(3.31) added by 1998, c. 19, subsec. 131(1), applicable on the same basis as subsec. 112(3).

(3.32) Loss on share held by trust — excluded dividends — No taxable dividend received on the share and designated under subsection 104(19) by the trust in respect of a beneficiary that was a corporation, partnership or trust shall be included under paragraph (3.2)(b) or (3.3)(b) where the trust establishes that the dividend was received by an individual (other than a trust), or

(a) was received when the trust, the beneficiary and persons with whom the beneficiary was not dealing at arm's length did not own in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received; and

(b) was received on a share that the trust owned throughout the 365-day period that ended immediately before the disposition.

Related Provisions: 87(2)(x) — Amalgamations — flow-through to new corporation.

History: Subsec. 112(3.32) added by 1998, c. 19, subsec. 131(1), applicable on the same basis as subsec. 112(3).

(4) Loss on share that is not capital property — Subject to subsections (5.5) and (5.6), the amount of any

loss of a taxpayer (other than a trust) from the disposition of a share of the capital stock of a corporation that is property (other than capital property) of the taxpayer is deemed to be the amount of the loss determined without reference to this subsection minus,

(a) where the taxpayer is an individual and the corporation is resident in Canada, the total of all dividends received by the individual on the share;

(b) where the taxpayer is a partnership, the total of all dividends received by the partnership on the share; and

(c) where the taxpayer is a corporation, the total of all amounts received by the taxpayer on the share each of which is

(i) a taxable dividend, to the extent of the amount of the dividend that was deductible under this section, section 113 or subsection 115(1) or 138(6) in computing the taxpayer's taxable income or taxable income earned in Canada for any taxation year, or

(ii) a dividend (other than a taxable dividend).

Related Provisions: 87(2)(x) — Amalgamations — flow-through to new corporation; 93(2)–(2.3) — Loss limitation on disposition of share; 112(4.01) — Exclusion for certain dividends; 112(5.2)C(b) — Adjustment for dividends received on mark-to-market property. See also at end of s. 112.

History: Subsec. 112(4) amended by 1998, c. 19, subsec. 131(1), applicable to dispositions that occur after April 26, 1995. Subsec. 112(4) formerly read:

(4) Subject to subsections (5.5) and (5.6), where a taxpayer owns a share that is not a capital property and receives a dividend in respect of that share, the amount of any loss of the taxpayer arising from transactions with reference to the share on which the dividend was received shall, unless it is established by the taxpayer that

(a) the taxpayer owned the share 365 days or longer before the loss was sustained, and

(b) the taxpayer and persons with whom the taxpayer was not dealing at arm's length, did not, at the time the dividend was received, own in the aggregate more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received,

be deemed to be the amount of that loss otherwise determined, minus

(c) where the taxpayer is an individual and the corporation is a taxable Canadian corporation, the total of all amounts each of which is a dividend (other than a capital gains dividend within the meaning assigned by subsection 131(1)) on the share received by the taxpayer,

(d) where the taxpayer is a corporation, the total of all amounts each of which is

(i) a taxable dividend, to the extent of the amount thereof that was deductible under this section or subsection 115(1) or 138(6) in computing the taxpayer's taxable income or taxable income earned in Canada for any taxation year, or

(ii) a dividend (other than a taxable dividend or a dividend deemed by subsection 131(1) to be a capital gains dividend),

on the share received by the taxpayer, and

(e) in any other case, nil.

The opening words of subsec. 112(4) amended by 1995, c. 21, subsec. 56(4), applicable to dispositions occurring after October 30, 1994. The opening words formerly read:

(4) Where a taxpayer owns a share that is not a capital property and receives a dividend in respect of that share, the amount of any loss of the taxpayer arising from transactions with reference to the share on which the dividend was received shall, unless it is established by the taxpayer that

Subpara. 112(4)(d)(ii) substituted by 1994, c. 21, subsec. 51(2), applicable to the determination of losses arising in 1990 *et seq.* and, where a taxpayer has elected under subsec. 84(6) of 1994, c. 7, Sch. II (1991, c. 49) (see below), in the taxpayer's 1985 to 1989 taxation years, in which case, notwithstanding subsecs. 152(4) to (5), such assessments and determinations shall be made as are necessary to give effect to that amendment. That subpara. formerly read:

(ii) a dividend, other than a taxable dividend,

That portion of subsec. 112(4) following para. (b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 84(2), applicable (by subsec. 84(6)) to the determination of losses arising

(a) in 1990 *et seq.*, and

(b) where a taxpayer so elects by notifying the Minister of National Revenue in writing before 1992 [1994, c. 7, Sch. VIII (1993, c. 24), s. 159 provides that such an election made before December 11, 1993 shall be deemed to have been made before 1992], in the taxpayer's 1985 to 1989 taxation years, in which case, notwithstanding subsecs. 152(4) to (5), such assessments of tax, interest and penalties shall be made as are necessary to give effect to the election,

except that the subsec. as amended does not apply to the amount of a dividend received by a taxpayer on which the taxpayer was required to pay tax under Part VII as it read on March 31, 1977. That portion of subsec. 112(4) formerly read:

be deemed to be the amount of that loss otherwise determined, minus the total of all amounts received by the taxpayer in respect of dividends (other than capital gains dividends within the meaning assigned by subsection 131(1)) on the share to the extent that the amounts of those dividends were not amounts on which the taxpayer was required to pay tax under Part VII of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read on March 31, 1977.

Interpretation Bulletins: IT-88R2: Stock dividends; IT-328R3: Losses on shares on which dividends have been received.

(4.01) Loss on share that is not capital property — excluded dividends — A dividend shall not be included in the total determined under paragraph (4)(a), (b) or (c) where the taxpayer establishes that

(a) it was received when the taxpayer and persons with whom the taxpayer was not dealing at arm's length did not own in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received; and

(b) it was received on a share that the taxpayer owned throughout the 365-day period that ended immediately before the disposition.

Related Provisions: 87(2)(x) — Amalgamations — flow-through to new corporation; 112(5.6) — Stop-loss rules restricted.

History: Subsec. 112(4.01) added by 1998, c. 19, subsec. 131(1), applicable to dispositions that occur after April 26, 1995.

(4.1) Fair market value of shares held as inventory — For the purpose of section 10, the fair market value at any time of a share of the capital stock of a corporation is deemed to be equal to the fair market value of the share at that time, plus

(a) where the shareholder is a corporation, the total of all amounts received by the shareholder on the share before that time each of which is

(i) a taxable dividend, to the extent of the amount of the dividend that was deductible under this section, section 113 or subsection 115(1) or 138(6) in computing the shareholder's taxable income or taxable income earned in Canada for any taxation year, or

(ii) a dividend (other than a taxable dividend);

(b) where the shareholder is a partnership, the total of all amounts each of which is a dividend received by the shareholder on the share before that time; and

(c) where the shareholder is an individual and the corporation is resident in Canada, the total of all amounts each of which is a dividend received by the share-

holder on the share before that time (or, where the shareholder is a trust, that would have been so received if this Act were read without reference to subsection 104(19)).

Related Provisions: 87(2)(x) — Amalgamations — flow-through to new corporation; 112(4.11) — Exclusion for certain dividends. See also at end of s. 112.

History: Subsec. 112(4.1) amended by 1998, c. 19, subsec. 131(1), applicable to taxation years that end after April 26, 1995. Subsec. 112(4.1) formerly read:

(4.1) Fair market value of share that is not capital property — Where a taxpayer (other than a prescribed trust) or partnership (in this subsection referred to as the "holder") holds a share that is not a capital property and a dividend is received in respect of that share, for the purpose of subsection 10(1) and any regulations made under that subsection, the fair market value of the share at any particular time after November 12, 1981 shall, unless it is established by the holder that

(a) the holder held the share 365 days or longer before the particular time, and

(b) the holder and persons with whom the holder was not dealing at arm's length did not, at the time the dividend was received, hold in the aggregate more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received,

be deemed to be an amount equal to the fair market value of that share at the particular time otherwise determined, plus

(c) where the holder is an individual and the corporation is a taxable Canadian corporation, the total of all amounts each of which is a dividend (other than a capital gains dividend within the meaning assigned by subsection 131(1)) on the share received before the particular time by the holder or that would have been so received if this Act were read without reference to subsection 104(19),

(d) where the holder is a corporation, the total of all amounts each of which is

(i) a taxable dividend, to the extent of the amount thereof that was deductible under this section, section 113 or subsection 115(1) or 138(6) in computing the holder's taxable income or taxable income earned in Canada for any taxation year, or

(ii) a dividend (other than a taxable dividend or a dividend deemed by subsection 131(1) to be a capital gains dividend),

on the share received before the particular time by the holder,

(e) where the holder is a partnership, the total of all amounts each of which is a dividend (other than a capital gains dividend within the meaning assigned by subsection 131(1)) on the share received before the particular time by the holder, and

(f) in any other case, nil.

Subpara. 112(4.1)(d)(ii) substituted by 1994, c. 21, subsec. 51(3), applicable to 1990 *et seq.* and, where a taxpayer has elected under subsec. 84(7) of 1994, c. 7, Sch. II (1991, c. 49) (see below), to the taxpayer's 1985 to 1989 taxation years, in which case, notwithstanding subsecs. 152(4) to (5), such assessments and determinations shall be made as are necessary to give effect to that amendment. That subpara. formerly read:

(ii) a dividend, other than a taxable dividend,

That portion of subsec. 112(4.1) following para. (b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 84(3), applicable (by subsec. 84(7))

(a) to 1990 *et seq.*, and

(b) where a taxpayer so elects by notifying the Minister of National Revenue in writing before 1992 [1994, c. 7, Sch. VIII (1993, c. 24), s. 159 provides that such an election made before December 11, 1993 shall be deemed to have been made before 1992], to the taxpayer's 1985 to 1989 taxation years, in which case, notwithstanding subsecs. 152(4) to (5), such assessments of tax, interest and penalties shall be made as are necessary to give effect to the election,

except that the subsec. as amended does not apply to the amount of a dividend received by a holder on which the holder was required to pay tax under Part VII of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read on March 31, 1977. That portion of subsec. 112(4.1) formerly read:

be deemed to be the total of the fair market value of the share at the particular time otherwise determined and all amounts received before the particular time by the holder in respect of dividends (other than capital gains dividends within the meaning assigned by subsection 131(1)) on the share determined as if this Act were read without reference to subsection 104(19).

Interpretation Bulletins: IT-88R2: Stock dividends; IT-328R3: Losses on shares on which dividends have been received.

(4.11) Fair market value of shares held as inventory — excluded dividends — A dividend shall not be included in the total determined under paragraph (4.1)(a), (b) or (c) where the shareholder establishes that

(a) it was received while the shareholder and persons with whom the shareholder was not dealing at arm's length did not hold in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received; and

(b) it was received on a share that the shareholder held throughout the 365-day period that ended at the time referred to in subsection (4.1).

Related Provisions: 87(2)(x) — Amalgamations — flow-through to new corporation.

History: Subsec. 112(4.11) added by 1998, c. 19, subsec. 131(1), applicable to taxation years that end after April 26, 1995.

(4.2) Loss on share held by trust — Subject to subsections (5.5) and (5.6), the amount of any loss of a trust from the disposition of a share that is property (other than capital property) of the trust is deemed to be the amount of the loss determined without reference to this subsection minus

(a) the total of all amounts each of which is a dividend received by the trust on the share, to the extent that the amount was not designated under subsection 104(20) in respect of a beneficiary of the trust; and

(b) the total of all amounts each of which is a dividend received on the share that was designated under subsection 104(19) or (20) by the trust in respect of a beneficiary of the trust.

Related Provisions: 87(2)(x) — Amalgamations — flow-through to new corporation; 104(20) — Designation re non-taxable dividends; 112(3.2) — Stop-loss rule; 112(4.21), (4.22) — Exclusions for certain dividends; 112(5.2)C(b) — Adjustment for dividends received on mark-to-market property. See also at end of s. 112.

History: Subsec. 112(4.2) amended by 1998, c. 19, subsec. 131(1), applicable to dispositions that occur after April 26, 1995. Subsec. 112(4.2) formerly read:

(4.2) Where no deduction permitted — Subject to subsections (5.5) and (5.6), where a taxpayer is a member of a partnership and the taxpayer receives a dividend in respect of a share that is not a capital property of the partnership, the taxpayer's share of any loss of the partnership arising with respect to the share on which the dividend was received shall, unless it is established by the taxpayer that

(a) the partnership held the share 365 days or longer before the loss was sustained, and

(b) the partnership, the taxpayer and persons with whom the taxpayer was not dealing at arm's length did not, at the time the dividend was received, hold in the aggregate more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received,

be deemed to be the amount of that loss otherwise determined, minus

(c) where the taxpayer is an individual and the corporation is a taxable Canadian corporation, the total of all amounts each of which is a dividend (other than a capital gains dividend within the meaning assigned by subsection 131(1)) on the share received by the taxpayer,

(d) where the taxpayer is a corporation, the total of all amounts each of which is

(i) a taxable dividend, to the extent of the amount thereof that was deductible under this section or subsection 115(1) or 138(6) in computing the taxpayer's taxable income or taxable income earned in Canada for any taxation year, or

(ii) a dividend (other than a taxable dividend or a dividend deemed by subsection 131(1) to be a capital gains dividend),

on the share received by the taxpayer, and

(e) in any other case, nil.

The opening words of subsec. 112(4.2) amended by 1995, c. 21, subsec. 56(5), applicable to dispositions occurring after October 30, 1994. The opening words formerly read:

(4.2) Where no deduction permitted — Where a taxpayer is a member of a partnership and the taxpayer receives a dividend in respect of a share that is not a capital property of the partnership, the taxpayer's share of any loss of the partnership arising with respect to the share on which the dividend was received shall, unless it is established by the taxpayer that

Subpara. 112(4.2)(d)(ii) substituted by 1994, c. 21, subsec. 51(4), applicable to the determination of losses arising in 1990 *et seq.* and, where a taxpayer has elected under subsec. 84(6) of 1994, c. 7, Sch. II (1991, c. 49) (see below), in the taxpayer's 1985 to 1989 taxation years, in which case, notwithstanding subsecs. 152(4) to (5), such assessments and determinations shall be made as are necessary to give effect to that amendment. That subpara. formerly read:

(ii) a dividend, other than a taxable dividend,

That portion of subsec. 112(4.2) following para. (b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 84(4), applicable (by subsec. 84(6)) to the determination of losses arising

(a) in 1990 *et seq.*, and

(b) where a taxpayer so elects by notifying the Minister of National Revenue in writing before 1992 [1994, c. 7, Sch. VIII (1993, c. 24), s. 159 provides that such an election made before December 11, 1993 shall be deemed to have been made before 1992], in the taxpayer's 1985 to 1989 taxation years, in which case, notwithstanding subsecs. 152(4) to (5), such assessments of tax, interest and penalties shall be made as are necessary to give effect to the election,

except that the subsec. as amended does not apply to the amount of a dividend received by a taxpayer on which the taxpayer was required to pay tax under Part VII of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read on March 31, 1977. That portion of subsec. 112(4.2) formerly read:

be deemed to be the amount of the loss otherwise determined, minus the total of all amounts each of which is an amount received by the taxpayer in respect of

(c) a dividend (other than capital gains dividends within the meaning assigned by subsection 131(1)) on the share to the extent that the amount of that dividend was not an amount on which the taxpayer was required to pay tax under Part VII of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read on March 31, 1977.

Interpretation Bulletins: IT-88R2: Stock dividends; IT-328R3: Losses on shares on which dividends have been received.

(4.21) Loss on share held by trust — excluded dividends — A dividend shall not be included in the total determined under paragraph (4.2)(a) where the taxpayer establishes that

(a) it was received when the trust and persons with whom the trust was not dealing at arm's length did not own in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received; and

(b) it was received on a share that the trust owned throughout the 365-day period that ended immediately before the disposition.

Related Provisions: 87(2)(x) — Amalgamations — flow-through to new corporation; 112(5.6) — Stop-loss rules restricted.

History: Subsec. 112(4.21) added by 1998, c. 19, subsec. 131(1), applicable to dispositions that occur after April 26, 1995.

(4.22) Loss on share held by trust — excluded dividends — A dividend shall not be included in the total determined under paragraph (4.2)(b) where the taxpayer establishes that

(a) it was received when the trust, the beneficiary and persons with whom the beneficiary was not dealing at arm's length did not own in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received; and

(b) it was received on a share that the trust owned throughout the 365-day period that ended immediately before the disposition.

Related Provisions: 87(2)(x) — Amalgamations — flow-through to new corporation; 112(5.6) — Stop-loss rules restricted.

History: Subsec. 112(4.22) added by 1998, c. 19, subsec. 131(1), applicable to dispositions that occur after April 26, 1995.

(4.3) [Repealed]

History: Subsec. 112(4.3) repealed by 1998, c. 19, subsec. 131(2), applicable to dispositions that occur after April 26, 1995. Subsec. 112(4.3) formerly read:

(4.3) Idem — Subject to subsections (5.5) and (5.6), where a taxpayer is a beneficiary of a trust (other than a prescribed trust) that owns a share that is not capital property and the taxpayer receives a taxable dividend in respect of that share pursuant to a designation under subsection 104(19) or the trust has made a designation under subsection 104(20) in respect of the taxpayer for a dividend other than a taxable dividend on that share, the amount of any loss of the trust arising with respect to the share on which the dividend was subject to a designation shall, unless it is established by the taxpayer that

(a) the trust owned the share 365 days or longer before the loss was sustained, and

(b) the trust, the taxpayer and persons with whom the taxpayer was not dealing at arm's length did not, at the time the dividend was received, own in the aggregate more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received,

be deemed to be the amount of that loss otherwise determined, minus the total of all amounts each of which is a dividend (other than a capital gains dividend within the meaning assigned by subsection 131(1)) in respect of that share that was designated under subsection 104(19) or (20) in respect of the taxpayer.

The opening words of subsec. 112(4.3) amended by 1995, c. 21, subsec. 56(6), applicable to dispositions occurring after October 30, 1994. The opening words formerly read:

(4.3) Loss on share that is not capital property of trust — Where a taxpayer is a beneficiary of a trust (other than a prescribed trust) that owns a share that is not capital property and the taxpayer receives a taxable dividend in respect of that share pursuant to a designation under subsection 104(19) or the trust has made a designation under subsection 104(20) in respect of the taxpayer for a dividend other than a taxable dividend on that share, the amount of any loss of the trust arising with respect to the share on which the dividend was subject to a designation shall, unless it is established by the taxpayer that

(5) Disposition of share by financial institution — Subsection (5.2) applies to the disposition of a share by a taxpayer in a taxation year where

(a) the taxpayer is a financial institution in the year;

(b) the share is a mark-to-market property for the year; and

(c) the taxpayer received a dividend on the share at a time when the taxpayer and persons with whom the taxpayer was not dealing at arm's length held in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received.

Related Provisions: 87(2)(e.5) — Amalgamation — continuing corporation; 88(1)(h) — Windup — continuing corporation; 112(5.4) — Deemed dispositions and reacquisitions to be ignored; 138(11.5)(k.2) — Transfer of business by non-resident insurer.

History: Subsec. 112(5) added by 1995, c. 21, subsec. 56(7), applicable to dispositions in taxation years that begin after October 1994.

(5.1) Share held for less than one year — Subsection (5.2) applies to the disposition of a share by a taxpayer in a taxation year where

(a) the disposition is an actual disposition;

(b) the taxpayer did not hold the share throughout the 365-day period that ended immediately before the disposition; and

(c) the share was a mark-to-market property of the taxpayer for a taxation year that begins after October 1994 and in which the taxpayer was a financial institution.

Related Provisions: 87(2)(e.5) — Amalgamation — continuing corporation; 88(1)(h) — Windup — continuing corporation; 112(5.4) — Deemed dispositions and reacquisitions to be ignored; 138(11.5)(k.2) — Transfer of business by non-resident insurer.

History: Para. 112(5.1)(b) amended by 1998, c. 19, subsec. 131(3), applicable to dispositions that occur after April 26, 1995. Para. 112(5.1)(b) formerly read:

(b) the taxpayer held the share for less than 365 days; and

Subsec. 112(5.1) added by 1995, c. 21, subsec. 56(7), applicable to dispositions in taxation years that begin after October 1994.

(5.2) Adjustment re dividends — Subject to subsection (5.3), where subsection (5) or (5.1) provides that this subsection applies to the disposition of a share by a taxpayer at any time, the taxpayer's proceeds of disposition shall be deemed to be the amount determined by the formula

$$A + B - (C - D)$$

where

A is the taxpayer's proceeds determined without reference to this subsection,

B is the lesser of

(a) the loss, if any, from the disposition of the share that would be determined before the application of this subsection if the cost of the share to any taxpayer were determined without reference to

(i) paragraphs 87(2)(e.2) and (e.4), 88(1)(c), 138(11.5)(e) and 142.5(2)(b),

(ii) subsection 85(1), where the provisions of that subsection are required by paragraph 138(11.5)(e) to be applied, and

(iii) paragraph 142.6(1)(d), and

(b) the total of all amounts each of which is

(i) where the taxpayer is a corporation, a taxable dividend received by the taxpayer on the share, to the extent of the amount that was deductible under this section or subsection 115(1) or 138(6) in computing the taxpayer's taxable income or taxable income earned in Canada for any taxation year,

(ii) where the taxpayer is a partnership, a taxable dividend received by the taxpayer on the share, to the extent of the amount that was deductible under this section or subsection 115(1) or 138(6) in computing the taxable income or taxable income earned in Canada for any taxation year of members of the partnership,

(iii) where the taxpayer is a trust, an amount designated under subsection 104(19) in respect of a taxable dividend on the share, or

(iv) a dividend (other than a taxable dividend) received by the taxpayer on the share,

C is the total of all amounts each of which is the amount by which

(a) the taxpayer's proceeds of disposition on a deemed disposition of the share before that time were increased because of this subsection,

(b) where the taxpayer is a corporation or trust, a loss of the taxpayer on a deemed disposition of the share before that time was reduced because of subsection (3), (3.2), (4) or (4.2), or

(c) where the taxpayer is a partnership, a loss of a member of the partnership on a deemed disposition of the share before that time was reduced because of subsection (3.1) or (4.2), and

D is the total of all amounts each of which is the amount by which the taxpayer's proceeds of disposition on a deemed disposition of the share before that time were decreased because of this subsection.

Related Provisions: 87(2)(e.5) — Amalgamation — continuing corporation; 88(1)(h) — Windup — continuing corporation; 112(5.21) — Exclusion for certain dividends; 112(5.3), (5.4) — Application; 112(5.5), (5.6) — Stop-loss rules not applicable; 138(11.5)(k.2) — Transfer of business by non-resident insurer; 257 — Formula cannot calculate to less than zero.

History: Subpara. (b)(iv) of the description of B, and para. (b) of the description of C in subsec. 112(5.2), amended by 1998, c. 19, subsecs. 131(4), (5), applicable to dispositions that occur after April 26, 1995. Subpara. B(b)(iv) and para. C(b) formerly read:

(iv) a dividend (other than a taxable dividend or a dividend deemed by subsection 131(1) to be a capital gains dividend) received by the taxpayer on the share,

. . . . .

(b) where the taxpayer is a corporation or trust, a loss of the taxpayer on a deemed disposition of the share before that time was reduced because of subsection (3), (3.2), (4) or (4.3), or

Subsec. 112(5.2) added by 1995, c. 21, subsec. 56(7), applicable to dispositions in taxation years that begin after October 1994.

(5.21) Subsection (5.2) — excluded dividends — A dividend shall not be included in the total determined under paragraph (b) of the description of B in subsection (5.2) unless

(a) the dividend was received when the taxpayer and persons with whom the taxpayer did not deal at arm's length held in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received; or

(b) the share was not held by the taxpayer throughout the 365-day period that ended immediately before the disposition.

History: Subsec. 112(5.21) added by 1998, c. 19, subsec. 131(6), applicable to dispositions that occur after April 26, 1995.

(5.3) Adjustment not applicable — For the purpose of determining the cost of a share to a taxpayer on a deemed reacquisition of the share after a deemed disposition of the share, the taxpayer's proceeds of disposition shall be determined without regard to subsection (5.2).

History: Subsec. 112(5.3) added by 1995, c. 21, subsec. 56(7), applicable to dispositions in taxation years that begin after October 1994.

(5.4) Deemed dispositions — Where a taxpayer disposes of a share at any time,

(a) for the purpose of determining whether subsection (5.2) applies to the disposition, the conditions in subsections (5) and (5.1) shall be applied without regard to a deemed disposition and reacquisition of the share before that time; and

(b) total amounts under subsection (5.2) in respect of the disposition shall be determined from the time when the taxpayer actually acquired the share.

Related Provisions: 87(2)(e.5) — Amalgamation — continuing corporation; 88(1)(h) — Windup — continuing corporation; 138(11.5)(k.2) — Transfer of business by non-resident insurer.

History: Subsec. 112(5.4) added by 1995, c. 21, subsec. 56(7), applicable to dispositions in taxation years that begin after October 1994.

(5.5) Stop-loss rules not applicable — Subsections (3) to (4) and (4.2) do not apply to the disposition of a share by a taxpayer in a taxation year that begins after October 1994 where

(a) the share is a mark-to-market property for the year and the taxpayer is a financial institution in the year; or

(b) subsection (5.2) applies to the disposition.

Related Provisions: 112(5.6) — Transitional rules.

History: The opening words of subsec. 112(5.5) amended by 1998, c. 19, subsec. 131(7), applicable to dispositions that occur after April 26, 1995. The opening words formerly read:

(5.5) Subsections (3) to (4), (4.2) and (4.3) do not apply to the disposition of a share by a taxpayer in a taxation year that begins after October 1994 where

Subsec. 112(5.5) added by 1995, c. 21, subsec. 56(7), applicable to dispositions in taxation years that begin after October 1994.

(5.6) Stop-loss rules restricted — In determining whether any of subsections (3) to (4) and (4.2) apply to reduce a loss of a taxpayer from the disposition of a share, this Act shall be read without reference to paragraphs (3.01)(b) and (3.11)(b), subclauses (3.2)(a)(ii)(C)(I) and (3.3)(a)(ii)(C)(I) and paragraphs (3.31)(b), (3.32)(b), (4.01)(b), (4.21)(b) and (4.22)(b) where

(a) the disposition occurs

(i) because of subsection 142.5(2) in a taxation year that includes October 31, 1994, or

(ii) because of paragraph 142.6(1)(b) after October 30, 1994; or

(b) the share was a mark-to-market property of the taxpayer for a taxation year that begins after October 1994 in which the taxpayer was a financial institution.

History: The opening words of subsec. 112(5.6) amended by 1998, c. 19, subsec. 131(8), applicable to dispositions that occur after April 26, 1995. The opening words formerly read:

(5.6) In determining whether any of subsections (3) to (4), (4.2) and (4.3) apply to the disposition of a share by a taxpayer, each of those subsections shall be read without reference to paragraph (a) of the subsection where

Subsec. 112(5.6) added by 1995, c. 21, subsec. 56(7), applicable to dispositions occurring after October 30, 1994.

(6) Meaning of certain expressions — For the purposes of this section,

(a) **["dividend", "taxable dividend"]** — "dividend" and "taxable dividend" do not include a capital gains dividend (within the meaning assigned by subsection 131(1)) or any dividend received by a taxpayer on which the taxpayer was required to pay tax under Part VII of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read on March 31, 1977;

Related Provisions: 248(1) — Definitions of "dividend" and "taxable dividend".

(b) **["control"]** — one corporation is controlled by another corporation if more than 50% of its issued share capital (having full voting rights under all circumstances) belongs to the other corporation, to persons with whom the other corporation does not deal at arm's length, or to the other corporation and persons with whom the other corporation does not deal at arm's length; and

(c) **["financial institution", "mark-to-market property"]** — "financial institution" and "mark-to-market property" have the meanings assigned by subsection 142.2(1).

Related Provisions: See Related Provisions at end of s. 112.

History: Para. 112(6)(a) amended by 1998, c. 19, subsec. 131(9), applicable after April 26, 1995. Para. 112(6)(a) formerly read:

(a) ["taxable dividend"] — "taxable dividend" does not include a capital gains dividend within the meaning assigned by subsection 131(1);

Para. 112(6)(c) added by 1995, c. 21, subsec. 56(8), applicable to taxation years that begin after October 1994.

(7) Rules where shares exchanged — Where a share (in this subsection referred to as the "new share") has been acquired in exchange for another share (in this subsection referred to as the "old share") in a transaction to which section 51, 85.1, 86 or 87 applies, for the purposes of the application of any of subsections (3) to (3.32) in respect of a disposition of the new share, the new share is deemed to be the same share as the old share, except that

(a) any dividend received on the old share is deemed for those purposes to have been received on the new share only to the extent of the proportion of the dividend that

(i) the shareholder's adjusted cost base of the new share immediately after the exchange

is of

(ii) the shareholder's adjusted cost base of all new shares immediately after the exchange acquired in exchange for the old share; and

(b) the amount, if any, by which a loss from the disposition of the new share is reduced because of the application of this subsection shall not exceed the proportion of the shareholder's adjusted cost base of the old share immediately before the exchange that

(i) the shareholder's adjusted cost base of the new share immediately after the exchange

is of

(ii) the shareholder's adjusted cost base of all new shares, immediately after the exchange, acquired in exchange for the old share.

Related Provisions: 40(3.7) — Application to non-resident individual.

History: Subsec. 112(7) amended by 1998, c. 19, subsec. 131(10), applicable to dispositions that occur after April 26, 1995. Subsec. 112(7) formerly read:

(7) Where at a particular time a share (in this subsection referred to as the "new share") has been acquired by a corporation, partnership or trust (in this subsection referred to as the "holder") in exchange for another share (in this subsection referred to as the "old share") by means of a transaction to which section 51, 85.1, 86 or 87 applies, any reference in subsection (3), (3.1) or (3.2) to a share shall be deemed to include a reference to the new share and the old share as though they were the same share, except that the total of the

amounts to be deducted from a loss otherwise determined on any new share of the holder, in respect of dividends received, or designated by the holder, in respect of the share, shall be deemed to be the total of

(a) the total of all amounts each of which is an amount that would be determined under subsection (3), (3.1) or (3.2) in respect of a taxable dividend, a capital dividend or a life insurance capital dividend received or designated by the holder in respect of the new share only, and

(b) the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the total of all amounts each of which is the amount determined in respect of an old share exchanged by the holder at the particular time equal to the lesser of

(i) the total of all amounts each of which is received or designated by the holder in respect of a taxable dividend, a capital dividend or a life insurance capital dividend on the old share, and

(ii) the adjusted cost base to the holder of the old share immediately before the particular time,

B is the adjusted cost base to the holder of the new share immediately after the exchange, and

C is the adjusted cost base to the holder of all new shares immediately after the exchange,

to the extent that those amounts were not amounts on which the holder was required to pay tax under Part VII of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read on March 31, 1977.

Para. 112(7)(b) substituted by 1994, c. 21, subsec. 51(5), applicable to losses arising in 1992 *et seq.* That para. formerly read:

(b) that proportion of the total of all amounts each of which is an amount received or designated by the holder in respect of a taxable dividend, a capital dividend or a life insurance capital dividend on all the old shares exchanged at the particular time that

(i) the adjusted cost base to the holder of the new share immediately after the exchange

is of

(ii) the adjusted cost base to the holder of all new shares immediately after the exchange

Interpretation Bulletins [subsec. 112(7)]: IT-88R2: Stock dividends; IT-269R3: Part IV tax on dividends received by a private corporation or a subject corporation; IT-328R3: Losses on shares on which dividends have been received.

Related Provisions [s. 112]: 66(1) — Exploration development expenses of principal-business corporations; 82(2) — Certain dividends deemed received by taxpayer; 104(19) — Taxable dividends flowed through trust; 138(6) — Insurance corporations — Deduction for dividends from taxable corporations; 187.2 — Tax on dividends on taxable preferred shares; 187.3 — Tax on dividends on taxable RFI shares.

Definitions [s. 112]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 255; "capital dividend" — 83(2), 248(1); "capital property" — 54, 248(1); "carried on a business in Canada" — 253; "class of shares" — 248(1); "consequence of the individual's death" — 248(8); "controlled" — 112(6)(b), 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition" — 248(1); "dividend" — 112(6)(a), 248(1); "dividend rental arrangement" — 248(1); "exempt share" — 112(2.6), (2.7); "financial institution" — 112(6)(c), 142.2(1); "foreign affiliate" — 95(1), 248(1); "grandfathered share" — 248(1); "guarantee agreement", "guarantor" — 112(2.2)(a); "individual", "insurance corporation" — 248(1); "investment corporation" — 130(3)(a), 248(1); "investor", "issuer" — 112(2.6); "life insurance capital dividend" — 248(1); "mark-to-market property" — 112(6)(c), 142.2(1); "mutual fund corporation" — 131(8), 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q) [to be repealed], 132.2(3)(n) [draft], 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "permanent establishment" — Reg. 8201; "person", "prescribed" — 248(1); "prescribed stock exchange" — 248(29), Reg. 3200, 3201; "property" — 248(1); "received" — 248(7); "regulation" — 248(1); "related" — 112(2.9), 251; "resident in Canada" — 250; "restricted financial institution" — 248(1); "series of transactions" — 248(10); "share" — 112(7), 248(1); "short-term preferred share" — 248(1); "specified financial institution" — 248(1), 248(14); "specified person" — 112(2.22)(b); "substituted property" — 248(5); "tax payable" — 248(2); "taxable Canadian corporation" — 89(1), 248(1); "taxable dividend" — 89(1), 112(6)(a), 248(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxable preferred share" — 248(1); "taxation year" — 249; "taxpayer", "term preferred share" — 248(1); "trust" — 104(1), 248(1), (3); "written" — *Interpretation Act* 35(1)"writing".

113. (1) Deduction in respect of dividend received from foreign affiliate — Where in a taxation year a corporation resident in Canada has received a dividend on a share owned by it of the capital stock of a foreign affiliate of the corporation, there may be deducted from the income for the year of the corporation for the purpose of computing its taxable income for the year, an amount equal to the total of

(a) an amount equal to such portion of the dividend as is prescribed to have been paid out of the exempt surplus, as defined by regulation (in this Part referred to as "exempt surplus") of the affiliate,

Selected Cases [para. 113(1)(a)]: *Old HW-GW Ltd. v. Canada*, [1993] 1 C.T.C. 363 (FCA); leave to appeal to SCC refused (Sept. 30, 1993), Doc. 23591 (SCC) (Puerto Rico separate country from US under subsecs. 5907(10) and (11) of Regulations; incentive to promote sales from Puerto Rico to US was "export" incentive; dividends from foreign affiliate in Puerto Rico not from "exempt surplus").

(b) an amount equal to the lesser of

(i) the product obtained when the foreign tax prescribed to be applicable to such portion of the dividend as is prescribed to have been paid out of the taxable surplus, as defined by regulation (in this Part referred to as "taxable surplus") of the affiliate is multiplied by the amount by which

(A) the relevant tax factor

Proposed Amendment — 113(1)(b)(i)(A)

(A) the corporation's relevant tax factor for the year

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 27(1), will amend cl. 113(1)(b)(i)(A) to read as above, applicable after 2000.

Technical Notes: Subsection 113(1) permits a resident corporation to deduct specified amounts in respect of dividends received from a foreign affiliate out of the exempt, taxable and pre-acquisition surplus of the foreign affiliate. The amounts so deductible are determined largely with reference to Part LIX of the *Income Tax Regulations*. The deductions under paragraphs 113(1)(b) and (c) with regard to dividends out of taxable surplus are also determined with reference to the resident corporation's "relevant tax factor".

Subsection 113(1) is amended to explicitly link the "relevant tax factor" to the resident corporation receiving the dividends and the taxation year in which the dividends are received.

exceeds

(B) one, and

(ii) that portion of the dividend,

(c) an amount equal to the lesser of

(i) the product obtained when

(A) the non-business-income tax paid by the corporation applicable to such portion of the dividend as is prescribed to have been paid out of the taxable surplus of the affiliate

is multiplied by

(B) the relevant tax factor, and

Proposed Amendment — 113(1)(c)(i)(B)

(B) the corporation's relevant tax factor for the year, and

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 27(2), will amend cl. 113(1)(c)(i)(B) to read as above, applicable after 2000.

Technical Notes: See under 113(1)(b)(i)(A) above.

(ii) the amount by which such portion of the dividend as is prescribed to have been paid out of the taxable surplus of the affiliate exceeds the deduction in respect thereof referred to in paragraph (b); and

(d) an amount equal to such portion of the dividend as is prescribed to have been paid out of the pre-acquisition surplus of the affiliate,

and for the purposes of this subsection and subdivision i of Division B, the corporation may make such elections as may be prescribed.

Related Provisions: 20(13) — Deduction for dividend; 91(5) — Amounts deductible in respect of dividends received; 92(4)–(6) — Where dividend from pre-acquisition surplus received by partnership; 93(1.2) — Disposition of share of foreign affiliate held by partnership; 93(2)–(2.3) — Stop-loss rules; 93(3) — Exempt dividends; 93.1(1) — Where shares are owned by partnership; 93.1(2) — Dividend on shares of foreign affiliate held by partnership; 94.4(4)(a)(i)(E) — Prevention of double taxation; 95(3.8) — Exclusion from exempt surplus of foreign affiliate; 111(8)"non-capital loss"A:E — Carryforward of dividend deduction as non-capital loss; 112(2) — Deduction for dividend received from corporation that is not a foreign affiliate; 113(4) — Dividend received before 1976; 186(1) — Part IV tax on certain taxable dividends; 186(3)"assessable dividend" — Part IV tax. See also at end of s. 113.

Regulations: 5900–5902, 5906, 5907 (prescribed portion, prescribed foreign tax, prescribed elections, definitions); 5900(1)(c) (pre-acquisition surplus); 5907(1.01) (exempt surplus, taxable surplus).

Interpretation Bulletins: IT-269R3: Part IV tax on taxable dividends received by a private corporation or a subject corporation; IT-328R3: Losses on shares on which dividends have been received.

Information Circulars: 77-9R: Books, records and other requirements for taxpayers having foreign affiliates.

(2) Additional deduction — Where, at any particular time in a taxation year ending after 1975, a corporation resident in Canada has received a dividend on a share owned by it at the end of its 1975 taxation year of the capital stock of a foreign affiliate of the corporation, there may be deducted from the income for the year of the corporation for the purpose of computing its taxable income for the year, an amount in respect of the dividend equal to the lesser of

(a) the amount, if any, by which the amount of the dividend so received exceeds the total of

(i) the deduction in respect of the dividend permitted by subsection 91(5) in computing the corporation's income for the year, and

(ii) the deduction in respect of the dividend permitted by subsection (1) from the income for the year of the corporation for the purpose of computing its taxable income, and

(b) the amount, if any, by which

(i) the adjusted cost base to the corporation of the share at the end of its 1975 taxation year

exceeds the total of

(ii) [Repealed under former Act]

(iii) such amounts in respect of dividends received by the corporation on the share after the end of its 1975 taxation year and before the particular time as are deductible under paragraph (1)(d) in computing the taxable income of the corporation for taxation years ending after 1975,

(iii.1) the total of all amounts received by the corporation on the share after the end of its 1975 taxation year and before the particular time on a reduction of the paid-up capital of the foreign affiliate in respect of the share, and

(iv) the total of all amounts deducted under this subsection in respect of dividends received by the corporation on the share before the particular time.

Related Provisions: 92 — ACB of share in foreign affiliate; 113(1) — Deduction in respect of dividend received from foreign affiliate; 186(3)"assessable dividend" — Part IV tax. See also at end of s. 113.

Interpretation Bulletins: IT-98R2: Investment corporations (archived); IT-269R3: Part IV tax on taxable dividends received by a private corporation or a subject corporation.

(3) Definitions — In this section,

"non-business-income tax" paid by a taxpayer has the meaning assigned by subsection 126(7);

"relevant tax factor" has the meaning assigned by subsection 95(1).

(4) Portion of dividend deemed paid out of exempt surplus — Such portion of any dividend received at any time in a taxation year by a corporation resident in Canada on a share owned by it of the capital stock of a foreign affiliate of the corporation, that was received after the 1971 taxation year of the affiliate and before the affiliate's 1976 taxation year, as exceeds the amount deductible in respect of the dividend under paragraph (1)(d) in computing the corporation's taxable income for the year shall, for the purposes of paragraph (1)(a), be deemed to be the portion of the dividend prescribed to have been paid out of the exempt surplus of the affiliate.

Related Provisions: 113(1) — Deduction in respect of dividend received from foreign affiliate. See also at end of s. 113.

Related Provisions [s. 113]: 66(1) — Exploration and development expenses of principal-business corporations; 80.1(4) — Assets acquired from foreign affiliate of taxpayer as dividend in kind or as benefit to shareholder; 82(2) — Dividend deemed received by taxpayer; 126(4) — Portion of foreign tax not included; 187.2 — Tax on dividends on taxable preferred shares; 187.3 — Tax on dividends on taxable RFI shares; 258(3) — Certain dividends on preferred shares deemed to be interest; 258(5) — Deemed interest on certain shares.

Definitions [s. 113]: "adjusted cost base" — 54; "amount" — 248(1); "Canada" — 255; "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "exempt surplus" — 113(1)(a), Reg. 5907(1), (1.01); "foreign affiliate" — 93.1(1), 95(1), 248(1); "individual" — 248(1); "non-business-income tax" — 113(3), 126(7); "pre-acquisition surplus" — Reg. 5900(1)(c); "prescribed", "regulation" — 248(1); "relevant tax factor" — 95(1), 113(3); "resident in Canada" — 250; "share" — 248(1); "taxable income" — 2(2), 248(1); "taxable surplus" — 113(1)(b)(i), Reg. 5907(1), (1.01); "taxation year" — 249; "taxpayer" — 248(1).

114. Individual resident in Canada for only part of year — Notwithstanding subsection 2(2), the taxable income for a taxation year of an individual who is resident in Canada throughout part of the year and non-resident throughout another part of the year is the amount, if any, by which

Proposed Amendment — 114 opening words

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), s. 28, will amend the opening words of s. 114 to add "and subject to subsection 94.2(5)", applicable to taxation years that begin after 2002.

Technical Notes: Section 114 provides rules for computing the taxable income of an individual who is resident in Canada for a period or periods in a taxation year, and is non-resident for the rest of the year.

Section 114 is amended so that it is subject to paragraph 94.2(5)(c), a rule that applies in connection with a participating interest, in a foreign investment entity, in respect of which the mark-to-market regime under section 94.2 applies to a taxpayer. Paragraph 94.2(5)(c) is, however, only relevant to an individual who ceases to be, and later becomes, resident in Canada in the same taxation year. For further information, see the commentary on new subsection 94.2(5).

(a) the amount that would be the individual's income for the year if the individual had no income or losses, for the part of the year throughout which the individual was non-resident, other than

(i) income or losses described in paragraphs 115(1)(a) to (c), and

(ii) income that would have been included in the individual's taxable income earned in Canada for the year under subparagraph 115(1)(a)(v) if the part of the year throughout which the individual was non-resident were the whole taxation year,

exceeds the total of

(b) the deductions permitted by subsection 111(1) and, to the extent that they relate to amounts included in computing the amount determined under paragraph (a), the deductions permitted by any of paragraphs 110(1)(d) to (d.2) and (f), and

(c) any other deduction permitted for the purpose of computing taxable income to the extent that

(i) it can reasonably be considered to be applicable to the part of the year throughout which the individual was resident in Canada, or

(ii) if all or substantially all of the individual's income for the part of the year throughout which the individual was non-resident is included in the amount determined under paragraph (a), it can reasonably be considered to be applicable to that part of the year.

Related Provisions: 66(4.3) — Foreign exploration and development expenses of part-year resident; 94.2(5)(c) — Application of foreign investment entity mark-to-market rules; 111(9) — Losses where taxpayer not resident in Canada; 118.91 — Part-time resident — deductions from tax; 119 — Credit to former resident where stop-loss rule applies; 120(3)(a) — Effect of s. 114 where income earned in no province or in Quebec; 126(2.1) — Foreign tax credit where s. 114 applies; 128.1 — Change in residence.

History: S. 114 amended by 2001, c. 17, s. 89, applicable to 1998 *et seq.* S. 114 formerly read:

114. Notwithstanding subsection 2(2), where an individual is resident in Canada throughout part of a taxation year, and throughout another part of the year is non-resident, the individual's taxable income for the year is the amount, if any, by which the total of

(a) the individual's income for the period or periods in the year throughout which the individual is resident in Canada, computed without regard to section 61.2 and as though that period or those periods were the whole taxation year, and

(b) the amount that would be the individual's taxable income earned in Canada for the year if at no time in the year the individual had been resident in Canada, computed as though the part of the year that is not in the period or periods referred to in paragraph (a) were the whole taxation year,

exceeds

(c) the total of

(i) such of the deductions permitted for the purpose of computing taxable income as can reasonably be considered wholly applicable, and

(ii) such part of any other of those deductions as can reasonably be considered applicable

to the period or periods referred to in paragraph (a),

except that the total of all amounts included in computing the total determined under paragraph (c) and all amounts deducted because of paragraphs 115(1)(d) to (f) in respect of the individual for the year shall not exceed the total of the amounts that would have been deductible in computing the individual's taxable income for the year had the individual been resident in Canada throughout the year.

Para. 114(a) amended by 1995, c. 21, s. 37, applicable to taxation years that end after February 21, 1994. Para. (a) formerly read:

(a) the individual's income for the period or periods in the year throughout which the individual is resident in Canada, computed as though that period or those periods were the whole taxation year, and

All that portion of s. 114 preceding para. (b) substituted by 1994, c. 21, s. 52, applicable to 1992 *et seq.*, except that a taxpayer may elect that the amendment not apply to the taxpayer's 1992 taxation year by notifying the Minister of National Revenue in writing before the end of December 1994. That portion of s. 114 formerly read:

114. Individual resident in Canada for only part of year — Notwithstanding subsection 2(2), where an individual is resident in Canada during part of a taxation year, and during some other part of the year is not resident in Canada, is not employed in Canada and is not carrying on business in Canada, for the purposes of this Part, the individual's taxable income for the year is the amount, if any, by which the total of

(a) the individual's income for the period or periods in the year throughout which the individual is resident in Canada, is employed in Canada or is carrying on business in Canada, computed as though that period or those periods were the whole taxation year and as though any disposition of property deemed by subsection 48(1) to have been made because the individual ceased to be resident in Canada were made in that period or those periods, and

S. 114 substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 85, applicable to 1988 *et seq.* S. 114 formerly read:

114. Individual resident in Canada during part only of year — Notwithstanding subsection 2(2), where an individual was resident in Canada during part of a taxation year, and during some other part of the year was not resident in Canada, was not employed in Canada and was not carrying on business in Canada, for the purpose of this Part, the individual's taxable income for the taxation year is the total of

(a) the individual's income for the period or periods in the year throughout which the individual was resident in Canada, was employed in Canada or was carrying on business in Canada, computed as though that period or those periods were the whole taxation year and as though any disposition of property deemed by subsection 48(1) to have been made by reason of the individual having ceased to be resident in Canada were made in the period or periods, and

(b) the amount that would be the individual's taxable income earned in Canada for the year if at no time in the year the individual had been resident in Canada, computed as though the portion of the year that is not in the period or periods referred to in paragraph (a) were the whole taxation year,

minus the total of such of the deductions permitted for the purpose of computing taxable income as may reasonably be considered wholly applicable to the period or periods referred to in paragraph (a) and of such part of any other of those deductions as may reasonably be considered applicable to the period or periods.

Selected Cases [s. 114]: *Taylor v. Canada*, [1991] 1 C.T.C. 304 (FCA) (No carryforward of "non-capital loss of other years" incurred during non-residency); *Taylor v. Canada*, [1988] 2 C.T.C. 226 (FCTD); rev'd [1991] 1 C.T.C. 304 (FCA) (Division B deductions not restricted to those reasonably considered wholly applicable to period of residence); *Schujahn v. MNR*, [1962] C.T.C. 364 (Exch.) (Intention not relevant; residence is question of fact).

Definitions [s. 114]: "amount", "individual", "non-resident" — 248(1); "resident in Canada" — 94(3)(a)(viii), 250; "taxable income", "taxable income earned in Canada" — 248(1); "taxation year" — 249.

Interpretation Bulletins [s. 114]: IT-221R3: Determination of an individual's residence status; IT-262R2: Losses of non-residents and part-year residents; IT-497R4: Overseas employment tax credit.

Forms: T1248: Information about your residency status; T4056: Emigrants and income tax [guide]; T4058: Non-residents and income tax [guide].

114.1 [Repealed]

History: S. 114.1 repealed by 2001, c. 17, s. 89, applicable to 1998 *et seq.* S. 114.1 formerly read:

> 114.1 Application of subsec. 115(2) — In applying section 115 for the purposes of section 114, the references in paragraphs 115(2)(b), (b.1) and (c) to "who had, in any previous year, ceased to be resident in Canada" shall be read as references to "who has, in the year, or had, in any previous year, ceased to be resident in Canada".

114.2 Deductions in separate returns — Where a separate return of income with respect to a taxpayer is filed under subsection 70(2), 104(23) or 150(4) for a particular period and another return of income under this Part with respect to the taxpayer is filed for a period ending in the calendar year in which the particular period ends, for the purpose of computing the taxable income under this Part of the taxpayer in those returns, the total of all deductions claimed in all those returns under section 110 shall not exceed the total that could be deducted under that section for the year with respect to the taxpayer if no separate returns were filed under subsections 70(2), 104(23) and 150(4).

Related Provisions: 118.93 — Credits in separate returns.

Definitions [s. 114.2]: "calendar year" — *Interpretation Act* 37(1)(a); "taxable income" — 2(2), 248(1); "taxpayer" — 248(1).

Interpretation Bulletins: IT-326R3: Returns of deceased persons as "another person".

Division D — Taxable Income Earned in Canada by Non-Residents

115. (1) Non-resident's taxable income [earned] in Canada — For the purposes of this Act, the taxable income earned in Canada for a taxation year of a person who at no time in the year is resident in Canada is the amount, if any, by which the amount that would be the non-resident person's income for the year under section 3 if

(a) the non-resident person had no income other than

(i) incomes from the duties of offices and employments performed by the non-resident person in Canada and, if the person was resident in Canada at the time the person performed the duties, outside Canada,

(ii) incomes from businesses carried on by the non-resident person in Canada which, in the case of the Canadian banking business of an authorized foreign bank, is, subject to this Part, the profit from that business computed using the bank's branch financial statements (within the meaning assigned by subsection 20.2(1)),

(iii) taxable capital gains from dispositions described in paragraph (b),

(iii.1) the amount by which the amount required by paragraph 59(3.2)(c) to be included in computing the non-resident person's income for the year exceeds any portion of that amount that was included in computing the non-resident person's income from a business carried on by the non-resident person in Canada,

(iii.2) amounts required by section 13 to be included in computing the non-resident person's income for the year in respect of dispositions of properties to the extent that those amounts were not included in computing the non-resident person's income from a business carried on by the non-resident person in Canada,

(iii.21) the amount, if any, included under section 56.3 in computing the non-resident person's income for the year,

(iii.3) in any case where, in the year, the non-resident person carried on a business in Canada described in any of paragraphs (a) to (g) of the definition "principal-business corporation" in subsection 66(15), all amounts in respect of a Canadian resource property that would be required to be included in computing the non-resident person's income for the year under this Part if the non-resident person were resident in Canada at any time in the year, to the extent that those amounts are not included in computing the non-resident person's income by virtue of subparagraph (ii) or (iii.1),

(iv) the amount, if any, by which any amount required by subsection 106(2) to be included in computing the non-resident person's income for the year as proceeds of the disposition of an income interest in a trust resident in Canada exceeds the amount in respect of that income interest that would, if the non-resident person had been resident in Canada throughout the year, be deductible under subsection 106(1) in computing the non-resident person's income for the year,

(iv.1) the amount, if any, by which any amount required by subsection 96(1.2) to be included in computing the non-resident person's income for the year as proceeds of the disposition of a right to a share of the income or loss under an agreement referred to in paragraph 96(1.1)(a) exceeds the amount in respect of that right that would, if the non-resident person had been resident in Canada throughout the year, be deductible under subsection 96(1.3) in computing the non-resident person's income for the year,

(v) in the case of a non-resident person described in subsection (2), the total determined under paragraph (2)(e) in respect of the non-resident person,

(vi) the amount that would have been required to be included in computing the non-resident person's income in respect of a life insurance policy in Canada by virtue of subsection 148(1) or (1.1) if the non-resident person had been resident in Canada throughout the year, and

(vii) in the case of an authorized foreign bank, the amount claimed by the bank to the extent that the inclusion of the amount in income

(A) increases any amount deductible by the bank under subsection 126(1) for the year, and

(B) does not increase an amount deductible by the bank under section 127 for the year,

Proposed Amendment — 115(1)(a)(vii)

(vii) in the case of an authorized foreign bank,

(A) the amount claimed by the bank to the extent that the inclusion of the amount in income

(I) increases any amount deductible by the bank under subsection 126(1) for the year, and

(II) does not increase an amount deductible by the bank under section 127 for the year, and

(B) all amounts required by paragraph 12(1)(k) to be included in computing the bank's income, except to the extent that

(I) subparagraph (ii) or clause (A) applies to those amounts, or

(II) those amounts are in respect of a business of the bank that is not its Canadian banking business,

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), s. 29, will amend subpara. 115(1)(a)(vii) to read as above, applicable to taxation years that begin after July 18, 2005.

Technical Notes: Section 115 determines the amount of a non-resident person's income that is subject to tax under Part I of the Act. This amount is referred to as the non-resident's "taxable income earned in Canada". Subsection 115(1) provides general rules to be applied in calculating a non-resident's "taxable income earned in Canada". Paragraphs 115(1)(a) to (c) set out special assumptions that are applied in computing the taxable income earned in Canada of a non-resident taxpayer. Subparagraph 115(1)(a)(vii) includes in the taxable income earned in Canada of an authorized foreign bank the amount claimed by the bank to the extent that the inclusion increases the bank's usable foreign tax credit under subsection 126(1) but does not increase any amount deductible by the bank under section 127.

Subparagraph 115(1)(a)(vii) is amended so that, in computing the taxable income earned in Canada of an authorized foreign bank, there must also be included amounts (not otherwise included in computing its taxable income earned in Canada) that are required by paragraph 12(1)(k) to be included in computing the bank's income, but only to the extent that the income is earned in its Canadian banking business.

This amendment is made in conjunction with paragraph 94.2(2)(t), which ensures that an authorized foreign bank is subject to the FIE rules in respect of participating interests held by it in a FIE.

Selected Cases [para. 115(1)(a)]: *Hale (J.) v. Canada*, [1992] 2 C.T.C. 379 (FCA); leave to appeal to SCC refused (1993), 151 N.R. 159 (note) (Benefit from exercising options while resident in UK and after Canadian employment terminated taxable; subsec. 7(4) not inconsistent with Article 15(1) of *Canada-UK Convention*).

(b) the only taxable capital gains and allowable capital losses referred to in paragraph 3(b) were taxable capital gains and allowable capital losses from dispositions, other than dispositions deemed under subsection 218.3(2), of taxable Canadian properties (other than treaty-protected properties), and

Selected Cases [para. 115(1)(b)]: *Beame v. R.*, [2004] 2 C.T.C. 265 (FCA); rev'g [2003] 2 C.T.C. 2140 (TCC) ("Capital gain" in Canada-U.K. Agreement refers to "taxable capital gain").

(b.1) [Repealed]

(c) the only losses for the year referred to in paragraph 3(d) were losses from duties of an office or employment performed by the person in Canada and businesses (other than treaty-protected businesses) carried on by the person in Canada and allowable business investment losses in respect of property any gain from the disposition of which would, because of this subsection, be included in computing the person's taxable income earned in Canada,

exceeds the total of

(d) the deductions permitted by subsection 111(1) and, to the extent that they relate to amounts included in computing the amount determined under any of paragraphs (a) to (c), the deductions permitted by any of paragraphs 110(1)(d) to (d.2) and (f) and subsection 110.1(1),

(e) the deductions permitted by any of subsections 112(1) and (2) and 138(6) in respect of a dividend received by the non-resident person, to the extent that the dividend is included in computing the non-resident person's taxable income earned in Canada for the year,

(e.1) the deduction permitted by subsection (4.1), and

(f) where all or substantially all of the non-resident person's income for the year is included in computing the non-resident person's taxable income earned in Canada for the year, such of the other deductions permitted for the purpose of computing taxable income as may reasonably be considered wholly applicable.

Related Provisions: 2(3) — Tax on non-resident's taxable income earned in Canada; 4(3) — Whether deductions applicable to a particular source; 33.1 — International banking centres; 40(9) — Prorating for gains not taxed before April 27, 1995; 52(8) — Cost to non-resident of share of corporation that becomes resident in Canada; 94(3)(a)(iv) [proposed] — Application to beneficiary of trust deemed resident in Canada; 107.3(1)(b) — Income of non-resident beneficiary of mining reclamation trust/qualifying environmental trust; 111(8)"non-capital loss"B — Carryforward of 115(1)(b)(vii) amount; 111(9) — Carryover of losses of non-resident taxpayer; 112(3)(b)(i) — Reduction in loss under 115(1)(d.1) on subsequent disposition of share; 112(5.2)B(b)(i), (ii) — Adjustment for dividends received on mark-to-market property; 114 — Individual resident in Canada for only part of year; 115(2.1) — Non-resident actors — income excluded; 115.1 — Competent authority agreements under tax treaties; 115.2 — Non-resident investment or pension fund deemed not carrying on business in Canada; 116 — Certificate required where non-resident disposes of TCP; 118.94 — Limitation on credits available; 133 — Non-resident-owned investment corporations; 217 — Election re certain payments; 219(1) — Branch tax on non-resident corporations; 248(1)"taxable income earned in Canada" — Definition applies to entire Act but cannot be less than nil; 250.1(a) — Taxation year of non-resident person; Canada-U.S. Tax Treaty:Art. VII — Business profits of U.S. resident; Art. XIII — Taxation of capital gains.

History: Para. 115(1)(b) amended by 2005, c. 19, s. 21 to add ", other than dispositions deemed under subsection 218.3(2),", applicable after 2004.

Subpara. 115(1)(a)(i) amended by 2001, c. 17, subsec. 90(1), applicable to 1998 *et seq.* except that, if an individual who ceased at any time after 1992 and before October 2, 1996 to be resident in Canada elects under subsec. 124(1) of the said c. 17 (see c. 17 amendment to 128.1(4)(b)) in respect of that cessation of residence, subpara. 115(1)(a)(i), as amended, applies to income received by the individual after that cessation of residence. The subpara. formerly read:

(i) incomes from the duties of offices and employments performed by the non-resident person in Canada,

Subpara. 115(1)(a)(ii) amended by the said c. 17, subsec. 90(2), applicable after June 27, 1999. The subpara. formerly read:

(ii) incomes from businesses carried on by the non-resident person in Canada,

Subpara. 115(1)(a)(vii) added by the said c. 17, subsec. 90(3), applicable after June 27, 1999.

Para. 115(1)(b) amended and para. (b.1) repealed by the said c. 17, subsec. 90(4), applicable after October 1, 1996, except that, in its application to dispositions that occurred before the 1998 taxation year, para. 115(1)(b) shall be read as follows:

(b) the only taxable capital gains and allowable capital losses referred to in paragraph 3(b) were taxable capital gains and allowable capital losses from dispositions of taxable Canadian properties, and

The paras. formerly read:

(b) the only taxable capital gains and allowable capital losses referred to in paragraph 3(b) were taxable capital gains and allowable capital losses from dispositions at any time in the year of property or an interest therein (in this Act referred to as "taxable Canadian property") that was

(i) real property situated in Canada,

(ii) a capital property used by the non-resident person in carrying on a business in Canada, other than

(A) property used in carrying on an insurance business, and

(B) ships and aircraft used principally in international traffic and personal property pertaining to their operation if the country in which the non-resident person is resident grants substantially similar relief for the year to persons resident in Canada,

(iii) where the non-resident person is an insurer, any capital property that is its designated insurance property for the year,

(iv) a share of the capital stock of a corporation (other than a mutual fund corporation) resident in Canada that is not listed on a prescribed stock exchange,

(v) a share of the capital stock of a non-resident corporation that is not listed on a prescribed stock exchange where, at any particular time during the 12-month period that ends at that time,

(A) the fair market value of all of the properties of the corporation each of which was

(I) a taxable Canadian property,

(II) a Canadian resource property,

(III) a timber resource property,

(IV) an income interest in a trust resident in Canada, or

(V) an interest in or option in respect of a property described in any of subclauses (II) to (IV), whether or not the property exists,

was more than 50% of the fair market value of all of its properties, and

(B) more than 50% of the fair market value of the share is derived directly or indirectly from one or any combination of

(I) real property situated in Canada,

(II) Canadian resource properties, and

(III) timber resource properties,

(vi) a share otherwise described in subparagraph (iv) or (v) that is listed on a prescribed stock exchange, or a share of the capital stock of a mutual fund corporation, if, at any time during the 5-year period that ends at that time, the non-resident person, persons with whom the non-resident person did not deal at arm's length, or the non-resident person together with all such persons owned 25% or more of the issued shares of any class of the capital stock of the corporation that issued the share,

(vii) an interest in a partnership where, at any particular time during the 12-month period that ends at that time, the fair market value of all of the properties of the partnership each of which was

(A) a taxable Canadian property,

(B) a Canadian resource property,

(C) a timber resource property,

(D) an income interest in a trust resident in Canada, or

(E) an interest in or option in respect of a property described in clauses (B) to (D), whether or not that property exists,

was more than 50% of the fair market value of all of its properties,

(viii) a capital interest in a trust (other than a unit trust) resident in Canada,

(ix) a unit of a unit trust (other than a mutual fund trust) resident in Canada,

(x) a unit of a mutual fund trust if, at any particular time during the 5-year period that ends at that time, not less than 25% of the issued units of the trust belonged to the non-resident person, to persons with whom the non-resident person did not deal at arm's length, or to the non-resident person and persons with whom the non-resident person did not deal at arm's length,

(xi) an interest in a non-resident trust where, at any particular time during the 12-month period that ends at that time,

(A) the fair market value of all of the properties of the trust each of which was

(I) a taxable Canadian property,

(II) a Canadian resource property,

(III) a timber resource property,

(IV) an income interest in a trust resident in Canada, or

(V) an interest in or option in respect of a property described in subclauses (II) to (IV), whether or not the property exists,

was more than 50% of the fair market value of all of its properties, and

(B) more than 50% of the fair market value of the interest is derived directly or indirectly from one or any combination of

(I) real property situated in Canada,

(II) Canadian resource properties, and

(III) timber resource properties, or

(xii) a property deemed by any provision of this Act to be taxable Canadian property,

but does not include a share of the capital stock of a non-resident-owned investment corporation if, on the first day of the year, the corporation did not own taxable Canadian property, Canadian resource property, timber resource property nor an income interest in a trust resident in Canada,

(b.1) notwithstanding paragraph (b), the taxable capital gains and allowable capital losses referred to in paragraph 3(b) did not include taxable capital gains and allowable capital losses from dispositions at any time in the year of taxable Canadian property that was treaty-protected property of the non-resident at that time, and

Para. 115(1)(d) amended by the said c. 17, subsec. 90(5) to replace "paragraphs 110(1)(d), (d.1), (d.2)" with "paragraphs 110(1)(d) to (d.2)", applicable to 2000 *et seq.*

Para. 115(1)(e.1) added by the said c. 17, subsec. 90(6), applicable to taxation years that begin after February 27, 2000.

The opening words of subsec. 115(1), paras. 115(1)(c) to (e) amended, and para. (b.1) added, by 1999, c. 22, subsecs. 29(1), (2), applicable to 1998 *et seq.* The opening words and paras. (c) to (e) formerly read:

(1) For the purposes of this Act, the taxable income earned in Canada for a taxation year of a person who at no time in the year is resident in Canada is the amount of the non-resident person's income for the year that would be determined under section 3 if

. . . . .

(c) the only losses for the year referred to in paragraph 3(d) were losses from duties of an office or employment performed by the person in Canada and businesses carried on by the person in Canada and allowable business investment losses in respect of property any gain from the disposition of which would, because of this subsection, be included in computing the person's taxable income earned in Canada,

minus the total of

(d) the deductions permitted by paragraphs 110(1)(d), (d.1), (d.2) and (f) and subsection 110.1(1),

(d.1) the deductions permitted by subsections 112(1) and (2) and 138(6), to the extent that a dividend or portion thereof has been included in computing the non-resident person's taxable income earned in Canada,

(e) such of the deductions from income permitted by section 111 as may reasonably be considered to be applicable to the duties of an office or employment performed by the non-resident person in Canada, a business carried on by the non-resident person in Canada or a disposition of property, any profit or gain on which would have been required by this subsection to be included in computing the non-resident person's taxable income earned in Canada, and

Para. 115(1)(b) amended by 1998, c. 19, subsec. 132(1), applicable after April 26, 1995, except in respect of the disposition of a property before 1996

(a) to a person who was obliged on April 26, 1995 to acquire the property pursuant to the terms of an agreement in writing made on or before that day (and, for the purpose of this paragraph, a person shall be considered not to be obliged to acquire property where the person can be excused from the obligation if there is a change to the Act or if there is an adverse assessment under the Act); or

(b) pursuant to a prospectus or similar document filed with the relevant securities authority before April 27, 1995.

Para. 115(1)(b) formerly read:

(b) the only taxable capital gains and allowable capital losses referred to in paragraph 3(b) were taxable capital gains and allowable capital losses from dispositions of property each of which was a disposition of property or an interest therein (in this Act referred to as a "taxable Canadian property") that was

(i) real property situated in Canada,

(ii) any capital property used by the non-resident person in carrying on a business (other than an insurance business) in Canada,

(ii.1) where the non-resident person is an insurer, any capital property that is its designated insurance property for the year,

(iii) a share of the capital stock of a corporation resident in Canada (other than a public corporation),

(iv) a share of the capital stock of a public corporation if at any time during such part of the period of 5 years immediately preceding the disposition thereof as is after 1971, not less than 25% of the issued shares of any class of the capital stock of the corporation belonged to the non-resident person, to persons with whom the non-resident person did not deal at arm's length, or to the non-resident person and persons with whom the non-resident person did not deal at arm's length,

(v) an interest in a partnership, if, at any time during the 12 months immediately preceding the disposition thereof, the fair market value of such of the partnership property as was, at that time,

(A) a Canadian resource property,

(B) a timber resource property,

(C) an income interest in a trust resident in Canada, or

(D) any other property described in this paragraph

was not less than 50% of the total of

(E) the fair market value at that time of all of the partnership property, and

(F) the amount of any money of the partnership on hand at that time,

(vi) a capital interest in a trust (other than a unit trust) resident in Canada,

(vii) a unit of a unit trust (other than a mutual fund trust) resident in Canada,

(viii) a unit of a mutual fund trust, if at any time during such part of the period of 5 years immediately preceding the disposition thereof as is after 1971, not less than 25% of the issued units of the trust belonged to the non-resident person, to persons with whom the non-resident person did not deal at arm's length, or to the non-resident person and persons with whom the non-resident person did not deal at arm's length, or

(ix) any other property deemed by any provision of this Act to be taxable Canadian property,

but not including a share of the capital stock of a non-resident-owned investment corporation, if, on the first day of the taxation year of the corporation in which the disposition was made, the corporation did not own any property that was property referred to in clauses (v)(A) to (D), and

Subpara. 115(1)(b)(ii.1) amended by 1997, c. 25, s. 23, applicable to 1997 *et seq.* Subpara. (b)(ii.1) formerly read:

(ii.1) where the non-resident person is an insurer, any capital property that is property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada,

Subpara. 115(1)(a)(iii.21) added by 1995, c. 21, s. 38, applicable to taxation years that end after February 21, 1994.

Para. 115(1)(c) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 50, applicable to 1991 *et seq.* Para. (c) formerly read:

(c) the only losses referred to in paragraph 3(d) were losses from businesses carried on by the non-resident person in Canada,

Para. 115(1)(d) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 86(1), to delete reference to paragraph 110(1)(i), applicable to 1988 *et seq.*

Para. 115(1)(d.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 86(2), applicable to 1983 *et seq.*

Selected Cases [subsec. 115(1)]: *Hale v. Canada*, [1992] 2 C.T.C. 379 (FCA); leave to appeal to SCC refused (March 11, 1993), Doc. 23193 (Stock option benefit arose from Canadian employment and taxed even though taxpayer not resident in Canada when option exercised); *Placrefid Ltd. v. MNR*, [1992] 2 C.T.C. 198 (FCTD) (Payment to cancel settlement agreement by mortgagee not taxable as proceeds of disposition of option); *Hurd v. R.*, [1981] C.T.C. 209 (FCA) (Benefit from exercise of option taxable where U.S. resident performed duties in Canada in year of exercise).

Regulations: 105 (withholding on payments of fees, commissions, etc.); 3200, 3201 (prescribed stock exchanges).

I.T. Application Rules: 26(30) (taxable Canadian property under new rules effective April 26, 1995).

Interpretation Bulletins: IT-113R4: Benefits to employees — stock options; IT-150R2: Acquisition from a non-resident of certain property by death or mortgage foreclosure or by virtue of a deemed disposition (archived); IT-176R2: Taxable Canadian property — Interests in and options on real property and shares; IT-242R: Retired partners; IT-262R2: Losses of non-residents and part-year residents; IT-379R: Employees profit sharing plans — allocations to beneficiaries; IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt; IT-434R: Rental of real property by individual; IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada; IT-465R: Non-resident beneficiaries of trusts See also list at end of s. 115.

Information Circulars: 72-17R5: Procedures concerning the disposition of taxable Canadian property by non-residents of Canada — section 116; 88-2 Supplement, para. 7: General anti-avoidance rule — section 245 of the *Income Tax Act*.

Advance Tax Rulings: ATR-70: Distribution of taxable Canadian property by a trust to a non-resident.

Forms: R105: Regulation 105 waiver application; T2 SCH 91: Information concerning claims for treaty-based exemptions; T1243: Deemed disposition of property by an emigrant of Canada; T1248: Information about your residency status; T1261: Application for a CRA Individual tax number (ITN) for non-residents; T2061A: Election by an emigrant to report deemed dispositions of taxable Canadian property and capital gains and/or losses thereon; T4058: Non-residents and income tax [guide].

(2) Idem [persons deemed employed in Canada] — Where, in a taxation year, a non-resident person was

(a) a student in full-time attendance at an educational institution in Canada that is a university, college or other educational institution providing courses at a post-secondary school level in Canada,

(b) a student attending, or a teacher teaching at, an educational institution outside Canada that is a university, college or other educational institution providing courses at a post-secondary school level, who in any preceding taxation year ceased to be resident in Canada in the course of or subsequent to moving to attend or to teach at the institution,

(b.1) an individual who in any preceding taxation year ceased to be resident in Canada in the course of or subsequent to moving to carry on research or any similar work under a grant received by the individual to enable the individual to carry on the research or work,

(c) an individual

(i) who had, in any previous year, ceased to be resident in Canada,

(ii) who received, in the taxation year, salary or wages or other remuneration in respect of an office or employment that was paid to the individual directly or indirectly by a person resident in Canada, and

(iii) who was, under an agreement or a convention with one or more countries that has the force of law in Canada, entitled to an exemption from an income tax otherwise payable in any of those countries in respect of the salary or wages or other remuneration, or

(c.1) a person who received in the year an amount, under a contract, that was or will be deductible in computing the income of a taxpayer subject to tax under this Part and the amount can, irrespective of when the contract was entered into or the form or legal

effect of the contract, reasonably be regarded as having been received, in whole or in part,

(i) as consideration or partial consideration for entering into a contract of service or an agreement to perform a service where any such service is to be performed in Canada, or for undertaking not to enter into such a contract or agreement with another party, or

(ii) as remuneration or partial remuneration from the duties of an office or employment or as compensation or partial compensation for services to be performed in Canada,

the following rules apply:

(d) for the purposes of subsection 2(3) the non-resident person shall be deemed to have been employed in Canada in the year,

(e) for the purposes of subparagraph (1)(a)(v), the total determined under this paragraph in respect of the non-resident person is the total of

(i) any remuneration in respect of an office or employment that was paid to the non-resident person directly or indirectly by a person resident in Canada and was received by the non-resident person in the year, except to the extent that such remuneration is attributable to the duties of an office or employment performed by the non-resident person anywhere outside Canada and

(A) is subject to an income or profits tax imposed by the government of a country other than Canada, or

(B) is paid in connection with the selling of property, the negotiating of contracts or the rendering of services for the non-resident person's employer, or a foreign affiliate of the employer, or any other person with whom the employer does not deal at arm's length, in the ordinary course of a business carried on by the employer, that foreign affiliate or that person,

(ii) amounts that would be required by paragraph 56(1)(n) or (o) to be included in computing the non-resident person's income for the year if the non-resident person were resident in Canada throughout the year and the reference in the applicable paragraph to "received by the taxpayer in the year" were read as a reference to "received by the taxpayer in the year from a source in Canada",

(iii) [Repealed]

(iv) amounts that would be required by paragraph 56(1)(q) to be included in computing the non-resident person's income for the year if the non-resident person were resident in Canada throughout the year, and

(v) amounts described in paragraph (c.1) received by the non-resident person in the year, except to the extent that they are otherwise required to be included in computing the non-resident person's taxable income earned in Canada for the year, and

(f) there may be deducted in computing the taxable income of the non-resident person for the year the amount that would be deductible in computing the non-resident person's income for the year by virtue of section 62 if

(i) the definition "eligible relocation" in subsection 248(1) were read without reference to subparagraph (a)(i) of that definition, and

(ii) the amounts described in subparagraph 62(1)(c)(ii) were the amounts described in subparagraph (e)(ii) of this subsection.

Related Provisions: 4(3) — Deductions applicable; 33.1 — International banking centres; 52(8) — Reduction in cost base of share of corporation that becomes resident in Canada; 146(1)"earned income"(d) — RRSPs — "earned income"; 153(1)(o) — Withholding of tax on amount described in 115(2)(c.1); 250(1) — Individuals deemed resident in Canada.

History: Paras. 115(2)(b) and (b.1) amended by 2001, c. 17, subsec. 90(7), applicable to 1998 *et seq.* The paras. formerly read:

(b) a student attending, or a teacher teaching at, an educational institution outside Canada that is a university, college or other educational institution providing courses at a post-secondary school level, who had, in any previous year, ceased to be resident in Canada in the course of or subsequent to moving to attend or to teach at, as the case may be, that institution,

(b.1) an individual who had, in any previous year, ceased to be resident in Canada in the course of or subsequent to moving to carry on research or any similar work under a grant received by the individual to enable the individual to carry on that research or work,

Para. 115(2)(c) amended, subparas. 115(2)(f)(i) to (iii) replaced with subparas. (i) and (ii), by 1999, c. 22, subsec. 29(3), para. (c) applicable to 1998 *et seq.*, subparas. (f)(i) and (ii) applicable after 1997. Para. 115(2)(c) and subparas. 115(2)(f)(i) to (iii) formerly read:

(c) an individual who had, in any previous year, ceased to be resident in Canada and who was, in the taxation year, in receipt of remuneration in respect of an office or employment that was paid to the individual directly or indirectly by a person resident in Canada, or

. . . . .

(i) that section were read without reference to paragraph 62(1)(a),

(ii) that section were applicable in computing the taxable income of non-resident persons, and

(iii) the amounts described in subparagraph 62(1)(f)(ii) were the amounts described in subparagraph (e)(ii) of this subsection.

Subpara. 115(2)(e)(iii) repealed by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 5(2), applicable to 1993 *et seq.* Subpara. (e)(iii) formerly read:

(iii) amounts that would be required by subsection 56(5) to be included in computing the non-resident person's income for the year if the non-resident person were resident in Canada throughout the year,

Subpara. 115(2)(e)(iii) amended by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 5(1), to substitute "subsection 56(5)" for "subsection 56(5) of this Act or subsection 56(8) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952," applicable to 1990 *et seq.*

Selected Cases [subsec. 115(2)]: *Jarlan v. R.*, [1984] C.T.C. 375 (FCTD) (Royalties sent to inventor after leaving Canada constituted income from employment, not royalties paid to non-resident).

Interpretation Bulletins: IT-75R4: Scholarships, fellowships, bursaries, prizes, research grants and financial assistance; IT-161R3: Non-residents — exemption from tax deductions at source on employment income (archived); IT-178R3: Moving expenses. See also list at end of s. 115.

Forms: T1248: Information about your residency status; T1261: Application for a CRA Individual tax number (ITN) for non-residents; T4058: Non-residents and income tax [guide].

(2.1) Non-resident actors — Notwithstanding subsection (1), where a non-resident person is liable to tax under subsection 212(5.1), or would if this Act were read without reference to subsection 212(5.2) be so liable, in respect of an amount paid, credited or provided in a particular taxation year, the amount shall not be included in computing the non-resident person's taxable income earned in Canada for any taxation year unless a valid

election is made under subsection 216.1(1) in respect of the non-resident person for the particular year.

Related Provisions: 115(2.2) — Deferred payment by actor's corporation; 150(1)(a)(i)(B) — No requirement for actor to file Canadian tax return.

History: Subsec. 115(2.1) added by 2001, c. 17, subsec. 90(8), applicable in respect of amounts paid, credited or provided after 2000.

(2.2) Deferred payment by actor's corporation — Where a corporation is liable to tax under subsection 212(5.1) in respect of a corporation payment (within the meaning assigned by subsection 212(5.2)) made in a taxation year in respect of an actor and, in a subsequent year, the corporation makes an actor payment (within the meaning assigned by subsection 212(5.2)) to or for the benefit of the actor, the amount of the actor payment is not deductible in computing the income of the corporation for any taxation year and is not included in computing the taxable income earned in Canada of the actor for any taxation year.

History: Subsec. 115(2.2) added by 2001, c. 17, subsec. 90(8), applicable in respect of amounts paid, credited or provided after 2000.

Regulations: 202(1.1) (information return).

(3) [Repealed]

History: Subsec. 115(3) repealed by 2001, c. 17, subsec. 90(9), applicable after October 1, 1996. The subsec. formerly read:

> (3) Property deemed to include interests and options — For the purpose of this section, a property described in subparagraphs (1)(b)(i) to (xii) is deemed to include any interest therein or option in respect thereof, whether or not such property is in existence.

Subsec. 115(3) amended by 1998, c. 19, subsec. 132(2), applicable after April 26, 1995, except in respect of the disposition of a property before 1996

> (a) to a person who was obliged on April 26, 1995 to acquire the property pursuant to the terms of an agreement in writing made on or before that day (and, for the purpose of this paragraph, a person shall be considered not to be obliged to acquire property where the person can be excused from the obligation if there is a change to the Act or if there is an adverse assessment under the Act); or
>
> (b) pursuant to a prospectus or similar document filed with the relevant securities authority before April 27, 1995.

Subsec. 115(3) formerly read:

> (3) Property deemed to include interests and options — For the purpose of this section, a property described in subparagraphs (1)(b)(i) to (ix) shall be deemed to include any interest therein or option in respect thereof, whether or not such property is in existence.

Subsec. 115(3) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 86(3), applicable after July 13, 1990. Subsec. 115(3) formerly read:

> (3) Property deemed to include option — For the purposes of this section, a property described in subparagraphs (1)(b)(i) to (ix) shall be deemed to include an option in respect of such a property whether or not the property is in existence.

(4) Non-resident's income from Canadian resource property — Where a non-resident person ceases at any particular time in a taxation year to carry on such of the businesses described in any of paragraphs (a) to (g) of the definition "principal business corporation" in subsection 66(15) as were carried on by the non-resident person immediately before that time at one or more fixed places of business in Canada and either does not commence after that time and during the year to carry on any business so described at a fixed place of business in Canada or disposes of Canadian resource property at any time in the year during which the non-resident person was not carrying on any business so described at a fixed place of business in Canada, the following rules apply:

> (a) the taxation year of the non-resident person that would otherwise have included the particular time shall be deemed to have ended at such time and a new taxation year shall be deemed to have commenced immediately thereafter;
>
> (b) the non-resident person or any partnership of which the non-resident person was a member immediately after the particular time shall be deemed, for the purpose only of computing the non-resident person's income earned in Canada for the taxation year that is deemed to have ended, to have disposed immediately before the particular time of each Canadian resource property that was owned by the non-resident person or by the partnership immediately after the particular time and to have received therefor immediately before the particular time proceeds of disposition equal to the fair market value thereof at the particular time; and
>
> (c) the non-resident person or any partnership of which the non-resident person was a member immediately after the particular time shall be deemed, for the purpose only of computing the non-resident person's income earned in Canada for a taxation year commencing after the particular time, to have reacquired immediately after the particular time, at a cost equal to the amount deemed by paragraph (b) to have been received by the non-resident person or the partnership as the proceeds of disposition therefor, each property deemed by that paragraph to have been disposed of.

Related Provisions: 4(3) — Deductions applicable; 66.2(7) — Exception — Canadian development expense; 66.4(7) — Share of partner; 115(5) — Partnership excludes prescribed partnership; 115.1 — Competent authority agreements under tax treaties.

Interpretation Bulletins: IT-125R4: Dispositions of resource properties.

(4.1) Foreign resource pool expenses — Where a taxpayer ceases at any time after February 27, 2000 to be resident in Canada, a particular taxation year of the taxpayer ends after that time and the taxpayer was non-resident throughout the period (in this subsection referred to as the "non-resident period") that begins at that time and ends at the end of the particular year,

> (a) in computing the taxpayer's taxable income earned in Canada for the particular year, there may be deducted each amount that would be permitted to be deducted in computing the taxpayer's income for the particular year under subsection 66(4) or 66.21(4) if
>
> > (i) subsection 66(4) were read without reference to the words "who is resident throughout a taxation year in Canada" and as if the amount determined under subparagraph 66(4)(b)(ii) were nil, and
> >
> > (ii) subsection 66.21(4) were read without reference to the words "throughout which the taxpayer is resident in Canada" and as if the amounts determined under subparagraph 66.21(4)(a)(ii) and paragraph 66.21(4)(b) were nil; and
>
> (b) an amount deducted under this subsection in computing the taxpayer's taxable income earned in Canada for the particular year is deemed, for the purpose of applying subsection 66(4) or 66.21(4), as the case may be, to a subsequent taxation year, to have been deducted in computing the taxpayer's income for the particular year.

History: Subsec. 115(4.1) added by 2001, c. 17, subsec. 90(10), applicable to taxation years that begin after February 27, 2000.

(5) Interpretation of "partnership" — For the purposes of subsection (4), "partnership" does not include a prescribed partnership.

Regulations: No prescribed partnerships to date.

(6) Application of subsec. 138(12) — The definitions in subsection 138(12) apply to this section.

Origin of subsec. 115(6): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsec. 138(12)).

Selected Cases [s. 115]: *Austin v. R.*, 2003 CarswellNat 4221 (TCC) (Income based on games played in Canada, not days spent); *Hale v. Canada*, [1992] 2 C.T.C. 379 (FCA); leave to appeal to SCC refused (March 11, 1993), Doc. 23193 (Stock option benefit arose from Canadian employment and taxed even though taxpayer not resident in Canada when option exercised); *Placrefid Ltd. v. MNR*, [1992] 2 C.T.C. 198 (FCTD) (Payment to non-resident for cancellation of agreement was business income; non-resident had no place of business in Canada, not taxable).

Definitions [s. 115]: "allowable business investment loss" — 38(c), 248(1); "allowable capital loss" — 38(b), 248(1); "amount", "authorized foreign bank", "business" — 248(1); "branch financial statements" — 20.2(1); "Canada" — 255; "Canadian banking business" — 248(1); "Canadian resource property" — 66(15), 248(1); "capital interest" — in a trust 108(1), 248(1); "capital property" — 54, 248(1); "carried on a business in Canada" — 253; "class of shares" — 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "corporation payment" — 212(5.2); "designated insurance property" — 138(12), 248(1); "dividend", "employed", "employment" — 248(1); "foreign affiliate" — 95(1), 248(1); "foreign resource pool expense" — 248(1); "income interest" — 108(1), 248(1); "individual" — 248(1); "interest" — in real property 248(4); "international traffic" — 248(1); "life insurance policy in Canada" — 138(12), 248(1); "listed" — 87(10); "mutual fund corporation" — 131(8), 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q) [to be repealed], 132.2(3)(n) [draft], 248(1); "non-resident", "office" — 248(1); "partnership" — 115(5) ; "person", "prescribed" — 248(1); "prescribed stock exchange" — 248(29), Reg. 3200, 3201; "property" — 248(1); "property used by it in the year in, or held by it in the year in the course of carrying on an insurance business" — 115(6), 138(12); "public corporation" — 89(1), 248(1); "resident in Canada" — 94(3)(a)(viii), 250; "salary or wages", "share" — 248(1); "taxable Canadian property" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 249, 250.1(a); "taxpayer" — 248(1); "timber resource property" — 13(21), 248(1); "treaty-protected business", "treaty-protected property" — 248(1); "trust" — 104(1), 248(1), (3); "unit trust" — 108(2), 248(1).

Interpretation Bulletins [s. 115]: IT-81R: Partnerships — income of non-resident partners; IT-168R3: Athletes and players employed by football, hockey and similar clubs; IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits (archived); IT-221R3: Determination of an individual's residence status; IT-328R3: Losses on shares on which dividends have been received; IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-420R3: Non-residents — income earned in Canada.

115.1 (1) Competent authority [tax treaty] agreements — Notwithstanding any other provision of this Act, where the Minister and another person have, under a provision contained in a tax convention or agreement with another country that has the force of law in Canada, entered into an agreement with respect to the taxation of the other person, all determinations made in accordance with the terms and conditions of the agreement shall be deemed to be in accordance with this Act.

(2) Transfer of rights and obligations — Where rights and obligations under an agreement described in subsection (1) have been transferred to another person with the concurrence of the Minister, that other person shall be deemed, for the purpose of subsection (1), to have entered into the agreement with the Minister.

Related Provisions [s. 115.1]: 115(1) — Non-resident's taxable income earned in Canada; 116(1) — Disposition by non-resident of certain property; Canada-U.S. Tax Treaty:Art. XXVI — Mutual agreement procedure; Canada-U.K. Tax Treaty:Art. 23 — Mutual agreement procedure.

History: S. 115.1 substituted by 1994, c. 7, Sch. VIII (1993, c. 24), s. 51, applicable after 1984. S. 115.1 formerly read:

> 115.1 Disposition of property by non-resident person — Where a non-resident person or partnership (in this section referred to as "the vendor") has in a taxation year disposed of property to another person or partnership (in this section referred to as "the purchaser") and
>
> (a) the Minister has agreed, pursuant to a prescribed tax treaty provision, to defer the taxation in Canada of the gain or income in respect of the disposition, and
>
> (b) the vendor and the purchaser jointly so elect in prescribed form and within the prescribed time in accordance with terms and conditions satisfactory to the Minister,
>
> notwithstanding any other provision of this Act, the following rules apply:
>
> (c) the amount that the vendor, the purchaser and the Minister have agreed on in respect of the property shall be deemed to be the vendor's proceeds of disposition of the property and the purchaser's cost of the property;
>
> (d) where the property was, at the time of its disposition, depreciable property of a prescribed class to the vendor and the vendor's capital cost of the property immediately before the disposition exceeds the agreed amount in respect of the property, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a),
>
> (i) the capital cost of the property to the purchaser shall be deemed to be the amount that was the capital cost thereof to the vendor immediately before the disposition, and
>
> (ii) the excess shall be deemed to have been allowed to the purchaser in respect of the property under regulations made under paragraph 20(1)(a) in computing income for taxation years ending before the acquisition by the purchaser of the property, and
>
> (e) where the property was, at the time of its disposition, a capital property, a Canadian resource property, a foreign resource property, an eligible capital property or an inventory to the vendor, that property shall be deemed to be such a property of the purchaser and the purchaser shall be deemed to have acquired that property and used it for the same purposes as that for which the property was used by the vendor immediately before that time.

Definitions [s. 115.1]: "Minister", "person" — 248(1).

Interpretation Bulletins [s. 115.1]: IT-173R2: Capital gains derived in Canada by residents of the United States; IT-270R3: Foreign tax credit; IT-420R3: Non-residents — income earned in Canada.

Information Circulars [s. 115.1]: 71-17R5: Guidance on competent authority assistance under Canada's tax conventions.

Forms [s. 115.1]: T2029: Waiver in respect of the normal reassessment period.

115.2 Non-residents with Canadian investment service providers — (1) Definitions — The definitions in this subsection apply in this section.

"Canadian investor", at any time in respect of a non-resident person, means a person that the non-resident person knows, or ought to know after reasonable inquiry, is at that time resident in Canada.

History: The definition "Canadian investor" added to subsec. 115.2(1) by 2002, c. 9, subsec. 35(4), applicable to 1999 *et seq.* except that, in applying the definition to taxation years that end after 1998 and before 2002, the definition shall be read as follows:

> "Canadian investor", at any time in respect of a qualified non-resident, means
>
> (a) a person that the non-resident knows, or ought to know after reasonable inquiry, is at that time resident in Canada; and
>
> (b) a partnership that the non-resident knows, or ought to know after reasonable inquiry, has a member that is at that time resident in Canada.

"Canadian service provider" means a corporation resident in Canada, a trust resident in Canada or a Canadian partnership.

"designated investment services" provided to a person or partnership means any one or more of the services described in the following paragraphs:

(a) investment management and advice with respect to qualified investments, regardless of whether the manager has discretionary authority to buy or sell;

(b) purchasing and selling qualified investments, exercising rights incidental to the ownership of qualified investments such as voting, conversion and exchange, and entering into and executing agreements with respect to such purchasing and selling and the exercising of such rights;

(c) investment administration services, such as receiving, delivering and having custody of investments, calculating and reporting investment values, receiving subscription amounts from, and paying distributions and proceeds of disposition to, investors in and beneficiaries of the person or partnership, record keeping, accounting and reporting to the person or partnership and its investors and beneficiaries; and

(d) in the case of a corporation, trust or partnership the only undertaking of which is the investing of its funds in qualified investments, marketing investments in the corporation, trust or partnership to non-resident investors.

History: The definition "designated investment services" in subsec. 115.2(1) amended by 2002, c. 9, subsec. 35(2), applicable to 2002 *et seq.* The definition formerly read:

"designated investment services" provided to a qualified non-resident means any one or more of the services described in the following paragraphs:

(a) investment management and advice with respect to qualified investments, regardless of whether the manager has discretionary authority to buy or sell;

(b) purchasing and selling qualified investments, exercising rights incidental to the ownership of qualified investments such as voting, conversion and exchange, and entering into and executing agreements with respect to such purchasing and selling and the exercising of such rights;

(c) investment administration services, such as receiving, delivering and having custody of investments, calculating and reporting investment values, receiving subscription amounts from, and paying distributions and proceeds of disposition to, investors in and beneficiaries of the qualified non-resident, record keeping, accounting and reporting to the qualified non-resident and its investors and beneficiaries; and

(d) if the qualified non-resident is a corporation, trust or partnership the only undertaking of which is the investing of its funds in qualified investments, marketing investments in the qualified non-resident to non-resident investors.

"promoter" of a corporation, trust or partnership means a particular person or partnership that initiates or directs the founding, organization or substantial reorganization of the corporation, trust or partnership, and a person or partnership that is affiliated with the particular person or partnership.

History: The definition "promoter" in subsec. 115.2(1) amended by 2002, c. 9, subsec. 35(2), applicable to 2002 *et seq.* The definition formerly read:

"promoter" of a qualified non-resident that is a corporation, trust or partnership means a person or partnership that initiates or directs the founding, organization or substantial reorganization of the non-resident, or a person or partnership affiliated with such a person or partnership.

"qualified investment" of a person or partnership means

(a) a share of the capital stock of a corporation, or an interest in a partnership, trust, entity, fund or organization, other than a share or an interest

(i) that is either

(A) not listed on a prescribed stock exchange, or

(B) listed on a prescribed stock exchange, if the person or partnership, together with all persons with whom the person or partnership does not deal at arm's length, owns 25% or more of the issued shares of any class of the capital stock of the corporation or of the total value of interests in the partnership, entity, trust, fund or organization, as the case may be, and

(ii) of which more than 50% of the fair market value is derived from one or more of

(A) real property situated in Canada,

Proposed Amendment — 115.2(1)"qualified investment"(a)(ii)(A)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), s. 234, will amend cl. (a)(ii)(A) of the definition "qualified investment" in subsec. 115.2(1) by substituting "real or immovable property" for "real property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(B) Canadian resource property, and

(C) timber resource property;

(b) indebtedness;

(c) annuities;

(d) commodities or commodities futures purchased or sold, directly or indirectly in any manner whatever, on a commodities or commodities futures exchange;

(e) currency; and

(f) options, interests, rights and forward and futures agreements in respect of property described in any of paragraphs (a) to (e) or this paragraph, and agreements under which obligations are derived from interest rates, from the price of property described in any of those paragraphs, from payments made in respect of such a property by its issuer to holders of the property, or from an index reflecting a composite measure of such rates, prices or payments, whether or not the agreement creates any rights in or obligations regarding the referenced property itself.

History: The portion of the definition "qualified investment" in subsec. 115.2(1) before subpara. (a)(ii) amended by 2002, c. 9, subsec. 35(3), applicable to 2002 *et seq.* The portion formerly read:

"qualified investment" of a qualified non-resident means

(a) a share of the capital stock of a corporation, or an interest in a partnership, trust, entity, fund or organization, other than a share or an interest

(i) that is either

(A) not listed on a prescribed stock exchange, or

(B) listed on a prescribed stock exchange, if the qualified non-resident, together with all persons with whom the non-resident does not deal at arm's length, owns 25% or more of the issued shares of any class of the capital stock of the corporation or of the total value of interests in the partnership, entity, trust, fund or organization, as the case may be, and

Regulations: 3200, 3201 (prescribed stock exchanges for cls. (a)(i)(A) and (B); not yet prescribed).

"qualified non-resident" — [Repealed]

History: The definition "qualified non-resident" in subsec. 115.2(1) repealed by 2002, c. 9, subsec. 35(1), applicable to 2002 *et seq.* The definition formerly read:

> "qualified non-resident" means a non-resident person or a partnership no member of which is resident in Canada.

(2) Not carrying on business in Canada — For the purposes of subsection 115(1) and Part XIV, a non-resident person is not considered to be carrying on business in Canada at any particular time solely because of the provision to the person, or to a partnership of which the person is a member, at the particular time of designated investment services by a Canadian service provider if

(a) in the case of services provided to a non-resident individual other than a trust, the individual is not affiliated at the particular time with the Canadian service provider;

(b) in the case of services provided to a non-resident person that is a corporation or trust,

(i) the person has not, before the particular time, directly or through its agents,

(A) directed any promotion of investments in itself principally at Canadian investors, or

(B) sold an investment in itself that is outstanding at the particular time to a person who was a Canadian investor at the time of the sale and who is a Canadian investor at the particular time,

(ii) the person has not, before the particular time, directly or through its agents, filed any document with a public authority in Canada in accordance with the securities legislation of Canada or of any province in order to permit the distribution of interests in the person to persons resident in Canada, and

(iii) when the particular time is more than one year after the time at which the person was created, the total of the fair market value, at the particular time, of investments in the person that are beneficially owned by persons and partnerships (other than a designated entity in respect of the Canadian service provider) that are affiliated with the Canadian service provider does not exceed 25% of the fair market value, at the particular time, of all investments in the person; and

(c) in the case of services provided to a partnership of which the non-resident person is a member,

(i) the particular time is not more than one year after the partnership was formed, or

(ii) the total of the fair market value, at the particular time, of investments in the partnership that are beneficially owned by persons and partnerships (other than a designated entity in respect of the Canadian service provider) that are affiliated with the Canadian service provider does not exceed 25% of the fair market value, at the particular time, of all investments in the partnership.

Proposed Amendment — 115.2(2)(c)

Letter from Dept. of Finance, June 4, 2002:

Dear [xxx]

I am writing further to discussions you and your colleague, [xxx] have had with Ryan Hall of this Division and your letter of April 8, 2002, in which you raise a concern about the application of paragraph 115.2(2)(c) of the *Income Tax Act* to non-resident persons who are members of a partnership of which residents of Canada are also members, and you request that certain amendments be made to address this concern.

As you know, section 115.2 is an interpretive rule which ensures that, provided certain conditions are met, the receipt of Canadian investment management services does not by itself cause a non-resident person to be considered to be carrying on business in Canada. (However, it should be noted that the section does not protect from Canadian taxation non-residents who for other reasons would be considered to be earning income from carrying on business in Canada.)

This section was recently amended so that it applies to all non-resident persons, including those who are members of a partnership of which one or more members are resident in Canada. As a result, the rule no longer applies to partnerships *per se*, but rather to the partners themselves. Paragraph 115.2(2)(c) sets out the circumstances under which the rule applies where investment services are not directly provided to non-residents but to a partnership, of which the non-residents are members.

Your concern is that the restriction in subparagraph 115.2(2)(c)(ii), which places a 25% limit on investments held in a partnership by persons who are affiliated with the Canadian service provider, may in some cases lead to consequences which are inconsistent with the Government's stated policy objectives.

You note in your letter that the explanatory notes for the amendments to section 115.2 explain that the restrictions found in subparagraphs 115.2(2)(c)(i) and (ii) are comparable to those found in subparagraph 115.2(2)(b)(iii), but you express the view that these two restrictions are not analogous. Although we consider the mechanics of the provisions to be comparable, it would appear that the two rules differ substantively: paragraph (b) applies to limit investments in non-residents (in that paragraph, corporations and trusts) to which subsection 115.2(2) applies whereas paragraph (c) does not operate to restrict investments in non-residents who benefit from that subsection, but rather in partnerships of which they are members.

The underlying policy for the investment restrictions in subsection 115.2(2) is to ensure that a reasonable measure of independence exists between non-resident persons who benefit from section 115.2 and their service providers. Making section 115.2 available in those cases where a non-resident is a member of a partnership, of which 25% of the investments are held by persons and partnerships which are affiliated with a service provider but not with the non-resident, would not appear to compromise this policy objective. In short, it seems that the limitation found in paragraph (c) may not be an accurate proxy for gauging the level of independence between any given non-resident and a service provider who supplies investment services to a partnership of which the non-resident is a member.

Given the foregoing, the Government's policy objective — both to treat partnerships as flow-through entities for the purposes of section 115.2 and to ensure a reasonable measure of independence exists between non-resident persons who avail themselves of the benefit of this section and their service providers — would likely be met by replacing the restriction found in paragraph (c) with a limitation that better relates to the measure of independence *vis-à-vis* a non-resident person and a service provider who provides investment services to a partnership of which the non-resident is a member.

We therefore intend to recommend two things: that subsection 115.2(2) be amended so that a non-resident who is a member of a partnership which receives investment services will not be denied the benefit of section 115.2 because other persons or partnerships, which are affiliated with the service provider but not with the non-resident, hold more than 25% of the fair market value of the interests in the partnership; and that, in keeping with the principle of applying section 115.2 at the partner rather than at the partnership level, the 25% investment limit apply to the non-resident partners themselves. We are prepared to recommend that these amendments apply to the 2002 and subsequent taxation years, if the non-resident so chooses.

Of course, we cannot offer any assurance that either the Minister of Finance or Parliament will agree with the recommendation that we intend to make in this regard. Nonetheless, we trust that this statement of our position is helpful.

Yours sincerely,
Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

[Virtually identical letter dated November 20, 2002 — ed.]

Proposed Amendment — 115.2(2)

Letter from Dept. of Finance, November 26, 2002:

Dear [xxx]

I am writing further to your letter of August 20, 2002 and your discussions with Ryan Hall, of this Division, concerning section 115.2 of the *Income*

Tax Act. In particular, you ask that the section, which currently applies only for the purposes of subsection 115(1) and Part XIV of the Act, be broadened to apply also for the purposes of the corporate filing requirements under section 150 of the Act.

As you know, section 115.2 is an interpretive rule which ensures that, provided certain conditions are met, the receipt of Canadian investment management services does not by itself cause a non-resident person to be considered to be carrying on business in Canada. (However, it should be noted that the section does not protect from Canadian taxation non-residents who for other reasons would be considered to be earning income from carrying on business in Canada.)

You explain that a non-resident corporation that is entitled to benefit from the protection of section 115.2 may in some cases be required to file a return in Canada solely because of the provision of designated investment services to the non-resident by a Canadian investment manager. Technical Interpretation 2001-0089875, a copy of which you attached to your letter and to which you refer, makes it clear that section 253 will deem a non-resident to be carrying on business in Canada if, for example, the non-resident carries on business outside Canada and receives designated investment services from a Canadian investment manager. Unlike section 115.2, section 253 applies for the purposes of the Act, and, as a result, the non-resident in the example would be required to file a return in Canada under section 150, which requires corporations to file returns if at any time in the year they carry on business in Canada.

You suggest that the filing requirement deters non-resident investment, and that this result is inconsistent with the policy behind section 115.2. While we are not in a position to judge its effect on non-resident investors, we recognize that the requirement adds another step and cost to non-residents who wish to invest through a Canadian investment manager. It is worth noting that the requirement to file under section 150 does not necessarily mean that a corporation entitled to benefit from the protection of section 115.2 will be *taxed* as if it were carrying on business in Canada. Rather, the corporation is being treated for filing purposes as if it were carrying on business in Canada. That said, expanding the application of section 115.2 to apply for the purposes of section 150 would appear to be consistent with the general policy intent of the section 115.2; to ensure that the use of a Canadian investment manager does not, by itself, cause non-residents to be treated as though they are carrying on business in Canada.

We are therefore prepared to recommend amendments to the Act along the foregoing lines. As you suggest, we will recommend that these amendments be made effective as of the original effective date of section 115.2, namely for taxation years that end after 1998.

Of course, we cannot offer any assurance that either the Minister of Finance or Parliament will agree with the recommendations that we intend to make in this regard. Nonetheless, we trust that this statement of our position is helpful.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

History: Subsec. 115.2(2) amended by 2002, c. 9, subsec. 35(5), applicable to 2002 *et seq*. In applying subpara. 115.2(2)(b)(i) to taxation years that end after 1998 and before 2002, the opening words of that subpara. shall be read as follows:

> (i) the non-resident has not, before the particular time, directly or through its agents,

Subsec. 115.2(2) formerly read:

> (2) For the purposes of subsection 115(1) and Part XIV, a qualified non-resident is not considered to be carrying on business in Canada at any particular time solely because of the provision to the non-resident at the particular time of designated investment services by a Canadian service provider if
>
> (a) in the case of a non-resident who is an individual other than a trust, the non-resident is not affiliated at the particular time with the Canadian service provider; and
>
> (b) in the case of a non-resident that is a corporation, trust or partnership,
>
> (i) the non-resident has not, before the particular time, directly or through its agents, directed any promotion of investments in itself principally at, or sold such investments to, persons that the non-resident knew or ought to have known after reasonable enquiry were resident in Canada or partnerships that the non-resident knew or ought to have known after reasonable enquiry had members that were resident in Canada,
>
> (ii) the non-resident has not, before the particular time, directly or through its agents, filed any document with a public authority in Canada in accordance with the securities legislation of Canada or of any province in order to permit the distribution of interests in the non-resident to persons resident in Canada, and
>
> (iii) when the particular time is more than one year after the time at which the non-resident was created, the total of the fair market value, at the particular time, of investments in the non-resident that are beneficially owned by persons and partnerships (other than a designated entity in respect of the Canadian service provider) that are affiliated with the Canadian service provider does not exceed 25% of the fair market value, at the particular time, of all investments in the non-resident.

(3) Interpretation — For the purposes of subparagraph (2)(b)(iii) and this subsection,

(a) the fair market value of an investment in a corporation, trust or partnership shall be determined without regard to any voting rights attaching to that investment; and

(b) a person or partnership is, at a particular time, a designated entity in respect of a Canadian service provider if the total of the fair market value at the particular time, of investments in the entity that are beneficially owned by persons and partnerships (other than another designated entity in respect of the Canadian service provider) that are affiliated with the Canadian service provider does not exceed 25% of the fair market value, at the particular time, of all investments in the entity.

(4) Transfer pricing — For the purpose of section 247, where subsection (2) applies in respect of services provided to a person that is a corporation or trust or to a partnership, if the Canadian service provider referred to in that subsection does not deal at arm's length with the promoter of the person or of the partnership, the service provider is deemed not to deal at arm's length with the person or partnership.

History [subsec. 115.2(4)]: Subsec. 115.2(4) amended by 2002, c. 9, subsec. 35(6), applicable to 2002 *et seq*. The subsec. formerly read:

> (4) For the purpose of section 247, where subsection (2) applies to a qualified non-resident, if the Canadian service provider referred to in that subsection does not deal at arm's length with the promoter of the qualified non-resident, the service provider is deemed not to deal at arm's length with the non-resident.

History [s. 115.2]: S. 115.2 added by 2000, c. 19, s. 21, applicable to taxation years that end after 1998.

Definitions [s. 115.2]: "affiliated" — 251.1; "amount", "annuity" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "Canadian investor" — 115.2(1); "Canadian partnership" — 102, 248(1); "Canadian resource property" — 66(15), 248(1); "Canadian service provider" — 115.2(1); "corporation" — 248(1), *Interpretation Act* 35(1); "designated entity" — 115.2(3)(b); "designated investment services" — 115.2(1); "disposition" — 248(1); "fair market value" — 115.2(3)(a); "immovable" — Quebec *Civil Code* art. 900–907; "individual", "non-resident" — 248(1); "person", "prescribed" — 248(1); "prescribed stock exchange" — 248(29), Reg. 3200, 3201; "promoter" — 115.2(1); "property" — 248(1); "province" — *Interpretation Act* 35(1); "qualified investment", "qualified non-resident" — 115.2(1); "record" — 248(1); "resident in Canada" — 94(3)(a)(viii), 250; "share" — 248(1); "taxation year" — 249; "timber resource property" — 13(21), 248(1); "trust" — 104(1), 248(1), (3).

116. (1) Disposition by non-resident person of certain property — If a non-resident person proposes to dispose of any taxable Canadian property (other than property described in subsection (5.2) and excluded pro-

perty) the non-resident person may, at any time before the disposition, send to the Minister a notice setting out

(a) the name and address of the person to whom he proposes to dispose of the property (in this section referred to as the "proposed purchaser");

(b) a description of the property sufficient to identify it;

(c) the estimated amount of the proceeds of disposition to be received by the non-resident person for the property; and

(d) the amount of the adjusted cost base to him [the non-resident person] of the property at the time of the sending of the notice.

Related Provisions: 115.1 — Competent authority agreements under tax treaties; 116(2) — Certificate in respect of proposed disposition; 116(3) — Notice to Minister; 116(5) — Purchaser liable to withhold if no certificate obtained; 116(6) — Excluded property.

History: The opening words of subsec. 116(1) amended by 2001, c. 17, subsec. 91(1), applicable after October 1, 1996. The opening words formerly read:

> 116. (1) Where a non-resident person proposes to dispose of any property that would, if the non-resident person disposed of it, be taxable Canadian property of that person (other than property described in subsection (5.2) and excluded property) the non-resident person may, at any time before the disposition, send to the Minister a notice setting out

The opening words of subsec. 116(1) amended by 1998, c. 19, subsec. 133(1), applicable after April 26, 1995. The opening words formerly read:

> 116. (1) Where a non-resident person proposes to dispose of any property that would, if the non-resident person disposed of it, be taxable Canadian property of that person (other than depreciable property or excluded property), the non-resident person may, at any time before the disposition, send to the Minister a notice setting out

Interpretation Bulletins: See Interpretation Bulletins and Information Circulars at end of s. 116.

Forms: T2062: Request by a non-resident of Canada for a certificate of compliance related to the disposition of taxable Canadian property; T2062A: Request by a non-resident of Canada for a certificate of compliance related to the disposition of Canadian resource property, Canadian real property (other than capital property), Canadian timber resource property and/or depreciable taxable Canadian property; T2062ASCH1: Disposition of Canadian resource property by non-residents.

(2) Certificate in respect of proposed disposition — Where a non-resident person who has sent to the Minister a notice under subsection (1) in respect of a proposed disposition of any property has

(a) paid to the Receiver General, as or on account of tax under this Part payable by the non-resident person for the year, 25% of the amount, if any, by which the estimated amount set out in the notice in accordance with paragraph (1)(c) exceeds the amount set out in the notice in accordance with paragraph (1)(d), or

(b) furnished the Minister with security acceptable to the Minister in respect of the proposed disposition of the property,

the Minister shall forthwith issue to the non-resident person and the proposed purchaser a certificate in prescribed form in respect of the proposed disposition, fixing therein an amount (in this section referred to as the "certificate limit") equal to the estimated amount set out in the notice in accordance with paragraph (1)(c).

Related Provisions: 116(5) — Non-residents — Liability of purchaser; 164(1.6) — Security not to be released while appeal pending.

History: Subsec. 116(2) amended by 2001, c. 17, subsec. 91(2) to replace the percentage "33 1/3%" with "25%", applicable to taxation years that end after February 27, 2000, except that, for a taxation year that ended after February 27, 2000 and before October 18, 2000, it shall be read as a reference to "30%".

Interpretation Bulletins: See Interpretation Bulletins and Information Circulars at end of s. 116.

(3) Notice to Minister — Every non-resident person who in a taxation year disposes of any taxable Canadian property of that person (other than property described in subsection (5.2) and excluded property) shall, not later than 10 days after the disposition, send to the Minister, by registered mail, a notice setting out

(a) the name and address of the person to whom the non-resident person disposed of the property (in this section referred to as the "purchaser"),

(b) a description of the property sufficient to identify it, and

(c) a statement of the proceeds of disposition of the property and the amount of its adjusted cost base to the non-resident person immediately before the disposition,

unless the non-resident person has, at any time before the disposition, sent to the Minister a notice under subsection (1) in respect of any proposed disposition of that property and

(d) the purchaser was the proposed purchaser referred to in that notice,

(e) the estimated amount set out in that notice in accordance with paragraph (1)(c) is equal to or greater than the proceeds of disposition of the property, and

(f) the amount set out in that notice in accordance with paragraph (1)(d) does not exceed the adjusted cost base to the non-resident person of the property immediately before the disposition.

Related Provisions: 116(6) — Excluded property; 162(7) — Penalty for failure to send notice; 238(1) — Offences; 248(7) — Mail deemed received on day mailed.

History: The opening words of subsec. 116(3) amended by 1998, c. 19, subsec. 133(2), applicable after April 26, 1995. The opening words formerly read:

> 116. (3) Every non-resident person who in a taxation year has made a disposition of any taxable Canadian property of that person (other than depreciable property or excluded property) shall, not later than 10 days after the day on which the disposition was made, send to the Minister, by registered mail, a notice setting out

Interpretation Bulletins: See Interpretation Bulletins and Information Circulars at end of s. 116.

Forms: T2062: Request by a non-resident of Canada for a certificate of compliance related to the disposition of taxable Canadian property; T2062A: Request by a non-resident of Canada for a certificate of compliance related to the disposition of Canadian resource property, Canadian real property (other than capital property), Canadian timber resource property and/or depreciable taxable Canadian property; T2062ASCH1: Disposition of Canadian resource property by non-residents.

(4) Certificate in respect of property disposed of — Where a non-resident person who has sent to the Minister a notice under subsection (3) in respect of a disposition of any property has

(a) paid to the Receiver General, as or on account of tax under this Part payable by the non-resident person for the year, 25% of the amount, if any, by which the proceeds of disposition of the property exceed the adjusted cost base to the non-resident person of the property immediately before the disposition, or

(b) furnished the Minister with security acceptable to the Minister in respect of the disposition of the property,

the Minister shall forthwith issue to the non-resident person and the purchaser a certificate in prescribed form in respect of the disposition.

Related Provisions: 116(5) — Non-residents — liability of purchaser; 164(1.6) — Security not to be released while appeal pending.

History: Subsec. 116(4) amended by 2001, c. 17, subsec. 91(2) to replace the percentage "33 1/3%" with "25%", applicable to taxation years that end after February 27, 2000, except that, for a taxation year that ended after February 27, 2000 and before October 18, 2000, it shall be read as a reference to "30%".

Interpretation Bulletins: See Interpretation Bulletins and Information Circulars at end of s. 116.

(5) Liability of purchaser — Where in a taxation year a purchaser has acquired from a non-resident person any taxable Canadian property (other than depreciable property or excluded property) of the non-resident person, the purchaser, unless

(a) after reasonable inquiry the purchaser had no reason to believe that the non-resident person was not resident in Canada, or

(b) a certificate under subsection (4) has been issued to the purchaser by the Minister in respect of the property,

is liable to pay, and shall remit to the Receiver General within 30 days after the end of the month in which the purchaser acquired the property, as tax under this Part for the year on behalf of the non-resident person, 25% of the amount, if any, by which

(c) the cost to the purchaser of the property so acquired

exceeds

(d) the certificate limit fixed by the certificate, if any, issued under subsection (2) in respect of the disposition of the property by the non-resident person to the purchaser,

and is entitled to deduct or withhold from any amount paid or credited by the purchaser to the non-resident person or otherwise recover from the non-resident person any amount paid by the purchaser as such a tax.

Related Provisions: 116(2) — Certificate in respect of proposed disposition; 116(4) — Certificate in respect of property disposed of; 116(6) — Excluded property; 227(9) — Failure to remit tax — penalty; 227(9.3) — Interest on tax not paid; 227(10.1) — Assessment; 248(7) — Mail deemed received on day mailed.

History: Subsec. 116(5) amended by 2001, c. 17, subsec. 91(2) to replace the percentage "33 1/3%" with "25%", applicable to taxation years that end after February 27, 2000, except that, for a taxation year that ended after February 27, 2000 and before October 18, 2000, it shall be read as a reference to "30%".

Interpretation Bulletins: See Interpretation Bulletins and Information Circulars at end of s. 116.

(5.1) Gifts, etc. — If a non-resident person has disposed of or proposes to dispose of a life insurance policy in Canada, a Canadian resource property or a taxable Canadian property other than

(a) excluded property, or

(b) property that has been transferred or distributed on or after the non-resident person's death and as a consequence thereof

to any person by way of gift *inter vivos* or to a person with whom the non-resident person was not dealing at arm's length for no proceeds of disposition or for proceeds of disposition less than the fair market value of the property at the time the non-resident person so disposed of it or proposes to dispose of it, as the case may be, the following rules apply:

(c) the reference in paragraph (1)(c) to "the proceeds of disposition to be received by the non-resident person for the property" shall be read as a reference to "the fair market value of the property at the time the non-resident person proposes to dispose of it",

(d) the references in subsections (3) and (4) to "the proceeds of disposition of the property" shall be read as references to "the fair market value of the property immediately before the disposition",

(e) the references in subsection (5) to "the cost to the purchaser of the property so acquired" shall be read as references to "the fair market value of the property at the time it was so acquired", and

(f) the reference in subsection (5.3) to "the amount payable by the taxpayer for the property so acquired" shall be read as a reference to "the fair market value of the property at the time it was so acquired".

Related Provisions: 116(6) — Excluded property.

History: The opening words of subsec. 116(5.1) amended by 2001, c. 17, subsec. 91(3), applicable after October 1, 1996. The opening words formerly read:

> (5.1) Idem — Where a non-resident person has disposed of or proposes to dispose of a life insurance policy in Canada, a Canadian resource property or any property that is or would, if the non-resident person disposed of it, be taxable Canadian property of the non-resident person other than

Interpretation Bulletins: IT-150R2: Taxable Canadian property — acquisition from a non-resident of certain property on death or mortgage foreclosure or by virtue of a deemed disposition (archived). See also Interpretation Bulletins and Information Circulars at end of s. 116.

Forms: T2062B: Notice of dispositions of life insurance policies in Canada by a non-resident; T2062B — Sched. 1: Certification and remittance notice.

(5.2) Certificates for dispositions — If a non-resident person has, in respect of a disposition or proposed disposition to a taxpayer in a taxation year of property (other than excluded property) that is a life insurance policy in Canada, a Canadian resource property, a property (other than capital property) that is real property situated in Canada, a timber resource property, depreciable property that is a taxable Canadian property or any interest in or option in respect of a property to which this subsection applies (whether or not that property exists),

Proposed Amendment — 116(5.2) opening words

(5.2) Certificates for dispositions — If a non-resident person has, in respect of a disposition, or a proposed disposition, in a taxation year to a taxpayer of property (other than excluded property) that is a life insurance policy in Canada, a Canadian resource property, a property (other than capital property) that is real property, or an immovable, situated in Canada, a timber resource property, depreciable property that is a taxable Canadian property, eligible capital property that is a taxable Canadian property or any interest in, or for civil law any right in, or any option in respect of, a property to which this subsection applies (whether or not that property exists),

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 104(1), will amend the opening words of subsec. 116(5.2) to read as above, applicable after December 23, 1998.

Technical Notes: Section 116 sets out rules that apply when a non-resident person disposes of any of certain types of property. Subsection 116(5.2) allows a non-resident vendor to obtain what is commonly known as a "clearance certificate" in respect of the disposition or proposed disposition of, among other things, depreciable property that is a taxable Canadian property. Subsection 116(5.2) is amended to include among the types of property to which it applies eligible capital property that is a taxable Canadian property. This amendment applies after December 23, 1998, which is when the definition "taxable Canadian pro-

perty" in subsection 248(1) first included eligible capital property used in carrying on a business in Canada.

(a) paid to the Receiver General, as or on account of tax under this Part payable by the non-resident person for the year, such amount as is acceptable to the Minister in respect of the disposition or proposed disposition of the property, or

(b) furnished the Minister with security acceptable to the Minister in respect of the disposition or proposed disposition of the property,

the Minister shall forthwith issue to the non-resident person and to the taxpayer a certificate in prescribed form in respect of the disposition or proposed disposition fixing therein an amount equal to the proceeds of disposition, proposed proceeds of disposition or such other amount as is reasonable in the circumstances.

Related Provisions: 116(5.1), (5.3) — Liability of purchaser; 164(1.6) — Security not to be released while appeal pending; 248(4) — Interest in real property.

History: The opening words of subsec. 116(5.2) amended by 2001, c. 17, subsec. 91(4), applicable after October 1, 1996. The opening words formerly read:

(5.2) Where a non-resident person has, in respect of a disposition or proposed disposition to a taxpayer in a taxation year of property (other than excluded property) that is a life insurance policy in Canada, a Canadian resource property, a property (other than capital property) that is real property situated in Canada, a timber resource property, depreciable property that is or would, if the non-resident person disposed of it, be a taxable Canadian property of the non-resident person or any interest in, or option in respect of, a property to which this subsection applies (whether or not the property exists),

The opening words of subsec. 116(5.2) amended by 1998, c. 19, subsec. 133(3), applicable to dispositions that occur after 1996. The opening words formerly read:

116. (5.2) Where a non-resident person has, in respect of a disposition or proposed disposition to a taxpayer in a taxation year of a life insurance policy in Canada of the non-resident person, a Canadian resource property of the non-resident person, a property (other than capital property) that is real property situated in Canada of the non-resident person (including any interest therein or option in respect thereof, whether or not the property is in existence), a timber resource property of the non-resident person or any interest therein or option in respect thereof, or depreciable property that is or would, if the non-resident person disposed of it, be a taxable Canadian property of the non-resident person,

That portion of subsec. 116(5.2) preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 87, applicable to dispositions occurring after February 20, 1990, other than dispositions pursuant to agreements in writing entered into before February 21, 1990. That portion formerly read:

(5.2) Where a non-resident person has, in respect of a disposition or proposed disposition to a taxpayer in a taxation year of a life insurance policy in Canada of the non-resident person, a Canadian resource property of the non-resident person or depreciable property that is or would, if the non-resident person disposed of it, be taxable Canadian property of the non-resident person,

Interpretation Bulletins: See Interpretation Bulletins and Information Circulars at end of s. 116.

(5.3) Liability of purchaser in certain cases — Where in a taxation year a taxpayer has acquired from a non-resident person property referred to in subsection (5.2),

(a) the taxpayer, unless after reasonable inquiry the taxpayer had no reason to believe that the non-resident person was not resident in Canada, is liable to pay, as tax under this Part for the year on behalf of the non-resident person, 50% of the amount, if any, by which

(i) the amount payable by the taxpayer for the property so acquired

exceeds

(ii) the amount fixed in the certificate, if any, issued under subsection (5.2) in respect of the disposition of the property by the non-resident person to the taxpayer

and is entitled to deduct or withhold from any amount paid or credited by the taxpayer to the non-resident person or to otherwise recover from the non-resident person any amount paid by the taxpayer as such a tax; and

(b) the taxpayer shall, within 30 days after the end of the month in which the taxpayer acquired the property, remit to the Receiver General the tax for which the taxpayer is liable under paragraph (a).

Related Provisions: 227(9) — Failure to remit tax — penalty; 227(9.3) — Interest on tax not paid; 227(10.1) — Assessment; 248(7) — Mail deemed received on day mailed.

Interpretation Bulletins: See Interpretation Bulletins and Information Circulars at end of s. 116.

(5.4) Presumption — Where there has been a disposition by a non-resident of a life insurance policy in Canada by virtue of subsection 148(2) or any of paragraphs (a) to (c) and (e) of the definition "disposition" in subsection 148(9), the insurer under the policy shall, for the purposes of subsections (5.2) and (5.3) be deemed to be the taxpayer who acquired the property for an amount equal to the proceeds of disposition as determined under section 148.

Interpretation Bulletins: See Interpretation Bulletins and Information Circulars at end of s. 116.

(6) Definition of "excluded property" — For the purposes of this section, "excluded property" of a non-resident person means

(a) a property that is a taxable Canadian property solely because a provision of this Act deems it to be a taxable Canadian property;

(a.1) a property (other than real property situated in Canada, a Canadian resource property or a timber resource property) that is described in an inventory of a business carried on in Canada by the person;

Proposed Amendment — 116(6)(a.1)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 235(1), will amend para. 116(6)(a.1) by substituting "real or immovable property" for "real property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(b) a share of a class of shares of the capital stock of a corporation that is listed on a prescribed stock exchange;

(c) a unit of a mutual fund trust;

(d) a bond, debenture, bill, note, mortgage, hypothecary claim or similar obligation;

(e) property of a non-resident insurer that

(i) is licensed or otherwise authorized under the laws of Canada or a province to carry on an insurance business in Canada; and

(ii) carries on an insurance business, within the meaning of subsection 138(1) of the Act, in Canada;

(f) property of an authorized foreign bank that is used or held in the course of the bank's Canadian banking business;

Proposed Amendment — 116(6)(f)

(f) property of an authorized foreign bank that carries on a Canadian banking business;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 104(2), will amend para. 116(6)(f) to read as above, applicable after June 27, 1999.

Technical Notes: Paragraph 116(6)(f) currently treats as an excluded property any property of an authorized foreign bank that is used or held in the bank's "Canadian banking business" (defined in subsection 248(1)). The paragraph is amended to treat as excluded property all of the property of an authorized foreign bank that carries on a Canadian banking business. As a result, the treatment of authorized foreign banks will in this respect be comparable to the treatment of non-resident insurers.

Letter from Dept. of Finance, December 18, 2001:

Dear [xxx]:

I am writing in reply to your letter of October 24, 2001, regarding the conversion rules of foreign bank branches, particularly subsection 142.7(8) and subparagraph 212(1)(b)(vii) of the *Income Tax Act*, as well as your letter of November 13, 2001 regarding the application of section 116 of the Act where an authorized foreign bank disposes of its property to a Canadian resident.

. . . . .

You suggest that it would be difficult for the purchaser of a taxable Canadian property from an authorized foreign bank to determine if the property were used in the bank's Canadian banking business, and thus was an "excluded property" under section 116 such that the transaction would have no withholding implications. Therefore, you request that the purchaser be exempt from the withholding obligation in a manner similar to the relief proposed for the purposes of Part XIII and Regulation 105.

We understand the difficulty facing purchasers and, as a result, are prepared to recommend amendments to alleviate the compliance burden of purchasers acquiring taxable Canadian properties from an authorized foreign bank similar to the relief available to qualified non-resident insurance corporations described in Regulation 810.

It is also our intention to recommend that the above-noted changes be effective after June 27, 1999, coinciding with the other aspects of the taxation rules of authorized foreign bank. While I can offer no assurance that the Minister will accept our recommendations, we expect that measures along the lines I have described will be included in the next package of draft income tax technical amendments.

I trust that the above will satisfy your requirements.

Yours sincerely,

Brian Ernewein, Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, July 13, 2001: See under 212(13.3).

(g) an option in respect of property referred to in any of paragraphs (a) to (f) whether or not such property is in existence; and

(h) an interest in property referred to in any of paragraphs (a) to (g).

Proposed Amendment — 116(6)(h)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 235(2), will amend para. 116(6)(h) by substituting "an interest, or for civil law a right," for "an interest", to come into force on Royal Assent.

Technical Notes: See under 12(4).

Related Provisions: 55(6) — Reorganization share deemed listed on prescribed stock exchange for purposes of 116(6); 87(10) — New share issued on amalgamation of public corporation deemed to be listed on prescribed stock exchange.

History: Paras. 116(6)(a) and (b) amended, and para. (a.1) added, by 2001, c. 17, subsec. 91(5), paras. (a) and (a.1) applicable after October 1, 1996 and para. (b) applicable after June 27, 1999. Paras. 116(6)(a) and (b) formerly read:

(a) property described in subparagraph 115(1)(b)(xii);

(b) a share of a class of the capital stock of a corporation that is listed on a prescribed stock exchange, or an interest in the share;

Para. 116(6)(d) amended by the said c. 17, s. 212, to add the words "hypothecary claim", in force on June 14, 2001.

Para. 116(6)(e) amended, and paras. (f) to (h) added, by the said c. 17, subsec. 91(6), applicable after June 27, 1999. Para. (e) formerly read:

(e) any other property that is prescribed to be excluded property.

Paras. 116(6)(a) and (b) amended by 1998, c. 19, subsec. 133(4), applicable after April 26, 1995, except in respect of the disposition of a property before 1996

(a) to a person who was obliged on April 26, 1995 to acquire the property pursuant to the terms of an agreement in writing made on or before that day (and, for the purpose of this paragraph, a person shall be considered not to be obliged to acquire property where the person can be excused from the obligation if there is a change to the Act or if there is an adverse assessment under the Act); or

(b) pursuant to a prospectus or similar document filed with the relevant securities authority before April 27, 1995.

Paras. 116(6)(a) and (b) formerly read:

(a) property described in subparagraph 115(1)(b)(ix);

(b) a share of the capital stock of a public corporation, or an interest therein;

Regulations: 810 [to be repealed] (property prescribed to be excluded property); 3200, 3201 (prescribed stock exchanges).

(7) Application of subsec. 138(12) — The definitions in subsection 138(12) apply to this section.

Origin of subsec. 116(7): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsec. 138(12)).

Selected Cases [s. 116]: *Merlis Investments Ltd. v. MNR*, [2001] 1 C.T.C. 57 (FCTD) (Minister sought to apply provision to taxpayers not party to transaction).

Definitions [s. 116]: "adjusted cost base" — 54, 248(1); "amount", "authorized foreign bank", "bank", "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "Canadian banking business" — 248(1); "Canadian resource property" — 66(15), 248(1); "capital property" — 54, 248(1); "class of shares" — 248(6); "consequence thereof" — 248(8); "depreciable property" — 13(21), 248(1); "disposition" — 248(1); "eligible capital property" — 54, 248(1); "excluded property" — 116(6); "immovable" — Quebec *Civil Code* art. 900–907; "insurer" — 248(1); "interest" in real property — 248(4); "life insurance policy in Canada" — 138(12), 248(1); "listed" — 87(10); "Minister" — 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q) [to be repealed], 132.2(3)(n) [draft], 248(1); "non-resident", "person", "prescribed" — 248(1); "prescribed stock exchange" — 248(29), Reg. 3200, 3201; "property" — 248(1); "province" — *Interpretation Act* 35(1); "public corporation" — 89(1), 248(1); "resident in Canada" — 250; "taxable Canadian property" — 248(1); "taxation year" — 249, 250.1(a); "taxpayer", "timber resource property" — 248(1). See also 116(7).

Interpretation Bulletins [s. 116]: IT-150R2: Acquisition from non-resident of certain property on death or mortgage foreclosure or by virtue of a deemed disposition (archived); IT-474R: Amalgamations of Canadian corporations.

Information Circulars [s. 116]: 72-17R5: Procedures concerning the disposition of taxable Canadian property by non-residents of Canada — section 116.

DIVISION E — COMPUTATION OF TAX

Subdivision a — Rules Applicable to Individuals

117. (1) Tax payable under this Part — For the purposes of this Division, except section 120 (other than subparagraph (a)(ii) of the definition "tax otherwise payable under this Part" in subsection 120(4)), tax payable under this Part, tax otherwise payable under this Part and tax under this Part shall be computed as if this Part were read without reference to Division E.1.

Related Provisions: 248(2) — Rates of tax.

History: Subsec. 117(1) amended by 2000, c. 19, subsec. 22(1), applicable to 1998 *et seq.* except that, in its application to the 1998 and 1999

taxation years, the reference to "subparagraph (a)(ii)" shall be read as a reference to "paragraph (b)". The subsec. formerly read:

(1) For the purposes of this Division, except section 120 (other than paragraph (b) of the definition "tax otherwise payable under this Part" in subsection 120(4)) and section 120.1 (other than subsection 120.1(2)), tax payable under this Part, tax otherwise payable under this Part and tax under this Part shall be computed as if this Part were read without reference to Division E.1.

(2) Rates for years after 2000 — The tax payable under this Part by an individual on the individual's taxable income or taxable income earned in Canada, as the case may be, (in this subdivision referred to as the "amount taxable") for a taxation year is

(a) 16% of the amount taxable, if the amount taxable does not exceed $30,754[14];

(b) $4,921[14] plus 22% of the amount by which the amount taxable exceeds $30,754[14], if the amount taxable exceeds $30,754[14] and does not exceed $61,509[14]

(b.1) $11,687[14] plus 26% of the amount by which the amount taxable exceeds $61,509[14], if the amount taxable exceeds $61,509[14] and does not exceed $100,000; and

(c) $21,695[14] plus 29% of the amount by which the amount taxable exceeds $100,000[14], if the amount taxable exceeds $100,000.

Related Provisions: 117(1) — Minimum tax to be ignored for purposes of 117(2); 117(3) — Minimum thresholds for 2004; 117.1(1) — Indexing for inflation; 120(2) — Rate reduction for residents of Quebec; 122 — Top rate of tax payable by *inter vivos* trust; 127.5 — Minimum tax; 180.2 — "Clawback" tax on old age security.

History: Subsec. 117(2) amended by 2001, c. 17, subsec. 92(2), applicable to 2001 *et seq.* Subsec. 117(2) formerly read:

(2) Rate for 2000 — The tax payable under this Part by an individual on the individual's taxable income or taxable income earned in Canada, as the case may be, (in this subdivision referred to as the "amount taxable") for the 2000 taxation year is

(a) 17% of the amount taxable, if the amount taxable does not exceed $30,004;

(b) $5,101 plus 25% of the amount by which the amount taxable exceeds $30,004, if the amount taxable exceeds $30,004 and does not exceed $60,009; and

(c) $12,602 plus 29% of the amount by which the amount taxable exceeds $60,009, if the amount taxable exceeds $60,009.

Subsec. 117(2) amended by 2001, c. 17, subsec. 92(1), applicable to the 2000 taxation year. Subsec. 117(2) formerly read:

(2) 1988 and subsequent taxation years rates — The tax payable under this Part by an individual on the individual's taxable income or taxable income earned in Canada, as the case may be, (in this subdivision referred to as the "amount taxable") for the 1988 and subsequent taxation years is

(a) 17% of the amount taxable if the amount taxable does not exceed $27,500;[15]

(b) $4,675[15] plus 26% of the amount by which the amount taxable exceeds $27,500[15] if the amount taxable exceeds $27,500[15] and does not exceed $55,000[15]; and

(c) $11,825[15] plus 29% of the amount by which the amount taxable exceeds $55,000.[15]

Selected Cases: *Guillemette v. R.*, [1997] 3 C.T.C. 2797 (TCC) (Progressive tax rates not unconstitutional).

Interpretation Bulletins: IT-406R2: Tax payable by an *inter vivos* trust; IT-513R: Personal tax credits; IT-515R2: Education tax credit; IT-516R2: Tuition tax credit; IT-519R2: Medical expense and disability tax credits and attendant care expense deduction.

(3) Minimum thresholds for 2004 — Each of the amounts of $30,754, $61,509 and $100,000 referred to in subsection (2) is deemed, for the purposes of applying subsection (2) to the 2004 taxation year, to be the greater of

(a) the amount that would be used for the 2004 taxation year if this section were read without reference to this subsection, and

(b) in the case of

(i) the amount of $30,754, $35,000,

(ii) the amount of $61,509, $70,000, and

(iii) the amount of $100,000, $113,804.

History: Subsec. 117(3) added by 2001, c. 17, subsec. 92(2), applicable to 2001 *et seq.*

Note re Provincial Income Tax: In addition to the tax under Part I of the federal Act, as above, an individual who resides in or has income earned in any of the provinces is also subject to provincial income tax. Except for Quebec, which collects its own tax on separate income tax returns, each other province imposes a tax that is expressed as a percentage of the tax otherwise payable under Part I of the federal Act and is collected for the province by the federal government on a joint tax return. For rates and surtaxes see introductory pages.

(4)–(5.2) [Repealed under former Act]

(6) [Repealed]

History: Subsec. 117(6) repealed by 2000, c. 19, subsec. 22(2), applicable to 1998 *et seq.* The subsec. formerly read:

(6) Special table — An individual (other than an individual of a prescribed class) whose amount taxable for a taxation year does not exceed a prescribed amount may use a table prepared for that year in accordance with prescribed rules in computing the amount of the individual's tax payable under Part I.1 and the amount that, but for prescribed provisions of this Act, would be the individual's tax payable under this Part for the year.

(7) [Repealed]

History: Subsec. 117(7) repealed by 1994, c. 7, Sch. VII (1992, c. 48), s. 6, applicable to 1993 *et seq.* Subsec. (7) formerly read:

(7) Notch provision — Where the tax otherwise payable under this Part for a taxation year by an individual is greater than the total of

(a) the tax that would be so payable if, in computing the individual's tax payable under this Part for the year, the individual could deduct under section 118.2 payments described in that section made in respect of a person who, had the person's income for the year been nil, would have been a dependant in respect of whom the individual could have deducted an amount under section 118 in computing the individual's tax payable under this Part for the year; and

(b) 68% of the amount by which the income for the year of the person referred to in paragraph (a) exceeds $6,000[15],

the tax otherwise payable under this Part for the year may be reduced to that total.

Definitions [s. 117]: "amount" — 248(1); "amount taxable" — 117(2); "individual", "person", "prescribed" — 248(1); "tax payable" — 117(1), 248(2); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Annual Adjustment of Deductions and Other Amounts

117.1 (1) Annual adjustment [indexing] — Each of the amounts expressed in dollars in subsection 117(2), the description of B in subsection 118(1), subsection 118(2), the descriptions of C and F in subsection 118.2(1), subsections 118.3(1), 122.5(3) and 122.51(1) and (2) and Part I.2 in relation to tax payable under this Part or Part I.2 for a taxation year shall be adjusted so that the amount to be used under those provisions for the year is the total of

[14]Indexed by 117.1 after 2001, but see also 117(3) — ed.

[15]Indexed by s. 117.1 after 1988 — ed.

Proposed Amendment — 117.1(1) opening words

Application: The August 15, 2005 draft legislation (2005 Budget second bill), s. 3, will amend the opening words of subsec. 117.1(1) to substitute "subsections 118(2) and 118.01(2)" for "subsection 118(2)", applicable to 2006 *et seq.*

Technical Notes: Subsection 117.1 (1) provides for the indexing of various amounts, including the amounts on which the personal tax credits are based. The indexing is based on annual increases in the Consumer Price Index.

Subsection 117.1 (1) is amended to add a reference to new section 118.01, the adoption expense tax credit.

(a) the amount that would, but for subsection (3), be the amount to be used under those provisions for the preceding taxation year, and

(b) the product obtained by multiplying

(i) the amount referred to in paragraph (a)

by

(ii) the amount, adjusted in such manner as may be prescribed and rounded to the nearest one-thousandth, or, where the result obtained is equidistant from two consecutive one-thousandths, to the higher thereof, that is determined by the formula

$$\frac{A}{B} - 1$$

where

A is the Consumer Price Index for the 12 month period that ended on September 30 next before that year, and

B is the Consumer Price Index for the 12 month period immediately preceding the period mentioned in the description of A.

Related Provisions: 117(1.1) — Indexing of specific amounts; 122.5(3.1) — Indexing of GST Credit amounts; 122.61(5) — Indexing of Child Tax Benefit; 257 — Formula cannot calculate to less than zero.

History: The opening words of subsec. 117.1(1) amended by 2005, c. 19, s. 22, applicable to 2004 *et seq.* The opening words formerly read:

(1) Each of the amounts expressed in dollars in subsection 117(2), the description of B in subsection 118(1), subsections 118(2), 118.2(1), 118.3(1), 122.5(3) and 122.51(1) and (2) and Part I.2 in relation to tax payable under this Part or Part I.2 for a taxation year shall be adjusted so that the amount to be used under those provisions for the year is the total of

The portion of subsec. 117.1(1) before subpara. (d)(ii) amended by 2000, c. 19, subsec. 23(1), applicable to 2001 *et seq.* The portion formerly read:

117.1 (1) Each of

(a) the amount of $6,456 referred to in clause (a)(ii)(B) of the definition "preferred beneficiary" in subsection 108(1) in relation to a beneficiary's income (computed without reference to subsection 104(14)) for a taxation year,

(b) the amounts expressed in dollars in subsection 117(2), paragraphs (b.1) to (d) of the description of B in subsection 118(1), subsections 118(2), 118.2(1) and 118.3(1) and Part I.2 in relation to tax payable under this Part or Part I.2 for a taxation year,

(b.1) the amounts of $5,000 and $6,000 referred to in subsection (2) and paragraphs (a) and (b) of the description of B in subsection 118(1) in relation to tax payable under this Part for a taxation year, and

(b.2) the amounts expressed in dollars in subsections 122.5(3) and 122.51(1) and (2) in relation to tax payable under this Part for a taxation year

shall be adjusted so that the amount to be used under those provisions for the year is the total of

(c) the amount that would, but for subsection (3), be the amount to be used under those provisions for the immediately preceding taxation year, and

(d) the product obtained by multiplying

(i) the amount referred to in paragraph (c)

by

The formula in subsec. 117.1(1) amended by 2000, c. 14, subsec. 37(1), applicable to 2000 *et seq.* It formerly read:

$$\frac{A}{B} - 1.03$$

Para. 117.1(1)(b) amended by 1999, c. 22, s. 30, applicable

(a) to 2000 *et seq.* for amounts referred to in para. (b.1) of the description of B in subsec. 118(1) as amended; and

(b) to 1999 *et seq.* for amounts referred to in para. (c.1) of the description of B in subsec. 118(1) as amended.

The para. formerly read:

(b) the amounts expressed in dollars in subsection 117(2), paragraphs (c) and (d) of the description of B in subsection 118(1), subsections 118(2), 118.2(1) and 118.3(1) and Part I.2 in relation to tax payable under this Part or Part I.2 for a taxation year,

The portion of subsec. 117.1(1) before para. (c) amended by 1998, c. 19, s. 21, applicable to 1997 *et seq.* except that, in applying para. 117.1(1)(b.2) to the 1997 taxation year, the reference in that paragraph to "subsections 122.5(3) and 122.51(1) and (2)" shall be read as "subsection 122.5(3)". The portion formerly read:

117.1 (1) Each of

(a) the amounts of $5,000 and $6,000 referred to in subsection (2) and paragraphs (a) and (b) of the description of B in subsection 118(1),

(a.1) the amounts expressed in dollars in subsection 122.5(3), and

(b) the amounts expressed in dollars in subsection 117(2), paragraphs (c) and (d) of the description of B in subsection 118(1), subsections 118(2), 118.2(1) and 118.3(1) and Part I.2

shall be adjusted, for each taxation year after 1996 for amounts referred to in paragraph (d) of the description of B in subsection 118(1), for each taxation year after 1990 for amounts referred to in subsection 122.5(3) and for each taxation year after 1988 in any other case, so that the amount to be used under those provisions for the year is an amount equal to the total of

Subsec. 21(3) of 1998, c. 19 provides that for the purpose of para. 117.1(1)(c), the amount to be used under cl. (a)(ii)(B) of the definition "preferred beneficiary" in subsec. 108(1), as amended, in relation to income for the 1996 taxation year is deemed to be $6,456.

Para. 117.1(1)(a) amended by 1997, c. 25, subsec. 24(1), to substitute "paragraphs (a) and (b) of the description of B in subsection 118(1)" for "paragraphs 118(1)(a) and (b)", applicable April 25, 1997.

The portion of subsec. 117.1(1) between paras. (b) and (c) amended by 1997, c. 25, subsec. 24(2), applicable to 1996 *et seq.* This portion formerly read:

shall be adjusted, for each taxation year after 1990 for amounts referred to in subsection 122.5(3) and for each taxation year after 1988 in any other case, so that the amount to be used under those provisions for the year is an amount equal to the total of

Para. 117.1(1)(b) amended by 1996, c. 21, s. 22, applicable to 1996 *et seq.* The para. formerly read:

(b) the amounts expressed in dollars in subsection 117(2), paragraphs 118(1)(c) and (d) and subsections 118(2), 118.2(1), 118.3(1) and 180.2(1)

Interpretation Bulletins: IT-406R2: Tax payable by an *inter vivos* trust.

(1.1) Adjustment of certain amounts — Notwithstanding any other provision of this section, for the purpose of making the adjustment provided under subsection (1) for the 2000 taxation year, the amounts used for the 1999 taxation year

(a) in respect of the amounts of $6,000, $5,000 and $500 referred to in paragraphs (a), (b) and (c) of the description of B in subsection 118(1) and the amount of $625 referred to in subparagraph 180.2(4)(a)(ii) are deemed to be $7,131, $6,055, $606 and $665, respectively; and

(b) in respect of the amounts of $6,456 and $4,103 referred to in paragraph (d) of the description of B in subsection 118(1) are deemed to be $7,131 and $4,778, respectively.

Related Provisions: 122.5(3.1) — Indexing of GST Credit amounts.

History: Subsec. 117.1(1.1) added by 2000, c. 14, subsec. 37(2), applicable to the 2000 taxation year.

(2) Idem — [Repealed]

History: Subsec. 117.1(2) repealed by 2000, c. 19, subsec. 23(2), applicable to 1999 *et seq.* The subsec. formerly read:

(2) Idem — The amount of $500 referred to in subparagraphs (a)(ii) and (b)(iv) of the description of B in subsection 118(1) shall be adjusted for each taxation year after 1988 so that the amount to be used under those subparagraphs for the year is the amount determined by the formula

$$\frac{1}{2} \times (\$6{,}000^{15} - \$5{,}000^{15})$$

Subsec. 117.1(2) amended by 1997, c. 25, subsec. 24(3), to substitute "subparagraphs (a)(ii) and (b)(iv) of the description of B in subsection 118(1)" for "subparagraphs 118(1)(a)(ii) and (b)(iv)", applicable April 25, 1997.

Para. 117.1(1)(b) amended by 1994, c. 7, Sch. VII (1992, c. 48), s. 7, to delete reference to subsecs. 117(7), 122.2(1) and 164.1(1), applicable to 1993 *et seq.*

(3) Rounding — Where an amount referred to in this section, when adjusted as provided in this section, is not a multiple of one dollar, it shall be rounded to the nearest multiple of one dollar or, where it is equidistant from two such consecutive multiples, to the higher thereof.

(4) Consumer Price Index — In this section, the Consumer Price Index for any 12 month period is the result arrived at by

(a) aggregating the Consumer Price Index for Canada, as published by Statistics Canada under the authority of the *Statistics Act*, adjusted in such manner as is prescribed, for each month in that period;

(b) dividing the aggregate obtained under paragraph (a) by twelve; and

(c) rounding the result obtained under paragraph (b) to the nearest one-thousandth or, where the result obtained is equidistant from two consecutive one-thousandths, to the higher thereof.

History: Para. 117.1(4)(a) amended by 2000, c. 14, subsec. 37(3), applicable to 2000 *et seq.* The para. formerly read:

(a) aggregating the Consumer Price Index, as published by Statistics Canada under the authority of the *Statistics Act*, adjusted in such manner as may be prescribed, for each month in that period;

(5)–(8) [Repealed under former Act]

INDEXED PERSONAL TAX CREDITS (see introductory pages for more details)

	1996-98	1999	2000	2001	2002	2003	2004	2005
Indexing factor from previous year	1.000	1.000	1.014	1.025	1.030	1.016	1.033	1.017
118(1)B(c): basic personal credit	$1,098	$1,155	$1,229	$1,186	$1,221	$1,241	$1,282	$1,304
118(1)B(a), (b): spousal/partner and wholly dependent person	915	972	1,044	1,007	1,037	1,054	1,089	1,108
— income limit	*538*	*572*	*614*	*629*	*648*	*659*	*680*	*692*
under 18 and infirm			500	560	577	586	605	616
118(1)B(d): 18 and over and infirm	400	400	406	560	577	586	605	616
— income limit	*4,103*	*4,103*	*4,845*	*4,966*	*5,115*	*5,197*	*5,368*	*5,459*
118(2): age 65 or older (low-income only, since 1994)	592	592	600	579	596	606	626	637
118(3): maximum pension credit	170	170	170	160	160	160	160	160
118.3(1): disability credit	720	720	730	960	989	1,005	1,038	1,056
118(1)B(c.1): caregiver		400	406	560	577	586	605	616
118.01(2): maximum adoption expenses credit								1,600
118.2(1): medical expense credit — income threshold	1,614	1,614	1,637	1,678	1,728	1,755	1,813	1,844
180.2(1): OAS/family allowance clawback — income threshold	53,215	53,215	53,960	55,309	56,968	57,879	59,789	60,806
180.2(4): OAS monthly grind-down	665	665	675	691	712	723	747	760

INDEXED FEDERAL TAX RATES FOR INDIVIDUALS

1988 Income Tax Rate Schedule

Taxable Income	Tax
$27,500 or less	17%
In excess of:	
$27,500	$ 4,675 + 26% on next $27,500
55.000	$11,825 + 29% on remainder

1989 Income Tax Rate Schedule

Taxable Income	Tax
$27,803 or less	17%
In excess of:	
$27,803	$ 4,726 + 26% on next $27,802
55,605	$11,955 + 29% on remainder

1990 Income Tax Rate Schedule

Taxable Income	Tax
$28,275 or less	17%
In excess of:	
$28,275	$ 4,807 + 26% on next $28,275
56,550	$12,158 + 29% on remainder

1991 Income Tax Rate Schedule

Taxable Income	Tax
$28,784 or less	17%
In excess of:	
$28,784	$ 4,893 + 26% on next $28,784
57,568	$12,377 + 29% on remainder

[15] Indexed by s. 117.1 after 1988 — ed.

1992–1999 Income Tax Rate Schedule

Taxable Income	Tax
(inflation less than 3% per year)	
$29,590 or less	17%
In excess of:	
$29,590	$ 5,030 + 26% on next $29,590
59,180	$12,724 + 29% on remainder

2000 Income Tax Rate Schedule

Taxable Income	Tax on Lower Limit	Tax Rate on Excess	Surtax Rate	Surtax Threshold
$0 – 30,004	$ —	17%	5%	$15,500
30,005 – 60,009	5,101	25%		
60,010 and over	12,602	29%		

2001 Income Tax Rate Schedule

Taxable Income	Tax on Lower Limit	Tax Rate on Excess
$0 – 30,754	$ —	16%
30,755 – 61,509	4,921	22%
61,510 – 100,000	11,687	26%
100,001 and over	21,694	29%

2002 Income Tax Rate Schedule

Taxable Income	Tax on Lower Limit	Tax Rate on Excess
$0 – 31,677	$ —	16%
31,678 – 63,354	5,068	22%
63,355 – 103,000	12,037	26%
103,001 and over	22,345	29%

2003 Income Tax Rate Schedule

Taxable Income	Tax on Lower Limit	Tax Rate on Excess
$0 – 32,183	$ —	16%
32,184 – 64,368	5,149	22%
64,369 – 104,648	12,229	26%
104,649 and over	22,702	29%

2004 Income Tax Rate Schedule

Taxable Income	Tax on Lower Limit	Tax Rate on Excess
$0 – 35,000	$ —	16%
35,001 – 70,000	5,600	22%
70,001 – 113,804	13,300	26%
113,805 and over	24,689	29%

2005 Income Tax Rate Schedule

Taxable Income	Tax on Lower Limit	Tax Rate on Excess
$0 – 35,594	$ —	16%
35,595 – 71,189	5,695	22%
71,190 – 115,738	13,526	26%
115,739 and over	25,108	29%

See s. 180.1 regarding surtax before 2001 and Division E.1 for minimum tax.

Definitions [s. 117.1]: "amount" — 248(1); "Consumer Price Index" — 117.1(4); "individual", "prescribed", "regulation" — 248(1); "taxation year" — 249.

118. (1) Personal credits — For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted an amount determined by the formula

$$A \times B$$

where

A is the appropriate percentage for the year, and

B is the total of,

(a) **married status** — in the case of an individual who at any time in the year is a married person or a person who is in a common-law partnership who supports the individual's spouse or common-law partner and is not living separate and apart from the spouse or common-law partner by reason of a breakdown of their marriage or common-law partnership, an amount equal to the total of

(i) $7,131[16], and

(ii) the amount determined by the formula

$$\$6,055^{16} - (C - \$606^{16})$$

where

C is the greater of $606[16] and the income of the individual's spouse for the year or, where the individual and the individual's spouse or common-law partner are living separate and apart at the end of the year because of a breakdown of their marriage or common-law partnership, the spouse's income for the year while married or in a common-law partnership and not so separated,

Proposed Amendment — 118(1)B(a)(ii)C

C is the greater of $606[16] and the income of the individual's spouse or common-law partner for the year or, where the individual and the individual's spouse or common-law partner are living separate and apart at the end of the year because of a breakdown of their marriage or common-law partnership, the spouse's or common-law partner's income for the year while married or in a common-law partnership and not so separated,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 105(1), will amend the description of C in subpara. (a)(ii) of the description of B in subsec. 118(1) to read as above, applicable to 2001 *et seq*, except that, if a taxpayer and a person have jointly elected under s. 144 of the *Modernization of Benefits and Obligations Act* (see History to 248(1)"common-law partner"), in respect of the 1998, 1999 or 2000 taxation years, the amendment applies to the taxpayer and the person in respect of the applicable taxation year and subsequent taxation years.

Technical Notes: Paragraph 118(1)(a) deals with the tax credit to persons who are married or in a common-law partnership. In 2000, the Act was amended to include common-law partners, but some provisions, including the English version of paragraph 118(1)(a), were overlooked. This paragraph is therefore amended to correct this omission. The amendment applies, in general, to the 2001 and subsequent taxation years. However, it may apply as of 1998 if the common-law partners jointly choose to be deemed as such, beginning in that year, for the purposes of the application of the Act.

Related Provisions: 82(3) — Optional inclusion into income of dividends received by spouse; 117.1(1) — Indexing for inflation; 118(3.1), (3.2), (3.3) — Additional amounts for 2006 and later years; 118(4) — Limitations; 118(5) — No deduction where claim made for support;

[16] Indexed by 117.1(1) after 2000 — ed.

118.91 — Individual resident in Canada for part of the year; 118.95(b) — Application in year individual becomes bankrupt.

History: Para. (a) of the description of B in subsec. 118(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner"; by Sch. 2, s. 9, to replace "marriage" with "marriage or common-law partnership"; by Sch. 2, s. 11, to replace "married" with "married or in a common-law partnership"; and by Sch. 2, s. 13, to replace "married person" with "married person or a person who is in a common-law partnership", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subparas. (a)(i) and (ii) of the description of B in subsec. 118(1) amended by 2000, c. 19, subsec. 24(1), applicable to 1999 *et seq.* except that, in their application to the 1999 taxation year, the references to "$7,131", "$6,055" and "$606" in subparas. (a)(i) and (ii) shall be read as references to "$6,794", "$5,718" and "$572", respectively. The subparas. formerly read:

(i) $6,000[15], and

(ii) an amount determined by the formula

$$\$5{,}000^{15} - (C - \$500^{15})$$

where

C is the greater of $500[15] and the income of the individual's spouse for the year or, where the individual and the individual's spouse are living separate and apart at the end of the year by reason of a breakdown of their marriage, the spouse's income for the year while married and not so separated,

The opening words of para. (a) of the description of B in subsec. 118(1) amended by 1997, c. 25, subsec. 25(2), applicable to 1997 *et seq.* The opening words formerly read:

(a) in the case of an individual who at any time in the year is a married person who supports the individual's spouse, an amount equal to the total of

Interpretation Bulletins: IT-295R4: Taxable dividends received after 1987 by a spouse; IT-513R: Personal tax credits.

Forms: T1 Sched. 6: Amounts for infirm dependants age 18 or older.

(b) **wholly dependent person ["equivalent to spouse" credit]** — in the case of an individual who does not claim a deduction for the year because of paragraph (a) and who, at any time in the year,

(i) is

(A) a person who is unmarried and who does not live in a common-law partnership, or

(B) a person who is married or in a common-law partnership, who neither supported nor lived with their spouse or common-law partner and who is not supported by that spouse or common-law partner, and

(ii) whether alone or jointly with one or more other persons, maintains a self-contained domestic establishment (in which the individual lives) and actually supports in that establishment a person who, at that time, is

(A) except in the case of a child of the individual, resident in Canada,

(B) wholly dependent for support on the individual, or the individual and the other person or persons, as the case may be,

(C) related to the individual, and

(D) except in the case of a parent or grandparent of the individual, either under 18 years of age or so dependent by reason of mental or physical infirmity,

an amount equal to the total of

(iii) $7,131[16], and

(iv) the amount determined by the formula

$$\$6{,}055^{16} - (D - \$606^{16})$$

where

D is the greater of $606[16] and the dependent person's income for the year,

Related Provisions: 117.1(1) — Indexing for inflation; 118(3.1), (3.2), (3.3) — Additional amounts for 2006 and later years; 118(4) — Limitations; 118(5) — No deduction where claim made for support; 118.3(2) — Dependant having impairment; 118.91 — Individual resident in Canada for part of the year; 118.95(b) — Application in year individual becomes bankrupt.

History: Subpara. (b)(i) of the description of B in subsec. 118(1) amended by 2000, c. 12, subsec. 131(1), applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner". The subpara. formerly read:

(i) is an unmarried person or a married person who neither supported nor lived with the married person's spouse and is not supported by the spouse, and

Subparas. (b)(iii) and (iv) of the description of B in subsec. 118(1) amended by 2000, c. 19, subsec. 24(2), applicable to 1999 *et seq.* except that, in their application to the 1999 taxation year, the references to "$7,131", "$6,055" and "$606" in subparas. (b)(iii) and (iv) shall be read as references to "$6,794", "$5,718" and "$572", respectively. Those subparas. formerly read:

(iii) $6,000[15], and

(iv) an amount determined by the formula

$$\$5{,}000^{15} - (D - \$500^{15})$$

where

D is the greater of $500[15] and the income for the year of the dependent person,

The opening words of para. (b) of the description of B in subsec. 118(1) amended by 1997, c. 25, subsec. 25(3), applicable to 1997 *et seq.* Those words formerly read:

(b) in the case of an individual not entitled to a deduction by reason of paragraph (a) who, at any time in the year,

Selected Cases [para. 118(1)B(b)]: *Mahoney v. R.*, [2003] 1 C.T.C. 2694 (TCC) (Infirmity and disability are not the same); *Geddes v. R.*, [2000] 2 C.T.C. 2577 (TCC) (Intermittent but substantial visits sufficient to qualify).

Interpretation Bulletins: IT-513R: Personal tax credits.

Forms: T1 Sched. 5: Details of dependant.

(b.1) **supplementary amount [low-income individuals]** — [Repealed]

History: Para. (b.1) of the description of B in subsec. 118(1) repealed by 2000 c. 19, subsec. 24(4), applicable to 2000 *et seq.* The para. formerly read:

(b.1) supplementary amount [low-income individuals] — for each individual (other than a trust), 1/2 of the amount, if any, by which the total of

(i) $500[17], and

(ii) if an amount is deducted under paragraph (a) or (b) by the individual for the year in respect of another individual (or would be so deducted if the other individual had no income for the year), the lesser of

(A) $500[17], and

[15] Indexed by s. 117.1 after 1988 — ed.

[16] Indexed by 117.1(1) after 2000 — ed.

[17] Indexed by s. 117.1 after 1999 — ed.

(B) the amount, if any, by which

(I) the total of $500[17] and the amount used under paragraph (c) for the year

exceeds

(II) the other individual's income for the year or, where the other individual is the individual's spouse and both persons are living separate and apart at the end of the year by reason of a breakdown of their marriage, the other individual's income for the year while married and not so separated

exceeds

(iii) 4% of the amount, if any, by which

(A) the individual's income for the year

exceeds

(B) the total of $500, the amount used under paragraph (c) for the year and, if subparagraph (ii) applies for the year to the individual, the amount determined under clause (ii)(B) for the year,

The opening words of para. (b.1) of the description of B in subsec. 118(1) amended by the said c. 19, subsec. 24(3), applicable to the 1999 taxation year. The opening words formerly read:

supplementary amount [low-income individuals] — for each individual (other than a trust), the amount, if any, by which the total of

Para. (b.1) added to the description of B in subsec. 118(1) by 1999, c. 22, subsecs. 31(1), applicable to 1998 *et seq.* except that, in its application to the 1998 taxation year, the reference to "the amount" in the opening words of para. (b.1) shall be read as a reference to "50% of the amount".

(c) **single status** — except in the case of an individual entitled to a deduction because of paragraph (a) or (b), $7,131[16],

Related Provisions: 117.1(1) — Indexing for inflation; 118(3.1) — Additional amount for 2006 and later years; 118.91 — Individual resident in Canada for part of the year; 118.95(b) — Application in year individual becomes bankrupt; 122(1.1) — Credits not permitted to trust.

History: Para. (c) of the description of B in subsec. 118(1) amended by 2000, c. 19, subsec. 24(5), applicable to 1999 *et seq.* except that, in its application to the 1999 taxation year, the reference to "$7,131" shall be read as "$6,794". The para. formerly read:

(c) except in the case of an individual entitled to a deduction by reason of paragraph (a) or (b), $6,000[15],

Para. (c) of the description of B in subsec. 118(1) amended by 1997, c. 25, subsec. 25(4), by striking out the word "and" at the end, applicable to 1996 *et seq.*

Interpretation Bulletins: IT-495R3: Child care expenses; IT-500R: RRSPs — death of an annuitant; IT-513R: Personal tax credits.

(c.1) **in-home care of relative [caregiver credit]** — in the case of an individual who, at any time in the year alone or jointly with one or more persons, maintains a self-contained domestic establishment which is the ordinary place of residence of the individual and of a particular person

(i) who has attained the age of 18 years before that time,

(ii) who is

(A) the individual's child or grandchild, or

(B) resident in Canada and is the parent, grandparent, brother, sister, aunt, uncle, nephew or niece of the individual or of the individual's spouse or common-law partner, and

(iii) who is

(A) the individual's parent or grandparent and has attained the age of 65 years before that time, or

(B) dependent on the individual because of the particular person's mental or physical infirmity,

the amount determined by the formula

$$\$15,453^{18} - D.1$$

where

D.1 is the greater of $11,953[18] and the particular person's income for the year,

Related Provisions: 117.1(1) — Indexing for inflation; 118(1)B(e) — Credit for infirm dependant; 118(4) — Limitations; 118(5) — No deduction where claim made for support; 118.2(2)(l.8) — Medical expense credit for caregiver training; 118.3(2) — Dependant having impairment; 118.91 — Individual resident in Canada for part of the year; 118.95(b) — Application in year individual becomes bankrupt.

History: Cl. (c.1)(ii)(B) of the description of B in subsec. 118(1) amended by 2001, c. 17, subsec. 93(1), to add "of the individual or of the individual's spouse or common-law partner", applicable to 1998 *et seq.* except that the cl. shall be read without reference to "or common-law partner" for any taxation year that ends before 2001 unless a valid election is made by the taxpayer under s. 144 of the *Modernization of Benefits and Obligations Act*, S.C. 2000, c. 12, that that Act apply to the taxpayer in respect of one or more taxation years that includes the year.

The portion of para. (c.1) of the description of B in subsec. 118(1) after cl. (iii)(B) amended by the said c. 17, subsec. 93(2), applicable to 2001 *et seq.* That portion formerly read:

the amount determined by the formula

$$\$13,853^{19} - D.1$$

where

D.1 is the greater of $11,500[19] and the particular person's income for the year,

Para. (c.1) added to the description of B in subsec. 118(1) by 1999, c. 22, subsec. 31(2), applicable to 1998 *et seq.*

(d) **dependants** — for each dependant of the individual for the year who

(i) attained the age of 18 years before the end of the year, and

(ii) was dependent on the individual because of mental or physical infirmity,

the amount determined by the formula

$$\$8,466^{18} - E$$

where

E is the greater of $4,966[18] and the dependant's income for the year, and

Related Provisions: 108(1)"preferred beneficiary"(a)(ii)(A) — infirm dependant can be a preferred beneficiary of trust; 117.1(1) — Indexing for inflation; 118(1)B(e) — Credit for infirm dependant who also qualifies for equivalent-to-spouse credit; 118(4) — Limitations; 118(6) — Definition of dependant; 118.3(2) — Dependant having impairment; 118.91 — Individual resident in Canada for part of the year; 118.92 — Ordering of credits; 118.95(b) — Application in year individual becomes bankrupt.

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[15] Indexed by s. 117.1 after 1988 — ed.

[16] Indexed by 117.1(1) after 2000 — ed.

[17] Indexed by s. 117.1 after 1999 — ed.

[18] Indexed by s. 117.1 after 2001 — ed.

[19] Indexed by s. 117.1 after 1998 — ed.

History: The portion of para. (d) of the description of B in subsec. 118(1) after subpara. (ii) amended by 2001, c. 17, subsec. 93(3) applicable to 2001 *et seq.*. That portion formerly read:

the amount determined by the formula

$$\$7{,}131^{16} - E$$

where

E is the greater of $4,778[16] and the dependant's income for the year, and

The portion of para. (d) of the description of B in subsec. 118(1) after subpara. (ii) amended by 2000, c. 19, subsec. 24(6), applicable to 1999 *et seq.* except that, in its application to the 1999 taxation year, the references to "$7,131" and "$4,778" shall be read as references to "$6,794" and "$4,441", respectively. The portion formerly read:

the amount determined by the formula

$$\$6{,}456^{20} - E$$

where

E is the greater of $4,103[20] and the income for the year of the dependant, and

The closing words of para. (d) of the description of B in subsec. 118(1) amended by 1997, c. 25, subsec. 25(5), applicable to 1996 *et seq.* Those words formerly read:

an amount determined by the formula

$$\$1{,}471^{19} - (E - \$2{,}500^{19})$$

where

E is the greater of $2,500[19] and the income for the year of the dependant.

Para. (d) of the description of B in subsec. 118(1) substituted by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 8(1), applicable to 1993 *et seq.* Para. (d) formerly read:

(d) for each dependant of the individual for the year, an amount equal to

(i) if the dependant was under the age of 18 years at any time in the year, an amount determined by the formula

$$\$388^{19} - (E - \$2{,}500^{19})$$

where

E is the greater of $2,500[19] and the income for the year of the dependant,

except that where the individual has more than 2 such dependants for the year, the reference to the amount "$388[19]" in the formula under this subparagraph shall, in respect of all but 2 of those dependants, be read as twice that amount, and

(ii) in the case of a person dependent on the individual by reason of mental or physical infirmity and to whom subparagraph (i) does not apply, an amount determined by the formula

$$\$1{,}471^{19} - (F - \$2{,}500^{15})$$

where

F is the greater of $2,500[15] and the income for the year of the dependant.

(For earlier history see at end of s. 118. See also former para. 109(1)(d), s. 117.1.)

(e) **additional amount [re dependant]** — in the case of an individual entitled to a deduction in respect of a person because of paragraph (b) and who would also be entitled, but for paragraph (4)(c), to a deduction because of paragraph (c.1) or (d) in respect of the person, the amount by which the amount that would be determined under paragraph (c.1) or (d), as the case may be, exceeds the amount determined under paragraph (b) in respect of the person.

Related Provisions: 118(6) — Definition of dependant; 118.91 — Individual resident in Canada for part of the year; 118.92 — Ordering of credits; 118.95(b) — Application in year individual becomes bankrupt.

History: Para. (e) of the description of B amended by 1999, c. 22, subsec. 31(3), applicable to 1998 *et seq.* Para (e) formerly read:

(e) **infirm dependant** — in the case of an individual entitled to a deduction in respect of a person because of paragraph (b) and who would also be entitled, but for paragraph (4)(c), to a deduction because of paragraph (d) in respect of the same person, the amount by which the amount that would be determined under paragraph (d) in respect of the person exceeds the amount determined under paragraph (b) in respect of the person.

Para. (e) added to the description of B in subsec. 118(1) by 1997, c. 25, subsec. 25(6), applicable to 1996 *et seq.*

Selected Cases [subsec. 118(1)]: *Gartner v. R.*, [2000] 3 C.T.C. 2228 (TCC) (Divorce judgment had specified parties were living separate and apart. Extra costs awarded to taxpayer); *Dionne v. R.*, [1998] 2 C.T.C. 2352 (TCC) (Provision does not violate Canadian *Human Rights Act*).

Interpretation Bulletins: IT-394R2: Preferred beneficiary election; IT-495R3: Child care expenses; IT-513R: Personal tax credits.

Information Circulars: 92-3: Guidelines for refunds beyond the normal three year period.

Forms: RC4064: Information concerning people with disabilities [guide].

(2) **Age [senior citizen] credit** — For the purpose of computing the tax payable under this Part for a taxation year by an individual who, before the end of the year, has attained the age of 65 years, there may be deducted the amount determined by the formula

$$A \times (\$3{,}236^{15} - B)$$

where

A is the appropriate percentage for the year; and

B is 15% of the amount, if any, by which the individual's income for the year would exceed $25,921[21] if no amount were included in respect of a gain from a disposition of property to which section 79 applies in computing that income.

Related Provisions: 117.1(1) — Indexing for inflation; 118.8 — Transfer of unused credits to spouse; 118.91 — Individual resident in Canada for part of the year; 118.92 — Ordering of credits; 118.95(b) — Application in year individual becomes bankrupt; 180.2 — "Clawback" tax and withholding of old age security benefits.

History: The description of B in subsec. 118(2) amended by 1998, c. 19, s. 134, applicable to 1994 *et seq.* except that, notwithstanding s. 117.1, the value of B in subsec. 118(2) shall, for the 1994 taxation year, be determined as the lesser of $1,741 and 7.5% of the amount, if any, by which the individual's income for the year would exceed $25,921 if no amount were included in respect of a gain from a disposition of property to which s. 79 applies in computing that income. The description formerly read:

B is 15% of the amount, if any, by which the individual's income for the year exceeds $25,921[21].

Subsec. 118(2) amended by 1995, c. 3, s. 33, applicable to 1994 *et seq.* except that, notwithstanding s. 117.1, the value of B in subsec. 118(2) shall, for the 1994 taxation year, be determined as the lesser of $1,741 and 7.5% of the amount, if any, by which the individual's income for the year exceeds $25,921. Subsec. (2) formerly read:

(2) For the purpose of computing the tax payable under this Part for a taxation year by an individual who, before the end of the year, has

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[15] Indexed by s. 117.1 after 1988 — ed.

[16] Indexed by 117.1(1) after 2000 — ed.

[19] Indexed by s. 117.1 after 1998 — ed.

[20] Indexed by s. 117.1 after 1996 — ed.

[21] Indexed by s. 117.1 after 1995.

attained the age of 65 years, there may be deducted an amount determined by the formula

$$A \times \$3,236^{19}$$

where

A is the appropriate percentage for the year.

Selected Cases [subsec. 118(2)]: *Peter v. R.*, [1997] 2 C.T.C. 2504 (TCC) (Treaty-protected income not included in calculation).

Interpretation Bulletins: IT-513R: Personal tax credits.

Information Circulars: 92-3: Guidelines for refunds beyond the normal three year period.

(3) Pension credit — For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted an amount determined by the formula

$$A \times B$$

where

A is the appropriate percentage for the year; and

B is the lesser of $1,000[22] and

(a) where the individual has attained the age of 65 years before the end of the year, the pension income received by the individual in the year, and

(b) where the individual has not attained the age of 65 years before the end of the year, the qualified pension income received by the individual in the year.

Related Provisions: 60(j.2) — Rollover of pension income to spouse's RRSP before 1995; 104(27) — Deemed income of beneficiary; 118(7), (8) — Meaning of "pension income" and "qualified pension income"; 118.8 — Transfer of unused credits to spouse; 118.91 — Individual resident in Canada for part of the year; 118.92 — Ordering of credits; 118.93 — Separate returns; 118.95(a) — Application in year individual becomes bankrupt; 122(1.1) — Credits not permitted to trust.

History: Subsec. 118(3) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 52(1), applicable to 1992 *et seq.* Subsec. (3) formerly read:

(3) For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted,

(a) where the individual has attained the age of 65 years before the end of the year, an amount determined by the formula

$$A \times B$$

where

A is the appropriate percentage for the year, and

B is the lesser of $1,000[22] and the pension income received by the individual in the year; and

(b) where the individual (other than an individual referred to in paragraph (a)) has before the end of the year

(i) attained the age of 60 years,

(ii) received a disability pension or survivor's pension under the *Canada Pension Plan* or under a provincial pension plan as defined in section 3 of that Act, or

(iii) not attained the age of 60 years, and has not deducted in computing the individual's income for the year an amount under paragraph 60(j) (other than in respect of an amount included in computing the individual's income pursuant to subsection 147(10), which amount was received in satisfaction of all the individual's rights and entitlements under a deferred profit sharing plan),

an amount determined by the formula

$$A \times B$$

where

A is the appropriate percentage for the year, and

B is the lesser of $1,000[22] and the qualified pension income received by the individual in the year.

Selected Cases [subsec. 118(3)]: *Whalen v. Canada*, [1995] 1 C.T.C. 2339 (TCC) (Payments from RRIF to persons under 65 do not give rise to entitlement to pension credit).

Interpretation Bulletins: IT-500R: RRSPs — death of an annuitant; IT-517R: Pension tax credit (archived).

Information Circulars: 92-3: Guidelines for refunds beyond the normal three year period.

(3.1) Additions to personal credits — basic personal amount — The amount of $7,131 referred to in paragraphs (a) to (c) of the description of B in subsection (1) (in this subsection referred to as the "particular amount") that is to be used for the purpose of determining the amount of that description is

(a) for the 2006 taxation year, to be replaced by the amount that is the total of $100 and the amount that would be determined for that description for that year in respect of the particular amount if this section were read without reference to this subsection;

(b) for the 2007 taxation year, to be replaced by the amount that is the total of $100 and the amount that would be determined for that description for that year in respect of the particular amount by applying subsection 117.1(1) to the amount determined under paragraph (a);

(c) for the 2008 taxation year, to be replaced by the amount that is the total of $400 and the amount that would be determined for that description for that year in respect of the particular amount by applying subsection 117.1(1) to the amount determined under paragraph (b);

(d) for the 2009 taxation year, to be replaced by the amount that is the greater of

(i) the amount that is the total of $600 and the amount that would be determined for that description for that year in respect of the particular amount by applying subsection 117.1(1) to the amount determined under paragraph (c), and

(ii) $10,000; and

(e) for the 2010 and subsequent taxation years, to be replaced by the amount that is the amount that would be determined for that description for those years in respect of the particular amount by applying subsection 117.1(1) to the amount determined under paragraph (d).

Related Provisions: 118(3.2), (3.3) — Additional amounts for 118(1)B(a)(ii) and (b)(iv).

History: Subsec. 118(3.1) amended by 2005, c. 30, s. 5, in force June 29, 2005. The subsec. formerly read:

(3.1) Minimum amounts for 2004 — Each of the amounts of $7,131, $6,055 and $606 referred to in paragraphs (a) to (c) of the description of B in subsection (1) is deemed, for the 2004 taxation year, to be the greater of

(a) the amount in respect thereof that would be used for that year if this section were read without reference to this subsection, and

(b) in the case of

(i) the amounts of $7,131, $8,000,

(ii) the amounts of $6,055, $6,800, and

(iii) the amounts of $606, $680.

[19] Indexed by s. 117.1 after 1998 — ed.

[22] Not indexed for inflation.

Subsec. 118(3.1) added by 2001, c. 17, subsec. 93(4), in force June 14, 2001.

(3.2) Additions to personal credits — spouse or common-law partner or wholly dependent person — The amount of $6,055 referred to in subparagraphs (a)(ii) and (b)(iv) of the description of B in subsection (1) (in this subsection referred to as the "particular amount") that is to be used for the purpose of determining the amount of that description is

(a) for the 2006 taxation year, to be replaced by the amount that is the total of $85 and the amount that would be determined for that description for that year in respect of the particular amount if this section were read without reference to this subsection;

(b) for the 2007 taxation year, to be replaced by the amount that is the total of $85 and the amount that would be determined for that description for that year in respect of the particular amount by applying subsection 117.1(1) to the amount determined under paragraph (a);

(c) for the 2008 taxation year, to be replaced by the amount that is the total of $340 and the amount that would be determined for that description for that year in respect of the particular amount by applying subsection 117.1(1) to the amount determined under paragraph (b);

(d) for the 2009 taxation year, to be replaced by the amount that is the greater of

(i) the amount that is the total of $510 and the amount that would be determined for that description for that year in respect of the particular amount by applying subsection 117.1(1) to the amount determined under paragraph (c), and

(ii) $8,500; and

(e) for the 2010 and subsequent taxation years, to be replaced by the amount that is the amount that would be determined for that description for those years in respect of the particular amount by applying subsection 117.1(1) to the amount determined under paragraph (d).

Related Provisions: 118(3.3) — Addition to net income threshold.

History: Subsec. 118(3.2) added by 2005, c. 30, s. 5, in force June 29, 2005.

(3.3) Additions to personal credits — net income threshold — The amount of $606 referred to in subparagraphs (a)(ii) and (b)(iv) of the description of B in subsection (1) (in this subsection referred to as the "particular amount") that is to be used for the purpose of determining the amount of that description is

(a) for the 2006 taxation year, to be replaced by the amount that is the total of $8.50 and the amount that would be determined for that description for that year in respect of the particular amount if this section were read without reference to this subsection;

(b) for the 2007 taxation year, to be replaced by the amount that is the total of $8.50 and the amount that would be determined for that description for that year in respect of the particular amount by applying subsection 117.1(1) to the amount determined under paragraph (a);

(c) for the 2008 taxation year, to be replaced by the amount that is the total of $34 and the amount that would be determined for that description for that year in respect of the particular amount by applying subsection 117.1(1) to the amount determined under paragraph (b);

(d) for the 2009 taxation year, to be replaced by the amount that is the greater of

(i) the amount that is the total of $51 and the amount that would be determined for that description for that year in respect of the particular amount by applying subsection 117.1(1) to the amount determined under paragraph (c), and

(ii) $850; and

(e) for the 2010 and subsequent taxation years, to be replaced by the amount that is the amount that would be determined for that description for those years in respect of the particular amount by applying subsection 117.1(1) to the amount determined under paragraph (d).

History: Subsec. 118(3.3) added by 2005, c. 30, s. 5, in force June 29, 2005.

(4) Limitations re subsec. (1) — For the purposes of subsection (1), the following rules apply:

(a) no amount may be deducted under subsection (1) because of paragraphs (a) and (b) of the description of B in subsection (1) by an individual in a taxation year for more than one other person;

(a.1) no amount may be deducted under subsection (1) because of paragraph (b) of the description of B in subsection (1) by an individual for a taxation year for a person in respect of whom an amount is deducted because of paragraph (a) of that description by another individual for the year if, throughout the year, the person and that other individual are married to each other or in a common-law partnership with each other and are not living separate and apart because of a breakdown of their marriage or the common-law partnership, as the case may be;

(b) not more than one individual is entitled to a deduction under subsection (1) because of paragraph (b) of the description of B in subsection (1) for a taxation year in respect of the same person or the same domestic establishment and where two or more individuals otherwise entitled to such a deduction fail to agree as to the individual by whom the deduction may be made, no such deduction for the year shall be allowed to either or any of them;

(c) where an individual is entitled to a deduction under subsection (1) because of paragraph (b) of the description of B in subsection (1) for a taxation year in respect of any person, no amount may be deducted because of paragraph (c.1) or (d) of that description by any individual for the year in respect of the person;

(d) where an individual is entitled to a deduction under subsection (1) because of paragraph (c.1) of the description of B in subsection (1) for a taxation year in respect of any person, the person is deemed not to be a dependant of any individual for the year for the purpose of paragraph (d) of that description; and

(e) where more than one individual is entitled to a deduction under subsection (1) because of paragraph (c.1) or (d) of the description of B in subsection (1) for a taxation year in respect of the same person,

(i) the total of all amounts so deductible for the year shall not exceed the maximum amount that would be so deductible for the year by any one of those individuals for that person if that individual were the only individual entitled to deduct an

amount for the year because of that paragraph for that person, and

(ii) if the individuals cannot agree as to what portion of the amount each can so deduct, the Minister may fix the portions.

Related Provisions: 118(6) — Definition of "dependant".

History: Para. 118(4)(a.1) amended by 2000, c. 12, subsec. 131(3), applicable to 2001 *et seq.*, applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner". The para. formerly read:

(a.1) no amount may be deducted under subsection (1) because of paragraph (b) of the description of B in subsection (1) by an individual for a taxation year for a person in respect of whom an amount is deducted because of paragraph (a) of that description by another individual for the year if, throughout the year, the person and that other individual are married to each other and are not living separate and apart because of a breakdown of their marriage;

Para. 118(4)(a.1) added, paras. 118(4)(c) to (e) amended, by 1999, c. 22, subsecs. 31(4), (5), applicable to 1998 *et seq.* Paras. (c) to (e) formerly read:

(c) where an individual is entitled to a deduction under subsection (1) because of paragraph (b) of the description of B in subsection (1) for any person described therein, the person shall be deemed not to be a dependant for the year for the purposes of paragraph (1)(d); and

(d) [Repealed]

(e) where more than one individual is, in respect of a taxation year, entitled to deduct an amount under subsection (1) because of paragraph (d) of the description of B in subsection (1) for the same dependant, the total of all amounts so deductible for the year shall not exceed the maximum amount that would be deductible by reason of that paragraph for the year by any one of those individuals for that dependant if that individual were the only individual entitled to deduct an amount for the year by reason of that paragraph for that dependant and, where the individuals cannot agree as to what portion of the amount each can so deduct, the Minister may fix the portions.

Subsec. 118(4) amended by 1997, c. 25, subsec. 25(7), by substituting

(a) in para. (a), "because of paragraphs (a) and (b) of the description of B in subsection (1)" for "by reason of paragraphs (1)(a) and (b)",

(b) in paras. (b) and (c), "because of paragraph (b) of the description of B in subsection (1)" for "by reason of paragraph (1)(b)", and

(c) in para. (e), "because of paragraph (d) of the description of B in subsection (1)" for "by reason of paragraph (1)(d)",

applicable April 25, 1997.

Para. 118(4)(d) repealed by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 8(2), applicable to 1993 *et seq.* Para. (d) formerly read:

(d) no amount may be deducted under subsection (1) by reason of paragraph (1)(d) by an individual for a taxation year for a person in respect of whom an allowance referred to in subsection 56(5) has been paid in the year, except to the extent of the proportion of the allowance paid in the year in respect of the person that has been included in computing the individual's income for the year; and

Interpretation Bulletins: IT-513R: Personal tax credits.

(5) Support — No amount may be deducted under subsection (1) in computing an individual's tax payable under this Part for a taxation year in respect of a person where the individual is required to pay a support amount (within the meaning assigned by subsection 56.1(4)) to the individual's spouse or common-law partner or former spouse or common-law partner in respect of the person and the individual

(a) lives separate and apart from the spouse or common-law partner or former spouse or common-law partner throughout the year because of the breakdown of their marriage or common-law partnership; or

(b) claims a deduction for the year because of section 60 in respect of a support amount paid to the spouse or common-law partner or former spouse or common-law partner.

History: The opening words of subsec. 118(5) amended by 2001, c. 17, s. 243, applicable to 2001 *et seq.* except that, if a taxpayer and a person have jointly elected pursuant to s. 144 of 2000, c. 12 in respect of the 1998, 1999 or 2000 taxation years, the amendment applies to the taxpayer and the person in respect of the applicable taxation year and subsequent taxation years. That portion formerly read:

(5) No amount may be deducted under subsection (1) in computing an individual's tax payable under this Part for a taxation year in respect of a person where the individual is required to pay a support amount (as defined in subsection 56.1(4)) to the individual's spouse or former spouse in respect of the person and the individual

Subsec. 118(5) amended by 2000, c. 12, Sch. 2, s. 2, to replace "spouse" with "spouse or common-law partner", and by Sch. 2, s. 9, to replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subsec. 118(5) amended by 1997, c. 25, subsec. 25(8), applicable to 1997 *et seq.* Subsec. (5) formerly read:

(5) Alimony and maintenance — Where an individual in computing the individual's income for a taxation year is entitled to a deduction under paragraph 60(b), (c) or (c.1) in respect of a payment for the maintenance of a spouse or child, the spouse or child shall, for the purposes of this section (other than the definition "qualified pension income" in subsection (7)) be deemed not to be the spouse or child of the individual.

Selected Cases [subsec. 118(5)]: *Lavoie v. R.* (2002), [2005] 2 C.T.C. 2621 (TCC) (Even if support payments are not made, access to credit denied); *Paustian v. Canada*, [1995] 1 C.T.C. 2395 (TCC) (Entitlement to deduction under para. 60(b) disqualifies deduction under s. 118).

Interpretation Bulletins: IT-513R: Personal tax credits; IT-530R: Support payments.

Information Circulars: 92-3: Guidelines for refunds beyond the normal three year period.

(6) Definition of "dependant" — For the purposes of paragraphs (d) and (e) of the description of B in subsection (1) and paragraph (4)(e), "dependant" of an individual for a taxation year means a person who at any time in the year is dependent on the individual for support and is

(a) the child or grandchild of the individual or of the individual's spouse or common-law partner; or

(b) the parent, grandparent, brother, sister, uncle, aunt, niece or nephew, if resident in Canada at any time in the year, of the individual or of the individual's spouse or common-law partner.

Related Provisions: 118(5) — Meaning of "spouse" and "child" where alimony or maintenance being paid.

History: Subsec. 118(6) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

The opening words of subsec. 118(6) amended by 1997, c. 25, subsec. 25(9), applicable to 1996 *et seq.* Those words formerly read:

(6) For the purposes of paragraphs (1)(d) and (4)(e), "dependant" of an individual for a taxation year means a person who at any time in the year is dependent on the individual for support and is

Interpretation Bulletins: IT-394R2: Preferred beneficiary election; IT-513R: Personal tax credits.

(7) Definitions — Subject to subsection (8), for the purposes of subsection (3),

"pension income" received by an individual in a taxation year means the total of

(a) the total of all amounts each of which is an amount included in computing the individual's income for the year that is

(i) a payment in respect of a life annuity out of or under a superannuation or pension plan,

(ii) an annuity payment under a registered retirement savings plan, under an "amended plan" as referred to in subsection 146(12) or under an annuity in respect of which an amount is included in computing the individual's income by reason of paragraph 56(1)(d.2),

(iii) a payment out of or under a registered retirement income fund or under an "amended fund" as referred to in subsection 146.3(11),

Proposed Addition — 118(7)"pension income"(a)(iii.1)

(iii.1) a payment (other than a payment described in subparagraph (i)) payable on a periodic basis under a money purchase provision (within the meaning assigned by subsection 147.1(1)) of a registered pension plan,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 105(2), will add subpara. (a)(iii.1) to the definition "pension income" in subsec. 118(7), applicable to 2004 *et seq.*

Technical Notes: Section 118 provides for a number of credits that are deductible in computing the tax payable by an individual, including the pension credit in subsection 118(3). The pension credit available to a taxpayer who is 65 years of age or older is based on the taxpayer's "pension income", as defined in subsection 118(7). Pension income includes lifetime annuity payments under a pension plan and payments under a registered retirement income fund (RRIF).

The definition "pension income" is amended to add periodic payments under a money purchase provision of a registered pension plan (RPP), to the extent that such payments are not already included. This amendment is consequential on amendments to section 8506 of the Regulations, the purpose of which is to allow money purchase RPPs to provide members with retirement benefits that are payable in the same manner as is permitted under a RRIF. Since these benefits would not be considered to be lifetime annuity payments, it is necessary to ensure that they qualify for the purpose of the pension credit.

(iv) an annuity payment under a deferred profit sharing plan or under a "revoked plan" as referred to in subsection 147(15),

(v) a payment described in subparagraph 147(2)(k)(v), or

(vi) the amount by which an annuity payment included in computing the individual's income for the year by reason of paragraph 56(1)(d) exceeds the capital element of that payment as determined or established under paragraph 60(a), and

(b) the total of all amounts each of which is an amount included in computing the individual's income for the year by reason of section 12.2 of this Act or paragraph 56(1)(d.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952;

Related Provisions: 104(27) — Flow-out of pension benefits by trust; 118(8) — Limitations; 118.7 — Credit for UI/EI premium and CPP contribution.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

"qualified pension income" received by an individual in a taxation year means the total of all amounts each of which is an amount included in computing the individual's income for the year and described in

(a) subparagraph (a)(i) of the definition "pension income" in this subsection, or

(b) any of subparagraphs (a)(ii) to (vi) or paragraph (b) of the definition "pension income" in this subsection received by the individual as a consequence of the death of a spouse or common-law partner of the individual.

Related Provisions: 104(27) — Flow-out of pension benefits by trust; 118(5) — Alimony and maintenance; 118(8) — Limitations; 118.7 — Credit for UI/EI premium and CPP contribution; 248(8) — Occurrences as a consequence of death.

History: Para. (b) of the definition "qualified pension income" in subsec. 118(7) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Para. (b) of "qualified pension income" amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 52(2), applicable after 1992. Para. (b) formerly read:

> (b) any of subparagraphs (a)(ii) to (vi) or paragraph (b) of the definition "pension income" in this subsection received by the individual as a consequence of the death of the spouse (within the meaning assigned by subsection 146(1.1)) of the individual.

Interpretation Bulletins: IT-500R: RRSPS — death of an annuitant; IT-517R: Pension tax credit (archived).

(8) Interpretation — For the purposes of subsection (3), "pension income" and "qualified pension income" received by an individual do not include any amount that is

(a) the amount of a pension or supplement under the *Old Age Security Act* or of any similar payment under a law of a province;

(b) the amount of a benefit under the *Canada Pension Plan* or under a provincial pension plan as defined in section 3 of that Act;

(c) a death benefit;

(d) the amount, if any, by which

(i) an amount required to be included in computing the individual's income for the year

exceeds

(ii) the amount, if any, by which the amount referred to in subparagraph (i) exceeds the total of all amounts deducted by the individual for the year in respect of that amount; or

(e) a payment received out of or under a salary deferral arrangement, a retirement compensation arrangement, an employee benefit plan, an employee trust or a prescribed provincial pension plan.

Related Provisions: 118.91 — Individual resident in Canada for part of the year; 118.92 — Ordering of credits; 118.93 — Credits in separate returns; 118.94 — Tax payable by non-resident individual.

Regulations: 7800(1) (prescribed provincial pension plan).

Interpretation Bulletins [subsec. 118(8)]: IT-517R: Pension tax credit (archived).

Definitions [s. 118]: "amount", "annuity", "appropriate percentage" — 248(1); "aunt" — 252(2)(e); "brother" — 252(2); "Canada" — 255; "child" — 118(5), 252(1); "common-law partner", "common-law partnership" — 248(1); "consequence of the death" — 248(8); "death benefit" — 248(1); "deferred profit sharing plan" — 147(1), 248(1); "dependant" — 118(5), (6); "employee benefit plan" — 248(1); "grandparent" — 252(2); "individual" — 248(1); "Minister" — 248(1); "money purchase provision" — 147.1(1); "nephew", "niece" — 252(2)(g); "parent" — 252(2); "pension income" — 118(7), (8); "person", "prescribed" — 248(1); "province" — *Interpretation Act* 35(1); "qualified pension income" — 118(7), (8); "real servitude" — Quebec *Civil Code* art. 1177; "received" — 248(7); "registered pension plan" — 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "related" — 251(2); "resident in Canada" — 250; "salary deferral arrangement", "self-contained domestic establishment" — 248(1); "sister" — 252(2); "spouse" — 118(5); "tax payable" — 248(2); "taxation year" — 249; "uncle" — 252(2)(e).

Interpretation Bulletins [s. 118]: IT-83R3: Non-profit organizations — Taxation of income from property; IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits (archived); IT-326R3: Returns of deceased persons as "another person"; IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-495R3: Child care expenses; IT-516R2: Tuition tax credit; IT-519R2: Medical expense and disability tax credits and attendant care expense deduction.

Information Circulars [s. 118]: 92-3: Guidelines for refunds beyond the normal three year period.

Proposed Addition — 118.01

118.01 [Adoption expense credit] —

Technical Notes: New section 118.01 provides a tax credit in respect of eligible adoption expenses incurred in respect of the completed adoption of an eligible child, up to a maximum of $10,000 (to the extent that the adoptive parent has not been reimbursed in respect of eligible expenses and is not entitled to be so reimbursed). Individuals may include eligible adoption expenses incurred during the adoption period, generally defined as the period that begins at the earlier of the time the child's adoption file is opened with the provincial or territorial ministry responsible for adoption or a licensed adoption agency, and the time, if any, that an application related to an adoption is made to a Canadian court and that ends at the later of the time the adoption is finalized and the time the adopted child begins to live with the adoptive parent. To be eligible for the credit, a parent must submit proof of an adoption in the form of a Canadian or foreign adoption order, or otherwise demonstrate that all of the legal requirements of the jurisdiction in which the parent resides have been met in completing the adoption. Individuals must claim the credit in the taxation year in which the adoption period ends.

(1) Definitions — The following definitions apply in this section.

"adoption period", in respect of an eligible child of an individual, means the period that

(a) begins at the earlier of the time that the eligible child's adoption file is opened with a provincial ministry responsible for adoption (or with an adoption agency licensed by a provincial government) and the time, if any, that an application related to the adoption is made to a Canadian court; and

(b) ends at the later of the time an adoption order is issued by, or recognized by, a government in Canada in respect of that child, and the time that the child first begins to reside permanently with the individual.

Technical Notes: New subsection 118.01(1) sets out certain definitions and rules that apply for the purpose of the adoption expense tax credit.

"Adoption period" in respect of an eligible child is defined as the period that begins at the earlier of the time that the adoption file is opened with a provincial or territorial ministry responsible for adoption (or with a licensed adoption agency) and the time, if any, that an application related to the adoption is made to a Canadian court and that ends at the later of the time that an adoption order is issued by, or recognized by a government in Canada and the time that the child first begins to permanently reside with the adoptive parent.

"eligible adoption expense", in respect of an eligible child of an individual, means an amount paid in respect of the adoption of that child during the adoption period, including

(a) fees paid to an adoption agency licensed by a provincial government;

(b) court costs and legal and administrative expenses related to an adoption order in respect of that child;

(c) reasonable and necessary travel and living expenses of the child and the adoptive parents;

(d) document translation fees;

(e) mandatory fees paid to a foreign institution; and

(f) any other reasonable expenses related to the adoption required by a provincial government or an adoption agency licensed by a provincial government.

Technical Notes: "Eligible adoption expenses" in respect of an eligible child are defined to include

- fees paid to an adoption agency licensed by a provincial or territorial government,
- court, legal and administrative expenses related to an adoption order in respect of the child,
- reasonable and necessary travel and living expenses for the child and the adoptive parents,
- document translation fees,
- mandatory fees paid to a foreign institution, and
- any other reasonable expenses required by a provincial or territorial government or an adoption agency licensed by a provincial or territorial government.

"eligible child", of an individual, means a child who has not attained the age of 18 years at the time that an adoption order is issued or recognized by a government in Canada in respect of the adoption of that child by that individual.

Technical Notes: "Eligible child" means a child who has not attained the age of 18 years at the time the adoption order is issued by, or recognized by a government in Canada.

(2) Adoption expense tax credit — For the purpose of computing the tax payable under this Part by an individual for the taxation year that includes the end of the adoption period in respect of an eligible child of the individual, there may be deducted the amount determined by the formula

$$A \times B$$

where

A is the appropriate percentage for the year; and

B is the lesser of

(a) $10,000[23], and

(b) the amount determined by the formula

$$C - D$$

where

C is the total of all eligible adoption expenses in respect of the eligible child, and

D is the total of all amounts each of which is the amount of a reimbursement or any other form of assistance (other than an amount that is included in computing the individual's income and that is not deductible in computing the individual's taxable income) that any individual is or was entitled to receive in respect of an amount included in computing the value of C.

Technical Notes: New subsection 118.01(2) provides for the calculation of the adoption expense tax credit in respect of the adoption of an eligible child. The credit is determined by applying the appropriate percentage (16% in 2005) to the lesser of $10,000 and the amount obtained when reimbursements and other forms of assistance (other than an amount that is included in computing the individual's income and that is not deductible in computing the individual's taxable income) that any individual is or was entitled to receive in respect of an eligible adoption expense is subtracted from the amount of eligible adoption expenses incurred in respect of an eligible child.

Related Provisions: 117.1(1) — Indexing for inflation; 118.01(3) — Apportionment of credit between parents; 118.92 — Ordering of credits; 118.93 — Credits in separate returns; 118.94 — Computing tax payable by a non-resident individual; 118.95(a) — Application in year individual becomes bankrupt.

(3) Apportionment of credit — Where more than one individual is entitled to a deduction under this section for a taxation year in respect [of] the adoption of an

[23] Indexed by 117.1 after 2005 — ed.

eligible child, the total of all amounts so deductible shall not exceed the maximum amount that would be so deductible for the year by any one of those individuals for that child if that individual were the only individual entitled to deduct an amount for the year under this section, and if the individuals cannot agree as to what portion of the amount each can so deduct, the Minister may fix the portions.

Technical Notes: New subsection 118.01(3) provides that, where more than one individual is entitled [to] the adoption expense tax credit in respect of the same eligible child, the total amounts claimed by those individuals can not exceed the maximum amount that would be allowed if only one individual were claiming the adoption expense tax credit in respect of that child.

Application: The August 15, 2005 draft legislation (2005 Budget second bill), s. 4, will add s. 118.01, applicable to 2005 *et seq.*

Federal budget, Notice of Ways and Means Motion, February 23, 2005: *Adoption Expense Tax Credit*

(14) That, for the 2005 and subsequent taxation years,

(a) an individual be entitled to deduct, in computing tax payable under Part I of the Act for a taxation year in which an adoption order is issued by, or recognized by, a government in Canada in respect of an adopted child of the individual, 16% of the lesser of $10,000 (indexed after 2005) and the total of all amounts paid in respect of eligible adoption expenses incurred during the adoption period in respect of that child (to the extent that the individual has not been reimbursed, and is not entitled to be reimbursed, for these expenses),

(b) eligible adoption expenses include

(i) fees paid to an adoption agency licensed by a provincial or territorial government,

(ii) court costs, legal and administrative expenses,

(iii) reasonable travel and living expenses of the child and the adoptive parents,

(iv) document translation fees,

(v) mandatory fees paid to a foreign institution, and

(vi) any other reasonable expenses required by a provincial or territorial government or an adoption agency licensed by a provincial or territorial government,

(c) the "adoption period" be the period that

(i) begins at the earlier of the time that the child's adoption file is opened with a provincial or territorial ministry responsible for adoption (or with an adoption agency licensed by a provincial or territorial government) and the time, if any, that an application related to the adoption is made to a Canadian court, and

(ii) ends at the time of the adoption; and

(d) where more than one individual is entitled to a deduction under this paragraph for a taxation year in respect of a particular child, the total of all amounts so deductible not exceed 16% of the lesser of $10,000 (indexed after 2005) and the total of all eligible adoption expenses incurred in respect of that child, and if the individuals cannot agree as to what portion of the amount each can so deduct, the Minister of National Revenue be permitted to apportion the deduction.

Federal budget, Supplementary Information, February 23, 2005: *Adoption Expense Tax Credit*

There are significant costs attached to the decision to adopt a child, including adoption agency and legal fees. In the case of children who are adopted from outside of Canada, the range of costs often includes travel expenses, accommodation expenses, and document translation fees. The budget proposes to introduce a 16% non-refundable credit for eligible (non-reimbursable) adoption expenses for the completed adoption of a child under the age of 18 years.

Eligible adoption expenses will include:

- Fees paid to an adoption agency licensed by a provincial or territorial government.
- Court, legal and administrative expenses.
- Reasonable travel and living expenses for the child and the adoptive parents.
- Document translation fees.
- Mandatory fees paid to a foreign institution.
- Any other reasonable expenses required by a provincial or territorial government or an adoption agency licensed by a provincial or territorial government.

The maximum eligible adoption expenses claimable in respect of any particular adoption will be $10,000. This amount will be indexed for taxation years after 2005. The credit may be split between two adoptive parents, but the combined expenses claimed for an adopted child cannot exceed $10,000. To be eligible for the credit, a parent must submit proof of an adoption in the form of a Canadian or foreign adoption order, or otherwise demonstrate that all of the legal requirements of the jurisdiction in which the parent resides have been met in completing the adoption. Parents will be able to claim the credit only for the taxation year in which an adoption is finalized, and will be able to include expenses incurred from the earlier of the time the child's adoption file is opened with the provincial or territorial ministry responsible for adoption or a licensed adoption agency, and the time, if any, that an application related to an adoption is made to a Canadian court.

This measure will apply for the 2005 and subsequent taxation years.

[Quebec has had an adoption expenses credit for provincial tax purposes since 1994, in *Taxation Act* ss. 1029.8.63-1029.8.66. Table A8.1 in the Budget Supplementary Information estimates that the cost of the federal credit will be $5 million in each year from 2005-06 through 2009-10 — ed.]

Definitions [s. 118.01]: "adoption period" — 118.01(1); "amount", "appropriate percentage" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "child" — 252(1); "eligible adoption expense", "eligible child" — 118.01(1); "individual", "Minister" — 248(1); "parent" — 252(2)(a); "related" — 251(2)-(6); "taxable income" — 248(1); "taxation year" — 249.

118.1 (1) Definitions — In this section

"total charitable gifts" of an individual for a taxation year means the total of all amounts each of which is the fair market value of a gift (other than a gift the fair market value of which is included in the total Crown gifts, the total cultural gifts or the total ecological gifts of the individual for the year) made by the individual in the year or in any of the 5 immediately preceding taxation years (other than in a year for which a deduction under subsection 110(2) was claimed in computing the individual's taxable income) to

Proposed Amendment — 118.1(1)"total charitable gifts" opening words

"total charitable gifts", in respect of an individual for a taxation year, means the total of all amounts each of which is the eligible amount of a gift (other than a gift described in the definition "total Crown gifts", "total cultural gifts" or "total ecological gifts") made by the individual in the year or in any of the five preceding taxation years (other than in a year for which a deduction under subsection 110(2) was claimed in computing the individual's taxable income) to

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 106(2), will amend the opening words of the definition "total charitable gifts" in subsec. 118.1(1) to read as above, applicable to gifts made after December 20, 2002.

Technical Notes: Section 118.1 provides for a charitable donations tax credit to individuals in respect of gifts made to registered charities and to certain other entities. Section 118.1 is amended to expand the entities referred to in this section to include municipal or public bodies performing a function of government in Canada. This amendment is in response to the Quebec Court of Appeal decision in *Tawich Development Corporation v. Deputy Minister of Revenue of Quebec*, 2001 D.T.C. 5144. For additional information, see the commentary to paragraph 149(1)(d.5).

The amendments to section 118.1, described below, are made consequential to the addition of new subsections 248(30) to (39). Generally, those subsections clarify the circumstances under which a transfer of

property will be considered a gift notwithstanding that the donor may be entitled to receive an advantage or benefit in respect of the property. New subsection 248(31) generally provides that the "eligible amount" of the gift is the excess of the fair market value of a property transferred by way of gift over the value of the advantage or benefit, if any, to which the transferor is entitled. For additional information, see the commentary to new subsections 248(30) to (39).

Subsection 118.1(1) provides definitions of the terms "total charitable gifts", "total Crown gifts", "total cultural gifts" and "total ecological gifts". These definitions apply for the purpose of the tax credit available under subsection 118.1(3) to individuals who make such gifts. The amount of a gift that is eligible for a tax credit is, generally, the fair market value of the property disposed of by the individual in the making of the gift.

The definitions "total charitable gifts", "total Crown gifts", "total cultural gifts" and "total ecological gifts" in subsection 118.1(1) are amended, as a consequence of the addition of new subsection 248(31), to provide that the amount that qualifies for the credit under subsection 118.1(3) is the "eligible amount" of a gift. In addition, the definition of "total charitable gifts" and the definition of "total ecological gifts" in subsection 118.1(1) are expanded to include a gift to a municipal or public body performing a function of government in Canada.

(a) a registered charity,

(b) a registered Canadian amateur athletic association,

(c) a housing corporation resident in Canada and exempt from tax under this Part because of paragraph 149(1)(i),

(d) a Canadian municipality,

Proposed Amendment — 118.1(1)"total charitable gifts"(d), (d.1)

(d) a municipality in Canada,

(d.1) a municipal or public body performing a function of government in Canada,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 106(3), will amend para. (d) of the definition "total charitable gifts" in subsec. 118.1(1) to read as above and add para. (d.1), applicable to gifts made after May 8, 2000.

Technical Notes: See under 118.1(1)"total charitable gifts" opening words above.

Letter from Dept. of Finance, September 10, 2002: See under 149(1)(d.5).

(e) the United Nations or an agency thereof,

(f) a university outside Canada that is prescribed to be a university the student body of which ordinarily includes students from Canada,

(g) a charitable organization outside Canada to which Her Majesty in right of Canada has made a gift during the individual's taxation year or the 12 months immediately preceding that taxation year, or

(g.1) Her Majesty in right of Canada or a province,

to the extent that those amounts were

(h) not deducted in computing the individual's taxable income for a taxation year ending before 1988, and

(i) not included in determining an amount that was deducted under this section in computing the individual's tax payable under this Part for a preceding taxation year;

Related Provisions: 43.1(1) — Charitable gifts excluded from rules re life interests in real property; 46(1), (5) — Capital gain on certain donations of art and other property; 69(1)(b)(ii) — Donor deemed to have disposed of property at fair market value; 94(1)"specified charity" [proposed] — Charity as beneficiary of non-resident trust; 110(1)(d.01) — Deduction on donating employee stock-option shares to charity; 110.1(1)(a) — Parallel deduction for corporations; 118.1(1)"total gifts"(a)(ii) — Charitable gifts limited to 75% of net income; 118.1(2.1) — Ordering of claims; 118.1(5.1), (5.2) — Designation of charity as beneficiary of insurance policy; 118.1(5.3) — Designation of charity as beneficiary of RRSP or RRIF; 118.1(6)(b)(i) — Reduced gain or recapture on donation of property to charity; 118.1(10.1) — Determination of value of cultural property; 118.1(13) — Donation of non-qualifying securities; 118.1(16) — Loanback arrangements; 143(3.1) — Hutterite colonies — election re gifts; 149.1(6.4) — Donations to registered national arts service organization; 188.2(3)(a)(i) — Effect of suspension of charity's receipting privileges; 237.1(1)"gifting arrangement", "tax shelter" — Tax shelter registration requirement; 248(30)–(33) — Determination of eligible amount; 248(35)–(39) — Value of gift limited to cost if acquired within 3 years or as tax shelter; 248(40) — Donee must make inquiry re circumstances of donation over $5,000; 248(41) — Donation value deemed nil if taxpayer does not inform donee of circumstances requiring reduction; Canada-U.S. Tax Treaty:Art. XXI:6 — Donations to U.S. charities qualify for taxpayer with U.S.-source income; Canada-U.S. Tax Treaty:Art. XXIX-B:1 — Property left to U.S. charity on death.

History: 2005, c. 30, s. 6, states that for the purpose of applying s. 118.1, a gift made by an individual after 2004 and before January 12, 2005 is deemed to have been made by the individual in the individual's 2004 taxation year and not in the individual's 2005 taxation year if

(a) the individual claims an amount under subsec. 118.1(3) in respect of the gift for the individual's 2004 taxation year;

(b) the gift was made to a registered charity listed under the International Humanitarian Assistance program of the Canadian International Development Agency;

(c) the individual directed the charity to apply the gift to the tsunami relief effort; and

(d) the gift was in the form of cash or was transferred by way of cheque, credit card or money order.

Para. (g.1) added to the definition "total charitable gifts" in subsec. 118.1(1) by 1998, c. 19, subsec. 22(1), applicable to taxation years that begin after 1996.

The opening words of the definition "total charitable gifts" in subsec. 118.1(1) amended by 1996, c. 21, subsec. 23(1), applicable to gifts made after February 27, 1995. The opening words formerly read:

"total charitable gifts" of an individual for a taxation year means the total of all amounts each of which is the fair market value of a gift (other than a gift the fair market value of which is included in the total Crown gifts or the total cultural gifts of the individual for the year, or would have been so included for a preceding taxation year if this section had applied to that preceding year) made by the individual in the year or in any of the 5 immediately preceding taxation years (other than in a year for which a deduction under subsection 110(2) was claimed in computing the individual's taxable income) to

Definition "total charitable gifts" amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 88(1), applicable after December 11, 1988. That definition formerly read:

"total charitable gifts" of an individual for a taxation year means the total of all amounts each of which is the amount of a gift made by the individual in the year or in one of the 5 immediately preceding taxation years to

(a) a registered charity,

(b) a registered Canadian amateur athletic association,

(c) a housing corporation resident in Canada and exempt from tax under this Part by paragraph 149(1)(i),

(d) a Canadian municipality,

(e) the United Nations or an agency thereof,

(f) a university outside Canada prescribed to be a university the student body of which ordinarily includes students from Canada, or

(g) a charitable organization outside Canada to which Her Majesty in right of Canada has made a gift during the individual's taxation year or the 12 months immediately preceding that taxation year,

to the extent that the amounts of those gifts have been neither

(h) deducted in computing the individual's taxable income for a taxation year preceding 1988, nor

(i) used in determining an amount that has been deducted under this section in computing the individual's tax payable under this Part for a preceding taxation year,

but, where the individual has claimed a deduction under subsection 110(2) in computing the individual's taxable income for a taxation year, does not include the amount of any gift made in that year;

Selected Cases [subsec. 118.1(1)"total charitable gifts"]: *Woolner v. R.*, [2000] 1 C.T.C. 35 (FCA) (Anticipated benefit deprives "gift" of essential eleemosynary quality); *Burns v. MNR*, [1990] 1 C.T.C. 350 (FCA) (Donations to registered amateur athletic association not "gifts" where taxpayer paying for daughter's training); *Guertin, Antoine, Ltée v. R.*, [1988] 1 C.T.C. 117 (FCA) (Loan for interest to company by foundation made from amounts donated to foundation by company not artificial transactions); *R. v. McBurney*, [1985] 2 C.T.C. 214 (FCA); leave to appeal to SCC refused (1986), 65 N.R. 320 (note), (sub nom. *McBurney v. MNR)* (Mere lack of legal obligation to contribute to religious schools not sufficient to create gifts); *R. v. Zandstra*, [1974] C.T.C. 503 (FCTD) (Of amounts paid to Christian school, $200 per child held to be tuition; excess charitable).

Regulations: 3503, Sch. VIII (prescribed universities).

Forms: RC4142: Tax advantages of donating to a charity [guide]; T1236: Qualified donees worksheet.

Interpretation Bulletins: See lists at end of 118.1(1) and at end of 118.1.

Information Circulars: 75-23: Tuition fees and charitable donations paid to privately supported secular and religious schools; 84-3R5: Gifts to certain charitable organizations outside Canada. See also at end of 118.1.

I.T. Technical News: 17 (loan of property as a gift).

Registered Charities Newsletters: 1 (donation of services); 2 (issuing official donation receipts where there are prizes); 3 (gifts of property other than cash); 4 (issuing receipts for gifts of art); 6 (can registered charities issue donation tax receipts for tuition fees?; the "art" of issuing official donation receipts); 7 (fundraising golf tournaments; fundraising auctions); 8 (further questions on golf tournaments; directed donations; issuing receipts for gifts of art; gifts of units in a hedge fund; membership fees; official donation receipts — Quebec donors); 9 (how do you establish the value of gifts-in-kind?); 11 (audit of tax preparer lands registered charities in hot water); 12 (valuing gifts of public securities); 14 (abusive donation scheme not allowed); 16 (donations of items of a speculative value); 18 (charitable donation tax shelter arrangements; what is a gift in kind?; how should charitable gifts in kind be valued?; donation of timeshares, including recreational property; can businesses receive receipts for donations made out of their inventory?; can shares or stock options be gifts?; can a charity issue a charitable receipt for a court-ordered payment made to it?); 22 (rent-free accommodations; donate-a-car programs); 23 (court news: volunteering services is not a gift).

Charities Policies: CPC-006: Gift-in-kind; CPC-008: Gift — payment to a registered charity instead of paying union dues; CPC-012: Out of pocket expenses; CPC-017: Official donation receipts — gifts of services; CPC-018: Official donation receipts — gifts out of inventory; CPC-019: Official donation receipts — payment for participation in a youth band or choir; CPC-025: Gift — expenses — volunteer; CPS-018: Donations of gift certificates.

"total Crown gifts" of an individual for a taxation year means the total of all amounts each of which is the fair market value of a gift (other than a gift the fair market value of which is included in the total cultural gifts or the total ecological gifts of the individual for the year) made by the individual in the year or in any of the 5 immediately preceding taxation years to Her Majesty in right of Canada or a province, to the extent that those amounts were

Proposed Amendment — 118.1(1)"total Crown gifts" opening words

"total Crown gifts", in respect of an individual for a taxation year, means the total of all amounts each of which is the eligible amount of a gift (other than a gift described in the definition "total cultural gifts" or "total ecological gifts") made by the individual in the year or in any of the five preceding taxation years to Her Majesty in right of Canada or of a province, to the extent that those amounts were

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 106(4), will amend the opening words of the definition "total Crown gifts" in subsec. 118.1(1) to read as above, applicable to gifts made after December 20, 2002.

Technical Notes: See under 118.1(1)"total charitable gifts" opening words above.

(a) not deducted in computing the individual's taxable income for a taxation year ending before 1988,

(b) not included in determining an amount that was deducted under this section in computing the individual's tax payable under this Part for a preceding taxation year, and

(c) in respect of gifts made before February 19, 1997 or under agreements in writing made before that day;

History: Para. (c) added to the definition "total Crown gifts" in subsec. 118.1(1) by 1998, c. 19, subsec. 22(2), applicable to taxation years that begin after 1996.

The opening words of the definition "total Crown gifts" in subsec. 118.1(1) amended by 1996, c. 21, subsec. 23(2), applicable to gifts made after February 27, 1995. The opening words formerly read:

> "total Crown gifts" of an individual for a taxation year means the total of all amounts each of which is the fair market value of a gift (other than a gift the fair market value of which is included in the total cultural gifts of the individual for the year, or would have been so included for a preceding taxation year if this section had applied to that preceding year) made by the individual in the year or in any of the 5 immediately preceding taxation years to Her Majesty in right of Canada or a province, to the extent that those amounts were

Definition "total Crown gifts" in subsec. 118.1(1) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 88(1), applicable after December 11, 1988. That definition formerly read:

> "total Crown gifts" of an individual for a taxation year means the total of all amounts each of which is the amount of a gift made by the individual in the year or in one of the 5 immediately preceding taxation years to Her Majesty in right of Canada or to Her Majesty in right of a province, to the extent that the amounts of those gifts have been neither
>
> (a) deducted in computing the individual's taxable income for a taxation year preceding 1988, nor
>
> (b) used in determining an amount that has been deducted under this section in computing the individual's tax payable under this Part for a preceding taxation year;

Selected Cases [subsec. 118.1(1)"total Crown gifts"]: *Hudson Bay Mining and Smelting Co. Ltd. v. Canada*, [1989] 2 C.T.C. 309 (FCA); leave to appeal to SCC refused (1990), 106 N.R. 16 (note) ("Gift" to Crown corporation after latter acquired facilities from taxpayer neither separate transaction nor deductible).

Advance Tax Rulings: ATR-63: Donations to agents of the Crown.

I.T. Technical News: 17 (loan of property as a gift).

Forms: T1236: Qualified donees worksheet.

"total cultural gifts" of an individual for a taxation year means the total of all amounts each of which is the fair market value of a gift

Proposed Amendment — 118.1(1)"total cultural gifts" opening words

"total cultural gifts", in respect of an individual for a taxation year, means the total of all amounts each of which is the eligible amount of a gift

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 106(5), will amend the opening words of the definition "total cultural gifts" in subsec. 118.1(1) to read as above, applicable to gifts made after December 20, 2002.

Technical Notes: See under 118.1(1)"total charitable gifts" opening words above.

(a) of an object that the Canadian Cultural Property Export Review Board has determined meets the criteria set out in paragraphs 29(3)(b) and (c) of the *Cultural Property Export and Import Act*, and

(b) that was made by the individual in the year or in any of the 5 immediately preceding taxation years to an institution or a public authority in Canada that was,

at the time the gift was made, designated under subsection 32(2) of the *Cultural Property Export and Import Act* either generally or for a specified purpose related to that object,

to the extent that those amounts were

(c) not deducted in computing the individual's taxable income for a taxation year ending before 1988, and

(d) not included in determining an amount that was deducted under this section in computing the individual's tax payable under this Part for a preceding taxation year;

Related Provisions: 39(1)(a)(i.1) — No capital gain on gift of cultural property to designated institution; 110.1(1)(c) — Parallel deduction for corporations; 118.1(1)"total gifts"(c) — Cultural gifts not limited to 75% of net income; 118.1(2.1) — Ordering of claims; 118.1(6)(b)(i) — Reduced recapture on donation of property to charity; 118.1(7.1) — Gifts of cultural property — deemed proceeds; 118.1(10) — Determination of fair market value; 118.1(10.1) — Determination of value by Cultural Property Export Review Board; 143(3.1) — Election in respect of gifts; 207.3 — Tax on institution that disposes of cultural property; 248(30)–(33) — Determination of eligible amount; 248(35)–(39) — Value of gift limited to cost if acquired within 3 years or as tax shelter.

History: Definition "total cultural gifts" in subsec. 118.1(1) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 88(1), applicable after December 11, 1988. That definition formerly read:

"total cultural gifts" of an individual for a taxation year means the total of all values each of which is the value of a gift

(a) of an object that the Canadian Cultural Property Export Review Board has determined meets all the criteria set out in paragraphs 29(3)(b) and (c) of the *Cultural Property Export and Import Act*,

(b) that neither is included in the total charitable gifts or the total Crown gifts of the individual for the year, nor would have been so included in a preceding taxation year had this section been applicable to that preceding year, and

(c) that was made by the individual in the year or in one of the 5 immediately preceding taxation years to an institution or public authority in Canada that was, at the time the gift was made, designated under subsection 32(2) of the *Cultural Property Export and Import Act* either generally or for a purpose related to the object referred to in paragraph (a)

to the extent that the values of those gifts have been neither

(d) deducted in computing the individual's taxable income for a taxation year preceding 1988, nor

(e) used in determining an amount that has been deducted under this section in computing the individual's tax payable under this Part for a preceding taxation year;

Selected Cases [subsec. 118.1(1)"total cultural gifts"]: *Chabot v. R.*, [2000] 2 C.T.C. 2546 (TCC) (Artwork not owned and could not be donated); *Hudson Bay Mining and Smelting Co. Ltd. v. Canada*, [1989] 2 C.T.C. 309 (FCA); leave to appeal to SCC refused (1990), 106 N.R. 16 (note) ("Gift" to Crown corporation after latter acquired facilities from taxpayer neither separate transaction nor deductible); *Friedberg v. MNR*, [1989] 1 C.T.C. 274 (FCTD); aff'd in part [1992] 1 C.T.C. 1 (FCA); leave to appeal to SCC refused (July 2, 1992), Doc. 22990 [unreported]. Fair market value of collections donated to museum deductible despite cost to taxpayer below fair market value).

Interpretation Bulletins: IT-407R4: Dispositions of cultural property to designated Canadian institutions. See also at end of 118.1.

I.T. Technical News: 17 (loan of property as a gift).

"total ecological gifts" of an individual for a taxation year means the total of all amounts each of which is the fair market value of a gift (other than a gift the fair market value of which is included in the total cultural gifts of the individual for the year) of land, including a servitude for the use and benefit of a dominant land, a covenant or an easement, the fair market value of which is certified by the Minister of the Environment and that is certified by that Minister, or a person designated by that Minister, to be ecologically sensitive land, the conservation and protection of which is, in the opinion of that Minister, or that person, important to the preservation of Canada's environmental heritage, which gift was made by the individual in the year or in any of the five immediately preceding taxation years to

(a) Her Majesty in right of Canada or a province or a municipality in Canada, or

(b) a registered charity one of the main purposes of which is, in the opinion of the Minister of the Environment, the conservation and protection of Canada's environmental heritage, and that is approved by that Minister, or that person, in respect of that gift,

to the extent that those amounts were not included in determining an amount that was deducted under this section in computing the individual's tax payable under this Part for a preceding taxation year;

Proposed Amendment — 118.1(1)"total ecological gifts"

"total ecological gifts", in respect of an individual for a taxation year, means the total of all amounts each of which is the eligible amount of a gift (other than a gift described in the definition "total cultural gifts") of land (including a covenant or an easement to which land is subject or, in the case of land in the Province of Quebec, a real servitude) if

(a) the fair market value of the gift is certified by the Minister of the Environment,

(b) the land is certified by that Minister, or by a person designated by that Minister, to be ecologically sensitive land, the conservation and protection of which is, in the opinion of that Minister or that person, important to the preservation of Canada's environmental heritage, and

(c) the gift was made by the individual in the year or in any of the five preceding taxation years to

(i) Her Majesty in right of Canada or of a province,

(ii) a municipality in Canada,

(iii) a municipal or public body performing a function of government in Canada, or

(iv) a registered charity one of the main purposes of which is, in the opinion of that Minister, the conservation and protection of Canada's environmental heritage, and that is approved by that Minister or that person in respect of the gift,

to the extent that those amounts were not included in determining an amount that was deducted under this section in computing the individual's tax payable under this Part for a preceding taxation year;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 106(1), will amend the definition "total ecological gifts" in subsec. 118.1(1) to read as above, applicable to gifts made after December 20, 2002. In addition, for gifts made after May 8, 2000 but before December 21, 2002, para. (a) of the definition is to be read as follows:

(a) Her Majesty in right of Canada or of a province, a municipality in Canada or a municipal or public body performing a function of government in Canada, or

Technical Notes: [See also under 118.1(1)"total charitable gifts" opening words above — ed.] The definition "total ecological gifts" is also amended to clarify its application to "real servitudes" under the *Civil Code of Quebec*.

Letter from Dept. of Finance, September 10, 2002: See under 149(1)(d.5).

Related Provisions: 38(a.2) — Reduced capital gain inclusion on ecological gift; 110.1(1)(d) — Parallel deduction for corporations;

118.1(1)"total gifts"(d) — Ecological gifts not limited to 20% of net income; 118.1(2.1) — Ordering of claims; 118.1(10.1)–(10.5) — Determination of fair market value by Minister of the Environment; 118.1(12) — Fair market value of ecological servitude, covenant or easement; 207.31 — Tax if donee disposes of the property; 248(30)–(33) — Determination of eligible amount.

History: The opening words of the definition "total ecological gifts" in subsec. 118.1(1) amended by 2001, c. 17, subsec. 94(1), applicable in respect of gifts made, or proposed to be made, after February 27, 2000. The opening words formerly read:

> "total ecological gifts" of an individual for a taxation year means the total of all amounts each of which is the fair market value of a gift (other than a gift the fair market value of which is included in the total cultural gifts of the individual for the year) of land, including a servitude for the use and benefit of a dominant land, a covenant or an easement, that is certified by the Minister of the Environment, or a person designated by that Minister, to be ecologically sensitive land, the conservation and protection of which is, in the opinion of that Minister, or that person, important to the preservation of Canada's environmental heritage, which gift was made by the individual in the year or in any of the 5 immediately preceding taxation years to

Para. (a) of the definition "total ecological gifts" in subsec. 118.1(1) amended by 1998, c. 19, subsec. 22(3), applicable to gifts made after February 18, 1997. Para. (a) formerly read:

> (a) a Canadian municipality, or

The definition "total ecological gifts" added to subsec. 118.1(1) by 1996, c. 21, subsec. 23(4), applicable to gifts made after February 27, 1995.

I.T. Technical News: 17 (loan of property as a gift).

Registered Charities Newsletters: 22 (ecological gifts).

"total gifts" of an individual for a taxation year means the total of

(a) the least of

(i) the individual's total charitable gifts for the year,

(ii) the individual's income for the year where the individual dies in the year or in the following taxation year, and

(iii) in any other case, the lesser of the individual's income for the year and the amount determined by the formula

$$0.75A + 0.25 (B + C + D - E)$$

where

A is the individual's income for the year,

B is the total of all amounts each of which is a taxable capital gain of the individual for the year from a disposition that is the making of a gift made by the individual in the year, which gift is included in the individual's total charitable gifts for the year,

Proposed Amendment — 118.1(1)"total gifts"(a)(iii)B

B is the total of all amounts, each of which is that proportion of the individual's taxable capital gain for the taxation year in respect of a gift made by the individual in the taxation year (in respect of which gift an eligible amount is included in the individual's total charitable gifts for the taxation year) that the eligible amount of the gift is of the individual's proceeds of disposition in respect of the gift,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 106(6), will amend the description of B in subpara. (a)(iii) of the definition "total gifts" in subsec. 118.1(1) to read as above, applicable to gifts made after December 20, 2002.

Technical Notes: Variable B in the formula [in] the definition "total gifts" in subsection 118.1(1) generally provides that 100% of a taxable capital gain that results from a gift is included in the annual income limit that applies to gifts. This is an enhancement of the 75% income limit that generally applies to other types of income. Variable B is amended as a consequence of the addition of new subsection 248(31), to ensure that the enhanced income limit only applies to the portion of a taxable capital gain that relates to the eligible amount of a gift.

C is the total of all amounts each of which is a taxable capital gain of the individual for the year, because of subsection 40(1.01), from a disposition of a property in a preceding taxation year,

D is the total of all amounts each of which is determined in respect of the individual's depreciable property of a prescribed class and equal to the lesser of

(A) the amount included under subsection 13(1) in respect of the class in computing the individual's income for the year, and

(B) the total of all amounts each of which is determined in respect of a disposition that is the making of a gift of property of the class made by the individual in the year that is included in the individual's total charitable gifts for the year and equal to the lesser of

(I) the proceeds of disposition of the property minus any outlays and expenses to the extent that they were made or incurred by the individual for the purpose of making the disposition, and

(II) the capital cost to the individual of the property, and

Proposed Amendment — 118.1(1)"total gifts"(a)(iii)D(B)

(B) the total of all amounts each of which is determined in respect of a disposition that is the making of a gift of property of the class made by the individual in the year (in respect of which gift an eligible amount is included in the individual's total charitable gifts for the taxation year) equal to the lesser of

(I) that proportion, of the amount by which the proceeds of disposition of the property exceed any outlays and expenses, to the extent that they were made or incurred by the individual for the purpose of making the disposition, that the eligible amount of the gift is of the individual's proceeds of disposition in respect of the gift, and

(II) that proportion, of the capital cost to the individual of the property, that the eligible amount of the gift is of the individual's proceeds of disposition in respect of the gift, and

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 106(7), will amend cl. (B) in the description of D in subpara. (a)(iii) of the definition "total gifts" in subsec. 118.1(1) to read as above, applicable to gifts made after December 20, 2002.

Technical Notes: See under 118.1(1)"total gifts"(a)(iii)B above.

E is the total of all amounts each of which is the portion of an amount deducted under section 110.6 in computing the individual's taxable income for the year that can reasonably be con-

sidered to be in respect of a gift referred to in the description of B or C,

(b) the individual's total Crown gifts for the year,

(c) the individual's total cultural gifts for the year, and

(d) the individual's total ecological gifts for the year.

Related Provisions: 248(35)–(39) — Value of gift limited to cost if acquired within 3 years or as tax shelter; 257 — Formula cannot calculate to less than zero.

History: 1999, c. 22, s. 33 provides the following special rule, applicable to taxation years that ended after November 15, 1997 and before 1998.

For the purposes of the Act, if

(a) a taxpayer made a gift at any particular time before February 1998, and after the end of a taxation year that ended after November 15, 1997 and before 1998, that would be deductible under section 110.1 or 118.1 of the Act in computing the taxpayer's taxable income or tax payable under Part I of the Act for the year if it were made immediately before the end of the year,

(b) the gift was a gift of tangible property (other than real property) or a gift by cash, cheque, credit card or money order,

(c) the gift was not made

(i) through a payroll deduction, or

(ii) where the taxpayer died after 1997, by the taxpayer's will, and

(d) the taxpayer so elects in the taxpayer's return of income under the Act for the year or by notifying the Minister of National Revenue in writing before 1999,

the taxpayer is deemed to have made the gift and, in the case of a gift of tangible property, to have disposed of the property immediately before the end of the taxpayer's taxation year that ended before 1998 and not to have done so at the particular time.

Subpara. (a)(iii) of the definition "total gifts" in subsec. 118.1(1) amended by 1998, c. 19, subsec. 22(4), applicable to taxation years that begin after 1996. Subpara. (a)(iii) formerly read:

(iii) in any other case, the amount determined by the formula

$$0.5(A + B - C)$$

where

A is the individual's income for the year,

B is the total of all amounts each of which is the amount of a taxable capital gain from a gift of property made by the individual in the year to a donee described in the definition "total charitable gifts", and

C is the total of all amounts each of which is the portion of an amount deducted under section 110.6 in computing the individual's taxable income for the year that can reasonably be considered to be in respect of a gift of capital property made by the individual in the year to a donee described in the definition "total charitable gifts",

Para. (a) of the definition "total gifts" in subsec. 118.1(1) amended by 1997, c. 25, s. 26, applicable to 1996 *et seq.* and, where an individual dies in 1996, to the individual's 1995 taxation year. Para. (a) formerly read:

(a) the lesser of

(i) the individual's total charitable gifts for the year, and

(ii) 1/5 of the individual's income for the year,

Para. (d) of the definition "total gifts" in subsec. 118.1(1) added by 1996, c. 21, subsec. 23(3), applicable to gifts made after February 27, 1995.

Definition "total gifts" in subsec. 118.1(1) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 88(1), applicable after December 11, 1988. That definition formerly read:

"total gifts" of an individual for a taxation year means the total of

(a) the lesser of

(i) the individual's total charitable gifts for the year, and

(ii) 1/5 of the individual's income for the year computed without reference to subsection 137(2),

(b) the individual's total Crown gifts for the year, and

(c) the individual's total cultural gifts for the year.

I.T. Technical News: 17 (loan of property as a gift).

Interpretation Bulletins [subsec. 118.1(1)]: IT-110R3: Gifts and official donation receipts; IT-226R: Gift to a charity of a residual interest in real property or an equitable interest in a trust; IT-288R2: Gifts of capital properties to a charity and others; IT-297R2: Gifts in kind to charity and others; IT-407R4: Dispositions of cultural property to designated Canadian institutions; IT-504R2: Visual artists and writers. See also at end of s. 118.1.

Information Circulars: See list at end of s. 118.1.

(2) Proof of gift — A gift shall not be included in the total charitable gifts, total Crown gifts, total cultural gifts or total ecological gifts of an individual unless the making of the gift is proven by filing with the Minister

Proposed Amendment — 118.1(2) opening words

(2) Proof of gift — An eligible amount of a gift shall not be included in the total charitable gifts, total Crown gifts, total cultural gifts or total ecological gifts of an individual unless the making of the gift is evidenced by filing with the Minister

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 106(8), will amend the opening words of subsec. 118.1(2) to read as above, applicable to gifts made after December 20, 2002.

Technical Notes: Subsection 118.1(2) provides that an amount in respect of a gift by an individual may not be included in the amount eligible for a tax credit under subsection 118.1(3) unless the gift is evidenced by a receipt containing prescribed information. Subsection 118.1(2) is amended concurrently with subsection 118.1(1), to refer to the "eligible amount" of a gift.

It is proposed that subsections 3501(1), (1.1) and (6) of the Regulations be amended to provide that every official receipt issued by a registered organization in respect of a gift contain, in addition to the information already prescribed, a description of and the amount of the advantage, if any, and the eligible amount of the gift.

For additional details, see the commentary to new subsections 248(31) and (32) regarding the eligible amount and the amount of the advantage in respect of a gift.

(a) a receipt for the gift that contains prescribed information;

(b) in the case of a gift described in the definition "total cultural gifts" in subsection (1), the certificate issued under subsection 33(1) of the *Cultural Property Export and Import Act*; and

(c) in the case of a gift described in the definition "total ecological gifts" in subsection (1), both certificates referred to in that definition.

Related Provisions: 110.1(2) — Parallel rule for corporations; 149.1(1)"disbursement quota"A — Charity must disburse 80% of receipted gifts; 188.2 — Suspension of charity's receipting privileges; 230(2) — Books and records to be kept by charity; 248(30)–(33) — Determination of eligible amount; 248(40) — Donee must make inquiry re circumstances of donation over $5,000; 248(41) — Donation value deemed nil if taxpayer does not inform donee of circumstances requiring reduction.

History: Subsec. 118.1(2) amended by 2001, c. 17, subsec. 94(2), applicable in respect of gifts made, or proposed to be made, after February 27, 2000, except that the subsec., as amended, shall be read without reference to para. 118.1(2)(b) in respect of gifts made before December 21, 2000. That subsec. formerly read:

(2) A gift shall not be included in the total charitable gifts, total Crown gifts, total cultural gifts or total ecological gifts of an individual unless the making of the gift is proven by filing with the Minister a receipt therefor that contains prescribed information.

Subsec. 118.1(2) amended by 1996, c. 21, subsec. 23(5), applicable to gifts made after February 27, 1995. That subsec. formerly read:

(2) A gift shall not be included in the total charitable gifts, total Crown gifts or total cultural gifts of an individual unless the making of the gift is proven by filing with the Minister a receipt therefor that contains prescribed information.

Selected Cases [subsec. 118.1(2)]: *Côté v. R.*, [1999] 3 C.T.C. 2373 (TCC) (Gifts valid but valuations exaggerated; penalties upheld).

Regulations: 3501 (prescribed information).

Interpretation Bulletins: IT-407R4: Dispositions of cultural property to designated Canadian institutions. See also at end of s. 118.1.

Information Circulars: See list at end of s. 118.1.

Advance Tax Rulings: ATR-63: Donations to agents of the Crown.

Registered Charities Newsletters: See under 118.1(1)"total charitable gifts" and Reg. 3501(1).

(2.1) Ordering — For the purposes of determining the total charitable gifts, total Crown gifts, total cultural gifts and total ecological gifts of an individual for a taxation year, no amount in respect of a gift described in any of the definitions of those expressions and made in a particular taxation year shall be considered to have been included in determining an amount that was deducted under this section in computing the individual's tax payable under this Part for a taxation year until amounts in respect of such gifts made in taxation years preceding the particular year that can be so considered are so considered.

Related Provisions: 110.1(1.1)(b) — Parallel ordering rule for corporations.

History: Subsec. 118.1(2.1) added by 1998, c. 19, subsec. 22(5), applicable to taxation years that begin after 1996.

(3) Deduction by individuals for gifts — For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted such amount as the individual claims not exceeding the amount determined by the formula

$$(A \times B) + [C \times (D - B)]$$

where

A is the appropriate percentage for the year;

B is the lesser of $200 and the individual's total gifts for the year;

C is the highest percentage referred to in subsection 117(2) that applies in determining tax that might be payable under this Part for the year; and

D is the individual's total gifts for the year.

Related Provisions: 37(5) — Scientific research and experimental development expenditures; 110(2) — Deduction for member of religious order who has taken vow of perpetual poverty; 110.1 — Deduction for gifts by corporations; 117(1) — Tax payable under this Part; 118.1(4)–(5.3) — Gift on death; 118.1(5.4), (6) — Gift of capital property — designation of value; 118.1(7) — Gift of art by artist; 118.1(13)–(20) — No credit for gift of non-qualifying securities; 118.91 — Individual resident in Canada for part of the year; 118.95(a), 128(2)(e)(iii)(B), 128(2)(f)(iv), 128(2)(g)(ii)(B) — Application to bankrupt individual; 152(6) — Reassessment; 164(5), (5.1) — Effect of carryback of loss.

History: Subsec. 118.1(3) amended by 1995, c. 3, s. 34, applicable to 1994 *et seq.* Subsec. (3) formerly read:

> (3) For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted such amount as the individual may claim not exceeding an amount determined by the formula
>
> $$(A \times B) + (C \times (D - B))$$
>
> where
>
> A is the appropriate percentage for the year;
>
> B is the lesser of $250 and the individual's total gifts for the year;
>
> C is the highest percentage referred to in subsection 117(2) that is applicable in determining tax that might be payable under this Part for the year; and
>
> D is the individual's total gifts for the year.

Selected Cases [subsec. 118.1(3)]: *Klotz v. R.*, [2004] 2 C.T.C. 2892 (TCC) (Value of gift not supported by evidence).

Interpretation Bulletins: IT-226R: Gift to a charity of a residual interest in real property or an equitable interest in a trust; IT-297R2: Gifts in kind to charity and others; IT-407R4: Dispositions of cultural property to designated Canadian institutions. See also at end of s. 118.1.

Information Circulars: 75-23: Tuition fees and charitable donations paid to privately supported secular and religious schools.

Registered Charities Newsletters: See under 118.1(1)"total charitable gifts".

(4) Gift in year of death — Subject to subsection (13), a gift made by an individual in the particular taxation year in which the individual dies (including, for greater certainty, a gift otherwise deemed by subsection (5), (5.2), (5.3), (7), (7.1), (13) or (15) to have been so made) is deemed, for the purpose of this section other than this subsection, to have been made by the individual in the preceding taxation year, and not in the particular year, to the extent that an amount in respect of the gift is not deducted in computing the individual's tax payable under this Part for the particular year.

Related Provisions: 70(5) — Deemed disposition of property immediately before death; 118.1(5) — Gift made by will deemed made in year of death.

History: Subsec. 118.1(4) amended by 2001, c. 17, subsec. 94(3), to substitute "subsection (5), (5.2), (5.3), (7), (7.1), (13) or (15)" for "subsection (5), (13) or (15)", applicable in respect of deaths that occur after 1998. For taxation years before 2000, subsec. 118.1(4) is read without reference to subsecs. 118.1(7) and (7.1) except that, where a taxpayer or a taxpayer's legal representative notifies the Minister of National Revenue in writing before 2002 of the intention of the taxpayer or the taxpayer's legal representative that this subsection apply in respect of a gift made after 1996 and before 2000, subsec. 118.1(4), as amended, applies to the taxation year in which the gift was made and shall be read, in respect of the 1996 to 1998 taxation years, without reference to subsecs. 118.1(5.2) and (5.3).

Subsec. 118.1(4) amended by 1998, c. 19, subsec. 22(6), applicable to gifts made after July 1997. Subsec. 118.1(4) formerly read:

> (4) Time of gift — For the purposes of this section, a gift made by an individual in the taxation year in which the individual dies shall be deemed to have been made by the individual in the immediately preceding taxation year to the extent that an amount in respect thereof is not deducted in computing the individual's tax payable under this Part for the taxation year in which the individual dies.

Interpretation Bulletins: IT-288R2: Gifts of capital properties to a charity and others; IT-407R4: Dispositions of cultural property to designated Canadian institutions. See also at end of s. 118.1.

(5) Gift by will — Subject to subsection (13), where an individual by the individual's will makes a gift, the gift is, for the purpose of this section, deemed to have been made by the individual immediately before the individual died.

Related Provisions: 38(a.1)(ii) — Gift of publicly-traded securities made on death; 38(a.2) — Reduced capital gain inclusion on ecological gift; 39(1)(a)(i.1) — Gain on disposition not capital gain; 70(5) — Deemed disposition of property immediately before death; 118.1(4) — Carryback of gift made in year of death; 118.1(5.1), (5.2) — Gift of life insurance on death. See additional Related Provisions at end of s. 118.1.

History: Subsec. 118.1(5) amended by 1998, c. 19, subsec. 22(6), applicable to gifts made after July 1997 Subsec. 118.1(5) formerly read:

> (5) Where an individual by the individual's will makes a gift to a donee described in subsection (1), the gift shall, for the purposes of this section, be deemed to have been made by the individual in the taxation year in which the individual dies.

Interpretation Bulletins: IT-226R: Gift to a charity of a residual interest in real property or an equitable interest in a trust; IT-407R4: Dispositions of cultural property to designated Canadian institutions. See also at end of s. 118.1.

Registered Charities Newsletters: 1 (donation of services); 2 (issuing official donation receipts where there are prizes); 3 (gifts of property other than cash); 4 (issuing receipts for gifts of art); 6 (can registered charities issue donation tax receipts for tuition fees?; the "art" of issuing official donation receipts); 7 (fundraising golf tournaments; fundraising auctions); 8 (further questions on golf tournaments; directed donations; issuing receipts for gifts of art; gifts of units in a hedge fund; Membership fees; official donation receipts — Quebec donors); 9 (how do you estab-

lish the value of gifts-in-kind?); 11 (audit of tax preparer lands registered charities in hot water); 12 (valuing gifts of public securities).

(5.1) Direct designation — insurance proceeds — Subsection (5.2) applies to an individual in respect of a life insurance policy where

(a) the policy is a life insurance policy under which, immediately before the individual's death, the individual's life was insured;

(b) a transfer of money, or a transfer by means of a negotiable instrument, is made as a consequence of the individual's death and solely because of the obligations under the policy, from an insurer to a qualified donee (other than a transfer the amount of which is not included in computing the income of the individual or the individual's estate for any taxation year but would have been included in computing the income of the individual or the individual's estate for a taxation year if the transfer had been made to the individual's legal representative for the benefit of the individual's estate and this Act were read without reference to subsection 70(3));

(c) immediately before the individual's death,

(i) the individual's consent would have been required to change the recipient of the transfer described in paragraph (b), and

(ii) the donee was neither a policyholder under the policy, nor an assignee of the individual's interest under the policy; and

(d) the transfer occurs within the 36 month period that begins at the time of the death (or, where written application to extend the period has been made to the Minister by the individual's legal representative, within such longer period as the Minister considers reasonable in the circumstances).

History: Subsec. 118.1(5.1) added by 2001, c. 17, subsec. 94(4), applicable in respect of deaths that occur after 1998.

Registered Charities Newsletters: 15 (gifts by direct designation).

(5.2) Deemed gift — subsection (5.1) — Where this subsection applies,

(a) for the purpose of this section (other than subsection (5.1) and this paragraph) and section 149.1, the transfer described in subsection (5.1) is deemed to be a gift made, immediately before the individual's death, by the individual to the qualified donee referred to in subsection (5.1); and

(b) the fair market value of the gift is deemed to be the fair market value, at the time of the individual's death, of the right to that transfer (determined without reference to any risk of default with regard to obligations of the insurer).

Related Provisions: 118.1(4) — Carryback of gift made in year of death; 149.1(1)"disbursement quota"A(a) — Designated amount (enduring property) not included in disbursement quota; 149.1(1)"enduring property" — Definition includes gift deemed by 118.1(5.2).

History: Para. 118.1(5.2)(a) amended by 2005, c. 19, subsec. 23(1), to add "and section 149.1", applicable in respect of deaths that occur after 1998.

Subsec. 118.1(5.2) added by 2001, c. 17, subsec. 94(4), applicable in respect of deaths that occur after 1998.

Registered Charities Newsletters: 15 (gifts by direct designation).

(5.3) Direct designation — RRSPs and RRIFs — Where as a consequence of an individual's death, a transfer of money, or a transfer by means of a negotiable instrument, is made, from a registered retirement savings plan or registered retirement income fund (other than a plan or fund of which a licensed annuities provider is the issuer or carrier, as the case may be) to a qualified donee, solely because of the donee's interest as a beneficiary under the plan or fund, the individual was the annuitant (within the meaning assigned by subsection 146(1) or 146.3(1)) under the plan or fund immediately before the individual's death and the transfer occurs within the 36-month period that begins at the time of the death (or, where written application to extend the period has been made to the Minister by the individual's legal representative, within such longer period as the Minister considers reasonable in the circumstances),

(a) for the purposes of this section (other than this paragraph) and section 149.1, the transfer is deemed to be a gift made, immediately before the individual's death, by the individual to the donee; and

(b) the fair market value of the gift is deemed to be the fair market value, at the time of the individual's death, of the right to the transfer (determined without reference to any risk of default with regard to the obligations of the issuer of the plan or the carrier of the fund).

Related Provisions: 118.1(4) — Carryback of gift made in year of death; 149.1(1)"disbursement quota"A(a) — Designated amount (enduring property) not included in disbursement quota; 149.1(1)"enduring property" — Definition includes gift deemed by 118.1(5.3).

History: Para. 118.1(5.3)(a) amended by 2005, c. 19, subsec. 23(2), to add "and section 149.1", applicable in respect of deaths that occur after 1998.

Subsec. 118.1(5.3) added by 2001, c. 17, subsec. 94(4), applicable in respect of deaths that occur after 1998.

Registered Charities Newsletters: 15 (gifts by direct designation).

(6) Gift of capital property — Where, at any time, whether by the individual's will or otherwise, an individual makes a gift of

(a) capital property to a donee described in the definition "total charitable gifts", "total Crown gifts" or "total ecological gifts" in subsection (1), or

(b) in the case of an individual who is a non-resident person, real property situated in Canada to a prescribed donee who provides an undertaking, in a form satisfactory to the Minister, to the effect that such property will be held for use in the public interest,

and the fair market value of the property otherwise determined at that time exceeds its adjusted cost base to the individual, such amount, not greater than the fair market value and not less than the adjusted cost base to the individual of the property at that time, as the individual or the individual's legal representative designates in the individual's return of income under section 150 for the year in which the gift is made is, if the making of the gift is proven by filing with the Minister a receipt containing prescribed information, deemed to be the individual's proceeds of disposition of the property and, for the purposes of subsection (1), the fair market value of the gift made by the individual.

Proposed Amendment — 118.1(5.4), (6)

(5.4) Where subsection (6) applies — Subsection (6) applies in circumstances where

(a) an individual

(i) makes a gift (by the individual's will or otherwise) at any time of capital property to a donee described in the definition "total charitable gifts", "total Crown gifts" or "total ecological gifts" in subsection (1), or

(ii) who is non-resident, makes a gift (by the individual's will or otherwise) at any time of real or immovable property situated in Canada to a prescribed donee who provides an undertaking, in a form satisfactory to the Minister, to the effect that the property will be held for use in the public interest; and

(b) the fair market value of the property otherwise determined at that time exceeds

(i) in the case of depreciable property of a prescribed class, the lesser of the undepreciated capital cost of that class at the end of the taxation year of the individual that includes that time (determined without reference to proceeds of disposition designated in respect of the property under subsection (6)) and the adjusted cost base to the individual of the property immediately before that time, and

(ii) in any other case, the adjusted cost base to the individual of the property immediately before that time.

Related Provisions: 110.1(2.1) — Parallel rule for corporations; 248(35)-(39) — Value of gift limited to cost if acquired within 3 years or as tax shelter.

(6) Gifts of capital property — If this subsection applies in respect of a gift by an individual of property, and the individual or the individual's legal representative designates an amount in respect of the gift in the individual's return of income under section 150 for the year in which the gift is made, the amount so designated is deemed to be the individual's proceeds of disposition of the property and, for the purpose of subsection 248(31), the fair market value of the gift, but the amount so designated may not exceed the fair market value of the property otherwise determined and may not be less than the greater of

(a) in the case of a gift made after December 20, 2002, the amount of the advantage, if any, in respect of the gift, and

(b) the amount determined under subparagraph (5.4)(b)(i) or (ii), as the case may be, in respect of the property.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 106(9), will add subsec. 118.1(5.4) and amend subsec. (6) to read as above, applicable to gifts made after 1999 except that, for gifts made after 1999 and before December 21, 2002, the expression "subsection 248(31)" in subsec. 118.1(6) shall be read as "subsection (1)".

Technical Notes: Subsection 118.1(6) provides that, if an individual donates capital property to a charity, the individual may designate a value between the adjusted cost base and the fair market value of the donated property to be treated both as the proceeds of disposition for the purpose of calculating the individual's capital gain and the amount of the gift for the purpose of calculating the tax credit allowed for charitable donations under subsection 118.1(3).

Subsection 118.1(6) is restructured as new subsection 118.1(5.4) and revised subsection 118.1(6). New subsection 118.1(5.4) describes the circumstances under which amended subsection 118.1(6), which remain generally unchanged, will apply. However, where the property is depreciable property, subsection 118.1(5.4) includes those situations where the actual value of the gifted property is between the undepreciated capital cost of that class at the end of the taxation year of the individual and the fair market value of the donated property.

Amended subsection 118.1(6) provides for the amount that may be designated by the individual. As with the former provision, the amount designated is deemed to be the individual's proceeds of disposition of the gift. The provision also continues to provide that the amount designated is treated as the fair market value of the property transferred by way of gift. However, under the amended version, this is for the purpose of new subsection 248(31) (changed from subsection 118.1(1)). New subsection 248(31) generally provides that the "eligible amount" of the gift is the excess of the fair market value of a property transferred by way of gift over the value of the advantage or benefit, if any, to which the transferor is entitled. The "eligible amount" is relevant to the determination of the tax credit deductible by the individual under subsection 118.1(3).

Finally, amended subsection 118.1(6) effectively allows an individual to reduce the amount of recaptured depreciation that might otherwise be calculated in respect of a gift of depreciable property, with a corresponding reduction to the eligible amount deductible in respect of the gift under subsection 118.1(6). However, the designated amount may not be lower than the amount of any actual proceeds of disposition in respect of the property (or, more specifically, the amount of the advantage in respect of the gift, as defined under new subsection 248(32)).

In particular, the amount designated by the individual in respect of the property transferred may not exceed the fair market value of the property otherwise determined, and may not be less than the greater of

- the amount of the advantage, if any, in respect of the gift, and
- the adjusted cost base of the property or, if the property is depreciable property of the individual, the undepreciated capital cost of the class of the property at the end of the individual's taxation year (determined without reference to the proceeds of disposition designated in respect of the property).

Subsections 118.1(5.4) and (6) (as amended) generally apply in respect of gifts made after 1999. For additional details regarding the eligible amount and the amount of the advantage in respect of a gift, see the commentary to new subsections 248(31) and (32).

Example

Mr. Adams transfers a rental property with a fair market value of $200,000 to a registered charity, in exchange for proceeds of disposition of $95,000. The original cost to Mr. Adams when he purchased the property in 1985 was $65,000. The rental property is the only depreciable property in its class, with an undepreciated capital cost balance before the transfer of $45,000.

Assuming that the transfer qualifies as a gift (see the commentary to subsections 248(30) to (32)), Mr. Adams may designate any amount between $95,000 and $200,000 as the proceeds of disposition for the gift. Mr. Adams could have designated an amount as low $45,000, if he had received a lesser amount in actual proceeds from the charity.

Mr. Adams decides to designate $150,000 as its proceeds of disposition. The taxable gain to Mr. Adams on the transfer can therefore be allocated as follows:

Designated proceeds		*$150,000*
Adjusted cost base (original cost)	*65,000*	*65,000*
Capital Gain		*85,000*
Taxable Capital Gain		*42,500*
Undepreciated Capital Cost	*45,000*	
Recaptured depreciation		*20,000*
Total Income Inclusion		*$ 62,500*

The eligible amount of the gift is calculated as follows:

Designated proceeds	*$150,000*
Amount of advantage (consideration)	*95,000*
Eligible amount of the gift	*55,000*

Letter from Dept. of Finance, February 15, 2000:

Dear [xxx]

The Honourable Paul Martin, Minister of Finance, has forwarded your letter of September 7, 1999 to me for reply. It is my understanding that you have requested amendments to the *Income Tax Act* (the Act) that would address a situation where a resident of Switzerland would be required to pay Canadian income tax as a result of a donation of a Canadian rental building to a charity. More specifically, upon the donation to charity of their Canadian rental buildings, your Swiss clients would be required to pay tax under Part I of the Act on the resulting recaptured capital cost allowance ("CCA"), without the ability to deduct a charitable donations tax credit.

I also understand that Mr. Ed Short of this Department spoke with you in this regard and asked whether you were seeking amendments to the Act that would allow for an elective reduction of the deemed proceeds of disposition as a result of the gift (with a concurrent reduction of the base upon which the charitable donations tax credit is calculated) or

amendments that would allow the claim of the charitable donations tax credit against tax on other sources of income. Your letter dated November 1, 1999 suggests that you are seeking both. That is, you have suggested not only that the disposition should (on an elective basis) not give rise to tax but that the charitable donations tax credit should also be allowed to be claimed against tax on other Canadian sources of income that a non-resident may have.

You have indicated that, on an ongoing basis, your Swiss clients have elected under section 216 of the Act to pay Part I tax on their net incomes from rental property, rather than to pay tax at the flat rate on gross rents that otherwise applies to non-residents under Part XIII of the Act. In this regard, they have claimed CCA against their rental revenues. Disposing of the rental properties for proceeds above their undepreciated capital costs would, therefore, result in recaptured CCA and, potentially, capital gains.

As you are aware, the charitable donations tax credit may be claimed by a non-resident individual to offset tax imposed under Part I of the Act on income from a business or employment carried on in Canada. The charitable donations tax credit is also available in respect of certain other sources of income, other than income from property, where the non-resident elects under section 217 of the Act to file a Part I tax return.

Property income of non-residents is, however, taxed under Part XIII, and is generally calculated as a percentage of the gross amount of revenues. The exceptions are rental income from real property and timber royalties, for which a non- resident may elect to pay tax under Part I on net income from the property. Although this election is provided in order to give non-residents some relief from Part XIII tax, the basis of relief is the method of calculating income, not the availability of tax credits. Just as the Part XIII tax on property income may not be reduced by the charitable donations tax credit, the elective Part I tax on property income may not be reduced.

However, an amendment that the Minister of Finance is prepared to support would extend the existing election to report a reduced amount of capital gain on the donation of capital property to also reduce the recaptured CCA that must be reported on the donation of a depreciable capital property. This amendment would apply equally to residents who file under section 152 of the Act and non-residents who are required to file under subsection 216(5). The result of this amendment would be that taxpayers, resident and non-resident alike, would not be required to pay tax on the donation of a depreciable property.

I understand that the Minister of Finance intends to recommend that the requisite amendments to the *Income Tax Act* be effective for donations made after 1999.

Yours sincerely,

Munir A. Sheikh
Senior ADM, Tax Policy Branch

Related Provisions: 110.1(3) — Parallel rule for corporations; 248(32) — Determination of amount of advantage; 248(35)–(39) — Value of gift limited to cost if acquired within 3 years or as tax shelter.

History: The closing words of subsec. 118.1(6) amended by 2001, c. 17, subsec. 94(5), applicable in respect of gifts made after February 27, 1995. The closing words formerly read:

> and the fair market value of the property at that time exceeds its adjusted cost base to the individual, such amount, not greater than the fair market value and not less than the adjusted cost base to the individual of the property at that time, as the individual or the individual's legal representative designates in the individual's return of income under section 150 for the year in which the gift is made shall, if the making of the gift is proven by filing with the Minister a receipt containing prescribed information, be deemed to be the individual's proceeds of disposition of the property and, for the purposes of subsection (1), the fair market value of the gift made by the individual.

Para. 118.1(6)(a) amended by 1996, c. 21, subsec. 23(6), applicable to gifts made after February 27, 1995. The para. formerly read:

> (a) capital property to a donee described in the definition "total charitable gifts" or "total Crown gifts" in subsection (1), or

That portion of subsec. 118.1(6) following para. (b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 53, applicable to gifts made after December 11, 1988. That portion formerly read:

> and the fair market value of the property at that time exceeds its adjusted cost base to the individual, such amount, not greater than the fair market value and not less than the adjusted cost base to the individual of the property at that time, as is designated by the individual or the individual's legal representative in the individual's return of income under section 150 for the year in which the gift is made shall, if the making of the gift is proven by filing with the Minister a receipt containing prescribed information, be deemed to be the individual's proceeds of disposition of the property and the amount of the gift made by the individual.

Regulations: 3500–3502 (prescribed information); 3504 (prescribed donee).

Interpretation Bulletins: IT-226R: Gift to a charity of a residual interest in real property or an equitable interest in a trust; IT-288R2: Gifts of capital properties to a charity and others; IT-504R2: Visual artists and writers.

Forms: T3 Sched. 1A, T1170: Capital gains on gifts of certain capital property.

(7) Gifts of art [by artist] — Except where subsection (7.1) applies, where at any time, whether by the individual's will or otherwise, an individual makes a gift described in the definition "total charitable gifts" or "total Crown gifts" in subsection (1) of a work of art that was

(a) created by the individual and that is property in the individual's inventory, or

(b) acquired under circumstances where subsection 70(3) applied,

and at that time the fair market value of the work of art exceeds its cost amount to the individual, the following rules apply:

(c) where the gift is made as a consequence of the death of the individual, the gift is deemed to have been made immediately before the death, and

(d) the amount, not greater than that fair market value at the time the gift is made and not less than the cost amount of the property to the individual, that is designated in the individual's return of income under section 150 for the year in which the gift is made is, if the making of the gift is proven by filing with the Minister a receipt containing prescribed information, deemed to be the individual's proceeds of disposition of the work of art and, for the purposes of subsection (1), the fair market value of the gift made by the individual.

Proposed Amendment — 118.1(7)(d)

(d) the amount that the individual or the individual's legal representative designates in the individual's return of income under section 150 for the year in which the gift is made is deemed to be the individual's proceeds of disposition of the work of art and, for the purpose of subsection 248(31), the fair market value of the work of art, but the amount so designated may not exceed the fair market value otherwise determined of the work of art and may not be less than the greater of

(i) the amount of the advantage, if any, in respect of the gift, and

(ii) the cost amount to the individual of the work of art.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 106(11), will amend para. 118.1(7)(d) to read as above, applicable to gifts made after December 20, 2002.

Technical Notes: Subsection 118.1(7) provides that, if an artist donates artwork created by the artist and held in the artist's inventory, the artist may designate a value between the cost amount and the fair market value of the artwork to be treated both as the proceeds of disposition for the purpose of calculating the artist's income and the amount of the gift for the purpose of calculating the tax credit allowed for charitable donations under subsection 118.1(3).

If the artwork is certified as a cultural gift, as described in subsection 118.1(1), subsection 118.1(7.1) applies instead of subsection 118.1(7). Under subsection 118.1(7.1), the artist is treated as having received pro-

ceeds of disposition equal to the cost amount to the artist of the work of art for the purpose of calculating the artist's income, but the fair market value of the artwork is not affected. This means that the artist is entitled to a credit based on the value of the donation, but that the artist recognizes neither a profit nor a loss on the disposition of the work of art in computing income from a business for income tax purposes.

Paragraphs 118.1(7)(d) and (7.1)(d) are amended consequential to the addition of subsections 248(31) and (32). Amended paragraph 118.1(7.1)(d) generally provides that the artist's proceeds of disposition from a gift of cultural property that was created by the artist and held as inventory may not be lower than the amount of any actual proceeds of disposition in respect of the property (or, more specifically, the amount of the advantage in respect of the gift, as defined under new subsection 248(32)). In particular, the amount that may be designated by the artist must be the greater of the cost amount of the work of art and the amount of the advantage in respect of the gift. As a result, the artist will have business income from the disposition if the amount of the advantage in respect of the gift exceeds the cost amount to the artist of the work of art.

For gifts from an artist's inventory that are not certified cultural property, amended paragraph 118.1(7)(d) provides that the amount designated in the artist's return of income is deemed to be the artist's proceeds of disposition. The provision also continues to provide that the amount designated is treated as the fair market value of the property transferred by way of gift. However, under the amended version, this is for the purpose of new subsection 248(31) (changed from subsection 118.1(1)). New subsection 248(31) generally provides that the "eligible amount" of the gift is the excess of the fair market value of a property transferred by way of gift over the value of the advantage or benefit, if any, to which the transferor is entitled. The "eligible amount" is relevant to the determination of the tax credit deductible by the individual under subsection 118.1(3).

The amount designated in the artist's return of income in respect of the property transferred may not exceed the fair market value of the property otherwise determined, and may not be less than the greater of

- the amount of the advantage, if any, in respect of the gift, and
- the cost amount to the artist of the work of art.

As a result, the artist will have business income from the disposition to the extent that the amount of the advantage in respect of the gift (or some other amount designated in the artist's return of income, if greater) exceeds the cost amount to the artist of the work of art.

For additional details regarding the eligible amount and the amount of the advantage in respect of a gift, see the commentary to new subsections 248(31) and (32).

Related Provisions: 248(32) — Determination of amount of advantage.

History: Subsec. 118.1(7) amended by 2001, c. 17, subsec. 94(6), applicable to 2000 *et seq.*, and where a taxpayer or a taxpayer's legal representative so notifies the Minister of National Revenue in writing before 2002 of the intention of the taxpayer or the taxpayer's legal representative that this amendment apply in respect of a gift made after 1996 and before 2000, this amendment applies to the taxation year in which the gift was made and, where para. 118.1(7)(d) applies, the amount designated in the notice in respect of the gift is deemed to have been validly designated for the purposes of that paragraph in the taxpayer's return of income for the year in which the gift was made. Subsec. 118.1(7) formerly read:

> (7) Except where subsection (7.1) applies, where at any time, whether by the individual's will or otherwise, an individual makes a gift of a work of art that was created by the individual and that is property in the individual's inventory to a donee described in the definition "total charitable gifts" or "total Crown gifts" in subsection (1) and at that time the fair market value of the work of art exceeds its cost amount to the individual, such amount, not greater than that fair market value and not less than that cost amount, as is designated in the individual's return of income under section 150 for the year in which the gift is made shall, if the making of the gift is proven by filing with the Minister a receipt containing prescribed information, be deemed to be the individual's proceeds of disposition of the work of art and, for the purposes of subsection (1), the fair market value of the gift made by the individual.

Subsec. 118.1(7) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 88(2), applicable to gifts made after 1990. Subsec. 118.1(7) formerly read:

> (7) Where at any time after 1984, whether by the individual's will or otherwise, an individual makes a gift of a work of art created by the individual that is property in the individual's inventory to a donee described in the definition "total charitable gifts" or "total Crown gifts" in subsection (1), and the fair market value of the work of art at that time exceeds its cost amount to the individual, such amount, not greater than the fair market value and not less than the cost amount to the individual of the work of art at that time, as is designated by the individual or the individual's legal representative in the individual's return of income under section 150 for the year in which the gift is made shall, if the making of the gift is proven by filing with the Minister a receipt containing prescribed information, be deemed to be the individual's proceeds of disposition of the work of art and the amount of the gift made by the individual.

Interpretation Bulletins: IT-288R2: Gifts of capital properties to a charity and others; IT-504R2: Visual artists and writers.

(7.1) Gifts of cultural property — Where at any particular time, whether by the individual's will or otherwise, an individual makes a gift described in the definition "total cultural gifts" in subsection (1) of a work of art that was

> (a) created by the individual and that is property in the individual's inventory, or
>
> (b) acquired under circumstances where subsection 70(3) applied,

and at that time the fair market value of the work of art exceeds its cost amount to the individual, the following rules apply:

> (c) where the gift is made as a consequence of the death of the individual, the individual is deemed to have made the gift immediately before the death, and
>
> (d) the individual is deemed to have received at the particular time proceeds of disposition in respect of the gift equal to its cost amount to the individual at that time.

Proposed Amendment — 118.1(7.1)(d)

(d) the individual is deemed to have received at the particular time proceeds of disposition in respect of the work of art equal to the greater of its cost amount to the individual at that time and the amount of the advantage, if any, in respect of the gift.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 106(13), will amend para. 118.1(7.1)(d) to read as above, applicable to gifts made after December 20, 2002.

Technical Notes: See under 118.1(7)(d) above.

Related Provisions: 39(1)(a)(i.1) — Meaning of capital gain and capital loss; 207.3 — Tax on institution that disposes of cultural property; 248(32) — Determination of amount of advantage.

History: Subsec. 118.1(7.1) amended by 2001, c. 17, subsec. 94(6), applicable to 2000 *et seq.*, and where a taxpayer or a taxpayer's legal representative so notifies the Minister of National Revenue in writing before 2002 of the intention of the taxpayer or the taxpayer's legal representative that this amendment apply in respect of a gift made after 1996 and before 2000, this amendment applies to the taxation year in which the gift was made. Subsec. 118.1(7.1) formerly read:

> (7.1) Where at any time, whether by the individual's will or otherwise, an individual makes a gift described in the definition "total cultural gifts" in subsection (1) of a work of art that was created by the individual and that is property in the individual's inventory, the individual shall, if the making of the gift is proven by filing with the Minister a receipt containing prescribed information, be deemed to have received proceeds of disposition in respect of the gift at that time equal to its cost amount to the individual at that time.

Subsec. 118.1(7.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 88(2), applicable to gifts made after 1990.

Interpretation Bulletins: IT-407R4: Dispositions of cultural property to designated Canadian institutions; IT-504R2: Visual artists and writers. See also at end of s. 118.1.

(8) Gifts made by partnership — Where an individual is, at the end of a fiscal period of a partnership, a member of the partnership, the individual's share of any amount that would, if the partnership were a person, be a

gift made by the partnership to any donee shall, for the purposes of this section, be deemed to be a gift made by the individual to that donee in the individual's taxation year in which the fiscal period of the partnership ends.

Proposed Amendment — 118.1(8)

(8) Gifts made by partnership — If at the end of a fiscal period of a partnership an individual is a member of the partnership, the individual's share of any amount that would, if the partnership were a person, be the eligible amount of a gift made by the partnership to any donee is, for the purpose of this section, deemed to be the eligible amount of a gift made to that donee by the individual in the individual's taxation year in which the fiscal period of the partnership ends.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 106(14), will amend subsec. 118.1(8) to read as above, applicable to gifts made after December 20, 2002.

Technical Notes: Subsection 118.1(8) allows the attribution of gifts made by a partnership to its individual members, according to each member's share in the partnership. Subsection 118.1(8) is amended consequential to the addition of new subsection 248(31), to refer to the "eligible amount" of a gift made because of an individual's membership in a partnership.

Related Provisions: 53(2)(c)(iii) — Deduction from ACB of partnership interest; 110.1(4) — Parallel rule for corporations; 248(30)–(33) — Determination of eligible amount.

(9) Commuter's charitable donations — Where throughout a taxation year an individual resided in Canada near the boundary between Canada and the United States, if

(a) the individual commuted to the individual's principal place of employment or business in the United States, and

(b) the individual's chief source of income for the year was that employment or business,

a gift made by the individual in the year to a religious, charitable, scientific, literary or educational organization created or organized in or under the laws of the United States that would be allowed as a deduction under the *United States Internal Revenue Code* shall, for the purpose of the definition "total charitable gifts" in subsection (1), be deemed to have been made to a registered charity.

Related Provisions: Canada-U.S. Tax Treaty:Art. XXI:6 — Cross-border donations.

(10) Determination of fair market value — For the purposes of paragraph 110.1(1)(c) and the definition "total cultural gifts" in subsection (1), the fair market value of an object is deemed to be the fair market value determined by the Canadian Cultural Property Export Review Board.

Related Provisions: 118.1(10.1) — Determination by Board applies for 2 years; 118.1(11) — Assessment consequential on determination of value by Board; 241(4)(d)(xii) — Disclosure of information to Department of Canadian Heritage or the Board.

History: Subsec. 118.1(10) amended by 1995, c. 38, s. 3, in force July 12, 1996. Subsec. (10) formerly read:

(10) For the purposes of paragraph 110.1(1)(c) and the definition "total cultural gifts" in subsection (1), the fair market value of an object shall be determined by the Canadian Cultural Property Export Review Board.

Subsec. 118.1(10) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 88(3), applicable to gifts made after February 20, 1990.

Interpretation Bulletins: IT-407R4: Dispositions of cultural property to designated Canadian institutions; IT-504R2: Visual artists and writers.

(10.1) Determination of fair market value [cultural or ecological property] — For the purposes of subparagraph 69(1)(b)(ii), subsection 70(5) and sections 110.1, 207.31 and this section, where at any time the Canadian Cultural Property Export Review Board or the Minister of the Environment determines or redetermines an amount to be the fair market value of a property that is the subject of a gift described in paragraph 110.1(1)(a), or in the definition "total charitable gifts" in subsection (1), made by a taxpayer within the two-year period that begins at that time, an amount equal to the last amount so determined or redetermined within the period is deemed to be the fair market value of the gift at the time the gift was made and, subject to subsections (6), (7), (7.1) and 110.1(3), to be the taxpayer's proceeds of disposition of the gift.

Related Provisions: 118.1(10.2)–(11) — Related administrative procedures.

History: Subsec. 118.1(10.1) amended by 2001, c. 17, subsec. 94(7), applicable in respect of gifts made, or proposed to be made, after February 27, 2000. Subsec. 118.1(10.1) formerly read:

(10.1) For the purposes of subparagraph 69(1)(b)(ii), subsection 70(5), section 110.1 and this section, where at any time the Canadian Cultural Property Export Review Board determines or redetermines an amount to be the fair market value of a property that is the subject of a gift described in paragraph 110.1(1)(a) or in the definition "total charitable gifts" in subsection (1) made by a taxpayer within the two-year period that begins at that time, the last amount so determined or redetermined within the period is deemed to be the fair market value of the property at the time the gift was made and, subject to subsection 110.1(3) and subsections (6) and (7), to be the taxpayer's proceeds of disposition of the property.

Subsec. 118.1(10.1) added by 1999, c. 22, s. 32, applicable to determinations and redeterminations made after February 23, 1998.

(10.2) Request for determination by the Minister of the Environment — Where a person disposes or proposes to dispose of a property that would, if the disposition were made and the certificates described in paragraph 110.1(1)(d) or in the definition "total ecological gifts" in subsection (1) were issued by the Minister of the Environment, be a gift described in those provisions, the person may request, by notice in writing to that Minister, a determination of the fair market value of the property.

Related Provisions: 118.1(10.3) — Duty of Minister on receipt of request.

History: Subsec. 118.1(10.2) added by 2001, c. 17, subsec. 94(7), applicable in respect of gifts made, or proposed to be made, after February 27, 2000.

(10.3) Duty of Minister of the Environment — In response to a request made under subsection (10.2), the Minister of the Environment shall with all due dispatch make a determination in accordance with subsection (12) or 110.1(5), as the case may be, of the fair market value of the property referred to in that request and give notice of the determination in writing to the person who has disposed of, or who proposes to dispose of, the property, except that no such determination shall be made if the request is received by that Minister after three years after the end of the person's taxation year in which the disposition occurred.

Related Provisions: 118.1(10.4) — Redetermination by Minister; 118.1(10.5) — Certificate of fair market value.

History: Subsec. 118.1(10.3) added by 2001, c. 17, subsec. 94(7), applicable in respect of gifts made, or proposed to be made, after February 27, 2000.

(10.4) Ecological gifts — redetermination — Where the Minister of the Environment has, under subsection (10.3), notified a person of the amount determined by that

Minister to be the fair market value of a property in respect of its disposition or proposed disposition,

(a) that Minister shall, on receipt of a written request made by the person on or before the day that is 90 days after the day that the person was so notified of the first such determination, with all due dispatch confirm or redetermine the fair market value;

(b) that Minister may, on that Minister's own initiative, at any time redetermine the fair market value;

(c) that Minister shall in either case notify the person in writing of that Minister's confirmation or redetermination; and

(d) any such redetermination is deemed to replace all preceding determinations and redeterminations of the fair market value of that property from the time at which the first such determination was made.

Related Provisions: 118.1(10.5) — Certificate of fair market value; 169(1.1) — Appeal of valuation to Tax Court of Canada.

History: Subsec. 118.1(10.4) added by 2001, c. 17, subsec. 94(7), applicable in respect of gifts made, or proposed to be made, after February 27, 2000.

(10.5) Certificate of fair market value — Where the Minister of the Environment determines under subsection (10.3) the fair market value of a property, or redetermines that value under subsection (10.4), and the property has been disposed of to a qualified donee described in paragraph 110.1(1)(d) or in the definition "total ecological gifts" in subsection (1), that Minister shall issue to the person who made the disposition a certificate that states the fair market value of the property so determined or redetermined and, where more than one certificate has been so issued, the last certificate is deemed to replace all preceding certificates from the time at which the first certificate was issued.

Related Provisions: 118.1(12) — Reassessment beyond limitation period to give effect to certificate; 169(1.1) — Appeal of certificate value to Tax Court of Canada.

History: Subsec. 118.1(10.5) added by 2001, c. 17, subsec. 94(7), applicable in respect of gifts made, or proposed to be made, after February 27, 2000.

(11) Assessments — Notwithstanding subsections 152(4) to (5), such assessments or reassessments of a taxpayer's tax, interest or penalties payable under this Act for any taxation year shall be made as are necessary to give effect

(a) to a certificate issued under subsection 33(1) of the *Cultural Property Export and Import Act* or to a decision of a court resulting from an appeal made pursuant to section 33.1 of that Act; or

(b) to a certificate issued under subsection (10.5) or to a decision of a court resulting from an appeal made pursuant to subsection 169(1.1).

Related Provisions: 165(1.2) — No objection allowed to assessment under 118.1(11).

History: Subsec. 118.1(11) amended by 2001, c. 17, subsec. 94(8), applicable in respect of gifts made, or proposed to be made, after February 27, 2000. Subsec. 118.1(11) formerly read:

(11) Notwithstanding subsections 152(4) to (5), such assessments or reassessments of a taxpayer's tax, interest or penalties payable under this Act for any taxation year shall be made as are necessary to give effect to a certificate issued under subsection 33(1) of the *Cultural Property Export and Import Act* or to a decision of a court resulting from an appeal made pursuant to section 33.1 of that Act.

Subsec. 118.1(11) added by 1995, c. 38, s. 3, in force July 12, 1996.

(12) Ecological gifts [fair market value] — For the purposes of applying subparagraph 69(1)(b)(ii), subsection 70(5), this section and section 207.31 in respect of a gift described in the definition "total ecological gifts" in subsection (1) that is made by an individual, the amount that is the fair market value (or, for the purpose of subsection (6), the fair market value otherwise determined) of the gift at the time the gift was made and, subject to subsection (6), the individual's proceeds of disposition of the gift, is deemed to be the amount determined by the Minister of the Environment to be

(a) where the gift is land, the fair market value of the gift; or

(b) where the gift is a servitude, covenant or easement to which land is subject, the greater of

(i) the fair market value otherwise determined of the gift, and

(ii) the amount by which the fair market value of the land is reduced as a result of the making of the gift.

Related Provisions: 43(2) — Calculation for 118.1(12) also applies for determining capital gain or loss on disposition; 110.1(5) — Parallel rule for donation deduction for corporations; 118.1(10.1)–(10.5) — Determination of fair market value by Minister of the Environment.

History: Subsec. 118.1(12) amended by 2001, c. 17, subsec. 94(10), applicable in respect of gifts made, or proposed to be made, after February 27, 2000. Subsec. 118.1(12) formerly read:

(12) For the purpose of applying subparagraph 69(1)(b)(ii), subsection 70(5), section 207.31 and this section in respect of a gift described in the definition "total ecological gifts" in subsection (1) that is made by a taxpayer and that is a servitude, covenant or easement to which land is subject, the greater of

(a) the fair market value otherwise determined of the gift, and

(b) the amount by which the fair market value of the land is reduced as a result of the making of the gift

is deemed to be the fair market value (or, for the purpose of subsection (6), the fair market value otherwise determined) of the gift at the time the gift was made and, subject to subsection (6), to be the taxpayer's proceeds of disposition of the gift.

Subsec. 118.1(12) amended by 2001, c. 17, subsec. 94(9), applicable in respect of gifts made after February 27, 1995 and before February 28, 2000. Subsec. 118.1(12) formerly read:

(12) For the purposes of section 207.31 and the definition "total ecological gifts" in subsection (1), the fair market value of a gift of a servitude, a covenant or an easement to which land is subject is deemed to be the greater of its fair market value otherwise determined and the amount by which the fair market value of the land is reduced as a result of the making of the gift.

Subsec. 118.1(12) added by 1998, c. 19, subsec. 22(7), applicable to gifts made after February 27, 1995.

(13) Non-qualifying securities — For the purpose of this section (other than this subsection), where at any particular time an individual makes a gift (including a gift that, but for this subsection and subsection (4), would be deemed by subsection (5) to be made at the particular time) of a non-qualifying security of the individual and the gift is not an excepted gift,

(a) except for the purpose of applying subsection (6) to determine the individual's proceeds of disposition of the security, the gift is deemed not to have been made;

(b) if the security ceases to be a non-qualifying security of the individual at a subsequent time that is within 60 months after the particular time and the donee has not disposed of the security at or before the subsequent time, the individual is deemed to have made a gift to the donee of property at the subsequent time and the fair market value of that gift is deemed to be the lesser of the fair market value of the security at the subsequent time and the amount of the gift made at the

particular time that would, but for this subsection, have been included in the individual's total charitable gifts or total Crown gifts for a taxation year;

(c) if the security is disposed of by the donee within 60 months after the particular time and paragraph (b) does not apply to the security, the individual is deemed to have made a gift to the donee of property at the time of the disposition and the fair market value of that gift is deemed to be the lesser of the fair market value of any consideration (other than a non-qualifying security of the individual or a property that would be a non-qualifying security of the individual if the individual were alive at that time) received by the donee for the disposition and the amount of the gift made at the particular time that would, but for this subsection, have been included in the individual's total charitable gifts or total Crown gifts for a taxation year; and

Proposed Amendment — 118.1(13)(b), (c)

(b) if the security ceases to be a non-qualifying security of the individual at a subsequent time that is within 60 months after the particular time and the donee has not disposed of the security at or before the subsequent time, the individual is deemed to have made a gift to the donee of property at the subsequent time and the fair market value of that property is deemed to be the lesser of the fair market value of the security at the subsequent time and the fair market value of the security at the particular time that would, if this Act were read without reference to this subsection, have been included in calculating the individual's total charitable gifts or total Crown gifts for a taxation year;

(c) if the security is disposed of by the donee within 60 months after the particular time and paragraph (b) does not apply to the security, the individual is deemed to have made a gift to the donee of property at the time of the disposition and the fair market value of that property is deemed to be the lesser of the fair market value of any consideration (other than a non-qualifying security of the individual or a property that would be a non-qualifying security of the individual if the individual were alive at that time) received by the donee for the disposition and the fair market value of the security at the particular time that would, if this Act were read without reference to this subsection, have been included in calculating the individual's total charitable gifts or total Crown gifts for a taxation year; and

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 106(15), will amend paras. 118.1(13)(b) and (c) to read as above, applicable to gifts made after December 20, 2002.

Technical Notes: Subsection 118.1(13) provides that, if an individual makes a gift of a "non-qualifying security" (defined in subsection 118.1(18)), that gift will be ignored for the purpose of the charitable donations tax credit.

Paragraphs 118.1(13)(b) and (c) concern the amount to be included in a taxpayer's "total charitable gifts" or "total Crown gifts" (defined in subsection 118.1(1)) for the taxation year in which a security ceases to be a "non-qualifying security" or the donee disposes of a non-qualifying security. If either of these events occurs within five years of the actual donation of the non-qualifying security by a taxpayer, the taxpayer will be treated as having made a gift at that later time. The fair market value of this deemed gift is considered to be the lesser of two amounts. The first amount is the fair market value of the security at the time that it was actually donated. (Note that this amount may have been designated by the taxpayer as a lower amount than the actual fair market value if an election were made under subsection 118.1(6) for the taxation year of the actual donation.) The second amount is

- if the security ceased at the later time to be a non-qualifying security, the fair market value of the security at that later time, or
- if the security was disposed of by the donee at that later time, the fair market value of the consideration received by the donee.

Amendments to paragraphs 118.1(13)(b) and (c) are to provide language complementary to the amendment of the definitions "total charitable gifts" and "total Crown gifts" in subsection 118.1(1).

(d) a designation under subsection (6) or 110.1(3) in respect of the gift made at the particular time may be made in the individual's return of income for the year that includes the subsequent time referred to in paragraph (b) or the time of the disposition referred to in paragraph (c).

Related Provisions: 40(1.01) — Capital gains reserve on disposition of non-qualifying security; 88(1)(e.61) — Winding-up of subsidiary — gift deemed made by parent corporation; 110.1(6), (7) — Application to corporation; 118.1(14) — When security exchanged for another non-qualifying security; 118.1(15) — Death of donor; 118.1(18) — Definition of non-qualifying security; 118.1(19) — Excepted gift.

History: Subsec. 118.1(13) added by 1998, c. 19, subsec. 22(7), applicable to gifts made after July 1997.

Forms: RC4108: Registered charities and the *Income Tax Act* [guide].

(14) Exchanged security — Where a share (in this subsection referred to as the "new share") that is a non-qualifying security of an individual has been acquired by a donee referred to in subsection (13) in exchange for another share (in this subsection referred to as the "original share") that is a non-qualifying security of the individual by means of a transaction to which section 51, subparagraphs 85.1(1)(a)(i) and (ii) or section 86 or 87 applies, the new share is deemed for the purposes of this subsection and subsection (13) to be the same share as the original share.

Related Provisions: 110.1(6) — Application to corporation; 118.1(18) — Definition of non-qualifying security.

History: Subsec. 118.1(14) added by 1998, c. 19, subsec. 22(7), applicable to gifts made after July 1997.

(15) Death of donor — If, but for this subsection, an individual would be deemed by subsection (13) to have made a gift after the individual's death, for the purpose of this section the individual is deemed to have made the gift in the taxation year in which the individual died, except that the amount of interest payable under any provision of this Act is the amount that it would be if this subsection did not apply to the gift.

Related Provisions: 118.1(4) — Carryback of gift made in year of death; 152(4)(b)(vi) — Three-year extension to reassessment period; 161(1) — Imposition of interest on late payments of tax.

History: Subsec. 118.1(15) added by 1998, c. 19, subsec. 22(7), applicable to gifts made after July 1997.

(16) Loanbacks — For the purpose of this section, where

(a) at any particular time an individual makes a gift of property,

(b) if the property is a non-qualifying security of the individual, the gift is an excepted gift, and

(c) within 60 months after the particular time

(i) the donee holds a non-qualifying security of the individual that was acquired by the donee after the time that is 60 months before the particular time, or

(ii) where the individual and the donee do not deal at arm's length with each other,

(A) the individual or any person or partnership with which the individual does not deal at arm's length uses property of the donee under an agreement that was made or modified after the time that is 60 months before the particular time, and

(B) the property was not used in the carrying on of the donee's charitable activities,

the fair market value of the gift is deemed to be that value otherwise determined minus the total of all amounts each of which is the fair market value of the consideration given by the donee to so acquire a non-qualifying security so held or the fair market value of such a property so used, as the case may be.

Related Provisions: 110.1(6) — Application to corporation; 118.1(17) — Ordering rule; 118.1(18) — Definition of non-qualifying security; 152(4)(b)(vi) — Three-year extension to reassessment period.

History: Subsec. 118.1(16) added by 1998, c. 19, subsec. 22(7), applicable where

(a) a non-qualifying security referred to in subpara. 118.1(16)(c)(i) is acquired after July 1997; or

(b) property referred to in subpara. 118.1(16)(c)(ii) has begun to be used after July 1997.

Forms: RC4108: Registered charities and the *Income Tax Act* [guide].

(17) Ordering rule — For the purpose of applying subsection (16) to determine the fair market value of a gift made at any time by a taxpayer, the fair market value of consideration given to acquire property described in subparagraph (16)(c)(i) or of property described in subparagraph (16)(c)(ii) is deemed to be that value otherwise determined minus any portion of it that has been applied under that subsection to reduce the fair market value of another gift made before that time by the taxpayer.

Related Provisions: 110.1(6) — Application to corporation.

History: Subsec. 118.1(17) amended by 1999, c. 31, s. 136, in force June 17, 1999 (Royal Assent). It formerly read:

(17) For the purpose of applying subsection (16) to determine the fair market value of a gift made at any time by a taxpayer, the fair market value of consideration given to acquire property described in subparagraph (16)(b)(i) or of property described in subparagraph (16)(b)(ii) is deemed to be that value otherwise determined minus any portion of it that has been applied under that subsection to reduce the fair market value of another gift made before that time by the taxpayer.

Subsec. 118.1(17) added by 1998, c. 19, subsec. 22(7), applicable after July 1997.

(18) Non-qualifying security defined — For the purposes of this section, "non-qualifying security" of an individual at any time means

(a) an obligation (other than an obligation of a financial institution to repay an amount deposited with the institution or an obligation listed on a prescribed stock exchange) of the individual or the individual's estate or of any person or partnership with which the individual or the estate does not deal at arm's length immediately after that time;

(b) a share (other than a share listed on a prescribed stock exchange) of the capital stock of a corporation with which the individual or the estate does not deal at arm's length immediately after that time; or

(c) any other security (other than a security listed on a prescribed stock exchange) issued by the individual or the estate or by any person or partnership with which the individual or the estate does not deal at arm's length immediately after that time.

Related Provisions: 110.1(6) — Application to corporation; 118.1(20) — Meaning of "financial institution".

History: Subsec. 118.1(18) added by 1998, c. 19, subsec. 22(7), applicable after July 1997.

(19) Excepted gift — For the purposes of this section, a gift made by a taxpayer is an excepted gift if

(a) the security is a share;

(b) the donee is not a private foundation;

(c) the taxpayer deals at arm's length with the donee; and

(d) where the donee is a charitable organization or a public foundation, the taxpayer deals at arm's length with each director, trustee, officer and like official of the donee.

Related Provisions: 110.1(6) — Application to corporation; 251(1) — Meaning of arm's length.

History: Subsec. 118.1(19) added by 1998, c. 19, subsec. 22(7), applicable to gifts made after July 1997.

(20) Financial institution defined — For the purpose of subsection (18), "financial institution" means a corporation that is

(a) a member of the Canadian Payments Association; or

(b) a credit union that is a shareholder or member of a body corporate or organization that is a central for the purposes of the *Canadian Payments Association Act*.

Related Provisions: 110.1(6) — Application to corporation.

History: Subsec. 118.1(20) added by 1998, c. 19, subsec. 22(7), applicable after July 1997.

Selected Cases [s. 118.1]: *Aikman v. R.*, [2000] 2 C.T.C. 2211 (TCC) (Cost of property relevant factor in determining value where no comparables available); *Beaudry v. R.*, [1998] 1 C.T.C. 2041 (TCC) (No deduction where recipient merely intermediary for non-eligible donee).

Definitions [s. 118.1]: "adjusted cost base" — 54, 248(1); "advantage" — 248(32); "amount", "appropriate percentage" — 248(1); "annuitant" — 146(1), 146.3(1); "arm's length" — 251(1); "assessment", "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "capital property" — 54, 248(1); "charitable organization" — 149.1(1) [technically does not apply to 118.1]; "cost amount" — 248(1); "credit union" — 137(6), 248(1); "depreciable property" — 13(21), 248(1); "disposition", "employment" — 248(1); "eligible amount" — 248(31), (41); "estate" — 104(1), 248(1); "excepted gift" — 118.1(19); "fair market value" — 118.1(13), 248(35); "financial institution" — 118.1(20); "fiscal period" — 249(2)(b), 249.1; "Her Majesty" — *Interpretation Act* 35(1); "immovable" — Quebec *Civil Code* art. 900–907; "individual", "insurer", "inventory", "legal representative" — 248(1); "life insurance policy" — 138(12), 248(1); "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "non-qualifying security" — 118.1(18); "non-resident" — 248(1); "officer" — 248(1) [under "office"]; "person", "prescribed" — 248(1); "prescribed stock exchange" — 248(29), Reg. 3200, 3201; "private foundation" — 149.1(1), 248(1); "property" — 248(1); "province" — *Interpretation Act* 35(1); "public foundation", "qualified donee" — 149.1(1), 248(1); "qualified pension income" — 118(7); "registered Canadian amateur athletic association", "registered charity" — 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "resident in Canada" — 250; "share", "shareholder" — 248(1); "tax payable" — 248(2); "taxable capital gain" — 38(a), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "that Minister" — 118.1(10.2); "total charitable gifts", "total Crown gifts", "total cultural gifts", "total ecological gifts", "total gifts" — 118.1(1); "trust" — 104(1), 248(1), (3); "undepreciated capital cost" — 13(21), 248(1); "writing" — *Interpretation Act* 35(1); "written" — *Interpretation Act* 35(1)"writing".

Interpretation Bulletins [s. 118.1]: IT-86R: Vow of perpetual poverty; IT-110R2: Deductible gifts and official donation receipts; IT-151R5: Scientific research and experimental development expenditures; IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits (archived); IT-226R: Gift to a charity

of a residual interest in real property or an equitable interest in a trust; IT-244R3: Gifts by individuals of life insurance policies as charitable donations; IT-326R3: Returns of deceased persons as "another person"; IT-393R2: Election re tax on rents and timber royalties — non-residents.

Information Circulars [s. 118.1]: 75-23: Tuition fees and charitable donations paid to privately supported schools; 92-3: Guidelines for refunds beyond the normal three year period.

Forms: RC4108: Registered charities and the Income Tax Act [guide].

118.2 (1) Medical expense credit — For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted the amount determined by the formula

$$A \times [(B - C) + D]$$

where

A is the appropriate percentage for the taxation year;

B is the total of the individual's medical expenses in respect of the individual, the individual's spouse, the individual's common-law partner or a child of the individual who has not attained the age of 18 years before the end of the taxation year

(a) that are evidenced by receipts filed with the Minister,

(b) that were not included in determining an amount under this subsection, section 64 or subsection 122.51(2), for a preceding taxation year,

(c) that are not included in determining an amount under this subsection, section 64 or subsection 122.51(2), by any other taxpayer for any taxation year, and

(d) that were paid by the individual or the individual's legal representative within any period of 12 months that ends in the taxation year or, if those expenses were in respect of a person (including the individual) who died in the taxation year, within any period of 24 months that includes the day of the person's death;

C is the lesser of $1,813[24] and 3% of the individual's income for the taxation year; and

D is the total of all amounts each of which is, in respect of a dependant of the individual (within the meaning assigned by subsection 118(6), other than a child of the individual who has not attained the age of 18 years before the end of the taxation year), the lesser of $5,000 and the amount determined by the formula

Proposed Amendment — 118.2(1)D opening words

Application: The August 15, 2005 draft legislation (2005 Budget second bill), subsec. 5(1), will amend the opening words of the description of D in subsec. 118.2(1) to substitute "$10,000" for "$5,000", applicable to 2005 *et seq.*

Technical Notes: Section 118.2 provides rules for determining the amount that may be claimed as a tax credit in respect of an individual's medical expenses.

Subsection 118.2(1) provides the calculation of an individual's medical expense tax credit (METC). The description of D in that subsection includes in the individual's medical expenses amounts paid by the individual in respect of a dependant (other than an individual's spouse, the individual's common-law partner or child of the individual who has not attained the age of 18 years) to the lesser of $5,000 and the amount by which the expenses paid by the individual on behalf of the dependant exceed the dependant's medical expense threshold for the year or 3% of net income.

The description of D is amended to increase the $5,000 limit to $10,000.

Federal budget, Notice of Ways and Means Motion, February 23, 2005: *Medical Expense Tax Credit — Caregiver*

(13) That, for the 2005 and subsequent taxation years, the $5,000 maximum amount referred to in subsection 118.2(1) of the Act that an individual is permitted to claim in respect of certain dependants in calculating the medical expense tax credit be increased to $10,000.

Federal budget, Supplementary Information, February 23, 2005: *Tax Relief for Caregivers*

Taxpayers paying medical or disability-related expenses on behalf of a dependent relative may claim those expenses under the medical expense tax credit (METC). For this purpose, a dependent relative is defined as a child who is 18 years of age or older, or a grandchild, parent, grandparent, brother, sister, uncle, aunt, niece or nephew, who is dependent on the taxpayer for support.

Based on changes introduced in the 2004 budget, taxpayers can claim eligible expenses paid on behalf of the dependent relative that exceed the lesser of 3% of the dependent relative's net income and $1,844 (i.e. the threshold for the METC that would apply if the dependent relative claimed the expenses). The maximum eligible amount that can be claimed on behalf of such a dependent relative was set at $5,000.

This budget proposes to double this eligible maximum amount to $10,000.

This measure will apply to the 2005 and subsequent tax years.

Example: Tax Recognition of Medical and Disability-Related Expenses Paid by Caregivers

Marie provides support to her father, Vincent, who is a senior with severe arthritis. Vincent receives an annual governmental pension of $12,000. Marie pays all of Vincent's medical expenses (attendant care and prescription drugs), which amount to $8,000 a year.

Existing Rules

Under the existing rules, Marie would be able to claim the portion of Vincent's medical expenses that exceed 3% of his net income, but only up to a maximum of $5,000. She could claim only $5,000 in expenses, for a federal income tax reduction of $800.

Medical expenses incurred on behalf of Vincent	$8,000
Less: 3% of Vincent's net income ($12,000 × 3%)	-360
Net medical expenses	$7,640
Maximum claimable medical expenses [A]	5,000
Federal income tax reduction ([A] × 16%)	$800

Proposed Rules

Under the proposed rules, by increasing the limit from $5,000 to $10,000, Marie would be able to claim $7,640 in expenses, for a federal income tax reduction of $1,222.

Medical expenses incurred on behalf of Vincent	$8,000
Less: 3% of Vincent's net income ($12,000 × 3%)	-360
Net medical expenses [B]	$7,640
Federal income tax reduction ([B] × 16%)	$1,222

[Table A8.1 in the Budget Supplementary Information estimates that the cost of this measure will be $5 million in 2004-05, $15m in 2005-06 and 2006-07 and $20m in each of 2007-08 through 2009-10. This measure was not included in Budget Bill C-43 and will be introduced in a later bill (Finance news release, March 21, 2005) — ed.]

$$E - F$$

where

E is the total of the individual's medical expenses in respect of the dependant

(a) that are evidenced by receipts filed with the Minister,

(b) that were not included in determining an amount under this subsection, or subsection 122.51(2), in respect of the individual for a preceding taxation year,

[24] Indexed by subsec. 117.1(1) after 2004 — ed.

(c) that are not included in determining an amount under this subsection, or subsection 122.51(2), by any other taxpayer for any taxation year, and

(d) that were paid by the individual or the individual's legal representative within the period referred to in paragraph (d) of the description of B; and

F is the lesser of $1,813[24] and 3% of the dependant's income for the taxation year.

Related Provisions: 110.7(1) — Residing in prescribed zone; 117(1) — Tax payable under this Part; 117.1(1) — Indexing for inflation; 118.3 — Mental or physical impairment; 118.4(1) — Severe and prolonged impairment; 118.4(2) — Reference to medical practitioner; 118.91 — Individual resident in Canada for part of the year; 118.92 — Ordering of credits; 118.93 — Credits in separate returns; 118.94 — Computing tax payable by a non-resident individual; 118.95(a) — Application in year individual becomes bankrupt; 122.51 — Refundable credit of up to $500; 257 — Formula amounts cannot calculate to less than zero.

History: Subsec. 118.2(1) amended by 2005, c. 19, s. 24, applicable to 2004 *et seq*. For the 2001 to 2003 taxation years, the description of B in subsec. 118.2(1) is to be read as follows:

B is the total of the individual's medical expenses

(a) that are evidenced by receipts filed with the Minister,

(b) that were not included in determining an amount under this subsection or subsection 122.51(2) for a preceding taxation year, and

(c) that were paid by the individual or the individual's legal representative within any period of 12 months that ends in the taxation year or, if those expenses were in respect of a person (including the individual) who died in the taxation year, within any period of 24 months that includes the day of the person's death;

The subsec. formerly read:

(1) For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted an amount determined by the formula

$$A (B - C) - D$$

where

A is the appropriate percentage for the year;

B is the total of the individual's medical expenses that are proven by filing receipts therefor with the Minister, that were not included in determining an amount under this subsection or subsection 122.51(2) for a preceding taxation year and that were paid by either the individual or the individual's legal representative,

(a) where the individual died in the year, within any period of 24 months that includes the day of death, and

(b) in any other case, within any period of 12 months ending in the year;

C is the lesser of $1,500[15] and 3% of the individual's income for the year; and

D is 68% of the total of all amounts each of which is the amount, if any, by which

(a) the income for the year of a person (other than the individual and the individual's spouse or common-law partner) in respect of whom an amount is included in computing the individual's deduction under this section for the year

exceeds

(b) the amount used under paragraph (c) of the description of B in subsection 118(1) for the year.

Para. (a) of the description of D in subsec. 118.2(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Para. (b) of the description of D in subsec. 118.2(1) amended by 2000, c. 19, subsec. 25(1), applicable to 1999 *et seq.* except that, in its application to the 1999 taxation year, the para. shall be read as follows:

(b) $7,044.

Para. (b) formerly read:

(b) the total of $500 and the amount used under paragraph (c) of the description of B in subsection 118(1) for the year.

Para. (b) of the description of D in subsec. 118.2(1) amended by 1999, c. 22, subsec. 34(1), applicable to 1998 *et seq.* Para. (b) formerly read:

(b) the amount used under paragraph [(c)] of the description of B in subsection 118(1) for the year.

The opening words of the description of B in 118.2(1) amended by 1998, c. 19, subsec. 23(1), applicable to 1997 *et seq.* The opening words formerly read:

B is the total of the individual's medical expenses that are proven by filing receipts therefor with the Minister, that were not included in determining a deduction for medical expenses for a preceding taxation year and that were paid by either the individual or the individual's legal representative

Subsec. 118.2(1) substituted by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 9(1), applicable to 1993 *et seq*. Subsec. (1) formerly read:

118.2 (1) For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted an amount determined by the formula

$$A \times (B - C)$$

where

A is the appropriate percentage for the year;

B is the total of the individual's medical expenses that are proven by filing receipts therefor with the Minister, that were not included in determining a deduction for medical expenses for a preceding taxation year and that were paid by either the individual or the individual's legal representative,

(a) where the individual died in the year, within any period of 24 months that includes the day of death, and

(b) in any other case, within any period of 12 months ending in the year; and

C is the lesser of $1,500[19] and 3% of the individual's income for the year.

Selected Cases: *Watt v. R.*, [1997] 2 C.T.C. 2651 (TCC) (Receipts required for subsec. 118.2(1) expenses; for subsection 118.2(4) deemed expenses, taxpayer need only show expenses were reasonable).

Interpretation Bulletins: IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits (archived); IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-519R2: Medical expense and disability tax credits and attendant care expense deduction.

Information Circulars: 92-3: Guidelines for refunds beyond the normal three year period.

Forms: RC4064: Information concerning people with disabilities [guide].

(2) Medical expenses — For the purposes of subsection (1), a medical expense of an individual is an amount paid

(a) **[medical and dental services]** — to a medical practitioner, dentist or nurse or a public or licensed private hospital in respect of medical or dental services provided to a person (in this subsection referred to as the "patient") who is the individual, the individual's spouse or common-law partner or a dependant of the individual (within the meaning assigned by subsection 118(6)) in the taxation year in which the expense was incurred;

[15] Indexed by s. 117.1 after 1988 — ed.

[19] Indexed by s. 117.1 after 1998 — ed.

[24] Indexed by subsec. 117.1(1) after 2004 — ed.

(b) **[attendant or nursing home care]** — as remuneration for one full-time attendant (other than a person who, at the time the remuneration is paid, is the individual's spouse or common-law partner or is under 18 years of age) on, or for the full-time care in a nursing home of, the patient in respect of whom an amount would, but for paragraph 118.3(1)(c), be deductible under section 118.3 in computing a taxpayer's tax payable under this Part for the taxation year in which the expense was incurred;

(b.1) **[attendant]** — as remuneration for attendant care provided in Canada to the patient if

(i) the patient is a person in respect of whom an amount may be deducted under section 118.3 in computing a taxpayer's tax payable under this Part for the taxation year in which the expense was incurred,

(ii) no part of the remuneration is included in computing a deduction claimed in respect of the patient under section 63 or 64 or paragraph (b), (b.2), (c), (d) or (e) for any taxation year,

(iii) at the time the remuneration is paid, the attendant is neither the individual's spouse or common-law partner nor under 18 years of age, and

(iv) each receipt filed with the Minister to prove payment of the remuneration was issued by the payee and contains, where the payee is an individual, that individual's Social Insurance Number,

to the extent that the total of amounts so paid does not exceed $10,000 (or $20,000 if the individual dies in the year);

(b.2) **[group home care]** — as remuneration for the patient's care or supervision provided in a group home in Canada maintained and operated exclusively for the benefit of individuals who have a severe and prolonged impairment if

(i) because of the patient's impairment, the patient is a person in respect of whom an amount may be deducted under section 118.3 in computing a taxpayer's tax payable under this Part for the taxation year in which the expense is incurred,

(ii) no part of the remuneration is included in computing a deduction claimed in respect of the patient under section 63 or 64 or paragraph (b), (b.1), (c), (d) or (e) for any taxation year, and

(iii) each receipt filed with the Minister to prove payment of the remuneration was issued by the payee and contains, where the payee is an individual, that individual's Social Insurance Number;

(c) **[full-time attendant at home]** — as remuneration for one full-time attendant upon the patient in a self-contained domestic establishment in which the patient lives, if

(i) the patient is, and has been certified by a medical practitioner to be, a person who, by reason of mental or physical infirmity, is and is likely to be for a long-continued period of indefinite duration dependent on others for the patient's personal needs and care and who, as a result thereof, requires a full-time attendant,

Proposed Amendment — 118.2(2)(c)(i)

(i) the patient is, and has been certified in writing by a medical practitioner to be, a person who, by reason of mental or physical infirmity, is and is likely to be for a long-continued period of indefinite duration dependent on others for the patient's personal needs and care and who, as a result, requires a full-time attendant,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 107(1), will amend subpara. 118.2(2)(c)(i) to read as above, applicable to certifications made after December 20, 2002.

Technical Notes: The eligibility of certain expenses [for] the medical expense tax credit is conditional on a medical practitioner's certification. Paragraphs 118.2)(c), (d), (e), (g), and (h) are amended to clarify that such a certification has to be in writing.

(ii) at the time the remuneration is paid, the attendant is neither the individual's spouse or common-law partner nor under 18 years of age, and

(iii) each receipt filed with the Minister to prove payment of the remuneration was issued by the payee and contains, where the payee is an individual, that individual's Social Insurance Number;

(d) **[nursing home care]** — for the full-time care in a nursing home of the patient, who has been certified by a medical practitioner to be a person who, by reason of lack of normal mental capacity, is and in the foreseeable future will continue to be dependent on others for the patient's personal needs and care;

(e) **[school, institution, etc.]** — for the care, or the care and training, at a school, institution or other place of the patient, who has been certified by an appropriately qualified person to be a person who, by reason of a physical or mental handicap, requires the equipment, facilities or personnel specially provided by that school, institution or other place for the care, or the care and training, of individuals suffering from the handicap suffered by the patient;

Proposed Amendment — 118.2(2)(d), (e)

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 107(2), will amend paras. 118.2(2)(d) and (e) to substitute, in each, "certified in writing" for "certified", applicable to certifications made after December 20, 2002.

Technical Notes: See under 118.2(2)(c)(i) above.

(f) **[ambulance fees]** — for transportation by ambulance to or from a public or licensed private hospital for the patient;

(g) **[transportation]** — to a person engaged in the business of providing transportation services, to the extent that the payment is made for the transportation of

(i) the patient, and

(ii) one individual who accompanied the patient, where the patient was, and has been certified by a medical practitioner to be, incapable of travelling without the assistance of an attendant

Proposed Amendment — 118.2(2)(g)(ii)

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 107(3), will amend subpara. 118.2(2)(g)(ii) to substitute, "certified in writing" for "certified", applicable to certifications made after December 20, 2002.

Technical Notes: See under 118.2(2)(c)(i) above.

from the locality where the patient dwells to a place, not less than 40 kilometres from that locality, where medical services are normally provided, or from that place to that locality, if

(iii) substantially equivalent medical services are not available in that locality,

(iv) the route travelled by the patient is, having regard to the circumstances, a reasonably direct route, and

(v) the patient travels to that place to obtain medical services for himself or herself and it is reasonable, having regard to the circumstances, for the patient to travel to that place to obtain those services;

(h) **[travel expenses]** — for reasonable travel expenses (other than expenses described in paragraph (g)) incurred in respect of the patient and, where the patient was, and has been certified by a medical practitioner to be, incapable of travelling without the assistance of an attendant, in respect of one individual who accompanied the patient, to obtain medical services in a place that is not less than 80 kilometres from the locality where the patient dwells if the circumstances described in subparagraphs (g)(iii), (iv) and (v) apply;

Proposed Amendment — 118.2(2)(h)

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 107(4), will amend para. 118.2(2)(h) to substitute, "certified in writing" for "certified", applicable to certifications made after December 20, 2002.

Technical Notes: See under 118.2(2)(c)(i) above.

(i) **[devices]** — for or in respect of an artificial limb, iron lung, rocking bed for poliomyelitis victims, wheel chair, crutches, spinal brace, brace for a limb, iliostomy or colostomy pad, truss for hernia, artificial eye, laryngeal speaking aid, aid to hearing or artificial kidney machine, for the patient;

Proposed Amendment — 118.2(2)(i)

(i) **[devices]** — for, or in respect of, an artificial limb, an iron lung, a rocking bed for poliomyelitis victims, a wheel chair, crutches, a spinal brace, a brace for a limb, an iliostomy or colostomy pad, a truss for hernia, an artificial eye, a laryngeal speaking aid, an aid to hearing, an artificial kidney machine, phototherapy equipment for the treatment of psoriasis or other skin disorders, or an oxygen concentrator, for the patient;

Application: The August 15, 2005 draft legislation (2005 Budget second bill), subsec. 5(2), will amend para. 118.2(2)(i) to read as above, applicable to 2005 *et seq.*

Technical Notes: Paragraph 118.2(2)(i) is amended to add the cost to purchase, operate, and maintain phototherapy equipment prescribed for the treatment of psoriasis or other skin disorders to the list of items that qualify as medical expenses. Further, while the cost of purchasing an oxygen concentrator is currently an eligible expense under paragraph 118.2(2)(k), a reference to oxygen concentrator is added to paragraph 118.2(2)(i) to extend eligibility under the METC to expenses incurred to operate an oxygen concentrator, including the cost of electricity [due to the words "in respect of" in 118.2(2)(i) — ed.].

Federal budget, Notice of Ways and Means Motion, February 23, 2005: *Medical Expense Tax Credit*

(11) That, for the 2005 and subsequent taxation years, there be added to the list of expenses eligible for the medical expense tax credit, amounts paid

(a) to purchase, operate and maintain phototherapy equipment for the treatment of psoriasis or other skin disorders;

(b) to operate and maintain an oxygen concentrator;

(c) for deaf-blind intervening services used by an individual who is both blind and profoundly deaf (if paid to persons engaged in the business of providing such services);

(d) for reading services used by an individual who is blind or who has a severe learning disability, if the need for the service is certified in writing by a medical practitioner and paid to persons engaged in the business of providing such services;

(e) for drugs or medical devices obtained under Health Canada's Special Access Programme;

(f) for the purchase of medical marihuana or marihuana seeds, from Health Canada, for use by a patient who is authorized to possess marihuana for medical purposes under the *Marihuana Medical Access Regulations* (MMAR) or who holds an Exemption for possession under Section 56 of the *Controlled Drugs and Substances Act* (CDSA); and

(g) for the purchase of medical marihuana, for use by a patient who is authorized to possess marihuana for medical purposes under the MMAR or who holds an Exemption for possession under Section 56 of the CDSA, from an individual who possesses a Designated-person Production Licence under the MMAR to cultivate or produce marihuana for medical purposes on behalf of that patient or who holds a designated person Exemption for cultivation or production under Section 56 of the CDSA to cultivate or produce marihuana for medical purposes on behalf of that patient.

(12) That, for expenses incurred after February 22, 2005, the provisions of the Act that include as an eligible medical expense reasonable expenses relating to renovations or alterations to a dwelling of a patient who lacks normal physical development or has a severe and prolonged mobility impairment to enable the patient to gain access to, or to be mobile or functional within, the dwelling [para. (l.2) — ed.], be amended to require that such expenses

(a) must be of a type that would not typically be incurred by persons who have normal physical development or who do not have a severe and prolonged mobility impairment; and

(b) must not be of a type that would typically be expected to increase the value of the dwelling [this is designed to stop claims for hot tubs and hardwood flooring — ed.].

Federal budget, Supplementary Information, February 23, 2005: *Medical Expense Tax Credit*

The medical expense tax credit (METC) recognizes the effect of above-average specific medical and disability-related expenses on an individual's ability to pay income tax.

Currently, the METC provides tax relief equal to 16% of eligible medical and disability-related expenses in excess of a threshold. In particular, eligible medical and disability-related expenses incurred by a taxpayer, including those incurred on behalf of a spouse or common-law partner and minor children, may be claimed by the taxpayer to the extent that they exceed the taxpayer's minimum expense threshold — that is, the lesser of 3% of the taxpayer's net income and $1,844. Caregivers may also claim expenses they incur on behalf of a dependent relative.

The list of expenses eligible for the credit is regularly reviewed and updated in light of new technologies and other disability-specific or medically related developments. In addition to the items added to the list of expenses eligible for the METC as described under "Expansion of the Disability Supports Deduction," the budget proposes three other additions to the list of expenses eligible for the METC.

First, the budget proposes to add the cost to purchase, operate, and maintain phototherapy equipment prescribed for the treatment of psoriasis or other skin disorders [118.2(2)(i) — ed.].

Second, while the cost of purchasing an oxygen concentrator is currently an eligible expense under the METC, the budget proposes to extend eligibility under the METC to expenses incurred to operate an oxygen concentrator, including the cost of electricity [118.2(2)(i), due to the words "in respect of" — ed.].

Third, the budget proposes to add drugs purchased under Health Canada's Special Access Programme [118.2(2)(s) — ed.], and medical marihuana [118.2(2)(t), to become 118.2(2)(u) — ed.], to the list of expenses eligible under the METC. Currently, these two types of medication are available only upon the recommendation of a physician but are ineligible for the METC.

To be an eligible expense under the METC, medical marihuana will have to be purchased from either Health Canada or a designated grower, by an individual authorized to use the drug for medical purposes under Health Canada's *Medical Marihuana Access Regulations* or an exemption under Section 56 of the *Controlled Drug and Substances Act*. With the exception of the cost of seeds purchased from Health Canada, expenses incurred by authorized users to grow their own marihuana will not be eligible under the METC.

Health Canada's Special Access Programme allows access to drugs that have not yet been approved for sale in Canada. Special access can be requested in emergency cases or when conventional therapies have failed, are unsuitable or are unavailable. The cost of drugs purchased

under the Special Access Programme will be eligible under the METC. The budget also proposes to extend the same treatment to devices purchased under the Special Access Programme.

These changes will be effective for the 2005 and subsequent taxation years.

The budget also proposes to clarify the METC provisions regarding the eligibility of home renovation expenses.

Currently, reasonable expenses for renovations to a home are recognized under the METC when they are undertaken to enable a person who lacks normal physical development or has a severe and prolonged mobility impairment to gain access to, or to be mobile or functional within, the home [118.2(2)(l.2) — ed.]. The policy intent is to grant eligibility under the METC to renovation expenses that would be of benefit only to such individuals (e.g. the cost of widening doorways). However, recent court decisions have interpreted these measures to apply more broadly, most notably to include, in some cases, the cost of hardwood floors [*Seely*, [2003] 4 C.T.C. 2674 (TCC) — ed.] or installing a hot tub [*Gibson*, [2002] 1 C.T.C. 147 (FCA) and several TCC cases — ed.]. Such an expansion goes far beyond the policy intent of the METC because it subsidizes renovation expenses that increase the value of the home, and extends tax recognition to expenses with a substantial element of personal consumption and personal choice. To ensure that the METC continues to be provided to those most in need, the budget proposes a two-criteria test for determining whether home renovation expenses qualify under the METC.

The first criterion [118.2(2)(l.2)(i), 118.2(2)(l.21)(i) — ed.] is that the expense must not typically be expected to increase the value of the home. Secondly [118.2(2)(l.2)(ii), 118.2(2)(l.21)(ii) — ed.], the expenses must be of a type that would not typically be incurred by persons without such an impairment. Only expenses that meet both of these criteria will be eligible to be claimed under the METC.

For example, a person confined to a wheelchair who has a wheelchair ramp installed in his or her home would be able to claim the cost of the ramp since such an expense would (i) not typically increase the value of the home and (ii) not typically be undertaken by individuals without such an impairment.

In light of these clarifications, most medical and disability-related home renovation expenses will remain eligible under the METC, including, for example the cost of installing entrance and exit ramps, widening doorways, lowering shelves, modifying kitchen cabinets and moving electrical outlets.

Similarly, the provisions of the *Income Tax Regulations* that prescribe devices designed to assist an individual in walking where the individual has a mobility impairment will be amended to ensure that only devices exclusively designed for that purpose will be eligible under the METC.

These changes will be effective for expenses incurred on or after February 23, 2005.

[Table A8.1 in the Budget Supplementary Information estimates that the cost of the Budget changes to the METC will be $5 million in each year from 2005-06 through 2009-10. These measures were not included in Budget Bill C-43 and will be introduced in a later bill (Finance news release, March 21, 2005) — ed.]

(i.1) **[devices for incontinence]** — for or in respect of diapers, disposable briefs, catheters, catheter trays, tubing or other products required by the patient by reason of incontinence caused by illness, injury or affliction;

(j) **[eyeglasses]** — for eye glasses or other devices for the treatment or correction of a defect of vision of the patient as prescribed by a medical practitioner or optometrist;

(k) **[various]** — for an oxygen tent or other equipment necessary to administer oxygen or for insulin, oxygen, liver extract injectible for pernicious anaemia or vitamin B12 for pernicious anaemia, for use by the patient as prescribed by a medical practitioner;

(l) **[guide dogs, etc.]** — on behalf of the patient who is blind or profoundly deaf or has a severe and prolonged impairment that markedly restricts the use of the patient's arms or legs,

(i) for an animal specially trained to assist the patient in coping with the impairment and provided by a person or organization one of whose main purposes is such training of animals,

(ii) for the care and maintenance of such an animal, including food and veterinary care,

(iii) for reasonable travel expenses of the patient incurred for the purpose of attending a school, institution or other facility that trains, in the handling of such animals, individuals who are so impaired, and

(iv) for reasonable board and lodging expenses of the patient incurred for the purpose of the patient's full-time attendance at a school, institution or other facility referred to in subparagraph (iii);

(l.1) **[transplant costs]** — on behalf of the patient who requires a bone marrow or organ transplant,

(i) for reasonable expenses (other than expenses described in subparagraph (ii)), including legal fees and insurance premiums, to locate a compatible donor and to arrange for the transplant, and

(ii) for reasonable travel, board and lodging expenses (other than expenses described in paragraphs (g) and (h)) of the donor (and one other person who accompanies the donor) and the patient (and one other person who accompanies the patient) incurred in respect of the transplant;

(l.2) **[alterations to home]** — for reasonable expenses relating to renovations or alterations to a dwelling of the patient who lacks normal physical development or has a severe and prolonged mobility impairment, to enable the patient to gain access to, or to be mobile or functional within, the dwelling;

(l.21) **[home construction costs]** — for reasonable expenses, relating to the construction of the principal place of residence of the patient who lacks normal physical development or has a severe and prolonged mobility impairment, that can reasonably be considered to be incremental costs incurred to enable the patient to gain access to, or to be mobile or functional within, the patient's principal place of residence;

Proposed Amendment — 118.2(2)(l.2), (l.21)

(l.2) **[alterations to home]** — for reasonable expenses relating to renovations or alterations to a dwelling of the patient who lacks normal physical development or has a severe and prolonged mobility impairment, to enable the patient to gain access to, or to be mobile or functional within, the dwelling, provided that such expenses

(i) are not of a type that would typically be expected to increase the value of the dwelling, and

(ii) are of a type that would not normally be incurred by persons who have normal physical development or who do not have a severe and prolonged mobility impairment;

(l.21) **[home construction costs]** — for reasonable expenses relating to the construction of the principal place of residence of the patient who lacks normal physical development or has a severe and prolonged mobility impairment, that can reasonably be considered to be incremental costs incurred to en-

able the patient to gain access to, or to be mobile or functional within, the patient's principal place of residence, provided that such expenses

(i) are not of a type that would typically be expected to increase the value of the dwelling, and

(ii) are of a type that would not normally be incurred by persons who have normal physical development or who do not have a severe and prolonged mobility impairment;

Application: The August 15, 2005 draft legislation (2005 Budget second bill), subsec. 5(3), will amend paras. 118.2(2)(l.2) and (l.21) to read as above, applicable to expenses incurred after February 22, 2005.

Technical Notes: Paragraph 118.2(2)(l.2) allows reasonable expenses relating to modifications to a dwelling of an individual who lacks normal physical development or is confined to a wheelchair to qualify as medical expenses.

Paragraph 118.2(2)(l.2) is amended in two respects. First, in order to qualify as a medical expense, the renovation or alteration to the home must not typically be expected to increase the value of the home. Secondly, the expenses must be of a type that would not typically be incurred by persons without such an impairment. Only expenses that meet both of these criteria will be eligible to be claimed under the medical expense tax credit.

Most medical and disability-related home renovation expenses will remain eligible under the medical expense tax credit, including, for example, the cost of installing entrance and exit ramps, widening doorways, lowering shelves, modifying kitchen cabinets and moving electrical outlets.

Similar to paragraph 118.2(2)(l.2) described above, paragraph 118.2(2)(l.21) allows reasonable expenses relating to the construction of the principal place of residence of an individual who lacks normal physical development or is confined to a wheelchair to qualify as medical expenses, that can reasonably be considered to be incremental costs incurred to enable the individual to gain access to, or to be mobile and functional within, the individual's principal place of residence.

Paragraph 118.2(2)(l.21) is amended in two respects. First, in order to qualify as a medical expense, the incremental costs incurred during the construction of the residence must not typically be expected to increase the value of the home. Secondly, the incremental costs must be of a type that would not typically be incurred by persons without such an impairment. Only expenses that meet both of these criteria are eligible to be claimed under the medical expense tax credit.

Federal budget, Notice of Ways and Means Motion and Supplementary Information, February 23, 2005: See under 118.2(2)(i).

(l.3) **[lip reading and sign language training]** — for reasonable expenses relating to rehabilitative therapy, including training in lip reading and sign language, incurred to adjust for the patient's hearing or speech loss;

(l.4) **[sign language services]** — on behalf of the patient who has a speech or hearing impairment, for sign language interpretation services or real-time captioning services, to the extent that the payment is made to a person in the business of providing such services;

(l.41) **[note-taking services]** — on behalf of the patient who has a mental or physical impairment, for note-taking services, if

(i) the patient has been certified in writing by a medical practitioner to be a person who, because of that impairment, requires such services, and

(ii) the payment is made to a person in the business of providing such services;

(l.42) **[voice recognition software]** — on behalf of the patient who has a physical impairment, for the cost of voice recognition software, if the patient has been certified in writing by a medical practitioner to be a person who, because of that impairment, requires that software;

Proposed Addition — 118.2(2)(l.43)

(l.43) **[reading services]** — on behalf of the patient who is blind or has a severe learning disability, for reading services, if

(i) the patient has been certified in writing by a medical practitioner to be a person who, because of that impairment, requires such services, and

(ii) the payment is made to a person in the business of providing such services;

(l.44) **[deaf-blind intervening services]** — on behalf of the patient who is blind and profoundly deaf, for deaf-blind intervening services, if the payment is made to a person in the business of providing those services;

Application: The August 15, 2005 draft legislation (2005 Budget second bill), subsec. 5(4), will add paras. 118.2(2)(l.43) and (l.44), applicable to 2005 *et seq*.

Technical Notes: New paragraph 118.2(2)(l.43) adds to the list of eligible medical expenses amounts paid for reading services on behalf of individuals who are blind or have a severe learning disability. In order to qualify as medical expenses, the amount must be paid to persons engaged in the business of providing such services and a medical practitioner must certify the need for those services.

New paragraph 118.2(2)(l.44) adds to the list of eligible medical expenses amounts paid for deaf-blind intervening services on behalf of individuals who are blind and profoundly deaf. In order to qualify as medical expenses, the amount must be paid to persons engaged in the business of providing such services.

Federal budget, Notice of Ways and Means Motion and Supplementary Information, February 23, 2005: See under 118.2(2)(i).

(l.5) **[moving expenses]** — for reasonable moving expenses (within the meaning of subsection 62(3), but not including any expense deducted under section 62 for any taxation year) of the patient, who lacks normal physical development or has a severe and prolonged mobility impairment, incurred for the purpose of the patient's move to a dwelling that is more accessible by the patient or in which the patient is more mobile or functional, if the total of the expenses claimed under this paragraph by all persons in respect of the move does not exceed $2,000;

(l.6) **[driveway alterations]** — for reasonable expenses relating to alterations to the driveway of the principal place of residence of the patient who has a severe and prolonged mobility impairment, to facilitate the patient's access to a bus;

(l.7) **[van for wheelchair]** — for a van that, at the time of its acquisition or within 6 months after that time, has been adapted for the transportation of the patient who requires the use of a wheelchair, to the extent of the lesser of $5,000 and 20% of the amount by which

(i) the amount paid for the acquisition of the van

exceeds

(ii) the portion, if any, of the amount referred to in subparagraph (i) that is included because of paragraph (m) in computing the individual's deduction under this section for any taxation year;

(l.8) **[caregiver training]** — for reasonable expenses (other than amounts paid to a person who was at the time of the payment the individual's spouse or common-law partner or a person under 18 years of age) to train the individual, or a person related to the

individual, if the training relates to the mental or physical infirmity of a person who

(i) is related to the individual, and

(ii) is a member of the individual's household or is dependent on the individual for support;

(l.9) **[therapy]** — as remuneration for therapy provided to the patient because of the patient's severe and prolonged impairment, if

(i) because of the patient's impairment, an amount may be deducted under section 118.3 in computing a taxpayer's tax payable under this Part for the taxation year in which the remuneration is paid,

(ii) the therapy is prescribed by, and administered under the general supervision of,

(A) a medical doctor or a psychologist, in the case of mental impairment, and

(B) a medical doctor or an occupational therapist, in the case of a physical impairment,

(iii) at the time the remuneration is paid, the payee is neither the individual's spouse nor an individual who is under 18 years of age, and

(iv) each receipt filed with the Minister to prove payment of the remuneration was issued by the payee and contains, where the payee is an individual, that individual's Social Insurance Number;

(l.91) **[tutoring services]** — as remuneration for tutoring services that are rendered to, and are supplementary to the primary education of, the patient who

(i) has a learning disability or a mental impairment, and

(ii) has been certified in writing by a medical practitioner to be a person who, because of that disability or impairment, requires those services,

if the payment is made to a person ordinarily engaged in the business of providing such services to individuals who are not related to the payee.

(m) **[prescribed in regulations]** — for any device or equipment for use by the patient that

(i) is of a prescribed kind,

(ii) is prescribed by a medical practitioner,

(iii) is not described in any other paragraph of this subsection, and

(iv) meets such conditions as may be prescribed as to its use or the reason for its acquisition,

to the extent that the amount so paid does not exceed the amount, if any, prescribed in respect of the device or equipment;

(n) **[drugs]** — for drugs, medicaments or other preparations or substances (other than those described in paragraph (k)) manufactured, sold or represented for use in the diagnosis, treatment or prevention of a disease, disorder, abnormal physical state, or the symptoms thereof or in restoring, correcting or modifying an organic function, purchased for use by the patient as prescribed by a medical practitioner or dentist and as recorded by a pharmacist;

(o) **[lab tests]** — for laboratory, radiological or other diagnostic procedures or services together with necessary interpretations, for maintaining health, preventing disease or assisting in the diagnosis or treatment of any injury, illness or disability, for the patient as prescribed by a medical practitioner or dentist;

(p) **[dentures]** — to a person authorized under the laws of a province to carry on the business of a dental mechanic, for the making or repairing of an upper or lower denture, or for the taking of impressions, bite registrations and insertions in respect of the making, producing, constructing and furnishing of an upper or lower denture, for the patient;

(q) **[health plan premiums]** — as a premium, contribution or other consideration under a private health services plan in respect of one or more of the individual, the individual's spouse or common-law partner and any member of the individual's household with whom the individual is connected by blood relationship, marriage, common-law partnership or adoption, except to the extent that the premium, contribution or consideration is deducted under subsection 20.01(1) in computing an individual's income from a business for any taxation year; or

(r) **[gluten-free food]** — on behalf of the patient who has celiac disease, the incremental cost of acquiring gluten-free food products as compared to the cost of comparable non-gluten-free food products, if the patient has been certified in writing by a medical practitioner to be a person who, because of that disease, requires a gluten-free diet.

Proposed Addition — 118.2(2)(s)–(u)

(s) **[Special Access Programme drugs]** — for drugs obtained under Health Canada's Special Access Programme in accordance with sections C.08.010 and C.08.011 of the *Food and Drug Regulations* and purchased for use by the patient;

(s) *[should be (t) — ed.]* **[Special Access Programme devices]** — for medical devices obtained under Health Canada's Special Access Programme in accordance with Part 2 of the *Medical Devices Regulations* and purchased for use by the patient; and

(t) *[should be (u) — ed.]* **[marijuana]** — on behalf of the patient who is authorized to possess marihuana for medical purposes under the *Marihuana Medical Access Regulations* or section 56 of the *Controlled Drugs and Substances Act*, for

(i) the cost of medical marihuana or marihuana seeds purchased from Health Canada, or

(ii) the cost of marihuana purchased from an individual who possesses, on behalf of that patient, a Designated-person Production license to produce marihuana under the *Marihuana Medical Access Regulations* or an Exemption for cultivation or production under section 56 of the *Controlled Drugs and Substances Act*.

Application: The August 15, 2005 draft legislation (2005 Budget second bill), subsec. 5(5), will add paras. 118.2(2)(s) to (u), applicable to 2005 *et seq.*

Technical Notes: New paragraphs 118.2(2)(r) and (s) [*sic.* Should be (s) and (t) — ed.] add to the list of eligible medical expenses amounts paid for drugs or devices purchased under Health Canada's *Special Access Programme* on behalf of the patient. This programme allows access to drugs or medical devices that have not yet been approved for sale in Canada. Special access can be requested in emergency cases or when conventional therapies have failed, are unsuitable or are unavailable.

New paragraph 118.2(2)(u) adds to the list of eligible medical expenses amounts paid for medical marihuana. To be an eligible expense under the METC, medical marihuana must be purchased from either Health Canada or a designated grower, by a patient authorized to use the drug for medical purposes under Health Canada's *Medical Marihuana Access Regulations* or who possesses an exemption under Section 56 of the

Controlled Drug and Substances Act. The designated grower must possess, on behalf of the particular patient, a *Designation-Person* [*sic*. Should be "Designated-Person" — ed.] *Production License* to produce marihuana under the *Marihuana Medical Access Regulations* or an Exemption for cultivation or production under section 56 of the *Controlled Drugs and Substances Act*. With the exception of the cost of seeds purchased from Health Canada, expenses incurred by authorized users to grow their own marihuana will not be eligible under the METC.

Federal budget, Notice of Ways and Means Motion and Supplementary Information, February 23, 2005: See under 118.2(2)(i).

Related Provisions: 20(1)(qq), (rr) — Business deduction for disability-related modifications to buildings and disability-related equipment; 20.01 — Deduction from business income for private health plan premiums; 63(3)"child care expense"(d) — Medical expenses are not child care expenses; 64 — Disability supports deduction for attendant care and other expenses; 110.7(3) — Northern Canada residents — trips to obtain medical services; 118.2(3) — Deemed medical expense; 118.2(4) — Use of own vehicle for transportation under (2)(g); 118.3(2) — Dependant having impairment; 251(6) — Meaning of "connected by blood relationship, marriage or adoption".

History: Para. 118.2(2)(l.4) amended and paras. (l.41), (l.42) and (r) added by 2003, c. 15, subsecs. 73(1), (2) applicable to 2003 *et seq*. Para. (l.4) formerly read:

> (l.4) on behalf of the patient who has a speech or hearing impairment, for sign language interpretation services, to the extent that the payment is made to a person engaged in the business of providing such services;

Para. 118.2(2)(l.21) added by 2001, c. 17, s. 95, applicable to 2000 *et seq.*

Para. 118.2(2)(q) amended by the said c. 17, s. 244, to add "common-law partner", applicable to 2001 *et seq.* except that, if a taxpayer and a person have jointly elected pursuant to s. 144 of 2000, c. 12 in respect of the 1998, 1999 or 2000 taxation years, the amendment applies to the taxpayer and the person in respect of the applicable taxation year and subsequent taxation years.

Paras. 118.2(2)(a) and (b), subparas. 118.2(2)(b.1)(iii) and (c)(ii), and paras. 118.2(2) (l.8) and (q) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subpara. 118.2(2)(b.1)(ii) amended, paras. 118.2(2)(b.2), (2)(l.9) and (l.91) added, by 2000, c. 19, subsecs. 25(2), (3), applicable to 1999 *et seq.* The subpara. formerly read:

> (ii) no amount is included under section 63 or 64 or paragraph (b), (c), (d) or (e) in computing a deduction claimed in respect of the patient for the taxation year in which the remuneration was paid,

Para. 118.2(2)(l.8) added, and para. 118.2(2)(q) amended by 1999, c. 22, subsecs. 34(2), (3), applicable to 1998 *et seq.* Para. (q) formerly read:

> (q) as a premium, contribution or other consideration to a private health services plan in respect of one or more of the individual, the individual's spouse and any member of the individual's household with whom the individual is connected by blood relationship, marriage or adoption.

The closing words of para. 118.2(2)(b.1) amended, paras. 118.2(2)(l.4) to (l.7) and the closing words to para. 118.2(2)(m) added, by 1998, c. 19, subsecs. 23(1.1)–(3), applicable to 1997 *et seq.* The closing words of para. (b.1) formerly read:

> to the extent that the total of amounts so paid does not exceed $5,000 (or $10,000 where the individual died in the year);

Para. 118.2(2)(l.3) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 54(1), applicable to 1992 *et seq.*

Para. 118.2(2)(a) substituted by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 9(2), applicable to 1993 *et seq*. Para. (a) formerly read:

> (a) to a medical practitioner, dentist or nurse or a public or licensed private hospital in respect of medical or dental services provided to a person (in this subsection referred to as the "patient") who is the individual, the individual's spouse or any dependant in respect of whom the individual may deduct an amount under section 118 from tax payable under this Part by the individual for the taxation year in which the expense was incurred;

Paras. 118.2(2)(b), (b.1) substituted for para. (b) by 1994, c. 7, Sch. II (1991, c. 49), subsec. 89(1), applicable to expenses incurred after 1990. Para 118.2(2)(b) formerly read:

> (b) as remuneration for one full-time attendant on, or for the full-time care in a nursing home of, the patient who has a severe and prolonged mental or physical impairment that has been certified as such in prescribed form by a medical practitioner or, where the impairment is an impairment of sight, by a medical practitioner or an optometrist;

Subparas. 118.2(2)(c)(ii), (iii) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 89(2), applicable to expenses incurred after 1990. Subparas. (c)(ii), (iii) formerly read:

> (ii) the attendant is not
>
> (A) a person in respect of whom the individual or the individual's spouse deducts an amount under section 118 from tax payable under this Part by the individual for the taxation year in which the remuneration is paid, or
>
> (B) at the time the remuneration is paid, under 18 years of age and connected with the individual or the individual's spouse by blood relationship, marriage or adoption, and
>
> (iii) each receipt filed with the Minister to prove payment of the remuneration contains the Social Insurance Number of the person who issued the receipt;

Para. 118.2(2)(h) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 89(3), applicable to 1988 *et seq.* Para. 118.2(2)(h) formerly read:

> (h) for reasonable travel expenses (other than expenses described in paragraph (g)) incurred in respect of the patient (who was, and has been certified by a medical practitioner to be, incapable of travelling without the assistance of an attendant) and one individual who accompanied the patient to obtain medical services in a place that is not less than 80 kilometres from the locality where the patient dwells if the circumstances described in subparagraphs (g)(iii) to (v) apply;

Paras. 118.2(2)(i), (i.1) substituted for para. (i) and paras. (l), (l.2) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 89(4), (5), (7), applicable to expenses incurred after 1990. Paras. (i), (l), (l.2) formerly read:

> (i) for or in respect of an artificial limb, iron lung, rocking bed for poliomyelitis victims, wheel chair, crutches, spinal brace, brace for a limb, iliostomy or colostomy pad, cloth diapers or disposable briefs for use by persons who are incontinent by reason of illness, injury or affliction, truss for hernia, artificial eye, laryngeal speaking aid, aid to hearing or artificial kidney machine for the patient;
>
> . . . . .
>
> (l) on behalf of the patient who is totally blind or profoundly deaf,
>
> (i) for a dog trained to guide or assist a blind or deaf person and provided by a person or organization one of whose main purposes is the training of such dogs,
>
> (ii) for the care and maintenance of such a dog, including food and veterinarian care,
>
> (iii) for reasonable travel expenses of the patient incurred in travelling to and from a school, institution or other place that trains blind or deaf persons in the handling of such dogs, and
>
> (iv) for reasonable board and lodging expenses of the patient incurred while the patient is required to live away from the patient's ordinary place of residence because the patient is in full-time attendance at a school, institution or other place that trains blind or deaf persons in the handling of such dogs;
>
> . . . . .
>
> (l.2) for reasonable expenses relating to modifications to a dwelling of the patient, who lacks normal physical development or is necessarily confined to a wheelchair for a long-continued period of indefinite duration, to enable the patient to be mobile and functional within the dwelling;

Para. 118.2(2)(m) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 89(8). Para. 118.2(2)(m) formerly read:

> (m) for any device or equipment, not described in any other paragraph of this subsection, of a prescribed kind, for use by the patient as prescribed by a medical practitioner;

Selected Cases: *Roy v. R.*, 2004 CarswellNat 4481 (TCC) (Therapist under provincial law not a doctor; expenses did not qualify as medical expenses); *Ray v. R.*, [2002] 4 C.T.C. 2590 (TCC) (Requirement for drugs to be recorded by pharmacist disregarded); *Dunn v. R.*, [2002] 2 C.T.C. 2007 (TCC) (Medications must be recorded by a pharmacist); *Banman v.*

R., [2001] 2 C.T.C. 2111 (TCC) (Alternative medicine not recognized as equivalent of medical practice); *Hillier v. R.*, [2000] 3 C.T.C. 2367 (TCC) (Modifications during construction phase may qualify); *Flumerfelt v. R.*, [1999] 3 C.T.C. 2168 (TCC) (Full-time medical care means person must attend to taxpayer and no one else); *Revusky v. R.*, [1997] 2 C.T.C. 2443 (TCC) (Certification valid even though issued after travel had occurred).

Regulations: 5700 (prescribed device or equipment, for 118.2(2)(m)).

Interpretation Bulletins: IT-339R2: Meaning of "private health services plan"; IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-495R3: Child care expenses; IT-519R2: Medical expense and disability tax credits and attendant care expense deduction.

Information Circulars: 82-2R2: SIN legislation that relates to the preparation of information slips (re 118.2(2)(b.1)(iv), (c)(iii)).

Forms: RC4064: Information concerning people with disabilities [guide].

(3) Deemed medical expense — For the purposes of subsection (1),

(a) any amount included in computing an individual's income for a taxation year from an office or employment in respect of a medical expense described in subsection (2) paid or provided by an employer at a particular time shall be deemed to be a medical expense paid by the individual at that time; and

(b) there shall not be included as a medical expense of an individual any expense to the extent that

(i) the individual,

(ii) the person referred to in subsection (2) as the patient,

(iii) any person related to a person referred to in subparagraph (i) or (ii), or

(iv) the legal representative of any person referred to in any of subparagraphs (i) to (iii)

is entitled to be reimbursed for the expense, except to the extent that the amount of the reimbursement is required to be included in computing income and is not deductible in computing taxable income.

Related Provisions: 251(2) — Related persons.

History: Para. 118.2(3)(b) amended by 1998, c. 19, subsec. 23(4), applicable to 1997 *et seq.* Para. 118.2(3)(b) formerly read:

(b) there shall not be included as a medical expense of an individual any expense for which the individual, the person referred to in subsection (2) as the patient or the legal representative of either of them has been or is entitled to be reimbursed, except to the extent that the amount thereof is required to be included in computing income under this Part and cannot be deducted in computing taxable income.

Para. 118.2(3)(b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 54(2), applicable to 1992 *et seq.* Para. (b) formerly read:

(b) there shall not be included as a medical expense of an individual any expense for which the individual or the individual's legal representative has been or is entitled to be reimbursed, except to the extent that its amount is required to be included in computing the individual's income under this Part.

Interpretation Bulletins: IT-339R2: Meaning of "private health services plan"; IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-519R2: Medical expense and disability tax credits and attendant care expense deduction.

(4) Deemed payment of medical expenses — Where, in circumstances in which a person engaged in the business of providing transportation services is not readily available, an individual makes use of a vehicle for a purpose described in paragraph (2)(g), the individual or the individual's legal representative shall be deemed to have paid to a person engaged in the business of providing transportation services, in respect of the operation of the vehicle, such amount as is reasonable in the circumstances.

Selected Cases [subsec. 118.2(4)]: *Watt v. R.*, [1997] 2 C.T.C. 2651 (TCC) (Receipts required for subsec. 118.2(1) expenses; for subsection 118.2(4) deemed expenses, taxpayer need only show expenses were reasonable).

Selected Cases [s. 118.2]: *Noddin v. R.*, [2005] 1 C.T.C. 2287 (TCC) (No *Charter* violation in requirement for provincial supervision of therapists); *Exner v. R.*, [2002] 4 C.T.C. 2415 (TCC) (*Charter* not breached through reduction of benefits available); *Crockart v. R.*, [1999] 2 C.T.C. 2409 (TCC) (Provision to be construed liberally, humanely and compassionately).

Definitions [s. 118.2]: "amount", "appropriate percentage", "business" — 248(1); "carrying on business" — 253; "child" — 252(1); "common-law partner", "common-law partnership" — 248(1); "connected" — 251(6); "dentist" — 118.4(2); "employment", "individual", "legal representative" — 248(1); "medical practitioner" — 118.4(2); "Minister" — 248(1); "month" — *Interpretation Act* 28, 35(1); "nurse" — 118.4(2); "office" — 248(1); "optometrist" — 118.4(2); "patient" — 118.2(2)(a); "person", "prescribed", "private health services plan" — 248(1); "province" — *Interpretation Act* 35(1); "related" — 251(2); "resident in Canada" — 250; "self-contained domestic establishment" — 248(1); "tax payable" — 248(2); "taxation year" — 249; "taxpayer" — 248(1); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-326R3: Returns of deceased persons as "another person"; IT-518R: Food, beverages and entertainment expenses.

118.3 (1) Credit for mental or physical impairment — Where

(a) an individual has a severe and prolonged mental or physical impairment,

Proposed Amendment — 118.3(1)(a)

(a) an individual has one or more severe and prolonged impairments in physical or mental functions,

Application: The August 15, 2005 draft legislation (2005 Budget second bill), subsec. 6(1), will amend para. 118.3(1)(a) to read as above, applicable to 2005 *et seq.*

Technical Notes: In April 2003, the Technical Advisory Committee on Tax Measures for Persons with Disabilities was established with a mandate to provide advice to the Ministers of Finance and National Revenue on how to address issues related to tax measures for persons with disabilities. In its final report, *Disability Tax Fairness*, issued in December 2004, the Committee made several recommendations regarding the eligibility criteria for the disability tax credit. Based on this advice, a number of amendments are being made to the DTC to respond to the Committee's suggestions. These amendments are intended to:

- Clarify the legislation with respect to how impairments are conceptualized.
- Align the legislative criteria for impairments in mental functions with wording used in the administration of these provisions.
- Extend eligibility to include individuals with multiple restrictions where the cumulative effect of those restrictions is equivalent to a marked restriction in a single basic activity of daily living.
- Better define the activities that constitute life-sustaining therapy.
- Add to the list of health practitioners who can certify eligibility for the DTC.

Currently, the DTC eligibility criteria require that a person have a "severe and prolonged mental or physical impairment." In its report, the Technical Advisory Committee expressed concerns with this wording. Based on the Committee's advice, this subsection is amended to replace the present wording of "severe and prolonged mental or physical impairment" with the wording "severe and prolonged impairment in physical or mental functions." As indicated by the Committee, the intent of this measure is to clarify the existing legislation and not to expand eligibility for the DTC.

Federal budget, Notice of Ways and Means Motion, February 23, 2005: *Disability tax credit*

(6) That the provisions of the Act relating to the Disability Tax Credit be modified in accordance with proposals described in the budget documents tabled by the Minister of Finance in the House of Commons on February 23, 2005.

Federal budget, Supplementary Information, February 23, 2005: *Response to the Recommendations of the Technical Advisory Committee on Tax Measures for Persons with Disabilities*

The Technical Advisory Committee on Tax Measures for Persons with Disabilities was established in April 2003, with an 18-month mandate to provide advice to the Ministers of Finance and National Revenue on how to address issues related to tax measures for persons with disabilities. It was comprised of members of organizations representing persons with disabilities, medical practitioners, and private sector tax experts. The 2003 and 2004 budgets set aside funding of $85 million per year to improve tax fairness for persons with disabilities based on the recommendations of the Committee.

The 2004 budget acted on an early proposal of the Committee by proposing the creation of the disability supports deduction [s. 64 — ed.], at a cost of $15 million per year.

In December 2004, the Committee released its final report, *Disability Tax Fairness* [164 pages; see www.disabilitytax.ca — ed.], in which it made 25 policy and administrative recommendations focusing on three key areas:

- Issues relating to eligibility for the disability tax credit.
- Measures to recognize expenses incurred to pursue employment or education.
- Measures for caregivers and children with disabilities.

Based on the advice of the Committee, the budget proposes a number of income tax changes that will benefit persons with disabilities and those who care for them.

Eligibility for the Disability Tax Credit

The Technical Advisory Committee made several recommendations regarding the eligibility criteria for the disability tax credit (DTC). The budget responds by proposing to:

- Clarify the legislation with respect to how impairments are conceptualized.
- Align the legislative criteria for impairments in mental functions with wording used in the administration of these provisions.
- Extend eligibility to include individuals with multiple restrictions where the cumulative effect of those restrictions is equivalent to a marked restriction in a single basic activity of daily living.
- Better define the activities that constitute life-sustaining therapy.
- Add to the list of health practitioners who can certify eligibility for the DTC.

The Disability Tax Credit (DTC)

Background

Individuals with severe and prolonged mental or physical impairments incur medical or disability-related expenses that are not incurred by others and which reduce their ability to pay tax. The tax system contains a number of measures, such as the disability supports deduction, the medical expense tax credit (METC) and the DTC, to recognize this reduced ability to pay.

The disability supports deduction [s. 64 — ed.] provides tax relief for the cost of disability supports incurred for the purposes of employment or education (such as sign-language interpretation services and talking textbooks). The METC [118.2 — ed.] also provides tax relief for these and other medical or disability-related expenses when they are incurred for reasons not related to employment and education. The METC provides tax relief to individuals who incur above-average medical or disability-related expenses on items such as attendant care, prescription drugs, wheelchairs and hearing aids. For instance, diabetics can claim the cost of insulin, insulin pumps, and devices designed to measure their blood sugar levels, as well as the cost of any needles and syringes used for the purpose of giving an injection.

The Role of the DTC

The DTC, which is available to those with severe and prolonged impairments, complements these tax measures by providing tax relief in recognition of non-discretionary disability-related expenses that are difficult to quantify. For example, individuals with severe mobility impairments may have special transportation needs that result in higher costs. The DTC does not require claimants to itemize the disability-related expenses they incur. Instead, eligible claimants are provided with the equivalent of a general expense claim of $6,596. This reduces their federal tax by up to $1,055 (16% of $6,596) in 2005. Additionally, the DTC supplement for children provides up to $616 in further tax relief for families caring for a child with a severe disability. This credit can be transferred to a supporting spouse or other relative and is fully indexed to inflation. Provinces and territories provide similar credits.

Eligibility for the DTC

The DTC provides tax relief to individuals who, due to the effects of a severe and prolonged mental or physical impairment, are markedly restricted in their ability to perform a basic activity of daily living, or would be markedly restricted were it not for extensive therapy (i.e. averaging at least 14 hours per week) to sustain a vital function. A qualified health practitioner must certify this eligibility. Individuals are markedly restricted if, all or substantially all of the time, even with therapy or the use of appropriate devices and medication, they are blind or unable to perform a basic activity of daily living or require an inordinate amount of time to perform the activity [118.4(1)(b) — ed.]. The basic activities of daily living currently recognized in the *Income Tax Act* are: walking; feeding or dressing oneself; perceiving, thinking and remembering; speaking; hearing; and eliminating bodily waste [118.4(1)(c) — ed.].

Conceptualization of Impairment

Currently, the disability tax credit (DTC) eligibility criteria require that a person have a "severe and prolonged mental or physical impairment." In its report, the Technical Advisory Committee expressed concerns with this wording. Based on the Committee's advice, the budget proposes that the *Income Tax Act* be amended to replace the present wording of "severe and prolonged mental or physical impairment" with the wording "severe and prolonged impairment in physical or mental functions." As indicated by the Committee, the intent of this measure is to clarify the existing legislation and not to expand eligibility for the DTC.

This measure will apply for the 2005 and subsequent taxation years.

Updating Criteria Regarding Impairments in Mental Functions

The *Income Tax Act* provides that individuals with severe impairments in mental functions are eligible for the disability tax credit (DTC) if they have a marked restriction in "perceiving, thinking and remembering," [118.4(1)(c)(i) — ed.] which is one of the basic activities of daily living. The disability community, particularly representatives of persons with mental impairments, has raised many concerns about the effectiveness of the term "perceiving, thinking and remembering" as a means of recognizing the impact of impairments in mental functions.

The Technical Advisory Committee noted that the language currently used by the Canada Revenue Agency on Form T2201, Disability Tax Credit Certificate, to explain the meaning of "perceiving, thinking and remembering" provides a clearer description of the effects of impairments in mental functions. Accordingly, the budget proposes to replace the expression "perceiving, thinking and remembering" in the *Income Tax Act* with the expression "mental functions necessary for everyday life," which is currently used on Form T2201.

In addition, for greater certainty, mental functions necessary for everyday life will be defined [118.4(1)(c.1) — ed.] as including:

- Memory
- Problem-solving, goal-setting and judgement
- Adaptive functioning

As indicated on the current T2201 form, memory includes the ability to remember the following: simple instructions; basic personal information such as name and address; or material of importance or interest. Problem-solving, goal-setting and judgement refer to the ability to solve problems, set and keep goals, and make appropriate decisions and judgements. Adaptive functioning refers to abilities related to self-care, health and safety, social skills and common, simple transactions. As indicated by the Committee, the intent of this measure is to clarify the existing legislation and not to expand eligibility for the DTC.

This measure will apply for the 2005 and subsequent taxation years.

Cumulative Effects of Multiple Restrictions

Currently, the disability tax credit (DTC) eligibility criteria require that an individual have a marked restriction in at least one basic activity of daily living. In practice, the individual must be unable — or take an inordinate amount of time — to perform the activity, all or substantially all of the time. For example, the individual must be unable to walk, be deaf, or require tube feeding for nutritional sustenance.

Based on the advice of the Technical Advisory Committee, the budget proposes to extend eligibility for the DTC to include individuals with severe and prolonged impairments in mental or physical functions who have significant restrictions in more than one basic activity of daily living as specified in the *Income Tax Act* if the cumulative effect of their restrictions is equivalent to having a single marked restriction in one basic activity of daily living [118.4(1)(b.1) — ed.].

An example of an individual who could become eligible for the DTC under this change is someone with multiple sclerosis who continuously experiences fatigue, depressed mood and balance problems, where each of these restrictions on its own does not markedly restrict a specific ba-

sic activity of daily living, but when taken together have an effect equivalent to that of a marked restriction in a single activity. As these individuals incur disability-related costs that are as significant as costs incurred by individuals who are currently eligible for the DTC, it is appropriate to expand eligibility for the credit.

As is currently the case with a marked restriction in a single basic activity of daily living, the multiple restrictions, taken together, must be present all or substantially all of the time. While not a basic activity of daily living, a visual impairment that cannot be mitigated by means of eyeglasses or other visual aids will be considered in conjunction with restrictions in the other basic activities of daily living when determining the cumulative effects of one or more impairments. Time spent on life-sustaining therapy that is less than 14 hours per week cannot be combined with restrictions in other activities. It is estimated that approximately 50,000 individuals will become eligible for the DTC as a result of this measure.

This measure will apply for the 2005 and subsequent taxation years.

Life-Sustaining Therapy

Currently, individuals who require extensive therapy to sustain a vital function qualify for the disability tax credit (DTC) if their therapy meets three conditions:

- It is essential to sustain a vital function.
- It is required to be administered at least three times each week for a total duration averaging not less than 14 hours a week.
- It cannot reasonably be expected to be of significant benefit to persons who are not so impaired.

The purpose of these provisions is to allow individuals to be eligible for the DTC if they must have life-sustaining therapy that requires them to dedicate a significant amount of time away from their normal, everyday activities to receive the therapy. Two examples of individuals who may be eligible under these provisions are individuals who require kidney dialysis and children with cystic fibrosis who require chest physiotherapy on average at least 14 hours per week.

In its report, the Technical Advisory Committee raised concerns as to what activities constitute therapy under these provisions. In particular, the Committee was concerned that certain activities necessary to the administration of insulin were not considered to be therapy for some children with particularly severe cases of Type 1 diabetes. In these cases, the Committee believed that therapy included monitoring blood sugar levels and determining insulin dosages.

In response, the budget proposes amendments to the *Income Tax Act* to better define the activities that will be considered therapy and will be included as time spent receiving therapy. Specifically [118.3(1.1) — ed.].

- Where the therapy has been determined to require a regular dosage of medication that needs to be adjusted on a daily basis, the activities directly involved in determining the appropriate dosage will be considered part of the therapy.
- Therapy does not include activities such as following a dietary restriction or regime, exercise, travel time, medical appointments, shopping for medication or recuperation after therapy.
- The time it takes to administer the therapy must be time dedicated to the therapy — that is, the individual has to take time away from normal, everyday activities in order to receive the therapy. Further, in the case of a child who is unable to perform the activities related to the therapy as a result of his or her age, the time spent by the child's primary caregivers (i.e. parents) performing and supervising these activities for the child can be considered time dedicated to the therapy.

With these proposed changes, it is expected that children with very severe cases of Type 1 diabetes — who require many insulin injections (which requires knowledge of current blood sugar levels at the time of each injection), as well as several additional blood sugar tests to monitor their condition — will become eligible for the DTC.

The life-sustaining therapy provisions, in and of themselves, do not extend eligibility for the DTC to individuals who receive therapy in a manner that does not significantly affect their everyday activities (for example, by means of a portable or implanted device).

These measures will apply for the 2005 and subsequent taxation years.

List of Qualified Practitioners

Currently, a medical doctor or other health practitioner must certify eligibility for the DTC. While medical doctors can certify all types of impairments, other practitioners may certify impairments only in their respective fields, as summarized in the following box [see 118.3(1)(a.2) — ed.].

Certification of DTC Eligibility

Health practitioner	Type of impairment
Medical doctors	All impairments
Optometrists	Vision
Audiologists	Hearing
Occupational therapists	Walking, feeding or dressing
Psychologists	Perceiving, thinking and remembering
Speech-language pathologists	Speaking

Based on the advice of the Technical Advisory Committee, the budget proposes to allow physiotherapists to certify a marked restriction in walking for the purposes of determining eligibility for the DTC. Certification of eligibility for the DTC as a result of cumulative effects of multiple restrictions must be made by a medical doctor, unless the multiple restrictions pertain only to walking, feeding, or dressing, in which case certification may also be made by an occupational therapist.

These measures will apply to certifications made on or after February 23, 2005.

In addition, the Government will consult further to determine under what circumstances, if any, nurse practitioners should be allowed to certify eligibility for the DTC.

. . .

Improving Administrative Practices

The Canada Revenue Agency (CRA) is responsible for the interpretation and administration of the legislation pertaining to the various tax measures for persons with disabilities.

The Technical Advisory Committee made a series of recommendations with respect to further steps for the CRA to take in two areas: the administration of the disability tax credit (DTC) and other tax measures for persons with disabilities; and communications with the community of persons with disabilities and other stakeholders.

Over the last 18 months, the CRA has taken steps in these areas by consulting with persons with disabilities and qualified health practitioners regarding the DTC certification form (Form T2201), resulting in improvements to the form and other related materials. The CRA also conducted similar consultations with respect to letters issued to individuals regarding their eligibility for the DTC.

Making Administrative Improvements

In response to the Committee's recommendations, the CRA will make a number of improvements to the administration of the disability-related tax measures. For example, to ensure consistency and fairness in the application of these measures, the CRA will improve staff education through enhanced training programs and improved methods, work tools, and procedures.

Enhancing Communications

The CRA will continue to improve communications with the community of persons with disabilities and other stakeholders by, for example:

- Revising communications materials to better help persons with disabilities to access the various tax measures available to them.
- Improving awareness of tax measures available to businesses that hire or provide services to persons with disabilities (e.g. full deductibility of capital expenditures to accommodate persons with disabilities).

. . .

New CRA Advisory Committee

As recommended by the Technical Advisory Committee, the CRA will establish a new advisory committee, comprised of community and professional representatives, to advise the Minister of National Revenue on the administration of tax measures for persons with disabilities. This new committee will be established in 2005.

Disability Tax Credit and Canada Pension Plan Disability Beneficiaries

The Technical Advisory Committee noted the low take-up rate of the disability tax credit (DTC) by recipients of the Canada Pension Plan (CPP) disability benefit. As recommended by the Technical Advisory Committee, the Canada Revenue Agency will work with Social Development Canada to:

- Analyze the take-up rate of the DTC by recipients of CPP disability benefits.

- Raise awareness of the DTC among applicants for CPP disability benefits.

Improving Data Collection on Persons with Disabilities

The Technical Advisory Committee noted that there is a lack of detailed statistical information regarding persons with disabilities, and that this has an impact on the effectiveness of current policies in addressing the issues those persons face. To improve the knowledge base in this area, the Committee suggested that, where possible, questions on disability be added to new and existing surveys. The Government has also identified a need for more information on disability-related expenses in its evaluation of the disability tax credit. Accordingly, the budget provides funding of $100,000 per year to Statistics Canada to add questions on disability to the Survey of Household Spending, beginning in 2005-06.

[Table A8.1 in the Budget Supplementary Information estimates that the combined cost of all of the Budget responses to the recommendations of the Technical Advisory Committee will be $25 million in 2004-05, $107m in 2005-06 and 2006-07, $112m in 2007-08 and 2008-09 and $122m in 2009-10 — ed.]

(a.1) the effects of the impairment are such that the individual's ability to perform a basic activity of daily living is markedly restricted or would be markedly restricted but for therapy that

Proposed Amendment — 118.3(1)(a.1) opening words

(a.1) the effects of the impairment or impairments are such that the individual's ability to perform more than one basic activity of daily living is significantly restricted where the cumulative effect of those restrictions is equivalent to having a marked restriction in the ability to perform a basic activity of daily living or are such that the individual's ability to perform a basic activity of daily living is markedly restricted or would be markedly restricted but for therapy that

Application: The August 15, 2005 draft legislation (2005 Budget second bill), subsec. 6(2), will amend the opening words of para. 118.3(1)(a.1) to read as above, applicable to 2005 *et seq.*

Technical Notes: Paragraphs 118.3(1)(a.1) and (a.2) provide various conditions that must be met to be eligible for the DTC.

Paragraph 118.3(1)(a.1), which currently applies only in respect of individuals with severe and prolonged impairments in mental or physical functions who have impairments the effects of which are to markedly restrict an individual's ability to perform a basic activity of daily living (or would be to so markedly restrict the individual's ability to perform a basic activity of daily living but for certain life sustaining therapy) is amended to also apply in respect of individuals with severe and prolonged impairments in mental or physical functions who have significant (but not marked) restrictions in more than one basic activity of daily living, if the cumulative effect of the restrictions is equivalent to having a single marked restriction in one basic activity of daily living.

Federal budget, Notice of Ways and Means Motion and Supplementary Information, February 23, 2005: See under 118.3(1)(a).

(i) is essential to sustain a vital function of the individual,

(ii) is required to be administered at least three times each week for a total duration averaging not less than 14 hours a week, and

(iii) cannot reasonably be expected to be of significant benefit to persons who are not so impaired,

(a.2) in the case of

(i) a sight impairment, a medical doctor or an optometrist,

(i.1) a speech impairment, a medical doctor or a speech-language pathologist,

(ii) a hearing impairment, a medical doctor or an audiologist,

(iii) an impairment with respect to an individual's ability in feeding or dressing themself, or in walking, a medical doctor or an occupational therapist,

(iv) an impairment with respect to an individual's ability in perceiving, thinking and remembering, a medical doctor or a psychologist, and

(v) an impairment not referred to in any of subparagraphs (i) to (iv), a medical doctor

has certified in prescribed form that the impairment is a severe and prolonged mental or physical impairment the effects of which are such that the individual's ability to perform a basic activity of daily living is markedly restricted or would be markedly restricted but for therapy referred to in paragraph (a.1),

Proposed Amendment — 118.3(1)(a.2), (a.3)

(a.2) in the case of an impairment in physical or mental functions the effects of which are such that the individual's ability to perform a single basic activity of daily living is markedly restricted or would be so restricted but for therapy referred to [in] paragraph (a.1), a medical practitioner has certified in prescribed form that the impairment is a severe and prolonged impairment in physical or mental functions the effects of which are such that the individual's ability to perform a basic activity of daily living is markedly restricted or would be markedly restricted, but for therapy referred to in paragraph (a.1), where the medical practitioner is a medical doctor or, in the case of

(i) a sight impairment, an optometrist,

(ii) a speech impairment, a speech-language pathologist,

(iii) a hearing impairment, an audiologist,

(iv) an impairment with respect to an individual's ability in feeding or dressing themself, an occupational therapist,

(v) an impairment with respect to an individual's ability in walking, an occupational therapist, or after February 22, 2005, a physiotherapist, and

(vi) an impairment with respect to an individual's ability in mental functions necessary for everyday life, a psychologist,

(a.3) in the case of one or more impairments in physical or mental functions the effects of which are such that the individual's ability to perform more than one basic activity of daily living is significantly restricted, a medical practitioner has certified in prescribed form that the impairment or impairments are severe and prolonged impairments in physical or mental functions the effects of which are such that the individual's ability to perform more than one basic activity of daily living is significantly restricted and that the cumulative effect of those restrictions is equivalent to having a marked restriction in the ability to perform a single basic activity of daily living, where the medical practitioner is, in the case of

(i) an impairment with respect to the individual's ability in feeding or dressing themself, or in walking, a medical doctor or an occupational therapist, and

(ii) in the case of any other impairment, a medical doctor,

Application: The August 15, 2005 draft legislation (2005 Budget second bill), subsec. 6(3), will amend para. 118.3(1)(a.2) to read as above and add para. (a.3), applicable to 2005 *et seq.*

Technical Notes: Paragraph 118.3(1)(a.2) sets out the types of medical practitioners that are eligible to certify the effects of various impairments. Paragraph 118.3(1)(a.2) is amended to apply only in respect of individuals with severe and prolonged impairments in mental or physical functions who have impairments the effects of which are to markedly restrict an individual's ability to perform a basic activity of daily living (or would be to markedly restrict the individual's ability to perform a basic activity of daily living but for certain life supporting therapy) and to allow physiotherapists to certify a marked restriction in walking for the purposes of determining eligibility for the DTC.

The medical practitioners that can certify severe and prolonged impairments in mental or physical functions the effects of which are significant (but not marked) restrictions in more than one basic activity of daily living, if the cumulative effect of the restrictions is equivalent to having a single marked restriction in one basic activity of daily living, are set out in new paragraph 118.3(1)(a.3).

New paragraph 118.3(1)(a.3) is added with respect to the certification of eligibility for the DTC as a result of the cumulative effects of multiple restrictions (i.e., severe and prolonged impairments in mental or physical functions the effects of which are significant (but not marked) restrictions in more than one basic activity of daily living, if the cumulative effect of the restrictions is equivalent to having a single marked restriction in one basic activity of daily living). A medical doctor must make such certifications, unless the multiple restrictions pertain only to walking, feeding, or dressing, in which case certification may also be made by an occupational therapist.

These amendments apply to the 2005 and subsequent taxation years except that, in the case of certifications made by a physiotherapist, the amendment applies only to certifications made after February 22, 2005.

Federal budget, Notice of Ways and Means Motion and Supplementary Information, February 23, 2005: See under 118.3(1)(a).

(b) the individual has filed for a taxation year with the Minister the certificate described in paragraph (a.2), and

(c) no amount in respect of remuneration for an attendant or care in a nursing home, in respect of the individual, is included in calculating a deduction under section 118.2 (otherwise than because of paragraph 118.2(2)(b.1)) for the year by the individual or by any other person,

there may be deducted in computing the individual's tax payable under this Part for the year the amount determined by the formula

$$A \times (B + C)$$

where

A is the appropriate percentage for the year,

B is $6,000, and

C is

(a) where the individual has not attained the age of 18 years before the end of the year, the amount, if any, by which

(i) $3,500

exceeds

(ii) the amount, if any, by which

(A) the total of all amounts each of which is an amount paid in the year for the care or supervision of the individual and included in computing a deduction under section 63, 64 or 118.2 for a taxation year

exceeds

(B) $2,050, and

(b) in any other case, zero.

Related Provisions: 6(16) — Non-taxable disability-related employment benefits; 64 — Disability supports deduction for attendant care and other expenses; 108(1) — Preferred beneficiary election available after 1995 only to beneficiary with severe and prolonged impairment; 117.1(1) — Indexing for inflation; 118.2 — Credit for medical expenses; 118.3(1.1) — Determining time spent on therapy; 118.3(4) — Additional information requested by CRA; 118.4(1) — Meaning of severe and prolonged impairment; 118.4(2) — Reference to medical practitioner; 118.6(3) — Education credit for disabled individuals; 118.8 — Transfer of unused credits to spouse; 118.91 — Individual resident in Canada for part of the year; 118.92 — Ordering of credits; 118.93 — Credits in separate returns; 118.94 — Computing tax payable by a non-resident individual; 118.95(b) — Application in year individual becomes bankrupt.

History: Subpara. 118.3(1)(a.2)(iii) amended by 2003, c. 15, subsec. 74(1), applicable to 2003 *et seq.* Subpara. (a.2)(iii) formerly read:

(iii) an impairment with respect to an individual's ability in feeding and dressing themself, or in walking, a medical doctor or an occupational therapist,

Para. 118.3(1)(a.1) amended by 2001, c. 17, subsec. 96(2), applicable to 2000 *et seq.* Para. (a.1) formerly read:

(a.1) the effects of the impairment are such that the individual's ability to perform a basic activity of daily living is markedly restricted,

Subpara. 118.3(1)(a.2)(i.1) added by the said c. 17, subsec. 96(4), applicable to certifications made after October 17, 2000.

The closing words of para. 118.3(1)(a.2) amended by the said c. 17, subsec. 96(5), applicable to 2000 *et seq.*, to add "or would be markedly restricted but for therapy referred to in paragraph (a.1)".

The portion of subsec. 118.3(1) after para. (c) amended by the said c. 17, subsec. 96(6), applicable to 2000 *et seq.*, except that, in its application to 2000, the references to "$6,000", "$3,500" and "$2,050" in the descriptions of B and C in the formula, as amended, shall be read as references to "$4,293", "$2,941" and "$2,000", respectively. That portion formerly read:

for the purposes of computing the tax payable under this Part by the individual for the year, there may be deducted an amount determined by the formula

$$A \times \$4,118^{25}$$

where

A is the appropriate percentage for the year.

Subpara. 118.3(1)(a.2)(iii) renumbered as subpara. (v) and amended, and subparas. (iii) and (iv) added, by 1999, c. 22, subsec. 35(1), applicable to certifications made after February 24, 1998 Subpara. (iii) formerly read:.

(iii) an impairment not referred to in subparagraph (i) or (ii), a medical doctor

Para. 118.3(1)(a.2) amended by 1998, c. 19, s. 24, applicable to certifications made after February 18, 1997. Para. 118.3(1)(a.2) formerly read:

(a.2) a medical doctor, or where the impairment is an impairment of sight, a medical doctor or an optometrist, has certified in prescribed form that the individual has a severe and prolonged mental or physical impairment the effects of which are such that the individual's ability to perform a basic activity of daily living is markedly restricted,

Subsec. 118.3(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 90(1), (3), applicable to 1991 *et seq.* Subsec. 118.3(1) formerly read:

118.3 (1) Where

(a) an individual has a severe and prolonged mental or physical impairment that has been certified as such in prescribed form by a medical practitioner or, where the impairment is an impairment of sight, by a medical practitioner or an optometrist,

(b) the individual has filed for a taxation year with the Minister the certificate described in paragraph (a), and

(c) no amount in respect of remuneration for an attendant, or care in a nursing home, by reason of the mental or physical impairment of the individual is included in calculating a deduction under subsection 118.2(1) for the year by the individual or by any other person,

[25] Indexed by s. 117.1 after 1991 — ed.

for the purposes of computing the tax payable under this Part by the individual for the year, there may be deducted an amount determined by the formula

$$A \times \$3,236^{19}$$

where

A is the appropriate percentage for the year.

Selected Cases [subsec. 118.3(1)]: *Froese v. R.*, [1998] 3 C.T.C. 2237 (TCC) (Erroneous tick-mark by doctor not conclusive); *Lowe v. Canada*, [1995] 1 C.T.C. 2392 (TCC) (Colostomate did not qualify for credit); *Brookshaw v. Canada*, [1994] 2 C.T.C. 2360 (TCC) (Crohn's disease qualified for credit).

Interpretation Bulletins: IT-394R2: Preferred beneficiary election; IT-495R3: Child care expenses. See also at end of s. 118.3.

Information Circulars: 92-3: Guidelines for refunds beyond the normal three year period.

Forms: RC4064: Information concerning people with disabilities [guide]; T2201: Disability tax credit information.

Proposed Addition — 118.3(1.1)

(1.1) Time spent on therapy — For the purpose of paragraph 118.3(1)(a.1), in determining whether therapy is required to be administered at least three times each week for a total duration averaging not less than an average of 14 hours a week, the time spent on administering therapy

(a) includes only time spent on activities that require the individual to take time away from normal everyday activities in order to receive the therapy,

(b) in the case of therapy that requires a regular dosage of medication that is required to be adjusted on a daily basis, includes (subject to paragraph (d)) time spent on activities that are directly related to the determination of the dosage of the medication,

(c) in the case of a child who is unable to perform the activities related to the administration of the therapy as a result of the child's age, includes the time, if any, spent by the child's primary caregivers performing or supervising those activities for the child, and

(d) does not include time spent on activities related to dietary or exercise restrictions or regimes (even if these restrictions or regimes are a factor in determining the daily dosage of medication), travel time, medical appointments, shopping for medication or recuperation after therapy.

Application: The August 15, 2005 draft legislation (2005 Budget second bill), subsec. 6(4), will add subsec. 118.3(1.1), applicable to 2005 *et seq.*

Technical Notes: Subsection 118.3(1)(a.1) extends eligibility for the DTC to individuals who would be markedly restricted in their ability to perform a basic activity of daily living but for therapy administered to them, at least three times each week for a total duration averaging not less than 14 hours per week, in order to sustain one of their vital functions. The purpose of these provisions, which are generally referred to as the life-sustaining therapy provisions, is to allow individuals to be eligible for the DTC if, but for life-sustaining therapy that requires them to dedicate a significant amount of time away from their normal, everyday activities to receive the therapy, they would have impairments the effects of which would markedly restrict their ability to perform a basic activity of daily living. In its report, the Technical Advisory Committee raised concerns as to what activities constitute therapy under the DTC provisions.

In response to the committee's concerns, new subsection 118.3(1.1) is added to the Act to define the activities that will be included in determining time spent receiving therapy for the purpose of paragraph 118.3(1)(a.1). Specifically, new subsection 118.3(1.1) specifies that the time spent on administering therapy

- includes only time dedicated to the therapy — that is, the individual has to take time away from normal, everyday activities in order to receive the therapy,
- includes, in the case of therapy that requires a regular dosage of medication that needs to be adjusted on a daily basis, the activities directly involved in determining the appropriate dosage, but does not include time spent on activities related to a dietary or exercise restrictions or regime (even if these restrictions or regimes are a factor in determining the daily dosage of medication),
- does not include travel time, medical appointments, shopping for medication or recuperation after therapy, and
- includes, in the case of a child who is unable to perform the activities related to the therapy as a result of the child's age, the time spent by the child's primary caregivers (usually the parents) in performing or supervising these activities for the child.

With these proposed changes, it is expected that children with very severe cases of Type 1 diabetes — who require many insulin injections (which requires knowledge of current blood sugar levels at the time of each injection), as well as several additional blood sugar tests to monitor their condition — will become eligible for the DTC.

The life-sustaining therapy provisions, in and of themselves, do not extend eligibility for the DTC to individuals who receive therapy in a manner that does not significantly affect their everyday activities (for example, by means of a portable or implanted device).

Federal budget, Notice of Ways and Means Motion and Supplementary Information, February 23, 2005: See under 118.3(1)(a).

(2) Dependant having impairment — Where

(a) an individual has, in respect of a person (other than a person in respect of whom the person's spouse or common-law partner deducts for a taxation year an amount under section 118 or 118.8) who is resident in Canada at any time in the year and who is entitled to deduct an amount under subsection (1) for the year,

(i) claimed for the year a deduction under subsection 118(1) because of

(A) paragraph (b) of the description of B in that subsection, or

(B) paragraph (c.1) or (d) of that description where the person is a parent, grandparent, child, grandchild, brother, sister, aunt, uncle, nephew or niece of the individual, or of the individual's spouse or common-law partner, or

(ii) could have claimed for the year a deduction referred to in subparagraph (i) in respect of the person if

(A) the person had no income for the year and had attained the age of 18 years before the end of the year, and

(B) in the case of a deduction referred to in clause (i)(A), the individual were not married or not in a common-law partnership, and

(b) no amount in respect of remuneration for an attendant, or care in a nursing home, because of that person's mental or physical impairment, is included in calculating a deduction under section 118.2 (otherwise than under paragraph 118.2(2)(b.1)) for the year by the individual or by any other person,

[19] Indexed by s. 117.1 after 1998 — ed.

there may be deducted, for the purpose of computing the tax payable under this Part by the individual for the year, the amount, if any, by which

(c) the amount deductible under subsection (1) in computing that person's tax payable under this Part for the year

exceeds

(d) the amount of that person's tax payable under this Part for the year computed before any deductions under this Division (other than sections 118 and 118.7).

Related Provisions: 63(1)(e)(ii)(A)(II), 63(2)(b)(i)(B), 63(3)"child care expense"(c)(i)(B) — Higher child care expenses deduction for disabled child over 7; 118.3(4) — Additional information requested by CRA; 118.8 — Transfer of disability credit to spouse; 118.91 — Individual resident in Canada for part of the year; 118.92 — Ordering of credits; 118.93 — Credits in separate returns; 118.94 — Computing tax payable by a non-resident individual; 118.95(b) — Application in year individual becomes bankrupt.

History: Cl. 118.3(2)(a)(i)(B) amended by 2001, c. 17, subsec. 96(7), applicable to 2000 *et seq.* The clause formerly read:

(B) paragraph (c.1) or (d) of that description where the person is the individual's parent, grandparent, child or grandchild, or

Cl. 118.3(2)(a)(ii)(B) amended by 2000, c. 12, s. 132, applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner". The clause formerly read:

(B) in the case of a deduction referred to in clause (i)(A), the individual were not married, and

Para. 118.3(2)(a) amended by 1999, c. 22, subsec. 35(2), applicable to 1998 *et seq.* The para. formerly read:

(a) an individual has, in respect of a person (other than a person in respect of whom the person's spouse deducts for the year an amount under section 118 or 118.8) who is resident in Canada at any time in a taxation year and who is entitled to deduct an amount under subsection (1) for the year, claimed for the year a deduction under subsection 118(1) because of

(i) paragraph (b) of the description of B in subsection 118(1), or

(ii) paragraph (d) of the description of B in subsection 118(1) where that person is the individual's child or grandchild,

or, where that person is the individual's parent, grandparent, child or grandchild, could have claimed such a deduction if the individual were not married and that person had no income for the year and had attained the age of 18 years before the end of the year, and

Subparas. 118.3(2)(a)(i) and (ii) amended by 1997, c. 25, s. 27, applicable April 25, 1997. Subparas. (a)(i) and (ii) formerly read:

(i) paragraph 118(1)(b), or

(ii) paragraph 118(1)(d) where that person is the individual's child or grandchild,

The closing words of para. 118.3(2)(a) substituted by 1994, c. 21, s. 53, applicable to 1993 *et seq.* The closing words formerly read:

or, where that person is the individual's parent, grandparent, child or grandchild, could have claimed such a deduction if the individual were not married and that person had no income for the year, and

Para. 118.3(2)(b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 55, applicable to 1991 *et seq.* Para. (b) formerly read:

(b) no amount in respect of remuneration for an attendant, or care in a nursing home, by reason of that person's mental or physical impairment, is included in calculating a deduction under subsection 118.2(1) for the year by the individual or by any other person,

That portion of para. 118.3(2)(a) preceding subpara. (i) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 90(2), applicable to 1988 *et seq.* That portion formerly read:

(a) an individual has, in respect of a person who is resident in Canada at any time in a taxation year and who is entitled to deduct an amount under subsection (1) for the year, claimed for the year a deduction under subsection 118(1) by reason of

Interpretation Bulletins: See list at end of 118.3.

Information Circulars: 92-3: Guidelines for refunds beyond the normal three year period.

Forms: RC4064: Information concerning people with disabilities [guide].

(3) Partial dependency — Where more than one individual is entitled to deduct an amount under subsection (2) for a taxation year in respect of the same person, the total of all amounts so deductible for the year shall not exceed the maximum amount that would be deductible under that subsection for the year by an individual in respect of that person if that individual were the only individual entitled to deduct an amount under that subsection in respect of that person, and where the individuals cannot agree as to what portion of the amount each can deduct, the Minister may fix the portions.

(4) Additional information — Where a claim under this section or under section 118.8 is made in respect of an individual's impairment

(a) if the Minister requests in writing information with respect to the individual's impairment, its effects on the individual and, where applicable, the therapy referred to in paragraph (1)(a.1) that is required to be administered, from any person referred to in subsection (1) or (2) or section 118.8 in connection with such a claim, that person shall provide the information so requested to the Minister in writing; and

(b) if the information referred to in paragraph (a) is provided by a person referred to in paragraph (1)(a.2), the information so provided is deemed to be included in a certificate in prescribed form.

Related Provisions: 162(7) — Penalty for failure to comply with request for information.

History [subsec. 118.3(4)]: Subsec. 118.3(4) amended by 2001, c. 17, subsec. 96(8), applicable to 2000 *et seq.* Subsec. 118.3(4) formerly read:

(4) Department of Human Resources Development — The Minister may obtain the advice of the Department of Human Resources Development as to whether an individual in respect of whom an amount has been claimed under subsection (1) or (2) has a severe and prolonged impairment, the effects of which are such that the individual's ability to perform a basic activity of daily living is markedly restricted, and any person referred to in subsection (1) or (2) shall, on request in writing by that Department for information with respect to an individual's impairment and its effects on the individual, provide the information so requested.

Subsec. 118.3(4) amended by 1996, c. 11, para. 97(1)(e), to substitute "Department of Human Resources Development" for "Department of National Health and Welfare", in force July 12, 1996.

Subsec. 118.3(4) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 90(3), applicable to 1991 *et seq.*

Selected Cases [s. 118.3]: *Jasper v. R.*, [2003] 2 C.T.C. 2492 (TCC) (Doctor's testimony explained shortcomings in signed certificate); *Buchanan v. R.*, [2002] 3 C.T.C. 301 (FCA) (Medical certificate may be ignored or treated as positive if doctor misinterprets the law); *MacIsaac v. R.*, [2000] 1 C.T.C. 307 (FCA) (Provision of prescribed form is mandatory, not merely directory); *Radage v. Canada*, [1996] 3 C.T.C. 2510 (TCC) (Provisions to be construed liberally, humanely and compassionately, not narrowly and technically, without ignoring narrowness of statutory language); *Noseworthy v. Canada*, [1996] 2 C.T.C. 2006 (TCC) (Inability to get out of bed interfered with ordinary course of life).

Definitions [s. 118.3]: "amount" — 248(1); "appropriate percentage" — 248(1); "audiologist" — 118.4(2); "aunt" — 252(2)(e); "basic activity of daily living" — 118.4(1)(c), (d); "brother" — 252(2)(b); "Canada" — 255; "child" — 252(1); "common-law partner", "common-law partnership" — 248(1); "dressing" — 118.4(1)(f); "feeding" — 118.4(1)(e); "grandparent" — 252(2)(d); "individual" — 248(1); "markedly restricted" — 118.4(1)(b); "medical doctor" — 118.4(2); "Minister" — 248(1); "nephew", "niece" — 252(2)(g); "occupational therapist" — 118.4(2); "optometrist" — 118.4(2); "parent" — 252(2)(a); "person", "prescribed" — 248(1); "prolonged" — 118.4(1)(a); "psychologist" — 118.4(2); "resident in Canada" — 250; "sister" — 252(2)(c); "speech-language pathologist" — 118.4(2); "taxation year" — 249; "uncle" — 252(2)(e); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [s. 118.3]: IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits (archived); IT-326R3: Returns of deceased persons as "an-

other person"; IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-495R3: Child care expenses; IT-516R2: Tuition tax credit; IT-519R2: Medical expense and disability tax credits and attendant care expense deduction.

Forms [s. 118.3]: T929: Disability supports deduction; T2201: Disability tax credit certificate; T2201A: Disability tax credit questionnaire.

118.4 (1) Nature of impairment — For the purposes of subsection 6(16), sections 118.2 and 118.3 and this subsection,

(a) an impairment is prolonged where it has lasted, or can reasonably be expected to last, for a continuous period of at least 12 months;

(b) an individual's ability to perform a basic activity of daily living is markedly restricted only where all or substantially all of the time, even with therapy and the use of appropriate devices and medication, the individual is blind or is unable (or requires an inordinate amount of time) to perform a basic activity of daily living;

Proposed Addition — 118.4(1)(b.1)

(b.1) an individual is considered to have the equivalent of a marked restriction in a basic activity of daily living only where all or substantially all of the time, even with therapy and the use of appropriate devices and medication, the individual's ability to perform more than one basic activity of daily living (including for this purpose, the ability to see) is significantly restricted, and the cumulative effect of those restrictions is tantamount to the individual's ability to perform a basic activity of daily living being markedly restricted;

Application: The August 15, 2005 draft legislation (2005 Budget second bill), subsec. 7(1), will add para. 118.4(1)(b.1), applicable to 2005 *et seq.*

Technical Notes: Section 118.4 sets out circumstances in which an individual is considered to have a severe and prolonged impairment for the purposes of the DTC.

Based on the advice of the Technical Advisory Committee, eligibility for the DTC is extended to individuals with severe and prolonged impairments in mental or physical functions who have significant restrictions in more than one basic activity of daily living if the cumulative effect of their restrictions is equivalent to having a single marked restriction in one basic activity of daily living.

New paragraph 118.4(b.1) describes the circumstances where an individual with significant restrictions in more than one basic activity of daily living will be considered to have the equivalent of a single marked restriction. Such an individual will be considered to have the equivalent of a marked restriction in a basic activity of daily living only where, even with therapy and the use of appropriate devices and medication, the individual's ability to perform more than one basic activity of daily living is significantly restricted. These multiple restrictions, taken together, must be present all or substantially all of the time. In other words, while each of these restrictions on its own would not markedly restrict a specific basic activity of daily living, when taken together, the restrictions must have an effect equivalent to that of a marked restriction in a single activity. While not a basic activity of daily living, a visual impairment that cannot be mitigated by means of eyeglasses or other visual aids will be considered in conjunction with restrictions in the other basic activities of daily living in determining the cumulative effects of one or more impairments.

An example of an individual who could become eligible for the DTC under this change is someone with multiple sclerosis who continuously experiences fatigue, depressed mood and balance problems.

Federal budget, Notice of Ways and Means Motion and Supplementary Information, February 23, 2005: See under 118.3(1)(a).

(c) a basic activity of daily living in relation to an individual means

(i) perceiving, thinking and remembering,

Proposed Amendment — 118.4(1)(c)(i)

(i) mental functions necessary for everyday life;

Application: The August 15, 2005 draft legislation (2005 Budget second bill), subsec. 7(2), will amend para. 118.4(1)(c) to read as above, applicable to 2005 *et seq.*

Technical Notes: Individuals with severe impairments in mental functions are eligible for the disability tax credit (DTC) if they have a marked restriction in "perceiving, thinking and remembering," which is one of the basic activities of daily living. The Technical Advisory Committee noted that the language currently used by the Canada Revenue Agency on Form T2201, Disability Tax Credit Certificate, to explain the meaning of "perceiving, thinking and remembering" provides a clearer description of the effects of impairments in mental functions. Accordingly, paragraph 118.4(1)(c) is amended to replace the expression "perceiving, thinking and remembering" with the expression "mental functions necessary for everyday life".

Federal budget, Notice of Ways and Means Motion and Supplementary Information, February 23, 2005: See under 118.3(1)(a).

(ii) feeding oneself or dressing oneself,

Selected Cases [subpara. 118.4(1)(c)(ii)]: *Mercier v. R.*, [1998] 2 C.T.C. 2610 (TCC) ("And" should be read as "or").

(iii) speaking so as to be understood, in a quiet setting, by another person familiar with the individual,

(iv) hearing so as to understand, in a quiet setting, another person familiar with the individual,

(v) eliminating (bowel or bladder functions), or

(vi) walking;

Proposed Addition — 118.4(1)(c.1)

(c.1) mental functions necessary for everyday life include

(i) memory,

(ii) problem solving, goal-setting and judgement (taken together), and

(iii) adaptive functioning;

Application: The August 15, 2005 draft legislation (2005 Budget second bill), subsec. 7(3), will add para. 118.4(1)(c.1), applicable to 2005 *et seq.*

Technical Notes: New paragraph 118.4(1)(c.1) is added to the Act, for greater certainty, to define mental functions necessary for everyday life. These mental functions include

- memory — which refers to the ability to remember the following: simple instructions; basic personal information such as name and address; or material of importance or interest,
- problem-solving, goal-setting and judgement (taken together) — which refers to the ability to solve problems, set and keep goals, and make appropriate decisions and judgements, and
- adaptive functioning — which refers to abilities related to self-care, health and safety, social skills and common, simple transactions.

Federal budget, Notice of Ways and Means Motion and Supplementary Information, February 23, 2005: See under 118.3(1)(a).

(d) for greater certainty, no other activity, including working, housekeeping or a social or recreational activity, shall be considered as a basic activity of daily living;

(e) feeding oneself does not include

(i) any of the activities of identifying, finding, shopping for or otherwise procuring food, or

(ii) the activity of preparing food to the extent that the time associated with the activity would not have been necessary in the absence of a dietary restriction or regime; and

(f) dressing oneself does not include any of the activities of identifying, finding, shopping for or otherwise procuring clothing.

History: Subpara. 118.4(1)(c)(ii) amended, paras. (e) and (f) added, by 2003, c. 15, subsecs. 75(1), (2), applicable to 2003 *et seq*. Subpara. (c)(ii) formerly read:

(ii) feeding and dressing oneself,

Subsec. 118.4(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 91, applicable to 1991 *et seq*. Subsec. 118.4(1) formerly read:

118.4 (1) For the purposes of sections 63, 118.2 and 118.3,

(a) a person shall be considered to have a severe and prolonged impairment only if by reason thereof the person is markedly restricted in the person's activities of daily living and the impairment has lasted or can reasonably be expected to last for a continuous period of at least 12 months; and

(b) the Minister may obtain the advice of the Department of National Health and Welfare as to whether a person has a severe and prolonged impairment.

Interpretation Bulletins: IT-326R3: Returns of deceased persons as "another person"; IT-519R2: Medical expense and disability tax credits and attendant care expense deduction.

(2) Reference to medical practitioners, etc. — For the purposes of sections 63, 118.2, 118.3 and 118.6, a reference to an audiologist, dentist, medical doctor, medical practitioner, nurse, occupational therapist, optometrist, pharmacist, psychologist or speech-language pathologist is a reference to a person authorized to practise as such,

Proposed Amendment — 118.4(2) opening words

Application: The August 15, 2005 draft legislation (2005 Budget second bill), subsec. 7(4), will amend the opening words of subsec. 118.4(2) to add a reference to s. 64 applicable to 2004 *et seq*., and "physiotherapist" applicable after February 22, 2005.

Technical Notes: Subsection 118.4(2) provides a definition of the group of health professionals to whom various references in section 63 (relating to childcare expenses), section 118.2 (referring to medical expenses) section 118.3 (relating to the DTC) and section 118.6 (relating to the education tax credit) apply.

This provision is amended as a consequence of the introduction of section 64 — the disability supports deduction, applicable to the 2004 and subsequent taxation years.

This provision is further amended, applicable after February 22, 2005, consequential to the amendment to paragraph 118.3(1)(a.2) which makes a physiotherapist eligible to certify, after that date, a severe and prolonged impairment in walking.

Federal budget, Notice of Ways and Means Motion and Supplementary Information, February 23, 2005: See under 118.3(1)(a).

(a) where the reference is used in respect of a service rendered to a taxpayer, pursuant to the laws of the jurisdiction in which the service is rendered;

(b) where the reference is used in respect of a certificate issued by the person in respect of a taxpayer, pursuant to the laws of the jurisdiction in which the taxpayer resides or of a province; and

(c) where the reference is used in respect of a prescription issued by the person for property to be provided to or for the use of a taxpayer, pursuant to the laws of the jurisdiction in which the taxpayer resides, of a province or of the jurisdiction in which the property is provided.

History [subsec. 118.4(2)]: The opening words of subsec. 118.4(2) amended by 2001, c. 17, s. 97, to substitute "psychologist or speech-language pathologist" for "or psychologist", applicable to certifications made after October 17, 2000.

The opening words of subsec. 118.4(2) amended by 1999, c. 22, s. 36, applicable after February 24, 1998. The opening words formerly read:

(2) For the purposes of sections 63, 118.2 and 118.3, a reference to an audiologist, dentist, medical doctor, medical practitioner, nurse, optometrist or pharmacist is a reference to a person authorized to practice as such

The opening words of subsec. 118.4(2) amended by 1998, c. 19, subsec. 25(1), applicable to taxation years that end after November 1991 except that the reference to "an audiologist" is applicable after February 18, 1997. The opening words formerly read:

(2) For the purposes of sections 63, 118.2 and 118.3, a reference to a medical practitioner, dentist, pharmacist, nurse or optometrist is a reference to a person authorized to practice as such,

Selected Cases [s. 118.4]: *Buchanan v. R.*, [2002] 3 C.T.C. 301 (FCA) (Medical certificate may be ignored or treated as positive if doctor misinterprets the law); *Radage v. Canada*, [1996] 3 C.T.C. 2510 (TCC) (Provisions to be contrued liberally, humanely and compassionately, not narrowly and technically, without ignoring narrowness of statutory language); *Noseworthy v. Canada*, [1996] 2 C.T.C. 2006 (TCC) (Inability to get out of bed interfered with ordinary course of life).

Definitions [s. 118.4]: "basic activity of daily living" — 118.4(1)(c), (d); "dressing" — 118.4(1)(f); "feeding" — 118.4(1)(e); "individual" — 248(1); "mental functions necessary for everyday life" — 118.4(1)(c.1); "Minister", "person", "property" — 248(1); "province" — *Interpretation Act* 35(1); "taxpayer" — 248(1).

Forms [s. 118.4]: T2201: Disability tax credit information.

118.5 (1) Tuition credit — For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted,

(a) **[institution in Canada]** — where the individual was during the year a student enrolled at an educational institution in Canada that is

(i) a university, college or other educational institution providing courses at a post-secondary school level, or

(ii) certified by the Minister of Human Resources Development to be an educational institution providing courses, other than courses designed for university credit, that furnish a person with skills for, or improve a person's skills in, an occupation,

Proposed Amendment — 118.5(1)(a)(ii)

Application: S.C. 2005, c. 34 (Bill C-23, Royal Assent July 20, 2005), subpara. 80(f)(i), amended subpara. 118.5(1)(a)(ii) to replace "Minister of Human Resources Development" with "Minister of Human Resources and Skills Development", in force on a day to be proclaimed by the Governor in Council.

an amount equal to the product obtained when the appropriate percentage for the year is multiplied by the amount of any fees for the individual's tuition paid in respect of the year to the educational institution if the total of those fees exceeds $100,[22] except to the extent that those fees

(ii.1) are paid to an educational institution described in subparagraph (i) in respect of courses that are not at the post-secondary school level,

(ii.2) are paid to an educational institution described in subparagraph (ii) if

(A) the individual had not attained the age of 16 years before the end of the year, or

(B) the purpose of the individual's enrolment at the institution cannot reasonably be regarded as being to provide the individual with skills, or to improve the individual's skills, in an occupation,

[22]Not indexed for inflation.

(iii) are paid on the individual's behalf by the individual's employer and are not included in computing the individual's income,

Proposed Amendment — 118.5(1)(a)(iii)

(iii) are paid on behalf of, or reimbursed to, the individual by the individual's employer and the amount paid or reimbursed is not included in the individual's income,

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 109, will amend subpara. 118.5(1)(a)(iii) to read as above, in force on Royal Assent.

Technical Notes: Subsection 118.5(1) provides a tax credit in respect of tuition fees paid to certain educational institutions. Subparagraph 118.5(1)(a)(iii) provides that an amount paid on behalf of an individual by the individual's employer is not eligible for the credit unless the amount is required to be included in computing the individual's income. Subparagraph 118.5(1)(a)(iii) is amended, applicable on Royal Assent, to clarify that an amount paid by the individual, for which the individual is reimbursed by the individual's employer, is also not eligible for the credit unless the reimbursement is required to be included in computing the individual's income.

(iii.1) are fees in respect of which the individual is or was entitled to receive a reimbursement or any form of assistance under a program of Her Majesty in right of Canada or a province designed to facilitate the entry or re-entry of workers into the labour force, where the amount of the reimbursement or assistance is not included in computing the individual's income,

(iv) were included as part of an allowance received by the individual's parent on the individual's behalf from an employer and are not included in computing the income of the parent by reason of subparagraph 6(1)(b)(ix), or

(v) are paid on the individual's behalf, or are fees in respect of which the individual is or was entitled to receive a reimbursement, under a program of Her Majesty in right of Canada designed to assist athletes, where the payment or reimbursement is not included in computing the individual's income;

Related Provisions: See Related Provisions at end of s. 118.5.

History: Subpara. 118.5(1)(a)(v) added by 1998, c. 19, s. 135, applicable to 1994 *et seq.*

Subpara. 118.5(1)(a)(ii) amended by 1996, c. 11, para. 95(h), to substitute "Minister of Human Resources Development" for "Minister of National Health and Welfare", in force July 12, 1996.

That portion of para. 118.5(1)(a) between subparas. (ii) and (iii) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 56, applicable to 1992 *et seq.* That portion formerly read:

> an amount equal to the product obtained when the appropriate percentage for the year is multiplied by the amount of any fees for the individual's tuition paid in respect of the year to the educational institution if the total of those fees exceeds $100 and, in the case of an educational institution described in subparagraph (ii), the individual is enrolled therein to obtain skills for, or improve the individual's skills in, an occupation, except to the extent that those fees

Subpara. 118.5(1)(a)(iii.1) added by 1994, c. 7, Sch. II (1991, c. 49), s. 92, applicable to 1988 *et seq.*

Interpretation Bulletins: IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits (archived); IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-470R: Employees' fringe benefits; IT-516R2: Tuition tax credit.

Information Circulars: 75-23: Tuition fees and charitable donations paid to privately supported secular and religious schools; 92-3: Guidelines for refunds beyond the normal three year period.

Forms: T2202A: Tuition and education amounts certificate; TL11B: Tuition fees certificate — Flying school or club.

(b) **[university outside Canada]** — where the individual was during the year a student in full-time attendance at a university outside Canada in a course leading to a degree, an amount equal to the product obtained when the appropriate percentage for the year is multiplied by the amount of any fees for the individual's tuition paid in respect of the year to the university, except any such fees

(i) paid in respect of a course of less than 13 consecutive weeks duration,

(ii) paid on the individual's behalf by the individual's employer to the extent that the amount of the fees is not included in computing the individual's income, or

(iii) paid on the individual's behalf by the employer of the individual's parent, to the extent that the amount of the fees is not included in computing the income of the parent by reason of subparagraph 6(1)(b)(ix); and

Related Provisions: See Related Provisions at end of 118.5.

Selected Cases [para. 118.5(1)(b)]: *Fayle v. R.*, [2005] 1 C.T.C. 2840 (TCC) (Despite same number of hours as 13-week course, 6-week course did not qualify); *R. v. Gaudet*, [1978] C.T.C. 686 (FCA) (Seven hours per week in classes in "qualifying educational program" and 10 hours per week preparing therefor not "full time").

Interpretation Bulletins: IT-516R2: Tuition tax credit.

Forms: T2202A: Tuition and education amounts certificate; TL11A: Tuition fees certificate — University outside Canada.

(c) **[cross-border commuter]** — where the individual resided throughout the year in Canada near the boundary between Canada and the United States if the individual

(i) was at any time in the year a student enrolled at an educational institution in the United States that is a university, college or other educational institution providing courses at a post-secondary school level, and

(ii) commuted to that educational institution in the United States,

an amount equal to the product obtained when the appropriate percentage for the year is multiplied by the amount of any fees for the individual's tuition paid in respect of the year to the educational institution if those fees exceed $100, except to the extent that those fees

(iii) are paid on the individual's behalf by the individual's employer and are not included in computing the individual's income, or

(iv) were included as part of an allowance received by the individual's parent on the individual's behalf from an employer and are not included in computing the income of the parent by reason of subparagraph 6(1)(b)(ix).

Related Provisions: See Related Provisions at end of 118.5.

Selected Cases [subsec. 118.5(1)]: *Friedland v. R.*, [2000] 1 C.T.C. 2938 (TCC) (No educational institution; fees not deductible); *Gilbert v. R.*, [1999] 2 C.T.C. 2127 (TCC) (Foreign institutions must be degree-granting for tuition to be deductible); *Edwards v. R.*, [1998] 4 C.T.C. 2906 (TCC) (Onus on Minister to show school not certified).

Interpretation Bulletins: IT-75R4: Scholarships, fellowships, bursaries, prizes, research grants and financial assistance; IT-516R2: Tuition tax credit.

I.T. Technical News: 13 (employer-paid educational costs).

Forms: T2202A: Tuition and education amounts certificate; TL11C: Tuition fees certificate — Commuter to United States.

(2) Application to deemed residents — Where an individual is deemed by section 250 to be resident in Canada throughout all or part of a taxation year, in applying subsection (1) in respect of the individual for the period when the individual is so deemed to be resident in Canada, paragraph (1)(a) shall be read without reference to the words "in Canada".

Forms: TL11D: Tuition fees certificate — educational institutions outside Canada for a deemed resident of Canada.

(3) Inclusion of ancillary fees and charges — For the purpose of this section, "fees for an individual's tuition" includes ancillary fees and charges that are paid

(a) to an educational institution referred to in subparagraph (1)(a)(i), and

(b) in respect of the individual's enrolment at the institution in a program at a post-secondary school level,

but does not include

(c) any fee or charge to the extent that it is levied in respect of

(i) a student association,

(ii) property to be acquired by students,

(iii) services not ordinarily provided at educational institutions in Canada that offer courses at a post-secondary school level,

(iv) the provision of financial assistance to students, except to the extent that, if the reference in paragraph 56(1)(n) to "$500" were read as a reference to "nil", the amount of the assistance would be required to be included in computing the income, and not be deductible in computing the taxable income, of the students to whom the assistance is provided, or

(v) the construction, renovation or maintenance of any building or facility, except to the extent that the building or facility is owned by the institution and used to provide

(A) courses at the post-secondary school level, or

(B) services for which, if fees or charges in respect of the services were required to be paid by all students of the institution, the fees or charges would be included because of this subsection in the fees for an individual's tuition, and

(d) any fee or charge for a taxation year that, but for this paragraph, would be included because of this subsection in the fees for the individual's tuition and that is not required to be paid by

(i) all of the institution's full-time students, where the individual is a full-time student at the institution, and

(ii) all of the institution's part-time students, where the individual is a part-time student at the institution,

to the extent that the total for the year of all such fees and charges paid in respect of the individual's enrolment at the institution exceeds $250.

History: Subsec. 118.5(3) added by 1998, c. 19, s. 26, applicable to 1997 *et seq.*

Selected Cases [subsec. 118.5(3)]: *Arrioja v. R.*, [2005] 2 C.T.C. 2012 (TCC) (National Examining Board not an educational institution).

Related Provisions [s. 118.5]: 64(a)A(ii)(I) — Deduction for talking textbooks for disabled students; 110(1)(g) — Deduction for tuition assistance that does not qualify under 118.5; 117(1) — Tax payable under this Part; 118.5(3) — Ancillary fees included; 118.61(2) — Carryforward of unused credits; 118.8 — Transfer of unused credits to spouse; 118.9 — Transfers to supporting person; 118.91 — Individual resident in Canada for part of the year; 118.92 — Ordering of credits; 118.93 — Credits in separate returns; 118.94 — Computing tax payable by a non-resident individual; 118.95(a) — Application in year individual becomes bankrupt; Reg. 5700(w) — Medical expense credit for talking textbooks for disabled students.

Selected Cases [s. 118.5]: *Cleveland v. R.*, [2004] 2 C.T.C. 2416 (TCC) (Physical presence at university required); *East v. R.*, [2001] 1 C.T.C. 2033 (TCC) (Certification applies to institution, not to specific locations); *Jacejko v. R.*, [1999] 4 C.T.C. 2032 (TCC) (Institution had right to determine whether course was post-secondary).

Definitions [s. 118.5]: "amount", "appropriate percentage" — 248(1); "Canada" — 255; "employer" — 248(1); "fees for tuition" — 118.5(3); "Her Majesty" — *Interpretation Act* 35(1); "individual" — 248(1); "parent" — 252(2); "property" — 248(1); "province" — *Interpretation Act* 35(1); "resident in Canada" — 250; "tax payable" — 248(2); "taxation year" — 249.

Interpretation Bulletins: IT-326R3: Returns of deceased persons as "another person"; IT-516R2: Tuition tax credit.

118.6 (1) [Education credit —] Definitions — For the purposes of sections 63 and 64 and this subdivision,

"designated educational institution" means

(a) an educational institution in Canada that is

(i) a university, college or other educational institution designated by the Lieutenant Governor in Council of a province as a specified educational institution under the *Canada Student Loans Act*, designated by an appropriate authority under the *Canada Student Financial Assistance Act*, or designated by the Minister of Higher Education and Science of the Province of Quebec for the purposes of *An Act respecting financial assistance for students* of the Province of Quebec, or

Proposed Amendment — 118.6(1)"designated educational institution"(a)(i)

(i) a university, college or other educational institution designated by the lieutenant governor in council of a province as a specified educational institution under the *Canada Student Loans Act*, designated by an appropriate authority under the *Canada Student Financial Assistance Act*, or designated by the Minister of Education of the Province of Quebec for the purposes of *An Act respecting financial assistance for education expenses*, R.S.Q, c. A-13.3, or

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 110, will amend subpara. (a)(i) of the definition "designated educational institution" in subsec. 118.6(1) to read as above, applicable to 1998 *et seq.*

Technical Notes: Subsection 118.6(1) defines the expression "designated educational institution", which is relevant for the purposes of the child care expense and attendant care expense deductions and the tuition fee and education tax credits. Generally speaking, a designated educational institution is an institution that provides post-secondary education, an institution certified by the Minister of Human Resources Development that furnishes or improves skills in an occupation, or a foreign university. This amendment to subparagraph (a)(i) of that definition, applicable to the 1998 and subsequent taxation years, is consequential on the change in the name of the Quebec statute under which financial assistance is provided to students as well as the change in the name of the responsible Quebec ministry.

(ii) certified by the Minister of Human Resources Development to be an educational institution pro-

viding courses, other than courses designed for university credit, that furnish a person with skills for, or improve a person's skills in, an occupation,

Proposed Amendment — 118.6(1)"designated educational institution"(a)(ii)

Application: S.C. 2005, c. 34 (Bill C-23, Royal Assent July 20, 2005), subpara. 80(f)(i), amended subpara. (a)(ii) of the definition "designated educational institution" in subsec. 118.6(1) to replace "Minister of Human Resources Development" with "Minister of Human Resources and Skills Development", in force on a day to be proclaimed by the Governor in Council.

(b) a university outside Canada at which the individual referred to in subsection (2) was enrolled in a course, of not less than 13 consecutive weeks duration, leading to a degree, or

(c) if the individual referred to in subsection (2) resided, throughout the year referred to in that subsection, in Canada near the boundary between Canada and the United States, an educational institution in the United States to which the individual commuted that is a university, college or other educational institution providing courses at a post-secondary school level;

Related Provisions: 146.1(1)"post-secondary educational institution"(a) — designated education institution qualifies for RESP purposes. See additional Related Provisions at end of s. 118.6.

"qualifying educational program" means a program of not less than three consecutive weeks duration that provides that each student taking the program spend not less than ten hours per week on courses or work in the program and, in respect of a program at an institution described in the definition "designated educational institution" (other than an institution described in subparagraph (a)(ii) of that definition), that is a program at a post-secondary school level but, in relation to any particular student, does not include a program if the student receives, from a person with whom the student is dealing at arm's length, any allowance, benefit, grant or reimbursement for expenses in respect of the program other than

(a) an amount received by the student as or on account of a scholarship, fellowship or bursary, or a prize for achievement in a field of endeavour ordinarily carried on by the student,

(b) a benefit, if any, received by the student because of a loan made to the student in accordance with the requirements of the *Canada Student Loans Act* or *An Act respecting financial assistance for education expenses*, R.S.Q., c. A-13.3, or because of financial assistance given to the student in accordance with the requirements of the *Canada Student Financial Assistance Act*, or

(c) an amount that is received by the student in the year under a program referred to in subparagraph 56(1)(r)(ii) or (iii), a program established under the authority of the *Department of Human Resources Development Act* or a prescribed program;

Proposed Amendment — 118.6(1)"qualifying educational program"(c)

Application: S.C. 2005, c. 34 (Bill C-23, Royal Assent July 20, 2005), para. 81(b), amended para. (c) of the definition "qualifying educational program" in subsec. 118.6(1) to replace "*Department of Human Resources Development Act*" with "*Department of Human Resources and Skills Development Act*", in force on a day to be proclaimed by the Governor in Council.

Related Provisions: 146.1(1)"qualifying educational program" — Only para. (b) of definition applies to RESPs; 146.02(1)"qualifying educational program" — Definition for purposes of LLP (borrowing from RRSP).

Regulations: No prescribed programs yet for para. (c).

Interpretation Bulletins: IT-495R3: Child care expenses.

"specified educational program" means a program that would be a qualifying educational program if the definition "qualifying educational program" were read without reference to the words "that provides that each student taking the program spend not less than 10 hours per week on courses or work in the program".

History: The definition "qualifying educational program" in subsec. 118.6(1) amended by 2005, c. 19, s. 25, applicable to 2004 *et seq.* For the 1998 to 2003 taxation years, subpara. (a)(ii) of the definition is to be read as follows:

(ii) a benefit, if any, received by the student because of a loan made to the student in accordance with the requirements of the *Canada Student Loans Act* or *An Act respecting financial assistance for education expenses*, R.S.Q., c. A-13.3, or because of financial assistance given to the student in accordance with the requirements of the *Canada Student Financial Assistance Act*, or

The definition formerly read:

"qualifying educational program" means a program of not less than 3 consecutive weeks duration that provides that each student taking the program spend not less than 10 hours per week on courses or work in the program and, in respect of a program at an institution described in the definition "designated educational institution" (other than an institution described in subparagraph (a)(ii) thereof), that is a program at a post-secondary school level but, in relation to any particular student, does not include any such program

(a) if the student receives, from a person with whom the student is dealing at arm's length, any allowance, benefit, grant or reimbursement for expenses in respect of the program other than

(i) an amount received by the student as or on account of a scholarship, fellowship or bursary, or a prize for achievement in a field of endeavour ordinarily carried on by the student,

(ii) a benefit, if any, received by the student by reason of a loan made to the student in accordance with the requirements of the *Canada Student Loans Act* or *An Act respecting financial assistance for students* of the Province of Quebec, or by reason of financial assistance given to the student in accordance with the requirements of the *Canada Student Financial Assistance Act*, or

(iii) an amount that is received by the student in the year under a program referred to in subparagraph 56(1)(r)(ii) or (iii), a program established under the authority of the *Department of Human Resources Development Act* or a prescribed program, or

(b) if the program is taken by the student

(i) during a period in respect of which the student receives income from an office or employment, and

(ii) in connection with, or as part of the duties of, that office or employment.

Subpara. (a)(iii) of the definition "qualifying educational program" in subsec. 118.6(1) added by 2002, c. 9, s. 36, applicable to 2002 *et seq.*

The opening words of subsec. 118.6(1) amended by 2001, c. 17, subsec. 98(1), to substitute "sections 63 and 64" for "section 63", applicable to 2000 *et seq.*

The opening words of subsec. 118.6(1) amended, and the definition "specified educational program" added, by 1999, c. 22, subsecs. 37(1), (2), applicable to 1998 *et seq.* The opening words formerly read:

118.6 (1) For the purposes of this subdivision,

Subpara. (a)(ii) of the definition "designated educational institution" in subsec. 118.6(1) amended by 1996, c. 11, para. 95(h), to substitute "Minister of Human Resources Development" for "Minister of National Health and Welfare", in force July 12, 1996.

Subpara. (a)(i) of the definition "designated educational institution" and subpara. (a)(ii) of the definition "qualifying educational program" in sub-

sec. 118.6(1) amended by 1994, c. 28, s. 28, in force August 1, 1995. These subparas. formerly read:

(i) a university, college or other educational institution designated by the Lieutenant Governor in Council of a province as a specified educational institution under the *Canada Student Loans Act* or recognized by the Minister of Higher Education and Science of the Province of Quebec for the purposes of *An Act respecting financial assistance for students* of the Province of Quebec, or

. . . . .

(ii) a benefit, if any, received by the student by reason of a loan made to the student in accordance with the requirements of the *Canada Student Loans Act* or *An Act respecting financial assistance for students* of the Province of Quebec, or

That portion of subsec. 118.6(1) preceding the first definition substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 93(1), applicable after June 1990. That portion formerly read:

118.6 (1) For the purposes of this section

That portion of the definition "qualifying education program" preceding para. (a) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 93(2), to substitute "described in the definition "designated educational institution" (other than an institution described in subparagraph (a)(ii) thereof) "for "described in subparagraph (a)(i) of the definition "designated educational institution" ", applicable to 1991 *et seq.*

(2) Education credit — There may be deducted in computing an individual's tax payable under this Part for a taxation year the amount determined by the formula

$$A \times B$$

where

A is the appropriate percentage for the year; and

B is the total of the products obtained when

(a) $400 is multiplied by the number of months in the year during which the individual is enrolled in a qualifying educational program as a full-time student at a designated educational institution, and

(b) $120 is multiplied by the number of months in the year (other than months described in paragraph (a)), each of which is a month during which the individual is enrolled at a designated educational institution in a specified educational program that provides that each student in the program spend not less than 12 hours in the month on courses in the program,

if the enrolment is proven by filing with the Minister a certificate in prescribed form issued by the designated educational institution and containing prescribed information and, in respect of a designated educational institution described in subparagraph (a)(ii) of the definition "designated educational institution" in subsection (1), the individual has attained the age of 16 years before the end of the year and is enrolled in the program to obtain skills for, or improve the individual's skills in, an occupation.

Related Provisions: 118.6(3) — Disabled individuals may be enrolled part-time; 118.61(2) — Carryforward of unused credits; 118.8 — Transfer of unused credits to spouse; 118.9 — Transfers to supporting person; 118.91 — Individual resident in Canada for part of the year; 118.92 — Ordering of credits; 118.93 — Credits in separate returns; 118.94 — Computing tax payable by a non-resident individual; 118.95(a) — Application in year individual becomes bankrupt; 146.02 — LLP (loan from RRSP to fund education).

History: Paras. (a) and (b) of the description of B in subsec. 118.6(2) amended by 2001, c. 17, subsec. 98(2), to substitute "$400" for "$200" in para. (a), and "$120" for "$60" in para. (b), applicable to 2001 *et seq.*

The closing words in subsec. 118.6(2) amended by the said c. 17, subsec. 98(3), to add "has attained the age of 16 years before the end of the year and", applicable to 1999 *et seq.*

Subsec. 118.6(2) amended by 1999, c. 22, subsec. 34(3), applicable to 1998 *et seq.* The subsec. formerly read:

(2) For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted an amount determined by the formula

$$A \times \$200 \times B$$

where

A is the appropriate percentage for the year, and

B is the number of months in the year during which the individual is enrolled in a qualifying educational program as a full-time student at a designated educational institution,

if the enrolment is proven by filing with the Minister a certificate in prescribed form issued by the designated educational institution and containing prescribed information and, in respect of a designated educational institution described in subparagraph (a)(ii) of the definition "designated educational institution" in subsection (1), the student is enrolled in the program to obtain skills for, or improve the student's skills in, an occupation.

The formula in subsec. 118.6(2) amended by 1998, c. 19, s. 27, applicable to 1997 *et seq.* except that, for the 1997 taxation year, the reference to "$200" shall be read as a reference to "$150". It formerly read:

$$A \times \$100^{22} \times B$$

The formula in subsec. 118.6(2) amended by 1997, c. 25, s. 28, applicable to 1996 *et seq.* It formerly read:

$$A \times \$80^{22} \times B$$

The formula in subsec. 118.6(2) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 57(1), to substitute "$80" for "$60", applicable to 1992 *et seq.*

The description of B in subsec. 118.6(2) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 93(3), applicable to 1991 *et seq.* That description formerly read:

B is the number of months in the year during which the individual is a student in full-time attendance at a designated educational institution and enrolled in a qualifying educational program at the institution,

I.T. Technical News: 13 (employer-paid educational costs).

Forms: T1238: Equity in education tax credit; T2202: Education amount certificate; T2202A: Tuition and education amounts certificate.

(3) Disabled students — In calculating the amount deductible under subsection (2) in computing an individual's tax payable under this Part for a taxation year, the reference in that subsection to "full-time student" shall be read as "student" if either

(a) an amount may be deducted under section 118.3 in respect of the individual for the year; or

(b) the individual has in the year a mental or physical impairment the effects of which on the individual have been certified in writing, to be such that the individual cannot reasonably be expected to be enrolled as a full-time student while so impaired, by a medical doctor or, where the impairment is

(i) an impairment of sight, by a medical doctor or an optometrist,

(i.1) a speech impairment, by a medical doctor or a speech-language pathologist,

(ii) a hearing impairment, by a medical doctor or an audiologist,

(iii) an impairment with respect to the individual's ability in feeding or dressing themself, or in walking, by a medical doctor or an occupational therapist, or

[22] Not indexed for inflation.

(iv) an impairment with respect to the individual's ability in perceiving, thinking and remembering, by a medical doctor or a psychologist.

Related Provisions: 64(a)A(ii)(I) — Disability supports deduction for talking textbooks; 146.02(1)"full-time student" — Student eligible under 118.6(3) qualifies as full-time student for LLP (loan from RRSP to fund education); 146.1(2)(g.1)(i)(B) — Disabled student may receive RESP funds when enrolled part-time; Reg. 5700(w) — Medical expense credit for talking textbooks.

History: Subpara. 118.6(3)(b)(i.1) added by 2003, c. 15, subsec. 76(1), applicable in respect of certifications made after October 17, 2000.

Subpara. 118.6(3)(b)(iii) amended by the said c. 15, subsec. 76(3), applicable to 2003 *et seq*. The subpara. formerly read:

(iii) an impairment with respect to the individual's ability in feeding and dressing themself, or in walking, by a medical doctor or an occupational therapist, or

Subsec. 118.6(3) amended by 1999, c. 22, subsec. 37(4), applicable to certifications made

(a) after February 18, 1997, in the case of a hearing impairment referred to in subpara. 118.6(3)(b)(ii); and

(b) after February 24, 1998, in any other case.

The subsec. formerly read:

(3) Application of subsec. (2) to disabled individuals — In calculating the amount deductible under subsection (2) in computing the tax payable under this Part for a taxation year by an individual

(a) in respect of whom an amount may be deducted under section 118.3 for the year, or

(b) who has in the year a mental or physical impairment, if a medical doctor or, where the impairment is an impairment of sight, a medical doctor or an optometrist, has certified in writing that the effects of the impairment on the individual are such that the individual cannot reasonably be expected to be enrolled as a full-time student while so impaired,

the reference in that subsection to "full-time student" shall be read as "student".

Subsec. 118.6(3) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 57(2), applicable to 1992 *et seq.*

Definitions [s. 118.6]: "amount", "appropriate percentage" — 248(1); "arm's length" — 251(1); "audiologist" — 118.4(2); "Canada" — 255, *Interpretation Act* 35(1); "designated educational institution" — 118.6(1); "employment", "individual" — 248(1); "Lieutenant Governor in Council" — *Interpretation Act* 35(1); "medical doctor" — 118.4(2); "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "occupational therapist" — 118.4(2); "office", "person", "prescribed" — 248(1); "province" — *Interpretation Act* 35(1); "psychologist" — 118.4(2); "qualifying educational program", "specified educational program" — 118.6(1); "tax payable" — 248(2); "taxation year" — 249; "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [s. 118.6]: IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits (archived); IT-326R3: Returns of deceased persons as "another person"; IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-515R2: Education tax credit.

Information Circulars [s. 118.6]: 92-3: Guidelines for refunds beyond the normal three year period.

118.61 (1) Unused tuition and education tax credits — In this section, an individual's unused tuition and education tax credits at the end of a taxation year is the amount determined by the formula

$$A + (B - C) - (D + E)$$

where

A is the individual's unused tuition and education tax credits at the end of the preceding taxation year;

B is the total of all amounts each of which may be deducted under section 118.5 or 118.6 in computing the individual's tax payable under this Part for the year;

C is the lesser of the value of B and the amount that would be the individual's tax payable under this Part for the year if no amount were deductible under any of sections 118.1, 118.2, 118.5, 118.6, 118.62, 118.8, 118.9 and 121;

Proposed Amendment — 118.61(1)C

C is the lesser of the value of B and the amount that would be the individual's tax payable under this Part for the year if no amount were deductible under this Division (other than an amount deductible under this section and any of sections 118, 118.3 and 118.7);

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 111(1), will amend the description of C in subsec. 118.61(1) to read as above, applicable to 2002 *et seq.*

Technical Notes: Subsection 118.61(1) provides for the calculation of a student's unused tuition and education tax credits at the end of a taxation year that may be carried forward to future taxation years for use by the student. The amount of the carry-forward that is deductible for the current year is set out in subsection 118.61(2).

Paragraph 118.61(2)(b) and the description of C in subsection 118.61(1) are amended, applicable to the 2002 and subsequent taxation years, to ensure that the calculation of the student's unused tax credits are compatible with the ordering in section 118.92 for the claiming of non-refundable credits. These amendments also ensure that the wording contained in this section is compatible with the wording used in section 118.8 (in particular, subparagraph (b)(ii) in the description of C and the description of B in paragraph 118.81(1)(a)).

D is the amount that the individual may deduct under subsection (2) for the year; and

E is the tuition and education tax credits transferred for the year by the individual to the individual's spouse, common-law partner, parent or grandparent.

Related Provisions: 118.81 — Tuition and education credits transferred; 257 — Formula cannot calculate to less than zero; 128(2)(g)(ii) — Effect of bankruptcy on unused credits.

History: The description of C in subsec. 118.61(1) amended by 2001, c. 17, subsec. 99(1), applicable to 1999 *et seq.* That description formerly read:

C is the lesser of the value of B and the amount that would be the individual's tax payable under this Part for the year if no amount were deductible under section 118.5 or 118.6;

Subsec. 118.61(1) amended by 2000, c. 12, Sch. 2, s. 8, to replace "spouse,"with "spouse, common-law partner,", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subsec. 118.61(1) added by 1998, c. 19, s. 28, applicable to 1997 *et seq.*

(2) Deduction of carryforward — For the purpose of computing an individual's tax payable under this Part for a taxation year, there may be deducted the lesser of

(a) the individual's unused tuition and education tax credits at the end of the preceding taxation year, and

(b) the amount that would be the individual's tax payable under this Part for the year if no amount were deductible under any of sections 118.1, 118.2, 118.5, 118.6, 118.62, 118.8, 118.9 and 121.

Proposed Amendment — 118.61(2)(b)

(b) the amount that would be the individual's tax payable under this Part for the year if no amount were deductible under this Division (other than an amount deductible under this section and any of sections 118, 118.3 and 118.7).

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 111(2), will amend para. 118.61(2)(b) to read as above, applicable to 2002 *et seq.*

Technical Notes: See under 118.61(1)C.

Related Provisions: 118.61(3) — Transitional rule from 2000 to 2001; 118.91 — Individual resident in Canada for part of the year; 118.92 — Ordering of credits; 128(2)(e), 128(2)(f)(iv) — On bankruptcy, only trustee can claim carryforward.

History: Para. 118.61(2)(b) amended by 2001, c. 17, subsec. 99(2), applicable to 1999 *et seq.* That para. formerly read:

(b) the amount that would be the individual's tax payable under this Part for the year if no amount were deductible under section 118.5 or 118.6 or this section.

Subsec. 118.61(2) added by 1998, c. 19, s. 28, applicable to 1997 *et seq.*

(3) Unused tuition and education tax credits at the end of 2000 — For the purpose of determining the amount that may be deducted under subsection (2) in computing an individual's tax payable for a taxation year that begins after 2000, the individual's unused tuition fee and education tax credits at the end of the individual's 2000 taxation year is deemed to be $^{16}/_{17}$ of the amount that would be the individual's unused tuition and education tax credits at the end of that year if this section were read without reference to this subsection.

History: Subsec. 118.61(3) added by 2001, c. 17, subsec. 99(3), applicable to 2001 *et seq.*

Definitions [s. 118.61]: "amount", "common-law partner" — 248(1); "grandparent" — 252(2)(d); "individual" — 248(1); "parent" — 252(2)(a); "taxation year" — 249; "tuition and education tax credits transferred" — 118.81; "unused tuition and education tax credits" — 118.61(1).

118.62 Credit for interest on student loan — For the purpose of computing an individual's tax payable under this Part for a taxation year, there may be deducted the amount determined by the formula

$$A \times B$$

where

A is the appropriate percentage for the year; and

B is the total of all amounts (other than any amount paid on account of or in satisfaction of a judgement) each of which is an amount of interest paid in the year (or in any of the five preceding taxation years that are after 1997, to the extent that it was not included in computing a deduction under this section for any other taxation year) by the individual or a person related to the individual on a loan made to, or other amount owing by, the individual under the *Canada Student Loans Act*, the *Canada Student Financial Assistance Act* or a law of a province governing the granting of financial assistance to students at the post-secondary school level.

Related Provisions: 20(1)(c) — Interest deductible when money borrowed to earn income; 118.91 — Individual resident in Canada for part of the year; 118.92 — Ordering of credits; 118.93 — Credits in separate returns; 118.94 — Computing tax payable by a non-resident individual; 118.95(a) — Application in year individual becomes bankrupt.

History: S. 118.62 added by 1999, c. 22, s. 38, applicable to 1998 *et seq.*

Definitions [s. 118.62]: "amount", "appropriate percentage" — 248(1); "individual", "person" — 248(1); "province" — *Interpretation Act* 35(1); "related" — 251(2)–(6); "taxation year" — 249.

118.7 Credit for UI [EI] premium and CPP contribution — For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted an amount determined by the formula

$$A \times B$$

where

A is the appropriate percentage for the year; and

B is the total of

(a) the total of all amounts each of which is an amount payable by the individual as an employee's premium for the year under the *Employment Insurance Act*, not exceeding the maximum amount of such premiums payable by the individual for the year under that Act,

(b) the total of all amounts each of which is an amount payable by the individual for the year as an employee's contribution under the *Canada Pension Plan* or under a provincial pension plan defined in section 3 of that Act, not exceeding the maximum amount of such contributions payable by the individual for the year under the plan, and

(c) the amount by which

(i) the total of all amounts each of which is an amount payable by the individual in respect of self-employed earnings for the year as a contribution under the *Canada Pension Plan* or under a provincial pension plan within the meaning assigned by section 3 of that Act (not exceeding the maximum amount of such contributions payable by the individual for the year under the plan)

exceeds

(ii) the amount deductible under paragraph 60(e) in computing the individual's income for the year.

Proposed Amendment — Quebec Parental Insurance Plan treated like Employment Insurance

Department of Finance news release, July 19, 2005: See under 56(1)(a)(iv).

Related Provisions: 56(1)(a)(iv) — Pension benefits, UI/EI benefits, etc.; 60(e) — Deduction for other half of CPP contributions; 117(1) — Tax payable under this Part; 118.91 — Individual resident in Canada for part of the year; 118.92 — Ordering of credits; 118.93 — Credits in separate returns; 118.94 — Tax payable by non-resident individual; 118.95(a) — Application in year individual becomes bankrupt.

History: Para. (c) of the description of B in s. 118.7 amended by 2001, c. 17, s. 100, applicable to 2001 *et seq.* Para. (c) formerly read:

(c) the total of all amounts each of which is an amount payable by the individual in respect of self-employed earnings for the year as a contribution under the *Canada Pension Plan* or under a provincial pension plan as defined in section 3 of that Act, not exceeding the maximum amount of such contributions payable by the individual for the year under the plan.

Para. 118.7B(a) amended by 1996, c. 23, para. 187(d), to substitute "*Employment Insurance Act*" for "*Unemployment Insurance Act*", in force June 30, 1996.

Selected Cases [s. 118.7]: *Ashby v. Canada*, [1996] 1 C.T.C. 2464 (TCC) (Deductions made but not remitted differ from case where deductions not made).

Definitions [s. 118.7]: "amount", "appropriate percentage", "employee", "individual" — 248(1); "tax payable" — 248(2); "taxation year" — 249.

Interpretation Bulletins: IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits (archived); IT-326R3: Returns of deceased persons as "another person"; IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-516R2: Tuition tax credit; IT-519R2: Medical expense and disability tax credits and attendant care expense deduction.

Information Circulars: 92-3: Guidelines for refunds beyond the normal three year period.

Forms: T1 Sched. 8: QPP contributions on self-employment and other earnings.

118.8 Transfer of unused credits to spouse [or common-law partner] — For the purpose of computing the tax payable under this Part for a taxation year by an individual who, at any time in the year, is a married person or a person who is in a common-law partnership

(other than an individual who, by reason of a breakdown of their marriage or common-law partnership, is living separate and apart from the individual's spouse or common-law partner at the end of the year and for a period of 90 days commencing in the year), there may be deducted an amount determined by the formula

$$A + B - C$$

where

A is the tuition and education tax credits transferred for the year by the spouse or common-law partner to the individual;

B is the total of all amounts each of which is deductible under subsection 118(2) or (3) or 118.3(1) in computing the spouse's or common-law partner's tax payable under this Part for the year; and

C is the amount, if any, by which

(a) the amount that would be the spouse's or common-law partner's tax payable under this Part for the year if no amount were deductible under this Division (other than an amount deductible under subsection 118(1) because of paragraph (c) of the description of B in that subsection or under section 118.61 or 118.7)

exceeds

(b) the lesser of

(i) the total of all amounts that may be deducted under section 118.5 or 118.6 in computing the spouse's or common-law partner's tax payable under this Part for the year, and

(ii) the amount that would be the spouse's or common-law partner's tax payable under this Part for the year if no amount were deductible under this Division (other than an amount deductible under section 118, 118.3, 118.61 or 118.7).

Related Provisions: 117(1) — Tax payable under this Part; 118.3(2) — Disability credit claim for disabled dependant; 118.3(4) — Additional information requested by CRA; 118.61(2) — Carryforward of unused credits; 118.91 — Individual resident in Canada for part of the year; 118.92 — Ordering of credits; 118.93 — Credits in separate returns; 118.94 — Computing tax payable by a non-resident individual; 118.95(b) — Application in year individual becomes bankrupt; 257 — Formula cannot calculate to less than zero.

History: The description of A in s. 118.8 amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", and the descriptions of B and C amended by Sch. 2, s. 7, to replace "spouse's"with "spouse's or common-law partner's", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

The opening words of s. 118.8 amended by 2000, c. 12, s. 133, applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner". The opening words formerly read:

118.8 For the purpose of computing the tax payable under this Part for a taxation year by an individual who, at any time in the year, is a married person (other than an individual who, by reason of a breakdown of their marriage, is living separate and apart from the individual's spouse at the end of the year and for a period of 90 days commencing in the year), there may be deducted an amount determined by the formula

Para. (a) of the description of C in s. 118.8 amended by 2000, c. 19, s. 26, applicable to 2000 *et seq.* The para. formerly read:

(a) the amount that would be the spouse's tax payable under this Part for the year if no amount were deductible under this Division (other than an amount deductible under subsection 118(1) because of paragraph (b.1) or (c) of the description of B in that subsection or under section 118.61 or 118.7)

Para. (a) of the description of C in s. 118.8 amended by 1999, c. 22, s. 39, applicable to 1998 *et seq.* Para. (a) formerly read:

(a) the amount that would be the spouse's tax payable under this Part for the year if no amount were deductible under this Division (other than an amount deductible under subsection 118(1) because of paragraph (c) of the description of B in that subsection or under section 118.61 or 118.7)

The descriptions of A and C in s. 118.8 amended by 1998, c. 19, subsecs. 29(1), (2), applicable to 1997 *et seq.* A and C formerly read:

A is the lesser of $850[22] and the total of all amounts each of which is deductible under section 118.5 or 118.6 in computing the spouse's tax payable under this Part for the year;

. . . . .

C is the spouse's tax payable under this Part for the year computed before any deductions under this Division (other than a deduction under subsection 118(1) because of paragraph (c) of the description of B in that subsection or under section 118.7).

The descriptions of A, B and C in s. 118.8 amended by 1997, c. 25, s. 29, applicable to 1996 *et seq.* A, B, and C formerly read:

A is the lesser of $680[22] and the total of all amounts that the individual's spouse may deduct under section 118.5 or 118.6 for the year;

B is the total of all amounts each of which is an amount that the individual's spouse may deduct for the year under subsection 118(2) or (3) or 118.3(1); and

C is the amount of the individual's spouse's tax payable under this Part for the year computed before any deductions under this Division (other than a deduction under subsection 118(1) by reason of paragraph 118(1)(c) or under section 118.7).

The description of A in s. 118.8 amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 58, applicable to 1992 *et seq.* That description formerly read:

A is the lesser of $600 and the total of all amounts each of which is an amount that the individual's spouse may deduct for the year under section 118.5 or 118.6;

Definitions [s. 118.8]: "amount", "common-law partner", "common-law partnership", "individual" — 248(1); "tax payable" — 248(2); "taxation year" — 249; "tuition and education tax credits transferred" — 118.81.

Interpretation Bulletins: IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits (archived); IT-326R3: Returns of deceased persons as "another person"; IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-470R: Employees' fringe benefits; IT-513R: Personal tax credits; IT-515R2: Education tax credit; IT-516R2: Tuition tax credit; IT-517R: Pension tax credit (archived); IT-519R2: Medical expense and disability tax credits and attendant care expense deduction.

Forms: T1 Sched. 2: Federal amounts transferred from your spouse or common-law partner.

118.81 Tuition and education tax credits transferred — In this subdivision, the tuition and education tax credits transferred for a taxation year by a person to an individual is the lesser of

(a) the amount determined by the formula

$$A - B$$

where

A is the lesser of

(i) the total of all amounts that may be deducted under section 118.5 or 118.6 in computing the person's tax payable under this Part for the year, and

(ii) $800[22], and

B is the amount that would be the person's tax payable under this Part for the year if no amount were

[22]Not indexed for inflation.

deductible under this Division (other than an amount deductible under section 118, 118.3, 118.61 or 118.7), and

(b) the amount for the year that the person designates in writing for the purpose of section 118.8 or 118.9.

Related Provisions: 118.61(2) — Carryforward of unused credits; 257 — Formula cannot calculate to less than zero.

History: Subpara. (ii) of the description of A in s. 118.81 amended by 2001, c. 17, s. 101, to substitute "$800" for "$850", applicable to 2001 *et seq.*

S. 118.81 added by 1998, c. 19, subsec. 30(1), applicable to 1997 *et seq.*

Definitions [s. 118.81]: "amount", "individual", "person" — 248(1); "tax payable" — 248(2); "taxation year" — 249; "writing" — *Interpretation Act* 35(1).

118.9 Transfer to parent or grandparent — Where for a taxation year a parent or grandparent of an individual (other than an individual in respect of whom the individual's spouse or common-law partner deducts an amount under section 118 or 118.8 for the year) is the only person designated in writing by the individual for the year for the purpose of this section, there may be deducted in computing the tax payable under this Part for the year by the parent or grandparent, as the case may be, the tuition and education tax credits transferred for the year by the individual to the parent or grandparent, as the case may be.

History [s. 118.9]: S. 118.9 amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

S. 118.9 amended by 1998, c. 19, subsec. 30(1), applicable to 1997 *et seq.* It formerly read:

118.9 (1) Transfers to supporting person — Where the parent or grandparent of an individual (other than an individual in respect of whom the individual's spouse deducts an amount under section 118 or 118.8 for the year) files with the Minister for a taxation year a prescribed form containing prescribed information, there may be deducted in computing the tax payable by the parent or grandparent, as the case may be, under this Part for the year an amount determined by the formula

A – B

where

A is the lesser of $850[22] and the total of all amounts each of which is deductible under section 118.5 or 118.6 in computing the individual's tax payable under this Part for the year; and

B is the amount of the individual's tax payable under this Part for the year computed before any deductions under this Division (other than sections 118, 118.3 and 118.7).

(2) Only one claim per student — Where in computing his or her tax payable under this Part for a taxation year a parent or grandparent of an individual has deducted an amount under section 118 in respect of the individual, that parent or grandparent, as the case may be, is the only person entitled to deduct an amount for the year under subsection (1) in respect of the individual and in any other case only such one of the parents and grandparents of the individual as is designated for the year in writing by the individual is entitled to make such a deduction for the year.

The description of A in subsec. 118.9(1) amended by 1997, c. 25, s. 30, applicable to 1996 *et seq.* The description of A formerly read:

A is the lesser of $680[22] and the total of all amounts that the individual may deduct under section 118.5 or 118.6 for the year; and

The description of A in subsec. 118.9(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 59, applicable to 1992 *et seq.* That description formerly read:

A is the lesser of

(a) $600, and

(b) the total of all amounts each of which is an amount that the individual may deduct under section 118.6 for the year or an amount that the individual would have been entitled to deduct under subsection 118.5(1) for the year if the reference in paragraph 118.5(1)(a) to "the amount of any fees for the individual's tuition paid in respect of the year to the educational institution" were read as a reference to "that portion of the individual's fees paid in respect of the year that may reasonably be considered to have been paid in respect of a qualifying educational program of an educational institution described in subparagraph (a)(i) of the definition "designated educational institution" in subsection 118.6(1)"; and

The description of A in subsec. 118.9(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 94, applicable to fees relating to periods after June 1990. That description formerly read:

A is the lesser of $600 and the total of all amounts each of which is an amount the individual may deduct for the year under section 118.5 or 118.6; and

Definitions [s. 118.9]: "amount", "common-law partner" — 248(1); "grandparent" — 252(2)(d); "individual", "Minister" — 248(1); "parent" — 252(2)(a); "prescribed" — 248(1); "tax payable" — 248(2); "taxation year" — 249; "tuition and education tax credits transferred" — 118.81; "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [s. 118.9]: IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits (archived); IT-326R3: Returns of deceased persons as "another person"; IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-470R: Employees' fringe benefits; IT-515R2: Education tax credit; IT-516R2: Tuition tax credit.

118.91 Part-year residents — Notwithstanding sections 118 to 118.9, where an individual is resident in Canada throughout part of a taxation year and throughout another part of the year is non-resident, for the purpose of computing the individual's tax payable under this Part for the year,

(a) the amount deductible for the year under each such provision in respect of the part of the year that is not included in the period or periods referred to in paragraph (b) shall be computed as though such part were the whole taxation year; and

(b) the individual shall be allowed only

(i) such of the deductions permitted under subsection 118(3) and sections 118.1, 118.2, 118.5, 118.6, 118.62 and 118.7 as can reasonably be considered wholly applicable, and

(ii) such part of the deductions permitted under sections 118 (other than subsection 118(3)), 118.3, 118.8 and 118.9 as can reasonably be considered applicable

to the period or periods in the year throughout which the individual is resident in Canada, computed as though that period or those periods were the whole taxation year,

except that the amount deductible for the year by the individual under each such provision shall not exceed the amount that would have been deductible under that provision had the individual been resident in Canada throughout the year.

[22]Not indexed for inflation.

Related Provisions: 114 — Individual resident in Canada during only part of year; 117(1) — Tax payable under this Part; 217(c) — Election respecting certain payments.

History: Subpara. 118.91(b)(i) amended by 1999, c. 22, s. 40, applicable to 1998 *et seq.* The subpara. formerly read:

> (i) such of the deductions permitted under subsection 118(3) and sections 118.1, 118.2, 118.5, 118.6 and 118.7 as can reasonably be considered wholly applicable, and

The opening words of s. 118.91 and the closing words of para. (b) substituted by 1994, c. 21, subsecs. 55(1), (2), applicable to 1992 *et seq.*, except that a taxpayer may elect that the amendment not apply to the taxpayer's 1992 taxation year by notifying the Minister of National Revenue in writing before the end of December 1994. The substituted portions formerly read:

> 118.91 Notwithstanding the provisions of sections 118 to 118.9, where an individual is resident in Canada throughout part of a taxation year and throughout some other part of the year is not resident in Canada, is not employed in Canada and is not carrying on business in Canada, for the purpose of computing the individual's tax payable under this Part for the year,
>
> . . . . .
>
> to the period or periods in the year throughout which the individual is resident in Canada, is employed in Canada or is carrying on business in Canada, computed as though the period or periods were the whole taxation year,

S. 118.91 substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 95, applicable to 1988 *et seq.* S. 118.91 formerly read:

> 118.91 Individual resident in Canada for part of the year — Notwithstanding sections 118 to 118.9, where an individual is resident in Canada during part of a taxation year and during some other part of the year is not resident in Canada, is not employed in Canada and is not carrying on business in Canada, unless all or substantially all of the individual's income for the year is included in computing the individual's taxable income for the year, no amounts may be deducted under those sections for the purpose of computing the individual's tax payable under this Part for the year except the total of
>
> (a) the deductions permitted under sections 118.1, 118.2, 118.5, 118.6 and 118.7 to taxpayers resident in Canada throughout the year for the purpose of computing tax payable under this Part for the year that may reasonably be considered wholly applicable to the individual for the period or periods in the year throughout which the individual is resident in Canada, employed in Canada or carrying on business in Canada; and
>
> (b) such part of the deductions permitted under sections 118, 118.3, 118.8 and 118.9 to taxpayers resident in Canada throughout the year for the purpose of computing tax payable under this Part for the year as may reasonably be considered applicable to the individual for the period or periods referred to in paragraph (a).

Definitions [s. 118.91]: "amount" — 248(1); "Canada" — 255; "carrying on business" — 253; "employed", "individual", "non-resident" — 248(1); "resident in Canada" — 250; "tax payable" — 248(2); "taxation year" — 249; "taxpayer" — 248(1).

118.92 Ordering of credits — In computing an individual's tax payable under this Part, the following provisions shall be applied in the following order: subsections 118(1) and (2), section 118.7, subsection 118(3) and sections 118.3, 118.61, 118.5, 118.6, 118.9, 118.8, 118.2, 118.1, 118.62 and 121.

Proposed Amendment — 118.92

Application: The August 15, 2005 draft legislation (2005 Budget second bill), s. 8, will amend s. 118.92 to add "118.01," before "118.3", applicable to 2005 *et seq.*

Technical Notes: Section 118.92 provides that the tax credits allowed in computing an individual's tax payable are to be applied in a specific order.

This section is amended to add a reference to new section 118.01, the adoption expense tax credit.

Related Provisions: 117(1) — Tax payable under this Part.

History: S. 118.92 amended by 1999, c. 22, s. 41, applicable to 1998 *et seq.* It formerly read:

> 118.92 In computing an individual's tax payable under this Part, the following provisions shall be applied in the following order: subsections 118(1) and (2), section 118.7, subsection 118(3) and sections 118.3, 118.61, 118.5, 118.6, 118.9, 118.8, 118.2, 118.1 and 121.

S. 118.92 amended by 1998, c. 19, s. 31, applicable to 1997 *et seq.* It formerly read:

> 118.92 In computing the tax payable under this Part by an individual the following provisions shall be applied in the following order: subsections 118(1) and (2), section 118.7, subsection 118(3) and sections 118.3, 118.5, 118.6, 118.9, 118.8, 118.2, 118.1 and 121.

Definitions [s. 118.92]: "individual" — 248(1); "tax payable" — 248(2).

Interpretation Bulletins: IT-523: Order of provisions applicable in computing an individual's taxable income and tax payable.

118.93 Credits in separate returns — Where a separate return of income with respect to a taxpayer is filed under subsection 70(2), 104(23) or 150(4) for a particular period and another return of income under this Part with respect to the taxpayer is filed for a period ending in the calendar year in which the particular period ends, for the purpose of computing the tax payable under this Part by the taxpayer in those returns, the total of all deductions claimed in all those returns under any of subsection 118(3) and sections 118.1 to 118.7 and 118.9 shall not exceed the total that could be deducted under those provisions for the year with respect to the taxpayer if no separate returns were filed under subsections 70(2), 104(23) and 150(4).

Proposed Amendment — 118.93

Application: The August 15, 2005 draft legislation (2005 Budget second bill), s. 8, will amend s. 118.93 to substitute "118.3, and sections 118.01 to 118.7" for "118(3) and sections 118.1 to 118.7", applicable to 2005 *et seq.*

Technical Notes: Section 118.93 provides that, where a separate return of income for an individual is filed under subsection 70(2), 104(23) or 150(4) for a period and another return under Part I is filed for a period ending in the calendar year in which the period covered in the separate return ends, the combined amounts deducted in respect of the pension, charitable donation, medical expenses, impairment in mental or physical functions, tuition fees and education credits and the transfer of unused credits to a supporting person (but not to a spouse) cannot exceed the amount that would be deducted under those provisions if no separate return were filed.

This section is amended to add a reference to new section 118.01, the adoption expense tax credit.

Related Provisions: 114.2 — Deductions in separate returns; 117(1) — Tax payable under this Part.

Definitions [s. 118.93]: "calendar year" — *Interpretation Act* 37(1)(a); "taxpayer" — 248(1).

Interpretation Bulletins: IT-326R3: Returns of deceased persons as "another person"; IT-513R: Personal tax credits; IT-517R: Pension tax credit (archived).

118.94 Tax payable by non-resident [credits restricted] — Sections 118 and 118.2, subsections 118.3(2) and (3) and sections 118.6, 118.8 and 118.9 do not apply for the purpose of computing the tax payable under this Part for a taxation year by an individual who at no time in the year is resident in Canada unless all or substantially all of the individual's income for the year is included in computing the individual's taxable income earned in Canada for the year.

Proposed Amendment — 118.94

Application: The August 15, 2005 draft legislation (2005 Budget second bill), s. 8, will amend s. 118.94 to substitute "Sections 118, 118.01 and 118.2" for "Sections 118 and 118.2", applicable to 2005 *et seq.*

Technical Notes: Section 118.94 provides rules with respect to non-refundable tax credits allowed to individuals who did not reside in Canada at any time in a taxation year. Subject to the special rule in section 217, such individuals are allowed to claim certain non-refundable credits only where all or substantially all (90%) of their income for the year is included in computing their taxable income earned in Canada.

This section is amended to add a reference to new section 118.01, the adoption expense tax credit.

Related Provisions: 117(1) — Tax payable under this Part; 217 — Election respecting certain payments.

History: S. 118.94 substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 96, applicable to 1988 *et seq.* S. 118.94 formerly read:

> 118.94 Computing tax payable by a non-resident individual — Sections 118 and 118.2, subsections 118.3(2) and (3) and sections 118.5 to 118.9 do not apply for the purpose of computing the tax payable under this Part for a taxation year by an individual who at no time in the year is resident in Canada, except that, where all or substantially all of the individual's income for the year is included in computing the individual's taxable income earned in Canada for the year, for the purpose of computing the individual's tax payable under this Part for the year there may be deducted the amounts that would have been deductible under those provisions for the purpose of computing the individual's tax payable under this Part for the year had the individual been resident in Canada throughout the year.

Definitions [s. 118.94]: "amount" — 248(1); "individual" — 248(1); "resident in Canada" — 250; "tax payable" — 248(2); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 249.

Interpretation Bulletins: IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits (archived); IT-513R: Personal tax credits.

118.95 Credits in year of bankruptcy — Notwithstanding sections 118 to 118.9, for the purpose of computing an individual's tax payable under this Part for a taxation year that ends in a calendar year in which the individual becomes bankrupt, the individual shall be allowed only

(a) such of the deductions as the individual is entitled to under subsection 118(3) and sections 118.1, 118.2, 118.5, 118.6, 118.62 and 118.7 as can reasonably be considered wholly applicable to the taxation year, and

Proposed Amendment — 118.95(a)

Application: The August 15, 2005 draft legislation (2005 Budget second bill), s. 9, will amend para. 118.95(a) to add "118.01," before "118.1", applicable to 2005 *et seq.*

Technical Notes: When an individual becomes bankrupt, subsection 128(2) divides the calendar year in which the bankruptcy occurs into two taxation years: one that runs from January 1 to the day before the bankruptcy; and a second that begins on the day of the bankruptcy and runs to December 31. Section 118.95 ensures that non-refundable tax credits that are based on expenditures or the receipt of certain types of income are determined by reference to the amounts that relate to the relevant taxation year. In all cases, the total of the amounts claimed in respect of each of the credits for the two taxation years cannot be greater than the amount that could be claimed in respect of the calendar year as a whole.

The amendment to paragraph 118.95(a) adds a reference to new section 118.01, the adoption expense tax credit and ensures that, in the year of bankruptcy, this credit will be claimed on the tax return for the taxation year in which the adoption period (as defined in section 118.01) ends.

(b) such part of the deductions as the individual is entitled to under sections 118 (other than subsection 118(3)), 118.3, 118.8 and 118.9 as can reasonably be considered applicable to the taxation year,

except that the total of the amounts so deductible for all taxation years of the individual in the calendar year under any of those provisions shall not exceed the amount that would have been deductible under that provision in respect of the calendar year if the individual had not become bankrupt.

Related Provisions [s. 118.95]: 122.5(7) — Parallel rule for GST credit; 122.61(3.1) — Parallel rule for Child Tax Benefit; 128(2)(e)(iii) — Credits allowed on return by trustee.

History: Para. 118.95(a) amended by 1999, c. 22, s. 42, applicable to 1998 *et seq.* It formerly read:

> (a) such of the deductions as the individual is entitled to under subsection 118(3) and sections 118.1, 118.2, 118.5, 118.6 and 118.7 as can reasonably be considered wholly applicable to the taxation year, and

S. 118.95 added by 1998, c. 19, s. 136, applicable to bankruptcies that occur after April 26, 1995.

Definitions [s. 118.95]: "bankrupt" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "individual" — 248(1); "taxation year" — 249.

Interpretation Bulletins [s. 118.95]: IT-513R: Personal tax credits.

119. Former resident — credit for tax paid — If at any particular time an individual was deemed by subsection 128.1(4) to have disposed of a capital property that was a taxable Canadian property of the individual throughout the period that began at the particular time and that ends at the first time, after the particular time, at which the individual disposes of the property, there may be deducted in computing the individual's tax payable under this Part for the taxation year that includes the particular time the lesser of

(a) that proportion of the individual's tax for the year otherwise payable under this Part (within the meaning assigned by paragraph (a) of the definition "tax for the year otherwise payable under this Part" in subsection 126(7)) that

(i) the individual's taxable capital gain from the disposition of the property at the particular time

is of

(ii) the amount determined under paragraph 114(a) in respect of the individual for the year, and

(b) that proportion of the individual's tax payable under Part XIII in respect of dividends received during the period by the individual in respect of the property and amounts deemed under Part XIII to have been paid during the period to the individual as dividends from corporations resident in Canada, to the extent that the amounts can reasonably be considered to relate to the property, that

(i) the amount by which the individual's loss from the disposition of the property at the end of the period is reduced by subsection 40(3.7)

is of

(ii) the total amount of those dividends.

Proposed Amendment — Interaction of s. 119 and Alternative Minimum Tax

Letter from Dept. of Finance, September 9, 2004:

Dear [xxx]

I am responding to your letter dated March 3, 2004 to Mr. Lawrence Purdy of this Division regarding the interaction of the income tax rules relating to the determination of alternative minimum tax ("AMT"), and the ability of an individual to claim a credit under section 119 of the *Income Tax Act* (the "Act").

As you know, the purpose behind section 119 is to alleviate a situation where a taxpayer would be subject to taxation both on a gain arising as a result of the section 128.1 deemed disposition of shares held by the taxpayer on emigration from Canada, and on any subsequent dividends the taxpayer received on these shares and in respect of which Part XIII tax was withheld. Although the Act does not allow the taxpayer who has received dividends to claim a capital loss on the subsequent disposition of these shares, the payment of Part XIII tax can be seen as a substitute for the Part I tax paid on the gain. Section 119 therefore allows a credit to offset the potential double taxation. The credit is limited to the lesser of

two amounts: that portion of the Part XIII tax paid that the denied loss is of the dividends received; and the amount of tax liability resulting from the deemed gain on the taxpayer's departure from Canada.

In your letter you describe a situation in which your client is being reassessed for the client's year of departure due to the client claiming a section 119 credit. My understanding of your client's situation is as follows. When your client emigrated from Canada your client incurred a tax liability because of the deemed disposition of assets owned by your client, which included shares. Subsequent to departure your client received dividends on these shares, for which Part XIII withholding tax was paid. Upon disposition of the shares, any loss that may have resulted was not available to your client due to the stop loss rules contained in subsection 40(3.7). However, your client did claim a section 119 credit and requested that the credit be applied against the tax liability arising on the gain on the shares that was triggered in the year of emigration.

You advise that the Canada Revenue Agency (CRA) has since notified your client that the client's emigration year tax return is now being reassessed to apply AMT. This is because the section 119 credit as applied to that year has reduced your client's tax payable for the year to a level at which AMT applies. In your view, this negates the purpose of the section 119 credit, as your client is faced with double taxation, since part of the AMT represents tax on the gain from the deemed disposition on departure. You request that we recommend an amendment to the Act, so as to allow your client the ability to claim a full section 119 credit without this claim causing the AMT rules to apply.

Again as I am sure you know, the purpose to the AMT rules is to ensure that individual taxpayers who have significant income pay at least a minimum amount of tax in any particular year. These rules generally speaking recalculate a taxpayer's tax payable by redetermining the taxpayer's income for the year. Essentially the taxpayer adds back to their income what are generally known as "preferences" or deductions that the taxpayer is entitled to. If the amount of AMT determined is greater than the amount of regular Part I tax payable then the taxpayer is liable for the AMT amount.

The interaction between AMT, regular Part I tax and section 119 credits is complex. And it seems to me that there are two potential situations when a difficulty could result. The first situation is one in which the taxpayer was assessed AMT for the year of departure, and subsequently attempts to claim a section 119 credit for that year. It is my understanding that the CRA has advised you that the current rules would not allow the taxpayer in this situation to claim such a credit. Although the purpose of AMT is to ensure an individual pays a minimum amount of tax, I agree with you that, in policy terms, a taxpayer should not be restricted from claiming a section 119 credit merely because the taxpayer was subject to AMT. To do so could result in the potential for double taxation that section 119 is designed to avoid.

The second situation in which a difficulty could arise is the situation your client appears to be facing. In this second instance, the taxpayer was assessed regular Part I tax for the year of departure. In claiming a section 119 credit for that year, the taxpayer is then reassessed because the section 119 credit reduces the regular Part I tax payable to an amount below the tax payable under the AMT rules. The taxpayer is then assessed the higher AMT tax payable for that year. In this situation too, I see no reason in policy terms why a taxpayer should be made subject to AMT simply because the taxpayer claimed a section 119 credit.

This being the case, I am prepared to recommend an amendment to the *Income Tax Act* so that a taxpayer that has paid AMT for the taxpayer year of emigration is not barred from claiming a section 119 credit. In addition, I am willing to recommend an amendment that would prevent a taxpayer from being reassessed and subjected to AMT for the year of departure from Canada due solely to the application of a section 119 credit to that year.

I note in your letter that you request this amendment be retroactive to the effective date for the application of section 119, which was to dispositions that occurred after December 23, 1998 for individuals that departed Canada after October 1, 1996. We do not normally recommend that changes such as this be made on such a markedly retroactive basis, since both taxpayers and the Government need to be able to rely at any particular time on the law as it exists at that time. Exceptionally, however, we do recommend linking a relieving change to the transaction or circumstance that makes the Government aware of the need for the change. In this case, it is our understanding that this fact situation applies to your client's 2002 taxation year and therefore we are willing to recommend that this change apply to an individual's 2002 and subsequent taxation years.

I cannot offer any assurance that either the Minister of Finance or Parliament will agree with the recommendation that we intend to make in this regard. Nonetheless, I hope that this statement of our position is helpful. Thank you for bringing this issue to our attention.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Letter from Department of Finance, December 7, 2004:

Dear [xxx]

I am responding to your letter dated October 1, 2004 regarding the effective date of proposed amendments concerning the determination of alternative minimum tax (AMT) and the ability of an individual to claim a credit under section 119 of the *Income Tax Act* (the "Act"). Section 119 allows for a tax credit to alleviate the overlap of tax resulting from a subsection 128.1(4) deemed disposition of a capital property and the Part XIII tax on dividends that reduce the taxpayer's loss on that property.

As you know, I have indicated that I am prepared to recommend an amendment to the Act so that a taxpayer who has paid AMT for the year of emigration is not barred from claiming a section 119 credit. In addition, I have indicated that I am prepared to recommend an amendment that would prevent a taxpayer from being reassessed and subjected to AMT for the year of departure from Canada due solely to the application of a section 119 credit to that year. I proposed that these amendments apply to an individual's 2002 and subsequent taxation years.

In your letter you request that the proposed amendments have effect from 1997 in order to provide relief to the individual on whose behalf you contacted us. Following further review of the policy considerations behind these proposed amendments, I believe there is justification for a retroactive application date that corresponds with the inception of the section 119 credit. Therefore, I am prepared to recommend that the proposed amendments affect dispositions after December 23, 1998 by individuals who ceased to be resident in Canada after October 1, 1996.

As I am sure you know, I cannot offer any assurance that either the Minister of Finance or Parliament will agree with the recommendation that we intend to make in this regard. Nonetheless, I hope that this statement of our position is helpful.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 126(2.21) — Foreign tax credit for former resident; 128.1(6)(b)(iii) — Effect of election by returning former resident; 128.3 — Shares acquired on rollover deemed to be same shares for s. 119; 152(6)(c.1) — Minister required to reassess past year to allow additional deduction; 161(7)(a)(i), 164(5)(a.1) — Effect of carryback of loss.

History: S. 119 added by 2001, c. 17, subsec. 102(2), applicable to dispositions after December 23, 1998 by individuals who cease to be resident in Canada after October 1, 1996.

Definitions [s. 119]: "amount" — 248(1); "capital property" — 54, 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend", "individual", "property" — 248(1); "resident in Canada" — 250; "taxable Canadian property" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxation year" — 249; "trust" — 104(1), 248(1), (3).

History [former s. 119]: Former s. 119 repealed by 2001, c. 17, subsec. 102(1), applicable to 1995 *et seq.* It formerly read:

> 119. (1) **Averaging for farmers and fishermen [obsolete]** — Where an individual's chief source of income has been farming or fishing for a taxation year (in this section referred to as the "year of averaging") and the 4 immediately preceding years for which the individual has filed returns of income as required by this Part (in this section referred to as the "preceding years"), if the individual, on or before the day on or before which the individual was required to file a return of the individual's income for the year of averaging, or on or before the day on or before which the individual would have been required to file such a return if any tax had been payable by the individual for the year of averaging, files with the Minister an election in prescribed form, the tax payable under this Part for the year of averaging is an amount determined by the following rules:
>
> (a) ascertain the amount, if any, remaining after deducting from the income for each year of the averaging period (which, in this section, means the year of averaging and the preceding years) all deductions permitted for that year by Division C, except the deductions permitted by section 110.4 of this Act or section 109 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, or any amount in respect of a loss for the 3 years immediately following the year of averaging or any amount in

respect of a loss deducted under this paragraph from income for a preceding taxation year in the averaging period,

(b) determine the amount (in this section referred to as the "average gross income") equal to 1/5 of the amount by which

(i) the total of the amounts determined under paragraph (a) for the years in the averaging period,

exceeds

(ii) the total of the amounts that would be deductible in respect of the losses for the taxation years in the averaging period in computing the taxable income for the year immediately following the year of averaging if the individual's income from the same business for that year were the total of the amounts determined under paragraph (a) for the years in the averaging period,

(c) determine the amount (in this section referred to as the "average net income") for each year in the averaging period equal to the average gross income minus the deductions permitted for that year by section 109 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952,

(d) determine the amount (in this section referred to as the "average tax") for each year in the averaging period equal to the tax that would be payable under this Part for the year if the taxable income for the year were the average net income for the year and no amount were deductible under subsection 127(5) for the year,

(e) determine the amount, if any, by which

(i) the total of the average taxes as determined under paragraph (d)

exceeds

(ii) the total of all amounts each of which is an amount deducted under subsection 127(5) in computing the tax payable for the preceding years other than any amount deemed by subsection 127.1(3) to have been so deducted,

(f) where

(i) the total of all amounts each of which is the amount deemed by subsection 120(2) to have been paid on account of tax under this Part for a preceding year in the averaging period,

exceeds

(ii) the amount that would be determined under subparagraph (i) if the taxable income for each preceding year were the average net income for that year,

add to the amount, if any, determined under paragraph (e) the amount of that excess,

(g) where paragraph (f) does not apply, deduct from the amount, if any, determined under paragraph (e) the amount, if any, by which

(i) the amount determined under subparagraph (f)(ii)

exceeds

(ii) the amount determined under subparagraph (f)(i), and

(h) deduct from the amount resulting from the application of paragraph (f) or (g), as the case may be, the total of the taxes payable under this Part for the preceding years computed without reference to section 120.2,

and the remainder, if any, obtained under paragraph (h) is the tax payable under this Part for the year of averaging and no further deduction may be made therefrom under any other provision of this Part except subsection 127(5).

(2) Refunds — Where this section is applicable to the computation of an individual's tax for a taxation year, the amount, if any, by which the total of

(a) the total of taxes payable under this Part for the preceding years, and

(b) the amount, if any, by which

(i) the amount determined under subparagraph (1)(f)(ii)

exceeds

(ii) the amount determined under subparagraph (1)(f)(i)

exceeds the total of

(c) the amount, if any, determined under paragraph (1)(e), and

(d) the amount, if any, by which

(i) the amount determined under subparagraph (1)(f)(i)

exceeds

(ii) the amount determined under subparagraph (1)(f)(ii)

shall be deemed to be an overpayment made when the notice of assessment for the year of averaging was mailed.

(3) Assessment — The provisions of this Part relating to the assessment of tax, interest and penalties apply with such modifications as the circumstances require to an assessment whereby, for the purposes of this section, it is determined by the Minister that no tax is payable under this Part for the year of averaging or that an overpayment has been made as described in subsection (2).

(4) Where subsec. (1) election null — An election under subsection (1) is a nullity unless the earliest of the "preceding years" ended before 1988 and is one of the 6 years immediately preceding the year of averaging.

(5) Revocation of election — An election filed under subsection (1) may be revoked by the individual

(a) at any time before the Minister has first assessed the individual's tax for the year of averaging; or

(b) during the 30 day period immediately following any assessment by the Minister of the individual's tax for the year of averaging.

(6) Limitation as to election — No election may be filed under this section by a taxpayer for a taxation year if

(a) the averaging period resulting from the election would include a year that was included in an averaging period resulting from a previous election by the taxpayer under this section that has not been revoked under subsection (5); or

(b) an amount has been added or deducted under section 110.4 in computing the taxable income of the taxpayer for the year or any other year of the averaging period.

(7) Rents or trust income from farming or fishing — For the purposes of subsection (1),

(a) rents dependent on the lessee's gross production in the course of farming or fishing, and

(b) income from a trust or estate to the extent that it can reasonably be regarded as having been derived from farming or fishing,

shall be deemed to be income from farming or fishing.

(8) Losses — Any amount in respect of a loss deducted in making a calculation under paragraph (1)(a) and any amount in respect of a loss described in subparagraph (1)(b)(ii) shall, for the purpose of computing taxable income for taxation years following the year of averaging, be deemed to have been deducted in respect of that loss in computing taxable income for a taxation year preceding the year for which the loss was determined.

(9) Investment tax credit — Where this section is applicable to the computation of an individual's tax payable for a taxation year, the amount, if any, by which

(a) the amount described in subparagraph (1)(e)(ii)

exceeds

(b) the amount described in subparagraph (1)(e)(i)

shall be added in computing the individual's investment tax credit at the end of that year, and paragraph 12(1)(t) and subsections 13(7.1) and 53(2) shall not apply to any amount deducted under subsection 127(5) for that year, or any subsequent taxation year, that may reasonably be attributed to the amount added under this subsection.

(10) Idem — Notwithstanding the definition "investment tax credit" in subsection 127(9), where a taxpayer has filed an election under subsection (1) for a year of averaging, in computing the taxpayer's investment tax credit at the end of any of the preceding years, there shall not be included any amount in respect of property acquired, or an expenditure made, in or after the year of averaging.

Selected Cases [former subsec. 119(1)]: *Israel v. R.*, [1979] C.T.C. 468 (FCTD) (Company to which taxpayer transferred farming business held not to have income from farming in the year; income averaging not permitted); *Wilfley v. R.*, [1974] C.T.C. 510 (FCTD) (Income averaging permitted to incorporator of company to operate farm); *Kuhl et al. v. R.*, [1973] C.T.C. 846 (FCTD) (Income averaging permitted to incorporators of company to operate farm where incorporators working for company as independent contractors).

120. (1) Income not earned in a province — There shall be added to the tax otherwise payable under this Part by an individual for a taxation year the amount that bears the same relation to 48% of the tax otherwise payable under this Part by the individual for the year that

(a) the individual's income for the year, other than the individual's income earned in the year in a province,

bears to

(b) the individual's income for the year.

Related Provisions: 117(1) — Tax payable under this Part; 120(3) — "Income for the year" defined; 120(4) — Income earned in the year in a province.

History: The opening words of subsec. 120(1) amended by 2001, c. 17, subsec. 103(1), applicable to 2000 *et seq.* That portion formerly read:

(1) There shall be added to the tax otherwise payable under this Part by an individual for a taxation year an amount that bears the same relation to 52% of the tax otherwise payable under this Part by the individual for the year that

Selected Cases [subsec. 120(1)]: *Gardner v. R.*, [2000] 4 C.T.C. 2531 (TCC); aff'd [2002] 1 C.T.C. 302 (FCA) (Matters of Ontario tax to be decided by Ontario courts).

Interpretation Bulletins: IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-434R: Rental of real property by individual.

(2) Amount deemed paid in prescribed manner [Quebec abatement] — Each individual is deemed to have paid, in prescribed manner and on prescribed dates, on account of the individual's tax under this Part for a taxation year an amount that bears the same relation to 3% of the tax otherwise payable under this Part by the individual for the year that

(a) the individual's income earned in the year in a province that, on January 1, 1973, was a province providing schooling allowances within the meaning of the *Youth Allowances Act*, chapter Y-1 of the Revised Statutes of Canada, 1970,

bears to

(b) the individual's income for the year.

Related Provisions: 117(1) — Tax payable under this Part; 120(3) — "Income for the year" defined; 152(1)(b) — Determination of amount on assessment; 152(4.2)(d) — Redetermination at taxpayer's request; 160.1 — Where excess refunded.

Federal-Provincial Fiscal Arrangements . . . Act: S. 27 of the *Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act*, R.S.C. 1985, c. F-8, provides an additional 13.5% credit for residents of Quebec.

Selected Cases [subsec. 120(2)]: *Hollinger v. R.*, [1974] C.T.C. 693 (FCA) (Amounts received by passive partner in U.S. business constituted income from business; no provincial abatement).

Regulations: 6401 (prescribed date is December 31 of each year).

Remission Orders: *Income Earned in Quebec Income Tax Remission Order*, P.C. 1989-1204 (reduction in withholdings for certain income related to Quebec).

(2.1) [Repealed]

History: Subsec. 120(2.1) repealed by 2001, c. 17, subsec. 103(2), applicable to 1996 *et seq.* Subsec. 120(2.1) formerly read:

(2.1) Idem — Where section 119 is applicable to the computation of an individual's tax for a taxation year (referred to in that section as the "year of averaging"), notwithstanding subsection (2), the amount deemed by that subsection to have been paid on account of the individual's tax under this Part for the year shall be equal to the amount that would be determined under that subsection if the reference therein to "the tax otherwise payable under this Part by the individual for the year" were read as a reference to "the amount that would be the tax otherwise payable under this Part by the individual if the individual's taxable income for the year were the individual's average net income (within the meaning of paragraph 119(1)(c)) for the year".

(2.2) Amount deemed paid [First Nations tax] — An individual is deemed to have paid on the last day of a taxation year, on account of the individual's tax under this Part for the year, an amount equal to the individual's income tax payable for the year to an Aboriginal government pursuant to a law of that government made in accordance with a tax sharing agreement between that government and the Government of Canada.

Related Provisions: 81(1)(a) — Deduction for amounts exempted under *Indian Act*; 152(1)(b) — Determination of amount on assessment; 152(4.2)(d) — Redetermination at taxpayer's request; 156.1(1)"net tax owing"(b)B, E, F, 156.1(1.3) — First Nations tax counted for instalment purposes; 239(5) — 120(2.2) to be ignored in determining whether offence committed.

History: Subsec. 120(2.2) added by 2000, c. 19, subsec. 27(1), applicable to 1999 *et seq.*

(3) Definition of "the individual's income for the year" — For the purpose of this section, "the individual's income for the year" means

(a) if section 114 applies to the individual in respect of the year, the amount determined under paragraph 114(a) in respect of the individual for the year;

(b) if the individual was non-resident throughout the year, the individual's taxable income earned in Canada for the year determined without reference to paragraphs 115(1)(d) to (f); and

(c) in the case of an individual who is a specified individual in relation to the year, the individual's income for the year computed without reference to paragraph 20(1)(ww).

History: Paras. 120(3)(a) and (b) amended by 2001, c. 17, subsec. 103(3), applicable to 1998 *et seq.*, except that, for taxation years that end before 2000, the paras. shall be read as follows:

(a) if section 114 applies to the individual in respect of the year, the amount determined under paragraph 114(a) in respect of the individual for the year; and

(b) if the individual was non-resident throughout the year, the individual's taxable income earned in Canada for the year determined without reference to paragraphs 115(1)(d) to (f).

The paras. formerly read:

(a) in the case of an individual to whom section 114 applies who was resident in Canada during part of the year and during some other part of the year was not resident in Canada, the amount that would be determined under that section to be the individual's taxable income for the year if that section were read without reference to the words following paragraph 114(b);

(b) in the case of an individual to whom section 115 applies who was not resident in Canada at any time in the taxation year, the amount that would be determined under Division D to be the individual's taxable income for the year if subsection 115(1) were read without reference to the words following paragraph 115(1)(c); and

The opening words of subsec. 120(3) amended, para. 120(3)(c) added, by 2000, c. 19, subsecs. 27(2), (3), applicable to 2000 *et seq.* The opening words formerly read:

(3) Definition of "the individual's income for the year" — In subsections (1) and (2), "the individual's income for the year" means

(3.1) [Repealed under former Act]

(4) Definitions — In this section,

"income earned in the year in a province" means amounts determined under rules prescribed for the purpose by regulations made on the recommendation of the Minister of Finance;

Regulations: 2600–2607 (rules determining income earned in the year in a province).

Interpretation Bulletins: IT-221R3: Determination of an individual's residence status; IT-434R: Rental of real property by individual.

"province [para. 120(4)(b)]" — [Repealed under former Act]

"tax otherwise payable under this Part" by an individual for a taxation year means the total of

(a) the greater of

(i) the individual's minimum amount for the year determined under section 127.51, and

(ii) the amount that, but for this section, would be the individual's tax payable under this Part for the year if this Part were read without reference to

(A) section 119, subsection 120.4(2) and sections 126, 127, 127.4 and 127.41, and

(B) where the individual is a specified individual in relation to the year, section 121 in its application to dividends included in computing the individual's split income for the year, and

(b) where the individual is a specified individual in relation to the year, the amount, if any, by which

(i) 29% of the individual's split income for the year

exceeds

(ii) the total of all amounts each of which is an amount that may be deducted under section 121 and that can reasonably be considered to be in respect of a dividend included in computing the individual's split income for the year.

Related Provisions: 117(1) — Tax payable under this Part.

History: Cl. (a)(ii)(A) of the definition "tax otherwise payable under this Part" in subsec. 120(4), amended by 2001, c. 17, subsec. 103(4), to add "section 119,", applicable to 1996 *et seq.* except that, in its application to taxation years that end before 2000 [see para. (b) history below], subsec. (3) of the amending legislation shall be read as follows:

(3) Paragraph (b) of the definition "tax otherwise payable under this Part" in subsection 120(4) of the Act is replaced by the following:

(b) the amount that, but for this section and subsection 117(6), would be the tax payable under this Part by the individual for the year if this Part were read without reference to any of sections 119, 126, 127 and 127.4.

The definition "tax otherwise payable under this Part" in subsec. 120(4) amended by 2000, c. 19, subsec. 27(3), applicable to 2000 *et seq.* It formerly read:

"tax otherwise payable under this Part" by an individual for a taxation year means the greater of

(a) the amount, if any, by which the total of

(i) the individual's minimum amount for the year determined under section 127.51, and

(ii) any amount required under subsection 120.1(2) to be added to the tax payable by the individual for the year under this Part,

exceeds any amount that may be deducted under subsection 120.1(1) from the tax payable by the individual for the year under this Part, and

(b) the amount that, but for this section and subsection 117(6), would be the tax payable under this Part by the individual for the year if this Part were read without reference to any of sections 126, 127 and 127.4.

Para. (b) of the definition "tax otherwise payable under this Part" in subsec. 120(4) amended by 1999, c. 22, s. 43, applicable to 1998 *et seq.*

(b) the amount that, but for this section and subsection 117(6), would be the tax payable under this Part by the individual for the year if the individual were not entitled to any deduction under any of sections 126, 127, 127.2 and 127.4.

Selected Cases [s. 120]: *Lemaire v. Canada*, [1995] 1 C.T.C. 2844 (TCC) (Tax Court cannot grant relief from provincial taxation or order refund of provincial taxes deducted at source).

Definitions [s. 120]: "amount" — 248(1); "Canada" — 255; "income earned in the year in a province" — 120(4); "income for the year" — 120(3); "individual" — 248(1); "minimum amount" — 127.51; "prescribed", "non-resident" — 248(1); "province" — *Interpretation Act* 35(1); "regulation" — 248(1); "resident in Canada" — 250; "specified individual", "split income" — 120.4(1), 248(1); "tax otherwise payable" — 120(4); "tax payable" — 248(2); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1).

I.T. Application Rules [s. 120]: 40(1), (2); 49(3).

120.1 [Repealed]

History [120.1]: S. 120.1 repealed by 2000, c. 19, s. 28, applicable to 1998 *et seq.* It formerly read:

120.1 (1) **Forward averaging credit** — There may be deducted from the amount that would, but for this section, be the tax otherwise payable under this Part (other than the tax payable with respect to a return of income referred to in subsection 110.4(5)) by an individual for a taxation year an amount equal to the product obtained when

(a) the amount specified in the individual's election for the year under subsection 110.4(2) and, where the individual's legal representative has filed on the individual's behalf an election under subsection (2) for the year, the individual's accumulated averaging amount at the end of the year

is multiplied by

(b) the percentage referred to in paragraph 117(2)(c).

(2) **Year of death** — Where an individual dies in a taxation year before 1998 (and is resident in Canada at the time of death) and the individual's legal representative files with the individual's return of income (other than a return of income referred to in subsection 110.4(5)) for the year an election in prescribed form on or before the day on or before which the return is required to be filed, there shall be added to the amount that would, but for this section, be the individual's tax payable for the year under this Part with respect to the return of income an amount equal to the amount, if any, by which

(a) the total of the taxes that would have been payable by the individual under this Part for the three immediately preceding taxation years if the individual's taxable income otherwise determined for each of those years were increased by 1/3 of the individual's accumulated averaging amount at the end of the year in which the individual died and if this Part were read without reference to sections 119 to 127.3

exceeds

(b) the total of the taxes that would have been payable by the individual under this Part for the three immediately preceding taxation years if this Part were read without reference to sections 119 to 127.3.

(3) **Deduction and additions** — Each amount deducted or added under subsection (1) or (2) in computing the tax payable under this Part by an individual for a taxation year shall, notwithstanding those subsections, be equal to the total of

(a) the amount that would, but for this subsection, be determined for the year under subsection (1) or (2), as the case may be, and

(b) an amount equal to that proportion of 52% of the amount referred to in paragraph (a) that

(i) the individual's income for the year, other than the individual's income earned in the year in a province,

is of

(ii) the individual's income for the year.

(4) **Presumption** — Where the amount deductible by an individual under subsection (1) exceeds the amount that would, but for that subsection, be the individual's tax otherwise payable under this Part for the year, the excess shall be deemed to be an amount paid by the individual, on the day the individual was required to file the election under subsection 110.4(2), on account of the individual's tax for the year under this Part.

(5) **Reduction** — Notwithstanding subsection (4), the amount of the excess referred to in that subsection shall be reduced by an amount equal to that proportion of 16.5% of the amount of the excess that

(a) the individual's income earned in the year in a province that, on January 1, 1973, was a province providing schooling allowances (within the meaning of the *Youth Allowances Act*, chapter Y-1 of the Revised Statutes of Canada, 1970)

is of

(b) the individual's income for the year.

(6) Individual not resident — Where an individual was not resident in Canada throughout the taxation years referred to in paragraph (2)(b), the amount determined under that paragraph shall be equal to the amount that would have been so determined if the individual had been resident in Canada throughout those years and the individual's incomes for those years had been from sources in Canada.

(7) Application — This section does not apply to an individual described in subsection (6) unless the individual's legal representatives have, on or before the day on or before which they were required to file the individual's return of income under this Part for the taxation year in which the individual died (or would have been required to file such a return had tax been payable by the individual under this Part for the year), filed a return of the individual's income for each of the three taxation years referred to in paragraph (2)(b) in the same form and containing the same information as the return that the individual, or legal representatives, would have been required to file under this Part if the individual had been resident in Canada throughout each of those three years and if tax had been payable by the individual under this Part for each of those three years.

(8) Amount required to be included — Where an amount is required by virtue of this section to be included in computing the individual's tax otherwise payable under this Part for a taxation year, the references in subsection 120(1) and section 121 of this Act and subsection 120(3.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, to "the tax otherwise payable under this Part" shall be read as references to "the amount that would, but for section 120.1, be the tax otherwise payable under this Part".

That portion of para. 120.1(3)(b) preceding subpara. (i) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 97, to substitute "52%" for "47%", applicable to 1989 *et seq.* except that for the 1989 taxation year "52%" shall be read as "49.5%".

Selected Cases [s. 120.1]: *Miller v. MNR*, [1990] 2 C.T.C. 4 (FCTD); rev'd [1993] 1 C.T.C. 269 (FCA) (Amendment of election permitted subsequent to filing).

120.2 (1) Minimum tax carry-over — There may be deducted from the amount that, but for this section, section 120 and subsection 120.4(2), would be an individual's tax payable under this Part for a particular taxation year such amount as the individual claims not exceeding the lesser of

(a) the portion of the total of the individual's additional taxes determined under subsection (3) for the 7 taxation years immediately preceding the particular year that was not deducted in computing the individual's tax payable under this Part for a taxation year preceding the particular year, and

(b) the amount, if any, by which

(i) the amount that, but for this section, section 120 and subsection 120.4(2), would be the individual's tax payable under this Part for the particular year if the individual were not entitled to any deduction under any of sections 126, 127 and 127.4

exceeds

(ii) the individual's minimum amount for the particular year determined under section 127.51.

(2) [Repealed under former Act]

(3) Additional tax determined — For the purposes of subsection (1), additional tax of an individual for a taxation year is the amount, if any, by which

(a) the individual's minimum amount for the year determined under section 127.51

exceeds the total of

(b) the amount that, but for section 120 and subsection 120.4(2), would be the individual's tax payable under this Part for the year if the individual were not entitled to any deduction under any of sections 126, 127 and 127.4, and

Proposed Amendment — 120.2(3)(b)

(b) the amount that, if this Act were read without reference to section 120, would be the individual's tax payable under this Part for the year if the individual were not entitled to any deduction under any of sections 126, 127 and 127.4, and

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 112, will amend para. 120.2(3)(b) to read as above, applicable to 2000 *et seq.*

Technical Notes: Section 120.2 allows an individual to apply additional taxes, imposed for a given year under the minimum tax in section 127.5, against the individual's ordinary Part I tax liability for following years. Paragraph 120.2(3)(b) is amended to remove the reference in that paragraph to subsection 120.4(2). This amendment ensures that an individual's additional tax in respect of the minimum tax does not include the special 29% tax imposed under section 120.4 on certain passive income of minors.

(c) that proportion of the amount, if any, by which

(i) the individual's special foreign tax credit for the year determined under section 127.54

exceeds

(ii) the total of all amounts deductible under section 126 from the individual's tax for the year

that

(iii) the amount of the individual's foreign taxes for the year within the meaning assigned by subsection 127.54(1)

is of

(iv) the amount that would be the individual's foreign taxes for the year within the meaning assigned by subsection 127.54(1) if the definition "foreign taxes" in that subsection were read without reference to "⅔ of".

Related Provisions: 117(1) — Tax payable under this Part.

(4) Where subsec. (1) does not apply — Subsection (1) does not apply in respect of an individual's return of income filed under subsection 70(2), paragraph 104(23)(d) or 128(2)(f) or subsection 150(4).

History: Subsec. 120.2(4) amended by 2001, c. 17, s. 104, applicable to 1996 *et seq.* Subsec. 120.2(4) formerly read:

(4) Subsection (1) does not apply in respect of

(a) an individual's return of income filed under subsection 70(2), paragraph 104(23)(d) or 128(2)(f) or subsection 150(4); or

(b) a taxation year of an individual in respect of which the individual has made an election under section 119.

The opening words of subsec. 120.2(1), subpara. 120.2(1)(b)(i) and para. 120.2(3)(b) amended by 2000, c. 19, subsecs. 29(1)–(3), applicable to 2000 *et seq.* The opening words, the subpara. and para. formerly read:

(1) There may be deducted from the amount that, but for this section and sections 120 and 120.1, would be the tax payable under this Part by an individual for a particular taxation year such amount as the individual may claim not exceeding the lesser of

. . . . .

(i) the amount that, but for this section, subsection 117(6), sections 120 and 120.1, would be the individual's tax payable under this Part for the particular year if the individual were not entitled to any deduction under any of sections 126, 127 and 127.2 to 127.4

. . . . .

(b) the amount that, but for subsection 117(6) and sections 120 and 120.1, would be the tax payable by the individual under this Part for the year if the individual were not entitled to any deduction under any of sections 126, 127 and 127.2 to 127.4, and

Para. 120.2(4)(a) amended by 1998, c. 19, s. 137, applicable to taxation years that begin after April 26, 1995. Para. 120.2(4)(a) formerly read:

(a) a return of income of an individual filed under subsection 70(2), paragraph 104(23)(d) or 128(2)(e) or subsection 150(4); or

Selected Cases [s. 120.2]: *Netupsky v. Canada*, [1995] 1 C.T.C. 2321 (TCC) (Alternative minimum tax not unconstitutional).

Definitions [s. 120.2]: "amount", "individual" — 248(1); "minimum amount" — 127.51; "tax payable" — 248(2); "taxation year" — 249.

120.3 CPP/QPP disability [or other] benefits for previous years — There shall be added in computing an individual's tax payable under this Part for a particular taxation year the total of all amounts each of which is the amount, if any, by which

(a) the amount that would have been the tax payable under this Part by the individual for a preceding taxation year if that portion of any amount not included in computing the individual's income for the particular year because of subsection 56(8) and that relates to the preceding year had been included in computing the individual's income for the preceding year

exceeds

(b) the tax payable under this Part by the individual for the preceding year.

Related Provisions: 120.31 — Lump-sum payment averaging.

History: S. 120.3 added by 1994, c. 7, Sch. II (1991, c. 49), s. 98, applicable to 1990 *et seq.*

Definitions [s. 120.3]: "amount", "individual" — 248(1); "tax payable" — 248(2); "taxation year" — 249.

120.31 Lump-sum payments [averaging] — (1) Definitions — The definitions in subsection 110.2(1) apply in this section.

(2) Addition to tax payable — There shall be added in computing an individual's tax payable under this Part for a particular taxation year the total of all amounts each of which is the amount, if any, by which

(a) the individual's notional tax payable for an eligible taxation year to which a specified portion of a qualifying amount received by the individual relates and in respect of which an amount is deducted under section 110.2 in computing the individual's taxable income for the particular year

exceeds

(b) the individual's tax payable under this Part for the eligible taxation year.

Forms: T1198: Statement of qualifying retroactive lump-sum payment.

(3) Notional tax payable — For the purpose of subsection (2), an individual's notional tax payable for an eligible taxation year, calculated for the purpose of computing the individual's tax payable under this Part for a taxation year (in this subsection referred to as "the year of receipt") in which the individual received a qualifying amount, is the total of

(a) the amount, if any, by which

(i) the amount that would be the individual's tax payable under this Part for the eligible taxation year if the total of all amounts, each of which is the specified portion, in relation to the eligible taxation year, of a qualifying amount received by the individual before the end of the year of receipt, were added in computing the individual's taxable income for the eligible taxation year

exceeds

(ii) the total of all amounts each of which is an amount, in respect of a qualifying amount received by the individual before the year of receipt, that was included because of this paragraph in computing the individual's notional tax payable under this Part for the eligible taxation year, and

(b) where the eligible taxation year ended before the taxation year preceding the year of receipt, an amount equal to the amount that would be calculated as interest payable on the amount determined under paragraph (a) if it were so calculated

Proposed Amendment — 120.31(3)(b) opening words

(b) if the eligible taxation year ended before the taxation year preceding the year of receipt, an amount equal to the amount that would be calculated as interest payable on the amount, if any, by which the amount determined under paragraph (a) in respect of the eligible taxation year exceeds the taxpayer's tax payable under this Part for that year, if the amount that would be calculated as interest payable on that excess were calculated

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 113, will amend the opening words of para. 120.31(3)(b) to read as above, applicable to 1995 *et seq.*

Technical Notes: Section 120.31 provides for the calculation of the tax payable on certain lump-sum payments. The amount of the tax is equal to the total of the additional taxes that would be payable for each relevant taxation year if the portion of the lump-sum payment that relates to that preceding year were added to the individual's taxable income for that year.

A notional amount of interest (using the rate of interest on tax refunds applicable to the relevant period) is added to the additional tax to take into account the fact that the calculation of the tax on the lump-sum payment should reflect not only the additional tax that would have been payable had the payment been received on an on-going basis, but also the fact that this additional tax was not paid during those preceding years.

The amendment to paragraph 120.31(3)(b) clarifies that the notional amount of interest is calculated on the amount of the additional tax for each relevant previous year and not on the whole tax payable for that year.

(i) for the period that began on May 1 of the year following the eligible taxation year and that ended immediately before the year of receipt, and

(ii) at the prescribed rate that is applicable for the purpose of subsection 164(3) with respect to the period.

Regulations: 4301(b) (prescribed rate of interest).

History: S. 120.31 added by 2000, c. 19, s. 30, applicable to 1995 *et seq.* and, notwithstanding subsecs. 152(4) to (5), any assessment of an individual's tax payable under the Act for any taxation year that ended before 1999 shall be made as is necessary to take into account the application of s. 120.31.

Definitions [s. 120.31]: "amount" — 248(1); "eligible taxation year" — 110.2(1), 120.31(1); "individual" — 248(1); "notional tax payable" — 120.31(3); "prescribed" — 248(1); "qualifying amount", "specified portion" — 110.2(1), 120.31(1); "taxable income" — 248(1); "taxation year" — 249; "year of receipt" — 120.31(3).

120.4 Tax on split income [Kiddie tax] — (1) Definitions — The definitions in this subsection apply in this section.

"excluded amount", in respect of an individual for a taxation year, means an amount that is the income from a property acquired by or for the benefit of the individual as a consequence of the death of

(a) a parent of the individual; or

(b) any person, if the individual is

(i) enrolled as a full-time student during the year at a post-secondary educational institution (as defined in subsection 146.1(1)), or

(ii) an individual in respect of whom an amount may be deducted under section 118.3 in computing a taxpayer's tax payable under this Part for the year.

Related Provisions: 248(8) — Occurrences as a consequence of death.

"specified individual", in relation to a taxation year, means an individual who

(a) had not attained the age of 17 years before the year;

(b) at no time in the year was non-resident; and

(c) has a parent who is resident in Canada at any time in the year.

Related Provisions: 248(1)"specified individual" — Definition applies to entire Act.

"split income", of a specified individual for a taxation year, means the total of all amounts (other than excluded amounts) each of which is

(a) an amount required to be included in computing the individual's income for the year

(i) in respect of taxable dividends received by the individual in respect of shares of the capital stock of a corporation (other than shares of a class listed on a prescribed stock exchange or shares of the capital stock of a mutual fund corporation), or

(ii) because of the application of section 15 in respect of the ownership by any person of shares of the capital stock of a corporation (other than shares of a class listed on a prescribed stock exchange),

(b) a portion of an amount included because of the application of paragraph 96(1)(f) in computing the individual's income for the year, to the extent that the portion

(i) is not included in an amount described in paragraph (a), and

(ii) can reasonably be considered to be income derived from the provision of goods or services by a partnership or trust to or in support of a business carried on by

Proposed Amendment — 120.4(1)"split income"(b)(ii) opening words

(ii) can reasonably be considered to be income derived from the provision of property or services by a partnership or trust to, or in support of, a business carried on by

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 114(1), will amend the opening words of subpara. (b)(ii) of the definition "split income" in subsec. 120.4(1) to read as above, applicable in computing split income of a specified individual for taxation years that begin after December 20, 2002, other than in computing an amount included in that income that is from a trust or partnership for a taxation year or fiscal period of the trust or partnership that began before December 21, 2002.

Technical Notes: The expression "split income" describes the type of income to which this measure applies.

Among other things, split income of an individual includes all amounts (other than excluded amounts) required to be included in the individual's income in respect of partnership or trust income if the source of the income is the provision of goods or services by the partnership or trust to, or in support of, a business carried on by

- a person who is related to the individual,
- a corporation of which a person who is related to the individual is a specified shareholder, or
- a professional corporation of which a person related to the individual is a shareholder.

The phrase "goods or services" in the English version of subparagraph (b)(ii) and clause (c)(ii)(C) in the definition "split income" is replaced by the phrase "property or services". This ensures that the split income rules will apply to income from property, such as rental income. This change applies in computing the split income of a specified individual for taxation years that begin after December 20, 2002, other than in computing an amount included in that income that is from a trust or partnership for a fiscal period or taxation year of the trust or partnership that began before December 21, 2002. Also see the commentary to subsection 160(1.2), which is amended consequential to this amendment.

(A) a person who is related to the individual at any time in the year,

(B) a corporation of which a person who is related to the individual is a specified shareholder at any time in the year, or

(C) a professional corporation of which a person related to the individual is a shareholder at any time in the year, or

(c) a portion of an amount included because of the application of subsection 104(13) or 105(2) in respect of a trust (other than a mutual fund trust) in computing the individual's income for the year, to the extent that the portion

(i) is not included in an amount described in paragraph (a), and

(ii) can reasonably be considered

(A) to be in respect of taxable dividends received in respect of shares of the capital stock of a corporation (other than shares of a class listed on a prescribed stock exchange or shares of the capital stock of a mutual fund corporation),

(B) to arise because of the application of section 15 in respect of the ownership by any person of shares of the capital stock of a corporation (other than shares of a class listed on a prescribed stock exchange), or

(C) to be income derived from the provision of goods or services by a partnership or trust to or in support of a business carried on by

Proposed Amendment — 120.4(1)"split income"(c)(ii)(C) opening words

(C) to be income derived from the provision of property or services by a partnership or trust to, or in support of, a business carried on by

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 114(2), will amend the opening words of cl. (c)(ii)(C) of the definition "split income" in subsec. 120.4(1) to read as above, applicable in computing split income of a specified individual for taxation years that begin after December 20, 2002, other than in computing an amount included in that income that is from a trust or partnership for a taxation year or fiscal period of the trust or partnership that began before December 21, 2002.

Technical Notes: See under 120.4(1)"split income"(b)(ii) opening words above.

(I) a person who is related to the individual at any time in the year,

(II) a corporation of which a person who is related to the individual is a specified shareholder at any time in the year, or

(III) a professional corporation of which a person related to the individual is a shareholder at any time in the year.

Related Provisions: 20(1)(ww) — Split income deducted from income for regular tax purposes; 56(5), 74.4(2)(g), 74.5(13) — Attribution rules do not apply to split income; 108(5) — Split income paid out by trust to beneficiary retains its characteristics; 120.4(2) — Tax on split income; 248(1)"split income" — Definition applies to entire Act.

Forms: T1206: Tax on split income.

(2) Tax on split income — There shall be added to a specified individual's tax payable under this Part for a taxation year 29% of the individual's split income for the year.

Related Provisions: 20(1)(ww) — Split income deducted from income for regular tax purposes; 120.2(1), 120.2(1)(b)(i) — No AMT carryover allowed against split-income tax; 120.4(3) — Minimum amount of income-splitting tax; 127.5 — Alternative minimum tax cannot be less than split-income tax; 160(1.2) — Parent jointly liable with child for tax.

Forms: T1206: Tax on split income.

(3) Tax payable by a specified individual — Notwithstanding any other provision of this Act, where an individual is a specified individual in relation to a taxation year, the individual's tax payable under this Part for the year shall not be less than the amount by which

(a) the amount added under subsection (2) to the individual's tax payable under this Part for the year

exceeds

(b) the total of all amounts each of which is an amount that

(i) may be deducted under section 121 or 126 in computing the individual's tax payable under this Part for the year, and

(ii) can reasonably be considered to be in respect of an amount included in computing the individual's split income for the year.

History: S. 120.4 added by 2000, c. 19, s. 30, applicable to 2000 *et seq.*

Definitions [s. 120.4]: "amount", "business" — 248(1); "consequence of the death" — 248(8); "corporation" — 248(1), *Interpretation Act* 35(1); "excluded amount" — 120.4(1); "individual" — 248(1); "mutual fund corporation" — 131(8), 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q) [to be repealed], 132.2(3)(n) [draft], 248(1); "non-resident" — 248(1); "parent" — 252(2)(a); "person" — 248(1); "post-secondary educational institution" — 146.1(1); "prescribed" — 248(1); "prescribed stock exchange" — 248(29), Reg. 3200, 3201; "professional corporation", "property" — 248(1); "related" — 251(2)–(6); "resident in Canada" — 250; "share", "shareholder" — 248(1); "specified individual" — 120.4(1), 248(1); "specified shareholder" — 248(1); "split income" — 120.4(1), 248(1); "taxable dividend" — 89(1), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

121. Deduction for taxable dividends [dividend tax credit] — There may be deducted from the tax otherwise payable under this Part by an individual for a taxation year ⅔ of any amount that is required by paragraph 82(1)(b) to be included in computing the individual's income for the year.

Related Provisions: 82(2) — Dividends deemed received by taxpayer; 117(1) — Tax payable under this Part; 118.92 — Ordering of credits.

Definitions [s. 121]: "amount", "individual" — 248(1); "taxation year" — 249.

I.T. Application Rules: 40(1), (2).

Interpretation Bulletins: IT-67R3: Taxable dividends from corporations resident in Canada; IT-295R4: Taxable dividends received after 1987 by spouse; IT-379R: Employees profit sharing plans — allocations to beneficiaries; IT-524: Trusts — flow-through of taxable dividends to a beneficiary after 1987.

122. (1) Tax payable by *inter vivos* trust — Notwithstanding section 117, the tax payable under this Part by an *inter vivos* trust on its amount taxable for a taxation year shall be 29% of its amount taxable for the year.

Related Provisions: 104(2) — Multiple trusts can be considered as one, to prevent multiplication of low rate of tax for testamentary trusts; 122(2) — Exception.

Selected Cases [subsec. 122(1)]: *Robinson (Trustee of) v. R.*, [1998] 1 C.T.C. 272 (FCA) (Limited partner nevertheless carries on the business of the partnership).

Interpretation Bulletins: IT-83R3: Non-profit organizations — taxation of income from property.

(1.1) Deductions [personal credits] not permitted [to trust] — No deduction may be made under section 118 in computing the tax payable by a trust for a taxation year.

Interpretation Bulletins: IT-83R3: Non-profit organizations — taxation of income from property; IT-406R2: Tax payable by an *inter vivos* trust.

(2) Where subsec. (1) does not apply [grandfathering] — Subsection (1) is not applicable for a taxation year of an *inter vivos* trust other than a mutual fund trust if the trust

Proposed Amendment — 122(2) opening words

(2) Where subsec. (1) does not apply — Subsection (1) does not apply for a taxation year of an *inter vivos* trust that is not a mutual fund trust and that

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 30(1), will amend the opening words of subsec. 122(2), applicable to trust taxation years that begin after 2002.

Technical Notes: Subsection 122(1) provides that, instead of graduated income tax rates, *inter vivos* trusts are generally subject to top marginal rates of income tax on their undistributed income. Subsection 122(2) which does not apply to mutual fund trusts, permits graduated income tax rates for certain *inter vivos* trusts established before June 18, 1971. One of the conditions for an *inter vivos* trust continuing to qualify for graduated income tax rates is that it not receive any gifts after June 18, 1971.

The opening words of subsection 122(2) are amended to modernize the language and to clarify its intended scope.

(a) was established before June 18, 1971;

(b) was resident in Canada on June 18, 1971 and without interruption thereafter until the end of the year;

(c) did not carry on any active business in the year;

(d) has not received any property by way of gift since June 18, 1971;

Proposed Addition — 122(2)(d.1)

(d.1) was not a trust to which a contribution (as defined by section 94) was made after June 22, 2000;

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 30(2), will add para. 122(2)(d.1), applicable to trust taxation years that begin after 2002.

Technical Notes: Paragraph 122(2)(d.1) is introduced so that the graduated income tax rates cease to apply to a trust in the event that, after June 22, 2000, a "contribution" is made to the trust. For this purpose, the expression "contribution" is defined in new section 94.

(e) has not, after June 18, 1971, incurred

(i) any debt, or

(ii) any other obligation to pay an amount,

to, or guaranteed by, any person with whom any beneficiary of the trust was not dealing at arm's length; and

(f) has not received any property after December 17, 1999, where

(i) the property was received as a result of a transfer from another trust,

(ii) subsection (1) applied to a taxation year of the other trust that began before the property was so received, and

(iii) no change in the beneficial ownership of the property resulted from the transfer.

Related Provisions: 127.53(1)(b) — Trust under 122(2) has $40,000 exemption from minimum tax.

History: Para. 122(2)(f) added by 2001, c. 17, s. 105, applicable to 1999 *et seq.*

Interpretation Bulletins: IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-406R2: Tax payable by an *inter vivos* trust.

(3) [Repealed under former Act]

Definitions [s. 122]: "allowable capital loss" — 38(b), 248(1); "amount" — 248(1); "amount taxable" — 117(2); "business" — 248(1); "Canada" — 255; "contribution" — 94(1); "*inter vivos* trust" — 108(1), 248(1); "months specified" — 122.5(4); "mutual fund trust" — 132(6)–(7), 132.2(1)(q) [to be repealed], 132.2(3)(n) [draft], 248(1); "person", "property" — 248(1); "resident in Canada" — 94(3)(a)(viii), 250; "tax payable" — 248(2); "taxable capital gain" — 38(a), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "trust" — 104(1), 248(1), (3).

Information Circulars [s. 122]: 78-5R3: Communal organizations.

122.1 [Repealed under former Act]

122.2 (1) [Repealed]

History: 1998, c. 19, s. 138(1), amended subpara. 122.2(1)(b)(i), as it read in its application to the 1992 taxation year, to read as follows, in force June 18, 1998.

(i) the total of all amounts each of which would be the income for the year of the individual or a supporting person of an eligible child of the individual for the year if no amount were included in respect of a gain from a disposition of property to which section 79 applies in computing that income

Subsec. 122.2(1) repealed by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 10(2), applicable to 1993 *et seq.* Subsec. (1) formerly read:

122.2 (1) Where an individual who has an eligible child files with the individual's return of income (other than a return of income filed under subsection 70(2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) under this Part for a taxation year a prescribed form, containing prescribed information, completed by the individual or, where the individual resided at the end of the year with a supporting person of that child, jointly by the individual and that supporting person, the amount, if any, by which

(a) the total of

(i) the product obtained when $559[26] is multiplied by the number of eligible children of the individual for the year, and

(ii) the total of all amounts each of which is, in respect of an eligible child of the individual for the year who is under 7 years of age at the end of the year, the amount, if any, by which $200[26] exceeds 25% of such portion of all amounts deducted under section 63 for the year as may reasonably be considered to have been paid in respect of the child

exceeds

(b) 5% of the amount, if any, by which

(i) the total of all amounts each of which is the income for the year of the individual or a supporting person of an eligible child of the individual for the year

exceeds

(ii) $24,090[26]

shall be deemed to be an amount paid by the individual, in prescribed manner and on prescribed dates, on account of the individual's tax under this Part for the year.

(2) [Repealed]

History: Subsec. 122.2(2) repealed by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 10(2), applicable to 1993 *et seq.* Subsec. (2) formerly read:

(2) Definitions — In this section,

"eligible child" of an individual for a taxation year means a child in respect of whom the individual

(a) is entitled to receive a family allowance under the *Family Allowances Act*

(i) in December of the year, or

(ii) where the child died or attained the age of 18 years during any month in the year, in that month, or

(b) would be entitled to receive a family allowance under the *Family Allowances Act* in December of the year if under that Act such an allowance were payable in the month in which the child becomes a child of the individual or becomes resident in Canada;

"supporting person" of an eligible child of an individual for a taxation year means

(a) where the individual was married and resided with the individual's spouse at the end of the year, that spouse,

(b) where the eligible child is the child of the individual and another person who resided together at the end of the year, that other person, and

(c) any taxpayer who deducted an amount under section 118 for the year in respect of an eligible child of the individual.

The definition "eligible child" in subsec. 122.2(2) substituted by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 10(1), applicable to the 1992 taxation year. The definition formerly read:

"eligible child" of an individual for a taxation year means a child in respect of whom the individual is entitled

(a) in January of the following taxation year, or

(b) where the child died or attained 18 years of age during any month in the year, in that month

to receive a family allowance under the *Family Allowances Act*;

Selected Cases [s. 122.2]: *Morrow v. R.*, [1997] 3 C.T.C. 2652 (TCC) (Child tax credit to be applied against total of federal and provincial tax payable, not just federal).

122.3 [Overseas employment tax credit] — (1) Deduction from tax payable where employment out of Canada

— Where an individual is resident in Canada in a taxation year and, throughout any period of more than 6 consecutive months that commenced before the end of the year and included any part of the year (in this subsection referred to as the "qualifying period")

Proposed Amendment — 122.3(1) opening words

122.3 (1) Overseas employment tax credit — If an individual is resident in Canada in a taxation year and, throughout any period of more than six consecutive months that began before the end of the year and included any part of the year (in this section referred to as the "qualifying period")

[26]Indexed by s. 117.1.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 115(1), will amend the opening words of subsec. 122.3(1) to read as above, applicable to taxation years that begin after Royal Assent.

Technical Notes: See under 122.3(1.1).

(a) was employed by a person who was a specified employer, other than for the performance of services under a prescribed international development assistance program of the Government of Canada, and

(b) performed all or substantially all the duties of the individual's employment outside Canada

(i) in connection with a contract under which the specified employer carried on business outside Canada with respect to

(A) the exploration for or exploitation of petroleum, natural gas, minerals or other similar resources,

(B) any construction, installation, agricultural or engineering activity, or

(C) any prescribed activity, or

(ii) for the purpose of obtaining, on behalf of the specified employer, a contract to undertake any of the activities referred to in clause (i)(A), (B) or (C),

there may be deducted, from the amount that would, but for this section, be the individual's tax payable under this Part for the year, an amount equal to that proportion of the tax otherwise payable under this Part for the year by the individual that the lesser of

(c) an amount equal to that proportion of $80,000 that the number of days

(i) in that portion of the qualifying period that is in the year, and

(ii) on which the individual was resident in Canada

is of 365, and

(d) 80% of the individual's income for the year from that employment that is reasonably attributable to duties performed on the days referred to in paragraph (c)

is of

(e) the amount, if any, by which

(i) if the individual is resident in Canada throughout the year, the individual's income for the year, and

(ii) if the individual is non-resident at any time in the year, the amount determined under paragraph 114(a) in respect of the taxpayer for the year

exceeds

(iii) the total of all amounts each of which is an amount deducted under section 110.6 or paragraph 111(1)(b), or deductible under paragraph 110(1)(d.2), (d.3), (f), (g) or (j), in computing the individual's taxable income for the year.

Related Provisions: 117(1) — Tax payable under this Part; 122.3(1.1) — No credit for incorporated employee; 126(1)(b)(i)(E)(II) — Foreign tax credit.

History: Subpara. 122.3(1)(e)(iii) amended by 2002, c. 9, s. 37, applicable to 1997 *et seq.* except that, for the 1997 taxation year, the subpara. shall be read as follows:

(iii) the total of all amounts each of which is an amount deducted by the individual under section 110.6 or paragraph 111(1)(b), or deductible by the individual under paragraph 110(1)(d.2), (d.3), (f), (g) or (j), for the year or in respect of the period or periods referred to in subparagraph (ii), as the case may be.

Notwithstanding subsecs. 152(4) to (5), any assessment of a taxpayer's tax, interest or penalty for any taxation year shall be made that is necessary to give effect to the amendment. Subpara. (e)(iii) formerly read:

(iii) the total of all amounts each of which is an amount deducted under section 110.6 or paragraph 111(1)(b) or deductible under paragraph 110(1)(d.2), (d.3), (f) or (j) in computing the individual's taxable income for the year.

Para. 122.3(1)(e) amended by 2001, c. 17, s. 106, applicable to 1998 *et seq.* The para. formerly read:

(e) the amount, if any, by which

(i) where section 114 does not apply to the individual in respect of the year, the individual's income for the year, and

(ii) where section 114 applies to the individual in respect of the year, the total of

(A) the individual's income for the period or periods in the year referred to in paragraph 114(a), and

(B) the amount that would be determined under paragraph 114(b) in respect of the individual for the year if subsection 115(1) were read without reference to paragraphs 115(1)(d) to (f)

exceeds

(iii) the total of all amounts each of which is an amount deducted by the individual under section 110.6 or paragraph 111(1)(b) or deductible by the individual under paragraph 110(1)(d.2), (d.3), (f) or (j) for the year or in respect of the period or periods referred to in subparagraph (ii), as the case may be.

Subpara. 122.3(1)(e)(i) amended by 2000, c. 19, subsec. 31(1), applicable to 1998 *et seq.* The subpara. formerly read:

(i) where section 114 is not applicable to the individual in respect of the year, the total of the individual's income for the year and the amount, if any, included pursuant to subsection 110.4(2) in computing the individual's taxable income for the year, and

Subpara. 122.3(1)(c)(ii) substituted by 1994, c. 21, subsec. 56(1), applicable to 1992 *et seq.*, except that a taxpayer may elect that the amendment not apply to the taxpayer's 1992 taxation year by so notifying the Minister of National Revenue in writing before the end of December 1994. Subpara. 122.3(1)(c)(ii) formerly read:

(ii) on which the individual was resident in Canada or carrying on business in Canada,

Subpara. 122.3(1)(e)(ii) substituted by 1994, c. 21, subsec. 56(2), applicable to 1993 *et seq.* That subpara. formerly read:

(ii) where section 114 is applicable to the individual in respect of the year, the individual's income for the period or periods in the year referred to in paragraph 114(a)

That portion of para. 122.3(1)(b) preceding cl. (i)(A) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 99, applicable to 1985 *et seq.* That portion formerly read:

(b) performed all or substantially all the duties of the individual's employment in one or more countries other than Canada

(i) in connection with a contract under which the specified employer carried on business in that country or those countries with respect to

Selected Cases [subsec. 122.3(1)]: *Purves v. R.*, 2005 CarswellNat 1028 (TCC) (Providing services of engineer was engineering activity, not merely providing personnel); *Duff v. R.*, [2005] 2 C.T.C. 2448 (TCC) (Not relevant that employee misled by employer); *Gonsalves v. R.*, [2000] 1 C.T.C. 2436 (TCC) (No requirement that employer be the main contractor); *Timmins v. R.*, [1999] 2 C.T.C. 133 (FCA) (Not necessary for there to be predominant profit motive for business to be carried on); *Gabie v. R.*, [1999] 1 C.T.C. 2352 (TCC) (Engineering activity did not have to be performed by professional engineer. Engineering activity included software engineering).

Regulations: 3400 (prescribed international development assistance program for 122.3(1)(a)); 6000 (prescribed activity for 122.3(1)(b)(i)(C) is activity under contract with UN).

Interpretation Bulletins: IT-270R3: Foreign tax credit; IT-497R4: Overseas employment tax credit.

Information Circulars: 92-3: Guidelines for refunds beyond the normal three year period.

Forms: T626: Overseas employment tax credit.

(1.1) Excluded income — No amount may be included under paragraph (1)(d) in respect of an individual's income for a taxation year from the individual's employment by an employer where

(a) the employer carries on a business of providing services and does not employ in the business throughout the year more than 5 full-time employees;

(b) the individual

(i) does not deal at arm's length with the employer, or is a specified shareholder of the employer, or

(ii) where the employer is a partnership, does not deal at arm's length with a member of the partnership, or is a specified shareholder of a member of the partnership; and

(c) but for the existence of the employer, the individual would reasonably be regarded as an employee of a person or partnership that is not a specified employer.

Proposed Amendment — 122.3(1.1)

(1.1) Excluded income — No amount may be included under paragraph (1)(d) in respect of an individual's income for a taxation year from the individual's employment by an employer

(a) if

(i) the employer carries on a business of providing services and does not employ in the business throughout the year more than five full-time employees,

(ii) the individual

(A) does not deal at arm's length with the employer, or is a specified shareholder of the employer, or

(B) where the employer is a partnership, does not deal at arm's length with a member of the partnership, or is a specified shareholder of a member of the partnership, and

(iii) but for the existence of the employer, the individual would reasonably be regarded as being an employee of a person or partnership that is not a specified employer; or

(b) if at any time in that portion of the qualifying period that is in the taxation year

(i) the employer provides the services of the individual to a corporation, partnership or trust with which the employer does not deal at arm's length, and

(ii) the fair market value of all the issued shares of the capital stock of the corporation or of all interests in the partnership or trust, as the case may be, that are held, directly or indirectly, by persons who are resident in Canada is less than 10% of the fair market value of all those shares or interests.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 115(2), will amend subsec. 122.3(1.1) to read as above, applicable to taxation years that begin after Royal Assent.

Technical Notes: Subsection 122.3(1.1), which at present limits access to the tax credit in one set of circumstances, is amended so that the credit is also unavailable in another situation. New paragraph 122.3(1.1)(b) denies an individual the benefit of the credit if, at any time in the qualifying period, the services of the individual are provided to a firm with which the employer does not deal at arm's length, and less than 10% of the fair market value of all the interests in the firm are held directly or indirectly by persons resident in Canada.

Example:

Situation:

An individual is employed by a corporation that is a specified employer. The employer supplies the individual's services to a non-resident corporation, the shares of which are held as follows: 60% are held by a non-resident corporation that also controls the individual's corporate specified employer; 20% are held by a non-resident trust, all of the units of which are held by non-residents; and 20% are held by a second non-resident trust, half of the units of which are held by residents of Canada.

Result:

Since they are related, the specified employer does not deal at arm's length with the recipient of the services in this example. However, new paragraph 122.3(1.1)(b) would not apply in this instance because residents of Canada hold, indirectly through the second trust, 10% of the interests in the recipient corporation.

The set of circumstances currently described in paragraphs 122.3(1.1)(a), (b) and (c) is contained in amended paragraph 122.3(1.1)(a), and subsection 122.3(1) is amended to ensure that the term "qualifying period" applies to subsection 122.3(1.1), as well as to subsection 122.3(1).

History: Subsec. 122.3(1.1) added by 1997, c. 25, s. 31, applicable to 1997 *et seq.*

(2) Definitions — In subsection (1),

"specified employer" means

(a) a person resident in Canada,

(b) a partnership in which interests that exceed in total value 10% of the fair market value of all interests in the partnership are owned by persons resident in Canada or corporations controlled by persons resident in Canada, or

(c) a corporation that is a foreign affiliate of a person resident in Canada;

Related Provisions: 256(6), (6.1) — Meaning of "controlled".

"tax otherwise payable under this Part for the year" means the amount that, but for this section, sections 120 and 120.2, subsection 120.4(2) and sections 121, 126, 127 and 127.4, would be the tax payable under this Part for the year.

History: The definition "tax otherwise payable under this Part for the year" in subsec. 122.3(2) amended by 2000, c. 19, subsec. 31(2), applicable to 2000 *et seq.* It formerly read:

> "tax otherwise payable under this Part for the year" means the amount that, but for this section and sections 120, 120.1, 120.2, 121, 126, 127 and 127.2 to 127.4, would be the tax payable under this Part for the year.

Selected Cases [s. 122.3]: *Rooke v. R.*, [2003] 1 C.T.C. 208 (FCA) (Grammatical and ordinary sense of words used overrode extraneous material regarding legislative policy); *Meredith v. R.*, [2002] 3 C.T.C. 519 (FCA); rev'g [2001] 4 C.T.C. 2596 (TCC) (Improper piercing of corporate veil had ignored legal relationships; credit allowed).

Definitions [s. 122.3]: "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "controlled" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "employed", "employee", "employer", "employment" — 248(1); "foreign affiliate" — 95(1), 248(1); "individual" — 248(1); "month" — *Interpretation Act* 35(1); "non-resident" — 248(1); ; "person" — 248(1); "qualifying period" — 122.3(1); "resident in Canada" — 94(3)(a)(viii), 250; "share" — 248(1); "specified employer" — 122.3(2); "specified shareholder" — 248(1); "tax otherwise payable" — 122.3(2); "tax payable" — 248(2); "taxable income" — 2(2), 248(1); "taxation year" — 249; "trust" — 104(1), 248(1), (3).

122.4 [Repealed under former Act]

122.5 [GST/HST credit] — (1) Definitions — The following definitions apply in this section.

History: The opening words of subsec. 122.5(1) amended by 2002, c. 9, subsec. 38(1), applicable to amounts that are deemed to be paid during months specified for 2001 *et seq.* The opening words formerly read:

122.5 (1) In this section,

"adjusted income" of an individual, for a taxation year in relation to a month specified for the taxation year, means the total of the individual's income for the taxation year and the income for the taxation year of the individual's qualified relation, if any, in relation to the specified month, both calculated as if no amount were included in respect of any gain from a disposition of property to which section 79 applies.

History: The definition "adjusted income" in subsec. 122.5(1) amended by 2002, c. 9, subsec. 38(1), applicable to amounts that are deemed to be paid during months specified for 2001 *et seq.* The definition formerly read:

"adjusted income" of an individual for a taxation year means the total of all amounts each of which would be the income for the year of

(a) the individual, or

(b) the individual's qualified relation for the year

if no amount were included in respect of a gain from a disposition of property to which section 79 applies in computing that income;

The definition "adjusted income" in subsec. 122.5(1) amended by 1998, c. 19, subsec. 139(1), applicable to 1992 *et seq.* It formerly read:

"adjusted income" of an individual for a taxation year means the total of all amounts each of which is the income of the year of

(a) the individual, or

(b) the individual's qualified relation for the year.

(c) [Repealed]

Para. (c) of "adjusted income" in subsec. 122.5(1) repealed by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 60(1), applicable to 1992 *et seq.* Para. (c) formerly read:

(c) a person (other than the individual or the individual's qualified relation for the year) who deducts for the year an amount under section 118 in respect of a qualified dependant of the individual for the year;

"cohabiting spouse or common-law partner" of an individual at any time has the meaning assigned by section 122.6.

History: The definition "cohabiting spouse or common-law partner" in subsec. 122.5(1) added by 2002, c. 9, subsec. 38(1), applicable to amounts that are deemed to be paid during months specified for 2001 *et seq.*

"eligible individual", in relation to a month specified for a taxation year, means an individual (other than a trust) who

(a) has, before the specified month, attained the age of 19 years; or

(b) was, at any time before the specified month,

(i) a parent who resided with their child, or

(ii) married or in a common-law partnership.

Related Provisions: 122.5(2) — Persons deemed not to be eligible individuals.

History: The definition "eligible individual" in subsec. 122.5(1) amended by 2002, c. 9, subsec. 38(1), applicable to amounts that are deemed to be paid during months specified for 2001 *et seq.* The definition formerly read:

"eligible individual" for a taxation year means an individual (other than a trust) who, at the end of December 31 of that year, is resident in Canada and is

(a) married or in a common-law partnership,

(b) a parent of a child, or

(c) 19 years of age or over;

The definition "eligible individual" in subsec. 122.5(1) amended by 2000, c. 12, Sch. 2, s. 11, to replace "married" with "married or in a common-law partnership", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

The opening words of the definition "eligible individual" in subsec. 122.5(1) amended by 1998, c. 19, subsec. 139(2), applicable after April 26, 1995. The opening words formerly read:

"eligible individual" for a taxation year means an individual (other than a trust) who, at the end of December of that year, is resident in Canada and is

"qualified dependant" of an individual, in relation to a month specified for a taxation year, means a person who at the beginning of the specified month

(a) is the individual's child or is dependent for support on the individual or on the individual's cohabiting spouse or common-law partner;

(b) resides with the individual;

(c) is under the age of 19 years;

(d) is not an eligible individual in relation to the specified month; and

(e) is not a qualified relation of any individual in relation to the specified month.

Related Provisions: 122.5(2) — Persons deemed not to be qualified dependants.

History: The definition "qualified dependant" in subsec. 122.5(1) amended by 2002, c. 9, subsec. 38(1), applicable to amounts that are deemed to be paid during months specified for 2001 *et seq.* The definition formerly read:

"qualified dependant" of an individual for a taxation year means a person who is

(a) a person in respect of whom the individual or the individual's qualified relation for the year is the only person who deducts an amount under section 118 for the year, or

(b) a child of the individual residing with the individual at the end of the year,

and who is not

(c) an eligible individual for the year,

(d) the qualified relation of an individual for the year, or

(e) a person in respect of whom an amount is deemed under this section to be paid by any other individual for the year;

"qualified relation" of an individual, in relation to a month specified for a taxation year, means the person, if any, who, at the beginning of the specified month, is the individual's cohabiting spouse or common-law partner.

Related Provisions: 122.5(2) — Persons deemed not to be qualified relations; 163(2)(c.1) — False statements or omissions.

History: The definition "qualified relation" in subsec. 122.5(1) amended by 2002, c. 9, subsec. 38(1), applicable to amounts that are deemed to be paid during months specified for 2001 *et seq.* The definition formerly read:

"qualified relation" of an individual for a taxation year means the person who, at the end of the year, is the individual's cohabiting spouse or common-law partner (within the meaning assigned by section 122.6).

The definition "qualified relation" in subsec. 122.5(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

"Qualified relation" in subsec. 122.5(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 60(2), applicable to 1992 *et seq.* except that in its application to the 1992 taxation year, it shall be read as follows:

"qualified relation" of an individual for a taxation year means the person who, at the beginning of the 1993 calendar year, is the individual's cohabiting spouse (within the meaning assigned by section 122.6).

The definition formerly read:

"qualified relation" of an individual for a taxation year means the person, if any, who is either

(a) the individual's spouse, or

(b) the other parent of a child of the individual, if the child is a qualified dependant of the individual,

who is of the opposite sex to the individual and who, at the end of the year, is not living separate and apart from the individual by reason of the breakdown of their marriage or other conjugal relationship.

"return of income", in respect of a person for a taxation year, means

(a) for a person who is resident in Canada at the end of the taxation year, the person's return of income (other than a return of income under subsection 70(2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) that is required to be filed for the taxation year or that would be required to be filed if the person had tax payable under this Part for the taxation year; and

(b) in any other case, a prescribed form containing prescribed information that is filed for the taxation year with the Minister.

History: The definition "return of income" in subsec. 122.5(1) added by 2002, c. 9, subsec. 38(1), applicable to amounts that are deemed to be paid during months specified for 2001 *et seq.*

Selected Cases [subsec. 122.5(1)]: *Russell v. R.*, [2001] 3 C.T.C. 2652 (TCC) (Use of "or" is conjunctive).

(2) Persons not eligible individuals, qualified relations or qualified dependants — Notwithstanding subsection (1), a person is not an eligible individual, is not a qualified relation and is not a qualified dependant, in relation to a month specified for a taxation year, if the person

(a) died before the specified month;

(b) is confined to a prison or similar institution for a period of at least 90 days that includes the first day of the specified month;

(c) is at the beginning of the specified month a non-resident person, other than a non-resident person who

(i) is at that time the cohabiting spouse or common-law partner of a person who is deemed under subsection 250(1) to be resident in Canada throughout the taxation year that includes the first day of the specified month, and

(ii) was resident in Canada at any time before the specified month;

(d) is at the beginning of the specified month a person described in paragraph 149(1)(a) or (b); or

(e) is a person in respect of whom a special allowance under the *Children's Special Allowances Act* is payable for the specified month.

Related Provisions: 122.5(5.1) — Deeming rule for person in prison in 2001-02.

History: Subsec. 122.5(2) amended by 2002, c. 9, subsec. 38(1), applicable to amounts that are deemed to be paid during months specified for 2001 *et seq.* The subsec. formerly read:

(2) Notwithstanding subsection (1), a person shall be deemed not to be an eligible individual for a taxation year or a qualified relation or qualified dependant of an individual for a taxation year where the person

(a) dies before the end of the year;

(b) is, at the end of the year, a person described in paragraph 149(1)(a) or (b); or

(c) is, at the end of the year, confined to a prison or similar institution and has been so confined for a period of, or periods the total of which in the year was more than, 6 months.

(3) Deemed payment on account of tax — An eligible individual in relation to a month specified for a taxation year who files a return of income for the taxation year and applies for an amount under this subsection is deemed to have paid during the specified month on account of their tax payable under this Part for the taxation year an amount equal to ¼ of the amount, if any, determined by the formula

$$A - B$$

where

A is the total of

(a) $213[27],

(b) $213[27] for the qualified relation, if any, of the individual in relation to the specified month,

(c) if the individual has no qualified relation in relation to the specified month and is entitled to deduct an amount for the taxation year under subsection 118(1) because of paragraph (b) of the description of B in that subsection in respect of a qualified dependant of the individual in relation to the specified month, $213[27],

(d) $112[27] times the number of qualified dependants of the individual in relation to the specified month, other than a qualified dependant in respect of whom an amount is included under paragraph (c) in computing the total for the specified month,

(e) if the individual has no qualified relation and has one or more qualified dependants, in relation to the specified month, $112, and

(f) if the individual has no qualified relation and no qualified dependant, in relation to the specified month, the lesser of $112[17] and 2% of the amount, if any, by which the individual's income for the taxation year exceeds $6,911[17]; and

B is 5% of the amount, if any, by which the individual's adjusted income for the taxation year in relation to the specified month exceeds $27,749[28].

Related Provisions: 117.1(1) — Annual adjustment; 122.5(3.1), (3.2) — Advance payment; 122.5(5) — Exceptions; 152(1)(b) — Assessment; 160.1(1)(b), (3) — No interest payable on overpaid credit; 160.1(1.1) — Joint liability to repay overpaid credit; 163(2)(c.1) — False statements or omissions — penalty; 164(2.1) — Application respecting refunds under section 122.5; 257 — Formula cannot calculate to less than zero.

History: Subsec. 122.5(3) amended by 2002, c. 9, subsec. 38(1), applicable to amounts that are deemed to be paid during months specified for 2001 *et seq.* The subsec. formerly read:

(3) Deemed payment on account — Where a return of income (other than a return of income filed under subsection 70(2), paragraph 104(23)(d) or 128(2)(e) or subsection 150(4)) is filed under this Part for a taxation year in respect of an eligible individual and the individual applies therefor in writing, ¼ of the amount, if any, by which the total of

(a) $190[27],

(b) $190[27] for a person who is the qualified relation of the individual for the year,

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[17] Indexed by s. 117.1 after 1999 — ed.

[27] Indexed by s. 117.1 after 1990 — ed.

[28] Indexed by s. 117.1 after 1992 — ed.

(c) $190[27], where the individual has no qualified relation for the year and is entitled to deduct an amount for the year under subsection 118(1) because of paragraph (b) of the description of B in subsection 118(1) in respect of a qualified dependant of the individual for the year,

(d) the product obtained when $100[27] is multiplied by the number of qualified dependants of the individual for the year, other than a qualified dependant in respect of whom an amount is included by reason of paragraph (c) in computing an amount deemed to be paid under this subsection for the year, and

(e) where the individual has no qualified relation for the year,

(i) if the individual has one or more qualified dependants for the year, $105, and

(ii) if the individual has no qualified dependant for the year, the lesser of

(A) $105[17], and

(B) 2% of the amount, if any, by which

(I) the individual's income for the year

exceeds

(II) $6,546[17],

exceeds

(f) 5% of the amount, if any, by which

(i) the individual's adjusted income for the year

exceeds

(ii) $26,284[28],

shall be deemed to be an amount paid by the individual on account of the individual's tax payable under this Part for the year during each of the months specified for that year under subsection (4).

Subcl. 122.5(3)(e)(ii)(B)(II), subpara. 122.5(3)(f)(ii) amended by 2000, c. 14, subsecs. 38(1), (2), applicable to 1999 *et seq.* They formerly read:

(II) $6,456[17],

. . . . .

(ii) $25,921[28],

Para. 122.5(3)(e) amended by 1999, c. 26, s. 41, applicable to amounts deemed to be paid in specified months that are after June 1999. The para. formerly read:

(e) where the individual has no qualified relation for the year, the lesser of

(i) $100[27], and

(ii) 2% of the amount, if any, by which

(A) the individual's income for the year

exceeds

(B) the amount determined for the year for the purposes of paragraph (c) of the description of B in subsection 118(1),

Para. 122.5(3)(c) amended to substitute "because of paragraph (b) of the description of B in subsection 118(1)" for "by reason of paragraph 118(1)(b)", and cl. 122.5(3)(e)(ii)(B) amended to substitute "paragraph (c) of the description of B in subsection 118(1)" for "paragraph 118(1)(c)", by 1997, c. 25, subsecs. 32(1), (2), applicable April 25, 1997.

The opening words of subsec. 122.5(3) substituted by 1994, c. 21, subsec. 57(1), applicable to 1992 *et seq.* The opening words of that subsec. formerly read:

(3) Amount deemed paid on account of tax [GST credit] — Where an eligible individual for a taxation year files with the individual's return of income (other than a return of income filed under subsection 70(2), paragraph 104(23)(d) or 128(2)(e) or subsection 150(4)) under this Part for the year a prescribed form, containing prescribed information, ¼ of the amount, if any, by which the total of

Subpara. 122.5(3)(f)(ii) substituted by 1994, c. 7, Sch. VII (1992, c. 48), s. 11, applicable to 1992 *et seq.* Subpara. (f)(ii) formerly read:

(ii) the amount referred to in subparagraph 122.2(1)(b)(ii) for the year,

Information Circulars: 92-3: Guidelines for refunds beyond the normal three year period.

(3.1) When advance payment applies — Subsection (3.2) applies in respect of an eligible individual in relation to a particular month specified for a taxation year, and each subsequent month specified for the taxation year, if

(a) the amount deemed by that subsection to have been paid by the eligible individual during the particular month specified for the taxation year is less than $25; and

(b) it is reasonable to conclude that the amount deemed by that subsection to have been paid by the eligible individual during each subsequent month specified for the taxation year will be less than $25.

History: Subsec. 122.5(3.1) amended by 2002, c. 9, subsec. 38(1), applicable to amounts that are deemed to be paid during months specified for 2001 *et seq.* The subsec. formerly read:

(3.1) Adjustment of certain amounts [annual indexing] — For the purpose of subsection (3) and notwithstanding subsection 117.1(1), the amounts, in respect of the amounts of $190, $100 and $105 referred to in subsection (3), used for the purpose of determining amounts deemed to be paid during months specified under subsection (4)

(a) for the 1999 taxation year are deemed to be $205, $107 and $107, respectively;

(b) for the 2000 taxation year shall be equal to the greater of the amounts referred to in paragraph (a) and the amounts that would otherwise be determined to be paid during those months if this Act were read without reference to this subsection; and

(c) for the 2001 and subsequent taxation years shall be computed without reference to paragraphs (a) and (b).

Subsec. 122.5(3.1) added by 2000, c. 14, subsec. 38(3), applicable to 1999 *et seq.*

(3.2) Advance payment — If this subsection applies, the total of the amounts that would otherwise be deemed by subsection (3) to have been paid on account of the eligible individual's tax payable under this Part for the taxation year during the particular month specified for the taxation year, and during each subsequent month specified for the taxation year, is deemed to have been paid by the eligible individual on account of their tax payable under this Part for the taxation year during the particular specified month for the taxation year, and the amount deemed by subsection (3) to have been paid by the eligible individual during those subsequent months specified for the taxation year is deemed, except for the purpose of this subsection, not to have been paid to the extent that it is included in an amount deemed to have been paid by this subsection.

Related Provisions: 160.1(1)(b), 160.1(3) — No interest payable on overpaid credit.

History: Subsec. 122.5(3.2) added by 2002, c. 9, subsec. 38(1), applicable to amounts that are deemed to be paid during months specified for 2001 *et seq.*

(4) Months specified — For the purposes of this section, the months specified for a taxation year are July and October of the immediately following taxation year and January and April of the second immediately following taxation year.

(5) Only one eligible individual — If an individual is a qualified relation of another individual, in relation to a month specified for a taxation year, only one of them is

[17] Indexed by s. 117.1 after 1999 — ed.

[27] Indexed by s. 117.1 after 1990 — ed.

[28] Indexed by s. 117.1 after 1992 — ed.

an eligible individual in relation to that specified month, and if both of them claim to be eligible individuals, the individual that the Minister designates is the eligible individual in relation to that specified month.

Related Provisions: 122.5(6) — Qualified relation of a deceased eligible individual.

History: Subsec. 122.5(5) amended by 2002, c. 9, subsec. 38(2), applicable to amounts that are deemed to be paid during months specified for 2001 *et seq.* The subsec. formerly read:

(5) Exceptions — Notwithstanding subsection (3),

(a) where an individual is a qualified relation of another individual for a taxation year, only one of them may apply under that subsection for the year;

(b) where the total of all amounts, deemed under that subsection to be paid by an individual for a taxation year during months specified for the year, is less than $100[29], the total shall be deemed to be paid by the individual during the first month specified for the year, and no other amount shall be deemed to be paid under that subsection by the individual for the year; and

(c) no amount shall be deemed to be paid under that subsection by an individual for a taxation year during a month specified for that year where the individual died before that month or was not resident in Canada at the beginning of that month.

Para. 122.5(5)(a) substituted by 1994, c. 21, subsec. 57(2), applicable to 1992 *et seq.* That para. formerly read:

(a) where an individual is a qualified relation of another individual for a taxation year, only one of them may file a prescribed form under that subsection for the year;

Para. 122.5(5)(b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 60(3). Para. (b) formerly read:

(b) where the total of all amounts, each of which is an amount deemed under that subsection to be paid by an individual for a taxation year during a month specified for the year, is less than

(i) one dollar, the total shall be deemed to be nil, and

(ii) $100 but not less than one dollar, the total shall be deemed to be paid by the individual during the first month specified for the year, and no other amount shall be deemed to be paid under that subsection by the individual for the year; and

Para. 122.5(5)(c) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 60(4), applicable to 1989 *et seq.* Para. (c) formerly read:

(c) no amount shall be deemed to be paid under that subsection by an individual for a taxation year

(i) during a month specified for that year where the individual died before that month or was not resident in Canada at the beginning of that month, or

(ii) where the individual's return of income under this Part for the year and prescribed form under this section are not filed within 3 years after the end of the year.

(5.1) [Repealed]

History: Subsec. 122.5(5.1) repealed by 2002, c. 9, subsec. 38(2), applicable to amounts that are deemed to be paid during months specified for 2001 *et seq.* The subsec. formerly read:

(5.1) Exception — No amount is deemed to be paid under subsection (3) by an individual for the 2000 taxation year if the individual is confined to a prison or similar institution at any time during the 12-month period that ends on June 30, 2002, unless the individual satisfies the Minister that the individual's confinement is for a period of not more than 6 months included in that 12-month period.

Subsec. 122.5(5.1) added by 2001, c. 17, s. 107, applicable to amounts deemed to be paid during months specified for the 2000 taxation year.

(6) Exception re qualified dependant — If a person would, if this Act were read without reference to this subsection, be the qualified dependant of two or more individuals, in relation to a month specified for a taxation year,

(a) the person is deemed to be a qualified dependant, in relation to that month, of the one of those individuals on whom those individuals agree;

(b) in the absence of an agreement referred to in paragraph (a), the person is deemed to be, in relation to that month, a qualified dependant of the individual, if any, who is, at the beginning of that month, an eligible individual within the meaning assigned by section 122.6 in respect of the person; and

(c) in any other case, the person is deemed to be, in relation to that month, a qualified dependant only of the individual that the Minister designates.

History: Subsec. 122.5(6) amended by 2002, c. 9, subsec. 38(2), applicable to amounts that are deemed to be paid during months specified for 2001 *et seq.* The subsec. formerly read:

(6) Qualified relation of deceased eligible individual — Notwithstanding paragraph (5)(c), on written application made, on or before the day on or before which a return of income (other than a return of income filed under subsection 70(2), paragraph 104(23)(d) or 128(2)(e) or subsection 150(4)) of a deceased person is required to be filed under this Part for the taxation year in which the person died (or would have been so required if the person were liable to pay tax under this Part for that year), by an individual who

(a) is the deceased person's qualified relation for the taxation year in respect of which a payment under this section would, but for that paragraph, be made, and

(b) is not an individual to whom that paragraph applies,

each amount that, but for that paragraph, would be deemed to be paid under subsection (3) by the deceased person during a month specified for a taxation year shall be deemed to be paid during the month on account of the individual's tax payable under this Part for that year.

The opening words of subsec. 122.5(6) substituted by 1994, c. 21, subsec. 57(3), applicable to 1992 *et seq.* The opening words formerly read:

(6) Qualified relation of a deceased individual — Notwithstanding paragraph (5)(c), on application made in prescribed form containing prescribed information within 60 days after a person's death (or within such longer period as the Minister considers reasonable in the circumstances) by an individual who

Subsec. 122.5(6) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 60(5), applicable to 1989 *et seq.* Subsec. (6) formerly read:

(6) Qualified relation of a deceased eligible individual — Notwithstanding subparagraph (5)(c)(i), on application made in prescribed form containing prescribed information within 60 days after a person's death (or within such longer period as the Minister considers reasonable in the circumstances) by an individual who

(a) is the deceased person's qualified relation for the taxation year in respect of which a payment under this section would, but for that subparagraph, be made, and

(b) is not an individual to whom that subparagraph applies,

each amount that, but for that subparagraph, would be deemed to be paid under subsection (3) by the deceased person during a month specified for a taxation year shall be deemed to be paid during the month on account of the individual's tax payable under this Part for that year.

(6.1) Notification to Minister — An individual shall notify the Minister of the occurrence of any of the following events before the end of the month following the month in which the event occurs:

(a) the individual ceases to be an eligible individual;

(b) a person becomes or ceases to be the individual's qualified relation; and

[29]Not indexed.

(c) a person ceases to be a qualified dependant of the individual, otherwise than because of attaining the age of 19 years.

History: Subsec. 122.5(6.1) added by 2002, c. 9, subsec. 38(2), applicable to amounts that are deemed to be paid during months specified for 2001 *et seq.*

(6.2) Non-residents and part-year residents — For the purpose of this section, the income of a person who is non-resident at any time in a taxation year is deemed to be equal to the amount that would, if the person were resident in Canada throughout the year, be the person's income for the year.

History: Subsec. 122.5(6.2) added by 2002, c. 9, subsec. 38(2), applicable to amounts that are deemed to be paid during months specified for 2001 *et seq.*

(7) Effect of bankruptcy — For the purpose of this section, where in a taxation year an individual becomes bankrupt,

(a) the individual's income for the year shall include the individual's income for the taxation year that begins on January 1 of the calendar year that includes the date of bankruptcy; and

(b) the amount determined for the year under clause (3)(e)(ii)(B) shall include the amount determined for the purpose of paragraph (c) of the description of B in subsection 118(1) for the individual's taxation year that begins on January 1 of the calendar year that includes the date of bankruptcy.

Related Provisions: 118.95 — Parallel rule for other credits; 122.61(3.1) — Parallel rule for Child Tax Benefit.

History: Subsec. 122.5(7) added by 1998, c. 19, subsec. 139(3), applicable to bankruptcies that occur after April 26, 1995.

Selected Cases [s. 122.5]: *Gartner v. R.*, [2000] 3 C.T.C. 2228 (TCC) (Divorce judgment had specified parties were living separate and apart. Extra costs awarded to taxpayer).

Definitions [s. 122.5]: "adjusted income" — 122.5(1); "amount", "bankrupt" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "child" — 252(1); "cohabiting spouse or common-law partner" — 122.5(1), 122.6; "common-law partner", "common-law partnership" — 248(1); "eligible individual" — 122.5(1); "individual" — 248(1); "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "non-resident" — 248(1); "parent" — 252(2); "person", "prescribed" — 248(1); "qualified dependant", "qualified relation" — 122.5(1); "resident", "resident in Canada" — 250; "return of income" — 122.5(1); "taxation year" — 249; "writing" — *Interpretation Act* 35(1).

122.51 (1) [Refundable medical expense supplement —] Definitions — The definitions in this subsection apply in this section.

"adjusted income" of an individual for a taxation year has the meaning assigned by section 122.6.

"eligible individual" for a taxation year means an individual (other than a trust)

(a) who is resident in Canada throughout the year (or, if the individual dies in the year, throughout the portion of the year before the individual's death);

(b) who, before the end of the year, has attained the age of 18 years; and

(c) whose incomes for the year from all

(i) offices and employments (computed without reference to paragraph 6(1)(f)), and

(ii) businesses each of which is a business carried on by the individual either alone or as a partner actively engaged in the business

total $2,500 or more.

Related Provisions: 117.1(1)(b.1) — Annual indexing for inflation.

History: Subsec. 122.51(1) added by 1998, c. 19, s. 32, applicable to 1997 *et seq.*

(2) Deemed payment on account of tax — Where a return of income (other than a return of income filed under subsection 70(2), paragraph 104(23)(d) or 128(2)(e) or subsection 150(4)) is filed in respect of an eligible individual for a particular taxation year that ends at the end of a calendar year, there is deemed to be paid at the end of the particular year on account of the individual's tax payable under this Part for the particular year the amount determined by the formula

$$A - B$$

where

A is the lesser of

(a) $750, and

(b) the total of

(i) $^{25}/_{16}$ of the total of all amounts each of which is the amount determined by the formula in subsection 118.2(1) for the purpose of computing the individual's tax payable under this Part for a taxation year that ends in the calendar year, and

(ii) 25% of the total of all amounts each of which is the amount deductible under section 64 in computing the individual's income for a taxation year that ends in the calendar year; and

B is 5% of the amount, if any, by which

(a) the total of all amounts each of which is the individual's adjusted income for a taxation year that ends in the calendar year

exceeds

(b) the sum of

(i) the greatest total that may be determined in respect of an individual for the year under paragraph (a) of the description of B in subsection 118(1), and

(ii) the dollar amount used for the year in computing the amount that may be claimed under subsection 118.3(1) in respect of an individual who has attained the age of 18 years before the end of the year.

Related Provisions: 117.1(1)(b.1) — Annual indexing for inflation; 152(1)(b) — Assessment; 163(2)(c.2) — False statements or omissions — penalty; 257 — Formula cannot calculate to less than zero.

History: Para. (a) of the description of A in subsec. 122.51(2) amended to replace "$500" with "$750", by 2005, c. 30 s. 7, applicable to 2005 *et seq.*

Para. (b) of the description of A in subsec. 122.51(2) amended by 2005, c. 19, s. 26, applicable to 2004 *et seq.* The para. formerly read:

(b) $^{25}/_{16}$ of the total of all amounts each of which is the amount determined by the formula in subsection 118.2(1) for the purpose of computing the individual's tax payable under this Part for a taxation year that ends in the calendar year; and

Para. (b) of the description of A in subsec. 122.51(2) amended to replace the reference to "25/17" with a reference to "25/16", by 2001, c. 17, s. 108, applicable to 2001 *et seq.*

Para. (b) of the description of B in subsec. 122.51(2) amended by 2000, c. 14, s. 39, applicable to 2000 *et seq.* It formerly read:

(b) $17,419[30].

The description of B in subsec. 122.51(2) amended by 2000, c. 19, s. 32, applicable to 1999 *et seq.* except that, in its application to the 1999 taxation year, para. (b) of the description of B in subsec. 122.51(2) shall be read as follows:

(b) $16,745.

The description of B formerly read:

B is 5% of the amount, if any, by which

(a) the individual's adjusted income for the particular year

exceeds

(b) $16,069

Subsec. 122.51(2) added by 1998, c. 19, s. 32, applicable to 1997 *et seq.*

Definitions [s. 122.51]: "adjusted income" — 122.51(1); "amount" — 248(1); "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "eligible individual" — 122.51(1); "employment", "individual", "office" — 248(1); "resident in Canada" — 250; "tax payable" — 248(2); "taxation year" — 249.

Subdivision a.1 — Canada Child Tax Benefit

122.6 Definitions — In this subdivision,

"adjusted earned income" — [Repealed]

History: The definition "adjusted earned income" in s. 122.6 repealed by 1998, c. 21, s. 92, applicable with respect to overpayments deemed to arise during months that are after June 1998. The definition formerly read:

> "adjusted earned income" of an individual for a taxation year means the total of all amounts each of which is the earned income for the year of the individual or of the person who was the individual's cohabiting spouse at the end of the year;

"adjusted income" of an individual for a taxation year means the total of all amounts each of which would be the income for the year of the individual or of the person who was the individual's cohabiting spouse or common-law partner at the end of the year if no amount were included in respect of a gain from a disposition of property to which section 79 applies in computing that income;

Related Provisions: 122.51(1)"adjusted income" — Definition applies for purposes of refundable medical expense supplement; 122.62(5) — Death of cohabiting spouse; 122.62(6) — Separation from cohabiting spouse.

History: The definition "adjusted income" in s. 122.6 amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

The definition "adjusted income" in s. 122.6 amended by 1998, c. 19, subsec. 140(1), applicable in determining the adjusted income of an individual for the 1992 and subsequent taxation years. The definition formerly read:

> "adjusted income" of an individual for a taxation year means the total of all amounts each of which is the income for the year of the individual or of the person who was the individual's cohabiting spouse at the end of the year;

"base taxation year", in relation to a month, means

(a) where the month is any of the first 6 months of a calendar year, the taxation year that ended on December 31 of the second preceding calendar year, and

(b) where the month is any of the last 6 months of a calendar year, the taxation year that ended on December 31 of the preceding calendar year;

"cohabiting spouse or common-law partner" of an individual at any time means the person who at that time is the individual's spouse or common-law partner and who is not at that time living separate and apart from the individual and, for the purpose of this definition, a person shall not be considered to be living separate and apart from an individual at any time unless they were living separate and apart at that time, because of a breakdown of their marriage or common-law partnership, for a period of at least 90 days that includes that time;

Related Provisions: 122.5(1)"cohabiting spouse or common-law partner" — Definition applies to GST Credit.

History: The definition "cohabiting spouse" in s. 122.6 amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", and by Sch. 2, s. 9, to replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

"earned income" — [Repealed]

History: The definition "earned income" in s. 122.6 repealed by 1998, c. 21, s. 92, applicable with respect to overpayments deemed to arise during months that are after June 1998. The definition formerly read:

> "earned income" of an individual for a taxation year has the meaning assigned by subsection 63(3);

"eligible individual" in respect of a qualified dependant at any time means a person who at that time

(a) resides with the qualified dependant,

(b) is the parent of the qualified dependant who primarily fulfils the responsibility for the care and upbringing of the qualified dependant,

(c) is resident in Canada or, where the person is the cohabiting spouse or common-law partner of a person who is deemed under subsection 250(1) to be resident in Canada throughout the taxation year that includes that time, was resident in Canada in any preceding taxation year,

(d) is not described in paragraph 149(1)(a) or (b), and

(e) is, or whose cohabiting spouse or common-law partner is, a Canadian citizen or a person who

(i) is a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*,

(ii) is a temporary resident within the meaning of the *Immigration and Refugee Protection Act*, who was resident in Canada throughout the 18 month period preceding that time, or

(iii) is a protected person within the meaning of the *Immigration and Refugee Protection Act*,

(iv) was determined before that time to be a member of a class defined in the *Humanitarian Designated Classes Regulations* made under the *Immigration Act*,

and, for the purposes of this definition,

(f) where a qualified dependant resides with the dependant's female parent, the parent who primarily fulfils the responsibility for the care and upbringing of the qualified dependant is presumed to be the female parent,

(g) the presumption referred to in paragraph (f) does not apply in prescribed circumstances, and

(h) prescribed factors shall be considered in determining what constitutes care and upbringing;

Related Provisions: 122.62(1) — Eligible individuals.

[30]Indexed by 117.1(1) after 1997 — ed.

History: Subparas. (e)(i) to (iii) of the definition "eligible individual" in s. 122.6 amended by 2001, c. 27, s. 254, proclaimed in force June 28, 2002. The subparas. formerly read:

(i) is a permanent resident (within the meaning assigned by the *Immigration Act*),

(ii) is a visitor in Canada or the holder of a permit in Canada (within the meanings assigned by the *Immigration Act*) who was resident in Canada throughout the 18 month period preceding that time,

(iii) was determined before that time under the *Immigration Act*, or regulations made under that Act, to be a Convention refugee, or

Subpara. (iv) added to the definition "eligible individual" in s. 122.6 by 2001, c. 17, s. 109, applicable in respect of overpayments deemed to arise during months that are after June 2001.

The definition "eligible individual" in s. 122.6 amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Para. (c) of the definition "eligible individual" in s. 122.6 amended by 1999, c. 22, s. 44, applicable after February 23, 1998. It formerly read:

(c) is resident in Canada,

Subpara. (e)(iii), paras. (g) and (h) of the definition "eligible individual" in s. 122.6 amended by 1998, c. 19, subsec. 140(2), (3); subpara. (e)(iii) applicable after 1992, and paras. (g) and (h) applicable after August 27, 1995. Subpara. (e)(iii) and paras. (g) and (h) formerly read:

(iii) was determined before that time by the Convention Refugee Determination Division of the Immigration and Refugee Board to be a Convention refugee,

. . . . .

(g) the presumption referred to in paragraph (f) does not apply in circumstances set out in regulations made by the Governor in Council on the recommendation of the Minister of Human Resources Development, and

(h) factors to be considered in determining what constitutes care and upbringing may be set out in regulations made by the Governor in Council on the recommendation of the Minister of Human Resources Development;

Paras. 122.6"eligible individual"(g), (h) amended by 1996, c. 11, para. 95(h), to substitute "Minister of Human Resources Development" for "Minister of National Health and Welfare", in force July 12, 1996.

Selected Cases [s. 122.6"eligible individual"]: *Campbell v. R.*, [2005] 1 C.T.C. 2020 (TCC) (Provision violates *Charter*. Damages awarded to taxpayer); *Matte v. R.*, [2003] 1 C.T.C. 109 (FCA) (Custodial parent may change from time to time; calculation on month-by-month basis); *Burton v. R.*, [2000] 1 C.T.C. 2727 (TCC) (Must reside in same house as children to get child tax credit).

Regulations: 6301 (for para. (g) — circumstances where the presumption in para. (f) does not apply); 6302 (for para. (h) — factors to be considered).

Forms: RC66 SCH: Status in Canada/statement of income.

"qualified dependant" at any time means a person who at that time

(a) has not attained the age of 18 years,

(b) is not a person in respect of whom an amount was deducted under paragraph (a) of the description of B in subsection 118(1) in computing the tax payable under this Part by the person's spouse or common-law partner for the base taxation year in relation to the month that includes that time, and

(c) is not a person in respect of whom a special allowance under the *Children's Special Allowances Act* is payable for the month that includes that time;

History: The definition "qualified dependant" in s. 122.6 amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

"return of income" filed by an individual for a taxation year means

(a) where the individual was resident in Canada throughout the year, the individual's return of income (other than a return of income filed under subsection 70(2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) that is filed or required to be filed under this Part for the year, and

(b) in any other case, a prescribed form containing prescribed information, that is filed with the Minister.

Related Provisions: 164(2.3) — Form deemed to be a return of income.

History: The title before s. 122.6 amended to add the word "Canada" by 1998, c. 21, s. 91, applicable after June 1998.

Definitions [s. 122.6]: "amount" — 248(1); "base taxation year" — 122.6; "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "cohabiting spouse" — 122.6; "common-law partner", "common-law partnership" — 248(1); "earned income" — 63(3), 122.6; "individual" — 248(1); "Minister" — 248(1); "parent" — 252(2); "prescribed" — 248(1); "qualified dependant" — 122.6; "resident" — 250; "taxation year" — 249.

Interpretation Bulletins: IT-495R3: Child care expenses.

122.61 (1) Deemed overpayment [Child Tax Benefit] — Where a person and, where the Minister so demands, the person's cohabiting spouse or common-law partner at the end of a taxation year have filed a return of income for the year, an overpayment on account of the person's liability under this Part for the year is deemed to have arisen during a month in relation to which the year is the base taxation year, equal to the amount determined by the formula

$$\frac{1}{12}[(A - B) + C + M]$$

where

A is the total of

(a) the product obtained by multiplying $1,090[31] by the number of qualified dependants in respect of whom the person was an eligible individual at the beginning of the month,

(b) the product obtained by multiplying $75[31] by the number of qualified dependants, in excess of 2, in respect of whom the person was an eligible individual at the beginning of the month, and

(c) the amount determined by the formula

$$D - E$$

where

D is the product obtained by multiplying $213[31] by the number of qualified dependants who have not attained the age of 7 years before the month and in respect of whom the person is an eligible individual at the beginning of the month, and

E is 25% of the total of all amounts deducted under section 63 in respect of qualified dependants in computing the income for the year of the person or the person's cohabiting spouse or common-law partner;

B is [as of July 2004] 4% (or where the person is an eligible individual in respect of only one qualified dependant at the beginning of the month, [as of July 2004] 2%) of the amount, if any, by which

(a) the person's adjusted income for the year

[31] Indexed by 122.61(5) after base taxation year 1996.

exceeds

(b) the greater of $32,000 and the dollar amount, as adjusted annually and referred to in paragraph 117(2)(a), that is used for the calendar year following the base taxation year;

C is the amount determined by the formula

$$F - (G \times H)$$

where

F is, where the person is, at the beginning of the month, an eligible individual in respect of

(a) only one qualified dependant, $1,463, and

(b) two or more qualified dependants, the total of

(i) $1,463 for the first qualified dependant,

(ii) $1,254 for the second qualified dependant, and

(iii) $1,176 for each of the third and subsequent qualified dependants,

G is the amount determined by the formula

$$J - [K - (\frac{L}{0.122})]$$

where

J is the person's adjusted income for the year,

K is the amount referred to in paragraph (b) of the description of B, and

L is the amount referred to in paragraph (a) of the description of F, and

H is

(a) if the person is an eligible individual in respect of only one qualified dependant, 12.2%, and

(b) if the person is an eligible individual in respect of two or more qualified dependants, the fraction (expressed as a percentage rounded to the nearest one-tenth of one per cent) of which

(i) the numerator is the total that would be determined under the description of F in respect of the eligible individual if that description were applied without reference to the fourth and subsequent qualified dependants in respect of whom the person is an eligible individual, and

(ii) the denominator is the amount referred to in paragraph (a) of the description of F, divided by 0.122; and

M is the amount determined by the formula

$$N - (O \times P)$$

where

N is the product obtained by multiplying $2,000 by the number of qualified dependants in respect of whom both

(a) an amount may be deducted under section 118.3 for the taxation year that includes the month, and

(b) the person is an eligible individual at the beginning of the month,

O is the amount determined by the formula

$$J - [F/H + (K - \frac{L}{0.122})]$$

where the descriptions of J, F, H, K, and L are described in the description of C, and

P is the amount that would be determined for the description of H if the person were an eligible individual in respect of only the number of qualified dependants included in the description of N.

Related Provisions: 74.1(2) — No attribution of income from Child Tax Benefit; 122.61(6) — Additions to F after June 2005; 122.63 — Agreement with province to vary calculation; 152(1.2) — Provisions applicable to determination of overpayment; 152(3.2), (3.3) — Determination of deemed overpayment; 160.1(1)(b) — No interest payable on overpaid credit; 160.1(2.1) — Liability for refunds by reason of section 122.61; 160.1(3) — No interest payable on overpaid credit; 164(1) — Refunds; 164(2.2) — Application respecting refunds re section 122.61; 164(2.3) — Form deemed to be a return of income; 164(3) — No interest on late payment of Child Tax Benefit; 257 — Formula amounts cannot calculate to less than zero.

History: The description of N in the description of M in subsec. 122.61(1) amended to replace "$1,600" with "$2,000" by 2005, c. 30, s. 8, applicable in respect of overpayments deemed to arise during months that are after June 2005.

The first formula in subsec. 122.61(1) amended by 2003, c. 15, subsec. 77(1), applicable in respect of overpayments deemed to arise during months that are after June 2003. The first formula formerly read:

$$1/12[(A - B) + C]$$

Paras. (a) and (b) of the description of F in subsec. 122.61(1) amended by the said c. 15, subsec. 77(2), applicable in respect of overpayments deemed to arise during months that are after June 2003. The paras. formerly read:

(a) only one qualified dependant, $1,255, and

(b) two or more qualified dependants, the total of

(i) $1,255 for the first qualified dependant,

(ii) $1055 for the second qualified dependant, and

(iii) $980 for each of the third and subsequent qualified dependants,

The descriptions of G and H in subsec. 122.61(1) amended by the said c. 15, subsec. 77(3), applicable in respect of overpayments deemed to arise during months that are after June 2003, except that, for overpayments deemed to arise during those months that are before July 2004,

(a) the description of G is to be read as follows:

G is the amount, if any, by which the person's adjusted income for the year exceeds $21,529, and

(b) subpara. (b)(ii) in the description of H is to be read as follows:

(ii) the denominator is the amount by which the amount referred to in paragraph (b) of the description of B exceeds $21,529.

The description of M added to subsec. 122.61(1) by the said c. 15, subsec. 77(4), applicable in respect of overpayments deemed to arise during months that are after June 2003, except that, for overpayments deemed to arise during those months that are before July 2004, the description of O is to be read as follows:

O is the amount determined by the formula

(a) "J - $33,487", if the person is an eligible individual in respect of three or fewer qualified dependants, and

(b) "J - (F/H + $21,529)", if the person is an eligible individual in respect of more than three qualified dependants,

where the descriptions of J, F and H are described in the description of C, and

The opening words of the description of B in subsec. 122.61(1) amended by 2001, c. 17, subsec. 110(1), applicable with respect to overpayments deemed to arise during months that are after June 2004. That portion formerly read:

B is 5% (or where the person is an eligible individual in respect of only one qualified dependant at the beginning of the month, 2 1/2%) of the amount, if any, by which

Para. (b) of the description of B in subsec. 122.61(1) amended to add "the greater of $32,000 and" by the said c. 17, subsec. 110(2), applicable with respect to overpayments deemed to arise during months that are after June 2001.

Paras. (a) and (b) of the description of F in subsec. 122.61(1) amended by the said c. 17, subsec. 110(3), applicable with respect to overpayments deemed to arise during months that are after June 2001. Those paras. formerly read:

(a) only one qualified dependant, $1,155[31], and

(b) two or more qualified dependants, the total of

(i) $1,155[31] for the first qualified dependant,

(ii) $955[31] for the second qualified dependant, and

(iii) $880[31] for each of the third and subsequent qualified dependants,

Subsec. 122.61(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Para. (a) of the description of A, and the descriptions of B, G and H in subsec. 122.61(1) amended by 2000, c. 14, subsecs. 40(1), (2), and (4), applicable with respect to overpayments deemed to arise during months that are after June 2000. Those portions formerly read:

(a) the product obtained by multiplying $1,020 by the number of qualified dependants in respect of whom the person was an eligible individual at the beginning of the month,

. . . . .

B is 5% (or where the person is an eligible individual in respect of only one qualified dependant at the beginning of the month, 2½ %) of the amount, if any, by which the person's adjusted income for the year exceeds $29,590[31]; and

. . . . .

G is the amount, if any, by which the person's adjusted income for the year exceeds $20,921[31], and

H is, where the person is an eligible individual in respect of

(a) only one qualified dependant, 11.0%,

(b) two qualified dependants, 19.7%, and

(c) three or more qualified dependants, 27.6%.

Paras. (a) and (b) of the description of F in subsec. 122.61(1) amended by the said c. 14, subsec. 40(3), applicable with respect to overpayments deemed to arise during months that are after June 2000 except that, with respect to overpayments deemed to arise during months that are after June 2000 and before July 2001, the references to "$1,155", "$955" and "$880" shall be read as references to "$977", "$771" and "$694", respectively. Paras. (a) and (b) formerly read:

(a) only one qualified dependant, $955[31], and

(b) two or more qualified dependants, the total of

(i) $955[31] for the first qualified dependant,

(ii) $755[31] for the second qualified dependant, and

(iii) $680[31] for each, if any, of the third and subsequent qualified dependants,

The opening words of the description of F in subsec. 122.61(1) amended by 2000, c. 19, s. 33, deemed to have come into force on June 18, 1998. They formerly read:

F is, where the person is an eligible individual in respect of

The description of B in subsec. 122.61(1) amended by 1999, c. 26, subsec. 36(1), applicable to the calculation of overpayments deemed to arise during months that are after June 2000. The description formerly read:

B is 5% (or where the person is an eligible individual in respect of only one qualified dependant at the beginning of the month, 2 ½%) of the amount, if any, by which the person's adjusted income for the year exceeds $25,921; and

Paras. (a) and (b) of the description of F, and paras. (a) to (c) of the description of H in subsec. 122.61(1) amended by the said c. 26, subsec. 36(2), applicable to the calculation of overpayments deemed to arise during months that are after June 1999 except that, in their application to overpayments deemed to arise during months that are after June 1999 and before July 2000, the reference to "$955" in para. (a) of the description of F shall be read as "$785" (by 2000, c. 19, s. 73, deemed to have come into force on June 17, 1999), the references to "$955", "$755" and "$680" in subparas. (b)(i) to (iii) of F, as amended, shall be read as references to "$785", "$585" and "$510", respectively; and the references to "11.0%", "19.7%" and "27.6%" in paras. (a) to (c) of H, as amended, shall be read as references to "11.5%", "20.1%" and "27.5%", respectively. The paras. in descriptions F and H formerly read:

(a) only one qualified dependant, $605, and

(b) two or more qualified dependants, the total of

(i) $605 for the first qualified dependant,

(ii) $405 for the second qualified dependant, and

(iii) $330 for each, if any, of the third and subsequent qualified dependants,

. . . . .

(a) only one qualified dependant, 12.1%,

(b) two qualified dependants, 20.2%, and

(c) three or more qualified dependants, 26.8%.

Subsec. 122.61(1) amended by 1998, c. 21, subsec. 93(1), applicable with respect to overpayments deemed to arise during months that are after June 1998. The subsec. formerly read:

(1) Where a person and, where the Minister so demands, the person's cohabiting spouse at the end of a taxation year have filed a return of income for the year, an overpayment on account of the person's liability under this Part for the year shall be deemed to have arisen during a month in relation to which the year is the base taxation year, equal to the amount determined by the formula

$$\frac{1}{12}(A - B)$$

where

A is the total of

(a) the product obtained by multiplying $1,020[31] by the number of qualified dependants in respect of whom the person was an eligible individual at the beginning of the month,

(b) the product obtained by multiplying $75[31] by the number of qualified dependants, in excess of 2, in respect of whom the person was an eligible individual at the beginning of the month,

(c) where the person is, at the beginning of the month, an eligible individual in respect of one or more qualified dependants, the amount determined by the formula

$$\left(C \times \left(\frac{D - \$3{,}750^{31}}{\$6{,}250^{32}}\right)\right) - (G \times H)$$

where

C is, where the person is an eligible individual in respect of

(i) only one qualified dependant, $605[31], and

(ii) two or more qualified dependants, the total of

(A) $605[31] for the first qualified dependant,

(B) $405[31] for the second qualified dependant, and

(C) $330[31] for each, if any, of the third and subsequent qualified dependants,

D is the lesser of $10,000[31] and the person's adjusted earned income for the year,

G is the amount, if any, by which the person's adjusted income for the year exceeds $20,921,[33] and

H is, where the person is an eligible individual in respect of

(i) only one qualified dependant, 12.1%,

(ii) two qualified dependants, 20.2%, and

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[31]Indexed by 122.61(5) after base taxation year 1996.

[32]Indexed by 122.61(5.1) after base taxation year 1996.

[33]Indexed by 122.61(6) after base taxation year 1991.

(iii) three or more qualified dependants, 26.8%, and

(d) the amount determined by the formula

E – F

where

E is the product obtained by multiplying $213[31] by the number of qualified dependants who have not attained the age of 7 years before the month and in respect of whom the person is an eligible individual at the beginning of the month, and

F is 25% of the total of all amounts deducted under section 63 in respect of qualified dependants in computing the income for the year of the person or the person's cohabiting spouse; and

B is 5% (or where the person is an eligible individual in respect of only one qualified dependant at the beginning of the month, 2½%) of the amount, if any, by which the person's adjusted income for the year exceeds $25,921[31].

Para. (c) of the description of A in subsec. 122.61(1) amended by 1997, c. 26, subsec. 80(1), applicable to overpayments deemed to arise during months that are after June 1997. Para. (c) formerly read:

(c) where the person is, at the beginning of the month, an eligible individual in respect of one or more qualified dependants, the amount determined by the formula

C – D

where

C is the lesser of $500[34] and 8% of the amount, if any, by which the person's adjusted earned income for the year exceeds $3,750,[34] and

D is 10% of the amount, if any, by which the person's adjusted income for the year exceeds $20,921,[35] and

For more History, see at end of s. 122.64.

Interpretation Bulletins: IT-495R3: Child care expenses.

Forms: CTB9: Canada child tax benefit statement; RC64: Children's special allowances; RC66: Canada child tax benefit application; RC66 SCH: Status in Canada/statement of income.

(2) Exceptions — Notwithstanding subsection (1), where a particular month is the first month during which an overpayment that is less than $10 (or such other amount as is prescribed) is deemed under that subsection to have arisen on account of a person's liability under this Part for the base taxation year in relation to the particular month, any such overpayment that would, but for this subsection, reasonably be expected at the end of the particular month to arise during another month in relation to which the year is the base taxation year shall be deemed to arise under that subsection during the particular month and not during the other month.

(3) Non-residents and part-year residents — For the purposes of this section, unless a person was resident in Canada throughout a taxation year,

(a) for greater certainty, the person's income for the year shall be deemed to be equal to the amount that would have been the person's income for the year had the person been resident in Canada throughout the year; and

(b) the person's earned income for the year shall not exceed that portion of the amount that would, but for this paragraph, be the person's earned income that is included because of section 114 or subsection 115(1) in computing the person's taxable income or taxable income earned in Canada, as the case may be, for the year.

Forms: RC66 SCH: Status in Canada/statement of income.

(3.1) Effect of bankruptcy — For the purposes of this subdivision, where in a taxation year an individual becomes bankrupt,

(a) the individual's income for the year shall include the individual's income for the taxation year that begins on January 1 of the calendar year that includes the date of bankruptcy; and

(b) the total of all amounts deducted under section 63 in computing the individual's income for the year shall include the amount deducted under that section for the individual's taxation year that begins on January 1 of the calendar year that includes the date of bankruptcy.

(c) [Repealed]

Related Provisions: 118.95, 122.5(7) — Parallel rule for personal credits and GST credit.

History: Paras. 122.61(3.1)(a) and (b) amended and para. (c) repealed by 1998, c. 21, s. 94, in force on June 18, 1998. The paras. formerly read:

(a) the individual's earned income for the year shall include the individual's earned income for the taxation year that begins on January 1 of the calendar year that includes the date of bankruptcy;

(b) the individual's income for the year shall include the individual's income for the taxation year that begins on January 1 of the calendar year that includes the date of bankruptcy; and

(c) the total of all amounts deducted under section 63 in computing the individual's income for the year shall include the amount deducted under that section for the individual's taxation year that begins on January 1 of the calendar year that includes the date of bankruptcy.

Subsec. 122.61(3.1) added by 1998, c. 19, s. 141, applicable to bankruptcies that occur after April 26, 1995.

For more History, see at end of s. 122.64

(4) Amount not to be charged, etc. — A refund of an amount deemed by this section to be an overpayment on account of a person's liability under this Part for a taxation year

(a) shall not be subject to the operation of any law relating to bankruptcy or insolvency;

(b) cannot be assigned, charged, attached or given as security;

(c) does not qualify as a refund of tax for the purposes of the *Tax Rebate Discounting Act*;

(d) cannot be retained by way of deduction or set-off under the *Financial Administration Act*; and

(e) is not garnishable moneys for the purposes of the *Family Orders and Agreements Enforcement Assistance Act*.

(5) Annual adjustment [indexing] — Each amount expressed in dollars in subsection (1) shall be adjusted so that, where the base taxation year in relation to a particular month is after 1998, the amount to be used under that subsection for the month is the total of

(a) the amount that would, but for subsection (7), be the relevant amount used under subsection (1) for the month that is one year before the particular month, and

(b) the product obtained by multiplying

(i) the amount referred to in paragraph (a)

[31] Indexed by 122.61(5) after base taxation year 1996.

[34] Were indexed by 122.61(5) after base taxation year 1991.

[35] Was indexed by 122.61(6) after base taxation year 1991.

by

(ii) the amount, adjusted in such manner as is prescribed and rounded to the nearest one-thousandth or, where the result obtained is equidistant from 2 such consecutive one thousandths, to the higher thereof, that is determined by the formula

$$\frac{A}{B} - 1$$

where

A is the Consumer Price Index (within the meaning assigned by subsection 117.1(4)) for the 12-month period that ended on September 30 of the base taxation year, and

B is the Consumer Price Index for the 12 month period preceding the period referred to in the description of A.

Related Provisions: 117.1(1) — Indexing of other amounts; 122.61(6) — Adjustment to amounts of $1,090, $213 and $75; 122.61(6.1) — Transition for 2001-02; 122.61(7) — Rounding of adjusted amounts; 257 — Formula cannot calculate to less than zero.

History: The opening words of subsec. 122.61(5), the formula and the description of A in subpara. 122.61(5)(b)(ii) amended by 2000, c. 14, subsecs. 40(5)-(7), applicable with respect to overpayments deemed to arise during months that are after June 2000. Those portions formerly read:

(5) Each amount expressed in dollars in subsection (1) shall be adjusted so that, where the base taxation year in relation to a particular month is after 1996, the amount to be used under that subsection for the month is equal to the total of

. . . . .

$$\frac{A}{B} - 1.03$$

. . . . .

A is the Consumer Price Index (within the meaning assigned by subsection 117.1(4)) for the 12 month period that ended on March 31 in the calendar year following the base taxation year, and

The opening words of subsec. 122.61(5) amended by 1999, c. 26, subsec. 36(4), applicable in respect of months that are after June 1997. They formerly read:

(5) Each amount (other than the amounts of $6,250 and $20,921) expressed in dollars in subsection (1) shall be adjusted so that, where the base taxation year in relation to a particular month is after 1996, the amount to be used under that subsection for the month is equal to the total of

The opening words of subsec. 122.61(5) amended by 1997, c. 26, subsec. 80(2), applicable to overpayments deemed to arise during months that are after June 1997. These words formerly read:

(5) Each amount (other than the amount of $20,921) expressed in dollars in subsection (1) shall be adjusted so that, where the base taxation year in relation to a particular month is after 1991, the amount to be used under that subsection for the month is equal to the total of

For more History, see at end of s. 122.64

(5.1) [Repealed]

History: Subsec. 122.61(5.1) repealed by 1998, c. 21, subsec. 93(2), applicable with respect to overpayments deemed to arise during months that are after June 1998. The subsec. formerly read:

(5.1) Annual adjustment [indexing] — The amount of $6,250 referred to in subsection (1) shall be adjusted so that the amount to be used under that subsection for a month in relation to a base taxation year that is after 1996 is equal to the amount by which

(a) the amount of $10,000 referred to in that subsection, as adjusted and rounded under this section for the year,

exceeds

(b) the amount of $3,750 referred to in that subsection, as adjusted and rounded under this section for the year.

Subsec. 122.61(5.1) added by 1997, c. 26, subsec. 80(3), applicable to overpayments deemed to arise during months that are after June 1997.

For more History, see at end of s. 122.64

(6) Additions to NCB supplement — July 2005 and 2006 — Each amount referred to in the description of F in subsection (1) that is to be used for the purpose of determining the amount deemed to be an overpayment arising during months that are

(a) after June 2005 and before July 2006, is to be replaced with the amount that is the total of $185 and the amount otherwise determined under subsection (5) for those months; and

(b) after June 2006 and before July 2007, is to be replaced with the amount that is the total of $185 and the amount otherwise determined, for those months, by applying subsection (5) to the amount determined under paragraph (a).

History [subsec. 122.61(6)]: Subsec. 122.61(6) amended by 2003 c. 15, subsec. 77(5), applicable in respect of overpayments deemed to arise during months that are after June 2003. The subsec. formerly read:

(6) Adjustment to certain amounts — For the purpose of subsection (5), the amount of $1,090, and the amounts in respect of the amounts of $213 and $75, referred to in subsection (1), that are used for the purpose of determining the amount deemed to be an overpayment arising during particular months that are

(a) after June 2000 and before July 2001, are deemed to be $1,104, $219 and $77, respectively;

(b) after June 2001 and before July 2002, shall be equal to the greater of the amounts deemed under paragraph (a) to be an overpayment arising during the months referred to in that paragraph and the amounts that would otherwise be determined for those particular months if this Act were read without reference to this subsection; and

(c) after June 2002, shall be computed without reference to paragraphs (a) and (b).

Subsec. 122.61(6) added by 2000, c. 14, subsec. 40(8), applicable with respect to overpayments deemed to arise during months that are after June 2000.

History [former subsec. 122.61(6)]: Subsec. 122.61(6) repealed by 1999, c. 26, subsec. 36(5), applicable in respect of months that are after June 1997. The subsec. formerly read:

(6) Idem — The amount of $20,921 referred to in subsection (1) shall be adjusted so that the amount to be used thereunder for a month in relation to a base taxation year that is after 1991 is equal to the amount by which

(a) the amount of $25,921 referred to in subsection (1), as adjusted and rounded under this section for the year,

exceeds

(b) the product obtained by multiplying the amount of $500 referred to in subsection (1), as adjusted and rounded under this section for the year, by 10.

For more History, see at end of s. 122.64

(6.1) Agreement with a province — Notwithstanding subsection (5), for the purposes of any agreement referred to in section 122.63 with respect to overpayments deemed to arise during months that are after June 2001 and before July 2002, the amount determined under subparagraph (5)(b)(ii) for a month referred to in paragraph (6)(b) is deemed to be 0.012.

History: Subsec. 122.61(6.1) amended by 2001, c. 17, subsec. 110(4), applicable in respect of overpayments deemed to arise during months that are after June 2001 and before July 2002. Subsec. 122.61(6.1) formerly read:

(6.1) Exception — Where section 122.63 applies for the purpose of calculating an overpayment deemed under subsection (1) to arise during a month referred to in paragraph (6)(a) or (b) on account of a

person's tax liability, the amount determined under subparagraph (5)(b)(ii) in respect of the person for the month is deemed to be

(a) zero, where the month is referred to

(i) in paragraph (6)(a), or

(ii) in paragraph (6)(b) and the amount otherwise determined under subparagraph (5)(b)(ii) is less than 0.014; and

(b) 1090/1104 of the amount otherwise determined under that subparagraph, in any other case.

Subsec. 122.61(6.1) added by 2000, c. 14, subsec. 40(8), applicable with respect to overpayments deemed to arise during months that are after June 2000.

(7) Rounding — Where an amount referred to in subsection (1), when adjusted as provided in subsection (5), is not a multiple of one dollar, it shall be rounded to the nearest multiple of one dollar or, where it is equidistant from 2 such consecutive multiples, to the higher thereof.

History [s. 122.61]: See at end of s. 122.64.

Definitions [s. 122.61]: "adjusted earned income", "adjusted income" — 122.6; "amount" — 248(1); "base taxation year" — 122.6; "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "cohabiting spouse" — 122.6; "common-law partner" — 248(1); "earned income", "eligible individual" — 122.6; "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "person" — 248(1); "qualified dependant" — 122.6; "resident" — 250; "return of income" — 122.6; "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 249.

122.62 (1) Eligible individuals — For the purposes of this subdivision, a person may be considered to be an eligible individual in respect of a particular qualified dependant at the beginning of a month only if the person has, no later than 11 months after the end of the month, filed with the Minister a notice in prescribed form containing prescribed information.

Related Provisions: 220(2.1) — Waiver of requirement under 122.62(1) to file notice; 241(4)(b) — Disclosure of taxpayer information for purposes of administering the Act.

History: Subsec. 122.62(1) amended by 1998, c. 19, subsec. 142(1), applicable after August 27, 1995. Subsec. 122.62(1) formerly read:

(1) For the purposes of this subdivision, a person may be considered to be an eligible individual in respect of a particular qualified dependant at the beginning of a month only if the person has, no later than 11 months after the end of the month, filed with the Minister of Human Resources Development a notice in a form authorized, and containing information required, by that Minister.

Subsec. 122.62(1) amended by 1996, c. 11, para. 95(h), to substitute "Minister of Human Resources Development" for "Minister of National Health and Welfare", in force July 12, 1996.

For more History, see at end of s. 122.64

(2) Extension for notices — The Minister may at any time extend the time for filing a notice under subsection (1).

History: Subsec. 122.62(2) amended by 1998, c. 19, subsec. 142(1), applicable after August 27, 1995. Subsec. 122.62(2) formerly read:

(2) The Minister of Human Resources Development may at any time extend the time for filing a notice under subsection (1).

Subsec. 122.62(2) amended by 1996, c. 11, para. 95(h), to substitute "Minister of Human Resources Development" for "Minister of National Health and Welfare", in force July 12, 1996.

For more History, see at end of s. 122.64

(3) Exception — Where at the beginning of 1993 a person is an eligible individual in respect of a qualified dependant, subsection (1) does not apply to the person in respect of the qualified dependant if the qualified dependant was an eligible child (within the meaning assigned by subsection 122.2(2) because of subparagraph (a)(i) in the definition "eligible child" in that subsection) of the individual for the 1992 taxation year.

(4) Person ceasing to be an eligible individual — Where during a particular month a person ceases to be an eligible individual in respect of a particular qualified dependant (otherwise than because of the qualified dependant attaining the age of 18 years), the person shall notify the Minister of that fact before the end of the first month following the particular month.

History: Subsec. 122.62(4) amended by 1998, c. 19, subsec. 142(2), applicable after August 27, 1995. Subsec. 122.62(4) formerly read:

(4) Where during a particular month a person ceases to be an eligible individual in respect of a particular qualified dependant (otherwise than because of the qualified dependant attaining the age of 18 years), the person shall inform the Minister of Human Resources Development of that fact, in such form as that minister may require, before the end of the first month following the particular month.

Subsec. 122.62(4) amended by 1996, c. 11, para. 95(h), to substitute "Minister of Human Resources Development" for "Minister of National Health and Welfare", in force July 12, 1996.

For more History, see at end of s. 122.64

Selected Cases [subsec. 122.62(4)]: *Kehler v. R.*, [2004] 3 C.T.C. 2504 (TCC) (Taxpayer required to advise Minister if no longer eligible to receive payments. Interest assessed).

Forms: RC65: Marital status change.

(5) Death of cohabiting spouse [or common-law partner] — Where

(a) before the end of a particular month the cohabiting spouse or common-law partner of an eligible individual in respect of a qualified dependant dies, and

(b) the individual so elects, before the end of the eleventh month after the particular month, in a form that is acceptable to the Minister,

for the purpose of determining the amount deemed under subsection 122.61(1) to be an overpayment arising in any month after the particular month on account of the individual's liability under this Part for the base taxation year in relation to the particular month, subject to any subsequent election under subsection (6) or (7), the individual's adjusted income for the year is deemed to be equal to the individual's income for the year.

History: Subsec. 122.62(5) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

The portion of subsec. 122.62(5) after para. (b) amended by 1998, c. 21, para. 95(a), in force on June 18, 1998. That portion formerly read:

for the purpose of determining the amount deemed under subsection 122.61(1) to be an overpayment arising in any month after the particular month on account of the individual's liability under this Part for the base taxation year in relation to the particular month, subject to any subsequent election under subsection (6) or (7),

(c) the individual's adjusted income for the year is deemed to be equal to the individual's income for the year, and

(d) the individual's adjusted earned income for the year is deemed to be equal to the individual's earned income for the year.

Former subsec. 122.62(5) repealed, 122.62(6) renumbered as 122.62(5) and amended by 1998, c. 19, subsec. 142(2), applicable after August 27, 1995. Former subsecs. 122.62(5) and (6) formerly read:

(5) Waiver — The Minister of Human Resources Development may at any time waive the requirement

(a) under subsection (1) to file a notice; or

(b) under subsection (4) to inform that minister that the person has ceased to be an eligible individual in respect of a particular qualified dependant.

(6) Death of cohabiting spouse — Where before the end of a particular month the cohabiting spouse of an eligible individual in respect of a qualified dependant dies and the individual so elects, before the end of the eleventh month following the particular month, in a form that is acceptable to the Minister of Human Re-

sources Development, for the purpose of determining the amount deemed under subsection 122.61(1) to be an overpayment arising in any month after the particular month on account of the individual's liability under this Part for the base taxation year in relation to the particular month subject to any subsequent election under subsection (7) or (8), the individual's adjusted income for the year shall be deemed to be equal to the individual's income for the year and the individual's adjusted earned income for the year shall be deemed to be equal to the individual's earned income for the year.

Subsecs. 122.62(5), (6) amended by 1996, c. 11, para. 95(h), to substitute "Minister of Human Resources Development" for "Minister of National Health and Welfare", in force July 12, 1996.

For more History, see at end of s. 122.64.

Forms: RC65: Marital status change.

(6) Separation from cohabiting spouse [or common-law partner] — Where

(a) before the end of a particular month an eligible individual in respect of a qualified dependant begins to live separate and apart from the individual's cohabiting spouse or common-law partner, because of a breakdown of their marriage or common-law partnership, for a period of at least 90 days that includes a day in the particular month, and

(b) the individual so elects, before the end of the eleventh month after the particular month, in a form that is acceptable to the Minister,

for the purpose of determining the amount deemed under subsection 122.61(1) to be an overpayment arising in any month after the particular month on account of the individual's liability under this Part for the base taxation year in relation to the particular month, subject to any subsequent election under subsection (5) or (7), the individual's adjusted income for the year is deemed to be equal to the individual's income for the year.

History: Subsec. 122.62(5) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", and by Sch. 2, s. 9, to replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

The portion of subsec. 122.62(6) after para. (b) amended by 1998, c. 21, para. 95(b), in force on June 18, 1998. That portion formerly read:

for the purpose of determining the amount deemed under subsection 122.61(1) to be an overpayment arising in any month after the particular month on account of the individual's liability under this Part for the base taxation year in relation to the particular month, subject to any subsequent election under subsection (5) or (7),

(c) the individual's adjusted income for the year is deemed to be equal to the individual's income for the year, and

(d) the individual's adjusted earned income for the year is deemed to be equal to the individual's earned income for the year.

Former subsec. 122.62(7) renumbered as 122.62(6) and amended by 1998, c. 19, subsec. 142(2), applicable after August 27, 1995. Subsec. 122.62(7) formerly read:

(7) Where before the end of a particular month an eligible individual in respect of a qualified dependant commences to live separate and apart from the individual's cohabiting spouse, because of a breakdown of their marriage, for a period of at least 90 days that includes a day in the particular month and the individual so elects, before the end of the eleventh month following the particular month, in a form that is acceptable to the Minister of Human Resources Development, for the purpose of determining the amount deemed under subsection 122.61(1) to be an overpayment arising in any month after the particular month on account of the individual's liability under this Part for the base taxation year in relation to the particular month subject to any subsequent election under subsection (6) or (8), the individual's adjusted income for the year shall be deemed to be equal to the individual's income for the year and the individual's adjusted earned income for the year shall be deemed to be equal to the individual's earned income for the year.

Former subsec. 122.62(7) amended by 1996, c. 11, para. 95(h), to substitute "Minister of Human Resources Development" for "Minister of National Health and Welfare", in force July 12, 1996.

For more History, see at end of s. 122.64

Forms: RC65: Marital status change.

(7) Person becoming a cohabiting spouse [or common-law partner] — Where

(a) at any particular time before the end of a particular month a taxpayer has become the cohabiting spouse or common-law partner of an eligible individual, and

(b) the taxpayer and the eligible individual jointly so elect in prescribed form filed with the Minister before the end of the eleventh month after the particular month,

for the purpose of determining the amount deemed by subsection 122.61(1) to be an overpayment arising in any month after the particular month on account of the eligible individual's liability under this Part for the year, the taxpayer is deemed to have been the eligible individual's cohabiting spouse or common-law partner throughout the period that began immediately before the end of the base taxation year in relation to the particular month and ended at the particular time.

History: Subsec. 122.62(7) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Former subsec. 122.62(8) renumbered as 122.62(7) and amended by 1998, c. 19, subsec. 142(2), applicable after August 27, 1995. Subsec. (8) formerly read:

(8) Where at any particular time before the end of a particular month a taxpayer has become the cohabiting spouse of an eligible individual and the taxpayer and the eligible individual jointly so elect, before the end of the eleventh month following the particular month, in a form that is acceptable to the Minister of Human Resources Development, the taxpayer shall be deemed to have been the eligible individual's cohabiting spouse throughout the period commencing immediately before the end of the base taxation year in relation to the particular month and ending at the particular time for the purpose of determining the amount deemed by subsection 122.61(1) to be an overpayment arising in any month after the particular month on account of the eligible individual's liability under this Part for the year.

Former subsec. 122.62(8) amended by 1996, c. 11, para. 95(h), to substitute "Minister of Human Resources Development" for "Minister of National Health and Welfare", in force July 12, 1996.

For more History, see at end of s. 122.64

Forms: RC65: Marital status change.

(8), (9) [Repealed]

History: Subsec. 122.62(9) repealed by 1998, c. 19, subsec. 142(2), applicable after August 27, 1995. Subsec. 122.62(9) formerly read:

(9) Advice of Department of Human Resources Development — The Minister may obtain the advice of the Department of Human Resources Development as to whether

(a) a taxpayer is an eligible individual in respect of a qualified dependant;

(b) a person is a qualified dependant; or

(c) a person is a taxpayer's cohabiting spouse.

Subsec. 122.62(9) amended by 1996, c. 11, para. 97(1)(e), to substitute "Department of Human Resources Development" for "Department of National Health and Welfare", in force July 12, 1996.

For more History, see at end of s. 122.64

Definitions [s. 122.62]: "adjusted earned income", "adjusted income", "cohabiting spouse or common-law partner" — 122.6; "common-law partner", "common-law partnership" — 248(1); "eligible individual" — 122.6; "individual" — 248(1); "Minister", "person", "prescribed" — 248(1); "qualified dependant" — 122.6; "taxpayer" — 248(1).

122.63 (1) Agreement — The Minister of Finance may enter into an agreement with the government of a province whereby the amounts determined under paragraph (a) of the description of A in subsection 122.61(1) with respect to persons resident in the province shall, for the purpose of calculating overpayments deemed to arise under that subsection, be replaced by amounts determined in accordance with the agreement.

Related Provisions: 122.61(6.1) — Transitional adjustment for 2001-02.

History: Subsec. 122.63(1) amended by 1998, c. 19, s. 143, applicable after August 27, 1995. Subsec. 122.63(1) formerly read:

> (1) The Minister of Finance and the Minister of Human Resources Development may enter jointly into an agreement with the government of a province whereby the amounts determined under paragraph (a) in the description of A in subsection 122.61(1) with respect to persons resident in the province shall, for the purposes of calculating overpayments deemed to arise under that subsection, be replaced by amounts determined in accordance with the agreement.

Subsec. 122.63(1) amended by 1996, c. 11, para. 95(h), to substitute "Minister of Human Resources Development" for "Minister of National Health and Welfare", in force July 12, 1996. However, this change will effectively be superseded by (Bill C-69) 1998, c. 19 reproduced as proposed amendments above.

For more History, see at end of s. 122.64

(2) Idem — The amounts determined under paragraph (a) of the description of A in subsection 122.61(1) for a base taxation year because of any agreement entered into with a province and referred to in subsection (1) shall be based on the age of qualified dependants of eligible individuals, or on the number of such qualified dependants, or both, and shall result in an amount in respect of a qualified dependant that is not less, in respect of that qualified dependant, than 85% of the amount that would otherwise be determined under that paragraph in respect of that qualified dependant for that year.

(3) Idem — Any agreement entered into with a province and referred to in subsection (1) shall provide that, where the operation of the agreement results in a total of all amounts, each of which is an amount deemed under subsection 122.61(1) to be an overpayment on account of the liability under this Part for a taxation year of a person subject to the agreement, that exceeds 101% of the total of such overpayments that would have otherwise been deemed to have arisen under subsection 122.61(1), the excess shall be reimbursed by the government of the province to the Government of Canada.

Definitions [s. 122.63]: "amount" — 248(1); "base taxation year", "eligible individual" — 122.6; "person" — 248(1); "province" — *Interpretation Act* 35(1); "qualified dependant" — 122.6; "resident" — 250.

122.64 (1) Confidentiality of information — Information obtained under this Act or the *Family Allowances Act* by or on behalf of the Minister of Human Resources Development is deemed to be obtained on behalf of the Minister of National Revenue for the purposes of this Act.

Proposed Amendment — 122.64(1)

Application: S.C. 2005, c. 35 (Bill C-22, Royal Assent July 20, 2005), para. 67(d), replaced "Minister of Human Resources Development" with "Minister of Social Development" in subsec. 122.64(1), in force on a day to be fixed by order of the Governor in Council, provided that that day is the same as fixed under s. 85 of Bill C-23 (S.C. 2005, c. 34).

Related Provisions: 241 — Rules applicable to taxpayer information; 122.64(2), (3) — Intergovernmental disclosure.

History: Subsec. 122.64(1) amended by 1996, c. 11, para. 95(h), to substitute "Minister of Human Resources Development" for "Minister of National Health and Welfare", in force July 12, 1996.

For more History, see at end of s. 122.64

(2) Communication of information — Notwithstanding subsection 241(1), an official (as defined in subsection 241(10)) may provide information obtained under subsection 122.62(1), (4), (5), (6) or (7) or the *Family Allowances Act*

(a) to an official of the government of a province, solely for the purposes of the administration or enforcement of a prescribed law of the province; or

(b) to an official of the Department of Human Resources Development for the purposes of the administration of the *Family Allowances Act*, the *Canada Pension Plan* or the *Old Age Security Act*.

Proposed Amendment — 122.64(2)(b)

Application: S.C. 2005, c. 35 (Bill C-22, Royal Assent July 20, 2005), para. 66(d), replaced "Department of Human Resources Development" with "Department of Social Development" in para. 122.64(2)(b), in force on a day to be fixed by order of the Governor in Council, provided that that day is the same as fixed under s. 85 of Bill C-23 (S.C. 2005, c. 34).

Related Provisions: 122.64(4) — Offence; 241(4)(j.1) — Disclosure to officials of provinces other than Quebec.

History: Subsec. 122.64(2) amended by 1998, c. 19, subsec. 144(1), applicable after August 27, 1995 except that, before July 12, 1996, the reference in para. 122.64(2)(b) to "Human Resources Development" shall be read as a reference to "National Health and Welfare". Subsec. 122.64(2) formerly read:

> (2) Notwithstanding subsection 241(1), an official or authorized person may provide information obtained under subsection 122.62(1), (4), (6), (7) or (8) or the *Family Allowances Act*
>
> (a) to an official of the government of a province, solely for the purposes of the administration or enforcement of a prescribed law of the province; or
>
> (b) to an official of the Department of Human Resources Development, for the purposes of the administration of the *Children's Special Allowances Act*, the *Canada Pension Plan* and the *Old Age Security Act*.

Para. 122.64(2)(b) amended by 1996, c. 11, para. 97(1)(e), to substitute "Department of Human Resources Development" for "Department of National Health and Welfare", in force July 12, 1996.

For more History, see at end of s. 122.64

Regulations: 3003 (prescribed law of a province).

(3) Taxpayer's address — Notwithstanding subsection 241(1), an official or authorized person may provide a taxpayer's name and address that has been obtained by or on behalf of the Minister of National Revenue for the purposes of this subdivision, for the purposes of the administration or enforcement of Part I of the *Family Orders and Agreements Enforcement Assistance Act*.

Related Provisions: 122.61(4)(e) — Child Tax Benefit not garnishable under the *Family Orders and Agreements Enforcement Assistance Act*; 122.64(4) — Offence.

(4) Offence — Every person to whom information has been provided under subsection (2) or (3) and who knowingly uses, communicates or allows to be communicated that information for any purpose other than that for which it was provided is guilty of an offence and is liable on summary conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or to both that fine and imprisonment.

Related Provisions: 239(2.2), (2.21) — Offence with respect to confidential information.

(5) [Repealed]

History [subsec. 122.64(5)]: Subsec. 122.64(5) repealed by 1998, c. 19, subsec. 144(2), applicable after August 27, 1995. Subsec. 122.64(5) formerly read:

> (5) "official" and "authorized person" — For the purposes of subsections (2) and (3), "official" and "authorized person" have the meanings assigned by subsection 241(10).

For more History, see at end of s. 122.64

Definitions [s. 122.64]: "authorized person", "official" — 241(10); "person", "prescribed" — 248(1); "province" — *Interpretation Act* 35(1); "taxpayer" — 248(1).

History [ss. 122.6–122.64]: Ss. 122.6 to 122.64 enacted by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 12(1), 122.6 to 122.63 applicable to overpayments deemed to arise during months after 1992; and, with respect to

(a) any amount deemed by subsec. 122.61(1) to be an overpayment on account of an individual's liability under Part I

(i) during any month before July 1993, the individual's cohabiting spouse at the end of 1991 includes a person who

(A) is of the opposite sex to the individual,

(B) is at the beginning of the month a parent of a child of whom the individual is a parent, and

(C) is not living separate and apart from the individual for a period of at least 90 days that includes December 31, 1991, and

(ii) during any month after June 1993 and before July 1994, the cohabiting spouse of an individual at the end of 1992 includes the person of the opposite sex who, at the end of 1992, was cohabiting with the individual in a conjugal relationship and

(A) had so cohabited with the individual throughout a 12 month period ending before the end of 1992, or

(B) is a parent of a child of whom the individual is a parent,

and, for the purpose of this subparagraph, where before the end of 1992 the individual and the person cohabited in a conjugal relationship, they shall be deemed to be cohabiting in a conjugal relationship at the end of 1992, unless they were not cohabiting at that time for a period of at least 90 days that includes that time because of a breakdown of their conjugal relationship; and

(b) any amount deemed by subsec. 122.61(1) to be an overpayment on account of a person's liability under Part I arising in any month in relation to which the 1992 taxation year is the base taxation year, the expression "earned income" as defined in s. 122.6 shall be deemed to have the meaning assigned by subsec. 63(3) as that subsec. reads in its application to the 1993 taxation year.

S. 122.64 is deemed to have come into force January 1, 1993.

Subsec. 12(3) of 1994, c. 7, Sch. VII (1992, c. 48) provides as follows:

(3) The Minister of National Revenue may during any month

(a) in relation to which the 1991 taxation year is the base taxation year, and

(b) that is before the month in which that minister mails to an individual a notice of determination of the amounts deemed by subsection 122.61(1) of the Act, as enacted by subsection (1), to be overpayments on account of the individual's liability under Part I of the Act for the 1991 taxation year,

pay to the individual, in respect of a qualified dependant who was an eligible child (within the meaning assigned by subsection 122.2(2) of the Act) of the individual for the 1992 taxation year, an amount not exceeding the amount that would be deemed by the said subsection 122.61(1) to be an overpayment on account of the individual's liability under Part I of the Act for the 1991 taxation year that would have arisen in that month or a preceding month if the individual's adjusted income and adjusted earned income for the 1991 taxation year were equal to zero and if the individual had filed a return of income for that year, and any amount so paid shall be deemed to be an amount refunded on account of the individual's liability under Part I of the Act for the 1991 taxation year that arose as a consequence of the operation of the said subsection 122.61(1).

Subdivision b — Rules Applicable to Corporations

123. (1) Rate for corporations — The tax payable under this Part for a taxation year by a corporation on its taxable income or taxable income earned in Canada, as the case may be, (in this section referred to as its "amount taxable") for the year is, except where otherwise provided,

(a) 38% of its amount taxable for the year.

(b)–(d) [Repealed under former Act]

Related Provisions: 117(1) — Tax payable under this Part; 123.2 — Corporate surtax; 123.4(2) — General reduction in tax rate; 124 — Provincial tax abatement for corporations; 125 — Small business deduction; 125.1 — Manufacturing and processing credit; 125.11 — Resource rate reduction 2003-06; 133(3) — Tax rate for non-resident-owned investment corporation; 137.1(9) — Tax rate for deposit insurance corporation; 157(1) — Monthly instalment requirements; 161(4.1) — Interest on unpaid taxes; 182 — Surtax on tobacco manufacturers; 219(1) — Additional tax on foreign corporations.

Selected Cases [subsec. 123(1)]: *Groupe Commerce, Cie D'assurances v. R.*, [1999] 4 C.T.C. 54 (FCA) (No refundable dividend tax available to insurance companies).

Forms: T2 SCH 7: Calculation of aggregate investment income and active business income.

(2) [Repealed under former Act]

Definitions [s. 123]: "amount taxable" — 123(1); "corporation" — 248(1), *Interpretation Act* 35(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1).

123.1 Corporation surtax — There shall be added to the tax otherwise payable under this Part for each taxation year by a corporation (other than a corporation that was throughout the year an investment corporation or a non-resident-owned investment corporation) an amount equal to that proportion of 5% of the amount, if any, by which

(a) the tax payable under this Part by the corporation for the year determined without reference to this section, sections 123.2 and 126 (except for the purposes of subsection 125(1) and section 125.1), subsections 127(3) and (5), 127.2(1) and 127.3(1) of this Act and paragraph 123(1)(b) and subsection 127(13) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, and if subsection 124(1) of this Act were read without reference to the words "in a province" in that subsection

exceeds

(b) in the case of a Canadian-controlled private corporation to which subsection 125(1) applies, the amount, if any, by which

(i) 15% of the least of the amounts, if any, determined under paragraphs 125(1)(a) to (c) in respect of the corporation for the year

exceeds

(ii) the amount, if any, determined under paragraph 125.1(1)(b) in respect of the corporation for the year,

(c) in the case of a mutual fund corporation, the least of the amounts that would be determined under paragraphs (a) to (c) of the description of A in the definition "refundable capital gains tax on hand" in subsection 131(6) in respect of the corporation for the year if this Act were read without reference to this section, and

(d) in any other case, nil

that the number of days in that portion of the year that is after June 30, 1985 and before 1987 is of the number of days in the year.

Definitions [s. 123.1]: "amount" — 248(1); "Canadian-controlled private corporation" — 125(7), 248(1); "corporation" — 248(1); "investment corporation" — 130(3), 248(1); "mutual fund corporation" — 131(8), 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "tax payable" — 248(2); "taxation year" — 249(1).

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

123.2 (1) Corporation surtax — There shall be added to the tax otherwise payable under this Part for each taxa-

tion year by a corporation an amount equal to the corporation's specified percentage for the taxation year multiplied by the amount, if any, by which

(a) the tax payable under this Part by the corporation for the year determined without reference to this section, sections 123.3, 123.4 and 125 to 126 and subsections 127(3), (5), (27) to (31), (34) and (35) and 137(3) and as if subsection 124(1) did not contain the words "in a province"

exceeds

(b) in the case of a corporation that was throughout the year an investment corporation or a mutual fund corporation, the amount determined for A in the definition "refundable capital gains tax on hand" in subsection 131(6) in respect of the corporation for the year, and

(c) in any other case, nil.

Related Provisions: 141.1 — Insurance corporation deemed not to be private corporation; 157(1) — Tax instalment requirements; 161(4.1) — Interest on unpaid taxes; 182 — Surtax on tobacco manufacturers; Reg. 8602 — Prescribed portion of amount determined under 123.2.

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations.

Application Policies: SR&ED 2000-04R2: Recapture of investment tax credit.

Forms [s. 123.2]: T2 SCH 37: Calculation of unused surtax credit; T2215: Corporate surtax — 1988 *et seq.*

(2) Specified percentage — The specified percentage of a corporation for a taxation year is

(a) if the taxable capital employed in Canada of the corporation for the taxation year is equal to or less than $50,000,000, that proportion of 4% that the number of days in the taxation year that are before 2008 is of the number of days in the taxation year; and

(b) if paragraph (a) does not apply, the percentage determined by the formula

$$A + B \left[\frac{(C - \$50,000,000)}{\$25,000,000} \right]$$

where

A is that proportion of 4% that the number of days in the taxation year that are before 2008 is of the number of days in the taxation year,

B is that proportion of 4% that the number of days in the taxation year that are after 2007 is of the number of days in the taxation year; and

C is the lesser of $75,000,000 and the taxable capital employed in Canada of the corporation for the taxation year.

Related Provisions: 123.2(3) — Taxable capital employed in Canada; 257 — Formula cannot calculate to less than zero.

(3) Taxable income — For the purpose of subsection (2), the taxable capital employed in Canada of a corporation for a particular taxation year is

(a) if the corporation is associated with one or more other corporations in the particular taxation year, the total of all amounts each of which is the taxable capital employed in Canada (within the meaning assigned by subsection 181.2(1) or 181.3(1) or section 181.4, as the case may be) of the corporation, or of such an associated corporation, for its last taxation year that ended in the calendar year preceding the calendar year in which the particular taxation year ends; and

(b) if the corporation is not associated with one or more other corporations in the particular taxation year, the taxable capital employed in Canada (within the meaning assigned by subsection 181.2(1) or 181.3(1) or section 181.4, as the case may be) of the corporation for the particular taxation year.

History: S. 123.2 amended by 2005, c. 30, s. 9, in force on June 29, 2005. The section formerly read:

123.2 There shall be added to the tax otherwise payable under this Part for each taxation year by a corporation (other than a corporation that was throughout the year a non-resident-owned investment corporation) an amount equal to 4% of the amount, if any, by which

(a) the tax payable under this Part by the corporation for the year determined without reference to this section, sections 123.3, 123.4 and 125 to 126 and subsections 127(3), (5), (27) to (31), (34) and (35) and 137(3) and as if subsection 124(1) did not contain the words "in a province"

exceeds

(b) in the case of a corporation that was throughout the year an investment corporation or a mutual fund corporation, the amount determined for A in the definition "refundable capital gains tax on hand" in subsection 131(6) in respect of the corporation for the year, and

(c) in any other case, nil.

Para. 123.2(a) amended by 2001, c. 17, s. 111 to add reference to "123.4", applicable to 2001 *et seq.*

Para. 123.2(a) amended by 1999, c. 22, s. 45, applicable to 1998 *et seq.* It formerly read:

(a) the tax payable under this Part by the corporation for the year determined without reference to this section, sections 123.3 and 125 to 126 and subsections 127(3) and (5) and 137(3) and as if subsection 124(1) did not contain the words "in a province"

The portion of s. 123.2 before para. (b) amended by 1996, c. 21, s. 24, applicable to taxation years that end after February 27, 1995 except that, in applying s. 123.2, as amended, to a taxation year that began before February 28, 1995, the amount otherwise determined under that section shall be reduced by that proportion of ¼ of that amount that the number of days in the year that are before February 28, 1995 is of the number of days in the year. The portion formerly read:

123.2 There shall be added to the tax otherwise payable under this Part for each taxation year by a corporation (other than a corporation that was throughout the year a non-resident-owned investment corporation) an amount equal to 3% of the amount, if any, by which

(a) the tax payable under this Part by the corporation for the year determined without reference to this section, sections 125 to 126 and subsections 127(3) and (5) and 137(3) and as if subsection 124(1) did not contain the words "in a province" therein

exceeds

Para. 123.2(a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 61, applicable to 1992 *et seq.* except that, in its application to a corporation's taxation year beginning before 1992, there shall be deducted from the amount determined under the para. in respect of the corporation for the year an amount equal to that proportion of the amount determined under subsec. 137(3) in respect of the corporation for the year that the number of days in the year that are before 1992 is of the number of days in the year. Para. 123.2(a) formerly read:

(a) the tax payable under this Part by the corporation for the year determined without reference to this section and sections 125 to 126 and subsections 127(3) and (5) of this Act and paragraph 123(1)(b) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, and as if subsection 124(1) of this Act were read without reference to the words "in a province" in that subsection

Definitions [s. 123.2]: "amount" — 248(1); "Canadian-controlled private corporation" — 125(7), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "investment corporation" — 130(3), 248(1); "mutual fund corporation" — 131(8), 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "tax payable" — 248(2).

123.3 Refundable tax on CCPC's investment income — There shall be added to the tax otherwise payable under this Part for each taxation year by a corporation

that is throughout the year a Canadian-controlled private corporation an amount equal to 6⅔% of the lesser of

(a) the corporation's aggregate investment income for the year (within the meaning assigned by subsection 129(4)), and

(b) the amount, if any, by which its taxable income for the year exceeds the least of the amounts determined in respect of it for the year under paragraphs 125(1)(a) to (c).

Related Provisions: 123.2(a) — Corporate surtax applies to total tax before adding this refundable tax; 125(1)(b)(i), 126(7)"tax for the year otherwise payable under this Part"(b), (c) — Refundable tax ignored for foreign tax credit purposes; 129(3)(a)(i)A — Refund of tax (plus 20 points of regular tax on the same income).

History: S. 123.3 added by 1996, c. 21, s. 25, applicable to taxation years that end after June 1995 except that, in its application to such taxation years that begin before July 1995, the reference in s. 123.3 to "6 ⅔%" shall be read as "that proportion of 6 ⅔% that the number of days in the year that are after June 1995 is of the number of days in the year".

Definitions [s. 123.3]: "Canadian-controlled private corporation" — 125(7), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "taxable capital employed in Canada" — 123.2(3); "taxable income" — 2(2), 248(1); "taxation year" — 249.

123.4 Corporation tax reductions — (1) Definitions — The definitions in this subsection apply in this section.

"CCPC rate reduction percentage" [Repealed]

"full rate taxable income" of a corporation for a taxation year is

(a) if the corporation is not a corporation described in paragraph (b) or (c) for the year, the amount by which the corporation's taxable income for the year exceeds the total of

(i) if an amount is deducted under subsection 125.1(1) from the corporation's tax otherwise payable under this Part for the year, 100/7 of the amount deducted,

Proposed Amendment [on hold] — 123.4(1)"full rate taxable income"(a) before (ii)

(a) if the corporation is not a corporation described in paragraph (b) or (c) for the year, the amount by which the corporation's taxable income for the year (or, for greater certainty, if the corporation is non-resident, its taxable income earned in Canada for the year) exceeds the total of

(1) if an amount is deducted under subsection 125.1(1) from the corporation's tax otherwise payable under this Part for the year, the amount obtained by dividing the amount so deducted by the corporation's general rate reduction percentage for the taxation year,

Application: Bill C-43 (S.C. 2005, c. 30), subsec. 10(2), would have amended the portion of para. (a) of the definition "full rate taxable income" in subsec. 123.4(1) before subpara. (ii) to read as above, in force on Royal Assent. This proposal was deleted before enactment but may be reintroduced in the future. See Finance news release of April 27, 2005 under 123.4(1)"general rate reduction percentage".

Technical Notes (Bill C-43): Section 123.4 contains rules that allow a corporation to reduce its tax otherwise payable under Part I of the Act by the "general rate reduction percentage" of the corporation's "full rate taxable income" — a term that is separately defined in the section for Canadian-controlled private corporations (CCPCs) and for other corporations. This section is amended, as described below, to provide for further corporate income tax rate reductions totalling one-half of a percentage point for 2008, one percentage point for 2009, and two percentage points for the 2010 and later calendar years. The corporate income tax rate reductions are prorated to reflect the number of days in a corporation's taxation year that fall in a given calendar year. Investment corporations, mortgage investment corporations and mutual fund corporations are not eligible for this rate reduction.

The "full rate taxable income" of a corporation for a taxation year is, in general terms, that part of the corporation's taxable income for the year that has not benefited from any of the various special effective tax rates provided under the Act. This amount is determined differently depending on the nature of the corporation. Paragraph (a) of the definition applies to corporations, other than CCPCs and various "specialty corporations" such as investment corporations and mutual fund corporations. Paragraph (a) is amended to clarify that a non-resident corporation's taxable income earned in Canada in the year is included in the "full rate taxable income" calculation. Subparagraph (a)(i) is amended to reflect the changes in the manufacturing and processing profits deduction (see commentary on subsection 125.1(1)).

Department of Finance news release, April 27, 2005: See under 123.4(1)"general rate reduction percentage".

(ii) if an amount is deducted under subsection 125.1(2) from the corporation's tax otherwise payable under this Part for the year, the amount determined, in respect of the deduction, by the formula in that subsection,

(iii) the corporation's taxable resource income for the year, and

Repeal [effective 2007] — 123.4(1)"full rate taxable income"(a)(iii)

Application: S.C. 2003, c. 28 (Bill C-48, Royal Assent November 7, 2003), subsec. 12(2), repeals subpara. (a)(iii) of the definition "full rate taxable income" in subsec. 123.4(1), applicable to taxation years that begin after 2006.

(iv) if the corporation is a credit union throughout the year, 100/16 of the amount, if any, deducted under subsection 137(3) from the corporation's tax otherwise payable under this Part for the year;

(b) if the corporation is a Canadian-controlled private corporation throughout the year, the amount by which the corporation's taxable income for the year exceeds the total of

(i) the amounts that would, if paragraph (a) applied to the corporation, be determined under subparagraphs (a)(i) to (iv) in respect of the corporation for the year,

(ii) 100/16 of the amount, if any, deducted under subsection 125(1) from the corporation's tax otherwise payable under this Part for the year,

(iii) the corporation's aggregate investment income for the year, within the meaning assigned by subsection 129(4), and

(iv) [Repealed]

(c) if the corporation is throughout the year an investment corporation, a mortgage investment corporation or a mutual fund corporation, nil.

Related Provisions: 125.11 — Resource rate reduction 2003-06.

"general rate reduction percentage" of a corporation for a taxation year is the total of

(a) that proportion of 1% that the number of days in the year that are in 2001 is of the number of days in the year;

(b) that proportion of 3% that the number of days in the year that are in 2002 is of the number of days in the year;

(c) that proportion of 5% that the number of days in the year that are in 2003 is of the number of days in the year; and

(d) that proportion of 7% that the number of days in the year that are after 2003 is of the number of days in the year.

Proposed Amendment [on hold] — 123.4(1)"general rate reduction percentage"

"general rate reduction percentage" of a corporation for a taxation year is the total of

(a) the proportion of 7% that the number of days in the taxation year that are before 2008 is of the number of days in the taxation year,

(b) the proportion of 7.5% that the number of days in the taxation year that are in 2008 is of the number of days in the taxation year,

(c) the proportion of 8% that the number of days in the taxation year that are in 2009 is of the number of days in the taxation year, and

(d) the proportion of 9% that the number of days in the taxation year that are after 2009 is of the number of days in the taxation year.

Application: Bill C-43 (S.C. 2005, c. 30), subsec. 10(2), would have amended the portion of para. (a) of the definition "full rate taxable income" in subsec. 123.4(1) before subpara. (ii) to read as above, in force on Royal Assent. This proposal was deleted before enactment but may be reintroduced in the future. See Finance news release of April 27, 2005 below.

Technical Notes (Bill C-43): A corporation's "general rate reduction percentage" for a taxation year is a rate reduction percentage that is computed by reference to the calendar year or years in which a corporation's taxation year falls. The percentage is amended to provide for further corporate income tax rate reductions totalling one-half of a percentage point for 2008, one percentage point for 2009, and two percentage points for the 2010 and later calendar years.

Federal budget, Notice of Ways and Means Motion, February 23, 2005: *Corporate Tax Rate Reduction*

(19) That, for taxation years that end after 2007, a deduction be provided from the tax otherwise payable under Part I of the Act by a corporation (other than a corporation that is throughout the year an investment corporation, a mortgage investment corporation or a mutual fund corporation), equal to the designated percentage (0.5% for 2008, 1% for 2009, and 2% after 2009, with proration for taxation years that include days in more than one calendar year) of the amount by which the corporation's taxable income for the year (or, if the corporation is non-resident, its taxable income earned in Canada for the year) exceeds the total of

(a) if the corporation is throughout the year a Canadian-controlled private corporation, the total of

(i) the least of the amounts determined under paragraphs 125(1)(a) to (c) of the Act in respect of the corporation's small business deduction for the year, and

(ii) the corporation's aggregate investment income determined under subsection 129(4) of the Act for the year; and

(b) if the corporation is a credit union, the amount in respect of which the corporation applied the deduction from tax provided by subsection 137(3) of the Act.

Federal budget, Supplementary Information, February 23, 2005: *Corporate Tax Rate Reduction*

The budget proposes to reduce the general corporate income tax rate to 19% from 21% by 2010. The general corporate income tax rate will be reduced to 20.5% effective January 1, 2008, to 20% effective January 1, 2009, and to 19% effective January 1, 2010 (all prorated for taxation years that include those dates).

The rate reductions will apply to all types of corporate income, other than: small business income that is already eligible for the low 12% corporate tax rate; investment income of Canadian-controlled private corporations (CCPCs), which income is eligible for a special refundable tax; the income of credit unions eligible for the corporate tax rate reduction under section 137 of the *Income Tax Act*; and the income of mutual fund corporations, mortgage investment corporations, and investment corporations (as defined in the *Income Tax Act*), which income already qualifies for special tax provisions.

The following table presents the federal corporate tax rates on various types of income, before and after the proposed rate reductions.

Table A8.4 — *Federal Corporate Income Tax Rates*

	Legislated rates	Proposed rates		
	in 2008[1]	2008	2009	2010
On first $300,000 of CCPCs' active business income	13.12	12	12	12
On other business income	22.12	20.5	20	19

Table note:

1 Rates include the corporate surtax.

Federal budget, February 23, 2005, Chapter 4: *Reducing Corporate Tax Rates*

Improving the competitiveness of the tax system is particularly important at a time when most industrialized countries are significantly reducing their corporate tax rates (see box below).

Last year the U.S. legislated a plan to reduce its corporate tax rate on manufacturing income by an equivalent of 3.15 percentage points by 2010. Ensuring the competitiveness of Canada's business taxes vis-à-vis the U.S. is particularly important because our economies are highly integrated. For example, two-thirds of foreign direct investment in Canada is from U.S. investors, and about 40% of Canada's outbound direct foreign investment is made in the U.S.

In 2004, Canada's average federal-provincial corporate tax rate was 2.3 percentage points lower than the average federal-state rate in the U.S. Due to the recently announced corporate tax reductions in the U.S., absent new measures, Canada's tax advantage would be significantly diminished for certain types of income — for manufacturing income, falling to only 1.4 percentage points by 2010. More than 40% of foreign direct investment in Canada is made in the manufacturing sector. It is important that Canada maintain a tax rate advantage for manufacturing as well as other sectors of the economy.

To ensure that Canada's business taxes are internationally competitive and foster investment, productivity and growth, Budget 2005 proposes the elimination of the corporate surtax in 2008 and a 2-percentage-point reduction in the general corporate income tax rate to 19% from 21%, by 2010. . . .

The corporate surtax was originally introduced in 1987 as a deficit reduction measure. Its elimination is equivalent to a 1.12 percentage point reduction in corporate income tax rates and will benefit both large and small businesses. Eliminating the surtax will also simplify the tax system.

The proposed tax reductions will establish a solid corporate tax rate advantage for all sectors. For manufacturing income, Canada's tax rate advantage will be 4.5 percentage points in 2010 (see chart [not reproduced — ed.]). A strong signal to investors is necessary to influence the location of investment.

Department of Finance news release, April 27, 2005: *Government to Proceed With [Only Some of the] Budget 2005 Corporate Tax Reduction Measures*

Minister of Finance Ralph Goodale stated today that the Government intends to proceed with plans to implement the corporate tax reduction measures outlined in Budget 2005.

The Minister explained that these measures include reducing the general corporate income tax rate, eliminating the corporate surtax [123.2 — ed.], and improving the alignment of capital cost allowance (CCA) rates with the useful life of assets.

Mr. Goodale said that the Government will propose amendments to the *Budget Implementation Act*, Bill C-43, to eliminate the surtax for small and medium-sized businesses only and to remove the reduction to the general corporate tax rate proposed in Budget 2005. The Government will bring forward separate legislation at the earliest opportunity to reintroduce those measures eliminated from Bill C-43, including extending the surtax elimination to all corporations and reducing the general corporate income tax rate. CCA rates announced in Budget 2005 will be implemented without delay through regulatory changes.

"I want to make it clear that our tax measures, just like our other budget measures, will be implemented in a fiscally responsible manner," Minister Goodale said. "We will post balanced budgets or better in each of

the next two years, and our plan to reduce Canada's debt-to-GDP (gross domestic product) ratio to 25% by 2014–15 remains on track."

For further information, media may contact: David Gamble, Public Affairs and Operations Division, (613) 996-8080; Pat Breton, Press Secretary, Office of the Minister of Finance, (613) 996-7861.

Related Provisions: 125.1(1), (2) — Application to M&P credit.

(2) General deduction from tax — There may be deducted from a corporation's tax otherwise payable under this Part for a taxation year the product obtained by multiplying the corporation's general rate reduction percentage for the year by the corporation's full-rate taxable income for the year.

Related Provisions: 123.2(a) — Corporate surtax applies to total tax before applying this reduction; 136(1) — Cooperative can be private corporation for purposes of 123.4; 137(7) — Credit union can be private corporation for purposes of 123.4.

(3) [Repealed]

History [s. 123.4]: Subpara. (a)(iii) of the definition "full rate taxable income" in subsec. 123.4(1) amended by 2003, c. 28, subsec. 12(1), applicable to 2003 *et seq*. The subpara. formerly read:

(iii) three times the total of all amounts each of which is deducted under paragraph 20(1)(v.1) in computing the corporation's income from a business or property for the year, and

The definition "CCPC rate reduction percentage", subpara. (b)(iv) of the definition "full rate taxable income" in subsec. 123.4(1) repealed by 2003, c. 15, subsecs. 78(1), (2), applicable to 2005 *et seq*. They formerly read:

"CCPC rate reduction percentage" of a Canadian-controlled private corporation for a taxation year is that proportion of 7% that the number of days in the year that are after 2000 is of the number of days in the year.

. . . . .

(iv) $^{100}/_{7}$ of the amount, if any, deducted under subsection (3) from the corporation's tax otherwise payable under this Part for the year; and

Para. (c) of the definition "full rate taxable income" in subsec. 123.4(1) amended by the said c. 15, subsec. 78(3), applicable to 2005 *et seq*. Para. (c) formerly read:

(c) if the corporation is throughout the year an investment corporation, a mortgage investment corporation, a mutual fund corporation, or a non-resident-owned investment corporation, nil.

Subsec. 123.4(3) repealed by the said c. 15, subsec. 78(5), applicable to 2005 *et seq*. Subsec. 123.4(3) formerly read (for 2003 and 2004 taxation years only):

(3) CCPC deduction — There may be deducted from the tax otherwise payable under this Part for a taxation year by a Canadian-controlled private corporation the product obtained by multiplying the corporation's CCPC rate reduction percentage for the year by the amount by which the least of

(a) the amount determined by the formula

$$(\$300{,}000/A) \times B$$

where

A is the total of

(i) that proportion of $200,000 that the number of days in the taxation year that are before 2003 is of the number of days in the taxation year,

(ii) that proportion of $225,000 that the number of days in the taxation year that are in 2003 is of the number of days in the taxation year, and

(iii) that proportion of $250,000 that the number of days in the taxation year that are in 2004 is of the number of days in the taxation year, and

B is the corporation's business limit for the taxation year as determined under section 125 for the purpose of paragraph 125(1)(c),

(b) the amount that would be determined under paragraph 125(1)(a) in respect of the corporation for the year if the description of M in the definition "specified partnership income" in subsection 125(7) were read as it is to be read for fiscal periods that begin after 2005, and

(c) the amount by which

(i) the amount that would, if subsection 126(1) did not apply in respect of any amount included in the corporation's aggregate investment income for the year (determined under subsection 129(4)), be determined under paragraph 125(1)(b) in respect of the corporation for the year

exceeds

(ii) the corporation's aggregate investment income for the year,

exceeds the total of

(d) the amounts that would, if paragraph (a) of the definition "full-rate taxable income" in subsection (1) applied to the corporation for the year, be determined under subparagraphs (a)(i) to (iv) of that definition in respect of the corporation for the year, and

(e) $^{100}/_{16}$ of the amount, if any, deducted under subsection 125(1) from the corporation's tax otherwise payable under this Part for the year.

Paras. 123.4(3)(a) and (b) amended by the said c. 15, subsec. 78(4), applicable to 2003 and 2004. Paras. (3)(a) and (b) formerly read:

(a) $^{1}/_{2}$ of the corporation's business limit for the year, as determined under section 125 for the purpose of paragraph 125(1)(c),

(b) the amount that would be determined under paragraph 125(1)(a) in respect of the corporation for the year if the references in the description of M in the definition "specified partnership income" in subsection 125(7) to "$200,000" and "$548" were read as references to "$300,000" and "$822", respectively, and

S. 123.4 added by 2001, c. 17, s. 112, applicable to 2001 *et seq.* except that, in its application to a taxation year that begins before 2001, the amount determined under subpara. (b)(iv) of the definition "full rate taxable income" in subsec. (1) is deemed to be the amount otherwise so determined multiplied by the number obtained by dividing the number of days in the year by the number of days in the year that are after 2000.

Definitions [s. 123.4]: "aggregate investment income" — 129(4); "amount", "business", "business limit" — 248(1); "CCPC rate reduction percentage" — 123.4(1); "Canadian-controlled private corporation" — 125(7), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "credit union" — 248(1); "fiscal period" — 249.1; "full rate taxable income", "general rate reduction percentage" — 123.4(1); "investment corporation" — 130(3), 248(1); "mortgage investment corporation" — 130.1(6), 248(1); "mutual fund corporation" — 131(8), 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "property", "taxable income" — 248(1); "taxable resource income" — 125.11(1); "taxation year" — 249.

Interpretation Bulletins: IT-73R6: The small business deduction.

123.5 [Repealed under former Act]

124. (1) Deduction from corporation tax — There may be deducted[36] from the tax otherwise payable by a corporation under this Part for a taxation year an amount equal to 10% of the corporation's taxable income earned in the year in a province.

Related Provisions: 117(1) — Tax payable under this Part; 123.2(a) — 10% reduction applies for corporate surtax even if income not earned in a province; 123.4(2) — Further 7% rate reduction; 133(4) — No deduction for non-resident-owned investment corporation.

Interpretation Bulletins: IT-177R2: Permanent establishment of a corporation in a province; IT-347R2: Crown corporations (archived); IT-393R2: Election re tax on rents and timber royalties — non-residents.

(2)–(2.2) [Repealed under former Act]

(3) Crown agents — Notwithstanding subsection (1), no deduction may be made under this section from the tax otherwise payable under this Part for a taxation year by a corporation in respect of any taxable income of the corpo-

[36]Complementing the abatement allowed by subsec. 124(1) are the income taxes imposed, at various rates, by all the provinces. See introductory pages.

ration for the year that is not, because of an Act of Parliament, subject to tax under this Part or by a prescribed federal Crown corporation that is an agent of Her Majesty.

Related Provisions: 27 — Prescribed federal Crown corporations are subject to Part I tax; 149(6) — Apportionment rule.

History: Subsec. 124(3) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 62, applicable to 1992 *et seq.* Subsec. (3) formerly read:

(3) No deduction may be made under this section from the tax otherwise payable under this Part for a taxation year by a prescribed federal Crown corporation that is an agent of Her Majesty.

Regulations: 7100 (prescribed federal Crown corporation).

Interpretation Bulletins: IT-347R2: Crown corporations (archived).

(4) Definitions — In this section,

"province" includes the Newfoundland offshore area and the Nova Scotia offshore area;

Interpretation Act: R.S.C. 1985, c. I-21, subsec. 35(1):

"province" means a province of Canada, and includes the Yukon Territory and the Northwest Territories;

Regulations: 400–413 (taxable income earned in the year in a province).

"taxable income earned in the year in a province" means the amount determined under rules prescribed for the purpose by regulations made on the recommendation of the Minister of Finance.

Regulations: 400–413 (taxable income earned in the year in a province).

Definitions [s. 124]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "Her Majesty" — *Interpretation Act* 35(1); "mineral resource", "Newfoundland offshore area", "Nova Scotia offshore area" — 248(1); "Parliament" — *Interpretation Act* 35(1); "province" — 124(4), *Interpretation Act* 35(1); "taxable income" — 2(2), 248(1); "taxable income earned in the year in a province" — 124(4); "taxation year" — 249.

124.1 [Repealed under former Act]

Selected Cases [s. 124.1]: *Echo Bay Mines Ltd. v. Canada*, [1992] 2 C.T.C. 182 (FCTD) (Gains from settlement of forward sales contracts for silver were "resource profits").

124.2 [Repealed under former Act]

Selected Cases [s. 124.2]: *Echo Bay Mines Ltd. v. Canada*, [1992] 2 C.T.C. 182 (FCTD) (Gains from settlement of forward sales contracts for silver were "resource profits").

125. (1) Small business deduction — There may be deducted from the tax otherwise payable under this Part for a taxation year by a corporation that was, throughout the year, a Canadian-controlled private corporation, an amount equal to 16% of the least of

(a) the amount, if any, by which the total of

(i) the total of all amounts each of which is the income of the corporation for the year from an active business carried on in Canada (other than the income of the corporation for the year from a business carried on by it as a member of a partnership), and

(ii) the specified partnership income of the corporation for the year

exceeds the total of

(iii) the total of all amounts each of which is a loss of the corporation for the year from an active business carried on in Canada (other than a loss of the corporation for the year from a business carried on by it as a member of a partnership), and

(iv) the specified partnership loss of the corporation for the year,

(b) the amount, if any, by which the corporation's taxable income for the year exceeds the total of

(i) 10/3 of the total of the amounts that would be deductible under subsection 126(1) from the tax for the year otherwise payable under this Part by it if those amounts were determined without reference to sections 123.3 and 123.4,

(ii) 10/4 of the total of the amounts that would be deductible under subsection 126(2) from the tax for the year otherwise payable under this Part by it if those amounts were determined without reference to section 123.4, and

Proposed Amendment — 125(1)(b)(ii)

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 116(1), will amend subpara. 125(1)(b)(ii) to substitute "three times" for "10/4 of", applicable to 2003 *et seq.*

Technical Notes: Under subsection 125(1), a CCPC's small business deduction for a taxation year is calculated as 16% of the least of three amounts. One of these, set out in paragraph 125(1)(b), is the amount by which the corporation's taxable income for the year exceeds income that has supported a foreign tax credit (FTC) or that is statutorily exempt from tax. The amount of income that has supported an FTC is determined by multiplying the corporation's FTCs for the year (subject to certain adjustments) by a factor that reflects an assumed rate of tax. For FTCs in respect of foreign non-business income, the factor is currently 10/3, reflecting an assumed tax rate of 30%. For business-income FTCs, the factor is currently 10/4, which reflects an assumed tax rate of 40%.

Subparagraph 125(1)(b)(ii) is amended to adjust the factor for foreign business income, as part of a series of amendments reflecting recent and planned reductions in income tax rates. The factor for business-income FTCs will become 3. This implies an assumed tax rate of 33.3%.

(iii) the amount, if any, of the corporation's taxable income for the year that is not, because of an Act of Parliament, subject to tax under this Part, and

(c) the corporation's business limit for the year.

Related Provisions: 123.2(a) — Corporate surtax applies to total tax before claiming small business deduction; 123.4(3) — Reduction in tax rate for CCPC's income over $200,000–$300,000; 125(2)–(5) — Restriction of deduction to $200,000–$300,000 of active business income; 125(5.1) — Elimination of small business deduction for large corporations; 136(1) — Cooperative can be private corporation for purposes of s. 125; 137(3), (4) — Credit unions — small business deduction; 137(7) — Credit union can be private corporation for purposes of s. 125.

History: Para. 125(1)(b) before subpara. (iii) amended by 2001, c. 17, subsec. 113(1), applicable to 2001 *et seq.* That portion formerly read:

(b) the amount, if any, by which the corporation's taxable income for the year exceeds the total of

(i) 10/3 of the total of the amounts that would be deductible under subsection 126(1) from the tax for the year otherwise payable under this Part by it if those amounts were determined without reference to section 123.3,

(ii) 10/4 of the total of amounts deducted under subsection 126(2) from the tax for the year otherwise payable by it under this Part, and

The opening words of subsec. 125(1) amended by 1998, c. 19, subsec. 145(1), applicable to taxation years that end after June 1988, except that there shall be added to the amount otherwise determined under subsec. 125(1), as amended, in respect of a corporation's taxation year that began before July 1988 and ended after June 1988, that proportion of 5% of the least of the amounts determined under paras. 125(1)(a) to (c) in respect of the corporation for the year that the number of days in the year that are before July 1988 is of the number of days in the year. The opening words formerly read:

125 (1) There may be deducted from the tax otherwise payable under this Part for a taxation year by a corporation that was, throughout a taxation year, a Canadian-controlled private corporation, an amount equal to 16% of the least of

1998, c. 19, subsec. 304(1), repealed subsecs. 102(1) and (5) of 1988, c. 55 (which amended that portion of subsec. 125(1) preceding para. (a)), deemed to have come into force on September 13, 1988. (The repeal of

those subsecs. is strictly consequential on the amendment to 125(1) in subsec. 145(1) of the said c. 19 (see above).)

Subpara. 125(1)(b)(i) amended by 1996, c. 21, subsec. 26(1), applicable to taxation years that end after June 1995. Subpara. (i) formerly read:

(i) 10/3 of the total of amounts deducted under subsection 126(1) from the tax for the year otherwise payable by it under this Part,

Subpara. 125(1)(b)(iii) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 63(1), applicable to 1992 *et seq.*

Selected Cases [subsec. 125(1)]: *Criterion Capital Corp. v. R.*, [2001] 4 C.T.C. 2844 (TCC) (Possible to have both employee and completely different relationship with same company); *Protos Shipping Ltd. v. Canada*, [1989] 1 C.T.C. 1 (FCTD) (Capital dividend account calculable for years before taxpayer becomes Canadian-controlled private corporation); *Freeway Properties Inc. v. R.*, [1985] 1 C.T.C. 222 (FCTD) (Profit from land trading active business income); *Morbane Developments Ltd. v. MNR*, [1983] C.T.C. 338 (FCA) (Compensation for expropriation active business income, not Canadian investment income); *R. v. B & J Music Ltd.*, [1983] C.T.C. 50 (FCA); leave to appeal to SCC refused (1983), 50 N.R. 159 (note) (Capital dividend account calculable for years before taxpayer becomes Canadian-controlled private corporation); *R. v. Cadboro Bay Holdings Ltd.*, [1977] C.T.C. 186 (FCTD) (Rental income from shopping centre active business income); *ESG Holdings Ltd. v. R.*, [1976] C.T.C. 295 (FCA) (Income from business carried on by independent agent for taxpayer active business income); *R. v. Rockmore Investments Ltd.*, [1976] C.T.C. 291 (FCA) (Whether business active is question of fact).

Interpretation Bulletins: IT-73R6: The small business deduction; IT-189R2: Corporations used by practising members of professions; IT-243R4: Dividend refund to private corporations; IT-362R: Patronage dividends; IT-458R2: Canadian-controlled private corporation.

Information Circulars: 88-2, para. 11: General anti-avoidance rule — section 245 of the *Income Tax Act*.

I.T. Technical News: 16 (Parthenon Investments case).

Forms: T2 SCH 7: Calculation of aggregate investment income and active business income; T2 SCH 341: Nova Scotia corporate tax reduction for new small businesses; T700: Saskatchewan new small business corporate tax reduction; T701: Nova Scotia corporate tax reduction for new small businesses; T708: Prince Edward Island small business deduction; T745 — Newfoundland new small business deduction; T1001: Northwest Territories small business deduction; T1258: New Brunswick small business investor tax credit.

(1.1) [Repealed under former Act]

Selected Cases [subsec. 125(1.1)]: *Hawboldt Hydraulics (Canada) Inc. Estate (Trustee of) v. Canada*, [1992] 2 C.T.C. 363 (FCTD) (Particular equipment used by taxpayer primarily in manufacturing or processing of goods for sale or lease); *Qit-Fer et Titane Inc. v. Canada*, [1996] 2 C.T.C. 30 (FCA) (Manufacturing and processing deduction not allowed in respect of mining activities; gerund and infinitive forms of verbs have same meaning); *Rolls Royce (Canada) Ltd. v. Canada*, [1991] 2 C.T.C. 252 (FCTD); aff'd [1993] 1 C.T.C. 272 (FCA) (Overhauling of aircraft engines not manufacturing or processing); *International Mercantile Factors Ltd. v. Canada*, [1990] 2 C.T.C. 137 (FCTD); aff'd (Dec. 15, 1992), File A-520/522/524/525-90 (FCA) [unreported] (Taxpayer not Canadian-controlled private corporation where nominees of two public companies holding 50% of shares have majority on board).

(2) Interpretation of business limit — For the purpose of this section, a corporation's "business limit" for a taxation year is $300,000 unless the corporation is associated in the year with one or more other Canadian-controlled private corporations in which case, except as otherwise provided in this section, its business limit for the year is nil.

Related Provisions: 125(3)–(5) — Business limit to be shared among associated corporations; 125(5.1) — Elimination of small business deduction for large corporations; 248(1)"business limit" — Definition applies to entire Act.

History: Subsec. 125(2) amended by 2003, c. 15, subsec. 79(1) (itself amended by 2005, c. 19, subsecs. 56(1) and (2), deemed to have come into force on June 19, 2003), applicable to 2003 *et seq.* except that for taxation years that begin before 2005 the reference to "$300,000" is to be read as a reference to the total of

(i) that proportion of $200,000 that the number of days in the taxation year that are before 2003 is of the number of days in the taxation year,

(ii) that proportion of $225,000 that the number of days in the taxation year that are in 2003 is of the number of days in the taxation year,

(iii) that proportion of $250,000 that the number of days in the taxation year that are in 2004 is of the number of days in the taxation year, and

(iv) that proportion of $300,000 that the number of days in the taxation year that are after 2004 is of the number of days in the taxation year.

The subsec. formerly read:

(2) For the purposes of this section, a corporation's "business limit" for a taxation year is $200,000 unless the corporation is associated in the year with one or more other Canadian-controlled private corporations in which case, except as otherwise provided in this section, its business limit for the year is nil.

Interpretation Bulletins: IT-73R6: The small business deduction; IT-151R5 (paras. 80, 87): Scientific research and experimental development expenditures.

Information Circulars: 88-2, para. 18: General anti-avoidance rule — section 245 of the *Income Tax Act*.

(3) Associated corporations — Notwithstanding subsection (2), if all the Canadian-controlled private corporations that are associated with each other in a taxation year file with the Minister in prescribed form an agreement that assigns for the purpose of this section a percentage to one or more of them for the year, the business limit for the year of each of the corporations is

(a) if the total of the percentages assigned in the agreement does not exceed 100%, $300,000 multiplied by the percentage assigned to that corporation in the agreement; and

(b) in any other case, nil.

Related Provisions: 125(4) — Failure to file agreement; 125(5) — Special rules for business limit; 256(1) — Associated corporations.

History: Subsec. 125(3) amended by 2003, c. 15, subsec. 79(1), applicable to 2003 *et seq.* except that for taxation years that begin before 2000, the reference in subsec. 125(3) to "$300,000" is to be read as a reference to "the amount that would, if the corporation were not associated in the year with any other corporation, be its business limit for the year determined without reference to subsections (5) and (5.1),". It formerly read:

(3) Notwithstanding subsection (2), if all of the Canadian-controlled private corporations that are associated with each other in a taxation year have filed with the Minister in prescribed form an agreement whereby, for the purposes of this section, they allocate an amount to one or more of them for the taxation year and the amount so allocated or the total of the amounts so allocated, as the case may be, is $200,000, the business limit for the year of each of the corporations is the amount so allocated to it.

Interpretation Bulletins: IT-73R6: The small business deduction.

Forms: T2 SCH 23: Agreement among associated Canadian-controlled private corporations to allocate the business limit; T2 SCH 49: Agreement among associated Canadian-controlled private corporations to allocate the expenditure limit.

(4) Failure to file agreement — If any of the Canadian-controlled private corporations that are associated with each other in a taxation year has failed to file with the Minister an agreement as contemplated by subsection (3) within 30 days after notice in writing by the Minister has been forwarded to any of them that such an agreement is required for the purpose of any assessment of tax under this Part, the Minister shall, for the purpose of this section, allocate an amount to one or more of them for the taxation year. The total amount so allocated must equal the least of the amounts that would, if none of the corporations were associated with any other corporation during the year and if this Act were read without reference to subsections (5) and (5.1), be the business limits of the corporations for the year.

Related Provisions: 256(1) — Associated corporations.

History: Subsec. 125(4) amended by 2003, c. 15, subsec. 79(1), applicable to 2003 *et seq.* Subsec. 125(4) formerly read:

> (4) If any of the Canadian-controlled private corporations that are associated with each other in a taxation year has failed to file with the Minister an agreement as contemplated by subsection (3) within 30 days after notice in writing by the Minister has been forwarded to any of them that such an agreement is required for the purpose of any assessment of tax under this Part, the Minister shall, for the purpose of this section, allocate an amount to one or more of them for the taxation year, which amount or the total of which amounts, as the case may be, shall equal $200,000, and in any such case, notwithstanding subsection (2), the business limit for the year of each of the corporations is the amount so allocated to it.

Selected Cases [subsec. 125(4)]: *Deneschuk Building Supplies Ltd. v. Canada*, [1996] 3 C.T.C. 2039 (TCC) (No time limit within which allocation to share business limit between associated corporations must be filed if not demanded by Minister).

Interpretation Bulletins: IT-73R6: The small business deduction.

(5) Special rules for business limit — Notwithstanding subsections (2) to (4),

(a) where a Canadian-controlled private corporation (in this paragraph referred to as the "first corporation") has more than one taxation year ending in the same calendar year and it is associated in 2 or more of those taxation years with another Canadian-controlled private corporation that has a taxation year ending in that calendar year, the business limit of the first corporation for each taxation year ending in the calendar year in which it is associated with the other corporation that ends after the first such taxation year ending in that calendar year is, subject to the application of paragraph (b), an amount equal to the lesser of

(i) its business limit determined under subsection (3) or (4) for the first such taxation year ending in the calendar year, and

(ii) its business limit determined under subsection (3) or (4) for the particular taxation year ending in the calendar year; and

(b) where a Canadian-controlled private corporation has a taxation year that is less than 51 weeks, its business limit for the year is that proportion of its business limit for the year determined without reference to this paragraph that the number of days in the year is of 365.

History: The opening words of subsec. 125(5) amended by 1995, c. 3, subsec. 35(1), applicable to taxation years that end after June 1994. The opening words formerly read:

> (5) Notwithstanding any other provision of this section,

Para. 125(5)(a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 63(2), applicable to taxation years ending after December 20, 1991. Para. (a) formerly read:

> (a) where a Canadian-controlled private corporation (in this paragraph referred to as the "first corporation") has more than one taxation year ending in the same calendar year and it is associated in two or more of those taxation years with another Canadian-controlled private corporation that has a taxation year ending in that calendar year, the business limit of the first corporation for each taxation year in which it is associated with the other corporation ending in that calendar year is, subject to the application of paragraph (b), an amount equal to its business limit for the first such taxation year determined without reference to paragraph (b); and

Interpretation Bulletins: IT-73R6: The small business deduction; IT-151R5 (para. 81): Scientific research and experimental development expenditures.

(5.1) Business limit reduction — Notwithstanding subsections (2) to (5), a Canadian-controlled private corporation's business limit for a particular taxation year ending in a calendar year is the amount, if any, by which its business limit otherwise determined for the particular year exceeds the amount determined by the formula

$$A \times \frac{B}{\$11{,}250}$$

where

A is the amount that would, but for this subsection, be the corporation's business limit for the particular year; and

B is

(a) where the corporation is not associated with any other corporation in the particular year, the amount that would, but for subsections 181.1(2) and (4), be the corporation's tax payable under Part I.3 for its preceding taxation year, and

(b) where the corporation is associated with one or more other corporations in the particular year, the total of all amounts each of which would, but for subsections 181.1(2) and (4), be the tax payable under Part I.3 by the corporation or any such other corporation for its last taxation year ending in the preceding calendar year.

Proposed Amendment — 125(5.1)B

B is

(a) if, in both the particular taxation year and the preceding taxation year, the corporation is not associated with any corporation, the amount that would, but for subsections 181.1(2) and (4), be the corporation's tax payable under Part I.3 for the preceding taxation year,

(b) if, in the particular taxation year, the corporation is not associated with any corporation but was associated with one or more corporations in the preceding taxation year, the amount that would, but for subsections 181.1(2) and (4), be the corporation's tax payable under Part I.3 for the particular taxation year, and

(c) if, in the particular taxation year, the corporation is associated with one or more particular corporations, the amount determined by the formula

$$0.225\% \times (D - E)$$

where

D is the total of all amounts each of which is the taxable capital employed in Canada (within the meaning assigned by subsection 181.2(1) or 181.3(1) or section 181.4, as the case may be) of the corporation or of any of the particular corporations for its last taxation year that ended in the preceding calendar year, and

E is $10 million.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 116(2), will amend the description of B in subsec. 125(5.1) to read as above, applicable to taxation years that begin after December 20, 2002.

Technical Notes: A corporation's entitlement to the small business deduction for a particular taxation year is determined by reference to, among other things, the "business limit" of the corporation for the particular year. In broad terms, subsection 125(5.1) reduces the business limit of a corporation if tax under Part I.3 of the Act was payable by the corporation for its preceding taxation year. If the corporation is associated with one or more other corporations in the particular year, the provision takes into account the Part I.3 tax payable by it and those other corporations, in each case for their last taxation years that ended in the preceding calendar year.

Subsection 125(5.1) is amended to respond better to cases in which a corporation is associated with more, fewer or different corporations in one taxation year than in the past. Specifically, the description of B in the formula in the subsection — a description that in effect refers to an amount of tax under Part I.3 — will take one of three forms, depending on the corporation's associations in the current and, in some cases, the preceding taxation year:

- if the corporation is not associated with any other corporation in the current year, and was not associated with any other corporation in the preceding taxation year, the description of B is based on the corporation's Part I.3 tax for the preceding taxation year;
- if the corporation is not associated with any other corporation in the current year, but was so associated in the preceding taxation year, the description of B is based on the corporation's Part I.3 tax for the current year; and
- if the corporation is associated with one or more corporations in the current year, the description of B is the product of a formula that looks to the total taxable capital employed in Canada of the corporation itself and all the corporations with which it is associated in the current year, in each case for its last taxation year that ended in the preceding calendar year.

Related Provisions: 87(2)(j.92) — Amalgamations — continuing corporation; 127(10.2) — Reduction in SR&ED investment tax credits for large corporations; 181.1(1.2), 181.5(1.1), (4.1) — Application of calculation to large corporations; 257 — Formula cannot calculate to less than zero.

History: Subsec. 125(5.1) amended by 1996, c. 21, subsec. 26(2), to substitute "$11,250" for "$10,000", applicable

(a) where a corporation is not associated with any other corporation in a particular taxation year and the corporation's preceding taxation year began after February 27, 1995, to the corporation's particular year and subsequent taxation years; and

(b) where a particular corporation is associated with one or more other corporations in a particular taxation year that ends in a calendar year and the last taxation year of the particular corporation and of each of the other corporations that ended in the preceding calendar year began after February 27, 1995, to the particular year and subsequent taxation years of the particular corporation.

For the purpose of applying subsection 125(5.1), the amount that would, but for subsecs. 181.1(2) and (4), be a corporation's tax payable under Part I.3 for a taxation year that began before February 28, 1995 shall be determined without reference to the 1996, c. 21, s. 47 amendment to subsec. 181.1(1).

Subsec. 125(5.1) added by 1995, c. 3, subsec. 35(2), applicable to taxation years that end after June 1994 except that, in its application to taxation years that begin before July 1994, it shall be read as follows:

(5.1) Notwithstanding subsections (2) to (5), a Canadian-controlled private corporation's business limit for a particular taxation year ending in a calendar year is the amount, if any, by which its business limit otherwise determined for the particular year exceeds the amount determined by the formula

$$A \times \frac{B}{\$10{,}000} \times \frac{C}{D}$$

where

A is the amount that would, but for this subsection, be the corporation's business limit for the particular year;

B is

(a) where the corporation is not associated with any other corporation in the particular year, the lesser of $10,000 and the amount that would, but for subsections 181.1(2) and (4), be the corporation's tax payable under Part I.3 for its preceding taxation year, and

(b) where the corporation is associated with one or more other corporations in the particular year, the lesser of $10,000 and the total of all amounts each of which would, but for subsections 181.1(2) and (4), be the tax payable under Part I.3 by the corporation or any such other corporation for its last taxation year ending in the preceding calendar year;

C is the number of days in the particular year that are after June 1994; and

D is the number of days in the particular year.

Subsec. 35(4) of 1995, c. 3 provides that, notwithstanding any other provision of the Act or of the amending legislation, nothing in this amendment shall affect the amount of interest payable under the Act in respect of a corporation for any period or part thereof that is before July 1994.

Interpretation Bulletins: IT-73R6: The small business deduction; IT-151R5 (para. 81): Scientific research and experimental development expenditures.

(6) Corporate partnerships — Where in a taxation year a corporation is a member of a particular partnership and in the year the corporation or a corporation with which it is associated in the year is a member of one or more other partnerships and it may reasonably be considered that one of the main reasons for the separate existence of the partnerships is to increase the amount of a deduction of any corporation under subsection (1), the specified partnership income of the corporation for the year shall, for the purposes of this section, be computed in respect of those partnerships as if all amounts each of which is the income of one of the partnerships for a fiscal period ending in the year from an active business carried on in Canada were nil except for the greatest of those amounts.

Related Provisions: 125(6.1) — Corporation deemed member of partnership; 125(6.2) — Specified partnership income deemed nil.

(6.1) Corporation deemed member of partnership — For the purposes of this section, a corporation that is a member, or is deemed by this subsection to be a member, of a partnership that is a member of another partnership shall be deemed to be a member of the other partnership and the corporation's share of the income of the other partnership for a fiscal period shall be deemed to be equal to the amount of that income to which the corporation was directly or indirectly entitled.

(6.2) Specified partnership income deemed nil — Notwithstanding any other provision of this section, where a corporation is a member of a partnership that was controlled, directly or indirectly in any manner whatever, by one or more non-resident persons, by one or more public corporations (other than a prescribed venture capital corporation) or by any combination thereof at any time in its fiscal period ending in a taxation year of the corporation, the income of the partnership for that fiscal period from an active business carried on in Canada shall, for the purposes of computing the specified partnership income of a corporation for the year, be deemed to be nil.

Related Provisions: 125(6.3) — Partnership deemed to be controlled; 256(5.1), (6.2) — Controlled directly or indirectly.

Regulations: 6700 (prescribed venture capital corporation).

(6.3) Partnership deemed to be controlled — For the purposes of subsection (6.2), a partnership shall be deemed to be controlled by one or more persons at any time if the total of the shares of that person or those persons of the income of the partnership from any source for the fiscal period of the partnership that includes that time exceeds ½ of the income of the partnership from that source for that period.

(7) Definitions — In this section,

"active business carried on by a corporation" means any business carried on by the corporation other than a specified investment business or a personal services business and includes an adventure or concern in the nature of trade;

Related Provisions: 129(6) — Investment income from associated corporation deemed to be active business income; 248(1) — Definition of "active business" for purposes other than s. 125.

Selected Cases [subsec. 125(7)"active business"]: *McCutcheon Farms Ltd. v. MNR*, [1991] 1 C.T.C. 50 (FCTD) (Interest on deposits not active business income).

Interpretation Bulletins: IT-73R6: The small business deduction; IT-243R4: Dividend refund to private corporations.

"Canadian-controlled private corporation" means a private corporation that is a Canadian corporation other than

(a) a corporation controlled, directly or indirectly in any manner whatever, by one or more non-resident persons, by one or more public corporations (other than a prescribed venture capital corporation), by one or more corporations described in paragraph (c), or by any combination of them,

(b) a corporation that would, if each share of the capital stock of a corporation that is owned by a non-resident person, by a public corporation (other than a prescribed venture capital corporation), or by a corporation described in paragraph (c) were owned by a particular person, be controlled by the particular person, or

(c) a corporation a class of the shares of the capital stock of which is listed on a prescribed stock exchange;

Related Provisions: 136 — Co-operative corporation may be private corporation for purposes of s. 125; 137(7) — Credit union may be private corporation for purposes of s. 125; 248(1)"Canadian-controlled private corporation" — Definition applies to entire Act; 251(5) — Control by related groups, options, etc.; 256(5.1), (6.2) — Controlled directly or indirectly.

History: The definition "Canadian-controlled private corporation" in subsec. 125(7) amended by 2001, c. 17, subsec. 113(2), applicable to taxation years that begin after 1999. The definition formerly read:

> "Canadian-controlled private corporation" means a private corporation that is a Canadian corporation other than a corporation
>
> (a) controlled, directly or indirectly in any manner whatever, by one or more non-resident persons, by one or more public corporations (other than a prescribed venture capital corporation), or by any combination thereof,
>
> (b) that would, if each share of the capital stock of a corporation that is owned by a non-resident person or a public corporation (other than a prescribed venture capital corporation) were owned by a particular person, be controlled by the particular person, or
>
> (c) a class of the shares of the capital stock of which is listed on a prescribed stock exchange;

The definition "Canadian-controlled private corporation" in subsec. 125(7) amended by 1998, c. 19, subsec. 145(2), applicable after 1995. The definition formerly read:

> "Canadian-controlled private corporation" means a private corporation that is a Canadian corporation other than a corporation controlled, directly or indirectly in any manner whatever, by one or more non-resident persons, by one or more public corporations (other than a prescribed venture capital corporation) or by any combination thereof;

Selected Cases [subsec. 125(7)"Canadian-controlled private corporation"]: *Mimetix Pharmaceuticals Inc. v. R.*, [2003] 3 C.T.C. 72 (FCA) (U.S. parent company had *de facto* control in 50-50 shareholding); *Silicon Graphics Ltd. v. R.*, [2002] 3 C.T.C. 527 (FCA) (Company was CCPC even when majority of shares owned by non-residents, where no common connection between them or inference that they acted together); *Parthenon Investments Ltd. v. R.*, [1997] 3 C.T.C. 152 (FCA) (Interposition of U.S. company in corporate chain did not destroy CCPC status where ultimate control held by Canadian residents); *Scandia Plate v. R.*, [1982] C.T.C. 431 (FCTD) (Taxpayer not Canadian-controlled private corporation when ownership of shares passing from non-resident parent to resident manager retained until following taxation year).

Regulations: 3200, 3201 (prescribed stock exchanges); 6700 (prescribed venture capital corporation).

Interpretation Bulletins: IT-73R6: The small business deduction; IT-113R4: Benefits to employees — stock options; IT-243R4: Dividend refund to private corporations; IT-458R2: Canadian-controlled private corporation; IT-484R2: Business investment losses.

I.T. Technical News: 3 (Canadian-controlled private corporation); 16 (*Parthenon Investments* case); 25 (*Silicon Graphics* case and para. (b)).

"income of the corporation for the year from an active business" means the total of

(a) the corporation's income for the year from an active business carried on by it including any income for the year pertaining to or incident to that business, other than income for the year from a source in Canada that is a property (within the meaning assigned by subsection 129(4)), and

(b) the amount, if any, included under subsection 12(10.2) in computing the corporation's income for the year;

Related Provisions: 129(6) — Investment income from associated corporation deemed to be active business income.

History: Para. (a) of the definition "income of the corporation for the year from an active business" in subsec. 125(7) amended by 1996, c. 21, subsec. 26(3), applicable to taxation years that end after June 1995. Para. (a) formerly read:

> (a) the corporation's income for the year from an active business carried on by it including any income for the year pertaining to or incident to that business, other than income for the year from a source in Canada that is a property (within the meaning assigned by subsection 129(4.1)), and

The definition "income of the corporation..." in subsec. 125(7) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 63(3), applicable to 1991 *et seq.* That definition formerly read:

> "income of the corporation for the year from an active business" means the income of the corporation for the year from an active business carried on by it including any income for the year pertaining to or incident to that business, but does not include income for the year from a source in Canada that is a property (within the meaning assigned by subsection 129(4.1));

Selected Cases [subsec. 125(7)"income of the corporation for the year from an active business"]: *Irving Oil Ltd. v. R.*, [2000] 3 C.T.C. 2823 (TCC) (Tax refund may constitute active business income).

Interpretation Bulletins: IT-73R6: The small business deduction; IT-243R4: Dividend refund to private corporations.

"personal services business" carried on by a corporation in a taxation year means a business of providing services where

(a) an individual who performs services on behalf of the corporation (in this definition and paragraph 18(1)(p) referred to as an "incorporated employee"), or

(b) any person related to the incorporated employee

is a specified shareholder of the corporation and the incorporated employee would reasonably be regarded as an officer or employee of the person or partnership to whom or to which the services were provided but for the existence of the corporation, unless

(c) the corporation employs in the business throughout the year more than five full-time employees, or

(d) the amount paid or payable to the corporation in the year for the services is received or receivable by it from a corporation with which it was associated in the year;

Related Provisions: 18(1)(p) — Limitation on deductions from personal services business income; 122.3(1.1) — Restriction on overseas employment tax credit for incorporated employee; 207.6(3) — Retirement compensation arrangement for incorporated employee; 248(1)"personal services business" — Definition applies to entire Act.

Selected Cases [subsec. 125(7)"personal services business"]: *Hughes & Co. Holdings Ltd. v. MNR*, [1994] 2 C.T.C. 170 (FCTD) ("More than five employees" means at least six employees).

Interpretation Bulletins: IT-73R6: The small business deduction; IT-168R3: Athletes and players employed by football, hockey and similar clubs; IT-189R2: Corporations used by practising members of professions; IT-406R2: Tax payable by an *inter vivos* trust; IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt.

Forms: CPT-1: Request for a ruling as to the status of a worker under the *Canada Pension Plan* or *Employment Insurance Act*.

"specified investment business" carried on by a corporation in a taxation year means a business (other than a business carried on by a credit union or a business of leasing property other than real property) the principal purpose of which is to derive income (including interest, dividends, rents and royalties) from property but, except where the corporation was a prescribed labour-sponsored venture capital corporation at any time in the year, does not include a business carried on by the corporation in the year where

Proposed Amendment — 125(7)"specified investment business" opening words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), s. 236, will amend the opening words of the definition "specified investment business" in subsec. 125(7) by substituting "real or immovable property" for "real property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(a) the corporation employs in the business throughout the year more than 5 full-time employees, or

(b) any other corporation associated with the corporation provides, in the course of carrying on an active business, managerial, administrative, financial, maintenance or other similar services to the corporation in the year and the corporation could reasonably be expected to require more than 5 full-time employees if those services had not been provided;

Related Provisions: 95(1) — Analogous definition of "investment business" for FAPI purposes; 125(7)"active business" — No small business deduction for specified investment business; 129(4)"income" — Dividend refund available for income from specified investment business; 129(6) — Income from associated corporation deemed to be active business income; 248(1)"specified investment business" — Definition applies to entire Act.

History: The definition "specified investment business" in subsec. 125(7) amended by 1998, c. 19, subsec. 145(3), applicable to 1995 *et seq.* The definition formerly read:

> "specified investment business" carried on by a corporation in a taxation year means a business (other than a business carried on by a credit union or a business of leasing property other than real property) the principal purpose of which is to derive income from property (including interest, dividends, rents or royalties), unless
>
> (a) the corporation employs in the business throughout the year more than five full-time employees, or
>
> (b) in the course of carrying on an active business, any other corporation associated with it provides managerial, administrative, financial, maintenance or other similar services to the corporation in the year and the corporation could reasonably be expected to require more than five full-time employees if those services had not been provided;

Selected Cases [subsec. 125(7)"specified investment business"]: *Lerric Investments Corp. v. R.*, [2001] 2 C.T.C. 84 (FCA); aff'g [1999] 2 C.T.C. 2714 (TCC) (No double-counting of employees for purposes of "specified investment business" test).

Regulations: 6701 (prescribed labour-sponsored venture capital corporation).

Interpretation Bulletins: IT-73R6: The small business deduction; IT-189R2: Corporations used by practising members of professions; IT-243R4: Dividend refund to private corporations; IT-406R2: Tax payable by an *inter vivos* trust.

"specified partnership income" of a corporation for a taxation year means the amount determined by the formula

$$A + B$$

where

A is the total of all amounts each of which is an amount in respect of a partnership of which the corporation was a member in the year equal to the lesser of

(a) the total of all amounts each of which is an amount in respect of an active business carried on in Canada by the corporation as a member of the partnership determined by the formula

$$G - H$$

where

G is the total of all amounts each of which is the corporation's share of the income (determined in accordance with subdivision j of Division B) of the partnership for a fiscal period of the business that ends in the year or an amount included in the corporation's income for the year from the business because of subsection 34.2(5), and

H is the total of all amounts deducted in computing the corporation's income for the year from the business (other than amounts that were deducted in computing the income of the partnership from the business), and

(b) the amount determined by the formula

$$\frac{K}{L} \times M$$

where

K is the total of all amounts each of which is the corporation's share of the income (determined in accordance with subdivision j of Division B) of the partnership for a fiscal period ending in the year from an active business carried on in Canada,

L is the total of all amounts each of which is the income of the partnership for a fiscal period referred to in paragraph (a) from an active business carried on in Canada, and

M is the lesser of

(i) [*for taxation years that begin after 2004:*] $300,000, and

(ii) the product obtained when [*for taxation years that begin after 2004:*] $822 is multiplied by the total of all amounts each of which is the number of days in a fiscal period of the partnership that ends in the year, and

B is the lesser of

(a) the total of the amounts determined in respect of the corporation for the year under subparagraphs (1)(a)(iii) and (iv), and

(b) the total of all amounts each of which is an amount in respect of a partnership of which the corporation was a member in the year equal to the amount determined by the formula

$$N - O$$

where

N is the amount determined in respect of the partnership for the year under paragraph (a) of the description of A, and

O is the amount determined in respect of the partnership for the year under paragraph (b) of the description of A;

Related Provisions: 125(6) — Corporate partnerships; 125(6.2) — Specified partnership income deemed nil; 257 — Formula amounts cannot calculate to less than zero. See additional Related Provisions at end of s. 125.

History: The description of M in subsec. 125(7) amended by 2003, c. 15, subsec. 79(2) (itself amended by 2005, c. 19, subsecs. 56(3) and (4), deemed to have come into force on June 19, 2003), applicable to 2003 *et seq.* except that, for taxation years that begin before 2005, the references to "$300,000" and "$822" are to be read

(a) for fiscal periods of a partnership that end in a corporation's 2003 taxation year, as "$225,000" and "$617", respectively; and

(b) for fiscal periods of a partnership that end in a corporation's 2004 taxation year, as "$250,000" and "$685", respectively.

The description of M formerly read:

M is the lesser of

(i) $200,000 and

(ii) the product obtained when $548 is multiplied by the total of all amounts each of which is the number of days contained in a fiscal period of the partnership ending in the year, and

The description of G in the definition "specified partnership income" in subsec. 125(7) amended by 1996, c. 21, subsec. 26(4), applicable to 1995 *et seq.* The description of G formerly read:

G is the total of all amounts each of which is the corporation's share of the income (determined in accordance with subdivision j of Division B) of the partnership for a fiscal period ending in the year from the business, and

Para. (a) of the description of A, and the description of K, in the definition "specified partnership income" in subsec. 125(7) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 100(1), (2) applicable to 1985 *et seq.* Those portions formerly read:

(a) the total of all amounts each of which is the corporation's share of the income (determined in accordance with subdivision j of Division B) of the partnership for a fiscal period ending in the year from an active business carried on in Canada by it as a member of the partnership, and

. . . . .

K is the amount determined under paragraph (a),

Interpretation Bulletins: IT-73R6: The small business deduction.

"specified partnership loss" of a corporation for a taxation year means the total of all amounts each of which is an amount in respect of a partnership of which the corporation was a member in the year determined by the formula

$$A + B$$

where

A is the total of all amounts each of which is the corporation's share of the loss (determined in accordance with subdivision j of Division B) of the partnership for a fiscal period ending in the year from an active business carried on in Canada by the corporation as a member of the partnership, and

B is the total of all amounts each of which is an amount determined by the formula

$$G - H$$

where

G is the amount determined for H in the definition "specified partnership income" in this subsection for the year in respect of the corporation's income from an active business carried on in Canada by the corporation as a member of the partnership, and

H is the amount determined for G in the definition "specified partnership income" in this subsection for the year in respect of the corporation's share of the income from the business.

Related Provisions: 257 — Formula amount cannot calculate to less than zero.

History: The definition "specified partnership loss" in subsec. 125(7) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 100(3), applicable to 1985 *et seq.* That definition formerly read:

"specified partnership loss" of a corporation for a taxation year means the total of all amounts each of which is an amount in respect of a partnership of which the corporation was a member in the year equal to the corporation's share of a loss (determined in accordance with subdivision j of Division B) of the partnership for a fiscal period ending in the year from an active business carried on in Canada by it as a member of the partnership.

Interpretation Bulletins: IT-73R6: The small business deduction.

Related Provisions [subsec. 125(7)]: 48.1 — Election to trigger capital gains exemption on ceasing to be CCPC.

(8)–(15) [Repealed under former Act]

Definitions [s. 125]: "active business" — 125(7) (see also "income from ..."), 248(1); "amount", "assessment" — 248(1); "associated" — 256; "business" — 248(1); "business limit" — 125(2)–(5); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "Canadian-controlled private corporation" — 125(7), 248(1); "carrying on business" — 253; "class" — 248(6); "controlled directly or indirectly" — 256(5.1), (6.2); "corporation" — 248(1), *Interpretation Act* 35(1); "credit union" — 137(6), 248(1); "dividend", "employee" — 248(1); "fiscal period" — 249(2)(b), 249.1; "immovable" — Quebec *Civil Code* art. 900–907; "in Canada" — 255; "income from active business" — 125(7); "incorporated employee" — 125(7); "Minister", "non-resident" — 248(1); "Parliament" — *Interpretation Act* 35(1); "person" — 248(1); "personal services business" — 125(7), 248(1); "prescribed" — 248(1); "prescribed labour-sponsored venture capital corporation" — Reg. 6701; "prescribed stock exchange" — 248(29), Reg. 3200, 3201; "prescribed venture capital corporation" — Reg. 6700; "private corporation" — 89(1), 136, 248(1); "property" — 248(1); "public corporation" — 89(1), 248(1); "share" — 248(1); "specified investment business" — 125(7), 248(1); "specified partnership income", "specified partnership loss" — 125(7); "taxable dividend" — 89(1), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "writing" — *Interpretation Act* 35(1).

125.1 (1) Manufacturing and processing profits deductions [M&P credit] — There may be deducted from the tax otherwise payable under this Part by a corporation for a taxation year an amount equal to 7% of the lesser of

Proposed Amendment [on hold] — 125.1(1) opening words

(1) Manufacturing and processing profits deductions [M&P credit] — There may be deducted from the tax otherwise payable under this Part by a corporation for a taxation year an amount equal to the corporation's general rate reduction percentage for the taxation year (within the meaning assigned by subsection 123.4(1)) multiplied by the lesser of

Application: Bill C-43 (S.C. 2005, c. 30), subsec. 11(1), would have amended the opening words of subsec. 125.1(1) to read as above, in force on Royal Assent. This proposal was deleted before enactment but may be reintroduced in the future. See Finance news release of April 27, 2005 under 123.4(1)"general rate reduction percentage".

Technical Notes (Bill C-43): Subsection 125.1(1) provides a reduced rate of corporate tax on Canadian manufacturing and processing profits. Generally, the rate reduction takes the form of a deduction, from Part I tax otherwise payable, of an amount equal to a specified percentage — currently 7% — of a corporation's "Canadian manufacturing and processing profits" (other than profits eligible for the small business deduction under section 125). Subsection 125.1(2) extends the 7% corporate tax rate reduction to a corporation that generates electrical energy for sale, or produces steam for use in the generation of electrical energy for sale.

The 7% specified percentage in subsections 125.1(1) and (2) is amended to reflect the changes to the "general rate reduction percentage" in sub-

section 123.4(1), so that the rate of tax applied to corporate manufacturing and processing profits remains equal to the rate applied to other corporate taxable income (see commentary on subsection 123.4(1)).

(a) the amount, if any, by which the corporation's Canadian manufacturing and processing profits for the year exceed, where the corporation was a Canadian-controlled private corporation throughout the year, the least of the amounts determined under paragraphs 125(1)(a) to (c) in respect of the corporation for the year, and

(b) the amount, if any, by which the corporation's taxable income for the year exceeds the total of

(i) where the corporation was a Canadian-controlled private corporation throughout the year, the least of the amounts determined under paragraphs 125(1)(a) to (c) in respect of the corporation for the year,

(ii) 10/4 of the total of the amounts that would be deductible under subsection 126(2) from the tax for the year otherwise payable under this Part by the corporation if those amounts were determined without reference to section 123.4, and

Proposed Amendment — 125.1(1)(b)(ii)

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 117(1), will amend subpara. 125.1(1)(b)(ii) to replace "10/4 of" with "3 times", applicable to 2003 *et seq.*

Technical Notes: Subsection 125.1(1) provides the basic rules for the calculation of a corporation's manufacturing and processing profits deduction. The deduction for a given taxation year is the lesser of two amounts, one of which is the corporation's taxable income less certain other amounts. One of these other amounts, described in subparagraph 125.1(1)(b)(ii), is the grossed up amount of the corporation's foreign tax credits (FTCs) for the year in respect of foreign businesses. Currently, the corporation's FTCs are grossed up by a factor of 10/4, which assumes this income was subject to tax at a rate of 40%.

Subparagraph 125.1(1)(b)(ii) is amended to adjust this factor to reflect recent reductions to income tax rates. The new factor will be 3, which implies an assumed tax rate of 33.3% on foreign source business income.

(iii) where the corporation was a Canadian-controlled private corporation throughout the year, its aggregate investment income for the year (within the meaning assigned by subsection 129(4)).

Selected Cases [para. 125.1(1)(b)]: *Lehman Bookbinding Ltd. v. MNR*, [1995] 2 C.T.C. 129 (FCTD) (Critical element was not whether there was manufacturing and processing, but whether activity was in respect of goods for sale).

Related Provisions: 123.2(a) — Corporate surtax applies to total tax before claiming M&P deduction; 125.1(2) — Credit for generating electrical energy; 136(1) — Cooperative can be private corporation for purposes of 125.1; 137(7) — Credit union can be private corporation for purposes of 125.1; 182 — Manufacturing of tobacco — surtax.

History: Subpara. 125.1(1)(b)(ii) amended by 2001, c. 17, subsec. 114(1), applicable to 2001 *et seq.* The subpara. formerly read:

(ii) 10/4 of the total of amounts deducted under subsection 126(2) from the tax for the year otherwise payable under this Part by the corporation, and

Subpara. 125.1(1)(b)(iii) amended by 1996, c. 21, s. 27, applicable to taxation years that end after June 1995. Subpara. (iii) formerly read:

(iii) where the corporation was a Canadian-controlled private corporation throughout the year, the amount determined under clause 129(3)(a)(i)(B) in respect of the corporation for the year.

That portion of subsec. 125.1(1) preceding para. (a) amended to substitute "7% for "5%" by 1994, c. 7, Sch. VIII (1993, c. 24), s. 64, applicable to 1993 *et seq.* except that, in its application to taxation years commencing before 1994, the reference in the subsec. to "7%" shall be read as a reference to the total of

(a) that proportion of 5% that the number of days in the year that are before 1993 is of the number of days in the year,

(b) that proportion of 6% that the number of days in the year that are in 1993 is of the number of days in the year, and

(c) that proportion of 7% that the number of days in the year that are after 1993 is of the number of days in the year.

Selected Cases [subsec. 125.1(1)]: *Irving Oil Ltd. v. R.*, [2002] 1 C.T.C. 191 (FCA); aff'g [2000] 3 C.T.C. 2823 (TCC) (Refund interest on taxes paid under protest was active business income); *Allarcom Pay Television Ltd. v. R.*, [2000] 1 C.T.C. 273 (FCA); aff'g [1996] 3 C.T.C. 2608 (TCC) (Cable TV contracts were supply of services, not goods); *Publi-Hebdos Inc. v. Canada*, [1995] 2 C.T.C. 330 (FCTD) (Free newspapers not held for sale or lease); *Tenneco Canada Inc. v. Canada*, [1991] 1 C.T.C. 323 (FCA) (Taxpayer carrying on servicing business not manufacturing or processing goods for sale in Canada); *Nowsco Well Service Ltd. v. Canada*, [1990] 1 C.T.C. 416 (FCA) (Taxpayer in well-servicing business allowed to claim manufacturing and processing deduction); *Dixie X-Ray Associates Ltd. v. R.*, [1988] 1 C.T.C. 69 (FCTD) (Manufacturing and processing credit disallowed when substance of business is provision of services); *Canadian Marconi Co. v. R.*, [1986] 2 C.T.C. 465 (SCC) (Short-term investment earnings are income from active business; "Canadian manufacturing and processing profits" not restricted to income from manufacturing or processing); *Levi Strauss of Canada Inc. v. R.*, [1982] C.T.C. 65 (FCA) (Manufacturing and processing deduction reduced when services rendered by contractor not considered as taxpayer's "cost of labour").

Interpretation Bulletins: IT-145R: Canadian manufacturing and processing profits — reduced rate of corporate tax.

Forms: T2 SCH 27: Calculation of Canadian manufacturing and processing profits; T2 SCH 300: Newfoundland manufacturing and processing profits tax credit; T2 SCH 320: PEI manufacturing and processing profits tax credit; T2 SCH 321: PEI corporate investment tax credit; T2 SCH 344: Nova Scotia manufacturing and processing investment tax credit; T2 SCH 381: Manitoba manufacturing and processing tax credit; T2 SCH 401: Saskatchewan manufacturing and processing tax credit; T2 SCH 402: Saskatchewan manufacturing and processing investment tax credit; T2 SCH 404: Saskatchewan manufacturing and processing profits tax reduction; T2 SCH 426: B.C. manufacturing and processing tax credit; T2 SCH 440: Yukon manufacturing and processing profits tax credit; T2 SCH 460: NWT investment tax credit; T2 SCH 480: Nunavut Territory investment tax credit; T86: Manitoba manufacturing investment tax credit.

(2) **Electrical energy and steam** — A corporation that generates electrical energy for sale, or produces steam for sale, in a taxation year may deduct from its tax otherwise payable under this Part for the year 7% of the amount determined by the formula

Proposed Amendment [on hold] — 125.1(2) opening words

(2) **Electrical energy and steam** — A corporation that generates electrical energy for sale, or produces steam for sale, in a taxation year may deduct from its tax otherwise payable under this Part for the year an amount equal to the corporation's general rate reduction percentage for the taxation year (within the meaning assigned by subsection 123.4(1)) multiplied by the amount determined by the formula

Application: Bill C-43 (S.C. 2005, c. 30), subsec. 11(2), would have amended the opening words of subsec. 125.1(2) to read as above, in force on Royal Assent. This proposal was deleted before enactment but may be reintroduced in the future. See Finance news release of April 27, 2005 under 123.4(1)"general rate reduction percentage".

Technical Notes (Bill C-43): See under 125.1(1) opening words.

A – B

where

A is the amount, if any, that would, if the definition "manufacturing or processing" in subsection (3), and in subsection 1104(9) of the *Income Tax Regulations*, were read without reference to paragraph (h) of those definitions (other than for the purpose of applying section 5201 of the *Income Tax Regulations*) and if sub-

section (5) applied for the purpose of subsection (1), be the lesser of

(a) the amount determined under paragraph (1)(a) in respect of the corporation for the year, and

(b) the amount determined under paragraph (1)(b) in respect of the corporation for the year; and

B is the amount, if any, that is the lesser of

(a) the amount determined under paragraph (1)(a) in respect of the corporation for the year, and

(b) the amount determined under paragraph (1)(b) in respect of the corporation for the year.

Related Provisions: 125.1(5) — Interpretation; 257 — Formula cannot calculate to less than zero.

History: The portion of subsec. 125.1(2) before the formula amended by 2001, c. 17, subsec. 114(2), applicable to taxation years that end after 1999 except that, in its application to such a taxation year that begins before 2002, the reference to "7%" shall be read as a reference to the total of

(a) 0% multiplied by the number of days in the year that are before 1999,

(b) in the case of a corporation that in 1999 generated electrical energy for sale, or produced steam for use in the generation of electrical energy for sale, that proportion of 1% that the number of days in the taxation year that are in the 1999 calendar year is of the number of days in the taxation year,

(c) in the case of a corporation to which para. (b) does not apply, 0% multiplied by the number of days in the taxation year that are in the 1999 calendar year,

(d) that proportion of 3% that the number of days in the taxation year that are in the 2000 calendar year is of the number of days in the taxation year,

(e) that proportion of 5% that the number of days in the taxation year that are in the 2001 calendar year is of the number of days in the taxation year,

(f) that proportion of 7% that the number of days in the taxation year that are in the 2002 calendar year is of the number of days in the taxation year, and

(g) that proportion of 7% that the number of days in the taxation year that are in the 2003 calendar year is of the number of days in the taxation year.

That portion formerly read:

(2) Generating electrical energy for sale — A corporation that generates electrical energy for sale, or produces steam for use in the generation of electrical energy for sale, in a taxation year may deduct from its tax otherwise payable under this Part for the year 7% of the amount determined by the formula

Subsec. 125.1(2) added by 2000, c. 19, subsec. 34(1), applicable to taxation years that end after 1998 except that, in its application to such a taxation year that begins before 2002, the reference to "7%" shall be read as a reference to the total of

(a) 0% multiplied by the number of days in the year that are before 1999,

(b) that proportion of "1%" that the number of days in the taxation year that are in the year is of the number of days in the taxation year,

(c) that proportion of "3%" that the number of days in the taxation year that are in the 2000 calendar year is of the number of days in the taxation year,

(d) that proportion of "5%" that the number of days in the taxation year that are in the 2001 calendar year is of the number of days in the taxation year,

(e) that proportion of "7%" that the number of days in the taxation year that are in the 2002 calendar year is of the number of days in the taxation year, and

(f) that proportion of "7%" that the number of days in the taxation year that are in the 2003 calendar year is of the number of days in the taxation year.

(3) Definitions — In this section,

"Canadian manufacturing and processing profits" of a corporation for a taxation year means such portion of the total of all amounts each of which is the income of the corporation for the year from an active business carried on in Canada as is determined under rules prescribed for that purpose by regulation made on the recommendation of the Minister of Finance to be applicable to the manufacturing or processing in Canada of goods for sale or lease; and

Selected Cases [subsec. 125.1(3)"Canadian manufacturing and processing profits"]: *Mont-Sutton Inc. v. R.*, [2000] 1 C.T.C. 311 (FCA) (No "rental" of snow at ski resort; "surface construction" considered); *Industrial Forestry Service Ltd. v. MNR*, [1992] 1 C.T.C. 2182 (TCC) (Creation of digital maps and aerial triangulation qualified for manufacturing and processing deduction); *Crown Tire Service Ltd. v. R.*, [1983] C.T.C. 412 (FCTD) (Repair contracts where ownership of equipment retained by customers do not constitute manufacturing or processing of goods for sale or lease); *R. v. McGraw-Hill Ryerson Ltd.*, [1982] C.T.C. 167 (FCA) (Taxpayer retaining control over quality of products allowed to claim manufacturing and processing deduction); *Canadian Clyde Tube Forgings Ltd. v. R.*, [1982] C.T.C. 21 (FCA) (Amount paid to contractor for service not normally rendered by taxpayer's employees not included in "cost of labour"); *Canadian Wirevision Ltd. v. R.*, [1979] C.T.C. 122 (FCA) (Taxpayer not entitled to deduction since television and radio signals not "goods"); *St. Catharines Standard Ltd. v. R.*, [1978] C.T.C. 258 (FCTD) (Salaries to employees of newspaper publisher included in calculation of manufacturing and processing credit).

Regulations: 5200–5204 (Canadian manufacturing and processing profits).

Interpretation Bulletins: IT-145R: Canadian manufacturing and processing profits — reduced rate of corporate tax.

"manufacturing or processing" does not include

(a) farming or fishing,

(b) logging,

(c) construction,

(d) operating an oil or gas well or extracting petroleum or natural gas from a natural accumulation of petroleum or natural gas,

(e) extracting minerals from a mineral resource,

(f) processing

(i) ore (other than iron ore or tar sands ore) from a mineral resource located in Canada to any stage that is not beyond the prime metal stage or its equivalent,

(ii) iron ore from a mineral resource located in Canada to any stage that is not beyond the pellet stage or its equivalent, or

(iii) tar sands ore from a mineral resource located in Canada to any stage that is not beyond the crude oil stage or its equivalent,

(g) producing industrial minerals,

(h) producing or processing electrical energy or steam, for sale,

(i) processing natural gas as part of the business of selling or distributing gas in the course of operating a public utility,

(j) processing heavy crude oil recovered from a natural reservoir in Canada to a stage that is not beyond the crude oil stage or its equivalent,

(k) Canadian field processing, or

(l) any manufacturing or processing of goods for sale or lease, if, for any taxation year of a corporation in respect of which the expression is being applied, less than 10% of its gross revenue from all active businesses carried on in Canada was from

(i) the selling or leasing of goods manufactured or processed in Canada by it, and

(ii) the manufacturing or processing in Canada of goods for sale or lease, other than goods for sale or lease by it.

Related Provisions: 127(11)(a) — Meaning of "manufacturing or processing" for investment tax credit purposes; Reg. 1104(9) — Definition of manufacturing or processing for Class 29 purposes.

History: Paras. (d) to (k) of the definition "manufacturing or processing" in subsec. 125.1(3) amended by 1997, c. 25, s. 33, applicable to taxation years that begin after 1996. Paras. (d) to (k) formerly read:

(d) operating an oil or gas well, extracting petroleum or natural gas from a natural accumulation thereof or processing heavy crude oil recovered from a natural reservoir in Canada to a stage that is not beyond the crude oil stage or its equivalent,

(e) extracting minerals from a mineral resource,

(f) processing ore (other than iron ore or tar sands) from a mineral resource located in Canada to any stage that is not beyond the prime metal stage or its equivalent,

(g) processing iron ore from a mineral resource located in Canada to any stage that is not beyond the pellet stage or its equivalent,

(h) processing tar sands from a mineral resource located in Canada to any stage that is not beyond the crude oil stage or its equivalent,

(i) producing industrial minerals other than sulphur produced by processing natural gas,

(j) producing or processing electrical energy or steam, for sale,

(k) processing gas, if such gas is processed as part of the business of selling or distributing gas in the course of operating a public utility, or

Paras. (f) to (h) of "manufacturing or processing" in subsec. 125.1(3) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 101, to add "located in Canada" in (f) and (g) and "from a mineral resource located in Canada" in (h), applicable to 1990 *et seq.*

Selected Cases [subsec. 125.1(3)"manufacturing or processing"]: *Mont-Sutton Inc. v. R.*, [2000] 1 C.T.C. 311 (FCA) (No "rental" of snow at ski resort; "surface construction" considered); *Qit-Fer et Titane Inc. v. Canada*, [1996] 2 C.T.C. 30 (FCA) (Gerund and infinitive forms of verbs have same meaning); *R. v. Nova Construction Co. Ltd.*, [1986] 1 C.T.C. 68 (FCA) (Credit refused where profits from product not derived from manufacturing or processing); *Halliburton Services Ltd. v. R.*, [1985] 2 C.T.C. 52 (FCTD) (Profit on processing of product considered manufacturing or processing profit); *Nova Scotia Sand and Gravel Ltd. v. R.*, [1980] C.T.C. 378 (FCA) (Taxpayer excavating sand and gravel allowed manufacturing and processing credit).

Interpretation Bulletins: IT-92R2: Income of contractors; IT-145R: Canadian manufacturing and processing profits — reduced rate of corporate tax; IT-411R: Meaning of "construction".

I.T. Technical News: 8 (pre-delivery service of new vehicles); 19 (Canadian manufacturing and processing profits — change to Interpretation Bulletin IT-145R).

(4) Determination of gross revenue — For the purposes of paragraph (l) of the definition "manufacturing or processing" in subsection (3), where a corporation was a member of a partnership at any time in a taxation year,

(a) there shall be included in the gross revenue of the corporation for the year from all active businesses carried on in Canada, that proportion of the gross revenue from each such business carried on in Canada by means of the partnership, for the fiscal period of the partnership coinciding with or ending in that year, that the corporation's share of the income of the partnership from that business for that fiscal period is of the income of the partnership from that business for that fiscal period; and

(b) there shall be included in the gross revenue of the corporation for the year from all activities described in subparagraphs (l)(i) and (ii) of the definition "manufacturing or processing" in subsection (3), that proportion of the gross revenue from each such activity engaged in in the course of a business carried on by means of the partnership, for the fiscal period of the partnership coinciding with or ending in that year, that the corporation's share of the income of the partnership from that business for that fiscal period is of the income of the partnership from that business for that fiscal period.

(5) Interpretation — For the purpose of the description of A in subsection 125.1(2) and for the purpose of applying the *Income Tax Regulations* (other than section 5201 of the Regulations) to that subsection other than the description of B,

(a) electrical energy and steam are deemed to be goods; and

(b) the generation of electrical energy for sale, and the production of steam for sale, are deemed to be, subject to paragraph (l) of the definition "manufacturing or processing" in subsection (3), manufacturing or processing.

History: Paras. 125.1(5)(a) and (b) amended by 2001, c. 17, subsec. 114(3), applicable to taxation years that end after 1999. Those paras. formerly read:

(a) electrical energy is deemed to be a good; and

(b) the generation of electrical energy for sale, or the production of steam for use in the generation of electrical energy for sale, is deemed to be, subject to paragraph (l) of the definition "manufacturing or processing" in subsection (3), manufacturing or processing.

Subsec. 125.1(5) added by 2000, c. 19, subsec. 34(2), applicable to taxation years that end after 1998.

Selected Cases [s. 125.1]: *Range Grain Co. v. R.*, [1997] 2 C.T.C. 227 (FCTD) (Gross revenues of commission agent do not include funds provided by principal to carry out contracts); *NRB Inc. v. Canada*, [1993] 1 C.T.C. 2435 (TCC) (Amounts paid to subcontractors included in computing cost of manufacturing and processing labour); *International Petrodata Inc v. Canada*, [1993] 1 C.T.C. 2189 (TCC) (Compilation of technical data recorded on computer tapes and microfiches was manufacturing or processing); *Rolls Royce (Canada) Ltd. v. Canada*, [1993] 1 C.T.C. 272 (FCA); leave to appeal to SCC refused (1993), 158 N.R. 400 (note) (Rebuilding motors not manufacturing or processing); *Lomex Inc. v. MNR*, [1992] 2 C.T.C. 2678 (TCC) (Picking up and transporting raw materials to plant was "receiving" raw materials for manufacturing and processing under para. 5202(a)(ii) of Regulations); *Nettoyeurs Shefford Inc. v. MNR*, [1992] 2 C.T.C. 2353 (TCC) (Laundry business not manufacturing or processing); *Tuyauteries Saglac Inc. v. MNR*, [1992] 2 C.T.C. 2307 (TCC) (Customizing and installing piping was manufacturing and processing); *Hawboldt Hydraulics (Canada) Inc. Estate (Trustee of) v. Canada*, [1992] 2 C.T.C. 363 (FCTD) (Equipment used to manufacture replacement parts was used in manufacturing or processing goods for sale); *Tenneco Canada Inc. v. Canada*, [1991] 1 C.T.C. 323 (FCA) (Assembling parts produced elsewhere not manufacturing despite adjustments made to parts).

Definitions [s. 125.1]: "amount", "business" — 248(1); "Canadian-controlled private corporation" — 125(7), 248(1); "Canadian field processing" — 248(1); "Canadian manufacturing and processing profits" — 125.1(3); "corporation" — 248(1), *Interpretation Act* 35(1); "general rate reduction percentage" — 123.4(1); "gross revenue" — 125.1(4), 248(1); "manufacturing or processing" — 125.1(3); "mineral resource", "oil or gas well", "tar sands" — 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249.

125.11 [Repealed effective 2007] — (1) Definitions — The following definitions apply in section 123.4 and this section.

"resource rate reduction percentage", of a corporation for a taxation year, is the total of

(a) that proportion of 1% that the number of days in the taxation year that are in 2003 is of the number of days in the taxation year,

(b) that proportion of 2% that the number of days in the taxation year that are in 2004 is of the number of days in the taxation year,

(c) that proportion of 3% that the number of days in the taxation year that are in 2005 is of the number of days in the taxation year,

(d) that proportion of 5% that the number of days in the taxation year that are in 2006 is of the number of days in the taxation year, and

(e) that proportion of 7% that the number of days in the taxation year that are after 2006 is of the number of days in the taxation year.

"taxable resource income", of a taxpayer for a taxation year, is the lesser of the taxpayer's taxable income for the taxation year and the amount determined by the formula

$$3(A/B) + C - D$$

where

A is the total of all amounts each of which is deducted by the taxpayer under paragraph 20(1)(v.1) in computing the taxpayer's income for the taxation year;

B is the percentage that is the total of

(a) that proportion of 100% that the number of days in the taxation year that are before 2003 is of the number of days in the taxation year,

(b) that proportion of 90% that the number of days in the taxation year that are in 2003 is of the number of days in the taxation year,

(c) that proportion of 75% that the number of days in the taxation year that are in 2004 is of the number of days in the taxation year,

(d) that proportion of 65% that the number of days in the taxation year that are in 2005 is of the number of days in the taxation year, and

(e) that proportion of 35% that the number of days in the taxation year that are in 2006 is of the number of days in the taxation year;

C is [*nil for taxation years that begin before June 9, 2003 — ed.*] the total of all amounts included in computing the taxpayer's income for the taxation year under paragraph 59(3.2)(b) or (c); and

D is the total of all amounts deducted by the taxpayer under any of sections 65 to 66.7, other than subsections 66(4), 66.21(4) and 66.7(2) and (2.3), of this Act, and subsections 17(2) and (6) and section 29 of the *Income Tax Application Rules*, in computing the taxpayer's income for the taxation year.

Proposed Amendment — 125.11(1)"taxable resource income"

"taxable resource income", of a taxpayer for a taxation year, is the lesser of

(a) the amount, if any, by which the taxpayer's taxable income for the taxation year exceeds 100/16 of the amount deducted under subsection 125(1) from the taxpayer's tax otherwise payable under this Part for the year, and

(b) the amount determined by the formula

$$3(A/B) + C - D - E$$

where

A is the total of all amounts each of which is deducted by the taxpayer under paragraph 20(1)(v.1) in computing the taxpayer's income for the taxation year,

B is the percentage that is the total of

(i) that proportion of 100% that the number of days in the taxation year that are before 2003 is of the number of days in the taxation year,

(ii) that proportion of 90% that the number of days in the taxation year that are in 2003 is of the number of days in the taxation year,

(iii) that proportion of 75% that the number of days in the taxation year that are in 2004 is of the number of days in the taxation year,

(iv) that proportion of 65% that the number of days in the taxation year that are in 2005 is of the number of days in the taxation year, and

(v) that proportion of 35% that the number of days in the taxation year that are in 2006 is of the number of days in the taxation year,

C is total of all amounts included in computing the taxpayer's income for the taxation year under paragraph 59(3.2)(b) or (c),

D is the total of all amounts deducted by the taxpayer under any of sections 65 to 66.7, other than subsections 66(4), 66.21(4) and 66.7(2) and (2.3), of this Act, and subsections 17(2) and (6) and section 29 of the *Income Tax Application Rules*, in computing the taxpayer's income for the taxation year, and

E is $^{100}/_{16}$ of the amount deducted under subsection 125(1) from the taxpayer's tax otherwise payable under this Part for the year.

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 118, will amend the definition "taxable resource income" in subsec. 125.11(1) to read as above, applicable to taxation years that begin after February 27, 2004.

Technical Notes: Section 125.11 has the effect of reducing the federal corporate income tax rate for income earned from resource activities from 28% to 21% by 2007. This is accomplished for the years 2003-2006 by providing a deduction against the 28% rate for income that falls within the definition of "taxable resource income". After 2006 resource income will be included in full rate taxable income and be subject to the general rate reduction rules.

Currently, a taxpayer's "taxable resource income" is the lesser of the taxpayer's taxable income for the taxation year and the amount calculated by the following formula: 3(A/B) + C – D. A represents the deduction taken as a resource allowance under paragraph 20(1)(v.1). B is a reduction of the resource allowance, which is being phased out between 2003 and 2006, prorated for non-calendar year-ends. C represents additions to the taxpayer's income resulting from negative resource pools. Lastly, D is any amounts deducted from income on account of resource pools.

The definition "taxable resource income" is being amended to ensure that resource income that was earned by a Canadian-controlled private corporation (CCPC) and received a small business deduction under section 125(1) is not also eligible for this rate reduction. The result is that a taxpayer's "taxable resource income" will now be the lesser of two amounts. The first amount is the taxpayer's taxable income for the year less $^{100}/_{16}$ of the amount the taxpayer deducted from tax payable pursuant to section 125(1). The second amount is calculated by the formula 3(A/B) + C – D – E. Elements A to D are unchanged from the previous formula contained in this definition, and remain as described above. New element E is $^{100}/_{16}$ of the amount deducted from tax otherwise payable pursuant to subsection 125(1). This amendment ensures that resource income earned by a CCPC can only benefit from one rate reduction.

Related Provisions: 257 — Formula cannot calculate to less than zero.

(2) Resource deduction — There may be deducted from a corporation's tax otherwise payable under this Part for a taxation year [2003-06 only — ed.] the product obtained by multiplying the corporation's resource rate re-

duction percentage for the taxation year by the corporation's taxable resource income for the taxation year.

Repeal [effective 2007] — 125.11

Application: S.C. 2003, c. 28 (Bill C-48, Royal Assent November 7, 2003), subsec. 13(2), repeals s. 125.11, applicable to taxation years that begin after 2006.

History: S. 125.11 added by 2003, c. 28, subsec. 13(1), applicable to 2003 *et seq.* except that, for those taxation years that begin before June 9, 2003, the value of C in the formula in the definition "taxable resource income" in subsec. 125.11(1) is deemed to be nil.

Definitions [s. 125.11]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "resource rate reduction percentage" — 125.11(1); "taxable income" — 248(1); "taxable resource income" — 125.11(1); "taxation year" — 249; "taxpayer" — 248(1).

125.2 (1) Deduction of [pre-1992] Part VI tax — There may be deducted in computing the tax payable under this Part for a taxation year by a corporation that was throughout the year a financial institution (within the meaning assigned by section 190) an amount equal to such part as the corporation claims of its unused Part VI tax credits for any of its 7 immediately preceding taxation years ending before 1992, to the extent that that amount does not exceed the amount, if any, by which

(a) its tax payable under this Part (determined without reference to this section) for the year

exceeds the total of

(b) the amount that would, but for subsection 190.1(3), be its tax payable under Part VI for the year, and

(c) the lesser of its Canadian surtax payable (within the meaning assigned by subsection 125.3(4)) for the year and the amount that would, but for subsection 181.1(4), be its tax payable under Part I.3 for the year.

Related Provisions: 123.2(a) — Corporate surtax applies to total tax before claiming this credit; 181.1(4)–(7) — Credit of surtax against Part VI tax after 1991. See also Related Provisions at end of 125.2.

History: Subsec. 125.2(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 65(1), applicable to 1992 *et seq.* and, where a corporation elected under subsection 111(2) (of the amending legislation — see under subsec. 190.1(2)) to have subsection 111(1) (of the amending legislation) apply to its taxation years ending in 1991, to all such years except that in its application to such years, subsec. 125.2(1) shall be read without reference to:

(a) the expression "the total of",

(b) the word "and" at the end of para. 125.2(1)(b), and

(c) para. 125.2(1)(c),

and the reference therein to "1992" shall be read as "1991". Subsec. 125.2(1) formerly read:

(1) There may be deducted from the tax otherwise payable under this Part for a taxation year by a corporation that was throughout the year a financial institution (within the meaning assigned by section 190) an amount equal to the total of

(a) its tax payable under Part VI for the year, and

(b) such part of its unused Part VI tax credits for the seven taxation years immediately preceding and the three taxation years immediately following the year as the corporation may claim.

Special Application: 1994, c. 7, Sch. II (1991, c. 49), s. 102 provides that in its application to corporations described in para. (d) or (e) of the definition "financial institution" in subsec. 190(1), for taxation years beginning before February 21, 1990, subsec. 125.2(1) shall be read as follows:

"125.2(1) There may be deducted from the tax otherwise payable under this Part for a taxation year by a corporation that was throughout the year a financial institution (within the meaning assigned by section 190) an amount equal to the lesser of

(a) the total of

(i) its tax payable under Part VI for the year, and

(ii) such part of its unused Part VI tax credits for the 3 taxation years immediately following the year as the corporation claims; and

(b) that proportion of its tax otherwise payable under this Part for the year that the number of days in the year that are after February 20, 1990 is of the number of days in the year."

Forms: T2 SCH 42: Calculation of unused unused Part I tax credit.

(2) Idem — For the purposes of this section,

(a) an amount may not be claimed under subsection (1) in computing a corporation's tax payable under this Part for a particular taxation year in respect of its unused Part VI tax credit for another taxation year until its unused Part VI tax credits for taxation years preceding the other year that may be claimed for the particular year have been claimed; and

(b) an amount in respect of a corporation's unused Part VI tax credit for a taxation year may be claimed under subsection (1) in computing its tax payable under this Part for another taxation year only to the extent that it exceeds the total of all amounts each of which is the amount claimed in respect of that unused Part VI tax credit in computing its tax payable under this Part for a taxation year preceding that other year.

(3) Definition of "unused Part VI tax credit" — For the purposes of this section, "unused Part VI tax credit" of a corporation for a taxation year is the lesser of

(a) its tax payable under Part VI (determined without reference to subsections 190.1(1.1) and (3)) for the year, and

(b) the amount determined by the formula

$$A - B$$

where

A is its tax payable under Part VI for the year (determined without reference to subsection 190.1(3)), and

B is the amount, if any, by which

(i) the amount that would, but for this section, be its tax payable under this Part for the year

exceeds

(ii) the lesser of its Canadian surtax payable (within the meaning assigned by subsection 125.3(4)) and the amount that would, but for subsection 181.1(4), be its tax payable under Part I.3 for the year.

History: Subsec. 125.2(3) substituted by 1994, c. 21, s. 58, applicable for the purpose of computing the amount that may be deducted by a corporation under subsec. 125.2(1),

(a) subject to paragraphs (b) and (c), for taxation years that end before 1992 in respect of unused Part VI tax credits for taxation years that end after 1991;

(b) where the corporation has elected under subsec. 111(2) of 1993, c. 24 [see under subsec. 190.1(2)], for its taxation years that end before 1991 in respect of unused Part VI tax credits for taxation years that end after 1990, except that for the purpose of computing its unused Part VI tax credits under subsec. 125.2(3) for taxation years that end in 1991, the amount determined under subpara. (ii) of the description of B in subsec. 125.2(3) shall be deemed to be nil; and

(c) where paragraph (b) does not apply and the corporation elected under paragraph 88(2)(b) of 1994, c. 21, [see under subpara. 190.11(b)(i)], for its taxation years that end before 1992 in respect of unused Part VI tax credits for taxation years that end after 1990, except that

(i) for the purpose of computing its unused Part VI tax credits under subsec. 125.2(3) for its taxation years that end in 1991, the amount determined under subpara. (ii) of the description of B in subsec. 125.2(3) shall be deemed to be nil, and

(ii) for the purpose of computing the amount that it may deduct under subsec. 125.2(1) for its taxation years that end in 1991, para. 125.2(3)(a) shall be read as follows:

(a) its tax payable under Part VI (determined without reference to subsection 190.1(3)) for the year, and

Subsec. 125.2(3) formerly read:

(3) For the purposes of this section, "unused Part VI tax credit" of a corporation for a taxation year ending after 1991 means the amount determined by the formula

A – B

where

A is the corporation's tax payable under Part VI for the year (determined without reference to subsection 190.1(3)), and

B is the amount, if any, by which

(a) the amount that would, but for this section, be its tax payable under this Part for the year

exceeds

(b) the lesser of its Canadian surtax payable (within the meaning assigned by subsection 125.3(4)) and the amount that would, but for subsection 181.1(4), be its tax payable under Part I.3 for the year.

Subsec. 125.2(3) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 65(2), applicable for the purpose of computing the amount that may be deducted by a corporation under subsec. 125.2(1)

(a) subject to paragraph (b), for taxation years ending before 1992 in respect of unused Part VI tax credits for taxation years ending after 1991; or

(b) where the corporation elected under subsection 111(2) (of the amending legislation — see under subsec. 190.1(2)) to have subsection 111(1) (of the amending legislation) apply to its taxation years ending in 1991, for its taxation years ending before 1991 in respect of unused Part VI tax credits for taxation years ending after 1990, except that, for the purpose of computing its unused Part VI tax credits under subsec. 125.2(3), as amended, for taxation years ending in 1991, the amount determined under paragraph (b) in the description of B in the said subsection 125.2(3) shall be deemed to be nil.

Subsec. 125.2(3) formerly read:

(3) In this section, "unused Part VI tax credit" of a corporation for a taxation year means the amount, if any, by which the corporation's tax payable under Part VI for the year exceeds the amount that would, but for this section, be its tax payable under this Part for the year.

Special Application: 1994, c. 7, Sch. II (1991, c. 49), s. 102 provides that in its application to corporations described in para. (d) or (e) of the definition "financial institution" in subsec. 190(1), subsec. 125.2(3) shall be read as follows:

"(3) For the purposes of this section, "unused Part VI tax credit" of a corporation for a taxation year commencing before February 21, 1990 means the amount, if any, by which the corporation's tax payable under Part VI for the year exceeds the amount deductible under subsection (1) in computing its tax payable under this Part for the year."

Related Provisions [s. 125.2]: 87(2)(j.9) — Amalgamation; 88(1)(e.2) — Windings-up; 152(6) — Reassessment; 161(7)(a)(vi) — Interest — Effect of carryback of loss, etc.; 164(5.1)(g) — Refund of taxes — Interest payable in respect of repayment of amount in controversy; 257 — Formula cannot calculate to less than zero.

Definitions [s. 125.2]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "tax payable" — 248(2); "taxation year" — 249; "unused Part VI tax credit" — 125.2(3).

125.3 (1) Deduction of [pre-1992] Part I.3 tax — There may be deducted in computing the tax payable under this Part for a taxation year by a corporation (other than a corporation that was throughout the year a financial institution, within the meaning assigned by section 190) an amount equal to such part as the corporation claims of its unused Part I.3 tax credits for any of its 7 immediately preceding taxation years ending before 1992, to the extent that that amount does not exceed the amount, if any, by which

(a) its Canadian surtax payable for the year

exceeds

(b) the amount that would, but for subsection 181.1(4), be its tax payable under Part I.3 for the year.

Related Provisions: 87(2)(j.9) — Amalgamations — continuing corporation; 88(1)(e.2) — Winding-up; 123.2(a) — Corporate surtax applies to total tax before claiming this credit.

History: Subsec. 125.3(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 66(1), applicable to 1992 *et seq.* Subsec. (1) formerly read:

(1) There may be deducted from the tax otherwise payable under this Part for a taxation year by a corporation an amount equal to the lesser of

(a) the total of

(i) its tax payable under Part I.3 for the year, and

(ii) such part of its unused Part I.3 tax credits for the 7 taxation years immediately preceding and the 3 taxation years immediately following the year as the corporation may claim; and

(b) its Canadian surtax payable for the year.

Forms: T2 SCH 37: Calculation of unused surtax credit.

(1.1) Idem — There may be deducted in computing the tax payable under this Part for a taxation year by a corporation that was a financial institution (within the meaning assigned by section 190) throughout the year an amount equal to such part as the corporation claims of its unused Part I.3 tax credits for any of its 7 immediately preceding taxation years ending before 1992, to the extent that that amount does not exceed the lesser of

(a) the amount, if any, by which its Canadian surtax payable for the year exceeds the amount that would, but for subsection 181.1(4), be its tax payable under Part I.3 for the year, and

(b) the amount, if any, by which its tax payable under this Part (determined without reference to this section and section 125.2) for the year exceeds the amount that would, but for subsections 181.1(4) and 190.1(3), be the total of its taxes payable under Parts I.3 and VI for the year.

Related Provisions: 152(6)(f) — Assessments; 161(7)(a)(vii) — Interest — effect of carryback of loss, etc.; 164(5.1)(h) — Refund of taxes — effect of carryback of loss, etc.; 181.1(4)–(7) — Credit of surtax against Part I.3 tax after 1991.

History: Subsec. 125.3(1.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 66(1), applicable to 1992 *et seq.*

(2) Special rules — For the purposes of this section,

(a) no amount may be claimed under subsection (1) in computing a corporation's tax payable under this Part for a particular taxation year in respect of its unused Part I.3 tax credit for another taxation year until its unused Part I.3 tax credits for taxation years preceding the other year that may be claimed for the particular year have been claimed; and

(b) an amount in respect of a corporation's unused Part I.3 tax credit for a taxation year may be claimed under subsection (1) in computing its tax payable under this Part for another taxation year only to the extent that it exceeds the total of all amounts each of which is the amount claimed in respect of that unused Part I.3 tax credit in computing its tax payable under this Part for a taxation year preceding that other year.

(3) Acquisition of control — Where, at any time, control of a corporation has been acquired by a person or group of persons, no amount in respect of its unused Part

I.3 tax credit for a taxation year ending before that time is deductible by the corporation for a taxation year ending after that time and no amount in respect of its unused Part I.3 tax credit for a taxation year ending after that time is deductible by the corporation for a taxation year ending before that time, except that

(a) where a business was carried on by the corporation in a taxation year ending before that time, its unused Part I.3 tax credit for that year is deductible by the corporation for a particular taxation year ending after that time only if that business was carried on by the corporation for profit or with a reasonable expectation of profit throughout the particular year and only to the extent of that proportion of the corporation's Canadian surtax payable for the particular year that

(i) the amount, if any, by which

(A) the total of its income for the particular year from that business and, where properties were sold, leased, rented or developed or services rendered in the course of carrying on that business before that time, its income for the particular year from any other business substantially all the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services

exceeds

(B) the total of all amounts each of which is an amount deducted under paragraph 111(1)(a) or (d) for the particular year by the corporation in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of that business or the other business,

is of the greater of

(ii) the amount determined under subparagraph (i), and

(iii) the corporation's taxable income for the particular year; and

(b) where a business was carried on by the corporation throughout a taxation year ending after that time, its unused Part I.3 tax credit for that year is deductible by the corporation for a particular taxation year ending before that time only if that business was carried on by the corporation for profit or with a reasonable expectation of profit in the particular year and only to the extent of that proportion of the corporation's Canadian surtax payable for the particular year that

(i) the amount, if any, by which

(A) the total of its income for the particular year from that business and, where properties were sold, leased, rented or developed or services rendered in the course of carrying on that business before that time, its income for the particular year from any other business substantially all the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services

exceeds

(B) the total of all amounts each of which is an amount deducted under paragraph 111(1)(a) or (d) for the particular year by the corporation in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of that business or the other business,

is of the greater of

(ii) the amount determined under subparagraph (i), and

(iii) the corporation's taxable income for the particular year.

Related Provisions: 256(6)–(9) — Whether control acquired; 256(9) — Date of acquisition of control.

I.T. Technical News: 7 (control by a group — 50/50 arrangement).

(4) Definitions — For the purposes of this section,

"Canadian surtax payable" of a corporation for a taxation year means

(a) in the case of a corporation that is non-resident throughout the year, the lesser of

(i) the amount determined under section 123.2 in respect of the corporation for the year, and

(ii) its tax payable under this Part for the year, and

(b) in any other case, the lesser of

(i) the prescribed proportion of the amount determined under section 123.2 in respect of the corporation for the year, and

(ii) its tax payable under this Part for the year;

History: The definition "Canadian surtax payable" in subsec. 125.3(4) substituted by 1994, c. 21, s. 59, applicable to 1994 *et seq.* That definition formerly read:

"Canadian surtax payable" of a corporation for a taxation year means

(a) in the case of a corporation that is throughout the year not resident in Canada, the amount determined under section 123.2 in respect of the corporation for the year, and

(b) in any other case, the prescribed proportion of the amount determined under section 123.2 in respect of the corporation for the year;

Regulations: 8602 (prescribed proportion).

"unused Part I.3 tax credit" of a corporation for a taxation year means

(a) where the year ended before 1992, the amount, if any, by which its tax payable under Part I.3 for the year exceeds the amount deductible under subsection (1) in computing its tax payable under this Part for the year, and

(b) where the year ends after 1991, the amount, if any, by which the corporation's tax payable under Part I.3 for the year (determined without reference to subsection 181.1(4)) exceeds its Canadian surtax payable under this Part for the year.

Related Provisions: 87(2)(j.9) — Amalgamations; 88(1)(e.2) — Winding-up.

History: "Unused Part I.3 tax credit" in subsec. 125.3(4) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 66(2), applicable for the purpose of computing the amount that may be deducted under subsec. 125.3(1) for taxation years ending after June 1989. The definition formerly read:

"unused Part I.3 tax credit" of a corporation for a taxation year means the amount, if any, by which the corporation's tax payable under Part I.3 for the year exceeds the amount deductible under subsection (1) in computing its tax payable under this Part for the year.

Forms: T2 SCH 37: Calculation of unused surtax credit.

Definitions [s. 125.3]: "amount", "business" — 248(1); "Canada" — 255; "Canadian surtax payable" — 125.3(4); "corporation" — 248(1), *Interpretation Act* 35(1); "farm loss" — 111(8), 248(1); "financial institution" — 190(1); "non-capital loss" — 111(8), 248(1); "non-resident", "prescribed" — 248(1); "resident" — 250; "taxable income" — 2(2), 248(1); "taxation year" — 249; "unused Part I.3 tax credit" — 125.3(4).

Canadian Film or Video Production Tax Credit

125.4 (1) Definitions — The definitions in this subsection apply in this section.

"assistance" means an amount, other than a prescribed amount or an amount deemed under subsection (3) to have been paid, that would be included under paragraph 12(1)(x) in computing a taxpayer's income for any taxation year if that paragraph were read without reference to subparagraphs (v) to (vii).

Proposed Amendment — 125.4(1)"assistance"

"assistance" means an amount, other than a prescribed amount or an amount deemed under subsection (3) to have been paid, that would be included under paragraph 12(1)(x) in computing a taxpayer's income for any taxation year if that paragraph were read without reference to

(a) subparagraphs 12(1)(x)(v) to (viii), if the amount were received

(i) from a person or partnership described in subparagraph 12(1)(x)(ii), or

(ii) in circumstances where clause 12(1)(x)(i)(C) applies; and

(b) subparagraphs 12(1)(x)(v) to (vii), in any other case.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 119(2), will amend the definition "assistance" in subsec. 125.4(1) to read as above, applicable

(a) to film or video productions for which the production commencement time of the corporation (or, if there is more than one qualified corporation in respect of the production, of all such corporations) is after November 13, 2003, and

(b) to a corporation in respect of a film or video production for which the production commencement time of any corporation is before November 14, 2003

(i) if the earliest labour expenditure of the corporation (or, if there is more than one qualified corporation in respect of the production, of all such corporations) in respect of the production is made after 2003, or

(ii) if the corporation elects (or, if there is more than one qualified corporation in respect of the production, all such corporations jointly elect), in writing, and the election is filed with the Minister of National Revenue on or before the earliest filing-due date of any qualified corporation in respect of the production for that corporation's taxation year that includes the day on which the amending legislation is assented to, and the earliest labour expenditure of all such qualified corporations in respect of the production is made

(A) after the last taxation year of any such corporation that ended before November 14, 2003, or

(B) if the first taxation year of all such corporations includes November 14, 2003, in that taxation year.

The earliest labour expenditure referred to above is to be determined under the provisions of subsec. 125.4(1) or (2) that would apply if the amendments to 125.4"assistance", "labour expenditure", "production commencement time", "qualified labour expenditure", "salary or wages" and "script material", and to subsec 125.4(2) were not enacted.

Technical Notes: Section 125.4 sets out the rules that apply for the purpose of computing the Canadian film or video production tax credit ("CFVPTC"). Generally, this tax credit is available at a rate of 25% of qualified labour expenditures incurred by a qualified corporation for a production certified by the Minister of Canadian Heritage to be a Canadian film or video production.

Except as noted below, the amendments to subsection 125.4 generally apply in respect of productions for which development commences on or after November 14, 2003 or the first labour expenditures (as determined under subsections 125.4(1) and (2) as they applied before that date — the "old rules") of the production corporation are incurred after 2003. As well, if development commenced before November 14, 2003 and the first labour expenditures (as defined under the old rules) were incurred by the corporation in its taxation year that includes November 14, 2003, the corporation may elect to have the new rules apply. Subject to this election, corporations must continue to claim the CFVPTC under the old rules for productions that qualified under those rules. Where, in the case of a co-production, more than one qualified corporation is eligible to claim a CFVPTC in respect of the production, the election to have the new rules apply must be made jointly. A production cannot qualify under both schemes.

In computing the CFVPTC, qualified labour expenditures in respect of a film or video production are limited to 48% of the amount by which the cost of the production exceeds any "assistance" in respect of that cost that has not been repaid.

The definition "assistance" is amended to provide that the equity share of a production of a government or other public authority is treated in the same manner as government assistance. This could include, for example, a loan from a government agency where repayment of the loan is dependent on profit from the production.

Department of Finance news release, November 14, 2003: See under 125.4(2).

Related Provisions: 87(2)(j.94) — Amalgamations — continuing corporation; 125.4(5) — Credit is deemed to be assistance for all purposes under the Act; 241(4)(d)(xv) — Disclosure of information to government agency providing assistance.

History: The definition "assistance" in subsec. 125.4(1) amended by 1999, c. 22, s. 46, applicable to amounts received after February 23, 1998. It formerly read:

> "assistance" means an amount, other than an amount deemed under subsection (3) to have been paid, that would be included under paragraph 12(1)(x) in computing the income of a taxpayer for any taxation year if that paragraph were read without reference to subparagraphs (v) to (vii).

Regulations: 1106(11) (prescribed amount).

"Canadian film or video production" has the meaning assigned by regulation.

Regulations: 1101(5k.1) (separate class for Canadian film or video production); 1106(4) (definition of "Canadian film or video production"); Sch. II:Cl. 10(x) (CCA class for Canadian film or video production).

"Canadian film or video production certificate" means a certificate issued in respect of a production by the Minister of Canadian Heritage

(a) certifying that the production is a Canadian film or video production, and

(b) estimating amounts relevant for the purpose of determining the amount deemed under subsection (3) to have been paid in respect of the production.

Proposed Amendment — 125.4(1)"Canadian film or video production certificate"

"Canadian film or video production certificate" means a certificate issued in respect of a production by the Minister of Canadian Heritage certifying that the production is a Canadian film or video production in respect of which that Minister is satisfied that

(a) except where the production is a treaty co-production (as defined by regulation), an acceptable share of revenues from the exploitation of the production in non-Canadian markets is, under the terms of any agreement, retained by

(i) a qualified corporation that owns or owned an interest in, or for civil law a right in, the production,

(ii) a prescribed taxable Canadian corporation related to the qualified corporation, or

(iii) any combination of corporations described in subparagraph (i) or (ii); and

(b) public financial support of the production would not be contrary to public policy.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 119(3), will amend the definition "Canadian film or video production certificate" in subsec. 125.4(1) to read as above, applicable in respect of film or video productions in respect of which certificates are issued by the Minister of Canadian Heritage after December 20, 2002, except that in respect of those film or video productions in respect of which certificates are issued by the Minister of Canadian Heritage before 2004, the definition "Canadian film or video production certificate" is to be read as follows (identical to the November 14, 2003 and December 20, 2002 draft legislation):

"Canadian film or video production certificate" means a certificate issued in respect of a production by the Minister of Canadian Heritage

(a) certifying that the production is a Canadian film or video production in respect of which that Minister is satisfied that

(i) except where the production is a treaty co-production (as defined by regulation), an acceptable share of revenues from the exploitation of the production in non-Canadian markets is, under the terms of any agreement, retained by

(A) a qualified corporation that owns or owned an interest in, or for civil law a right in, the production,

(B) a prescribed taxable Canadian corporation related to the qualified corporation, or

(C) any combination of corporations described in clause (A) or (B), and

(ii) public financial support of the production would not be contrary to public policy, and

(b) estimating amounts relevant for the purpose of determining the amount deemed under subsection (3) to have been paid in respect of the production.

Technical Notes: A qualified corporation must file a Canadian film or video production certificate with its tax return for a taxation year in which it claims a Canadian film or video production tax credit in respect of the production. A "Canadian film or video production certificate", as defined in subsection 125.4(1), is issued by the Minister of Canadian Heritage. The definition is amended to provide that that Minister will also certify that the public funding of the production would not be contrary to public policy and that, generally, a qualified corporation or a related taxable Canadian corporation will retain an acceptable share of revenues from the exploitation of the production in non-Canadian markets. The Minister of Canadian Heritage will issue guidelines as to how these criteria can be met.

This amendment generally applies in respect of Canadian film or video productions for which certificates are issued by the Minister of Canadian Heritage after December 20, 2002.

The definition is also amended to remove the requirement for the Minister of Canadian Heritage to provide estimates relevant to the calculation of the CFVPTC, in respect of certificates issued after 2003.

Related Provisions: 125.4(3) — Tax credit where certificate issued; 125.4(6) — Revocation of certificate; 125.4(7) — Guidelines from Minister of Canadian Heritage; 241(9) — Disclosure to public of information on certificate.

"investor" means a person, other than a prescribed person, who is not actively engaged on a regular, continuous and substantial basis in a business carried on through a permanent establishment (as defined by regulation) in Canada that is a Canadian film or video production business.

Proposed Repeal — 125.4(1)"investor"

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 119(1), will repeal the definition "investor" in subsec. 125.4(1), applicable

(a) to taxation years that end after November 14, 2003; and

(b) in respect of a film or video production in respect of which a corporation has, in a return of income filed before November 14, 2003, claimed an amount under subsec. 125.4(3) in respect of a labour expenditure incurred after 1997.

Technical Notes: The definition "investor" describes a person who is not actively engaged on a regular, continuous, and substantial basis in a Canadian film or video production business carried on through a permanent establishment in Canada. A CFVPTC may not be claimed in respect of a Canadian film or video production where an investor, or a partnership in which an investor has an interest, may deduct an amount in respect of the production.

The definition of investor is repealed, applicable to taxation years that end after November 14, 2003, as well as to productions in respect of which a qualifying production corporation has, in a return of income filed before November 14, 2003, claimed an amount under subsection 125.4(3) in respect of a labour expenditure incurred after 1997 in respect of the production.

Related Provisions: 125.4(4) — No credit where investor can deduct any amount.

Regulations: 1106(10) (prescribed person); 8201 (permanent establishment).

"labour expenditure" of a corporation for a taxation year in respect of a property of the corporation that is a Canadian film or video production means, in the case of a corporation that is not a qualified corporation for the year, nil, and in the case of a corporation that is a qualified corporation for the year, subject to subsection (2), the total of the following amounts to the extent that they are reasonable in the circumstances and included in the cost or, in the case of depreciable property, the capital cost to the corporation of the property:

(a) the salary or wages directly attributable to the production that are incurred after 1994 and in the year, or the preceding taxation year, by the corporation for the stages of production of the property, from the final script stage to the end of the post-production stage, and paid by it in the year or within 60 days after the end of the year (other than amounts incurred in that preceding year that were paid within 60 days after the end of that preceding year),

(b) that portion of the remuneration (other than salary or wages and other than remuneration that relates to services rendered in the preceding taxation year and that was paid within 60 days after the end of that preceding year) that is directly attributable to the production of property, that relates to services rendered after 1994 and in the year, or that preceding year, to the corporation for the stages of production, from the final script stage to the end of the post-production stage, and that is paid by it in the year or within 60 days after the end of the year to

Proposed Amendment — 125.4(1)"labour expenditure" before (b)(i)

"labour expenditure", of a corporation for a taxation year in respect of a Canadian film or video production, means, in the case of a corporation that is not a qualified corporation for the taxation year, nil, and in the case of a corporation that is a qualified corporation for the taxation year, subject to subsection (2), the total of the following amounts to the extent that they are reasonable in the circumstances and included in the cost to, or in the case of depreciable property the capital cost to, the corporation, or any other person or partnership, of the production:

(a) the salary or wages directly attributable to the production that are incurred after 1994 and in the taxation year, or the preceding taxation year, by the corporation for the stages of production of the property, from the production commencement

time to the end of the post-production stage, and paid by it in the taxation year or within 60 days after the end of the taxation year (other than amounts incurred in that preceding taxation year that were paid within 60 days after the end of that preceding taxation year),

(b) that portion of the remuneration (other than salary or wages and other than remuneration that relates to services rendered in the preceding taxation year and that was paid within 60 days after the end of that preceding taxation year) that is directly attributable to the production of property, that relates to services rendered after 1994 and in the taxation year, or that preceding taxation year, to the corporation for the stages of production, from the production commencement time to the end of the post-production stage, and that is paid by it in the taxation year or within 60 days after the end of the taxation year to

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 119(4), will amend the portion of the definition "labour expenditure" in subsec. 125.4(1) before subpara. (b)(i) to read as above, applicable on the same basis as the amendment to 125.4(1)"assistance".

Technical Notes: The definition "labour expenditure" describes the underlying expenditures of a qualified corporation in respect of a film or video production that will be eligible for the CFVPTC. The definition is amended concurrently with the repeal of the definition "investor" in subsection 125.4(1) and the amendment of subsections 125.4(2) and (4), to include those production expenditures incurred by the qualified corporation for or on behalf of another person. That is, labour expenditures are no longer limited to those included in the cost to the qualified corporation of the production. The definition is also amended concurrently with the introduction of the definition "production commencement time", which represents the time after which an eligible expenditure will qualify for the CFVPTC.

Where a particular corporation is a co-producer with another qualified corporation, and that other corporation has incurred expenditures for or on behalf of the taxpayer, new paragraph 125.4(2)(d) prevents the particular corporation from claiming a CFVPTC in respect of those expenditures.

For more information on subsections 125.4(2) and (4) and the definitions "investor" and "production commencement time", refer to the commentary for those provisions.

(i) an individual who is not an employee of the corporation, to the extent that the amount paid

(A) is attributable to services personally rendered by the individual for the production of the property, or

(B) is attributable to and does not exceed the salary or wages of the individual's employees for personally rendering services for the production of the property,

(ii) another taxable Canadian corporation, to the extent that the amount paid is attributable to and does not exceed the salary or wages of the other corporation's employees for personally rendering services for the production of the property,

(iii) another taxable Canadian corporation all the issued and outstanding shares of the capital stock of which (except directors' qualifying shares) belong to an individual and the activities of which consist principally of the provision of the individual's services, to the extent that the amount paid is attributable to services rendered personally by the individual for the production of the property, or

(iv) a partnership that is carrying on business in Canada, to the extent that the amount paid

(A) is attributable to services personally rendered by an individual who is a member of the partnership for the production of the property, or

(B) is attributable to and does not exceed the salary or wages of the partnership's employees for personally rendering services for the production of the property, and

(c) where

(i) the corporation is a subsidiary wholly-owned corporation of another taxable Canadian corporation (in this section referred to as the "parent"), and

(ii) the corporation and the parent have agreed that this paragraph apply in respect of the production,

the reimbursement made by the corporation in the year, or within 60 days after the end of the year, of an expenditure that was incurred by the parent in a particular taxation year of the parent in respect of that production and that would be included in the labour expenditure of the corporation in respect of the property for the particular taxation year because of paragraph (a) or (b) if

(iii) the corporation had had such a particular taxation year, and

(iv) the expenditure were incurred by the corporation for the same purpose as it was by the parent and were paid at the same time and to the same person or partnership as it was by the parent.

Related Provisions: 13(7)–(7.4) — Capital cost of depreciable property; 125.4(1), 248(1) — Extended meaning of salary or wages; 125.4(2) — Rules governing labour expenditure.

Proposed Addition — 125.4(1)"production commencement time"

"production commencement time", in respect of a Canadian film or video production, means the earlier of

(a) the time at which principal photography of the production begins, and

(b) the latest of

(i) the time at which a qualified corporation that has an interest in, or for civil law a right in, the production, or the parent of the corporation, first makes an expenditure for salary or wages or other remuneration for activities, of scriptwriters, that are directly attributable to the development by the corporation of script material of the production,

(ii) the time at which the corporation or the parent of the corporation acquires a property, on which the production is based, that is a published literary work, screenplay, play, personal history or all or part of the script material of the production, and

(iii) two years before the date on which principal photography of the production begins.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 119(7), will add the definition "production commencement time" to subsec. 125.4(1), applicable on the same basis as the amendment to 125.4(1)"assistance".

Technical Notes: For the purpose of the definition "labour expenditure" in subsection 125.4(1), in order to be eligible for the CFVPTC, expenditures in respect of a film or video production must be incurred by a qualified corporation from the time that is the "final script stage" of the production. The definition "labour expenditure" is amended to in-

stead refer to expenditures incurred after the production commencement time. The new definition "production commencement time" describes the time that is the latest of the following:

1. The time at which a qualified corporation or its parent company first incurs development labour costs for the development of property of the corporation that is script material on which a Canadian film or video production is based.

2. The first time at which the qualified corporation or its parent company acquires a right in respect of the story that is the basis of the final script. Such rights might include a published literary work, play or screenplay.

3. Two years before the date on which principal photography of the production begins.

It is intended that the in-house development labour costs of an initial draft of a script, as well as the cost of modifications, should fall within the period of production for which labour expenditures qualify for the CFVPTC. These in-house costs could include the cost to hire an independent writer to create a script on the basis of some other story or literary work for which the rights have been acquired by the corporation.

Existing conditions on eligible labour expenditures also apply to script-writing labour. (See, for example, amounts excluded from the definition "salary and wages" in subsection 125.4(1), such as amounts determined by reference to profits or revenues). As well, the cost to acquire an initial script or any other right referred to above will, like other rights, not qualify. Such an expenditure represents the cost of a property, not a labour expenditure.

The new definition "script material" in subsection 125.4(1) is defined for the purpose of the definition "production commencement time".

"qualified corporation" for a taxation year means a corporation that is throughout the year a prescribed taxable Canadian corporation the activities of which in the year are primarily the carrying on through a permanent establishment (as defined by regulation) in Canada of a business that is a Canadian film or video production business.

Regulations: 8201 (permanent establishment).

"qualified labour expenditure" of a corporation for a taxation year in respect of a property of the corporation that is a Canadian film or video production means the lesser of

Proposed Amendment — 125.4(1)"qualified labour expenditure" opening words

"qualified labour expenditure", of a corporation for a taxation year in respect of a Canadian film or video production, means the lesser of

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 119(5), will amend the opening words of the definition "qualified labour expenditure" in subsec. 125.4(1) to read as above, applicable on the same basis as the amendment to 125.4(1)"assistance".

Technical Notes: See under 125.4(1)"qualified labour expenditure"(b)A before (ii) below.

(a) the amount, if any, by which

(i) the total of

(A) the labour expenditure of the corporation for the year in respect of the production, and

(B) the amount by which the total of all amounts each of which is the labour expenditure of the corporation for a preceding taxation year in respect of the production exceeds the total of all amounts each of which is a qualified labour expenditure of the corporation in respect of the production for a preceding taxation year before the end of which the principal filming or taping of the production began

exceeds

(ii) where the corporation is a parent, the total of all amounts each of which is an amount that is the subject of an agreement in respect of the production referred to in paragraph (c) of the definition "labour expenditure" between the corporation and its wholly-owned corporation, and

(b) the amount determined by the formula

$$A - B$$

where

A is 48% of the amount by which

(i) the cost or, in the case of depreciable property, the capital cost to the corporation of the production at the end of the year,

exceeds

Proposed Amendment — 125.4(1)"qualified labour expenditure"(b)A before (ii)

A is 60% of the amount by which

(i) the total of all amounts each of which is an expenditure by the corporation in respect of the production that is included in the cost to, or in the case of depreciable property the capital cost to, the corporation or any other person or partnership of the production at the end of the taxation year,

exceeds

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 119(6), will amend the portion of the description of A before subpara. (ii) in para. (b) of the definition "qualified labour expenditure" in subsec. 125.4(1) to read as above, applicable on the same basis as the amendment to 125.4(1)"assistance".

Technical Notes: The definition "qualified labour expenditure" describes the portion of a qualified corporation's labour expenditures upon which it can claim a 25% investment tax credit for a Canadian film or video production. Under a formula in the definition, qualified labour expenditures in respect of a production are limited to 48% of the amount by which the cost of the production to the qualified corporation exceeds any "assistance" in respect of that cost that has not been repaid.

Variable A in the formula is amended to increase the maximum amount of labour expenditure that qualify for the CFVPTC from 48% to 60% of the cost of the production. The definition is also amended concurrently with the repeal of the definition "investor" in subsection 125.4(1) and the amendment of subsections 125.4(2) and (4), to include in the production cost those production expenditures incurred by the qualified corporation for or on behalf of another person. That is, production expenditures are no longer limited to those included in the cost to the qualified corporation of the production.

Where the taxpayer corporation is a co-producer with another qualified corporation, and that other corporation has incurred expenditures for or on behalf of the taxpayer, those expenditures are excluded from the formula by new paragraph 125.4(2)(b).

For more information on subsections 125.4(2) and (4) and the definition "investor", refer to the commentary for those provisions.

Department of Finance news release, November 14, 2003: See under 125.4(2).

(ii) the total of all amounts each of which is an amount of assistance in respect of that cost that, at the time of the filing of its return of income for the year, the corporation or any other person or partnership has received, is entitled to receive or can reasonably be expected to receive, that has not been repaid before that time pursuant to a legal obligation to do so (and that does not otherwise reduce that cost), and

B is the total of all amounts each of which is the qualified labour expenditure of the corporation in respect of the production for a preceding taxation

year before the end of which the principal filming or taping of the production began.

Related Provisions: 257 — Formula cannot calculate to less than zero.

"salary or wages" does not include an amount described in section 7 or any amount determined by reference to profits or revenues.

Proposed Amendment — 125.4(1)"salary or wages"

"salary or wages" does not include an amount

(a) described in section 7;

(b) determined by reference to profits or revenues; or

(c) paid to a person in respect of services rendered by the person at a time when the person was non-resident, unless the person was at that time a Canadian citizen.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 119(2), will amend the definition "salary or wages" in subsec. 125.4(1) to read as above, applicable on the same basis as the amendment to 125.4(1)"assistance".

Technical Notes: For the purposes of the Canadian film and video production tax credit, the definition "salary or wages", which is generally defined in subsection 248(1), does not include an amount described in section 7 (share option benefits) or any amount determined by reference to profits or revenues.

The definition "salary or wages" is amended to provide that it also does not include an amount paid to a person in respect of services rendered by the person at a time when the person was non-resident, unless the person was at that time a Canadian citizen.

Department of Finance news release, November 14, 2003: See under 125.4(2).

Related Provisions: 125.4(2)(a) — Meaning of "remuneration"; 248(1)"salary or wages" — Definition extended to include all income from employment.

Proposed Addition — 125.4(1)"script material"

"script material", in respect of a production, means written material describing the story on which the production is based and, for greater certainty, includes a draft script, an original story, a screen story, a narration, a television production concept, an outline or a scene-by-scene schematic, synopsis or treatment.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 119(7), will add the definition "script material" to subsec. 125.4(1), applicable on the same basis as the amendment to 125.4(1)"assistance".

Technical Notes: The new definition "script material" applies for the purpose of determining the "production commencement time" of a production. Script material is written material describing the story on which the production is based and, for greater certainty, includes a draft script, original story, screen story, narration, television production concept, outline or scene-by-scene schematic, synopsis or treatment. These descriptions are terms commonly used in the film production industry.

(2) Rules governing labour expenditure of a corporation — For the purpose of the definition "labour expenditure" in subsection (1),

(a) remuneration does not include remuneration determined by reference to profits or revenues;

Proposed Amendment — 125.4(2) before (b)

(2) Rules governing labour expenditures of a corporation — For the purposes of the definitions "labour expenditure" and "qualified labour expenditure" in subsection (1),

(a) remuneration does not include remuneration

(i) determined by reference to profits or revenues, or

(ii) in respect of services rendered by a person at a time when the person was non-resident, unless the person was at that time a Canadian citizen;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 119(8), will amend the portion of subsec. 125.4(2) before para. (b) to read as above, applicable on the same basis as the amendment to 125.4(1)"assistance".

Technical Notes: Subsection 125.4(2) provides rules that apply for the purpose of the definition of "labour expenditure" in subsection 125.4(1). Paragraph 125.4(2)(a) provides that remuneration does not include remuneration determined by reference to profits or revenues.

Subsection 125.4(2) is amended to provide that it also applies to the definition "qualified labour expenditure" in subsection 125.4(1). In addition, paragraph 125.4(2)(a) is amended to provide that remuneration also does not included remuneration in respect of services rendered by a person at a time when the person was non-resident, unless the person was at that time a Canadian citizen.

Department of Finance news release, November 14, 2003: *Government Announces Changes to the Canadian Film or Video Production Tax Credit*

John Manley, Deputy Prime Minister and Minister of Finance, and Sheila Copps, Minister of Canadian Heritage, today released draft amendments to the *Income Tax Act* concerning the Canadian Film or Video Production Tax Credit (CFVPTC).

The CFVPTC supports film and video production in Canada by providing a tax credit equal to 25% of qualifying labour expenditures. The intent of these modifications is to simplify the credit and ensure that tax assistance is appropriately targeted. The proposed amendments include the following:

- The limit on the base of qualifying labour expenditures will be raised to 60% of the total cost of a production from the existing 48% limit. [See 125.4(1)"qualified labour expenditure"(b)A — ed.]
- Labour expenditures in respect of non-residents of Canada (other than Canadian citizens) will no longer be eligible for the credit. [See 125.4(1)"salary or wages" and 125.4(2)(a)(ii) — ed.]
- The holding of an interest in a film or video production by a person other than the production corporation will no longer disqualify the production from eligibility for a tax credit, unless the production or one of the investors is associated with a tax shelter. [See 125.4(4) — ed.] However, the credit will continue to be available only with respect to production expenditures made by the production corporation.
- If a government entity is an investor, that investment will be treated in the same manner as other forms of government assistance. [See 125.4(1)"assistance" — ed.]

Today's proposal results from ongoing consultations with all sectors of the film industry, which were undertaken by the Departments of Finance and Canadian Heritage following Budget 2000. The changes are in keeping with the Government's goal of simplifying the rules and administration of the CFVPTC, and basing the credit more closely on Canadian labour content.

The new rules will generally apply to productions for which development commences on or after today. As well, a production corporation may elect that the proposed rules apply to productions for which labour expenditures were first incurred in the taxation year of the corporation that includes today.

For further information: Andrée Houde, Public Affairs and Operations Division, (613) 996-8080; Mike Scandiffio, Communications Advisor, Office of the Deputy Prime Minister and Minister of Finance, (613) 996-7861; Ed Short, Tax Policy Branch, (613) 996-0599; Naline Rampersad, Director of Communications, Office of the Minister of Canadian Heritage, (819) 997-7788.

Backgrounder

The Government introduced the Canadian Film or Video Production Tax Credit ("CFVPTC") in the 1995 budget. The credit is equal to 25% of the eligible labour costs of a Canadian-controlled production corporation for films that have high Canadian content.

In the February 2000 budget, the Government indicated that the rules and administration of the CFVPTC would be simplified and would reflect more closely the original objectives of the eligibility requirements. The 2003 budget promised the continuation of industry consultations on the CFVPTC, with a view to ensuring that intended support levels are maintained.

As a result of the proposals announced today, the maximum amount of Canadian labour cost that qualifies for a tax credit will be increased from 48% to 60% of the total cost of a film or video production. The effect of this change to the "production cost cap" is to increase benefits to productions that have relatively high Canadian labour costs. However, the qualifying labour pool will now exclude amounts paid for the services of non-residents (other than Canadian citizens).

Other details of the proposal include the following:

- It will not be required that only the production corporation hold an interest in the production. It is proposed that the so-called "investor rule" in subsection 125.4(4) disqualify a production for the CFVPTC only where the production or a person or partnership holding an interest in the production is a tax shelter. However, it remains a requirement under the *Income Tax Regulations* [Reg. 1106(1)"excluded production"(a)(ii)(A) — ed.] that the production corporation have ownership of copyright. This latter provision is currently under review by the Department of Canadian Heritage.
- The equity share of a production of a government agency (including loans that participate in profits) will be treated in the same manner as other forms of government assistance.
- Funding under the Licence Fee Program of the Canadian Television Fund will continue to be exempted from treatment as government assistance.
- Production costs recognized under the CFVPTC are those incurred after the "final script stage" of a production. To reduce uncertainties in interpretation, the commencement time for a production will be defined to allow the possibility for eligible costs to be incurred as early as two years before principal photography begins. Eligible labour expenditures will include those incurred after principal photography begins, plus those incurred after the latest of the following three times:
  1. The time at which the production corporation or its parent company first incurs development labour costs for the development of property of the corporation that is script material on which the production is based.
  2. The first time at which the production corporation or its parent company acquires a right in respect of the story that is the basis of the final script. Such rights might include a published literary work, play or screenplay.
  3. Two years prior to the date on which principal photography begins.

  It is intended that in-house development labour costs of an initial draft of a script, as well as the cost of modifications, should be eligible. These in-house costs could include the cost to hire an independent writer to create a script on the basis of some other story or literary work for which the rights have been acquired by the corporation.

  Existing conditions on eligible labour expenditures will also apply to scriptwriting labour (e.g. the exclusion of amounts determined by reference to profits or revenues). However, the cost to acquire an initial script or any other right referred to above will, like other rights, not qualify. Such an expenditure represents the cost of a property, not a labour expenditure.
- The definition of "Canadian film or video production certificate" in the Act [125.4(1) — ed.] will be amended to remove the requirement for the Minister of Canadian Heritage to provide estimates. Such estimates will still be provided, but only on request.
- It will be clarified that a Canadian film or video production certificate may be revoked in respect of one episode of a television series without affecting the eligibility of other episodes in the series and that, in such a case, the expenditures attributable to that episode do not qualify for the CFVPTC. [See 125.4(6) — ed.]

The new rules will generally apply to productions for which development commences on or after today. As well, the new rules will apply if development commenced before today and the first labour expenditures (as defined under the old rules) were incurred by the corporation after 2003. Further, if development commenced before today and the first labour expenditures (as defined under the old rules) were incurred by the corporation in its taxation year that includes today, then the corporation may elect to have the new rules apply. Subject to this election, corporations must continue to claim the CFVPTC under the old rules for productions that qualified under those rules. A production cannot qualify under both schemes.

Further, the amended investor rule will apply to any production for which labour expenditures were incurred after 1997 (to coincide, generally, with the application of the matchable expenditure rules in section 18.1).

(b) services referred to in paragraph (b) of that definition that relate to the post-production stage of the production include only the services that are rendered at that stage by a person who performs the duties of animation cameraman, assistant colourist, assistant mixer, assistant sound-effects technician, boom operator, colourist, computer graphics designer, cutter, developing technician, director of post production, dubbing technician, encoding technician, inspection technician — clean up, mixer, optical effects technician, picture editor, printing technician, projectionist, recording technician, senior editor, sound editor, sound-effects technician, special effects editor, subtitle technician, timer, video-film recorder operator, videotape operator or by a person who performs a prescribed duty; and

(c) that definition does not apply to an amount to which section 37 applies.

Proposed Addition — 125.4(2)(d)

(d) an expenditure incurred in respect of a film or video production by a qualified corporation (in this paragraph referred to as the "co-producer") in respect of goods supplied or services rendered by another qualified corporation to the co-producer in respect of the production is not a labour expenditure to the co-producer or, for the purpose of applying of this section to the co-producer, a cost or capital cost of the production.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 119(9), will add para. 125.4(2)(d), applicable on the same basis as the amendment to 125.4(1)"assistance".

Technical Notes: A film or video production may be produced jointly by two or more qualified corporations. New paragraph 125.4(2)(d) is added to ensure that only one qualified corporation may claim a CFVPTC in respect of any particular expenditure. Where another qualified corporation supplies goods to or renders services for or on behalf of the taxpayer corporation, new paragraph 125.4(2)(d) provides that the related expenditure by the taxpayer is not a labour expenditure, a cost or capital cost of the production to the taxpayer. This provision does not affect the calculation of the cost of the production for other purposes of the Act.

History [subsec. 125.4(2)]: Para. 125.4(2)(c) added by 2001, c. 17, s. 115, applicable after November 1999.

(3) Tax credit — Where

(a) a qualified corporation for a taxation year files with its return of income for the year

(i) a Canadian film or video production certificate issued in respect of a Canadian film or video production of the corporation,

(ii) a prescribed form containing prescribed information, and

(iii) each other document prescribed in respect of the production, and

(b) the principal filming or taping of the production began before the end of the year,

the corporation is deemed to have paid on its balance-due day for the year an amount on account of its tax payable under this Part for the year equal to 25% of its qualified

labour expenditure for the year in respect of the production.

Related Provisions: 87(2)(j.94) — Amalgamations — continuing corporation; 123.2(a) — Corporate surtax applies to total tax before claiming film/video credit; 125.4(4) — No credit where investor can claim deduction; 125.4(5) — Credit constitutes assistance for purposes of the Act generally; 125.4(6) — Credit lost retroactively if certificate revoked; 125.5(4) — No film/video production services credit if Canadian film/video credit is available under 125.4; 152(1)(b) — Assessment of credit; 157(3)(e) — Reduction in monthly instalment to reflect credit; 163(2)(f) — Penalty for false statement or omission; 164(1)(a)(ii) — Refund of credit before assessment; 220(6) — Assignment of refund permitted.

History: The closing words of subsec. 125.4(3) amended by 1997, c. 25, s. 34, applicable to 1996 *et seq.* The closing words formerly read:

> the corporation is deemed to have paid, on the day referred to in paragraph 157(1)(b) on or before which the corporation would be required to pay the remainder of its tax payable under this Part for the year if such a remainder were payable, an amount on account of its tax payable under this Part for the year equal to 25% of its qualified labour expenditure for the year in respect of the production.

Regulations: 1101(5k.1)(a) (separate class for CCA purposes).

Forms: RC4164: Claiming a Canadian film or video production tax credit — guide to Form T1131; T2 SCH 302: Additional certificate numbers for the Newfoundland film and video industry tax credit; T2 SCH 345: Additional certificate numbers for the Nova Scotia film industry tax credit; T2 SCH 365: Additional certificate numbers for the New Brunswick film tax credit; T2 SCH 382: Additional certificate numbers for the Manitoba film and video production tax credit; T2 SCH 410: Additional certificate numbers for the Saskatchewan film employment tax credit; T1131: Claiming a Canadian film or video production tax credit; T1196: B.C. film and television tax credit; T1197: B.C. production services tax credit.

(4) Exception — This section does not apply to a Canadian film or video production where an investor, or a partnership in which an investor has an interest, directly or indirectly, may deduct an amount in respect of the production in computing its income for any taxation year.

Proposed Amendment — 125.4(4)

(4) Exception — This section does not apply to a Canadian film or video production if the production — or an interest in a person or partnership that has, directly or indirectly, an interest in, or for civil law a right in, the production — is a tax shelter investment for the purpose of section 143.2.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 119(10), will amend subsec. 125.4(4) to read as above, applicable

(a) to taxation years that end after November 14, 2003; and

(b) in respect of a film or video production in respect of which a corporation has, in a return of income filed before November 14, 2003, claimed an amount under subsec. 125.4(3) in respect of a labour expenditure incurred after 1997.

Technical Notes: Subsection 125.4(4) provides that a Canadian film or video production tax credit is not available for a production if an investor may deduct an amount in respect of the production in computing its income for any taxation year. An investor is defined in subsection 125.4(1) to include, generally, any person, other than a prescribed person, that does not carry on a film or video production basis in Canada on a substantial basis.

Subsection 125.4(4) is amended concurrently with the repeal of the definition "investor", to deny the CFVPTC only in circumstances where the production or a person or partnership holding an interest in the production is a tax shelter investment for the purpose of section 143.2.

However, proposed *Income Tax Regulations* include a requirement that, for a film or video production to qualify as a Canadian film or video production eligible for the CFVPTC, a prescribed taxable Canadian corporation must retain worldwide ownership of copyright.

Department of Finance news release, November 14, 2003: See under 125.4(2).

(5) When assistance received — For the purposes of this Act other than this section, and for greater certainty, the amount that a corporation is deemed under subsection (3) to have paid for a taxation year is assistance received by the corporation from a government immediately before the end of the year.

Related Provisions: 12(1)(x) — Inclusion of assistance in income; 13(7.4) — Reduction in capital cost of depreciable property to reflect assistance; 53(2)(k) — Reduction in ACB of capital property to reflect assistance.

(6) Revocation of a certificate — A Canadian film or video production certificate in respect of a production may be revoked by the Minister of Canadian Heritage where

(a) an omission or incorrect statement was made for the purpose of obtaining the certificate, or

(b) the production is not a Canadian film or video production,

and, for the purpose of subparagraph (3)(a)(i), a certificate that has been revoked is deemed never to have been issued.

Proposed Amendment — 125.4(6)

(6) Revocation of a certificate — If an omission or incorrect statement was made for the purpose of obtaining a Canadian film or video production certificate in respect of a production, or if the production is not a Canadian film or video production,

(a) the Minister of Canadian Heritage may

(i) revoke the certificate, or

(ii) if the certificate was issued in respect of productions included in an episodic television series, revoke the certificate in respect of one or more episodes in the series;

(b) for greater certainty, for the purposes of this section, the expenditures and cost of production in respect of productions included in an episodic television series that relate to an episode in the series in respect of which a certificate has been revoked are not attributable to a Canadian film or video production; and

(c) for the purpose of subparagraph (3)(a)(i), a certificate that has been revoked is deemed never to have been issued.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 119(11), will amend subsec. 125.4(6) to read as above, applicable after November 14, 2003.

Technical Notes: Subsection 125.4(6) provides that a Canadian film or video production certificate in respect of a production may be revoked by the Minister of Canadian Heritage. The revocation of a certificate may occur if an incorrect statement or an omission was made in order to obtain the certificate, or if the production is not a Canadian film or video production. A revoked certificate is considered never to have been issued, so a Canadian film or video production tax credit under new subsection 125.4(3) cannot be claimed in respect of the decertified production.

Subsection 125.4(6) is amended, applicable after November 14, 2003, to clarify that a Canadian film or video production certificate may be revoked in respect of one episode of a television series without affecting the eligibility of other episodes in the series and that, in such a case, the expenditures attributable to that episode do not qualify for the CFVPTC.

Related Provisions: 241(9) — Disclosure to public of information on revoked certificate.

Proposed Addition — 125.4(7)

(7) Guidelines — The Minister of Canadian Heritage shall issue guidelines respecting the circumstances

under which the conditions in paragraphs (a) and (b) of the definition of "Canadian film or video production certificate" in subsection (1) are satisfied. For greater certainty, these guidelines are not statutory instruments as defined in the *Statutory Instruments Act*.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 119(12), will add subsec. 125.4(7), applicable in respect of film or video productions in respect of which certificates are issued by the Minister of Canadian Heritage after December 20, 2002, except that in respect of those film or video productions in respect of which certificates are issued by the Minister of Canadian Heritage before 2004, the reference to "paragraphs (a) and (b)" in subsec. 125.4(7) is to be read as "subparagraphs (a)(i) and (ii)".

Technical Notes: New subsection 125.4(7), which applies in respect of Canadian film or video productions for which certificates are issued by the Minister of Canadian Heritage after December 20, 2002, requires the Minister of Canadian Heritage to issue guidelines respecting the circumstances under which new conditions in the definition "Canadian film or video production certificate" in subsection 125.4(1) are met. For further details, see the commentary for that definition.

History: S. 125.4 added by 1996, c. 21, s. 28, applicable to 1995 *et seq.* except that, in applying the definition "qualified corporation" in subsec. 125.4(1) in respect of a film or video production the principal photography of which began before July 1996, the words "are primarily" in that definition shall be read as "include".

Selected Cases [s. 125.4]: *Big Comfy Corp. v. R.*, [2002] 3 C.T.C. 2151 (TCC) (Entitlement to credit where no partnership, no ownership and no claim for CCA).

Definitions [s. 125.4]: "amount" — 248(1); "assistance" — 125.4(1), (5); "balance-due day" — 248(1); "business" — 248(1); "Canada" — 255; "Canadian film or video production", "Canadian film or video production certificate" — 125.4(1); "capital cost" — of depreciable property 13(7)–(7.4), (10), 70(12), 128.1(1)(c), 128.1(4)(c); "carrying on business in Canada" — 253; "corporation" — 248(1), *Interpretation Act* 35(1); "depreciable property" — 13(21), 248(1); "employee", "individual" — 248(1); "investor" — 125.4(1); "labour expenditure" — 125.4(1), (2); "non-resident" — 248(1); "parent" — 125.4(1)"labour expenditure"(c)(i); "permanent establishment" — Reg. 8201; "person", "prescribed" — 248(1); "production commencement time" — 125.4(1); "property" — 248(1); "qualified corporation", "qualified labour expenditure" — 125.4(1); "qualifying share" — 192(6), 248(1) *[not intended to apply to s. 125.4]*; "regulation" — 248(1); "related" — 251(2)–(6); "remuneration" — 125.4(2)(a); "salary or wages" — 125.4(1), 248(1); "script material" — 125.4(1); "share", "subsidiary wholly-owned corporation" — 248(1); "tax shelter investment" — 143.2(1); "taxable Canadian corporation" — 89(1), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "treaty co-production" — Reg. 1106(3); "written" — *Interpretation Act* 35(1)"writing".

Film or Video Production Services Tax Credit

125.5 (1) Definitions — The definitions in this subsection apply in this section.

"accredited film or video production certificate", in respect of a film or video production, means a certificate issued by the Minister of Canadian Heritage certifying that the production is an accredited production.

Related Provisions: 125.5(3) — Tax credit where certificate issued; 125.5(6) — Revocation of certificate.

"accredited production" has the meaning assigned by regulation.

Regulations: 9300 (meaning of accredited production).

"assistance" means an amount, other than an amount deemed under subsection (3) to have been paid, that would be included under paragraph 12(1)(x) in computing the income of a taxpayer for any taxation year if that paragraph were read without reference to subparagraphs (v) to (vii).

Related Provisions: 241(4)(d)(xv) — Disclosure of information to government agency providing assistance.

"Canadian labour expenditure" of a corporation for a taxation year in respect of an accredited production means, in the case of a corporation that is not an eligible production corporation in respect of the production for the year, nil, and in any other case, subject to subsection (2), the total of the following amounts in respect of the production to the extent that they are reasonable in the circumstances:

(a) the salary or wages directly attributable to the production that are incurred by the corporation after October 1997, and in the year or the preceding taxation year, and that relate to services rendered in Canada for the stages of production of the production, from the final script stage to the end of the post-production stage, and paid by it in the year or within 60 days after the end of the year to employees of the corporation who were resident in Canada at the time the payments were made (other than amounts incurred in that preceding year that were paid within 60 days after the end of that preceding year),

(b) that portion of the remuneration (other than salary or wages and other than remuneration that relates to services rendered in the preceding taxation year and that was paid within 60 days after the end of that preceding year) that is directly attributable to the production, that relates to services rendered in Canada after October 1997 and in the year, or that preceding year, to the corporation for the stages of production of the production, from the final script stage to the end of the post-production stage, and that is paid by it in the year or within 60 days after the end of the year to a person or a partnership, that carries on a business in Canada through a permanent establishment (as defined by regulation), and that is

(i) an individual resident in Canada at the time the amount is paid and who is not an employee of the corporation, to the extent that the amount paid

(A) is attributable to services personally rendered by the individual in Canada in respect of the accredited production, or

(B) is attributable to and does not exceed the salary or wages paid by the individual to the individual's employees at a time when they were resident in Canada for personally rendering services in Canada in respect of the accredited production,

(ii) another corporation that is a taxable Canadian corporation, to the extent that the amount paid is attributable to and does not exceed the salary or wages paid to the other corporation's employees at a time when they were resident in Canada for personally rendering services in Canada in respect of the accredited production,

(iii) another corporation that is a taxable Canadian corporation, all the issued and outstanding shares of the capital stock of which (except directors' qualifying shares) belong to an individual who was resident in Canada and the activities of which consist principally of the provision of the individual's services, to the extent that the amount paid is attributable to services rendered personally in Canada by the individual in respect of the accredited production, or

(iv) a partnership, to the extent that the amount paid

(A) is attributable to services personally rendered in respect of the accredited production by an individual who is resident in Canada and who is a member of the partnership, or

(B) is attributable to and does not exceed the salary or wages paid by the partnership to its employees at a time when they were resident in Canada for personally rendering services in Canada in respect of the accredited production, and

(c) where

(i) the corporation is a subsidiary wholly-owned corporation of another corporation that is a taxable Canadian corporation (in this section referred to as the "parent"), and

(ii) the corporation and the parent have filed with the Minister an agreement that this paragraph apply in respect of the production,

the reimbursement made by the corporation in the year, or within 60 days after the end of the year, of an expenditure that was incurred by the parent in a particular taxation year of the parent in respect of the production and that would be included in the Canadian labour expenditure of the corporation in respect of the production for the particular taxation year because of paragraph (a) or (b) if

(iii) the corporation had had such a particular taxation year, and

(iv) the expenditure were incurred by the corporation for the same purpose as it was incurred by the parent and were paid at the same time and to the same person or partnership as it was paid by the parent.

Related Provisions: 13(7)–(7.4) — Capital cost of depreciable property; 87(2)(j.94) — Amalgamations — continuing corporation; 125.5(1), 248(1) — Extended meaning of salary or wages; 125.5(2) — Rules governing labour expenditure.

Regulations: 8201 (permanent establishment).

"eligible production corporation", in respect of an accredited production for a taxation year, means a corporation, the activities of which in the year in Canada are primarily the carrying on through a permanent establishment (as defined by regulation) in Canada of a film or video production business or a film or video production services business and that

(a) owns the copyright in the accredited production throughout the period during which the production is produced in Canada, or

(b) has contracted directly with the owner of the copyright in the accredited production to provide production services in respect of the production, where the owner of the copyright is not an eligible production corporation in respect of the production,

except a corporation that is, at any time in the year,

(c) a person all or part of whose taxable income is exempt from tax under this Part,

(d) controlled directly or indirectly in any manner whatever by one or more persons all or part of whose taxable income is exempt from tax under this Part, or

(e) prescribed to be a labour-sponsored venture capital corporation for the purpose of section 127.4.

Related Provisions: 256(5.1), (6.2) — Controlled directly or indirectly.

Regulations: 6701 (prescribed labour-sponsored venture capital corporation); 8201 (permanent establishment).

"qualified Canadian labour expenditure" of an eligible production corporation for a taxation year in respect of an accredited production means the amount, if any, by which

(a) the total of all amounts each of which is the corporation's Canadian labour expenditure for the year or a preceding taxation year

exceeds the aggregate of

(b) the total of all amounts, each of which is an amount of assistance that can reasonably be considered to be in respect of amounts included in the total determined under paragraph (a) in respect of the corporation for the year that, at the time of filing its return of income for the year, the corporation or any other person or partnership has received, is entitled to receive or can reasonably be expected to receive, that has not been repaid before that time pursuant to a legal obligation to do so (and that does not otherwise reduce that expenditure),

(c) the total of all amounts, each of which is the qualified Canadian labour expenditure of the corporation in respect of the accredited production for a preceding taxation year before the end of which the principal filming or taping of the production began, and

(d) where the corporation is a parent, the total of all amounts each of which is included in the total determined under paragraph (a) in respect of the corporation for the year and is the subject of an agreement in respect of the accredited production referred to in paragraph (c) of the definition "Canadian labour expenditure" between the corporation and its subsidiary wholly-owned corporation.

"salary or wages" does not include an amount described in section 7 or an amount determined by reference to profits or revenues.

Related Provisions: 125.5(2)(a) — Meaning of "remuneration"; 248(1)"salary or wages" — Definition extended to include all income from employment.

History: The portion of the definition "eligible production corporation" in subsec. 125.5(1) between paras. (b) and (c) amended by 2001, c. 17, s. 116, to add "at any time in the year," applicable after November 1999.

Subsec. 125.5(1) added by 1998, c. 19, s. 145.1, applicable to taxation years that end after October 1997.

(2) Rules governing Canadian labour expenditure of a corporation — For the purpose of the definition "Canadian labour expenditure" in subsection (1),

(a) remuneration does not include remuneration determined by reference to profits or revenues;

(b) services referred to in paragraph (b) of that definition that relate to the post-production stage of the accredited production include only the services that are rendered at that stage by a person who performs the duties of animation cameraman, assistant colourist, assistant mixer, assistant sound-effects technician, boom operator, colourist, computer graphics designer, cutter, developing technician, director of post production, dubbing technician, encoding technician, inspection technician — clean up, mixer, optical effects technician, picture editor, printing technician, projectionist, recording technician, senior editor, sound editor, sound-effects technician, special effects editor, subtitle technician, timer, video-film recorder operator, videotape operator or by a person who performs a prescribed duty;

(c) that definition does not apply to an amount to which section 37 applies; and

(d) for greater certainty, that definition does not apply to an amount that is not a production cost including an amount in respect of advertising, marketing, promotion, market research or an amount related in any way to another film or video production.

History: Subsec. 125.5(2) added by 1998, c. 19, s. 145.1, applicable to taxation years that end after October 1997.

(3) Tax credit — An eligible production corporation in respect of an accredited production for a taxation year is deemed to have paid on its balance-due day for the year an amount on account of its tax payable under this Part for the year equal to 16% of its qualified Canadian labour expenditure for the year in respect of the production, if

(a) the corporation files with its return of income for the year

(i) a prescribed form containing prescribed information in respect of the production,

(ii) an accredited film or video production certificate in respect of the production, and

(iii) each other document prescribed in respect of the production; and

(b) the principal filming or taping of the production began before the end of the year.

Related Provisions: 87(2)(j.94) — Amalgamations — continuing corporation; 123.2(a) — Corporate surtax applies to total tax before claiming film/video credit; 125.5(4) — No credit where Canadian film/video credit allowed under 125.4; 125.5(5) — Credit constitutes assistance for purposes of the Act generally; 125.5(6) — Credit lost retroactively if certificate revoked; 152(1)(b) — Assessment of credit; 157(3)(e) — Reduction in monthly instalments to reflect credit; 163(2)(g) — Penalty for false statement or omission; 164(1)(a)(ii) — Refund of credit before assessment.

History: Subsec. 125.5(3) amended by 2003, c. 15, s. 80, applicable in respect of Canadian labour expenditures incurred after February 18, 2003. It formerly read:

(3) Subject to subsection (4), where

(a) an eligible production corporation in respect of an accredited production for a taxation year files with its return of income for the year

(i) a prescribed form containing prescribed information in respect of the production,

(ii) an accredited film or video production certificate in respect of the production, and

(iii) each other document prescribed in respect of the production, and

(b) the principal filming or taping of the production began before the end of the year,

the corporation is deemed to have paid on its balance-due day for the year an amount on account of its tax payable under this Part for the year equal to 11% of its qualified Canadian labour expenditure for the year in respect of the production.

Subsec. 125.5(3) added by 1998, c. 19, s. 145.1, applicable to taxation years that end after October 1997.

Forms: T1177: Claiming a film or video production services tax credit.

(4) Canadian film or video production — Subsection (3) does not apply in respect of a production in respect of which an amount is deemed to have been paid under subsection 125.4(3).

History: Subsec. 125.5(4) added by 1998, c. 19, s. 145.1, applicable to taxation years that end after October 1997.

(5) When assistance received — For the purposes of this Act other than this section, and for greater certainty, the amount that a corporation is deemed under subsection (3) to have paid for a taxation year is assistance received by the corporation from a government immediately before the end of the year.

Related Provisions: 12(1)(x) — Inclusion of assistance into income; 13(7.4) — Reduction in capital cost of depreciable property to reflect assistance; 53(2)(k) — Reduction in ACB of capital property to reflect assistance.

History: Subsec. 125.5(5) added by 1998, c. 19, s. 145.1, applicable to taxation years that end after October 1997.

(6) Revocation of certificate — An accredited film or video production certificate in respect of an accredited production may be revoked by the Minister of Canadian Heritage where

(a) an omission or incorrect statement was made for the purpose of obtaining the certificate, or

(b) the production is not an accredited production,

and, for the purpose of subparagraph (3)(a)(ii), a certificate that has been revoked is deemed never to have been issued.

History: Subsec. 125.5(6) added by 1998, c. 19, s. 145.1, applicable to taxation years that end after October 1997.

Definitions [s. 125.5]: "accredited film or video production certificate", "accredited production" — 125.5(1); "amount" — 248(1); "assistance" — 125.5(1), (5); "business" — 248(1); "Canada" — 255; "Canadian labour expenditure" — 125.5(1); "carries on business in Canada", "carries on a business in Canada" — 253; "controlled directly or indirectly" — 256(5.1), (6.2); "corporation" — 248(1), *Interpretation Act* 35(1); eligible production corporation" — 248(1); "employee", "individual" — 248(1); "parent" — 125.5(1)"Canadian labour expenditure"(c)(i); "permanent establishment" — Reg. 8201; "person", "prescribed" — 248(1); "qualified Canadian labour expenditure" — 125.5(1); "qualifying share" — 192(6), 248(1) *[not intended to apply to s. 125.5]*; "regulation" — 248(1); "remuneration" — 125.5(2)(a); "resident in Canada" — 250; "salary or wages" — 125.5(1), 248(1); "share" — 248(1); "subsidiary wholly-owned corporation" — 248(1); "taxable Canadian corporation" — 89(1), 248(1); "taxation year" — 249.

Subdivision c — Rules Applicable to All Taxpayers

126. (1) Foreign tax deduction [foreign tax credit — non-business income] — A taxpayer who was resident in Canada at any time in a taxation year may deduct from the tax for the year otherwise payable under this Part by the taxpayer an amount equal to

(a) such part of any non-business-income tax paid by the taxpayer for the year to the government of a country other than Canada (except, where the taxpayer is a corporation, any such tax or part thereof that may reasonably be regarded as having been paid by the taxpayer in respect of income from a share of the capital stock of a foreign affiliate of the taxpayer) as the taxpayer may claim,

Proposed Amendment — 126(1)(a)

(a) the part of any non-business income tax paid by the taxpayer for the year to the government of a country other than Canada that the taxpayer claims,

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 31(1), will amend para. 126(1)(a) to read as above, applicable to taxation years that begin after 2002.

Technical Notes: Subsection 126(1) provides a tax credit to a taxpayer in respect of foreign non-business income tax — that is, foreign taxes levied on investment and other non-business income of the taxpayer. However, paragraph 126(1)(a) provides an exception to the effect that no tax credit is available if the taxpayer is a corporation and the foreign taxes paid by the taxpayer are in respect of income from a share of the capital stock of a foreign affiliate of the taxpayer.

Paragraph 126(1)(a) is amended to remove the reference to the exception for taxes paid in respect of income from a share of a foreign affiliate. This exception is now found in subsection 126(1.2) [(b) — ed.].

not exceeding, however,

(b) that proportion of the tax for the year otherwise payable under this Part by the taxpayer that

(i) the amount, if any, by which the total of the taxpayer's qualifying incomes exceeds the total of the taxpayer's qualifying losses

(A) for the year, if the taxpayer is resident in Canada throughout the year, and

(B) for the part of the year throughout which the taxpayer is resident in Canada, if the taxpayer is non-resident at any time in the year,

from sources in that country, on the assumption that

(C) no businesses were carried on by the taxpayer in that country,

(D) where the taxpayer is a corporation, it had no income from shares of the capital stock of a foreign affiliate of the taxpayer, and

(E) where the taxpayer is an individual,

(I) no amount was deducted under subsection 91(5) in computing the taxpayer's income for the year, and

(II) if the taxpayer deducted an amount under subsection 122.3(1) from the taxpayer's tax otherwise payable under this Part for the year, the taxpayer's income from employment in that country was not from a source in that country to the extent of the lesser of the amounts determined in respect thereof under paragraphs 122.3(1)(c) and (d) for the year,

is of

(ii) the total of

(A) the amount, if any, by which,

(I) if the taxpayer was resident in Canada throughout the year, the taxpayer's income for the year computed without reference to paragraph 20(1)(ww), and

(II) if the taxpayer was non-resident at any time in the year, the amount determined under paragraph 114(a) in respect of the taxpayer for the year

exceeds

(III) the total of all amounts each of which is an amount deducted under section 110.6 or paragraph 111(1)(b), or deductible under any of paragraphs 110(1)(d) to (d.3), (f), (g) and (j) and sections 112 and 113, in computing the taxpayer's taxable income for the year, and

(B) the amount, if any, added under section 110.5 in computing the taxpayer's taxable income for the year.

Related Provisions: 20(11), 20(12) — Deduction instead of credit for foreign taxes paid; 20(12) — Foreign non-business income tax; 94(3)(b) [proposed] — Application to trust deemed resident in Canada; 94.4(3) — Application of foreign investment entity rules; 104(22.1) — Foreign tax credit allocated to beneficiary of trust; 110.5 — Addition to corporation's taxable income to increase foreign tax credit; 123.2(a) — Corporate surtax applies to total tax before claiming foreign tax credit; 126(1.1) — Application to authorized foreign bank; 126(1.2) — Exceptions to 126(1); 126(6) — Separate deduction in respect of each country and source; 126(7)"tax for the year otherwise payable under this Part" — Tax otherwise payable; 129(3) — Refundable dividend tax on hand; 133(4) — No foreign tax deduction for non-resident-owned investment corporations; 138(8) — No deduction for tax paid on life insurance business income; 144(8.1) — Employees profit sharing plan — foreign tax deduction; 161(6.1) — Delay in interest on foreign tax credit adjustment; Canada-U.S. Tax Treaty:Art. XXIV:4 — Credit for U.S. citizen resident in Canada; Canada-U.S. Tax Treaty:Art. XXIX-B:6, 7 — Credit for U.S. estate taxes. See additional Related Provisions at end of s. 126.

History: Subcl. 126(1)(b)(ii)(A)(III) amended by 2002, c. 9, subsec. 39(1), applicable to 1997 *et seq.* except that, for the 1997 taxation year, the subcl. shall be read as follows:

(III) the total of all amounts each of which is an amount deducted by the taxpayer under section 110.6 or paragraph 111(1)(b), or deductible by the taxpayer under paragraph 110(1)(d), (d.1), (d.2), (d.3), (f), (g) or (j) or section 112 or 113, for the year or in respect of the period or periods referred to in subclause (II), as the case may be, and

Notwithstanding subsecs. 152(4) to (5), any assessment of a taxpayer's tax, interest or penalty for any taxation year shall be made that is necessary to give effect to the amendment. Subcl. 126(1)(b)(ii)(A)(III) formerly read:

(III) the total of all amounts each of which is an amount deducted under section 110.6 or paragraph 111(1)(b), or deductible under any of paragraphs 110(1)(d) to (d.3), (f) and (j) and sections 112 and 113, in computing the taxpayer's taxable income for the year, and

Cl. 126(1)(b)(ii)(A) amended by 2001, c. 17, subsec. 117(1), applicable to 1998 *et seq.* except that, in its application to the 1998 and 1999 taxation years, subcl. (A)(I) shall be read without reference to the expression "computed without reference to paragraph 20(1)(ww)". The cl. formerly read:

(A) the amount, if any, by which,

(I) where section 114 does not apply to the taxpayer in respect of the year, the taxpayer's income for the year computed without reference to paragraph 20(1)(ww), and

(II) where section 114 applies to the taxpayer in respect of the year, the total of the taxpayer's income for the period or periods in the year referred to in paragraph 114(a) and the amount that would be determined under paragraph 114(b) in respect of the taxpayer for the year if subsection 115(1) were read without reference to paragraphs 115(1)(d) to (f)

exceeds

(III) the total of all amounts each of which is an amount deducted by the taxpayer under section 110.6 or paragraph 111(1)(b), or deductible by the taxpayer under paragraph 110(1)(d), (d.1), (d.2), (d.3), (f) or (j) or section 112 or 113, for the year or in respect of the period or periods referred to in subclause (II), as the case may be, and

Subcl. 126(1)(b)(ii)(A)(I) amended by 2000, c. 19, subsec. 35(1), applicable to 1998 *et seq.* except that, in its application to the 1998 and 1999 taxation years, the subcl. shall be read without reference to the expression "computed without reference to paragraph 20(1)(ww)". The subcl. formerly read:

(I) where section 114 is not applicable to the taxpayer in respect of the year, the total of the taxpayer's income for the year and the amount, if any, added under subsection 110.4(2) in computing the taxpayer's taxable income for the year, and

The portion of subpara. 126(1)(b)(i) before cl. (C) amended by 1999, c. 22, subsec. 47(1), applicable to taxation years that begin after February 24, 1998 The portion formerly read:.

(i) the total of the taxpayer's incomes from sources in that country, excluding any portion thereof that was deductible by the taxpayer under subparagraph 110(1)(f)(i) or in respect of which an amount was deducted by the taxpayer under section 110.6,

(A) for the year, if section 114 is not applicable, or

(B) if section 114 is applicable, for the period or periods in the year referred to in paragraph 114(a),

on the assumption that

Subcl. 126(1)(b)(ii)(A)(II) substituted by 1994, c. 21, subsec. 60(1), applicable to 1993 *et seq.* That subcl. formerly read:

(II) where section 114 is applicable to the taxpayer in respect of the year, the taxpayer's income for the period or periods in the year referred to in paragraph 114(a)

Selected Cases [subsec. 126(1)]: *Kempe v. R.*, [2001] 1 C.T.C. 2060 (TCC) (German church tax was imposed by government and calculated on income, thereby constituting foreign non-business income tax); *Dagenais v. R.*, [2000] 2 C.T.C. 2022 (TCC) (Foreign tax credit not available with respect to U.S. lottery winnings; no double taxation); *Interprovincial Pipe Line Co. v. MNR*, [1968] C.T.C. 156 (SCC) (To determine income from a source, taxpayer required to deduct interest paid to Canadian lenders from interest received from U.S. subsidiary).

Interpretation Bulletins: IT-167R6: Registered pension plans — employee's contributions; IT-270R3: Foreign tax credit; IT-273R2: Government assistance — general comments; IT-243R4: Dividend refund to private corporations; IT-379R: Employees profit sharing plans — allocations to beneficiaries; IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-395R2: Foreign tax credit — foreign-source capital gains and losses; IT-506: Foreign income taxes as a deduction from income; IT-520: Unused foreign tax credits — carryforward and carryback. See also at end of s. 126.

I.T. Technical News: 30 (tax avoidance); 31 (social security taxes and the foreign tax credit).

Forms: T2 SCH 5: Tax calculation supplementary — corporations; T2 SCH 21: Federal foreign income tax credits and federal logging tax credit; T2036: Provincial or territorial foreign tax credits; T2209: Federal foreign tax credits.

(1.1) Authorized foreign bank — In applying subsections 20(12) and (12.1) and this section in respect of an authorized foreign bank,

(a) the bank is deemed, for the purposes of subsections (1), (4) to (5), (6) and (7), to be resident in Canada in respect of its Canadian banking business;

(b) the references in subsection 20(12) and paragraph (1)(a) to "country other than Canada" shall be read as a reference to "country that is neither Canada nor a country in which the taxpayer is resident at any time in the taxation year";

(c) the reference in subparagraph (1)(b)(i) to "from sources in that country" shall be read as a reference to "in respect of its Canadian banking business from sources in that country";

(d) subparagraph (1)(b)(ii) shall be read as follows:

"(ii) the lesser of

(A) the taxpayer's taxable income earned in Canada for the year, and

(B) the total of the taxpayer's income for the year from its Canadian banking business and the amount determined in respect of the taxpayer under subparagraph 115(1)(a)(vii) for the year.";

(e) in computing the non-business income tax paid by the bank for a taxation year to the government of a country other than Canada, there shall be included only taxes that relate to amounts that are included in computing the bank's taxable income earned in Canada from its Canadian banking business; and

(f) the definition "tax-exempt income" in subsection (7) shall be read as follows:

" "tax-exempt income" means income of a taxpayer from a source in a particular country in respect of which

(a) the taxpayer is, because of a comprehensive agreement or convention for the elimination of double taxation on income, which has the force of law in the particular country and to which a country in which the taxpayer is resident is a party, entitled to an exemption from all income or profits taxes, imposed in the particular country, to which the agreement or convention applies, and

(b) no income or profits tax to which the agreement or convention does not apply is imposed in the particular country;".

History: Subsec. 126(1.1) added by 2001, c. 17, subsec. 117(2), applicable after June 27, 1999.

Proposed Addition — 126(1.2)

(1.2) Exception — Subsection (1) does not apply to non-business income tax paid by

(a) a taxpayer, in respect of a particular amount that is included in computing, in respect of the taxpayer, the amount determined under subparagraph 94.4(2)(a)(i) in respect of a participating interest of the taxpayer, if the taxpayer made a deduction under subsection 94.4(3) in respect of the particular amount; and

(b) a corporation in respect of income from a share of the capital stock of a foreign affiliate of the corporation.

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 31(2), will add subsec. 126(1.2), applicable to taxation years that begin after 2002.

Technical Notes: New subsection 126(1.2) describes circumstances in which subsection 126(1) does not apply. More specifically, it provides that subsection 126(1):

- does not apply to non-business income tax paid by a taxpayer in respect of a particular amount that is included in computing, in respect of the taxpayer, the amount determined under subparagraph 94.4(2)(a)(i) in respect of a participating interest of the taxpayer, if the taxpayer made a deduction under subsection 94.4(3) in respect of the particular amount — in this regard, see the commentary on the related rule found in new subsection 94.3(3), and
- does not apply to non-business income tax paid by a corporation in respect of income from a share of the capital stock of a foreign affiliate of the corporation.

(2) Idem [foreign tax credit — business income] — Where a taxpayer who was resident in Canada at any time in a taxation year carried on business in the year in a country other than Canada, the taxpayer may deduct from the tax for the year otherwise payable under this Part by the taxpayer an amount not exceeding the least of

(a) such part of the total of the business-income tax paid by the taxpayer for the year in respect of businesses carried on by the taxpayer in that country and the taxpayer's unused foreign tax credits in respect of that country for the 10 taxation years immediately preceding and the 3 taxation years immediately following the year as the taxpayer may claim,

(b) the amount determined under subsection (2.1) for the year in respect of businesses carried on by the taxpayer in that country, and

(c) the amount by which

(i) the tax for the year otherwise payable under this Part by the taxpayer

exceeds

(ii) the amount or the total of amounts, as the case may be, deducted under subsection (1) by the taxpayer from the tax for the year otherwise payable under this Part.

Possible Future Amendment — 126(2)

Letter from Dept. of Finance, February 21, 2003:

Dear Bill:

As you know, the CCRA has planned for some time to announce a significant change in its administrative practices relating to the foreign tax cred-

its available to Canadian banks and other lending institutions. . . . We very much appreciate your co-operation in this regard, and I am writing now to update you on the progress of our work.

The transactions that give rise to this issue are loans by a resident of Canada to a non-resident, and the resulting receipt by the resident of interest income. If the non-resident borrower's country of residence imposes a withholding tax (as Canada itself often would in the reverse case), it is appropriate in policy terms that Canada provides some foreign tax credit for the tax. Indeed, if Canada has a tax treaty with the country in question, the tax treaty generally designates the interest income to be from a source in that other country, and Canada is required under the treaty to provide a credit.

The difficulty arises where there is no such treaty obligation. If the Canadian-resident lender earns the interest as income from carrying on a business in Canada, it is not clear that the interest has a foreign source. If it does not have a foreign source, it will not give rise to a foreign tax credit. This would be the result despite the fact that, as I have noted, we impose withholding taxes generally with the expectation that they will be creditable in the recipient's country of residence.

. . . . .

Again, thank you for the patience you have shown in this matter. With your continued co-operation, we hope to be able to clear it off both our agendas within a reasonable time.

Yours sincerely,

[Senior Assistant Deputy Minister] Stephen R. Richardson

Related Provisions: 87(2)(z) — Amalgamation; 88(1)(e.7) — Winding-up; 94(3)(b) [proposed] — Application to trust deemed resident in Canada; 104(22.1) — FTC allocated to beneficiary of trust; 110.5 — Optional addition to income to create FTC; 125 — Small business deduction; 126(2.1) — Amount determined for para. (2)(b); 126(2.3) — Rules relating to unused FTC; 126(6) — Separate deduction in respect of each country; 129(3) — Refundable dividend tax on hand; 138(8) — No FTC for life insurance business; 152(6) — Reassessment; 152(6)(f.1) — Minister required to reassess past year to allow unused FTC; 161(6.1) — Delay in interest on FTC adjustment; 161(7)(a)(iv.1), 164(5)(e), 164(5.1) — Effect of loss carryback. See additional Related Provisions at end of s. 126.

History: Para. 126(2)(a) amended by 2005, c. 19, s. 27 to replace "seven taxation years" with "10 taxation years" and "three taxation years" with "3 taxation years", applicable in respect of unused foreign tax credits computed for taxation years that end after March 22, 2004.

Selected Cases [subsec. 126(2)]: *Collins v. R.*, [1985] 1 C.T.C. 342 (Ont CA) (Payment of tax in U.S. does not affect calculation of tax sought to be evaded when taxpayer charged with tax evasion); *R. v. Bank of Nova Scotia*, [1981] C.T.C. 162 (FCA) (Taxpayer liable for income tax in U.K. entitled to use weighted average exchange rate during fiscal period); *Icanda Ltd. v. MNR*, [1972] C.T.C. 163 (FCTD) (Taxpayer receiving U.S. tax refund not allowed foreign tax credit).

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations; IT-270R3: Foreign tax credit; IT-273R2: Government assistance — general comments; IT-520: Unused foreign tax credits — carryforward and carryback. See also at end of s. 126.

I.T. Technical News: 8 (treatment of United States unitary state taxes).

Forms: T2 SCH 5: Tax calculation supplementary — corporations; T2 SCH 21: Federal foreign income tax credits and federal logging tax credit; T2036: Provincial or territorial foreign tax credits; T2209: Federal foreign tax credits.

(2.1) Amount determined for purposes of para. (2)(b) — For the purposes of paragraph (2)(b), the amount determined under this subsection for a year in respect of businesses carried on by a taxpayer in a country other than Canada is the total of

(a) that proportion of the tax for the year otherwise payable under this Part by the taxpayer that

(i) the amount, if any, by which the total of the taxpayer's qualifying incomes exceeds the total of the taxpayer's qualifying losses

(A) for the year, if the taxpayer is resident in Canada throughout the year, and

(B) for the part of the year throughout which the taxpayer is resident in Canada, if the taxpayer is non-resident at any time in the year,

is of

(ii) the total of

(A) the amount, if any, by which

(I) if the taxpayer is resident in Canada throughout the year, the taxpayer's income for the year computed without reference to paragraph 20(1)(ww), and

(II) if the taxpayer is non-resident at any time in the year, the amount determined under paragraph 114(a) in respect of the taxpayer for the year

exceeds

(III) the total of all amounts each of which is an amount deducted under section 110.6 or paragraph 111(1)(b), or deductible under any of paragraphs 110(1)(d) to (d.3), (f), (g) and (j) and sections 112 and 113, in computing the taxpayer's taxable income for the year, and

(B) the amount, if any, added under section 110.5 in computing the taxpayer's taxable income for the year, and

(b) that proportion of the amount, if any, added under subsection 120(1) to the tax for the year otherwise payable under this Part by the taxpayer that

(i) the amount determined under subparagraph (a)(i) in respect of the country

is of

(ii) the amount, if any, by which,

(A) where section 114 does not apply to the taxpayer in respect of the year, the taxpayer's income for the year, and

(B) where section 114 applies to the taxpayer in respect of the year, the total of the taxpayer's income for the period or periods referred to in paragraph 114(a) and the amount that would be determined under paragraph 114(b) in respect of the taxpayer for the year if subsection 115(1) were read without reference to paragraphs 115(1)(d) to (f)

exceeds

(C) the taxpayer's income earned in the year in a province (within the meaning assigned by subsection 120(4)).

Related Provisions: 126(6)(c) — Incomes deemed from separate sources. See also Related Provisions at end of s. 126.

History: Subcl. 126(2.1)(a)(ii)(A)(III) amended by 2002, c. 9, subsec. 39(2), applicable to 1997 *et seq.* except that, for the 1997 taxation year, the subcl. shall be read as follows:

(III) the total of all amounts each of which is an amount deducted by the taxpayer under section 110.6 or paragraph 111(1)(b), or deductible by the taxpayer under paragraph 110(1)(d), (d.1), (d.2), (d.3), (f), (g) or (j) or section 112 or 113, for the year or in respect of the period or periods referred to in subclause (II), as the case may be, and

Notwithstanding subsecs. 152(4) to (5), any assessment of a taxpayer's tax, interest or penalty for any taxation year shall be made that is necessary to give effect to the amendment. Subcl. 126(2.1)(a)(ii)(A)(III) formerly read:

(III) the total of all amounts each of which is an amount deducted under section 110.6 or paragraph 111(1)(b), or deductible under any of paragraphs 110(1)(d) to (d.3), (f) and (j) and sections 112 and 113, in computing the taxpayer's taxable income for the year, and

Cl. 126(2.1)(a)(ii)(A) amended by 2001, c. 17, subsec 117(3), applicable to 1998 *et seq.* except that, in its application to the 1998 and 1999 taxation

years. subcl. (A)(I) shall be read without reference to the expression "computed without reference to paragraph 20(1)(ww)". The cl. formerly read:

(A) the amount, if any, by which

(I) where section 114 does not apply to the taxpayer in respect of the year, the taxpayer's income for the year computed without reference to paragraph 20(1)(ww), and

(II) where section 114 applies to the taxpayer in respect of the year, the total of the taxpayer's income for the period or periods referred to in paragraph 114(a) and the amount that would be determined under paragraph 114(b) in respect of the taxpayer for the year if subsection 115(1) were read without reference to paragraphs 115(1)(d) to (f)

exceeds

(III) the total of all amounts each of which is an amount deducted by the taxpayer under section 110.6 or paragraph 111(1)(b), or deductible by the taxpayer under paragraph 110(1)(d), (d.1), (d.2), (d.3), (f) or (j) or section 112 or 113, for the year or in respect of the period or periods referred to in subclause (II), as the case may be, and

Subcl. 126(2.1)(a)(ii)(A)(I) amended by 2000, c. 19, subsec. 35(2), applicable to 1998 *et seq.* except that, in its application to the 1998 and 1999 taxation years, the subcl. shall be read without reference to the expression "computed without reference to paragraph 20(1)(ww)". The subcl. formerly read:

(I) where section 114 is not applicable to the taxpayer in respect of the year, the total of the taxpayer's income for the year and the amount, if any, included under subsection 110.4(2) in computing the taxpayer's taxable income for the year, and

Subparas. 126(2.1)(a)(i) and (b)(i) amended by 1999, c. 22, subsecs. 47(2), (3), applicable to taxation years that begin after February 24, 1998. The subparas. formerly read:

(i) the total of the taxpayer's incomes

(A) for the year, if section 114 is not applicable, or

(B) if section 114 is applicable, for the period or periods in the year referred to in paragraph 114(a),

from businesses carried on by the taxpayer in that country, other than any portion of that income that was deductible under subparagraph 110(1)(f)(i) in computing the taxpayer's taxable income for the year

. . . . .

(i) the total of the taxpayer's incomes described in subparagraph (a)(i)

Subcl. 126(2.1)(a)(ii)(A)(II) and subpara. (2.1)(b)(ii) substituted by 1994, c. 21, subsecs. 60(2), (3), applicable to 1993 *et seq.* That subcl. and that subpara. formerly read:

(II) where section 114 is applicable to the taxpayer in respect of the year, the taxpayer's income for the period or periods in the year referred to in paragraph 114(a)

. . . . .

(ii) the taxpayer's income, other than the taxpayer's income earned in the year in a province (within the meaning assigned by subsection 120(4)),

(A) for the year, if section 114 is not applicable, or

(B) if section 114 is applicable, for the period or periods in the year referred to in paragraph 114(a).

That portion of subpara. 126(2.1)(a)(i) following cl. (B) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 103(1), applicable to taxation years ending after July 13, 1990. That portion formerly read:

from businesses carried on by the taxpayer in that country

Interpretation Bulletins: IT-270R3: Foreign tax credit. See also at end of s. 126.

Forms: T2036: Provincial or territorial foreign tax credits.

(2.2) Non-resident's foreign tax deduction — If at any time in a taxation year a taxpayer who is not at that time resident in Canada disposes of a property that was deemed by subsection 48(2), as it read in its application before 1993, or by paragraph 128.1(4)(e), as it read in its application before October 2, 1996, to be taxable Canadian property of the taxpayer, the taxpayer may deduct from the tax for the year otherwise payable under this Part by the taxpayer an amount equal to the lesser of

(a) the amount of any non-business-income tax paid by the taxpayer for the year to the government of a country other than Canada that can reasonably be regarded as having been paid by the taxpayer in respect of any gain or profit from the disposition of the property, and

(b) that proportion of the tax for the year otherwise payable under this Part by the taxpayer that

(i) the taxable capital gain from the disposition of that property

is of

(ii) if the taxpayer is non-resident throughout the year, the taxpayer's taxable income earned in Canada for the year determined without reference to paragraphs 115(1)(d) to (f), and

(iii) if the taxpayer is resident in Canada at any time in the year, the amount that would have been the taxpayer's taxable income earned in Canada for the year if the part of the year throughout which the taxpayer was non-resident were the whole taxation year.

Related Provisions: 114 — Residence in Canada for part of year; 126(2.21)–(2.23) — Credit for former resident;; 115(1) — Non-resident's taxable income; 126(7) — "tax for the year otherwise payable under this Part". See additional Related Provisions at end of s. 126.

History: The portion of subsec. 126(2.2) before para. (b) amended by 2001 c. 17, subsec. 117(4), applicable to 1996 *et seq.* That portion formerly read:

(2.2) Where at any time in a taxation year a taxpayer who is not at that time resident in Canada disposes of property that was deemed by subsection 48(2), as it read in its application before 1993, or paragraph 128.1(4)(e) to be taxable Canadian property of the taxpayer, the taxpayer may deduct from the tax for the year otherwise payable under this Part by the taxpayer an amount equal to

(a) the amount of any non-business-income tax paid by the taxpayer for the year to the government of a country other than Canada that may reasonably be regarded as having been paid by the taxpayer in respect of any gain or profit from the disposition of that property

not exceeding, however,

Subpara. 126(2.2)(b)(ii) amended, and subpara. (iii) added, by the said c. 17, subsec. 117(5), applicable to 1998 *et seq.* Subpara. 126(2.2)(b)(ii) formerly read:

(ii) the amount that would be the taxpayer's taxable income earned in Canada

(A) for the year, if section 114 is not applicable, or

(B) if section 114 is applicable, for the portion of the year referred to in paragraph 114(b)

if subsection 115(1) were read without reference to that portion thereof following paragraph 115(1)(c).

The opening words of subsec. 126(2.2) substituted by 1994, c. 21, subsec. 60(4), applicable after 1992. The opening words formerly read:

(2.2) Where at any time in a taxation year a taxpayer who was not at that time resident in Canada disposed of property that was deemed by subsection 48(2) to be taxable Canadian property of the taxpayer, the taxpayer may deduct from the tax for the year otherwise payable under this Part by the taxpayer an amount equal to

Interpretation Bulletins: IT-273R2: Government assistance — general comments; IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident. See also at end of s. 126.

(2.21) Former resident — deduction — If at any particular time in a particular taxation year a non-resident individual disposes of a property that the individual last acquired because of the application, at any time (in this subsection referred to as the "acquisition time") after October 1, 1996, of paragraph 128.1(4)(c), there may be de-

ducted from the individual's tax otherwise payable under this Part for the year (in this subsection referred to as the "emigration year") that includes the time immediately before the acquisition time an amount not exceeding the lesser of

(a) the total of all amounts each of which is the amount of any business-income tax or non-business-income tax paid by the individual for the particular year

(i) where the property is real property situated in a country other than Canada,

Proposed Amendment — 126(2.21)(a)(i) opening words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 237(1), will amend the opening words of subpara. 126(2.21)(a)(i) by substituting "real or immovable property" for "real property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(A) to the government of that country, or

(B) to the government of a country with which Canada has a tax treaty at the particular time and in which the individual is resident at the particular time, or

(ii) where the property is not real property, to the government of a country with which Canada has a tax treaty at the particular time and in which the individual is resident at the particular time,

Proposed Amendment — 126(2.21)(a)(ii)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 237(2), will amend subpara. 126(2.21)(a)(ii) by substituting "real or immovable property" for "real property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

that can reasonably be regarded as having been paid in respect of that portion of any gain or profit from the disposition of the property that accrued while the individual was resident in Canada and before the time the individual last ceased to be resident in Canada, and

(b) the amount, if any, by which

(i) the amount of tax under this Part that was, after taking into account the application of this subsection in respect of dispositions that occurred before the particular time, otherwise payable by the individual for the emigration year

exceeds

(ii) the amount of such tax that would have been payable if the particular property had not been deemed by subsection 128.1(4) to have been disposed of in the emigration year.

Related Provisions: 119 — Former resident — credit for tax paid; 126(2.22) — Parallel credit to trust after distribution to non-resident beneficiary; 126(2.23) — Reduction where foreign tax credit available under foreign system; 128.3 — Shares acquired on rollover deemed to be same shares for 126(2.21); 152(6)(f.1) — Minister required to reassess past year to allow credit; 161(7)(a)(iv.1), 164(5)(e), 164(5.1) — Effect of carryback of loss; Canada-U.S. Tax Treaty:Art. XIII:1 — Gain on real property taxable by country in which property is situated.

History: Subsec. 126(2.21) added by 2001, c. 17, subsec. 117(6), applicable to 1996 *et seq.*

Interpretation Bulletins: IT-395R2: Foreign tax credit — foreign-source capital gains and losses.

(2.22) Former resident — trust beneficiary — If at any particular time in a particular taxation year a non-resident individual disposes of a property that the individual last acquired at any time (in this subsection referred to as the "acquisition time") on a distribution after October 1, 1996 to which paragraphs 107(2)(a) to (c) do not apply only because of subsection 107(5), the trust may deduct from its tax otherwise payable under this Part for the year (in this subsection referred to as the "distribution year") that includes the acquisition time an amount not exceeding the lesser of

(a) the total of all amounts each of which is the amount of any business-income tax or non-business-income tax paid by the individual for the particular year

(i) where the property is real property situated in a country other than Canada,

Proposed Amendment — 126(2.22)(a)(i) opening words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 237(3), will amend the opening words of subpara. 126(2.22)(a)(i) by substituting "real or immovable property" for "real property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(A) to the government of that country, or

(B) to the government of a country with which Canada has a tax treaty at the particular time and in which the individual is resident at the particular time, or

(ii) where the property is not real property, to the government of a country with which Canada has a tax treaty at the particular time and in which the individual is resident at the particular time,

Proposed Amendment — 126(2.22)(a)(ii)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 237(4), will amend subpara. 126(2.22)(a)(ii) by substituting "real or immovable property" for "real property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

that can reasonably be regarded as having been paid in respect of that portion of any gain or profit from the disposition of the property that accrued before the distribution and after the latest of the times, before the distribution, at which

(iii) the trust became resident in Canada,

(iv) the individual became a beneficiary under the trust, or

(v) the trust acquired the property, and

(b) the amount, if any, by which

(i) the amount of tax under this Part that was, after taking into account the application of this subsection in respect of dispositions that occurred before the particular time, otherwise payable by the trust for the distribution year

exceeds

(ii) the amount of such tax that would have been payable by the trust for the distribution year if the particular property had not been distributed to the individual.

Related Provisions: 104(22.1) — FTC to beneficiary of trust; 126(2.23) — Reduction where FTC available under foreign system; 128.3 — Shares acquired on rollover deemed to be same shares for 126(2.22); 152(6)(f.1) — Minister required to reassess past year to allow credit; 161(7)(a)(iv.1), 164(5)(e), 164(5.1) — Effect of carryback of loss; 220(4.6)–(4.63) — Security for tax on distribution of taxable Canadian property by trust to non-resident beneficiary; Canada-U.S. Tax Treaty:Art.

XIII:1 — Gain on real property taxable by country in which property is situated.

History: Subsec. 126(2.22) added by 2001, c. 17, subsec. 117(6), applicable to 1996 *et seq.*

(2.23) Where foreign credit available — For the purposes of subsections (2.21) and (2.22), in computing, in respect of the disposition of a property by an individual in a taxation year, the total amount of taxes paid by the individual for the year to one or more governments of countries other than Canada, there shall be deducted any tax credit (or other reduction in the amount of a tax) to which the individual was entitled for the year, under the law of any of those countries or under a tax treaty between Canada and any of those countries, because of taxes paid or payable by the individual under this Act in respect of the disposition or a previous disposition of the property.

Related Provisions: 128.3 — Shares acquired on rollover deemed to be same shares for 126(2.23).

History: Subsec. 126(2.23) added by 2001, c. 17, subsec. 117(6), applicable to 1996 *et seq.*

(2.3) Rules relating to unused foreign tax credit — For the purposes of this section,

(a) the amount claimed under paragraph (2)(a) by a taxpayer for a taxation year in respect of a country shall be deemed to be in respect of the business-income tax paid by the taxpayer for the year in respect of businesses carried on by the taxpayer in that country to the extent of the amount of that tax, and the remainder, if any, of the amount so claimed shall be deemed to be in respect of the taxpayer's unused foreign tax credits in respect of that country that may be claimed for the taxation year;

(b) no amount may be claimed under paragraph (2)(a) in computing a taxpayer's tax payable under this Part for a particular taxation year in respect of the taxpayer's unused foreign tax credit in respect of a country for a taxation year until the taxpayer's unused foreign tax credits in respect of that country for taxation years preceding the taxation year that may be claimed for the particular taxation year have been claimed; and

(c) an amount in respect of a taxpayer's unused foreign tax credit in respect of a country for a taxation year may be claimed under paragraph (2)(a) in computing the taxpayer's tax payable under this Part for a particular taxation year only to the extent that it exceeds the aggregate of all amounts each of which is the amount that may reasonably be considered to have been claimed in respect of that unused foreign tax credit in computing the taxpayer's tax payable under this Part for a taxation year preceding the particular taxation year.

Related Provisions: 87(2)(z) — Amalgamations; 88(1)(e.7) — Winding-up.

History: Paras. 126(2.3)(b) and (c) amended by 2001, c. 17, subsec. 117(7), applicable to 2001 *et seq.* Paras. (b) and (c) formerly read:

(b) no amount may be claimed under paragraph (2)(a) in computing a taxpayer's tax payable under this Part or Part I.1 for a particular taxation year in respect of the taxpayer's unused foreign tax credit in respect of a country for a taxation year until the taxpayer's unused foreign tax credits in respect of that country for taxation years preceding the taxation year that may be claimed for the particular taxation year have been claimed; and

(c) an amount in respect of a taxpayer's unused foreign tax credit in respect of a country for a taxation year may be claimed under paragraph (2)(a) in computing the taxpayer's tax payable under this Part or Part I.1 for a particular taxation year only to the extent that it exceeds the total of all amounts each of which is the amount that may reasonably be considered to have been claimed in respect of that unused foreign tax credit in computing the taxpayer's tax payable under this Part or Part I.1 for a taxation year preceding the particular taxation year.

Interpretation Bulletins: IT-520: Unused foreign tax credits — carryforward and carryback. See also at end of s. 126.

(3) Employees of international organizations — Where an individual is resident in Canada at any time in a taxation year, there may be deducted from the individual's tax for the year otherwise payable under this Part an amount equal to that proportion of the tax for the year otherwise payable under this Part by the individual that

(a) the individual's income

(i) for the year, if the individual is resident in Canada throughout the year, and

(ii) for the part of the year throughout which the individual was resident in Canada, if the individual is non-resident at any time in the year,

from employment with an international organization (other than a prescribed international organization), as defined for the purposes of section 2 of the *Foreign Missions and International Organizations Act*

is of

(b) the amount, if any, by which

(i) if the taxpayer is resident in Canada throughout the year, the taxpayer's income for the year computed without reference to paragraph 20(1)(ww), and

(ii) if the taxpayer is non-resident at any time in the year, the amount determined under paragraph 114(a) in respect of the taxpayer for the year

exceeds

(iii) the total of all amounts each of which is an amount deducted under section 110.6 or paragraph 111(1)(b), or deductible under any of paragraphs 110(1)(d) to (d.3), (f), (g) and (j), in computing the taxpayer's taxable income for the year,

except that the amount deductible under this subsection in computing the individual's tax payable under this Part for the year may not exceed that proportion of the total of all amounts each of which is an amount paid by the individual to the organization as a levy (the proceeds of which are used to defray expenses of the organization), computed by reference to the remuneration received by the individual in the year from the organization in a manner similar to the manner in which income tax is computed, that

(c) the individual's income for the year from employment with the organization

is of

(d) the amount that would be the individual's income for the year from employment with the organization if this Act were read without reference to paragraph 81(1)(a).

Related Provisions: 110(1)(f)(iii), (iv) — Deductions for income from certain international organizations; 126(7)"tax for the year otherwise payable under this Part" — Tax for year otherwise payable defined. See additional Related Provisions at end of s. 126.

History: Subpara. 126(3)(b)(iii) amended by 2002, c. 9, subsec. 39(3), applicable to 1997 *et seq.* except that, for the 1997 taxation year, the subpara. shall be read as follows:

"(iii) the total of all amounts each of which is an amount deducted under section 110.6 or paragraph 111(1)(b), or deductible under paragraph 110(1)(d), (d.1), (d.2), (d.3), (f), (g) or (j), in computing the individual's taxable income for the year or in respect of the period or periods referred to in subparagraph (ii), as the case may be,"

Notwithstanding subsecs. 152(4) to (5), any assessment of a taxpayer's tax, interest or penalty for any taxation year shall be made that is necessary to give effect to the amendment. Subpara. 126(3)(b)(iii) formerly read:

> (iii) the total of all amounts each of which is an amount deducted under section 110.6 or paragraph 111(1)(b), or deductible under paragraph 110(1)(d) to (d.3), (f) or (j), in computing the taxpayer's taxable income for the year, and

Subparas. 126(3)(a)(i) and (ii) amended by 2001, c. 17, subsec. 117(8), applicable to 1998 *et seq.* Those subparas. formerly read:

> (i) for the year, where section 114 is not applicable to the individual in respect of the year, and
>
> (ii) for the period or periods in the year referred to in paragraph 114(a), where section 114 is applicable to the individual in respect of the year,

Para. 126(3)(b) amended by the said c. 17, subsec. 117(9), applicable to 1998 *et seq.* except that, in its application to the 1998 and 1999 taxation years, subpara. (b)(i) shall be read without reference to the expression "computed without reference to paragraph 20(1)(ww)". Para. 126(3)(b) formerly read:

> (b) the amount, if any, by which
>
> (i) where section 114 does not apply to the individual in respect of the year, the individual's income for the year computed without reference to paragraph 20(1)(ww), and
>
> (ii) where section 114 applies to the individual in respect of the year, the total of the individual's income for the period or periods in the year referred to in paragraph 114(a) and the amount that would be determined under paragraph 114(b) in respect of the individual for the year if subsection 115(1) were read without reference to paragraphs 115(1)(d) to (f)
>
> exceeds
>
> (iii) the total of all amounts each of which is an amount deducted under section 110.6 or paragraph 111(1)(b), or deductible under paragraph 110(1)(d), (d.1), (d.2), (d.3), (f) or (j), in computing the individual's taxable income for the year or in respect of the period or periods referred to in subparagraph (ii), as the case may be,

Subpara. 126(3)(b)(i) amended by 2000, c. 19, subsec. 35(3), applicable to 1998 *et seq.* except that, in its application to the 1998 and 1999 taxation years, the subpara. shall be read without reference to the expression "computed without reference to paragraph 20(1)(ww)". The subpara. formerly read:

> (i) where section 114 does not apply to the individual in respect of the year, the total of the individual's income for the year and the amount, if any, included under subsection 110.4(2) in computing the individual's taxable income for the year, and

Subparas. 126(3)(b)(i) and (ii) substituted by 1994, c. 21, subsec. 60(5), applicable to 1993 *et seq.* Those subparas. formerly read:

> (i) the total of the individual's income for the year and the amount, if any, included pursuant to subsection 110.4(2) in computing the individual's taxable income for the year, where section 114 is not applicable to the individual in respect of the year, or
>
> (ii) the individual's income for the period or periods in the year referred to in paragraph 114(a), where section 114 is applicable to the individual in respect of the year,

That portion of para. 126(3)(a) following subpara. (ii) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 67(1), applicable to 1991 *et seq.* That portion formerly read:

> from employment with an organization, as defined in section 3 of the *Privileges and Immunities (International Organizations) Act*

All that portion of subsec. 126(3) between subpara. (b)(ii) and para. (c) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 67(2), applicable to 1991 *et seq.* That portion formerly read:

> exceeds
>
> (iii) the total of all amounts each of which is an amount deducted by the individual under section 110.6 or paragraph 111(1)(b), or deductible by the individual under paragraph 110(1)(d) or (f), for the year or in respect of the period or periods referred to in subparagraph (ii), as the case may be,
>
> except that where the organization referred to in paragraph (a) is neither the United Nations nor a specialized agency that is brought into relationship with the United Nations in accordance with Article 63 of the Charter of the United Nations, the amount deductible under this subsection by the individual may not exceed that proportion of the total of all amounts each of which is an amount paid by the individual to the organization as a levy (the proceeds of which are used to defray expenses of the organization) computed by reference to the remuneration received by the individual in the year from the organization in a manner similar to the manner in which income tax is computed that

International organization: S. 2 of the *Foreign Missions and International Organizations Act* (1991, c. 41) defines "international organization" to mean "any intergovernmental organization of which two or more states are members".

Interpretation Bulletins: See list at end of s. 126.

(4) Portion of foreign tax not included — For the purposes of this Act, an income or profits tax paid by a person resident in Canada to the government of a country other than Canada does not include a tax, or that portion of a tax, imposed by that government that would not be imposed if the person were not entitled under section 113 or this section to a deduction in respect of the tax or that portion of the tax.

Related Provisions: 126(6)(a) — Interpretation of "government of a country..." See additional Related Provisions at end of s. 126.

History: Subsec. 126(4) amended by 2001, c. 17, subsec. 117(10), applicable after June 27, 1999. Subsec. 126(4) formerly read:

> (4) For the purposes of this Act, an income or profits tax paid by a person resident in Canada to the government of a country other than Canada or to the government of a state, province or other political subdivision of such a country does not include a tax, or that portion of a tax, imposed by that country or by that state, province or other political subdivision, as the case may be, that would not be imposed if the person were not entitled under this section or under section 113 to a deduction in respect thereof.

Interpretation Bulletins: See list at end of s. 126.

(4.1) No economic profit — If a taxpayer acquires a property, other than a capital property, at any time after February 23, 1998 and it is reasonable to expect at that time that the taxpayer will not realize an economic profit in respect of the property for the period that begins at that time and ends when the taxpayer next disposes of the property, the total amount of all income or profits taxes (referred to as the "foreign tax" for the purpose of subsection 20(12.1)) in respect of the property for the period, and in respect of related transactions, paid by the taxpayer for any year to the government of any country other than Canada, is not included in computing the taxpayer's business-income tax or non-business-income tax for any taxation year.

Related Provisions: 20(12.1) — Deduction from income for amount disallowed as credit by 126(4.1); 126(4.4) — Certain dispositions ignored for 126(4.1); 126(6)(a) — Interpretation of "government of a country...".

History: Subsec. 126(4.1) amended by 2001, c. 17, subsec. 117(10), to substitute "computing taxpayer's" for "computing the taxpayer's", applicable after June 27, 1999.

Subsec. 126(4.1) added by 1999, c. 22, subsec. 47(4), applicable to 1998 *et seq.*

(4.2) Short-term securities acquisitions — If at any particular time a taxpayer disposes of a property that is a share or debt obligation and the period that began at the time the taxpayer last acquired the property and ended at the particular time is one year or less, the amount included in business-income tax or non-business-income tax paid by the taxpayer for a particular taxation year on account of all taxes (referred to in this subsection and subsections (4.3) and 161(6.1) as the "foreign tax") that are

> (a) paid by the taxpayer in respect of dividends or interest in respect of the period that are included in com-

puting the taxpayer's income from the property for any taxation year,

(b) otherwise included in business-income tax or non-business-income tax for any taxation year, and

(c) similar to the tax levied under Part XIII

shall, subject to subsection (4.3), not exceed the amount determined by the formula

$$A \times (B - C) \times D / E$$

where

A is 40%, if the foreign tax would otherwise be included in business-income tax, and 30%, if the foreign tax would otherwise be included in non-business-income tax,

B is the total of the taxpayer's proceeds from the disposition of the property at the particular time and the amount of all dividends or interest from the property in respect of the period included in computing the taxpayer's income for any taxation year,

C is the total of the cost at which the taxpayer last acquired the property and any outlays or expenses made or incurred by the taxpayer for the purpose of disposing of the property at the particular time,

D is the amount of foreign tax that would otherwise be included in computing the taxpayer's business-income tax or non-business-income tax for the particular year, and

E is the total amount of foreign tax that would otherwise be included in computing the taxpayer's business-income tax or non-business-income tax for all taxation years.

Related Provisions: 112(2.3) — No domestic deduction on dividend rental arrangement; 126(4.3) — Exceptions; 126(4.4) — Certain dispositions ignored for 126(4.2); 161(6.1) — Delay in interest on foreign tax credit adjustment; 257 — Formula cannot calculate to less than zero.

History: Subsec. 126(4.2) added by 1999, c. 22, subsec. 47(4), applicable to 1998 *et seq.*

(4.3) Exceptions — Subsection (4.2) does not apply to a property of a taxpayer

(a) that is a capital property;

(b) that is a debt obligation issued to the taxpayer that has a term of one year or less and that is held by no one other than the taxpayer at any time;

(c) that was last acquired by the taxpayer before February 24, 1998; or

(d) in respect of which any foreign tax is, because of subsection (4.1), not included in computing the taxpayer's business-income tax or non-business-income tax.

History: Subsec. 126(4.3) added by 1999, c. 22, subsec. 47(4), applicable to 1998 *et seq.*

(4.4) Dispositions ignored — For the purposes of subsections (4.1) and (4.2) and the definition "economic profit" in subsection (7),

(a) a disposition or acquisition of property deemed to be made by subsection 10(12) or (13), 14(14) or (15) or 45(1), section 70, 128.1 or 132.2, subsections 138(11.3) or 142.5(2), paragraph 142.6(1)(b), or subsections 142.6(1.1) or (1.2) or 149(10) is not a disposition or acquisition, as the case may be; and

Proposed Amendment — 126(4.4)(a)

(a) a disposition or acquisition of property deemed to be made by subsection 10(12) or (13), 14(14) or (15) or 45(1), section 70, 128.1 or 132.2, subsections 138(11.3) or 142.5(2), paragraph 142.6(1)(b), or subsections 142.6(1.1) or (1.2) or 149(10) is not a disposition or acquisition, as the case may be; and

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 120(4), will amend para. 126(4.4)(a) to read as above, applicable to dispositions and acquisitions that occur after 1998, except that in applying the para. to dispositions and acquisitions that occur before June 28, 1999, it is to be read without reference to "10(12) or (13), 14(14) or (15), or".

Technical Notes: Subsection 126(4.4) directs that certain dispositions and acquisitions of property be ignored for the purposes of the foreign tax credit limitations in subsections 126(4.1) and (4.2) and the definition of "economic profit" in subsection 126(7). As a consequence of the restructuring of section 132.2, the reference in paragraph 126(4.4)(a) to paragraph 132.2(1)(f) is replaced by a reference to section 132.2.

(b) a disposition

(i) to which section 51.1 applies, of a convertible obligation in exchange for a new obligation,

(ii) to which subsection 86(1) applies, of old shares in exchange for new shares, or

(iii) to which subsections 87(4) and (8) apply, of old shares in exchange for new shares,

is not a disposition, and the convertible obligation and the new obligation, or the old shares and the new shares, as the case may be, are deemed to be the same property.

History: Para. 126(4.4)(a) amended by 2001, c. 17, subsec. 117(11), applicable after June 27, 1999. Para. (a) formerly read:

(a) a disposition or acquisition of property deemed to be made by subsection 45(1), section 70 or 128.1, paragraph 132.2(1)(f), subsection 138(11.3) or 142.5(2), paragraph 142.6(1)(b) or subsection 149(10) is not a disposition or acquisition, as the case may be; and

Subsec. 126(4.4) added by 1999, c. 22, subsec. 47(4), applicable to 1998 *et seq.*

(5) Foreign oil and gas levies — A taxpayer who is resident in Canada throughout a taxation year and carries on a foreign oil and gas business in a taxing country in the year is deemed for the purposes of this section to have paid in the year as an income or profits tax to the government of the taxing country an amount equal to the lesser of

(a) the amount, if any, by which

(i) 40% of the taxpayer's income from the business in the taxing country for the year

exceeds

(ii) the total of all amounts that would, but for this subsection, be income or profits taxes paid in the year in respect of the business to the government of the taxing country, and

(b) the taxpayer's production tax amount for the business in the taxing country for the year.

Related Provisions: See Related Provisions at end of s. 126.

History: Subsec. 126(5) amended by 2001, c. 17, subsec. 117(12), applicable to taxation years of a taxpayer that begin after the earlier of

(a) December 31, 1999; and

(b) where, for the purposes of this subsec., a date is designated in writing by the taxpayer and the designation is filed with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes June 14, 2001, the later of

(i) the date so designated, and

(ii) December 31, 1994.

Subsec. 126(5) formerly read:

(5) Foreign tax — A tax paid to the government of a country other than Canada or to the government of a state, province or other political subdivision of such a country may, subject to prescribed condi-

tions, be deemed, for the purposes of this Act, to be an income or profits tax paid to the government of that country.

Regulations: 5910 (production sharing rules apply to foreign affiliate system).

Interpretation Bulletins: See list at end of s. 126.

(5.1) Deductions for specified capital gains — Where in a taxation year an individual has claimed a deduction under section 110.6 in computing the individual's taxable income for the year, for the purposes of this section the individual shall be deemed to have claimed the deduction under section 110.6 in respect of such taxable capital gains or portion thereof as the individual may specify in the individual's return of income required to be filed pursuant to section 150 for the year or, where the individual has failed to so specify, in respect of such taxable capital gains as the Minister may specify in respect of the taxpayer for the year.

Related Provisions: See Related Provisions at end of s. 126.

Interpretation Bulletins: See list at end of s. 126.

(6) Rules of construction — For the purposes of this section,

(a) the government of a country other than Canada includes the government of a state, province or other political subdivision of that country;

(b) where a taxpayer's income for a taxation year is in whole or in part from sources in more than one country other than Canada, subsections (1) and (2) shall be read as providing for separate deductions in respect of each of the countries other than Canada; and

(c) if any income from a source in a particular country would be tax-exempt income but for the fact that a portion of the income is subject to an income or profits tax imposed by the government of a country other than Canada, the portion is deemed to be income from a separate source in the particular country.

Proposed Addition — 126(6)(d)

(d) if, in computing a taxpayer's income for a taxation year from a business carried on by the taxpayer in Canada, an amount is included in respect of interest paid or payable to the taxpayer by a person resident in a country other than Canada, and the taxpayer has paid to the government of that other country a non-business income tax for the year with respect to the amount, the amount is, in applying the definition "qualifying incomes" for the purpose of subsection (1), deemed to be income from a source in that other country.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 120(5), will add para. 126(6)(d), applicable to amounts received after February 27, 2004.

Technical Notes: Section 126 permits a taxpayer to claim a foreign tax credit. Subsection 126(1) sets out the rules for claiming the credit in respect of foreign non-business-income tax — that is, the foreign taxes imposed on investment income and other categories of foreign source non-business income. A credit in respect of foreign taxes on business income is provided under subsection 126(2).

Subsection 126(1) has been interpreted [by the CRA in IT-270R2 para. 24 — ed.] to allow a non-business foreign tax credit for non-business foreign tax paid on interest income earned abroad by a Canadian business that does not carry on business in the foreign jurisdiction, and therefore is not eligible for a business foreign tax credit. In order to ensure that the credit continues to be available in these situations, subsection 126(6), which contains interpretation rules that apply to the section, is amended to add new paragraph 126(6)(d). New paragraph 126(6)(d) deems foreign interest income earned from a business carried on in Canada, and for which the business has paid a non-business foreign tax to a country other than Canada, to be from a source in that other country. Therefore, if a taxpayer includes in its Canadian business income for the year foreign interest income, and has paid foreign tax with respect to this amount, the taxpayer will eligible to claim a non-business foreign tax credit subject to the limits set out in section 126.

Related Provisions: See Related Provisions at end of s. 126.

History: Subsec. 126(6) amended by 2001, c. 17, subsec. 117(13), applicable after June 27, 1999. Subsec. 126(5) formerly read:

(6) Construction of subsecs. (1) and (2) — For greater certainty, where a taxpayer's income for a taxation year is in whole or in part from sources in more than one country other than Canada, subsections (1) and (2) shall be read as providing for separate deductions in respect of each of the countries other than Canada.

Interpretation Bulletins: IT-270R3: Foreign tax credit. Also see list at end of s. 126.

(7) Definitions — In this section,

"business-income tax" paid by a taxpayer for a taxation year in respect of businesses carried on by the taxpayer in a country other than Canada (in this definition referred to as the "business country") means, subject to subsections (4.1) and (4.2), the portion of any income or profits tax paid by the taxpayer for the year to the government of a country other than Canada that can reasonably be regarded as tax in respect of the income of the taxpayer from a business carried on by the taxpayer in the business country, but does not include a tax, or the portion of a tax, that can reasonably be regarded as relating to an amount that

(a) any other person or partnership has received or is entitled to receive from that government, or

(b) was deductible under subparagraph 110(1)(f)(i) in computing the taxpayer's taxable income for the year;

Related Provisions: 104(22.3) — Deduction in computing non-business-income tax of trust; 126(4) — Portion of foreign tax not included; 126(5) — Foreign tax; 126(6)(a) — Interpretation of "government of a country..." See additional Related Provisions at end of s. 126.

History: The opening words of the definition "business-income tax" in subsec. 126(7) amended by 2001, c. 17, subsec. 117(16), to substitute "a country" for "any country" and "a business" for "any business", applicable after June 27, 1999.

The portion of the definition "business-income tax" in subsec. 126(7) before para. (a) amended by 1999, c. 22, subsec. 47(5), applicable to 1998 *et seq.* The portion formerly read:

"business-income tax" paid by a taxpayer for a taxation year in respect of businesses carried on by the taxpayer in a country other than Canada (in this definition referred to as the "business country") means such portion of any income or profits tax paid by the taxpayer for the year to the government of any country other than Canada or to the government of a state, province or other political subdivision of any such country as can reasonably be regarded as tax in respect of the income of the taxpayer from any business carried on by the taxpayer in the business country, but does not include a tax, or the portion of a tax, that can reasonably be regarded as relating to an amount that

The definition "business-income tax" in subsec. 126(7) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 103(2), applicable to taxation years ending after July 13, 1990. That definition formerly read:

"business-income tax" paid by a taxpayer for a taxation year in respect of businesses carried on by the taxpayer in a country other than Canada (in this definition referred to as the "business country") means such portion of any income or profits tax paid by the taxpayer for the year to the government of a country other than Canada or to the government of a state, province or other political subdivision of such a country as may reasonably be regarded as tax in respect of the income of the taxpayer from any business carried on by the taxpayer in the business country, but does not include a tax, or the portion of a tax, that may reasonably be regarded as relating to an amount that any other person or partnership has received or is entitled to receive from that government;

Interpretation Bulletins: IT-201R2: Foreign tax credit — trust and beneficiaries; IT-270R3: Foreign tax credit; IT-506: Foreign income taxes

as a deduction from income; IT-520: Unused foreign tax credits — carryforward and carryback.

I.T. Technical News: 8 (treatment of United States unitary state taxes).

"commercial obligation" in respect of a taxpayer's foreign oil and gas business in a country means an obligation of the taxpayer to a particular person, undertaken in the course of carrying on the business or in contemplation of the business, if the law of the country would have allowed the taxpayer to undertake an obligation, on substantially the same terms, to a person other than the particular person;

History: The definition "commercial obligation" added to subsec. 126(7) by 2001, c. 17, subsec. 117(19), applicable to taxation years of a taxpayer that begin after the earlier of

(a) December 31, 1999; and

(b) where, for the purposes of this subsec., a date is designated in writing by the taxpayer and the designation is filed with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes June 14, 2001, the later of

(i) the date so designated, and

(ii) December 31, 1994.

"economic profit" of a taxpayer in respect of a property for a period means the part of the taxpayer's profit, from the business in which the property is used, that is attributable to the property in respect of the period or to related transactions, determined as if the only amounts deducted in computing that part of the profit were

(a) interest and financing expenses incurred by the taxpayer and attributable to the acquisition or holding of the property in respect of the period or to a related transaction,

(b) income or profits taxes payable by the taxpayer for any year to the government of a country other than Canada, in respect of the property for the period or in respect of a related transaction, or

(c) other outlays and expenses that are directly attributable to the acquisition, holding or disposition of the property in respect of the period or to a related transaction;

Related Provisions: 126(4.4) — Certain dispositions ignored for purposes of this definition; 126(6)(a) — Interpretation of "government of a country...".

History: Para. (b) of the definition "economic profit" in subsec. 126(7) amended by 2001, c. 17, subsec. 117(17), applicable after June 27, 1999. Para. (b) formerly read:

(b) income or profits taxes payable by the taxpayer for any year to the government of any country other than Canada or to the government of any state, province or other political subdivision of such a country, in respect of the property for the period or in respect of a related transaction, or

The definition "economic profit" added to subsec. 126(7) by 1999, c. 22, subsec. 47(7), applicable to 1998 *et seq.*

"foreign oil and gas business" of a taxpayer means a business, carried on by the taxpayer in a taxing country, the principal activity of which is the extraction from natural accumulations, or from oil or gas wells, of petroleum, natural gas or related hydrocarbons;

History: The definition "foreign oil and gas business" added to subsec. 126(7) by 2001, c. 17, subsec. 117(19), applicable to taxation years of a taxpayer that begin after the earlier of

(a) December 31, 1999; and

(b) where, for the purposes of this subsec., a date is designated in writing by the taxpayer and the designation is filed with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes June 14, 2001, the later of

(i) the date so designated, and

(ii) December 31, 1994.

"foreign-tax carryover [para. 126(7)(b)]" — [Repealed under former Act]

"non-business-income tax" paid by a taxpayer for a taxation year to the government of a country other than Canada means, subject to subsections (4.1) and (4.2), the portion of any income or profits tax paid by the taxpayer for the year to the government of that country that

(a) was not included in computing the taxpayer's business-income tax for the year in respect of any business carried on by the taxpayer in any country other than Canada,

(b) was not deductible by virtue of subsection 20(11) in computing the taxpayer's income for the year, and

(c) was not deducted by virtue of subsection 20(12) in computing the taxpayer's income for the year,

but does not include a tax, or the portion of a tax,

(c.1) that is in respect of an amount deducted because of subsection 104(22.3) in computing the taxpayer's business-income tax,

(d) that would not have been payable had the taxpayer not been a citizen of that country and that cannot reasonably be regarded as attributable to income from a source outside Canada,

(e) that may reasonably be regarded as relating to an amount that any other person or partnership has received or is entitled to receive from that government,

(f) that, where the taxpayer deducted an amount under subsection 122.3(1) from the taxpayer's tax otherwise payable under this Part for the year, may reasonably be regarded as attributable to the taxpayer's income from employment to the extent of the lesser of the amounts determined in respect thereof under paragraphs 122.3(1)(c) and (d) for the year,

(g) that can reasonably be attributed to a taxable capital gain or a portion thereof in respect of which the taxpayer or a spouse or common-law partner of the taxpayer has claimed a deduction under section 110.6,

(h) that may reasonably be regarded as attributable to any amount received or receivable by the taxpayer in respect of a loan for the period in the year during which it was an eligible loan (within the meaning assigned by subsection 33.1(1)), or

(i) that can reasonably be regarded as relating to an amount that was deductible under subparagraph 110(1)(f)(i) in computing the taxpayer's taxable income for the year;

Related Provisions: 4(1) — Income or loss from a source; 94(3)(b) [proposed] — Application to trust deemed resident in Canada; 104(22.3) — Deduction in computing non-business-income tax of trust; 126(6)(a) — Interpretation of "government of a country..."; Canada-U.S. Tax Treaty:Art. XXIX-B:6 — U.S. estate tax allowed for foreign tax credit purposes. See additional Related Provisions and Definitions at end of s. 126.

History: The opening words of the definition "non-business-income tax" in subsec. 126(7) amended by 2001, c. 17, subsec. 117(18), applicable after June 27, 1999. That portion formerly read:

"non-business-income tax" paid by a taxpayer for a taxation year to the government of a country other than Canada means, subject to subsections (4.1) and (4.2), the portion of any income or profits tax paid by the taxpayer for the year to the government of that country, or to the government of a state, province or other political subdivision of that country, that

Para. (g) of the definition "non-business-income tax" in subsec. 126(7) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000.

See also the transitional rules reproduced in the History to 248(1)"common-law partner".

The opening words of the definition "non-business-income tax" in subsec. 126(7) amended by 1999, c. 22, subsec. 47(6), applicable to 1998 *et seq.* The opening words formerly read:

> "non-business-income tax" paid by a taxpayer for a taxation year to the government of a country other than Canada means such portion of any income or profits tax paid by the taxpayer for the year to the government of that country, or to the government of a state, province or other political subdivision of that country, as

Para. (g) of the definition "non-business-income tax" in subsec. 126(7) amended by 1995, c. 3, subsec. 36(2), applicable to 1994 *et seq.* Para. (g) formerly read:

> (g) that may reasonably be attributed to a taxable capital gain or a portion thereof in respect of which the taxpayer has claimed a deduction for the year under section 110.6;

Para. (c.1) of the definition "non-business-income tax" in subsec. 126(7) added by 1994, c. 21, subsec. 60(6), applicable to taxation years ending after November 12, 1981.

Para. (i) of "non-business-income tax" added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 103(3), applicable to taxation years ending after July 13, 1990.

Selected Cases [subsec. 126(7)"non-business-income tax"]: *R. v. Hoffman*, [1985] 2 C.T.C. 347 (FCTD) (Amounts withheld from income of U.S. citizen working in Canada not deductible as foreign non-business income tax).

Interpretation Bulletins: IT-201R2: Foreign tax credit — trust and beneficiaries; IT-270R3: Foreign tax credit; IT-395R2: Foreign tax credit — foreign-source capital gains and losses; IT-506: Foreign income taxes as a deduction from income. See also at end of s. 126.

I.T. Technical News: 30 (tax avoidance).

"production tax amount" of a taxpayer for a foreign oil and gas business carried on by the taxpayer in a taxing country for a taxation year means the total of all amounts each of which

(a) became receivable in the year by the government of the country because of an obligation (other than a commercial obligation) of the taxpayer, in respect of the business, to the government or an agent or instrumentality of the government,

(b) is computed by reference to the amount by which

(i) the amount or value of petroleum, natural gas or related hydrocarbons produced or extracted by the taxpayer in the course of carrying on the business in the year

exceeds

(ii) an allowance or other deduction that

(A) is deductible, under the agreement or law that creates the obligation described in paragraph (a), in computing the amount receivable by the government of the country, and

(B) is intended to take into account the taxpayer's operating and capital costs of that production or extraction, and can reasonably be considered to have that effect,

(c) would not, if this Act were read without reference to subsection (5), be an income or profits tax, and

(d) is not identified as a royalty under the agreement that creates the obligation or under any law of the country;

Related Provisions: 12(1)(o.1) — Production tax amount included in income.

History: The definition "production tax amount" added to subsec. 126(7) by 2001, c. 17, subsec. 117(19), applicable to taxation years of a taxpayer that begin after the earlier of

(a) December 31, 1999; and

(b) where, for the purposes of this subsec., a date is designated in writing by the taxpayer and the designation is filed with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes June 14, 2001, the later of

(i) the date so designated, and

(ii) December 31, 1994.

Regulations: 5910 (production sharing rules apply to foreign affiliate system).

"qualifying incomes" of a taxpayer from sources in a country means incomes from sources in the country, determined in accordance with subsection (9);

Related Provisions: 126(6)(d) — Foreign tax on interest income earned by Canadian business.

History: The definition "qualifying incomes" in subsec. 126(7) amended by 2001, c. 17, subsec. 117(14), applicable to taxation years of a taxpayer that begin after the earlier of

(a) December 31, 1999; and

(b) where, for the purposes of this subsec., a date is designated in writing by the taxpayer and the designation is filed with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes June 14, 2001, the later of

(i) the date so designated, and

(ii) December 31, 1994.

The definition formerly read:

> "qualifying incomes" of a taxpayer from sources in a country means incomes from sources in the country, determined without reference to
>
> (a) any portion of income that was deductible under subparagraph 110(1)(f)(i) in computing the taxpayer's taxable income,
>
> (b) for the purpose of subparagraph 126(1)(b)(i), any portion of income in respect of which an amount was deducted under section 110.6 by the taxpayer, and
>
> (c) any income from a source in the country if any income of the taxpayer from the source would be tax-exempt income;

The definition "qualifying incomes" added to subsec. 126(7) by 1999, c. 22, subsec. 47(7), applicable to taxation years that begin after February 24, 1998.

"qualifying losses" of a taxpayer from sources in a country means losses from sources in the country, determined in accordance with subsection (9);

History: The definition "qualifying losses" in subsec. 126(7) amended by 2001, c. 17, subsec. 117(14), applicable to taxation years of a taxpayer that begin after the earlier of

(a) December 31, 1999; and

(b) where, for the purposes of this subsec., a date is designated in writing by the taxpayer and the designation is filed with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes June 14, 2001, the later of

(i) the date so designated, and

(ii) December 31, 1994.

The definition formerly read:

> "qualifying losses" of a taxpayer from sources in a country means losses from sources in the country, determined without reference to
>
> (a) any portion of income that was deductible under subparagraph 110(1)(f)(i) in computing the taxpayer's taxable income,
>
> (b) for the purpose of subparagraph 126(1)(b)(i), any portion of income in respect of which an amount was deducted by the taxpayer under section 110.6, and
>
> (c) any loss from a source in the country if any income of the taxpayer from the source would be tax-exempt income;

The definition "qualifying losses" added to subsec. 126(7) by 1999, c. 22, subsec. 47(7), applicable to taxation years that begin after February 24, 1998.

"related transactions", in respect of a taxpayer's ownership of a property for a period, means transactions entered into by the taxpayer as part of the arrangement under which the property was owned;

History: The definition "related transactions" added to subsec. 126(7) by 1999, c. 22, subsec. 47(7), applicable to 1998 *et seq.*

"tax for the year otherwise payable under this Part" by a taxpayer means

(a) in paragraph (1)(b) and subsection (3), the amount determined by the formula

A – B

where

A is the amount that would be the tax payable under this Part for the year by the taxpayer if that tax were determined without reference to section 120.3 and before making any deduction under any of sections 121, 122.3, 125 to 127.41 and, if the taxpayer is a Canadian-controlled private corporation throughout the year, section 123.4, and

B is the amounts deemed by subsections 120(2) and (2.2) to have been paid on account of tax payable under this Part by the taxpayer,

(b) in subparagraph (2)(c)(i) and paragraph (2.2)(b), the amount that would be the tax payable under this Part for the year by the taxpayer if that tax were determined without reference to sections 120.3 and 123.3 and before making any deduction under any of sections 121 and 122.3, subsection 123.4(3), and sections 124 to 127.41, and

(c) in subsection (2.1), the amount that would be the tax payable under this Part for the year by the taxpayer if that tax were determined without reference to subsection 120(1) and sections 120.3 and 123.3 and before making any deduction under any of sections 121 and 122.3, subsection 123.4(3) and sections 124 to 127.41;

Related Provisions: 257 — Formula cannot calculate to less than zero. See additional Related Provisions at end of s. 126.

History: The definition "tax for the year otherwise payable under this Part" in subsec. 126(7) amended by 2001, c. 17, subsec. 117(15), applicable to 2001 *et seq.* The definition formerly read:

"tax for the year otherwise payable under this Part" means

(a) in paragraph (1)(b) and subsection (3), the amount determined by the formula

A – B

where

A is the amount that would be the tax payable under this Part for the year if that tax were determined without reference to section 120.3 and before making any deduction under any of sections 121, 122.3 and 125 to 127.41, and

B is the amounts deemed by subsections 120(2) and (2.2) to have been paid on account of tax payable under this Part,

(b) in subparagraph (2)(c)(i) and paragraph (2.2)(b), the tax for the year payable under this Part (determined without reference to sections 120.3 and 123.3 and before making any deduction under any of sections 121, 122.3 and 124 to 127.41), and

(c) in subsection (2.1), the tax for the year payable under this Part (determined without reference to subsection 120(1) and sections 120.3 and 123.3 and before making any deduction under any of sections 121, 122.3 and 124 to 127.41);

The descriptions of A and B in para. (a), and paras. (b) and (c) of the definition "tax for the year otherwise payable under this Part" in subsec. 126(7) amended by 2000, c. 19, subsecs. 35(4)-(6), the description of A and paras. (b) and (c) applicable to 1998 *et seq.* and the description of B applicable to 1999 *et seq.* The descriptions and the paras. formerly read:

A is the amount that would be the tax payable under this Part for the year if that tax were determined without reference to sections 120.1 and 120.3 and before making any deduction under any of sections 121, 122.3, 125 to 127 and 127.2 to 127.41, and

B is the amount, if any, deemed by subsection 120(2) to have been paid on account of tax payable under this Part,

. . . . .

(b) in subparagraph (2)(c)(i) and paragraph (2.2)(b), the tax for the year payable under this Part (determined without reference to sections 120.1, 120.3 and 123.3 and before making any deduction under any of sections 121, 122.3, 124 to 127 and 127.2 to 127.41), and

(c) in subsection (2.1), the tax for the year payable under this Part (determined without reference to subsection 120(1) and sections 120.1, 120.3 and 123.3 and before making any deduction under any of sections 121, 122.3, 124 to 127 and 127.2 to 127.41);

Paras. (b) and (c) of the definition "tax for the year otherwise payable under this Part" in subsec. 126(7) amended by 1996, c. 21, s. 29, applicable to taxation years that end after June 1995. Paras. (b) and (c) formerly read:

(b) in subparagraph (2)(c)(i) and paragraph (2.2)(b), the tax for the year payable under this Part (determined without reference to sections 120.1 and 120.3 and before making any deduction under any of sections 121, 122.3, 124 to 127 and 127.2 to 127.41), and

(c) in subsection (2.1), the tax for the year payable under this Part (determined without reference to subsection 120(1) and sections 120.1 and 120.3 and before making any deduction under any of sections 121, 122.3, 124 to 127 and 127.2 to 127.41);

The definition "tax for the year otherwise payable under this Part" in subsec. 126(7) amended by 1995, c. 3, subsec. 36(1), applicable to taxation years that end after February 22, 1994. The definition formerly read:

"tax for the year otherwise payable under this Part" means

(a) in paragraph (1)(b) and subsection (3), the amount determined by the formula

A – B

where

A is the amount that would be the tax payable under this Part for the year if that tax were determined without reference to sections 120.1 and 120.3 of this Act and paragraph 123(1)(b) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to taxation years beginning before December 22, 1989, and before making any deduction under any of sections 121, 122.3, 125 to 127 and 127.2 to 127.4, and

B is the amount, if any, deemed by subsection 120(2) to been paid on account of tax payable under this Part for the year,

(b) in subparagraph (2)(c)(i) and paragraph (2.2)(b), the tax for the year payable under this Part (determined without reference to sections 120.1 and 120.3 of this Act and paragraph 123(1)(b) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to taxation years beginning before December 22, 1989, and before making any deduction under any of sections 121, 122.3, 124 to 127 and 127.2 to 127.4), and

(c) in subsection (2.1), the tax for the year payable under this Part (determined without reference to subsection 120(1) and sections 120.1 and 120.3 of this Act and paragraph 123(1)(b) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to taxation years beginning before December 22, 1989, and before making any deduction under any of sections 121, 122.3, 124 to 127 and 127.2 to 127.4);

The description of A in para. (a), and paras. (b), (c) of "tax for the year..." in subsec. 126(7) amended by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 103(4), (5), to add, in each, reference to s. 120.3 and "as it read in its application to taxation years beginning before December 22, 1989", applicable to 1990 *et seq.*

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-270R3: Foreign tax credit.

"tax-exempt income" means income of a taxpayer from a source in a country in respect of which

(a) the taxpayer is, because of a tax treaty with that country, entitled to an exemption from all income or profits taxes, imposed in that country, to which the treaty applies, and

(b) no income or profits tax to which the treaty does not apply is imposed in any country other than Canada;

Related Provisions: 126(1.1)(f) — Application of definition to authorized foreign bank.

History: The definition "tax-exempt income" added to subsec. 126(7) by 1999, c. 22, subsec. 47(7), applicable to taxation years that begin after February 24, 1998.

Interpretation Bulletins: IT-395R2: Foreign tax credit — foreign-source capital gains and losses.

"taxing country" means a country (other than Canada) the government of which regularly imposes, in respect of income from businesses carried on in the country, a levy or charge of general application that would, if this Act were read without reference to subsection (5), be an income or profits tax.

History: The definition "taxing country" added to subsec. 126(7) by 2001, c. 17, subsec. 117(19), applicable to taxation years of a taxpayer that begin after the earlier of

(a) December 31, 1999; and

(b) where, for the purposes of this subsec., a date is designated in writing by the taxpayer and the designation is filed with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes June 14, 2001, the later of

(i) the date so designated, and

(ii) December 31, 1994.

"unused foreign tax credit" of a taxpayer in respect of a country for a taxation year means the amount, if any, by which

(a) the business-income tax paid by the taxpayer for the year in respect of businesses carried on by the taxpayer in that country

exceeds

(b) the amount, if any, deductible under subsection (2) in respect of that country in computing the taxpayer's tax payable under this Part for the year.

Related Provisions: 152(6)(f.1) — Minister required to reassess past year to allow unused foreign tax credit; 257 — Formula cannot calculate to less than zero. See additional Related Provisions at end of s. 126.

History: The definition "unused foreign tax credit" in subsec. 126(7) amended by 2001, c. 17, subsec. 117(15), applicable to 2001 *et seq.* The definition formerly read:

"unused foreign tax credit" of a taxpayer in respect of a country for a taxation year means the amount determined by the formula

$$A - (B + C)$$

where

A is the business-income tax paid by the taxpayer for the year in respect of businesses carried on by the taxpayer in that country,

B is the amount, if any, deductible under subsection (2) in respect of that country in computing the taxpayer's tax payable under this Part for the year, and

C is that portion of business income tax paid by the taxpayer for the year in respect of businesses carried on by the taxpayer in that country that may reasonably be considered to have been deducted in computing the taxpayer's tax payable under Part I.1 for the year.

Interpretation Bulletins: IT-488R2: Winding-up of 90%-owned taxable Canadian corporations (archived); IT-520: Unused foreign tax credits — carryforward and carryback. See also at end of s. 126.

(8) [Repealed]

History: Subsec. 126(8) repealed by 2001, c. 17, subsec. 117(20), applicable after June 27, 1999. Subsec. (8) formerly read:

(8) Deemed separate source — For the purpose of this section, if any income from a source in a particular country would be tax-exempt income but for the fact that a portion of the income is subject to an income or profits tax imposed by the government of a country other than Canada or of a state, province or other political subdivision of such a country, the portion is deemed to be income from a separate source in the particular country.

Subsec. 126(8) added by 1999, c. 22, subsec. 47(8), applicable to taxation years that begin after February 24, 1998.

(9) Computation of qualifying incomes and losses — The qualifying incomes and qualifying losses for a taxation year of a taxpayer from sources in a country shall be determined

(a) without reference to

(i) any portion of income that was deductible under subparagraph 110(1)(f)(i) in computing the taxpayer's taxable income,

(ii) for the purpose of subparagraph 126(1)(b)(i), any portion of income in respect of which an amount was deducted under section 110.6 in computing the taxpayer's income, or

(iii) any income or loss from a source in the country if any income of the taxpayer from the source would be tax-exempt income; and

(b) as if the total of all amounts each of which is that portion of an amount deducted under subsection 66(4), 66.21(4), 66.7(2) or 66.7(2.3) in computing those qualifying incomes and qualifying losses for the year that applies to those sources were the greater of

(i) the total of all amounts each of which is that portion of an amount deducted under subsection 66(4), 66.21(4), 66.7(2) or 66.7(2.3) in computing the taxpayer's income for the year that applies to those sources, and

(ii) the total of

(A) the portion of the maximum amount that would be deductible under subsection 66(4) in computing the taxpayer's income for the year that applies to those sources if the amount determined under subparagraph 66(4)(b)(ii) for the taxpayer in respect of the year were equal to the amount, if any, by which the total of

(I) the taxpayer's foreign resource income (within the meaning assigned by subsection 66.21(1)) for the year in respect of the country, determined as if the taxpayer had claimed the maximum amounts deductible for the year under subsections 66.7(2) and (2.3), and

(II) all amounts each of which would have been an amount included in computing the taxpayer's income for the year under subsection 59(1) in respect of a disposition of a foreign resource property in respect of the country, determined as if each amount determined under subparagraph 59(1)(b)(ii) were nil,

exceeds

(III) the total of all amounts each of which is a portion of an amount (other than a portion that results in a reduction of the amount otherwise determined under subclause (I)) that applies to those sources and that would be deducted under subsection 66.7(2) in computing the taxpayer's income for the year if the maximum amounts deductible for the year under that subsection were deducted,

(B) the maximum amount that would be deductible under subsection 66.21(4) in respect of

those sources in computing the taxpayer's income for the year if

(I) the amount deducted under subsection 66(4) in respect of those sources in computing the taxpayer's income for the year were the amount determined under clause (A),

(II) the amounts deducted under subsections 66.7(2) and (2.3) in respect of those sources in computing the taxpayer's income for the year were the maximum amounts deductible under those subsections,

(III) for the purposes of the definition "cumulative foreign resource expense" in subsection 66.21(1), the total of the amounts designated under subparagraph 59(1)(b)(ii) for the year in respect of dispositions by the taxpayer of foreign resource properties in respect of the country in the year were the maximum total that could be so designated without any reduction in the maximum amount that would be determined under clause (A) in respect of the taxpayer for the year in respect of the country if no assumption had been made under subclause (A)(II) in respect of designations made under subparagraph 59(1)(b)(ii), and

(IV) the amount determined under paragraph 66.21(4)(b) were nil, and

(C) the total of all amounts each of which is the maximum amount, applicable to one of those sources, that is deductible under subsection 66.7(2) or (2.3) in computing the taxpayer's income for the year.

Related Provisions: 248(1)"foreign resource property" — Meaning of foreign resource property in respect of a country.

History: Subsec. 126(9), added by 2001, c. 17, subsec. 117(21), applicable to taxation years of a taxpayer that begin after the earlier of

(a) December 31, 1999; and

(b) where, for the purposes of this subsec., a date is designated in writing by the taxpayer and the designation is filed with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes June 14, 2001, the later of

(i) the date so designated, and

(ii) December 31, 1994.

Related Provisions [s. 126]: 4(3) — Whether deductions are applicable to a particular source; 60(o)(iii) — Deduction for legal expenses in appealing assessment of foreign tax; 80.1(2) — Election re interest for expropriation assets required; 87(2.11) — Vertical amalgamations; 104(22)–(22.4) — Trusts — allocation of foreign-source income to beneficiaries; 127.54(2) — Minimum tax — foreign tax credit; 258(3) — Certain dividends on preferred shares deemed to be interest; 258(5) — Deemed interest on certain shares; Canada-U.S. Tax Treaty:Art. XXIV — Elimination of double taxation.

Selected Cases [s. 126]: *Meyer v. R.*, [2004] 2 C.T.C. 2934 (TCC) (Payment of tax in excess of legal liability not available for credit); *Taylor v. Canada*, [1991] 1 C.T.C. 304 (FCA) (No carryforward of "non-capital loss of other years" incurred during non-residency).

Definitions [s. 126]: "amount", "authorized foreign bank", "business" — 248(1); "business-income tax" — 126(7); "Canada" — 255, *Interpretation Act* 35(1); "Canadian banking business" — 248(1); "capital property" — 54, 248(1); "commercial obligation" — 126(7); "common-law partner" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "distribution year" — 126(2.22); "disposition", "dividend" — 248(1); "economic profit" — 126(7); "emigration year" — 126(2.21); "employment" — 248(1); "foreign affiliate" — 95(1), 248(1); "foreign investment entity" — 94.1(1), 94.1(2)(q); "foreign oil and gas business" — 126(7); "foreign resource property" — 66(15), 248(1); "foreign resource property in respect of" — 248(1); "foreign tax" — 126(4.2); "government of a country" — 126(6)(a); "immovable" — Quebec *Civil Code* art. 900–907; "income or profits tax" — 126(4), (5); "individual" — 248(1); "non-business-income tax" — 126(7); "non-resident" — 126(1.1)(a), 248(1); "office", "oil or gas well" — 248(1); "participating interest" — 94.1(1), 94.1(2)(s); "person", "prescribed" — 248(1); "production tax amount" — 126(7); "property" — 248(1); "province" — *Interpretation Act* 35(1); "qualifying incomes", "qualifying losses" — 126(7), (9); "related transactions" — 126(7); "resident", "resident in Canada" — 126(1.1)(a), 250; "share" — 248(1); "source" — 126(6)(c); "tax for the year otherwise payable" — 126(7); "tax-exempt income" — 126(7); "tax payable" — 248(2); "tax treaty", "taxable Canadian property" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 248(1); "taxation year" — 249; "taxing country" — 126(7); "taxpayer" — 248(1); "time of disposition" — 128.1(4)(b); "trust" — 104(1), 248(1), (3); "unused foreign tax credit" — 126(7).

I.T. Application Rules [s. 126]: 40(1), (2).

Interpretation Bulletins [s. 126]: IT-201R2: Foreign tax credit — trust and beneficiaries; IT-273R2: Government assistance — general comments; IT-497R4: Overseas employment tax credit.

Forms: T2209: Federal foreign tax credits.

126.1 (1) [1993 UI premium tax credit] Definitions — In this section,

"employer" at any time means any person or partnership (other than a person who at that time is exempt because of any of paragraphs 149(1)(a) to (d), (h.1), (o) to (o.2), (o.4) to (s) and (u) to (y) from tax under this Part on all or part of the person's taxable income) that has a qualifying employee in 1992 or 1993;

"qualifying employee" of an employer means,

(a) where the employer is not exempt because of subsection 149(1) from tax under this Part on all or part of the employer's taxable income,

(i) any employee of the employer, other than any employee whose remuneration is not deductible in computing income from a business or property, and

(ii) any person in respect of whom the employer is deemed under any regulation under the *Unemployment Insurance Act* to be an employer for the purpose of determining an employer's UI premium, and

(b) in any other case, any employee of the employer;

"qualifying employer premium" for a period of an employer means that portion of the employer's UI premium that can reasonably be attributed to the remuneration paid in the period to qualifying employees of the employer;

"remittance date" for 1993 of an employer means the day prescribed under the *Unemployment Insurance Act* on or before which the employer is required to remit a UI premium in respect of remuneration paid in 1993;

"UI premium" of an employer means a premium under subsection 51(2) of the *Unemployment Insurance Act* payable,

(a) where the employer is a partnership, by the members of the partnership in respect of remuneration paid by the partnership to employees of the partnership, and

(b) in any other case, by the employer.

"1992 cumulative premium base" of an employer on any particular day means the total of all qualifying employer premiums of the employer for the period beginning on January 1, 1992 and ending on the day that is 365 days earlier than the particular day that became payable on or before the last day of that period;

"1992 premium base" of an employer means the total of all qualifying employer premiums for 1992 of the employer;

"1993 cumulative premium base" of an employer on any particular day means the total of all qualifying employer premiums of the employer for the period beginning on January 1, 1993 and ending on the particular day that became payable on or before the last day of that period;

"1993 premium base" of an employer means the total of all qualifying employer premiums for 1993 of the employer;

(2) Associated employers — For the purposes of this section,

(a) employers that are corporations that are associated with each other at any time shall be deemed to be employers that are associated with each other at that time; and

(b) where 2 employers

(i) would, but for this paragraph, not be associated with each other at any time, and

(ii) are associated, or are deemed by this subsection to be associated, with another corporation at that time,

they shall be deemed to be associated with each other at that time.

(3) Idem — In determining for the purpose of this section whether 2 or more employers are associated with each other at any time, and in determining whether an employer is at any time a specified employer in relation to another employer,

(a) where an employer at any time is an individual, the employer shall be deemed at that time to be a corporation all the issued shares of the capital stock of which, having full voting rights under all circumstances, are owned by the individual; and

(b) where an employer at any time is a partnership,

(i) the employer shall be deemed at that time to be a corporation having one class of issued shares, which shares have full voting rights under all circumstances, and

(ii) each member of the partnership shall be deemed to own at that time the greatest proportion of the number of issued shares of the capital stock of the corporation that

(A) the member's share of the income or loss of the partnership from any source for the fiscal period of the partnership that includes that time

is of

(B) the income or loss of the partnership from that source for that period

and for the purpose of this paragraph, where the income and loss of the partnership from any source for that period are nil, that proportion shall be computed as if the partnership had income from that source for that period in the amount of $1,000,000.

(4) Business carried on by another employer — Where at any time before 1994 an employer (referred to in this subsection and subsection (5) as the "successor") carries on, as a separate business or as part of another business, a business or part of a business that was carried on at any earlier time after 1991 by a specified employer in relation to the successor (which business or part of a business is referred to in this subsection as the "specified business"), in determining

(a) the UI premium tax credit of the specified employer and the successor, and

(b) each amount that is or would, but for subsection (13), be deemed by subsection (12) to be paid to the specified employer or the successor at any time after the successor began to carry on the specified business,

that portion of the qualifying employer premiums for any period of the specified employer that can reasonably be considered to relate to the specified business shall be deemed not to be qualifying employer premiums for the period of the specified employer and to be qualifying employer premiums for the period of the successor.

(5) Definition of "specified employer" — For the purposes of subsection (4), "specified employer" at any time in relation to a successor means any particular employer with whom the successor at that time is not or would not be dealing at arm's length if,

(a) where the particular employer ceased to exist before that time, the particular employer were in existence at that time, and

(b) the particular employer were controlled at that time by each person or group of persons who at any time in 1992 or 1993 controlled the particular employer,

except that a particular employer is not a specified employer in relation to a successor where the successor is, for the purposes of this section, deemed by paragraph 87(2)(mm) or 88(1)(e.2) to be a continuation of, and the same corporation as, the particular employer.

(6) UI premium tax credit — Where an employer (other than a partnership) files with the Minister a prescribed form containing prescribed information, an overpayment on account of the employer's liability under this Part for the employer's last taxation year beginning before 1994 equal to the employer's UI premium tax credit shall be deemed to have arisen on the later of March 1, 1994 and the day on which the form is so filed.

Related Provisions: 87(2)(mm) — Amalgamations — continuing corporation; 126.1(11) — UI premium tax credit — associated employers; 152(1.2) — Provisions applicable to determination of overpayment; 152(3.4), (3.5) — Determination of credit by Minister; 164(1.6) — Refund of credit by Minister.

(7) Idem — Where a member of a partnership, acting on behalf of all of the members of the partnership, files with the Minister a prescribed form containing prescribed information, an overpayment on account of each taxpayer's liability under this Part for the taxpayer's last taxation year beginning before 1994 equal to that portion of the partnership's UI premium tax credit that can reasonably be considered to be the taxpayer's share thereof shall be deemed to have arisen on the later of March 1, 1994 and the day on which the form is so filed.

Related Provisions: 152(3.4), (3.5) — Determination of credit by Minister; 164(1.6) — Refund of credit by Minister.

(8) Definition of "UI premium tax credit" — For the purposes of this section, an employer's "UI premium tax credit" is the lesser of

(a) the amount, if any, by which $30,000 exceeds the amount, if any, by which the employer's 1992 premium base exceeds $30,000, and

(b) the amount, if any, by which the employer's 1993 premium base exceeds the employer's 1992 premium base,

unless the employer is associated at the end of 1993 with any other employer, in which case, subject to subsection (11), the employer's UI premium tax credit is nil.

(9) Allocation by associated employers — An employer that is a member of a group of employers that are associated with each other at the end of 1993 (referred to in this subsection and in subsections (10) and (11) as "associated employers") may file with the Minister an agreement in prescribed form on behalf of the associated employers allocating among them an amount not exceeding the lesser of

(a) the amount, if any, by which $30,000 exceeds the amount, if any, by which the total of the 1992 premium bases of all of the associated employers exceeds $30,000, and

(b) the amount, if any, by which

(i) the total of the 1993 premium bases of all of the associated employers

exceeds

(ii) the total of the 1992 premium bases of all of the associated employers.

(10) Allocation by the Minister — The Minister may request any of the associated employers to file with the Minister an agreement referred to in subsection (9) and, where the employer does not file the agreement within 30 days after receiving the request, the Minister may allocate among them an amount not exceeding the lesser of the amounts determined under paragraphs (9)(a) and (b).

(11) UI premium tax credit — associated employers — For the purposes of this section, the least amount allocated to an associated employer under an agreement described in subsection (9) or the amount allocated to the employer by the Minister under subsection (10), as the case may be, is the UI premium tax credit of the employer.

(12) Prepayment of UI premium tax credit — Where before March 1994 an employer or, where the employer is a partnership, any member of the partnership acting on behalf of all of the members of the partnership, files with the Minister a prescribed form containing prescribed information, the Minister shall, subject to subsection (13), be deemed to have paid to the employer on account of the overpayment determined under subsection (6) in respect of the employer, and the employer shall be deemed, for the purpose of paragraph 12(1)(x), to have received and, for the purposes of the *Unemployment Insurance Act* and regulations made under it, to have remitted to the Receiver General on account of the employer's UI premium, on each remittance date for 1993, an amount that is equal to,

(a) where the employer was not associated with any other employer on the remittance date, the lesser of

(i) the amount, if any, by which the lesser of

(A) the amount, if any, by which $30,000 exceeds the amount, if any, by which the 1992 premium base of the employer exceeds $30,000, and

(B) the amount, if any, by which

(I) the 1993 cumulative premium base of the employer on the remittance date

exceeds

(II) the 1992 cumulative premium base of the employer on the remittance date

exceeds the total of all amounts deemed or that would, but for subsection (13), be deemed by this subsection to have been paid to the employer before the remittance date, and

(ii) the amount determined by the formula

$$A - (B + C)$$

where

A is the total of all UI premiums of the employer payable on or before the remittance date that can reasonably be attributed to remuneration paid in the period beginning on January 1, 1993 and ending on the remittance date,

B is the total of all amounts (determined without reference to this subsection) remitted by the employer to the Receiver General on or before the remittance date on account of the UI premiums referred to in the description of A, and

C is the total of all amounts deemed or that would, but for subsection (13), be deemed by this subsection to have been paid to the employer before the remittance date; and

(b) where the employer (in this paragraph referred to as the "particular employer") was associated on the remittance date with any other employer (in this paragraph referred to as an "associated employer"), the lesser of

(i) the amount that would be determined under paragraph (a) in respect of the particular employer on the remittance date if the particular employer were not associated on the remittance date with any other employer, and

(ii) the amount, if any, by which the lesser of

(A) the amount, if any, by which $30,000 exceeds the amount, if any, by which the total of the 1992 premium bases of the particular employer and all associated employers exceeds $30,000, and

(B) the amount, if any, by which

(I) the total of all amounts each of which is the 1993 cumulative premium base of the particular employer or an associated employer on the remittance date

exceeds

(II) the total of all amounts each of which is the 1992 cumulative premium base of the particular employer or an associated employer on the remittance date

exceeds the total of

(C) all amounts each of which is an amount deemed or that would, but for subsection (13), be deemed by this subsection to have been paid to the particular employer or an associated employer before the remittance date, and

(D) all amounts each of which is an amount that would be determined under subparagraph (a)(ii) in respect of an associated employer on the remittance date if the associated employer were not associated on that date with any other employer.

Related Provisions: 126.1(13) — Amount deemed paid to a partnership; 126.1(14), (15) — Excess prepayments; 257 — Formula cannot calculate to less than zero.

(13) Idem — Where an amount would, but for this subsection, be deemed by subsection (12) to be paid at any time to a partnership, that portion of the amount that can reasonably be considered to be a taxpayer's share of it shall be deemed not to have been paid to the partnership and to have been paid at that time by the Minister to the taxpayer on account of the overpayment determined under subsection (7) in respect of the taxpayer.

(14) Excess prepayment — Where the total of all amounts paid under subsection (12) to a taxpayer exceeds the taxpayer's UI premium tax credit, the excess shall be deemed to have been refunded to the taxpayer, on the taxpayer's last remittance date for 1993, on account of the taxpayer's liability under this Part for the taxpayer's last taxation year beginning before 1994.

(15) Idem — Where the total of all amounts paid under subsection (13) to a taxpayer in respect of a partnership exceeds that portion of the partnership's UI premium tax credit that can reasonably be considered to be the taxpayer's share of it, the excess shall be deemed to have been refunded to the taxpayer, on the partnership's last remittance date for 1993, on account of the taxpayer's liability under this Part for the taxpayer's last taxation year beginning before 1994.

Proposed Repeal — 126.1

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 121, will repeal s. 126.1, applicable in respect of forms filed after March 20, 2003.

Technical Notes: Section 126.1 provides certain employers with a refundable tax credit to offset the increase in the employer's portion of 1993 unemployment insurance premiums.

This section has lapsed, and is repealed in respect of forms filed after March 20, 2003.

History [s. 126.1]: S. 126.1 enacted by 1994, c. 8, s. 14, applicable after 1992.

Definitions [s. 126.1]: "1992 cumulative premium base", "1992 premium base", "1993 cumulative premium base", "1993 premium base" — 126.1(1); "arm's length" — 251; "associated" — 126.1(2), (3), 256; "business" — 248(1); "class" — 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "employee" — 248(1); "employer" — 126.1(1); "fiscal period" — 249.1; "individual", "Minister" — 248(1); "prescribed", "property" — 248(1); "qualifying employee" — 126.1(1); "qualifying employer" — 126.1(1), (4); "remittance date" — 126.1(1); "share" — 248(1); "specified employer" — 126.1(5); "successor" — 126.1(4); "taxation year" — 249; "UI premium" — 126.1(1); "UI premium tax credit" — 126.1(8), (11).

127. [Investment tax credit, logging credit and political credit] — (1) Logging tax deduction [credit] — There may be deducted from the tax otherwise payable by a taxpayer under this Part for a taxation year an amount equal to the lesser of

(a) ⅔ of any logging tax paid by the taxpayer to the government of a province in respect of income for the year from logging operations in the province, and

(b) 6⅔% of the taxpayer's income for the year from logging operations in the province referred to in paragraph (a),

except that in no case shall the total of amounts in respect of all provinces that would otherwise be deductible under this subsection from the tax otherwise payable under this Part for the year by the taxpayer exceed 6⅔% of the amount that would be the taxpayer's taxable income for the year or taxable income earned in Canada for the year, as the case may be, if this Part were read without reference to paragraphs 60(b), (c) to (c.2), (i) and (v) and sections 62, 63 and 64.

Related Provisions: 117(1) — "Tax otherwise payable".

History: That portion of subsec. 127(1) following para. (b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 68(1), applicable to 1991 *et seq.* That portion formerly read:

> except that in no case shall the total of amounts in respect of all provinces that would otherwise be deductible under this section from the tax otherwise payable by the taxpayer under this Part for the year exceed 6⅔% of the taxpayer's taxable income for the year or taxable income earned in Canada for the year, as the case may be.

Selected Cases [subsec. 127(1)]: *R. v. British Columbia Forest Products Ltd.*, [1986] 1 C.T.C. 1 (FCA); leave to appeal to SCC refused (Feb. 28, 1986), Doc. 19677 [unreported] (Investment tax credit must be deducted from capital cost where taxpayer received assistance from government as a deduction from tax); *MacMillan Bloedel (Alberni) Ltd. v. MNR*, [1973] C.T.C. 295 (FCTD) (Interest received by taxpayer on promissory note from subsidiary deducted from income when calculating logging tax credit).

Interpretation Bulletins: IT-121R3: Election to capitalize cost of borrowed money (archived).

Forms: T2 SCH 5: Tax calculation supplementary — corporations.

(2) Definitions — In subsection (1),

"income for the year from logging operations in the province" has the meaning assigned by regulation;

Regulations: 700(1), (2) (meaning of "income for the year from logging operations in a province").

"logging tax" means a tax imposed by the legislature of a province that is declared by regulation to be a tax of general application on income from logging operations.

Regulations: 700(3) (provinces are B.C. and Quebec).

Selected Cases [subsec. 127(2)]: *British Columbia Forest Products Ltd. v. MNR*, [1971] C.T.C. 270 (SCC) (Computation of income "from all sources" to be determined under provisions of the Act less allowable deductions).

(3) Monetary contributions — *Canada Elections Act* — There may be deducted from the tax otherwise payable by a taxpayer under this Part for a taxation year in respect of the total of all amounts each of which is a monetary contribution referred to in the *Canada Elections Act* made by the taxpayer in the year to a registered party, a provincial division of a registered party, a registered association or a candidate, as those terms are defined in that Act,

Proposed Amendment — 127(3) opening words

(3) Contributions to registered parties and candidates — There may be deducted from the tax otherwise payable by a taxpayer under this Part for a taxation year in respect of the total of all amounts each of which is the eligible amount, of a monetary contribution referred to in the *Canada Elections Act*, made by the taxpayer in the year to a registered party, a provincial division of a registered party, a registered association or a candidate, as those terms are defined in that Act,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 122(5), will amend the opening words of subsec. 127(3) to read as above, applicable to monetary contributions made after December 20, 2002, except that for monetary contributions made before 2004, the expression "to a registered party, a provincial division of a registered party, a registered association or a candidate" is to be read as "to a registered party or a candidate".

Technical Notes: Subsection 127(3) provides a tax credit to a taxpayer in respect of amounts contributed to a registered party or to a candidate. Subsection 127(3) is amended consequential to the addition of new subsections 248(31) and (32), to provide that the amount of a contribution that is eligible for the political contributions tax credit is to be reduced by the amount of any advantage or benefit, as defined by subsection 248(32), to which the taxpayer is entitled in respect of the contri-

bution. This amendment is generally applicable to monetary contributions made after December 20, 2002.

It is proposed that subsections 2000(1) and (6) of the Regulations be amended to provide that every official receipt issued by a registered party in respect of a contribution contain, in addition to the information already prescribed, the eligible amount and the amount of the advantage, if any, in respect of the contribution.

For additional details, see the commentary to new subsections 248(31) and (32) regarding the amount of the advantage in respect of a contribution.

(a) when that total does not exceed $400, 75% of that total,

(b) when that total exceeds $400 and does not exceed $750, $300 plus 50% of the amount by which that total exceeds $400, and

(c) when that total exceeds $750, the lesser of

(i) $650, and

(ii) $475 plus 33⅓% of the amount by which the total exceeds $750,

if payment of each monetary contribution that is included in that total is evidenced by filing with the Minister a receipt, signed by the agent authorized under that Act to accept that monetary contribution, that contains prescribed information.

Related Provisions: 18(1)(n) — No deduction from income for political contributions; 120(4) — "Tax otherwise payable under this Part"; 123.2(a) — Corporate surtax applies to total tax before claiming political tax credit; 127(3.1) — Issue of receipts; 127(3.2) — Authorization required for receipts from registered associations; 127(3.3) — No receipts to be issued while judicial deregistration of party is pending; 127(4) — Interpretation; 127(4.1) — Definition of "amount contributed"; 127(4.2) — Allocation of amount contributed among partners; 230.1 — Books and records relating to political contributions; 248(30)–(33) — Eligible amount of monetary contribution; 248(40) — Donee must make inquiry re circumstances of donation over $5,000; 248(41) — Donation value deemed nil if taxpayer does not inform donee of circumstances requiring reduction.

History: Subsec. 127(3) amended by 2003, c. 19, s. 73, applicable to monetary contributions made in taxation years ending after 2003, except that

(a) for monetary contributions made in 2004 taxation years but before the day on which the amendment to s. 230.1 comes into force [Jan. 1, 2004], the preamble to subsec. 127(3) is to be read by replacing "to a registered party, a registered association, or a candidate" with "to a registered party or a candidate";

(b) if the day on which the amendment to s. 230.1 comes into force [Jan. 1, 2004] occurs during an election period, within the meaning assigned by the *Canada Elections Act*, the preamble to subsec. 127(3) is to be read, in respect of that election, as described in (a) above.

This transitional rule in para. (a) above is technically meaningless because it does not refer to the words "a provincial division of a registered party", which were added at the Commons committee stage before the 2003 election financing bill received Third Reading in the House of Commons.

Subsec. 127(3) formerly read:

(3) Contributions to registered parties and candidates [political contribution credit] — There may be deducted from the tax otherwise payable by a taxpayer under this Part for a taxation year in respect of the total of all amounts each of which is a monetary contribution made by the taxpayer in the year to a registered party or to a candidate whose nomination has been confirmed in an election of a member or members to serve in the House of Commons of Canada (in this section referred to as "the total"),

(a) 75% of the total, if the total does not exceed $200,

(b) $150 plus 50% of the amount by which the total exceeds $200, if the total exceeds $200 and does not exceed $550, or

(c) the lesser of

(i) $325 plus 33⅓% of the amount by which the total exceeds $550, and

(ii) $500,

if payment of each monetary contribution that is included in the total is proven by filing a receipt with the Minister, signed by a registered agent of the registered party or by the official agent of the candidate whose nomination has been confirmed, as the case may be, that contains prescribed information.

Subsec. 127(3) amended by 2000, c. 9, s. 560, applicable to 2000 *et seq.* except that, in its application to money contributions made after 1999 and before September 1, 2000 (the in-force date of 2000, c. 9), the references in 127(3) to "a monetary contribution made", "monetary contribution" and a "candidate whose nomination has been confirmed" shall be read as references to "an amount contributed", "amount contributed" and "an officially nominated candidate", respectively. Subsec. 127(3) formerly read:

(3) There may be deducted from the tax otherwise payable by a taxpayer under this Part for a taxation year in respect of the total of all amounts each of which is an amount contributed by the taxpayer in the year to a registered party or to an officially nominated candidate at an election of a member or members to serve in the House of Commons of Canada (in this section referred to as "the total"),

(a) 75% of the total if the total does not exceed $100,

(b) $75 plus 50% of the amount by which the total exceeds $100 if the total exceeds $100 and does not exceed $550, or

(c) the lesser of

(i) $300 plus 33⅓% of the amount by which the total exceeds $550 if the total exceeds $550, and

(ii) $500,

if payment of each amount contributed that is included in the total is proven by filing a receipt with the Minister, signed by a registered agent of the registered party or by the official agent of the officially nominated candidate, as the case may be, that contains prescribed information.

Regulations: 2000 (prescribed information).

Information Circulars: 75-2R7: Contributions to a registered party, a registered association or to a candidate at a federal election.

Forms: T2092: Contributions to a registered party or to a registered association — information return; T2093: Contributions to a candidate at an election — information return.

(3.1) Issue of receipts — A receipt referred to in subsection (3) must be issued only in respect of the monetary contribution that it provides evidence for and only to the contributor who made it.

Related Provisions: 238(1) — Offences.

History: Subsec. 127(3.1) amended by 2003, c. 19, s. 73, applicable to monetary contributions made in taxation years ending after 2003. The subsec. formerly read:

(3.1) A receipt referred to in subsection (3) shall not be issued

(a) by a registered agent of a registered party, or

(b) by an official agent of a candidate whose nomination has been confirmed

otherwise than in respect of a monetary contribution and to the contributor who made it.

Subsec. 127(3.1) amended by 2000, c. 9, s. 560, in force September 1, 2000. The subsec. formerly read:

(3.1) A receipt referred to in subsection (3) shall not be issued

(a) by a registered agent of a registered party, or

(b) by an official agent of an officially nominated candidate

otherwise than in respect of an amount contributed and to the contributor of such an amount.

(3.2) Authorization required for receipts from registered associations — No agent of a registered association of a registered party shall issue a receipt referred to in subsection (3) unless the leader of the registered party has, in writing, notified the financial agent, as referred to in the *Canada Elections Act*, of the registered association that its agents are authorized to issue those receipts.

Related Provisions: 238(1) — Offences.

History: Subsec. 127(3.2) amended by 2003, c. 19, s. 73, applicable to monetary contributions made in taxation years ending after 2003. The subsec. formerly read:

> (3.2) Deposit of amounts contributed — An official agent of a candidate whose nomination has been confirmed — other than in an electoral district referred to in Schedule 3 to the *Canada Elections Act* — who receives a monetary contribution, shall without delay deposit it in an account in the name of the official agent, in his or her capacity as such, in a branch or other office in Canada of a Canadian financial institution as defined in section 2 of the *Bank Act*, or in an authorized foreign bank, as defined in that section, that is not subject to the restrictions and requirements referred to in subsection 524(2) of that Act.

Subsec. 127(3.2) amended by 2000, c. 9, s. 560, in force September 1, 2000. The subsec. formerly read:

> (3.2) Where an amount contributed has been received by an official agent of an officially nominated candidate other than an officially nominated candidate in any of the electoral districts referred to in Schedule III to the *Canada Elections Act*, the official agent shall forthwith deposit that amount contributed in an account standing to the credit of the official agent in the agent's capacity as such in the records of a branch or other office in Canada of
>
> (a) a bank;
>
> (b) a corporation that is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee; or
>
> (c) a credit union.

Information Circulars: 75-2R7: Contributions to a registered party, a registered association or to a candidate at a federal election.

(3.3) Prohibition — issuance of receipts — If the Commissioner of Canada Elections makes an application under subsection 521.1(2) of the *Canada Elections Act* in respect of a registered party, no registered agent of the party — including, for greater certainty, a registered agent appointed by a provincial division of the party — and no electoral district agent of a registered association of the party shall issue a receipt referred to in subsection (3) unless the Commissioner withdraws the application or the court makes an order under subsection 521.1(6) of that Act or dismisses the application.

History: Subsec. 127(3.3) added by 2004, c. 24, s. 25, in force May 15, 2004.

(4) [Repealed]

History: Subsec. 127(4) repealed by 2003, c. 19, s. 73, applicable to monetary contributions made in taxation years ending after 2003. The subsec. formerly read:

> (4) Definitions — In subsections (3), (3.1), (3.2) and (4.1), the terms "official agent", "registered agent" and "registered party" have the meanings assigned to them by subsection 2(1) of the *Canada Elections Act* and the expression "candidate whose nomination has been confirmed" means a person whom the returning officer has, under subsection 71(1) of that Act, confirmed as a candidate in an election.

Subsec. 127(4) amended by 2000, c. 9, s. 560, in force September 1, 2000. The subsec. formerly read:

> (4) In subsections (3), (3.1), (3.2) and (4.1), the terms "official agent", "registered agent" and "registered party" have the meanings assigned to them by section 2 of the *Canada Elections Act* and the term "officially nominated candidate" means a person in respect of whom a nomination paper and deposit have been filed as referred to in the definition "official nomination" in that section of that Act.

(4.1) Monetary contributions — form and content — For the purpose of subsections (3), (3.1) and (4.2), a monetary contribution made by a taxpayer may be in the form of cash or of a negotiable instrument issued by the taxpayer. However, it does not include

(a) a monetary contribution that a taxpayer who is an agent authorized under the *Canada Elections Act* to accept monetary contributions makes in that capacity; or

(b) a monetary contribution in respect of which a taxpayer has received or is entitled to receive a financial benefit of any kind (other than a prescribed financial benefit or a deduction under subsection (3)) from a government, municipality or other public authority, whether as a grant, subsidy, forgivable loan or deduction from tax or an allowance or otherwise.

Related Provisions: 237.1(1)"gifting arrangement", "tax shelter" — Tax shelter registration requirement.

History: Subsec. 127(4.1) amended by 2003, c. 19, s. 73, applicable to monetary contributions made in taxation years ending after 2003. The subsec. formerly read:

> (4.1) Definition of ["monetary contribution"] "amount contributed" — In subsections (3), (3.1), (3.2) and (4.2), "monetary contribution" made by a taxpayer means a contribution made by the taxpayer to a registered party or to a candidate whose nomination has been confirmed in the form of cash or in the form of a negotiable instrument issued by the taxpayer, but does not include
>
> (a) a monetary contribution made by an official agent of a candidate whose nomination has been confirmed or a registered agent of a registered party (in the agent's capacity as official agent or registered agent, as the case may be) to another such official agent or registered agent, as the case may be; or
>
> (b) a monetary contribution in respect of which the taxpayer has received or is entitled to receive a financial benefit of any kind (other than a prescribed financial benefit or a deduction under subsection (3)) from a government, municipality or other public authority, whether as a grant, subsidy, forgivable loan or deduction from tax or an allowance or otherwise.

Subsec. 127(4.1) amended by 2000, c. 9, s. 560, in force September 1, 2000. The subsec. formerly read:

> (4.1) In subsections (3), (3.1) and (3.2), "amount contributed" by a taxpayer means a contribution by the taxpayer to a registered party or an officially nominated candidate in the form of cash or in the form of a negotiable instrument issued by the taxpayer, but does not include
>
> (a) a contribution made by an official agent of an officially nominated candidate or a registered agent of a registered party (in the agent's capacity as such official agent or registered agent, as the case may be) to another such official agent or registered agent, as the case may be; or
>
> (b) a contribution in respect of which the taxpayer has received or is entitled to receive a financial benefit of any kind (other than a prescribed financial benefit or a deduction pursuant to subsection (3)) from a government, municipality or other public authority, whether as a grant, subsidy, forgivable loan or deduction from tax or an allowance or otherwise.

(4.2) Allocation of amount contributed among partners — Where a taxpayer was, at the end of a taxation year of a partnership, a member of the partnership, the taxpayer's share of any monetary contribution made by the partnership in that taxation year that would, if the partnership were a person, be a monetary contribution referred to in subsection (3), is, for the purposes of that subsection, deemed to be a monetary contribution made by the taxpayer in the taxpayer's taxation year in which the taxation year of the partnership ended.

Proposed Amendment — 127(4.2)

(4.2) Allocation of amount contributed among partners — If at the end of a fiscal period of a partnership a taxpayer is a member of the partnership, the taxpayer's share of the total that would, if the partnership were a person and its fiscal period were its taxation year, be the total referred to in subsection (3) in respect of the partnership for that taxation year is deemed for the purpose of that subsection to be a monetary contribution made by the taxpayer in the taxpayer's taxation year in which the fiscal period of the partnership ends.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 122(6), will amend subsec. 127(4.2) to read as above, applicable to monetary contributions made after December 20, 2002.

Technical Notes: Subsection 127(4.2) allows the tax benefits of political contributions made by a partnership to be flowed through to its members. Subsection 127(4.2) is amended consequential to the amendment of subsection 127(3), applicable to contributions made after December 20, 2002, to provide the amount of a contribution that is eligible for a tax credit because of a taxpayer's membership in a partnership.

Related Provisions: 53(2)(c)(iii) — Reduction in ACB of partnership interest.

History: Subsec. 127(4.2) amended by 2000, c. 9, s. 560, in force September 1, 2000. The subsec. formerly read:

> (4.2) Where a taxpayer was, at the end of a taxation year of a partnership, a member of the partnership, the taxpayer's share of any amount contributed by the partnership in that taxation year that would, if the partnership were a person, be an amount contributed referred to in subsection (3), shall, for the purposes of that subsection, be deemed to be an amount contributed by the taxpayer in the taxpayer's taxation year in which the taxation year of the partnership ended.

(5) Investment tax credit — There may be deducted from the tax otherwise payable by a taxpayer under this Part for a taxation year an amount not exceeding the lesser of

(a) the total of

(i) the taxpayer's investment tax credit at the end of the year in respect of property acquired before the end of the year, of the taxpayer's flow-through mining expenditure for the year or a preceding taxation year, of the taxpayer's pre-production mining expenditure for the year or a preceding taxation year or of the taxpayer's SR&ED qualified expenditure pool at the end of the year or at the end of a preceding taxation year, and

(ii) the lesser of

(A) the taxpayer's investment tax credit at the end of the year in respect of property acquired in a subsequent taxation year, of the taxpayer's flowthrough mining expenditure for a subsequent taxation year, of the taxpayer's pre-production mining expenditure for a subsequent taxation year or of the taxpayer's SR&ED qualified expenditure pool at the end of a subsequent taxation year to the extent that an investment tax credit was not deductible under this subsection for the subsequent year, and

(B) the amount, if any, by which the taxpayer's tax otherwise payable under this Part for the year exceeds the amount, if any, determined under subparagraph (i), and

(b) where Division E.1 applies to the taxpayer for the year, the amount, if any, by which

(i) the taxpayer's tax otherwise payable under this Part for the year

exceeds

(ii) the taxpayer's minimum amount for the year determined under section 127.51.

Related Provisions: 12(1)(t) — Income inclusion for ITCs; 13(7.1) — Deemed capital cost; 13(21)"undepreciated capital cost"I — Reduction in u.c.c. of property to reflect ITCs; 37(1)(e) — Deduction for scientific research and experimental development; 53(2)(k)(ii) — Deduction from ACB of property to reflect ITCs; 66.1(6)"cumulative Canadian exploration expense"L — Reduction in CCEE; 87(2.11) — Vertical amalgamations; 117(1), 120(4) — "Tax otherwise payable under this Part"; 123.2(a) — Corporate surtax applies to total tax before claiming ITC; 127(8) — ITC of partnership; 127(11.2) — Time of expenditure and acquisition; 127(26) — Expenditure unpaid within 180 days of end of year; 127.1(3) — Refundable ITC deemed claimed under 127(5); 128(2)(e)(iii)(C) — No credit on return filed by trustee following individual's discharge from bankruptcy; 149(10)(c) — Where corporation becomes or ceases to be exempt; 152(6) — Reassessment; 164(5), (5.1) — Effect of carryback of loss; 192(10) — SPTC claim deemed to be deducted as ITC; 220(6), (7) — Assignment of ITC refund by corporation.

History: Subpara. 127(5)(a)(i) amended by 2003, c. 28, subsec. 14(1), applicable to 2003 *et seq.* The subpara. formerly read:

> (i) the taxpayer's investment tax credit at the end of the year in respect of property acquired before the end of the year, of the taxpayer's flow-through mining expenditure for the year or a preceding taxation year or of the taxpayer's SR&ED qualified expenditure pool at the end of the year or of a preceding taxation year, and

Cl. 127(5)(a)(ii)(A) amended by the said c. 28, subsec. 14(2), applicable to 2003 *et seq.* The clause formerly read:

> (A) the taxpayer's investment tax credit at the end of the year in respect of property acquired in a subsequent taxation year, of the taxpayer's flow-through mining expenditure for a subsequent taxation year or of the taxpayer's SR&ED qualified expenditure pool at the end of a subsequent taxation year to the extent that an investment tax credit was not deductible under this subsection for the subsequent year, and

Subpara. 127(5)(a)(i) amended by 2001, c. 17, subsec. 118(1), to add the phrase "of the taxpayer's flow-through mining expenditure for the year or a preceding taxation year", applicable to 2000 *et seq.*

Cl. 127(5)(a)(ii)(A) amended by the said c. 17, subsec. 118(2), applicable to 2000 *et seq.* except that, for the 2000 taxation year, it shall be read as follows:

> "(A) the taxpayer's investment tax credit at the end of the year in respect of property acquired in a subsequent taxation year, of the taxpayer's flow-through mining expenditure for a subsequent taxation year or of the taxpayer's SR&ED qualified expenditure pool at the end of a subsequent taxation year to the extent that an investment tax credit was not deductible under this subsection or subsection 180.1(1.2) for the subsequent year, and"

Cl. (a)(ii)(A) formerly read:

> (A) the taxpayer's investment tax credit at the end of the year in respect of property acquired in a subsequent taxation year or of the taxpayer's SR&ED qualified expenditure pool at the end of a subsequent taxation year to the extent that an investment tax credit was not deductible under this subsection or subsection 180.1(1.2) for the subsequent year, and

Para. 127(5)(b) amended by the said c. 17, subsec. 118(3), applicable to 2001 *et seq.* Para. (b) formerly read:

> (b) where Division E.1 applies to the taxpayer for the year, the amount, if any, by which the total of
>
> (i) the taxpayer's tax otherwise payable under this Part for the year, and
>
> (ii) the taxpayer's tax payable under Part I.1 for the year before deducting any amount under subsection 180.1(1.2)
>
> exceeds the taxpayer's minimum amount for the year determined under section 127.51.

Subpara. 127(5)(a)(i) and cl. 127(5)(a)(ii)(A) amended by 1996, c. 21, subsecs. 30(1), (2), applicable to taxation years that begin after 1995. Subpara. (a)(i) and cl. (a)(ii)(A) formerly read:

> (i) the taxpayer's investment tax credit at the end of the year in respect of property acquired, or an expenditure made, before the end of the year, and
>
> . . . . .
>
> (A) the taxpayer's investment tax credit at the end of the year in respect of property acquired, or an expenditure made, in a subsequent taxation year, to the extent that the investment tax credit was not deductible under this subsection or subsection 180.1(1.2) for the taxation year in which the property was acquired, or the expenditure was made, as the case may be, and

Subsec. 127(5) amended by 1994, c. 8, subsec. 15(1), applicable to taxation years that begin after 1993. Subsec. (5) formerly read:

> (5) There may be deducted from the tax otherwise payable by a taxpayer under this Part for a taxation year an amount not exceeding the least of
>
> (a) the taxpayer's annual investment tax credit limit for the year,

(b) the total of

(i) the taxpayer's investment tax credit at the end of the year in respect of property acquired, or an expenditure made, before the end of the year, and

(ii) the lesser of

(A) the taxpayer's investment tax credit at the end of the year in respect of property acquired, or an expenditure made, in a subsequent taxation year, to the extent that the investment tax credit was not deductible under this subsection or subsection 180.1(1.2) for the taxation year in which the property was acquired, or the expenditure was made, as the case may be, and

(B) the amount, if any, by which the taxpayer's tax otherwise payable by the taxpayer under this Part for the year exceeds the amount, if any, determined under subparagraph (i), and

(c) where Division E.1 is applicable to the taxpayer for the year, the amount, if any, by which the total of

(i) the taxpayer's tax otherwise payable under this Part for the year, and

(ii) the taxpayer's tax payable under Part I.1 for the year before deducting any amount under subsection 180.1(1.2),

exceeds the taxpayer's minimum amount for the year determined under section 127.51.

Selected Cases [subsec. 127(5)]: *Ainsworth Lumber Co. v. R.*, [2001] 3 C.T.C. 2001 (TCC) (Project may be substantially advanced even if construction has not begun); *Will-Kare Paving & Contracting Ltd. v. R.*, [2000] 3 C.T.C. 463 (SCC) (Settled concepts of law (e.g., sale, lease) to be preferred to plain meaning); *Atcon Construction Ltd. v. R.*, [2000] 2 C.T.C. 2691 (TCC) (Rock crushing was not extraction of minerals); *Lehman Bookbinding Ltd. v. MNR*, [1995] 2 C.T.C. 129 (FCTD) (Critical element was not whether there was manufacturing and processing, but whether activity was in respect of goods for sale); *Hawboldt Hydraulics (Canada) Inc. Estate (Trustee of) v. Canada*, [1992] 2 C.T.C. 363 (FCTD) (Equipment used to manufacture replacement parts was used in manufacturing or processing goods for sale); *GA Borstad Associates Ltd. v. MNR*, [1992] 2 C.T.C. 2146 (TCC) (Investment tax credit not applicable in respect of salaries payable but not paid in taxation year); *Tenneco Canada Inc. v. Canada*, [1991] 1 C.T.C. 323 (FCA) (Taxpayer carrying on servicing business denied investment tax credits when not manufacturing or processing goods for sale in Canada); *O'Neill v. R.*, [1984] C.T.C. 682 (FCTD) (Investment tax credit disallowed when equipment not "qualified property").

Regulations: 4600–4609.

Interpretation Bulletins: IT-92R2: Income of contractors; IT-151R5: Scientific research and experimental development expenditures; IT-411R: Meaning of "construction".

Information Circulars: 78-4R3: Investment tax credit rates.

Advance Tax Rulings: ATR-44: Utilization of deductions and credits within a related corporate group.

Application Policies: SR&ED 96-03: Claimants' entitlements and responsibilities; SR&ED 96-05: Penalties under subsec. 163(2).

Forms: RC4290: Refunds for small business R&D [guide]; T2 SCH 31: Investment tax credit — corporations; T661: Claim for SR&ED in Canada; T2038 (Ind.): Investment tax credit (individuals); T4088: Claiming scientific research and experimental development expenditures — guide to form T661.

(6) Investment tax credit of cooperative corporation — Where at any particular time in a taxation year a taxpayer that is a cooperative corporation within the meaning assigned by subsection 136(2) has, as required by subsection 135(3), deducted or withheld an amount from a payment made by it to any person pursuant to an allocation in proportion to patronage, the taxpayer may deduct from the amount otherwise required by that subsection to be remitted to the Receiver General, an amount, not exceeding the amount, if any, by which

(a) its investment tax credit at the end of the immediately preceding taxation year in respect of property acquired and expenditures made before the end of that preceding taxation year

exceeds the total of

(b) the amount deducted under subsection (5) from its tax otherwise payable under this Part for the immediately preceding taxation year in respect of property acquired and expenditures made before the end of that preceding taxation year, and

(c) the total of all amounts each of which is the amount deducted by virtue of this subsection from any amount otherwise required to be remitted by subsection 135(3) in respect of payments made by it before the particular time and in the taxation year,

and the amount, if any, so deducted from the amount otherwise required to be remitted by subsection 135(3)

(d) shall be deducted in computing the taxpayer's investment tax credit at the end of the taxation year, and

(e) shall be deemed to have been remitted by the taxpayer to the Receiver General on account of tax under this Part of the person to whom that payment was made.

Related Provisions: 12(1)(t) — Inclusion in income of ITCs; 13(7.1) — Deemed capital cost; 13(21)"undepreciated capital cost"I — Reduction in u.c.c. to reflect ITCs; 53(2)(k)(ii) — Deduction from ACB of property to reflect ITCs; 66.1(6)"cumulative Canadian exploration expense"L — Reduction in CCEE.

Interpretation Bulletins: IT-362R: Patronage dividends.

Forms: T2 SCH 31: Investment tax credit — corporations; T2038A: Business investment tax credit (prior to November 17, 1978).

(7) Investment tax credit of testamentary trust [or communal organization] — Where, in a particular taxation year of a taxpayer who is a beneficiary under a testamentary trust or under an *inter vivos* trust that is deemed to be in existence by section 143, an amount is determined in respect of the trust under paragraph (a), (a.1), (b) or (e.1) of the definition "investment tax credit" in subsection (9) for its taxation year that ends in that particular taxation year, the trust may, in its return of income for its taxation year that ends in that particular taxation year, designate the portion of that amount that can, having regard to all the circumstances including the terms and conditions of the trust, reasonably be considered to be attributable to the taxpayer and was not designated by the trust in respect of any other beneficiary of the trust, and that portion shall be added in computing the investment tax credit of the taxpayer at the end of that particular taxation year and shall be deducted in computing the investment tax credit of the trust at the end of its taxation year that ends in that particular taxation year.

Related Provisions: 53(2)(h)(ii) — Reduction in ACB of interest in trust; 127(11.2) — Time of expenditure and acquisition.

History: Subsec. 127(7) amended by 1996, c. 21, subsec. 30(3), applicable to taxation years that begin after 1995. Subsec. (7) formerly read:

(7) Where, in a particular taxation year of a taxpayer who is a beneficiary under a testamentary trust or under an *inter vivos* trust that is deemed to be in existence by section 143, an amount is determined in respect of the trust under paragraph (a), (b) or (e.1) of the definition "investment tax credit" in subsection (9) for its taxation year ending in that particular taxation year, the trust may, in its return of income under this Part for its taxation year ending in that particular taxation year, designate such portion of that amount as may, having regard to all the circumstances including the terms and conditions of the trust, reasonably be considered to be attributable to the taxpayer and was not designated by the trust in respect of any other beneficiary of that trust, and that portion shall be added in computing the investment tax credit of the taxpayer at the end of that particular taxation year and shall be deducted in computing the investment tax credit of the trust at the end of its taxation year ending in that particular taxation year.

Application Policies: SR&ED 2000-01: Cost of materials.

Forms: T2038 (Ind): Investment tax credit (individuals) for 1984 *et seq.*; T2 SCH 31: Investment tax credit — corporations.

(8) Investment tax credit of partnership — Subject to subsection (28), where, in a particular taxation year of a taxpayer who is a member of a partnership, an amount would be determined in respect of the partnership, for its taxation year that ends in the particular year, under paragraph (a), (a.1), (b) or (e.1) of the definition "investment tax credit" in subsection (9), if

(a) except for the purpose of subsection (13), the partnership were a person and its fiscal period were its taxation year, and

(b) in the case of a taxpayer who is a specified member of the partnership in the taxation year of the partnership, that definition were read without reference to paragraph (a.1) thereof, and paragraph (e.1) of that definition were read without reference to subparagraphs (ii) to (iv) thereof,

the portion of that amount that can reasonably be considered to be the taxpayer's share thereof shall be added in computing the investment tax credit of the taxpayer at the end of the particular year.

Related Provisions: 53(2)(c)(vi) — Reduction in ACB of partnership interest; 96(2.1)–(2.4) — Limited partnerships; 127(8.1) — ITC of limited partner; 127(8.3) — ITC not allocated to limited partners; 127(8.4) — Election — renunciation of allocated credits; 127(11.2) — Time of expenditure and acquisition; 127(23) — Taxation year of partnership for rules governing allocation of assistance; 127(28) — Recapture of ITC where partnership property converted to commercial use.

History: The opening words of subsec. 127(8) amended by 1999, c. 22, subsec. 48(1), applicable to dispositions and conversions of property that occur after February 23, 1998 The opening words formerly read:

(8) Where, in a particular taxation year of a taxpayer who is a member of a partnership, an amount would be determined in respect of the partnership, for its taxation year that ends in the particular year, under paragraph (a), (a.1), (b) or (e.1) of the definition "investment tax credit" in subsection (9), if

Subsec. 127(8) amended by 1996, c, 21, subsec. 30(5), applicable to taxation years that begin after 1995. Subsec. (8) formerly read:

(8) Where, in a particular taxation year of a taxpayer who is a member of a partnership, an amount would, if the partnership were a person and its fiscal period were its taxation year, be determined in respect of the partnership, for its taxation year ending in that particular taxation year, under paragraph (a), (b) or (e.1) of the definition "investment tax credit" in subsection (9), if

(a) paragraph (a) of that definition were read without reference to subparagraph (a)(iii) thereof, and

(b) in the case of a taxpayer who is a specified member of the partnership in the taxation year of the partnership,

(i) paragraph (a) of that definition were read without reference to subparagraph (a)(ii) thereof, and

(ii) paragraph (e.1) of that definition were read without reference to the words "the amount of an expenditure made by the taxpayer under paragraph (11.1)(c)",

the portion of that amount that may reasonably be considered to be the taxpayer's share thereof shall be added in computing the investment tax credit of the taxpayer at the end of that particular taxation year.

Subpara. 127(8)(b)(ii) amended by 1996, c. 21, subsec. 30(4), applicable to taxation years that end after December 2, 1992 and begin before 1996. Subpara. (b)(ii) formerly read:

(ii) paragraph (e.1) of that definition were read without reference to the words "or that reduced the amount of an expenditure made by the taxpayer under paragraph (11.1)(c)",

Selected Cases [subsec. 127(8)]: *Canadian Solifuels Inc.*, [2001] 4 C.T.C. 161 (FCA) (Provisions of subsec. 127(8) sufficient to deal with ITCs for partnerships without reference to computation rules in subsec. 96(1)).

Application Policies: SR&ED 2000-04R2: Recapture of investment tax credit; SR&ED 2004-02: Filing requirements for claiming SR&ED carried out in Canada.

Forms: T2038 (Ind): Investment tax credit (individuals) for 1984 *et seq.*; T2 SCH 31: Investment tax credit — corporations.

(8.1) Investment tax credit of limited partner — Where a taxpayer is a limited partner of a partnership at the end of the partnership's taxation year, the amount referred to under subsection (8) as the amount which can reasonably be considered to be the taxpayer's share of the amounts that would be determined under paragraph (a), (a.1), (b) or (e.1) of the definition "investment tax credit" in subsection (9) in respect of the partnership for the year shall not exceed the lesser of

(a) such portion of the amount thereof so determined without reference to this subsection, as is considered to have arisen by virtue of the expenditure by the partnership of an amount equal to the taxpayer's expenditure base (as determined under subsection (8.2)) in respect of the partnership at the end of the year, and

(b) the taxpayer's at-risk amount in respect of the partnership at the end of the year.

Related Provisions: 96(2.2) — At-risk amount; 96(2.4) — Limited partner; 127(8.2) — Expenditure base; 127(8.3) — ITC not allocated to limited partners; 127(8.5) — "At-risk amount", "limited partner".

History: The opening words of subsec. 127(8.1) amended by 1996, c. 21, subsec. 30(6), applicable to taxation years that begin after 1995. The opening words formerly read:

(8.1) Where a taxpayer is a limited partner of a partnership at the end of the partnership's taxation year, the amount referred to under subsection (8) as the amount which may reasonably be considered to be the taxpayer's share of the amounts that would be determined under paragraph (a), (b) or (e.1) of the definition "investment tax credit" in subsection (9), if paragraph (a) of that definition were read without reference to subparagraph (a)(iii) thereof, in respect of the partnership for the year shall not exceed the lesser of

(8.2) Expenditure base — For the purposes of subsection (8.1), a taxpayer's expenditure base in respect of a partnership at the end of a taxation year of the partnership is the lesser of

(a) the amount, if any, by which the total of

(i) the taxpayer's at-risk amount in respect of the partnership at the time the taxpayer last became a limited partner of the partnership,

(ii) all amounts described in subparagraph 53(1)(e)(iv) contributed by the taxpayer after the time the taxpayer last became a limited partner of the partnership and before the end of the year that may reasonably be considered to have increased the taxpayer's at-risk amount in respect of the partnership at the end of the taxation year in which the contribution was made, and

(iii) the amount, if any, by which

(A) the total of all amounts each of which is the taxpayer's share of any income of the partnership as determined under paragraph 96(1)(f) for the year, or a preceding year ending after the time the taxpayer last became a limited partner of the partnership,

exceeds

(B) the total of all amounts each of which is the taxpayer's share of any loss of the partnership as determined under paragraph 96(1)(g) for one of those years

exceeds the total of

(iv) all amounts received by the taxpayer after the time the taxpayer last became a limited partner of the partnership and before the end of the year as, on account or in lieu of payment of, or in satisfaction of, a distribution of the taxpayer's share of partnership profits or partnership capital, and

(v) the total of all amounts each of which is the amount of an expenditure of the partnership referred to in paragraph (8.1)(a) in respect of the taxpayer for a preceding year, and

(b) that proportion of the lesser of

(i) the total of all amounts each of which is, if the partnership were a person and its fiscal period were its taxation year,

(A) an amount a specified percentage of which would be determined in respect of the partnership under paragraph (a), (b) or (e.1) of the definition "investment tax credit" in subsection (9) for the year, or

(B) the amount that would be the SR&ED qualified expenditure pool of the partnership at the end of the year, and

(ii) the total of all amounts each of which is the amount determined under paragraph (a) in respect of each of the limited partners of the partnership at the end of the year

that

(iii) the amount determined in respect of the taxpayer under paragraph (a) for the year

is of

(iv) the amount determined under subparagraph (ii).

Related Provisions: 96(2.2) — At-risk amount; 96(2.4) — Limited partner; 127(8.5) — "At-risk amount", "limited partner".

History: Subpara. 127(8.2)(b)(i) amended by 1996, c. 21, subsec. 30(7), applicable to taxation years that begin after 1995. Subpara. (b)(i) formerly read:

(i) the total of all amounts each of which is an amount a specified percentage of which would, if the partnership were a person and its fiscal period were its taxation year, be determined in respect of the partnership under paragraph (a), (b) or (e.1) of the definition "investment tax credit" in subsection (9), if paragraph (a) of that definition were read without reference to subparagraph (a)(iii) thereof, for the taxation year, and

(8.3) Investment tax credit not allocated to limited partners — Where

(a) the amount that would, if the partnership were a person and its fiscal period were its taxation year, be determined in respect of the partnership under paragraph (a), (a.1), (b) or (e.1) of the definition "investment tax credit" in subsection (9) for a taxation year

exceeds

(b) the total of all amounts each of which is the amount determined, under subsections (8) and (8.1), to be the share thereof of a limited partner of the partnership,

such portion of the excess as is reasonable in the circumstances (having regard to the investment in the partnership, including debt obligations of the partnership, of each of those members of the partnership who was a member of the partnership throughout the fiscal period of the partnership and who was not a limited partner of the partnership during the fiscal period of the partnership) shall, for the purposes of subsection (8), be considered to be the amount that may reasonably be considered to be that member's share of the amount described in paragraph (a).

Related Provisions: 96(2.2) — At-risk amount; 96(2.4) — Limited partner; 127(8) — Election — renunciation of allocated credits; 127(8.4) — Election; 127(8.5) — "At-risk amount", "limited partner".

History: Para. 127(8.3)(a) amended by 1996, c. 21, subsec. 30(8), applicable to taxation years that begin after 1995. Para. (a) formerly read:

(a) the amount that would, if the partnership were a person and its fiscal period were its taxation year, be determined in respect of the partnership under paragraph (a), (b) or (e.1) of the definition "investment tax credit" in subsection (9), if paragraph (a) of that definition were read without reference to subparagraph (a)(iii) thereof, for a taxation year

(8.4) Idem — Notwithstanding subsection (8), where, pursuant to subsections (8) and (8.3) an amount would, but for this subsection, be required to be added in computing the investment tax credit of a taxpayer for a taxation year, where the taxpayer so elects in prescribed form and manner in the taxpayer's return of income (other than a return of income filed under subsection 70(2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) under this Part for the year, such portion of the amount as is elected by the taxpayer shall, for the purposes of this section, be deemed not to have been required by subsection (8) to have been added in computing the taxpayer's investment tax credit at the end of the year.

Related Provisions: 96(2.2) — At-risk amount; 96(2.4) — Limited partner; 127(8.5) — "At-risk amount", "limited partner".

Forms: T932: Election by a member of a partnership to renounce investment tax credits pursuant to subsection 127(8.4).

(8.5) Definitions — In subsections (8.1) to (8.4), the words "at-risk amount" of a taxpayer and "limited partner" of a partnership have the meanings assigned to those words by subsections 96(2.2) and (2.4), respectively.

(9) Idem — In this section,

"annual investment tax credit limit" — [Repealed]

History: The definition "annual investment tax credit limit" in subsec. 127(9) repealed by 1994, c. 8, subsec. 15(2), applicable to taxation years that begin after 1993. The definition formerly read:

"annual investment tax credit limit" of a taxpayer for a taxation year means

(a) in the case of a corporation, the total of

(i) ¾ of the corporation's tax otherwise payable under this Part for the year, and

(ii) where the corporation is a Canadian-controlled private corporation throughout the year, 3% of the least of the amounts determined under paragraphs 125(1)(a) to (c) in respect of the corporation for the year, and

(b) in any other case, the total of

(i) $24,000, and

(ii) ¾ of the amount, if any, by which the taxpayer's tax otherwise payable under this Part for the year exceeds $24,000;

"approved project" means a project with a total capital cost of depreciable property, determined without reference to subsection 13(7.1) or (7.4), of not less than $25,000 that has, on application in writing before July, 1988, been approved by such member of the Queen's Privy Council for Canada as is designated by the Governor in Council for the purposes of this definition in relation to projects in the appropriate province or region of a province;

"approved project property" — [Repealed]

History: The definition "approved project property" in subsec. 127(9) repealed by 1996, c. 21, subsec. 30(9), applicable to taxation years that begin after 1995. It formerly read:

"approved project property" of a taxpayer means property that is certified by the member of the Queen's Privy Council for Canada appointed to be the Minister for the purposes of the *Atlantic Canada Opportunities Agency Act* to be property that has not been used, or acquired for use or lease, for any purpose whatever before it was acquired by the taxpayer, and to be

(a) a prescribed building, to the extent that it is acquired by the taxpayer after May 23, 1985 and before 1993, or

(b) prescribed machinery and equipment acquired by the taxpayer after May 23, 1985 and before 1993,

that has been acquired pursuant to a plan by the taxpayer to use the property in Cape Breton primarily for an approved purpose in an approved project or, in the case of a prescribed building, to be leased by the taxpayer to a lessee (other than a person exempt from tax under this Part by virtue of section 149) who can reasonably be expected to use the building pursuant to a plan to use it in Cape Breton primarily for an approved purpose in an approved project, or

(c) part of a prescribed building to the extent that the part is acquired by the taxpayer after May 23, 1985 and before 1993 to be

(i) used by the taxpayer, or

(ii) leased by the taxpayer to a lessee (other than a person exempt from tax under this Part by virtue of section 149) who can reasonably be expected to use that part

pursuant to a plan to use that part in Cape Breton primarily for an approved purpose in an approved project, or

(d) where the taxpayer is a leasing corporation, prescribed machinery and equipment acquired by the taxpayer after May 23, 1985 and before 1993, to be leased by the taxpayer in the ordinary course of carrying on a business in Canada to a lessee (other than a person exempt from tax under this Part by virtue of section 149) who can reasonably be expected to use the property in Cape Breton primarily for an approved purpose in an approved project, but this paragraph only applies if the first lessee of the property commenced use of the property after May 23, 1985,

and for the purposes of this definition,

(e) "for an approved purpose" means for the purpose of

(i) any of the activities described in subparagraphs (c)(i) to (ix), (xi) and (xii) of the definition "qualified property" in this subsection,

(ii) farming, or

(iii) a prescribed activity, and

(f) "leasing corporation" means a corporation the principal business of which is leasing property, manufacturing property that it sells or leases, the lending of money, the purchasing of conditional sales contracts, accounts receivable, bills of sale, chattel mortgages, bills of exchange or other obligations representing part or all of the sale price of merchandise or services, or selling or servicing a type of property that it also leases, or any combination thereof;

"Cape Breton" means Cape Breton Island and that portion of the Province of Nova Scotia within the following described boundary:

beginning at a point on the southwesterly shore of Chedabucto Bay near Red Head, said point being S 70 degrees E (Nova Scotia grid meridian) from Geodetic Station Sand, thence in a southwesterly direction to a point on the northwesterly boundary of highway 344, said point being southwesterly 240' from the intersection of King Brook with said highway boundary, thence northwesterly to Crown post 6678, thence continuing northwesterly to Crown post 6679, thence continuing northwesterly to Crown post 6680, thence continuing northwesterly to Crown post 6681, thence continuing northwesterly to Crown post 6632, thence continuing northwesterly to Crown post 6602, thence northerly to Crown post 8575; thence northerly to Crown post 6599, thence continuing northerly to Crown post 6600, thence northwesterly to the southwest angle of the Town of Mulgrave, thence along the westerly boundary of the Town of Mulgrave and a prolongation thereof northerly to the Antigonish-Guysborough county line, thence along said county line northeasterly to the southwesterly shore of the Strait of Canso, thence following the southwesterly shore of the Strait of Canso and the northwesterly shore of Chedabucto Bay southeasterly to the place of beginning;

"certified property" of a taxpayer means any property (other than an approved project property) described in paragraph (a) or (b) of the definition "qualified property" in this subsection

(a) that was acquired by the taxpayer

(i) after October 28, 1980 and

(A) before 1987, or

(B) before 1988 where the property is

(I) a building under construction before 1987, or

(II) machinery and equipment ordered in writing by the taxpayer before 1987,

(ii) after 1986 and before 1989, other than a property included in subparagraph (i),

(iii) after 1988 and before 1995,

(iv) after 1994 and before 1996 where

(A) the property is acquired by the taxpayer for use in a project that was substantially advanced by or on behalf of the taxpayer, as evidenced in writing, before February 22, 1994, and

(B) construction of the project by or on behalf of the taxpayer begins before 1995, or

(v) after 1994 where the property

(A) is acquired by the taxpayer under a written agreement of purchase and sale entered into by the taxpayer before February 22, 1994,

(B) was under construction by or on behalf of the taxpayer on February 22, 1994, or

(C) is machinery or equipment that will be a fixed and integral part of property under construction by or on behalf of the taxpayer on February 22, 1994,

and that has not been used, or acquired for use or lease, for any purpose whatever before it was acquired by the taxpayer, and

(b) that is part of a facility as defined for the purposes of the *Regional Development Incentives Act*, chapter R-3 of the Revised Statutes of Canada, 1970, and was acquired primarily for use by the taxpayer in a prescribed area;

History: Subpara. (a)(iii) of the definition "certified property" in subsec. 127(9) amended and subparas. (iv) and (v) added by 1995, c. 3, subsec. 37(1), applicable to property acquired and expenditures incurred after 1994. Subpara. (a)(iii) formerly read:

(iii) after 1988,

Selected Cases [subsec. 127(9)"certified property"]: *Ainsworth Lumber Co. v. R.*, [2001] 3 C.T.C. 2001 (TCC) (Project may be substantially advanced even if construction has not begun); *Newfoundland Tractor and Equipment Co. v. Canada*, [1996] 2 C.T.C. 2250 (TCC) ("Use" does not include leasing); *Fibreco Pulp Inc. v. Canada*, [1994] 2 C.T.C. 114 (FCTD) (Chemi-thermo-mechanical pulp mill was certified property).

Regulations: 4602 (prescribed area).

"contract payment" means

(a) an amount paid or payable to a taxpayer, by a taxable supplier in respect of the amount, for scientific research and experimental development to the extent that it is performed

(i) for or on behalf of a person or partnership entitled to a deduction in respect of the amount because of subparagraph 37(1)(a)(i) or (i.1), and

(ii) at a time when the taxpayer is dealing at arm's length with the person or partnership, or

(b) an amount, other than a prescribed amount, payable by a Canadian government or municipality or other Canadian public authority or by a person exempt, because of section 149, from tax under this Part on all or part of the person's taxable income for scientific research and experimental development to be performed for it or on its behalf;

Related Provisions: 127(18)–(22) — Reduction of qualified expenditures to reflect contract payment; 127(25) — Anti-avoidance — deemed contract payment.

History: Para. (a) of the definition "contract payment" in subsec. 127(9) amended by 1996, c. 21, subsec. 30(11), applicable to taxation years that begin after 1995. Para. (a) formerly read:

(a) an amount payable for scientific research and experimental development to the extent that it can reasonably be considered to have been performed for, or on behalf of, a person entitled to a deduction in respect of the amount because of subparagraph 37(1)(a)(i) or clause 37(1)(a)(ii)(D), or

1998, c. 19, s. 306, amended subsec. 30(26) of the *Income Tax Act Budget Amendment Act* (S.C. 1996, c. 21) (Bill C-36) to read as follows, and added subsec. (26.1), deemed to have come into force on June 20, 1996:

(26) Subject to subsection (26.1), subsections (1) to (3) and (5) to (23), subsections 127(11.4) and (11.5) of the Act, as enacted by subsection (24), and subsections 127(13) to (25) of the Act, as enacted by subsection (25), apply to taxation years that begin after 1995. [This is unchanged except for "subject to subsection (26.1)" — ed.]

(26.1) Where, because of the application of subsection (26), an amount paid or payable by a person or partnership to a taxpayer with whom the person or partnership does not deal at arm's length otherwise

(a) would be a qualified expenditure of the person or partnership but would not be a contract payment received or receivable by the taxpayer, or

(b) would not be a qualified expenditure of the person or partnership but would be a contract payment received or receivable by the taxpayer,

the amount is deemed not to be a qualified expenditure of the person or partnership and not to be a contract payment received or receivable by the taxpayer.

"Contract payment" in subsec. 127(9) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 68(2), applicable to amounts that become payable after December 20, 1991. That definition formerly read:

"contract payment" means

(a) an amount payable by a person resident in Canada for scientific research and experimental development related to the business of that person,

(b) an amount, other than a prescribed amount, payable by a Canadian government, municipality or other Canadian public authority or by a person exempt from tax under Part I by virtue of section 149 for scientific research and experimental development to be performed for it or on its behalf, or

(c) an amount payable by a person not resident in Canada if that person is entitled to a deduction under clause 37(1)(a)(ii)(D) in respect of the amount;

Regulations: 4606 (prescribed amount).

Interpretation Bulletins: IT-151R5: Scientific research and experimental development expenditures.

Application Policies: SR&ED 94-04: Definition of "contract payment" in subsec. 127(9); SR&ED 2002-03: Taxable supplier rules.

"designated region" — [Repealed under former Act]

"eligible taxpayer" means

(a) a corporation other than a non-qualifying corporation,

(b) an individual other than a trust,

(c) a trust all the beneficiaries of which are eligible taxpayers, and

(d) a partnership all the members of which are eligible taxpayers,

and, for the purpose of this definition, a beneficiary of a trust is a person or partnership that is beneficially interested in the trust;

Related Provisions: 248(25) — Meaning of "beneficially interested".

History: The definition "eligible taxpayer" added to subsec. 127(9) by 1994, c. 8, subsec. 15(9), applicable to property acquired after December 2, 1992.

"first term shared-use-equipment" of a taxpayer means depreciable property of the taxpayer (other than prescribed depreciable property of a taxpayer) that is used by the taxpayer, during its operating time in the period (in this subsection and subsection (11.1) referred to as the "first period") beginning at the time the property was acquired by the taxpayer and ending at the end of the taxpayer's first taxation year ending at least 12 months after that time, primarily for the prosecution of scientific research and experimental development in Canada, but does not include general purpose office equipment or furniture;

Related Provisions: 37(1.3) — SR&ED within 200 nautical miles offshore is deemed done in Canada; 88(1)(e.3) closing words — Winding-up — parent deemed continuation of subsidiary; 127(11.5)(b) — Adjustments to qualified expenditures.

History: The definition "first term shared-use-equipment" added to subsec. 127(9) by 1994, c. 8, subsec. 15(9), applicable to property acquired after December 2, 1992.

Regulations: 2900(9) (prescribed depreciable property).

"flow-through mining expenditure" of a taxpayer for a taxation year means an expense deemed by subsection 66(12.61) (or by subsection 66(18) as a consequence of the application of subsection 66(12.61) to the partnership, referred to in paragraph (c) of this definition, of which the taxpayer is a member) to be incurred by the taxpayer in the year

(a) that is a Canadian exploration expense incurred after October 17, 2000 and before 2006 by a corporation in conducting mining exploration activity from or above the surface of the earth for the purpose of determining the existence, location, extent or quality of a mineral resource described in paragraph (a) or (d) of the definition "mineral resource" in subsection 248(1),

(b) that

(i) is an expense described in paragraph (f) of the definition "Canadian exploration expense" in subsection 66.1(6), and

(ii) is not an expense in respect of

(A) trenching, if one of the purposes of the trenching is to carry out preliminary sampling (other than specified sampling),

(B) digging test pits (other than digging test pits for the purpose of carrying out specified sampling), and

(C) preliminary sampling (other than specified sampling),

(c) an amount in respect of which is renounced in accordance with subsection 66(12.6) by the corporation to the taxpayer (or a partnership of which the taxpayer is a member) under an agreement described in that subsection and made after October 17, 2000, and

(d) that is not an expense that was renounced under subsection 66(12.6) to the corporation (or a partnership of which the corporation is a member), unless that renunciation was under an agreement described in that subsection and made after October 17, 2000,

(e) [Repealed]

Related Provisions: 127(9)"investment tax credit"(a.2) — 15% credit for expenditure; 127(11.1)(c.2) — Reduction for assistance received.

History: Para. (a) of the definition "flow-through mining expenditure" in subsec. 127(9) amended by 2005, c. 19, subsec. 28(1) to replace "2005" with "2006", applicable after March 23, 2004.

Para. (a) of the definition "flow-through mining expenditure" amended, and para. (e) repealed, by 2003, c. 15, subsecs. 81(1), (2), applicable after February 18, 2003. The paras. formerly read:

(a) that is a Canadian exploration expense incurred after October 17, 2000 and before 2004 by a corporation in conducting mining exploration activity from or above the surface of the earth for the purpose of determining the existence, location, extent or quality of a mineral resource described in paragraph (a) or (d) of the definition "mineral resource" in subsection 248(1),

. . . . .

(e) that is an expense that would be incurred by the corporation before 2004 if this Act were read without reference to subsection 66(12.66);

The definition "flow-through mining expenditure" added to subsec. 127(9), by 2001, c. 17, subsec. 118(7), applicable after October 17, 2000.

"Gaspé Peninsula" means that portion of the Gaspé region of the Province of Quebec that extends to the western border of Kamouraska County and includes the Magdalen Islands;

"government assistance" means assistance from a government, municipality or other public authority whether as a grant, subsidy, forgivable loan, deduction from tax, investment allowance or as any other form of assistance other than as a deduction under subsection (5) or (6);

Related Provisions: 12(1)(x) — Income inclusion for assistance; 248(16), (18) — GST input tax credit and rebate deemed to be government assistance; 248(16.1), (18.1) — QST input tax credit and rebate deemed to be government assistance.

"investment tax credit" of a taxpayer at the end of a taxation year means the amount, if any, by which the total of

(a) the total of all amounts each of which is the specified percentage of the capital cost to the taxpayer of certified property or qualified property acquired by the taxpayer in the year,

(a.1) 20% of the amount by which the taxpayer's SR&ED qualified expenditure pool at the end of the year exceeds the total of all amounts each of which is the super-allowance benefit amount for the year in respect of the taxpayer in respect of a province,

(a.2) where the taxpayer is an individual (other than a trust), 15% of the taxpayer's flow-through mining expenditures for the year,

(a.3) where the taxpayer is a taxable Canadian corporation, the specified percentage of the taxpayer's pre-production mining expenditure for the year,

(b) the total of amounts required by subsection (7) or (8) to be added in computing the taxpayer's investment tax credit at the end of the year,

(c) the total of all amounts each of which is an amount determined under any of paragraphs (a) to (b) in respect of the taxpayer for any of the 10 taxation years immediately preceding or the 3 taxation years immediately following the year,

(d) the total of all amounts each of which is an amount required by subsection 119(9) to be added in computing the taxpayer's investment tax credit at the end of the year or at the end of any of the 10 taxation years immediately preceding the year,

(e) the total of all amounts each of which is an amount required by subsection (10.1) to be added in computing the taxpayer's investment tax credit at the end of the year or at the end of any of the 10 taxation years immediately preceding or the 3 taxation years immediately following the year,

(e.1) the total of all amounts each of which is the specified percentage of that part of a repayment made by the taxpayer in the year or in any of the 10 taxation years immediately preceding or the 3 taxation years immediately following the year that can reasonably be considered to be a repayment of government assistance, non-government assistance or a contract payment that reduced

(i) the capital cost to the taxpayer of a property under paragraph (11.1)(b),

(ii) the amount of a qualified expenditure incurred by the taxpayer under paragraph (11.1)(c) for taxation years that began before 1996,

(iii) the prescribed proxy amount of the taxpayer under paragraph (11.1)(f) for taxation years that began before 1996,

(iv) a qualified expenditure incurred by the taxpayer under any of subsections (18) to (20), or

(v) the amount of a pre-production mining expenditure of the taxpayer under paragraph (11.1)(c.3), and

(e.2) the total of all amounts each of which is the specified percentage of 1/4 of that part of a repayment made by the taxpayer in the year or in any of the 10 taxation years immediately preceding or the 3 taxation years immediately following the year that can reasonably be considered to be a repayment of government assistance, non-government assistance or a contract payment that reduced

(i) the amount of a qualified expenditure incurred by the taxpayer under paragraph (11.1)(e) for taxation years that began before 1996, or

(ii) a qualified expenditure incurred by the taxpayer under any of subsections (18) to (20),

in respect of first term shared-use-equipment or second term shared-use-equipment, and, for that purpose, a repayment made by the taxpayer in any taxation year preceding the first taxation year that ends coincidentally with the first period or the second period in respect of first term shared-use-equipment or second term shared-use-equipment, respectively, is deemed to have been incurred by the taxpayer in that first taxation year,

exceeds the total of

(f) the total of all amounts each of which is an amount deducted under subsection (5) from the tax otherwise payable under this Part by the taxpayer for a preceding taxation year in respect of property acquired, or an expenditure incurred, in the year or in any of the 10 taxation years immediately preceding or the 2 taxation

years immediately following the year, or in respect of the taxpayer's SR&ED qualified expenditure pool at the end of such a year,

(g) the total of all amounts each of which is an amount required by subsection (6) to be deducted in computing the taxpayer's investment tax credit

(i) at the end of the year, or

(ii) [Repealed]

(iii) at the end of any of the 9 taxation years immediately preceding or the 3 taxation years immediately following the year,

(h) the total of all amounts each of which is an amount required by subsection (7) to be deducted in computing the taxpayer's investment tax credit

(i) at the end of the year, or

(ii) [Repealed]

(iii) at the end of any of the 10 taxation years immediately preceding or the 3 taxation years immediately following the year,

(i) the total of all amounts each of which is an amount claimed under subparagraph 192(2)(a)(ii) by the taxpayer for the year or a preceding taxation year in respect of property acquired, or an expenditure made, in the year or the 10 taxation years immediately preceding the year,

(j) where the taxpayer is a corporation control of which has been acquired by a person or group of persons at any time before the end of the year, the amount determined under subsection (9.1) in respect of the taxpayer, and

(k) where the taxpayer is a corporation control of which has been acquired by a person or group of persons at any time after the end of the year, the amount determined under subsection (9.2) in respect of the taxpayer,

except that no amount shall be included in the total determined under any of paragraphs (a) to (e.2) in respect of an outlay, expense or expenditure that would, if this Act were read without reference to subsections (26) and 78(4), be made or incurred by the taxpayer in the course of earning income in a particular taxation year, and no amount shall be added under paragraph (b) in computing the taxpayer's investment tax credit at the end of a particular taxation year in respect of an outlay, expense or expenditure made or incurred by a trust or a partnership in the course of earning income, if

(l) any of the income is exempt income or is exempt from tax under this Part,

(m) the taxpayer does not file with the Minister a prescribed form containing prescribed information in respect of the amount on or before the day that is one year after the taxpayer's filing-due date for the particular year;

Related Provisions: 37(11) — Filing deadline for R&D claims; 66(10.1)(b) — Joint exploration corporation; 87(2)(qq) — Amalgamations — continuation of corporation; 87(2.11) — Vertical amalgamations; 88(1)(e.3) — Flow-through of ITC to parent on wind-up of corporation; 127(7) — ITC of testamentary trust; 127(8) — ITC of partnership; 127(9.1) — Where control acquired before end of year; 127(9.2) — Where control acquired after beginning of year; 127(10.1) — Addition to ITC for SR&ED done by CCPC; 127(10.8) — Regeneration of ITCs where entitlement to assistance expires; 127(11.1), (11.2) — ITC calculation rules; 127(26) — Expenditure unpaid within 180 days of end of year; 127(27), (29) — Reduction of ITC where property converted to commercial use; 127(28) — Recapture of negative ITC; 127.1(2), (2.01) — Refundable investment tax credit; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 149(10)(c) — Where corporation becomes or ceases to be exempt; 248(1)"investment tax credit" — Definition applies to entire Act; 256(6)–(9) — Whether control acquired (for paras. (j), (k)).

History: Para. (a.3) added to the definition "investment tax credit" in subsec. 127(9) by 2003, c. 28, subsec. 14(3), applicable to 2003 *et seq.*

Para. (c) of the definition "investment tax credit" in subsec. 127(9) amended by the said c. 28, subsec. 14(4), applicable to 2003 *et seq.* The para. formerly read:

(c) the total of all amounts each of which is an amount determined under paragraph (a), (a.1), (a.2) or (b) in respect of the taxpayer for any of the 10 taxation years immediately preceding or the 3 taxation years immediately following the year,

Subpara. (e.1)(v) of the definition "investment tax credit" in subsec. 127(9) added by the said c. 28, subsec. 14(5), applicable to 2003 *et seq.*

Para. (a.1) amended and para. (a.2) added to the definition "investment tax credit" in subsec. 127(9), by 2001, c. 17, subsec. 118(4), para. (a.1) applicable to taxation years that begin after February 2000 except that, if a corporation's first taxation year that begins after February 2000 ends before 2001, it is applicable to the corporation's taxation years that begin after 2000. Para. (a.2) is applicable after October 17, 2000. Para. (a.1) formerly read:

(a.1) 20% of the taxpayer's SR&ED qualified expenditure pool at the end of the year,

Para. (c) of the definition "investment tax credit" in subsec. 127(9) amended by the said c. 17, subsec. 118(5), to add reference to "(a.2)", applicable after October 17, 2000.

Para. (l) of the definition "investment tax credit" in subsec. 127(9) amended by the said c. 17, subsec. 118(6), applicable to all taxation years. Para. (l) formerly read:

(l) any of the income is exempt income, or

The portion of the definition "investment tax credit" in subsec. 127(9) after para. (k) amended by 1998, c. 19, subsec. 33(1), applicable to all taxation years except that, if the taxpayer's filing-due date for the year is before June 1996, the taxpayer may file the prescribed form referred to in para. (m) before June 1997, and, for this purpose, the definition "filing-due date" in subsec. 248(1) applies to all taxation years. The closing words formerly read:

except that no amount shall be included in the total determined under any of paragraphs (a) to (e.2) in respect of any qualified expenditure incurred by the taxpayer in the course of earning income from a business, or in respect of any certified property or qualified property acquired by the taxpayer for use in the course of earning income from a business, if any of the income from that business is exempt from tax under this Part;

Paras. (a), (c), that portion between paras. (e) and (g), subparas. (g)(iii) and (h)(iii), and the closing words of the definition "investment tax credit" in subsec. 127(9) amended, subparas. (g)(ii) and (h)(ii) repealed, para. (a.1) added, by 1996, c. 21, subsecs. 30(12) to (17), applicable to taxation years that begin after 1995. These portions of the definition formerly read:

(a) the total of all amounts each of which is the specified percentage of

(i) the capital cost to the taxpayer of approved project property, certified property, qualified construction equipment, qualified property, qualified small-business property or qualified transportation equipment acquired by the taxpayer in the year,

(ii) a qualified expenditure made by the taxpayer in the year, or

(iii) the taxpayer's qualified Canadian exploration expenditure for the year,

. . . . .

(c) the total of all amounts each of which is

(i) an amount determined under paragraph (a) or (b) in respect of the taxpayer for any of the 5 taxation years immediately preceding the year, where the property was acquired, or the qualified expenditure was made, before April 20, 1983, or

(ii) an amount determined under paragraph (a) or (b) in respect of the taxpayer for any of the 10 taxation years immediately preceding or the 3 taxation years immediately following the year, where the property was acquired, or the qualified expenditure was made, after April 19, 1983 or the qualified Canadian exploration expenditure was for a taxation year ending after November 30, 1985,

. . . . .

(e.1) the total of all amounts each of which is the specified percentage of that part of a repayment made by the taxpayer in the year or in any of the 10 taxation years immediately preceding or the 3 taxation years immediately following the year that can reasonably be considered to be a repayment of government assistance, non-government assistance or a contract payment that reduced the capital cost to the taxpayer of a property under paragraph (11.1)(b), the amount of an expenditure made by the taxpayer under paragraph (11.1)(c) or the prescribed proxy amount of the taxpayer under paragraph (11.1)(f), and

(e.2) the total of all amounts each of which is the specified percentage of 1/4 of that part of a repayment made by the taxpayer in the year or in any of the 10 taxation years immediately preceding or the 3 taxation years immediately following the year that can reasonably be considered to be a repayment of government assistance, non-government assistance or a contract payment that reduced the amount of an expenditure made by the taxpayer under paragraph (11.1)(e) in respect of first term shared-use-equipment or second term shared-use-equipment, and, for that purpose, a repayment made by the taxpayer in any taxation year preceding the first taxation year ending coincidentally with the first period or the second period in respect of first term shared-use-equipment or second term shared-use-equipment, respectively, shall be deemed to have been made by the taxpayer in that first taxation year,

exceeds the total of

(f) the total of all amounts each of which is an amount deducted under subsection (5) from the tax otherwise payable under this Part by the taxpayer for a preceding taxation year in respect of

(i) property acquired, or an expenditure made, in any of the 5 taxation years immediately preceding the year, where the property was acquired, or the expenditure was made, before April 20, 1983, or

(ii) property acquired, or an expenditure made, in the year or in any of the 10 taxation years immediately preceding or the 2 taxation years immediately following the year, where the property was acquired, or the expenditure was made, after April 19, 1983,

. . . . .

(g)(ii) in respect of property acquired, or an expenditure made, before April 20, 1983, at the end of any of the 4 taxation years immediately preceding the year, or

(g)(iii) in respect of property acquired, or an expenditure made, after April 19, 1983, at the end of any of the 9 taxation years immediately preceding or the 3 taxation years immediately following the year,

. . . . .

(h)(ii) in respect of property acquired, or an expenditure made, before April 20, 1983, at the end of any of the 5 taxation years immediately preceding the year, or

(h)(iii) in respect of property acquired, or an expenditure made, after April 19, 1983, at the end of any of the 10 taxation years immediately preceding or the 3 taxation years immediately following the year,

. . . . .

except that no amount shall be included in the total determined under any of paragraphs (a) to (e.2) in respect of any qualified expenditure incurred by the taxpayer in the course of earning income from a business, or in respect of any certified property or qualified property acquired by the taxpayer for use in the course of earning income from a business, if any of the income from that business is exempt from tax under this Part;

Subpara. (a)(i) of the definition "investment tax credit" in subsec. 127(9) amended by 1994, c. 8, subsec. 15(3), applicable to property acquired after December 2, 1992. Subpara. (a)(i) formerly read:

(i) the capital cost to the taxpayer of a qualified property, qualified transportation equipment, qualified construction equipment, approved project property or certified property acquired by the taxpayer in the year,

Para. (e.1) of the definition "investment tax credit" in subsec. 127(9) amended, para. (e.2) added, by 1994, c. 8, subsec. 15(4), applicable to taxation years ending after December 2, 1992. Para. (e.1) formerly read:

(e.1) the total of all amounts each of which is the specified percentage of that part of a repayment made by the taxpayer in the year or in any of the 10 taxation years immediately preceding or the 3 taxation years immediately following the year that may reasonably be considered to be a repayment of government assistance, non-government assistance or a contract payment that reduced the capital cost to the taxpayer of a property under paragraph (11.1)(b) or that reduced the amount of an expenditure made by the taxpayer under paragraph (11.1)(c)

The closing words of the definition "investment tax credit" in subsec. 127(9) amended by 1994, c. 8, subsec. 15(5), applicable to property acquired after December 2, 1992. They formerly read:

except that no amount shall be included in the total determined under any of paragraphs (a) to (e.1) in respect of any qualified Canadian exploration expenditure or qualified expenditure made by the taxpayer in the course of earning income from a business, or in respect of any certified property, qualified property or approved project property acquired by the taxpayer for use in the course of earning income from a business, if any of the income from that business is exempt from tax under this Part;

That portion of "investment tax credit" following para. (k) in subsec. 127(9) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 104(1), applicable to property acquired and expenditures made by a taxpayer after July 13, 1990, other than property acquired and expenditures made after that day and before 1992

(a) under an agreement in writing entered into by the taxpayer before July 14, 1990; or

(b) for the purpose of completing the construction of property that was under construction by or on behalf of the taxpayer before July 14, 1990.

Interpretation Bulletins: IT-121R3: Election to capitalize cost of borrowed money (archived); IT-151R5: Scientific research and experimental development expenditures; IT-273R: Government assistance — general comments.

Information Circulars: 78-4R3: Investment tax credit rates.

Application Policies: SR&ED 2004-02: Filing requirements for claiming SR&ED carried out in Canada.

Forms: RC4290: Refunds for small business R&D [guide]; T2 SCH 38: Investment tax credit (ITC) — corporations; T661: Claim for SR&ED in Canada; T2038 (Ind): Investment tax credit (ITC) — individuals; T4088: Claiming scientific research and experimental development expenditures — guide to form T661.

"non-government assistance" means an amount that would be included in income by virtue of paragraph 12(1)(x) if that paragraph were read without reference to subparagraphs 12(1)(x)(vi) and (vii);

"non-qualifying corporation" at any time means

(a) a corporation that is, at that time, not a Canadian-controlled private corporation,

(b) a corporation that would be liable to pay tax under Part I.3 for the taxation year of the corporation that includes that time if that Part were read without reference to subsection 181.1(4) and if the amount determined under subsection 181.2(3) in respect of the corporation for the year were determined without reference to amounts described in any of paragraphs 181.2(3)(a), (b), (d) and (f) to the extent that the amounts so described were used to acquire property that would be qualified small-business property if the corporation were not a non-qualifying corporation, or

(c) a corporation that at that time is related for the purposes of section 181.5 to a corporation described in paragraph (b);

History: The definition "non-qualifying corporation" added to subsec. 127(9) by 1994, c. 8, subsec. 15(9), applicable to property acquired after December 2, 1992.

"pre-production mining expenditure", of a taxable Canadian corporation for a taxation year, means the total of all amounts each of which is an expenditure incurred after

2002 by the taxable Canadian corporation in the taxation year that

(a) would be an expense described in paragraph (f) or (g) of the definition "Canadian exploration expense" in subsection 66.1(6) if the expression "mineral resource" in that paragraph were defined to mean a mineral deposit from which the principal mineral to be extracted is diamond, a base or precious metal deposit, or a mineral deposit from which the principal mineral to be extracted is an industrial mineral that, when refined, results in a base or precious metal, and

(b) is not an expense that was renounced under subsection 66(12.6) to the taxable Canadian corporation;

Proposed Amendment — 127(9)"pre-production mining expenditure"

Letter from Department of Finance, December 8, 2004:

Dear [xxx]

We are writing in response to your letter dated March 23, 2004 and further to our meeting on May 25, 2004.

In your letter and in our subsequent meeting you expressed concern regarding the restriction in paragraph (b) of the definition "pre-production mining expenditure" in subsection 127(5) [should be 127(9) — ed.] of the *Income Tax Act* (the "Act"). That paragraph excludes an expenditure from qualifying as a pre-production mining expenditure if it is renounced under the terms of a flow-through share agreement.

You have asked us to recommend changes to the Act that would allow pre-production mining expenditures renounced under a flow-through share agreement to qualify for the pre-production tax credit if the flow-through shareholder is a taxable Canadian corporation that owns all the outstanding shares of the corporation that incurred the expenditures.

You advised us that, for commercial reasons, mineral exploration and development activities are frequently carried on through a wholly-owned subsidiary of a mining corporation. You also advised us that the preferred method of financing the subsidiary would generally be through the issuance of flow-through shares. In this case, the subsidiary would not normally have any income or would not be expected to have any income for a considerable period of time and, therefore, would not be in a position to use the pre-production tax credit.

As set out in the March 2003 technical paper titled, "Improving the Income Taxation of the Resource Sector in Canada", the credit was deliberately limited to the taxable Canadian corporation that incurred the expenditures and was not intended to be transferable to another corporation.

However, we agree that pre-production mining expenditures actually incurred by a wholly-owned subsidiary of a taxable Canadian corporation ("parent corporation") and renounced to that corporation should qualify for the pre-production tax credit if the parent corporation is a "principal-business corporation" as defined in subsection 66(15) of the Act, if the definition were read without reference to paragraphs (a), (a.1), (f), (h) and (i). Accordingly, we will recommend to the Minister of Finance that the definition of pre-production mining expenditure be amended, for expenses renounced under a flow-through share agreement entered into after 2004, to provide for this result. While I cannot offer any assurance that either the Minister or Parliament will agree with our recommendation, I hope that this statement of our intentions is helpful to you.

Yours sincerely,

Len Farber
General Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 127(9)"investment tax credit"(a.3) — 5%, 7% or 10% credit for expenditure; 127(11.1)(c.3) — Reduction for assistance received.

History: The definition "pre-production mining expenditure" in subsec. 127(9) added by 2003, c. 28, subsec. 14(7), applicable to 2003 *et seq.*

"qualified Canadian exploration expenditure" — [Repealed]

History: The definition "qualified Canadian exploration expenditure" in subsec. 127(9) repealed by 1996, c. 21, subsec. 30(9), applicable to taxation years that begin after 1995. It formerly read:

> "qualified Canadian exploration expenditure" of a taxpayer for a taxation year means the prescribed expenditure of the taxpayer for the year;

"qualified construction equipment" — [Repealed]

History: The definition "qualified construction equipment" in subsec. 127(9) repealed by 1996, c. 21, subsec. 30(9), applicable to taxation years that begin after 1995. It formerly read:

> "qualified construction equipment" of a taxpayer means prescribed equipment acquired by the taxpayer after April 19, 1983 and before 1989 that has not been used, or acquired for use or lease, for any purpose whatever before its acquisition by the taxpayer and that is
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> (a) to be used by the taxpayer principally for the purpose of construction in Canada in the course of carrying on a business other than a business
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> (i) the income from which is exempt from income tax by virtue of any provision of this Act, or
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> (ii) the income from which is not included in the taxpayer's income or, in the case of a non-resident person, in the taxpayer's taxable income earned in Canada, or
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> (b) to be leased by the taxpayer, if
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> (i) the equipment is leased by the taxpayer in the ordinary course of carrying on a business in Canada, the income from which is other than income referred to in subparagraph (a)(i) or (ii), to a lessee who can reasonably be expected to use the equipment principally for the purpose and under the circumstances referred to in paragraph (a), and
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> (ii) the taxpayer is a corporation whose principal business is a business described in subparagraph (d)(i) of the definition "qualified property" in this subsection or is a taxpayer whose principal business is a construction business;

"qualified expenditure" incurred by a taxpayer in a taxation year means

(a) an amount that is an expenditure incurred in the year by the taxpayer in respect of scientific research and experimental development that is an expenditure

(i) for first term shared-use-equipment or second term shared-use-equipment,

(ii) described in paragraph 37(1)(a), or

(iii) described in subparagraph 37(1)(b)(i), or

(b) a prescribed proxy amount of the taxpayer for the year (which, for the purpose of paragraph (e), is deemed to be an amount incurred in the year),

but does not include

(c) a prescribed expenditure incurred in the year by the taxpayer,

(d) where the taxpayer is a corporation, an expenditure specified by the taxpayer for the year for the purpose of clause 194(2)(a)(ii)(A),

(e) [Repealed]

(f) an expenditure (other than an expenditure that is salary or wages of an employee of the taxpayer) incurred by the taxpayer in respect of scientific research and experimental development to the extent that it is performed by another person or partnership at a time when the taxpayer and the person or partnership to which the expenditure is paid or payable do not deal with each other at arm's length,

(g) an expenditure described in paragraph 37(1)(a) that is paid or payable by the taxpayer to or for the benefit of a person or partnership that is not a taxable supplier in respect of the expenditure, other than an expenditure in respect of scientific research and experimental development directly undertaken by the taxpayer, and

(h) an amount that would otherwise be a qualified expenditure incurred by the taxpayer in the year to the extent of any reduction in respect of the amount that is required under any of subsections (18) to (20) to be applied;

Related Provisions: 18(9)(e) — Prepaid expenses deemed incurred in later taxation year; 37(1.3) — SR&ED within 200 nautical miles offshore is deemed done in Canada; 127(11.5) — Adjustments to qualified expenditures; 127(13)–(16) — Agreement to transfer expenditures to non-arm's length person who performs research; 127(18)–(21) — Reduction to reflect government assistance; 127(24) — Anti-avoidance rule — exclusion from qualified expenditure; 127(26) — Amounts not paid within 180 days of end of year.

History: Para. (e) repealed and paras. (f) and (g) of the definition "qualified expenditure" in subsec. 127(9) amended by 1998, c. 19, subsec. 33(2), applicable to taxation years that begin after 1995. The paras. formerly read:

> (e) subject to subsection (11.4), an amount in respect of which the taxpayer does not file with the Minister a prescribed form containing prescribed information on or before the day that is 12 months after the taxpayer's filing-due date for the particular taxation year in which the amount would have been incurred if this Act were read without reference to subsections (26) and 78(4) where the particular year begins after 1995,
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> (f) an expenditure (other than an expenditure that is salary or wages of an employee of the taxpayer) incurred by the taxpayer in respect of scientific research and experimental development to the extent that it is performed for or on behalf of the taxpayer at a time when the taxpayer and the person or partnership to which the expenditure is paid or payable do not deal with each other at arm's length,
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> (g) an expenditure described in paragraph 37(1)(a), other than an expenditure on scientific research and experimental development directly undertaken by the taxpayer, that is paid or payable by the taxpayer to or for the benefit of a person or partnership that is not a taxable supplier in respect of the expenditure, and

The definition "qualified expenditure" in subsec. 127(9) amended by 1996, c. 21, subsec. 30(10), applicable to taxation years that begin after 1995. It formerly read:

> "qualified expenditure" means an expenditure in respect of scientific research and experimental development incurred by a taxpayer that is an expenditure in respect of first term shared-use-equipment or second term shared-use-equipment or an expenditure described in paragraph 37(1)(a) or subparagraph 37(1)(b)(i) and includes an amount that is a prescribed proxy amount of a taxpayer, but does not include
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> (a) a prescribed expenditure,
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> (b) in the case of a taxpayer that is a corporation, an expenditure specified by the taxpayer for the purposes of clause 194(2)(a)(ii)(A), or
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> (c) subject to subsection (11.4), an expenditure in respect of which the taxpayer does not, by the day on or before which the taxpayer's return of income under this Part for the taxpayer's taxation year after that in which the expenditure was incurred is required to be filed, or would be required to be filed if tax under this Part were payable by the taxpayer for that following year, file with the Minister a prescribed form containing prescribed information;

1998, c. 19, s. 306, amended subsec. 30(26) of the *Income Tax Act Budget Amendment Act* (S.C. 1996, c. 21) (Bill C-36) to read as follows, and added subsec. (26.1), deemed to have come into force on June 20, 1996:

> (26) Subject to subsection (26.1), subsections (1) to (3) and (5) to (23), subsections 127(11.4) and (11.5) of the Act, as enacted by subsection (24), and subsections 127(13) to (25) of the Act, as enacted by subsection (25), apply to taxation years that begin after 1995. [This is unchanged except for "subject to subsection (26.1)" — ed.]
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> (26.1) Where, because of the application of subsection (26), an amount paid or payable by a person or partnership to a taxpayer with whom the person or partnership does not deal at arm's length otherwise
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> (a) would be a qualified expenditure of the person or partnership but would not be a contract payment received or receivable by the taxpayer, or
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> (b) would not be a qualified expenditure of the person or partnership but would be a contract payment received or receivable by the taxpayer,
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> the amount is deemed not to be a qualified expenditure of the person or partnership and not to be a contract payment received or receivable by the taxpayer.

Para. (c) of the definition "qualified expenditure" in subsec. 127(9) added by 1994, c. 21, subsec. 61(1), applicable after February 21, 1994 to expenditures incurred at any time except that, for an expenditure incurred by a taxpayer in a taxation year ending before February 22, 1994, the taxpayer may file the prescribed form referred to in para. (c) by the later of the day referred to in that para. and September 13, 1994.

The opening words of the definition "qualified expenditure" in subsec. 127(9) amended by 1994, c. 8, subsec. 15(6), applicable to taxation years ending after December 2, 1992. They formerly read:

> "qualified expenditure" means an expenditure in respect of scientific research and experimental development made by a taxpayer after March 31, 1977 that qualifies as an expenditure described in paragraph 37(1)(a) or subparagraph 37(1)(b)(i), but does not include

Regulations: 2900(4) (prescribed proxy amount); 2902 (prescribed expenditure).

Interpretation Bulletins: IT-104R2: Deductibility of fines or penalties; IT-151R5: Scientific research and experimental development expenditures.

Information Circulars: 97-1: SR&ED — Administrative guidelines for software development.

Application Policies: SR&ED 2002-03: Taxable supplier rules; SR&ED 2004-01: Retiring allowance.

Forms: T2 SCH 301: Newfoundland research and development tax credit; T2 SCH 340: Nova Scotia research and development tax credit; T2 SCH 360: New Brunswick research and development tax credit; T2 SCH 380: Manitoba research and development tax credit; T2 SCH 403: Saskatchewan research and development tax credit; T2 SCH 422: Yukon research and development tax credit; T661: Claim for SR&ED in Canada; T1129: Newfoundland research and development tax credit (individuals); T1132: Yukon research and development tax credit (individuals); T4088: Claiming scientific research and experimental development expenditures — guide to form T661.

"qualified property" of a taxpayer means property (other than an approved project property or a certified property) that is

> (a) a prescribed building to the extent that it is acquired by the taxpayer after June 23, 1975, or
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> (b) prescribed machinery and equipment acquired by the taxpayer after June 23, 1975,

that has not been used, or acquired for use or lease, for any purpose whatever before it was acquired by the taxpayer and that is

> (c) to be used by the taxpayer in Canada primarily for the purpose of
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> (i) manufacturing or processing goods for sale or lease,
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> (ii) farming or fishing,
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> (iii) logging,
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> (iv) operating an oil or gas well or extracting petroleum or natural gas from a natural accumulation of petroleum or natural gas,
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> (v) extracting minerals from a mineral resource,
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> (vi) processing
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> (A) ore (other than iron ore or tar sands ore) from a mineral resource to any stage that is not beyond the prime metal stage or its equivalent,
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> (B) iron ore from a mineral resource to any stage that is not beyond the pellet stage or its equivalent, or
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> (C) tar sands ore from a mineral resource to any stage that is not beyond the crude oil stage or its equivalent,
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> (vii) producing industrial minerals,
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> (viii) processing heavy crude oil recovered from a natural reservoir in Canada to a stage that is not beyond the crude oil stage or its equivalent,

(ix) Canadian field processing,

(x) exploring or drilling for petroleum or natural gas,

(xi) prospecting or exploring for or developing a mineral resource,

(xii) storing grain, or

(xiii) harvesting peat,

(c.1) to be used by the taxpayer in Canada primarily for the purpose of producing or processing electrical energy or steam in a prescribed area, where

(i) all or substantially all of the energy or steam

(A) is used by the taxpayer for the purpose of gaining or producing income from a business (other than the business of selling the product of the particular property), or

(B) is sold directly (or indirectly by way of sale to a provincially regulated power utility operating in the prescribed area) to a person related to the taxpayer, and

(ii) the energy or steam is used by the taxpayer or the person related to the taxpayer primarily for the purpose of manufacturing or processing goods in the prescribed area for sale or lease, or

(d) to be leased by the taxpayer to a lessee (other than a person exempt from tax under this Part because of section 149) who can reasonably be expected to use the property in Canada primarily for any of the purposes referred to in subparagraphs (c)(i) to (xiii), but this paragraph does not apply to property that is prescribed for the purpose of paragraph (b) unless use of the property by the first person to whom it was leased began after June 23, 1975 and

(i) the property is leased in the ordinary course of carrying on a business in Canada by a corporation whose principal business is leasing property, lending money, purchasing conditional sales contracts, accounts receivable, bills of sale, chattel mortgages or hypothecary claims on movables, bills of exchange or other obligations representing all or part of the sale price of merchandise or services, or any combination thereof,

(ii) the property is manufactured and leased in the ordinary course of carrying on business in Canada by a corporation whose principal business is manufacturing property that it sells or leases,

(iii) the property is leased in the ordinary course of carrying on business in Canada by a corporation whose principal business is selling or servicing property of that type, or

(iv) the property is a fishing vessel, including the furniture, fittings and equipment attached to it, leased by an individual (other than a trust) to a corporation, controlled by the individual, that carries on a fishing business in connection with one or more commercial fishing licences issued by the Government of Canada to the individual,

and, for the purpose of this definition, "Canada" includes the offshore region prescribed for the purpose of the definition "specified percentage";

Related Provisions: 127(11) — Interpretation.

History: Subpara. (d)(i) of the definition "qualified property" in subsec. 127(9) amended by 2001, c. 17, s. 213, to add the phrase "or hypothecary claims on movables", in force June 14, 2001.

Subparas. (c)(ii) to (xii) of the definition "qualified property" in subsec. 127(9) amended by 1997, c. 25, subsec. 35(1), applicable to taxation years that begin after 1996. Subparas. (c)(ii) to (xii) formerly read:

(ii) operating an oil or gas well, extracting petroleum or natural gas from a natural accumulation thereof or processing heavy crude oil recovered from a natural reservoir in Canada to a stage that is not beyond the crude oil stage or its equivalent,

(iii) extracting minerals from a mineral resource,

(iv) processing ore (other than iron ore or tar sands) from a mineral resource to a stage that is not beyond the prime metal stage or its equivalent,

(v) processing iron ore from a mineral resource to a stage that is not beyond the pellet stage or its equivalent,

(vi) processing tar sands to a stage that is not beyond the crude oil stage or its equivalent,

(vii) exploring or drilling for petroleum or natural gas,

(viii) prospecting or exploring for or developing a mineral resource,

(ix) logging,

(x) farming or fishing,

(xi) storing grain,

(xii) producing industrial minerals,

Para. (c.1) of "qualified property" in subsec. 127(9) added applicable to property acquired after 1991, and subpara. (d)(iv) added applicable to 1980 *et seq.*, by 1994, c. 21, subsecs. 61(2), (3).

Subpara. (c)(xiii) added to the definition "qualified property" in subsec. 127(9) by 1994, c. 7, Sch. II (1991, c. 49), subsec. 104(2), applicable to 1985 *et seq.*

Para. (d) of the definition "qualified property" in subsec. 127(9) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 104(3), applicable to property acquired after July 13, 1990. Para. (d) formerly read:

(d) to be leased by the taxpayer to a lessee (other than a person exempt from tax under section 149) who can reasonably be expected to use the property in Canada primarily for any of the purposes referred to in subparagraphs (c)(i) to (xii), but this paragraph does not apply in respect of property that is a prescribed property for the purposes of paragraph (b) unless

(i) the property is leased by the taxpayer in the ordinary course of carrying on a business in Canada and the taxpayer is a corporation whose principal business is leasing property, manufacturing property that it sells or leases, the lending of money, the purchasing of conditional sales contracts, accounts receivable, bills of sale, chattel mortgages, bills of exchange or other obligations representing part or all of the sale price of merchandise or services, or selling or servicing a type of property that it also leases, or any combination thereof, and

(ii) use of the property by the first lessee commenced after June 23, 1975;

That portion of the definition "qualified property" following para. (d) in subsec. 127(9) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 104(4), applicable after February 25, 1986.

Selected Cases [subsec. 127(9)"qualified property"]: *Bois Daaquam Inc. v. R.*, [2002] 1 C.T.C. 2650 (TCC) ("Primarily" refers to nature of operations, not place of use); *Stevenson v. R.*, [2002] 1 C.T.C. 2269 (TCC) (Testing machines before use did not disqualify categorization as "new"); *Will-Kare Paving & Contracting Ltd. v. R.*, [2000] 3 C.T.C. 463 (SCC) (Settled concepts of law (e.g., sale, lease) to be preferred to plain meaning); *Service Pause Café Mat Inc. v. R.*, [2000] 2 C.T.C. 2339 (TCC) (Coffee grounds transformed into goods for sale; credit available); *Burger King Restaurants of Canada Inc. v. R.*, [2000] 2 C.T.C. 1 (FCA) (Quantitative aspect (space) will govern unless compelling evidence provided as to qualitative (investment, salaries, service) aspect); *Allarcom Pay Television Ltd. v. R.*, [2000] 1 C.T.C. 273 (FCA); aff'g [1996] 3 C.T.C. 2608 (TCC) (Cable TV contracts were supply of services, not goods); *Newfoundland Tractor and Equipment Co. v. Canada*, [1996] 2 C.T.C. 2250 (TCC) ("Use" does not include leasing).

Regulations: 4600 (prescribed building, machinery); 4610 (prescribed area for para. (c.1)).

Interpretation Bulletins: IT-145R: Canadian manufacturing and processing profits — reduced rate of corporate tax.

Forms: T2 SCH 321: PEI corporate investment tax credit.

"qualified small-business property" — [Repealed]

History: The definition "qualified small-business property" in subsec. 127(9) repealed by 1996, c. 21, subsec. 30(9), applicable to taxation years that begin after 1995. It formerly read:

> "qualified small-business property" means property, acquired by a taxpayer who was an eligible taxpayer at the time the property was acquired, that, if this subsection were read without reference to subsection (11.2), would be
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> (a) certified property of the taxpayer if the definition "certified property" were read without the reference in it to paragraph (a) of the definition "qualified property" and without reference to subparagraphs (a)(i) and (ii) of it and if the reference in subparagraph (a)(iii) of it to "after 1988" were read as a reference to "after December 2, 1992 and before 1994",
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> (b) qualified construction equipment of the taxpayer if the definition "qualified construction equipment" were read without reference to paragraph (b) of it and if the reference in it to "after April 19, 1983 and before 1989" were read as a reference to "after December 2, 1992 and before 1994",
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> (c) qualified property of the taxpayer if the definition "qualified property" were read without reference to paragraphs (a) and (d) of it and if the reference in paragraph (b) of it to "after June 23, 1975" were read as a reference to "after December 2, 1992 and before 1994", or
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> (d) qualified transportation equipment of the taxpayer if the definition "qualified transportation equipment" were read without reference to paragraph (b) of it and if the reference in it to "after November 16, 1978 and before 1989" were read as a reference to "after December 2, 1992 and before 1994",
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> and where the property was acquired by the taxpayer to be leased to a person with whom the taxpayer does not deal at arm's length and the property is used by the person in Canada primarily for the purposes described in any of the definitions "qualified construction equipment", "qualified property" and "qualified transportation equipment", for the purposes of this subsection, the taxpayer shall be deemed to have acquired the property for that use;

The definition "qualified small-business property" added to subsec. 127(9) by 1994, c. 8, subsec. 15(9), applicable to property acquired after December 2, 1992.

"qualified transportation equipment" — [Repealed]

History: The definition "qualified transportation equipment" in subsec. 127(9) repealed by 1996, c. 21, subsec. 30(9), applicable to taxation years that begin after 1995. It formerly read:

> "qualified transportation equipment" of a taxpayer means prescribed equipment acquired by the taxpayer after November 16, 1978 and before 1989 that has not been used, or acquired for use or lease, for any purpose whatever before it was acquired by the taxpayer and that is
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> (a) to be used by the taxpayer principally for the purpose of transporting passengers, property or passengers and property, in Canada or to and from Canada, in the ordinary course of carrying on a business in Canada other than a business
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> (i) the income from which is exempt from income tax by virtue of any provision of this Act, or
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> (ii) the income from which is not included in the taxpayer's income or, in the case of a non-resident person, the taxpayer's taxable income earned in Canada, or
>
> (b) to be leased by the taxpayer, if
>
> (i) the equipment is leased by the taxpayer in the ordinary course of carrying on a business in Canada, the income from which is other than income referred to in subparagraph (a)(i) or (ii), to a lessee who can reasonably be expected to use the equipment principally for the purposes and under the circumstances referred to in paragraph (a), and
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> (ii) the taxpayer is a corporation whose principal business is a business described in subparagraph (d)(i) of the definition "qualified property" in this subsection or is a taxpayer whose principal business is passenger, property or passenger and property transport;

Selected Cases [subsec. 127(9)"qualified transportation equipment"]: *McMynn v. Canada*, [1995] 1 C.T.C. 2417 (TCC) ("Transport" used as noun is broader than "transporting").

Regulations: 4601 (prescribed equipment).

"SR&ED qualified expenditure pool" of a taxpayer at the end of a taxation year means the amount determined by the formula

$$A + B - C$$

where

A is the total of all amounts each of which is a qualified expenditure incurred by the taxpayer in the year,

B is the total of all amounts each of which is an amount determined under paragraph (13)(e) for the year in respect of the taxpayer, and in respect of which the taxpayer files with the Minister a prescribed form containing prescribed information by the day that is 12 months after the taxpayer's filing-due date for the year, and

C is the total of all amounts each of which is an amount determined under paragraph (13)(d) for the year in respect of the taxpayer;

Related Provisions: 37(1.3) — SR&ED within 200 nautical miles offshore is deemed done in Canada; 127(5)(a)(i), 127(5)(a)(ii)(A) — Investment tax credit; 127(9)"investment tax credit"(a.1) — 20% of pool claimable; 127(10.1)(b) — Additional ITC for CCPC; 127(13) — Transfer of pool to other taxpayer; 127(14) — Identification of amounts transferred as current or capital; 257 — Formula cannot calculate to less than zero.

History: The definition "SR&ED qualified expenditure pool" added to subsec. 127(9) by 1996, c. 21, subsec. 30(18), applicable to taxation years that begin after 1995.

Application Policies: SR&ED 94-01: Retroactive claims for scientific research (TPRs); SR&ED 95-04R: Conflict of interest with regard to outside consultants; SR&ED 96-05: Penalties under subsec. 163(2); SR&ED 96-07: Prototypes, custom products/commercial assets, pilot plants and experimental production; SR&ED 2000-02R: Guidelines for resolving claimants' SR&ED concerns. See also under 248(1)"scientific research and experimental development".

Forms: RC4290: Refunds for small business R&D [guide]; T661: Claim for SR&ED in Canada; T4052: An introduction to the SR&ED program [guide]; T4088: Claiming scientific research and experimental development expenditures — guide to form T661.

"second term shared-use-equipment" of a taxpayer means property of the taxpayer that was first term shared-use-equipment of the taxpayer and that is used by the taxpayer, during its operating time in the period (in this subsection and subsection (11.1) referred to as the "second period") beginning at the time the property was acquired by the taxpayer and ending at the end of the taxpayer's first taxation year ending at least 24 months after that time, primarily for the prosecution of scientific research and experimental development in Canada;

Related Provisions: 37(1.3) — SR&ED within 200 nautical miles offshore is deemed done in Canada; 88(1)(e.3) closing words — Winding-up — parent deemed continuation of subsidiary; 127(11.5)(b) — Adjustments to qualified expenditures.

History: The definition "second term shared-use-equipment" added to subsec. 127(9) by 1994, c. 8, subsec. 15(9), applicable to property acquired after December 2, 1992.

"specified percentage" means

(a) in respect of a qualified property

(i) acquired before April, 1977, 5%,

(ii) acquired after March 31, 1977 and before November 17, 1978 primarily for use in

(A) the Province of Nova Scotia, New Brunswick, Prince Edward Island or Newfoundland or the Gaspé Peninsula, 10%,

(B) a prescribed designated region, 7½%, and

(C) any other area in Canada, 5%,

(iii) acquired primarily for use in the Province of Nova Scotia, New Brunswick, Prince Edward Island or Newfoundland or the Gaspé Peninsula,

(A) after November 16, 1978 and before 1989, 20%,

(B) after 1988 and before 1995, 15%,

(C) after 1994, 15% where the property

(I) is acquired by the taxpayer under a written agreement of purchase and sale entered into by the taxpayer before February 22, 1994,

(II) was under construction by or on behalf of the taxpayer on February 22, 1994, or

(III) is machinery or equipment that will be a fixed and integral part of property under construction by or on behalf of the taxpayer on February 22, 1994, and

(D) after 1994, 10% where the property is not property to which clause (C) applies,

(iv) acquired after November 16, 1978 and before February 26, 1986 primarily for use in a prescribed offshore region, 7%,

(v) acquired primarily for use in a prescribed offshore region and

(A) after February 25, 1986 and before 1989, 20%,

(B) after 1988 and before 1995, 15%,

(C) after 1994, 15% where the property

(I) is acquired by the taxpayer under a written agreement of purchase and sale entered into by the taxpayer before February 22, 1994,

(II) was under construction by or on behalf of the taxpayer on February 22, 1994, or

(III) is machinery or equipment that will be a fixed and integral part of property under construction by or on behalf of the taxpayer on February 22, 1994, and

(D) after 1994, 10% where the property is not property to which clause (C) applies,

(vi) acquired primarily for use in a prescribed designated region and

(A) after November 16, 1978 and before 1987, 10%,

(B) in 1987, 7%,

(C) in 1988, 3%, and

(D) after 1988, 0%, and

(vii) acquired primarily for use in Canada (other than a property described in subparagraph (iii), (iv), (v) or (vi)), and

(A) after November 16, 1978 and before 1987, 7%,

(B) in 1987, 5%,

(C) in 1988, 3%, and

(D) after 1988, 0%,

(b) in respect of qualified transportation equipment acquired

(i) before 1987, 7%

(ii) in 1987, 5%, and

(iii) in 1988, 3%,

(c) in respect of qualified construction equipment acquired

(i) before 1987, 7%,

(ii) in 1987, 5%, and

(iii) in 1988, 3%,

(d) in respect of certified property

(i) included in subparagraph (a)(i) of the definition "certified property" in this subsection, 50%,

(ii) included in subparagraph (a)(ii) of that definition, 40%, and

(iii) in any other case, 30%,

(e) in respect of a qualified expenditure

(i) made after March 31, 1977 and before November 17, 1978 in respect of scientific research and experimental development to be carried out in

(A) the Province of Nova Scotia, New Brunswick, Prince Edward Island or Newfoundland or the Gaspé Peninsula, 10%,

(B) a prescribed designated region, 7½%, and

(C) any other area in Canada, 5%,

(ii) made by a taxpayer after November 16, 1978 and before the taxpayer's taxation year that includes November 1, 1983 or made by the taxpayer in the taxpayer's taxation year that includes November 1, 1983 or a subsequent taxation year if the taxpayer deducted an amount under section 37.1 in computing the taxpayer's income for the year,

(A) where the expenditure was made by a Canadian-controlled private corporation in a taxation year of the corporation in which it is or would, if it had sufficient taxable income for the year, be entitled to a deduction under section 125 in computing its tax payable under this Part for the year, 25%, and

(B) where clause (A) is not applicable and the qualified expenditure was in respect of scientific research and experimental development to be carried out in

(I) the Province of Nova Scotia, New Brunswick, Prince Edward Island or Newfoundland or the Gaspé Peninsula, 20%, and

(II) any other area in Canada, 10%,

(iii) made by a taxpayer in the taxpayer's taxation year that ends after October 31, 1983 and before January 1, 1985, other than a qualified expenditure in respect of which subparagraph (ii) is applicable,

(A) where the expenditure was made by a Canadian-controlled private corporation in a taxation year of the corporation in which it is or would, if it had sufficient taxable income for the year, be entitled to a deduction under section 125 in computing its tax payable under this Part for the year, 35%, and

(B) where clause (A) is not applicable and the qualified expenditure was in respect of scientific research and experimental development to be carried out in

(I) the Province of Nova Scotia, New Brunswick, Prince Edward Island or Newfoundland or the Gaspé Peninsula, 30%, and

(II) any other area in Canada, 20%,

(iv) made by a taxpayer

(A) after the taxpayer's 1984 taxation year and before 1995, or

(B) after 1994 under a written agreement entered into by the taxpayer before February 22, 1994,

(other than a qualified expenditure in respect of which subparagraph (ii) applies) in respect of scientific research and experimental development to be carried out in

(C) the Province of Newfoundland, Prince Edward Island, Nova Scotia or New Brunswick or the Gaspé Peninsula, 30%, and

(D) in any other area in Canada, 20%, and

(v) made by a taxpayer after 1994, 20% where the amount is not an amount to which clause (iv)(B) applies,

(f) in respect of the repayment of government assistance, non-government assistance or a contract payment that reduced

(i) the capital cost to the taxpayer of a property under paragraph (11.1)(b),

(ii) the amount of a qualified expenditure incurred by the taxpayer under paragraph (11.1)(c) or (e) for taxation years that began before 1996, or

(iii) the prescribed proxy amount of the taxpayer under paragraph (11.1)(f) for taxation years that began before 1996,

the specified percentage that applied in respect of the property, the expenditure or the prescribed proxy amount, as the case may be,

(f.1) in respect of the repayment of government assistance, non-government assistance or a contract payment that reduced a qualified expenditure incurred by the taxpayer under any of subsections (18) to (20), 20%,

(g) in respect of an approved project property acquired

(i) before 1989, 60%, and

(ii) after 1988, 45%,

(h) in respect of the qualified Canadian exploration expenditure of a taxpayer for a taxation year, 25%,

(i) in respect of qualified small-business property, 10%, and

(j) in respect of a pre-production mining expenditure, if the expenditure was incurred

(i) in 2003, 5%,

(ii) in 2004, 7%, and

(iii) after 2004, 10%;

Related Provisions: 13(27)(f) — Interpretation — available for use; 127(10.1) — Additional amount for R&D; 127(10.8) — Regeneration of ITCs where entitlement to assistance expires.

History: Para. (j) of the definition "specified percentage" in subsec. 127(9) added by 2003, c. 28, subsec. 14(6), applicable to 2003 *et seq.*

Para. (f) of the definition "specified percentage" in subsec. 127(9) amended and para. (f.1) added, by 1998, c. 19, s. 146, applicable to taxation years that begin after 1995. Para. (f) formerly read:

(f) in respect of the repayment of government assistance, non-government assistance or a contract payment that reduced the capital cost to the taxpayer of a property under paragraph (11.1)(b), the amount of an expenditure made by the taxpayer under paragraph (11.1)(c) or (e), or the prescribed proxy amount of a taxpayer under paragraph (11.1)(f), the specified percentage that was applicable in respect of the property, the expenditure or the prescribed proxy amount, as the case may be,

Cl. (a)(iii)(B) of the definition "specified percentage" in subsec. 127(9) amended and cls. (C) and (D) added by 1995, c. 3, subsec. 37(2), applicable to property acquired and expenditures incurred after 1994. Cl. (a)(iii)(B) formerly read:

(B) after 1988, 15%,

Cl. (a)(v)(B) of the definition "specified percentage" in subsec. 127(9) amended and cls. (C) and (D) added by 1995, c. 3, subsec. 37(3), applicable to property acquired and expenditures incurred after 1994. Cl. (a)(v)(B) formerly read:

(B) after 1988, 15%,

Subpara. (e)(iv) of the definition "specified percentage" in subsec. 127(9) amended and subpara. (v) added by 1995, c. 3, subsec. 37(4), applicable to property acquired and expenditures incurred after 1994. Subpara. (e)(iv) formerly read:

(iv) made by a taxpayer in [the taxpayer's] 1985 taxation year or a subsequent taxation year, other than a qualified expenditure in respect of which subparagraph (ii) is applicable, in respect of scientific research and experimental development to be carried out in

(A) the Province of Nova Scotia, New Brunswick, Prince Edward Island or Newfoundland or the Gaspé Peninsula, 30%, and

(B) any other area in Canada, 20%,

Para. (f) of the definition "specified percentage" in subsec. 127(9) amended by 1994, c. 8, subsec. 15(7), applicable to taxation years ending after December 2, 1992. Para. (f) formerly read:

(f) in respect of the repayment of government assistance, non-government assistance or a contract payment that reduced the capital cost to the taxpayer of a property under paragraph (11.1)(b) or that reduced the amount of an expenditure made by the taxpayer under paragraph (11.1)(c), the specified percentage that was applicable in respect of the property or expenditure, as the case may be,

Para. (i) added to the definition "specified percentage" in subsec 127(9) by 1994, c. 8, subsec. 15(8), applicable to property acquired after December 2, 1992.

Regulations: 4607 (prescribed designated region); 4609 (prescribed offshore region).

Interpretation Bulletins: IT-151R5: Scientific research and experimental development expenditures.

Information Circulars: 78-4R3: Investment tax credit rates; 87-5: Capital cost of property where trade-in is involved.

"specified sampling" means the collecting and testing of samples in respect of a mineral resource except that specified sampling does not include

(a) the collecting or testing of a sample that, at the time the sample is collected, weighs more than 15 tonnes, and

(b) the collecting or testing of a sample collected at any time in a calendar year in respect of any one mineral resource if the total weight of all such samples collected (by any person or partnership or any combination of persons and partnerships) in the period in the calendar year that is before that time (other than samples each of which weighs less than one tonne) exceeds 1,000 tonnes.

History: The definition "specified sampling" added to subsec. 127(9) by 2001, c. 17, subsec. 118(7), applicable after October 17, 2000.

"super-allowance benefit amount" for a particular taxation year in respect of a corporation in respect of a province means the amount determined by the formula

$$(A - B) \times C$$

where

A is the total of all amounts each of which is an amount that is or may become deductible by the corporation, in computing income or taxable income relevant in calculating an income tax payable by the corporation under a law of the province for any taxation year, in respect of an expenditure on scientific research and

experimental development incurred in the particular year,

B is the amount by which the amount of the expenditure exceeds the total of all amounts that would be required by subsections (18) to (20) to reduce the corporation's qualified expenditures otherwise determined under this section if the definitions "government assistance" and "non-government assistance" did not apply to assistance provided under that law, and

C is,

(a) where the corporation's expenditure limit for the particular year is nil, the maximum rate of the province's income tax that applies for that year to active business income earned in the province by a corporation, and

(b) in any other case, the rate of the province's income tax for that year that would apply to the corporation if

(i) it were not associated with any other corporation in the year,

(ii) its taxable income for the year were less than $200,000, and

(iii) its taxable income for the year were earned in the province in respect of an active business carried on in the province.

Related Provisions: 37(1)(d.1) — Amount reduces R&D deduction pool; 127(9)"investment tax credit"(a.1) — No direct ITC for amount; 127(10.1)(b) — Addition to ITC for amount; 257 — Formula cannot calculate to less than zero.

History: The definition "super-allowance benefit amount" added to subsec. 127(9) by 2001, c. 17, subsec. 118(7), applicable to taxation years that begin after February 2000 except that, if a corporation's first taxation year that begins after February 2000 ends before 2001, it is applicable to the corporation's taxation years that begin after 2000.

"taxable supplier" in respect of an amount means

(a) a person resident in Canada or a Canadian partnership, or

(b) a non-resident person, or a partnership that is not a Canadian partnership,

(i) by which the amount was payable, or

(ii) by or for whom the amount was receivable

in the course of carrying on a business through a permanent establishment (as defined by regulation) in Canada.

History: Para. (b) of the definition "taxable supplier" in subsec. 127(9) amended by 1998, c. 19, subsec. 33(3), applicable to taxation years that begin after 1995. Para. (b) formerly read:

(b) a non-resident person, or a partnership that is not a Canadian partnership,

(i) by which the amount was payable, or

(ii) by or for the benefit of which the amount was receivable in the course of carrying on a business through a permanent establishment (as defined by regulation) in Canada.

The definition "taxable supplier" added to subsec. 127(9) by 1996, c. 21, subsec. 30(18), applicable to taxation years that begin after 1995.

Regulations: 8201 (permanent establishment).

Application Policies: SR&ED 2002-03: Taxable supplier rules.

Selected Cases [subsec. 127(9)]: *Datacalc Research Corp. v. R.*, [2002] 2 C.T.C. 2548 (TCC) (Rights established by statute can be changed by statute and may not be vested); *Kowdrysh v. R.*, [2001] 2 C.T.C. 156 (FCA) (Beneficial ownership not necessary for purposes of tax credit); *Atcon Construction Ltd. v. R.*, [2000] 2 C.T.C. 2691 (TCC) (Rock crushing was not extraction of minerals); *Burger King Restaurants of Canada Inc. v. R.*, [2000] 2 C.T.C. 1 (FCA) (Preparation of fast food was "processing".); *Mont-Sutton Inc. v. R.*, [2000] 1 C.T.C. 311 (FCA) (No "rental" of snow at ski resort; "surface construction" considered); *Com Dev Ltd. v. R.*, [1999] 2 C.T.C. 2566 (TCC) (Cost-plus contracts more likely to indicate purchase of scientific research); *McMynn v. R.*, [1997] 3 C.T.C. 16 (FCTD) ("Use" is direct use by taxpayer claiming ITC, not rental to others for their use); *Minicom Data Corp. v. Canada*, [1992] 2 C.T.C. 2196 (TCC) (Interest on money borrowed to acquire head office site not prescribed scientific research and experimental development expense); *Mother's Pizza Parlour et al. v. R.*, [1988] 2 C.T.C. 197 (FCA) (Investment tax credit refused where building not used "primarily" for processing of goods); *Lor-Wes Contracting Ltd. v. R.*, [1985] 2 C.T.C. 79 (FCA) (Investment tax credit allowed when subcontractor's work integral and necessary part of contract); *Halliburton Services Ltd. v. R.*, [1985] 2 C.T.C. 52 (FCTD) (Investment tax credit allowed on contractor's movable equipment); *Bunge of Canada Ltd. v. R.*, [1984] C.T.C. 284 (FCA) (Loading systems in grain elevators "qualified property" for investment tax credit).

(9.1) Control acquired before the end of the year — Where a taxpayer is a corporation the control of which has been acquired by a person or group of persons (each of whom is in this subsection referred to as the "purchaser") at any time (in this subsection referred to as "that time") before the end of a taxation year of the corporation, the amount determined for the purposes of paragraph (j) of the definition "investment tax credit" in subsection (9) is the amount, if any, by which

(a) the amount, if any, by which

(i) the total of all amounts added in computing its investment tax credit at the end of the year in respect of a property acquired, or an expenditure made, before that time

exceeds

(ii) the total of all amounts each of which is an amount

(A) deducted in computing its investment tax credit at the end of the year under paragraph (f) or (g) of the definition "investment tax credit" in subsection (9), or

(B) deducted in computing its investment tax credit at the end of the taxation year immediately preceding the year under paragraph (i) of that definition,

to the extent that the amount may reasonably be considered to have been so deducted in respect of a property or expenditure in respect of which an amount is included in subparagraph (i)

exceeds the total of

(b) [Repealed under former Act]

(c) the amount, if any, by which its refundable Part VII tax on hand at the end of the year exceeds the total of all amounts each of which is an amount designated under subsection 192(4) in respect of a share issued by it

(i) in the period commencing one month before that time and ending at that time, or

(ii) after that time,

and before the end of the year, and

(d) that proportion of the amount that, but for subsections (3) and (5) and sections 126, 127.2 and 127.3, would be its tax payable under this Part for the year that,

(i) where throughout the year the corporation carried on a particular business in the course of which a property was acquired, or an expenditure was made, before that time in respect of which an amount is included in computing its investment tax

credit at the end of the year, the amount, if any, by which the total of all amounts each of which is

(A) its income for the year from the particular business, or

(B) its income for the year from any other business substantially all the income of which was derived from the sale, leasing, rental or development of properties or the rendering of services similar to the properties sold, leased, rented or developed, or the services rendered, as the case may be, by the corporation in carrying on the particular business before that time

exceeds

(C) the total of all amounts each of which is an amount deducted under paragraph 111(1)(a) or (d) for the year by the corporation in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of the particular business or the other business,

is of the greater of

(ii) the amount determined under subparagraph (i), and

(iii) its taxable income for the year.

Related Provisions: 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 249(4) — Deemed year-end on change of control; 256(6)–(9) — Whether control acquired.

Interpretation Bulletins: IT-151R5: Scientific research and experimental development expenditures.

I.T. Technical News: 7 (control by a group — 50/50 arrangement.

Forms: T2 SCH 31: Investment tax credit — corporations.

(9.2) Control acquired after the end of the year — Where a taxpayer is a corporation the control of which has been acquired by a person or group of persons at any time (in this subsection referred to as "that time") after the end of a taxation year of the corporation, the amount determined for the purposes of paragraph (k) of the definition "investment tax credit" in subsection (9) is the amount, if any, by which

(a) the total of all amounts each of which is an amount included in computing its investment tax credit at the end of the year in respect of a property acquired, or an expenditure made, after that time

exceeds the total of

(b) [Repealed under former Act]

(c) its refundable Part VII tax on hand at the end of the year, and

(d) that proportion of the amount that, but for subsections (3) and (5) and sections 126, 127.2 and 127.3, would be its tax payable under this Part for the year that,

(i) where the corporation acquired a property or made an expenditure, in the course of carrying on a particular business throughout the portion of a taxation year that is after that time, in respect of which an amount is included in computing its investment tax credit at the end of the year, the amount, if any, by which the total of all amounts each of which is

(A) its income for the year from the particular business, or

(B) where the corporation carried on a particular business in the year, its income for the year from any other business substantially all the income of which was derived from the sale, leasing, rental or development of properties or the rendering of services similar to the properties sold, leased, rented or developed, or the services rendered, as the case may be, by the corporation in carrying on the particular business before that time

exceeds

(C) the total of all amounts each of which is an amount deducted under paragraph 111(1)(a) or (d) for the year by the corporation in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of the particular business or the other business

is of the greater of

(ii) the amount determined under subparagraph (i), and

(iii) its taxable income for the year.

Related Provisions: 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 249(4) — Deemed year-end on change of control; 256(6)–(9) — Whether control acquired.

Interpretation Bulletins: IT-151R5: Scientific research and experimental development expenditures.

I.T. Technical News: 7 (control by a group — 50/50 arrangement).

Forms: T2 SCH 31: Investment tax credit — corporations.

(10) Ascertainment of certain property — The Minister may

(a) obtain the advice of the appropriate minister for the purposes of the *Regional Development Incentives Act*, chapter R-3 of the Revised Statutes of Canada, 1970, as to whether any property is property as described in paragraph (b) of the definition "certified property" in subsection (9);

(b) obtain a certificate from the appropriate minister for the purposes of the *Regional Development Incentives Act* certifying that any property specified therein is property as described in paragraph (b) of that definition; or

(c) provide advice to the member of the Queen's Privy Council for Canada appointed to be the Minister for the purposes of the *Atlantic Canada Opportunities Agency Act* as to whether any property qualifies for certification under the definition "approved project property" in subsection (9).

Selected Cases [subsec. 127(10)]: *Publi-Hebdos Inc. v. Canada*, [1995] 2 C.T.C. 330 (FCTD) (Free newspapers not held for sale or lease); *Coopers & Lybrand Limited v. Canada*, [1994] 2 C.T.C. 336 (FCA) ("For sale" does not mean "for use in repair process").

(10.1) Additions to investment tax credit — For the purpose of paragraph (e) of the definition "investment tax credit" in subsection (9), where a corporation was throughout a taxation year a Canadian-controlled private corporation, there shall be added in computing the corporation's investment tax credit at the end of the year the amount that is 15% of the least of

(a) such amount as the corporation claims;

(b) the amount by which the corporation's SR&ED qualified expenditure pool at the end of the year exceeds the total of all amounts each of which is the super-allowance benefit amount for the year in respect of the corporation in respect of a province; and

(c) the corporation's expenditure limit for the year.

Related Provisions: 88(1)(e.8) — Winding-up; 127(10.2)–(10.4) — Expenditure limit and associated corporations; 127(10.7) — Further additions to ITCs; 127.1(2)"refundable investment tax credit"(f)(i) — Addition to refundable ITC; 127.1(2.01) — Addition to refundable investment tax

credit; 136(1) — Cooperative can be private corporation for purposes of 127(10.1); 137(7) — Credit union can be private corporation for 127(10.1).

History: Para. 127(10.1)(b) amended by 2001, c. 17, subsec. 118(8), applicable to taxation years that begin after February 2000 except that, if a corporation's first taxation year that begins after February 2000 ends before 2001, it is applicable to the corporation's taxation years that begin after 2000. Para. (b) formerly read:

(b) the SR&ED qualified expenditure pool of the corporation at the end of the year; and

Subsec. 127(10.1) amended by 1996, c. 21, subsec. 30(19), applicable to taxation years that begin after 1995. Subsec. (10.1) formerly read:

(10.1) For the purpose of paragraph (e) of the definition "investment tax credit" in subsection (9), where a corporation was throughout a particular taxation year a Canadian-controlled private corporation, there shall be added in computing the corporation's investment tax credit at the end of the particular year the amount determined by the formula

$$\left[\frac{35}{100} \times A\right] - B$$

where

A is the lesser of

(a) the total of all expenditures described in any of subparagraphs (e)(iv) and (v) of the definition "specified percentage" in subsection (9) made by the corporation in the particular year and that were designated by it in its return of income under this Part for the particular year, and

(b) the corporation's expenditure limit for the particular year; and

B is the total of all amounts determined under paragraph (a) of the definition "investment tax credit" in subsection (9) in respect of an expenditure referred to in paragraph (a) of the description of A.

Subsec. 127(10.1) amended by 1995, c. 3, subsec. 37(5), applicable to taxation years that begin after 1995. Subsec. (10.1) formerly read:

(10.1) For the purpose of paragraph (e) of the definition "investment tax credit" in subsection (9), where a taxpayer was throughout a particular taxation year a Canadian-controlled private corporation the taxable income of which, for the taxation year preceding the particular year together with the taxable incomes of all corporations with which it was associated in the particular year for their taxation years ending in the calendar year preceding the calendar year in which the taxpayer's particular year ended, does not exceed twice the total of the business limits (as determined under section 125) of the taxpayer and the associated corporations for those preceding years, the amount, if any, by which

(a) 35% of the lesser of

(i) the total of all expenditures described in subparagraph (e)(iv) of the definition "specified percentage" in subsection (9) made by the taxpayer in the particular year and that were designated by it in its return of income under this Part for the particular year, and

(ii) the taxpayer's expenditure limit for the particular year

exceeds

(b) the total of all amounts determined under paragraph (a) of the definition "investment tax credit" in subsection (9) in respect of an expenditure referred to in subparagraph (a)(i)

shall be added in computing the taxpayer's investment tax credit at the end of the particular year.

Subsec. 127(10.1) amended by 1994, c. 8, subsec. 15(10), applicable to taxation years that begin after 1993. Subsec. (10.1) formerly read:

(10.1) For the purposes of paragraph (e) of the definition "investment tax credit" in subsection (9), where a taxpayer was throughout its taxation year a Canadian-controlled private corporation whose taxable income for the immediately preceding taxation year together with the taxable incomes of all corporations with which it was associated in the year for their taxation years ending in the calendar year immediately preceding the calendar year in which the corporation's year ended does not exceed the total of the business limits (as determined under section 125) of the corporation and the associated corporations for those preceding years, the amount, if any, by which

(a) 35% of the lesser of

(i) the total of all expenditures described in subparagraph (e)(iv) of the definition "specified percentage" in subsection (9) made by it in the year and that were designated by the taxpayer in its return of income under this Part for the year, and

(ii) the taxpayer's expenditure limit for the year

exceeds

(b) the total of all amounts determined under paragraph (a) of the definition "investment tax credit" in subsection (9) in respect of an expenditure referred to in subparagraph (a)(i)

shall be added in computing the taxpayer's investment tax credit at the end of the taxation year.

Forms: T2 SCH 31: Investment tax credit — corporations. See also under 127(9)"SR&ED qualified expenditure pool".

(10.2) Expenditure limit determined — For the purpose of subsection (10.1), a corporation's expenditure limit for a particular taxation year is the amount determined by the formula

$$(\$5{,}000{,}000 - 10A) \times \frac{B}{C}$$

where

A is the greater of $300,000 and either

(a) if the corporation is associated with one or more other corporations in the particular year and the particular year ends in a calendar year, the total of all amounts each of which is the taxable income of the corporation, or of such an associated corporation, for its last taxation year that ended in the preceding calendar year (determined before taking into consideration the specified future tax consequences for that last taxation year), or

(b) if paragraph (a) does not apply, the corporation's taxable income for its immediately preceding taxation year (determined before taking into consideration the specified future tax consequences for that preceding year),

B is the total of the business limits under section 125 for the particular year of the corporation and any such other corporations for the particular year, and

C is

(a) if the corporation is associated with one or more other corporations in the particular year, the total of all amounts each of which would be the business limit for the particular year of the corporation or of such an associated corporation, if this Act were read without reference to subsections 125(5) and (5.1), or

(b) if paragraph (a) does not apply, the amount that would, if this Act were read without reference to subsections 125(5) and (5.1), be the corporation's business limit for the particular year.

Related Provisions: 87(2)(oo) — Effect of amalgamation; 88(1)(e.8) — Winding-up; 125(5.1) — Elimination of business limit (and therefore the expenditure limit) for large corporations; 127(10.21)–(10.6) — Expenditure limit to be shared among associated corporations; 127(10.22), (10.23) — Venture capital investors — exclusion from associated-corporation rules; 127(10.6)(c) — Short taxation year; 257 — Formula cannot calculate to less than zero.

History: Subsec. 127(10.2) amended by 2003, c. 15, subsec. 81(3), applicable to taxation years that end after 2002 except that, for taxation years that immediately follow taxation years that ended before 2003, the reference in the formula in subsec. 127(10.2) to "$5,000,000" is to be read as

"$4,000,000" and the reference to "$300,000" in the description of A is to be read as "$200,000". It formerly read:

(10.2) For the purpose of subsection (10.1), a corporation's expenditure limit for a particular taxation year is the amount determined by the formula

$$(\$4{,}000{,}000 - 10A) \times \frac{B}{\$200{,}000}$$

where

A is the greater of $200,000 and either

(a) where the corporation is associated with one or more other corporations in the particular year and the particular year ends in a calendar year, the total of all amounts each of which is the taxable income of the corporation or such an associated corporation for its last taxation year that ended in the preceding calendar year (determined before taking into consideration the specified future tax consequences for that last year), or

(b) where paragraph (a) does not apply, the corporation's taxable income for its immediately preceding taxation year (determined before taking into consideration the specified future tax consequences for that preceding year), and

B is the total of the business limits under section 125 for the particular year of the corporation and any such other corporations for the particular year,

unless the corporation is associated in the particular year with one or more other Canadian-controlled private corporations, in which case, except as otherwise provided in this section, its expenditure limit for the particular year is nil.

The description of A in subsec. 127(10.2) amended by 1997, c. 25, subsec. 35(2), applicable to taxation years that begin after 1995. It formerly read:

A is the greater of

(a) $200,000; and

(b) the taxable income of the corporation for its preceding taxation year or, if it is associated with one or more other corporations in the particular year, the taxable income of the corporation for its last taxation year ending in the preceding calendar year plus the taxable incomes of all such other corporations for their last taxation years ending in the preceding calendar year, and

Subsec. 127(10.2) amended by 1995, c. 3, subsec. 37(5), applicable to taxation years that begin after 1995. Subsec. (10.2) formerly read:

(10.2) For the purpose of subsection (10.1), a corporation's expenditure limit for a particular taxation year is the amount determined by the formula

$$\$4{,}000{,}000 - 10A$$

where

A is the greater of

(a) $200,000, and

(b) the total of the taxable income of the corporation for the taxation year preceding the particular year and the taxable incomes of all corporations with which it was associated in the particular year for their taxation years ending in the calendar year preceding the calendar year in which the taxpayer's particular year ended,

unless the corporation is associated in the particular year with one or more other Canadian-controlled private corporations in which case, except as otherwise provided in this section, its expenditure limit for the particular year is nil.

Subsec. 127(10.2) amended by 1994, c. 8, subsec. 15(10), applicable to taxation years that begin after 1993. Subsec. (10.2) formerly read:

(10.2) For the purposes of subsection (10.1), a corporation's expenditure limit for a taxation year is $2,000,000 unless the corporation is associated in the year with one or more other Canadian-controlled private corporations in which case, except as otherwise provided in this section, its expenditure limit for the year is nil.

Interpretation Bulletins: IT-151R5: Scientific research and experimental development expenditures.

(10.21) Expenditure limits — associated CCPCs — Notwithstanding subsection (10.2), the expenditure limit for a taxation year of a corporation that is associated in the taxation year with one or more other Canadian-controlled private corporations is, except as otherwise provided in this section, nil.

Related Provisions: 127(10.3) — Allocation of expenditure limit among associated corporations.

History: Subsec. 127(10.21) added by 2003, c. 15, subsec. 81(3), applicable to taxation years that end after 2002

(10.22) Expenditure limits — associated CCPCs — If a particular Canadian-controlled private corporation is associated with another corporation in circumstances where those corporations would not be associated if the Act were read without reference to paragraph 256(1.2)(a), the particular corporation has issued shares to one or more persons who have been issued shares by the other corporation and there is at least one shareholder of the particular corporation who is not a shareholder of the other corporation or one shareholder of the other corporation who is not a shareholder of the particular corporation, the particular corporation is not associated with the other corporation for the purpose of

(a) determining the particular corporation's expenditure limit under subsection (10.2); and

(b) determining the particular corporation's business limit under section 125, as applied for the purpose only of determining the particular corporation's expenditure limit under subsection (10.2).

Related Provisions: 127(10.23) — Limitation on application of 127(10.22); 127.1(2.2) — Parallel rule for refundability of credit.

History: Subsec. 127(10.22) added by 2005, c. 19, subsec. 28(2), applicable to taxation years that end after March 22, 2004.

(10.23) Application of subsec. (10.22) — Subsection (10.22) applies to the particular corporation and the other corporation referred to in that subsection only if the Minister is satisfied that

(a) the particular corporation and the other corporation are not otherwise associated under this Act; and

(b) the existence of one or more shareholders of the particular corporation who is not a shareholder of the other corporation, or the existence of one or more shareholders of the other corporation who is not a shareholder of the particular corporation, is not for the purpose of satisfying the requirements of subsection (10.22) or 127.1(2.2).

Related Provisions: 127.1(2.3) — Parallel rule for refundability of credit.

History: Subsec. 127(10.23) added by 2005, c. 19, subsec. 28(2), applicable to taxation years that end after March 22, 2004.

(10.3) Associated corporations — If all of the Canadian-controlled private corporations that are associated with each other in a taxation year file with the Minister in prescribed form an agreement whereby, for the purpose of subsection (10.1), they allocate an amount to one or more of them for the year and the amount so allocated or the total of the amounts so allocated, as the case may be, does not exceed the amount determined for the year by the formula in subsection (10.2), the expenditure limit for the year of each of the corporations is the amount so allocated to it.

Related Provisions: 127(10.4) — Failure to file agreement.

History: Subsec. 127(10.3) amended by 1994, c. 8, subsec. 15(10), applicable to taxation years that begin after 1993. Subsec. (10.3) formerly read:

(10.3) If all of the Canadian-controlled private corporations that are associated with each other in a taxation year have filed with the Minister in prescribed form an agreement whereby, for the purposes of subsection (10.1), they allocate an amount to one or more of them for the taxation year and the amount so allocated or the total of

the amounts so allocated, as the case may be, is $2,000,000, the expenditure limit for the year of each of the corporations is the amount so allocated to it.

Interpretation Bulletins: IT-151R5: Scientific research and experimental development expenditures.

Forms: T2 SCH 23: Agreement among associated Canadian-controlled private corporations to allocate the business limit; T2 SCH 49: Agreement among associated Canadian-controlled private corporations to allocate the expenditure limit.

(10.4) Failure to file agreement — If any of the Canadian-controlled private corporations that are associated with each other in a taxation year fails to file with the Minister an agreement as contemplated by subsection (10.3) within 30 days after notice in writing by the Minister is forwarded to any of them that such an agreement is required for the purposes of this Part, the Minister shall, for the purpose of subsection (10.1), allocate an amount to one or more of them for the year, which amount or the total of which amounts, as the case may be, shall equal the amount determined for the year by the formula in subsection (10.2), and in any such case the expenditure limit for the year of each of the corporations is the amount so allocated to it.

History: Subsec. 127(10.4) amended by 1994, c. 8, subsec. 15(10), applicable to taxation years that begin after 1993. Subsec. (10.4) formerly read:

(10.4) If any of the Canadian-controlled private corporations that are associated with each other in a taxation year has failed to file with the Minister an agreement as contemplated by subsection (10.3) within 30 days after notice in writing by the Minister has been forwarded to any of them that such an agreement is required for the purpose of any assessment of tax under this Part, the Minister shall, for the purposes of subsection (10.1), allocate an amount to one or more of them for the taxation year, which amount or the total of which amounts, as the case may be, shall equal $2,000,000, and in any such case the expenditure limit for the year of each of the corporations is the amount so allocated to it.

(10.5) [Repealed under former Act]

(10.6) Expenditure limit determination in certain cases — Notwithstanding any other provision of this section,

(a) where a Canadian-controlled private corporation (in this paragraph referred to as the "first corporation") has more than one taxation year ending in the same calendar year and it is associated in two or more of those taxation years with another Canadian-controlled private corporation that has a taxation year ending in that calendar year, the expenditure limit of the first corporation for each taxation year in which it is associated with the other corporation ending in that calendar year is, subject to the application of paragraph (b), an amount equal to its expenditure limit for the first such taxation year determined without reference to paragraph (b);

(b) where a Canadian-controlled private corporation has a taxation year that is less than 51 weeks, its expenditure limit for the year is that proportion of its expenditure limit for the year determined without reference to this paragraph that the number of days in the year is of 365; and

(c) for the purpose of subsection (10.2), where a Canadian-controlled private corporation has a taxation year that is less than 51 weeks, the taxable income and business limit of the corporation for the year shall be determined by multiplying those amounts by the ratio that 365 is of the number of days in that year.

History: Para. 127(10.6)(c) added by 1995, c. 3, subsec. 37(6), applicable to taxation years that begin after 1995.

Interpretation Bulletins: IT-151R5: Scientific research and experimental development expenditures.

(10.7) Further additions to investment tax credit [repaid assistance] — Where a taxpayer has in a particular taxation year repaid an amount of government assistance, non-government assistance or a contract payment that was applied to reduce

(a) the amount of a qualified expenditure incurred by the taxpayer under paragraph (11.1)(c) for a preceding taxation year that began before 1996,

(b) the prescribed proxy amount of the taxpayer under paragraph (11.1)(f) for a preceding taxation year that began before 1996, or

(c) a qualified expenditure incurred by the taxpayer under any of subsections (18) to (20) for a preceding taxation year,

there shall be added to the amount otherwise determined under subsection (10.1) in respect of the taxpayer for the particular year the amount, if any, by which

(d) the amount that would have been determined under subsection (10.1) in respect of the taxpayer for that preceding year if subsections (11.1) and (18) to (20) had not applied in respect of the government assistance, non-government assistance or contract payment, as the case may be, to the extent of the amount so repaid,

exceeds

(e) the amount determined under subsection (10.1) in respect of the taxpayer for that preceding year.

Related Provisions: 127(10.8) — Further additions to investment tax credits.

History: Subsec. 127(10.7) amended by 1996, c. 21, subsec. 30(20), applicable to taxation years that begin after 1995. Subsec. (10.7) formerly read:

(10.7) Where a taxpayer has in a particular taxation year repaid an amount of government assistance, non-government assistance or a contract payment that had, because of subsection (11.1), resulted in a reduction of the amount of a qualified expenditure for a preceding taxation year, there shall be added to the amount otherwise determined under subsection (10.1) in respect of the taxpayer for the particular year the amount, if any, by which

(a) the amount that would have been determined under subsection (10.1) in respect of the taxpayer for that preceding year if subsection (11.1) had not applied in respect of the government assistance, non-government assistance or contract payment, as the case may be, to the extent of the amount so repaid,

exceeds

(b) the amount determined under subsection (10.1) in respect of the taxpayer for that preceding year.

Subsec. 127(10.7) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 104(5), applicable to amounts repaid after May 23, 1985.

(10.8) Further additions to investment tax credit [expired assistance] — For the purposes of paragraph (e.1) of the definition "investment tax credit" in subsection (9), subsection (10.7) and paragraph 37(1)(c), an amount of government assistance, non-government assistance or a contract payment that

(a) was applied to reduce

(i) the capital cost to a taxpayer of a property under paragraph (11.1)(b),

(ii) the amount of a qualified expenditure incurred by a taxpayer under paragraph (11.1)(c) for taxation years that began before 1996,

(iii) the prescribed proxy amount of a taxpayer under paragraph (11.1)(f) for taxation years that began before 1996, or

(iv) a qualified expenditure incurred by a taxpayer under any of subsections (18) to (20),

(b) was not received by the taxpayer, and

(c) ceased in a taxation year to be an amount that the taxpayer can reasonably be expected to receive,

is deemed to be the amount of a repayment by the taxpayer in the year of the government assistance, non-government assistance or contract payment, as the case may be.

Related Provisions: 127(9)"investment tax credit"(e.1), (e.2) — Repayment of assistance; 127(9)"specified percentage"(f) — Repayment of assistance.

History: Subsec. 127(10.8) amended by 1996, c. 21, subsec. 30(20), applicable to taxation years that begin after 1995. Subsec. (10.8) formerly read:

(10.8) Idem [expired assistance] — For the purposes of paragraph (e.1) of the definition "investment tax credit" in subsection (9), subsection (10.7) and paragraph 37(1)(c), where an amount of assistance that

(a) was applied in reduction of

(i) the capital cost to a taxpayer of a property, because of paragraph (11.1)(b), or

(ii) the amount of a qualified expenditure made by a taxpayer, because of paragraph (11.1)(c),

(b) was not received by the taxpayer, and

(c) ceased in a taxation year to be an amount that the taxpayer can reasonably be expected to receive,

that amount shall be deemed to be an amount of assistance repaid by the taxpayer in the year.

Subsec. 127(10.8) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 68(3), applicable to 1991 *et seq.*

(11) Interpretation — For the purposes of the definition "qualified property" in subsection (9),

(a) "manufacturing or processing" does not include any of the activities

(i) referred to in any of paragraphs (a) to (e) and (g) to (i) of the definition "manufacturing or processing" in subsection 125.1(3),

(ii) that would be referred to in paragraph (f) of that definition if that paragraph were read without reference to the expression "located in Canada",

(iii) that would be referred to in paragraph (j) of that definition if that paragraph were read without reference to the expression "in Canada", or

(iv) that would be referred to in paragraph (k) of that definition if the definition "Canadian field processing" in subsection 248(1) were read without reference to the expression "in Canada"; and

(b) for greater certainty, the purposes referred to in paragraph (c) of the definition "qualified property" in subsection (9) do not include

(i) storing (other than the storing of grain), shipping, selling or leasing finished goods,

(ii) purchasing raw materials,

(iii) administration, including clerical and personnel activities,

(iv) purchase and resale operations,

(v) data processing, or

(vi) providing facilities for employees, including cafeterias, clinics and recreational facilities.

History: Subparas. 127(11)(a)(i) and (ii) amended, subparas. (iii) and (iv) added, by 1997, c. 25, subsec. 35(3), applicable to taxation years that begin after 1996. Subparas. (a)(i) and (i) formerly read:

(i) referred to in any of paragraphs (a) to (e) and (i) to (k) of the definition "manufacturing or processing" in subsection 125.1(3), or

(ii) that would be referred to in any of paragraphs (f) to (h) of that definition if those paragraphs were read without reference to the expression "located in Canada"; and

Para. 127(11)(a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 104(6), applicable to 1990 *et seq.* Para. 127(11)(a) formerly read:

(a) "manufacturing or processing" does not include any of the activities referred to in paragraphs (a) to (k) of the definition "manufacturing or processing" in subsection 125.1(3); and

Selected Cases [subsec. 127(11)]: *Burger King Restaurants of Canada Inc. v. R.*, [2000] 2 C.T.C. 1 (FCA) (Quantitative aspect (space) will govern unless compelling evidence provided as to qualitative (investment, salaries, service) aspect).

Interpretation Bulletins: IT-411R: Meaning of "construction".

(11.1) Investment tax credit — For the purposes of the definition "investment tax credit" in subsection (9),

(a) the capital cost to a taxpayer of a property shall be computed as if no amount were added thereto by virtue of section 21;

(b) the capital cost to a taxpayer of a property shall be deemed to be the capital cost to the taxpayer of the property, determined without reference to subsections 13(7.1) and (7.4), less the amount of any government assistance or non-government assistance that can reasonably be considered to be in respect of, or for the acquisition of, the property and that, at the time of the filing of the taxpayer's return of income under this Part for the taxation year in which the property was acquired, the taxpayer has received, is entitled to receive or can reasonably be expected to receive;

(c) [Repealed]

(c.1) the amount of a taxpayer's qualified Canadian exploration expenditure for a taxation year shall be deemed to be the amount of the taxpayer's qualified Canadian exploration expenditure for the year as otherwise determined less the amount of any government assistance, non-government assistance or contract payment (other than assistance under the *Petroleum Incentives Program Act* or the *Petroleum Incentives Program Act*, Chapter P-4.1 of the Statutes of Alberta, 1981) in respect of expenditures included in determining the taxpayer's qualified Canadian exploration expenditure for the year that, at the time of the filing of the taxpayer's return of income for the year, the taxpayer has received, is entitled to receive or can reasonably be expected to receive;

(c.2) the amount of a taxpayer's flow-through mining expenditure for a taxation year is deemed to be the amount of the taxpayer's flow-through mining expenditure for the year as otherwise determined less the amount of any government assistance or non-government assistance in respect of expenses included in determining the taxpayer's flow-through mining expenditure for the year that, at the time of the filing of the taxpayer's return of income for the year, the taxpayer has received, is entitled to receive or can reasonably be expected to receive;

(c.3) the amount of a taxpayer's pre-production mining expenditure for a taxation year is deemed to be the amount of the taxpayer's pre-production mining expenditure for the year as otherwise determined less the amount of any government assistance or non-government assistance in respect of expenses included in de-

termining the taxpayer's pre-production mining expenditure for the year that, at the time of the filing of the taxpayer's return of income for the year, the taxpayer has received, is entitled to receive or can reasonably be expected to receive; and

(d) where at a particular time a taxpayer who is a beneficiary of a trust or a member of a partnership has received, is entitled to receive or can reasonably be expected to receive government assistance, non-government assistance or a contract payment, the amount thereof that may reasonably be considered to be in respect of, or for the acquisition of, depreciable property of the trust or partnership or in respect of an expenditure by the trust or partnership shall be deemed to have been received at that time by the trust or partnership, as the case may be, as government assistance, non-government assistance or as a contract payment in respect of the property or the expenditure, as the case may be.

(e), (f) [Repealed]

Related Provisions: 12(1)(x) — Payments as inducement or reimbursement etc.; 127(9)"investment tax credit"(e.1), (e.2) — Inclusion in ITC; 127(10.7), (10.8) — Further additions to ITCs; 248(16), (16.1) — GST or QST input tax credit/refund and rebate; 248(18), (18.1) — GST or QST — repayment of input tax credit or refund.

History: Para. 127(11.1)(c.3) added by 2003, c. 28, subsec. 14(8), applicable to 2003 *et seq.*

Para. 127(11.1)(c.2) added by 2001, c. 17, subsec. 118(9), applicable to 2000 *et seq.*

Paras. 127(11.1)(c), (e) and (f) repealed by 1996, c. 21, subsecs. 30(21), (22), applicable to taxation years that begin after 1995. Paras. (c), (e) and (f) formerly read:

(c) the amount of a qualified expenditure (other than a prescribed proxy amount or an amount determined under paragraph (e)) made by a taxpayer shall be deemed to be the amount of the qualified expenditure, determined without reference to subsections 13(7.1) and (7.4), less the amount of any government assistance, non-government assistance or contract payment that can reasonably be considered to be in respect of the expenditure and that, at the time of the filing of the taxpayer's return of income under this Part for the taxation year in which the expenditure was made, the taxpayer has received, is entitled to receive or can reasonably be expected to receive;

. . . . .

(e) the amount of a qualified expenditure made by a taxpayer in the taxation year ending coincidentally with the end of the first period (within the meaning assigned in the definition "first term shared-use-equipment" in subsection (9)) or the second period (within the meaning assigned in the definition "second term shared-use-equipment" in subsection (9)) in respect of first term shared-use-equipment or second term shared-use-equipment, respectively, of the taxpayer shall be deemed to be ¼ of the capital cost of the equipment that would be determined in accordance with paragraphs (a) and (b) if paragraph (b) were read as

"(b) the capital cost to a taxpayer of a property shall be deemed to be the capital cost to the taxpayer of the property, determined without reference to subsections 13(7.1) and (7.4), less the amount of any government assistance, non-government assistance or contract payment that can reasonably be considered to be in respect of, or for the acquisition of, the property and that, at the time of the filing of the return of income under this Part for the taxation year ending coincidentally with the first period, the taxpayer has received, is entitled to receive or can reasonably be expected to receive;"; and

(f) the prescribed proxy amount of a taxpayer for a taxation year shall be deemed to be the prescribed proxy amount of the taxpayer for the taxation year less the amount of any government assistance, non-government assistance or contract payment that can reasonably be considered to be in respect of an expenditure described in subparagraph 37(8)(a)(ii), other than an expenditure described in clause (B) of that subparagraph, and that, at the time of the filing of the taxpayer's return of income under this Part for the taxation year in which the expenditure was made, the taxpayer has received, is entitled to receive or can reasonably be expected to receive.

Paras. 127(11.1)(b), (c) amended, paras. (e), (f) added, by 1994, c. 8, subsecs. 15(11), (12), applicable to taxation years ending after December 2, 1992. Paras. (b), (c) formerly read:

(b) the capital cost to a taxpayer of a property shall be deemed to be the capital cost to the taxpayer of the property, determined without reference to subsections 13(7.1) and (7.4), less the amount of any government assistance or non-government assistance in respect of, or for the acquisition of, the property that, at the time of the filing of the return of income for the taxation year in which the property was acquired, the taxpayer has received, is entitled to receive or can reasonably be expected to receive;

(c) the amount of a qualified expenditure made by a taxpayer shall be deemed to be the amount of the qualified expenditure, determined without reference to subsections 13(7.1) and (7.4), less the amount of any government assistance, non-government assistance or contract payment in respect of the expenditure that, at the time of the filing of the return of income for the taxation year in which the expenditure was made, the taxpayer has received, is entitled to receive or can reasonably be expected to receive;

Selected Cases [subsec. 127(11.1)]: *Com Dev Ltd. v. R.*, [1999] 2 C.T.C. 2566 (TCC) (Cost-plus contracts more likely to indicate purchase of scientific research).

Interpretation Bulletins: IT-151R5: Scientific research and experimental development expenditures.

(11.2) Time of expenditure and acquisition — In applying subsections (5), (7) and (8), paragraphs (a) and (a.1) of the definition "investment tax credit" in subsection (9) and section 127.1,

(a) certified property, qualified property and first term shared-use-equipment are deemed not to have been acquired, and

(b) expenditures incurred to acquire property described in subparagraph 37(1)(b)(i) are deemed not to have been incurred

by a taxpayer before the property is considered to have become available for use by the taxpayer, determined without reference to paragraphs 13(27)(c) and (28)(d).

Related Provisions: 13(26) — No CCA until property available for use; 37(1.2) — No R&D deduction for capital expenditure until property available for use; 248(19) — When property available for use.

History: Subsec. 127(11.2) amended by 1996, c. 21, subsec. 30(23), applicable to taxation years that begin after 1995. Subsec. (11.2) formerly read:

(11.2) In applying subsections (5), (7) and (8), paragraph (a) of the definition "investment tax credit" in subsection (9) and section 127.1,

(a) property described in subparagraph (a)(i) of the definition "investment tax credit" in subsection (9) shall be deemed not to have been acquired,

(b) property that is first term shared-use-equipment the expenditure for which is a qualified expenditure included in subparagraph (a)(ii) of the definition "investment tax credit" in subsection (9) shall be deemed not to have been acquired, and

(c) expenditures incurred to acquire property described in subparagraph 37(1)(b)(i) shall be deemed not to have been incurred,

by the taxpayer before the property is considered to have become available for use by the taxpayer, determined without reference to paragraphs 13(27)(c) and (28)(d).

Subsec. 127(11.2) amended by 1995, c. 3, subsec. 37(7), applicable to property acquired and expenditures incurred after February 21, 1994. Subsec. (11.2) formerly read:

(11.2) Idem — For the purposes of this section and section 127.1, property described in subparagraph (a)(i) of the definition "investment tax credit" in subsection (9) shall be deemed not to have been acquired, and expenditures made to acquire property described in subparagraph 37(1)(b)(i) shall be deemed not to have been made, by a taxpayer before the property is considered to have become availa-

ble for use by the taxpayer, determined without reference to paragraphs 13(27)(c) and (28)(d).

Subsec. 127(11.2) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 104(7), applicable to property acquired and expenditures made after 1989.

Selected Cases [subsec. 127(11.2)]: *Kowdrysh v. R.*, [2001] 2 C.T.C. 156 (FCA) (Beneficial ownership not necessary for purposes of tax credit); *Saskatchewan Wheat Pool v. R.*, [1999] 2 C.T.C. 369 (FCA); leave to appeal to SCC refused (Apr. 13, 2000), File 27346 (ITC should not be higher for taxpayer who capitalizes interest).

Interpretation Bulletins: IT-151R5: Scientific research and experimental development expenditures.

Advance Tax Rulings: ATR-44: Utilization of deductions and credits within a related corporate group.

(11.3) Decertification of approved project property — For the purposes of the definition "approved project property" in subsection (9), a property that has been certified by the Minister of Regional Industrial Expansion, the Minister of Industry, Science and Technology or the member of the Queen's Privy Council for Canada appointed to be the Minister for the purposes of the *Atlantic Canada Opportunities Agency Act* may have its certification revoked by the latter Minister where

(a) an incorrect statement was made in the furnishing of information for the purpose of obtaining the certificate, or

(b) the taxpayer does not conform to the plan described in that definition,

and a certificate that has been so revoked shall be void from the time of its issue.

Related Provisions: 241(4) — Communication of information — exception.

(11.4) [Repealed]

History: Subsec. 127(11.4) repealed by 1998, c. 19, subsec. 33(5), applicable to 1997 *et seq.* Subsec. 127(11.4) formerly read:

(11.4) Paragraph (m) of the definition "investment tax credit" in subsection (9) does not apply to an expenditure incurred in a taxation year by a taxpayer if the expenditure is reclassified by the Minister on an assessment of the taxpayer's tax payable under this Part for the year, or on a determination that no tax under this Part is payable for the year by the taxpayer, as an expenditure in respect of scientific research and experimental development.

Subsec. 127(11.4) amended by 1998, c. 19, subsec. 33(4), applicable to 1996 *et seq.* Subsec. 127(11.4) formerly read:

(11.4) Paragraph (e) of the definition "qualified expenditure" in subsection (9) does not apply to an expenditure incurred in a taxation year by a taxpayer where the expenditure is reclassified by the Minister on an assessment of the taxpayer's tax payable under this Part for the year, or on a determination that no tax under this Part is payable for the year by the taxpayer, as an expenditure in respect of scientific research and experimental development.

Subsec. 127(11.4) amended by 1996, c. 21, subsec. 30(24), applicable to taxation years that begin after 1995. Subsec. (11.4) formerly read:

(11.4) Reclassified expenditures — Paragraph (c) of the definition "qualified expenditure" in subsection (9) does not apply to an expenditure incurred in a taxation year by a taxpayer where the expenditure is reclassified by the Minister on an assessment of the taxpayer's tax payable under this Part for the year, or on a determination that no tax under this Part is payable for the year by the taxpayer, as an expenditure in respect of scientific research and experimental development.

Subsec. 127(11.4) added by 1994, c. 21, subsec. 61(4), applicable after February 21, 1994 to expenditures incurred at any time.

(11.5) Adjustments to qualified expenditures — For the purpose of the definition "qualified expenditure" in subsection (9),

(a) the amount of an expenditure (other than a prescribed proxy amount or an amount described in paragraph (b)) incurred by a taxpayer in a taxation year is deemed to be the amount of the expenditure, determined without reference to subsections 13(7.1) and (7.4) and after the application of subsection (11.6); and

(b) the amount of an expenditure incurred by a taxpayer in the taxation year that ends coincidentally with the end of the first period (within the meaning assigned in the definition "first term shared-use-equipment" in subsection (9)) or the second period (within the meaning assigned in the definition "second term shared-use-equipment" in subsection (9)) in respect of first term shared-use-equipment or second term shared-use-equipment, respectively, of the taxpayer is deemed to be 1/4 of the capital cost of the equipment determined after the application of subsection (11.6) in accordance with the following rules:

(i) the capital cost to the taxpayer shall be computed as if no amount were added thereto because of section 21, and

(ii) the capital cost to the taxpayer is determined without reference to subsections 13(7.1) and (7.4).

Related Provisions: 12(1)(x)(vi) — Income inclusion from reimbursement or assistance; 127(11.6) — Non-arm's length costs; 127(18) — Reduction of qualified expenditures.

History: Subsec. 127(11.5) added by 1996, c. 21, subsec. 30(24), applicable to taxation years that begin after 1995.

(11.6) Non-arm's length costs — For the purpose of subsection (11.5), where

(a) a taxpayer would, if this Act were read without reference to subsection (26), incur at any time an expenditure as consideration for a person or partnership (referred to in this subsection as the "supplier") rendering a service (other than a service rendered by a person as an employee of the taxpayer) or providing a property to the taxpayer, and

(b) at that time the taxpayer does not deal at arm's length with the supplier,

the amount of the expenditure incurred by the taxpayer for the service or property and the capital cost to the taxpayer of the property are deemed to be

(c) in the case of a service rendered to the taxpayer, the lesser of

(i) the amount of the expenditure otherwise incurred by the taxpayer for the service, and

(ii) the adjusted service cost to the supplier of rendering the service, and

(d) in the case of a property sold to the taxpayer, the lesser of

(i) the capital cost to the taxpayer of the property otherwise determined, and

(ii) the adjusted selling cost to the supplier of the property.

Related Provisions: 12(1)(x)(vi) — Income inclusion from reimbursement or assistance; 127(11.7) — Meaning of adjusted selling cost and adjusted service cost; 127(11.8) — Interpretation; 127(24) — Exclusion from qualified expenditure.

History: Subsec. 127(11.6) added by 1996, c. 21, subsec. 30(24), applicable to expenditures incurred in taxation years that begin after 1995.

(11.7) Definitions — The definitions in this subsection apply in this subsection and subsection (11.6).

"adjusted selling cost" to a person or partnership (referred to in this definition as the "supplier") of a property is the amount determined by the formula

A – B

where

A is

(a) where the property is purchased from another person or partnership with which the supplier does not deal at arm's length, the lesser of

(i) the cost to the supplier of the property, and

(ii) the adjusted selling cost to the other person or partnership of the property, and

(b) in any other case, the cost to the supplier of the property,

and for the purpose of paragraph (b),

(c) where part of the cost to a supplier of a particular property is attributable to another property acquired by the supplier from a person or partnership with which the supplier does not deal at arm's length, that part of the cost is deemed to be the lesser of

(i) the amount of that part of the cost otherwise determined, and

(ii) the adjusted selling cost to the person or the partnership of the other property,

(d) where part of the cost to a supplier of a property is attributable to a service (other than a service rendered by a person as an employee of the supplier) rendered to the supplier by a person or partnership with which the supplier does not deal at arm's length, that part of the cost is deemed to be the lesser of

(i) the amount of that part of the cost otherwise determined, and

(ii) the adjusted service cost to the person or partnership of rendering the service, and

(e) no part of the cost to a supplier of a property that is attributable to remuneration based on profits or a bonus paid or payable to an employee of the supplier shall be included, and

B is the total of all amounts each of which is the amount of government assistance or non-government assistance that can reasonably be considered to be in respect of the property and that the supplier has received, is entitled to receive or can reasonably be expected to receive.

Related Provisions: 127(11.8) — Interpretation; 257 — Formula cannot calculate to less than zero.

"adjusted service cost" to a person or partnership (referred to in this definition as the "supplier") of rendering a particular service is the amount determined by the formula:

A – B – C – D – E

where

A is the cost to the supplier of rendering the particular service,

B is the total of all amounts each of which is the amount, if any, by which

(a) the cost to the supplier for a service (other than a service rendered by a person as an employee of the supplier) rendered by a person or partnership that does not deal at arm's length with the supplier to the extent that the cost is incurred for the purpose of rendering the particular service

exceeds

(b) the adjusted service cost to the person or partnership referred to in paragraph (a) of rendering the service referred to in that paragraph to the supplier,

C is the total of all amounts each of which is the amount, if any, by which

(a) the cost to the supplier of a property acquired by the supplier from a person or partnership that does not deal at arm's length with the supplier

exceeds

(b) the adjusted selling cost to the person or partnership referred to in paragraph (a) of the property,

to the extent that the excess relates to the cost of rendering the particular service,

D is the total of all amounts each of which is remuneration based on profits or a bonus paid or payable to an employee of the supplier to the extent that it is included in the cost to the supplier of rendering the particular service, and

E is the total of all amounts each of which is government assistance or non-government assistance that can reasonably be considered to be in respect of rendering the particular service and that the supplier has received, is entitled to receive or can reasonably be expected to receive;

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: Subsec. 127(11.7) added by 1996, c. 21, subsec. 30(24), applicable to expenditures incurred in taxation years that begin after 1995.

(11.8) Interpretation for non-arm's length costs — For the purposes of this subsection and subsections (11.6) and (11.7),

(a) the cost to a person or partnership (referred to in this paragraph as the "supplier") of rendering a service or providing a property to another person or partnership (referred to in this paragraph as the "recipient") with which the supplier does not deal at arm's length does not include,

(i) where the cost to the recipient of the service rendered or property provided by the supplier would, but for this paragraph, be a cost to the recipient incurred in rendering a particular service or providing a particular property to a person or partnership with which the recipient does not deal at arm's length, any expenditure of the supplier to the extent that it would, if it were incurred by the recipient in rendering the particular service or providing the particular property, be excluded from a cost to the recipient because of this paragraph, and

(ii) in any other case, any expenditure of the supplier to the extent that it would, if it were incurred by the recipient, not be a qualified expenditure of the recipient;

(b) paragraph 69(1)(c) does not apply in determining the cost of a property; and

(c) the leasing of a property is deemed to be the rendering of a service.

History: Subsec. 127(11.8) added by 1996, c. 21, subsec. 30(24), applicable to expenditures incurred in taxation years that begin after 1995.

(12) Interpretation — For the purposes of subsection 13(7.1), where, pursuant to a designation or an allocation from a trust or partnership, an amount is required by subsection (7) or (8) to be added in computing the investment tax credit of a taxpayer at the end of the taxpayer's taxa-

tion year, the portion thereof that can reasonably be considered to relate to depreciable property shall be deemed to have been received by the partnership or trust, as the case may be, at the end of its fiscal period in respect of which the designation or allocation was made as assistance from a government for the acquisition of depreciable property.

(12.1) Idem — For the purposes of section 37, where, pursuant to a designation or an allocation from a trust or partnership, an amount is required by subsection (7) or (8) to be added in computing the investment tax credit of a taxpayer at the end of the taxpayer's taxation year, the portion thereof that may reasonably be regarded as relating to expenditures of a current nature in respect of scientific research and experimental development that are qualified expenditures shall, at the end of the fiscal period of the trust or partnership, as the case may be, in respect of which the designation or allocation was made, reduce the total of such expenditures of a current nature as may be claimed by the trust or partnership in respect of scientific research and experimental development.

(12.2) Idem — For the purposes of paragraphs 53(2)(c), (h) and (k), where in a taxation year a taxpayer has deducted under subsection (5) an amount that may reasonably be regarded as attributable to amounts included in computing the investment tax credit of the taxpayer at the end of the year in respect of property acquired, or an expenditure made, in a subsequent taxation year, the taxpayer shall be deemed to have made the deduction under that subsection in that subsequent taxation year.

(12.3) Idem — For the purposes of the determination of J in the definition "cumulative Canadian exploration expense" in subsection 66.1(6), where, pursuant to a designation by a trust, an amount is required by subsection (7) to be added in computing the investment tax credit of a taxpayer at the end of the taxpayer's taxation year, the portion thereof that can reasonably be considered to relate to a qualified Canadian exploration expenditure of the trust for a taxation year shall be deemed to have been received by the trust at the end of its taxation year in respect of which the designation was made as assistance from a government in respect of that expenditure.

Related Provisions: 248(16), (16.1) — GST or QST input tax credit/refund and rebate; 248(18), (18.1) — GST or QST — repayment of input tax credit or refund.

(13) Agreement to transfer qualified expenditures — Where a taxpayer (referred to in this subsection and subsections (15) and (16) as the "transferor") and another taxpayer (referred to in this subsection and subsection (15) as the "transferee") file with the Minister an agreement or an amended agreement in respect of a particular taxation year of the transferor, the least of

(a) the amount specified in the agreement for the purpose of this subsection,

(b) the amount that but for the agreement would be the transferor's SR&ED qualified expenditure pool at the end of the particular year, and

(c) the total of all amounts each of which is an amount that, if the transferor were dealing at arm's length with the transferee, would be a contract payment

(i) for the performance of scientific research and experimental development for, or on behalf of, the transferee,

(ii) that is paid by the transferee to the transferor on or before the day that is 180 days after the end of the particular year, and

(iii) that would be in respect of

(A) a qualified expenditure that

(I) would be incurred by the transferor in the particular year (if this Act were read without reference to subsections (26) and 78(4)) in respect of that portion of the scientific research and experimental development that was performed at a time when the transferor did not deal at arm's length with the transferee, and

(II) is paid by the transferor on or before the day that is 180 days after the end of the particular year, or

(B) an amount added because of this subsection to the transferor's SR&ED qualified expenditure pool at the end of the particular year where the amount is attributable to an expenditure in respect of the scientific research and experimental development

is deemed to be

(d) an amount determined in respect of the transferor for the particular year for the purpose of determining the value of C in the definition "SR&ED qualified expenditure pool" in subsection (9), and

(e) an amount determined in respect of the transferee for the transferee's first taxation year that ends at or after the end of the particular year for the purpose of determining the value of B in the definition "SR&ED qualified expenditure pool" in subsection (9),

and where the total of all amounts each of which is an amount specified in an agreement filed with the Minister under this subsection in respect of a particular taxation year of a transferor exceeds the amount that would be the transferor's SR&ED qualified expenditure pool at the end of the particular year if no agreement were filed with the Minister in respect of the particular year, the least of the amounts determined under paragraphs (a) to (c) in respect of each such agreement is deemed to be nil.

Related Provisions: 37(1)(e)(iii) — Reduced SR&ED deduction; 127(8)(a) — Partnership not a person for purposes of this subsection; 127(14) — Identification of amounts transferred as current or capital; 127(15) — Filing requirements; 127(16) — Anti-avoidance; 127(17) — Assessment of other years to take agreement into account; 127(29) — Recapture of ITC of allocating taxpayer.

History: Subsec. 127(13) added by 1996, c. 21, subsec. 30(25), applicable to taxation years that begin after 1995.

Selected Cases [former subsec. 127(13)]: *410285 Ontario Ltd. v. MNR*, [1985] 1 C.T.C. 2377 (TCC) (Taxpayer corporation can rely on confirmed Department of Employment and Immigration information when hiring employees to qualify for employment tax credits).

Application Policies: SR&ED 2000-04R2: Recapture of investment tax credit.

Forms: T1146: Agreement to transfer qualified expenditures incurred re SR&ED contracts carried on in Canada.

(14) Identification of amounts transferred — Where

(a) a transferor and a transferee have filed an agreement under subsection (13) in respect of a taxation year of the transferor,

(b) the agreement includes a statement identifying the amount specified in the agreement for the purpose of

subsection (13), or a part of that amount, as being related to

(i) a particular qualified expenditure included in the value of A in the formula in the definition "SR&ED qualified expenditure pool" in subsection (9) for the purpose of determining the transferor's SR&ED qualified expenditure pool at the end of the year, or

(ii) a particular amount included in the value of B in the formula in that definition for the purpose of determining the transferor's SR&ED qualified expenditure pool at the end of the year that is deemed by paragraph (d) to be a qualified expenditure, and

(c) the total of all amounts so identified in agreements filed by the transferor under subsection (13) as being related to the particular expenditure or the particular amount does not exceed the particular expenditure or the particular amount, as the case may be,

for the purposes of this section (other than the description of A in the definition "SR&ED qualified expenditure pool" in subsection (9)) and section 127.1,

(d) the amount so identified that is included in the value of B in the formula in that definition for the purpose of determining the transferee's SR&ED qualified expenditure pool at the end of the taxation year of the transferee is deemed to be a qualified expenditure either of a current nature or of a capital nature, incurred by the transferee in that year, where the particular expenditure or the particular amount was an expenditure of a current nature or of a capital nature, as the case may be, and

(e) except for the purpose of paragraph (b), the amount of the transferor's qualified expenditures of a current nature incurred in the taxation year of the transferor in respect of which the agreement is made is deemed not to exceed the amount by which the amount of such expenditures otherwise determined exceeds the total of all amounts identified under paragraph (b) by the transferor in agreements filed under subsection (13) in respect of the year as being related to expenditures of a current nature.

History: Subsec. 127(14) added by 1996, c. 21, subsec. 30(25), applicable to taxation years that begin after 1995.

(15) Invalid agreements — An agreement or amended agreement referred to in subsection (13) between a transferor and a transferee is deemed not to have been filed with the Minister for the purpose of that subsection where

(a) it is not in prescribed form;

(b) it is not filed

(i) on or before the transferor's filing-due date for the particular taxation year to which the agreement relates,

(ii) in the period within which the transferor may serve a notice of objection to an assessment of tax payable under this Part for the particular year, or

(iii) in the period within which the transferee may serve a notice of objection to an assessment of tax payable under this Part for its first taxation year that ends at or after the end of the transferor's particular year;

(c) it is not accompanied by,

(i) where the transferor is a corporation and its directors are legally entitled to administer its affairs, a certified copy of their resolution authorizing the agreement to be made,

(ii) where the transferor is a corporation and its directors are not legally entitled to administer its affairs, a certified copy of the document by which the person legally entitled to administer its affairs authorized the agreement to be made,

(iii) where the transferee is a corporation and its directors are legally entitled to administer its affairs, a certified copy of their resolution authorizing the agreement to be made, and

(iv) where the transferee is a corporation and its directors are not legally entitled to administer its affairs, a certified copy of the document by which the person legally entitled to administer its affairs authorized the agreement to be made; or

(d) an agreement amending the agreement has been filed in accordance with subsection (13) and this subsection, except where subsection (16) applies to the original agreement.

History: Subsec. 127(15) added by 1996, c. 21, subsec. 30(25), applicable to taxation years that begin after 1995.

(16) Non-arm's length parties — Where a taxpayer does not deal at arm's length with another taxpayer as a result of a transaction, event or arrangement, or a series of transactions or events, the principal purpose of which can reasonably be considered to have been to enable the taxpayers to enter into an agreement referred to in subsection (13), for the purpose of paragraph (13)(e) the least of the amounts determined under paragraphs (13)(a) to (c) in respect of the agreement is deemed to be nil.

Related Provisions: 248(10) — Series of transactions.

History: Subsec. 127(16) added by 1996, c. 21, subsec. 30(25), applicable to taxation years that begin after 1995.

(17) Assessment — Notwithstanding subsections 152(4) and (5), such assessment of the tax, interest and penalties payable by any taxpayer in respect of any taxation year that began before the day an agreement or amended agreement is filed under subsection (13) or (20) shall be made as is necessary to take into account the agreement or the amended agreement.

History: Subsec. 127(17) added by 1996, c. 21, subsec. 30(25), applicable to taxation years that begin after 1995.

Former subsec. 127(17) repealed by 1994, c. 8, subsec. 15(13), applicable to taxation years that begin after 1993. Subsec. (17) formerly read:

(17) Definition of "tax otherwise payable" — In this section, "tax otherwise payable" by a taxpayer under this Part for a taxation year means the amount that would, but for subsection (5) and sections 120.1 and 120.2, be the tax payable by the taxpayer under this Part for the year.

(18) Reduction of qualified expenditures — Where on or before the filing-due date for a taxation year of a person or partnership (referred to in this subsection as the "taxpayer") the taxpayer has received, is entitled to receive or can reasonably be expected to receive a particular amount that is government assistance, non-government assistance or a contract payment that can reasonably be considered to be in respect of scientific research and experimental development, the amount by which the particular amount exceeds all amounts applied for preceding taxation years under this subsection or subsection (19) or (20) in respect of the particular amount shall be applied to reduce the taxpayer's qualified expenditures otherwise incurred in the year that can reasonably be considered to be in respect of the scientific research and experimental development.

Related Provisions: 127(9)"investment tax credit"(e.1)(iv), 127(9)"investment tax credit"(e.2)(ii) — Inclusion in ITC; 127(9)"qualified expenditure"(h) — Exclusion from qualified expenditure; 127(10.7)(c), (d) — Further addition to ITC; 127(11.5) — Adjustments to qualified expenditures; 127(21) — Failure to allocate; 127(23) — Partnership's taxation year and filing-due date.

History: Subsec. 127(18) added by 1996, c. 21, subsec. 30(25), applicable to taxation years that begin after 1995.

(19) Reduction of qualified expenditures — Where on or before the filing-due date for a taxation year of a person or partnership (referred to in this subsection as the "recipient") the recipient has received, is entitled to receive or can reasonably be expected to receive a particular amount that is government assistance, non-government assistance or a contract payment that can reasonably be considered to be in respect of scientific research and experimental development and the particular amount exceeds the total of

(a) all amounts applied for preceding taxation years under this subsection or subsection (18) or (20) in respect of the particular amount,

(b) the total of all amounts each of which would be a qualified expenditure that is incurred in the year by the recipient and that can reasonably be considered to be in respect of the scientific research and experimental development if subsection (18) did not apply to the particular amount, and

(c) the total of all amounts each of which would, but for the application of this subsection to the particular amount, be a qualified expenditure

(i) that was incurred by a person or partnership in a taxation year of the person or partnership that ended in the recipient's taxation year, and

(ii) that can reasonably be considered to be in respect of the scientific research and experimental development to the extent that it was performed by the person or partnership at a time when the person or partnership was not dealing at arm's length with the recipient,

the particular amount shall be applied to reduce each qualified expenditure otherwise determined that is referred to in paragraph (c).

Related Provisions: 127(9)"investment tax credit"(e.1)(iv), 127(9)"investment tax credit"(e.2)(ii) — Inclusion in ITC; 127(9)"qualified expenditure"(h) — Exclusion from qualified expenditure; 127(21) — Failure to allocate; 127(23) — Partnership's taxation year and filing-due date.

History: Subsec. 127(19) added by 1996, c. 21, subsec. 30(25), applicable to taxation years that begin after 1995.

(20) Agreement to allocate — Where

(a) on or before the filing-due date for a taxation year of a person or partnership (referred to in this subsection and subsection (22) as the "taxpayer") the taxpayer has received, is entitled to receive or can reasonably be expected to receive a particular amount that is government assistance, non-government assistance or a contract payment that can reasonably be considered to be in respect of scientific research and experimental development,

(b) subsection (19) does not apply to the particular amount in respect of the year, and

(c) the taxpayer and a person or partnership (referred to in this subsection and subsection (22) as the "transferee") with which the taxpayer does not deal at arm's length file an agreement or amended agreement with the Minister,

the lesser of

(d) the amount specified in the agreement, and

(e) the total of all amounts each of which would, but for the agreement, be a qualified expenditure

(i) that was incurred by the transferee in a particular taxation year of the transferee that ended in the taxpayer's taxation year, and

(ii) that can reasonably be considered to be in respect of the scientific research and experimental development to the extent that it was performed by the transferee at a time when the transferee was not dealing at arm's length with the taxpayer

shall be applied to reduce the qualified expenditures otherwise determined that are described in paragraph (e).

Related Provisions: 127(9)"investment tax credit"(e.1)(iv), (e.2)(ii) — Inclusion in ITC; 127(9)"qualified expenditure"(h) — Exclusion from qualified expenditure; 127(17) — Assessment of other years to take agreement into account; 127(21) — Failure to allocate; 127(22) — Filing requirements; 127(23) — Partnership's taxation year and filing-due date.

History: Subsec. 127(20) added by 1996, c. 21, subsec. 30(25), applicable to taxation years that begin after 1995.

Forms: T1145: Agreement to allocate assistance between persons not dealing at arm's length for SR&ED expenditures carried on in Canada.

(21) Failure to allocate — Where on or before the filing-due date for a taxation year of a person or partnership (referred to in this subsection as the "recipient") the recipient has received, is entitled to receive or can reasonably be expected to receive a particular amount that is government assistance, non-government assistance or a contract payment that can reasonably be considered to be in respect of scientific research and experimental development and subsection (19) does not apply to the particular amount in respect of the year, the lesser of

(a) the total of all amounts each of which is a qualified expenditure

(i) that was incurred by a particular person or partnership in a taxation year of the particular person or partnership that ended in the recipient's taxation year, and

(ii) that can reasonably be considered to be in respect of the scientific research and experimental development to the extent that it was performed by the particular person or partnership at a time when the particular person or partnership was not dealing at arm's length with the recipient, and

(b) the amount, if any, by which the particular amount exceeds the total of amounts applied for the year and preceding taxation years under subsection (18), (19) or (20) in respect of the particular amount

is deemed for the purposes of this section to be an amount of government assistance received at the end of the particular year by the particular person or partnership in respect of the scientific research and experimental development.

Related Provisions: 127(23) — Partnership's taxation year and filing-due date.

History: Subsec. 127(21) added by 1996, c. 21, subsec. 30(25), applicable to taxation years that begin after 1995.

(22) Invalid agreements — An agreement or amended agreement referred to in subsection (20) between a taxpayer and a transferee is deemed not to have been filed with the Minister where

(a) it is not in prescribed form;

(b) it is not filed

(i) on or before the taxpayer's filing-due date for the particular taxation year to which the agreement relates,

(ii) in the period within which the taxpayer may serve a notice of objection to an assessment of tax payable under this Part for the particular year, or

(iii) in the period within which the transferee may serve a notice of objection to an assessment of tax payable under this Part for its first taxation year that ends at or after the end of the taxpayer's particular year;

(c) it is not accompanied by,

(i) where the taxpayer is a corporation and its directors are legally entitled to administer its affairs, a certified copy of their resolution authorizing the agreement to be made,

(ii) where the taxpayer is a corporation and its directors are not legally entitled to administer its affairs, a certified copy of the document by which the person legally entitled to administer its affairs authorized the agreement to be made,

(iii) where the transferee is a corporation and its directors are legally entitled to administer its affairs, a certified copy of their resolution authorizing the agreement to be made, and

(iv) where the transferee is a corporation and its directors are not legally entitled to administer its affairs, a certified copy of the document by which the person legally entitled to administer its affairs authorized the agreement to be made; or

(d) an agreement amending the agreement has been filed in accordance with subsection (20) and this subsection.

Related Provisions: 127(23) — Partnership's taxation year and filing-due date.

History: Subsec. 127(22) added by 1996, c. 21, subsec. 30(25), applicable to taxation years that begin after 1995.

(23) Partnership's taxation year — For the purposes of subsections (18) to (22), the taxation year of a partnership is deemed to be its fiscal period and its filing-due date for a taxation year is deemed to be the day that would be its filing-due date for the year if it were a corporation.

History: Subsec. 127(23) added by 1996, c. 21, subsec. 30(25), applicable to taxation years that begin after 1995.

(24) Exclusion from qualified expenditure — Where

(a) a person or partnership (referred to in this subsection as the "first person") does not deal at arm's length with another person or partnership (referred to in this subsection as the "second person"),

(b) there is an arrangement under which an amount is paid or payable by the first person to a person or partnership with which the first person deals at arm's length and an amount is received or receivable by the second person from a person or partnership with which the second person deals at arm's length, and

(c) one of the main purposes of the arrangement can reasonably be considered to be to cause the amount paid or payable by the first person to be a qualified expenditure,

the amount paid or payable by the first person is deemed not to be a qualified expenditure.

Related Provisions: 127(11.6) — Non-arm's length costs.

History: Subsec. 127(24) added by 1996, c. 21, subsec. 30(25), applicable to taxation years that begin after 1995.

(25) Deemed contract payment — Where

(a) a person or partnership (referred to in this subsection as the "first person") deals at arm's length with another person or partnership (referred to in this subsection as the "second person"),

(b) there is an arrangement under which an amount is paid or payable by the first person to a person or partnership (other than the second person) and a particular amount is received or receivable in respect of scientific research and experimental development by the second person from a person or partnership that is not a taxable supplier in respect of the particular amount, and

(c) one of the main purposes of the arrangement can reasonably be considered to be to cause the amount received or receivable by the second person not to be a contract payment,

the amount received or receivable by the second person is deemed to be a contract payment in respect of scientific research and experimental development.

History: Subsec. 127(25) added by 1996, c. 21, subsec. 30(25), applicable to taxation years that begin after 1995.

Application Policies: SR&ED 2002-03: Taxable supplier rules.

(26) Unpaid amounts — For the purposes of subsections (5) to (25) and section 127.1, a taxpayer's expenditure described in paragraph 37(1)(a) that is unpaid on the day that is 180 days after the end of the taxation year in which the expenditure is otherwise incurred is deemed

(a) not to have been incurred in the year; and

(b) to be incurred at the time it is paid.

Related Provisions: 127(11.6) — Non-arm's length costs; 127(27) — Recapture of ITC.

History: Subsec. 127(26) added by 1996, c. 21, subsec. 30(25), applicable to amounts that are incurred at any time, except that it does not apply to amounts that are paid on or before September 18, 1996.

(27) Recapture of investment tax credit — Where

(a) a taxpayer acquired a particular property from a person or partnership in a taxation year of the taxpayer or in any of the 10 preceding taxation years,

(b) the cost of the particular property was a qualified expenditure to the taxpayer,

(c) the cost of the particular property is included in an amount, a percentage of which can reasonably be considered to be included in computing the taxpayer's investment tax credit at the end of the taxation year, and

Proposed Amendment — 127(27)(b), (c)

(b) the cost, or a portion of the cost, of the particular property was a qualified expenditure, or would if this Act were read without reference to subsection (26) be a qualified expenditure, to the taxpayer,

(c) the cost, or the portion of the cost, of the particular property is included, or would if this Act were read without reference to subsection (26) be included, in an amount, a percentage of which can reasonably be considered to be included in computing the taxpayer's investment tax credit at the end of the taxation year, and

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 122(7), will amend paras. 127(27)(b) and (c) to read as above.

applicable to dispositions and conversions that occur after December 20, 2002.

Technical Notes: Subsection 127(27) provides for the recapture of investment tax credits in respect of property used for scientific research and experimental development (SR&ED) where the property is sold or converted to commercial use. This recapture is effected by way of an addition to tax payable of an amount equal to the lesser of

- the amount that can reasonably be considered to have been included in the taxpayer's investment tax credit in respect of the particular property (i.e., the amount that is obtained by multiplying the amount of the qualified expenditure by the ITC rate that applied to that expenditure), and
- the amount that is obtained by multiplying the ITC rate (that applied to the qualified expenditure) by
  - the proceeds of disposition of the particular property (or of property that incorporates the particular property) if the property is disposed of to a person who deals at arm's length with the taxpayer. (See paragraph 127(27)(e).)
  - in any other case, the fair market value of the particular property (or the other property) at the time of its conversion or disposition. (See paragraph 127(27)(f).)

Concern has been expressed about the application of subsection 127(27) in the context of shared-use equipment, only 25% or 50% of the cost of which is a "qualified expenditure" under subsection 127(9) because of subsection 127(11.5). This concern is illustrated by the following example.

Example:

- *Year 1: Taxpayer acquires shared-use equipment for $100. The ITC rate is 20% and the taxpayer claims an ITC for first term shared-use-equipment of $5 (20% × $25 [¼ of its $100 cost under paragraph 127(11.5)(c)]).*
- *Year 2: Taxpayer claims an ITC for second term shared-use-equipment of $5 (20% × $25 [¼ of its $100 cost under paragraph 127(11.5)(c)]).*
- *Year 4: Taxpayer sells the property for $80.*
- *Recapture under subsection 127(27):*

  $10 being the lesser of:
  - *$10 (20% × $100 × 50% because the property is second term shared-use-equipment), and*
  - *$16 (20% × $80 proceeds of disposition).*

However, in this example the $16 amount should be $8 given that only a portion (50%) of the cost of the second term shared-use-equipment is a qualified expenditure.

As well, the government is concerned that subsection 127(27) should apply where the disposition or conversion relates to property acquired pursuant to an expenditure that would have been a qualified expenditure incurred in a taxation year but for the application of the 180-day-unpaid-amount rule in subsection 127(26).

To address these concerns, subsection 127(27) is amended in four respects.

First, paragraphs 127(27)(b) and (c) are amended to refer to the "cost, or a portion of the cost, of the particular property" instead of to the "cost of the particular property".

Second, paragraphs 127(27)(b) and (c) are amended to provide that the reference therein to a qualified expenditure included in a taxpayer's investment tax credit be read without reference to subsection 127(26) relating to unpaid amounts.

(d) in the year and after February 23, 1998, the taxpayer converts to commercial use, or disposes of without having previously converted to commercial use, the particular property or another property that incorporates the particular property,

there shall be added to the taxpayer's tax otherwise payable under this Part for the year the lesser of the amount that can reasonably be considered to be included in computing the taxpayer's investment tax credit in respect of the particular property and the amount that is the percentage (described in paragraph (c)) of

(e) if the particular property or the other property is disposed of to a person who deals at arm's length with the taxpayer, the proceeds of disposition of that property, and

(f) in any other case, the fair market value of the particular property or the other property at the time of the conversion or disposition.

Proposed Amendment — 127(27) after (d)

there shall be added to the taxpayer's tax otherwise payable under this Part for the year the lesser of

(e) the amount that can reasonably be considered to be included in the taxpayer's investment tax credit at the end of any taxation year, or that would be so included if this Act were read without reference to subsection (26), in respect of the particular property, and

(f) the amount that is the percentage — that is the sum of each percentage described in paragraph (c) that has been applied to compute the taxpayer's investment tax credit in respect of the particular property — of

(i) in the case where the particular property or the other property is disposed of to a person who deals at arm's length with the taxpayer,

(A) the proceeds of disposition of the property, if the property

(I) is the particular property and is neither first term shared-use equipment nor second term shared-use equipment, or

(II) is the other property,

(B) 25% of the proceeds of disposition of the property, if the property is the particular property, is first term shared-use equipment and is not second term shared-use equipment, and

(C) 50% of the proceeds of disposition of the property, if the property is the particular property and is second term shared-use equipment, and

(ii) in the case where the particular property or the other property is converted to commercial use or is disposed of to a person who does not deal at arm's length with the taxpayer,

(A) the fair market value of the property, if the property

(I) is the particular property and is neither first term shared-use equipment nor second term shared-use equipment, or

(II) is the other property,

(B) 25% of the fair market value of the property at the time of its conversion or disposition, if the particular property is first term shared-use equipment and is not second term shared-use equipment, and

(C) 50% of the fair market of the property at the time of its conversion or disposition, if the particular property is second term shared-use equipment.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 122(8), will amend the portion of subsec. 127(27) after para. (d) to read as above, applicable to dispositions and conversions that occur after December 20, 2002.

Technical Notes: Third, consequential changes are made to the wording between paragraphs 127(27)(d) and (e). In particular, the first of the two amounts in the "lesser of" formula is moved to new paragraph 127(27)(e). The second of these two amounts is described in amended paragraph 127(27)(f), which combines former paragraphs 127(27)(e) and (f).

Fourth, paragraph 127(27)(f), which combines former paragraphs 127(27)(e) and (f), is changed to account for circumstances where the property that is disposed of or converted is first term shared-use-equipment or second term shared-use-equipment.

Related Provisions: 37(1)(c.2) — Deduction allowed in subsequent year; 127(28) — Recapture of ITC of partnership; 127(29) — Recapture of ITC of allocating taxpayer; 127(32) — Meaning of "cost of the particular property"; 127(33) — No application to certain non-arm's length transfers.

Application Policies: SR&ED 2000-04R2: Recapture of investment tax credit; SR&ED 2002-02R2: Experimental production and commercial production with experimental development work — allowable SR&ED expenditures.

(28) Recapture of investment tax credit of partnership — For the purpose of computing the amount determined under subsection (8) in respect of a partnership at the end of a particular fiscal period, where

(a) a particular property, the cost of which is a qualified expenditure, is acquired by the partnership from a person or partnership in the particular fiscal period or in any of the 10 preceding fiscal periods of the partnership,

(b) the cost of the particular property is included in an amount, a percentage of which can reasonably be considered to have been included in computing the amount determined under subsection (8) in respect of the partnership at the end of a fiscal period, and

(c) in the particular fiscal period and after February 23, 1998, the partnership converts to commercial use, or disposes of without having previously converted to commercial use, the particular property or another property that incorporates the particular property,

there shall be deducted in computing the amount determined under subsection (8) in respect of the partnership at the end of the particular fiscal period the lesser of

(d) the amount that can reasonably be considered to have been included in respect of the particular property in computing the amount determined under subsection (8) in respect of the partnership, and

(e) the percentage (described in paragraph (b)) of

(i) where the particular property or the other property is disposed of to a person who deals at arm's length with the partnership, the proceeds of disposition of that property, and

(ii) in any other case, the fair market value of the particular property or the other property at the time of the conversion or disposition.

Related Provisions: 127(30) — Addition to tax where ITC goes negative; 127(32) — Meaning of "cost of the particular property"; 127(33) — No application to certain non-arm's length transfers.

Application Policies: SR&ED 2000-04R2: Recapture of investment tax credit; SR&ED 2002-02R2: Experimental production and commercial production with experimental development work — allowable SR&ED expenditures.

(29) Recapture of investment tax credit of allocating taxpayer — Where

(a) a taxpayer acquired a particular property from a person or partnership in a taxation year or in any of the 10 preceding taxation years,

(b) the cost of the particular property was a qualified expenditure to the taxpayer,

(c) all or part of the qualified expenditure can reasonably be considered to have been the subject of an agreement made under subsection (13) by the taxpayer and another taxpayer (in this subsection referred to as the "transferee"), and

(d) in the year and after February 23, 1998, the taxpayer converts to commercial use, or disposes of without having previously converted to commercial use, the particular property or another property that incorporates the particular property,

there shall be added to the taxpayer's tax otherwise payable under this Part for the year the lesser of

(e) the amount that can reasonably be considered to have been included in computing the transferee's investment tax credit in respect of the qualified expenditure that was the subject of the agreement, and

(f) the amount determined by the formula

$$A \times B - C$$

where

A is the percentage applied by the transferee in determining its investment tax credit in respect of the qualified expenditure that was the subject of the agreement,

B is

(i) where the particular property or the other property is disposed of to a person who deals at arm's length with the taxpayer, the proceeds of disposition of that property, and

(ii) in any other case, the fair market value of the particular property or the other property at the time of the conversion or disposition, and

C is the amount, if any, added to the taxpayer's tax payable under subsection (27) in respect of the particular property.

Related Provisions: 37(1)(c.2) — Deduction allowed in subsequent year; 127(32) — Meaning of "cost of the particular property"; 127(33) — No application to certain non-arm's length transfers; 257 — Formula cannot calculate to less than zero.

Application Policies: SR&ED 2000-04R2: Recapture of investment tax credit; SR&ED 2002-02R2: Experimental production and commercial production with experimental development work — allowable SR&ED expenditures.

(30) Addition to tax — Where a taxpayer is a member of a partnership and the total of

(a) the total of all amounts each of which is the lesser of the amounts described in paragraphs (28)(d) and (e) in respect of a property of the partnership, and

(b) the total of all amounts each of which is the lesser of the amounts described in paragraphs (35)(c) and (d) in respect of a property of the partnership,

exceeds the amount that would be determined in respect of the partnership under subsection (8) if that subsection were read without reference to subsections (28) and (35), the portion of the excess that can reasonably be considered to be the taxpayer's share of the excess shall be added to the taxpayer's tax otherwise payable under this Part for the year.

Related Provisions: 37(1)(c.3) — Deduction allowed in subsequent year; 53(1)(e)(xiii) — Addition to adjusted cost base of partnership interest; 127(31) — Tiered partnership.

Application Policies: SR&ED 2000-04R2: Recapture of investment tax credit.

(31) Tiered partnership — Where a taxpayer is a member of a particular partnership that is a member of another partnership and an amount would be added to the particular partnership's tax payable under this Part for the year pursuant to subsection (30) if the particular partnership were a person and its fiscal period were its taxation year, that amount is deemed to be an amount that is the lesser of the amounts described in paragraphs (28)(d) and (e), in respect of a property of the particular partnership, that is required by subsection (28) to be deducted in computing the amount under subsection (8) in respect of the particular partnership at the end of the fiscal period.

Application Policies: SR&ED 2000-04R2: Recapture of investment tax credit.

(32) Meaning of cost — For the purposes of subsections (27), (28) and (29), "cost of the particular property" to a taxpayer shall not exceed the amount paid by the taxpayer to acquire the particular property from a transferor of the particular property and, for greater certainty, does not include amounts paid by the taxpayer to maintain, modify or transform the particular property.

Application Policies: SR&ED 2000-04R2: Recapture of investment tax credit.

(33) Certain non-arm's length transfers — Subsections (27) to (29), (34) and (35) do not apply to a taxpayer or partnership (in this subsection referred to as the "transferor") that disposes of a property to a person or partnership (in this subsection and subsections (34) and (35) referred to as the "purchaser"), that does not deal at arm's length with the transferor, if the purchaser acquired the property in circumstances where the cost of the property to the purchaser would have been an expenditure of the purchaser described in subclause 37(8)(a)(ii)(A)(III) or (B)(III) but for subparagraph 2902(b)(iii) of the *Income Tax Regulations*.

Related Provisions: 127(34), (35) — Recapture on disposition or conversion to commercial use.

Application Policies: SR&ED 2000-04R2: Recapture of investment tax credit.

(34) Recapture of investment tax credit — Where, at any particular time in a taxation year and after February 23, 1998, a purchaser (other than a partnership) converts to commercial use, or disposes of without having previously converted to commercial use, a property

(a) that was acquired by the purchaser in circumstances described in subsection (33) or that is another property that incorporates a property acquired in such circumstances; and

(b) that was first acquired, or that incorporates a property that was first acquired, by a person or partnership (in this subsection referred to as the "original user") with which the purchaser did not deal at arm's length at the time at which the purchaser acquired the property, in the original user's taxation year or fiscal period that includes the particular time (on the assumption that the original user had such a taxation year or fiscal period) or in any of the original user's 10 preceding taxation years or fiscal periods,

there shall be added to the purchaser's tax otherwise payable under this Part for the year the lesser of

(c) the amount

(i) included, in respect of the property, in the investment tax credit of the original user, or

(ii) where the original user is a partnership, that can reasonably be considered to have been included in respect of the property in computing the amount determined under subsection (8) in respect of the original user, and

(d) the amount determined by applying the percentage that was applied by the original user in determining the amount referred to in paragraph (c) to

(i) if the property or the other property is disposed of to a person who deals at arm's length with the purchaser, the proceeds of disposition of that property, and

(ii) in any other case, the fair market value of the property or the other property at the time of the conversion or disposition.

Related Provisions: 37(1)(c.2) — Deduction allowed in subsequent year; 127(33) — No application to certain non-arm's length transfers.

Application Policies: SR&ED 2000-04R2: Recapture of investment tax credit.

(35) Recapture of investment tax credit — Where, at any particular time in a fiscal period and after February 23, 1998, a purchaser is a partnership that converts to commercial use, or disposes of without having previously converted to commercial use, a property

(a) that was acquired by the purchaser in circumstances described in subsection (33) or that is another property that incorporates a property acquired in such circumstances, and

(b) that was first acquired, or that incorporates a property that was first acquired, by a person or partnership (in this subsection referred to as the "original user") with which the purchaser did not deal at arm's length at the time at which the purchaser acquired the property, in the original user's taxation year or fiscal period that includes the particular time (on the assumption that the original user had such a taxation year or fiscal period) or in any of the original user's 10 preceding taxation years or fiscal periods,

there shall be deducted in computing the amount determined under subsection (8) in respect of the purchaser at the end of the fiscal period the lesser of

(c) the amount

(i) included, in respect of the property, in the investment tax credit of the original user, or

(ii) where the original user is a partnership, that can reasonably be considered to have been included in respect of the property in computing the amount determined under subsection (8) in respect of the original user, and

(d) the amount determined by applying the percentage that was applied by the original user in determining the amount referred to in paragraph (c) to

(i) if the property or the other property is disposed of to a person who deals at arm's length with the purchaser, the proceeds of disposition of that property, and

(ii) in any other case, the fair market value of the property or the other property at the time of the conversion or disposition.

Related Provisions: 127(30) — Addition to tax where ITC goes negative; 127(33) — No application to certain non-arm's length transfers.

History [subsecs. 127(27)–(35)]: Subsecs. 127(27) to (35) added by 1999, c. 22, subsec. 48(2), applicable to dispositions and conversions of property that occur after February 23, 1998.

Selected Cases [s. 127]: *Longley v. MNR*, [2000] 2 C.T.C. 382 (BC CA); aff'g [1999] 3 C.T.C. 108 (BC SC) (Minister held liable for damages

and punitive damages where acting in bad faith against legal advice received).

Definitions [s. 127]: "acquired" — 256(7)–(9); "active business" — 248(1); "adjusted selling cost", "adjusted service cost" — 127(11.7); "advantage" — 248(32); "allowable capital loss" — 38(b), 248(1); "amount" — 127(11.6), 248(1); "annual investment tax credit limit", "approved project", "approved project property" — 127(9); "arm's length" — 251(1); "assessment" — 248(1); "assistance" — 79(4), 125.4(5), 248(16), (16.1), (18), (18.1); "associated" — 127(10.22), (10.23), 256; "at-risk amount" — 96(2.2), 127(8.5); "available for use" — 13(27)–(32), 248(19); "bank" — 248(1); "beneficially interested" — 248(25); "business", "business limit" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 37(1.3), 127(9)"qualified property"(d), 255, *Interpretation Act* 35(1); "Canadian-controlled private corporation" — 125(7), 136(1), 248(1); "Canadian field processing" — 248(1); "Canadian exploration expense" — 66.1(6), 248(1); "Canadian partnership" — 102(1), 248(1); "Cape Breton" — 127(9); "capital cost" — 13(7.1)–(7.4), 127(11.1)(a), (b); "capital gain" — 39(1)(a), 248(1); "capital property" — 54, 248(1); "carrying on a business in Canada", "carrying on business in Canada" — 253; "certified property" — 127(9); "contract payment" — 127(9), (25); "control" — 256(6)–(9); "controlled" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "cost" — 127(11.8)(a); "cost of the particular property" — 127(32); "credit union" — 137(6), 248(1); "depreciable property" — 13(21), 248(1); "disposition" — 248(1); "eligible amount" — 248(31), (41); "eligible taxpayer" — 127(9); "employee", "exempt income" — 248(1); "expenditure" — 127(11.6), (26); "expenditure limit" — 127(10.2), (10.21); "farm loss" — 111(8), 248(1); "filing-due date" — 127(23), 248(1); "first period" — 127(9)"first-term shared-use-equipment"; "first-term shared-use-equipment" — 127(9); "fiscal period" — 249(2)(b), 249.1; "flow-through mining expenditure" — 127(9), (11.1)(c.2); "Gaspé Peninsula", "government assistance" — 127(9); "incurred" — 127(26); "individual" — 248(1); "*inter vivos* trust" — 108(1), 248(1); "investment tax credit" — 127(9), 248(1); "legislature" — *Interpretation Act* 35(1); "limited partner" — 96(2.4), 127(8.5); "manufacturing or processing" — 127(11)(a); "mineral resource" — 248(1); "minimum amount" — 127.51; "Minister" — 248(1); "monetary contribution" — 127(4.1), *Canada Elections Act* s. 2(1); "non-capital loss" — 111(8), 248(1); "non-government assistance", "non-qualifying corporation" — 127(9); "non-resident" — 248(1); "oil or gas well" — 248(1); "permanent establishment" — Reg. 8201; "person" — 248(1); "pre-production mining expenditure" — 127(9); "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "purchaser" — 127(33); "purposes" — 127(11)(b); "qualified Canadian exploration expenditure" — 127(9), (11.1)(c.1); "qualified construction equipment" — 127(9); "qualified expenditure" — 127(9), (14), (24); "qualified property", "qualified small-business property", "qualified transportation equipment" — 127(9); "record" — 248(1); "refundable Part VII tax on hand" — 192(3), 248(1); "regulation" — 248(1); "resident in Canada" — 250; "SR&ED qualified expenditure pool" — 127(9), (14); "scientific research and experimental development" — 37(13), 248(1); "second-term shared-use-equipment" — 127(9); "series of transactions" — 248(10); "service" — 127(11.8)(c); "share", "shareholder", "specified future tax consequence", "specified member" — 248(1); "specified percentage", "super-allowance benefit amount" — 127(9); "specified sampling" — 127(9); "tar sands" — 248(1); "tax otherwise payable" — 117(1), 120(4); "tax payable" — 248(2); "taxable capital gain" — 38(a), 248(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxable supplier" — 127(9); "taxation year" — 127(23), 249; "taxpayer" — 248(1); "testamentary trust" — 108(1), 248(1); "transferee" — 127(13), (20), (29); "transferor" — 127(13), (33); "trust" — 104(1), 248(1), (3); "undepreciated capital cost" — 13(21), 248(1); "writing" — *Interpretation Act* 35(1).

127.1 (1) Refundable investment tax credit — Where a taxpayer (other than a person exempt from tax under section 149) files

(a) with the taxpayer's return of income (other than a return of income filed under subsection 70(2) or 104(23), paragraph 128(2)(f) or subsection 150(4)) for a taxation year, or

(b) with a prescribed form amending a return referred to in paragraph (a)

a prescribed form containing prescribed information, the taxpayer is deemed to have paid on the taxpayer's balance-due day for the year an amount on account of the taxpayer's tax payable under this Part for the year equal to the lesser of

(c) the taxpayer's refundable investment tax credit for the year, and

(d) the amount designated by the taxpayer in the prescribed form.

Related Provisions: 13(24) — Acquisition of control — limitation re calculation of refundable investment tax credit; 127(14) — Identification of amounts transferred as current or capital; 127.1(3) — Refundable ITC deemed claimed under 127(5); 152(1) — Assessment; 157(3)(e) — Reduction in monthly corporate instalments to reflect credit; 160.1 — Where excess refunded; 164(1)(a) — Refunds; 220(6) — Assignment of refund by corporation permitted; 256(2.1) — Anti-avoidance.

History: Para. 127.1(1)(a) amended by 1998, c. 19, s. 147, applicable to taxation years that begin after April 26, 1995. Para. 127.1(1)(a) formerly read:

> (a) with the taxpayer's return of income (other than a return of income filed under subsection 70(2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) under this Part for a taxation year, or

The portion of subsec. 127.1(1) between paras. (b) and (c) amended by 1997, c. 25, subsec. 36(1), applicable to taxation years that end after February 22, 1994. This portion formerly read:

> a prescribed form containing prescribed information, the taxpayer shall be deemed to have paid, on the day on which the return referred to in paragraph (a) or the form referred to in paragraph (b), as the case may be, is filed, an amount, on account of the taxpayer's tax under this Part for the year, equal to the lesser of

Application Policies: SR&ED 96-03: Claimants' entitlements and responsibilities; SR&ED 96-05: Penalties under subsec. 163(2).

Forms: RC4290: Refunds for small business R&D [guide]; T4052: An introduction to the SR&ED program [guide].

(2) Definitions — In this section,

"excluded corporation" for a taxation year means a corporation that is, at any time in the year,

(a) controlled directly or indirectly, in any manner whatever, by

(i) one or more persons exempt from tax under this Part by virtue of section 149,

(ii) Her Majesty in right of a province, a Canadian municipality or any other public authority, or

(iii) any combination of persons each of whom is a person referred to in subparagraph (i) or (ii), or

(b) related to any person referred to in paragraph (a);

Related Provisions: 256(5.1), (6.2) — Controlled directly or indirectly — control in fact.

"qualifying corporation" for a particular taxation year that ends in a calendar year means

(a) a corporation that is a Canadian-controlled private corporation throughout the particular year (other than a corporation associated with another corporation in the particular year) the taxable income of which for its immediately preceding taxation year (determined before taking into consideration the specified future tax consequences for that preceding year) does not exceed its business limit for that preceding year, or

(b) a corporation that is a Canadian-controlled private corporation throughout the particular year and associated with another corporation in the particular year, where the total of all amounts each of which is the taxable income of the corporation or such an associated corporation for its last taxation year that ended in the preceding calendar year (determined before taking into consideration the specified future tax consequences for that last year) does not exceed the total of all amounts each of which is the business limit of the corporation or such an associated corporation for that last year;

Related Provisions: 87(2)(oo), (oo.1) — Effect of amalgamation; 88(1)(e.9) — Winding-up; 127.1(2.01) — Additional refundable amount for corporation that is not a qualifying corporation; 127.1(2.2), (2.3) — Venture capital investors — exclusion from associated-corporation rules; 136(1) — Cooperative can be private corporation for 127.1; 137(7) — Credit union can be private corporation for 127.1.

History: The definition "qualifying corporation" in subsec. 127.1(2) amended by 1997, c. 25, subsec. 36(2), applicable to taxation years that begin after 1995. It formerly read:

> "qualifying corporation" for a particular taxation year means a corporation that is, throughout the particular year, a Canadian-controlled private corporation the taxable income of which for its preceding taxation year or, if it is associated with one or more other corporations in the particular year, the taxable income of the corporation for its last taxation year ending in the preceding calendar year plus the taxable incomes of all such other corporations for their last taxation years ending in the preceding calendar year, does not exceed the total of the business limits (as determined under section 125) of the corporation and the other corporations for those preceding years, except that for a particular taxation year that begins before 1996 the total of the business limits shall be determined under section 125 as that section read in its application to taxation years ending before July 1994;

The definition "qualifying corporation" in subsec. 127.1(2) amended by 1995, c. 3, s. 38, applicable to taxation years that end after June 1994. The definition formerly read:

> "qualifying corporation" for a particular taxation year means a corporation that is, throughout the particular year, a Canadian-controlled private corporation whose taxable income for the immediately preceding taxation year together with the taxable incomes of all corporations with which it was associated in the particular year for their taxation years ending in the calendar year immediately preceding the calendar year in which the particular year of the corporation ended does not exceed the total of the business limits (as determined under section 125) of the corporation and the associated corporations for those preceding years;

"refundable investment tax credit" of a taxpayer for a taxation year means, in the case of a taxpayer who is

(a) a qualifying corporation for the year,

(b) an individual other than a trust, or

(c) a trust each beneficiary of which is a person referred to in paragraph (a) or (b),

an amount equal to 40% of the amount, if any, by which

(d) the total of all amounts included in computing the taxpayer's investment tax credit at the end of the year

(i) in respect of property (other than qualified small-business property) acquired, or a qualified expenditure (other than an expenditure in respect of which an amount is included under paragraph (f) in computing the taxpayer's refundable investment tax credit for the year) incurred, by the taxpayer in the year, or

(ii) because of paragraph (b) of the definition "investment tax credit" in subsection 127(9) in respect of a property (other than qualified small-business property) acquired or a qualified expenditure (other than an expenditure in respect of which an amount is included under paragraph (f) in computing the taxpayer's refundable investment tax credit for the year) incurred

exceeds

(e) the total of

(i) the portion of the total of all amounts deducted under subsection 127(5) for the year or a preceding taxation year (other than an amount deemed by subsection (3) to be so deducted for the year) that can reasonably be considered to be in respect of the total determined under paragraph (d), and

(ii) the portion of the total of all amounts required by subsection 127(6) or (7) to be deducted in computing the taxpayer's investment tax credit at the end of the year that can reasonably be considered to be in respect of the total determined under paragraph (d),

plus, where the taxpayer is a qualifying corporation (other than an excluded corporation) for the year, the amount, if any, by which

(f) the total of

(i) the portion of the amount required by subsection 127(10.1) to be added in computing the taxpayer's investment tax credit at the end of the year that is in respect of qualified expenditures (other than expenditures of a capital nature) incurred by the taxpayer in the year, and

(ii) all amounts determined under paragraph (a.1) of the definition "investment tax credit" in subsection 127(9) in respect of expenditures for which an amount is included in subparagraph (i)

exceeds

(g) the total of

(i) the portion of the total of all amounts deducted by the taxpayer under subsection 127(5) for the year or a preceding taxation year (other than an amount deemed by subsection (3) to be so deducted for the year) that can reasonably be considered to be in respect of the total determined under paragraph (f), and

(ii) the portion of the total of all amounts required by subsection 127(6) to be deducted in computing the taxpayer's investment tax credit at the end of the year that can reasonably be considered to be in respect of the total determined under paragraph (f).

Related Provisions: 88(1)(e.8) — Winding-up; 127(14) — Identification of amounts transferred as current or capital; 127.1(2.01) — Addition to refundable investment tax credit; 127(10.22), (10.23) — Venture capital investors — exclusion from associated-corporation rules; 256(2.1) — Anti-avoidance; 256(5.1), (6.2) — Controlled directly or indirectly — control in fact.

History: Para. (f) of the definition "refundable investment tax credit" in subsec. 127.1(2) amended by 1996, c. 21, subsec. 31(1), applicable to taxation years that begin after 1995. Para. (f) formerly read:

> (f) the total of
>
> (i) the portion of the amount required by subsection 127(10.1) to be added in computing the taxpayer's investment tax credit at the end of the year that is in respect of qualified expenditures (other than expenditures of a capital nature) incurred in the year, and
>
> (ii) all amounts determined under paragraph (a) of the definition "investment tax credit" in subsection 127(9) in respect of expenditures for which amounts are included in subparagraph (i),

The definition "refundable investment tax credit" in subsec. 127.1(2) amended by 1994, c. 8, subsec. 16(1), applicable to taxation years ending after December 2, 1992. The definition formerly read:

> "refundable investment tax credit" for a taxation year means,
>
> (a) in the case of a taxpayer who is
>
> (i) a qualifying corporation for the year,
>
> (ii) an individual other than a trust, or
>
> (iii) a trust each beneficiary of which is a person referred to in subparagraph (i) or (ii),
>
> an amount equal to 40% of the amount, if any, by which
>
> (iv) the total of all amounts each of which is an amount included in computing the taxpayer's investment tax credit at the end of the year
>
> (A) in respect of property acquired, or an expenditure made (other than a qualified Canadian exploration ex-

penditure or an expenditure in respect of which an amount is included under subparagraph (vi) or (b)(ii) in computing the taxpayer's refundable investment tax credit for the year), by the taxpayer in the year and after April 19, 1983,

(B) pursuant to paragraph (b) of the definition "investment tax credit" in subsection 127(9) in respect of a property acquired, or an expenditure made (other than a qualified Canadian exploration expenditure or an expenditure in respect of which an amount is included under subparagraph (vi) or (b)(ii) in computing the taxpayer's refundable investment tax credit for the year), after April 19, 1983, or

(C) in respect of the taxpayer's qualified Canadian exploration expenditure for the year, or pursuant to paragraph (b) of that definition in respect of a qualified Canadian exploration expenditure for the year, other than an amount included under subparagraph (b)(iii)

exceeds

(v) the total of

(A) such portion of the total of all amounts each of which is an amount deducted by the taxpayer under subsection 127(5) for the year or a preceding taxation year (other than an amount deemed by subsection (3) to be so deducted for the year) as may reasonably be considered to be in respect of the total determined under subparagraph (iv), and

(B) such portion of the total of all amounts each of which is an amount required by subsection 127(6) or (7) to be deducted in computing the taxpayer's investment tax credit at the end of the year as may reasonably be considered to be in respect of the total determined under subparagraph (iv),

plus, in the case of a qualifying corporation for the year, other than an excluded corporation for the year, the amount, if any, by which

(vi) the total of

(A) the total of all amounts each of which is an amount required by subsection 127(10.1) to be added in computing the taxpayer's investment tax credit at the end of the year in respect of an expenditure, other than an expenditure of a capital nature, made by it after May 23, 1985 and in the year, and

(B) the total of all amounts each of which is an amount determined under paragraph (a) of the definition "investment tax credit" in subsection 127(9) in respect of an expenditure for which an amount is included in clause (A)

exceeds

(vii) the total of

(A) such portion of the total of all amounts each of which is an amount deducted by the taxpayer under subsection 127(5) for the year or a preceding taxation year (other than an amount deemed by subsection (3) to be so deducted for the year) as may reasonably be considered to be in respect of the total determined under subparagraph (vi), and

(B) such portion of the total of all amounts each of which is an amount required by subsection 127(6) to be deducted in computing the taxpayer's investment tax credit at the end of the year as may reasonably be considered to be in respect of the total determined under subparagraph (vi), and

(b) in the case of any other taxpayer, the total of

(i) 20% of the amount, if any, calculated for the year in respect of the taxpayer, by which the total determined under subparagraph (a)(iv) in respect of property acquired or an expenditure made before 1988, exceeds the total determined under subparagraph (a)(v) in respect of property acquired or an expenditure made before 1988,

(ii) 40% of the amount, if any, by which

(A) the total of all amounts each of which is an amount included in computing the taxpayer's investment tax credit at the end of the year

(I) in respect of an approved project property acquired by the taxpayer in the year and before 1988, or

(II) pursuant to paragraph (b) of the definition "investment tax credit" in subsection 127(9) in respect of an approved project property acquired before 1988

exceeds

(B) the total of

(I) such portion of the total of all amounts each of which is an amount deducted by the taxpayer under subsection 127(5) for the year or a preceding taxation year (other than an amount deemed by subsection (3) to be so deducted for the year) as may reasonably be considered to be in respect of the total determined under clause (A), and

(II) such portion of the total of all amounts each of which is an amount required by subsection 127(6) or (7) to be deducted in computing the taxpayer's investment tax credit at the end of the year as may reasonably be considered to be in respect of the total determined under clause (A), and

(iii) where the taxation year commences before 1988, 40% of the amount, if any, by which

(A) the total of all amounts each of which is an amount included in computing the taxpayer's investment tax credit at the end of the year

(I) in respect of the taxpayer's qualified Canadian exploration expenditure for the year, or

(II) pursuant to paragraph (b) of the definition "investment tax credit" in subsection 127(9) in respect of a qualified Canadian exploration expenditure for the year,

exceeds

(B) the total of

(I) such portion of the total of all amounts each of which is an amount deducted by the taxpayer under subsection 127(5) for the year or a preceding taxation year (other than an amount deemed by subsection (3) to be so deducted for the year) as may reasonably be considered to be in respect of the total determined under clause (A), and

(II) such portion of the total of all amounts each of which is an amount required by subsection 127(6) or (7) to be deducted in computing the taxpayer's investment tax credit at the end of the year as may reasonably be considered to be in respect of the total determined under clause (A).

(2.01) Addition to refundable investment tax credit — In the case of a taxpayer that is a Canadian-controlled private corporation other than a qualifying corporation or an excluded corporation, the refundable investment tax credit of the taxpayer for a taxation year is 40% of the amount, if any, by which

(a) the total of

(i) the portion of the amount required by subsection 127(10.1) to be added in computing the taxpayer's investment tax credit at the end of the year that is in respect of qualified expenditures (other than expenditures of a current nature) incurred by the taxpayer in the year, and

(ii) all amounts determined under paragraph (a.1) of the definition "investment tax credit" in subsection 127(9) in respect of expenditures for which an amount is included in subparagraph (i)

exceeds

(b) the total of

(i) the portion of the total of all amounts deducted by the taxpayer under subsection 127(5) for the

year or a preceding taxation year (other than an amount deemed by subsection (3) to have been so deducted for the year) that can reasonably be considered to be in respect of the total determined under paragraph (a), and

(ii) the portion of the total of all amounts required by subsection 127(6) to be deducted in computing the taxpayer's investment tax credit at the end of the year that can reasonably be considered to be in respect of the total determined under paragraph (a)

plus the amount, if any, by which

(c) the total of

(i) the portion of the amount required by subsection 127(10.1) to be added in computing the taxpayer's investment tax credit at the end of the year that is in respect of qualified expenditures (other than expenditures of a capital nature) incurred by the taxpayer in the year, and

(ii) all amounts determined under paragraph (a.1) of the definition "investment tax credit" in subsection 127(9) in respect of expenditures for which an amount is included in subparagraph (i)

exceeds

(d) the total of

(i) the portion of the total of all amounts deducted by the taxpayer under subsection 127(5) for the year or a preceding taxation year (other than an amount deemed by subsection (3) to have been so deducted for the year) that can reasonably be considered to be in respect of the total determined under paragraph (c), and

(ii) the portion of the total of all amounts required by subsection 127(6) to be deducted in computing the taxpayer's investment tax credit at the end of the year that can reasonably be considered to be in respect of the total determined under paragraph (c).

Related Provisions: 136(1) — Cooperative can be private corporation for 127.1; 137(7) — Credit union can be private corporation for 127.1.

History: Paras. 127.1(2.01)(a), (c) amended by 1996, c. 21, subsecs. 31(2), (3), applicable to taxation years that begin after 1995. Paras. (a), (c) formerly read:

(a) the total of

(i) the portion of the amount required by subsection 127(10.1) to be added in computing the taxpayer's investment tax credit at the end of the year that is in respect of qualified expenditures (other than expenditures of a current nature) incurred in the year, and

(ii) all amounts determined under paragraph (a) of the definition "investment tax credit" in subsection 127(9) in respect of expenditures for which an amount is included in subparagraph (i)

. . . . .

(c) the total of

(i) the portion of the amount required by subsection 127(10.1) to be added in computing the taxpayer's investment tax credit at the end of the year that is in respect of qualified expenditures (other than expenditures of a capital nature) incurred in the year, and

(ii) all amounts determined under paragraph (a) of the definition "investment tax credit" in subsection 127(9) in respect of expenditures for which an amount is included in subparagraph (i)

Subsec. 127.1(2.01) added by 1994, c. 8, subsec. 16(2), applicable to taxation years beginning after 1993.

(2.1) Application of subsec. 127(9) — The definitions in subsection 127(9) apply to this section.

Origin of subsec. 127.1(2.1): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsec. 127(9)).

Selected Cases [s. 127.1(2.1)]: *Allarcom Pay Television Ltd. v. R.*, [2000] 1 C.T.C. 273 (FCA); aff'g [1996] 3 C.T.C. 2608 (TCC) (Cable TV contracts were supply of services, not goods).

(2.2) Refundable investment tax credit — associated CCPCs — If a particular Canadian-controlled private corporation is associated with another corporation in circumstances where those corporations would not be associated if the Act were read without reference to paragraph 256(1.2)(a), the particular corporation has issued shares to one or more persons who have been issued shares by the other corporation and there is at least one shareholder of the particular corporation who is not a shareholder of the other corporation or one shareholder of the other corporation who is not a shareholder of the particular corporation, the particular corporation is not associated with the other corporation for the purpose of calculating that portion of the particular corporation's refundable investment tax credit that is in respect of qualified expenditures.

Related Provisions: 127(10.22) — Parallel rule for determining expenditure limit.

History: Subsec. 127.1(2.2) added by 2005, c. 19, s. 29, applicable to taxation years that end after March 22, 2004.

(2.3) Application of subsec. (2.2) — Subsection (2.2) applies to the particular corporation and the other corporation referred to in that subsection only if the Minister is satisfied that

(a) the particular corporation and the other corporation are not otherwise associated under this Act; and

(b) the existence of one or more shareholders of the particular corporation who is not a shareholder of the other corporation, or the existence of one or more shareholders of the other corporation who is not a shareholder of the particular corporation, is not for the purpose of satisfying the requirements of subsection (2.2) or 127(10.22).

Related Provisions: 127(10.23) — Parallel rule for determining expenditure limit.

History: Subsec. 127.1(2.3) added by 2005, c. 19, s. 29, applicable to taxation years that end after March 22, 2004.

(3) Deemed deduction — For the purposes of this Act, the amount deemed under subsection (1) to have been paid by a taxpayer for a taxation year shall be deemed to have been deducted by the taxpayer under subsection 127(5) for the year.

Definitions [s. 127.1]: "active business" — 125(7), 248(1); "amount" — 248(1); "approved project property" — 127(9), 127.1(2.1); "associated" — 127.1(2.2), (2.3), 256; "balance-due day" — 248(1); "business limit" — 125(2)–(5.1), 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canadian-controlled private corporation" — 125(7), 248(1); "Canadian exploration expense" — 66.1(6), 248(1); "controlled directly or indirectly" — 256(5.1), (6.2); "corporation" — 248(1), *Interpretation Act* 35(1); "excluded corporation" — 127.1(2); "Her Majesty" — *Interpretation Act* 35(1); "individual" — 248(1); "investment tax credit" — 127(9), 248(1); "Minister", "person", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "qualified Canadian exploration expenditure", "qualified expenditure", "qualified small-business property" — 127(9), 127.1(2.1); "qualifying corporation", "refundable investment tax credit" — 127.1(2); "related" — 251(2); "scientific research and experimental development" — 37(13), 248(1); "share", "shareholder", "specified employee", "specified future tax consequence" — 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

Interpretation Bulletins [s. 127.1]: IT-151R5: Scientific research and experimental development expenditures.

127.2 (1) [Pre-1987] Share-purchase tax credit — There may be deducted from the tax otherwise payable

under this Part by a taxpayer for a taxation year an amount not exceeding the total of

(a) the taxpayer's share-purchase tax credit for the year, and

(b) the taxpayer's unused share-purchase tax credit for the taxation year immediately following the year.

(2) Persons exempt from tax — Where a taxpayer who was throughout a taxation year a person described in any of paragraphs 149(1)(e) to (y) files with the taxpayer's return of income under this Part for the year a prescribed form containing prescribed information, the taxpayer shall be deemed to have paid, on the day on which the return is filed, an amount, on account of the taxpayer's tax under this Part for the year, equal to the taxpayer's share-purchase tax credit for the year.

(3) Trust — Where, in a particular taxation year of a taxpayer who is a beneficiary under a trust, an amount is included in computing the share-purchase tax credit of the trust for its taxation year ending in that particular taxation year, the trust may, in its return of income for its taxation year ending in that particular taxation year, designate as attributable to the taxpayer such portion of that amount

(a) as may, having regard to all the circumstances (including the terms and conditions of the trust arrangement), reasonably be considered to be attributable to the taxpayer, and

(b) as was not designated by the trust in respect of any other beneficiary of that trust,

and, where the trust so designates such a portion, an amount equal to that portion shall be

(c) added in computing the share-purchase tax credit of the taxpayer for the particular taxation year, and

(d) deducted in computing the share-purchase tax credit of the trust for its taxation year ending in the particular taxation year.

Related Provisions: 53(2)(h)(iii) — Deduction from cost base of beneficiary's capital interest in a trust.

(3.1) Exclusion of certain trusts — For the purposes of subsection (3), a trust does not include a trust that is

(a) governed by an employee benefit plan or a revoked deferred profit sharing plan; or

(b) exempt from tax under section 149.

(4) Partnership — Where, in a taxation year of a taxpayer who is a member of a partnership, an amount is included in computing the share-purchase tax credit of the partnership for its fiscal period ending in that year, such portion of that amount as may reasonably be considered to be the taxpayer's share thereof shall be

(a) added in computing the share-purchase tax credit of the taxpayer for that year; and

(b) deducted in computing the share-purchase tax credit of the partnership for that fiscal period.

Related Provisions: 53(2)(c)(vii) — Deductions from cost base of partnership interest.

(5) Cooperative corporation — Where at any particular time in a taxation year a taxpayer that is a cooperative corporation (within the meaning assigned by subsection 136(2)) has, as required by subsection 135(3), deducted or withheld an amount from a payment made by it to any person pursuant to an allocation in proportion to patronage, the taxpayer may deduct from the amount otherwise required by subsection 135(3) to be remitted to the Receiver General, an amount not exceeding the amount, if any, by which

(a) the amount that would, but for this subsection, be its share-purchase tax credit for the taxation year in which it made the payment if that year had ended immediately before the particular time

exceeds

(b) the total of all amounts each of which is the amount deducted by virtue of this subsection from any amount otherwise required to be remitted by subsection 135(3) in respect of payments made by it before the particular time and in the taxation year,

and the amount, if any, so deducted from the amount otherwise required to be remitted by subsection 135(3) shall be

(c) deducted in computing the share-purchase tax credit of the taxpayer for the taxation year, and

(d) deemed to have been remitted by the taxpayer to the Receiver General on account of tax under this Part of the person to whom that payment was made.

(6) Definitions — In this section,

"share-purchase tax credit" of a taxpayer for a taxation year means the amount determined by the formula

$$(A + B) - C$$

where

A is the total of all amounts each of which is an amount designated by a corporation under subsection 192(4) in respect of a share acquired by the taxpayer in the year where the taxpayer is the first person, other than a broker or dealer in securities, to be a registered holder,

B is the total of all amounts each of which is an amount required by subsection (3) or (4) to be added in computing the taxpayer's share-purchase tax credit for the year, and

C the total of all amounts each of which is an amount required by subsection (3), (4) or (5) to be deducted in computing the taxpayer's share-purchase tax credit for the year;

Related Provisions: 257 — Formula cannot calculate to less than zero.

"unused share-purchase tax credit" of a taxpayer for a taxation year means the amount determined by the formula

$$A - (B + C)$$

where

A is the taxpayer's share-purchase tax credit for the year,

B the taxpayer's tax otherwise payable under this Part for the year, the amount deemed by subsection (2) to have been paid on account of the taxpayer's tax payable under this Part for the year or, where Division E.1 is applicable to the taxpayer for the year, the amount, if any, by which the taxpayer's tax otherwise payable under this Part for the year exceeds the taxpayer's minimum amount for the year determined under section 127.51, as the case may be, and

C is the taxpayer's refundable Part VII tax on hand at the end of the year.

Related Provisions: 248(1)"unused share-purchase tax credit" — Definition applies to entire Act; 257 — Formula cannot calculate to less than zero.

(7) Definition of "tax otherwise payable" — In this section, "tax otherwise payable" under this Part by a tax-

payer means the amount that would, but for this section and section 120.1, be the tax payable under this Part by the taxpayer.

(8) Deemed cost of acquisition — For the purposes of this Act, where, at any time in a taxation year, a taxpayer has acquired a share and is the first registered holder of the share, other than a broker or dealer in securities, and an amount is, at any time, designated by a corporation under subsection 192(4) in respect of the share, the following rules apply:

(a) the taxpayer shall be deemed to have acquired the share at a cost to the taxpayer equal to the amount by which

(i) its cost to the taxpayer as otherwise determined

exceeds

(ii) the amount so designated in respect of the share; and

(b) where the amount determined under subparagraph (a)(ii) exceeds the amount determined under subparagraph (a)(i), the excess shall

(i) where the share is a capital property to the taxpayer, be deemed to be a capital gain of the taxpayer for the year from the disposition of that property, and

(ii) in any other case, be included in computing the income of the taxpayer for the year,

and the cost to the taxpayer of the share shall be deemed to be nil.

Related Provisions: 192(4.1) — Paid-up capital of designated share.

(9) Partnership — For the purposes of this section and subsection 193(5), a partnership shall be deemed to be a person and its taxation year shall be deemed to be its fiscal period.

(10) Election re first holder — Where a share of a public corporation has been lawfully distributed to the public in accordance with a prospectus, registration statement or similar document filed with a public authority in Canada pursuant to and in accordance with the law of Canada or of any province, and, where required by law, accepted for filing by such a public authority, the corporation, if it has designated an amount under subsection 192(4) in respect of the share, may, in the prescribed form required to be filed under that subsection, elect that, for the purposes of this section, the first person, other than a broker or dealer in securities, to have acquired the share (and no other person) shall be considered to be the first person to be a registered holder of the share.

(11) Calculation of consideration — For greater certainty,

(a) for the purposes of this section and Part VII, the amount of consideration for which a share is acquired and issued includes the amount of any consideration for the designation under subsection 192(4) in respect of the share; and

(b) the amount received by a corporation as consideration for a designation under subsection 192(4) in respect of a share issued by it shall not be included in computing its income.

Selected Cases [s. 127.2]: *598606 Ontario Ltd. v. MNR*, [1993] 1 C.T.C. 2001 (TCC); appealed to FCTD (Feb. 11, 1993), File T-367-93 (Failure to make designation by filing prescribed form disentitles taxpayer to claim share-purchase tax credit).

Definitions [s. 127.2]: "amount" — 248(1); "Canada" — 255; "capital gain" — 39(1)(a), 248(1); "capital property" — 54, 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan", "employee benefit plan" — 248(1); "person" — 127.2(9), 248(1); "prescribed" — 248(1); "province" — *Interpretation Act* 35(1); "public corporation" — 248(1); "refundable Part VII tax on hand" — 192(3), 248(1); "share" — 248(1); "tax payable" — 248(2); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

127.3 (1) [Pre-1986] Scientific research and experimental development tax credit — There may be deducted from the tax otherwise payable under this Part by a taxpayer for a taxation year an amount not exceeding the total of the taxpayer's

(a) scientific research and experimental development tax credit for the year, and

(b) unused scientific research and experimental development tax credit for the taxation year immediately following the year.

Related Provisions: 117(1) — Tax payable under this Part; 194(4.2) — Where amount may not be designated; 195(5) — Evasion of tax; 195(6) — Undue deferral of refundable tax.

Selected Cases [subsec. 127.3(1)]: *Groupmark Canada Ltd. v. Canada*, [1993] 1 C.T.C. 234 (FCTD) (Amounts paid to related company before and after SRTC note issued were "consideration" for note); *United Equities Ltd. v. MNR*, [1992] 2 C.T.C. 214 (FCTD) (Taxpayer eligible for scientific research tax credit despite late filing since requirements for remedying delay met).

(2) Definitions — In this section,

"scientific research and experimental development tax credit" of a taxpayer for a taxation year means the amount determined by the formula

$$A - B$$

where

A is the total of all amounts each of which is an amount equal to

(a) where the taxpayer is a corporation, 50%, or

(b) where the taxpayer is an individual other than a trust, 34%

of an amount designated by a corporation under subsection 194(4) in respect of

(c) a share acquired by the taxpayer in the year where the taxpayer is the first person, other than a broker or dealer in securities, to be a registered holder thereof,

(d) a bond, debenture, bill, note, mortgage or similar obligation (in this section referred to as a "debt obligation") acquired by the taxpayer in the year where the taxpayer is the first person, other than a broker or dealer in securities, to be a registered holder of that debt obligation, or

Proposed Amendment — 127.3(2)"scientific research and experimental development tax credit"(d)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), s. 238, will amend para. (d) of the definition "scientific research and experimental development tax credit" in subsec. 127.3(2) by adding "or hypothecary claim" after "mortgage", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(e) a right acquired by the taxpayer in the year where the taxpayer is the first person, other than a broker or dealer in securities, to have acquired that right, and

B is the total of all amounts required by subsection (5) to be deducted in computing the taxpayer's scientific re-

search and experimental development tax credit for the year;

Related Provisions: 248(1)"scientific research and experimental development tax credit" — Definition applies to entire Act; 257 — Formula cannot calculate to less than zero.

"unused scientific research and experimental development tax credit" of a taxpayer for a taxation year means the amount determined by the formula

$$A - (B + C)$$

where

A is the taxpayer's scientific research and experimental development tax credit for the year,

B is the taxpayer's tax otherwise payable under this Part for the year or, where Division E.1 is applicable to the taxpayer for the year, the amount, if any, by which the taxpayer's tax otherwise payable under this Part for the year exceeds the taxpayer's minimum amount for the year determined under section 127.51, as the case may be, and

C is the taxpayer's refundable Part VIII tax on hand at the end of the year.

Related Provisions: 248(1)"unused scientific research and experimental development tax credit" — Definition applies to entire Act; 257 — Formula cannot calculate to less than zero.

Selected Cases [subsec. 127.3(2)]: *Loewen v. MNR*, [1994] 2 C.T.C. 75 (FCA) (Acquisition and disposition of SRTC debenture was not an adventure in nature of trade).

(3) Trust — For the purposes of this section and section 53, where a taxpayer, other than a broker or dealer in securities, is a beneficiary under a trust and an amount is designated by a corporation under subsection 194(4) in respect of a share, debt obligation or right acquired by the trust in a taxation year of the trust where the trust is the first person, other than a broker or dealer in securities, to be a registered holder of the share or debt obligation or to have acquired the right, as the case may be,

(a) the trust may, in its return of income for that year, specify such portion of that amount as may, having regard to all the circumstances (including the terms and conditions of the trust arrangement), reasonably be considered to be attributable to the taxpayer and as was not specified by the trust in respect of any other beneficiary under that trust; and

(b) the portion specified pursuant to paragraph (a) shall be deemed to be an amount designated on the last day of that year by the corporation under subsection 194(4) in respect of a share, debt obligation or right, as the case may be, acquired by the taxpayer on that day where the taxpayer is the first person, other than a broker or dealer in securities, to be a registered holder of the share or debt obligation or to have acquired the right, as the case may be.

Related Provisions: 53(2)(h)(iv) — Deductions from cost base of beneficiary's capital interest in a trust.

(3.1) Exclusion of certain trusts — For the purposes of subsection (3), a trust does not include a trust that is

(a) governed by an employee benefit plan or a revoked deferred profit sharing plan; or

(b) exempt from tax under section 149.

(4) Partnership — For the purposes of this section and section 53, where a taxpayer, other than a broker or dealer in securities, is a member of a partnership and an amount is designated by a corporation under subsection 194(4) in respect of a share, debt obligation or right acquired by the partnership in a taxation year of the partnership where the partnership is the first person, other than a broker or dealer in securities, to be a registered holder of the share or debt obligation or to have acquired the right, as the case may be, such portion of that amount as may reasonably be considered to be the taxpayer's share thereof shall be deemed to be an amount designated on the last day of that year by the corporation under subsection 194(4) in respect of a share, debt obligation or right, as the case may be, acquired by the taxpayer on that day where the taxpayer is the first person, other than a broker or dealer in securities, to be a registered holder of the share or debt obligation or to have acquired the right, as the case may be.

Related Provisions: 53(2)(c)(viii) — Deductions from cost base of partnership interest re scientific research and experimental development tax credit.

(5) Cooperative corporation — Where at any particular time in a taxation year a taxpayer that is a cooperative corporation (within the meaning assigned by subsection 136(2)) has, as required by subsection 135(3), deducted or withheld an amount from a payment made by it to any person pursuant to an allocation in proportion to patronage, the taxpayer may deduct from the amount otherwise required by subsection 135(3) to be remitted to the Receiver General, an amount not exceeding the amount, if any, by which

(a) the amount that would, but for this subsection, be its scientific research and experimental development tax credit for the taxation year in which it made the payment if that year had ended immediately before the particular time

exceeds

(b) the total of all amounts each of which is the amount deducted by virtue of this subsection from any amount otherwise required to be remitted by subsection 135(3) in respect of payments made by it before the particular time and in the taxation year,

and the amount, if any, so deducted from the amount otherwise required to be remitted by subsection 135(3) shall be

(c) deducted in computing the scientific research and experimental development tax credit of the taxpayer for the taxation year, and

(d) deemed to have been remitted by the taxpayer to the Receiver General on account of tax under this Part of the person to whom that payment was made.

(6) Deduction from cost — For the purposes of this Act, where at any time in a taxation year a taxpayer has acquired a share, debt obligation or right and is the first registered holder of the share or debt obligation or the first person to have acquired the right, as the case may be, other than a broker or dealer in securities, and an amount is, at any time, designated by a corporation under subsection 194(4), in respect of the share, debt obligation or right, the following rules apply:

(a) the taxpayer shall be deemed to have acquired the share, debt obligation or right at a cost to the taxpayer equal to the amount by which

(i) its cost to the taxpayer as otherwise determined

exceeds

(ii) 50% of the amount so designated in respect thereof; and

(b) where the amount determined under subparagraph (a)(ii) exceeds the amount determined under subparagraph (a)(i), the excess shall

(i) where the share, debt obligation or right, as the case may be, is a capital property to the taxpayer, be deemed to be a capital gain of the taxpayer for the year from the disposition of that property, and

(ii) in any other case, be included in computing the income of the taxpayer for the year,

and the cost to the taxpayer of the share, debt obligation or right, as the case may be, shall be deemed to be nil.

Related Provisions: 194(4.1) — Computation of paid-up capital of designated share.

(7) Partnership — For the purposes of this section and Part VIII, a partnership shall be deemed to be a person and its taxation year shall be deemed to be its fiscal period.

(8) Definition of "tax otherwise payable" — In this section, "tax otherwise payable" under this Part by a taxpayer means the amount that would, but for this section and section 120.1, be the tax payable under this Part by the taxpayer.

(9) Election re first holder — Where a share or debt obligation of a public corporation has been lawfully distributed to the public in accordance with a prospectus, registration statement or similar document filed with a public authority in Canada pursuant to and in accordance with the law of Canada or of any province, and, where required by law, accepted for filing by that public authority, the corporation, if it has designated an amount under subsection 194(4) in respect of the share or debt obligation, may, in the prescribed form required to be filed under that subsection, elect that, for the purposes of this section, the first person, other than a broker or dealer in securities, to have acquired the share or debt obligation, as the case may be, (and no other person) shall be considered to be the first person to be a registered holder thereof.

(10) Calculation of consideration — For greater certainty,

(a) for the purposes of this section and Part VIII, the amount of consideration for which a share, debt obligation or right was acquired and issued or granted includes the amount of any consideration for the designation under subsection 194(4) in respect of the share, debt obligation or right; and

(b) the amount received by a corporation as consideration for a designation under subsection 194(4) in respect of a share, debt obligation or right issued or granted by it shall not be included in computing its income.

Selected Cases [s. 127.3]: *Donat Flamand Inc. v. MNR*, [2001] 3 C.T.C. 130 (FCTD) (Opinion letter obtained on basis of fraud ineffective to establish qualified debenture even where investors unaware of misrepresentation); *Mort (C.L.) v. Canada*, [1993] 1 C.T.C. 99 (FCTD) (Financing arrangements "substantially advanced" when moratorium on SRTC program announced).

Definitions [s. 127.3]: "amount" — 248(1); "Canada" — 255; "capital gain" — 39(1)(a), 248(1); "capital property" — 54, 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan", "employee benefit plan" — 248(1); "hypothecary" — Quebec *Civil Code* art. 2660; "individual", "Minister" — 248(1); "person" — 127.3(7), 248(1); "prescribed" — 248(1); "province" — *Interpretation Act* 35(1); "public corporation" — 89(1), 248(1); "refundable Part VIII tax on hand" — 194(3), 248(1); "share" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

127.4 (1) [Labour-sponsored funds tax credit] Definitions — In this section,

"approved share" means a share of the capital stock of a prescribed labour-sponsored venture capital corporation, but does not include

(a) a share issued by a registered labour-sponsored venture capital corporation the venture capital business of which was discontinued before the time of the issue, and

(b) a share issued by a prescribed labour-sponsored venture capital corporation (other than a registered labour-sponsored venture capital corporation) if, at the time of the issue, every province under the laws of which the corporation is a prescribed labour-sponsored venture capital corporation has suspended or terminated its assistance in respect of the acquisition of shares of the capital stock of the corporation;

Proposed Amendment — 127.4(1)"approved share"(b)

(b) a share issued by a prescribed labour-sponsored venture capital corporation that is not a registered labour-sponsored venture capital corporation if, at the time of the issue, no province under the laws (described in section 6701 of the *Income Tax Regulations*) of which the corporation is registered or established provides assistance in respect of the acquisition of the share;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 123(1), will amend para. (b) of the definition "approved share" in subsec. 127.4(1) to read as above, applicable to acquisitions of shares that occur after 2003.

Technical Notes: Subsection 127.4(2) allows an individual (other than a trust) a tax credit for the acquisition of an "approved share", which is defined in subsection 127.4(1) as, generally, a share issued by a prescribed LSVCC. LSVCCs prescribed for this purpose under section 6701 of the Regulations include LSVCCs registered under Part X.3 of the Act, as well as specified provincially registered LSVCCs. Paragraph (b) of the definition "approved share" excludes from the definition certain shares issued by a provincially-registered LSVCC that is not a federally-registered LSVCC. This exclusion applies only in the event that, at the time of the issue of the shares, no assistance is available in respect of the acquisition of such shares because of a suspension or termination of assistance to the LSVCC under the laws of every province in which the LSVCC is registered.

Paragraph (b) of the definition "approved share" is amended to provide that an approved share does not include a share issued by a provincially-registered LSVCC (that is not a federally-registered LSVCC) if, at the time of the issue, no province under the laws of which the corporation is an LSVCC that is a prescribed LSVCC provides assistance in respect of the acquisition of the share. This amendment is provided to have the definition "approved share" better reflect the policy that a federal income tax credit be available in respect of a share issued by a provincially-registered LSVCC (that is not a federally-registered LSVCC) only if a provincial income tax credit is also available in respect of the share.

Paragraph (b) of the definition will continue to apply if, at the time of the issue by such an LSVCC of a share, no assistance is available in respect of the acquisition of shares of the LSVCC because of a suspension or termination of assistance to the LSVCC under the laws of every province in which the LSVCC is registered.

Amended paragraph (b) of the definition will also apply where there has not been a suspension or termination of assistance with respect to the issuance of the LSVCC's shares generally, but assistance is not available with respect to the acquisition of a particular share. For example, if under the laws of a province under which an LSVCC is a prescribed LSVCC, a taxpayer who acquires a share is not entitled to any assistance in respect of the acquisition either because of having reached the age of 65 years or because of the province of residence of the taxpayer, the share will not be treated as an approved share.

Letter from Dept. of Finance, September 29, 2004:

Dear [xxx]

Thank you for your letter of April 28, 2004, requesting that the Government of Canada delay the effective date of the amendment to the definition of "approved share" in subsection 127.4(1) of the *Income Tax Act*. The amendment and the effective date were originally announced in a package of income tax technical amendments released in draft form by the Department of Finance in December of 2002. You have asked that the original effective date of the amendment be delayed until the 2004 and subsequent taxation years.

As you point out in your letter, the Canada Revenue Agency issued a Technical Interpretation on April 15, 2003 that indicated that the federal tax credit given for purchasing a share of a labour-sponsored venture capital corporation registered in Québec would be available to an investor notwithstanding that the investor was not eligible for a provincial credit, without any mention of the December 2002 proposed change. Technical interpretations are not legally binding on the Canada Revenue Agency and, indeed, contain wording that explains this fact. However, as it was recognized that some confusion could have been created by the issuance of this document after the release of the December 2002 technical amendment package, our Minister is prepared to recommend to Parliament a coming into force provision that would provide that the proposed amendment would apply to acquisitions of shares after 2003.

Thank you for writing on this matter.

Yours sincerely,

Len Farber
General Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 131(8) — Prescribed LSVCC is a mutual fund corporation; 204.8(2) — Determining when an RLSVCC discontinues its business; 211.7(1)"approved share" — Definition applies to Part XII.5.

History: The definition "approved share" in subsec. 127.4(1) amended by 2000, c. 19, subsec. 36(1), applicable to 1999 *et seq.* It formerly read:

> "approved share" means a share of the capital stock of a prescribed labour-sponsored venture capital corporation;

The definition "approved share" in subsec. 127.4(1) amended by 1997, c. 25, subsec. 37(1), applicable to 1996 *et seq.* It formerly read:

> "approved share" means a share of the capital stock of a prescribed labour-sponsored venture capital corporation acquired or irrevocably subscribed and paid for by an individual where the individual is or will be the first person, other than a broker or dealer in securities, to be a registered holder thereof;

"Approved share" in subsec. 127.4(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 105(1), applicable after 1988. That definition formerly read:

> "approved share" means a share of the capital stock of a prescribed labour-sponsored venture capital corporation acquired by an individual where the individual is the first person, other than a broker or dealer in securities, to be a registered holder of that share;

Regulations: 100(5) (reduction in withholding where share purchased from payroll); 6701 (prescribed labour-sponsored venture capital corporation).

"labour-sponsored funds tax credit" — [Repealed]

History: The definition "labour-sponsored funds tax credit" in subsec. 127.4(1) repealed by 1997, c. 25, subsec. 37(2), applicable to 1996 *et seq.* It formerly read:

> "labour-sponsored funds tax credit" of an individual for a taxation year means the amount computed under subsection (3) in respect of the individual for that year;

"net cost" to an individual of an approved share means the amount, if any, by which

(a) the amount of consideration paid by the individual to acquire or subscribe for the share

exceeds

(b) the amount of any assistance (other than an amount included in computing a tax credit of the individual in respect of that share) provided or to be provided by a government, municipality or any public authority in respect of, or for the acquisition of, the share;

Related Provisions: 211.7(1)"net cost" — Definition applies to Part XII.5.

History: "Net cost" in subsec. 127.4(1) amended to substitute that portion preceding para. (b) by 1994, c. 7, Sch. II (1991, c. 49), subsec. 105(1), applicable after 1988. That portion formerly read:

> "net cost" to an individual of an approved share means the amount by which
>
> (a) the amount of the consideration for which the share was issued to the individual
>
> exceeds

"original acquisition" of a share means the first acquisition of the share, except that

(a) where the share is irrevocably subscribed and paid for before its first acquisition, subject to paragraphs (b) and (c), the original acquisition of the share is the first transaction whereby the share is irrevocably subscribed and paid for,

(b) a share is deemed never to have been acquired and never to have been irrevocably subscribed and paid for unless the first registered holder of the share is, subject to paragraph (c), the first person to either acquire or irrevocably subscribe and pay for the share, and

(c) for the purpose of this definition, a broker or dealer in securities acting in that capacity is deemed never to acquire or subscribe and pay for the share and never to be the registered holder of the share;

Proposed Amendment — Convertible LSVCC shares

Letter from Dept. of Finance, May 13, 2004:

Dear [xxx]

I am writing in response to your letter of September 24, 2003, concerning the application of the *Income Tax Act* (the "Act") to investors owning shares in a labour-sponsored venture capital corporation ("LSVCC") that are convertible into another series of class A share. Specifically, you are concerned that the labour-sponsored fund tax credit recovery mechanism contained in Part XII.5 will apply to an investor in such an LSVCC upon the conversion of their shares, and submit that this result is inconsistent with the policy of the LSVCC program.

You have informed us that [xxx] is now the manager of [xxx], a federally registered LSVCC. It is your wish to have [xxx] issue its class A shares in series, with shareholders having the ability to convert from one series to another at their request. The only difference between the series will be the investments selected for the non-eligible investment portion, or reserve, of [xxx] portfolio. The venture capital portion of the shareholder's equity will be the same for all series. On that basis, we understand that under your proposed structure no eligible investment will be at risk of divestment as the result of a conversion from one series of class A share to another.

Based on our understanding that the issue of convertible shares by [xxx] would not put at risk the capital placed in eligible investments, restrict the LSVCC from investing more than the minimal requirement in eligible investments nor allow an investor to withdraw their investment from the LSVCC before the eight-year holding period expires without a recovery of the tax credit given in respect of those shares, your proposal does not appear to contravene the policy underlying the LSVCC program. Accordingly, we intend to recommend to the Minister of Finance that changes to the Act be implemented to allow for such conversions without creating a recapture of the labour-sponsored tax credit. It is contemplated that accommodation would be made only for exchanges subject to section 51 of the Act, where the conversion is made from one series of class A share to another series of class A share, and where the series differ only in respect of the reserve portion of the shareholder's equity, as described above. In conjunction with this accommodation, it is also envisioned that changes to section 127.4 of the Act will be made to ensure that a new labour-sponsored tax credit is not available upon the issuance of new class A shares by a LSVCC pursuant to a share conversion. We will be recommending that these changes be effective for conversions that take place after 2003. If our recommendations are acted upon, we anticipate that the amendments would be included in an upcoming technical bill.

Thank you for writing.

Yours sincerely,

Len Farber
General Director, Tax Legislative Division, Tax Policy Branch

Related Provisions: 127.4(5.1) — Direction for original acquisition to be deemed to occur at beginning of year; 204.8(1)"original acquisition" — Definition applies to Part X.3; 211.7(1)"original acquisition" — Definition applies to Part XII.5.

History: The definition "original acquisition" added to subsec. 127.4(1) by 1997, c. 25, subsec. 37(3), applicable after 1995.

"qualifying trust" for an individual in respect of a share means

(a) a trust governed by a registered retirement savings plan, under which the individual is the annuitant, that is not a spousal plan (in this definition having the meaning assigned by subsection 146(1)) in relation to another individual, or

(b) a trust governed by a registered retirement savings plan, under which the individual or the individual's spouse or common-law partner is the annuitant, that is a spousal plan in relation to the individual or the individual's spouse or common-law partner, if the individual and no other person claims a deduction under subsection 127.4(2) in respect of the share;

Proposed Amendment — 127.4(1)"qualifying trust"(a), (b)

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 123(2), will amend paras. (a) and (b) of the definition "qualifying trust" in subsec. 127.4(1) to replace, in each, "spousal plan" with "spousal or common-law partner plan", applicable to 2001 *et seq* except that, if a taxpayer and a person have jointly elected under s. 144 of the *Modernization of Benefits and Obligations Act*, in respect of the 1998, 1999 or 2000 taxation years, the amendment applies to the taxpayer and the person in respect of the applicable taxation year and subsequent taxation years.

Technical Notes: Subsection 127.4(1) contains the definition of "qualifying trust". In 2000, the Act was amended to include common-law partners, but some provisions, including the English version of the definition of "qualifying trust", were overlooked. This definition is therefore amended to correct this omission. The amendment applies, in general, to the 2001 and subsequent taxation years. However, it may apply as of 1998 if the common-law partners jointly choose to be deemed as such, beginning in that year, for the purposes of the application of the Act.

Related Provisions: 127.4(6)(a) — Credit to individual for investment by qualifying trust; 211.7(1)"qualifying trust" — Definition applies to Part XII.5.

History: Para. (b) of the definition "qualifying trust" in subsec. 127.4(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

The definition "qualifying trust" in subsec. 127.4(1) amended by 1999, c. 22, subsec. 49(1), applicable to 1998 *et seq.* It formerly read:

> "qualifying trust" for an individual in respect of a share means a trust governed by a registered retirement savings plan where
>
> (a) the individual makes contributions to the trust and those contributions (and no other funds) can reasonably be considered to have been used by the trust to acquire or subscribe for the share, and
>
> (b) the annuitant under the plan is the individual or a spouse of the individual;

The definition "qualifying trust" added to subsec. 127.4(1) by 1994, c. 8, subsec. 17(1), applicable to 1992 *et seq.*

"tax otherwise payable" by an individual means the amount that, but for this section, would be the individual's tax payable under this Part.

History: The definition "tax otherwise payable" in subsec. 127.4(1) amended by 2000, c. 19, subsec. 36(1), applicable to 1998 *et seq.*

> "tax otherwise payable" by an individual means the amount that would, but for this section and section 120.1, be the tax payable under this Part by the individual.

(1.1) Amalgamations or mergers — Subsections 204.8(2) and 204.85(3) apply for the purpose of this section.

History: Subsec. 127.4(1.1) added by 2000, c. 19, subsec. 36(2), applicable after February 16, 1999.

(2) Deduction of labour-sponsored funds tax credit — There may be deducted from the tax otherwise payable by an individual (other than a trust) for a taxation year such amount as the individual claims not exceeding the individual's labour-sponsored funds tax credit limit for the year.

Related Provisions: 127.4(5) — Determination of labour-sponsored funds tax credit limit; 211.8 — Repayment of credit on early disposition of share.

History: Subsec. 127.4(2) amended by 1999, c. 22, subsec. 49(2), applicable to 1998 *et seq.* It formerly read:

> (2) Subject to subsections (3) and (4), there may be deducted from the tax otherwise payable by an individual (other than a trust) for a taxation year such amount as the individual claims not exceeding the individual's labour-sponsored funds tax credit limit for the year.

Subsec. 127.4(2) amended by 1997, c. 25, subsec. 37(4), applicable to 1996 *et seq.* and, for the 1992 to 1995 taxation years, subsec. (2) shall be read as follows:

> (2) There may be deducted from the tax otherwise payable by an individual (other than a trust) for a taxation year the lesser of $1,000 and the individual's labour-sponsored funds tax credit (determined as if an approved share in respect of which an individual receives a payment under section 211.9 had never been either acquired nor irrevocably subscribed and paid for).

Subsec. (2) formerly read:

> (2) There may be deducted from the tax otherwise payable by an individual (other than a trust) for a taxation year the lesser of $1,000 and the individual's labour-sponsored funds tax credit for the year.

Subsec. 127.4(2) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 69, applicable to 1992 *et seq.* Subsec. (2) formerly read:

> (2) There may be deducted from the tax otherwise payable by an individual (other than a trust) for a taxation year the lesser of $700 and the individual's labour-sponsored funds tax credit for the year.

Regulations: 100(5) (reduction in withholding where share purchased from payroll).

(3) [Repealed]

History: Subsec. 127.4(3) repealed by 1999, c. 22, subsec. 49(3), applicable to 1998 *et seq.* It formerly read:

> (3) 3-year cooling-off period — Subject to subsection (4), no amount may be deducted under subsection (2) from an individual's tax otherwise payable for a taxation year that ends after 1996 where
>
> (a) an approved share of the capital stock of a corporation is redeemed, acquired or cancelled by the corporation
>
> (i) after March 5, 1996 (otherwise than pursuant to a request in writing made to the corporation before March 6, 1996), and
>
> (ii) in the year or in either of the 2 preceding taxation years; and
>
> (b) the original acquisition of the share was by the individual or by a qualifying trust for the individual in respect of the share.

Subsec. 127.4(3) amended by 1997, c. 25, subsec. 37(4), applicable to 1996 *et seq.* Subsec. (3) formerly read:

> (3) Computation of tax credit — The labour-sponsored funds tax credit of an individual for a taxation year is the total of all amounts, in respect of an approved share acquired or irrevocably subscribed and paid for by the individual (or by a qualifying trust for the individual in respect of the share) in the year or within 60 days after the end of the year (to the extent that it was not deducted in computing the individual's tax payable under this Part for the preceding taxation year), each of which is
>
> (a) where a tax credit is provided under the law of a province in respect of the acquisition of, or subscription for, the share by the individual or the trust, and the share is not a share of a registered labour-sponsored venture capital corporation (within the

meaning assigned by section 204.8), the amount, if any, by which

(i) 40% of the net cost to the individual or the trust of the share

exceeds

(ii) the amount of the tax credit so provided; and

(b) in any other case, where the information return described in paragraph 204.81(6)(c) in respect of the share was filed with the individual's return of income under this Part for the year (other than a return of income filed under subsection 70(2), paragraph 104(23)(d) or 128(2)(e) or subsection 150(4)), 20% of the net cost to the individual or the trust of the share.

Subsec. 127.4(3) amended by 1994, c. 8, subsec. 17(2), applicable to 1992 *et seq.* Subsec. (3) formerly read:

(3) The labour-sponsored funds tax credit of an individual for a taxation year is the total of all amounts, in respect of an approved share acquired or irrevocably subscribed and paid for by the individual in the year or within 60 days after the end of the year (to the extent that it was not deducted in computing the individual's tax payable under this Part for the preceding taxation year), each of which is

(a) where a tax credit is provided under the law of a province in respect of the acquisition of, or subscription for, the share by the individual, and the share is not a share of a registered labour-sponsored venture capital corporation (within the meaning assigned by section 204.8), the amount, if any, by which

(i) 40% of the net cost to the individual of the share

exceeds

(ii) the amount of the tax credit so provided, and

(b) in any other case, where the information return described in paragraph 204.81(6)(c) in respect of the share is filed with the individual's return of income under this Part for the year (other than a return of income filed under subsection 70(2), paragraph 104(23)(d) or 128(2)(e) or subsection 150(4)), 20% of the net cost to the individual of the share.

Subsec. 127.4(3) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 105(2), applicable after 1988. Subsec. (3) formerly read:

(3) The labour-sponsored funds tax credit of an individual for a taxation year is the total of all amounts in respect of an approved share acquired by the individual in the year or within 60 days after the end of the year (to the extent it was not deducted in computing the individual's tax payable under this Part for the immediately preceding taxation year), each of which is

(a) where a tax credit is provided under the law of a province in respect of the acquisition of the share by the individual, the amount, if any, by which

(i) 40% of the net cost to the individual of the share

exceeds

(ii) the amount of the tax credit so provided, and

(b) in any other case, 20% of the net cost to the individual of the share.

(4) [Repealed]

History: Subsec. 127.4(4) repealed by 1999, c. 22, subsec. 49(3), applicable to 1998 *et seq.* It formerly read:

(4) Exceptions to cooling-off period — Subsection (3) does not apply to an individual for a taxation year as a consequence of the redemption, acquisition or cancellation of a share where

(a) the individual dies in the year and before the redemption, acquisition or cancellation;

(b) the individual's labour-sponsored funds tax credit in respect of the original acquisition of the share is nil;

(c) tax becomes payable under Part XII.5 because of the redemption, acquisition or cancellation;

(d) an amount determined under regulations made for the purpose of clause 204.81(1)(c)(v)(F) is directed to be remitted to the Receiver General in order to permit the redemption, acquisition or cancellation; or

(e) the individual becomes either disabled and permanently unfit for work or terminally ill in the year

(i) after the last original acquisition in the year of any approved share by the individual or by a qualifying trust for the individual in respect of that share, and

(ii) before the redemption, acquisition or cancellation.

Subsec. 127.4(4) amended by 1997, c. 25, subsec. 37(4), applicable to 1996 *et seq.* Subsec. (4) formerly read:

(4) Idem — Notwithstanding subsection (3), where paragraph (3)(a) applies in computing an individual's labour-sponsored funds tax credit for a taxation year in respect of an approved share and the amount of the tax credit referred to in that paragraph is less than 20% of the consideration for which the share was issued, the amount determined under that paragraph for the year in respect of the share shall be deemed to be nil.

Subsec. 127.4(4) amended by 1994, c. 8, subsec. 17(2), applicable to 1992 *et seq.* Subsec. (4) formerly read:

(4) Notwithstanding subsection (3), where paragraph (3)(a) is applicable in computing an individual's labour-sponsored fund tax credit for a taxation year in respect of an approved share acquired by the individual and the amount of the tax credit referred to in that paragraph is less than 20% of the consideration for which the share was issued, the amount determined under that paragraph for the year in respect of the share shall be deemed to be nil.

(5) Labour-sponsored funds tax credit limit — For the purpose of subsection (2), an individual's labour-sponsored funds tax credit limit for a taxation year is the lesser of

(a) $750, and

(b) the amount, if any, by which

(i) the total of all amounts each of which is the individual's labour-sponsored funds tax credit in respect of an original acquisition in the year or in the first 60 days of the following taxation year of an approved share

exceeds

(ii) the portion of the total described in subparagraph (i) that was deducted under subsection (2) in computing the individual's tax payable under this Part for the preceding taxation year.

Related Provisions: 127.4(5.1) — Extension of investment deadline by CRA so that acquisition deemed made at beginning of year; 127.4(6) — Determination of labour-sponsored funds tax credit.

History: Para. 127.4(5)(a) amended by 1999, c. 22, subsec. 49(4), applicable to 1998 *et seq.* It formerly read:

(a) $525, and

Subsec. 127.4(5) added by 1997, c. 25, subsec. 37(4), applicable to 1996 *et seq.*, except that in its application to the 1996 taxation year, subsec. (5) shall be read as follows:

(5) For the purpose of subsection (2), an individual's labour-sponsored funds tax credit limit for a taxation year is the lesser of

(a) the total of

(i) the lesser of $1,000 and the amount, if any, by which

(A) the total of all amounts each of which is the individual's labour-sponsored funds tax credit in respect of an original acquisition after 1995 and before March 6, 1996 of an approved share

exceeds

(B) such portion of the amount deducted under subsection (2) in computing the individual's tax payable under this Part for the 1995 taxation year as is attributable to the original acquisition after 1995 of an approved share, and

(ii) the amount, if any, by which $525 exceeds the amount determined under subparagraph (i) in respect of the individual for the year, and

(b) the amount, if any, by which

(i) the total of all amounts each of which is the individual's labour-sponsored funds tax credit in respect of an original

acquisition in the year or in the first 60 days of the following taxation year of an approved share

exceeds

(ii) the portion of the total described in subparagraph (i) that was deducted under subsection (2) in computing the individual's tax payable under this Part for the preceding taxation year.

(5.1) Deemed original acquisition — If the Minister so directs, an original acquisition of an approved share that occurs in an individual's taxation year (other than in the first 60 days of the year) is deemed for the purpose of this section to have occurred at the beginning of the year and not at the time it actually occurred.

History: Subsec. 127.4(5.1) added by 1999, c. 22, subsec. 49(5), applicable to acquisitions that are made after 1997.

(6) Labour-sponsored funds tax credit — For the purpose of subsection (5), an individual's labour-sponsored funds tax credit in respect of an original acquisition of an approved share is equal to the least of

(a) 15% of the net cost to the individual (or to a qualifying trust for the individual in respect of the share) for the original acquisition of the share by the individual or by the trust,

(b) nil, where the share was issued by a registered labour-sponsored venture capital corporation unless the information return described in paragraph 204.81(6)(c) is filed with the individual's return of income for the taxation year for which a claim is made under subsection (2) in respect of the original acquisition of the share (other than a return of income filed under subsection 70(2), paragraph 104(23)(d) or 128(2)(e) or subsection 150(4)),

(c) nil, where the individual dies after December 5, 1996 and before the original acquisition of the share, and

(d) nil, where a payment in respect of the disposition of the share has been made under section 211.9.

Related Provisions: 211.7(1)"labour-sponsored funds tax credit" — Determination of credit for purposes of Part XII.5 where share redeemed early.

History: The opening words of subsec. 127.4(6) amended by 1999, c. 22, subsec. 49(6), applicable to 1998 *et seq.* The opening words formerly read:

(6) For the purposes of subsections (4) and (5), an individual's labour-sponsored funds tax credit in respect of an original acquisition of an approved share is equal to the least of

Subsec. 127.4(6) added by 1997, c. 25, subsec. 37(4), applicable to 1996 *et seq.*, except that the reference to "15%" in para. (6)(a) shall be read as "20%" for original acquisitions that occurred before March 6, 1996.

Definitions [s. 127.4]: "amount" — 248(1); "annuitant" — 146(1); "approved share" — 127.4(1); "business", "common-law partner" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "discontinued" — 204.8(2); "individual" — 248(1); "labour-sponsored funds tax credit" — 127.4(1), (6); "labour-sponsored funds tax credit limit" — 127.4(5); "Minister" — 248(1); "net cost" — 127.4(1); "original acquisition", "person", "prescribed" — 248(1); "prescribed labour-sponsored venture capital corporation" — Reg. 6701; "province" — *Interpretation Act* 35(1); "qualifying trust" — 127.4(1); "registered labour-sponsored venture capital corporation" — 248(1); "registered retirement savings plan" — 146(1), 248(1); "regulation", "share" — 248(1); "spousal or common-law partner plan" — 146(1); "tax otherwise payable" — 127.4(1); "tax payable" — 248(2); "taxation year" — 249; "trust" — 104(1), 248(1), (3).

Forms [s. 127.4]: T5006: Statement of registered LSVCC class A shares.

127.41 (1) Part XII.4 tax credit [qualifying environmental trust beneficiary] — In this section, the Part XII.4 tax credit of a taxpayer for a particular taxation year means the total of

(a) all amounts each of which is an amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the tax payable under Part XII.4 by a qualifying environmental trust for a taxation year (in this paragraph referred to as the "trust's year") that ends in the particular year,

B is the amount, if any, by which the total of all amounts in respect of the trust that were included (otherwise than because of being a member of a partnership) because of the application of subsection 107.3(1) in computing the taxpayer's income for the particular year exceeds the total of all amounts in respect of the trust that were deducted (otherwise than because of being a member of a partnership) because of the application of subsection 107.3(1) in computing that income, and

C is the trust's income for the trust's year, computed without reference to subsections 104(4) to (31) and sections 105 to 107, and

(b) in respect of each partnership of which the taxpayer was a member, the total of all amounts each of which is the amount that can reasonably be considered to be the taxpayer's share of the relevant credit in respect of the partnership and, for this purpose, the relevant credit in respect of a partnership is the amount that would, if a partnership were a person and its fiscal period were its taxation year, be the Part XII.4 tax credit of the partnership for its taxation year that ends in the particular year.

Related Provisions: 87(2)(j.93) — Amalgamations — continuing corporation; 126(7)"tax for the year otherwise payable under this Part" — Credit under 127.41 ignored for foreign tax credit purposes.

History: The description of A in para. 127.41(1)(a) amended by 1998, c. 19, s. 34, applicable to taxation years that end after February 18, 1997. The description of A formerly read:

A is the tax payable under Part XII.4 by a mining reclamation trust for a taxation year (in this paragraph referred to as the "trust's year") that ends in the particular year,

The description of B in para. 127.41(1)(a) amended by the said c. 19, s. 148, applicable to taxation years that end after February 22, 1994. The description formerly read:

B is the amount, if any, by which the total of all amounts in respect of the trust that were included (otherwise than because of being a member of a partnership) because of the application of subsection 107.3(1) in computing the taxpayer's income for the particular year exceeds the total of all amounts in respect of the trust that were deducted because of the application of subsection 107.3(1) in computing such income, and

Subsec. 127.41(1) added by 1995, c. 3, s. 39, applicable to taxation years that end after February 22, 1994.

(2) Reduction of Part I tax — There may be deducted from a taxpayer's tax otherwise payable under this Part for a taxation year such amount as the taxpayer claims not exceeding the taxpayer's Part XII.4 tax credit for the year.

History: Subsec. 127.41(2) added by 1995, c. 3, s. 39, applicable to taxation years that end after February 22, 1994.

(3) Deemed payment of Part I tax — There is deemed to have been paid on account of the tax payable under this Part by a taxpayer (other than a taxpayer exempt from such tax) for a taxation year on the taxpayer's

balance-due day for the year, such amount as the taxpayer claims not exceeding the amount, if any, by which

(a) the taxpayer's Part XII.4 tax credit for the year

exceeds

(b) the amount deducted under subsection (2) in computing the taxpayer's tax payable under this Part for the year.

Related Provisions: 152(1)(b) — Assessment of amount deemed paid; 157(3)(e) — Reduction in monthly corporate instalments to reflect credit; 163(2)(e) — Penalty for false statement or omission.

History: The opening words of subsec. 127.41(3) amended by 1997, c. 25, s. 38, applicable to 1996 *et seq.* The opening words formerly read:

(3) There shall be deemed to have been paid on account of tax payable under this Part by a taxpayer (other than a taxpayer exempt from such tax) for a taxation year, where the taxpayer is an individual, on the individual's balance-due day for the year and, where the taxpayer is a corporation, on the day referred to in paragraph 157(1)(b) on or before which the remainder of the taxes payable under this Part for the year by the taxpayer would be required to be paid if such a remainder were payable, such amount as the taxpayer claims not exceeding the amount, if any, by which

Subsec. 127.41(3) added by 1995, c. 3, s. 39, applicable to taxation years that end after February 22, 1994.

Definitions [s. 127.41]: "amount", "balance-due day" — 248(1); "fiscal period" — 249(2)(b), 249.1; "Part XII.4 tax credit" — 127.41(1); "qualifying environmental trust" — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1); "trust's year" — 107.3(1).

Division E.1 — Minimum Tax

127.5 Obligation to pay minimum tax — Notwithstanding any other provision of this Act but subject to subsection 120.4(3) and section 127.55, where the amount that, but for section 120, would be determined under Division E to be an individual's tax payable for a taxation year is less than the amount determined under paragraph (a) in respect of the individual for the year, the individual's tax payable under this Part for the year is the total of

(a) the amount, if any, by which

(i) the individual's minimum amount for the year determined under section 127.51

exceeds

(ii) the individual's special foreign tax credit determined under section 127.54 for the year, and

(b) the amount, if any, required by section 120 to be added to the individual's tax otherwise payable under this Part for the year.

Proposed Amendment — AMT for year of emigration — s. 119 credit

Letters from Department of Finance, September 9, 2004 and December 7, 2004: See under 119.

Related Provisions: 117(1) — "Tax payable" to be calculated without reference to minimum tax; 120.2 — Minimum tax carryover; 127.54(2) — Foreign tax credit; 127.55 — Where minimum tax not applicable.

History: S. 127.5 amended by 2000, c. 19, s. 37, applicable to 1998 *et seq.* except that, in its application to the 1998 and 1999 taxation years, s. 127.5 shall be read without reference to the expression "subsection 120.4(3) and". It formerly read:

127.5 Notwithstanding any other provision of this Act but subject to section 127.55, where the amount that, but for sections 120 and 120.1, would be determined under Division E to be the tax payable by an individual for a taxation year is less than the amount determined under subparagraph (a)(i) in respect of the individual, the tax payable under this Part for the year by the individual is the amount, if any, by which

(a) the total of

(i) the amount, if any, by which the minimum amount for the year of the individual determined under section 127.51 exceeds the individual's special foreign tax credit determined under section 127.54 for the year, and

(ii) the total of all amounts required under sections 120 and 120.1 to be added to the tax otherwise payable under this Part by the individual for the year

exceeds

(b) the amount, if any, that may be deducted under subsection 120.1(1) from the tax otherwise payable under this Part by the individual for the year.

The opening words of subsec. 127.5 amended by 1998, c. 19, s. 149, applicable to 1992 *et seq.* The opening words formerly read:

127.5 Notwithstanding any other provision of this Act, but subject to section 127.55, where the amount that, but for sections 120 and 120.1, would be determined under Division E to be the tax payable by an individual for a taxation year is less than the amount determined under subparagraph (a)(i) in respect of the individual, the tax payable under this Part for the year by the individual (other than a related segregated fund trust within the meaning assigned by paragraph 138.1(1)(a) or a mutual fund trust) is the amount, if any, by which

Definitions [s. 127.5]: "amount", "individual" — 248(1); "minimum amount" — 127.51; "mutual fund trust" — 132(6)–(7), 132.2(1)(q) [to be repealed], 132.2(3)(n) [draft], 248(1); "taxation year" — 249.

Interpretation Bulletins: IT-270R3: Foreign tax credit.

Forms: T3 Sched. 12: Minimum tax; T691: Alternative minimum tax; T691A: Minimum tax supplement — multiple jurisdictions; T1033-WS: Worksheet for calculating instalment payments; T1219: Provincial alternative minimum tax; T1219-ON: Ontario minimum tax carryover.

127.51 Minimum amount determined — An individual's minimum amount for a taxation year is the amount determined by the formula

$$A (B - C) - D$$

where

A is the appropriate percentage for the year;

B is the individual's adjusted taxable income for the year determined under section 127.52;

C is the individual's basic exemption for the year determined under section 127.53; and

D is the individual's basic minimum tax credit for the year determined under section 127.531.

Related Provisions: 127(5) — Investment tax credit; 257 — Formula cannot calculate to less than zero.

Definitions [s. 127.51]: "appropriate percentage", "individual" — 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249.

Forms: T3 Sched. 12: Minimum tax; T691: Alternative minimum tax; T691A: Minimum tax supplement — multiple jurisdictions; T1033-WS: Worksheet for calculating instalment payments; T1219: Provincial alternative minimum tax; T1219-ON: Ontario minimum tax carryover.

127.52 (1) Adjusted taxable income determined — Subject to subsection (2), an individual's adjusted taxable income for a taxation year is the amount that would be the individual's taxable income for the year or the individual's taxable income earned in Canada for the year, as the case may be, if it were computed on the assumption that

(a) [Repealed]

(b) the total of all amounts each of which is an amount deductible under paragraph 20(1)(a) or any of paragraphs 20(1)(c) to (f) in computing the individual's income for the year in respect of a rental or

leasing property (other than an amount included in the individual's share of a loss referred to in paragraph (c.1)) were the lesser of the total of all amounts otherwise so deductible and the amount, if any, by which the total of

(i) the total of all amounts each of which is the individual's income for the year from the renting or leasing of a rental or leasing property owned by the individual or by a partnership, computed without reference to paragraphs 20(1)(a) and (c) to (f), and

(ii) the amount, if any, by which

(A) the total of all amounts each of which is the individual's taxable capital gain for the year from the disposition of a rental or leasing property owned by the individual or by a partnership

exceeds

(B) the total of all amounts each of which is the individual's allowable capital loss for the year from the disposition of a rental or leasing property owned by the individual or by a partnership

exceeds the total of all amounts each of which is the individual's loss for the year from the renting or leasing of a rental or leasing property owned by the individual or by a partnership (other than an amount included in the individual's share of a loss referred to in paragraph (c.1)), computed without reference to paragraphs 20(1)(a) and (c) to (f);

(c) the total of all amounts each of which is an amount deductible under paragraph 20(1)(a) or any of paragraphs 20(1)(c) to (f) in computing the individual's income for the year in respect of a film property referred to in paragraph (w) of Class 10 of Schedule II to the *Income Tax Regulations* (other than an amount included in the individual's share of a loss referred to in paragraph (c.1)) were the lesser of the total of all amounts otherwise so deductible by the individual for the year and the amount, if any, by which the total of

(i) the total of all amounts each of which is the individual's income for the year from the renting or leasing of a film property owned by the individual or by a partnership, computed without reference to paragraphs 20(1)(a) and (c) to (f), and

(ii) the amount, if any, by which

(A) the total of all amounts each of which is the individual's taxable capital gain for the year from the disposition of such a film property owned by the individual or by a partnership

exceeds

(B) the total of all amounts each of which is the individual's allowable capital loss for the year from the disposition of such a film property owned by the individual or by a partnership

exceeds the total of all amounts each of which is the individual's loss for the year from such a film property owned by the individual or by a partnership (other than amounts included in the individual's share of a loss referred to in paragraph (c.1)), computed without reference to paragraphs 20(1)(a) and (c) to (f);

(c.1) where, during a partnership's fiscal period that ends in the year (other than a fiscal period that ends because of the application of subsection 99(1)), the individual is a limited partner of the partnership or a member of the partnership who was a specified member of the partnership at all times since becoming a member of the partnership, or the individual's interest in the partnership is an interest for which an identification number is required to be, or has been, obtained under section 237.1,

(i) the individual's share of allowable capital losses of the partnership for the fiscal period were the lesser of

(A) the total of all amounts each of which is the individual's

(I) share of a taxable capital gain for the fiscal period from the disposition of property (other than property acquired by the partnership in a transaction to which subsection 97(2) applied), or

(II) taxable capital gain for the year from the disposition of the individual's interest in the partnership if the individual, or a person who does not deal at arm's length with the individual, does not have an interest in the partnership (otherwise than because of the application of paragraph 98(1)(a) or 98.1(1)(a)) throughout the following taxation year, and

(B) the individual's share of allowable capital losses of the partnership for the fiscal period,

(ii) the individual's share of each loss from a business of the partnership for the fiscal period were the lesser of

(A) the individual's share of the loss, and

(B) the amount, if any, by which

(I) the total of all amounts each of which is the individual's

1. share of a taxable capital gain for the fiscal period from the disposition of property used by the partnership in the business (other than property acquired by the partnership in a transaction to which subsection 97(2) applied), or

2. taxable capital gain for the year from the disposition of the individual's interest in the partnership if the individual, or a person who does not deal at arm's length with the individual, does not have an interest in the partnership (otherwise than because of the application of paragraph 98(1)(a) or 98.1(1)(a)) throughout the following taxation year

exceeds

(II) the total of all amounts each of which is the individual's share of an allowable capital loss for the fiscal period, and

(iii) the individual's share of losses from property of the partnership for the fiscal period were the lesser of

(A) the total of

(I) the individual's share of incomes for the fiscal period from properties of the partnership, and

(II) the amount, if any, by which the total of all amounts each of which is the individual's

1. share of a taxable capital gain for the fiscal period from the disposition of property held by the partnership for the purpose of earning income from property (other than property acquired by the partnership in a transaction to which subsection 97(2) applied), or

2. taxable capital gain for the year from the disposition of the individual's interest in the partnership if the individual, or a person who does not deal at arm's length with the individual, does not have an interest in the partnership (otherwise than because of the application of paragraph 98(1)(a) or 98.1(1)(a)) throughout the following taxation year,

exceeds the total of all amounts each of which is the individual's share of an allowable capital loss for the fiscal period, and

(B) the individual's share of losses from property of the partnership for the fiscal period;

(c.2) where, during a fiscal period of a partnership that ends in the year (other than a fiscal period that ends because of the application of subsection 99(1)),

(i) the individual is a limited partner of the partnership, or is a member of the partnership who was a specified member of the partnership at all times since becoming a member of the partnership, or

(ii) the partnership owns a rental or leasing property or a film property and the individual is a member of the partnership,

the total of all amounts each of which is an amount deductible under any of paragraphs 20(1)(c) to (f) in computing the individual's income for the year in respect of the individual's acquisition of the partnership interest were the lesser of

(iii) the total of all amounts otherwise so deductible, and

(iv) the total of all amounts each of which is the individual's share of any income of the partnership for the fiscal period, determined in accordance with subsection 96(1);

(c.3) the total of all amounts each of which is an amount deductible in computing the individual's income for the year in respect of a property for which an identification number is required to be, or has been, obtained under section 237.1 (other than an amount to which any of paragraphs (b) to (c.2) applies) were nil;

(d) except in respect of dispositions of property occurring before 1986 or to which section 79 applies,

(i) the references to the fraction applicable to the individual for the year in each of paragraphs 38(a), (b) and (c) and section 41 were read as a reference to "4/5", other than in the case of a capital gain from a disposition that is the making of a gift of property to a qualified donee, and

(ii) each amount (other than an amount to which subsection 104(21.4) applies) that is designated by a trust for a particular year of the trust in respect of the individual and deemed by subsection 104(21) to be a taxable capital gain for the year of the individual were equal to the amount obtained by the formula

$$4/5 \ (A \times 1/B)$$

where

A is the amount so deemed to be a taxable capital gain for the year of the individual, and

B is the fraction in paragraph 38(a) applicable to the trust for the particular year of the trust for which the designation is made;

Proposed Addition — 127.52(1)(d)(iii)

(iii) this Act were read without reference to subsection 104(21.6);

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 124, will add para. 127.52(1)(d)(iii), applicable to 2000 *et seq.*

Technical Notes: Paragraph 127.52(1)(d) provides that in computing an individual's adjusted taxable income for minimum tax purposes, the total amount of capital gains and losses is to be taken into account. In some cases, because of subsection 104(21.6) (which in some cases deems a taxpayer to have realised a larger capital gain than was actually realised) more than the total amount of capital gains and losses would be taken into account. Excess capital gains are deemed by subsection 104(21.6) to have been realized in order that the inclusion rate for capital gains realized on property disposed of by a trust prior to February 28, 2000 is ¾ and property disposed of by a trust after February 27, 2000 and before October 18, 2000 is ⅔. Paragraph 127.52(1)(d) is therefore amended to ensure that only the actual amount of the gain is included in computing the alternative minimum tax.

(e) the total of all amounts deductible under section 65, 66, 66.1, 66.2, 66.21 or 66.4 or under subsection 29(10) or (12) of the *Income Tax Application Rules* in computing the individual's income for the year were the lesser of the amounts otherwise so deductible by the individual for the year and the total of

(i) the individual's income for the year from royalties in respect of, and such part of the individual's income, other than royalties, for the year as may reasonably be considered as attributable to, the production of petroleum, natural gas and minerals, determined before deducting those amounts, and

(ii) all amounts included in computing the individual's income for the year under section 59;

(e.1) the total of all amounts each of which is an amount deductible under any of paragraphs 20(1)(c) to (f) in computing the individual's income for the year in respect of a property that is a flow-through share (if the individual is the person to whom the share was issued under an agreement referred to in the definition "flow-through share" in subsection 66(15)), a Canadian resource property or a foreign resource property were the lesser of the total of the amounts otherwise so determined for the year and the amount, if any, by which

(i) the total of all amounts each of which is an amount described in subparagraph (e)(i) or (ii), determined without reference to paragraphs 20(1)(c) to (f),

exceeds

(ii) the total of all amounts each of which is an amount deductible under section 65, 66, 66.1, 66.2, 66.21 or 66.4 or under subsection 29(10) or (12) of the *Income Tax Application Rules* in computing the individual's income for the year;

(f) subsection 82(1) were read without reference to that portion following paragraph 82(1)(a);

(g) the total of all amounts deductible under section 104 in computing the income of a trust for the year were equal to the total of

(i) the total of all amounts otherwise deductible under that section, and

(ii) the total of all amounts each of which is 3/5 of

(A) amounts designated by the trust under subsection 104(21) for the year, or

(B) that portion of a net taxable capital gain of the trust that may reasonably be considered to

(I) be part of an amount included, by virtue of subsection 104(13) or section 105, in computing the income for the year of a non-resident beneficiary of the trust, or

(II) have been paid in the year by a trust governed by an employee benefit plan to a beneficiary thereunder;

(h) the only amounts deductible under sections 110 to 110.7 in computing the individual's taxable income for the year or taxable income earned in Canada for the year, as the case may be, were

(i) the amounts deducted under any of subsections 110(2), 110.6(2), (2.1), (3) and (12) and 110.7(1),

(ii) the amount deducted under paragraph 110(1)(d), not exceeding the total of

(A) twice the amount deducted under paragraph 110(1)(d.01), and

(B) 2/5 of the amount, if any, by which

(I) the amount deducted under paragraph 110(1)(d)

exceeds

(II) the amount determined under clause (A),

(iii) the amount deducted under paragraph 110(1)(d.01),

(iv) 2/5 of the amounts deducted under any of paragraphs 110(1)(d.1) to (d.3),

(v) the amount that would be deductible under paragraph 110(1)(f) if paragraph (d) were applicable in computing the individual's income for the year; and

(vi) the amount deducted under paragraph 110(1)(g);

(h.1) the formula in paragraph 110.6(21)(a) were read as

A – B

(i) in computing the individual's taxable income for the year or the individual's taxable income earned in Canada for the year, as the case may be, the only amounts deductible under

(i) paragraphs 111(1)(a), (c), (d) and (e) were the lesser of

(A) the amount deducted under those paragraphs for the year, and

(B) the total of all amounts that would be deductible under those paragraphs for the year if

(I) paragraphs (b), (c) and (e) of this subsection, as they read in respect of taxation years that began after 1985 and before 1995, applied in computing the individual's non-capital loss, restricted farm loss, farm loss and limited partnership loss for any of those years, and

(II) paragraphs (b) to (c.3), (e) and (e.1) of this subsection applied in computing the individual's non-capital loss, restricted farm loss, farm loss and limited partnership loss for any taxation year that begins after 1994, and

(ii) paragraph 111(1)(b) were the lesser of

(A) the total of all amounts each of which is an amount that can reasonably be considered to be the amount that the individual would have deducted under paragraph 111(1)(b) had paragraph (d) of this subsection been applicable in computing the amount deductible under paragraph 111(1)(b), and

(B) the total of all amounts that would be deductible under that paragraph for the year if

(I) paragraph (d) of this subsection applied in computing the individual's net capital loss for any taxation year that began before 1995, and

(II) paragraphs (c.1) and (d) of this subsection applied in computing the individual's net capital loss for any taxation year that begins after 1994; and

(j) the *Income Tax Application Rules* were read without reference to section 40 of that Act.

Related Provisions: 127.52(2) — Certain CCA claims by partnership deemed claimed by partner; 127.52(2.1) — Specified member of partnership — anti-avoidance rule; 127.52(3) — Rental or leasing property; 248(8) — Occurrences as a consequence of death.

History: Subpara. 127.52(1)(h)(vi) added by 2002, c. 9, s. 40, applicable to 1997 *et seq.* and, notwithstanding subsecs. 152(4) to (5), any assessment of a taxpayer's tax, interest or penalty for any taxation year shall be made that is necessary to give effect to the amendment.

Para. 127.52(1)(d) amended by 2001, c. 17, subsec. 119(1), applicable to 2000 *et seq.* Para. (d) formerly read:

(d) except in respect of dispositions of property occurring before 1986 or to which section 79 applies,

(i) sections 38 and 41 were read without the references therein to "3/4 of", other than in the case of a capital gain from a disposition that is the making of a gift of property to a qualified donee (as defined in subsection 149.1(1)), and

(ii) each amount deemed by subsection 104(21) to be a taxable capital gain for the year of the individual were equal to 4/3 of that amount;

The opening words of para. 127.52(1)(e) amended by the said c. 17, subsec. 119(2), to add reference to "66.21", applicable to taxation years that begin after 2000.

Subpara. 127.52(1)(e.i)(ii) amended by the said c. 17, subsec. 119(3), to add reference to "66.21", applicable to taxation years that begin after 2000.

The opening words of subpara. 127.52(1)(g)(ii) amended by the said c. 17, subsec. 119(4) to substitute "3/5" for "1/3", applicable to 2000 *et seq.*

Para. 127.52(1)(h) amended by the said c. 17, subsec. 119(5), applicable to 2000 *et seq.* except that, for the 2000 taxation year, cl. 127.52(1)(h)(ii)(A) shall be read as follows:

(A) the total of

(I) twice the amount deducted under paragraph 110(1)(d.01) in respect of benefits that the individual is deemed by paragraph 7(1)(a) to have received in the year as a result of transactions, events or circumstances that occur after October 17, 2000, and

(II) the amount deducted under paragraph 110(1)(d.01) in respect of benefits that the individual is deemed by paragraph 7(1)(a) to have received in the year as a result of transactions, events or circumstances that occur before October 18, 2000, and

Para. (h) formerly read:

(h) the only amounts deductible under sections 110 to 110.7 in computing the individual's taxable income for the year or taxable income earned in Canada for the year, as the case may be, were the amounts deducted under any of subsections 110(2), 110.6(2), (2.1), (3) and (12) and 110.7(1) and the amount that would be deductible under paragraph 110(1)(f) if paragraph (d) were applicable in computing the individual's income for the year;

Para. 127.52(1)(a) repealed by 1999, c. 22, subsec. 50(2), applicable to 1998 *et seq.* The para. formerly read:

(a) the total of all amounts deductible under any of paragraphs 8(1)(m) and 60(i) to (j.2) in computing the individual's income for the year were the lesser of

(i) the total of the amounts otherwise so deductible, and

(ii) the total of

(A) the amount otherwise so deductible under paragraph 60(i) by reason of subsection 146(6.1), and

(B) all amounts each of which was included in computing the individual's income for the year and is a single payment out of or under a deferred profit sharing plan, a superannuation or pension fund or plan or a foreign retirement arrangement

(I) as a consequence of the death, withdrawal from the fund, plan or arrangement or termination of employment of a person,

(II) on the winding-up of the fund, plan or arrangement in full satisfaction of all rights of the payee in or under the fund, plan or arrangement, or

(III) to which the individual is entitled because of an amendment to the fund, plan or arrangement;

Subsec. 50(1) of the said c. 22 provides the following transitional rule, applicable to 1994 *et seq.* and, notwithstanding subsecs 152(4) to (5) of the Act, such assessment of an individual's tax payable under the Act for any taxation year shall be made as is necessary to take into account the application of subsec. 50(1).

(1) Where an individual's tax payable under Part I of the Act for a particular taxation year that began after 1993 and before 1998 is greater than the tax that would have been so payable if the Act were read without reference to paragraph 127.52(1)(a) and the individual was resident in Canada throughout, and was not a bankrupt at any time in, the period that began immediately after the end of the particular year and that ended at the end of 1997, the individual's minimum amount for the particular year under section 127.51 of the Act is deemed to be equal to the amount, if any, by which

(a) the amount that would be the individual's minimum amount for the particular year determined without reference to this subsection

exceeds

(b) the part of the individual's additional tax for the particular year determined under subsection 120.2(3) of the Act that can reasonably be considered to be attributable to the application of paragraph 127.52(1)(a) of the Act and not deductible in computing the individual's tax payable under Part I of the Act for any of the taxation years that began after the end of the particular year and before 1998.

Paras. 127.52(1)(b) and (c) amended, and paras. (c.1) to (c.3), (e.1), and (h.1), added, by 1998, c. 19, subsec. 150(1)–(3), paras. (b), (c) to (c.3), and (e.1) applicable to taxation years of an individual that begin after 1994, and (h.1) applicable to the 1994 and 1995 taxation years. Paras. 127.52(1)(b) and (c) formerly read:

(b) the total of all amounts deductible by the individual under paragraph 20(1)(a) for the year in respect of residential properties were the lesser of the total of all amounts otherwise so deductible by the individual for the year and the amount, if any, by which

(i) the total of the individual's incomes for the year from the renting or leasing of residential properties owned by the individual or by a partnership, computed without reference to paragraph 20(1)(a),

exceeds

(ii) the total of the individual's losses for the year from the renting or leasing of residential properties owned by the individual or by a partnership, computed without reference to paragraph 20(1)(a);

(c) the total of all amounts deductible by the individual under paragraph 20(1)(a) for the year in respect of film properties were the lesser of the total of all amounts otherwise so deductible by the individual for the year and the amount, if any, by which

(i) the total of the individual's incomes for the year from the renting or leasing of film properties owned by the individual or by a partnership, computed without reference to paragraph 20(1)(a),

exceeds

(ii) the total of the individual's losses for the year from the renting or leasing of film properties owned by the individual or by a partnership, computed without reference to paragraph 20(1)(a);

Cl. 127.52(1)(i)(i)(B) amended by the said c. 19, subsec. 150(4), applicable to all taxation years. Cl. 127.52(1)(i)(i)(B) formerly read:

(B) the amounts that would be deductible under those paragraphs for the year if paragraphs (b), (c) and (e) of this subsection were applicable in computing the individual's non-capital loss, restricted farm loss, farm loss and the limited partnership loss for any taxation year beginning after 1985, and

Cl. 127.52(1)(i)(ii)(B) amended by the said c. 19, subsec. 150(5), applicable to all taxation years except that, in determining an individual's adjusted taxable income for taxation years that began before 1995, subcl. 127.52(1)(i)(ii)(B)(I) shall be read as follows:

"(I) paragraph (d) of this subsection applied in computing the individual's net capital loss for any taxation year that began after 1985 and before 1995, and"

Cl. 127.52(1)(i)(ii)(B) formerly read:

(B) the total of all amounts that would be deductible under paragraph 111(1)(b) if paragraph (d) of this subsection were applicable in computing the total referred to in the definition "net capital loss" in subsection 111(8) for any taxation year commencing after 1985; and

Subpara. 127.52(1)(d)(i) amended by the said c. 19, s. 35, applicable to taxation years that begin after 1996. Subpara. 127.52(1)(d)(i) formerly read:

(i) sections 38 and 41 were read without the references therein to "¾ of", and

Para. 127.52(1)(d) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 70, applicable to 1991 *et seq.* Para. (1)(d) formerly read:

(d) except in respect of dispositions of property occurring before 1986 or to which section 79 applies, sections 38 and 41 were read without the references to the fraction set out in those two sections;

Cl. 127.52(1)(a)(ii)(B) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 106(1), applicable to 1990 *et seq.* That cl. formerly read:

(B) the total of all amounts each of which was included in computing the individual's income for the year and which is a single payment out of or under a deferred profit sharing plan or a superannuation or pension fund or plan

(I) as a consequence of the death, withdrawal from the fund or plan or termination of employment of a person,

(II) on the winding-up of the fund or plan in full satisfaction of all rights of the payee in or under the fund or plan, or

(III) to which the individual is entitled by virtue of an amendment to the fund or plan;

Para. 127.52(1)(h) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 106(2), applicable to 1986 *et seq.*, except that in its application to the 1986 to 1988 taxation years the para. shall be read as follows:

(h) the only amounts deductible under sections 110 to 110.7 in computing the individual's taxable income for the year or the individual's taxable income earned in Canada for the year, as the case may be, were the amounts deducted under any of paragraph 110(1)(i) and subsections 110(2), 110.6(2), (2.1), (3) and (12) and 110.7(1) of this Act and subsection 110.4(1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it applied to taxation years ending before 1988 and the amount that would be deductible under paragraph 110(1)(f) if paragraph (d) were applicable in computing the individual's income for the year;

Para. (1)(h) formerly read:

(h) the only amounts deductible under sections 110 to 110.7 in computing the individual's taxable income for the year or the individual's taxable income earned in Canada for the year, as the case may be, were the amounts deducted under any of paragraphs

110(1)(f) and (i) and subsections 110(2), 110.6(2), (2.1), (3) and (12) and 110.7(1) of this Act and subsection 110.4(1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, computed without reference to this section;

Subpara. 127.52(1)(i)(i) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 106(3), applicable to taxation years beginning after 1985. Subpara. (1)(i)(i) formerly read:

(i) paragraphs 111(1)(a), (c) and (d) were the lesser of

(A) the amount deducted under each of those paragraphs, and

(B) the amount that would be deductible under each of those paragraphs if paragraphs (b), (c) and (e) of this subsection were applicable in determining the amount for E in the definition "non-capital loss" in subsection 111(8) for any taxation year commencing after 1985, and

Advance Tax Rulings: ATR-28: Redemption of capital stock of family farm corporation.

(2) Partnerships — For the purposes of subsection (1) and this subsection, any amount deductible under a provision of this Act in computing the income or loss of a partnership for a fiscal period is, to the extent of a member's share of the partnership's income or loss, deemed to be deductible by the member under that provision in computing the member's income for the taxation year in which the fiscal period ends.

History: Subsec. 127.52(2) amended by 1998, c. 19, subsec. 150(6), applicable to taxation years of an individual that begin after 1994. Subsec. 127.52(2) formerly read:

(2) For the purposes of paragraphs (1)(b) and (c), where an individual was a member of that partnership at the end of its fiscal period, any amount deducted by that partnership as a deduction under paragraph 20(1)(a) in respect of a residential property or a film property in computing its income shall, to the extent of the individual's share thereof, be deemed to have been deducted by the individual under that paragraph in computing the individual's income in respect of the property for the taxation year in which the fiscal period ended.

(2.1) Specified member of a partnership — Where it can reasonably be considered that one of the main reasons that a member of a partnership was not a specified member of the partnership at all times since becoming a member of the partnership is to avoid the application of this section to the member's interest in the partnership, the member is deemed for the purpose of this section to have been a specified member of the partnership at all times since becoming a member of the partnership.

Related Provisions: 40(3.131) — Parallel rule for negative adjusted cost base of partnership interest.

History: Subsec. 127.52(2.1) added by 1998, c. 19, subsec. 150(7), applicable after April 26, 1995.

(3) Definitions — For the purposes of this section,

"film property" means a property described in paragraph (n) of Class 12, or paragraph (w) of Class 10, of Schedule II to the *Income Tax Regulations*;

"limited partner" has the meaning that would be assigned by subsection 96(2.4) if that subsection were read without reference to "if the member's partnership interest is not an exempt interest (within the meaning assigned by subsection (2.5)) at that time and";

History: The definition "limited partner" added to subsec. 127.52(3) by 1998, c. 19, subsec. 150(9), applicable to taxation years of an individual that begin after 1994.

"rental or leasing property" means a property that is a rental property or a leasing property for the purpose of section 1100 of the *Income Tax Regulations*.

Related Provisions: 127.52(1)(b), (c.2)(ii) — Application of minimum tax.

History: The definition "rental or leasing property" added to subsec. 127.52(3) by 1998, c. 19, subsec. 150(9), applicable to taxation years of an individual that begin after 1994.

Regulations: 1100(14)–(14.2) (definition of rental property); 1100(17)–(20) (definition of leasing property).

"residential property" — [Repealed]

History: The definition "residential property" repealed by 1998, c. 19, subsec. 150(8), applicable to taxation years of an individual that begin after 1994. The definition formerly read:

"residential property" means a property described in Class 31 or 32 of Schedule II to the *Income Tax Regulations* and furniture, fixtures and equipment, if any, located in, and ancillary to, that property.

Definitions [s. 127.52]: "allowable capital loss" — 38(a), 248(1); "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 255; "capital gain" — 54, 248(1); "deferred profit sharing plan" — 147(1), 248(1); "disposition" — 248(1); of capital property — 54; "employment" — 248(1); "farm loss" — 111(8), 248(1); "film property" — 127.52(3); "fiscal period" — 248(1), 249(2)(b), 249.1; "flow-through share" — 66(15), 248(1); "foreign retirement arrangement" — 248(1); "identical" — 40(3.5), 248(12); "individual" — 248(1); "limited partner" — 127.52(3); "limited partnership loss" — 96(2.1)(e), 248(1); "mineral" — 248(1); "non-capital loss" — 111(8), 248(1); "non-resident" — 248(1) "person", "property", "regulation" — 248(1); "qualified donee" — 149.1(1), 248(1); "rental or leasing property" — 127.52(3); "restricted farm loss" — 31, 248(1); "specified member" — 127.52(2.1), 248(1); "taxable capital gain" — 38(a), 248(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 249; "trust" — 104(1), 248(1), (3).

Forms [s. 127.52]: T3 Sched. 12: Minimum tax; T691: Alternative minimum tax; T691A: Minimum tax supplement — multiple jurisdictions; T1033-WS: Worksheet for calculating instalment payments; T1219: Provincial alternative minimum tax; T1219-ON: Ontario minimum tax carryover.

127.53 (1) Basic exemption — An individual's basic exemption for a taxation year is

(a) $40,000, in the case of an individual other than a trust;

(b) $40,000, in the case of a testamentary trust or an *inter vivos* trust described in subsection 122(2); and

(c) in any other case, nil.

(2) Multiple trusts — Notwithstanding paragraph (1)(b), where more than one trust described in that paragraph arose as a consequence of contributions to the trusts by an individual and those trusts have filed with the Minister in prescribed form an agreement whereby, for the purpose of this Division, they allocate an amount to one or more of them for a taxation year and the total of the amounts so allocated does not exceed $40,000, the basic exemption for the year of each of the trusts is the amount so allocated to it.

Related Provisions: 104(2) — Grouping of multiple trusts for regular tax purposes.

Forms: T3 Sched. 6: Trusts' agreement to allocate the basic exemption from minimum tax.

(3) Failure to file agreement — Notwithstanding paragraph (1)(b), where more than one trust described in that paragraph arose as a consequence of contributions to the trusts by an individual and no agreement as contemplated by subsection (2) has been filed with the Minister before the expiry of 30 days after notice in writing has been forwarded by the Minister to any of the trusts that such an agreement is required for the purpose of an assessment of tax under this Part, the Minister may, for the purpose of this Division, allocate an amount to one or more of the trusts for a taxation year, the total of all of which amounts does not exceed $40,000, and the basic exemption for the year of each of the trusts is the amount so allocated to it.

Definitions [s. 127.53]: "amount", "assessment", "individual" — 248(1); "*inter vivos* trust" — 108(1), 248(1); "Minister", "prescribed" — 248(1); "taxation year" — 249; "testamentary trust" — 108(1), 248(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [s. 127.53]: IT-406R2: Tax payable by an *inter vivos* trust.

Forms [s. 127.53]: T3 Sched. 12: Minimum tax; T691: Alternative minimum tax; T691A: Minimum tax supplement — multiple jurisdictions; T1219: Provincial alternative minimum tax; T1219-ON: Ontario minimum tax carryover.

127.531 Basic minimum tax credit determined — An individual's basic minimum tax credit for a taxation year is the total of amounts that may be deducted in computing the individual's tax payable for the year under this Part under any of subsections 118(1) and (2), sections 118.1 and 118.2, subsection 118.3(1) and sections 118.5 to 118.7.

Proposed Amendment — 127.531

127.531 Basic minimum tax credit determined — An individual's basic minimum tax credit for a taxation year is the total of all amounts each of which is

(a) an amount deducted under subsection 118(1) or (2) or 118.3(1) or any of sections 118.5 to 118.7 in computing the individual's tax payable for the year under this Part; or

(b) the amount that was claimed under section 118.1 or 118.2 in computing the individual's tax payable for the year under this Part, determined without reference to this Division, to the extent that the amount claimed does not exceed the maximum amount deductible under that section in computing the individual's tax payable for the year under this Part, determined without reference to this Division.

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 125, will amend s. 127.531 to read as above, applicable to 2002 *et seq.*

Technical Notes: Section 127.51 provides for the calculation of an individual's minimum tax for a taxation year. An individual's minimum tax is determined by the formula:

$$A \times (B - C) - D$$

where

A is the appropriate percentage (16%);

B is the individual's taxable income;

C is the individual's basic minimum tax exemption; and

D is the individual's basic tax credit determined under section 127.531.

Section 127.531 permits an individual to claim a deduction in computing minimum tax for most non-refundable personal tax credits.

Section 127.531 is amended to clarify [actually to change the law by overruling *David M. Sherman v. The Queen*, [2000] 1 C.T.C. 2696 (TCC) — ed.], that the amount deductible for minimum tax purposes in respect of a particular tax credit referred to in that section is equal to the amount that would be deductible for regular income tax purposes if minimum tax were not applicable. For example, if the total of an individual's eligible charitable gifts for a year is $10,000 and the individual chooses to claim only $8,000 for Part I tax purposes, in computing the individual's basic credit for minimum tax purposes only $8,000 may be taken into account.

Selected Cases [s. 127.531]: *Sherman v. R.*, [2000] 1 C.T.C. 2696 (TCC) ("May be deducted" not the same as "has been deducted").

Definitions [s. 127.531]: "amount", "individual" — 248(1); "tax payable" — 248(2); "taxation year" — 249.

127.54 (1) Definitions — In this section,

"foreign income" of an individual for a taxation year means the total of

(a) the individual's incomes for the year from businesses carried on by the individual in countries other than Canada, and

(b) the individual's incomes for the year from sources in countries other than Canada in respect of which the individual has paid non-business-income taxes, within the meaning assigned by subsection 126(7), to governments of countries other than Canada;

"foreign taxes" of an individual for a taxation year means the total of the business-income taxes, within the meaning assigned by subsection 126(7), paid by the individual for the year in respect of businesses carried on by the individual in countries other than Canada and ⅔ of the non-business-income taxes, within the meaning assigned by that subsection, paid by the individual for the year to the governments of countries other than Canada.

(2) Foreign tax credit — For the purposes of section 127.5, an individual's special foreign tax credit for a taxation year is the greater of

(a) the total of all amounts deductible under section 126 from the individual's tax for the year, and

(b) the lesser of

(i) the individual's foreign taxes for the year, and

(ii) 16% of the individual's foreign income for the year.

History: Subpara. 127.54(2)(b)(ii) amended by 2001, c. 17, s. 120, to substitute "16%" for "17%", applicable to 2001 *et seq.*

Definitions [s. 127.54]: "amount", "business" — 248(1); "Canada" — 255; "foreign income", "foreign taxes" — 127.54(1); "individual" — 248(1); "taxation year" — 249.

Interpretation Bulletins [s. 127.54]: IT-270R3: Foreign tax credit.

127.55 Application of section 127.5 — Section 127.5 does not apply in respect of

(a) a return of income of an individual filed under subsection 70(2), paragraph 104(23)(d) or 128(2)(e) or subsection 150(4);

(b) [Repealed]

(c) an individual for the taxation year in which the individual dies;

(d) an individual for the 1986 taxation year if the individual dies in 1987;

(e) a trust described in paragraph 104(4)(a) or (a.1) for its taxation year that includes the day determined in respect of the trust under that paragraph; and

(f) a taxation year of a trust throughout which the trust is

(i) a related segregated fund trust (within the meaning assigned by paragraph 138.1(1)(a)),

(ii) a mutual fund trust, or

(iii) a trust prescribed to be a master trust.

History: Para. 127.55(b) repealed by 2001, c. 17, s. 121, applicable to 1996 *et seq.* Para. (b) formerly read:

(b) a taxation year of an individual in respect of which the individual has made an election under section 119;

Para. 127.55(f) added by 1998, c. 19; s. 151, applicable to 1992 *et seq.*

Para. 127.55(e) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 71, applicable to 1993 *et seq.* Para. (e) formerly read:

(e) a trust described in paragraph 104(4)(a) for its taxation year in which the spouse referred to in that paragraph dies.

Para. 127.55(e) added by 1994, c. 7, Sch. II (1991, c. 49), s. 107, applicable to 1986 *et seq.*

Definitions [s. 127.55]: "individual" — 248(1); "mutual fund trust" — 132(6); "prescribed" — 248(1); "taxation year" — 249; "trust" — 104(1), 248(1), (3).

Interpretation Bulletins [s. 127.55]: IT-326R3: Returns of deceased persons as "another person".

DIVISION F — SPECIAL RULES APPLICABLE IN CERTAIN CIRCUMSTANCES

Bankruptcies

128. (1) Where corporation bankrupt — Where a corporation has become a bankrupt, the following rules are applicable:

(a) the trustee in bankruptcy shall be deemed to be the agent of the bankrupt for all purposes of this Act;

(b) the estate of the bankrupt shall be deemed not to be a trust or an estate for the purposes of this Act;

(c) the income and the taxable income of the corporation for any taxation year of the corporation during which it was a bankrupt and for any subsequent year shall be calculated as if

(i) the property of the bankrupt did not pass to and vest in the trustee in bankruptcy on the bankruptcy order being made or the assignment filed but remained vested in the bankrupt, and

(ii) any dealing in the estate of the bankrupt or any act performed in the carrying on of the business of the bankrupt estate by the trustee was done as agent on behalf of the bankrupt and any income of the trustee from such dealing or carrying on is income of the bankrupt and not of the trustee;

(d) a taxation year of the corporation shall be deemed to have commenced on the day the corporation became a bankrupt and a taxation year of the corporation that would otherwise have ended after the corporation became a bankrupt shall be deemed to have ended on the day immediately before the day on which the corporation became a bankrupt;

(e) where, in the case of any taxation year of the corporation ending during the period the corporation is a bankrupt, the corporation fails to pay any tax payable by the corporation under this Act for any such year, the corporation and the trustee in bankruptcy are jointly and severally liable to pay the tax, except that

Proposed Amendment — 128(1)(e) opening words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 239(1), will amend the opening words of para. 128(1)(e) by substituting "jointly and severally, or solidarily," for "jointly and severally", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(i) the trustee is only liable to the extent of the property of the bankrupt in the trustee's possession, and

(ii) payment by either of them shall discharge the joint obligation;

Proposed Amendment — 128(1)(e)(ii)

(ii) payment by either of them discharges the liability to the extent of the amount paid;

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 239(2), will amend subpara. 128(1)(e)(ii) to read as above, to come into force on Royal Assent.

Technical Notes: See under 12(4).

(f) in the case of any taxation year of the corporation ending during the period the corporation is a bankrupt, the corporation shall be deemed not to be associated with any other corporation in the year; and

(g) where an absolute order of discharge is granted in respect of the corporation, for the purposes of section 111 any loss of the corporation for any taxation year preceding the year in which the order of discharge was granted is not deductible by the corporation in computing its taxable income for the taxation year of the corporation in which the order was granted or any subsequent year.

Related Provisions: 39(1)(c)(iv)(B) — Business investment loss on debt of bankrupt corporation; 50(1) — Capital loss on debts and shares of bankrupt corporation; 56.3 — No debt forgiveness reserve inclusion while corporation bankrupt; 80(1)"forgiven amount"B(i) — Debt forgiveness rules do not apply; 129(1.1) — No dividend refund on dividend paid to bankrupt controlling corporation; 181.1(3)(b) — Where tax not payable; 227(5) — Amount in trust not part of estate.

History: Subpara. 128(1)(c)(i) amended by 2004, c. 25, subsec. 201(1) to replace "receiving order" with "bankruptcy order", in force December 15, 2004.

Regulations: 206(2) (information return).

Interpretation Bulletins: IT-179R: Change of fiscal period (to be revised re bankrupt corporations — see I.T. Technical News No. 8); IT-206R: Separate businesses.

I.T. Technical News: 8 (bankrupt corporation — change of fiscal period).

(2) Where individual bankrupt — Where an individual has become a bankrupt, the following rules are applicable:

(a) the trustee in bankruptcy shall be deemed to be the agent of the bankrupt for all purposes of this Act;

(b) the estate of the bankrupt shall be deemed not to be a trust or an estate for the purposes of this Act;

(c) the income and the taxable income of the individual for any taxation year during which the individual was a bankrupt and for any subsequent year shall be calculated as if

(i) the property of the bankrupt did not pass to and vest in the trustee in bankruptcy on the bankruptcy order being made or the assignment filed but remained vested in the bankrupt, and

(ii) any dealing in the estate of the bankrupt or any act performed in the carrying on of the business of the bankrupt estate by the trustee was done as agent on behalf of the bankrupt and any income of the trustee from such dealing or carrying on is income of the bankrupt and not of the trustee;

(d) except for the purposes of subsections 146(1), 146.01(4) and 146.02(4) and Part X.1,

(i) a taxation year of the individual is deemed to have begun at the beginning of the day on which the individual became a bankrupt, and

(ii) the individual's last taxation year that began before that day is deemed to have ended immediately before that day;

(d.1) where, by reason of paragraph (d), a taxation year of the individual is not a calendar year,

(i) paragraph 146(5)(b) shall, for the purpose of the application of subsection 146(5) to the taxation year, be read as follows:

"(b) the amount, if any, by which

(i) the taxpayer's RRSP deduction limit for the particular calendar year in which the taxation year ends

exceeds

(ii) the total of the amounts deducted under this subsection and subsection (5.1) in computing the taxpayer's income for any preceding taxation year that ends in the particular calendar year.",

and

(ii) paragraph 146(5.1)(b) shall, for the purpose of the application of subsection 146(5.1) to the taxation year, be read as follows:

"(b) the amount, if any, by which

(i) the taxpayer's RRSP deduction limit for the particular calendar year in which the taxation year ends

exceeds

(ii) the total of the amount deducted under subsection (5) in computing the taxpayer's income for the year and the amounts deducted under this subsection and subsection (5) in computing the taxpayer's income for any preceding taxation year that ends in the particular calendar year.";

(d.2) where, by reason of paragraph (d), the individual has two taxation years ending in a calendar year, each amount deducted in computing the individual's income for either of the taxation years shall be deemed, for the purposes of the definition "unused RRSP deduction room" in subsection 146(1) and Part X.1, to have been deducted in computing the individual's income for the calendar year;

(e) where the individual was a bankrupt at any time in a calendar year the trustee shall, within 90 days from the end of the year, file a return with the Minister, in prescribed form, on behalf of the individual of the individual's income for any taxation year occurring in the calendar year computed as if

(i) the only income of the individual for that taxation year was the income for the year, if any, arising from dealings in the estate of the bankrupt or acts performed in the carrying on of the business of the bankrupt by the trustee,

(ii) in computing the individual's taxable income for that taxation year, no deduction were permitted by Division C, other than

(A) an amount under any of paragraphs 110(1)(d) to (d.3) and section 110.6 to the extent that the amount is in respect of an amount included in income under subparagraph (i) for that taxation year, and

(B) an amount under section 111 to the extent that the amount was in respect of a loss of the individual for any taxation year that ended before the individual was discharged absolutely from bankruptcy, and

(iii) in computing the individual's tax payable under this Part for that taxation year, no deduction were allowed

(A) under section 118, 118.2, 118.3, 118.5, 118.6, 118.8 or 118.9,

Proposed Amendment — 128(2)(e)(iii)(A)

Application: The August 15, 2005 draft legislation (2005 Budget second bill), s. 10, will amend cl. 128(2)(e)(iii)(A) by adding "118.01," after "118,", applicable to 2005 *et seq.*

Technical Notes: Subsection 128(2) contains a number of special rules that apply in cases of personal bankruptcy.

Paragraph 128(2)(d) divides the calendar year in which an individual becomes bankrupt into two taxation years.

The first taxation year runs from January 1 to the day before bankruptcy and the second taxation year begins on the day of bankruptcy and runs to December 31.

Paragraph 128(2)(e) requires a trustee in bankruptcy to file, for each taxation year in the calendar year in which an individual becomes bankrupt, an income tax return with respect to certain income of the estate and businesses of the individual. For this purpose, the individual's income is to be determined as if no deductions other than those specifically listed were available to the individual.

Paragraph 128(2)(e) is amended to add a reference to new section 118.01, the adoption expense tax credit. This means that the adoption expense tax credit will be claimed on the tax return for the taxation year in which the adoption period (as defined in section 118.01) ends.

(B) under section 118.1 with respect to a gift made by the individual on or after the day the individual became bankrupt,

(B.1) under section 118.62 with respect to interest paid on or after the day on which the individual became bankrupt, and

(C) under subsection 127(5) with respect to an expenditure incurred or property acquired by the individual in any taxation year that ends after the individual was discharged absolutely from bankruptcy,

and the trustee is liable to pay any tax so determined for that taxation year;

(f) notwithstanding paragraph (e), the individual shall file a separate return of the individual's income for any taxation year during which the individual was a bankrupt, computed as if

(i) the income required to be reported in respect of the year by the trustee under paragraph (e) was not the income of the individual,

(ii) in computing income, the individual was not entitled to deduct any loss sustained by the trustee in the year in dealing with the estate of the bankrupt or in carrying on the business of the bankrupt,

(iii) in computing the individual's taxable income for the year, no amount were deductible under any of paragraphs 110(1)(d) to (d.3) and section 110.6 in respect of an amount included in income under subparagraph (e)(i), and no amount were deductible under section 111, and

(iv) in computing the individual's tax payable under this Part for the year, no amount were deductible under

(A) section 118.1 in respect of a gift made before the day on which the individual became bankrupt,

(B) section 118.62 in respect of interest paid before the day on which the individual became bankrupt, or

(C) section 118.61 or 120.2 or subsection 127(5),

and the individual is liable to pay any tax so determined for that taxation year;

(g) notwithstanding subparagraphs (e)(ii) and (iii) and (f)(iii) and (iv), where at any time an individual was discharged absolutely from bankruptcy,

(i) in computing the individual's taxable income for any taxation year that ends after that time, no amount shall be deducted under section 111 in respect of losses for taxation years that ended before that time,

(ii) in computing the individual's tax payable under this Part for any taxation year that ends after that time,

(A) no amount shall be deducted under section 118.61 or 120.2 in respect of an amount for any taxation year that ended before that time,

(B) no amount shall be deducted under section 118.1 in respect of a gift made before the individual became bankrupt,

(B.1) no amount shall be deducted under section 118.62 in respect of interest paid before the day on which the individual became bankrupt, and

(C) no amount shall be deducted under subsection 127(5) in respect of an expenditure incurred or a property acquired by the individual in any taxation year that ended before that time, and

(iii) the individual's unused tuition and education tax credits at the end of the last taxation year that ended before that time is deemed to be nil;

(h) where, in a taxation year commencing after an order of discharge has been granted in respect of the individual, the trustee deals in the estate of the individual who was a bankrupt or performs any act in the carrying on of the business of the individual, paragraphs (e), (f) and (g) shall apply as if the individual were a bankrupt in the year; and

(i) the portion of the individual's non-capital loss for a particular taxation year in which paragraph (e) applied in respect of the individual and any preceding taxation year that does not exceed the lesser of

(i) the amount of the individual's allowable business investment losses for the particular taxation year, and

(ii) any portion of the individual's non-capital loss for that particular year that was not deducted in computing the individual's taxable income for any taxation year in which paragraph (e) applied in respect of the individual or any preceding taxation year,

shall, for the purpose of determining the individual's cumulative gains limit under section 110.6 for taxation years following the taxation year in which paragraph (e) was last applicable in respect of the individual, be deemed not to have been an allowable business investment loss.

Related Provisions: 56.2, 56.3 — No debt forgiveness reserve inclusion while individual bankrupt; 80(1)"forgiven amount"B(i) — Debt forgiveness rules do not apply; 118.95 — Credits allowed on return filed by bankrupt individual; 120.2(4)(a) — No minimum tax carryover on individual's return under 128(2)(f); 122.5(7) — GST credit for year of bankruptcy; 122.61(3.1) — Child Tax Benefit for year of bankruptcy; 127.1(1)(a) — No refundable investment tax credit on individual's return under 128(2)(f); 127.55 — Minimum tax not applicable; 150(3) — Trustee in bankruptcy required to file return; 227(5) — Amount in trust not part of estate; Reg. 2701(2) — Calculation of group term life insurance benefit where individual bankrupt.

History: Subpara. 128(2)(c)(i) amended by 2004, c. 25, subsec. 201(2) to replace "receiving order" with "bankruptcy order", in force December 15, 2004.

Cl. 128(2)(e)(ii)(A) amended by 2001, c. 17, subsec. 122(1), applicable to 2000 *et seq.* The cl. formerly read:

(A) an amount under paragraph 110(1)(d), (d.1), (d.2) or (d.3) or section 110.6 to the extent that the amount is in respect of an amount included in income under subparagraph (i) for that taxation year, and

Subpara. 128(2)(f)(iii) amended by the said c. 17, subsec. 122(2), applicable to 2000 *et seq.* The subpara. formerly read:

(iii) in computing the individual's taxable income for the year, no amount were deductible under paragraph 110(1)(d), (d.1), (d.2) or (d.3) or section 110.6 in respect of an amount included in income under subparagraph (e)(i), and no amount were deductible under section 111, and

Para. 128(2)(d) and subpara. (f)(iv) amended by 1999, c. 22, subsecs. 51(1) and (3), para. (d) applicable to 1999 *et seq.*, and subpara. (f)(iv) applicable to bankruptcies that occur after 1997. Cls. 128(2)(e)(iii)(B.1) and (g)(ii)(B.1) added by the said c. 22, subsecs. 51(2) and (4), applicable to bankruptcies that occur after 1997. The para. and subpara. formerly read:

(d) except for the purposes of subsections 146(1) and 146.01(4), (9) and (10) and Part X.1, a taxation year of the individual shall be deemed to have begun on the day in the calendar year on which the individual became a bankrupt and the individual's taxation year that would otherwise have ended on the last day of that calendar year shall be deemed to have ended on the day immediately before the day the individual became a bankrupt;

. . . . .

(iv) in computing the individual's tax payable under this Part for the year, no amount were deductible under section 118.1 in respect of a gift made before the day the individual became bankrupt or under section 118.61 or 120.2 or subsection 127(5),

The portion of para. 128(2)(e) after subpara. (i), the portion of para. 128(2)(f) after subpara. (ii), and para. 128(2)(g), amended by 1998, c. 19, subsecs. 152(1)–(3), applicable to bankruptcies that occur after April 26, 1995 except that, in applying subsec. 128(2), as amended, to taxation years that ended before 1997,

(a) cl. 128(2)(e)(iii)(A) shall be read without reference to "118.61";

(b) subpara. 128(2)(f)(iv) shall be read without reference to "118.61 or";

(c) cl. 128(2)(g)(ii)(A) shall be read without reference to "118.61 or"; and

(d) para. 128(2)(g) shall be read without reference to subparagraph (iii).

Those portions and para. (g) formerly read:

(ii) in computing taxable income, the individual was not entitled to any deduction permitted by Division C for that taxation year except any deduction permitted by section 111, and

(iii) in computing the tax payable under this Part by the individual, the individual was not entitled to deduct any amount under any of sections 118 to 118.3, 118.5, 118.6, 118.8 and 118.9,

and the trustee is liable to pay any tax payable under this Part by the individual in respect of that taxable income for that taxation year;

. . . . .

(iii) in computing taxable income, the individual was not entitled to any deduction under section 111 with respect to any losses for a previous taxation year,

and the individual is liable to pay any tax payable under this Part by the individual in respect of that taxable income for the taxation year;

. . . . .

(g) where an absolute order of discharge is granted in respect of the individual, for the purpose of section 111 any loss of the individual for a taxation year preceding the year in which the order of discharge was granted is not deductible by the individual in computing the individual's taxable income for the taxation year in which the order was granted or any subsequent year;

Para. 128(2)(d) amended by 1994, c. 8, s. 18, applicable to 1993 *et seq.* Para. (d) formerly read:

(d) except for the purposes of subsections 146(1) and 146.01(4) and (9) and Part X.1, a taxation year of the individual shall be deemed to have begun on the day in the calendar year on which the individual became a bankrupt and the individual's taxation year that would otherwise have ended on the last day of that calendar year shall be deemed to have ended on the day immediately before the day the individual became a bankrupt;

Para. 128(2)(d) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 72, applicable to 1992 *et seq.* Para. (2)(d) formerly read:

(d) except for the purposes of subsection 146(1) and Part X.1, a taxation year of the individual shall be deemed to have commenced on the day in the calendar year on which the individual became a bankrupt and the individual's taxation year that would otherwise have ended on the last day of that calendar year shall be deemed to have ended on the day immediately before the day on which the individual became a bankrupt;

Regulations: 206(2) (information return).

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-179R: Change of fiscal period; IT-206R: Separate businesses; IT-415R2: Deregistration of registered retirement savings plans (archived); IT-513R: Personal tax credits.

(3) [Repealed]

History: Subsec. 128(3) repealed by 1998, c. 19, subsec. 152(4), applicable to bankruptcies that occur after April 26, 1995. Subsec. 128(3) formerly read:

(3) Definitions of "bankrupt" and "estate of the bankrupt" — In this section, "bankrupt" and "estate of the bankrupt" have the meanings assigned by the *Bankruptcy and Insolvency Act*.

Subsec. 128(3) amended by 1994, c. 7, Sch. V (1992, c. 27), para. 90(1)(q), to substitute "*Bankruptcy and Insolvency Act*" for "*Bankruptcy Act*", in force November 30, 1992.

"Bankrupt": S. 2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (as amended) defines "bankrupt" as follows:

"bankrupt" means a person who has made an assignment or against whom a bankruptcy order has been made or the legal status of that person;

"estate of the bankrupt" *per se* is not defined therein.

Definitions [s. 128]: "allowable business investment loss" — 38(c), 248(1); "amount" — 248(1); "associated" — 128(1)(f), 256; "bankrupt" — 248(1); "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "capital gain", "capital loss" — 39(1), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "estate of the bankrupt" — 248(1); "individual", "Minister" — 248(1); "non-capital loss" — 111(8), 248(1); "prescribed", "property" — 248(1); "RRSP deduction limit" — 146(1), 248(1); "tax payable" — 248(2); "taxable income" — 2(2), 248(1); "taxation year" — 128(2)(d), 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "unused tuition and education tax credits" — 118.61(1) [technically does not apply to s. 128].

Changes in Residence

128.1 (1) Immigration — For the purposes of this Act, where at a particular time a taxpayer becomes resident in Canada,

(a) **year-end, fiscal period** — where the taxpayer is a corporation or a trust,

(i) the taxpayer's taxation year that would otherwise include the particular time shall be deemed to have ended immediately before the particular time and a new taxation year of the taxpayer shall be deemed to have begun at the particular time, and

(ii) for the purpose of determining the taxpayer's fiscal period after the particular time, the taxpayer shall be deemed not to have established a fiscal period before the particular time;

(b) **deemed disposition** — the taxpayer is deemed to have disposed, at the time (in this subsection referred to as the "time of disposition") that is immediately before the time that is immediately before the particular time, of each property owned by the taxpayer, other than, if the taxpayer is an individual,

(i) property that is a taxable Canadian property,

(ii) property that is described in the inventory of a business carried on by the taxpayer in Canada at the time of disposition,

(iii) eligible capital property in respect of a business carried on by the taxpayer in Canada at the time of disposition, and

(iv) an excluded right or interest of the taxpayer (other than an interest in a non-resident testamentary trust that was never acquired for consideration),

(v) [Repealed]

for proceeds equal to its fair market value at the time of disposition;

(c) **deemed acquisition** — the taxpayer shall be deemed to have acquired at the particular time each property deemed by paragraph (b) to have been disposed of by the taxpayer, at a cost equal to the proceeds of disposition of the property;

(c.1) **deemed dividend to immigrating corporation** — if the taxpayer is a particular corporation that immediately before the time of disposition owned a share of the capital stock of another corporation resident in Canada, a dividend is deemed to have been paid by the other corporation, and received by the particular corporation, immediately before the time of disposition, equal to the amount, if any, by which the fair market value of the share immediately before the time of disposition exceeds the total of

(i) the paid-up capital in respect of the share immediately before the time of disposition, and

(ii) if the share immediately before the time of disposition was taxable Canadian property that is not treaty-protected property, the amount by which, at the time of disposition, the fair market value of the share exceeds its cost amount;

(c.2) **deemed dividend to shareholder of immigrating corporation** — if the taxpayer is a corporation and an amount has been added to the paid-up capital in respect of a class of shares of the corporation's capital stock because of paragraph (2)(b),

(i) the corporation is deemed to have paid, immediately before the time of disposition, a dividend on the issued shares of the class equal to the amount of the paid-up capital adjustment in respect of the class, and

(ii) a dividend is deemed to have been received, immediately before the time of disposition, by each person (other than a person in respect of whom the corporation is a foreign affiliate) who held any of the issued shares of the class equal to that proportion of the dividend so deemed to have been paid that the number of shares of the class held by the person immediately before the time of disposition

is of the number of issued shares of the class outstanding immediately before the time of disposition; and

(d) **foreign affiliate** — where the taxpayer was, immediately before the particular time, a foreign affiliate of another taxpayer that is resident in Canada,

(i) the affiliate shall be deemed to have been a controlled foreign affiliate (within the meaning assigned by subsection 95(1)) of the other taxpayer immediately before the particular time, and

(ii) such amount as is prescribed shall be included in the foreign accrual property income (within the meaning assigned by subsection 95(1)) of the affiliate for its taxation year ending immediately before the particular time.

Related Provisions: 44(2)(d) — Exchanges of property; 52(8) — Cost of corporation's shares on its becoming resident in Canada; 53(1)(b.1) — Addition to ACB for deemed dividend under 128.1(1)(c.2); 53(4) — Effect on ACB of share, partnership interest or trust interest; 54"superficial loss"(c) — Superficial loss rule does not apply; 66(4.3) — Foreign exploration and development expenses on becoming resident; 66.21(5) — Foreign resource expenses on becoming resident; 70(5.3) — Value of shares of corporation holding life insurance policy; 84(7) — When deemed dividend payable; 93.1(1) — Where shares are owned by partnership — effect on foreign affiliate definition; 94(3)(c), 94(4)(d) [proposed] — Application to trust deemed resident in Canada; 96(8) — Cost of properties of partnership when partner becomes resident in Canada; 106(1.1)(b) — Deemed cost of income interest in trust; 107(1.1)(b)(ii) — Deemed cost of income interest in trust; 114 — Individual resident during only part of year; 128.1(1.1) — Application of 128.1(1)(b) to a trust; 139.1(5) — Value of ownership rights in insurer during demutualization; 215(1.1) — Limitation on requirement to withhold tax on deemed dividend under 128.1(1)(c.1); Reg. 808(1.1) — Investment allowance for branch tax deemed nil before immigration.

History: Subpara. 128.1(1)(b)(i) amended by 2001, c. 17, subsec. 123(1), applicable to changes in residence that occur after October 1, 1996. The subpara. formerly read:

(i) property that would be taxable Canadian property if the taxpayer had been resident in Canada at no time in the taxpayer's last taxation year that began before the particular time,

Subpara. 128.1(1)(b)(iv) amended and subpara. (v) repealed by the said c. 17, subsec. 123(2), applicable to changes in residence that occur after October 1, 1996. The subparas. formerly read:

(iv) property in respect of which the taxpayer elected under paragraph 48(1)(c), as it read in its application before 1993, or subparagraph (4)(b)(iv) in respect of the last preceding time the taxpayer ceased to be resident in Canada, and

(v) a right to acquire shares of the capital stock of a corporation where section 7 would apply if the taxpayer disposed of the right to a person with whom the taxpayer was dealing at arm's length,

The opening words of para. 128.1(1)(b) amended, paras. 128.1(1)(c.1) and (c.2) added, by 1999, c. 22, subsecs. 52(1), (2), applicable to corporations that become resident in Canada after February 23, 1998. The opening words formerly read:

(b) the taxpayer shall be deemed to have disposed, at the time (in this subsection referred to as the "time of disposition") that is immediately before the time that is immediately before the particular time, of each property owned by the taxpayer, other than

Subsec. 128.1(1) enacted by 1994, c. 21, s. 62, applicable after 1992 except that where a corporation elects in accordance with para. 111(4)(a) of 1994, c. 21 (i.e., elects before the end of December 1994 for new subsec. 250(5.1) to apply in respect of a continuance before 1993), the section applies to the corporation from the time at which the corporation was first granted articles of continuation (or similar constitutional documents) in any jurisdiction.

Regulations: 5907(13) (prescribed amount of FAPI; expected to be amended to apply to 128.1(1)(d)(ii)).

I.T. Application Rules: 26(10) (ITAR 26 does not apply to property owned since before 1972).

Interpretation Bulletins: IT-221R3: Determination of an individual's residence status; IT-259R4: Exchanges of property.

Forms: NR74: Determination of residency status (entering Canada).

Proposed Addition — 128.1(1.1)

(1.1) Trusts subject to s. 94(3) — Paragraph (1)(b) does not apply, at a time in a particular taxation year of a trust, to the trust if the trust is resident in Canada for the particular taxation year for the purpose of computing its income.

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), s. 32, will add subsec. 128.1(1.1), applicable to trust taxation years that begin after 2002, and to trust taxation years that begin

(a) after 2000, if the trust that makes a valid election under para. (a) of the Application of the amendment to s. 94; and

(b) after 2001, if the trust that makes a valid election under para. (a) or (b) of the Application of the amendment to s. 94.

Technical Notes: Subsection 128.1(1) sets out rules that apply where a taxpayer becomes resident in Canada. Paragraph 128.1(1)(b) treats a taxpayer who becomes resident in Canada as having disposed of the taxpayer's property, with certain exceptions, for proceeds equal to the property's fair market value.

New subsection 128.1(1.1) identifies a set of circumstances in which paragraph 128.1(1)(b) does not apply to a taxpayer that is a trust.

Under subsection 128.1(1.1), paragraph 128.1(1)(b) will not apply, at a time in a particular taxation year of a trust, to the trust if the trust is resident in Canada because of new paragraph 94(3)(a) for the particular taxation year for the purpose of computing its income.

This rule applies to ensure that a deemed disposition does not occur solely because the basis for a trust's residency in Canada changes from paragraph 94(3)(a) to some other basis.

For more detail on subsections 94(3) and (4), see the commentary on those provisions.

Related Provisions: 94(4)(b) [proposed] — Deeming non-resident trust to be resident in Canada does not apply to para. (a).

(2) **Paid-up capital adjustment** — If a corporation becomes resident in Canada at a particular time,

(a) for the purposes of subsection (1) and this subsection, the "paid-up capital adjustment" in respect of a particular class of shares of the corporation's capital stock in respect of that acquisition of residence is the positive or negative amount determined by the formula

$$(A \times B/C) - D$$

where

A is the amount, if any, by which

(i) the total of all amounts each of which is an amount deemed by paragraph (1)(c) to be the cost to the corporation of property deemed under that paragraph to have been acquired by the corporation at the particular time

exceeds

(ii) the total of all amounts each of which is the amount of a debt owing by the corporation, or any other obligation of the corporation to pay an amount, that is outstanding at the particular time,

B is the fair market value at the particular time of all of the shares of the particular class,

C is the total of all amounts each of which is the fair market value at the particular time of all of the shares of a class of shares of the corporation's capital stock, and

D is the paid-up capital at the particular time, determined without reference to this subsection, in respect of the particular class; and

(b) for the purposes of this Act, in computing the paid-up capital in respect of a class of shares of the corpo-

ration's capital stock at any time after the particular time and before the time, if any, at which the corporation next becomes resident in Canada, there shall be

(i) added the amount of the paid-up capital adjustment in respect of the particular class, if that amount is positive and the corporation so elects for all such classes in respect of that acquisition of residence by notifying the Minister in writing within 90 days after the particular time, and

(ii) deducted, if the amount of the paid-up capital adjustment in respect of the particular class is negative, the absolute value of that amount.

Related Provisions: 128.1(1)(c.2) — Deemed dividend to shareholder of immigrating corporation; 257 — Formula cannot calculate to less than zero.

History: Subsec. 128.1(2) amended by 1999, c. 22, subsec. 52(3), applicable to corporations that become resident in Canada after February 23, 1998, except that an election made under subpara. 128.1(2)(b)(i), as amended, is deemed to have been made in a timely manner if it is made by the corporation, with the consent of all who were shareholders of the corporation immediately before the time of disposition (within the meaning assigned by para. 128.1(1)(b)), before April 1, 1999. The subsec. formerly read:

(2) Idem — paid-up capital — For the purposes of this Act, where at a particular time a corporation becomes resident in Canada, in computing the paid-up capital at any time after the particular time in respect of a particular class of shares of the capital stock of the corporation, there shall be deducted the amount determined by the formula

$$\frac{A}{B} \times (C - D)$$

where

A is the paid-up capital, determined without reference to this subsection, of the particular class of shares at the particular time;

B is the paid-up capital, determined without reference to this subsection, in respect of all of the shares of the corporation at the particular time;

C is the total of

(a) the paid-up capital, determined without reference to this subsection, in respect of all of the shares of the corporation at the particular time,

(b) all amounts each of which is the amount of any debt owing by the corporation, or any other obligation of the corporation to pay an amount, that is outstanding at the particular time, and

(c) any amount claimed under paragraph 219(1)(j) by the corporation for its last taxation year that began before the particular time; and

D is the total of

(a) all amounts each of which is deemed by paragraph (1)(c) to be the cost to the corporation of property (other than property described in paragraph (d)) deemed under paragraph (1)(c) to have been acquired by the corporation at the particular time,

(b) all amounts each of which is the cost amount to the corporation, immediately after the particular time, of property (other than a Canadian resource property or property described in paragraph (a) or (d)),

(c) the total of

(i) all Canadian exploration and development expenses incurred by the corporation before the particular time, except to the extent that those expenses were deducted in computing a taxpayer's income for a taxation year that ended before the particular time,

(ii) the corporation's cumulative Canadian exploration expense at the particular time (within the meaning assigned by subsection 66.1(6)),

(iii) the corporation's cumulative Canadian development expense at the particular time (within the meaning assigned by subsection 66.2(5)), and

(iv) the corporation's cumulative Canadian oil and gas property expense at the particular time (within the meaning assigned by subsection 66.4(5)), and

(d) the total of all amounts each of which is the paid-up capital in respect of a share of the capital stock of another corporation resident in Canada and connected with the corporation (within the meaning that would be assigned by subsection 186(4) if the references therein to "payer corporation" and "particular corporation" were read as references to the other corporation and the corporation, respectively) immediately after the particular time, owned by the corporation at the particular time.

Para. (c) of the description of C in subsec. 128.1(2) amended by 1998, c. 19, s. 153, applicable to taxation years that begin after 1995 except that, in its application to taxation years that begin in 1996, the reference in para. (c) to "paragraph 219(1)(j)" shall be read as a reference to "paragraph 219(1)(h) as it read in its application to the 1995 taxation year or paragraph 219(1)(j)". Para. (c) formerly read:

(c) any amount claimed under paragraph 219(1)(h) by the corporation for its last taxation year that began before the particular time; and

Subsec. 128.1(2) enacted by 1994, c. 21, s. 62, applicable after 1992 except that where a corporation elects in accordance with para. 111(4)(a) of 1994, c. 21 (i.e., elects before the end of December 1994 for new subsec. 250(5.1) to apply in respect of a continuance before 1993), the section applies to the corporation from the time at which the corporation was first granted articles of continuation (or similar constitutional documents) in any jurisdiction.

(3) Paid-up capital adjustment — In computing the paid-up capital at any time in respect of a class of shares of the corporation's capital stock, there shall be deducted an amount equal to the lesser of A and B, and added an amount equal to the lesser of A and C, where

A is the absolute value of the difference between

(a) the total of all amounts deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of the class paid before that time by the corporation, and

(b) the total that would be determined under paragraph (a) if this Act were read without reference to subsection (2),

B is the total of all amounts required by subsection (2) to be added in computing the paid-up capital in respect of the class before that time, and

C is the total of all amounts required by subsection (2) to be subtracted in computing the paid-up capital in respect of the class before that time.

Related Provisions: 66(4.3) — Foreign exploration and development expenses on ceasing to be resident; 66.21(5) — Foreign resource expenses on ceasing to be resident.

History: Subsec. 128.1(3) amended by 1999, c. 22, subsec. 52(3), applicable to corporations that become resident in Canada after February 23, 1998. The subsec. formerly read:

(3) Idem — In computing the paid-up capital at any time in respect of a class of shares of the capital stock of a corporation, there shall be added an amount equal to the lesser of

(a) the amount, if any, by which

(i) the total of all amounts deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of the class paid before that time by the corporation

exceeds

(ii) the total that would be determined under subparagraph (i) if this Act were read without reference to subsection (2), and

(b) the total of all amounts required by subsection (2) to be deducted in computing the paid-up capital in respect of that class of shares before that time.

Subsec. 128.1(3) enacted by 1994, c. 21, s. 62, applicable after 1992 except that where a corporation elects in accordance with para. 111(4)(a) of 1994, c. 21 (i.e., elects before the end of December 1994 for new subsec. 250(5.1) to apply in respect of a continuance before 1993), the section

applies to the corporation from the time at which the corporation was first granted articles of continuation (or similar constitutional documents) in any jurisdiction.

(4) **Emigration** — For the purposes of this Act, where at any particular time a taxpayer ceases to be resident in Canada,

(a) **year-end, fiscal period** — where the taxpayer is a corporation or a trust,

(i) the taxpayer's taxation year that would otherwise include the particular time shall be deemed to have ended immediately before the particular time and a new taxation year of the taxpayer shall be deemed to have begun at the particular time, and

(ii) for the purpose of determining the taxpayer's fiscal period after the particular time, the taxpayer shall be deemed not to have established a fiscal period before the particular time;

(a.1) **fiscal period** — if the taxpayer is an individual (other than a trust) and carries on a business at the particular time, otherwise than through a permanent establishment (as defined by regulation) in Canada,

(i) the fiscal period of the business is deemed to have ended immediately before the particular time and a new fiscal period of the business is deemed to have begun at the particular time, and

(ii) for the purpose of determining the fiscal period of the business after the particular time, the taxpayer is deemed not to have established a fiscal period of the business before the particular time;

(b) **deemed disposition** — the taxpayer is deemed to have disposed, at the time (in this paragraph and paragraph (d) referred to as the "time of disposition") that is immediately before the time that is immediately before the particular time, of each property owned by the taxpayer other than, if the taxpayer is an individual,

(i) real property situated in Canada, a Canadian resource property or a timber resource property,

Proposed Amendment — 128.1(4)(b)(i)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 240(1), will amend subpara. 128.1(4)(b)(i) by substituting "real or immovable property" for "real property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(ii) capital property used in, eligible capital property in respect of or property described in the inventory of, a business carried on by the taxpayer through a permanent establishment (as defined by regulation) in Canada at the particular time,

(iii) an excluded right or interest of the taxpayer,

(iv) if the taxpayer is not a trust and was not, during the 120-month period that ends at the particular time, resident in Canada for more than 60 months, property that was owned by the taxpayer at the time the taxpayer last became resident in Canada or that was acquired by the taxpayer by inheritance or bequest after the taxpayer last became resident in Canada, and

(v) any property in respect of which the taxpayer elects under paragraph (6)(a) for the taxation year that includes the first time, after the particular time, at which the taxpayer becomes resident in Canada,

for proceeds equal to its fair market value at the time of disposition, which proceeds are deemed to have become receivable and to have been received by the taxpayer at the time of disposition;

(c) **reacquisition** — the taxpayer shall be deemed to have reacquired, at the particular time, each property deemed by paragraph (b) to have been disposed of by the taxpayer, at a cost equal to the proceeds of disposition of the property;

(d) **individual — elective disposition** — notwithstanding paragraphs (b) to (c), if the taxpayer is an individual (other than a trust) and so elects in prescribed form and manner in respect of a property described in subparagraph (b)(i) or (ii),

(i) the taxpayer is deemed to have disposed of the property at the time of disposition for proceeds equal to its fair market value at that time and to have reacquired the property at the particular time at a cost equal to those proceeds,

(ii) the taxpayer's income for the taxation year that includes the particular time is deemed to be the greater of

(A) that income determined without reference to this subparagraph, and

(B) the lesser of

(I) that income determined without reference to this subsection, and

(II) that income determined without reference to subparagraph (i), and

(iii) each of the taxpayer's non-capital loss, net capital loss, restricted farm loss, farm loss and limited partnership loss for the taxation year that includes the particular time is deemed to be the lesser of

(A) that amount determined without reference to this subparagraph, and

(B) the greater of

(I) that amount determined without reference to this subsection, and

(II) that amount determined without reference to subparagraph (i); and

(d.1) **employee CCPC stock option shares** — if the taxpayer is deemed by paragraph (b) to have disposed of a share that was acquired before February 28, 2000 under circumstances to which subsection 7(1.1) applied, there shall be deducted from the taxpayer's proceeds of disposition the amount that would, if section 7 were read without reference to subsection 7(1.6), be added under paragraph 53(1)(j) in computing the adjusted cost base to the taxpayer of the share as a consequence of the deemed disposition.

(e), (f) [Repealed]

Related Provisions: 7(1.6) — Deemed disposition does not apply to stock option rules; 10(12) — Non-resident ceasing to use inventory — deemed disposition; 28(4), (4.1) — Farmer or fisherman emigrating; 44(2)(d) — Exchanges of property; 53(4) — Effect on ACB of share, partnership interest or trust interest; 54"superficial loss"(c) — Superficial loss rule does not apply; 66(4)(b) — Foreign exploration and development expenses — deduction after emigration; 70(5.3) — Value of shares of corporation that owns life insurance policy; 74.2(3) — Application of spousal attribution rule to disposition on emigration; 94(4)(e), 94(5) [proposed] — When trust deemed to cease being resident in Canada; 104(4)(a.3) — Deemed disposition of property by trust on emigration of transferor; 106(1.1)(b) — Deemed cost of income interest in trust; 107(1.1)(b)(ii) — Deemed cost of income interest in trust; 114 — Individual resident during only part of year; 119 — Credit where stop-loss rule in 40(3.7) applies; 126(2.2) — Foreign tax credit on property deemed to be taxable Canadian property; 126(2.21), (2.22) — Foreign tax credit after emigration;

128.1(1)(b) — Deemed disposition on immigration; 128.1(5) — Deemed disposition does not increase instalment requirements; 128.1(6) — Returning former resident; 128.1(8) — Post-emigration loss; 128.1(9) — Information reporting; 139.1(5) — Value of ownership rights in insurer during demutualization; 219.1 — Tax on corporate emigration; 220(3.2), Reg. 600 — Late filing of elections under 128.1(4)(d); 220(4.5)–(4.54) — Deferral of payment of departure tax; 226 — Demand for payment of taxes owing when taxpayer leaving Canada, and seizure of goods; Canada-U.S. Tax Treaty:Art. XIII:6, 7 — effect of emigration to U.S. on future capital gains; Canada-U.K. Tax Treaty:Art. 13:9 — effect of emigration to U.K. on future capital gains.

History: Para. 128.1(4)(a.1) added and para. (b) amended by 2001, c. 17, subsec. 123(3), applicable to changes in residence that occur after October 1, 1996. S. 124 of the said c. 17 provides:

> 124. (1) If an individual ceased at any time after 1992 and before October 2, 1996 to be resident in Canada and so elects in writing and files the election with the Minister of National Revenue before the end of the sixth month [December 31, 2001] following the month in which this Act [2001, c. 17] receives royal assent, subparagraph 128.1(4)(b)(iii) of the Act as it read at that time shall, in respect of the cessation of residence, be read as enacted by this Act and as though subsection 128.1(10) of the Act, as enacted by this Act, applied.
>
> (2) Where an individual makes an election under subsection (1), notwithstanding subsections 152(4) to (5) of the Act, any reassessment of the individual's tax, interest or penalties for any year shall be made that is necessary to take the election into account.

Para. (b) formerly read:

> (b) the taxpayer shall be deemed to have disposed, at the time (in this paragraph and paragraph (d) referred to as the "time of disposition") that is immediately before the time that is immediately before the particular time, of each property owned by the taxpayer, other than
>
> (i) where the taxpayer is an individual, property that would be taxable Canadian property if the taxpayer had been resident in Canada at no time in the taxpayer's last taxation year that began before the particular time,
>
> (ii) where the taxpayer is an individual, property that is described in the inventory of a business carried on by the taxpayer in Canada at the particular time,
>
> (iii) where the taxpayer is an individual, a right to receive a payment described in any of paragraphs 212(1)(h) and (j) to (q), a right under a registered education savings plan or a right to receive any payment of a benefit under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act,
>
> (iv) where the taxpayer is an individual other than a trust, each capital property not described in any of subparagraphs (i) to (iii) in respect of which, on or before the taxpayer's balance-due day for the taxation year in which the taxpayer ceased to be resident in Canada, the taxpayer elects in prescribed manner and furnishes to the Minister security acceptable to the Minister for the payment of the additional tax that would have been payable by the taxpayer under this Part for the year had the taxpayer not so elected,
>
> (v) where the taxpayer is an individual other than a trust and was, during the 10 years immediately preceding the particular time, resident in Canada for a period or periods totalling 60 months or less, property that was
>
> (A) owned by the taxpayer at the time the taxpayer last became resident in Canada, or
>
> (B) acquired by the taxpayer by inheritance or bequest after the taxpayer last became resident in Canada, and
>
> (vi) a right to acquire shares of the capital stock of a corporation where section 7 would apply if the taxpayer disposed of the right to a person with whom the taxpayer was dealing at arm's length,
>
> for proceeds equal to its fair market value at the time of disposition, which proceeds shall be deemed to have become receivable and to have been received by the taxpayer at the time of disposition;

Para. 128.1(4)(d) amended, para. (d.1) added, and paras. (e) and (f) repealed by the said c. 17, subsec. 123(4), applicable to changes in residence that occur after October 1, 1996 except for para. (d.1), which is applicable to changes in residence that occur after 1992. Paras. (d) to (f) formerly read:

> (d) **individual** — notwithstanding paragraphs (b) and (c), where a taxpayer who is an individual other than a trust so elects in prescribed manner, on or before the taxpayer's balance-due day for the taxation year that includes the particular time, in respect of any property described in subparagraph (b)(i) or (ii), the taxpayer shall be deemed to have disposed of the property at the time of disposition for proceeds equal to its fair market value at that time, and to have reacquired the property at the particular time at a cost equal to those proceeds;
>
> (e) **deemed [taxable Canadian] property** — capital property in respect of which a taxpayer elects under subparagraph (b)(iv) shall be deemed to be taxable Canadian property of the taxpayer from the particular time until the earlier of
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> (i) the time when the taxpayer disposes of the property, and
>
> (ii) the time when the taxpayer next becomes resident in Canada; and
>
> (f) **losses on election** — where a taxpayer elects under subparagraph (b)(iv) or paragraph (d),
>
> (i) the taxpayer's income for the taxation year that includes the particular time shall be deemed to be the greater of
>
> (A) that income otherwise determined, and
>
> (B) the lesser of
>
> (I) that income determined without reference to this subsection, and
>
> (II) that income determined without reference to subparagraph (b)(iv) and paragraph (d), and
>
> (ii) the amount of each of the taxpayer's non-capital loss, net capital loss, restricted farm loss, farm loss and limited partnership loss for the taxation year that includes the particular time shall be deemed to be the lesser of
>
> (A) that amount otherwise determined, and
>
> (B) the greater of
>
> (I) that amount determined without reference to this subsection, and
>
> (II) that amount determined without reference to subparagraph (b)(iv) and paragraph (d).

Subpara. 128.1(4)(b)(iii) amended by 1998, c. 19, s. 36, applicable to changes of residence that occur after October 1, 1996. Subpara. 128.1(4)(b)(iii) formerly read:

> (iii) where the taxpayer is an individual, a right to receive a payment described in any of paragraphs 212(1)(h) and (j) to (q) or a right to receive any payment of a benefit under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act,

Subsec. 128.1(4) enacted by 1994, c. 21, s. 62, applicable after 1992 except that where a corporation elects in accordance with para. 111(4)(a) of 1994, c. 21 (i.e., elects before the end of December 1994 for new subsec. 250(5.1) to apply in respect of a continuance before 1993), the section applies to the corporation from the time at which the corporation was first granted articles of continuation (or similar constitutional documents) in any jurisdiction.

Regulations: 600(c), (c.1) (late filing of elections under (4)(b)(iv) and (4)(d)); 1300 (election under 128.1(4)(b)(iv)); 1302 (election under 128.1(4)(d)); 8201 (permanent establishment for (4)(b)(ii)).

Interpretation Bulletins: IT-113R4: Benefits to employees — stock options; IT-137R3: Additional tax on certain corporations carrying on business in Canada; IT-259R4: Exchanges of property; IT-395R2: Foreign tax credit — foreign-source capital gains and losses; IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

Advance Tax Rulings: ATR-70: Distribution of taxable Canadian property by a trust to a non-resident. [This was the 1991 ruling criticized by the Auditor General in 1996 that led to the October 2, 1996 proposals — ed.].

Forms: NR73: Determination of residency status (leaving Canada); T1161: List of properties by an emigrant of Canada; T1243: Deemed disposition of property by an emigrant of Canada; T2061A: Election by emigrant to report deemed dispositions of taxable Canadian property and capital gains and/or losses thereon; T4056: Emigrants and income tax [guide].

(5) Instalment interest — If an individual is deemed by subsection (4) to have disposed of a property in a taxation year, in applying sections 155 and 156 and subsections 156.1(1) to (3) and 161(2), (4) and (4.01) and any regulations made for the purposes of those provisions, the individual's total taxes payable under this Part and Part I.1 for the year are deemed to be the lesser of

(a) the individual's total taxes payable under this Part and Part I.1 for the year, determined before taking into consideration the specified future tax consequences for the year, and

(b) the amount that would be determined under paragraph (a) if subsection (4) did not apply to the individual for the year.

History: Subsec. 128.1(5) added by 2001, c. 17, subsec. 123(5), applicable to changes in residence that occur after October 1, 1996.

(6) Returning former resident — If an individual (other than a trust) becomes resident in Canada at a particular time in a taxation year and the last time (in this subsection referred to as the "emigration time"), before the particular time, at which the individual ceased to be resident in Canada was after October 1, 1996,

(a) subject to paragraph (b), if the individual so elects in writing and files the election with the Minister on or before the individual's filing-due date for the year, paragraphs (4)(b) and (c) do not apply to the individual's cessation of residence at the emigration time in respect of all properties that were taxable Canadian properties of the individual throughout the period that began at the emigration time and that ends at the particular time;

(b) where, if a property in respect of which an election under paragraph (a) is made had been acquired by the individual at the emigration time at a cost equal to its fair market value at the emigration time and had been disposed of by the individual immediately before the particular time for proceeds of disposition equal to its fair market value immediately before the particular time, the application of subsection 40(3.7) would reduce the amount that would, but for that subsection and this subsection, be the individual's loss from the disposition,

(i) the individual is deemed to have disposed of the property at the time of disposition (within the meaning assigned by paragraph (4)(b)) in respect of the emigration time for proceeds of disposition equal to the total of

(A) the adjusted cost base to the individual of the property immediately before the time of disposition, and

(B) the amount, if any, by which that reduction exceeds the lesser of

(I) the adjusted cost base to the individual of the property immediately before the time of disposition, and

(II) the amount, if any, that the individual specifies for the purposes of this paragraph in the election under paragraph (a) in respect of the property,

(ii) the individual is deemed to have reacquired the property at the emigration time at a cost equal to the amount, if any, by which the amount determined under clause (i)(A) exceeds the lesser of that reduction and the amount specified by the individual under subclause (i)(B)(II), and

(iii) for the purpose of section 119, the individual is deemed to have disposed of the property immediately before the particular time;

(c) if the individual so elects in writing and files the election with the Minister on or before the individual's filing-due date for the year, in respect of each property that the individual owned throughout the period that began at the emigration time and that ends at the particular time and that is deemed by paragraph (1)(b) to have been disposed of because the individual became resident in Canada, notwithstanding paragraphs (1)(c) and (4)(b) the individual's proceeds of disposition at the time of disposition (within the meaning assigned by paragraph (4)(b)), and the individual's cost of acquiring the property at the particular time, are deemed to be those proceeds and that cost, determined without reference to this paragraph, minus the least of

(i) the amount that would, but for this paragraph, have been the individual's gain from the disposition of the property deemed by paragraph (4)(b) to have occurred,

(ii) the fair market value of the property at the particular time, and

(iii) the amount that the individual specifies for the purposes of this paragraph in the election; and

(d) notwithstanding subsections 152(4) to (5), any assessment of tax that is payable under this Act by the individual for any taxation year that is before the year that includes the particular time and that is not before the year that includes the emigration time shall be made that is necessary to take an election under this subsection into account, except that no such assessment shall affect the computation of

(i) interest payable under this Act to or by a taxpayer in respect of any period that is before the day on which the taxpayer's return of income for the taxation year that includes the particular time is filed, or

(ii) any penalty payable under this Act.

Related Provisions: 40(3.7) — Stop-loss rule applicable while non-resident; 128.1(7) — Returning trust beneficiary; 128.3 — Shares acquired on rollover deemed to be same shares for 128.1(6); 161(7)(a)(xi), 164(5)(h.02), 164(5.1) — Effect of carryback of loss; 220(3.2), Reg. 600(c) — Late filing of elections under (6)(a) and (c); 220(4.5)–(4.54) — Deferral of payment of tax on emigration.

History: Subsec. 128.1(6) added by 2001, c. 17, subsec. 123(5), applicable to changes in residence that occur after October 1, 1996, and an election made under paras. 128.1(6)(a) and (c) by an individual who ceased to be resident in Canada before June 14, 2001 is deemed to have been made in a timely manner if it is made on or before the individual's filing-due date for the taxation year that includes June 14, 2001.

Regulations: 600(c) (late filing of elections under (6)(a) and (c)).

(7) Returning trust beneficiary — If an individual (other than a trust)

(a) becomes resident in Canada at a particular time in a taxation year,

(b) owns at the particular time a property that the individual last acquired on a trust distribution to which subsection 107(2) would, but for subsection 107(5), have applied and at a time (in this subsection referred to as the "distribution time") that was after October 1, 1996 and before the particular time, and

(c) was a beneficiary of the trust at the last time, before the particular time, at which the individual ceased to be resident in Canada,

the following rules apply:

(d) subject to paragraphs (e) and (f), if the individual and the trust jointly so elect in writing and file the election with the Minister on or before the earlier of their filing-due dates for their taxation years that include the particular time, subsection 107(2.1) does not apply to the distribution in respect of all properties acquired by the individual on the distribution that were taxable Canadian properties of the individual throughout the period that began at the distribution time and that ends at the particular time,

(e) paragraph (f) applies in respect of the individual, the trust and a property in respect of which an election under paragraph (d) is made where, if the individual

(i) had been resident in Canada at the distribution time,

(ii) had acquired the property at the distribution time at a cost equal to its fair market value at that time,

(iii) had ceased to be resident in Canada immediately after the distribution time, and

(iv) had, immediately before the particular time, disposed of the property for proceeds of disposition equal to its fair market value immediately before the particular time,

the application of subsection 40(3.7) would reduce the amount that would, but for that subsection and this subsection, have been the individual's loss from the disposition,

(f) where this paragraph applies in respect of an individual, a trust and a property,

(i) notwithstanding paragraph 107(2.1)(a), the trust is deemed to have disposed of the property at the distribution time for proceeds of disposition equal to the total of

(A) the cost amount to the trust of the property immediately before the distribution time, and

(B) the amount, if any, by which the reduction under subsection 40(3.7) described in paragraph (e) exceeds the lesser of

(I) the cost amount to the trust of the property immediately before the distribution time, and

(II) the amount, if any, which the individual and the trust jointly specify for the purposes of this paragraph in the election under paragraph (d) in respect of the property, and

(ii) notwithstanding paragraph 107(2.1)(b), the individual is deemed to have acquired the property at the distribution time at a cost equal to the amount, if any, by which the amount otherwise determined under paragraph 107(2)(b) exceeds the lesser of the reduction under subsection 40(3.7) described in paragraph (e) and the amount specified under subclause (i)(B)(II),

(g) if the individual and the trust jointly so elect in writing and file the election with the Minister on or before the later of their filing-due dates for their taxation years that include the particular time, in respect of each property that the individual owned throughout the period that began at the distribution time and that ends at the particular time and that is deemed by paragraph (1)(b) to have been disposed of because the individual became resident in Canada, notwithstanding paragraphs 107(2.1)(a) and (b), the trust's proceeds of disposition under paragraph 107(2.1)(a) at the distribution time, and the individual's cost of acquiring the property at the particular time, are deemed to be those proceeds and that cost determined without reference to this paragraph, minus the least of

(i) the amount that would, but for this paragraph, have been the trust's gain from the disposition of the property deemed by paragraph 107(2.1)(a) to have occurred,

(ii) the fair market value of the property at the particular time, and

(iii) the amount that the individual and the trust jointly specify for the purposes of this paragraph in the election,

(h) if the trust ceases to exist before the individual's filing-due date for the individual's taxation year that includes the particular time,

(i) an election or specification described in this subsection may be made by the individual alone in writing if the election is filed with the Minister on or before that filing-due date, and

(ii) if the individual alone makes such an election or specification, the individual and the trust are jointly and severally liable for any amount payable under this Act by the trust as a result of the election or specification, and

Proposed Amendment — 128.1(7)(h)(ii)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 240(2), will amend subpara. 128.1(7)(h)(ii) by substituting "jointly and severally, or solidarily," for "jointly and severally", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(i) notwithstanding subsections 152(4) to (5), such assessment of tax payable under the Act by the trust or the individual for any year that is before the year that includes the particular time and that is not before the year that includes the distribution time shall be made as is necessary to take an election under this subsection into account, except that no such assessment shall affect the computation of

(i) interest payable under this Act to or by the trust or the individual in respect of any period that is before the individual's filing-due date for the taxation year that includes the particular time, or

(ii) any penalty payable under this Act.

Related Provisions: 40(3.7) — Stop-loss rule applicable while non-resident; 128.1(6) — Returning former resident; 128.3 — Shares acquired on rollover deemed to be same shares for 128.1(7); 161(7)(a)(xi), 164(5)(h.02), 164(5.1) — Effect of carryback of loss; 220(3.2), Reg. 600(c) — Late filing of elections under (7)(d) and (g); 220(4.5)–(4.54) — Deferral of payment of tax on emigration.

History: Subsec. 128.1(7) added by 2001, c. 17, subsec. 123(5), applicable to changes in residence that occur after October 1, 1996, and an election made under paras. 128.1(7)(d) and (g) by an individual who ceased to be resident in Canada before June 14, 2001 is deemed to have been made in a timely manner if it is made on or before the individual's filing-due date for the taxation year that includes June 14, 2001.

Regulations: 600(c) (late filed elections under (7)(d), (g)).

(8) Post-emigration loss — If an individual (other than a trust)

(a) was deemed by paragraph (4)(b) to have disposed of a capital property at any particular time after October 1, 1996,

(b) has disposed of the property at a later time at which the property was a taxable Canadian property of the individual, and

(c) so elects in writing in the individual's return of income for the taxation year that includes the later time,

there shall, except for the purpose of paragraph (4)(c), be deducted from the individual's proceeds of disposition of the property at the particular time, and added to the individual's proceeds of disposition of the property at the later time, an amount equal to the least of

(d) the amount specified in respect of the property in the election,

(e) the amount that would, but for the election, be the individual's gain from the disposition of the property at the particular time, and

(f) the amount that would be the individual's loss from the disposition of the property at the later time, if the loss were determined having reference to every other provision of this Act including, for greater certainty, subsection 40(3.7) and section 112, but without reference to the election.

Related Provisions: 128.3 — Shares acquired on rollover deemed to be same shares for 128.1(7); 152(6)(f.2) — Minister required to reassess past year to allow unused foreign tax credit; 161(7)(a)(xi), 164(5)(h.02), 164(5.1) — Effect of carryback of loss; 220(3.2), Reg. 600(c) — Late filing of election under (8)(c).

History: Subsec. 128.1(8) added by 2001, c. 17, subsec. 123(5), applicable to changes in residence that occur after October 1, 1996, and an election made under para. 128.1(8)(c) by an individual who ceased to be resident in Canada before June 14, 2001 is deemed to have been made in a timely manner if it is made on or before the individual's filing-due date for the taxation year that includes June 14, 2001.

Regulations: 600(c) (late filed elections under (8)(c)).

(9) Information reporting — An individual who ceases at a particular time in a taxation year to be resident in Canada, and who owns immediately after the particular time one or more reportable properties the total fair market value of which at the particular time is greater than $25,000, shall file with the Minister in prescribed form, on or before the individual's filing-due date for the year, a list of all the reportable properties that the individual owned immediately after the particular time.

Related Provisions: 128.1(10)"reportable property" — Exclusions.

History: Subsec. 128.1(9) added by 2001, c. 17, subsec. 123(5), applicable to changes in residence that occur after 1995, and a form described in subsec. 128.1(9), filed by an individual who ceased to be resident in Canada before June 14, 2001, is deemed to have been filed in a timely manner if it is filed on or before the individual's filing-due date for the taxation year that includes June 14, 2001.

Forms: T1161: List of properties by an emigrant of Canada.

(10) Definitions — The definitions in this subsection apply in this section.

"excluded right or interest" of a taxpayer who is an individual means

(a) a right of the individual under, or an interest of the individual in a trust governed by,

(i) a registered retirement savings plan or a plan referred to in subsection 146(12) as an "amended plan",

(ii) a registered retirement income fund,

(iii) a registered education savings plan,

(iv) a deferred profit sharing plan or a plan referred to in subsection 147(15) as a "revoked plan",

(v) an employees profit sharing plan,

(vi) an employee benefit plan (other than a plan described in subparagraph (b)(i) or (ii)),

(vii) a plan or arrangement (other than an employee benefit plan) under which the individual has a right to receive in a year remuneration in respect of services rendered by the individual in the year or a prior year,

(viii) a superannuation or pension fund or plan (other than an employee benefit plan),

(ix) a retirement compensation arrangement,

(x) a foreign retirement arrangement, or

(xi) a registered supplementary unemployment benefit plan;

(b) a right of the individual to a benefit under an employee benefit plan that is

(i) a plan or arrangement described in paragraph (j) of the definition "salary deferral arrangement" in subsection 248(1) that would, but for paragraphs (j) and (k) of that definition, be a salary deferral arrangement, or

(ii) a plan or arrangement that would, but for paragraph 6801(c) of the *Income Tax Regulations*, be a salary deferral arrangement,

to the extent that the benefit can reasonably be considered to be attributable to services rendered by the individual in Canada;

(c) a right of the individual under an agreement referred to in subsection 7(1);

(d) a right of the individual to a retiring allowance;

(e) a right of the individual under, or an interest of the individual in, a trust that is

(i) an employee trust,

(ii) an amateur athlete trust,

(iii) a cemetery care trust, or

(iv) a trust governed by an eligible funeral arrangement;

(f) a right of the individual to receive a payment under

(i) an annuity contract, or

(ii) an income-averaging annuity contract;

(g) a right of the individual to a benefit under

(i) the *Canada Pension Plan* or a provincial plan described in section 3 of that Act,

(ii) the *Old Age Security Act*,

(iii) a provincial pension plan prescribed for the purpose of paragraph 60(v), or

(iv) a plan or arrangement instituted by the social security legislation of a country other than Canada or of a state, province or other political subdivision of such a country;

(h) a right of the individual to a benefit described in any of subparagraphs 56(1)(a)(iii) to (vi);

(i) a right of the individual to a payment out of a NISA Fund No. 2;

(j) an interest of the individual in a personal trust resident in Canada if the interest was never acquired for consideration and did not arise as a consequence of a qualifying disposition by the individual (within the meaning that would be assigned by subsection 107.4(1) if that subsection were read without reference to paragraphs 107.4(1)(h) and (i));

(k) an interest of the individual in a non-resident testamentary trust if the interest was never acquired for consideration; or

(l) an interest of the individual in a life insurance policy in Canada, except for that part of the policy in respect of which the individual is deemed by paragraph 138.1(1)(e) to have an interest in a related segregated fund trust.

Related Provisions: 108(6) — Where terms of trust are varied; 108(7) — Meaning of "acquired for consideration"; 128.1(1)(b)(iv) — No deemed disposition on immigration; 128.1(4)(b)(iii) — No deemed disposition on emigration; 128.1(4)(d.1) — Where share acquired under stock option before emigration; 128.1(10)"reportable property" — No requirement to report most excluded personal property.

"reportable property" of an individual at a particular time means any property other than

(a) money that is legal tender in Canada and deposits of such money;

(b) property that would be an excluded right or interest of the individual if the definition "excluded right or interest" in this subsection were read without reference to paragraphs (c), (j) and (l) of that definition;

(c) if the individual is not a trust and was not, during the 120-month period that ends at the particular time, resident in Canada for more than 60 months, property described in subparagraph (4)(b)(iv) that is not taxable Canadian property; and

(d) any item of personal-use property the fair market value of which, at the particular time, is less than $10,000.

History: Subsec. 128.1(10) added by 2001, c. 17, subsec. 123(5), the definition "excluded right or interest" applicable to changes in residence that occur after October 1, 1996, and the definition "reportable property", applicable to changes in residence that occur after 1995.

Definitions [s. 128.1]: "acquired for consideration" — 108(7); "adjusted cost base" — 54, 248(1); "amateur athlete trust" — 143.1(1), 248(1); "amount", "annuity" — 248(1); "arm's length" — 251(1); "assessment" — 248(1); "balance-due day", "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "Canadian exploration and development expenses", "Canadian resource property" — 66(15), 248(1); "capital property" — 54, 248(1); "cemetery care trust" — 148.1(1), 248(1); "class of shares" — 248(6); "consideration" — 108(7); "controlled foreign affiliate" — 94.1(2)(h), 95(1), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount", "dividend" — 248(1); "deferred profit sharing plan" — 147(1), 248(1); "disposition" — 248(1); "eligible capital property" — 54, 248(1); "distribution time" — 128.1(7)(b); "eligible funeral arrangement" — 148.1(1), 248(1); "emigration time" — 128.1(6); "employee benefit plan" — 248(1); "employee trust" — 248(1); "employees profit sharing plan" — 144(1), 248(1); "excluded right or interest" — 128.1(10); "farm loss" — 111(8), 248(1); "filing-due date" — 248(1); "fiscal period" — 249.1; "foreign accrual property income" — 95(1), (2), 248(1); "foreign affiliate" — 95(1), 248(1); "foreign retirement arrangement" — 248(1), Reg 6803; "immovable" — Quebec *Civil Code* art. 900–907; "income-averaging annuity contract", "individual", "inventory" — 248(1); "limited partnership loss" — 96(2.1), 248(1); "life insurance policy in Canada" — 138(12), 248(1); "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "NISA Fund No. 2" — 248(1); "net capital loss", "non-capital loss" — 111(8), 248(1); "non-resident" — 248(1); "paid-up capital" — 89(1), 248(1); "paid-up capital adjustment" — 128.1(2)(a); "permanent establishment" — Reg. 8201; "person", "personal trust" — 248(1); "personal-use property" — 54, 248(1); "prescribed" — 248(1); "proceeds of disposition" — 54; "property" — 248(1); "province" — *Interpretation Act* 35(1); "registered education savings plan" — 146.1(1), 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "registered supplementary unemployment benefit plan" — 145(1), 248(1); "regulation" — 248(1); "reportable property" — 128.1(10); "resident in Canada" — 94(3)(a)(viii), 250; "restricted farm loss" — 31(1.1), 248(1); "retirement compensation arrangement", "retiring allowance", "salary deferral arrangement", "share", "shareholder", "specified future tax consequence", "taxable Canadian property" — 248(1); "taxation year" — 249, 250.1(a); "taxpayer" — 248(1); "testamentary trust" — 108(1), 248(1); "timber resource property" — 13(21), 248(1); "time of disposition" — 128.1(1)(b), 128.1(4)(b); "treaty-protected property" — 248(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

128.2 (1) Cross-border mergers — Where a corporation formed at a particular time by the amalgamation or merger of, or by a plan of arrangement or other corporate reorganization in respect of, 2 or more corporations (each of which is referred to in this section as a "predecessor") is at the particular time resident in Canada, a predecessor that was not immediately before the particular time resident in Canada shall be deemed to have become resident in Canada immediately before the particular time.

(2) Idem — Where a corporation formed at a particular time by the amalgamation or merger of, or by a plan of arrangement or other corporate reorganization in respect of, 2 or more corporations is at the particular time not resident in Canada, a predecessor that was immediately before the particular time resident in Canada shall be deemed to have ceased to be resident in Canada immediately before the particular time.

(3) Windings-up excluded — For greater certainty, subsections (1) and (2) do not apply to reorganizations occurring solely because of the acquisition of property of one corporation by another corporation, pursuant to the purchase of the property by the other corporation or because of the distribution of the property to the other corporation on the winding-up of the corporation.

History [s. 128.2]: S. 128.2 enacted by 1994, c. 21, s. 62, applicable after 1992 except that where a corporation elects in accordance with para. 111(4)(a) of 1994, c. 21 (i.e., elects before the end of December 1994 for new subsec. 250(5.1) to apply in respect of a continuance before 1993), the section applies to the corporation from the time at which the corporation was first granted articles of continuation (or similar constitutional documents) in any jurisdiction.

Definitions [s. 128.2]: "corporation" — 248(1), *Interpretation Act* 35(1); "predecessor" — 128.2(1); "property" — 248(1); "resident in Canada" — 250.

128.3 Former resident — replaced shares — If, in a transaction to which section 51, subparagraphs 85.1(1)(a)(i) and (ii) or section 86 or 87 apply, a person acquires a share (in this section referred to as the "new share") in exchange for another share (in this section referred to as the "old share"), for the purposes of section 119, subsections 126(2.21) to (2.23), 128.1(6) to (8), 180.1(1.4) and 220(4.5) and (4.6), the person is deemed not to have disposed of the old share, and the new share is deemed to be the same share as the old share.

Proposed Amendment — 128.3

Letter from Dept. of Finance, June 2, 2003:

Dear [xxx]

I am writing in response to your letter dated April 25, 2003 to Mr. Lawrence Purdy of this Division asking that we consider recommending an amendment to section 128.3 of the *Income Tax Act* ("Act") so that this section applies for the purposes of subparagraph 128.1(4)(b)(iv).

Under the taxpayer migration rules in section 128.1 of the Act, the post-departure disposition of a property can have important tax consequences for an emigrant individual. Section 128.3 of the Act allows for a deferral of these consequences in certain circumstances, by deeming the individual not to have disposed of shares that were converted to new shares under section 51 of the Act, or subject to a share for share exchange, reorganization or amalgamation under any of sections 85.1, 86 or 87 of the Act. Section 128.3 also deems the share received by an individual to be the same as the old share for the purposes of section 119, and subsections 126(2.21) to (2.23). These provisions provide tax credits for individuals who were subject to the departure rules. As well, the new share is deemed to be the same share for the purposes of subsections 128.1(6) to (8), which allow returning former residents to "unwind" transactions subject to the

departure tax rules, or in certain cases carry back future losses to the year of departure. By deeming the new share to be the same as the old share, the rule ensures that the individual does not lose access to these relieving provisions.

However, you have pointed out that section 128.3 does not apply for the purposes of subparagraph 128.1(4)(b)(iv). Under subparagraph 128.1(4)(b)(iv) property owned by an individual is not subject to the deemed disposition rules on emigration from Canada if the individual, during the last 10 years, was not resident in Canada for more than 60 months and owned the property when the individual first took up residence in Canada or inherited the property after that time. Since section 128.3 does not apply, an individual who immigrated to Canada owning shares, and received new shares after this time because of a share for share exchange, reorganization or merger, or because the shares were converted into new shares, would be deemed to dispose of these new shares upon emigration from Canada, even if the individual had resided here less than 60 months in the past 10 years. In your view this is an unfair result, and you request that we consider extending the policy of section 128.3 to include individuals who find themselves in this situation.

The policy intent of section 128.3 is to allow continuity in the migration rules' treatment of an individual where the individual's property has been replaced because of a situation that is typically beyond the individual's control, such as a corporate merger or reorganization. It is important to note that although this section is relatively new, and the previous rules, contained in section 48 of the Act, did not provide such relief, there was in the past less need for it. This was because the previous rules allowed individuals to defer departure tax on most property owned by them, by electing to treat the property as taxable Canadian property (TCP). That election meant that the property was not deemed disposed of upon emigration. Therefore, an individual who received new shares because of a reorganization or merger could elect on emigration to treat these as TCP and avoid the deemed disposition of this property on emigration. The election effectively removed the need to have something similar to section 128.3.

In my view, there is no reason in policy terms not to extend the relief provided in section 128.3 to subparagraph 128.1(4)(b)(iv), which as I have described provides an exception to the deemed disposition rules for short-term residents. The effect of the change would be that short-term residents who own shares on immigration and receive new shares on a tax deferred basis under any of sections 51, 85.1, 86 or 87 of the Act, would be deemed not to have disposed of the share and the new share would be the same as the old share, thereby allowing the share to continue to qualify for the exemption from the deemed disposition rules provided in subparagraph 128.1(4)(b)(iv).

You further request that we recommend this change be applicable for individuals who have emigrated from Canada after October 1, 1996 to ensure consistency. We do not normally recommend that changes such as this be made on such a markedly retroactive basis, since both taxpayers and the Government need to be able to rely at any particular time on the law as it exists at that time. Exceptionally, however, we do recommend linking a relieving change to the transaction or circumstance that makes the Government aware of the need for the change. In this case, we understand that this fact situation applies to your client's 2002 taxation year and therefore we are willing to recommend that this change apply to an individual's 2002 and subsequent taxation years.

I cannot offer any assurance that either the Minister of Finance or Parliament will agree with the recommendation that we intend to make in this regard. Nonetheless, I hope that this statement of our position is helpful. Thank you for bringing this issue to our attention.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

History: S. 128.3 added by 2001, c. 17, s. 125, applicable after October 1, 1996.

Definitions [s. 128.3]: "new share", "old share" — 128.3; "person", "share" — 248(1).

Private Corporations

129. (1) Dividend refund to private corporation — Where a return of a corporation's income under this Part for a taxation year is made within 3 years after the end of the year, the Minister

(a) may, on mailing the notice of assessment for the year, refund without application therefor an amount (in this Act referred to as its "dividend refund" for the year) equal to the lesser of

(i) 1/3 of all taxable dividends paid by the corporation on shares of its capital stock in the year and at a time when it was a private corporation, and

(ii) its refundable dividend tax on hand at the end of the year; and

(b) shall, with all due dispatch, make the dividend refund after mailing the notice of assessment if an application for it has been made in writing by the corporation within the period within which the Minister would be allowed under subsection 152(4) to assess tax payable under this Part by the corporation for the year if that subsection were read without reference to paragraph 152(4)(a).

Related Provisions: 15.1(2)(b) — Amount paid on small business development bond not a dividend for 129(1); 129(1.2) — Anti-avoidance; 129(2) — Application to other liability; 131(5) — Mutual fund corporation deemed to be a private corporation; 141.1 — Insurance corporation deemed not to be private corporation; 152(1)(a) — Determination of refund by Minister; 157(3) — Reduction in instalment obligations to reflect dividend refund; 160.1 — Where excess refunded; 186(5) — Deemed private corporation; 260(7) — Securities lending arrangement — amount deemed paid as a taxable dividend. See additional Related Provisions and Definitions at end of s. 129.

History: Para. 129(1)(b) amended by 1998, c. 19, s. 154, applicable after April 27, 1989. Para. 129(1)(b) formerly read:

(b) shall, with all due dispatch, make such a refund after mailing the notice of assessment if application therefor has been made in writing by the corporation within the period determined under paragraph 152(4)(b) or (c), as the case may be, within which the Minister may reassess tax payable by the corporation for the year.

Subpara. 129(1)(a)(i) amended by 1996, c. 21, subsec. 32(1), applicable to taxation years that end after June 1995 except that, in its application to such taxation years that began before July 1995, the subpara. shall be read as follows:

(i) an amount in respect of taxable dividends paid by the corporation on shares of its capital stock in the year and at a time when it was a private corporation equal to the total of

(A) 1/4 of all such dividends paid before July 1995, and

(B) 1/3 of all such dividends paid after June 1995,

Subpara. (a)(i) formerly read:

(i) 1/4 of all taxable dividends paid by the corporation in the year and at a time when it was a private corporation on shares of its capital stock, and

All that portion of subsec. 129(1) preceding subpara. (a)(ii) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 73(1), applicable to 1993 *et seq.* except that in its application to taxation years beginning before 1993 and ending after 1992, subpara. 129(1)(a)(i) shall be read as follows:

(i) the total of

(A) 1/4 of all taxable dividends paid by the corporation on shares of its capital stock in the year and before 1993, where the corporation was a private corporation at the end of the year, and

(B) 1/4 of all taxable dividends paid by the corporation on shares of its capital stock in the year and at a time after 1992 when it was a private corporation, and

That portion formerly read:

129. (1) Where a corporation was, at the end of any taxation year, a private corporation and a return of its income for the year has been made within 3 years from the end of the year, the Minister

(a) may, on mailing the notice of assessment for the year, refund without application therefor an amount (in this Act referred to as its "dividend refund" for the year) equal to the lesser of

(i) 1/4 of all taxable dividends paid by it in the year on shares of its capital stock, and

Selected Cases [subsec. 129(1)]: *Bulk Transfer Systems Inc. v. R.*, [2005] 2 C.T.C. 87 (FCA) (Dividend refund has no connection with Part I tax calculation); *Canwest Capital Inc. v. Canada*, [1996] 1 C.T.C. 2974 (TCC) (Normal application of provision not to be altered by subsection

129(1.2)); *King George Hotels Ltd. v. R.*, [1981] C.T.C. 87 (FCA) (Refundable dividend tax not created when property management business generates active business income).

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations; IT-432R2: Benefits conferred on shareholders.

(1.1) Dividends paid to bankrupt controlling corporation — In determining the dividend refund for a taxation year ending after 1977 of a particular corporation, no amount may be included by virtue of subparagraph (1)(a)(i) in respect of a taxable dividend paid to a shareholder that

(a) was a corporation that controlled (within the meaning assigned by subsection 186(2)) the particular corporation at the time the dividend was paid; and

(b) was a bankrupt (within the meaning assigned by subsection 128(3)) at any time during that taxation year of the particular corporation.

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations.

(1.2) Dividends deemed not to be taxable dividends — Where a dividend is paid on a share of the capital stock of a corporation and the share (or another share for which the share was substituted) was acquired by its holder in a transaction or as part of a series of transactions one of the main purposes of which was to enable the corporation to obtain a dividend refund, the dividend shall, for the purpose of subsection (1), be deemed not to be a taxable dividend.

Related Provisions: 87(2)(aa), (ii) — Amalgamations; 88(1)(e.5) — Winding-up; 129(7) — Capital gains dividend excluded; 248(10) — Series of transactions. See additional Related Provisions at end of s. 129.

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations.

(2) Application to other liability — Instead of making a refund that might otherwise be made under subsection (1), the Minister may, where the corporation is liable or about to become liable to make any payment under this Act, apply the amount that would otherwise be refundable to that other liability and notify the corporation of that action.

Related Provisions: 222(1)"action" — Ten-year limitation period applies to 129(2).

Selected Cases: *MNR v. 159890 Canada Inc.*, [1997] 3 C.T.C. 284 (FCTD) (Jeopardy orders not to be sought where other means available to Minister to secure tax).

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations.

(2.1) Interest on dividend refund — Where a dividend refund for a taxation year is paid to, or applied to a liability of, a corporation, the Minister shall pay or apply interest on the refund at the prescribed rate for the period beginning on the day that is the later of

(a) the day that is 120 days after the end of the year, and

(b) the day that is 30 days after the day on which the corporation's return of income under this Part for the year was filed under section 150, unless the return was filed on or before the day on or before which it was required to be filed,

and ending on the day on which the refund is paid or applied.

Related Provisions: 161.1 — Offset of refund interest against arrears interest.

History: Para. 129(2.1)(b) amended by 2003, c. 15, s. 111, applicable to taxation years that end after June 2003. The para. formerly read:

(b) the day on which the corporation's return of income under this Part for the year was filed under section 150, unless the return was filed on or before the day on or before which it was required to be filed,

Subsec. 129(2.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 73(2), applicable to dividend refunds paid or applied with respect to taxation years beginning after 1991.

Selected Cases [subsec. 129(2.1)]: *Canwest Capital Inc. v. Canada*, [1996] 1 C.T.C. 2974 (TCC) (Dividend was not caught by anti-avoidance provision).

Regulations: 4301(b) (prescribed rate of interest).

(2.2) Excess interest on dividend refund — Where, at any particular time, interest has been paid to, or applied to a liability of, a corporation under subsection (2.1) in respect of a dividend refund and it is determined at a subsequent time that the dividend refund was less than that in respect of which interest was so paid or applied,

(a) the amount by which the interest that was so paid or applied exceeds the interest, if any, computed in respect of the amount that is determined at the subsequent time to be the dividend refund shall be deemed to be an amount (in this subsection referred to as the "amount payable") that became payable under this Part by the corporation at the particular time;

(b) the corporation shall pay to the Receiver General interest at the prescribed rate on the amount payable, computed from the particular time to the day of payment; and

(c) the Minister may at any time assess the corporation in respect of the amount payable and, where the Minister makes such an assessment, the provisions of Divisions I and J apply, with such modifications as the circumstances require, in respect of the assessment as though it had been made under section 152.

Related Provisions: 20(1)(ll) — Deduction on repayment of interest; 161.1 — Offset of refund interest against arrears interest; 221.1 — Application of interest where legislation retroactive; 248(11) — Interest compounded daily.

History: Subsec. 129(2.2) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 73(2), applicable to dividend refunds paid or applied with respect to taxation years beginning after 1991.

Regulations: 4301(a) (prescribed rate of interest).

(3) Definition of "refundable dividend tax on hand" — In this section, "refundable dividend tax on hand" of a corporation at the end of a taxation year means the amount, if any, by which the total of

(a) where the corporation was a Canadian-controlled private corporation throughout the year, the least of

(i) the amount determined by the formula

$$A - B$$

where

A is 26⅔% of the corporation's aggregate investment income for the year, and

B is the amount, if any, by which

(I) the amount deducted under subsection 126(1) from the tax for the year otherwise payable by it under this Part

exceeds

(II) 9⅓% of its foreign investment income for the year,

(ii) 26⅔% of the amount, if any, by which the corporation's taxable income for the year exceeds the total of

(A) the least of the amounts determined under paragraphs 125(1)(a) to (c) in respect of the corporation for the year,

(B) 25/9 of the total of amounts deducted under subsection 126(1) from its tax for the year otherwise payable under this Part, and

(C) 10/4 of the total of amounts deducted under subsection 126(2) from its tax for the year otherwise payable under this Part, and

Proposed Amendment — 129(3)(a)(ii)(C)

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 70 will amend cl. 129(3)(a)(ii)(C) to replace "10/4 of" with "3 times", applicable to 2003 *et seq.*

Technical Notes: Section 129 allows a private corporation that pays a taxable dividend to obtain a partial refund of the income taxes it has paid on its investment income. For this purpose, paragraph 129(3)(a) adds to the refundable dividend tax on hand of a Canadian-controlled private corporation at the end of a taxation year the least of three amounts.

One of these amounts, which is described in subparagraph 129(3)(a)(ii), is 26 ⅔% of a corporation's taxable income, less income that either benefited from the section 125 small business deduction or supported a foreign tax credit (FTC). Income that supported an FTC is measured by multiplying both the corporation's non-business- and its business-income FTCs by factors that reflect assumed Canadian tax rates. Subparagraph 129(3)(a)(ii) is amended to adjust the factor for foreign business income. The factor for business-income FTCs will become 3. This implies an assumed tax rate of 33.3%.

(iii) the corporation's tax for the year payable under this Part determined without reference to section 123.2,

(b) the total of the taxes under Part IV payable by the corporation for the year, and

(c) where the corporation was a private corporation at the end of its preceding taxation year, the corporation's refundable dividend tax on hand at the end of that preceding year

exceeds

(d) the corporation's dividend refund for its preceding taxation year.

Related Provisions: 129(3.1) — Grandfathering for property disposed of before November 13, 1981; 141.1 — Insurance corporation deemed not to be private corporation; 257 — Formula cannot calculate to less than zero; 260(11)(c) — Amounts deemed paid where partnership of corporations enters into securities lending arrangement.

History: Subsec. 129(3) substituted by 1996, c. 21, subsec. 32(2), applicable to taxation years that end after June 1995 except that, in their application to such taxation years that began before July 1995, in computing the amount determined under each of subparas. 129(3)(a)(i) and (ii) there shall be deducted an amount equal to that proportion of ¼ of the amount otherwise determined under the subpara. that the number of days in the year that are before July 1995 is of the number of days in the year. Subsec. 129(3) formerly read:

(3) In this section, "refundable dividend tax on hand" of a corporation at the end of any particular taxation year means the amount, if any, by which the total of

(a) the total of all amounts each of which is an amount in respect of a taxation year commencing after it last became a private corporation and ending not later than the end of the particular taxation year and, where the taxation year commences after November 12, 1981, throughout which the corporation was a Canadian-controlled private corporation, equal to, in respect of taxation years ending before 1978, the least of, in respect of taxation years ending after 1977 and commencing before 1987, ⅔ of the least of, in respect of taxation years commencing after 1986 and before 1988, the least of, and in respect of taxation years commencing after 1987, ⅘ of the least of

(i) 25% of the total of all amounts each of which is

(A) in respect of a taxation year ending before November 13, 1981, the amount, if any, by which the total of its Canadian investment income for the year and its foreign investment income for the year exceeds the amount deductible under paragraph 111(1)(b) from the corporation's income for the year, or

(B) in respect of a taxation year ending after November 12, 1981, the amount, if any, by which the total of the amounts that would, if subsection (4) were read without reference to C in the definition "Canadian investment income" in that subsection, be its Canadian investment income for the year and its foreign investment income for the year, exceeds the total of

(I) the amount, if any, deducted under paragraph 111(1)(b) from the corporation's income for the year, and

(II) the total of all amounts each of which is the amount of the corporation's loss for the year from a source that is property,

(ii) the amount, if any, by which the total of

(A) 25% of the corporation's Canadian investment income for the year, and

(B) the amount, if any, by which 30% of the corporation's foreign investment income for the year exceeds the total of amounts deducted under subsection 126(1) from the tax for the year otherwise payable by it under this Part,

exceeds 25% of the amount, if any, deducted under paragraph 111(1)(b) from the corporation's income for the year,

(iii) 25% of the amount, if any, by which the corporation's taxable income for the year exceeds the total of

(A) the least of the amounts determined under paragraphs 125(1)(a) to (c) in respect of the corporation for the year,

(B) 10/3 of the total of amounts deducted under subsection 126(1) from its tax for the year otherwise payable under this Part, and

(C) 10/4 of the total of amounts deducted under subsection 126(2) from its tax for the year otherwise payable under this Part, and

(iv) 5/4 of the amount of the corporation's tax for the year payable under this Part determined without reference to section 123.2,

(b) the total of the taxes under Part IV payable by the corporation for the particular taxation year and any previous taxation years ending after it last became a private corporation, and

(b.1) the amount, if any, of the corporation's addition at December 31, 1986 of refundable dividend tax on hand

exceeds the total of

(c) the total of the corporation's dividend refunds for taxation years ending after it last became a private corporation and before the particular taxation year,

(d) the amount, if any, of the corporation's reduction at December 31, 1977 of refundable dividend tax on hand, and

(e) the amount, if any, of the corporation's reduction at December 31, 1987 of refundable dividend tax on hand.

That portion of subsec. 129(3) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 73(3), applicable to 1993 *et seq.* That portion formerly read:

(3) In this section, "refundable dividend tax on hand" of a private corporation at the end of any particular taxation year means the amount, if any, by which the total of

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations; IT-269R3: Part IV tax on taxable dividends received by a private corporation or a subject corporation.

Forms: T713: Addition at December 31, 1986 of RDTOH.

(3.1) Application [for taxation years that end before 2003] — Where, in a taxation year that begins

after November 12, 1981, a corporation that last became a private corporation on or before that date and that was throughout the year a private corporation, other than a Canadian-controlled private corporation, has included in its income for the year an amount in respect of property that the corporation

(a) disposed of before November 13, 1981,

(b) was obligated to dispose of under the terms of an agreement in writing entered into before November 13, 1981, or

(c) is deemed by subsection 44(2) to have disposed of at any time after November 12, 1981 because of an event referred to in paragraph (b), (c) or (d) of the definition "proceeds of disposition" in section 54 in respect of the disposition that occurred before November 13, 1981,

paragraph 3(a)[37] shall apply as if the corporation were a Canadian-controlled private corporation throughout the year, except that the total of the amounts determined under that paragraph in respect of the corporation for the year shall not exceed the amount that would be so determined if the only income of the corporation for the year were the amount included in respect of the disposition of such property.

History: Subsec. 129(3.1) added by 2001, c. 17, s. 126, applicable to taxation years that end after June 1995 and before 2003.

History [former subsec. 129(3.1)]: Former subsec. 129(3.1) repealed by 1996, c. 21, subsec. 32(2), applicable to taxation years that end after June 1995. Subsec. (3.1) formerly read:

(3.1) Definition of "reduction at December 31, 1977 of refundable dividend tax on hand" — In subsection (3), "reduction at December 31, 1977 of refundable dividend tax on hand" of a corporation means the amount that is ⅓ of the amount, if any, by which the total of

(a) the amount, if any, of the corporation's refundable dividend tax on hand at the end of its 1977 taxation year, and

(b) the amount, if any, of the tax under Part IV payable by the corporation for its 1978 taxation year in respect of taxable dividends received by it in that year and before 1978,

exceeds the total of

(c) the corporation's dividend refund, if any, for its 1977 taxation year, and

(d) ⅓ of the taxable dividends, if any, paid by the corporation in its 1978 taxation year and before 1978.

(3.2) [Repealed]

History: Subsec. 129(3.2) restored as 129(3.1) by 2001, c. 17, s. 126 (see under 126(3.1)).

Subsec. 129(3.2) repealed by 1996, c. 21, subsec. 32(2), applicable to taxation years that end after June 1995.Subsec. (3.1) formerly read:

(3.2) Application — Where, in a taxation year commencing after November 12, 1981, a corporation that last became a private corporation on or before that date and that was throughout the year a private corporation, other than a Canadian-controlled private corporation, has included in its income for the year an amount in respect of property that the corporation

(a) disposed of before November 13, 1981,

(b) was obligated to dispose of under the terms of an agreement in writing entered into before November 13, 1981, or

(c) is deemed by subsection 44(2) to have disposed of at any time after November 12, 1981 by virtue of an event referred to in paragraph (b), (c) or (d) of the definition "proceeds of disposition" in section 54 in respect of the disposition that occurred before November 13, 1981,

paragraph (3)(a) shall apply as if the corporation were a Canadian-controlled private corporation throughout the year, except that the total of the amounts determined under that paragraph in respect of the corporation for the year shall not exceed the amount that would be so determined if the only income of the corporation for the year were the amount included in respect of the disposition of such property.

(3.3) [Repealed]

History: Subsec. 129(3.3) repealed by 1996, c. 21, subsec. 32(2), applicable to taxation years that end after June 1995.Subsec. (3.3) formerly read:

(3.3) Definition of "addition at December 31, 1986 of refundable dividend tax on hand" — In subsection (3), "addition at December 31, 1986 of refundable dividend tax on hand" of a corporation means the amount that is ½ of the amount, if any, by which

(a) the amount, if any, of the corporation's refundable dividend tax on hand at the end of its last taxation year commencing before 1987, determined without reference to paragraph (3)(b.1),

exceeds the total of

(b) the amount, if any, of the tax payable under Part IV by the corporation for its last taxation year commencing before 1987 in respect of taxable dividends received by it in that year and after 1986,

(c) ¼ of the taxable dividends, if any, paid by the corporation before 1987 in its last taxation year commencing before 1987, and

(d) any amount added under paragraph 88(1)(e.5) in computing the corporation's refundable dividend tax on hand at the end of its last taxation year commencing before 1987 in respect of the refundable dividend tax on hand of a subsidiary (within the meaning assigned by subsection 88(1)) for its 1987 or 1988 taxation year.

(3.4) [Repealed]

History: Subsec. 129(3.4) repealed by 1996, c. 21, subsec. 32(2), applicable to taxation years that end after June 1995.Subsec. (3.4) formerly read:

(3.4) Reduction under para. (3.3)(a) — Where a corporation has received a taxable dividend after February 25, 1986 and before 1987 as part of a transaction effected after February 25, 1986 or series of transactions each of which was effected after that day and it may be reasonably considered that one of the main purposes thereof was to increase the corporation's refundable dividend tax on hand at the end of a taxation year by virtue of the application of subsection (3.3), the amount otherwise determined under paragraph (3.3)(a) in respect of the corporation shall be reduced by the tax payable under Part IV by the corporation in respect of the dividend.

(3.5) [Repealed]

History: Subsec. 129(3.5) repealed by 1996, c. 21, subsec. 32(2), applicable to taxation years that end after June 1995.Subsec. (3.5) formerly read:

(3.5) Definition of "reduction at December 31, 1987 of refundable dividend tax on hand" — In subsection (3), "reduction at December 31, 1987 of refundable dividend tax on hand" of a corporation means the amount that is ¼ of the amount, if any, by which

(a) the amount, if any, of the corporation's refundable dividend tax on hand at the end of its last taxation year commencing before 1988, determined without reference to paragraph (3)(e),

exceeds the total of

(b) the amount, if any, of the tax payable under Part IV by the corporation for its last taxation year commencing before 1988 in respect of taxable dividends received by it in that year and after 1987,

(c) ⅓ of the taxable dividends, if any, paid by the corporation before 1988 in its last taxation year commencing before 1988,

(d) any amount added, under paragraph 88(1)(e.5) in computing the corporation's refundable dividend tax on hand at the end of its last taxation year beginning before 1988, in respect of the refundable dividend tax on hand of a subsidiary (within the meaning assigned by subsection 88(1)) for a taxation year ending after 1987, and

(e) an amount equal to that proportion of ⅕ of the least of the amounts determined under subparagraphs (3)(a)(i) to (iv) in respect of its last taxation year commencing before 1988 that the number of days in the year that are after 1987 is of the number of days in the year.

[37] *Sic.* Should read (3)(a) — ed.

Para. 129(3.5)(d) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 108, applicable to 1988 *et seq.* Para. (d) formerly read:

(d) any amount added under paragraph 88(1)(e.5) in computing the corporation's refundable dividend tax on hand at the end of its last taxation year commencing before 1988 in respect of the refundable dividend tax on hand of a subsidiary (within the meaning assigned by subsection 88(1)) for a taxation year commencing after 1987, and

(4) Definitions — The definitions in this subsection apply in this section.

History: The opening words of subsec. 129(4) amended by 1996, c. 21, subsec. 32(2), applicable to tax years that end after June 1995. They formerly read:

(4) In subsection (3),

"aggregate investment income" of a corporation for a taxation year means the amount, if any, by which the total of all amounts, each of which is

(a) the amount, if any, by which

(i) the eligible portion of the corporation's taxable capital gains for the year

exceeds the total of

(ii) the eligible portion of its allowable capital losses for the year, and

(iii) the amount, if any, deducted under paragraph 111(1)(b) in computing its taxable income for the year, or

(b) the corporation's income for the year from a source that is a property, other than

(i) exempt income,

(ii) an amount included under subsection 12(10.2) in computing the corporation's income for the year,

(iii) the portion of any dividend that was deductible in computing the corporation's taxable income for the year, and

(iv) income that, but for paragraph 108(5)(a), would not be income from a property,

exceeds the total of all amounts, each of which is the corporation's loss for the year from a source that is a property;

Related Provisions: 123.3 — Refundable tax on CCPC's investment income; 129(3)(a)(i)A — Refund of 26⅔% of aggregate investment income; 129(4)"income" or "loss" — Specified investment business income and income relating to an active business; 131(11)(b) — Application of definition to labour-sponsored venture capital corporation.

History: The definition "aggregate investment income" added to subsec. 129(4) by 1996, c. 21, subsec. 32(2), applicable to tax years that end after June 1995.

Interpretation Bulletins: IT-484R2: Business investment losses.

"Canadian investment income" — [Repealed]

History: The definition "Canadian investment income" in subsec. 129(4) repealed by 1996, c. 21, subsec. 32(2), applicable to taxation years that end after June 1995. It formerly read:

"Canadian investment income" of a corporation for a taxation year means the amount determined by the formula

$$(A + B) - C$$

where

A is the amount determined by the formula

$$(K - L) - (M - N)$$

where

K is the total of such of the corporation's taxable capital gains for the year from dispositions of property as may reasonably be considered to be income from sources in Canada,

L is the total of all amounts each of which is the portion of a taxable capital gain referred to in the description of K in this definition from the disposition by it of a property, other than a designated property, that may reasonably be regarded as having accrued while the property, or a property for which it was substituted, was property of a corporation other than a Canadian-controlled private corporation, an investment corporation, a mortgage investment corporation or a mutual fund corporation,

M is the total of such of the corporation's allowable capital losses for the year from dispositions of property as may reasonably be considered to be losses from sources in Canada, and

N is the total of all amounts each of which is the portion of an allowable capital loss referred to in the description of M in this definition from the disposition by it of a property, other than a designated property, that may reasonably be regarded as having accrued while the property, or a property for which it was substituted, was property of a corporation other than a Canadian-controlled private corporation, an investment corporation, a mortgage investment corporation or a mutual fund corporation,

B is the total of all amounts each of which is the corporation's income for the year from a source in Canada that is property (other than exempt income, an amount included under subsection 12(10.2) in the corporation's income for the year, any dividend the amount of which was deductible in computing its taxable income for the year or income that, but for paragraph 108(5)(a), would not be income from a property), determined after deducting all outlays and expenses deductible in computing the corporation's income for the year to the extent that they can reasonably be regarded as having been made or incurred for the purpose of earning income from that property[, and]

C is the total of all amounts each of which is the corporation's loss for the year from a source in Canada that is a property;

The description of B in "Canadian investment income" in subsec. 129(4) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 73(4), applicable to 1991 *et seq.* That description formerly read:

B is the total of all amounts each of which is the corporation's income for the year from a source in Canada that is property (other than exempt income, any dividend the amount of which was deductible in computing its taxable income for the year or income that, but for paragraph 108(5)(a), would not be income from a property), determined after deducting all outlays and expenses deductible in computing the corporation's income for the year to the extent that they may reasonably be regarded as having been made or incurred for the purpose of earning income from that property, and

"eligible portion" of a corporation's taxable capital gains or allowable capital losses for a taxation year is the total of all amounts each of which is the portion of a taxable capital gain or an allowable capital loss, as the case may be, of the corporation for the year from a disposition of a property that, except where the property was a designated property (within the meaning assigned by subsection 89(1)), cannot reasonably be regarded as having accrued while the property, or a property for which it was substituted, was property of a corporation other than a Canadian-controlled private corporation, an investment corporation, a mortgage investment corporation or a mutual fund corporation;

Related Provisions: 248(5) — Substituted property.

History: The definition "eligible portion" added to subsec. 129(4) by 1996, c. 21, subsec. 32(2), applicable to taxation years that end after June 1995.

"foreign investment income" of a corporation for a taxation year is the amount that would be its aggregate investment income for the year if

(a) every amount of its income, loss, capital gain or capital loss for the year that can reasonably be regarded as being from a source in Canada were nil,

(b) no amount were deducted under paragraph 111(1)(b) in computing its taxable income for the year, and

(c) this Act were read without reference to paragraph (a) of the definition "income" or "loss" in this subsection;

History: The definition "foreign investment income" in subsec. 129(4) amended by 1996, c. 21, subsec. 32(2), applicable to taxation years that end after June 1995. It formerly read:

"foreign investment income" of a corporation for a taxation year means the amount that would be determined under the definition "Canadian investment income" in this subsection in respect of the corporation for the year if the references in that definition to "in Canada" were read as references to "outside Canada" and this Act were read without reference to subsection (4.1).

"income" or "loss" of a corporation for a taxation year from a source that is a property

(a) includes the income or loss from a specified investment business carried on by it in Canada other than income or loss from a source outside Canada, but

(b) does not include the income or loss from any property

(i) that is incident to or pertains to an active business carried on by it, or

(ii) that is used or held principally for the purpose of gaining or producing income from an active business carried on by it.

Related Provisions: 129(4)"foreign investment income"(c) — Para. (a) ignored for purposes of determining foreign investment income.

History: The definition "income" or "loss" added to subsec. 129(4) by 1996, c. 21, subsec. 32(2), applicable to taxation years that end after June 1995.

Interpretation Bulletins: IT-73R6: The small business deduction.

Selected Cases [subsec. 129(4)]: *Actra Fraternal Benefit Society v. R.*, [1997] 3 C.T.C. 61 (FCA); rev'g [1995] 2 C.T.C. 2671 (TCC) (Allocation of assets to particular fund was rebuttable presumption only); *Irving Garber Sales Canada Ltd. v. MNR*, [1992] 2 C.T.C. 261 (FCTD) (Term deposit interest was active business income to extent of business requirements, balance was investment income); *Echo Bay Mines Ltd. v. Canada*, [1992] 2 C.T.C. 182 (FCTD) (Gains from settlement of forward sales contracts for silver were "resource profits"); *Canadian Marconi Co. v. R.*, [1986] 2 C.T.C. 465 (SCC) (Short-term investment earnings income from active business; "Canadian manufacturing and processing profits" not restricted to income from manufacturing or processing); *Ensite Ltd. v. R.*, [1986] 2 C.T.C. 459 (SCC) (Deposits as security for foreign currency loans in financing manufacturing plant were "property used or held in the carrying out of its business"; interest earned not foreign investment income); *Burri v. MNR*, [1985] 2 C.T.C. 42 (FCTD) (Income from apartment building "from source in Canada that is property" qualifies as "Canadian investment income"); *Morbane Developments Ltd. v. MNR*, [1983] C.T.C. 338 (FCA) (Compensation payment from expropriation income was from active business); *R. v. Brown Boveri Howden Inc.*, [1983] C.T.C. 301 (FCA) (Interest on short-term notes originating from property used by corporation in the course of its business not "Canadian investment income"); *R. v. Marsh & McLennan*, [1983] C.T.C. 231 (FCA) (Income from investments used in carrying on of business excluded from "Canadian investment income" when investments and main business interdependent); *Riviera Hotel Co. Ltd. v. R.*, [1982] C.T.C. 30 (FCTD) (Income from hotel business not "Canadian investment income"); *Supreme Theatres v. R.*, [1981] C.T.C. 190 (FCTD) (Rental income part of active business).

(4.1) [Repealed]

History: Subsec. 129(4.1) repealed by 1996, c. 21, subsec. 32(2), applicable to taxation years that end after June 1995.Subsec. (4.1) formerly read:

(4.1) Interpretation of "income" or "loss" — For the purposes of the definition "Canadian investment income" in subsection (4) and subsection (6), "income" or "loss" of a corporation for a year from a source in Canada that is a property includes the income or loss from a specified investment business carried on by it in Canada other than income or loss from a source outside Canada but does not include income or loss

(a) from any other business;

(b) from any property that is incident to or pertains to an active business carried on by it; or

(c) from any property used or held principally for the purpose of gaining or producing income from an active business carried on by it.

Selected Cases [subsec. 129(4.1)]: *Shamita Inc. v. R.*, [1998] 2 C.T.C. 2974 (TCC) (Income from a property includes more than just income from a specified investment business).

(4.2) [Repealed]

History: Subsec. 129(4.2) repealed by 1996, c. 21, subsec. 32(2), applicable to taxation years that end after June 1995.Subsec. (4.2) formerly read:

(4.2) Idem — For the purposes of the definition "foreign investment income" in subsection (4), "income" or "loss" of a corporation for a year from a source outside Canada that is a property does not include the income or loss from any property

(a) that is incident to or pertains to an active business carried on by it; or

(b) that is used or held principally for the purpose of gaining or producing income from an active business carried on by it.

(4.3) [Repealed]

History: Subsec. 129(4.3) repealed by 1996, c. 21, subsec. 32(2), applicable to taxation years that end after June 1995.Subsec. (4.3) formerly read:

(4.3) Definition of "designated property" — In this section, "designated property" has the meaning assigned by subsection 89(1).

(5) [Repealed]

History: Subsec. 129(5) repealed by 1996, c. 21, subsec. 32(2), applicable to taxation years that end after June 1995. Subsec. (5) formerly read:

(5) Reduction of refundable dividend tax on hand — Notwithstanding any other provision of this section, the least of the amounts determined under subparagraphs (3)(a)(i) to (iv) in respect of the 1972 or 1973 taxation year of a corporation is,

(a) in respect of its 1972 taxation year, 93% of the least of the amounts so determined; and

(b) in respect of its 1973 taxation year, the total of

(i) 93% of that proportion of the least of the amounts so determined that the number of days in that portion of the year that is before 1973 is of the number of days in the whole year, and

(ii) 100% of that proportion of the least of the amounts so determined that the number of days in that portion of the year that is after 1972 is of the number of days in the whole year.

(6) Investment income from associated corporation deemed to be active business income — Where any particular amount paid or payable to a corporation (in this subsection referred to as the "recipient corporation") by another corporation (in this subsection referred to as the "associated corporation") with which the recipient corporation was associated in any particular taxation year commencing after 1972, would otherwise be included in computing the income of the recipient corporation for the particular year from a source in Canada that is a property, the following rules apply:

(a) for the purposes of subsection (4), in computing the recipient corporation's income for the year from a source in Canada that is a property,

(i) there shall not be included any portion (in this subsection referred to as the "deductible portion") of the particular amount that was or may be deductible in computing the income of the associated corporation for any taxation year from an active business carried on by it in Canada, and

(ii) no deduction shall be made in respect of any outlay or expense, to the extent that that outlay or

expense may reasonably be regarded as having been made or incurred by the recipient corporation for the purpose of gaining or producing the deductible portion; and

(b) for the purposes of this subsection and section 125,

(i) the deductible portion shall be deemed to be income of the recipient corporation for the particular year from an active business carried on by it in Canada, and

(ii) any outlay or expense, to the extent described in subparagraph (a)(ii), shall be deemed to have been made or incurred by the recipient corporation for the purpose of gaining or producing that income.

Related Provisions: 125(3) — Allocation of active business income among associated corporations; 256(1) — Associated corporations.

Selected Cases [subsec. 129(6)]: *Norco Development Ltd. v. R.*, [1985] 1 C.T.C. 130 (FCTD) (Interest payments from partnership of corporations active business income when corporations associated).

Interpretation Bulletins: IT-73R6: The small business deduction; IT-243R4: Dividend refund to private corporations.

(7) Meaning of "taxable dividend" — For the purposes of this section, "taxable dividend" does not include a capital gains dividend within the meaning assigned by subsection 131(1).

Related Provisions: 129(1.2) — Dividends deemed not to be taxable dividends; 157(3) — Private, mutual fund and non-resident owned investment corporations.

(8) Application of section 125 — Expressions used in this section and not otherwise defined for the purposes of this section have the same meanings as in section 125.

Selected Cases [s. 129]: *Groupe Commerce, Cie D'assurances v. R.*, [1999] 4 C.T.C. 54 (FCA); aff'g [1996] 3 C.T.C. 2066 (TCC) (No refundable dividend tax available to insurance companies); *L'Heureux v. Canada*, [1995] 1 C.T.C. 2850 (TCC) (Circular calculations of tax proper in certain "butterfly" transactions).

Definitions [s. 129]: "active business" — 125(7), 129(8), 248(1); "aggregate investment income" — 129(4); "allowable capital loss" — 38(b), 248(1); "amount", "assessment" — 248(1); "associated corporation" — 256(1); "business" — 248(1); "Canada" — 255; "Canadian-controlled private corporation" — 125(7), 248(1); "carrying on business" — 253; "corporation" — 248(1), *Interpretation Act* 35(1); "designated property" — 89(1), 129(4.3); "dividend" — 248(1); "dividend refund" — 129(1); "eligible portion" — 129(4); "exempt income" — 248(1); "income" — from property 129(4.1), (4.2); "income of the corporation for the year from an active business" — 125(7), 129(6), 129(8); "investment corporation" — 130(3), 248(1); "investment tax credit" — 127(9), 248(1); "loss" — from property 129(4.1), (4.2); "Minister" — 248(1); "prescribed rate" — Reg. 4301; "private corporation" — 89(1), 131(5), 186(5), 248(1); "property" — 129(4.1), (4.2), 248(1); "refundable dividend tax on hand" — 129(3); "series of transactions" — 248(10); "share" — 248(1); "specified investment business" — 125(7), 248(1); "substituted property" — 248(5); "tax payable" — 248(2); "taxable capital gain" — 38(a), 248(1); "taxable dividend" — 89(1), 129(1.2), 129(7), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "writing" — *Interpretation Act* 35(1).

Investment Corporations

130. (1) Deduction from tax — A corporation that was, throughout a taxation year, an investment corporation may deduct from the tax otherwise payable by it under this Part for the year an amount equal to 20% of the amount, if any, by which its taxable income for the year exceeds its taxed capital gains for the year.

Related Provisions: 131(10) — Investment corporation can elect not to be restricted financial institution; 142.2(1)"financial institution"(c)(i) — Investment corporation not subject to mark-to-market rules.

Interpretation Bulletins: IT-98R2: Investment corporations (archived).

(2) Application of subsecs. 131(1) to (3.2) and (6) — Where a corporation was an investment corporation throughout a taxation year (other than a corporation that was a mutual fund corporation throughout the year), subsections 131(1) to (3.2) and (6) apply in respect of the corporation for the year

(a) as if the corporation had been a mutual fund corporation throughout that and all previous taxation years ending after 1971 throughout which it was an investment corporation; and

(b) as if its capital gains redemptions for that and all previous taxation years ending after 1971, throughout which it would, but for the assumption made by paragraph (a), not have been a mutual fund corporation, were nil.

History: The opening words of subsec. 130(2) amended by 1998, c. 19, subsec. 155(1), applicable to 1993 *et seq.* The opening words formerly read:

(2) Application of subsecs. 131(1) to (3.2) — Where a corporation was throughout a taxation year an investment corporation (other than a mutual fund corporation), subsections 131(1) to (3.2) apply in respect of the corporation for the year

That portion of subsec. 130(2) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 74, applicable to capital gains refunds paid or applied with respect to taxation years beginning after 1991. That portion formerly read:

(2) Application of ss. 131(1) to (3) — Where a corporation was, throughout a taxation year, an investment corporation other than a mutual fund corporation, subsections 131(1) to (3) are applicable in respect of the corporation for the year

Interpretation Bulletins: IT-98R2: Investment corporations (archived).

Forms: T2 SCH 18: Federal and provincial or territorial capital gains refund; T5: Statement of investment income; T5 Summ: Return of investment income.

(3) Meaning of expressions "investment corporation" and "taxed capital gains" — For the purposes of this section,

(a) a corporation is an "investment corporation" throughout any taxation year in respect of which the expression is being applied if it complied with the following conditions:

(i) it was throughout the year a Canadian corporation that was a public corporation,

(ii) at least 80% of its property throughout the year consisted of shares, bonds, marketable securities or cash,

(iii) not less than 95% of its income (determined without reference to subsection 49(2)) for the year was derived from, or from dispositions of, investments described in subparagraph (ii),

(iv) not less than 85% of its gross revenue for the year was from sources in Canada,

(v) not more than 25% of its gross revenue for the year was from interest,

(vi) at no time in the year did more than 10% of its property consist of shares, bonds or securities of any one corporation or debtor other than Her Majesty in right of Canada or of a province or a Canadian municipality,

(vii) no person would have been a specified shareholder of the corporation in the year if

(A) the portion of the definition "specified shareholder" in subsection 248(1) before paragraph (a) were read as follows:

" "specified shareholder" of a corporation in a taxation year means a taxpayer who owns, directly or indirectly, at any time in the year, more than 25% of the issued shares of any class of the capital stock of the corporation and, for the purposes of this definition,"

(B) paragraph (a) of that definition were read as follows:

"(a) a taxpayer is deemed to own each share of the capital stock of a corporation owned at that time by a person related to the taxpayer,"

(C) that definition were read without reference to paragraph (d) of that definition,

and

(D) paragraph 251(2)(a) were read as follows:

"(a) an individual and

(i) the individual's child (as defined in subsection 70(10)) who is under 19 years of age, or

(ii) the individual's spouse or common-law partner;"

(viii) an amount not less than 85% of the total of

(A) ⅔ of the amount, if any, by which its taxable income for the year exceeds its taxed capital gains for the year, and

(B) the amount, if any, by which all taxable dividends received by it in the year to the extent of the amount thereof deductible under section 112 or 113 from its income for the year exceeds the amount that the corporation's non-capital loss for the year would be if the amount determined in respect of the corporation for the year under paragraph 3(b) was nil,

(less any dividends or interest received by it in the form of shares, bonds or other securities that had not been sold before the end of the year) was distributed, otherwise than by way of capital gains dividends, to its shareholders before the end of the year; and

(b) the amount of the "taxed capital gains" of a taxpayer for a taxation year is the amount, if any, by which

(i) its taxable capital gains for the year from dispositions of property

exceeds

(ii) the total of its allowable capital losses for the year from dispositions of property and the amount, if any, deducted under paragraph 111(1)(b) for the purpose of computing its taxable income for the year.

Related Provisions: 4(1) — Income or loss from a source; 112 — Deduction of dividends received; 113 — Deduction for dividends from foreign affiliate; 130(2) — Application of mutual fund corporation rules; 130(4) — Wholly owned subsidiaries; 132(5) — Taxed capital gains definition applies to mutual fund trusts; 184(2) — Tax on excess dividend paid by corporation; 248(1)"investment corporation" — Definition applies to entire Act.

History: Cl. 130(3)(a)(vii)(D) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

S.C. 1999, c. 22, s. 92 amended the amendment made to subpara. 130(3)(a)(vii) by S.C. 1998, c. 19 (Bill C-28) and amended the application so that it is applicable to corporations for taxation years that begin after June 20, 1996 except that, by subsec. 155(4) of S.C. 1998, c. 19 (as amended by 1999, c. 22), where

(a) a corporation was an investment corporation on June 20, 1996,

(b) a particular person is a specified shareholder of the corporation in the year, and

(c) the particular person

(i) was a specified shareholder of the corporation on June 20, 1996, or

(ii) both

(A) was a specified shareholder of the corporation at any time after June 20, 1996 and before August 14, 1998, and

(B) would have been a specified shareholder of the corporation on June 20, 1996 if subpara 130(3)(a)(vii), as amended, were read without reference to clauses (B) and (D),

subpara. 130(3)(a)(vii), as amended, does not apply to the corporation, with respect to the particular person and persons related to the particular person, except as provided in subsections 155(5) to (11) of the said c. 19, which were also amended by 1999, c. 22 (see below). These amendments by 1999, c. 22 are deemed to have come into force on June 18, 1998. The amendment made by S.C. 1998, c. 19 read:

(vii) no person would be a specified shareholder of the corporation in the year if, in the definition "specified shareholder" in subsection 248(1),

(A) the portion of that definition before paragraph (a) were read as follows:

"specified shareholder" of a corporation in a taxation year means a taxpayer who owns, directly or indirectly, at any time in the year, more than 25% of the issued shares of any class of the capital stock of the corporation and, for the purpose of this definition,

and

(B) the reference in paragraph (d) of that definition to "not less than 10%" were read as a reference to "more than 25%", and

Subsecs. 155(5) to (11) of S.C. 1998, c. 19, (as amended by 1999, c. 22, s. 92, deemed to have come into force on June 18, 1998) provide:

(5) [The amendment to subpara. 130(3)(a)(vii)] applies to a corporation that was an investment corporation on June 20, 1996 for a taxation year that begins after that day if, at any time after that day and before the end of the year, a particular person described in paragraph [155(4)(b) of the said c. 19 (above)] in respect of the corporation for the year contributes capital to the corporation or acquires a share of the capital stock of the corporation other than by a permitted acquisition.

(6) [The amendment to subpara. 130(3)(a)(vii)] applies to a corporation that was an investment corporation on June 20, 1996 for a taxation year that begins after that day where, at any time after that day and before the end of the year, a newly related person in respect of the corporation

(a) contributed capital to the corporation; or

(b) held at any particular time property (in this paragraph referred to as an "ineligible investment") that is

(i) a share of the capital stock of the corporation, or

(ii) a share of the capital stock of a corporation, or an interest in a partnership or trust, that held an ineligible investment at the particular time.

(7) For the purpose of subsection (6), a newly related person in respect of a corporation at any time means a person who, at any other time that is before that time and after June 20, 1996, became related to a particular person described in paragraph [155(4)(b) of the said c. 19 (above)] in respect of the corporation, but does not include a person who would, if the taxation year of the corporation that includes that other time had ended immediately before that other time, have been a particular person described in paragraph [155(4)(b) of the said c. 19 (above)] in respect of the corporation for the year.

(8) [Repealed by 1999, c. 22, s. 92]

(9) For the purposes of subsections (5) to (8),

(a) where at a particular time

(i) a trust that existed on June 20, 1996 distributes a share of the capital stock of a corporation to a person who was a beneficiary under the trust throughout the period from June 20, 1996 to the particular time in satisfaction of all or any part of the beneficiary's capital interest in the trust, or

(ii) a partnership that existed on June 20, 1996 distributes, on ceasing to exist, a share of the capital stock of a corporation or an interest in a share to a person who was a member of the partnership throughout the period from June 20, 1996 to the particular time,

the share is deemed to have been owned by the beneficiary or member from the later of June 20, 1996 and the time the share was last acquired by the trust or partnership until the particular time; and

(b) where a person who is a beneficiary of a trust or a member of a partnership is deemed by paragraph (b), (c) or (e) of the definition "specified shareholder" in subsection 248(1) of the Act to own a share owned by the partnership or trust, the person is deemed to have acquired the share at the later of the time the share was acquired by the trust or partnership and the time the person last became a beneficiary of the trust or a member of the partnership.

(10) At any time on or after the day of the death of a person described in paragraph [155(4)(c) of the said c. 19 (above)] in respect of a corporation and before the third anniversary of that day,

(a) the estate of the deceased person is deemed to be a person described in paragraphs (4)(b) and (c) [of the said c. 19 (above)] who is related to each person who, throughout the period that begins at the end of June 20, 1996 and ends at the time of death, was related to the deceased person;

(b) notwithstanding subsection (7), the estate is deemed not to be a newly related person in respect of the corporation;

(c) notwithstanding subsection (11), the acquisition of shares of the corporation's capital stock by the estate from the deceased person is deemed to be a permitted acquisition; and

(d) the estate is deemed not to be a trust for the purposes of subparagraph (9)(a)(i) of this Act and paragraphs (b) and (e) of the definition "specified shareholder" in subsection 248(1) of the *Income Tax Act*.

(11) The definitions in this subsection apply in subsections (4) to (10) [of the said c. 19 (above)] and this subsection.

"permitted acquisition" means an acquisition by a particular person of a share of a class of the capital stock of a corporation that was

(a) held, at each particular time after June 20, 1996 and before the time at which the particular person acquired it, or

(b) issued after June 20, 1996 by the corporation as a stock dividend and held, at each particular time after the time the share was issued and before the time at which the particular person acquired it,

by the particular person or by a person who was related to the particular person throughout the period that begins at the end of June 20, 1996 and ends at the particular time if, immediately after the time at which the particular person acquires the share, the total percentage of the issued shares of that class held by the particular person and persons related to the particular person (or in the case of acquisitions before August 14, 1998, by the particular person and persons with whom the particular person did not deal at arm's length immediately after the acquisition) does not exceed the permitted percentage for the particular person in respect of that class of shares.

"permitted percentage" for a particular person in respect of any class of shares of the capital stock of a corporation means

(a) in respect of acquisitions of shares before August 14, 1998, the greatest percentage that is the total percentage of the issued shares of a class of the capital stock of the corporation held at the end of June 20, 1996 by the particular person and persons with whom the particular person did not at that time deal at arm's length; and

(b) in any other case, the greater of

(i) the greatest percentage that is the total percentage of the issued shares of a class of the capital stock of the corporation held at the end of June 20, 1996 by the particular person and persons related to the particular person, and

(ii) the greatest percentage that is the total percentage of the issued shares of a class of the capital stock of the corporation held at the beginning of August 14, 1998 by the particular person and persons related to the particular person.

"related persons" and persons related to each other have, for purposes other than applying the definitions "permitted acquisition" and "permitted percentage" in respect of acquisitions of shares before August 14, 1998, the meaning that would be assigned by section 251 of the Act if paragraph 251(2)(a) of the Act were read as follows:

(a) an individual and

(i) the individual's child (as defined in subsection 70(10)) who is under 19 years of age, or

(ii) the individual's spouse;

"specified shareholder" has the meaning assigned by subparagraph 130(3)(a)(vii) of the Act, as enacted by subsection (2).

Proposed Amendment — Application of 130(3)(a)(vii) — definition of "specified shareholder" in transition rules

Letter from Department of Finance, March 12, 2003:

Dear [xxx]

We are responding to your letter to me of January 8, 2003, your letter of February 3, 2003 to Stephanie Smith and subsequent discussions with Ms. Smith concerning the special transitional rules that apply to exempt from the application of subparagraph 130(3)(a)(vii) an investment corporation that had at least one "existing specified shareholder" on June 20, 1996. In general, the exemption is lost where the existing specified shareholder and certain "newly related persons" acquire more shares of the corporation after June 20, 1996, other than by certain permitted acquisitions. For this purpose, if any such person has an interest in a partnership or trust, the exemption is lost if the partnership or trust acquires a share of the investment corporation after that date.

Your letter describes an investment corporation that had an individual who was an existing specified shareholder (the "Specified Shareholder") on June 20, 1996. The transitional rules provide that in determining who is a specified shareholder of an investment corporation, a person is deemed to own the shares of any corporation that are owned by a related person. Related persons are specifically defined for the purpose of these rules. As a result of the rules, if any of the Specified Shareholder's spouse's grandchildren under 19 years of age (the "Grandchildren") acquire or are deemed to acquire a share of the investment corporation after June 20, 1996, other than in a permitted acquisition, the transitional relief afforded in the transitional rules from the application of subparagraph 130(3)(a)(vii) would be lost.

In the situation you have described, the Specified Shareholder's daughter, who is over 19 years of age, (the "Daughter") established a registered education savings plan ("RESP") in the late 1980s for a number of persons including certain of the Grandchildren. In 1997, 1998 and 1999, the Daughter transferred shares of the investment corporation to the RESP and the dividend income received on the shares held in the RESP was, in part, paid by the RESP to the Grandchildren. In 2000, the shares of the investment corporation were reacquired by the Daughter from the RESP. The deemed acquisition of shares of the investment corporation by the Grandchildren would result in the investment corporation losing its exemption from the application of subparagraph 130(3)(a)(vii) provided for in the transitional rules and, therefore, losing its status as an investment corporation in 1997. You have asked us to expand the scope of the transitional rules to accommodate your client's situation.

We are sympathetic to this request and intend to recommend to the Minister of Finance that the *Income Tax Act* and the transitional rules that apply to investment corporations be amended to exclude from the definition of "specified shareholder", as it applies for the purpose of investment corporations, a beneficiary's interest in a trust governed by a RESP where the beneficiary of the trust is less than 19 years of age. Furthermore, we intend to recommend that the amendment be effective only for taxation years that begin before the date detailed legislative proposals are made public.

While we cannot offer any assurance that our recommendation in this matter will be accepted, we hope our statement of intent in this letter will be helpful in responding to your concern.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Subpara. 130(3)(a)(vii) amended by 1998, c. 19, subsec. 155(2) (but subsequently replaced by an amendment by 1999, c. 22 (see above)), applicable to corporations for taxation years that begin after June 20, 1996 except that, by subsec. 155(4) of the said c. 19, where

(a) a corporation was an investment corporation on June 20, 1996,

(b) a particular person would be a specified shareholder of the corporation in the year, within the meaning assigned by subpara. 130(3)(a)(vii) if this amendment applied to the corporation for the year, and,

(c) the particular person would have been a specified shareholder of the corporation on June 20, 1996, within the meaning assigned by subpara. 130(3)(a)(vii) if this amendment applied to the corporation for the year that includes that day,

subpara. 130(3)(a)(vii) does not apply to the corporation, with respect to the particular person and persons related to the particular person, except as provided in subsections 155(5) to (8) of the said c. 19. Subpara. 130(3)(a)(vii) formerly read:

(vii) none of its shareholders at any time in the year held more than 25% of the issued shares of the capital stock of the corporation, and

Subpara. 130(3)(a)(iii) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 109(1), to add "(determined without reference to subsection 49(2))", applicable to 1990 *et seq.*

Selected Cases [subsec. 130(3)]: *Canadian & Foreign Securities Co. Ltd. v. MNR*, [1972] C.T.C. 391 (FCTD) ("Securities" include promissory notes; requirements for investment corporation not met).

Interpretation Bulletins: IT-98R2: Investment corporations (archived).

(4) Wholly owned subsidiaries — Where a corporation so elects in its return of income under this Part for a taxation year, each of the corporation's properties that is a share or indebtedness of another Canadian corporation that is at any time in the year a subsidiary wholly owned corporation of the corporation shall, for the purposes of subparagraphs (3)(a)(ii) and (vi), be deemed not to be owned by the corporation at any such time in the year, and each property owned by the other corporation at that time shall, for the purposes of those subparagraphs, be deemed to be owned by the corporation at that time.

History: Subsec. 130(4) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 109(2), applicable to 1987 *et seq.*, and an election referred to in the subsec. in respect of a corporation's taxation year for which a return of income under Part I of the Act was made before December 18, 1991 shall be deemed to have been made in the corporation's return of income for that year if the election is filed in writing with the Minister of National Revenue before March 17, 1992.

Interpretation Bulletins: IT-98R2: Investment corporations (archived).

Definitions [s. 130]: "allowable capital loss" — 38(b), 248(1); "amount" — 248(1); "Canada" — 255; "Canadian corporation" — 89(1), 248(1); "capital gain" — 39(1)(a), 248(1); "common-law partner" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend", "gross revenue" — 248(1); "Her Majesty" — *Interpretation Act* 35(1); "investment corporation" — 130(3)(a), 248(1); "mutual fund corporation" — 131(8), 248(1); "property" — 248(1); "public corporation" — 89(1), 248(1); "share", "shareholder", "subsidiary wholly owned corporation" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxable dividend" — 89(1), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxed capital gains" — 130(3)(b).

Information Circulars [s. 130]: 78-14R3: Guidelines for trust companies and other persons responsible for filing T3-IND, T3G, T3D, T3P, T3S, T3RI and T3F returns.

Mortgage Investment Corporations

130.1 (1) Deduction from tax — In computing the income for a taxation year of a corporation that was, throughout the year, a mortgage investment corporation,

(a) there may be deducted the total of

(i) all taxable dividends, other than capital gains dividends, paid by the corporation during the year or within 90 days after the end of the year to the extent that those dividends were not deductible by the corporation in computing its income for the preceding year, and

(ii) ½ of all capital gains dividends paid by the corporation during the period commencing 91 days after the commencement of the year and ending 90 days after the end of the year; and

(b) no deduction may be made under section 112 in respect of taxable dividends received by it from other corporations.

Related Provisions: 142.2(1)"financial institution"(c)(ii) — Mortgage investment corporation not subject to mark-to-market rules; 181.3(3)(a) — Capital of financial institution.

History: Subpara. 130.1(1)(a)(ii) amended by 2001, c. 17, subsec. 127(1) to replace the reference to "3/4" with "1/2", applicable to taxation years that end after February 27, 2000 except that, for a corporation's taxation year that includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, the reference to "1/2" shall be read as a reference to the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the corporation for the year.

(2) Dividend equated to bond interest — For the purposes of this Act, any amount received from a mortgage investment corporation by a shareholder of the corporation as or on account of a taxable dividend, other than a capital gains dividend, shall be deemed to have been received by the shareholder as interest payable on a bond issued by the corporation after 1971.

Related Provisions: 130.1(3) — Application; 214(3)(e) — Non-resident withholding tax.

(3) Application of subsec. (2) — Subsection (2) applies where the taxable dividend (other than a capital gains dividend) described in that subsection was paid during a taxation year throughout which the paying corporation was a mortgage investment corporation or within 90 days thereafter.

(4) Election re capital gains dividend — Where at any particular time during the period that begins 91 days after the beginning of a taxation year of a corporation that was, throughout the year, a mortgage investment corporation and ends 90 days after the end of the year, a dividend is paid by the corporation to shareholders of the corporation, if the corporation so elects in respect of the full amount of the dividend in prescribed manner and at or before the earlier of the particular time and the first day on which any part of the dividend was paid,

(a) the dividend shall be deemed to be a capital gains dividend to the extent that it does not exceed the amount, if any, by which

(i) twice the taxed capital gains of the corporation for the year

exceeds

(ii) the total of all dividends, and parts of dividends, paid by the corporation during the period and before the particular time that are deemed by this paragraph to be capital gains dividends; and

(b) notwithstanding any other provision of this Act, any amount received by a taxpayer in a taxation year as, on account of, in lieu of payment of or in satisfaction of, the dividend shall not be included in computing the taxpayer's income for the year as income from a share of the capital stock of the corporation, and

(i) where the dividend was in respect of capital gains of the corporation from dispositions of property that occurred before February 28, 2000 and the taxation year of the taxpayer began after February 27, 2000 and ended before October 18, 2000, ⅝

of the dividend is deemed to be a capital gain of the taxpayer from the disposition by the taxpayer of a capital property in the year,

(ii) where the dividend was in respect of capital gains of the corporation from dispositions of property that occurred before February 28, 2000, and the taxation year of the taxpayer includes February 27, 2000, the dividend is deemed to be a capital gain of the taxpayer from the disposition by the taxpayer of a capital property in the year and before February 28, 2000,

(iii) where the dividend was in respect of capital gains of the corporation from dispositions of property that occurred before February 28, 2000 and the taxation year of the taxpayer began after October 17, 2000, 3/2 of the dividend is deemed to be a capital gain of the taxpayer from the disposition by the taxpayer of a capital property in the year,

(iii.1) where the dividend was in respect of capital gains of the corporation from dispositions of property that occurred before February 28, 2000 and the taxation year of the taxpayer begins after February 27, 2000 and ends after October 17, 2000, 9/8 of the dividend is deemed to be a capital gain of the taxpayer from the disposition by the taxpayer of capital property in the year and before October 18, 2000,

(iv) where the dividend was in respect of capital gains of the corporation from dispositions of property that occurred after February 27, 2000 and before October 18, 2000, and the taxation year of the taxpayer began after October 17, 2000, 4/3 of the dividend is deemed to be a capital gain of the taxpayer from the disposition by the taxpayer of a capital property in the year,

(v) where the dividend was in respect of capital gains of the corporation from dispositions of property that occurred after February 27, 2000, and before October 18, 2000 and the taxation year of the taxpayer includes October 17, 2000, the dividend is deemed to be a capital gain of the taxpayer from the disposition by the taxpayer of a capital property in the year and in the period that began after February 27, 2000 and ended before October 18, 2000,

(vi) where the dividend was in respect of capital gains of the corporation from dispositions of property that occurred after February 27, 2000, and before October 17, 2000 and the taxation year of the taxpayer began after February 27, 2000 and ended before October 17, 2000, the dividend is deemed to be a capital gain of the taxpayer from the disposition by the taxpayer of a capital property in the year, and

(vii) in any other case, the dividend is deemed to be a capital gain of the taxpayer from the disposition of capital property after October 17, 2000 and in the year.

Related Provisions: 39.1(1)"exempt capital gains balance"C(c), 39.1(6) — Reduction in gain to reflect capital gains exemption election; 111(1.1)(c) — Net capital loss carryover — transition for 2000; 130.1(4.2) — Reporting to shareholder of capital gains tax rate; 130.1(4.3) — Allocation of capital gains tax rate for 2000; 184(2) — Tax on excessive elections; 184(3) — Election to treat excess as separate dividend; 185(4) — Joint and several liability from excessive elections.

History: Subpara. 130.1(4)(a)(i) amended by 2001, c. 17, subsec. 127(2), to replace the reference to "3/4" with "1/2", applicable to taxation years that end after February 27, 2000 except that, for a corporation's taxation year that includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, the word "twice" shall be read as "the fraction that is the reciprocal of the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the corporation for the year, multiplied by".

Para. 130.1(4)(b) amended by the said c. 17, subsec. 127(3), applicable to taxation years that end after February 27, 2000. The para. formerly read:

(b) notwithstanding any other provision of this Act, any amount received by a taxpayer in a taxation year as, on account of, in lieu of payment of or in satisfaction of, the dividend shall not be included in computing the taxpayer's income for the year as income from a share of the capital stock of the corporation, but shall be deemed to be a capital gain of the taxpayer for the year from a disposition, in the year and after February 22, 1994, by the taxpayer of capital property.

Subsec. 130.1(4) amended by 1995, c. 3, subsec. 40(1), applicable to dividends paid after February 22, 1994. Subsec. (4) formerly read:

(4) Electing capital gains dividend — Where at any particular time during the period beginning 91 days after the beginning of a taxation year of a corporation that was, throughout the year, a mortgage investment corporation and ending 90 days after the end of the year, a dividend is paid by the corporation to shareholders of the corporation,

(a) if the corporation so elects in respect of the full amount of the dividend, in prescribed form and manner and at or before the earlier of the particular time and the first day on which any part of the dividend was paid,

(i) the dividend shall be deemed to be a capital gains dividend to the extent that it does not exceed the amount, if any, by which

(A) 4/3 of the corporation's qualifying taxed capital gains for the year

exceeds

(B) the total of all dividends, and parts of dividends, paid by the corporation during the period and before the particular time that are deemed by this subparagraph to be capital gains dividends,

(ii) notwithstanding any other provision of this Act, any amount received by a taxpayer in a taxation year as or on account of the dividend shall not be included in computing the taxpayer's income for the year as income from a share of the capital stock of the corporation, but shall be deemed to be a capital gain of the taxpayer for the year from a disposition of capital property and, for the purposes of section 110.6, that property shall be deemed to have been disposed of by the taxpayer in the year, and

(iii) any election under paragraph (b) made by the corporation in respect of the dividend shall be deemed not to have been made; and

(b) if the corporation so elects in respect of the full amount of the dividend, in prescribed form and manner and at or before the earlier of the particular time and the first day on which any part of the dividend was paid,

(i) the dividend shall be deemed to be a capital gains dividend to the extent that it does not exceed the amount, if any, by which

(A) 4/3 of the corporation's non-qualifying taxed capital gains for the year

exceeds

(B) the total of all dividends, and parts of dividends, paid by the corporation during the period and before the particular time that are deemed by this subparagraph to be capital gains dividends, and

(ii) notwithstanding any other provision of this Act, any amount received by a taxpayer in a taxation year as or on account of the dividend shall not be included in computing the taxpayer's income for the year as income from a share of the capital stock of the corporation, but shall be deemed to be a capital gain of the taxpayer for the year from a disposition of capital property and, for the purposes of section 110.6,

(A) that property shall be deemed to have been non-qualifying real property of the taxpayer, within the

meaning of that section, disposed of by the taxpayer in the year, and

(B) the taxpayer's eligible real property gain for the year, within the meaning of that section, from the disposition of that property shall be deemed to be nil.

Subsec. 130.1(4) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 75(1), applicable to 1992 *et seq.* Subsec. (4) formerly read:

(4) Where at any particular time during the period commencing 91 days after the commencement of a taxation year of a corporation that was, throughout the year, a mortgage investment corporation and ending 90 days after the end of the year, a dividend is paid by the corporation to shareholders of the corporation, if the corporation so elects in respect of the full amount of the dividend, in prescribed manner and prescribed form and at or before the particular time or the first day on which any part of the dividend was paid if that day is earlier than the particular time,

(a) the dividend shall be deemed to be a capital gains dividend to the extent that it does not exceed

(i) 4/3 of the taxed capital gains of the corporation for the year

minus

(ii) such part, if any, of each dividend paid by the corporation during the period and before the particular time as is deemed by this subsection to be a capital gains dividend; and

(b) notwithstanding any other provision of this Act, any amount received by a taxpayer in a taxation year as or on account of the dividend shall not be included in computing the taxpayer's income for the year as income from a share of the capital stock of the corporation, but shall be deemed to be a capital gain of the taxpayer for the year from a disposition of capital property and, for the purposes of section 110.6, that property shall be deemed to have been disposed of by the taxpayer in the year.

Regulations: 2104.1 (prescribed manner, prescribed form).

Forms: T5: Statement of investment income; T5 Summ: Return of investment income; T2012: Election in respect of a capital gains dividend.

(4.1) Application of subsecs. 131(1.1) to (1.4) — Where at any particular time a mortgage investment corporation paid a dividend to its shareholders and subsection (4) would have applied to the dividend except that the corporation did not make an election under subsection (4) on or before the day on or before which it was required by that subsection to be made, subsections 131(1.1) to (1.4) apply with such modifications as the circumstances require.

History: Subsec. 130.1(4.1) added by 2001, c. 17, subsec. 127(4), applicable to taxation years that end after February 27, 2000.

(4.2) Reporting [for 2000] — Where paragraph (4)(b) applies to a dividend paid by a mortgage investment corporation to a shareholder of any class of shares of its capital stock in the period that begins 91 days after the beginning of the corporation's taxation year that includes February 28, 2000 or October 17, 2000 and ends 90 days after the end of that year, the corporation shall disclose to the shareholder in prescribed form the amount of the dividend that is in respect of capital gains realized on dispositions of property that occurred

(a) before February 28, 2000,

(b) after February 27, 2000 and before October 18, 2000, and

(c) after October 17, 2000

and, if it does not do so, the dividend is deemed to be in respect of capital gains from dispositions of property that occurred before February 28, 2000.

History: Subsec. 130.1(4.2) added by 2001, c. 17, subsec. 127(4), applicable to taxation years that end after February 27, 2000.

(4.3) Allocation [for 2000] — Where subsection (4) applies in respect of a dividend paid by a mortgage investment corporation at any time in the period that begins 91 days after the beginning of the corporation's taxation year that includes February 28, 2000 or October 17, 2000 and ends 90 days after the end of that year, and the corporation does not elect under subsection (4.4), the following rules apply:

(a) the portion of the dividend that is in respect of capital gains from dispositions of property that occurred in the year and in the particular period that began at the beginning of the year and ended at the end of February 27, 2000 is deemed to be that proportion of the dividend that the net capital gains of the corporation from the dispositions of property in the particular period is of the total of the corporation's net capital gains from the dispositions of property in each of the particular periods referred to in this subsection,

(b) the portion of the dividend that is in respect of capital gains from dispositions of property that occurred in the year and in the particular period that began at the beginning of February 28, 2000 and ended at the end of October 17, 2000 is deemed to be that proportion of the dividend that the net capital gains of the corporation from the dispositions of property in the particular period is of the total of the corporation's net capital gains from the dispositions of property in each of the particular periods referred to in this subsection,

(c) the portion of the dividend that is in respect of capital gains from dispositions of property that occurred in the year and in the particular period that begins at the beginning of October 18, 2000 and ends at the end of the year, is deemed to be that proportion of the dividend that the net capital gains of the corporation from the dispositions of property in the particular period is of the total of the corporation's net capital gains from the dispositions of property in each of the periods referred to in this subsection, and

in this subsection net capital gains from dispositions of property in a particular period means the amount, if any, by which the corporation's capital gains from dispositions of property in the particular period exceeds the corporation's capital losses from dispositions of property in the particular period.

History: Subsec. 130.1(4.3) added by 2001, c. 17, subsec. 127(4), applicable to taxation years that end after February 27, 2000.

(4.4) Allocation [for 2000] — Where subsection (4) applies in respect of a dividend paid by a mortgage investment corporation in the period that begins 91 days after the beginning of the corporation's taxation year that includes February 28, 2000 or October 17, 2000 and ends 90 days after the end of that year, and the corporation so elects under this subsection in its return of income for the year, the following rules apply:

(a) the portion of the dividend that is in respect of capital gains from dispositions of property that occurred in the year and before February 28, 2000 is deemed to be that proportion of the dividend that the number of days that are in that year and before February 28, 2000 is of the number of days that are in that year;

(b) the portion of the dividend that is in respect of capital gains from dispositions of property that occurred in the year and in the period that began at the beginning of February 28, 2000 and ended at the end of October 17, 2000 is deemed to be that proportion of the dividend that the number of days that are in the year and in that period is of the number of days that are in the year; and

(c) the portion of the dividend that is in respect of capital gains from dispositions of property that occurred in the year and in the period that begins at the beginning of October 18, 2000 and ends at the end of the year, is deemed to be that proportion of the dividend that the number of days that are in the year and in that period is of the number of days that are in the year.

History: Subsec. 130.1(4.4) added by 2001, c. 17, subsec. 127(4), applicable to taxation years that end after February 27, 2000.

(4.5) Allocation [for 2000] — Where no dividend to which subsection (4.4) applies is paid by a mortgage investment corporation in respect of its net taxable capital gains for its taxation year that includes February 28, 2000 or October 17, 2000, the corporation has net capital gains or net capital losses from dispositions of property in the year, and the corporation so elects under this subsection in its return of income for the year

(a) the portion of those net capital gains and net capital losses that is in respect of capital gains and losses from dispositions of property that occurred before February 28, 2000 is deemed to be that proportion of the net capital gains or net capital losses respectively that the number of days that are in the year and before February 28, 2000 is of the number of days that are in the year,

(b) the portion of those net capital gains and net capital losses that is in respect of capital gains and losses from dispositions of property that occurred in the year and in the period that began at the beginning of February 28, 2000 and ended at the end of October 17, 2000, is deemed to be that proportion of the net capital gains or net capital losses respectively that the number of days that are in the year and in that period is of the number of days that are in the year, and

(c) the portion of those net capital gains and net capital losses that is in respect of capital gains and losses from dispositions of property that occurred in the year and in the period that began at the beginning of October 18, 2000 and ended at the end of the year, is deemed to be that proportion of the net capital gains or net capital losses respectively that the number of days that are in the year and in that period is of the number of days that are in the year,

and, for the purpose of this subsection,

(d) the net capital gains of a mortgage investment corporation from dispositions of property in a year is the amount, if any, by which the corporation's capital gains from dispositions of property in a year exceeds the corporation's capital losses from dispositions of property in the year, and

(e) the net capital losses of a mortgage investment corporation from dispositions of property in a year is the amount, if any, by which the corporation's capital losses from dispositions of property in a year exceeds the corporation's capital gains from dispositions of property in the year.

History: Subsec. 130.1(4.5) added by 2001, c. 17, subsec. 127(4), applicable to taxation years that end after February 27, 2000.

(5) Public corporation — Notwithstanding any other provision of this Act, a mortgage investment corporation shall be deemed to be a public corporation.

(6) Meaning of "mortgage investment corporation" — For the purposes of this section, a corporation is a "mortgage investment corporation" throughout a taxation year if, throughout the year,

(a) it was a Canadian corporation;

(b) its only undertaking was the investing of funds of the corporation and it did not manage or develop any real property;

(c) none of the property of the corporation consisted of

(i) debts owing to the corporation that were secured on real property situated outside Canada,

(ii) debts owing to the corporation by non-resident persons, except any such debts that were secured on real property situated in Canada,

(iii) shares of the capital stock of corporations not resident in Canada, or

(iv) real property situated outside Canada, or any leasehold interest in such property;

Proposed Amendment — 130.1(6)(b), (c)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 241(1), will amend paras. 130.1(6)(b) and (c) by substituting "real or immovable property" for "real property", once in para. (b), and four times in para. (c), to come into force on Royal Assent.

Technical Notes: See under 12(4).

(d) there were 20 or more shareholders of the corporation and no person would have been a specified shareholder of the corporation at any time in the year if

(i) the portion of the definition "specified shareholder" in subsection 248(1) before paragraph (a) were read as follows:

" "specified shareholder" of a corporation at any time means a taxpayer who owns, directly or indirectly, at that time, more than 25% of the issued shares of any class of the capital stock of the corporation and, for the purposes of this definition,"

(ii) paragraph (a) of that definition were read as follows:

"(a) a taxpayer is deemed to own each share of the capital stock of a corporation owned at that time by a person related to the taxpayer,"

(iii) that definition were read without reference to paragraph (d) of that definition, and

(iv) paragraph 251(2)(a) were read as follows:

"(a) an individual and

(i) the individual's child (as defined in subsection 70(10)) who is under 18 years of age, or

(ii) the individual's spouse or common-law partner;"

(e) any holders of preferred shares of the corporation had a right, after payment to them of their preferred dividends, and payment of dividends in a like amount per share to the holders of the common shares of the corporation, to participate *pari passu* with the holders of the common shares in any further payment of dividends;

(f) the cost amount to the corporation of such of its property as consisted of

(i) debts owing to the corporation that were secured, whether by mortgages, hypothecs or in any other manner, on houses (as defined in section 2 of the *National Housing Act*) or on property included

within a housing project (as defined in that section), and

(ii) amounts of any deposits standing to the corporation's credit in the records of

(A) a bank or other corporation any of whose deposits are insured by the Canada Deposit Insurance Corporation or the Régie de l'assurance-dépôts du Québec, or

(B) a credit union,

plus the amount of any money of the corporation was at least 50% of the cost amount to it of all of its property;

(g) the cost amount to the corporation of all real property of the corporation, including leasehold interests in such property, (except real property acquired by the corporation by foreclosure or otherwise after default made on a mortgage, hypothec or agreement of sale of real property) did not exceed 25% of the cost amount to it of all of its property;

Proposed Amendment — 130.1(6)(g)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 241(2), will amend para. 130.1(6)(g) by substituting "real or immovable property" for "real property" in three places, to come into force on Royal Assent.

Technical Notes: See under 12(4).

(h) its liabilities did not exceed 3 times the amount by which the cost amount to it of all of its property exceeded its liabilities, where at any time in the year the cost amount to it of such of its property as consisted of property described in subparagraphs (f)(i) and (ii) plus the amount of any money of the corporation was less than ⅔ of the cost amount to it of all of its property; and

(i) its liabilities did not exceed 5 times the amount by which the cost amount to it of all its property exceeded its liabilities, where paragraph (h) is not applicable.

Related Provisions: 130.1(7) — How shareholders counted; 130.1(8) — First taxation year; 142.2(1)"financial institution"(c)(ii) — Mortgage investment corporation not subject to mark-to-market rules; 248(1)"mortgage investment corporation" — Definition applies to entire Act; 253.1 — Limited partner not considered to carry on business of partnership.

History: Subpara. 130.1(6)(f)(i) amended by 2001 c. 17, subsec. 214(1), to add the word "hypothecs", in force June 14, 2001.

Para. 130.1(6)(g) amended by the said c. 17, subsec. 214(2), to add the word "hypothec", in force June 14, 2001.

Subpara. 130.1(6)(d)(iv) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Para. 130.1(6)(d) amended by 1999, c. 22, subsec. 53(1), applicable in determining whether a corporation is a mortgage investment corporation for a taxation year that begins after January 14, 1998, except that the amendment applies to the corporation, with respect to a particular person and persons related to the particular person, only as provided in subsections (4) to (10) of the amending legislation if

(a) the corporation was a mortgage investment corporation at the end of January 14, 1998,

(b) the particular person is a specified shareholder of the corporation at any time in the year, and

(c) the particular person

(i) was a specified shareholder of the corporation at the end of January 14, 1998, or

(ii) both

(A) was a specified shareholder of the corporation at any time after January 14, 1998 and before August 14, 1998, and

(B) would have been a specified shareholder of the corporation at the end of January 14, 1998 if para. 130.1(6)(d), as amended, were read without reference to subparas. (ii) and (iv).

Subsections 53(4) to (10) of the said c. 22 provide:

(4) [The amendments] apply to a corporation that was a mortgage investment corporation at the end of January 14, 1998 for a taxation year that begins after that day if a person who at any time in the year is a specified shareholder of the corporation contributes capital to the corporation, or acquires a share of the corporation's capital stock other than by a permitted acquisition, at any time after January 14, 1998 and before the end of the year.

(5) [The amendments] apply to a corporation that was a mortgage investment corporation at the end of January 14, 1998 for a taxation year that begins after that day if a newly related person in respect of a person who at any time in the year is a specified shareholder of the corporation

(a) contributes capital to the corporation, or

(b) holds property (in this paragraph referred to as an "ineligible investment") that is

(i) a share of the capital stock of the corporation, or

(ii) a share of the capital stock of a corporation that holds an ineligible investment

at any time after January 14, 1998 and before the end of the year.

(6) [The amendments] apply to a corporation that was a mortgage investment corporation at the end of January 14, 1998 for a taxation year that ends after that day if

(a) at any particular time after January 14, 1998 and before the end of the year, a mortgage lender is a specified shareholder of the corporation; and

(b) at any time that is in the taxation year that includes the particular time and that is after January 14, 1998, any person contributes capital to the corporation or acquires from the corporation a share of the corporation's capital stock, other than a share that was issued to the person as a stock dividend.

(7) [The amendments] apply to a corporation that was a mortgage investment corporation at the end of January 14, 1998 for a taxation year that ends after 2007 if a mortgage lender is a specified shareholder of the corporation at any time in the year or in a taxation year that ends before the year and after 2007.

(8) For the purposes of subsections (4) to (7),

(a) if at a particular time

(i) a trust distributes a share of the capital stock of a corporation to a person who was a beneficiary under the trust throughout the period from the end of January 14, 1998 to the particular time in satisfaction of all or any part of the beneficiary's capital interest in the trust, or

(ii) a partnership distributes, to a person who was a member of the partnership throughout the period from the end of January 14, 1998 to the particular time, on the partnership ceasing to exist or on the ceasing of the person to be a member of the partnership, a share of the capital stock of a corporation or an interest in such a share,

the share is deemed to have been owned by the beneficiary or member throughout the period that begins at the later of the end of January 14, 1998 and the time the share was last acquired by the trust or partnership and that ends at the particular time; and

(b) if a person who is a beneficiary under a trust or who is a member of a partnership is deemed by paragraph (b), (c) or (e) of the definition "specified shareholder" in subsection 248(1) of the Act to own a share owned by the trust or partnership, the person is deemed to own the share and to have acquired the share at the later of the time the share was acquired by the trust or partnership and the time the person last became a beneficiary under the trust or a member of the partnership.

(9) At any time on or after the day of the death of a person described in paragraph (3)(c) [see application above] in respect of a corporation and before the third anniversary of that day,

(a) the estate of the deceased person is deemed to be a person described in paragraphs (3)(b) and (c) [see application above] who is related to each person who, throughout the period that begins at the beginning of January 15, 1998 and ends at the time of death, was related to the deceased person;

(b) notwithstanding subsection (10),

(i) the estate is deemed not to be a newly related person in respect of the corporation, and

(ii) the acquisition of shares of the corporation's capital stock by the estate from the deceased person is deemed to be a permitted acquisition; and

(c) the estate is deemed not to be a trust for the purposes of subparagraph (8)(a)(i) and paragraphs (b) and (e) of the definition "specified shareholder" in subsection 248(1) of the Act.

(10) The definitions in this subsection apply in subsections (3) [i.e., the application above] to (9) and this subsection.

"mortgage lender" means a particular corporation where the ordinary business of

(a) the particular corporation, or

(b) a corporation (other than a mortgage investment corporation) or partnership affiliated with the particular corporation

includes the holding of debts that are secured, whether by mortgage or in any other manner, on houses (as defined in section 2 of the *National Housing Act*) or on property included within a housing project (as defined in that section).

"newly related persons" means persons who are related to each other and who became so related after January 14, 1998.

"permitted acquisition" means an acquisition by a particular person of a share of a class of the capital stock of a corporation that was

(a) held, at each particular time after January 14, 1998 and before the time at which the particular person acquired it, or

(b) issued after January 14, 1998 by the corporation as a stock dividend and held, at each particular time after the time the share was issued and before the time at which the particular person acquired it,

by the particular person or by a person who was related to the particular person throughout the period that began at the beginning of January 15, 1998 and that ends at the particular time if, immediately after the time at which the particular person acquires the share, the percentage of the issued shares of that class held by the particular person and persons related to the particular person (or in the case of acquisitions before August 14, 1998, by the particular person and persons with whom the particular person did not deal at arm's length immediately after the acquisition) does not exceed the permitted percentage for the particular person in respect of that class of shares.

"permitted percentage" for a particular person in respect of a class of shares of the capital stock of a corporation means

(a) in respect of acquisitions of shares before August 14, 1998, the percentage of the issued shares of that class held at the end of January 14, 1998 by the particular person and persons with whom the particular person did not at that time deal at arm's length; and

(b) in any other case, the greater of

(i) the percentage of the issued shares of that class held at the end of January 14, 1998 by the particular person and persons related at that time to the particular person, and

(ii) the percentage of the issued shares of that class held at the beginning of August 14, 1998 by the particular person and persons related at that time to the particular person.

"related persons" and persons related to each other have, for purposes other than applying the definitions "permitted acquisition" and "permitted percentage" in respect of acquisitions of shares before August 14, 1998, the meaning that would be assigned by section 251 of the Act if paragraph 251(2)(a) of the Act were read as follows:

(a) an individual and

(i) the individual's child (as defined in subsection 70(10)) who is under 19 years of age, or

(ii) the individual's spouse;

"specified shareholder" has the meaning assigned by paragraph 130.1(6)(d) of the Act, as enacted by subsection (1).

Para. 130.1(6)(d) formerly read:

(d) subject to subsections (7) and (8), the number of shareholders of the corporation was not less than twenty and no one shareholder held more than 25% of the issued shares of the capital stock of the corporation;

Subpara. 130.1(6)(f)(i) amended by 1998, c. 19, s. 156, deemed to have come into force on June 23, 1993. It formerly read:

(i) debts owing to the corporation that were secured on residential property, as defined in the *Residential Mortgage Financing Act*, chapter 49 of the Statutes of Canada, 1973-74, whether by mortgages or in any other manner, and

"Residential Property": Subsec. 2(1) of the *Residential Mortgage Financing Act*, R.S.C. 1985, c. R-6, (repealed June 23, 1993) defined "residential property" as follows:

"residential property" means a house or the property included within a housing project.

Subsec. 2(2) defined "house" and "housing project" by reference to the *National Housing Act*, R.S.C. 1985, c. N-11, s.2 (as amended by c. 25 (4th Supp.), s. 1(2)), which in turn provides:

"house" means a building or movable structure intended for human habitation containing not more than two family housing units, together with the land, if any, on which the building or movable structure is situated;

"housing project" means a project consisting of one or more houses, one or more multiple-family dwellings, housing accommodation of the hostel or dormitory type, one or more condominium units or any combination thereof, together with any public space, recreational facilities, commercial space and other buildings appropriate to the project, but does not include a hotel;

(7) How shareholders counted — In paragraph (6)(d), a trust governed by a registered pension plan or deferred profit sharing plan by which shares of the capital stock of a corporation are held shall be counted as four shareholders of the corporation for the purpose of determining the number of shareholders of the corporation, but as one shareholder for the purpose of determining whether any person is a specified shareholder (as defined for the purpose of that paragraph).

History: Subsec. 130.1(7) amended by 1999, c. 22, subsec. 53(2), applicable on the same basis as the amendment to para. 130.1(6)(d). It formerly read:

(7) For the purposes of paragraph (6)(d), a trust governed by a registered pension plan or deferred profit sharing plan by which shares of the capital stock of a corporation are held shall be counted as four shareholders of the corporation, and a trust governed by a registered retirement savings plan by which shares of the capital stock of a corporation are held shall be counted as one shareholder of the corporation, but, for the purpose of calculating the limitation on the holding of shares of the capital stock of a mortgage investment corporation by a trust governed by a registered pension plan or deferred profit sharing plan, the trust shall be counted as one shareholder.

(8) First taxation year — For the purposes of subsection (6), a corporation that was incorporated after 1971 shall be deemed to have complied with paragraph (6)(d) throughout the first taxation year of the corporation in which it carried on business if it complied with that paragraph on the last day of that taxation year.

(9) Definitions — In this section,

"liabilities" of a corporation at any particular time means the total of all debts owing by the corporation, and all other obligations of the corporation to pay an amount, that were outstanding at that time;

"non-qualifying real property" — [Repealed]

History: The definition "non-qualifying real property" in subsec. 130.1(9) repealed by 1995, c. 3, subsec. 40(2.1), applicable after February 22, 1994. The definition formerly read:

"non-qualifying real property" of a corporation has the meaning assigned by subsection 131(6);

The definition "non-qualifying real property" added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 75(2.1), applicable to 1992 *et seq.*

"non-qualifying taxed capital gains" — [Repealed]

History: The definition "non-qualifying taxed capital gains" in subsec. 130.1(9) repealed by 1995, c. 3, subsec. 40(2), applicable after February 22, 1994. The definition formerly read:

"non-qualifying taxed capital gains" of a mortgage investment corporation for a taxation year means the amount, if any, by which

(a) the amount by which its taxable capital gains for the year from dispositions of its non-qualifying real property exceeds the amounts determined under paragraph (b) of the definition "qualifying taxed capital gains" in respect of those dispositions

exceeds the total of

(b) the amount by which its allowable capital losses for the year from dispositions of its non-qualifying real property exceeds the amounts determined under paragraph (d) of the definition "qualifying taxed capital gains" in respect of those dispositions,

(c) the amount, if any, deducted under paragraph 111(1)(b) in computing its taxable income for the year, and

(d) the amount, if any, by which the total of the amounts, if any, determined under paragraphs (c) and (d) of the definition "qualifying taxed capital gains" in respect of the corporation for the year exceeds the total of the amounts, if any, determined under paragraphs (a) and (b) of that definition in respect of the corporation for the year;

The definition "non-qualifying taxed capital gains" added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 75(2.1), applicable to 1992 *et seq.*

"qualifying taxed capital gains" — [Repealed]

History: The definition "qualifying taxed capital gains" in subsec. 130.1(9) repealed by 1995, c. 3, subsec. 40(2), applicable after February 22, 1994. The definition formerly read:

"qualifying taxed capital gains" of a mortgage investment corporation for a taxation year means the amount, if any, by which the total of

(a) its taxable capital gains for the year from dispositions of property, other than its non-qualifying real property, and

(b) all amounts each of which is an amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is its taxable capital gain for the year from the disposition of a non-qualifying real property of the corporation,

B is the number of calendar months in the period that begins with the later of the calendar month in which the property was last acquired by it and January 1972 and ends with February 1992, and

C is the number of calendar months in the period that begins with the later of the calendar month in which the property was last acquired by it and January 1972 and ends with the calendar month in which the property was disposed of

exceeds the total of

(c) its allowable capital losses for the year from dispositions of property, other than its non-qualifying real property,

(d) all amounts each of which is an amount determined by the formula

$$D \times \frac{E}{F}$$

where

D is its allowable capital loss for the year from the disposition of a non-qualifying real property of the corporation,

E is the number of calendar months in the period that begins with the later of the calendar month in which the property was last acquired by it and January 1972 and ends with February 1992, and

F is the number of calendar months in the period that begins with the later of the calendar month in which the property was last acquired by it and January 1972 and ends with the calendar month in which the property was disposed of, and

(e) the amount, if any, by which the total of the amounts determined under paragraphs (b) and (c) of the definition "non-qualifying taxed capital gains" in respect of the corporation for the year exceeds the amount, if any, determined under paragraph (a) of that definition in respect of the corporation for the year.

The definition "qualifying taxed capital gains" added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 75(2.1), applicable to 1992 *et seq.*

"taxed capital gains" has the meaning assigned by paragraph 130(3)(b).

History: Definition "taxed capital gains" added to subsec. 130.1(9) by 1995, c. 3, subsec. 40(3), applicable after February 22, 1994.

Former definition "taxed capital gains" repealed, by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 75(2), applicable to 1992 *et seq.* "Taxed capital gains" formerly read:

"taxed capital gains" has the meaning assigned by paragraph 130(3)(b).

Definitions [s. 130.1]: "allowable capital loss" — 38(b), 248(1); "amount" — 248(1); "bank" — 248(1); "capital gain" — 39(1)(a), 248(1); "capital gains dividend" — 130.1(4); "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "class of shares" — 248(6); "common share", "common-law partner" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan" — 147(1), 248(1); "disposition", "dividend" — 248(1); "immovable" — Quebec *Civil Code* art. 900–907; "liabilities" — 130.1(9); "mortgage investment corporation" — 130.1(6), 248(1); "non-qualifying taxed capital gains" — 130.1(9); "non-resident", "preferred share", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "public corporation" — 89(1), 130.1(5), 248(1); "qualifying taxed capital gains" — 130.1(9); "received" — 248(7); "record", "registered pension plan" — 248(1); "resident in Canada" — 250; "share", "shareholder", "specified shareholder" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxation year" — 249; "taxed capital gains" — 130(3)(b), 130.1(9); "taxpayer" — 248(1);"trust" — 104(1), 248(1), (3); "undertaking" — 253.1(a).

Mutual Fund Corporations

131. (1) Election re capital gains dividend — Where at any particular time a dividend became payable by a corporation, that was throughout the taxation year in which the dividend became payable a mutual fund corporation, to shareholders of any class of its capital stock, if the corporation so elects in respect of the full amount of the dividend in prescribed manner and at or before the earlier of the particular time and the first day on which any part of the dividend was paid,

(a) the dividend shall be deemed to be a capital gains dividend payable out of the corporation's capital gains dividend account to the extent that it does not exceed the corporation's capital gains dividend account at the particular time; and

(b) notwithstanding any other provision of this Act (other than paragraph (5.1)(b)), any amount received by a taxpayer in a taxation year as, on account of, in lieu of payment of or in satisfaction of, the dividend shall not be included in computing the taxpayer's income for the year as income from a share of the capital stock of the corporation, and

(i) where the dividend was in respect of capital gains of the corporation from dispositions of property that occurred before February 28, 2000, and the taxation year of the taxpayer began after February 27, 2000 and ended before October 18, 2000, 5/8 of the dividend is deemed to be a capital gain of the taxpayer from the disposition by the taxpayer of a capital property in the year,

(ii) where the dividend was in respect of capital gains of the corporation from dispositions of property that occurred before February 28, 2000, and the taxation year of the taxpayer includes February 27, 2000, the dividend is deemed to be a capital gain of the taxpayer from the disposition by the

taxpayer of a capital property in the year and before February 28, 2000,

(iii) where the dividend was in respect of capital gains of the corporation from dispositions of property that occurred before February 28, 2000, and the taxation year of the taxpayer began after October 17, 2000, 1/2 of the dividend is deemed to be a capital gain of the taxpayer from the disposition by the taxpayer of a capital property in the year,

(iii.1) where the dividend was in respect of capital gains of the corporation from dispositions of property that occurred before February 28, 2000 and the taxation year of the taxpayer begins after February 27, 2000 and ends after October 17, 2000, 5/8 of the dividend is deemed to be a capital gain of the taxpayer from the disposition by the taxpayer of capital property in the year and before October 18, 2000,

(iv) where the dividend was in respect of capital gains of the corporation from dispositions of property that occurred after February 27, 2000 and before October 18, 2000, and the taxation year of the taxpayer began after October 17, 2000, 4/3 of the dividend is deemed to be a capital gain of the taxpayer from the disposition by the taxpayer of a capital property in the year,

(v) where the dividend was in respect of capital gains of the corporation from dispositions of property that occurred after February 27, 2000 and before October 18, 2000, and the taxation year of the taxpayer includes October 17, 2000, the dividend is deemed to be a capital gain of the taxpayer from the disposition by the taxpayer of a capital property in the year and in the period that began after February 27, 2000 and ended before October 18, 2000,

(vi) where the dividend was in respect of capital gains of the corporation from dispositions of property that occurred after February 27, 2000, and before October 17, 2000 and the taxation year of the taxpayer began after February 27, 2000 and ended before October 18, 2000, the dividend is deemed to be a capital gain of the taxpayer from the disposition by the taxpayer of a capital property in the year, and

(vii) in any other case, the dividend is deemed to be a capital gain of the taxpayer from the disposition of capital property after October 17, 2000 and in the year,

and, for the purpose of this paragraph,

(viii) dividends paid by a corporation are deemed to be paid in respect of the corporation's net capital gains in the order in which those net capital gains were realized by the corporation,

(viii.1) capital gains redemptions are deemed to be made in respect of net capital gains in the order in which those net capital gains were realized by the corporation to the extent that they are not reduced by dividends, and

(ix) for the purposes of applying subparagraphs (viii) and (viii.1)

(A) net capital gains of a corporation for a year is the amount by which the corporation's capital gains from dispositions of property in the year exceed the corporation's capital losses from dispositions of property in the year,

(B) net capital losses of a corporation for a year is the amount by which the corporation's capital losses from dispositions of property in the year exceed the corporation's capital gains from dispositions of property in the year,

(C) net capital gains of a corporation for a year are deemed to be realized evenly throughout the year, and

(D) net capital losses of a corporation for a year are deemed to be a capital loss of the corporation from the disposition of property in the following year.

Related Provisions: 39.1(1)"exempt capital gains balance"C(c), 39.1(6) — Reduction in gain to reflect capital gains exemption election; 84(7) — When deemed dividend deemed payable; 111(1.1)(c) — Net capital loss carryover — transition for 2000; 112(4)(d), 112(4.1)(d), 112(4.2)(d) — Capital gains dividend excluded from stop-loss and share inventory valuation rules; 112(6) — No deduction for capital gains dividend; 129(7) — No dividend refund for capital gains dividend; 130(2) — Application to investment corporation; 130(3) — Meaning of investment corporation and taxed capital gains; 131(1.1) — Deemed date of election; 131(1.5) — Reporting to shareholder of capital gains tax rate; 131(1.6) — Allocation of capital gains tax rate for 2000; 131(4) — Application of s. 84; 131(5.1), (5.2) — TCP gains distribution to non-resident subject to withholding tax; 132.2 — Mutual fund reorganizations; 152(1) — Assessment; 142.2(1)"financial institution"(c)(iii) — Mutual fund corporation not subject to mark-to-market rules; 184(2) — Tax on excessive elections; 184(3) — Election to treat excess as separate dividend; 212(2) — No withholding tax on capital gains dividend.

History: The opening words of para. 131(1)(b) amended by 2005, c. 19, subsec. 30(1) to add "(other than paragraph (5.1)(b))", applicable after March 22, 2004.

Para. 131(1)(b) amended by 2001, c. 17, subsec. 128(1), applicable to taxation years that end after February 27, 2000. The para. formerly read:

> (b) notwithstanding any other provision of this Act, any amount received by a taxpayer in a taxation year as, on account of, in lieu of payment of or in satisfaction of, the dividend shall not be included in computing the taxpayer's income for the year as income from a share of the capital stock of the corporation, but shall be deemed to be a capital gain of the taxpayer for the year from a disposition, in the year and after February 22, 1994, by the taxpayer of capital property.

Subsec. 131(1) amended by 1995, c. 3, subsec. 41(1), applicable to dividends paid after February 22, 1994. Subsec. (1) formerly read:

> (1) Where at any particular time a dividend became payable, by a corporation that was throughout the taxation year in which the dividend became payable a mutual fund corporation, to shareholders of any class of shares of its capital stock,
>
> (a) if the corporation so elects in respect of the full amount of the dividend, in prescribed form and manner and at or before the earlier of the particular time and the first day on which any part of the dividend was paid,
>
> (i) the dividend shall be deemed to be a capital gains dividend payable out of the corporation's capital gains dividend account to the extent that it does not exceed the corporation's capital gains dividend account at the particular time,
>
> (ii) notwithstanding any other provision of this Act, any amount received by a taxpayer in a taxation year as, on account of, in lieu of payment of or in satisfaction of, the dividend shall not be included in computing the taxpayer's income for the year as income from a share of the capital stock of the corporation, but shall be deemed to be a capital gain of the taxpayer for the year from a disposition of capital property and, for the purposes of section 110.6, that property shall be deemed to have been disposed of by the taxpayer in the year, and
>
> (iii) any election under paragraph (b) made by the corporation in respect of the dividend shall be deemed not to have been made; and
>
> (b) if the corporation so elects in respect of the full amount of the dividend, in prescribed form and manner and at or before

the earlier of the particular time and the first day on which any part of the dividend was paid,

(i) the dividend shall be deemed to be a capital gains dividend payable out of the corporation's non-qualifying real property capital gains dividend account to the extent that it does not exceed the corporation's non-qualifying real property capital gains dividend account at the particular time, and

(ii) notwithstanding any other provision of this Act, any amount received by a taxpayer in a taxation year as, on account of, in lieu of payment of or in satisfaction of, the dividend shall not be included in computing the taxpayer's income for the year as income from a share of the capital stock of the corporation, but shall be deemed to be a capital gain of the taxpayer for the year from a disposition of capital property and, for the purposes of section 110.6,

(A) that property shall be deemed to have been a non-qualifying real property of the taxpayer, within the meaning of that section, disposed of by the taxpayer in the year, and

(B) the taxpayer's eligible real property gain for the year from the disposition of that property shall be deemed to be nil.

Subsec. 131(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 76(1), applicable to 1992 *et.seq.* Subsec. (1) formerly read:

131. (1) Where at any particular time after 1971 a dividend has become payable by a corporation that was, throughout the taxation year in which the dividend became payable, a mutual fund corporation, to shareholders of any class of shares of its capital stock, if the corporation so elects in respect of the full amount of the dividend, in prescribed manner and prescribed form and at or before the particular time or the first day on which any part of the dividend was paid if that day is earlier than the particular time,

(a) the dividend shall be deemed to be a capital gains dividend to the extent that it does not exceed the corporation's capital gains dividend account at the particular time; and

(b) notwithstanding any other provision of this Act, any amount received by a taxpayer in a taxation year as, on account or in lieu of payment of, or in satisfaction of the dividend shall not be included in computing the taxpayer's income for the year as income from a share of the capital stock of the corporation, but shall be deemed to be a capital gain of the taxpayer for the year from a disposition of capital property and, for the purposes of section 110.6, that property shall be deemed to have been disposed of by the taxpayer in the year.

Regulations: 2104 (prescribed manner of making election).

Interpretation Bulletins: IT-98R2: Investment corporations (archived); IT-243R4: Dividend refund to private corporations; IT-328R3: Losses on shares on which dividends have been received.

Forms: T5: Statement of investment income; T5 Summ: Return of investment income; T2055: Election in respect of a capital gains dividend under subsection 131(1); RC4169: Tax treatment of mutual funds for individuals.

(1.1) Deemed date of election — Where at any particular time a dividend has become payable by a mutual fund corporation to shareholders of any class of shares of its capital stock and subsection (1) would have applied to the dividend except that the election referred to in that subsection was not made on or before the day on or before which the election was required by that subsection to be made, the election shall be deemed to have been made at the particular time or on the first day on which any part of the dividend was paid, whichever is the earlier, if

(a) the election is thereafter made in prescribed manner and prescribed form;

(b) an estimate of the penalty in respect of the election is paid by the corporation when the election is made; and

(c) the directors or other person or persons legally entitled to administer the affairs of the corporation have, before the time the election is made, authorized the election to be made.

Related Provisions: 130(2) — Application to investment corporation; 131(1.2) — Request to make election; 131(1.3), (1.4) — Penalty; 152(1) — Assessment.

Regulations: 2104(f) (prescribed manner).

(1.2) Request to make election — The Minister may at any time, by written request served personally or by registered mail, request that an election referred to in paragraph (1.1)(a) be made by a mutual fund corporation and where the mutual fund corporation on which such a request is served does not comply therewith within 90 days after service of the request, subsection (1.1) does not apply to such an election made thereafter by it.

Related Provisions: 248(7)(a) — Mail deemed received on day mailed.

(1.3) Penalty — For the purposes of this section, the penalty in respect of an election referred to in paragraph (1.1)(b) is an amount equal to the lesser of

(a) 1% per annum of the amount of the dividend referred to in the election for each month or part of a month during the period commencing with the time that the dividend became payable, or the first day on which any part of the dividend was paid if that day is earlier, and ending with the day on which the election was made, and

(b) the product obtained when $500 is multiplied by the proportion that the number of months or parts of months during the period referred to in paragraph (a) bears to 12.

(1.4) Assessment and payment of penalty — The Minister shall, with all due dispatch, examine each election referred to in paragraph (1.1)(a), assess the penalty payable and send a notice of assessment to the mutual fund corporation and the corporation shall pay forthwith to the Receiver General, the amount, if any, by which the penalty so assessed exceeds the total of all amounts previously paid on account of that penalty.

Related Provisions: 152(1) — Assessment.

(1.5) Reporting [for 2000] — Where paragraph (1)(b) applies to a dividend paid by a mutual fund corporation to a shareholder of any class of shares of its capital stock, the corporation shall disclose to the shareholder in prescribed form the amount of the dividend that is in respect of capital gains realized on dispositions of property that occurred

(a) before February 28, 2000,

(b) after February 27, 2000 and before October 18, 2000, and

(c) after October 17, 2000,

and if it does not do so, the dividend is deemed to be in respect of capital gains from dispositions of property that occurred before February 28, 2000.

History: Subsec. 131(1.5) added by 2001, c. 17, subsec. 128(2), applicable to taxation years that end after February 27, 2000.

(1.6) Allocation [for 2000] — Where subsection (1) applies in respect of a dividend paid by a mutual fund corporation in the period that begins 60 days after the beginning of the corporation's taxation year that includes February 28, 2000 or October 17, 2000 and ends 60 days after the end of that year, and the corporation does not elect under subsection (1.7), the following rules apply:

(a) the portion of the dividend that is in respect of capital gains of the mutual fund corporation from disposi-

tions of property by the mutual fund corporation in the year and in the particular period that began at the beginning of the year and ended at the end of February 27, 2000 is deemed to be that proportion of the dividend that the corporation's net capital gains from dispositions of property in the particular period to which the dividend relates is of the total of the corporation's net capital gains from dispositions of property in each of the particular periods referred to in this subsection,

(b) the portion of the dividend that is in respect of capital gains of the mutual fund corporation from dispositions of property by the mutual fund corporation in the year and in the particular period that began at the beginning of February 28, 2000 and ended at the end of October 17, 2000 is deemed to be that proportion of the dividend that the corporation's net capital gains from dispositions of property in the particular period is of the total of the corporation's net capital gains from dispositions of property in each of the particular periods referred to in this subsection, and

(c) the portion of the dividend that is in respect of capital gains of the mutual fund corporation from dispositions of property by the mutual fund corporation in the year and in the particular period that begins at the beginning of October 18, 2000 and ends at the end of the year, is deemed to be that proportion of the dividend that the corporation's net capital gains from dispositions of property in the particular period is of the total of the corporation's net capital gains from dispositions of property in each of the particular periods referred to in this subsection,

and, in this subsection and in subsection (1.8), net capital gains from dispositions of property in a particular period means the amount, if any, by which the corporation's capital gains from dispositions of property in the particular period exceeds the corporation's capital losses from dispositions of property in the particular period.

History: Subsec. 131(1.6) added by 2001, c. 17, subsec. 128(2), applicable to taxation years that end after February 27, 2000.

(1.7) Allocation [for 2000] — Where subsection (1) applies in respect of a dividend paid by a mutual fund corporation in the period that begins 60 days after the beginning of the corporation's taxation year that includes February 28, 2000 or October 17, 2000 and ends 60 days after the end of that year, and the corporation so elects under this paragraph in its return of income

(a) the portion of the dividend that is in respect of capital gains from dispositions of property that occurred in the year and before February 28, 2000 is deemed to be that proportion of the dividend that the number of days that are in that year and before February 28, 2000 is of the number of days that are in that year;

(b) the portion of the dividend that is in respect of capital gains from dispositions of property that occurred in the year and in the period that began at the beginning of February 28, 2000 and ended at the end of October 17, 2000 is deemed to be that proportion of the dividend that the number of days that are in the year and in that period is of the number of days that are in the year; and

(c) the portion of the dividend that is in respect of capital gains from dispositions of property that occurred in the year and in the period that begins at the beginning of October 18, 2000 and ends at the end of the year, is deemed to be that proportion of the dividend that the number of days that are in the year and in that period is of the number of days that are in the year.

History: Subsec. 131(1.7) added by 2001, c. 17, subsec. 128(2), applicable to taxation years that end after February 27, 2000.

(1.8) Allocation [for 2000] — For the purposes of subsection (1.6) and (1.7), where the total amount of dividends paid by a mutual fund corporation in the period that begins 60 days after the beginning of the corporation's taxation year that includes February 28, 2000 or October 17, 2000 and ends 60 days after the end of that year and to which subsection (1) applies exceeds the total amount of the corporation's net capital gains from dispositions of property in that year

(a) the amount of those dividends to which subsections (1.6) and (1.7) apply is the amount of the corporation's net capital gains from dispositions of property in that year, and

(b) the amount, if any, by which total amount of the dividends paid by the corporation in the period exceeds the total amount of the corporation's net capital gains from dispositions of property in that year is deemed to be a dividend in respect of capital gains from dispositions of property in the first of the periods described in subsection (1.6) that ends in the year.

History: Subsec. 131(1.8) added by 2001, c. 17, subsec. 128(2), applicable to taxation years that end after February 27, 2000.

(1.9) Allocation [for 2000] — Where no dividend to which subsection (1.7) applies is paid by a mutual fund corporation in respect of its net taxable capital gains for its taxation year that includes February 28, 2000 or October 17, 2000, the corporation has net capital gains or net capital losses from dispositions of property in the year, and the corporation so elects under this subsection in its return of income for the year

(a) the portion of those net capital gains and net capital losses that is in respect of capital gains and losses from dispositions of property that occurred before February 28, 2000 is deemed to be that proportion of the net capital gains or net capital losses respectively that the number of days that are in the year and before February 28, 2000 is of the number of days that are in the year,

(b) the portion of those net capital gains and net capital losses that is in respect of capital gains and losses from dispositions of property that occurred in the year and in the period that began at the beginning of February 28, 2000 and ended at the end of October 17, 2000, is deemed to be that proportion of the net capital gains or net capital losses respectively that the number of days that are in the year and in that period is of the number of days that are in the year, and

(c) the portion of those net capital gains and net capital losses that is in respect of capital gains and losses from dispositions of property that occurred in the year and in the period that began at the beginning of October 18, 2000 and ended at the end of the year, is deemed to be that proportion of the net capital gains or net capital losses respectively that the number of days that are in the year and in that period is of the number of days that are in the year,

and, for the purpose of this subsection,

(d) the net capital gains of a mutual fund corporation from dispositions of property in the year is the amount, if any, by which the corporation's capital gains from dispositions of property in a year exceeds

the corporation's capital losses from dispositions of property in the year, and

(e) the net capital losses of a mutual fund corporation from dispositions of property in the year is the amount, if any, by which the corporation's capital losses from dispositions of property in a year exceeds the corporation's capital gains from dispositions of property in the year.

History: Subsec. 131(1.9) added by 2001, c. 17, subsec. 128(2), applicable to taxation years that end after February 27, 2000.

(2) Capital gains refund to mutual fund corporation — Where a corporation was, throughout a taxation year, a mutual fund corporation and a return of its income for the year has been made within 3 years from the end of the year, the Minister

(a) may, on sending the notice of assessment for the year, refund an amount (in this subsection referred to as its "capital gains refund" for the year) equal to the lesser of

(i) the total of

(A) 14% of the total of

(I) all capital gains dividends paid by the corporation in the period commencing 60 days after the beginning of the year and ending 60 days after the end of the year, and

(II) its capital gains redemptions for the year, and

(B) the amount, if any, that the Minister determines to be reasonable in the circumstances, after giving consideration to the percentages applicable in determining the corporation's capital gains refund for the year and preceding taxation years and the percentages applicable in determining the corporation's refundable capital gains tax on hand at the end of the year, and

(ii) the corporation's refundable capital gains tax on hand at the end of the year; and

(b) shall, with all due dispatch, make that capital gains refund after mailing the notice of assessment if an application for it has been made in writing by the corporation within the period within which the Minister would be allowed under subsection 152(4) to assess tax payable under this Part by the corporation for the year if that subsection were read without reference to paragraph 152(4)(a).

Related Provisions: 130(2) — Application; 131(3) — Application to other liability; 131(3.1), (3.2) — Interest; 131(5.1), (5.2) — TCP gains distribution to non-resident subject to withholding tax; 152(1) — Assessment; 157(3)(c) — Reduction in instalments to reflect capital gains refund; 160.1 — Where excess refunded.

History: Para. 131(2)(a) amended by 2001, c. 17, subsec. 128(3), applicable to taxation years that end after February 27, 2000 except that, for a taxation year of a mutual fund corporation that includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, the reference to "14%" in cl. 131(2)(a)(i)(A) shall be read as a reference to the percentage determined when 28% is multiplied by the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the corporation for the year. Para. 131(2)(a) formerly read:

(a) may, on mailing the notice of assessment for the year, refund without application therefor an amount (in this section referred to as its "capital gains refund" for the year) equal to the lesser of

(i) 21% of the total of

(A) all capital gains dividends paid by the corporation in the period commencing 60 days after the commencement of the year and ending 60 days after the end of the year, and

(B) its capital gains redemptions for the year, and

(ii) the corporation's refundable capital gains tax on hand at the end of the year; and

Para. 131(2)(b) amended by 1998, c. 19, subsec. 157(1), applicable after April 27, 1989. Para. 131(2)(b) formerly read:

(b) shall, with all due dispatch, make such a refund after mailing the notice of assessment if application therefor has been made in writing by the corporation within the period determined under paragraph 152(4)(b) or (c), as the case may be, within which the Minister may reassess tax payable by the corporation for the year.

Interpretation Bulletins: IT-98R2: Investment corporations (archived).

Forms: T2 SCH 18: Federal and provincial or territorial capital gains refund.

(3) Application to other liability — Instead of making a refund that might otherwise be made under subsection (2), the Minister may, where the corporation is liable or about to become liable to make any payment under this Act, apply the amount that would otherwise be refunded to that other liability and notify the corporation of that action.

Related Provisions: 130(2) — Application to investment corporation; 152(1) — Assessment; 222(1)"action" — Ten-year limitation period applies to 131(3).

(3.1) Interest on capital gains refund — Where a capital gains refund for a taxation year is paid to, or applied to a liability of, a corporation, the Minister shall pay or apply interest on the refund at the prescribed rate for the period beginning on the day that is the later of

(a) the day that is 120 days after the end of the year, and

(b) the day that is 30 days after the day on which the corporation's return of income under this Part for the year was filed under section 150, unless the return was filed on or before the day on or before which it was required to be filed,

and ending on the day the refund is paid or applied.

Related Provisions: 130(2) — Application to investment corporation; 131(3.2) — Excess interest on capital gains refund; 161.1 — Offset of refund interest against arrears interest; 221.1 — Application of interest where legislation retroactive; 248(11) — Interest compounded daily.

History: Para. 131(3.1)(b) amended by 2003, c. 15, s. 112, applicable to taxation years that end after June 2003. It formerly read:

(b) the day on which the corporation's return of income under this Part for the year was filed under section 150, unless the return was filed on or before the day on or before which it was required to be filed,

Subsec. 131(3.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 76(2), applicable to capital gains refunds paid or applied with respect to taxation years beginning after 1991.

Regulations: 4301(b) (prescribed rate of interest).

(3.2) Excess interest on capital gains refund — Where at any particular time interest has been paid to, or applied to a liability of, a corporation under subsection (3.1) in respect of a capital gains refund and it is determined at a subsequent time that the capital gains refund was less than that in respect of which interest was so paid or applied,

(a) the amount by which the interest that was so paid or applied exceeds the interest, if any, computed in respect of the amount that is determined at the subsequent time to be the capital gains refund shall be deemed to be an amount (in this subsection referred to as the "amount payable") that became payable under this Part by the corporation at the particular time;

(b) the corporation shall pay to the Receiver General interest at the prescribed rate on the amount payable,

computed from the particular time to the day of payment; and

(c) the Minister may at any time assess the corporation in respect of the amount payable and, where the Minister makes such an assessment, the provisions of Divisions I and J apply, with such modifications as the circumstances require, in respect of the assessment as though it had been made under section 152.

Related Provisions: 20(1)(ll) — Deduction on repayment of interest; 130(2) — Application to investment corporation; 161.1 — Offset of refund interest against arrears interest; 221.1 — Application of interest where legislation retroactive; 248(11) — Interest compounded daily.

History: Subsec. 131(3.2) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 76(2), applicable to capital gains refunds paid or applied with respect to taxation years beginning after 1991.

Regulations: 4301(a) (prescribed rate of interest).

(4) Application of section 84 — Section 84 does not apply to deem a dividend to have been paid by a corporation to any of its shareholders, or to deem any of the shareholders of a corporation to have received a dividend on any shares of the capital stock of the corporation, if at the time the dividend would, but for this subsection, be deemed by that section to have been so paid or received, as the case may be, the corporation was a mutual fund corporation.

Related Provisions: 131(11)(c) — Rules re prescribed labour-sponsored venture capital corporations; 132.2(1)(o)(i) [to be repealed], 132.2(3)(l)(i) [draft] — Mutual fund reorganization.

(5) Dividend refund to mutual fund corporation — A corporation that was a mutual fund corporation throughout a taxation year

(a) is deemed for the purposes of paragraph 87(2)(aa) and section 129 to have been a private corporation throughout the year, except that its refundable dividend tax on hand at the end of the year (within the meaning assigned by subsection 129(3)) shall be determined without reference to paragraph 129(3)(a); and

(b) where it was not an investment corporation throughout the year, is deemed for the purposes of Part IV to have been a private corporation throughout the year except that, in applying subsection 186(1) to the corporation in respect of the year, that subsection shall be read without reference to paragraph 186(1)(b).

Related Provisions: 112 — Deduction of dividends received by resident corporation; 113 — Deduction of dividend from foreign affiliate; 131(1) — Election re capital gains dividend; 131(2) — Capital gains refund; 131(4) — Application of s. 84; 131(11)(c) — Rules re prescribed labour-sponsored venture capital corporations; 152(1) — Assessment; 157(3)(c) — Reduction in instalments to reflect dividend refund.

History: Subsec. 131(5) amended by 1998, c. 19, subsec. 157(2), applicable to 1993 *et seq.* Subsec. 131(5) formerly read:

(5) A corporation that was, throughout a taxation year, a mutual fund corporation other than an investment corporation shall, for the purposes of paragraph 87(2)(aa), section 129 and Part IV, be deemed to have been a private corporation throughout the year, except that

(a) its refundable dividend tax on hand at the end of the year (within the meaning assigned by subsection 129(3)) shall be determined without reference to paragraph (a) of that subsection; and

(b) in its application to the corporation in respect of the year, subsection 186(1) shall be read without reference to paragraph 186(1)(b).

Para. 131(5)(a) amended by 1996, c. 21, subsec. 33(1), applicable to taxation years that end after June 1995. Para. (a) formerly read:

(a) for the purposes of section 129, its refundable dividend tax on hand at the end of the year shall be deemed to be the amount, if any, by which the total of

(i) the total of amounts each of which is an amount in respect of the year or any preceding taxation year throughout which it is deemed by this subsection to have been a private corporation, equal to the tax under Part IV payable by it for that year, and

(i.1) the amount, if any, of the corporation's addition at December 31, 1986 of refundable dividend tax on hand (within the meaning assigned by subsection 129(3.3)),

exceeds the total of

(ii) the total of amounts each of which is the corporation's dividend refund for any previous taxation year described in subparagraph (i),

(iii) the amount, if any, of the corporation's reduction at December 31, 1977 of refundable dividend tax on hand (within the meaning assigned by subsection 129(3.1)), and

(iv) the amount, if any, of the corporation's reduction at December 31, 1987 of refundable dividend tax on hand (within the meaning assigned by subsection 129(3.5)); and

(5.1) TCP gains distribution — If a mutual fund corporation elects under subsection (1) to treat a dividend as a capital gains dividend, for the purposes of this Part and Part XIII,

(a) each shareholder to whom the dividend is paid is deemed to receive from the corporation, at the time the dividend is paid, a TCP gains distribution equal to the lesser of the amount of the dividend and the shareholder's pro rata portion at that time of the mutual fund corporation's TCP gains balance; and

(b) where the dividend is paid to a shareholder who is a non-resident person or a partnership that is not a Canadian partnership,

(i) subparagraph (1)(b)(vii) does not apply to the dividend, to the extent of the TCP gains distribution, and

(ii) the TCP gains distribution is a taxable dividend that, except for the purpose of the definition of "capital gains dividend account" in subsection (6), is not a capital gains dividend.

Related Provisions: 131(5.2) — Limitation on application of 131(5.1); 131(6) — Definitions of "pro rata portion" and "TCP gains distribution"; 131(6)"TCP gains balance"(a)(ii) — Dividend included in TCP gains balance of shareholder that is mutual fund corporation; 132(4)"TCP gains balance"(a)(ii) — Dividend included in TCP gains balance of shareholder that is mutual fund trust; 132(5.1) — Parallel rule for mutual fund trust; 212(2) — Withholding tax on taxable dividend deemed payable to non-resident; 218.3(2)(c) — Withholding tax on mutual fund distributions to non-residents.

History: Subsec. 131(5.1) added by 2005, c. 19, subsec. 30(2), applicable after March 22, 2004.

(5.2) Application of subsec. (5.1) — Subsection (5.1) applies to a dividend paid by a mutual fund corporation in a taxation year only if more than 5% of the dividend is received by or on behalf of shareholders each of whom is a non-resident person or is a partnership that is not a Canadian partnership.

Related Provisions: 132(5.2) — Parallel rule for mutual fund corporation.

History: Subsec. 131(5.2) added by 2005, c. 19, subsec. 30(2), applicable after March 22, 2004.

(6) Definitions — In this section,

"capital gains dividend account" of a mutual fund corporation at any time means the amount, if any, by which

(a) its capital gains, for all taxation years that began more than 60 days before that time, from dispositions of property after 1971 and before that time while it was a mutual fund corporation

exceeds

(b) the total of

(i) its capital losses, for all taxation years that began more than 60 days before that time, from dispositions of property after 1971 and before that time while it was a mutual fund corporation,

(ii) all capital gains dividends that became payable by the corporation before that time and more than 60 days after the end of the last taxation year that ended more than 60 days before that time, and

(iii) the total of all amounts each of which is

(A) an amount equal to $^{100}/_{21}$ of its capital gains refund for any taxation year throughout which it was a mutual fund corporation where the year ended

(I) more than 60 days before that time, and

(II) before February 28, 2000,

(B) an amount equal to 100/18.7 of its capital gains refund for any taxation year throughout which it was a mutual fund corporation where the year ended

(I) more than 60 days before that time, and

(II) after February 27, 2000 and before October 18, 2000, or

(C) an amount equal to $^{100}/_{14}$ of its capital gain refund[38] for any taxation year throughout which it was a mutual fund corporation where the year ended

(I) more than 60 days before that time, and

(II) after October 17, 2000;

Related Provisions: 88(2)(a)(i.1) — Winding-up; 87(2)(bb) — Amalgamation — addition to amounts determined under 131(6)"capital gains dividend account"(a) and (b).

History: Subpara. (b)(iii) of the definition "capital gains dividend account" in subsec. 131(6) amended by 2001, c. 17, subsec. 128(4), applicable to taxation years that end after February 27, 2000 except that, for a taxation year of a mutual fund corporation that includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, the references to "100/18.7" in cl. (b)(iii)(B) and "100/14" in cl. (b)(iii)(C) shall be read as "100/28X", where "X" is the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the corporation for the year. Subpara. (b)(iii) formerly read:

(iii) all amounts each of which is an amount in respect of any taxation year that ended more than 60 days before that time throughout which it was a mutual fund corporation, equal to $^{100}/_{21}$ of its capital gains refund for that year;

The definition "capital gains dividend account" in subsec. 131(6) amended by 1995, c. 3, subsec. 41(3), applicable after February 22, 1994. The definition formerly read:

"capital gains dividend account" of a mutual fund corporation at any time means the amount, if any, by which the total of

(a) its capital gains, for all taxation years beginning more than 60 days before that time, from dispositions of property (other than its non-qualifying real property) after 1971 and before that time while it was a mutual fund corporation, and

(b) all amounts each of which is an amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is its capital gain, for a taxation year beginning more than 60 days before that time, from the disposition of a non-qualifying real property of the corporation before that time while it was a mutual fund corporation,

B is the number of calendar months in the period that begins with the later of the calendar month in which the property was last acquired by it and January 1972 and ends with February 1992, and

C is the number of calendar months in the period that begins with the later of the calendar month in which the property was last acquired by it and January 1972 and ends with the calendar month in which the property was disposed of by it

exceeds the total of

(c) its capital losses, for all taxation years beginning more than 60 days before that time, from dispositions of property (other than its non-qualifying real property) after 1971 and before that time while it was a mutual fund corporation,

(d) all amounts each of which is an amount determined by the formula

$$D \times \frac{E}{F}$$

where

D is its capital loss, for a taxation year beginning more than 60 days before that time, from the disposition of a non-qualifying real property of the corporation before that time while it was a mutual fund corporation,

E is the number of calendar months in the period that begins with the later of the calendar month in which the property was last acquired by it and January 1972 and ends with February 1992, and

F is the number of calendar months in the period that begins with the later of the calendar month in which the property was last acquired by it and January 1972 and ends with the calendar month in which the property was disposed of by it,

(e) all capital gains dividends that became payable by the corporation before that time and more than 60 days after the end of the last taxation year ending more than 60 days before that time, other than any such dividends that became payable out of the corporation's non-qualifying real property capital gains dividend account,

(f) all amounts each of which is an amount in respect of any taxation year ending more than 60 days before that time throughout which it was a mutual fund corporation, equal to 100/21 of its capital gains refund for that year, and

(g) the amount, if any, by which the total of the amounts determined under paragraphs (b) and (c) of the definition "non-qualifying real property capital gains dividend account" in respect of the corporation at that time exceeds the amount determined under paragraph (a) of that definition in respect of the corporation at that time;

"Capital gains dividend account" in subsec. 131(6) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 76(3), applicable to 1992 *et seq.* That definition formerly read:

"capital gains dividend account" of a mutual fund corporation at any time means the amount determined by the formula

$$A - (B + C + D)$$

where

A is the total amount of the corporation's capital gains, for all taxation years commencing more than 60 days before that time, from dispositions of property after 1971 and before that time while it was a mutual fund corporation,

B is the total amount of the corporation's capital losses, for all taxation years commencing more than 60 days before that time, from dispositions of property after 1971 and before that time while it was a mutual fund corporation,

[38] *Sic.* Should be "capital gains refund" — ed.

C is the total amount of all capital gains dividends that became payable by the corporation before that time and more than 60 days after the end of the last taxation year ending more than 60 days before that time, and

D is the total of all amounts each of which is an amount in respect of any taxation year ending more than 60 days before that time throughout which the corporation was a mutual fund corporation, equal to 100/21 of its capital gains refund for that year;

"capital gains redemptions" of a mutual fund corporation for a taxation year means the amount determined by the formula

$$\frac{A}{B} \times (C + D)$$

where

A is the total of all amounts paid by the corporation in the year on the redemption of shares of its capital stock,

B is the total of the fair market value at the end of the year of all the issued shares of its capital stock and the amount determined for A in respect of the corporation for the year,

C is $^{100}/_{14}$ of the corporation's refundable capital gains tax on hand at the end of the year, and

D is the amount determined by the formula

$$(K + L) - (M + N)$$

where

K is the amount of the fair market value at the end of the year of all the issued shares of the corporation's capital stock,

L is the total of all amounts each of which is the amount of any debt owing by the corporation, or of any other obligation of the corporation to pay an amount, that was outstanding at that time,

M is the total of the cost amounts to the corporation at that time of all its properties, and

N is the amount of any money of the corporation on hand at that time;

Related Provisions: 130(2) — Application to investment corporation; 132.2(1)(p) [to be repealed], 132.2(3)(m) [draft] — Mutual fund reorganizations; 257 — Formula amount cannot calculate to less than zero.

History: The description of C in the definition "capital gains redemptions" in subsec. 131(6) amended by 2001, c. 17, subsec. 128(5) to replace the reference to "100/21" with "100/14", applicable to taxation years that end after February 27, 2000 except that, for a taxation year of a mutual fund corporation that includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, "100/14" shall be read as "100/28X", where "X" is the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the corporation for the year.

"dividend refund [para. 131(6)(c)]" — [Repealed under former Act]

"non-qualifying real property" — [Repealed]

History: The definition "non-qualifying real property" in subsec. 131(6) repealed by 1995, c. 3, subsec. 41(2), applicable after February 22, 1994. The definition formerly read:

> "non-qualifying real property" of a corporation or trust (other than a personal trust) means property disposed of by the corporation or trust after February 1992 that at the time of its disposition is
>
> (a) real property,
>
> (b) a share of the capital stock of a corporation, the fair market value of which is derived principally from real property, other than real property that was used
>
> (i) throughout that part of the 24-month period immediately preceding that time while it was owned by the corporation or a corporation related to the corporation, or
>
> (ii) throughout all or substantially all of the time in the period preceding that time during which it was owned by the corporation or a corporation related to the corporation,
>
> principally in an active business carried on by the corporation or a corporation related to it, but not including a share of the capital stock of a corporation the fair market value of which is derived principally from real property owned by another corporation the shares of which would, if owned by the corporation or the trust, not be non-qualifying real property of the corporation or the trust,
>
> (c) an interest in a partnership or trust, the fair market value of which is derived principally from real property, other than real property that was used
>
> (i) throughout that part of the 24-month period immediately preceding that time while it was property of the partnership or trust, or
>
> (ii) throughout all or substantially all of the time in the period preceding that time during which it was property of the partnership or trust,
>
> principally in an active business carried on by one or more persons as members of the partnership or by the trust, or
>
> (d) an interest or an option in respect of property described in any of paragraphs (a) to (c),
>
> and, for the purposes of this definition, an "active business" carried on by a person at any time means a business carried on by the person at that time other than a business (other than a business carried on by a credit union or a business of leasing property that is not real property) the principal purpose of which is to derive income from property (including interest, dividends, rents or royalties), unless the person or, where the person carries on the business as a member of a partnership, the partnership
>
> (e) employs in the business at that time more than 5 individuals on a full-time basis, or
>
> (f) in the course of carrying on the business has managerial, administrative, financial, maintenance or other similar services provided to it at that time and the person or partnership could reasonably be expected to require more than 5 full-time employees if those services had not been so provided;

The closing words of para. (b) of the definition "non-qualifying real property" in subsec. 131(6) substituted by 1994, c. 21, s. 63, applicable to 1992 *et seq.* The closing words formerly read:

> principally in an active business carried on by the corporation or a corporation related to it,

"Non-qualifying real property" added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 76(3.1), applicable to 1992 *et seq.*

"non-qualifying real property capital gains dividend account" — [Repealed]

History: The definition "non-qualifying real property capital gains dividend account" in subsec. 131(6) repealed by 1995, c. 3, subsec. 41(2), applicable after February 22, 1994. The definition formerly read:

> "non-qualifying real property capital gains dividend account" of a mutual fund corporation at any time means the amount, if any, by which
>
> (a) the total of all amounts each of which is the amount by which its capital gain, for a taxation year beginning more than 60 days before that time, from the disposition of a non-qualifying real property of the corporation before that time while it was a mutual fund corporation exceeds the amount determined under paragraph (b) of the definition "capital gains dividend account" in respect of that disposition
>
> exceeds the total of
>
> (b) all amounts each of which is the amount by which its capital loss, for a taxation year beginning more than 60 days before that time, from the disposition of a non-qualifying real property of the corporation before that time while it was a mutual fund corporation exceeds the amount determined under paragraph (d) of the definition "capital gains dividend account" in respect of that disposition,
>
> (c) all capital gains dividends that became payable by the corporation before that time and more than 60 days after the end of the last taxation year ending more than 60 days before that time, other than any such dividends that became payable out of the corporation's capital gains dividend account, and

(d) the amount, if any, by which the total of all amounts determined under paragraphs (c) to (f) of the definition "capital gains dividend account" in respect of the corporation at that time exceeds the total of all amounts determined under paragraphs (a) and (b) of that definition in respect of the corporation at that time;

"Non-qualifying real property capital gains dividend account" added to subsec. 131(6) by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 76(3.1), applicable to 1992 *et seq.*

"pro rata portion", of a shareholder at any time, of a mutual fund corporation's TCP gains balance, in respect of a dividend paid by the mutual fund corporation on a class of shares of its capital stock, means the amount determined by the formula

$$A \times B/C$$

where

A is the mutual fund corporation's TCP gains balance immediately before that time,

B is the amount received in respect of the dividend by the shareholder, and

C is the total amount of the dividend;

History: The definition "pro rata portion" in subsec. 131(6) added by 2005, c. 19, subsec. 30(3), applicable after March 22, 2004.

"refundable capital gains tax on hand" of a mutual fund corporation at the end of a taxation year means the amount determined by the formula

$$A - B$$

where

A is the total of all amounts each of which is an amount in respect of that or any previous taxation year throughout which the corporation was a mutual fund corporation, equal to the least of

(a) 28% of its taxable income for the year,

(b) 28% of its taxed capital gains for the year, and

(c) the tax payable by it under this Part for the year determined without reference to section 123.2, and

B is the total of all amounts each of which is an amount in respect of any previous taxation year throughout which the corporation was a mutual fund corporation, equal to its capital gains refund for the year.

Related Provisions: 87(2)(bb) — Amalgamation — addition to amounts determined under 131(6)"refundable capital gains tax on hand"A and B; 130(2) — Application to investment corporation; 131(7) — Taxed capital gains defined; 132.2(1)(l) [to be repealed], 132.2(3)(i) [draft] — Addition to RCGTOH of transferee on qualifying exchange of property between mutual funds; 257 — Formula cannot calculate to less than zero.

"TCP gains balance", of a mutual fund corporation at any time, means the amount, if any, by which

(a) the total of

(i) the mutual fund corporation's capital gains from dispositions, after March 22, 2004 and at or before that time, of taxable Canadian properties, and

(ii) the TCP gains distributions (including those defined in section 132) received by the mutual fund corporation at or before that time

exceeds

(b) the total of

(i) the mutual fund corporation's capital losses from dispositions, after March 22, 2004 and at or before that time, of taxable Canadian properties, and

(ii) the total of all amounts deemed, in respect of dividends paid by the mutual fund corporation before that time, to be TCP gains distributions received by shareholders from the mutual fund corporation;

History: The definition "TCP gains balance" in subsec. 131(6) added by 2005, c. 19, subsec. 30(3), applicable after March 22, 2004.

"TCP gains distribution" means a TCP gains distribution described in subsection (5.1).

Related Provisions: 132(4)"TCP gains distribution" — Definition applies to mutual fund trust.

History: The definition "TCP gains distribution" in subsec. 131(6) added by 2005, c. 19, subsec. 30(3), applicable after March 22, 2004.

(7) Definition of "taxed capital gains" — In subsection (6), "taxed capital gains" of a taxpayer for a taxation year has the meaning assigned by subsection 130(3).

(8) Meaning of "mutual fund corporation" — Subject to subsection (8.1), a corporation is, for the purposes of this section, a mutual fund corporation at any time in a taxation year if, at that time, it was a prescribed labour-sponsored venture capital corporation or

(a) it was a Canadian corporation that was a public corporation;

(b) its only undertaking was

(i) the investing of its funds in property (other than real property or an interest in real property),

(ii) the acquiring, holding, maintaining, improving, leasing or managing of any real property (or interest in real property) that is capital property of the corporation, or

Proposed Amendment — 131(8)(b)(i), (ii)

(i) the investing of its funds in property (other than real property or an interest in real property or an immovable or a real right in an immovable),

(ii) the acquiring, holding, maintaining, improving, leasing or managing of any real property (or interest in real property) or of any immovable (or real right in immovables) that is capital property of the corporation, or

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), s. 242, will amend subparas. 131(8)(b)(i) and (ii) to read as above, to come into force on Royal Assent.

Technical Notes: See under 12(4).

(iii) any combination of the activities described in subparagraphs (i) and (ii), and

(c) the issued shares of the capital stock of the corporation included shares

(i) having conditions attached thereto that included conditions requiring the corporation to accept, at the demand of the holder thereof and at prices determined and payable in accordance with the conditions, the surrender of the shares, or fractions or parts thereof, that are fully paid, or

(ii) qualified in accordance with prescribed conditions relating to the redemption of the shares,

and the fair market value of such of the issued shares of its capital stock as had conditions attached thereto that included such conditions or as were so qualified, as the case may be, was not less than 95% of the fair market value of all of the issued shares of the capital stock of the corporation (such fair market values being determined without regard to any voting rights attaching to shares of the capital stock of the corporation).

Related Provisions: 39(5) — MFC can make election for Canadian securities; 131(8.1) — Loss of MFC status; 132.2(1)(q) [to be repealed], 132.2(3)(n) [draft] — Corporation deemed not to be MFC after rollover of property to mutual fund trust; 142.2(1)"financial institution"(c)(iii) — MFC not subject to mark-to-market rules; 157(3)(c) — Instalments required from MFC; 248(1)"mutual fund corporation" — Definition applies to entire Act; 248(4.1) — Meaning of "real right in an immovable"; 253.1 — Limited partner not considered to carry on business of partnership.

History: Subparas. 131(8)(b)(i) and (ii) amended by 1998, c. 19, subsec. 157(3), applicable to 1994 *et seq.* Subparas. 131(8)(b)(i) and (ii) formerly read:

(i) the investing of its funds in property (other than real property),

(ii) the acquiring, holding, maintaining, improving, leasing or managing of any real property that is capital property of the corporation, or

Para. 131(8)(b) amended by 1995, c. 21, s. 67, applicable to 1994 *et seq.* Para. (b) formerly read:

(b) its only undertaking was the investing of funds of the corporation; and

That portion of subsec. 131(8) preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 110(1), applicable to 1990 *et seq.* That portion formerly read:

(8) Meaning of expression "mutual fund corporation" — For the purposes of this Act, a corporation is a mutual fund corporation at any time in a taxation year if at that time

Regulations: 6701 (prescribed labour-sponsored venture capital corporation).

I.T. Technical News: 6 (mutual funds trading — meaning of "investing its funds in property" in 131(8)(b)(i)); 14 (reporting of derivative income by mutual funds).

Advance Tax Rulings: ATR-62: Mutual fund distribution limited partnership — amortization of selling commissions.

(8.1) Idem — Where, at any time, it can reasonably be considered that a corporation, having regard to all the circumstances, including the terms and conditions of the shares of its capital stock, was established or is maintained primarily for the benefit of non-resident persons, the corporation shall be deemed not to be a mutual fund corporation after that time unless

(a) throughout the period that begins on the later of February 21, 1990 and the day of its incorporation and ends at that time, all or substantially all of its property consisted of property other than property that would be taxable Canadian property if the definition "taxable Canadian property" in subsection 248(1) were read without reference to paragraph (b) of that definition; or

(b) it has not issued a share (other than a share issued as a stock dividend) of its capital stock after February 20, 1990 and before that time to a person who, after reasonable inquiry, it had reason to believe was non-resident, except where the share was issued to that person under an agreement in writing entered into before February 21, 1990.

Possible Future Amendment — 131(8.1)

(8.1) If, at any particular time, the total of all amounts each of which is the fair market value, at the particular time, of an issued and outstanding share of the capital stock of a corporation held by a non-resident person or a partnership that is not a Canadian partnership is more than 50% of the total of all amounts each of which is the fair market value, at the particular time, of an issued and outstanding share of the corporation, the corporation is deemed not to be, after the particular time, a mutual fund corporation unless

(a) both

(i) throughout the period that begins on the later of January 1, 2005 and the day of its incorporation and ends at the particular time, the total of all amounts each of which is the fair market value of a specified property (as defined in subsection 132(4)) of the corporation was not more than 10% of the total of all amounts each of which is the fair market value of a property of the corporation, and

(ii) where the corporation was incorporated before 2005, throughout the period that began on the later of February 21, 1990 and the day of its incorporation and ends on the earlier of the particular time and December 31, 2004, the total of all amounts each of which is the fair market value of a taxable Canadian property (determined without reference to paragraph (b) of the definition "taxable Canadian property" in subsection 248(1)) of the corporation was not more than 10% of the total of all amounts each of which is the fair market value of a property of the corporation; or

(b) it has

(i) not issued a share (other than a share issued as a stock dividend) of its capital stock after February 20, 1990 and before the particular time to a person who, after reasonable inquiry, it had reason to believe was non-resident, except where the share was issued to that person under an agreement in writing entered into before February 21, 1990, and

(ii) not issued a share (other than a share issued as a stock dividend) of its capital stock after [the day before September 16, 2004] and before the particular time to a partnership that, after reasonable inquiry, it had reason to believe was not a Canadian partnership, except where the share was issued to that partnership under an agreement in writing, between the corporation and the partnership, made before September 16, 2004.

Application: The September 16, 2004 draft legislation, subsec. 17(4), would have amended subsec. 131(8.1) to read as above, applicable after March 22, 2004, except that the opening words, in their application before 2005 to a corporation, are to, unless the corporation elects otherwise in writing by filing the election with the Minister of National Revenue on or before its filing-due date for its taxation year in which the amending legislation is assented to, be read as follows:

(8.1) If at any particular time it can reasonably be considered that a corporation (having regard to all the circumstances, including the terms and conditions of the shares of its capital stock) was incorporated, or is maintained, primarily for the benefit of non-resident persons, the corporation is deemed not to be a mutual fund corporation after the particular time, unless

In addition, the reference in para. 131(8.1)(a), as amended, to "January 1, 2005" is to be read as "January 1, 2007" and the reference to "2004" is to be read as "2006" in the application of that paragraph to a corporation that

(i) on March 23, 2004 would have ceased to be a mutual fund corporation if

(A) the reference to the expression "throughout the period that begins on the later of January 1, 2005 and the day of its incorporation and ends at the particular time" in that paragraph were read as "on March 23, 2004", and

(B) the reference to the expression "December 31, 2004" in that paragraph were read as "March 22, 2004", and

(ii) on March 24, 2004 was a mutual fund corporation.

This proposal is unlikely to be enacted in its current form; see news release in Possible Future Amendment to 132(7).

Technical Notes: Subsection 131(8.1) provides that a corporation is not a mutual fund corporation after a particular time if, at the particular time, it is reasonable to conclude that the corporation was established or maintained primarily for the benefit of non-resident persons. There are two exceptions to this rule. The first, which is set out in paragraph 131(8.1)(a), applies if, throughout the period that started on February 21, 1990 (or if later, the date of incorporation) and that ends at the particular time, all or substantially all of the corporation's property consisted of property other than taxable Canadian property. The second, which is set out in paragraph 131(8.1)(b), applies if the corporation did not issue a share of its capital stock, other than a stock dividend, after February 20, 1990 and before that time to a person who, after reasonable inquiry, it had reason to believe was not resident in Canada, except where the share was issued pursuant to an agreement in writing entered into before February 21, 1990.

The preamble to subsection 131(8.1) is amended to provide that a corporation is not a mutual fund corporation after a particular time if, at that time, more than 50% of the fair market value of the issued and outstanding shares of the capital stock of the corporation is attributable to the fair market value of shares that are held by one or any combination of non-resident persons or partnerships that are not "Canadian partnerships" (as defined in section 102).

This amendment applies

- after March 22, 2004 to a corporation that so elects in writing by filing the election with the Minister of National Revenue on or before its filing-due date for its taxation year in which the amendment receives Royal Assent; and
- after 2004 to a corporation that does not so elect. Where a corporation does not so elect, subsection 131(8.1) will continue to provide, until December 31, 2004, that the corporation is not a mutual fund corporation after a particular time if, at that time, it can reasonably be considered that the corporation (having regard to all the circumstances, including the terms and conditions of the shares of its capital stock) was incorporated, or is maintained, primarily for the benefit of non-resident persons.

The loss, under the general rule in subsection 131(8.1), after the particular time of a corporation's status as a mutual fund corporation will continue to be subject to the exceptions found in paragraphs 131(8.1)(a) and (b).

Paragraph 131(8.1)(a) is amended to clarify that, in addition to other forms of taxable Canadian property, Canadian resource property and timber resource property are included in determining the availability of relief under that paragraph. Except as otherwise provided in the transitional rules for the amendments, the amendments to paragraph 131(8.1)(a) apply after March 22, 2004.

Corporations incorporated after 2004

Paragraph 131(8.1)(a) is amended to provide that the exception applies to a corporation incorporated after 2004 only if, throughout the period that begins on the later of January 1, 2005 and the day of its incorporation and ends at the particular time, the total of all amounts each of which is the fair market value of a "specified property" (as newly defined in subsection 132(4)) of the corporation was not more than 10% of the fair market value of all of its properties.

Corporations incorporated before 2005

For a corporation incorporated before 2005, paragraph 131(8.1)(a) is amended to provide that the exception applies to the corporation only if both

- throughout the period that begins on January 1, 2005 and ends at the particular time, the total of all amounts each of which is the fair market value of a "specified property" (as defined in subsection 132(4)) of the corporation was not more than 10% of the fair market value of all of its properties, and
- throughout the period that began on the later of February 21, 1990 and the day of its incorporation and ends on the earlier of the particular time and December 31, 2004, the total of all amounts each of which is the fair market value of a taxable Canadian property (determined without reference to paragraph (b) of the definition "taxable Canadian property" in subsection 248(1)) of the corporation was not more than 10% of the fair market value of all of its properties.

Transitional relief: corporations otherwise offside on March 23, 2004

Some corporations that were otherwise mutual fund corporations at the end of March 23, 2004, might have lost their mutual fund status on March 23, 2004 if the addition of Canadian resource property and timber resource property to the properties considered in determining the application of paragraph 131(8.1)(a) applied on March 23, 2004. For such a corporation, paragraph 131(8.1)(a) is amended to provide that the exception in that paragraph applies to the corporation if both

- throughout the period that begins on January 1, 2007 and ends at the particular time, the total of all amounts each of which is the fair market value of a "specified property" (as defined in subsection 132(4)) of the corporation was not more than 10% of the fair market value of all of its properties, and
- throughout the period that began on the later of February 21, 1990 and the day of its incorporation and ends on the earlier of the particular time and December 31, 2006, the total of all amounts each of which is the fair market value of a taxable Canadian property (determined without reference to paragraph (b) of the definition "taxable Canadian property" in subsection 248(1)) of the corporation was not more than 10% of the fair market value of all of its properties.

For more detail on the new definition "specified property" in subsection 132(4), see the commentary on that subsection.

Paragraph 131(8.1)(b) is amended to provide that the exception applies to a corporation only if the corporation satisfies the existing condition in that paragraph (*i.e.*, the condition found, under these amendments, in subparagraph 131(8.1)(b)(i)) and it has not issued a share (other than a share issued as a stock dividend) of its capital stock on or after September 16, 2004 and before the particular time to a partnership that, after reasonable inquiry, it had reason to believe was not a "Canadian partnership" (as defined in section 102), except where the share was issued to that partnership under an agreement in writing, between the corporation and the partnership, made before September 16, 2004.

Related Provisions: 248(4) — Interest in real property.

History: Para. 131(8.1)(a) amended by 2001, c. 17, subsec. 128(6), applicable after October 1, 1996. The para. formerly read:

> (a) throughout the period beginning on the later of February 21, 1990 and the day of its incorporation and ending at that time, all or substantially all of its property consisted of property other than
>
> (i) real property situated in Canada (including any interest therein or option in respect thereof, whether or not the property is in existence), and
>
> (ii) property that would, if
>
> (A) the corporation were non-resident,
>
> (B) paragraph 115(1)(b) were read without reference to subparagraphs 115(1)(b)(i) and (ii), and
>
> (C) the property were disposed of,
>
> be taxable Canadian property of the corporation; or

Subsec. 131(8.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 110(2), applicable after February 20, 1990.

(9) Reduction of refundable capital gains tax on hand — Notwithstanding any other provision of this section, the amount determined for A in the definition "refundable capital gains tax on hand" in subsection (6) in respect of the 1972 or 1973 taxation year of a corporation is,

> (a) in respect of its 1972 taxation year, 91.25% of the amount so determined; and
>
> (b) in respect of its 1973 taxation year, the total of
>
> (i) 91.25% of that proportion of the amount so determined that the number of days in that portion of the year that is before 1973 is of the number of days in the whole year, and
>
> (ii) 100% of that proportion of the amount so determined that the number of days in that portion of the year that is after 1972 is of the number of days in the whole year.

Related Provisions: 131(1) — Election re capital gains dividend; 131(6) — Definitions.

(10) Restricted financial institution — Notwithstanding any other provision of this Act, a mutual fund corporation or an investment corporation that at any time would, but for this subsection, be a restricted financial institution shall, if it has so elected in prescribed manner and prescribed form before that time, be deemed not to be a restricted financial institution at that time.

Related Provisions: 112(2.1) — Where no deduction of dividend permitted.

Forms: T2143: Election not to be a restricted financial institution.

(11) Rules respecting prescribed labour-sponsored venture capital corporations — Notwithstanding any other provision of this Act, in applying this Act to a corporation that was at any time a prescribed labour-sponsored venture capital corporation,

(a) for the purposes of subparagraphs 129(3)(a)(i) and (ii), the amount deducted under paragraph 111(1)(b) from the corporation's income for each taxation year ending after that time shall be deemed to be nil;

(b) the definition "aggregate investment income" in subsection 129(4) shall be read without reference to paragraph (a) of that definition in its application to taxation years that end after that time;

(c) notwithstanding subsection (4), if it so elects in its return of income under this Part for a taxation year ending after that time, subsection 84(1) applies for that year and all subsequent taxation years;

(d) subsection (5) does not apply for taxation years ending after that time; and

(e) the amount of the corporation's capital dividend account at any time after that time shall be deemed to be nil.

Related Provisions: 157(3)(c) — Reduction in instalments to reflect dividend refund; 186.1 — Exempt corporations.

History: Para. 131(11)(b) amended by 1996, c. 21, subsec. 33(2), applicable to taxation years that end after June 1995. Para. (b) formerly read:

(b) the value of A in the definition "Canadian investment income" in subsection 129(4) shall be deemed to be zero for taxation years ending after that time;

Subsec. 131(11) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 110(3), applicable to 1990 *et seq.*

Definitions [s. 131]: "active business" — 248(1); "amount", "assessment", "business" — 248(1); "Canada" — 255; "Canadian corporation" — 89(1), 248(1); "Canadian partnership" — 102, 248(1); "capital gains dividend" — 131(1), (5.1)(b)(ii); "capital dividend account" — 89(1) [technically not applicable to s. 131]; "capital gain" — 39(1)(a), 248(1); "capital gains dividend account", "capital gains redemptions" — 131(6); "capital gains refund" — 131(2); "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "class of shares" — 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount" — 248(1); "credit union" — 137(6), 248(1); "disposition", "dividend" — 248(1); "immovable" — Quebec *Civil Code* art. 900–907; "interest" — in real property 248(4); "investment corporation" — 130(3), 248(1); "Minister" — 248(1); "mutual fund corporation" — 131(8), (8.1), 132.2(1)(o)(i) [to be repealed], 132.2(3)(l)(i) [draft], 132.2(1)(q) [to be repealed], 132.2(1)(n) [draft], 248(1); "non-resident" — 248(1); "payable" — 84(7); "person", "prescribed" — 248(1); "prescribed labour-sponsored venture capital corporation" — Reg. 6701; "prescribed rate" — Reg. 4301; "private corporation" — 89(1), 248(1); "pro rata portion" — 131(6); "property" — 248(1); "public corporation" — 89(1), 248(1); "real right in an immovable" — 248(4.1); "received" — 248(7); "refundable capital gains tax on hand" — 131(6); "resident in Canada" — 250; "restricted financial institution", "share", "shareholder" — 248(1); "stock dividend" — 248(1); "TCP gains balance" — 131(6); "TCP gains distribution" — 131(5.1), (6); "tax payable" — 248(2); "taxable Canadian property" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxable dividend" — 89(1), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxed capital gains" — 130(3)(b), 131(7); "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "undertaking" — 253.1(a); "writing" — *Interpretation Act* 35(1).

Regulations [s. 131]: 6701 (prescribed labour-sponsored venture capital corporation).

Mutual Fund Trusts

132. (1) Capital gains refund to mutual fund trust — Where a trust was, throughout a taxation year, a mutual fund trust and a return of its income for the year has been made within 3 years from the end of the year, the Minister

(a) may, on sending the notice of assessment for the year, refund an amount (in this subsection referred to as its "capital gains refund" for the year) equal to the lesser of

(i) the total of

(A) 14.5% of the total of the trust's capital gains redemptions for the year, and

(B) the amount, if any, that the Minister determines to be reasonable in the circumstances, after giving consideration to the percentages applicable in determining the trust's capital gains refunds for the year and preceding taxation years and the percentages applicable in determining the trust's refundable capital gains tax on hand at the end of the year, and

(ii) the trust's refundable capital gains tax on hand at the end of the year; and

(b) shall, with all due dispatch, make that capital gains refund after mailing the notice of assessment if an application for it has been made in writing by the trust within the period within which the Minister would be allowed under subsection 152(4) to assess tax payable under this Part by the trust for the year if that subsection were read without reference to paragraph 152(4)(a).

Related Provisions: 104(21) — Allocation of capital gains and losses to beneficiaries; 127.55(f)(ii) — No minimum tax on mutual fund trust; 132(2) — Application to other liability; 132(2.1), (2.2) — Interest; 132(5.1), (5.2) — TCP gains distribution to non-resident subject to withholding tax; 132.1 — Deduction for certain amounts designated by mutual fund trust; 132.2 — Mutual fund reorganizations; 142.2(1)"financial institution"(d) — Mutual fund trust not subject to mark-to-market rules; 152(1) — Assessment: 160.1 — Where excess refunded.

History: Para. 132(1)(a) amended by 2001, c. 17, subsec. 129(1), applicable to taxation years that end after February 27, 2000 except that, for a taxation year of a mutual fund trust that includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, the reference to "14.5%" shall be read as a reference to the percentage determined when 29% is multiplied by the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the trust for the year. Para. 132(1)(a) formerly read:

(a) may, on mailing the notice of assessment for the year, refund without application therefor an amount (in this section referred to as its "capital gains refund" for the year) equal to the lesser of

(i) 21.75% of the trust's capital gains redemptions for the year, and

(ii) the trust's refundable capital gains tax on hand at the end of the year; and

Para. 132(1)(b) amended by 1998, c. 19, subsec. 158(1), applicable after April 27, 1989. Para. 132(1)(b) formerly read:

(b) shall, with all due dispatch, make such a refund after mailing the notice of assessment if application therefor has been made in writing by the trust within the period determined under paragraph 152(4)(b) or (c), as the case may be, within which the Minister may reassess tax payable by the trust for the year.

Forms: T2 SCH 18: Federal and provincial or territorial capital gains refund; T184: Capital gains refund for a mutual fund trust.

(2) Application to other liability — Instead of making a refund that might otherwise be made under subsection (1) the Minister may, where the trust is liable or about to become liable to make any payment under this Act, apply the amount that would otherwise be refunded to that other liability and notify the trust of that action.

Related Provisions: 132(4) — Definitions; 132(6) — Meaning of mutual fund corporation; 152(1) — Assessment; 222(1)"action" — Ten-year limitation period applies to 132(2).

(2.1) Interest on capital gains refund — If a capital gains refund for a taxation year is paid to, or applied to a liability of, a mutual fund trust, the Minister shall pay or apply interest on the refund at the prescribed rate for the period beginning on the day that is 30 days after the later of

(a) the day that is 90 days after the end of the year, and

(b) the day on which the trust's return of income under this Part for the year was filed under section 150

and ending on the day on which the refund is paid or applied.

Related Provisions: 132(2.2) — Excess interest on capital gains refund; 161.1 — Offset of refund interest against arrears interest; 221.1 — Application of interest where legislation retroactive; 248(11) — Interest compounded daily.

History: The opening words of subsec. 132(2.1) amended by 2003, c. 15, s. 113, applicable to taxation years that end after June 2003. The opening words formerly read:

(2.1) Where a capital gains refund for a taxation year is paid to, or applied to a liability of, a mutual fund trust, the Minister shall pay or apply interest on the refund at the prescribed rate for the period beginning on the day that is 45 days after the later ofand ending on the day on which the refund is paid or applied.

Subsec. 132(2.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 77, applicable to capital gains refunds paid or applied with respect to taxation years beginning after 1991.

Regulations: 4301(b) (prescribed rate of interest).

(2.2) Excess interest on capital gains refund — Where at any particular time interest has been paid to, or applied to a liability of, a trust under subsection (2.1) in respect of a capital gains refund and it is determined at a subsequent time that the capital gains refund was less than that in respect of which interest was so paid or applied,

(a) the amount by which the interest that was so paid or applied exceeds the interest, if any, computed in respect of the amount that is determined at the subsequent time to be the capital gains refund shall be deemed to be an amount (in this subsection referred to as the "amount payable") that became payable under this Part by the trust at the particular time;

(b) the trust shall pay to the Receiver General interest at the prescribed rate on the amount payable, computed from the particular time to the day of payment; and

(c) the Minister may at any time assess the trust in respect of the amount payable and, where the Minister makes such an assessment, the provisions of Divisions I and J apply, with such modifications as the circumstances require, in respect of the assessment as though it had been made under section 152.

Related Provisions: 20(1)(ll) — Deduction on repayment of interest; 161.1 — Offset of refund interest against arrears interest; 221.1 — Application of interest where legislation retroactive; 248(11) — Interest compounded daily.

History: Subsec. 132(2.2) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 77, applicable to capital gains refunds paid or applied with respect to taxation years beginning after 1991.

Regulations: 4301(a) (prescribed rate of interest).

(3) Application of subsec. 104(20) — In its application in respect of a mutual fund trust, subsection 104(20) shall be read as if the reference therein to "a dividend (other than a taxable dividend)" were read as a reference to "a capital dividend".

(4) Definitions — In this section,

"capital gains redemptions" of a mutual fund trust for a taxation year means the amount determined by the formula

$$(\frac{A}{B} \times (C + D)) - E$$

where

A is the total of all amounts each of which is the portion of an amount paid by the trust in the year on the redemption of a unit in the trust that is included in the proceeds of disposition in respect of that redemption,

B is the total of the fair market value at the end of the year of all the issued units of the trust and the amount determined for A in respect of the trust for the year,

C is 100/14.5 of the trust's refundable capital gains tax on hand at the end of the year,

D is the amount determined by the formula

$$(K + L) - (M + N)$$

where

K is the amount of the fair market value at the end of the year of all the issued units of the trust,

L is the total of all amounts each of which is the amount of any debt owing by the trust, or of any other obligation of the trust to pay an amount, that was outstanding at that time,

M is the total of the cost amounts to the trust at that time of all its properties, and

N is the amount of any money of the trust on hand at that time, and

E is twice the total of all amounts each of which is an amount designated under subsection 104(21) for the year by the trust in respect of a unit of the trust redeemed by the trust at any time in the year and after December 21, 2000;

Related Provisions: 132.2(1)(p) [to be repealed], 132.2(3)(m) [draft] — Mutual fund reorganizations; 257 — Formula amounts cannot calculate to less than zero.

History: The first formula in the definition "capital gains redemptions" in subsec. 132(4) amended by 2001 c. 17, subsec. 129(2) to add "– E", applicable to taxation years that end after February 27, 2000.

The description of A in the definition "capital gains redemptions" in subsec. 132(4) amended by the said c. 17, subsec. 129(3), applicable to taxation years that end after February 27, 2000. The description formerly read:

A is the total of all amounts paid by the trust in the year on the redemption of units of the trust,

The description of C in the definition "capital gains redemptions" in subsec. 132(4) amended by the said c. 17, subsec. 129(4) to replace the reference to the fraction "100/21.75" with a reference to the fraction "100/14.5", applicable to taxation years that end after February 27, 2000 except that, for a taxation year of a mutual fund trust that includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, the reference to the fraction "100/14.5" shall be read as a reference to the fraction "100/29X", where "X" is the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the trust for the year.

The description of E in the definition "capital gains redemptions" in subsec. 132(4) added by the said c. 17, subsec. 129(5), applicable to taxation years that end after February 27, 2000 except that, for a taxation year of a

mutual fund trust that includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, the word "twice" shall be read as "the fraction that is the reciprocal of the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the taxpayer for the year, multiplied by".

"pro rata portion", of a beneficiary, of a mutual fund trust's TCP gains balance for a taxation year, in respect of an amount designated under subsection 104(21) by the mutual fund trust for the taxation year, means the amount determined by the formula

$$A \times B/C$$

where

A is the mutual fund trust's TCP gains balance for the taxation year,

B is the amount the mutual fund trust has designated under that subsection in respect of the beneficiary for the taxation year, and

C is the total of all amounts designated under that subsection by the mutual fund trust for the taxation year;

History: The definition "pro rata portion" in subsec. 132(4) added by 2005, c. 19, subsec. 31(1), applicable after March 22, 2004.

"refundable capital gains tax on hand" of a mutual fund trust at the end of a taxation year means the amount determined by the formula

$$A - B$$

where

A is the total of all amounts each of which is an amount in respect of that or any previous taxation year throughout which the trust was a mutual fund trust, equal to the least of

(a) 29% of its taxable income for the year,

(b) 29% of its taxed capital gains for the year, and

(c) where the taxation year ended after May 6, 1974, the tax payable under this Part by it for the year, and

B is the total of all amounts each of which is an amount in respect of any previous taxation year throughout which the trust was a mutual fund trust, equal to its capital gains refund for the year.

Related Provisions: 132(5) — Taxed capital gains defined; 132.2(1)(l) [to be repealed], 132.2(3)(i) [draft] — Addition to RCGTOH on qualifying exchange of property between mutual funds; 257 — Formula cannot calculate to less than zero.

Possible Future Amendment — 132(4)"specified property"

"specified property" means property that is any of

(a) taxable Canadian property (determined without reference to paragraph (b) of the definition "taxable Canadian property" in subsection 248(1));

(b) Canadian resource property; and

(c) timber resource property.

Application: The September 16, 2004 draft legislation, subsec. 18(1), would have added the definition "specified property" to subsec. 132(4), applicable after March 22, 2004. However, see Application annotation to 132(7).

Technical Notes: "Specified property" means property that is taxable Canadian property (determined without reference to paragraph (b) of the definition "taxable Canadian property" in subsection 248(1)), Canadian resource property, or timber resource property.

The new definition "specified property" is relevant in applying paragraphs 131(8.1)(a) and 132(7)(a). For more detail on those paragraphs, see the commentary to subsections 131(8.1) and 132(7).

"TCP gains balance", of a mutual fund trust for a particular taxation year, means the amount, if any, by which

(a) the total of

(i) the mutual fund trust's capital gains from dispositions, after March 22, 2004 and at or before the end of the particular taxation year, of taxable Canadian properties, and

(ii) the TCP gains distributions (including those defined in section 131) received by the mutual fund trust at or before the end of the particular taxation year

exceeds

(b) the total of

(i) the mutual fund trust's capital losses from dispositions, after March 22, 2004 and at or before the end of the particular taxation year, of taxable Canadian properties, and

(ii) the total of all amounts deemed, in respect of amounts designated by the mutual fund trust under subsection 104(21) for taxation years that preceded the particular taxation year, to be TCP gains distributions received by beneficiaries under the mutual fund trust;

History: The definition "TCP gains balance" in subsec. 132(4) added by 2005, c. 19, subsec. 31(1), applicable after March 22, 2004.

"TCP gains distribution" means a TCP gains distribution described in subsection (5.1).

History: The definition "TCP gains distribution" in subsec. 132(4) added by 2005, c. 19, subsec. 31(1), applicable after March 22, 2004.

(5) Definition of "taxed capital gains" — In subsection (4), "taxed capital gains" of a taxpayer for a taxation year has the meaning assigned by subsection 130(3).

(5.1) TCP gains distribution — If a mutual fund trust designates an amount under subsection 104(21) for a taxation year of the trust in respect of a beneficiary under the trust, for the purposes of this Part and Part XIII,

(a) the beneficiary is deemed to have received from the mutual fund trust a TCP gains distribution equal to the lesser of

(i) twice the amount designated, and

(ii) the beneficiary's pro rata portion of the mutual fund trust's TCP gains balance for the taxation year; and

(b) where the beneficiary is a non-resident person or a partnership that is not a Canadian partnership,

(i) the amount designated is deemed by subsection 104(21) to be a taxable capital gain of the beneficiary only to the extent that it exceeds one half of the TCP gains distribution, and

(ii) one half of the TCP gains distribution is to be added to the amount otherwise included under subsection 104(13) in computing the income of the beneficiary, and is deemed to be an amount to which paragraph 212(1)(c) applies.

Related Provisions: 131(5.1) — Parallel rule for mutual fund corporation; 131(6)"TCP gains balance"(a)(ii) — Dividend included in TCP gains balance of shareholder that is mutual fund corporation; 132(4) — Definitions of "pro rata portion" and "TCP gains distribution"; 132(4)"TCP gains balance"(a)(ii) — Dividend included in TCP gains balance of shareholder that is mutual fund trust; 132(5.2) — Limitation on application of 132(5.1); 212(1)(c) — Withholding tax on taxable dividend deemed paid under (a)(ii); 218.3(2)(c) — Withholding tax on mutual fund distributions to non-residents.

History: Subsec. 132(5.1) added by 2005, c. 19, subsec. 31(2), applicable after March 22, 2004.

(5.2) Application of subsection (5.1) — Subsection (5.1) applies to an amount designated under subsection 104(21) by a mutual fund trust for a taxation year only if more than 5% of the total of all amounts each of which is an amount designated under that subsection by the mutual fund trust for the taxation year was designated in respect of beneficiaries under the mutual fund trust each of whom is a non-resident person or is a partnership that is not a Canadian partnership.

Related Provisions: 131(5.2) — Parallel rule for mutual fund corporation.

History: Subsec. 132(5.2) added by 2005, c. 19, subsec. 31(2), applicable after March 22, 2004.

(6) Meaning of "mutual fund trust" — Subject to subsection (7), for the purposes of this section, a trust is a mutual fund trust at any time if at that time

(a) it was a unit trust resident in Canada,

(b) its only undertaking was

(i) the investing of its funds in property (other than real property or an interest in real property),

(ii) the acquiring, holding, maintaining, improving, leasing or managing of any real property (or interest in real property) that is capital property of the trust, or

Proposed Amendment — 132(6)(b)(i), (ii)

(i) the investing of its funds in property (other than real property or an interest in real property or an immovable or a real right in an immovable),

(ii) the acquiring, holding, maintaining, improving, leasing or managing of any real property (or interest in real property) or of any immovable (or real right in immovables) that is capital property of the trust, or

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), s. 243, will amend subparas. 132(6)(b)(i) and (ii) to read as above, to come into force on Royal Assent.

Technical Notes: See under 12(4).

(iii) any combination of the activities described in subparagraphs (i) and (ii), and

(c) it complied with prescribed conditions relating to the number of its unit holders, dispersal of ownership of its units and public trading of its units.

Proposed Amendment — 132(6)(c)

(c) it complied with prescribed conditions.

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 128, will amend para. 132(6)(c) to read as above, applicable to 2000 *et seq.*

Technical Notes: Subsection 132(6) sets out the definition "mutual fund trust". Under paragraph 132(6)(c), a trust will qualify at any time as a mutual fund trust only if at that time it meets prescribed conditions relating to the number of its unit holders, dispersal of ownership of trust units issued by it and public trading of trust units issued by it.

Paragraph 132(6)(c) is amended so that the prescribed conditions that a trust may be required to satisfy in order to qualify as a mutual fund trust are not limited to those relating to ownership and trading of its units.

The regulations setting out these prescribed conditions for a mutual fund trust are found in Part XLVIII of the *Income Tax Regulations*. In particular, Regulation 4801 sets out conditions that apply to a class of units issued by a trust in order for the trust to be considered a mutual fund trust. It is intended that proposed amendments to Part XLVIII of the Regulations would include the following:

- Paragraph 4801(a) of the Regulations would be amended so that subparagraph 4801(a)(ii) applies to a trust created before 2000, for its 2004 and subsequent taxation years, if the trust elects by notifying the Minister of National Revenue in writing in its return of income for the taxation year of the trust that ends in the calendar year in which the amending regulations are published in Part II of the *Canada Gazette*. As a result of the proposed change, if there has been a lawful distribution in a province to the public of units of a class of units of a trust created before 2000 and a prospectus, registration statement or similar document was not required under the laws of the province to be filed in respect of the distribution, the trust could rely upon subparagraph 4801(a)(ii) to meet, in its 2004 and later taxation years, the condition prescribed under paragraph 4801(a).

These amendments to the Regulations would, except as described above, be proposed to apply to the 2000 and subsequent taxation years of trusts.

Related Provisions: 39(5) — MFT can make election for Canadian securities; 94(1)"exempt foreign trust"(h) — Non-resident mutual fund trust exempt from NRT rules; 94(4)(b) [proposed] — Deeming non-resident trust to be resident in Canada does not apply to 132(6)(a); 104(21) — Allocation of capital gains and losses to beneficiaries; 132(6.1) — Election to be MFT from beginning of first year; 132(6.2) — Retention of MFT status to end of year; 132(7) — Loss of MFT status; 132.11 — Optional December 15 year-end; 132.1(1)(q) — Trust deemed not to be MFT after rollover of property to another trust; 142.2(1)"financial institution"(d) — MFT not subject to mark-to-market rules; 156(2) — Payment of tax by MFT; 210.1(b) — MFT not subject to Part XII.2 tax; 212(9)(c) — Interest received by MFT and paid to non-residents — withholding tax exemption; 248(1)"mutual fund trust" — Definition applies to entire Act; 248(4.1) — Meaning of "real right in an immovable"; 253.1 — Limited partner not considered to carry on business of partnership.

History: Subparas. 132(6)(b)(i) and (ii) amended, and the closing words repealed, by 1998, c. 19, subsecs. 158(2), (3), applicable to 1994 *et seq.* Subparas. 132(6)(b)(i) and (ii) and the closing words formerly read:

(i) the investing of its funds in property (other than real property),

(ii) the acquiring, holding, maintaining, improving, leasing or managing of any real property that is capital property of the trust, or

. . . . .

except that where a trust's first taxation year ended after 1971 and the trust has, after 1971 and on or before the day on or before which it was required by section 150 to file its return of income for that year, become a mutual fund trust, it shall, if it so elected in that return, be deemed to have been a mutual fund trust from the commencement of that year until the day on which it so became a mutual fund trust.

Para. 132(6)(b) amended by 1995, c. 21, s. 68, applicable to 1994 *et seq.* Para. (b) formerly read:

(b) its only undertaking was the investing of funds of the trust, and

That portion of subsec. 132(6) preceding para. (a) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 111(1), to add "Subject to subsection (7)", applicable after February 20, 1990.

Subsec. 132(6) substituted by 1973-74, c. 14, s. 41.

Regulations: 4801 (prescribed conditions).

I.T. Technical News: 6 (mutual funds trading — meaning of "investing its funds in property" in 132(6)(b)(i)); 14 (reporting of derivative income by mutual funds).

Advance Tax Rulings: ATR-62: Mutual fund distribution limited partnership — amortization of selling commissions.

Forms: RC4169: Tax treatment of mutual funds for individuals.

(6.1) Election to be mutual fund — Where a trust becomes a mutual fund trust at any particular time before the 91st day after the end of its first taxation year, and the trust so elects in its return of income for that year, the trust is deemed to have been a mutual fund trust from the beginning of that year until the particular time.

History: Subsec. 132(6.1) amended by 1999, c. 22, s. 54, applicable to 1998 *et seq.* It formerly read:

(6.1) Where a trust becomes a mutual fund trust at any particular time before the 91st day after the end of the calendar year in which its first taxation year began, and the trust so elects in its return of income under this Part for that first year, the trust is deemed to have been a mutual fund trust from the beginning of that first year until the particular time.

Subsec. 132(6.1) added by 1998, c. 19, subsec. 158(4), applicable to 1994 *et seq.*

(6.2) Retention of status as mutual fund trust — A trust is deemed to be a mutual fund trust throughout a calendar year where

(a) at any time in the year, the trust would, if this section were read without reference to this subsection, have ceased to be a mutual fund trust

(i) because the condition described in paragraph 108(2)(a) ceased to be satisfied,

(ii) because of the application of paragraph (6)(c), or

(iii) because the trust ceased to exist;

(b) the trust was a mutual fund trust at the beginning of the year; and

(c) the trust would, throughout the portion of the year throughout which it was in existence, have been a mutual fund trust if

(i) in the case where the condition described in paragraph 108(2)(a) was satisfied at any time in the year, that condition were satisfied throughout the year,

(ii) subsection (6) were read without reference to paragraph (c) of that subsection, and

(iii) this section were read without reference to this subsection.

Related Provisions: 250(6.1) — Similar rule for trust's residence in Canada.

History: Subsec. 132(6.2) added by 2001, c. 17, subsec. 129(6), applicable to 1990 *et seq.*

(7) Idem [trust primarily for non-residents] — Where, at any time, it can reasonably be considered that a trust, having regard to all the circumstances, including the terms and conditions of the units of the trust, was established or is maintained primarily for the benefit of non-resident persons, the trust shall be deemed not to be a mutual fund trust after that time unless

(a) throughout the period that began on the later of February 21, 1990 and the day of its creation and ended at that time, all or substantially all of its property consisted of property other than property that would be taxable Canadian property if the definition "taxable Canadian property" in subsection 248(1) were read without reference to paragraph (b) of that definition; or

(b) it has not issued any unit (other than a unit issued to a person as a payment, or in satisfaction of the person's right to enforce payment, of an amount out of the trust's income determined before the application of subsection 104(6), or out of the trust's capital gains) of the trust after February 20, 1990 and before that time to a person who, after reasonable inquiry, it had reason to believe was non-resident, except where the unit was issued to that person under an agreement in writing entered into before February 21, 1990.

Proposed Amendment — 132(7)

Letter from Dept. of Finance, November 26, 2004:

Dear [xxx]

Thank you for your letter of November 19, 2004, concerning the application of subsection 132(7) of the *Income Tax Act* (the "Act"). I would also like to acknowledge receipt of related submissions from [xxx].

As you know, subsection 132(7) is a special rule that causes a trust to lose its status as a mutual fund if the fund is non-resident owned. (I use the term "non-resident owned" to refer both to the existing test for non-resident ownership, as well as the proposed "bright-line" test.) This rule does not apply where the trust can rely upon a saving provision found in paragraph 132(7)(a) of the Act. That saving provision applies if all or substantially all of the fund's property is, at all times after the later of February 21, 1990 and the trust's creation, property other than — as the provision is presently enacted — "taxable Canadian property" (as defined in subsection 248(1) of the Act).

You have requested that the saving provision in paragraph 132(7)(a) of the Act be amended, effective January 1, 2004, so that compliance with the savings provision is relevant only at the particular time at which the trust fund is non-resident owned (rather than at all times in the period that commences at the later of the time the trust was created or February 21, 1990 and ends at that particular time). As a result, the saving provision would apply to a trust that, at a particular time on or after January 1, 2004, becomes a trust that is non-resident owned if, at that particular time, all or substantially all of the fund's property is — as the provision is presently enacted — property other than "taxable Canadian property". (As you know, it is proposed that after a transition period the "all or substantially all" test in paragraph 132(7)(a) be replaced by a specific fair market value rule.)

We are prepared to recommend the change that you are seeking. Of course, we cannot offer any assurance that either the Minister of Finance or Parliament will agree with the recommendation that we intend to make in this regard. Nonetheless, we trust that this statement of our position is helpful.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Possible Future Amendment — 132(7)

(7) Loss of mutual fund trust status — If, at any particular time, the total of all amounts each of which is the fair market value, at the particular time, of a unit issued by a trust and held by a non-resident person or a partnership that is not a Canadian partnership is more than 50% of the total of all amounts each of which is the fair market value, at the particular time, of a unit issued by the trust, the trust is deemed not to be, after the particular time, a mutual fund trust unless

(a) both

(i) throughout the period that begins on the later of January 1, 2005 and the day on which the trust was created and ends at the particular time, the total of all amounts each of which is the fair market value of a specified property of the trust was not more than 10% of the total of all amounts each of which is the fair market value of a property of the trust, and

(ii) where the trust was created before 2005, throughout the period that began on the later of February 21, 1990 and the day of its creation and ends on the earlier of the particular time and December 31, 2004, the total of all amounts each of which is the fair market value of a taxable Canadian property (determined without reference to paragraph (b) of the definition "taxable Canadian property" in subsection 248(1)) of the trust was not more than 10% of the total of all amounts each of which is the fair market value of a property of the trust; or

(b) it has

(i) not issued any unit (other than a unit issued to a person as a payment, or in satisfaction of the person's right to enforce payment, of an amount out of the trust's income determined before the application of subsection 104(6), or out of the trust's capital gains) of the trust after February 20, 1990 and before the particular time to a person who, after reasonable inquiry, it had reason to

believe was non-resident, except where the unit was issued to that person under an agreement in writing entered into before February 21, 1990, and

(ii) not issued any unit (other than a unit issued to a partnership as a payment, or in satisfaction of the partnership's right to enforce payment, of an amount out of the trust's income determined before the application of subsection 104(6), or out of the trust's capital gains) of the trust after September 15, 2004 and before the particular time to a partnership that, after reasonable enquiry, it had reason to believe was not a Canadian partnership, except where the unit was issued to that partnership under an agreement in writing, between the trust and the partnership, entered into before September 16, 2004.

Application: The September 16, 2004 draft legislation, subsec. 18(3), would have amended subsec. 132(7) to read as above, applicable after March 22, 2004, except that the opening words, in their application before 2005 to a trust, are to, unless the trust elects otherwise in writing by filing the election with the Minister of National Revenue on or before its filing-due date for its taxation year in which the amending legislation is assented to, be read as follows:

(7) If at any particular time it can reasonably be considered that a trust (having regard to all the circumstances, including the terms and conditions of the units of the trust) was created, or is maintained, primarily for the benefit of non-resident persons, the trust is deemed not to be a mutual fund trust after the particular time, unless

In addition, the reference in para. 132(7)(a), as amended, to "January 1, 2005" is to be read as "January 1, 2007" and the reference to "2004" is to be read as "2006" in the application of that paragraph to a corporation that

(i) on March 23, 2004 would have ceased to be a mutual fund trust if

(A) the reference to the expression "throughout the period that begins on the later of January 1, 2005 and the day on which the trust was created and ends at the particular time" in that paragraph were read as "on March 23, 2004", and

(B) the reference to "December 31, 2004" in that paragraph were read as "March 22, 2004", and

(ii) on March 24, 2004 was a mutual fund trust.

This proposal is unlikely to be enacted in its current form; see news release below.

Dept. of Finance news release, December 6, 2004: Today's Notice [of Ways and Means Motion, later Bill C-33 replacing the Sept. 16/04 draft legislation, now enacted as S.C. 2005, c. 19 — ed.] does not include the proposal concerning mutual funds maintained primarily for the benefit of non-residents. Further discussions will be pursued with the private sector concerning the appropriate Canadian tax treatment of non-residents investing in resource property through mutual funds.

Technical Notes: Subsection 132(7) provides that a trust is not a mutual fund trust after a particular time if, at the particular time, it is reasonable to conclude that the trust was established or maintained primarily for the benefit of non-resident persons. There are two exceptions to this rule. The first, which is set out in paragraph 132(7)(a), applies if, throughout the period that started on February 21, 1990 (or if later, the date of the trust's creation) and that ends at the particular time, all or substantially all of the trust's property consisted of property other than taxable Canadian property. The second, which is set out in paragraph 132(7)(b), applies if the trust did not issue any unit (other than a unit issued to a person as a payment, or in satisfaction of the person's right to enforce payment, of an amount out of the trust's income determined before the application of subsection 104(6), or out of the trust's capital gains) after February 20, 1990 and before that time to a person who, after reasonable inquiry, it had reason to believe was not resident in Canada, except where the unit was issued pursuant to an agreement in writing entered into before February 21, 1990.

The preamble to subsection 132(7) is amended to provide that a trust is not a mutual fund trust after a particular time if, at that time, more than 50% of the fair market value of the issued units of the trust is attributable to the fair market value of those issued units that are held by one or any combination of non-resident persons or partnerships other than Canadian partnerships (as defined in section 102).

This amendment applies

- after March 22, 2004 to a trust that elects otherwise in writing by filing the election with the Minister of National Revenue on or before its filing-due date for its taxation year in which the amendment receives Royal Assent; and
- after 2004 to trusts that do not so elect. Where a trust does not so elect, subsection 132(7) will continue to provide, until December 31, 2004, that the trust is not a mutual fund trust after a particular time if, at that time, it can reasonably be considered that the trust (having regard to all the circumstances, including the terms and conditions of the units of the trust) was created, or is maintained, primarily for the benefit of non-resident persons.

The loss, under the general rule in subsection 132(7), after the particular time of a trust's status as a mutual fund trust will continue to be subject to the exceptions found in paragraphs 132(7)(a) and (b).

Paragraph 132(7)(a) is amended to clarify that, together with other forms of taxable Canadian property, Canadian resource property and timber resource property are included in determining the availability of relief under that paragraph. Except as otherwise provided in the transitional rules for the amendments, the amendments to paragraph 132(7)(a) apply after March 22, 2004.

Trusts created after 2004

In particular, paragraph 132(7)(a) is amended to provide that it applies to a trust created after 2004 if, throughout the period that begins on the later of January 1, 2005 and the day of its creation and ends at the particular time, the total of all amounts each of which is the fair market value of a "specified property" (as newly defined in subsection 132(4)) of the trust was not more than 10% of the fair market value of all of its properties.

Trusts created before 2005

For a trust created before 2005, paragraph 132(7)(a) is amended to provide that it applies to the trust if both

- throughout the period that begins on January 1, 2005 and ends at the particular time, the total of all amounts each of which is the fair market value of a "specified property" (as defined in subsection 132(4)) of the trust was not more than 10% of the fair market value of all of its properties, and
- throughout the period that began on the later of February 21, 1990 and the day of its creation and ends on the earlier of the particular time and December 31, 2004, the total of all amounts each of which is the fair market value of a taxable Canadian property (determined without reference to paragraph (b) of the definition "taxable Canadian property" in subsection 248(1)) of the trust was not more than 10% of the fair market value of all of its properties.

For more detail on the new definition "specified property" in subsection 132(4), please see the commentary on that subsection.

Transitional relief: trusts otherwise offside on March 23, 2004

Some trusts that were otherwise mutual fund trusts at the end of March 23, 2004, might have lost their mutual fund status on March 23, 2004 if the addition of Canadian resource property and timber resource property to the properties considered in determining the application of paragraph 132(7)(a) applied on March 23, 2004. For such a trust, paragraph 132(7)(a) is amended to provide that the exception in that paragraph applies to the trust if both

- throughout the period that begins on January 1, 2007 and ends at the particular time, the total of all amounts each of which is the fair market value of a "specified property" (as defined in subsection 132(4)) of the trust was not more than 10% of the fair market value of all of its properties, and
- throughout the period that began on the later of February 21, 1990 and the day of its incorporation and ends on the earlier of the particular time and December 31, 2006, the total of all amounts each of which is the fair market value of a taxable Canadian property (determined without reference to paragraph (b) of the definition "taxable Canadian property" in subsection 248(1)) of the trust was not more than 10% of the fair market value of all of its properties.

Paragraph 132(7)(b) is amended to provide that it applies to a trust only if the trust satisfies the existing condition in that paragraph (*i.e.*, the condition found, under these amendments, in subparagraph 132(7)(b)(ii)) and it has not issued any unit (other than a unit issued to a partnership as a payment, or in satisfaction of the partnership's right to enforce pay-

ment, of an amount out of the trust's income determined before the application of subsection 104(6), or out of the trust's capital gains) of the trust on or after September 16, 2004 and before the particular time to a partnership that, after reasonable enquiry, it had reason to believe was not a Canadian partnership, except where the unit was issued to that partnership under an agreement in writing, between the trust and the partnership, entered into before September 16, 2004.

Letter from Dept. of Finance, October 5, 2004:

Dear [xxx]:

Thank you for your letter of September 23, 2004 concerning the legislative proposals relating to subsection 132(7) of the *Income Tax Act* (the "Act") that were announced by the Department of Finance on September 16, 2004.

To briefly highlight the legislative proposals, it is proposed, effective after December 31, 2004, that the preamble to subsection 132(7) be amended to provide that a commercial trust ceases under certain circumstances to be a mutual fund trust if more than 50% of the fair market value of the issued trust units are held by any combination of non-resident persons or partnerships (other than a Canadian partnership).

Under those legislative proposals, if the ownership of the commercial trust's units by non-resident persons or partnerships (other than a Canadian partnership) exceeds the 50% limit described above, the commercial trust could still maintain its status as a mutual fund trust provided:

1) At all times after February 21, 1990, not more than 10% of the fair market value of all the trust's property can be attributed to taxable Canadian property; and

2) At all times after December 31, 2004, not more than 10% of the fair market value of all the trust's property can be attributed to property that is any of taxable Canadian property, Canadian resource property or timber resource property.

In your letter, you had recommended that under the proposed new fair market value test, units of a different class of trust, which have substantially the same rights to the income, and capital of the trust should be deemed to have the same fair market value. You have stated that the fair market value of a publicly listed security is generally considered to be equal to its trading price and, as a consequence, it could be difficult for a mutual fund trust with units trading on a foreign exchange and a Canadian exchange to manage the relative fair market values of issued trust units held by residents and non-resident persons or partnerships (other than a Canadian partnership). This difficulty arises because trust units held by non-residents may trade at a premium because of market forces, even though the rights of the units are substantially the same except for ownership restrictions based on country of residence. With regard to this recommendation, we are willing to conduct further study and consultation with the view to addressing this potential difficulty while preserving the integrity of the 50% non-resident ownership test.

You have also requested that the new taxable Canadian property exceptions mentioned above be applied prospectively after March 22, 2004. The proposed rules provide a 10% taxable Canadian property ownership limitation that would have to be measured at all times subsequent to February 21, 1990. You argue that the application of this new 10% brightline test to past periods would be inappropriate, given that the new test explicitly requires the trust to respect a 10% threshold based on the fair market value of the trust's assets whereas the "all or substantially all" test gave rise to some uncertainty as to whether cost or market value would be the appropriate measurement base.

Given the possible differing interpretations of the "all or substantially all" test in paragraph 132(7)(a), it would seem appropriate to maintain the existing "all or substantially all" test for periods prior to 2005. Consequently, we are prepared to recommend to the Minister of Finance that the proposed legislation be modified to provide this result. While we cannot offer any assurances that either the Minister or Parliament will agree with our recommendation, we hope that this statement of our position is helpful to you.

Yours sincerely,

Brian Ernewein

Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 248(4) — Interest in real property.

History: Paras. 132(7)(a) and (b) amended by 2001, c. 17, subsec. 129(7), para. (a) applicable after October 1, 1996 and para. (b) applicable after February 20, 1990. The paras. formerly read:

(a) throughout the period beginning on the later of February 21, 1990 and the day of its creation and ending at that time, all or substantially all of its property consisted of property other than

(i) real property situated in Canada (including any interest therein or option in respect thereof, whether or not the property is in existence), and

(ii) property that would, if

(A) the trust were non-resident,

(B) paragraph 115(1)(b) were read without reference to subparagraphs 115(1)(b)(i) and (ii), and

(C) the property were disposed of,

be taxable Canadian property of the trust; or

(b) it has not issued a unit (other than a unit issued to a person in satisfaction of the person's right under the trust to an amount referred to in paragraph 104(13)(c)) of the trust after February 20, 1990 and before that time to a person who, after reasonable inquiry, it had reason to believe was non-resident, except where the unit was issued to that person under an agreement in writing entered into before February 21, 1990.

Subsec. 132(7) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 111(2), applicable after February 20, 1990.

Definitions [s. 132]: "amount", "assessment" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "Canadian partnership" — 102, 248(1); "Canadian resource property" — 66(15), 248(1); "capital dividend" — 83(2), 248(1); "capital gain" — 39(1)(a), 248(1); "capital gains redemptions" — 132(4); "capital gains refund" — 132(1); "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "cost amount", "disposition", "dividend" — 248(1); "immovable" — Quebec *Civil Code* art. 900–907; "interest" — in real property 248(4); "Minister" — 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q) [to be repealed], 132.2(3)(n) [draft], 248(1); "non-resident", "person" — 248(1); "prescribed rate" — Reg. 4301; "pro rata portion" — 132(4); "property" — 248(1); "real right in an immovable" — 248(4.1); "refundable capital gains tax on hand" — 132(4); "resident in Canada" — 94(3)(a)(viii), 250; "specified property" — 132(4); "taxable Canadian property" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxable dividend" — 89(1), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxed capital gains" — 130(3), 132(5); "TCP gains balance" — 132(4); "TCP gains distribution" — 132(4), (5.1); "timber resource property" — 13(21), 248(1); "trust" — 104(1), 248(1), (3); "undertaking" — 253.1(a); "unit trust" — 108(2), 248(1); "writing" — *Interpretation Act* 35(1).

Information Circulars [s. 132]: 78-14R3: Guidelines for trust companies and other persons responsible for filing T3-IND, T3G, T3D, T3P, T3S, T3RI and T3F returns.

132.1 (1) Amounts designated by mutual fund trust [for inclusion in taxpayer's income] — Where a trust in its return of income under this Part for a taxation year throughout which it was a mutual fund trust designates an amount in respect of a particular unit of the trust owned by a taxpayer at any time in the year equal to the total of

(a) such amount as the trust may determine in respect of the particular unit for the year not exceeding the amount, if any, by which

(i) the total of all amounts that were determined by the trust under subsection 104(16) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, for taxation years of the trust commencing before 1988

exceeds

(ii) the total of all amounts determined by the trust under this paragraph for the year or a preceding taxation year in respect of all units of the trust, other than amounts determined in respect of the particular unit for the year under this paragraph, and

(b) such amount as the trust may determine in respect of the particular unit for the year not exceeding the amount, if any, by which

(i) the total of all amounts described in subparagraph 53(2)(h)(i.1) that became payable by the trust after 1987 and before the year

exceeds

(ii) the total of all amounts determined by the trust under this paragraph for the year or a preceding taxation year in respect of all units of the trust, other than amounts determined in respect of the particular unit for the year under this paragraph,

the amount so designated shall

(c) subject to subsection (3), be deductible in computing the income of the trust for the year, and

(d) be included in computing the income of the taxpayer for the taxpayer's taxation year in which the year of the trust ends, except that where the particular unit was owned by two or more taxpayers during the year, such part of the amount so designated as the trust may determine shall be included in computing the income of each such taxpayer for the taxpayer's taxation year in which the year of the trust ends if the total of the parts so determined is equal to the amount so designated.

Related Provisions: 12(1)(m) — Income inclusion — benefits from trust; 132.2(1)(n) [to be repealed], 132.2(3)(k) [draft] — Mutual fund reorganization — continuation of trust; 214(3)(f.1) — Non-resident withholding tax.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Forms: RC4169: Tax treatment of mutual funds for individuals.

(2) Adjusted cost base of unit where designation made — In computing, at any time in a taxation year of a taxpayer, the adjusted cost base to the taxpayer of a unit in a mutual fund trust, there shall be added that part of the amount included under subsection (1) in computing the taxpayer's income that is reasonably attributable to the amount determined under paragraph (1)(b) by the trust for its taxation year ending in the year in respect of the unit owned by the taxpayer.

Related Provisions: 12(1)(m) — Amounts to be included from business or property — benefits from trusts; 53(1)(d.2) — Addition to adjusted cost base of share.

(3) Limitation on current year deduction — The total of amounts deductible by reason of paragraph (1)(c) in computing the income of a trust for a taxation year shall not exceed the amount that would be the income of the trust for the year if no deductions were made under this section and subsection 104(6).

Related Provisions: 132.2(1)(n) [to be repealed], 132.2(3)(k) [draft] — Mutual fund reorganization — continuation of trust.

(4) Carryover of excess — The amount, if any, by which the total of all amounts each of which is an amount designated for the year under subsection (1) exceeds the amount deductible under this section in computing the income of the trust for the year, shall, for the purposes of paragraph (1)(c) and subsection (3), be deemed designated under subsection (1) by the trust for its immediately following taxation year.

Related Provisions: 132.2(1)(n) [to be repealed], 132.2(3)(k) [draft] — Mutual fund reorganization — continuation of trust.

(5) Where designation has no effect — Where it is reasonable to conclude that an amount determined by a mutual fund trust

(a) under paragraph (1)(a) or (b) for a taxation year of the trust in respect of a unit owned at any time in the year by a taxpayer who was a person exempt from tax under this Part by reason of subsection 149(1), or

(b) under paragraph (1)(d) for the year in respect of the amount designated under subsection (1) for the year in respect of the unit

differs from the amount that would have been so determined for the year in respect of the taxpayer had the taxpayer not been a person exempt from tax under this Part by reason of subsection 149(1), the amount designated for the year in respect of the unit under subsection (1) shall have no effect for the purposes of paragraph (1)(c).

Related Provisions: 132.2(1)(n) [to be repealed], 132.2(3)(k) [draft] — Mutual fund reorganization — continuation of trust.

Definitions [s. 132.1]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "Canadian property" — 133(8); "mutual fund trust" — 132(6)–(7), 132.2(1)(q) [to be repealed], 132.2(3)(n) [draft], 248(1); "person" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

132.11 (1) Taxation year of mutual fund trust — Notwithstanding any other provision of this Act, where a trust (other than a prescribed trust) that was a mutual fund trust on the 74th day after the end of a particular calendar year so elects in writing filed with the Minister with the trust's return of income for the trust's taxation year that includes December 15 of the particular year,

(a) the trust's taxation year that began before December 16 of the particular year and, but for this paragraph, would end at the end of the particular year (or, where the first taxation year of the trust began after December 15 of the preceding calendar year and no return of income was filed for a taxation year of the trust that ended at the end of the preceding calendar year, at the end of the preceding calendar year) is deemed to end at the end of December 15 of the particular year;

(b) where the trust's taxation year ends on December 15 because of paragraph (a), subject to subsection (1.1), each subsequent taxation year of the trust is deemed to be the period that begins at the beginning of December 16 of a calendar year and ends at the end of December 15 of the following calendar year or at such earlier time as is determined under paragraph 132.2(1)(b) or subsection 142.6(1); and

Proposed Amendment — 132.11(1)(b)

(b) if the trust's taxation year ends on December 15 because of paragraph (a), subject to subsection (1.1), each subsequent taxation year of the trust is deemed to be the period that begins at the beginning of December 16 of a calendar year and ends at the end of December 15 of the following calendar year or at any earlier time that is determined under paragraph 132.2(3)(b) or subsection 142.6(1); and

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 129(1), will amend para. 132.11(1)(b) to read as above, applicable after 1998, except that in applying the para. to taxation years that end before 2000, it is to be read without reference to "subject to subsection (1.1)".

Technical Notes: Section 132.11 generally allows a mutual fund trust to elect to have taxation years that end on December 15, rather than on December 31.

Where a trust makes this election, each subsequent taxation year of the trust is deemed to start on December 16 of a calendar year and to end on December 15 of the following calendar year, unless any of certain events intervenes. One of the events that can intervene, and that results in an earlier year-end, is a qualifying exchange under section 132.2.

As a consequence of the restructuring of section 132.2, the reference in paragraph 132.11(1)(b) to paragraph 132.2(1)(b) is replaced by a reference to paragraph 132.2(3)(b).

This amendment applies after 1998 except that, in applying the amended version of paragraph 132.11(1)(b) to taxation years that end before 2000, the paragraph is to be read as though it did not contain the words "subject to subsection (1.1)".

Paragraph 132.11(1)(c) generally provides that each fiscal period of a mutual fund trust that has made an election under subsection 132.11(1) shall end no later than the end of the trust's taxation year that ends on December 15th.

(c) each fiscal period of the trust that begins in a taxation year of the trust that ends on December 15 because of paragraph (a) or that ends in a subsequent taxation year of the trust shall end no later than the end of the year or the subsequent year, as the case may be.

Related Provisions: 132.11(1.1) — Revocation of election; 132.11(2) — Where trust is member of partnership; 132.11(3) — Where trust is beneficiary of another trust; 132.11(6) — Additional income.

History: Para. 132.11(1)(b) amended by 2001, c. 17, subsec. 130(1), applicable to taxation years that end after 1999. The para. formerly read:

(b) where the trust's taxation year ends on December 15 because of paragraph (a), each subsequent taxation year of the trust is deemed to be the period that begins at the beginning of December 16 of a calendar year and ends at the end of December 15 of the following calendar year or at such earlier time as is determined under paragraph 132.2(1)(b) or subsection 142.6(1); and

Subsec. 132.11(1) added by 1999, c. 22, s. 55, applicable to 1998 *et seq.*

Regulations: 4801.01 (prescribed trust).

(1.1) Revocation of election — Where a particular taxation year of a trust ends on December 15 of a calendar year because of an election made under paragraph (1)(a), the trust applies to the Minister in writing before December 15 of that calendar year (or before a later time that is acceptable to the Minister) to have this subsection apply to the trust, with the concurrence of the Minister

(a) the trust's taxation year following the particular taxation year is deemed to begin immediately after the end of the particular taxation year and end at the end of that calendar year; and

(b) each subsequent taxation year of the trust is deemed to be determined as if that election had not been made.

History: Subsec. 132.11(1.1) added by 2001, c. 17, subsec. 130(2), applicable to taxation years that end after 1999.

(2) Electing trust's share of partnership income and losses — Where a trust is a member of a partnership a fiscal period of which ends in a calendar year after December 15 of the year and a particular taxation year of the trust ends on December 15 of the year because of subsection (1), each amount otherwise determined under paragraph 96(1)(f) or (g) to be the trust's income or loss for a subsequent taxation year of the trust is deemed to be the trust's income or loss determined under paragraph 96(1)(f) or (g) for the particular year and not for the subsequent year.

(3) Electing trust's income from other trusts — Where a particular trust is a beneficiary under another trust a taxation year of which (in this subsection referred to as the "other year") ends in a calendar year after December 15 of the year and a particular taxation year of the trust ends on December 15 of the year because of subsection (1), each amount determined or designated under subsection 104(13), (19), (21), (22) or (29) for the other year that would otherwise be included, or taken into account, in computing the income of the particular trust for a subsequent taxation year of the trust shall

(a) be included, or taken into account, in computing the particular trust's income for the particular year; and

(b) not be included, or taken into account, in computing the particular trust's income for the subsequent year.

(4) Amounts paid or payable to beneficiaries — For the purposes of subsections (5) and (6) and 104(6) and (13) and notwithstanding subsection 104(24), each amount that is paid, or that becomes payable, by a trust to a beneficiary after the end of a particular taxation year of the trust that ends on December 15 of a calendar year because of subsection (1) and before the end of that calendar year, is deemed to have been paid or to have become payable, as the case may be, to the beneficiary at the end of the particular year and not at any other time.

Proposed Amendment — 132.11(4)

(4) Amounts paid or payable to beneficiaries — Notwithstanding subsection 104(24), for the purposes of subsections (5) and (6) and 104(6) and (13) and paragraph (i) of the definition "disposition" in subsection 248(1) each amount that is paid, or that becomes payable, by a trust to a beneficiary after the end of a particular taxation year of the trust that ends on December 15 of a calendar year because of subsection (1) and before the end of that calendar year, is deemed to have been paid or to have become payable, as the case may be, to the beneficiary at the end of the particular year and not at any other time.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 129(3), will amend subsec. 132.11(4) to read as above, applicable to amounts that are paid or have become payable by a trust, after 1999.

Technical Notes: Subsection 132.11(4) is designed to permit distributions made in the last 16 days of a calendar year in respect of a trust's taxation year ending on December 15 of the calendar year to be treated as if they were made at the end of that taxation year.

Subsection 132.11(4) is amended so that it applies for the purpose of paragraph (i) of the definition "disposition" in subsection 248(1). As a result, in the case of a mutual fund trust that has elected under section 132.11 to have a December 15th taxation year-end, distributions from the trust in respect of a taxpayer's capital interest made in the last 16 days of a calendar year will not result in a disposition of the interest.

Letter from Dept. of Finance, March 7, 2003:

Dear [xxx]

Thank you for your letter of January 8, 2003, concerning the application of subsection 132.11(4) of the *Income Tax Act* in the context of distributions by a mutual fund trust.

Section 132.11 of the Act generally allows a mutual fund trust to elect to have a taxation year that ends on December 15. The objective of section 132.11 of the Act is to provide mutual fund trusts with an administratively workable basis for calculating income and distributions for a taxation year and for reporting on a timely basis. Subsection 132.11(4) permits, for a number of purposes including subsections 104(6) and (13) of the Act, distributions made in the last 16 days of a calendar year in respect of a trust's taxation year that ends on December 15 of the calendar year to be treated as if they were made at the end of that taxation year.

Paragraph (d) of the definition "disposition" in subsection 248(1) of the Act provides that a taxpayer disposes of the taxpayer's capital interest in a trust upon payment of an amount, from the trust, that is in respect of the capital interest. An exception to this general rule is found in paragraph (i) of the definition, which provides that there is no such disposi-

tion if the payment is made out of the trust's income (determined without reference to subsection 104(6)) or capital gains for a taxation year and the payment was made in that taxation year or the right to the payment was acquired in that taxation year.

As subsection 132.11(4) does not apply for the purpose of paragraph (1) of the definition "disposition" in subsection 248(1) of the Act, you are concerned that, in the case of a mutual fund trust that has elected under section 132.11 to have a December 15th taxation year-end, distributions from the trust in respect of a taxpayer's capital interest made in the last 16 days of a calendar year will result in a disposition of the interest.

From a policy perspective, a disposition of the taxpayer's capital interest would be unintended in these circumstances. This is because the relevant distribution would generally be recognized in computing the taxpayer's income, such that a disposition of the taxpayer's interest upon the distribution might give rise to double taxation of the amount distributed. Therefore, we are prepared to recommend an amendment to the Act so that subsection 132.11(4) does, for payments made by a mutual fund trust after 1999, apply for the purpose of paragraph (i) of the definition "disposition" in subsection 248(1) of the Act.

Of course, we cannot offer any assurance that either the Minister of Finance or Parliament will agree with the recommendation that we intend to make in this regard. Nonetheless, we trust that this statement of our position is helpful.

Thank you for writing.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

History: Subsec. 132.11(4) amended by 2001, c. 17, subsec. 130(3), applicable to 2000 *et seq.* The subsec. formerly read:

> (4) For the purposes of subsections 52(6) and 104(6) and (13) and subsections (5) and (6) and notwithstanding subsection 104(24), each amount that is paid, or that becomes payable, by a trust to a beneficiary after the end of a particular taxation year of the trust that ends on December 15 of a calendar year because of subsection (1) and before the end of that calendar year is deemed to have been paid or to have become payable, as the case may be, to the beneficiary at the end of the particular taxation year and not at any other time.

Subsec. 132.11(4) added by 1999, c. 22, s. 55, applicable to 1998 *et seq.*

(5) Special rules where change in status of beneficiary — Where an amount is deemed by subsection (4) to have been paid or to have become payable at the end of December 15 of a calendar year by a trust to a beneficiary who was not a beneficiary under the trust at that time,

> (a) notwithstanding any other provision of this Act, where the beneficiary did not exist at that time, except for the purpose of this paragraph, the first taxation year of the beneficiary is deemed to include the period that begins at that time and ends immediately before the beginning of the first taxation year of the beneficiary;
>
> (b) the beneficiary is deemed to exist throughout the period described in paragraph (a); and
>
> (c) where the beneficiary was not a beneficiary under the trust at that time, the beneficiary is deemed to have been a beneficiary under the trust at that time.

Related Provisions: 132.11(4) — Amounts paid to beneficiary from December 16-31.

(6) Additional income of electing trust — Where a particular amount is designated under this subsection by a trust in its return of income for a particular taxation year that ends on December 15 because of subsection (1) or throughout which the trust was a mutual fund trust and the trust does not designate an amount under subsection 104(13.1) or (13.2) for the particular year,

> (a) the particular amount shall be added in computing its income for the particular year; and
>
> (b) for the purposes of subsections 104(6) and (13), each portion of the particular amount that is allocated under this paragraph to a beneficiary under the trust in the trust's return of income for the particular year in respect of an amount paid or payable to the beneficiary in the particular year shall be considered to be additional income of the trust for the particular year (determined without reference to subsection 104(6)) that was paid or payable, as the case may be, to the beneficiary at the end of the particular year.
>
> (c) [Repealed]

Related Provisions: 132.11(4) — Amounts paid to beneficiary from December 16-31; 220(3.21)(b) — Late filing, amendment or revocation of designation or allocation.

History: Para. 132.11(6)(c) repealed by 2001, c. 17, subsec. 130(3), applicable to 2000 *et seq.* The para. formerly read:

> (c) for the purpose of subsection 52(6), where a portion of the particular amount is allocated to a beneficiary under paragraph (b) in respect of an amount that became payable to the beneficiary in the particular year, the right to the amount so payable shall be considered to be a right to enforce payment by the trust to the beneficiary out of the trust's income (determined without reference to the provisions of this Act) for the particular year.

Subsec. 132.11(6) added by 1999, c. 22, s. 55, applicable to 1998 *et seq.*

(7) Deduction — Subject to subsection (8), the lesser of the amount designated under subsection (6) by a trust for a taxation year and the total of all amounts each of which is allocated by the trust under paragraph (6)(b) in respect of the year shall be deducted in computing the trust's income for the following taxation year.

Related Provisions: 132.11(8) — Anti-avoidance rule.

(8) Anti-avoidance — Subsection (7) does not apply in computing the income of a trust for a taxation year where it is reasonable to consider that the designation under subsection (6) for the preceding taxation year was part of a series of transactions or events that includes a change in the composition of beneficiaries under the trust.

Related Provisions: 248(10) — Series of transactions or events.

History [s. 132.11]: S. 132.11 added by 1999, c. 22, s. 55, applicable to 1998 *et seq.*

Definitions [s. 132.11]: "amount" — 248(1); "fiscal period" — 249.1; "Minister" — 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q) [to be repealed], 132.2(3)(n) [draft], 248(1); "prescribed" — 248(1); "series of transactions" — 248(10); "share" — 248(1); "taxation year" — 249; "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

132.2 (1) Mutual funds — qualifying exchange [rollover] — Where a mutual fund corporation or a mutual fund trust has at any time disposed of a property to a mutual fund trust in a qualifying exchange,

> (a) the transferee shall be deemed to have acquired the property at the time (in this subsection referred to as the "acquisition time") that is immediately after the time that is immediately after the transfer time, and not to have acquired the property at the transfer time;
>
> (b) subject to paragraph (o), the last taxation years of the funds that began before the transfer time shall be deemed to have ended at the acquisition time, and their next taxation years shall be deemed to have begun immediately after those last taxation years ended;
>
> (c) the transferor's proceeds of disposition of the property and the transferee's cost of the property shall be deemed to be the lesser of
>
> > (i) the fair market value of the property at the transfer time, and
> >
> > (ii) the greatest of
> >
> > > (A) the cost amount to the transferor of the property at the transfer time or, where the property

is depreciable property, the lesser of its capital cost and its cost amount to the transferor immediately before the transfer time,

(B) the amount that the funds have agreed upon in respect of the property in their election in respect of the qualifying exchange, and

(C) the fair market value at the transfer time of the consideration (other than units of the transferee) received by the transferor for the disposition of the property;

(d) where the property is depreciable property and its capital cost to the transferor exceeds the transferor's proceeds of disposition of the property under paragraph (c), for the purposes of sections 13 and 20 and any regulations made for the purposes of paragraph 20(1)(a),

(i) the property's capital cost to the transferee shall be deemed to be the amount that was its capital cost to the transferor, and

(ii) the excess shall be deemed to have been allowed to the transferee in respect of the property under regulations made for the purposes of paragraph 20(1)(a) in computing income for taxation years ending before the transfer time;

(e) where two or more depreciable properties of a prescribed class are disposed of by the transferor to the transferee in the same qualifying exchange, paragraph (c) applies as if each property so disposed of had been separately disposed of in the order designated by the transferor at the time of making the election in respect of the qualifying exchange or, if the transferor does not so designate any such order, in the order designated by the Minister;

(f) each property of a fund, other than

(i) depreciable property of a prescribed class to which paragraph (g) would, but for this paragraph, apply, and

(ii) property disposed of by the transferor to the transferee at the transfer time

shall be deemed to have been disposed of, and to have been reacquired by the fund, immediately before the acquisition time for an amount equal to the lesser of

(iii) the fair market value of the property at the transfer time, and

(iv) the greater of

(A) its cost amount or, where the property is depreciable property, the lesser of its capital cost and its cost amount to the disposing fund at the transfer time, and

(B) the amount that the fund designates in respect of the property in a notification to the Minister accompanying the election in respect of the qualifying exchange;

(g) where the undepreciated capital cost to a fund of depreciable property of a prescribed class immediately before the acquisition time exceeds the total of

(i) the fair market value of all the property of that class immediately before the acquisition time, and

(ii) the amount in respect of property of that class otherwise allowed under regulations made for the purposes of paragraph 20(1)(a) or deductible under subsection 20(16) in computing the fund's income for the taxation year that includes the transfer time,

the excess shall be deducted in computing the fund's income for the taxation year that includes the transfer time and shall be deemed to have been allowed in respect of property of that class under regulations made for the purposes of paragraph 20(1)(a);

(h) except as provided in paragraph (p), the transferor's cost of any particular property received by the transferor from the transferee as consideration for the disposition of the property is deemed to be

(i) nil, where the particular property is a unit of the transferee, and

(ii) the particular property's fair market value at the transfer time, in any other case;

(i) the transferor's proceeds of disposition of any units of the transferee received as consideration for the disposition of the property that were disposed of by the transferor within 60 days after the transfer time in exchange for shares of the transferor shall be deemed to be nil;

(j) where shares of the transferor have been disposed of by a taxpayer to the transferor in exchange for units of the transferee within 60 days after the transfer time,

(i) the taxpayer's proceeds of disposition of the shares and the cost to the taxpayer of the units shall be deemed to be equal to the cost amount to the taxpayer of the shares immediately before the transfer time, and

(ii) where all of the taxpayer's shares of the transferor have been so disposed of, for the purposes of applying section 39.1 in respect of the taxpayer after that disposition, the transferee shall be deemed to be the same entity as the transferor;

Proposed Amendment — 132.2(1)(j) [temporary]

(j) where shares of the transferor have been disposed of by a taxpayer to the transferor in exchange for units of the transferee within 60 days after the transfer time,

(i) the taxpayer's proceeds of disposition of the shares and the cost to the taxpayer of the units are deemed to be equal to the cost amount to the taxpayer of the shares immediately before the transfer time,

(ii) if all of the taxpayer's shares of the transferor have been so disposed of, for the purposes of applying section 39.1 in respect of the taxpayer after that disposition, the transferee is deemed to be the same entity as the transferor, and

(iii) for the purpose of the definition "designated beneficiary" in section 210, the units are deemed not to have been held at any time by the transferor;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 130(3), will amend para. 132.2(1)(j) to read as above, applicable for qualifying exchanges that occurred after June 1994 and before 1999. (Effective 1999, all of s. 132.2 is to be replaced; see below.)

Technical Notes: See under proposed 132.2(3)(g)(iii) below.

(k) where a share to which paragraph (j) applies would, but for this paragraph, cease to be a qualified investment (within the meaning assigned by subsection 146(1), 146.1(1) or 146.3(1) or section 204) as a consequence of the qualifying exchange, the share is deemed to be a qualified investment until the earlier of the day that is 60 days after the transfer time and the

time at which it is disposed of in accordance with paragraph (j);

(l) there shall be added to the amount determined under the description of A in the definition "refundable capital gains tax on hand" in subsection 132(4) in respect of the transferee for its taxation years that begin after the transfer time the amount, if any, by which

(i) the transferor's refundable capital gains tax on hand (within the meaning assigned by subsection 131(6) or 132(4), as the case may be) at the end of its taxation year that includes the transfer time

exceeds

(ii) the transferor's capital gains refund (within the meaning assigned by paragraph 131(2)(a) or 132(1)(a), as the case may be) for that year;

(m) no amount in respect of a non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss of a fund for a taxation year that began before the transfer time is deductible in computing its taxable income for a taxation year that begins after the transfer time;

(n) where the transferor is a mutual fund trust, for the purposes of subsections 132.1(1) and (3) to (5), the transferee shall be deemed after the transfer time to be the same mutual fund trust as, and a continuation of, the transferor;

(o) where the transferor is a mutual fund corporation,

(i) for the purposes of subsection 131(4), the transferor is deemed in respect of any share disposed of in accordance with paragraph (j) to be a mutual fund corporation at the time of the disposition, and

(ii) for the purposes of Part I.3, the transferor's taxation year that, but for this paragraph, would have included the transfer time is deemed to have ended immediately before the transfer time (except that, for greater certainty, nothing in this paragraph shall affect the computation of any amount determined under this Part);

(p) for the purpose of determining the funds' capital gains redemptions (as defined in subsection 131(6) or 132(4)), for their taxation years that include the transfer time,

(i) the total of the cost amounts to the transferor of all its properties at the end of the year is deemed to be the total of all amounts each of which is

(A) the transferor's proceeds of disposition of a property that was transferred to a transferee on the qualifying exchange, or

(B) the cost amount to the transferor at the end of the year of a property that was not transferred on the qualifying exchange, and

(ii) the transferee is deemed not to have acquired any property that was transferred to it on the qualifying exchange; and

(q) except as provided in subparagraph (o)(i), the transferor is, notwithstanding subsections 131(8) and 132(6), deemed to be neither a mutual fund corporation nor a mutual fund trust for taxation years that begin after the transfer time.

Proposed Amendment — 132.2(1)

See at end of s. 132.2.

Related Provisions: 7(1.4) — Exchange of options giving mutual fund trust employee right to acquire units; 54"superficial loss"(c) — No superficial loss on deemed disposition and reacquisition.

History: Para. 132.2(1)(k) amended by 1999, c. 22, s. 56, applicable after 1997. It formerly read:

(k) where a share to which paragraph (j) applies would, but for this paragraph, cease to be a qualified investment (within the meaning assigned by subsection 146(1) or 146.3(1) or section 204) as a consequence of the qualifying exchange, the share shall be deemed to be a qualified investment until the earlier of the day that is 60 days after the transfer time and the time at which it is disposed of in accordance with paragraph (j);

The opening words of para. 132.2(1)(h), paras. 132.2(1)(o) and (p) amended, and para. (q) added, by 1998, c. 19, subsecs. 159(1), (2), applicable after June 1994 except that, where

(a) a qualifying exchange (as defined in subsec. 132.2(2)) between funds occurs before November 1996, and

(b) the funds jointly elect in writing filed with the Minister of National Revenue before October 1998,

subsec. 132.2(1) shall be read without reference to para. 132.2(1)(p), as amended, in its application to the exchange. The opening words of para. 132.2(1)(h) and paras. 132.2(1)(o) and (p) formerly read:

(h) the transferor's cost of any particular property received by the transferor from the transferee as consideration for the disposition of the property shall be deemed to be

. . . . .

(o) where the transferor is a mutual fund corporation, for the purposes of Part I.3, the transferor's taxation year that, but for this paragraph, would have ended at the acquisition time shall be deemed to have ended immediately before the transfer time (except that, for greater certainty, nothing in this paragraph affects the computation of any amount determined under this Part); and

(p) the transferor shall, notwithstanding subsections 131(8) and 132(6), be deemed to be neither a mutual fund corporation nor a mutual fund trust for taxation years beginning after the transfer time.

Subsec. 132.2(1) added by 1995, c. 21, s. 69, applicable after June 1994.

Regulations: 1105 (prescribed classes of depreciable property).

(2) Definitions — In this section,

"qualifying exchange" means a transfer at any time (in this section referred to as the "transfer time") of all or substantially all of the property of a mutual fund corporation or mutual fund trust to a mutual fund trust (in this section referred to as the "transferor" and "transferee", respectively, and as the "funds") where

(a) all or substantially all of the shares issued by the transferor and outstanding immediately before the transfer time are within 60 days after the transfer time disposed of to the transferor,

(b) no person disposing of shares of the transferor to the transferor within that 60-day period (otherwise than pursuant to the exercise of a statutory right of dissent) receives any consideration for the shares other than units of the transferee, and

(c) the funds jointly elect, by filing a prescribed form with the Minister within 6 months after the transfer time, to have this section apply with respect to the transfer;

History: Para. (b) of the definition "qualifying exchange" in subsec. 132.2(2) amended by 1998, c. 19, subsec. 159(3), applicable after June 1994. Para. (b) formerly read:

(b) no person disposing of shares in the transferor to the transferor within that 60 day period receives any consideration for those shares other than units of the transferee, and

The definition "qualifying exchange" in subsec. 132.2(2) added by 1995, c. 21, s. 69, applicable after June 1994, except that an election referred to in para. (c) of the definition "qualifying exchange" in subsec. 132.2(2) shall be deemed to have been made in a timely manner where it is made before December 31, 1995.

Forms: T1169: Election on disposition of property by a mutual fund corporation (or a mutual fund trust) to a mutual fund trust.

"share" means a share of the capital stock of a mutual fund corporation and a unit of a mutual fund trust.

History: The definition "share" in subsec. 132.2(2) added by 1995, c. 21, s. 69, applicable after June 1994.

Proposed Administrative Policy — Extension of filing deadlines after merger

Letter from CRA, May 5, 2004:

Mr. John Mountain, Vice President, Regulation, The Investment Funds Institute of Canada, Toronto, Ontario

Dear Mr. Mountain:

Re: Blanket Extension of Time to Make Tax Filings After Mutual Funds Mergers.

This is in response to your letter dated June 25, 2003, addressed to Mr. David Miller, Assistant Commissioner, Assessment and Collections Branch, and the subsequent meeting between you and Thomas C. Lee representing IFIC, and Doug Watson and André Gauthier representing the Canada Revenue Agency (CRA). Your letter was forwarded to us for reply.

In your letter, you requested that CRA grant a blanket extension of time for all tax filings that must be prepared by unit trusts and mutual fund trusts that are a party to a merger, whether or not the merger was a "qualifying exchange" as defined in subsection 132.2(2) of the *Income Tax Act* (ITA). The types of tax filings to be covered by your request would include:

- T3 Trust Income Tax Return
- T3 Summary and Supplementary
- NR4 Summary and Supplementary
- T5008 Summary and Supplementary

As well, you requested that the filing due date be extended to the next normal filing date that would have occurred in the absence of the merger (i.e. 90 days after December 15 or December 31). Finally, with respect to the continuing fund, you asked to combine the information for the taxation years immediately before and after the merger date into one T3 slip for each unit-holder (to avoid having to issue multiple slips to the investors for the same calendar year).

Blanket extension of time for return filing

As previously discussed, CRA is unable to agree to a blanket extension of the time for filing the required returns and summaries. However, we are prepared to review all requests for an extension of time for tax filings on a merging of mutual funds on a case-by-case basis. This will ensure that CRA has all requisite information on hand to make an informed decision. In order to consider granting an extension, the Mutual Fund Manager or Trustee should provide CRA with the following information:

- Reasons for requesting an extension of time.
- Names of the units trusts, mutual funds trust or mutual funds corporation involved with their identification numbers, the date of the merger and when CRA may expect to receive the related returns.
- Is the exchange a "qualifying exchange" and is an election made under paragraph 132.2(2)(c) of the definition of "qualifying exchange"?

At the APFF 2002 round table, the Department of Finance indicated that they would not commit to extending the use of section 132.2, by administrative policy, to any entity other than the ones described in the section. Consequently, extensions of time will be granted only to mutual funds or unit trusts that are deemed mutual fund trusts for the purposes of the ITA. An extension of time request will be considered provided the appropriate information outlined above is provided to CRA and the requester agrees to:

- File the T3 returns, T3 summaries, NR4 summaries for each mutual fund that is part of the merger, no later than the date indicated in the letter granting the extension, which cannot exceed the next normal filing date that would have occurred in the absence of the merger.
- Identify each of the relevant T3 returns, when they are filed as either the transferee trust or transferor trust.
- Indicate whether the reorganization has created a new transferee trust instead of a continuation of the existing trust. It should be noted that a Trust account number would be issued to any newly created transferee trust when it is filed.
- Identify any amount of refundable capital gains on hand available to be transferred.
- Attach a copy of the letter approving the request to each of the relevant returns.
- Provide CRA with a breakdown of the types of income and capital gains of the various underlying funds.
- The granting of an extension of time should not, in any circumstances, trigger any year-ends of any mutual funds as defined in the ITA.

Combining of reporting information into one T3 slip for each unit-holder

The T3 Guide currently authorizes mutual funds that file magnetic media to combine information on the T3 slip from several funds onto one T3 slip for each unit-holder. However, when reporting slips are combined, it is necessary to:

- Prepare the tape, cartridge, CD-ROM, or diskette of summaries and slips, which will be submitted to CRA for each individual fund;
- Provide unit-holders with statements that allow them to reconcile the amounts reported on the combined information slips;
- Maintain an audit trail so the combined information slips can be verified, if CRA audits these funds later.

The CRA is prepared to allow the continuing fund to combine the information for the taxation years immediately before and after the merger date into one T3 slip for each unit-holder provided, of course, that the 3 requirements above are also followed. This policy would also apply to any NR4 Summary and slips or T5008 Summary or slips to be issued following a merger of mutual funds.

T4013 — T3 Trust Guide

In order to ensure that the above information is widely disseminated, we will request that the T3 Guide be amended to include that information.

Conclusion

As indicated at our meeting, while the CRA cannot grant a blanket extension of time for tax filings, we are prepared to facilitate a request that helps to improve compliance. CRA will consider a request for an extension of time for tax filings on a merging of mutual funds for the units trusts and mutual funds trusts that are part of the merger. CRA also confirms that the continuing fund may combine information on specific slips for each unit-holder, provided the requester complies with the requirements pointed out in this letter.

To minimize any delay in responding to an extension request, the request should be forwarded to the Assistant Director, Verification and Enforcement Division (ADVE), located in the Taxation Services Office (TSO) where the Funds Manager has its own file. This TSO will review the request and provide its answer to the Funds Manager.

With respect to the issue regarding the combined reporting of information on information slips such as the T-3, we will be forwarding a copy of this letter to the Department of Finance for consideration of a legislative change.

If you require further clarification, please call André Gauthier, Financial Services Specialist, at (418) 649-3043 ext. 4258.

John Luck, Coordinator, Financial Industries, Industry Specialists Services, Technical Applications & Valuations Division

Proposed Amendment — 132.2

132.2 (1) Definitions re qualifying exchange of mutual funds — The following definitions apply in this section.

"first post-exchange year", of a fund in respect of a qualifying exchange, means the taxation year of the fund that begins immediately after the acquisition time.

"qualifying exchange" means a transfer at any time (in this section referred to as the "transfer time") of all or substantially all of the property of a mutual fund corporation or a mutual fund trust to a mutual fund trust (in this section referred to as the "transferor" and "transferee", respectively, and as the "funds") if

(a) all or substantially all of the shares issued by the transferor and outstanding immediately before the transfer time are within 60 days after the transfer time disposed of to the transferor;

(b) no person disposing of shares of the transferor to the transferor within that 60-day period (otherwise than pursuant to the exercise of a statutory right of dissent) receives any consideration for the shares other than units of the transferee; and

(c) the funds jointly elect, by filing a prescribed form with the Minister on or before the election's due date.

Related Provisions: 132.2(6) — Due date for election in para. (c); 132.2(7) — Amendment or revocation of election.

"share" means a share of the capital stock of a mutual fund corporation and a unit of a mutual fund trust.

(2) Timing — In respect of a qualifying exchange, a time referred to in the following list immediately follows the time that precedes it in the list

(a) the transfer time;

(b) the first intervening time;

(c) the acquisition time;

(d) the beginning of the funds' first post-exchange years;

(e) the depreciables disposition time;

(f) the second intervening time; and

(g) the depreciables acquisition time.

(3) General — In respect of a qualifying exchange,

(a) each property of a fund, other than property disposed of by the transferor to the transferee at the transfer time and depreciable property, is deemed to have been disposed of, and to have been reacquired by the fund, at the first intervening time, for an amount equal to the lesser of

(i) the fair market value of the property at the transfer time, and

(ii) the greater of

(A) its cost amount, and

(B) the amount that the fund designates in respect of the property in a notification to the Minister accompanying the election in respect of the qualifying exchange;

(b) subject to paragraph (l), the last taxation years of the funds that began before the transfer time are deemed to have ended at the acquisition time, and their first post-exchange years are deemed to have begun immediately after those last taxation years ended;

(c) each depreciable property of a fund (other than property to which subsection (5) applies and property to which paragraph (d) would, if this Act were read without reference to this paragraph, apply) is deemed to have been disposed of, and to have been reacquired, by the fund at the second intervening time for an amount equal to the lesser of

(i) the fair market value of the property at the depreciables disposition time, and

(ii) the greater of

(A) the lesser of its capital cost and its cost amount to the disposing fund at the depreciables disposition time, and

(B) the amount that the fund designates in respect of the property in a notification to the Minister accompanying the election in respect of the qualifying exchange;

(d) if at the second intervening time the undepreciated capital cost to a fund of depreciable property of a prescribed class exceeds the fair market value of all the property of that class, the excess is to be deducted in computing the fund's income for the taxation year that includes the transfer time and is deemed to have been allowed in respect of property of that class under regulations made for the purpose of paragraph 20(1)(a);

(e) except as provided in paragraph (m), the transferor's cost of any particular property received by the transferor from the transferee as consideration for the disposition of the property is deemed to be

(i) nil, if the particular property is a unit of the transferee, and

(ii) the particular property's fair market value at the transfer time, in any other case;

(f) the transferor's proceeds of disposition of any units of the transferee that were disposed of by the transferor at any particular time that is within 60 days after the day that includes the transfer time in exchange for shares of the transferor, are deemed to be equal to the cost amount of the units to the transferor immediately before the particular time;

(g) if, at any particular time that is within 60 days after the day that includes the transfer time, a taxpayer disposes of shares of the transferor to the transferor in exchange for units of the transferee

(i) the taxpayer's proceeds of disposition of the shares and the cost to the taxpayer of the units are deemed to be equal to the cost amount to the taxpayer of the shares immediately before the particular time,

(ii) where all of the taxpayer's shares of the transferor have been so disposed of, for the purpose of applying section 39.1 in respect of the taxpayer after that disposition, the transferee is deemed to be the same entity as the transferor,

(iii) for the purpose of the definition "designated beneficiary" in section 210, the units are deemed not to have been held at any time by the transferor, and

Technical Notes: *Rules of General Application*

New subparagraph 132.2(3)(g)(iii) applies in determining whether a person is a "designated beneficiary" (as defined in section 210) of a trust. Under the definition designated beneficiary, certain persons or partnerships that are beneficiaries under a trust may be treated (or may cause trusts or partnerships of which they are beneficiaries or members to be treated) as designated beneficiaries under the trust, unless the relevant interest in the trust is held at all times by the person or partnership, as the case may be, or by another person exempt because of subsection 149(1) from tax, under Part I of the Act, on all of the other person's taxable income.

In a qualifying exchange, a mutual fund trust or mutual fund corporation (transferor) transfers all or substantially all of its property to another mutual fund trust (transferee) and takes back units of the transferee. Those units are then provided by the transferor to its investors in exchange for their shares or units of the transferor. New subparagraph 132.2(3)(g)(iii) ensures that, in these circumstances, the transferor is treated, for the purpose of the definition designated beneficiary, as not having held the units of the transferee.

This amendment applies for qualifying exchanges that occur after 1998. A similar rule, in former subparagraph 132.2(1)(j)(iii), applies for qualifying exchanges that occurred after June 1994 and before 1999.

Rules of General Application — Losses

132.2(3)(f) and (g)

New paragraphs 132.2(3)(f) and (g) are amended to ensure that the mutual fund merger rules do not apply inappropriately to create artificial or

"phantom" losses. Although the changes reflected in these new provisions are not expected to be relevant to most qualifying exchanges, the following is a description of their purpose and effect.

Under the definition "qualifying exchange" in new subsection 132.2(1), all or substantially all of the outstanding shares issued by the transferor must be disposed of to the transferor within the 60 days after the transfer time, and every person so disposing of shares of the transferor must receive only units of the transferee as consideration. The second leg of a qualifying exchange is thus a set of transactions in which the transferor's investors replace their shares of the transferor with units of the transferee. The tax effect of those transactions are governed by paragraphs 132.2(1)(f) and (g). For clarity, these notes reflect the legislation by referring to investments in the transferor — whether a corporation or a trust — as shares, reserving the term "units" to refer to the units of the transferee mutual fund trust.

Existing paragraph 132.2(1)(i) provides that if, within 60 days after the transfer time, the transferor fund disposed of units of the transferee in exchange for shares of itself, its proceeds of disposition are deemed to be nil. Since the units acquired by the transferor in return for its property are deemed, under existing paragraph 132.2(1)(h) (now new paragraph 132.2(3)(e)), also to have had a cost of nil, this provision allows the transferor to roll those units out to its investors with no tax consequences to it. New paragraph 132.2(3)(f) provides that if, within 60 days after the transfer time, the transferor fund disposes of units of the transferee in exchange for shares of itself, its proceeds of disposition will be deemed to be equal to the cost amount of the units to the transferor immediately before the disposition. This change — from nil proceeds to proceeds equal to cost amount — ensures appropriate results if the transferor held units of the transferee that were acquired otherwise than as a result of the qualifying exchange. In this situation, that first tranche of units will have a cost base that, pursuant to section 47, will be averaged with the second tranche of units (i.e. the units that the transferor acquired in the qualifying exchange). Existing paragraph 132.2(1)(i) deems the proceeds of the disposition of the second tranche of units to be nil, an inappropriate result in that it creates a phantom loss. New paragraph 132.2(3)(f), deeming the proceeds of disposition equal to the cost amount of the units to the transferor immediately before the disposition, ensures that the transferor can still roll units of the transferee out to its investors with no tax consequences to it, and avoids the creation of a phantom loss.

Existing subparagraph 132.2(1)(j)(i) provides that, where a taxpayer disposes of shares of the transferor in exchange for units of the transferee within that same 60-day period, both the taxpayer's proceeds of disposition of the shares and the taxpayer's cost of the units are deemed to be equal to the cost amount of the shares immediately before the transfer time. New subparagraph 132.2(3)(g)(i) provides that, where a taxpayer disposes of shares of the transferor in exchange for units of the transferee within that same 60-day period, both the taxpayer's proceeds of disposition of the shares and the taxpayer's cost of the units are deemed to be equal to the cost amount of the shares immediately before the disposition. This change — from measuring the cost amount of the shares immediately before the transfer time to measuring it immediately before the disposition — ensures that the transferor's investors will not realize any gain or loss on their exchange of their shares for units of the transferee.

Paragraph 132.2(3)(g) also includes a new subparagraph 132.2(3)(g)(iv) to address the disposition by certain persons or partnerships of the units in the transferee that they received on the qualifying exchange. Those affected by this new provision are those who, when they acquire the units, are affiliated with one or both of the funds. This could include, for example, the transferee itself, or a corporation it controls.

The subparagraph first deems the units received in the qualifying exchange not to be identical to any other units of the transferee. This segregates the new units from the averaging effect of section 47.

Next, the subparagraph specifies the effects of disposing of the new units. If the taxpayer is the transferee, and the units cease to exist when the taxpayer acquires them (if, for example, the units are cancelled immediately on receipt), clause 132.2(3)(g)(iv)(B) provides two effects. First, to prevent any possible question in this regard, the taxpayer is deemed to have acquired those units. This ensures, among other things, that subparagraph (i) establishes the taxpayer's cost of the units. Second, the taxpayer is treated as having disposed of those units immediately after it acquired them, for proceeds of disposition equal to the cost amount to the taxpayer of those units at that time. This ensures, for greater certainty, that a transferee that had an investment in the transferor prior to the qualifying exchange will not incur a phantom loss as a result of exchanging its shares in the transferor in return for units of itself.

If the taxpayer is affiliated with one or both of the funds, but is not the transferee, clause 132.2(3)(g)(iv)(C) provides that, for the purpose of computing any gain or loss of the taxpayer from the taxpayer's first disposition of each of those units, the proceeds of disposition of the unit will depend on whether the disposition is a renunciation or surrender of the unit or some other disposition.

New subclause 132.2(3)(g)(iv)(C)(I) provides that, if the disposition is a renunciation or surrender of the unit by the taxpayer for no consideration, and is not in favour of any person other than the transferee, the taxpayer's proceeds of disposition of that unit are deemed to be equal to that unit's cost amount to the taxpayer immediately before that disposition. This ensures that an affiliated taxpayer will never incur a phantom loss or gain on the renunciation or surrender of the unit.

If the disposition is not a renunciation or surrender of the unit described in subclause 132.2(3)(g)(iv)(C)(I), the affiliated taxpayer's proceeds of disposition of that unit are deemed by subclause 132.2(3)(g)(iv)(C)(II) to be equal to the greater of that unit's fair market value and its cost amount to the taxpayer immediately before that disposition. This ensures that the taxpayer will never incur a loss, including a phantom loss, on a disposition of one of those units, but may incur a gain.

Two additional points should be noted with respect to the operation of new subparagraph 132.2(3)(g)(iv).

- The deeming, by subclause 132.2(3)(g)(iv)(C)(II), of a taxpayer's proceeds of disposition of the units the taxpayer acquired on the qualifying exchange applies only to the first disposition of each unit. It is possible that a taxpayer might dispose of a unit and then reacquire the same unit (under, for example, the change in residence rules in section 128.1). The subclause will not apply to any subsequent disposition of the unit by that taxpayer.

- In some circumstances, an affiliated taxpayer may have a latent loss on a share of the transferor prior to the qualifying exchange, and may wish to realize that loss. This can be done, if the affiliated taxpayer disposes of the share prior to the qualifying exchange. However, the possible application of the Act's "superficial loss" and loss deferral rules would have to be borne in mind.

New paragraphs 132.2(3)(f) and (g), together with the rest of new subsection 132.2(3), generally apply to qualifying exchanges that occur after 1998. A limited exception applies in respect of certain qualifying exchanges in respect of which a return of income, claiming the losses sought to be prevented by these amendments, was filed by the transferee mutual fund before July 18, 2005.

> (iv) where the taxpayer is at the particular time affiliated with one or both of the funds,
>
> (A) those units are deemed not to be identical to any other units of the transferee,
>
> (B) if the taxpayer is the transferee, and the units cease to exist when the taxpayer acquires them (or, for greater certainty, when the taxpayer would but for that cessation have acquired them), the taxpayer is deemed
>
> (I) to have acquired those units at the particular time, and
>
> (II) to have disposed of those units immediately after the particular time for proceeds of disposition equal to the cost amount to the taxpayer of those units at the particular time, and
>
> (C) in any other case, for the purpose of computing any gain or loss of the taxpayer from the taxpayer's first disposition, after the particular time, of each of those units,
>
> (I) if that disposition is a renunciation or surrender of the unit by the taxpayer for no consideration, and is not in favour of any person other than the transferee, the taxpayer's proceeds of disposition of that unit are deemed to be equal to that unit's cost

amount to the taxpayer immediately before that disposition, and

(II) if subclause (I) does not apply, the taxpayer's proceeds of disposition of that unit are deemed to be equal to the greater of that unit's fair market value and its cost amount to the taxpayer immediately before that disposition;

(h) where a share to which paragraph (g) applies would, if this Act were read without reference to this paragraph, cease to be a qualified investment (within the meaning assigned by subsection 146(1), 146.1(1) or 146.3(1) or section 204) as a consequence of the qualifying exchange, the share is deemed to be a qualified investment until the earlier of the day that is 60 days after the day that includes the transfer time and the time at which it is disposed of in accordance with paragraph (g);

(i) there shall be added to the amount determined under the description of A in the definition "refundable capital gains tax on hand" in subsection 132(4) in respect of the transferee for its taxation years that begin after the transfer time the amount, if any, by which

(i) the transferor's refundable capital gains tax on hand (within the meaning assigned by subsection 131(6) or 132(4), as the case may be) at the end of its taxation year that includes the transfer time

exceeds

(ii) the transferor's capital gains refund (within the meaning assigned by paragraph 131(2)(a) or 132(1)(a), as the case may be) for that year;

(j) no amount in respect of a non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss of a fund for a taxation year that began before the transfer time is deductible in computing the taxable income of either of the funds for a taxation year that begins after the transfer time;

(k) if the transferor is a mutual fund trust, for the purposes of subsections 132.1(1) and (3) to (5), the transferee is deemed after the transfer time to be the same mutual fund trust as, and a continuation of, the transferor;

(l) if the transferor is a mutual fund corporation

(i) for the purpose of subsection 131(4) but, for greater certainty, without having any effect on the computation of any amount determined under this Part, the transferor is deemed in respect of any share disposed of in accordance with paragraph (g) to be a mutual fund corporation at the time of the disposition, and

(ii) for the purpose of Part I.3 but, for greater certainty, without having any effect on the computation of any amount determined under this Part, the transferor's taxation year that, if this Act were read without reference to this paragraph, would have included the transfer time is deemed to have ended immediately before the transfer time;

(m) for the purpose of determining the funds' capital gains redemptions (as defined in subsection 131(6) or 132(4), as the case may be), for their taxation years that include the transfer time,

(i) the total of the cost amounts to the transferor of all its properties at the end of the year is deemed to be the total of all amounts each of which is

(A) the transferor's proceeds of disposition of a property that was transferred to a transferee on the qualifying exchange, or

(B) the cost amount to the transferor at the end of the year of a property that was not transferred on the qualifying exchange, and

(ii) the transferee is deemed not to have acquired any property that was transferred to it on the qualifying exchange; and

(n) except as provided in subparagraph (l)(i), the transferor is, notwithstanding subsections 131(8) and 132(6), deemed to be neither a mutual fund corporation nor a mutual fund trust for taxation years that begin after the transfer time.

Related Provisions: 54"superficial loss"(c) — Superficial loss rule does not apply to disposition under 132.2(3)(a) or (c); 132.2(4) — Transfer of non-depreciable property; 132.2(5) — Transfer of depreciable property.

(4) Qualifying exchange — non-depreciable property — If a transferor transfers a property, other than a depreciable property, to a transferee in a qualifying exchange

(a) the transferee is deemed to have acquired the property at the acquisition time and not to have acquired the property at the transfer time; and

(b) the transferor's proceeds of disposition of the property and the transferee's cost of the property are deemed to be the lesser of

(i) the fair market value of the property at the transfer time, and

(ii) the greatest of

(A) the cost amount to the transferor of the property at the transfer time,

(B) the amount that the funds agree on in respect of the property in their election, and

(C) the fair market value at the transfer time of the consideration (other than units of the transferee) received by the transferor for the disposition of the property.

(5) Depreciable property — If a transferor transfers a depreciable property to a transferee in a qualifying exchange,

(a) the transferor is deemed to have disposed of the property at the depreciables disposition time, and not to have disposed of the property at the transfer time;

(b) the transferee is deemed to have acquired the property at the depreciables acquisition time, and not to have acquired the property at the transfer time;

(c) the transferor's proceeds of disposition of the property and the transferee's cost of the property are deemed to be the lesser of

(i) the fair market value of the property at the transfer time, and

(ii) the greatest of

(A) the lesser of its capital cost and its cost amount to the transferor immediately before the depreciables disposition time,

(B) the amount that the funds agree on in respect of the property in their election, and

(C) the fair market value at the transfer time of the consideration (other than units of the transferee) received by the transferor for the disposition of the property;

(d) where the capital cost of the property to the transferor exceeds the transferor's proceeds of disposition of the property under paragraph (c), for the purposes of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a),

(i) the property's capital cost to the transferee is deemed to be the amount that was its capital cost to the transferor, and

(ii) the excess is deemed to have been allowed to the transferee in respect of the property under regulations made for the purpose of paragraph 20(1)(a) in computing income for taxation years ending before the transfer time; and

(e) where two or more depreciable properties of a prescribed class are disposed of by the transferor to the transferee in the same qualifying exchange, paragraph (c) applies as if each property so disposed of had been separately disposed of in the order designated by the transferor at the time of making the election in respect of the qualifying exchange or, if the transferor does not so designate any such order, in the order designated by the Minister.

(6) Due date — The due date of an election referred to in paragraph (c) of the definition "qualifying exchange" in subsection (1) is

(a) the day that is 6 months after the day that includes the transfer time; and

(b) on joint application by the funds, any later day that the Minister accepts.

(7) Amendment or revocation of election — The Minister may, on joint application by the funds on or before the due date of an election referred to in paragraph (c) of the definition "qualifying exchange" in subsection (1), grant permission to amend or revoke the election.

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 130, will amend s. 132.2 to read as above, applicable as follows:

The definitions "first post-exchange year" and "share" in subsec. 132.2(1), and subsecs. 132.2(2) to (5), are applicable to qualifying exchanges that occur after 1998, except that if a qualifying exchange occurred before July 18, 2005 and the transferee has before July 18, 2005 filed a return of income, for any taxation year, that identified the realization of any loss that would not have been realized if paras. 132.2(3)(f) and (g), as amended, had applied in respect of the qualifying exchange, those paras. shall be read in their application to the qualifying exchange as follows:

(f) the transferor's proceeds of disposition of any units of the transferee that were received by the transferor as consideration for the disposition of the property, and that were disposed of by the transferor within 60 days after the day that includes the transfer time in exchange for shares of the transferor, are deemed to be nil;

(g) if, within 60 days after the day that includes the transfer time, a taxpayer disposes of shares of the transferor to the transferor in exchange for units of the transferee

(i) the taxpayer's proceeds of disposition of the shares and the cost to the taxpayer of the units are deemed to be equal to the cost amount to the taxpayer of the shares immediately before the transfer time,

(ii) where all of the taxpayer's shares of the transferor have been so disposed of, for the purpose of applying section 39.1 in respect of the taxpayer after that disposition, the transferee is deemed to be the same entity as the transferor, and

(iii) for the purpose of the definition "designated beneficiary" in section 210, the units are deemed not to have been held at any time by the transferor;

The definition "qualifying exchange" in subsec. 132.2(1) and subsecs. 132.2(6) and (7) are applicable to qualifying exchanges that occur after June 1994.

If a valid election referred to in para. (c) of the definition "qualifying exchange" in subsec. 132.2(2) was made, the election continues to have the effect of having s. 132.2, as modified from time to time, apply to the transfer.

If a valid election referred to in subsec. 159(4) of the *Income Tax Amendments Act, 1997* [S.C. 1998, c. 19; see History to subsec. 132.2(1)] was made in respect of a qualifying exchange, subsec. 132.2(1) of the Act is to be read without reference to para. 132.2(1)(p), and the election is, on the application of this amendment, deemed to have the effect that subsec. 132.2(3), in respect of the qualifying exchange, is to be read without reference to para. 132.2(3)(i).

Technical Notes: Section 132.2 provides rules to allow two mutual fund trusts, or a mutual fund trust and a mutual fund corporation, to merge on a tax-deferred basis. Such a merger is referred to as a "qualifying exchange".

In addition to introducing several substantive improvements to the rules in section 132.2, these amendments restructure the provision as a whole. In general terms, the section is now organized as follows: new subsection 132.2(1) sets out definitions that apply for the section; subsection (2) describes the order in which the events that make up a qualifying exchange are considered to have occurred; subsection (3) provides a set of general rules; subsection (4) deals with non-depreciable property that is transferred on the qualifying exchange; and subsection (5) deals with depreciable property that is transferred. Subsection (6) establishes the due date for the election to treat a transfer as a qualifying exchange; and subsection (7) provides authority for the Minister of National Revenue to allow that election to be amended or revoked.

Despite this restructuring, the basic principles of section 132.2 remain unchanged, as do most aspects of its operation. The exceptions — the areas where these amendments change the provision substantively — have to do with depreciable property that is transferred on a qualifying exchange, and with the election to treat a transaction as a qualifying exchange. Further modifications have been made to prevent the creation of artificial or "phantom" losses, generally in circumstances where one fund holds units or shares of the other fund immediately before the transfer time.

Transfers of Depreciable Property

In its current form, section 132.2 does not deal comprehensively with transfers of depreciable property between mutual funds. In particular, the deemed timing of the transfer, in relation to the deemed year-end of the funds, may prevent either fund from claiming capital cost allowance (CCA) for the last taxation year that began before the qualifying exchange. The transferor has disposed of the property two moments before the end of its year, and the transferee will not acquire it until the last moment of its own year.

To ensure that one CCA claim is available for that last year, new subsection 132.2(5) provides a special regime for qualifying exchanges that include transfers of depreciable property. A key aspect of these special rules is the ordering of events in accordance with new subsection 132.2(2). That subsection provides that, starting with the actual (i.e., legal) transfer of property between a transferor fund and a transferee fund that carry out a qualifying exchange, the following series of times occurs, each immediately after the previous one:

Name of Time	Description	Reference
the transfer time	The actual transfer of the property between the funds takes place.	definition "qualifying exchange" in 132.2(1)
the first intervening time	The funds are treated as having disposed of and reacquired non-transferred property (other than depreciable property).	132.2(3)(a)
the acquisition time	The transferee is treated as having acquired transferred property (other than depreciable property); the funds' taxation years are treated as ending.	132.2(4)(a); 132.2(3)(b)

Name of Time	Description	Reference
the beginning of the funds' first post-exchange years		132.2(3)(b)
the depreciables disposition time	The transferor is deemed to have disposed of any transferred property that is depreciable property.	132.2(5)(a)
the second intervening time	The funds are treated as having disposed of and reacquired any non-transferred property that is depreciable property.	132.2(3)(c)
the depreciables acquisition time	The transferee is deemed to have acquired any transferred property that is depreciable property.	132.2(5)(b)

As a result of this timing, the transferor fund will be treated as owning, until after its first post-exchange year has begun, any depreciable property that is being transferred. This will ensure that the transfer does not prevent the transferor from deducting CCA in respect of property of that class, for its taxation year that ends at the acquisition time. The new rule also ensures that the transferee does not duplicate that deduction, by treating the transferee as having acquired the property only after its new taxation year has begun.

This treatment of depreciable property applies, along with most aspects of the restructuring of section 132.2, to qualifying exchanges that take place after 1998.

Timing of Election

For section 132.2 to apply to a transfer of property between mutual funds, the definition "qualifying exchange" currently requires the funds to file their joint election in prescribed form with the Minister of National Revenue within six months after the transfer time. This timing requirement is changed to allow greater flexibility. The amended definition "qualifying exchange" requires that the funds' election be made before the election's "due date", defined in new subsection 132.2(6) to mean either the day that is six months after the day that includes the transfer time or any later day that the Minister accepts, on joint application by the funds. An example of a case in which the Minister might accept such an application would be one in which the Minister has already decided to accept a late filing of the funds' returns of income for the taxation year that includes the qualifying exchange.

In certain cases, mutual funds that have elected to treat a transfer as a qualifying exchange may wish to amend, or even revoke, their election. New subsection 132.2(7) allows the funds to do this, on joint application and with the permission of the Minister.

Definitions [proposed s. 132.2]: "acquisition time" — 132.2(2)(c); "affiliated" — 251.1; "amount" — 248(1); "capital gain" — 39(1)(a), 248(1); "cost amount" — 248(1); "depreciable property" — 13(21), 248(1); "depreciables acquisition time" — 132.2(2)(g); "depreciables disposition time" — 132.2(2)(e); "disposition" — 248(1); "farm loss" — 111(8), 248(1); "first intervening time" — 132.2(2)(b); "first post-exchange year" — 132.2(1); "funds" — 132.2(1)"qualifying exchange"; "limited partnership loss" — 96(2.1), 248(1); "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "mutual fund corporation" — 131(8), 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q) [to be repealed], 132.2(3)(n) [draft], 248(1); "net capital loss", "non-capital loss" — 111(8), 248(1); "person", "prescribed", "property" — 248(1); "qualifying exchange" — 132.2(1); "regulation" — 248(1); "restricted farm loss" — 31(1.1), 248(1); "second intervening time" — 132.2(2)(f); "share" — 132.2(1), 248(1); "taxable income" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "transfer time", "transferee", "transferor" — 132.2(1)"qualifying exchange"; "undepreciated capital cost" — 13(21), 248(1).

Definitions [existing s. 132.2]: "acquisition time" — 132.2(1)(a); "cost amount" — 248(1); "depreciable property" — 13(21), 248(1); "farm loss" — 111(8), 248(1); "limited partnership loss" — 96(2.1)(e), 248(1); "Minister" — 248(1); "mutual fund corporation" — 131(8), 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q), 248(1); "net capital loss", "non-capital loss" — 111(8), 248(1); "proceeds of disposition" — 54; "prescribed", "property" — 248(1); "qualifying exchange" — 132.2(2); "regulation" — 248(1); "restricted farm loss" — 31, 248(1); "share" — 132.2(2); "taxable income" — 2(2), 248(1); "taxation year" — 132.2(1)(b), 249; "transfer time" — 132.2(2)"qualifying exchange"; "undepreciated capital cost" — 13(21), 248(1).

Non-Resident-Owned Investment Corporations

133. (1) Computation of income — In computing the income of a non-resident-owned investment corporation for a taxation year,

(a) no deduction may be made in respect of interest on its bonds, debentures, securities or other indebtedness, and

(b) no deduction may be made under subsection 65(1),

and its income and taxable income shall be computed as if

(c) the only taxable capital gains and allowable capital losses referred to in paragraph 3(b) were from dispositions of taxable Canadian property,

(d) any taxable capital gain or allowable capital loss of the corporation were an amount equal to twice the amount thereof otherwise determined, and

(e) subsection 83(2) were read without reference to paragraph 83(2)(b).

Related Provisions: 104(10) — Where dividends and interest paid to trust for non-residents; 104(11) — Dividend received from NRO; 134 — NRO not a Canadian corporation etc.; 134.2 — Choice of taxation year-end on revocation of election to be NRO; 186.1(b) — NRO not subject to Part IV tax; 212(9)(a) — Dividends received by trust from NRO — no withholding tax; Canada-U.S. Tax Treaty:Art. XXIX:6(b) — Treaty provisions inapplicable to NRO.

History: Para. 133(1)(c) amended by 2001, c. 17, subsec. 131(1), applicable after October 1, 1996. The para. formerly read:

> (c) the only taxable capital gains and allowable capital losses referred to in paragraph 3(c) were taxable capital gains and allowable capital losses from dispositions of taxable Canadian property or property that would be taxable Canadian property if at no time in the year the corporation had been resident in Canada,

Para. 133(1)(d) amended by the said c. 17, subsec. 131(2), to replace the expression "4/3 of" with the word "twice", applicable to taxation years that end after February 27, 2000 except that, for a taxation year of a corporation that includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, the word "twice" shall be read as "the fraction that is the reciprocal of the fraction in para. 38(a), as amended by 2001, c. 17, that applies to the taxpayer for the year, multiplied by".

Regulations: 502 (annual certificate of changes of ownership of shares and debt).

(2) Non-resident-owned investment corporations — In computing the taxable income of a non-resident-owned investment corporation for a taxation year, no deduction may be made from its income for the year, except

(a) interest received in the year from other non-resident-owned investment corporations;

(b) taxes paid to the government of a country other than Canada in respect of any part of the income of the corporation for the year derived from sources therein; and

(c) net capital losses as provided for by section 111.

Related Provisions: 88(2)(a) — Winding-up of Canadian corporation.

(3) Special tax rate — The tax payable under this Part by a corporation for a taxation year when it was a non-resident-owned investment corporation is an amount equal to 25% of its taxable income for the year.

Related Provisions: 88(2)(a) — Winding-up of Canadian corporation; 157(3)(d) — Instalments payable by NRO.

Advance Tax Rulings: ATR-43: Utilization of a non-resident-owned investment corporation as a holding corporation.

(4) No deduction for foreign taxes — No deduction from the tax payable under this Part by a non-resident-

owned investment corporation may be made under section 124 or in respect of taxes paid to the government of a country other than Canada.

Related Provisions: 88(2)(a)(iv) — Winding-up of Canadian corporation; 111 — Losses deductible; 115 — Non-residents' taxable income; 133(8) — Non-resident-owned investment corporation.

(5) [Repealed under former Act]

(6) Allowable refund to non-resident-owned investment corporations — If the return of a non-resident-owned investment corporation's income for a taxation year has been made within 3 years from the end of the year, the Minister

(a) may, on mailing the notice of assessment for the year, refund without application therefor its allowable refund for the year; and

(b) shall, with all due dispatch, make that allowable refund after mailing the notice of assessment if an application for it has been made in writing by the corporation within the period within which the Minister would be allowed under subsection 152(4) to assess tax payable by the corporation for the year if that subsection were read without reference to paragraph 152(4)(a).

Related Provisions: 88(2)(a) — Winding-up of Canadian corporation; 133(7) — Application to other liability; 133(7.01), (7.02) — Interest; 134.1 — Transitional rule re elimination of NROs; 152(1) — Assessment of refund; 157(3) — Reduction in instalment obligations to reflect allowable refund; 160.1 — Where excess refunded.

History: Para. 133(6)(b) amended by 1998, c. 19, s. 160, applicable after April 27, 1989. Para. 133(6)(b) formerly read:

(b) shall, with all due dispatch, make such a refund after mailing the notice of assessment if application therefor has been made in writing by the corporation within the period determined under paragraph 152(4)(b) or (c), as the case may be, within which the Minister may reassess tax payable by the corporation for the year.

Selected Cases [subsec. 133(6)]: *The Great Atlantic & Pacific Tea Co. Ltd. v. R.*, [1979] C.T.C. 509 (SCC) (Refund not available when dividend paid prior to end of taxation year).

(7) Application to other liability — Instead of making a refund that might otherwise be made under subsection (6), the Minister may, where the taxpayer is liable or about to become liable to make any payment under this Act, apply the amount that would otherwise be refunded to that other liability and notify the taxpayer of that action.

Related Provisions: 88(2)(a) — Winding-up of Canadian corporation; 134.1 — Transitional rule re elimination of NROs.

(7.01) Interest on allowable refund — Where an allowable refund for a taxation year is paid to, or applied to a liability of, a non-resident-owned investment corporation, the Minister shall pay or apply interest on the refund at the prescribed rate for the period beginning on the day that is the later of

(a) the day that is 120 days after the end of the year, and

(b) the day that is 30 days after the day on which the corporation's return of income under this Part for the year was filed under section 150, unless the return was filed on or before the day on or before which it was required to be filed,

and ending on the day the refund is paid or applied.

Related Provisions: 133(7.02) — Where excess interest paid; 134.1 — Transitional rule re elimination of NROs; 161.1 — Offset of refund interest against arrears interest.

History: Para. 133(7.01) amended by 2003, c. 15, s. 114, applicable to taxation years that end after June 2003. It formerly read:

(b) the day on which the corporation's return of income under this Part for the year was filed under section 150, unless the return was filed on or before the day on or before which it was required to be filed,

Subsec. 133(7.01) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 78, applicable to allowable refunds paid or applied with respect to taxation years beginning after 1991.

Regulations: 4301(b) (prescribed rate of interest).

(7.02) Excess interest on allowable refund — Where at any particular time interest has been paid to, or applied to a liability of, a corporation under subsection (7.01) in respect of an allowable refund and it is determined at a subsequent time that the allowable refund was less than that in respect of which interest was so paid or applied,

(a) the amount by which the interest that was so paid or applied exceeds the interest, if any, computed in respect of the amount that is determined at the subsequent time to be the allowable refund shall be deemed to be an amount (in this subsection referred to as the "amount payable") that became payable under this Part by the corporation at the particular time;

(b) the corporation shall pay to the Receiver General interest at the prescribed rate on the amount payable, computed from the particular time to the day of payment; and

(c) the Minister may at any time assess the corporation in respect of the amount payable and, where the Minister makes such an assessment, the provisions of Divisions I and J apply, with such modifications as the circumstances require, in respect of the assessment as though it had been made under section 152.

Related Provisions: 20(1)(ll) — Deduction on repayment of interest; 161.1 — Offset of refund interest against arrears interest; 221.1 — Application of interest where legislation retroactive; 248(11) — Interest compounded daily.

History: Subsec. 133(7.02) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 78, applicable to allowable refunds paid or applied with respect to taxation years beginning after 1991.

Regulations: 4301(a) (prescribed rate of interest).

(7.1) Election re capital gains dividend — Where at any particular time after 1971 a dividend has become payable by a non-resident-owned investment corporation to shareholders of any class of shares of its capital stock, if the corporation so elects in respect of the full amount of the dividend, in prescribed manner and prescribed form and at or before the particular time or the first day on which any part of the dividend was paid if that day is earlier than the particular time, the following rules apply:

(a) the dividend shall be deemed to be a capital gains dividend to the extent that it does not exceed the corporation's capital gains dividend account immediately before the particular time; and

(b) any amount received by another non-resident-owned investment corporation in a taxation year as, on account or in lieu of payment of, or in satisfaction of the capital gains dividend shall not be included in computing its income for the year.

Related Provisions: 83(2) — Capital dividends; 84(7) — When dividend payable; 88(2)(b)(i) — Winding-up of Canadian corporation; 133(7.2) — Simultaneous dividends; 133(7.3) — Application of subsecs. 131(1.1)–(1.4); 133(8) — Canadian property; 133(8) — Capital gains dividend account; 133(8) — Taxable dividend; 134.1 — Transitional rule re elimination of NROs; 212(2) — No withholding tax on capital gains dividends paid to non-residents.

Regulations: 2105 (prescribed manner of making election).

Interpretation Bulletins: IT-149R4: Winding-up dividend.

Forms: T5: Statement of investment income; T5 Summ: Return of investment income; T2063: Election in respect of a capital gains dividend under subsection 133(7.1).

(7.2) Simultaneous dividends — Where a dividend becomes payable at the same time on more than one class of shares of the capital stock of a non-resident-owned investment corporation, for the purposes of subsection (7.1), the dividend on any such class of shares shall be deemed to become payable at a different time than the dividend on the other class or classes of shares and to become payable in the order designated

(a) by the corporation on or before the day on or before which the election described in subsection (7.1) is required to be filed; or

(b) in any other case, by the Minister.

Related Provisions: 88(2)(a) — Winding-up of Canadian corporation; 89(3) — Simultaneous dividends.

(7.3) Application of subsecs. 131(1.1) to (1.4) — Where at any particular time a non-resident-owned investment corporation paid a dividend to its shareholders and subsection (7.1) would have applied to the dividend except that the corporation did not make an election under that subsection on or before the day on or before which it was required by that subsection to be made, subsections 131(1.1) to (1.4) apply with such modifications as the circumstances require.

(8) Definitions — In this section,

"allowable refund" of a non-resident-owned investment corporation for a taxation year means the total of amounts each of which is an amount in respect of a taxable dividend paid by the corporation in the year on a share of its capital stock, determined by the formula

$$\frac{A}{B} \times C$$

where

A is the corporation's allowable refundable tax on hand immediately before the dividend was paid,

B is the greater of the amount of the dividend so paid and the corporation's cumulative taxable income immediately before the dividend was paid, and

C is the amount of the dividend so paid;

"Canadian property" means

(a) taxable Canadian property, and

(b) any other property not being foreign property within the meaning assigned by section 206;

History: Para. (a) of the definition "Canadian property" in subsec. 133(8) amended by 2001, c. 17, subsec. 131(3), applicable after October 1, 1996. The para. formerly read:

(a) property of a corporation that would be taxable Canadian property if at no time in the year the corporation had been resident in Canada, and

"capital gains dividend account" of a non-resident-owned investment corporation at any particular time means the amount determined by the formula

$$A - B$$

where

A is the total of the following amounts in respect of the period commencing January 1, 1972 and ending immediately after the corporation's last taxation year ending before the particular time:

(a) the corporation's capital gains for taxation years ending in the period from dispositions in the period of Canadian property or shares of another non-resident-owned investment corporation, and

(b) amounts received by the corporation in the period as, on account or in lieu of payment of, or in satisfaction of capital gains dividends from other non-resident-owned investment corporations, and

B is the total of the following amounts in respect of the period referred to in the description of A:

(a) the corporation's capital losses for taxation years ending in the period from dispositions in the period of Canadian property or shares of another non-resident-owned investment corporation,

(b) all capital gains dividends that became payable by the corporation before the particular time, and

(c) the amount determined by the formula

$$0.25 \times (M - N)$$

where

M is the total of the corporation's capital gains for taxation years ending in the period from dispositions in the period of taxable Canadian property, and

N is the total of the corporation's capital losses for the taxation years ending in the period from dispositions in the period of property of the kinds referred to in the description of M;

Related Provisions: 88(2)(a) — Winding-up of Canadian corporation; 134.1 — Transitional rule re elimination of NROs; 257 — Formula amounts cannot calculate to less than zero.

History: The description of M in para. (c) of the description of B in the definition "capital gains dividend account" in subsec. 133(8) amended by 2001, c. 17, subsec. 131(4), applicable after October 1, 1996. The description formerly read:

M is the total of the corporation's capital gains for taxation years ending in the period from dispositions in the period of taxable Canadian property or property that would be taxable Canadian property if at no time in the period the corporation had been resident in Canada, and

"increase in capital" in respect of a corporation means a transaction (other than a transaction carried out pursuant to an agreement in writing made before February 28, 2000, referred to in this definition as a "specified transaction") in the course of which the corporation issues additional shares of its capital stock or incurs indebtedness, if the transaction has the effect of increasing the total of

(a) the corporation's liabilities, and

(b) the fair market value of all the shares of its capital stock

to an amount that is substantially greater than that total would have been on February 27, 2000 if all specified transactions had been carried out immediately before that day;

History: The definition "increase in capital" added to subsec. 133(8) by 2001, c. 17, subsec. 131(6), applicable after February 27, 2000.

"non-resident-owned investment corporation" means a corporation incorporated in Canada that, throughout the whole of the period commencing on the later of June 18, 1971 and the day on which it was incorporated and ending on the last day of the taxation year in respect of which

the expression is being applied, complied with the following conditions:

(a) all of its issued shares and all of its bonds, debentures and other funded indebtedness were

(i) beneficially owned by non-resident persons (other than any foreign affiliate of a taxpayer resident in Canada),

(ii) owned by trustees for the benefit of non-resident persons or their unborn issue, or

(iii) owned by a non-resident-owned investment corporation, all of the issued shares of which and all of the bonds, debentures and other funded indebtedness of which were beneficially owned by non-resident persons or owned by trustees for the benefit of non-resident persons or their unborn issue, or by two or more such corporations,

(b) its income for each taxation year ending in the period was derived from

(i) ownership of, or trading or dealing in, bonds, shares, debentures, mortgages, hypothecary claims, bills, notes or other similar property or any interest therein,

(ii) lending money with or without security,

(iii) rents, hire of chattels, charterparty fees or remunerations, annuities, royalties, interest or dividends,

Proposed Amendment — 133(8)"non-resident-owned investment corporation"(b)(i)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 244(1), will amend subpara. (b)(i) of the definition "non-resident-owned investment corporation" in subsec. 133(8) by substituting "interest, or for civil law any right," for "interest", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(iv) estates or trusts, or

(v) disposition of capital property,

(c) not more than 10% of its gross revenue for each taxation year ending in the period was derived from rents, hire of chattels, charterparty fees or charterparty remunerations,

(d) its principal business in each taxation year ending in the period was not

(i) the making of loans, or

(ii) trading or dealing in bonds, shares, debentures, mortgages, hypothecary claims, bills, notes or other similar property or any interest therein,

(e) it has, on or before the earlier of February 27, 2000 and the day that is 90 days after the beginning of its first taxation year that begins after 1971, elected in prescribed manner to be taxed under this section, and

(f) it has not, before the end of the last taxation year in the period, revoked in prescribed manner its election,

except that

(g) a new corporation (within the meaning assigned by section 87) formed as a result of an amalgamation after June 18, 1971 of two or more predecessor corporations is not a non-resident-owned investment corporation unless each of the predecessor corporations was, immediately before the amalgamation, a non-resident-owned investment corporation,

(h) where a corporation is a new corporation described in paragraph (g), and each of the predecessor corporations elected in a timely manner under paragraph (e), paragraph (e) shall be read, in its application to the new corporation, without reference to the words "the earlier of February 27, 2000 and", and

(i) subject to section 134.1, a corporation is not a non-resident-owned investment corporation in any taxation year that ends after the earlier of,

(i) the first time, if any, after February 27, 2000 at which the corporation effects an increase in capital, and

(ii) the corporation's last taxation year that begins before 2003;

Related Provisions: 108(1) — "excluded property"; 134.1 — Election to remain NRO for one more year for certain purposes; 134.2 — Choice of taxation year-end on revocation of election to be NRO; 248(1)"non-resident-owned investment corporation" — Definition applies to entire Act.

History: The portion of the definition "non-resident-owned investment corporation" in subsec. 133(8) after para. (d) amended by 2001, c. 17, subsec. 131(5), applicable after February 27, 2000. The portion formerly read:

(e) it has, not later than 90 days after the commencement of its first taxation year commencing after 1971, elected in prescribed manner to be taxed under this section, and

(f) it has not, before the end of the last taxation year in the period, revoked in prescribed manner the election so made by it,

except that in no case shall a new corporation (within the meaning assigned by section 87) formed as a result of an amalgamation after June 18, 1971 of two or more predecessor corporations be regarded as a non-resident-owned investment corporation unless each of the predecessor corporations was, immediately before the amalgamation, a non-resident-owned investment corporation;

Subpara. (b)(i) of the definition amended by the said c. 17, subsec. 215(1), in force June 14, 2001. The subpara. formerly read:

(i) ownership of or trading or dealing in bonds, shares, debentures, mortgages, bills, notes or other similar property or any interest therein,

Subpara. (d)(ii) of the definition amended by the said c. 17, subsec. 215(2), to add the words "hypothecary claims", in force June 14, 2001.

Regulations: 500, 501 (prescribed manner of making and revoking election).

I.T. Application Rules: 59(2) (application of conditions in para. (a) during 1972-75).

Interpretation Bulletins: IT-290: NRO investment corporations — meaning of principal business (archived); IT-465R: Non-resident beneficiaries of trusts.

Advance Tax Rulings: ATR-43: Utilization of a non-resident-owned investment corporation as a holding corporation.

"taxable dividend" does not include a capital gains dividend.

Selected Cases [subsec. 133(8)]: *Banner Pharmacaps NRO Ltd. v. R.*, [2003] 3 C.T.C. 2022 (TCC) (NRO status remained where no revocation of election).

(9) Definitions — In the definition "allowable refund" in subsection (8),

"allowable refundable tax on hand" of a corporation at any particular time means the amount determined by the formula

$$(A + B + C) - (D + E + F)$$

where

A is the total of all amounts each of which is an amount in respect of any taxation year commencing after 1971 and ending before the particular time, equal to the tax under this Part payable by the corporation for the year,

B is an amount equal to 15% of the amount determined for B in the definition "cumulative taxable income" in this subsection in respect of the corporation,

C where the corporation's 1972 taxation year commenced before 1972, is an amount equal to 10% of the amount that would be determined for C in the definition "cumulative taxable income" in this subsection if the reference in the description of C in that definition to "the 1972 taxation year or any taxation year commencing after 1971 and ending before the particular time" were read as a reference to "the 1972 taxation year",

D is the total of all amounts each of which is an amount, in respect of the 1972 taxation year or any taxation year commencing after 1971 and ending before the particular time, determined by the formula

$$0.25 \times [L - (M + N)]$$

where

L is the total of the corporation's taxable capital gains for the year from dispositions after 1971 of property described in paragraph (1)(c), computed in accordance with the assumption set out in paragraph (1)(d),

M is the total of the corporation's allowable capital losses for the year from dispositions after 1971 of property described in paragraph (1)(c), computed in accordance with the same assumption, and

N is the amount deductible from the corporation's income for the year by virtue of paragraph (2)(c),

E is the total of all amounts each of which is an amount equal to 1/3 of any amount paid or credited by the corporation after the commencement of its 1972 taxation year and before the particular time, as, on account or in lieu of payment of, or in satisfaction of interest, and

F is the total of all amounts each of which is an amount in respect of any taxable dividend paid by the corporation on a share of its capital stock before the particular time and after the commencement of its first taxation year commencing after 1971, equal to the amount in respect of the dividend determined under the definition "allowable refund" in subsection (8);

Related Provisions: 88(2)(a) — Winding-up of Canadian corporation; 87(2)(cc) — Amalgamation — non-resident-owned investment corporation; 134.1 — Transitional rule re elimination of NROs; 257 — Formula amounts cannot calculate to less than zero.

"cumulative taxable income" of a corporation at any particular time means the amount determined by the formula

$$(A + B) - (C + D + E)$$

where

A is the total of the corporation's taxable incomes for taxation years commencing after 1971 and ending before the particular time,

B where the corporation's 1972 taxation year commenced before 1972, is the amount determined by the formula

$$L - (M + N)$$

where

L is the corporation's taxable income for its 1972 taxation year,

M is the total of all amounts received by the corporation as described in paragraph 196(4)(b), and

N is the lesser of the amount determined under paragraph 196(4)(e) in respect of the corporation and the amount, if any, by which the total of amounts determined under paragraphs 196(4)(d) to (f) in respect of the corporation exceeds the total of amounts determined under paragraphs 196(4)(a) to (c) in respect of the corporation,

C is the total of all amounts each of which is an amount, in respect of the 1972 taxation year or any taxation year commencing after 1971 and ending before the particular time, determined by the formula

$$P - (Q + R)$$

where

P is the total of the corporation's taxable capital gains for the year from dispositions after 1971 of property described in paragraph (1)(c), computed in accordance with the assumption set out in paragraph (1)(d),

Q is the total of the corporation's allowable capital losses for the year from dispositions after 1971 of property described in paragraph (1)(c), computed in accordance with the same assumption, and

R is the amount deductible from the corporation's income for the year by virtue of paragraph (2)(c),

D is the total of all amounts each of which is an amount equal to 4/3 of any amount paid or credited by the corporation, after the commencement of its 1972 taxation year and before the particular time, as, on account or in lieu of payment of, or in satisfaction of interest, and

E is the total of all amounts each of which is the amount of any taxable dividend paid by the corporation on a share of its capital stock before the particular time and after the commencement of its first taxation year commencing after 1971.

Related Provisions: 88(2)(a) — Winding-up of Canadian corporation; 157(3) — Private, mutual and non-resident-owned investment corporation; 134.1 — Transitional rule re elimination of NROs; 257 — Formula amounts cannot calculate to less than zero.

Selected Cases [subsec. 133(9)]: *The Great Atlantic & Pacific Tea Co. Ltd. v. R.*, [1979] C.T.C. 509 (SCC) (Refund not available when dividend paid prior to end of taxation year).

Definitions [s. 133]: "allowable capital loss" — 38(b), 248(1); "allowable refund" — 133(8); "allowable refundable tax on hand" — 133(9); "amount", "annuity", "assessment" — 248(1); "Canada" — 255; "Canadian property" — 133(8); "capital gain" — 39(1)(a), 248(1); "capital gains dividend" — 133(7.1); "capital gains dividend account" — 133(8); "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "class", "class of shares" — 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "cumulative taxable income" — 133(9); "dividend" — 248(1); "estate" — 104(1), 248(1); "foreign affiliate" — 95(1), 248(1); "gross revenue" — 248(1); "incorporated in Canada" — 248(1)"corporation incorporated in Canada"; "increase in capital" — 133(8); "Minister" — 248(1); "net capital loss" — 111(8), 248(1); "non-resident" — 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "payable" — 84(7); "person", "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "resident in Canada" — 250; "share", "shareholder" — 248(1); "taxable Canadian property" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxable dividend" — 133(8), 89(1), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

Regulations [s. 133]: 500–502 (prescribed manner of making and revoking elections; certified statement required with annual return).

134. Non-resident-owned corporation not a Canadian corporation, etc. — Notwithstanding any other provision of this Act, a non-resident-owned investment corporation that would, but for this section, be a Canadian corporation, taxable Canadian corporation or pri-

vate corporation shall be deemed not to be a Canadian corporation, taxable Canadian corporation or private corporation, as the case may be, except for the purposes of section 87, subsection 88(2) and sections 212.1 and 219.

Definitions [s. 134]: "Canadian corporation" — 89(1), 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "private corporation", "taxable Canadian corporation" — 89(1), 248(1).

134.1 (1) NRO — transition — This section applies to a corporation that

(a) was a non-resident-owned investment corporation in a taxation year;

(b) is not a non-resident-owned investment corporation in the following taxation year (in this section referred to as the corporation's "first non-NRO year"); and

(c) elects in writing filed with the Minister on or before the corporation's filing-due date for its first non-NRO year to have this section apply.

(2) Application — A corporation to which this section applies is deemed to be a non-resident-owned investment corporation in its first non-NRO year for the purposes of applying, in respect of dividends paid on shares of its capital stock in its first non-NRO year to a non-resident person or a non-resident-owned investment corporation, subsections 133(6) to (9) (other than the definition "non-resident-owned investment corporation" in subsection 133(8)) and section 212 and any tax treaty.

Proposed Amendment — 134.1(2)

(2) Application — For the purposes of applying subsections 104(10) and (11) and 133(6) to (9) (other than the definition "non-resident-owned investment corporation" in subsection 133(8)), section 212 and any tax treaty, a corporation described in subsection (1) is deemed to be a non-resident-owned investment corporation in its first non-NRO year in respect of dividends paid in that year on shares of its capital stock to a non-resident person, to a trust for the benefit of non-resident persons or their unborn issue or to a non-resident-owned investment corporation.

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 131, will amend subsec. 134.1(2) to read as above, applicable to a corporation that ceases to be a non-resident-owned investment corporation because of a transaction or event that occurs, or a circumstance that arises, in a taxation year of the corporation that ends after February 27, 2000.

Technical Notes: Section 134.1 was enacted, along with section 134.2, in 2001 to provide transitional relief for corporations that cease to be non-resident owned investment corporations (NROs). The essence of the relief provided in section 134.1 is to allow such a corporation to recover refundable tax by paying a dividend in its "first non-NRO year". In its current form, the section applies only in respect of dividends paid to a non-resident person or another NRO. There is, however, another kind of shareholder to whom an NRO may pay a dividend in respect of which it is appropriate to apply the section — a trust for the benefit of non-resident persons or their unborn issue. Since such a trust could, under the rules that have governed NROs themselves, have held the shares and debt of an NRO, a dividend to the trust ought to support a refund of the former NRO's refundable tax. Subsection 134.1(2) is therefore amended to include such dividends within the section's scope.

In addition, subsections 104(10) and (11) are added to the list of provisions in subsection 134.1(2) for which a former NRO is deemed to be an NRO during its first non-NRO year. Prior to the repeal of the NRO system, a trust that received a dividend from an NRO and that did not in turn distribute the amount of the dividend to its non-resident beneficiaries was entitled to deduct that amount from the trust's income under subsection 104(10). Subsection 104(11) then deemed the amount deducted under subsection 104(10) to have been paid to a non-resident beneficiary, with the result that Part XIII withholding tax would typically be payable. These two subsections are included in subsection 134.1(2) in order to allow a trust to benefit from these provisions in the year it receives the final payment of dividends from the former NRO.

Letter from Dept. of Finance, November 1, 2001:

Dear [xxx]:

Thank you for your letter dated October 2, 2001 in which you request that we consider recommending an amendment to section 134.1 of the *Income Tax Act*, a relieving measure relating to the phase-out of non-resident-owned investment corporations (NROs). Section 134.1 treats a corporation that has ceased to be an NRO as an NRO during its first non-NRO year, so that it can claim a refund of the 25% tax paid while an NRO. The refund is based on dividends paid by the corporation during its first non-NRO year to a non-resident person or another NRO.

Your concern is that the relieving effect of section 134.1 is too narrow, given that the *Income Tax Act* contemplates that an NRO can be structured so that all of its shares are owned by a trust resident in Canada for the benefit of non-resident persons. In such a case, the NRO would pay dividends in its first non-NRO year to the trust, which would then allocate the dividends to the non-resident beneficiaries, but because the trust is resident in Canada the relief provided by section 134.1 would not be available.

We have reviewed your request, and I can confirm that the denial of the section 134.1 relief to a trust under the conditions you have described is unintended in policy terms. We are therefore prepared to recommend an amendment to the *Income Tax Act* that would allow an NRO to claim the relief available under section 134.1, where a Canadian-resident trust owns all of the shares of an NRO for the benefit of non-resident persons. We intend to recommend that this change be brought forward in a package of technical amendments at an early opportunity, and that the amendment have effect for the same time period as section 134.1 of the Act.

While I cannot offer any assurances that our recommendation in this matter will be accepted, I hope our statement of intent in this letter will be helpful in responding to your concern.

Thank you again for writing.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

History: S. 134.1 added by 2001, c. 17, s. 132, applicable to a corporation that ceases to be a non-resident-owned investment corporation because of a transaction or event that occurs, or a circumstance that arises, in a taxation year of the corporation that ends after February 27, 2000. An election under para. 134.1(1)(c) is deemed to have been made in a timely manner if it is made on or before the electing corporation's filing-due date for its first taxation year that ends after June 14, 2001.

Definitions [s. 134.1]: "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "filing-due-date" — 248(1); "first non-NRO year" — 134.1(1)(b); "Minister", "non-resident" — 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "person" — 248(1); "revocation time" — 134.2(1)(a); "share", "tax treaty" — 248(1); "taxation year" — 249; "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

134.2 (1) Revocation — This section applies to a corporation that

(a) revokes at any time (in this section described as the "revocation time") its election to be taxed under section 133;

(b) elects to have this section apply, by filing an election in writing with the Minister on or before the corporation's filing-due date for the taxation year of the corporation (in this section referred to as the "revocation year") that would have included the revocation time if the corporation had not so elected; and

(c) specifies in the election a time (in this section referred to as the "elected time") that is in the revocation year and is not after the revocation time.

(2) Consequences — Where this section applies to a corporation,

(a) the corporation's taxation year that would have included the elected time, if the corporation had not elected to have this section apply, is deemed to end immediately before the elected time;

(b) a new taxation year of the corporation is deemed to begin at the elected time; and

(c) notwithstanding paragraph (f) of the definition "non-resident-owned investment corporation" in subsection 133(8), the corporation is deemed to be a non-resident-owned investment corporation for the period that begins at the beginning of the revocation year and ends immediately before the elected time.

History: S. 134.2 added by 2001, c. 17, s. 132, applicable to revocations made after February 27, 2000. An election under para. 134.2(1)(b) is deemed to have been made in a timely manner if it is made on or before the electing corporation's filing-due date for its first taxation year that ends after June 14, 2001.

Definitions [s. 134.2]: "corporation" — 248(1), *Interpretation Act* 35(1); "elected time" — 134.2(1)(c); "filing-due date", "Minister" — 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "revocation time" — 134.2(1)(a); "revocation year" — 134.2(1)(b); "taxation year" — 249; "writing" — *Interpretation Act* 35(1).

Patronage Dividends

135. (1) Deduction in computing income — Notwithstanding anything in this Part, other than subsections (1.1) to (2.1), there may be deducted, in computing the income of a taxpayer for a taxation year, the total of the payments made, pursuant to allocations in proportion to patronage, by the taxpayer

Proposed Amendment — 135(1) opening words

Application: The August 15, 2005 draft legislation (2005 Budget second bill), subsec. 11(1), will amend the opening words of subsec. 135(1) by adding "and 135.1(3)" after "(1.1) to (2.1)", applicable after 2005.

Technical Notes: Subsection 135(1) allows a taxpayer to deduct from income payments made to customers pursuant to allocations in proportion to patronage. Subsection 135(1) is amended as a consequence of the addition of the new rules in section 135.1 relating to the payment of tax-deferred patronage dividends by agricultural cooperative corporations. In particular, subsection 135(1) is amended to provide that subsection (1) is subject to the deductibility limit in new subsection 135.1(3).

Federal budget, Notice of Ways and Means Motion, February 23, 2005: See under 135.1.

(a) within the year or within 12 months thereafter to the taxpayer's customers of the year; and

(b) within the year or within 12 months thereafter to the taxpayer's customers of a previous year, the deduction of which from income of a previous taxation year was not permitted.

Related Provisions: 20(1)(u) — Deduction from income for amount allowed under 135(1); 87(2)(g.5) — Amalgamation — continuing corporation; 135(1.1) — No deduction for payment not at arm's length unless cooperative or credit union; 135(2) — Limitation — non-member customers; 135(4) — Definitions; 135(7) — Patronage dividend included in member's income; 135.1(3) — Limit on deductibility for tax deferred cooperative shares; 136 — Cooperative deemed not to be private corporation; 157(2) — Exemption from instalment obligations where taxable income not over $10,000; 181.2(3)(j) — Large corporations tax — deduction from capital; 212(1)(g) — Non-resident withholding tax.

History: The opening words of subsec. 135(1) amended by 2005, c. 19 to add "other than subsections (1.1) to (2.1),", subsec. 32(1), applicable in respect of payments made by a taxpayer after March 22, 2004.

Selected Cases [subsec. 135(1)]: *R. v. Consumers' Co-operative Refineries Ltd.*, [1987] 2 C.T.C. 204 (FCA) (Deduction of patronage dividends allowed even though payments not made to all customers); *Interprovincial Co-operative Ltd. v. R.*, [1987] 1 C.T.C. 222 (FCTD) (Different billing procedures did not affect right to deduction by cooperative); *Sedgewick Co-operative Association Ltd. v. R.*, [1984] C.T.C. 14 (FCTD) (Capital gain added to business income for calculation of patronage dividends).

Regulations: 218 (information return).

Interpretation Bulletins: See list at end of s. 135.

Forms: T2 SCH 16: Patronage dividend deduction.

(1.1) Limitation where non-arm's length customer — Subsection (1) applies to a payment made by a taxpayer to a customer with whom the taxpayer does not deal at arm's length only if

(a) the taxpayer is a cooperative corporation described in subsection 136(2) or a credit union; or

(b) the payment is prescribed.

History: Subsec. 135(1.1) added by 2005, c. 19, subsec. 32(2), applicable in respect of payments made by a taxpayer after March 22, 2004, except that subsec. 135(1.1) does not apply to the portion, if any, of a qualifying payment in respect of a taxation year that

(a) can reasonably be regarded as having in commercial terms the nature of any one or more of an incentive payment, a rebate or a sales allowance; and

(b) would have been deductible under the Act in computing the income of the paying corporation for the taxation year if that portion had become payable in the taxation year as an incentive payment, a rebate or a sales allowance.

Subsec. 32(5)–(8) of the said c. 19 provide:

(5) For the purposes of subsecs. (4) and (6) [of the amending legislation — ed.], an amount paid by a corporation is a qualifying payment in respect of a taxation year if

(a) the taxation year began before March 23, 2004, and the amount is paid pursuant to a resolution that was passed by the corporation's Board of Directors before that date; and

(b) the corporation elects, in writing filed with the Minister of National Revenue on or before the day that is three months after the day on which the amending legislation is assented to, to have this subsection apply to the payment.

(6) If a qualifying payment in respect of a taxation year was not paid within 12 months after the taxation year, but is paid on or before the day that is three months after the day on which the amending legislation is assented to [i.e. before Aug. 14/05 — ed.], for the purpose of applying the amendment to the taxpayer the amount is deemed to have been paid on March 23, 2004.

(7) If a corporation

(a) before March 23, 2004, recorded in writing its intention to deduct under s. 135 an amount in computing its income for a taxation year the balance-due day for which is before that date,

(b) is liable to pay an amount of tax under Part I of the Act for the taxation year that exceeds the amount to which it would be so liable if the Act were read without reference to subsec. 135(1.1), as amended, and

(c) pays to the Receiver General that excess amount within six months after the amending legislation is assented to,

the corporation is, for the purpose of determining any interest or penalty payable by it under the Act, deemed to have paid that excess amount on its balance-due day for the taxation year.

(8) If a corporation

(a) before March 23, 2004 recorded in writing its intention to deduct under s. 135 an amount in computing its income for a taxation year, and

(b) was required by Part I of the Act to pay before March 23, 2004 a part or instalment of tax that exceeds the amount it would have been so required to pay if the Act were read without reference to subsec. 135(1.1), as amended,

the corporation is not liable to pay interest under subsec. 161(2), or to pay a penalty under s. 163.1, in respect of that excess.

Regulations: No prescribed payments yet for 135(1.1)(b). The Technical Notes (Dec. 6, 2004) state: "The concept of a prescribed payment has been introduced in order to accommodate cooperative structures that would, but

for non-substantive technical reasons, satisfy the definition of a cooperative corporation".

(2) Limitation where non-member customer — If a taxpayer has not made allocations in proportion to patronage in respect of all of the taxpayer's customers of the year, at the same rate, with appropriate differences for different types, classes, grades or qualities of goods, products or services, the amount that may be deducted by the taxpayer under subsection (1) is an amount equal to the lesser of

(a) the total of the payments mentioned in that subsection, and

(b) the total of

(i) the part of the income of the taxpayer for the year attributable to business done with members, and

(ii) the allocations in proportion to patronage made to non-member customers of the year.

Related Provisions: 87(2)(g.5) — Amalgamation — continuing corporation; 135(2.1) — Carryforward.

History: The opening words of subsec. 135(2) amended by 2005, c. 19, subsec. 32(3), applicable in respect of payments made by a taxpayer after March 22, 2004. The opening words formerly read:

(2) Notwithstanding subsection (1), if the taxpayer has not made allocations in proportion to patronage in respect of all the taxpayer's customers of the year at the same rate, with appropriate differences for different types or classes of goods, products or services, or classes, grades or qualities thereof, the amount that may be deducted under subsection (1) is an amount equal to the lesser of

Interpretation Bulletins: See list at end of s. 135.

(2.1) Deduction carried over — Where, in a taxation year ending after 1985, all or a portion of a payment made by a taxpayer pursuant to an allocation in proportion to patronage to the taxpayer's customers who are members is not deductible in computing the taxpayer's income for the year because of the application of subsection (2) (in this subsection referred to as the "undeducted amount"), there may be deducted in computing the taxpayer's income for a subsequent taxation year, an amount equal to the lesser of

(a) the undeducted amount, except to the extent that that amount was deducted in computing the taxpayer's income for any preceding taxation year, and

(b) the amount, if any, by which

(i) the taxpayer's income for the subsequent taxation year (computed without reference to this subsection) attributable to business done with the taxpayer's customers of that year who are members

exceeds

(ii) the amount deducted in computing the taxpayer's income for the subsequent taxation year by virtue of subsection (1) in respect of payments made by the taxpayer pursuant to allocations in proportion to patronage to the taxpayer's customers of that year who are members.

Related Provisions: 87(2)(g.5) — Amalgamation — continuing corporation.

Interpretation Bulletins: See list at end of s. 135.

(3) Amount to be deducted or withheld from payment to customer — Where at any particular time in a calendar year and after 1971 a payment pursuant to an allocation in proportion to patronage is made by a taxpayer to a person who is resident in Canada and is not exempt from tax under section 149, the taxpayer shall, notwithstanding any agreement or any law to the contrary, deduct or withhold therefrom an amount equal to 15% of the lesser of the amount of the payment and the amount, if any, by which

Proposed Amendment — 135(3) opening words

(3) Amount to be deducted or withheld from payment to customer — Subject to subsection 135.1(6), a taxpayer who makes at any particular time in a calendar year a payment pursuant to an allocation in proportion to patronage to a person who is resident in Canada and is not exempt from tax under section 149 shall, notwithstanding any agreement or any law to the contrary, deduct or withhold from the payment an amount equal to 15% of the lesser of the amount of the payment and the amount, if any, by which

Application: The August 15, 2005 draft legislation (2005 Budget second bill), subsec. 11(2), will amend the opening words of subsec. 135(2) to read as above, applicable after 2005.

Technical Notes: Subsection 135(3) provides that most payments made pursuant to allocations in proportion to patronage are subject to a withholding of 15% on account of the recipient's income tax liability. Subsection 135(3) is amended as a consequence of the addition of the new rules in section 135.1 relating to the payment of tax-deferred patronage dividends by agricultural cooperative corporations. In particular, subsection 135(3) is amended to provide that subsection 135(3) is subject to the exclusion from the withholding obligation set out in new subsection 135.1(6).

Federal budget, Notice of Ways and Means Motion, February 23, 2005: See under 135.1.

(a) the total of the amount of the payment and the amounts of all other payments pursuant to allocations in proportion to patronage made by the taxpayer to that person in the calendar year and before the particular time

exceeds

(b) $100,

and forthwith remit that amount to the Receiver General on behalf of that person on account of that person's tax under this Part.

Related Provisions: 87(2)(g.5) — Amalgamation — continuing corporation; 127(6) — Investment tax credit of cooperative corporation; 135(2) — Limitation — non-member customers; 135(6) — Amount of payment to customers; 135.1(6) — 135.1(6) — Exclusion from withholding — tax deferred cooperative shares; 227(1), (4), (5), (8.3), (8.4), (9), (9.2), (9.4), (11), (12), (13) — Witholding taxes — administration and enforcement; 227.1 — Liability of directors.

Interpretation Bulletins: See list at end of s. 135.

Forms: T2 SCH 16: Patronage dividend deduction; T4A: Statement of pension, retirement, annuity, and other income; RC4157: Employers' Guide: Filing the T4A Slip and Summary Form.

(4) Definitions — For the purposes of this section,

Proposed Amendment — 135(4) opening words

Application: The August 15, 2005 draft legislation (2005 Budget second bill), subsec. 11(3), will amend the opening words of subsec. 135(2) by adding "and section 135.1", applicable after 2005.

Technical Notes: Subsection 135(4) is amended to provide that the definitions set out in subsection 135(4) also apply for the purposes of new section 135.1 relating to the payment of tax-deferred patronage dividends by agricultural cooperative corporations.

"allocation in proportion to patronage" for a taxation year means an amount credited by a taxpayer to a customer of that year on terms that the customer is entitled to or will receive payment thereof, computed at a rate in relation to the quantity, quality or value of the goods or products acquired, marketed, handled, dealt in or sold, or

services rendered by the taxpayer from, on behalf of or to the customer, whether as principal or as agent of the customer or otherwise, with appropriate differences in the rate for different classes, grades or qualities thereof, if

(a) the amount was credited

(i) within the year or within 12 months thereafter, and

(ii) at the same rate in relation to quantity, quality or value aforesaid as the rate at which amounts were similarly credited to all other customers of that year who were members or to all other customers of that year, as the case may be, with appropriate differences aforesaid for different classes, grades or qualities, and

(b) the prospect that amounts would be so credited was held out by the taxpayer to the taxpayer's customers of that year who were members or non-member customers of that year, as the case may be;

Related Provisions: 135(1) — Deduction for allocations; 212(1)(g) — Withholding tax on allocations to non-residents.

"consumer goods or services" means goods or services the cost of which was not deductible by the taxpayer in computing the income from a business or property;

"customer" means a customer of a taxpayer and includes a person who sells or delivers goods or products to the taxpayer, or for whom the taxpayer renders services;

"income of the taxpayer attributable to business done with members" of any taxation year means that proportion of the income of the taxpayer for the year (before making any deduction under this section) that the value of the goods or products acquired, marketed, handled, dealt in or sold or services rendered by the taxpayer from, on behalf of, or for members, is of the total value of goods or products acquired, marketed, handled, dealt in or sold or services rendered by the taxpayer from, on behalf of, or for all customers during the year;

"member" means a person who is entitled as a member or shareholder to full voting rights in the conduct of the affairs of the taxpayer (being a corporation) or of a corporation of which the taxpayer is a subsidiary wholly-owned corporation;

"non-member customer" means a customer who is not a member;

"payment" includes

(a) the issue of a certificate of indebtedness or shares of the taxpayer or of a corporation of which the taxpayer is a subsidiary wholly-owned corporation if the taxpayer or that corporation has in the year or within 12 months thereafter disbursed an amount of money equal to the total face value of all certificates or shares so issued in the course of redeeming or purchasing certificates of indebtedness or shares of the taxpayer or that corporation previously issued,

(b) the application by the taxpayer of an amount to a member's liability to the taxpayer (including, without restricting the generality of the foregoing, an amount applied in fulfilment of an obligation of the member to make a loan to the taxpayer and an amount applied on account of payment for shares issued to a member) pursuant to a by-law of the taxpayer, pursuant to statutory authority or at the request of the member, or

(c) the amount of a payment or transfer by the taxpayer that, under subsection 56(2), is required to be included in computing the income of a member.

Interpretation Bulletins: See list at end of s. 135.

(5) Holding out prospect of allocations — For the purpose of this section a taxpayer shall be deemed to have held out the prospect that amounts would be credited to a customer of a taxation year by way of allocation in proportion to patronage, if

(a) throughout the year the statute under which the taxpayer was incorporated or registered, its charter, articles of association or by-laws or its contract with the customer held out the prospect that amounts would be so credited to customers who are members or non-member customers, as the case may be; or

(b) prior to the commencement of the year or prior to such other day as may be prescribed for the class of business in which the taxpayer is engaged, the taxpayer has published an advertisement in prescribed form in a newspaper or newspapers of general circulation throughout the greater part of the area in which the taxpayer carried on business holding out that prospect to customers who are members or non-member customers, as the case may be, and has filed copies of the newspapers with the Minister before the end of the 30th day of the taxation year or within 30 days from the prescribed day, as the case may be.

Related Provisions: 20(1)(u) — Patronage dividends.

Interpretation Bulletins: See list at end of s. 135.

(6) Amount of payment to customer — For greater certainty, the amount of any payment pursuant to an allocation in proportion to patronage is the amount thereof determined before deducting any amount required by subsection (3) to be deducted or withheld from that payment.

Related Provisions: 20(1)(u) — Deduction — patronage dividends; 87(2)(g.5) — Amalgamation — continuing corporation; 135(3) — Amount to be deducted or withheld from payment to customer; 157(2) — Exemption from instalment obligations where taxable income not over $10,000.

Interpretation Bulletins: See list at end of s. 135.

(7) Payment to customer to be included in income — Where a payment pursuant to an allocation in proportion to patronage (other than an allocation in respect of consumer goods or services) has been received by the taxpayer, the amount of the payment shall be included in computing the recipient's income for the taxation year in which the payment was received and, without restricting the generality of the foregoing, where a certificate of indebtedness or a share was issued to a person pursuant to an allocation in proportion to patronage, the amount of the payment by virtue of the issue thereof shall be included in computing the recipient's income for the taxation year in which the certificate or share was received and not in computing the recipient's income for the year in which the indebtedness was subsequently discharged or the share was redeemed.

Proposed Amendment — 135(7)

Application: The August 15, 2005 draft legislation (2005 Budget second bill), subsec. 11(4), will amend subsec. 135(7) by adding ", subject to subsection 135.1(2)," after "amount of the payment shall", applicable after 2005.

Technical Notes: Subsection 135(7) provides that a taxpayer must include in income a payment pursuant to an allocation in proportion to patronage (other than an allocation in respect of consumer goods or services) in the taxation year in which the payment was received. Subsection 135(7) is amended as a consequence of the addition of the new rules in section

135.1 relating to the payment of tax-deferred patronage dividends by agricultural cooperative corporations. In particular, subsection 135(7) is amended to provide that subsection 135(7) is subject to the income inclusion rule in new subsection 135.1(2).

Federal budget, Notice of Ways and Means Motion, Supplementary Information and Chapter 4, February 23, 2005: See under 135.1.

Related Provisions: 20(1)(u) — Patronage dividend deduction; 87(2)(g.5) — Amalgamation — continuing corporation; 135.1(2) — Limitation on income inclusion — tax deferred cooperative shares; 212(1)(g) — Non-resident withholding tax.

Interpretation Bulletins: See list at end of s. 135.

Forms: RC4157: Employers' Guide: Filing the T4A Slip and Summary Form; T2 SCH 16: Patronage dividend deduction; T4A: Statement of pension, retirement, annuity, and other income.

(8) Patronage dividends — For the purposes of this section, where

(a) a person has sold or delivered a quantity of goods or products to a marketing board established by or pursuant to a law of Canada or a province,

(b) the marketing board has sold or delivered the same quantity of goods or products of the same class, grade or quality to a taxpayer of which the person is a member, and

(c) the taxpayer has credited that person with an amount based on the quantity of goods or products of that class, grade or quality sold or delivered to it by the marketing board,

the quantity of goods or products referred to in paragraph (c) shall be deemed to have been sold or delivered by that person to the taxpayer and to have been acquired by the taxpayer from that person.

Definitions [s. 135]: "amount" — 248(1); "arm's length" — 251(1); "attributable" — 135(4)"income of the taxpayer attributable to business done with members"; "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "corporation" — 248(1), *Interpretation Act* 35(1); "credit union", "Minister", "person", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "resident in Canada" — 94(3)(a)(viii), 250; "share", "subsidiary wholly-owned corporation" — 248(1); "taxation year" — 249; "taxpayer" — 248(1). See also 135(4).

Regulations [s. 135]: 218 (information return).

Interpretation Bulletins [s. 135]: IT-362R: Patronage dividends; IT-493: Agency cooperative corporations (archived).

Agricultural Cooperatives — Tax-Deferred Patronage Dividends

Proposed Addition — 135.1

Technical Notes: New section 135.1 provides that an eligible member of an agricultural cooperative corporation may defer the inclusion in income of all or a portion of a payment, made by an agricultural cooperative corporation, in the form of a tax deferred cooperative share, pursuant to an allocation in proportion to patronage. This deferral lasts until the disposition (or deemed disposition) of the share. Unless otherwise indicated, the provisions of new section 135.1 apply after 2005.

135.1 (1) Definitions — The following definitions apply in this section and section 135.

"agricultural business" means a business, carried on in Canada, that consists of one or any combination of

(a) farming (including, if the person carrying on the business is a corporation described in paragraph (a) of the definition "agricultural cooperative corporation", the production, processing, storing and wholesale marketing, of the products of its members' farming activities); or

(b) the provision of goods or services (other than financial services) that are required for farming.

Technical Notes: "Agricultural business" is defined to mean a business, carried on in Canada, that consists of (i) farming (including, if the person carrying on the business is a cooperative corporation, the production, processing, storing and wholesale marketing, of the products of its members' farming activities), or (ii) the provision of goods or services (other than financial services) that are required for farming.

An example of the provision of goods required for farming is the sale of livestock feed and supplements. An example of the provision of a service required for farming is grain marketing services.

"agricultural cooperative corporation" at any time means a corporation

(a) that was incorporated or continued by or under the provisions of a law, of Canada or of a province, that provide[s] for the establishment of the corporation as a cooperative corporation or that provide[s] for the establishment of cooperative corporations; and

(b) that has at that time

(i) as its principal business an agricultural business, or

(ii) members, making up at least 75% of all members of the corporation, each of whom

(A) is an agricultural cooperative corporation, or

(B) has as their principal business a farming business.

Technical Notes: "Agricultural cooperative corporation" is defined to mean at any time a cooperative corporation that meets either (or both) of two tests. The first test is met if the cooperative corporation's principal business is an agricultural business. The second test is met if at least 75% of the cooperative corporation's members are themselves agricultural cooperative corporations or have as their principal business a farming business.

Related Provisions: 87(2)(s) — Amalgamation — continuing corporation.

"allowable disposition" means a disposition by a taxpayer of a tax deferred cooperative share less than five years after the day on which the share was issued if

(a) before the disposition,

(i) the agricultural cooperative corporation is notified in writing that the taxpayer has after the share was issued become disabled and permanently unfit for work, or terminally ill, or

(ii) the taxpayer ceases to be a member of the agricultural cooperative corporation; or

(b) the agricultural cooperative corporation is notified in writing that the share is held by a person on whom the share has devolved as a consequence of the death of the taxpayer.

Technical Notes: "Allowable disposition" is defined to mean certain dispositions by a taxpayer of a tax deferred cooperative share that take place less than 5 years after the day on which the share was issued. A disposition within that time is an allowable disposition if, before the disposition, the agricultural cooperative corporation is notified in writing that the taxpayer has become disabled and permanently unfit for work, or terminally ill. It will also be an allowable disposition if the taxpayer has ceased to be a member. Lastly, a disposition is an allowable disposition if the agricultural cooperative corporation is notified in writing that the share is held by a person on whom the share has devolved as a consequence of the death of the taxpayer.

The term "allowable disposition" is relevant for the definition of a tax deferred cooperative share. One of the conditions to qualify as a tax deferred cooperative share is that a term of the share must provide that the agricultural cooperative corporation cannot, otherwise than pursuant to an allowable disposition, redeem, acquire or cancel the share within 5 years [of] its issuance.

"eligible member" of an agricultural cooperative corporation means a member who carries on an agricultural business and who is

(a) an individual resident in Canada;

(b) an agricultural cooperative corporation;

(c) a corporation resident in Canada that carries on the business of farming in Canada; or

(d) a partnership that carries on the business of farming in Canada, all of the members of which are described in any of paragraphs (a) to (c) or this paragraph.

Technical Notes: "Eligible member", of an agricultural cooperative corporation, is defined to mean a member who carries on an agricultural business and who is an individual resident in Canada, an agricultural cooperative corporation, a corporation resident in Canada that carries on the business of farming in Canada, or a partnership that carries on the business of farming in Canada, all of the members of which are eligible members.

"tax deferred cooperative share" at any time, means a share

(a) issued, after 2005 and before 2016, by an agricultural cooperative corporation to a person or partnership that is at the time the share is issued an eligible member of the agricultural cooperative corporation, pursuant to an allocation in proportion to patronage;

(b) the holder of which is not entitled to receive on the redemption, cancellation or acquisition of the share by the agricultural cooperative corporation or by any person with whom the agricultural cooperative corporation does not deal at arm's length an amount that is greater than the amount that would, if this Act were read without reference to this section, be included under subsection 135(7) in computing the eligible member's income for their taxation year in which the share was issued;

(c) that has not before that time been deemed by subsection (4) to have been disposed of; and

(d) that is of a class

(i) the terms of which provide that the agricultural cooperative corporation shall not, otherwise than pursuant to an allowable disposition, redeem, acquire or cancel a share of the class before the day that is five years after the day on which the share was issued, and

(ii) that is identified by the agricultural cooperative corporation in prescribed form and manner as a class of tax deferred cooperative shares.

Technical Notes: "Tax deferred cooperative share" is defined, at any time, to mean a share that meets certain conditions.

- First, the share must be issued, after 2005 and before 2016, by an agricultural cooperative corporation to an eligible member, and pursuant to an allocation in proportion to patronage.
- Second, the holder of the share cannot be entitled to receive on the redemption, cancellation or acquisition of the share by the agricultural cooperative corporation (or by any person with whom the agricultural cooperative corporation does not deal at arm's length) an amount that is greater than the amount that would, if the Act were read without reference to new section 135.1, be included under subsection 135(7) of the Act in computing the eligible member's income for their taxation year in which the share was issued.
- Third, new subsection (4) must not have applied before that time to treat the share as having been disposed of. The share will be deemed to have been disposed of by subsection (4) at the earliest time at which either (i) the paid-up capital of the share is reduced otherwise than by way of a redemption of the share, or (ii) the taxpayer pledges, assigns or in any way alienates the share as security for indebtedness of any kind.
- Fourth, the share must be of a class the terms of which provide that the agricultural cooperative corporation shall not, otherwise than pursuant to an allowable disposition, redeem, acquire or cancel a share of the class within 5 years after it was issued.
- Fifth, the agricultural cooperative corporation must, in prescribed form and manner, identify the class of shares as being tax deferred cooperative shares. It is expected that Regulation 218 will be amended to provide in more detail for the reporting obligation that this imposes on the agricultural cooperative corporation.

Related Provisions: 87(2)(s) — Amalgamation — continuing corporation.

"tax paid balance" of a taxpayer at the end of a particular taxation year of the taxpayer, means the amount, if any, by which

(a) the total of

(i) the taxpayer's tax paid balance at the end of the immediately preceding taxation year, and

(ii) the amount, if any, that is included in computing the taxpayer's income under this Part for the particular taxation year because of an election described in subparagraph (2)(a)(ii),

exceeds

(b) the total of all amounts each of which is the taxpayer's proceeds of disposition of a tax deferred cooperative share that the taxpayer disposed of in the particular taxation year.

Technical Notes: The "tax paid balance" of a taxpayer at the end of a particular taxation year is essentially the total amount, in respect of tax deferred cooperative shares, that the taxpayer has included in income for that year and previous years. Specifically, the balance is defined to mean the amount, if any, by which the total of the taxpayer's tax paid balance at the end of the immediately preceding taxation year and the amount that the taxpayer has elected to include in income under subparagraph (2)(a)(ii) exceeds the total of the taxpayer's proceeds of disposition on tax deferred cooperative shares disposed of in the taxation year.

(2) Income inclusion — (2) In computing the income of a taxpayer for a particular taxation year, there shall be included under subsection 135(7), in respect of the taxpayer's receipt, as an eligible member, of tax deferred cooperative shares of an agricultural cooperative corporation in the particular taxation year, only the total of

(a) the lesser of

(i) the total of all amounts, in respect of the taxpayer's receipt in the particular taxation year of tax deferred cooperative shares, that would, if this Act were read without reference to this section, be included under subsection 135(7) in computing the taxpayer's income for the particular taxation year, and

(ii) the greater of nil and the amount, if any, specified by the taxpayer in an election in prescribed form that is filed with the taxpayer's return of income for the particular taxation year, and

(b) the amount, if any, by which

(i) the total of all amounts each of which is the taxpayer's proceeds of disposition of a tax deferred cooperative share disposed of by the taxpayer in the particular taxation year exceeds

(ii) the total of

(A) the taxpayer's tax paid balance at the end of the immediately preceding taxation year, and

(B) the amount, if any, that is included in computing the taxpayer's income for the par-

ticular taxation year because of an election described in subparagraph (2)(a)(ii).

Technical Notes: New subsection 135.1(2) limits the amount, in respect of tax deferred cooperative shares, that is included in a taxpayer's income for a taxation year. The subsection provides that in computing the income of a taxpayer under Part I of the Act for a particular taxation year, the amount that shall be included under subsection 135(7), in respect of the taxpayer's receipt, as an eligible member, of a tax deferred cooperative share of an agricultural cooperative corporation in the particular taxation year is only the total of:

(a) the lesser of (i) the amount that would, if the Act were read without reference to section 135.1, have been included in income under subsection 135(7) and (ii) the amount, if any, specified by the taxpayer in an election, and

(b) the amount, if any, by which (i) the taxpayer's proceeds of disposition on tax deferred cooperative shares disposed of in the particular taxation year exceeds (ii) the total of the taxpayer's tax paid balance at the end of the immediately preceding taxation year, and the amount that the taxpayer has elected to include in income under subparagraph (2)(a)(ii).

The effect of subsection 135.1(2) is that if no election is made to include in income some portion of the amount that would otherwise be included in respect of having been issued a tax deferred cooperative share the inclusion in income will be deferred until the disposition (or deemed disposition) of the share. The election provided in paragraph 135.1(2)(a) is thus not to defer the inclusion of the amount in income but rather to include the amount in income for the particular taxation year.

Related Provisions: 87(2)(s) — Amalgamation — continuing corporation.

(3) Deductibility limit — The amount that may be deducted under subsection 135(1) for a particular taxation year by an agricultural cooperative corporation in respect of payments, in the form of tax deferred cooperative shares, made pursuant to allocations in proportion to patronage shall not exceed 85% of the agricultural cooperative corporation's income of the taxation year attributable to business done with members.

Technical Notes: Subsection 135(1) allows a taxpayer to deduct from income payments made to customers pursuant to allocations in proportion to patronage. New subsection 135.1(3) restricts the amount that may be deducted under subsection 135(1) by an agricultural cooperative corporation for a particular taxation year in respect of payments, in the form of tax deferred cooperative shares, made pursuant to allocations in proportion to patronage. The restriction is that the deducted amount may not exceed 85% of the agricultural cooperative corporation's income of the taxation year attributable to business done with members. The term "income of the taxpayer attributable to business done with members" as defined in subsection 135(4) is intended to apply to this calculation.

(4) Deemed disposition — A taxpayer who holds a tax deferred cooperative share is deemed to have disposed of the share, for proceeds of disposition equal to the amount that would, if this Act were read without reference to this section, have been included under subsection 135(7), in respect of the share, in computing the taxpayer's income for the taxation year in which the share was issued, at the earliest [*sic*] time at which

(a) the paid-up capital of the share is reduced otherwise than by way of a redemption of the share; or

(b) the taxpayer pledges, assigns or in any way alienates the share as security for indebtedness of any kind.

Technical Notes: New subsection 135.1(4) provides that a taxpayer who holds a tax deferred cooperative share is treated as having disposed of the share at the [earlier] time at which (i) the paid-up capital of the share is reduced (otherwise than by way of a redemption of the share), or (ii) the taxpayer pledges, assigns or in any way alienates the share as security for indebtedness of any kind. If the subsection applies, the tax deferred cooperative share is considered to have been disposed of for proceeds of disposition equal to the amount that would otherwise have been included under subsection 135(7), in respect of the share, in computing the taxpayer's income for the taxation year in which the share was issued.

As a result of the deemed disposition, any deferral of the inclusion in income of the patronage dividend received as a tax deferred cooperative share will end.

Related Provisions: 135.1(5) — Reacquisition.

(5) Reacquisition — A taxpayer who is deemed by subsection (4) to have disposed at any time of a tax deferred cooperative share is deemed to have reacquired the share, immediately after that time, at a cost equal to the taxpayer's proceeds of disposition from that disposition.

Technical Notes: New subsection 135.1(5) provides that a taxpayer who is treated by subsection (4) to have disposed at any time of a tax deferred cooperative share is considered [as having] reacquired the share, immediately after that time, at a cost equal to the taxpayer's proceeds of disposition from that disposition.

(6) Exclusion from withholding obligation — Subsection 135(3) does not apply to a payment pursuant to an allocation in proportion to patronage that is paid by an agricultural cooperative corporation through the issuance of a tax deferred cooperative share.

Technical Notes: Existing subsection 135(3) of the Act requires that amounts be withheld from most patronage dividends (payments made pursuant to allocations in proportion to patronage), on account of the recipient's tax liability. New subsection 135.1(6) provides that subsection 135(3) does not apply to a patronage dividend that is paid by an agricultural cooperative corporation through the issuance of a tax deferred cooperative share.

(7) Withholding on redemption — If a share that was at the time it was issued, a tax deferred cooperative share of an agricultural cooperative corporation is redeemed, acquired or cancelled by the agricultural cooperative corporation, or by a person or partnership with whom the agricultural cooperative corporation does not deal at arm's length, the agricultural cooperative corporation or the person or partnership, as the case may be, shall withhold and forthwith remit to the Receiver General, on account of the shareholder's tax liability, 15% from the amount otherwise payable on the redemption, acquisition or cancellation.

Technical Notes: New subsection 135.1(7) applies a withholding requirement in respect of any share that was, at the time it was issued, a tax deferred cooperative share of an agricultural cooperative corporation. The new subsection provides that if the share is redeemed, acquired or cancelled by the agricultural cooperative corporation, or by a person or partnership with whom it does not deal at arm's length, that cooperative or person or partnership must withhold and forthwith remit to the Receiver General, on account of the shareholder's tax liability, 15% from the amount otherwise payable on the redemption, acquisition or cancellation. It is expected that Regulation 218 will be amended to provide in more detail for the reporting obligation that this imposes on the agricultural cooperative corporation.

Related Provisions: 87(2)(s) — Amalgamation — continuing corporation; 227(1), (4), (5), (8.3), (8.4), (9), (9.2), (9.4), (11), (12), (13) — Withholding taxes — administration and enforcement; 227.1 — Liability of directors for failing to withhold.

(8) Application of subsecs. 84(2) and (3) — Subsections 84(2) and (3) do not apply to a tax deferred cooperative share.

Technical Notes: New subsection 135.1(8) provides that the deemed dividend provisions in subsections 84(2) and (3) do not apply to a tax deferred cooperative share. In general, subsections 84(2) and (3) provide that paid-up capital can be returned to a shareholder free of tax, on the winding-up of a corporation or its redemption, acquisition or cancellation of its shares, but that any excess is treated as a dividend.

Application: The August 15, 2005 draft legislation (2005 Budget second bill), s. 12, will add s. 135.1, applicable after 2005, except that para. 135.1(4)(b) does not apply to any indebtedness entered into before 2006.

Federal budget, Notice of Ways and Means Motion, February 23, 2005: *Agricultural Cooperatives*

(16) That the Act be modified to introduce a tax deferral in respect of certain dividends paid by an agricultural cooperative corporation in the form of eligible shares, in accordance with proposals described in the Budget documents tabled by the Minister of Finance in the House of Commons on February 23, 2005.

Federal budget, Supplementary Information, February 23, 2005: *Agricultural Cooperatives*

Agricultural cooperative corporations play an important role in rural communities. To aid their capitalization, the budget proposes to allow members of such cooperatives to defer paying tax on patronage dividends paid to them in the form of eligible shares rather than as cash distributions.

Agricultural cooperatives can distribute earnings to their members in the form of patronage dividends, which are paid in proportion to the amount of business the member has undertaken with the cooperative. In computing its income, a cooperative may deduct patronage dividends paid to its members. Accordingly, income paid out in the form of patronage dividends is not subject to tax at the cooperative level.

Patronage dividends received by a member, other than those received in respect of consumer goods and services, are included in the recipient's income and are taxable in the year they are received. Further, the payor of a patronage dividend is required to withhold an amount from the dividend and remit it to the Canada Revenue Agency on account of the recipients' tax liability. As a result, when patronage dividends are paid in shares, agricultural cooperatives typically issue a portion of the patronage dividend in cash, in order to fund the member's tax liability on the patronage dividend. Depending on the amount of the patronage dividend, this cash portion could represent a significant outlay of capital for the agricultural cooperative.

In response, the budget proposes to permit eligible members of eligible agricultural cooperatives to defer the inclusion in income of all or a portion of any patronage dividend received as an eligible share until the disposition (or deemed disposition) of the share. Further, when an eligible agricultural cooperative issues an eligible share as a patronage dividend, there will be no withholding tax obligation in respect of the patronage dividend. Instead, there will be a withholding obligation when the share is redeemed.

Agricultural cooperatives that are eligible for this measure must be resident in Canada and have, as their principal business activity, farming (including for this purpose the production, processing, storing and the wholesale marketing, of the products of their members' farming activities) or the provision of goods or services required for farming (other than financial services). Further, that principal business must be carried on in Canada. To be eligible for the deferral, a member of an eligible cooperative must generally meet these same criteria.

In order to ensure compliance, facilitate administration and evaluate the impact of this measure, agricultural cooperatives that make patronage dividends in the form of shares eligible for this deferral will be required to report those share issuances with their income tax returns.

The amount of deductible patronage dividends that an agricultural cooperative can issue as eligible shares will be limited. In general, an eligible agricultural cooperative will be allowed to deduct the amount of eligible shares issued in respect of a taxation year as a patronage dividend up to a maximum amount of 85% of its income for that taxation year attributable to business done with members (calculated without reference to the dividend).

In order to be an eligible share, the share must be issued after 2005 and before 2016, and must not, except in the case of death, disability or ceasing to be a member, be redeemable or retractable within five years of its issue. In addition, if the share is pledged as collateral security or the paid-up capital of the share is reduced (other than by way of a redemption) a disposition of the share will be deemed to have occurred.

Federal budget, February 23, 2005, Chapter 4: *Canada's Agricultural Cooperatives*

In its December 2004 report, Study on Small Business Tax Measures: Canada's Agricultural Cooperatives, the Committee [House of Commons Standing Committee on Finance — ed.] recommended that the Government immediately allow the deferral of tax on patronage dividends paid in shares; create a cooperative investment plan to encourage agricultural cooperative members and employees to invest in their cooperatives; and undertake a review of tax and non-tax measures that would enable the cooperative sector to meet its capitalization needs.

The Committee's report noted that, due to a number of factors, agricultural cooperatives may have difficulty raising capital. The report identified a number of reasons to support the capitalization of agricultural cooperatives: they play an important role in regional development and the rural economy; they are an important part of Canada's agricultural sector; and their presence supports and sustains family farms and small agricultural businesses throughout rural Canada.

This budget proposes to allow members of agricultural cooperatives to defer paying tax on patronage dividends they receive in the form of shares until the shares are disposed of. This measure is expected to reduce federal revenues by about $10 million in 2005-06 and $30 million in 2006-07 and subsequent years. The cooperative investment plan, which was also recommended by the Committee, will remain under consideration.

The Government will monitor the effectiveness of this measure and, as the Committee recommended, will continue to assess the capitalization challenges of the agricultural cooperative sector.

Definitions [s. 135.1]: "agricultural business", "agricultural cooperative corporation" — 135.1(1); "allocation in proportion to patronage" — 135(4); "allowable disposition" — 135.1(1); "amount" — 248(1); "arm's length" — 251(1); "attributable" — 135(4)"income of the taxpayer attributable to business done with members"; "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "consequence" — 248(8); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition" — 248(1); "eligible member" — 135.1(1); "farming", "individual" — 248(1); "member" — 135(4); "paid-up capital" — 29(1), 248(1); "payment" — 135(4); "person", "prescribed" — 248(1); "province" — *Interpretation Act* 35(1); "resident in Canada" — 250; "security" — *Interpretation Act* 35(1); "share", "shareholder" — 248(1); "tax deferred cooperative share", "tax paid balance" — 135.1(1); "taxation year" — 249; "taxpayer" — 248(1); "writing" — *Interpretation Act* 35(1).

Cooperative Corporations

136. (1) Cooperative not private corporation — Notwithstanding any other provision of this Act, a cooperative corporation that would, but for this section, be a private corporation is deemed not to be a private corporation except for the purposes of sections 15.1, 125, 125.1, 127, 127.1, 152 and 157, the definition "mark-to-market property" in subsection 142.2(1) and the definition "small business corporation" in subsection 248(1) as it applies for the purpose of paragraph 39(1)(c).

Proposed Amendment — 136(1)

136. (1) Cooperative not private corporation — Notwithstanding any other provision of this Act, a cooperative corporation that would, if this Act were read without reference to this section, be a private corporation is deemed not to be a private corporation except for the purposes of sections 15.1, 123.4, 125, 125.1, 127, 127.1, 152 and 157, the definition "mark-to-market property" in subsection 142.2(1) and the definition "small business corporation" in subsection 248(1) as it applies for the purpose of paragraph 39(1)(c).

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 132(1), will amend subsec. 136(1) to read as above, applicable to 2001 *et seq.*

Technical Notes: Subsection 136(1) provides that a cooperative corporation that would otherwise be a private corporation is treated as a private corporation for the purposes of specified provisions of the Act. The subsection is amended to include among those provisions section 123.4, which in effect provides reductions in corporate tax rates. This subsection is amended, for the 2001 and subsequent taxation years, to provide that a cooperative corporation that otherwise qualifies as a Canadian-controlled private corporation (CCPC) may use the special rate reduction provided for CCPCs.

Letter from Dept. of Finance, March 20, 2001:

Dear [xxx]

Thank you for your letter of February 26, 2001, regarding the application of proposed section 123.4 of the *Income Tax Act* (the "Act") to co-operative corporations.

If it is enacted as proposed, section 123.4 will provide both a general deduction from tax otherwise payable, available to most types of corporation, and a special deduction for Canadian-controlled private corporations (CCPCs). You have asked whether a co-operative corporation could also be a CCPC for the purposes of these new deductions. You identify two important results that follow from the answer to that question. First, a co-operative corporation that is a CCPC will determine its "full rate taxable income" using paragraph (b) of the definition of that term in proposed subsection 123.4(1); one that is not a CCPC will use paragraph (a). Second, a co-operative corporation that is a CCPC may be able to use the proposed 7% deduction from tax on up to $100,000 of active business income in excess of the $200,000 limit for the section 125 "small business deduction".

As you point out, although subsection 136(1) of the Act deems co-operative corporations not to be private corporations for most purposes, that deeming rule does not apply for the purposes of a number of specified provisions, including section 125 of the Act. A co-operative corporation that meets the other relevant requirements is thus not precluded from being a CCPC under the definition in subsection 125(7), nor from taking advantage of the small business deduction itself.

Given the close connection between the new special deduction for CCPCs and the existing small business deduction, in policy terms it seems clear that a co-operative corporation that is a CCPC under section 125 ought also to be treated as such for the purposes of proposed section 123.4. I agree, however, that it may not be obvious from the current version of subsection 136(1) that this is indeed the case.

To avoid any possible confusion, we are therefore prepared to recommend the addition, to the list in subsection 136(1), of a reference to proposed section 123.4. This change, if approved by the Minister of Finance, would be included in a package of draft technical amendments scheduled for release in the coming months.

Thank you for bringing this matter to our attention.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 15.1(3) — Eligible small business corporation; 89(1)"paid-up capital"(b) — Paid-up capital of cooperative corporation; 125 — Small business deduction; 127(6) — Investment tax credit of cooperative corporation; 135 — Patronage dividend; 137 — Deductions in computing income; 181.1(3)(f) — Certain cooperative corporations exempt from Part I.3 tax; 248(1) — "share" includes a share of a cooperative corporation.

History: Subsec. 136(1) amended by 1998, c. 19, s. 161, applicable to taxation years that end after February 22, 1994. Subsec. 136(1) formerly read:

> 136. (1) Notwithstanding any other provision of this Act, a cooperative corporation that would, but for this section, be a private corporation shall be deemed not to be a private corporation except for the purposes of sections 15.1, 125, 125.1, 127, 127.1, 152 and 157 and the definition "small business corporation" in subsection 248(1) as it applies for the purpose of paragraph 39(1)(c).

Subsec. 136(1) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 112, to substitute "125, 125.1" for "123.1, 125", applicable after June 1988 except that in its application before April 28, 1989, the subsec. shall be read without the reference to s. 152.

Interpretation Bulletins: IT-493: Agency cooperative corporations (archived).

(2) Definition of "cooperative corporation" — In this section, "cooperative corporation" means a corporation that was incorporated by or under a law of Canada or a province providing for the establishment of the corporation or respecting the establishment of cooperative corporations for the purpose of marketing (including processing incident to or connected therewith) natural products belonging to or acquired from its members or customers, of purchasing supplies, equipment or household necessaries for or to be sold to its members or customers or of performing services for its members or customers, if

Proposed Amendment — 136(2) opening words

(2) Definition of "cooperative corporation" — In this section, "cooperative corporation" means a corporation that was incorporated or continued by or under the provisions of a law, of Canada or of a province, that provide for the establishment of the corporation as a co-operative corporation or that provide for the establishment of cooperative corporations, for the purpose of marketing (including processing incident to or connected to the marketing) natural products belonging to or acquired from its members or customers, of purchasing supplies, equipment or household necessaries for or to be sold to its members or customers or of performing services for its members or customers, if

Application: The August 15, 2005 draft legislation (2005 Budget second bill), s. 13, will amend the opening words of subsec. 136(2) to read as above, applicable after June 2005.

Technical Notes: Subsection 136(2) defines "cooperative corporation" for the purpose of section 136. Subsection 136(2) is amended to clarify the drafting and to provide that a corporation that is continued, in addition to one that is incorporated, as a cooperative corporation will be included in the definition.

(a) the statute by or under which it was incorporated, its charter, articles of association or by-laws or its contracts with its members or its members and customers held out the prospect that payments would be made to them in proportion to patronage;

(b) none of its members (except other cooperative corporations) have more than one vote in the conduct of the affairs of the corporation; and

(c) at least 90% of its members are individuals, other cooperative corporations, or corporations or partnerships that carry on the business of farming, and at least 90% of its shares, if any, are held by those persons or partnerships.

Proposed Amendment — 136(2)(c), (d)

(c) at least 90% of its members are individuals, other cooperative corporations, or corporations or partnerships that carry on the business of farming; and

(d) at least 90% of its shares, if any, are held by members described in paragraph (c) or by trusts governed by registered retirement savings plans, registered retirement income funds or registered education savings plans, the annuitants or subscribers under which are members described in that paragraph.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 132(2), will amend para. 136(2)(c) to read as above and add para. (d), applicable to 1998 *et seq.*

Technical Notes: Subsection 136(2) sets out conditions that a corporation must meet in order to be a cooperative corporation. The condition in current paragraph 136(2)(c) has two parts: at least 90% of its members must be individuals, other cooperative corporations, or corporations or partnerships that carry on the business of farming; and at least 90% of its shares, if any, must be held by those persons or partnerships.

The second part of this condition is modified to accommodate cases where the shares of a cooperative are held not only by the members themselves, but also by their registered plans (RRSPs, RRIFs, or RESPs). If shares are held by a trust that is governed by such a plan, provided a member of the cooperative is the plan's subscriber or annuitant, as the case may be, those shares will be counted in the same way as if they were held by a member personally.

Letter from Dept. of Finance, June 11, 1999:

Dear [xxx]

This is in response to your letter dated June 4, 1999 to Len Farber respecting paragraph 136(2)(c) of the *Income Tax Act* and subsection

4900(12) of the *Income Tax Regulations*. Paragraph 136(2)(c) of the Act provides, as part of the definition of "cooperative corporation" in section 136, that at least 90% of a cooperative's shares must be held by members who are individuals, other cooperative corporations or corporations or partnerships that carry on the business of farming. Subsection 4900(12) of the Regulations provides that shares of specified cooperative corporations are qualified investments that may be held in an RRSP. You are concerned that the ability of a cooperative's members to hold their shares in RRSPs could, because the RRSPs may not be "members", cause the corporation to lose its cooperative status under section 136.

You have been advised by officials of the Tax Legislation Division that an amendment to paragraph 136(2)(c) is anticipated which would ensure that a cooperative does not lose its status as a consequence of its members contributing their shares to their RRSPs. You are seeking confirmation in writing of this information.

I can confirm that we intend to recommend that paragraph 136(2)(c) of the Act be amended to enable individual members of a cooperative to contribute their shares to their own RRSPs without any adverse consequences to the cooperative under the Act. The details of the amendment to be recommended remain to be developed. In general terms, however, I would foresee it being structured either as a rule which attributed the shares held by an RRSP to the annuitant, or which reformed paragraph 136(2)(c) to provide that shares contributed to an RRSP by a cooperative member would be treated as shares held by individuals who are members of a cooperative. We will recommend that this amendment apply to the 1998 and subsequent taxation years.

Yours sincerely,

Brian Ernewein

Director, Tax Legislation Division, Tax Policy Branch

Definitions [s. 136]: "carrying on business" — 253; "corporation" — 248(1), *Interpretation Act* 35(1); "farming", "individual", "person" — 248(1); "private corporation" — 89(1), 248(1); "province" — *Interpretation Act* 35(1); "share", "small business corporation" — 248(1).

Credit Unions, Savings and Credit Unions, and Deposit Insurance Corporations

137. (1) [Repealed under former Act]

(2) Payments pursuant to allocations in proportion to borrowing [credit union] — Notwithstanding anything in this Part, there may be deducted, in computing the income for a taxation year of a credit union, the total of bonus interest payments and payments pursuant to allocations in proportion to borrowing made by the credit union within the year or within 12 months thereafter to members of the credit union, to the extent that those payments were not deductible under this subsection in computing the income of the credit union for the immediately preceding taxation year.

Related Provisions: 110.1(1)(a) — 137(2) ignored for purposes of charitable donations limit; 135 — Patronage dividends; 137(6) — Maximum cumulative reserve; 157(2) — Instalment obligations — special case; 181.3(3)(a) — Capital of financial institution.

Interpretation Bulletins: IT-483: Credit unions (archived).

Forms: T2 SCH 17: Credit union deductions.

(3) Additional deduction [credit union] — There may be deducted from the tax otherwise payable under this Part for a taxation year by a corporation that was, throughout the year, a credit union, an amount equal to 16% of the amount, if any, by which the lesser of

(a) the corporation's taxable income for the year, and

(b) the amount, if any, by which 4/3 of the corporation's maximum cumulative reserve at the end of the year exceeds the corporation's preferred-rate amount at the end of the immediately preceding taxation year exceeds

(c) the least of the amounts determined under paragraphs 125(1)(a) to (c) in respect of the corporation for the year.

Related Provisions: 123.2 — Corporation surtax calculated before deducting credit under 137(3).

Interpretation Bulletins: IT-483: Credit unions (archived).

Forms: T2 SCH 17: Credit union deductions.

(4) Amount deemed deductible under section 125 — For the purposes of this Act, any amount deductible or any deduction under subsection (3) from the tax otherwise payable by a credit union under this Part for a taxation year shall be deemed to be an amount deductible or a deduction, as the case may be, under section 125 from that tax.

Related Provisions: 125 — Small business deduction; 137(6) — Maximum cumulative reserve.

Interpretation Bulletins: IT-483: Credit unions (archived).

(4.1) Payments in respect of shares — Notwithstanding any other provision of this Act, an amount paid or payable by a credit union to a member thereof in respect of a share of a class of the capital stock of the credit union (other than any such amount paid or payable as or on account of a reduction of the paid-up capital, redemption, acquisition or cancellation of the share by the credit union to the extent of the paid-up capital of the share) shall, where the share is not listed on a prescribed stock exchange, be deemed to have been paid or payable, as the case may be, by the credit union as interest and to have been received or to have been receivable, as the case may be, by the member as interest.

Related Provisions: 12(1)(c) — Interest included in income; 84(4) — Deemed dividend on reduction of paid-up capital where share is listed on prescribed stock exchange; 137(4.2) — Deemed interest not a dividend.

History: Subsec. 137(4.1) substituted by 1994, c. 21, s. 64, applicable to transactions occurring after December 21, 1992. That subsec. formerly read:

> (4.1) Amount paid in respect of members' share deemed paid as interest — Notwithstanding any other provisions of this Act, any amount paid or payable by a credit union to a member thereof in respect of the member's share in the credit union, other than any such amount paid or payable as or on account of a reduction of the paid-up capital, redemption, acquisition or cancellation by the credit union of the member's share to the extent of the paid-up capital of that share, shall be deemed to have been paid or payable, as the case may be, by the credit union as interest and, when received by the member, to have been received by the member as interest.

Regulations: 3200 (prescribed stock exchange; needs to be amended to apply to 137(4.1)).

Interpretation Bulletins: IT-483: Credit unions (archived).

(4.2) Deemed interest not a dividend — Notwithstanding any other provision of this Act, an amount that is deemed by subsection (4.1) to be interest shall be deemed not to be a dividend.

Related Provisions: 84(2) — Deemed dividend on winding-up; 84(3) — Deemed dividend on redemption of shares; 84(4) — Deemed dividend — reduction of paid-up capital.

History: Subsec. 137(4.2) substituted by 1994, c. 21, s. 64, applicable to transactions occurring after December 21, 1992. That subsec. formerly read:

> (4.2) Application of section 84 — Subsections 84(2), (3) and (4) do not apply to deem a dividend to have been paid by a corporation to any of its shareholders, or to deem any of the shareholders of a corporation to have received a dividend on any shares of the capital stock of the corporation, if at the time the dividend would, but for this subsection, be deemed by subsection 84(2), (3) or (4) to have been so paid or received, as the case may be, the corporation was a credit union.

Interpretation Bulletins: IT-483: Credit unions (archived).

(4.3) Determination of preferred-rate amount of a corporation — For the purposes of subsection (3),

(a) the preferred-rate amount of a corporation at the end of a taxation year is an amount equal to the total of its preferred-rate amount at the end of its immediately preceding taxation year and 25/4 of the amount deductible under section 125 from the tax for the year otherwise payable by it under this Part;

(b) where at any time a new corporation has been formed as a result of an amalgamation of two or more predecessor corporations, within the meaning of subsection 87(1), it shall be deemed to have had a taxation year ending immediately before that time and to have had, at the end of that year, a preferred-rate amount equal to the total of the preferred-rate amounts of each of the predecessor corporations at the end of their last taxation years; and

(c) where there has been a winding-up as described in subsection 88(1), the preferred-rate amount of the parent (referred to in that subsection) at the end of its taxation year immediately preceding its taxation year in which it received the assets of the subsidiary (referred to in that subsection) on the winding-up shall be deemed to be the total of the amount that would otherwise be its preferred-rate amount at the end of that year and the preferred-rate amount of the subsidiary at the end of its taxation year in which its assets were distributed to the parent on the winding-up.

Interpretation Bulletins: IT-483: Credit unions (archived).

(5) Member's income — Where a payment has been received by a taxpayer from a credit union in a taxation year in respect of an allocation in proportion to borrowing, the amount thereof shall, if the money so borrowed was used by the taxpayer for the purpose of earning income from a business or property (otherwise than to acquire property the income from which would be exempt or to acquire a life insurance policy), be included in computing the taxpayer's income for the year.

(5.1) Allocations of taxable dividends and capital gains — A credit union (referred to in this subsection and in subsection (5.2) as the "payer") may, at any time within 120 days after the end of its taxation year, elect in prescribed form to allocate in respect of the year to a member that is a credit union such portion of each of the following amounts as may reasonably be regarded as attributable to the member:

(a) the total of all amounts each of which is the amount of a taxable dividend received by the payer from a taxable Canadian corporation in the year;

(b) the amount if any, by which

(i) the total of all amounts each of which is the amount by which the payer's capital gain from the disposition of a property in the year exceeds the payer's taxable capital gain from the disposition

exceeds

(ii) the total of all amounts each of which is the amount by which the payer's capital loss from the disposition of a property in the year exceeds the payer's allowable capital loss from the disposition; and

(c) each amount deductible under paragraph (5.2)(c) in computing the payer's taxable income for the year.

Related Provisions: 137(5.2) — Allocations of taxable dividends and capital gains.

History: Para. 137(5.1)(b) substituted and para. (c) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 113(1), applicable to 1988 *et seq.* Para. (b) formerly read:

(b) the amount, if any, by which the total of the payer's taxable capital gains from dispositions of property in the year exceeds the total of its allowable capital losses from dispositions of property in the year.

Interpretation Bulletins: IT-483: Credit unions (archived).

Forms: T2004: Election by a credit union to allocate taxable dividends and taxable capital gains to member credit unions.

(5.2) Idem — Notwithstanding any other provision of this Act,

(a) there shall be deducted from the amount that would, but for this subsection, be deductible under section 112 in computing a payer's taxable income for a taxation year such portion of the total referred to in paragraph (5.1)(a) as the payer allocated to its members under subsection (5.1) in respect of the year;

(b) there shall be included in computing the income of a payer for a taxation year an amount equal to that portion of the amount referred to in paragraphs (5.1)(b) and (c) that the payer allocated under subsection (5.1) in respect of the year to its members; and

(c) each amount allocated under subsection (5.1) to a member may be deducted by that member in computing the member's taxable income for its taxation year that includes the last day of the payer's taxation year in respect of which the amount was so allocated.

History: Para. 137(5.2)(c) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 79, applicable to 1991 *et seq.* Para. (c) formerly read:

(c) each amount allocated to a member under subsection (5.1) may be deducted by that member in computing its taxable income for its taxation year during which the amount was so allocated.

Para. 137(5.2)(b) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 113(2), applicable to 1988 *et seq.* Para. (b) formerly read:

(b) there shall be included in computing the income of a payer for a taxation year an amount equal to that portion of the amount referred to in paragraph (5.1)(b) that the payer allocated to its members under subsection (5.1) in respect of the year; and

Interpretation Bulletins: IT-483: Credit unions (archived).

(6) Definitions — In this section,

"allocation in proportion to borrowing" for a taxation year means an amount credited by a credit union to a person who was a member of the credit union in the year on terms that the member is entitled to or will receive payment thereof, computed at a rate in relation to

(a) the amount of interest payable by the member on money borrowed from the credit union, or

(b) the amount of money borrowed by the member from the credit union,

if the amount was credited at the same rate in relation to the amount of interest or money, as the case may be, as the rate at which amounts were similarly credited for the year to all other members of the credit union of the same class;

"bonus interest payment" for a taxation year means an amount credited by a credit union to a person who was a member of the credit union in the year on terms that the member is entitled to or will receive payment thereof, computed at a rate in relation to

(a) the amount of interest payable in respect of the year by the credit union to the member on money

standing to the member's credit from time to time in the records or books of account of the credit union, or

(b) the amount of money standing to the member's credit from time to time in the year in the records or books of account of the credit union,

if the amount was credited at the same rate in relation to the amount of interest or money, as the case may be, as the rate at which amounts were similarly credited in the year to all other members of the credit union of the same class;

"credit union" means a corporation, association or federation incorporated or organized as a credit union or cooperative credit society if

(a) it derived all or substantially all of its revenues from

(i) loans made to, or cashing cheques for, members,

(ii) debt obligations or securities of, or guaranteed by, the Government of Canada or a province, a Canadian municipality, or an agency thereof, or debt obligations or securities of a municipal or public body performing a function of government in Canada or an agency thereof,

(iii) debt obligations of or deposits with, or guaranteed by, a corporation, commission or association not less than 90% of the shares or capital of which was owned by the Government of Canada or a province or by a municipality in Canada,

(iv) debt obligations of or deposits with, or guaranteed by, a bank, or debt obligations of or deposits with a corporation licensed or otherwise authorized under a law of Canada or a province to carry on in Canada the business of offering to the public its services as trustee,

(v) charges, fees and dues levied against members or members of members,

(vi) loans made to or deposits with a credit union or cooperative credit society of which it is a member, or

(vii) a prescribed revenue source,

(b) all or substantially all the members thereof having full voting rights therein were corporations, associations or federations

(i) incorporated as credit unions or cooperative credit societies, all of which derived all or substantially all of their revenues from the sources described in paragraph (a), or all or substantially all of the members of which were credit unions, cooperatives or a combination thereof,

(ii) incorporated, organized or registered under, or governed by a law of Canada or a province with respect to cooperatives, or

(iii) incorporated or organized for charitable purposes,

or were corporations, associations or federations no part of the income of which was payable to, or otherwise available for the personal benefit of, any shareholder or member thereof, or

(c) the corporation, association or federation would be a credit union by virtue of paragraph (b) if all the members (other than individuals) having full voting rights in each member thereof that is a credit union were members having full voting rights in the corporation, association or federation;

Related Provisions: 89(1)"paid-up capital"(b) — PUC of credit union; 137.1(7) — Deposit insurance corporation deemed not credit union; 157(2) — Exemption from instalment obligations where taxable income not over $10,000; 248(1)"credit union" — Definition applies to entire Act; 248(1)"share" — Share of a credit union is a share; Reg. 9002(3) — Mark-to-market rules — property held by credit union.

Interpretation Bulletins: IT-483: Credit unions (archived).

"maximum cumulative reserve" of a credit union at the end of any particular taxation year means an amount determined by the formula

$$0.05 \times (A + B)$$

where

A is the total of all amounts each of which is the amount of any debt owing by the credit union to a member thereof or of any other obligation of the credit union to pay an amount to a member thereof, that was outstanding at the end of the year, including, for greater certainty, the amount of any deposit standing to the credit of a member of the credit union in the records of the credit union, but excluding, for greater certainty, any share in the credit union of any member thereof, and

B is the total of all amounts each of which is the amount, as of the end of the year, of any share in the credit union of any member thereof;

I.T. Application Rules: 58(3.2) (reduction in maximum cumulative reserve to reflect level at end of 1971).

"member" of a credit union means a person who is recorded as a member on the records of the credit union and is entitled to participate in and use the services of the credit union.

Proposed Amendment — 137(6)"member"

"member", of a credit union, means

(a) a person who is recorded as a member on the records of the credit union and is entitled to participate in and use the services of the credit union, and

(b) a registered retirement savings plan, a registered retirement income fund or a registered education savings plan, the annuitant or subscriber under which is a person described in paragraph (a).

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 133(1), will amend the definition "member" in subsec. 137(6) to read as above, applicable to 1996 *et seq.*

Technical Notes: Section 137 provides rules that apply to credit unions. Among the definitions set out in subsection 137(1) is "member," meaning essentially a member of record who is entitled to the services of the credit union. This definition is amended, for the 1996 and subsequent taxation years, to treat as a member a registered retirement savings plan, registered retirement income fund, or registered education savings plan, provided that the annuitant or subscriber under the plan is a person who meets the existing definition of "member".

Letter from Dept. of Finance, June 11, 1999: See under 136(2)(c), (d).

Related Provisions: Reg. 1404(2)"acquisition costs"(a)(iii.1) — Insurer established to provide insurance to credit union members — policy reserves.

(7) **Credit union not private corporation** — Notwithstanding any other provision of this Act, a credit union that would, but for this section, be a private corporation shall be deemed not to be a private corporation except for the purposes of sections 123.1, 125, 127, 127.1, 152 and 157 and the definition "small business corporation" in subsection 248(1) as it applies for the purposes of paragraph 39(1)(c).

Proposed Amendment — 137(7)

(7) Credit union not private corporation — Notwithstanding any other provision of this Act, a credit union that would, if this Act were read without reference to this section, be a private corporation is deemed not to be a private corporation except for the purposes of sections 123.1, 123.4, 125, 127, 127.1, 152 and 157 and the definition "small business corporation" in subsection 248(1) as it applies for the purpose of paragraph 39(1)(c).

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 133(2), will amend subsec. 137(7) to read as above, applicable to 2001 *et seq*.

Technical Notes: Subsection 137(7) provides that a credit union that would otherwise be a private corporation is treated as a private corporation for the purposes of specified provisions of the Act. The subsection is amended to include among those provisions section 123.4, which in effect provides reductions in corporate tax rates. This amendment, which applies to the 2001 and subsequent taxation years, provides that a credit union that otherwise qualifies as a Canadian-controlled private corporation (CCPC) may use the special rate reduction provided for CCPCs.

Letter from Dept. of Finance, December 20, 2001:

Dear [xxx]:

I am writing, with the concurrence of Mr. Roger Champagne of the Fédération des caisses Desjardins du Québec, to provide you with the enclosed copy of my response to a recent letter from Mr. Champagne. In my response, I agree to recommend an *Income Tax Act* amendment to allow a credit union to be treated as a private corporation for purposes of the new deductions from tax otherwise payable, found in section 123.4 of the Act.

As this is a matter that may be of interest to many of your members, it seemed appropriate that you be advised of our intentions in this regard.

Yours sincerely,

Brian Ernewein, Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, December 20, 2001:

Monsieur,

La présente fait suite à votre lettre du 5 novembre dernier au sujet de l'application [xxx] du nouvel article 123.4 de la *Loi de l'impôt sur le revenu* (« Loi »). Cet article, qui a pour effet de réduire l'impôt que doit payer une société sur une partie de son revenu, que l'on appelle « revenu imposable au taux complet », s'applique différemment aux sociétés privées sous contrôle canadien (SPCC) qu'aux autres sociétés. En particulier, il prévoit une déduction accélérée de l'impôt par ailleurs payable par une SPCC sur un certain montant de son revenu tiré d'une entreprise exploitée activement.

Comme vous l'indiquiez, le paragraphe [xxx] de la Loi traite une [xxx] comme une société privée à certaines fins, notamment en ce qui concerne la déduction accordée aux petites entreprises prévue à l'article 125. Le paragraphe [xxx] ne s'applique cependant pas explicitement aux fins prévues au paragraphe 123.4. Vous avez donc demandé que nous recommandions une modification pour assurer qu'[xxx] est considérée comme une société privée aux fins de l'article 123.4 et qu'elle peut donc, en supposant que les autres critères pertinents sont respectés, profiter de la déduction accélérée consentie aux SPCC.

Selon moi, une telle mesure serait appropriée sur le plan de la politique, et nous recommanderons qu'elle soit incluse dans les prochaines modifications techniques. Le changement s'appliquerait aux années d'imposition 2001 et suivantes, de manière à coïncider avec l'instauration de l'article 123.4. Je vous soulignerais aussi que le « revenu imposable au taux complet » [xxx], au sens de l'article 123.4, exclut les montants visés par la déduction additionnelle prévue au paragraphe [xxx] de la Loi, et que nous ne proposerons donc aucun changement à cet égard.

Veuillez agréer, Monsieur, l'expression de mes sentiments les meilleurs.

Directeur, Division de la législation de l'impôt, Direction de la politique de l'impôt, Brian Ernewein

Definitions [s. 137]: "allocation in proportion to borrowing" — 137(6); "allowable capital loss" — 38(b), 248(1); "amount" — 248(1); "bank" — 248(1); "bonus interest payment" — 137(6); "business" — 248(1); "class" — of shares 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "credit union" — 137(6), 248(1); "disposition" — 248(1); "dividend" — 137(4.1), (4.2), 248(1); "interest" — 137(4.1), (4.2); "life insurance policy" — 138(12), 248(1); "maximum cumulative reserve", "member" — 137(6); "payer" — 137(5.1); "person" — 248(1); "preferred-rate amount" — 137(4.3); "prescribed" — 248(1); "prescribed stock exchange" — 248(29), Reg. 3200, 3201; "private corporation" — 89(1), 137(7), 248(1); "property" — 248(1); "province" — *Interpretation Act* 35(1); "record", "share", "shareholder", "small business corporation" — 248(1); "taxable Canadian corporation" — 89(1), 248(1); "taxable capital gain" — 38(a), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1).

I.T. Application Rules [s. 137]: 58 (property of credit union acquired before 1972).

Interpretation Bulletins [s. 137]: IT-483: Credit unions (archived).

137.1 (1) Amounts included in income of deposit insurance corporation — For the purpose of computing the income for a taxation year of a taxpayer that is a deposit insurance corporation, the following rules apply:

(a) the corporation's income shall, except as otherwise provided in this section, be computed in accordance with the rules applicable in computing income for the purposes of this Part; and

(b) there shall be included in computing the corporation's income such of the following amounts as are applicable:

(i) the total of profits or gains made in the year by the corporation in respect of bonds, debentures, mortgages, hypothecary claims, notes or other similar obligations owned by it that were disposed of by it in the year, and

(ii) the total of each such portion of each amount, if any, by which the principal amount, at the time it was acquired by the corporation, of a bond, debenture, mortgage, hypothecary claim, note or other similar obligation owned by the corporation at the end of the year exceeds the cost to the corporation of acquiring it as was included by the corporation in computing its profit for the year.

Related Provisions: 137.1(3) — Deductions from income of deposit insurance corporation; 137.1(5) — Deposit insurance corporation defined; 137.1(10) — Amounts paid by a deposit insurance corporation; 137.2 — Valuation of property owned since before 1975; 142.2(1)"financial institution"(c)(iv) — Deposit insurance corporation not subject to mark-to-market rules.

History: Subparas. 137.1(1)(b)(i) and (ii) amended by 2001, c. 17, subsec. 216(1) to add the words "hypothecary claims" and "hypothecary claim" respectively, in force June 14, 2001.

Interpretation Bulletins: IT-483: Credit unions (archived).

(2) Amounts not included in income — The amount of any premiums or assessments received or receivable by a taxpayer that is a deposit insurance corporation from its member institutions in a taxation year shall not be included in computing its income.

Proposed Amendment — 137.1(2)

(2) Amounts not included in income — The following amounts shall not be included in computing the income of a deposit insurance corporation for a taxation year:

(a) any premium or assessment received, or receivable, by the corporation in the year from a member institution; and

(b) any amount received by the corporation in the year from another deposit insurance corporation to the extent that that amount can reasonably be considered to have been paid out of amounts referred to in

paragraph (a) received by that other deposit insurance corporation in any taxation year.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 134(1), will amend subsec. 137.1(2) to read as above, applicable to 1998 *et seq.*

Technical Notes: Section 137.1 provides rules for the taxation of deposit insurance corporations (DICs), including rules that affect the computation of income. In general terms, the premiums that a member institution pays to a DIC are deductible in computing the member's income and are not included in computing the income of the DIC, while any assistance that the DIC provides to the member or the member's depositors is not deductible for the DIC and is included in computing the member's income.

In certain circumstances, two or more DICs may share responsibilities toward a group of members. In such a case, it may be necessary for one DIC to pay to another an amount in respect of premiums. To ensure the appropriate tax consequences of such a payment, subsections 137.1(2) and (4) are amended. New paragraph 137.1(2)(b) excludes from the income of a DIC any amount it receives from another DIC, to the extent the amount can reasonably be considered to have been paid out of premiums or assessments received or receivable by the other DIC from its member institutions. New paragraph 137.1(4)(d), on the other hand, precludes the paying DIC from deducting the amount in computing its own income.

Related Provisions: 137.1(4) — Limitation on deduction; 137.1(11) — Deductions for payments by member institution.

Selected Cases [subsec. 137.1(2)]: *Civil Service Co-operative Credit Society Ltd. v. R.*, [2001] 4 C.T.C. 2350 (TCC) (Income deductions and subsequent inclusion part of specific statutory scheme).

(3) Amounts deductible in computing income of deposit insurance corporation — There may be deducted in computing the income for a taxation year of a taxpayer that is a deposit insurance corporation such of the following amounts as are applicable:

(a) the total of losses sustained in the year by the corporation in respect of bonds, debentures, mortgages, hypothecary claims, notes or other similar obligations owned by it and issued by a person other than a member institution that were disposed of by it in the year;

(b) the total of each such portion of each amount, if any, by which the cost to the corporation of acquiring a bond, debenture, mortgage, hypothecary claim, note or other similar obligation owned by the corporation at the end of the year exceeds the principal amount of the bond, debenture, mortgage, hypothecary claim, note or other similar obligation, as the case may be, at the time it was so acquired as was deducted by the corporation in computing its profit for the year;

(c) [Repealed under former Act]

(d) the total of all expenses incurred by the taxpayer in collecting premiums or assessments from member institutions;

(e) the total of all expenses incurred by the taxpayer

(i) in the performance of its duties as curator of a bank, or as liquidator or receiver of a member institution when duly appointed as such a curator, liquidator or receiver,

(ii) in the course of making or causing to be made such inspections as may reasonably be considered to be appropriate for the purposes of assessing the solvency or financial stability of a member institution, and

(iii) in supervising or administering a member institution in financial difficulty; and

(f) the total of all amounts each of which is an amount that is not otherwise deductible by the taxpayer for the year or any other taxation year and that is

(i) an amount paid by the taxpayer in the year pursuant to a legal obligation to pay interest on borrowed money used

(A) to lend money to, or otherwise provide assistance to, a member institution in financial difficulty,

(B) to assist in the payment of any losses suffered by members or depositors of a member institution in financial difficulty,

(C) to lend money to a subsidiary wholly-owned corporation of the taxpayer where the subsidiary is deemed by subsection (5.1) to be a deposit insurance corporation,

(D) to acquire property from a member institution in financial difficulty, or

(E) to acquire shares of the capital stock of a member institution in financial difficulty, or

(ii) an amount paid by the taxpayer in the year pursuant to a legal obligation to pay interest on an amount that would be deductible under subparagraph (i) if it were paid in the year.

Related Provisions: 137.2 — Valuation of property owned since before 1975.

History: Paras. 137.1(3)(a) and (b) amended by 2001, c. 17, subsec. 216(2) to add the words "hypothecary claims" and "hypothecary claim" respectively, in force June 14, 2001.

Interpretation Bulletins: IT-483: Credit unions (archived).

(4) Limitation on deduction — No deduction shall be made in computing the income for a taxation year of a taxpayer that is a deposit insurance corporation in respect of

(a) any grant, subsidy or other assistance to member institutions provided by it;

(b) an amount equal to the amount, if any, by which the amount paid or payable by it to acquire property exceeds the fair market value of the property at the time it was so acquired;

(c) any amounts paid to its member institutions as allocations in proportion to any amounts described in subsection (2); or

(d) [Repealed under former Act]

Proposed Addition — 137.1(4)(d)

(d) any amount paid by it to another deposit insurance corporation that is, because of paragraph (2)(b), not included in computing the income of that other deposit insurance corporation; or

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 134(2), will add para. 137.1(4)(d), applicable to 1998 *et seq.*

Technical Notes: See under 137.1(2).

(e) any amount that may otherwise be deductible under paragraph 20(1)(p) in respect of debts owing to it by any of its member institutions that has not been included in computing its income for the year or a preceding taxation year.

Related Provisions: 20(1)(p) — Bad debts; 137.1(2) — Amounts not included in income.

Selected Cases [subsec. 137.1(4)]: *Civil Service Co-operative Credit Society Ltd. v. R.*, [2001] 4 C.T.C. 2350 (TCC) (Income deductions and subsequent inclusion part of specific statutory scheme).

(5) Definitions — In this section,

"amortized cost [para. 137.1(5)(d)]" — [Repealed under former Act]

"deposit insurance corporation" means

(a) a corporation that was incorporated by or under a law of Canada or a province respecting the establishment of a stabilization fund or board if

(i) it was incorporated primarily

(A) to provide or administer a stabilization, liquidity or mutual aid fund for credit unions, and

(B) to assist in the payment of any losses suffered by members of credit unions in liquidation, and

(ii) throughout any taxation year in respect of which the expression is being applied,

(A) it was a Canadian corporation, and

(B) the cost amount to the corporation of its investment property was at least 50% of the cost amount to it of all its property (other than a debt obligation of, or a share of the capital stock of, a member institution issued by the member institution at a time when it was in financial difficulty), or

(b) a corporation incorporated by the *Canada Deposit Insurance Corporation Act*;

Related Provisions: 137.1(5.1) — Deeming provision; 137.1(8) — Deemed compliance with Act; 181.1(3)(e) — Large Corporations Tax not payable by deposit insurance corporation.

"investment property" means

(a) bonds, debentures, mortgages, hypothecary claims, notes or other similar obligations

(i) of or guaranteed by the Government of Canada,

(ii) of the government of a province or an agent thereof,

(iii) of a municipality in Canada or a municipal or public body performing a function of government in Canada,

(iv) of a corporation, commission or association not less than 90% of the shares or capital of which is owned by Her Majesty in right of a province or by a Canadian municipality, or of a subsidiary wholly-owned corporation that is subsidiary to such a corporation, commission or association, or

(v) of an educational institution or a hospital if repayment of the principal amount thereof and payment of the interest thereon is to be made, or is guaranteed, assured or otherwise specifically provided for or secured by the government of a province,

(b) any deposits, deposit certificates or guaranteed investment certificates with

(i) a bank,

(ii) a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee, or

(iii) a credit union or central that is a member of the Canadian Payments Association or a credit union that is a shareholder or member of a central that is a member of the Canadian Payments Association,

(c) any money of the corporation, and

(d) in relation to a particular deposit insurance corporation, debt obligations of, and shares of the capital stock of, a subsidiary wholly-owned corporation of the particular corporation where the subsidiary is deemed by subsection (5.1) to be a deposit insurance corporation;

History: The opening words of para. (a) of the definition "investment property" in subsec. 137.1(5) amended by 2001, c. 17, subsec. 216(3) to add the words "hypothecary claims", in force June 14, 2001.

"member institution", in relation to a particular deposit insurance corporation, means

(a) a corporation whose liabilities in respect of deposits are insured by, or

(b) a credit union that is qualified for assistance from that deposit insurance corporation.

Related Provisions: 142.2(1)"financial institution"(c)(iv) — Deposit insurance corporation not subject to mark-to-market rules.

(5.1) Deeming provision — For the purposes of this section, other than subsection (2), paragraph (3)(d), subparagraph (3)(e)(i), subsection (9) and paragraph (11)(a), a subsidiary wholly-owned corporation of a particular corporation described in the definition "deposit insurance corporation" in subsection (5) shall be deemed to be a deposit insurance corporation, and any member institution of the particular corporation shall be deemed to be a member institution of the subsidiary, where all or substantially all of the property of the subsidiary has at all times since the subsidiary was incorporated consisted of

(a) investment property;

(b) shares of the capital stock of a member institution of the particular corporation obtained by the subsidiary at a time when the member institution was in financial difficulty;

(c) debt obligations issued by a member institution of the particular corporation at a time when the member institution was in financial difficulty;

(d) property acquired from a member institution of the particular corporation at a time when the member institution was in financial difficulty; or

(e) any combination of property described in paragraphs (a) to (d).

History: The opening words of subsec. 137.1(5.1) substituted by 1994, c. 21, s. 65, applicable to 1992 *et seq.* The opening words formerly read:

> (5.1) For the purposes of this section, other than subsection (2), paragraph (3)(d), subparagraph (3)(e)(i) and subsections (9) and (11), a subsidiary wholly-owned corporation of a particular corporation described in the definition "deposit insurance corporation" in subsection (5) shall be deemed to be a deposit insurance corporation, and any member institution of the particular corporation shall be deemed to be a member institution of the subsidiary, where all or substantially all of the property of the subsidiary has at all times since the subsidiary was incorporated consisted of

(6) Deemed not to be a private corporation — Notwithstanding any other provision of this Act, a deposit insurance corporation that would, but for this subsection, be a private corporation shall be deemed not to be a private corporation.

(7) Deposit insurance corporation deemed not a credit union — Notwithstanding any other provision of this Act, a deposit insurance corporation that would, but for this subsection, be a credit union shall be deemed not to be a credit union.

Related Provisions: 137 — Credit unions.

(8) Deemed compliance — For the purposes of subsection (5), a corporation shall be deemed to have complied with clause (a)(ii)(B) of the definition "deposit insurance corporation" in subsection (5) throughout the 1975 taxation year if it complied with that clause on the last day of that taxation year.

(9) Special tax rate — The tax payable under this Part by a corporation for a taxation year throughout which it was a deposit insurance corporation (other than a corporation incorporated under the *Canada Deposit Insurance Corporation Act*) is an amount equal to 22% of its taxable income for the year.

Related Provisions: 220(4.3), (4.4) — Security furnished by member institution of a deposit insurance corporation.

(10) Amounts paid by a deposit insurance corporation — Where in a taxation year a taxpayer is a member institution, there shall be included in computing its income for the year the total of all amounts each of which is

(a) an amount received by the taxpayer in the year from a deposit insurance corporation that is an amount described in any of paragraphs (4)(a) to (c), to the extent that the taxpayer has not repaid the amount to the deposit insurance corporation in the year,

(b) an amount received from a deposit insurance corporation in the year by a depositor or member of the taxpayer as, on account of, in lieu of payment of, or in satisfaction of, deposits with, or share capital of, the taxpayer, to the extent that the taxpayer has not repaid the amount to the deposit insurance corporation in the year, or

(c) the amount by which

(i) the principal amount of any obligation of the taxpayer to pay an amount to a deposit insurance corporation that is settled or extinguished in the year without any payment by the taxpayer or by the payment by the taxpayer of an amount less than the principal amount

exceeds

(ii) the amount, if any, paid by the taxpayer on the settlement or extinguishment of the obligation

to the extent that the excess is not otherwise required to be included in computing the taxpayer's income for the year or a preceding taxation year.

Related Provisions: 80(1)"forgiven amount" — Debt forgiveness; 137.1(10.1) — Principal amount of an obligation to pay interest; 137.1(12) — Repayment excluded; 220(4.3), (4.4) — Security furnished by a member institution of a deposit insurance corporation.

(10.1) Principal amount of an obligation to pay interest — For the purposes of paragraph (10)(c), an amount of interest payable by a member institution to a deposit insurance corporation on an obligation shall be deemed to have a principal amount equal to that amount.

Related Provisions: 137.1(11) — Deduction for payments by member institution.

(11) Deduction by member institutions — There may be deducted in computing the income for a taxation year of a taxpayer that is a member institution such of the following amounts as are applicable:

(a) any amount paid or payable by the taxpayer in the year that is described in subsection (2) to the extent that it was not deducted in computing the taxpayer's income for a preceding taxation year; and

(b) any amount repaid by the taxpayer in the year to a deposit insurance corporation on account of an amount described in paragraph (10)(a) or (b) that was received in a preceding taxation year to the extent that it was not, by reason of subsection (12), excluded from the taxpayer's income for the preceding year.

(12) Repayment excluded — Where

(a) a member institution has in a taxation year repaid an amount to a deposit insurance corporation on account of an amount that was included by virtue of paragraph (10)(a) or (b) in computing its income for a preceding taxation year,

(b) the member institution has filed its return of income required by section 150 for the preceding year, and

(c) on or before the day on or before which the member institution is required by section 150 to file a return of income for the taxation year, it has filed an amended return for the preceding year excluding from its income for that year the amount repaid,

the amount repaid shall be excluded from the amount otherwise included by virtue of paragraph (10)(a) or (b) in computing the member institution's income for the preceding year and the Minister shall make such reassessment of the tax, interest and penalties payable by the member institution for preceding taxation years as is necessary to give effect to the exclusion.

Definitions [s. 137.1]: "amount" — 248(1); "Canadian corporation" — 89(1), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "credit union" — 137(6), 137.1(7), 248(1); "deposit insurance corporation" — 137.1(5), (5.1); "Her Majesty" — *Interpretation Act* 35(1); "insurance corporation" — 248(1); "investment property" — 137.1(5); "member institution" — 137.1(5); "Minister" — 248(1); "private corporation" — 89(1), 248(1); "property" — 248(1); "province" — *Interpretation Act* 35(1); "share", "shareholder", "subsidiary wholly-owned corporation" — 248(1); "tax payable" — 248(2); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1).

137.2 [Deposit insurance corporation —] Computation of income for 1975 and subsequent years — For the purpose of computing the income of a deposit insurance corporation for the 1975 and subsequent taxation years,

(a) property of the corporation that is a bond, debenture, mortgage, hypothecary claim, note or other similar obligation owned by it at the commencement of the corporation's 1975 taxation year shall be valued at its cost to the corporation less the total of all amounts that, before that time, the corporation was entitled to receive as, on account or in lieu of payment of, or in satisfaction of, the principal amount of the bond, debenture, mortgage, hypothecary claim, note or other similar obligation,

(i) plus a reasonable amount in respect of the amortization of the amount by which the principal amount of the property at the time it was acquired by the corporation exceeded its actual cost to the corporation, or

(ii) minus a reasonable amount in respect of the amortization of the amount by which its actual cost to the corporation exceeded the principal amount of the property at the time it was acquired by the corporation;

(b) property of the corporation that is a debt owing to the corporation (other than property described in paragraph (a) or a debt that became a bad debt before its 1975 taxation year) acquired by it before the commencement of its 1975 taxation year shall be valued at

any time at the amount thereof outstanding at that time;

(c) property of the corporation (other than property in respect of which any amount for the year has been included under paragraph (a)) that was acquired, by foreclosure or otherwise, after default made under a mortgage or hypothec shall be valued at its cost amount to the corporation; and

(d) any other property shall be valued at its cost amount to the corporation.

Origin of s. 137.2: R.S.C. 1985, c. 1 (5th Supp.) (formerly an application rule contained in 1974-75-76, c. 26, s. 94).

History: The opening words of para. 137.2(a) amended by 2001, c. 17, subsec. 217(1) to add the words "hypothecary claim", in force June 14, 2001.

Para. 137.2(c) amended by the said c. 17, subsec. 217(2) to add the words "or hypothec", in force June 14, 2001.

Definitions [s. 137.2]: "amount", "cost amount" — 248(1); "deposit insurance corporation" — 137.1(5), (5.1) [does not explicitly apply to 137.2]; "income" — 3; "principal amount", "property" — 248(1); "taxation year" — 249.

Insurance Corporations

138. (1) Insurance corporations — It is hereby declared that a corporation, whether or not it is a mutual corporation, that has, in a taxation year, been a party to insurance contracts or other arrangements or relationships of a particular class whereby it can reasonably be regarded as undertaking

(a) to insure other persons against loss, damage or expense of any kind, or

(b) to pay insurance moneys to other persons

(i) on the death of any person,

(ii) on the happening of an event or contingency dependent on human life,

(iii) for a term dependent on human life, or

(iv) at a fixed or determinable future time,

whether or not such persons are members or shareholders of the corporation, shall, regardless of the form or legal effect of those contracts, arrangements or relationships, be deemed, for the purposes of this Act, to have been carrying on an insurance business of that class in the year for profit, and in any such case, for the purpose of computing the income of the corporation, the following rules apply:

(c) every amount received by the corporation under, in consideration of, in respect of or on account of such a contract, arrangement or relationship shall be deemed to have been received by it in the course of that business,

(d) the income shall, except as otherwise provided in this section, be computed in accordance with the rules applicable in computing income for the purposes of this Part,

(e) all income from property vested in the corporation shall be deemed to be income of the corporation, and

(f) all taxable capital gains and allowable capital losses from dispositions of property vested in the corporation shall be deemed to be taxable capital gains or allowable capital losses, as the case may be, of the corporation.

Related Provisions: 87(2.2) — Amalgamation of insurance corporations; 138(6) — Deductions for dividends from taxable corporations; 138(9) — Computation of income; 139, 139.1 — Mutualization and demutualization of insurer; 142 — Taxable capital gains where insurer carries on business in Canada and outside Canada; 148(1) — Amount included in life insurance policyholder's income; 149(1)(m), (t) — Exemptions — insurers; 190.1 — Financial institutions capital tax.

Selected Cases [subsec. 138(1)]: *Munich Reinsurance Co. (Canada Branch) v. R.*, [2000] 2 C.T.C. 2785 (TCC) (Right to tax refund not property used in business).

(2) Insurer's income or loss — Notwithstanding any other provision of this Act, where a life insurer resident in Canada carries on an insurance business in Canada and in a country other than Canada in a taxation year

(a) its income or loss for the year from carrying on an insurance business is the amount of its income or loss for the year, computed in accordance with this Act, from the business in Canada; and

(b) no amount shall be included in computing its income for the year in respect of its taxable capital gains and allowable capital losses from dispositions of property (other than property disposed of in a taxation year in which it was designated insurance property) of the insurer used or held by it in the course of carrying on an insurance business.

Proposed Amendment — 138(2)

(2) Insurer's income or loss — Notwithstanding any other provision of this Act,

(a) if a life insurer resident in Canada carries on an insurance business in Canada and in a country other than Canada in a taxation year, its income or loss for the year from carrying on an insurance business is the amount of its income or loss for the taxation year from carrying on the insurance business in Canada;

(b) if a life insurer resident in Canada carries on an insurance business in Canada and in a country other than Canada in a taxation year, for greater certainty,

(i) in computing the insurer's income or loss for the taxation year from the insurance business carried on by it in Canada, no amount is to be included in respect of the insurer's gross investment revenue for the taxation year derived from property used or held by it in the course of carrying on an insurance business that is not designated insurance property for the taxation year of the insurer, and

(ii) in computing the insurer's taxable capital gains or allowable capital losses for the taxation year from dispositions of capital property (referred to in this subparagraph as "insurance business property") that, at the time of the disposition, was used or held by the insurer in the course of carrying on an insurance business,

(A) there is to be included each taxable capital gain or allowable capital loss of the insurer for the taxation year from a disposition in the taxation year of an insurance business property that was a designated insurance property for the taxation year of the insurer, and

(B) there is not to be included any taxable capital gain or allowable capital loss of the insurer for the taxation year from a disposition in the taxation year of an insurance business property that was not a designated insurance property for the taxation year of the insurer;

(c) if a non-resident insurer carries on an insurance business in Canada in a taxation year, its income or loss for the taxation year from carrying on an insurance business is the amount of its income or loss for

the taxation year from carrying on the insurance business in Canada; and

(d) if a non-resident insurer carries on an insurance business in Canada in a taxation year,

(i) in computing the non-resident insurer's income or loss for the taxation year from the insurance business carried on by it in Canada, no amount is to be included in respect of the non-resident insurer's gross investment revenue for the taxation year derived from property used or held by it in the course of carrying on an insurance business that is not designated insurance property for the taxation year of the non-resident insurer, and

(ii) in computing the non-resident insurer's taxable capital gains or allowable capital losses for the taxation year from dispositions of capital property (referred to in this subparagraph as "insurance business property") that, at the time of the disposition, was used or held by the non-resident insurer in the course of carrying on an insurance business,

(A) there is to be included each taxable capital gain or allowable capital loss of the non-resident insurer for the taxation year from a disposition in the taxation year of an insurance business property that was a designated insurance property for the taxation year of the non-resident insurer, and

(B) there is not to be included any taxable capital gain or allowable capital loss of the non-resident insurer for the taxation year from a disposition in the taxation year of an insurance business property that was not a designated insurance property for the taxation year of the non-resident insurer.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 135(1), will amend subsec. 138(2) to read as above, applicable to taxation years that end after 1999.

Technical Notes: Subsection 138(2) provides rules for the purpose of computing the income of a life insurer resident in Canada where the life insurer carries on an insurance business in Canada and in a country other than Canada. The subsection provides that the insurer's income from carrying on an insurance business is the amount of its income from carrying in the insurance business in Canada computed in accordance with the Act. As well, the subsection provides that the insurer's taxable capital gains and allowable capital losses from property used or held in the course of carrying on an insurance business is the insurer's taxable capital gains and allowable capital losses from designated insurance property.

Subsection 138(2) is being amended to extend its application to non-resident insurer's that carry on an insurance business in Canada. As well, it is being amended to provide, for greater certainty, the following:

1. In computing a multinational insurer's income from an insurance business carried on by it in Canada, no amount is to be included in respect of the insurer's gross investment revenue for a taxation year derived from property used or held in the course of carrying on an insurance business that is not designated insurance property of the insurer. Subsection 138(9) provides that in computing a multinational insurer's income from an insurance business carried on by it in Canada the insurer must include its gross investment revenue for the year from its designated insurance property for the year plus the amount prescribed in respect of the insurer for the year. Designated insurance property is defined in section 2400 of the *Income Tax Regulations*.

2. In computing a multinational insurer's taxable capital gains and allowable capital losses for the year from the disposition of property used or held in the course of carrying on an insurance business there is to be included the insurer's taxable capital gains and allowable capital losses from dispositions of its designated insurance property for the year. It also provides that the insurer's taxable capital gains and allowable capital losses for the year from the disposition of property used or held in the course of carrying on an insurance business that is its designated insurance property for the year are not to be included in computing a multinational insurer's taxable capital gains and allowable capital losses for the year.

Letter from Dept. of Finance, May 7, 2001:

Dear [xxx]

We are responding to your letter of March 23, 2001 seeking confirmation that we are intending to recommend to the Minister of Finance (the "Minister") amendments to the *Income Tax Act* (the "Act") to ensure that gross investment revenue is included in computing the income of multinational life insurers resident in Canada (and non-resident multinational insurers) from carrying on an insurance business in Canada only to the extent such gross investment revenue is derived from "designated insurance property", as defined in the Act.

We can confirm that we are intending to recommend to the Minister that subsections 138(2) and (9) of the Act be amended. The amendment will clarify that only the gross investment revenue derived by the insurer from "designated insurance property" of the insurer in respect of the insurance business carried on in Canada will be included in the income of the insurer from that insurance business. If adopted it will be recommended that the amendments be effective for taxation years ending after 1999.

We hope this addresses your concerns.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, January 8, 2001:

Dear [xxx]

We are responding to your letter of October 11th, 2000, to Mr. Wally Conway concerning sections 95 and 138 of the *Income Tax Act* (the Act).

In your letter you expressed concern about the recent decision of the Tax Court of Canada in *Munich Reinsurance Company (Canada Branch) v. The Queen* [affirmed by the Federal Court of Appeal, [2002] 1 C.T.C. 199 — ed.], where it interpreted subsection 138(9) as not being a complete code with respect to the inclusion of investment income in a multinational insurer's income from carrying on an insurance business in Canada. Instead the court applied the general rules in the Act in determining whether income from a property was income of the insurer from its insurance business carried on in Canada.

You are concerned that, as a result of this decision, the intent of subsections 138(2) and (9) will be ignored and a multinational insurer will be required to include in its income from an insurance business carried on in Canada, its gross investment revenue from investment property that is not designated insurance property in respect of that business but is property factually used or held in that business. Consequently, you are requesting clarifying amendments to subsections 138(2) and (9) of the Act.

We are sympathetic to this request and will recommend to the Minister of Finance that subsections 138(2) and (9) be amended. The amendment will clarify that only the gross investment revenue derived by the insurer from "designated insurance property" of the insurer in respect of the insurance business carried on in Canada will be included in the income of the insurer from that insurance business. The amendments will be effective for taxation years ending after 1999. . .

Thank you for bringing these matters to our attention.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 20(7)(c) — No deduction for certain reserves; 20(26) — Deduction for unpaid claims reserve adjustment; 138(1) — Insurance corporations; 138(6) — Deduction for dividends; 138(9) — Computation of income; 140(1), (2) — Deductions and inclusions in income of insurer; 142 — Application of rule in 138(2)(b) before 1996; 211.1 — Tax on investment income of life insurer.

History: Subsec. 138(2) amended by 1997, c. 25, subsec. 39(1), applicable to 1997 *et seq.* Subsec. (2) formerly read:

(2) Notwithstanding any other provision of this Act, where a life insurer is resident in Canada,

(a) its income for a taxation year from carrying on an insurance business is the amount of its income for the year from carrying on that insurance business in Canada; and

(b) its loss sustained in a taxation year in carrying on an insurance business is the amount of its loss, if any, sustained in the year in carrying on that insurance business in Canada, computed by applying, with such modifications as the circumstances require, the provisions of this Act respecting the computation of income from an insurance business of the class carried on by it.

That portion of subsec. 138(2) preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 114(1), applicable to 1990 *et seq.* That portion formerly read:

(2) Notwithstanding any other provision of this Act, in the case of an insurer, other than a resident of Canada that does not carry on a life insurance business,

(3) Deductions allowed in computing income [of life insurer] — In computing a life insurer's income for a taxation year from carrying on its life insurance business in Canada, there may be deducted

(a) such of the following amounts as are applicable:

(i) any amount that the insurer claims as a policy reserve for the year in respect of its life insurance policies, not exceeding the total of amounts that the insurer is allowed by regulation to deduct in respect of the policies,

(ii) any amount that the insurer claims as a reserve in respect of claims that were received by the insurer before the end of the year under its life insurance policies and that are unpaid at the end of the year, not exceeding the total of amounts that the insurer is allowed by regulation to deduct in respect of the policies,

(ii.1) the amount included under paragraph (4)(b) in computing the insurer's income for the taxation year preceding the year,

(iii) an amount equal to the lesser of

(A) the amount, if any, by which the total of policy dividends (except the portion thereof paid out of segregated funds) that became payable by the insurer after its 1968 taxation year and before the end of the year under its participating life insurance policies exceeds the total of amounts deductible under this subparagraph in computing its incomes for taxation years before the year, and

(B) the amount, if any, by which the total of all amounts, each of which is the insurer's income, determined in accordance with prescribed rules, for the year or a preceding taxation year ending after 1968 from its participating life insurance business carried on in Canada exceeds the total of all amounts each of which is an amount deductible under this subparagraph or subparagraph (iv) in computing its incomes for taxation years ending before the year,

(iv) an amount as a reserve for policy dividends that will become payable by the insurer in the immediately following taxation year equal to the least of

(A) that portion of policy dividends that has accrued in the year or a preceding taxation year to or for the benefit of participating life insurance policyholders of the insurer, to the extent that an amount in respect thereof has not been included, either explicitly or implicitly, in the calculation of the amount deductible by the insurer for the year under subparagraph (i) and, for the purpose of this clause, a policy dividend in respect of a life insurance policy shall be deemed to accrue in equal daily amounts between anniversary dates of the policy,

(B) 110% of the amount paid or unconditionally credited in the taxation year immediately following the year in respect of the portion referred to in clause (A) of policy dividends that has accrued in the year or a preceding taxation year, and

(C) the amount, if any, by which the amount described in clause (iii)(B) for the year exceeds the amount described in clause (iii)(A) for the year, and

(v) each amount (other than an amount credited under a participating life insurance policy) that would be deductible under section 140 in computing the insurer's income for the year if the reference in that section to "an insurance business other than a life insurance business" were read as a reference to "a life insurance business in Canada";

(b) [Repealed]

(c) [Repealed under former Act]

(d) [Repealed]

(e) the total of amounts each of which is a policy loan made by the insurer in the year and after 1977;

(f) where the taxation year is the first taxation year of the insurer ending after November 12, 1981, the total of all amounts each of which is the amount, if any, in respect of interest on a policy loan that was included in computing the insurer's income for a taxation year ending before November 13, 1981

(i) to the extent that the interest had accrued to it before the commencement of its 1969 taxation year, or

(ii) to the extent that the interest had been included in computing its income for a preceding taxation year; and

(g) the amount of tax under Part XII.3 payable by the insurer in respect of its taxable Canadian life investment income for the year.

Related Provisions: 4(1) — Income or loss from a source; 18(1)(e.1) — No deduction for unpaid claims; 20(1)(l) — Deductions — reserve for doubtful debts; 20(7)(c) — Policy reserves for non-life insurance business; 20(26) — Deduction for unpaid claims reserve adjustment; 39.1(1)"exempt capital gains balance"C(c), 39.1(6) — Reduction in gain to reflect capital gains exemption election; 138(3.1) — Excess policy dividend deduction deemed deductible; 138(4) — Amounts included in computing income; 138(4.01) — Life insurance policy includes group life benefit or annuity contract; 138(9) — Computation of income; 138(11.91)(d.1) — Computation of income for non-resident insurer; 138(12) — "Maximum tax actuarial reserve"; 139.1(8)(b) — No deduction for policy dividend paid on demutualization; 140 — Adjustments to income of insurance corporation; 148(1) — Amounts included in computing policyholder's income; 148(2) — Policy dividends deemed to be proceeds of disposition; 149(10)(a.1) — Exempt corporations.

History: Subparas. 138(3)(a)(i) and (ii) amended, subpara. (ii.1) added, by 1997, c. 25, subsec. 39(2), applicable to 1996 *et seq.* Subparas. (a)(i) and (ii) formerly read:

(i) such amount in respect of a policy reserve for the year for life insurance policies of a particular class as is allowed by regulation,

(ii) such amount as is allowed by regulation as a reserve in respect of claims that were received by the insurer before the end of the year under life insurance policies and that are unpaid at the end of the year,

Para. 138(3)(b) repealed by 1995, c. 21, subsec. 57(1), applicable to taxation years that begin after February 22, 1994. For taxation years that include February 22, 1994, para. (b) shall be read as follows:

(b) the total of losses sustained in the year by the insurer in respect of Canada securities owned by it that were disposed of by it in the year and before February 23, 1994;

Para. (b) formerly read:

(b) the total of losses sustained in the year by the insurer in respect of Canada securities owned by it that were disposed of by it in the year;

Para. 138(3)(d) repealed by 1995, c. 21, subsec. 57(2), applicable to taxation years that end after February 22, 1994. Para. (d) formerly read:

(d) the total of each such portion of each amount, if any, by which the cost to the insurer of acquiring a Canada security owned by it at the end of the year exceeds the principal amount of the security at the time it was so acquired as was deducted by the insurer in computing its profit for the year;

Regulations: 1102(1)(j) (no CCA on property used in life insurance business outside Canada); 1401(1) (policy reserves for pre-1996 policies); 1401(4) (unpaid claims reserve for pre-1996 policies); 1404(1) (policy reserves for post-1995 policies); 1405 (unpaid claims reserve for post-1995 policies); 2402 (amounts to be included in income).

(3.1) Excess policy dividend deduction deemed deductible — For the purposes of clause (3)(a)(iii)(A),

(a) an insurer's 1975-76 excess policy dividend deduction shall be deemed to be an amount that was deductible under subparagraph (3)(a)(iii) in computing its incomes for taxation years before its 1977 taxation year; and

(b) the amount prescribed to be an insurer's 1977 excess policy dividend deduction shall be deemed to be an amount that was deductible under subparagraph (3)(a)(iii) in computing its incomes for taxation years before its 1978 taxation year.

Regulations: 2407 (insurer's 1977 excess policy dividend deduction).

(4) Amounts included in computing income — In computing a life insurer's income for a taxation year from carrying on its life insurance business in Canada, there shall be included

(a) each amount deducted under subparagraph (3)(a)(i), (ii) or (iv) in computing the insurer's income for the preceding taxation year;

(b) the amount prescribed in respect of the insurer for the year in respect of its life insurance policies; and

(c) the total of all amounts received by the insurer in the year in respect of the repayment of policy loans or in respect of interest on policy loans.

Related Provisions: 138(1) — Insurance corporations; 138(3) — Deductions allowed in computing income; 138(4.01) — Life insurance policy includes group life benefit or annuity contract; 138(4.1)–(4.4) — Amounts included in computing income; 138(9) — Computation of income; 138(11.5)(j.1) — Transfer of business by non-resident insurer; 138(11.91)(d) — Computation of income of non-resident insurer.

History: Subsec. 138(4) amended by 1997, c. 25, subsec. 39(3), applicable to 1996 *et seq.* Subsec. (4) formerly read:

(4) In computing a life insurer's income for a taxation year from carrying on its life insurance business in Canada, there shall be included

(a) each amount deducted by the insurer under subparagraph (3)(a)(i), (ii) or (iv) in computing its income for the immediately preceding taxation year; and

(b), (c) [Repealed]

(d) the total of amounts each of which is an amount received by the insurer in the year in respect of the repayment of a policy loan or in respect of interest on a policy loan.

Para. 138(4)(b) repealed by 1995, c. 21, subsec. 57(3), applicable to taxation years that begin after February 22, 1994. For taxation years that include February 22, 1994, para. (b) shall be read as follows:

(b) the total of profits or gains made in the year by the insurer in respect of Canada securities owned by it that were disposed of by it in the year and before February 23, 1994; and

Para. (b) formerly read:

(b) the total of profits or gains made in the year by the insurer in respect of Canada securities owned by it that were disposed of by it in the year;

Para. 138(4)(c) repealed by 1995, c. 21, subsec. 57(4), applicable to taxation years that end after February 22, 1994. Para. (c) formerly read:

(c) the total of each such portion of each amount, if any, by which the principal amount, at the time it was acquired by the insurer, of a Canada security owned by it at the end of the year exceeds the cost to the insurer of so acquiring it as was included by the insurer in computing its profit for the year; and

Regulations: 1404(2) (amount prescribed for 138(4)(b)); 8103 (prescribed amount).

(4.01) Life insurance policy — For the purposes of subsections (3) and (4), a life insurance policy includes a benefit under a group life insurance policy or a group annuity contract.

Related Provisions: Reg. 1408(1)"life insurance policy in Canada" — Same definition for purposes of policy reserve regulations.

History: Subsec. 138(4.01) added by 1997, c. 25, subsec. 39(3), applicable to 1996 *et seq.*

(4.1) Idem [deemed deduction for 1976] — For the purposes of paragraph (4)(a), an insurer shall be deemed to have deducted in computing its income for its 1976 taxation year,

(a) under subparagraph (3)(a)(i), the total of

(i) the amount deducted under that subparagraph in computing its income from its life insurance business in Canada for its 1976 taxation year, and

(ii) the lesser of

(A) the amount, if any, of its 1975-76 excess policy reserves, and

(B) the amount, if any, by which its 1975 branch accounting election deficiency exceeds the total of

(I) the amount determined under subparagraph (d)(ii),

(II) the total of amounts each of which is an amount determined under paragraph 13(22)(b) with respect to depreciable property of a prescribed class of the insurer,

(III) the amount determined under subparagraph (b)(ii), and

(IV) the total of amounts each of which is a portion of a non-capital loss that is deemed by subsection 111(7.1) to have been deductible in computing the insurer's income for a taxation year ending before 1977;

(b) under subparagraph (3)(a)(ii), the total of

(i) the amount deducted under that subparagraph in computing its income from its life insurance business in Canada for its 1976 taxation year, and

(ii) the lesser of

(A) the amount, if any, of its 1975-76 excess additional group term reserves, and

(B) the amount, if any, by which its 1975 branch accounting election deficiency exceeds the total of

(I) the amount determined under subparagraph (d)(ii),

(II) the total of amounts each of which is an amount determined under paragraph 13(22)(b) with respect to depreciable property of a prescribed class of the insurer, and

(III) the total described in subclause (a)(ii)(B)(IV);

(c) under subparagraph (3)(a)(iv), the total of

(i) the amount deducted under that subparagraph in computing its income from its life insurance business in Canada for its 1976 taxation year, and

(ii) the amount, if any, of its 1975-76 excess policy dividend reserve; and

(d) under paragraph 138(3)(c) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, the total of

(i) the amount deducted under that paragraph in computing its income from its life insurance business in Canada for its 1976 taxation year, and

(ii) the lesser of

(A) the amount, if any, of its 1975-76 excess investment reserve, and

(B) the amount, if any, of its 1975 branch accounting election deficiency.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

(4.2) Idem [deemed deduction for 1977] — For the purposes of paragraph (4)(a), a life insurer shall be deemed to have deducted the following amounts in computing its income for its 1977 taxation year

(a) under subparagraph (3)(a)(i), the amount if any, by which the total of

(i) the insurer's maximum tax actuarial reserve for its 1977 taxation year, if that reserve had been determined on the basis of the rules applicable to its 1978 taxation year,

(ii) where the insurer has deducted the amount of any policy loan made by it in the year in computing its income from its life insurance business in Canada for any taxation year before its 1978 taxation year or not included interest in respect of any such loan in computing its gross investment revenue for any taxation year before its 1978 taxation year, the total of amounts that were outstanding at the end of the insurer's 1977 taxation year each of which is an amount payable to it in respect of a policy loan, and

(iii) that portion of the amount deducted by the insurer under subparagraph (3)(a)(i) in computing its income for its 1977 taxation year that is in respect of segregated fund policies

exceeds

(iv) the amount prescribed to be its 1977 carryforward deduction;

(b) under subparagraph (3)(a)(iv), the total of

(i) the amount deducted under that subparagraph in computing its income from its life insurance business in Canada for its 1977 taxation year, and

(ii) the amount, if any, by which

(A) the amount that would have been deductible under that subparagraph for its 1977 taxation year if that subparagraph were read without reference to clause (3)(a)(iv)(C),

exceeds

(B) the amount determined under subparagraph (i) for that taxation year; and

(c) under paragraph 138(3)(c) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, the total of

(i) the amount deducted under that paragraph in computing its income from its life insurance business in Canada for its 1977 taxation year, and

(ii) the amount, if any, by which,

(A) where the insurer has made an election under subsection (9) in respect of its 1975 taxation year, the amount that would have been deductible under paragraph 138(3)(c) of that Act in computing its income for its 1977 taxation year if the insurer had claimed the maximum allowable amount in its 1977 taxation year, or

(B) where the insurer has not made an election under subsection (9) in respect of its 1975 taxation year, the amount that would have been deductible under paragraph 138(3)(c) of that Act in computing its income for its 1977 taxation year if the insurer had claimed the maximum allowable amount in each of its taxation years ending before 1978 and after 1974

exceeds

(C) the amount determined under subparagraph (i).

Related Provisions: 111(7.2) — Non-capital loss of life insurer.

Regulations: 2408 (1977 carryforward deduction).

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

(4.3) Idem [deemed deduction for 1985] — For the purposes of paragraph (4)(a), in computing a life insurer's income from carrying on its life insurance business in Canada for its first taxation year ending after 1984, the amount, if any, by which

(a) the total of all amounts each of which is an amount deducted by the insurer in computing its income for a taxation year ending after 1968 and before 1985 in respect of a claim under a life insurance policy that was likely to arise after the end of the particular taxation year in respect of a death that occurred in the particular taxation year

exceeds

(b) the total of all amounts each of which is an amount paid by the insurer or included in computing its income before the commencement of its first taxation year ending after 1984 in respect of amounts described in paragraph (a)

shall be deemed to be an amount that was deducted by the insurer under subparagraph (3)(a)(i) in computing its income from that business for its last taxation year ending before 1985.

(4.4) Idem [income inclusion re land, building] — Where, for a period of time in a taxation year, a life insurer

(a) owned land (other than land referred to in paragraph (c) or (d)) or an interest therein that was not

held primarily for the purpose of gaining or producing income from the land for the period,

(b) had an interest in a building that was being constructed, renovated or altered,

(c) owned land subjacent to the building referred to in paragraph (b) or an interest therein, or

(d) owned land immediately contiguous to the land referred to in paragraph (c) or an interest therein that was used or was intended to be used for a parking area, driveway, yard, garden or other use necessary for the use or intended use of the building referred to in paragraph (b),

there shall be included in computing the insurer's income for the year, where the land, building or interest was designated insurance property of the insurer for the year, or property used or held by it in the year in the course of carrying on an insurance business in Canada, the total of all amounts each of which is the amount prescribed in respect of the insurer's cost or capital cost, as the case may be, of the land, building or interest for the period, and the amount prescribed shall, at the end of the period, be included in computing

(e) where the land or interest therein is property described in paragraph (a), the cost to the insurer of the land or the interest therein, and

(f) where the land, building or interest therein is property described in paragraphs (b) to (d), the capital cost to the insurer of the interest in the building described in paragraph (b).

Proposed Amendment — 138(4.4)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 245(1), will amend subsec. 138(4.4) by substituting "interest, or for civil law a right," for "interest" in each of paras. (a) to (d), "interest or right," for "interest" in five places thereafter, and "land, or of the interest or right" for "land or the interest" in para. (e), to come into force on Royal Assent.

Technical Notes: See under 12(4).

Related Provisions: 138(4.5) — Anti-avoidance rule; 138(4.6) — Meaning of "completed"; 248(4) — Interest in real property.

History: The portion of subsec. 138(4.4) between paras. (d) and (e) amended by 1997, c. 25, subsec. 39(4), applicable to 1997 *et seq*. That portion formerly read:

> the life insurer shall, where that land or building was property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada, include a prescribed amount in computing its income for the year in respect of the cost or capital cost, as the case may be, of the land, building or interest therein to the insurer for the period, and the amount so included shall, at the end of the period, be included in computing

Regulations: 2410 (prescribed amount).

(4.5) Application [of subsec. (4.4)] — Where a life insurer transfers or lends property, directly or indirectly in any manner whatever, to a person or partnership (in this subsection referred to as the "transferee") that is affiliated with the insurer or a person or partnership that does not deal at arm's length with the insurer and

(a) that property,

(b) property substituted for that property, or

(c) property the acquisition of which was assisted by the transfer or loan of that property

was property described in paragraph (4.4)(a), (b), (c) or (d) of the transferee for a period of time in a taxation year of the insurer, the following rules apply:

(d) subsection (4.4) shall apply to include an amount in the insurer's income for the year on the assumption that the property was owned by the insurer for the period, was property described in paragraph (4.4)(a), (b), (c) or (d) of the insurer and was used or held by it in the year in the course of carrying on an insurance business in Canada, and

(e) an amount included in the insurer's income for the year under subsection (4.4) by reason of the application of this subsection shall

(i) where subparagraph (ii) does not apply, be added by the insurer in computing the cost to it of shares of the capital stock of or an interest in the transferee at the end of the year, or

(ii) where the insurer and the transferee have jointly elected in prescribed form on or before the day that is the earliest of the days on or before which any taxpayer making the election is required to file a return pursuant to section 150 for the taxation year that includes the period, be added in computing

(A) where the property is land or an interest therein of the transferee described in paragraph (4.4)(a), the cost to the transferee of the land or the interest therein, and

(B) where the property is land, a building or an interest therein described in paragraphs (4.4)(b) to (d), the capital cost to the transferee of the interest in the building described in paragraph (4.4)(b).

Proposed Amendment — 138(4.5)(e)(ii)(A), (B)

(A) where the property is land or an interest, or for civil law a right, therein of the transferee described in paragraph (4.4)(a), the cost to the transferee of the land, or of the interest or right therein, and

(B) where the property is land or a building, or an interest therein or for civil law a right therein, described in paragraphs (4.4)(b) to (d), the capital cost to the transferee of the interest or of the right in the building described in paragraph (4.4)(b).

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 245(3), will amend cls. 138(4.5)(e)(ii)(A) and (B) to read as above, to come into force on Royal Assent.

Technical Notes: See under 12(4).

Related Provisions: 248(4) — Interest in real property; 248(5) — Substituted property; 251.1 — Affiliated persons.

History: The opening words of subsec. 138(4.5), and para. (d), amended by 1997, c. 25, subsecs. 39(5), (6), applicable to 1997 *et seq*. The opening words and para. (d) formerly read:

> (4.5) Where, after 1987, a life insurer has transferred or lent property, directly or indirectly in any manner whatever, to a transferee that was a designated corporation of the insurer (within the meaning assigned by subsection 2405(3) of the *Income Tax Regulations*) or a person or partnership that does not deal at arm's length with the insurer and
>
> . . . . .
>
> (d) subsection (4.4) shall apply to the insurer to include an amount in the insurer's income for the year on the assumption that the property was owned by the insurer for the period, was property described in paragraph (4.4)(a), (b), (c) or (d) of the insurer and was used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada, and

(4.6) Completion [of building] — For the purposes of subsection (4.4), the construction, renovation or alteration of a building is completed at the earlier of the day on

which the construction, renovation or alteration is actually completed and the day on which all or substantially all of the building is used for the purpose for which it was constructed, renovated or altered.

(5) Deductions not allowed — Notwithstanding any other provision of this Act,

(a) in the case of an insurer, no deduction may be made under paragraph 20(1)(l) in computing its income for a taxation year from an insurance business in Canada in respect of a premium or other consideration for a life insurance policy in Canada or an interest therein; and

(b) in the case of a non-resident insurer or a life insurer resident in Canada that carries on any of its insurance business in a country other than Canada, no deduction may be made under paragraph 20(1)(c) or (d) in computing its income for a taxation year from carrying on an insurance business in Canada, except in respect of

(i) interest on borrowed money used to acquire designated insurance property for the year, or to acquire property for which designated insurance property for the year was substituted property, for the period in the year during which the designated insurance property was held by the insurer in respect of the business,

(ii) interest on amounts payable for designated insurance property for the year in respect of the business, or

(iii) interest on deposits received or other amounts held by the insurer that arose in connection with life insurance policies in Canada or with policies insuring Canadian risks.

(iv) [Repealed]

Related Provisions: 248(4) — Interest in real property; 248(5) — Substituted property.

History: Subpara. 138(5)(b)(i) amended by 2001, c. 17, subsec. 133(1), applicable to 1997 *et seq.* The subpara. formerly read:

(i) interest on borrowed money used to acquire designated insurance property for the year in respect of the business,

Subpara. 138(5)(b)(iv) repealed by the said c. 17, subsec. 133(2), applicable to 1997 *et seq.* The subpara. formerly read:

(iv) other interest that does not exceed a prescribed amount.

Para. 138(5)(b) amended by 1997, c. 25, subsec. 39(7), applicable to 1997 *et seq.* Para. (b) formerly read:

(b) in the case of a non-resident insurer or a life insurer resident in Canada that carries on any of its insurance business in a country other than Canada, no deduction may be made under paragraph 20(1)(c) or (d) in computing its income for a taxation year from carrying on an insurance business in Canada, except in respect of interest on

(i) borrowed money used to acquire property used by it in the year in, or held by it in the year in the course of, carrying on that insurance business in Canada, to the extent that the interest is paid or payable in respect of that portion of the year during which the property was so used or held,

(ii) amounts payable for its property used by it in the year in, or held by it in the year in the course of, carrying on that insurance business in Canada to the extent that the interest is paid or payable in respect of that portion of the year during which the property was so used or held, or

(iii) deposits received or other amounts held by the insurer that arose in connection with life insurance policies in Canada or with policies insuring Canadian risks.

Regulations: 2404 (prescribed amount for 138(5)(b)(iv)).

(5.1) No deduction — No deduction shall be made under subsection 20(12) in computing the income of a life insurer resident in Canada in respect of foreign taxes attributable to its insurance business.

Interpretation Bulletins: IT-506: Foreign income taxes as a deduction from income.

(5.2) [Repealed]

History: Subsec. 138(5.2) repealed by 1995, c. 21, subsec. 57(5), applicable to dispositions occurring after October 30, 1994, except the disposition of a debt obligation before July 1995 where

(a) the disposition is part of a series of transactions or events that began before October 31, 1994;

(b) as part of the series of transactions or events, the taxpayer who acquired the debt obligation disposed of property before October 31, 1994; and

(c) it is reasonable to consider that one of the main reasons for the acquisition of the debt obligation by the taxpayer was to obtain a deduction because, as a consequence of the disposition referred to in paragraph (b),

(i) an amount was included in the taxpayer's income for any taxation year, or

(ii) an amount was subtracted from a balance of undeducted outlays, expenses or other amounts of the taxpayer and the subtracted amount exceeded the portion, if any, of the balance that could reasonably be considered to be in respect of the property.

Subsec. (5.2) formerly read:

(5.2) Idem — Notwithstanding paragraph (3)(b) and subsection (11.4), in computing an insurer's income for a taxation year from carrying on an insurance business, no amount shall be deducted in respect of a loss sustained by the insurer on a disposition (other than a disposition occurring as a result of the application of subsection (11.3)) of property that is a share, bond, debenture, mortgage, note, agreement of sale or any other form of indebtedness that was not a capital property of the insurer and was used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in any case where

(a) during the period commencing 30 days before and ending 30 days after the disposition, the insurer or a person or partnership that does not deal at arm's length with the insurer acquired or agreed to acquire the same or an identical property (in this subsection referred to as the "substituted property"), and

(b) at the end of the period referred to in paragraph (a), the insurer or the person or partnership, as the case may be, owned or had a right to acquire the substituted property,

and any such loss shall be added in computing the cost to the insurer or the person or partnership, as the case may be, of the substituted property.

(6) Deduction for dividends from taxable corporations — In computing the taxable income of a life insurer for a taxation year, no deduction from the income of the insurer for the year may be made under section 112 but, except as otherwise provided by that section, there may be deducted from that income the total of taxable dividends (other than dividends on term preferred shares that are acquired in the ordinary course of the business carried on by the life insurer) included in computing the insurer's income for the year and received by the insurer in the year from taxable Canadian corporations.

Related Provisions: 18(1)(c) — Limitation re exempt income; 55(2) — Deemed proceeds or capital gain; 87(2)(x) — Amalgamations; 111(7.2) — "Non-capital loss" of life insurer; 111(8)"non-capital loss"A:E — Amount included in non-capital loss; 112(2.2), (2.4) — Where no deduction permitted; 112(3)(b)(i) — Reduction in loss on subsequent disposition of share; 112(4)(d) — Loss on share held as inventory; 112(5.2)B(b)(i), (ii) — Adjustment for dividends received on mark-to-market property; 115(1)(d.1) — Deduction from income of non-resident; 141(2) — Life insurance corporation deemed to be public corporation; 148(4) — Income from disposition; 187.2 — Tax on dividends on taxable preferred shares; 187.3 — Tax on dividends on taxable RFI shares; 191(4) — Subsec. 138(6) deemed not to apply; 248(14) — Corporations deemed related; 258 — Deemed dividend on term preferred share.

Interpretation Bulletins: IT-52R4: Income bonds and income debentures (archived); IT-328R3: Losses on shares on which dividends have been received; IT-385R2: Disposition of an income interest in a trust.

(7) [Repealed]

History: Subsec. 138(7) repealed by 1997, c. 25, subsec. 39(8), applicable to 1996 *et seq.* Subsec. (7) formerly read:

(7) Amounts paid to shareholders included in taxable income — The taxable income for a taxation year of a life insurer resident in Canada is its taxable income for the year otherwise computed under this Part, plus 2 times the amount, if any, by which the total of amounts each of which is an amount paid by it after the end of its 1968 taxation year and before the end of the year as, on account or in lieu of payment of, or in satisfaction of dividends or stock dividends or any other amounts that, but for paragraph 84(1)(c.1), would have been dividends, exceeds the total of

(a) the insurer's undistributed income on hand at the end of its 1968 taxation year in respect of which tax under this Part has been paid by it,

(b) the surplus funds derived from operations of the insurer as of the end of the year,

(c) the total of amounts of surplus contributed to the insurer before the end of the year,

(d) ½ the total of amounts that, by virtue of this subsection, have been added to the taxable income of the insurer otherwise computed under this Part in computing its taxable income for taxation years before the year,

(e) where in the taxation year the insurer carried on an insurance business in a country other than Canada, the lesser of

(i) the total of dividends and stock dividends in respect of shares of the capital stock of the insurer paid by it in the year out of property other than property used by the insurer in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada, and

(ii) the amount of tax for the year paid by the insurer to the government of a country other than Canada under the income tax laws of that country out of property other than property used by the insurer in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada,

(f) where in the taxation year the insurer did not carry on an insurance business in a country other than Canada, the lesser of

(i) the total of dividends and stock dividends in respect of shares of the capital stock of the insurer paid by it in the year, and

(ii) the amount of tax for the year paid by the insurer to the government of a country other than Canada under the income tax laws of that country,

(g) the total of all amounts determined under paragraphs (e) and (f) in respect of the insurer for taxation years before the year, and

(h) the amount, if any, by which the lesser of

(i) the total of amounts paid after the end of the insurer's 1968 taxation year and before 1978 as, on account or in lieu of payment of, or in satisfaction of, dividends or stock dividends in respect of shares of the capital stock of the insurer, and

(ii) the amount, if any, determined in respect of the insurer under paragraph 138(7)(c) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1976 taxation year

exceeds

(iii) the total of amounts of surplus contributed to the insurer before 1978.

(8) No deduction for foreign tax — No deduction shall be made under section 126 from the tax payable under this Part for a taxation year by a life insurer resident in Canada in respect of such part of an income or profits tax as can reasonably be attributable to income from its insurance business.

(9) Computation of income — Where in a taxation year an insurer (other than an insurer resident in Canada that does not carry on a life insurance business) carries on an insurance business in Canada and in a country other than Canada, there shall be included in computing its income for the year from carrying on its insurance businesses in Canada the total of

(a) its gross investment revenue for the year from its designated insurance property for the year, and

(b) the amount prescribed in respect of the insurer for the year.

Proposed Amendment — 138(9)

Letters from Department of Finance, January 8 and May 7, 2001: See under 138(2).

Related Provisions: 88(1)(g) — Winding up — gross investment revenue; 111(7.1) — Effect of election by insurer under ss. 138(9) re 1975 taxation year; 138(2) — Insurer's income or loss; 138(3) — Deductions allowed in computing income; 138(7) — Amounts paid to shareholders included in taxable income; 138(11.5)(i) — Transfer of insurance business by non-resident insurer; 138(11.91)(d) — Computation of income for non-resident insurer; 138(11.92)(c) — Computation of income where insurance business transferred; 142 — Taxable capital gains, etc.; 148(1) — Amounts included in computing policyholder's income; 219(4) — Non-resident insurers.

History: Subsec. 138(9) amended by 1997, c. 25, subsec. 39(9), applicable to 1997 *et seq.* Subsec. (9) formerly read:

(9) Where in a taxation year an insurer (other than a resident of Canada that does not carry on a life insurance business) carried on an insurance business in Canada and in a country other than Canada, there shall be included in computing its income for the year from carrying on its insurance businesses in Canada the total of

(a) that part of its gross investment revenue for the year that is gross investment revenue from property used by it in the year in, or held by it in the year in the course of, carrying on those insurance businesses in Canada, and

(b) such additional amount as is prescribed in respect of the insurer for the year by regulation.

Selected Cases [subsec. 138(9)]: *Munich Reinsurance Co. (Canada Branch) v. R.*, [2002] 1 C.T.C. 199 (FCA); aff'g [2000] 2 C.T.C. 2785 (TCC) (Interest on overpayments of tax instalments part of income from insurance business in Canada); *Victory Reinsurance Co. v. MNR*, [1992] 2 C.T.C. 2200 (TCC) (Amount of reserve reported to Superintendent of Insurance was amount of reserve under Act); *London Life Insurance Co. v. R.*, [1990] 1 C.T.C. 43 (FCA) (Resident insurer carrying on business out of Canada, although related activities in Canada).

Regulations: 2411 (prescribed amount).

Forms: T2 SCH 150: Net income (loss) for income tax purposes for life insurance companies; T2016: Part XIII tax return — tax on income from Canada of approved non-resident insurers.

(9.1) [Repealed under former Act]

(10) Application of financial institution rules — Notwithstanding sections 142.3, 142.4 and 142.5, where in a taxation year an insurer (other than an insurer resident in Canada that does not carry on a life insurance business) carries on an insurance business in Canada and in a country other than Canada, in computing its income for the year from carrying on an insurance business in Canada,

(a) sections 142.3 and 142.5 apply only in respect of property that is designated insurance property for the year in respect of the business; and

(b) section 142.4 applies only in respect of the disposition of property that, for the taxation year in which the insurer disposed of it, was designated insurance property in respect of the business.

History: Subsec. 138(10) amended by 1997, c. 25, subsec. 39(9), applicable to 1997 *et seq.* Subsec. (10) formerly read:

(10) Where in a taxation year an insurer (other than an insurer resident in Canada that does not carry on a life insurance business) carried on an insurance business in Canada and in a country other than Canada, in computing the income of the insurer for the year from carrying on an insurance business in Canada,

(a) sections 142.3 and 142.5 apply with respect to property used by it in the year in, or held by it in the year in the course of, carrying on that business; and

(b) section 142.4 applies with respect to the disposition of property that, in the taxation year in which the insurer disposed of it, was property used by it in the year in, or held by it in the year in the course of, carrying on that business.

Subsec. 138(10) added by 1995, c. 21, subsec. 57(6), applicable to taxation years that end after February 22, 1994.

(11) [Repealed]

History: Subsec. 138(11) repealed by 1995, c. 21, subsec. 57(7), applicable to taxation years that begin after February 22, 1994. Subsec. (11) formerly read:

(11) Profit or loss in respect of Canada security — For the purposes of paragraphs (3)(b) and (4)(b),

(a) the profit or gain made by an insurer in a taxation year in respect of a Canada security owned by it that was disposed of by it in the year is the amount by which the proceeds of disposition to which the insurer thereby became entitled exceeds the amortized cost of the security to the insurer at the time of the disposition; and

(b) the loss sustained by an insurer in a taxation year in respect of a Canada security owned by it that was disposed of by it in the year is the amount by which the amortized cost of the security to the insurer at the time of the disposition exceeds the proceeds of the disposition to which the insurer thereby became entitled.

(11.1) Identical properties — For the purpose of section 47, any property of a life insurance corporation that would, but for this subsection, be identical to any other property of the corporation is deemed not to be identical to the other property unless both properties are

(a) designated insurance property of the insurer in respect of a life insurance business carried on in Canada; or

(b) designated insurance property of the insurer in respect of an insurance business in Canada other than a life insurance business.

Related Provisions: 248(12) — Identical properties.

History: Subsec. 138(11.1) amended by 1997, c. 25, subsec. 39(9), applicable to 1997 *et seq.* Subsec. (11.1) formerly read:

(11.1) For the purposes of section 47, any property of a life insurance corporation that would, but for this subsection, be identical to any other property of the corporation shall be deemed not to be identical to that other property unless both properties are

(a) non-segregated property used by it in the year in, or held by it in the year in the course of, carrying on a life insurance business in Canada; or

(b) non-segregated property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada other than a life insurance business.

I.T. Application Rules: 26(8.1) (property owned since before 1972).

Interpretation Bulletins: IT-387R2: Meaning of "identical properties".

(11.2) Computation of capital gain on pre-1969 depreciable property — For the purposes of computing the amount of a capital gain from the disposition of any depreciable property acquired by a life insurer before 1969, the capital cost of the property to the insurer shall be its capital cost determined without reference to paragraph 32(1)(a) of *An Act to amend the Income Tax Act*, chapter 44 of the Statutes of Canada 1968-69, as it read in its application to the 1971 taxation year.

(11.3) Deemed disposition — Subject to subsection (11.31), where a property of a life insurer resident in Canada that carries on an insurance business in Canada and in a country other than Canada or of a non-resident insurer is

(a) designated insurance property of the insurer for a taxation year, was owned by the insurer at the end of the preceding taxation year and was not designated insurance property of the insurer for that preceding year, or

(b) not designated insurance property for a taxation year, was owned by the insurer at the end of the preceding taxation year and was designated insurance property of the insurer for that preceding year,

the following rules apply:

(c) the insurer is deemed to have disposed of the property at the beginning of the year for proceeds of disposition equal to its fair market value at that time and to have reacquired the property immediately after that time at a cost equal to that fair market value,

(d) where paragraph (a) applies, any gain or loss arising from the disposition is deemed not to be a gain or loss from designated insurance property of the insurer in the year, and

(e) where paragraph (b) applies, any gain or loss arising from the disposition is deemed to be a gain or loss from designated insurance property of the insurer in the year.

Related Provisions: 54"superficial loss"(c) — Superficial loss rule does not apply; 138(11.31) — Exception where mark-to-market deemed disposition has applied; 138(11.4) — Loss deductible only in year property disposed of.

History: The portion of subsec. 138(11.3) after para. (b) amended by 2001, c. 17, subsec. 133(3), applicable to 1997 *et seq.* The portion formerly read:

the insurer is deemed to have disposed of the property at the beginning of the year for proceeds of disposition equal to its fair market value at that time and to have immediately thereafter reacquired the property at a cost equal to that fair market value.

Subsec. 138(11.3) amended by 1997, c. 25, subsec. 39(10), applicable to 1997 *et seq.* Subsec. (11.3) formerly read:

(11.3) Subject to subsection (11.31), and except for the purposes of paragraph 20(1)(l), the description of A in the definition "undepreciated capital cost" in subsection 13(21) and paragraph (b) of the description of F in that definition and any regulations made for the purpose of the definition "property used by it in the year in, or held by it in the year in the course of" in subsection (12), where a life insurer resident in Canada, or a non-resident insurer, that carries on an insurance business in Canada and in a country other than Canada, at any time,

(a) acquires property for some other purpose and at a later time commences to use that property as property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada, or

(b) acquires property for use as property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada and at a later time commences to use the property for some other purpose,

(c), (d) [Repealed]

the insurer shall be deemed to have disposed of the property at that later time for proceeds of disposition equal to its fair market value at that time and to have immediately thereafter reacquired the property at a cost equal to that fair market value.

The opening words of subsec. 138(11.3) amended by 1995, c. 21, subsec. 57(8), applicable to changes in use of property occurring in taxation years that begin after October 1994. The opening words formerly read:

(11.3) Except for the purposes of paragraphs (3)(d), (4)(c) and 20(1)(l), the description of A in the definition "undepreciated capital cost" in subsection 13(21) and paragraph (b) of the description of F in that definition and any regulations made for the purpose of the

definition "property used by it in the year in, or held by it in the year in the course of" in subsection (12), where a life insurer resident in Canada, or a non-resident insurer, that carries on an insurance business in Canada and in a country other than Canada, at any time,

Paras. 138(11.3)(c) and (d) repealed by 1995, c. 21, subsec. 57(9), applicable to changes in use of property occurring after February 22, 1994. Paras. (c) and (d) formerly read:

(c) acquires property that is a bond, debenture, mortgage, agreement of sale or any other form of indebtedness for use as property used by it in the year in, or held by it in the year in the course of, carrying on a life insurance business in Canada and at a later time commences to use the property in, or hold it in the course of, carrying on a business other than a life insurance business in Canada, or

(d) acquires property that is a bond, debenture, mortgage, agreement of sale or any other form of indebtedness for use in, or to be held in the course of, carrying on a business other than a life insurance business in Canada and at a later time commences to use the property as property used by it in the year in, or held by it in the year in the course of, carrying on a life insurance business in Canada,

That portion of subsec. 138(11.3) preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 114(2), applicable to taxation years beginning after June 17, 1987 that end after 1987. That portion formerly read:

(11.3) Except for the purposes of the definition "amortized cost" in subsection 248(1) as it applies to paragraphs (3)(d) and (4)(c), paragraph 20(1)(l), the description of A in the definition "undepreciated capital cost" in subsection 13(21) and paragraph (b) of the description of F in that definition and any regulations made for the purposes of the definition "property used by it in the year in, or held by it in the year in the course of" in subsection (12), where a life insurer resident in Canada, or a non-resident insurer, that carries on an insurance business in Canada and in a country other than Canada, at any time,

I.T. Application Rules: 26(17.1) (ITAR 26 does not apply to property owned since before 1972 where 138(11.3) applies).

(11.31) Exclusion from deemed disposition — Subsection (11.3) does not apply

(a) to deem a disposition in a taxation year of a property of an insurer where subsection 142.5(2) deemed the insurer to have disposed of the property in its preceding taxation year; nor

(b) for the purposes of paragraph 20(1)(l), the description of A and paragraph (b) of the description of F in the definition "undepreciated capital cost" in subsection 13(21) and the definition "designated insurance property" in subsection (12).

History: Subsec. 138(11.31) amended by 1997, c. 25, subsec. 39(10), applicable to 1997 *et seq.* Subsec. (11.31) formerly read:

(11.31) Subsection (11.3) does not apply in respect of a change in use of a property of an insurer where subsection 142.5(2) deemed the insurer to have disposed of the property in the taxation year that ended immediately before the change in use.

Subsec. 138(11.31) added by 1995, c. 21, subsec. 57(10), applicable to changes in use of property occurring in taxation years that begin after October 1994.

(11.4) Deduction of loss — Notwithstanding any other provision of this Act, where an insurer has a loss for a taxation year from the disposition, because of subsection (11.3), of a property other than a specified debt obligation (as defined in subsection 142.2(1)), and the loss would, but for this subsection, have been deductible in the year, the loss shall be deductible only in the taxation year in which the taxpayer disposes of the property otherwise than because of subsection (11.3).

History: Subsec. 138(11.4) amended by 1995, c. 21, subsec. 57(11), applicable to property deemed by subsection 138(11.3) to be disposed of after 1994. Subsec. (11.4) formerly read:

(11.4) Rules on deemed disposition and reacquisition — Where, but for this subsection, an insurer in a taxation year would, by virtue of subsection (11.3), have realized an otherwise deductible loss for the year in respect of any property, notwithstanding any other provision of this Act, that loss shall be deductible only in the taxation year in which the insurer disposes of the property otherwise than by virtue of subsection (11.3).

(11.41) [Repealed]

History: Subsec. 138(11.41) repealed by 1995, c. 21, subsec. 57(12), applicable to changes in use of property occurring after February 22, 1994. Subsec. (11.41) formerly read:

(11.41) Inclusion of gain — Where, by reason of a change in use referred to in paragraph (11.3)(c) or (d) of a property that is a bond, debenture, mortgage, agreement of sale or any other form of indebtedness, an insurer would, by reason of subsection (11.3), have realized an otherwise taxable gain at any time in respect of such property, that gain shall be included in computing the income of the insurer only in the taxation year in which the insurer disposes of or is deemed to have disposed of the property otherwise than by reason of a change in use of the property referred to in paragraph (11.3)(c) or (d).

(11.5) Transfer of insurance business by non-resident insurer — Where

(a) a non-resident insurer (in this subsection referred to as the "transferor") has, at any time in a taxation year, ceased to carry on all or substantially all of an insurance business carried on by it in Canada in that year,

(b) the transferor has, at that time or within 60 days after that time, transferred all or substantially all of the property (in this subsection referred to as the "transferred property") that is owned by it at that time and that was designated insurance property in respect of the business for the taxation year that, because of paragraph (h), ended immediately before that time

(i) to a corporation (in this subsection referred to as the "transferee") that is a qualified related corporation (within the meaning assigned by subsection 219(8)) of the transferor that began immediately after that time to carry on that insurance business in Canada, and

(ii) for consideration that includes shares of the capital stock of the transferee,

(c) the transferee has, at that time or within 60 days thereafter, assumed or reinsured all or substantially all of the obligations of the transferor that arose in the course of carrying on that insurance business in Canada, and

(d) the transferor and the transferee have jointly elected in prescribed form and in accordance with subsection (11.6),

the following rules apply:

(e) subject to paragraph (k.1), where the fair market value, at that time, of the consideration (other than shares of the capital stock of the transferee or a right to receive any such shares) received or receivable by the transferor for the transferred property does not exceed the total of the cost amounts to the transferor, at that time, of the transferred property, the proceeds of disposition of the transferor and the cost to the transferee of the transferred property shall be deemed to be the cost amount, at that time, to the transferor of the transferred property, and in any other case, the provisions of subsection 85(1) shall be applied in respect of the transfer,

(f) where the provisions of subsection 85(1) are not required to be applied in respect of the transfer, the cost to the transferor of any particular property (other than shares of the capital stock of the transferee or a right

to receive any such shares) received or receivable by it as consideration for the transferred property shall be deemed to be the fair market value, at that time, of the particular property,

(g) where the provisions of subsection 85(1) are not required to be applied in respect of the transfer, the cost to the transferor of any shares of the capital stock of the transferee received or receivable by the transferor as consideration for the transferred property shall be deemed to be

(i) where the shares are preferred shares of any class of the capital stock of the transferee, the lesser of

(A) the fair market value of those shares immediately after the transfer of the transferred property, and

(B) the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount, if any, by which the proceeds of disposition of the transferor of the transferred property determined under paragraph (e) exceed the fair market value, at that time, of the consideration (other than shares of the capital stock of the transferee or a right to receive any such shares) received or receivable by the transferor for the transferred property,

B is the fair market value, immediately after the transfer of the transferred property, of those preferred shares of that class, and

C is the fair market value, immediately after the transfer of the transferred property, of all preferred shares of the capital stock of the transferee receivable by the transferor as consideration for the transferred property, and

(ii) where the shares are common shares of any class of the capital stock of the transferee, the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount, if any, by which the proceeds of disposition of the transferor of the transferred property determined under paragraph (e) exceed the total of the fair market value, at that time, of the consideration (other than shares of the capital stock of the transferee or a right to receive any such shares) received or receivable by the transferor for the transferred property and the cost to the transferor of all preferred shares of the capital stock of the transferee receivable by the transferor as consideration for the transferred property,

B is the fair market value, immediately after the transfer of the transferred property, of those shares of that class, and

C is the fair market value, immediately after the transfer of the transferred property, of all common shares of the capital stock of the transferee receivable by the transferor as consideration for the transferred property,

(h) for the purposes of this Act, the transferor and the transferee shall be deemed to have had taxation years ending immediately before that time and, for the purposes of determining the fiscal periods of the transferor and transferee after that time, they shall be deemed not to have established fiscal periods before that time,

(i) for the purpose of determining the amount of gross investment revenue required by subsection (9) to be included in computing the transferor's income for the particular taxation year referred to in paragraph (h) and its gains and losses from its designated insurance property for its subsequent taxation years, the transferor is deemed to have transferred the business referred to in paragraph (a), the property referred to in paragraph (b) and the obligations referred to in paragraph (c) to the transferee on the last day of the particular year,

(j) for the purpose of determining the income of the transferor and the transferee for their taxation years following their taxation years referred to in paragraph (h), amounts deducted by the transferor as reserves under subparagraphs (3)(a)(i), (ii) and (iv), paragraphs 20(1)(l) and (l.1) and 20(7)(c) of this Act and section 33 and paragraph 138(3)(c) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in its taxation year referred to in paragraph (h) in respect of the transferred property referred to in paragraph (b) or the obligations referred to in paragraph (c) shall be deemed to have been deducted by the transferee, and not the transferor, for its taxation year referred to in paragraph (h),

(j.1) for the purpose of determining the income of the transferor and the transferee for their taxation years following their taxation years referred to in paragraph (h), amounts included under paragraphs (4)(b) and 12(1)(e.1) in computing the transferor's income for its taxation year referred to in paragraph (h) in respect of the insurance policies of the business referred to in paragraph (a) are deemed to have been included in computing the income of the transferee, and not of the transferor, for their taxation years referred to in paragraph (h),

(k) for the purposes of this section, sections 12, 12.3, 12.4, 20, 138.1, 140 and 142, subsections 142.5(5) and (7), paragraphs 142.4(4)(c) and (d), section 148 and Part XII.3, the transferee shall, in its taxation years following its taxation year referred to in paragraph (h), be deemed to be the same person as, and a continuation of, the transferor in respect of the business referred to in paragraph (a), the transferred property referred to in paragraph (b) and the obligations referred to in paragraph (c),

(k.1) except for the purpose of this subsection, where the provisions of subsection 85(1) are not required to be applied in respect of the transfer,

(i) the transferor shall be deemed not to have disposed of a transferred property that is a specified debt obligation (other than a mark-to-market property), and

(ii) the transferee shall be deemed, in respect of a transferred property that is a specified debt obligation (other than a mark-to-market property), to be

the same person as, and a continuation of, the transferor,

and for the purpose of this paragraph, "mark-to-market property" and "specified debt obligation" have the meanings assigned by subsection 142.2(1),

(k.2) for the purposes of subsections 112(5) to (5.2) and (5.4) and the definition "mark-to-market property" in subsection 142.2(1), the transferee shall be deemed, in respect of the transferred property, to be the same person as, and a continuation of, the transferor,

(l) for the purposes of this subsection and subsections (11.7) and (11.9), the fair market value of consideration received by the transferor from the transferee in respect of the assumption or reinsurance of a particular obligation referred to in paragraph (c) shall be deemed to be the total of the amounts deducted by the transferor as a reserve under subparagraphs (3)(a)(i), (ii) and (iv) and paragraph 20(7)(c) in its taxation year referred to in paragraph (h) in respect of the particular obligation, and

(m) for the purpose of computing the income of the transferor or the transferee for their taxation years following their taxation years referred to in paragraph (h),

(i) an amount in respect of a reinsurance premium paid or payable by the transferor to the transferee in respect of the obligations referred to in paragraph (c), or

(ii) an amount in respect of a reinsurance commission paid or payable by the transferee to the transferor in respect of the amount referred to in subparagraph (i)

under a reinsurance arrangement undertaken to effect the transfer of the insurance business to which this subsection applied shall be included or deducted, as the case may be, only to the extent that may be reasonably regarded as necessary to determine the appropriate amount of income of both the transferor and the transferee.

Related Provisions: 116(6)(e) — No s. 116 certificate required on disposition of Canadian insurance business assets; 138(11.6) — Time of election; 138(11.7) — Computation of paid-up capital; 138(11.94) — Transfer of business by resident insurer; 142.6(5), (6) — Acquisition of specified debt obligation by financial institution in rollover transaction; 181.3(3)(d)(i)(A)(III), 190.13(c)(i)(A)(III) — Effect on capital tax; 219(5.2) — Branch tax — election by non-resident insurer who has transferred business; Reg. 8101(4) — Inclusion in income of transferee re unpaid claims reserve; Reg. 8103(4) — Mark-to-market — transition inclusion; Reg. 9204(3) — Residual portion of specified debt obligation.

History: Para. 138(11.5)(b) amended by 2001, c. 17, subsec. 133(4), applicable to 1999 *et seq.* except that, where a taxpayer or a taxpayer's legal representative so elects in writing, filed with the Minister of National Revenue before 2002, the amended para. applies to the taxpayer's 1997 and subsequent taxation years. The para. formerly read:

(b) the transferor has, at that time or within 60 days thereafter, transferred all or substantially all of the property owned by it at that time and used by it in the year in, or held by it in the year in the course of, carrying on that insurance business in Canada in that year (in this subsection referred to as the "transferred property") to a corporation (in this subsection referred to as the "transferee") that is a qualified related corporation (within the meaning assigned by subsection 219(8)) of the transferor that, immediately after that time, began to carry on that insurance business in Canada and the consideration for the transfer includes shares of the capital stock of the transferee,

Para. 138(11.5)(i) amended, para. (j.1) added, by 1997, c. 25, subsecs. 39(11), (12); para. (i) applicable to the transfer by an insurer of an insurance business in its 1997 or a subsequent taxation year; para. (j.1) applicable to 1996 *et seq.* Para. (i) formerly read:

(i) for the purpose of determining the amount of gross investment revenue required to be included in computing the transferor's income for the year under subsection (9) and its gains and losses from property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada for its taxation years following its year referred to in paragraph (h), the transferor shall be deemed to have transferred the business referred to in paragraph (a), the property referred to in paragraph (b) and the obligations referred to in paragraph (c) to the transferee on the last day of its taxation year referred to in paragraph (h),

Para. 138(11.5)(e) amended by 1995, c. 21, subsec. 57(13), applicable to transfers of insurance businesses occurring after February 22, 1994. Para. (e) formerly read:

(e) where the fair market value, at that time, of the consideration (other than shares of the capital stock of the transferee or a right to receive any such shares) received or receivable by the transferor for the transferred property does not exceed the total of the cost amounts to the transferor, at that time, of the transferred property, the proceeds of disposition of the transferor and the cost to the transferee of the transferred property shall be deemed to be the cost amount, at that time, to the transferor of the transferred property, and in any other case, the provisions of subsection 85(1) shall be applied in respect of the transfer,

Para. 138(11.5)(k) amended and paras. (k.1) and (k.2) added by 1995, c. 21, subsec. 57(14); para. (k) applicable to transfers of insurance businesses occurring after October 1994, para. (k.1) applicable to transfers of insurance businesses occurring after February 22, 1994, and para. (k.2) applicable to transfers of insurance businesses occurring at any time (including, for greater certainty, transfers occurring before June 22, 1995). Para. (k) formerly read:

(k) for the purposes of this section, sections 12, 12.3, 12.4, 20, 138.1, 140, 142 and 148 and Part XII.3 of this Act and of section 33 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it applied to taxation years and fiscal periods beginning before June 18, 1987, the transferee shall, in its taxation years following its taxation year referred to in paragraph (h), be deemed to be the same person as, and a continuation of, the transferor in respect of the business referred to in paragraph (a), the transferred property referred to in paragraph (b) and the obligations referred to in paragraph (c),

Paras. 138(11.5)(b) and (k) amended by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 114(3), (4), applicable to transfers of an insurance business occurring after December 15, 1987. Paras. (b), (k) formerly read:

(b) the transferor has, at that time or within 60 days thereafter, transferred all or substantially all of the property used by it in the year in, or held by it in the year in the course of, carrying on that insurance business in Canada in that year (in this subsection referred to as the "transferred property") to a corporation (in this subsection referred to as the "transferee") that is a qualified related corporation (within the meaning assigned by subsection 219(8)) of the transferor which, immediately after that time, commenced to carry on that insurance business in Canada and the consideration for the transfer includes shares of the capital stock of the transferee,

. . . . .

(k) for the purposes of this section and sections 12, 12.3, 12.4, 20, 138.1, 140, 142 and 148 of this Act and section 33 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, the transferee shall, in its taxation years following its taxation year referred to in paragraph (h), be deemed to be the same person as, and a continuation of, the transferor in respect of the business referred to in paragraph (a), the transferred property referred to in paragraph (b) and the obligations referred to in paragraph (c),

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Forms: T2100: Joint election in respect of an insurance business transferred by a non-resident insurer.

(11.6) Time of election — Any election under subsection (11.5) shall be made on or before the day that is the earliest of the days on or before which any taxpayer making the election is required to file a return of income pursuant to section 150 for the taxation year in which the transactions to which the election relates occurred.

(11.7) Computation of paid-up capital — Where, after December 15, 1987, subsection (11.5) is applicable in respect of a transfer of property by a non-resident insurer to a qualified related corporation of the insurer and the provisions of subsection 85(1) were not required to be applied in respect of the transfer, the following rules apply:

(a) in computing the paid-up capital, at any time after the transfer, in respect of any particular class of shares of the capital stock of the qualified related corporation, there shall be deducted an amount determined by the formula

$$(A - B) \times \frac{C}{A}$$

where

A is the increase, if any, determined without reference to this subsection as it applies to the transfer, in the paid-up capital in respect of all the shares of the capital stock of the corporation as a result of the transfer,

B is the amount, if any, by which the cost of the transferred property to the corporation, immediately after the transfer, exceeds the fair market value, immediately after the transfer, of any consideration (other than shares of the capital stock of the corporation) received or receivable by the insurer from the corporation for the property, and

C is the increase, if any, determined without reference to this subsection as it applies to the transfer, in the paid-up capital in respect of the particular class of shares as a result of the acquisition by the corporation of the transferred property; and

(b) in computing the paid-up capital, at any time after December 15, 1987, in respect of any particular class of shares of the capital stock of the qualified related corporation, there shall be added an amount equal to the lesser of

(i) the amount, if any, by which

(A) the total of all amounts each of which is an amount deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of that class paid after December 15, 1987 and before that time by the corporation

exceeds

(B) the total of such dividends that would have been determined under clause (A) if this Act were read without reference to paragraph (a), and

(ii) the total of all amounts each of which is an amount required by paragraph (a) to be deducted in computing the paid-up capital in respect of that class of shares after December 15, 1987 and before that time.

Related Provisions: 138(11.5)(l) — Transfer of insurance business by non-resident insurer; 257 — Formula cannot calculate to less than zero.

(11.8) Rules on transfers of depreciable property — Where

(a) subsection (11.5) is applicable in respect of a transfer of depreciable property by a non-resident insurer to a qualified related corporation,

(b) the provisions of subsection 85(1) were not required to be applied in respect of the transfer, and

(c) the capital cost to the insurer of the depreciable property exceeds its proceeds of disposition therefor,

for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a), the following rules apply:

(d) the capital cost of the depreciable property to the corporation shall be deemed to be the amount that was the capital cost thereof to the insurer, and

(e) the excess shall be deemed to have been allowed to the corporation in respect of the property under regulations made under paragraph 20(1)(a) in computing its income for taxation years ending before the transfer.

(11.9) Computation of contributed surplus — Where, after December 15, 1987, subsection (11.5) or 85(1) is applicable in respect of a transfer of property by a person or partnership to an insurance corporation resident in Canada and

(a) the total of

(i) the fair market value, immediately after the transfer, of any consideration (other than shares of the capital stock of the corporation) received or receivable by the person or partnership from the corporation for the transferred property,

(ii) the increase, if any, in the paid-up capital of all the shares of the capital stock of the corporation (determined without reference to subsection (11.7) or 85(2.1) as it applies in respect of the transfer) arising on the transfer, and

(iii) the increase, if any, in the contributed surplus of the corporation (determined without reference to this subsection as it applies in respect of the transfer) arising on the transfer

exceeds

(b) the total of

(i) the total of all amounts each of which is an amount required to be deducted in computing the paid-up capital of a class of shares of the capital stock of the corporation under subsection (11.7) or 85(2.1), as the case may be, as it applies in respect of the transfer, and

(ii) the cost to the corporation of the transferred property,

for the purposes of paragraph 84(1)(c.1) and subsections 219(5.2) and (5.3), the contributed surplus of the corporation arising on the transfer shall be deemed to be the amount, if any, by which the amount of the contributed surplus otherwise determined exceeds the amount, if any, by which the total determined under paragraph (a) exceeds the total determined under paragraph (b).

Related Provisions: 138(11.5)(l) — Transfer of insurance business by non-resident insurer.

(11.91) Computation of income of non-resident insurer — Where, at any time in a particular taxation year,

(a) a non-resident insurer carries on an insurance business in Canada, and

(b) immediately before that time, the insurer was not carrying on an insurance business in Canada or ceased to be exempt from tax under this Part on any income from such business by reason of any Act of Parliament or anything approved, made or declared to have the force of law thereunder,

for the purpose of computing the income of the insurer for the particular taxation year,

(c) the insurer shall be deemed to have had a taxation year ending immediately before the commencement of the particular taxation year,

(d) for the purposes of paragraphs 12(1)(d) and (e), paragraph (4)(a), subsection (9) and the definition "designated insurance property" in subsection (12), the insurer is deemed to have carried on the business in Canada in that preceding year and to have claimed the maximum amounts to which it would have been entitled under paragraphs 20(1)(l) and (l.1) and 20(7)(c) and subparagraphs (3)(a)(i), (ii) and (iv) for that year,

(d.1) for the purposes of subsection 20(22) and subparagraph (3)(a)(ii.1),

(i) the insurer is deemed to have carried on the business referred to in paragraph (a) in Canada in the preceding taxation year referred to in paragraph (c), and

(ii) the amounts, if any, that would have been prescribed in respect of the insurer for the purposes of paragraphs (4)(b) and 12(1)(e.1) for that preceding year in respect of the insurance policies of that business are deemed to have been included in computing its income for that year,

(e) the insurer is deemed to have disposed, immediately before the beginning of the particular taxation year, of each property owned by it at that time that is designated insurance property in respect of the business referred to in paragraph (a) for the particular taxation year, for proceeds of disposition equal to the fair market value at that time and to have reacquired, at the beginning of the particular taxation year, the property at a cost equal to that fair market value, and

(f) where paragraph (e) applies in respect of depreciable property of the insurer and the cost thereof to the insurer immediately before the commencement of the particular taxation year exceeds the fair market value thereof at that time, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a),

(i) the capital cost of the property to the insurer at that time shall be deemed to be the cost thereof to the insurer at that time, and

(ii) the excess shall be deemed to have been allowed to the insurer in respect of the property under regulations made under paragraph 20(1)(a) in computing its income for taxation years ending before the commencement of the particular taxation year.

Proposed Repeal — 138(11.91)(f)

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 135(3), will repeal para. 138(11.91)(f), applicable to taxation years that end after 1999.

Technical Notes: Subsection 138(11.91) provides rules for the purpose of computing the income of a non-resident insurer that at any time in a particular taxation year commences to carry on business in Canada or that ceases to be exempt from tax under Part I of the Act.

Paragraph 138(11.91)(f) of the English version of the Act applies where the non-resident insurer's capital cost of a depreciable property exceeds the property's fair market value immediately before the commencement of the particular taxation year. To ensure that on a later disposition of the property the non-resident insurer is subject to recapture of any excess capital cost allowance claimed before the particular taxation year, this paragraph preserves the property's capital cost, and treats the excess as having been allowed as capital cost allowance.

Since it is inappropriate to provide for the recapture of capital cost allowance that was claimed when the business was not carried on in Canada or when the non-resident insurer was exempt from tax under Part I of the Act, paragraph 138(11.91)(f) of the English version of the Act is repealed.

Related Provisions: 95(2)(k.1) — Application to start-up of business of foreign affiliate.

History: Para. 138(11.91)(e) amended by 2001, c. 17, subsec. 133(5), applicable to 1999 *et seq.* except that, where a taxpayer or a taxpayer's legal representative so elects in writing, filed with the Minister of National Revenue before 2002, the amended para. applies to the taxpayer's 1997 and subsequent taxation years. The para. formerly read:

(e) the insurer shall, immediately before the commencement of the particular taxation year, be deemed to have disposed of each property that was owned by it at that time and used by it in the year in, or held by it in the year in the course of, carrying on the business referred to in paragraph (a) for proceeds of disposition equal to the fair market value of the property at that time and to have reacquired the property at that time at a cost equal to that fair market value, and

Para. 138(11.91)(d) amended, para. (d.1) added, by 1997, c. 25, subsec. 39(13); para. (d) applicable to 1997 *et seq.*, and para. (d.1) applicable to 1996 *et seq.* Para. (d) formerly read:

(d) for the purposes of paragraphs 12(1)(d) and (e), paragraph (4)(a) and subsection (9) and any regulations made under the definition "property used by it in the year in, or held by it in the year in the course of" in subsection (12), the insurer shall be deemed to have carried on the business referred to in paragraph (a) in Canada in the immediately preceding taxation year referred to in paragraph (c) and to have claimed the maximum amounts to which it would have been entitled under subparagraphs (3)(a)(i), (ii) and (iv), paragraphs 20(1)(l) and (l.1) and 20(7)(c) of this Act and section 33 and paragraph 138(3)(c) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, for that year,

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

(11.92) Computation of income where insurance business is transferred — Where, at any time in a taxation year, an insurer (in this subsection referred to as the "vendor") has disposed of

(a) all or substantially all of an insurance business carried on by it in Canada, or

(b) all or substantially all of a line of business of an insurance business carried on by it in Canada

to a person (in this subsection referred to as the "purchaser") and obligations in respect of the business or line of business, as the case may be, in respect of which a reserve may be claimed under subparagraph (3)(a)(i) or (ii) or paragraph 20(7)(c) (in this subsection referred to as the "obligations") were assumed by the purchaser, the following rules apply:

(c) for the purpose of determining the amount of the gross investment revenue required to be included in computing the income of the vendor and the purchaser under subsection (9) and the amount of the gains and losses of the vendor and the purchaser from designated insurance property for the year

(i) the vendor and the purchaser shall, in addition to their normal taxation years, be deemed to have had a taxation year ending immediately before that time, and

(ii) for the taxation years of the vendor and the purchaser following that time, the business or line of business, as the case may be, disposed of to, and the obligations assumed by, the purchaser shall be deemed to have been disposed of or assumed, as the case may be, on the last day of the taxation year referred to in subparagraph (i),

(d) for the purpose of computing the income of the vendor and the purchaser for taxation years ending after that time,

(i) an amount paid or payable by the vendor to the purchaser in respect of the obligations, or

(ii) an amount in respect of a commission paid or payable by the purchaser to the vendor in respect of the amount referred to in subparagraph (i)

shall be deemed to have been paid or payable or received or receivable, as the case may be, by the vendor or the purchaser, as the case may be, in the course of carrying on the business or line of business, as the case may be, and

(e) where the vendor has disposed of all or substantially all of an insurance business referred to in paragraph (a), the vendor shall, for the purposes of section 219, be deemed to have ceased to carry on that business at that time.

Related Provisions: 181.3(3)(d)(i)(A)(III), 190.13(c)(i)(A)(III) — Effect on capital tax.

History: The opening words of para. 138(11.92)(c) amended by 1997, c. 25, subsec. 39(14), applicable to the disposition by an insurer of an insurance business or a line of business of an insurance business in its 1997 or a subsequent taxation year. The opening words formerly read:

(c) for the purpose of determining the amount of the gross investment revenue required to be included in the income of the vendor and the purchaser under subsection (9) and the amount of the gains and losses of the vendor and the purchaser from property used by it in the year in or held by it in the year in the course of carrying on an insurance business in Canada

(11.93) Property acquired on default in payment — Where, at any time in a taxation year of an insurer, the beneficial ownership of property is acquired or reacquired by the insurer in consequence of the failure to pay all or any part of an amount (in this subsection referred to as the "insurer's claim") owing to the insurer at that time in respect of a bond, debenture, mortgage, hypothecary claim, agreement of sale or any other form of indebtedness owned by the insurer, the following rules apply to the insurer:

(a) section 79.1 does not apply in respect of the acquisition or reacquisition;

(b) the insurer shall be deemed to have acquired or reacquired, as the case may be, the property at an amount equal to the fair market value of the property, immediately before that time;

(c) the insurer shall be deemed to have disposed at that time of the portion of the indebtedness represented by the insurer's claim for proceeds of disposition equal to that fair market value and, immediately after that time, to have reacquired that portion of the indebtedness at a cost of nil;

(d) the acquisition or reacquisition shall be deemed to have no effect on the form of the indebtedness; and

(e) in computing the insurer's income for the year or a subsequent taxation year, no amount is deductible under paragraph 20(1)(l) in respect of the insurer's claim.

History: The opening words of subsec. 138(11.93) amended by 2001, c. 17, s. 218 to add the words "hypothecary claim", in force June 14, 2001.

Subsec. 138(11.93) amended by 1995, c. 21, s. 39, applicable to property acquired or reacquired after February 21, 1994, other than acquisitions or reacquisitions pursuant to a court order made before February 22, 1994. Subsec. (11.93) formerly read:

(11.93) Notwithstanding section 79, where, at any time in a taxation year, an insurer has acquired or reacquired the beneficial ownership of property in consequence of another person's failure to pay all or any part of an amount (in this subsection referred to as the "insurer's claim") owing by the other person to the insurer in respect of a bond, debenture, mortgage, agreement of sale or any other form of indebtedness owned by the insurer, the following rules apply:

(a) in computing the other person's proceeds of disposition of the property, there shall be included the amount of the insurer's claim;

(b) any amount paid by the other person after the acquisition or reacquisition, as the case may be, of the property on account of or in satisfaction of the insurer's claim shall be deemed to be a loss of that person from the disposition of the property for that person's taxation year in which payment of that amount was made;

(c) the insurer shall be deemed to have acquired or reacquired, as the case may be, the property at an amount equal to the fair market value of the property, immediately before that time, and to have disposed of the bond, debenture, mortgage, agreement of sale or other form of indebtedness, as the case may be, for proceeds of disposition equal to that fair market value;

(d) the cost amount to the insurer of the insurer's claim shall be deemed to be nil and the insurer's claim shall be deemed to be a bond, debenture, mortgage, agreement of sale or other form of indebtedness, as the case may be; and

(e) in computing the insurer's income for the year or a subsequent year, no amount is deductible in respect of the insurer's claim by reason of paragraph 20(1)(l).

(11.94) Transfer of insurance business by resident insurer — Where

(a) an insurer resident in Canada (in this subsection referred to as the "transferor") has, at any time in a taxation year, ceased to carry on all or substantially all of an insurance business carried on by it in Canada in that year,

(b) the transferor has, at that time or within 60 days after that time,

(i) in the case of a transferor that is a life insurer and that carries on an insurance business in Canada and in a country other than Canada in the year, transferred all or substantially all of the property (in subsection (11.5) referred to as the "transferred property") that is owned by it at that time and that was designated insurance property in respect of the business for the taxation year that, because of paragraph (11.5)(h), ended immediately before that time, or

(ii) in any other case, transferred all or substantially all of the property owned by it at that time and used by it in the year in, or held by it in the year in the course of, carrying on that insurance business in Canada in that year (in subsection (11.5) referred to as the "transferred property")

to a corporation resident in Canada (in this subsection referred to as the "transferee") that is a subsidiary wholly-owned corporation of the transferor that, immediately after that time, began to carry on that insurance business in Canada for consideration that includes shares of the capital stock of the transferee,

(c) the transferee has, at that time or within 60 days thereafter, assumed or reinsured all or substantially all of the obligations of the transferor that arose in the course of carrying on that insurance business in Canada, and

(d) the transferor and the transferee have jointly elected in prescribed form and in accordance with subsection (11.6),

paragraphs (11.5)(e) to (m) and subsections (11.7) to (11.9) apply in respect of the transfer.

Proposed Amendment — 138(11.94)

Letter from Department of Finance, November 5, 2004: See under 248(1)"subsidiary wholly-owned corporation".

Related Provisions: 142.6(5), (6) — Acquisition of specified debt obligation by financial institution in rollover transaction; Reg. 8101(4) — Inclusion in income of transferee re unpaid claims reserve; Reg. 8103(4) — Mark-to-market — transition inclusion; Reg. 9204(3) — Residual portion of specified debt obligation.

History: Para. 138(11.94)(b) amended by 2001, c. 17, subsec. 133(6), applicable to 1999 *et seq.* except that, where a taxpayer or a taxpayer's legal representative so elects in writing, filed with the Minister of National Revenue before 2002, the amended para. applies to the taxpayer's 1997 and subsequent taxation years. The para. formerly read:

> (b) the transferor has, at that time or within 60 days thereafter, in the year transferred all or substantially all of the property used or held by it in the year in the course of carrying on that insurance business in Canada to a corporation resident in Canada (in this subsection referred to as the "transferee") that is a subsidiary wholly-owned corporation of the transferor which, immediately after that time, began to carry on that insurance business in Canada and the consideration for the transfer includes shares of the capital stock of the transferee,

Para. 138(11.94)(b) amended by 1997, c. 25, subsec. 39(15), applicable to 1997 *et seq.* Para. (b) formerly read:

> (b) the transferor has, at that time or within 60 days thereafter, transferred all or substantially all of the property used by it in the year in, or held by it in the year in the course of, carrying on that insurance business in Canada in that year to a corporation resident in Canada (in this subsection referred to as the "transferee") that is a subsidiary wholly-owned corporation of the transferor which, immediately after that time, commenced to carry on that insurance business in Canada and the consideration for the transfer includes shares of the capital stock of the transferee,

(12) Definitions — In this section,

"accumulated 1968 deficit" — [Repealed]

History: The definition "accumulated 1968 deficit" in subsec. 138(12) repealed by 1997, c. 25, subsec. 39(16), applicable to 1997 *et seq.* The definition formerly read:

> "accumulated 1968 deficit" of a life insurer means such amount as can be established by the insurer to be its deficit as of the end of its 1968 taxation year from carrying on its life insurance business in Canada on the assumption that the amounts of its assets and liabilities (including reserves of any kind)
>
> (a) as of the end of any taxation year before its 1968 taxation year, were the amounts thereof determined for the purposes of the relevant authority, and
>
> (b) as of the end of its 1968 taxation year, were
>
> (i) in respect of depreciable property, the capital cost thereof as of the first day of its 1969 taxation year,
>
> (ii) in respect of policy reserves, the insurer's maximum tax actuarial reserves for its 1968 taxation year for life insurance policies issued by it in the course of carrying on its life insurance business in Canada, and
>
> (iii) in respect of other assets and liabilities, the amounts thereof determined as of the end of that year for the purpose of computing its income for its 1969 taxation year;

"amortized cost [para. 138(12)(b)]" — [Repealed under former Act]

"amount payable", in respect of a policy loan at a particular time, means the amount of the policy loan and the interest thereon that is outstanding at that time;

Related Provisions: 148(9) — "amount payable".

"Canada security" — [Repealed]

History: The definition "Canada security" in subsec. 138(12) repealed by 1995, c. 21, subsec. 57(15), applicable to taxation years that begin after February 22, 1994. The definition formerly read:

> "Canada security" in respect of a life insurer that carried on a business in Canada in a taxation year, means a bond, debenture, mortgage, agreement of sale or any other indebtedness that was property used by it in the year in, or held by it in the year in the course of, carrying on its life insurance business in Canada, other than property included in a segregated fund;

"cost" — [Repealed]

History: The definition "cost" in subsec. 138(12) repealed by 1995, c. 21, subsec. 57(15), applicable to taxation years that begin after February 22, 1994. The definition formerly read:

> "cost" to an insurer of acquiring a mortgage includes any amount advanced by the insurer to the borrower by way of loan under the terms of the mortgage;

"designated insurance property" for a taxation year of an insurer (other than an insurer resident in Canada that at no time in the year carried on a life insurance business) that, at any time in the year, carried on an insurance business in Canada and in a country other than Canada, means property determined in accordance with prescribed rules except that, in its application to any taxation year, "designated insurance property" for the 1998 or a preceding taxation year means property that was, under this subsection as it read in its application to taxation years that ended in 1996, property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada;

Related Provisions: 138(11.31)(b) — Change in use rule for insurance properties does not apply for purposes of this definition; 248(1)"designated insurance property" — Definition applies to entire Act.

History: The definition "designated insurance property" in subsec. 138(12) amended by 2001, c. 17, subsec. 133(7), applicable to 1997 *et seq.* The definition formerly read:

> "designated insurance property" for a taxation year of an insurer (other than an insurer resident in Canada that at no time in the year carried on a life insurance business) that, at any time in the year, carried on an insurance business in Canada and in a country other than Canada, means property determined in accordance with prescribed rules except that, in its application to any taxation year, "designated insurance property" for the 1996 or a preceding taxation year means property that was, under this subsection as it read in its application to that year, property used by it in the year in, or held by it in the year in the course of carrying on an insurance business in Canada;

The definition "designated insurance property" added to subsec. 138(12) by 1997, c. 25, subsec. 39(17), applicable to 1997 *et seq.*

Regulations: 2401, 2405 (prescribed rules).

"gross investment revenue" of an insurer for a taxation year means the amount determined by the formula

$$A + B + C + D + E + F - G$$

where

A is the total of the following amounts included in its gross revenue for the year:

> (a) taxable dividends, and
>
> (b) amounts received or receivable as, on account of, in lieu of or in satisfaction of, interest, rentals or royalties, other than amounts in respect of debt obligations to which subsection 142.3(1) applies for the year,

B is its income for the year from each trust of which it is a beneficiary,

C is its income for the year from each partnership of which it is a member,

D is the total of all amounts required by subsection 16(1) to be included in computing its income for the year,

E is the total of

> (a) all amounts required by paragraph 142.3(1)(a) to be included in computing its income for the year, and

(b) all amounts required by subsection 12(3) or 20(14) to be included in computing its income for the year except to the extent that those amounts are included in the computation of A,

F is the amount determined by the formula

$$V - W$$

where

V is the total of all amounts included under paragraph 56(1)(d) in computing its income for the year, and

W is the total of all amounts deducted under paragraph 60(a) in computing its income for the year, and

G is the total of all amounts each of which is

(a) an amount deemed by subparagraph 16(6)(a)(ii) to be paid by it in respect of the year as interest, or

(b) an amount deductible under paragraph 142.3(1)(b) in computing its income for the year;

Related Provisions: 148(9) — "interest"; 257 — Formula amounts cannot calculate to less than zero.

History: The description of A in the definition "gross investment revenue" in subsec. 138(12) amended by 1995, c. 21, subsec. 57(17), applicable to taxation years that end after February 22, 1994. The description of A formerly read:

A is the total of all taxable dividends and amounts received or receivable as, on account of, in lieu of or in satisfaction of, interest, rentals or royalties included in its gross revenue for the year,

The description of E in the definition "gross investment revenue" in subsec. 138(12) amended by 1995, c. 21, subsec. 57(18), applicable to taxation years that end after February 22, 1994. The description of E formerly read:

E is the total of all amounts required by subsection 12(3) or 20(14) to be included in computing its income for the year except to the extent that those amounts are included in the computation of A,

The first formula in the definition "gross investment revenue" in subsec. 138(12) amended to add G, and the description of G added, by 1995, c. 21, subsecs. 57(16) and (19), applicable to taxation years that end after October 16, 1991, except that, in its application to taxation years that end before February 23, 1994, the description of G shall be read as follows:

G is the total of all amounts deemed by subparagraph 16(6)(a)(ii) to be paid by it in respect of the year as interest;

In "gross investment revenue" in subsecs. 138(12), the element F was added to the formula, the description of A was amended, and the description of F was added, by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 114(4.1), (5), (6), applicable to 1990 *et seq.* The description of A formerly read:

A is the total amount of all taxable dividends, interest, rentals and royalties included in the insurer's gross revenue for the year,

"group term insurance policy [para. 138(12)(p)]" — [Repealed under former Act]

History: This definition was moved from para. 138(12)(p) to subsec. 138(15) in the R.S.C. 1985 (5th Supp.).

"interest", in relation to a policy loan, means the amount in respect of the policy loan that is required to be paid under the terms and conditions of the policy in order to maintain the policyholder's interest in the policy;

"life insurance policy" includes an annuity contract and a contract all or any part of the insurer's reserves for which vary in amount depending on the fair market value of a specified group of assets;

Related Provisions: 12.2(10) — Riders; 211(1) — "Life insurance policy" for purposes of Part XII.3 tax; 248(1)"life insurance policy" — Definition applies to entire Act.

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies; IT-291R3: Transfer of property to a corporation under subsection 85(1); IT-355R2: Interest on loans to buy life insurance policies and annuity contracts, and interest on policy loans (archived).

"life insurance policy in Canada" means a life insurance policy issued or effected by an insurer on the life of a person resident in Canada at the time the policy was issued or effected;

Related Provisions: 128.1(10)"excluded right or interest"(l) — Life insurance policy in Canada excluded from deemed disposition on emigration; 248(1)"life insurance policy in Canada" — Definition applies to entire Act.

Interpretation Bulletins: IT-355R2: Interest on loans to buy life insurance policies and annuity contracts, and interest on policy loans (archived).

"maximum tax actuarial reserve" for a particular class of life insurance policy for a taxation year of a life insurer means, except as otherwise expressly prescribed, the maximum amount allowable under subparagraph (3)(a)(i) as a policy reserve for the year in respect of policies of that class;

"net Canadian life investment income [para. 138(12)(i)]" — [Repealed under former Act]

"non-segregated property" of an insurer means its property other than property included in a segregated fund;

Related Provisions: 181.3(1)(a) — Taxable capital employed in Canada of financial institution.

"participating life insurance policy" means a life insurance policy under which the policyholder is entitled to share (other than by way of an experience rating refund) in the profits of the insurer other than profits in respect of property in a segregated fund;

"policy loan" means an amount advanced at a particular time by an insurer to a policyholder in accordance with the terms and conditions of a life insurance policy in Canada;

Interpretation Bulletins: IT-355R2: Interest on loans to buy life insurance policies and annuity contracts, and interest on policy loans (archived).

"property used by it in the year in, or held by it in the year in the course of" — [Repealed]

History: The definition "property used by it in the year in, or held by it in the year in the course of" in subsec. 138(12) repealed by 1997, c. 25, subsec. 39(16), applicable to 1997 *et seq.* The definition formerly read:

"property used by it in the year in, or held by it in the year in the course of" carrying on an insurance business in Canada means, in the case of an insurer (other than a resident of Canada that does not carry on a life insurance business) that carried on an insurance business in Canada and in a country other than Canada, property determined in accordance with prescribed rules;

Selected Cases [subsec. 138(12)"property used ..."]: *Victory Reinsurance Co. v. MNR*, [1992] 2 C.T.C. 2200 (TCC) (Amount of reserve reported to Superintendent of Insurance was amount of reserve under Act).

"qualified related corporation" of a non-resident insurer has the meaning assigned by subsection 219(8);

"relevant authority" — [Repealed]

History: The definition "relevant authority" in subsec. 138(12) repealed by 1997, c. 25, subsec. 39(16), applicable to 1997 *et seq.* The definition formerly read:

"relevant authority", in relation to a life insurer, means

(a) the Superintendent of Financial Institutions, if the insurer is required by law to report to the Superintendent of Financial Institutions, or

(b) in any other case, the superintendent of insurance or other similar officer or authority of the province under the laws of which the insurer is incorporated;

"segregated fund" has the meaning given that expression in subsection 138.1(1);

"surplus funds derived from operations" of an insurer as of the end of a particular taxation year means the amount determined by the formula

$$(A + B + C) - (D + E + F + G + H)$$

where

A is the total of the insurer's income for each taxation year in the period beginning with its 1969 taxation year and ending with the particular year from all insurance businesses carried on by it,

B is the total described in subclause (4.1)(a)(ii)(B)(IV), and

C is the total of all profits or gains made by the insurer in the period in respect of non-segregated property of the insurer disposed of by it that was used by it in, or held by it in the course of, carrying on an insurance business in Canada, except to the extent that those profits or gains have been or are included in computing the insurer's income or loss, if any, for any taxation year in the period from carrying on an insurance business,

D is the total of its loss, if any, for each taxation year in the period from all insurance businesses carried on by it,

E is the total of all losses sustained by the insurer in the period in respect of non-segregated property disposed of by it that was used by it in, or held by it in the course of, carrying on an insurance business in Canada, except to the extent that those losses have been or are included in computing the insurer's income or loss, if any, for any taxation year in the period from carrying on an insurance business,

F is the total of

(a) all taxes payable under this Part by the insurer, and all income taxes payable by it under the laws of each province, for each taxation year in the period, except such portion thereof as would not have been payable by it if subsection (7) had not been enacted, and

(b) all taxes payable under Parts I.3 and VI by the insurer for each taxation year in the period,

G is the total of all gifts made in the period by the insurer to a person or organization described in paragraph 110.1(1)(a) or (b), and

H is the amount determined by the formula

$$M - N$$

where

M is the amount determined in respect of the insurer for the particular taxation year under clause (3)(a)(iii)(A), and

N is the amount so determined under clause (3)(a)(iii)(B);

Related Provisions: 257 — Formula amounts cannot calculate to less than zero.

History: The description of F in the definition "surplus funds derived from operations" in subsec. 138(12) substituted by 1994, c. 21, s. 66, applicable to 1992 *et seq.* That description formerly read:

F is the total of any taxes payable by the insurer under this Part and any income tax payable by it under the laws of any province for each taxation year in the period, except such portion thereof as would not have been payable by it if subsection (7) had not been enacted,

I.T. Application Rules: 60.1 (reference to "this Part" in description of F includes Part IA of pre-1972 Act).

"1975 branch accounting election deficiency" of an insurer that has made an election under subsection 138(9) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1977 taxation year, in respect of its 1975 taxation year means the amount determined by the formula

$$(A + B) - (C + D + E + F + G)$$

where

A is such portion of the total of the insurer's gross investment revenue and all amounts determined under paragraphs (4)(b) and (c) as would have been required to be included in computing its income for its 1975 taxation year if

(a) it had not made the election under subsection 138(9) of that Act in respect of that year, and

(b) where it had made the election under subsection 138(9) of that Act in respect of its 1974 taxation year, it had adopted for its 1975 taxation year, with the concurrence of the Minister, the method required by subsection 138(9) of that Act if it had not elected under that subsection and the Minister had specified no terms and conditions under subsection 138(10) of that Act,

B is the total of the amounts deducted in computing the insurer's income for its 1975 taxation year under paragraphs (3)(b) and (d),

C is the total of the insurer's gross investment revenue included in computing its income for its 1975 taxation year and the amounts included in computing its income for that year under paragraphs (4)(b) and (c),

D is such portion of the total of all amounts determined under paragraphs (3)(b) and (d) as would have been deductible in computing the insurer's income for its 1975 taxation year if

(a) it had not made the election under subsection 138(9) of that Act in respect of that year, and

(b) where it had made the election under subsection 138(9) of that Act in respect of its 1974 taxation year, it had adopted for its 1975 taxation year, with the concurrence of the Minister, the method required by subsection 138(9) of that Act if it had not elected under that subsection and the Minister had specified no terms and conditions under subsection 138(10) of that Act,

E is the amount determined by the formula

$$P - Q$$

where

P is the total of the insurer's outlays or expenses that would have been deductible in computing its income from its insurance businesses for its 1975 taxation year (other than amounts deductible under subsection (3), section 140 and regulations made under paragraph 20(1)(a) and 20(7)(c)), if

(a) it had not made the election under subsection 138(9) of that Act in respect of that year, and

(b) where it had made the election under subsection 138(9) of that Act in respect of its 1974 taxation year, it had adopted for its 1975 taxation year, with the concurrence of the Minister, the method required by subsection 138(9) of

that Act if it had not elected under that subsection and the Minister had specified no terms and conditions under subsection 138(10) of that Act,

Q is the total of the insurer's outlays or expenses deducted in computing its income from its insurance businesses for its 1975 taxation year (other than amounts deducted under subsection (3), section 140 and regulations made under paragraphs 20(1)(a) and 20(7)(c)),

F is the amount of the insurer's 1975-76 excess policy dividend deduction, and

G is the amount of the insurer's 1975-76 excess policy dividend reserve;

Related Provisions: 257 — Formula amounts cannot calculate to less than zero.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

"1975–76 excess additional group term reserve" of an insurer that has made an election under subsection 138(9) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1977 taxation year, in respect of its 1975 taxation year means the amount determined by the formula

$$A - B$$

where

A is the amount that would have been deductible under subparagraph (3)(a)(ii) in computing the insurer's income for its 1976 taxation year if it had claimed the maximum allowable amount under that subparagraph for that year, and

B is the amount deducted under that subparagraph in computing its income for its 1976 taxation year;

Related Provisions: 257 — Formula cannot calculate to less than zero.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

"1975–76 excess capital cost allowance" of depreciable property of a prescribed class of an insurer that has made an election under subsection 138(9) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1977 taxation year, in respect of its 1975 taxation year means the amount determined by the formula

$$(A + B) - C$$

where

A is the amount determined by the formula

$$P - Q$$

where

P is the amount that would have been deductible under paragraph 20(1)(a) by the insurer in computing its income for its 1975 taxation year with respect to that class, if it had claimed the maximum allowable amount under that paragraph in that year with respect to that class and if

(a) it had not made the election under subsection 138(9) of that Act in respect of its 1975 taxation year, and

(b) where it made the election under subsection 138(9) of that Act in respect of its 1974 taxation year, it had adopted for its 1975 taxation year, with the concurrence of the Minister, the method required by subsection 138(9) of that Act if it had not elected under that subsection and the Minister had specified no terms and conditions under subsection 138(10) of that Act, and

Q is the amount deducted under paragraph 20(1)(a) by the insurer in computing its income for its 1975 taxation year with respect to that class,

B is the amount determined by the formula

$$R - S$$

where

R is the amount that would have been deductible under paragraph 20(1)(a) by the insurer in computing its income for its 1976 taxation year with respect to that class if it had claimed the maximum allowable amount under that paragraph in that year and in its 1975 taxation year with respect to that class on the basis of the assumptions made in paragraphs (a) to (d) of the description of A in the definition "1975-76 excess policy dividend reserve" in this subsection, and

S is the amount deducted under paragraph 20(1)(a) by the insurer in computing its income for its 1976 taxation year with respect to that class, and

C is the amount determined by the formula

$$T - U$$

where

T is the amount determined for S, and

U is the amount determined for R;

Related Provisions: 257 — Formula amounts cannot calculate to less than zero.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

"1975–76 excess investment reserve" of an insurer that has made an election under subsection 138(9) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1977 taxation year, in respect of its 1975 taxation year means the amount determined by the formula

$$A - B$$

where

A is the amount that would have been deductible under paragraph 138(3)(c) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, by the insurer in computing its income for its 1976 taxation year if it had claimed the maximum allowable amount under that paragraph in that year and that amount was determined without reference to subparagraph 138(3)(c)(ii) of that Act, and

B is the amount deducted by the insurer under paragraph 138(3)(c) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in computing its income for its 1976 taxation year;

Related Provisions: 257 — Formula cannot calculate to less than zero.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

"1975–76 excess policy dividend deduction" of an insurer that has made an election under subsection 138(9) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1977 taxation year, in respect of its 1975 taxation year means the amount determined by the formula

$$(A + B) - C$$

where

A is the amount determined by the formula

P – Q

where

P is the amount that would have been deductible under subparagraph (3)(a)(iii) by the insurer in computing its income for its 1975 taxation year if that amount had been determined on the assumptions made in paragraphs (a) to (d) of the description of A in the definition "1975-76 excess policy dividend reserve" in this subsection, and

Q is the amount deducted under subparagraph (3)(a)(iii) by the insurer in computing its income for its 1975 taxation year,

B is the amount determined by the formula

R – S

where

R is the amount that would have been deductible under subparagraph (3)(a)(iii) by the insurer in computing its income for its 1976 taxation year if that amount had been determined on the basis that the amount of its income for that year from its participating life insurance business carried on in Canada was computed in accordance with prescribed rules on the assumptions made in paragraph (e) of the description of A in the definition "1975-76 excess policy dividend reserve" in this subsection, and

S is the amount deducted by the insurer under subparagraph (3)(a)(iii) in computing its income for its 1976 taxation year, and

C is the amount determined by the formula

T – U

where

T is the amount determined for S, and

U is the amount determined for R;

Related Provisions: 257 — Formula amounts cannot calculate to less than zero.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

"1975–76 excess policy dividend reserve" of an insurer that has made an election under subsection 138(9) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1977 taxation year, in respect of its 1975 taxation year means the amount determined by the formula

A – B

where

A is the amount that would have been deductible under subparagraph (3)(a)(iv) by the insurer in computing its income for its 1976 taxation year if

(a) it had not made the election under subsection 138(9) of that Act in respect of its 1975 taxation year,

(b) where it made an election under subsection 138(9) of that Act in respect of its 1974 taxation year, it had adopted for its 1975 taxation year, with the concurrence of the Minister, the method required by subsection 138(9) of that Act if it had not elected under that subsection and the Minister had specified no terms and conditions under subsection 138(10) of that Act,

(c) it had claimed the maximum allowable amount under paragraph 138(3)(c) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in computing its income for its 1975 taxation year,

(d) it had claimed the maximum allowable amount that would have been deductible under regulations made under paragraph 20(1)(a) in computing its income for its 1975 taxation year with respect to property of each of its prescribed classes, and

(e) the amount of its income for its 1976 taxation year from its participating life insurance business carried on in Canada was computed in accordance with prescribed rules and as if the amount deducted under subparagraph (3)(a)(iv) by it in computing its income for its 1975 taxation year was the amount that would have been deductible under that subparagraph on the basis of the assumptions made in paragraphs (a) to (d) of this description, and

B is the amount deducted by the insurer under subparagraph (3)(a)(iv) in computing its income for its 1976 taxation year;

Related Provisions: 257 — Formula cannot calculate to less than zero.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

"1975–76 excess policy reserves" of an insurer that has made an election under subsection 138(9) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1977 taxation year, in respect of its 1975 taxation year means the amount determined by the formula

A – B

where

A is the amount that would have been deductible under subparagraph (3)(a)(i) in computing the insurer's income for its 1976 taxation year if it had claimed the maximum allowable amount under that subparagraph for that year, and

B is the amount deducted under that subparagraph in computing its income for its 1976 taxation year.

Related Provisions: 257 — Formula cannot calculate to less than zero.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Related Provisions [subsec. 138(12)]: 211(1) — Definitions.

(13) Variation in "tax basis" and "amortized cost" — Where

(a) in a taxation year that ended after 1968 and before 1978 an insurer carried on a life insurance business in Canada and an insurance business in a country other than Canada,

(b) the insurer did not make an election in respect of the year under subsection 138(9) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it applied to that year, and

(c) the ratio of the value for the year of the insurer's specified Canadian assets to its Canadian investment fund for the year exceeded one,

each of the amounts included or deducted as follows in respect of the year shall be multiplied by the ratio referred to in paragraph (c):

(d) under paragraph (c), (d), (k) or (l) of the definition "tax basis" in subsection 142.4(1) in determining the tax basis of a debt obligation to the insurer, or

(e) under paragraph (c), (d), (f) or (h) of the definition "amortized cost" in subsection 248(1) in determining the amortized cost of a debt obligation to the insurer.

Related Provisions: 138(14) — Meaning of certain expressions; 142.4(1)"tax basis"(c), (d), (k), (l) — Disposition of specified debt obligation by financial institution.

History: Subsec. 138(13) amended by 1995, c. 21, subsec. 57(20), applicable to taxation years that end after February 22, 1994. Subsec. (13) formerly read:

> (13) Where meaning of "amortized cost" varied — For the purposes of the definition "amortized cost" in subsection 248(1), where in a taxation year ending after 1968 and before the particular time referred to in that definition an insurer carried on a life insurance business in Canada and an insurance business in a country other than Canada and has not made an election under subsection 138(9) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1977 taxation year, in respect of that year, each of the amounts referred to in paragraph (c), (d), (f) or (h) in that definition shall, in respect of that year, be deemed to be the greater of
>
> (a) each such amount, and
>
> (b) that proportion of the amount referred to in paragraph (a) that the value for the taxation year of the insurer's specified Canadian assets is of its Canadian investment fund for the taxation year.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

(14) Meaning of certain expressions — For the purposes of subsection (13), the expressions "Canadian investment fund for a taxation year", "specified Canadian assets" and "value for the taxation year" have the meanings prescribed therefor.

Regulations: 2400(4)(a), 2405(2) [before 1999] (prescribed meanings).

(15) Definition not to apply — In this section, in construing the meaning of the expression "group term insurance policy", the definition "group term life insurance policy" in subsection 248(1) does not apply.

(16) [Repealed under former Act]

Definitions [s. 138]: "accumulated 1968 deficit" — 138(12); "affiliated" — 251.1; "allowable capital loss" — 38(b), 248(1); "amortized cost" — 138(13), 248(1); "amount" — 248(1); "amount payable" — (in respect of a policy loan) 138(12); "arm's length" — 251(1); "borrowed money", "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "Canada security" — 138(12); "Canadian investment fund" — 138(14), Reg. 2400(4)(a); "capital gain" — 39(1)(a), 248(1); "capital property" — 54, 248(1); "carrying on business" — 253; "class of shares" — 248(6); "common share" — 248(1); "completed" — 138(4.6); "corporation" — 248(1), *Interpretation Act* 35(1); "cost" — (to an insurer of acquiring a mortgage or hypothec) 138(12); "cost amount" — 248(1); "depreciable property" — 13(21), 248(1); "designated insurance property" — 138(12), 248(1); "disposition", "dividend" — 248(1); "fiscal period" — 249(2)(b), 249.1; "gross investment revenue" — 138(12); "identical" — 138(11.1), 248(12); "insurer" — 248(1); "interest in real property" — 248(4); "interest" — in relation to a policy loan 138(12); "life insurance business" — 248(1); "life insurance policy" — 138(4.01), (12), 248(1); "life insurance policy in Canada" — 138(12), 248(1); "life insurer" — 248(1); "mark-to-market property" — 142.2(1); "maximum tax actuarial reserve" — 138(12); "Minister" — 248(1); "net Canadian life investment income" — 209(2); "1975 branch accounting election deficiency" — 138(12); "1975-76 excess policy dividend deduction" — 138(3.1), 138(12); "1975-76 excess policy dividend reserve", "1975-76 excess additional group term reserves", "1975-76 excess policy reserves" — 138(12); "non-resident" — 248(1); "non-segregated property" — 138(12); "paid-up capital" — 89(1), 138(11.7), 248(1); "Parliament" — *Interpretation Act* 35(1); "participating life insurance policy" — 138(12); "person" — 248(1); "policy dividend" — 139.1(8)(a); "policy loan" — 138(12); "preferred share", "prescribed", "principal amount", "property" — 248(1); "property used by it in the year in, or held by it in the year in the course of" — carrying on an insurance business 138(12); "province" — *Interpretation Act* 35(1); "qualified related corporation" — 138(12), 219(8); "received" — 248(7); "registered pension plan" — 248(1); "registered retirement savings plan" — 146(1), 248(1); "regulation" — 248(1); "relevant authority" — 138(12); "resident in Canada" — 250; "segregated fund" — 138(12); "share", "shareholder" — 248(1); "specified Canadian assets" — 138(14), Reg. 2400(4)(a); "specified debt obligation" — 142.2(1); "subsidiary wholly-owned corporation" — 248(1); "substituted property" — 248(5); "surplus funds derived from operations" — 138(12); "taxable Canadian corporation" — 89(1), 248(1); "taxable capital gain" — 38(a), 248(1); "taxable dividend" — 89(1), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer", "term preferred share" — 248(1); "transferred property" — 138(11.94)(b)(i); "used" — 138(12)"property used by it in the year in, or held by it in the year in the course of"; "value for the taxation year" — 138(14), Reg. 2400(4)(a).

138.1 (1) Rules relating to segregated funds — In respect of life insurance policies for which all or any portion of an insurer's reserves vary in amount depending on the fair market value of a specified group of properties (in this section referred to as a "segregated fund"), for the purposes of this Part, the following rules apply:

(a) an *inter vivos* trust (in this section referred to as the "related segregated fund trust") is deemed to be created at the time that is the later of

(i) the day that the segregated fund is created, and

(ii) the day on which the insurer's 1978 taxation year commences,

and to continue in existence throughout the period during which the fund determines any portion of the benefits under those policies that vary in amount depending on the fair market value of the property in the segregated fund (in this section referred to as "segregated fund policies");

(b) property that has been allocated to and that remains a part of the segregated fund, and any income that has accrued on that property is deemed to be the property and income of the related segregated fund trust and not to be the property and income of the insurer;

(c) the insurer is deemed to be

(i) the trustee who has ownership or control of the related segregated fund trust property,

(ii) a resident of Canada in respect of the related segregated fund trust property used or held by it in the course of carrying on the insurer's life insurance business in Canada, and

(iii) a non-resident of Canada in respect of the related segregated fund trust property not used or held by it in the course of carrying on the insurer's life insurance business in Canada;

(d) where at a particular time there is property in the segregated fund that was not funded with premiums paid under a segregated fund policy,

(i) the insurer is deemed to have an interest in the related segregated fund trust that is not in respect of any particular property or source of income, and

(ii) the cost at any time of that interest to the insurer is deemed to be the total of

(A) for property of the trust at that time allocated by the insurer to the segregated fund prior to 1978, the amount that would be its adjusted cost base to the insurer if the interest had been a capital property at all relevant times prior to 1978 and if the rules in this section had been applicable for the taxation years after 1971 and before 1978, and

(B) for property of the trust at that time allocated by the insurer to the segregated fund after 1977, the fair market value of the property at the time it was last allocated to the segregated fund by the insurer;

(e) where at any particular time there is property in the segregated fund that was funded with a portion of the

premiums paid before that time under a segregated fund policy,

(i) the respective segregated fund policyholder is deemed to have an interest in the related segregated fund trust that is not in respect of any particular property or source of income,

(ii) the cost of that interest is deemed to be the amount that is the total of

(A) the amount that would be its adjusted cost base to the insurer at December 31, 1977 if the interest had been a capital property at all relevant times prior to 1978 and if the rules in this section (if subsection (3) were read without reference to the expressions "or capital loss" and "or loss") had been applicable for taxation years after 1971 and before 1978, and

(B) the total of amounts each of which is that portion of a premium paid before that time and after the day referred to in subparagraph (a)(ii) under a segregated fund policy that was or is to be used by the insurer to fund property allocated to the segregated fund (other than the portion of the premium that is an acquisition fee), and

(iii) the portion of a premium included in a segregated fund is deemed not to be an amount paid in respect of a premium under the policy;

(f) the income of the related segregated fund trust is deemed for the purposes of subsections 104(6), (13) and (24) to be an amount that has become payable in the year to the beneficiaries under the segregated fund trust and the amount therefor in respect of any particular beneficiary is equal to the amount determined by reference to the terms and conditions of the segregated fund policy;

(g) where at a particular time the fair market value of property transferred by the insurer to the segregated fund results in an increase at that time in the portion of the insurer's reserves for a segregated fund policy held by a policyholder that vary with the fair market value of the segregated fund and a decrease in the portion of its reserves for the policy that do not so vary, the amount of that increase shall,

(i) for the purpose of the determination of H in the definition "adjusted cost basis" in subsection 148(9), be deemed to be proceeds of disposition that the policyholder became entitled to receive at that time,

(ii) for the purpose of computing the adjusted cost base to the policyholder of the policyholder's interest in the related segregated fund trust, be added at that time to the cost to the policyholder of that interest, and

(iii) for the purpose of computing the insurer's income, be deemed to be a payment under the terms and conditions of the policy at that time;

(h) where at a particular time the fair market value of property transferred by the insurer from the segregated fund results in an increase at that time in the portion of the insurer's reserves for a segregated fund policy that do not vary with the fair market value of the segregated fund and a decrease in the portion of its reserves for the policy that so vary, the amount of that increase shall, for the purpose of calculating the insurer's income, be deemed to be a premium received by the insurer at that time;

(i) where at a particular time the policyholder of a segregated fund policy disposes of all or a portion of the policyholder's interest in the related segregated fund trust, that proportion of the amount, if any, by which the acquisition fee with respect to the particular policy exceeds the total of amounts each of which is an amount determined under this paragraph with respect to the particular policy before that time, that

(i) the fair market value of the interest disposed of at that time

is of

(ii) the fair market value of the policyholder's interest in the particular segregated fund trust immediately before that time,

is deemed to be a capital loss of the related segregated fund trust that reduces the policyholder's benefits under the particular policy by that amount for the purposes of subsection (3);

(j) the obligations of an insurer in respect of a benefit that is payable under a segregated fund policy, the amount of which benefit varies with the fair market value of the segregated fund at the time the benefit becomes payable, are deemed to be obligations of the trustee under the related segregated fund trust and not of the insurer and any amount received by the policyholder or that the policyholder became entitled to receive at any particular time in a year in respect of those obligations is deemed to be proceeds from the disposition of an interest in the related segregated fund trust;

(k) a reference to "the terms and conditions of the trust arrangement" in section 104 or subsection 127.2(3) is deemed to include a reference to the terms and conditions of the related segregated fund policy and the trustee is deemed to have designated the amounts referred to in that section in accordance with those terms and conditions; and

(l) where at any time an insurer acquires a share as a first registered holder thereof and allocates the share to a related segregated fund trust, the trust shall be deemed to have acquired the share at that time as the first registered holder thereof for the purpose of computing its share-purchase tax credit and the insurer shall be deemed not to have acquired the share for the purpose of computing its share-purchase tax credit.

Related Provisions: 39(1)(a)(iii) — Meaning of capital gain; 53(1)(l), 53(2)(q) — Adjustments to cost base; 87(2.2) — Amalgamation of insurance corporations; 88(1)(g) — Winding-up of subsidiary insurance corporations; 94.2(11)(b), (c) — No application to foreign insurance policy of foreign investment entity; 107.4(3)(g) — Application of 138.1(1)(i) on qualifying disposition to trust; 127.55(f)(i) — No minimum tax on related segregated fund trust; 138(11.5)(k) — Transfer of business by non-resident insurer; 138.1(7) — Where subsections (1) to (6) not to apply; 218.1 — Application to non-resident withholding tax; 248(1)"disposition"(f)(vi) — Rollover from one trust to another; Reg. 9000 — Certain segregated funds excluded from definition of "financial institution".

(2) Rules relating to property in segregated funds at end of 1977 taxation year — Where an insurer holds property at the end of its 1977 taxation year in connection with a segregated fund, the following rules apply:

(a) the property is deemed to have been acquired by the related segregated fund trust on the day determined under paragraph (1)(a) at a cost equal to the adjusted cost base of the property to the insurer on that day and

that transaction is deemed to be a transaction between persons not dealing at arm's length;

(b) the property is deemed to have been disposed of by the insurer on the day referred to in paragraph (a) for proceeds equal to the adjusted cost base of the property to the insurer on that day; and

(c) for the purpose of computing the insurer's income for its 1978 taxation year it shall be deemed to have made a payment to its policyholders in satisfaction of their rights under their segregated fund policies in that year equal to that portion of the amount deducted under subparagraph 138(3)(a)(i) in computing its income for its 1977 taxation year that is in respect of segregated fund policies.

Related Provisions: 39.1(2)B(c), 39.1(5) — Reduction in gain to reflect capital gains exemption election; 138.1(7) — Where subsections (1) to (6) not to apply.

(3) Capital gains and capital losses of related segregated fund trusts — A capital gain or capital loss of a related segregated fund trust from the disposition of any property shall, to the extent that a policyholder's benefits under a policy or the interest in the trust of any other beneficiary is affected by that gain or loss, be deemed to be a capital gain or capital loss, as the case may be, of the policyholder or other beneficiary and not that of the trust.

Related Provisions: 39.1(2)B(c), 39.1(5) — Reduction in gain to reflect 1994 capital gains exemption election; 53(1)(l)(iv), 53(2)(q)(ii) — Adjustments to cost base; 138.1(3.1), (3.2) — Transitional rules for 2000; 138.1(7) — Where subsections (1) to (6) not to apply.

(3.1) Deemed gains and losses [transition for 2000] — Where an amount is deemed under subsection (3) to be a capital gain or capital loss of a policyholder or other beneficiary (in this subsection referred to as the "taxpayer") of a related segregated fund trust, in respect of capital gains or losses realized in a taxation year of the related segregated fund trust that includes February 28, 2000 or October 17, 2000, and the related segregated fund trust so elects under this subsection in its return of income for the year,

(a) the portion of the gains and losses that are in respect of capital gains or losses from dispositions of property that occurred before February 28, 2000 is deemed to be that proportion of the gains or losses that the number of days that are in the year and before February 28, 2000 is of the number of days that are in the year;

(b) the portion of the gains and losses that is in respect of capital gains or losses from dispositions of property that occurred in the year and in the period that begins at the beginning of February 28, 2000 and ends at the end of October 17, 2000, is deemed to be that proportion of the gains or losses that the number of days that are in the year and in that period is of the number of days that are in the year; and

(c) the portion of the gains and losses that is in respect of capital gains or losses from dispositions of property that occurred in the year and in the period that begins at the beginning of October 18, 2000 and ends at the end of the year, is deemed to be that proportion of the gains or losses that the number of days that are in the year and in that period is of the number of days that are in the year.

History: Subsec. 138.1(3.1) added by 2001, c. 17, s. 134, applicable to taxation years that end after February 27, 2000.

(3.2) Deemed gains — taxpayer [transition for 2000] — Where a capital gain or a capital loss is deemed by subsection (3) to be a capital gain or a capital loss of a taxpayer and not that of a related segregated fund trust,

(a) if the capital gain or capital loss was in respect of capital gains or capital losses from dispositions of property by the related segregated fund trust that occurred before February 28, 2000 and that taxation year of the taxpayer includes February 27, 2000, the capital gain or the capital loss is deemed to be a capital gain or a capital loss, as the case may be, of the taxpayer from the disposition by the taxpayer of capital property in the taxpayer's taxation year and before February 28, 2000;

(b) if the capital gain or capital loss was in respect of capital gains or capital losses from dispositions of property by the related segregated fund trust that occurred before February 28, 2000 and the taxation year of the taxpayer began after February 27, 2000 and ended before October 18, 2000, 5/8 of the capital gain or the capital loss is deemed to be a capital gain or a capital loss, as the case may be, of the taxpayer from the disposition by the taxpayer of capital property in the taxpayer's taxation year;

(c) if the capital gain or capital loss was in respect of capital gains or capital losses from dispositions of property by the related segregated fund trust that occurred before February 28, 2000 and the taxation year of the taxpayer began after February 27, 2000 and ended after October 17, 2000, 5/8 of the capital gain or the capital loss is deemed to be a capital gain or a capital loss, as the case may be, of the taxpayer from the disposition by the taxpayer of capital property in the taxpayer's taxation year and before October 18, 2000;

(d) if the capital gain or capital loss was in respect of capital gains or capital losses from dispositions of property by the related segregated fund trust that occurred before February 28, 2000 and the taxation year of the taxpayer began after October 17, 2000, 3/2 of the capital gain or the capital loss is deemed to be a capital gain or a capital loss, as the case may be, of the taxpayer from the disposition by the taxpayer of capital property in the taxpayer's taxation year;

(e) if the capital gain or capital loss was in respect of capital gains or capital losses from dispositions of property by the related segregated fund that occurred after February 27, 2000 and before October 18, 2000 and the taxation year of the taxpayer began after October 17, 2000, 4/3 of the capital gain or capital loss is deemed to be a capital gain or a capital loss, as the case may be, of the taxpayer from the disposition by the taxpayer of capital property in the taxpayer's taxation year;

(f) if the capital gain or capital loss was in respect of capital gains or capital losses from dispositions of property by the related segregated fund trust that occurred after February 27, 2000 and before October 18, 2000 and the taxation year of the taxpayer includes February 28, 2000 and October 17, 2000, the capital gain or the capital loss is deemed to be a capital gain or a capital loss, as the case may be, of the taxpayer from the disposition by the taxpayer of capital property in the taxpayer's taxation year and in the period that began after February 27, 2000 and ended before October 18, 2000;

(g) if the capital gain or capital loss was in respect of capital gains or capital losses from dispositions of property by the related segregated fund trust that occurred after February 27, 2000 and before October 17, 2000 and the taxation year of the taxpayer began after February 27, 2000 and ended before October 17, 2000, the capital gain or the capital loss is deemed to be a capital gain or a capital loss, as the case may be, of the taxpayer from the disposition by the taxpayer of capital property in the taxpayer's taxation year; and

(h) in any other case, the capital gain or the capital loss is deemed to be a capital gain or a capital loss, as the case may be, of the taxpayer from the disposition of capital property by the taxpayer in the taxpayer's taxation year and after October 17, 2000.

Related Provisions: 111(1.1)(c) — Net capital loss carryover — transition for 2000.

History: Subsec. 138.1(3.2) added by 2001, c. 17, s. 134, applicable to taxation years that end after February 27, 2000.

(4) Election and allocation — Where at any particular time after 1977, a policyholder withdraws all or part of the policyholder's interest in a segregated fund policy, the trustee of a related segregated fund trust may elect in prescribed manner and prescribed form to treat any capital property of the trust as having been disposed of, whereupon the property shall be deemed to have been disposed of on any day designated by the trustee for proceeds of disposition equal to

(a) the fair market value of the property on that day,

(b) the adjusted cost base to the trust of the property on that day, or

(c) an amount that is neither greater than the greater of nor less than the lesser of the amounts determined under paragraphs (a) and (b),

whichever is designated by the trustee, and to have been reacquired by the trust immediately thereafter at a cost equal to those proceeds, and where the trustee of a related segregated fund trust has made such an election, the following rules apply:

(d) the amount of any capital gain or capital loss resulting from the deemed disposition shall be allocated by the trustee to any policyholder withdrawing all or part of the policyholder's interest in the policyholder's policy at that time to the extent that the amount of the policyholder's benefits under the policy at that time is affected by the capital gain or capital loss in respect of property held by the related segregated fund trust at that time,

(e) the allocation referred to in paragraph (d) is deemed to have been made immediately before the withdrawal,

(f) any capital gain not so allocated is deemed to be allocated in accordance with the terms and conditions of the policy, and

(g) any capital loss not so allocated is deemed to be a superficial loss of each policyholder to the extent that the policyholder's benefits under the policy would be affected by the loss.

Related Provisions: 39.1(1)"exempt capital gains balance"C(c), 39.1(6) — Reduction in gain to reflect capital gains exemption election; 53(1)(l)(iii), 53(2)(q)(i) — Adjustments to cost base; 138.1(7) — Where subsections (1) to (6) not to apply.

Regulations: 6100 (prescribed manner and time).

Forms: T3018: Election under subsection 138.1(4) of the deemed disposition of capital property of a life insurance segregated fund.

(5) Adjusted cost base of property in related segregated fund trust — At any particular time, the adjusted cost base of each capital property of a related segregated fund trust shall be deemed to be the amount, if any, by which

(a) the adjusted cost base of the property to the trust immediately before that time

exceeds

(b) the total of amounts each of which is an amount in respect of the disposition by a policyholder of all or part of the policyholder's interest in the related segregated fund trust at that time equal to that proportion of the amount, if any, by which

(i) the adjusted cost base to the policyholder of that interest at that time

exceeds

(ii) the policyholder's proceeds of the disposition of that interest in the trust

that

(iii) the fair market value of the capital property at that time

is of

(iv) the total of amounts each of which is the fair market value of a capital property of the related segregated fund trust at that time.

Related Provisions: 53(1)(l), 53(2)(q) — ACB of interest in related segregated fund trust; 138(11.5)(k) — Transfer of business by non-resident insurer; 138.1(7) — Where subsections (1) to (6) not to apply.

(6) Definition of "acquisition fee" — In this section, "acquisition fee" means the amount, if any, by which the total of amounts each of which is

(a) that portion of a premium charged by the insurer under a segregated fund policy that is not included in the related segregated fund or cannot reasonably be regarded as an amount required to fund a mortality or maturity benefit,

(b) a transfer from the segregated fund that cannot reasonably be regarded as an amount required to fund a mortality or maturity benefit other than an annual administration fee or charge, or,

(c) any amount by which the proceeds payable to the policyholder under a particular segregated fund policy is reduced on the surrender or partial surrender of the policy that may reasonably be regarded as a surrender fee,

exceeds

(d) the total of amounts each of which is that portion of an amount described in paragraph (a), (b) or (c) that may reasonably be considered to be in respect of an interest in the segregated fund that was disposed of before 1978.

(7) Where subsecs. (1) to (6) do not apply — Subsections (1) to (6) do not apply to the holder of a segregated fund policy with respect to such a policy that is issued or effected as a registered retirement savings plan or a registered retirement income fund or that is issued under a registered pension plan.

Related Provisions: 148(1) — Amounts included in computing policyholder's income.

History: Subsec. 138.1(7) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 80, applicable to 1991 *et seq.* Subsec. (7) formerly read:

(7) Where policyholder deemed to be trust, etc. — For the purposes of this section, where a segregated fund policy is issued or

effected as a registered retirement savings plan or is issued pursuant to a registered pension plan, the policyholder of the policy shall be deemed to be a trust or a trust or corporation described by paragraph 149(1)(r) or (o), respectively.

Definitions [s. 138.1]: "acquisition fee" — 138.1(6); "adjusted cost base" — 54, 248(1); "amount" — 248(1); "arm's length" — 251(1); "capital gain", "capital loss" — 39(1), 248(1); "capital property" — 54, 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition", "insurer" — 248(1); "*inter vivos* trust" — 108(1), 248(1); "life insurance business", "prescribed", "property", "registered pension plan" — 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "related" — 251(2)–(6); "related segregated fund trust" — 138.1(1)(a); "segregated fund" — 138.1(1); "segregated fund policy" — 138.1(1)(a); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

139. Conversion of insurance corporations into mutual corporations — Where an insurance corporation that is a Canadian corporation applies an amount in payment for shares of the corporation purchased or otherwise acquired by it under a mutualization proposal under Division III of Part VI of the *Insurance Companies Act* or under a law of the province under the laws of which the corporation is incorporated that provides for the conversion of the corporation into a mutual corporation by the purchase of its shares in accordance with that law,

(a) section 15 does not apply to require the inclusion, in computing the income of a shareholder of the corporation, of any part of that amount; and

(b) no part of that amount shall be deemed, for the purpose of subsection 138(7), to have been paid to shareholders or, for the purpose of section 84, to have been received as a dividend.

History: S. 139 amended by 1994, c. 7, Sch. I (1991, c. 47), s. 734, to substitute that portion preceding para. (a), deemed to have come into force June 1, 1992. That portion formerly read:

139. Conversion of provincial life insurance corporation into mutual corporation — Where a life insurance corporation that is incorporated under the laws of a province has applied an amount in payment for shares of the corporation purchased by it under the authority of a law of the province that provides for the conversion of the corporation into a mutual corporation by the purchase of its shares in accordance with the provisions of that law,

Definitions [s. 139]: "amount" — 248(1); "Canadian corporation" — 89(1), 248(1); "dividend", "insurance corporation" — 248(1); "province" — *Interpretation Act* 35(1); "share", "shareholder" — 248(1).

Demutualization of Insurance Corporations

139.1 (1) Definitions — The definitions in this subsection apply in this section and sections 139.2 and 147.4.

"conversion benefit" means a benefit received in connection with the demutualization of an insurance corporation because of an interest, before the demutualization, of any person in an insurance policy to which the insurance corporation has been a party.

Related Provisions: 139.1(2), (3) — Determining when benefit received; 139.1(11) — Conversion benefit is not a shareholder benefit. See also Related Provisions under "taxable conversion benefit".

"deadline" for a payment in respect of a demutualization of an insurance corporation means the latest of

(a) the end of the day that is 13 months after the time of the demutualization,

(b) where the entire amount of the payment depends on the outcome of an initial public offering of shares of the corporation or a holding corporation in respect of the insurance corporation, the end of the day that is 60 days after the day on which the offering is completed,

(c) where the payment is made after the initial deadline for the payment and it is reasonable to conclude that the payment was postponed beyond that initial deadline because there was not sufficient information available 60 days before that initial deadline with regard to the location of a person, the end of the day that is six months after such information becomes available, and

(d) the end of any other day that is acceptable to the Minister.

Related Provisions: 139.1(1)"initial deadline" — Definition.

"demutualization" means the conversion of an insurance corporation from a mutual company into a corporation that is not a mutual company.

Related Provisions: 139.1(4) — Effect of demutualization; 237(4) — Authority to communicate SIN to agent of shareholder.

"holding corporation" means a corporation that

(a) in connection with the demutualization of an insurance corporation, has issued shares of its capital stock to stakeholders; and

(b) owns shares of the capital stock of the insurance corporation acquired in connection with the demutualization that entitle it to 90% or more of the votes that could be cast in respect of shares under all circumstances at an annual meeting of

(i) shareholders of the insurance corporation, or

(ii) shareholders of the insurance corporation and holders of insurance policies to which the insurance corporation is a party.

Related Provisions: 139.1(4)(e) — Cost to holding corporation of shares acquired on demutualization; 141(3) — Holding corporation deemed to be public corporation.

"initial deadline" for a payment is the time that would, if the definition "deadline" were read without reference to paragraph (c) of that definition, be the deadline for the payment.

"mutual holding corporation" in respect of an insurance corporation, means a mutual company established to hold shares of the capital stock of the insurance corporation, where the only persons entitled to vote at an annual meeting of the mutual company are policyholders of the insurance corporation.

Related Provisions: 139.1(4)(d) — Receipt of ownership rights in MHC on demutualization; 139.2 — Deemed dividend on distribution of property by MHC.

"ownership rights" means

(a) in a particular mutual holding corporation, the following rights and interests held by a person in respect of the particular corporation because of an interest or former interest of any person in an insurance policy to which an insurance corporation, in respect of which the particular corporation is the mutual holding corporation, has been a party:

(i) rights that are similar to rights attached to shares of the capital stock of a corporation, and

(ii) all other rights with respect to, and interests in, the particular corporation as a mutual company; and

(b) in a mutual insurance corporation, the following rights and interests held by a person in respect of the mutual insurance corporation because of an interest or

former interest of any person in an insurance policy to which that corporation has been a party:

(i) rights that are similar to rights attached to shares of the capital stock of a corporation,

(ii) all other rights with respect to, and interests in, the mutual insurance corporation as a mutual company, and

(iii) any contingent or absolute right to receive a benefit in connection with the demutualization of the mutual insurance corporation.

Related Provisions: 139.1(4)(a), (d) — Rollover where shares acquired in exchange for ownership rights.

"person" includes a partnership.

"share" of the capital stock of a corporation includes a right granted by the corporation to acquire a share of its capital stock.

"specified insurance benefit" means a taxable conversion benefit that is

(a) an enhancement of benefits under an insurance policy;

(b) an issuance of an insurance policy;

(c) an undertaking by an insurance corporation of an obligation to pay a policy dividend; or

(d) a reduction in the amount of premiums that would otherwise be payable under an insurance policy.

Related Provisions: 139.1(8) — Effect of stakeholder receiving specified insurance benefit.

"stakeholder" means a person who is entitled to receive or who has received a conversion benefit but, in respect of the demutualization of an insurance corporation, does not include a holding corporation in connection with the demutualization or a mutual holding corporation in respect of the insurance corporation.

Related Provisions: 139.1(4) — Effect of demutualization on stakeholder.

"taxable conversion benefit" means a conversion benefit received by a stakeholder in connection with the demutualization of an insurance corporation, other than a conversion benefit that is

(a) a share of a class of the capital stock of the corporation;

(b) a share of a class of the capital stock of a corporation that is or becomes a holding corporation in connection with the demutualization; or

(c) an ownership right in a mutual holding corporation in respect of the insurance corporation.

Related Provisions: 139.1(2), (3) — Determining when benefit received; 139.1(4)(f) — TCB deemed to be a dividend; 139.1(8)(a) — Policy dividend that is TCB deemed not to be policy dividend; 139.1(10) — Cost of TCB.

(2) Rules of general application — For the purposes of this section,

(a) subject to paragraphs (b) to (g), if in providing a benefit in respect of a demutualization, a corporation becomes obligated, either absolutely or contingently, to make or arrange a payment, the person to whom the undertaking to make or arrange the payment was given is considered to have received a benefit

(i) as a consequence of the undertaking of the obligation, and

(ii) not as a consequence of the making of the payment;

(b) where, in providing a benefit in respect of a demutualization, a corporation makes a payment (other than a payment, made pursuant to the terms of an insurance policy, that is not a policy dividend) at any time on or before the deadline for the payment,

(i) subject to paragraphs (f) and (g), the recipient of the payment is considered to have received a benefit as a consequence of the making of the payment, and

(ii) no benefit is considered to have been received as a consequence of the undertaking of an obligation, that is either contingent or absolute, to make or arrange the payment;

(c) no benefit is considered to have been received as a consequence of the undertaking of an absolute or contingent obligation of a corporation to make or arrange a payment (other than a payment, made pursuant to the terms of an insurance policy, that is not a policy dividend) unless it is reasonable to conclude that there is sufficient information with regard to the location of a person to make or arrange the payment;

(d) where a corporation's obligation to make or arrange a payment in connection with a demutualization ceases on or before the initial deadline for the payment and without the payment being made in whole or in part, no benefit is considered to have been received as a consequence of the undertaking of the obligation unless the payment was to be a payment (other than a policy dividend) pursuant to the terms of an insurance policy;

(e) no benefit is considered to have been received as a consequence of the undertaking of an absolute or contingent obligation of a corporation to make or arrange a payment where

(i) paragraph (a) would, but for this paragraph, apply with respect to the obligation,

(ii) paragraph (d) would, if that paragraph were read without reference to the words "on or before the initial deadline for the payment", apply in respect of the obligation,

(iii) it is reasonable to conclude that there was not, before the initial deadline for the payment, sufficient information with regard to the location of a person to make or arrange the payment, and

(iv) such information becomes available on a particular day after the initial deadline and the obligation ceases not more than six months after the particular day;

(f) no benefit is considered to have been received as a consequence of

(i) an undertaking of an absolute or contingent obligation of a corporation to make or arrange an annuity payment through the issuance of an annuity contract, or

(ii) a receipt of an annuity payment under the contract so issued

where it is reasonable to conclude that the purpose of the undertaking or the making of the annuity payment is to supplement benefits provided under either an annuity contract to which subsection 147.4(1) or paragraph 254(a) applied or a group annuity contract that had been issued under, or pursuant to, a registered pension plan that has wound up;

(g) no benefit is considered to have been received as a consequence of

(i) an amendment to which subsection 147.4(2) would, but for subparagraph 147.4(2)(a)(ii), apply, or

(ii) a substitution to which paragraph 147.4(3)(a) applies;

(h) the time at which a stakeholder is considered to receive a benefit in connection with the demutualization of an insurance corporation is,

(i) where the benefit is a payment made at or before the time of demutualization or is a payment to which paragraph (b) applies, the time at which the payment is made, and

(ii) in any other case, the latest of

(A) the time of the demutualization,

(B) where the extent of the benefit or the stakeholder's entitlement to it depends on the outcome of an initial public offering of shares of the corporation or a holding corporation in respect of the insurance corporation and the offering is completed before the day that is 13 months after the time of the demutualization, the time at which the offering is completed,

(C) where the entire amount of the benefit depends on the outcome of an initial public offering of shares of the corporation or a holding corporation in respect of the insurance corporation, the time at which the offering is completed,

(D) where it is reasonable to conclude that the person conferring the benefit does not have sufficient information with regard to the location of the stakeholder before the later of the times determined under clauses (A) to (C), to advise the stakeholder of the benefit, the time at which sufficient information with regard to the location of the stakeholder to so advise the stakeholder was received by that person, and

(E) the end of any other day that is acceptable to the Minister;

(i) the time at which an insurance corporation is considered to demutualize is the time at which it first issues a share of its capital stock (other than shares of its capital stock issued by it when it was a mutual company if the corporation did not cease to be a mutual company because of the issuance of those shares); and

(j) subject to paragraph (3)(b), the value of a benefit received by a stakeholder is the fair market value of the benefit at the time the stakeholder receives the benefit.

Related Provisions: 49.1 — Acquisition in satisfaction of obligation deemed not to be a disposition.

(3) Special cases — For the purposes of this section,

(a) where benefits under an insurance policy are enhanced (otherwise than by way of an amendment to which subsection 147.4(2) would, but for subparagraph 147.4(2)(a)(ii), apply) in connection with a demutualization, the value of the enhancement is deemed to be a benefit received by the policyholder and not by any other person;

(b) where premiums payable under an insurance policy to an insurance corporation are reduced in connection with a demutualization, the policyholder is deemed, as a consequence of the undertaking to reduce the premiums, to have received a benefit equal to the present value at the time of the demutualization of the additional premiums that would have been payable if the premiums had not been reduced in connection with the demutualization;

(c) the payment of a policy dividend by an insurance corporation or an undertaking of an obligation by the corporation to pay a policy dividend is considered to be in connection with the demutualization of the corporation only to the extent that

(i) the policy dividend is referred to in the demutualization proposal sent by the corporation to stakeholders,

(ii) the obligation to make the payment is contingent on stakeholder approval for the demutualization, and

(iii) the payment or undertaking cannot reasonably be considered to have been made or given, as the case may be, to ensure that policy dividends are not adversely affected by the demutualization;

(d) except for the purposes of paragraphs (c), (e) and (f), where part of a policy dividend is a conversion benefit in respect of the demutualization of an insurance corporation and part of it is not, each part of the dividend is deemed to be a policy dividend that is separate from the other part;

(e) a policy dividend includes an amount that is in lieu of payment of, or in satisfaction of, a policy dividend;

(f) the payment of a policy dividend includes the application of the policy dividend to pay a premium under an insurance policy or to repay a policy loan;

(g) where the demutualization of an insurance corporation is effected by the merger of the corporation with one or more other corporations to form one corporate entity, that entity is deemed to be the same corporation as, and a continuation of, the insurance corporation;

(h) an insurance corporation shall be considered to have become a party to an insurance policy at the time that the insurance corporation becomes liable in respect of obligations of an insurer under the policy; and

(i) notwithstanding paragraph 248(7)(a), where a cheque or other means of payment sent to an address is returned to the sender without being received by the addressee, it is deemed not to have been sent.

Related Provisions: 139.1(2)(i) — Determining time of demutualization; 87(2.2) — Amalgamation of insurers.

(4) Consequences of demutualization — Where a particular insurance corporation demutualizes,

(a) each of the income, loss, capital gain and capital loss of a taxpayer, from the disposition, alteration or dilution of the taxpayer's ownership rights in the particular corporation as a result of the demutualization, is deemed to be nil;

(b) no amount paid or payable to a stakeholder in connection with the disposition, alteration or dilution of the stakeholder's ownership rights in the particular corporation is an eligible capital expenditure;

(c) no election may be made under subsection 85(1) or (2) in respect of ownership rights in the particular corporation;

(d) where the consideration given by a person for a share of the capital stock of the particular corporation or a holding corporation in connection with the

demutualization (or for particular ownership rights in a mutual holding corporation in respect of the particular corporation) includes the transfer, surrender, alteration or dilution of ownership rights in the particular corporation, the cost of the share (or the particular ownership rights) to the person is deemed to be nil;

(e) where a holding corporation in connection with the demutualization acquires, in connection with the demutualization, a share of the capital stock of the particular corporation from the particular corporation and issues a share of its own capital stock to a stakeholder as consideration for the share of the capital stock of the particular corporation, the cost to the holding corporation of the share of the capital stock of the particular corporation is deemed to be nil;

(f) where at any time a stakeholder receives a taxable conversion benefit and subsection (14) does not apply to the benefit,

(i) the corporation that conferred the benefit is deemed to have paid a dividend at that time on shares of its capital stock equal to the value of the benefit, and

(ii) subject to subsection (16), the benefit received by the stakeholder is deemed to be a dividend received by the stakeholder at that time;

(g) for the purposes of this Part, where a dividend is deemed by paragraph (f) or by paragraph (16)(i) to have been paid by a non-resident corporation, that corporation is deemed in respect of the payment of the dividend to be a corporation resident in Canada that is a taxable Canadian corporation unless any amount is claimed under section 126 in respect of tax on the dividend;

(h) for the purposes of section 70, subsection 104(4) and section 128.1, the fair market value of rights to benefits that are to be received in connection with the demutualization is, before the time of the receipt, deemed to be nil; and

(i) where a person acquires an annuity contract in respect of which, because of the application of paragraph (2)(f), no benefit is considered to have been received for the purpose of this section,

(i) the cost of the annuity contract to the person is deemed to be nil, and

(ii) section 12.2 does not apply to the annuity contract.

Related Provisions: 12(1)(j), 82(1), 90 — Inclusion in income of deemed dividend; 87(2)(j.6) — Amalgamations — continuing corporation; 139 — Mutualization proposal; 139.1(2)(j) — Value of benefit; 212(2) — Non-resident withholding tax on deemed dividend.

(5) Fair market value of ownership rights — For the purposes of section 70, subsection 104(4) and section 128.1, where an insurance corporation makes, at any time, a public announcement that it intends to seek approval for its demutualization, the fair market value of ownership rights in the corporation is deemed to be nil throughout the period that

(a) begins at that time; and

(b) ends either at the time of the demutualization or, in the event that the corporation makes at any subsequent time a public announcement that it no longer intends to demutualize, at the subsequent time.

Related Provisions: 87(2)(j.6) — Amalgamations — continuing corporation.

(6) Paid-up capital — insurance corporation — Where an insurance corporation resident in Canada has demutualized, in computing the paid-up capital at any particular time in respect of a class of shares of the capital stock of the corporation,

(a) there shall be deducted the total of all amounts each of which would, but for this subsection, have been deemed by subsection 84(1) to have been paid at or before the particular time by the corporation as a dividend on a share of that class because of an increase in paid-up capital (determined without reference to this subsection) in connection with the demutualization; and

(b) there shall be added the amount, if any, by which

(i) the total of all amounts each of which is deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of that class paid by the corporation before the particular time

exceeds

(ii) the total of all amounts each of which would be deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of that class paid by the corporation before the particular time, if this Act were read without reference to this subsection.

Related Provisions: 87(2)(j.6) — Amalgamations — continuing corporation.

(7) Paid-up capital — holding corporation — Where a particular corporation resident in Canada was at any time a holding corporation in connection with the demutualization of an insurance corporation, in computing the paid-up capital at any particular time in respect of a class of shares of the capital stock of the particular corporation,

(a) there shall be deducted the total of all amounts each of which is an amount by which the paid-up capital would, but for this subsection, have increased at or before the particular time as a result of the acquisition of shares of a class of the capital stock of the insurance corporation from the corporation on its demutualization; and

(b) there shall be added the amount, if any, by which

(i) the total of all amounts each of which is deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of that class paid by the particular corporation before the particular time

exceeds

(ii) the total of all amounts each of which would be deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of that class paid by the particular corporation before the particular time, if this Act were read without reference to this subsection.

Related Provisions: 87(2)(j.6) — Amalgamations — continuing corporation.

(8) Policy dividends — Where the payment of a policy dividend by an insurance corporation is a taxable conversion benefit,

(a) for the purposes of this Act other than this section, the policy dividend is deemed not to be a policy dividend; and

(b) no amount in respect of the policy dividend may be included, either explicitly or implicitly, in the calculation of an amount deductible by the insurer for any taxation year under paragraph 20(7)(c) or subsection 138(3).

Related Provisions: 87(2)(j.6) — Amalgamations — continuing corporation.

(9) Payment and receipt of premium — Where, in connection with the demutualization of an insurance corporation, a person would, if subsection (2) were read without reference to paragraphs (f) and (g) and paragraph (3)(a) were read without reference to the application of subsection 147.4(2), receive a particular benefit that is a specified insurance benefit,

(a) the insurance corporation that is obligated to pay benefits under the policy to which the particular benefit relates is deemed to have received a premium at the time of the demutualization in respect of that policy equal to the value of the particular benefit;

(b) for the purpose of paragraph (a), to the extent that the obligations of a particular insurance corporation under the policy were assumed by another insurance corporation before the time of the demutualization, the particular corporation is deemed not to be obligated to pay benefits under the policy; and

(c) subject to paragraph (15)(e), where the person receives the particular benefit, the person is deemed to have paid, at the time of demutualization, a premium in respect of the policy to which the benefit relates equal to the value of the particular benefit.

Related Provisions: 139.1(2)(i) — Determining time of demutualization; 139.1(2)(j) — Value of benefit.

(10) Cost of taxable conversion benefit — Where, in connection with the demutualization of an insurance corporation, a stakeholder receives a taxable conversion benefit (other than a specified insurance benefit), the stakeholder is deemed to have acquired the benefit at a cost equal to the value of the benefit.

Related Provisions: 139.1(2)(j) — Value of benefit.

(11) No shareholder benefit — Subsection 15(1) does not apply to a conversion benefit.

(12) Exclusion of benefit from RRSP and other rules — Subject to subsection (14), for the purposes of the provisions of this Act (other than paragraph (9)(c)) that relate to registered retirement savings plans, registered retirement income funds, retirement compensation arrangements, deferred profit sharing plans and superannuation or pension funds or plans, the receipt of a conversion benefit shall be considered to be neither a contribution to, nor a distribution from, such a plan, fund or arrangement.

(13) RRSP registration rules, etc. — For the purposes of this Act, paragraphs 146(2)(c.4) and 146.3(2)(g) and subsection 198(6) shall be applied without reference to any conversion benefit.

(14) Retirement benefit — A conversion benefit received because of an interest in a life insurance policy held by a trust governed by a registered retirement savings plan, registered retirement income fund, deferred profit sharing plan or superannuation or pension fund or plan is deemed to be received under the plan or fund, as the case may be, if it is received by any person (other than the trust).

Related Provisions: 139.1(4)(j) — Deemed dividend where 139.1(12) does not apply.

(15) Employee-paid insurance — Where

(a) a stakeholder receives a conversion benefit because of the stakeholder's interest in a group insurance policy under which individuals have been insured in the course of or because of their employment,

(b) at all times before the payment of a premium described in paragraph (c), the full cost of a particular insurance coverage under the policy was borne by the individuals who were insured under the particular coverage,

(c) the stakeholder pays a premium under the policy in respect of the particular coverage or under another group insurance policy in respect of coverage that has replaced the particular coverage, and

(d) either

(i) the premium is deemed by paragraph (9)(c) to have been paid, or

(ii) it is reasonable to conclude that the purpose of the premium is to apply, for the benefit of the individuals who are insured under the particular coverage or the replacement coverage, all or part of the value of the portion of the conversion benefit that can reasonably be considered to be in respect of the particular coverage,

the following rules apply:

(e) for the purposes of paragraph 6(1)(f) and regulations made for the purposes of subsection 6(4), the premium is deemed to be an amount paid by the individuals who are insured under the particular coverage or the replacement coverage, as the case may be, and not to be an amount paid by the stakeholder, and

(f) no amount may be deducted in respect of the premium in computing the stakeholder's income.

Related Provisions: 87(2)(j.6) — Amalgamations — continuing corporation.

(16) Flow-through of conversion benefits to employees and others — Where

(a) a stakeholder receives a conversion benefit (in this subsection referred to as the "relevant conversion benefit") because of the interest of any person in an insurance policy,

(b) the stakeholder makes a payment of an amount (otherwise than by way of a transfer of a share that was received by the stakeholder as all or part of the relevant conversion benefit and that was not so received as a taxable conversion benefit) to a particular individual

(i) who has received benefits under the policy,

(ii) who has, or had at any time, an absolute or contingent right to receive benefits under the policy,

(iii) for whose benefit insurance coverage was provided under the policy, or

(iv) who received the amount because an individual satisfied the condition in subparagraph (i), (ii) or (iii),

(c) it is reasonable to conclude that the purpose of the payment is to distribute an amount in respect of the relevant conversion benefit to the particular individual,

(d) either

(i) the main purpose of the policy was to provide retirement benefits or insurance coverage to individuals in respect of their employment with an employer, or

(ii) all or part of the cost of insurance coverage under the policy had been borne by individuals (other than the stakeholder),

(e) subsection (14) does not apply to the relevant conversion benefit, and

(f) one of the following applies, namely,

(i) the particular individual is resident in Canada at the time of the payment, the stakeholder is a person the taxable income of which is exempt from tax under this Part and the payment would, if this section were read without reference to this subsection, be included in computing the income of the particular individual,

(ii) the payment is received before December 7, 1999 and the stakeholder elects in writing filed with the Minister, on a day that is not more than six months after the end of the taxation year in which the stakeholder receives the relevant conversion benefit (or a later day acceptable to the Minister), that this subsection applies in respect of the payment,

(iii) the payment is received after December 6, 1999, the payment would, if this section were read without reference to this subsection, be included in computing the income of the particular individual and the stakeholder elects in writing filed with the Minister, on a day that is not more than six months after the end of the taxation year in which the stakeholder receives the relevant conversion benefit (or a later day acceptable to the Minister), that this subsection applies in respect of the payment, or

(iv) the payment is received after December 6, 1999 and the payment would, if this section were read without reference to this subsection, not be included in computing the income of the particular individual,

the following rules apply:

(g) subject to paragraph (l), no amount is, because of the making of the payment, deductible in computing the stakeholder's income,

(h) except for the purpose of this subsection and without affecting the consequences to the particular individual of any transaction or event that occurs after the time that the payment was made, the payment is deemed not to have been received by, or made payable to, the particular individual,

(i) the corporation that conferred the relevant conversion benefit is deemed to have paid to the particular individual at the time the payment was made, and the particular individual is deemed to have received at that time, a dividend on shares of the capital stock of the corporation equal to the amount of the payment,

(j) all obligations that would, but for this subsection, be imposed by this Act or the Regulations on the corporation because of the payment of the dividend apply to the stakeholder as if the stakeholder were the corporation, and do not apply to the corporation,

(k) where the relevant conversion benefit is a taxable conversion benefit, except for the purpose of this subsection and the purposes of determining the obligations imposed by this Act or the Regulations on the corporation because of the conferral of the relevant conversion benefit, the stakeholder is deemed, to the extent of the fair market value of the payment, not to have received the relevant conversion benefit, and

(l) where the relevant conversion benefit was a share received by the stakeholder (otherwise than as a taxable conversion benefit),

(i) where the share is, at the time of the payment, capital property held by the stakeholder, the amount of the payment shall, after that time, be added in computing the adjusted cost base to the stakeholder of the share,

(ii) where subparagraph (i) does not apply and the share was capital property disposed of by the stakeholder before that time, the amount of the payment is deemed to be a capital loss of the stakeholder from the disposition of a property for the taxation year of the stakeholder in which the payment is made, and

(iii) in any other case, paragraph (g) shall not apply to the payment.

Related Provisions: 53(1)(d.01) — Addition to ACB for amount under 139.1(16)(l); 87(2)(j.6) — Amalgamations — continuing corporation; 96(3) — Election by members of partnership; 139.1(17) — Flow-through of share benefits.

(17) Flow-through of share benefits to employees and others — Where

(a) because of the interest of any person in an insurance policy, a stakeholder receives a conversion benefit (other than a taxable conversion benefit) that consists of shares of the capital stock of a corporation,

(b) the stakeholder transfers some or all of the shares at any time to a particular individual

(i) who has received benefits under the policy,

(ii) who has, or had at any time, an absolute or contingent right to receive benefits under the policy,

(iii) for whose benefit insurance coverage was provided under the policy, or

(iv) who received the shares because an individual satisfied the condition in subparagraph (i), (ii) or (iii),

(c) it is reasonable to conclude that the purpose of the transfer is to distribute all or any portion of the conversion benefit to the particular individual,

(d) either

(i) the main purpose of the policy was to provide retirement benefits or insurance coverage to individuals in respect of their employment with an employer, or

(ii) all or part of the cost of insurance coverage under the policy had been borne by individuals (other than the stakeholder),

(e) subsection (14) does not apply to the conversion benefit, and

(f) one of the following applies, namely,

(i) the particular individual is resident in Canada at the time of the transfer, the stakeholder is a person the taxable income of which is exempt from tax under this Part and the amount of the transfer would, if this section were read without reference to this subsection, be included in computing the income of the particular individual,

(ii) the transfer is made before December 7, 1999 and the stakeholder elects in writing filed with the Minister, on a day that is not more than six months

after the end of the taxation year in which the stakeholder receives the conversion benefit (or a later day acceptable to the Minister), that this subsection applies in respect of the transfer,

(iii) the transfer is made after December 6, 1999, the amount of the transfer would, if this section were read without reference to this subsection, be included in computing the income of the particular individual and the stakeholder elects in writing filed with the Minister, on a day that is not more than six months after the end of the taxation year in which the stakeholder receives the conversion benefit (or a later day acceptable to the Minister), that this subsection applies in respect of the transfer, or

(iv) the transfer is made after December 6, 1999 and the amount of the transfer would, if this section were read without reference to this subsection, not be included in computing the income of the particular individual,

the following rules apply:

(g) no amount is, because of the transfer, deductible in computing the stakeholder's income,

(h) except for the purpose of this subsection and without affecting the consequences to the particular individual of any transaction or event that occurs after the time that the transfer was made, the transfer is deemed not to have been made to the particular individual nor to represent an amount payable to the particular individual, and

(i) the cost of the shares to the particular individual is deemed to be nil.

Related Provisions: 87(2)(j.6) — Amalgamations — continuing corporation; 139.1(16) — Flow-through of conversion benefits.

(18) Acquisition of control — For the purposes of subsections 10(10), 13(21.2) and (24), 14(12) and 18(15), sections 18.1 and 37, subsection 40(3.4), the definition "superficial loss" in section 54, section 55, subsections 66(11), (11.4) and (11.5), 66.5(3) and 66.7(10) and (11), section 80, paragraph 80.04(4)(h), subsections 85(1.2) and 88(1.1) and (1.2), sections 111 and 127 and subsections 249(4) and 256(7), control of an insurance corporation (and each corporation controlled by it) is deemed not to be acquired solely because of the acquisition of shares of the capital stock of the insurance corporation, in connection with the demutualization of the insurance corporation, by a particular corporation that at a particular time becomes a holding corporation in connection with the demutualization where, immediately after the particular time,

(a) the particular corporation is not controlled by any person or group of persons; and

(b) 95% of the fair market value of all the assets of the particular corporation is less than the total of all amounts each of which is

(i) the amount of the particular corporation's money,

(ii) the amount of a deposit, with a financial institution, of such money standing to the credit of the particular corporation,

(iii) the fair market value of a bond, debenture, note or similar obligation that is owned by the particular corporation that had, at the time of its acquisition, a maturity date of not more than 24 months after that time, or

(iv) the fair market value of a share of the capital stock of the insurance corporation held by the particular corporation.

Related Provisions: 87(2)(j.6) — Amalgamations — continuing corporation; 256(6), (6.1) — Meaning of "controlled".

History [s. 139.1]: S. 139.1 added by 2000, c. 19, s. 38, applicable to transactions that occur after December 15, 1998 and, for the purposes of subsecs. 139.1(16) and (17), an election is deemed to have been filed on a timely basis if it is filed not more that 6 months after the end of the month in which the amending legislation is assented to.

Definitions [s. 139.1]: "adjusted cost base" — 54, 248(1); "amount", "annuity" — 248(1); "capital gain" — 39(1), 248(1); "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "class of shares" — 248(6); "controlled" — 256(6), (6.1); "conversion benefit" — 139.1(1); "corporation" — 248(1), *Interpretation Act* 35(1); "deadline" — 139.1(1); "deferred profit sharing plan" — 147(1), 248(1); "demutualization" — 139.1(1); "disposition", "dividend" — 248(1); "eligible capital expenditure" — 14(5), 248(1); "employee", "employer", "employment" — 248(1); "holding corporation" — 139.1(1); "individual" — 248(1); "initial deadline" — 139.1(1); "insurance corporation", "insurance policy", "insurer" — 248(1); "life insurance policy" — 138(12), 248(1); "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "mutual holding corporation" — 139.1(1); "non-resident" — 248(1); "ownership rights" — 139.1(1); "paid-up capital" — 89(1), 248(1); "person" — 139.1(1), 248(1); "property", "registered pension plan" — 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "relevant conversion benefit" — 139.1(16)(a); "resident in Canada" — 250; "retirement compensation arrangement" — 248(1); "share" — 139.1(1), 248(1); "shareholder" — 248(1); "specified insurance benefit", "stakeholder" — 139.1(1); "taxable Canadian corporation" — 89(1), 248(1); "taxable conversion benefit" — 139.1(1); "taxable income" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

139.2 Mutual holding corporations — Where at any time a mutual holding corporation (as defined in subsection 139.1(1)) in respect of an insurance corporation distributes property to a policyholder of the insurance corporation, the mutual holding corporation is deemed to have paid, and the policyholder is deemed to have received from the mutual holding corporation, at that time a dividend on shares of the capital stock of the mutual holding corporation, equal to the fair market value of the property.

Related Provisions: 139.1 — Demutualization.

History: S. 139.2 added by 2000, c. 19, s. 38, applicable to transactions that occur after December 15, 1998.

Definitions [s. 139.2]: "corporation" — 248(1), *Interpretation Act* 35(1); "dividend", "insurance corporation" — 248(1); "mutual holding corporation" — 139.1(1); "property", "share" — 248(1).

140. (1) [Insurance corporation] Deductions in computing income — In computing the income for a taxation year of an insurance corporation, whether a mutual corporation or a joint stock company, from carrying on an insurance business other than a life insurance business, there may be deducted every amount credited in respect of that business for the year or a preceding taxation year to a policyholder of the corporation by way of a policy dividend, refund of premiums or refund of premium deposits if the amount was, during the year or within 12 months thereafter,

(a) paid or unconditionally credited to the policyholder; or

(b) applied in discharge, in whole or in part, of a liability of the policyholder to pay premiums to the corporation.

Related Provisions: 87(2.2) — Amalgamation of insurance corporations; 88(1)(g) — Winding-up of subsidiary insurance corporations; 138(11.5)(k) — Transfer of business by non-resident insurer; 149(10)(a.1) — Exempt corporations; Reg. 1401(3)J — Policy reserves — non-life insurance business.

(2) Inclusion in computing income — There shall be included in computing the income of an insurance corporation, whether a mutual corporation or a joint stock company, from carrying on an insurance business for its first taxation year that commences after June 17, 1987 and ends after 1987 (in this subsection referred to as its "1988 taxation year") the amount, if any, by which

(a) the total of all amounts each of which is an amount deducted by the corporation in computing its income for a taxation year ending before its 1988 taxation year pursuant to paragraph 140(c) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, or pursuant to that paragraph by reason of subparagraph 138(3)(a)(v) of that Act as it read in respect of those taxation years in respect of amounts credited to the account of the policyholder on terms that the policyholder is entitled to payment thereof on or before the expiration or termination of the policy

exceeds

(b) the total of all amounts each of which is an amount paid or unconditionally credited to a policyholder or applied in discharge, in whole or in part, of a liability of the policyholder to pay premiums to the corporation before the corporation's 1988 taxation year in respect of the amounts credited to the account of the policyholder referred to in paragraph (a).

Related Provisions [subsec. 140(2)]: 87(2.2) — Amalgamation of insurance corporations; 88(1)(g) — Winding-up of insurance corporations; 138(3) — Deductions allowed in computing income; 138(11.5)(k) — Transfer of business by non-resident insurer.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

History [s. 140]: Subsec. 140(1) amended by substituting "policy dividend" for "dividend", by 2000, c. 19, s. 39, applicable after December 15, 1998.

Definitions [s. 140]: "amount", "business" — 248(1); "carrying on business" — 253; "corporation" — 248(1), *Interpretation Act* 35(1); "dividend", "insurance corporation", "life insurance business", "policy dividend" — 139.1(8)(a), 248(1); "taxation year" — 249.

141. (1) Definitions — In this section, "demutualization" and "holding corporation" have the same meaning as in subsection 139.1(1).

(2) Life insurance corporation deemed to be public corporation — Notwithstanding any other provision of this Act, a life insurance corporation that is resident in Canada is deemed to be a public corporation.

(3) Holding corporation deemed to be public corporation — A corporation resident in Canada that is a holding corporation because of its acquisition of shares in connection with the demutualization of a life insurance corporation resident in Canada is deemed to be a public corporation at each time in the specified period of the holding corporation at which the holding corporation would have satisfied conditions prescribed under subparagraph (b)(i) of the definition "public corporation" in subsection 89(1) if the words "shareholders, the dispersal of ownership of its shares and the public trading of its shares" in that subparagraph were read as "shareholders and the dispersal of ownership of its shares".

Related Provisions: 141(4) — Meaning of "specified period"; 141(5) — Shares of holding corporation deemed not to be taxable Canadian property.

(4) Specified period — For the purpose of subsection (3), the specified period of a corporation

(a) begins at the time the corporation becomes a holding corporation; and

(b) ends at the first time the corporation is a public corporation because of any provision of this Act other than subsection (3).

(5) Exclusion from taxable Canadian property — For the purpose of paragraph (d) of the definition "taxable Canadian property" in subsection 248(1), a share of the capital stock of a corporation is deemed to be listed at any time on a stock exchange prescribed for the purpose of that definition where

(a) the corporation is

(i) a life insurance corporation resident in Canada that has demutualized and that, at that time, would have satisfied conditions prescribed under subparagraph (b)(i) of the definition "public corporation" in subsection 89(1) if the words "shareholders, the dispersal of ownership of its shares and the public trading of its shares" in that subparagraph were read as "shareholders and the dispersal of ownership of its shares", or

(ii) a holding corporation that is deemed by subsection (3) to be a public corporation at that time;

(b) no share of the capital stock of the corporation is listed on any stock exchange at that time; and

(c) that time is not later than six months after the time of demutualization of

(i) the corporation, where the corporation is a life insurance corporation, and

(ii) in any other case, the life insurance corporation in respect of which the corporation is a holding corporation.

History [subsec. 141(5)]: The opening words of subsec. 141(5) amended by 2001, c. 17, s. 135, applicable after December 15, 1998. The opening words formerly read:

(5) For the purpose of subparagraph 115(1)(b)(iv), a share of the capital stock of a corporation is deemed to be listed at any time on a stock exchange prescribed for the purpose of that subparagraph where

Related Provisions: 138(1) — Insurance corporations; 141.1 — Insurance corporation deemed not to be private corporation; 142 — Taxable capital gains of life insurer.

History [s. 141]: S. 141 amended by 2000, c. 19, s. 40, applicable after December 15, 1998. It formerly read:

141. Life insurance corporation deemed to be public corporation — Notwithstanding any other provision of this Act, a life insurance corporation that is resident in Canada shall be deemed to be a public corporation.

Definitions [s. 141]: "Canada" — 255; "corporation" — 248(1), *Interpretation Act* 35(1); "demutualization" — 139.1(1), 141(1); "dividend" — 248(1); "holding corporation" — 139.1(1), 141(1); "insurance corporation", "life insurance corporation" — 248(1); "month" — *Interpretation Act* 35(1); "prescribed" — 248(1); "public corporation" — 89(1), 248(1); "resident in Canada" — 250; "share" — 248(1); "specified period" — 141(4); "taxable Canadian property" — 248(1).

141.1 [Insurance corporation] deemed not to be a private corporation — Notwithstanding any other provision of this Act, an insurance corporation (other than a life insurance corporation) that would, but for this section, be a private corporation is deemed not to be a private corporation for the purposes of subsection 55(5), the definition "capital dividend account" in subsection 89(1) and sections 123.3 and 129.

Related Provisions: 141(2) — Life insurance corporation deemed to be public corporation.

History: S. 141.1 amended by 1998, c. 19, s. 162, applicable to taxation years that end after June 1995. S. 141.1 formerly read:

> 141.1 Notwithstanding any other provision of this Act, an insurance corporation (other than a life insurance corporation) that would, but for this section, be a private corporation shall be deemed not to be a private corporation for the purposes of subsection 55(5), the definition "capital dividend account" in subsection 89(1) and section 129 of this Act and paragraph 89(1)(b.2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952.

Selected Cases [s. 141.1]: *Groupe Commerce, Cie D'assurances v. R.*, [1999] 4 C.T.C. 54 (FCA); aff'g [1996] 3 C.T.C. 2066 (TCC) (No refundable dividend tax available to insurance companies).

Definitions [s. 141.1]: "insurance corporation", "life insurance corporation" — 248(1); "private corporation" — 89(1), 248(1).

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

142. [Repealed]

History: S. 142 repealed by 1997, c. 25, s. 40, applicable to 1997 *et seq.* S. 142 formerly read:

> 142. Taxable capital gains etc. [of life insurer] — Notwithstanding any other provision of this Act, where in a taxation year a life insurer resident in Canada carries on an insurance business in Canada and in a country other than Canada, such of its taxable capital gains for the year and allowable capital losses for the year
>
> (a) as were from dispositions of property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business, and
>
> (b) as were not from dispositions of property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada,
>
> shall not be included in computing its income for the year.

That portion of s. 142 preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 115, applicable to 1990 *et seq.* That portion formerly read:

> 142. Notwithstanding any other provision of this Act, where in a taxation year an insurer (other than a resident of Canada that does not carry on a life insurance business) carried on an insurance business in Canada and in a country other than Canada, such of its taxable capital gains for the year and allowable capital losses for the year

142.1 [Repealed]

Origin of s. 142.1: R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsec. 138(12)).

History: S. 142.1 repealed by 1997, c. 25, s. 40, applicable to 1997 *et seq.* S. 142.1 formerly read:

> 142.1 Application of subsec. 138(12) — The definitions in subsection 138(12) apply to section 142.

Financial Institutions

Interpretation

142.2 (1) Definitions — In this section and sections 142.3 to 142.7,

History: The opening words of subsec. 142.2(1) amended by 2001, c. 17, s. 136, to replace "142.6" with "142.7", applicable after June 27, 1999.

"financial institution" at any time means

(a) a corporation that is, at that time,

(i) a corporation referred to in any of paragraphs (a) to (e.1) of the definition "restricted financial institution" in subsection 248(1),

(ii) an investment dealer, or

(iii) a corporation controlled by one or more persons or partnerships each of which is a financial institution at that time, other than a corporation the control of which was acquired by reason of the default of a debtor where it is reasonable to consider that control is being retained solely for the purpose of minimizing any losses in respect of the debtor's default, and

(b) a trust or partnership more than 50% of the fair market value of all interests in which are held at that time by one or more financial institutions,

but does not include

(c) a corporation that is, at that time,

(i) an investment corporation,

(ii) a mortgage investment corporation,

(iii) a mutual fund corporation, or

(iv) a deposit insurance corporation (as defined in subsection 137.1(5)),

(d) a trust that is a mutual fund trust at that time, nor

(e) a prescribed person or partnership;

Related Provisions: 20(1)(l)(ii) — Reserve for doubtful debts; 20(1)(p)(ii) — Deduction for bad debts; 85(1.4), 87(1.5) — Definition applies to other provisions; 87(2)(e.3), (e.4) — Amalgamations — continuing corporation; 94.1 — Foreign investment entities — accrual rules; 94.2 — Foreign investment entities — mark-to-market; 112(6)(c) — Definition applies to other provisions; 142.5 — Mark-to-market rules applicable to financial institution; 142.6(1) — Becoming or ceasing to be a financial institution; 248(1)"cost amount" — Definition applies to other provisions; 256(6)–(9) — Whether control acquired; Reg. 8103(4) — Mark-to-market — transition inclusion on ceasing to be a financial institution; Reg. 9204(2) — Residual portion of specified debt obligation on ceasing to be a financial institution.

History: Subpara. (a)(i) of the definition "financial institution" in subsec. 142.2(1) amended by 1999, c. 22, s. 57, applicable to taxation years that begin after 1998. It formerly read:

> (i) a corporation referred to in any of paragraphs (a) to (e) of the definition "restricted financial institution" in subsection 248(1),

Regulations: 8604 [to be repealed] (prescribed financial institutions); 9000 (prescribed person for para. (e) — segregated fund).

I.T. Technical News: 14 (reporting of derivative income by mutual funds); 25 (*Silicon Graphics* case — dispersed control is not control).

"investment dealer" at any time means a corporation that is, at that time, a registered securities dealer;

Related Provisions: 142.2(1)"financial institution" — Investment dealer is a financial institution; 142.2(1)"mark-to-market property"(c) — debt held by investment dealer subject to mark-to-market rules.

"mark-to-market property" of a taxpayer for a taxation year means property held by the taxpayer in the year that is

(a) a share,

(b) where the taxpayer is not an investment dealer, a specified debt obligation that

(i) was carried at fair market value in the taxpayer's financial statements

(A) for the year, where the taxpayer held the obligation at the end of the year, and

(B) for each preceding taxation year that ended after the taxpayer acquired the obligation, or

(ii) was acquired and disposed of in the year, where it is reasonable to expect that the obligation would have been carried in the taxpayer's financial statements for the year at fair market value if the taxpayer had not disposed of the obligation,

other than a specified debt obligation of the taxpayer that was (or would have been) carried at fair market value

(iii) solely because its fair market value was less than its cost to the taxpayer, or

(iv) because of a default of the debtor, and

(c) where the taxpayer is an investment dealer, a specified debt obligation,

but does not include

(d) a share of a corporation in which the taxpayer has a significant interest at any time in the year, nor

(e) a prescribed property;

Proposed Amendment — 142.2(1)"mark-to-market property" — Acquisition of control

Letter from Dept. of Finance, July 25, 2002:

Dear [xxx]

I am writing in reply to your letter to Mr. Stephen Richardson dated February 21, 2002 in which you have requested that an amendment be made to the mark-to-market rules in the *Income Tax Act* (the "Act") to provide for an exemption from those rules in the case where a taxpayer holds shares of a corporation and is in the process of carrying out a plan of action to acquire control of the corporation.

The expression "mark-to-market property" is defined in subsection 142.2(1) of the Act. A share of a corporation in which a taxpayer has a "significant interest" at any time in a taxation year of the taxpayer is excluded from the definition "mark-to-market property" of the taxpayer for the year. In this regard, subsection 142.2(2) of the Act provides that a taxpayer is considered to have a "significant interest" in a corporation at any time if at that time the taxpayer is related to the corporation (ignoring any rights described in paragraph 251(5)(b)) or if at that time the taxpayer holds shares of the corporation the fair market value of which represents at least 10% of the fair market value of all issued shares.

In your letter, you suggested that subsection 142.2(2) be amended so that a taxpayer would be considered to have a "significant interest" in a corporation at any time at which the taxpayer is carrying out a plan of action to acquire control of the corporation. Your letter also suggested certain other amendments which would accommodate various types of plans of action. However, we understand that your direct concern relates to the acquisition of control situation. In our view, it would be appropriate to exclude, from being a mark-to-market property for a particular taxation year, shares of a corporation held by a taxpayer at any time in the particular year where control was acquired in that year or in the subsequent taxation year.

We are therefore prepared to recommend to the Minister of Finance that the Act be amended to provide that, where a taxpayer, alone or together with persons related to the taxpayer (otherwise than by reason of a right referred to in paragraph 251(5)(b)), acquires control of a corporation in a taxation year of the taxpayer that begins after 2001, the taxpayer may elect to treat any shares of the corporation held by the taxpayer in the immediately preceding taxation year as not being mark-to-market property.

Thank you for bringing this matter to our attention.

Yours sincerely,

Len Farber
General Director, Tax Legislation Division, Tax Policy Branch

Proposed Amendment — Deemed disposition on losing prescribed-property status

Letter from Dept. of Finance, August 14, 2002:

Dear [xxx]

I am writing in response to the requests made of the Department by representatives of the [xxx] in conversations with officials of the Department and in the electronic mail dated July 22, 2002 that you sent to Mr. Wallace Conway.

You have informed us that, pursuant to a Plan of Arrangement, all of the common shareholders of the [xxx] will transfer their shares of [xxx] to a new corporation, [xxx]. In exchange for the transfer of the shares of [xxx] the shareholders will receive common shares of [xxx]. Thus, initially, the common shareholders of [xxx] will become the common shareholders of [xxx] will become a wholly-owned subsidiary of [xxx]. On the same day that the share exchange is made, the class of common shares of [xxx] will be listed on the [xxx] and shares of that class will be offered to public investors through an initial public offering. At the time of listing, [xxx] will become a public corporation and, since the shares of [xxx] will not be listed on any stock exchange, [xxx] will not be a public corporation.

We are prepared to recommend to the Minister of Finance amendments to the *Income Tax Act* and *Regulations* as set out in the following paragraphs. If our recommendations are accepted, the amendments will be presented to Parliament and the Governor in Council for consideration and approval. We specifically confirm the following matters:

- Based on what we have been told by representatives of [xxx] concerning the activities of [xxx], under our recommended amendments to the *Income Tax Regulations*, the shares of [xxx] will qualify as prescribed property for the purposes of the definition "mark-to-market property" in subsection 142.2(1) of the *Income Tax Act* (Act) up until the time at which they are exchanged for the shares of [xxx]
- Based on what we have been told by representatives of [xxx] concerning the activities of [xxx], under our recommended amendments to the *Income Tax Regulations*, the shares of [xxx] will not qualify as prescribed property for the purposes of the definition "mark-to-market property" in subsection 142.2(1) of the Act effective as of the time at which any class of shares of [xxx] is listed on any stock exchange.
- We are prepared to recommend to the Minister of Finance that the mark-to-market property rules in the Act be modified to require a deemed disposition by a taxpayer of property at its fair market value immediately before the property loses its status as a prescribed property for the purposes of the definition "mark-to-market property" in subsection 142.2(1) of the Act. The property would be deemed to have been reacquired by the taxpayer, immediately after the time of the deemed disposition, at a cost equal to the amount of proceeds deemed to have been received by the taxpayer.
- The gains and losses of a taxpayer that arise as a result of a deemed disposition of a property (which occurs because that property loses its status as a prescribed property for the purposes of the definition "mark-to-market property" in subsection 142.2(1)) will be included in determining the taxpayer's income for the year in which the disposition occurs. Under our recommended amendments, taxpayers will not be permitted to defer the payment of any of the taxes attributable to the gains arising on the deemed disposition of the property.

I trust that this letter addresses all the requests made of the Department by [xxx]. If further assistance or clarification is required, do not hesitate to contact us.

Yours sincerely,

Len Farber
General Director, Tax Legislation Division, Tax Policy Branch

Proposed Amendment — 142.2(1)"mark-to-market property"

Letter from Dept. of Finance, July 29, 2002: See under Reg. 9001(2).

Related Provisions: 85(1.4), 87(1.5) — Definition applies to other provisions; 87(2)(e.4), (e.5) — Amalgamations — continuing corporation; 88(1)(h) — Windup — continuing corporation; 94.1(1)"exempt interest"(b)(i) — Mark-to-market property excluded from foreign investment entity accrual rules; 112(6)(c) — Definition applies to other provisions; 136(1) — Cooperative not private corporation — exception; 138(11.5)(k.2) — Transfer of business by non-resident insurer; 142.2(2), (3), (5) — Significant interest; 142.3(3) — Mark-to-market property not subject to rules re income from specified debt obligations; 142.5 — Mark-to-market rules; 248(1)"cost amount" — Definition applies to other provisions; 248(1)"cost amount"(c.1) — Cost amount of mark-to-market property; Reg. 6209(b)(i) — Prescribed securities for lending assets.

Regulations: 9001(2), 9002 (prescribed property for para. (e)).

Interpretation Bulletins: IT-291R3: Transfer of property to a corporation under subsection 85(1).

"specified debt obligation" of a taxpayer means the interest held by the taxpayer in

(a) a loan, bond, debenture, mortgage, hypothecary claim, note, agreement of sale or any other similar indebtedness, or

(b) a debt obligation, where the taxpayer purchased the interest,

other than an interest in

(c) an income bond, an income debenture, a small business development bond, a small business bond or a prescribed property, or

(d) an instrument issued by or made with a person to whom the taxpayer is related or with whom the tax-

payer does not otherwise deal at arm's length, or in which the taxpayer has a significant interest.

Related Provisions: 85(1.4), 87(1.5) — Definition applies to other provisions; 87(2)(e.3) — Amalgamation of holder of obligation; 138(11.5)(k.1) — Definition applies to other provisions; 142.2(1)"mark-to-market property"(b), (c) — Mark-to-market rules for financial institutions; 142.2(2), (3) — Meaning of "significant interest"; 142.3(1) — Income from specified debt obligations; 142.4 — Disposition of specified debt obligation; 142.5 — Mark-to-market rules for financial institutions; 248(1)"cost amount" — Definition applies to other provisions; 248(1)"cost amount"(d.2) — Cost amount of specified debt obligation; 248(1) — Definition of "lending asset"; Reg. 6209(b)(ii) — Prescribed securities for lending assets.

History: Para. (a) of the definition "specified debt obligation" in subsec. 142.2(1) amended by 2001, c. 17, s. 219 to add the words "hypothecary claim", in force June 14, 2001.

The portion of the definition "specified debt obligation" in subsec. 142.2(1) after para. (b) amended by 1998, c. 19, s. 163, applicable to taxation years that end after February 22, 1994. The portion formerly read:

> other than an interest in an income bond, an income debenture, a small business development bond, a small business bond or a prescribed property.

For earlier history see at end of s. 142.2.

Regulations: 9004 (prescribed property).

Interpretation Bulletins: IT-291R3: Transfer of property to a corporation under subsection 85(1).

(2) Significant interest — For the purpose of subsection (5) and the definition "mark-to-market property" in subsection (1), a taxpayer has a significant interest in a corporation at any time if

(a) the taxpayer is related (otherwise than because of a right referred to in paragraph 251(5)(b)) to the corporation at that time; or

(b) the taxpayer holds, at that time,

(i) shares of the corporation that give the taxpayer 10% or more of the votes that could be cast under all circumstances at an annual meeting of shareholders of the corporation, and

(ii) shares of the corporation having a fair market value of 10% or more of the fair market value of all the issued shares of the corporation.

Proposed Amendment — 142.2(2)

Letter from Dept. of Finance, July 25, 2002: See under 142.2(1)"mark-to-market property".

Related Provisions: 142.2(3) — Rules for determining significant interest; 142.2(4) — Extended meaning of "related".

(3) Rules re significant interest — For the purpose of determining under subsection (2) whether a taxpayer has a significant interest in a corporation at any time,

(a) the taxpayer shall be deemed to hold each share that is held at that time by a person or partnership to whom the taxpayer is related (otherwise than because of a right referred to in paragraph 251(5)(b));

(b) a share of the corporation acquired by the taxpayer by reason of the default of a debtor shall be disregarded where it is reasonable to consider that the share is being retained for the purpose of minimizing any losses in respect of the debtor's default; and

(c) a share of the corporation that is prescribed in respect of the taxpayer shall be disregarded.

Related Provisions: 142.2(4) — Extended meaning of "related".

Regulations: 9003 (prescribed share for 142.2(3)(c)).

(4) Extension of meaning of "related" — For the purposes of this subsection and subsections (2) and (3), a person or partnership shall be deemed to be related to a person or partnership where they would be related if, for the purpose of section 251,

(a) every partnership and trust were considered to be a corporation;

(b) subject to paragraph (c), all decisions relating to the conduct of a trust were made by majority vote of the beneficiaries of the trust, with each beneficiary having, at any time, a number of votes equal to the number determined by the formula

$$100 \times \frac{A}{B}$$

where

A is the fair market value at that time of the beneficiary's beneficial interest in the trust, and

B is the total of all amounts each of which is the fair market value at that time of a beneficial interest in the trust; and

(c) where the amount that would be determined for B in paragraph (b) in respect of a trust is nil, the trust were considered not to be controlled by any person, partnership or group each member of which is a person or partnership.

(5) Significant interest — transition — For the purpose of the definition "mark-to-market property" in subsection (1), where

(a) on October 31, 1994, a taxpayer whose 1994 taxation year ends after October 30, 1994 held a share of a corporation in which the taxpayer did not have a significant interest at any time in the year, and

(b) at any time after the end of the year and before May 1995, the taxpayer has a significant interest in the corporation,

the taxpayer has a significant interest in the corporation in the year and in any subsequent taxation year ending before the earliest time referred to in paragraph (b).

Related Provisions: 142.2(2), (3) — Significant interest.

History [s. 142.2]: S. 142.2 added by 1995, c. 21, s. 58, applicable to taxation years that end after February 22, 1994.

Definitions [s. 142.2]: "acquired" — 256(7)–(9); "control" — 256(6)–(9); "controlled" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "financial institution" — 142.2(1); "fiscal period" — 249(2)(b), 249.1; "income bond", "income debenture", "indexed debt obligation", "investment corporation" — 130(3)(a), 248(1); "investment dealer" — 142.2(1); "mortgage investment corporation" — 130.1(6), 248(1); "mutual fund corporation" — 131(8), 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q) [to be repealed], 132.2(3)(n) [draft], 248(1); "person", "prescribed", "property", "registered securities dealer" — 248(1); "related" — 142.2(4), 251(2); "share", "shareholder" — 248(1); "significant interest" — 142.2(2), (3); "small business bond" — 15.2(3), 248(1); "small business development bond" — 15.1(3), 248(1); "specified debt obligation" — 142.2(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1).

Income from Specified Debt Obligations

142.3 (1) Amounts to be included and deducted — Subject to subsections (3) and (4), where a taxpayer that is, in a taxation year, a financial institution holds a specified debt obligation at any time in the year,

(a) there shall be included in computing the income of the taxpayer for the year the amount, if any, prescribed in respect of the obligation;

(b) there shall be deducted in computing the income of the taxpayer for the year the amount, if any, prescribed in respect of the obligation; and

(c) except as provided by this section, paragraphs 12(1)(d) and (i) and 20(1)(l) and (p) and section 142.4, no amount shall be included or deducted in respect of payments under the obligation (other than fees and similar amounts) in computing the income of the taxpayer for the year.

Related Provisions: 87(2)(e.3) — Amalgamations — continuing corporation; 138(10)(a) — Application to insurance corporation; 138(12)"gross investment revenue"E(a), 138(12)"gross investment revenue"G(b) — Gross investment revenue of insurer; 142.3(3) — Exception for certain obligations; 142.3(4) — Impaired specified debt obligations; 142.4(1)"tax basis"(b), (i) — Disposition of specified debt obligation by financial institution; 142.4(9) — Disposition of part of obligation.

Regulations: 9101 (prescribed amounts).

(2) Failure to report accrued amounts — Subject to subsection (3), where

(a) a taxpayer holds a specified debt obligation at any time in a particular taxation year in which the taxpayer is a financial institution, and

(b) all or part of an amount required by paragraph (1)(a) or subsection 12(3) to be included in respect of the obligation in computing the taxpayer's income for a preceding taxation year was not so included,

that part of the amount shall be included in computing the taxpayer's income for the particular year, to the extent that it was not included in computing the taxpayer's income for a preceding taxation year.

Related Provisions: 142.3(3) — Exception for certain obligations; 142.4(1)"tax basis"(b) — Disposition of specified debt obligation by financial institution.

(3) Exception for certain obligations — Subsections (1) and (2) do not apply for a taxation year in respect of a taxpayer's specified debt obligation that is

(a) a mark-to-market property for the year; or

(b) an indexed debt obligation, other than a prescribed obligation.

(4) Impaired specified debt obligations — Subsection (1) does not apply to a taxpayer in respect of a specified debt obligation for the part of a taxation year throughout which the obligation is impaired where an amount in respect of the obligation is deductible because of subparagraph 20(1)(l)(ii) in computing the taxpayer's income for the year.

History [s. 142.3]: The opening words of subsec. 142.3(1) amended, subsec. 142.3(4) added, by 1998, c. 19, subsecs. 164(2), (5), applicable

(a) to taxation years that end after September 1997; and

(b) to a taxpayer's taxation years that ended after 1995 and before October 1997 where the taxpayer files an election in accordance with para. 81(11)(b) of the said c. 19 (see under 20(1)(l)).

The opening words formerly read:

(1) Subject to subsection (3), where a taxpayer that is, in a taxation year, a financial institution holds a specified debt obligation at any time in the year,

The opening words of subsec. 142.3(1), para. 142.3(1)(c), subsec. 142.3(2) added, former subsec. (2) renumbered as (3) and amended, by 1998, c. 19, subsecs. 164(1), (3), (4), applicable to taxation years that end after February 22, 1994, except that the amendments do not apply to debt obligations disposed of before February 23, 1994. The opening words, para. (c), and subsec. 142.3(2) formerly read:

(1) Subject to subsection (2), where a taxpayer that is, in a taxation year, a financial institution holds a specified debt obligation at any time in the year,

. . . . .

(c) except as provided by this subsection, paragraphs 12(1)(d) and (i) and 20(1)(l) and (p) and section 142.4, no amount shall be included or deducted in respect of payments under the obligation (other than fees and similar amounts) in computing the income of the taxpayer for the year.

. . . . .

(2) Exception for certain obligations — Subsection (1) does not apply for a taxation year in respect of a specified debt obligation of a taxpayer that is

(a) a mark-to-market property for the year; or

(b) an indexed debt obligation, other than a prescribed obligation.

S. 142.3 added by 1995, c. 21, s. 58, applicable to taxation years that end after February 22, 1994, except that it not apply to debt obligations disposed of before February 23, 1994.

Definitions [s. 142.3]: "amount" — 248(1); "financial institution" — 142.2(1); "indexed debt obligation" — 248(1); "investment dealer", "mark-to-market property" — 142.2(1); "prescribed" — 248(1); "specified debt obligation" — 142.2(1); "taxation year" — 249; "taxpayer" — 248(1).

Disposition of Specified Debt Obligations

142.4 (1) Definitions — In this section,

"tax basis" of a specified debt obligation at any time to a taxpayer means the amount, if any, by which the total of all amounts each of which is

(a) the cost of the obligation to the taxpayer,

(b) an amount included under subsection 12(3) or 16(2) or (3), paragraph 142.3(1)(a) or subsection 142.3(2) in respect of the obligation in computing the taxpayer's income for a taxation year that began before that time,

(c) subject to subsection 138(13), where the taxpayer acquired the obligation in a taxation year ending before February 23, 1994, the part of the amount, if any, by which

(i) the principal amount of the obligation at the time it was acquired

exceeds

(ii) the cost to the taxpayer of the obligation

that was included in computing the taxpayer's income for a taxation year ending before February 23, 1994,

(d) subject to subsection 138(13), where the taxpayer is a life insurer, an amount in respect of the obligation that was deemed by paragraph 142(3)(a) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1977 taxation year, to be a gain for a taxation year ending before 1978,

(e) where the obligation is an indexed debt obligation, an amount determined under subparagraph 16(6)(a)(i) in respect of the obligation and included in computing the income of the taxpayer for a taxation year beginning before that time,

(f) an amount in respect of the obligation that was included in computing the taxpayer's income for a taxation year ending at or before that time in respect of changes in the value of the obligation attributable to the fluctuation in the value of a currency of a country other than Canada relative to Canadian currency, other than an amount included under paragraph 142.3(1)(a),

(g) an amount in respect of the obligation that was included under paragraph 12(1)(i) in computing the taxpayer's income for a taxation year beginning before that time, or

(h) where the obligation was a capital property of the taxpayer on February 22, 1994, an amount required by paragraph 53(1)(f) or (f.1) to be added in computing the adjusted cost base of the obligation to the taxpayer on that day

exceeds the total of all amounts each of which is

(i) an amount deducted under paragraph 142.3(1)(b) in respect of the obligation in computing the taxpayer's income for a taxation year beginning before that time,

(j) the amount of a payment received by the taxpayer under the obligation at or before that time, other than

(i) a fee or similar payment, and

(ii) proceeds of disposition of the obligation,

(k) subject to subsection 138(13), where the taxpayer acquired the obligation in a taxation year ending before February 23, 1994, the part of the amount, if any, by which

(i) the cost to the taxpayer of the obligation

exceeds

(ii) the principal amount of the obligation at the time it was acquired

that was deducted in computing the taxpayer's income for a taxation year ending before February 23, 1994,

(l) subject to subsection 138(13), where the taxpayer is a life insurer, an amount in respect of the obligation that was deemed by paragraph 142(3)(b) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1977 taxation year, to be a loss for a taxation year ending before 1978,

(m) an amount that was deducted under subsection 20(14) in respect of the obligation in computing the taxpayer's income for a taxation year beginning before that time,

(n) where the obligation is an indexed debt obligation, an amount determined under subparagraph 16(6)(a)(ii) in respect of the obligation and deducted in computing the income of the taxpayer for a taxation year beginning before that time,

(o) an amount in respect of the obligation that was deducted in computing the taxpayer's income for a taxation year ending at or before that time in respect of changes in the value of the obligation attributable to the fluctuation in the value of a currency of a country other than Canada relative to Canadian currency, other than an amount deducted under paragraph 142.3(1)(b),

(p) an amount in respect of the obligation that was deducted under paragraph 20(1)(p) in computing the taxpayer's income for a taxation year ending at or before that time, or

(q) where the obligation was a capital property of the taxpayer on February 22, 1994, an amount required by paragraph 53(2)(b.2) or (g) to be deducted in computing the adjusted cost base of the obligation to the taxpayer on that day;

Related Provisions: 138(13) — Variation in tax basis of certain insurers; 248(1)"cost amount"(d.2) — Cost amount of specified debt obligation is tax basis.

History: Paras. (b) and (j) of the definition "tax basis" in subsec. 142.4(1) amended by 1998, c. 19, subsecs. 165(1), (2), applicable to taxation years that end after February 22, 1994. Paras. (b) and (j) formerly read:

(b) an amount included under subsection 12(3) or 16(2) or (3) or paragraph 142.3(1)(a) in respect of the obligation in computing the taxpayer's income for a taxation year beginning before that time,

. . . . .

(j) the amount of a payment (other than proceeds of disposition of the obligation) received by the taxpayer under the obligation at or before that time in respect of an amount included by any of paragraphs (a) to (f) in determining the tax basis of the obligation to the taxpayer at that time,

Subsec. 142.4(1)"tax basis" added by 1995, c. 21, s. 58, applicable to taxation years that end after February 22, 1994.

"transition amount" of a taxpayer in respect of the disposition of a specified debt obligation has the meaning assigned by regulation.

Related Provisions: 142.4(7)A — Current amount based on transition amount.

Regulations: 9201 (transition amount).

(2) Scope of section — This section applies to the disposition of a specified debt obligation by a taxpayer that is a financial institution, except that this section does not apply to the disposition of a specified debt obligation that is a mark-to-market property for the taxation year in which the disposition occurs.

Related Provisions: 87(2)(e.3) — Amalgamations — continuing corporation; 138(10)(b) — Application to insurance corporation; 142.3(1)(c) — Amount deductible in respect of specified debt obligation; 142.4(9) — Disposition of part of obligation.

(3) Rules applicable to disposition — Where a taxpayer has disposed of a specified debt obligation after February 22, 1994,

(a) except as provided by paragraph 79.1(7)(d) or this section, no amount shall be included or deducted in respect of the disposition in computing the taxpayer's income; and

(b) except where the obligation is an indexed debt obligation (other than a prescribed obligation), paragraph 20(14)(a) shall not apply in respect of the disposition.

Related Provisions: 142.4(2) — Scope of section.

History: Para. 142.4(3)(a) amended by 1998, c. 19, subsec. 165(3), applicable to taxation years that end after February 22, 1994. Para. 142.4(3)(a) formerly read:

(a) except as provided by this section, no amount shall be included or deducted in respect of the disposition in computing the income of the taxpayer; and

Subsec. 142.4(3) added by 1995, c. 21, s. 58, applicable to taxation years that end after February 22, 1994.

(4) Inclusions and deductions re disposition — Subject to subsection (5), where after 1994 a taxpayer disposes of a specified debt obligation in a taxation year,

(a) where the transition amount in respect of the disposition of the obligation is positive, it shall be included in computing the income of the taxpayer for the year;

(b) where the transition amount in respect of the disposition of the obligation is negative, the absolute value of the transition amount shall be deducted in computing the income of the taxpayer for the year;

(c) where the taxpayer has a gain from the disposition of the obligation,

(i) the current amount of the gain shall be included in computing the income of the taxpayer for the year, and

(ii) there shall be included in computing the taxpayer's income for taxation years that end on or after the day of disposition the amount allocated, in accordance with prescribed rules, to the year in respect of the residual portion of the gain; and

(d) where the taxpayer has a loss from the disposition of the obligation,

(i) the current amount of the loss shall be deducted in computing the taxpayer's income for the year, and

(ii) there shall be deducted in computing the taxpayer's income for taxation years that end on or after the day of disposition the amount allocated, in accordance with prescribed rules, to the year in respect of the residual portion of the loss.

Related Provisions: 39(1)(a)(ii.2) — No capital gain on disposition; 87(2)(g.2) — Amalgamations — continuing corporation; 142.4(2) — Scope of section; 142.4(5) — Where subsec. (4) does not apply; 142.4(7) — Current amount; 142.4(8) — Residual portion; 142.4(9) — Disposition of part of obligation; 142.4(11) — Payments received on or after disposition; 142.7(13) — Application on transfer of foreign bank business from Canadian affiliate to branch; Reg. 2405(3)"gross Canadian life investment income"(d.1), (i.1) — Inclusion in/deduction from life insurer's income; Reg. 2411(4.1) — Inclusion in insurer's net investment revenue.

History: Subsec. 142.4(4) amended by 1998, c. 19, subsec. 165(4), applicable to taxation years that end after February 22, 1994. Subsec. 142.4(4) formerly read:

(4) Subject to subsection (5), where after 1994 a taxpayer has, in a taxation year, disposed of a specified debt obligation,

(a) where the current amount in respect of the disposition of the obligation is positive, it shall be included in computing the income of the taxpayer for the year;

(b) where the current amount in respect of the disposition of the obligation is negative, it shall be deducted in computing the income of the taxpayer for the year;

(c) where the taxpayer has a gain from the disposition of the obligation, there shall be included in computing the taxpayer's income for taxation years that end on or after the day of disposition the amount allocated, in accordance with prescribed rules, to the year in respect of the residual portion of the gain; and

(d) where the taxpayer has a loss from the disposition of the obligation, there shall be deducted in computing the taxpayer's income for taxation years that end on or after the day of disposition the amount allocated, in accordance with prescribed rules, to the year in respect of the residual portion of the loss.

Subsec. 142.4(4) added by 1995, c. 21, s. 58, applicable to taxation years that end after February 22, 1994.

Regulations: 9203, 9204 (prescribed rules — residual portion).

(5) Gain or loss not amortized — Where after February 22, 1994 a taxpayer disposes of a specified debt obligation in a taxation year, and

(a) the obligation is

(i) an indexed debt obligation (other than a prescribed obligation), or

(ii) a debt obligation prescribed in respect of the taxpayer,

(b) the disposition occurred

(i) before 1995,

(ii) after 1994 in connection with the transfer of all or part of a business of the taxpayer to a person or partnership, or

(iii) because of paragraph 142.6(1)(c), or

(c) in the case of a taxpayer other than a life insurance corporation,

(i) the disposition occurred before 1996, and

(ii) the taxpayer elects in writing, filed with the Minister before July 1997, to have this paragraph apply,

the following rules apply:

(d) subsection (4) does not apply to the disposition,

(e) there shall be included in computing the taxpayer's income for the year the amount, if any, by which the taxpayer's proceeds of disposition exceed the tax basis of the obligation to the taxpayer immediately before the disposition, and

(f) there shall be deducted in computing the taxpayer's income for the year the amount, if any, by which the tax basis of the obligation to the taxpayer immediately before the disposition exceeds the taxpayer's proceeds of disposition.

Related Provisions: 39(1)(a)(ii.2) — No capital gain on disposition; 142.4(2) — Scope of section; Reg. 2411(4)A(c.1), 2411(4)B(a.1) — Inclusion in insurer's net investment revenue.

History: Subsec. 142.4(5) amended by 1998, c. 19, subsec. 165(4), applicable to taxation years that end after February 22, 1994. Subsec. 142.4(5) formerly read:

(5) Where a taxpayer has, in a taxation year and after February 22, 1994, disposed of a specified debt obligation, and either

(a) the obligation is

(i) an indexed debt obligation (other than a prescribed obligation), or

(ii) a debt obligation prescribed in respect of the taxpayer, or

(b) the disposition occurred

(i) before 1995,

(ii) after 1994 in connection with the transfer of all or part of a business of the taxpayer to a person or partnership, or

(iii) because of paragraph 142.6(1)(c),

the following rules apply:

(c) subsection (4) does not apply to the disposition,

(d) where the taxpayer has a gain from the disposition of the obligation, the gain shall be included in computing the income of the taxpayer for the year, and

(e) where the taxpayer has a loss from the disposition of the obligation, the loss shall be deducted in computing the income of the taxpayer for the year.

Subsec. 142.4(5) added by 1995, c. 21, s. 58, applicable to taxation years that end after February 22, 1994.

Regulations: 9202(2), (4), (5) (debt obligations prescribed for 142.2(5)(a)(ii)).

(6) Gain or loss from disposition of obligation — For the purposes of this section,

(a) where the amount determined under paragraph (c) in respect of the disposition of a specified debt obligation by a taxpayer is positive, that amount is the taxpayer's gain from the disposition of the obligation;

(b) where the amount determined under paragraph (c) in respect of the disposition of a specified debt obligation by a taxpayer is negative, the absolute value of that amount is the taxpayer's loss from the disposition of the obligation; and

(c) the amount determined under this paragraph in respect of the disposition of a specified debt obligation by a taxpayer is the positive or negative amount determined by the formula

$$A - (B + C)$$

where

A is the taxpayer's proceeds of disposition,

B is the tax basis of the obligation to the taxpayer immediately before the time of disposition, and

C is the taxpayer's transition amount in respect of the disposition.

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: Para. 142.4(6)(b) and the description of C in para. 142.4(6)(c) amended by 1998, c. 19, subsec. 165(5), (6), applicable to taxation years

that end after February 22, 1994. Para. 142.4(6)(b) and the description of C formerly read:

(b) where the amount determined under paragraph (c) in respect of the disposition of a specified debt obligation by a taxpayer is negative, that amount is the taxpayer's loss from the disposition of the obligation; and

. . . . .

C is

(i) where subsection (4) applies to the disposition, the taxpayer's transition amount in respect of the disposition, and

(ii) in any other case, nil.

Subsec. 142.4(6) added by 1995, c. 21, s. 58, applicable to taxation years that end after February 22, 1994.

(7) Current amount — For the purposes of subsections (4) and (8), the current amount of a taxpayer's gain or loss from the disposition of a specified debt obligation is

(a) where the taxpayer has a gain from the disposition of the obligation, the part, if any, of the gain that is reasonably attributable to a material increase in the probability, or perceived probability, that the debtor will make all payments as required by the obligation; and

(b) where the taxpayer has a loss from the disposition of the obligation, the amount that the taxpayer claims not exceeding the part, if any, of the loss that is reasonably attributable to a default by the debtor or a material decrease in the probability, or perceived probability, that the debtor will make all payments as required by the obligation.

History: Subsec. 142.4(7) amended by 1998, c. 19, subsec. 165(7), applicable to taxation years that end after February 22, 1994. Subsec. 142.4(7) formerly read:

(7) For the purpose of subsection (4), the current amount in respect of the disposition of a specified debt obligation by a taxpayer is the positive or negative amount determined by the formula

A + B

where

A is the taxpayer's transition amount in respect of the disposition, and

B is

(a) where the taxpayer has a gain from the disposition of the obligation, the part, if any, of the gain that is reasonably attributable to a material increase in the probability, or perceived probability, that the debtor will make all payments as required by the obligation, and

(b) where the taxpayer has a loss from the disposition of the obligation, the negative amount that the taxpayer claims not exceeding in magnitude the part, if any, of the loss that is reasonably attributable to a default by the debtor or a material decrease in the probability, or perceived probability, that the debtor will make all payments as required by the obligation.

Subsec. 142.4(7) added by 1995, c. 21, s. 58, applicable to taxation years that end after February 22, 1994.

(8) Residual portion of gain or loss — For the purpose of subsection (4), the residual portion of a taxpayer's gain or loss from the disposition of a specified debt obligation is the amount, if any, by which the gain or loss exceeds the current amount of the gain or loss.

Related Provisions: 142.4(7) — Current amount.

History: Subsec. 142.4(8) amended by 1998, c. 19, subsec. 165(7), applicable to taxation years that end after February 22, 1994. Subsec. 142.4(8) formerly read:

(8) For the purpose of subsection (4), where a taxpayer has a gain or loss from the disposition of a specified debt obligation, the residual portion of the gain or loss is the part of the gain or loss that is not included in determining the amount B in the formula in subsection (7) in respect of the disposition.

Subsec. 142.4(8) added by 1995, c. 21, s. 58, applicable to taxation years that end after February 22, 1994.

(9) Disposition of part of obligation — Where a taxpayer disposes of part of a specified debt obligation, section 142.3 and this section apply as if the part disposed of and the part retained were separate specified debt obligations.

Related Provisions: 248(27) — Partial forgiveness of debt obligation — effect on debtor.

History: Subsec. 142.4(9) amended by 1998, c. 19, subsec. 165(7), applicable to taxation years that end after February 22, 1994. Subsec. 142.4(9) formerly read:

(9) Where a taxpayer disposed of part of a specified debt obligation, this section and any regulations made for the purpose of this section apply as if the part disposed of and the part retained were separate specified debt obligations.

Subsec. 142.4(9) added by 1995, c. 21, s. 58, applicable to taxation years that end after February 22, 1994.

(10) Penalties and bonuses — Notwithstanding subsection 18(9.1), where a taxpayer that holds a specified debt obligation receives a penalty or bonus because of the repayment before maturity of all or part of the principal amount of the debt obligation, the payment is deemed to be received by the taxpayer as proceeds of disposition of the specified debt obligation.

History: Subsec. 142.4(10) added by 1998, c. 19, subsec. 165(7), applicable to taxation years that end after February 22, 1994.

(11) Payments received on or after disposition — For the purposes of this section, where at any time a taxpayer receives a payment (other than proceeds of disposition) under a specified debt obligation on or after the disposition of the obligation, the payment is deemed not to have been so received at that time but to have been so received immediately before the disposition.

History [subsec. 142.4(11)]: Subsec. 142.4(11) added by 1998, c. 19, subsec. 165(7), applicable to taxation years that end after February 22, 1994.

History [s. 142.4]: S. 142.4 added by 1995, c. 21, s. 58, applicable to taxation years that end after February 22, 1994.

Definitions [s. 142.4]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "capital property" — 54, 248(1); "current amount" — 142.4(7); "financial institution" — 142.2(1); "indexed debt obligation" — 248(1); "investment dealer" — 142.2(1); "life insurance corporation", "life insurer" — 248(1); "mark-to-market property" — 142.2(1); "Minister" — 248(1); "person", "prescribed", "principal amount", "regulation" — 248(1); "residual portion" — 142.4(8); "specified debt obligation" — 142.2(1); "tax basis" — 142.4(1); "taxation year" — 249; "taxpayer" — 248(1); "transition amount" — 142.4(1); "writing" — *Interpretation Act* 35(1).

Mark-to-Market Properties

142.5 (1) Income treatment for profits and losses — Where, in a taxation year that begins after October 1994, a taxpayer that is a financial institution in the year disposes of a property that is a mark-to-market property for the year,

(a) there shall be included in computing the taxpayer's income for the year the profit, if any, from the disposition; and

(b) there shall be deducted in computing the taxpayer's income for the year the loss, if any, from the disposition.

Related Provisions: 39(1)(a)(ii.2) — No capital gain on disposition; 138(10)(a) — Application to insurance corporation; 142.5(2) — Deemed disposition at year-end.

(2) Mark-to-market requirement — Where a taxpayer that is a financial institution in a taxation year holds, at the end of the year, a mark-to-market property for the year, the taxpayer shall be deemed

(a) to have disposed of the property immediately before the end of the year for proceeds equal to its fair market value at the time of disposition, and

(b) to have reacquired the property at the end of the year at a cost equal to those proceeds.

Related Provisions: 54"superficial loss"(c) — Superficial loss rule does not apply; 88(1)(i) — Windup of subsidiary into parent; 112(5.6)(a)(i) — Stop-loss rules inapplicable; 138(10)(a) — Application to insurance corporation; 138(11.31)(a) — Change in use rules for insurer do not apply; 142.5(4)–(9) — Transitional rules; 142.6(2) — Acquisition date under 142.5(2) to be ignored; 142.6(8)–(10) — Transitional election re year that includes February 22, 1994; Reg. 2405(5) — 142.5(2) to be ignored for definitions in Reg. 2405(3).

I.T. Technical News: 14 (reporting of derivative income by mutual funds).

(3) Mark-to-market debt obligation — Where a taxpayer is a financial institution in a particular taxation year that begins after October 1994, the following rules apply with respect to a specified debt obligation that is a mark-to-market property of the taxpayer for the particular year:

(a) paragraph 12(1)(c) and subsections 12(3) and 20(14) and (21) do not apply to the obligation in computing the taxpayer's income for the particular year;

(b) there shall be included in computing the taxpayer's income for the particular year an amount received by the taxpayer in the particular year as, on account of, in lieu of payment of, or in satisfaction of, interest on the obligation, to the extent that the interest was not included in computing the taxpayer's income for a preceding taxation year; and

(c) for the purpose of paragraph (b), where the taxpayer was deemed by subsection (2) or paragraph 142.6(1)(b) to have disposed of the obligation in a preceding taxation year, no part of an amount included in computing the income of the taxpayer for that preceding year because of the disposition shall be considered to be in respect of interest on the obligation.

Related Provisions: 138(10)(a) — Application to insurance corporation.

(4) Transition — deduction re non-capital amounts — There may be deducted in computing the income of a taxpayer for the taxpayer's taxation year that includes October 31, 1994 such amount as the taxpayer claims not exceeding a prescribed amount in respect of properties (other than capital properties) disposed of by the taxpayer because of subsection (2).

Related Provisions: 138(11.5)(k) — Transfer of business by non-resident insurer; 142.5(5) — Inclusion re non-capital amounts.

Regulations: 8102(2) (prescribed amount).

(5) Transition — inclusion re non-capital amounts — Where an amount is deducted under subsection (4) in computing a taxpayer's income, there shall be included, in computing the taxpayer's income for each taxation year that begins before 1999 and ends after October 30, 1994, the total of all amounts prescribed for the year.

Related Provisions: 87(2)(g.2) — Amalgamations — continuing corporation; 138(11.5)(k) — Transfer of business by non-resident insurer; Reg. 2402(a.1)A — Inclusion in income from participating life insurance business.

Regulations: 8103 (prescribed amount).

(6) Transition — deduction re net capital gains — Such amount as a taxpayer elects, not exceeding a prescribed amount in respect of capital properties disposed of by the taxpayer because of subsection (2), is deemed to be an allowable capital loss of the taxpayer for its taxation year that includes October 31, 1994 from the disposition of property (or, where the taxpayer is non-resident throughout the year, from the disposition of taxable Canadian property).

Related Provisions: 138(11.5)(k) — Transfer of business by non-resident insurer; 142.5(7) — Inclusion re net capital gains.

Regulations: 8104(2) (prescribed amount).

(7) Transition — inclusion re net capital gains — A taxpayer that elects an amount under subsection (6) is deemed, for each taxation year that begins before 1999 and ends after October 30, 1994, to have a taxable capital gain for the year from the disposition of property (or, where the taxpayer is non-resident throughout the year, from the disposition of taxable Canadian property) equal to the total of all amounts prescribed for the year.

Related Provisions: 87(2)(g.2) — Amalgamations — continuing corporation; 138(11.5)(k) — Transfer of business by non-resident insurer; Reg. 2402(a.1)B — Inclusion in income from participating life insurance business.

Regulations: 8105(2) (prescribed amount).

(8) First deemed disposition of debt obligation — Where

(a) in a particular taxation year that ends after October 30, 1994, a taxpayer disposed of a specified debt obligation that is a mark-to-market property of the taxpayer for the following taxation year, and

(b) either

(i) the disposition occurred because of subsection (2) and the particular year includes October 31, 1994, or

(ii) the disposition occurred because of paragraph 142.6(1)(b),

the following rules apply:

(c) subsection 20(21) does not apply to the disposition, and

(d) where

(i) an amount has been deducted under paragraph 20(1)(p) in respect of the obligation in computing the taxpayer's income for the particular year or a preceding taxation year, and

(ii) section 12.4 does not apply to the disposition,

there shall be included in computing the taxpayer's income for the particular year the amount, if any, by which

(iii) the total of all amounts referred to in subparagraph (i)

exceeds

(iv) the total of all amounts included under paragraph 12(1)(i) in respect of the obligation in computing the taxpayer's income for the particular year or a preceding taxation year.

(9) Transition — property acquired on rollover — Where

(a) a taxpayer acquired a property before October 31, 1994 at a cost less than the fair market value of the property at the time of acquisition,

(b) the property was transferred, directly or indirectly, to the taxpayer by a person that would never have been a financial institution before the transfer if the definition "financial institution" in subsection 142.2(1) had always applied,

(c) the cost is less than the fair market value because subsection 85(1) applied in respect of the disposition of the property by the person, and

(d) subsection (2) deemed the taxpayer to have disposed of the property in its particular taxation year that includes October 31, 1994,

the following rules apply:

(e) where the taxpayer would, but for this paragraph, have a taxable capital gain for the particular year from the disposition of the property, the part of the taxable capital gain that can reasonably be considered to have arisen while the property was held by a person described in paragraph (b) shall be deemed to be a taxable capital gain of the taxpayer from the disposition of the property for the taxation year in which the taxpayer disposes of the property otherwise than because of subsection (2), and not to be a taxable capital gain for the particular year, and

(f) where the taxpayer has a profit (other than a capital gain) from the disposition of the property, the part of the profit that can reasonably be considered to have arisen while the property was held by a person described in paragraph (b) shall be included in computing the taxpayer's income for the taxation year in which the taxpayer disposes of the property otherwise than because of subsection (2), and shall not be included in computing the taxpayer's income for the particular year.

History [s. 142.5]: Subsecs. 142.5(5), (6) and (7) amended by 1998, c. 19, s. 166, applicable to taxation years that end after October 30, 1994. Subsecs. 142.5(5), (6) and (7) formerly read:

(5) Transition — inclusion re non-capital amounts — Where a taxpayer deducts an amount under subsection (4), there shall be included in computing the taxpayer's income for each taxation year that begins before 1999 and ends after October 30, 1994, the prescribed portion for the year of the amount so deducted.

(6) Transition — deduction re net capital gains — Such amount as a taxpayer elects, not exceeding a prescribed amount in respect of capital properties disposed of by the taxpayer because of subsection (2), shall be deemed to be an allowable capital loss of the taxpayer for its taxation year that includes October 31, 1994 from the disposition of property.

(7) Transition — inclusion re net capital gains — Where a taxpayer elects an amount under subsection (6), the taxpayer shall be deemed, for each taxation year that begins before 1999 and ends after October 30, 1994, to have a taxable capital gain for the year from the disposition of property equal to the prescribed portion for the year of the amount so elected.

S. 142.5 added by 1995, c. 21, s. 58, applicable to taxation years that end after October 30; 1994.

Definitions [s. 142.5]: "allowable capital loss" — 38(b), 248(1); "amount" — 248(1); "capital gain" — 39(1)(a), 248(1); "capital property" — 54, 248(1); "financial institution", "mark-to-market property" — 142.2(1); "non-resident", "prescribed", "property" — 248(1); "specified debt obligation" — 142.2(1); "taxable Canadian property" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Additional Rules

142.6 (1) Becoming or ceasing to be a financial institution — Where, at a particular time after February 22, 1994, a taxpayer becomes or ceases to be a financial institution,

(a) where a taxation year of the taxpayer would not, but for this paragraph, end immediately before the particular time,

(i) except for the purpose of subsection 132(6.1), the taxpayer's taxation year that would otherwise have included the particular time is deemed to have ended immediately before that time and a new taxation year of the taxpayer is deemed to have begun at that time, and

(ii) for the purpose of determining the taxpayer's fiscal period after the particular time, the taxpayer shall be deemed not to have established a fiscal period before that time;

(b) where the taxpayer becomes a financial institution, the taxpayer shall be deemed to have disposed, immediately before the end of its taxation year that ends immediately before the particular time, of each property held by the taxpayer that is

(i) a specified debt obligation (other than a mark-to-market property for the year), or

(ii) where the year ends after October 30, 1994, a mark-to-market property for the year

for proceeds equal to its fair market value at the time of disposition;

Proposed Amendment — 142.6(1)(b)

(b) if the taxpayer becomes a financial institution, the taxpayer is deemed to have disposed, immediately before the end of its particular taxation year that ends immediately before the particular time, of each of the following properties held by the taxpayer for proceeds equal to the property's fair market value at the time of that disposition:

(i) a specified debt obligation, or

(ii) a mark-to-market property of the taxpayer for the particular taxation year or for the taxpayer's taxation year that includes the particular time;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 136(1), will amend para. 142.6(1)(b) to read as above, applicable to taxation years that end after 1998.

Technical Notes: Subsection 142.6(1) contains rules that apply where a taxpayer becomes (or ceases to be) a financial institution. This is most likely to happen where the change of status occurs because the taxpayer becomes (or ceases to be) controlled by a financial institution.

If a taxation year of the taxpayer does not end immediately before the time at which its status as a financial institution changes, subparagraph 142.6(1)(a)(i) deems the taxpayer's taxation year that would otherwise have included that time to end immediately before that time. A new taxation year begins at that time, and the taxpayer is permitted to adopt a new fiscal period. One purpose for the deemed year-end is to ensure the proper application, in taxation years in which the taxpayer is a financial institution, of the rules, commonly known as the mark-to-market rules,

- in section 142.3 for specified debt obligations, and
- in section 142.5 for market-to-market properties.

The expressions "financial institution", "specified debt obligation" and "mark-to-market property" are defined in section 142.2.

Paragraph 142.6(1)(b) applies where a taxpayer becomes a financial institution. This paragraph generally provides for a deemed disposition at fair market value of each property held by the taxpayer that is

- a specified debt obligation (other than a specified debt obligation that is a mark-to-market property to which subparagraph 142.6(1)(b)(ii) applies)[39], or
- a mark-to-market property for the taxpayer's taxation year that ends immediately before the time of the change of status[40].

This deemed disposition under paragraph 142.6(1)(b) is intended to ensure that amounts brought, because of the mark-to-market rules in sections 142.3 and 142.5, into the taxpayer's income for the taxpayer's subsequent taxation year (i.e., the taxation year that includes the time of the change of status) do not include gains or losses accrued before the beginning of that subsequent taxation year.

Paragraph 142.6(1)(b) is amended to ensure that this is achieved in connection with mark-to-market properties. Amended paragraph 142.6(1)(b) results in the taxpayer being deemed to have disposed of, immediately before the end of its particular taxation year that ends immediately before the time of the change of status, and for proceeds equal to its fair market value at the time of that disposition, a mark-to-market property of the taxpayer

- for the particular taxation year, or
- for the subsequent taxation year.

(c) where the taxpayer ceases to be a financial institution, the taxpayer shall be deemed to have disposed, immediately before the end of its taxation year that ends immediately before the particular time, of each property held by the taxpayer that is a specified debt obligation (other than a mark-to-market property of the taxpayer for the year), for proceeds equal to its fair market value at the time of disposition; and

(d) the taxpayer shall be deemed to have reacquired, at the end of the taxation year referred to in paragraph (b) or (c), each property deemed by that paragraph to have been disposed of by the taxpayer, at a cost equal to the proceeds of disposition of the property.

Proposed Amendment — 142.6(1)(d)

(d) the taxpayer is deemed to have reacquired, at the end of its taxation year that ends immediately before the particular time, each property deemed by paragraph (b) or (c) to have been disposed of by the taxpayer, at a cost equal to the proceeds of disposition of the property.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 136(2), will amend para. 142.6(1)(d) to read as above, applicable to taxation years that end after 1998.

Technical Notes: Paragraph 142.6(1)(c) provides for a deemed disposition of specified debt obligations (other than mark-to-market property) in the opposite situation of change of status, i.e., where the taxpayer ceases to be a financial institution. Paragraph 142.6(1)(d) provides that the taxpayer is deemed to have reacquired, at the end of the taxation year referred to in paragraph 142.6(1)(b) or (c), each property deemed by that paragraph to have been disposed of by the taxpayer, at a cost equal to the proceeds of disposition of the property.

Consequential to the amendments to paragraph 142.6(1)(b), paragraph 142.6(1)(d) is amended to provide that the taxpayer is deemed to have reacquired, at the end of its taxation year that ends immediately before the time of the change of status, each property deemed by paragraph 142.6(1)(b) or (c) to have been disposed of by the taxpayer, at a cost equal to the proceeds of disposition of the property.

Related Provisions: 54"superficial loss"(c) — Superficial loss rule does not apply to disposition under 142.6(1)(b); 87(2)(g.2) — Application of rule to predecessors corporation on amalgamation; 112(5.6)(a)(ii) — Stop-loss rules inapplicable; 142.4(5)(b)(iii) — Gain or loss not amortized; 142.5(8)(b)(ii) — First deemed disposition of debt obligation; 142.6(2) — Acquisition date under 142.6(1) to be ignored.

History: Subpara. 142.6(1)(a)(i) amended by 1999, c. 22, s. 58, applicable after 1997. It formerly read:

(i) the taxation year of the taxpayer that would otherwise have included the particular time shall be deemed to have ended immediately before that time and a new taxation year of the taxpayer shall be deemed to have begun at that time, and

Subsecs. 142.6(8) to (10) added by 1998, c. 19, s. 167, applicable to 1993 *et seq.*

S. 142.6 added by 1995, c. 21, s. 58; subsec. 142.6(1) applicable after February 22, 1994; subsecs. 142.6(2) to (6) applicable to taxation years that end after February 22, 1994; and subsec. 142.6(7) applicable to dispositions occurring after October 30, 1994, except the disposition of a debt obligation before July 1995 where

(a) the disposition is part of a series of transactions or events that began before October 31, 1994;

(b) as part of the series of transactions or events, the taxpayer who acquired the debt obligation disposed of property before October 31, 1994; and

(c) it is reasonable to consider that one of the main reasons for the acquisition of the debt obligation by the taxpayer was to obtain a deduction because, as a consequence of the disposition referred to in paragraph (b),

(i) an amount was included in the taxpayer's income for any taxation year, or

(ii) an amount was subtracted from a balance of undeducted outlays, expenses or other amounts of the taxpayer and the subtracted amount exceeded the portion, if any, of the balance that could reasonably be considered to be in respect of the property.

(1.1) Ceasing to use property in Canadian business — If at a particular time in a taxation year a taxpayer that is a non-resident financial institution (other than a life insurance corporation) ceases to use, in connection with a business or part of a business carried on by the taxpayer in Canada immediately before the particular time, a property that is a mark-to-market property of the taxpayer for the year or a specified debt obligation, but that is not a property that was disposed of by the taxpayer at the particular time,

(a) the taxpayer is deemed

(i) to have disposed of the property immediately before the time that was immediately before the particular time for proceeds equal to its fair market value at the time of disposition and to have received those proceeds at the time of disposition in the course of carrying on the business or the part of the business, as the case may be, and

(ii) to have reacquired the property at the particular time at a cost equal to those proceeds; and

(b) in determining the consequences of the disposition in subparagraph (a)(i), subsection 142.4(11) does not apply to any payment received by the taxpayer after the particular time.

Related Provisions: 10(12) — Parallel rule for inventory; 14(14) — Parallel rule for eligible capital property; 142.6(1.3) — Specified debt obligation market to market; 142.6(2) — No effect on determination of when share acquired.

History: Subsec. 142.6(1.1) added by 2001, c. 17, s. 137, applicable after June 27, 1999 in respect of an authorized foreign bank, and after August 8, 2000 in any other case.

(1.2) Beginning to use property in a Canadian business — If at a particular time a taxpayer that is a non-resident financial institution (other than a life insurance corporation) begins to use, in connection with a business or part of a business carried on by the taxpayer in

[39] Subparagraph 142.6(1)(b)(i)

[40] Subparagraph 142.6(1)(b)(ii)

Canada, a property that is a mark-to-market property of the taxpayer for the year that includes the particular time or a specified debt obligation, but that is not a property that was acquired by the taxpayer at the particular time, the taxpayer is deemed

(a) to have disposed of the property immediately before the time that was immediately before the particular time for proceeds equal to its fair market value at the time of disposition; and

(b) to have reacquired the property at the particular time at a cost equal to those proceeds.

Related Provisions: 10(14) — Parallel rule for inventory; 14(15) — Parallel rule for eligible capital property; 142.6(2) — No effect on determination of when share acquired.

History: Subsec. 142.6(1.2) added by 2001, c. 17, s. 137, applicable after June 27, 1999 in respect of an authorized foreign bank, and after August 8, 2000 in any other case.

(1.3) Specified debt obligation marked to market — In applying subsection (1.1) to a taxpayer in respect of a property in a taxation year,

(a) the definition "mark-to-market property" in subsection 142.2(1) shall be applied as if the year ended immediately before the particular time referred to in subsection (1.1); and

(b) if the taxpayer does not have financial statements for the period ending immediately before the particular time referred to in subsection (1.1), references in the definition to financial statements for the year shall be read as references to the financial statements that it is reasonable to expect would have been prepared if the year had ended immediately before the particular time.

History: Subsec. 142.6(1.3) added by 2001, c. 17, s. 137, applicable after June 27, 1999 in respect of an authorized foreign bank, and after August 8, 2000 in any other case.

(2) Deemed disposition not applicable — For the purposes of this Act, the determination of when a taxpayer acquired a share shall be made without regard to a disposition or acquisition that occurred because of subsection 142.5(2) or subsection (1), (1.1) or (1.2).

History: Subsec. 142.6(2) amended by 2001, c. 17, s. 137, applicable after June 27, 1999 in respect of an authorized foreign bank, and after August 8, 2000 in any other case. The subsec. formerly read:

(2) For the purposes of this Act, the determination of when a taxpayer acquired a share shall be made without regard to a disposition or acquisition that occurred because of subsection (1) or 142.5(2).

(3) Property not inventory — Where a taxpayer is a financial institution in a taxation year, inventory of the taxpayer in the year does not include property that is

(a) a specified debt obligation (other than a mark-to-market property for the year); or

(b) where the year begins after October 1994, a mark-to-market property for the year.

Related Provisions: 66.3(1)(a)(ii) — Rule in 142.6(3) overrides rule for certain exploration and development shares; 142.6(4) — Property that was inventory before introduction of new rules.

(4) Property that ceases to be inventory — Where a taxpayer that was a financial institution in its particular taxation year that includes February 23, 1994 held, on that day, a specified debt obligation (other than a mark-to-market property for the year) that was inventory of the taxpayer at the end of its preceding taxation year,

(a) the taxpayer shall be deemed to have disposed of the property at the beginning of the particular year for proceeds equal to

(i) where subparagraph (ii) does not apply, the amount at which the property was valued at the end of the preceding taxation year for the purpose of computing the taxpayer's income for the year, and

(ii) where the taxpayer is a bank and the property is prescribed property for the particular year, the cost of the property to the taxpayer (determined without reference to paragraph (b));

(b) for the purpose of determining the taxpayer's profit or loss from the disposition, the cost of the property to the taxpayer shall be deemed to be the amount referred to in subparagraph (a)(i); and

(c) the taxpayer shall be deemed to have reacquired the property, immediately after the beginning of the particular year, at a cost equal to the proceeds of disposition of the property.

(5) Debt obligations acquired in rollover transactions — Where,

(a) on February 23, 1994, a financial institution that is a corporation held a specified debt obligation (other than a mark-to-market property for the taxation year that includes that day) that was at any particular time before that day held by another corporation, and

(b) between the particular time and February 23, 1994, the only transactions affecting the ownership of the property were rollover transactions,

the financial institution shall be deemed, in respect of that obligation, to be the same corporation as, and a continuation of, the other corporation.

Related Provisions: 87(2)(e), (e.2) — Rule overrides normal rules on amalgamation; 87(2)(e.3) — Continuity of corporation on amalgamation; 138(11.5)(k.1) — Continuity of corporation on rollover of insurance business by non-resident; 142.6(6) — Rollover transaction.

(6) Definition of "rollover transaction" — For the purpose of subsection (5), "rollover transaction" means a transaction to which subsection 87(2), 88(1) or 138(11.5) or (11.94) applies, other than a transaction to which paragraph 138(11.5)(e) requires the provisions of subsection 85(1) to be applied.

(7) Superficial loss rule not applicable — Subsection 18(13) does not apply to the disposition of a property by a taxpayer after October 30, 1994 where

(a) the taxpayer is a financial institution when the disposition occurs and the property is a specified debt obligation or a mark-to-market property for the taxation year in which the disposition occurs; or

(b) the disposition occurs because of paragraph (1)(b).

(8) Accrued capital gains and losses election — Where a taxpayer that is a financial institution in its first taxation year that ends after February 22, 1994 so elects by notifying the Minister in writing before July 1998 or within 90 days after the day on which a notice of assessment of tax payable under this Part for the year, notification that no tax is payable under this Part for the year or notification that an election made by the taxpayer under

this subsection is deemed by subsection (9) or (10) not to have been made is mailed to the taxpayer,

(a) each property of the taxpayer

(i) that was a capital property (other than a depreciable property) of the taxpayer at the end of the taxpayer's last taxation year that ended before February 23, 1994,

(ii) that was a mark-to-market property for, or a specified debt obligation in, the taxpayer's first taxation year that begins after that time,

(iii) that had a fair market value at that time greater than its adjusted cost base to the taxpayer at that time, and

(iv) that is designated by the taxpayer in the election

is deemed to have been disposed of by the taxpayer at that time for proceeds of disposition equal to, and to have been reacquired by the taxpayer immediately after that time at a cost equal to, the lesser of

(v) the fair market value of the property at that time, and

(vi) the greater of the adjusted cost base to the taxpayer of the property immediately before that time and the amount designated by the taxpayer in the election in respect of the property;

(b) each property of the taxpayer

(i) that was a capital property (other than a depreciable property) of the taxpayer at the end of the taxpayer's last taxation year that ended before February 23, 1994,

(ii) that was not a mark-to-market property for, or a specified debt obligation in, the taxpayer's first taxation year that begins after that time,

(iii) that had an adjusted cost base to the taxpayer at that time greater than its fair market value at that time, and

(iv) that is designated by the taxpayer in the election

is deemed to have been disposed of by the taxpayer at that time for proceeds of disposition equal to, and to have been reacquired by the taxpayer immediately after that time at a cost equal to, the greater of

(v) the fair market value of the property at that time, and

(vi) the lesser of the adjusted cost base to the taxpayer of the property immediately before that time and the amount designated by the taxpayer in the election in respect of the property; and

(c) notwithstanding subsections 152(4) to (5), such assessment of the taxpayer's tax payable under this Act for the taxpayer's last taxation year that ended before February 23, 1994 shall be made as is necessary to take the election into account.

Related Provisions: 142.6(9) — Accrued capital gains election limit; 142.6(10) — Accrued capital losses election limit.

History: Subsec. 142.6(8) added by 1998, c. 19, s. 167, applicable to 1993 *et seq.*

(9) Accrued capital gains election limit — Where a taxpayer has made an election under subsection (8) in which a property was designated under subparagraph (8)(a)(iv), the election is deemed not to have been made where

(a) the amount that would be the taxpayer's taxable capital gains from dispositions of property for the taxpayer's last taxation year that ended before February 23, 1994 if this subsection and subsection (10) did not apply

exceeds the total of

(b) the amount that would be the taxpayer's allowable capital losses for the year from dispositions of property if this subsection and subsection (10) did not apply,

(c) the maximum amount that would have been deductible in computing the taxpayer's taxable income for the year in respect of the taxpayer's net capital losses for preceding taxation years if there were sufficient taxable capital gains for the year from dispositions of property, and

(d) the amount, if any, by which

(i) the amount that would be the taxpayer's taxable capital gains for the taxpayer's last taxation year that ended before February 23, 1994 from dispositions of property if no election were made under subsection (8)

exceeds the total of

(ii) the amount that would be the taxpayer's allowable capital losses for the year from dispositions of property if no election were made under subsection (8), and

(iii) the maximum amount that would have been deductible in computing the taxpayer's taxable income for the year in respect of the taxpayer's net capital losses for preceding taxation years if no election were made under subsection (8).

History: Subsec. 142.6(9) added by 1998, c. 19, s. 167, applicable to 1993 *et seq.*

(10) Accrued capital losses election limit — Where a taxpayer has made an election under subsection (8) in which a property was designated under subparagraph (8)(b)(iv), the election is deemed not to have been made where

(a) the total of the amounts determined under paragraphs (9)(b) and (c) in respect of the taxpayer exceeds the amount determined under paragraph (9)(a) in respect of the taxpayer; or

(b) the total of all amounts each of which would, if this subsection did not apply, be the taxpayer's allowable capital loss for the taxpayer's last taxation year that ended before February 23, 1994 from the disposition of a property deemed to have been disposed of under paragraph (8)(b) exceeds the total of all amounts each of which is the taxpayer's taxable capital gain for the year from the disposition of a property deemed to have been disposed of under paragraph (8)(a).

History: Subsec. 142.6(10) added by 1998, c. 19, s. 167, applicable to 1993 *et seq.*

History [s. 142.6]: S. 142.6 added by 1995, c. 21, s. 58; subsec. 142.6(1) applicable after February 22, 1994; subsecs. 142.6(2) to (6) applicable to taxation years that end after February 22, 1994; and subsec. 142.6(7) applicable to dispositions occurring after October 30, 1994, except the disposition of a debt obligation before July 1995 where

(a) the disposition is part of a series of transactions or events that began before October 31, 1994;

(b) as part of the series of transactions or events, the taxpayer who acquired the debt obligation disposed of property before October 31, 1994; and

(c) it is reasonable to consider that one of the main reasons for the acquisition of the debt obligation by the taxpayer was to obtain a deduction because, as a consequence of the disposition referred to in paragraph (b),

(i) an amount was included in the taxpayer's income for any taxation year, or

(ii) an amount was subtracted from a balance of undeducted outlays, expenses or other amounts of the taxpayer and the subtracted amount exceeded the portion, if any, of the balance that could reasonably be considered to be in respect of the property.

Definitions [s. 142.6]: "adjusted cost base" — 54, 248(1); "allowable capital loss" — 38(b), 248(1); "amount", "assessment", "authorized foreign bank" — 248(1); "bank" — 248(1); "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "capital property" — 54, 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition" — 248(1); "financial institution" — 142.2(1); "fiscal period" — 249.1; "inventory" — 248(1); "life insurance corporation" — 248(1); "mark-to-market property" — 142.2(1); "Minister" — 248(1); "net capital loss" — 111(8), 248(1); "non-resident", "prescribed", "property" — 248(1); "rollover transaction" — 142.6(6); "share" — 248(1); "specified debt obligation" — 142.2(1); "taxable capital gain" — 38(a), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "writing" — *Interpretation Act* 35(1).

Conversion of Foreign Bank Affiliate to Branch

142.7 (1) Definitions — The definitions in this subsection apply in this section.

"Canadian affiliate" of an entrant bank at any particular time means a Canadian corporation that was, immediately before the particular time, affiliated with the entrant bank and that was, at all times during the period that began on February 11, 1999 and ended immediately before the particular time,

(a) affiliated with either

(i) the entrant bank, or

(ii) a foreign bank (within the meaning assigned by section 2 of the *Bank Act*) that is affiliated with the entrant bank at the particular time; and

(b) either

(i) a bank,

(ii) a corporation authorized under the *Trust and Loan Companies Act* to carry on the business of offering to the public its services as trustee, or

(iii) a corporation of which the principal activity in Canada consists of any of the activities referred to in subparagraphs 518(3)(a)(i) to (v) of the *Bank Act* and in which the entrant bank or a non-resident person affiliated with the entrant bank holds shares under the authority, directly or indirectly, of an order issued by the Minister of Finance or the Governor in Council under subsection 521(1) of that Act.

Related Provisions: 142.7(2)(a) — Effect of qualifying foreign merger.

"eligible property" of a Canadian affiliate at any time means a property described in any of paragraphs 85(1.1)(a) to (g.1) that is, immediately before that time, used or held by it in carrying on its business in Canada.

"entrant bank" means a non-resident corporation that is, or has applied to the Superintendent of Financial Institutions to become, an authorized foreign bank.

"qualifying foreign merger" means a merger or combination of two or more corporations that would be a "foreign merger" within the meaning assigned by subsection 87(8.1) if that subsection were read without reference to the words "and otherwise than as a result of the distribution of property to one corporation on the winding-up of another corporation.

(2) Qualifying foreign merger — Where an entrant bank was formed as the result of a qualifying foreign merger, after February 11, 1999, of two or more corporations (referred to in this subsection as "predecessors"), and at the time immediately before the merger, there were one or more Canadian corporations (referred to in this subsection as "predecessor affiliates"), each of which at that time would have been a Canadian affiliate of a predecessor if the predecessor were an entrant bank at that time,

(a) for the purpose of the definition "Canadian affiliate" in subsection (1),

(i) each predecessor affiliate is deemed to have been affiliated with the entrant bank throughout the period that began on February 11, 1999 and ended at the time of the merger,

(ii) the expression "entrant bank" in subparagraph (b)(iii) of the definition is deemed to include a predecessor, and

(iii) if two or more of the predecessor affiliates are amalgamated or merged at any time after February 11, 1999 to form a new corporation, the new corporation is deemed to have been affiliated with the entrant bank throughout the period that began on February 11, 1999 and ended at the time of the amalgamation or merger of the predecessor affiliates; and

(b) if at least one of the predecessors complied with the terms of subsection[41] (11)(a), the entrant bank is deemed to have complied with those terms.

(3) Branch-establishment rollover — If a Canadian affiliate of an entrant bank transfers an eligible property to the entrant bank, the entrant bank begins immediately after the transfer to use or hold the transferred property in its Canadian banking business and the Canadian affiliate and the entrant bank jointly elect, in accordance with subsection (11), to have this subsection apply in respect of the transfer, subsections 85(1) (other than paragraph (e.2)), (1.1), (1.4) and (5) apply, with any modifications that the circumstances require, in respect of the transfer, except that the portion of subsection 85(1) before paragraph (a) shall be read as follows:

"85. (1) Where a taxpayer that is a Canadian affiliate of an entrant bank (within the meanings assigned by subsection 142.7(1)) has, in a taxation year, disposed of any of the taxpayer's property to the entrant bank (referred to in this subsection as the "corporation"), if the taxpayer and the corporation have jointly elected under subsection 142.7(3), the following rules apply:".

Related Provisions: 142.7(4) — Deemed fair market value; 142.7(5) — Transfers of specified debt obligations; 142.7(11) — Requirements for election; 142.7(13) — Stop-loss rule on windup of affiliate; Reg. 5301(8) — Effect of transfer on instalment base of transferee.

[41] *Sic.* Should be "paragraph" — ed.

(4) Deemed fair market value — If a Canadian affiliate of an entrant bank and the entrant bank make an election under subsection (3) in respect of a transfer of property by the Canadian affiliate to the entrant bank, for the purposes of subsections 15(1), 52(2), 69(1), (4) and (5), 246(1) and 247(2) in respect of the transfer, the fair market value of the property is deemed to be the amount agreed by the Canadian affiliate and the entrant bank in their election.

(5) Specified debt obligations — If a Canadian affiliate of an entrant bank transfers a specified debt obligation to the entrant bank in a transaction in respect of which an election is made under subsection (3), the Canadian affiliate is a financial institution in its taxation year in which the transfer is made, and the amount that the Canadian affiliate and the entrant bank agree on in their election in respect of the obligation is equal to the tax basis of the obligation within the meaning assigned by subsection 142.4(1), the entrant bank is deemed, in respect of the obligation, for the purposes of sections 142.2 to 142.4 and 142.6, to be the same corporation as, and a continuation of, the Canadian affiliate.

(6) Mark-to-market property — If a Canadian affiliate of an entrant bank described in paragraph (11)(a) transfers at any time within the period described in paragraph (11)(c) to the entrant bank a property that is, for the Canadian affiliate's taxation year in which the property is transferred, a mark-to-market property of the Canadian affiliate,

(a) for the purposes of subsections 112(5) to (5.21) and (5.4), the definition "mark-to-market property" in subsection 142.2(1) and subsection 142.5(9), the entrant bank is deemed, in respect of the property, to be the same corporation as and a continuation of, the Canadian affiliate; and

(b) for the purpose of applying subsection 142.5(2) in respect of the property, the Canadian affiliate's taxation year in which the property is transferred is deemed to have ended immediately before the time the property was transferred.

Related Provisions: 87(2)(e.5) — Parallel rule on amalgamations.

(7) Reserves — If

(a) at a particular time,

(i) a Canadian affiliate of an entrant bank transfers to the entrant bank property that is a loan or lending asset, or a right to receive an unpaid amount in respect of a disposition before the particular time of property by the affiliate, or

(ii) the entrant bank assumes an obligation of the Canadian affiliate that is an instrument or commitment described in paragraph 20(1)(l.1) or an obligation in respect of goods, services, lands or chattels described in subparagraph 20(1)(m)(i), (ii) or (iii),

Proposed Amendment — 142.7(7)(a)(ii)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 246(1), will amend subpara. 142.7(7)(a)(ii) by substituting "land, or chattels or immovable property," for "lands or chattels", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(b) the property is transferred or the obligation is assumed for an amount equal to its fair market value at the particular time,

(c) the entrant bank begins immediately after the particular time to use or hold the property or owe the obligation in its Canadian banking business, and

(d) the Canadian affiliate and the entrant bank jointly elect in accordance with subsection (11) to have this subsection apply in respect of the transfer or assumption,

then

(e) in applying paragraphs 20(1)(l), (l.1), (m), (n) and (p) in respect of the obligation or property, the taxation year of the affiliate that would, but for this paragraph, include the particular time is deemed to end immediately before the particular time, and

(f) in computing the income of the Canadian affiliate and the entrant bank for taxation years that end on or after the particular time,

(i) any amount deducted under paragraph 20(1)(l), (l.1), (m) or (n) by the Canadian affiliate in respect of the property or obligation in computing its income for its taxation year that ended immediately before the particular time, or under paragraph 20(1)(p) in computing its income for that year or for a preceding taxation year (to the extent that the amount has not been included in the affiliate's income under paragraph 12(1)(i)), is deemed to have been so deducted by the entrant bank in computing its income for its last taxation year that ended before the particular time and not to have been deducted by the Canadian affiliate,

(ii) in applying paragraph 20(1)(m), an amount in respect of the goods, services, land or chattels that was included under paragraph 12(1)(a) in computing the Canadian affiliate's income from a business is deemed to have been so included in computing the entrant bank's income from its Canadian banking business for a preceding taxation year,

Proposed Amendment — 142.7(7)(f)(ii)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 246(2), will amend subpara. 142.7(7)(f)(ii) by substituting ", or chattels or immovable property," for "or chattels", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(iii) in applying paragraph 20(1)(n) in respect of a property described in subparagraph (a)(i) and paragraphs (b), (c) and (d) sold by the Canadian affiliate in the course of a business, the property is deemed to have been disposed of by the entrant bank (and not by the Canadian affiliate) at the time it was disposed of by the Canadian affiliate, and the amount in respect of the sale that was included in computing the Canadian affiliate's income from a business is deemed to have been included in computing the entrant bank's income from its Canadian banking business for its taxation year that includes the time at which the property was so disposed of, and

(iv) in applying paragraph 40(1)(a) or 44(1)(e) in respect of a property described in subparagraph (a)(i) and paragraphs (b), (c) and (d) disposed of by the Canadian affiliate, the property is deemed to have been disposed of by the entrant bank (and not by the Canadian affiliate) at the time it was disposed of by the Canadian affiliate, the amount determined under subparagraph 40(1)(a)(i) or 44(1)(e)(i) in respect of the Canadian affiliate is

deemed to be the amount determined under that subparagraph in respect of the entrant bank, and any amount claimed by the Canadian affiliate under subparagraph 40(1)(a)(iii) or 44(1)(e)(iii) in computing its gain from the disposition of the property for its last taxation year that ended before the particular time is deemed to have been so claimed by the entrant bank for its last taxation year that ended before the particular time.

Related Provisions: 142.7(11) — Requirements for election.

(8) Assumption of debt obligation — If a Canadian affiliate of an entrant bank described in paragraph (11)(a) transfers at any time within the period described in paragraph (11)(c) property to the entrant bank, and any part of the consideration for the transfer is the assumption by the entrant bank in respect of its Canadian banking business of a debt obligation of the Canadian affiliate,

(a) where the Canadian affiliate and the entrant bank jointly elect in accordance with subsection (11) to have this paragraph apply,

(i) both

(A) the value of that part of the consideration for the transfer of the property, and

(B) for the purpose of determining the consequences of the assumption of the obligation and any subsequent settlement or extinguishment of it, the value of the consideration given to the entrant bank for the assumption of the obligation,

are deemed to be an amount (in this paragraph referred to as the "assumption amount") equal to the amount outstanding on account of the principal amount of the obligation at that time, and

(ii) the assumption amount shall not be considered a term of the transaction that differs from that which would have been made between persons dealing at arm's length solely because it is not equal to the fair market value of the obligation at that time;

(b) where the obligation is denominated in a foreign currency, and the Canadian affiliate and the entrant bank jointly elect in accordance with subsection (11) to have this paragraph apply,

(i) the amount of any income, loss, capital gain or capital loss in respect of the obligation due to the fluctuation in the value of the foreign currency relative to Canadian currency realized by

(A) the Canadian affiliate on the assumption of the obligation is deemed to be nil, and

(B) the entrant bank on the settlement or extinguishment of the obligation shall be determined based on the amount of the obligation in Canadian currency at the time it became an obligation of the Canadian affiliate, and

(ii) for the purpose of an election made in respect of the obligation under paragraph (a), the amount outstanding on account of the principal amount of the obligation at that time is the total of all amounts each of which is an amount that was advanced to the Canadian affiliate on account of principal, that remains outstanding at that time, and that is determined using the exchange rate that applied between the foreign currency and Canadian currency at the time of the advance; and

(c) for the purpose of applying paragraphs 20(1)(e) and (f) in respect of the debt obligation, the obligation is deemed not to have been settled or extinguished by virtue of its assumption by the entrant bank and the entrant bank is deemed to be the same corporation as, and a continuation of, the Canadian affiliate.

Proposed Addition — 142.7(8)(d)

(d) for the purpose of applying subparagraph 212(1)(b)(vii) in respect of the debt obligation, the obligation is deemed to have been issued by the entrant bank at the time that the obligation was issued by the Canadian affiliate.

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 137, will add para. 142.7(8)(d), applicable after June 27, 1999.

Technical Notes: Section 142.7 provides time-limited rules to facilitate foreign banks' transformation of certain Canadian operations, currently carried out through subsidiaries, into Canadian branches (known as "authorized foreign banks") of the foreign banks themselves.

When an authorized foreign bank assumes certain debt obligations of its Canadian affiliates, subsection 142.7(8) applies to govern the tax consequences of the assumption.

Subparagraph 212(1)(b)(vii) provides an exemption from Part XIII tax in respect of interest payments on certain long- and medium-term corporate debt. The exemption can depend upon, among other things, the time at which a debt is issued. New paragraph 142.7(8)(d) is added to treat, for the purpose of subparagraph 212(1)(b)(vii), a debt obligation assumed by an authorized foreign bank from its Canadian affiliate as having been issued at the time that the debt was issued by the Canadian affiliate.

Letter from Dept. of Finance, December 18, 2001:

Dear [xxx]:

I am writing in reply to your letter of October 24, 2001, regarding the conversion rules of foreign bank branches, particularly subsection 142.7(8) and subparagraph 212(1)(b)(vii) of the *Income Tax Act*, as well as your letter of November 13, 2001 regarding the application of section 116 of the Act where an authorized foreign bank disposes of its property to a Canadian resident.

Conversion Rules

Subsection 142.7(8) provides the conversion rules for debt obligations assumed by an authorized foreign bank from its Canadian subsidiary, and subparagraph 212(1)(b)(vii) exempts from Part XIII non-resident withholding tax the interest paid to a non-resident by a corporation resident in Canada on certain long-term debts. Subsection 212(13.3), meanwhile, treats the branch as a resident of Canada for the purposes of Part XIII.

In your October letter, you note that paragraph 142.7(8)(c) deems the assumed debt not to have been settled or extinguished for the purposes of paragraphs 20(1)(e) and (f), but it does not do the same for the purposes of subparagraph 212(1)(b)(vii). You also suggest that the assumption of debt by an authorized foreign bank would result in a novation of that debt as the Canadian affiliate would have been totally discharged from it. In your opinion, when the novation took place there would be a new debt, which would not qualify for the exemption in subparagraph 212(1)(b)(vii) if there were less than 5 years left on the debt.

You consider this to be an inappropriate result, and you request an amendment to subsection 142.7(8) to provide specifically that the above-described debt be deemed to continue in order to qualify for the subparagraph 212(1)(b)(vii) exemption.

We agree with your views on this point and are prepared to recommend amendments to ensure that, where an authorized foreign bank assumes the debts of its subsidiary, such debt will be deemed for the purposes of the subparagraph 212(1)(b)(vii) exemption to have been issued by the entrant bank at the same time that it was issued by the Canadian affiliate under the original terms and conditions.

. . . . .

I trust that the above will satisfy your requirements.

Yours sincerely,

Brian Ernewein, Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 142.7(11) — Requirements for election.

(9) Branch-establishment dividend — Notwithstanding any other provision of this Act, the rules in subsection (10) apply if

(a) a dividend is paid by a Canadian affiliate of an entrant bank to the entrant bank or to a person that is affiliated with the Canadian affiliate and that is resident in the country in which the entrant bank is resident, or

(b) a dividend is deemed to be paid for the purposes of this Part or Part XIII (other than by paragraph 214(3)(a)) as a result of a transfer of property from the Canadian affiliate to such a person,

and the Canadian affiliate and the entrant bank jointly elect in accordance with subsection (11) to have subsection (10) apply in respect of the dividend.

(10) Treatment of dividend — If the conditions in subsection (9) are met,

(a) the dividend is deemed (except for the purposes of subsections 112(3) to (7)) not to be a taxable dividend; and

(b) there is added to the amount otherwise determined under paragraph 219(1)(g) in respect of the entrant bank for its first taxation year that ends after the time at which the dividend is paid, the amount of the dividend less, where the dividend is paid by means of, or arises as a result of, a transfer of eligible property in respect of which the Canadian affiliate and the entrant bank have jointly elected under subsection (3), the amount by which the fair market value of the property transferred exceeds the amount the Canadian affiliate and the entrant bank have agreed on in their election.

Related Provisions: 142.7(11) — Requirements for election.

(11) Elections — An election under subsection (3) or (7), paragraph (8)(a) or (b) or subsection (10), (12) or (14) is valid only if

(a) the entrant bank by which the election is made has, on or before the day that is 6 months after the day on which the *Income Tax Amendments Act, 2000* [2001, c. 17] receives royal assent [June 14, 2001], complied with paragraphs 1.1(b) and (c) of the "Guide to Foreign Bank Branching" in respect of the establishment and commencement of business of a foreign bank branch in Canada issued by the Office of the Superintendent of Financial Institutions, as it read on December 31, 2000;

(b) the election is made in prescribed form on or before the earlier of the filing-due date of the Canadian affiliate and the filing-due date of the entrant bank, for the taxation year that includes the time at which

(i) in the case of an election under subsection (3) or (7), paragraph (8)(a) or (b) or subsection (10), the dividend, transfer or assumption to which the election relates is paid, made or effected, or

(ii) in the case of an election under subsection (12), the dissolution order was granted or the winding up commenced; and

(c) in the case of an election under subsection (3) or (7), paragraph (8)(a) or (b) or subsection (10), the dividend, transfer or assumption to which the election relates is paid, made or effected within the period that

(i) begins on the day on which the Superintendent makes an order in respect of the entrant bank under subsection 534(1) of the *Bank Act*, and

(ii) ends on the later of

(A) the earlier of

(I) the day that is one year after the day referred to subparagraph (i), and

(II) the day that is three years after the day on which the *Income Tax Amendments Act, 2000* [2001, c. 17] receives royal assent [June 14, 2001], and

(B) the day that is one year after the day on which the *Income Tax Amendments Act, 2000* [2001, c. 17] receives royal assent [June 14, 2001].

Related Provisions: 142.7(2)(b) — Entrant bank deemed to have complied with para. (11)(a) if predecessor did; 142.7(6) — Transfer of mark-to-market property; 142.7(8) — Assumption of debt obligation.

(12) Winding-up of Canadian affiliate: losses — If

(a) within the period described in paragraph (11)(c) in respect of the entrant bank,

(i) the Minister of Finance has issued letters patent under section 342 of the *Bank Act* or section 347 of the *Trust and Loan Companies Act* dissolving the Canadian affiliate or an order under section 345 of the *Bank Act* or section 350 of the *Trust and Loan Companies Act* approving the Canadian affiliate's application for dissolution (such letters patent or order being referred to in this subsection as the "dissolution order"), or

(ii) the affiliate has been wound up under the terms of the corporate law that governs it,

(b) the entrant bank carries on all or part of the business in Canada that was formerly carried on by the Canadian affiliate, and

(c) the Canadian affiliate and the entrant bank jointly elect in accordance with subsection (11) to have this section apply

then in applying section 111 for the purpose of computing the taxable income earned in Canada of the entrant bank for any taxation year that begins after the date of the dissolution order or the commencement of the winding up, as the case may be,

(d) subject to paragraphs (e) and (h), the portion of a non-capital loss of the Canadian affiliate for a taxation year (in this paragraph referred to as the "Canadian affiliate's loss year") that can reasonably be regarded as being its loss from carrying on a business in Canada (in this paragraph referred to as the "loss business") or being in respect of a claim made under section 110.5, to the extent that it

(i) was not deducted in computing the taxable income of the Canadian affiliate or any other entrant bank for any taxation year, and

(ii) would have been deductible in computing the taxable income of the Canadian affiliate for any taxation year that begins after the date of the dissolution order or the commencement of the winding up, as the case may be, on the assumption that it had such a taxation year and that it had sufficient income for that year,

is deemed, for the taxation year of the entrant bank in which the Canadian affiliate's loss year ended, to be a non-capital loss of the entrant bank from carrying on the loss business (or, in respect of a claim made under section 110.5, to be a non-capital loss of the entrant bank in respect of a claim under subparagraph

115(1)(a)(vii)) that was not deductible by the entrant bank in computing its taxable income earned in Canada for any taxation year that began before the date of the dissolution order or the commencement of the winding up, as the case may be,

(e) if at any time control of the Canadian affiliate or entrant bank has been acquired by a person or group of persons, no amount in respect of the Canadian affiliate's non-capital loss for a taxation year that ends before that time is deductible in computing the taxable income earned in Canada of the entrant bank for a particular taxation year that ends after that time, except that the portion of the loss that can reasonably be regarded as the Canadian affiliate's loss from carrying on a business in Canada and, where a business was carried on by the Canadian affiliate in Canada in the earlier year, the portion of the loss that can reasonably be regarded as being in respect of an amount deductible under paragraph 110(1)(k) in computing its taxable income for the year are deductible only

(i) if that business is carried on by the Canadian affiliate or the entrant bank for profit or with a reasonable expectation of profit throughout the particular year, and

(ii) to the extent of the total of the entrant bank's income for the particular year from that business, and where properties were sold, leased, rented or developed or services rendered in the course of carrying on that business before that time, from any other business substantially all of the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services,

and, for the purpose of this paragraph, where subsection 88(1.1) applied to the dissolution of another corporation in respect of which the Canadian affiliate was the parent and paragraph 88(1.1)(e) applied in respect of losses of that other corporation, the Canadian affiliate is deemed to be the same corporation as, and a continuation of, that other corporation with respect to those losses,

(f) subject to paragraphs (g) and (h), a net capital loss of the Canadian affiliate for a taxation year (in this paragraph referred to as the "Canadian affiliate's loss year") is deemed to be a net capital loss of the entrant bank for its taxation year in which the Canadian affiliate's loss year ended to the extent that the loss

(i) was not deducted in computing the taxable income of the Canadian affiliate or any other entrant bank for any taxation year, and

(ii) would have been deductible in computing the taxable income of the Canadian affiliate for any taxation year beginning after the date of the dissolution order or the commencement of the winding-up, as the case may be, on the assumption that the Canadian affiliate had such a taxation year and that it had sufficient income and taxable capital gains for that year,

(g) if at any time control of the Canadian affiliate or the entrant bank has been acquired by a person or group of persons, no amount in respect of the Canadian affiliate's net capital loss for a taxation year that ends before that time is deductible in computing the entrant bank's taxable income earned in Canada for a taxation year that ends after that time, and

(h) any loss of the Canadian affiliate that would otherwise be deemed by paragraph (d) or (f) to be a loss of the entrant bank for a particular taxation year that begins after the date of the dissolution order or the commencement of the winding-up, as the case may be, is deemed, for the purpose of computing the entrant bank's taxable income earned in Canada for taxation years that begin after that date, to be such a loss of the entrant bank for its immediately preceding taxation year and not for the particular year, if the entrant bank so elects in its return of income for the particular year.

Related Provisions: 142.7(11) — Requirements for election; 142.7(13) — Stop-loss rule on windup of affiliate; 142.7(14) — Specified debt obligations.

(13) Winding-up of Canadian affiliate: stop loss — If a Canadian affiliate and its entrant bank have at any time made a joint election under either of subsection (3) or (12),

(a) in respect of any transfer of property, directly or indirectly, by the Canadian affiliate to the entrant bank or a person with whom the entrant bank does not deal at arm's length,

(i) subparagraph 13(21.2)(e)(iii) shall be read without reference to clause (E) of that subparagraph,

(ii) subsection 14(12) shall be read without reference to paragraph (g) of that subsection,

(iii) paragraph 18(15)(b) shall be read without reference to subparagraph (iv) of that paragraph, and

(iv) paragraph 40(3.4)(b) shall be read without reference to subparagraph (v) of that paragraph;

(b) in respect of any property of the Canadian affiliate appropriated to or for the benefit of the entrant bank or any person with whom the entrant bank does not deal at arm's length, section 69(5) shall be read without reference to paragraph (d); and

(c) for the purposes of applying subsection 13(21.2), 14(12), 18(15) and 40(3.4) to any property that was disposed of by the affiliate, after the dissolution or winding-up of the affiliate, the entrant bank is deemed to be the same corporation as, and a continuation of, the affiliate.

Regulations: 9204(2.1) (winding-up into authorized foreign bank).

(14) Winding-up of Canadian affiliate: SDOs — If a Canadian affiliate of an entrant bank and the entrant bank meet the conditions set out in paragraphs (12)(a) and (b) and jointly elect in accordance with subsection (11) to have this subsection apply, and the Canadian affiliate has not made an election under this subsection with any other entrant bank, the entrant bank is deemed to be the same corporation as, and a continuation of, the Canadian affiliate for the purposes of paragraphs 142.4(4)(c) and (d) in respect of any specified debt obligation disposed of by the Canadian affiliate.

Related Provisions: 142.7(11) — Requirements for election.

History [s. 142.7]: S. 142.7 added by 2001, c. 17, s. 138, applicable after June 27, 1999.

Definitions [s. 142.7]: "affiliated" — 251.1; "amount" — 248(1); "arm's length" — 251(1); "authorized foreign bank", "bank", "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "Canadian affiliate" — 142.7(1); "Canadian banking business" — 248(1); "Canadian corporation" — 89(1), 248(1); "capital gain" — 39(1)(a), 248(1); "capital loss" — 39(1)(b), 248(1); "carrying on a business in Canada" — 253; "commencement" — *Interpretation Act* 35(1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "eligible property", "entrant bank" — 142.7(1); "filing-due date" — 248(1); "financial institution" — 142.2(1); "foreign currency" — 248(1); "foreign merger" —

87(8.1); "Governor" — *Interpretation Act* 35(1); "lending asset" — 248(1); "mark-to-market property" — 142.2(1); "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "movable" — Quebec *Civil Code* art. 900–907; "net capital loss", "non-capital loss" — 111(8), 248(1); "non-resident" — 248(1); "parent" — 88(1.1); "person", "prescribed", "principal amount", "property" — 248(1); "qualifying foreign merger" — 142.7(1); "resident" — 250; "share", "shareholder" — 248(1); "specified debt obligation" — 142.2(1); "taxable capital gain" — 38(a), 248(1); "taxable dividend" — 89(1), 248(1); "taxable income", "taxable income earned in Canada" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Communal Organizations

143. (1) Communal [religious] organizations — Where a congregation, or one or more business agencies of the congregation, carries on one or more businesses for purposes that include supporting or sustaining the congregation's members or the members of any other congregation, the following rules apply:

(a) an *inter vivos* trust is deemed to be created on the day that is the later of

(i) December 31, 1976, and

(ii) the day the congregation came into existence;

(b) the trust is deemed to have been continuously in existence from the day determined under paragraph (a);

(c) the property of the congregation is deemed to be the property of the trust;

(d) the property of each business agency of the congregation in a calendar year is deemed to be property of the trust throughout the portion of the year throughout which the trust exists;

(e) where the congregation is a corporation, the corporation is deemed to be the trustee having control of the trust property;

(f) where the congregation is not a corporation, its council, committee of leaders, executive committee, administrative committee, officers or other group charged with its management are deemed to be the trustees having control of the trust property;

(g) the congregation is deemed to act and to have always acted as agent for the trust in all matters relating to its businesses and other activities;

(h) each business agency of the congregation in a calendar year is deemed to have acted as agent for the trust in all matters in the year relating to its businesses and other activities;

(i) the members of the congregation are deemed to be the beneficiaries under the trust;

(j) tax under this Part is payable by the trust on its taxable income for each taxation year;

(k) in computing the income of the trust for any taxation year,

(i) subject to paragraph (l), no deduction may be made in respect of salaries, wages or benefits of any kind provided to the members of the congregation, and

(ii) no deduction may be made under subsection 104(6), except to the extent that any portion of the trust's income (determined without reference to that subsection) is allocated to the members of the congregation in accordance with subsection (2);

(l) for the purpose of applying section 20.01 to the trust,

(i) each member of the congregation is deemed to be a member of the trust's household, and

(ii) section 20.01 shall be read without reference to paragraphs 20.01(2)(b) and (c) and subsection 20.01(3); and

(m) where the congregation or one of the business agencies is a corporation, section 15.1 shall, except for the purposes of paragraphs 15.1(2)(a) and (c) (other than subparagraphs 15.1(2)(c)(i) and (ii)), apply as if this subsection were read without reference to paragraphs (c), (d), (g) and(h).

Related Provisions: 108(1)"trust"(c) — S. 143 trust deemed not a trust for certain purposes; 127(7) — Investment tax credit of trust; 143(2) — Election in respect of income.

History: Subsec. 143(1) amended by 2000, c. 19, subsec. 41(1) applicable to 1998 *et seq.* The subsec. formerly read:

143. (1) Where a congregation

(a) the members of which live and work together,

(b) that does not permit any of its members to own any property in the member's own right, and

(c) that requires that its members devote their working lives to the activities of the congregation

carries on one or more businesses or has the effective management or control of one or more corporations, trusts or other persons (which corporations, trusts and other persons are in this section collectively referred to as "business agencies") that carry on one or more businesses for purposes that include supporting or sustaining its members or the members of any other congregation, an *inter vivos* trust shall be deemed to have been in existence on December 31, 1976 and continuously thereafter and the following rules apply:

(d) the property of the congregation and the property of all business agencies of the congregation shall be deemed to be the property of the *inter vivos* trust,

(e) where the congregation is a corporation, the corporation shall be deemed to be the trustee having control of the trust property,

(f) where the congregation is not a corporation, its council, committee of leaders, executive committee, administrative committee, officers or other group charged with the management of the congregation shall be deemed to be the trustees having control of the trust property,

(g) the congregation and all business agencies of the congregation shall be deemed to act and have always acted as agents for the *inter vivos* trust in all matters relating to their business and other activities,

(h) the members of the congregation shall be deemed to be the beneficiaries under the trust,

(i) tax under this Part is payable by the trust on its taxable income for each taxation year,

(j) in computing the income of the trust for any taxation year, no deduction may be made in respect of salaries, wages or benefits of any kind whatever, paid to the members of the congregation, and

(k) where the congregation or one of the business agencies is a corporation, section 15.1 shall, except for the purposes of paragraphs 15.1(2)(a) and (c) (other than subparagraphs 15.1(2)(c)(i) and (ii)), apply as if this subsection were read without reference to paragraphs (d) and (g).

Para. 143(1)(k) added by 1994, c. 21, s. 67, applicable to 1992 *et seq.*

Information Circulars: 78-5R3: Communal organizations.

(2) Election in respect of income — Where the *inter vivos* trust referred to in subsection (1) in respect of a congregation so elects in respect of a taxation year in writing filed with the Minister on or before the trust's filing-due date for the year and all the congregation's partic-

ipating members are specified in the election in accordance with subsection (5), the following rules apply:

(a) for the purposes of subsections 104(6) and (13), the amount payable in the year to a particular participating member of the congregation out of the income of the trust (determined without reference to subsection 104(6)) is the amount determined by the formula

$$0.8 (A \times B/C) + D + (0.2A - E)/F$$

where

A is the taxable income of the trust for the year (determined without reference to subsection 104(6) and specified future tax consequences for the year),

B is

(i) where the particular member is identified in the election as a person to whom this subparagraph applies (in this subsection referred to as a "designated member"), 1, and

(ii) in any other case, 0.5,

C is the total of

(i) the number of designated members of the congregation, and

(ii) ½ of the number of other participating members of the congregation in respect of the year,

D is the amount, if any, that is specified in the election as an additional allocation under this subsection to the particular member,

E is the total of all amounts each of which is an amount specified in the election as an additional allocation under this subsection to a participating member of the congregation in respect of the year, and

F is the number of participating members of the congregation in respect of the year;

(b) the designated member of each family at the end of the year is deemed to have supported the other members of the family during the year and the other members of the family are deemed to have been wholly dependent on the designated member for support during the year; and

(c) the taxable income for the year of each member of the congregation shall be computed without reference to subsection 110(2).

Related Provisions: 143(3) — Election not binding unless taxes paid; 143(5) — Specification of family members; 220(3.2), Reg. 600(b) — Late filing or revocation of election; 257 — Formula cannot calculate to less than zero.

History: Subsec. 143(2) amended by 2000, c. 19, subsec. 41(1), applicable to 1998 *et seq.* The subsec. formerly read:

(2) Election in respect of taxable income — Where the *inter vivos* trust referred to in subsection (1) in respect of a congregation so elects in respect of a taxation year, the amount determined under paragraph (a) for that taxation year shall be deemed to have been payable by the trust in the year to the beneficiaries thereunder in accordance with the following rules:

(a) determine the amount that would be the taxable income of the trust for the year if no deductions were made in respect of expenses incurred for the support, maintenance and satisfaction or personal needs of its members,

(b) determine the amount that is the quotient obtained when the amount so determined is divided by 1¼ times the number of adults who are members of the congregation at the end of the year,

(c) allocate to each family in the congregation at the end of the year the amount equal to the product obtained when the amount determined under paragraph (b) is multiplied by the number of adults in the family at the end of the year, and

(d) allocate among the families in the congregation at the end of the year in such manner as the congregation determines the amount by which the amount determined under paragraph (a) exceeds the total of amounts allocated under paragraph (c) or, if such an allocation is not made and specified in the election under this subsection in respect of the year, allocate to each of the families in the congregation at the end of the year the amount equal to the proportion of the excess that the number of adults in the family at that time is of the number of adults in all of the families in the congregation at that time,

and the total of amounts so allocated to a family shall be deemed to be payable in the year to, and to be received in the year by, the adult member of the family who is specified in the election under this subsection in respect of the year and that member of the family shall be deemed to have supported each of the other members of the family during that taxation year and the other members of the family shall be deemed to have been wholly dependent on that member for support during that taxation year.

Information Circulars: 78-5R3: Communal organizations.

(3) Refusal to accept election — An election under subsection (2) in respect of a congregation for a particular taxation year is not binding on the Minister unless all taxes, interest and penalties payable under this Part, as a consequence of the application of subsection (2) to the congregation for preceding taxation years, are paid at or before the end of the particular year.

History: Subsec. 143(3) amended by 2000, c. 19, subsec. 41(1), applicable to 1998 *et seq.* The subsec. formerly read:

(3) Idem — An election under subsection (2) in respect of a taxation year is not binding on the Minister unless

(a) the election is made on or before the day on or before which the *inter vivos* trust is required by section 150 to file a return of income for the year;

(b) all tax, interest and penalties, if any, payable under this Part by adult members designated in accordance with subsection (2) have been paid within the time required by this Act; and

(c) no amounts are, by virtue of subsection 110(2), deducted in computing the taxable income for the year of the members designated in accordance with subsection (2).

Information Circulars: 78-5R3: Communal organizations.

(3.1) Election in respect of gifts — For the purposes of section 118.1, where the fair market value of a gift made in a taxation year by an *inter vivos* trust referred to in subsection (1) in respect of a congregation would, but for this subsection, be included in the total charitable gifts, total Crown gifts, total cultural gifts or total ecological gifts of the trust for the year and the trust so elects in its return of income under this Part for the year,

(a) the trust is deemed not to have made the gift; and

(b) each participating member of the congregation is deemed to have made, in the year, such a gift the fair market value of which is the amount determined by the formula

$$A \times B/C$$

where

A is the fair market value of the gift made by the trust,

Proposed Amendment — 143(3.1) before (b)B

(3.1) Election in respect of gifts — For the purposes of section 118.1, if the eligible amount of a gift made in a taxation year by an *inter vivos* trust referred to in subsection (1) in respect of a congregation would, but for this subsection, be included in the total charitable gifts, total Crown gifts, total cultural

gifts or total ecological gifts of the trust for the year and the trust so elects in its return of income under this Part for the year,

(a) the trust is deemed not to have made the gift; and

(b) each participating member of the congregation is deemed to have made, in the year, such a gift the eligible amount of which is the amount determined by the formula

$$A \times B/C$$

where

A is the eligible amount of the gift made by the trust,

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 138, will amend the portion of subsec. 143(3.1) before the description of B in para. (b) to read as above, applicable to gifts made after December 20, 2002.

Technical Notes: Subsection 143(3.1) allows a communal organization that makes an election under subsection 143(2) to elect to have its total charitable, Crown, cultural and ecological gifts flowed through to those members (the "participating" members) of the congregation for whom an amount is included in income for the year under subsection 143(2).

Subsection 143(3.1) is amended consequential to the addition of new subsection 248(31), in respect of gifts made after December 20, 2002, to refer to the "eligible amount" of a gift made because of a person being a participating member in the communal organization.

B is the amount determined for the year in respect of the member under paragraph (2)(a) as a consequence of an election under subsection (2) by the trust, and

C is the total of all amounts each of which is an amount determined for the year in respect of a participating member of the congregation under paragraph (2)(a) as a consequence of an election under subsection (2) by the trust.

Related Provisions: 248(30)–(33) — Determination of eligible amount.

History: Subsec. 143(3.1) amended by 2000, c. 19, subsec. 41(2), the opening words applicable to 1995 *et seq.* and paras. (a), (b) applicable to 1998 *et seq.* The subsec. formerly read:

(3.1) For the purposes of section 118.1, where the fair market value of a gift made in a taxation year by an *inter vivos* trust referred to in subsection (1) would, but for this subsection, be included in the total charitable gifts, total Crown gifts or total cultural gifts of the trust for the year and the trust so elects in its return of income under this Part for the year,

(a) the trust shall be deemed not to have made the gift; and

(b) each adult member of a family to whom an amount is deemed under subsection (2) to be payable in the year shall be deemed to have made, in the year, such a gift the fair market value of which is the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the fair market value of the gift made by the trust,

B is the amount deemed under subsection (2) to be payable in the year in respect of the trust to the adult member, and

C is the total of all amounts deemed under subsection (2) to be payable in the year in respect of the trust to an adult member of a family.

Subsec. 143(3.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 116(1), applicable to 1990 *et seq.*

Information Circulars: 78-5R3: Communal organizations.

(4) Definitions — For the purposes of this section,

"adult" means an individual who, before the time at which the term is applied, has attained the age of eighteen years or is married or in a common-law partnership;

"business agency", of a congregation at any time in a particular calendar year, means a corporation, trust or other person, where the congregation owned all the shares of the capital stock of the corporation (except directors' qualifying shares) or every interest in the trust or other person, as the case may be, throughout the portion of the particular calendar year throughout which both the congregation and the corporation, trust or other person, as the case may be, were in existence;

"congregation" means a community, society or body of individuals, whether or not incorporated,

(a) the members of which live and work together,

(b) that adheres to the practices and beliefs of, and operates according to the principles of, the religious organization of which it is a constituent part,

(c) that does not permit any of its members to own any property in their own right, and

(d) that requires its members to devote their working lives to the activities of the congregation;

"family" means,

(a) in the case of an adult who is unmarried and who is not in a common-law partnership, that person and the person's children who are not adults, not married and not in a common-law partnership, and

(b) in the case of an adult who is married or in a common-law partnership, that person and the person's spouse or common-law partner and the children of either or both of them who are not adults, not married and not in a common-law partnership

but does not include an individual who is included in any other family or who is not a member of the congregation in which the family is included;

"member of a congregation" means

(a) an adult, living with the members of the congregation, who conforms to the practices of the religious organization of which the congregation is a constituent part whether or not that person has been formally accepted into the organization, and

(b) a child who is unmarried and not in common-law partnership, other than an adult, of an adult referred to in paragraph (a), if the child lives with the members of the congregation;

"participating member", of a congregation in respect of a taxation year, means an individual who, at the end of the year, is an adult who is a member of the congregation;

"religious organization" means an organization, other than a registered charity, of which a congregation is a constituent part, that adheres to beliefs, evidenced by the religious and philosophical tenets of the organization, that include a belief in the existence of a supreme being;

"total charitable gifts" has the meaning assigned by subsection 118.1(1);

"total Crown gifts" has the meaning assigned by subsection 118.1(1);

"total cultural gifts" has the meaning assigned by subsection 118.1(1).

"total ecological gifts" has the same meaning as in subsection 118.1(1).

History: The definition "adult" in subsec. 143(4) amended by 2000, c. 12, Sch. 2, s. 11, to replace "married" with "married or in a common-law partnership", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

The definition "family" in subsec. 143(4) amended by 2000, c. 12, subsec. 134(1), applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner". The definition formerly read:

"family" means,

(a) in the case of an unmarried adult, that person and the person's unmarried children who are not adults, and

(b) in the case of a married adult, that person and the person's spouse and the unmarried children of either or both of them who are not adults

but does not include an individual who is included in any other family or who is not a member of the congregation in which the family is included;

Para. (b) of the definition "member of the congregation" in subsec. 143(4) amended by 2000, c. 12, subsec. 134(2) (as amended by 2001, c. 17, s. 263), applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner". The para. formerly read:

(b) an unmarried child, other than an adult, of an adult referred to in paragraph (a), if the child lives with the members of the congregation;

The definition "congregation" in subsec. (4) amended, and the definitions "business agency", "participating member" and "total ecological gifts" added to subsec. (4) by 2000, c. 19, subsecs. 41(3), (4), the definitions "congregation", "business agency" and "participating member" applicable to 1998 *et seq.* except that, for taxation years that end before 2001, the definition "business agency" shall be read as follows:

"business agency", of a congregation at any time in a particular calendar year, means

(a) a corporation, trust or other person, where the congregation owned all the shares of the capital stock of the corporation (except directors' qualifying shares) or every interest in the trust or other person, as the case may be, throughout the portion of the particular year throughout which both the congregation and the corporation, trust or other person, as the case may be, existed, or

(b) a corporation, trust or other person of which the congregation

(i) has effective management or control throughout the portion of the particular year throughout which both the congregation and the corporation, trust or other person, as the case may be, were in existence, and

(ii) had effective management or control during a taxation year of the corporation, trust or other person that began before March 1999 and ended in the particular year;

and the definition "total ecological gifts", applicable to gifts made after February 27, 1995. The definition "congregation" formerly read:

"congregation" means a community, society or body of individuals, whether or not incorporated, that adheres to the practices and beliefs of, and operates according to the principles of, the religious organization of which it is a constituent part;

The definitions "total charitable gifts", "total Crown gifts" and "total cultural gifts" added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 116(2), applicable to 1990 *et seq.*

(5) Specification of family members — For the purpose of applying subsection (2) to a particular election by the *inter vivos* trust referred to in subsection (1) in respect of a congregation for a particular taxation year,

(a) subject to paragraph (b), a participating member of the congregation is considered to have been specified in the particular election in accordance with this subsection only if the member is identified in the particular election and

(i) where the member's family includes only one adult at the end of the particular year, the member is identified in the particular election as a person to whom subparagraph (i) of the description of B in subsection (2) (in this subsection referred to as the "relevant subparagraph") applies, and

(ii) in any other case, only one of the adults in the member's family is identified in the particular election as a person to whom the relevant subparagraph applies; and

(b) an individual is considered not to have been specified in the particular election in accordance with this subsection if

(i) the individual is one of two individuals who were married to each other, or in a common-law partnership, at the end of a preceding taxation year of the trust and at the end of the particular year,

(ii) one of those individuals was

(A) where the preceding year ended before 1998, specified in an election under subsection (2) by the trust for the preceding year, and

(B) in any other case, identified in an election under subsection (2) by the trust for the preceding year as a person to whom the relevant subparagraph applied, and

(iii) the other individual is identified in the particular election as a person to whom the relevant subparagraph applies.

History [subsec. 143(5)]: Subpara. 143(5)(b)(i) amended by 2001, c. 17, s. 245 to add the words "or in a common-law partnership", applicable to 2001 *et seq.* except that, if a taxpayer and a person have jointly elected pursuant to s. 144 of 2000, c. 12 in respect of the 1998, 1999 or 2000 taxation years, the amendment applies to the taxpayer and the person in respect of the applicable taxation year and subsequent taxation years.

Subsec. 143(5) amended by 2000, c. 19, subsec. 41(5), applicable to 1998 *et seq.* The subsec. formerly read:

(5) Effect of specification of member of family — Where an adult member (in this subsection referred to as a "specified person") of a family is specified in an election under subsection (2) in respect of a taxation year, no other member of that family may be specified in an election in respect of any subsequent taxation year at the end of which the specified person was a member of that family.

Definitions [s. 143]: "adult" — 143(4); "amount", "business" — 248(1); "business agency" — 143(4); "child" — 252(1); "congregation" — 143(4); "corporation" — 248(1), *Interpretation Act* 35(1); "eligible amount" — 248(31), (41); "family" — 143(4); "filing-due date", "individual" — 248(1); "inter vivos trust" — 108(1), 248(1); "member of a congregation" — 143(4); "Minister", "officer" — 248(1); "participating member" — 143(4); "person", "property" — 248(1); "qualifying share" — 192(6), 248(1); "registered charity" — 248(1); "religious organization" — 143(4); "share", "specified future tax consequence" — 248(1); "taxable income" — 248(1); "taxation year" — 249; "total charitable gifts", "total Crown gifts", "total cultural gifts", "total ecological gifts" — 143(4); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

143.1 (1) Amateur athletes' reserve funds — Where a national sport organization that is a registered Canadian amateur athletic association receives an amount for the benefit of an individual under an arrangement made under rules of an international sport federation that require amounts to be held, controlled and administered by the organization in order to preserve the eligibility of the in-

dividual to compete in a sporting event sanctioned by the federation,

(a) an *inter vivos* trust (in this section referred to as an "amateur athlete trust") shall be deemed to be created on the day that is the later of

(i) the day on which the first such amount is received by the organization, and

(ii) January 1, 1992,

and to exist continuously thereafter until subsection (3) or (4) applies in respect of the trust;

(b) all property required to be held after 1991 under the arrangement shall be deemed to be property of the trust and not property of any other person;

(c) any amount received at any time under the arrangement by the organization shall, to the extent that it would, but for this subsection, be included in computing the individual's income for the taxation year that includes that time, be deemed to be income of the trust for the taxation year and not to be income of the individual;

(d) all amounts paid at any time by the organization under the arrangement to or for the benefit of the individual shall be deemed to be amounts distributed at that time to the individual by the trust;

(e) the individual shall be deemed to be the beneficiary under the trust;

(f) the organization shall be deemed to be the trustee of the trust; and

(g) no tax is payable under this Part by the trust on its taxable income for any taxation year.

Related Provisions: 128.1(10)"excluded right or interest"(e)(ii) — No deemed disposition on emigration of athlete; 149(1)(v) — Exemptions — amateur athlete trust; 210.2(1.1) — Part XII.2 tax payable by amateur athlete trust; 248(1)"amateur athlete trust" — Definition applies to entire Act; 248(1)"disposition"(f)(vi) — Rollover from one trust to another.

Forms: T3ATH-IND: Amateur athlete trust income tax return; T1061: Canadian amateur athletic trust group information return.

(2) Amounts included in beneficiary's income — In computing the income for a taxation year of the beneficiary under an amateur athlete trust, there shall be included the total of all amounts distributed in the year to the beneficiary by the trust.

Related Provisions: 12(1)(z) — Inclusion in income of amateur athlete trust payments; 210.2(1.1) — Application of Part XII.2 tax to amateur athlete trusts; 212(1)(u) — Non-resident withholding tax — amateur athlete trust payments; 214(3)(k) — Non-resident withholding tax.

(3) Termination of amateur athlete trust — Where an amateur athlete trust holds property on behalf of a beneficiary who has not competed in an international sporting event as a Canadian national team member for a period of 8 years that ends in a particular taxation year and begins in the year that is the later of

(a) where the beneficiary has competed in such an event, the year in which the beneficiary last so competed, and

(b) the year in which the trust was created,

the trust shall be deemed to have distributed, at the end of the particular taxation year to the beneficiary, an amount equal to

(c) where the trust is liable to pay tax under Part XII.2 in respect of the particular year, 64% of the fair market value of all property held by it at that time, and

(d) in any other case, the fair market value of all property held by it at that time.

Related Provisions: 210.2(1.1) — Application of Part XII.2 tax to amateur athlete trusts.

(4) Death of beneficiary — Where an amateur athlete trust holds property on behalf of a beneficiary who dies in a year, the trust shall be deemed to have distributed, immediately before the death, to the beneficiary, an amount equal to

(a) where the trust is liable to pay tax under Part XII.2 in respect of the year, 64% of the fair market value of all property held by it at that time; and

(b) in any other case, the fair market value of all property held by it at that time.

Related Provisions: 210.2(1.1) — Application of Part XII.2 tax to amateur athlete trusts.

History [s. 143.1]: S. 143.1 added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 81, applicable to 1992 *et seq.* and, where an individual and a national sport organization that received an amount for the benefit of that individual jointly so elect by notifying the Minister of National Revenue in writing, to any taxation year ending after 1987 and before 1992 throughout which the individual was resident in Canada, in which case, with respect to that individual and the trust under which the individual is deemed by s. 143.1 to be a beneficiary,

(a) the reference to "1992" in para. 143.1(1)(a) shall be read as a reference to the taxation year for which the election is made; and

(b) the reference to "1991" in para. 143.1(1)(b) shall be read as a reference to the taxation year before the year for which the election is made.

Definitions [s. 143.1]: "amateur athlete trust" — 143.1(1)(a), 248(1); "amount" — 248(1); "beneficiary" — 108(1); "individual" — 248(1); "*inter vivos* trust" — 108(1), 248(1); "property", "registered Canadian amateur athletic association" — 248(1); "taxation year" — 11(2), 249.

Cost of Tax Shelter Investments

Proposed Amendment — Heading before 143.2

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 139(1), will amend the heading before s. 143.2 to read "Cost of Tax Shelter Investments and Limited-recourse Debt in Respect of Gifting Arrangements", applicable in respect of expenditures, gifts and monetary contributions made after February 18, 2003.

143.2 (1) Definitions — The definitions in this subsection apply in this section.

"expenditure" means an outlay or expense or the cost or capital cost of a property.

Related Provisions: 143.2(2) — At-risk adjustment in respect of expenditures; 143.2(6) — Expenditures reduced by at-risk adjustment.

"limited partner" has the meaning that would be assigned by subsection 96(2.4) if that subsection were read without reference to "if the member's partnership interest is not an exempt interest (within the meaning assigned by subsection (2.5)) at that time and".

"limited-recourse amount" means the unpaid principal amount of any indebtedness for which recourse is limited, either immediately or in the future and either absolutely or contingently.

Related Provisions: 143.2(7), (8), (13) — Whether unpaid principal deemed to be limited-recourse amount; 248(1) — Definition of "principal amount"; 248(1)"limited-recourse amount" — Definition applies to entire Act; Reg. 231(6.1) — Limited-recourse amount may be prescribed benefit for purposes of definition of tax shelter.

"taxpayer" includes a partnership.

"tax shelter investment" means

(a) a property that is a tax shelter for the purpose of subsection 237.1(1); or

(b) a taxpayer's interest in a partnership where

(i) an interest in the taxpayer

(A) is a tax shelter investment, and

(B) the taxpayer's partnership interest would be a tax shelter investment if

(I) this Act were read without reference to this paragraph and to the words "having regard to statements or representations made or proposed to be made in connection with the property" in the definition "tax shelter" in subsection 237.1(1),

(II) the references in that definition to "represented" were read as references to "that can reasonably be expected", and

(III) the reference in that definition to "is represented" were read as a reference to "can reasonably be expected",

(ii) another interest in the partnership is a tax shelter investment, or

(iii) the taxpayer's interest in the partnership entitles the taxpayer, directly or indirectly, to a share of the income or loss of a particular partnership where

(A) another taxpayer holding a partnership interest is entitled, directly or indirectly, to a share of the income or loss of the particular partnership, and

(B) that other taxpayer's partnership interest is a tax shelter investment.

Related Provisions: 18.1(13) — Matchable expenditure deemed to be a tax shelter investment; 53(2)(c)(i.3) — Tax shelter investment excluded from certain ACB reductions; 125.4(4) — No Canadian film credit for a tax shelter investment; 143.2(6) — Limitation on cost of tax shelter investment; 150(1)(d)(ii)(A) — Tax shelter investment does not entitle individual to June 15 filing deadline; 249.1(5) — Election for non-calendar year-end not permitted for tax shelters; Reg. 1100(20.1) — limitation on CCA claim for computer software tax shelter property.

I.T. Technical News: 22 (tax shelter news release — rulings position).

(2) At-risk adjustment — For the purpose of this section, an at-risk adjustment in respect of an expenditure of a particular taxpayer, other than the cost of a partnership interest to which subsection 96(2.2) applies, means any amount or benefit that the particular taxpayer, or another taxpayer not dealing at arm's length with the particular taxpayer, is entitled, either immediately or in the future and either absolutely or contingently, to receive or to obtain, whether by way of reimbursement, compensation, revenue guarantee, proceeds of disposition, loan or any other form of indebtedness, or in any other form or manner whatever, granted or to be granted for the purpose of reducing the impact, in whole or in part, of any loss that the particular taxpayer may sustain in respect of the expenditure or, where the expenditure is the cost or capital cost of a property, any loss from the holding or disposition of the property.

Related Provisions: 96(2.2) — At-risk amount for limited partnership; 143.2(3) — Exclusions from at-risk adjustment; 143.2(4) — Determination of amount or benefit; 143.2(6) — Expenditures reduced by at-risk adjustment; 143.2(9) — Timing.

(3) Amount or benefit not included — For the purpose of subsection (2), an at-risk adjustment in respect of a taxpayer's expenditure does not include an amount or benefit

(a) to the extent that it is included in determining the value of J in the definition "cumulative Canadian exploration expense" in subsection 66.1(6), of M in the definition "cumulative Canadian development expense" in subsection 66.2(5) or of I in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5) in respect of the taxpayer; or

(b) the entitlement to which arises

(i) because of a contract of insurance with an insurance corporation dealing at arm's length with the taxpayer (and, where the expenditure is the cost of an interest in a partnership, with each member of the partnership) under which the taxpayer is insured against any claim arising as a result of a liability incurred in the ordinary course of carrying on the business of the taxpayer or the partnership,

(ii) as a consequence of the death of the taxpayer,

(iii) in respect of an amount not included in the expenditure, determined without reference to subparagraph (6)(b)(ii), or

(iv) because of an excluded obligation (as defined in subsection 6202.1(5) of the *Income Tax Regulations*) in relation to a share issued to the taxpayer or, where the expenditure is the cost of an interest in a partnership, to the partnership.

(4) Amount or benefit — For the purposes of subsections (2) and (3), where the amount or benefit to which a taxpayer is entitled at any time is provided by way of an agreement or other arrangement under which the taxpayer has a right, either immediately or in the future and either absolutely or contingently (otherwise than as a consequence of the death of the taxpayer), to acquire property, for greater certainty the amount or benefit to which the taxpayer is entitled under the agreement or arrangement is considered to be not less than the fair market value of the property at that time.

(5) Amount or benefit — For the purposes of subsections (2) and (3), where the amount or benefit to which a taxpayer is entitled at any time is provided by way of a guarantee, security or similar indemnity or covenant in respect of any loan or other obligation of the taxpayer, for greater certainty the amount or benefit to which the taxpayer is entitled under the guarantee or indemnity at any particular time is considered to be not less than the total of the unpaid amount of the loan or obligation at that time and all other amounts outstanding in respect of the loan or obligation at that time.

(6) Amount of expenditure — Notwithstanding any other provision of this Act, the amount of any expenditure that is, or is the cost or capital cost of, a taxpayer's tax shelter investment, and the amount of any expenditure of a taxpayer an interest in which is a tax shelter investment, shall be reduced to the amount, if any, by which

(a) the amount of the taxpayer's expenditure otherwise determined

exceeds

(b) the total of

(i) the limited-recourse amounts of

(A) the taxpayer, and

(B) all other taxpayers not dealing at arm's length with the taxpayer

that can reasonably be considered to relate to the expenditure,

(ii) the taxpayer's at-risk adjustment in respect of the expenditure, and

(iii) each limited-recourse amount and at-risk adjustment, determined under this section when this section is applied to each other taxpayer who deals at arm's length with and holds, directly or indirectly, an interest in the taxpayer, that can reasonably be considered to relate to the expenditure.

Related Provisions: 18.1(13) — Subpara. (6)(b)(ii) inapplicable for matchable expenditures; Reg. 1100(20.1) — limitation on CCA claim for computer software tax shelter property.

Proposed Addition — 143.2(6.1)

(6.1) Limited-recourse debt in respect of a gift or monetary contribution — The limited-recourse debt in respect of a gift or monetary contribution of a taxpayer, at the time the gift or monetary contribution is made, is the total of

(a) each limited-recourse amount at that time, of the taxpayer and of all other taxpayers not dealing at arm's length with the taxpayer, that can reasonably be considered to relate to the gift or monetary contribution,

(b) each limited-recourse amount at that time, determined under this section when this section is applied to each other taxpayer who deals at arm's length with and holds, directly or indirectly, an interest in the taxpayer, that can reasonably be considered to relate to the gift or monetary contribution, and

(c) each amount that is the unpaid amount at that time of any other indebtedness, of any taxpayer referred to in paragraph (a) or (b), that can reasonably be considered to relate to the gift or monetary contribution if there is a guarantee, security or similar indemnity or covenant in respect of that or any other indebtedness.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 139(2), will add subsec. 143.2(6.1), applicable in respect of expenditures, gifts and monetary contributions made after February 18, 2003.

Technical Notes: New subsection 143.2(6.1) describes limited-recourse debt in respect of a gift or monetary contribution made after February 18, 2003. Such an amount is an advantage under subsection 248(32), such that it reduces the eligible amount of a gift or political contribution determined under subsection 248(31). For additional details regarding the amount of an advantage, see the commentary to new subsection 248(32).

A limited-recourse debt includes the unpaid principal of any indebtedness for which recourse is limited, even if that limitation applies only in the future or contingently. It also includes any other indebtedness of the taxpayer, related to the gift or contribution, if there is a guarantee, security or similar indemnity or covenant in respect of that or any other indebtedness. For example, if a donor (or any other person mentioned below) enters into a contract of insurance whereby all or part of a debt will be paid upon the occurrence of either a certain or contingent event, the debt is a limited-recourse debt in respect of a gift if it is in any way related to the gift.

Such an indebtedness is also a limited-recourse debt if it is owed by a person dealing non-arm's length with the taxpayer or by a person who holds an interest in the taxpayer.

Department of Finance news release, December 5, 2003: These measures implement proposals introduced in Budget 2003 that address charitable donation arrangements that were promoted in recent years involving the use of limited-recourse debt. [See under 248(35)–(41) for full text of news release — ed.]

Notice of Ways and Means Motion, federal budget, February 18, 2003: (17) That, after February 18, 2003, . . .

(c) in respect of gifts and contributions, and representations, made after that date, an arrangement in respect of the making of a gift referred to in section 110.1 or 118.1 of the Act or a contribution referred to in subsection 127(4.1) of the Act be deemed to be a tax shelter if it may reasonably be considered that, having regard to representations made concerning the arrangement, a person will incur an indebtedness in respect of which recourse is limited; and

(d) for gifts and contributions made after that date pursuant to an arrangement described in subparagraph (c), the amount of the gift or contribution be reduced by the amount of any associated indebtedness in respect of which recourse is limited, and the value of any repayment of the limited recourse debt be treated as a gift or contribution in the year the repayment is made.

Federal budget, Supplementary Information, February 18, 2003: *Tax Shelter Definition*

Generally, a tax shelter is any property in respect of which it is represented that a potential purchaser will be able to claim, within four years, deductions from income or taxable income which equal or exceed the net cost of the property to the purchaser (that is, net of certain prescribed benefits such as limited-recourse debt).

Promoters of tax shelter properties are not permitted to sell a tax shelter without first obtaining an identification number from the Canada Customs and Revenue Agency (CCRA). This identification number does not constitute confirmation by the CCRA of entitlement to any tax benefits that may have been described to potential purchasers; rather, the CCRA uses the number for administrative purposes such as identifying tax shelters for audit.

If an identification number is not obtained in advance, no person may claim any deduction in respect of the tax shelter until the number is obtained.

While the existing definition of "tax shelter" in the *Income Tax Act* applies to arrangements promoted as providing deductions in computing income or taxable income, it may not currently apply to those that are promoted as providing only the deduction of tax credits. The budget proposes to eliminate this technical distinction so that promoters will be required to register a property as a tax shelter if representations are made that a potential purchaser will be able to claim, within four years, any combination of deductions in computing income or taxable income and federal tax credits which in total equal or exceed the purchaser's net cost of the property. The definition of tax shelter will also be amended to clarify its application to property acquired under an arrangement in respect of which it is represented that a donation or contribution of the property would generate tax credits or deductions (such as charitable donations tax credits or deductions) equal to or exceeding the net cost to the donor of the property.

In order to avoid a double counting of tax credits in the formula used to determine if a property or an arrangement is a tax shelter, it is proposed that the definition of "prescribed benefits" in paragraph 231(6)(b) of the Income Tax Regulations *be amended to exclude any federal tax credit already taken into account in determining whether tax credits and deductions exceed net cost. Provincial tax credits would continue to be considered prescribed benefits.*

Further, the budget proposes to treat as a tax shelter any arrangement that involves a transfer of property in respect of which it is represented that a donation or contribution of the property would generate tax credits or deductions, if it may reasonably be considered that a person will incur limited-recourse debt in connection with the arrangement. *If the transfer otherwise qualifies for a tax credit or deduction, the amount of the donation or contribution will be reduced for the purposes of calculating the amount of the credit or deduction to the extent of the associated limited-recourse debt. A repayment of the limited-recourse debt will be treated as a donation or contribution in the year it is repaid.*

These amendments will generally apply in respect of property acquired, and gifts, contributions and representations made, after February 18, 2003.

Related Provisions: 237.1(1)"gifting arrangement"(b) — Incurring limited-recourse debt may require tax shelter registration; 248(32)(b) — Limited-recourse debt reduces value of donation; 248(34) — Repayment of limited-recourse debt.

(7) Repayment of indebtedness — For the purpose of this section, the unpaid principal of an indebtedness is deemed to be a limited-recourse amount unless

(a) *bona fide* arrangements, evidenced in writing, were made, at the time the indebtedness arose, for repayment by the debtor of the indebtedness and all interest on the indebtedness within a reasonable period not exceeding 10 years; and

(b) interest is payable at least annually, at a rate equal to or greater than the lesser of

(i) the prescribed rate of interest in effect at the time the indebtedness arose, and

(ii) the prescribed rate of interest applicable from time to time during the term of the indebtedness,

and is paid in respect of the indebtedness by the debtor no later than 60 days after the end of each taxation year of the debtor that ends in the period.

Related Provisions: 143.2(12) — Series of loans or repayments; Reg. 4301(c) (prescribed rate of interest).

(8) Limited-recourse amount — For the purpose of this section, the unpaid principal of an indebtedness is deemed to be a limited-recourse amount of a taxpayer where the taxpayer is a partnership and recourse against any member of the partnership in respect of the indebtedness is limited, either immediately or in the future and either absolutely or contingently.

(9) Timing — Where at any time a taxpayer has paid an amount (in this subsection referred to as the "repaid amount") on account of the principal amount of an indebtedness that was, before that time, the unpaid principal amount of a loan or any other form of indebtedness to which subsection (2) applies (in this subsection referred to as the "former amount or benefit") relating to an expenditure of the taxpayer,

(a) the former amount or benefit is considered to have been an amount or benefit under subsection (2) in respect of the taxpayer at all times before that time; and

(b) the expenditure is, subject to subsection (6), deemed to have been made or incurred at that time to the extent of, and by the payment of, the repaid amount.

(10) Timing — Where at any time a taxpayer has paid an amount (in this subsection referred to as the "repaid amount") on account of the principal amount of an indebtedness which was, before that time, an unpaid principal amount that was a limited-recourse amount (in this subsection referred to as the "former limited-recourse indebtedness") relating to an expenditure of the taxpayer,

(a) the former limited-recourse indebtedness is considered to have been a limited-recourse amount at all times before that time; and

(b) the expenditure is, subject to subsection (6), deemed to have been made or incurred at that time to the extent of, and by the amount of, the repaid amount.

Related Provisions: 231.6 — Foreign-based information.

(11) Short-term debt — Where a taxpayer pays all of the principal of an indebtedness no later than 60 days after that indebtedness arose and the indebtedness would otherwise be considered to be a limited-recourse amount solely because of the application of subsection (7) or (8), that subsection does not apply to the indebtedness unless

(a) any portion of the repayment is made with a limited-recourse amount; or

(b) the repayment can reasonably be considered to be part of a series of loans or other indebtedness and repayments that ends more than 60 days after the indebtedness arose.

Related Provisions: 231.6 — Foreign-based information; 251(1) — Arm's length.

(12) Series of loans or repayments — For the purpose of paragraph (7)(a), a debtor is considered not to have made arrangements to repay an indebtedness within 10 years where the debtor's arrangement to repay can reasonably be considered to be part of a series of loans or other indebtedness and repayments that ends more than 10 years after it begins.

Related Provisions: 248(10) — Series of transactions or events.

(13) Information located outside Canada — For the purpose of this section, where it can reasonably be considered that information relating to indebtedness that relates to a taxpayer's expenditure is available outside Canada and the Minister is not satisfied that the unpaid principal of the indebtedness is not a limited-recourse amount, the unpaid principal of the indebtedness relating to the taxpayer's expenditure is deemed to be a limited-recourse amount relating to the expenditure unless

Proposed Amendment — 143.2(13) opening words

(13) Information located outside Canada — For the purpose of this section, if can reasonably be considered that information relating to indebtedness that relates to a taxpayer's expenditure, gift or monetary contribution is available outside Canada and the Minister is not satisfied that the unpaid principal of the indebtedness is not a limited-recourse amount, the unpaid principal of the indebtedness relating to the taxpayer's expenditure, gift or monetary contribution is deemed to be a limited-recourse amount relating to the expenditure, gift or monetary contribution unless

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 139(3), will amend the opening words of subsec. 143.2(13), applicable in respect of expenditures, gifts and monetary contributions made after February 18, 2003.

Technical Notes: Subsection 143.2(13) applies where information related to an indebtedness in respect of an expenditure is located outside Canada, and the Minister of National Revenue is not satisfied that the indebtedness is not a limited-recourse amount. In such a case, the indebtedness is deemed to be a limited-recourse amount in respect of the expenditure. Subsection 143.2(13) is extended to also apply in respect of an indebtedness that relates to a gift or political contribution made after February 18, 2003.

(a) the information is provided to the Minister; or

(b) the information is located in a country with which the Government of Canada has entered into a tax convention or agreement that has the force of law in Canada and includes a provision under which the Minister can obtain the information.

(14) Information located outside Canada — For the purpose of this section, where it can reasonably be considered that information relating to whether a taxpayer is not dealing at arm's length with another taxpayer is available outside Canada and the Minister is not satisfied that the taxpayer is dealing at arm's length with the other taxpayer, the taxpayer and the other taxpayer are deemed not to be dealing with each other at arm's length unless

(a) the information is provided to the Minister; or

(b) the information is located in a country with which the Government of Canada has entered into a tax convention or agreement that has the force of law in Canada and includes a provision under which the Minister can obtain the information.

(15) Assessments — Notwithstanding subsections 152(4) to (5), such assessments, determinations and redeterminations may be made as are necessary to give effect to this section.

Related Provisions: 237.1(6.2) — Late assessment to deny deduction when penalty unpaid.

History [s. 143.2]: S. 143.2 added by 1998, c. 19, s. 168, applicable to property acquired and to outlays and expenses made or incurred by a taxpayer after November 1994, except that

(a) it does not apply where

(i) the property was acquired, or the outlay or expense was made or incurred, before 1995 pursuant to an agreement in writing made by the taxpayer before December 1994, or

(ii) the property is

(A) a film production prescribed for the purpose of subpara. 96(2.2)(d)(ii) where

(I) the principal photography of the production began before 1995, or, in the case of a production that is a television series, one episode of the series began before 1995, and

(II) the principal photography of the production was completed before March 2, 1995, or

(B) an interest in a partnership (all or substantially all of the property of which is a film production referred to in clause (A)) acquired before 1995 by a taxpayer that is a partnership

and the following conditions are met:

(iii) in the case of an interest that is a tax shelter for which s. 237.1 requires an identification number to be obtained, an identification number was obtained before December 1994, and

(iv) there is no agreement or other arrangement under which the taxpayer's obligations with respect to the interest can be changed, reduced or waived if there is a change to the Act or if there is an adverse assessment under the Act;

(b) it does not apply to revenue guarantees prescribed for the purpose of subpara. 96(2.2)(d)(ii) that were granted before 1996;

(c) subpara. 143.2(6)(b)(ii) does not apply

(i) to property acquired, or outlays or expenses made or incurred, by a taxpayer before April 27, 1995, or

(ii) to property acquired, or outlays or expenses made or incurred, by a taxpayer before 1996 pursuant to a particular agreement in writing made by the taxpayer before April 27, 1995 where the following conditions are met:

(A) in the case of a property that is a tax shelter for which s. 237.1 requires an identification number, an identification number was obtained before April 27, 1995, and

(B) there is no agreement or other arrangement under which the taxpayer's obligations under the particular agreement can be changed, reduced or waived if there is a change to the Act or if there is an adverse assessment under the Act;

(d) para. 143.2(7)(a) shall be read without reference to "not exceeding 10 years" where

(i) the indebtedness arises

(A) pursuant to the terms of an agreement in writing made by the taxpayer before April 27, 1995,

(B) before 1996, in respect of the acquisition of a film production prescribed for the purpose of subpara. 96(2.2)(d)(ii) or an interest in a partnership all or substantially all of the property of which is either a film production prescribed for the purpose of that subparagraph or an interest in one or more partnerships all or substantially all of the property of each of which is such a film production, where

(I) the principal photography of the production began before 1996, or, in the case of a production that is a television series, the principal photography of one episode of the series began before 1996, and

(II) the principal photography of the production was completed before March 1996, or

(C) before July 1995

(I) pursuant to the terms of a document that is a prospectus, preliminary prospectus or registration statement filed before April 27, 1995 with a public authority in Canada pursuant to and in accordance with the securities legislation of Canada or of any province and, where required by law, accepted for filing by the public authority, and the funds so raised were expended before 1996 on expenditures contemplated by the document, or

(II) pursuant to the terms of an offering memorandum distributed as part of an offering of securities where

1. the memorandum contained a complete or substantially complete description of the securities contemplated in the offering as well as the terms and conditions of the offering,

2. the memorandum was distributed before April 27, 1995,

3. solicitations in respect of the sale of the securities contemplated by the memorandum were made before April 27, 1995,

4. the sale of the securities was substantially in accordance with the memorandum, and

5. the funds were expended before 1996 in accordance with the memorandum, and

(ii) the following conditions are met:

(A) in the case of an interest to which clause (i)(A) or (C) applies that is a tax shelter for which s. 237.1 requires an identification number to be obtained, an identification number was obtained before April 27, 1995, and

(B) there is no agreement or other arrangement under which the taxpayer's obligations with respect to the interest can be changed, reduced or waived if there is a change to the Act or if there is an adverse assessment under the Act; and

(e) subsec. 143.2(8) does not apply to a taxpayer in respect of an indebtedness

(i) where the indebtedness

(A) arose, and

(B) is related to property acquired, or outlays or expenses made or incurred, by the taxpayer

before April 27, 1995, nor

(ii) where the indebtedness

(A) arose, and

(B) is related to property acquired, or outlays or expenses made or incurred, by the taxpayer,

before 1996 pursuant to a particular agreement in writing made by the taxpayer before April 27, 1995 and there is no agreement or other arrangement under which the taxpayer's obligations under the particular agreement can be changed, reduced or waived if there is a change to the Act or if there is an adverse assessment under the Act.

Definitions [s. 143.2]: "amount" — 143.2(4), (5.1), (6), 248(1); "arm's length" — 143.2(11), 251(1); "at-risk adjustment" — 143.2(2), (3); "benefit" — 143.2(4), (5.1); "business" — 248(1); "Canada" — 255; "consequence of the death" — 248(8); "expenditure" — 143.2(1), (6); "former limited-recourse indebtedness" — 143.2(9); "insurance corporation" — 248(1); "limited partner" — 143.2(1); "limited-recourse amount" — 143.2(1), (7), (8); "Minister" — 248(1); "monetary contribution" — 127(4.1); "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "principal amount", "property" — 248(1); "repaid amount" — 143.2(9); "regulation" — 248(1); "security" — *Interpretation Act* 35(1); "series" — 248(10); "specified member" — 248(1), (28); "tax shelter investment" — 143.2(1); "taxpayer" — 143.2(1), 248(1); "taxation year" — 249.

DIVISION G — DEFERRED AND OTHER SPECIAL INCOME ARRANGEMENTS

Employees Profit Sharing Plans

144. (1) Definitions — The definitions in this subsection apply in this section.

"employees profit sharing plan" at a particular time means an arrangement

(a) under which payments computed by reference to

(i) an employer's profits from the employer's business,

(ii) the profits from the business of a corporation with which the employer does not deal at arm's length, or

(iii) any combination of the amounts described in subparagraphs (i) and (ii)

are required to be made by the employer to a trustee under the arrangement for the benefit of employees of the employer or of a corporation with which the employer does not deal at arm's length; and

(b) in respect of which the trustee has, since the later of the beginning of the arrangement and the end of 1949, allocated, either contingently or absolutely, to those employees

(i) in each year that ended at or before the particular time, all amounts received in the year by the trustee from the employer or from a corporation with which the employer does not deal at arm's length,

(ii) in each year that ended at or before the particular time, all profits for the year from the property of the trust (determined without regard to any capital gain made by the trust or capital loss sustained by it at any time after 1955),

(iii) in each year that ended after 1971 and at or before the particular time, all capital gains and capital losses of the trust for the year,

(iv) in each year that ended after 1971, before 1993 and at or before the particular time, 100/15 of the total of all amounts each of which is deemed by subsection (9) to be paid on account of tax under this Part in respect of an employee because the employee ceased to be a beneficiary under the plan in the year, and

(v) in each year that ended after 1991 and at or before the particular time, the total of all amounts each of which is an amount that may be deducted under subsection (9) in computing the employee's income because the employee ceased to be a beneficiary under the plan in the year.

Related Provisions: 94(1)"exempt foreign trust"(e) — Non-resident EPSP excluded from non-resident trust rules; 128.1(10)"excluded right or interest"(a)(v) — No deemed disposition on emigration; 144(9) — Refunds; 144(10) — Payments out of profits; 144(11) — Year-end on becoming DPSP; 147(6) — DPSP deemed not to be EPSP; 233.2(1)"exempt trust"(b)(iv)(B) — foreign EPSP exempt from foreign trust reporting rules; 248(1)"disposition"(f)(vi) — Rollover from one trust to another; 248(1)"employees profit sharing plan" — Definition applies to entire Act; 251(1) — Arm's length.

Regulations: 204(3)(b) (no requirement to file regular trust return); 212 (information return).

Interpretation Bulletins: IT-280R: Employees profit sharing plans — payments computed by reference to profits; IT-379R: Employees profit sharing plans — allocations to beneficiaries.

"unused portion of a beneficiary's exempt capital gains balance" in respect of a trust governed by an employees profit sharing plan, at any particular time in a taxation year of the beneficiary, means

(a) where the year ends before 2005, the amount, if any, by which the beneficiary's exempt capital gains balance (in this paragraph having the same meaning as in subsection 39.1(1)) in respect of the trust for the year exceeds the total of all amounts each of which is an amount by which a capital gain is reduced under section 39.1 in the year because of the beneficiary's exempt capital gains balance in respect of the trust; or

(b) where the year ends after 2004, the amount, if any, by which

(i) the amount, if any, that would, if the definition "exempt capital gains balance" in subsection 39.1(1) were read without reference to "that ends before 2005", be the beneficiary's exempt capital gains balance in respect of the trust for the year

exceeds

(ii) where there has been a disposition of an interest or a part of an interest of the beneficiary in the trust after the beneficiary's 2004 taxation year (other than a disposition that is a part of a transaction described in paragraph (7.1)(c) in which property is received in satisfaction of all or a portion of the beneficiary's interests in the trust), the total of all amounts each of which is an amount by which the adjusted cost base of an interest or a part of an interest disposed of by the beneficiary (other than an interest or a part of an interest that is all or a portion of the beneficiary's interests referred to in paragraph (7.1)(c)) was increased because of paragraph 53(1)(p), and

(iii) in any other case, nil.

History: Subsec. 144(1) amended by 1998, c. 19, subsecs. 169(1) and (2), applicable to 1994 *et seq.*, except that subpara. (a)(iii) is applicable to 1992 *et seq.* Subsec. 144(1) formerly read:

(1) In this section, an "employees profit sharing plan" at a particular time means an arrangement

(a) under which payments computed by reference to

(i) an employer's profits from the employer's business,

(ii) the profits from the business of a corporation with which the employer does not deal at arm's length, or

(iii) any combination of the amounts described in paragraphs (a) and (b)

are required to be made by the employer to a trustee under the arrangement for the benefit of employees of the employer or of a corporation with which the employer does not deal at arm's length, and

(b) in respect of which the trustee has, since the later of the beginning of the arrangement and the end of 1949, allocated, either contingently or absolutely, to those employees

(i) in each year that ended at or before the particular time, all amounts received in the year by the trustee from the employer or from a corporation with which the employer does not deal at arm's length,

(ii) in each year that ended at or before the particular time, all profits for the year from the property of the trust (determined without regard to any capital gain made by the trust or capital loss sustained by it at any time after 1955),

(iii) in each year that ended after 1971 and at or before the particular time, all capital gains and capital losses of the trust for the year,

(iv) in each year that ended after 1971, before 1993 and at or before the particular time, 100/15 of the total of all amounts each of which is deemed by subsection (9) to be paid on account of tax under this Part in respect of an employee because the employee ceased to be a beneficiary under the plan in the year, and

(v) in each year that ended after 1991 and at or before the particular time, the total of all amounts each of which is an amount that an employee is entitled to deduct under subsection (9) in computing income because the employee ceased to be a beneficiary under the plan in the year.

Subsec. 144(1) substituted by 1994, c. 21, subsec. 68(1), applicable to 1992 *et seq.* and, where an amount was paid to a person before 1993 without first having been allocated to that person, it shall be deemed for the purposes of the subsec. to have been allocated to that person. Subsec. 144(1) formerly read:

(1) Definition of "employees profit sharing plan" — In this section, an "employees profit sharing plan" means an arrangement

under which payments computed by reference to an employer's profits from the employer's business or by reference to an employer's profits from the employer's business and the profits, if any, from the business of a corporation with whom an employer does not deal at arm's length are made by the employer to a trustee in trust for the benefit of officers or employees of the employer or of a corporation with whom the employer does not deal at arm's length (whether or not payments are also made to the trustee by the officers or employees), and under which the trustee has, since the commencement of the plan or the end of 1949, whichever is the later, each year allocated either contingently or absolutely to individual officers or employees,

(a) all amounts received by the trustee from the employer or from a corporation with whom the employer does not deal at arm's length,

(b) all profits from the trust property (computed without regard to any capital gain made by the trust or capital loss sustained by it at any time since the end of 1955),

(c) all capital gains and capital losses of the trust for taxation years ending after 1971, and

(d) all amounts in respect of which employees who have, after 1971, ceased to be beneficiaries under the arrangement are deemed by subsection (9) to have made a payment on account of tax under this Part,

in such a manner that the total of all those amounts, profits, gains and losses, minus such portion thereof as has been paid to beneficiaries under the trust, is allocated either contingently or absolutely to officers or employees who are beneficiaries thereunder.

(2) No tax while trust governed by a plan — No tax is payable under this Part by a trust on the taxable income of the trust for a taxation year throughout which the trust is governed by an employees profit sharing plan.

Related Provisions: 149(1)(p) — Exemption from tax.

History: Subsec. 144(2) substituted by 1994, c. 21, subsec. 68(1), applicable to 1993 *et seq.* That subsec. formerly read:

(2) No tax is payable under this Part by a trust on the taxable income of the trust for a period during which the trust was governed by an employees profit sharing plan.

(3) Allocation contingent or absolute taxable — There shall be included in computing the income for a taxation year of an employee who is a beneficiary under an employees profit sharing plan each amount that is allocated to the employee contingently or absolutely by the trustee under the plan at any time in the year otherwise than in respect of

(a) a payment made by the employee to the trustee;

(b) a capital gain made by the trust before 1972;

(c) a capital gain of the trust for a taxation year ending after 1971;

(d) a gain made by the trust after 1971 from the disposition of a capital property except to the extent that the gain is a capital gain described in paragraph (c); or

(e) a dividend received by the trust from a taxable Canadian corporation.

(f) [Repealed]

Related Provisions: 6(1)(d) — Inclusion in income from employment; 144(8) — Allocation of credit for dividends; 147(11) — Portion of receipts deductible where EPSP later becomes a DPSP.

History: Para. 144(3)(f) repealed by 1994, c. 21, subsec. 68(2), applicable to 1992 *et seq.*, except that a taxpayer may elect that the repeal not apply to the taxpayer's 1992 taxation year by so notifying Revenue Canada in writing before the end of December 1994. That para. formerly read:

(f) interest received by the trust.

Regulations: 212 (information return).

Interpretation Bulletins: IT-379R: Employees' profit sharing plans — allocations to beneficiaries.

Forms: T4PS: Statement of employee profit sharing plan allocations and payments; T4PS Summary: Employee profit-sharing plan payments and allocations; T4PS Segment.

(4) Allocated capital gains and losses — Each capital gain and capital loss of a trust governed by an employees profit sharing plan from the disposition of any property shall, to the extent that it is allocated by the trust to an employee who is a beneficiary under the plan, be deemed to be a capital gain or capital loss, as the case may be, of the employee from the disposition of that property for the taxation year of the employee in which the allocation was made and, for the purposes of section 110.6, the property shall be deemed to have been disposed of by the employee on the day on which it was disposed of by the trust.

Related Provisions: 6(1)(d) — Allocations etc. under profit sharing plan; 39.1(1)"exempt capital gains balance"C(c), 39.1(6) — Reduction in gain to reflect capital gains exemption election.

History: Subsec. 144(4) amended by 1995, c. 3, s. 42, applicable to 1994 *et seq.* Subsec. (4) formerly read:

(4) Any capital gain of a trust governed by an employees profit sharing plan or any capital loss of the trust for a taxation year ending after 1971 from the disposition of any property shall, to the extent that it has been allocated by the trust to an employee who is a beneficiary under the plan, be deemed to be a capital gain or capital loss, as the case may be, of the employee from the disposition of that property, for the taxation year of the employee in which the allocation was made.

Interpretation Bulletins: IT-379R: Employees profit sharing plans — allocations to beneficiaries.

(4.1) Idem — Notwithstanding subsection 26(6) of the *Income Tax Application Rules*, where at any time before 1976 the trustee of a trust governed by an employees profit sharing plan so elects in prescribed manner, the trust shall be deemed

(a) to have, on December 31, 1971, disposed of each property owned by the trust on that day for proceeds of disposition equal to the fair market value of the property on that day, and

(b) to have, on January 1, 1972, reacquired each property described in paragraph (a) for the amount referred to in that paragraph,

if the trustee under the plan has, before 1976, allocated the total of all capital gains and capital losses resulting from the deemed dispositions among the employees or other beneficiaries under the plan to the extent that the trustee under the plan has not previously so allocated them.

Related Provisions: 54"superficial loss"(c) — Superficial loss rule does not apply.

Regulations: 1500(1) (prescribed manner).

Interpretation Bulletins: IT-379R: Employees profit sharing plans — allocations to beneficiaries.

(4.2) Idem — Where a trust governed by an employees profit sharing plan

(a) was governed by an employees profit sharing plan on December 31, 1971, and the trustee of the trust has made an election under subsection (4.1), or

(b) was not governed by an employees profit sharing plan on December 31, 1971,

the trustee of the trust may, in any taxation year after 1973, elect in prescribed manner and prescribed form to treat any capital property of the trust as having been disposed of, in which event the property shall be deemed to

have been disposed of on any day designated by the trustee for proceeds of disposition equal to

(c) the fair market value of the property on that day,

(d) the adjusted cost base to the trust of the property on that day, or

(e) an amount that is neither greater than the greater of the amounts determined under paragraphs (c) and (d) nor less than the lesser of the amounts determined under those paragraphs

whichever is designated by the trustee and to have been reacquired by the trust immediately thereafter at a cost equal to those proceeds.

Related Provisions: 54"superficial loss"(c) — Superficial loss rule does not apply.

Regulations: 1500(2) (prescribed manner).

Interpretation Bulletins: IT-379R: Employees profit sharing plans — allocations to beneficiaries.

Forms: T3009: Election for deemed disposition and reacquisition of any capital property of an employees profit sharing plan under subsection 144(4.2).

(5) Employer's contribution to trust deductible — An amount paid by an employer to a trustee under an employees profit sharing plan during a taxation year or within 120 days thereafter may be deducted in computing the employer's income for the taxation year to the extent that it was not deductible in computing income for a previous taxation year.

Related Provisions: 12(1)(n) — Benefits from employees profit sharing plan — income to employer; 18(1)(k) — Limitation re employer's contribution under profit sharing plan; 20(1)(w) — Employer's contribution under profit sharing plan.

(6) Beneficiary's receipts deductible — An amount received in a taxation year by a beneficiary from a trustee under an employees profit sharing plan shall not be included in computing the beneficiary's income for the year.

Related Provisions: 12(1)(n) — Benefits from employees profit sharing plan — income to employer; 18(1)(k)(i), 20(1)(w) — Deduction for employer's contribution.

(7) Beneficiary's receipts that are not deductible — Notwithstanding subsection (6), such portion of an amount received in a taxation year by a beneficiary from the trustee under an employees profit sharing plan as cannot be established to be attributable to

(a) payments made by the employee to the trustee,

(b) amounts required to be included in computing the income of the employee for that or a previous taxation year,

(c) a capital gain made by the trust before 1972,

(d) a capital gain made by the trust for a taxation year ending after 1971, to the extent allocated by the trust to the beneficiary,

(e) a gain made by the trust after 1971 from the disposition of a capital property, except to the extent that the gain is a capital gain made by the trust for a taxation year ending after 1971,

(f) the portion, if any, of the increase in the value of property transferred to the beneficiary by the trustee that would have been considered to be a capital gain made by the trust in 1971 if the trustee had sold the property on December 31, 1971 for its fair market value at that time, or

(g) a dividend received by the trust from a taxable Canadian corporation other than a dividend described in subsection 83(1), to the extent allocated by the trust to the beneficiary,

shall be included in computing the beneficiary's income for the year in which the amount was received, except that in determining the amount of any payments or other things described in any paragraph of this subsection, the amount thereof otherwise determined shall be reduced by such portion of the total of all capital losses of the trust for taxation years ending after 1971 as has been allocated by the trust to the beneficiary and has not been applied to reduce the amount of any payments or other things described in any other paragraph of this subsection.

Related Provisions: 6(1)(d) — Allocations etc. under profit sharing plan; 212 — Tax on Canadian income of non-resident persons.

Interpretation Bulletins: IT-379R: Employees profit sharing plan — allocations to beneficiaries.

Forms: T4PS: Statement of employee profit sharing plan allocations and payments; T4PS Summary: Employee profit-sharing plan payments and allocations; T4PS Segment.

(7.1) Where property other than money received by beneficiary — Where, at any particular time in a taxation year of a trust governed by an employees profit sharing plan, an amount was received by a beneficiary from the trustee under the plan and the amount so received was property other than money, the following rules apply in respect of each such property so received by the beneficiary at the particular time:

(a) the amount that was the cost amount to the trust of the property immediately before the particular time shall be deemed to be the trust's proceeds of disposition of the property; and

(b) that proportion of

(i) such portion of the amount received by the beneficiary as can be established to be attributable to the payments or other things described in paragraphs (7)(a) to (g) (on the assumption that the amount of any payments or other things described in any such paragraph is the amount thereof determined as provided in subsection (7))

that

(ii) the cost amount to the trust of the property immediately before the particular time

is of

(iii) the cost amounts to the trust of all properties, other than money, so received by the beneficiary at the particular time,

is, subject to paragraph (c), deemed to be

(iv) the cost to the beneficiary of the property, and

(v) for the purposes of subsection (7) but not for the purposes of this subsection, the amount so received by the beneficiary by virtue of the receipt by the beneficiary of the property.

(c) where a particular property received is all or a portion of property received in satisfaction of all or a portion of the beneficiary's interests in the trust and the beneficiary files with the Minister on or before the beneficiary's filing-due date for the taxation year that includes the particular time an election in respect of the particular property in prescribed form, there shall be included in the cost to the beneficiary of the particular property determined under paragraph (b) the least of

(i) the amount, if any, by which the unused portion of the beneficiary's exempt capital gains balance in

respect of the trust at the particular time exceeds the total of all amounts each of which is an amount included because of this paragraph in the cost to the beneficiary of another property received by the beneficiary at or before the particular time in the year,

(ii) the amount, if any, by which the fair market value of the particular property at the particular time exceeds the amount deemed by subparagraph (b)(iv) to be the cost to the beneficiary of the particular property, and

(iii) the amount designated in the election in respect of the particular property.

Related Provisions: 39.1(1)"exempt capital gains balance"F(a) — Exempt capital gains balance of flow-through entity.

History: The portion of para. 144(7.1)(b) between subparas. (iii) and (iv) amended, para. 144(7.1)(c) added, by 1998, c. 19, subsec. 169(3), (4); the portion applicable to 1994 *et seq.*, para. (c) applicable to 1994 *et seq.*, and a prescribed form filed under para. 144(7.1)(c) before January 1999 is deemed to be filed on time. The portion of para. 144(7.1)(b) between subparas. (iii) and (iv) formerly read:

shall be deemed to be

Interpretation Bulletins: IT-379R: Employees profit sharing plan — allocations to beneficiaries.

Forms: T4PS: Statement of employee profit sharing plan allocations and payments; T4PS Summary: Employee profit-sharing plan payments and allocations; T4PS Segment.

(8) Allocation of credit for dividends — Where there has been included in computing the income of a trust for a taxation year during which the trust was governed by an employees profit sharing plan taxable dividends from taxable Canadian corporations and there has been allocated by the trustee under the plan for the purposes of this subsection an amount for the year to one or more of the employees who are beneficiaries under the plan, which amount or the total of which amounts does not exceed the amount of the taxable dividends so included, each of the employees who are beneficiaries under the plan shall be deemed to have received a taxable dividend from a taxable Canadian corporation equal to the lesser of

(a) the amount, if any, that would be included in computing the employee's income for the year by virtue of this section, if this section were read without reference to paragraph (3)(e), and

(b) the amount, if any, so allocated for the purposes of this subsection to the employee.

Interpretation Bulletins: IT-379R: Employees profit sharing plans — allocations to beneficiaries.

(8.1) Foreign tax deduction [foreign tax credit] — For the purpose of subsection 126(1), the following rules apply:

(a) such portion of the income for a taxation year of a trust governed by an employees profit sharing plan from sources (other than businesses carried on by it) in a foreign country as

(i) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the plan) to be part of

(A) the income that, by virtue of subsection (3), was included in computing the income for a taxation year of a particular employee who was a beneficiary under the plan, or

(B) the amount, if any, by which

(I) the total of amounts each of which is a capital gain of the trust that, by virtue of subsection (4), was deemed to be a capital gain of the particular employee for a taxation year

exceeds

(II) the total of amounts each of which is a capital loss of the trust that, by virtue of subsection (4), was deemed to be a capital loss of the particular employee for the taxation year, and

(ii) was not designated by the trust in respect of any other employee who was a beneficiary under the plan,

shall, if so designated by the trust in respect of the particular employee in its return of income for the year under this Part, be deemed to be income of the particular employee for the taxation year from sources in that country; and

(b) an employee who is a beneficiary under an employees profit sharing plan shall be deemed to have paid as non-business-income tax for a taxation year, on the income that the employee is deemed by paragraph (a) to have for the year from sources in a foreign country, to the government of that country an amount equal to that proportion of the non-business-income tax paid by the trust governed by the plan for the year to the government of that country, or to the government of a state, province or other political subdivision of that country (except such portion of that tax as was deductible under subsection 20(11) in computing its income for the year) that

(i) the income that the employee is deemed by paragraph (a) to have for the year from sources in that country

is of

(ii) the income of the trust for the year from sources (other than businesses carried on by it) in that country.

(8.2) [Repealed]

History: Subsec. 144(8.2) repealed by 1994, c. 21, subsec. 68(3), applicable to 1992 *et seq.*, except that a taxpayer may elect that the repeal not apply to the taxpayer's 1992 taxation year by so notifying Revenue Canada in writing before the end of December 1994. That subsec. formerly read:

(8.2) Where interest has been included in computing the income of a trust for a taxation year during which the trust was governed by an employees profit sharing plan, and there has been allocated by the trustee under the plan for the purposes of this subsection an amount for the year to one or more of the employees who are beneficiaries under the plan, which amount or the total of which amounts does not exceed the amount of the interest so included, each of the employees who are beneficiaries under the plan shall be deemed to have received interest equal to the lesser of

(a) the amount, if any, that would be included in computing the employee's income for the year by virtue of this section, if this section were read without reference to paragraph (3)(f), and

(b) the amount, if any, so allocated for the purposes of this subsection to the employee.

(9) Deduction for forfeited amounts — Where a person ceases at any time in a taxation year to be a beneficiary under an employees profit sharing plan and does not become a beneficiary under the plan after that time and in the year, there may be deducted in computing the person's income for the year the amount determined by the formula

$$A - B - \frac{C}{4} - D$$

where

A is the total of all amounts each of which is an amount included in computing the person's income for the year or a preceding taxation year (other than an amount received before that time under the plan or an amount under the plan that the person is entitled at that time to receive) because of an allocation (other than an allocation to which subsection (4) applies) to the person made contingently under the plan before that time;

B is the portion, if any, of the value of A that is included in the value of A because of paragraph 82(1)(b);

C is the total of all taxable dividends deemed to be received by the person because of allocations under subsection (8) in respect of the plan; and

D is the total of all amounts deductible under this subsection in computing the person's income for a preceding taxation year because the person ceased to be a beneficiary under the plan in a preceding taxation year.

Related Provisions: 8(1)(o.1) — Deduction from employment income; 144(3) — Allocation contingent or absolute taxable; 144(10) — Payments out of profits; 152(1) — Assessment; 160.1 — Where excess refunded; 257 — Formula cannot calculate to less than zero.

History: Subsec. 144(9) substituted by 1994, c. 21, subsec. 68(4), applicable to 1992 *et seq.*, except that a taxpayer may elect that the subsec. not apply to the taxpayer's 1992 taxation year by notifying Revenue Canada in writing before the end of December 1994. That subsec. formerly read:

> (9) Refunds — For the purposes of section 164, where an employee who is a beneficiary under an employees profit sharing plan ceases, at any time in a taxation year, to be a beneficiary thereunder, and it is established that
>
> (a) there has been included in computing the income of the employee for that or a previous taxation year an amount by virtue of any allocation made to the employee contingently by the trustee under the plan prior to the time the employee ceased to be a beneficiary thereunder, and
>
> (b) the employee has not at any time received that amount from the trustee under the plan and is not, under the plan, entitled to receive that amount,
>
> the employee shall be deemed to have made, at the time the employee ceased to be a beneficiary under the plan, a payment equal to 15% of that amount on account of tax under this Part for the taxation year in which the employee ceased to be a beneficiary under the plan.

(10) Payments out of profits — Where the terms of an arrangement under which an employer makes payments to a trustee specifically provide that the payments shall be made "out of profits", the arrangement shall, if the employer so elects in prescribed manner, be deemed, for the purpose of subsection (1), to be an arrangement under which payments computed by reference to the employer's profits are required.

Related Provisions: 87(2)(r) — Amalgamation — election by predecessor deemed made by new corporation.

History: Subsec. 144(10) substituted by 1994, c. 21, subsec. 68(4), applicable to 1992 *et seq.* That subsec. formerly read:

> (10) Where the terms of an arrangement under which an employer makes payments to a trustee specifically provide that the payments shall be made "out of profits", the arrangement shall, if the employer has so elected in prescribed manner, be deemed, for the purpose of subsection (1), to be an arrangement for payments "computed by reference to an employer's profits from the employer's business".

Regulations: 1500(3) (prescribed manner).

Interpretation Bulletins: IT-280R: Employees' profit sharing plans — payments computed by reference to profits.

(11) Taxation year of trust — Where an employees profit sharing plan is accepted for registration by the Minister as a deferred profit sharing plan, the taxation year of the trust governed by the employees profit sharing plan shall be deemed to have ended immediately before the plan is deemed to have become registered as a deferred profit sharing plan pursuant to subsection 147(5).

Definitions [s. 144]: "adjusted cost base" — 54, 248(1); "amount", "business" — 248(1); "Canadian corporation" — 89(1), 248(1); "capital gain", "capital loss" — 39(1), 248(1); "capital property" — 54, 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend", "employee" — 248(1); "employees profit sharing plan" — 144(1), 248(1); "employer", "Minister", "officer", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "taxable Canadian corporation" — 89(1), 248(1); "taxable capital gain" — 38(a), 248(1); "taxable dividend" — 89(1), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 144(11), 249; "trust" — 104(1), 248(1); "unused portion of a beneficiary's exempt capital gains balance" — 144(1).

Information Circulars [s. 144]: 77-1R4: Deferred profit sharing plans.

Registered Supplementary Unemployment Benefit Plans

145. (1) Definitions — In this section,

"registered supplementary unemployment benefit plan" means a supplementary unemployment benefit plan accepted by the Minister for registration for the purposes of this Act in respect of its constitution and operations for the taxation year under consideration;

Related Provisions: 128.1(10)"excluded right or interest"(a)(xi) — No deemed disposition on emigration; 248(1)"disposition"(f)(vi) — Rollover from one trust to another; 248(1)"registered supplementary unemployment benefit plan" — Definition applies to entire Act.

Forms: T3S: Supplementary unemployment benefit plan — income tax return.

"supplementary unemployment benefit plan" means an arrangement, other than an arrangement in the nature of a superannuation or pension fund or plan or an employees profit sharing plan, under which payments are made by an employer to a trustee in trust exclusively for the payment of periodic amounts to employees or former employees of the employer who are or may be laid off for any temporary or indefinite period.

Information Circulars: 72-5R2: Registration of supplementary unemployment benefit plans; 78-14R3: Guidelines for trust companies and other persons responsible for filing T3-IND, T3G, T3D, T3P, T3S, T3RI and T3F returns.

(2) No tax while trust governed by plan — No tax is payable under this Part by a trust on the taxable income of the trust for a period during which the trust was governed by a registered supplementary unemployment benefit plan.

Related Provisions: 149(1)(q) — Trust exempt from tax.

Forms: T3S: Supplementary unemployment benefit plan — income tax return.

(3) Amounts received taxable — There shall be included in computing the income of a taxpayer for a taxation year each amount received by the taxpayer under a supplementary unemployment benefit plan from the trustee under the plan at any time in the year.

Related Provisions: 56(1)(g) — Income inclusion; 153(1)(e) — Withholding; 212(1)(k) — Withholding tax on payment to non-resident.

(4) Amounts received on amendment or winding-up of plan — There shall be included in computing the income for a taxation year of a taxpayer who, as an employer, has made any payment to a trustee under a supplementary unemployment benefit plan, any amount received by the taxpayer in the year as a result of an

amendment to or modification of the plan or as a result of the termination or winding-up of the plan.

Related Provisions: 56(1)(g) — Income inclusion; 153(1)(e) — Withholding; 212(1)(k) — Withholding tax on payment to non-resident.

(5) Payments by employer deductible — An amount paid by an employer to a trustee under a registered supplementary unemployment benefit plan during a taxation year or within 30 days thereafter may be deducted in computing the employer's income for the taxation year to the extent that it was not deductible in computing income for a previous taxation year.

Related Provisions: 6(1)(a)(i) — Employer's contribution is not a taxable benefit; 18(1)(i) — Limitation re employer's contribution under supplementary unemployment benefit plan; 20(1)(x) — Deduction for employer's contribution.

Definitions [s. 145]: "amount", "employee" — 248(1); "employees profit sharing plan" — 144(1), 248(1); "employer", "Minister" — 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1).

Forms: T2 SCH 15: Deferred income plans.

Registered Retirement Savings Plans

146. (1) Definitions — In this section,

"annuitant" means

(a) until such time after maturity of the plan as an individual's spouse or common-law partner becomes entitled, as a consequence of the individual's death, to receive benefits to be paid out of or under the plan, the individual referred to in paragraph (a) or (b) of the definition "retirement savings plan" in this subsection for whom, under a retirement savings plan, a retirement income is to be provided, and

(b) thereafter, the spouse or common-law partner referred to in paragraph (a);

Related Provisions: 60(l) — Transfer of RRSP premium refunds; 128.1(10)"excluded right or interest"(a)(i), (a)(ii) — No deemed disposition on emigration of annuitant; 146(16) — RRSP — deduction on transfer of funds; 160.2(1) — Joint and several liability in respect of amounts received out of or under RRSP; 248(8) — Occurrences as a consequence of death.

History: The definition "annuitant" in subsec. 146(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Para. (a) of the definition "annuitant" in subsec. 146(1) amended by 1998, c. 19, subsec. 170(1), applicable to taxation years that end after November 1991. Para. (a) formerly read:

> (a) until such time after maturity of the plan as his or her spouse becomes entitled, as a consequence of the spouse's death, to receive benefits to be paid out of or under the plan, the individual referred to in paragraph (a) or (b) of the definition "retirement savings plan" in this subsection for whom, under a retirement savings plan, a retirement income is to be provided, and

Information Circulars: 72-22R9: Registered retirement savings plans.

Forms: RC4177: Death of an RRSP annuitant [guide].

"benefit" includes any amount received out of or under a retirement savings plan other than

(a) the portion thereof received by a person other than the annuitant that can reasonably be regarded as part of the amount included in computing the income of an annuitant by virtue of subsections (8.8) and (8.9),

(b) an amount received by the person with whom the annuitant has the contract or arrangement described in the definition "retirement savings plan" in this subsection as a premium under the plan,

(c) an amount, or part thereof, received in respect of the income of the trust under the plan for a taxation year for which the trust was not exempt from tax by virtue of paragraph (4)(c), and

(c.1) a tax-paid amount described in paragraph (b) of the definition "tax-paid amount" in this subsection that relates to interest or another amount included in computing income otherwise than because of this section

and without restricting the generality of the foregoing includes any amount paid to an annuitant under the plan

(d) in accordance with the terms of the plan,

(e) resulting from an amendment to or modification of the plan, or

(f) resulting from the termination of the plan;

Related Provisions: 160.2(1) — Joint and several liability in respect of amounts received out of or under RRSP.

History: Para. (c.1) added to the definition "benefit" in subsec. 146(1) by 1998, c. 19, subsec. 170(2), applicable to deaths occurring after 1992.

Advance Tax Rulings: ATR-37: Refund of premiums transferred to spouse.

"earned income" of a taxpayer for a taxation year means the amount, if any, by which the total of all amounts each of which is

(a) the taxpayer's income for a period in the year throughout which the taxpayer was resident in Canada from

(i) an office or employment, determined without reference to paragraphs 8(1)(c), (m) and (m.2),

(ii) a business carried on by the taxpayer either alone or as a partner actively engaged in the business, or

(iii) property, where the income is derived from the rental of real property or from royalties in respect of a work or invention of which the taxpayer was the author or inventor,

Proposed Amendment — 146(1)"earned income"(a)(iii)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 247(1), will amend subpara. (a)(iii) of the definition "earned income" in subsec. 146(1) by substituting "real or immovable property" for "real property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(b) an amount included under paragraph 56(1)(b), (c), (c.1), (c.2), (g) or (o) in computing the taxpayer's income for a period in the year throughout which the taxpayer was resident in Canada,

Proposed Amendment — 146(1)"earned income"(b)

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 140(1), will amend para. (b) of the definition "earned income" in subsec. 146(1) to delete the reference to para. 56(1)(c), applicable to 1997 *et seq.*

Technical Notes: Subsection 146(1) defines "earned income", which is relevant in determining the maximum tax-deductible contributions that a taxpayer may make to RRSPs. The definition includes references to a number of provisions that have previously been repealed or re-numbered. The definition is amended to remove these references and update the numbering, with application from the time the provisions were repealed or renumbered.

(b.1) an amount received by the taxpayer in the year and at a time when the taxpayer is resident in Canada as, on account of, in lieu of payment of or in satisfaction of, a disability pension under the *Canada Pension*

Plan or a provincial pension plan as defined in section 3 of that Act,

(c) the taxpayer's income for a period in the year throughout which the taxpayer was not resident in Canada from

(i) the duties of an office or employment performed by the taxpayer in Canada, determined without reference to paragraphs 8(1)(c), (m) and (m.2), or

(ii) a business carried on by the taxpayer in Canada, either alone or as a partner actively engaged in the business

except to the extent that the income is exempt from income tax in Canada by reason of a provision contained in a tax convention or agreement with another country that has the force of law in Canada, or

(d) in the case of a taxpayer described in subsection 115(2), the total that would be determined under paragraph 115(2)(e) in respect of the taxpayer for the year if

(i) that paragraph were read without reference to subparagraphs 115(2)(e)(iii) and (iv), and

Proposed Amendment — 146(1)"earned income"(d)(i)

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 140(3), will amend subpara. (d)(i) of the definition "earned income" in subsec. 146(1) to delete the reference to subpara. 115(2)(e)(iii), applicable to 1993 *et seq*.

Technical Notes: See under 146(1)"earned income"(b).

(ii) subparagraph 115(2)(e)(ii) were read without any reference therein to paragraph 56(1)(n),

except any part thereof included in the total determined under this definition by reason of paragraph (c) or exempt from income tax in Canada by reason of a provision contained in a tax convention or agreement with another country that has the force of law in Canada,

exceeds the total of all amounts each of which is

(e) the taxpayer's loss for a period in the year throughout which the taxpayer was resident in Canada from

(i) a business carried on by the taxpayer, either alone or as a partner actively engaged in the business, or

(ii) property, where the loss is sustained from the rental of real property,

Proposed Amendment — 146(1)"earned income"(e)(ii)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 247(2), will amend subpara. (e)(ii) of the definition "earned income" in subsec. 146(1) by substituting "real or immovable property" for "real property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(f) an amount deductible under paragraph 60(b), (c) or (c.1), or deducted under paragraph 60(c.2), in computing the taxpayer's income for the year,

Proposed Amendment — 146(1)"earned income"(f)

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 140(4), will amend para. (f) of the definition "earned income" in subsec. 146(1) to delete the reference to para. 60(c), applicable to 1997 *et seq*.

Technical Notes: See under 146(1)"earned income"(b).

(g) the taxpayer's loss for a period in the year throughout which the taxpayer was not resident in Canada from a business carried on by the taxpayer in Canada, either alone or as a partner actively engaged in the business, or

(h) the portion of an amount included under subparagraph (a)(ii) or (c)(ii) in determining the taxpayer's earned income for the year because of subparagraph 14(1)(a)(v)

Proposed Amendment — 146(1)"earned income"(h)

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 140(5), will amend para. (h) of the definition "earned income" in subsec. 146(1) to replace "subparagraph 14(1)(a)(v)" with "paragraph 14(1)(b)", applicable to amounts included in computing income for taxation years in respect of business fiscal periods that end after February 27, 2000.

Technical Notes: See under 146(1)"earned income"(b).

and, for the purposes of this definition, the income or loss of a taxpayer for any period in a taxation year is the taxpayer's income or loss computed as though that period were the whole taxation year;

History: Para. (b.1) of the definition "earned income" in subsec. 146(1) amended by 1998, c. 19, subsec. 37(3), applicable to amounts received after 1994. Para. (b.1) formerly read:

(b.1) an amount described in paragraph 56(8)(a) received by the taxpayer in the year, where the taxpayer was resident in Canada at the time of receipt,

Para. (h) added by 1998, c. 19, subsec. 170(3), applicable to 1995 *et seq*.

Para. (b) of the definition "earned income" in subsec. 146(1) amended to add reference to para. 56(1)(c.2), para. (b.1) added and para. (f) amended to add ", or deducted under paragraph 60(c.2)", by 1994, c. 7, Sch. VIII (1993, c. 24), subsecs. 82(1) and (2), applicable to 1991 *et seq*.

Selected Cases [subsec. 146(1)"earned income"]: *De Giorgio v. Canada*, [1996] 2 C.T.C. 2038 (TCC) (Reported income from company constituted "earned income"); *Goldstein v. Canada*, [1995] 2 C.T.C. 2036 (TCC) (Income retains its character as it flows through partnership); *Switzer v. Canada*, [1995] 1 C.T.C. 2928 (TCC) (Royalties in appropriate circumstances may be earned income).

Interpretation Bulletins: IT-377R: Director's, executor's or juror's fees (archived); IT-434R: Rental of real property by individual.

I.T. Technical News: 11 (reporting of amounts paid out of an employee benefit plan).

"issuer" means the person referred to in the definition "retirement savings plan" in this subsection with whom an annuitant has a contract or arrangement that is a retirement savings plan;

"maturity" means the date fixed under a retirement savings plan for the commencement of any retirement income the payment of which is provided for by the plan;

"net past service pension adjustment" of a taxpayer for a taxation year means the positive or negative amount determined by the formula

$$P + Q - G$$

where

P is the total of all amounts each of which is the taxpayer's past service pension adjustment for the year in respect of an employer,

Q is the total of all amounts each of which is a prescribed amount in respect of the taxpayer for the year, and

G is the amount of the taxpayer's PSPA withdrawals for the year, determined as of the end of the year in accordance with prescribed rules;

Related Provisions: 204.2(1.3) — Net past service pension adjustment for purposes of Part X.1 tax; 257 — Formula cannot calculate to less than zero.

History: The portion of the definition "net past service pension adjustment" before the description of G in subsec. 146(1) substituted by 1994, c. 21, subsec. 69(1), applicable to 1993 *et seq.* That portion of the definition formerly read:

> "net past service pension adjustment" of a taxpayer for a taxation year means the positive or negative amount determined by the formula
>
> $$P - G$$
>
> where
>
> P is the total of all amounts each of which is the taxpayer's past service pension adjustment for the year in respect of an employer, and

All that portion of the definition of "net past service pension adjustment" preceding the description of G amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 82(3), applicable after 1988. That portion formerly read:

> "net past service pension adjustment" of a taxpayer for a taxation year means the amount determined by the formula
>
> $$P - (F + G)$$
>
> where
>
> P is the total of all amounts each of which is the taxpayer's past service pension adjustment for the year in respect of an employer,
>
> F is the amount of the taxpayer's PSPA transfers for the year, determined as of the end of the year in accordance with prescribed rules, and

Regulations: 8307(5) (prescribed rules); 8308.4(2) (prescribed amount for formula element Q).

"non-qualified investment", in relation to a trust governed by a registered retirement savings plan, means property acquired by the trust after 1971 that is not a qualified investment for the trust;

"premium" means any periodic or other amount paid or payable under a retirement savings plan

(a) as consideration for any contract referred to in paragraph (a) of the definition "retirement savings plan" to pay a retirement income, or

(b) as a contribution or deposit referred to in paragraph (b) of that definition for the purpose stated in that paragraph

but, except for the purposes of paragraph (b) of the definition "benefit" in this subsection, paragraph (2)(b.3), subsection (22) and the definition "excluded premium" in subsection 146.02(1), does not include a repayment to which paragraph (b) of the definition "excluded withdrawal" in either subsection 146.01(1) or 146.02(1) applies or an amount that is designated under subsection 146.01(3) or 146.02(3);

Related Provisions: 60(j) — Transfer of superannuation benefits; 60(j.01) — Transfer of surplus; 60(j.2) — Transfer to spousal RRSP; 60(l) — Transfer of RRSP premium refunds.

History: The closing words of the definition "premium" in subsec. 146(1) amended by 1999, c. 22, subsec. 59(1), applicable to 1997 *et seq.* The closing words formerly read:

> but, except for the purposes of paragraph (b) of the definition "benefit" in this subsection and paragraph (2)(b.3), does not include a repayment described in subparagraph (b)(ii) of the definition "excluded withdrawal" in subsection 146.01(1) or an amount designated under subsection 146.01(3);

The closing words of the definition "premium" in subsec. 146(1) amended by 1995, c. 3, subsec. 43(1), applicable to 1995 *et seq.* The closing words formerly read:

> but, except for the purposes of paragraph (b) of the definition "benefit" and paragraph (2)(b.3), does not include a repayment described in subparagraph (b)(ii) of the definition "excluded withdrawal" in subsection 146.01(1) or designated under subsection 146.01(3);

The definition "premium" in subsec. 146(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 82(4), to delete "in this subsection" from after "retirement savings plan" in para. (a) and to add that portion following para. (b), applicable to 1992 *et seq.*

Regulations: 100(3)(c) (no source withholding where premium is paid by employer directly to RRSP); 214.1 (information return).

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

"qualified investment" for a trust governed by a registered retirement savings plan means

(a) an investment that would be described in any of paragraphs (a), (b), (d) and (f) to (h) of the definition "qualified investment" in section 204 if the references in that definition to a trust were read as references to the trust governed by the registered retirement savings plan,

(b) a bond, debenture, note or similar obligation

(i) issued by a corporation the shares of which are listed on a prescribed stock exchange in Canada, or

(ii) issued by an authorized foreign bank and payable at a branch in Canada of the bank,

(c) an annuity described in the definition "retirement income" in respect of the annuitant under the plan, if purchased from a licensed annuities provider,

(c.1) a contract for an annuity issued by a licensed annuities provider where

(i) the trust is the only person who, disregarding any subsequent transfer of the contract by the trust, is or may become entitled to any annuity payments under the contract, and

(ii) the holder of the contract has a right to surrender the contract at any time for an amount that would, if reasonable sales and administration charges were ignored, approximate the value of funds that could otherwise be applied to fund future periodic payments under the contract,

(c.2) a contract for an annuity issued by a licensed annuities provider where

(i) annual or more frequent periodic payments are or may be made under the contract to the holder of the contract,

(ii) the trust is the only person who, disregarding any subsequent transfer of the contract by the trust, is or may become entitled to any annuity payments under the contract,

(iii) neither the time nor the amount of any payment under the contract may vary because of the length of any life, other than the life of the annuitant under the plan (in this definition referred to as the "RRSP annuitant"),

(iv) the day on which the periodic payments began or are to begin (in this paragraph referred to as the "start date") is not later than the end of the year in which the RRSP annuitant attains 70 years of age,

(v) either

(A) the periodic payments are payable for the life of the RRSP annuitant and either there is no guaranteed period under the contract or there is a guaranteed period that begins at the start date

and does not exceed a term equal to 90 years minus the lesser of

(I) the age in whole years at the start date of the RRSP annuitant (determined on the assumption that the RRSP annuitant is alive at the start date), and

(II) the age in whole years at the start date of a spouse or common-law partner of the RRSP annuitant (determined on the assumption that a spouse or common-law partner of the RRSP annuitant at the time the contract was acquired is a spouse or common-law partner of the RRSP annuitant at the start date), or

(B) the periodic payments are payable for a term equal to

(I) 90 years minus the age described in subclause (A)(I), or

(II) 90 years minus the age described in subclause (A)(II), and

(vi) the periodic payments

(A) are equal, or

(B) are not equal solely because of one or more adjustments that would, if the contract were an annuity under a retirement savings plan, be in accordance with subparagraphs (3)(b)(iii) to (v) or that arise because of a uniform reduction in the entitlement to the periodic payments as a consequence of a partial surrender of rights to the periodic payments, and

(d) such other investments as may be prescribed by regulations of the Governor in Council made on the recommendation of the Minister of Finance;

Related Provisions: 87(10) — New share issued on amalgamation of public corporation deemed to be listed on prescribed stock exchange; 132.2(1)(k) [to be repealed], 132.2(3)(h) [draft] — Where share ceases to be qualified investment due to mutual fund reorganization; 146(10.1) — Tax payable on income from non-qualified investments; 207.1(1) — Tax payable by RRSP.

History: Para. (b) of the definition "qualified investment" in subsec. 146(1) amended by 2001, c. 17, s. 139, applicable after June 27, 1999. The para. formerly read:

(b) a bond, debenture, note or similar obligation of a corporation the shares of which are listed on a prescribed stock exchange in Canada,

Subcl. (c.2)(v)(A)(II) of the definition "qualified investment" in subsec. 146(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Para. (c) of the definition "qualified investment" in subsec. 146(1) amended by 1998, c. 19, subsec. 170(4), and add paras. (c.1) and (c.2), applicable after 1996. Para. (c) formerly read:

(c) an annuity described in the definition "retirement income" in this subsection in respect of the annuitant under the plan, if purchased from a person licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an annuities business, and

Selected Cases [subsec. 146(1)"qualified investment"]: *R. v. Epstein*, [1984] C.T.C. 270 (FCTD) (Mortgage acquired from company controlled by taxpayer was arm's length transaction and qualified investment for RRSP).

Regulations: 221 (information return by issuer of qualified investment); 3200, 3201 (prescribed stock exchanges; but see also ITA 87(10)); 4900, 4901, 5100–5104 (prescribed investments).

I.T. Application Rules: 65(1), (3).

Remission Orders: *Lionaird Capital Corporation Notes Remission Order*, P.C. 1999-737 (tax under 146(10) waived because taxpayers thought they were qualified investments).

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs.

Forms: T3F: Investments prescribed to be qualified or not to be foreign property information return.

"RRSP deduction limit" of a taxpayer for a taxation year means the amount determined by the formula

$$A + B + R - C$$

where

A is the taxpayer's unused RRSP deduction room at the end of the preceding taxation year,

B is the amount, if any, by which

(a) the lesser of the RRSP dollar limit for the year and 18% of the taxpayer's earned income for the preceding taxation year

exceeds the total of all amounts each of which is

(b) the taxpayer's pension adjustment for the preceding taxation year in respect of an employer, or

(c) a prescribed amount in respect of the taxpayer for the year,

C is the taxpayer's net past service pension adjustment for the year, and

R is the taxpayer's total pension adjustment reversal for the year;

Related Provisions: 128(2)(d) — Where individual bankrupt; 146(5) — Amount of RRSP premiums deductible; 146(5.1) — Amount of spousal RRSP premiums deductible; 146(5.21) — Anti-avoidance; 204.1(2.1) — Tax payable by individuals — contributions after 1990; 248(1)"RRSP deduction limit" — Definition applies to entire Act; 257 — Formula cannot calculate to less than zero; Reg. 8307(2) — Prescribed condition for registered pension plan.

History: The definition "RRSP deduction limit" in subsec. 146(1) amended by 1998, c. 19, subsec. 37(1), applicable after 1988 except that, for taxation years before 1998, the description of "R" shall be read as "R is nil". The definition formerly read:

"RRSP deduction limit" of a taxpayer for a taxation year means the amount determined by the formula

$$A + B - C$$

where

A is the taxpayer's unused RRSP deduction room at the end of the immediately preceding taxation year,

B is the amount, if any, by which the lesser of the RRSP dollar limit for the year and 18% of the taxpayer's earned income for the immediately preceding taxation year exceeds the total of all amounts each of which is the taxpayer's pension adjustment for the immediately preceding taxation year in respect of an employer, or a prescribed amount in respect of the taxpayer for the year, and

C is the taxpayer's net past service pension adjustment for the year;

Regulations: 8304.1 (pension adjustment reversal); 8308(2), 8308.2, 8308.4(2), 8309 (prescribed amount).

Forms: T1 General Sched. 7: RRSP contributions, transfers and designations of repayments under the home buyers' plan.

"RRSP dollar limit" for a calendar year means

(a) for years other than 1996 and 2003, the money purchase limit for the preceding year,

(b) for 1996, $13,500, and

(c) for 2003, $14,500;

Related Provisions: 204.2(1.1) — Cumulative excess amount in respect of RRSPs; 248(1)"RRSP dollar limit" — Definition applies to entire Act.

History: Paras. (a) and (b) of the definition "RRSP dollar limit" in subsec. 146(1) amended, and para. (c) added, by 2003, c. 15, subsec. 82(2), applicable after 2002. Paras. (a) and (b) formerly read:

> (a) for years other than 1996, the money purchase limit for the preceding year, and
>
> (b) for 1996, $13,500;

The definition "RRSP dollar limit" in subsec. 146(1) amended by 1996, c. 21, s. 34, applicable after 1995. It formerly read:

> "RRSP dollar limit" for a calendar year means the money purchase limit for the immediately preceding calendar year;

"refund of premiums" means any amount paid out of or under a registered retirement savings plan (other than a tax-paid amount in respect of the plan) as consequence of the death of the annuitant under the plan,

> (a) to an individual who was, immediately before the death, a spouse or common-law partner of the annuitant, where the annuitant died before the maturity of the plan, or
>
> (b) to a child or grandchild of the annuitant who was, immediately before the death, financially dependent on the annuitant for support;

Related Provisions: 60(l)(ii)(A), 60.011 — Rollover of premiums to Henson trust; 60(l)(v) — Rollover of refund of premiums to RRSP; 146(1.1) — Where child presumed not financially dependent; 146(8.1) — Deemed receipt of refund of premiums; 146(8.9) — Effect of death where person other than spouse becomes entitled; 146.3(1)"designated benefit" — Application of definition to RRIFs; 248(8) — Occurrences as a consequence of death.

History: The definition "refund of premiums" in subsec. 146(1) amended by 2003, c. 15, subsec. 82(1), applicable in respect of deaths that occur after 2002. It formerly read:

> "refund of premiums" means
>
> > (a) any amount paid to a spouse or common-law partner of the annuitant out of or under a registered retirement savings plan of the annuitant (other than any part of the amount that is a tax-paid amount in respect of the plan), where the annuitant died before the maturity of the plan and the amount was paid as a consequence of the death, or
> >
> > (b) any amount paid out of or under a registered retirement savings plan of the annuitant (other than any part of the amount that is a tax-paid amount in respect of the plan) after the death to a child or grandchild (in this definition referred to as a "dependant") of the annuitant, who was, at the time of the death, financially dependent on the annuitant for support,
>
> and for the purpose of paragraph (b), it is assumed, unless the contrary is established, that a dependant was not financially dependent on the annuitant for support at the time of the annuitant's death if the dependant's income for the year preceding the taxation year in which the annuitant died exceeded the amount used under paragraph (c) of the description of B in subsection 118(1) for that preceding year;

Para. (a) of the definition "refund of premiums" in subsec. 146(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Para. (b) of the definition "refund of premiums" in subsec. 146(1) amended by 2000, c. 19, subsec. 42(1), applicable (by subsec. 42(4)) to deaths that occur after 1995 except that, in respect of the death of an individual that occurred after 1995 and before 1999, the para. shall be read as it did before being amended in connection with an amount paid at a particular time out of a registered retirement savings plan or registered retirement income fund, unless the following persons jointly elect otherwise in writing filed with the Minister of National Revenue before May 2000 (or before such later day as is acceptable to the Minister):

> (a) the legal representative of the deceased individual; and
>
> (b) the individual in whose income an amount would be required to be included as a result of the election, or would be so required to be included if Part I of the Act applied.

Subsec. 42(5) of the said c. 19 reads as follows:

> (5) Notwithstanding subsections 152(4) to (5) of the Act, the Minister of National Revenue shall make such assessments, reassessments and additional assessments of tax, interest and penalties and such determinations and redeterminations as are necessary to give effect to an election under subsection (4).

Para. (b) of the definition formerly read:

> (b) if the annuitant had no spouse at the time of the annuitant's death, any amount paid out of or under a registered retirement savings plan of the annuitant (other than any part of the amount that is a tax-paid amount in respect of the plan) after the death to a child or grandchild (in this definition referred to as a "dependant") of the annuitant, who was, at the time of the death, financially dependent on the annuitant for support,

The closing words of the definition "refund of premiums" in subsec. 146(1) amended by the said c. 19, subsec. 42(2), applicable to 2000 *et seq.* except that, in its application to the 2000 taxation year, the reference to "the amount used under paragraph (c) of the description of B in subsection 118(1) for that preceding taxation year" shall be read as a reference to "$7,044". The closing words formerly read:

> and for the purpose of paragraph (b), it is assumed, unless the contrary is established, that a dependant was not financially dependent on the annuitant for support at the time of the annuitant's death if the dependant's ncome for the year preceding the taxation year in which the annuitant died exceeded the total of $500 and the amount used under paragraph (c) of the description of B in subsection 118(1) for that preceding year;

The closing words of the definition "refund of premiums" in subsec. 146(1) amended by 1999, c. 22, subsec. 59(2), applicable to 1999 *et seq.* The closing words formerly read:

> and for the purpose of paragraph (b), it is assumed, unless the contrary is established, that a dependant was not financially dependent on the annuitant for support at the time of the annuitant's death if the income of the dependant for the taxation year preceding the taxation year in which the annuitant died exceeded the amount used under paragraph (c) of the description of B in subsection 118(1) for that preceding year;

Paras. (a) and (b) of the definition "refund of premiums" in subsec. 146(1) amended by 1998, c. 19, subsec. 170(5), applicable to deaths occurring after 1992. Paras. (a) and (b) formerly read:

> (a) any amount paid to a spouse of the annuitant out of or under a registered retirement savings plan of the annuitant, where the annuitant died before the maturity of the plan and that amount was paid as a consequence of the death, or
>
> (b) if the annuitant had no spouse at the time of the annuitant's death, any amount paid out of or under a registered retirement savings plan of the annuitant after the death to a child or grandchild (in this definition referred to as a "dependant") of the annuitant, who was, at the time of the death, financially dependent on the annuitant for support,

Paras. (a) and (b) of the definition of "refund of premiums" in subsec. 146(1) substituted by 1994, c. 21, subsec. 69(2), applicable to deaths occurring after 1992. Those paras. formerly read:

> (a) any amount paid to a spouse of the annuitant, as a consequence of the annuitant's death, out of or under a registered retirement savings plan of the annuitant prior to its maturity, or
>
> (b) if the annuitant had no spouse at the time of the annuitant's death, any amount paid out of or under a registered retirement savings plan of the annuitant to a child or grandchild (in this definition referred to as a "dependant") of the annuitant, who was, at the time the annuitant died, financially dependent on the annuitant for support,

All that portion of the definition "refund of premiums" in subsec. 146(1) following para. (b) substituted by 1994, c. 7, Sch. VII (1992, c. 48), s. 13, applicable to 1993 *et seq.* That portion formerly read:

> and for the purpose of paragraph (b), it shall be assumed, unless the contrary is established, that a dependant was not financially dependent on the annuitant for support at the time of the annuitant's death if
>
> > (c) any person other than the annuitant was permitted a deduction under paragraph 118(1)(d) in respect of the dependant in computing that other person's tax payable under this Part for the taxation year immediately preceding the taxation year in which the annuitant died, or

(d) the income of the dependant for the year referred to in paragraph (c) exceeded $5,000;

Interpretation Bulletins: IT-500R: RRSPs — death of an annuitant.

Advance Tax Rulings: ATR-37: Refund of premiums transferred to spouse.

Forms: RC4177: Death of an RRSP annuitant [guide].

"registered retirement savings plan" means a retirement savings plan accepted by the Minister for registration for the purposes of this Act as complying with the requirements of this section;

Related Provisions: 128.1(10)"excluded right or interest"(a)(i) — No deemed disposition of RRSP on emigration; 206(2), 206.1 — Tax payable by a trust governed by RRSP; 207.1(1) — Tax payable by RRSP; 207.2 — Return and payment of tax by RRSP; 248(1)"disposition"(g) — Transfer between RRSPs/RRIFs not a disposition; 248(1)"foreign retirement arrangement" — U.S. Individual Retirement Account; 248(1)"registered retirement savings plan" — Definition applies to entire Act.

Interpretation Bulletins: IT-415R2: Deregistration of RRSPs (archived); IT-528: Transfers of funds between registered plans.

"retirement income" means

(a) an annuity commencing at maturity, and with or without a guaranteed term commencing at maturity, not exceeding the term referred to in paragraph (b), or, in the case of a plan entered into before March 14, 1957, not exceeding 20 years, payable to

(i) the annuitant for the annuitant's life, or

(ii) the annuitant for the lives, jointly, of the annuitant and the annuitant's spouse or common-law partner and to the survivor of them for the survivor's life, or

(b) an annuity commencing at maturity, payable to the annuitant, or to the annuitant for the annuitant's life and to the spouse or common-law partner after the annuitant's death, for a term of years equal to 90 minus either

(i) the age in whole years of the annuitant at the maturity of the plan, or

(ii) where the annuitant's spouse or common-law partner is younger than the annuitant and the annuitant so elects, the age in whole years of the spouse or common-law partner at the maturity of the plan,

issued by a person described in the definition "retirement savings plan" in this subsection with whom an individual may have a contract or arrangement that is a retirement savings plan,

or any combination thereof;

History: Paras. (a) and (b) of the definition "retirement income" in subsec. 146(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs.

Information Circulars: 72-22R9: Registered retirement savings plans; 74-1R5: Form T2037, Notice of purchase of annuity with "plan" funds.

Forms: T2037: Notice of purchase of annuity with "plan" funds.

"retirement savings plan" means

(a) a contract between an individual and a person licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an annuities business, under which, in consideration of payment by the individual or the individual's spouse or common-law partner of any periodic or other amount as consideration under the contract, a retirement income commencing at maturity is to be provided for the individual, or

(b) an arrangement under which payment is made by an individual or the individual's spouse or common-law partner

(i) in trust to a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee, of any periodic or other amount as a contribution under the trust,

(ii) to a corporation approved by the Governor in Council for the purposes of this section that is licensed or otherwise authorized under the laws of Canada or a province to issue investment contracts providing for the payment to or to the credit of the holder thereof of a fixed or determinable amount at maturity, of any periodic or other amount as a contribution under such a contract between the individual and that corporation, or

(iii) as a deposit with a branch or office, in Canada, of

(A) a person who is, or is eligible to become, a member of the Canadian Payments Association, or

(B) a credit union that is a shareholder or member of a body corporate referred to as a "central" for the purposes of the *Canadian Payments Association Act*,

(in this section referred to as a "depositary")

to be used, invested or otherwise applied by that corporation or that depositary, as the case may be, for the purpose of providing for the individual, commencing at maturity, a retirement income;

Related Provisions: 248(1)"foreign retirement arrangement" — U.S. Individual Retirement Account; 248(1)"retirement savings plan" — Definition applies to entire Act.

History: Paras. (a) and (b) of the definition "retirement savings plan" in subsec. 146(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Information Circulars: 72-22R9: Registered retirement savings plans; 74-1R5 — Form T2037: Notice of purchase of annuity with "plan" funds; 78-14R3: Guidelines for trust companies and other persons responsible for filing T3-IND, T3G, T3D, T3P, T3S, T3RI and T3F returns.

Forms: T3G: Certification of no tax liability by a group of RRSPs, RRIFs, or RESPs; T3GR: Group income tax and information return for RRSP, RRIF or RESP trusts (and worksheets); T3IND: T3IND income tax return for RRSP, RRIF, or RESP; T4RSP Segment; T4RSP Summ: Return of RRSP income; T4RSP Supp: Statement of RRSP income; T4079: T4RSP and T4RIF guide.

"spousal or common-law partner plan", in relation to a taxpayer, means

(a) a registered retirement savings plan

(i) to which the taxpayer has, at a time when the taxpayer's spouse or common-law partner was the annuitant under the plan, paid a premium, or

(ii) that has received a payment out of or a transfer from a registered retirement savings plan or a registered retirement income fund that was a spousal or common-law partner plan in relation to the taxpayer, or

(b) a registered retirement income fund that has received a payment out of or a transfer from a spousal or common-law partner plan in relation to the taxpayer;

Related Provisions: 74.5(12) — Application; 146(5.1) — Deduction for contribution to spousal RRSP; 146(8.3) — Attribution on withdrawal from spousal RRSP; 146.3(5.1) — Amount included in income.

History: The definition "spousal or common-law partner plan" in subsec. 146(1) added, and "spousal plan" repealed, by 2001, c. 17, subsecs. 246(2) and (1), applicable to 2001 *et seq.* except that, if a taxpayer and a person have jointly elected pursuant to s. 144 of 2000, c. 12 in respect of the 1998, 1999 or 2000 taxation years, the amendment applies to the taxpayer and the person in respect of the applicable taxation year and subsequent taxation years. "Spousal plan" formerly read:

"spousal plan", in relation to a taxpayer, means

(a) a registered retirement savings plan

(i) to which the taxpayer has, at a time when the taxpayer's spouse or common-law partner was the annuitant under the plan, paid a premium, or

(ii) that has received a payment out of or a transfer from a registered retirement savings plan or a registered retirement income fund that was a spousal plan in relation to the taxpayer, or

(b) a registered retirement income fund that has received a payment out of or a transfer from a spousal plan in relation to the taxpayer;

Subpara. (a)(i) of the definition "spousal plan" in subsec. 146(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

"tax-paid amount" paid to a person in respect of a registered retirement saving plan means

(a) an amount paid to the person in respect of the amount that would, if this Act were read without reference to subsection 104(6), be income of a trust governed by the plan for a taxation year for which the trust was subject to tax because of paragraph (4)(c), or

(b) where

(i) the plan is a deposit with a depositary referred to in clause (b)(iii)(B) of the definition "retirement savings plan" in this subsection, and

(ii) an amount is received at any time out of or under the plan by the person,

the portion of the amount that can reasonably be considered to relate to interest or another amount in respect of the deposit that was required to be included in computing the income of any person (other than the annuitant) otherwise than because of this section;

Related Provisions: 146(1)"benefit"(c.1) — Whether tax-paid amount is a "benefit"; 146(1)"refund of premiums" — Exclusion of tax-paid amount; 146(8.9) — RRSP income inclusion on death; 146.3(5)(c) — Tax-paid amount from RRIF excluded from income; 146.3(6.2) — RRIF income inclusion on death.

History: The definition "tax-paid amount" added to subsec. 146(1) by 1998, c. 19, subsec. 170(6), applicable to deaths occurring after 1992.

"unused RRSP deduction room" of a taxpayer at the end of a taxation year means,

(a) for taxation years ending before 1991, nil, and

(b) for taxation years that end after 1990, the amount, which can be positive or negative, determined by the formula

$$A + B + R - (C + D)$$

where

A is the taxpayer's unused RRSP deduction room at the end of the preceding taxation year,

B is the amount, if any, by which

(i) the lesser of the RRSP dollar limit for the year and 18% of the taxpayer's earned income for the preceding taxation year exceeds the total of all amounts each of which is

(ii) the taxpayer's pension adjustment for the preceding taxation year in respect of an employer, or

(iii) a prescribed amount in respect of the taxpayer for the year,

C is the taxpayer's net past service pension adjustment for the year,

D is the total of the amounts deducted by the taxpayer under subsections (5) and (5.1) and paragraph 60(v) in computing the taxpayer's income for the year, and

R is the taxpayer's total pension adjustment reversal for the year.

Related Provisions: 128(2)(d), (d.2) — Where individual bankrupt; 146(1) — RRSP deduction limit; 146(5.21) — Anti-avoidance; 204.2(1.1) — Cumulative excess amount re RRSPs; 248(1)"unused RRSP deduction room" — Definition applies to entire Act; 257 — Formula cannot calculate to less than zero.

History: Para. (b) of the definition "unused RRSP deduction room" in subsec. 146(1) amended 1998, c. 19, subsec. 37(2), applicable after 1988 except that, for taxation years before 1998, the description of "R" shall be read as "R is nil". Para. (b) formerly read:

(b) for taxation years that end after 1990,

(i) the amount, which can be positive or negative, determined by the formula

$$A + B - (C + D)$$

where

A is the taxpayer's unused RRSP deduction room at the end of the immediately preceding taxation year,

B is the amount, if any, by which the lesser of the RRSP dollar limit for the year and 18% of the taxpayer's earned income for the immediately preceding taxation year exceeds the total of all amounts each of which is the taxpayer's pension adjustment for the immediately preceding taxation year in respect of an employer, or a prescribed amount in respect of the taxpayer for the year,

C is the taxpayer's net past service pension adjustment for the year, and

D is the total of the amounts deducted by the taxpayer under subsections (5) and (5.1) and paragraph 60(v) in computing the taxpayer's income for the year.

(ii) [Repealed]

The opening words of para. (b) of the definition "unused RRSP deduction room" in subsec. 146(1) amended, and subpara. (b)(ii) repealed, by 1997, c. 25, subsecs. 41(1), (2), applicable April 25, 1997. The opening words of para. (b), and subpara. (b)(ii), formerly read:

(b) for taxation years ending after 1990, the lesser of

. . . . .

(ii) the greater of

(A) the total of all amounts each of which is the amount, determined in respect of a particular taxation year that is the year or such of the six taxation years immediately preceding the year as end after 1990, that is the lesser of 18% of the taxpayer's earned income for the taxation year immediately preceding the particular taxation year and the RRSP dollar limit for the particular taxation year, and

(B) ½ of the RRSP dollar limit for the year.

Regulations: 8304.1 (pension adjustment reversal); 8308(2), 8308.2, 8308.4(2) (prescribed amount).

Forms: T1 General Sched. 7: RRSP contributions, transfers and designations of repayments under the home buyers' plan.

Selected Cases [subsec. 146(1)]: *Osborn v. Canada*, [1995] 2 C.T.C. 2215 (TCC) (Non-vested pension amounts treated as if vested for purposes of RRSP contribution limit); *Re Gero*, [1979] C.T.C. 309 (FCTD) (RRSP funds of taxpayer indebted to Crown not exempt from seizure).

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-307R4: Spousal or common-law registered retirement savings plans; IT-415R2: Deregistration of RRSPs (archived).

(1.1) Restriction — financially dependent — For the purpose of paragraph (b) of the definition "refund of premiums" in subsection (1), clause 60(l)(v)(B.01) and subparagraph 104(27)(e)(i), it is assumed, unless the contrary is established, that an individual's child or grandchild was not financially dependent on the individual for support immediately before the individual's death if the income of the child or grandchild for the taxation year preceding the taxation year in which the individual died exceeded the amount determined by the formula

$$A + B$$

where

A is the amount used under paragraph (c) of the description of B in subsection 118(1) for that preceding taxation year; and

B is nil, unless the financial dependency was because of mental or physical infirmity, in which case it is $6,180 adjusted for each such preceding taxation year that is after 2002 in the manner set out in section 117.1.

History: Subsec. 146(1.1) added by 2003, c. 15, subsec. 82(3), applicable in respect of deaths that occur after 2002.

History [former subsec. 146(1.1)]: Subsec. 146(1.1) repealed by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 82(5), applicable after 1992. [See now subsec. 252(4).] Subsec. (1.1) formerly read:

> (1.1) Definition of "spouse" — For the purposes of the definitions "annuitant", "refund of premiums" and "retirement income" in subsection (1), paragraph (3)(b) and subsections (8.8), (8.91) and (16), "spouse" of an individual means a person of the opposite sex
>
> (a) who is married to the individual; or
>
> (b) who is cohabiting with the individual in a conjugal relationship and
>
> (i) has so cohabited for a period of at least one year, or
>
> (ii) is a parent of a child of whom the individual is a parent.

(2) Acceptance of plan for registration [— conditions] — The Minister shall not accept for registration for the purposes of this Act any retirement savings plan unless, in the Minister's opinion, it complies with the following conditions:

(a) the plan does not provide for the payment of any benefit before maturity except

(i) a refund of premiums, and

(ii) a payment to the annuitant;

(b) the plan does not provide for the payment of any benefit after maturity except

(i) by way of retirement income to the annuitant,

(ii) to the annuitant in full or partial commutation of retirement income under the plan, and

(iii) in respect of a commutation referred to in paragraph (c.2);

(b.1) the plan does not provide for a payment to the annuitant of a retirement income except by way of equal annual or more frequent periodic payments until such time as there is a payment in full or partial commutation of the retirement income and, where that commutation is partial, equal annual or more frequent periodic payments thereafter;

(b.2) the plan does not provide for periodic payments in a year under an annuity after the death of the first annuitant, the total of which exceeds the total of the payments under the annuity in a year before that death;

(b.3) the plan does not provide for the payment of any premium after maturity;

(b.4) the plan does not provide for maturity after the end of the year in which the annuitant attains 69 years of age;

(c) the plan provides that retirement income under the plan may not be assigned in whole or in part;

(c.1) notwithstanding paragraph (a), the plan permits the payment of an amount to a taxpayer where the amount is paid to reduce the amount of tax otherwise payable under Part X.1 by the taxpayer;

(c.2) the plan requires the commutation of each annuity payable thereunder that would otherwise become payable to a person other than an annuitant under the plan;

(c.3) the plan, where it involves a depositary, includes provisions stipulating that

(i) the depositary has no right of offset as regards the property held under the plan in connection with any debt or obligation owing to the depositary, and

(ii) the property held under the plan cannot be pledged, assigned or in any way alienated as security for a loan or for any purpose other than that of providing for the annuitant, commencing at maturity, a retirement income;

(c.4) the plan requires that no advantage, other than

(i) a benefit,

(i.1) an amount described in paragraph (a) or (c) of the definition "benefit" in subsection (1),

(ii) the payment or allocation of any amount to the plan by the issuer,

(iii) an advantage from life insurance in effect on December 31, 1981, or

(iv) an advantage derived from the provision of administrative or investment services in respect of the plan,

that is conditional in any way on the existence of the plan may be extended to the annuitant or to a person with whom the annuitant was not dealing at arm's length; and

(d) the plan in all other respects complies with regulations of the Governor in Council made on the recommendation of the Minister of Finance.

Related Provisions: 139.1(13) — Para. 146(2)(c.4) inapplicable to conversion benefit on demutualization of insurer; 146(3) — Minister may accept plan despite certain other conditions; 146(12) — Change in plan after registration; 146(13.1) — Effect of extending an advantage; 146(13.2) — Where pre-1997 plan does not mature by age 69; 204.2(1.2) — Undeducted RRSP premiums; 248(1)"disposition"(g) — Transfer with same annuitant not a disposition.

History: Para. 146(2)(b.4) amended by 1997, c. 25, subsec. 41(3), applicable after 1996, except that

> (a) the amended para. does not apply to a retirement savings plan accepted for registration before 1997;
>
> (b) the amended para. does not apply to a retirement savings plan where the annuitant under the plan attained 70 years of age before 1997;
>
> (c) in applying the para. to a retirement savings plan where the annuitant under the plan attained 69 years of age in 1996, the reference to "69 years of age" shall be read as "70 years of age".

Para. (b.4) formerly read:

> (b.4) the plan does not provide for maturity after the end of the year in which the annuitant attains 71 years of age;

Selected Cases [subsec. 146(2)]: *Re Whaling*, [1999] 4 C.T.C. 221 (Ont CA) (Act does not prohibit certain actions with respect to RRSP, but

actions may lead to plan ceasing to be RRSP); *Gerol v. A.G. Can.*, [1986] 1 C.T.C. 75 (Ont SC) (No *Charter* violation when maturity date of RRSP fixed with reference to age).

Regulations: 214, 214.1 (issuer must file information returns).

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-307R4: Spousal or common-law registered retirement savings plans; IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs; IT-415R2: Deregistration of RRSPs (archived).

Information Circulars: 72-22R9: Registered retirement savings plans.

Forms: T550: Application for registration of RSPs, ESPs or RIFs under s. 146, 146.1 and 146.3 of the ITA.

(3) Idem — The Minister may accept for registration for the purposes of this Act any retirement savings plan notwithstanding that the plan

(a) provides for the payment of a benefit after maturity by way of dividend;

(b) provides for any annual or more frequent periodic amount payable

(i) to the annuitant referred to in subparagraph (a)(ii) of the definition "retirement income" in subsection (1) by way of an annuity described in paragraph (a) of that definition to be reduced, in the event of the death of the annuitant's spouse or common-law partner during the lifetime of the annuitant, in such manner as to provide for the payment of equal annual or more frequent periodic amounts throughout the lifetime of the annuitant thereafter,

(ii) to any person by way of an annuity, to be reduced if a pension becomes payable to that person under the *Old Age Security Act*, by an annual or other periodic amount not exceeding the amount payable to that person in that period under that Act,

(iii) to any person by way of an annuity, to be increased or reduced depending on the increase or reduction in the value of a specified group of assets constituting the assets of a separate and distinct account or fund maintained in respect of a variable annuities business by a person licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada that business,

(iii.1) to any person by way of an annuity under a contract that provides for the increase or reduction of the annuity in accordance only with a change in the interest rate on which the annuity is based, if the interest rate, as increased or reduced, equals or approximates a generally available Canadian market interest rate,

(iv) that may be adjusted annually to reflect

(A) in whole or in part increases in the Consumer Price Index, as published by Statistics Canada under the authority of the *Statistics Act*, or

(B) increases at a rate specified in the annuity contract, not exceeding 4% per annum, or

(v) to the annuitant by way of an annuity to be increased annually to the extent the amount or rate of return that would have been earned on a pool of investment assets (available for purchase by the public and specified in the annuity contract) exceeds an amount or rate specified in the plan and provides that no other increase may be made in the amount payable;

(c) [Repealed under former Act]

(d) provides for the payment of any amount after the death of an annuitant thereunder;

(e) is adjoined to a contract or other arrangement that is not a retirement savings plan; or

(f) contains such other terms and provisions, not inconsistent with this section, as are authorized or permitted by regulations of the Governor in Council made on the recommendation of the Minister of Finance.

Related Provisions: 60(l)(ii) — Transfer of RRSP premium refunds; 172(3) — Appeal from refusal to register.

History: Subpara. 146(3)(b)(i) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-307R4: Spousal or common-law registered retirement savings plans; IT-415R2: Deregistration of RRSPs (archived).

Information Circulars: 72-22R9: Registered retirement savings plans.

(4) No tax while trust governed by plan — Except as provided in subsection (10.1), no tax is payable under this Part by a trust on the taxable income of the trust for a taxation year if, throughout the period in the year during which the trust was in existence, the trust was governed by a registered retirement savings plan, except that

(a) if the trust has borrowed money (other than money used in carrying on a business) in the year or has, after June 18, 1971, borrowed money (other than money used in carrying on a business) that it has not repaid before the commencement of the year, tax is payable under this Part by the trust on its taxable income for the year;

(b) in any case not described in paragraph (a), if the trust has carried on any business or businesses in the year, tax is payable under this Part by the trust on the amount, if any, by which

(i) the amount that its taxable income for the year would be if it had no incomes or losses from sources other than from that business or those businesses, as the case may be,

exceeds

(ii) such portion of the amount determined under subparagraph (i) in respect of the trust for the year as can reasonably be considered to be income from, or from the disposition of, qualified investments for the trust; and

(c) if the last annuitant under the plan has died, tax is payable under this Part by the trust on its taxable income for each year after the year following the year in which the last annuitant died.

Related Provisions: 104(6)(a.2) — Deduction for amounts paid out to beneficiaries; 146(8.9)A(b), (c) — No income inclusion for tax-paid amounts on death; 146(10.1) — Tax on income from non-qualified investment; 146(20) — Amount credited to deposit RRSP deemed not received by annuitant or any other person; 149(1)(r) — No tax on RRSP; 204.6 — Tax in respect of registered investments; 206(2) — Part XI tax on excess holdings of foreign property; 207.1(1) — Tax on non-qualified investments; Canada-U.S. Tax Treaty:Art. XIX:7 — Election to defer U.S. tax on income accruing in RRSP; Canada-U.S. Tax Treaty:Art. XXI:2(a) — RRSP exempt from U.S. tax.

History: Paras. 146(4)(b), (c) substituted by 1994, c. 21, subsec. 69(3), applicable to 1993 *et seq.* Those paras. formerly read:

(b) in any case not described in paragraph (a), if the trust has carried on any business or businesses in the year, tax is payable under this Part by the trust on the amount that its taxable income for the year would be if it had no incomes or losses from sources other than from that business or those businesses; and

(c) if the last annuitant under the plan has died, tax is payable under this Part by the trust on its taxable income for each year after the year of the annuitant's death.

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs; IT-415R2: Deregistration of RRSPs (archived).

Information Circulars: 72-22R9: Registered retirement savings plans.

Advance Tax Rulings: ATR-37: Refund of premiums transferred to spouse.

(5) Amount of RRSP premiums deductible — There may be deducted in computing a taxpayer's income for a taxation year such amount as the taxpayer claims not exceeding the lesser of

(a) the amount, if any, by which the total of all amounts each of which is a premium paid by the taxpayer after 1990 and on or before the day that is 60 days after the end of the year under a registered retirement savings plan under which the taxpayer was the annuitant at the time the premium was paid, other than the portion, if any, of the premium

(i) that was deducted in computing the taxpayer's income for a preceding taxation year,

(ii) that was designated for any taxation year for the purposes of paragraph 60(j), (j.1) or (l),

(iii) in respect of which the taxpayer received a payment that was deducted under subsection (8.2) in computing the taxpayer's income for a preceding taxation year,

(iv) that was deductible under subsection (6.1) in computing the taxpayer's income for any taxation year, or

(iv.1) that would be considered to be withdrawn by the taxpayer as an eligible amount (as defined in subsection 146.01(1) or 146.02(1)) less than 90 days after it was paid, if earnings in respect of a registered retirement savings plan were considered to be withdrawn before premiums paid under that plan and premiums were considered to be withdrawn in the order in which they were paid

exceeds

(v) the amount, if any, by which

(A) the total of all amounts deducted under subsection 147.3(13.1) in computing the taxpayer's income for the year or a preceding taxation year

exceeds

(B) the total of all amounts, in respect of transfers occurring before 1991 from registered pension plans, deemed by paragraph 147.3(10)(b) or (c) to be a premium paid by the taxpayer to a registered retirement savings plan, and

Selected Cases [para. 146(5)(a)]: *Osborn v. Canada*, [1995] 2 C.T.C. 2215 (TCC) (Non-vested pension amounts treated as if vested for purposes of RRSP contribution limit); *Corse v. Canada*, [1995] 2 C.T.C. 2168 (TCC) (Deduction for RRSP allowed where taxpayer could never have become entitled to pension benefits).

(b) the taxpayer's RRSP deduction limit for the year.

Related Provisions: 18(1)(u) — Investment counselling and administration fees for RRSP are non-deductible; 18(11)(b) — No deduction for interest on money borrowed to make RRSP contribution; 60(i) — Deduction for RRSP premium paid; 60(j) — Transfer of superannuation benefits; 60(j.1) — Transfer of retiring allowances; 60(l) — Transfer of RRSP premium refunds; 60(v) — Contribution to a provincial pension plan; 146(5.1) — Deduction for contribution to spousal RRSP; 146(5.21) — Anti-avoidance; 146(8.2) — Deduction where non-deducted overcontribution withdrawn from plan; 146(8.21) — Premium deemed not paid; 146(16) — Deduction on transfer of funds; 146(22) — Deadline extension for ice storm and for 1998 PAR; 147.3(13.1) — Withdrawal of excessive transfers to RRSPs and RRIFs; 204.1(2.1) — Tax payable by individuals — contributions after 1990; 204.2(1.2)I(a)(vi) — Amount non-deductible due to 146(5)(a)(iv.1) not included for Part X.1 penalty tax purposes; Canada-U.S. Tax Treaty:Art. XIX:7 — Election to defer U.S. tax on income accruing in RRIF; Canada-U.S. Tax Treaty:Art. XXI:2(a) — RRIF exempt from U.S. tax.

History: Subpara. 146(5)(a)(iv.1) amended by 1999, c. 22, subsec. 59(3), applicable to 1998 *et seq.* It formerly read:

(iv.1) that would be considered to be withdrawn by the taxpayer as an eligible amount (within the meaning assigned by subsection 146.01(1)) less than 90 days after it was paid, if earnings in respect of a registered retirement savings plan were considered to be withdrawn before premiums paid under that plan and premiums were considered to be withdrawn in the order in which they were paid

Subpara. 146(5)(a)(iv.1) added by 1995, c. 3, subsec. 43(2), applicable to the withdrawal of amounts paid after March 1, 1994.

All that portion of para. 146(5)(a) following subpara. (iv) substituted by 1994, c. 21, subsec. 69(4), applicable to 1992 *et seq.* That portion of the para. formerly read:

exceeds the total of all amounts each [of] which is

(v) an amount deducted under subsection 147.3(13.1) in computing the taxpayer's income for the year or a preceding taxation year that ends after 1992, or

(vi) an amount deducted under subsection 147.3(13.1) in computing the taxpayer's income for the 1992 taxation year, other than any portion of the amount that could not have been so deducted if paragraphs 147.3(10)(b) and (c) did not apply in respect of transfers made before 1991, and

Para. 146(5)(a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 82(6), applicable (by subsec. 82(13), as amended by 1994, c. 21, s. 136) to 1992 *et seq.* Para. (5)(a) formerly read:

(a) the total of all amounts each of which is a premium paid by the taxpayer after 1990 and on or before the day that is 60 days after the end of the year under a registered retirement savings plan under which the taxpayer was the annuitant at the time the premium was paid, other than the portion, if any, of the premium

(i) that was deducted in computing the taxpayer's income for a preceding taxation year,

(ii) that was designated for any taxation year for the purposes of paragraph 60(j), (j.1) or (l),

(iii) in respect of which the taxpayer has received a payment that has been deducted under subsection (8.2) in computing the taxpayer's income for a preceding taxation year, or

(iv) that was deductible under subsection (6.1) in computing the taxpayer's income for any taxation year, and

Selected Cases [subsec. 146(5)]: *Bouchard v. MNR*, [1996] 1 C.T.C. 2239 (TCC) (Proper time to determine contribution limit is at end of taxation year or within 60 days of following year); *Gadsby v. MNR*, [1989] 1 C.T.C. 441 (FCTD) (Taxpayer entitled to full RRSP deduction when withdrawal from pension plans terminated all rights thereunder); *Wood v. R.*, [1985] 2 C.T.C. 16 (FCTD) (Earned income is net of deductions).

Regulations: 100(3)(c) (no source withholding where premium is paid by employer directly to RRSP); 214.1 (information return).

Remission Orders: *Certain Taxpayers Remission Order, 1998-2*, P.C. 1998-2092, s. 2 (judges in Quebec who made contributions in 1989 or 1990); *Certain Taxpayers Remission Order, 1999-2*, P.C. 1999-1855, s. 2 (remission to Quebec judges for excess contributions in 1989-90); *Donald Potter Remission Order*, P.C. 2004-264 (remission of tax on a withdrawal based on incorrect information from the CRA).

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-307R4: Spousal or common-law registered retirement savings plans; IT-500R: RRSPs — death of an annuitant.

Advance Tax Rulings: ATR-2: Contribution to pension plan for past service; ATR-17: Employee benefit plan — purchase of company shares; ATR-37: Refund of premiums transferred to spouse.

Forms: T1 General Sched. 7: RRSP contributions, transfers and designations of repayments under the home buyers' plan; T4040: RRSPs and other registered plans for retirement [guide].

(5.1) Amount of spousal RRSP premiums deductible — There may be deducted in computing a taxpayer's

income for a taxation year such amount as the taxpayer claims not exceeding the lesser of

(a) the total of all amounts each of which is a premium paid by the taxpayer after 1990 and on or before the day that is 60 days after the end of the year under a registered retirement savings plan under which the taxpayer's spouse or common-law partner (or, where the taxpayer died in the year or within 60 days after the end of the year, an individual who was the taxpayer's spouse or common-law partner immediately before the death) was the annuitant at the time the premium was paid, other than the portion, if any, of the premium

(i) that was deducted in computing the taxpayer's income for a preceding taxation year,

(ii) that was designated for any taxation year for the purposes of paragraph 60(j.2),

(iii) in respect of which the taxpayer or the taxpayer's spouse or common-law partner has received a payment that has been deducted under subsection (8.2) in computing the taxpayer's income for a preceding taxation year, or

(iv) that would be considered to be withdrawn by the taxpayer's spouse or common-law partner as an eligible amount (as defined in subsection 146.01(1) or 146.02(1)) less than 90 days after it was paid, if earnings in respect of a registered retirement savings plan were considered to be withdrawn before premiums paid under that plan and premiums were considered to be withdrawn in the order in which they were paid, and

(b) the amount, if any, by which the taxpayer's RRSP deduction limit for the year exceeds the amount deducted under subsection (5) in computing the taxpayer's income for the year.

Related Provisions: 60(i) — Deduction for RRSP premiums paid; 60(l) — Transfer of RRSP premium refunds; 60(v) — Contribution to provincial pension plan; 74.5(12)(a) — Attribution rules do not apply to spousal contribution; 146(5) — Deduction for contribution to own plan; 146(8.21) — Premium deemed not paid; 146(8.3) — Attribution of income when amount withdrawn from RRSP; 146(16) — Deduction on transfer of funds; 146(22) — Deadline extension for ice storm; 146.3(5.1) — Attribution on withdrawal from RRIF; 146.3(5.4) — RRIF — Spouse's income; 204.1(2.1) — Tax payable by individuals — contributions after 1990; 204.2(1.2)I(a)(vi) — Amount non-deductible due to 146(5.1)(a)(iv) not included for Part X.1 penalty tax purposes; 252(3) — Extended meaning of "spouse".

History: The opening words of para. 146(5.1)(a) amended by 2001, c. 17, subsec. 246(3) to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.* except that, if a taxpayer and a person have jointly elected pursuant to s. 144 of 2000, c. 12 in respect of the 1998, 1999 or 2000 taxation years, the amendment applies to the taxpayer and the person in respect of the applicable taxation year and subsequent taxation years.

Subparas. 146(5.1)(a)(iii) and (iv) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subpara. 146(5.1)(a)(iv) amended by 1999, c. 22, subsec. 59(4), applicable to 1998 *et seq.* It formerly read:

> (iv) that would be considered to be withdrawn by the taxpayer's spouse as an eligible amount (within the meaning assigned by subsection 146.01(1)) less than 90 days after it was paid, if earnings in respect of a registered retirement savings plan were considered to be withdrawn before premiums paid under that plan and premiums were considered to be withdrawn in the order in which they were paid, and

Subpara. 146(5.1)(a)(iv) added by 1995, c. 3, subsec. 43(3), applicable to the withdrawal of amounts paid after March 1, 1994.

The opening words of para. 146(5.1)(a) substituted by 1994, c. 21, subsec. 69(5), applicable to 1992 *et seq.* The opening words formerly read:

> (a) the total of all amounts each of which is a premium paid by the taxpayer after 1990 and on or before the day that is 60 days after the end of the year under a registered retirement savings plan under which the taxpayer's spouse was the annuitant at the time the premium was paid, other than the portion, if any, of the premium

Selected Cases [subsec. 146(5.1)]: *Gilbert (M.) v. Canada*, [1993] 1 C.T.C. 233 (FCA) (Year in which actual payment made is relevant, not prior year in respect of which deduction taken).

Regulations: 100(3)(c) (no source withholding where premium is paid by employer directly to RRSP); 214.1 (information return).

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-307R4: Spousal or common-law registered retirement savings plans; IT-500R: RRSPs — death of an annuitant.

Information Circulars: 72-22R9: Registered retirement savings plans.

Forms: T4040: RRSPs and other registered plans for retirement [guide].

(5.2) [Repealed under former Act]

(5.21) Anti-avoidance — Notwithstanding any other provision of this section, where

(a) a registered pension plan is amended or administered in such a manner as to terminate, suspend or delay

(i) the membership of an individual in the plan for the individual's 1990 taxation year,

(ii) contributions under the plan by or for the benefit of the individual in respect of the year, or

(iii) the accrual of retirement benefits under the plan for the individual in respect of the year, or

(b) a deferred profit sharing plan is amended or administered in such a manner as to terminate, suspend or delay contributions under the plan for the year in respect of an individual,

and one of the main reasons for the termination, suspension or delay may reasonably be considered to be to reduce the pension adjustment of the individual for the year in respect of an employer, the only amount that may be deducted in computing the income for the year of the individual, in respect of premiums paid to registered retirement savings plans, is the amount that would have been deductible had that termination, suspension or delay not occurred.

(5.3)–(5.5) [Repealed under former Act]

(6) Disposition of non-qualified investment — Where in a taxation year a trust governed by a registered retirement savings plan disposes of a property that, when acquired, was a non-qualified investment, there may be deducted, in computing the income for the taxation year of the taxpayer who is the annuitant under the plan, an amount equal to the lesser of

(a) the amount that, by virtue of subsection (10), was included in computing the income of that taxpayer in respect of the acquisition of that property, and

(b) the proceeds of disposition of the property.

Related Provisions: 146(10) — Tax on acquisition of non-qualified investment; 146(11) — Life insurance policy; 259(1) — Election for proportional holdings in trust property.

Selected Cases [subsec. 146(6)]: *Foreman et al. v. MNR*, [1996] 1 C.T.C. 265 (FCTD) (Statutory language required where "series" of transactions attacked).

Regulations: 214(2) (information return).

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs; IT-415R2: Deregistration of registered retirement savings plans (archived).

Forms: T3G: Certification of no tax liability by a group of RRSPs, RRIFs, or RESPs; T3GR: Group income tax and information return for RRSP, RRIF or RESP trusts (and worksheets); T3IND: T3IND income tax return for RRSP, RRIF, or RESP.

(6.1) Recontribution of certain withdrawals — There may be deducted in computing a taxpayer's income for a particular taxation year the total of all amounts each of which is such portion of a prescribed premium for the particular year as was not designated for any taxation year for the purposes of paragraph 60(j), (j.1) or (l).

Related Provisions: 60(i) — Deduction for RRSP premiums paid; 127.52(1)(a)(ii)(A) — Addition to adjusted taxable income for minimum tax purposes; 146(5) — Amount of RRSP premiums deductible; 146.01(1)"excluded premium"(c) — Premium deducted under 146(6.1) not eligible for Home Buyers' Plan; 146.02(1)"excluded premium"(d) — Premium deducted under 146(6.1) not eligible for LLP; 152(6)(b.1) — Reassessment where deductible claimed.

Regulations: 8307(7) (prescribed premium).

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans.

(7) Recovery of property used as security — Where in a taxation year a loan, for which a trust governed by a registered retirement savings plan has used or permitted to be used trust property as security, ceases to be extant, and the fair market value of the property so used was included by virtue of subsection (10) in computing the income of the taxpayer who is the annuitant under the plan, there may be deducted, in computing the income of the taxpayer for the taxation year, an amount equal to the amount, if any, remaining when

(a) the net loss (exclusive of payments by the trust as or on account of interest) sustained by the trust in consequence of its using the property, or permitting it to be used, as security for the loan and not as a result of a change in the fair market value of the property

is deducted from

(b) the amount so included in computing the income of the taxpayer in consequence of the trust's using the property, or permitting it to be used, as security for the loan.

Related Provisions: 60(i) — Deduction in computing income; 146(10) — Inclusion in income of property used as security.

Regulations: 214(2) (information return).

Forms: T3G: Certification of no tax liability by a group of RRSPs, RRIFs, or RESPs; T3GR: Group income tax and information return for RRSP, RRIF or RESP trusts (and worksheets); T3IND: T3IND income tax return for RRSP, RRIF, or RESP.

(8) Benefits [and withdrawals] taxable — There shall be included in computing a taxpayer's income for a taxation year the total of all amounts received by the taxpayer in the year as benefits out of or under registered retirement savings plans, other than excluded withdrawals (as defined in subsection 146.01(1) or 146.02(1)) of the taxpayer and amounts that are included under paragraph (12)(b) in computing the taxpayer's income.

Proposed Amendment — Income inclusion on conversion to Roth IRA

Department of Finance press release, December 18, 1998: See under 56(12).

Related Provisions: 56(1)(h) — Income from RRSP; 56(12) — Distribution from foreign retirement arrangement; 60(l) — Rollover of refund of premium; 139.1(12) — Conversion benefit on demutualization of insurance corporation not taxable; 146(8.01) — Benefits from RRSP re Home Buyers' Plan; 146(8.3) — Attribution from spousal RRSP; 146(12) — Change in plan after registration; 146(16) — Deduction on transfer of funds; 146(20) — Amount credited to deposit RRSP deemed not received by annuitant; 146.01(4) — Home Buyers' Plan — portion of eligible amount not repaid; 146.01(5), (6) — HBP — other income inclusions; 146.02(4) — Lifelong Learning Plan — portion of eligible amount not repaid; 146.02(5), (6) — LLP — other income inclusions; 147.3(13.1) — Withdrawal of excessive transfers to RRSPs and RRIFs; 153(1)(j) — Withholding of tax at source; 160.2(1) — Joint and several liability in respect of amounts received from RRSP; 212(1)(l) — Withholding tax on payments to non-residents.

History: Subsec. 146(8) amended by 1999, c. 22, subsec. 59(5), applicable to 1999 *et seq.* It formerly read:

(8) There shall be included in computing the income of a taxpayer for a taxation year the total of all amounts received by the taxpayer in the year as benefits out of or under registered retirement savings plans, other than excluded withdrawals (within the meaning assigned by subsection 146.01(1)) in respect of the taxpayer and amounts that are included under paragraph (12)(b) in computing the taxpayer's income.

Subsec. 146(8) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 82(7), applicable to 1992 *et seq.* Subsec. (8) formerly read:

(8) There shall be included in computing the income of a taxpayer for a taxation year all amounts received by the taxpayer in the year as a benefit out of or under a registered retirement savings plan, other than an amount that is included in computing the taxpayer's income pursuant to paragraph (12)(b).

Selected Cases: *St-Hilaire v. R.*, [1997] 3 C.T.C. 2711 (TCC) (Receipts from RRSP taxable even if contributions improperly made).

Regulations: 100(1)"remuneration"(i) (payment from RRSP subject to source withholding); 103(4), (6) (withholding requirements on withdrawal from RRSP); 104(3) (no withholding on Home Buyers' Plan withdrawal); 104.1 (no withholding on Lifelong Learning Plan withdrawal); 214(1), (4) (information return).

I.T. Application Rules: 61(2) (where annuitant died before 1972).

Interpretation Bulletins: IT-307R4: Spousal or common-law registered retirement savings plans; IT-500R: RRSPs — death of an annuitant.

Information Circulars: 72-22R9: Registered retirement savings plans.

Advance Tax Rulings: ATR-37: Refund of premiums transferred to spouse.

Forms: T4RSP Segment; T4RSP Summ: Return of RRSP income; T4RSP Supp: Statement of RRSP income; T4040: RRSPs and other registered plans for retirement [guide]; T4079: T4RSP and T4RIF guide.

(8.01) Subsequent re-calculation [on HBP or LLP withdrawal] — If a designated withdrawal (as defined in subsection 146.01(1)) or an amount referred to in paragraph (a) of the definition "eligible amount" in subsection 146.02(1) is received by a taxpayer in a taxation year and, at any time after that year, it is determined that the amount is not an excluded withdrawal (as defined in subsection 146.01(1) or 146.02(1)), notwithstanding subsections 152(4) to (5), such assessments of tax, interest and penalties shall be made as are necessary to give effect to the determination.

History: Subsec. 146(8.01) amended by 1999, c. 22, subsec. 59(5), applicable to 1999 *et seq.* It formerly read:

(8.01) Idem — subsequent re-calculation — Where an amount referred to in paragraph (a) of the definition "eligible amount" in subsection 146.01(1) is received by a taxpayer in a taxation year and, at any time after that year, it is determined that the amount is not an excluded withdrawal (within the meaning assigned by that subsection), notwithstanding subsections 152(4) to (5), such assessments of tax, interest and penalties shall be made as are necessary to give effect to the determination.

Subsec. 146(8.01) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 82(7), applicable to 1992 *et seq.*

Interpretation Bulletins: IT-415R2: Deregistration of RRSPs (archived).

(8.1) Deemed receipt of refund of premiums — Where a portion of an amount paid out of or under a registered retirement savings plan of a deceased annuitant to the annuitant's legal representative would have been a refund of premiums if it had been paid under the plan to a beneficiary of the deceased's estate, it is, to the extent it is

so designated jointly by the legal representative and the beneficiary in prescribed form filed with the Minister, deemed to be received by the beneficiary (and not by the legal representative) at the time it was so paid as a benefit that is a refund of premiums.

Proposed Amendment — 146(8.1)

(8.1) Deemed receipt of refund of premiums — Where a payment out of or under a registered retirement savings plan of a deceased annuitant to the annuitant's legal representative would have been a refund of premiums if it had been paid under the plan to an individual who is a beneficiary (as defined in subsection 108(1)) under the deceased's estate, the payment is, to the extent it is so designated jointly by the legal representative and the individual in prescribed form filed with the Minister, deemed to be received by the individual (and not by the legal representative) at the time it was so paid as a benefit that is a refund of premiums.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 140(6), will amend subsec. 146(8.1) to read as above, applicable after 1988 except that, before 1999, it is to be read as follows:

> (8.1) Such portion of an amount paid in a taxation year out of or under a registered retirement savings plan of a deceased annuitant to the annuitant's legal representative as, had that portion been paid under the plan to an individual who is a beneficiary (as defined in subsection 108(1)) under the deceased's estate, would have been a refund of premiums is, to the extent it is so designated jointly by the legal representative and the individual in prescribed form filed with the Minister, deemed to be received by the individual in the year as a benefit that is a refund of premiums.

Technical Notes: Subsection 146(8.1) deals with situations in which an amount paid from a deceased individual's RRSP to the individual's estate would have been a "refund of premiums" if it had been paid by the RRSP to a beneficiary under the estate. An amount paid out of an RRSP as a consequence of the death of the annuitant is defined, by subsection 146(1), to be a "refund of premiums" if the recipient was, immediately before the death of the RRSP annuitant, a spouse or common-law partner of the annuitant or a financially dependent child or grandchild of the annuitant.

Subsection 146(8.1) allows the legal representative of a deceased RRSP annuitant's estate and a qualifying beneficiary under the estate to elect jointly to have the RRSP proceeds that were paid to the estate treated as a refund of premiums received by the beneficiary from the RRSP. When such a election is made, the beneficiary is required to include the deemed refund of premiums in income. If a corresponding amount is used to acquire a qualifying annuity or is paid into an RRSP or registered retirement income fund of the beneficiary and certain other conditions are satisfied, the beneficiary will be entitled to an offsetting deduction under paragraph 60(l).

Subsection 146(8.1) is amended to provide that the expression "beneficiary" under a deceased RRSP annuitant's estate has the meaning assigned by subsection 108(1). This has the effect of extending the provisions of subsection 146(8.1) to an individual who is "beneficially interested" in a deceased RRSP annuitant's estate (as defined in subsection 248(25)), but who is not a beneficiary under the estate. This could occur, for example, where an individual has only an indirect interest in the deceased RRSP annuitant's estate by virtue of being a beneficiary under a trust that is a beneficiary under the estate — a structure typically contemplated in the estate planning of parents of mentally infirm children.

Letter from Dept. of Finance, April 20, 2005:

Dear [xxx]

This is in reply to your letter of January 25, 2005 concerning proposed amendments to paragraph 60(l) of the *Income Tax Act*, released by the Department of Finance on February 27, 2004. In general terms, the proposed amendments are intended to accommodate a tax-deferred rollover of the proceeds of a deceased individual's RRSP where the proceeds are used to acquire a life annuity under which a qualifying trust for a qualifying infirm individual is the annuitant.

You suggest that additional legislative amendments are needed in order to give effect to the stated intent of the proposed amendments. In this regard, you describe (in your letter and in the Ruling Request to which you make reference) a situation in which the proceeds of a deceased individual's RRSP are transferred to the deceased individual's legal representative. The funds are then used by the deceased's estate to acquire an annuity under which the annuitant is a testamentary trust created under the will of the deceased. A mentally infirm financially dependent child of the deceased is, during the child's lifetime, the sole beneficiary of the testamentary trust. While the child does not have a direct interest in the deceased individual's estate, the child is "beneficially interested" in the estate, within the meaning assigned by subsection 248(25) of the Act, by virtue of being a beneficiary of the testamentary trust, which is, in turn, a beneficiary of the estate.

You are concerned, in particular, with subsection 146(8.1) of the Act. That subsection allows a beneficiary of a deceased individual's estate and the legal representative of the deceased individual to make a joint election to treat proceeds received by the estate from the deceased individual's RRSP as having been received by the beneficiary as a "refund of premiums" (as defined in subsection 146(1) of the Act), to the extent that the proceeds would have been a "refund of premiums" had they been received directly by the beneficiary. When such an election is made, the proceeds are included in the beneficiary's income and, if the proceeds are used as provided for under paragraph 60(l), an offsetting deduction is allowed.

In some situations, the Act extends the normal meaning of beneficiary so that a reference to a beneficiary of a trust or estate includes an individual who is not a direct beneficiary of the trust or estate but who is beneficially interested in the trust or estate. This extended meaning of "beneficiary" does not apply, however, for subsection 146(8.1). Thus, in the situation you describe, no election can be made to treat the RRSP proceeds as having been received by the child as a refund of premiums. Moreover, while the testamentary trust is itself a beneficiary of the estate, no election can be made to treat the testamentary trust as having received a refund of premiums. This is because there is no provision in the Act that would treat proceeds paid directly from the deceased annuitant's RRSP to the testamentary trust as being a refund of premiums received by the trust. As there is no possibility of having the deceased individual's RRSP proceeds treated as a refund of premiums, no rollover under paragraph 60(l) of the Act is available.

I agree that it is not appropriate that a rollover under paragraph 60(l) be denied simply because the child's interest in the deceased annuitant's estate is not a direct interest. I am prepared, therefore, to recommend to the Minister of Finance that subsection 146(8.1) of the Act be amended to extend the meaning of "beneficiary", for the purposes of that subsection, to include persons who are beneficially interested (within the meaning assigned by subsection 248(25) of the Act) in the estate of the deceased individual. This would ensure that, in the situation you describe, an election can be made under subsection 146(8.1) to treat the child of the deceased RRSP annuitant as having received a refund of premiums from the RRSP. I am also prepared to recommend that the Act be amended to clarify that the amount paid to acquire the annuity, whether paid by the estate or by the trust that is the annuitant under the annuity, be treated as having been paid on behalf of the child, thus ensuring that the requirements of paragraph 60(l) in this regard can be met and that the child is not denied the deduction thereunder for the purchase price of the annuity. I will also recommend that these proposed amendments apply as of the effective date of the previously proposed amendments to paragraph 60(l).

You have also asked that consideration be given to amending the Act to allow the trust (rather than the child) that is a direct beneficiary of the estate to include the refund of premiums in its income and to claim the offsetting deduction under paragraph 60(l). Such a measure would go beyond the intended scope of the proposed amendments released in February 2004 and is not something that I could recommend at this time.

While I cannot offer any assurance that the legislative amendments that we intend to recommend will be adopted, I trust that this statement of our position is helpful to you.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 60(l) — Transfer of RRSP premium refunds; 60(l)(v)(B.1) — Rollover of designated benefits to child or grandchild on death; 146(8.9) — Effect of death where person other than spouse becomes entitled; 146.3(6.1) — Parallel rule for RRIFs; 160.2(1) — Joint and several liability in respect of amounts received out of or under RRSP; 214(3)(c) — Non-resident withholding tax.

History: Subsec. 146(8.1) amended by 2000, c. 19, subsec. 42(3), applicable to 1999 *et seq.* The subsec. formerly read:

> (8.1) Such portion of an amount paid in a taxation year out of or under a registered retirement savings plan of a deceased annuitant to the annuitant's legal representative as, had that portion been paid under the plan to a beneficiary of the deceased's estate, would have been a refund of premiums shall, to the extent it is so designated jointly by the legal representative and the beneficiary in prescribed form filed with the Minister, be deemed to be received by the beneficiary in the year as a benefit that is a refund of premiums.

Advance Tax Rulings: ATR-37: Refund of premiums transferred to spouse.

Forms: T2019: Death of an RRSP annuitant — refund of premiums.

(8.2) Amount deductible — Where

(a) all or any portion of the premiums paid in a taxation year by a taxpayer to one or more registered retirement savings plans under which the taxpayer or the taxpayer's spouse or common-law partner was the annuitant was not deducted in computing the taxpayer's income for any taxation year,

(b) the taxpayer or the taxpayer's spouse or common-law partner can reasonably be regarded as having received a payment from a registered retirement savings plan or a registered retirement income fund in respect of such portion of the undeducted premiums as

(i) was not paid by way of a transfer of an amount from a registered pension plan to a registered retirement savings plan,

(ii) was not paid by way of a transfer of an amount from a deferred profit sharing plan to a registered retirement savings plan in accordance with subsection 147(19), and

(iii) was not paid by way of a transfer of an amount from a provincial pension plan prescribed for the purpose of paragraph 60(v) to a registered retirement savings plan in circumstances to which subsection (21) applied,

(c) the payment is received by the taxpayer or the taxpayer's spouse or common-law partner in a particular taxation year that is

(i) the year in which the premiums were paid by the taxpayer,

(ii) the year in which a notice of assessment for the taxation year referred to in subparagraph (i) was sent to the taxpayer, or

(iii) the year immediately following the year referred to in subparagraph (i) or (ii), and

(d) the payment is included in computing the taxpayer's income for the particular year,

the payment (except to the extent that it is a prescribed withdrawal) may be deducted in computing the taxpayer's income for the particular year unless it is reasonable to consider that

(e) the taxpayer did not reasonably expect that the full amount of the premiums would be deductible in the taxation year in which the premiums were paid or in the immediately preceding taxation year, and

(f) the taxpayer paid all or any portion of the premiums with the intent of receiving a payment that, but for this paragraph and paragraph (e), would be deductible under this subsection.

Related Provisions: 60(i) — Deduction for RRSP premiums paid; 146(5) — Deduction for contribution to own RRSP; 146(5.1) — Deduction for contribution to spousal RRSP; 146(8.21) — Excess premium deemed not paid; 146(16) — Deduction on transfer of funds; 147.3(13.1) — Withdrawal of excessive transfers to RRSPs and RRIFs; Reg. 8307(4) — Eligibility of withdrawn amount for designation.

History: Paras. 146(8.2)(a) to (c) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subpara. 146(8.2)(b)(iii) added by 1994, c. 21, subsec. 69(6), applicable to 1992 *et seq.*

Para. 146(8.2)(b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 82(8), applicable to 1991 *et seq.* except that for the 1991 taxation year subpara. (i) shall be read as follows:

> (i) was not paid by way of a transfer of an amount from a registered pension plan to a registered retirement savings plan in accordance with any of subsections 147.3(1) and (4) to (7), and

Para. (b) formerly read:

> (b) the taxpayer or the taxpayer's spouse can reasonably be regarded as having received a payment from a registered retirement savings plan or a registered retirement income fund in respect of such undeducted premiums,

Regulations: 8307(6) (prescribed withdrawal).

Interpretation Bulletins: IT-307R4: Spousal or common-law registered retirement savings plans; IT-124R6: Contributions to registered retirement savings plans.

Forms: T746: Calculating your deduction for refund of unused RRSP contributions; T3012A: Tax deduction waiver on the refund of your unused RRSP contributions.

(8.21) Premium deemed not paid — Where a taxpayer or the taxpayer's spouse or common-law partner has, at any time in a taxation year, received a payment from a registered retirement savings plan or a registered retirement income fund in respect of all or any portion of a premium paid by the taxpayer to a registered retirement savings plan and the payment has been deducted under subsection (8.2) in computing the taxpayer's income for the year, the premium or portion thereof, as the case may be, shall,

(a) for the purposes of determining, after that time, the amount that may be deducted under subsection (5) or (5.1) in computing the taxpayer's income for the year or a preceding taxation year, and

(b) for the purposes of subsections (8.3) and 146.3(5.1) after that time, in the case of a payment received by the taxpayer,

be deemed not to have been a premium paid by the taxpayer to a registered retirement savings plan.

Related Provisions: 146(8.6) — Spouse's income.

History: Subsec. 146(8.21) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans.

(8.3) Spousal or common-law partner payments [attribution rule] — Where at any time in a taxation year a particular amount in respect of a registered retirement savings plan that is a spousal or common-law partner plan in relation to a taxpayer is required by reason of subsection (8) or paragraph (12)(b) to be included in computing the income of the taxpayer's spouse or common-law partner before the plan matures or as a payment in full or partial commutation of a retirement income under the plan and the taxpayer is not living separate and apart from the taxpayer's spouse or common-law partner at that time by reason of the breakdown of their marriage or common-law partnership, there shall be included at that

time in computing the taxpayer's income for the year an amount equal to the lesser of

(a) the total of all amounts each of which is a premium paid by the taxpayer in the year or in one of the two immediately preceding taxation years to a registered retirement savings plan under which the taxpayer's spouse or common-law partner was the annuitant at the time the premium was paid, and

(b) the particular amount.

Related Provisions: 56(1)(h) — Income from RRSP; 60(j.2) — Transfer to spousal RRSP; 74.5(12) — Regular attribution rule does not apply; 146(8.21) — Premium deemed not paid; 146(8.5) — Ordering; 146(8.6) — Spouse's income; 146(8.7) — Where subsec. (8.3) does not apply; 146.3(5.1) — Parallel rule for RRIFs; 146.3(5.4) — Spouse's income; 147.3(13.1) — Withdrawal of excessive transfers to RRSPs and RRIFs; 153(1)(j) — Withholding of tax at source.

History: The opening words of subsec. 146(8.3) amended by 2001, c. 17, subsec. 246(4), applicable to 2001 *et seq.* except that, if a taxpayer and a person have jointly elected pursuant to s. 144 of 2000, c. 12 in respect of the 1998, 1999 or 2000 taxation years, the amendment applies to the taxpayer and the person in respect of the applicable taxation year and subsequent taxation years. The opening words formerly read:

(8.3) Spousal RRSP payments [attribution rule] — Where at any time in a taxation year a particular amount in respect of a registered retirement savings plan that is a spousal plan in relation to a taxpayer is required by reason of subsection (8) or paragraph (12)(b) to be included in computing the income of the taxpayer's spouse before the plan matures or as a payment in full or partial commutation of a retirement income under the plan and the taxpayer is not living separate and apart from the taxpayer's spouse at that time by reason of the breakdown of their marriage or common-law partnership, there shall be included at that time in computing the taxpayer's income for the year an amount equal to the lesser of

The opening words of subsec. 146(8.3) amended by 2000, c. 12, Sch. 2, s. 9, to replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Para. 146(8.3)(a) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Selected Cases [subsec. 146(8.3)]: *Gilbert (M.) v. Canada*, [1993] 1 C.T.C. 233 (FCA) (Year in which actual payment made is relevant, not prior year in respect of which deduction taken).

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-307R4: Spousal or common-law registered retirement savings plans; IT-415R2: Deregistration of RRSPs (archived).

Forms: T1234: Allowable amounts of non-refundable tax credits; T2205: Amounts from a spousal or common-law partner RRSP or RRIF to include in income.

(8.4) [Repealed under former Act]

(8.5) Ordering — Where a taxpayer has paid more than one premium described in subsection (8.3), such a premium or part thereof paid by the taxpayer at any time shall be deemed to have been included in computing the taxpayer's income by virtue of that subsection before premiums or parts thereof paid by the taxpayer after that time.

Interpretation Bulletins: IT-307R4: Spousal or common-law registered retirement savings plans.

(8.6) Spouse's [or common-law partner's] income — Where, in respect of an amount required at any time in a taxation year to be included in computing the income of a taxpayer's spouse or common-law partner, all or part of a premium has by reason of subsection (8.3) been included in computing the taxpayer's income for the year, the following rules apply:

(a) the premium or part thereof, as the case may be, shall, for the purposes of subsections (8.3) and 146.3(5.1) after that time, be deemed not to have been a premium paid to a registered retirement savings plan under which the taxpayer's spouse or common-law partner was the annuitant; and

(b) an amount equal to the premium or part thereof, as the case may be, may be deducted in computing the income of the spouse or common-law partner for the year.

Related Provisions: 146(8.21) — Premium deemed not paid; 146.3(5.4) — Spouse's income.

History: Subsec. 146(8.6) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Interpretation Bulletins: IT-307R4: Spousal or common-law registered retirement savings plans; IT-415R2: Deregistration of RRSPs (archived).

(8.7) Where subsec. (8.3) does not apply — Subsection (8.3) does not apply

(a) in respect of a taxpayer at any time during the year in which the taxpayer died;

(b) in respect of a taxpayer where either the taxpayer or the taxpayer's spouse or common-law partner is a non-resident at the particular time referred to in that subsection;

(c) in respect of amounts paid out of or under a plan referred to in subsection (12) as an "amended plan" to which paragraph (12)(a) applied before May 26, 1976;

(d) to any payment that is received in full or partial commutation of a registered retirement income fund or a registered retirement savings plan and in respect of which a deduction was made under paragraph 60(l) if, where the deduction was in respect of the acquisition of an annuity, the terms of the annuity provide that it cannot be commuted, and it is not commuted, in whole or in part within 3 years after the acquisition; or

(e) in respect of an amount that is deemed by subsection (8.8) to have been received by an annuitant under a registered retirement savings plan immediately before the annuitant's death.

History: Para. 146(8.7)(b) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Interpretation Bulletins: IT-307R4: Spousal or common-law registered retirement savings plans; IT-415R2: Deregistration of RRSPs (archived).

(8.8) Effect of death where person other than spouse [or common-law partner] becomes entitled — Where the annuitant under a registered retirement savings plan (other than a plan that had matured before June 30, 1978) dies after June 29, 1978, the annuitant shall be deemed to have received, immediately before the annuitant's death, an amount as a benefit out of or under a registered retirement savings plan equal to the amount, if any, by which

(a) the fair market value of all the property of the plan at the time of death

exceeds

(b) where the annuitant died after the maturity of the plan, the fair market value at the time of the death of the portion of the property described in paragraph (a) that, as a consequence of the death, becomes receivable by a person who was the annuitant's spouse or common-law partner immediately before the death, or would become so receivable should that person sur-

vive throughout all guaranteed terms contained in the plan.

Related Provisions: 60(l)(v)(B.1) — Transfer of RRSP premium refunds; 118.1(5.3) — Designation of charity as beneficiary of RRSP; 146(8.7) — Where subsec. (8.3) does not apply; 146(8.9) — Effect of death where person other than spouse becomes entitled; 146.3(6) — Parallel rule for RRIFs; 160.2(1) — Joint and several liability in respect of amounts received out of or under RRSP; 214(3)(c) — Non-resident withholding tax.

History: Para. 146(8.8)(b) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Para. 146(8.8)(b) substituted by 1994, c. 21, subsec. 69(7), applicable to deaths occurring after 1992. That para. formerly read:

(b) the portion thereof that, as a consequence of the annuitant's death, becomes receivable by the annuitant's spouse, or would become so receivable should that spouse survive throughout all guaranteed terms contained in the plan.

Selected Cases: *Curley v. MacDonald*, [2000] 4 C.T.C. 14 (Ont SCJ) (Provision is liability-fixing, not just tax calculation mechanism); *Slater v. Klassen Estate*, [2000] 2 C.T.C. 100 (Man QB) (RRSP did not pass by will where marriage no longer in existence; no rollover).

Regulations: 214(4) (information return).

Interpretation Bulletins: IT-307R4: Spousal or common-law registered retirement savings plans; IT-500R: RRSPs — death of an annuitant.

Advance Tax Rulings: ATR-37: Refund of premiums transferred to spouse.

Forms: RC4177: Death of an RRSP annuitant [guide].

(8.9) Idem — There may be deducted from the amount deemed by subsection (8.8) to have been received by an annuitant as a benefit out of or under a registered retirement savings plan an amount not exceeding the amount determined by the formula

$$A \times \left[1 - \frac{(B + C - D)}{(B + C)} \right]$$

where

A is the total of

(a) all refunds of premiums in respect of the plan,

(b) all tax-paid amounts in respect of the plan paid to individuals who, otherwise than because of subsection (8.1), received refunds of premiums in respect of the plan, and

(c) all amounts each of which is a tax-paid amount in respect of the plan paid to the legal representative of the annuitant under the plan, to the extent that the legal representative would have been entitled to designate that tax-paid amount under subsection (8.1) if tax-paid amounts were not excluded in determining refunds of premiums;

B is the fair market value of the property of the plan at the particular time that is the later of

(a) the end of the first calendar year that begins after the death of the annuitant, and

(b) the time immediately after the last time that any refund of premiums in respect of the plan is paid out of or under the plan;

C is the total of all amounts paid out of or under the plan after the death of the annuitant and before the particular time; and

D is the lesser of

(a) the fair market value of the property of the plan at the time of the annuitant's death, and

(b) the sum of the values of B and C in respect of the plan.

Related Provisions: 60(l) — Transfer of RRSP premium refunds; 146.3(6.2) — Parallel rule for RRIFs; 160.2(1) — Joint and several liability in respect of amounts received out of or under RRSP.

History: The description of A in subsec. 146(8.9) amended by 1998, c. 19, subsec. 170(7), applicable to deaths occurring after 1992. The description formerly read:

A is the total of all refunds of premiums in respect of the plan;

Subsec. 146(8.9) substituted by 1994, c. 21, subsec. 69(8), applicable to deaths occurring after 1992. That subsec. formerly read:

(8.9) There may be deducted from the amount deemed by subsection (8.8) to have been received by an annuitant as a benefit out of or under a registered retirement savings plan the total of all amounts each of which is

(a) that portion of an amount paid out of or under the plan that is deemed to be received by a beneficiary as a benefit that is a refund of premiums pursuant to subsection (8.1); or

(b) an amount received under the plan by a child or grandchild of the annuitant as a refund of premiums.

Interpretation Bulletins: IT-500R: RRSPs — death of an annuitant.

Advance Tax Rulings: ATR-37: Refund of premiums transferred to spouse.

Forms: RC4177: Death of an RRSP annuitant [guide].

(8.91) Amounts deemed receivable by spouse [or common-law partner] — Where, as a consequence of the death of an annuitant after the maturity of the annuitant's registered retirement savings plan, the annuitant's legal representative has become entitled to receive amounts out of or under the plan for the benefit of the spouse or common-law partner of the deceased and the legal representative and the spouse or common-law partner file with the Minister a joint election in prescribed form,

(a) the spouse or common-law partner shall be deemed to have become the annuitant under the plan as a consequence of the annuitant's death; and

(b) such amounts shall be deemed to be receivable by the spouse or common-law partner and, when paid, to be received by the spouse or common-law partner as a benefit under the plan, and not to be received by any other person.

Related Provisions: 60(l) — Transfer of RRSP premium refunds; 160.2(1) — Joint and several liability in respect of amounts received out of or under RRSP; 214(3)(c) — Non-resident withholding tax; 248(8) — Occurrences as a consequence of death.

History: Subsec. 146(8.91) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Interpretation Bulletins: IT-307R4: Spousal or common-law registered retirement savings plans; IT-500R: RRSPs — death of an annuitant.

Forms: RC4177: Death of an RRSP annuitant [guide].

(9) Where disposition of property by trust — Where in a taxation year a trust governed by a registered retirement savings plan

(a) disposes of property for a consideration less than the fair market value of the property at the time of the disposition, or for no consideration, or

(b) acquires property for a consideration greater than the fair market value of the property at the time of the acquisition,

the difference between the fair market value and the consideration, if any, shall be included in computing the income for the taxation year of the annuitant under the plan.

Related Provisions: 146(11) — Life insurance policies; 146(12) — Change in plan after registration; 214(3)(c) — Non-resident withholding tax.

Regulations: 214(2) (information return).

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs.

Forms: T3G: Certification of no tax liability by a group of RRSPs, RRIFs, or RESPs; T3GR: Group income tax and information return for RRSP, RRIF or RESP trusts (and worksheets); T3IND: T3IND income tax return for RRSP, RRIF, or RESP.

(10) Where acquisition of non-qualified investment by trust — Where at any time in a taxation year a trust governed by a registered retirement savings plan

(a) acquires a non-qualified investment, or

(b) uses or permits to be used any property of the trust as security for a loan,

the fair market value of

(c) the non-qualified investment at the time it was acquired by the trust, or

(d) the property used as security at the time it commenced to be so used,

as the case may be, shall be included in computing the income for the year of the taxpayer who is the annuitant under the plan at that time.

Related Provisions: 146(6) — Disposition of non-qualified investment; 146(7) — Recovery of property used as security; 146(10.1) — Tax payable by trust; 146(11) — Life insurance policies; 207.1(1) — Tax payable by RRSP; 214(3)(c) — Non-resident withholding tax; 259(1) — Election for proportional holdings in trust property.

Selected Cases [subsec. 146(10)]: *Millward v. R.*, [1986] 2 C.T.C. 423 (FCTD) (Cross investments in mortgages made by RRSPs of two partners were not at arm's length and were "non-qualified investments"); *R. v. Epstein*, [1984] C.T.C. 270 (FCTD) (Definition of terms in federal legislation may not be the same as under applicable provincial legislation; definition of "mortgagor" considered).

Regulations: 214(2) (information return).

Remission Orders: *Lionaird Capital Corporation Notes Remission Order*, P.C. 1999-737 (tax under 146(10) waived because taxpayers thought they were qualified investments).

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs; IT-415R2: Deregistration of RRSPs (archived).

Forms: T3G: Certification of no tax liability by a group of RRSPs, RRIFs, or RESPs; T3GR: Group income tax and information return for RRSP, RRIF or RESP trusts (and worksheets); T3IND: T3IND income tax return for RRSP, RRIF, or RESP.

(10.1) Where tax payable [income from non-qualified investment] — Where in a taxation year a trust governed by a registered retirement savings plan holds a property that is a non-qualified investment,

(a) tax is payable under this Part by the trust on the amount that its taxable income for the year would be if it had no incomes or losses from sources other than non-qualified investments and no capital gains or losses other than from dispositions of non-qualified investments; and

(b) for the purposes of paragraph (a),

(i) "income" includes dividends described in section 83, and

(ii) paragraphs 38(a) and (b) shall be read without reference to the fractions set out in those paragraphs.

Proposed Amendment — 146(10.1)(b)(ii)

(ii) paragraphs 38(a) and (b) are to be read as if the fraction set out in each of those paragraphs were replaced by the word "all".

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 140(7), will amend subpara. 146(10.1)(b)(ii) to read as above, in force on Royal Assent.

Technical Notes: Subsection 146(10.1) provides that income earned by a trust governed by a retirement savings plan from non-qualified investments is taxable under Part I. Subparagraph 146(10.1)(b)(ii) provides that income for this purpose includes the full amount of capital gains in excess of capital losses. This subparagraph is reworded for clarity.

Related Provisions: 146(4) — Tax not otherwise payable by trust; 259(1) — Election for proportional holdings in trust property.

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs.

(11) Life insurance policies — Subsections 198(6) and (8) are applicable, with such modifications as the circumstances require, to subsections (6), (9) and (10), except that in the application of subsection 198(8) to the latter subsections paragraph 198(8)(a) shall be read as follows:

(a) "the trust shall be deemed, for the purposes of subsection 146(6), to have disposed of each non-qualified investment that, by virtue of payments under the policy, it was deemed by subsection 146(10) to have acquired, and"

Related Provisions: 139.1(12) — Effect of conversion benefit on demutualization of insurance corporation; 146(1)"qualified investment"(c)–(c.2) — Annuity contracts as qualified investments; 146(11.1) — Subsec. (11) does not apply to contracts issued after 1997.

Interpretation Bulletins: IT-408R: Life insurance policies as investments of RRSPs and DPSPs (archived).

(11.1) Exception — Subsection (11) does not apply to annuity contracts issued after 1997.

History: Subsec. 146(11.1) added by 1998, c. 19, subsec. 170(8), applicable after 1997.

(12) Change in plan after registration — Where, on any day after a retirement savings plan has been accepted by the Minister for registration for the purposes of this Act, the plan is revised or amended or a new plan is substituted for it, and the plan as revised or amended or the new plan, as the case may be (in this subsection referred to as the "amended plan"), does not comply with the requirements of this section for its acceptance by the Minister for registration for the purposes of this Act, subject to subsection (13.1), the following rules apply:

(a) the amended plan shall be deemed, for the purposes of this Act, not to be a registered retirement savings plan; and

(b) the taxpayer who was the annuitant under the plan before it became an amended plan shall, in computing the taxpayer's income for the taxation year that includes that day, include as income received at that time an amount equal to the fair market value of all the property of the plan immediately before that time.

Related Provisions: 146(2) — Requirements for registration; 146(8.3) — Spousal RRSP payments; 146(8.7) — Where ss. (8.3) does not apply; 146(13) — Change in plan after registration; 147.3(13.1) — Withdrawal of excessive transfers to RRSPs and RRIFs; 146(13.2), (13.3) — Pre-1997 plan that does not mature by age 69 is deemed deregistered; 204.1 — Tax in respect of over-contribution to deferred income plans; 204.2(1.4) — Deemed receipt where RRSP or RRIF amended; 214(3)(c) — Non-resident withholding tax.

Selected Cases [subsec. 146(12)]: *Phenix Estate (Trustee of) v. Bank of Nova Scotia*, [1989] 1 C.T.C. 442 (Sask CA) (Plan deregistered when assets pledged as security).

Regulations: 214(3) (information return).

Interpretation Bulletins: IT-307R4: Spousal or common-law registered retirement savings plans; IT-415R2: Deregistration of RRSPs (archived).

Forms: T3G: Certification of no tax liability by a group of RRSPs, RRIFs, or RESPs; T3GR: Group income tax and information return for RRSP, RRIF or RESP trusts (and worksheets); T3IND: T3IND income tax return for RRSP, RRIF, or RESP; T4RSP Segment; T4RSP Summary: Re-

turn of RRSP income; T4RSP Supplementary: Statement of RRSP income; T1234: Allowable amounts of non-refundable tax credits; T2205: Amounts from a spousal or common-law partner RRSP or RRIF to include in income; T4079: T4RSP and T4RIF guide.

(13) Idem — For the purposes of subsection (12), an arrangement under which a right or obligation under a retirement savings plan is released or extinguished either wholly or in part and either in exchange or substitution for any right or obligation, or otherwise (other than an arrangement the sole object and legal effect of which is to revise or amend the plan) or under which payment of any amount by way of loan or otherwise is made on the security of a right under a retirement savings plan, shall be deemed to be a new plan substituted for that retirement savings plan.

Related Provisions: 146(2), (3) — Acceptance of plan registration; 146(16) — Deduction on transfer of funds.

Interpretation Bulletins: IT-415R2: Deregistration of RRSPs (archived).

(13.1) RRSP advantages — Where an issuer of a registered retirement savings plan or any person not dealing at arm's length with the issuer has extended an advantage to the annuitant of the plan (or to a person not dealing at arm's length with the annuitant) and that advantage would have been prohibited if the plan had met the requirement for registration contained in paragraph (2)(c.4),

(a) paragraphs (12)(a) and (b) do not apply by reason only of the extension of that advantage; and

(b) the issuer is liable to a penalty equal to the greater of $100 and the amount or value of that advantage.

Related Provisions: 18(1)(t) — Penalty is non-deductible; 146(2)(c.4) — Prohibition against extending advantage; 146(5)(a) — Amount of RRSP premiums deductible.

Interpretation Bulletins: IT-415R2: Deregistration of RRSPs (archived).

Information Circulars: 72-22R9: Registered retirement saving plans.

(13.2) Maturity after age 69 — For the purpose of subsection (12), where a retirement savings plan accepted for registration before 1997 does not mature by the end of the particular year in which the annuitant under the plan attains 69 years of age,

(a) the plan is deemed to have been amended immediately after the particular year; and

(b) the plan as amended is deemed not to comply with the requirements of this section for its acceptance by the Minister for registration for the purposes of this Act.

Related Provisions: 146(12)(b) — Deregistration and income inclusion as a result of deemed amendments to plan; 146(13.3) — Notification required that plan will be deregistered; 147(10.6) — Parallel rules for DPSPs.

History: Subsecs. 146(13.2) added by 1997, c. 25, subsec. 41(4), applicable after 1996, except that

(a) it does not apply to a retirement savings plan where the annuitant under the plan attained 70 years of age before 1997;

(b) in applying the subsec. to a retirement savings plan where the annuitant under the plan attained 69 years of age in 1996, the references in that provisions to "69 years of age" shall be read as "70 years of age";

(c) it does not apply to a retirement savings plan where an annuity contract was issued before March 6, 1996 under, pursuant to or as the plan to provide the retirement income under the plan and, under the terms and conditions of the contract as they read immediately before that day,

(i) the day on which annuity payments are to begin under the plan is fixed and determined and is after the year in which the annuitant attains

(A) 69 years of age, where the annuitant had not attained that age before 1997, or

(B) 70 years of age, where the annuitant attained 69 years of age in 1996, and

(ii) the amount and timing of each annuity payment are fixed and determined; and

(d) it does not apply to a retirement savings plan that is part of a life insurance policy that was issued before March 6, 1996 and that has a life insurance component that is not a retirement savings plan where, under the terms and conditions of the policy as they read immediately before that day,

(i) the amount of each premium, if any, subsequently payable in respect of the life insurance component of the policy, and a date by which each such premium is to be paid, are fixed and determined,

(ii) the amount payable under the policy because of the death of the annuitant (determined without reference to any amount payable as, on account of, in lieu of payment of or in satisfaction of, a policy dividend or related interest) is fixed and determined, and

(iii) insurance on the life of the annuitant is provided under the policy for a period of time after the year in which the annuitant attains

(A) 69 years of age, where the annuitant had not attained that age before 1997, or

(B) 70 years of age, where the annuitant attained 69 years of age in 1996.

Where, because of (d) above, the subsec. does not apply to a retirement savings plan that is part of a life insurance policy, any part of a premium paid under the policy after March 5, 1996 that was not fixed and determined under the terms and conditions of the policy as they read at the end of that day is deemed, for the purposes of subsecs. 146(5), (5.1) and (8.2), not to have been paid under the policy.

(13.3) Notice — Where a retirement savings plan accepted for registration before 1997 does not prevent maturity after the particular year in which the annuitant under the plan attains 69 years of age, the issuer of the plan shall, before July of the particular year, notify the annuitant in writing that, pursuant to subsections (12) and (13.2), the plan will cease to be a registered retirement savings plan if it does not mature by the end of the particular year, except that no such notification is required where, before that month,

(a) the plan has matured; or

(b) arrangements have been made for the plan to mature, or for the property under the plan to be transferred or otherwise paid out of the plan, by the end of the particular year.

Related Provisions: 162(7) — Penalty for failure to comply.

History: Subsecs. 146(13.3) added by 1997, c. 25, subsec. 41(4), applicable on the same basis as subsec. 146(13.2)

(14) Premiums paid in taxation year — Where any amount has been paid in a taxation year as a premium under a retirement savings plan that was, at the end of that taxation year, a registered retirement savings plan, the amount so paid shall be deemed, for the purposes of this Act, to have been paid in that year as a premium under a registered retirement savings plan.

Related Provisions: 146(1) — "Retirement savings plan".

(15) Plan not registered at end of year entered into — Notwithstanding anything in this section, where an amount is received in a taxation year as a benefit under a registered retirement savings plan that was not, at the end of the year in which the plan was entered into, a reg-

istered retirement savings plan, such part, if any, of the amount so received as may be prescribed shall be deemed, for the purposes of this Act, to have been received in the taxation year otherwise than as a benefit or other payment under a registered retirement savings plan.

Regulations: Part I.

(16) Transfer of funds — Notwithstanding any other provision in this section, a registered retirement savings plan may at any time be revised or amended to provide for the payment or transfer before the maturity of the plan, on behalf of the annuitant under the plan (in this subsection referred to as the "transferor"), of any property thereunder by the issuer thereof

(a) to a registered pension plan for the benefit of the transferor or to a registered retirement savings plan or registered retirement income fund under which the transferor is the annuitant, or

(b) to a registered retirement savings plan or registered retirement income fund under which the spouse or common-law partner or former spouse or common-law partner of the transferor is the annuitant, where the transferor and the transferor's spouse or common-law partner or former spouse or common-law partner are living separate and apart and the payment or transfer is made under a decree, order or judgment of a competent tribunal, or under a written separation agreement, relating to a division of property between the transferor and the transferor's spouse or common-law partner or former spouse or common-law partner in settlement of rights arising out of, or on the breakdown of, their marriage or common-law partnership,

and, where there has been such a payment or transfer of such property on behalf of the transferor before the maturity of the plan,

(c) the amount of the payment or transfer shall not, solely because of the payment or transfer, be included in computing the income of the transferor or the transferor's spouse or common-law partner or former spouse or common-law partner,

(d) no deduction may be made under subsection (5), (5.1) or (8.2) or section 8 or 60 in respect of the payment or transfer in computing the income of any taxpayer, and

(e) where the payment or transfer was made to a registered retirement savings plan, for the purposes of subsection (8.2), the amount of the payment or transfer shall be deemed not to be a premium paid to that plan by the taxpayer.

Related Provisions: 60(l) — Transfer of RRSP premium refunds; 146.3(14)(a) — Transfer of RRIF on marriage breakdown; 160.2(1) — Joint and several liability in respect of amounts received out of or under RRSP; 204.2(1) — Excess amount for a year for RRSP; 204.2(2) — Where terminated plan deemed to continue to exist; 248(23.1)(a) — Where property transferred to spouse after death; 252(3) — Extended meaning of "spouse" and "former spouse"; Reg. 8300(1)"excluded contribution" — Amount transferred is excluded contribution.

History: Subsec. 146(16) amended by 2000, c. 12, Sch. 2, s. 2, to replace "spouse" with "spouse or common-law partner", and by Sch. 2, s. 9, to replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Para. 146(16)(b) amended applicable after 1992, and all that portion of subsec. (16) following para. (b) amended applicable to 1991 *et seq.*, by 1994, c. 7, Sch. VIII (1993, c. 24), subsecs. 82(9) and (10). Those portions formerly read:

> (b) to a registered retirement savings plan or registered retirement income fund under which the spouse or former spouse of the transferor is the annuitant, where the transferor and the transferor's spouse or former spouse are living separate and apart and the payment or transfer is made pursuant to a decree, order or judgment of a competent tribunal, or a written separation agreement, relating to a division of property between the transferor and the transferor's spouse or former spouse in settlement of rights arising out of their marriage or other conjugal relationship, on or after the breakdown of the marriage or other relationship,
>
> and on the payment or transfer of such property before the maturity of the plan,
>
> (c) the amount so paid or transferred on behalf of the transferor shall not by reason only of that payment or transfer be included by virtue of subsection (8) in computing the income of the transferor or the spouse or former spouse, and
>
> (d) no deduction may be made under subsection (5), (5.1) or (8.2) or section 8 or 60, in respect of the amount so paid or transferred, in computing the income of any taxpayer.

Regulations: 214(5), (6) (information return).

Remission Orders: *Certain Taxpayers Remission Order, 1999-2*, P.C. 1999-1855, s. 2 (remission to Quebec judges for excess contributions in 1989-90 transferred under 146(16)).

Interpretation Bulletins: IT-307R4: Spousal or common-law registered retirement savings plans; IT-415R2: Deregistration of RRSPs (archived); IT-528: Transfers of funds between registered plans.

Information Circulars: 72-22R9: Registered retirement savings plans; 74-1R5: Form T2037, Notice of purchase of annuity with "plan" funds.

Advance Tax Rulings: ATR-31: Funding of divorce settlement amount from DPSP.

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions).

Forms: T2033: Direct transfer under subsec. 146.3(14.1) or para. 146(16)(a) or 146.3(2)(e); T2220: Transfer from an RRSP or a RRIF to another RRSP or RRIF on marriage breakdown.

(17)–(19) [Repealed under former Act]

(20) Credited or added amount deemed not received — Where

(a) an amount is credited or added to a deposit with a depositary referred to in subparagraph (b)(iii) of the definition "retirement savings plan" in subsection (1) as interest or income in respect of the deposit,

(b) the deposit is a registered retirement savings plan at the time the amount is credited or added to the deposit, and

(c) during the calendar year in which the amount is credited or added or during the preceding calendar year, the annuitant under the plan was alive,

the amount shall be deemed not to be received by the annuitant or any other person solely because of the crediting or adding.

Related Provisions: 81(1)(r) — No income inclusion where amount credited or added to foreign retirement arrangement; 146(8) — Tax on withdrawals from plan.

History: Subsec. 146(20) substituted by 1994, c. 21, subsec. 69(9), applicable to deaths occurring after 1992. That subsec. formerly read:

> (20) Where amount credited or added deemed not received — Where an amount is credited or added to a deposit with a depositary referred to in subparagraph (b)(iii) of the definition "retirement savings plan" in subsection (1) as interest or income in respect of the deposit, and where
>
> (a) the deposit is a registered retirement savings plan at the time the amount is credited or added to the deposit, and
>
> (b) the annuitant under the plan is alive during the year in which the amount is credited or added,
>
> the amount shall be deemed not to be received by the annuitant by reason only of the crediting or adding.

Selected Cases [subsec. 146(20)]: *Foreman (P.M.) v. MNR*, [1992] 2 C.T.C. 2621 (TCC) (No artificiality where taxpayer repaid loan from

RRSP with proceeds of bank loan in December, then borrowed from RRSP in January to repay bank).

Interpretation Bulletins: IT-415R2: Deregistration of RRSPs (archived).

Information Circulars: 72-22R9: Registered retirement savings plans.

(21) Prescribed provincial pension plans — Where

(a) an amount (other than an amount that is part of a series of periodic payments) is transferred directly from an individual's account under a provincial pension plan prescribed for the purpose of paragraph 60(v)

(i) to a registered retirement savings plan or registered retirement income fund under which the individual, or a spouse or common-law partner or former spouse or common-law partner of the individual, is the annuitant,

(ii) to acquire from a licensed annuities provider an annuity that would be described in subparagraph 60(l)(ii) if the individual, or a spouse or common-law partner or former spouse or common-law partner of the individual, were the taxpayer referred to in that subparagraph and if that subparagraph were read without reference to clause 60(l)(ii)(B), or

(iii) to an account under the plan of a spouse or common-law partner or former spouse or common-law partner of the individual, and

(b) if the transfer is in respect of a spouse or common-law partner or former spouse or common-law partner of the individual,

(i) the individual and the spouse or common-law partner or former spouse or common-law partner are living separate and apart and the transfer is made under a decree, order or judgment of a competent tribunal, or under a written separation agreement, relating to a division of property in settlement of rights arising out of, or on the breakdown of, their marriage or common-law partnership, or

(ii) the amount is transferred as a consequence of the individual's death,

the following rules apply:

(c) the amount shall not, solely because of the transfer, be included because of subparagraph 56(1)(a)(i) in computing the income of a taxpayer, and

(d) no deduction may be made under any provision of this Act in respect of the transfer in computing the income of a taxpayer.

Related Provisions: 56(1)(d.2) — Income inclusion; 70(3.1)(a) — "Rights or things" treatment on death ; 146.3(2)(f)(vii) — Conditions for RRIF — transfer of funds under 146(21); 148(1)(e) — Amounts included in computing policyholder's income; 204.2(1.2)I(a)(iii) — Transfer under 146(21) excluded from cumulative excess RRSP amount; 212(1)(h)(iii.1)(A), 212(1)(h)(iv.1) — Transfers under 146(21) excluded from withholding tax on pension benefits.

History: Subsec. 146(21) amended by 2000, c. 12, Sch. 2, s. 2, to replace "spouse" with "spouse or common-law partner", and by Sch. 2, s. 9, to replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subsec. 146(21) amended by 1999, c. 22, subsec. 59(6), applicable to transfers made after 1994. It formerly read:

(21) Where an amount (other than an amount that is part of a series of periodic payments) is transferred on behalf of a particular individual directly from a provincial pension plan prescribed for the purpose of paragraph 60(v)

(a) to a registered retirement savings plan or a registered retirement income fund under which the particular individual is the annuitant,

(b) to a registered retirement savings plan or registered retirement income fund under which the spouse or former spouse of the particular individual is the annuitant, where the particular individual and the spouse or former spouse are living separate and apart and the transfer is made under a decree, order or judgment of a competent tribunal, or under a written separation agreement, relating to a division of property between the particular individual and the spouse or former spouse in settlement of rights arising out of, or on the breakdown of, their marriage,

(c) to acquire, from a person licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an annuities business, an annuity that would be described in subparagraph 60(l)(ii) if the particular individual were the taxpayer referred to therein and if that subparagraph were read without reference to clause (B) thereof, or

(d) to acquire, from a person licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an annuities business, an annuity that would be described in subparagraph 60(l)(ii) if the particular individual's spouse or former spouse were the taxpayer referred to therein and if that subparagraph were read without reference to clause (B) thereof, where the particular individual and the spouse or former spouse are living separate and apart and the transfer is made under a decree, order or judgment of a competent tribunal, or under a written separation agreement, relating to a division of property between the individual and the spouse or former spouse in settlement of rights arising out of, or on the breakdown of, their marriage,

except where the amount arose as a consequence of the death of an individual (other than the particular individual or a spouse or former spouse of the particular individual),

(e) the amount shall not, solely because of that transfer, be included because of subparagraph 56(1)(a)(i) in computing the income of a taxpayer, and

(f) no deduction may be made under any provision of this Act in respect of the transfer in computing the income of a taxpayer.

Subsec. 146(21) added by 1994, c. 21, subsec. 69(10), applicable to transfers occurring after 1991, except that

(a) where a taxpayer elects under subsec. 26(10) of 1994, c. 21 [i.e. with respect to subpara. 60(l)(v)], subsec. 146(21) does not apply in respect of transfers made on behalf of the taxpayer in 1992; and

(b) with respect to transfers made in 1992,

(i) the word "spouse", wherever it appears in subsec. 146(21), shall have the meaning assigned by subsec. 146(1.1) as it read in its application to that year, and

(ii) the word "marriage" in paras. 146(21)(b) and (d), shall be read as "marriage or other conjugal relationship".

Regulations: 7800(1) (prescribed provincial pension plan is the Saskatchewan Pension Plan).

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

(22) Deemed payment of RRSP premiums and provincial pension plan contributions [extension of contribution deadline] — If the Minister so directs,

(a) except for the purposes of subparagraphs (5)(a)(iv.1) and (5.1)(a)(iv), an amount paid by an individual in a taxation year (other than an amount paid in the first 60 days of the year) as a contribution to an account under a prescribed provincial pension plan or as a premium is deemed to have been paid at the beginning of the year and not at the time it was actually paid;

(b) all or part of the amount may be designated in writing by the individual for the purpose of paragraph 60(j), (j.1) or (l) or subsection 146.01(3) or 146.02(3); and

(c) the designation is deemed to have been made in the individual's return of income for the preceding taxation year or in a prescribed form filed with that return, as the case may be.

History: Subsec. 146(22) added by 1999, c. 22, subsec. 59(6), applicable to amounts paid after 1997.

Definitions [s. 146]: "amount" — 248(1); "annuitant" — 146(1); "annuity" — 248(1); "arm's length" — 251(1); "assessment", "authorized foreign bank" — 248(1); "beneficiary" — 108(1); "benefit" — 146(1); "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "carrying on business" — 253; "child" — 252(1); "common-law partner", "common-law partnership" — 248(1); "consequence of the death", "consequence of the annuitant's death", "consequence of the individual's death" — 248(8); "corporation" — 248(1), *Interpretation Act* 35(1); "credit union" — 137(6), 248(1); "death benefit" — 248(1); "deferred profit sharing plan" — 147(1), 248(1); "depositary" — 146(1)"retirement savings plan"(b)(iii); "designated withdrawal" — 146.01(1); "earned income" — 146(1); "employer", "employment" — 248(1); "estate" — 104(1), 248(1); "farm loss" — 111(8), 248(1); "farming" — 248(1); "financially dependent" — 146(1.1); "former spouse" — 252(3); "immovable" — Quebec *Civil Code* art. 900–907; "individual" — 248(1); "interest in a family farm partnership" — 70(10); "issuer" — 146(1); "legal representative" — 248(1); "licensed annuities provider" — 147(1), 248(1); "life insurance policy" — 138(12), 248(1); "listed" — 87(10); "listed personal property" — 54, 248(1); "maturity" — 146(1); "Minister" — 248(1); "money purchase limit" — 147.1(1), 248(1); "net past service pension adjustment", "non-qualified investment" — 146(1); "non-resident", "office" — 248(1); "PSPA withdrawals" — Reg. 8307(5); "parent" — 252(2); "past service pension adjustment" — 248(1), Reg. 8303; "pension adjustment" — 248(1), Reg. 8301(1); "person" — 248(1); "premium" — 146(1); "prescribed" — 248(1); "prescribed stock exchange in Canada" — Reg. 3200; "prescribed withdrawal" — Reg. 8306(6); "property" — 248(1); "province" — *Interpretation Act* 35(1); "qualified investment" — 146(1); "RRSP deduction limit", "RRSP dollar limit" — 146(1), 248(1); "received" — 146(20); "refund of premiums" — 146(1); "registered pension plan" — 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "regulation" — 248(1); "resident" — 250; "retirement income" — 146(1); "retirement savings plan" — 146(1), 248(1); "retiring allowance", "salary or wages", "separation agreement", "share" — 248(1); "spousal or common-law partner plan" — 146(1); "spouse" — 252(3); "superannuation or pension benefit" — 248(1); "tax-paid amount" — 146(1); "tax payable" — 248(2); "taxable capital gain" — 38, 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "testamentary trust" — 108(1), 248(1); "total pension adjustment reversal" — 248(1); "trust" — 104(1), 248(1), (3); "unused RRSP deduction room" — 146(1), 248(1); "writing" — *Interpretation Act* 35(1).

Possible Future Amendment — Tax pre-paid savings plans

Federal budget, Supplementary Information, February 18, 2003: *Tax Pre-Paid Savings Plans*

This budget contains proposals to increase registered pension plan and registered retirement savings plan limits to support saving by Canadians. It is important that the tax system continue to provide and improve upon mechanisms to support saving. The Government has received numerous representations from individuals, researchers and businesses that Canada's tax system should be more conducive to saving. In particular, some of these have proposed the creation of tax pre-paid savings plans (TPSPs).

TPSPs are savings vehicles that, like RRSPs, increase the after-tax return to saving compared to saving in unregistered plans. TPSPs, however, are structured differently than RRSPs. In a TPSP, no deduction is provided on contributions (in this sense, the income tax on contributions is "pre-paid") but the investment income in the plan and withdrawals are not subject to income tax. A number of other countries provide for availability to taxpayers of a combination of RRSP-type and TPSP-type vehicles that improve the tax treatment of savings.

There are a number of important issues that would have to be considered in examining any proposal to introduce TPSPs, for example: their effect on savings behaviour, impact on government revenues, and whether such plans could be effectively administered.

The Government intends to review and consult with respect to these issues in order to assess whether TPSPs could be a useful and appropriate mechanism to provide additional savings opportunities for Canadians.

Federal budget, Supplementary Information, March 23, 2004: *Tax Treatment of Savings*

A tax system that encourages private saving is important both to support investment and economic growth and to allow Canadians to meet their individual savings needs. Budget 2003 announced increases in the registered pension plan (RPP) and registered retirement savings plan (RRSP) limits to $18,000 by 2005 and 2006 respectively. It also noted that it is important that the tax system continue to provide effective mechanisms to support saving. In this regard, it was stated that representations received on the tax treatment of savings would be reviewed and analysis conducted in order to identify possible approaches for future improvements. In particular, the Budget stated an intention to examine and consult on the question of whether tax pre-paid savings plans (TPSPs) could be a useful and appropriate additional savings vehicle for Canadians.

Finance officials consulted with interested groups, experts and academics on the tax treatment of savings and TPSPs. The discussions were helpful in gathering views on how the tax treatment of savings could be improved and on TPSPs in particular. The Department is reviewing the views brought forward and is continuing to examine and assess TPSPs and other approaches to improve the tax treatment of savings. In the consultation, the question of whether a new type of savings plan such as a TPSP could be appropriate for Canada raised a number of important issues which require further consideration.

Home Buyers' Plan

146.01 (1) Definitions — In this section,

"annuitant" has the meaning assigned by subsection 146(1);

"benefit" has the meaning assigned by subsection 146(1);

"completion date", in respect of an amount received by an individual, is

(a) where the amount was received before March 2, 1993, October 1, 1993,

(b) where the amount was received after March 1, 1993 and before March 2, 1994, October 1, 1994, and

(c) in any other case, October 1 of the calendar year following the calendar year in which the amount was received;

History: Paras. (b) and (c) substituted for para. (b) in the definition "completion date" in subsec. 146.01(1) by 1995, c. 3, subsec. 44(1), applicable to 1994 *et seq.* Para. (b) formerly read:

(b) in any other case, October 1, 1994;

The definition "completion date" added to subsec. 146.01(1) by 1994, c. 8, subsec. 19(3), applicable to 1992 *et seq.*

"designated withdrawal" of an individual is an amount received by the individual, as a benefit out of or under a registered retirement savings plan, pursuant to the individual's written request in the prescribed form referred to in paragraph (a) of the definition "eligible amount" (as that definition read in its application to amounts received before 1999), paragraph (a) of the definition "regular eligible amount" or paragraph (a) of the definition "supplemental eligible amount";

History: The definition "designated withdrawal" added to subsec. 146.01(1) by 1999, c. 22, subsec. 60(4), applicable after 1998.

"eligible amount" of an individual is a regular eligible amount or supplemental eligible amount of the individual;

Related Provisions: 146(5)(a)(iv.1), 146(5.1)(a)(iv) — Amount withdrawn within 90 days under Home Buyers' Plan ineligible for RRSP contribution; 146.01(2) — Interpretation; 146.01(3), (4) — Repayment of eligible amounts to RRSP.

History: The definition "eligible amount" in subsec. 146.01(1) amended by 1999, c. 22, subsec. 60(1), applicable to amounts received after 1998. It formerly read:

"eligible amount" in respect of an individual means an amount received at a particular time by the individual as a benefit out of or under a registered retirement savings plan where

(a) the amount is received after February 25, 1992 pursuant to the written request of the individual in prescribed form in which the individual sets out the location of a qualifying home that the individual has begun, or intends not later than one year after its

acquisition by the individual to begin, using as a principal place of residence,

(b) the individual is resident in Canada at the particular time and entered into an agreement in writing before the particular time for the acquisition of the qualifying home or with respect to its construction,

(c) the individual acquires the qualifying home (or replacement property for the qualifying home) after February 25, 1992 and before the completion date in respect of the amount,

(d) neither the individual nor the individual's spouse acquired the qualifying home more than 30 days before the particular time,

(d.1) if the particular time is after March 1, 1994,

(i) the individual did not have an owner-occupied home in the period that began at the beginning of the fourth preceding calendar year that ended before the particular time and ended on the 31st day before the particular time, and

(ii) the individual's spouse did not have an owner-occupied home in the period referred to in subparagraph (i)

(A) that is inhabited by the individual during the spouse's marriage to the individual, or

(B) that is a share of the capital stock of a cooperative housing corporation that relates to a housing unit that is inhabited by the individual during the spouse's marriage to the individual,

(e) unless the individual acquired the qualifying home before the particular time, the individual is resident in Canada throughout the period beginning immediately after the particular time and ending at the earliest of any time at which the individual acquired the qualifying home or any replacement property for the qualifying home,

(f) the total of the amount and all eligible amounts received by the individual at or before the particular time does not exceed $20,000,

(g) if the particular time is after March 1, 1993 and before March 2, 1994, neither the individual, nor another individual who was, at any time after February 25, 1992 and before the particular time, a spouse of the individual, received an eligible amount before March 2, 1993,

(h) if the particular time is after March 1, 1994 and before 1995, the individual did not receive an eligible amount before March 2, 1994, and

(i) if the particular time is after 1994, the individual did not receive an eligible amount before the calendar year that includes the particular time;

Para. (a) of the definition "eligible amount" in subsec. 146.01(1) amended and (d.1) added by 1995, c. 3, subsecs. 44(2) and (3), applicable to 1994 *et seq.* Para. (a) formerly read:

(a) the amount is received after February 25, 1992 and before March 2, 1994 pursuant to the written request of the individual in prescribed form in which the individual sets out the location of a qualifying home that the individual has begun, or intends not later than one year after its acquisition by the individual to begin, using as a principal place of residence,

Paras. (g) to (i) substituted for para. (g) in the definition "eligible amount" in subsec. 146.01(1) by 1995, c. 3, subsec. 44(4); para. (g) applicable to 1992 *et seq.*, and paras. (h) and (i) applicable to 1994 *et seq.* Para. (g) formerly read:

(g) if the particular time is after March 1, 1993, neither the individual, nor another individual who was, at any time after February 25, 1992 and before the particular time, a spouse of the individual, received an eligible amount before March 2, 1993;

The definition of "eligible amount" in subsec. 146.01(1) amended by 1994, c. 8, subsec. 19(1), applicable to 1992 *et seq.* The definition formerly read:

"eligible amount" in respect of an individual means an amount received at a particular time by the individual as a benefit out of or under a registered retirement savings plan where

(a) the amount is received after February 25, 1992 and before March 2, 1993 pursuant to the written request of the individual in prescribed form in which the individual sets out the location of a qualifying home that the individual has begun, or intends not later than one year after its acquisition by the individual to begin, using as a principal place of residence,

(b) the individual is resident in Canada at the particular time and entered into an agreement in writing before the particular time for the acquisition of the qualifying home or with respect to its construction,

(c) the individual acquires the qualifying home (or replacement property for the qualifying home) after February 25, 1992 and before October 1, 1993,

(d) neither the individual nor the individual's spouse acquired the qualifying home more than 30 days before the particular time,

(e) unless the individual acquired the qualifying home before the particular time, the individual is resident in Canada throughout the period beginning immediately after the particular time and ending at the earliest of any time at which the individual acquired the qualifying home or any replacement property for the qualifying home, and

(f) the total of the amount and all eligible amounts received by the individual at or before the particular time does not exceed $20,000;

Regulations: 214(1) (information return).

Forms: T1036: Home buyers' plan — request to withdraw funds from an RRSP; RC4135: Home Buyers' Plan [guide].

"excluded premium" in respect of an individual means a premium under a registered retirement savings plan where the premium

(a) was designated by the individual for the purposes of paragraph 60(j), (j.1), (j.2) or (l),

(b) was an amount transferred directly from a registered retirement savings plan, registered pension plan, registered retirement income fund, deferred profit sharing plan or a provincial pension plan prescribed for the purpose of paragraph 60(v),

(c) was deductible under subsection 146(6.1) in computing the individual's income for any taxation year, or

(d) was deducted in computing the individual's income for the 1991 taxation year;

History: Para. (b) of "excluded premium" in subsec. 146.01(1) substituted by 1994, c. 21, s. 70, applicable to 1992 *et seq.* That para. formerly read:

(b) was an amount transferred directly from a registered retirement savings plan, registered pension plan, registered retirement income fund or deferred profit sharing plan,

"excluded withdrawal" of an individual means

(a) an eligible amount received by the individual,

(b) a particular amount (other than an eligible amount) received while the individual was resident in Canada and in a calendar year if

(i) the particular amount would be an eligible amount of the individual if the definition "regular eligible amount" were read without reference to paragraphs (c) and (g) of that definition and the definition "supplemental eligible amount" were read without reference to paragraphs (d) and (f) of that definition,

(ii) a payment (other than an excluded premium) equal to the particular amount is made by the individual under a retirement saving plan that is, at the end of the taxation year of the payment, a registered retirement savings plan under which the individual is the annuitant,

(iii) the payment is made before the particular time that is

(A) if the individual was not resident in Canada at the time the individual filed a return of income for the taxation year in which the particular amount was received, the earlier of

(I) the end of the following calendar year, and

(II) the time at which the individual filed the return,

(B) where clause (A) does not apply and the particular amount would, but for subclause (2)(c)(ii)(A)(II), be an eligible amount, the end of the second following calendar year, and

(C) in any other case, the end of the following calendar year, and

(iv) either

(A) if the particular time is before 2000, the payment is made, as a repayment of the particular amount, to the issuer of the registered retirement savings plan from which the particular amount was received, no other payment is made as a repayment of the particular amount and that issuer is notified of the payment in prescribed form submitted to the issuer at the time the payment is made, or

(B) the payment is made after 1999 and before the particular time and the payment (and no other payment) is designated under this clause as a repayment of the particular amount in prescribed form filed with the Minister on or before the particular time (or before such later time as is acceptable to the Minister), or

(c) an amount (other than an eligible amount) that is received in a calendar year before 1999 and that would be an eligible amount of the individual if the definition "eligible amount", as it applied to amounts received before 1999, were read without reference to paragraphs (c) and (e) of that definition, where the individual

(i) died before the end of the following calendar year, and

(ii) was resident in Canada throughout the period that began immediately after the amount was received and ended at the time of the death;

Related Provisions: 146(1)"premium" — Definition excludes repayment described in para. (b); 146(8) — Home Buyers' Plan withdrawal not to be included in income; 146.01(2)(c) — Special rules.

History: The definition "excluded withdrawal" in subsec. 146.01(1) amended by 1999, c. 22, subsec. 60(2), applicable to amounts received after 1996, except that the portion of para. (b) of the definition before subpara. (ii), as amended, shall in its application to amounts received before 1999 be read as follows:

(b) a particular amount (other than an eligible amount), received in a calendar year, that would be an eligible amount of the individual if

(i) the definition "eligible amount" were read without reference to paragraphs (c) and (e) of that definition,

The definition formerly read:

"excluded withdrawal" in respect of an individual means

(a) an eligible amount received by the individual, or

(b) an amount (other than an eligible amount) that would, if the definition "eligible amount" were read without reference to paragraphs (c) and (e) thereof, be an eligible amount received by the individual out of or under a registered retirement savings plan in respect of which a person is the issuer, where either

(i) the individual

(A) died before the end of the calendar year that includes the completion date in respect of the amount, and

(B) was resident in Canada throughout the period beginning immediately after the amount was received and ending at the time of the death, or

(ii) the amount is repaid before the end of the calendar year described in clause (i)(A) to a registered retirement savings plan in respect of which the person is the issuer (or, where the individual was not resident in Canada at the time the individual filed a return of income under this Part for the taxation year in which the amount was received by the individual, before the earlier of the end of the calendar year described in clause (i)(A) and the time at which the individual filed that return) and the issuer is notified of the repayment in prescribed form submitted to the issuer at the time the repayment is made,

except that where an amount would, but for subclause (2)(c)(ii)(A)(II), be an eligible amount, subparagraph (b)(ii) applies in respect of the amount as if the first reference therein to "described in clause (i)(A)" were read as "following the calendar year described in clause (i)(A)";

That portion of the definition of "excluded withdrawal" in subsec. 146.01(1) following para. (a) amended by 1994, c. 8, subsec. 19(2), applicable to 1992 *et seq.* That portion formerly read:

(b) an amount (other than an eligible amount) that would, if the definition "eligible amount" were read without reference to paragraphs (c) and (e) of that definition, be an eligible amount received by the individual out of or under a registered retirement savings plan in respect of which a person is the issuer, where either

(i) the individual died before 1994 and was resident in Canada throughout the period beginning immediately after the amount was received and ending at the time of the death, or

(ii) the amount is repaid before 1994 to a registered retirement savings plan in respect of which the person is the issuer (or, where the individual was not resident in Canada at the time the individual filed a return of income under this Part for the taxation year in which the amount was received by the individual, before the earlier of January 1, 1994 and the time the individual filed that return) and the issuer is notified of the repayment in prescribed form submitted to the issuer at the time the repayment is made,

except that, where an amount would, but for subclause (2)(c)(ii)(A)(II), be an eligible amount, subparagraph (b)(ii) applies in respect of the amount as if the first reference therein to "1994" were "1995";

Regulations: 104(3) — No tax withheld at source on excluded withdrawal.

"HBP balance" of an individual at any time means the amount, if any, by which the total of all eligible amounts received by the individual at or before that time exceeds the total of

(a) all amounts designated under subsection (3) by the individual for taxation years that ended before that time, and

(b) all amounts each of which is included under subsection (4) or (5) in computing the individual's income for a taxation year that ended before that time;

Related Provisions: 150(1.1)(b)(iv) — Individual with HBP balance must file tax return.

History: The definition "HBP balance" added to subsec. 146.01(1) by 1999, c. 22, subsec. 60(4), applicable after 1998.

"issuer" has the meaning assigned by subsection 146(1);

"participation period" of an individual means each period

(a) that begins at the beginning of a calendar year in which the individual receives an eligible amount, and

(b) that ends immediately before the beginning of the first subsequent calendar year at the beginning of which the individual's HBP balance is nil;

History: The definition "participation period" added to subsec. 146.01(1) by 1999, c. 22, subsec. 60(4), applicable after 1998.

"premium" has the meaning assigned by subsection 146(1);

"qualifying home" means

(a) a housing unit located in Canada, or

(b) a share of the capital stock of a cooperative housing corporation, the holder of which is entitled to possession of a housing unit located in Canada,

except that, where the context so requires, a reference to a qualifying home that is a share described in paragraph (b) means the housing unit to which the share described in that paragraph relates;

"quarter" means any of the following periods in a calendar year:

(a) the period beginning on January 1 and ending on March 31,

(b) the period beginning on April 1 and ending on June 30,

(c) the period beginning on July 1 and ending on September 30, and

(d) the period beginning on October 1 and ending on December 31;

Proposed Repeal — 146.01(1)"quarter"

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 141(1), will repeal the definition "quarter" in subsec. 146.01(1), applicable to 2002 *et seq.*

Technical Notes: Subsection 146.01(1) contains the definition "quarter" for purposes of the rules relating to the HBP. This definition is repealed as a consequence of the repeal of subsection 146.01(8), where this definition applied.

"regular eligible amount" of an individual means an amount received at a particular time by the individual as a benefit out of or under a registered retirement savings plan if

(a) the amount is received pursuant to the individual's written request in a prescribed form in which the individual sets out the location of a qualifying home that the individual has begun, or intends not later than one year after its acquisition by the individual to begin, using as a principal place of residence,

(b) the individual entered into an agreement in writing before the particular time for the acquisition of it or with respect to its construction,

(c) the individual

(i) acquires the qualifying home (or a replacement property for the qualifying home) before the completion date in respect of the amount, or

(ii) dies before the end of the calendar year that includes the completion date in respect of the amount,

(d) neither the individual nor the individual's spouse or common-law partner acquired the qualifying home more than 30 days before the particular time,

(e) the individual did not have an owner-occupied home in the period

(i) that began at the beginning of the fourth preceding calendar year that ended before the particular time, and

(ii) that ended on the 31st day before the particular time,

(f) the individual's spouse or common-law partner did not, in the period referred to in paragraph (e), have an owner-occupied home

(i) that was inhabited by the individual during the spouse's or common-law partner's marriage or common-law partnership to the individual, or

(ii) that was a share of the capital stock of a cooperative housing corporation that relates to a housing unit inhabited by the individual during the spouse's or common-law partner's marriage or common-law partnership to the individual,

(g) the individual

(i) acquired the qualifying home before the particular time and is resident in Canada at the particular time, or

(ii) is resident in Canada throughout the period that begins at the particular time and ends at the earlier of the time of the individual's death and the earliest time at which the individual acquires the qualifying home or a replacement property for it,

(h) the total of the amount and all other eligible amounts received by the individual in the calendar year that includes the particular time does not exceed $20,000, and

(i) the individual's HBP balance at the beginning of the calendar year that includes the particular time is nil;

History: Para. (d) and the opening words of para. (f) of the definition "regular eligible amount" in subsec. 146.01(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subparas. (f)(i) and (ii) of the definition "regular eligible amount" amended by 2000, c. 12, Sch. 2, s. 7, to replace "spouse's" with "spouse's or common-law partner's", and by Sch. 2, s. 9, to replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced under 248(1)"common-law partner".

The definition "regular eligible amount" added to subsec. 146.01(1) by 1999, c. 22, subsec. 60(4), applicable to amounts received after 1998.

Regulations: 214(1) (information return).

"replacement property" for a particular qualifying home in respect of an individual, or of a specified disabled person in respect of the individual, means another qualifying home that

(a) the individual or the specified disabled person agrees to acquire, or begins the construction of, at a particular time that is after the latest time that the individual made a request described in the definition "designated withdrawal" in respect of the particular qualifying home,

(b) at the particular time, the individual intends to be used by the individual or the specified disabled person as a principal place of residence not later than one year after its acquisition, and

(c) none of the individual, the individual's spouse or common-law partner, the specified disabled person or

that person's spouse or common-law partner had acquired before the particular time;

History: Para. (c) of the definition "replacement property" in subsec. 146.01(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

The definition "replacement property" in subsec. 146.01(1) amended by 1999, c. 22, subsec. 60(3), applicable after 1998. It formerly read:

"replacement property" for a particular qualifying home in respect of an individual means another qualifying home where

(a) the individual

(i) agreed to acquire, or

(ii) began the construction of

the other qualifying home at a particular time that is after the latest time that the individual requested a withdrawal in respect of the particular qualifying home under paragraph (a) of the definition "eligible amount",

(b) the individual intended, at the particular time, that the other qualifying home be used by the individual as a principal place of residence not later than one year after its acquisition, and

(c) neither the individual nor the individual's spouse had acquired the other qualifying home before the particular time.

"specified disabled person", in respect of an individual at any time, means a person who

(a) is the individual or is related at that time to the individual, and

(b) would be entitled to a deduction under subsection 118.3(1) in computing tax payable under this Part for the person's taxation year that includes that time if that subsection were read without reference to paragraph (c) of that subsection;

Related Provisions: 146.01(1)"supplemental eligible amount" — Withdrawal to acquire accessible home for specified disabled person.

History: The definition "specified disabled person" added to subsec. 146.01(1) by 1999, c. 22, subsec. 60(4), applicable after 1998.

"spouse" — [Repealed]

History: Definition of "spouse" in subsec. 146.01(1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 83(2), applicable to 1992 taxation year only. The definition read:

"spouse" has the meaning assigned by subsection 146(1.1).

"supplemental eligible amount" of an individual means an amount received at a particular time by the individual as a benefit out of or under a registered retirement savings plan if

(a) the amount is received pursuant to the individual's written request in a prescribed form identifying a specified disabled person in respect of the individual and setting out the location of a qualifying home

(i) that has begun to be used by that person as a principal place of residence, or

(ii) that the individual intends to be used by that person as a principal place of residence not later than one year after its first acquisition after the particular time,

(b) the purpose of receiving the amount is to enable the specified disabled person to live

(i) in a dwelling that is more accessible by that person or in which that person is more mobile or functional, or

(ii) in an environment better suited to the personal needs and care of that person,

(c) the individual or the specified disabled person entered into an agreement in writing before the particular time for the acquisition of the qualifying home or with respect to its construction,

(d) either

(i) the individual or the specified disabled person acquires the qualifying home (or a replacement property for it) after 1998 and before the completion date in respect of the amount, or

(ii) the individual dies before the end of the calendar year that includes the completion date in respect of the amount,

(e) none of the individual, the spouse or common-law partner of the individual, the specified disabled person or the spouse or common-law partner of that person acquired the qualifying home more than 30 days before the particular time,

(f) either

(i) the individual or the specified disabled person acquired the qualifying home before the particular time and the individual is resident in Canada at the particular time, or

(ii) the individual is resident in Canada throughout the period that begins at the particular time and ends at the earlier of the time of the individual's death and the earliest time at which

(A) the individual acquires the qualifying home or a replacement property for it, or

(B) the specified disabled person acquires the qualifying home or a replacement property for it,

(g) the total of the amount and all other eligible amounts received by the individual in the calendar year that includes the particular time does not exceed $20,000, and

(h) the individual's HBP balance at the beginning of the calendar year that includes the particular time is nil.

Related Provisions: 118.2(2)(l.2), (l.21) — Medical expense credit for disability-related renovations and construction costs.

History: Para. (e) of the definition "supplemental eligible amount" in subsec. 146.01(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

The definition "supplemental eligible amount" added to subsec. 146.01(1) by 1999, c. 22, subsec. 60(4), applicable to amounts received after 1998.

Regulations: 214(1) (information return).

(2) Special rules — For the purposes of this section,

(a) an individual shall be considered to have acquired a qualifying home if the individual acquired it jointly with one or more other persons;

(a.1) an individual shall be considered to have an owner-occupied home at any time where, at that time, the individual owns, whether jointly with another person or otherwise, a housing unit or a share of the capital stock of a cooperative housing corporation and

(i) the housing unit is inhabited by the individual as the individual's principal place of residence at that time, or

(ii) the share was acquired for the purpose of acquiring a right to possess a housing unit owned by the corporation and that unit is inhabited by the individual as the individual's principal place of residence at that time;

(b) where an individual agrees to acquire a condominium unit, the individual shall be deemed to have acquired it on the day the individual is entitled to immediate vacant possession of it;

(c) except for the purposes of subparagraph (g)(ii) of the definition "regular eligible amount" and subparagraph (f)(ii) of the definition "supplemental eligible amount", an individual or a specified disabled person in respect of the individual is deemed to have acquired, before the completion date in respect of a designated withdrawal received by the individual, the qualifying home in respect of which the designated withdrawal was received if

(i) neither the qualifying home nor a replacement property for it was acquired by the individual or the specified disabled person before that completion date, and

(ii) either

(A) the individual or the specified disabled person

(I) is obliged under the terms of a written agreement in effect on that completion date to acquire the qualifying home (or a replacement property for it) on or after that date, and

(II) acquires the qualifying home or a replacement property for it before the day that is one year after that completion date, or

(B) the individual or the specified disabled person made payments, the total of which equalled or exceeded the total of all designated withdrawals that were received by the individual in respect of the qualifying home,

(I) to persons with whom the individual was dealing at arm's length,

(II) in respect of the construction of the qualifying home or a replacement property for it, and

(III) in the period that begins at the time the individual first received a designated withdrawal in respect of the qualifying home and that ends before that completion date; and

(d) an amount received by an individual in a particular calendar year is deemed to have been received by the individual at the end of the preceding calendar year and not at any other time if

(i) the amount is received in January of the particular year (or at such later time as is acceptable to the Minister),

(ii) the amount would not be an eligible amount if this section were read without reference to this paragraph, and

(iii) the amount would be an eligible amount if the definition "regular eligible amount" in subsection (1) were read without reference to paragraph (i) of that definition and the definition "supplemental eligible amount" were read without reference to paragraph (h) of that definition.

Related Provisions: 146(5)(a)(iv.1), 146(5.1)(a)(iv) — Amount withdrawn within 90 days under Home Buyers' Plan ineligible for RRSP contribution.

History: Para. 146.01(2)(c) amended, paras. (d) and (e) repealed, and para. (f) amended and renumbered as para. (d), by 1999, c. 22, subsec. 60(5), applicable to amounts received after 1998. Paras. (c)–(f) formerly read:

(c) where

(i) neither a qualifying home in respect of which an individual withdrew an amount described in paragraph (a) of the definition "eligible amount" in subsection (1) nor a replacement property for the qualifying home has been acquired by the individual before the completion date in respect of the amount, and

(ii) either

(A) the individual

(I) is obliged under the terms of a written agreement in effect on that completion date to acquire the qualifying home (or a replacement property for the qualifying home) on or after that date,

(II) acquires the qualifying home or a replacement property for the qualifying home before the day that is one year after that completion date, and

(III) is resident in Canada throughout the period beginning on that completion date and ending on the earlier of October 1 in the first calendar year beginning after that date and the earliest of any day on which the individual acquires the qualifying home or a replacement property for the qualifying home, or

(B) the individual made payments

(I) to persons with whom the individual was dealing at arm's length,

(II) in respect of the construction of the qualifying home or a replacement property for the qualifying home, and

(III) in the period beginning at the time the individual first withdrew an amount described in paragraph (a) of that definition in respect of the qualifying home and ending before that completion date,

and the total of all payments so made was not less than the total of all amounts described in that paragraph in respect of the qualifying home that were withdrawn by the individual,

except for the purpose of this paragraph, the individual shall be deemed to have acquired the qualifying home before that completion date;

(d) where

(i) an individual or a spouse of the individual receives an eligible amount before March 2, 1993,

(ii) at a particular time after March 1, 1993 and before April 1993 (or at such later time in 1993 as is acceptable to the Minister), the individual receives another amount that would, if the definition "eligible amount" in subsection (1) were read without reference to paragraph (g) thereof, be an eligible amount, and

(iii) the request described in paragraph (a) of the definition "eligible amount" in subsection (1) pursuant to which the other amount was received was made before March 2, 1993 or at such later time as is acceptable to the Minister,

except for the purposes of paragraphs (a) to (f) of the definition "eligible amount" in subsection (1) and the purposes of this paragraph, the other amount shall be deemed to have been received by the individual on March 1, 1993 and not at the particular time and any premium paid by the individual or the individual's spouse after March 1, 1993 and before the particular time under a registered retirement savings plan shall be deemed to have been paid on March 1, 1993;

(e) where

(i) at a particular time after March 1, 1994 and before April 1994 (or at such later time in 1994 as is acceptable to the Minister), an individual receives an amount that would, if paragraph (g) of the definition "eligible amount" in subsection (1) were read without reference to the words "and before March 2, 1994" and that definition were read without reference to paragraphs (d.1) and (h) thereof, be an eligible amount,

(ii) the request described in paragraph (a) of the definition "eligible amount" in subsection (1) pursuant to which the amount was received was made before March 2, 1994 or, where the individual received an eligible amount before March 2, 1994, at such later time as is acceptable to the Minister, and

(iii) the individual does not elect by notifying the Minister in writing before the end of 1995 that this paragraph not apply

except for the purposes of this paragraph and paragraphs (a) to (f) of the definition "eligible amount" in subsection (1), that amount shall be deemed to have been received by the individual on March 1, 1994 and not at the particular time and any premium paid under a registered retirement savings plan by the individual or the individual's spouse after March 1, 1994 and before the particular time shall be deemed to have been paid on March 1, 1994; and

(f) where

(i) an individual receives an eligible amount in a particular calendar year,

(ii) at a particular time in January of the following calendar year (or at such later time in that following year as is acceptable to the Minister), an individual receives another amount that would, if the definition "eligible amount" in subsection (1) were read without reference to paragraph (i) thereof, be an eligible amount, and

(iii) the request described in paragraph (a) of the definition "eligible amount" in subsection (1) pursuant to which the other amount was received was made before the end of the particular calendar year

except for the purposes of this paragraph and paragraphs (a) to (h) of the definition "eligible amount" in subsection (1), the other amount shall be deemed to have been received by the individual at the end of the particular calendar year and not at the particular time.

Para. 146.01(2)(a.1) added by 1995, c. 3, subsec. 44(5), applicable to 1994 *et seq.*

Subparas. 146.01(2)(d)(ii) and (iii) amended by 1995, c. 3, subsec. 44(6), applicable to 1992 *et seq.* Subparas. (ii) and (iii) formerly read:

(ii) at a particular time after March 1, 1993 and before April 1993 the individual receives another amount that would, if the reference to "March 1, 1993" in paragraph (g) of the definition "eligible amount" in subsection (1) were read as "March 1993", be an eligible amount, and

(iii) the request described in paragraph (a) of the definition "eligible amount" in subsection (1) pursuant to which the other amount was received was made before March 2, 1993,

Paras. 146.01(2)(e) and (f) substituted for para. (e) by 1995, c. 3, subsec. 44(7); para. (e) applicable to 1992 *et seq.*, and para. (f) applicable to 1995 *et seq.* Para. (e) formerly read:

(e) where

(i) at a particular time after March 1, 1994 and before April 1994, an individual receives an amount that would, if the reference to "March 2, 1994" in paragraph (a) of the definition "eligible amount" in subsection (1) were read as "April 1994", be an eligible amount, and

(ii) the request described in paragraph (a) of the definition "eligible amount" in subsection (1) pursuant to which the amount was received was made before March 2, 1994,

except for the purposes of paragraphs (b) to (g) of the definition "eligible amount" in subsection (1) and the purposes of this paragraph, that amount shall be deemed to have been received by the individual on March 1, 1994 and not at the particular time and any premium paid by the individual or the individual's spouse after March 1, 1994 and before the particular time under a registered retirement savings plan shall be deemed to have been paid on March 1, 1994.

Para. 146.01(2)(c) amended, paras. (d) and (e) added, by 1994, c. 8, subsec. 19(4), applicable to 1992 *et seq.* Para. (c) formerly read:

(c) where

(i) neither a qualifying home in respect of which an individual withdrew an amount described in paragraph (a) of the definition "eligible amount" in subsection (1) nor a replacement property for the qualifying home has been acquired by the individual before October 1, 1993, and

(ii) either

(A) the individual

(I) is obliged under the terms of a written agreement in effect on October 1, 1993 to acquire the qualifying home (or a replacement property for the qualifying home) on or after that day,

(II) acquires the qualifying home or a replacement property for the qualifying home before October 1, 1994, and

(III) is resident in Canada throughout the period beginning on October 1, 1993 and ending on the earlier of October 1, 1994 and the earliest of any day on which the individual acquires the qualifying home or a replacement property for the qualifying home, or

(B) the individual made payments

(I) to persons with whom the individual was dealing at arm's length,

(II) in respect of the construction of the qualifying home or a replacement property for the qualifying home, and

(III) in the period beginning at the time the individual first withdrew an amount described in paragraph (a) of that definition in respect of the qualifying home and ending before October 1, 1993,

and the total of all payments so made was not less than the total of all amounts described in that paragraph in respect of the qualifying home that were withdrawn by the individual,

except for the purposes of this paragraph, the individual shall be deemed to have acquired the qualifying home on September 30, 1993.

Forms: RC4135: Home Buyers' Plan [guide].

(3) Repayment of eligible amount — An individual may designate a single amount for a taxation year in a prescribed form filed with the individual's return of income for the year if the amount does not exceed the lesser of

(a) the total of all amounts (other than excluded premiums, repayments to which paragraph (b) of the definition "excluded withdrawal" in subsection (1) applies and amounts paid by the individual in the first 60 days of the year that can reasonably be considered to have been deducted in computing the individual's income, or designated under this subsection, for the preceding taxation year) paid by the individual in the year or within 60 days after the end of the year under a retirement savings plan that is at the end of the year or the following taxation year a registered retirement savings plan under which the individual is the annuitant, and

(b) the amount, if any, by which

(i) the total of all eligible amounts received by the individual before the end of the year

exceeds the total of

(ii) all amounts designated by the individual under this subsection for preceding taxation years, and

(iii) all amounts each of which is an amount included in computing the income of the individual under subsection (4) or (5) for a preceding taxation year.

Related Provisions: 146.02(1)"excluded premium"(a) — Amount claimed under Home Buyers' Plan ineligible for LLP.

History: The opening words of subsec. 146.01(3) amended by 1999, c. 22, subsec. 60(6), applicable to 1999 *et seq.* The opening words formerly read:

(3) An individual may designate a single amount for a taxation year in prescribed form filed with the individual's return of income required to be filed for the year or, if a return of income for the year is not required to be filed, filed with the Minister on or before the individual's filing-due date for the year, where the amount does not exceed the lesser of

Para. 146.01(3)(a) amended by the said c. 22, subsec. 60(7), applicable to 1996 *et seq.* The para. formerly read:

(a) the total of all amounts (other than excluded premiums and amounts paid by the individual in the first 60 days of the year that

can reasonably be considered to have been either deducted in computing the individual's income for the preceding taxation year or designated under this subsection for the preceding taxation year) paid by the individual in the year or within 60 days after the end of the year under a retirement savings plan that is at the end of the year or the following taxation year a registered retirement savings plan under which the individual is the annuitant, and

The opening words of subsec. 146.01(3) amended by 1996, c. 21, s. 35, applicable to 1995 *et seq.* They formerly read:

(3) An individual may designate a single amount for a taxation year in prescribed form filed with the individual's return of income under this Part for the year or, if that return is not required to be filed, filed with the Minister on or before the balance-due day of the individual for the year, where the amount does not exceed the lesser of

Subsec. 146.01(3) amended by 1995, c. 3, subsec. 44(8), applicable to 1995 *et seq.* Subsec. (3) formerly read:

(3) An amount (other than an excluded premium) paid by an individual at a particular time in a taxation year under a retirement savings plan that was at the end of the year a registered retirement savings plan under which the individual is the annuitant may be designated by the individual under this subsection (in prescribed form submitted to the issuer of the plan at the time of the payment or at such later time as is acceptable to the Minister) to the extent that the amount so paid does not exceed the amount, if any, by which

(a) the total of all eligible amounts received by the individual before the particular time

exceeds the total of

(b) all amounts designated under this subsection in respect of amounts paid before the particular time to registered retirement savings plans under which the individual is the annuitant, and

(c) all amounts each of which is an amount included in computing the income of the individual under subsection (4) or (5) for a taxation year ending before the particular time.

Forms: T1 General Sched. 7: RRSP contributions, transfers and designations of repayments under the home buyers' plan; T1037: Designating your RRSP contributions as your 1995 repayment under the Home buyers' plan; RC4135: Home Buyers' Plan [guide].

(4) Portion of eligible amount not repaid — There shall be included in computing an individual's income for a particular taxation year included in a particular participation period of the individual the amount determined by the formula

$$\frac{(A - B - C)}{(15 - D)} - E$$

where

A is

(a) where

(i) the individual died or ceased to be resident in Canada in the particular year, or

(ii) the completion date in respect of an eligible amount received by the individual was in the particular year

nil, and

(b) in any other case, the total of all eligible amounts received by the individual in preceding taxation years included in the particular period,

B is

(a) nil, if the completion date in respect of an eligible amount received by the individual was in the preceding taxation year, and

(b) in any other case, the total of all amounts each of which is designated under subsection (3) by the individual for a preceding taxation year included in the particular period;

C is the total of all amounts each of which is included under this subsection or subsection (5) in computing the individual's income for a preceding taxation year included in the particular period;

D is the lesser of 14 and the number of taxation years of the individual ending in the period beginning

(a) where the completion date in respect of an eligible amount received by the individual was before 1995, January 1, 1995, and

(b) in any other case, January 1 of the first calendar year beginning after the completion date in respect of an eligible amount received by the individual

and ending at the beginning of the particular year, and

E is

(a) if the completion date in respect of an eligible amount received by the individual was in the preceding taxation year, the total of all amounts each of which is designated under subsection (3) by the individual for the particular year or any preceding taxation year included in the particular period, and

(b) in any other case, the amount designated under subsection (3) by the individual for the particular year.

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: The portion of subsec. 146.01(4) before the formula, para. (b) of the description of A in the formula, and the descriptions of B, C and E, amended by 1999, c. 22, subsecs. 60(8)–(11), applicable to 1999 *et seq.* That portion and those descriptions formerly read:

(4) Where portion of eligible amount not repaid — There shall be included in computing the income of an individual for a particular taxation year ending after 1994 the amount determined by the formula

. . . . .

(b) in any other case, the total of all eligible amounts received by the individual in preceding taxation years;

. . . . .

B is

(a) where the particular year is the 1995 taxation year, nil, and

(b) in any other case, the total of all amounts designated by the individual under subsection (3) for preceding taxation years;

C is the total of all amounts each of which is an amount included under this subsection or subsection (5) in computing the income of the individual for a preceding taxation year;

. . . . .

E is

(a) where the particular year is the 1995 taxation year, the total of all amounts each of which is an amount designated under subsection (3) by the individual for the particular year or a preceding taxation year,

(b) where the particular year begins after 1995 and the completion date in respect of an eligible amount received by the individual was in the preceding taxation year, the total of all amounts each of which is designated under subsection (3) by the individual for the particular year or a preceding taxation year, and

(c) in any other case, the total of all amounts designated under subsection (3) by the individual for the particular year.

Para. (a) of the description of A in subsec. 146.01(4) amended by 1995, c. 3, subsec. 44(9), applicable to 1994 *et seq.* Para. (a) formerly read:

(a) where the individual died or ceased to be resident in Canada in the particular year, nil, and

The descriptions of D and E in subsec. 146.01(4) amended by 1995, c. 3, subsec. 44(10), applicable to 1994 *et seq.* The descriptions of D and E formerly read:

D is the lesser of 14 and the number of taxation years of the individual ending in the period beginning on January 1, 1995 and ending at the beginning of the particular year; and

E is

(a) where the particular year is the 1995 taxation year, the total of all amounts each of which is an amount designated by the individual under subsection (3) for the particular year or any of the 3 preceding taxation years, and

(b) in any other case, the total of all amounts designated under subsection (3) by the individual for the particular year.

Subsec. 146.01(4) amended by 1994, c. 8, subsec. 19(5), applicable to 1992 *et seq.* Subsec. (4) formerly read:

(4) Where portion of eligible amount not repaid — There shall be included in computing the income of an individual for a particular taxation year ending after 1993 the amount determined by the formula

$$\frac{(A - B - C)}{(15 - D)} - E$$

where

A is

(a) where the individual died or ceased to be resident in Canada in the particular year, nil, and

(b) in any other case, the total of all eligible amounts received by the individual in preceding taxation years;

B is

(a) where the particular year is the 1994 taxation year, nil, and

(b) in any other case, the total of all amounts designated by the individual under subsection (3) for preceding taxation years;

C is the total of all amounts each of which is an amount included under this subsection or subsection (5) in computing the income of the individual for a preceding taxation year;

D is the lesser of 14 and the number of taxation years of the individual ending in the period beginning on January 1, 1994 and ending at the beginning of the particular year; and

E is

(a) where the particular year is the 1994 taxation year, the total of all amounts each of which is an amount designated by the individual under subsection (3) for the particular year or either of the 2 preceding taxation years, and

(b) in any other case, the total of all amounts designated under subsection (3) by the individual for the particular year.

Forms: RC4135: Home Buyers' Plan [guide].

(5) Where individual becomes a non-resident — Where at any time in a taxation year an individual ceases to be resident in Canada, there shall be included in computing the income of the individual for the period in the year during which the individual was resident in Canada the amount, if any, by which

(a) the total of all amounts each of which is an eligible amount received by the individual in the year or a preceding taxation year

exceeds the total of

(b) all amounts designated under subsection (3) by the individual in respect of amounts paid not later than 60 days after that time and before the individual files a return of income for the year, and

(c) all amounts included under subsection (4) or this subsection in computing the individual's income for preceding taxation years.

Related Provisions: 56(1)(h.1) — Home buyers' plan — income inclusion.

History: Para. 146.01(5)(c) amended by 1999, c. 22, subsec. 60(12), applicable to 1999 *et seq.* It formerly read:

(c) all amounts included under subsection (4) in computing the income of the individual for preceding taxation years.

Para. 146.01(5)(b) amended by 1995, c. 3, subsec. 44(11), applicable to 1995 *et seq.* Para. (b) formerly read:

(b) all amounts designated by the individual under subsection (3) that are paid not later than 90 days after that time and before the individual files a return of income under this Part for the year, and

(6) Death of individual — If an individual dies at any time in a taxation year, there shall be included in computing the individual's income for the year the amount, if any, by which

(a) the individual's HBP balance immediately before that time

exceeds

(b) the amount designated under subsection (3) by the individual for the year.

Related Provisions: 56(1)(h.1) — Home buyers' plan — income inclusion; 146.01(7) — Optional transfer of repayment obligation to spouse.

History: Subsec. 146.01(6) amended by 1999, c. 22, subsec. 60(14), applicable to 2000 *et seq.* The subsec. formerly read:

(6) Where individual dies — Where an individual dies at any time in a taxation year, there shall be included in computing the income of the individual for the year the amount, if any, by which

(a) the total of all excluded withdrawals in respect of the individual received before that time (other than excluded withdrawals in respect of the individual that were repaid as described in the definition "excluded withdrawal" in subsection (1))

exceeds the total of

(b) all amounts designated by the individual under subsection (3) that were paid before that time, and

(c) all amounts each of which is an amount included under subsection (4) or (5) in computing the income of the individual for a preceding taxation year.

Para. 146.01(6)(a) amended by 1999, c. 22, subsec. 60(13), applicable to the 1997 to 1999 taxation years. It formerly read:

(a) the total of all excluded withdrawals in respect of the individual received by the individual before that time (other than excluded withdrawals in respect of the individual repaid as described in subparagraph (b)(ii) of the definition "excluded withdrawal" in subsection (1) before that time)

(7) Exception — If a spouse or common-law partner of an individual was resident in Canada immediately before the individual's death at a particular time in a taxation year and the spouse or common-law partner and the individual's legal representatives jointly so elect in writing in the individual's return of income for the year,

(a) subsection (6) does not apply to the individual;

(b) the spouse or common-law partner is deemed to have received a particular eligible amount at the particular time equal to the amount that, but for this subsection, would be determined under subsection (6) in respect of the individual;

(c) for the purposes of subsection (4) and paragraph (d), the completion date in respect of the particular amount is deemed to be

(i) if the spouse or common-law partner received an eligible amount before the death (other than an eligible amount received in a participation period of the spouse or common-law partner that ended before the beginning of the year), the completion date in respect of that amount, and

(ii) in any other case, the completion date in respect of the last eligible amount received by the individual; and

(d) for the purpose of subsection (4), the completion date in respect of each eligible amount received by the spouse or common-law partner, after the death and before the end of the spouse or common-law partner's participation period that includes the time of the death, is deemed to be the completion date in respect of the particular amount.

Related Provisions: 220(3.2), Reg. 600(b) — Late filing or revocation of election.

History: Subsec. 146.01(7) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", and by 2000, c. 12, Sch. 2, s. 7, to replace "spouse's" with "spouse's or common-law partner's", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subsec. 146.01(7) amended by 1999, c. 22, subsec. 60(15), applicable to deaths that occur after 1998 except that, for deaths that occur in 1999, subpara. 146.01(7)(c)(ii), as amended, shall be read as follows:

(ii) in any other case,

(A) the completion date in respect of an eligible amount, if any, received by the individual in a participation period of the individual that includes the time of the death, or

(B) if clause (A) does not apply, October 1, 2000; and

Subsec. (7) formerly read:

(7) Where subsec. (6) does not apply — Where

(a) an individual's spouse was resident in Canada immediately before the death of the individual in a taxation year,

(b) the spouse and the individual's legal representatives jointly so elect in writing in the individual's return of income under this Part for the year, and

(c) either

(i) the spouse or the individual did not receive any eligible amount before the death, or

(ii) the spouse and the individual both received eligible amounts before the death and all the completion dates in respect of those amounts were the same or occurred before 1995,

the following rules apply:

(d) subsection (6) does not apply to the individual;

(e) the spouse shall be deemed to have received an eligible amount at the time of the death equal to the amount that would, but for this subsection, be determined under subsection (6) in respect of the individual;

(f) for the purpose only of determining whether an amount received after the death is an eligible amount in respect of the spouse, the spouse shall be deemed to have received all eligible amounts in respect of the individual at the times that those amounts were received by the individual; and

(g) the completion date in respect of the eligible amount deemed by paragraph (e) to have been received by the spouse shall be deemed to be

(i) where the spouse received an eligible amount before the death, the completion date in respect of that amount,

(ii) where subparagraph (i) does not apply and the individual received an eligible amount before the death, the completion date in respect of that amount, and

(iii) in any other case, October 1 of the year.

Subsec. 146.01(7) amended by 1995, c. 3, subsec. 44(12), applicable to 1994 *et seq.* Subsec. (7) formerly read:

(7) Idem — Where an individual's spouse was resident in Canada immediately before the death of the individual in a taxation year and the spouse and the individual's legal representative jointly so elect in writing in the individual's return of income under this Part for the year,

(a) subsection (6) does not apply in respect of the individual; and

(b) except for the purposes of subsections (9) and (10), the spouse shall be deemed to have received an eligible amount at the time of the individual's death equal to the amount that would, but for this subsection, be determined under subsection (6) in respect of the individual.

Para. 146.01(7)(b) amended by 1994, c. 8, subsec. 19(6), applicable to 1992 *et seq.* Para. (b) formerly read:

(b) except for the purpose of subsection (9), the spouse shall be deemed to have received an eligible amount at the time of the individual's death equal to the amount that would, but for this subsection, be determined under subsection (6) in respect of the individual

.

(8) Filing of prescribed form — A prescribed form referred to in this section that is submitted to an issuer shall be filed with the Minister by the issuer not later than 15 days after the quarter in which it was submitted to the issuer.

Proposed Repeal — 146.01(8)

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 141(2), will repeal subsec. 146.01(8), applicable to 2002 *et seq.*

Technical Notes: In order for an RRSP withdrawal to qualify as an HBP withdrawal, the taxpayer must make a written request in prescribed form to the RRSP issuer. The prescribed form for this purpose is the T1036. Under subsection 146.01(8), an RRSP issuer to whom a T1036 is submitted must file the form with the Minister of National Revenue no later than 15 days after the quarter in which it was so submitted.

Subsection 146.01(8) is repealed. Rather than reporting HBP withdrawals on a quarterly basis by filing the relevant T1036, RRSP issuers are instead required (by subsection 214(1) of the Regulations) to report such withdrawals on an annual basis using the T4RSP.

Forms: T1 Sched. 7: RRSP unused contributions, transfers, and HBP or LLP activities; T1036: Home buyers' plan — request to withdraw funds from an RRSP.

(9)–(13) [Repealed]

History: Subsecs. 146.01(9)–(13) repealed by 1995, c. 3, subsec. 44(13), applicable to 1994 *et seq.* The subsecs. formerly read:

(9) Income inclusion for 1992 — There shall be included in computing the income for the 1992 taxation year of an individual who was resident in Canada at the end of that year an amount equal to the lesser of

(a) the net premium balance for the year of the individual, and

(b) the total of

(i) all eligible amounts received by the individual before March 2, 1993, and

(ii) the lesser of

(A) the total of all premiums (other than excluded premiums in respect of the individual) paid by the individual after February 25, 1992 and before March 2, 1993 under registered retirement savings plans under which the individual's spouse is the annuitant, and

(B) the amount, if any, by which

(I) the total of all eligible amounts received before March 2, 1993 by the individual's spouse

exceeds

(II) the net premium balance for the year of the individual's spouse.

(10) Income inclusion for 1993 — There shall be included in computing the income for the 1993 taxation year of an individual who was resident in Canada at the end of that year an amount equal to the lesser of

(a) the net premium balance for the year of the individual, and

(b) the total of

(i) all eligible amounts received after March 1, 1993 and before March 2, 1994 by the individual, and

(ii) the lesser of

(A) the total of all premiums (other than excluded premiums in respect of the individual) paid by the individual after December 2, 1992 and before March 2, 1994

under registered retirement savings plans under which the individual's spouse is the annuitant, and

(B) the amount, if any, by which

(I) the total of all eligible amounts received after March 1, 1993 and before March 2, 1994 by the individual's spouse

exceeds

(II) the net premium balance for the year of the individual's spouse.

(11) Net premium balance for 1992 — For the purpose of subsection (9), the net premium balance for the 1992 taxation year of an individual is the amount, if any, by which

(a) the total of all premiums (other than excluded premiums in respect of the individual) paid by the individual after February 25, 1992 and before March 2, 1993 under registered retirement savings plans under which the individual or the individual's spouse is the annuitant

exceeds

(b) the total of all amounts each of which is an amount received by the individual or the individual's spouse after February 25, 1992 and before 1994 and included under subsection 146(8) or (8.3) in computing the individual's income for the 1992 or 1993 taxation year (other than an amount in respect of which an amount is deductible under paragraph 146(8.6)(b) in computing the income of the individual or in respect of premiums paid by the individual after March 1, 1993).

(12) Net premium balance for 1993 — For the purpose of subsection (10), the net premium balance for the 1993 taxation year of an individual is the amount, if any, by which

(a) the total of all premiums (other than excluded premiums in respect of the individual) paid by the individual after December 2, 1992 and before March 2, 1994 under registered retirement savings plans under which the individual or the individual's spouse is the annuitant

exceeds

(b) the total of all amounts each of which is an amount received by the individual or the individual's spouse after December 2, 1992 and before 1995 and included under subsection 146(8) or (8.3) in computing the individual's income for the 1992, 1993 or 1994 taxation year (other than an amount in respect of which an amount is deductible under paragraph 146(8.6)(b) in computing the income of the individual or in respect of premiums paid by the individual after March 1, 1994).

(13) Assessments — Notwithstanding subsections 152(4) to (5), such assessments of tax, interest and penalties shall be made as are necessary to give effect to subsections (9) and (10).

Subsecs. 146.01(9)–(13) substituted for subsecs. 146.01(9)–(11) by 1994, c. 8, subsec. 19(7), applicable to 1992 *et seq.* Those subsecs. formerly read:

(9) Income inclusion — There shall be included in computing the income for the 1992 taxation year of an individual who was resident in Canada at the end of that year an amount equal to the lesser of

(a) the net premium balance of the individual, and

(b) the total of

(i) all amounts each of which is an eligible amount received in 1992 or 1993 by the individual, and

(ii) the lesser of

(A) the total of all premiums (other than excluded premiums in respect of the individual) paid by the individual after February 25, 1992 and before March 2, 1993 under registered retirement savings plans under which the individual's spouse is the annuitant, and

(B) the amount, if any, by which

(I) the total of all amounts each of which is an eligible amount received in 1992 or 1993 by the individual's spouse

exceeds

(II) the net premium balance of the individual's spouse.

(10) Net premium balance — For the purposes of subsection (9), the net premium balance of an individual is the amount, if any, by which

(a) the total of all premiums (other than excluded premiums in respect of the individual) paid by the individual after February 25, 1992 and before March 2, 1993 under registered retirement savings plans under which the individual or the individual's spouse is the annuitant

exceeds

(b) the total of all amounts each of which is an amount received by the individual or the individual's spouse after February 25, 1992 and before 1994 and included under subsection 146(8) or (8.3) in computing the individual's income for the 1992 or 1993 taxation year (other than an amount in respect of which an amount is deductible under paragraph 146(8.6)(b) in computing the income of the individual or in respect of premiums paid by the individual after March 1, 1993).

(11) Assessments — Notwithstanding subsections 152(4) to (5), such assessments of tax, interest and penalties shall be made as are necessary to give effect to amounts included in income under subsection (9).

History [s. 146.01]: S. 146.01 added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 83, applicable to 1992 *et seq.*; and in applying s. 146.01 before 1993, subsec. (1) shall be read as if it included the following definition:

"spouse" has the meaning assigned by subsection 146(1.1).

Definitions [s. 146.01]: "amount" — 248(1); "annuitant" — 146(1), 146.01(1); "arm's length" — 251(1); "benefit" — 146(1), 146.01(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "common-law partner", "common-law partnership" — 248(1); "completion date" — 146.01(1); "corporation" — 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan" — 147(1), 248(1); "designated withdrawal" — 146.01(1); "eligible amount", "excluded premium", "excluded withdrawal" — 146.01(1); "filing-due date" — 150(1), 248(1); "HBP balance" — 146.01(1); "have an owner-occupied home" — 146.01(2)(a.1); "individual" — 248(1); "issuer" — 146(1), 146.01(1); "legal representative", "Minister" — 248(1); "net premium balance" — 146.01(11), (12); "owner-occupied home" — 146.01(2)(a.1); "participation period" — 146.01(1); "person" — 248(1); "premium" — 146(1), 146.01(1); "prescribed", "property" — 248(1); "qualifying home", "quarter" — 146.01(1); "registered pension plan" — 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "regular eligible amount" — 146.01(1); "related" — 251(2)–(6); "resident", "resident in Canada" — 250; "retirement savings plan" — 146(1), 248(1); "share" — 248(1); "specified disabled person" — 146.01(1); "spouse" — 252(3); "supplemental eligible amount" — 146.01(1); "taxation year" — 128(2)(d), 249; "writing" — *Interpretation Act* 35(1); "written" — *Interpretation Act* 35(1)"writing".

Lifelong Learning Plan

146.02 (1) Definitions — The definitions in this subsection apply in this section.

"annuitant" has the meaning assigned by subsection 146(1).

"benefit" has the meaning assigned by subsection 146(1).

"eligible amount" of an individual means a particular amount received at a particular time in a calendar year by the individual as a benefit out of or under a registered retirement savings plan if

(a) the particular amount is received after 1998 pursuant to the individual's written request in a prescribed form;

(b) in respect of the particular amount, the individual designates in the form a person (in this definition referred to as the "designated person") who is the individual or the individual's spouse or common-law partner;

(c) the total of the particular amount and all other eligible amounts received by the individual at or before the particular time and in the year does not exceed $10,000;

(d) the total of the particular amount and all other eligible amounts received by the individual at or before the particular time (other than amounts received in participation periods of the individual that ended before the year) does not exceed $20,000;

(e) the individual did not receive an eligible amount at or before the particular time in respect of which someone other than the designated person was designated (other than an amount received in a participation period of the individual that ended before the year);

(f) the designated person

(i) is enrolled at the particular time as a full-time student in a qualifying educational program, or

(ii) has received written notification before the particular time that the designated person is absolutely or contingently entitled to enrol before March of the following year as a full-time student in a qualifying educational program;

(g) the individual is resident in Canada throughout the period that begins at the particular time and ends immediately before the earlier of

(i) the beginning of the following year, and

(ii) the time of the individual's death;

(h) except where the individual dies after the particular time and before April of the following year, the designated person is enrolled as a full-time student in a qualifying educational program after the particular time and before March of the following year and

(i) the designated person completes the program before April of the following year,

(ii) the designated person does not withdraw from the program before April of the following year, or

(iii) less than 75% of the tuition paid, after the beginning of the year and before April of the following year, in respect of the designated person and the program is refundable; and

(i) if an eligible amount was received by the individual before the year, the particular time is neither

(i) in the individual's repayment period for the individual's participation period that includes the particular time, nor

(ii) after January (or a later month where the Minister so permits) of the fifth calendar year of that participation period.

Related Provisions: 146(5)(a)(iv.1), 146(5.1)(a)(iv) — Amount withdrawn within 90 days under LLP ineligible for RRSP contribution; 146.01(2) — Interpretation; 146.02(3), (4) — Repayment of eligible amounts to RRSP.

History: Para. (b) of the definition "eligible amount" in subsec. 146.02(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Regulations: 214(1) (information return).

Forms: RC96: LLP — request to withdraw funds from an RRSP; RC4112: Lifelong learning plan [guide].

"excluded premium" of an individual means a premium that

(a) was designated by the individual for the purpose of paragraph 60(j), (j.1) or (l) or subsection 146.01(3);

(b) was a repayment to which paragraph (b) of the definition "excluded withdrawal" in subsection 146.01(1) applies;

(c) was an amount transferred directly from a registered retirement savings plan, registered pension plan, registered retirement income fund, deferred profit sharing plan or a provincial pension plan prescribed for the purpose of paragraph 60(v); or

(d) was deductible under subsection 146(6.1) in computing the individual's income for any taxation year.

"excluded withdrawal" of an individual means

(a) an eligible amount received by the individual; or

(b) a particular amount (other than an eligible amount) received while the individual was resident in Canada and in a calendar year if

(i) the particular amount would be an eligible amount of the individual if the definition "eligible amount" were read without reference to paragraphs (g) and (h) of that definition,

(ii) a payment (other than an excluded premium) equal to the particular amount is paid by the individual under a retirement savings plan that is, at the end of the taxation year of payment, a registered retirement savings plan under which the individual is the annuitant,

(iii) the payment is made before the particular time that is,

(A) if the individual was not resident in Canada at the time the individual filed a return of income for the taxation year in which the particular amount was received, the earlier of

(I) the end of the following calendar year, and

(II) the time at which the individual filed the return, and

(B) in any other case, the end of the following calendar year, and

(iv) the payment (and no other payment) is designated under this subparagraph as a repayment of the particular amount in prescribed form filed with the Minister on or before the particular time (or before such later time as is acceptable to the Minister).

Related Provisions: 146(1)"premium" — Definition excludes repayment described in para. (b); 146(8) — LLP withdrawal not to be included in income.

"full-time student" in a taxation year includes an individual to whom subsection 118.6(3) applies for the purpose of computing tax payable under this Part for the year or the following taxation year.

"LLP balance" of an individual at any time means the amount, if any, by which the total of all eligible amounts received by the individual at or before that time exceeds the total of

(a) all amounts designated under subsection (3) by the individual for taxation years that ended before that time, and

(b) all amounts each of which is included under subsection (4) or (5) in computing the individual's income for a taxation year that ended before that time.

Related Provisions: 150(1.1)(b)(iv) — Individual with LLP balance must file tax return.

"participation period" of an individual means each period

(a) that begins at the beginning of a calendar year

(i) in which the individual receives an eligible amount, and

(ii) at the beginning of which the individual's LLP balance is nil; and

(b) that ends immediately before the beginning of the first subsequent calendar year at the beginning of which the individual's LLP balance is nil.

"premium" has the meaning assigned by subsection 146(1).

"qualifying educational program" means a program at a designated educational institution, as defined in subsection 118.6(1), of not less than three consecutive months duration that requires that each student taking the program spend not less than ten hours per week on courses or work in the program and that is

(a) of a technical or vocational nature designed to furnish a person with skills for, or improve a person's skills in, an occupation, if the program is at an institution described in subparagraph (a)(ii) of that definition; and

(b) at a post-secondary school level, in any other case.

History: The definition "qualifying educational program" in subsec. 146.02(1) amended by 2005, c. 19, s. 33, applicable after 2003. The definition formerly read:

"qualifying educational program" means a qualifying educational program (as defined in subsection 118.6(1)) at a designated educational institution (as defined in subsection 118.6(1)), except that the definition "qualifying educational program" in subsection 118.6(1) shall be read

(a) without reference to paragraphs (a) and (b) of that definition; and

(b) as if the expression "3 consecutive weeks" were "3 consecutive months".

"repayment period" of an individual for a participation period of the individual in respect of a person designated under paragraph (b) of the definition "eligible amount" means the period, if any, within the participation period

(a) that begins

(i) at the beginning of the third calendar year within the participation period, if the person would not be entitled to claim an amount under subsection 118.6(2) in respect of at least three months in each of the second and third calendar years within the participation period, if that subsection were read without reference to paragraph (b) of the description of B in that subsection,

(ii) at the beginning of the fourth calendar year within the participation period, if subparagraph (i) does not apply and the person would not be entitled to claim an amount under subsection 118.6(2) in respect of at least three months in each of the third and fourth calendar years within the participation period, if that subsection were read without reference to paragraph (b) of the description of B in that subsection,

(iii) at the beginning of the fifth calendar year within the participation period, if subparagraphs (i) and (ii) do not apply and the person would not be entitled to claim an amount under subsection 118.6(2) in respect of at least three months in each of the fourth and fifth calendar years within that period, if that subsection were read without reference to paragraph (b) of the description of B in that subsection, and

(iv) in any other case, at the beginning of the sixth calendar year within the participation period; and

(b) that ends at the end of the participation period.

Forms: RC96: LLP — request to withdraw funds from an RRSP; RC4112: Lifelong learning plan [guide].

(2) Rule of application — For the purpose of the definition "eligible amount" in subsection (1), a particular person is deemed to be the only person in respect of whom a particular amount was designated under paragraph (b) of that definition if

(a) an individual received the particular amount;

(b) the individual files a prescribed form with the Minister in which the particular person is specified in connection with the receipt of the particular amount;

(c) the particular amount would be an eligible amount of the individual if

(i) that definition were read without reference to paragraphs (b) and (e) of that definition, and

(ii) each reference in the portion of that definition after paragraph (d) to "designated person" were read as "individual" or "individual's spouse or common-law partner"; and

(d) the Minister so permits.

Related Provisions: 146(5)(a)(iv.1), 146(5.1)(a)(iv) — Amount withdrawn within 90 days under LLP ineligible for RRSP contribution.

History: Subpara. 146.02(2)(c)(ii) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Forms: RC96: LLP — request to withdraw funds from an RRSP.

(3) Repayment of eligible amount — An individual may designate a single amount for a taxation year in prescribed form filed with the individual's return of income for the year if the amount does not exceed the lesser of

(a) the total of all amounts (other than excluded premiums, repayments to which paragraph (b) of the definition "excluded withdrawal" in subsection (1) applies and amounts paid by the individual in the first 60 days of the year that can reasonably be considered to have been deducted in computing the individual's income, or designated under this subsection, for the preceding taxation year) paid by the individual in the year or within 60 days after the end of the year under a retirement savings plan that is at the end of the year or the following taxation year a registered retirement savings plan under which the individual is the annuitant, and

(b) the individual's LLP balance at the end of the year.

Forms: RC96: LLP — request to withdraw funds from an RRSP.

(4) If portion of eligible amount not repaid — There shall be included in computing an individual's income for a particular taxation year that begins after 2000 the amount determined by the formula

$$[(A - B - C)/(10 - D)] - E$$

where

A is

(a) nil, if

(i) the individual died or ceased to be resident in Canada in the particular year, or

(ii) the beginning of the particular year is not included in a repayment period of the individual, and

(b) in any other case, the total of all eligible amounts received by the individual in preceding taxation years (other than taxation years in participation periods of the individual that ended before the particular year);

B is

(a) nil, if the particular year is the first taxation year in a repayment period of the individual, and

(b) in any other case, the total of all amounts designated under subsection (3) by the individual for preceding taxation years (other than taxation years in participation periods of the individual that ended before the particular year);

C is the total of all amounts each of which is included under this subsection or subsection (5) in computing the individual's income for a preceding taxation year (other than a taxation year included in a participation period of the individual that ended before the particular year);

D is the lesser of nine and the number of taxation years of the individual that end in the period that

(a) begins at the beginning of the individual's last repayment period that began at or before the beginning of the particular year, and

(b) ends at the beginning of the particular year; and

E is

(a) if the particular year is the first taxation year within a repayment period of the individual, the total of the amount designated under subsection (3) by the individual for the particular year and all amounts so designated for preceding taxation years (other than taxation years in participation periods of the individual that ended before the particular year), and

(b) in any other case, the amount designated under subsection (3) by the individual for the particular year.

Related Provisions: 56(1)(h.1) — Inclusion in income; 257 — Formula cannot calculate to less than zero.

Forms: RC4112: Lifelong learning plan [guide].

(5) Ceasing residence in Canada — If at any time in a taxation year an individual ceases to be resident in Canada, there shall be included in computing the individual's income for the period in the year during which the individual was resident in Canada the amount, if any, by which

(a) the total of all amounts each of which is an eligible amount received by the individual in the year or a preceding taxation year

exceeds the total of

(b) all amounts designated under subsection (3) by the individual in respect of amounts paid not later than 60 days after that time and before the individual files a return of income for the year, and

(c) all amounts included under subsection (4) or this subsection in computing the individual's income for preceding taxation years.

Related Provisions: 56(1)(h.2) — LLP — income inclusion; 128.1(4) — Ceasing residence in Canada.

(6) Death of individual — If an individual dies at any time in a taxation year, there shall be included in computing the individual's income for the year the amount, if any, by which

(a) the individual's LLP balance immediately before that time

exceeds

(b) the amount designated under subsection (3) by the individual for the year.

Related Provisions: 56(1)(h.2) — LLP — income inclusion; 70(5) — Effect of death; 146.01(7) — Optional transfer of repayment obligation to spouse.

(7) Exception — If a spouse or common-law partner of an individual was resident in Canada immediately before the individual's death at a particular time in a taxation year and the spouse or common-law partner and the individual's legal representatives jointly so elect in writing in the individual's return of income for the year,

(a) subsection (6) does not apply to the individual;

(b) the spouse or common-law partner is deemed to have received a particular eligible amount at the particular time equal to the amount that, but for this subsection, would be determined under subsection (6) in respect of the individual;

(c) subject to paragraph (d), for the purpose of applying this section after the particular time, the spouse or common-law partner is deemed to be the person designated under paragraph (b) of the definition "eligible amount" in subsection (1) in respect of the particular amount; and

(d) where the spouse or common-law partner received an eligible amount before the particular time in the spouse's or common-law partner's participation period that included the particular time and the particular individual designated under paragraph (b) of the definition "eligible amount" in subsection (1) in respect of that eligible amount was not the spouse or common-law partner, for the purpose of applying this section after the particular time the particular individual is deemed to be the person designated under that paragraph in respect of the particular amount.

Related Provisions: 220(3.2), Reg. 600(b) — Late filing or revocation of election.

History: Subsec. 146.02(7) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", and by 2000, c. 12, Sch. 2, s. 7, to replace "spouse's"with "spouse's or common-law partner's", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

History [s. 146.02]: S. 146.02 added by 1999, c. 22, s. 61, applicable after 1998.

Definitions [s. 146.02]: "amount" — 248(1); "annuitant", "benefit" — 146(1), 146.01(1); "Canada" — 255, *Interpretation Act* 35(1); "common-law partner" — 248(1); "deferred profit sharing plan" — 147(1), 248(1); "eligible amount", "excluded premium", "excluded withdrawal", "full-time student" — 146.02(1); "individual", "legal representative" — 248(1); "LLP balance" — 146.02(1); "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "participation period" — 146.02(1); "person" — 248(1); "premium" — 146(1), 146.02(1); "prescribed", "registered pension plan" — 248(1); "qualifying educational program" — 146.02(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "repayment period" — 146.02(1); "resident in Canada" — 250; "retirement savings plan" — 146(1), 248(1); "revocable" — 146.1(2.1); "taxation year" — 249; "written" — *Interpretation Act* 35(1)"writing".

Forms: RC96: LLP — request to withdraw funds from an RRSP; RC4112: Lifelong learning plan [guide].

Registered Education Savings Plans

146.1 (1) Definitions — In this section,

Related Provisions: 204.9(1.1) — Application of subsec. 146.1(1).

"accumulated income payment" under an education savings plan means any amount paid out of the plan, other than a payment described in any of paragraphs (a) and (c) to (e) of the definition "trust", to the extent that the amount so paid exceeds the fair market value of any consideration given to the plan for the payment of the amount;

Related Provisions: 146.1(2)(d.1) — Limitations on accumulated income payments; 146.1(7.1) — Accumulated income payments included in recipient's income; 153(1)(t) — Withholding of tax at source from payments; 204.94 — Tax on accumulated income payments not transferred to RRSP.

History: The definition "accumulated income payment" in subsec. 146.1(1) amended by 1999, c. 22, subsec. 62(1), applicable after 1997. It formerly read:

> "accumulated income payment" under an education savings plan means any amount paid out of the plan, other than a payment described in any of paragraphs (a), (c), (d) and (e) of the definition "trust", to the extent that the amount so paid exceeds the fair market value of any consideration given to the plan for the payment of the amount;

The definition "accumulated income payment" added to subsec. 146.1(1) by 1998, c. 19, subsec. 38(4), applicable after 1997.

Regulations: 103(4), 103(6)(g), 103(8) (withholding at source); 200(2)(j) (information return).

"beneficiary", in respect of an education savings plan, means a person, designated by a subscriber, to whom or on whose behalf an educational assistance payment under the plan is agreed to be paid if the person qualifies under the plan;

Related Provisions: 146.1(2)(j) — Restrictions on who can be beneficiaries.

"contribution", into an education savings plan, does not include an amount paid into the plan under the *Canada Education Savings Act* or under a program administered pursuant to an agreement entered into under section 12 of that Act;

Related Provisions: 146.1(14)(a) — Reference to *Canada Education Savings Act* includes reference to earlier *DHRD Act*.

History: The definition "contribution" in subsec. 146.1(1) amended by 2004, c. 26, subsec. 21(1), in force December 15, 2004. The definition formerly read:

> "contribution" into an education savings plan does not include an amount paid into the plan by the Minister of Human Resources Development under Part III.1 of the *Department of Human Resources Development Act*;

The definition "contribution" added to subsec. 146.1(1) by 1999, c. 22, subsec. 62(3), applicable after 1997.

"education savings plan" means an arrangement entered into between

(a) any of the following, namely,

(i) an individual (other than a trust),

(ii) an individual (other than a trust) and the spouse or common-law partner of the individual, and

(iii) a public primary caregiver of a beneficiary, and

(b) a person or organization (in this section referred to as a "promoter")

under which the promoter agrees to pay or to cause to be paid educational assistance payments to or for one or more beneficiaries;

History: The portion before para. (b) of the definition "education savings plan" in subsec. 146.1(1) amended by 2004, c. 26, subsec. 21(2), in force December 15, 2004. The portion formerly read:

> "education savings plan" means a contract made at any time between
>
> (a) either
>
> (i) one individual (other than a trust), or
>
> (ii) an individual (other than a trust) and the spouse or common-law partner of the individual, and

Subpara. (a)(ii) of the definition "education savings plan" in subsec. 146.1(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

The definition "education savings plan" in subsec. 146.1(1) amended by 1998, c. 19, subsec. 38(2), applicable to contracts made after 1997. The definition formerly read:

> "education savings plan" means a contract entered into at any time between an individual (in this section referred to as a "subscriber") and a person or organization (in this section referred to as a "promoter") under which, in consideration of payment by the subscriber of any periodic or other amount as consideration under the contract, the promoter agrees to pay or to cause to be paid to or for a beneficiary educational assistance payments;

"educational assistance payment" means any amount, other than a refund of payments, paid out of an education savings plan to or for an individual to assist the individual to further the individual's education at a post-secondary school level;

Related Provisions: 146.1(2)(g), (g.1) — Limitations on educational assistance payments; 146.1(7) — Educational assistance payments included in income; 153(1)(t) — Withholding of tax at source from payments; 212(1)(r) — Tax on educational assistance payments.

History: The definition "educational assistance paymen" in subsec. 146.1(1) amended by 1998, c. 19, subsec. 38(2), applicable after 1997. The definition formerly read:

> "educational assistance payment" means any amount, other than a refund of payments, paid or payable under an education savings plan to or for a beneficiary to assist the beneficiary to further the beneficiary's education at the post-secondary school level;

Regulations: 200(2)(j) (information return).

"post-secondary educational institution" means

(a) an educational institution in Canada that is described in paragraph (a) of the definition "designated educational institution" in subsection 118.6(1), or

(b) an educational institution outside Canada that is a university, college or other educational institution that provides courses at a post-secondary school level at which a beneficiary was enrolled in a course of not less than 13 consecutive weeks;

History: The definition "post-secondary education institution" (formerly 146.1(1)(c.1) before consolidation in R.S.C. 1985 (5th Supp.)) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 118(2), applicable after February 20, 1990.

"post-secondary school level" includes a program of courses, at an institution described in subparagraph (a)(ii) of the definition "designated educational institution" in subsection 118.6(1), of a technical or vocational nature designed to furnish a person with skills for, or improve a person's skills in, an occupation;

History: The definition "post-secondary school level" in subsec. 146.1(1) added by 2005, c. 19, subsec. 34(2), applicable after 2003.

"pre-1972 income" — [Repealed]

History: The definition "pre-1972 income" in subsec. 146.1(1) repealed by 1998, c. 19, subsec. 38(1), applicable after 1997. The definition formerly read:

> "pre-1972 income" means the total of all amounts each of which is the income (within the meaning of the *Income Tax Act*, chapter 148

of the Revised Statutes of Canada, 1952, as it read in its application to the particular taxation year) for a taxation year ending before 1972 of a trust governed by an education savings plan;

"public primary caregiver", of a beneficiary under an education savings plan in respect of whom a special allowance is payable under the *Children's Special Allowances Act*, means the department, agency or institution that maintains the beneficiary or the public trustee or public curator of the province in which the beneficiary resides;

History: The definition "public primary caregiver" in subsec. 146.1(1) added by 2004, c. 26, subsec. 21(6), in force December 15, 2004.

"qualified investment" for a trust governed by a registered education savings plan means

(a) an investment that would be described in any of paragraphs (a), (b), (d) and (f) to (h) of the definition "qualified investment" in section 204 if the reference in that definition to "a trust governed by a deferred profit sharing plan or revoked plan" were read as a reference to "a trust governed by a registered education savings plan",

(b) a bond, debenture, note or similar obligation

(i) issued by a corporation the shares of which are listed on a prescribed stock exchange in Canada, or

(ii) issued by an authorized foreign bank and payable at a branch in Canada of the bank,

(c) a contract for an annuity issued by a licensed annuities provider where

(i) the trust is the only person who, disregarding any subsequent transfer of the contract by the trust, is or may become entitled to any annuity payments under the contract, and

(ii) the holder of the contract has a right to surrender the contract at any time for an amount that would, if reasonable sales and administration charges were ignored, approximate the value of funds that could otherwise be applied to fund future periodic payments under the contract,

(d) an investment that was acquired by the trust before October 28, 1998, and

(e) a prescribed investment;

Related Provisions: 87(10) — New share issued on amalgamation of public corporation deemed listed on prescribed stock exchange; 132.2(1)(k) [to be repealed], 132.2(3)(h) [draft] — Where share ceases to be qualified investment due to mutual fund reorganization; 146.1(2.1)(a) — Acquisition of non-qualified investment makes plan revocable; 207.1(3) — Tax payable by RESP on holding non-qualified investments.

History: Para. (b) of the definition "qualified investment" in subsec. 146(1.1) amended by 2001, c. 17, s. 140, applicable after June 27, 1999. The para. formerly read:

(b) a bond, debenture, note or similar obligation of a corporation the shares of which are listed on a prescribed stock exchange in Canada,

The definition "qualified investment" added to subsec. 146.1(1) by 1999, c. 22, subsec. 62(3), applicable after 1997.

Regulations: 3200 (prescribed stock exchange in Canada); 4900 (prescribed investment).

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs.

"qualifying educational program" means a program at a post-secondary school level of not less than three consecutive weeks duration that requires that each student taking the program spend not less than ten hours per week on courses or work in the program;

History: The definition "qualifying educational program" in subsec. 146.1(1) amended by 2005, c. 19, subsec. 34(1), applicable after 2003. The definition formerly read:

"qualifying educational program" has the meaning that would be assigned by the definition of that expression in subsection 118.6(1) if that definition were read without reference to paragraph (a);

The definition "qualifying educational program" in subsec. 146.1(1) amended by 1997, c. 25, subsec. 42(1), applicable to 1996 *et seq.* It formerly read:

"qualifying educational program" has the meaning assigned by subsection 118.6(1);

The definition "qualifying educational program" added to subsec. 146.1(1) by 1994, c. 7, Sch. II (1991, c. 49), subsec. 118(2), applicable after February 20, 1990.

"RESP annual limit" for a year means,

(a) for 1990 to 1995, $1,500,

(b) for 1996, $2,000, and

(c) for 1997 and subsequent years, $4,000;

Related Provisions: 146.1(2)(k) — Contributions not to exceed RESP annual limit; 204.9"excess amount"(a) — Penalty tax on exceeding RESP annual limit.

History: The definition "RESP annual limit" added to subsec. 146.1(1) by 1998, c. 19, subsec. 38(4), applicable after 1989.

"refund of payments" at any time under a particular registered education savings plan means

(a) a refund at that time of a contribution that had been made at a previous time, if the contribution was made

(i) otherwise than by way of a transfer from another registered education savings plan, and

(ii) into the particular plan by or on behalf of a subscriber under the particular plan, or

(b) a refund at that time of an amount that was paid at a previous time into the particular plan by way of a transfer from another registered education savings plan, where the amount would have been a refund of payments under the other plan if it had been paid at the previous time directly to a subscriber under the other plan;

History: The definition "refund of payments" in subsec. 146.1(1) amended by 1998, c. 19, subsec. 38(2), applicable to 1997 *et seq.* The definition formerly read:

"refund of payments" means any amount (not in excess of the total of amounts paid by or on behalf of a subscriber under an education savings plan) paid or payable to the subscriber, the subscriber's heirs, executors or assigns as or on account of a refund of amounts paid to the plan by or on behalf of the subscriber under the plan;

"registered education savings plan" means

(a) an education savings plan registered for the purposes of this Act, or

(b) a registered education savings plan as it is amended from time to time

but, except for the purposes of subsections (7) and (7.1) and Part X.4, a plan ceases to be a registered education savings plan immediately after the day as of which its registration is revoked under subsection (13);

Related Provisions: 128.1(10)"excluded right or interest"(a)(iii) — No deemed disposition of RESP on emigration; 248(1)"disposition"(f)(vi) — Rollover from one trust to another; 248(1)"registered education savings plan" — Definition applies to entire Act.

History: The definition "registered education savings plan" in subsec. 146.1(1) amended by 1998, c. 19, subsec. 38(2), applicable after 1997. The definition formerly read:

"registered education savings plan" means an education savings plan accepted by the Minister for registration for the purposes of this Act as complying with the requirements of this section;

Information Circulars: 93-3R: Registered education savings plans.

"specified plan" means an education savings plan

(a) that does not allow more than one beneficiary under the plan at any one time,

(b) under which the beneficiary is an individual in respect of whom paragraphs 118.3(1)(a) to (b) apply for the beneficiary's taxation year that ends in the 21st year following the year in which the plan was entered into, and

(c) that provides that, at all times after the end of the 25th year following the year in which the plan was entered into, no other individual may be designated as a beneficiary under the plan;

History: The definition "specified plan" added to subsec. 146.1(1) by 2005, c. 30, subsec. 10(1), applicable to 2005 *et seq.*

"subscriber" under an education savings plan at any time means

(a) each individual or the public primary caregiver with whom the promoter of the plan enters into the plan,

(a.1) another individual or another public primary caregiver who has before that time, under a written agreement, acquired a public primary caregiver's rights as a subscriber under the plan,

(b) an individual who has before that time acquired a subscriber's rights under the plan pursuant to a decree, order or judgment of a competent tribunal, or under a written agreement, relating to a division of property between the individual and a subscriber under the plan in settlement of rights arising out of, or on the breakdown of, their marriage or common-law partnership, or

(c) after the death of an individual described in any of paragraphs (a) to (b), any other person (including the estate of the deceased individual) who acquires the individual's rights as a subscriber under the plan or who makes contributions into the plan in respect of a beneficiary

but does not include an individual or a public primary caregiver whose rights as a subscriber under the plan had, before that time, been acquired by an individual or public primary caregiver in the circumstances described in paragraph (a.1) or (b);

History: Para. (a) of the definition "subscriber" in subsec. 146.1(1) amended and para. (a.1) added by 2004, c. 26, subsec. 21(3), in force December 15, 2004. Para. (a) formerly read:

(a) each individual with whom the promoter of the plan entered into the plan,

The portion of the definition "subscriber" after para. (b) amended by the said c. 26, subsec. 21(4), in force December 15, 2004. The portion formerly read:

(c) after the death of a subscriber under the plan, any other person (including the estate of the subscriber) who makes contributions into the plan in respect of a beneficiary

but does not include an individual who, before that time, disposed of the individual's rights as a subscriber under the plan in the circumstances described in paragraph (b);

The definition "subscriber" in subsec. 146.1(1) amended by 2000, c. 12, Sch. 2, s. 9, to replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

The definition "subscriber" added to subsec. 146.1(1) by 1998, c. 19, subsec. 38(4), applicable to contracts made after 1997.

"tax-paid-income" — [Repealed]

History: The definition "tax-paid-income" in subsec. 146.1(1) repealed by 1998, c. 19, subsec. 38(1), applicable after 1997. The definition formerly read:

"tax-paid-income" means the amount determined by the formula

$$A - (B - C)$$

where

A is the fair market value on December 31, 1971 of all the property of a trust governed by an education savings plan,

B is the total of all amounts paid to the plan on or before December 31, 1971 by or on behalf of the subscriber under the plan, and

C is the total amount of all refunds of payments made under the plan on or before December 31, 1971; and

"trust", except in this definition and the definition "education savings plan", means any person who irrevocably holds property under an education savings plan for any of, or any combination of, the following purposes:

(a) the payment of educational assistance payments,

(b) the payment after 1997 of accumulated income payments,

(c) the refund of payments,

(c.1) the repayment of amounts (and the payment of amounts related to that repayment) under the *Canada Education Savings Act* or under a program administered pursuant to an agreement entered into under section 12 of that Act,

(d) the payment to, or to a trust in favour of, designated educational institutions in Canada referred to in subparagraph (a)(i) of the definition of that expression in subsection 118.6(1), or

(e) the payment to a trust that irrevocably holds property pursuant to a registered education savings plan for any of the purposes set out in paragraphs (a) to (d).

Related Provisions: 104(1) — Reference to trust or estate; 108(1)"trust"(a) — "trust" does not include a RESP for certain purposes; 146.1(14)(a) — Reference to *Canada Education Savings Act* includes reference to earlier *DHRD Act*.

History: Para. (c.1) of the definition "trust" in subsec. 146.1(1) amended by 2004, c. 26, subsec. 21(5), in force December 15, 2004. The para. formerly read:

(c.1) the repayment of amounts under Part III.1 of the *Department of Human Resources Development Act*,

Para. (c.1) added to the definition "trust" in subsec. 146.1(1) by 1999, c. 22, subsec. 62(2), applicable after 1997.

The portion of the definition "trust" in subsec. 146.1(1) before para. (c) amended by 1998, c. 19, subsec. 38(3), applicable after 1997. The portion formerly read:

"trust", except in this definition, means any person who irrevocably holds property pursuant to an education savings plan for

(a) the payment of educational assistance payments,

(b) the payment of scholarships or other amounts to persons, other than a beneficiary, to assist them to further their education at the post-secondary school level,

That portion of the definition of "trust" in subsec. 146.1(1) preceding para. (a) amended to substitute "holds property" for "holds property or money", and para. (e) amended to substitute "holds property pursuant to a registered education savings plan" for "holds money or property transferred to it", by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 118(4), (5), applicable after July 13, 1990.

(2) Conditions for registration — The Minister shall not accept for registration for the purposes of this Act any education savings plan of a promoter unless, in the Minister's opinion, the following conditions are complied with:

(a) the plan provides that the property of any trust governed by the plan (after the payment of trustee and ad-

ministration charges) is irrevocably held for any of the purposes described in the definition "trust" in subsection (1) by a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as a trustee;

(b) at the time of the application by the promoter for registration of the plan, there are not fewer than 150 plans entered into with the promoter each of which complied, at the time it was entered into, with all the other conditions set out in this subsection, as it read at that time;

(b.1) application for registration of the plan is made by the promoter in prescribed form containing prescribed information;

(c) the promoter and all trusts governed by the plan are resident in Canada;

(d) the plan does not allow for any payment before 1998 to a subscriber, other than a refund of payments, unless the subscriber is also the beneficiary under the plan;

(d.1) subject to subsection (2.2), if the plan allows accumulated income payments, the plan provides that an accumulated income payment is permitted to be made only if

(i) the payment is made to, or on behalf of, a subscriber under the plan who is resident in Canada when the payment is made,

(ii) the payment is not made jointly to, or on behalf of, more than one subscriber, and

(iii) any of

(A) the payment is made after the 9th year that follows the year in which the plan was entered into and each individual (other than a deceased individual) who is or was a beneficiary under the plan has attained 21 years of age before the payment is made and is not, when the payment is made, eligible under the plan to receive an educational assistance payment,

(B) the payment is made in the year in which the plan is required to be terminated in accordance with paragraph (i), or

(C) each individual who was a beneficiary under the plan is deceased when the payment is made;

(e) the plan is substantially similar to the type of plan described in or annexed to a prospectus filed by the promoter with a securities commission in Canada or a body performing a similar function in a province;

(f) in the event that a trust governed by the plan is terminated, the property held by the trust is required to be used for any of the purposes described in the definition "trust" in subsection (1);

(g) the plan does not allow for the payment of educational assistance payments before 1997 to an individual unless the individual is, at the time the payment is made, a student in full-time attendance at a post-secondary educational institution and enrolled in a qualifying educational program at the institution;

(g.1) the plan does not allow for the payment of an educational assistance payment to or for an individual at any time after 1996 unless

(i) either

(A) the individual is at that time enrolled as a full-time or part-time student in a qualifying educational program at a post-secondary educational institution, or

(B) the individual is at that time enrolled as a student in a qualifying educational program at a post-secondary educational institution and has at that time a mental or physical impairment the effects of which on the individual have been certified in writing, by a person described in paragraph 118.3(1)(a.2) in relation to the individual's impairment, to be such that the individual cannot reasonably be expected to be enrolled as a full-time student, and

(ii) either

(A) the individual has satisfied the condition set out in subparagraph (i) throughout at least 13 consecutive weeks in the 12-month period that ends at that time, or

(B) the total of the payment and all other educational assistance payments made under a registered education savings plan of the promoter to or for the individual in the 12-month period that ends at that time does not exceed $5,000 or any greater amount that the Minister designated for the purpose of the *Canada Education Savings Act* approves in writing with respect to the individual;

Proposed Amendment — 146.1(2)(g.1)

CRA, Information Circular 93-3R (June 30, 2004), para. 23: The Department of Finance Canada will recommend changes to section 146.1 of the Act to ensure that an EAP can be paid to a beneficiary enrolled in an occupational skills program (described in second bullet of 25 below) at an educational institution certified by the Minister of Human Resources and Skills Development Canada.

[Para. 25, second bullet:]

- an educational institution certified by the Federal Minister of Human Resources and Skills Development to be an educational institution providing courses, other than courses designed for university credit, that furnish a person with skills for, or improve a person's skills in, an occupation.

(g.2) the plan does not allow for any contribution into the plan, other than a contribution made by or on behalf of a subscriber under the plan in respect of a beneficiary under the plan or a contribution made by way of transfer from another registered education savings plan;

Proposed Addition — 146.1(2)(g.3)

(g.3) the plan provides that an individual is permitted to be designated as a beneficiary under the plan, and that a contribution to the plan in respect of an individual who is a beneficiary under the plan is permitted to be made, only if

(i) in the case of a designation, the individual's Social Insurance Number is provided to the promoter before the designation is made and either

(A) the individual is resident in Canada when the designation is made, or

(B) the designation is made in conjunction with a transfer of property into the plan from another registered education savings plan

under which the individual was a beneficiary immediately before the transfer, and

(ii) in the case of a contribution, either

(A) the individual's Social Insurance Number is provided to the promoter before the contribution is made and the individual is resident in Canada when the contribution is made, or

(B) the contribution is made by way of transfer from another registered education savings plan under which the individual was a beneficiary immediately before the transfer;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 142(1), will add para. 146.1(2)(g.3), applicable after 2003.

Technical Notes: Subsection 146.1(2) sets out the conditions that must be satisfied in order for an education savings plan to be accepted for registration.

New paragraph 146.1(2)(g.3) is introduced to preclude non-residents and individuals who have not yet been assigned a Social Insurance Number (SIN) from becoming a beneficiary under a registered education savings plan (RESP) or from benefiting from RESP contributions.

Specifically, paragraph 146.1(2)(g.3) requires that an education savings plan not permit an individual to be designated as a beneficiary under the plan, and not allow a contribution for an individual who is a beneficiary under the plan, unless the individual's SIN has been provided to the promoter of the plan and the individual is resident in Canada.

If an individual is designated as a beneficiary under an RESP in conjunction with the transfer of property into the plan from another RESP under which the individual was a beneficiary immediately before the transfer, the requirement that the individual be resident in Canada in order to be designated as a beneficiary does not apply. However, subject to the exceptions in new subsection 146.1(2.3), the individual's SIN has to be provided to the promoter in order for the individual to be designated as a beneficiary under the transferee RESP. This special rule is intended primarily to accommodate transfers from an RESP to a replacement RESP after the beneficiary has ceased to be resident of Canada. (It should be noted that the transfer itself, as a contribution to an RESP, is not subject to the SIN and residency conditions that apply to ordinary contributions.)

Letter from Dept. of Finance, May 15, 2003:

Dear [xxx]

I am responding to your letter of January 17, 2003 to Mr. Brett Baker, regarding the proposed *Income Tax Act* (ITA) amendments contained in the legislative proposals that were released on December 20, 2002. Your letter raises concerns about the amendment requiring registered education savings plan (RESP) promoters to obtain a beneficiary's Social Insurance Number (SIN) before accepting any contributions into an RESP. I want to express my appreciation for the recent opportunity I had to meet with you and several of your colleagues to further elaborate on this matter.

The federal government is committed to helping Canadian families save for their children's post-secondary education, and recognizes the important role that RESPs play in helping them achieve their financial goal. As you know, the government has taken significant steps in recent years to enhance the attractiveness of RESPs as a savings instrument: the lifetime contribution limit was increased to $42,000 per beneficiary; the annual contribution limit was raised to $4,000 to give families flexibility to make "catch-up" contributions; investment income can be paid out to the contributor in the event the beneficiary does not pursue post-secondary education; and the Canada Education Savings Grant (CESG) program was introduced in the 1998 Budget as part of the Canadian Opportunities Strategy.

The SIN is already required for the effective administration of both the RESP and CESG programs, and must currently be provided in order to register an RESP. The proposed amendment to the ITA is intended to help ensure that RESP beneficiaries fully benefit from RESP tax benefits and the CESG supplement, and will minimize the potential for adverse consequences that can currently arise when the SIN is not provided on time.

In the event that parents face significant delays in obtaining a SIN for their child, they can generally make "catch-up" contributions to the RESP and thus obtain the full CESG.

We appreciate comments and suggestions that we have received on the proposed amendment from members of your organization and others in the RESP industry. While imposing a requirement for obtaining a SIN prior to setting up an RESP is appropriate, for the reasons set out above, we understand that implementing this change too quickly might be disruptive and have some adverse impacts on the sale of RESPs. In order to provide for a smoother transition, I will recommend to the Minister of Finance that the coming-into-force date of the proposed amendment be deferred from March 21, 2003 until January 1, 2004.

I trust this addresses your concerns and thank you for bringing this matter to the government's attention.

Yours sincerely,

Stephen R. Richardson
Senior Assistant Deputy Minister

CCRA Registered Plans release, April 28, 2003: *Technical Income Tax Amendments for Registered Education Savings Plans*

On December 20, 2002, the Minister of Finance released a package of draft technical amendments to the *Income Tax Act* (ITA). The technical bill indicated that these amendments were to be applicable after the 90th day after the announcement date (i.e., March 21, 2003). In order to provide for a smoother transition, the Department of Finance intends to propose an amendment [February 27, 2004 — ed.] to the coming into force date, which would change it from March 21, 2003 to January 1, 2004.

Summary of Changes

Paragraph 146.1(2)(g.3) and subsection 146.1(2.3) have been introduced, both of which apply December 31, 2003. Subparagraph 146.1(2)(g.3)(i) of the Act permits an individual to be designated as a beneficiary under the plan only if the individual's SIN is provided to the promoter before the designation is made, and the individual is resident in Canada when the designation is made. The residency requirement is not applicable when the designation is made in conjunction with a transfer of property from another RESP under which the individual was a beneficiary immediately before the transfer.

Subparagraph 146.1(2)(g.3)(ii) of the Act permits a contribution to the plan in respect of an individual who is a beneficiary only if the individual's SIN is provided to the promoter before the contribution is made and the individual is resident in Canada, or where the contribution is made by way of a transfer from another RESP under which the individual was a beneficiary immediately before the transfer.

As an exception to the requirement to provide the individual's SIN above, subsection 146.1(2.3) does not require an individual's SIN to be provided in respect of a contribution to the plan, if the plan was entered into before 1999. Such contributions continue to be ineligible for the CESG, and the SIN exception is relevant only for existing beneficiaries under such plans.

Under the second new exception, an educational savings plan may permit a non-resident individual who does not have a SIN to be designated as a beneficiary under the plan provided that such designation is made in conjunction with a transfer of property from another RESP under which the individual was a beneficiary immediately before the transfer.

Promoter requirements

As well as amending your RESP specimen plan(s) to comply with the proposed changes for new contracts, you may also need to amend existing contracts so that they may maintain their registered status and eligibility for the Canada Education Savings Grant (CESG).

We will require that the amendments be submitted to this office a year from the date the amendment to the *Income Tax Act* receives Royal Assent. Please note that the plans must be administered as if they were amended as of January 1, 2004.

(h) the plan provides that no contribution (other than a contribution made by way of a transfer from another registered education savings plan) may be made into the plan after

(i) in the case of a specified plan, the 25th year following the year in which the plan was entered into, and

(ii) in any other case, the 21st year following the year in which the plan was entered into;

(i) the plan provides that it must be terminated on or before the last day of

(i) in the case of a specified plan, the 30th year following the year in which the plan was entered into, and

(ii) in any other case, the 25th year following the year in which the plan was entered into;

(i.1) if the plan allows accumulated income payments in accordance with paragraph (d.1), the plan provides that it must be terminated before March of the year following the year in which the first such payment is made out of the plan;

(i.2) the plan does not allow for the receipt of property by way of direct transfer from another registered education savings plan after the other plan has made any accumulated income payment;

(j) if the plan allows more than one beneficiary under the plan at any one time, the plan provides

(i) that each of the beneficiaries under the plan is required to be connected to each living subscriber under the plan, or to have been connected to a deceased original subscriber under the plan, by blood relationship or adoption,

(ii) that a contribution into the plan in respect of a beneficiary is permitted to be made only if

(A) the beneficiary had not attained 21 years of age before the time of the contribution, or

(B) the contribution is made by way of transfer from another registered education savings plan that allows more than one beneficiary at any one time, and

(iii) that an individual is permitted to become a beneficiary under the plan at any particular time only if

(A) the individual had not attained 21 years of age before the particular time, or

(B) the individual was, immediately before the particular time, a beneficiary under another registered education savings plan that allows more than one beneficiary at any one time;

(k) the plan does not allow the total of all contributions made into the plan in respect of a beneficiary for a year (other than contributions made by way of transfer from registered education savings plans) to exceed the RESP annual limit for the year;

(l) the plan provides that the promoter shall, within 90 days after an individual becomes a beneficiary under the plan, notify the individual (or, where the individual is under 19 years of age at that time and either ordinarily resides with a parent of the individual or is maintained by a public primary caregiver of the individual, that parent or public primary caregiver) in writing of the existence of the plan and the name and address of the subscriber in respect of the plan;

(m) the Minister has no reasonable basis to believe that the promoter will not take all reasonable measures to ensure that the plan will continue to comply with the conditions set out in paragraphs (a), (c) to (d.1) and (f) to (l) for its registration for the purposes of this Act; and

(n) the Minister has no reasonable basis to believe that the plan will become revocable.

Related Provisions: 146.1(2.1) — RESP becoming revocable; 146.1(2.2) — Waiver of conditions for disabled beneficiary; 146.1(2.3) — Circumstances where Social Insurance Number not required; 146.1(3) — Deemed registration; 146.1(4) — Registration of plans without prospectus; 146.1(4.1) — Amendments must be filed with CRA; 146.1(13) — Revocation where plan ceases to comply with requirements; 146.1(14) — References to *Canada Education Savings Act* includes references to earlier *DHRD Act*; 172(3) — Appeal from refusal to register; 204.9(1)"excess amount" — Limit on RESP contributions; 204.91 — Tax payable by subscribers.

History: Cl. 146.1(2)(d.1)(iii)(B), paras. (2)(h) and (i) amended, by 2005, c. 30, subsecs. 10(2), (3), applicable to 2005 *et seq*. The cl. and paras. formerly read:

(B) the payment is made in the 25th year following the year in which the plan is entered into, or

. . . . .

(h) the plan provides that no payments may be made into the plan by or on behalf of a subscriber after the 21st year following the year in which the plan is entered into;

(i) the plan provides that it must be terminated on or before the last day of the 25th year following the year in which the plan is entered into;

Para. 146.1(2)(d.1) amended by 2004, c. 26, subsec. 21(7), in force December 15, 2004. The para. formerly read:

(d.1) subject to subsection (2.2), the plan does not allow accumulated income payments under the plan, or the plan allows an accumulated income payment at a particular time only if

(i) the payment is made to, or on behalf of, a person and not jointly to, or on behalf of, more than one person,

(ii) the particular time is after 1997,

(iii) the person is resident in Canada at the particular time,

(iv) either

(A) the person is a subscriber under the plan at the particular time, or

(B) an individual died at any previous time and was a subscriber under the plan immediately before death,

(v) each individual in respect of whom a subscriber has made a contribution into the plan

(A) has before the particular time attained 21 years of age and is not, at the particular time, eligible under the plan to receive an educational assistance payment, or

(B) has died before the particular time, and

(vi) either

(A) the particular time is after the 9th year that follows the year in which the plan was entered into, or

(B) each individual in respect of whom a subscriber has made a contribution into the plan has died before the particular time and was, or was related to, a subscriber under the plan (or was the nephew, niece, great nephew or great niece of a subscriber under the plan);

Cl. 146.1(2)(g.1)(i)(A) amended by the said c. 26, subsec. 21(7.1), to replace "full-time" with "full-time or part-time", in force December 15, 2004.

Cl. 146.1(2)(g.1)(ii)(B) and para. (2)(l) amended by the said c. 26, subsecs. 21(8) and (9), in force December 15, 2004. The cl. and para. formerly read:

(B) the total of the payment and all other educational assistance payments made under a registered educational savings plan of the promoter to or for the individual in the 12-month period that ends at that time does not exceed $5,000 or such greater amount as the Minister of Human Resources Development approves in writing with respect to the individual;

. . .

(l) the plan provides that the promoter shall, within 90 days after an individual becomes a beneficiary under the plan, notify the individual (or, where the individual is under 19 years of age at that time and ordinarily resides with a parent of the individual, that parent) in writing of the existence of the plan and the name and address of the subscriber in respect of the plan;

Para. 146.1(2)(b.1) added, subpara. 146.1(2)(j)(ii) amended and subpara. (iii) added, by 1999, c. 22, subsecs. 62(4) and (7), applicable to plans entered into after 1998. Subpara. (j)(ii) formerly read:

(ii) that a contribution into the plan in respect of a beneficiary is permitted to be made only if

(A) the beneficiary had not attained 21 years of age at the time the plan was entered into,

(B) the contribution is made by way of transfer from another registered education savings plan into which a contribution had been made before the transfer in respect of the beneficiary, or

(C) the contribution is made (after a contribution to which clause (B) applied was made) into the plan in respect of the beneficiary;

The opening words of para. 146.1(2)(d.1) amended, para. 146.1(2)(n) added, by the said c. 22, subsecs. 62(5) and (8), applicable after 1997. The opening words formerly read:

(d.1) the plan does not allow accumulated income payments under the plan, or the plan allows an accumulated income payment at a particular time under the plan only if

Para. 146.1(2)(g.1) amended by the said c. 22, subsec. 62(6), applicable to plans entered into after February 20, 1990, except that

(a) for plans entered into before 1998, references in the amendment to "individual" shall be read as "beneficiary"; and

(b) subpara. 146.1(2)(g.1)(ii), as amended, does not apply to plans entered into before 1999.

Para. (g.1) formerly read:

(g.1) the plan does not allow for the payment of educational assistance payments after 1996 to an individual unless the individual is, at the time the payment is made, enrolled in a qualifying educational program as a full-time student at a post-secondary educational institution;

The opening words of subsec. 146.1(2), paras. 146.1(2)(b) and (m) amended by 1998, c. 19, subsecs. 38(5), (6), and (11), applicable to applications made after 1997. Those provisions formerly read:

(2) Conditions for acceptance of plan for registration — The Minister shall not accept for registration for the purposes of this Act any education savings plan of a promoter unless, in the Minister's opinion, it complies with the following conditions:

. . . . .

(b) at the time of the application by the promoter for registration of the plan, there are not fewer than 150 subscribers who have entered into education savings plans with the promoter each of which complied, at the time it was entered into, with all the other conditions set out in this subsection, or subsection 146.1(2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as the case may be, as the applicable subsection read at that time;

. . . . .

(m) the plan complies with prescribed conditions.

Para. 146.1(2)(d) amended, and add para. (d.1) added, by the said c. 19, subsec. 38(7), applicable to 1998 *et seq.* Para. 146.1(2)(d) formerly read:

(d) the plan does not allow for any payment to a subscriber other than a refund of payments unless the subscriber is also the beneficiary under the plan;

Para. 146.1(2)(g) amended, and add paras. (g.1) and (g.2) added, by the said c. 19, subsec. 38(8), paras. (g) and (g.1) applicable to plans entered into after February 20, 1990 except that, for plans entered into before 1998, the references to "an individual" and "the individual" in para. (g.1) shall be read as "a beneficiary" and "the beneficiary"; and para. (g.2) applicable to 1997 *et seq.* Para. 146.1(2)(g) formerly read:

(g) the plan does not allow for the payment of educational assistance payments to an individual unless the individual is, at the time the payment is made, a student in full-time attendance at a post-secondary educational institution and enrolled in a qualifying educational program at the institution;

Paras. 146.1(2)(i.1) and (i.2) added, and para. (j) amended, by the said c. 19, subsec. 38(9), applicable to 1998 *et seq.*, except that

(a) para. (j) does not apply to plans entered into before July 14, 1990; and

(b) subpara. (j)(ii) does not apply to plans entered into before 1998.

Para. (j) formerly read:

(j) where the plan provides that a subscriber may name more than one beneficiary under the plan at any one time, the plan provides that each of the beneficiaries under the plan is required to be connected to the subscriber by blood relationship or adoption;

Para. 146.1(2)(k) amended by the said c. 19, subsec. 38(10), applicable to plans entered into after February 20, 1990. Para. 146.1(2)(k) formerly read:

(k) the plan provides that the total of all payments made into the plan in respect of a beneficiary for a year shall not exceed $2,000;

Para. 146.1(2)(k) amended by 1997, c. 25, subsec. 42(2), applicable to 1996 *et seq.*, except in respect of plans entered into before February 21, 1990. Para. (k) formerly read:

(k) the plan provides that the total of all payments made into the plan in respect of a beneficiary for a year shall not exceed $1,500;

Paras. 146.1(2)(a), (b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 118(6), applicable to plans entered into after February 20, 1990. Paras. (a), (b) formerly read:

(a) the plan provides that the property of any trust established under the plan (after payment of trustee and administration charges) is irrevocably held for any of the purposes described in the definition "trust" in subsection (1);

(b) at the time of the application by the promoter for registration of the plan, there are not less than 150 subscribers who have entered into education savings plans with the promoter that comply with the conditions set out in paragraphs (a) and (c) to (g);

Para. 146.1(2)(c) amended to substitute "governed by the plan" for "established under the plan", and para. (f) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 118(7), (8), applicable after July 13, 1990. Para. (f) formerly read:

(f) in the event that a trust established under the plan is terminated, the property or money held by the trust is required to be used for any of the purposes described in the definition "trust" in subsection (1); and

Paras. 146.1(2)(g) to (m) substituted for para. (g) by 1994, c. 7, Sch. II (1991, c. 49), subsec. 118(9), paras. (g) to (i), (k) and (m) applicable to plans entered into after February 20, 1990, para. (j) applicable to plans entered into after July 13, 1990, and para. (l) applicable to plans entered into after March 1991. Para. (g) formerly read:

(g) the plan in all other respects complies with any regulations of the Governor in Council made on the recommendation of the Minister of Finance.

Regulations: No prescribed conditions for 146.1(2)(m).

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Information Circulars: 93-3R: Registered education savings plans.

Forms: T3G: Certification of no tax liability by a group of RRSPs, RRIFs, or RESPs; T3GR: Group income tax and information return for RRSP, RRIF or RESP trusts (and worksheets); T3IND: T3IND income tax return for RRSP, RRIF, or RESP; T550: Application for registration of RSPs, ESPs or RIFs under s. 146, 146.1 and 146.3 of the ITA; T1171: Tax withholding waiver on accumulated income payments from RESPs; T1172: Additional tax on accumulated income payments from RESPs.

(2.1) RESP is revocable — For the purposes of paragraphs (2)(n) and (12.1)(d), a registered education savings plan is revocable at any time after October 27, 1998 at which

(a) a trust governed by the plan acquires property that is not a qualified investment for the trust;

(b) property held by a trust governed by the plan ceases to be a qualified investment for the trust and the property is not disposed of by the trust within 60 days after that time;

(c) a trust governed by the plan begins carrying on a business; or

(d) a trustee that holds property in connection with the plan borrows money for the purposes of the plan, except where

(i) the money is borrowed for a term not exceeding 90 days,

(ii) the money is not borrowed as part of a series of loans or other transactions and repayments, and

(iii) none of the property of the trust is used as security for the borrowed money.

Related Provisions: 146.1(12.1) — Notice of intent to revoke registration; 146.1(12.2), (13) — Revocation of registration; 248(10) — Series of transactions; 253.1 — Limited partner not considered to carry on business of partnership; 259(1) — Election for proportional holdings in trust property.

History: Subsec. 146.1(2.1) added by 1999, c. 22, subsec. 62(9) applicable after 1997.

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs.

(2.2) Waiver of conditions for accumulated income payments — The Minister may, on written application of the promoter of a registered education savings plan, waive the application of the conditions in clause (2)(d.1)(iii)(A) in respect of the plan where a beneficiary under the plan suffers from a severe and prolonged mental impairment that prevents, or can reasonably be expected to prevent, the beneficiary from enrolling in a qualifying educational program at a post-secondary educational institution.

History: Subsec. 146.1(2.2) amended by 2004, c. 26, subsec. 21(9.1) to replace "subparagraphs (2)(d.1)(v) and (vi)" with "clause (2)(d.1)(iii)(A)", in force December 15, 2004.

Subsec. 146.1(2.2) added by 1999, c. 22, subsec. 62(9), applicable after 1997.

Proposed Addition — 146.1(2.3)

(2.3) Social Insurance Number not required — Notwithstanding paragraph (2)(g.3), an education savings plan may provide that an individual's Social Insurance Number need not be provided in respect of

(a) a contribution to the plan, if the plan was entered into before 1999; and

(b) a designation of a non-resident individual as a beneficiary under the plan, if the individual was not assigned a Social Insurance Number before the designation is made.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 142(2), will add subsec. 146.1(2.3), applicable after 2003.

Technical Notes: New subsection 146.1(2.3) provides two additional exceptions to the SIN condition that are primarily of relevance to RESPs that were entered into before 1999 and RESPs that replace such plans. These exceptions recognize that the Canada Customs and Revenue Agency only began requiring the beneficiary's SIN to be provided on the application for registration for plans entered into after 1998.

The first new exception allows an education savings plan that was entered into before 1999 to not require that an individual's SIN be provided in respect of a contribution to the plan. Such contributions, however, continue to be ineligible for the Canada Education Savings Grant. It should be noted that this exception is only relevant for contributions made for existing beneficiaries under such plans. An individual without a SIN is prevented from being designated as a new beneficiary under such a plan.

Under the second new exception, an education savings plan may permit a non-resident individual who does not have a SIN to be designated as a beneficiary under the plan provided that the designation is being made in conjunction with a transfer of property into the plan from another RESP under which the individual was a beneficiary immediately before the transfer. This exception is intended, in particular, to accommodate the transfer of property from an RESP that was entered into before 1999, under which the beneficiary had always been non-resident or had ceased to be resident in Canada before having been assigned a SIN, to a replacement RESP (and successive transfers).

CCRA Registered Plans release, April 28, 2003: See under 146.1(2)(g.3).

(3) Deemed registration — Where in any year an education savings plan cannot be accepted for registration solely because the condition set out in paragraph (2)(b) has not been complied with, if the plan is subsequently registered, it shall be deemed to have been registered on the first day of January of

(a) the year in which all of the conditions set out in subsection (2) (except in paragraph (2)(b)) were complied with, or

(b) the year preceding the year in which the plan was subsequently registered,

whichever is the later.

Related Provisions: 146.1(12) — Deemed date of registration; 212(1)(r) — Non-residents — registered education savings plan.

Information Circulars: 93-3R: Registered education savings plans.

(4) Registration of plans without prospectus — Notwithstanding paragraph (2)(e), where a promoter has not filed a prospectus in respect of an education savings plan referred to in that paragraph, the Minister may register the plan if the promoter is not otherwise required by the laws of Canada or a province to file such a prospectus with a securities commission in Canada or a body performing a similar function in a province and the plan complies with the other conditions set out in subsection (2).

History: Subsec. 146.1(4) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 118(10), applicable to plans registered after February 20, 1990. Subsec. 146.1(4) formerly read:

(4) Registration of plans in existence on October 15, 1973 — Notwithstanding paragraph (2)(e), where a promoter has not filed a prospectus referred to in that paragraph, the Minister may register an education savings plan if the plan was in existence on October 15, 1973 and as of that date the other conditions set out in subsection (2) had been complied with.

(4.1) Obligation to file amendment — When a registered education savings plan is amended, the promoter shall file the text of the amendment with the Minister not later than 60 days after the day on which the plan is amended.

Related Provisions: 162(7) — Penalty for failure to comply.

History: Subsec. 146.1(4.1) added by 1998, c. 19, subsec. 38(12), in force on June 18, 1998.

(5) Trust not taxable — No tax is payable under this Part by a trust on the taxable income of the trust for a taxation year if, throughout the period in the year during which the trust was in existence, the trust was governed by a registered education savings plan.

Related Provisions: 18(11)(h) — No deduction for interest paid on money borrowed to make RESP contribution; 149(1)(u) — Exemption from tax.

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs.

Information Circulars: 93-3R: Registered education savings plans.

Forms: T3G: Certification of no tax liability by a group of RRSPs, RRIFs, or RESPs; T3GR: Group income tax and information return for RRSP, RRIF or RESP trusts (and worksheets); T3IND: T3IND income tax return for RRSP, RRIF, or RESP.

(6) Subscriber not taxable — No tax is payable by a subscriber on the income of a trust for a taxation year after 1971 throughout which the trust was governed by a registered education savings plan.

Related Provisions: 146.1(5) — Trust not taxable; 204.91 — Tax payable by subscribers; 212(1)(r) — Non-residents — registered education savings plan.

(6.1) Transfers between plans — Where property irrevocably held by a trust governed by a registered education savings plan (in this subsection referred to as the "transferor plan") is transferred to a trust governed by another registered education savings plan (in this subsection referred to as the "transferee plan"),

(a) [Repealed]

(b) for the purposes of this paragraph, the definition "specified plan" in subsection (1) and paragraphs

(2)(d.1), (h) and (i), the transferee plan is deemed to have been entered into on the day that is the earlier of

(i) the day on which the transferee plan was entered into, and

(ii) the day on which the transferor plan was entered into; and

(c) notwithstanding subsections (7) and (7.1), no amount shall be included in computing the income of any person because of the transfer.

Related Provisions: 146.1(2)(g.2), (i.2) — Restrictions on transfers between RESPs; 204.9(5) — Transfers between RESPs.

History: The opening words of para. 146.1(6.1)(b) amended to add ", the definition "specified plan" in subsection (1)" by 2005, c. 30, subsec. 10(4), applicable to 2005 *et seq.*

The opening words of para. 146.1(6.1)(b) amended by 2004, c. 26, subsec. 21(10), in force December 15, 2004. The opening words formerly read:

(b) for the purposes of this paragraph, subparagraph (2)(d.1)(vi) and paragraphs (2)(h) and (i), the transferee plan is deemed to have been entered into on the day that is the earlier of

Para. 146.1(6.1)(a) repealed, para. (b) amended, and para. (c) added, by 1998, c. 19, subsecs. 38(13), (14), para. (a) applicable to transfers made after 1996, para. (b) applicable after 1997, and para. (c) applicable to transfers made after 1997. Paras. (a) and (b) formerly read:

(a) for the purposes of Part X.4,

(i) the transferee plan shall be deemed to be the same plan as, and a continuation of, the transferor plan, and

(ii) the transfer of property shall be deemed not to be a payment made into the transferee plan; and

(b) for the purposes of this paragraph and paragraphs (2)(h) and (i), the transferee plan shall be deemed to have been entered into on the earlier of

(i) the day on which the transferee plan was entered into, and

(ii) the day on which the transferor plan was entered into.

Subsec. 146.1(6.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 118(11), applicable after February 20, 1990.

Information Circulars: 93-3R: Registered education savings plans.

(7) Educational assistance payments — There shall be included in computing an individual's income for a taxation year the total of all educational assistance payments paid out of registered education savings plans to or for the individual in the year.

Related Provisions: 56(1)(q) — Income inclusion from RESP; 60(x) — Deduction for repayment of Canada Education Savings Grant; 153(1)(t) — Withholding of tax at source; 212(1)(r) — Withholding tax on RESP payments to non-residents.

History: Subsec. 146.1(7) amended by 1998, c. 19, subsec. 38(15), applicable to 1998 *et seq.* Subsec. 146.1(7) formerly read:

(7) Amounts to be included in beneficiary's income — There shall be included in computing the income for a taxation year of a taxpayer who is or was a beneficiary under a registered education savings plan, the amount, if any, by which the total of

(a) educational assistance payments paid to the taxpayer or on the taxpayer's behalf in the year under the plan, and

(b) amounts paid to the taxpayer or on the taxpayer's behalf to the extent that those amounts may reasonably be regarded as a distribution of property that had been transferred from a trust established under a registered education savings plan, of property substituted therefor or of income from any such property

exceeds

(c) the taxpayer's portion of the tax-paid-income in the year under the plan.

Regulations: 200(2)(j) (information return).

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs.

Information Circulars: 93-3R: Registered education savings plans.

(7.1) Other income inclusions — There shall be included in computing a taxpayer's income for a taxation year

(a) each accumulated income payment received in the year by the taxpayer under a registered education savings plan; and

(b) each amount received in the year by the taxpayer in full or partial satisfaction of a subscriber's interest under a registered education savings plan (other than any excluded amount in respect of the plan).

Related Provisions: 146.1(7.2) — Excluded amount; 153(1)(t) — Withholding of tax at source.

History: Subsec. 146.1(7.1) added by 1998, c. 19, subsec. 38(15), applicable to 1998 *et seq.*

Regulations: 103(4), 103(6)(g), 103(8) (withholding of 20% at source); 200(2)(j) (information return).

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs.

(7.2) Excluded amount — For the purpose of paragraph (7.1)(b), an excluded amount in respect of a registered education savings plan is

(a) any amount received under the plan;

(b) any amount received in satisfaction of a right to a refund of payments under the plan; or

(c) any amount received by a taxpayer under a decree, order or judgment of a competent tribunal, or under a written agreement, relating to a division of property between the taxpayer and the taxpayer's spouse or common-law partner or former spouse or common-law partner in settlement of rights arising out of, or on the breakdown of, their marriage or common-law partnership.

History: Para. 146.1(7.2)(c) amended by 2000, c. 12, Sch. 2, s. 2, to replace "spouse" with "spouse or common-law partner", and by 2000, c. 12, Sch. 2, s. 9, to replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subsec. 146.1(7.2) added by 1998, c. 19, subsec. 38(15), applicable to 1998 *et seq.*

(8) [Repealed]

History: Subsec. 146.1(8) repealed by 1998, c. 19, subsec. 38(15), applicable to 1998 *et seq.* Subsec. 146.1(8) formerly read:

(8) Definition of "beneficiary's portion of the tax-paid-income" — For the purposes of subsection (7), a "beneficiary's portion of the tax-paid-income" for a taxation year under a registered education savings plan means the greater of

(a) the lesser of

(i) one-third of the pre-1972 income reported on or before April 30, 1972 by the trust governed by the plan to the subscriber as having been earned in respect of amounts paid to the plan by or on behalf of the subscriber, and

(ii) the amount, if any, by which

(A) the pre-1972 income reported on or before April 30, 1972 by the trust governed by the plan to the subscriber as having been earned in respect of amounts paid to the plan by or on behalf of the subscriber

exceeds

(B) the total of all amounts, if any, referred to in paragraph (7)(c) in respect of preceding taxation years, and

(b) the amount of the tax-paid-income actually allocated under the trust governed by the plan to the beneficiary in the year.

(9) [Repealed]

History: Subsec. 146.1(9) repealed by 1998, c. 19, subsec. 38(15), applicable to 1998 *et seq.* Subsec. 146.1(9) formerly read:

(9) Limitation on allocation of tax-paid-income — For the purposes of paragraph (8)(b), no amount of the tax-paid-income shall

be allocated in a particular taxation year if an allocation has been made in respect of the same amount in a previous taxation year.

(10) [Repealed]

History: Subsec. 146.1(10) repealed by 1998, c. 19, subsec. 38(15), applicable to 1998 *et seq.* Subsec. 146.1(10) formerly read:

> (10) Allocation of tax-paid-income — For the purposes of this subsection and subsections (8) and (9), in any taxation year there shall be allocated by the trust governed by a registered education savings plan an amount of the tax-paid-income to a beneficiary that is not less than the amount determined under paragraph (8)(a) for the year.

(11) Trust deemed to be *inter vivos* trust — For any taxation year during which an education savings plan is not registered, a trust governed by the plan shall be deemed, for the purposes of section 122, to be a trust referred to in subsection 122(1) established after June 17, 1971.

(12) Deemed date of registration — Subject to subsection (3), an education savings plan that is registered

(a) before 1976 shall be deemed to have been registered since the later of

(i) January 1, 1972, and

(ii) the first day of January of the year in which the plan was created; and

(b) after 1975 shall be deemed to have been registered on the first day of January in the year of registration.

(12.1) Notice of intent to revoke registration — When a particular day is

(a) a day on which a registered education savings plan ceases to comply with the conditions of subsection (2) for the plan's registration,

(b) a day on which a registered education savings plan ceases to comply with any provision of the plan,

(c) the last day of a month in respect of which tax is payable under Part X.4 by an individual because of contributions made, or deemed for the purpose of Part X.4 to have been made, by or on behalf of the individual into a registered education savings plan,

(d) a day on which a registered education savings plan is revocable, or

(e) a day on which a person fails to comply with a condition or an obligation, imposed under the *Canada Education Savings Act* or under a program administered pursuant to an agreement entered into under section 12 of that Act, that applies with respect to a registered education savings plan,

the Minister may send written notice (referred to in this subsection and subsection (12.2) as a "notice of intent") to the promoter of the plan that the Minister proposes to revoke the registration of the plan as of the day specified in the notice of intent, which day shall not be earlier than the particular day.

Related Provisions: 146.1(2.1) — RESP becoming revocable; 146.1(12.2) — Notice of revocation; 146.1(14)(a) — Reference to *Canada Education Savings Act* includes reference to earlier *DHRD Act*; 172(3)(e.1) — Appeal to Federal Court of Appeal from giving of notice of intent; 180(1)(c.1) — Deadline for filing appeal to Federal Court of Appeal; 248(7) — Notice deemed received on day mailed.

History: Para. 146.1(12.1)(e) amended by 2004, c. 26, subsec. 21(11), in force December 15, 2004. The para. formerly read:

> (e) a day on which a person fails to comply with a condition or obligation imposed under Part III.1 of the *Department of Human Resources Development Act* that applies with respect to a registered education savings plan,

Paras. 146.1(12.1)(d) and (e) added by 1999, c. 22, subsec. 62(10), applicable after 1997.

Subsec. 146.1(12.1) added by 1998, c. 19, subsec. 38(16), applicable after 1997.

(12.2) Notice of revocation — When the Minister sends a notice of intent to revoke the registration of a registered education savings plan to the promoter of the plan, the Minister may, after 30 days after the receipt by the promoter of the notice, send written notice (referred to in this subsection and subsection (13) as a "notice of revocation") to the promoter that the registration of the plan is revoked as of the day specified in the notice of revocation, which day shall not be earlier than the day specified in the notice of intent.

Related Provisions: 146.1(13) — Revocation; 248(7) — Notice deemed received on day mailed.

History: Subsec. 146.1(12.2) added by 1998, c. 19, subsec. 38(16), applicable after 1997.

(13) Revocation of registration — When the Minister sends a notice of revocation of the registration of a registered education savings plan under subsection (12.2) to the promoter of the plan, the registration of the plan is revoked as of the day specified in the notice of revocation, unless the Federal Court of Appeal or a judge thereof, on application made at any time before the determination of an appeal under subsection 172(3), orders otherwise.

Related Provisions: 146.1(2) — Requirements for registration; 146.1(5) — Trust becomes taxable after revocation; 244(5) — Proof of service by mail; 248(7)(a) — Mail deemed received on day mailed.

History: Subsec. 146.1(13) amended by 1998, c. 19, subsec. 38(16), applicable after 1997. Subsec. 146.1(13) formerly read:

> (13) Where at any time an education savings plan that has been accepted by the Minister for registration for the purposes of this Act ceases to comply with the requirements of this section for its registration as such, the Minister may revoke its registration as of any date after that time and shall give notice of the revocation by registered mail to the subscriber and to the promoter.

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs.

(13.1) RESP information — Every trustee under a registered education savings plan shall, in prescribed form and manner, file with the Minister information returns in respect of the plan.

Related Provisions: 146.1(15) — Information returns by promoters.

History: Subsec. 146.1(13.1) added by 1998, c. 21, s. 74, in force June 18, 1998.

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs.

(14) Former Act — A reference

(a) in this section, in paragraph 60(x) or in subparagraph 241(4)(d)(vii.1) to the *Canada Education Savings Act*, to an amount paid, to the payment of an amount or to the repayment of an amount, or to a condition or an obligation imposed, under that Act includes a reference to Part III.1 of the *Department of Human Resources Development Act*, or to an amount paid, to the payment of an amount or to the repayment of an amount, or to a condition or an obligation imposed, as the case may be, under that Part as it read at the time the reference is relevant; and

(b) in clause (2)(g.1)(ii)(B) to an amount that the Minister designated for the purpose of the *Canada Education Savings Act* approves in writing with respect to an individual includes a reference to an amount that the Minister of Human Resources Development or the

Minister of State to be styled Minister of Human Resources and Skills Development has approved in writing, before the day on which a Minister is designated for the purposes of that Act, with respect to the individual.

History: Subsec. 146.1(14) added by 2004, c. 26, subsec. 21(12), in force December 15, 2004.

Former subsec. 146.1(14) repealed by 1998, c. 19, subsec. 38(16), applicable after 1997. Subsec. 146.1(14) formerly read:

(14) Rules applicable to revoked plan — Where at any time in a taxation year the Minister revokes the registration of an education savings plan that had previously been accepted for registration, there shall be included in computing the income of the subscriber under the plan for that year the amount, if any, by which

(a) the fair market value at that time of all of the property of the trust governed by the plan

exceeds

(b) the amount by which

(i) the total of all amounts each of which is

(A) an amount paid to the plan by or on behalf of the subscriber, or

(B) the amount of the pre-1972 income reported on or before April 30, 1972 by the trust governed by the plan to the subscriber as having been earned in respect of amounts paid to the plan by or on behalf of the subscriber

exceeds

(ii) the total of all refunds of payments paid or payable under the plan to the subscriber.

(15) Regulations — The Governor in Council may make regulations requiring promoters of education savings plans to file information returns in respect of the plans.

Related Provisions: 146.1(13.1) — Information returns by trustees.

History: Subsec. 146.1(15) added by 1998, c. 19, subsec. 38(17), in force on June 18, 1998.

Definitions [s. 146.1]: "accumulated income payment" — 146.1(1); "adoption" — 251(6)(c); "amount", "annuity", "authorized foreign bank" — 248(1); "beneficiary" — 146.1(1); "blood relationship" — 251(6)(a); "borrowed money", "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "common-law partner", "common-law partnership" — 248(1); "connected" — 251(6); "contribution" — 146.1(1); "corporation" — 248(1), *Interpretation Act* 35(1); "education savings plan", "educational assistance payment" — 146.1(1); "estate" — 104(1), 248(1); "excluded amount" — 146.1(7.2); "Federal Court of Appeal" — *Federal Courts Act* s. 3; "Governor in Council" — *Interpretation Act* 35(1); "individual" — 248(1); "licensed annuities provider" — 147(1), 248(1); "Minister" — 248(1); "nephew", "niece" — 252(2)(g); "non-resident" — 248(1); "notice of intent" — 146.1(12.1); "notice of revocation" — 146.1(12.2); "parent" — 252(2)(a); "person" — 248(1); "portion" — 146.1(8); "post-secondary educational institution" — 146.1(1); "post-secondary school level" — 146.1(1); "prescribed" — 248(1); "prescribed stock exchange in Canada" — Reg. 3200; "promoter" — 146.1(1)"education savings plan"(b); "property" — 248(1); "province" — *Interpretation Act* 35(1); "public primary caregiver" — 146.1(1); "qualified investment" — 146.1(1); "RESP annual limit", "refund of payments" — 146.1(1); "registered education savings plan" — 146.1(1), 248(1); "regulation" — 248(1); "resident in Canada" — 250; "security" — *Interpretation Act* 35(1); "series of loans" — 248(10); "share" — 248(1); "specified plan" — 146.1(1); "subscriber" — 146.1(1); "substituted property" — 248(5); "taxable income" — 2(2), 248(1); "taxation year" — 249; "tax-paid income" — 146.1(1); "trust" — 104(1), 108(1), 146.1(1), 248(1), (3); "writing" — *Interpretation Act* 35(1); "written" — *Interpretation Act* 35(1)"writing".

Registered Home Ownership Savings Plans

146.2 (1)–(21) [Repealed under former Act]

(22) Contributions to R.H.O.S.P. after May 22, 1985 — There shall be included in computing the income of a taxpayer for the 1985 taxation year an amount equal to that portion of the income of a registered home ownership savings plan, under which the taxpayer is a beneficiary, that can reasonably be considered to have accrued to the end of 1985, to have become receivable or to have been received before the end of 1985, and to be attributable to amounts contributed after May 22, 1985 to or under the plan.

(23) Application of subsec. 146.2(1) of R.S.C., 1952, c. 148 — The definitions in subsection 146.2(1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1985 taxation year, apply to subsection (22).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Origin of subsec. 146.2(23): R.S.C. 1985, c. 1 (5th Supp.).

Registered Retirement Income Funds

146.3 (1) Definitions — In this section,

"annuitant" under a retirement income fund at any time means

(a) the first individual to whom the carrier has undertaken to make payments described in the definition "retirement income fund" out of or under the fund, where the first individual is alive at that time,

(b) after the death of the first individual, a spouse or common-law partner (in this definition referred to as the "survivor") of the first individual to whom the carrier has undertaken to make payments described in the definition "retirement income fund" out of or under the fund after the death of the first individual, where the survivor is alive at that time and the undertaking was made pursuant to an election described in that definition of the first individual with the consent of the legal representative of the first individual, and

Proposed Amendment — 146.3(1)"annuitant"(b)

(b) after the death of the first individual, a spouse or common-law partner (in this definition referred to as the "survivor") of the first individual to whom the carrier has undertaken to make payments described in the definition "retirement income fund" out of or under the fund after the death of the first individual, if the survivor is alive at that time and the undertaking was made

(i) pursuant to an election that is described in that definition and that was made by the first individual, or

(ii) with the consent of the legal representative of the first individual, and

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 143(1), will amend para. (b) of the definition "annuitant" in subsec. 146.3(1) to read as above, applicable to 2001 *et seq.* except that, if a taxpayer and a person have jointly elected under s. 144 of the *Modernization of Benefits and Obligations Act* [S.C. 2000, c. 12; see the transitional rules reproduced in the History to 248(1)"common-law partner"], in respect of the 1998, 1999 or 2000 taxation years, it applies to the taxpayer and the person in respect of the applicable taxation year and subsequent taxation years.

Technical Notes: Subsection 146.3(1) contains the definition "annuitant" for purposes of the rules relating to RRIFs. Paragraph (b) of the definition allows the spouse or common-law partner of a deceased annuitant to become the successor annuitant under the RRIF, if the deceased annuitant so elected or the legal representative of the deceased annuitant consents. When this paragraph was amended by S.C. 2000, c. 12 (the

Modernization of Benefits and Obligations Act, formerly Bill C-23), the word "or" in the English version was inadvertently removed. The definition is amended to correct this error, and to improve the readability of this paragraph, with the same application as the initial amendment in Bill C-23.

(c) after the death of the survivor, another spouse or common-law partner of the survivor to whom the carrier has undertaken, with the consent of the legal representative of the survivor, to make payments described in the definition "retirement income fund" out of or under the fund after the death of the survivor, where that other spouse or common-law partner is alive at that time;

History: Paras. (b) and (c) of the definition "annuitant" in subsec. 146.3(1) by 2000, c. 12, s. 136, applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History note to 248(1)"common-law partner". The paras. formerly read:

(b) after the death of the first individual, a spouse (in this paragraph[42] referred to as the "surviving spouse") of the first individual to whom the carrier has undertaken to make payments described in the definition "retirement income fund" out of or under the fund after the death of the first individual, where the surviving spouse is alive at that time and the undertaking was made pursuant to an election described in that definition of the first individual or with the consent of the legal representative of the first individual, and

(c) after the death of the surviving spouse, another spouse of the surviving spouse to whom the carrier has undertaken, with the consent of the legal representative of the surviving spouse, to make payments described in the definition "retirement income fund" out of or under the fund after the death of the surviving spouse, where that other spouse is alive at that time;

The definition "annuitant" in subsec. 146.3(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 84(1), applicable to deaths occurring after 1990. The definition formerly read:

"annuitant" under a retirement income fund at any particular time means the individual to whom the carrier has undertaken to make the payments described in the definition "retirement income fund" in this subsection out of or under the fund;

Forms: RC4178: Death of a RRIF annuitant [guide].

"carrier" of a retirement income fund means

(a) a person licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an annuities business,

(b) a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee,

(c) a corporation approved by the Governor in Council for the purposes of section 146 that is licensed or otherwise authorized under the laws of Canada or a province to issue investment contracts, or

(d) a person referred to as a depositary in section 146,

that has agreed to make payments under a retirement income fund to the individual who is the annuitant under the fund;

Forms: T3G: Certification of no tax liability by a group of RRSPs, RRIFs, or RESPs; T3GR: Group income tax and information return for RRSP, RRIF or RESP trusts (and worksheets); T3IND: T3IND income tax return for RRSP, RRIF, or RESP.

"designated benefit" of an individual in respect of a registered retirement income fund means the total of

(a) such amounts paid out of or under the fund after the death of the last annuitant thereunder to the legal representative of that annuitant

(i) as would, had they been paid under the fund to the individual, have been refunds of premiums (in this paragraph having the meaning assigned by subsection 146(1)) if the fund were a registered retirement savings plan that had not matured before the death, and

(ii) as are designated jointly by the legal representative and the individual in prescribed form filed with the Minister, and

(b) amounts paid out of or under the fund after the death of the last annuitant thereunder to the individual that would be refunds of premiums had the fund been a registered retirement savings plan that had not matured before the death;

Related Provisions: 146.3(6.1) — Designated benefit deemed received; 146.3(6.11) — Transfer of designated benefit.

History: The definition "designated benefit" added to subsec. 146.3(1) by 1994, c. 21, subsec. 71(2), applicable to deaths occurring after 1992.

Forms: T1090: Death of a RRIF annuitant — designated benefit.

"minimum amount" under a retirement income fund for a year is the amount determined by the formula

$$(A \times B) + C$$

where

A is the total fair market value of all properties held in connection with the fund at the beginning of the year (other than annuity contracts held by a trust governed by the fund that, at the beginning of the year, are not described in paragraph (b.1) of the definition "qualified investment");

B is

(a) where the first annuitant under the fund elected in respect of the fund under paragraph (b) of the definition "minimum amount" in this subsection, as it read before 1992, or under subparagraph 146.3(1)(f)(i) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, to use the age of another individual, the prescribed factor for the year in respect of the other individual,

(b) where paragraph (a) does not apply and the first annuitant under the fund so elects before any payment has been made under the fund by the carrier, the prescribed factor for the year in respect of an individual who was the spouse or common-law partner of the first annuitant at the time of the election, and

(c) in any other case, the prescribed factor for the year in respect of the first annuitant under the fund, and

C is, where the fund governs a trust, the total of all amounts each of which is

(a) a periodic payment under an annuity contract held by the trust at the beginning of the year (other than an annuity contract described at the beginning of the year in paragraph (b.1) of the definition "qualified investment") that is paid to the trust in the year, or

[42] *Sic.* This should read "in this definition".

(b) if the periodic payment under such an annuity contract is not made to the trust because the trust disposed of the right to that payment in the year, a reasonable estimate of that payment on the assumption that the annuity contract had been held throughout the year and no rights under the contract were disposed of in the year;

Related Provisions: 146.3(1)"retirement income fund" — Requirement to withdraw minimum amount annually; 146.3(2)(e.1), (e.2) — Requirement for carrier to retain enough property to pay out minimum amount; 146.3(5.1) — Amount included in income; Reg. 100(1)"remuneration"(j.1), 103(6)(d.1) — Withholding tax on payments; *Income Tax Conventions Interpretation Act* 5"periodic pension payment"(c) — Withdrawal of more than twice the minimum amount per year is not "periodic".

History: The definition "minimum amount" in subsec. 146.3(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

The definition "minimum amount" in subsec. 146.3(1) amended by 1998, c. 19, subsec. 171(1), applicable

(a) to 1998 *et seq.* with respect to

(i) retirement income funds entered into after February 1986, and

(ii) retirement income funds entered into before March 1986 and revised or amended after February 1986 and before 1998;

(b) to the year in which a retirement income fund is first revised or amended after 1997 and to subsequent years, if the fund was entered into before March 1986 and was not revised or amended after February 1986 and before 1998; and

(c) with respect to a retirement income fund that governs a trust that, after July 1997, holds a contract for an annuity, to all years that begin after the first day

(i) that is after July 1997, and

(ii) on which the trust holds such a contract.

The definition formerly read:

"minimum amount" under a retirement income fund for the year in which the fund is entered into is nil and for each subsequent year is the product obtained when the fair market value of the property held in connection with the fund at the beginning of that subsequent year is multiplied by

(a) where the first annuitant under the fund elected in respect of the fund under paragraph (b), as it read before 1992, or under subparagraph 146.3(1)(f)(i) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read before 1986, to use the age of another individual, the prescribed amount for that subsequent year in respect of the other individual,

(b) where paragraph (a) does not apply and the first annuitant under the fund so elects before any payment has been made under the fund by the carrier, the prescribed amount for that subsequent year in respect of an individual who was the spouse of the first annuitant at the time of the election, or

(c) in any other case, the prescribed amount for that subsequent year in respect of the first annuitant under the fund;

The definition "minimum amount" in subsec. 146.3(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 84(2), applicable

(a) to 1992 *et seq.* with respect to retirement income funds

(i) entered into after February 1986, and

(ii) entered into before March 1986 and revised or amended after February 1986 and before 1992; and

(b) to the taxation year in which a retirement income fund is first revised or amended after February 1986 and to subsequent taxation years, where the fund was entered into before March 1986 and was not revised or amended after February 1986 and before 1992.

However, the amended definition does not apply, for the purposes of subsec. 146.3(5.1), prescribed rules made for the purpose of subsection 153(1) of the Act, and section 5 of the *Income Tax Conventions Interpretation Act*, to payments made before 1993. The definition formerly read:

"minimum amount" under a retirement income fund

(a) for the year in which the fund was entered into is nil and

(b) for each subsequent year, the amount determined by the formula

$$\frac{A}{90-B}$$

where

A is the fair market value of the property held in connection with the fund at the beginning of the year, and

B is

(i) the number that is, or would be, the age in whole years of the annuitant at the beginning of the year, or

(ii) where the annuitant so elects before any payment has been made by the carrier of the fund, the number that is or would be the age in whole years of the annuitant's spouse at the beginning of the year;

Regulations: 7308 (prescribed factor).

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Information Circulars: 78-18R6: Registered retirement income funds.

"property held" in connection with a retirement income fund means property held by the carrier of the fund, whether held by the carrier as trustee or beneficial owner thereof, the value of which, or the income or loss from which, is relevant in determining the amount for a year payable to the annuitant under the fund;

"qualified investment" for a trust governed by a registered retirement income fund means

(a) an investment that would be described in any of paragraphs (a), (b), (d) and (f) to (h) of the definition "qualified investment" in section 204 if the references in that definition to "a trust governed by a deferred profit sharing plan or revoked plan" were read as references to "a trust governed by a registered retirement income fund",

(b) a bond, debenture, note or similar obligation

(i) issued by a corporation the shares of which are listed on a prescribed stock exchange in Canada, or

(ii) issued by an authorized foreign bank and payable at a branch in Canada of the bank,

(b.1) a contract for an annuity issued by a licensed annuities provider where

(i) the trust is the only person who, disregarding any subsequent transfer of the contract by the trust, is or may become entitled to any annuity payments under the contract, and

(ii) the holder of the contract has a right to surrender the contract at any time for an amount that would, if reasonable sales and administration charges were ignored, approximate the value of funds that could otherwise be applied to fund future periodic payments under the contract,

(b.2) a contract for an annuity issued by a licensed annuities provider where

(i) annual or more frequent periodic payments are or may be made under the contract to the holder of the contract,

(ii) the trust is the only person who, disregarding any subsequent transfer of the contract by the trust, is or may become entitled to any annuity payments under the contract,

(iii) neither the time nor the amount of any payment under the contract may vary because of the length of any life, other than

(A) if the annuitant under the fund (in this paragraph referred to as the "RRIF annuitant") has

made the election referred to in the definition "retirement income fund" in respect of the fund and a spouse or common-law partner, the life of the RRIF annuitant or the life of the spouse or common-law partner, and

(B) in any other case, the life of the RRIF annuitant,

(iv) the day on which the periodic payments began or are to begin (in this paragraph referred to as the "start date") is not later than the end of the year following the year in which the contract was acquired by the trust,

(v) either

(A) the periodic payments are payable for the life of the RRIF annuitant or the joint lives of the RRIF annuitant and the RRIF annuitant's spouse or common-law partner and either there is no guaranteed period under the contract or there is a guaranteed period that begins at the start date and does not exceed a term equal to 90 years minus the lesser of

(I) the age in whole years at the start date of the RRIF annuitant (determined on the assumption that the RRIF annuitant is alive at the start date), and

(II) the age in whole years at the start date of a spouse or common-law partner of the RRIF annuitant (determined on the assumption that a spouse or common-law partner of the RRIF annuitant at the time the contract was acquired is a spouse or common-law partner of the RRIF annuitant at the start date), or

(B) the periodic payments are payable for a term equal to

(I) 90 years minus the age described in subclause (A)(I), or

(II) 90 years minus the age described in subclause (A)(II), and

(vi) the periodic payments

(A) are equal, or

(B) are not equal solely because of one or more adjustments that would, if the contract were an annuity under a retirement savings plan, be in accordance with subparagraphs 146(3)(b)(iii) to (v) or that arise because of a uniform reduction in the entitlement to the periodic payments as a consequence of a partial surrender of rights to the periodic payments, and

(c) such other investments as may be prescribed by regulations of the Governor in Council made on the recommendation of the Minister of Finance;

Related Provisions: 87(10) — New share issued on amalgamation of public corporation deemed to be listed on prescribed stock exchange; 132.2(1)(k) [to be repealed], 132.2(3)(h) [draft] — Where share ceases to be qualified investment due to mutual fund reorganization; 146.3(7) — Tax on acquisition of non-qualified investment; 146.3(9) — Tax on income from non-qualified investment; 207.1(4) — Tax on holding of non-qualified investment.

History: Para. (b) of the definition "qualified investment" in subsec. 146.3(1) amended by 2001, c. 17, s. 141, applicable after June 27, 1999. The para. formerly read:

(b) a bond, debenture, note or similar obligation of a corporation the shares of which are listed on a prescribed stock exchange in Canada,

The definition "qualified investment" in subsec. 146.3(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Paras. (b.1) and (b.2) added to the definition "qualified investment" in subsec. 146.3(1) by 1998, c. 19, subsec. 171(2), applicable after 1996.

Regulations: 221 (information return by issuer of qualified investment); 3200, 3201 (prescribed stock exchanges; but see also ITA 87(10)); 4900, 4901, 5100–5104 (prescribed investments).

Remission Orders: *Lionaird Capital Corporation Notes Remission Order*, P.C. 1999-737 (tax under 146.3(7) waived because taxpayers thought they were qualified investments).

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs.

Information Circulars: 78-18R6: Registered retirement income funds.

Forms: T3F: Investments prescribed to be qualified or not to be foreign property information return.

"registered retirement income fund" means a retirement income fund accepted by the Minister for registration for the purposes of this Act and registered under the Social Insurance Number of the first annuitant under the fund;

Related Provisions: 18(1)(u) — Investment counselling fees for RRSP are non-deductible; 128.1(10)"excluded right or interest"(a)(ii) — No deemed disposition of RRIF on emigration; 248(1)"disposition"(g) — Transfer between RRSPs/RRIFs not a disposition; 248(1)"registered retirement income fund" — Definition applies to entire Act.

Interpretation Bulletins: IT-415R2: Deregistration of RRSPs (archived); IT-528: Transfers of funds between registered plans.

Forms: T2033: Direct transfer under subsec. 146.3(14.1) or para. 146(16)(a) or 146.3(2)(e).

"retirement income fund" means an arrangement between a carrier and an annuitant under which, in consideration for the transfer to the carrier of property, the carrier undertakes to pay to the annuitant and, where the annuitant so elects, to the annuitant's spouse or common-law partner after the annuitant's death, in each year that begins not later than the first calendar year after the year in which the arrangement was entered into one or more amounts the total of which is not less than the minimum amount under the arrangement for the year, but the amount of any such payment shall not exceed the value of the property held in connection with the arrangement immediately before the time of the payment.

Related Provisions: 146.3(1)"minimum amount" — determination of minimum amount to be paid out; 248(1)"retirement income fund" — Definition applies to entire Act.

History: The definition "retirement income fund" in subsec. 146.3(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

The definition "retirement income fund" in subsec. 146.3(1) substituted by 1994, c. 21, subsec. 71(1), applicable

(a) to 1992 *et seq.* with respect to

(i) retirement income funds entered into after February 1986, and

(ii) retirement income funds entered into before March 1986 and revised or amended after February 1986 and before 1992; and

(b) where a retirement income fund was entered into before March 1986 and was not revised or amended after February 1986 and before 1992, to the taxation year in which the fund is first revised or amended after February 1986 and to subsequent taxation years.

That definition formerly read:

"retirement income fund" means an arrangement between a carrier and an annuitant under which, in consideration for the transfer to the carrier of property (including money), the carrier undertakes to

pay to the annuitant and, where the annuitant so elects, to the annuitant's spouse after the annuitant's death,

(a) in each year, commencing not later than the first calendar year after the year in which the arrangement is entered into, one or more amounts the total of which is not less than the minimum amount under the arrangement for a year, but the amount of any such payment shall not exceed the value of the property held in connection with the arrangement immediately before the time of the payment, and

(b) at the end of the year in which the last payment under the arrangement is, in accordance with the terms and conditions of the arrangement, required to be made, an amount equal to the value of the property, if any, held in connection with the arrangement at that time.

Interpretation Bulletins: IT-415R2: Deregistration of RRSPs (archived).

Information Circulars: 78-18R6: Registered retirement income funds.

(1.1) [Repealed]

History: Subsec. 146.3(1.1) repealed by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 84(3), applicable after 1992 [see now subsec. 252(4)]; and, in applying the subsec. in 1991 and 1992, the reference therein to "minimum amount" shall be read as ""annuitant", "minimum amount"". Subsec. (1.1) formerly read:

(1.1) Definition of "spouse" — For the purposes of the definitions "minimum amount" and "retirement income fund" in subsection (1) paragraph (2)(d), subparagraph (2)(f)(iv), subsection (6) and paragraph (14)(b), "spouse" has the meaning assigned by subsection 146(1.1).

(2) Acceptance of fund for registration — The Minister shall not accept for registration for the purposes of this Act any retirement income fund of an individual unless, in the Minister's opinion, the following conditions are complied with:

(a) the fund provides that the carrier shall make only those payments described in any of paragraphs (d) and (e), the definition "retirement income fund" in subsection (1), and subsections (14) and (14.1);

(b) the fund provides that payments thereunder may not be assigned in whole or in part;

(c) where the carrier is a person referred to as a depository in section 146, the fund provides that

Proposed Amendment — 146.3(2)(c) opening words

(c) if the carrier is a person referred to as a depositary in section 146, the fund provides that

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 143(2), will amend the opening words of para. 146.3(2)(c) to read as above, applicable after 2001.

Technical Notes: Subsection 146.3(2) outlines the conditions that must be satisfied in order for a retirement income fund to be registered as a RRIF.

Paragraph 146.3(2)(c) of the English version refers to a carrier who "is a person referred to as a depository in section 146". This paragraph is amended to replace the word "depository" with the word "depositary", which is the term used in section 146.

(i) the carrier has no right of offset as regards the property held in connection with the fund in respect of any debt or obligation owing to the carrier, and

(ii) the property held in connection with the fund cannot be pledged, assigned or in any way alienated as security for a loan or for any purpose other than that of the making by the carrier to the annuitant those payments described in paragraph (a);

(d) the fund provides that, except where the annuitant's spouse or common-law partner becomes the annuitant under the fund, the carrier shall, as a consequence of the death of the annuitant, distribute the property held in connection with the fund at the time of the annuitant's death or an amount equal to the value of such property at that time;

(e) the fund provides that, at the direction of the annuitant, the carrier shall transfer all or part of the property held in connection with the fund, or an amount equal to its value at the time of the direction (other than property required to be retained in accordance with the provision described in paragraph (e.1) or (e.2)), together with all information necessary for the continuance of the fund, to a person who has agreed to be a carrier of another registered retirement income fund of the annuitant;

(e.1) where the fund does not govern a trust or the fund governs a trust created before 1998 that does not hold an annuity contract as a qualified investment for the trust, the fund provides that if an annuitant, at any time, directs that the carrier transfer all or part of the property held in connection with the fund, or an amount equal to its value at that time, to a person who has agreed to be a carrier of another registered retirement income fund of the annuitant or to a registered pension plan in accordance with subsection (14.1), the transferor shall retain an amount equal to the lesser of

(i) the fair market value of such portion of the property as would, if the fair market value thereof does not decline after the transfer, be sufficient to ensure that the minimum amount under the fund for the year in which the transfer is made may be paid to the annuitant in the year, and

(ii) the fair market value of all the property;

(e.2) where paragraph (e.1) does not apply, the fund provides that if an annuitant, at any time, directs that the carrier transfer all or part of the property held in connection with the fund, or an amount equal to its value at that time, to a person who has agreed to be a carrier of another registered retirement income fund of the annuitant or to a registered pension plan in accordance with subsection (14.1), the transferor shall retain property in the fund sufficient to ensure that the total of

(i) all amounts each of which is the fair market value, immediately after the transfer, of a property held in connection with the fund that is

(A) property other than an annuity contract, or

(B) an annuity contract described, immediately after the transfer, in paragraph (b.1) of the definition "qualified investment" in subsection (1), and

(ii) all amounts each of which is a reasonable estimate, as of the time of the transfer, of the amount of an annual or more frequent periodic payment under an annuity contract (other than an annuity contract described in clause (i)(B)) that the trust may receive after the transfer and in the year of the transfer

is not less than the amount, if any, by which the minimum amount under the fund for that year exceeds the total of all amounts received out of or under the fund before the transfer that are included in computing the income of the annuitant under the fund for that year;

(f) the fund provides that the carrier shall not accept property as consideration thereunder other than property transferred from

(i) a registered retirement savings plan under which the individual is the annuitant,

(ii) another registered retirement income fund under which the individual is the annuitant,

(iii) the individual to the extent only that the amount of the consideration was an amount described in subparagraph 60(l)(v),

(iv) a registered retirement income fund or registered retirement savings plan of the individual's spouse or common-law partner or former spouse or common-law partner under a decree, order or judgment of a competent tribunal, or under a written separation agreement, relating to a division of property between the individual and the individual's spouse or common-law partner or former spouse or common-law partner in settlement of rights arising out of, or on the breakdown of, their marriage or common-law partnership,

(v) a registered pension plan of which the individual is a member (within the meaning assigned by subsection 147.1(1)),

(vi) a registered pension plan in accordance with subsection 147.3(5) or (7), or

(vii) a provincial pension plan in circumstances to which subsection 146(21) applies;

Proposed Addition — 146.3(2)(f)(viii)

(viii) a deferred profit sharing plan in accordance with subsection 147(19);

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 143(3), will add subpara. 146.3(2)(f)(viii), applicable after March 20, 2003.

Technical Notes: Paragraph 146.3(2)(f) prohibits a RRIF from receiving property, other than property transferred from sources listed in that paragraph. The paragraph is amended so that a RRIF may receive property transferred directly from a deferred profit sharing plan (DPSP) in accordance with subsection 147(19). This amendment is consequential on an amendment to subsection 147(19) that permits direct transfers from DPSPs to RRIFs. For more details, see the commentary to that subsection.

(g) the fund requires that no benefit or loan, other than

(i) a benefit the amount of which is required to be included in computing the annuitant's income,

(ii) an amount referred to in paragraph (5)(a) or (b), or

(iii) the benefit derived from the provision of administrative or investment services in respect of the fund,

that is conditional in any way on the existence of the fund may be extended to the annuitant or to a person with whom the annuitant was not dealing at arm's length; and

(h) the fund in all other respects complies with regulations of the Governor in Council made on the recommendation of the Minister of Finance.

Related Provisions: 139.1(13) — Para. 146(2)(c.4) inapplicable to conversion benefit on demutualization of insurer; 146.3(11) — Change in fund after registration; 146.3(14)–(14.2) — Transfers; 172(3) — Appeal from refusal to register; 248(1)"disposition"(g) — Transfer with same annuitant not a disposition; 248(8) — Occurrences as a consequence of death; 252(3) — Extended meaning of "spouse" and "former spouse".

History: Para. 146.3(2)(a) and the opening words of para. 146.3(2)(e.1) and (e.2) amended by 2003, c. 15, subsecs. 83(1)–(3), applicable after 2003. Those provisions formerly read:

(a) the fund provides that the carrier shall make only those payments described in any of paragraphs (d) and (e), the definition "retirement income fund" in subsection (1) and paragraph (14)(b);

. . . . .

(e.1) where the fund does not govern a trust or the fund governs a trust created before 1998 that does not hold an annuity contract as a qualified investment for the trust, the fund provides that if an annuitant, at any time, directs that the carrier transfer all or part of the property held in connection with the fund, or an amount equal to its value at that time, to a person who has agreed to be a carrier of another registered retirement income fund of the annuitant, the transferor shall retain an amount equal to the lesser of

. . . . .

(e.2) where paragraph (e.1) does not apply, the fund provides that if an annuitant, at any time, directs that the carrier transfer all or part of the property held in connection with the fund, or an amount equal to its value at that time, to a person who has agreed to be a carrier of another registered retirement income fund of the annuitant, the transferor shall retain property in the fund sufficient to ensure that the total of

Subsec. 146.3(2) amended by 2000, c. 12, Sch. 2, ss. 1 and 2, to replace "spouse" with "spouse or common-law partner", and by 2000, c. 12, Sch. 2, s. 9, to replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Para. 146.3(2)(a) amended by 1998, c. 19, subsec. 171(3), applicable to taxation years that end after November 1991. Para. 146.3(2)(a) formerly read:

(a) the fund provides that the carrier shall make only those payments described in paragraphs (d) and (e), the definition "retirement income [fund]" in subsection (1) and paragraph (14)(b);

Para. 146.3(2)(e) and the opening words of para. (e.1) amended, para. 146.3(2)(e.2) added, by the said c. 19, subsecs. 171(4)–(6), applicable to retirement income funds entered into after July 13, 1990 and, in the application of para. (e) to retirement income funds entered into before July 14, 1990, the para. shall be read without reference to the words "in prescribed form and manner". Para. 146.3(2)(e) and the opening words of para. (e.1) formerly read:

(e) the fund provides that, at the direction of the annuitant, the carrier shall, in prescribed form and manner, transfer all or part of the property held in connection with the fund, or an amount equal to its value at the time of such direction (other than property required to be retained in accordance with the provision described in paragraph (e.1)), together with all information necessary for the continuance of the fund, to any person who has agreed to be a carrier of another registered retirement income fund of the annuitant;

(e.1) the fund provides that where an annuitant, at any time, directs that the carrier transfer all or part of the property held in connection with the fund, or an amount equal to its value at that time, to any person who has agreed to be a carrier of another registered retirement income fund, as described in paragraph (e), the carrier shall retain an amount equal to the lesser of

Subpara. 146.3(2)(f)(vii) added by 1994, c. 21, subsec. 71(3), applicable after 1991.

Para. 146.3(2)(d) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 84(4), applicable after 1990. Para. (d) formerly read:

(d) the fund provides that, except where the annuitant's spouse becomes the annuitant under the fund pursuant to the terms of the fund or the provisions of the will of the deceased annuitant, the carrier shall, as a consequence of the death of the annuitant, distribute the property held in connection with the fund at the time of death or an amount equal to the value of the property at that time;

Subpara. 146.3(2)(f)(iv) amended applicable after 1992, and subparas. (f)(v) and (vi) added applicable after August 29, 1990, by 1994, c. 7, Sch. VIII (1993, c. 24), subsecs. 84(5) and (6). Subpara. (f)(iv) formerly read:

(iv) a registered retirement income fund or registered retirement savings plan of the individual's spouse or former spouse pursuant to a decree, order or judgment of a competent tribunal or a written separation agreement, relating to a division of property between the individual and the individual's spouse or former spouse in settlement

of rights arising out of their marriage or other conjugal relationship, on or after the breakdown of their marriage or other relationship;

Para. 146.3(2)(e) amended to add "(other than property required to be retained in accordance with the provision described in paragraph (e.1))", and para. (e.1) added, by 1994, c. 7, Sch. II (1991, c. 49), s. 119, applicable to RIFs entered into after July 13, 1990.

Interpretation Bulletins: IT-307R4: Spousal or common-law registered retirement savings plans.

Information Circulars: 78-18R6: Registered retirement income funds.

Forms: T550: Application for registration of RSPs, ESPs or RIFs under s. 146, 146.1 and 146.3 of the ITA; T2033: Direct transfer under subsec. 146.3(14.1) or para. 146(16)(a) or 146.3(2)(e).

(3) No tax while trust governed by fund — Except as provided in subsection (9), no tax is payable under this Part by a trust on the taxable income of the trust for a taxation year if, throughout the period in the year during which the trust was in existence, the trust was governed by a registered retirement income fund of an individual, except that if the trust has

(a) borrowed money in the year or has borrowed money that it has not repaid before the commencement of the year,

(b) received a gift of property (other than a transfer from a registered retirement savings plan under which the individual is the annuitant (within the meaning of subsection 146(1)) or a transfer from a registered retirement income fund under which the individual is the annuitant)

(i) in the year, or

(ii) in a preceding year and has not divested itself of the property or any property substituted therefor before the commencement of the year, or

(c) carried on any business or businesses in the year,

tax is payable under this Part by the trust,

(d) where paragraph (a) or (b) applies, on its taxable income for the year, and

(e) where neither paragraph (a) nor (b) applies and where paragraph (c) applies, on the amount, if any, by which

(i) the amount that its taxable income for the year would be if it had no incomes or losses from sources other than from the business or businesses, as the case may be,

exceeds

(ii) such portion of the amount determined under subparagraph (i) in respect of the trust for the year as can reasonably be considered to be income from, or from the disposition of, qualified investments for the trust.

Related Provisions: 146.3(3.1) — Exception; 146.3(9) — Tax on income from non-qualified investments; 146.3(15) — Amount earned on RRIF deposit account not taxable to annuitant; 149(1)(x) — RRIF exempt from tax; 206(2) — Part XI tax on excess holdings of foreign property; 207.1(4) — Tax on holding non-qualified investments; 248(5) — Substituted property; Canada-U.S. Tax Treaty:Art. XVIII:5 — Deferral of income accruing in retirement plan.

History: Para. 146.3(3)(e) substituted by 1994, c. 21, subsec. 71(4), applicable to 1993 *et seq.* That para. formerly read:

(e) where neither paragraph (a) nor (b) applies and where paragraph (c) applies, on the amount that its taxable income for the year would be if it had no incomes or losses from sources other than from the business or businesses, as the case may be.

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs.

Information Circulars: 78-18R6: Registered retirement income funds.

(3.1) Exception — Notwithstanding subsection (3), if the last annuitant under a registered retirement income fund has died, tax is payable under this Part by the trust governed by the fund on its taxable income for each year after the year following the year in which the last annuitant under the fund died.

Related Provisions: 104(6)(a.2) — Deduction for amounts paid out to beneficiaries.

History: Subsec. 146.3(3.1) substituted by 1994, c. 21, subsec. 71(5), applicable to 1993 *et seq.* That subsec. formerly read:

(3.1) Notwithstanding subsection (3), if the last annuitant under a registered retirement income fund has died, tax is payable under this Part by the trust governed by the fund on its taxable income for each year after the year of the annuitant's death.

(4) Disposition or acquisition of property by trust — Where at any time in a taxation year a trust governed by a registered retirement income fund

(a) disposes of property for a consideration less than the fair market value of the property at the time of the disposition, or for no consideration, or

(b) acquires property for a consideration greater than the fair market value of the property at the time of the acquisition,

2 times the difference between that fair market value and the consideration, if any, shall be included in computing the income for the taxation year of the taxpayer who is the annuitant under the fund at that time.

Related Provisions: 212(1)(q), 214(3)(i) — Non-resident withholding tax.

Regulations: 215(3) (information return).

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs.

Information Circulars: 78-18R6: Registered retirement income funds.

(5) Benefits taxable — There shall be included in computing the income of a taxpayer for a taxation year all amounts received by the taxpayer in the year out of or under a registered retirement income fund other than the portion thereof that can reasonably be regarded as

(a) part of the amount included in computing the income of another taxpayer by virtue of subsections (6) and (6.2); or

(b) an amount received in respect of the income of the trust under the fund for a taxation year for which the trust was not exempt from tax by virtue of subsection (3.1).

(c) an amount that relates to interest, or to another amount included in computing income otherwise than because of this section, and that would, if the fund were a registered retirement savings plan, be a tax-paid amount (within the meaning assigned by paragraph (b) of the definition "tax-paid amount" in subsection 146(1)).

Related Provisions: 56(1)(t) — Income from RRIF; 60(l) — Transfer of refund of premium under RRSP; 139.1(12) — Conversion benefit on demutualization of insurance corporation not taxable; 146.3(1)"retirement income fund" — Requirement to withdraw minimum amount annually; 146.3(15) — Amount earned in RRIF deposit account not taxable; 147.3(13.1) — Withdrawal of excessive transfers to RRSPs and RRIFs; 153(1)(l) — Withholding of tax on RRIF payments; 160.2(2) — Joint and several liability where non-annuitant receives amount from RRIF; 212(1)(q) — Withholding tax on RRIF payment to non-resident; Canada-U.S. Tax Treaty:Art. XXI:2(a) — RRSP exempt from U.S. tax.

History: Para. 146.3(5)(c) added by 1998, c. 19, subsec. 171(7), applicable to deaths that occur after 1992.

Regulations: 215(2) (information return).

Information Circulars: 78-18R6: Registered retirement income funds.

Forms: T4RIF: Statement of income from a registered retirement income fund; T4RIF Segment; T4RIF Summ: Return of income out of a registered retirement income fund; T4040: RRSPs and other registered plans for retirement [guide].

(5.1) Amount included in income — Where at any time in a taxation year a particular amount in respect of a registered retirement income fund that is a spousal plan (within the meaning assigned by subsection 146(1)) in relation to a taxpayer is required to be included in the income of the taxpayer's spouse or common-law partner and the taxpayer is not living separate and apart from the taxpayer's spouse or common-law partner at that time by reason of the breakdown of their marriage or common-law partnership, there shall be included at that time in computing the taxpayer's income for the year an amount equal to the least of

Proposed Amendment — 146.3(5.1) opening words

(5.1) Amount included in income [spousal attribution] — If at any time in a taxation year a particular amount in respect of a registered retirement income fund that is a spousal or common-law partner plan (within the meaning assigned by subsection 146(1)) in relation to a taxpayer is required to be included in the income of the taxpayer's spouse or common-law partner and the taxpayer is not living separate and apart from the taxpayer's spouse or common-law partner at that time by reason of the breakdown of their marriage or common-law partnership, there shall be included at that time in computing the taxpayer's income for the year an amount equal to the least of

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 143(4), will amend the opening words of subsec. 146.3(5.1) to read as above, applicable to 2001 *et seq.* except that, if a taxpayer and a person have jointly elected under s. 144 of the *Modernization of Benefits and Obligations Act* [S.C. 2000, c. 12; see the transitional rules reproduced in the History to 248(1)"common-law partner"], in respect of the 1998, 1999 or 2000 taxation years, it applies to the taxpayer and the person in respect of the applicable taxation year and subsequent taxation years.

Technical Notes: In 2000, the Act was amended to include common-law partners, but some provisions, including the English version of subsection 146.3(5.1), were overlooked. This subsection is therefore amended to correct this omission. The amendment applies, in general, to the 2001 and subsequent taxation years. However, it may apply as of 1998 if the common-law partners jointly choose to be deemed as such, beginning in that year, for the purposes of the application of the Act.

(a) the total of all amounts each of which is a premium (within the meaning assigned by subsection 146(1)) paid by the taxpayer in the year or in one of the two immediately preceding taxation years to a registered retirement savings plan under which the taxpayer's spouse or common-law partner was the annuitant (within the meaning assigned by subsection 146(1)) at the time the premium was paid,

(b) the particular amount, and

(c) the amount, if any, by which

(i) the total of all amounts each of which is an amount in respect of the fund that is required, in the year and at or before that time, to be included in the income of the taxpayer's spouse or common-law partner

exceeds

(ii) the minimum amount under the fund for the year.

Related Provisions: 60(l) — Transfer of refund of premiums under RRSP; 60(j.2) — Transfer to spousal RRSP; 146(8.21) — Premium deemed not paid; 146(8.3) — Spousal RRSP payments; 146(8.6) — RRSP — Spouse's income; 146.3(5.4) — Spouse's income; 146.3(5.5) — Application of subsec. (5.1); 147.3(13.1) — Withdrawal of excessive transfers to RRSPs and RRIFs.

History: Subsec. 146.3(5.1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", and by 2000, c. 12, Sch. 2, s. 9, to replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Interpretation Bulletins: IT-307R4: Spousal or common-law registered retirement savings plans; IT-124R6: Contributions to registered retirement savings plans.

Forms: T4RIF: Statement of income from a registered retirement income fund; T4RIF Segment; T4RIF Summ: Return of income out of a registered retirement income fund; T1234: Allowable amounts of non-refundable tax credits; T2205: Amounts from a spousal or common-law partner RRSP or RRIF to include in income.

(5.2) [Repealed under former Act]

(5.3) Ordering — Where a taxpayer has paid more than one premium described in subsection (5.1), such a premium or part thereof paid by the taxpayer at any time shall be deemed to have been included in computing the taxpayer's income by virtue of that subsection before premiums or parts thereof paid by the taxpayer after that time.

(5.4) Spouse's income — Where, in respect of an amount required at any time in a taxation year to be included in computing the income of a taxpayer's spouse or common-law partner, all or part of a premium has, by reason of subsection (5.1), been included in computing the taxpayer's income for the year, the following rules apply:

(a) the premium or part thereof, as the case may be, shall, for the purposes of subsections (5.1) and 146(8.3) after that time, be deemed not to have been a premium paid to a registered retirement savings plan under which the taxpayer's spouse or common-law partner was the annuitant (within the meaning assigned by subsection 146(1)); and

(b) an amount equal to the premium or part thereof, as the case may be, deducted in computing the income of the spouse or common-law partner for the year.

Related Provisions: 146(8.6) — Spouse's income.

History: Subsec. 146.3(5.4) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

(5.5) Where subsec. (5.1) does not apply — Subsection (5.1) does not apply

(a) in respect of a taxpayer at any time during the year in which the taxpayer dies;

(b) in respect of a taxpayer where either the taxpayer or the annuitant is a non-resident at the particular time referred to in that subsection;

(c) to any payment that is received in full or partial commutation of a registered retirement savings plan or a registered retirement income fund and in respect of which a deduction was made under paragraph 60(l) if, where the deduction was in respect of the acquisition of an annuity, the terms of the annuity provide that it cannot be commuted, and it is not commuted, in whole or in part within 3 years after the acquisition; or

(d) in respect of an amount that is deemed by subsection (6) to have been received by an annuitant under a registered retirement income fund immediately before the annuitant's death.

(6) Where last annuitant dies — Where the last annuitant under a registered retirement income fund dies, that annuitant shall be deemed to have received, immediately before death, an amount out of or under a registered retirement income fund equal to the fair market value of the property of the fund at the time of the death.

Related Provisions: 56(1)(t) — Income from RRIF; 146(8.8) — Parallel rule for RRSPs; 146.3(5.5) — Application of subsec. (5.1); 146.3(6.2) — Amount deductible; 160.2(2) — Joint and several liability for tax owing on payment from RRIF; 212(1)(q), 214(3)(i) — Non-resident withholding tax; 257 — Formula cannot calculate to less than zero.

History: Subsec. 146.3(6) substituted by 1994, c. 21, subsec. 71(6), applicable to deaths occurring after 1992. That subsec. formerly read:

> (6) Effect of death where person other than spouse becomes entitled — Where the last annuitant under a registered retirement income fund dies, the annuitant shall be deemed to have received, immediately before the annuitant's death, an amount out of or under a registered retirement income fund equal to the amount, if any, by which
>
> (a) the fair market [value] of all the property of the fund at the time of death
>
> exceeds
>
> (b) the portion thereof that, as a consequence of the death, becomes receivable by the annuitant's spouse.

Regulations: 215(4) (information return).

Forms: RC4178: Death of a RRIF annuitant [guide].

(6.1) Designated benefit deemed received — A designated benefit of an individual in respect of a registered retirement income fund that is received by the legal representative of the last annuitant under the fund shall be deemed

(a) to be received by the individual out of or under the fund at the time it is received by the legal representative; and

(b) except for the purpose of the definition "designated benefit" in subsection (1), not to be received out of or under the fund by any other person.

Related Provisions: 60(l)(v)(B.1) — Rollover of designated benefits to child or grandchild on death; 146(8.1) — Parallel rule for RRSPs; 212(1)(q), 214(3)(i) — Non-resident withholding tax.

History: Subsec. 146.3(6.1) substituted by 1994, c. 21, subsec. 71(6), applicable to deaths occurring after 1992. That subsec. formerly read:

> (6.1) Amount deemed received by child or grandchild as a result of death — Such portion of an amount paid in a taxation year out of or under a registered retirement income fund after the death of the last annuitant thereunder to the annuitant's legal representative as, had that portion been paid under the fund to a beneficiary of the deceased's estate, would have been a refund of premiums (within the meaning assigned by subsection 146(1)) if the fund were a registered retirement savings plan shall, to the extent it is so designated jointly by the legal representative and the beneficiary in prescribed form filed with the Minister, be deemed
>
> (a) to be received by the beneficiary in the year as a benefit that is a refund of premiums under a registered retirement savings plan (within the meanings assigned by subsection 146(1)); and
>
> (b) not to be received out of or under a registered retirement income fund.

Forms: RC4178: Death of a RRIF annuitant [guide]; T1090: Death of a RRIF annuitant — designated benefit.

(6.11) Transfer of designated benefit — For the purpose of subparagraph 60(l)(v), the eligible amount of a particular individual for a taxation year in respect of a registered retirement income fund is nil unless the particular individual was

(a) a spouse or common-law partner of the last annuitant under the fund, or

(b) a child or grandchild of that annuitant who was dependent because of physical or mental infirmity on that annuitant,

in which case the eligible amount shall be determined by the formula

$$A \times \left[1 - \frac{(B - C)}{D} \right]$$

where

A is the portion of the designated benefit of the particular individual in respect of the fund that is included because of subsection (5) in computing the particular individual's income for the year,

B is the minimum amount under the fund for the year,

C is the lesser of

(a) the total amounts included because of subsection (5) in computing the income of an annuitant under the fund for the year in respect of amounts received by the annuitant out of or under the fund, and

(b) the minimum amount under the fund for the year, and

D is the total of all amounts each of which is the portion of a designated benefit of an individual in respect of the fund that is included because of subsection (5) in computing the individual's income for the year.

Related Provisions: 60(l)(ii)(a), 60.011 — Transfer to trust for infirm dependent child; 257 — Formula cannot calculate to less than zero.

History: Subsec. 146.3(6.11) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subsec. 146.3(6.11) added by 1994, c. 21, subsec. 71(6), applicable to deaths occurring after 1992.

Forms: RC4178: Death of a RRIF annuitant [guide].

(6.2) Amount deductible — There may be deducted from the amount deemed by subsection (6) to be received by an annuitant out of or under a registered retirement income fund an amount not exceeding the amount determined by the formula

$$A \times \left[1 - \frac{(B + C - D)}{(B + C)} \right]$$

where

A is the total of

(a) all designated benefits of individuals in respect of the fund,

(b) all amounts that would, if the fund were a registered retirement savings plan, be tax-paid amounts (in this subsection having the meaning assigned by subsection 146(1)) in respect of the fund received by individuals who received, otherwise than because of subsection (6.1), designated benefits in respect of the fund, and

(c) all amounts each of which is an amount that would, if the fund were a registered retirement savings plan, be a tax-paid amount in respect of the fund received by the legal representative of the last annuitant under the fund, to the extent that the legal representative would have been entitled to designate that tax-paid amount under paragraph (a) of the definition "designated benefit" in subsection (1) if tax-paid amounts were not excluded in determining refunds of premiums (as defined in subsection 146(1));

B is the fair market value of the property of the fund at the particular time that is the later of

(a) the end of the first calendar year that begins after the death of the annuitant, and

(b) the time immediately after the last time that any designated benefit in respect of the fund is received by an individual;

C is the total of all amounts paid out of or under the fund after the death of the last annuitant thereunder and before the particular time; and

D is the lesser of

(a) the fair market value of the property of the fund at the time of the death of the last annuitant thereunder, and

(b) the sum of the values of B and C in respect of the fund.

Related Provisions: 118.1(5.3) — Designation of charity as beneficiary of RRIF; 146(8.9) — Parallel rule for RRSPs.

History: The description of A in subsec. 146.3(6.2) amended by 1998, c. 19, subsec. 171(8), applicable to deaths that occur after 1992. The description formerly read:

A is the total of all designated benefits of individuals in respect of the fund;

Subsec. 146.3(6.2) substituted by 1994, c. 21, subsec. 71(6), applicable to deaths occurring after 1992. That subsec. formerly read:

(6.2) **Amount deductible** — There may be deducted from the amount deemed by subsection (6) to have been received by an annuitant under a registered retirement income fund the total of all amounts each of which is

(a) that portion of an amount paid out of or under the fund that is deemed to be received by a beneficiary as a benefit that is a refund of premiums pursuant to subsection (6.1), or

(b) an amount paid under the fund to a child or grandchild of the annuitant that would be a refund of premiums (within the meaning assigned by subsection 146(1)) had the fund been a registered retirement savings plan

and each amount described in paragraph (b) that is paid to a child or grandchild of the deceased shall be deemed to be received by the child or grandchild, as the case may be, as a benefit that is a refund of premiums under a registered retirement savings plan (within the meanings assigned by subsection 146(1)) and not to be received out of or under a registered retirement income fund.

Forms: RC4178: Death of a RRIF annuitant [guide].

(7) Acquisition of non-qualified investment by trust — Where at any time in a taxation year a trust governed by a registered retirement income fund

(a) acquires an investment that is not a qualified investment, or

(b) uses or permits to be used a property of the trust as security for a loan,

the fair market value of

(c) the investment at the time it was acquired by the trust, or

(d) the property used as security at the time it commenced to be so used

as the case may be, shall be included in computing the income for the year of the taxpayer who is the annuitant under the fund at that time.

Related Provisions: 146.3(9) — Tax payable where non-qualified investment acquired; 146.3(10) — Recovery of property used as security; 212(1)(q), 214(3)(i) — Non-resident withholding tax; 259(1) — Election for proportional holdings in trust property.

Regulations: 215(3) (information return).

Remission Orders: *Lionaird Capital Corporation Notes Remission Order*, P.C. 1999-737 (tax under 146.3(7) waived because taxpayers thought they were qualified investments).

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs.

(8) Disposition of non-qualified investment — Where at any time in a taxation year a trust governed by a registered retirement income fund disposes of a property that, when acquired, was not a qualified investment, there may be deducted in computing the income for the taxation year of the taxpayer who is the annuitant under the fund at that time, an amount equal to the lesser of

(a) the amount that, by virtue of subsection (7), was included in computing the income of a taxpayer in respect of the acquisition of that property, and

(b) the proceeds of disposition of the property.

Related Provisions: 259(1) — Election for proportional holdings in trust property.

Regulations: 215(3) (information return).

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs.

(9) Tax payable where non-qualified investment acquired — Where a trust governed by a registered retirement income fund has acquired a property that is not a qualified investment,

Proposed Amendment — 146.3(9) opening words

(9) Tax payable on income from non-qualified investment — If a trust that is governed by a registered retirement income fund holds, at any time in a taxation year, a property that is not a qualified investment,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 143(5), will amend the opening words of subsec. 146.3(9) to read as above, applicable to 2003 *et seq.*

Technical Notes: Subsection 146.3(9) provides that, if a trust governed by a RRIF acquires a non-qualified investment, any income earned by the trust from the investment is taxable under Part I.

Subsection 146.3(9) is amended to clarify that income from property that was a qualified investment at the time it was acquired but later became non-qualified is also taxable in respect of the non-qualified period. This amendment, which applies to the 2003 and subsequent taxation years, is consistent with the tax treatment of income earned by RRSP trusts from non-qualified investments under subsection 146(10.1).

(a) tax is payable under this Part by the trust on the amount that its taxable income for the year would be if it had no incomes or losses from sources other than the property that is not a qualified investment or no capital gains or capital losses other than from the disposition of that property, as the case may be; and

(b) for the purposes of paragraph (a),

(i) "income" includes dividends described in section 83, and

(ii) paragraphs 38(a) and (b) shall be read without reference to the fractions set out therein.

Proposed Amendment — 146.3(9)(b)(ii)

(ii) paragraphs 38(a) and (b) are to be read as if the fraction set out in each of those paragraphs were replaced by the word "all".

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 143(6), will amend subpara. 146.3(9)(b)(ii) to read as above, in force on Royal Assent.

Technical Notes: Subparagraph 146.3(9)(b)(ii) is reworded for clarity, applicable on Royal Assent.

Related Provisions: 146.3(3) — No tax while trust governed by fund; 146.3(7) — Acquisition of non-qualified investment by trust; 149(1)(x) — RRIF exemption; 207.1(4) — Tax payable by RRIF on non-qualified investments; 259(1) — Election for proportional holdings in trust property.

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs.

Information Circulars: 78-18R6: Registered retirement income funds.

(10) Recovery of property used as security — Where at any time in a taxation year a loan for which a trust governed by a registered retirement income fund has used or permitted to be used trust property as security ceases to be extant, and the fair market value of the property so used was included by virtue of subsection (7) in computing the income of a taxpayer who was the annuitant under the fund, there may be deducted in computing the income for a taxation year of the taxpayer who is at that time the annuitant, an amount equal to the amount, if any, remaining when

(a) the net loss (exclusive of payments by the trust as or on account of interest) sustained by the trust in consequence of its using or permitting to be used the property as security for the loan and not as a result of a change in the fair market value of the property

is deducted from

(b) the amount so included in computing the income of a taxpayer in consequence of the trust's using or permitting to be used the property as security for the loan.

Regulations: 215(3) (information return).

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs.

(11) Change in fund after registration — Where, on any day after a retirement income fund has been accepted by the Minister for registration for the purposes of this Act, the fund is revised or amended or a new fund is substituted therefor, and the fund as revised or amended or the new fund substituted therefor, as the case may be, (in this subsection referred to as the "amended fund") does not comply with the requirements of this section for its acceptance by the Minister for registration for the purposes of this Act, the following rules apply:

(a) the amended fund shall be deemed, for the purposes of this Act, not to be a registered retirement income fund; and

(b) the taxpayer who was the annuitant under the fund before it became an amended fund shall, in computing the taxpayer's income for the taxation year that includes that day, include as income received out of the fund at that time an amount equal to the fair market value of all the property held in connection with the fund immediately before that time.

Related Provisions: 146.3(2) — Requirements for acceptance for registration; 146.3(12) — Where arrangement deemed to be new fund substituted for RRIF; 146.3(13) — Where fund deemed revised or amended; 147.3(13.1) — Withdrawal of excessive transfers to RRSPs and RRIFs; 153(1)(l) — Withholdings; 204.2(1.4) — Deemed receipt where RRSP or RRIF amended; 212(1)(q), 214(3)(i) — Non-resident withholding tax.

Information Circulars: 78-18R6: Registered retirement income funds.

Forms: T1234: Allowable amounts of non-refundable tax credits; T2205: Amounts from a spousal or common-law partner RRSP or RRIF to include in income.

(12) Idem — For the purposes of subsection (11), an arrangement under which a right or obligation under a retirement income fund is released or extinguished either wholly or in part and either in exchange or substitution for any right or obligation, or otherwise (other than an arrangement the sole object and legal effect of which is to revise or amend the fund) or under which payment of any amount by way of loan or otherwise is made on the security of a right under a retirement income fund, shall be deemed to be a new fund substituted for the retirement income fund.

Regulations: 215(4) (information return).

(13) Idem — Where at any time a benefit or loan is extended or continues to be extended as a consequence of the existence of a registered retirement income fund and that benefit or loan would be prohibited if the fund met the requirement for registration contained in paragraph (2)(g), for the purposes of subsection (11), the fund shall be deemed to have been revised or amended at that time so that it fails to meet the requirement for registration contained in paragraph (2)(g).

(14) Transfer on breakdown of marriage or common-law partnership — An amount is transferred from a registered retirement income fund of an annuitant in accordance with this subsection if the amount

(a) is transferred on behalf of an individual who is a spouse or common-law partner or former spouse or common-law partner of the annuitant and who is entitled to the amount under a decree, an order or a judgment of a competent tribunal, or under a written agreement, that relates to a division of property between the annuitant and the individual in settlement of rights that arise out of, or on a breakdown of, their marriage or common-law partnership; and

(b) is transferred directly to

(i) a registered retirement income fund under which the individual is the annuitant, or

(ii) a registered retirement savings plan under which the individual is the annuitant (within the meaning assigned by subsection 146(1)).

Related Provisions: 146(16)(b) — Transfer of RRSP on marriage breakdown; 146.3(2)(e)–(e.2) — Conditions applying on transfer; 146.3(14.2) — Effect of transfer; 252(3) — Extended meaning of "spouse" and "former spouse".

History: Subsec. 146.3(14) amended by 2003, c. 15, subsec. 83(4), applicable after 2003. It formerly read:

(14) Transfers — Notwithstanding anything in this section, an amount

(a) transferred as described in paragraph (2)(e), or

(b) transferred from a registered retirement income fund of an annuitant to a registered retirement income fund or registered retirement savings plan of the annuitant's spouse or common-law partner or former spouse or common-law partner under a decree, order or judgment of a competent tribunal, or under a written separation agreement, relating to a division of property between the annuitant and the annuitant's spouse or common-law partner or former spouse or common-law partner in settlement of rights arising out of, or on the breakdown of, their marriage or common-law partnership,

shall be deemed not to be an amount received by the annuitant out of or under a registered retirement income fund.

Subsec. 146.3(14) amended by 2000, c. 12, Sch. 2, s. 2, to replace "spouse" with "spouse or common-law partner", and by 2000, c. 12, Sch. 2, s. 9, to replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Para. 146.3(14)(b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 84(7), applicable after 1992. Para. (b) formerly read:

(b) transferred from a registered retirement income fund of an annuitant to a registered retirement income fund or a registered retirement savings plan of the annuitant's spouse or former spouse pursuant to a decree, order or judgment of a competent tribunal or a written separation agreement, relating to a division of property between the annuitant and the annuitant's spouse or former spouse in settlement of rights arising out of their marriage or other conjugal relationship, on or after the breakdown of their marriage or other relationship,

Regulations: 215(5) (information return).

Interpretation Bulletins: IT-307R4: Spousal or common-law registered retirement savings plans; IT-528: Transfers of funds between registered plans.

Remission Orders: *Certain Taxpayers Remission Order, 1999-2*, P.C. 1999-1855, s. 2 (remission to Quebec judges for excess contributions in 1989-90 transferred under 146.3(14)).

Information Circulars: 78-18R6: Registered retirement income funds.

Forms: T2033: Direct transfer under subsec. 146.3(14.1) or para. 146(16)(a) or 146.3(2)(e); T2220: Transfer from an RRSP or a RRIF to another RRSP or RRIF on marriage breakdown.

(14.1) Transfer to money purchase RPP — An amount is transferred from a registered retirement income fund of an annuitant in accordance with this subsection if the amount is transferred at the direction of the annuitant directly to a registered pension plan of which, at any time before the transfer, the annuitant was a member (within the meaning assigned by subsection 147.1(1)) or to a prescribed registered pension plan and allocated to the annuitant under a money purchase provision (within the meaning assigned by subsection 147.1(1)) of the plan.

Related Provisions: 146.3(14.2) — Effect of transfer; Reg. 8300(1)"excluded contribution" — Amount transferred is excluded contribution.

History: Subsec. 146.3(14.1) added by 2003, c. 15, subsec. 83(4), applicable after 2003.

(14.2) Taxation of amount transferred — An amount transferred on behalf of an individual in accordance with paragraph (2)(e) or subsection (14) or (14.1)

(a) is not, solely because of that transfer, to be included in computing the income of any taxpayer; and

(b) is not to be deducted in computing the income of any taxpayer.

History: Subsec. 146.3(14.2) added by 2003, c. 15, subsec. 83(4), applicable after 2003.

(15) Credited or added amount deemed not received — Where

(a) an amount is credited or added to a deposit with a depositary referred to in paragraph (d) of the definition "carrier" in subsection (1) as interest or income in respect of the deposit,

(b) the deposit is a registered retirement income fund at the time the amount is credited or added to the deposit, and

(c) during the calendar year in which the amount is credited or added or during the preceding calendar year, the annuitant under the fund was alive,

the amount shall be deemed not to be received by the annuitant or any other person solely because of the crediting or adding.

History: Subsec. 146.3(15) substituted by 1994, c. 21, subsec. 71(7), applicable to deaths occurring after 1992. That subsec. formerly read:

(15) Where amount credited or added deemed not received — Where an amount is credited or added to a deposit with a depositary referred to in paragraph (d) of the definition "carrier" in subsection (1) as interest or income in respect of the deposit, and where

(a) the deposit is a registered retirement income fund at the time the amount is credited or added to the deposit, and

(b) the annuitant under the fund is alive during the year in which the amount is credited or added,

the amount shall be deemed not to be received by the annuitant by reason only of the crediting or adding.

Definitions [s. 146.3]: "amount" — 248(1); "annuitant" — 146.3(1); "annuity" — 248(1); "arm's length" — 251(1); "authorized foreign bank" — 248(1); "beneficial owner" — 248(3); "calendar year" — *Interpretation Act* 37(1)(a); "capital gain", "capital loss" — 39(1), 248(1); "carrier" — 146.3(1); "common-law partner", "common-law partnership" — 248(1); "consequence of the death" — 248(8); "corporation" — 248(1), *Interpretation Act*; "deferred profit sharing plan" — 147(1), 248(1); "depositary" — 146(1)"retirement savings plan"(b)(iii), 146.3(1)"carrier"(d); "former spouse" — 252(3); "held" — 146.3(1); "individual", "legal representative" — 248(1); "licensed annuities provider" — 147(1), 248(1); "listed" — 87(10); "minimum amount" — 146.3(1); "Minister", "non-resident", "person", "prescribed" — 248(1); "prescribed stock exchange in Canada" — Reg. 3200; "property" — 248(1); "property held" — 146.3(1); "province" — *Interpretation Act* 35(1); "qualified investment" — 146.3(1); "received" — 146.3(15); "registered pension plan" — 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "retirement income fund" — 146.3(1), 248(1); "separation agreement" — 248(1); "spousal or common-law partner plan" — 146(1); "spouse" — 252(3); "substituted property" — 248(5); "surviving spouse" — 146.3(1)"annuitant"(b); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "written" — *Interpretation Act* 35(1)"writing".

Deferred Profit Sharing Plans

147. (1) Definitions — In this section,

"deferred profit sharing plan" means a profit sharing plan accepted by the Minister for registration for the purposes of this Act, on application therefor in prescribed manner by a trustee under the plan and an employer of employees who are beneficiaries under the plan, as complying with the requirements of this section;

Related Provisions: 128.1(10)"excluded right or interest"(a)(iv) — No deemed disposition of DPSP on emigration.

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Forms: T2214: Application for registration as a deferred profit sharing plan.

"forfeited amount", under a deferred profit sharing plan or a plan the registration of which has been revoked pursuant to subsection (14) or (14.1), means an amount to which a beneficiary under the plan has ceased to have any rights, other than the portion thereof, if any, that is payable as a consequence of the death of the beneficiary to a person who is entitled thereto by virtue of the participation of the beneficiary in the plan;

"licensed annuities provider" means a person licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an annuities business;

Related Provisions: 248(1)"licensed annuities provider" — Definition applies to entire Act.

History: The definition "licensed annuities provider" added to subsec. 147(1) by 1997, c. 25, subsec. 43(1), applicable after 1991.

"profit sharing plan" means an arrangement under which payments computed by reference to an employer's profits from the employer's business, or by reference to those profits and the profits, if any, from the business of a corporation with which the employer does not deal at arm's length, are or have been made by the employer to a trustee in trust for the benefit of employees or former employees of that employer.

Related Provisions: 147(16) — Payments out of profits; 248(1)"deferred profit sharing plan", "profit sharing plan" — Definitions apply to entire Act; 248(8) — Occurrences as a consequence of death.

Regulations: 1501 (prescribed manner).

Interpretation Bulletins: IT-280R: Employees profit sharing plans — payments computed by reference to profits.

Information Circulars: 77-1R4: Deferred profit sharing plans. See also at end of s. 147.

Forms: T3D: Income tax return for DPSP or revoked DPSP.

(1.1) Participating employer — An employer is considered to participate in a profit sharing plan where the employer makes or has made payments under the plan to a trustee in trust for the benefit of employees or former employees of the employer.

History: Subsec. 147(1.1) added by 1997, c. 25, subsec. 43(2), applicable after 1988.

(2) Acceptance of plan for registration — The Minister shall not accept for registration for the purposes of this Act any profit sharing plan unless, in the Minister's opinion, it complies with the following conditions:

(a) the plan provides that each payment made under the plan to a trustee in trust for the benefit of beneficiaries thereunder is the total of amounts each of which is required to be allocated by the trustee in the year in which it is received by the trustee, to the individual beneficiary in respect of whom the amount was so paid;

(a.1) the plan includes a stipulation that no contribution may be made to the plan other than

(i) a contribution made in accordance with the terms of the plan by an employer for the benefit of the employer's employees who are beneficiaries under the plan, or

(ii) an amount transferred to the plan in accordance with subsection (19);

(b) the plan does not provide for the payment of any amount to an employee or other beneficiary thereunder by way of loan;

(c) the plan provides that no part of the funds of the trust governed by the plan may be invested in notes, bonds, debentures, bankers' acceptances or similar obligations of

(i) an employer by whom payments are made in trust to a trustee under the plan for the benefit of beneficiaries thereunder, or

(ii) a corporation with whom that employer does not deal at arm's length;

(d) the plan provides that no part of the funds of the trust governed by the plan may be invested in shares of a corporation at least 50% of the property of which consists of notes, bonds, debentures, bankers' acceptances or similar obligations of an employer or a corporation described in paragraph (c);

(e) the plan includes a provision stipulating that no right or interest under the plan of an employee who is a beneficiary thereunder is capable, either in whole or in part, of surrender or assignment;

Proposed Amendment — 147(2)(e)

(e) the plan includes a provision stipulating that no right of a person under the plan is capable of any surrender or assignment other than

(i) an assignment under a decree, an order or a judgment of a competent tribunal, or under a written agreement, that relates to a division of property between an individual and the individual's spouse or common-law partner, or former spouse or common-law partner, in settlement of rights that arise out of, or on a breakdown of, their marriage or common-law partnership,

(ii) an assignment by a deceased individual's legal representative on the distribution of the individual's estate, and

(iii) a surrender of benefits to avoid revocation of the plan's registration;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 144(1), will amend para. 147(2)(e) to read as above, applicable after March 20, 2003.

Technical Notes: Subsection 147(2) sets out the conditions that a profit sharing plan must satisfy in order to be registered as a DPSP. Paragraph 147(2)(e) requires that such a plan include a provision stipulating that no right of an employee who is a beneficiary under the plan is capable of surrender or assignment.

Paragraph 147(2)(e) is amended in two ways. First, it is amended to extend the application of the provision to require that the stipulation apply to all persons who have rights under a DPSP, not just employee beneficiaries. Second, it is amended to provide that the stipulation is not required to prohibit:

- an assignment under a court order or written agreement relating to the division of property on the breakdown of a marriage or common-law partnership;
- an assignment by a deceased individual's legal representative on the distribution of the individual's estate; and
- a surrender of benefits to avoid revocation of the plan's registration.

These new provisions are similar to the rule in Regulation 8502(f) that applies to registered pension plans (RPPs). The new provisions are, in part, consequential on amendments to subsection 147(19) that accommodate the division of DPSP assets on the breakdown of a marriage or common-law partnership.

(f) the plan includes a provision stipulating that each of the trustees under the plan shall be resident in Canada;

(g) the plan provides that, if a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee is not a trustee under the plan, there shall be at least 3 trustees under the plan who shall be individuals;

(h) the plan provides that all income received, capital gains made and capital losses sustained by the trust governed by the plan must be allocated to beneficiaries under the plan on or before a day 90 days after the end of the year in which they were received, made or sustained, as the case may be, to the extent that they have not been allocated in years preceding that year;

(i) the plan provides that each amount allocated or reallocated by a trustee under the plan to a beneficiary under the plan vest irrevocably in that beneficiary,

(i) in the case of an amount allocated or reallocated before 1991, at a time that is not later than 5 years after the end of the year in which it was allocated or reallocated, unless the beneficiary becomes, before that time, an individual who is not an employee of any employer who participates in the plan, and

(ii) in the case of any other amount, not later than the later of the time of allocation or reallocation and the day on which the beneficiary completes a period of 24 consecutive months as a beneficiary under the plan or under any other deferred profit sharing plan for which the plan can reasonably be considered to have been substituted;

(i.1) the plan requires that each forfeited amount under the plan and all earnings of the plan reasonably attributable thereto be paid to employers who participate in the plan, or be reallocated to beneficiaries under the plan, on or before the later of December 31, 1991 and December 31 of the year immediately following the calendar year in which the amount is forfeited, or such

later time as is permitted in writing by the Minister under subsection (2.2);

(j) the plan provides that a trustee under the plan inform, in writing, all new beneficiaries under the plan of their rights under the plan;

(k) the plan provides that, in respect of each beneficiary under the plan who has been employed by an employer who participates in the plan, all amounts vested under the plan in the beneficiary become payable

(i) to the beneficiary, or

(ii) in the event of the beneficiary's death, to another person designated by the beneficiary or to the beneficiary's estate,

not later than the earlier of

(iii) the end of the year in which the beneficiary attains 69 years of age, and

(iv) 90 days after the earliest of

(A) the death of the beneficiary,

(B) the day on which the beneficiary ceases to be employed by an employer who participates in the plan where, at the time of ceasing to be so employed, the beneficiary is not employed by another employer who participates in the plan, and

(C) the termination or winding-up of the plan,

except that the plan may provide that, on election by the beneficiary, all or any part of the amounts payable to the beneficiary may be paid

(v) in equal instalments payable not less frequently than annually over a period not exceeding 10 years from the day on which the amount became payable, or

(vi) by a trustee under the plan to a licensed annuities provider to purchase for the beneficiary an annuity where

(A) payment of the annuity is to begin not later than the end of the year in which the beneficiary attains 69 years of age, and

(B) the guaranteed term, if any, of the annuity does not exceed 15 years;

(k.1) the plan requires that no benefit or loan, other than

(i) a benefit the amount of which is required to be included in computing the beneficiary's income,

(ii) an amount referred to in paragraph (10)(b),

(ii.1) an amount paid pursuant to or under the plan by a trustee under the plan to a licensed annuities provider to purchase for a beneficiary under the plan an annuity to which subparagraph (k)(vi) applies,

(iii) a benefit derived from an allocation or reallocation referred to in subsection (2), or

(iv) the benefit derived from the provision of administrative or investment services in respect of the plan,

that is conditional in any way on the existence of the plan may be extended to a beneficiary thereunder or to a person with whom the beneficiary was not dealing at arm's length;

(k.2) the plan provides that no individual who is

(i) a person related to the employer,

(ii) a person who is, or is related to, a specified shareholder of the employer or of a corporation related to the employer,

(iii) where the employer is a partnership, a person related to a member of the partnership, or

(iv) where the employer is a trust, a person who is, or is related to, a beneficiary under the trust

may become a beneficiary under the plan; and

(l) the plan, in all other respects, complies with regulations of the Governor in Council made on the recommendation of the Minister of Finance.

Related Provisions: 56(1)(d.2)(iii) — Income from annuity purchased with plan funds is taxable; 146(5.21)(b) — Anti-avoidance re pension adjustment; 147(1.1) — Meaning of "participates" in a profit sharing plan; 147(2.1) — Terms limiting contributions; 147(2.2) — Reallocation of forfeitures; 147(10)(a) — Amount used to purchase annuity under 147(2)(k)(vi) is not taxable; 147(10.3) — Amount contributed to or forfeited under a plan; 147(10.6) — Where pre-1997 annuity has not begun by age 69; 147(14) — Revocation of registration where plan ceases to comply with requirements; 147(17) — Meaning of "other beneficiary"; 147(19) — Transfer to spouse's/partner's RPP, RRSP or RRIF on breakdown of relationship; 147(21) — Restrictions re transfers from DPSPs; 172(3) — Appeal from refusal to register, revocation of registration, etc.; 198–204 — Taxes on DPSPs and revoked plans; 204.1(3) — Tax payable by DPSP on excess contributions; 204.2(4) — Definition of "excess amount" for a DPSP; Reg. 8502(f) — RPP rules parallel to 147(2)(e).

History: Para. 147(2)(k) amended by 1997, c. 25, subsec. 43(3), applicable after 1996, except that

(a) where a beneficiary under a profit sharing plan attained 70 years of age before 1997,

(i) in applying subpara. (iii) in respect of the beneficiary, that subpara. shall be read as follows:

(iii) 90 days after the day on which the beneficiary attains 71 years of age, and

(ii) in applying cl. (vi)(A) in respect of the beneficiary, the reference in that clause to "the end of the year in which the beneficiary attains 69 years of age" shall be read as "the day on which the beneficiary attains 71 years of age", and

(b) where a beneficiary under a profit sharing plan attained 69 years of age in 1996, in applying subpara. (iii) and cl. (vi)(A) in respect of the beneficiary, the references in those provisions to "69 years of age" shall be read as "70 years of age".

Para. (k) formerly read:

(k) the plan provides that, in respect of each employee who is a beneficiary under the plan, all amounts vested in the employee become payable to the employee or, in the event of the employee's death, to a beneficiary designated by the employee or to the employee's estate, not later than 90 days after the earliest of

(i) the death of the employee,

(ii) the day on which the employee ceases to be employed by an employer who makes or has made payments under the plan to a trustee under the plan,

(iii) the day on which the employee becomes 71 years of age, and

(iv) the termination or winding up of the plan,

except that the plan may provide that, on election by the employee, all or any part of the amounts payable to the employee may be paid

(v) in equal instalments payable not less frequently than annually over a period not exceeding 10 years from the day on which the amount became payable, or

(vi) by a trustee under the plan to a person licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an annuities business, to purchase for the employee an annuity commencing not later than a day 71 years after the day of the employee's birth, the guaranteed term of which, if any, does not exceed 15 years;

Subpara. 147(2)(k.1)(ii) amended, and subpara. (ii.1) added, by 1997, c. 25, subsec. 43(4), applicable after 1991. Subpara. (k.1)(ii) formerly read:

(ii) an amount referred to in paragraph (10)(a) or (b),

The opening words of para. 147(2)(c), and para. (d), substituted by 1994, c. 21, subsecs. 72(1), (2), applicable to 1993 *et seq.* Those portions formerly read:

> (c) the plan provides that no part of the funds of the trust governed by the plan may be invested in notes, bonds, debentures or similar obligations of
>
> . . . . .
>
> (d) the plan provides that no part of the funds of the trust governed by the plan may be invested in shares of a corporation at least 50% of the property of which consists of notes, bonds, debentures or similar obligations of an employer or a corporation described in paragraph (c);

Regulations: 4900(2) (obligations described in 147(2)(c) are not qualified investments).

Interpretation Bulletins: IT-280R: Employees profit sharing plans — payments computed by reference to profits; IT-281R2: Elections on single payments from a deferred profit-sharing plan (archived); IT-363R2: Deferred profit sharing plans — deductibility of employer contributions and taxation of amounts received by a beneficiary (archived); IT-517R: Pension tax credit (archived).

Information Circulars: 74-1R5: Form T2037 — Notice of purchase of annuity with "plan" funds; 78-14R3: Guidelines for trust companies and other persons responsible for filing T3-IND, T3G, T3D, T3P, T3S, T3RI and T3F returns.

Forms: T2037: Notice of purchase of annuity with "plan" funds; T2214: Application for registration as a deferred profit sharing plan.

(2.1) Terms limiting contributions — The Minister shall not accept for registration for the purposes of this Act a profit sharing plan unless it includes terms that are adequate to ensure that the requirements of subsection (5.1) in respect of the plan will be satisfied for each calendar year.

(2.2) Reallocation of forfeitures — The Minister may, on written application, extend the time for satisfying the requirements of paragraph (2)(i.1) where

(a) the total of the forfeited amounts arising in a calendar year is greater than normal because of unusual circumstances; and

(b) the forfeited amounts are to be reallocated on a reasonable basis to a majority of beneficiaries under the plan.

(3) Acceptance of employees profit sharing plan for registration — The Minister shall not accept for registration for the purposes of this Act any employees profit sharing plan unless all the capital gains of or made by the trust governed by the plan before the date of application for registration of the plan and all the capital losses of or sustained by the trust before that date have been allocated by the trustee under the plan to employees and other beneficiaries thereunder.

(4) Capital gains determined — For the purposes of subsections (3) and (11), such amount as may be determined by the Minister, on request in prescribed manner by the trustee of a trust governed by an employees profit sharing plan, shall be deemed to be the amount of

(a) the capital gains of or made by the trust governed by the plan before the date of application for registration of the plan, or

(b) the capital losses of or sustained by the trust before that date,

as the case may be.

(5) Registration date — Where a profit sharing plan is accepted by the Minister for registration as a deferred profit sharing plan, the plan shall be deemed to have become registered as a deferred profit sharing plan

(a) on the date the application for registration of the plan was made; or

(b) where in the application for registration a later date is specified as the date on which the plan is to commence as a deferred profit sharing plan, on that date.

Related Provisions: 144(11) — Taxation year of trust accepted as DPSP.

(5.1) Contribution limits — For the purposes of subsections (2.1) and (9) and paragraph (14)(c.4), the requirements of this subsection in respect of a deferred profit sharing plan are satisfied for a calendar year if, in the case of each beneficiary under the plan and each employer in respect of whom the beneficiary's pension credit (as prescribed by regulation) for the year under the plan is greater than nil,

(a) the total of all amounts each of which is the beneficiary's pension credit (as prescribed by regulation) for the year in respect of the employer under a deferred profit sharing plan does not exceed the lesser of

(i) ½ of the money purchase limit for the year, and

(ii) 18% of the amount that would be the beneficiary's compensation (within the meaning assigned by subsection 147.1(1)) from the employer for the year if the definition "compensation" in subsection 147.1(1) were read without reference to paragraph (b) of that definition;

(b) the total of all amounts each of which is the beneficiary's pension credit (as prescribed by regulation) for the year under a deferred profit sharing plan in respect of

(i) the employer, or

(ii) any other employer who, at any time in the year, does not deal at arm's length with the employer

does not exceed ½ of the money purchase limit for the year; and

(c) the total of

(i) the beneficiary's pension adjustment for the year in respect of the employer, and

(ii) the total of all amounts each of which is the beneficiary's pension adjustment for the year in respect of any other employer who, at any time in the year, does not deal at arm's length with the employer

does not exceed the lesser of

(iii) the money purchase limit for the year, and

(iv) 18% of the total of all amounts each of which is the beneficiary's compensation (within the meaning assigned by subsection 147.1(1)) for the year from the employer or any other employer referred to in subparagraph (ii).

Related Provisions: 147(2.1) — Terms limiting contributions; 147(5.11) — Compensation; 147(8) — Employer contributions deductible; 147(9) — Limitation on deduction; 147(14) — Revocation of registration; 147(22) — Excess transfer; 147.1(8) — Pension adjustment limits; Reg. 8301(11) — Timing of contributions.

Regulations: 8301(2)–(3) (pension credit under DPSP).

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Information Circulars: See list at end of s. 147.

Registered Plans Directorate Newsletters: 96-1 (changes to retirement savings limits).

(5.11) Compensation — Where at any time in a calendar year an individual ceases to be employed by an employer,

(a) for the purposes of paragraph (5.1)(a), the amount that would be the individual's compensation (in this subsection having the meaning assigned by subsection 147.1(1)) from the employer for the year if the definition "compensation" in subsection 147.1(1) were read without reference to paragraph (b) of that definition shall be deemed to be the greater of

(i) that amount determined without reference to this paragraph, and

(ii) the amount that would be the individual's compensation from the employer for the immediately preceding year if the definition "compensation" in subsection 147.1(1) were read without reference to paragraph (b) of that definition; and

(b) for the purposes of paragraph (5.1)(c), the individual's compensation from the employer for the year shall be deemed to be the greater of

(i) that compensation determined without reference to this paragraph, and

(ii) the individual's compensation from the employer for the immediately preceding year.

Proposed Repeal — 147(5.11)

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 144(2), will repeal subsec. 147(5.11), applicable to cessations of employment that occur after 2002.

Technical Notes: Subsection 147(5.1) sets out the employer contribution limits for DPSPs. In general terms, the maximum employer contributions in respect of an individual for a calendar year cannot exceed the lesser of: (i) 18% of the individual's compensation for the year from the employer; and (ii) ½ of the year's money purchase limit. For this purpose, "compensation" and "money purchase limit" are generally as defined in subsection 147.1(1). Additional cross-plan limits apply if the individual also participates in an RPP sponsored by the employer or in a DPSP or RPP sponsored by a non-arm's length employer.

If the contribution limits are not respected for a calendar year, the Minister of National Revenue may revoke the registration of the DPSP. In addition, the employer is denied a deduction for all contributions made in the year, except as expressly permitted in writing by the Minister.

Subsection 147(5.11) provides a special relieving rule that applies when an employee who is a beneficiary under a DPSP terminates employment with a participating employer in a calendar year. In this circumstance, for the purposes of determining whether the contribution limits have been satisfied, the employee's compensation can be based on the compensation for the immediately preceding year, if it is more than the compensation for the year of termination.

This rule recognizes that it is common practice for an employer to make contributions to a DPSP only after its fiscal year-end, since this is when profits are determined. This can often result in employer contributions being made based (in whole or in part) on employees' earnings in the previous calendar year, but being included in the employees' contribution limits for the current calendar year. This in turn can give rise to over-contributions when an employee terminates employment later in the year before having earned sufficient compensation to support the contribution. However, subsection 147(5.11) generally ensures that such over-contributions do not result in adverse tax effects by allowing the contribution limits to be based on the employee's compensation from the preceding calendar year.

There are, however, two policy concerns with the approach used in subsection 147(5.11). The first concern is that the provision deals only with over-contributions that involve employees who terminate employment. It does not provide relief for similar over-contributions that arise where an employee takes an unpaid leave of absence before having earned sufficient compensation to support any contributions that the employer had already made on his or her behalf. The second concern is that the provision allows DPSP contributions to be made in situations where there is no supporting employment income.

To address these concerns, subsection 147(5.11) is repealed and replaced by a broader relief mechanism in section 8301 of the Regulations [see Reg. 8301(2), (2.1) — ed.]. The new mechanism will provide relief in both of the situations described above by allowing over-contributions to be ignored for purposes of the DPSP contribution limits, provided the excess is refunded from the plan.

The repeal of subsection 147(5.11) applies to cessations of employment that occur in 2003 and subsequent calendar years, while the new refund mechanism in the Regulations applies for 2002 and subsequent calendar years. As a result, for excess contributions relating to cessations of employment that occur in 2002, employers will be entitled to relief either by relying on existing 147(5.11) or by using the new refund mechanism.

(6) Deferred plan not employees profit sharing plan — For a period during which a plan is a deferred profit sharing plan, the plan shall be deemed, for the purposes of this Act, not to be an employees profit sharing plan.

Related Provisions: 144(11) — Year-end of EPSP on becoming DPSP.

(7) No tax while trust governed by plan — No tax is payable under this Part by a trust on the taxable income of the trust for a period during which the trust was governed by a deferred profit sharing plan.

Related Provisions: 149(1)(s) — Exemption for DPSP; 198 — Tax on acquisition of non-qualified investments and use of assets as security; 206(2) — Part XI tax on excess holdings of foreign property; 207.1(2) — Tax payable by DPSP on holding non-qualified investments.

(8) Amount of employer's contribution deductible — Subject to subsection (9), there may be deducted in computing the income of an employer for a taxation year the total of all amounts each of which is an amount paid by the employer in the year or within 120 days after the end of the year to a trustee under a deferred profit sharing plan for the benefit of the employer's employees who are beneficiaries under the plan, to the extent that the amount was paid in accordance with the terms of the plan and was not deducted in computing the employer's income for a preceding taxation year.

Related Provisions: 6(1)(a)(i) — Employer's contribution to DPSP not a taxable benefit; 20(1)(y) — Employer's contribution to DPSP deductible; 147(5.1) — Contribution limits; 147(9), (9.1) — Limitations on deduction; 147(20) — Taxation of amount transferred; 204.1(3) — Tax payable by DPSP on excess amount.

Interpretation Bulletins: IT-280R: Employees profit sharing plans — payments computed by reference to profits; IT-363R2: Deferred profit sharing plans — deductibility of employer contributions and taxation of amounts received by a beneficiary (archived).

Forms: T2 SCH 15: Deferred income plans.

(9) Limitation on deduction — Where the requirements of subsection (5.1) in respect of a deferred profit sharing plan are not satisfied for a calendar year by reason that the pension credits of a beneficiary under the plan in respect of a particular employer do not comply with paragraph (5.1)(a) or the beneficiary's pension credits or pension adjustments in respect of a particular employer and other employers who do not deal at arm's length with the particular employer do not comply with paragraph (5.1)(b) or (c), the particular employer is not entitled to a deduction under subsection (8) in computing the particular employer's income for any taxation year in respect of an amount paid to a trustee under the plan in the calendar year except to the extent expressly permitted in writing by the Minister, and, for the purposes of this subsection, an amount paid to a trustee of a deferred profit sharing plan in the first two months of a calendar year shall be deemed to have been paid in the immediately preceding year and not to have been paid in the year to the extent that the amount can reasonably be considered to be in respect of the immediately preceding year.

Forms: T2 SCH 15: Deferred income plans.

(9.1) No deduction — Notwithstanding subsection (8), no deduction shall be made in computing the income of an employer for a taxation year in respect of an amount paid by the employer for the year to a trustee under a deferred profit sharing plan in respect of a beneficiary who is described in paragraph (2)(k.2) in respect of the plan.

Interpretation Bulletins: IT-280R: Employees profit sharing plans — payments computed by reference to profits; IT-363R2: Deferred profit sharing plans — deductibility of employer contributions and taxation of amounts received by a beneficiary (archived).

(10) Amounts received taxable — There shall be included in computing the income of a beneficiary under a deferred profit sharing plan for a taxation year the amount, if any, by which

(a) the total of all amounts received by the beneficiary in the year from a trustee under the plan (other than as a result of acquiring an annuity described in subparagraph (2)(k)(vi) under which the beneficiary is the annuitant)

exceeds

(b) the total of all amounts each of which is an amount determined for the year under subsection (10.1), (11) or (12) in relation to the plan and in respect of the beneficiary.

Related Provisions: 56(1)(d.2)(iii) — Income from annuity purchased with plan funds is taxable; 56(1)(i) — Deferred profit sharing plan; 60(j) — Transfer of superannuation benefits; 104(27.1) — DPSP benefits; 128.1(10)"excluded right or interest"(a)(iv) — No deemed disposition of DPSP on emigration; 139.1(12) — Conversion benefit on demutualization of insurance corporation not taxable; 147(10.1) — Single payment on retirement etc.; 147(10.4) — Income on disposal of shares; 147(11) — Portion of receipts deductible; 147(18) — Inadequate consideration on purchase from or sale to trust; 147(20) — Taxation of amount transferred; 153(1)(h) — Withholdings; 212(1)(m), 214(3)(d) — Withholding tax on payments to non-residents.

History: Subsec. 147(10) amended by 1997, c. 25, subsec. 43(5), applicable to 1992 *et seq.* Subsec. (10) formerly read:

(10) There shall be included in computing the income of a beneficiary under a deferred profit sharing plan for a taxation year the amount by which the total of the amounts received by the beneficiary in the year from a trustee under the plan exceeds the total of

(a) any amounts determined for the year under subsection (10.1), (11) or (12) in relation to the plan and in respect of the beneficiary, and

(b) amounts paid by a trustee under the plan pursuant to the plan to a person described in subparagraph (2)(k)(vi) to purchase an annuity described in that subparagraph.

Selected Cases [subsec. 147(10)]: *R. v. Powell*, [1980] C.T.C. 382 (FCTD) (Increase in value of shares from time of acquisition in deferred profit sharing plan included in income).

Interpretation Bulletins: IT-280R: Employees profit sharing plans — payments computed by reference to profits; IT-281R2: Elections on single payments from a deferred profit-sharing plan (archived); IT-363R2: Deferred profit sharing plans — deductibility of employer contributions and taxation of amounts received by a beneficiary (archived); IT-528: Transfers of funds between registered plans.

Information Circulars: See list at end of s. 147.

Advance Tax Rulings: ATR-31: Funding of divorce settlement amount from DPSP.

(10.1) Single payment on retirement, etc. — For the purposes of subsections (10) and (10.2), where a beneficiary under a deferred profit sharing plan has received, in a taxation year and when the beneficiary was resident in Canada, from a trustee under the plan a single payment that included shares of the capital stock of a corporation that was an employer who contributed to the plan or of a corporation with which the employer did not deal at arm's length on the beneficiary's withdrawal from the plan or retirement from employment or on the death of an employee or former employee and has made an election in respect thereof in prescribed manner and prescribed form, the amount determined for the year under this subsection in relation to the plan and in respect of the beneficiary is the amount, if any, by which the fair market value of those shares, immediately before the single payment was made, exceeds the cost amount to the plan of those shares at that time.

Related Provisions: 47(3)(a) — No averaging of cost on disposition of securities; 147(10) — Amounts received taxable; 147(10.2) — Single payment on retirement etc.; 147(11) — Portion of receipts deductible.

Regulations: 1503 (prescribed manner, prescribed form).

Interpretation Bulletins: IT-281R2: Election on single payments from a deferred profit-sharing plan (archived); IT-528: Transfers of funds between registered plans.

Forms: T2078: Election under subsection 147(10.1) in respect of a single payment received from a deferred profit sharing plan.

(10.2) Idem — Where a trustee under a deferred profit sharing plan has at any time in a taxation year made under the plan a single payment that included shares referred to in subsection (10.1) to a beneficiary who was resident in Canada at the time and the beneficiary has made an election under that subsection in respect of that payment,

(a) the trustee shall be deemed to have disposed of those shares for proceeds of disposition equal to the cost amount to the trust of those shares immediately before the single payment was made;

(b) the cost to the beneficiary of those shares shall be deemed to be their cost amount to the trust immediately before the single payment was made;

(c) the cost to the beneficiary of each of those shares shall be deemed to be the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount determined under paragraph (a) in respect of all of those shares,

B is the fair market value of that share at the time the single payment was made, and

C is the fair market value of all those shares at the time the single payment was made; and

(d) for the purposes of paragraph 60(j), the cost to the beneficiary of those shares is an eligible amount in respect of the beneficiary for the year.

Interpretation Bulletins: IT-281R2: Elections on single payments from a deferred profit-sharing plan (archived); IT-528: Transfers of funds between registered plans.

(10.3) Amount contributed to or forfeited under a plan — There shall be included in computing the income for a taxation year of a beneficiary described in paragraph (2)(k.2) the total of amounts allocated or reallocated to the beneficiary in the year in respect of

(a) any amount contributed after December 1, 1982 by an employer to, or

(b) any forfeited amount under

a deferred profit sharing plan or a plan the registration of which has been revoked pursuant to subsection (14) or (14.1).

Interpretation Bulletins: IT-363R2: Deferred profit sharing plans — deductibility of employer contributions and taxation of amounts received by a beneficiary (archived).

(10.4) Income on disposal of shares — Where a taxpayer has a share in respect of which the taxpayer has made an election under subsection (10.1), there shall be included in computing the taxpayer's income for the taxation year in which the taxpayer disposed of or exchanged the share or ceased to be a resident of Canada, whichever is the earlier, the amount, if any, by which the fair market value of the share at the time the taxpayer acquired it exceeds the cost to the taxpayer, determined under paragraph (10.2)(c), of the share at the time the taxpayer acquired it.

Related Provisions: 7(1.3) — Order of disposition of securities acquired under stock option agreement; 110(1)(d.3) — Employer's shares — deduction from taxable income.

Interpretation Bulletins: IT-281R2: Elections on single payments from a deferred profit-sharing plan (archived).

(10.5) [Repealed]

History: Subsec. 147(10.5) repealed by 2001, c. 17, s. 142, applicable to shares acquired, but not disposed of, before February 28, 2000 and to shares acquired after February 27, 2000. The subsec. formerly read:

> (10.5) Order of disposal of shares — For the purposes of subsection (10.4), a taxpayer shall be deemed to have disposed of or exchanged shares that are identical properties in the order in which the taxpayer acquired them.

(10.6) Commencement of annuity after age 69 — Where an amount is paid before 1997 pursuant to or under a deferred profit sharing plan to purchase for a beneficiary under the plan an annuity to which subparagraph (2)(k)(vi) applies, and payment of the annuity has not begun by the end of the particular year in which the beneficiary attains 69 years of age,

> (a) the beneficiary is deemed to have disposed of the annuity immediately after the particular year and to have received as proceeds of the disposition an amount equal to the fair market value of the annuity at the end of the particular year;
>
> (b) the beneficiary is deemed to have acquired immediately after the particular year an interest in the annuity as a separate and newly issued annuity contract at a cost equal to the amount referred to in paragraph (a); and
>
> (c) the issue and acquisition of the contract referred to in paragraph (b) are deemed not to be pursuant to or under a deferred profit sharing plan.

Related Provisions: 56(1)(d.2)(iii) — Beneficiary required to include fair market value of annuity in income; 146(13.2) — Parallel rules for RRSPs; 198(6)(d) — Life insurance policy purchased with DPSP maturing by age 69.

History: Subsec. 147(10.6) added by 1997, c. 25, subsec. 43(6), applicable after 1996 except that

> (a) where a beneficiary under a profit sharing plan attained 70 years of age before 1997, the subsec. does not apply to an annuity purchased for the beneficiary;
>
> (b) where a beneficiary under a profit sharing plan attained 69 years of age in 1996, in applying subsec. (10.6) to an annuity purchased for the beneficiary, the reference to "69 years of age" shall be read as "70 years of age"; and
>
> (c) the subsec. does not apply to an annuity purchased before March 6, 1996 for a beneficiary under a deferred profit sharing plan where, under the terms and conditions of the annuity contract as they read immediately before that day,
>
> > (i) the day on which annuity payments are to begin under the contract is fixed and determined and is after the year in which the beneficiary attains
> >
> > > (A) 69 years of age, where the beneficiary had not attained that age before 1997, or
> >
> > > (B) 70 years of age, where the beneficiary attained 69 years of age in 1996, and
> >
> > (ii) the amount and timing of each annuity payment are fixed and determined.

(11) Portion of receipts deductible — For the purposes of subsections (10), (10.1) and (12), where an amount was received in a taxation year from a trustee under a deferred profit sharing plan by an employee or other beneficiary thereunder, and the employee was a beneficiary under the plan at a time when the plan was an employees profit sharing plan, the amount determined for the year under this subsection in relation to the plan and in respect of the beneficiary is such portion of the total of the amounts so received in the year as does not exceed

(a) the total of

> (i) each amount included in respect of the plan in computing the income of the employee for the year or for a previous taxation year by virtue of section 144,
>
> (ii) each amount paid by the employee to a trustee under the plan at a time when it was an employees profit sharing plan, and
>
> (iii) each amount that was allocated to the employee or other beneficiary by a trustee under the plan, at a time when it was an employees profit sharing plan, in respect of a capital gain made by the trust before 1972,

minus

(b) the total of

> (i) each amount received by the employee or other beneficiary in a previous taxation year from a trustee under the plan at a time when it was an employees profit sharing plan,
>
> (ii) each amount received by the employee or other beneficiary in a previous taxation year from a trustee under the plan at a time when it was a deferred profit sharing plan, and
>
> (iii) each amount allocated to the employee or other beneficiary by a trustee under the plan, at a time when it was an employees profit sharing plan, in respect of a capital loss sustained by the trust before 1972.

Related Provisions: 147(10) — Amounts received taxable; 147(17) — Meaning of "other beneficiary".

Interpretation Bulletins: IT-281R2: Elections on single payments from a deferred profit-sharing plan (archived); IT-363R2: Deferred profit sharing plans — deductibility of employer contributions and taxation of amounts received by a beneficiary (archived).

(12) Idem — For the purposes of subsections (10) and (10.1), where an amount was received in a taxation year from a trustee under a deferred profit sharing plan by an employee or other beneficiary thereunder, and the employee has made a payment in the year or a previous year to a trustee under the plan at a time when the plan was a deferred profit sharing plan, the amount determined for the year under this subsection in relation to the plan and in respect of the beneficiary is such portion of the total of the amounts so received in the year (minus any amount determined for the year under subsection (11) in relation to the plan and in respect of the beneficiary) as does not exceed

(a) the total of all amounts each of which was so paid by the employee in the year or a previous year to the extent that the payment was not deductible in computing the employee's income,

minus

(b) the total of all amounts each of which was received by the employee or other beneficiary from a trustee under the plan, at a time when it was a deferred profit sharing plan, to the extent that it was included in the computation of an amount determined for a previous year under this subsection in relation to the plan and in respect of the employee or other beneficiary.

Related Provisions: 60(j) — Transfer of superannuation benefits; 147(10) — Amounts received taxable; 147(11) — Portion of receipts deductible; 147(17) — Meaning of "other beneficiary".

Interpretation Bulletins: IT-281R2: Elections on single payments from a deferred profit-sharing plan (archived); IT-363R2: Deferred profit sharing plans — deductibility of employer contributions and taxation of amounts received by a beneficiary (archived).

(13) Appropriation of trust property by employer — Where funds or property of a trust governed by a deferred profit sharing plan have been appropriated in any manner whatever to or for the benefit of a taxpayer who is

(a) an employer by whom payments are made in trust to a trustee under the plan, or

(b) a corporation with which that employer does not deal at arm's length,

otherwise than in payment of or on account of shares of the capital stock of the taxpayer purchased by the trust, the amount or value of the funds or property so appropriated shall be included in computing the income of the taxpayer for the taxation year of the taxpayer in which the funds or property were so appropriated, unless the funds or property or an amount in lieu thereof equal to the amount or value of the funds or property was repaid to the trust within one year from the end of the taxation year, and it is established by subsequent events or otherwise that the repayment was not made as part of a series of appropriations and repayments.

Related Provisions: 201 — Tax on forfeitures; 214(3)(d) — Non-resident withholding tax; 248(10) — Series of transactions.

(14) Revocation of registration — Where, at any time after a profit sharing plan has been accepted by the Minister for registration for the purposes of this Act,

(a) the plan has been revised or amended or a new plan has been substituted therefor, and the plan as revised or amended or the new plan substituted therefor, as the case may be, ceased to comply with the requirements of this section for its acceptance by the Minister for registration for the purposes of this Act,

(b) any provision of the plan has not been complied with,

(c) the plan is a plan that did not, as of January 1, 1968,

(i) comply with the requirements of paragraphs (2)(a), (b) to (h), (j) and (k), and paragraph 147(2)(i) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read on January 1, 1972, and

(ii) provide that the amounts held by the trust for the benefit of beneficiaries thereunder that remain unallocated on December 31, 1967 must be allocated or reallocated, as the case may be, before 1969,

(c.1) the plan becomes a revocable plan pursuant to subsection (21),

(c.2) the plan does not comply with the requirements of paragraphs (2)(a) to (k) and (l),

(c.3) in the case of a plan that became registered after March, 1983, the plan does not comply with the requirements of paragraphs (2)(k.1) and (k.2),

(c.4) the requirements of subsection (5.1) in respect of the plan are not satisfied for a calendar year, or

(c.5) an employer who participates in the plan fails to file an information return reporting a pension adjustment of a beneficiary under the plan as and when required by regulation,

the Minister may revoke the registration of the plan,

(d) where paragraph (a) applies, as of the date that the plan ceased so to comply, or any subsequent date,

(e) where paragraph (b) applies, as of the date that any provision of the plan was not so complied with, or any subsequent date,

(f) where paragraph (c) applies, as of any date following January 1, 1968,

(g) where paragraph (c.1) applies, as of the date on which the plan became a revocable plan, or any subsequent date,

(h) where paragraph (c.2) or (c.3) applies, as of the date on which the plan did not so comply, or any subsequent date, but not before January 1, 1991,

(i) where paragraph (c.4) applies, as of the end of the year for which the requirements of subsection (5.1) in respect of the plan are not satisfied, or any subsequent date, and

(j) where paragraph (c.5) applies, as of any date after the date by which the information return was required to be filed,

and the Minister shall thereafter give notice of the revocation by registered mail to a trustee under the plan and to an employer of employees who are beneficiaries under the plan.

Related Provisions: 147(2) — Requirements for registration; 147(10.3) — Amount contributed to or forfeited under a plan; 147(15) — Rules applicable to revoked plan; 172(3)(c) — Appeal from refusal to register, revocation of registration, etc.; 198 — Tax on non-qualified investments and use of assets as security; 204 — "Revoked plan"; 244(5) — Proof of service by mail; 248(7)(a) — Mail deemed received on day mailed.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

(14.1) Idem — Where on any day after June 30, 1982 a benefit or loan is extended or continues to be extended as a consequence of the existence of a deferred profit sharing plan and that benefit or loan would be prohibited if the plan met the requirement for registration contained in paragraph (2)(k.1), the Minister may revoke the registration of the plan as of that or any subsequent day that is specified by the Minister in a notice given by registered mail to a trustee under the plan and to an employer of employees who are beneficiaries under the plan.

Related Provisions: 147(15) — Rules applicable to revoked plan; 198 — Tax on non-qualified investments and use of assets as security; 204 — "Revoked plan"; 244(5) — Proof of service by mail; 248(7)(a) — Mail deemed received on day mailed.

(15) Rules applicable to revoked plan — Where the Minister revokes the registration of a deferred profit sharing plan, the plan (in this section referred to as the "revoked plan") shall be deemed, for the purposes of this Act, not to be a deferred profit sharing plan, and notwithstanding any other provision of this Act, the following rules shall apply:

(a) the revoked plan shall not be accepted for registration for the purposes of this Act or be deemed to have

become registered as a deferred profit sharing plan at any time within a period of one year commencing on the date the plan became a revoked plan;

(b) subsection (7) does not apply to exempt the trust governed by the plan from tax under this Part on the taxable income of the trust for a taxation year in which, at any time therein, the trust was governed by the revoked plan;

(c) no deduction shall be made by an employer in computing the employer's income for a taxation year in respect of an amount paid by the employer to a trustee under the plan at a time when it was a revoked plan;

(d) there shall be included in computing the income of a taxpayer for a taxation year

(i) all amounts received by the taxpayer in the year from a trustee under the revoked plan that, by virtue of subsection (10), would have been so included if the revoked plan had been a deferred profit sharing plan at the time the taxpayer received those amounts, and

(ii) the amount or value of any funds or property appropriated to or for the benefit of the taxpayer in the year that, by virtue of subsection (13), would have been so included if the revoked plan had been a deferred profit sharing plan at the time of the appropriation of the funds or property; and

(e) the revoked plan shall be deemed, for the purposes of this Act, not to be an employees profit sharing plan or a retirement compensation arrangement.

Related Provisions: 128.1(10)"excluded right or interest"(a)(iv) — Emigration — no deemed disposition of interest in revoked plan; 147(14), (14.1) — Revocation of DPSP; 147(18) — Inadequate consideration on purchase from or sale to trust; 214(3)(d) — Non-resident withholding tax.

(16) Payments out of profits — Where the terms of an arrangement under which an employer makes payments to a trustee specifically provide that the payments shall be made "out of profits", the arrangement shall be deemed, for the purpose of subsection (1), to be an arrangement for payments "computed by reference to an employer's profits from the employer's business".

Interpretation Bulletins: IT-280R: Employees profit sharing plans — payments computed by reference to profits.

(17) Interpretation of "other beneficiary" — Where the expression "employee or other beneficiary" under a profit sharing plan occurs in this section, the words "other beneficiary" shall be construed as meaning any person, other than the employee, to whom any amount is or may become payable by a trustee under the plan as a result of payments made to the trustee under the plan in trust for the benefit of employees, including the employee.

Related Provisions: 202(1) — Returns and payment of estimated tax.

(18) Inadequate consideration on purchase from or sale to trust — Where a trust governed by a deferred profit sharing plan or revoked plan

(a) disposes of property to a taxpayer for a consideration less than the fair market value of the property at the time of the transaction, or for no consideration, or

(b) acquires property from a taxpayer for a consideration greater than the fair market value of the property at the time of the transaction,

the difference between that fair market value and the consideration, if any

(c) shall, for the purposes of subsections (10) and (15), be deemed to be an amount received by the taxpayer at the time of the disposal or acquisition, as the case may be, from a trustee under the plan as if the taxpayer were a beneficiary under the plan, and

(d) is an amount taxable under section 201 for the calendar year in which the trust disposes of or acquires the property, as the case may be.

Related Provisions: 201 — 50% tax payable on amount taxable.

Information Circulars: 77-1R4 — Deferred profit sharing plans.

(19) Transfer to RPP, RRSP or DPSP — An amount is transferred from a deferred profit sharing plan in accordance with this subsection if the amount

(a) is not part of a series of periodic payments;

(b) is transferred on behalf of an individual

(i) who is an employee or former employee of an employer who participated in the plan on the employee's behalf, or

(ii) who is entitled to the amount as a consequence of the death of an employee or former employee referred to in subparagraph (i) and who was, at the date of the employee's death, a spouse or common-law partner of the employee,

Proposed Amendment — 147(19)(b)(ii)

(ii) who is a spouse or common-law partner, or former spouse or common-law partner, of an employee or former employee referred to in subparagraph (i) and who is entitled to the amount

(A) as a consequence of the death of the employee or former employee, or

(B) under a decree, an order or a judgment of a competent tribunal, or under a written agreement, that relates to a division of property between the employee or former employee and the individual in settlement of rights that arise out of, or on a breakdown of, their marriage or common-law partnership;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 144(3), will amend subpara. 147(19)(b)(ii) to read as above, applicable to transfers that occur after March 20, 2003.

Technical Notes: Subsection 147(19) provides for the tax-free transfer on behalf of an individual of a lump sum amount from a DPSP to an RPP, an RRSP or another DPSP for the individual's benefit. Currently, direct transfers may be made on behalf of an individual only if the individual is an employee or former employee of an employer who participated in the plan or was a spouse or common-law partner of a deceased employee as at the date of the employee's death.

A number of technical amendments are being made to subsection 147(19) to provide greater consistency with the transfer provisions that apply to RPPs.

Subsection 147(19) is amended so that the direct transfer on the death of an employee may be made on behalf of a former spouse or common-law partner of the deceased employee. It is also amended to allow for direct transfers of DPSP assets to be made on behalf of a spouse or common-law partner, or former spouse or common-law partner, of an employee or former employee, where the transfer relates to a division of property arising on the breakdown of their marriage or common-law partnership.

in full or partial satisfaction of the individual's entitlement to benefits under the plan;

(c) would, if it were paid directly to the individual, be included under subsection (10) in computing the individual's income for a taxation year; and

(d) is transferred for the benefit of the individual directly to

(i) a registered pension plan,

(ii) a registered retirement savings plan under which the individual is the annuitant (within the meaning assigned by subsection 146(1)), or

(iii) a deferred profit sharing plan that can reasonably be expected to have at least 5 beneficiaries at all times throughout the calendar year in which the transfer is made.

Proposed Addition — 147(19)(d)(iv)

(iv) a registered retirement income fund under which the individual is the annuitant (within the meaning assigned by subsection 146.3(1)).

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 144(5), will add subpara. 147(19)(d)(iv), applicable to transfers that occur after March 20, 2003.

Technical Notes: See under 147(19)(b)(ii).

Related Provisions: 60(j) — Transfer of superannuation benefits; 60(j.2) — Transfer to spousal RRSP; 60(k) — re 1989 — Transfers to DPSPs; 104(27.1) — DPSP benefits; 146.3(2)(f)(viii) — Conditions for RRIF; 146(8.2) — Amount deductible where withdrawn after mistaken contribution; 147(2)(a.1) — Acceptance of plan for registration; 147(2)(e)(i) — Transfer of DPSP rights to spouse or partner permitted; 147(10.2) — Single payment on retirement etc.; 147(20) — Taxation of amount transferred; 147(22) — Excess transfer; 248(8) — Occurrences as a consequence of death; 248(10) — Series of transactions; 252(3) — Extended meaning of "spouse" and "former spouse"; Reg. 8300(1)"excluded contribution" — Amount transferred is excluded contribution.

History: Subsec. 147(19) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subpara. 147(19)(b)(ii) amended by 1998, c. 19, s. 172, applicable after 1992. Subpara. 147(19)(b)(ii) formerly read:

(ii) who is entitled to the amount as a consequence of the death of an employee or former employee referred to in subparagraph (i) and who was, at the date of the employee's death, a spouse (within the meaning assigned by subsection 146(1.1)) of the employee,

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Information Circulars: See list at end of s. 147.

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions).

Forms: T2151: Direct transfer of a "single amount" under subsec. 147(19) or s. 147.3.

(20) Taxation of amount transferred — Where an amount is transferred on behalf of an individual in accordance with subsection (19),

(a) the amount shall not, by reason only of that transfer, be included by virtue of this section in computing the income of any taxpayer; and

(b) no deduction may be made under any provision of this Act in respect of the amount in computing the income of any taxpayer.

Related Provisions: 56(1)(i) — Amount received taxable; 212(1)(m)(i) — Transferred amount not subject to non-resident withholding tax.

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

(21) Restriction re transfers — A deferred profit sharing plan becomes a revocable plan at any time that an amount is transferred from the plan to a registered pension plan, a registered retirement savings plan or another deferred profit sharing plan unless

(a) the transfer is in accordance with subsection (19); or

(b) the amount is deductible under paragraph 60(j) or (j.2) of this Act or paragraph 60(k) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, by the individual on whose behalf the transfer is made.

Related Provisions: 147(14)(c.1) — Revocation of registration.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

(22) Excess transfer — Where

(a) the transfer of an amount from a deferred profit sharing plan in a calendar year on behalf of a beneficiary under the plan would, but for this subsection, be in accordance with subsection (19), and

(b) the requirements of subsection (5.1) in respect of the plan are not satisfied for the year by reason that the beneficiary's pension credits or pension adjustments do not comply with any of paragraphs (5.1)(a) to (c),

such portion of the amount transferred as may reasonably be considered to derive from amounts allocated or reallocated to the beneficiary in the year or from earnings reasonably attributable to those amounts shall, except to the extent otherwise expressly provided in writing by the Minister, be deemed to be an amount that was not transferred in accordance with subsection (19).

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions).

Definitions [s. 147]: "amount" — 248(1); "annuitant" — 146.3(1); "annuity", "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "capital gain", "capital loss" — 39(1), 248(1); "common-law partner", "common-law partnership" — 248(1); "compensation" — 147(5.11), 147.1(1); "consequence of the death" — 248(8); "corporation" — 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan" — 147(1), 248(1); "employed", "employee" — 248(1); "employees profit sharing plan" — 144(1), 248(1); "employer", "employment" — 248(1); "estate" — 104(1), 248(1); "forfeited amount" — 147(1); "identical" — 248(12); "individual", "legal representative" — 248(1); "licensed annuities provider" — 147(1); "Minister" — 248(1); "money purchase limit" — 147.1(1), 248(1); "other beneficiary" — 147(17); "participate" — 147(1.1); "pension adjustment" — 248(1), Reg. 8301(1); "person", "prescribed" — 248(1); "profit sharing plan" — 147(1), 248(1); "property" — 248(1); "province" — *Interpretation Act* 35(1); "registered pension plan" — 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "regulation" — 248(1); "related" — 251(2); "resident in Canada", "resident of Canada" — 250; "retirement compensation arrangement" — 248(1); "revoked plan" — 147(15); "series of appropriations", "series of transactions" — 248(10); "share", "specified shareholder" — 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1); "written" — *Interpretation Act* 35(1)"writing".

Information Circulars [s. 147]: 74-1R5: Form T2037 — Notice of purchase of annuity with "plan" funds; 77-1R4: Deferred profit sharing plans.

Registered Pension Plans

147.1 (1) Definitions — In this section and sections 147.2 and 147.3,

"actuary" means a Fellow of the Canadian Institute of Actuaries;

"administrator" of a pension plan means the person or body of persons that has ultimate responsibility for the administration of the plan;

Related Provisions: 147.1(6) — Administrator; 147.1(7) — Obligations of administrator.

"average wage" for a calendar year means the amount that is obtained by dividing by 12 the total of all amounts each of which is the wage measure for a month in the 12 month period ending on June 30 of the immediately preceding calendar year;

"compensation" of an individual from an employer for a calendar year means the total of all amounts each of which is

(a) an amount in respect of

(i) the individual's employment with the employer, or

(ii) an office in respect of which the individual is remunerated by the employer

that is required (or that would be required but for paragraph 81(1)(a) as it applies with respect to the *Indian Act*) by section 5 or 6 to be included in computing the individual's income for the year, except such portion of the amount as

(iii) may reasonably be considered to relate to a period throughout which the individual was not resident in Canada, and

(iv) is not attributable to the performance of the duties of the office or employment in Canada or is exempt from income tax in Canada by reason of a provision contained in a tax convention or agreement with another country that has the force of law in Canada,

(b) a prescribed amount, or

(c) an amount acceptable to the Minister in respect of remuneration received by the individual from any employer for a period in the year throughout which the individual was not resident in Canada, to the extent that the amount is not otherwise included in the total;

Related Provisions: 87(2)(q) — Amalgamation — continuing corporation; 147(5.1) — DPSP Contribution limits; 147(5.11) — Compensation; 147.1(8) — Pension adjustment limits; 147.1(9) — Pension adjustment limits — multi-employer plans.

Regulations: 8507 (prescribed amount).

Information Circulars: 98-2: Prescribed compensation for registered pension plans.

"defined benefit provision" of a pension plan means terms of the plan under which benefits in respect of each member are determined in any way other than that described in the definition "money purchase provision" in this subsection;

Related Provisions: 60(j.01) — Transfer of surplus.

Interpretation Bulletins: IT-167R6: Registered pension plans — employee's contributions; IT-528: Transfers of funds between registered plans.

"former limit" for each calendar year after 2005 and before 2010 means the greater of

(a) the product (rounded to the nearest multiple of $10, or, if that product is equidistant from two such consecutive multiples, to the higher multiple) of

(i) $18,000, and

(ii) the quotient obtained when the average wage for the year is divided by the average wage for 2005, and

(b) for 2006, $18,000, and for any other of those calendar years, the former limit for the preceding calendar year;

History: The definition "former limit" in subsec. 147.1(1) added by 2005, c. 30, subsec. 11(2), applicable after 2004.

"member" of a pension plan means an individual who has a right, either immediate or in the future and either absolute or contingent, to receive benefits under the plan, other than an individual who has such a right only by reason of the participation of another individual in the plan;

Related Provisions: 128.1(10)"excluded right or interest"(a)(viii) — No deemed disposition on emigration of member.

"money purchase limit" for a calendar year means

(a) for years before 1990, nil,

(b) for 1990, $11,500,

(c) for 1991 and 1992, $12,500,

(d) for 1993, $13,500,

(e) for 1994, $14,500,

(f) for 1995, $15,500, and

(g) for years after 1995 and before 2003, $13,500,

(h) for 2003, $15,500,

(i) for 2004, $16,500,

(j) for 2005, $18,000,

(k) for 2006, the greater of $19,000 and the former limit for the year,

(l) for 2007, the greater of $20,000 and the former limit for the year,

(m) for 2008, the greater of $21,000 and the former limit for the year,

(n) for 2009, the greater of $22,000 and the former limit for the year, and

(o) for each year after 2009, the greater of

(i) the product (rounded to the nearest multiple of $10, or, if that product is equidistant from two such consecutive multiples, to the higher multiple) of

(A) the money purchase limit for 2009, and

(B) the quotient obtained when the average wage for the year is divided by the average wage for 2009, and

(ii) the money purchase limit for the preceding year;

Related Provisions: 146(1) — RRSP dollar limit; 147.1(8) — Pension adjustment limits; 147.1(9) — Pension adjustment limits — multi-employer plans; 248(1)"money purchase limit" — Definition applies to entire Act.

History: Para. (k) amended and paras. (l) to (o) added to the definition "money purchase limit" in subec. 147.(1) by 2005, c. 30, subsec. 11(1), applicable after 2004. Para. (k) formerly read:

(k) for each year after 2005, the greater of

(i) the product (rounded to the nearest multiple of $10, or, if that product is equidistant from two such consecutive multiples, to the higher multiple) of

(A) $18,000, and

(B) the quotient obtained when the average wage for the year is divided by the average wage for 2005, and

(ii) the money purchase limit for the preceding year;

Paras. (g) to (j) of the definition "money purchase limit" in subsec. 147.1(1) amended and para. (k) added by 2003, c. 15, s. 84, applicable after 2002. However, for the purpose of determining a pension credit of an individual for the 2002 calendar year under Reg. 8308.1 or 8308.3 or an amount prescribed in respect of an individual under Reg. 8308.2 or 8309

for the 2003 calendar year, the money purchase limit for 2002 is deemed to be $14,500. Paras. (g) to (j) formerly read:

(g) for years after 1995 and before 2003, $13,500,

(h) for 2003, $14,500,

(i) for 2004, $15,500, and

(j) for each year after 2004, the greater of

(i) the product of

(A) $15,500, and

(B) the quotient obtained when the average wage for the year is divided by the average wage for 2004,

rounded to the nearest multiple of $10, or, if that product is equidistant from 2 such consecutive multiples, to the higher thereof, and

(ii) the money purchase limit for the preceding year;

Paras. (g) to (j) of the definition "money purchase limit" in subsec. 147.1(1) amended by 1997, c. 25, s. 44, applicable after 1996. Paras. (g) to (j) formerly read:

(g) for 1996, $13,500,

(h) for 1997, $14,500,

(i) for 1998, $15,500, and

(j) for each year after 1998, the greater of

(i) the product of

(A) $15,500, and

(B) the quotient obtained when the average wage for the year is divided by the average wage for 1998,

rounded to the nearest multiple of $10, or, if that product is equidistant from 2 such consecutive multiples, to the higher thereof, and

(ii) the money purchase limit for the preceding year;

Paras. (g) to (j) substituted for para. (g) of the definition "money purchase limit" in subsec. 147.1(1), by 1996, c. 21, s. 36, applicable after 1995. Para. (g) formerly read:

(g) for each year thereafter, the greater of

(i) the product of

(A) $15,500, and

(B) the quotient obtained when the average wage for the year is divided by the average wage for 1995,

rounded to the nearest multiple of $10, or, if that product is equidistant from two such consecutive multiples, to the higher thereof, and

(ii) the money purchase limit for the immediately preceding calendar year;

"Money purchase limit" in subsec. 147.1(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 85(1), applicable after 1991. That definition formerly read:

"money purchase limit" for a calendar year means

(a) for years preceding 1990, nil,

(b) for 1990, $11,500,

(c) for 1991, $12,500,

(d) for 1992, $13,500,

(e) for 1993, $14,500,

(f) for 1994, $15,500, and

(g) for each year thereafter, the greater of

(i) the product of

(A) $15,500, and

(B) the quotient obtained when the average wage for the year is divided by the average wage for 1994,

rounded to the nearest multiple of ten dollars, or, if that product is equidistant from two such consecutive multiples, to the higher thereof, and

(ii) the money purchase limit for the immediately preceding calendar year;

Registered Plans Directorate Newsletters: 96-1 (changes to retirement savings limits).

"money purchase provision" of a pension plan means terms of the plan

(a) which provide for a separate account to be maintained in respect of each member, to which are credited contributions made to the plan by, or in respect of, the member and any other amounts allocated to the member, and to which are charged payments made in respect of the member, and

(b) under which the only benefits in respect of a member are benefits determined solely with reference to, and provided by, the amount in the member's account;

Regulations: 8506 (rules for money purchase provisions).

Interpretation Bulletins: IT-167R6: Registered pension plans — employee's contributions; IT-528: Transfers of funds between registered plans.

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions).

"multi-employer plan" in a calendar year has the meaning assigned by regulation;

Related Provisions: 147.1(9) — Pension adjustment limits — multi-employer plans; 252.1 — Where union is employer; Reg. 8510(5) — Special rules — multi-employer plan.

Regulations: 8500(1), 8510(1) (meaning of "multi-employer plan").

"participating employer", in relation to a pension plan, means an employer who has made, or is required to make, contributions to the plan in respect of the employer's employees or former employees, or payments under the plan to the employer's employees or former employees, and includes a prescribed employer;

Related Provisions: 87(2)(q) — Amalgamation — continuing corporation.

Regulations: 8308(7)(c) (prescribed employer).

Interpretation Bulletins: IT-363R2: Deferred profit sharing plans — deductibility of employer contributions and taxation of amounts received by a beneficiary (archived).

"past service event" has the meaning assigned by regulation;

Related Provisions: 147.1(10) — Past service benefits.

Regulations: 8300(1), (2) (past service event).

"single amount" means an amount that is not part of a series of periodic payments;

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

"specified multi-employer plan" in a calendar year has the meaning assigned by regulation;

Related Provisions: 252.1 — Where union is employer.

Regulations: 8510(2), (3) (meaning of "specified multi-employer plan").

"spouse" — [Repealed]

History: "Spouse" repealed by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 85(2), applicable after 1992. [See now subsec. 252(4).] That definition formerly read:

"spouse" of an individual has the meaning assigned by subsection 146(1.1);

"wage measure" for a month means the average weekly wages and salaries of

(a) the Industrial Aggregate in Canada for the month as published by Statistics Canada under the *Statistics Act*, or

(b) in the event that the Industrial Aggregate ceases to be published, such other measure for the month as is prescribed by regulation under the *Canada Pension Plan* for the purposes of paragraph 18(5)(b) of that Act.

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans.

(2) Registration of plan — The following rules apply with respect to the registration of pension plans:

(a) the Minister shall not register a pension plan unless

(i) application for registration is made in prescribed manner by the plan administrator,

(ii) the plan complies with prescribed conditions for registration, and

(iii) where the plan is required to be registered under the *Pension Benefits Standards Act, 1985* or a similar law of a province, application for such registration has been made;

(b) where a pension plan that was submitted for registration before 1992 is registered by the Minister, the registration is effective from the day specified in writing by the Minister; and

(c) where a pension plan that is submitted for registration after 1991 is registered by the Minister, the registration is effective from the later of

(i) January 1 of the calendar year in which application for registration is made in prescribed manner by the plan administrator, and

(ii) the day the plan began.

Related Provisions: 149(1)(o) — Exemption — pension trust; 172(5) — Deemed refusal to register; 241(4)(j) — Communication of information — exception.

History: Paras. 147.1(2)(b) and (c) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 85(3), applicable after 1990. Paras. (b) and (c) formerly read:

(b) where a pension plan that is submitted for registration before 1991 is registered by the Minister, the registration is effective from such day as is specified in writing by the Minister; and

(c) where a pension plan that is submitted for registration after 1990 is registered by the Minister, the registration is effective from the later of

(i) January 1 of the calendar year in which application for registration is made in prescribed manner by the plan administrator, and

(ii) the day of commencement of the plan.

Regulations: 8500-8520; 8501(1) (prescribed conditions); 8512(1), (2) (prescribed conditions, prescribed manner).

Information Circulars: 72-13R8: Employees' pension plans [partly superseded by new Regulations].

Registered Plans Directorate Newsletters: 95-1 (new approach to plan registration); 95-2R1 (registered plan division services); 95-6R (specimen pension plans — speeding up the process); 95-7 (Quebec simplified pension plans); 98-1 (simplified pension plans); 04-2 (RPP applications — processing an incomplete application).

Forms: T510: Application to register a pension plan.

(3) Deemed registration — Where application is made to the Minister for registration of a pension plan for the purposes of this Act and, where the manner for making the application has been prescribed, the application is made in that manner by the administrator,

(a) subject to paragraph (b), the plan is, for the purposes of this Act other than paragraphs 60(j) and (j.2) and sections 147.3 and 147.4, deemed to be a registered pension plan throughout the period that begins on the latest of

(i) January 1 of the calendar year in which the application is made,

(ii) the day of commencement of the plan, and

(iii) January 1, 1989

and ending on the day on which a final determination is made with respect to the application; and

(b) where the final determination made with respect to the application is a refusal to register the plan, this Act shall, after the day of the final determination, apply as if the plan had never been deemed, under paragraph (a), to be a registered pension plan, except that

(i) any information return otherwise required to be filed under subsection 207.7(3) before the particular day that is 90 days after the day of the final determination is not required to be filed until the particular day, and

(ii) subsections 227(8) and (8.2) are not applicable with respect to contributions made to the plan on or before the day of the final determination.

Related Provisions: 87(2)(q) — Amalgamation — continuing corporation; 172(3) — Appeal from refusal to register, revocation of registration, etc.; 172(5) — Deemed refusal to register.

History: The opening words of para. 147.1(3)(a) amended by 1998, c. 19, s. 173, applicable after 1996. The opening words formerly read:

(a) subject to paragraph (b), the plan shall, for the purposes of this Act other than paragraphs 60(j) and (j.2) and section 147.3, be deemed to be a registered pension plan throughout the period commencing on the latest of

Registered Plans Directorate Newsletters: 95-1 (new approach to plan registration); 95-2R1 (registered plan division services); 95-6R (specimen pension plans — speeding up the process); 95-7 (Quebec simplified pension plans); 98-1 (simplified pension plans).

(4) Acceptance of amendments — The Minister shall not accept an amendment to a registered pension plan unless

(a) application for the acceptance is made in prescribed manner by the plan administrator;

(b) the plan as amended complies with prescribed conditions for registration; and

(c) the amendment complies with prescribed conditions.

Related Provisions: 147.1(15) — Plan as registered.

Regulations: 8501(1), 8511 (prescribed conditions); 8512 (prescribed manner).

Registered Plans Directorate Newsletters: 95-6R (specimen pension plans — speeding up the process); 95-7 (Quebec simplified pension plans); 98-1 (simplified pension plans).

Forms: T920: Application to amend to an RPP.

(5) Additional conditions — The Minister may, at any time, impose reasonable conditions applicable with respect to registered pension plans, a class of such plans or a particular registered pension plan.

Registered Plans Directorate Newsletters: 96-3 (flexible pension plans); 98-1 (simplified pension plans); 04-1 (transfer from a defined benefit provision).

(6) Administrator — There shall, for each registered pension plan, be a person or a body of persons that has ultimate responsibility for the administration of the plan and, except as otherwise permitted in writing by the Minister, the person or a majority of the persons who constitute the body shall be a person or persons resident in Canada.

Related Provisions: 87(2)(q) — Amalgamation — continuing corporation; 147.1(7) — Obligations of administrator; 147.1(11) — Revocation of registration — notice of intention; 250 — Residents.

(7) Obligations of administrator — The administrator of a registered pension plan shall

(a) administer the plan in accordance with the terms of the plan as registered except that, where the plan fails

to comply with the prescribed conditions for registration or any other requirement of this Act or the regulations, the administrator may administer the plan as if it were amended to so comply;

(b) before July, 1990, in the case of a person or body that is the administrator on January 1, 1989 or becomes the administrator before June, 1990, and, in any other case, within 30 days after becoming the administrator, inform the Minister in writing

(i) of the name and address of the person who is the administrator, or

(ii) of the names and addresses of the persons who constitute the body that is the administrator; and

(c) where there is any change in the information provided to the Minister in accordance with this paragraph or paragraph (b), inform the Minister in writing, within 60 days after the change, of the new information.

Related Provisions: 87(2)(q) — Amalgamation — continuing corporation; 147.1(11) — Revocation of registration; 147.1(15) — Plan as registered; 147.1(18) — Regulations; 238(1) — Offences; 248(7)(a) — Mail deemed received on day mailed.

Regulations: Part LXXXV (prescribed conditions).

Forms: T3P: Employees' pension plan income tax return.

(8) Pension adjustment limits — Except as otherwise provided by regulation, a registered pension plan (other than a multi-employer plan) becomes, at the end of a calendar year after 1990, a revocable plan where

(a) the pension adjustment for the year of a member of the plan in respect of a participating employer exceeds the lesser of

(i) the money purchase limit for the year, and

(ii) 18% of the member's compensation from the employer for the year; or

(b) the total of

(i) the pension adjustment for the year of a member of the plan in respect of a participating employer, and

(ii) the total of all amounts each of which is the member's pension adjustment for the year in respect of an employer who, at any time in the year, does not deal at arm's length with the employer referred to in subparagraph (i)

exceeds the money purchase limit for the year.

Related Provisions: 87(2)(q) — Amalgamation — continuing corporation; 147(5.1)(c) — Contribution limits; 147.1(11) — Revocation of registration — notice of intention; 147.3(13) — Excess transfer; 252.1 — Multi-employer plan — union as employer.

Regulations: 8509(12) (limitation on application of 147.1(8)); 8518 (where subsec. 147.1(8) not to apply).

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Information Circulars: 98-2: Prescribed compensation for registered pension plans.

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions); 96-1 (changes to retirement savings limits).

Forms: T10: Summary of PARs.

(9) Idem — multi-employer plans — Except as otherwise provided by regulation, a registered pension plan that is a multi-employer plan (other than a specified multi-employer plan) in a calendar year after 1990 becomes, at the end of the year, a revocable plan where

(a) for a member and an employer, the total of all amounts each of which is the member's pension credit (as prescribed by regulation) for the year in respect of the employer under a defined benefit or money purchase provision of the plan exceeds the lesser of

(i) the money purchase limit for the year, and

(ii) 18% of the member's compensation from the employer for the year; or

(b) for a member, the total of all amounts each of which is the member's pension credit (as prescribed by regulation) for the year in respect of an employer under a defined benefit or money purchase provision of the plan exceeds the money purchase limit for the year.

Related Provisions: 87(2)(q) — Amalgamation — continuing corporation; 147.1(11) — Revocation of registration — notice of intention; 147.1(14) — Anti-avoidance — multi-employer plans; 147.3(13) — Excess transfer; Reg. 8301 — Pension adjustment.

Regulations: 8301(4)–(6), (8) (pension credit); 8509(12) (limitation on application of 147.1(9)).

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Information Circulars: 98-2: Prescribed compensation for registered pension plans.

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions); 95-7 (Quebec simplified pension plans); 96-1 (changes to retirement savings limits); 98-1 (simplified pension plans).

(10) Past service benefits — With respect to each past service event that is relevant to the determination of benefits in respect of a member under a defined benefit provision of a registered pension plan, such benefits as are in respect of periods after 1989 and before the calendar year in which the event occurred shall be determined, for the purpose of a payment to be made from the plan or a contribution to be made to the plan at a particular time, with regard to the event only if

(a) where the member is alive at the particular time and except as otherwise provided by regulation, the Minister has certified in writing, before the particular time, that prescribed conditions are satisfied,

(b) where the member died before the particular time and the event occurred before the death of the member,

(i) this subsection did not require that the event be disregarded in determining benefits that were payable to the member immediately before the member's death (or that would have been so payable had the member been entitled to receive benefits under the provision immediately before the member's death), or

(ii) the event, as it affects the benefits provided to each individual who is entitled to benefits as a consequence of the death of the member, is acceptable to the Minister,

(c) where the member died before the particular time and the event occurred after the death of the member, the event, as it affects the benefits provided to each individual who is entitled to benefits as a consequence of the death of the member, is acceptable to the Minister, and

(d) no past service event that occurred before the event is required by reason of the application of this subsec-

tion to be disregarded at the particular time in determining benefits in respect of the member,

and, for the purposes of this subsection as it applies with respect to contributions that may be made to a registered pension plan, where application has been made for a certification referred to in paragraph (a) and the Minister has not refused to issue the certification, the Minister shall be deemed to have issued the certification.

Related Provisions: 87(2)(q) — Amalgamation — continuing corporation; 147.1(11) — Revocation of registration — notice of intention; 147.1(18) — Regulations; 147.2(1) — Pension contributions deductible — employer contributions; 241(4)(c) — Communication of information — exception; 248(8) — Occurrences as a consequence of death.

Regulations: 8300(6) (prescribed rules); 8306 (certification not required); 8307(2) (prescribed conditions); 8308(1) (benefits provided before registration); 8519 (prescribed manner).

Interpretation Bulletins: IT-167R6: Registered pension plans — employee's contributions.

Forms: T1004: Applying for the certification of a provisional PSPA.

(11) Revocation of registration — notice of intention — Where, at any time after a pension plan has been registered by the Minister,

(a) the plan does not comply with the prescribed conditions for registration,

(b) the plan is not administered in accordance with the terms of the plan as registered,

(c) the plan becomes a revocable plan,

(d) a condition imposed by the Minister in writing and applicable with respect to the plan (including a condition applicable generally to registered pension plans or a class of such plans and a condition first imposed before 1989) is not complied with,

(e) a requirement under subsection (6) or (7) is not complied with,

(f) a benefit is paid by the plan, or a contribution is made to the plan, contrary to subsection (10),

(g) the administrator of the plan fails to file an information return or actuarial report relating to the plan or to a member of the plan as and when required by regulation,

(h) a participating employer fails to file an information return relating to the plan or to a member of the plan as and when required by regulation, or

(i) registration of the plan under the *Pension Benefits Standards Act, 1985* or a similar law of a province is refused or revoked,

the Minister may give notice (in this subsection and subsection (12) referred to as a "notice of intent") by registered mail to the plan administrator that the Minister proposes to revoke the registration of the plan as of a date specified in the notice of intent, which date shall not be earlier than the date as of which,

(j) where paragraph (a) applies, the plan failed to so comply,

(k) where paragraph (b) applies, the plan was not administered in accordance with its terms as registered,

(l) where paragraph (c) applies, the plan became a revocable plan,

(m) where paragraph (d) or (e) applies, the condition or requirement was not complied with,

(n) where paragraph (f) applies, the benefit was paid or the contribution was made,

(o) where paragraph (g) or (h) applies, the information return or actuarial report was required to be filed, and

(p) where paragraph (i) applies, the registration referred to in that paragraph was refused or revoked.

Related Provisions: 87(2)(q) — Amalgamation — continuing corporation; 147.1(8) — Pension adjustment limits; 147.1(9) — Pension adjustment limits — multi-employer plans; 147.1(12) — Notice of revocation; 147.1(13) — Revocation of registration; 147.1(15) — Meaning of "plan" as registered; 147.1(18)(b) — Regulations; 147.3(12) — Restriction re transfers; 147.4(1)(d) — RPP annuity contract; 172(3) — Appeal from refusal to register, revocation of registration, etc.; 180(1) — Appeals to Federal Court of Appeal; 244(5) — Proof of service by mail; 248(7)(a) — Mail deemed received on day mailed.

Regulations: 8501(2) (failure to comply with various conditions); 8503(15) (past service employer contributions); 8506(4) (non-payment of minimum amount).

(12) Notice of revocation — Where the Minister gives a notice of intent to the administrator of a registered pension plan, or the plan administrator applies to the Minister in writing for the revocation of the plan's registration, the Minister may,

(a) where the plan administrator has applied to the Minister in writing for the revocation of the plan's registration, at any time after receiving the administrator's application, and

(b) in any other case, after 30 days after the day of mailing of the notice of intent,

give notice (in this subsection and in subsection (13) referred to as a "notice of revocation") by registered mail to the plan administrator that the registration of the plan is revoked as of the date specified in the notice of revocation, which date may not be earlier than the date specified in the notice of intent or the administrator's application, as the case may be.

(13) Revocation of registration — Where the Minister gives a notice of revocation to the administrator of a registered pension plan, the registration of the plan is revoked as of the date specified in the notice of revocation, unless the Federal Court of Appeal or a judge thereof, on application made at any time before the determination of an appeal pursuant to subsection 172(3), orders otherwise.

Related Provisions: 147.1(12) — Notice of revocation; 244(5) — Proof of service by mail; 248(7)(a) — Mail deemed received on day mailed.

(14) Anti-avoidance — multi-employer plans — Where at any time the Minister gives written notice to the administrators of two or more registered pension plans, each of which is a multi-employer plan, that this subsection is applicable in relation to those plans with respect to a calendar year,

(a) each of those plans that is a specified multi-employer plan in the year shall, for the purposes of subsection (9) (other than for the purpose of determining the pension credits referred to in paragraphs (9)(a) and (b)), be deemed to be a multi-employer plan that is not a specified multi-employer plan; and

(b) the totals determined for the year under paragraphs (9)(a) and (b) shall be the amounts that would be determined if all the plans were a single plan.

Related Provisions: 87(2)(q) — Amalgamation — continuing corporation.

Registered Plans Directorate Newsletters: 95-7 (Quebec simplified pension plans); 98-1 (simplified pension plans).

(15) Plan as registered — Any reference in this Act and the regulations to a pension plan as registered means the terms of the plan on the basis of which the Minister

has registered the plan for the purposes of this Act and as amended by

(a) each amendment that has been accepted by the Minister, and

(b) each amendment that has been submitted to the Minister for acceptance and that the Minister has neither accepted nor refused to accept, if it is reasonable to expect the Minister to accept the amendment,

and includes all terms that are not contained in the documents constituting the plan but that are terms of the plan by reason of the *Pension Benefits Standards Act, 1985* or a similar law of a province.

Related Provisions: 87(2)(q) — Amalgamation — continuing corporation.

(16) Separate liability for obligations — Every person who is a member of a body that is the administrator of a registered pension plan is subject to all obligations imposed on administrators by this Act or a regulation as if the person were the administrator of the plan.

Related Provisions: 238(1) — Offences.

(17) Superintendent of Financial Institutions — The Minister may, for the purposes of this Act, obtain the advice of the Superintendent of Financial Institutions with respect to any matter relating to pension plans.

(18) Regulations — The Governor in Council may make regulations

(a) prescribing conditions for the registration of pension plans and enabling the Minister to impose additional conditions or waive any conditions that are prescribed;

(b) prescribing circumstances under which a registered pension plan becomes a revocable plan;

(c) specifying the manner of determining, or enabling the Minister to determine, the portion of a member's benefits under a registered pension plan that is in respect of any period;

(d) requiring administrators of registered pension plans to make determinations in connection with the computation of pension adjustments, past service pension adjustments, total pension adjustment reversals or any other related amounts (all such amounts referred to in this subsection as "specified amounts");

(e) requiring that the method used to determine a specified amount be acceptable to the Minister, where more than one method would otherwise comply with the regulations;

(f) enabling the Minister to permit or require a specified amount to be determined in a manner different from that set out in the regulations;

(g) requiring that any person who has information required by another person in order to determine a specified amount provide the other person with that information;

(h) enabling the Minister to require any person to provide the Minister with information relating to the method used to determine a specified amount;

(i) enabling the Minister to require any person to provide the Minister with information relevant to a claim that paragraph (10)(a) is not applicable by reason of an exemption provided by regulation;

(j) respecting applications for certifications for the purposes of subsection (10);

(k) enabling the Minister to waive the requirement for a certification for the purposes of subsection (10);

(l) prescribing rules for the purposes of subsection (10), so that that subsection applies or does not apply with respect to benefits provided as a consequence of particular transactions, events or circumstances;

(m) requiring any person to provide the Minister or the administrator of a registered pension plan with information in connection with an application for certification for the purposes of subsection (10);

(n) requiring any person who obtains a certification for the purposes of subsection (10) to provide the individual in respect of whom the certification was obtained with an information return;

(o) requiring administrators of registered pension plans to file information with respect to amendments to such plans and to the arrangements for funding benefits thereunder;

(p) requiring administrators of registered pension plans to file information returns respecting such plans;

(q) enabling the Minister to require any person to provide the Minister with information for the purpose of determining whether the registration of a pension plan may be revoked;

(r) requiring administrators of registered pension plans to submit reports to the Minister, prescribing the class of persons by whom the reports shall be prepared and prescribing information to be contained in those reports;

(s) enabling the Minister to impose any requirement that may be imposed by regulation made under paragraph (r);

(t) defining, for the purposes of this Act, the expressions "multi-employer plan", "past service event", "past service pension adjustment", "pension adjustment", "specified multi-employer plan" and "total pension adjustment reversal"; and

(u) generally to carry out the purposes and provisions of this Act relating to registered pension plans and the determination and reporting of specified amounts.

Related Provisions: 87(2)(q) — Amalgamation — continuing corporation; 221 — Regulations generally; 238(1) — Offences.

History [147.1(18)]: Paras. 147.1(18)(d) and (t) amended by 1998, c. 19, subsecs. 39(1), (2), applicable after 1996. Paras. (d) and (t) formerly read:

(d) requiring administrators of registered pension plans to make determinations in connection with the computation of pension adjustments, past service pension adjustments or any other related amounts (all such amounts referred to in this subsection as "specified amounts");

. . . . .

(t) defining the expressions "multi-employer plan", "past service event", "past service pension adjustment", "pension adjustment" and "specified multi-employer plan"; and

Regulations: 8300–8520.

Forms: T3P: Employees' pension plan income tax return; T10: Pension adjustment reversal; T10 Summ: Summary of PARs; T10 Segment.

Definitions [s. 147.1]: "actuary", "administrator" — 147.1(1); "amount" — 248(1); "as registered" — 147.1(15); "average wage" — 147.1(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "compensation" — 147.1(1); "consequence of the death" — 248(8); "defined benefit provision" — 147.1(1); "employer", "employment" — 248(1); "Federal Court of Appeal" — *Federal Courts Act* s. 3; "former limit" — 147.1(1); "Governor in Council" — *Interpretation Act* 35(1); "individual" — 248(1); "member" — 147.1(1); "Minister" — 248(1); "money purchase limit" — 147.1(1), 248(1); "money purchase provision" — 147.1(1); "multi-employer plan" — 147.1(1), Reg. 8500(1), 8510(1); "office" — 248(1); "participating employer" — 147.1(1); "past

service event" — 147.1(1), Reg. 8300(1), (2); "past service pension adjustment" — 248(1), Reg. 8303; "pension adjustment" — 248(1), Reg. 8301(1); "pension credit" — Reg. 8301(2)–(8), (10), (16); "person", "prescribed" — 248(1); "province" — *Interpretation Act* 35(1); "registered pension plan", "regulation" — 248(1); "resident in Canada" — 250; "single amount" — 147.1(1); "specified amount" — 147.1(18)(d); "specified multi-employer plan" — 147.1(1), Reg. 8510(2), (3); "spouse" — 146(1.1), 147.1(1); "total pension adjustment reversal" — 248(1); "wage measure" — 147.1(1); "writing" — *Interpretation Act* 35(1).

147.2 (1) Pension contributions deductible — employer contributions — For a taxation year ending after 1990, there may be deducted in computing the income of a taxpayer who is an employer the total of all amounts each of which is a contribution made by the employer after 1990 and either in the taxation year or within 120 days after the end of the taxation year to a registered pension plan in respect of the employer's employees or former employees, to the extent that

(a) in the case of a contribution in respect of a money purchase provision of a plan, the contribution was made in accordance with the plan as registered and in respect of periods before the end of the taxation year;

(b) in the case of a contribution in respect of the defined benefit provisions of a plan (other than a specified multi-employer plan), the contribution

(i) is an eligible contribution,

(ii) was made to fund benefits provided to employees and former employees of the employer in respect of periods before the end of the taxation year, and

(iii) complies with subsection 147.1(10);

(c) in the case of a contribution made to a plan that is a specified multi-employer plan, the contribution was made in accordance with the plan as registered and in respect of periods before the end of the taxation year; and

(d) the contribution was not deducted in computing the income of the employer for a preceding taxation year.

Related Provisions: 6(1)(a)(i) — Employer's contribution not a taxable benefit; 20(1)(q) — Employer's contributions deductible; 87(2)(q) — Amalgamation — continuing corporation; 147.1(8), (9) — Pension adjustment limits; 147.2(2) — Employer contributions — defined benefit provisions.

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions).

(2) Employer contributions — defined benefit provisions — For the purposes of subsection (1), a contribution made by an employer to a registered pension plan in respect of the defined benefit provisions of the plan is an eligible contribution if it is a prescribed contribution or if it complies with prescribed conditions and is made pursuant to a recommendation by an actuary in whose opinion the contribution is required to be made so that the plan will have sufficient assets to pay benefits under the defined benefit provisions of the plan, as registered, in respect of the employees and former employees of the employer, where

(a) the recommendation is based on an actuarial valuation that complies with the following conditions, except the conditions in subparagraphs (iii) and (iv) to the extent that they are inconsistent with any other conditions that apply for the purpose of determining whether the contribution is an eligible contribution:

(i) the effective date of the valuation is not more than 4 years before the day on which the contribution is made,

(ii) actuarial liabilities and current service costs are determined in accordance with an actuarial funding method that produces a reasonable matching of contributions with accruing benefits,

(iii) all assumptions made for the purposes of the valuation are reasonable at the time the valuation is prepared and at the time the contribution is made,

(iv) the valuation is prepared in accordance with generally accepted actuarial principles,

(v) the valuation complies with prescribed conditions, which conditions may include conditions regarding the benefits that may be taken into account for the purposes of the valuation, and

(vi) where more than one employer participates in the plan, assets and actuarial liabilities are apportioned in a reasonable manner among participating employers in respect of their employees and former employees, and

(b) the recommendation is approved by the Minister in writing,

and, for the purposes of this subsection and except as otherwise provided by regulation,

(c) the benefits taken into account for the purposes of a recommendation may include anticipated cost-of-living and similar adjustments where the terms of a pension plan do not require that those adjustments be made but it is reasonable to expect that they will be made, and

(d) a recommendation with respect to the contributions required to be made by an employer in respect of the defined benefit provisions of a pension plan may be prepared without regard to such portion of the assets of the plan apportioned to the employer in respect of the employer's employees and former employees as does not exceed the least of

(i) the amount of actuarial surplus in respect of the employer,

(ii) 20% of the amount of actuarial liabilities apportioned to the employer in respect of the employer's employees and former employees, and

(iii) the greater of

(A) 2 times the estimated amount of current service contributions that would, if there were no actuarial surplus, be required to be made by the employer and the employer's employees for the 12 months immediately following the effective date of the actuarial valuation on which the recommendation is based, and

(B) the amount that would be determined under subparagraph (ii) if the reference therein to "20%" were read as a reference to "10%".

Proposed Amendment — Regulatory exception re fixed-cost-shared plan

Letter from Dept. of Finance, August 19, 2002:

Dear [xxx]

This is further to our recent discussion concerning the status of the Department's review of the request by the [xxx] to relax the pension surplus rules in the *Income Tax Act* for defined benefit pension plans that are governed by a fixed-cost-shared arrangement.

We have completed our review of this matter and wish to confirm the Department's intention to recommend to the Minister of Finance relieving amendments to the *Income Tax Regulations*, effective for contributions made after 2002. The proposed amendments would permit employer contributions to be made to a fixed-cost-shared plan in accordance with the following table, where such contributions would not otherwise be permit-

ted under subsection 147.2(2) of the Act because the plan's funding ratio exceeds 110%.

Funding ratio	*Total employer and employee current service contributions*
>110% and ≤115%	75% of current service costs
>115% and ≤120%	50% of current service costs
>120% and ≤125%	25% of current service costs
>125%	nil

The amendments are being recommended in recognition of the fact that, because of the fixed-cost-shared arrangement, both employee and employer contributions to such a plan are linked to the funded status of the plan. As a result, employee contribution rates have the potential to vary significantly. This is in contrast to traditional defined benefit plans under which employee contribution rates remain constant, regardless of the funded status of the plan. By proposing to relax the restrictions on employer contributions to fixed-cost-shared plans in the manner outlined, changes in the funded status of such plans should be less volatile and, thus, employee contribution rates should be more stable.

If the recommendation is acted upon, the proposed amendments will, at the earliest opportunity, be submitted to the Governor in Council for consideration.

Yours sincerely,

Len Farber
General Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 147.2(3) — Filing of actuarial report.

History: Para. 147.2(2)(b) amended by 1998, c. 19, subsec. 174(1), applicable after March 1996. Para. 147.2(2)(b) formerly read:

(b) the recommendation is approved in writing by the Minister on the advice of the Superintendent of Financial Institutions,

Regulations: 8515(5) (prescribed conditions); 8516(1) (prescribed contribution).

Information Circulars: 72-13R8: Employees' pension plans.

Registered Plans Directorate Newsletters: 95-3 (actuarial report content); 96-1 (changes to retirement savings limits).

(3) Filing of actuarial report — Where, for the purposes of subsection (2), a person seeks the Minister's approval of a recommendation made by an actuary in connection with the contributions to be made by an employer to a registered pension plan in respect of the defined benefit provisions of the plan, the person shall file with the Minister a report prepared by the actuary that contains the recommendation and any other information required by the Minister.

Related Provisions: Reg. 8410 — Actuarial report required on demand.

Registered Plans Directorate Newsletters: 95-3 (actuarial report content).

(4) Amount of employee's pension contributions deductible — There may be deducted in computing the income of an individual for a taxation year ending after 1990 an amount equal to the total of

(a) **service after 1989** — the total of all amounts each of which is a contribution (other than a prescribed contribution) made by the individual in the year to a registered pension plan that is in respect of a period after 1989 or that is a prescribed eligible contribution, to the extent that the contribution was made in accordance with the plan as registered,

(b) **service before 1990 while not a contributor** — the least of

(i) the amount, if any, by which

(A) the total of all amounts each of which is a contribution (other than an additional voluntary contribution or a prescribed contribution) made by the individual in the year or a preceding taxation year and after 1945 to a registered pension plan in respect of a particular year before 1990, if all or any part of the particular year is included in the individual's eligible service under the plan and if

(I) in the case of a contribution that the individual made before March 28, 1988 or was obliged to make under the terms of an agreement in writing entered into before March 28, 1988, the individual was not a contributor to the plan in the particular year, or

(II) in any other case, the individual was not a contributor to any registered pension plan in the particular year

exceeds

(B) the total of all amounts each of which is an amount deducted, in computing the individual's income for a preceding taxation year, in respect of contributions included in the total determined in respect of the individual for the year under clause (A),

(ii) $3,500, and

(iii) the amount determined by the formula

$$(\$3{,}500 \times Y) - Z$$

where

Y is the number of calendar years before 1990 each of which is a year

(A) all or any part of which is included in the individual's eligible service under a registered pension plan to which the individual has made a contribution that is included in the total determined under clause (i)(A) and in which the individual was not a contributor to any registered pension plan, or

(B) all or any part of which is included in the individual's eligible service under a registered pension plan to which the individual has made a contribution

(I) that is included in the total determined under clause (i)(A), and

(II) that the individual made before March 28, 1988 or was obliged to make under the terms of an agreement in writing entered into before March 28, 1988, and in which the individual was not a contributor to the plan, and

Z is the total of all amounts each of which is an amount deducted, in computing the individual's income for a preceding taxation year,

(A) in respect of contributions included in the total determined in respect of the individual for the year under clause (i)(A), or

(B) where the preceding year was before 1987, under subparagraph 8(1)(m)(ii) (as it read in its application to that preceding year) in respect of additional voluntary contributions made in respect of a year that satisfies the conditions in the description of Y, and

(c) **service before 1990 while a contributor** — the lesser of

(i) the amount, if any, by which

(A) the total of all amounts each of which is a contribution (other than an additional voluntary contribution, a prescribed contribution or a contribution included in the total determined in re-

spect of the individual for the year under clause (b)(i)(A)) made by the individual in the year or a preceding taxation year and after 1962 to a registered pension plan in respect of a particular year before 1990 that is included, in whole or in part, in the individual's eligible service under the plan

exceeds

(B) the total of all amounts each of which is an amount deducted, in computing the individual's income for a preceding taxation year, in respect of contributions included in the total determined in respect of the individual for the year under clause (A), and

(ii) the amount, if any, by which $3,500 exceeds the total of the amounts deducted by reason of paragraphs (a) and (b) in computing the individual's income for the year.

Related Provisions: 8(1)(m) — Employee's RPP contributions deductible; 56(1)(a)(i) — Pension benefits taxable when received; 87(2)(q) — Amalgamation — continuing corporation; 147.1(8), (9) — Pension adjustment limits; 147.2(5) — Teachers; 147.2(6) — Additional deduction for year taxpayer dies; 152(6)(f) — Minister required to reassess past year to allow additional deduction following death; 257 — Formula cannot calculate to less than zero.

History: Para. 147.2(4)(a) amended by 2001, c. 17, s. 143, applicable to contributions made after 1990. The para. formerly read:

(a) the total of all amounts each of which is a contribution (other than a prescribed contribution) made by the individual in the year to a registered pension plan in respect of a period after 1989, to the extent that the contribution was made in accordance with the plan as registered,

Cl. (B) of the description of Z in subpara. 147.2(4)(b)(iii) amended by 1998, c. 19, subsec. 174(2), applicable to 1991 *et seq.* Cl. (B) formerly read:

(B) under subparagraph 8(1)(m)(ii) (as it read in its application to the 1990 taxation year) in respect of additional voluntary contributions made in respect of a year that satisfies the conditions in the description of Y, and

Selected Cases [subsec. 147.2(4)]: *Corbett v. R.*, [1999] 4 C.T.C. 231 (FCA); aff'g [1999] 1 C.T.C. 2590 (TCC) (Contributions allowed under amended plan were grandfathered and deductible).

Regulations: 100(3)(a) (deduction of pension contribution from payroll reduces source withholding); 8501(6.2) (prescribed eligible contribution); 8502(b)(i), 8503(4)(a), (b) (RPP contributions permitted by employee).

Interpretation Bulletins: IT-167R6: Registered pension plans — employee's contributions.

Forms: T4040: RRSPs and other registered plans for retirement [guide].

Remission Orders: *Certain Taxpayers Remission Order, 2000-3*, P.C. 2001-429 (Newfoundland public employees — payments for non-existent service under a pre-1991 agreement); *Certain Taxpayers Remission Order, 2003-1*, P.C. 2003-912 (Memorial University pension plan members — payments for non-existent service under a pre-1990 agreement).

(5) Teachers — For the purpose of determining whether a teacher may deduct an amount contributed by the teacher to a registered pension plan in computing the teacher's income for a taxation year ending after 1990 and before 1995 during which the teacher was employed by Her Majesty or a person exempt from tax for the year under section 149,

(a) clause (4)(b)(i)(A) shall be read without reference to subclauses (4)(b)(i)(A)(I) and (II); and

(b) the description of Y in subparagraph (4)(b)(iii) shall be read as follows:

"Y is the number of calendar years before 1990 each of which is a year all or any part of which is included in the individual's eligible service under a registered pension plan to which the individual has made a contribution that is included in the total determined under clause (i)(A), and"

Related Provisions: 8(7) (applicable before 1991).

Interpretation Bulletins: IT-167R6: Registered pension plans — employee's contributions.

(6) Deductible contributions when taxpayer dies — Where a taxpayer dies in a taxation year, for the purpose of computing the taxpayer's income for the year and the preceding taxation year,

(a) paragraph (4)(b) shall be read without reference to subparagraph (ii) and as if the reference to "the least of" were a reference to "the lesser of"; and

(b) paragraph (4)(c) shall be read without reference to subparagraph (ii) and the words "the lesser of".

Related Provisions [subsec. 147.2(6)]: 152(6)(f) — Minister required to reassess past year to allow additional deduction; 163(4)(b.1) — Additional deduction ignored when calculating penalties; 164(5)(h.01), 164(5.1)(h.01) — No back interest on refund where past year reassessed.

History [subsec. 147.2(6)]: Subsec. 147.2(6) added by 1998, c. 19, subsec. 174(3), applicable to taxpayers who die after 1992.

Definitions [s. 147.2]: "actuary" — 147.1(1); "additional voluntary contribution", "amount" — 248(1); "as registered" — 147.1(15); "defined benefit provision" — 147.1(1); "eligible contribution" — 147.2(2); "employee", "employer" — 248(1); "Her Majesty" — *Interpretation Act* 35(1); "individual", "Minister" — 248(1); "money purchase provision", "participating employer" — 147.1(1); "person", "prescribed", "registered pension plan", "regulation" — 248(1); "specified multi-employer plan" — 147.1(1), Reg. 8510(2), (3); "taxation year" — 249; "taxpayer" — 248(1); "writing" — *Interpretation Act* 35(1).

147.3 (1) Transfer — money purchase to money purchase, RRSP or RRIF — An amount is transferred from a registered pension plan in accordance with this subsection if the amount

(a) is a single amount;

(b) is transferred on behalf of a member in full or partial satisfaction of the member's entitlement to benefits under a money purchase provision of the plan as registered; and

(c) is transferred directly to

(i) another registered pension plan to provide benefits in respect of the member under a money purchase provision of that plan,

(ii) a registered retirement savings plan under which the member is the annuitant (within the meaning assigned by subsection 146(1)), or

(iii) a registered retirement income fund under which the member is the annuitant (within the meaning assigned by subsection 146.3(1)).

Related Provisions: 146(8.2) — Amount deductible where withdrawn after mistaken contribution; 147.3(9) — Taxation of amount transferred; 147.3(13) — Excess transfer; Reg. 8300(1)"excluded contribution" — Amount transferred is excluded contribution. See additional Related provisions at end of s. 147.3.

History: Subsec. 147.3(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 86(1), to split off subparas. (c)(i) and (ii) and to add subpara. (iii), applicable to transfers occurring after August 29, 1990.

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions).

Forms: T2151: Direct transfer of a "single amount" under subsec. 147(19) or s. 147.3.

(2) Transfer — money purchase to defined benefit — An amount is transferred from a registered pension plan in accordance with this subsection if the amount

(a) is a single amount;

(b) is transferred on behalf of a member in full or partial satisfaction of the member's entitlement to benefits under a money purchase provision of the plan as registered; and

(c) is transferred directly to another registered pension plan to fund benefits provided in respect of the member under a defined benefit provision of that plan.

Related Provisions: 147.1(10) — Past service benefits; 147.3(9) — Taxation of amount transferred; 147.3(13) — Excess transfer; Reg. 8300(1)"excluded contribution" — Amount transferred is excluded contribution. See additional Related provisions at end of s. 147.3.

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions).

Forms: T2151: Direct transfer of a "single amount" under subsec. 147(19) or s. 147.3.

(3) Transfer — defined benefit to defined benefit — An amount is transferred from a registered pension plan (in this subsection referred to as the "transferor plan") in accordance with this subsection if the amount

(a) is a single amount;

(b) consists of all or any part of the property held in connection with a defined benefit provision of the transferor plan;

(c) is transferred directly to another registered pension plan to be held in connection with a defined benefit provision of the other plan; and

(d) is transferred as a consequence of benefits becoming provided under the defined benefit provision of the other plan to one or more individuals who were members of the transferor plan.

Related Provisions: 147.3(9) — Taxation of amount transferred; Reg. 8300(1)"excluded contribution" — Amount transferred is excluded contribution. See additional Related provisions at end of s. 147.3.

Regulations: 8517 (prescribed amount).

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Registered Plans Directorate Newsletters: 04-1 (transfer from a defined benefit provision).

Forms: T2151: Direct transfer of a "single amount" under subsec. 147(19) or s. 147.3.

(4) Transfer — defined benefit to money purchase, RRSP or RRIF — An amount is transferred from a registered pension plan in accordance with this subsection if the amount

(a) is a single amount no portion of which relates to an actuarial surplus;

(b) is transferred on behalf of a member in full or partial satisfaction of benefits to which the member is entitled, either absolutely or contingently, under a defined benefit provision of the plan as registered;

(c) does not exceed a prescribed amount; and

(d) is transferred directly to

(i) another registered pension plan and allocated to the member under a money purchase provision of that plan,

(ii) a registered retirement savings plan under which the member is the annuitant (within the meaning assigned by subsection 146(1)), or

(iii) a registered retirement income fund under which the member is the annuitant (within the meaning assigned by subsection 146.3(1)).

Related Provisions: 146(8.2) — Amount deductible where withdrawn after mistaken contribution; 147.3(9) — Taxation of amount transferred; Reg. 8300(1)"excluded contribution" — Amount transferred is excluded contribution. See additional Related provisions at end of s. 147.3.

History: Subsec. 147.3(4) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 86(2), applicable to transfers occurring after 1988 except that in its application to such transfers occurring before August 30, 1990, para. (d) shall be read as follows:

(d) is transferred directly to

(i) another registered pension plan and allocated to the member under a money purchase provision of that plan, or

(ii) a registered retirement savings plan under which the member is the annuitant (within the meaning assigned by subsection 146(1)).

Subsec. 147.3(4) formerly read:

(4) Transfer — defined benefit to money purchase or RRSP — An amount is transferred from a registered pension plan in accordance with this subsection if the amount

(a) is a single amount no portion of which relates to an actuarial surplus;

(b) is transferred on behalf of a member in full or partial satisfaction of the member's entitlement to benefits under a defined benefit provision of the plan as registered;

(c) does not exceed a prescribed amount; and

(d) is transferred directly to another registered pension plan to provide benefits in respect of the member under a money purchase provision of that plan or to a registered retirement savings plan under which the member is the annuitant (within the meaning assigned by subsection 146(1)).

Regulations: 8517 (prescribed amount).

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions); 04-1 (transfer from a defined benefit provision).

Forms: T2151: Direct transfer of a "single amount" under subsec. 147(19) or s. 147.3.

(4.1) Transfer of surplus — defined benefit to money purchase — An amount is transferred from a registered pension plan in accordance with this subsection if the amount

(a) is transferred in respect of the actuarial surplus under a defined benefit provision of the plan; and

(b) is transferred directly to another registered pension plan and allocated under a money purchase provision of that plan to one or more members of that plan.

Related Provisions: 60(j.01) — Transfer of surplus.

History: Subsec. 147.3(4.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 86(2), applicable to transfers occurring after 1990.

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions); 95-5 (conversion of a defined benefit provision to a money purchase provision).

Forms: T2151: Direct transfer of a "single amount" under subsec. 147(19) or s. 147.3.

(5) Transfer to RPP, RRSP or RRIF for spouse [or common-law partner] on marriage [or partnership] breakdown — An amount is transferred from a registered pension plan in accordance with this subsection if the amount

(a) is a single amount no portion of which relates to an actuarial surplus;

(b) is transferred on behalf of an individual who is a spouse or common-law partner or former spouse or common-law partner of a member of the plan and who is entitled to the amount under a decree, order or judgment of a competent tribunal, or under a written agreement, relating to a division of property between the member and the individual in settlement of rights arising out of, or on a breakdown of, their marriage or common-law partnership; and

(c) is transferred directly to

(i) another registered pension plan for the benefit of the individual,

(ii) a registered retirement savings plan under which the individual is the annuitant (within the meaning assigned by subsection 146(1)), or

(iii) a registered retirement income fund under which the individual is the annuitant (within the meaning assigned by subsection 146.3(1)).

Related Provisions: 146.3(2)(f)(vi) — Conditions for RRIF; 147(2)(e)(i) — Transfer of DPSP rights permitted on breakdown of marriage or common-law partnership; 147.3(9) — Taxation of amount transferred; 252(3) — Extended meaning of "spouse" and "former spouse"; Reg. 8300(1)"excluded contribution" — Amount transferred is excluded contribution. See additional Related provisions at end of s. 147.3.

History: Para. 147.3(5)(a) amended by 2001, c. 17, subsec. 144(1), applicable to transfers that occur after November 1999. The para. formerly read:

(a) is a single amount;

Subsec. 147.3(5) amended by 2000, c. 12, Sch. 2, s. 2, to replace "spouse" with "spouse or common-law partner", and by 2000, c. 12, Sch. 2, s. 9, to replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subsec. 147.3(5) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 86(2), applicable to transfers occurring after August 29, 1990 except that in applying the subsec. before 1993, the reference in para. (b) to "marriage" shall be read as a reference to "marriage or other conjugal relationship". Subsec. (5) formerly read:

(5) Transfer to RPP or RRSP for spouse on marriage breakdown — An amount is transferred from a registered pension plan in accordance with this subsection if the amount

(a) is a single amount;

(b) is transferred on behalf of an individual who is a spouse or former spouse of a member of the plan and who is entitled to the amount pursuant to a decree, order or judgment of a competent tribunal, or a written agreement, relating to a division of property between the member and the individual in settlement of rights arising out of or on a breakdown of their marriage or other conjugal relationship; and

(c) is transferred directly to another registered pension plan for the benefit of the individual or to a registered retirement savings plan under which the individual is the annuitant (within the meaning assigned by subsection 146(1)).

Interpretation Bulletins: IT-440R2: Transfer of rights to income; IT-528: Transfers of funds between registered plans.

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions); 04-1 (transfer from a defined benefit provision).

Forms: T2151: Direct transfer of a "single amount" under subsec. 147(19) or s. 147.3.

(6) Transfer — pre-1991 contributions — An amount is transferred from a registered pension plan in accordance with this subsection if the amount

(a) is a single amount;

(b) is transferred on behalf of a member who is entitled to the amount as a return of contributions made by the member under a defined benefit provision of the plan before 1991, or as interest (computed at a rate not exceeding a reasonable rate) in respect of those contributions; and

(c) is transferred directly to

(i) another registered pension plan for the benefit of the member,

(ii) a registered retirement savings plan under which the member is the annuitant (within the meaning assigned by subsection 146(1)), or

(iii) a registered retirement income fund under which the member is the annuitant (within the meaning assigned by subsection 146.3(1)).

Related Provisions: 147.3(9) — Taxation of amount transferred; Reg. 8300(1)"excluded contribution" — Amount transferred is excluded contribution. See additional Related provisions at end of s. 147.3.

History: Para. 147.3(6)(c) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 86(3), to split off subparas. (i) and (ii) and add subpara. (iii), applicable to transfers occurring after August 29, 1990.

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions); 98-2 (treating excess member contributions under a registered pension plan); 04-1 (transfer from a defined benefit provision).

Forms: T2151: Direct transfer of a "single amount" under subsec. 147(19) or s. 147.3.

(7) Transfer — lump sum benefits on death — An amount is transferred from a registered pension plan in accordance with this subsection if the amount

(a) is a single amount no portion of which relates to an actuarial surplus;

(b) is transferred on behalf of an individual who is entitled to the amount as a consequence of the death of a member of the plan and who was a spouse or common-law partner or former spouse or common-law partner of the member at the date of the member's death; and

(c) is transferred directly to

(i) another registered pension plan for the benefit of the individual,

(ii) a registered retirement savings plan under which the individual is the annuitant (within the meaning assigned by subsection 146(1)), or

(iii) a registered retirement income fund under which the individual is the annuitant (within the meaning assigned by subsection 146.3(1)).

Related Provisions: 104(27) — Pension benefits; 146.3(2)(f)(vi) — Conditions for RRIF; 147.3(9) — Taxation of amount transferred; 248(8) — Occurrences as a consequence of death; 252(3) — Extended definition of "spouse" and "former spouse"; Reg. 8300(1)"excluded contribution" — Amount transferred is excluded contribution. See additional Related provisions at end of s. 147.3.

History: Para. 147.3(7)(c) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 86(4), to split off subparas. (i) and (ii) and add subpara. (iii), applicable to transfers occurring after August 29, 1990.

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions).

Forms: T2151: Direct transfer of a "single amount" under subsec. 147(19) or s. 147.3.

(7.1) Transfer where money purchase plan replaces money purchase plan — An amount is transferred from a registered pension plan (in this subsec-

tion referred to as the "transferor plan") in accordance with this subsection if

(a) the amount is a single amount;

(b) the amount is transferred in respect of the surplus (as defined by regulation) under a money purchase provision (in this subsection referred to as the "former provision") of the transferor plan;

(c) the amount is transferred directly to another registered pension plan to be held in connection with a money purchase provision (in this subsection referred to as the "current provision") of the other plan;

(d) the amount is transferred in conjunction with the transfer of amounts from the former provision to the current provision on behalf of all or a significant number of members of the transferor plan whose benefits under the former provision are replaced by benefits under the current provision; and

(e) the transfer is acceptable to the Minister and the Minister has so notified the administrator of the transferor plan in writing.

Related Provisions: Reg. 8300(8)(a)(iv) — Certain allocations deemed to be employer contributions; Reg. 8301(4)(b)(ii.2) — Pension credit to include transferred surplus; Reg. 8500(7)(d) — Certain allocations deemed to be individual's contributions.

History: Subsec. 147.3(7.1) added by 2001, c. 17, subsec. 144(2), applicable to transfers that occur after 1998.

Regulations: 8500(1)"surplus", 8500(1.1) (meaning of "surplus").

(8) Transfer where money purchase plan replaces defined benefit plan — An amount is transferred from a registered pension plan (in this subsection referred to as the "transferor plan") in accordance with this subsection if

(a) the amount is a single amount;

(b) the amount is transferred in respect of the actuarial surplus under a defined benefit provision of the transferor plan;

(c) the amount is transferred directly to another registered pension plan to be held in connection with a money purchase provision of the other plan;

(d) the amount is transferred in conjunction with the transfer of amounts from the defined benefit provision to the money purchase provision on behalf of all or a significant number of members of the transferor plan whose benefits under the defined benefit provision are replaced by benefits under the money purchase provision; and

(e) the transfer is acceptable to the Minister and the Minister has so notified the administrator of the transferor plan in writing.

Related Provisions: 147.3(9) — Taxation of amount transferred; 147.3(10) — Division of transferred amount. See additional Related Provisions at end of s. 147.3.

History: Paras. 147.3(8)(b) and (c) amended by 2001, c. 17, subsec. 144(3), applicable to transfers that occur after 1990. The paras. formerly read:

(b) the amount consists of all or any portion of the property held in connection with a defined benefit provision of the transferor plan;

(c) the amount is transferred directly to another registered pension plan to be held in connection with a money purchase provision of the other plan and used to satisfy employer obligations to make contributions under the money purchase provision;

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions); 95-5 (conversion of a defined benefit provision to a money purchase provision); 98-1 (simplified pension plans).

Forms: T2151: Direct transfer of a "single amount" under subsec. 147(19) or s. 147.3.

(9) Taxation of amount transferred — Where an amount is transferred in accordance with any of subsections (1) to (8),

(a) the amount shall not, by reason only of that transfer, be included by reason of subparagraph 56(1)(a)(i) in computing the income of any taxpayer; and

(b) no deduction may be made under any provision of this Act in respect of the amount in computing the income of any taxpayer.

Related Provisions: 147.3(11) — Division of transferred amount; 147.3(14.1) — Transfer of property between benefit provisions of the same plan; 212(1)(h)(iii.1)(A) — Amount transferred under 147.3 excluded from withholding tax on pension benefits. See additional Related provisions at end of s. 147.3.

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

(10) Idem — Where, on behalf of an individual, an amount is transferred from a registered pension plan (in this subsection referred to as the "transferor plan") to another plan or fund (in this subsection referred to as the "transferee plan") that is a registered pension plan, a registered retirement savings plan or a registered retirement income fund and the transfer is not in accordance with any of subsections (1) to (7),

(a) the amount is deemed to have been paid from the transferor plan to the individual;

(b) subject to paragraph (c), the individual shall be deemed to have paid the amount as a contribution or premium to the transferee plan; and

(c) where the transferee plan is a registered retirement income fund, for the purposes of subsection 146(5) and Part X.1, the individual shall be deemed to have paid the amount at the time of the transfer as a premium under a registered retirement savings plan under which the individual was the annuitant (within the meaning assigned by subsection 146(1)).

Related Provisions: 146(5)(a)(v)(B) — Amount of RRSP premiums deductible; 147.3(11) — Division of transferred amount; 147.3(12) — Restriction re transfers; 147.3(13.1) — Withdrawal of excessive transfers to RRSPs and RRIFs; 147.3(14.1) — Transfer of property between benefit provisions of the same plan. See additional Related Provisions at end of s. 147.3.

History: Para. 147.3(10)(a) amended by 1998, c. 19, subsec. 175(1), applicable to transfers that occur after July 30, 1997. Para. 147.3(10)(a) formerly read:

(a) notwithstanding section 254, the amount shall be deemed to have been paid from the transferor plan to the individual;

Subsec. 147.3(10) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 86(5), applicable to transfers occurring after August 29, 1990. Subsec. (10) formerly read:

(10) Where an amount is transferred from a registered pension plan (in this subsection referred to as the "transferor plan") to another registered pension plan or to a registered retirement savings plan (in this subsection referred to as the "transferee plan") on behalf of an individual and the transfer is not in accordance with any of subsections (1) to (7),

(a) notwithstanding section 254, the amount shall be deemed to have been paid from the transferor plan to the individual; and

(b) the individual shall be deemed to have paid the amount as a contribution or premium to the transferee plan.

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Registered Plans Directorate Newsletters: 04-1 (transfer from a defined benefit provision).

(11) Division of transferred amount — Where an amount is transferred from a registered pension plan to another registered pension plan, to a registered retirement savings plan or to a registered retirement income fund and a portion, but not all, of the amount is transferred in accordance with any of subsections (1) to (8),

(a) subsection (9) applies with respect to the portion of the amount that is transferred in accordance with any of subsections (1) to (8); and

(b) subsection (10) applies with respect to the remainder of the amount.

Related Provisions: 147.3(14.1) — Transfer of property between benefit provisions of the same plan.

History: That portion of subsec. 147.3(11) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 86(6), to add "or to a registered retirement income fund", applicable to transfers occurring after August 29, 1990.

(12) Restriction re transfers — A registered pension plan becomes a revocable plan at any time that an amount is transferred from the plan to another registered pension plan, to a registered retirement savings plan or to a registered retirement income fund unless

(a) the amount is transferred in accordance with any of subsections (1) to (8); or

(b) where the amount is transferred on behalf of an individual,

(i) the amount is deductible by the individual under paragraph 60(j) or (j.2), or

(ii) the *Pension Benefits Standards Act, 1985* or a similar law of a province prohibits the payment of the amount to the individual.

Related Provisions: 147.1(11) — Revocation of registration — notice of intention. See additional Related Provisions at end of s. 147.3.

History: That portion of subsec. 147.3(12) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 86(7), to add "or to a registered retirement income fund", applicable to transfers occurring after August 29, 1990.

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions); 04-1 (transfer from a defined benefit provision).

(13) Excess transfer — Where

(a) the transfer in a calendar year of an amount from a registered pension plan on behalf of a member of the plan would, but for this subsection, be in accordance with subsection (1) or (2), and

(b) the plan becomes, at the end of the year, a revocable plan as a consequence of an excess determined under any of paragraphs 147.1(8)(a) and (b) and (9)(a) and (b) with respect to the member (whether or not such an excess is also determined with respect to any other member),

such portion of the amount transferred as may reasonably be considered to derive from amounts allocated or reallocated to the member in the year or from earnings reasonably attributable to those amounts shall, except to the extent otherwise expressly provided in writing by the Minister, be deemed to be an amount that was not transferred in accordance with subsection (1) or (2), as the case may be.

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

(13.1) Withdrawal of excessive transfers to RRSPs and RRIFs — There may be deducted in computing the income of an individual for a taxation year the lesser of

(a) the amount, if any, by which

(i) the total of all amounts each of which is an amount included under subsection 146(8), (8.3) or (12) or 146.3(5), (5.1) or (11) in computing the individual's income for the year, to the extent that the amount is not a prescribed withdrawal,

exceeds

(ii) the total of all amounts each of which is an amount deductible under paragraph 60(l) or subsection 146(8.2) in computing the income of the individual for the year, and

(b) the amount, if any, by which

(i) the total of all amounts each of which is an amount that was

(A) transferred to a registered retirement savings plan or registered retirement income fund under which the individual was the annuitant (within the meaning assigned by subsection 146(1) or 146.3(1), as the case may be),

(B) included in computing the income of the individual for the year or a preceding taxation year, and

(C) deemed by paragraph (10)(b) or (c) to have been paid by the individual as a premium to a registered retirement savings plan,

exceeds

(ii) the total of all amounts each of which is an amount

(A) deductible under this subsection in computing the individual's income for a preceding taxation year, or

(B) deducted under subsection 146(5) in computing the individual's income for a preceding taxation year, to the extent that the amount can reasonably be considered to be in respect of an amount referred to in subparagraph (i).

Related Provisions: 60(i) — Premium or payment under RRSP or RRIF; 146(5) — Amount of RRSP premiums deductible; 146(8.2) — Amount deductible where withdrawn after mistaken contribution; Reg. Reg. 8307(4) — Eligibility of withdrawn amount for designation.

History: Subsec. 147.3(13.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 86(8), applicable to 1992 *et seq.* except that in its application to the 1992 taxation year it shall be read as follows:

(13.1) There may be deducted in computing the income of an individual for the 1992 taxation year the lesser of

(a) the amount, if any, by which

(i) the total of all amounts each of which is an amount included under subsection 146(8), (8.3) or (12) or 146.3(5), (5.1) or (11) in computing the individual's income for a taxation year ending after 1988 and before 1993, to the extent that the amount is not a prescribed withdrawal,

exceeds

(ii) the total of all amounts each of which is an amount deductible under paragraph 60(l) or subsection 146(8.2) in computing the income of the individual for a taxation year ending after 1988 and before 1993, and

(b) the amount, if any, by which

(i) the total of all amounts each of which is an amount

(A) transferred to a registered retirement savings plan or registered retirement income fund under which the individual was the annuitant (within the meaning assigned by subsection 146(1) or 146.3(1), as the case may be),

(B) included in computing the income of the individual for the year or a preceding taxation year, and

(C) deemed by paragraph (10)(b) or (c) to have been paid by the individual as a premium to a registered retirement savings plan,

exceeds

(ii) the total of all amounts each of which is an amount deducted under subsection 146(5) in computing the individual's income for a preceding taxation year, to the extent that the amount can reasonably be considered to be in respect of an amount referred to in subparagraph (i).

Regulations: 8307(6) (prescribed withdrawal).

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-528: Transfers of funds between registered plans.

Forms: T1043: Deduction for excess RPP transfers you withdrew from an RRSP or RRIF.

(14) Deemed transfer — For the purposes of this section and the regulations, where property held in connection with a particular pension plan is made available to pay benefits under another pension plan, the property shall be deemed to have been transferred from the particular plan to the other plan.

(14.1) Transfer of property between provisions — Where property held in connection with a benefit provision of a registered pension plan is made available to pay benefits under another benefit provision of the plan, subsections (9) to (11) apply in respect of the transaction by which the property is made so available in the same manner as they would apply if the other benefit provision were in another registered pension plan.

History: Subsec. 147.3(14.1) added by 1998, c. 19, s. 40, applicable to transactions that occur after July 30, 1997.

Registered Plans Directorate Newsletters: 04-1 (transfer from a defined benefit provision).

(15) [Repealed]

History: Subsec. 147.3(15) repealed by 1998, c. 19, subsec. 175(2), applicable after 1996. Subsec. 147.3(15) formerly read:

(15) Annuity contract commencing after age 69 — Where, under circumstances in which paragraph 254(a) applies, an individual receives before 1997 an interest in an annuity contract in full or partial satisfaction of the individual's entitlement to benefits under a registered pension plan, and payment of the annuity has not begun by the end of the particular year in which the individual attains 69 years of age,

(a) that interest is deemed not to exist after the particular year;

(b) the individual is deemed to have received immediately after the particular year the payment of a single amount from the plan equal to the fair market value of the interest at the end of the particular year;

(c) the individual is deemed to have acquired immediately after the particular year an interest in the annuity contract as a separate and newly issued annuity contract at a cost equal to the amount referred to in paragraph (b); and

(d) the issue and acquisition of the newly issued annuity contract are deemed not to be pursuant to or under a registered pension plan.

Subsec. 147.3(15) added by 1997, c. 25, s. 45, applicable after 1996, except that

(a) it does not apply to an individual who attained 70 years of age before 1997;

(b) in applying the subsec. to an individual who attained 69 years of age in 1996, the reference to "69 years of age" shall be read as a reference to "70 years of age"; and

(c) it does not apply to an annuity contract where an individual received an interest in the contract before March 6, 1996 and, under the terms and conditions of the contract as they read immediately before that day,

(i) the day on which the annuity payments are to begin under the contract is fixed and determined and is after the year in which the individual attains

(A) 69 years of age, where the individual had not attained that age before 1997, or

(B) 70 years of age, where the individual attained 69 years of age in 1996, and

(ii) the amount and timing of each annuity payment are fixed and determined.

Related Provisions [s. 147.3]: 60(j) — Transfer of superannuation benefits; 60(j.01) — transfer of surplus; 60(j.1) — Transfer of retiring allowances; 60(l) — Transfer of refund of RRSP premium; 147(19)–(22) — Transfer to RPP, RRSP or DPSP; 147.1(3)(a) — Deemed registration; Reg. 8502(k).

Definitions [s. 147.3]: "administrator" — 147.1(1); "amount" — 248(1); "as registered" — 147.1(15); "calendar year" — *Interpretation Act* 37(1)(a); "common-law partner", "common-law partnership" — 248(1); "consequence of the death" — 248(8); "defined benefit provision" — 147.1(1); "employer", "forfeited amount" — 147(1); "former spouse" — 252(3); "individual" — 248(1); "member" — 147.1(1); "Minister" — 248(1); "money purchase provision" — 147.1(1); "prescribed withdrawal" — Reg. 8306(6); "property" — 248(1); "province" — *Interpretation Act* 35(1); "registered pension plan" — 248(1); "registered retirement savings plan" — 146(1), 248(1); "regulation" — 248(1); "single amount" — 147.1(1); "spouse" — 252(3); "surplus" — Reg. 8500(1), (1.1); "taxpayer" — 248(1); "transfer", "transferred" — 147.3(14); "writing" — *Interpretation Act* 35(1).

Forms [s. 147.3]: T4040: RRSPs and other registered plans for retirement [guide].

147.4 (1) RPP annuity contract — Where

(a) at any time an individual acquires, in full or partial satisfaction of the individual's entitlement to benefits under a registered pension plan, an interest in an annuity contract purchased from a licensed annuities provider,

(b) the rights provided for under the contract are not materially different from those provided for under the plan as registered,

(c) the contract does not permit premiums to be paid at or after that time, other than a premium paid at that time out of or under the plan to purchase the contract,

(d) either the plan is not a plan in respect of which the Minister may, under subsection 147.1(11), give a notice of intent to revoke the registration of the plan or the Minister waives the application of this paragraph with respect to the contract and so notifies the administrator of the plan in writing, and

(e) the individual does not acquire the interest as a consequence of a transfer of property from the plan to a registered retirement savings plan or a registered retirement income fund,

the following rules apply for the purposes of this Act:

(f) the individual is deemed not to have received an amount out of or under the registered pension plan as a consequence of acquiring the interest, and

(g) other than for the purposes of sections 147.1 and 147.3, any amount received at or after that time by any individual under the contract is deemed to have been received under the registered pension plan.

Related Provisions: 147.4(2) — Amendment to RPP annuity contract.

History: Subsec. 147.4(1) added by 1998, c. 19, s. 176, applicable to annuity contract acquisitions, amendments and substitutions that occur after July 30, 1997.

(2) Amended contract — Where

(a) an amendment is made at any time to an annuity contract to which subsection (1) or paragraph 254(a) applies, other than an amendment the sole effect of which is to

(i) provide for an earlier annuity commencement that avoids the application of paragraph (4)(b), or

(ii) enhance benefits under the annuity contract in connection with the demutualization (as defined by subsection 139.1(1)) of an insurance corporation that is considered for the purpose of section 139.1 to have been a party to the annuity contract, and

(b) the rights provided for under the contract are materially altered as a consequence of the amendment,

the following rules apply for the purposes of this Act:

(c) each individual who has an interest in the contract immediately before that time is deemed to have received at that time the payment of an amount under a pension plan equal to the fair market value of the interest immediately before that time,

(d) the contract as amended is deemed to be a separate annuity contract issued at that time otherwise than pursuant to or under a superannuation or pension fund or plan, and

(e) each individual who has an interest in the separate annuity contract immediately after that time is deemed to have acquired the interest at that time at a cost equal to the fair market value of the interest immediately after that time.

Related Provisions: 139.1(2)(g) — No demutualization benefit.

History: Para. 147.4(2)(a) amended by 2000, c. 19, subsec. 43(1), applicable to amendments and substitutions that occur after December 15, 1998. The para. formerly read:

(a) an amendment is made at any time to an annuity contract to which subsection (1) or paragraph 254(a) applies (other than an amendment the sole effect of which is to provide for an earlier annuity commencement that avoids the application of paragraph (4)(b)), and

Subsec. 147.4(2) added by 1998, c. 19, s. 176, applicable to annuity contract acquisitions, amendments and substitutions that occur after July 30, 1997.

(3) New contract — For the purposes of this Act, where an annuity contract (in this subsection referred to as the "original contract") to which subsection (1) or paragraph 254(a) applies is, at any time, substituted by another contract,

(a) if the rights provided for under the other contract

(i) are not materially different from those provided for under the original contract, or

(ii) are materially different from those provided for under the original contract only because of an enhancement of benefits that can reasonably be considered to have been provided solely in connection with the demutualization (as defined by subsection 139.1(1)) of an insurance corporation that is considered for the purposes of section 139.1 to have been a party to the original contract,

the other contract is deemed to be the same contract as, and a continuation of, the original contract; and

(b) in any other case, each individual who has an interest in the original contract immediately before that time is deemed to have received at that time the payment of an amount under a pension plan equal to the fair market value of the interest immediately before that time.

Related Provisions: 139.1(2)(g) — No demutualization benefit due to substitution under 147.4(3)(a).

History: Para. 147.4(3)(a) amended by 2000, c. 19, subsec. 43(2), applicable to amendments and substitutions that occur after December 15, 1998. The para. formerly read:

(a) if the rights provided for under the other contract are not materially different from those provided for under the original contract, the other contract is deemed to be the same contract as, and a continuation of, the original contract; and

Subsec. 147.4(3) added by 1998, c. 19, s. 176, applicable to annuity contract acquisitions, amendments and substitutions that occur after July 30, 1997.

(4) RPP annuity contract beginning after age 69 — For the purposes of this Act, where, under circumstances to which paragraph 254(a) applied, an individual acquired before 1997 an interest in an annuity contract in full or partial satisfaction of the individual's entitlement to benefits under a registered pension plan, and payment of the annuity has not begun by the end of the particular year in which the individual attains 69 years of age,

(a) the interest is deemed not to exist after the particular year;

(b) the individual is deemed to have received immediately after the particular year the payment of an amount from the plan equal to the fair market value of the interest at the end of the particular year;

(c) the individual is deemed to have acquired immediately after the particular year an interest in the contract as a separate annuity contract issued immediately after the particular year at a cost equal to the amount referred to in paragraph (b); and

(d) the issue and acquisition of the separate annuity contract are deemed not to be pursuant to or under a registered pension plan.

History: Subsec. 147.4(4) added by 1998, c. 19, s. 176, applicable after 1996, except that

(a) it does not apply to an individual who attained 70 years of age before 1997;

(b) in applying it to an individual who attained 69 years of age in 1996, the reference in that provision to "69 years of age" shall be read as a reference to "70 years of age"; and

(c) it does not apply to an annuity contract if an individual received an interest in the contract before March 6, 1996 and, under the terms and conditions of the contract as they read immediately before that day,

(i) the day on which the annuity payments are to begin under the contract is fixed and determined and is after the year in which the individual attains

(A) 69 years of age, if the individual had not attained that age before 1997, or

(B) 70 years of age, if the individual attained 69 years of age in 1996, and

(ii) the amount and timing of each annuity payment are fixed and determined.

Definitions [147.4]: "annuity" — 248(1); demutualization" — 139.1(1); "individual", "licensed annuities provider", "Minister", "registered pension plan" — 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "writing" — *Interpretation Act* 35(1).

Life Insurance Policies

148. (1) Amounts included in computing policyholder's income — There shall be included in computing the income for a taxation year of a policyholder in respect of the disposition of an interest in a life insurance policy, other than a policy that is or is issued pursuant to

(a) a registered pension plan,

(b) a registered retirement savings plan,

(b.1) a registered retirement income fund,

(c) an income-averaging annuity contract,

(d) a deferred profit sharing plan, or

(e) an annuity contract where

(i) the payment for the annuity contract was deductible under paragraph 60(l) in computing the policyholder's income, or

Proposed Addition — 148(1)(e)(i.1)

(i.1) the annuity contract is a qualifying trust annuity with respect to a taxpayer and the amount paid to acquire it was deductible under paragraph 60(l) in computing the taxpayer's income, or

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 145, will add subpara. 148(1)(e)(i.1), applicable after August 1992.

Para. 148(1)(e), as it applies after 1988 and before September 1992, is to be read as follows:

(e) an annuity contract

(i) the payment for which was deductible in computing the policyholder's income by virtue of paragraph 60(l), or

(ii) that is a qualifying trust annuity with respect to a taxpayer, the payment for which was deductible under paragraph 60(l) in computing the taxpayer's income,

Technical Notes: Subsection 148(1) requires the inclusion in income of certain amounts from the disposition of a life insurance policy, but excludes from this rule annuities described in paragraph 148(1)(e).

Paragraph 148(1)(e) describes

- an annuity the payment for which was deductible under paragraph 60(l) in computing the policyholder's income, and
- an annuity acquired by a policyholder in circumstances to which subsection 146(21) applies (i.e., an annuity described in paragraph 60(l) and acquired with funds paid out of the Saskatchewan Pension Plan).

An annuity described in paragraph 148(1)(e) is defined, by paragraph 304(1)(b) of the *Income Tax Regulations*, to be a "prescribed annuity contract" and, as such, is not subject to the accrual rules set out in section 12.2. This treatment reflects the fact that the policyholder acquiring such an annuity does so with tax-deferred funds, and is generally meant to be taxed only when amounts are paid out of the annuity.

Subsection 148(1) is amended to include, in the annuities described in paragraph (e), an annuity that is a "qualifying trust annuity" with respect to a taxpayer (as defined in new subsection 60.011(2)), the payment for which was deductible by the taxpayer under paragraph 60(l). This reflects the fact that a qualifying trust annuity will typically be held by a trust, rather than by the taxpayer who is entitled to the deduction under paragraph 60(l), and ensures that it is treated, for tax purposes, in the same manner as if it were held by the taxpayer.

(ii) the policyholder acquired the annuity contract in circumstances to which subsection 146(21) applied,

the amount, if any, by which the proceeds of the disposition of the policyholder's interest in the policy that the policyholder, beneficiary or assignee, as the case may be, became entitled to receive in the year exceeds the adjusted cost basis to the policyholder of that interest immediately before the disposition.

Related Provisions: 20(1)(e.2) — Deduction for premiums on life insurance used as collateral; 56(1)(j) — Income inclusion — life insurance policy proceeds; 60(s) — Deduction of policy loan repayment; 138(3) — Deductions allowed in computing income; 138.1(7) — Where segregated fund policyholder deemed to be trust, etc.; 148(2) — Deemed proceeds of disposition; 148(9)"adjusted cost basis"C — Disposition amount included in adjusted cost basis; Reg. 304(1)(b) — Contract in 148(1)(c) or (e) is a prescribed annuity contract. See additional Related Provisions and Definitions at end of s. 148.

History: Para. 148(1)(e) substituted by 1994, c. 21, s. 73, applicable to dispositions occurring after August 1992. That para. formerly read:

(e) an annuity contract, the payment for which was deductible in computing the policyholder's income by virtue of paragraph 60(l),

Para. 148(1)(b.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 87(1), applicable to 1991 *et seq.*

Selected Cases [subsec. 148(1)]: *Canada v. Chrysler Canada Ltd.*, [1991] 2 C.T.C. 156 (FCTD); additional reasons at [1992] 1 C.T.C. 61, (sub nom. *Canada v. Chrysler Canada Ltd. (No. 2)*) (FCTD) (Employee stock ownership plan held to be an employee benefit plan as defined and taxable pursuant to para. 6(1)(g)).

Regulations: 217(2) (information return).

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies; IT-244R3: Gifts by individuals of life insurance policies as charitable donations; IT-379R: Employees profit sharing plans — allocations to beneficiaries.

(1.1) Amount included in computing taxpayer's income — There shall be included in computing the income for a taxation year of a taxpayer in respect of a disposition of an interest in a life insurance policy described in paragraph (e) of the definition "disposition" in subsection (9) the amount, if any, by which the amount of a payment described in paragraph (e) of that definition that the taxpayer became entitled to receive in the year exceeds the amount that would be the taxpayer's adjusted cost basis of the taxpayer's interest in the policy immediately before the disposition if, for the purposes of the definition "adjusted cost basis" in subsection (9), the taxpayer were, in respect of that interest in the policy, the policyholder.

Related Provisions: 56(1)(j) — Life insurance policy proceeds included in income. See additional Related Provisions at end of s. 148.

Regulations: 217(2) (information return).

(2) Deemed proceeds of disposition — For the purposes of subsections (1) and 20(20) and the definition "adjusted cost basis" in subsection (9),

(a) where at any time a policyholder becomes entitled to receive under a life insurance policy a particular amount as, on account of, in lieu of payment of or in satisfaction of, a policy dividend, the policyholder shall be deemed

(i) to have disposed of an interest in the policy at that time, and

(ii) to have become entitled to receive proceeds of the disposition equal to the amount, if any, by which

(A) the particular amount

exceeds

(B) the part of the particular amount applied immediately after that time to pay a premium under the policy or to repay a policy loan under the policy, as provided for under the terms and conditions of the policy;

(b) where in a taxation year a holder of an interest in, or a person whose life is insured or who is the annuitant under, a life insurance policy (other than an annuity contract or an exempt policy) last acquired after December 1, 1982 or an annuity contract (other than a life annuity contract, as defined by regulation, entered into before November 13, 1981 or a prescribed annuity contract) dies, the policyholder shall be deemed to have disposed of the policyholder's interest in the policy or the contract, as the case may be, immediately before the death;

(c) where, as a consequence of a death, a disposition of an interest in a life insurance policy is deemed to have occurred under paragraph (b), the policyholder

immediately after the death shall be deemed to have acquired the interest at a cost equal to the accumulating fund in respect thereof, as determined in prescribed manner, immediately after the death; and

(d) where at any time a life insurance policy last acquired after December 1, 1982, or a life insurance policy to which subsection 12.2(9) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, applies by virtue of paragraph 12.2(9)(b) of that Act, ceases to be an exempt policy (otherwise than as a consequence of the death of an individual whose life is insured under the policy or at a time when that individual is totally and permanently disabled), the policyholder shall be deemed to have disposed of the policyholder's interest in the policy at that time for proceeds of disposition equal to the accumulating fund with respect to the interest, as determined in prescribed manner, at that time and to have reacquired the interest immediately after that time at a cost equal to those proceeds.

Related Provisions: See Related Provisions at end of s. 148.

History: Para. 148(2)(a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 87(2), applicable to policy dividends received or receivable in taxation years beginning after December 20, 1991. Para. (a) formerly read:

(a) where at a particular time a policyholder became entitled to receive under a life insurance policy an amount as, on account or in lieu of payment of, or in satisfaction of, a policy dividend, the policyholder shall be deemed to have disposed of an interest in the policy at that time and that amount shall be deemed to be proceeds of the disposition that the policyholder became entitled to receive at that time;

That portion of subsec. 148(2) preceding para. (a) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 121(1), to add reference to subsec. 20(20), applicable to dispositions occurring after 1989.

Regulations: 301 (life annuity contract); 304 (prescribed annuity contract); 307 (accumulating fund).

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies; IT-210R2: Income of deceased persons — periodic payments and investment tax credit; IT-430R3: Life insurance proceeds received by a private corporation or a partnership as a consequence of death.

(3) Special rules for certain policies — For the purposes of this section, where all or any part of an insurer's reserves for a life insurance policy vary in amount depending on the fair market value of a specified group of properties (in this subsection referred to as a "segregated fund"),

(a) in computing the adjusted cost basis of the policy,

(i) an amount paid by the policyholder or on the policyholder's behalf as or on account of premiums under the policy or to acquire an interest in the policy shall, to the extent that the amount was used by the insurer to acquire property for the purposes of the segregated fund, be deemed not to have been so paid, and

(ii) any transfer of property by the insurer from the segregated fund that resulted in an increase in the portion of its reserves for the policy that do not vary with the fair market value of the segregated fund shall be deemed to have been a premium paid under the policy by the policyholder; and

(b) the proceeds of the disposition of an interest in the policy shall be deemed not to include the portion thereof, if any, payable out of the segregated fund.

(4) Income from disposition — For the purpose of computing a taxpayer's income from the disposition (other than a disposition deemed to have occurred under paragraph (2)(a) or a disposition described in paragraph (b) of the definition "disposition" in subsection (9)) of a part of the taxpayer's interest in a life insurance policy (other than an annuity contract) last acquired after December 1, 1982 or an annuity contract, the adjusted cost basis to the taxpayer, immediately before the disposition, of the part is the proportion of the adjusted cost basis to the taxpayer of the taxpayer's interest immediately before the disposition that

(a) the proceeds of the disposition

are of

(b) the accumulating fund with respect to the taxpayer's interest, as determined in prescribed manner, immediately before the disposition.

Regulations: 307 (accumulating fund).

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies.

(4.1), (5) [Repealed under former Act]

(6) Proceeds receivable as annuity — Where, under the terms of a life insurance policy (other than an annuity contract) last acquired before December 2, 1982, a policyholder became entitled to receive from the insurer at any time before the death of the person whose life was insured thereunder, all the proceeds (other than policy dividends) payable at that time under the policy in the form of an annuity contract or annuity payments,

(a) the payments shall be regarded as annuity payments made under an annuity contract;

(b) the purchase price of the annuity contract shall be deemed to be the adjusted cost basis of the policy to the policyholder immediately before the first payment under that contract became payable; and

(c) the annuity contract or annuity payments shall be deemed not to be proceeds of the disposition of an interest in the policy.

Related Provisions: 148(10)(b) — References to "person whose life was insured". See also Related Provisions at end of s. 148.

(7) Disposition at non-arm's length and similar cases — Where, otherwise than by virtue of a deemed disposition under paragraph (2)(b), an interest of a policyholder in a life insurance policy is disposed of by way of a gift (whether during the policyholder's lifetime or by the policyholder's will), by distribution from a corporation or by operation of law only to any person, or in any manner whatever to any person with whom the policyholder was not dealing at arm's length, the policyholder shall be deemed thereupon to become entitled to receive proceeds of the disposition equal to the value of the interest at the time of the disposition, and the person who acquires the interest by virtue of the disposition shall be deemed to acquire it at a cost equal to that value.

Related Provisions: See Related Provisions at end of s. 148.

(8) Idem — Notwithstanding any other provision in this section, where

(a) an interest of a policyholder in a life insurance policy (other than an annuity contract) has been transferred to the policyholder's child for no consideration, and

(b) a child of the policyholder or a child of the transferee is the person whose life is insured under the policy,

the interest shall be deemed to have been disposed of by the policyholder for proceeds of the disposition equal to the adjusted cost basis to the policyholder of the interest immediately before the transfer, and to have been acquired by the person who acquired the interest at a cost equal to those proceeds.

Related Provisions: 148(8.1) — *Inter vivos* transfer to spouse; 148(8.2) — Transfer to spouse at death. See additional Related Provisions at end of s. 148.

History: Paras. 148(8)(a), (b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 121(2), applicable to transfers and distributions occurring after 1989. Paras. (a), (b) formerly read:

> (a) an interest of a policyholder in a life insurance policy (other than an annuity contract) has been transferred to
>
> (i) the policyholder's spouse or child, for no consideration,
>
> (ii) the spouse or a former spouse of the policyholder, in settlement of rights arising out of their marriage, or
>
> (iii) an individual, pursuant to a decree, order or judgment of a competent tribunal made in accordance with prescribed provisions of the law of a province if that individual is a person within a prescribed class of persons referred to in those provisions, and
>
> (b) the transferee or a child of the policyholder or transferee is the person whose life is insured under the policy,

Regulations: 6500(1) (prescribed provisions and prescribed class of persons, for former 148(8)(a)(iii)).

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies.

(8.1) *Inter vivos* transfer to spouse [or common-law partner] — Notwithstanding any other provision of this section, where

(a) an interest of a policyholder in a life insurance policy (other than a policy that is, or is issued under, a plan or contract referred to in any of paragraphs (1)(a) to (e)) is transferred to

(i) the policyholder's spouse or common-law partner, or

(ii) a former spouse or common-law partner of the policyholder in settlement of rights arising out of their marriage or common-law partnership, and

(iii) [Repealed]

(b) both the policyholder and the transferee are resident in Canada at the time of the transfer,

unless an election is made in the policyholder's return of income under this Part for the taxation year in which the interest was transferred to have this subsection not apply, the interest shall be deemed to have been disposed of by the policyholder for proceeds of the disposition equal to the adjusted cost basis to the policyholder of the interest immediately before the transfer and to have been acquired by the transferee at a cost equal to those proceeds.

Related Provisions: 73(1) — *Inter vivos* transfer of property of spouse, etc., or trust; 148(8.2) — Transfer to spouse at death; 252(3) — Extended meaning of "spouse" and "former spouse". See additional Related Provisions and Definitions at end of s. 148.

History: Subsec. 148(8.1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", and by 2000, c. 12, Sch. 2, s. 9, to replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subpara. 148(8.1)(a)(iii) repealed by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 87(3), applicable after 1992. Subpara. (a)(iii) formerly read:

> (iii) an individual of the opposite sex under an order for the support or maintenance of the individual made by a competent tribunal in accordance with the laws of a province, where the individual and the taxpayer cohabited in a conjugal relationship before the date of the order, and

Subsec. 148(8.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 121(3), applicable to transfers and dispositions occurring after 1989, except that, in its application with respect to transfers and distributions occurring in 1990, an election referred to in this subsec. made by a policyholder or the legal representative of a deceased policyholder by notifying the Minister of National Revenue in writing before 1992 [1994, c. 7, Sch. VIII (1993, c. 24), s. 159 provides that such an election made before December 11, 1993 shall be deemed to have been made before 1992] shall be deemed to have been made in the policyholder's return of income under Part I of the Act for the 1990 taxation year.

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies.

(8.2) Transfer to spouse [or common-law partner] at death — Notwithstanding any other provision of this section, where, as a consequence of the death of a policyholder who was resident in Canada immediately before the policyholder's death, an interest of the policyholder in a life insurance policy (other than a policy that is or is issued under a plan or contract referred to in any of paragraphs (1)(a) to (e)) is transferred or distributed to the policyholder's spouse or common-law partner who was resident in Canada immediately before the death, unless an election is made in the policyholder's return of income under this Part for the taxation year in which the policyholder died to have this subsection not apply, the interest shall be deemed to have been disposed of by the policyholder immediately before the death for proceeds of the disposition equal to the adjusted cost basis to the policyholder of the interest immediately before the transfer and to have been acquired by the spouse or common-law partner at a cost equal to those proceeds.

Related Provisions: 70(6) — Where transfer or distribution to spouse or trust; 148(9)"adjusted cost basis"G.1 — "adjusted cost basis"; 248(8) — Occurrences as a consequence of death; 252(3) — Extended meaning of "spouse". See additional Related Provisions at end of s. 148.

History: Subsec. 148(8.2) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subsec. 148(8.2) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 121(3), applicable to transfers and dispositions occurring after 1989, except that, in its application with respect to transfers and distributions occurring in 1990, an election referred to in this subsec. made by a policyholder or the legal representative of a deceased policyholder by notifying the Minister of National Revenue in writing before 1992 [1994, c. 7, Sch. VIII (1993, c. 24), s. 159 provides that such an election made before December 11, 1993 shall be deemed to have been made before 1992] shall be deemed to have been made in the policyholder's return of income under Part I of the Act for the 1990 taxation year.

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies.

(9) Definitions — In this section and paragraph 56(1)(d.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952,

Related Provisions: 12.2(12) — Application of subsecs. 138(12) and 148(9). See additional Related Provisions at end of s. 148.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-379R: Employees profit sharing plans — allocations to beneficiaries.

"adjusted cost basis" to a policyholder as at a particular time of the policyholder's interest in a life insurance policy means the amount determined by the formula

$$(A + B + C + D + E + F + G + G.1) - (H + I + J + K + L)$$

where

A is the total of all amounts each of which is the cost of an interest in the policy acquired by the policyholder

before that time but not including an amount referred to in the description of B or E,

B is the total of all amounts each of which is an amount paid before that time by or on behalf of the policyholder in respect of a premium under the policy, other than amounts referred to in clause (2)(a)(ii)(B), in subparagraph (iii) of the description of C in paragraph (a) of the definition "proceeds of the disposition" or in subparagraph (b)(i) of that definition,

C is the total of all amounts each of which is an amount in respect of the disposition of an interest in the policy before that time that was required to be included in computing the policyholder's income or taxable income earned in Canada for a taxation year,

D is the total of all amounts each of which is an amount in respect of the policyholder's interest in the policy that was included by virtue of subsection 12(3) or section 12.2 or of paragraph 56(1)(d.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in computing the policyholder's income for any taxation year ending before that time or the portion of an amount paid to the policyholder in respect of the policyholder's interest in the policy on which tax was imposed by virtue of paragraph 212(1)(o) before that time,

E is the total of all amounts each of which is an amount in respect of the repayment before that time and after March 31, 1978 of a policy loan not exceeding the total of the proceeds of the disposition, if any, in respect of that loan and the amount, if any, described in the description of J but not including any payment of interest thereon, any loan repayment that was deductible under paragraph 60(s) of this Act or paragraph 20(1)(hh) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952 (as it applied in taxation years before 1985) or any loan repayment referred to in clause (2)(a)(ii)(B),

F is the amount, if any, by which the cash surrender value of the policy as at its first anniversary date after March 31, 1977 exceeds the adjusted cost basis (determined under the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it would have read on that date if subsection 148(8) of that Act, as it read in its application to the period ending immediately before April 1, 1978, had not been applicable) of the policyholder's interest in the policy on that date,

G is, in the case of an interest in a life annuity contract, as defined by regulation, to which subsection 12.2(1) applies for the taxation year that includes that time (or would apply if the contract had an anniversary day in the year at a time when the taxpayer held the interest), the total of all amounts each of which is a mortality gain, as defined by regulation and determined by the issuer of the contract in accordance with the regulations, in respect of the interest immediately before the end of the calendar year ending in a taxation year commencing before that time,

Proposed Amendment — Life annuity contracts

Letter from Dept. of Finance, September 12, 2002: See under Reg. 301(1).

G.1 [is,] in the case of an interest in a life insurance policy (other than an annuity contract) to which subsection (8.2) applied before that time, the total of all amounts each of which is a mortality gain, as defined by regulation and determined by the issuer of the policy in accordance with the regulations, in respect of the interest immediately before the end of the calendar year ending in a taxation year beginning before that time,

H is the total of all amounts each of which is the proceeds of the disposition of the policyholder's interest in the policy that the policyholder became entitled to receive before that time,

I is the total of all amounts each of which is an amount in respect of the policyholder's interest in the policy that was deducted by virtue of subsection 20(19) in computing the policyholder's income for any taxation year commencing before that time,

J is the amount payable on March 31, 1978 in respect of a policy loan in respect of the policy,

K is the total of all amounts each of which is an amount received before that time in respect of the policy that the policyholder was entitled to deduct under paragraph 60(a) in computing the policyholder's income for a taxation year, and

L is

(a) in the case of an interest in a life insurance policy (other than an annuity contract) that was last acquired after December 1, 1982 by the policyholder, the total of all amounts each of which is the net cost of pure insurance, as defined by regulation and determined by the issuer of the policy in accordance with the regulations, in respect of the interest immediately before the end of the calendar year ending in a taxation year commencing after May 31, 1985 and before that time,

(b) in the case of an interest in an annuity contract to which subsection 12.2(1) applies for the taxation year that includes that time (or would apply if the contract had an anniversary day in the year and while the taxpayer held the interest), the total of all annuity payments paid in respect of the interest before that time and while the policyholder held the interest, or

(c) in the case of an interest in a contract referred to in the description of G, the total of all amounts each of which is a mortality loss, as defined by regulation and determined by the issuer of the contract in accordance with the regulations, in respect of the interest before that time;

Related Provisions: 12.2(5) — Amounts included in income — taxpayer's interest in an annuity contract; 148(2) — Deemed proceeds of disposition; 257 — Formula cannot calculate to less than zero. See additional Related Provisions at end of s. 148.

History: The description of B in the definition "adjusted cost basis" in subsec. 148(9) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 87(4), applicable to amounts paid in taxation years commencing after December 20, 1991. The description formerly read:

> B is the total of all amounts each of which is an amount paid before that time, by the policyholder or on the policyholder's behalf, in respect of a premium under the policy,

The description of E in "adjusted cost basis" amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 87(5), applicable to loan repayments occurring in taxation years beginning after December 20, 1991. The description formerly read:

> E is the total of all amounts each of which is an amount in respect of the repayment before that time and after March 31, 1978 of a policy loan not exceeding the total of the proceeds of the disposition, if any, in respect of that loan and the amount, if any, referred to in the description of J but not including any payment of interest thereon or any repayment of the loan that was deductible pursuant to paragraph 20(1)(hh) or 60(s),

G.1 and its description added to "adjusted cost basis" by 1994, c. 7, Sch. VIII (1993, c. 24), subsecs. 87(3.1), (6), applicable to transfers and distributions occurring after 1989.

The description of G in "adjusted cost basis" amended by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 121(4), to substitute "subsection 12.2(1)" for "subsection 12.2(1) or (3)" and to add "(or would apply if the contract had an anniversary day in the year at a time when the taxpayer held the interest)", applicable to policies last acquired after 1989.

Para. (b) of the description of L in para. 148(9)(a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 121(5), applicable to policies last acquired after 1989. Para. (b) formerly read:

> (b) in the case of an interest in an annuity contract to which subsection 12.2(1) or (3) applies, the total of all amounts each of which is an annuity payment paid in respect of the interest before that time and while the policyholder held the interest, or

Regulations: 301 (life annuity contract — for 148(9)"adjusted cost basis"G); 308 (net cost of pure insurance — for 148(9)"adjusted cost basis"L(a)).

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies; IT-149R4: Winding-up dividend; IT-355R2: Interest on loans to buy life insurance policies and annuity contracts, and interest on policy loans (archived); IT-430R3: Life insurance proceeds received by a private corporation or a partnership as a consequence of death. See additional Related Provisions and Definitions at end of s. 148.

"amount payable", in respect of a policy loan, has the meaning assigned by subsection 138(12);

"cash surrender value" at a particular time of a life insurance policy means its cash surrender value at that time computed without regard to any policy loans made under the policy, any policy dividends (other than paid-up additions) payable under the policy or any interest payable on those dividends;

Related Provisions: Reg. 1408(1)"cash surrender value" — Definition applies for policy reserve calculation.

"child" of a policyholder includes a child as defined in subsection 70(10);

Related Provisions: 252(1) — Extended meaning of "child".

"disposition", in relation to an interest in a life insurance policy, includes

(a) a surrender thereof,

(b) a policy loan made after March 31, 1978,

(c) the dissolution of that interest by virtue of the maturity of the policy,

(d) a disposition of that interest by operation of law only, and

(e) the payment by an insurer of an amount (other than an annuity payment, a policy loan or a policy dividend) in respect of a policy (other than a policy described in paragraph (1)(a), (b), (c), (d) or (e)) that is a life annuity contract, as defined by regulation, entered into after November 16, 1978, and before November 13, 1981,

but does not include

(f) an assignment of all or any part of an interest in the policy for the purpose of securing a debt or a loan other than a policy loan,

(g) a lapse of the policy in consequence of the premiums under the policy remaining unpaid, if the policy was reinstated not later than 60 days after the end of the calendar year in which the lapse occurred,

(h) a payment under a policy as a disability benefit or as an accidental death benefit,

(i) an annuity payment,

(j) a payment under a life insurance policy (other than an annuity contract) that

(i) was last acquired before December 2, 1982, or

(ii) is an exempt policy

in consequence of the death of any person whose life was insured under the policy, or

(k) any transaction or event by which an individual becomes entitled to receive, under the terms of an exempt policy, all of the proceeds (including or excluding policy dividends) payable under the policy in the form of an annuity contract or annuity payments, if, at the time of the transaction or event, the individual whose life is insured under the policy was totally and permanently disabled;

Related Provisions: 60(s) — Deduction of policy loan repayment; 148(10)(b) — References to "person whose life was insured"; 248(8) — Occurrences as a consequence of death. See additional Related Provisions at end of s. 148.

Regulations: 301 (life annuity contract — for 148(9)"disposition"(e)).

Interpretation Bulletins: IT-85R2: Health and welfare trusts for employees; IT-87R2: Policyholders' income from life insurance policies.

"interest", in relation to a policy loan, has the meaning assigned by subsection 138(12);

"life insurance policy" — [Repealed under former Act]

"policy loan" means an amount advanced by an insurer to a policyholder in accordance with the terms and conditions of the life insurance policy;

"premium" under a policy includes

(a) interest paid after 1977 to a life insurer in respect of a policy loan, other than interest deductible in the 1978 or any subsequent taxation year pursuant to paragraph 20(1)(c) or (d), and

(b) a prepaid premium under the policy to the extent that it cannot be refunded otherwise than on termination or cancellation of the policy,

but does not include

(c) where the interest in the policy was last acquired after December 1, 1982, that portion of any amount paid after May 31, 1985 under the policy with respect to

(i) an accidental death benefit,

(ii) a disability benefit,

(iii) an additional risk as a result of insuring a substandard life,

(iv) an additional risk in respect of the conversion of a term policy into another policy after the end of the year,

(v) an additional risk under a settlement option,

(vi) an additional risk under a guaranteed insurability benefit, or

(vii) any other prescribed benefit that is ancillary to the policy;

Related Provisions: 60(s) — Repayment of policy loan. See additional Related Provisions at end of s. 148.

Regulations: No prescribed benefits for subpara. (c)(vii).

"proceeds of the disposition" of an interest in a life insurance policy means the amount of the proceeds that the policyholder, beneficiary or assignee, as the case may be,

is entitled to receive on a disposition of an interest in the policy and for greater certainty,

(a) in respect of a surrender or maturity thereof, means the amount determined by the formula

$$(A - B) - C$$

where

A is the cash surrender value of that interest in the policy at the time of surrender or maturity,

B is that portion of the cash surrender value represented by A that is applicable to the policyholder's interest in the related segregated fund trust as referred to in paragraph 138.1(1)(e), and

C is the total of amounts each of which is

(i) an amount payable at that time by the policyholder in respect of a policy loan in respect of the policy,

(ii) a premium under the policy that is due but unpaid at that time, or

(iii) an amount applied, immediately after the time of the surrender, to pay a premium under the policy, as provided for under the terms and conditions of the policy,

(b) in respect of a policy loan made after March 31, 1978 means the lesser of

(i) the amount of the loan, other than the part thereof applied, immediately after the loan, to pay a premium under the policy, as provided for under the terms and conditions of the policy, and

(ii) the amount, if any, by which the cash surrender value of the policy immediately before the loan was made exceeds the total of the balances outstanding at that time of any policy loans in respect of the policy,

(c) in respect of a payment described in paragraph (e) of the definition "disposition" in this subsection, means the amount of that payment, and

(d) in respect of a disposition deemed to have occurred under paragraph (2)(b), means the accumulating fund in respect of the interest, as determined in prescribed manner,

(i) immediately before the time of death in respect of a life insurance policy (other than an annuity contract) last acquired after December 1, 1982, or

(ii) immediately after the time of death in respect of an annuity contract;

Related Provisions: 257 — Formula cannot calculate to less than zero. See additional Related Provisions at end of s. 148.

History: The description of C in para. (a) of "proceeds of the disposition" in subsec. 148(9) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 87(7), applicable to surrenders occurring in taxation years commencing after December 20, 1991. That description formerly read:

C is the total of all amounts each of which is an amount payable at that time by the policyholder in respect of a policy loan in respect of the policy or a premium under the policy that is due but unpaid at that time,

Subpara. (b)(i) of "proceeds of the disposition" amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 87(8), applicable to policy loans made in taxation years beginning after December 20, 1991. That subpara. formerly read:

(i) the amount of the loan, and

"relevant authority" — [Repealed]

History: The definition "relevant authority" in subsec. 148(9) repealed by 1997, c. 25, s. 46, applicable April 25, 1997. It formerly read:

"relevant authority" has the meaning assigned by subsection 138(12);

"tax anniversary date", in relation to a life insurance policy, means the second anniversary date of the policy to occur after October 22, 1968;

"value" at a particular time of an interest in a life insurance policy means

(a) where the interest includes an interest in the cash surrender value of the policy, the amount in respect thereof that the holder of the interest would be entitled to receive if the policy were surrendered at that time, and

(b) in any other case, nil.

(9.1) Application of subsec. 12.2(11) — The definitions in subsection 12.2(11) apply to this section.

Origin of subsec. 148(9.1): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsec. 12.2(11)).

(10) Life annuity contracts — For the purposes of this section,

(a) a reference to "insurer" or "life insurer" shall be deemed to include a reference to a person who is licensed or otherwise authorized under a law of Canada or a province to issue contracts that are annuity contracts;

(b) a reference to a "person whose life was insured" shall be deemed to include a reference to an annuitant under a life annuity contract, as defined by regulation, entered into before November 17, 1978;

(c) where a policyholder is a person who has held an interest in a life insurance policy continuously since its issue date, the interest shall be deemed to have been acquired on the later of the date on which

(i) the policy came into force, and

(ii) the application in respect of the policy signed by the policyholder was filed with the insurer;

(d) except as otherwise provided, a policyholder shall be deemed not to have disposed of or acquired an interest in a life insurance policy (other than an annuity contract) as a result only of the exercise of any provision (other than a conversion into an annuity contract) of the policy; and

(e) where an interest in a life insurance policy (other than an annuity contract) last acquired before December 2, 1982 to which subsection 12.2(9) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, does not apply has been acquired by a taxpayer from a person with whom the taxpayer was not dealing at arm's length, the interest shall be deemed to have been last acquired by the taxpayer before December 2, 1982.

Related Provisions: 12.2(13) — Application of subsec. 148(10); 56(1)(j) — Life insurance policy proceeds. See also below.

Regulations: 301 (meaning of "life annuity contract").

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Related Provisions [s. 148]: 12.2 — Accrual of income on certain life insurance policies including annuity contracts; 20(1)(c), 20(2.2) — Deductibility of interest and compound interest on money borrowed to acquire a life insurance policy; 20(2.1) — Deductibility of interest paid or incurred in respect of a policy loan; 20(19) — Deduction from payment under an annuity contract for amounts previously included in income; 20(20) — Deduction re disposition of policy for accrued income previously included in income; 56(1)(d), (d.1) — Inclusion in income of annuity payments in respect of annuities not subject to accrual rules under sub-

sec. 12.2; 60(a) — Deduction of capital element of annuity payments; 70(3.1) — "Rights or things" not to include interest in a life insurance policy; 70(5.3) — Valuation of shares of a corporation where it is beneficiary of policy on deceased; 87(2.2) — Amalgamation of insurance corporations; 88(1)(g) — Winding-up of subsidiary insurance corporations; 89(1)"capital dividend account"(d) — When gains on life insurance policy issued on or before June 28, 1982 included in capital dividend account; 89(2)(a) — When gain on life insurance policy issued on or before June 28, 1982, excluded from capital dividend account; 94.2(11)(b), (c) — No application to foreign insurance policy of foreign investment entity; 115(1)(a)(vi), 116(5.1), (5.2) — Proceeds of disposition by non-resident of life insurance policy in Canada; 138 — Insurance corporations; 138.1 — Rules relating to segregated funds.

Definitions [s. 148]: "accumulating fund" — Reg. 307; "adjusted cost basis" — 148(9); "amount" — 248(1); "amount payable" — (in respect of a policy loan) 148(9); "anniversary day" — 12.2(11), 148(9.1); "annuity" — 248(1); "arm's length" — 251(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "cash surrender value" — 148(9); "child" — 70(10), 148(9), 252(1); "common-law partner", "common-law partnership" — 248(1); "consequence of a death", "consequence of the death" — 248(8); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition" — (in relation to an interest in a life insurance policy) 148(9); "dividend" — 248(1); "exempt policy" — 12.2(11), 148(9.1), Reg. 306 [does not explicitly apply to s. 148]; "former spouse" — 252(3); "gross revenue", "income-averaging annuity contract", "individual" — 248(1); "insurer" — 148(10)(a), 248(1); "interest" — (in relation to a policy loan) 148(9); "life annuity contract" — Reg. 301; "life insurance policy" — 138(12), 248(1); "life insurer" — 148(10)(a), 248(1); "non-resident" — 248(1); "paid-up addition" — 12.2(10); "person" — 248(1); "person whose life was insured" — 148(10)(b); "policy dividend" — 139.1(8)(a); "policy loan", "premium" — 148(9); "prescribed" — 248(1); "prescribed annuity contract" — Reg. 304; "proceeds of the disposition" (of an interest in a life insurance policy) — 148(9); "property" — 248(1); "province" — *Interpretation Act* 35(1); "qualifying trust annuity" — 60.011(2), 248(1); "registered pension plan" — 248(1); "registered retirement savings plan" — 146(1), 248(1); "regulation" — 248(1); "resident in Canada" — 94(3)(a)(viii), 250; "segregated fund" — 138.1(1); "segregated fund policy" — 138.1(1)(a); "share" — 248(1); "spouse" — 252(3); "taxable Canadian corporation" — 89(1), 248(1); "taxable capital gain" — 38(a), 248(1); "taxable dividend" — 89(1), 248(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "third anniversary" — 12.2(11), 148(9.1); "value" (of an interest in a life insurance policy) — 148(9).

Regulations [s. 148]: 300–310.

Eligible Funeral Arrangements

148.1 (1) Definitions — In this section,

"cemetery care trust" means a trust established pursuant to an Act of a province for the care and maintenance of a cemetery;

Related Provisions: 128.1(10)"excluded right or interest"(e)(iii) — No deemed disposition on emigration of individual; 149(1)(s.2) — No tax on cemetery care trust; 248(1)"cemetery care trust" — Definition applies to entire Act.

History: The definition "cemetery care trust" added to subsec. 148.1(1) by 1998, c. 19, subsec. 177(4), applicable to 1993 *et seq.*

Regulations: 204(3)(d.1) (cemetery care trust need not file T3 return).

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

"cemetery services" with respect to an individual means property (including interment vaults, markers, flowers, liners, urns, shrubs and wreaths) and services that relate directly to cemetery arrangements in Canada in consequence of the death of the individual including, for greater certainty, property and services to be funded out of a cemetery care trust;

History: The definition "cemetery services" added to subsec. 148.1(1) by 1998, c. 19, subsec. 177(4), applicable to 1993 *et seq.*

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

"custodian" of an arrangement means

(a) where a trust is governed by the arrangement, a trustee of the trust, and

(b) in any other case, a qualifying person who receives a contribution under the arrangement as a deposit for the provision by the person of funeral or cemetery services;

Related Provisions: 212(1)(v) — Withholding tax on payment by custodian to non-resident person.

History: Para. (b) of the definition "custodian" in subsec. 148.1(1) amended by 1998, c. 19, subsec. 177(2), applicable to 1993 *et seq.* Para. (b) formerly read:

(b) in any other case, a qualifying person who receives a contribution under the arrangement as a deposit for the provision by the person of funeral services;

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies; IT-531: Eligible funeral arrangements.

"eligible funeral arrangement" at a particular time means an arrangement established and maintained by a qualifying person solely for the purpose of funding funeral or cemetery services with respect to one or more individuals and of which there is one or more custodians each of whom was resident in Canada at the time the arrangement was established, where

(a) each contribution made before the particular time under the arrangement was made for the purpose of funding funeral or cemetery services to be provided by the qualifying person with respect to an individual, and

(b) for each such individual, the total of all relevant contributions made before the particular time in respect of the individual does not exceed

(i) $15,000, where the arrangement solely covers funeral services with respect to the individual,

(ii) $20,000, where the arrangement solely covers cemetery services with respect to the individual, and

(iii) $35,000, in any other case,

and, for the purpose of this definition, any payment (other than the portion of the payment to be applied as a contribution to a cemetery care trust) that is made in consideration for the immediate acquisition of a right to burial in or on property that is set apart or used as a place for the burial of human remains or of any interest in a building or structure for the permanent placement of human remains, shall be considered to have been made pursuant to a separate arrangement that is not an eligible funeral arrangement;

Related Provisions: 128.1(10)"excluded right or interest"(e)(iv) — No deemed disposition on emigration of individual; 149(1)(s.1) — No tax on eligible funeral arrangement; 212(1)(v) — Withholding tax on payment from eligible funeral arrangement to non-resident; 248(1)"eligible funeral arrangement" — Definition applies to entire Act.

History: The definition "eligible funeral arrangement" in subsec. 148.1(1) amended by 1998, c. 19, subsec. 177(1), applicable to 1993 *et seq.* The definition formerly read:

"eligible funeral arrangement" at a particular time means an arrangement established and maintained by a qualifying person solely for the purpose of funding funeral services with respect to one or more individuals and of which there is one or more custodians each of whom was resident in Canada at the time the arrangement was established, where

(a) each contribution made before the particular time under the arrangement was made for the purpose of funding funeral services to be provided by the qualifying person with respect to an individual, and

(b) for each such individual, the total of all relevant contributions made before the particular time in respect of the individual under the arrangement does not exceed $15,000;

Regulations: 201(1)(f) (information return on return of funds); 202(2)(m) (information return on payment to non-resident).

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

"funeral or cemetery services" with respect to an individual means funeral services with respect to the individual, cemetery services with respect to the individual or any combination of such services;

History: The definition "funeral or cemetery services" added to subsec. 148.1(1) by 1998, c. 19, subsec. 177(4), applicable to 1993 *et seq.*

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

"funeral services" with respect to an individual means property and services (other than cemetery services with respect to the individual) that relate directly to funeral arrangements in Canada in consequence of the death of the individual;

Related Provisions: 255 — "Canada" includes coastal waters.

History: The definition "funeral services" in subsec. 148.1(1) amended by 1998, c. 19, subsec. 177(1), applicable to 1993 *et seq.* The definition formerly read:

"funeral services" with respect to an individual means property and services that relate directly to funeral, burial, cremation or cemetery arrangements in Canada in consequence of the death of the individual or to any combination of such arrangements;

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

"qualifying person" means a person licensed or otherwise authorized under the laws of a province to provide funeral or cemetery services with respect to individuals;

History: The definition "qualifying person" in subsec. 148.1(1) amended by 1998, c. 19, subsec. 177(1), applicable to 1993 *et seq.* The definition formerly read:

"qualifying person" means a person licensed or otherwise authorized under the laws of a province to provide funeral services for individuals;

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

"relevant contribution" in respect of an individual under a particular arrangement means

(a) a contribution under the particular arrangement (other than a contribution made by way of a transfer from an eligible funeral arrangement) for the purpose of funding funeral or cemetery services with respect to the individual, or

(b) such portion of a contribution to another arrangement that was an eligible funeral arrangement (other than any such contribution made by way of a transfer from any eligible funeral arrangement) as can reasonably be considered to have subsequently been used to make a contribution under the particular arrangement by way of a transfer from an eligible funeral arrangement for the purpose of funding funeral or cemetery services with respect to the individual.

Related Provisions: 148.1(1)"eligible funeral arrangement"(b) — Dollar limits on relevant contributions.

History: Paras. (a) and (b) of the definition "relevant contribution" in subsec. 148.1(1) amended by 1998, c. 19, subsec. 177(3), applicable to 1993 *et seq.* Paras. (a) and (b) formerly read:

(a) a contribution under the particular arrangement (other than a contribution made by way of a transfer from an eligible funeral arrangement) for the purpose of funding funeral services with respect to the individual, or

(b) such portion of a contribution to another arrangement that was an eligible funeral arrangement (other than any such contribution made by way of a transfer from any eligible funeral arrangement) as can reasonably be considered to have subsequently been used to make a contribution under the particular arrangement by way of a transfer from an eligible funeral arrangement for the purpose of funding funeral services with respect to the individual.

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

(2) Exemption for eligible funeral arrangements — Notwithstanding any other provision of this Act,

(a) no amount that has accrued, is credited or is added to an eligible funeral arrangement shall be included in computing the income of any person solely because of such accrual, crediting or adding;

(b) subject to paragraph (c) and subsection (3), no amount shall be

(i) included in computing a person's income solely because of the provision by another person of funeral or cemetery services under an eligible funeral arrangement, or

(ii) included in computing a person's income because of the disposition of an interest under an eligible funeral arrangement or an interest in a trust governed by an eligible funeral arrangement; and

(c) subparagraph (b)(ii) shall not affect the consequences under this Act of the disposition of any right under an eligible funeral arrangement to payment for the provision of funeral or cemetery services.

Related Provisions: 149(1)(s.1) — No tax on trust governing an eligible funeral arrangement; 149(1)(s.2) — No tax on cemetery care trust.

History: Paras. 148.1(2)(b) and (c) amended by 1998, c. 19, subsec. 177(5), applicable to 1993 *et seq.* Paras. 148.1(2)(b) and (c) formerly read:

(b) subject to paragraph (c) and subsection (3), no amount shall be

(i) included in computing a person's income solely because of the provision by another person of funeral services under an eligible funeral arrangement, or

(ii) included in computing a person's income because of the disposition of an interest under an eligible funeral arrangement or an interest in a trust governed by an eligible funeral arrangement; and

(c) subparagraph (b)(ii) shall not affect the consequences under this Act of the disposition of any right under an eligible funeral arrangement to payment for the provision of funeral services.

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

(3) Income inclusion on return of funds — Where at any particular time in a taxation year a particular amount is distributed (otherwise than as payment for the provision of funeral or cemetery services with respect to an individual) to a taxpayer from an arrangement that was, at the time it was established, an eligible funeral arrangement and the particular amount is paid from the balance in respect of the individual under the arrangement, there shall be added in computing the taxpayer's income for the year from property the lesser of the particular amount and the amount determined by the formula

$$A + B - C$$

where

A is the balance in respect of the individual under the arrangement immediately before the particular time (determined without regard to the value of property in a cemetery care trust);

B is the total of all payments made from the arrangement before the particular time for the provision of funeral or cemetery services with respect to the individual (other than cemetery services funded by property in a cemetery care trust); and

C is the total of all relevant contributions made before the particular time in respect of the individual under

the particular arrangement (other than contributions in respect of the individual that were in a cemetery care trust).

Proposed Amendment — 148.1(3)C

C is the amount determined by the formula

D – E

where

D is the total of all relevant contributions made before the particular time in respect of the individual under the arrangement (other than contributions in respect of the individual that were in a cemetery care trust), and

E is the total of all amounts each of which is the amount, if any, by which

(a) an amount relating to the balance in respect of the individual under the arrangement that is deemed by subsection (4) to have been distributed before the particular time from the arrangement

exceeds

(b) the portion of the amount referred to in paragraph (a) that is added, because of this subsection, in computing a taxpayer's income.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 146(2), will amend the description of C in subsec. 148.1(3) to read as above, applicable to amounts that are transferred, credited or added after December 20, 2002.

Technical Notes: Section 148.1 is amended to provide specific rules relating to transfers from one EFA account to another. In general terms, the changes are as follows: . . .

- The provision that requires EFA distributions to be included in income (subsection 148.1(3)) is amended to ensure that the determination of the amount that can subsequently be distributed from the transferor EFA account on a tax-free basis is reduced by the portion of the transferred amount that was not included in income (i.e., that portion of the transferred amount that represents a return of contributions).

These changes are described in more detail below.

Subsection 148.1(3) provides for an income inclusion by a taxpayer in the event that there is a distribution of funds from an individual's EFA account to the taxpayer (otherwise than as a payment for the provision of funeral or cemetery services with respect to the individual). The amount of the income inclusion is the lesser of the distributed amount and a second amount. In general terms, this second amount is determined by the formula:

A + B – C

where

A is the balance in the EFA account immediately before the distribution,

B is the total of all payments made from the EFA account before the distribution for the provision of funeral or cemetery services, and

C is the total of all "relevant contributions" in respect of the EFA account that were made before the distribution.

For the purpose of the description of C, an amount is defined in subsection 148.1(1) to be a "relevant contribution" in respect of a particular EFA account if

- the amount was contributed to the particular EFA account otherwise than by way of transfer from another EFA account, or
- the amount was contributed to another EFA account (otherwise than by way of transfer) and subsequently transferred (either from the original or a subsequent EFA account) to the particular EFA account.

The effect of subsection 148.1(3) is to include in the income of the taxpayer the lesser of the amount received and an amount which generally represents the income accumulated in the EFA account. If the amount received by the taxpayer is greater than the amount included in the taxpayer's income, the excess generally represents a non-taxable refund of relevant contributions (represented by the variable C in the formula).

The description of C is amended so that its value is reduced, in effect, by any relevant contributions previously transferred from the EFA account to another EFA account. This ensures that the amount of the transferred relevant contribution (which, by virtue of subsection 148.1(3), can be distributed from the recipient EFA account tax-free) cannot also be used to support a subsequent tax-free withdrawal from the transferor EFA account.

The description of C is amended to provide that its value is determined by the formula

D – E

For this purpose, the value of D is the amount determined under the existing description of C. The value of E is the total of all amounts each of which is

- an amount which was previously transferred from the EFA account and deemed, by new subsection 148.1(4), to be a distribution

minus

- the portion of the deemed distribution that was required, by subsection 148.1(3), to be included in computing a taxpayer's income.

Related Provisions: 12(1)(z.4) — Inclusion into income from property; 212(1)(v) — Withholding tax on payment to non-resident; 257 — Formula amounts cannot calculate to less than zero.

History [148.1(3)]: Subsec. 148.1(3) amended by 1998, c. 19, subsec. 177(6), applicable to 1993 *et seq.* Subsec. 148.1(3) formerly read:

(3) Where at any particular time in a taxation year a particular amount is distributed (otherwise than as payment for the provision of funeral services with respect to an individual) to a taxpayer from an arrangement that was, at the time it was established, an eligible funeral arrangement and the particular amount is paid from the balance in respect of the individual under the arrangement, there shall be added in computing the taxpayer's income for the year from property the lesser of the particular amount and the amount determined by the formula

A + B – C

where

A is the balance in respect of the individual under the arrangement immediately before the particular time;

B is the total of all payments made from the arrangement before the particular time for the provision of funeral services with respect to the individual; and

C is the total of all relevant contributions made before that time in respect of the individual under the particular arrangement.

Regulations: 201(1)(f) (information return).

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

Proposed Addition — 148.1(4), (5)

(4) Deemed distribution on transfer — If at a particular time an amount relating to the balance in respect of an individual (referred to in this subsection and in subsection (5) as the "transferor") under an eligible funeral arrangement (referred to in this subsection and in subsection (5) as the "transferor arrangement") is transferred, credited or added to the balance in respect of the same or another individual (referred to in this subsection and in subsection (5) as the "recipient") under the same or another eligible funeral arrangement (referred to in this subsection and in subsection (5) as the "recipient arrangement"),

(a) the amount is deemed to be distributed to the transferor (or, if the transferor is deceased at the particular time, to the recipient) at the particular time from the transferor arrangement and to be paid from the balance in respect of the transferor under the transferor arrangement; and

(b) the amount is deemed to be a contribution made (other than by way of a transfer from an eligible funeral arrangement) at the particular time under the

recipient arrangement for the purpose of funding funeral or cemetery services with respect to the recipient.

Related Provisions: 148.1(5) — No deemed distribution on transfer to same individual.

(5) Non-application of subsection (4) — Subsection (4) does not apply if

(a) the transferor and the recipient are the same individual;

(b) the amount that is transferred, credited or added to the balance in respect of the individual under the recipient arrangement is equal to the balance in respect of the individual under the transferor arrangement immediately before the particular time; and

(c) the transferor arrangement is terminated immediately after the transfer.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 146(3), will add subsecs. 148.1(4) and (5), applicable to amounts that are transferred, credited or added after December 20, 2002.

Technical Notes: Section 148.1 is amended to provide specific rules relating to transfers from one EFA account to another. In general terms, the changes are as follows:

- A new provision (paragraph 148.1(4)(a)) deems the transferred amount to be distributed to the individual from whose EFA account the amount is transferred. However, if that individual is deceased, the amount is deemed to be distributed to the individual to whose EFA account the amount is transferred. This ensures that the transfer is included in income (to the extent that it does not exceed the income accumulated in the transferor account).
- A new provision (paragraph 148.1(4)(b)) deems the transferred amount to be a contribution made to the recipient EFA account other than by way of transfer. This ensures that the earnings portion of the transferred amount is not taxed again when it is distributed from the recipient EFA account. . . .
- A new provision (subsection 148.1(5)) provides that these new rules do not apply if the transferor and the recipient EFA accounts are in respect of the same person, the entire balance in the transferor account is transferred to the recipient account and the transferor EFA account is terminated immediately after the transfer.

These changes are described in more detail below. . . .

New subsection 148.1(4) contains rules that apply when an amount is transferred from one EFA account to another EFA account of the same or another person.

Paragraph 148.1(4)(a) deems the transfer to be a distribution from the transferor EFA account. If the individual from whose account the amount is transferred is alive at the time of the transfer, that individual is deemed to be the recipient of the distribution. Otherwise, the recipient is deemed to be the individual to whose EFA account the amount is transferred. This deeming provision ensures that subsection 148.1(3) applies to the transfer. Consequently, the transferred amount will be included in computing the income of the deemed recipient, except to the extent that the transferred amount exceeds the income accumulated in the transferor EFA account.

Paragraph 148.1(4)(b) deems the amount transferred to be a contribution made (otherwise than by way of transfer) under the recipient EFA account. This ensures that the income portion of the transferred amount (which is included in income, under subsection 148.1(3), as a distribution from the transferor account) is considered to be a "relevant contribution" in respect of the recipient EFA account (which it would not otherwise be, because of the definition "relevant contribution" in subsection 148.1(1)). This allows it to subsequently be withdrawn from the recipient EFA account on a tax-free basis.

New subsection 148.1(5) provides that new subsection 148.1(4) does not apply when the entire balance of an individual's EFA account is transferred to another EFA account of the same individual and the transferor EFA account is terminated immediately after the transfer. Consequently, there will be no deemed distribution resulting from such a transfer.

The following examples illustrate the application of the amendments to subsection 148.1.

Example 1

Paul sets up an EFA account for the pre-funding of his funeral expenses. He contributes $10,000 to his account, and earns $7,000 of interest in the account. Paul transfers $3,000 to an EFA account which he establishes for his daughter, Gaby.

The transferred amount is deemed to be a distribution to Paul under new paragraph 148.1(4)(a). Consequently, Paul includes in his income, under subsection 148.1(3), an amount of $3,000, which is the lesser of

- *$3,000, which is the amount distributed, and*
- *$7,000, which is the amount determined by the formula under subsection 148.1(3):*

A + B – C (where C = D – E)

= $17,000 + $0 – ($10,000 – $0)

The transfer is treated, in effect, as a distribution of a portion of the income accumulated in the plan.

Under new paragraph 148.1(4)(b), the transferred amount is also deemed to be a contribution made, other than by way of transfer, to Gaby's EFA account. Thus, the $3,000 is considered to be a relevant contribution in respect of Gaby's EFA account, and can subsequently be withdrawn tax-free.

Example 2

The facts are the same as in Example 1, except that Paul transfers $13,000 to Gaby's EFA.

The transferred amount is deemed to be a distribution to Paul under new paragraph 148.1(4)(a). Consequently, Paul includes in his income, under subsection 148.1(3), an amount of $7,000, which is the lesser of

- *$13,000, which is the amount distributed, and*
- *$7,000, which is the amount determined by the formula under subsection 148.1(3):*

A + B – C (where C = D – E)

= $17,000 + $0 – ($10,000 – $0)

The transfer is treated, in effect, as a distribution of all of the income accumulated in the plan ($7,000), which is taxable, plus a return of a portion of the relevant contributions in respect of the EFA ($6,000), which is not taxable.

Under new paragraph 148.1(4)(b), the transferred amount is also deemed to be a contribution made, other than by way of transfer, to Gaby's EFA account. This has no particular significance with respect to the portion of the transfer that represents relevant contributions in respect of Paul's EFA account, since this amount would be considered to be a relevant contribution to Gaby's EFA account under the existing rules. However, it does have significance with respect to the portion of the transfer that represents income in Paul's EFA account, in that it allows that portion to become a relevant contribution in respect of Gaby's EFA account which can then be withdrawn from Gaby's account tax-free.

Example 3

The facts are the same as in Example 2. After the transfer of $13,000, the balance in Paul's EFA account is $4,000, all of which represents relevant contributions in respect of the account. Over the next few years, the account earns an additional $2,500 of interest. Paul then withdraws the entire balance from the account.

The withdrawal is a distribution under subsection 148.1(3). Consequently, Paul includes $2,500 in his income, which is the lesser of:

- *$6,500, which is the amount of the withdrawal, and*
- *$2,500, which is the amount determined by the formula under subsection 148.1(3):*

A + B – C (where C = D – E)

= $6,500 + 0 – ($10,000 – $6,000)

The value of E ($6,000) is the excess of the amount that was previously transferred and to which subsection 148.1(4) applied ($13,000) over the portion of that amount that was included in income under subsection 148.1(3) ($7,000)

History [s. 148.1]: S. 148.1 added by 1995, c. 21, s. 62, applicable to 1993 *et seq.*

Definitions [s. 148.1]: "amount" — 248(1); "Canada" — 255; "cemetery care trust" — 148.1(1), 248(1); "cemetery services", "custodian" — 148.1(1); "eligible funeral arrangement" — 148.1(1), 248(1); "funeral or cemetery services", "funeral services" — 148.1(1); "individual", "property" — 248(1); "province" — *Interpretation Act* 35(1); "qualifying person" — 148.1(1); "recipient", "recipient arrangement" — 148.1(4); "relevant contribution" — 148.1(1); "resident in Canada" — 250; "taxation year" — 249; "taxpayer" — 248(1); "transferor" — 148.1(4); "trust" — 104(1), 248(1), (3).

DIVISION H — EXEMPTIONS

Miscellaneous Exemptions

149. (1) Miscellaneous exemptions — No tax is payable under this Part on the taxable income of a person for a period when that person was

(a) **employees of a country other than Canada** — an officer or servant of the government of a country other than Canada whose duties require that person to reside in Canada

(i) if, immediately before assuming those duties, the person resided outside Canada,

(ii) if that country grants a similar privilege to an officer or servant of Canada of the same class,

(iii) if the person was not, at any time in the period, engaged in a business or performing the duties of an office or employment in Canada other than the person's position with that government, and

(iv) if the person was not during the period a Canadian citizen;

Related Provisions: 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules; 149(1)(b) — Family members and servants; 212(14)(c)(i) — Certificate of exemption; Canada-U.S. Tax Treaty:Art. XIX — Government service; Canada-U.S. Tax Treaty:Art. XXVIII — Diplomatic agents and consular officers; Canada-U.K. Tax Treaty:Art. 25 — Diplomatic and consular officials.

(b) **members of the family and servants of employees of a country other than Canada** — a member of the family of a person described in paragraph (a) who resides with that person, or a servant employed by a person described in that paragraph,

(i) if the country of which the person described in paragraph (a) is an officer or servant grants a similar privilege to members of the family residing with and servants employed by an officer or servant of Canada of the same class,

(ii) in the case of a member of the family, if that member was not at any time lawfully admitted to Canada for permanent residence, or at any time in the period engaged in a business or performing the duties of an office or employment in Canada,

(iii) in the case of a servant, if, immediately before assuming his or her duties as a servant of a person described in paragraph (a), the servant resided outside Canada and, since first assuming those duties in Canada, has not at any time engaged in a business in Canada or been employed in Canada other than by a person described in that paragraph, and

(iv) if the member of the family or servant was not during the period a Canadian citizen;

Related Provisions: 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules.

(c) **municipal authorities** — a municipality in Canada, or a municipal or public body performing a function of government in Canada;

Related Provisions: 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules; 149(1)(d)–(d.6) — Municipal or provincial corporations.

(d) **corporations owned by the Crown** — a corporation, commission or association all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is Her Majesty in right of Canada or Her Majesty in right of a province;

Related Provisions: 27(2) — Prescribed federal Crown corporations are taxable; 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules; 149(1.1) — No exemption where other person has a right to acquire shares; 149(1.3) — No exemption if 10% ownership or *de facto* control by non-government; 181.1(3)(c) — Exemption from Part I.3 tax; 212(1)(b)(ii)(C)(IV) — No withholding tax on bond interest paid to non-residents; 227(14) — Exemption from tax under other Parts; 227(16) — Corporation deemed not private corporation for Part IV tax; Reg. 1216 — Exemption from Part XII tax.

History: Para. 149(1)(d) amended by 2001, c. 17, subsec. 145(1), applicable to taxation years and fiscal periods that begin after 1998. The para. formerly read:

(d) a corporation, commission or association all of the shares (except directors' qualifying shares) or of the capital of which was owned by Her Majesty in right of Canada or a province;

Para. 149(1)(d) amended by 1998, c. 19, applicable to taxation years and fiscal periods that begin after 1998. Para. 149(1)(d) formerly read:

(d) a corporation, commission or association not less than 90% of the shares or capital of which was owned by Her Majesty in right of Canada or a province or by a Canadian municipality, or a wholly-owned corporation subsidiary to such a corporation, commission or association, but this paragraph does not apply

(i) to such a corporation, commission or association if a person other than Her Majesty in right of Canada or a province or a Canadian municipality had, during the period, a right under a contract, in equity or otherwise either immediately or in the future and either absolutely or contingently, to, or to acquire, shares or capital of that corporation, commission or association, and

(ii) to such a wholly-owned subsidiary corporation if a person other than Her Majesty in right of Canada or a province or a Canadian municipality had, during the period, a right under a contract, in equity or otherwise either immediately or in the future and either absolutely or contingently, to, or to acquire, shares or capital of that wholly-owned subsidiary corporation or of the corporation, commission or association of which it is a wholly-owned subsidiary corporation;

Selected Cases [para. 149(1)(d)]: *Entreprises Chelsea Ltée v. MNR*, [1970] C.T.C. 598 (Exch.) (Wholly owned subsidiary of municipality allowed exemption from tax on sale profit).

Interpretation Bulletins: IT-347R2: Crown corporations (archived).

(d.1) **corporations 90% owned by the Crown** — a corporation, commission or association not less than 90% of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is Her Majesty in right of Canada or Her Majesty in right of a province;

Related Provisions: 27(2) — Prescribed federal Crown corporations are taxable; 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules; 149(1.1) — No exemption where other person has a right to acquire shares; 149(1.3) — No exemption if 10% ownership or *de facto* control by non-government; 181.1(3)(c) — Exemption from Part I.3 tax; 212(1)(b)(ii)(C)(IV) — No withholding tax on bond interest paid to non-residents; 227(14) — Exemption from tax under other Parts; 227(16) — Corporation deemed not private corporation for Part IV tax; Reg. 1216 — Exemption from Part XII tax.

History: Para. 149(1)(d.1) amended by 2001, c. 17, subsec. 145(1), applicable to taxation years and fiscal periods that begin after 1998. The para. formerly read:

(d.1) a corporation, commission or association not less than 90% of the shares (except directors' qualifying shares) or of the capital of which was owned by Her Majesty in right of Canada or a province;

Para. 149(1)(d.1) added by 1998, c. 19, applicable to taxation years and fiscal periods that begin after 1998.

(d.2) **wholly-owned corporations** — a corporation all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is a corporation, commission or association to which this paragraph or paragraph (d) applies for the period;

Related Provisions: 27(2) — Prescribed federal Crown corporations are taxable; 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules; 149(1.1) — No exemption where other person has a right to acquire shares; 149(1.11) — Election for corporation that was taxable before 1999 to remain taxable; 149(1.3) — No exemption if 10% ownership or *de facto* control by non-government; 181.1(3)(c) — Exemption from Part I.3 tax; 212(1)(b)(ii)(C)(IV) — No withholding tax on bond interest paid to non-residents; 227(14) — Exemption from tax under other Parts; 227(16) — Corporation deemed not private corporation for Part IV tax; Reg. 1216 — Exemption from Part XII tax.

History: Para. 149(1)(d.2) amended by 2001, c. 17, subsec. 145(1), applicable to taxation years and fiscal periods that begin after 1998. The para. formerly read:

(d.2) a corporation all of the shares (except directors' qualifying shares) or of the capital of which was owned by a corporation, commission or association to which this paragraph or paragraph (d) applies for the period;

Para. 149(1)(d.2) added by 1998, c. 19, applicable to taxation years and fiscal periods that begin after 1998.

(d.3) **90% owned corporations** — a corporation, commission or association not less than 90% of the shares (except directors' qualifying shares) or of the capital of which was owned by

(i) one or more persons each of which is Her Majesty in right of Canada or a province or a person to which paragraph (d) or (d.2) applies for the period, or

(ii) one or more municipalities in Canada in combination with one or more persons each of which is Her Majesty in right of Canada or a province or a person to which paragraph (d) or (d.2) applies for the period;

Related Provisions: 27(2) — Prescribed federal Crown corporations are taxable; 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules; 149(1.1) — No exemption where other person has a right to acquire shares; 149(1.11) — Election for corporation that was taxable before 1999 to remain taxable; 149(1.3) — No exemption if 10% ownership or *de facto* control by non-government; 181.1(3)(c) — Exemption from Part I.3 tax; 212(1)(b)(ii)(C)(IV) — No withholding tax on bond interest paid to non-residents; 227(14) — Exemption from tax under other Parts; 227(16) — Corporation deemed not private corporation for Part IV tax; Reg. 1216 — Exemption from Part XII tax.

History: Subpara. 149(1)(d.3)(i) amended by 2001, c. 17, subsec. 145(2) to add the words "one or more persons each of which is", applicable to taxation years and fiscal periods that begin after 1998.

Para. 149(1)(d.3) added by 1998, c. 19, applicable to taxation years and fiscal periods that begin after 1998.

(d.4) **combined [Crown] ownership** — a corporation all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is a corporation, commission or association to which this paragraph or any of paragraphs (d) to (d.3) applies for the period;

Related Provisions: 27(2) — Prescribed federal Crown corporations are taxable; 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules; 149(1.1) — No exemption where other person has a right to acquire shares; 149(1.11) — Election for corporation that was taxable before 1999 to remain taxable; 149(1.3) — No exemption if 10% ownership or *de facto* control by non-government; 181.1(3)(c) — Exemption from Part I.3 tax; 212(1)(b)(ii)(C)(IV) — No withholding tax on bond interest paid to non-residents; 227(14) — Exemption from tax under other Parts; 227(16) — Corporation deemed not private corporation for Part IV tax; Reg. 1216 — Exemption from Part XII tax.

History: Para. 149(1)(d.4) amended by 2001, c. 17, subsec. 145(3) to add the words "one or more persons each of which is", applicable to taxation years and fiscal periods that begin after 1998.

Para. 149(1)(d.4) added by 1998, c. 19, applicable to taxation years and fiscal periods that begin after 1998.

(d.5) **municipal corporations** — subject to subsections (1.2) and (1.3), a corporation, commission or association not less than 90% of the capital of which was owned by one or more municipalities in Canada, if the income for the period of the corporation, commission or association from activities carried on outside the geographical boundaries of the municipalities does not exceed 10% of its income for the period;

Proposed Amendment — 149(1)(d.5)

(d.5) **income within boundaries of entities** — subject to subsections (1.2) and (1.3), a corporation, commission or association not less than 90% of the capital of which was owned by one or more entities each of which is a municipality in Canada, or a municipal or public body performing a function of government in Canada, if the income for the period of the corporation, commission or association from activities carried on outside the geographical boundaries of the entities does not exceed 10% of its income for the period;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 147(1), will amend para. 149(1)(d.5) to read as above, applicable to taxation years that begin after May 8, 2000.

Notwithstanding subsec. 152(4) to (5), any assessment of a taxpayer's tax payable under the Act for any taxation year that began before February 27, 2004 shall be made that is necessary to give effect to the amendment.

Technical Notes: Paragraph 149(1)(d.5) exempts from tax, subject to an income test, the taxable income of any corporation, commission or association at least 90% of the capital of which is owned by one or more municipalities in Canada.

In accordance with the Tax Court of Canada decision in *Otineka Development Corporation Limited and 72902 Manitoba Limited v. The Queen*, 94 D.T.C. 1234, [1994] 1 C.T.C. 2424, an entity could be considered a municipality for the purpose of this paragraph on the basis of the functions it exercised. More recently, however, the decision in *Tawich Development Corporation v. Deputy Minister of Revenue of Quebec*, [1997] 2 C.N.L.R. 187 (Que. Civil Chamber); aff'd 2001 D.T.C. 5144 (Que. C.A.), a decision under the *Taxation Act* (Quebec), held that an entity could not attain the status of a municipality by exercising municipal functions but only by statute, letters patent or order. From a tax policy perspective, it is desired that the entities previously entitled to the exemption on the basis of the *Otineka* decision continue to have access to the exemption. This amendment resolves the uncertainty resulting from the two conflicting cases. The exemption in paragraph 149(1)(d.5) is therefore extended to include any corporation, commission or association at least 90% of the capital of which was owned by one or more entities each of which is a municipal or public body performing a function of government in Canada, which is consistent with the bodies described in paragraph 149(1)(c).

Letter from Dept. of Finance, September 10, 2002:

[Letter sent to 13 provincial and territorial officials — ed.]

Dear [xxx]:

I am writing to inform you of my intention to recommend to the Minister of Finance that, as a result of the recent decision of the Quebec Court of Appeal in *Tawich Development Corporation v. Deputy Minister of Revenue of Quebec* ([2000] 3 C.N.L.R. 383), the federal *Income Tax Act* (ITA) be amended to provide that certain exemptions and deductions currently applicable in respect of municipalities also be applied in respect of municipal or public bodies performing a function of government in Canada. Prior to discussing this matter with my Minister,

though, I want to set out the relevant background information for you and solicit your views.

Under paragraph 149(1)(d.5) of the ITA, no tax is payable under Part I on the taxable income of a corporation, commission or association owned by a municipality. Until recently, *Indian Act* bands were often considered municipalities for income tax purposes on the basis of the functions they exercised and, on this basis, many corporations owned by *Indian Act* bands were exempted from Part I tax under paragraph 149(1)(d.5). However, as a result of the decision in *Tawich*, in which the court held that an entity can only attain the status of a municipality through constituting documents of a province, the Canada Customs and Revenue Agency (CCRA) has advised us that it could no longer treat *Indian Act* bands as municipalities for income tax purposes. Therefore, without legislative changes, corporations owned by *Indian Act* bands would no longer be exempt from Part I tax under paragraph 149(1)(d.5).

In order to ensure the continued application of an exemption from Part I tax for *Indian Act* band corporations, I am prepared to recommend expanding the exemption under paragraph 149(1)(d.5) (and related provisions under section 149) to include corporations, commissions and associations owned by a municipal or public body performing a function of government. This will have the effect of ensuring that the taxable income of corporations owned by *Indian Act* bands continues to be exempt from Part I tax insofar as Indian bands are public bodies performing a function of government in Canada. The current geographic restriction found in paragraph 149(1)(d.5) will also apply to corporations, commissions and associations owned by a municipal or public body performing a function of government. Therefore, the exemption from Part I income tax will only be available to *Indian Act* band corporations, commissions and associations that earn substantially all of their taxable income on reserve.

In addition, under current subsections 110.1(1) and 118.1(1) of the ITA, corporations may deduct amounts from taxable income that constitute a charitable or ecological gift to, *inter alia*, a municipality. I am also prepared to recommend expanding the scope of these provisions to also allow deductions for charitable or ecological gifts to a municipal or public body performing a function of government in Canada. It is my understanding that this proposal is consistent with what is currently the administrative practice of the Canada Customs and Revenue Agency (CCRA).

My officials have informed me that these proposed amendments should have little, if any, impact on either federal or provincial revenues insofar as what is proposed is to legislate what has been a long-standing administrative practice. If you would like further information on this proposal, please contact Mr. Paul Rochon ((613) 996-9447), Director of Intergovernmental Tax Policy, Research and Evaluation Division or we can discuss this matter at the meeting of the Federal-Provincial Committee on Taxation on October 4, 2002.

Sincerely,

Stephen R. Richardson

Proposed Amendment — 149(1)(d.5)

Letter from Dept. of Finance, May 5, 2004:

Dear [xxx]

I am responding to your letter to me of March 17, 2004 and discussions with Stephanie Smith concerning the tax-exempt status of an amalgamated corporation ("[xxx]"). Once amalgamated, [xxx] will be approximately 59% owned by Municipality A and 41% owned by Municipality B. However, while Municipality A will directly own 59% of [xxx] Municipality B will indirectly own 41% of [xxx] due to the interposition of a [xxx] which is wholly owned by Municipality B.

In general, paragraphs 149(1)(c) through (d.6) of the Act exempt from tax under Part I of the Act municipalities in Canada, Crown corporations and municipal corporations, as well as certain other corporations jointly or indirectly owned by the Crown or municipalities in Canada. With respect to corporations owned by municipalities, the following combinations are provided for in the Act:

- paragraph 149(1)(d.3) — a corporation not less than 90% of the shares of which are owned by one or more municipalities in Canada in combination with one or more persons each of which is Canada, a province, a corporation all of the shares of which are owned by Canada or a province, or a wholly-owned subsidiary of such a corporation;
- paragraph 149(1)(d.5) — subject to an income and control test, a corporation not less than 90% of the capital of which is owned by one or more municipalities in Canada;
- paragraph 149(1)(d.6) — subject to an income and control test, a corporation all of the shares of which are owned by one or more persons each of which is a corporation to which paragraph 149(1)(d.5) or (d.6) itself applies.

[xxx] will not satisfy the requirements of any of the above-noted provisions.

You have asked us to recommend an amendment to the Act such that a corporation all of the shares of which are held by a combination of municipalities and corporations described in paragraph 149(1)(d.5) of the Act, will also qualify as a tax exempt corporation.

We consider the requested amendment to be consistent with the underlying policy objective of the provision; consequently, we are prepared to recommend that the *Income Tax Act* be amended to provide that a corporation will be exempt from tax under Part I of the Act provided that all of the shares of the corporation are owned by one or more municipalities in Canada in combination with one or more persons each of which is a corporation to which paragraph 149(1)(d.5) or 149(1)(d.6) applies for the period. Furthermore, our recommendation would be that the amendment be effective after April 30, 2004.

While I cannot offer any assurance that our recommendation in this matter will be accepted, I hope our statement of intent in this letter will be helpful in responding to your concern.

Yours sincerely,

Brian Ernewein

Director, Tax Legislative Division, Tax Policy Branch

Related Provisions: 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules; 149(1.1) — No exemption where other person has a right to acquire shares; 149(1.2) — Meaning of "outside the geographical boundaries"; 149(1.3) — No exemption if 10% ownership or *de facto* control by non-government; 149(11) — Geographical boundaries of body performing function of government; 181.1(3)(c) — Exemption from Part I.3 tax; 212(1)(b)(ii)(C)(IV) — No withholding tax on bond interest paid to non-residents; 227(14) — Exemption from tax under other Parts; 227(16) — Corporation deemed not private corporation for Part IV tax; Reg. 1216 — Exemption from Part XII tax.

History: Para. 149(1)(d.5) added by 1998, c. 19, applicable to taxation years and fiscal periods that begin after 1998.

(d.6) **subsidiaries of municipal corporations** — subject to subsections (1.2) and (1.3), a particular corporation all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is a corporation, commission or association to which paragraph (d.5) or this paragraph applies for the period if the income for the period of the particular corporation from activities carried on outside

(i) if paragraph (d.5) applies to the other corporation, commission or association, the geographical boundaries of the municipalities referred to in that paragraph in its application to that other corporation, commission or association, or

(ii) if this paragraph applies to the other corporation, commission or association, the geographical boundaries of the municipalities referred to in subparagraph (i) in its application to that other corporation, commission or association,

Proposed Amendment — 149(1)(d.6)(i), (ii)

(i) if paragraph (d.5) applies to the other corporation, commission or association, the geographical boundaries of the entities referred to in that paragraph in its application to that other corporation, commission or association, or

(ii) if this paragraph applies to the other corporation, commission or association, the geographical boundaries of the entities referred to in subparagraph (i) in its application to that other corporation, commission or association;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 147(2), will amend subparas. 149(1)(d.6)(i) and (ii) to read as above, applicable to taxation years that begin after May 8, 2000.

Notwithstanding subsec. 152(4) to (5), any assessment of a taxpayer's tax payable under the Act for any taxation year that began before February 27, 2004 shall be made that is necessary to give effect to the amendment.

Technical Notes: Paragraph 149(1)(d.6) exempts from tax, subject to an income test, a wholly-owned subsidiary of a corporation, commission or association referred to in paragraph 149(1)(d.5). As a consequence of the amendment to paragraph 149(1)(d.5), the geographical boundaries of the entities referred to in subparagraphs (i) and (ii) of paragraph 149(1)(d.6) are expanded to include references to all of the entities in the amended 149(1)(d.5).

does not exceed 10% of its income for the period;

Related Provisions: 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules; 149(1.1) — No exemption where other person has a right to acquire shares; 149(1.2) — Meaning of "outside the geographical boundaries"; 149(1.3) — No exemption if 10% ownership or *de facto* control by non-government; 149(11) — Geographical boundaries of body performing function of government; 181.1(3)(c) — Exemption from Part I.3 tax; 212(1)(b)(ii)(C)(IV) — No withholding tax on bond interest paid to non-residents; 227(14) — Exemption from tax under other Parts; 227(16) — Corporation deemed not private corporation for Part IV tax; Reg. 1216 — Exemption from Part XII tax.

History: The opening words of para. 149(1)(d.6) amended by 2001, c. 17, subsec. 145(4), applicable to taxation years and fiscal periods that begin after 1998. The opening words formerly read:

(d.6) subject to subsections (1.2) and (1.3), a particular corporation all the shares (except directors' qualifying shares) or of the capital of which was owned by another corporation, commission or association to which paragraph (d.5) or this paragraph applies for the period if the income for the period of the particular corporation from activities carried on outside

Para. 149(1)(d.6) added by 1998, c. 19, applicable to taxation years and fiscal periods that begin after 1998.

(e) **certain organizations** — an agricultural organization, a board of trade or a chamber of commerce, no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof;

Related Provisions: 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules; 149(2) — Income not to include taxable capital gains; 149(12) — Information returns; 181.1(3)(c) — Exemption from Part I.3 tax; 227(14) — Exemption from tax under other Parts.

Registered Charities Newsletters: 19 (what is the difference between a registered charity and a non-profit organization?).

(f) **registered charities** — a registered charity;

Related Provisions: 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules; 149.1 — Charities; 181.1(3)(c), 227(14) — Exemption from tax under other Parts; 248(1)"registered charity" — Registration provisions; Canada-U.S. Tax Treaty:Art. XXI:1 — Religious, literary, scientific, educational or charitable organization — exemption from tax.

Selected Cases [para. 149(1)(f)]: *Vancouver Society of Immigrant & Visible Minority Women v. MNR*, [1999] 2 C.T.C. 1 (SCC); aff'g [1996] 2 C.T.C. 88 (FCA) (Valid charitable organization must be constituted exclusively for charitable purposes); *Hutterian Brethren et al. v. R.*, [1980] C.T.C. 1 (FCA) (Charitable organization exemption not applicable to taxpayer conducting business).

(g), (h) [Repealed under former Act]

(h.1) **Association of Universities and Colleges of Canada** — the Association of Universities and Colleges of Canada, incorporated by the *Act to incorporate Association of Universities and Colleges of Canada*, chapter 75 of the Statutes of Canada, 1964-65;

Related Provisions: 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules; 181.1(3)(c), 227(14) — Exemption from tax under other Parts.

(i) **certain housing corporations** — a corporation that was constituted exclusively for the purpose of providing low-cost housing accommodation for the aged, no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof;

Related Provisions: 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules; 149(2) — Income not to include taxable capital gains; 181.1(3)(c), 227(14) — Exemption from tax under other Parts.

(j) **non-profit corporations for scientific research and experimental development** — a corporation that was constituted exclusively for the purpose of carrying on or promoting scientific research and experimental development, no part of whose income was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof, that has not acquired control of any other corporation and that, during the period,

(i) did not carry on any business, and

(ii) expended amounts in Canada each of which is

(A) an expenditure on scientific research and experimental development (within the meaning that would be assigned by paragraph 37(8)(a) if subsection 37(8) were read without reference to paragraph 37(8)(d)) directly undertaken by or on behalf of the corporation, or

(B) a payment to an association, university, college or research institute or other similar institution, described in clause 37(1)(a)(ii)(A) or (B) to be used for scientific research and experimental development, and

the total of which is not less than 90% of the amount, if any, by which the corporation's gross revenue for the period exceeds the total of all amounts paid in the period by the corporation because of subsection (7.1);

Related Provisions: 37(1)(a)(ii)(C), 37(1)(a)(iii) — Deduction for R&D payments to corporation described in 149(1)(j); 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules; 149(2) — Income not to include taxable capital gains; 149(7) — Prescribed form to be filed; 149(8), (9) — Interpretation rules; 149(9) — Rules; 181.1(3)(c) — Exemption from Part I.3 tax; 227(14) — Exemption from tax under other Parts; 256(6)–(9) — Whether control acquired.

History: Cl. 149(1)(j)(ii)(A) and the closing words of subpara. 149(1)(j)(ii) amended by 1996, c 21, subsecs. 37(2), (3); cl. (j)(ii)(A) applicable to taxation years that end after November 1991, closing words applicable to taxation years that begin after June 1995. Cl. 149(1)(j)(ii)(A) and the closing words of subpara. 149(1)(j)(ii) formerly read:

(A) an expenditure on scientific research and experimental development (within the meaning that would be assigned by subsection 37(7) if that subsection were read without reference to paragraph 37(8)(d)) directly undertaken by or on behalf of the corporation, or

. . . . .

the total of which is not less than 90% of the corporation's income for the period;

Regulations: 2900(1) (definition of SR&ED, except where work performed pursuant to agreement in writing entered into before Feb. 28, 1995).

Interpretation Bulletins: IT-151R5: Scientific research and experimental development expenditures.

Information Circulars: 86-4R3: Scientific research and experimental development.

Application Policies: SR&ED 96-10: Third party payments — approval process.

(k) **labour organizations** — a labour organization or society or a benevolent or fraternal benefit society or order;

Related Provisions: 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules.

Selected Cases [para. 149(1)(k)]: *Actra Fraternal Benefit Society v. R.*, [1997] 3 C.T.C. 61 (FCA); rev'g [1995] 2 C.T.C. 2671 (TCC) (Allocation of assets to a particular fund was rebuttable presumption only); *O'Brien v. R.*, [1985] 1 C.T.C. 285 (FCTD) (Distributed profits not taxable in hands of union members when placed in union's strike funds and newspaper operated by unions).

Interpretation Bulletins: IT-389R: Vacation pay trusts established under collective agreements.

(l) **non-profit organizations** — a club, society or association that, in the opinion of the Minister, was not a charity within the meaning assigned by subsection 149.1(1) and that was organized and operated exclusively for social welfare, civic improvement, pleasure or recreation or for any other purpose except profit, no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof unless the proprietor, member or shareholder was a club, society or association the primary purpose and function of which was the promotion of amateur athletics in Canada;

Related Provisions: 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules; 149(2) — Income not to include taxable capital gains; 149(3) — Application of subsec. (1); 149(5) — Exception re investment income of certain clubs; 149(12) — Information returns; 181.1(3)(c) — Exemption from Part I.3 tax; 227(14) — Exemption from tax under other Parts; 248(1) — "person"; 248(1) — "registered Canadian amateur athletic association"; Reg. 4900(1)(r) — Debt of non-profit corporation as qualified investment for RRSP, etc.

Selected Cases [para. 149(1)(l)]: *Elm Ridge Country Club Inc. v. MNR*, [1999] 3 C.T.C. 163 (FCA); leave to appeal to SCC refused (1999), 246 N.R. 200 (note) (Interest income is income from property of non-profit organization); *LIUNA Local 527 Members' Training Trust Fund v. Canada*, [1992] 2 C.T.C. 2410 (TCC) (Trust fund exempted from tax on interest earned from surplus funds); *Gull Bay Development Corp. v. R.*, [1984] C.T.C. 159 (FCTD) (Profits from logging operations exempt from tax when funds used for social and charitable activities on reserve).

Interpretation Bulletins: IT-83R3: Non-profit organizations — Taxation of income from property; IT-304R2: Condominiums; IT-409: Winding-up of a non-profit organization (archived); IT-496R: Non-profit organizations.

I.T. Technical News: 4 (condominium corporations).

Advance Tax Rulings: ATR-29: Amalgamation of social clubs.

Registered Charities Newsletters: 19 (what is the difference between a registered charity and a non-profit organization?).

(m) **mutual insurance corporations** — a mutual insurance corporation that received its premiums wholly from the insurance of churches, schools or other charitable organizations;

Related Provisions: 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules; 181.1(3)(c) — Exemption from Part I.3 tax; 227(14) — Exemption from tax under other Parts.

(n) **housing companies** — a limited-dividend housing company (within the meaning of that expression as defined in section 2 of the *National Housing Act*), all or substantially all of the business of which is the construction, holding or management of low-rental housing projects;

Related Provisions: 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules; 149.1(1) — Definitions — "non-qualified investment"; 181.1(3)(c) — Exemption from Part I.3 tax; 227(14) — Exemption from tax under other Parts.

Limited-dividend housing company: *National Housing Act*, R.S.C. 1985, c. N-11, s. 2 provides:

"limited-dividend housing company" means a company incorporated to construct, hold and manage a low-rental housing project, the dividends payable by which are limited by the terms of its charter or instrument of incorporation to five per cent per annum or less;

(o) **pension trusts** — a trust governed by a registered pension plan;

Related Provisions: 94(1)"exempt foreign trust"(a) — Foreign pension trust excluded from non-resident trust rules; 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules; 138.1(7) — Where policyholder deemed to be trust, etc.; 205 — Application of Part XI to pension trust; 210.1(c) — Pension trust not subject to Part XII.2 tax; Canada-U.S. Tax Treaty:Art. XXI:2 — Exemption from tax.

(o.1) **pension corporations** — a corporation

(i) incorporated and operated throughout the period either

(A) solely for the administration of a registered pension plan, or

(B) for the administration of a registered pension plan and for no other purpose other than acting as trustee of, or administering, a trust governed by a retirement compensation arrangement, where the terms of the arrangement provide for benefits only in respect of individuals who are provided with benefits under the registered pension plan, and

(ii) accepted by the Minister as a funding medium for the purpose of the registration of the pension plan;

Related Provisions: 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules; 149(1)(q.1) — No tax on RCA trust; 181.1(3)(c) — Exemption from Part I.3 tax; 205 — Application of Part XI to pension corporation; 227(14) — Exemption from tax under other Parts; Canada-U.S. Tax Treaty:Art. XXI:2 — Exemption from tax.

History: Para. 149(1)(o.1) amended by 1998, c. 19, subsec. 178(2), applicable to 1994 *et seq.* Para. 149(1)(o.1) formerly read:

(o.1) a corporation incorporated and operated throughout the period solely for the administration of a registered pension plan and accepted by the Minister as a funding medium for the purposes of the registration of a pension plan;

(o.2) **idem** — a corporation

(i) incorporated before November 17, 1978 solely in connection with, or for the administration of, a registered pension plan,

(ii) that has at all times since the later of November 16, 1978 and the date on which it was incorporated

(A) limited its activities to

(I) acquiring, holding, maintaining, improving, leasing or managing capital property that is real property or an interest in real property owned by the corporation, another corporation described by this subparagraph and subparagraph (iv) or a registered pension plan, and

(II) investing its funds in a partnership that limits its activities to acquiring, holding, maintaining, improving, leasing or managing capital property that is real property or an interest in real property owned by the partnership,

(B) made no investments other than in real property or an interest therein or investments that a pension plan is permitted to make under the *Pension Benefits Standards Act, 1985* or a similar law of a province, and

(C) borrowed money solely for the purpose of earning income from real property or an interest therein,

Proposed Amendment — 149(1)(o.2)(ii)(A)–(C)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), s. 248, will amend cls. 149(1)(o.2)(ii)(A) to (C) by substituting "in real property — or immovables or a real right in immovables — " for "in real property" in subcls. (A)(I) and (II) and for "therein" in cl. (B), and substituting "in real property or from immovables or a real right in immovables" for "therein" in cl. C, to come into force on Royal Assent.

Technical Notes: See under 12(4).

(ii.1) that throughout the period

(A) limited its activities to

(I) acquiring Canadian resource properties by purchase or by incurring Canadian exploration expense or Canadian development expense, or

(II) holding, exploring, developing, maintaining, improving, managing, operating or disposing of its Canadian resource properties,

(B) made no investments other than in

(I) Canadian resource properties,

(II) property to be used in connection with Canadian resource properties described in clause (A),

(III) loans secured by Canadian resource properties for the purpose of carrying out any activity described in clause (A) with respect to Canadian resource properties, or

(IV) investments that a pension fund or plan is permitted to make under the *Pension Benefits Standards Act, 1985* or a similar law of a province, and

(C) borrowed money solely for the purpose of earning income from Canadian resource properties, or

(iii) that made no investments other than investments that a pension fund or plan was permitted to make under the *Pension Benefits Standards Act, 1985* or a similar law of a province, and

(A) the assets of which were at least 98% cash and investments,

(B) that had not issued debt obligations or accepted deposits, and

(C) that had derived at least 98% of its income for the period that is a taxation year of the corporation from, or from the disposition of, investments

if, at all times since the later of November 16, 1978 and the date on which it was incorporated,

(iv) all of the shares, and rights to acquire shares, of the capital stock of the corporation are owned by

(A) one or more registered pension plans,

(B) one or more trusts all the beneficiaries of which are registered pension plans,

(C) one or more related segregated fund trusts (within the meaning assigned by paragraph 138.1(1)(a)) all the beneficiaries of which are registered pension plans, or

(D) one or more prescribed persons, or

(v) in the case of a corporation without share capital, all the property of the corporation has been held exclusively for the benefit of one or more registered pension plans,

and for the purposes of subparagraph (iv), where a corporation has been formed as a result of the merger of two or more other corporations, it shall be deemed to be the same corporation as, and a continuation of, each such other corporation and the shares of the merged corporations shall be deemed to have been altered, in form only, by virtue of the merger and to have continued in existence in the form of shares of the corporation formed as a result of the merger;

Related Provisions: 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules; 181.1(3)(c) — Exemption from Part I.3 tax; 205 — Application of Part XI; 206(2.1) — Exemption from Part XI tax when proportional holdings election made; 212(14)(c)(i) — Certificate of exemption; 227(14) — Exemption from tax under other Parts; 248(4) — Interest in real property; 248(4.1) — Meaning of "real right in an immovable"; 253.1 — Limited partner not considered to carry on business of partnership; 259(5)"qualified corporation" — proportional holdings in trust property.

History: Cl. 149(1)(o.2)(ii)(A) amended by 2001, c. 17, subsec. 145(5), applicable to taxation years that end after 2000. The clause formerly read:

(A) limited its activities to acquiring, holding, maintaining, improving, leasing or managing capital property that is real property or an interest therein owned by the corporation, another corporation described by this subparagraph and subparagraph (iv) or a registered pension plan,

Regulations: 4802 (prescribed persons).

I.T. Technical News: 1 (permissible activities of pension fund realty corporations).

(o.3) **prescribed small business investment corporations** — a corporation that is prescribed to be a small business investment corporation;

Related Provisions: 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules; 181.1(3)(c) — Exemption from Part I.3 tax; 227(14) — Exemption from tax under other Parts.

Regulations: 5101.

(o.4) **master trusts** — a trust that is prescribed to be a master trust and that elects to be such a trust under this paragraph in its return of income for its first taxation year ending in the period;

Related Provisions: 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules; 127.55(f)(iii) — Trust not subject to minimum tax; 205 — Application of Part XI; 206(2.1) — Exemption from Part XI tax when proportional holdings election made; 210.1(c) — Exemption from Part XII.2 tax; 248(1)"disposition"(f)(vi) — Rollover from one trust to another; 253.1 — Limited partner not considered to carry on business of partnership; 259(1) — Election for proportional holdings in trust property; 259(3) — Qualified trusts.

Regulations: 4802(1.1) (master trust), 5001 [to be repealed] (master trust).

(p) **trusts under profit sharing plan** — a trust under an employees profit sharing plan to the extent provided by section 144;

Related Provisions: 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules; 144(2) — No tax while trust governed by plan; 210.1(c) — Trust not subject to Part XII.2 tax; 212(14)(c)(i) — Certificate of exemption.

(q) **trusts under a registered supplementary unemployment benefit plan** — a trust under a registered supplementary unemployment benefit plan to the extent provided by section 145;

Related Provisions: 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules; 145(2) — No tax while trust gov-

erned by plan; 210.1(c) — Trust not subject to Part XII.2 tax; 212(14)(c)(i) — Certificate of exemption.

(q.1) **RCA trusts** — an RCA trust (within the meaning assigned by subsection 207.5(1));

Related Provisions: 149(1)(o.1)(i)(B) — No tax on corporation administering RCA trust; 207.7(1) — Part XI.3 tax on RCA trust; 210.1(c) — RCA trust not subject to Part XII.2 tax.

(r) **trusts under registered retirement savings plan** — a trust under a registered retirement savings plan to the extent provided by section 146;

Related Provisions: 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules; 138.1(7) — Where policyholder deemed to be trust, etc.; 146(4) — No tax while trust governed by plan; 146(10) — Tax on beneficiary when RRSP acquires non-qualified investment; 146(10.1) — Tax on income from non-qualified investments; 207.1(1) — Tax on holding non-qualified investment; 210.1(c) — RRSP not subject to Part XII.2 tax; 212(14)(c)(i) — Certificate of exemption.

Interpretation Bulletins: IT-415R2: Deregistration of RRSPs (archived).

Information Circulars: 72-22R9: Registered retirement savings plans.

(s) **trusts under deferred profit sharing plan** — a trust under a deferred profit sharing plan to the extent provided by section 147;

Related Provisions: 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules; 147(7) — No tax while trust governed by plan; 198 — Tax on acquisition of non-qualified investment or use of assets as security; 207.1(2) — Tax on holding non-qualified investment; 210.1(c) — DPSP not subject to Part XII.2 tax; 212(14)(c)(i) — Certificate of exemption.

(s.1) **trust governed by eligible funeral arrangement** — a trust governed by an eligible funeral arrangement;

Related Provisions: 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules; 148.1(2) — No tax on income accruing in funeral arrangement or on provision of funeral or cemetary services.

History: Para. 149(1)(s.1) added by 1995, c. 21, s. 63, applicable to 1993 *et seq.*

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

(s.2) **cemetery care trust** — a cemetery care trust;

Related Provisions: 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules.

History: Para. 149(1)(s.2) added by 1998, c. 19, subsec. 178(3), applicable to 1993 *et seq.*

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

(t) **farmers' and fishermen's insurer** — an insurer that, throughout the period, is not engaged in any business other than insurance if, in the opinion of the Minister, on the advice of the Superintendent of Financial Institutions or of the superintendent of insurance of the province under the laws of which the insurer is incorporated, not less than 20% of the total of the gross premium income (net of reinsurance ceded) earned in the period by the insurer and, where the insurer is not a prescribed insurer, by all other insurers that

(i) are specified shareholders of the insurer,

(ii) are related to the insurer, or

(iii) where the insurer is a mutual corporation, are part of a group that controls, directly or indirectly in any manner whatever, or are controlled, directly or indirectly in any manner whatever by, the insurer,

is in respect of insurance of property used in farming or fishing or residences of farmers or fishermen;

Proposed Amendment — Amalgamation of Farmers' and Fishermen's Insurers

Letter from Dept. of Finance, February 21, 2000: See under 89(1)"taxable Canadian corporation"(b).

Related Provisions: 89(1)"taxable Canadian corporation"(b) — Insurer is taxable Canadian corporation and thus amalgamation rules can apply; 138 — Insurance corporations; 149(4.1) — Extent of exemption; 149(4.2) — Application of subsection (1); 149(4.3) — Computation of taxable income of insurer; 181.1(3)(c) — Exemption from Part I.3 tax; 212(14)(c)(i) — Certificate of exemption; 227(14) — Exemption from tax under other Parts; 256(5.1), (6.2) — Controlled directly or indirectly.

History: Para. 149(1)(t) amended by 1997, c. 25, subsec. 47(1), applicable to 1996 *et seq.* Para. (t) formerly read:

(t) an insurer who, during the period, was not engaged in any business other than insurance if, in the opinion of the Minister, on the advice of the Superintendent of Financial Institutions or of the superintendent of insurance of the province under the laws of which the insurer is incorporated, not less than 25% of the total of the gross premium income (net of reinsurance ceded) earned in the period by the insurer and, where the insurer is not a prescribed insurer, of all other insurers that

(i) were specified shareholders of the insurer,

(ii) were related to the insurer, or

(iii) where the insurer is a mutual corporation, were part of a group that controlled, directly or indirectly in any manner whatever, or were controlled, directly or indirectly in any manner whatever, by the insurer,

was in respect of the insurance of farm property, property used in fishing or residences of farmers or fishermen;

Para. 149(1)(t) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 122(1), applicable to 1989 *et seq.* Para. (t) formerly read:

(t) an insurer, who was engaged during the period in no business other than insurance, if, in the opinion of the Minister, on the advice of the Superintendent of Financial Institutions or of the superintendent of insurance of the province under the laws of which the insurer is incorporated not less than 25% of the gross premium income (net of reinsurance ceded) of the insurer and all other insurers that were specified shareholders of the insurer or were related to the insurer or, where the insurer is a mutual corporation, all other insurers that were part of a group that controlled or were controlled by the insurer for the period was in respect of the insurance of farm property, property used in fishing or residences of farmers or fishermen;

Regulations: 4802(2) (prescribed insurers).

(u) **registered education savings plans** — a trust governed by a registered education savings plan to the extent provided by section 146.1;

Related Provisions: 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules; 146.1(5) — Trust not taxable; 212(14)(c)(i) — Certificate of exemption.

(v) **amateur athlete trust** — an amateur athlete trust;

Related Provisions: 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules; 143.1 — Rules for amateur athletic trusts; 210.1(c) — Amateur athlete trust not subject to Part XII.2 tax; 210.2(1.1) — Tax payable by amateur athlete trust.

History: Para. 149(1)(v) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 88(1), applicable to 1988 *et seq.*

(w) **trusts to provide compensation** — a trust established as required under a law of Canada or of a province in order to provide funds out of which to compensate persons for claims against an owner of a business identified in the relevant law where that owner is unwilling or unable to compensate a customer or client, if no part of the property of the trust, after payment of its proper trust expenses, is available to any person other than as a consequence of that person being a customer or client of a business so identified;

Related Provisions: 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules; 210.1(c) — Trust not subject to Part XII.2 tax; 212(14)(c)(i) — Certificate of exemption.

(x) **registered retirement income funds** — a trust governed by a registered retirement income fund to the extent provided by section 146.3;

Related Provisions: 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules; 146.3(3) — No tax while trust governed by fund; 146.3(7) — Tax on beneficiary when RRIF acquires non-qualified investment; 146.3(9) — Tax on income from non-qualified investments; 207.1(4) — Tax on holding non-qualified investments; 210.1(c) — RRIF not subject to Part XII.2 tax; 212(14)(c)(i) — Certificate of exemption.

(y) **trusts to provide vacation pay** — a trust established pursuant to the terms of a collective agreement between an employer or an association of employers and employees or their labour organization for the sole purpose of providing for the payment of vacation or holiday pay, if no part of the property of the trust, after payment of its reasonable expenses, is

(i) available at any time after 1980, or

(ii) paid after December 11, 1979

to any person (other than a person described in paragraph (k)) otherwise than as a consequence of that person being an employee or an heir or legal representative thereof; or

Related Provisions: 16(2) — Obligation issued at discount; 94.1(1)"exempt taxpayer"(a) — Exclusion from foreign investment entity accrual rules; 210.1(c) — Trust not subject to Part XII.2 tax; 212(14)(c)(i) — Certificate of exemption.

Interpretation Bulletins: IT-389R: Vacation pay trusts established under collective agreements.

(z) **qualifying environmental trust** — a qualifying environmental trust.

Related Provisions: 12(1)(z.1), 107.3(1) — Tax on beneficiary; 149(1)(z.1), (z.2) — Special Crown-owned environmental trusts; 211.6 — Part XII.4 tax on trust.

History: Para. 149(1)(z) amended by 1998, c. 19, s. 41, applicable to 1997 *et seq.* Para. 149(1)(z) formerly read:

(z) mining reclamation trust — a mining reclamation trust.

Para. 149(1)(z) added by 1995, c. 3, s. 45, applicable to 1994 *et seq.*

Proposed Addition — 149(1)(z.1), (z.2)

(z.1) **[Quebec *Environmental Quality Act* trust]** — a trust

(i) that was created because of a requirement imposed by section 56 of the *Environment Quality Act*, R.S.Q., c. Q-2,

(ii) that is resident in Canada, and

(iii) in which the only persons that are beneficially interested are

(A) Her Majesty in right of Canada,

(B) Her Majesty in right of a province, or

(C) a municipality (as defined in section 1 of that Act) that is exempt because of this subsection from tax under this Part on all of its taxable income; or

Technical Notes: New paragraph 149(1)(z.1)) exempts from tax under Part I a trust created because of a requirement imposed by section 56 of the *Environment Quality Act* (Quebec) (EQA). That provision requires certain residual materials elimination facilities to provide financial guarantees by way of establishment of a social trust to cover certain costs after the closure of the facility. This exemption applies only where no persons are beneficially interested in the trust other than Her Majesty in right of Canada, Her Majesty in right of a province and municipalities that are exempt from taxation under subsection 149(1) of the ITA.

Letter from Dept. of Finance, July 17, 2003:

Mr. Luc Monty
Assistant Deputy Minister, Tax Policy Branch, Ministère des Finances du Québec

Dear Sir:

This letter follows up on a letter of March 19, 2003 from your colleague, M. Réal Tremblay, and on our discussions with certain municipalities in Quebec with respect to income tax considerations relating to trusts established under the *Environment Quality Act* (EQA) for the management of funds used to manage waste disposal sites post-closure.

Given the requirement to establish trusts under the EQA, I am prepared to recommend to the Minister of Finance a measure that would ensure that the income of a trust established and maintained solely to meet the obligations of the EQA would be exempt from taxation under the federal *Income Tax Act* (ITA). This exemption would apply only where no persons are beneficially interested in the trust other than Her Majesty in right of Canada, Her Majesty in right of a province and municipalities that are exempt from taxation under subsection 149(1) of the ITA. I am also prepared to recommend to the Minister that this measure have effect from the date a trust is established under the EQA.

If the Minister accepts the recommendation for the legislative change described above, I would expect that this measure would be included in a future package of income tax technical amendments to be proposed to Parliament.

We also recognize that waste disposal sites subject to obligations imposed under the EQA could be owned by some combination of tax-exempt public entities and private sector entities. In such circumstances, the measure outlined above would not apply. We will, however, continue to consider circumstances involving other ownership structures. One approach that we are considering in this regard is a modified qualifying environmental trust (QET) approach in situations where a mix of public and private ownership exists. Assuming that trusts established under the EQA would normally meet the definition of a QET as outlined in the ITA, such an approach would seek to ensure that an entity that is beneficially interested in such a trust and that is exempt under subsection 149(1) of the ITA would not be subject to an economic cost as a result of the payment of tax under the QET rules. As part of the analysis of the modified QET approach, we will continue to examine and discuss with interested parties the type of detailed modifications that this approach would require to the existing QET rules.

I trust you will find this letter helpful. I also plan to send a copy of this letter to our colleagues on the Federal-Provincial Tax Committee.

Yours sincerely,

Stephen R. Richardson

c.c.: Mr. Jean-Philippe Côté, Policy Advisor, Finance Canada

Mr. Jean-Philippe Guay, Departmental Assistant, Canada Economic Development
Mr. Réal Tremblay, Assistant Deputy Minister, Fiscal Policy, Ministère des Finances (Québec)
Mr. Thomas J. Mulcair, Deputy Minister, Ministère de l'Environnement (Québec)
Mr. Wayne Adams, Director, Legislative Policy Division, Canada Customs and Revenue Agency

Related Provisions: 211.6(1) — Exemption from Part XII.4 tax.

(z.2) **[*Nuclear Fuel Waste Act* trust]** — a trust

(i) that was created because of a requirement imposed by subsection 9(1) of the *Nuclear Fuel Waste Act*, S.C. 2002, c. 23,

(ii) that is resident in Canada, and

(iii) in which the only persons that are beneficially interested are

(A) Her Majesty in right of Canada,

(B) Her Majesty in right of a province,

(C) a nuclear energy corporation (as defined in section 2 of that Act) all of the shares of the capital stock of which are owned by a person, or combination of persons, described in clause (A) or (B), or

(D) Atomic Energy of Canada Limited, being the company incorporated or acquired pursu-

ant to subsection 10(2) of the *Atomic Energy Control Act*, R.S.C. 1970, c. A-19.

Technical Notes: Similarly, new paragraph 149(1)(z.2) exempts from tax under Part I a trust created because of a requirement imposed by subsection 9(1) of the *Nuclear Fuel Waste Act* (NFWA). That provision requires specified entities to contribute moneys to a trust fund for the management of nuclear fuel waste. In this case, the exemption only applies where no persons are beneficially interested in the trust other than Her Majesty in right of Canada, Her Majesty in right of a province or a Crown-owned nuclear energy corporation that is exempt from taxation under subsection 149(1) of the ITA.

These provisions ensure that the tax consequences to a municipality or Crown-owned nuclear energy corporation that is required by federal or provincial legislation to set up a trust to fund an environmental obligation are the same as if the municipality or the Crown-owned nuclear energy corporation accumulated the funds internally rather than in a trust.

Letter from Dept. of Finance, November 15, 2002:

Ms. Louise Lemon
Assistant Deputy Minister, New Brunswick Ministry of Finance, Revenue and Taxation Division

Mr. Réal Tremblay
Assistant Deputy Minster, Fiscal Policy, Ministère des Finances du Québec

Mr. Robert Van Adel
President & Chief Executive Officer, Atomic Energy of Canada Limited

Dear Sirs/Madam:

This letter follows up on our discussions, with provinces and nuclear utilities, on the income tax considerations relating to trusts established under the *Nuclear Fuel Waste Act* (NFWA) for nuclear waste management.

Our overall intent in this regard is to ensure that the legislative obligations under the NFWA do not cause an income tax result that would make a Crown-owned, tax-exempt nuclear energy corporation (NEC) worse off than prior to the implementation of the NFWA obligations. In recognition of the requirement to establish trust funds once the NFWA comes into force, I am prepared to recommend to the Minister of Finance a measure that would ensure that the income of a trust established and maintained solely to meet the obligations of the NFWA would be exempt from taxation under the federal *Income Tax Act* (ITA). This exemption would apply only where no persons are beneficially interested in the trust other than Her Majesty in right of Canada, Her Majesty in right of a province or Crown-owned NECs that are exempt from taxation under subsection 149(1) of the ITA. I am also prepared to recommend to the Minister that this measure have effect from the date of the coming into force of the NFWA.

If the Minister accepts the recommendation for the legislative change described above, I would expect that this measure would be included in a future package of income tax technical amendments to be proposed to Parliament.

We also recognise that, while NECs are currently owned by Crown entities, a variety of ownership structures may exist in the future. That is, certain NECs in Canada may eventually be owned by a private sector entity or by some combination of public and private sector entities. As a result, it will also be important to ensure that a suitable taxation framework exists that is applicable under a variety of ownership structures. In this regard, we will explore changes to the existing qualifying environment trust (QET) rules in the ITA such that a trust required under the NFWA could be treated as a QET. In this circumstance, it would be important to ensure that an entity that is a beneficiary of such a trust and that is exempt under subsection 149(1) of the ITA would not be subject to an economic cost as a result of the payment of tax, under the QET rules, at the trust or beneficiary level.

As part of the analysis of the QET approach, we will continue to examine and discuss with interested parties the type of detailed modifications that this approach would require to the existing QET rules. This would include changes to the QET refundable tax credit provisions as they relate to beneficiaries that are exempt from taxation. We will also examine the treatment of any income tax obligations of the NFWA trust. In addition, we are interested in continuing discussions related to the investment restrictions applicable to a QET established under the NFWA.

I trust you will find this letter helpful in connection with your considerations relating to the establishment of trusts as required by NFWA.

Yours sincerely,

Stephen R. Richardson

c.c.: Mr. George Anderson, Natural Resources Canada
Mr. Ric Cameron, Natural Resources Canada
Mr. Severin Tong, Atomic Energy of Canada Limited

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 147(3), will add paras. 149(1)(z.1) and (z.2), applicable to 1997 *et seq.*

Related Provisions: 211.6(1) — Exemption from Part XII.4 tax.

Interpretation Bulletins [subsec. 149(1)]: IT-465R: Non-resident beneficiaries of trusts.

(1.1) Exception — Where at a particular time

(a) a corporation, commission or association (in this subsection referred to as "the entity") would, but for this subsection, be described in any of paragraphs (1)(d) to (d.6),

(b) one or more other persons (other than Her Majesty in right of Canada or a province, a municipality in Canada or a person which, at the particular time, is a person described in any of subparagraphs (1)(d) to (d.6)) have at the particular time one or more rights in equity or otherwise, either immediately or in the future and either absolutely or contingently to, or to acquire, shares or capital of the entity, and

(c) the exercise of the rights referred to in paragraph (b) would result in the entity not being a person described in any of paragraphs (1)(d.1) to (d.6) at the particular time,

the entity is deemed not to be, at the particular time, a person described in any of paragraphs (1)(d) to (d.6).

History: Subsec. 149(1.1) amended by 2001, c. 17, subsec. 145(6), applicable to taxation years and fiscal periods that begin after 1998 except that, where a corporation, commission or association so elects in writing and files the election with the Minister of National Revenue on or before December 31, 2001 (six months after the end of the month of Royal Assent), the reference to "at a particular time" in the subsec. shall be read as a reference to "at any time after November 1999". Subsec. 149(1.1) formerly read:

(1.1) Paragraphs (1)(d) to (d.6) do not apply to a corporation, commission or association during a period in which a person other than Her Majesty in right of Canada or a province or a municipality in Canada had a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently to, or to acquire, shares or capital of the corporation, commission or association.

Subsec. 149(1.1) added by 1998, c. 19, subsec. 178(4), applicable to taxation years and fiscal periods that begin after 1998.

Forms [subsec. 149(1.1)]: RC4107, Registered charities: education, advocacy and political activities (draft) [guide].

(1.11) Election [to remain taxable — 1999 transition] — Subsection (1) does not apply in respect of a person's taxable income for a particular taxation year that begins after 1998 where

(a) paragraph (1)(d) did not apply in respect of the person's taxable income for the person's last taxation year that began before 1999;

(b) paragraph (1)(d.2), (d.3) or (d.4) would, but for this subsection, have applied in respect of the person's taxable income for the person's first taxation year that began after 1998;

(c) there has been no change in the direct or indirect control of the person during the period that

(i) began at the beginning of the person's first taxation year that began after 1998, and

(ii) ends at the end of the particular year;

(d) the person elects in writing before 2002 that this subsection apply; and

(e) the person has not notified the Minister in writing before the particular year that the election has been revoked.

Proposed Amendment — Application of 149(1.11) on amalgamation

Letter from Dept. of Finance, December 6, 2004:

Dear [xxx]

I am writing in response to your letter of October 4, 2004 to Mr. Denis Normand of the Business Income Tax Division and further to subsequent discussions with Stephanie Smith of the Tax Legislation Division concerning the election in subsection 149(1.11) of the *Income Tax Act* (the "Act"). You have asked us to amend the Act such that a new corporate entity formed as a result of an amalgamation, particularly in the case of a vertical amalgamation, is deemed to be the same corporation as, and a continuation of, a predecessor parent corporation with respect to any election made by that predecessor parent corporation pursuant to subsection 149(1.11) of the Act.

Subsection 149(1.11) was added to the Act following an amendment to paragraph 149(1)(d) and the addition of paragraphs 149(1)(d.2) to (d.4). Those amendments caused some entities that were previously taxable to become exempt. The result was appropriate from a tax policy standpoint, however, it may not have been beneficial for a limited number of entities since it would trigger the application of subsection 149(10). As result, subsection 149(1.11) was added to allow an entity, that became exempt because of any of paragraphs 149(1)(d.2) to (d.4), to elect in writing to retain its taxable status. Two conditions apply for the entity to retain its taxable status: (i) the election had to be made before 2002 and (ii) there can be no change in the direct or indirect control of the entity.

You have brought to our attention the situation of [xxx]. [xxx] holds a [xxx] provincial insurers' licence and is licensed to conduct business in [xxx]. [xxx] was affected by the addition of paragraphs 149(1)(d.2) to (d.4). [xxx] wanted to remain a taxable entity in order to obtain insurance licences in other provinces and therefore made an election in accordance with subsection 149(1.11). We assume that there has been no change in the direct or indirect control of [xxx] since the election was made. [xxx] wholly owns [xxx] which holds an [xxx] provincial insurers' licence. [xxx] is a taxable entity.

[xxx] would like to amalgamate with [xxx] pursuant to subsection 87(1) of the Act, to improve the capitalization of [xxx] for regulatory purposes, to reduce administrative costs and to utilize losses carried forward in the corporate group. Although a windup would achieve the same objectives, and allow the election made by [xxx] under subsection 149(1.11) to remain intact, it is not feasible from a commercial standpoint because of the volume of contracts, licences, leases and other agreements that would have to be assigned.

In general, the Act treats an amalgamated corporation as a new corporation for tax purposes. There are some exceptions to this rule where, for specific purposes, the amalgamated corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation. Section 149 is not one of the exceptions.

[xxx] is of the view that the amalgamated company needs to remain a taxable entity. [xxx] is currently selling insurance in [xxx] and [xxx] and is looking to expand into other provinces. I understand that [xxx] believes that being a tax-exempt entity would likely impair the current operations, and also hamper future expansion. Tax-exempt status may be considered by provincial regulators to be an unfair advantage over existing insurers currently operating in those jurisdictions.

As I trust you can appreciate, an important concern in respect of the application of section 149 is the maintenance of competitive equity in the commercial marketplace. We have carefully considered your situation and have concluded that, by allowing amalgamated [xxx] and [xxx] to remain taxable, our concern for competitive equity does not arise. As such we prepared to recommend to the Minister of Finance that the Act be amended to provide that where one corporation (the "Parent") vertically amalgamates with a wholly-owned subsidiary under section 87 of the Act, any election made by the Parent under subsection 149(1.11) is deemed to have been made by the amalgamated corporation.

While we cannot offer any assurance that our recommendation in this matter will be accepted, we hope our statement of intent in this letter will be helpful in responding to your concern.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

c.c.: Denis Normand, Business Income Tax, Department of Finance

History: Subsec. 149(1.11) added by 2001, c. 17, subsec. 145(6), applicable to taxation years and fiscal periods that begin after 1998 except that an election referred to in the subsec., as amended, filed with the Minister of National Revenue on or before December 31, 2001 (six months after the end of the month of Royal Assent), is deemed to have been filed in accordance with the subsection.

(1.2) Income test [for municipal corporation] — For the purposes of paragraphs (1)(d.5) and (d.6), income of a corporation, commission or association from activities carried on outside the geographical boundaries of a municipality does not include income from activities carried on

(a) under an agreement in writing between

(i) the corporation, commission or association, and

(ii) a person who is Her Majesty in right of Canada or a province or a municipality or corporation to which any of paragraphs (1)(d) to (d.6) applies and that is controlled by Her Majesty in right of Canada or a province or by a municipality in Canada

within the geographical boundaries of,

(iii) where the person is Her Majesty in right of Canada or a corporation controlled by Her Majesty in right of Canada, Canada,

(iv) where the person is Her Majesty in right of a province or a corporation controlled by Her Majesty in right of a province, the province, and

(v) where the person is a municipality in Canada or a corporation controlled by a municipality in Canada, the municipality; or

Proposed Amendment — 149(1.2) before (b)

(1.2) Income test [for municipal corporation] — For the purposes of paragraphs (1)(d.5) and (d.6), income of a corporation, a commission or an association from activities carried on outside the geographical boundaries of a municipality or of a municipal or public body does not include income from activities carried on

(a) under an agreement in writing between

(i) the corporation, commission or association, and

(ii) a person who is Her Majesty in right of Canada or of a province, a municipality, a municipal or public body or a corporation to which any of paragraphs (1)(d) to (d.6) applies and that is controlled by Her Majesty in right of Canada or of a province, by a municipality in Canada or by a municipal or public body in Canada

within the geographical boundaries of,

(iii) if the person is Her Majesty in right of Canada or a corporation controlled by Her Majesty in right of Canada, Canada,

(iv) if the person is Her Majesty in right of a province or a corporation controlled by Her Majesty in right of a province, the province,

(v) if the person is a municipality in Canada or a corporation controlled by a municipality in Canada, the municipality, and

(vi) if the person is a municipal or public body performing a function of government in Canada or a corporation controlled by such a body, the

area described in subsection (11) in respect of the person; or

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 147(4), will amend the portion of subsec. 149(1.2) before para. (b) to read as above, applicable to taxation years that begin after May 8, 2000.

Notwithstanding subsec. 152(4) to (5), any assessment of a taxpayer's tax payable under the Act for any taxation year that began before February 27, 2004 shall be made that is necessary to give effect to the amendment.

Technical Notes: Subsection 149(1.2) excludes, for the purposes of paragraphs 149(1)(d.5) and (d.6), certain income from the determination of where an entity to which either of those paragraphs applies derives its income. As a consequence of the amendment to paragraph 149(1)(d.5), a written agreement in subsection 149(1.2) is expanded to include reference to a municipal or public body.

In addition, subparagraph 149(1.2)(a)(vi) is added to clarify that the geographical boundary of a municipal or public body performing a function of government in Canada is defined to be the area described in new subsection (11).

(b) in a province as

(i) a producer of electrical energy or natural gas, or

(ii) a distributor of electrical energy, heat, natural gas or water,

where the activities are regulated under the laws of the province.

Related Provisions: 149(1.3) — Determination of capital ownership; 149(11) — Geographical boundaries of body performing function of government; 256(6), (6.1) — Meaning of "controlled".

History: Subsec. 149(1.2) amended by 2001, c. 17, subsec. 145(7), applicable to taxation years and fiscal periods that begin after 1998. The subsec. formerly read:

(1.2) For the purposes of paragraphs (1)(d.5) and (d.6), income of a corporation, commission or association from activities carried on outside the geographical boundaries of a municipality does not include income from activities carried on under an agreement in writing between

(a) the corporation, commission or association, and

(b) a person who is Her Majesty in right of Canada or a province or a municipality or corporation to which any of paragraphs (1)(d) to (d.6) applies and that is controlled by Her Majesty in right of Canada or a province or by a municipality in Canada

within the geographical boundaries of,

(c) where the person is Her Majesty in right of Canada or a corporation controlled by Her Majesty in right of Canada, Canada,

(d) where the person is Her Majesty in right of a province or a corporation controlled by Her Majesty in right of a province, the province, and

(e) where the person is a municipality in Canada or a corporation controlled by a municipality in Canada, the municipality.

Subsec. 149(1.2) added by 1998, c. 19, subsec. 178(4), applicable to taxation years and fiscal periods that begin after 1998.

(1.3) Capital ownership [by municipality] — For the purposes of paragraph (1)(d.5) and subsection (1.2), 90% of the capital of a corporation that has issued share capital is owned by one or more municipalities only when the municipalities own shares of the capital stock of the corporation that give the municipalities 90% or more of the votes that could be cast under all circumstances at an annual meeting of shareholders of the corporation.

Proposed Amendment — 149(1.3)

(1.3) Votes or *de facto* control [by municipality or government] — Paragraphs (1)(d) to (d.6) do not apply in respect of a person's taxable income for a period in a taxation year if at any time during the period

(a) the person is a corporation shares of the capital stock of which are owned by one or more other persons that, in total, give them more than 10% of the votes that could be cast at a meeting of shareholders of the corporation, other than shares that are owned by one or more persons each of which is

(i) Her Majesty in right of Canada or of a province,

(ii) a municipality in Canada,

(iii) a municipal or public body performing a function of government in Canada, or

(iv) a corporation, a commission or an association, to which any of paragraphs (1)(d) to (d.6) apply; or

(b) the person is, or would be if the person were a corporation, controlled, directly or indirectly in any manner whatever, by a person, or by a group of persons that includes a person, who is not

(i) Her Majesty in right of Canada or of a province,

(ii) a municipality in Canada,

(iii) a municipal or public body performing a function of government in Canada, or

(iv) a corporation, a commission or an association, to which any of paragraphs (1)(d) to (d.6) apply.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 147(5), will amend subsec. 149(1.3) to read as above, applicable to taxation years that begin after May 8, 2000 except that for those taxation years that began before December 21, 2002, it is to be read as follows:

(1.3) For the purposes of paragraph (1)(d.5) and subsection (1.2), 90% of the capital of a corporation that has issued share capital is owned by one or more entities, each of which is a municipality or a municipal or public body, only if the entities own shares of the capital stock of the corporation that give the entities 90% or more of the votes that could be cast under all circumstances at an annual meeting of shareholders of the corporation.

Notwithstanding subsec. 152(4) to (5), any assessment of a taxpayer's tax payable under the Act for any taxation year that began before February 27, 2004 shall be made that is necessary to give effect to the amendment.

Technical Notes: Subsection 149(1.3) provides that, for the purposes of applying paragraph 149(1)(d.5) and subsection 149(1.2) to a corporation, 90% of the capital of the corporation is considered to be owned by one or more municipalities only if the municipalities are entitled to at least 90% of the votes associated with the shares of the corporation.

As a consequence of the amendment to paragraph 149(1)(d.5), subsection 149(1.3) is amended applicable to taxation years that begin after May 8, 2000, to include reference to municipal or public bodies performing a function of government in Canada.

In addition, subsection 149(1.3) is replaced, applicable to taxation years that begin after December 20, 2002, to provide that paragraphs 149(1)(d) to (d.6) do not apply to exempt a person's taxable income for a period in a taxation year in two cases.

First, under new paragraph 149(1.3)(a), a corporation is not exempt from tax on its taxable income for a period in a taxation year if at any time during the period the corporation has issued shares that are owned by one or more persons (other than certain tax-exempts) that, in total, give them more than 10% of the votes that could be cast at a meeting of shareholders. For this purpose, it is necessary to determine whether more than 10% of the votes could be cast at a meeting of the shareholders by a person or persons other than:

- Her Majesty in right of Canada or of a province,
- a municipality in Canada,

- a municipal or public body performing a function of government in Canada, or
- a commission, an association or a corporation, to which any of paragraphs 149(1)(d) to (d.6) apply.

Second, under new paragraph 149(1.3)(b), a person is not exempt because of any of paragraphs 149(1)(d) to (d.6) from tax on taxable income for a period in a taxation year if at any time in the period the person is, or would be if the person were a corporation, controlled, directly or indirectly in any manner whatever, by a person (or by a group of persons that includes a person) other than:

- Her Majesty in right of Canada or of a province,
- a municipality in Canada,
- a municipal or public body performing a function of government in Canada, or
- a commission, an association or a corporation, to which any of paragraphs 149(1)(d) to (d.6) apply.

For further details about the expression "controlled, directly or indirectly in any manner whatever", reference should be made to subsections 256(5.1) and (6). In general, the expression refers to a controller, who has any direct or indirect influence that, if exercised, would result in control in fact of the person.

Related Provisions: 256(5.1), (6) — Meaning of "controlled, directly or indirectly".

History: Subsec. 149(1.3) added by 1998, c. 19, subsec. 178(4), applicable to taxation years and fiscal periods that begin after 1998.

(2) Determination of income — For the purposes of paragraphs (1)(e), (i), (j) and (l), in computing the part, if any, of any income that was payable to or otherwise available for the personal benefit of any person or the total of any amounts that is not less than a percentage specified in any of those paragraphs of any income for a period, the amount of such income shall be deemed to be the amount thereof determined on the assumption that the amount of any taxable capital gain or allowable capital loss is nil.

History: Subsec. 149(2) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 88(2), applicable to 1992 *et seq.* Subsec. (2) formerly read:

> (2) Income not to include taxable capital gains — For the purposes of paragraphs (1)(e), (i), (j) and (l), in computing the part, if any, of any income that was payable to or otherwise available for the personal benefit of any person or the total of any amounts that is not less than a percentage specified in any of those paragraphs of any income for a period, the amount of that income shall be deemed to be the amount thereof otherwise determined less the amount of any taxable capital gains included therein.

Interpretation Bulletins: IT-409: Winding-up of a non-profit organization (archived); IT-496R: Non-profit organizations.

(3) Application of subsec. (1) — Subsection (1) does not apply in respect of the taxable income of a benevolent or fraternal society or order from carrying on a life insurance business or, for greater certainty, from the sale of property used by it in the year in, or held by it in the year in the course of, carrying on a life insurance business.

Related Provisions: 16(2) — Obligation issued at discount; 149(4) — Computation of taxable income; 212(14)(c)(i) — Certificate of exemption.

Selected Cases [subsec. 149(3)]: *Actra Fraternal Benefit Society v. R.*, [1997] 3 C.T.C. 61 (FCA); rev'g [1995] 2 C.T.C. 2671 (TCC) (Allocation of assets to a particular fund was rebuttable presumption only).

(4) Idem — For the purposes of subsection (3), the taxable income of a benevolent or fraternal benefit society or order from carrying on a life insurance business shall be computed on the assumption that it had no income or loss from any other sources.

(4.1) Income exempt under 149(1)(t) — Subject to subsection (4.2), subsection (1) applies to an insurer described in paragraph (1)(t) only in respect of the part of its taxable income for a taxation year determined by the formula

$$\frac{(A \times B \times C)}{D}$$

where

A is its taxable income for the year;

B is

> (a) ½, where less than 25% of the total of the gross premium income (net of reinsurance ceded) earned in the year by it and, where it is not a prescribed insurer for the purpose of paragraph (1)(t), by all other insurers that
>
> (i) are specified shareholders of the insurer,
>
> (ii) are related to the insurer, or
>
> (iii) where the insurer is a mutual corporation, are part of a group that controls, directly or indirectly in any manner whatever, or are controlled, directly or indirectly in any manner whatever by, the insurer,
>
> is in respect of insurance of property used in farming or fishing or residences of farmers or fishermen; and
>
> (b) 1 in any other case;

C is the part of the gross premium income (net of reinsurance ceded) earned by it in the year that, in the opinion of the Minister, on the advice of the Superintendent of Financial Institutions or of the superintendent of insurance of the province under the laws of which it is incorporated, is in respect of insurance of property used in farming or fishing or residences of farmers or fishermen; and

D is the gross premium income (net of reinsurance ceded) earned by it in the year.

Related Provisions: 149(4.2) — Application of subsection (1): computation of taxable income of insurer; 256(5.1), (6.2) — Controlled directly or indirectly.

History: Subsec. 149(4.1) amended by 1997, c. 25, subsec. 47(2), applicable to 1996 *et seq.* Subsec. (4.1) formerly read:

> (4.1) Idem — Subject to subsection (4.2), subsection (1) applies in respect of an insurer described in paragraph (1)(t) only in respect of that proportion of the insurer's taxable income for a taxation year that
>
> (a) the part of the gross premium income (net of reinsurance ceded) earned in the year by the insurer that, in the opinion of the Minister, on the advice of the Superintendent of Financial Institutions or of the superintendent of insurance of the province under the laws of which the insurer is incorporated, was in respect of insurance of farm property, property used in fishing or residences of farmers or fishermen
>
> is of
>
> (b) the gross premium income (net of reinsurance ceded) earned in the year by the insurer.

Subsec. 149(4.1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 122(2), applicable to 1989 *et seq.* Subsec. (4.1) formerly read:

> (4.1) Subject to subsection (4.2), subsection (1) shall apply in respect of an insurer described in paragraph (1)(t) only in respect of that proportion of the insurer's taxable income for a taxation year that
>
> (a) the insurer's gross premium income (net of reinsurance ceded) for the year that in the opinion of the Minister, on the advice of the Superintendent of Financial Institutions or of the superintendent of insurance of the province under the laws of which the insurer is incorporated, was in respect of the insurance of farm property, property used in fishing or residences of farmers or fishermen

is of

(b) its gross premium income (net of reinsurance ceded) for the year

and, in computing the taxable income of the insurer for the taxation year, the insurer shall be deemed to have claimed or deducted in each of the taxation years preceding the year the greater of such amount as it claimed or deducted or such amount as it may have been entitled to claim or deduct under paragraphs 20(1)(a), 20(7)(c) and 138(3)(a) and section 140 to the extent that that amount does not exceed its taxable income otherwise determined for the preceding taxation year.

(4.2) Idem — Subsection (4.1) does not apply to an insurer described in paragraph (1)(t) in respect of the taxable income of the insurer for a taxation year where more than 90% of the total of the gross premium income (net of reinsurance ceded) earned in the year by the insurer and, where the insurer is not a prescribed insurer, all other insurers that

(a) are specified shareholders of the insurer,

(b) are related to the insurer, or

(c) where the insurer is a mutual corporation, are part of a group that controls, directly or indirectly in any manner whatever, or are controlled, directly or indirectly in any manner whatever, by the insurer,

is in respect of insurance of property used in farming or fishing or residences of farmers or fishermen.

Related Provisions: 256(5.1), (6.2) — Controlled directly or indirectly.

History: The closing words of subsec. 149(4.2) amended by 1997, c. 25, subsec. 47(3), applicable to 1996 *et seq.* The closing words formerly read:

is in respect of insurance of farm property, property used in fishing or residences of farmers or fishermen.

Subsec. 149(4.2) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 122(2), applicable to 1989 *et seq.* Subsec. (4.2) formerly read:

(4.2) Subsection (4.1) shall not apply in respect of an insurer described in paragraph (1)(t) in respect of the taxable income of the insurer for a taxation year where more than 90% of the gross premium income (net of reinsurance ceded) of the insurer and all other insurers that were specified shareholders of the insurer or were related to the insurer or, where the insurer is a mutual corporation, all other insurers that were part of a group that controlled or were controlled by the insurer for the year was in respect of the insurance of farm property, property used in fishing or residences of farmers or fishermen.

(4.3) Computation of taxable income of insurer — For the purposes of this Part, in computing the taxable income of an insurer for a particular taxation year, the insurer shall be deemed to have deducted under paragraphs 20(1)(a), 20(7)(c) and 138(3)(a) and section 140 in each taxation year preceding the particular year and in respect of which paragraph (1)(t) applied to the insurer, the greater of

(a) the amount it claimed or deducted under those provisions for that preceding year, and

(b) the greatest amount that could have been claimed or deducted under those provisions to the extent that the total thereof does not exceed the amount that would be its taxable income for that preceding year if no amount had been claimed or deducted under those provisions.

History: Subsec. 149(4.3) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 122(2), applicable to 1989 *et seq.*, except that in its application to the 1989 and 1990 taxation years the subsec. shall be read as follows:

(4.3) In computing the taxable income of an insurer described in paragraph (1)(t) for a taxation year in respect of which subsection (1) applies to the insurer, the insurer shall be deemed to have claimed or deducted in each of its taxation years preceding the year the greater of such amount as it claimed or deducted and such amount as it was entitled to claim or deduct under paragraphs 20(1)(a), 20(7)(c) and 138(3)(a) and section 140 to the extent that that amount does not exceed its taxable income otherwise determined for the preceding taxation year.

(5) Exception re investment income of certain clubs — Notwithstanding subsections (1) and (2), where a club, society or association was for any period, a club, society or association described in paragraph (1)(l) the main purpose of which was to provide dining, recreational or sporting facilities for its members (in this subsection referred to as the "club"), an *inter vivos* trust shall be deemed to have been created on the later of the commencement of the period and the end of 1971 and to have continued in existence throughout the period, and, throughout that period, the following rules apply:

(a) the property of the club shall be deemed to be the property of the trust;

(b) where the club is a corporation, the corporation shall be deemed to be the trustee having control of the trust property;

(c) where the club is not a corporation, the officers of the club shall be deemed to be the trustees having control of the trust property;

(d) tax under this Part is payable by the trust on its taxable income for each taxation year;

(e) the income and taxable income of the trust for each taxation year shall be computed on the assumption that it had no incomes or losses other than

(i) incomes and losses from property, and

(ii) taxable capital gains and allowable capital losses from dispositions of property, other than property used exclusively for and directly in the course of providing the dining, recreational or sporting facilities provided by it for its members;

(f) in computing the taxable income of the trust for each taxation year

(i) there may be deducted, in addition to any other deductions permitted by this Part, $2,000, and

(ii) no deduction shall be made under section 112 or 113; and

(g) the provisions of subdivision k of Division B (except subsections 104(1) and (2)) do not apply in respect of the trust.

Related Provisions: 16(2) — Obligation issued at discount; 212(14)(c)(i) — Certificate of exemption.

Selected Cases [subsec. 149(5)]: *Elm Ridge Country Club Inc. v. MNR*, [1999] 3 C.T.C. 163 (FCA); leave to appeal to SCC refused (1999), 246 N.R. 200 (note) (Interest income is income from property of non-profit organization); *Point Grey Golf & Country Club v. R.*, [2000] 2 C.T.C. 312 (FCA) (Interest income was income from property).

Interpretation Bulletins: IT-83R3: Non-profit organizations — Taxation of income from property; IT-406R2: Tax payable by an *inter vivos* trust; IT-409: Winding-up of a non-profit organization (archived); IT-496R: Non-profit organizations.

Advance Tax Rulings: ATR-29: Amalgamation of social clubs.

(6) Apportionment rule — Where it is necessary for the purpose of this section to ascertain the taxable income of a taxpayer for a period that is a part of a taxation year, the taxable income for the period shall be deemed to be the proportion of the taxable income for the taxation year that the number of days in the period is of the number of days in the taxation year.

Related Provisions: 124(3) — Crown agents; 149(10) — Corporation becoming or ceasing to be exempt; 212(14)(c)(i) — Certificate of exemption; 249.1(1)(b)(i) — Exempt individuals not subject to forced calendar year-end.

Interpretation Bulletins: IT-347R2: Crown corporations (archived); IT-409: Winding-up of a non-profit organization (archived).

(7) [Prescribed form for R&D corporation —] Time for filing — A corporation the taxable income of which for a taxation year is exempt from tax under this Part because of paragraph (1)(j) shall file with the Minister a prescribed form containing prescribed information on or before its filing-due date for the year.

Related Provisions: 149(7.1) — Penalty for late filing.

History: Subsec. 149(7) added by 1996, c. 21, subsec. 37(4), applicable to taxation years that end after February 27, 1995, except that a form referred to in subsec. 149(7) that is filed with the Minister of National Revenue on or before September 18, 1996 is deemed to have been filed on a timely basis.

Forms: T661: Claim for SR&ED in Canada; T4088: Claiming scientific research and experimental development expenditures — guide to form T661.

(7.1) Penalty for failure to file on time — Where a corporation fails to file the prescribed form as required by subsection (7) for a taxation year, it is liable to a penalty equal to the amount determined by the formula

$$A \times B$$

where

A is the greater of

(a) $500, and

(b) 2% of its taxable income for the year; and

B is the lesser of

(a) 12, and

(b) the number of months in whole or in part that are in the period that begins on the day on or before which the prescribed form is required to be filed and ends on the day it is filed.

History: Subsec. 149(7.1) added by 1996, c 21, subsec. 37(4), applicable to taxation years that end after February 27, 1995.

(8) Interpretation of para. (1)(j) — For the purpose of paragraph (1)(j),

(a) a corporation is controlled by another corporation if more than 50% of its issued share capital (having full voting rights under all circumstances) belongs to

(i) the other corporation, or

(ii) the other corporation and persons with whom the other corporation does not deal at arm's length,

but a corporation shall be deemed not to have acquired control of a corporation if it has not purchased (or otherwise acquired for a consideration) any of the shares in the capital stock of that corporation; and

(b) there shall be included in computing a corporation's income and in determining its gross revenue the amount of all gifts received by the corporation and all amounts contributed to the corporation to be used for scientific research and experimental development.

Related Provisions: 212(14)(c)(i) — Certificate of exemption; 256(6), (6.1) — Extended meaning of "control".

History: Para. 149(8)(b) amended by 1996, c 21, subsec. 37(5), applicable to taxation years that begin after June 1995. Para. (b) formerly read:

(b) there shall be included in computing a corporation's income all gifts received by the corporation and all amounts contributed to the corporation to be used for scientific research and experimental development.

(9) Rules for determining gross revenue — In determining the gross revenue of a corporation for the purpose of determining whether it is described by paragraph (1)(j) for a taxation year,

(a) there may be deducted an amount not exceeding its gross revenue for the year computed without including or deducting any amount under this subsection; and

(b) there shall be included any amount that has been deducted under this subsection for the preceding taxation year.

Related Provisions: 212(14)(c)(i) — Certificate of exemption; 248(1) — Definition of "gross revenue".

History: Subsec. 149(9) amended by 1996, c 21, subsec. 37(6), applicable to taxation years that begin after June 1995. Subsec. (9) formerly read:

(9) **Rules** — In computing the income of a corporation for the purpose of determining whether it is described by paragraph (1)(j) for a taxation year,

(a) there may be deducted an amount not exceeding its income for the year computed without including or deducting any amount under this subsection; and

(b) there shall be included any amount that has been deducted under this subsection for the immediately preceding taxation year.

(10) Exempt corporations [becoming or ceasing to be exempt] — Where, at any time (in this subsection referred to as "that time"), a corporation becomes or ceases to be exempt from tax under this Part on its taxable income otherwise than by reason of paragraph (1)(t), the following rules apply:

(a) the taxation year of the corporation that would otherwise have included that time is deemed to have ended immediately before that time, a new taxation year of the corporation is deemed to have begun at that time and, for the purpose of determining the taxpayer's fiscal period after that time, the taxpayer is deemed not to have established a fiscal period before that time;

(a.1) for the purpose of computing the corporation's income for its first taxation year ending after that time, the corporation shall be deemed to have deducted under sections 20, 138 and 140 in computing its income for its taxation year ending immediately before that time, the greatest amount that could have been claimed or deducted for that year as a reserve under those sections;

(b) the corporation is deemed to have disposed, at the time (in this subsection referred to as the "disposition time") that is immediately before the time that is immediately before that time, of each property that was owned by it immediately before that time for an amount equal to its fair market value at that time and to have reacquired the property at that time at a cost equal to that fair market value;

(c) for the purposes of applying sections 37, 65 to 66.4, 66.7, 111 and 126, subsections 127(5) to (26) and section 127.3 to the corporation, the corporation is deemed to be a new corporation the first taxation year of which began at that time; and

Proposed Amendment — 149(10)(c)

(c) for the purposes of applying sections 3.7, 65 to 66.4, 66.7, 94.1 to 94.4, 111 and 126, subsections 127(5) to (35) and section 127.3 to the corporation, the corporation is deemed to be a new corporation the first taxation year of which began at that time; and

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), s. 33, will amend para. 149(10)(c) to read as above, applicable to

each corporation that, after 2002, becomes or ceases to be exempt from tax on its taxable income under Part I of the Act.

Technical Notes: Subsection 149(10) applies where, at a particular time, a corporation becomes or ceases to be exempt from tax under Part I on its taxable income (otherwise than by reason of the exemption for certain insurers in paragraph 149(1)(t)). A new taxation year is considered to start at the particular time and the corporation's properties are deemed to have been disposed of at fair market value and reacquired at the particular time for the same amount.

Paragraph 149(10)(c) provides that the corporation is, for specified purposes in the Act, treated as a new corporation. One of the specified purposes is with regard to the investment tax credit regime set out in subsections 127(5) to (26).

Paragraph 149(10)(c) is amended so that it is also relevant in applying

- additional rules for the investment tax credit that are set out in subsections 127(27) to (35) (this amendment is consequential on the earlier enactment of those subsections), and
- sections 94.1 to 94.4. (For example, a corporation's "deferral amount" (as defined in subsection 94.2(1)) in respect of any interest it holds in a foreign investment entity is determined without reference to taxation years that occurred before the corporation's change of status. This will typically result in a nil deferral amount for the corporation.)

(d) where, immediately before the disposition time, the corporation's cumulative eligible capital in respect of a business exceeds the total of

(i) ¾ of the fair market value of the eligible capital property in respect of the business, and

(ii) the amount otherwise deducted under paragraph 20(1)(b) in computing the corporation's income from the business for the taxation year that ended immediately before that time,

the excess shall be deducted under paragraph 20(1)(b) in computing the corporation's income from the business for the taxation year that ended immediately before that time.

Related Provisions: 16(2), (3) — Obligation issued at discount; 54"superficial loss"(c), (g) — Superficial loss rule does not apply; 87(2.1)(b) — Losses of predecessor corporation; 89(1.2) — Capital dividend account of corporation ceasing to be tax-exempt; 100 — Disposition of an interest in a partnership; 124(3) — Crown agents; 149(6) — Apportionment rule; 212(14) — Certificate of exemption; 216(1) — Alternative re rents and timber royalties; 219(2) — Exempt corporations; 227(14) — Application of Parts III, IV and VI to certain public corporations.

History: Paras. 149(10)(a), (b) to (d) amended by 1998, c. 19, subsecs. 178(5), (6), applicable to a corporation that becomes or ceases to be exempt from tax on its taxable income under Part I of the Act after April 26, 1995. Those paras. formerly read:

(a) the taxation year of the corporation that would otherwise have included that time shall be deemed to have ended immediately before that time and a new taxation year of the corporation shall be deemed to have commenced at that time;

. . . . .

(b) the corporation shall be deemed to have disposed, immediately before the time that is immediately before that time, of each property (other than, where, at that time, the corporation ceases to be exempt from tax under this Part on its taxable income, a Canadian resource property or a foreign resource property) that was owned by it immediately before that time for an amount equal to its fair market value at that time and to have reacquired the property at that time at a cost equal to that fair market value;

(c) where paragraph (b) applies in respect of depreciable property of the corporation and the capital cost thereof to the corporation immediately before the disposition exceeds the fair market value thereof at that time, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a),

(i) the capital cost of the property to the corporation at that time shall be deemed to be the amount that was its capital cost thereof immediately before the disposition, and

(ii) the excess shall be deemed to have been allowed to the corporation in respect of the property under regulations made under paragraph 20(1)(a) in computing its income for taxation years ending before that time; and

(d) notwithstanding section 111, no amount is deductible in computing the corporation's taxable income for a taxation year ending after that time in respect of a non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss for a taxation year ending before that time to the extent that the loss could have been applied to reduce the corporation's taxable income for taxation years ending before that time.

Para. 149(10)(a.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 88(3), applicable to 1992 *et seq.*

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987; IT-409: Winding-up of a non-profit organization (archived).

Charities Policies: CPS-017: Effective date of registration.

(11) [Repealed]

History: Subsec. 149(11) repealed by 1998, c. 19, subsec. 178(7), in force on June 18, 1998. Subsec. 149(11) formerly read:

(11) **Exception** — Subsection (10) does not apply to a corporation that ceases to be exempt from tax under this Part after November 12, 1981 by reason of control of the corporation being acquired by a person or persons pursuant to an agreement in writing entered into on or before that date.

Proposed Addition — 149(11)

(11) Geographical boundaries — body performing government functions — For the purpose of this section, the geographical boundaries of a municipal or public body performing a function of government are

(a) the geographical boundaries that encompass the area in respect of which an Act of Parliament or an agreement given effect by an Act of Parliament recognizes or grants to the body a power to impose taxes; or

(b) if paragraph (a) does not apply, the geographical boundaries within which that body has been authorized by the laws of Canada or of a province to exercise that function.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 147(6), will add subsec. 149(11), applicable to taxation years that begin after May 8, 2000.

Notwithstanding subsec. 152(4) to (5), any assessment of a taxpayer's tax payable under the Act for any taxation year that began before February 27, 2004 shall be made that is necessary to give effect to the amendment.

Technical Notes: Subsection 149(11) is added to define, for the purposes of section 149, the geographical boundaries of a municipal or public body performing a function of government in Canada. Those boundaries are defined as encompassing the area in respect of which an Act of Parliament or an agreement given effect by an Act of Parliament recognizes or grants to the body a power to impose taxes; or if there has been no such recognition or grant, the area within which the body has been authorized by the laws of Canada or of a province to exercise that function.

For example, if a particular self-governing First Nation meets the definition of "a public body performing a function of government in Canada," it is intended that the relevant geographic boundary would delineate the area where the self-government agreement, or the statute enacting self-government powers, provides the First Nation authority to impose direct taxes. As a second example, if a particular Indian Band meets the definition of "a public body performing a function of government in Canada," it is intended that the geographic boundary of the Indian Band be the band's reserves as defined in the *Indian Act*. Similarly, if a particular school board meets the definition of "a municipal or public body performing a function of government in Canada" it is intended that the geographic boundary of the school board be the area of jurisdiction of the board as defined by provincial legislation or regulation.

(12) Information returns — Every person who, because of paragraph (1)(e) or (l), is exempt from tax under this Part on all or part of the person's taxable income shall, within 6 months after the end of each fiscal period of the person and without notice or demand therefor, file with the Minister an information return for the period in prescribed form and containing prescribed information, if

(a) the total of all amounts each of which is a taxable dividend or an amount received or receivable by the person as, on account of, in lieu of or in satisfaction of, interest, rentals or royalties in the period exceeds $10,000;

(b) at the end of the person's preceding fiscal period the total assets of the person (determined in accordance with generally accepted accounting principles) exceeded $200,000; or

(c) an information return was required to be filed under this subsection by the person for a preceding fiscal period.

Related Provisions: 149.1(14) — Charity information return; 162(7)(a) — Penalty for failure to file; 233 — Demand for information return.

History: Subsec. 149(12) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 88(4), applicable to fiscal periods ending after 1992.

Interpretation Bulletins: IT-496R: Non-profit organizations.

Forms: T1044: Non-profit organization (NPO) information return; T4117: Income tax guide to the Non-Profit Organization (NPO) information return [guide].

Registered Charities Newsletters: 19 (what is the difference between a registered charity and a non-profit organization?).

Selected Cases [s. 149]: *Lutheran Life Insurance Society of Canada v. Canada*, [1991] 2 C.T.C. 284 (FCTD) (Non-profit fraternal benefit society cannot deduct income from non-insurance fraternal sources from investment income; fraternal dividends deductible from life insurance income when paid back for non-insurance fraternal purposes).

Definitions [s. 149]: "allowable capital loss" — 38(b), 248(1); "amateur athlete trust" — 143.1(1)(a), 248(1); "amount" — 248(1); "beneficially interested" — 248(25); "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "Canadian resource property" — 66(15), 248(1); "cemetery care trust" — 148.1(1), 248(1); "control" — 149(8); "controlled" — 256(5.1), (6), (6.1); "controlled directly or indirectly" — 256(5.1), (6.2); "corporation" — 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan" — 147(1), 248(1); "depreciable property" — 13(21), 248(1); "dividend", "employed" — 248(1); "eligible funeral arrangement" — 148.1(1), 248(1); "employees profit sharing plan" — 144(1), 248(1); "employment" — 248(1); "farm loss" — 111(8), 248(1); "farming" — 248(1); "filing-due date" — 150(1), 248(1); "fishing" — 248(1); "foreign resource property" — 66(15), 248(1); "geographical boundaries" — 149(11); "gross revenue" — 149(8)(b), 149(9), 248(1); "Her Majesty" — *Interpretation Act* 35(1); "immovables" — Quebec *Civil Code* art. 900–907; "insurer" — 248(1); "*inter vivos* trust" — 108(1), 248(1); "interest" in real property — 248(4); "life insurance business" — 248(1); "limited partnership loss" — 96(2.1)(e), 248(1); "Minister" — 248(1); "net capital loss", "non-capital loss" — 111(8), 248(1); "office" — 248(1); "outside the geographical boundaries" — 149(1.2); "owned" — 149(1.3); "Parliament" — *Interpretation Act* 35(1); "person", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "qualifying environmental trust" — 248(1); "qualifying share" — 192(6), 248(1) *[not intended to apply to s. 149]*; "real right in immovables" — 248(4.1); "registered pension plan" — 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "registered supplementary unemployment benefit plan" — 145(1), 248(1); "regulation" — 248(1); "related" — 251(2); "resident in Canada" — 250; "restricted farm loss" — 31, 248(1); "retirement compensation arrangement", "scientific research and experimental development" — 248(1), Reg. 2900(1); "servant" — 248(1)"employment"; "share", "shareholder", "specified shareholder", "subsidiary wholly-owned corporation" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [s. 149]: IT-151R5: Scientific research and experimental development expenditures; IT-167R6: Registered pension plans — employee's contributions; IT-269R3: Part IV tax on dividends received by a private corporation or a subject corporation; IT-362R: Patronage dividends.

Charities

149.1 (1) Definitions — In this section,

Related Provisions: 172(6), 187.7 — Application of subsec. 149.1(1).

"capital gains pool", of a registered charity for a taxation year, means the amount by which

(a) the total of all amounts, each of which is the amount of a capital gain of the charity from the disposition of an enduring property after March 22, 2004 and before the end of the taxation year (other than a capital gain from a disposition of a bequest or an inheritance received by the charity in a taxation year that included any time before 1994) that is declared by the charity in an information return under subsection (14) for the taxation year during which the disposition occurred,

exceeds

(b) the total of all amounts, each of which is the amount, determined for a preceding taxation year of the charity that began after March 22, 2004, that is the lesser of the amount determined under paragraph (a) of the description of A.1 in the definition "disbursement quota" and the amount claimed by the charity under paragraph (b) of that description;

Related Provisions: 149.1(1)"disbursement quota"A.1(b)(ii) — Capital gains pool reduces disbursement quota.

History: The definition "capital gains pool" in subsec. 149.1(1) added by 2005, c. 19, subsec. 35(2), applicable to taxation years that begin after March 22, 2004.

"charitable foundation" means a corporation or trust that is constituted and operated exclusively for charitable purposes, no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof, and that is not a charitable organization;

Related Provisions: 149 — Exemptions; 149.1(6.1) — Charitable purposes; 149.1(12)(b) — Rules — income; 149.1(22) — Refusal by Minister to register foundation; 188.1(4), (5) — Penalty for conferring undue benefit on a person.

Interpretation Bulletins: IT-83R3: Non-profit organizations — Taxation of income from property.

Forms: RC4106: Registered charities operating outside Canada [guide]; RC4108: Registered charities and the Income Tax Act [guide]; T2050: Application to register a charity under the *Income Tax Act*; T4063: Registering a charity for income tax purposes [guide].

"charitable organization" means an organization, whether or not incorporated,

Proposed Amendment — 149.1(1)"charitable organization" opening words

"charitable organization", at any particular time, means an organization, whether or not incorporated,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 148(2), will amend the opening words of the definition "charitable organization" in subsec. 149.1(1) to read as above, applicable after 1999.

Technical Notes: See under 149.1(1)"charitable organization"(c), (d) below.

(a) all the resources of which are devoted to charitable activities carried on by the organization itself,

(b) no part of the income of which is payable to, or is otherwise available for, the personal benefit of any

proprietor, member, shareholder, trustee or settlor thereof,

(c) more than 50% of the directors, trustees, officers or like officials of which deal with each other and with each of the other directors, trustees, officers or officials at arm's length, and

(d) where it has been designated as a private foundation or public foundation pursuant to subsection (6.3) of this section or subsection 110(8.1) or (8.2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, or has applied after February 15, 1984 for registration under paragraph 110(8)(c) of that Act or under the definition "registered charity" in subsection 248(1), not more than 50% of the capital of which has been contributed or otherwise paid into the organization by one person or members of a group of persons who do not deal with each other at arm's length and, for the purpose of this paragraph, a reference to any person or to members of a group does not include a reference to Her Majesty in right of Canada or a province, a municipality, another registered charity that is not a private foundation, or any club, society or association described in paragraph 149(1)(l);

Proposed Amendment — 149.1(1)"charitable organization"(c), (d)

(c) more than 50% of the directors, trustees, officers or like officials of which deal at arm's length with each other and with

(i) each of the other directors, trustees, officers and like officials of the organization,

(ii) each person described by subparagraph (d)(i) or (ii), and

(iii) each member of a group of persons (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(l)) who do not deal with each other at arm's length, if the group would, if it were a person, be a person described by subparagraph (d)(i), and

(d) that is not, at the particular time, and would not at the particular time be, if the organization were a corporation, controlled directly or indirectly in any manner whatever

(i) by a person (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(l)),

(A) who immediately after the particular time, has contributed to the organization amounts that are, in total, greater than 50% of the capital of the organization immediately after the particular time, and

(B) who immediately after the person's last contribution at or before the particular time, had contributed to the organization amounts that were, in total, greater than 50% of the capital of the organization immediately after the making of that last contribution, or

(ii) by a person, or by a group of persons that do not deal at arm's length with each other, if the person or any member of the group does not deal at arm's length with a person described in subparagraph (i);

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 148(3), will amend paras. (c) and (d) of the definition "charitable organization" in subsec. 149.1(1) to read as above, applicable after 1999 except that, in respect of a charitable organization that was not designated before 2000 as a private foundation or a public foundation under subsec. 149.1(6.3) or under subsec. 110(8.1) or (8.2), as enacted by R.S.C. 1952, c. 148 [repealed; see Pre-RSC History to 110(8.1), (8.2) on *TaxPartner* or *taxnet.pro*], and has not applied after February 15, 1984 for registration under para. 110(8)(c) of that Act [repealed; see Pre-RSC History to 110(8)] or under the definition "registered charity" in subsec. 248(1), subparas. (c)(ii) and (iii) of the definition "charitable organization", as amended, are applicable after the earlier of the day, if any, on which the organization is designated after 1999 as a private foundation or a public foundation under subsec. 149.1(6.3) and December 31, 2004.

Technical Notes: The definition "charitable organization" provides that more than 50% of the directors, trustees, officers or similar officials of a charitable organization must deal with each other and with each of the other directors, trustees, officers or similar officials at arm's length.

For a charity that has applied for registration after February 15, 1984 and which has been designated as a private or public foundation, the definition "charitable organization" also requires that not more than 50% of the charity's capital be contributed by a person or group of persons not dealing with each other at arm's length. This definition is amended to replace the "contribution" test with a "control" test. As a result, a charity will not be disqualified from being treated as a charitable organization solely because a person, or a group of persons not dealing with each other at arm's length, has contributed more than 50% of the charity's capital. However, such a person or group is not permitted to control the charity in any way, nor may the person or the members of the group represent more than 50% of the directors, trustees, officers and similar officials of the charity.

Letter from Dept. of Finance, September 11, 2001:

Dear [xxx]

I am responding to your recent inquiry concerning the capital restriction in the definition of charitable organization of not more than 50% of the capital contributed to the organization by one person or a group of persons not dealing at arm's length.

This matter has been brought to our attention recently in the context that it could have unintentional implications prohibiting large one-time donations.

From a tax policy perspective, we agree that the income tax provisions should not have the effect of prohibiting or limiting charitable giving. Under the current definition of "charitable organization", the capital restriction of not more than 50% could unintentionally have that effect.

Consequently, and in light of the other restrictions in the income tax provisions including disbursements requirements, we are recommending to the Minister of Finance that the definition "charitable organization" in subsection 149.1(1) of the Act be amended to ensure that in certain circumstances large donations are not prohibited. In particular, we are recommending the replacement of the current contribution test with a post-donation test. This test will require that, at all times after the donation, any person (or group of persons not dealing at arm's length) contributing more than 50% of the capital of the organization must deal at arm's length with more than half of the directors, trustees and officers of the organization, and must not have any direct or indirect influence over the organization such that, if exercised, it would be reasonable to conclude that the person (or group) controls the organization or one or more activities of the organization.

We are recommending that such an amendment apply for the purpose of determining an organization's status after 1999. If the recommendation is acted upon, we anticipate that the amendment would be included in a future income tax technical bill.

Yours sincerely,

Len Farber
General Director, Tax Legislation Division

[See also the proposed amendment to 149.1(1)"public foundation" — ed.]

Related Provisions: 149 — Exemptions; 149.1(6), (6.2) — Whether resources devoted to charitable activities; 149.1(6.3) — Designation as public foundation, etc.; 149.1(6.4) — Registered national arts service organization deemed to be charitable organization; 149.1(12)(b) — Rules —

income; 149.1(22) — Refusal by Minister to register foundation; 188 — Revocation tax; 188.1(4), (5) — Penalty for conferring undue benefit on a person; 256(5.1), (6) — Meaning of "controlled, directly or indirectly".

Selected Cases [subsec. 149.1(1)"charitable organization"]: *Earth Fund/Fond pour la Terre v. MNR*, [2003] 2 C.T.C. 10 (FCA) (Mere intention to do something charitable not sufficient); *Canadian Magen David Adom for Israel v. MNR*, [2002] 4 C.T.C. 422 (FCA) (Inability to demonstrate that donations being used for charitable purposes sufficient to justify de-registration); *Vancouver Society of Immigrant & Visible Minority Women v. MNR*, [1999] 2 C.T.C. 1 (SCC); aff'g [1996] 2 C.T.C. 88 (FCA) (Valid charitable organization must be constituted exclusively for charitable purposes); *Everywoman's Health Centre Society (1988) v. Canada*, [1991] 2 C.T.C. 320 (FCA) (Free-standing abortion clinic is a charity within common law meaning); *National Model Railroad Association v. MNR*, [1989] 1 C.T.C. 300 (FCA) (Taxpayer not charitable organization when activities have a "public character"); *Toronto Volgograd Committee v. MNR*, [1988] 1 C.T.C. 365 (FCA) (Registration refused when activities political); *Positive Action Against Pornography v. MNR*, [1988] 1 C.T.C. 232 (FCA) (Registration refused when society not constituted for "advancement of education"); *Native Communications Society of B.C. v. MNR*, [1986] 2 C.T.C. 170 (FCA) (Objects of non-profit corporation for benefit of community held charitable).

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-83R3: Non-profit organizations — Taxation of income from property. See also at end of s. 149.1.

Forms: RC4106: Registered charities operating outside Canada [guide]; RC4108: Registered charities and the Income Tax Act [guide]; T2050: Application to register a charity under the *Income Tax Act*; T2095: Registered charities — application for re-designation; T4063: Registering a charity for income tax purposes [guide].

Registered Charities Newsletters: 11 (consultation on registering organizations that provide rental housing for low-income); 15 (facts and figures about charities and the CCRA today; registered charities as internal divisions of other charities; elimination of racial discrimination as a charitable purpose); 17 (new policy statement on promoting racial equality; contact information); 20 (facts and figures; working outside Canada; working with others).

Charities Policies: CPC-003: Umbrella organization (see also July 29, 2005 consultation on proposed guidelines for the registration of umbrella organizations); CPC-004: Housing to the aged; CPC-011: Promotion of employment; CPC-013: Relief of poverty — advancement of education; CPC-022: Administration of registered charities' group insurance; CPS-001: Applicants that are established to hold periodic fundraisers; CPS-002: Relief of the aged; CPS-003: Daycare facilities; CPS-004: Applicants with broad object clauses; CPS-005: Festivals and the promotion of tourism; CPS-006: Registered charities making improvements to property leased from others; CPS-008: Organizations established to assist other charities; CPS-009: Holding of property for charities; CPS-010: Registration of arts festivals; CPS-012: Benefits to aboriginal peoples of Canada; CPS-013: School councils; CPS-015: Registration of organizations directed at youth; CPS-016: Distinction between self-help and members' groups; CPS-019: What is a related business?; CPS-020: Applicants that are established to relieve poverty by providing rental housing for low-income tenants; CPS-021: Registering charities that promote racial equality; CPS-023: Applicants assisting ethnocultural communities.

"charitable purposes" includes the disbursement of funds to qualified donees;

Charities Policies: CPC-014: Provision of goods and services. See under 149.1(1)"charitable organization" for Policies on whether the objects of an organization entitle it to registration as a charity.

"charity" means a charitable organization or charitable foundation;

Related Provisions: 149(1)(f) — Exemptions for registered charity; 149(1)(l) — Non-profit organizations; 188 — Revocation tax; 248(1) — "registered charity".

Interpretation Bulletins: IT-496R: Non-profit organizations.

Forms: RC4108: Registered charities and the Income Tax Act [guide]; T2050: Application to register a charity under the ITA; T2095: Registered charities — application for re-designation; T4063: Registering a charity for income tax purposes [guide].

Registered Charities Newsletters: See under 248(1)"registered charity".

"disbursement quota", for a taxation year of a registered charity, means the amount determined by the formula

$$A + A.1 + B + B.1$$

where

A is 80% of the total of all amounts each of which is the eligible amount of a gift for which the charity issued a receipt described in subsection 110.1(2) or 118.1(2) in its immediately preceding taxation year, other than a gift that is

Proposed Amendment — 149.1(1)"disbursement quota"A opening words

A is 80% of the total of all amounts each of which is the eligible amount of a gift for which the foundation issued a receipt described in subsection 110.1(2) or 118.1(2) in its immediately preceding taxation year, other than

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 148(4), will amend the opening words of the description of A in the definition "disbursement quota" in subsec. 149.1(1) to read as above, applicable to gifts made after December 20, 2002.

Technical Notes: The "disbursement quota" for a taxation year of a charitable foundation or organization is defined in subsection 149.1(1) for the purpose of determining the amount that the charity is required to spend on charitable activities or gifts to other charities. One factor in calculating the disbursement quota is a specified proportion of donations for which tax receipts are issued.

The definition "disbursement quota" is amended consequential to the addition of new subsection 248(31), in respect of gifts made after December 20, 2002, to provide that the amount of a gift for which a tax receipt is issued refers to the "eligible amount" of the gift. For additional information, see the commentary to new subsection 248(31).

(a) an enduring property, or

(b) received from another registered charity,

A.1 is the amount, if any, by which

Proposed Amendment — 149.1(1)"disbursement quota"A.1 opening words

A.1 is 80% of the total of all amounts each of which is the eligible amount of a gift received in a preceding taxation year, to the extent that the eligible amount

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 148(5), will amend the opening words of the description of A.1 in the definition "disbursement quota" in subsec. 149.1(1) to read as above, applicable to gifts made after December 20, 2002.

Technical Notes: See under 149.1(1)"disbursement quota"A opening words above.

(a) the sum of

(i) 80% of the total of all amounts, each of which is the amount of an enduring property of the charity (other than an enduring property described in subparagraph (ii), an enduring property that was received by the charity as a specified gift, or a bequest or an inheritance received by the charity in a taxation year that included any time before 1994) to the extent that it is expended in the year, and

(ii) the total of all amounts, each of which is the fair market value, when transferred, of an enduring property (other than an enduring property that was received by the charity as a specified gift) transferred by the charity in the taxation year by way of gift to a qualified donee

exceeds

(b) the amount, if any, claimed by the charity, that may not exceed the lesser of [deemed to be nil before 2009 for most charitable organizations; see History below — ed.]

(i) 3.5% of the amount determined for D, and

(ii) the capital gains pool of the charity for the taxation year,

B is

(a) in the case of a private foundation, the total of all amounts each of which is an amount received by it in its immediately preceding taxation year from a registered charity, other than an amount that is a specified gift or an enduring property, or

(b) in the case of a charitable organization or a public foundation, 80% of the total of all amounts each of which is an amount received by it in its immediately preceding taxation year from a registered charity, other than an amount that is a specified gift or an enduring property, and

B.1 is the amount determined by the formula

$$C \times 0.035 [D - (E + F)]/365$$

where

C is the number of days in the taxation year,

D is

(a) the prescribed amount for the year, in respect of all or a portion of a property (other than a prescribed property) owned by the charity at any time in the 24 months immediately preceding the taxation year that was not used directly in charitable activities or administration, if that amount is greater than $25,000, and

(b) in any other case, nil,

E is the total of the amount determined for subparagraph (a)(ii) of the description of A.1, and 5/4 of the total of the amounts determined for A and subparagraph (a)(i) of the description of A.1, for the year in respect of the charity, and

F is the amount equal to

(a) in the case of a private foundation, the amount determined for B for the year in respect of the charity in accordance with paragraph (a) of the description of B, or

(b) in the case of a charitable organization or a public foundation, 5/4 of the amount determined for B for the year in respect of the charity in accordance with paragraph (b) of the description of B;

Related Provisions: 149.1(1.2) — Authority of Minister — calculation of prescribed amount; 149.1(2)(b) — Charitable organization must expend DQ each year; 149.1(3)(b) — Public foundation must expend DQ each year; 149.1(4)(b) — Private foundation must expend DQ each year; 149.1(4.1) — Anti-avoidance rule re DQ; 149.1(5) — Administrative reduction in DQ; 149.1(8) — Accumulated property deemed expended on charitable activities; 149.1(12) — Rules; 149.1(21)(c) — Disbursement excess of registered charity; 248(5) — Substituted property; 248(30)–(33) — Determination of eligible amount of gift; 257 — Formula amounts cannot calculate to less than zero.

History: The definition "disbursement quota" in subsec. 149.1(1) amended by 2005, c. 19, subsec. 35(1), applicable to taxation years that begin after March 22, 2004, except that, in applying the amendment to a taxation year that begins before 2009 of a charitable organization registered by the Minister of National Revenue before March 23, 2004, the amount claimed by the charitable organization under para. (b) of the description of A.1 is deemed to be nil. The definition formerly read:

"disbursement quota" for a taxation year of a charitable foundation means the amount determined by the formula

$$A + A.1 + B + \frac{C \times 0.045 [D - (E + F)]}{365} + G$$

where

A is 80% of the total of all amounts each of which is the amount of a gift for which the foundation issued a receipt described in subsection 110.1(2) or 118.1(2) in its immediately preceding taxation year, other than

(a) a gift of capital received by way of bequest or inheritance,

(b) a gift received subject to a trust or direction to the effect that the property given, or property substituted therefor, is to be held by the foundation for a period of not less than 10 years, or

(c) a gift received from a registered charity,

A.1 is 80% of the total of all amounts each of which is the amount of a gift received in a preceding taxation year, to the extent that the amount of the gift

(a) is expended in the year, and

(b) was excluded from the disbursement quota of the foundation

(i) because of paragraph (a) of the description of A for a taxation year that begins after 1993, or

(ii) because of paragraph (b) of the description of A,

B is

(a) in the case of a private foundation, the total of all amounts each of which is an amount received by it in its immediately preceding taxation year from a registered charity, other than an amount that is a specified gift, or

(b) in the case of a public foundation, 80% of the total of all amounts each of which is an amount received by it in its immediately preceding taxation year from a registered charity, other than an amount that is a specified gift,

C is the number of days in the taxation year,

D is the prescribed amount for the year in respect of property (other than a prescribed property) or a portion thereof owned by the foundation at any time in the immediately preceding 24 months that was not used directly in charitable activities or administration,

E is 5/4 of the total of the amounts determined for A and A.1 for the year in respect of the foundation,

F is the amount equal to

(a) in the case of a private foundation, the amount determined as the value of B for the year in accordance with paragraph (a) of the description of B, or

(b) in the case of a public foundation, 5/4 of the amount determined as the value of B for the year in accordance with paragraph (b) of the description of B, and

G is, for each of the first 10 taxation years of the foundation commencing after 1983, a portion of the amount, if any, by which

(a) 90% of the amount, if any, by which the amount deducted by the foundation, for its last taxation year that commenced before 1984, pursuant to paragraph 149.1(18)(a) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read for that year, exceeds the total of the amounts determined in respect of the foundation under clauses 149.1(1)(e)(iv)(B) to (D) of that Act for its first taxation year commencing after 1983

exceeds

(b) the total of all amounts each of which is an amount that, for a preceding taxation year, has been determined as the value of G or included under subparagraph 149.1(1)(e)(v) of the above-mentioned Act in determining the disbursement quota of the foundation,

that is not less than the amount obtained when such excess is divided by the difference between 10 and the number of preced-

ing taxation years of the foundation that commenced after 1983 and before the year.

The formula in the definition "disbursement quota" in subsec. 149.1(1) amended by 1998, c. 19, subsec. 179(1), applicable to taxation years that end after November 1991 except that, for such taxation years that began before 1993, the formula shall be read without reference to "A.1". The formula formerly read:

$$0.8A + A.1 + B + \frac{C \times 0.045\ [D - (E + F)]}{365} + G$$

The portion of the description of A in the definition "disbursement quota" in subsec. 149.1(1) before para. (a) amended by the said c. 19, subsec. 179(2), applicable to taxation years that end after November 1991. The portion formerly read:

A is the total of all amounts each of which is the amount of a gift for which the foundation issued a receipt described in subsection 110.1(2) or 118.1(2) in its immediately preceding taxation year, other than

The element A.1 added to the formula, its description added to the definition of "disbursement quota" in subsec. 149.1(1) and the description of E amended, by 1994, c. 21, subsecs. 74(1) to (3), applicable to taxation years that begin after 1992. The description of E formerly read:

E is the amount equal to ¾ of the amount determined as the value of A for the year,

That portion of the description of A in "disbursement quota" in subsec. 149.1(1) preceding para. (a) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 123(1), to substitute "subsection 110.1(2) or 118.1(2)" for "paragraph 110.1(1)(a) or 118.1(1)(a)", applicable to 1988 *et seq.* except that in its application to the 1988 taxation year, that reference shall be read as "subsection 110.2 or 118.1(2) of this Act or paragraph 110(1)(a) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it applied to taxation years ending before 1988".

Regulations: 3701 (prescribed amount).

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-244R3: Gifts by individuals of life insurance policies as charitable donations. See also at end of s. 149.1.

Forms: RC4108: Registered charities and the Income Tax Act [guide]; T3010A: Registered charity information return; T4033A: Completing the registered charity information return [guide].

Registered Charities Newsletters: 4 (issuing receipts for gifts of art); 9 (once a charity has met its DQ); 13 (revised registered charity information return T3010); 18 (how does a charity calculate its DQ if it has received a gift in kind?); 19 (proposed disbursement quota changes); 20 (DQ listed in Notice of Confirmation; working outside Canada — DQ).

Charities Policies: CPC-005: Accumulation of property; CPC-021: Disbursement quota; CPS-009: Holding of property for charities.

"enduring property" means property of a registered charity that is

(a) a gift received by the charity by way of bequest or inheritance, including a gift deemed by subsection 118.1(5.2) or (5.3),

(b) if the registered charity is a charitable organization, a gift from another registered charity (other than a gift described by paragraph (d) or received from another charity in respect of which more than 50% of the members of the board of directors or trustees do not deal at arm's length with each member of the board of directors or trustees of the charitable organization) that is subject to a trust or direction to the effect that the property given, or property substituted for the gift,

(i) is to be held by the charitable organization for a period of not more than five years from the date that the gift was received by the charitable organization, and

(ii) is to be expended in its entirety over the period referred to in the trust or direction

(A) to acquire a tangible capital property of the charitable organization to be used directly in charitable activities or administration,

(B) in the course of a program of charitable activities of the charitable organization that could not reasonably be completed before the end of the first taxation year of the charitable organization ending after the taxation year in which the gift was received, or

(C) any combination of the uses described in clauses (A) and (B),

(c) a gift received by the registered charity (referred to in this definition as the "original recipient charity"), other than a gift received from another registered charity, that is subject to a trust or direction to the effect that the property given, or property substituted for the gift, is to be held by the original recipient charity or by another registered charity (referred to in this definition as a "transferee") for a period of not less than 10 years from the date that the gift was received by the original recipient charity, except that the trust or direction may allow the original recipient charity or the transferee to expend the property before the end of that period to the extent of the amount determined for a taxation year (for the charity or the transferee, as the case may be) by B.1 in the formula in the definition "disbursement quota", or

(d) a gift received by the registered charity as a transferee from an original recipient charity or another transferee of a property that was, before that gift was so received, an enduring property of the original recipient charity or of the other transferee because of paragraph (a) or (b) or this paragraph, or property substituted for the gift, if, in the case of a property that was an enduring property of an original recipient charity because of paragraph (b), the gift is subject to the same terms and conditions under the trust or direction as applied to the gift to the original recipient charity;

Proposed Amendment — 149.1(1)"enduring property"(d)

(d) a gift received by the registered charity as a transferee from an original recipient charity or another transferee of a property that was, before that gift was so received, an enduring property of the original recipient charity or of the other transferee because of paragraph (a) or (c) or this paragraph, or property substituted for the gift, if, in the case of a property that was an enduring property of an original recipient charity because of paragraph (c), the gift is subject to the same terms and conditions under the trust or direction as applied to the original recipient charity;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 148(6), will amend para. (d) of the definition "enduring property" in subsec. 149.1(1) to read as above, applicable to taxation years that begin after March 22, 2004.

Technical Notes: The English version of the definition "enduring property", which applies for the purpose of the definition "disbursement quota" to taxation years that begin after March 22, 2004, is amended to correct a cross-reference in its paragraph (d).

Related Provisions: 149.1(1)"capital gains pool" — Gain on enduring property; 149.1(1)"disbursement quota"A.1(a) — Enduring property included in calculation for disbursement quota.

History: The definition "enduring property" in subsec. 149.1(1) added by 2005, c. 19, subsec. 35(2), applicable to taxation years that begin after March 22, 2004.

"non-qualified investment" of a private foundation means

(a) a debt (other than a pledge or undertaking to make a gift) owing to the foundation by

(i) a person (other than an excluded corporation)

(A) who is a member, shareholder, trustee, settlor, officer, official or director of the foundation,

(B) who has, or is a member of a group of persons who do not deal with each other at arm's length who have, contributed more than 50% of the capital of the foundation, or

(C) who does not deal at arm's length with any person described in clause (A) or (B), or

(ii) a corporation (other than an excluded corporation) controlled by the foundation, by any person or group of persons referred to in subparagraph (i), by the foundation and any other private foundation with which it does not deal at arm's length or by any combination thereof,

(b) a share of a class of the capital stock of a corporation (other than an excluded corporation) referred to in paragraph (a) held by the foundation (other than a share listed on a prescribed stock exchange or a share that would be a qualifying share within the meaning assigned by subsection 192(6) if that subsection were read without reference to the expression "issued after May 22, 1985 and before 1987"), and

(c) a right held by the foundation to acquire a share referred to in paragraph (b),

and, for the purpose of this definition, an "excluded corporation" is

(d) a limited-dividend housing company to which paragraph 149(1)(n) applies,

(e) a corporation all of the property of which is used by a registered charity in its administration or in carrying on its charitable activities, or

(f) a corporation all of the issued shares of which are held by the foundation;

Related Provisions: 149.1(21)(c) — Disbursement excess of registered charity; 189 — Tax regarding non-qualified investment; 256(6), (6.1) — Meaning of "controlled".

History: Para. (b) of "non-qualified investment" in subsec. 149.1(1) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 123(2), applicable with respect to shares issued after May 22, 1985, other than shares issued before 1986 to which subsec. 192(6) of the former Act, as it read on May 22, 1985, is applicable. Para. (b) formerly read:

(b) a share of a class of the capital stock of a corporation (other than an excluded corporation) referred to in paragraph (a) held by the foundation (other than a share listed on a prescribed stock exchange or a share that would be a qualifying share within the meaning assigned by subsection 192(6) if that subsection were read without reference to the words "after May 22, 1985 and before 1987"), and

That portion of "non-qualified investment" following para. (c) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 123(3), applicable to taxation years beginning after 1983. That portion formerly read:

and, for the purpose of this definition, an "excluded corporation" is a limited dividend housing company to which paragraph 149(1)(n) applies or a corporation the operations of which are confined to the holding of property used by a registered charity in its administration or in carrying on its charitable activities;

Regulations: 3200 (prescribed stock exchange).

"private foundation" means a charitable foundation that is not a public foundation;

Related Provisions: 149.1(6.3) — Designation as public foundation, etc.; 149.1(13) — Designation of private foundation as public; 189 — Tax on private foundation with non-qualified investments; 248(1)"private foundation" — Definition applies to entire Act.

Interpretation Bulletins: IT-83R3: Non-profit organizations — Taxation of income from property. See also at end of s. 149.1.

Forms: RC4108: Registered charities and the Income Tax Act [guide]; T2095: Registered charities — application for re-designation.

Registered Charities Newsletters: 16 (policies: new rules for determining whether a charity is a private foundation).

"public foundation" means a charitable foundation of which,

(a) where the foundation has been registered after February 15, 1984 or designated as a charitable organization or private foundation pursuant to subsection (6.3) or to subsection 110(8.1) or (8.2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952,

(i) more than 50% of the directors, trustees, officers or like officials deal with each other and with each of the other directors, trustees, officers or officials at arm's length, and

(ii) not more than 50% of the capital contributed or otherwise paid in to the foundation has been so contributed or otherwise paid in by one person or members of a group of such persons who do not deal with each other at arm's length, or

(b) in any other case,

(i) more than 50% of the directors or trustees deal with each other and with each of the other directors or trustees at arm's length, and

(ii) not more than 75% of the capital contributed or otherwise paid in to the foundation has been so contributed or otherwise paid in by one person or by a group of persons who do not deal with each other at arm's length

and, for the purpose of subparagraph (a)(ii), a reference to any person or to members of a group does not include a reference to Her Majesty in right of Canada or a province, a municipality, another registered charity that is not a private foundation, or any club, society or association described in paragraph 149(1)(l);

Proposed Amendment — 149.1(1)"public foundation"

"public foundation", at a particular time, means a charitable foundation

(a) more than 50% of the directors, trustees, officers or like officials of which deal at arm's length with each other and with

(i) each of the other directors, trustees, officers and like officials of the foundation,

(ii) each person described by subparagraph (b)(i) or (ii), and

(iii) each member of a group of persons (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(l)) who do not deal with each other at arm's length, if the group would, if it were a person, be a person described by subparagraph (b)(i), and

(b) that is not, at the particular time, and would not at the particular time be, if the foundation were a

corporation, controlled directly or indirectly in any manner whatever

(i) by a person (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(l)),

(A) who immediately after the particular time, has contributed to the foundation amounts that are, in total, greater than 50% of the capital of the foundation immediately after the particular time, and

(B) who immediately after the person's last contribution at or before the particular time, had contributed to the foundation amounts that were, in total, greater than 50% of the capital of the foundation immediately after the making of that last contribution, or

(ii) by a person, or by a group of persons that do not deal at arm's length with each other, if the person or any member of the group does not deal at arm's length with a person described in subparagraph (i);

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 148(1), will amend the definition "public foundation" in subsec. 149.1(1) to read as above, applicable after 1999 except that, in respect of a foundation that has not been designated before 2000 as a private foundation or a charitable organization under subsec. 149.1(6.3) or under subsec. 110(8.1) or (8.2), as enacted by R.S.C. 1952, c. 148 [repealed; see Pre-RSC History to 110(8.1), (8.2) on *TaxPartner* or *taxnet.pro*], and has not applied after February 15, 1984 for registration under para. 110(8)(c) of that Act [repealed; see Pre-RSC History to 110(8)] or under the definition "registered charity" in subsec. 248(1), subpara. (a)(iii) and para. (b) of the definition "public foundation", as amended, are in their application before the earlier of the day, if any, on which the foundation is designated after 1999 as a private foundation or a charitable organization under subsec. 149.1(6.3) and January 1, 2005 to be read

(a) without reference to "(other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(l))"; and

(b) as if the reference to "50%" in para. (b) of the definition were read as "75%".

Technical Notes: The definition "public foundation" provides that more than 50% of the directors, trustees, officers or similar officials of a public foundation must deal with each other and with each of the other directors, trustees, officers or similar officials at arm's length.

This definition requires that not more than 50% (75% in some cases) of the foundation's capital can be contributed by a person or group of persons not dealing with each together at arm's length. The "contribution" test in the definition is replaced by a "control" test. As a result, a foundation will not be disqualified from being treated as a public foundation solely because a person, or a group of persons not dealing with each other at arm's length, has contributed more than 50% of the foundation's capital. However, such a person or group is not permitted to control the foundation in any way, nor may the person or the members of the group represent more than 50% of the directors, trustees, officers and similar officials of the foundation.

Letter from Dept. of Finance, December 13, 2002:

Dear [xxx]

I am writing in response to your letter dated November 14, 2002, in which you requested that the definition of a "public foundation" in the *Income Tax Act* be amended in a manner similar to the change that has been proposed in respect of charitable organizations.

In particular, we have agreed to recommend an amendment that will replace the current contribution test for charitable organizations with a test applying after a donation is made. Under this test, any person (or group of persons not dealing at arm's length) contributing more than 50% of the capital of the organization must deal at arm's length with more than half of the directors, trustees and officers of the organization, and must not have any direct or indirect influence over the organization such that, if exercised, it would be reasonable to conclude that the person (or group) controls the organization or one or more activities of the organization.

As the policy objectives for rules regarding the control of charitable organizations are similar to those for public foundations, we agree that it would be appropriate to recommend that the definitions of each remain similar in this respect. We will also recommend that such an amendment apply for the purpose of determining a foundation's status after 1999. If the recommendation is acted upon, we anticipate that the amendment would be included in a future technical bill.

Yours sincerely,

Len Farber
General Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 149.1(6.3) — Designation as public foundation, etc.; 149.1(13) — Designation of private foundation as public; 248(1)"private foundation" — Definition applies to entire Act.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-83R3: Non-profit organizations — Taxation of income from property. See also at end of s. 149.1.

Forms: RC4108: Registered charities and the Income Tax Act [guide]; T2095: Registered charities — application for re-designation.

Registered Charities Newsletters: 16 (policies: new rules for determining whether a charity is a private foundation).

Charities Policies: CPC-002: Related business; CPS-009: Holding of property for charities; CPS-019: What is a related business?.

"qualified donee" means a donee described in any of paragraphs 110.1(1)(a) and (b) and the definitions "total charitable gifts" and "total Crown gifts" in subsection 118.1(1);

Related Provisions: 248(1)"qualified donee" — Definition applies to entire Act.

Registered Charities Newsletters: 3 (registered national arts service organizations).

"qualified investment [para. 149.1(1)(i)]" — [Repealed under former Act]

"related business", in relation to a charity, includes a business that is unrelated to the objects of the charity if substantially all persons employed by the charity in the carrying on of that business are not remunerated for that employment;

Selected Cases [subsec. 149.1(1)"related business"]: *Alberta Institute on Mental Retardation v. R.*, [1987] 2 C.T.C. 70 (FCA); leave to appeal to SCC refused (1988), 87 N.R. 397 (note), (sub nom. *Alta. Institute on Mental Retardation v. MNR)* (Taxpayer operating for charitable purpose carrying on "related business" when income used in charitable activities).

Registered Charities Newsletters: 13 (related business guidelines); 14 (related business); 15 (court news — related vs. unrelated business); 17 (new policy statement on what is a related business).

Charities Policies: CPC-002: Related business; CPS-001: Applicants that are established to hold periodic fundraisers; CPS-019: What is a related business?.

"specified gift" means that portion of a gift, made in a taxation year by a registered charity, that is designated as a specified gift in its information return for the year;

Forms: RC4108: Registered charities and the *Income Tax Act* [guide].

"taxation year" means, in the case of a registered charity, a fiscal period.

Related Provisions: 188(1) — Deemed year-end on notice of revocation of charity registration.

Selected Cases [subsec. 149.1(1)]: *Action des Chrétiens pour l'Abolition de la Torture c. R.*, [2003] 3 C.T.C. 121 (FCA) (Political activities not merely incidental); *Alliance for Life v. MNR*, [1999] 3 C.T.C. 1 (FCA) (Political activity overcame charitable objects); *Vancouver Society of Immigrant & Visible Minority Women v. MNR*, [1999] 2 C.T.C. 1 (SCC); aff'g [1996] 2 C.T.C. 88 (FCA) (Valid charitable organization must be constituted exclusively for charitable purposes); *Interfaith*

Development Education Assn., Burlington v. MNR, [1997] 3 C.T.C. 271 (FCA) (Restricted interpretation given to "advancement of education").

(1.1) Exclusions [deemed non-charitable] — For the purposes of paragraphs (2)(b), (3)(b), (4)(b) and (21)(a), the following shall be deemed to be neither an amount expended in a taxation year on charitable activities nor a gift made to a qualified donee:

(a) a specified gift;

(b) an expenditure on political activities made by a charitable organization or a charitable foundation; and

(c) a transfer that has, because of paragraph (c) of the description of B in subsection 188(1.1), paragraph 189(6.2)(b) or subsection 189(6.3), reduced the amount of a liability under Part V.

Related Provisions: 149.1(6.1), (6.2) — Political activities that are ancillary and incidental to charitable activities.

History: Para. 149.1(1.1)(c) added by 2005, c. 19, subsec. 35(3), applicable in respect of notices issued by the Minister of National Revenue after June 12, 2005.

Information Circulars: 87-1: Registered charities — ancillary and incidental political activities.

Registered Charities Newsletters: 1 (partisan political activities); 2 (is participation on a municipal advisory committee a partisan political activity?); 6 (can registered charities average political expenses over time?); 10 (can a charity support or oppose a political party of a candidate?).

Forms: RC4108: Registered charities and the *Income Tax Act* [guide].

(1.2) Authority of Minister — For the purposes of the determination of D in the definition "disbursement quota" in subsection (1), the Minister may

(a) authorize a change in the number of periods chosen by a charitable foundation in determining the prescribed amount; and

(b) accept any method for the determination of the fair market value of property or a portion thereof that may be required in determining the prescribed amount.

(2) Revocation of registration of charitable organization — The Minister may, in the manner described in section 168, revoke the registration of a charitable organization for any reason described in subsection 168(1) or where the organization

(a) carries on a business that is not a related business of that charity; or

(b) [effective 2009 for most charitable organizations; see History below — ed.] fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the organization's disbursement quota for that year.

Proposed Addition — 149.1(2)(c)

(c) makes a disbursement by way of a gift, other than a gift made

(i) in the course of charitable activities carried on by it, or

(ii) to a donee that is a qualified donee at the time of the gift.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 148(7), will add para. 149.1(2)(c), applicable to gifts made after December 20, 2002.

Technical Notes: Subsections 149.1(2), (3) and (4) set out the reasons for which the Minister of National Revenue may revoke the registration of a charitable organization, a public foundation and a private foundation, respectively. These subsections are amended to permit the revocation of the registration of such entities if they make gifts (other than gifts made in the course of their charitable activities) to persons or entities that are not qualified donees. A "qualified donee" is essentially a person or entity to which a tax deductible or tax creditable donation may be made.

Related Provisions: 149.1(1.1) — Exclusions; 168(4) — Objection to proposed revocation; 172(3)(a) — Appeal from refusal to register, revocation of registration, etc.; 180(1) — Appeals to Federal Court of Appeal; 188(1) — Deemed year-end on notice of revocation; 188(1.1) — Revocation tax; 188.1(1)(b), 188.1(2)(b) — Penalty for carrying on unrelated business; 188.2(1), (2) — Suspension of charity's receipting privileges; 230(2) — Charity must keep books and records to allow Minister to determine if there are grounds for revocation of registration; 248(1)"registered charity" — Application for registration.

History: Para. 149.1(2)(b) amended by 2005, c. 19, subsec. 35(4), applicable to taxation years that begin after March 22, 2004, except that, in its application to a taxation year that begins before 2009 of a charitable organization registered by the Minister of National Revenue before March 23, 2004, the para., as amended, is to be read as follows:

(b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the total of the amounts determined for A, A.1, and B in the definition "disbursement quota" in subsection (1) for the year in respect of the charity.

The para. formerly read:

(b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the total of

(i) the amount that would be the value of A for the year, and

(ii) the amount that would be the value of A.1 for the year,

in the definition "disbursement quota" in subsection (1) in respect of the organization if it were a charitable foundation.

Subparas. 149.1(2)(b)(i) and (ii) amended by 1998, c. 19, subsec. 179(3), applicable to taxation years that end after November 1991. Subparas. 149.1(2)(b)(i) and (ii) formerly read:

(i) 80% of the amount that would be determined for the year for A, and

(ii) the amount that would be determined for the year for A.1,

Para. 149.1(2)(b) substituted by 1994, c. 21, subsec. 74(4), applicable to taxation years that begin after 1992. That para. formerly read:

(b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to 80% of the amount that would be determined for the year for A in the definition "disbursement quota" in subsection (1) in respect of the organization if it were a charitable foundation.

Interpretation Bulletins: IT-244R3: Gifts by individuals of life insurance policies as charitable donations. See also at end of s. 149.1.

Registered Charities Newsletters: 16 (did you know? [voluntary revocation]; why are you sending me these forms (TX11D, TX11E, T2051A, T2051B)?).

Charities Policies: CPS-019: What is a related business?.

Forms: RC4108: Registered charities and the *Income Tax Act* [guide].

(3) Revocation of registration of public foundation — The Minister may, in the manner described in section 168, revoke the registration of a public foundation for any reason described in subsection 168(1) or where the foundation

(a) carries on a business that is not a related business of that charity;

(b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;

Proposed Addition — 149.1(3)(b.1)

(b.1) makes a disbursement by way of a gift, other than a gift made

(i) in the course of charitable activities carried on by it, or

(ii) to a donee that is a qualified donee at the time of the gift;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 148(8), will add para. 149.1(3)(b.1), applicable to gifts made after December 20, 2002.

Technical Notes: See under 149.1(2)(c).

(c) since June 1, 1950, acquired control of any corporation;

(d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities; or

(e) at any time within the 24 month period preceding the day on which notice is given to the foundation by the Minister pursuant to subsection 168(1) and at a time when the foundation was a private foundation, took any action or failed to expend amounts such that the Minister was entitled, pursuant to subsection (4), to revoke its registration as a private foundation.

Related Provisions: 149.1(1.1) — Exclusions; 149.1(12)(a) — Meaning of "control"; 149.1(18) — Rules relating to computation of income; 149.1(20) — Rule regarding disbursement excess; 168(4) — Objection to proposed revocation; 172(3)(a) — Appeal from refusal to register, revocation of registration, etc.; 180(1) — Appeals to Federal Court of Appeal; 188(1) — Deemed year-end on notice of revocation; 188(1.1) — Revocation tax; 188.1(1)(b), 188.1(2)(b) — Penalty for carrying on unrelated business; 188.1(3) — Penalty for receiving dividends from controlled corporation; 188.2(1), (2) — Suspension of charity's receipting privileges; 230(2) — Charity must keep books and records to allow Minister to determine if there are grounds for revocation of registration; 248(1)"registered charity" — Application for registration; 256(6)–(9) — Whether control acquired.

Charities Policies: CPS-009: Holding of property for charities; CPS-019: What is a related business?.

Forms: RC4108: Registered charities and the *Income Tax Act* [guide].

(4) Revocation of registration of private foundation — The Minister may, in the manner described in section 168, revoke the registration of a private foundation for any reason described in subsection 168(1) or where the foundation

(a) carries on any business;

(b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;

Proposed Addition — 149.1(4)(b.1)

(b.1) makes a disbursement by way of a gift, other than a gift made

(i) in the course of charitable activities carried on by it, or

(ii) to a donee that is a qualified donee at the time of the gift;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 148(9), will add para. 149.1(4)(b.1), applicable to gifts made after December 20, 2002.

Technical Notes: See under 149.1(2)(c).

(c) since June 1, 1950, acquired control of any corporation; or

(d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities.

Related Provisions: 149.1(1.1) — Exclusions; 149.1(12)(a) — Meaning of "control"; 168(4) — Objection to proposed revocation; 172(3)(a) — Appeal from refusal to register, revocation of registration, etc.; 180(1) — Appeals to Federal Court of Appeal; 188(1) — Deemed year-end on notice of revocation; 188(1.1) — Revocation tax; 188.1(3) — Penalty for receiving dividends from controlled corporation; 188.2(1), (2) — Suspension of charity's receipting privileges; 230(2) — Charity must keep books and records to allow Minister to determine if there are grounds for revocation of registration; 248(1)"registered charity" — Application for registration; 256(6)–(9) — Whether control acquired.

Registered Charities Newsletters: 23 (did you know? golf tournaments).

Charities Policies: CPC-023: Private foundations; CPS-009: Holding of property for charities; CPS-019: What is a related business?.

Forms: RC4108: Registered charities and the *Income Tax Act* [guide].

(4.1) Revocation of registration of registered charity — The Minister may, in the manner described in section 168, revoke the registration

(a) of a registered charity, if the registered charity has made a gift to another registered charity and it can reasonably be considered that one of the main purposes of making the gift was to unduly delay the expenditure of amounts on charitable activities;

(b) of the other charity referred to in paragraph (a), if it can reasonably be considered that, by accepting the gift, it acted in concert with the registered charity to which paragraph (a) applies; and

(c) of a registered charity, if a false statement, within the meaning assigned by subsection 163.2(1), was made in circumstances amounting to culpable conduct, within the meaning assigned by that subsection, in the furnishing of information for the purpose of obtaining registration of the charity.

Related Provisions: 149.1(23), (24) — Annulment of charity registration; 168(4) — Objection to proposed revocation; 172(3)(a) — Appeal from refusal to register, revocation of registration, etc.; 180(1) — Appeals to Federal Court of Appeal; 188(1) — Deemed year-end on notice of revocation; 188(1.1) — Revocation tax; 188.1(11) — Alternative penalty for making gift for purpose of undue delay; 230(2) — Charity must keep books and records to allow Minister to determine if there are grounds for revocation of registration.

History: Subsec. 149.1(4.1) amended by 2005, c. 19, subsec. 35(5), applicable in respect of notices issued by the Minister of National Revenue after June 12, 2005. The subsec. formerly read:

(4.1) Where a registered charity has made a gift to another registered charity and it may reasonably be considered that one of the main purposes of making the gift was to unduly delay the expenditure of amounts on charitable activities, the Minister may, in the manner described in section 168, revoke the registration of the charity that made the gift and, where it may reasonably be considered that the charities acted in concert, of the other charity.

Subsec. 149.1(4.1) added by 1984, c. 45, subsec. 57(10), applicable to taxation years commencing after 1983.

Forms: RC4108: Registered charities and the *Income Tax Act* [guide].

(5) Reduction — The Minister may, on application made to the Minister in prescribed form by a registered charity, specify an amount in respect of the charity for a taxation year and, for the purpose of paragraph (2)(b), (3)(b) or (4)(b), as the case may be, that amount shall be deemed to be an amount expended by the charity in the year on charitable activities carried on by it.

Forms: RC4108: Registered charities and the *Income Tax Act* [guide]; T2094: Registered charities — Application to reduce disbursement quota.

Charities Policies: CPS-009: Holding of property for charities.

(6) Devoting resources to charitable activity — A charitable organization shall be considered to be devoting

its resources to charitable activities carried on by it to the extent that

(a) it carries on a related business;

(b) in any taxation year, it disburses not more than 50% of its income for that year to qualified donees; or

(c) it disburses income to a registered charity that the Minister has designated in writing as a charity associated with it.

Related Provisions: 149.1(7) — Designation of associated charities; 149.1(12)(b) — Rules — income.

Information Circulars: 77-6: Registered charities: designation as associated charities.

Forms: RC4108: Registered charities and the Income Tax Act [guide].

Charities Policies: CPS-001: Applicants that are established to hold periodic fundraisers; CPS-019: What is a related business?.

(6.1) Charitable purposes [limits to foundation's political activities] — For the purposes of the definition "charitable foundation" in subsection (1), where a corporation or trust devotes substantially all of its resources to charitable purposes and

(a) it devotes part of its resources to political activities,

(b) those political activities are ancillary and incidental to its charitable purposes, and

(c) those political activities do not include the direct or indirect support of, or opposition to, any political party or candidate for public office,

the corporation or trust shall be considered to be constituted and operated for charitable purposes to the extent of that part of its resources so devoted.

Information Circulars: 87-1: Registered charities — ancillary and incidental political activities.

Registered Charities Newsletters: 1 (partisan political activities); 2 (is participation on a municipal advisory committee a partisan political activity?); 6 (can registered charities average political expenses over time?); 14 (new political activity guidelines); 15 (political activities lead to revocation).

Charities Policies: CPC-001: Attendance at a political fundraising dinner; CPC-007: Charging fair market rent to a political party; CPS-022: Political activities.

(6.2) Charitable activities [limits to charity's political activities] — For the purposes of the definition "charitable organization" in subsection (1), where an organization devotes substantially all of its resources to charitable activities carried on by it and

(a) it devotes part of its resources to political activities,

(b) those political activities are ancillary and incidental to its charitable activities, and

(c) those political activities do not include the direct or indirect support of, or opposition to, any political party or candidate for public office,

the organization shall be considered to be devoting that part of its resources to charitable activities carried on by it.

Related Provisions: 149.1(1.1)(b) — Expenditures on political activities.

Selected Cases [subsec. 149.1(6.2)]: *N.D.G. Neighbourhood Assoc. v. Revenue Canada*, [1988] 2 C.T.C. 14 (FCA) (Registration refused when activities political).

Information Circulars: 87-1: Registered charities — ancillary and incidental political activities.

Registered Charities Newsletters: 1 (partisan political activities); 2 (is participation on a municipal advisory committee a partisan political activity?); 6 (can registered charities average political expenses over time?); 14 (new political activity guidelines); 15 (political activities lead to revocation).

Charities Policies: CPC-001: Partisan political activities — attendance at a political fundraising dinner; CPC-007: Partisan political activity — charging fair market rent to a political party; CPS-022: Political activities.

(6.21) Marriage for civil purposes — For greater certainty, subject to subsections (6.1) and (6.2), a registered charity with stated purposes that include the advancement of religion shall not have its registration revoked or be subject to any other penalty under Part V solely because it or any of its members, officials, supporters or adherents exercises, in relation to marriage between persons of the same sex, the freedom of conscience and religion guaranteed under the *Canadian Charter of Rights and Freedoms*.

History: Subsec. 149.1(6.21) added by 2005, c. 33, s. 11.1, in force on July 20, 2005 (Royal Assent).

(6.3) Designation as public foundation, etc. — The Minister may, by notice sent by registered mail to a registered charity, on the Minister's own initiative or on application made to the Minister in prescribed form, designate the charity to be a charitable organization, private foundation or public foundation and the charity shall be deemed to be registered as a charitable organization, private foundation or public foundation, as the case may be, for taxation years commencing after the day of mailing of the notice unless and until it is otherwise designated under this subsection or its registration is revoked under subsection (2), (3), (4), (4.1) or 168(2).

Proposed Amendment — Deadline for application under 149.1(6.3)

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 148(17), will enact the following provision re an application under subsec. 149.1(6.3), effective on Royal Assent.

(14) An application referred to in subsection 149.1(6.3) of the Act, in respect of one or more taxation years after 1999, may be made after 1999 and before the 90th day after this Act [the amending legislation] is assented to. If a designation referred to in that subsection for any of those taxation years is made in response to the application, the charity is deemed to be registered as a charitable organization, a public foundation or a private foundation, as the case may be, for the taxation years that the Minister of National Revenue specifies.

Related Provisions: 149.1(13) — Designation of private foundation as public; 172(3) — Appeal from refusal to designate; 168(4) — Objection to designation; 241(3.2)(h) — Designation notice may be disclosed to the public; 244(5) — Proof of service by mail; 244(14) — Notice presumed mailed on date of notice; 248(7)(a) — Mail deemed received on day mailed.

Forms: T2095: Registered charities — application for re-designation.

Charities Policies: CPS-008: Organizations established to assist other charities; CPS-009: Holding of property for charities.

(6.4) National arts service organizations — Where an organization that

(a) has, on written application to the Minister of Communications describing all of its objects and activities, been designated by that Minister on approval of those objects and activities to be a national arts service organization,

(b) has, as its exclusive purpose and its exclusive function, the promotion of arts in Canada on a nation-wide basis,

(c) is resident in Canada and was formed or created in Canada, and

(d) complies with prescribed conditions

applies in prescribed form to the Minister of National Revenue for registration, that Minister may register the organization for the purposes of this Act and, where the

organization so applies or is so registered, this section, paragraph 38(a.1), sections 110.1, 118.1, 168, 172, 180 and 230, subsection 241(3.2) and Part V apply, with such modifications as the circumstances require, to the organization as if it were an applicant for registration as a charitable organization or as if it were a registered charity that is designated as a charitable organization, as the case may be.

Related Provisions: 149.1(6.2) — Charitable activities; 149.1(6.5) — Revocation of designation.

History: The closing words of subsec. 149.1(6.4) amended by 2001, c. 17, s. 146 to add reference to subsection 241(3.2), in force June 14, 2001.

The closing words of subsec. 149.1(6.4) amended by 1998, c. 19, s. 41.1, applicable after February 18, 1997. The portion formerly read:

> applies in prescribed form to the Minister of National Revenue for registration, that Minister may register the organization for the purposes of this Act and, where the organization so applies or is so registered, this section and sections 110.1, 118.1, 168, 172, 180 and 230 and Part V apply, with such modifications as the circumstances require, to the organization as if it were an applicant for registration as a charitable organization or a registered charity that is designated as a charitable organization, as the case may be.

Subsec. 149.1(6.4) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 123(4), applicable after July 13, 1990 except that, where an organization has applied to the Minister of National Revenue for registration under the subsec. before December 17, 1991 and the Minister of National Revenue has accepted the application as meeting the requirements of that subsec., the organization shall be deemed to have become registered under the subsec.:

> (a) where in the application a day later than the day the application is made is specified as the day on which the organization is to become registered, on that later day; and
>
> (b) in any other case, on the day the application was made.

1995, c. 11: S. 46 of 1995, c. 11, in force July 12, 1996, provides as follows:

> 46. Other references — Every reference made to the Minister of Communications, the Minister of Multiculturalism and Citizenship and the Secretary of State of Canada in relation to any matter to which the powers, duties and functions of the Minister of Canadian Heritage extend by virtue of this Act, in any other Act of Parliament or in any order, regulation or other instrument made under any Act of Parliament shall, unless the context otherwise requires, be read as a reference to the Minister of Canadian Heritage.

Regulations: 8700 (prescribed conditions for 149.1(6.4)(d)).

Registered Charities Newsletters: 2 (registered national arts service organizations can issue tax receipts); 3 (registered national arts service organizations).

(6.5) Revocation of designation — The Minister of Communications may, at any time, revoke the designation of an organization made for the purpose of subsection (6.4) where

> (a) an incorrect statement was made in the furnishing of information for the purpose of obtaining the designation, or
>
> (b) the organization has amended its objects after its last designation was made,

and, where the designation is so revoked, the organization shall be deemed for the purpose of section 168 to have ceased to comply with the requirements of this Act for its registration under this Act.

History: Subsec. 149.1(6.5) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 123(4), applicable after July 13, 1990.

1995, c. 11: S. 46 of 1995, c. 11, in force July 12, 1996, provides as follows:

> 46. Other references — Every reference made to the Minister of Communications, the Minister of Multiculturalism and Citizenship and the Secretary of State of Canada in relation to any matter to which the powers, duties and functions of the Minister of Canadian Heritage extend by virtue of this Act, in any other Act of Parliament or in any order, regulation or other instrument made under any Act of Parliament shall, unless the context otherwise requires, be read as a reference to the Minister of Canadian Heritage.

(7) Designation of associated charities — On application made to the Minister in prescribed form, the Minister may, in writing, designate a registered charity as a charity associated with one or more specified registered charities where the Minister is satisfied that the charitable aim or activity of each of the registered charities is substantially the same, and on and after a date specified in such a designation, the charities to which it relates shall, until such time, if any, as the Minister revokes the designation, be deemed to be associated.

Related Provisions: 149.1(6)(c) — Disbursement to associated charity; 241(3.2)(h) — Designation notice may be disclosed to the public.

Information Circulars: 77-6: Registered charities: designation as associated charities.

Forms: RC4108: Registered charities and the Income Tax Act [guide]; T2050: Application to register a charity under the ITA; T3011: Registered charities — Application for designation as associated charities.

(8) Accumulation of property — A registered charity may, with the approval in writing of the Minister, accumulate property for a particular purpose, on terms and conditions, and over such period of time, as the Minister specifies in the approval, and any property accumulated after receipt of such an approval and in accordance therewith, including any income earned in respect of the property so accumulated, shall be deemed

> (a) to have been expended on charitable activities carried on by the charity in the taxation year in which it was so accumulated; and
>
> (b) not to have been expended in any other year.

Related Provisions: 149.1(9) — If property not used for indicated purpose; 241(3.2)(h) — Decision notice may be disclosed to the public.

History: Subsec. 149.1(8) substituted by 1994, c. 21, subsec. 74(5), applicable to taxation years that begin after 1992. That subsec. formerly read:

> (8) A registered charity may, with the approval in writing of the Minister, accumulate property for a particular purpose on such terms and conditions and over such period of time, if any, as is specified by the Minister in the approval, and any property accumulated after receipt of such an approval and in accordance therewith, including any income earned in respect of the property so accumulated, shall be deemed to have been expended on charitable activities carried on by the charity in the taxation year in which it was so accumulated.

Registered Charities Newsletters: 22 (permission to accumulate property).

Charities Policies: CPC-005: Accumulation of property; CPS-009: Holding of property for charities.

Forms: RC4108: Registered charities and the *Income Tax Act* [guide].

(9) Idem [— if property not used for indicated purpose] — Property accumulated by a registered charity as provided in subsection (8), including any income earned in respect of that property, that is not used for the particular purpose for which it was accumulated either

> (a) before the expiration of any period of time specified by the Minister in the Minister's approval of the accumulation, or
>
> (b) at an earlier time at which the registered charity decides not to use the property for that purpose

shall, notwithstanding subsection (8), be deemed to be income of the charity for, and the amount of a gift for which it issued a receipt described in subsection 110.1(2) or 118.1(2) in, its taxation year in which the period referred to in paragraph (a) expires or the time referred to in paragraph (b) occurs, as the case may be.

Proposed Amendment — 149.1(9) closing words

is, notwithstanding subsection (8), deemed to be income of the charity for, and the eligible amount of a gift for which it issued a receipt described in subsection 110.1(2) or 118.1(2) in, its taxation year in which the period referred to in paragraph (a) expires or the time referred to in paragraph (b) occurs, as the case may be.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 148(10), will amend the closing words of subsec. 149.1(9) to read as above, applicable after December 20, 2002.

Technical Notes: Subsection 149.1(8) permits a registered charity, with the approval of the Minister of National Revenue, to accumulate property over a specified period for a particular purpose. The amount of such property accumulated is deemed to have been expended in the taxation year of the charity in which it was accumulated. If in fact the charity defaults on this responsibility by not using the property for the approved purpose within the specified period, subsection 149.1(9) treats that property as income of the charity and the amount of a gift for which it issued a receipt. This affects the calculation of the disbursement quota of the charity, with the result that the amount of the property must be actually disbursed in the year following default.

Subsection 149.1(9) is amended consequential to the addition of new subsection 248(31), in respect of gifts made after December 20, 2002, to provide that the amount of a gift for which a tax receipt is issued refers to the "eligible amount" of a gift. For additional information, see the commentary to new subsection 248(31).

Related Provisions: 248(30)–(33) — Determination of eligible amount of gift.

History: That portion of subsec. 149.1(9) following para. (b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 123(5), applicable to 1988 *et seq*. That portion formerly read:

> shall, notwithstanding subsection (8), be deemed to be income of the charity and the amount of a gift for which it issued a receipt described in paragraph 110.1(1)(a) or subsection 118.1(2) in its taxation year in which the period referred to in paragraph (a) expires if that paragraph is applicable or in which the earlier time referred to in paragraph (b) occurs if that paragraph is applicable.

Registered Charities Newsletters: 22 (permission to accumulate property).

(10) Deemed charitable activity — An amount paid by a charitable organization to a qualified donee that is not paid out of the income of the charitable organization shall be deemed to be a devotion of a resource of the charitable organization to a charitable activity carried on by it.

Related Provisions: 149.1(12)(b) — Rules — income.

(11) [Repealed under former Act]

(12) Rules — For the purposes of this section,

(a) a corporation is controlled by a charitable foundation if more than 50% of the corporation's issued share capital, having full voting rights under all circumstances, belongs to

(i) the foundation, or

(ii) the foundation and persons with whom the foundation does not deal at arm's length,

but, for the purpose of paragraph (3)(c) or (4)(c), as the case may be, a charitable foundation shall be deemed not to have acquired control of a corporation if it has not purchased or otherwise acquired for consideration more than 5% of the issued shares of any class of the capital stock of that corporation;

(b) there shall be included in computing the income of a charity for a taxation year all gifts received by it in the year including gifts from any other charity but not including

(i) a specified gift or a gift referred to in paragraph (a) or (b) of the description of A in the definition "disbursement quota" in subsection (1),

(ii) any gift or portion of a gift in respect of which it is established that the donor is not a charity and

(A) has not been allowed a deduction under paragraph 110.1(1)(a) in computing the donor's taxable income or under subsection 118.1(3) in computing the donor's tax payable under this Part, or

(B) was not taxable under section 2 for the taxation year in which the gift was made, or

(iii) any gift or portion of a gift in respect of which it is established that the donor is a charity and that the gift was not made out of the income of the donor; and

(c) subsections 104(6) and (12) are not applicable in computing the income of a charitable foundation that is a trust.

Related Provisions: 256(6), (6.1) — Control.

Interpretation Bulletins: IT-244R3: Gifts by individuals of life insurance policies as charitable donations. See also at end of s. 149.1.

Forms: RC4108: Registered charities and the *Income Tax Act* [guide].

(13) Designation of private foundation as public — On application made to the Minister by a private foundation, the Minister may, on such terms and conditions as the Minister considers appropriate, designate the foundation to be a public foundation, and on and after the date specified in such a designation, the foundation to which it relates shall, until such time, if any, as the Minister revokes the designation, be deemed to be a public foundation.

Related Provisions: 149.1(6.3) — Designation as public foundation, etc; 241(3.2)(h) — Designation notice may be disclosed to the public.

Forms: T2095: Registered charities — application for re-designation.

(14) Information returns — Every registered charity shall, within 6 months from the end of each taxation year of the charity, file with the Minister both an information return and a public information return for the year, each in prescribed form and containing prescribed information, without notice or demand therefor.

Related Provisions: 149(12) — NPO information return; 149.1(15) — Public information return may be disclosed to the public; 150(1.1)(a) — Charity not required to file corporate tax return; 168(1) — Revocation of registration for failure to file return; 188.1(6) — $500 penalty for failure to file return; 189(6.1)(a)(ii) — Information returns required when registration revoked; 241(3.2) — Public disclosure of information returns; Reg. 204(3)(c) — Annual T3 return not required.

Forms: RC4108: Registered charities and the Income Tax Act [guide]; T1240: Registered charity adjustment request; T3010A: Registered charity information return; T4033A: Completing the registered charity information return [guide].

Registered Charities Newsletters: 1 (annual due date); 2 (revised annual information return); 5 (when does your charity have to file its T3010 return?); 6 (how have we revised the T3010 return that each registered charity has to file annually?); 7 (annual charity information return — frequently asked questions); 8 (increased transparency; changes in departmental policy on applications for re-registration); 11 (renewal in the Charities Directorate; reminder [re charities moving]); 13 (revised registered charity information return T3010; section E — financial information); 14 (form T3010 information online; adjusting T3010 returns); 16 (how can I be certain that my organization's T3010A has been received?; why are you sending me these forms (TX11D, TX11E, T2051A, T2051B)?); 17 (Q&A about the new Form T3010A); 18 (list of companies authorized to produce a customized Form T3010A now available); 19 (reminder: completing the T3010A); 23 (revisions to form T3010A).

Charities Policies: CPC-016: Religious charities — Form T3010; CPS-017: Effective date of registration.

(15) Information may be communicated — Notwithstanding section 241,

(a) the information contained in a public information return referred to in subsection (14) shall be communicated or otherwise made available to the public by the Minister in such manner as the Minister deems appropriate; and

(b) the Minister may make available to the public in such manner as the Minister deems appropriate an annual listing of all registered or previously registered charities indicating for each the name, location, registration number, date of registration and, in the case of a charity the registration of which has been revoked, annulled or terminated, the effective date of the revocation, annulment or termination.

Proposed Amendment — 149.1(15)(b)

(b) the Minister may make available to the public in any manner that the Minister considers appropriate a listing of all registered, or previously registered, charities and Canadian amateur athletic associations that indicates for each of them

(i) its name and address,

(ii) its registration number and date of registration, and

(iii) the effective date of any revocation, annulment or termination of its registration.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 148(11), will amend para. 149.1(15)(b) to read as above, in force on Royal Assent.

Technical Notes: Section 241 prohibits the use or communication by an official of information obtained under the Act unless specifically authorized by one of the exceptions found in that section. Paragraph 149.1(15)(b), which deals with charities, provides that, notwithstanding section 241, the Minister of National Revenue may publish a listing of all registered or previously registered charities indicating the name, location, registration number and, where the charity is no longer registered, the effective date of the revocation, annulment or termination of the charity's registration. This provision does not currently allow for the release of similar information in respect of registered Canadian amateur athletic associations. Since taxpayers who make donations to such associations obtain the same tax relief that is available in respect of donations to registered charities and, since subsection 149.1(15) is intended to provide transparency for the benefit of potential donors, paragraph 149.1(15)(b) is amended, effective after Royal Assent to this measure, to allow for the release of such information in respect of Canadian amateur athletic associations.

Related Provisions: 241(3.2) — Additional disclosure permitted of charity information.

(16)–(19) [Repealed under former Act]

(20) Rule regarding disbursement excess — Where a registered charity has expended a disbursement excess for a taxation year, the charity may, for the purpose of determining whether it complies with the requirements of paragraph (2)(b), (3)(b) or (4)(b), as the case may be, for the immediately preceding taxation year of the charity and 5 or less of its immediately subsequent taxation years, include in the computation of the amounts expended on charitable activities carried on by it and by way of gifts made by it to qualified donees, such portion of that disbursement excess as was not so included under this subsection for any preceding taxation year.

Related Provisions: 149.1(21) — "Disbursement excess" defined.

Charities Policies: CPS-009: Holding of property for charities.

Forms: RC4108: Registered charities and the *Income Tax Act* [guide].

(21) Definition of "disbursement excess" — [effective 2009 for most charitable organizations; see History below — ed.] For the purpose of subsection (20), "disbursement excess", for a taxation year of a charity, means the amount, if any, by which the total of amounts expended in the year by the charity on charitable activities carried on by it and by way of gifts made by it to qualified donees exceeds its disbursement quota for the year.

Related Provisions: 149.1(1.1) — Exclusions; 149.1(20) — Carrying disbursement excess back or forward to another year.

History: Subsec. 149.1(21) amended by 2005, c. 19, subsec. 35(6), applicable to taxation years that begin after March 22, 2004, except that, in its application to a taxation year that begins before 2009 of a charitable organization registered by the Minister of National Revenue before March 23, 2004, the subsec. is to be read as follows:

(21) For the purpose of subsection (20), "disbursement excess" for a taxation year of a charity means the amount, if any, by which

(a) the total of amounts expended in the year by the charity on charitable activities carried on by it or by way of gifts made by it to qualified donees

exceeds

(b) in the case of a charitable foundation, its disbursement quota for the year, and

(c) in the case of a charitable organization, the total of the amounts determined for A, A.1 and B in the definition "disbursement quota" in subsection (1) for the year in respect of the charity.

The subsec. formerly read:

(21) For the purpose of subsection (20), "disbursement excess" for a taxation year of a charity means the amount, if any, by which

(a) the total of amounts expended in the year by the charity on charitable activities carried on by it or by way of gifts made by it to qualified donees

exceeds

(b) in the case of a charitable foundation, its disbursement quota for the year, and

(c) in the case of a charitable organization, the total of

(i) the amount that would be the value of A for the year, and

(ii) the amount that would be the value of A.1 for the year,

in the definition "disbursement quota" in subsection (1) in respect of the organization if it were a charitable foundation.

Subparas. 149.1(21)(c)(i) and (ii) amended by 1998, c. 19, subsec. 179(4), applicable to taxation years that end after November 1991. Subparas. 149.1(21)(c)(i) and (ii) formerly read:

(i) 80% of the amount that would be determined for the year for A, and

(ii) the amount that would be determined for the year for A.1,

Para. 149.1(21)(c) amended by 1994, c. 21, subsec. 74(6), applicable to taxation years that begin after 1992. Para. (c) formerly read:

(c) in the case of a charitable organization, 80% of the amount that would be determined for the year for A in the definition "disbursement quota" in subsection (1) in respect of the organization if it were a charitable foundation.

Forms: RC4108: Registered charities and the Income Tax Act [guide]; T3010A: Registered charity information return; T4033A: Completing the registered charity information return [guide].

Registered Charities Newsletters: 19 (proposed disbursement quota changes). Also see under 149.1(1)"disbursement quota".

(22) Refusal to register — The Minister may, by registered mail, give notice to a person that the application of the person for registration as a registered charity is refused.

Related Provisions: 168(4) — Objection to refusal to register.

History: Subsec. 149.1(22) added by 2005, c. 19, subsec. 35(6), applicable in respect of notices issued by the Minister of National Revenue after June 12, 2005.

(23) Annulment of registration — The Minister may, by registered mail, give notice to a person that the registration of the person as a registered charity is annulled and deemed not to have been so registered, if the person was so registered by the Minister in error or the person has, solely as a result of a change in law, ceased to be a charity.

Related Provisions: 149.1(24) — Receipts issued before annulment; 168(4) — Objection to annulment; 241(3.2)(g) — Annulment letter may be disclosed to the public.

History: Subsec. 149.1(23) added by 2005, c. 19, subsec. 35(6), applicable in respect of notices issued by the Minister of National Revenue after June 12, 2005.

(24) Receipts issued before annulment — An official receipt referred to in Part XXXV of the *Income Tax Regulations* issued, by a person whose registration has been annulled under subsection (23), before that annulment is, if the receipt would have been valid were the person a registered charity at the time the receipt was issued, deemed to be a valid receipt under that Part.

History: Subsec. 149.1(24) added by 2005, c. 19, subsec. 35(6), applicable in respect of notices issued by the Minister of National Revenue after June 12, 2005.

Definitions [s. 149.1]: "acquired" — 149.1(12)(a), 256(7)–(9); "amount" — 248(1); "arm's length" — 251(1); "associated" — 149.1(7); "Canadian amateur athletic association" — 248(1)"registered Canadian amateur athletic association"; "capital gain" — 39(1)(a), 248(1); "capital gains pool" — 149.1(1); "capital property" — 54, 248(1); "charitable activities" — 149.1(6), (6.1), (6.2); "charitable foundation", "charitable organization", "charitable purposes", "charity" — 149.1(1); "class" — of shares 248(6); "control" — 149.1(12)(a), 256(6)–(9); "controlled" — 149.1(12)(a), 256(5.1), (6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "culpable conduct" — 163.2(1); "deferred profit sharing plan" — 147(1), 248(1); "disbursement excess" — 149.1(21); "disbursement quota" — 149.1(1); "disposition" — 248(1); "eligible amount" — 248(31), (41); "enduring property" — 149.1(1); "false statement" — 163.2(1); "Her Majesty" — *Interpretation Act* 35(1); "income" — of charity 149.1(12)(b); "limited-dividend housing company" — 149(1)(n); "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "mutual fund corporation" — 131(8), 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q) [to be repealed], 132.2(3)(n) [draft], 248(1); "non-qualified investment" — 149.1(1); "officer", "person", "prescribed" — 248(1); "prescribed stock exchange" — 248(29), Reg. 3200, 3201; "private foundation" — 149.1(1), 248(1); "property" — 248(1); "province" — *Interpretation Act* 35(1); "public foundation", "qualified donee" — 149.1(1), 248(1); "qualifying share" — 192(6), 248(1); "registered charity" — 149.1(6.4), 248(1); "related business" — 149.1(1); "resident in Canada" — 250; "share" — 248(1); "specified gift" — 149.1(1); "substituted" — 248(5); "tax payable" — 248(2); "taxable income" — 2(2), 248(1); "taxation year" — 149.1(1), 249; "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

DIVISION I — RETURNS, ASSESSMENTS, PAYMENT AND APPEALS

Returns

150. (1) Filing returns of income — general rule — Subject to subsection (1.1), a return of income that is in prescribed form and that contains prescribed information shall be filed with the Minister, without notice or demand for the return, for each taxation year of a taxpayer,

(a) **corporations** — in the case of a corporation, by or on behalf of the corporation within six months after the end of the year if

(i) at any time in the year the corporation

(A) is resident in Canada,

(B) carries on business in Canada, unless the corporation's only revenue from carrying on business in Canada in the year consists of amounts in respect of which tax was payable by the corporation under subsection 212(5.1),

(C) has a taxable capital gain, or

(D) disposes of a taxable Canadian property, or

(ii) tax under this Part is, or but for a tax treaty would be, payable by the corporation for the year;

Proposed Amendment — 150(1)(a) — non-resident investors

Letter from Dept. of Finance, November 26, 2002: See under 115.2(2).

Related Provisions: 115(1)(b) — Dispositions of taxable Canadian property; 150(1.1)(a) — Registered charities exempted from filing; 162(2.1) — Minimum non-filing penalty for non-resident corporation; 183(1) — Return deadline for tobacco manufacturers' surtax; 235 — Penalty on large corporations for failure to file return even where no balance owing; 236 — Execution of documents by corporations; 250(1) — Meaning of resident of Canada; 253 — Extended meaning of carrying on business in Canada. See additional Related Provisions at end of 150(1) and at end of s. 150.

History: Cl. 150(1)(a)(i)(B) amended by 2001, c. 17, s. 147, applicable to 2001 *et seq.* The cl. formerly read:

(B) carries on business in Canada,

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations; IT-304R2: Condominiums.

Information Circulars: See list at end of subsec. 150(1).

Application Policies: SR&ED 2004-02: Filing requirements for claiming SR&ED carried out in Canada.

Forms: RC1: Request for a business number; RC4088: Guide to the General Index of Financial Information (GIFI) for corporations; T2: Corporation income tax return; T2 Short: Return for eligible corporations; T2 SCH 97: Additional information on non-resident corporations in Canada; T2 SCH 150: Net income (loss) for income tax purposes for life insurance companies; T2 SCH 303: Newfoundland and Labrador direct equity tax credit; T2 SCH 384: Manitoba co-operative education tax credit; T2 SCH 385: Manitoba odour control tax credit; T2WS1: Calculating estimated tax payable and tax credits; T2WS2: Calculating monthly instalment payments; T9R-C: Remittance form — corporations; T1178: General index of financial information — short; T1219: Provincial alternative minimum tax; T1219-ON: Ontario minimum tax carryover; T2203: Provincial and territorial taxes — multiple jurisdictions; T4012: T2 corporation income tax guide.

(b) **deceased individuals** — in the case of an individual who dies after October of the year and before the day that would be the individual's filing due date for the year if the individual had not died, by the individual's legal representatives on or before the day that is the later of the day on or before which the return would otherwise be required to be filed and the day that is 6 months after the day of death;

Related Provisions: 70(2) — Return for rights or things; 70(7)(a) — Deadline extended to 18 months after death to untaint spousal trust; 127.55 — Minimum tax not applicable; 150(1)(d)(iii) — Deadline for deceased's cohabiting spouse; 150(4) — Death of partner or proprietor of business; 159(1) — Payments on behalf of others. See additional Related Provisions at end of 150(1) and at end of s. 150.

History: Para. 150(1)(b) amended by 1996, c 21, subsec. 38(1), applicable to 1995 *et seq.* Para. (b) formerly read:

(b) in the case of an individual who dies after October in the year and before May in the immediately following taxation year, by the individual's legal representatives within 6 months after the day of death;

Regulations: 206 (information return).

Information Circulars: See list at end of subsec. 150(1).

Forms: T1 General: Individual income tax return; T4011: Preparing returns for deceased persons [guide]. See also under 150(1)(d).

(c) **trusts or estates** — in the case of an estate or trust, within 90 days from the end of the year;

Related Provisions: 94(3)(a)(vii) [proposed] — Application to trust deemed resident in Canada; 104(23) — Testamentary trusts; 159(1) —

Payments on behalf of others. See additional Related Provisions at end of 150(1) and at end of s. 150.

Regulations: 204 (information return).

Information Circulars: 78-14R3: Guidelines for trust companies and other persons responsible for filing T3-IND, T3G, T3D, T3P, T3S, T3RI and T3F returns. See also at end of subsec. 150(1).

Forms: T3: Statement of trust income allocations and designations; T3ATH-IND: Amateur athlete trust income tax return; T3D: Income tax return for DPSP or revoked DPSP; T3G: Certification of no tax liability by a group of RRSPs, RRIFs, or RESPs; T3GR: Group income tax and information return for RRSP, RRIF or RESP trusts (and worksheets); T3IND: T3IND income tax return for RRSP, RRIF, or RESP; T3P: Employees' pension plan income tax return; T3RET: Trust income tax and information return; T3 SCH 11: Federal income tax; T3S: Supplementary unemployment benefit plan — income tax return; T1061: Canadian amateur athletic trust group information return; T1139: Reconciliation of business income for tax purposes.

(d) **individuals** — in the case of any other person, on or before

(i) the following April 30 by that person or, if the person is unable for any reason to file the return, by the person's guardian, committee or other legal representative (in this paragraph referred to as the person's "guardian"),

(ii) the following June 15 by that person or, if the person is unable for any reason to file the return, by the person's guardian where the person is

(A) an individual who carried on a business in the year, unless the expenditures made in the course of carrying on the business were primarily the cost or capital cost of tax shelter investments (as defined in subsection 143.2(1)), or

(B) at any time in the year a cohabiting spouse or common-law partner (within the meaning assigned by section 122.6) of an individual to whom clause (A) applies, or

(iii) where at any time in the year the person is a cohabiting spouse or common-law partner (within the meaning assigned by section 122.6) of an individual to whom paragraph (b) applies for the year, on or before the day that is the later of the day on or before which the person's return would otherwise be required to be filed and the day that is 6 months after the day of the individual's death; or

Proposed Administrative Change — 2D Bar Coding

CRA Fact Sheet, November 26, 2004: See under 150.1(2).

Related Provisions: 96(1.6) — Members of partnership deemed to carry on business of partnership for purposes of s. 150; 150(1.1)(b) — Individuals exempted from filing; 180.2(5) — Return required by residents and non-residents for OAS clawback calculation; 237(1) — Application for Social Insurance Number. See additional Related Provisions at end of 150(1) and at end of s. 150.

History: Para. 150(1)(d) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Cl. 150(1)(d)(ii)(A) amended by 1998, c. 19, subsec. 180(1), applicable to 1995 *et seq.* Cl. 150(1)(d)(ii)(A) formerly read:

(A) an individual who carried on a business in the year, unless the expenditures made in the course of carrying on the business were primarily the cost or capital cost of tax shelters (within the meaning assigned by subsection 237.1(1)), or

Para. 150(1)(d) amended by 1996, c. 21, subsec. 38(2), applicable to 1995 *et seq.* Para. (d) formerly read:

(d) individuals — in the case of any other person, on or before April 30 in the next year by that person or, if the person is unable for any reason to file the return, by the person's guardian, committee or other legal representative; or

Forms: T1 General: Individual income tax return; T1-Adj: Adjustment request; T1-KS: T1 keying schedule; T1261: Application for a CRA Individual tax number (ITN) for non-residents.

(e) **designated persons** — in a case where no person described by paragraph (a), (b) or (d) has filed the return, by such person as is required by notice in writing from the Minister to file the return, within such reasonable time as the notice specifies.

Related Provisions [subsec. 150(1)]: 149(12) — Non-profit organizations — information return; 149.1(14) — Charity information returns; 150.1 — Electronic filing; 162(1) — Penalty for late filing; 220(3) — Extension of time for filing return; 233.1 — Return of transactions with related non-residents; 248(1) — Definition of "filing-due date"; Reg. 229 — Partnership information returns; Reg. 8409 — Registered pension plan information return; *Interpretation Act* 26 — Extension of deadline where it falls on Sunday or holiday. See also Related Provisions at end of s. 150.

History [subsec. 150(1)]: The portion of subsec. 150(1) before para. (b) amended by 1999, c. 22, subsec. 63(1), applicable to taxation years that begin after 1998. The portion formerly read:

(1) Returns — A return of income for each taxation year in the case of a corporation (other than a corporation that was a registered charity throughout the year) and in the case of an individual, for each taxation year for which tax is payable by the individual or in which the individual has a taxable capital gain or has disposed of a capital property, shall, without notice or demand therefor, be filed with the Minister in prescribed form and containing prescribed information,

(a) in the case of a corporation, by or on behalf of the corporation within 6 months from the end of the year;

That portion of subsec. 150(1) preceding para. (a) substituted by 1994, c. 7, Sch. VII (1992, c. 48), s. 14, applicable to 1993 *et seq.* That portion formerly read:

150. (1) A return of income for each taxation year in the case of a corporation (other than a corporation that was a registered charity throughout the year) and in the case of an individual, for each taxation year for which tax is payable or would be payable if this Part were read without reference to sections 127.2 and 127.3, in which the individual has a taxable capital gain or has disposed of a capital property, or for which a payment has been received by the individual under section 164.1, shall, without notice or demand therefor, be filed with the Minister in prescribed form and containing prescribed information,

Para. 150(1)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 124, applicable to deaths occurring after October 1990. Para. 150(1)(b) formerly read:

(b) deceased persons — in the case of a person who has died without making the return, by the person's legal representatives, within 6 months from the day of death,

Selected Cases [subsec. 150(1)]: *Hooper et al. v. R.*, [1982] C.T.C. 95 (FCTD) (Crown's liability for act of negligence bestowing right to refunds).

Information Circulars [subsec. 150(1)]: 78-5R3: Communal organizations; 97-2R5: Customized forms; 00-1R: Voluntary disclosures program.

Forms: T2203: Provincial and territorial taxes — multiple jurisdictions.

(1.1) Exception — Subsection (1) does not apply to a taxation year of a taxpayer if

(a) the taxpayer is a corporation that was a registered charity throughout the year; or

(b) the taxpayer is an individual unless

(i) tax is payable under this Part by the individual for the year,

(ii) where the individual is resident in Canada at any time in the year, the individual has a taxable capital gain or disposes of capital property in the year,

(iii) where the individual is non-resident throughout the year, the individual has a taxable capital gain or disposes of a taxable Canadian property in the year, or

(iv) at the end of the year the individual's HBP balance or LLP balance (as defined in subsection 146.01(1) or 146.02(1)) is a positive amount.

Related Provisions: 149.1(14) — Charity must file information return.

History: Subsec. 150(1.1) added by 1999, c. 22, subsec. 63(2), applicable to taxation years that begin after 1998.

(2) Demands for returns — Every person, whether or not the person is liable to pay tax under this Part for a taxation year and whether or not a return has been filed under subsection (1) or (3), shall, on demand from the Minister, served personally or by registered letter, file, within such reasonable time as may be stipulated in the demand, with the Minister in prescribed form and containing prescribed information a return of the income for the taxation year designated in the demand.

Related Provisions: 162(2) — Repeated penalties; 231.2(1)(a) — Generic demand for information or return; 233 — Demand for partnership information return; 238(1) — Fine or imprisonment for failure to file. See additional Related Provisions at end of s. 150.

Selected Cases [subsec. 150(2)]: *Aulakh v. Canada*, [1995] 2 C.T.C. 526 (Alta Prov Ct) (Crown has choice of proceeding under s. 150 or by way of prosecution); *Miller v. Canada*, [1994] 2 C.T.C. 2230 (TCC) (Penalties vacated where evidence of personal service of demand was insufficient); *Skalbania, N.M., Ltd. v. Canada*, [1989] 2 C.T.C. 183 (BC Co Ct) (Request to file tax returns made under wrong provision; taxpayer's appeal against conviction allowed); *R. v. Merkle*, [1979] C.T.C. 519 (Alta CA) (Putting tax file in accountant's hands within time limit was valid defence); *Regina v. Harvey*, 74 D.T.C. 6250 (BC Co Ct) (Conviction of taxpayer not receiving demand to file tax returns overturned).

(3) Trustees, etc. — Every trustee in bankruptcy, assignee, liquidator, curator, receiver, trustee or committee and every agent or other person administering, managing, winding up, controlling or otherwise dealing with the property, business, estate or income of a person who has not filed a return for a taxation year as required by this section shall file a return in prescribed form of that person's income for that year.

Related Provisions: 94(3)(a)(vii) [proposed] — Application to trust deemed resident in Canada; 159 — Payments on behalf of others; 162(3) — Penalties; 163(1) — Repeated failures. See additional Related Provisions at end of s. 150.

Regulations: 204 (information returns).

(4) Death of partner or proprietor — Where

(a) subsection 34.1(9) or 34.2(8) applies in computing an individual's income for a taxation year from a business, or

(b) an individual who carries on a business in a taxation year dies in the year and after the end of a fiscal period of the business that ends in the year, another fiscal period of the business (in this subsection referred to as the "short period") ends in the year because of the individual's death, and the individual's legal representative elects that this subsection apply,

the individual's income from businesses for short periods, if any, shall not be included in computing the individual's income for the year and the individual's legal representative shall file an additional return of income for the year in respect of the individual as if the return were filed in respect of another person and shall pay the tax payable under this Part by that other person for the year computed as if

(c) the other person's only income for the year were the amount determined by the formula

$$A + B - C$$

where

A is the total of all amounts each of which is the individual's income from a business for a short fiscal period,

B is the total of all amounts each of which is an amount deducted under subsection 34.2(8) in computing the individual's income for the taxation year in which the individual dies, and

C is the total of all amounts each of which is an amount included under subsection 34.1(9) in computing the individual's income for the taxation year in which the individual dies, and

(d) subject to sections 114.2 and 118.93, that other person were entitled to the deductions to which the individual is entitled under sections 110, 118 to 118.7 and 118.9 for the year in computing the individual's taxable income or tax payable under this Part, as the case may be, for the year.

Related Provisions: 34.1(9)(d)(ii) — Additional income inclusion for off-calendar business year; 34.2(8)(d)(ii) — Deduction for 1995 stub period reserve; 70 — Rules for year of death; 114.2 — Deductions in separate returns; 118.93 — Credits in separate returns; 120.2(4)(a) — No minimum tax carryover; 127.1(1)(a) — No refundable investment tax credit; 127.55 — No minimum tax in year of death; 150(1)(b) — Deadline for deceased's return; 162(5) — Penalties — failure to provide information return; 163(1) — Repeated failures; 257 — Formula cannot calculate to less than zero. See additional Related Provisions at end of s. 150.

History: Subsec. 150(4) amended by 1998, c. 19, subsec. 180(2), applicable to 1996 *et seq.* Subsec. 150(4) formerly read:

(4) Where a taxpayer who is a partner or an individual who is a proprietor of a business died after the end of a fiscal period but before the end of the calendar year in which the fiscal period ended, the taxpayer's income as such partner or proprietor for the period commencing immediately after the end of the fiscal period and ending at the time of death shall be included in computing the taxpayer's income for the taxation year in which the taxpayer died unless the taxpayer's legal representative has elected otherwise, in which case the legal representative shall file a separate return of income for the period under this Part and pay the tax for the period under this Part as if

(a) the taxpayer were another person;

(b) the period were a taxation year;

(c) that other person's only income for the period were that person's income as such partner or proprietor for that period; and

(d) subject to sections 114.2 and 118.93, that other person were entitled to the deductions to which the taxpayer was entitled under sections 110, 118 to 118.7 and 118.9 for the period in computing the taxpayer's taxable income or tax payable under this Part, as the case may be, for the period.

Interpretation Bulletins [subsec. 150(4)]: IT-278R2: Death of a partner or of a retired partner; IT-326R3: Returns of deceased persons as "another person".

Forms: T4011: Preparing returns for deceased persons [guide].

Related Provisions [s. 150]: 11 — Proprietor of business; 149.1(14) — Registered charity information returns; 151 — Estimate of tax; 152(6) — Reassessment; 162 — Penalties; 163 — Failure to file return; 220(3) — Extension for filing return; 238 — Offences.

Definitions [s. 150]: "amount", "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "capital property" — 54, 248(1); "carries on business in Canada", "carrying on business in Canada" — 253; "common-law partner" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "estate" — 104(1), 248(1); "filing-due date" — 248(1); "fiscal period" — 249.1; "HBP balance" — 146.01(1); "individual" — 248(1); "LLP balance" — 146.02(1); "legal representative", "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "non-resident", "person", "prescribed", "property", "registered charity" — 248(1); "resident in Canada" — 94(3)(a)(vii), 250; "tax payable" — 248(2); "tax treaty", "taxable Canadian property" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [s. 150]: IT-109R2: Unpaid amounts.

150.1 (1) Definition of "electronic filing" — For the purposes of this section, "electronic filing" means using electronic media in a manner specified in writing by the Minister.

(2) Filing of return by electronic transmission — A person who meets the criteria specified in writing by the Minister may file a return of income for a taxation year by way of electronic filing.

Proposed Administrative Change — 2D Bar Coding on Paper Returns

CRA Fact Sheet, November 26, 2004: *CRA & 2D Bar Coding*

For the 2005 tax filing season, the Canada Revenue Agency (CRA) will introduce the use of two-dimensional (2D) bar codes for the purpose of processing computer generated paper returns filed by some Canadians.

2D bar codes

Advances in bar code technology in recent years have enabled greater amounts of data storage and retrieval to the point where it is now possible to capture a personal income tax return in a single 2D bar code.

Using 2D bar codes at the CRA

Tax preparers who use certified tax preparation software to generate returns for individuals, but decide to print out the return on paper and mail it to the CRA instead of sending it electronically over the Internet will be the primary users of the 2D bar code system. For the following year, the 2D bar code option will be made available to individual tax filers.

When tax preparers decide to print a copy of the tax return for submission to the CRA, certified tax preparation software will generate a 2D bar code to be printed on the first page of the *T1 Individual Income Tax and Benefit Return*. This bar code will contain all of the individual identification and financial data necessary for the assessment of the return.

Once the return is received by the CRA, an operator will scan the 2D bar code using a laser beam scanner. The data will then be validated and processed by the same system used to process returns today. In the rare case where the scanning process is unsuccessful, the return will be re-sorted for traditional processing.

Improved efficiencies

The CRA will gain efficiencies from the process of entering tax information from a return into the system being much faster than the traditional keying method, while at the same time eliminating keying errors. Additional efficiencies will be gained from the returns having been prepared by certified commercial software packages.

Paper returns traditionally have a fall-out rate of 45% for additional processing requirements as opposed to the lower rate of between 3% and 5% experienced for electronically filed returns. It is projected that 2D read returns will benefit from this lower rate.

Related Provisions: 244(21) — Proof of electronic filing; 244(22) — Electronic filing of information return.

Application Policies: SR&ED 2004-02: Filing requirements for claiming SR&ED carried out in Canada.

Forms: RC4018: Electronic filers manual [guide]; RC4088: Guide to the General Index of Financial Information (GIFI) for corporations; T183: Information return for electronic filing of an individual's income tax and benefit return; T183 CORP: Information return for corporations filing electronically; T1153: Consent and request form; T4077: EFILE: Electronic filing for individuals [guide].

(3) Deemed date of filing — For the purposes of section 150, where a return of income of a taxpayer for a taxation year is filed by way of electronic filing, it shall be deemed to be a return of income filed with the Minister in prescribed form on the day the Minister acknowledges acceptance of it.

(4) Declaration — Where a return of income of a taxpayer for a taxation year is filed by way of electronic filing by a particular person (in this subsection referred to as the "filer") other than the person who is required to file the return, the person who is required to file the return shall make an information return in prescribed form containing prescribed information, sign it, retain a copy of it and provide the filer with the information return, and that return and the copy shall be deemed to be a record referred to in section 230 in respect of the filer and the other person.

History: Subsec. 150.1(4) substituted by 1994, c. 21, s. 75, applicable after 1991. That subsec. formerly read:

> (4) Where a return of income of a taxpayer for a taxation year is filed by way of electronic filing by a particular person (in this subsection referred to as the "filer") other than the person who is required to file the return, the filer shall, if required by regulation, obtain from the other person a signed statement in prescribed form, retain one copy of the statement and provide the other person with a copy, and the statement shall be deemed to be a record referred to in section 230 in respect of the filer and the other person.

Forms: RC4018: Electronic filers manual [guide]; T183: Information return for electronic filing of an individual's income tax and benefit return; T183 CORP: Information return for corporations filing electronically.

(5) Application to other Parts — This section also applies to Parts I.2 to XIII, with such modifications as the circumstances require.

History: Subsec. 150.1(5) amended to replace "Part I.1" with "Parts I.2" by 2001, c. 17, s. 148, applicable to 2001 *et seq.*

History [s 150.1]: S. 150.1 added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 89, applicable to 1992 *et seq.*, and subsec. 150.1(5), in its application to Parts X, X.1, X.2, X.4, XI, XI.1 and XI.2, applies after 1991 as if subsecs. (1) to (4) applied after 1991.

Selected Cases [s. 150.1]: *Crisanti v. Canada*, [1996] 2 C.T.C. 2603 (TCC) (Late filing penalty applied in respect of electronically filed return).

Definitions [s. 150.1]: "electronic filing" — 150.1(1); "filer" — 150.1(4); "Minister", "person", "prescribed", "regulation" — 248(1); "taxation year" — 249; "writing" — *Interpretation Act* 35(1).

Forms: See under 150.1(2).

Estimate of Tax

151. Estimate of tax — Every person required by section 150 to file a return of income shall in the return estimate the amount of tax payable.

Related Provisions: 104(23) — Testamentary trusts; 150 — Returns; 155 — Farmers and fishermen; 156.1(4) — Payment of balance owing — individuals; 157(1), (2) — Corporations; 162(3) — Penalty — failure to complete return; 183(3) — Provision applicable to Part II; 187(3) — Provision applicable to Part IV; 193(8) — Provision applicable to Part VII; 195(8) — Provision applicable to Part VIII; 219(3) — Provision applicable to Part XIV.

Selected Cases [s. 151]: *R. v. Reid*, [1988] 1 C.T.C. 313 (Alta CA) (Requirement to estimate tax in tax return not Charter violation).

Definitions [s. 151]: "amount", "person" — 248(1).

Assessment

152. (1) Assessment — The Minister shall, with all due dispatch, examine a taxpayer's return of income for a taxation year, assess the tax for the year, the interest and penalties, if any, payable and determine

(a) the amount of refund, if any, to which the taxpayer may be entitled by virtue of section 129, 131, 132 or 133 for the year; or

(b) the amount of tax, if any, deemed by subsection 120(2) or (2.2), 122.5(3), 122.51(2), 125.4(3), 125.5(3), 127.1(1), 127.41(3) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year.

Related Provisions: 152(1.4) — Determination of income of partnership; 152(2) — Notice of assessment; 152(4), (5) — Reassessment; 158 — Remainder payable forthwith upon assessment; 160.2(3) — Minister may assess recipient under RRSP or RRIF; 166 — Irregularity or error in assessment; 244(15) — Date when assessment made.

History: Para. 152(1)(b) amended by 2000, c. 19, subsec. 44(1), applicable to 1999 *et seq.* The para. formerly read:

> (b) the amount of tax, if any, deemed by subsection 120(2), 122.5(3), 122.51(2), 125.4(3), 125.5(3), 127.1(1), 127.41(3) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year.

Para. 152(1)(b) amended by 1998, c. 19, subsec. 42(1), applicable to 1997 *et seq.*, except that for the 1997 taxation year the reference to "subsection 120(2)," shall be read as a reference to "subsection 120(2), 120.1(4),". Para. 152(1)(b) formerly read:

> (b) the amount of tax, if any, deemed by subsection 120(2), 120.1(4), 122.5(3), 125.4(3), 127.1(1), 127.41(3) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year or deemed by subsection 119(2) to be an overpayment.

Para. 152(1)(b) amended by 1996, c. 21, s. 39, applicable to 1995 *et seq.* Para. (b) formerly read:

> (b) the amount of tax, if any, deemed by subsection 120(2), 120.1(4), 122.5(3), 127.1(1), 127.41(3) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year or deemed by subsection 119(2) to be an overpayment.

Para. 152(1)(b) amended by 1995, c. 3, subsec. 46(1), applicable to taxation years that end after February 22, 1994. Para. (b) formerly read:

> (b) the amount of tax, if any, deemed by subsection 120(2), 120.1(4), 122.5(3), 127.1(1) or 210.2(3) or (4) to be paid on account of the taxpayer's tax under this Part for the year or deemed by subsection 119(2) to be an overpayment.

Para. 152(1)(b) substituted by 1994, c. 21, subsec. 76(1), applicable to 1993 *et seq.* That para. formerly read:

> (b) the amount of tax, if any, deemed by subsection 120(2), 120.1(4), 122.5(3), 127.1(1), 144(9) or 210.2(3) or (4) to be paid on account of the taxpayer's tax under this Part for the year or deemed by subsection 119(2) to be an overpayment.

Para. 152(1)(b) substituted by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 15(1), applicable to 1993 *et seq.* Para. (1)(b) formerly read:

> (b) the amount of tax, if any, deemed under subsection 119(2), 120(2), 120.1(4), 122.2(1), 122.5(3), 127.1(1), 127.2(2), 144(9) or 210.2(3) or (4) to be paid on account of the taxpayer's tax under this Part for the year.

Selected Cases [subsec. 152(1)]: *Valdis v. R.*, [2001] 1 C.T.C. 2827 (TCC) (Court has no jurisdiction to determine what amounts may have been withheld at source); *Schatten v. MNR*, [1996] 2 C.T.C. 13D (FCTD) (Minister must process return even if of the view that taxpayer non-resident); *Ginsberg v. Canada*, [1994] 2 C.T.C. 2063 (TCC) (Once significant delay established, onus on Crown to establish delay not unreasonable. Delay of one and a half years *prima facie* unreasonable); *Rodmon Constr. Inc. v. R.*, [1975] C.T.C. 73 (FCTD) (Assessment vacated where Minister failed to act with "all due dispatch").

(1.1) Determination of losses — Where the Minister ascertains the amount of a taxpayer's non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss for a taxation year and the taxpayer has not reported that amount as such a loss in the taxpayer's return of income for that year, the Minister shall, at the request of the taxpayer, determine, with all due dispatch, the amount of the loss and shall send a notice of determination to the person by whom the return was filed.

Related Provisions: 111 — Losses deductible; 152(1.4) — Determination of loss of partnership; 160.2(3) — Minister may assess recipient under RRSP or RRIF; 244(14) — Presumption re date of mailing of notice of determination; 244(15) — Determination deemed made on date mailed; 248(7)(a) — Mail deemed received on day mailed.

Selected Cases [subsec. 152(1.1)]: *Armstrong v. MNR*, [2005] 1 C.T.C. 21 (FC) (*Mandamus* refused for determination of loss where issues already dealt with in previous appeal); *Inco Ltd. v. R.*, [2004] 4 C.T.C. 2114 (TCC); aff'd [2005] 1 C.T.C. 367 (FCA) (Letter from Minister not a determination of taxpayer's loss); *Burleigh v. R.*, [2004] 2 C.T.C. 2797 (TCC) (Processing of return or determination of loss immaterial to claim for loss in tax return); *Burnet v. MNR*, [1999] 3 C.T.C. 60 (FCA) (Minister had duty to issue notice of determination of loss).

Interpretation Bulletins: IT-488R2: Winding-up of 90%-owned taxable Canadian corporations (archived); IT-512: Determination and redetermination of losses.

Information Circulars: 84-1: Revision of capital cost allowance claims and other permissive deductions.

(1.11) Determination pursuant to subsec. 245(2) — Where at any time the Minister ascertains the tax consequences to a taxpayer by reason of subsection 245(2) with respect to a transaction, the Minister

> (a) shall, in the case of a determination pursuant to subsection 245(8), or
>
> (b) may, in any other case,

determine any amount that is relevant for the purposes of computing the income, taxable income or taxable income earned in Canada of, tax or other amount payable by, or amount refundable to, the taxpayer under this Act and, where such a determination is made, the Minister shall send to the taxpayer, with all due dispatch, a notice of determination stating the amount so determined.

Related Provisions: 152(1.111) — Definitions in subsec. 245(1) apply; 152(1.12) — Limitation; 152(1.3) — Determination binding; 244(14) — Presumption re date of mailing of notice of determination; 244(15) — Determination deemed made on date mailed; 248(7)(a) — Mail deemed received on day mailed.

(1.111) Application of subsec. 245(1) — The definitions in subsection 245(1) apply to subsection (1.11).

Origin of subsec. 152(1.111): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsec. 245(1)).

(1.12) When determination not to be made — A determination of an amount shall not be made with respect to a taxpayer under subsection (1.11) at a time where that amount is relevant only for the purposes of computing the income, taxable income or taxable income earned in Canada of, tax or other amount payable by, or amount refundable to, the taxpayer under this Act for a taxation year ending before that time.

(1.2) Provisions applicable — Paragraphs 56(1)(l) and 60(o), this Division and Division J, as they relate to an assessment or a reassessment and to assessing or reassessing tax, apply, with such modifications as the circumstances require, to a determination or redetermination of an amount under this Division or an amount deemed under section 122.61 or 126.1 to be an overpayment on account of a taxpayer's liability under this Part, except that

Proposed Amendment — 152(1.2) opening words

(1.2) Provisions applicable — Paragraphs 56(1)(l) and 60(o), this Division and Division J, as they relate to an assessment or a reassessment and to assessing or reassessing tax, apply, with any modifications that the circumstances require, to a determination or a redetermination of an amount under this Division or an amount deemed under section 122.61 to be an overpayment on account of a taxpayer's liability under this Part, except that

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 149(1), will amend the opening words of subsec. 152(1.2) to read as above, applicable in respect of forms filed after March 20, 2003.

Technical Notes: Subsection 152(1.2) is amended to delete the reference to section 126.1, consequential to the repeal of that section. For additional information, see the commentary to section 126.1.

> (a) subsections (1) and (2) do not apply to determinations made under subsections (1.1) and (1.11);
>
> (b) an original determination of a taxpayer's non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss for a taxation year may be

made by the Minister only at the request of the taxpayer; and

(c) subsection 164(4.1) does not apply to a determination made under subsection (1.4).

Related Provisions: 96(2.1) — Limited partnership losses; 111 — Losses deductible; 160.2(3) — Minister may assess recipient under RRSP or RRIF.

History: Subsec. 152(1.2) amended by 1998, c. 19, subsec. 181(1), applicable in respect of determinations made after June 18, 1998. Subsec. 152(1.2) formerly read:

(1.2) Paragraphs 56(1)(l) and 60(o), this Division and Division J, as they relate to an assessment or a reassessment and to assessing or reassessing tax, apply, with such modifications as the circumstances require, to a determination or redetermination of an amount under this Division or an amount deemed under section 122.61 or 126.1 to be an overpayment on account of a taxpayer's liability under this Part, except that subsections (1) and (2) do not apply to determinations made under subsections (1.1) and (1.11) and, for greater certainty, an original determination of a taxpayer's non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss for a taxation year may be made by the Minister only at the request of the taxpayer.

Subsec. 152(1.2) amended by 1994, c. 8, subsec. 20(1), applicable after 1992. Subsec. (1.2) formerly read:

(1.2) Paragraphs 56(1)(l) and 60(o), this Division and Division J, as they relate to an assessment or a reassessment and to assessing or reassessing tax, are applicable, with such modifications as the circumstances require, to a determination or a redetermination and to determining or redetermining amounts under this Division, except that subsections (1) and (2) are not applicable to determinations made under subsections (1.1) and (1.11) and, for greater certainty, an original determination of a taxpayer's non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss for a taxation year may be made by the Minister only at the request of the taxpayer.

Selected Cases [subsec. 152(1.2)]: *Inco Ltd. v. R.*, [2005] 1 C.T.C. 367 (FCA); aff'g [2004] 4 C.T.C. 2114 (TCC) (Minister's letter was not "determination" of losses).

Interpretation Bulletins: IT-488R2: Winding-up of 90%-owned taxable Canadian corporations (archived); IT-512: Determination and redetermination of losses.

(1.3) Determination binding — For greater certainty, where the Minister makes a determination of the amount of a taxpayer's non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss for a taxation year or makes a determination under subsection (1.11) with respect to a taxpayer, the determination is (subject to the taxpayer's rights of objection and appeal in respect of the determination and to any redetermination by the Minister) binding on both the Minister and the taxpayer for the purpose of calculating the income, taxable income or taxable income earned in Canada of, tax or other amount payable by, or amount refundable to, the taxpayer, as the case may be, for any taxation year.

Related Provisions: 96(2.1) — Limited partnership loss; 111 — Losses deductible; 160.2(3) — Minister may assess recipient under RRSP or RRIF.

Interpretation Bulletins: IT-488R2: Winding-up of 90%-owned taxable Canadian corporations (archived); IT-512: Determination and redetermination of losses.

(1.4) Determination in respect of a partnership — The Minister may, within 3 years after the day that is the later of

(a) the day on or before which a member of a partnership is, or but for subsection 220(2.1) would be, required under section 229 of the *Income Tax Regulations* to make an information return for a fiscal period of the partnership, and

(b) the day the return is filed,

determine any income or loss of the partnership for the fiscal period and any deduction or other amount, or any other matter, in respect of the partnership for the fiscal period that is relevant in determining the income, taxable income or taxable income earned in Canada of, tax or other amount payable by, or any amount refundable to or deemed to have been paid or to have been an overpayment by, any member of the partnership for any taxation year under this Part.

Related Provisions: 152(1.2)(c) — Subsec. 164(4.1) does not apply to determination under 152(1.4); 152(1.5), (1.6) — Notice of determination; 152(1.7) — Determination binding; 152(1.8) — Assessment where partnership found not to exist; 163(2.9) — Partnership can be assessed certain penalties as though it were a corporation; 165(1.15) — Objection to determination; 244(15) — Determination deemed made on date mailed.

History: Subsec. 152(1.4) added by 1998, c. 19, subsec. 181(2), applicable in respect of determinations made after June 18, 1998.

(1.5) Notice of determination — Where a determination is made under subsection (1.4) in respect of a partnership for a fiscal period, the Minister shall send a notice of the determination to the partnership and to each person who was a member of the partnership during the fiscal period.

Related Provisions: 152(1.6) — Determination valid even if notice not received by partners; 244(14) — Presumption re date of mailing of determination; 244(20) — Notice mailed to partnership deemed provided to all partners; 248(7)(a) — Mail deemed received on day mailed.

History: Subsec. 152(1.5) added by 1998, c. 19, subsec. 181(2), applicable in respect of determinations made after June 18, 1998.

(1.6) Absence of notification — No determination made under subsection (1.4) in respect of a partnership for a fiscal period is invalid solely because one or more persons who were members of the partnership during the period did not receive a notice of the determination.

Related Provisions: 244(20) — Notice mailed to partnership deemed provided to all partners.

History: Subsec. 152(1.6) added by 1998, c. 19, subsec. 181(2), applicable in respect of determinations made after June 18, 1998.

(1.7) Binding effect of determination — Where the Minister makes a determination under subsection (1.4) or a redetermination in respect of a partnership,

(a) subject to the rights of objection and appeal of the member of the partnership referred to in subsection 165(1.15) in respect of the determination or redetermination, the determination or redetermination is binding on the Minister and each member of the partnership for the purposes of calculating the income, taxable income or taxable income earned in Canada of, tax or other amount payable by, or any amount refundable to or deemed to have been paid or to have been an overpayment by, the members for any taxation year under this Part; and

(b) notwithstanding subsections (4), (4.01), (4.1) and (5), the Minister may, before the end of the day that is one year after the day on which all rights of objection and appeal expire or are determined in respect of the determination or redetermination, assess the tax, interest, penalties or other amounts payable and determine an amount deemed to have been paid or to have been an overpayment under this Part in respect of any member of the partnership and any other taxpayer for any taxation year as may be necessary to give effect to the determination or redetermination or a decision of the Tax Court of Canada, the Federal Court of Appeal or the Supreme Court of Canada.

History: Para. 152(1.7)(b) amended by 2002, c. 8, para. 184(a) to substitute "Federal Court of Appeal" for "Federal Court of Canada", in force July 2, 2003.

Subsec. 152(1.7) added by 1998, c. 19, subsec. 181(2), applicable in respect of determinations made after June 18, 1998.

(1.8) Time to assess — Where, as a result of representations made to the Minister that a person was a member of a partnership in respect of a fiscal period, a determination is made under subsection (1.4) for the period and the Minister, the Tax Court of Canada, the Federal Court of Appeal or the Supreme Court of Canada concludes at a subsequent time that the partnership did not exist for the period or that, throughout the period, the person was not a member of the partnership, the Minister may, notwithstanding subsections (4), (4.1) and (5), within one year after that subsequent time, assess the tax, interest, penalties or other amounts payable, or determine an amount deemed to have been paid or to have been an overpayment under this Part, by any taxpayer for any taxation year, but only to the extent that the assessment or determination can reasonably be regarded

(a) as relating to any matter that was relevant in the making of the determination made under subsection (1.4);

(b) as resulting from the conclusion that the partnership did not exist for the period; or

(c) as resulting from the conclusion that the person was, throughout the period, not a member of the partnership.

Related Provisions [subsec. 152(1.8)]: 165(1.1)(a), (d) — Limitation of right to object; 169(2)(a), (d) — Limitation of right to appeal.

History: The opening words of subsec. 152(1.8) amended by 2002, c. 8, para. 184(b) to substitute "Federal Court of Appeal" for "Federal Court of Canada", in force July 2, 2003.

Subsec. 152(1.8) added by 1998, c. 19, subsec. 181(2), applicable in respect of determinations made after June 18, 1998.

(2) Notice of assessment — After examination of a return, the Minister shall send a notice of assessment to the person by whom the return was filed.

Related Provisions: 158 — Remainder payable forthwith after assessment mailed; 244(14), (15) — Mailing date of assessment.

Selected Cases [subsec. 152(2)]: *Sinnott v. R.*, [2000] 4 C.T.C. 2438 (TCC) (Sending of notice of assessment to trustee in bankruptcy instead of taxpayer did not give rise to extension of delays to object).

Forms: T67A, T67AC, T67AN, T453, T456, T457, T492: Notices of assessment; T1132: Alternative address authorization.

(3) Liability not dependent on assessment — Liability for the tax under this Part is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

Related Provisions: 152(4), (6), (8) — Assessment and reassessment; 160.2(3) — Minister may assess recipient; 165 — Objections to assessments; 166 — Assessment not to be vacated by reason of improper procedures; 169 — Appeal.

Selected Cases [subsec. 152(3)]: *Guaranty Properties Ltd. v. Canada*, [1990] 2 C.T.C. 94 (FCA); leave to appeal to SCC refused (1991), 49 B.L.R. 320 (note) (Amalgamating company not relieved of taxes prior to amalgamation; notice of reassessment valid).

(3.1) Definition of "normal reassessment period" — For the purposes of subsections (4), (4.01), (4.2), (4.3), (5) and (9), the normal reassessment period for a taxpayer in respect of a taxation year is

(a) where at the end of the year the taxpayer is a mutual fund trust or a corporation other than a Canadian-controlled private corporation, the period that ends 4 years after the earlier of the day of mailing of a notice of an original assessment under this Part in respect of the taxpayer for the year and the day of mailing of an original notification that no tax is payable by the taxpayer for the year; and

(b) in any other case, the period that ends 3 years after the earlier of the day of mailing of a notice of an original assessment under this Part in respect of the taxpayer for the year and the day of mailing of an original notification that no tax is payable by the taxpayer for the year.

Related Provisions: 136(1) — Cooperative corporation may be private corporation for purposes of s. 152; 137(7) — Credit union may be private corporation; 152(4), (6), (8) — Assessment and reassessment; 160.2(3) — Minister may assess recipient; 165 — Objections to assessments; 166 — Irregularities; 169, 172 — Appeal; 244(14) — Notice presumed mailed on date of notice; 244(15) — Date when assessment made.

History: 2001, c. 17, subsec. 150(2) (see below) is applicable in respect of an individual if, at any particular time after October 1, 1996 and before June 14, 1999 (two years before Royal Assent),

(a) the individual ceased to be resident in Canada; or

(b) where the individual is a trust, the trust made a distribution of property to which subsec. 107(2) does not apply solely because of the application of subsection 107(5), as amended.

Subsec. 150(2) reads as follows:

(2) Where this subsection applies in respect of an individual, for the purposes of any reassessment of the individual's tax, interest or penalties, for any year, that is necessary to take into account the application of this Act in respect of the cessation of residence or the distribution referred to in subsection (1), the individual's normal reassessment period under subsection 152(3.1) of the Act for any taxation year that ends at or after the particular time described in subsection (1) is, notwithstanding subsection 152(3.1) of the Act, deemed to end on the later of

(a) the day on which the normal reassessment period for the year would, but for this section, end; and

(b) the day [June 14, 2002] that is one year after the day on which this Act [2001, c. 17] receives royal assent.

The opening words of subsec. 152(3.1) amended by 1999, c. 22, subsec. 63.1(1), applicable to appeals disposed of after June 17, 1999. The opening words formerly read:

(3.1) For the purposes of subsections (4), (4.01), (4.2), (4.3) and (5), the normal reassessment period for a taxpayer in respect of a taxation year is

Subsec. 152(3.1) amended by 1998, c. 19, subsec. 181(3), applicable after April 27, 1989. The subsec. formerly read:

(3.1) For the purposes of subsections (4), (4.2), (4.3) and (5), the normal reassessment period for a taxpayer in respect of a taxation year is

(a) where at the end of the year the taxpayer is a mutual fund trust or a corporation other than a Canadian-controlled private corporation, the period that ends 4 years after the day of mailing of a notice of an original assessment under this Part in respect of the taxpayer for the year or the day of mailing of a notification that no tax is payable by the taxpayer for the year; and

(b) in any other case, the period that ends 3 years after the day of mailing of a notice of an original assessment under this Part in respect of the taxpayer for the year or the day of mailing of a notification that no tax is payable by the taxpayer for the year.

That portion of subsec. 152(3.1) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 90(1), to add reference to subsection (4.3), applicable to reassessments and redeterminations in respect of taxation years made after June 10, 1993 that relate to changes in balances for other taxation years made as a result of assessments made, or decisions on appeals rendered, after December 20, 1991.

That portion of subsec. 152(3.1) preceding para. (a) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 125(1), to add reference to subsec. (4.2), applicable to assessments and redeterminations made in respect of 1985 *et seq.*

Selected Cases [subsec. 152(3.1)]: *Brunette v. R.*, [2001] 1 C.T.C. 2008 (TCC) (Delay starts the day after assessment issued); *Continental Bank of Canada v. R.*, [1998] 4 C.T.C. 77 (SCC) (Minister not permitted to completely change basis of assessment long after reassessment period);

APL Oil & Gas Ltd. v. Canada, [1996] 3 C.T.C. 2001 (TCC) (Minister could not repudiate valid assessment because of a correctable error).

(3.2) Determination of deemed overpayment [Child Tax Benefit] — A taxpayer may, during any month, request in writing that the Minister determine the amount deemed by subsection 122.61(1) to be an overpayment on account of the taxpayer's liability under this Part for a taxation year that arose during the month or any of the 11 preceding months.

Related Provisions: 152(3.3) — Notice of determination.

History: Subsec. 152(3.2) added by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 15(2), applicable to months that are after 1992.

(3.3) Notice of determination [Child Tax Benefit] — On receipt of the request referred to in subsection (3.2), the Minister shall, with all due dispatch, determine the amounts deemed by subsection 122.61(1) to be overpayments on account of the taxpayer's liability under this Part that arose during the months in respect of which the request was made or determine that there is no such amount, and shall send a notice of the determination to the taxpayer.

History: Subsec. 152(3.3) added by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 15(2), applicable to months that are after 1992.

(3.4) Determination of UI premium tax credit — A taxpayer may request in writing that the Minister determine the amount deemed by subsection 126.1(6) or (7) to be an overpayment on account of the taxpayer's liability under this Part for a taxation year.

Related Provisions: 152(3.5) — Notice of determination.

History: Subsec. 152(3.4) added by 1994, c. 8, subsec. 20(2), applicable after 1992.

(3.5) Notice of determination [UI premium tax credit] — On receipt of the request referred to in subsection (3.4), the Minister shall, with all due dispatch, determine the amount deemed by subsection 126.1(6) or (7), as the case may be, to be an overpayment on account of the taxpayer's liability under this Part for a taxation year, or determine that there is no such amount, and shall send a notice of the determination to the taxpayer.

Proposed Repeal — 152(3.4), (3.5)

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 149(2), will repeal subsecs. 152(3.4) and (3.5), applicable in respect of forms filed after March 20, 2003.

Technical Notes: This subsection [152(3.4)] enables a taxpayer to request the Minister of National Revenue to determine the amount deemed by subsection 126.1(6) or (7) to be an overpayment on account of the taxpayer's liability under Part I of the Act.

This subsection is repealed consequential to the repeal of section 126.1. For additional information, see the commentary to section 126.1.

Subsection 152(3.5) requires the Minister of National Revenue to respond to a request for a determination of the UI premium tax credit. This subsection is repealed consequential to the repeal of section 126.1. For additional information, see the commentary to section 126.1.

History: Subsec. 152(3.5) added by 1994, c. 8, subsec. 20(2), applicable after 1992.

(4) Assessment and reassessment [limitation period] — The Minister may at any time make an assessment, reassessment or additional assessment of tax for a taxation year, interest or penalties, if any, payable under this Part by a taxpayer or notify in writing any person by whom a return of income for a taxation year has been filed that no tax is payable for the year, except that an assessment, reassessment or additional assessment may be made after the taxpayer's normal reassessment period in respect of the year only if

(a) the taxpayer or person filing the return

(i) has made any misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in filing the return or in supplying any information under this Act, or

(ii) has filed with the Minister a waiver in prescribed form within the normal reassessment period for the taxpayer in respect of the year; or

(b) the assessment, reassessment or additional assessment is made before the day that is 3 years after the end of the normal reassessment period for the taxpayer in respect of the year and

(i) is required pursuant to subsection (6) or would be so required if the taxpayer had claimed an amount by filing the prescribed form referred to in that subsection on or before the day referred to therein,

(ii) is made as a consequence of the assessment or reassessment pursuant to this paragraph or subsection (6) of tax payable by another taxpayer,

(iii) is made as a consequence of a transaction involving the taxpayer and a non-resident person with whom the taxpayer was not dealing at arm's length,

(iii.1) is made, if the taxpayer is non-resident and carries on a business in Canada, as a consequence of

(A) an allocation by the taxpayer of revenues or expenses as amounts in respect of the Canadian business (other than revenues and expenses that relate solely to the Canadian business, that are recorded in the books of account of the Canadian business, and the documentation in support of which is kept in Canada), or

(B) a notional transaction between the taxpayer and its Canadian business, where the transaction is recognized for the purposes of the computation of an amount under this Act or an applicable tax treaty.

(iv) is made as a consequence of a payment or reimbursement of any income or profits tax to or by the government of a country other than Canada or a government of a state, province or other political subdivision of any such country,

(v) is made as a consequence of a reduction under subsection 66(12.73) of an amount purported to be renounced under section 66, or

(vi) is made in order to give effect to the application of subsection 118.1(15) or (16).

Proposed Amendment — 152(4)(b)(vi)

(vi) is made in order to give effect to the application of subsection 94(9) or (10) or 118.1(15) or (16).

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), s. 34, will amend subpara. 152(4)(b)(vi) to read as above, applicable after 2002.

Technical Notes: In general terms, subsection 152(4) provides that the Minister of National Revenue may not reassess tax payable by a taxpayer for a taxation year after the normal reassessment period for the taxpayer in respect of the year unless certain conditions described in paragraph 152(4)(a) or (b) have been met. Subparagraph 152(4)(b)(vi) allows the Minister to reassess a taxpayer within 3 years after the end of the normal reassessment period for the taxpayer in respect of the year

where the reassessment is made in order to give effect to the application of subsection 118.1(15) or (16).

Subparagraph 152(4)(b)(vi) is amended to also allow the Minister to reassess a taxpayer within three years after the end of the normal reassessment period where the reassessment is made in order to give effect to the application of subsection 94(9) or (10). For more information on subsections 94(9) and (10), see the commentary on those subsections.

Related Provisions: 12(2.2) — Late assessment where amount elected re 12(1)(x) inclusion; 13(6) — Misclassified property; 21(5) — Late assessment to permit capitalization of interest; 67.5(2) — Late assessment re illegal payments; 69(12) — Late assessment on disposition of property below market value; 80.04(9) — Late assessment re transfer of forgiven amount of debt to related person; 104(5.31) — Revocation beyond the deadline of trust's election to defer 21-year deemed disposition; 118.1(11) — Late assessment on determination of value of cultural property; 127(17) — Assessment re ITC SR&ED pool beyond the deadline; 128.1(6)(d) — Late assessment to eliminate departure tax paid by taxpayer who returns to Canada; 143.2(15) — Limitation period inapplicable to reassessment of tax shelter investment; 146(8.01) — Home Buyer's Plan & LLP — late assessment of tax on withdrawal; 152(1.7) — Limitation period re determination of partnership income or loss; 152(3.1) — Normal reassessment period; 152(4.01) — Limitation on extended assessments; 152(4.1) — Where waiver revoked; 152(4.2) — Reassessment with taxpayer's consent; 152(4.3) — Consequential assessment; 152(5) — Limitation on assessments; 158 — Payment of balance on assessment; 160.2(3) — Minister may assess recipient under RRSP or RRIF; 161.1(7) — Late assessment to allow interest offset allocation; 164(1)(b) — Refunds; 165(1.1) — Limitation of right to object; 165(5) — Effect of filing of notice of objection; 169(2) — Limitation of right to appeal; 173(2) — Time during consideration not to count; 174(5) — Time during consideration of question not counted; 184(4) — Late assessment after election re excess capital dividend; 231.6 — Foreign-based information; 237.1(6.2) — Late assessment denying tax shelter deduction while penalty unpaid; 244(15) — Date when assessment made; Reg. 1106(1)"application for a certificate of completion"(b) — Waiver required to extend film tax credit application date; *Interpretation Act* 26 — Deadline on Sunday or holiday extended to next business day.

History: Subpara. 152(4)(b)(iii.1) added by 2001, c. 17, subsec. 149(1), applicable to 2000 *et seq.*

Subsec. 152(4) amended by 1998, c. 19, subsec. 181(4), applicable after April 27, 1989, except that in applying the subsec.

(a) before August 1997, it shall be read without reference to subpara. (b)(vi);

and

(b) to a taxation year before the 1996 taxation year, it shall be read without reference to subpara. (b)(v).

Subsec. 152(4) formerly read:

(4) Subject to subsection (5), the Minister may at any time assess tax for a taxation year, interest or penalties, if any, payable under this Part by a taxpayer or notify in writing any person by whom a return of income for a taxation year has been filed that no tax is payable for the year, and may

(a) at any time, if the taxpayer or person filing the return

(i) has made any misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in filing the return or in supplying any information under this Act, or

(ii) has filed with the Minister a waiver in prescribed form within the normal reassessment period for the taxpayer in respect of the year,

(b) before the day that is 3 years after the expiration of the normal reassessment period for the taxpayer in respect of the year, if

(i) an assessment or reassessment of the tax of the taxpayer was required pursuant to subsection (6) or would have been required if the taxpayer had claimed an amount by filing the prescribed form referred to in that subsection on or before the day referred to therein,

(ii) there is reason, as a consequence of the assessment or reassessment of another taxpayer's tax pursuant to this paragraph or subsection (6), to assess or reassess the taxpayer's tax for any relevant taxation year,

(iii) there is reason, as a consequence of a transaction involving the taxpayer and a non-resident person with whom the taxpayer was not dealing at arm's length, to assess or reassess the taxpayer's tax for any relevant taxation year, or

(iv) there is reason, as a consequence of an additional payment or reimbursement of any income or profits tax to or by the government of a country other than Canada, to assess or reassess the taxpayer's tax for any relevant taxation year, and

(c) within the normal reassessment period for the taxpayer in respect of the year, in any other case,

reassess or make additional assessments, or assess tax, interest or penalties under this Part, as the circumstances require, except that a reassessment, an additional assessment or an assessment may be made under paragraph (b) after the normal reassessment period for the taxpayer in respect of the year only to the extent that it may reasonably be regarded as relating to

(d) the assessment or reassessment referred to in subparagraph (b)(i) or (ii),

(e) the transaction referred to in subparagraph (b)(iii), or

(f) the additional payment or reimbursement referred to in subparagraph (b)(iv).

Selected Cases [subsec. 152(4)]: *Panini v. R.*, [2005] 2 C.T.C. 2252 (TCC) (Assessments allowed beyond statutory delay where taxpayer ignored stock option benefits); *Agazarian v. R.*, [2004] 3 C.T.C. 101 (FCA); rev'g [2003] 1 C.T.C. 2323 (TCC); leave to appeal to SCC refused 2004 CarswellNat 4638 (Minister has power to make more than one reassessment. English version is broader than French); *Mitchell v. Canada (A.G.)*, [2003] 1 C.T.C. 194 (FCA); rev'g [2001] 2 C.T.C. 301 (FCTD) (Waivers did not have to be in prescribed form); *Demers v. R.*, 2002 CarswellNat 4740 (TCC) (Claim of manifestly incorrect deduction was misrepresentation); *Brent v. R.*, [2001] 4 C.T.C. 2697 (TCC) (Where no knowledge exists of underlying facts, no neglect in misrepresentation of income); *Continental Steel Ltd. v. R.*, [2000] 1 C.T.C. 2732 (TCC) (Statutory limitation not applicable where error ought to have been discovered); *Markevich v. Canada*, [1999] 2 C.T.C. 104 (FCTD) (Provincial limitation statutes do not override Act); *Continental Bank of Canada v. R.*, [1998] 4 C.T.C. 77 (SCC) (Minister not permitted to completely change basis of assessment long after reassessment period); *APL Oil & Gas Ltd. v. Canada*, [1996] 3 C.T.C. 2001 (TCC) (Minister could not repudiate valid assessment because of a correctable error); *Nesbitt v. Canada*, 96 D.T.C. 6588 (FCA) (Mathematical error can constitute misrepresentation); *Duthie Estate v. Canada*, [1995] 2 C.T.C. 157 (FCTD) (Minister has power to issue contradictory assessments); *Paramount Productions Inc. v. Canada*, [1993] 2 C.T.C. 47 (FCTD) (Limitation period ran even where assessment erroneous); *Dauphinais (P.) v. MNR*, [1993] 1 C.T.C. 2056 (TCC) (Day on which assessment made excluded in computing delay within which Minister may reassess); *Wenger's Ltd. v. MNR*, [1992] 2 C.T.C. 2479 (TCC) (Minister not bound by position taken in earlier assessment); *Solberg (S.J.) v. Canada*, [1992] 2 C.T.C. 208 (FCTD) (Mistaken reference in waiver was technical defect only and did not preclude reassessment under Part I); *Lornport Investments Ltd. v. Canada*, [1992] 1 C.T.C. 351 (FCA) (Second notice of reassessment, later vacated, does not nullify first notice of reassessment); *Dick v. MNR*, [1991] 2 C.T.C. 2034 (TCC); appealed to FCTD (Aug. 30, 1991, File T-2251-91 (Since Minister failed to show fraud or misrepresentation reassessments for two taxation years statute-barred); *Canadian Marconi Co. v. Canada*, [1991] 2 C.T.C. 352 (FCA); leave to appeal to SCC refused (1992), 90 D.L.R. (4th) viii (note) (Minister has no power to reassess once statutory period has expired); *Cal Investments Ltd. v. Canada*, [1990] 2 C.T.C. 418 (FCTD) (Waiver without corporate seal valid where signed by an officer of the company with implied authority; corporate seal discretionary provision for Minister's benefit); *Flanagan v. R.*, [1987] 2 C.T.C. 167 (FCA) (Notice of reassessment not sent when still retained by Minister); *Davis v. R.*, [1984] C.T.C. 564 (FCTD) (Alleged misrepresentation for reassessment must not be proved before out-of-court settlement); *Burroughs v. R.*, [1982] C.T.C. 414 (FCTD) (Notice must be "sent", not necessarily "received", within prescribed time); *Saykaly v. MNR*, [1976] C.T.C. 702 (FCTD) (Reassessments justified upon presumption of misrepresentation when taxpayer not reporting benefit from transactions); *Bisson v. MNR*, [1972] C.T.C. 446 (FCTD) (Minister cannot reassess when taxpayer had no intention to defraud); *Bronze Memorials Ltd. v. MNR*, [1969] C.T.C. 620 (Exch.) (Minister not allowed to reassess after expiry of four-year limitation period from original assessment when no proof of fraud).

I.T. Application Rules: 62(1) (152(4) applies to assessments since December 23, 1971).

Interpretation Bulletins: IT-109R2: Unpaid amounts; IT-121R3: Election to capitalize cost of borrowed money (archived); IT-185R: Losses

from theft, defalcation or embezzlement; IT-384R: Reassessment where option exercised in subsequent year.

Information Circulars: 75-7R3: Reassessment of a return of income; 77-11: Sales tax reassessments — deductibility in computing income; 84-1: Revision of capital cost allowance claims and other permissive deductions; 92-3: Guidelines for refunds beyond the normal three year period.

Forms: T2029: Waiver in respect of the normal reassessment period.

(4.01) Assessment to which para. 152(4)(a) or (b) applies — Notwithstanding subsections (4) and (5), an assessment, reassessment or additional assessment to which paragraph (4)(a) or (4)(b) applies in respect of a taxpayer for a taxation year may be made after the taxpayer's normal reassessment period in respect of the year to the extent that, but only to the extent that, it can reasonably be regarded as relating to,

(a) where paragraph (4)(a) applies to the assessment, reassessment or additional assessment,

(i) any misrepresentation made by the taxpayer or a person who filed the taxpayer's return of income for the year that is attributable to neglect, carelessness or wilful default or any fraud committed by the taxpayer or that person in filing the return or supplying any information under this Act, or

(ii) a matter specified in a waiver filed with the Minister in respect of the year; and

(b) where paragraph (4)(b) applies to the assessment, reassessment or additional assessment,

(i) the assessment, reassessment or additional assessment to which subparagraph (4)(b)(i) applies,

(ii) the assessment or reassessment referred to in subparagraph (4)(b)(ii),

(iii) the transaction referred to in subparagraph (4)(b)(iii),

(iv) the payment or reimbursement referred to in subparagraph (4)(b)(iv),

(v) the reduction referred to in subparagraph (4)(b)(v), or

(vi) the application referred to in subparagraph (4)(b)(vi).

Related Provisions: 152(1.7) — Limitation period re determination of partnership income or loss; 152(3.1) — Normal reassessment period.

History: Subsec. 152(4.01) added by 1998, c. 19, subsec. 181(4), applicable after April 27, 1989, except that in applying the subsec.

(a) before August 1997, it shall be read without reference to subpara. (b)(vi); and

(b) to a taxation year before the 1996 taxation year, it shall be read without reference to subpara. (b)(v).

(4.1) Where waiver revoked — Where the Minister would, but for this subsection, be entitled to reassess, make an additional assessment or assess tax, interest or penalties by virtue only of the filing of a waiver under subparagraph (4)(a)(ii), the Minister may not make such reassessment, additional assessment or assessment after the day that is six months after the date on which a notice of revocation of the waiver in prescribed form is filed.

Related Provisions: 152(1.7) — Limitation period re determination of partnership income or loss; 152(4.2) — Reassessment with taxpayer's consent; 165(1.2) — No objection permitted where right to object waived; 169(2.2) — No appeal where right to object or appeal waived.

Forms: T652: Notice of revocation of waiver.

(4.2) Reassessment with taxpayer's consent — Notwithstanding subsections (4), (4.1) and (5), for the purpose of determining, at any time after the end of the normal reassessment period of a taxpayer who is an individual (other than a trust) or a testamentary trust in respect of a taxation year, the amount of any refund to which the taxpayer is entitled at that time for the year, or a reduction of an amount payable under this Part by the taxpayer for the year, the Minister may, if the taxpayer makes an application for that determination on or before the day that is ten calendar years after the end of that taxation year,

(a) reassess tax, interest or penalties payable under this Part by the taxpayer in respect of that year; and

(b) redetermine the amount, if any, deemed by subsection 120(2) or (2.2), 122.5(3), 122.51(2), 127.1(1), 127.41(3) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year or deemed by subsection 122.61(1) to be an overpayment on account of the taxpayer's liability under this Part for the year.

Related Provisions: 152(3.1) — Normal reassessment period; 152(4.3) — Consequential assessment; 164(1.5) — Refunds; 164(3.2) — Interest on refunds and repayments; 165(1.2) — Limitation of right to object; 225.1(1) — No collection restrictions following assessment.

History: Subsec. 152(4.2) amended by 2005, c. 19, s. 36, applicable to applications made after 2004. The subsec. formerly read:

(4.2) Notwithstanding subsections (4), (4.1) and (5), for the purpose of determining, at any time after the expiration of the normal reassessment period for a taxpayer who is an individual (other than a trust) or a testamentary trust in respect of a taxation year,

(a) the amount of any refund to which the taxpayer is entitled at that time for that year, or

(b) a reduction of an amount payable under this Part by the taxpayer for that year,

the Minister may, if application therefor has been made by the taxpayer,

(c) reassess tax, interest or penalties payable under this Part by the taxpayer in respect of that year, and

(d) redetermine the amount, if any, deemed by subsection 120(2) or (2.2), 122.5(3), 122.51(2), 127.1(1), 127.41(3) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year or deemed by subsection 122.61(1) to be an overpayment on account of the taxpayer's liability under this Part for the year.

Para. 152(4.2)(d) amended by 2000, c. 19, subsec. 44(2), applicable to 1999 *et seq.* The para. formerly read:

(d) redetermine the amount, if any, deemed by subsection 120(2), 122.5(3), 122.51(2), 127.1(1), 127.41(3) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year or deemed by subsection 122.61(1) to be an overpayment on account of the taxpayer's liability under this Part for the year.

Para. 152(4.2)(d) amended by 1998, c. 19, subsec. 42(2), applicable to 1997 *et seq.*, except that for the 1997 taxation year the reference to "subsection 120(2)," shall be read as a reference to "subsection 120(2), 120.1(4),". Para. 152(4.2)(d) formerly read:

(d) redetermine the amount, if any, deemed by subsection 120(2), 120.1(4), 122.5(3), 127.1(1), 127.41(3) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year or deemed by subsection 119(2), 122.61(1) or 126.1(6) or (7) to be an overpayment on account of the taxpayer's liability under this Part for the year.

Para. 152(4.2)(d) amended by 1995, c. 3, subsec. 46(2), applicable to taxation years that end after February 22, 1994. Para. (d) formerly read:

(d) redetermine the amount, if any, deemed by subsection 120(2), 120.1(4), 122.5(3), 127.1(1), 144(9) or 210.2(3) or (4) to be paid on account of the taxpayer's tax under this Part for the year or deemed by subsection 119(2), 122.61(1) or 126.1(6) or (7) to be an overpayment on account of the taxpayer's liability under this Part for the year,

Para. 152(4.2)(d) amended by 1994, c. 8, subsec. 20(3), applicable after 1992, except that in its application to redeterminations made in respect of the 1991 and 1992 taxation years, the para. shall be read as follows:

(d) redetermine the amount, if any, deemed by subsection 120(2), 120.1(4), 122.2(1), 122.5(3), 127.1(1), 144(9) or 210.2(3) or (4) to

be paid on account of the taxpayer's tax under this Part for the year or deemed by subsection 119(2) or 122.61(1) to be an overpayment on account of the taxpayer's liability under this Part for the year.

Para. (d) formerly read:

(d) redetermine the amount, if any, deemed by subsection 120(2), 120.1(4), 122.5(3), 127.1(1), 144(9) or 210.2(3) or (4) to be paid on account of the taxpayer's tax under this Part for the year or deemed by subsection 119(2) or 122.61(1) to be an overpayment on account of the taxpayer's liability under this Part for the year.

Para. 152(4.2)(d) substituted by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 15(3), applicable to redeterminations made in respect of 1991 *et seq.* except that, in its application to redeterminations made in respect of the 1991 and 1992 taxation years, the para. shall be read as follows:

(d) redetermine the amount of tax, if any, deemed by subsection 120(2), 120.1(4), 122.2(1), 122.5(3), 127.1(1), 144(9) or 210.2(3) or (4) to be paid on account of the taxpayer's tax under this Part for the year or deemed by subsection 119(2) or 122.61(1) to be an overpayment on account of the taxpayer's liability under this Part for the year.

Para. (4.2)(d) formerly read:

(d) redetermine the amount of tax, if any, deemed by subsection 119(2), 120(2), 120.1(4), 122.2(1), 122.5(3), 127.1(1), 144(9) or 210.2(3) or (4) of this Act or subsection 122.4(3) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it applied to taxation years ending before 1991, to have been paid on account of the taxpayer's tax under this Part for that year.

Subsec. 152(4.2) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 125(2), applicable to assessments and redeterminations made in respect of 1985 *et seq.*

Selected Cases [subsec. 152(4.2)]: *Lanno v. Canada (CCRA)*, [2004] 4 C.T.C. 268 (FC) (No entitlement to reassessment beyond statutory period simply because other taxpayers had filed objections).

Information Circulars: 75-7R3: Reassessment of a return of income; 92-3: Guidelines for refunds beyond the normal three year period.

Application Policies: SR&ED 94-01: Retroactive claims for scientific research (TPRs).

(4.3) Consequential assessment — Notwithstanding subsections (4), (4.1) and (5), where the result of an assessment or a decision on an appeal is to change a particular balance of a taxpayer for a particular taxation year, the Minister may, or where the taxpayer so requests in writing, shall, before the later of the expiration of the normal reassessment period in respect of a subsequent taxation year and the end of the day that is one year after the day on which all rights of objection and appeal expire or are determined in respect of the particular year, reassess the tax, interest or penalties payable, or redetermine an amount deemed to have been paid or to have been an overpayment, under this Part by the taxpayer in respect of the subsequent taxation year, but only to the extent that the reassessment or redetermination can reasonably be considered to relate to the change in the particular balance of the taxpayer for the particular year.

Related Provisions: 152(3.1) — Normal reassessment period; 152(4.4) — Definition of "balance"; 165(1.1) — Limitation of right to object to assessments or determinations; 169(2) — Limitation of right to appeal.

History: Subsec. 152(4.3) substituted by 1994, c. 21, subsec. 76(2), applicable to reassessments and redeterminations in respect of taxation years made after June 10, 1993 that relate to changes in balances for other taxation years made as a result of assessments made, or decisions on appeals rendered, after December 20, 1991 except that, where the day referred to as "the day on which all rights of objection and appeal expire or are determined in respect of the particular year" occurred before June 10, 1993, the subsec. shall be read as if that reference were a reference to June 10, 1993. That subsec. formerly read:

(4.3) Notwithstanding subsections (4), (4.1) and (5), where the result of an assessment or a decision on an appeal is to change a particular balance of a taxpayer for a particular taxation year, the Minister may or, where the taxpayer so requests in writing, shall, before the later of the expiration of the normal reassessment period in respect of another taxation year and the end of the day that is one year after the day on which all rights of objection and appeal have expired or been determined in respect of the particular year, reassess the tax, interest or penalties payable, or redetermine an amount deemed to have been paid, under this Part by the taxpayer in respect of the other taxation year, but only for the purpose of giving effect to any provision of this Act requiring the inclusion, or allowing the deduction, of an amount in computing a balance of the taxpayer for the other year, to the extent that the inclusion or deduction can reasonably be considered to relate to the change in the particular balance of the taxpayer for the particular year.

Subsec. 152(4.3) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 90(2), applicable to reassessments and redeterminations in respect of taxation years made after June 10, 1993 that relate to changes in balances for other taxation years made as a result of assessments made, or decisions on appeals rendered, after December 20, 1991 except that where the day referred to in subsec. (4.3) as "the day on which all rights of objection and appeal have expired or been determined in respect of the particular year" occurs before June 10, 1993, subsec. (4.3) shall be read as if that reference were to June 10, 1993.

Selected Cases [subsec. 152(4.3)]: *Hevey v. R.*, [2005] 1 C.T.C. 2848 (TCC) ("Consequential" assessment related to balance in earlier years not statute-barred); *Bulk Transfer Systems Inc. v. R.*, [2004] 2 C.T.C. 2995 (TCC); aff'd [2005] 2 C.T.C. 87 (FCA) (Minister must disclose factual basis for assessment issued outside normal assessment period); *Sherway Centre Ltd. v. R.*, [2003] 1 C.T.C. 123 (FCA) (Provision cannot be circumvented by reassessment under 165(1.1)).

(4.4) Definition of "balance" — For the purpose of subsection (4.3), a "balance" of a taxpayer for a taxation year is the income, taxable income, taxable income earned in Canada or any loss of the taxpayer for the year, or the tax or other amount payable by, any amount refundable to, or any amount deemed to have been paid or to have been an overpayment by, the taxpayer for the year.

Related Provisions: 152(4.3) — Consequential assessment; 165(1.11)(b) — Balance adjustment to be requested specifically on large corporation's notice of objection.

History: Subsec. 152(4.4) substituted by 1994, c. 21, subsec. 76(2), applicable to reassessments and redeterminations in respect of taxation years made after June 10, 1993 that relate to changes in balances for other taxation years made as a result of assessments made, or decisions on appeals rendered, after December 20, 1991. That subsec. formerly read:

(4.4) For the purposes of subsection (4.3), a "balance" of a taxpayer for a taxation year is the income, taxable income earned in Canada or any loss of the taxpayer for the year, or the tax or other amount payable by, any amount refundable to, or any amount deemed to have been paid by, the taxpayer for the year.

Subsec. 152(4.4) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 90(2), applicable to reassessments and redeterminations in respect of taxation years made after June 10, 1993 that relate to changes in balances for other taxation years made as a result of assessments made, or decisions on appeals rendered, after December 20, 1991.

(5) Limitation on assessments — There shall not be included in computing the income of a taxpayer for a taxation year, for the purpose of an assessment, reassessment or additional assessment made under this Part after the taxpayer's normal reassessment period in respect of the year, any amount that was not included in computing the taxpayer's income for the purpose of an assessment, reassessment or additional assessment made under this Part before the end of the period.

Related Provisions: 12(2.2) — Deemed outlay or expense; 67.5(2) — Reassessments; 127(17) — Assessment re ITC SR&ED pool beyond the deadline; 152(1.7) — Limitation period re determination of partnership income or loss; 152(3.1) — Normal reassessment period; 152(4.01) — Limitation on extended assessments; 152(4.2) — Assessment; 152(4.3) — Consequential assessment; 152(9) — Minister allowed to raise alternative ground of assessment; 160.2(3) — Minister may assess recipient under RRSP or RRIF; 161.1(7) — Late assessment to allow interest offset allocation.

History: Subsec. 152(5) amended by 1998, c. 19, subsec. 181(5), applicable after April 27, 1989. Subsec. 152(5) formerly read:

> (5) There shall not be included in computing the income of a taxpayer for a taxation year, for the purposes of any reassessment, additional assessment or assessment of tax, interest or penalties under this Part that is made after the normal reassessment period for the taxpayer in respect of the year, any amount
>
> (a) that was not included in computing the taxpayer's income for the purposes of an assessment of tax under this Part made before the end of the normal reassessment period for the taxpayer;
>
> (b) in respect of which the taxpayer establishes that the failure so to include it did not result from any misrepresentation that is attributable to negligence, carelessness or wilful default or from any fraud in filing a return of the taxpayer's income or supplying any information under this Act; and
>
> (c) where any waiver has been filed by the taxpayer with the Minister, in the form and within the time referred to in subsection (4), with respect to a taxation year to which the reassessment, additional assessment or assessment of tax, interest or penalties, as the case may be, relates, that the taxpayer establishes cannot reasonably be regarded as relating to a matter specified in the waiver.

Selected Cases [subsec. 152(5)]: *Merswolke v. Canada*, [1995] 1 C.T.C. 2524 (TCC) (Subsec. 152(5) does not authorize reassessment without authority of subsecs. 152(4), (4.2) or (4.3)).

I.T. Application Rules: 62(1) (where waiver filed before December 23, 1971).

Interpretation Bulletins: IT-241: Reassessments made after the four-year limit (archived).

(6) Reassessment where certain deductions claimed [carrybacks] — Where a taxpayer has filed for a particular taxation year the return of income required by section 150 and an amount is subsequently claimed by the taxpayer or on the taxpayer's behalf for the year as

(a) a deduction under paragraph 3(e) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, by virtue of the taxpayer's death in a subsequent taxation year and the consequent application of section 71 of that Act in respect of an allowable capital loss for the year,

(b) a deduction under section 41 in respect of the taxpayer's listed-personal-property loss for a subsequent taxation year,

(b.1) a deduction under paragraph 60(i) in respect of a premium (within the meaning assigned by subsection 146(1)) paid in a subsequent taxation year under a registered retirement savings plan where the premium is deductible by reason of subsection 146(6.1),

(c) a deduction under section 118.1 in respect of a gift made in a subsequent taxation year or under section 111 in respect of a loss for a subsequent taxation year,

(c.1) a deduction under section 119 in respect of a disposition in a subsequent taxation year,

(d) a deduction under subsection 127(5) in respect of property acquired or an expenditure made in a subsequent taxation year,

(e) a deduction under subsection 125.2 in respect of an unused Part VI tax credit (within the meaning assigned by subsection 125.2(3)) for a subsequent taxation year,

(f) a deduction under section 125.3 in respect of an unused Part I.3 tax credit (within the meaning assigned by subsection 125.3(3)) for a subsequent taxation year,

(f.1) a deduction under subsection 126(2) in respect of an unused foreign tax credit (within the meaning assigned by subsection 126(7)), or under subsection 126(2.21) or (2.22) in respect of foreign taxes paid, for a subsequent taxation year,

(f.2) a deduction under subsection 128.1(8) as a result of a disposition in a subsequent taxation year,

(g) a deduction under subsection 147.2(4) because of the application of subsection 147.2(6) as a result of the taxpayer's death in the subsequent taxation year, or

(h) a deduction by virtue of an election for a subsequent taxation year under paragraph 164(6)(c) or (d) by the taxpayer's legal representative,

by filing with the Minister, on or before the day on or before which the taxpayer is, or would be if a tax under this Part were payable by the taxpayer for that subsequent taxation year, required by section 150 to file a return of income for that subsequent taxation year, a prescribed form amending the return, the Minister shall reassess the taxpayer's tax for any relevant taxation year (other than a taxation year preceding the particular taxation year) in order to take into account the deduction claimed.

Related Provisions: 111 — Losses deductible; 150 — Returns; 160.2(3) — Minister may assess recipient under RRSP or RRIF; 161(7)(b)(iii) — Effect of carryback of loss, etc.; 164(5), (5.1) — No back interest on refund where past year reassessed; 165(1.1) — Limitation of right to object to assessments or determinations; 169(2)(a) — Limitation of right to appeal.

History: Former para. 152(6)(c.1) amended and renumbered as (f.1), new para. (c.1) and para. (f.2) added, by 2001, c. 17, subsecs. 149(2) and (3) applicable to taxation years that end after October 1, 1996. In respect of

> (a) a deduction under s. 119, or an adjustment under subsec. 128.1(8), in respect of a disposition by a taxpayer, or
>
> (b) a deduction under subsec. 126(2.21) or (2.22) in respect of foreign taxes paid by a taxpayer,

the taxpayer is deemed to have filed the prescribed form described in subsec. 152(6) in a timely manner if the taxpayer files the form with the Minister on or before the later of the day on or before which the taxpayer would, but for this application, be required to file the form and the taxpayer's filing-due date for the taxation year that includes June 14, 2001.

Former para. (c.1) (now (f.1)) formerly read:

> (c.1) a deduction under subsection 126(2) in respect of an unused foreign tax credit (within the meaning assigned by subsection 126(7)) for a subsequent taxation year,

Para. 152(6)(g) added by 1998, c. 19, subsec. 181(6), applicable to taxpayers who die after 1992.

Selected Cases [subsec. 152(6)]: *Agazarian v. R.*, [2003] 1 C.T.C. 2323 (TCC); rev'd [2004] 3 C.T.C. 101 (FCA) (Authority for reassessments re loss carry-backs derived from 152(4), not 152(6)); *A. & M. Johnson Contracting Ltd. v. R.*, [1998] 3 C.T.C. 2583 (TCC) (Courts will not grant mandamus compelling Minister to reassess).

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-232R3: Losses — their deductibility in the loss year or in other years; IT-520: Unused foreign tax credits — carryforward and carryback.

Information Circulars: 75-7R3: Reassessment of a return of income.

Forms: T1A: Request for loss carryback; T1ADJ: Adjustment request; T2 SCH 4: Corporation loss continuity and application; T67B, T67BCD, T67BD, T458, T459, T493: Notices of reassessment.

(6.1) Reassessment where amount included in income under subsec. 91(1) is reduced — Where

(a) a taxpayer has filed for a particular taxation year the return of income required by section 150,

(b) the amount included in computing the taxpayer's income for the particular year under subsection 91(1) is subsequently reduced because of a reduction in the foreign accrual property income of a foreign affiliate

of the taxpayer for a taxation year of the affiliate that ends in the particular year and is

(i) attributable to the amount prescribed to be the deductible loss of the affiliate for the year that arose in a subsequent year of the affiliate that ends in a subsequent taxation year of the taxpayer, and

(ii) included in the description of F of the definition "foreign accrual property income" in subsection 95(1) in respect of the affiliate for the year, and

(c) the taxpayer has filed with the Minister, on or before the filing-due-date for the taxpayer's subsequent taxation year, a prescribed form amending the return,

the Minister shall reassess the taxpayer's tax for any relevant taxation year (other than a taxation year preceding the particular taxation year) in order to take into account the reduction in the amount included under subsection 91(1) in computing the income of the taxpayer for the year.

Related Provisions: Reg. 5903(1) — Loss carryback.

History: Subsec. 152(6.1) added by 2001, c. 17, subsec. 149(4), applicable to taxation years of foreign affiliates that begin after November 1999.

(7) Assessment not dependent on return or information — The Minister is not bound by a return or information supplied by or on behalf of a taxpayer and, in making an assessment, may, notwithstanding a return or information so supplied or if no return has been filed, assess the tax payable under this Part.

Related Provisions: 152(4) — Reassessment; 160.2(3) — Minister may assess recipient under RRSP or RRIF; 165 — Objections to assessments; 169 — Appeal to Tax Court of Canada.

Selected Cases [subsec. 152(7)]: *R. v. Balanko*, [1988] 1 C.T.C. 317 (FCTD) (Gambling gains not income for net worth assessment); *Gentile v. R.*, [1988] 1 C.T.C. 253 (FCTD) (Taxpayer taxable on his income from all sources; assessment on net worth basis); *Chhabra v. R.*, [1988] 1 C.T.C. 84 (FCTD) (Taxpayer's tax returns accepted when flawed financial statements used by Minister); *Danielson v. MNR*, [1986] 2 C.T.C. 341 (FCTD) (Assessment to be challenged by objection and appeal, not by application for *certiorari*); *Werry v. R.*, [1976] C.T.C. 221 (FCA) (Burden of proof is on taxpayer to justify new trial relating to net worth assessment; evidence insufficient).

(8) Assessment deemed valid and binding — An assessment shall, subject to being varied or vacated on an objection or appeal under this Part and subject to a reassessment, be deemed to be valid and binding notwithstanding any error, defect or omission in the assessment or in any proceeding under this Act relating thereto.

Related Provisions: 152(3) — Liability for tax not affected by incorrect or incomplete assessment; 152(4) — Reassessment; 158 — Assessed amount payable forthwith; 160(2) — Minister may assess transferee; 160.2(3) — Minister may assess recipient; 165 — Objections to assessments; 166 — Assessment not to be vacated by reason of improper procedures; 172 — Appeal; 225.1 — Collection restrictions while assessment under objection or appeal.

Selected Cases [subsec. 152(8)]: *Friedberg v. R.*, [2000] 2 C.T.C. 370 (FCA) (Error on face of notice of assessment was not error in assessment); *Régime des Rentes pour les Employés de Direction de Gestion RST Inc. v. MNR*, [1993] 1 C.T.C. 2091 (TCC) (Assessment of trust, rather than trustee, invalid); *Lornport Investments Ltd. v. Canada*, [1992] 1 C.T.C. 351 (FCA) (Second notice of reassessment, later vacated, does not nullify first notice of reassessment); *Canadian Marconi Co. v. Canada*, [1991] 2 C.T.C. 352 (FCA); leave to appeal to SCC refused (1992), 90 DLR (4th) viii (note) (Minister has no power to reassess once statutory period has expired); *Guaranty Properties Ltd. v. Canada*, [1990] 2 C.T.C. 94 (FCA); leave to appeal to SCC refused (1991), 49 B.L.R. 320 (note) (Amalgamating company not relieved of taxes prior to amalgamation); *Stephens (Estate) v. R.*, [1987] 1 C.T.C. 88 (FCA) (Notices of reassessment not void when bearing name and signature other than Minister); *R. v. Lambert*, [1974] C.T.C. 516 (FCTD) (Answers of taxpayer in examination for discovery cannot be used in criminal proceedings).

(9) Alternative basis for assessment — The Minister may advance an alternative argument in support of an assessment at any time after the normal reassessment period unless, on an appeal under this Act

(a) there is relevant evidence that the taxpayer is no longer able to adduce without the leave of the court; and

(b) it is not appropriate in the circumstances for the court to order that the evidence be adduced.

Related Provisions: 152(5) — Limitation on income inclusion after normal reassessment period.

History: Subsec. 152(9) added by 1999, c. 22, subsec. 63.1(2), applicable to appeals disposed of after June 17, 1999.

Selected Cases [subsec. 152(9)]: *Blanchette v. R.*, [2003] 4 C.T.C. 2708 (TCC) (Alternative position argued by Minister not required to lead to exactly the same amount of tax as assessed).

I.T. Technical News: 16 (*Continental Bank* case).

(10) Where tax deemed not to be assessed — Notwithstanding any other provision of this section, an amount of tax for which adequate security is accepted by the Minister under subsection 220(4.5) or (4.6) is, until the end of the period during which the security is accepted by the Minister, deemed for the purpose of any agreement entered into by or on behalf of the Government of Canada under section 7 of the *Federal-Provincial Fiscal Arrangements Act* not to have been assessed under this Act.

History: Subsec. 152(10) added by 2001, c. 17, subsec. 149(5), applicable to taxation years that end after October 1, 1996.

Definitions [s. 152]: "allowable capital loss" — 38(b), 248(1); "amount", "assessment" — 248(1); "balance" — 152(4.4); "calendar year" — *Interpretation Act* 37(1)(a); "Canadian-controlled private corporation" — 125(7), 248(1); "carries on a business in Canada" — 253; "farm loss" — 111(8), 248(1); "Federal Court of Appeal" — *Federal Courts Act* s. 3; "foreign accrual property income" — 95(1), (2), 248(1); "foreign affiliate" — 95(1), 248(1); "individual" — 248(1); "limited partnership loss" — 96(2.1)(e), 248(1); "listed personal property" — 54, 248(1); "Minister" — 248(1); "net capital loss", "non-capital loss" — 111(8), 248(1); "non-resident" — 248(1); "normal reassessment period" — 152(3.1); "person", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "registered retirement savings plan" — 146(1), 248(1); "restricted farm loss" — 31, 248(1); "tax consequences" — 152(1.111), 245(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "testamentary trust" — 108(1), 248(1); "transaction" — 152(1.111), 245(1); "trust" — 104(1), 108(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

Payment of Tax

153. (1) Withholding [source deductions] — Every person paying at any time in a taxation year

(a) salary, wages or other remuneration, other than amounts described in subsection 212(5.1),

(b) a superannuation or pension benefit,

(c) a retiring allowance,

(d) a death benefit,

(d.1) an amount described in subparagraph 56(1)(a)(iv),

(e) an amount as a benefit under a supplementary unemployment benefit plan,

(f) an annuity payment or a payment in full or partial commutation of an annuity,

(g) fees, commissions or other amounts for services, other than amounts described in subsection 212(5.1),

(h) a payment under a deferred profit sharing plan or a plan referred to in section 147 as a revoked plan,

(i) [Repealed]

(j) a payment out of or under a registered retirement savings plan or a plan referred to in subsection 146(12) as an "amended plan",

(k) an amount as, on account or in lieu of payment of, or in satisfaction of, proceeds of the surrender, cancellation or redemption of an income-averaging annuity contract,

(l) a payment out of or under a registered retirement income fund or a fund referred to in subsection 146.3(11) as an "amended fund",

(m) a prescribed benefit under a government assistance program;

(m.1) [Repealed]

(n) one or more amounts to an individual who has elected for the year in prescribed form in respect of all such amounts,

(o) an amount described in paragraph 115(2)(c.1),

(p) a contribution under a retirement compensation arrangement,

(q) an amount as a distribution to one or more persons out of or under a retirement compensation arrangement,

(r) an amount on account of the purchase price of an interest in a retirement compensation arrangement,

(s) an amount described in paragraph 56(1)(r), or

(t) a payment made under a plan that was a registered education savings plan

shall deduct or withhold from the payment the amount determined in accordance with prescribed rules and shall, at the prescribed time, remit that amount to the Receiver General on account of the payee's tax for the year under this Part or Part XI.3, as the case may be, and, where at that prescribed time the person is a prescribed person, the remittance shall be made to the account of the Receiver General at a designated financial institution.

Related Provisions: 7(15) — No withholding required on inclusion of deferred stock option benefit; 78(1)(b) — Withholding of tax on unpaid amounts; 153(1.1) — Undue hardship — reduction in withholding; 153(1.2) — Election to increase withholding; 153(3) — Amount withheld deemed received by payee; 153(6) — Meaning of "designated financial institution"; 154 — Tax transfer payments to provinces; 212(5.1), (5.2) — Withholding on payments to non-resident for acting services; 221.2 — Transfers of balances from one account to other; 227(8), (9) — 10% penalty for failure to withhold or remit; 227 — Withholding taxes — administration and enforcement; 227.1 — Corporation's directors liable for unremitted source deductions; 238(1) — Offences; 248(7)(b)(i) — Remittance deemed made when received; 252.1(d) — Where union is employer; Canada-U.S. Tax Treaty:Art. XVII — Withholding of taxes in respect of personal services.

History: Para. 153(1)(a) amended by 2001, c. 17, subsec. 151(1), applicable in respect of amounts paid, credited or provided after 2000. The para. formerly read:

(a) salary or wages or other remuneration,

Para. 153(1)(g) amended by the said c. 17, subsec. 151(2), applicable in respect of amounts paid, credited or provided after 2000. The para. formerly read:

(g) fees, commissions or other amounts for services,

The closing words of subsec. 153(1) amended by the said c. 17, subsec. 151(3), applicable after June 27, 1999. The closing words formerly read:

shall deduct or withhold therefrom such amount as is determined in accordance with prescribed rules and shall, at such time as is prescribed, remit that amount to the Receiver General on account of the payee's tax for the year under this Part or Part XI.3, as the case may be, and, where at that prescribed time the person is a prescribed person, the remittance shall be made to the account of the Receiver General at a financial institution (within the meaning that would be assigned by the definition "financial institution" in subsection 190(1) if that definition were read without reference to paragraphs (d) and (e) thereof).

Para. 153(1)(d.1) amended by 1998, c. 19, s. 182, deemed to have come into force on June 30, 1996. Para. 153(1)(d.1) formerly read:

(d.1) an amount as a benefit under the *Employment Insurance Act*,

Paras. 153(1)(s) and (t) added by the said c. 19, s. 43, para. (s) applicable to payments made after 1992, and para. (t) applicable to payments made after 1997.

Para. 153(1)(d.1) amended by 1996, c. 23, para. 187(d), to substitute "*Employment Insurance Act*" for "*Unemployment Insurance Act*", in force June 30, 1996.

Para. 153(1)(i) repealed by 1996, c. 23, s. 175, in force January 1, 1998. Para. (i) formerly read:

(i) a training allowance under the *National Training Act*,

Para. 153(1)(m) substituted for paras. (m), (m.1) by 1994, c. 21, s. 77, applicable to payments made after October 1991. Those paras. formerly read:

(m) an amount as a benefit under the *Labour Adjustment Benefits Act*,

(m.1) an income assistance payment made pursuant to an agreement under section 5 of the *Department of Labour Act*,

That portion of subsec. 153(1) following para. (r) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 91, applicable after 1992. That portion formerly read:

shall deduct or withhold therefrom such amount as may be determined in accordance with prescribed rules and shall, at such time as may be prescribed, remit that amount to the Receiver General on account of the payee's tax for the year under this Part or Part XI.3, as the case may be.

1994, c. 7, Sch. VIII (1993, c. 24), subsec. 82(10), provides that the amended definition of "minimum amount" in subsec. 146.3(1) does not apply, for the purposes of prescribed rules made under subsec. 153(1), with respect to payments made before 1993.

Paras. 153(1)(f), (l) substituted, (m.1) added, by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 126(1)–(3), applicable to payments made after July 13, 1990. Paras. (f), (l) formerly read:

(f) an annuity payment,

. . . . .

(l) a payment out of or under a registered retirement income fund,

Selected Cases [subsec. 153(1)]: *Manke v. R.*, [1999] 1 C.T.C. 2186 (TCC) (Minister has constructive receipt of source deductions, even if not remitted); *Ashby v. Canada*, [1996] 1 C.T.C. 2464 (TCC) (Deductions made but not remitted differ from case where deductions not made); *Cana Construction Co. v. Canada*, [1995] 1 C.T.C. 2122 (TCC) (Prime contractor maintained full control of funds to pay wages and required to withhold source deduction); *Mollenhauer Ltd. v. Canada*, [1992] 2 C.T.C. 121 (FCTD) (Contractor which undertook to pay subcontractor's employees' "salary or wages or other remuneration" liable for failing to make and remit source deductions despite not being the employer); *R. v. Coopers & Lybrand Ltd.*, [1980] C.T.C. 367 (FCA) (Taxpayer company responsible for wages to employees, liable for amount of payroll deductions); *Dauphin Plains Credit Union Ltd. v. Xyloid Industries Ltd. et al.*, [1980] C.T.C. 247 (SCC) (UIC and CPP amounts deducted, but not remitted, held in trust for Crown); *R. v. National Indian Brotherhood*, [1978] C.T.C. 680 (FCTD) (Taxpayer corporation not resident on reserve required to remit income tax from salaries paid to Indians); *Re G & G Equipment*, 74 D.T.C. 6407 (B.C.S.C.) (Tax to be withheld when paying wages to employees of related company).

Regulations: 100–108 (withholding and remittance requirements); 110 (prescribed persons for the closing words of 153(1)); 200 (information returns); 5502 (prescribed benefits for 153(1)(m)).

Interpretation Bulletins: IT-75R4: Scholarships, fellowships, bursaries, prizes, research grants and financial assistance; IT-337R4: Retiring allowances; IT-379R: Employees profit sharing plans — allocations to beneficiaries.

Information Circulars: 75-6R2: Required withholding from amounts paid to non-residents performing services in Canada; 72-22R9: Registered retirement savings plans; 92-3: Guidelines for refunds beyond the normal three year period. See also "Employers' Guide to Payroll Deductions".

I.T. Technical News: 11 (reporting of amounts paid out of an employee benefit plan).

Forms: RC2: The Business Number and your Canada Customs and Revenue Agency accounts [guide]; RC4004: Seasonal agricultural workers program [guide]; RC4157: Employers' guide: — filing the T4A slip and summary form; RC4163: Employers' guide — remitting payroll deductions; RC4409: Keeping [payroll] records [guide]; TD1: Personal tax credits return; TD3F: Fisher's election for tax deductions at source; T4A Segment; T4A: Statement of pension, retirement, annuity and other income; T4A-RCA: Statement of amounts paid from an RCA; T4A-RCA Summ: Return of distributions from an RCA; T619: Magnetic media transmittal; T735: Application for a remittance number for tax withheld from an RCA; T1213: Request to reduce tax deductions at source; T1219: Provincial alternative minimum tax; T1219-ON: Ontario minimum tax carryover; T4001: Employer's guide to payroll deductions — Basic information; T4032: Payroll deductions tables [guide]; T4127: Payroll deductions formulas for computer programs [guide]; T4130: Employer's guide to payroll deductions — taxable benefits.

(1.1) Undue hardship — Where the Minister is satisfied that the deducting or withholding of the amount otherwise required to be deducted or withheld under subsection (1) from a payment would cause undue hardship, the Minister may determine a lesser amount and that amount shall be deemed to be the amount determined under that subsection as the amount to be deducted or withheld from that payment.

Related Provisions: 164(1.51)–(1.53) — Refund of instalments in cases of undue hardship; 180.2(6) — Reduced withholding available on old age security benefits; 212(5.3) — Parallel rule for withholding on non-resident actor's services; 227(8) — Withholding taxes; 227.1 — Liability of directors.

Selected Cases [subsec. 153(1.1)]: *Qu'Appelle Indian Residential School Council v. R.*, [2002] 1 C.T.C. 156 (FCTD) (No duty on Minister to advise taxpayers how to file returns).

Forms: T1213: Request to reduce tax deductions at source for year(s).

(1.2) Election to increase withholding — Where a taxpayer so elects in prescribed manner and prescribed form, the amount required to be deducted or withheld under subsection (1) from any payment to the taxpayer shall be deemed to be the total of

(a) the amount, if any, otherwise required to be deducted or withheld under that subsection from that payment, and

(b) the amount specified by the taxpayer in that election with respect to that payment or with respect to a class of payments that includes that payment.

Related Provisions: 227.1 — Liability of directors.

Regulations: 109 (prescribed manner for making election, and effect).

Forms: TD1: Personal tax credits return.

(1.3) [Repealed]

History: Subsec. 153(1.3) repealed by 1996, c 21, s. 40, applicable June 20, 1996. Subsec. (1.3) formerly read:

(1.3) Payments by trustee, etc. — For the purposes of subsection (1), where a trustee who is administering, managing, distributing, winding up, controlling or otherwise dealing with the property, business, estate or income of another person authorizes or otherwise causes a payment referred to in that subsection to be made on behalf of that other person, the trustee shall be deemed to be a person making the payment and the trustee and that other person shall be jointly and severally liable in respect of the amount required under that subsection to be deducted or withheld and to be remitted on account of the payment.

Selected Cases [subsec. 153(1.3)]: *Coopers & Lybrand Ltd. v. Canada*, [1994] 2 C.T.C. 2244 (TCC) (Agent held liable for source deductions not withheld).

(1.4) [Repealed]

History: Subsec. 153(1.4) repealed by 1996, c 21, s. 40, applicable June 20, 1996. Subsec. (1.4) formerly read:

(1.4) Definition of "trustee" — In subsection (1.3), "trustee" includes a liquidator, receiver, receiver-manager, trustee in bankruptcy, assignee, executor, administrator, sequestrator or any other person performing a function similar to that performed by any such person.

(2) [Repealed]

History: Subsec. 153(2) repealed by 1994, c. 8, s. 21, applicable to 1995 *et seq.*; for the 1994 taxation year, subsec. 153(2) reads as follows:

(2) Subject to sections 155, 156 and 156.1, where amounts have been deducted or withheld under this section from the remuneration or other payments received by an individual in a taxation year, if the total of the remuneration and other payments from which such amounts have been deducted or withheld and which the individual had received in the year is equal to or greater than ¾ of the individual's income for the year, the individual shall, on or before the individual's balance-due day for the year, pay to the Receiver General the remainder of the individual's tax for the year as estimated under section 151.

Subsec. (2) formerly read:

(2) Payment of remainder — Where amounts were deducted or withheld under this section from the remuneration or other payments received by an individual in a taxation year, if the total of the remuneration and other payments from which the amounts were deducted or withheld and which the individual received in the year is equal to or greater than ¾ of the individual's income for the year, the individual shall, on or before the individual's balance-due day for the year, pay to the Receiver General the remainder of the individual's tax for the year as estimated under section 151.

Subsec. 153(2) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 126(4), applicable to 1990 *et seq.* Subsec. 153(2) formerly read:

(2) Where amounts have been deducted or withheld under this section from the remuneration or other payments received by an individual in a taxation year, if the total of the remuneration and other payments from which such amounts have been deducted or withheld and which the individual had received in the year is equal to or greater than ¾ of the individual's income for the year, the individual shall, on or before April 30 in the next year, pay to the Receiver General the remainder of the individual's tax for the year as estimated under section 151.

(3) Deemed effect of deduction — When an amount has been deducted or withheld under subsection (1), it shall, for all the purposes of this Act, be deemed to have been received at that time by the person to whom the remuneration, benefit, payment, fees, commissions or other amounts were paid.

Related Provisions: 78(1)(b) — Unpaid amounts; 227 — Withholding taxes — rules; 227.1 — Liability of directors.

Selected Cases [subsec. 153(3)]: *Fraser v. R.*, [1997] 3 C.T.C. 3 (FCA) (Source deductions belonged to employee, not to employer).

(4) Unclaimed dividends, interest and proceeds — Where at the end of a taxpayer's taxation year the person beneficially entitled to an amount received by the taxpayer after 1984 and before the year as or in respect of dividends, interest or proceeds of disposition of property is unknown to the taxpayer, the taxpayer shall remit to the Receiver General on or before the day that is 60 days after the end of the year on account of the tax payable under this Act by that person an amount equal to

(a) in the case of dividends, 33⅓% of the total amount of the dividends,

(b) in the case of interest, 50% of the total amount of the interest, and

(c) in the case of proceeds of disposition of property, 50% of the total of all amounts each of which is the amount, if any, by which the proceeds of disposition of a property exceed the total of any outlays and expenses made or incurred by the taxpayer for the pur-

pose of disposing of the property (to the extent that those outlays and expenses were not deducted in computing the taxpayer's income for any taxation year or attributable to any other property),

except that no remittance under this subsection shall be required in respect of an amount that was included in computing the taxpayer's income for the year or a preceding taxation year or in respect of an amount on which the tax under this subsection was previously remitted.

Related Provisions: 153(5) — Effect of deduction; 227.1 — Liability of directors.

Regulations: 108(4) (remittance deadline).

Interpretation Bulletins: IT-67R3: Taxable dividends from corporations resident in Canada.

Information Circulars: 71-9R: Unclaimed dividends.

(5) Deemed effect of remittance — An amount remitted by a taxpayer under subsection (4) in respect of dividends, interest or proceeds of disposition of property shall be deemed

(a) to have been received by the person beneficially entitled thereto; and

(b) to have been deducted or withheld from the amount otherwise payable by the taxpayer to the person entitled thereto.

Related Provisions: 227(6), (9) — Withholding taxes; 227(10) — Assessment; 227(13) — Withholding tax; 227.1 — Liability of directors.

(6) Meaning of "designated financial institution" — In this section, "designated financial institution" means a corporation that

(a) is a bank, other than an authorized foreign bank that is subject to the restrictions and requirements referred to in subsection 524(2) of the *Bank Act*;

(b) is authorized under the laws of Canada or a province to carry on the business of offering its services as a trustee to the public; or

(c) is authorized under the laws of Canada or a province to accept deposits from the public and carries on the business of lending money on the security of real estate or investing in mortgages or hypothecs on real estate.

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(c) is authorized under the laws of Canada or a province to accept deposits from the public and carries on the business of lending money on the security of real property or immovables or investing in indebtedness on the security of mortgages on real property or of hypothecs on immovables.

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), s. 249, will amend para. 153(6)(c) to read as above, to come into force on Royal Assent.

Technical Notes: See under 12(4).

Related Provisions: 153(1) closing words — Large remittances to be made through designated financial institution.

History: Subsec. 153(6) added by 2001, c. 17, subsec. 151(4), applicable after June 27, 1999.

Selected Cases [s. 153]: *Hrab v. Canada*, [1995] 2 C.T.C. 2105 (TCC) (Failure by employer to deduct taxes at source does not affect taxpayer's liability to pay tax on income received).

Definitions [s. 153]: "amount", "annuity", "authorized foreign bank", "balance-due day", "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "corporation" — 248(1), *Interpretation Act* 35(1); "death benefit" — 248(1); "deferred profit sharing plan" — 147(1), 248(1); "designated financial institution" — 153(6); "dividend", "employee" — 248(1); "estate" — 104(1), 248(1); "hypothecs" — Quebec *Civil Code* art. 2660; "immovables" — Quebec *Civil Code* art. 900–907; "income-averaging annuity contract", "individual", "Minister", "person", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "registered education savings plan" — 146.1(1), 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "retirement compensation arrangement", "retiring allowance", "salary or wages" — 248(1); "security" — *Interpretation Act* 35(1); "superannuation or pension benefit" — 248(1); "supplementary unemployment benefit plan" — 145(1), 248(1); "tax payable" — 248(2); "tax treaty" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trustee" — 153(1.4).

154. (1) Agreements providing for tax transfer payments — The Minister may, with the approval of the Governor in Council, enter into an agreement with the government of a province to provide for tax transfer payments and the terms and conditions relating to such payments.

(2) Tax transfer payment — Where, on account of the tax for a taxation year payable by an individual under this Part, an amount has been deducted or withheld under subsection 153(1) on the assumption that the individual was resident in a place other than the province in which the individual resided on the last day of the year, and the individual

(a) has filed a return of income for the year with the Minister,

(b) is liable to pay tax under this Part for the year, and

(c) is resident on the last day of the year in a province with which an agreement described in subsection (1) has been entered into,

the Minister may make a tax transfer payment to the government of the province not exceeding an amount equal to the product obtained by multiplying the amount or the total of the amounts so deducted or withheld by a prescribed rate.

History: Para. 154(2)(a) amended by 1998, c. 19, s. 183, applicable to 1996 *et seq.* Para. 154(2)(a) formerly read:

(a) has filed a return under this Act,

Regulations: 2607 (individual is resident in province of principal place of residence); 3300 (prescribed rate is 40%).

Interpretation Bulletins: IT-221R3: Determination of an individual's residence status.

(3) Payment deemed received by individual — Where, pursuant to an agreement entered into under subsection (1), an amount has been transferred by the Minister to the government of a province with respect to an individual, the amount shall, for all purposes of this Act, be deemed to have been received by the individual at the time the amount was transferred.

(4) Payment deemed received by Receiver General — Where, pursuant to an agreement entered into under subsection (1), an amount has been transferred by the government of a province to the Minister with respect to an individual, the amount shall, for all purposes of this Act, be deemed to have been received by the Receiver General on account of the individual's tax under this Part for the year in respect of which the amount was transferred.

(5) Amount not to include refund — In this section, an amount deducted or withheld does not include any refund made in respect of that amount.

Related Provisions [s. 154]: 228 — Applying payments under collection agreements.

Definitions [s. 154]: "amount" — 154(5), 248(1); "individual", "Minister", "prescribed" — 248(1); "province" — *Interpretation Act* 35(1); "resident" — Reg 2607; "taxation year" — 249.

155. (1) [Instalments —] Farmers and fishermen — Subject to section 156.1, every individual whose chief source of income for a taxation year is farming or fishing shall, on or before December 31 in the year, pay to the Receiver General in respect of the year, 2/3 of

(a) the amount estimated by the individual to be the tax payable under this Part by the individual for the year, or

(b) the individual's instalment base for the preceding taxation year.

Related Provisions: 31 — Loss from farming where farming not chief source of income; 104(23)(e) — Alternative rule for testamentary trust; 107(5.1) — Trust's gain on distribution to non-resident beneficiary does not increase instalment requirements; 128.1(5) — Deemed disposition on emigration does not increase instalment requirements; 151 — Estimate of tax; 156(1) — Other individuals; 156.1 — No instalment required; 161(2) — Interest on late or insufficient instalments; 161(4) — Limitation on interest — farmers and fishermen; 163.1 — Penalty for late or deficient instalments; 248(7) — Receipt of things mailed.

History: Subsec. 155(1) amended by 1994, c. 8, s. 22, applicable to 1994 *et seq*. Subsec. (1) formerly read:

(1) Subject to section 156.1, every individual whose chief source of income is farming or fishing, other than an individual to whom subsection 153(2) applies, shall pay to the Receiver General in respect of each taxation year

(a) on or before December 31 in the year, 2/3 of

(i) the amount estimated by the individual to be the tax payable under this Part by the individual for the year, or

(ii) the individual's instalment base for the immediately preceding taxation year; and

(b) on or before the individual's balance-due day for the year, the remainder of the individual's tax as estimated under section 151.

Subsec. 155(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 127, applicable to 1990 *et seq*. Subsec. 155(1) formerly read:

155. (1) Subject to section 156.1, every individual whose chief source of income is farming or fishing, other than an individual to whom subsection 153(2) applies, shall pay to the Receiver General

(a) on or before December 31 in each taxation year, 2/3 of

(i) the amount estimated by the individual to be the tax payable under this Part by the individual for the year computed without reference to sections 127.2 and 127.3, or

(ii) the individual's instalment base for the immediately preceding taxation year; and

(b) on or before April 30 in the next year, the remainder of the individual's tax as estimated under section 151.

Forms: T4F: Statement of fishing income; T4F Summ: Summary of remuneration; T1033-WS: Worksheet for calculating instalment payments; T2042: Statement of farming activities; T2121: Statement of fishing activities; T4003: Farming income; T4004: Fishing income.

(2) Definition of "instalment base" — In this section, "instalment base" of an individual for a taxation year means the amount determined in prescribed manner to be the individual's instalment base for the year.

Regulations: 5300 (instalment base).

Definitions [s. 155]: "balance-due day" — 248(1); "farming", "fishing", "individual" — 248(1); "instalment base" — 155(2); "taxable income" — 2(2), 248(1); "taxation year" — 249.

156. (1) [Instalments —] Other individuals — Subject to section 156.1, in respect of each taxation year every individual (other than one to whom section 155 applies for the year) shall pay to the Receiver General

(a) on or before March 15, June 15, September 15 and December 15 in the year, an amount equal to 1/4 of

(i) the amount estimated by the individual to be the tax payable under this Part by the individual for the year, or

(ii) the individual's instalment base for the preceding taxation year, or

(b) on or before

(i) March 15 and June 15 in the year, an amount equal to 1/4 of the individual's instalment base for the second preceding taxation year, and

(ii) September 15 and December 15 in the year, an amount equal to 1/2 of the amount, if any, by which

(A) the individual's instalment base for the preceding taxation year

exceeds

(B) 1/2 of the individual's instalment base for the second preceding taxation year.

Related Provisions: 104(23)(e) — Alternative rule for testamentary trust; 107(5.1) — Trust's gain on distribution to non-resident beneficiary does not increase instalment requirements; 128.1(5) — Deemed disposition on emigration does not increase instalment requirements; 156.1(2) — Where no instalment required; 156.1(4) — Payment of balance by April 30; 161(2) — Interest on instalments; 161(4.01) — Minimum instalment payments to avoid interest charges; 163.1 — Penalty for late or deficient instalments; 164(1.51)–(1.53) — Refund of instalments at taxpayer's request; 248(7) — Receipt of things mailed.

History: The opening words of subsec. 156(1) amended by 1994, c. 8, subsec. 23(1), applicable to amounts that become payable after June 1994. They formerly read:

(1) Subject to section 156.1, every individual, other than one to whom subsection 153(2) or section 155 applies, shall pay to the Receiver General in respect of each taxation year

The closing words of subsec. 156(1) after para. (b) repealed by 1994, c. 8, subsec. 23(2), applicable to 1994 *et seq*. They formerly read:

and, on or before the individual's balance-due day for the year, the remainder of the individual's tax estimated under section 151.

Subsec. 156(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 92, applicable to 1992 *et seq*. Subsec. (1) formerly read:

(1) Subject to section 156.1, every individual, other than one to whom subsection 153(2) or section 155 applies, shall pay to the Receiver General in respect of each taxation year

(a) on or before March 15, June 15, September 15 and December 15 in the year, an amount equal to 1/4 of

(i) the amount estimated by the individual to be the tax payable under this Part by the individual for the year, or

(ii) the individual's instalment base for the preceding taxation year; and

(b) on or before the individual's balance-due day for the year, the remainder of the individual's tax estimated under section 151.

Subsec. 156(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 128, applicable to 1990 *et seq*. Subsec. 156(1) formerly read:

156. (1) Subject to section 156.1, every individual, other than one to whom subsection 153(2) or section 155 applies, shall pay to the Receiver General

(a) on or before March 15, June 15, September 15 and December 15 in each taxation year, an amount equal to 1/4 of

(i) the amount estimated by the individual to be the tax payable under this Part by the individual for the year computed without reference to sections 127.2 and 127.3, or

(ii) the individual's instalment base for the immediately preceding taxation year; and

(b) on or before April 30 in the next year, the remainder of the individual's tax as estimated under section 151.

Selected Cases [subsec. 156(1)]: *Canada v. Ritchie (E.S.)*, [1993] 2 C.T.C. 24 (FCA) (Interest due on instalments where additional income received after instalment due date).

Forms: P110: Paying your income tax by instalments (pamphlet); T1033-WS: Worksheet for calculating instalment payments; T1162A-1: Pre-authorized payment plan (personal quarterly instalment payments).

(2) Payment by mutual fund trusts — Notwithstanding subsection (1), the amount payable by a mutual fund

trust to the Receiver General on or before any day referred to in paragraph (1)(a) in a taxation year shall be deemed to be the amount, if any, by which

(a) the amount so payable otherwise determined under that subsection,

exceeds

(b) ¼ of the trust's capital gains refund (within the meaning assigned by section 132) for the year.

Related Provisions: 156.1 — No instalment required.

(3) Definition of "instalment base" — In this section, "instalment base" of an individual for a taxation year means the amount determined in prescribed manner to be the individual's instalment base for the year.

Related Provisions: 120(2) — Deemed payment of tax; 161(2) — Interest on instalments; 161(4) — Limitation of instalment base.

Regulations: 5300 (instalment base).

Definitions [s. 156]: "amount", "balance-due day" — 248(1); "individual" — 248(1); "instalment base" — 156(3), Reg. 5300(1); "mutual fund trust" — 132(6); "share" — 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249.

156.1 (1) [Instalments exemption —] Definitions — For the purposes of this section,

"instalment threshold" of an individual for a taxation year means

(a) in the case of an individual resident in the Province of Quebec at the end of the year, $1,200, and

(b) in any other case, $2,000;

"net tax owing" by an individual for a taxation year means

(a) in the case of an individual resident in the Province of Quebec at the end of the year, the amount determined by the formula

$$A - C - D - F$$

and

(b) in any other case, the amount determined by the formula

$$A + B - C - E - F$$

where

A is the total of the taxes payable under this Part and Parts I.2 and X.5 by the individual for the year,

B is the total of all income taxes payable by the individual for the year under any law of a province or of an Aboriginal government with which the Minister of Finance has entered into an agreement for the collection of income taxes payable by individuals to the province or Aboriginal government under that law,

C is the total of the taxes deducted or withheld under section 153 and Part I.2 on behalf of the individual for the year,

D is the amount determined under subsection 120(2) in respect of the individual for the year,

E is the total of all amounts deducted or withheld on behalf of the individual for the year under a law of a province or of an Aboriginal government with which the Minister of Finance has entered into an agreement for the collection of income taxes payable by individuals to the province or Aboriginal government under that law, and

F is the amount determined under subsection 120(2.2) in respect of the individual for the year.

Related Provisions: 156.1(1) — Rules for calculating formula elements A and B: 156.1(1.2) — Rule for calculating D; 156.1(1.3) — Rule for calculating F — First Nations Tax; 257 — Formulas cannot calculate to less than zero.

History: The description of A in para. (b) of the definition "net tax owing" in subsec. 156.1(1) amended by 2001, c. 17, s. 152 to delete the reference to Part I.1, applicable to 2001 *et seq.*

The formulas in paras. (a) and (b), the descriptions of B and E of the definition "net tax owing" in subsec. 156.1(1) amended, and the description of F added, by 2000, c. 19, subsecs. 45(1)–(4), applicable to 1999 *et seq.* The formulas and the descriptions formerly read:

$$A - C - D$$

. . . . .

$$A + B - C - E$$

. . . . .

B is the total of all income taxes payable by the individual for the year under any Act of a province with which the Minister of Finance has entered into an agreement for the collection of income taxes payable by individuals to the province under that Act,

. . . . .

E is the total of all income taxes deducted or withheld on behalf of the individual for the year under any Act of a province with which the Minister of Finance has entered into an agreement for the collection of income taxes payable by individuals to the province under that Act.

The description of A in para. (b) of the definition "net tax owing" in subsec. 156.1(1) amended by 1998, c. 19, s. 44, applicable to 1998 *et seq.* The description formerly read:

A is the total of the taxes payable under this Part and Parts I.1 and I.2 by the individual for the year,

The portion of the definition "net tax owing" in subsec. 156.1(1) after the description of E repealed by 1997, c. 25, subsec. 48(1), applicable to amounts that become payable after 1995. That portion formerly read:

and for the purposes of this definition, income taxes payable for a taxation year by an individual are determined after deducting all tax credits to which the individual is entitled for the year relating to those taxes (other than tax credits that become payable to the individual after the individual's balance-due day for the year and prescribed tax credits) and before taking into consideration amounts referred to in subparagraphs 161(7)(a)(ii) to (v).

The descriptions of A and C in para. (b) of the definition of "net tax owing" in subsec. 156.1(1) amended by 1996, c. 21, subsec. 40.1(1), applicable to 1996 *et seq.*, except that for the 1996 taxation year, A shall be read as follows:

A is the total of

(i) the taxes payable under this Part and Part I.1 by the individual for the year, and

(ii) half the tax payable under Part I.2 by the individual for the year,

The descriptions of A and C formerly read:

A is the total of the income taxes payable by the individual for the year under this Part and Part I.1,

. . . . .

C is the total of all income taxes deducted or withheld under section 153 on behalf of the individual for the year,

Regulations: 2607 (individual is resident in province of principal place of residence).

Forms: P110: Paying your income tax by instalments (pamphlet); T1033-WS: Worksheet for calculating instalment payments.

(1.1) Values of A and B in "net tax owing" — For the purposes of determining the values of A and B in the definition "net tax owing" in subsection (1), income taxes payable by an individual for a taxation year are determined

(a) before taking into consideration the specified future tax consequences for the year; and

(b) after deducting all tax credits to which the individual is entitled for the year relating to those taxes (other than tax credits that become payable to the individual after the individual's balance-due day for the year, prescribed tax credits and amounts deemed to have been paid because of the application of either subsection 120(2) or (2.2)).

History: Para. 156.1(1.1)(b) amended by 2000, c. 19, subsec. 45(5), applicable to 1999 *et seq.* The para. formerly read:

(b) after deducting all tax credits to which the individual is entitled for the year relating to those taxes (other than tax credits that become payable to the individual after the individual's balance-due day for the year, prescribed tax credits and the amount deemed to have been paid because of the application of subsection 120(2)).

Subsec. 156.1(1.1) added by 1997 c. 25, subsec. 48(2), applicable to amounts that become payable after 1995.

(1.2) Value of D in "net tax owing" — For the purpose of determining the value of D in the definition "net tax owing" in subsection (1), the amount deemed by subsection 120(2) to have been paid on account of an individual's tax under this Part for a taxation year is determined before taking into consideration the specified future tax consequences for the year.

History: Subsec. 156.1(1.2) added by 1997 c. 25, subsec. 48(2), applicable to amounts that become payable after 1995.

(1.3) Value of F in "net tax owing" — For the purpose of determining the value of F in the definition "net tax owing" in subsection (1), the amount deemed by subsection 120(2.2) to have been paid on account of an individual's tax under this Part for a taxation year is determined before taking into consideration the specified future tax consequences for the year.

History: Subsec. 156.1(1.3) added by 2000, c. 19, subsec. 45(6), applicable to 1999 *et seq.*

(2) No instalment required — Sections 155 and 156 do not apply to an individual for a particular taxation year where

(a) the individual's chief source of income for the particular year is farming or fishing and the individual's net tax owing for the particular year, or either of the 2 preceding taxation years, does not exceed the individual's instalment threshold for that year; or

(b) the individual's net tax owing for the particular year, or for each of the 2 preceding taxation years, does not exceed the individual's instalment threshold for that year.

Related Provisions: 107(5.1) — Trust's gain on distribution to non-resident beneficiary does not increase instalment requirements; 128.1(5) — Deemed disposition on emigration does not increase instalment requirements; 157(2.1) — Threshold of $1,000 for corporations; 161(2) — Interest on late or insufficient instalments.

Forms: T1033-WS: Worksheet for calculating instalment payments.

(3) Idem — Sections 155 and 156 do not require the payment of any amount in respect of an individual that would otherwise become due under either of those sections on or after the day on which the individual dies.

(4) Payment of remainder — Every individual shall, on or before the individual's balance-due day for each taxation year, pay to the Receiver General in respect of the year the amount, if any, by which the individual's tax payable under this Part for the year exceeds the total of

(a) all amounts deducted or withheld under section 153 from remuneration or other payments received by the individual in the year, and

(b) all other amounts paid to the Receiver General on or before that day on account of the individual's tax payable under this Part for the year.

Related Provisions: 104(23)(e) — Alternative rule for testamentary trust; 161(1) — Interest payable if balance not paid on time.

History [s. 156.1]: S. 156.1 amended by 1994, c. 8, s. 24, subsecs. 156.1(1) to (3) applicable to amounts that become payable after June 1994 and subsec. 156.1(4) applicable to 1994, *et seq.* S. 156.1 formerly read:

156.1 (1) **No instalment required** — Where the total of the taxes payable (before taking into consideration any amount referred to in any of subparagraphs 161(7)(a)(ii) to (v) or (viii) that was excluded or deducted, as the case may be) under this Part and Part I.1 by an individual for a particular taxation year or for the taxation year preceding that year is not more than the total of $1,000 and the amount, if any, determined in respect of the individual for that year under subsection 120(2),

(a) sections 155 and 156 do not apply to that individual for the particular year; and

(b) the individual shall pay to the Receiver General, on or before the individual's balance-due day for the particular year, the individual's tax as estimated under section 151 for the particular year.

(2) **Idem** — Paragraphs 155(1)(a) and 156(1)(a) and (b) do not require the payment of any amount in respect of an individual that would otherwise become due under any of those paragraphs on or after the day on which the individual died.

Subsec. 156.1(2) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 93, applicable to 1992 *et seq.* Subsec. (2) formerly read:

(2) **Idem** — Paragraphs 155(1)(a) and 156(1)(a) do not require the payment of any amount in respect of an individual that would otherwise become due under either of those paragraphs on or after the day on which the individual dies.

That portion of subsec. 156.1(1) preceding para. (a) amended by 1994, c. 7, Sch. VI (1992, c. 29), s. 6, applicable to 1992 *et seq.* That portion formerly read:

156.1 (1) Where the total of the taxes payable (before taking into consideration any amount referred to in any of subparagraphs 161(7)(a)(ii) to (v) that was excluded or deducted, as the case may be) under this Part and Part I.1 by an individual for a particular taxation year or for the taxation year immediately preceding that year is not more than the total of $1,000 and the amount, if any, determined in respect of the individual for the particular year under subsection 120(2),

S. 156.1 substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 129, applicable to 1990 *et seq.* Subsec. 156.1(1) is applicable, in addition, with respect to amounts referred to in para. 161(7)(a) in respect of subsequent taxation years referred to in that para. ending after 1989, except that, in its application to a taxation year ending before 1990, the reference in para. 156.1(1)(b) to "the individual's balance-due day for" shall be read as a reference to "April 30 in the year immediately following". S. 156.1 formerly read:

156.1 **No instalment required** — Where the total of the taxes payable under this Part and Part I.1 by an individual for a particular taxation year or for the taxation year immediately preceding that year is not more than the total of $1,000 and the amount, if any, determined in respect of the individual for that year under subsection 120(2),

(a) section 155 or 156, as the case may be, is not applicable in respect of that individual for the particular taxation year,

(b) the taxpayer shall pay to the Receiver General, on or before April 30 in the year immediately following the particular taxation year, the taxpayer's tax as estimated under section 151 for the particular taxation year.

Definitions [s. 156.1]: "amount", "balance-due day", "farming", "fishing", "individual" — 248(1); "instalment threshold", "net tax owing" — 156.1(1); "prescribed" — 248(1); "province" — *Interpretation Act* 35(1); "resident" — Reg. 2607; "specified future tax consequence" — 248(1); "taxpayer" — 248(1); "taxation year" — 249.

157. (1) Payment by corporations — Every corporation shall, in respect of each of its taxation years, pay to the Receiver General

(a) either

(i) on or before the last day of each month in the year, an amount equal to 1/12 of the total of the amounts estimated by it to be the taxes payable by it under this Part and Parts I.3, VI, VI.1 and XIII.1 for the year,

(ii) on or before the last day of each month in the year, an amount equal to 1/12 of its first instalment base for the year, or

(iii) on or before the last day of each of the first two months in the year, an amount equal to 1/12 of its second instalment base for the year, and on or before the last day of each of the following months in the year, an amount equal to 1/10 of the amount remaining after deducting the amount computed pursuant to this subparagraph in respect of the first two months from its first instalment base for the year; and

(b) the remainder of the taxes payable by it under this Part and Parts I.3, VI, VI.1 and XIII.1 for the year on or before its balance-due day for the year.

Related Provisions: 87(2)(oo.1) — Effect of amalgamation; 88(1)(e.8), (e.9) — Winding-up; 151 — Estimate of tax; 157(2), (2.1), (3) — Special cases; 157.1(3) — Deferral of instalments for January-March 2002; 161(1) — Interest on taxes due; 161(2) — Interest on unpaid tax instalments; 161(2.2) — Interest on instalments; 161(4.1) — Minimum instalment payments to avoid interest charges; 163.1 — Penalty for late or deficient instalments; 164(1.51)–(1.53) — Refund of instalments at taxpayer's request; 221.2 — Transfers of instalments to other years' accounts; 248(1)"balance-due day"(d) — Deadline under 157(1)(b) is the balance-due day of corporation; 248(7) — Receipt of things mailed; 256 — Associated corporations.

History: Para. 157(1)(b) amended by 2002, c. 9, s. 41, applicable to taxation years that end after 2001. The para. formerly read:

(b) the remainder of the taxes payable by it under this Part and Parts I.3, VI, VI.1 and XIII.1 for the year

(i) on or before the end of the third month following the end of the year, where

(A) an amount was deducted by virtue of section 125 in computing the tax payable under this Part by the corporation for the year or its immediately preceding taxation year,

(B) the corporation is, throughout the year, a Canadian-controlled private corporation,

(C) a particular calendar year immediately preceded the calendar year in which the year ends, and

(D) either

(I) the corporation is not associated with another corporation in the taxation year and its taxable income for its immediately preceding taxation year (determined before taking into consideration the specified future tax consequences for that preceding year) does not exceed its business limit for that preceding year, or

(II) where the corporation is associated with another corporation in the taxation year, the total of all amounts each of which is the taxable income of the corporation or such an associated corporation for its last taxation year that ended in the particular calendar year (determined before taking into consideration the specified future tax consequences for that last year) does not exceed the total of all amounts each of which is the business limit of the corporation or such an associated corporation for that last year, or

(ii) on or before the end of the second month following the end of the year, in any other case.

Subpara. 157(1)(a)(i) and the opening words of para. 157(1)(b) amended by 2001, c. 17, subsecs. 153(1), (2) to add the reference to Part XIII.1, applicable to 2001 *et seq.*

Cls. 157(1)(b)(i)(B)–(D) substituted for cl. (B) by 1997, c. 25, subsec. 49(1), applicable to amounts that become payable after 1995, except that, for taxation years that end before 1998, subcl. (D)(II) shall be read as follows:

(II) where the corporation is associated with another corporation in the year,

1. the total of the taxable income of the corporation for its immediately preceding taxation year (determined before taking into consideration the specified future tax consequences for that preceding year) and the total of the taxable incomes of all such associated corporations for their taxation years that ended in the particular calendar year (determined before taking into consideration the specified future tax consequences for those years)

does not exceed

2. the total of the business limit of the corporation for its immediately preceding taxation year and the total of the business limits of all such associated corporations for their taxation years that ended in the particular calendar year, or

Cl. (b)(i)(B) formerly read:

(B) the corporation is, throughout the year, a Canadian-controlled private corporation whose taxable income for the immediately preceding taxation year together with the taxable incomes of all corporations with which it was associated in the year for their taxation years ending in the calendar year immediately preceding the calendar year in which the taxation year of the corporation ended does not exceed the total of the business limits (as determined under section 125) of the corporation and the associated corporations for those preceding years, or

Subpara. 157(1)(a)(i) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 94(1), applicable to 1992 *et seq.* Subpara. (a)(i) formerly read:

(i) on or before the last day of each month in the year, an amount equal to 1/12 of the total of the amounts estimated by it to be the taxes payable under this Part and Part VI.1 by it for the year,

That portion of para. 157(1)(b) preceding subpara. (i) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 94(2), to add reference to Parts I.3 and VI, applicable to 1992 *et seq.*

Forms: T7B CORP: Corporation instalment guide; T2WS1: Calculating estimated tax payable and tax credits; T2WS2: Calculating monthly instalment payments.

(2) [Repealed]

History: Subsec. 157(2) repealed by 2003, c. 15, s. 115, applicable to taxation years that begin after June 2003. It formerly read:

(2) Special case [co-op or credit union] — Where in a taxation year a corporation

(a) has held out the prospect that it will make allocations in proportion to patronage as described in section 135, or

(b) is a credit union,

and for the year or the preceding taxation year

(c) its taxable income (determined before taking into consideration the specified future tax consequences for the year or that preceding year, as the case may be) was not more than $10,000, and

(d) no tax was payable by it under any of Parts I.3, VI and VI.1 (determined before taking into consideration the specified future tax consequences for the year or that preceding year, as the case may be),

it may, instead of paying the instalments required by subsection (1), pay to the Receiver General at the end of the third month following the end of the year the total of the taxes payable by it under this Part and Parts I.3, VI and VI.1 for the year.

The portion of subsec. 157(2) before para. (c) amended by 1998, c. 19, subsec. 184(1), applicable to taxation years that end after February 22, 1994. The portion formerly read:

(2) Where a corporation

(a) has held out the prospect that it will make allocations in proportion to patronage to its customers of a taxation year as described by section 135, or

(b) is a credit union,

and for the year or the immediately preceding taxation year

Paras. 157(2)(c) and (d) amended by 1997, c. 25, subsec. 49(2), applicable to amounts that become payable after 1995. Paras. (c) and (d) formerly read:

(c) its taxable income was not more than $10,000, and

(d) no tax was payable by it under any of Parts I.3, VI and VI.1,

All that portion of subsec. 157(2) following para. (c) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 94(3), applicable to 1992 *et seq.* That portion formerly read:

(d) no tax was payable by it under Part VI.1,

it may, instead of paying the instalments required by subsection (1), pay to the Receiver General at the end of the third month following the end of the year the total of the taxes payable by it under this Part and Part VI.1 for the year.

(2.1) $1,000 threshold — Where

(a) the total of the taxes payable under this Part and Parts I.3, VI, VI.1 and XIII.1 by a corporation for a taxation year (determined before taking into consideration the specified future tax consequences for the year), or

(b) the corporation's first instalment base for the year,

is not more than $1,000, the corporation may, instead of paying the instalments required for the year by paragraph (1)(a), pay to the Receiver General, under paragraph (1)(b), the total of the taxes payable by it under this Part and Parts I.3, VI, VI.1 and XIII.1 for the year.

Related Provisions: 156.1(1) — No instalment required.

History: Subsec. 157(2.1) amended by 2001, c. 17, subsec. 153(3) to add the references to Part XIII.1, applicable to 2001 *et seq.*

Para. 157(2.1)(a) amended by 1997, c. 25, subsec. 49(3), applicable to amounts that become payable after 1995. Para. (a) formerly read:

(a) the total of the taxes payable (before taking into consideration any amount referred to in any of subparagraphs 161(7)(a)(ii) to (x) that was excluded or deducted, as the case may be) under this Part and Parts I.3, VI and VI.1 by a corporation for a taxation year, or

Subsec. 157(2.1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 94(4), applicable to 1992 *et seq.* Subsec. (2.1) formerly read:

(2.1) Where

(a) the total of the taxes payable (before taking into consideration any amount referred to in any of subparagraphs 161(7)(a)(ii) to (viii) that was excluded or deducted, as the case may be) under this Part and Part VI.1 by a corporation for a taxation year, or

(b) the corporation's first instalment base for the year

is not more than $1,000, the corporation may, instead of paying the instalments required by paragraph (1)(a) for the year, pay to the Receiver General, pursuant to paragraph (1)(b), the total of the taxes payable by it under this Part and Part VI.1 for the year.

Para. 157(2.1)(a) amended by 1994, c. 7, Sch. VI (1992, c. 29), s. 7, to substitute "161(7)(a)(ii) to (viii)" for "161(7)(a)(ii) to (vii)", applicable to 1992 *et seq.*

Para. 157(2.1)(a) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 130, applicable

(a) to 1990 *et seq.*; and

(b) with respect to amounts referred to in para. 161(7)(a), in respect of subsequent taxation years referred to in that para. ending after 1989.

Para. (a) formerly read:

(a) the total of the taxes payable under this Part, Part I.3 and Part VI.1 by a corporation for a taxation year, or

(3) Private, mutual fund and non-resident-owned investment corporations — Notwithstanding subsection (1), the amount payable for a taxation year by a corporation to the Receiver General on or before the last day of any month in the year shall be deemed to be the amount, if any, by which

(a) the amount so payable as determined under that subsection for the month

exceeds

(b) where the corporation is neither a mutual fund corporation nor a non-resident-owned investment corporation, 1/12 of the corporation's dividend refund (within the meaning assigned by subsection 129(1)) for the year,

(c) where the corporation is a mutual fund corporation, 1/12 of the total of

(i) the corporation's capital gains refund (within the meaning assigned by section 131) for the year, and

(ii) the amount that, by virtue of subsection 131(5), is the corporation's dividend refund (within the meaning assigned by section 129) for the year,

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(c) if the corporation is a mutual fund corporation, 1/12 of the total of

(i) the corporation's capital gains refund (within the meaning assigned by section 131) for the year, and

(ii) the amount that, because of subsection 131(5) or, where the corporation is a prescribed labour-sponsored venture capital corporation, because of subsection 131(11), is the corporation's dividend refund (within the meaning assigned by section 129) for the year,

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 150, will amend para. 157(3)(c) to read as above, applicable to 1999 *et seq.*

Technical Notes: Section 157 requires a corporation to pay monthly instalments of its total tax payable under Parts I, I.3, VI, VI.1 and XIII.1 of the Act. Subsection 157(3) allows corporations to reduce each monthly instalment by 1/12 of the amount of certain tax refunds, including the "dividend refund" under section 129. For most mutual fund corporations, the dividend refund amount is computed according to rules set out in subsection 131(5). Paragraph 157(3)(c), which allows a mutual fund corporation to apply its dividend refund to reduce its instalments, therefore refers to subsection 131(5). However, prescribed labour-sponsored venture capital corporations (LSVCCs), which are by definition mutual fund corporations, do not use subsection 131(5) to compute their dividend refunds — instead, they use special rules in subsection 131(11). To ensure that subsection 157(3) applies appropriately to LSVCCs, this amendment adds to paragraph 157(3)(c) a reference to subsection 131(11).

(d) where the corporation is a non-resident-owned investment corporation, 1/12 of the corporation's allowable refund (within the meaning assigned by section 133) for the year, and

(e) 1/12 of the total of the amounts each of which is deemed by subsection 125.4(3), 125.5(3), 127.1(1) or 127.41(3) to have been paid on account of the corporation's tax payable under this Part for the year.

Related Provisions: 131(5) — Dividend refund to mutual fund corporation; 136 — Cooperative not private corporation — exception.

History: Para. 157(3)(e) amended by 1998, c. 19, subsec. 184(2), applicable to taxation years that end after February 22, 1994 except that,

(a) for taxation years that ended before 1995, the para. shall be read without reference to "125.4(3)"; and

(b) for taxation years that ended before November 1997, the para. shall be read without reference to "125.5(3)".

Para. 157(3)(e) formerly read:

(e) 1/12 of the total of all amounts each of which is an amount deemed by subsection 125.4(3) or 127.41(3) to have been paid on account of the corporation's tax payable under this Part for the year.

Para. 157(3)(e) amended by 1996, c 21, s. 41, applicable to 1995 *et seq.* Para. (e) formerly read:

(e) 1/12 of the amount deemed by subsection 127.41(3) to have been paid on account of the corporation's tax payable under this Part for the year.

Para. 157(3)(e) added by 1995, c. 3, s. 47, applicable to taxation years that end after February 22, 1994.

Para. 157(3)(b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 94(5), applicable to 1993 *et seq.* Para. (b) formerly read:

(b) where the corporation is a private corporation, 1/12 of the corporation's dividend refund (within the meaning assigned by section 129) for the year,

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations.

(4) Definitions — In this section, "first instalment base" and "second instalment base" of a corporation for a taxation year have the meanings prescribed by regulation.

Regulations: 5301 (meaning of "first instalment base", "second instalment base").

Definitions [s. 157]: "amount" — 248(1); "associated" — 256; "balance-due day" — 248(1); "business limit" — 125(2)–(5.1), 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "capital gain" — 39(1)(a), 248(1); "capital gains refund" — 131(2); "corporation" — 248(1), *Interpretation Act* 35(1); "credit union" — 137(6), 248(1); "dividend refund" — 129(1)(a); "first instalment base" — 157(4), Reg. 5301(1); "mutual fund corporation" — 131(8); "non-resident-owned investment corporation" — 133(8), 248(1); "prescribed", "regulation" — 248(1); "resident in Canada" — 250; "second instalment base" — 157(4), Reg. 5301(2); "share" — 248(1); "specified future tax consequence" — 248(1); "tax payable" — 248(2); "taxable income" — 2(2), 248(1); "taxation year" — 249.

157.1 (1) Instalment deferral for January, February and March 2002 — Definitions — The following definitions apply in this section.

"eligible corporation", for a particular taxation year, means a corporation

(a) that is resident in Canada throughout the particular taxation year; and

(b) of which the taxable capital employed in Canada, within the meaning assigned by Part I.3, for its preceding taxation year did not exceed,

(i) if the corporation is not associated with any other corporation in the particular taxation year, $15 million, and

(ii) if the corporation is associated with one or more other corporations in the particular taxation year, the amount by which $15 million exceeds the total of the taxable capital employed in Canada, within the meaning assigned by Part I.3, of those other corporations for their last taxation years that ended in the last calendar year that ended before the end of the particular taxation year.

Related Provisions: 87(2)(j.92) — Amalgamation — continuing corporation; 88(1)(e.2) — Winding-up; 181.2(1), 181.3(1) — Taxable capital employed in Canada.

"eligible instalment day" of an eligible corporation means a day in January, February or March, 2002, on which an instalment on account of the corporation's tax payable under this Part for the taxation year that includes that day would become payable

(a) if this Act were read without reference to this section; and

(b) if, in the case of a corporation that is not required by section 157 to make instalment payments on account of its tax payable under this Part for the taxation year, it were so required.

(2) Deferred balance-due day — An eligible corporation's balance-due day for a taxation year that ends after 2001 is deemed to be the later of

(a) the day that would otherwise be the corporation's balance-due day for the taxation year, and

(b) the day that is six months after the corporation's last eligible instalment day in the taxation year.

(3) Deferred instalment day — An amount that would, because of paragraph 157(1)(a), otherwise become payable in respect of a taxation year by an eligible corporation on an eligible instalment day of the corporation does not become payable on that day but becomes payable

(a) if the particular day that is six months after the eligible instalment day is in the taxation year, on the particular day; and

(b) in any other case, on the day that is deemed by subsection (2) to be the corporation's balance-due day for the taxation year.

History: S. 157.1 added by 2002, c. 9, s. 42, applicable to taxation years that end after 2001.

Definitions [s. 157.1]: "amount" — 248(1); "associated" — 256; "balance-due day" — 157.1(2), 248(1); "Canada" — 255, *Interpretation Act* 35(1); "corporation" — 248(1), *Interpretation Act* 35(1); "eligible corporation", "eligible instalment day" — 157.1(1); "month" — *Interpretation Act* 35(1); "resident in Canada" — 250; "taxable capital employed in Canada" — 181.2(1), 181.3(1); "taxation year" — 249.

158. Payment of remainder — Where the Minister mails a notice of assessment of any amount payable by a taxpayer, that part of the amount assessed then remaining unpaid is payable forthwith by the taxpayer to the Receiver General.

Related Provisions: 156.1(4) — Obligation of individual to pay balance by balance-due date; 157(1)(b) — Obligation of corporation to pay balance; 161.4(1) — No requirement to pay balance of $2 or less; 164(3) — Interest on overpayments; 220(4) — Security for taxes; 222–225 — Collection of taxes; 225.1 — Collection restrictions; 248(7)(a) — Mail deemed received on day mailed.

Selected Cases [s. 158]: *Markevich v. R.*, [2003] 1 C.T.C. 83 (SCC) (Federal limitation period of six years applies to federal taxes and provincial periods to provincial taxes); *Lambert v. R.*, [1976] C.T.C. 611 (FCA) (Subsequent reassessment not affecting validity of issued certificate in respect of unpaid balance for tax).

Definitions [s. 158]: "assessment", "Minister", "taxpayer" — 248(1).

159. (1) Person acting for another — For the purposes of this Act, where a person is a legal representative of a taxpayer at any time,

(a) the legal representative is jointly and severally liable with the taxpayer

Proposed Amendment — 159(1)(a) opening words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), s. 250, will amend the opening words of para. 159(1)(a) by substituting "jointly and severally, or solidarily," for "jointly and severally", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(i) to pay each amount payable under this Act by the taxpayer at or before that time and that remains unpaid, to the extent that the legal representative is at that time in possession or control, in the capacity of legal representative, of property that belongs or belonged to, or that is or was held for the benefit of, the taxpayer or the taxpayer's estate, and

(ii) to perform any obligation or duty imposed under this Act on the taxpayer at or before that time and that remains outstanding, to the extent that the obligation or duty can reasonably be considered to relate to the responsibilities of the legal representative acting in that capacity; and

(b) any action or proceeding in respect of the taxpayer taken under this Act at or after that time by the Minister may be so taken in the name of the legal representative acting in that capacity and, when so taken, has the same effect as if it had been taken directly against the taxpayer and, if the taxpayer no longer exists, as if the taxpayer continued to exist.

Related Provisions: 150(3) — Obligation to file taxpayer's return; 227.1 — Liability of corporate directors; 248(7)(a) — Mail deemed received on day mailed.

History: Subsec. 159(1) amended by 1998, c. 19, s. 185, in force on June 18, 1998. Subsec. 159(1) formerly read:

(1) Payment on behalf of others — Where the Minister mails to a person required by section 150 to file a return of the income of a taxpayer for a taxation year a notice of assessment of any amount payable for the year by or in respect of the taxpayer, that part of the amount assessed then remaining unpaid is payable forthwith by the person to the Receiver General to the extent that the person has or had, at any time after the end of the taxation year, in his or her possession or control property belonging to the taxpayer or the taxpayer's estate and on payment thereof the person shall be deemed to have made the payment on behalf of the taxpayer.

(2) Certificate before distribution — Every legal representative (other than a trustee in bankruptcy) of a taxpayer shall, before distributing to one or more persons any property in the possession or control of the legal representative acting in that capacity, obtain a certificate from the Minister, by applying for one in prescribed form, certifying that all amounts

(a) for which the taxpayer is or can reasonably be expected to become liable under this Act at or before the time the distribution is made, and

(b) for the payment of which the legal representative is or can reasonably be expected to become liable in that capacity

have been paid or that security for the payment thereof has been accepted by the Minister.

Related Provisions: 159(3) — Liability where property distributed with no certificate; 159(3.1) — Appropriation of property; 220(4) — Security for taxes; 227.1 — Liability of directors for withholding taxes.

History: Subsec. 159(2) amended by 1998, c. 19, s. 185, in force on June 18, 1998. Subsec. 159(2) formerly read:

(2) Every person (other than a trustee in bankruptcy) who is an assignee, liquidator, receiver, receiver-manager, administrator, executor or any other like person (in this section referred to as the "responsible representative") administering, winding up, controlling or otherwise dealing with a property, business or estate of another person shall, before distributing to one or more persons any property over which the responsible representative has control in the capacity of the responsible representative, obtain a certificate from the Minister, by applying therefor in prescribed form, certifying that all amounts

(a) for which any taxpayer is liable under this Act in respect of the taxation year in which the distribution is made, or any preceding taxation year, and

(b) for the payment of which the responsible representative is or can reasonably be expected to become liable in that capacity

have been paid or that security for the payment thereof has been accepted by the Minister.

That portion of subsec. 159(2) preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 131, applicable to applications made after December 17, 1991. That portion formerly read:

(2) Every person (other than a trustee in bankruptcy) who is an assignee, liquidator, receiver, receiver-manager, administrator, executor, or any other like person, (in this section referred to as the "responsible representative") administering, winding up, controlling or otherwise dealing with a property, business or estate of another person, before distributing to one or more persons any property over which the responsible representative has control in that capacity, shall obtain a certificate from the Minister certifying that all amounts

Selected Cases [subsec. 159(2)]: *Pâquet v. MNR*, [1992] 1 C.T.C. 2699 (TCC) (Appellant not responsible representative of taxpayer corporation, not personally liable for payment of tax owed by latter); *Flemming Estate v. MNR*, [1983] C.T.C. 321 (FCTD); rev'd in part [1984] C.T.C. 352, (sub nom. *R. v. Parsons)* (FCA) (No need to seek certificate from Minister when requirements of section do not cover directors of corporation).

Interpretation Bulletins: IT-488R2: Winding-up of 90%-owned taxable Canadian corporations (archived); CPP-2: Canada pension plan — status of employer where trustee in bankruptcy, receiver or receiver and manager is appointed; UI-3: *Unemployment Insurance Act* — status of employer where trustee in bankruptcy, receiver or receiver and manager is appointed.

Information Circulars: 78-10R4: Books and records retention/destruction; 82-6R3: Clearance certificate; 98-1R: Collections policies.

Forms: TX19: Asking for clearance certificate.

(3) Personal liability — Where a legal representative (other than a trustee in bankruptcy) of a taxpayer distributes to one or more persons property in the possession or control of the legal representative, acting in that capacity, without obtaining a certificate under subsection (2) in respect of the amounts referred to in that subsection, the legal representative is personally liable for the payment of those amounts to the extent of the value of the property distributed, and the Minister may at any time assess the legal representative in respect of any amount payable because of this subsection, and the provisions of this Division apply, with any modifications that the circumstances require, to an assessment made under this subsection as though it had been made under section 152.

Proposed Amendment — 159(3)

(3) Personal liability — If a legal representative (other than a trustee in bankruptcy) of a taxpayer distributes to one or more persons property in the possession or control of the legal representative, acting in that capacity, without obtaining a certificate under subsection (2) in respect of the amounts referred to in that subsection,

(a) the legal representative is personally liable for the payment of those amounts to the extent of the value of the property distributed;

(b) the Minister may at any time assess the legal representative in respect of any amount payable because of this subsection; and

(c) the provisions of this Division (including, for greater certainty, the provisions in respect of interest payable) apply, with any modifications that the circumstances require, to an assessment made under this subsection as though it had been made under section 152 in respect of taxes payable under this Part.

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 151, will amend subsec. 159(3) to read as above, applicable to assessments made after December 20, 2002.

Technical Notes: Subsection 159(1) provides, in part, that a legal representative acting for another person is jointly and severally liable for each amount payable by the other person under the Act, to the extent that the representative has possession and control of the other person's assets. If the representative distributes assets of the other person before obtaining a certificate from the Minister of National Revenue that the other person's tax debts have been paid, the Minister may, under subsection 159(3), assess the representative for the amount of the debt.

Subsection 159(3) is amended to clarify that a legal representative so assessed after December 20, 2002 is subject to interest on the assessment without any limit on the amount of interest for which the representative may be liable.

Related Provisions: 159(3.1) — Appropriation of property; 222(5)(c) — Restart of 10-year collection limitation period.

History: Subsec. 159(3) amended by 1998, c. 19, s. 185, in force on June 18, 1998. Subsec. 159(3) formerly read:

> (3) Where a responsible representative distributes to one or more persons property over which the responsible representative has control in that capacity without obtaining a certificate under subsection (2) in respect of the amounts referred to in that subsection, the responsible representative is personally liable for the payment of those amounts to the extent of the value of the property distributed and the Minister may assess the responsible representative therefor in the same manner and with the same effect as an assessment made under section 152.

Selected Cases [subsec. 159(3)]: *Flemming Estate v. MNR*, [1983] C.T.C. 321 (FCTD); rev'd in part [1984] C.T.C. 352, (sub nom. *R. v. Parsons)* (FCA) (No need to seek certificate from Minister when requirements of section do not cover directors of corporation).

Interpretation Bulletins: IT-488R2: Winding-up of 90%-owned taxable Canadian corporations (archived).

Information Circulars: 98-1R: Collections policies.

(3.1) Appropriation of property — For the purposes of subsections (2) and (3), an appropriation by a legal representative of a taxpayer of property in the possession or control of the legal representative acting in that capacity is deemed to be a distribution of the property to a person.

History: Subsec. 159(3.1) added by 1998, c. 19, s. 185, in force on June 18, 1998.

(4) [Repealed]

History: Subsec. 159(4) repealed by 2001, c. 17, subsec. 154(1), applicable to individuals who cease to be resident in Canada after October 1, 1996. The subsec. formerly read:

> (4) Election on emigration — Where an individual to whom subsection 128.1(4) applies
>
> (a) so elects in prescribed manner on or before the individual's balance-due day for the taxation year in which the individual ceased to be resident in Canada, and
>
> (b) furnishes to the Minister security acceptable to the Minister for payment of any tax under this Act the payment of which is deferred by the election,
>
> all or any portion of such part of that tax as is equal to the amount, if any, by which that tax exceeds the amount that would be that tax if this Act were read without reference to subsection 128.1(4) may, subject to subsection (4.1), be paid in such number of equal annual instalments as is specified in the election by the individual.

Subsec. 159(4) substituted by 1994, c. 21, s. 78, applicable to changes in residence occurring after 1992. That subsec. formerly read:

> (4) Election where subsec. 48(1) applicable — Where subsection 48(1) is applicable in respect of a taxpayer who has ceased to be resident in Canada in a taxation year, and the taxpayer so elects and furnishes the Minister with security acceptable to the Minister for payment of any tax the payment of which is deferred by the election, notwithstanding any provision of this Part respecting the time within which payment shall be made of the tax payable under this Part by the taxpayer for the year, all or any portion of such part of that tax as is equal to the amount, if any, by which that tax exceeds the amount that that tax would be, if this Act were read without reference to subsection 48(1), may be paid in such number (not exceeding 6) of equal consecutive annual instalments as is specified by the taxpayer in the election, the first instalment of which shall be paid on or before the day on or before which payment of that tax would, but for the election, have been required to be made and each subsequent instalment of which shall be paid on or before the next following anniversary of that day.

(4.1) [Repealed]

History: Subsec. 159(4.1) repealed by 2001, c. 17, subsec. 154(1), applicable to individuals who cease to be resident in Canada after October 1, 1996. The subsec. formerly read:

> (4.1) Idem — Where an individual to whom subsection 128.1(4) applies elects under subsection (4),
>
> (a) the number of equal annual instalments provided in the election shall be deemed to be the lesser of 6 and such other number as is specified in the election by the individual;
>
> (b) the first instalment shall be paid on or before the individual's balance-due day for the taxation year; and
>
> (c) each subsequent instalment shall be paid on or before the next following anniversary of the day described in paragraph (b).

Subsec. 159(4.1) added by 1994, c. 21, s. 78, applicable to changes in residence occurring after 1992.

(5) Election where certain provisions applicable [on death] — Where subsection 70(2), (5) or (5.2) of this Act or subsection 70(9.4) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, is applicable in respect of a taxpayer who has died, and the taxpayer's legal representative so elects and furnishes the Minister with security acceptable to the Minister for payment of any tax the payment of which is deferred by the election, notwithstanding any provision of this Part or the *Income Tax Application Rules* respecting the time within which payment shall be made of the tax payable under this Part by the taxpayer for the taxation year in which the taxpayer died, all or any portion of such part of that tax as is equal to the amount, if any, by which that tax exceeds the amount that that tax would be, if this Act were read without reference to subsections 70(2), (5) and (5.2) and the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, were read without reference to subsections 70(2), (5), (5.2) and (9.4) of that Act, may be paid in such number (not exceeding 10) of equal consecutive annual instalments as is specified by the legal representative in the election, the first instalment of which shall be paid on or before the day on or before which payment of that tax would, but for the election, have been required to be made and each subsequent instalment of which shall be paid on or before the next following anniversary of that day.

Related Provisions: 159(5.1) — Pre-1972 professional business; 159(6) — Meaning of "tax payable under this Part"; 159(7) — Form and manner of election, and interest.

Regulations: 1001 (prescribed manner of making election).

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-125R4: Dispositions of resource properties; IT-212R3: Income of deceased persons — rights or things; IT-278R2: Death of a partner or of a retired partner.

Forms: T2075: Election to defer payment of income tax under subsec. 159(5) by a deceased taxpayer's legal representative or trustee; T4011: Preparing returns for deceased persons [guide].

(5.1) Idem [pre-1972 professional business] — Where, in the taxation year in which a taxpayer dies, an amount is included in computing the taxpayer's income by virtue of paragraph 23(3)(c) of the *Income Tax Application Rules*, the provisions of subsection (5) apply, with such modifications as the circumstances require, as though the amount were an amount included in computing the taxpayer's income for the year by virtue of subsection 70(2) or an amount deemed to have been received by the taxpayer by virtue of subsection 70(5).

Related Provisions: 70(2) — Deceased taxpayer — amounts receivable; 70(5) — Depreciable and other capital property.

I.T. Application Rules: 23(3).

Interpretation Bulletins: IT-212R3: Income of deceased persons — rights or things; IT-278R2: Death of a partner or of a retired partner.

(6) Idem — For the purposes of subsection (5), the "tax payable under this Part" by a taxpayer for the taxation year in which the taxpayer died includes any tax payable under this Part by virtue of an election in respect of the taxpayer's death made by the taxpayer's legal representative under subsection 70(2) or under the provisions of that subsection as they are required to be read by virtue of the *Income Tax Application Rules*.

(6.1) Election where subsec. 104(4) applicable — Where a time determined under paragraph 104(4)(a), (a.1), (a.2), (a.3), (a.4), (b) or (c) in respect of a trust occurs in a taxation year of the trust and the trust so elects and furnishes to the Minister security acceptable to the Minister for payment of any tax the payment of which is deferred by the election, notwithstanding any other provision of this Part respecting the time within which payment shall be made of the tax payable under this Part by the trust for the year, all or any portion of the part of that tax that is equal to the amount, if any, by which that tax exceeds the amount that that tax would be if this Act were read without reference to paragraph 104(4)(a), (a.1), (a.2), (a.3), (a.4), (b) or (c), as the case may be, may be paid in the number (not exceeding 10) of equal consecutive annual instalments that is specified by the trust in the election, the first instalment of which shall be paid on or before the day on or before which payment of that tax would, but for the election, have been required to be made and each subsequent instalment of which shall be paid on or before the next following anniversary of that day.

Related Provisions: 104(5.3) — Election to postpone deemed disposition; 159(7) — Form and manner of election, and interest.

History: Subsec. 159(6.1) amended by 2001, c. 17, subsec. 154(2), applicable to 2000 *et seq.* The subsec. formerly read:

> (6.1) Where a day determined under paragraph 104(4)(a), (a.1), (b) or (c) in respect of a trust occurs in a taxation year of the trust and the trust so elects and furnishes to the Minister security acceptable to the Minister for payment of any tax the payment of which is deferred by the election, notwithstanding any other provision of this Part respecting the time within which payment shall be made of the tax payable under this Part by the trust for the year, all or any portion of such part of that tax as is equal to the amount, if any, by which that tax exceeds the amount that that tax would be if this Act were read without reference to paragraph 104(4)(a), (a.1), (b) or (c), as the case may be, may be paid in such number (not exceeding 10) of equal consecutive annual instalments as is specified by the trust in the election, the first instalment of which shall be paid on or before the day on or before which payment of that tax would, but for the election, have been required to be made and each subsequent instalment of which shall be paid on or before the next following anniversary of that day.

Subsec. 159(6.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 95, applicable to 1993 *et seq.*

Forms: T2223: Election under s. 159(6.1) by trust to defer payment of income tax.

(7) Form and manner of election and interest — Every election made by a taxpayer under subsection (4) or (6.1) or by the legal representative of a taxpayer under subsection (5) shall be made in prescribed form and on condition that, at the time of payment of any amount payment of which is deferred by the election, the taxpayer shall pay to the Receiver General interest on the amount at the prescribed rate in effect at the time the election was made, computed from the day on or before which the amount would, but for the election, have been required to be paid to the day of payment.

Related Provisions: 221.1 — Application of interest where legislation retroactive; 248(11) — Interest compounded daily.

History: Subsec. 159(7) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 95, applicable to 1993 *et seq.* Subsec. (7) formerly read:

> (7) Every election made by a taxpayer under subsection (4) or by the legal representative of a taxpayer under subsection (5), as the case may be, shall be made in prescribed form and in prescribed manner and on condition that, at the time of payment of any amount payment of which is deferred by the election, the taxpayer shall pay to the Receiver General interest on the amount at the prescribed rate in effect at the time the election was made computed from the day on or before which the amount would, but for the election, have been required to be paid to the day of payment.

Selected Cases [subsec. 159(7)]: *Agnew (Estate) v. R.*, [1978] C.T.C. 351 (FCA) (Interest rate held to be rate at time of election to defer tax payment).

Regulations: 4301(a) (prescribed rate of interest).

Forms: T2075: Election to defer payment of income tax under subsec. 159(5) by a deceased taxpayer's legal representative or trustee; T2223: Election under s. 159(6.1) by trust to defer payment of income tax.

Selected Cases [s. 159]: *Armstrong v. R.*, [1998] 4 C.T.C. 2006 (TCC) (Assessment under this provision did not revive right to attack assessments); *RMM Canadian Enterprises Inc. v. R.*, [1997] 3 C.T.C. 2103 (TCC) (Agent or instrumentality used to distribute deemed dividend liable under s. 215 or s. 159); *Westbrook Management Ltd. v. Canada*, [1996] 1 C.T.C. 2516 (TCC) (Assessment cannot raise a liability which has become statute-barred).

Definitions [s. 159]: "amount", "assessment", "balance-due day" — 248(1); "Canada" — 255; "individual", "legal representative", "Minister", "person", "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "property" — 248(1); "taxation year" — 249; "tax payable under this Part" — 159(6); "taxpayer" — 248(1).

160. (1) Tax liability re property transferred not at arm's length — Where a person has, on or after May 1, 1951, transferred property, either directly or indirectly, by means of a trust or by any other means whatever, to

(a) the person's spouse or common-law partner or a person who has since become the person's spouse or common-law partner,

(b) a person who was under 18 years of age, or

(c) a person with whom the person was not dealing at arm's length,

the following rules apply:

(d) the transferee and transferor are jointly and severally liable to pay a part of the transferor's tax under this Part for each taxation year equal to the amount by which the tax for the year is greater than it would have been if it were not for the operation of sections 74 to 75.1 of this Act and section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in respect of any income from, or gain from the disposition of, the property so transferred or property substituted therefor, and

Proposed Amendment — 160(1)(d)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 251(1), will amend para. 160(1)(d) by substituting "jointly and severally, or solidarily," for "jointly and severally", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(e) the transferee and transferor are jointly and severally liable to pay under this Act an amount equal to the lesser of

Proposed Amendment — 160(1)(e) opening words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 251(2), will amend the opening words of para. 160(1)(e) by substituting "jointly and severally, or solidarily," for "jointly and severally", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(i) the amount, if any, by which the fair market value of the property at the time it was transferred exceeds the fair market value at that time of the consideration given for the property, and

(ii) the total of all amounts each of which is an amount that the transferor is liable to pay under this Act in or in respect of the taxation year in which the property was transferred or any preceding taxation year,

but nothing in this subsection shall be deemed to limit the liability of the transferor under any other provision of this Act.

Proposed Amendment — 160(1) after (e)(i)

(ii) the total of all amounts each of which is an amount that the transferor is liable to pay under this Act (including, for greater certainty, an amount that the transferor is liable to pay under this section, regardless of whether the Minister has made an assessment under subsection (2) for that amount) in or in respect of the taxation year in which the property was transferred or any preceding taxation year,

but nothing in this subsection limits the liability of the transferor under any other provision of this Act or of the transferee for the interest that the transferee is liable to pay under this Act on an assessment in respect of the amount that the transferee is liable to pay because of this subsection.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 152(1), will amend the portion of subsec. 160(1) after subpara. (e)(i) to read as above, applicable in respect of assessments made after December 20, 2002.

Technical Notes: The amount that a taxpayer is liable to pay in respect of the transfer of property from a non-arm's length tax debtor is determined under subsection 160(1). The Minister may assess the taxpayer for such a liability under subsection 160(2). Paragraph 160(1)(e) is amended, in respect of assessments made after December 20, 2002, to clarify that the assessment of the taxpayer is subject to interest, without any limit on the amount of interest for which the taxpayer may be liable. [This overrules *Algoa Trust*, [1998] 4 C.T.C. 2001 (TCC) — ed.]

Related Provisions: 74–75.1 — Attribution of income on non-arm's length transfers; 160(3.1) — Fair market value of undivided interest in property; 160(4) — Transfer to spouse on breakdown of marriage; 188(2) — Liability where revoked charity transfers property; 248(5) — Substituted property.

History: Subsec. 160(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Selected Cases [subsec. 160(1)]: *Ducharme v. R.*, [2005] 2 C.T.C. 323 (FCA) (Rental payments were well under market value for property; no "transfer"); *Madsen v. R.*, [2005] 2 C.T.C. 2163 (TCC); add'l reasons to [2004] 4 C.T.C. 2492 (TCC) (Promise to pay when funds available insufficient to prevent application of provision); *Larochelle v. R.*, [2005] 1 C.T.C. 2476 (TCC) (FMV is the same for transferor and transferee); *Piuze v. R.* (2002), [2004] 5 C.T.C. 2050 (TCC) (Dividends may still be dividends and transfers without consideration even if not formally declared); *Reagh v. R.*, [2004] 3 C.T.C. 2336 (TCC) (Lack of knowledge of transferor's tax debt by transferee irrelevant); *Wannan v. R.*, [2004] 1 C.T.C. 326 (FCA); aff'g [2003] 2 C.T.C. 2303 (TCC) (Liability survives bankruptcy and discharge of transferor); *Goldberg v. R.*, [2003] 2 C.T.C. 2592 (TCC) (Transfer to trust to pay family expenses caught by provision); *Caron v. R.* , [2002] 3 C.T.C. 2369 (TCC) (Transfer of funds occurred even when taxpayer retained power of attorney on bank account of transferee); *VDS Management Inc. v. Canada (A.-G.)*, [2002] 3 C.T.C. 189 (BC SC) (Postponement of claim not a transfer of property); *Gestion Yvan Drouin Inc. v. R.*, [2001] 2 C.T.C. 2315 (TCC) (Crown may have onus of proof in subsec. 160(1) appeals); *Gaucher v. R.*, [2001] 1 C.T.C. 125 (FCA); rev'g [2000] 2 C.T.C. 2734 (TCC) (Taxpayer entitled to raise any defence, even if liability as between Minister and primary taxpayer definitively settled. *Schafer* disapproved); *Raphael v. R.*, [2000] 4 C.T.C. 2620 (TCC) (No consideration within matrimonial context); *Filippazzo v. R.*, [2000] 3 C.T.C. 2691 (TCC) (Provision applies to assessments under 227.1 as well as to ordinary tax assessments); *Medland v. R.*, [1999] 4 C.T.C. 293 (FCA); aff'g [1997] 1 C.T.C. 2702 (TCC) (Transfer may be direct or indirect); *Ho-A-Shoo v. Canada (A.-G.)*, [2000] 2 C.T.C. 155 (Ont SCJ) (Unassessed interest may not be contemplated by provision); *Biderman v. R.*, [2000] 2 C.T.C. 35 (FCA); aff'g [1998] 4 C.T.C. 2144 (TCC) (Improper disclaimer of estate meant property had been acquired and later transferred; provision applicable); *LeBlanc v. R.*, [1999] 1 C.T.C. 2825 (TCC) (Withdrawals from RRSP to fund obligation to support spouse not transfers); *Michaud v. R.*, [1998] 4 C.T.C. 2675 (TCC) (Payment of mortgage as part of family obligations is not a transfer); *Ruffolo v. R.*, [1998] 4 C.T.C. 2114 (TCC) (Dividends not carved out from concept of transfer); *Algoa Trust v. R.*, [1998] 4 C.T.C. 2001 (TCC) (No new tax debt established and no need for new assessment); *Cooke v. R.*, [1997] 2 C.T.C. 254 (FCA) (Transfer not made "pursuant" to agreement which contained no mention of any transfer of property); *Placements R.I.O. Inc. v. R.*, [1997] 2 C.T.C. 2513 (TCC) (What matters is the "transfer" of property, not the particular means by which it occurs); *Heavyside v. Canada*, [1997] 2 C.T.C. 1 (FCA) (Extinguishment of transferor's tax liability by discharge from bankruptcy does not affect transferee's separate and continuing liability); *155579 Canada Inc. v. Canada*, [1997] 1 C.T.C. 2011 (TCC) (Dividend is "transfer" of property); *Gamache v. Canada*, [1996] 3 C.T.C. 2597 (TCC) (Tax liability was discharged by bankruptcy; transferee not liable under provision); *Hamel v. MNR*, [1996] 2 C.T.C. 2046 (TCC) (Indirect transfer can trigger liability for assessment); *Caplan v. MNR*, [1995] 2 C.T.C. 2932D (TCC) (Where tax debtor granted discharge from bankruptcy, no longer any tax liability in year of transfer and assessment issued thereafter was ineffective); *Route Canada Real Estate Inc. v. Canada*, [1995] 2 C.T.C. 2430 (TCC) (Underlying tax liability of transferor is relevant); *Cox v. Canada*, [1995] 2 C.T.C. 2094 (TCC) (Transactions void against trustee valid unless challenged by trustee; transfer was effective if not attacked); *Achtem v. MNR*, [1995] 1 C.T.C. 2941 (TCC) (Liability of transferee extends to all amounts owing by transferor at date of transfer); *Davis v. Canada*, [1994] 2 C.T.C. 2033 (TCC) (Consideration given for transfer of property by way of dividend); *Delisle v. Canada*, [1995] 1 C.T.C. 2007 (TCC) (Taxpayer never had benefit of money transferred to her account and acted as agent only for transferor); *Dupuis (A.C.) v. Canada*, [1993] 2 C.T.C. 2032 (TCC) (Assessment under provision not subject to limitation periods in subsec. 152(4)); *Algoa Trust v. Canada*, [1993] 1 C.T.C. 2294 (TCC) (Cash dividend but not stock dividend is transfer of property under provision); *Mah (F.) v. Canada*, [1993] 1 C.T.C. 422 (FCTD) (Transferee not liable under provision unless and until he had knowledge of transfer and took steps in relation to property); *Kostiuk (B.) v. MNR*, [1993] 1 C.T.C. 31 (FCTD) (Transfer of property effective at time agreement executed); *Furfaro-Siconolfi v. MNR*, [1990] 1 C.T.C. 188 (FCTD); appealed to FCA (Dec. 1989), File A-572-89 ("Transferred" means transfer of beneficial ownership, not necessarily possession).

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-258R2: Transfer of property to a spouse; IT-260R: Transfer of property to a minor; IT-369R: Attribution of trust income to settlor; IT-510: Transfers and loans of property made after May 22, 1985 to a related minor; IT-511R: Interspousal and certain other transfers and loans of property.

Information Circulars: 98-1R: Collections policies.

I.T. Technical News: 4 (section 160 — the *Davis* case).

(1.1) Joint liability where subsec. 69(11) applies — Where a particular person or partnership is deemed by subsection 69(11) to have disposed of a property at any time, the person referred to in that subsection to whom a benefit described in that subsection was available in respect of a subsequent disposition of the property or property substituted for the property is jointly and severally liable with each other taxpayer to pay a part of the other taxpayer's liabilities under this Act in respect of

each taxation year equal to the amount determined by the formula

Proposed Amendment — 160(1.1) opening words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 251(3), will amend the portion of subsec. 160(1.1) before the formula by substituting "jointly and severally, or solidarily," for "jointly and severally", to come into force on Royal Assent.

Technical Notes: See under 12(4).

A – B

where

A is the total of amounts payable under this Act by the other taxpayer in respect of the year, and

B is the amount that would, if the particular person or partnership were not deemed by subsection 69(11) to have disposed of the property, be determined for A in respect of the other taxpayer in respect of the year,

but nothing under this subsection is deemed to limit the liability of the other taxpayer under any other provision of this Act.

Proposed Amendment — 160(1.1) closing words

but nothing in this subsection limits the liability of the other taxpayer under any other provision of this Act or of any person for the interest that the person is liable to pay under this Act on an assessment in respect of the amount that the person is liable to pay because of this subsection.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 152(2), will amend the closing words of subsec. 160(1.1) to read as above, applicable in respect of assessments made after December 20, 2002.

Technical Notes: Subsection 160(1.1) provides that where subsection 69(11) applies to deem a disposition of property to have occurred at fair market value, both the person disposing of the property and the person acquiring the property are jointly and severally liable for the payment of each other's liabilities arising under the Act as a result of that disposition. The Minister of National Revenue may assess the person for such a liability under subsection 160(2). Subsection 160(1.1) is amended, in respect of assessments made after December 20, 2002, to clarify that the assessment of the taxpayer is subject to interest. [This overrules *Algoa Trust*, [1998] 4 C.T.C. 2001 (TCC) — ed.]

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: Subsec. 160(1.1) added by 1998, c. 19, subsec. 186(1), applicable in respect of dispositions that are deemed by subsec. 69(11) to occur after April 26, 1995.

(1.2) Joint liability — tax on split income — A parent of a specified individual is jointly and severally liable with the individual for the amount required to be added because of subsection 120.4(2) in computing the specified individual's tax payable under this Part for a taxation year if, during the year, the parent

Proposed Amendment — 160(1.2) opening words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 251(4), will amend the opening words of subsec. 160(1.2) by substituting "jointly and severally, or solidarily," for "jointly and severally", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(a) carried on a business that purchased goods or services from a business the income of which is directly or indirectly included in computing the individual's split income for the year;

(b) was a specified shareholder of a corporation that purchased goods or services from a business the income of which is directly or indirectly included in computing the individual's split income for the year;

Proposed Amendment — 160(1.2)(a), (b)

(a) carried on a business that was provided property or services by a partnership or trust all or a portion of the income of which partnership or trust is directly or indirectly included in computing the individual's split income for the year,

(b) was a specified shareholder of a corporation that was provided property or services by a partnership or trust all or a portion of the income of which partnership or trust is directly or indirectly included in computing the individual's split income for the year,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 152(3), will amend paras. 160(1.2)(a) and (b) to read as above, applicable after December 20, 2002.

Technical Notes: Subsection 160(1.2), which applies in respect of tax owing on split income, is amended in two respects.

First, paragraphs 160(1.2)(a), (b) and (d) are amended to replace the phrase "goods or services" with the phrase "property or services" as a consequence of the same changes made to paragraphs (b) and (c) of the definition "split income" in subsection 120.4(1). These amendments apply after December 20, 2002.

(c) was a specified shareholder of a corporation, dividends on the shares of the capital stock of which were directly or indirectly included in computing the individual's split income for the year;

(d) was a shareholder of a professional corporation that purchased goods or services from a business the income of which is directly or indirectly included in computing the individual's split income for the year; or

Proposed Amendment — 160(1.2)(d)

(d) was a shareholder of a professional corporation that was provided property or services by a partnership or trust all or a portion of the income of which partnership or trust is directly or indirectly included in computing the individual's split income for the year, or

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 152(4), will amend para. 160(1.2)(d) to read as above, applicable after December 20, 2002.

Technical Notes: See under 160(1.2)(a), (b).

(e) was a shareholder of a professional corporation, dividends on the shares of the capital stock of which were directly or indirectly included in computing the individual's split income for the year.

Proposed Addition — 160(1.2) closing words

but nothing in this subsection limits the liability of the specified individual under any other provision of this Act or of the parent for the interest that the parent is liable to pay under this Act on an assessment in respect of the amount that the parent is liable to pay because of this subsection.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 152(5), will add the above closing words to subsec. 160(1.2), applicable in respect of assessments made after December 20, 2002.

Technical Notes: Second, a "postamble" is added to subsection 160(1.2) to clarify that, in respect of assessments made under subsection 160(2) after December 20, 2002, the assessment is subject to interest.

History: Subsec. 160(1.2) added by 2000, c. 19, s. 46, applicable to 2000 *et seq.*

(2) **Assessment** — The Minister may at any time assess a taxpayer in respect of any amount payable because of this section and the provisions of this Division apply, with any modifications that the circumstances require, in respect of an assessment made under this section as though it had been made under section 152.

Proposed Amendment — 160(2)

(2) **Assessment** — The Minister may at any time assess a taxpayer in respect of any amount payable because of this section, and the provisions of this Division (including, for greater certainty, the provisions in respect of interest payable) apply, with any modifications that the circumstances require, in respect of an assessment made under this section as though it had been made under section 152 in respect of taxes payable under this Part.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 152(6), will amend subsec. 160(2) to read as above, applicable in respect of assessments made after December 20, 2002.

Technical Notes: Subsection 160(2) allows the Minister of National Revenue to assess a taxpayer at any time in respect of liabilities arising under section 160, with such assessment having the same effect as if it had been made under section 152. Subsection 160(2) is amended, in respect of assessments made after December 20, 2002, to clarify that the assessment is subject to interest.

Related Provisions: 152 — Assessment; 222(5)(c) — Restart of 10-year collection limitation period.

History: Subsec. 160(2) amended by 1998, c. 19, subsec. 186(2), in force on June 18, 1998. Subsec. 160(2) formerly read:

> (2) Minister may assess transferee — The Minister may at any time assess a transferee in respect of any amount payable by virtue of this section and the provisions of this Division are applicable, with such modifications as the circumstances require, in respect of an assessment made under this section as though it had been made under section 152.

Selected Cases [subsec. 160(2)]: *Phillips (E.) v. Canada*, [1993] 2 C.T.C. 2110 (TCC) (Assessment under provision cannot include amounts in respect of transferor's provincial tax liability).

Proposed Addition — 160(2.1)

(2.1) **Assessment** — The Minister may at any time assess a taxpayer in respect of any amount payable because of paragraph 94(3)(d) or (e) and the provisions of this Division (including, for greater certainty, the provisions in respect of interest payable) apply, with any modifications that the circumstances require, in respect of an assessment made under this section as though it had been made under section 152 in respect of taxes payable under this Part.

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 35(1), will add subsec. 160(2.1), applicable to assessments made after 2002.

Technical Notes: New subsection 160(2.1) allows the Minister of National Revenue to assess a taxpayer at any time in respect of any amount payable because of paragraph 94(3)(d) or (e). Such an assessment has the same effect as if it had been made under section 152 and is subject to interest. For more information on paragraphs 94(3)(d) and (e), see the commentary on those provisions.

Related Provisions: 160(3) — Discharge of liability.

(3) **Discharge of liability** — Where a particular taxpayer has become jointly and severally liable with another taxpayer under this section in respect of part or all of a liability under this Act of the other taxpayer,

Proposed Amendment — 160(3) opening words

(3) **Discharge of liability** — Where a particular taxpayer has become jointly and severally, or solidarily, liable with another taxpayer under this section or because of paragraph 94(3)(d) or (e) in respect of part or all of a liability under this Act of the other taxpayer,

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 35(2), will amend the opening words of subsec. 160(3) to read as above, applicable to assessments made after 2002.

Technical Notes: Subsection 160(3) provides that, where a taxpayer becomes jointly and severally liable with another taxpayer under subsection 160(1) or (1.1) with respect to a tax liability of the other person, a payment by the particular taxpayer on account of the particular taxpayer's tax liability will discharge the joint liability to the extent of the payment.

Subsection 160(3) is amended so that it also applies where the particular taxpayer has become jointly and severally, or solidarily, liable with another taxpayer under because of paragraph 94(3)(d) or (e) in respect of part or all of a liability under this Act of the other taxpayer. (The expression "solidarily" is added to ensure that the Act appropriately reflects both the civil law of the province of Quebec and the law of other provinces.) For more information on paragraphs 94(3)(d) and (e), see the commentary on those provisions.

(a) a payment by the particular taxpayer on account of that taxpayer's liability shall to the extent of the payment discharge the joint liability; but

Proposed Amendment — 160(3)(a)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 251(5), will amend para. 160(3)(a) by substituting "their liability" for "the joint liability", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(b) a payment by the other taxpayer on account of that taxpayer's liability discharges the particular taxpayer's liability only to the extent that the payment operates to reduce that other taxpayer's liability to an amount less than the amount in respect of which the particular taxpayer is, by this section, made jointly and severally liable.

Proposed Amendment — 160(3)(b)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 251(6), will amend para. 160(3)(b) by substituting "jointly and severally, or solidarily," for "jointly and severally", to come into force on Royal Assent.

Technical Notes: See under 12(4).

History: Subsec. 160(3) amended by 1998, c. 19, subsec. 186(2), in force on June 18, 1998. Subsec. 160(3) formerly read:

> (3) Rules applicable — Where a transferor and transferee have, by virtue of subsection (1), become jointly and severally liable in respect of part or all of a liability of the transferor under this Act, the following rules apply:
>
> (a) a payment by the transferee on account of the transferee's liability shall to the extent thereof discharge the joint liability; but
>
> (b) a payment by the transferor on account of the transferor's liability only discharges the transferee's liability to the extent that the payment operates to reduce the transferor's liability to an amount less than the amount in respect of which the transferee was, by subsection (1), made jointly and severally liable.

(3.1) **Fair market value of undivided interest** — For the purposes of this section and section 160.4, the fair market value at any time of an undivided interest in a property, expressed as a proportionate interest in that property, is, subject to subsection (4), deemed to be equal to the same proportion of the fair market value of that property at that time.

Proposed Amendment — 160(3.1)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 251(6), will amend subsec. 160(3.1) by substituting "undivided interest, or for civil law an undivided right," for "undivided interest" and "proportionate interest or right" for "proportionate interest", to come into force on Royal Assent.

Technical Notes: See under 12(4).

History: Subsec. 160(3.1) added by 2000, c. 30, s. 170, applicable to transfers of property made after June 4, 1999.

(4) Special rules re transfer of property to spouse [or common-law partner] — Notwithstanding subsection (1), where at any time a taxpayer has transferred property to the taxpayer's spouse or common-law partner pursuant to a decree, order or judgment of a competent tribunal or pursuant to a written separation agreement and, at that time, the taxpayer and the spouse or common-law partner were separated and living apart as a result of the breakdown of their marriage or common-law partnership, the following rules apply:

(a) in respect of property so transferred after February 15, 1984,

(i) the spouse or common-law partner shall not be liable under subsection (1) to pay any amount with respect to any income from, or gain from the disposition of, the property so transferred or property substituted therefor, and

(ii) for the purposes of paragraph (1)(e), the fair market value of the property at the time it was transferred shall be deemed to be nil, and

(b) in respect of property so transferred before February 16, 1984, where the spouse or common-law partner would, but for this paragraph, be liable to pay an amount under this Act by virtue of subsection (1), the spouse's or common-law partner's liability in respect of that amount shall be deemed to have been discharged on February 16, 1984,

but nothing in this subsection shall operate to reduce the taxpayer's liability under any other provision of this Act.

Related Provisions: 248(5) — Substituted property.

History: Subsec. 160(4) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner"; by 2000, c. 12, Sch. 2, s. 7, to replace "spouse's"with "spouse's or common-law partner's"; and by 2000, c. 12, Sch. 2, s. 9, to replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Selected Cases [subsec. 160(4)]: *Apa v. R.*, [2004] 2 C.T.C. 2776 (TCC) (No liability where taxpayers separated and transfer made pursuant to separation agreement); *Cartier v. R.*, [2000] 2 C.T.C. 2709 (TCC) (Transfer not in consideration of marriage contract); *Cooke v. R.*, [1997] 2 C.T.C. 254 (FCA) (Transfer not made "pursuant" to agreement which contained no mention of any transfer of property).

Information Circulars: 98-1R: Collections policies.

Selected Cases [s. 160]: *Gosselin v. R.*, [1997] 2 C.T.C. 2830 (TCC) (50-50 shareholding meant factual non-arm's length); *Sinnott v. Canada*, [1996] 3 C.T.C. 2144 (TCC) (No consideration given for transfer of funds to pay household expenses); *Hewett v. Canada*, [1996] 1 C.T.C. 2675 (TCC) (Value of property for application of provision is value to transferor, not transferee).

Definitions [s. 160]: "amount", "assessment", "business", "common-law partner", "common-law partnership" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "fair market value" — 160(3.1); "individual" — 248(1); "Minister" — 248(1); "parent" — 252(2)(a); "person", "professional corporation", "property", "separation agreement", "share", "shareholder" — 248(1); "specified individual" — 120.4(1), 248(1); "specified shareholder" — 248(1); "split income" — 120.4(1), 248(1); "substituted property" — 248(5); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

160.1 (1) Where excess refunded — Where at any time the Minister determines that an amount has been refunded to a taxpayer for a taxation year in excess of the amount to which the taxpayer was entitled as a refund under this Act, the following rules apply:

(a) the excess shall be deemed to be an amount that became payable by the taxpayer on the day on which the amount was refunded; and

(b) the taxpayer shall pay to the Receiver General interest at the prescribed rate on the excess (other than any portion thereof that can reasonably be considered to arise as a consequence of the operation of section 122.5 or 122.61) from the day it became payable to the date of payment.

Related Provisions: 160.1(3) — Assessment; 161.1 — Offset of refund interest against arrears interest; 221.1 — Application of interest where legislation retroactive; 248(11) — Interest compounded daily.

Regulations: 4301(a) (prescribed rate of interest).

(1.1) Liability for refund by reason of s. 122.5 [GST credit] — If a person is a qualified relation of an individual (within the meaning assigned by subsection 122.5(1)), in relation to one or more months specified for a taxation year, the person and the individual are jointly and severally, or solidarily, liable to pay the lesser of

(a) any excess described in subsection (1) that was refunded in respect of the taxation year to, or applied to a liability of, the individual as a consequence of the operation of section 122.5, and

(b) the total of the amounts deemed by subsection 122.5(3) to have been paid by the individual during those specified months.

Related Provisions: 160.1(2) — Liability still exists under other provisions; 160.1(3) — Assessment.

(2) Liability under other provisions — Subsection (1.1) does not limit a person's liability under any other provision of this Act.

(2.1) Liability for refunds by reason of section 122.61 [Child Tax Benefit] — Where a person was a cohabiting spouse or common-law partner (within the meaning assigned by section 122.6) of an individual at the end of a taxation year, the person and the individual are jointly and severally liable to pay any excess described in subsection (1) that was refunded in respect of the year to, or applied to a liability of, the individual as a consequence of the operation of section 122.61 if the person was the individual's cohabiting spouse or common-law partner at the time the excess was refunded, but nothing in this subsection shall be deemed to limit the liability of any person under any other provision of this Act.

Related Provisions: 160.1(3) — Assessment.

(2.2) Liability for excess refunds under section 126.1 to partners [UI premium tax credit] — Every taxpayer who, on the day on which an amount has been refunded to, or applied to the liability of, a member of a partnership as a consequence of the operation of subsection 126.1(7) or (13) in excess of the amount to which the member was so entitled, is a member of that partnership is jointly and severally liable with each other taxpayer who on that day is a member of the partnership to pay the excess and to pay interest on the excess, but nothing in this subsection shall be deemed to limit the liability of any person under any other provision of this Act.

Proposed Amendment — 160.1(2.1), (2.2)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), s. 252, will amend subsecs. 160.1(2.1) and (2.2) by substituting "jointly and severally, or solidarily," for "jointly and severally", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(3) Assessment — The Minister may at any time assess a taxpayer in respect of any amount payable by the taxpayer because of subsection (1) or (1.1) or for which the taxpayer is liable because of subsection (2.1) or (2.2), and this Division applies, with such modifications as the circumstance require, in respect of an assessment made under this section as though it were made under section 152.

Proposed Amendment — 160.1(3)

(3) Assessment — The Minister may at any time assess a taxpayer in respect of any amount payable by the taxpayer because of subsection (1) or (1.1) or for which the taxpayer is liable because of subsection (2.1) or (2.2), and the provisions of this Division (including, for greater certainty, the provisions in respect of interest payable) apply, with any modifications that the circumstances require, in respect of an assessment made under this section, as though it were made under section 152 in respect of taxes payable under this Part, except that no interest is payable on an amount assessed in respect of an excess referred to in subsection (1) that can reasonably be considered to arise as a consequence of the operation of section 122.5 or 122.61.

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 153, will amend subsec. 160.1(3) to read as above, applicable to assessments made after December 20, 2002.

Technical Notes: Subsection 160.1(3) allows the Minister of National Revenue to assess a taxpayer in respect of excess refunds and overpayments for which the taxpayer is jointly and severally liable under subsection 160.1(1), (1.1), (2.1) or (2.2). Subsection 160.1(3) is amended, in respect of such assessments made after December 20, 2002, to clarify that such an assessment is subject to interest, except that no interest is payable to the extent that the excess refund is attributable to the overpayment of a GST tax credit or a child tax benefit. [This overrules *Algoa Trust*, [1998] 4 C.T.C. 2001 (TCC), decided under 160(1) — ed.]

Selected Cases [subsec. 160.1(3)]: *Matte v. R.*, [2004] 1 C.T.C. 2823 (TCC) (Interest applicable to excess refunds, even if such refunds applied against other tax debts).

(4) Where amount applied to liability — Where an amount is applied to a liability of a taxpayer to Her Majesty in right of Canada in excess of the amount to which the taxpayer is entitled as a refund under this Act, this section applies as though that amount had been refunded to the taxpayer on the day on which it was so applied.

History [s. 160.1]: Subsec. 160.1(1.1) amended and subsec. (1.2) added by 2002, c. 9, s. 43, applicable to amounts deemed to be paid during months specified for 2001 *et seq.* Subsec. (1.1) formerly read:

> (1.1) Where a person is a qualified relation of an individual for a taxation year (within the meaning assigned by subsection 122.5(1)), the person and the individual are jointly and severally liable to pay any excess described in subsection (1) that was refunded in respect of the year to, or applied to a liability of, the individual as a consequence of the operation of section 122.5, but nothing in this subsection shall be deemed to limit the liability of any person under any other provision of this Act.

Subsec. 160.1(2.1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subsec. 160.1(2.2) added, subsec. (3) amended, by 1994, c. 8, s. 25, applicable to 1993 *et seq.* Subsec. (3) formerly read:

> (3) Assessment — The Minister may at any time assess a taxpayer in respect of any amount payable by the taxpayer because of subsection (1) or (1.1) or for which the taxpayer is liable because of subsection (2.1), and this Division applies, with such modifications as the circumstances require, to an assessment made under this section as though it had been made under section 152.

Para. 160.1(1)(b) amended by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 16(1), to add reference to s. 122.61, applicable after 1992.

Subsec. 160.1(2) repealed by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 16(2), applicable to 1993 *et seq.* Subsec. (2) formerly read:

> (2) Joint and several liability — Where an individual resided at the end of a taxation year with a person who was a supporting person (within the meaning assigned by subsection 122.2(2)) of an eligible child of the individual for that year, the individual and that person are jointly and severally liable to pay any excess described in subsection (1) that was refunded to the individual in respect of the year as a consequence of the operation of section 122.2 or 164.1 and interest on such excess, but nothing in this subsection shall be deemed to limit the liability of any person under any other provision of this Act.

Subsec. 160.1(2.1) added, and subsec. (3) amended by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 16(3), applicable to 1991 *et seq.* except that in its application to the 1991 and 1992 taxation years subsec. (3) shall be read as follows:

> (3) The Minister may at any time assess a taxpayer in respect of any amount payable by the taxpayer because of subsection (1) or (1.1) or for which the taxpayer is liable because of subsection (2) or (2.1), and the provisions of this Division apply, with such modifications as the circumstances require, in respect of an assessment made under this section as though it had been made under section 152.

Subsec. 160.1(3) formerly read:

> (3) The Minister may at any time assess a taxpayer in respect of any amount payable by the taxpayer by virtue of subsection (1) or (1.1) or for which the taxpayer is liable by virtue of subsection (2) of this section or subsection 160.1(2.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, and the provisions of this Division are applicable, with such modifications as the circumstances require, in respect of an assessment made under this section as though it had been made under section 152.

Para. 160.1(1)(b) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 132(1), to add "(other than any portion thereof that can reasonably be considered to arise as a consequence of the operation of section 122.5)", applicable to 1989 *et seq.*

Subsec. 160.1(4) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 132(2), applicable to 1990 *et seq.*

Definitions [s. 160.1]: "amount", "assessment" — 248(1); "child" — 252(1); "cohabiting spouse or common-law partner" — 122.6; "common-law partner", "common-law partnership" — 248(1); "Her Majesty" — *Interpretation Act* 35(1); "individual", "Minister" — 248(1); "months specified" — 122.5(4); "person" — 248(1); "prescribed rate" — Reg. 4301; "qualified relation" — 122.5(1); "taxation year" — 249; "taxpayer" — 248(1).

160.2 (1) Joint and several liability in respect of amounts received out of or under RRSP — Where

> (a) an amount is received out of or under a registered retirement savings plan by a taxpayer other than an annuitant (within the meaning assigned by subsection 146(1)) under the plan, and
>
> (b) that amount or part thereof would, but for paragraph (a) of the definition "benefit" in subsection 146(1), be received by the taxpayer as a benefit (within the meaning assigned by that definition),

the taxpayer and the last annuitant under the plan are jointly and severally liable to pay a part of the annuitant's tax under this Part for the year of the annuitant's death equal to that proportion of the amount by which the annuitant's tax for the year is greater than it would have been if it were not for the operation of subsection 146(8.8) that the total of all amounts each of which is an amount determined under paragraph (b) in respect of the taxpayer is of the amount included in computing the annuitant's income by virtue of that subsection, but nothing in this subsection shall be deemed to limit the liability of the annuitant under any other provision of this Act.

Proposed Amendment — 160.2(1) closing words

the taxpayer and the last annuitant under the plan are jointly and severally, or solidarily, liable to pay a part of the annuitant's tax under this Part for the year of the annuitant's death equal to that proportion of the amount by which the annuitant's tax for the year is greater than it would have been if it were not for the operation of subsection 146(8.8) that the total of all amounts each of which is an amount determined under paragraph (b) in respect of the taxpayer is of the amount included in computing the annuitant's income because of that subsection, but nothing in this subsection limits the liability of the annuitant under any other provision of this Act or of the taxpayer for the interest that the taxpayer is liable to pay under this Act on an assessment in respect of the amount that the taxpayer is liable to pay because of this subsection.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 154(1), will amend the closing words of subsec. 160.2(1) to read as above, applicable to assessments made after December 20, 2002.

Technical Notes: Subsection 160.2(1) provides that a taxpayer who receives benefits out of another person's registered retirement savings plan is jointly and severally liable for the portion of that other person's tax that is attributable to those benefits. Subsection 160.2(2) provides a similar result with respect to benefits received out of another person's registered retirement income fund. The Minister may assess the taxpayer for such a liability under subsection 160.2(3).

Subsections 160.2(1), (2) and (3) are amended, in respect of assessments made after December 20, 2002, to clarify that the assessment is subject to interest, without any limit on the amount of interest for which the taxpayer may be liable. [This overrules *Algoa Trust*, [1998] 4 C.T.C. 2001 (TCC), decided under 160(1) — ed.]

Interpretation Bulletins: IT-500R: RRSPs — death of an annuitant.

(2) Joint and several liability in respect of amounts received out of or under RRIF — Where

(a) an amount is received out of or under a registered retirement income fund by a taxpayer other than an annuitant (within the meaning assigned by subsection 146.3(1)) under the fund, and

(b) that amount or part thereof would, but for paragraph 146.3(5)(a), be included in computing the taxpayer's income for the year of receipt pursuant to subsection 146.3(5),

the taxpayer and the annuitant are jointly and severally liable to pay a part of the annuitant's tax under this Part for the year of the annuitant's death equal to that proportion of the amount by which the annuitant's tax for the year is greater than it would have been if it were not for the operation of subsection 146.3(6) that the amount determined under paragraph (b) is of the amount included in computing the annuitant's income by virtue of that subsection, but nothing in this subsection shall be deemed to limit the liability of the annuitant under any other provision of this Act.

Proposed Amendment — 160.2(2) closing words

the taxpayer and the annuitant are jointly and severally, or solidarily, liable to pay a part of the annuitant's tax under this Part for the year of the annuitant's death equal to that proportion of the amount by which the annuitant's tax for the year is greater than it would have been if it were not for the operation of subsection 146.3(6) that the amount determined under paragraph (b) is of the amount included in computing the annuitant's income because of that subsection, but nothing in this subsection limits the liability of the annuitant under any other provision of this Act or of the taxpayer for the interest that the taxpayer is liable to pay under this Act on an assessment in respect of the amount that the taxpayer is liable to pay because of this subsection.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 154(2), will amend the closing words of subsec. 160.2(2) to read as above, applicable to assessments made after December 20, 2002.

Technical Notes: See under 160.2(1) closing words.

Proposed Addition — 160.2(2.1), (2.2)

(2.1) Joint and several liability in respect of a qualifying trust annuity — Where a taxpayer is deemed by section 75.2 to have received at any time an amount out of or under an annuity that is a qualifying trust annuity with respect to the taxpayer, the taxpayer, the annuitant under the annuity and the policyholder are jointly and severally, or solidarily, liable to pay the part of the taxpayer's tax under this Part for the taxation year of the taxpayer that includes that time that is equal to the amount, if any, determined by the formula

$$A - B$$

where

A is the amount of the taxpayer's tax under this Part for that taxation year, and

B is the amount that would be the taxpayer's tax under this Part for that taxation year if no amount were deemed by section 75.2 to have been received by the taxpayer out of or under the annuity in that taxation year.

Related Provisions: 160.2(2.2) — No limitation on liability; 160.2(5) — Rules applicable when (2.1) applies.

(2.2) No limitation on liability — Subsection (2.1) limits neither

(a) the liability of the taxpayer referred to in subsection (2.1) under any other provision of this Act; nor

(b) the liability of an annuitant or policyholder referred to in subsection (2.1) for the interest that the annuitant or policyholder is liable to pay under this Act on an assessment in respect of the amount that the annuitant or policyholder is liable to pay because of that subsection.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 154(3), will add subsecs. 160.2(2.1) and (2.2), applicable to assessments made after 2005.

Technical Notes: New subsection 160.2(2.1) applies to annuities that are "qualifying trust annuities" with respect to a taxpayer (as defined in new subsection 60.011(2)).

A distinguishing feature of a qualifying trust annuity with respect to a taxpayer is that the annuitant thereunder is a trust under which the taxpayer is a beneficiary. Such an annuity will typically be acquired and held either by the trust that is the annuitant under the annuity, or by the estate of a deceased spouse, common-law partner, parent or grandparent of the taxpayer which acquired the annuity with proceeds received from a registered retirement savings plan or registered retirement income fund of the deceased individual or from a registered pension plan in which the deceased individual participated.

Where the cost of a qualifying trust annuity with respect to a taxpayer is deductible by the taxpayer under paragraph 60(l) and the taxpayer has not died before 2006, new section 75.2 deems amounts payable out of or under the annuity after 2005 and before the taxpayer's death to have been received by the taxpayer. Section 75.2 also deems the taxpayer to have received, immediately before death, an amount out of or under the annuity equal to the fair market value of the annuity. By virtue of paragraph 56(1)(d.2), the taxpayer is required to include these amounts in computing income under Part I.

New subsection 160.2(2.1) provides that, where a taxpayer is deemed by section 75.2 to have received an amount from a qualifying trust annuity, the annuitant and the policyholder (which may be one and the same) are jointly and severally, or solidarily, liable for the portion of the taxpayer's tax that is attributable to the amounts that the taxpayer is deemed to have received from the annuity. The Minister of National Revenue may reassess the annuitant and the policyholder for such a liability under subsection 160.2(3).

New subsection 160.2(2.2) provides that the provisions of new subsection 160.2(2.1), which make the annuitant and policyholder of a "qualifying trust annuity" with respect to a taxpayer (as defined in new subsection 60.011(2)) jointly and severally, or solidarily, liable for a portion of the taxpayer's tax, do not limit the liability of the taxpayer under any provision of the Act. It also provides that there is no limitation on the liability of the annuitant or policyholder for the interest for which the annuitant or policyholder is liable under the Act on an assessment in respect of an amount that the annuitant or policyholder is liable to pay because of subsection 160.2(2.1).

(3) Minister may assess recipient — The Minister may at any time assess a taxpayer in respect of any amount payable by virtue of this section and the provisions of this Division are applicable, with such modifications as the circumstances require, in respect of an assessment made under this section as though it had been made under section 152.

Proposed Amendment — 160.2(3)

(3) Assessment — The Minister may at any time assess a taxpayer in respect of any amount payable because of this section, and the provisions of this Division (including, for greater certainty, the provisions in respect of interest payable) apply, with any modifications that the circumstances require, in respect of an assessment made under this section as though it had been made under section 152 in respect of taxes payable under this Part.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 154(4), will amend subsec. 160.2(3) to read as above, applicable to assessments made after December 20, 2002.

Technical Notes: See under 160.2(1) closing words.

(4) Rules applicable — Where a taxpayer and an annuitant have, by virtue of subsection (1) or (2), become jointly and severally liable in respect of part or all of a liability of the annuitant under this Act, the following rules apply:

Proposed Amendment — 160.2(4) opening words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 253(1), will amend the opening words of subsec. 160.2(4) by substituting "jointly and severally, or solidarily," for "jointly and severally", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(a) a payment by the taxpayer on account of the taxpayer's liability shall to the extent thereof discharge the joint liability; but

Proposed Amendment — 160.2(4)(a)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 253(2), will amend para. 160.2(4)(a) by substituting "their liability" for "the joint liability", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(b) a payment by the annuitant on account of the annuitant's liability only discharges the taxpayer's liability to the extent that the payment operates to reduce the annuitant's liability to an amount less than the amount in respect of which the taxpayer was, by subsection (1) or (2), as the case may be, made jointly and severally liable.

Proposed Amendment — 160.2(4)(b)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 253(3), will amend para. 160.2(4)(a) substituting "jointly and severally, or solidarily," for "jointly and severally", to come into force on Royal Assent.

Technical Notes: See under 12(4).

Proposed Addition — 160.2(5)

(5) Rules applicable — qualifying trust annuity — Where an annuitant or policyholder has, because of subsection (2.1), become jointly and severally, or solidarily, liable with a taxpayer in respect of part or all of a liability of the taxpayer under this Act, the following rules apply:

(a) a payment by the annuitant on account of the annuitant's liability, or by the policyholder on account of the policyholder's liability, shall to the extent of the payment discharge their liability, but

(b) a payment by the taxpayer on account of the taxpayer's liability only discharges the annuitant's and the policyholder's liability to the extent that the payment operates to reduce the taxpayer's liability to an amount less than the amount in respect of which the annuitant and the policyholder were, by subsection (2.1), made liable.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 154(5), will add subsec. 160.2(5), applicable to assessments made after 2005.

Technical Notes: New subsection 160.2(5) provides that a payment by the annuitant or policyholder of a "qualifying trust annuity" with respect to a taxpayer (as defined in new subsection 60.011(2)), on account of the annuitant's or policyholder's joint liability for a portion of the taxpayer's tax, directly reduces the joint liability to the extent of the payment. However, a payment by the taxpayer on account of the taxpayer's tax liability reduces the joint liability of the annuitant and the policyholder only to the extent that the payment reduces the total liability of the taxpayer to an amount that is less than the amount in respect of which the annuitant and policyholder were made jointly liable under subsection 160.2(2.1).

Definitions [s. 160.2]: "amount", "annuity", "assessment", "Minister" — 248(1); "qualifying trust annuity" — 60.011(2), 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 160.2]: IT-500R: RRSPs — death of an annuitant.

160.3 (1) Liability in respect of amounts received out of or under RCA trust — Where an amount required to be included in the income of a taxpayer by virtue of paragraph 56(1)(x) is received by a person with whom the taxpayer is not dealing at arm's length, that person is jointly and severally liable with the taxpayer to pay a part of the taxpayer's tax under this Part for the taxation year in which the amount is received equal to the amount by which the taxpayer's tax for the year exceeds the amount that would be the taxpayer's tax for the year if the amount had not been received, but nothing in this subsection shall be deemed to limit the liability of the taxpayer under any other provision of this Act.

(2) Minister may assess recipient — The Minister may at any time assess a person in respect of any amount payable by the person by virtue of this section and the provisions of this Division are applicable, with such modifications as the circumstances require, in respect of an assessment made under this section as though it had been made under section 152.

Proposed Amendment — 160.3(1), (2)

160.3 (1) Liability in respect of amounts received out of or under RCA trust — If an amount required to be included in the income of a taxpayer because of paragraph 56(1)(x) is received by a person with whom the taxpayer is not dealing at arm's length, that person is jointly and severally, or solidarily, liable with the taxpayer to pay a part of the taxpayer's tax under this Part for the taxation year in which the amount is received equal to the amount by which the taxpayer's tax for the year exceeds the amount that would be the taxpayer's tax for the year if the amount had not been received, but nothing in this subsection limits the liability of the taxpayer under any other provision of this Act or of the person for the interest that the person is liable to pay under this Act on an assessment in respect of the amount that the person is liable to pay because of this subsection.

(2) Assessment — The Minister may at any time assess a person in respect of any amount payable because of this section, and the provisions of this Division (including, for greater certainty, the provisions in respect of interest payable) apply, with any modifications that the circumstances require, in respect of an assessment made under this section as though it had been made under section 152 in respect of taxes payable under this Part.

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 155, will amend subsecs. 160.3(1) and (2) to read as above, applicable to assessments made after December 20, 2002.

Technical Notes: Subsection 160.3(1) provides that a person who receives benefits from a retirement compensation arrangement that relate to another taxpayer's employment is jointly and severally liable for the portion of that other taxpayer's tax that is attributable to such benefits. The Minister of National Revenue may assess the person for such a liability under subsection 160.3(2). Subsections 160.3(1) and (2) are amended, in respect of assessments made after December 20, 2002, to clarify that such an assessment is subject to interest, without any limit on the amount of interest for which the person may be liable. [This overrules *Algoa Trust*, [1998] 4 C.T.C. 2001 (TCC), decided under 160(1) — ed.]

(3) Rules applicable — Where a taxpayer and another person have, by virtue of subsection (1), become jointly and severally liable in respect of part or all of a liability of the taxpayer under this Act, the following rules apply:

Proposed Amendment — 160.3(3) opening words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 254(1), will amend the opening words of subsec. 160.3(3) substituting "jointly and severally, or solidarily," for "jointly and severally", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(a) a payment by the other person on account of the other person's liability shall to the extent thereof discharge the joint liability; but

Proposed Amendment — 160.3(3)(a)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 254(2), will amend para. 160.3(3)(a) by substituting "their liability" for "the joint liability", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(b) a payment by the taxpayer on account of the taxpayer's liability only discharges the other person's liability to the extent that the payment operates to reduce the taxpayer's liability to an amount less than the amount in respect of which the other person was, by subsection (1), made jointly and severally liable.

Proposed Amendment — 160.3(3)(b)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 254(3), will amend para. 160.3(3)(b) by substituting "jointly and severally, or solidarily," for "jointly and severally", to come into force on Royal Assent.

Technical Notes: See under 12(4).

Related Provisions [s. 160.3]: Part XI.3 — Tax in respect of retirement compensation arrangements.

Definitions [s. 160.3]: "amount" — 248(1); "arm's length" — 251(1); "assessment", "Minister", "person" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

160.4 (1) Liability in respect of transfers by insolvent corporations — Where property is transferred at any time by a corporation to a taxpayer with whom the corporation does not deal at arm's length at that time and the corporation is not entitled because of subsection 61.3(3) to deduct an amount under section 61.3 in computing its income for a taxation year because of the transfer or because of the transfer and one or more other transactions, the taxpayer is jointly and severally liable with the corporation to pay an amount of the corporation's tax under this Part for the year equal to the amount, if any, by which the fair market value of the property at that time exceeds the fair market value at that time of the consideration given for the property, but nothing in this subsection limits the liability of the corporation under any other provision of this Act.

Proposed Amendment — 160.4(1)

160.4 (1) Liability in respect of transfers by insolvent corporations — If property is transferred at any time by a corporation to a taxpayer with whom the corporation does not deal at arm's length at that time and the corporation is not entitled because of subsection 61.3(3) to deduct an amount under section 61.3 in computing its income for a taxation year because of the transfer or because of the transfer and one or more other transactions, the taxpayer is jointly and severally, or solidarily, liable with the corporation to pay the lesser of the corporation's tax payable under this Part for the year and the amount, if any, by which the fair market value of the property at that time exceeds the fair market value at that time of the consideration given for the property, but nothing in this subsection limits the liability of the corporation under any other provision of this Act or of the taxpayer for the interest that the taxpayer is liable to pay under this Act on an assessment in respect of the amount that the taxpayer is liable to pay because of this subsection.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 156(1), will amend subsec. 160.4(1) to read as above, applicable to assessments made after December 20, 2002.

Technical Notes: Subsection 160.4(1) applies where a transfer of property has been made by a corporation and, as a consequence of the transfer (or the transfer combined with other transactions), the corporation is precluded under subsection 61.3(3) from deducting an amount under section 61.3. Where this is the case, the transferee is jointly and severally liable with the transferor under subsection 160.4(1) for the transferor's tax under Part I of the Act for the first taxation year of the transferor that ends after the time of the transfer and for preceding taxation years. The liability of the transferee applies up to the amount, if any, by which the fair market value of the property at the time of the transfer exceeds the fair market value of the consideration given for the property transferred.

In addition, subsection 160.4(2) provides for joint and several liability of subsequent non-arm's length transferees for the corporation's Part I tax if the original transferee makes a further non-arm's length transfer and one of the reasons that the transfer was made was to prevent the enforcement of section 160.4.

Under subsection 160.4(3), the Minister of National Revenue may assess a transferee for a liability arising under subsections 160.4(1) or (2).

Subsections 160.4(1), (2) and (3) are amended, in respect of assessments made after December 20, 2002, to clarify that such an assessment is subject to interest, without any limit on the amount of interest for which the transferee may be liable. [This overrules *Algoa Trust*, [1998] 4 C.T.C. 2001 (TCC), decided under 160(1) — ed.]

Related Provisions: 160(3.1) — Fair market value of undivided interest in property.

(2) Indirect transfers — Where

(a) property is transferred at any time from a taxpayer (in this subsection referred to as the "transferor") to another taxpayer (in this subsection referred to as the "transferee") with whom the transferor does not deal at arm's length,

(b) the transferor is liable because of subsection (1) or this subsection to pay an amount of the tax of another person (in this subsection referred to as the "debtor") under this Part, and

(c) it can reasonably be considered that one of the reasons of the transfer would, but for this subsection, be to prevent the enforcement of this section,

the transferee is jointly and severally liable with the transferor and the debtor to pay an amount of the debtor's tax under this Part equal to the lesser of the amount of such tax that the transferor was liable to pay at that time and the amount, if any, by which the fair market value of the property at that time exceeds the fair market value at that time of the consideration given for the property, but nothing in this subsection limits the liability of the debtor or the transferor under any provision of this Act.

Proposed Amendment — 160.4(2) closing words

the transferee is jointly and severally, or solidarily, liable with the transferor and the debtor to pay an amount of the debtor's tax under this Part equal to the lesser of the amount of that tax that the transferor was liable to pay at that time and the amount, if any, by which the fair market value of the property at that time exceeds the fair market value at that time of the consideration given for the property, but nothing in this subsection limits the liability of the debtor or the transferor under any provision of this Act or of the transferee for the interest that the transferee is liable to pay under this Act on an assessment in respect of the amount that the transferee is liable to pay because of this subsection.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 156(2), will amend the closing words of subsec. 160.4(2) to read as above, applicable to assessments made after December 20, 2002.

Technical Notes: See under 160.4(1).

(3) Minister may assess recipient — The Minister may at any time assess a person in respect of any amount payable by the person because of this section and the provisions of this Division apply, with such modifications as the circumstances require, in respect of an assessment made under this section, as though it had been made under section 152.

Proposed Amendment — 160.4(3)

(3) Assessment — The Minister may at any time assess a person in respect of any amount payable by the person because of this section, and the provisions of this Division (including, for greater certainty, the provisions in respect of interest payable) apply, with any modifications that the circumstances require, in respect of an assessment made under this section, as though it had been made under section 152 in respect of taxes payable under this Part.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 156(3), will amend subsec. 160.4(3) to read as above, applicable to assessments made after December 20, 2002.

Technical Notes: See under 160.4(1).

(4) Rules applicable — Where a corporation and another person have, because of subsection (1) or (2), become jointly and severally liable in respect of part or all of a liability of the corporation under this Act

Proposed Amendment — 160.4(4) opening words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 255(1), will amend the opening words of subsec. 160.4(4) by substituting "jointly and severally, or solidarily," for "jointly and severally", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(a) a payment by the other person on account of that person's liability shall to the extent thereof discharge the joint liability; and

Proposed Amendment — 160.4(4)(a)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 255(2), will amend para. 160.4(4)(a) by substituting "their liability" for "the joint liability", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(b) a payment by the corporation on account of the corporation's liability discharges the other person's liability only to the extent that the payment operates to reduce the corporation's liability to an amount less than the amount in respect of which the other person was, by subsection (1) or (2), as the case may be, made liable.

Proposed Amendment — 160.4(4)(b)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 255(3), will amend para. 160.4(4)(b) by substituting "jointly and severally, or solidarily, liable" for "jointly and liable", to come into force on Royal Assent.

Technical Notes: See under 12(4).

History [s. 160.4]: S. 160.4 added by 1995, c. 21, s. 40, applicable to transfers that occur after December 20, 1994.

Definitions [s. 160.4]: "amount" — 248(1); "arm's length" — 251(1); "corporation" — 248(1), *Interpretation Act* 35(1); "debtor" — 160.4(2)(b); "fair market value" — 160(3.1); "Minister", "person", "property" — 248(1); "taxation year" — 249(1); "taxpayer" — 248(1); "transferee", "transferor" — 160.4(2)(a).

Interest

161. (1) General [interest on late balances] — Where at any time after a taxpayer's balance-due day for a taxation year

(a) the total of the taxpayer's taxes payable under this Part and Parts I.3, VI and VI.1 for the year

exceeds

(b) the total of all amounts each of which is an amount paid at or before that time on account of the taxpayer's tax payable and applied as at that time by the Minister against the taxpayer's liability for an amount payable under this Part or Part I.3, VI or VI.1 for the year,

the taxpayer shall pay to the Receiver General interest at the prescribed rate on the excess, computed for the period during which that excess is outstanding.

Related Provisions: 18(1)(t) — Interest is non-deductible; 150 — Filing of returns; 156.1(4) — Due date for payment of balance; 160(1)(e)(ii) — Third party can be liable for interest; 161(5), (6.1), (7) — Special rules; 161.1 — Offset of refund interest against arrears interest; 161.2 — No interest if balance paid within 20-day grace period; 161.3 — Interest and penalty up to $25 may be cancelled if tax paid; 164(3) — Interest on refunds paid by CRA; 220(3.1) — Waiver or cancellation of interest; 220(4.5)(b)(i) — No interest on unpaid departure tax where security provided; 220(4.6)(d)(i) — No interest on unpaid tax on distribution of property by trust to non-resident beneficiary where security provided; 221.1 — Application of interest where legislation retroactive; 227(8.3), (9.3) — Interest on certain withholding taxes not paid; 248(11) — Interest compounded daily.

History: The opening words of subsec. 161(1) amended by 1997, c. 25, subsec. 50(1), applicable to 1996 *et seq.* The opening words formerly read:

> (1) Where at any time after the day on or before which a taxpayer is required to pay the remainder of the taxpayer's tax payable under this Part for a taxation year (or would be so required if a remainder of such tax were payable),

Subsec. 161(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 96(1), applicable to 1992 *et seq.* Subsec. (1) formerly read:

> 161. (1) Where at any time after the day on or before which a taxpayer is required to pay the remainder of the taxpayer's tax payable under this Part for a taxation year,
>
> (a) the amount of the taxpayer's tax payable for the year under this Part
>
> exceeds
>
> (b) the total of all amounts each of which is an amount paid at or before that time on account of the taxpayer's tax payable and applied as at that time by the Minister against the taxpayer's liability for an amount payable under this Part for the year,
>
> the person liable to pay the tax shall pay to the Receiver General interest at the prescribed rate on the excess computed for the period during which that excess is outstanding.

Clause 117 of 1994, c. 21 provides: "Notwithstanding any other provision of the Act [i.e., the *Income Tax Act*] or of this Act, nothing in this Act shall affect the amount of any interest payable under the *Income Tax Act* by a life insurance corporation in respect of any period, or part of a period, that is before March 15, 1993."

Selected Cases [subsec. 161(1)]: *Koenig v. R.*, [1997] 2 C.T.C. 3077 (TCC) (Instruction to apply overpayment from earlier year to later year meant that taxpayer had paid taxes by due date); *Rath v. R.*, [1982] C.T.C. 207 (FCA) (No interest exigible on amounts refunded in error).

Regulations: 4301(a) (prescribed rate of interest).

I.T. Application Rules: 62(2) (subsec. 161(1) applies to interest payable in respect of any period after December 23, 1971).

Information Circulars: 92-2: Guidelines for the cancellation and waiver of interest and penalties.

(2) Interest on instalments — In addition to the interest payable under subsection (1), where a taxpayer who is required by this Part to pay a part or instalment of tax has failed to pay all or any part thereof on or before the day on or before which the tax or instalment, as the case may be, was required to be paid, the taxpayer shall pay to the Receiver General interest at the prescribed rate on the amount that the taxpayer failed to pay computed from the day on or before which the amount was required to be paid to the day of payment, or to the beginning of the period in respect of which the taxpayer is required to pay interest thereon under subsection (1), whichever is earlier.

Related Provisions: 18(1)(t) — Interest is non-deductible; 107(5.1) — Trust's gain on distribution to non-resident beneficiary does not increase instalment requirements; 128.1(5) — Deemed disposition on emigration does not increase instalment requirements; 155–157 — Times for instalments; 161(4) — Limitation — farmers and fishermen; 161(4.01) — Limitation — other individuals; 161(4.1) — Limitation — corporations; 161(5), (6.1), (7) — Special rules; 161(8) — Deemed instalments; 161(10) — When amount deemed paid; 163.1 — Penalty for late or deficient instalments; 211.5(2) — Interest on instalments of Part XII.3 tax; 220(3.1) — Waiver or cancellation of interest; 221.1 — Application of interest where legislation retroactive; 248(11) — Interest compounded daily.

History: Subsec. 49(4) of 1996, c. 21, provides that no interest is payable under subsec. 161(2) in respect of any amount that became payable before July 1995 because of subsec. 190.1(1.2).

Selected Cases [subsec. 161(2)]: *Canada v. Ritchie (E.S.)*, [1993] 2 C.T.C. 24 (FCA) (Interest due on instalments where additional income received after instalment due date); *Union Gas Ltd. v. MNR*, [1991] 1 C.T.C. 1 (FCA) (Interest on deficiency when instalments not satisfying current year's tax liability).

Regulations: 4301(a) (prescribed rate of interest).

I.T. Application Rules: 62(2) (subsec. 161(2) applies to interest payable in respect of any period after December 23, 1971.

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations.

Information Circulars: 92-2: Guidelines for the cancellation and waiver of interest and penalties.

(2.1) [Repealed]

History: Subsec. 161(2.1) repealed by 2003, c. 15, subsec. 116(1), applicable to taxation years that end after June 2003. It formerly read:

> (2.1) Exception — Where the total of all amounts each of which is an amount of interest payable under subsection (2) by a taxpayer, including any interest payable under subsection (2) because of its application under section 36 of the *Canada Pension Plan* to any amount paid or payable under that Act, or under any provision of an Act of a province with which the Minister of Finance has entered into an agreement for the collection of the taxes payable to the province under that Act that is similar to subsection (2) does not exceed $25 for a taxation year, the Minister shall not assess the interest.

Subsec. 161(2.1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 133(1). Subsec. 161(2.1) formerly read:

> (2.1) Where the total of all amounts each of which is an amount of interest payable by a taxpayer under subsection (2) or under any similar provision of an Act of a province with which the Minister of Finance has entered into an agreement for the collection of the taxes payable to the province under that Act does not exceed $25 for a taxation year, the Minister shall not assess that interest.

(2.2) Contra interest [offset interest] — Notwithstanding subsections (1) and (2), the total amount of interest payable by a taxpayer (other than a testamentary trust) under those subsections, for the period that begins on the first day of the taxation year for which a part or instalment of tax is payable and ends on the taxpayer's balance-due day for the year, in respect of the taxpayer's tax or instalments of tax payable for the year shall not exceed the amount, if any, by which

(a) the total amount of interest that would be payable for the period by the taxpayer under subsections (1) and (2) in respect of the taxpayer's tax and instalments of tax payable for the year if no amount were paid on account of the tax or instalments

exceeds

(b) the amount of interest that would be payable under subsection 164(3) to the taxpayer in respect of the period on the amount that would be refunded to the taxpayer in respect of the year or applied to another liability if

(i) no tax were payable by the taxpayer for the year,

(ii) no amount had been remitted under section 153 to the Receiver General on account of the taxpayer's tax for the year,

(iii) the rate of interest prescribed for the purpose of subsection (1) were prescribed for the purpose of subsection 164(3), and

(iv) the latest of the days described in paragraphs 164(3)(a), (b) and (c) were the first day of the year.

Related Provisions: 161.1 — Offset of refund interest and arrears interest of different years.

History: Subsec. 161(2.2) amended by 1997, c. 25, subsec. 50(2), applicable to 1996 *et seq.* Subsec. (2.2) formerly read:

> (2.2) Interest on instalments [offset interest] — Notwithstanding subsections (1) and (2), the total amount of interest payable by a taxpayer (other than a testamentary trust) under those subsections for the period commencing on the first day of the taxation year for which a part or instalment of tax is payable and ending
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> (a) where the taxpayer is a corporation, on the day on or before which the corporation is, pursuant to paragraph 157(1)(b), required to pay the remainder of its tax payable under this Part for the year or would be so required if a remainder of the tax were payable, and
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> (b) in the case of an individual, on the individual's balance-due day for the year,
>
> in respect of the tax or instalments thereof payable for the year shall not exceed the amount, if any, by which
>
> (c) the total amount of interest that would be payable for the period by the taxpayer under subsections (1) and (2) in respect of the taxpayer's tax and instalments thereof payable for the year if no amount were paid on account of the tax or instalments
>
> exceeds
>
> (d) the amount of interest that would be payable under subsection 164(3) to the taxpayer in respect of the period on the amount that would be refunded to the taxpayer in respect of the year or applied to another liability if
>
> (i) no tax were payable by the taxpayer for the year,
>
> (ii) no amount had been remitted under section 153 to the Receiver General on account of the taxpayer's tax for the year,
>
> (iii) the rate of interest prescribed for the purpose of subsection (1) were prescribed for the purpose of subsection 164(3), and
>
> (iv) the latest of the days described in paragraphs 164(3)(a), (b) and (c) were the first day of the year.

Para. 161(2.2)(d) amended by 1996, c. 21, s. 42, applicable to interest that is calculated in respect of periods after June 1995. Para. (d) formerly read:

> (d) the amount of interest that would be payable under subsection 164(3) to the taxpayer in respect of the period on the amount that would be refunded to the taxpayer in respect of the year or applied to another liability if no tax were payable by the taxpayer for the year, no amount had been remitted to the Receiver General on account of the taxpayer's tax for the year under section 153 and the latest of the days described in paragraphs 164(3)(a), (b) and (c) were the first day of the year.

Para. 161(2.2)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 133(2), applicable to 1990 *et seq.* Para. (b) formerly read:

> (b) in any other case, on April 30 in the taxation year immediately following the year,

Regulations: Reg. 4301(a) (prescribed rate of interest).

(3) [Repealed]

History: Subsec. 161(3) repealed by 1994, c. 7, Sch. II (1991, c. 49), subsec. 133(3), applicable to 1988 *et seq.* Para. 161(3) formerly read:

> (3) In addition to the interest payable under subsection (1), where a corporation that paid tax for a taxation year under subsection 157(2) had a taxable income for the year of more than $10,000 or had a tax payable for the year under Part VI.1, it shall, forthwith after assessment, pay to the Receiver General an amount of interest equal to 3% of the total of the taxes payable by it under this Part and Part VI.1 for the year.

(4) Limitation — farmers and fishermen — For the purposes of subsection (2) and section 163.1, where an individual is required to pay a part or instalment of tax for a taxation year computed by reference to a method described in subsection 155(1), the individual shall be deemed to have been liable to pay on or before the day referred to in subsection 155(1) a part or instalment computed by reference to

(a) the amount, if any, by which

(i) the tax payable under this Part by the individual for the year, determined before taking into consideration the specified future tax consequences for the year,

exceeds

(ii) the amounts deemed by subsections 120(2) and (2.2) to have been paid on account of the individual's tax under this Part for the year, determined before taking into consideration the specified future tax consequences for the year,

(b) the individual's instalment base for the preceding taxation year, or

(c) the amount stated to be the amount of the instalment payable by the individual for the year in the notice, if any, sent to the individual by the Minister,

whichever method gives rise to the least amount required to be paid by the individual on or before that day.

Related Provisions: 107(5.1) — Trust's gain on distrubition to non-resident beneficiary does not increase instalment requirements; 128.1(5) — Deemed disposition on emigration does not increase instalment requirements.

History: Subpara. 161(4)(a)(ii) amended by 2000, c. 19, subsec. 47(1), applicable to 1999 *et seq.* The subpara. formerly read:

> (ii) the amount deemed by subsection 120(2) to have been paid on account of the individual's tax under this Part for the year, determined before taking into consideration the specified future tax consequences for the year,

Para. 161(4)(a) amended by 1997, c. 25, subsec. 50(3), applicable to 1996 *et seq.* Para. (a) formerly read:

> (a) the amount, if any, by which the tax payable under this Part by the individual for the year exceeds the amount deemed by subsection 120(2) to have been paid on account of the individual's tax under this Part for the year,

See also History for 161(4.01).

(4.01) Limitation — other individuals — For the purposes of subsection (2) and section 163.1, where an individual is required to pay a part or instalment of tax for a taxation year computed by reference to a method described in subsection 156(1), the individual shall be deemed to have been liable to pay on or before each day referred to in subsection 156(1) a part or instalment computed by reference to

(a) the amount, if any, by which

(i) the tax payable under this Part by the individual for the year, determined before taking into consideration the specified future tax consequences for the year,

exceeds

(ii) the amounts deemed by subsections 120(2) and (2.2) to have been paid on account of the individual's tax under this Part for the year, determined before taking into consideration the specified future tax consequences for the year,

(b) the individual's instalment base for the preceding taxation year,

(c) the amounts determined under paragraph 156(1)(b) in respect of the individual for the year, or

(d) the amounts stated to be the amounts of instalments payable by the individual for the year in the notices, if any, sent to the individual by the Minister,

reduced by the amount, if any, determined under paragraph 156(2)(b) in respect of the individual for the year, whichever method gives rise to the least total amount of such parts or instalments required to be paid by the individual by that day.

Related Provisions: 107(5.1) — Trust's gain on distribution to non-resident beneficiary does not increase instalment requirements; 128.1(5) — Deemed disposition on emigration does not increase instalment requirements.

History: Subpara. 161(4.01)(a)(ii) amended by 2000, c. 19, subsec. 47(2), applicable to 1999 *et seq.* The subpara. formerly read:

> (ii) the amount deemed by subsection 120(2) to have been paid on account of the individual's tax under this Part for the year, determined before taking into consideration the specified future tax consequences for the year,

Para. 161(4.01)(a) amended by 1997, c. 25, subsec. 50(4), applicable to 1996 *et seq.* Para. (a) formerly read:

> (a) the amount, if any, by which the tax payable under this Part by the individual for the year exceeds the amount deemed by subsection 120(2) to have been paid on account of the individual's tax under this Part for the year,

The closing words of subsec. 161(4.01) substituted by 1994, c. 21, subsec. 79(1), applicable to 1992 *et seq.* The closing words formerly read:

> reduced by the amount, if any, determined under paragraph 156(2)(b) in respect of the individual for the year, whichever method gives rise to the least amount required to be paid by the individual on or before that day.

Subsecs. 161(4) and (4.01) substituted for subsec. (4) by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 96(2), applicable to 1992 *et seq.* except that in its application with respect to instalments of tax that became payable on or before June 10, 1993, the subsec. shall be read without reference to the words "and section 163.1". Subsec. (4) formerly read:

> (4) Limitation respecting individuals — For the purposes of subsection (2), where an individual is required to pay a part or instalment of tax for a taxation year computed by reference to
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> (a) the amount estimated by the individual to be the tax payable under this Part by the individual for the year computed without reference to sections 127.2 and 127.3, or
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> (b) the individual's instalment base for the immediately preceding taxation year,
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> the individual shall be deemed to have been liable to pay a part or instalment computed by reference to the lesser of
>
> (c) the amount, if any, by which the tax payable under this Part by the individual for the year computed without reference to sections 127.2 and 127.3 exceeds the amount deemed by subsection 120(2) to have been paid on account of the individual's tax under this Part for the year, and
>
> (d) the individual's instalment base for the immediately preceding taxation year.

(4.1) Limitation — corporations — For the purposes of subsection (2) and section 163.1, where a corporation is required to pay a part or instalment of tax for a taxation year computed by reference to a method described in subsection 157(1), the corporation shall be deemed to have been liable to pay on or before each day referred to in subparagraphs 157(1)(a)(i) to (iii) a part or instalment computed by reference to

(a) the total of the taxes payable under this Part and Parts I.3, VI and VI.1 by the corporation for the year, determined before taking into consideration the specified future tax consequences for the year,

(b) its first instalment base for the year, or

(c) its second instalment base and its first instalment base for the year,

reduced by the amount, if any, determined under any of paragraphs 157(3)(b) to (d) in respect of the corporation for the year, whichever method gives rise to the least total amount of such parts or instalments of tax for the year.

History: Para. 161(4.1)(a) amended by 1997, c. 25, subsec. 50(5), applicable to 1996 *et seq.* Para. (a) formerly read:

> (a) the total of the taxes payable under this Part and Parts I.3, VI and VI.1 by the corporation for the year,

The closing words of subsec. 161(4.1) substituted by 1994, c. 21, subsec. 79(2), applicable to 1992 *et seq.* The closing words formerly read:

> reduced by the amount, if any, determined under any of paragraphs 157(3)(b) to (d) in respect of the corporation for the year, whichever method gives rise to the least amount required to be paid by the corporation on or before that day.

Clause 117 of 1994, c. 21 provides: "Notwithstanding any other provision of the Act [i.e., the *Income Tax Act*] or of this Act, nothing in this Act shall affect the amount of any interest payable under the *Income Tax Act* by a life insurance corporation in respect of any period, or part of a period, that is before March 15, 1993."

Subsec. 161(4.1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 96(2), applicable to 1992 *et seq.* except that in its application with respect to instalments of tax that became payable on or before June 10, 1993, the subsec. shall be read without reference to the words "and section 163.1". Subsec. (4.1) formerly read:

> (4.1) Limitation respecting corporations — For the purposes of subsection (2), where a corporation is required to pay a part or instalment of tax for a taxation year computed by reference to a method described in subsection 157(1), the corporation shall be deemed to have been liable to pay a part or instalment computed by reference to
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> (a) the total of the taxes payable under this Part and Part VI.1 by it for the year,
>
> (b) its first instalment base for the year, or
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> (c) its second instalment base and its first instalment base for the year,
>
> whichever method gives rise to the least amount required to be paid by the corporation on or before the days referred to in subparagraphs 157(1)(a)(i) to (iii).

Selected Cases [subsec. 161(4.1)]: *Premay Equipment Ltd. v. R.*, [2004] 2 C.T.C. 2726 (TCC) (Interest due regardless of good faith if wrong method used).

Regulations: 5301(7), (9) (instalment obligations of parent after windup of subsidiary).

(5) Participation certificates — Notwithstanding any other provision in this section, no interest is payable in respect of the amount by which the tax payable by a person is increased by a payment made by The Canadian Wheat Board on a participation certificate previously issued to the person until 30 days after the payment is made.

(6) Income of resident from a foreign country in blocked currency — Where the income of a taxpayer for a taxation year, or part thereof, is from sources in another country and the taxpayer by reason of monetary or exchange restrictions imposed by the law of that country is unable to transfer it to Canada, the Minister may, if the Minister is satisfied that payment as required by this Part of the whole of the additional tax under this Part for the year reasonably attributable to income from sources in that country would impose extreme hardship on the taxpayer, postpone the time for payment of the whole or a part of that additional tax for a period to be determined by the Minister, but no such postponement may be granted if any of the income for the year from sources in that country has been

(a) transferred to Canada,

(b) used by the taxpayer for any purpose whatever, other than payment of income tax to the government of that other country on income from sources in that country, or

(c) disposed of by the taxpayer,

and no interest is payable under this section in respect of that additional tax, or part thereof, during the period of postponement.

Related Provisions: 91(2) — FAPI reserve for blocked currency.

Interpretation Bulletins: IT-351: Income from a foreign source — blocked currency (archived).

(6.1) Foreign tax credit adjustment — Notwithstanding any other provision in this section, where the tax payable under this Part by a taxpayer for a particular taxation year is increased because of

(a) an adjustment of an income or profits tax payable by the taxpayer to the government of a country other than Canada or to the government of a state, province or other political subdivision of such a country, or

(b) a reduction in the amount of foreign tax deductible under subsection 126(1) or (2) in computing the taxpayer's tax otherwise payable under this Part for the particular year, as a result of the application of subsection 126(4.2) in respect of a share or debt obligation disposed of by the taxpayer in the taxation year following the particular year,

no interest is payable, in respect of the increase in the taxpayer's tax payable, for the period

(c) that ends 90 days after the day on which the taxpayer is first notified of the amount of the adjustment, if paragraph (a) applies, and

(d) before the date of the disposition, if paragraph (b) applies.

Related Provisions: 248(1)"specified future tax consequence"(c) — Adjustment under 161(6.1) is a specified future tax consequence.

History: Subsec. 161(6.1) amended by 1999, c. 22, s. 64, applicable to 1998 *et seq.* It formerly read:

(6.1) Adjustment of foreign tax payable — Notwithstanding any other provision in this section, where the tax payable under this Part by a taxpayer for a taxation year is increased by virtue of an adjustment of an income or profits tax payable by the taxpayer to the government of a country other than Canada or to the government of a state, province or other political subdivision of any such country, no interest is payable, in respect of the increase in the taxpayer's tax payable, for the period ending 90 days after the day on which the taxpayer is first notified of the amount of the adjustment.

(6.2) Flow-through share renunciations — Where the tax payable under this Part by a taxpayer for a taxation year is more than it otherwise would be because of a consequence for the year described in paragraph (b) of the definition "specified future tax consequence" in subsection 248(1) in respect of an amount purported to be renounced in a calendar year, for the purposes of the provisions of this Act (other than this subsection) relating to interest payable under this Act, an amount equal to the additional tax payable is deemed

(a) to have been paid on the taxpayer's balance-due day for the taxation year on account of the taxpayer's tax payable under this Part for the year; and

(b) to have been refunded on April 30 of the following calendar year to the taxpayer on account of the taxpayer's tax payable under this Part for the taxation year.

History: Subsec. 161(6.2) added by 1997, c. 25, subsec. 50(6), applicable to 1996 *et seq.*

(7) Effect of carryback of loss, etc. — For the purpose of computing interest under subsection (1) or (2) on tax or a part of an instalment of tax for a taxation year, and for the purpose of section 163.1,

(a) the tax payable under this Part and Parts I.3, VI and VI.1 by the taxpayer for the year is deemed to be the amount that it would be if the consequences of the deduction or exclusion of the following amounts were not taken into consideration:

(i) any amount deducted under section 119 in respect of a disposition in a subsequent taxation year,

(ii) any amount deducted under section 41 in respect of the taxpayer's listed-personal-property loss for a subsequent taxation year,

(iii) any amount excluded from the taxpayer's income for the year by virtue of section 49 in respect of the exercise of an option in a subsequent taxation year,

(iv) any amount deducted under section 118.1 in respect of a gift made in a subsequent taxation year or under section 111 in respect of a loss for a subsequent taxation year,

(iv.1) any amount deducted under subsection 126(2) in respect of an unused foreign tax credit (within the meaning assigned by subsection 126(7)), or under subsection 126(2.21) or (2.22) in respect of foreign taxes paid, for a subsequent taxation year,

(iv.2) any amount deducted in computing the taxpayer's income for the year by virtue of an election in a subsequent taxation year under paragraph 164(6)(c) or (d) by the taxpayer's legal representative,

(v) any amount deducted under subsection 127(5) in respect of property acquired or an expenditure made in a subsequent taxation year,

(vi) any amount deducted under section 125.2 in respect of an unused Part VI tax credit (within the meaning assigned by subsection 125.2(3)) for a subsequent taxation year,

(vi.1) [Repealed under former Act]

(vii) any amount deducted under section 125.3 in respect of an unused Part I.3 tax credit (within the meaning assigned by subsection 125.3(3)) for a subsequent taxation year,

(viii) any amount deducted, in respect of a repayment under subsection 68.4(7) of the *Excise Tax Act* made in a subsequent taxation year, in computing the amount determined under subparagraph 12(1)(x.1)(ii),

(viii.1) any amount deducted under subsection 147.2(4) in computing the taxpayer's income for the year because of the application of subsection 147.2(6) as a result of the taxpayer's death in the subsequent taxation year,

(ix) any amount deducted under subsection 181.1(4) in respect of any unused surtax credit (within the meaning assigned by subsection 181.1(6)) of the taxpayer for a subsequent taxation year,

(x) any amount deducted under subsection 190.1(3) in respect of any unused Part I tax credit (within the meaning assigned by subsection 190.1(5)) of the taxpayer for a subsequent taxation year; and

(xi) any amount deducted under any of subsections 128.1(6) to (8) from the taxpayer's proceeds of dis-

position of a property because of an election made in a return of income for a subsequent taxation year; and

(b) the amount by which the tax payable under this Part and Parts I.3, VI and VI.1 by the taxpayer for the year is reduced as a consequence of the deduction or exclusion of amounts described in paragraph (a) is deemed to have been paid on account of the taxpayer's tax payable under this Part for the year on the day that is 30 days after the latest of

(i) the first day immediately following that subsequent taxation year,

(ii) the day on which the taxpayer's or the taxpayer's legal representative's return of income for that subsequent taxation year was filed,

(iii) where an amended return of the taxpayer's income for the year or a prescribed form amending the taxpayer's return of income for the year was filed in accordance with subsection 49(4) or 152(6) or paragraph 164(6)(e), the day on which the amended return or prescribed form was filed, and

(iv) where, as a consequence of a request in writing, the Minister reassessed the taxpayer's tax for the year to take into account the deduction or exclusion, the day on which the request was made.

Related Provisions: 162(11) — Effect of carryback of losses etc.; 248(1)"specified future tax consequence"(a) — Deduction or exclusion of amount referred to in 161(7)(a) is a specified future tax consequence.

History: The opening words of para. 161(7)(b) amended by 2003, c. 15, subsec. 116(2), to add "30 days after", applicable in respect of applications received after June 2003.

Subparas. 161(7)(a)(i), (xi) added by 2001, c. 17, subsecs. 155(1), (3), applicable to taxation years that end after October 1, 1996.

Subpara. 161(7)(a)(iv.1) amended by the said c. 17, subsec. 155(2), applicable to taxation years that end after October 1, 1996. The subpara. formerly read:

(iv.1) any amount deducted under subsection 126(2) in respect of an unused foreign tax credit (within the meaning assigned by subsection 126(7)) for a subsequent taxation year,

The opening and closing words of para. 161(7)(a) amended by 1998, c. 19, subsecs. 187(1), (3), applicable to amounts that become payable after December 1995. Those portions formerly read:

(a) the tax payable by the taxpayer under this Part and Parts I.3, VI and VI.1 for the year shall be deemed to be the amount that it would have been if none of the following amounts, namely,

. . . . .

were excluded or deducted for the year, as the case may be; and

Subpara. 161(7)(a)(viii.1) added by the said c. 19, subsec. 187(2), applicable to taxpayers who die after 1992.

The opening words of para. 161(7)(b) amended by the said c. 19, subsec. 187(4), applicable to amounts that become payable after December 1995. That portion formerly read:

(b) the amount by which the tax payable by the taxpayer under this Part and Parts I.3, VI and VI.1 for the year is reduced because of the exclusion or deduction, as the case may be, of an amount described in any of subparas. (a)(ii) to (x) of this subsec. and subpara. 161(7)(a)(i) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952 shall be deemed to have been paid by the taxpayer on account of the taxpayer's tax payable for the year under this Part on the day that is the latest of

Subparas. 161(7)(a)(ix) and (x) amended by 1997, c. 25, subsec. 50(7); subpara. (ix) applicable to 1992 *et seq.*, and subpara. (x) applicable to 1991 *et seq.* Subparas. (ix) and (x) formerly read:

(ix) any amount deducted for a subsequent taxation year under subsection 181.1(4) in respect of any unused surtax credit (within the meaning assigned by subsection 181.1(6)) of the taxpayer, or

(x) any amount deducted for a subsequent taxation year under subsection 190.1(3) in respect of any unused Part I tax credit (within the meaning assigned by subsection 190.1(5)) of the taxpayer,

Subpara. 161(7)(a)(viii) amended by 1997, c. 26, s. 85, applicable to 1997 *et seq.* Subpara. (a)(viii) formerly read:

(viii) any amount excluded from the amount determined under clause 12(1)(x.1)(ii)(A) because of subclause 12(1)(x.1)(ii)(A)(II) in respect of a fuel tax rebate repayment made in a subsequent taxation year,

That portion of subsec. 161(7) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 96(3), applicable to instalments of tax that become payable after June 10, 1993. That portion formerly read:

(7) Effect of carryback of loss, etc. — For the purpose of computing interest under subsection (1) or (2) on tax or a part or an instalment of tax for a taxation year,

That portion of para. 161(7)(a) preceding subpara. (i) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 96(4), to add reference to Parts I.3, VI and VI.1, applicable to 1992 *et seq.*

Subpara. 161(7)(a)(ix) added applicable to 1992 *et seq.*, and (x) added applicable to 1991*et seq.*, by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 96(5).

That portion of para. 161(7)(b) preceding subpara. (i) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 96(6), applicable to 1991 *et seq.*, except that in its application to the 1991 taxation year the para. shall be read without reference to the words "and Parts I.3, VI and VI.1". That portion formerly read:

(b) the amount by which the tax payable under this Part for the year is reduced because of the exclusion or deduction, as the case may be, of an amount described in any of subparagraphs (a)(ii) to (viii) is deemed to have been paid by the taxpayer on account of the taxpayer's tax payable for the year under this Part on the day that is the latest of

Subpara. 161(7)(a)(viii) added by 1994, c. 7, Sch. VI (1992, c. 29), subsec. 8(1), applicable to 1992 *et seq.*

That portion of para. 161(7)(b) preceding subpara. (i) amended by 1994, c. 7, Sch. VI (1992, c. 29), subsec. 8(2), applicable to 1992 *et seq.* That portion formerly read:

(b) the amount by which the tax payable by the taxpayer under this Part for the year is reduced by virtue of the exclusion or deduction, as the case may be, of an amount described in any of subparagraphs (a)(ii) to (vii) of this subsection and subparagraph 161(7)(a)(i) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, shall be deemed to have been paid by the taxpayer on account of the taxpayer's tax payable for the year under this Part on the day that is that latest of

Selected Cases [subsec. 161(7)]: *Yang v. R.*, [2004] 3 C.T.C. 2408 (TCC) (Carryback of losses does not affect liability for interest); *Connaught v. Canada*, [1995] 1 C.T.C. 216 (FCTD) (Taxpayer not permitted to use previously unclaimed deductions to offet income later assessed).

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

(8) Certain amounts deemed to be paid as instalments — For the purposes of subsection (2), where in a taxation year an amount has been paid by a non-resident person pursuant to subsection 116(2) or (4) or an amount has been paid on that person's behalf by another person in accordance with subsection 116(5), the amount shall be deemed to have been paid by that non-resident person in the year as an instalment of tax on the first day on which the non-resident person was required under this Act to pay an instalment of tax for that year.

(9) Definitions of "instalment base", etc. — In this section,

(a) "instalment base" of an individual for a taxation year means the amount determined in prescribed manner to be the individual's instalment base for the year; and

(b) "first instalment base" and "second instalment base" of a corporation for a taxation year have the meanings prescribed by regulation.

Regulations: 5300 ("instalment base"); 5301 ("first instalment base", "second instalment base").

(10) When amount deemed paid — For the purposes of subsection (2), where an amount has been deducted by virtue of paragraph 127.2(1)(a) or 127.3(1)(a) in computing the tax payable under this Part by a taxpayer for a taxation year, the amount so deducted shall be deemed to have been paid by the taxpayer

(a) in the case of a taxpayer who has filed a return of income under this Part for the year as required by section 150, on the last day of the year; and

(b) in any other case, on the day on which the taxpayer filed the taxpayer's return of income under this Part for the year.

(11) Interest on penalties — Where a taxpayer is required to pay a penalty, the taxpayer shall pay the penalty to the Receiver General together with interest thereon at the prescribed rate computed,

(a) in the case of a penalty payable under section 162, 163 or 235, from the day on or before which

(i) the taxpayer's return of income for a taxation year in respect of which the penalty is payable was required to be filed, or would have been required to be filed if tax under this Part were payable by the taxpayer for the year, or

(ii) the information return, return, ownership certificate or other document in respect of which the penalty is payable was required to be made,

as the case may be, to the day of payment;

(b) in the case of a penalty payable for a taxation year because of section 163.1, from the taxpayer's balance-due day for the year to the day of payment of the penalty;

(b.1) in the case of a penalty under subsection 237.1(7.4), from the day on which the taxpayer became liable to the penalty to the day of payment; and

(c) in the case of a penalty payable by reason of any other provision of this Act, from the day of mailing of the notice of original assessment of the penalty to the day of payment.

Related Provisions: 18(1)(t) — Interest and penalty are non-deductible; 161.1 — Offset of refund interest against arrears interest; 163(2.9) — Partnership liable to interest on penalty re tax shelters; 189(9) — No interest on charity revocation tax or penalties to extent reduced by charitable transfer; 221.1 — Application of interest where legislation retroactive; 248(11) — Interest compounded daily.

History: Para. 161(11)(b.1) added by 1998, c. 19, subsec. 187(5), applicable after December 1, 1994.

Para. 161(11)(b) amended by 1997, c. 25, subsec. 50(8), applicable to 1996 *et seq.* Para. (b) formerly read:

(b) in the case of a penalty payable for a taxation year by reason of section 163.1, from the day on or before which the taxpayer is required to pay the remainder of the taxpayer's tax payable under this Part for the year to the day of payment of the penalty; and

That portion of para. 161(11)(a) preceding subpara. (i) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 133(4), to substitute "under" for "by reason of" and add reference to s. 235.

Selected Cases [subsec. 161(11)]: *Ford v. Canada*, [1994] 2 C.T.C. 2395 (TCC) (No penalty where filing within 90 days of retroactive agreements for spousal and child support); *Reemark Chelsea Terraces Project Ltd. v. Canada*, [1993] 1 C.T.C. 2727 (TCC) (Amount of interest and penalty for late return not adjusted on reassessment giving effect to loss carryback reducing income to nil).

Regulations: 4301(a) (prescribed rate of interest).

Interpretation Bulletins: IT-407R4: Dispositions of cultural property to designated Canadian institutions.

Information Circulars: 92-2: Guidelines for the cancellation and waiver of interest and penalties.

(12) [Repealed]

History [subsec. 161(12)]: Subsec. 161(12) repealed by 2000, c. 19, subsec. 47(3), in force June 29, 2000 (Royal Assent). The subsec. formerly read:

(12) Partnership liable to interest — Where a partnership is liable to a penalty under subsection 237.1(7.4), sections 152, 158 to 160.1, this section and sections 164 to 167 and Division J apply, with such modifications as the circumstances require, with respect to interest on the penalty as if the partnership were a corporation.

Subsec. 161(12) added by 1998, c. 19, subsec. 187(6), applicable after December 1, 1994.

Selected Cases [s. 161]: *Prodor v. R.*, [1997] 3 C.T.C. 179 (FCTD) (Applicable interest rate is that prescribed in particular statute, not as provided in *Federal Court Act*).

Definitions [s. 161]: "allowable capital loss" — 38(b), 248(1); "amount", "assessment", "balance-due day" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "corporation" — 248(1), *Interpretation Act* 35(1); "foreign tax" — 126(4.2); "individual" — 248(1); "instalment base" — 161(9); "Minister" — 123(1); "non-resident" — 248(1); "person", "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "property" — 248(1); "province" — *Interpretation Act* 35(1); "regulation", "share", "specified future tax consequence" — 248(1); "tax payable" — 248(2); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "testamentary trust" — 108(1), 248(1); "writing" — *Interpretation Act* 35(1).

Offset of Refund Interest and Arrears Interest

161.1 (1) Definitions — The definitions in this subsection apply in this section.

"accumulated overpayment amount", of a corporation for a period, means the overpayment amount of the corporation for the period together with refund interest (including, for greater certainty, compound interest) that accrued with respect to the overpayment amount before the date specified under paragraph (3)(b) by the corporation in its application for the period.

"accumulated underpayment amount", of a corporation for a period, means the underpayment amount of the corporation for the period together with arrears interest (including, for greater certainty, compound interest) that accrued with respect to the underpayment amount before the date specified under paragraph (3)(b) by the corporation in its application for the period.

"arrears interest" means interest computed under paragraph (5)(b), 129(2.2)(b), 131(3.2)(b), 132(2.2)(b), 133(7.02)(b) or 160.1(1)(b), subsection 161(1) or (11), paragraph 164(3.1)(b) or (4)(b) or subsection 187(2).

"overpayment amount", of a corporation for a period, means the amount referred to in subparagraph (2)(a)(i) that is refunded to the corporation, or the amount referred to in subparagraph (2)(a)(ii) to which the corporation is entitled.

"refund interest" means interest computed under subsection 129(2.1), 131(3.1), 132(2.1), 133(7.01) or 164(3) or (3.2).

"underpayment amount", of a corporation for a period, means the amount referred to in paragraph (2)(b) payable by the corporation on which arrears interest is computed.

(2) Concurrent refund interest and arrears interest — A corporation may apply in writing to the Minister for the reallocation of an accumulated overpayment amount for a period that begins after 1999 on account of an accumulated underpayment amount for the period if, in

respect of tax paid or payable by the corporation under this Part or Part I.3, II, IV, IV.1, VI, VI.1 or XIV,

(a) refund interest for the period

(i) is computed on an amount refunded to the corporation, or

(ii) would be computed on an amount to which the corporation is entitled, if that amount were refunded to the corporation; and

(b) arrears interest for the period is computed on an amount payable by the corporation.

Related Provisions: 161.1(3) — Contents of and deadline for application; 161.1(5) — Where refund previously paid.

(3) Contents of application — A corporation's application referred to in subsection (2) for a period is deemed not to have been made unless

(a) it specifies the amount to be reallocated, which shall not exceed the lesser of the corporation's accumulated overpayment amount for the period and its accumulated underpayment amount for the period;

(b) it specifies the effective date for the reallocation, which shall not be earlier than the latest of

(i) the date from which refund interest is computed on the corporation's overpayment amount for the period, or would be so computed if the overpayment amount were refunded to the corporation,

(ii) the date from which arrears interest is computed on the corporation's underpayment amount for the period, and

(iii) January 1, 2000; and

(c) it is made on or before the day that is 90 days after the latest of

(i) the day of mailing of the first notice of assessment giving rise to any portion of the corporation's overpayment amount to which the application relates,

(ii) the day of mailing of the first notice of assessment giving rise to any portion of the corporation's underpayment amount to which the application relates,

(iii) if the corporation has served a notice of objection to an assessment referred to in subparagraph (i) or (ii), the day of mailing of the notification under subsection 165(3) by the Minister in respect of the notice of objection,

(iv) if the corporation has appealed, or applied for leave to appeal, from an assessment referred to in subparagraph (i) or (ii) to a court of competent jurisdiction, the day on which the court dismisses the application, the application or appeal is discontinued or final judgment is pronounced in the appeal, and

(v) the day of mailing of the first notice to the corporation indicating that the Minister has determined any portion of the corporation's overpayment amount to which the application relates, if the overpayment amount has not been determined as a result of a notice of assessment mailed before that day.

Related Provisions: 161.1(4) — Amount reallocated is deemed to have been refunded.

(4) Reallocation — The amount to be reallocated that is specified under paragraph (3)(a) by a corporation is deemed to have been refunded to the corporation and paid on account of the accumulated underpayment amount on the date specified under paragraph (3)(b) by the corporation.

Related Provisions: 161.1(6) — Consequential reallocations.

(5) Repayment of refund — If an application in respect of a period is made under subsection (2) by a corporation and a portion of the amount to be reallocated has been refunded to the corporation, the following rules apply:

(a) a particular amount equal to the total of

(i) the portion of the amount to be reallocated that was refunded to the corporation, and

(ii) refund interest paid or credited to the corporation in respect of that portion

is deemed to have become payable by the corporation on the day on which the portion was refunded; and

(b) the corporation shall pay to the Receiver General interest at the prescribed rate on the particular amount from the day referred to in paragraph (a) to the date of payment.

Related Provisions: 248(11) — Interest compounded daily.

(6) Consequential reallocations — If a particular reallocation of an accumulated overpayment amount under subsection (4) results in a new accumulated overpayment amount of the corporation for a period, the new accumulated overpayment amount shall not be reallocated under this section unless the corporation so applies in its application for the particular reallocation.

(7) Assessments — Notwithstanding subsections 152(4), (4.01) and (5), the Minister shall assess or reassess interest and penalties payable by a corporation in respect of any taxation year as necessary in order to take into account a reallocation of amounts under this section.

Related Provisions: 165(1.1) — Limitation of right to object to assessment.

Proposed Amendment — Extension of s. 161.1 to individuals

Notice of Ways and Means Motion, federal budget, February 28, 2000: *Offsetting of Interest on Personal Tax Overpayments and Underpayments*

(23) That, for individuals other than trusts, the taxable amount of refund interest accruing over any period after 1999 on overpayments of income tax be reduced by the amount of any arrears interest accruing over the same period on unpaid income tax.

Federal budget, supplementary information, February 28, 2000: *Offsetting of Interest on Personal Tax Overpayments and Underpayments*

An individual who has made an overpayment of income tax may be entitled to receive refund interest from the government on the overpayment. Refund interest is included in income for tax purposes, in the same manner as interest from other sources.

If, on the other hand, an individual has failed to pay an amount of income tax when due, the individual is required to pay arrears interest to the government. Arrears interest is not deductible in computing a taxpayer's income for tax purposes.

The taxation of refund interest and non-deductibility of arrears interest can produce inappropriate results in situations where an individual who owes interest on unpaid tax from one taxation year is concurrently owed interest on a tax overpayment from a different taxation year. In this circumstance, the cost of the non-deductible interest payable by the individual exceeds the after-tax value of the taxable interest receivable by the individual. In many instances, this difference results from the non-deductibility of interest paid and the inclusion in income of interest received.

This budget proposes a relieving mechanism for these individuals. Refund interest accruing over a period will be taxable only to the extent that it exceeds any arrears interest that accrued over the same period to which the refund interest relates. As under current practice, the individual's notice of assessment will indicate the full amount of refund interest. In addition, the

Canada Customs and Revenue Agency will issue an information slip indicating the amount, if any, of the refund interest that must be included in the individual's income for tax purposes.

This measure will apply to individuals other than trusts in respect of arrears and refund interest amounts that accrue concurrently after 1999, regardless of the taxation year to which the amounts relate.

Department of Finance news release Backgrounder, December 21, 2000: *Offset Interest*

The 2000 budget proposed an interest offset mechanism in respect of overpayments and underpayments of tax by individuals. The Department of Finance and the Canada Customs and Revenue Agency are working to develop a mechanism under which this proposal can be given effect, for implementation at the earliest opportunity.

History: S. 161.1 added by 2000, c. 19, s. 48, applicable after 1999.

Definitions [s. 161.1]: "accumulated overpayment amount", "accumulated underpayment amount" — 161.1(1); "amount" — 248(1); "arrears interest" — 161.1(1); "assessment" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "Minister" — 248(1); "overpayment amount" — 161.1(1); "prescribed" — 248(1); "refund interest" — 161.1(1); "taxation year" — 249; "underpayment amount" — 161.1(1); "writing" — *Interpretation Act* 35(1).

161.2 Period where interest not payable — Notwithstanding any other provision of this Act, if the Minister notifies a taxpayer that the taxpayer is required to pay a specified amount under this Act and the taxpayer pays the specified amount in full before the end of the period that the Minister specifies with the notice, interest is not payable on the specified amount for the period.

History: S. 161.2 added by 2003, c. 15, s. 117, in force July 1, 2003.

Definitions [s. 161.2]: "amount", "Minister", "taxpayer" — 248(1).

Small Amounts Owing

161.3 Interest and penalty amounts of $25 or less — If, at any time, a person pays an amount not less than the total of all amounts, other than interest and penalty, owing at that time to Her Majesty in right of Canada under this Act for a taxation year of the person and the total amount of interest and penalty payable by the person under this Act for that year is not more than $25.00, the Minister may cancel the interest and penalty.

History: S. 161.3 added by 2003, c. 15, s. 117, applicable to taxation years that end after June 2003.

Definitions [s. 161.3]: "amount" — 248(1); "Her Majesty" — *Interpretation Act* 35(1); "Minister", "person" — 248(1); "taxation year" — 249.

161.4 (1) Taxpayer — If the Minister determines, at any time, that the total of all amounts owing by a person to Her Majesty in right of Canada under this Act does not exceed two dollars, those amounts are deemed to be nil.

(2) Minister — If, at any time, the total of all amounts payable by the Minister to a person under this Act does not exceed two dollars, the Minister shall apply those amounts against any amount owing, at that time, by the person to Her Majesty in right of Canada. However, if the person, at that time, does not owe any amount to Her Majesty, those amounts payable are deemed to be nil.

History: S. 161.4 added by 2003, c. 15, s. 117, applicable to amounts owing or payable, as the case may be, after June 2003.

Definitions [s. 161.4]: "amount" — 248(1); "Her Majesty" — *Interpretation Act* 35(1); "Minister", "person" — 248(1).

Penalties

162. (1) Failure to file return of income — Every person who fails to file a return of income for a taxation year as and when required by subsection 150(1) is liable to a penalty equal to the total of

(a) an amount equal to 5% of the person's tax payable under this Part for the year that was unpaid when the return was required to be filed, and

(b) the product obtained when 1% of the person's tax payable under this Part for the year that was unpaid when the return was required to be filed is multiplied by the number of complete months, not exceeding 12, from the date on which the return was required to be filed to the date on which the return was filed.

Related Provisions: 94(3)(a)(vii) [proposed] — Application to trust deemed resident in Canada; 161.3 — Interest and penalty up to $25 may be cancelled if tax paid; 162(2.1) — Minimum penalty for non-resident corporation; 162(11) — Effect of carryback of losses, etc.; 189(8)(a) — 162(1) does not apply to charity revocation tax return; 220(3) — No penalty if return filed by extended deadline; 235 — Additional penalty on large corporation for late filing even where no balance owing. See additional Related Provisions and Definitions at end of s. 162.

Selected Cases [subsec. 162(1)]: *Ford v. Canada*, [1994] 2 C.T.C. 2395 (TCC) (No penalty where return filed within 90 days of retroactive agreements for spousal and child support); *Reemark Chelsea Terraces Project Ltd. v. Canada*, [1993] 1 C.T.C. 2727 (TCC) (Amount of interest and penalty for late return not adjusted on reassessment giving effect to loss carry-back reducing income to nil); *Carlson v. R.*, [1973] C.T.C. 360 (FCTD) (Filing "temporary" return containing an income "estimate"; penalty applied for late filing of tax return).

Information Circulars: 92-2: Guidelines for the cancellation and waiver of interest and penalties; 00-1R: Voluntary disclosures program.

(2) Repeated failure to file — Every person

(a) who fails to file a return of income for a taxation year as and when required by subsection 150(1),

(b) on whom a demand for a return for the year has been served under subsection 150(2), and

(c) by whom, before the time of failure, a penalty was payable under this subsection or subsection (1) in respect of a return of income for any of the 3 preceding taxation years

is liable to a penalty equal to the total of

(d) an amount equal to 10% of the person's tax payable under this Part for the year that was unpaid when the return was required to be filed, and

(e) the product obtained when 2% of the tax payable under this Part for the year that was unpaid when the return was required to be filed is multiplied by the number of complete months, not exceeding 20, from the date on which the return was required to be filed to the date on which the return was filed.

Related Provisions: 162(2.1) — Minimum penalty for non-resident corporation; 162(11) — Effect of carryback of losses, etc. See additional Related Provisions at end of s. 162.

Selected Cases [subsec. 162(2)]: *Roy v. R.*, [1998] 2 C.T.C. 2982 (TCC); aff'd [2001] 3 C.T.C. 226 (FCA) (Penalty calculated on amount of undisclosed income before any deduction for CCA); *Wichartz v. Canada*, [1995] 1 C.T.C. 2866 (TCC) (No liability for penalty until penalty assessed).

Information Circulars: 92-2: Guidelines for the cancellation and waiver of interest and penalties; 00-1R: Voluntary disclosures program.

(2.1) Failure to file — non-resident corporation — Notwithstanding subsections (1) and (2), if a non-resident corporation is liable to a penalty under subsection (1) or (2) for failure to file a return of income for a taxation year, the amount of the penalty is the greater of

(a) the amount computed under subsection (1) or (2), as the case may be, and

(b) an amount equal to the greater of

(i) $100, and

(ii) $25 times the number of days, not exceeding 100, from the day on which the return was required to be filed to the day on which the return is filed.

Related Provisions: 150(1)(a)(i), (ii) — Obligation on non-resident to file return.

History: Subsec. 162(2.1) added by 1999, c. 22, s. 65, applicable to taxation years that begin after 1998.

Selected Cases [subsec. 162(2.1)]: *Yang v. R.*, [2004] 3 C.T.C. 2408 (TCC) (Penalties computed on income prior to application of loss carryback); *Roy v. R.*, [1998] 2 C.T.C. 2982 (TCC); aff'd [2001] 3 C.T.C. 226 (FCA) (Penalty calculated on amount of undisclosed income before any deduction for CCA).

(3) Failure to file by trustee — Every person who fails to file a return as required by subsection 150(3) is liable to a penalty of $10 for each day of default but not exceeding $50.

Related Provisions: See Related Provisions at end of s. 162.

Information Circulars: 92-2: Guidelines for the cancellation and waiver of interest and penalties; 00-1R: Voluntary disclosures program.

(4) Ownership certificate — Every person who

(a) fails to complete an ownership certificate as required by section 234,

(b) fails to deliver an ownership certificate in the manner prescribed at the time prescribed and at the place prescribed by regulations made under that section, or

(c) cashes a coupon or warrant for which an ownership certificate has not been completed pursuant to that section,

is liable to a penalty of $50.

Related Provisions: See Related Provisions at end of s. 162.

Information Circulars: 92-2: Guidelines for the cancellation and waiver of interest and penalties; 00-1R: Voluntary disclosures program.

(5) Failure to provide information on form — Every person who fails to provide any information required on a prescribed form made under this Act or a regulation is liable to a penalty of $100 for each such failure, unless

(a) in the case of information required in respect of another person or partnership, a reasonable effort was made by the person to obtain the information from the other person or partnership; or

(b) in the case of a failure to provide a Social Insurance Number on a return of income, the person had applied for the assignment of the Number and had not received it at the time the return was filed.

Related Provisions: 162(8.1) — Where partnership liable to penalty. See also Related Provisions at end of s. 162.

History: Para. 162(5)(a) amended by 1998, c. 19, subsec. 188(1), in force on June 18, 1998. Para. 162(5)(a) formerly read:

(a) in the case of information required in respect of another person, a reasonable effort was made by the person to obtain the information from the other person; or

That portion of subsec. 162(5) preceding para. (a) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 134(1), to substitute "is liable" for "is, except where, in the case of an individual, the Minister has waived the penalty, liable".

Information Circulars: 82-2R2: SIN legislation that relates to the preparation of information slips; 00-1R: Voluntary disclosures program.

(6) Failure to provide identification number — Every person or partnership who fails to provide on request their Social Insurance Number or their business number to a person required under this Act or a regulation to make an information return requiring the number is liable to a penalty of $100 for each such failure, unless

(a) an application for the assignment of the number is made within 15 days after the request was received; and

(b) the number is provided to the person who requested the number within 15 days after the person or partnership received it.

Related Provisions: 162(8.1) — Where partnership liable to penalty; 237(1), (1.1), (2) — Obligation to apply for and provide Social Insurance Number on information return. See additional Related Provisions at end of s. 162.

History: Subsec. 162(6) amended by 1998, c. 19, subsec. 188(2), in force on June 18, 1998. Subsec. 162(6) formerly read:

(6) Failure to provide Social Insurance Number — Every individual who fails to provide on request the individual's Social Insurance Number to a person required under this Act or a regulation to make an information return requiring the individual's Social Insurance Number is liable to a penalty of $100 for each such failure, unless

(a) an application by the individual for the assignment of a Social Insurance Number was made not later than 15 days after the person made the request; and

(b) the Number was provided to the person within 15 days after the individual received it.

That portion of subsec. 162(6) preceding para. (a) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 134(2), to substitute "is liable" for "is, except where the Minister has waived the penalty, liable".

Information Circulars: 82-2R2: SIN legislation that relates to the preparation of information slips; 00-1R: Voluntary disclosures program.

(7) Failure to comply — Every person (other than a registered charity) or partnership who fails

(a) to file an information return as and when required by this Act or the regulations, or

(b) to comply with a duty or obligation imposed by this Act or the regulations

is liable in respect of each such failure, except where another provision of this Act (other than subsection (10) or (10.1) or 163(2.22)) sets out a penalty for the failure, to a penalty equal to the greater of $100 and the product obtained when $25 is multiplied by the number of days, not exceeding 100, during which the failure continues.

Related Provisions: 149(4.1), 188 — Revocation of registration and penalty tax for registered charity; 162(8.1) — Where partnership liable to penalty; 188.1 — Penalties for registered charities (reducible under 189(6.3)); Reg. 205.1(3) — failure to file 500 returns electronically is a single failure. See additional Related Provisions at end of s. 162.

History: Subsec. 162(7) amended by 1997, c. 25, subsec. 51(1), applicable to returns required to be filed on or before a day that is after 1997 and to duties and obligations first imposed after 1997. Subsec. (7) formerly read:

(7) Failure to comply with Act or regulation — Every person (other than a registered charity) who fails

(a) to file an information return as and when required by this Act or a regulation, or

(b) to comply with a duty or obligation imposed by this Act or a regulation

is liable in respect of each such failure, except where another provision of this Act (other than subsection (10)) sets out a penalty for the failure, to a penalty equal to the greater of $100 and the product obtained when $25 is multiplied by the number of days, not exceeding 100, during which the failure continues.

The opening words of subsec. 162(7) substituted by 1994, c. 21, s. 80, applicable June 15, 1994. The opening words formerly read:

(7) Every person

Information Circulars: 89-4: Tax shelter reporting; 92-2: Guidelines for the cancellation and waiver of interest and penalties; 00-1R: Voluntary disclosures program.

(7.1) Failure to make partnership information return — Where a member of a partnership fails to file an information return as a member of the partnership for a fiscal period of the partnership as and when required by this Act or the regulations and subsection (10) does not set out a penalty for the failure, the partnership is liable to a penalty equal to the greater of $100 and the product obtained when $25 is multiplied by the number of days, not exceeding 100, during which the failure continues.

Related Provisions: 96(1) — Taxation of partnership; 162(8.1) — Rules where partnership is liable to penalty; Reg. 205.1(3) — failure to file 500 returns electronically is a single failure. See additional Related Provisions at end of s. 162.

History: Subsec. 162(7.1) amended by 1997, c. 25, subsec. 51(1), applicable to returns required to be filed on or before a day that is after 1997 and to duties and obligations first imposed after 1997. Subsec. (7.1) formerly read:

> (7.1) Where a member of a partnership fails to file an information return as a member of the partnership for a fiscal period of the partnership as and when required by this Act or a regulation, the partnership is liable to a penalty equal to the greater of $100 and the product obtained when $25 is multiplied by the number of days, not exceeding 100, during which the failure continues.

Selected Cases [subsec. 162(7.1)]: *Katepwa Park Golf Partnership v. R.*, [2000] 3 C.T.C. 2043 (TCC) (Provision sufficiently unclear to make delay mandatory).

(8) Repeated failure to file — Where

(a) a penalty was payable under subsection (7.1) in respect of a failure by a member of a partnership to file an information return as a member of the partnership for a fiscal period of the partnership,

(b) a demand for the return or for information required to be contained in the return has been served under section 233 on the member, and

(c) a penalty was payable under subsection (7.1) in respect of the failure by a member of a partnership to file an information return as a member of the partnership for any of the 3 preceding fiscal periods,

the partnership is liable, in addition to the penalty under subsection (7.1), to a penalty of $100 for each member of the partnership for each month or part of a month, not exceeding 24 months, during which the failure referred to in paragraph (a) continues.

Related Provisions: 162(8.1) — Rules where partnership is liable to penalty. See additional Related Provisions at end of s. 162.

(8.1) Rules where partnership liable to a penalty — Where a partnership is liable to a penalty under subsection (5), (6), (7), (7.1), (8) or (10), sections 152, 158 to 160.1, 161 and 164 to 167 and Division J apply, with any modifications that the circumstances require, to the penalty as if the partnership were a corporation.

History: Subsec. 162(8.1) amended by 1998, c. 19, subsec. 188(3), in force on June 18, 1998. Subsec. 162(8.1) formerly read:

> (8.1) Where partnership liable to penalty — Where a partnership is liable to a penalty under subsection (7), (7.1), (8), (10) or (10.1), sections 152, 158 to 160.1, 161 and 164 to 167 and Division J apply, with any modifications that the circumstances require, to the penalty as if the partnership were a corporation.

Subsec. 162(8.1) amended by 1997, c. 25, subsec. 51(2), applicable to returns required to be filed on or before a day that is after 1997 and to duties and obligations first imposed after 1997. Subsec. (8.1) formerly read:

> (8.1) Where a partnership is liable to a penalty under subsection (7.1) or (8), sections 152, 158 to 160.1, 161 and 164 to 167 and Division J apply, with such modifications as the circumstances require, with respect to the penalty as if the partnership were a corporation.

(9) [Repealed]

History: Subsec. 162(9) repealed by 1998, c. 19, subsec. 188(4), applicable after December 1, 1994. Subsec. 162(9) formerly read:

> (9) Tax shelter identification number — Every person who
>
> (a) files false or misleading information with the Minister in an application under subsection 237.1(2) for an identification number for a tax shelter, or
>
> (b) whether as a principal or as an agent, sells, issues or accepts a contribution for the acquisition of an interest in a tax shelter before the Minister has issued an identification number therefor,
>
> is liable to a penalty equal to the greater of
>
> (c) $500, and
>
> (d) 3% of the total of all amounts each of which is the cost to each person who acquired an interest in the tax shelter before the correct information is filed with the Minister or the identification number is issued, as the case may be.

Selected Cases [subsec. 162(9)]: *Blier v. R.*, [2004] 2 C.T.C. 2392 (TCC) (Penalty upheld where arrangement was obvious tax shelter).

(10) Failure to furnish foreign-based information — Every person or partnership who,

(a) knowingly or under circumstances amounting to gross negligence, fails to file an information return as and when required by any of sections 233.1 to 233.4, or

(b) where paragraph (a) does not apply, knowingly or under circumstances amounting to gross negligence, fails to comply with a demand under section 233 to file a return

is liable to a penalty equal to the amount determined by the formula

$$(\$500 \times A \times B) - C$$

where

A is

(c) where paragraph (a) applies, the lesser of 24 and the number of months, beginning with the month in which the return was required to be filed, during any part of which the return has not been filed, and

(d) where paragraph (b) applies, the lesser of 24 and the number of months, beginning with the month in which the demand was served, during any part of which the return has not been filed,

B is

(e) where the person or partnership has failed to comply with a demand under section 233 to file a return, 2, and

(f) in any other case, 1, and

C is the penalty to which the person or partnership is liable under subsection (7) in respect of the return.

Related Provisions: 162(7) — Initial calculation of penalty; 162(8.1) — Where partnership liable to penalty; 162(10.1) — Additional penalty; 163(2.4)–(2.91) — Penalty for false statement or omission in return; 233.2(4.1) — Foreign arrangements similar to trusts; 233.5 — Due diligence defence; 257 — Formula cannot calculate to less than zero. See also Related Provisions at end of s. 162.

History: Subsec. 162(10) amended by 1997, c. 25, subsec. 51(3), applicable to returns required to be filed on or before a day that is after April 29, 1998. Subsec. (10) formerly read:

> (10) Every corporation
>
> (a) that fails to file an information return required by section 233.1,
>
> (b) on which a demand under section 233 has been served for the return, and
>
> (c) that does not comply with the demand within 90 days after the day the demand was served on it,

is liable in respect of each such failure, in addition to the penalty under subsection (7), to a penalty of $1,000 for each month or part of a month, not exceeding 24 months, during which the failure continues.

(10.1) Additional penalty — Where

(a) a person or partnership is liable to a penalty under subsection (10) for the failure to file a return (other than an information return required to be filed under section 233.1),

(b) if paragraph (10)(a) applies, the number of months, beginning with the month in which the return was required to be filed, during any part of which the return has not been filed exceeds 24, and

(c) if paragraph (10)(b) applies, the number of months, beginning with the month in which the demand referred to in that paragraph was served, during any part of which the return has not been filed exceeds 24,

the person or partnership is liable, in addition to the penalty determined under subsection (10), to a penalty equal to the amount determined by the formula

A – B

where

A is

(d) where the return is required to be filed under section 233.2, 5% of the total of all amounts each of which is the fair market value of property transferred or loaned (determined as of the time of the transfer or loan) because of which there would, if no other transfer or loan were taken into account, be an obligation to file the return,

Proposed Amendment — 162(10.1)A(d)

(d) where the return is required to be filed under section 233.2 in respect of a trust, 5% of the total of all amounts each of which is the fair market value, at the time it was made, of a contribution of the person or partnership made to the trust before the end of the last taxation year of the trust in respect of which the return is required,

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 36(2), will amend para. (d) of the description of A in subsec. 162(10.1) to read as above, applicable to returns in respect of taxation years that begin after 2002, and to returns in respect of taxation years that begin

(a) after 2000, if the return relates to a trust that makes a valid election under para. (a) of the Application of the amendment to s. 94; and

(b) after 2001, if the return relates to a trust that makes a valid election under para. (a) or (b) of the Application of the amendment to s. 94.

Technical Notes: Subsection 162(10.1) imposes a penalty on any person or partnership that is more than 24 months late in filing an information return that the person or partnership was required to file under any of sections 233.1 to 233.4. (This penalty applies in addition to the penalties imposed under subsections 162(7) and (10).)

The penalty imposed under subsection 162(10.1) with respect to a particular information return is equal to a specified amount less the amount of the penalties imposed under subsections 162(7) and (10) with respect to the return. The specified amount with respect to an information return for a trust required to be filed by a person or partnership under section 233.2 is equal to 5% of the total fair market value of any property transferred or loaned to the trust that, if no other loan or transfer were taken into account, would have imposed an obligation on the person or partnership to file the return.

Subsection 162(10.1) is amended, as a consequence of amendments made to section 233.2, by changing the manner in which the specified amount is determined. The specified amount is now to be determined with reference to the fair market value of "contributions" made by the person or partnership to the trust.

(e) where the return is required to be filed under section 233.3 for a taxation year or fiscal period, 5% of the greatest of all amounts each of which is the total of the cost amounts to the person or partnership at any time in the year or period of a specified foreign property (as defined by subsection 233.3(1)) of the person or partnership, and

(f) where the return is required to be filed under section 233.4 for a taxation year or fiscal period in respect of a foreign affiliate of the person or partnership, 5% of the greatest of all amounts each of which is the total of the cost amounts to the person or partnership at any time in the year or period of a property of the person or partnership that is a share of the capital stock or indebtedness of the affiliate, and

B is the total of the penalties to which the person or partnership is liable under subsections (7) and (10) in respect of the return.

Related Provisions: 162(7) — Initial calculation of penalty; 162(10.11) — Application to trust contributions; 162(10.2) — Shares or debt owned by controlled foreign affiliate; 162(10.3) — Application to partnerships; 162(10.4) — Application to non-resident trusts; 163(2.4)–(2.91) — Penalty for false statement or omission in return; 233.2(4.1) — Foreign arrangements similar to trusts; 233.5 — Due diligence defence to penalty; 257 — Formula cannot calculate to less than zero.

History: Subsec. 162(10.1) added by 1997, c. 25, subsec. 51(3), applicable to returns required to be filed on or before a day that is after April 29, 1998.

Proposed Addition — 162(10.11)

(10.11) Application to trust contributions — In paragraph (d) of the description of A in subsection (10.1), subsections 94(1), (2) and (9) apply, except that the references to the expression "(other than a restricted property)" in the definition "arm's length transfer" in subsection 94(1) are to be read as references to the expression "(other than property that is not described in any of subclauses (b)(i)(A)(I) to (III) but to which paragraph 94(2)(g) applies)".

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 36(3), will add subsec. 162(10.11), applicable on the same basis as the amendment to 162(10.1)A(d).

Technical Notes: New subsection 162(10.11) provides that, for the purpose of the calculation in subsection 162(10.1), the definitions and rules in subsections 94(1), (2) and (9) generally apply. Subsection 162(10.11) is similar to amended subsection 233.2(2), described in greater detail in the commentary [to 233.2 — ed.].

(10.2) Shares or debt owned by controlled foreign affiliate — For the purpose of paragraph (f) of the description of A in subsection (10.1),

(a) shares or indebtedness owned by a controlled foreign affiliate of a person or partnership are deemed to be owned by the person or partnership; and

(b) the cost amount at any time of such shares or indebtedness to the person or partnership is deemed to be equal to 20% of the cost amount at that time to the controlled foreign affiliate of the shares or indebtedness.

Related Provisions: 162(10.3) — Application to partnerships; 162(10.4) — Application to non-resident trusts.

History: Subsec. 162(10.2) added by 1997, c. 25, subsec. 51(3), applicable to returns required to be filed on or before a day that is after April 29, 1998.

(10.3) Application to partnerships — For the purposes of paragraph (f) of the description of A in subsection (10.1) and subsection (10.2), in determining whether a non-resident corporation or trust is a foreign affiliate or a controlled foreign affiliate of a partnership,

Proposed Amendment — 162(10.3) opening words

(10.3) Application to partnerships — For the purposes of paragraph (f) of the description of A in subsection (10.1) and subsection (10.2), in determining whether a non-resident corporation is a foreign affiliate or a controlled foreign affiliate of a partnership,

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 36(4), will amend the opening words of subsec. 162(10.3) to read as above, applicable on the same basis as the amendment to 162(10.1)A(d).

Technical Notes: Existing paragraph 94(1)(d) provides for non-resident trusts to be treated as foreign affiliates. It is being repealed as a consequence of the introduction of new rules for non-resident trusts in section 94. Subsections 162(10.3) and (10.4) are rules that affect the calculation of penalty tax in respect of a person's or partnership's failure to file a return in respect of a foreign affiliate.

Subsections 163(2.6) and (2.91) are similar provisions that affect the calculation of penalty tax in respect of false statements and omissions in such a return.

Subsections 162(10.3) and 163(2.6) are amended to reflect the changes to section 94 under which non-resident trusts are no longer treated as foreign affiliates. Subsections 162(10.4) and 163(2.91) are repealed for the same reason.

(a) the definitions "direct equity percentage" and "equity percentage" in subsection 95(4) shall be read as if a partnership were a person; and

(b) the definitions "controlled foreign affiliate" and "foreign affiliate" in subsection 95(1) shall be read as if a partnership were a taxpayer resident in Canada.

History: Subsec. 162(10.3) added by 1997, c. 25, subsec. 51(3), applicable to returns required to be filed on or before a day that is after April 29, 1998.

(10.4) Application to non-resident trusts — For the purposes of this subsection, paragraph (f) of the description of A in subsection (10.1) and subsection (10.2),

(a) a non-resident trust is deemed to be a controlled foreign affiliate of each beneficiary of which the trust is a controlled foreign affiliate for the purpose of section 233.4;

(b) the trust is deemed to be a non-resident corporation having a capital stock of a single class divided into 100 issued shares;

(c) each beneficiary under the trust is deemed to own at any time the number of the issued shares of the corporation that is equal to the proportion of 100 that

(i) the fair market value at that time of the beneficiary's beneficial interest in the trust

is of

(ii) the fair market value at that time of all beneficial interests in the trust; and

(d) the cost amount to a beneficiary at any time of a share of the corporation is deemed to be equal to the amount determined by the formula

$$\frac{A}{B}$$

where

A is the fair market value at that time of the beneficiary's beneficial interest in the trust, and

B is the number of shares deemed under paragraph (c) to be owned at that time by the beneficiary in respect of the corporation.

Proposed Repeal — 162(10.4)

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 36(5), will repeal subsec. 162(10.4), applicable on the same basis as the amendment to 162(10.1)A(d).

Technical Notes: See under 162(10.3).

History: Subsec. 162(10.4) added by 1997, c. 25, subsec. 51(3), applicable to returns required to be filed on or before a day that is after April 29, 1998.

(11) Effect of subsequent events — For the purpose of computing a penalty under subsection (1) or (2) in respect of a person's return of income for a taxation year, the person's tax payable under this Part for the year shall be determined before taking into consideration the specified future tax consequences for the year.

History: Subsec. 162(11) amended by 1997, c. 25, subsec. 51(4), applicable to 1996 *et seq.* Subsec. (11) formerly read:

> (11) Effect of carryback of losses etc. — In determining a person's tax for a taxation year for the purpose of computing a penalty under subsection (1) or (2) in respect of the person's return of income for the year, paragraph 161(7)(a) applies with such modifications as the circumstances require.

Subsec. 162(11) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 134(3), applicable to amounts referred to in para. 161(7)(a) in respect of subsequent taxation years referred to in that para. ending after July 13, 1990.

Related Provisions [s. 162]: 18(1)(t) — Penalties are non-deductible; 161(11) — Interest on penalty; 180.2(6), 181.7, 183(3), 183.2(2), 187(3), 187.6, 189(8), 190.21, 191.4(2), 193(8), 195(8),196(4), 202(3), 204.3(2), 204.7(3), 204.87, 204.93, 204.94(4), 207(3), 207.2(3), 207.4(2), 207.7(4), 208(4), 209(5), 210.2(7), 211.5, 211.6(5), 211.91(3), 218.2(5), 218.3(10), 219(3), 247(11) — Provisions of s. 162 apply for purposes of Parts I.1, I.2, I.3, II, II.1, IV, IV.1, V, VI, VI.1, VII, VIII, IX, X, X.1, X.2, X.3, X.4, X.5, XI, XI.1, XI.2, XI.3, XII, XII.1, XII.2, XII.3, XII.4, XII.6, XIII.1, XIII.2, XIV and XVI.1 respectively; 220(3.1) — Waiver or cancellation of penalty; 227(10.01), (10.1) — Provisions of s. 162 apply to withholding taxes under Parts XII.5 and XIII; 238(1), (3) — Offences; 239(3) — Penalty assessment cannot be issued after charge laid if person convicted.

Definitions [s. 162]: "amount", "business number" — 248(1); "controlled foreign affiliate" — 94.1(2)(h), 95(1), 248(1); "corporation" — 162(10.4)(b), 248(1), *Interpretation Act* 35(1); "fiscal period" — 249.1; "foreign affiliate" — 95(1), 162(10.3), 248(1); "individual", "Minister", "non-resident" — 248(1); "owned" — 162(10.2); "person", "prescribed", "property" — 248(1); "received" — 248(7); "registered charity", "regulation" — 248(1); "resident in Canada" — 250; "tax shelter" — 237.1(1), 248(1); "taxation year" — 249; "trust" — 104(1), 248(1), (3).

Information Circulars [s. 162]: 00-1R: Voluntary disclosures program.

163. (1) Repeated failures [to report income] — Every person who

(a) fails to report an amount required to be included in computing the person's income in a return filed under section 150 for a taxation year, and

(b) had failed to report an amount required to be so included in any return filed under section 150 for any of the three preceding taxation years

is liable to a penalty equal to 10% of the amount described in paragraph (a), except where the person is liable to a penalty under subsection (2) in respect of that amount.

Related Provisions: 163(3) — Burden of proof. See also Related Provisions at end of s. 163.

Selected Cases [subsec. 163(1)]: *Morrison v. R.*, [2003] 2 C.T.C. 2076 (TCC) (Penalty deleted when failure to report income due to accountant's error); *R. v. Pongrantz*, [1982] C.T.C. 259 (FCA) (Repeated failure to file return on time not wilful evasion); *Hawrish v. MNR*, [1976] C.T.C. 748 (FCA) (Penalties imposed after four-year limit period quashed

when no wilful tax evasion) (Note: the current version of subsec. 163(1) no longer requires that the failure have been wilful).

Information Circulars: 00-1R: Voluntary disclosures program.

(2) False statements or omissions — Every person who, knowingly, or under circumstances amounting to gross negligence, has made or has participated in, assented to or acquiesced in the making of, a false statement or omission in a return, form, certificate, statement or answer (in this section referred to as a "return") filed or made in respect of a taxation year for the purposes of this Act, is liable to a penalty of the greater of $100 and 50% of the total of

(a) the amount, if any, by which

(i) the amount, if any, by which

(A) the tax for the year that would be payable by the person under this Act

exceeds

(B) the amounts that would be deemed by subsections 120(2) and (2.2) to have been paid on account of the person's tax for the year

if the person's taxable income for the year were computed by adding to the taxable income reported by the person in the person's return for the year that portion of the person's understatement of income for the year that is reasonably attributable to the false statement or omission and if the person's tax payable for the year were computed by subtracting from the deductions from the tax otherwise payable by the person for the year such portion of any such deduction as may reasonably be attributable to the false statement or omission

exceeds

(ii) the amount, if any, by which

(A) the tax for the year that would have been payable by the person under this Act

exceeds

(B) the amounts that would be deemed by subsections 120(2) and (2.2) to have been paid on account of the person's tax for the year

had the person's tax payable for the year been assessed on the basis of the information provided in the person's return for the year,

(b) [Repealed]

(c) the total of all amounts each of which is the amount, if any, by which

(i) the amount that would be deemed by subsection 122.61(1) to be an overpayment on account of the person's liability under this Part for the year that arose during a particular month or, where that person is a cohabiting spouse or common-law partner (within the meaning assigned by section 122.6) of an individual at the end of the year and at the beginning of the particular month, of that individual's liability under this Part for the year that arose during the particular month, as the case may be, if that total were calculated by reference to the information provided

exceeds

(ii) the amount that is deemed by subsection 122.61(1) to be an overpayment on account of the liability of that person or that individual, as the case may be, under this Part for the year that arose during the particular month,

(c.1) the amount, if any, by which

(i) the total of all amounts each of which is an amount that would be deemed by section 122.5 to be paid by that person during a month specified for the year or, where that person is a qualified relation of an individual for the year (within the meaning assigned by subsection 122.5(1)), by that individual, as the case may be, if that total were calculated by reference to the information provided in the prescribed form filed for the year under section 122.5

exceeds

(ii) the total of all amounts each of which is an amount that is deemed under section 122.5 to be paid by that person or that qualified relation during a month specified for the year,

Proposed Amendment — 163(2)(c.1)

(c.1) the amount, if any, by which

(i) the total of all amounts each of which is an amount that would be deemed by section 122.5 to be paid by that person during a month specified for the year or, where that person is the qualified relation of an individual in relation to that specified month (within the meaning assigned by subsection 122.5(1)), by that individual, if that total were calculated by reference to the information provided in the person's return of income (within the meaning assigned by subsection 122.5(1)) for the year

exceeds

(ii) the total of all amounts each of which is an amount that is deemed by section 122.5 to be paid by that person or by an individual of whom the person is the qualified relation in relation to a month specified for the year (within the meaning assigned to subsection 122.5(1)),

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 158, will amend para. 163(2)(c.1) to read as above, applicable to amounts deemed to be paid during months specified for 2001 *et seq.*

Technical Notes: Subsection 163(2) imposes a penalty where a taxpayer knowingly, or in circumstances amounting to gross negligence, participates in or makes a false statement for the purposes of the Act. The penalty is determined with reference to the understatement of tax or the overstatement of amounts deemed to be paid on account of tax. Paragraph 163(2)(c.1) imposes a penalty where the false statement relates to the goods and services tax credit (GSTC).

The GSTC provisions were recently amended (S.C. 2002, chapter 9, formerly Bill C-49) to make the credit more responsive to changes in family circumstances by providing that the eligibility to the credit and the amount paid in each quarter reflect such changes that occurred before the end of the preceding quarter rather than in the preceding taxation year.

Paragraph 163(2)(c.1) is amended to reflect the new quarterly calculation of the GSTC.

(c.2) the amount, if any, by which

(i) the amount that would be deemed under subsection 122.51(2) to be paid on account of the person's tax payable under this Part for the year if the amount were calculated by reference to the information provided in the return

exceeds

(ii) the amount that is deemed under subsection 122.51(2) to be paid on account of the person's tax payable under this Part for the year,

(d) the amount, if any, by which

(i) the amount that would be deemed by subsection 127.1(1) to be paid for the year by the person if that amount were calculated by reference to the information provided in the return or form filed for the year pursuant to that subsection

exceeds

(ii) the amount that is deemed by that subsection to be paid for the year by the person,

(e) the amount, if any, by which

(i) the amount that would be deemed by subsection 127.41(3) to have been paid for the year by the person if that amount were calculated by reference to the person's claim for the year under that subsection

exceeds

(ii) the maximum amount that the person is entitled to claim for the year under subsection 127.41(3),

(f) the amount, if any, by which

(i) the amount that would be deemed by subsection 125.4(3) to have been paid for the year by the person if that amount were calculated by reference to the information provided in the return filed for the year pursuant to that subsection

exceeds

(ii) the amount that is deemed by that subsection to be paid for the year by the person, and

(g) the amount, if any, by which

(i) the amount that would be deemed by subsection 125.5(3) to have been paid for the year by the person if that amount were calculated by reference to the information provided in the return filed for the year pursuant to that subsection

exceeds

(ii) the amount that is deemed by that subsection to be paid for the year by the person.

Related Provisions: 94(3)(a)(vii) [proposed] — Application to trust deemed resident in Canada; 163(2.1) — Interpretation; 163(3) — Burden of proof; 163.2 — Penalty for acts of a third party; 163.2(15)(b) — Conduct of employee deemed to be conduct of employer; 239(1) — Offence — false statements. See also Related Provisions at end of s. 163.

History: Subsec. 163(2) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Cls. 163(2)(a)(i)(B) and (2)(a)(ii)(B) amended by 2000, c. 19, subsecs. 49(1), (2), applicable to 1999 *et seq.* The cls. formerly read:

(B) the amount that would be deemed by subsection 120(2) to have been paid on account of the person's tax for the year

. . . . .

(B) the amount that would have been deemed by subsection 120(2) to have been paid on account of the person's tax for the year

The opening words of subsec. 163(2) amended by 1998, c. 19, subsec. 189(1), applicable after June 20, 1996. The opening words of subsec. 163(2) formerly read:

(2) Every person who, knowingly, or under circumstances amounting to gross negligence in the carrying out of any duty or obligation imposed by or under this Act, has made or has participated in, assented to or acquiesced in the making of, a false statement or omission in a return, form, certificate, statement or answer (in this section referred to as a "return") filed or made in respect of a taxation year as required by or under this Act or a regulation, is liable to a penalty of the greater of $100 and 50% of the total of

Para. 163(2)(c.2) amended by 1998, c. 19, s. 45, applicable to 1997 *et seq.* Para. 163(2)(c.2) formerly read:

(c.2) the amount, if any, by which

(i) the amount that would be deemed under section 126.1 to be an overpayment on account of the person's liability under this Part for the year if the amount were calculated by reference to the information provided

exceeds

(ii) the amount that is deemed under section 126.1 to be an overpayment on account of the person's liability under this Part for the year,

Para. 163(2)(g) added by 1998, c. 19, subsec. 189(2), applicable after October 1997.

Para. 163(2)(f) added by 1996, c 21, s. 43, applicable to 1995 *et seq.*

Para. 163(2)(e) added by 1995, c. 3, s. 48, applicable to taxation years that end after February 22, 1994.

Para. 163(2)(c.2) added by 1994, c. 8, subsec. 26(1), applicable after 1992.

Para. 163(2)(b) repealed by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 17(1), applicable to 1993 *et seq.* Para. (b) formerly read:

(b) the amount, if any, by which

(i) the amount that would be deemed by subsection 122.2(1) to be paid for the year by the person or, where the person is a supporting person of an eligible child of an individual for the year (within the meaning assigned by subsection 122.2(2)) and resided with the individual at the end of the year, by that individual, as the case may be, if that amount were calculated by reference to the information provided in the return filed for the year pursuant to that subsection

exceeds

(ii) the amount that is deemed by subsection 122.2(1) to be paid for the year by the person or the individual referred to in subparagraph (i), as the case may be,

Para. 163(2)(c) was added by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 17(2), applicable to 1991 *et seq.*

Selected Cases [subsec. 163(2)]: *Savard v. R.*, [2005] 1 C.T.C. 144 (FCA) (Penalties reinstated where taxpayer aware of deceptive nature of scheme); *Villeneuve v. R.*, [2004] 4 C.T.C. 259 (FCA) (Participation in fraudulent scheme warranted imposition of penalties); *Immeubles Équation Inc. v. R.*, [2004] 4 C.T.C. 2192 (TCC) (Failure to keep adequate books and records was gross negligence); *Allchin v. R.*, [2004] 4 C.T.C. 1 (FCA) (Tax Court failed to consider possibility of dual residence. Penalty quashed); *Julian v. R.*, [2004] 3 C.T.C. 2501 (TCC) (Penalties quashed where lawyer relied on opinion of law partner without further due diligence); *Simard v. R.*, [2004] 3 C.T.C. 269 (FCA); rev'g in part [2002] 4 C.T.C. 2128 (TCC) (Penalties not to be reduced by trial judge); *Klotz v. R.*, [2004] 2 C.T.C. 2892 (TCC) (Failure to exercise due diligence not the same as gross negligence); *Boucher v. R.*, [2004] 2 C.T.C. 179 (FCA) (Penalty might be applicable even if no tax payable); *Lamarre v. R.* (2000), [2004] 1 C.T.C. 2508 (TCC) (Penalties upheld where fictional ABIL created); *Cumberland Paving & Contracting Ltd. v. R.*, [2003] 4 C.T.C. 2203 (TCC) (Penalties removed where amount paid as soon as error discovered); *MacKinnon v. R.*, [2001] 4 C.T.C. 2772 (TCC) (Evidence from criminal trial admissible in respect of civil penalties); *Foisy v. R.*, [2001] 1 C.T.C. 2606 (TCC) (Failure to declare gain did not result in loss of exemption or imposition of penalty); *Pedwell v. R.*, [2000] 3 C.T.C. 246 (FCA) (Court is bound by basis on which assessments made and cannot change that basis); *Findlay v. R.*, [2000] 3 C.T.C. 152 (FCA); rev'g [1997] 3 C.T.C. 152 (TCC) (If taxpayer not privy to gross negligence of return preparer, gross negligence cannot be attributed to taxpayer); *Hildebrandt v. R.*, [1997] 3 C.T.C. 2936 (TCC) (Failure to keep adequate records of substantial business was gross negligence); *MacDonald v. R.*, [1997] 3 C.T.C. 2195 (TCC) (Penalties applid even when CCA available to reduce net tax payable to nil; penalties relate to undeclared income, not amount of tax payable); *Skukan v. Canada*, [1997] 1 C.T.C. 2228 (TCC) (Minister must have more than hearsay evidence to impose penalties); *Wiese v. Canada*, [1995] 2 C.T.C. 2246 (TCC) (Persistent failure to comply with statutory duty to report income sufficient to justify penalty); *Hudson Bay Mining & Smelting Co. v. Canada*, [1989] 2 C.T.C. 309 (FCA); leave to appeal to SCC refused (1990), 106 N.R. 16 (note) (Company making non-refundable "gift" after sale transaction; amount paid held to be part of sale transaction); *R. v. Sharma*, [1987] 2 C.T.C. 253 (Ont SC) (Civil penalty upon tax evasion not criminal guilt under Charter); *De Graaf v. R.*, [1985] 1 C.T.C. 374 (FCTD) (Penalties imposed on sole operator of business); *Venne v. R.*, [1984] C.T.C. 223 (FCTD) (Penalties quashed when taxpayer relied completely on bookkeeper); *R. v. Columbia Enterprises Ltd.*, [1983]

C.T.C. 204 (FCA) (Penalty levied when intent and conduct of accountant attributed to taxpayer); *May v. R.*, [1982] C.T.C. 66 (FCTD) (Penalty levied for failing to report profit on income account); *R. v. Whittle*, 79 D.T.C. 5011 (BC SC) (Assessment of penalty is administrative and civil matter; writ of prohibition denied); *Cloutier v. R.*, [1978] C.T.C. 702 (FCTD) (Penalty for gross negligence upheld against taxpayer failing to include advances from controlled corporation); *Beech v. R.*, [1977] C.T.C. 361 (FCTD) (Penalty upheld against taxpayer not providing accountants with sufficient information); *Danalan Investments Ltd. v. MNR*, [1973] C.T.C. 251 (FCTD) (Penalties imposed on taxpayer not revealing relationships with associated companies); *MNR v. Weeks*, [1972] C.T.C. 60 (FCTD) (No false statement where taxpayer relied on accountant's error); *MNR v. Panko*, [1971] C.T.C. 467 (SCC) (Penalties imposed after taxpayer convicted for same offences); *Udell v. MNR*, [1969] C.T.C. 704 (Exch.) (Taxpayer not liable for penalty upon errors due to gross negligence of accountant).

Interpretation Bulletins: IT-256R: Gains from theft, defalcation or embezzlement.

Information Circulars: 73-10R3: Tax evasion; 00-1R: Voluntary disclosures program.

Application Policies: SR&ED 96-05: Penalties under subsec. 163(2).

(2.1) Interpretation — For the purposes of subsection (2), the taxable income reported by a person in the person's return for a taxation year shall be deemed not to be less than nil and the "understatement of income" for a year of a person means the total of

(a) the amount, if any, by which

(i) the total of all amounts that were not reported by the person in the person's return and that were required to be included in computing the person's income for the year

exceeds

(ii) the total of such of the amounts deductible by the person in computing the person's income for the year under the provisions of this Act as were wholly applicable to the amounts referred to in subparagraph (i) and were not deducted by the person in computing the person's income for the year reported by the person in the person's return,

(b) the amount, if any, by which

(i) the total of all amounts deducted by the person in computing the person's income for the year reported by the person in the person's return

exceeds

(ii) the total of such of the amounts referred to in subparagraph (i) as were deductible by the person in computing the person's income for the year in accordance with the provisions of this Act, and

(c) the amount, if any, by which

(i) the total of all amounts deducted by the person (otherwise than by virtue of section 111) from the person's income for the purpose of computing the person's taxable income for the year reported by the person in the person's return

exceeds

(ii) the total of all amounts deductible by the person (otherwise than by virtue of section 111) from the person's income for the purpose of computing the person's taxable income for the year in accordance with the provisions of this Act.

Related Provisions: 163(3) — Burden of proof; 163(4) — Effect of carryback of losses etc.

Selected Cases [subsec. 163(2.1)]: *Roy v. R.*, [2001] 3 C.T.C. 226 (FCA) (CCA cannot be claimed to reduce penalty).

(2.2) False statement or omission — Every person who, knowingly or under circumstances amounting to gross negligence, has made or has participated in, assented to or acquiesced in the making of, a false statement or omission in a renunciation that was to have been effective as of a particular date and that is purported to have been made under any of subsections 66(10) to (10.3), (12.6), (12.601) and (12.62), otherwise than because of the application of subsection 66(12.66), is liable to a penalty of 25% of the amount, if any, by which

(a) the amount set out in the renunciation in respect of Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses

exceeds

(b) the amount in respect of Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses, as the case may be, that the corporation was entitled under the applicable subsection to renounce as of that particular date.

Related Provisions: 163(2.21) — Penalty relating to 66(12.66); 163(3) — Burden of proof. See also Related Provisions at end of s. 163.

History: The opening words of subsec. 163(2.2) amended by 1997, c. 25, subsec. 52(1), applicable to acts and omissions that occur after April 25, 1997 except that, in connection with purported renunciations made before 1999, the expression "(12.601) and (12.62)" in subsec. (2.2) shall be read as "(12.601), (12.62) and (12.64)". The opening words formerly read:

> (2.2) Every person who, knowingly or under circumstances amounting to gross negligence, has made or has participated in, assented to or acquiesced in the making of, a false statement or omission in any renunciation that is effective as of a particular date and that is made under any of subsections 66(10) to (10.3), (12.6), (12.601), (12.62) and (12.64) is liable to a penalty of 25% of the amount, if any, by which

The opening words of subsec. 163(2.2) amended by 1994, c. 8, subsec. 26(2), applicable from May 12, 1994. They formerly read:

> (2.2) Every person who, knowingly or under circumstances amounting to gross negligence, has made or has participated in, assented to or acquiesced in the making of, a false statement or omission in any renunciation that is effective as of a particular date and that is made under any of subsections 66(10) to (10.3), (12.6), (12.62) and (12.64) is liable to a penalty of 25% of the amount, if any, by which

Information Circulars: 00-1R: Voluntary disclosures program.

(2.21) False statement or omissions with respect to look-back rule — A person is liable to the penalty determined under subsection (2.22) where the person,

(a) knowingly or under circumstances amounting to gross negligence has made or has participated in, assented to or acquiesced in the making of, a false statement or omission in a document required to be filed under subsection 66(12.73) in respect of a renunciation purported to have been made because of the application of subsection 66(12.66); or

(b) fails to file the document on or before the day that is 24 months after the day on or before which it was required to be filed.

History: Subsec. 163(2.21) added by 1997, c. 25, subsec. 52(2), applicable April 25, 1997.

(2.22) Penalty — For the purpose of subsection (2.21), the penalty to which a person is liable in respect of a document required to be filed under subsection 66(12.73) is equal to 25% of the amount, if any, by which

(a) the portion of the excess referred to in subsection 66(12.73) in respect of the document that was known or that ought to have been known by the person

exceeds

(b) where paragraph (2.21)(b) does not apply, the portion of the excess identified in the document, and

(c) in any other case, nil.

Related Provisions: 162(7) — Additional penalty. See additional Related Provisions at end of s. 163.

History: Subsec. 163(2.22) added by 1997, c. 25, subsec. 52(2), applicable April 25, 1997.

(2.3) Idem — Every person who, knowingly or under circumstances amounting to gross negligence, makes or participates in, assents to or acquiesces in the making of, a false statement or omission in a prescribed form required to be filed under subsection 66(12.691) or (12.701) is liable to a penalty of 25% of the amount, if any, by which

(a) the assistance required to be reported in respect of a person or partnership in the prescribed form

exceeds

(b) the assistance reported in the prescribed form in respect of the person or partnership.

Related Provisions: See Related Provisions at end of s. 163.

History: Subsec. 163(2.3) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 135(1).

(2.4) False statement or omission [re foreign asset reporting] — Every person or partnership who, knowingly or under circumstances amounting to gross negligence, makes or participates in, assents to or acquiesces in, the making of a false statement or omission in a return is liable to a penalty of

(a) where the return is required to be filed under section 233.1, $24,000;

(b) where the return is required to be filed under section 233.2, the greater of

(i) $24,000, and

(ii) 5% of the total of all amounts each of which is the fair market value of property transferred or loaned (determined as of the time of the transfer or loan) because of which there would, if no other transfer or loan were taken into account, be an obligation to file the return;

Proposed Amendment — 163(2.4)(b)

(b) where the return is required to be filed under section 233.2 in respect of a trust, the greater of

(i) $24,000, and

(ii) 5% of the total of all amounts each of which is the fair market value, at the time it was made, of a contribution of the person or partnership made to the trust before the end of the last taxation year of the trust in respect of which the return is required;

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 37(1), will amend para. 163(2.4)(b) to read as above, applicable to returns in respect of trust taxation years that begin after 2002, and to returns in respect of trust taxation years that begin

(a) after 2000, if the return relates to a trust that makes a valid election under para. (a) of the Application of the amendment to s. 94; and

(b) after 2001, if the return relates to a trust that makes a valid election under para. (a) or (b) of the Application of the amendment to s. 94.

Technical Notes: Subsection 163(2.4) imposes a penalty on any person or partnership that, knowingly or under circumstances amounting to gross negligence, has made or has participated in, assented to, or acquiesced in, the making of a false statement or omission in a return required to be filed under any of sections 233.1 to 233.6. The penalty under paragraph 163(2.4)(b) relates to a return required to be filed under section 233.2. The existing penalty is the greater of $24,000 and 5% of the total fair market value of the property that the person or partnership loaned or transferred to the trust that gave rise to the obligation to file.

Paragraph 163(2.4)(b) is amended as a consequence of changes made to the non-resident trust rules in section 94 and the annual reporting requirement in respect of non-resident trusts under section 233.2. Under amended section 233.2, a person is subject to the annual reporting requirement where the person makes a "contribution" to the trust.

Accordingly, amended paragraph 163(2.4)(b) provides for a penalty for a person equal the greater of $24,000 and a specified amount in respect of the return. The specified amount for a person is essentially equal to 5% of the fair market value of "contributions" made by the person. The specified amount is calculated in the same way as the specified amount under amended subsection 162(10.1) in respect of late-filed returns. Under new subsection 163(2.41), the definitions and rules in subsections 94(1), (2) and (9) generally apply. Subsection 163(2.41) is similar to amended subsection 233.2(2), described in greater detail in the commentary below.

(c) where the return is required to be filed under section 233.3 for a taxation year or fiscal period, the greater of

(i) $24,000, and

(ii) 5% of the greatest of all amounts each of which is the total of the cost amounts to the person or partnership at any time in the year or period of a specified foreign property (as defined by subsection 233.3(1)(a)) of the person or partnership in respect of which the false statement or omission is made;

(d) where the return is required to be filed under section 233.4 for a taxation year or fiscal period, the greater of

(i) $24,000, and

(ii) 5% of the greatest of all amounts each of which is the total of the cost amounts to the person or partnership at any time in the year or period of a property of the person or partnership that is a share of the capital stock or indebtedness of the foreign affiliate in respect of which the return is being filed; and

(e) where the return is required to be filed under section 233.6 for a taxation year or fiscal period, the greater of

(i) $2,500, and

(ii) 5% of the total of

(A) all amounts each of which is the fair market value of a property that is distributed to the person or partnership in the year or period by the trust and in respect of which the false statement or omission is made, and

(B) all amounts each of which is the greatest unpaid principal amount of a debt that is owing to the trust by the person or partnership in the year or period and in respect of which the false statement or omission is made.

Related Provisions: 162(10), (10.1) — Penalty for failure to file return; 163(2.41) — Application to trust contributions; 163(2.5) — Shares or debt owned by controlled foreign affiliate; 163(2.6), (2.7) — Application to partnerships; 163(2.9) — Where partnership liable to penalty; 163(2.91) — Application to non-resident trusts; 233.2(4.1) — Foreign arrangements similar to trusts; 233.5 — Due diligence defence to penalty.

History: Subsec. 163(2.4) added by 1997, c. 25 subsec. 52(3), applicable to returns required to be filed on or before a day that is after April 29, 1998.

Information Circulars: 00-1R: Voluntary disclosures program.

Proposed Addition — 163(2.41)

(2.41) Application to trust contributions — In subparagraph (2.4)(b)(ii), subsections 94(1), (2) and (9) apply, except that the references to the expression

"(other than a restricted property)" in the definition "arm's length transfer" in subsection 94(1) are to be read as references to the expression "(other than property that is not described in any of subclauses (b)(i)(A)(I) to (III) but to which paragraph 94(2)(g) applies)".

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 37(2), will add subsec. 163(2.41), applicable on the same basis as the amendment to 163(2.4)(b).

Technical Notes: See under 163(2.4)(b).

(2.5) Shares or debt owned by controlled foreign affiliate — For the purpose of paragraph (2.4)(d),

(a) shares or indebtedness owned by a controlled foreign affiliate of a person or partnership are deemed to be owned by the person or partnership; and

(b) the cost amount at any time of such shares or indebtedness to the person or partnership is deemed to be equal to 20% of the cost amount at that time to the controlled foreign affiliate of the shares or indebtedness.

Related Provisions: 163(2.6) — Application to partnerships; 163(2.91) — Application to non-resident trusts.

History: Subsec. 163(2.5) added by 1997, c. 25 subsec. 52(3), applicable to returns required to be filed on or before a day that is after April 29, 1998.

(2.6) Application to partnerships — For the purposes of paragraph (2.4)(d) and subsection (2.5), in determining whether a non-resident corporation or trust is a foreign affiliate or a controlled foreign affiliate of a partnership

Proposed Amendment — 163(2.6) opening words

(2.6) Application to partnerships — For the purposes of paragraph (2.4)(d) and subsection (2.5), in determining whether a non-resident corporation is a foreign affiliate or a controlled foreign affiliate of a partnership,

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 37(3), will amend the opening words of para. 163(2.6) to read as above, applicable on the same basis as the amendment to163(2.4)(b).

Technical Notes: See under 162(10.3).

(a) the definitions "direct equity percentage" and "equity percentage" in subsection 95(4) shall be read as if a partnership were a person; and

(b) the definitions "controlled foreign affiliate" and "foreign affiliate" in subsection 95(1) shall be read as if a partnership were a taxpayer resident in Canada.

History: Subsec. 163(2.6) added by 1997, c. 25 subsec. 52(3), applicable to returns required to be filed on or before a day that is after April 29, 1998.

(2.7) Application to partnerships — For the purpose of subsection (2.4), each act or omission of a member of a partnership in respect of an information return required to be filed by the partnership under section 233.3, 233.4 or 233.6 is deemed to be an act or omission of the partnership in respect of the return.

Related Provisions: 163(2.8) — Tiers of partnerships.

History: Subsec. 163(2.7) added by 1997, c. 25 subsec. 52(3), applicable to returns required to be filed on or before a day that is after April 29, 1998.

(2.8) Application to members of partnerships — For the purposes of this subsection and subsection (2.7), a person who is a member of a partnership that is a member of another partnership is deemed to be a member of the other partnership.

History: Subsec. 163(2.8) added by 1997, c. 25 subsec. 52(3), applicable to returns required to be filed on or before a day that is after April 29, 1998.

(2.9) Where partnership liable to penalty — Where a partnership is liable to a penalty under subsection (2.4) or section 163.2 or 237.1, sections 152, 158 to 160.1, 161, and 164 to 167 and Division J apply, with any changes that the circumstances require, in respect of the penalty as if the partnership were a corporation.

History: Subsec. 163(2.9) amended by 2000, c. 19, subsec. 49(3), in force June 29, 2000 (Royal Assent). The subsec. formerly read:

(2.9) Where a partnership is liable to a penalty under subsection (2.4), sections 152, 158 to 160.1, 161 and 164 to 167 and Division J apply, with any modifications that the circumstances require, to the penalty as if the partnership were a corporation.

Subsec. 163(2.9) added by 1997, c. 25 subsec. 52(3), applicable to returns required to be filed on or before a day that is after April 29, 1998.

(2.91) Application to non-resident trusts — For the purposes of this subsection, paragraph (2.4)(d) and subsection (2.5),

(a) a non-resident trust is deemed to be a controlled foreign affiliate of each beneficiary of which the trust is a controlled foreign affiliate for the purpose of section 233.4;

(b) the trust is deemed to be a non-resident corporation having a capital stock of a single class divided into 100 issued shares;

(c) each beneficiary under the trust is deemed to own at any time the number of the issued shares of the corporation that is equal to the proportion of 100 that

(i) the fair market value at that time of the beneficiary's beneficial interest in the trust

is of

(ii) the fair market value at that time of all beneficial interests in the trust; and

(d) the cost amount to a beneficiary at any time of a share of the corporation is deemed to be equal to the amount determined by the formula

$$\frac{A}{B}$$

where

A is the fair market value at that time of the beneficiary's beneficial interest in the trust, and

B is the number of shares deemed under paragraph (c) to be owned at that time by the beneficiary in respect of the corporation.

Proposed Repeal — 163(2.91)

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 37(4), will repeal subsec. 163(2.91), applicable on the same basis as the amendment to 163(2.4)(b).

Technical Notes: See under 162(10.3).

History: Subsec. 163(2.91) added by 1997, c. 25 subsec. 52(3), applicable to returns required to be filed on or before a day that is after April 29, 1998.

(3) Burden of proof in respect of penalties — Where, in an appeal under this Act, a penalty assessed by the Minister under this section or section 163.2 is in issue, the burden of establishing the facts justifying the assessment of the penalty is on the Minister.

Related Provisions: 15.1(5) — Small business development bond — penalties; 15.2(5) — Small business bond — penalties; 163.2(10) — Exception where valuation wrong by more than prescribed percentage.

History: Subsec. 163(3) amended by 2000, c. 19, subsec. 49(4), in force June 29, 2000 (Royal Assent). The subsec. formerly read:

> (3) Where, in any appeal under this Act, any penalty assessed by the Minister under this section is in issue, the burden of establishing the facts justifying the assessment of the penalty is on the Minister.

Selected Cases [subsec. 163(3)]: *Dick v. MNR*, [1991] 2 C.T.C. 2034 (TCC) appealed to FCTD (Aug. 30, 1991), File T-2251-91 (Since Minister failed to show fraud or misrepresentation reassessments for two taxation years statute-barred); *Levy v. MNR*, [1989] 2 C.T.C. 151 (FCTD) (Penalties reduced in proportion to reduction of taxpayer's income under net worth assessments); *R. v. Taylor*, [1984] C.T.C. 436 (FCTD) (Burden of proof in appeal from assessment and in appeal of penalty remains with taxpayer and Crown respectively); *Decore v. R.*, [1974] C.T.C. 791 (FCA) (Penalty denied when accountant of taxpayer not grossly negligent).

(4) Effect of carryback of losses etc. — In determining under subsection (2.1) the understatement of income for a taxation year of a person, the following amounts shall be deemed not to be deductible or excludable in computing the person's income for the year:

(a) any amount that may be deducted under section 41 in respect of the person's listed-personal-property loss for a subsequent taxation year;

(b) any amount that may be excluded from the person's income because of section 49 in respect of the exercise of any option in a subsequent taxation year;

(b.1) any amount that may be deducted under subsection 147.2(4) in computing the person's income for the year because of the application of subsection 147.2(6) as a result of the person's death in the subsequent taxation year; and

(c) any amount that may be deducted in computing the person's income for the year because of an election made under paragraph 164(6)(c) or (d) in a subsequent taxation year by the person's legal representative.

History: Para. 163(4)(b.1) added by 1998, c. 19, subsec. 189(3), applicable to taxpayers who die after 1992.

Subsec. 163(4) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 135(2), applicable to amounts referred to in the subsec. in respect of subsequent taxation years ending after July 13, 1990.

Related Provisions [s. 163]: 18(1)(t) — Penalty is non-deductible; 161(11) — Interest on penalty; 180.2(6), 181.7, 183(3), 183.2(2), 187(3), 187.6, 189(8), 190.21, 191.4(2), 193(8), 195(8),196(4), 202(3), 204.3(2), 204.7(3), 204.87, 204.93, 204.94(4), 207(3), 207.2(3), 207.4(2), 207.7(4), 208(4), 209(5), 210.2(7), 211.5, 211.6(5), 211.91(3), 218.2(5), 218.3(10), 219(3), 247(11) — Provisions of s. 163 apply for purposes of Parts I.1, I.2, I.3, II, II.1, IV, IV.1, V, VI, VI.1, VII, VIII, IX, X, X.1, X.2, X.3, X.4, X.5, XI, XI.1, XI.2, XI.3, XII, XII.1, XII.2, XII.3, XII.4, XII.6, XIII.1, XIII.2, XIV and XVI.1 respectively; 220(3.1) — Waiver of penalty; 227(10.01), (10.1) — Provisions of s. 163 apply to withholding taxes under Parts XII.5 and XIII; 239(3) — Penalty assessment cannot be issued after charge laid if person convicted.

Selected Cases [s. 163]: *Gagnon v. R.*, 2004 CarswellNat 2453 (TCC) (Failure to declare receipt of dividend even with no T5 was gross negligence); *Côté v. R.*, [1999] 3 C.T.C. 2373 (TCC) (Gifts valid but valuations exaggerated; penalties upheld); *Pompa v. Canada*, [1995] 1 C.T.C. 466 (FCA) (Judge cannot use facts from another proceeding where those facts not entered in evidence in case to be decided).

Definitions [s. 163]: "amount", "assessment" — 248(1); "Canadian development expense" — 66.2(5), 248(1); "Canadian exploration expense" — 66.1(6), 248(1); "Canadian oil and gas property expense" — 66.4(5), 248(1); "child" — 252(1); "cohabiting spouse or common-law partner" — 122.6; "common-law partner" — 248(1); "controlled foreign affiliate" — 94.1(2)(h), 95(1), 248(1); "corporation" — 163(2.91)(b), 248(1), *Interpretation Act* 35(1); "fiscal period" — 249.1; "individual", "Minister" — 248(1); "net capital loss", "non-capital loss" — 111(8), 248(1); "non-resident" — 248(1); "owned" — 163(2.5); "person", "prescribed", "property" — 248(1); "restricted farm loss" — 31, 248(1); "return" — 163(2); "tax payable" — 248(2); "taxable income" — 2(2), 248(1); "taxation year" — 249; "trust" — 104(1), 248(1), (3); "understatement of income" — 163(2.1).

Information Circulars [s. 163]: 73-10R3: Tax evasion.

163.1 Penalty for late or deficient instalments — Every person who fails to pay all or any part of an instalment of tax for a taxation year on or before the day on or before which the instalment is required by this Part to be paid is liable to a penalty equal to 50% of the amount, if any, by which

(a) the interest payable by the person under section 161 in respect of all instalments for the year

exceeds the greater of

(b) $1,000, and

(c) 25% of the interest that would have been payable by the person under section 161 in respect of all instalments for the year if no instalment had been made for that year.

Related Provisions: 18(1)(t) — Penalty is non-deductible; 161(2.2) — Offset interest from prepaying instalments; 161(4) — Interest — limitation — farmers and fishermen; 161(4.01) — Limitation — other individuals; 161(4.1) — Limitation — corporations; 161(7) — Effect of carryback of loss, etc.; 161(11) — Interest on penalties; 211.5(2) — Interest on instalments of Part XII.3 tax; 220(3.1) — Waiver or cancellation of interest. See also Related Provisions at end of s. 163.

Definitions [s. 163.1]: "amount" — 248(1); "instalment" — 155–157; "person" — 248(1); "taxation year" — 249.

Information Circulars: 92-2: Guidelines for the cancellation and waiver of interest and penalties; 00-1R: Voluntary disclosures program.

Misrepresentation of a Tax Matter by a Third Party

163.2 [Third party civil penalties] — (1) Definitions — The definitions in this subsection apply in this section.

"culpable conduct" means conduct, whether an act or a failure to act, that

(a) is tantamount to intentional conduct;

(b) shows an indifference as to whether this Act is complied with; or

(c) shows a wilful, reckless or wanton disregard of the law.

Related Provisions: 149.1(4.1)(c) — Definition applies for revoking charity's registration; 188.1(9) — Definition applies to charity false-statement penalty.

"entity" includes an association, a corporation, a fund, a joint venture, an organization, a partnership, a syndicate and a trust.

"excluded activity", in respect of a false statement, means the activity of

(a) promoting or selling (whether as principal or agent or directly or indirectly) an arrangement, an entity, a plan, a property or a scheme (in this definition referred to as the "arrangement") where it can reasonably be considered that

(i) subsection 66(12.68) applies to the arrangement,

(ii) the definition "tax shelter" in subsection 237.1(1) applies to a person's interest in the arrangement, or

(iii) one of the main purposes for a person's participation in the arrangement is to obtain a tax benefit; or

(b) accepting (whether as principal or agent or directly or indirectly) consideration in respect of the promotion or sale of an arrangement.

"false statement" includes a statement that is misleading because of an omission from the statement.

Related Provisions: 149.1(4.1)(c) — Definition applies for revoking charity's registration; 188.1(9) — Definition applies to charity false-statement penalty.

"gross compensation" of a particular person at any time, in respect of a false statement that could be used by or on behalf of another person, means all amounts to which the particular person, or any person not dealing at arm's length with the particular person, is entitled, either before or after that time and either absolutely or contingently, to receive or obtain in respect of the statement.

Related Provisions: 163.2(12)(c) — Exclusion of penalty assessed to another person under subsec. (5).

"gross entitlements" of a person at any time, in respect of a planning activity or a valuation activity of the person, means all amounts to which the person, or another person not dealing at arm's length with the person, is entitled, either before or after that time and either absolutely or contingently, to receive or obtain in respect of the activity.

Related Provisions: 163.2(12) — Special rules re gross entitlements.

"participate" includes

(a) to cause a subordinate to act or to omit information; and

(b) to know of, and to not make a reasonable attempt to prevent, the participation by a subordinate in an act or an omission of information.

"person" includes a partnership.

"planning activity" includes

(a) organizing or creating, or assisting in the organization or creation of, an arrangement, an entity, a plan or a scheme; and

(b) participating, directly or indirectly, in the selling of an interest in, or the promotion of, an arrangement, an entity, a plan, a property or a scheme.

"subordinate", in respect of a particular person, includes any other person over whose activities the particular person has direction, supervision or control whether or not the other person is an employee of the particular person or of another person, except that, if the particular person is a member of a partnership, the other person is not a subordinate of the particular person solely because the particular person is a member of the partnership.

"tax benefit" means a reduction, avoidance or deferral of tax or other amount payable under this Act or an increase in a refund of tax or other amount under this Act.

"valuation activity" of a person means anything done by the person in determining the value of a property or a service.

(2) Penalty for misrepresentations in tax planning arrangements — Every person who makes or furnishes, participates in the making of or causes another person to make or furnish a statement that the person knows, or would reasonably be expected to know but for circumstances amounting to culpable conduct, is a false statement that could be used by another person (in subsections (6) and (15) referred to as the "other person") for a purpose of this Act is liable to a penalty in respect of the false statement.

Related Provisions: 18(1)(t) — Penalty is non-deductible; 161(11) — Interest on penalty; 163(2.9) — Where partnership is liable to penalty; 163(3) — Burden of proof of penalty is on CRA; 163.2(3) — Amount of penalty; 163.2(4) — Alternative penalty; 163.2(6) — Reliance in good faith on information provided; 163.2(8) — Multiple false statements in respect of one arrangement; 163.2(12) — Special rules re gross entitlements; 163.2(14) — Where penalty applies under both (2) and (4); 163.2(15) — Transfer of liability of certain employees to employer; 188.1(9), (10) — Alternative penalty relating to charity receipt; 220(3.1) — Waiver of penalty; 239(3) — Penalty cannot be assessed after charge laid if person convicted. See also Related Provisions at end of s. 163 re application to other Parts.

Information Circulars: 00-1R: Voluntary disclosures program; 01-1: Third-party civil penalties.

Registered Charities Newsletters: 18 (charitable donation tax shelter arrangements).

(3) Amount of penalty — The penalty to which a person is liable under subsection (2) in respect of a false statement is

(a) where the statement is made in the course of a planning activity or a valuation activity, the greater of $1,000 and the total of the person's gross entitlements, at the time at which the notice of assessment of the penalty is sent to the person, in respect of the planning activity and the valuation activity; and

(b) in any other case, $1,000.

(4) Penalty for participating in a misrepresentation — Every person who makes, or participates in, assents to or acquiesces in the making of, a statement to, or by or on behalf of, another person (in this subsection and subsections (5) and (6), paragraph 12(c) and subsection (15) referred to as the "other person") that the person knows, or would reasonably be expected to know but for circumstances amounting to culpable conduct, is a false statement that could be used by or on behalf of the other person for a purpose of this Act is liable to a penalty in respect of the false statement.

Related Provisions: 18(1)(t) — Penalty is non-deductible; 161(11) — Interest on penalty; 163(2.9) — Where partnership is liable to penalty; 163(3) — Burden of proof of penalty is on CRA; 163.2(2) — Alternative penalty; 163.2(5) — Amount of penalty; 163.2(6) — Reliance in good faith on information provided; 163.2(14) — Where penalty applies under both (2) and (4); 163.2(15) — Transfer of liability of certain employees to employer; 188.1(9), (10) — Alternative penalty relating to charity receipt; 220(3.1) — Waiver of penalty; 239(3) — Penalty cannot be assessed after charge laid if person convicted. See also Related Provisions at end of s. 163 re application to other Parts.

Information Circulars: 00-1R: Voluntary disclosures program; 01-1: Third-party civil penalties.

Registered Charities Newsletters: 18 (charitable donation tax shelter arrangements).

(5) Amount of penalty — The penalty to which a person is liable under subsection (4) in respect of a false statement is the greater of

(a) $1,000, and

(b) the lesser of

(i) the penalty to which the other person would be liable under subsection 163(2) if the other person made the statement in a return filed for the purposes of this Act and knew that the statement was false, and

(ii) the total of $100,000 and the person's gross compensation, at the time at which the notice of assessment of the penalty is sent to the person, in re-

spect of the false statement that could be used by or on behalf of the other person.

Related Provisions: 163.2(4) — Meaning of "other person".

(6) Reliance in good faith — For the purposes of subsections (2) and (4), a person (in this subsection and in subsection (7) referred to as the "advisor") who acts on behalf of the other person is not considered to have acted in circumstances amounting to culpable conduct in respect of the false statement referred to in subsection (2) or (4) solely because the advisor relied, in good faith, on information provided to the advisor by or on behalf of the other person or, because of such reliance, failed to verify, investigate or correct the information.

Related Provisions: 163.2(2), (4) — Meaning of "other person"; 163.2(7) — No application to "excluded activity" such as selling tax shelters.

(7) Non-application of subsec. (6) — Subsection (6) does not apply in respect of a statement that an advisor makes (or participates in, assents to or acquiesces in the making of) in the course of an excluded activity.

(8) False statements in respect of a particular arrangement — For the purpose of applying this section (other than subsections (4) and (5)),

(a) where a person makes or furnishes, participates in the making of or causes another person to make or furnish, two or more false statements, the false statements are deemed to be one false statement if the statements are made or furnished in the course of

(i) one or more planning activities that are in respect of a particular arrangement, entity, plan, property or scheme, or

(ii) a valuation activity that is in respect of a particular property or service; and

(b) for greater certainty, a particular arrangement, entity, plan, property or scheme includes an arrangement, an entity, a plan, a property or a scheme in respect of which

(i) an interest is required to have, or has, an identification number issued under section 237.1 that is the same number as the number that applies to each other interest in the property,

(ii) a selling instrument in respect of flow-through shares is required to be filed with the Minister because of subsection 66(12.68), or

(iii) one of the main purposes for a person's participation in the arrangement, entity, plan or scheme, or a person's acquisition of the property, is to obtain a tax benefit.

(9) Clerical services — For the purposes of this section, a person is not considered to have made or furnished, or participated in, assented to or acquiesced in the making of, a false statement solely because the person provided clerical services (other than bookkeeping services) or secretarial services with respect to the statement.

(10) Valuations — Notwithstanding subsections (6) and 163(3), a statement as to the value of a property or a service (which value is in this subsection referred to as the "stated value"), made by the person who opined on the stated value or by a person in the course of an excluded activity is deemed to be a statement that the person would reasonably be expected to know, but for circumstances amounting to culpable conduct, is a false statement if the stated value is

(a) less than the product obtained when the prescribed percentage for the property or service is multiplied by the fair market value of the property or service; or

(b) greater than the product obtained when the prescribed percentage for the property or service is multiplied by the fair market value of the property or service.

Proposed Amendment — 163.2(10)

Letter from Dept. of Finance, July 11, 2000:

Dear [xxx]

Thank you for your letter of February 4, 2000 concerning our meeting of November 4, 1999 regarding the 1999 budget proposal to introduce a civil penalty in respect of misrepresentations of tax matters by third parties. As you may know, the legislation implementing this proposal received Royal Assent on June 29, 2000 (i.e., S.C. 2000, c. 19).

Your letter replies to our request for input from the [xxx] on the appropriate prescribed percentages for the purpose of establishing a deviation range under new subsection 163.2(10) of the *Income Tax Act* (the "Act"). In your letter, you have indicated that the Institute has concluded that, if a percentage threshold is to-be set by the government, it should be the 200% test adopted by the U.S. under section 6700 of the Internal Revenue Code (the "IRC"). The Institute is also of the view that providing separate prescribed percentages for different industries would be inappropriate because it would be unworkable from a practical perspective — diversifications and business combinations defeat industry classification.

We agree with your observation that it may be impractical to have prescribed percentages that differ for various industries. However, we remain of the view that the deviation range established by prescribed percentages should be narrower than that which would exist under a range that is based upon a 200% standard.

It is our understanding that the U.S. 200% test for gross overstatements results in an automatic application of the penalty under section 6700 of the IRC, subject only to an exception for valuations for which there is a reasonable basis, which were made in good faith and then only if the Secretary of the Treasury waives the penalty under the authority of subsection 6700(b)(2) of the IRC. In contrast, section 163.2 of the Act merely provides a reverse onus. That is to say, in the case of valuations outside of the range, the onus is on the valuator to establish to the Minister of National Revenue or the judiciary that the valuation was reasonable in the circumstances, was made in good faith and was not based on a misleading assumption. The Canadian approach favours Canadian valuators.

The objective of the reverse onus rule in the Canadian provisions is to ensure that valuators and tax shelter promoters justify a substantial deviation from actual value. We would expect that a *bona fide* professional valuator would be prepared to substantiate that a particular valuation is reasonable in the circumstances (regardless of whether it is, on an ex post facto basis, proven to be inaccurate), that the valuation was made in good faith and that it is not based upon misleading assumptions. In this regard, therefore, it would be inappropriate to permit valuators to refuse to justify valuations that are proven to be inaccurate by a wide margin.

We anticipate a deviation range for all valuations that is narrower than 200%. However, consideration will be given within this parameter as to whether the deviation range for valuations used in a non-tax shelter context should differ from valuations used in a tax-shelter context and, if so, the appropriate percentages. If you wish to make further presentations to the Department on this issue, please contact Mr. Kerry Harnish at (613) 992-4385.

Finally, you should be aware that we intend to recommend that the percentages, which are "prescribed" for the purpose of applying new subsection 163.2(10) of the Act, be effective only for statements made after the day on which they are announced.

Thank you again for bringing your concerns to our attention.

Yours sincerely,

Len Farber
General Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 163.2(11) — Exception where valuation was reasonable and made in good faith.

Registered Charities Newsletters: 18 (charitable donation tax shelter arrangements).

(11) Exception — Subsection (10) does not apply to a person in respect of a statement as to the value of a property or a service if the person establishes that the stated value was reasonable in the circumstances and that the statement was made in good faith and, where applicable, was not based on one or more assumptions that the person knew or would reasonably be expected to know, but for circumstances amounting to culpable conduct, were unreasonable or misleading in the circumstances.

(12) Special rules — For the purpose of applying this section,

(a) where a person is assessed a penalty that is referred to in subsection (2) the amount of which is based on the person's gross entitlements at any time in respect of a planning activity or a valuation activity and another assessment of the penalty is made at a later time,

(i) if the person's gross entitlements in respect of the activity are greater at that later time, the assessment of the penalty made at that later time is deemed to be an assessment of a separate penalty, and

(ii) in any other case, the notice of assessment of the penalty sent before that later time is deemed not to have been sent;

(b) a person's gross entitlements at any time in respect of a planning activity or a valuation activity, in the course of which the person makes or furnishes, participates in the making of or causes another person to make or furnish a false statement, shall exclude the total of all amounts each of which is the amount of a penalty (other than a penalty the assessment of which is void because of subsection (13)) determined under paragraph (3)(a) in respect of the false statement for which notice of the assessment was sent to the person before that time; and

(c) where a person is assessed a penalty that is referred to in subsection (4), the person's gross compensation at any time in respect of the false statement that could be used by or on behalf of the other person shall exclude the total of all amounts each of which is the amount of a penalty (other than a penalty the assessment of which is void because of subsection (13)) determined under subsection (5) to the extent that the false statement was used by or on behalf of that other person and for which notice of the assessment was sent to the person before that time.

Related Provisions: 163.2(4) — Meaning of "other person".

(13) Assessment void — For the purposes of this Act, if an assessment of a penalty that is referred to in subsection (2) or (4) is vacated, the assessment is deemed to be void.

(14) Maximum penalty — A person who is liable at any time to a penalty under both subsections (2) and (4) in respect of the same false statement is liable to pay a penalty that is not more than the greater of

(a) the total amount of the penalties to which the person is liable at that time under subsection (2) in respect of the statement, and

(b) the total amount of the penalties to which the person is liable at that time under subsection (4) in respect of the statement.

(15) Employees — Where an employee (other than a specified employee or an employee engaged in an excluded activity) is employed by the other person referred to in subsections (2) and (4),

(a) subsections (2) to (5) do not apply to the employee to the extent that the false statement could be used by or on behalf of the other person for a purpose of this Act; and

(b) the conduct of the employee is deemed to be that of the other person for the purposes of applying subsection 163(2) to the other person.

Related Provisions: 163.2(2), (4) — Meaning of "other person".

History [s. 163.2]: S. 163.2 added by 2000, c. 19, s. 50, applicable to statements made after June 29, 2000 (Royal Assent).

Definitions [s. 163.2]: "advisor" — 163.2(6); "amount" — 248(1); "arm's length" — 251(1); "assessment" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "culpable conduct" — 163.2(1); "employee" — 248(1); "entity", "excluded activity" — 163.2(1); "false statement" — 163.2(1); "flow-through share" — 66(15), 248(1); "gross compensation" — 163.2(1), (12)(c); "gross entitlements" — 163.2(1); "Minister" — 248(1); "other person" — 163.2(2), (4); "participates" — 163.2(1); "person" — 163.2(1), 248(1); "planning activity" — 163.2(1); "prescribed", "property", "specified employee" — 248(1); "subordinate", "tax benefit" — 163.2(1); "trust" — 104(1), 248(1), (3); "valuation activity" — 163.2(1).

Information Circulars [s. 163.2]: 01-1: Third-party civil penalties.

I.T. Technical News [s. 163.2]: 32 (application of penalties).

Refunds

164. (1) Refunds — If the return of a taxpayer's income for a taxation year has been made within 3 years from the end of the year, the Minister

(a) may,

(i) before mailing the notice of assessment for the year, where the taxpayer is, for any purpose of the definition "refundable investment tax credit" (as defined in subsection 127.1(2)), a qualifying corporation (as defined in that subsection) and claims in its return of income for the year to have paid an amount on account of its tax payable under this Part for the year because of subsection 127.1(1) in respect of its refundable investment tax credit (as defined in subsection 127.1(2)), refund all or part of any amount claimed in the return as an overpayment for the year, not exceeding the amount by which the total determined under paragraph (f) of the definition "refundable investment tax credit" in subsection 127.1(2) in respect of the taxpayer for the year exceeds the total determined under paragraph (g) of that definition in respect of the taxpayer for the year,

(ii) before mailing the notice of assessment for the year, where the taxpayer is a qualified corporation (as defined in subsection 125.4(1)) or an eligible production corporation (as defined in subsection 125.5(1)) and an amount is deemed under subsection 125.4(3) or 125.5(3) to have been paid on account of its tax payable under this Part for the year, refund all or part of any amount claimed in the return as an overpayment for the year, not exceeding the total of those amounts so deemed to have been paid, and

(iii) on or after mailing the notice of assessment for the year, refund any overpayment for the year, to the extent that the overpayment was not refunded pursuant to subparagraph (i) or (ii); and

(b) shall, with all due dispatch, make the refund referred to in subparagraph (a)(iii) after mailing the no-

tice of assessment if application for it is made in writing by the taxpayer within the period within which the Minister would be allowed under subsection 152(4) to assess tax payable under this Part by the taxpayer for the year if that subsection were read without reference to paragraph 152(4)(a).

Related Provisions: 144(9) — Employees profit sharing plans — refunds; 160.1 — Where excess refunded; 161.4(2) — No refund of $2 or less; 164(1.5) — Late refund of overpayment; 164(1.52) — Refund of instalments on request; 164(1.8) — Request to pay refund to prescribed province; 164(2.2) — Child Tax Benefit form deemed to be a return of income; 164(3) — Interest on refunds; 220(6) — Assignment of corporation's tax refund; *Tax Rebate Discounting Act* — Assignment of personal income tax refund to tax return preparer.

History: Subpara. 164(1)(a)(i) amended by 2005, c. 19, subsec. 37(1), applicable to taxation years that end after March 22, 2004. The subpara. formerly read:

(i) before mailing the notice of assessment for the year, where the taxpayer is a qualifying corporation (as defined in subsection 127.1(2)) and claims in its return of income for the year to have paid an amount on account of its tax payable under this Part for the year because of subsection 127.1(1) in respect of its refundable investment tax credit (as defined in subsection 127.1(2)), refund all or part of any amount claimed in the return as an overpayment for the year, not exceeding the amount by which the total determined under paragraph (f) of the definition "refundable investment tax credit" in subsection 127.1(2) in respect of the taxpayer for the year exceeds the total determined under paragraph (g) of that definition in respect of the taxpayer for the year,

Paras. 164(1)(a) and (b) amended by 2001, c. 17, subsec. 156(1), applicable to 1999 *et seq.* The paras. formerly read:

(a) may,

(i) before mailing the notice of assessment for the year, where the taxpayer is a qualifying corporation (as defined in subsection 127.1(2)) and claims in its return of income under this Part for the year to have paid an amount on account of its tax payable under this Part for the year by reason of subsection 127.1(1) in respect of its refundable investment tax credit (as defined in subsection 127.1(2)), refund without application therefor, all or any part of any amount claimed in the return as an overpayment for the year, not exceeding the amount by which the total determined under paragraph (f) of the definition "refundable investment tax credit" in subsection 127.1(2) in respect of the taxpayer for the year exceeds the total determined under paragraph (g) of that definition in respect of the taxpayer for the year, and

(ii) on or after mailing the notice of assessment for the year, refund without application therefor, any overpayment for the year, to the extent that the overpayment was not refunded pursuant to subparagraph (i); and

(b) shall, with all due dispatch, make the refund referred to in subparagraph (a)(ii) after mailing the notice of assessment if application for it is made in writing by the taxpayer within the period within which the Minister would be allowed under subsection 152(4) to assess tax payable under this Part by the taxpayer for the year if that subsection were read without reference to paragraph 152(4)(a).

Subpara. 164(1)(a)(i) amended by 1998, c. 19, subsec. 190(1), applicable to taxation years that end after December 2, 1992. Subpara. 164(1)(a)(i) formerly read:

(i) before mailing the notice of assessment for the year, where the taxpayer is a qualifying corporation (within the meaning assigned by subsection 127.1(2)) and claims in the taxpayer's return of income under this Part for the year to have paid an amount on account of the taxpayer's tax under this Part for the year by reason of subsection 127.1(1) in respect of the taxpayer's refundable investment tax credit for the year (within the meaning assigned by subsection 127.1(2)), refund without application therefor, all or any part of any amount claimed in the return as an overpayment for the year, not exceeding the amount by which the total determined under subparagraph (a)(vi) of the definition "refundable investment tax credit" in subsection 127.1(2) in respect of the taxpayer for the year exceeds the total determined under subparagraph (a)(vii) of that definition in respect of the taxpayer for the year, and

Para. 164(1)(b) amended by 1998, c. 19, subsec. 190(2), applicable after April 27, 1989. Para. 164(1)(b) formerly read:

(b) shall, with all due dispatch, make the refund referred to in subparagraph (a)(ii) after mailing the notice of assessment if application therefor has been made in writing by the taxpayer within the period determined under paragraph 152(4)(b) or (c), as the case may be, within which the Minister may reassess tax payable by the taxpayer for the year.

Selected Cases [subsec. 164(1)]: *Interprovincial Steel and Pipe Corp. Ltd. v. R.*, [1986] 2 C.T.C. 473 (FCA) (Minister's power of assessment cannot be used to collect interest previously over-refunded).

Information Circulars: 01-1: Third-party civil penalties; 75-7R3: Reassessment of a return of income; 92-3: Guidelines for refunds beyond the normal three-year period.

Forms: T1-DD: Direct deposit request — individuals; T1132: Alternative address authorization.

(1.1) Repayment on objections and appeals — Subject to subsection (1.2), where a taxpayer

(a) has under section 165 served a notice of objection to an assessment and the Minister has not within 120 days after the day of service confirmed or varied the assessment or made a reassessment in respect thereof, or

(b) has appealed from an assessment to the Tax Court of Canada,

and has applied in writing to the Minister for a payment or surrender of security, the Minister shall, where no authorization has been granted under subsection 225.2(2) in respect of the amount assessed, with all due dispatch repay all amounts paid on account of that amount or surrender security accepted therefor to the extent that

(c) the lesser of

(i) the total of the amounts so paid and the value of the security, and

(ii) the amount so assessed

exceeds

(d) the total of

(i) the amount, if any, so assessed that is not in controversy, and

(ii) where the taxpayer is a large corporation (within the meaning assigned by subsection 225.1(8)), ½ of the amount so assessed that is in controversy.

Related Provisions: 164(1.6) — 164(1.1) does not apply to security under s. 116; 225.1(7) — Limitation on collection restrictions — large corporations.

History: Para. 164(1.1)(d) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 97(1), applicable after June 10, 1993, except that, where a taxpayer has served a notice of objection under the Act with respect to a notice of assessment of tax, interest or penalties under the Act mailed before 1992, the reference in subpara. (ii) to "½" shall, in application before 1994 with respect to that notice of objection, be read as "¼". Para. (d) formerly read:

(d) the amount, if any, so assessed that is not in controversy.

Selected Cases [subsec. 164(1.1)]: *Topol v. R.*, [2003] 4 C.T.C. 44 (FCTD) (Provision does not provide mechanism to undo writ of seizure).

(1.2) Collection in jeopardy — Notwithstanding subsection (1.1), where, on application by the Minister made within 45 days after the receipt by the Minister of a written request by a taxpayer for repayment of an amount or surrender of a security, a judge is satisfied that there are reasonable grounds to believe that the collection of all or any part of an amount assessed in respect of the taxpayer would be jeopardized by the repayment of the amount or the surrender of the security to the taxpayer under that subsection, the judge shall order that the repayment of the

amount or a part thereof not be made or that the security or part thereof not be surrendered or make such other order as the judge considers reasonable in the circumstances.

Related Provisions: 225.2(2) — Lifting of collection restrictions where collection of tax in jeopardy.

(1.3) Notice of application — The Minister shall give 6 clear days notice of an application under subsection (1.2) to the taxpayer in respect of whom the application is made.

Related Provisions: *Interpretation Act* 27(1) — Calculation of "clear days".

(1.31) Application of subsecs. 225.2(4), (10), (12) and (13) — Where an application under subsection (1.2) is made by the Minister, subsections 225.2(4), (10), (12) and (13) are applicable in respect of the application with such modifications as the circumstances require.

(1.4) Provincial refund — Where, at any time, a taxpayer is entitled to a refund or repayment on account of taxes imposed by a province or as a result of a deduction in computing the taxes imposed by a province and the Government of Canada has agreed to make the refund or repayment on behalf of the province, the amount thereof shall be a liability of the Minister of National Revenue to the taxpayer.

(1.5) [Late refund of overpayment] — Notwithstanding subsection (1), the Minister may, on or after mailing a notice of assessment for a taxation year, refund all or any portion of any overpayment of a taxpayer for the year

(a) if the taxpayer is an individual (other than a trust) or is a testamentary trust and the taxpayer's return of income under this Part for the year was filed on or before the day that is ten calendar years after the end of the taxation year; or

(b) where an assessment or a redetermination was made under subsection 152(4.2) or 220(3.1) or (3.4) in respect of the taxpayer.

Related Provisions: 152(4.2) — Reassessment with taxpayer's consent; 164(3.2) — Interest on refunds and repayments.

History: Para. 164(1.5)(a) amended by 2005, c. 19, subsec. 37(2), applicable in respect of returns filed after 2004. The para. formerly read:

(a) if the taxpayer is an individual (other than a trust) or a testamentary trust and the taxpayer's return of income under this Part for the year was filed later than 3 years after the end of the year; or

Para. 164(1.5)(b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 97(2), to add reference to subsection 220(3.1), applicable to 1985 *et seq.*

Subsec. 164(1.5) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 136(1), applicable to refunds for 1985 *et seq.*

Information Circulars: 75-7R3: Reassessment of a return of income; 92-3: Guidelines for refunds beyond the normal three-year period.

Proposed Addition — 164(1.51)–(1.53)

(1.51) Where subsection (1.52) applies — Subsection (1.52) applies to a taxpayer for a taxation year if, at any time after the beginning of the year

(a) the taxpayer has, in respect of the tax payable by the taxpayer under this Part (and, if the taxpayer is a corporation, Parts I.3, VI, VI.1 and XIII.1) for the year, paid under any of sections 155 to 157 one or more instalments of tax;

(b) it is reasonable to conclude that the total amount of those instalments exceeds the total amount of taxes that will be payable by the taxpayer under those Parts for the year; and

(c) the Minister is satisfied that the payment of the instalments has caused or will cause undue hardship to the taxpayer.

(1.52) Instalment refund — If this subsection applies to a taxpayer for a taxation year, the Minister may refund to the taxpayer all or any part of the excess referred to in paragraph (1.51)(b).

Related Provisions: 164(1.51) — Conditions for 164(1.52) to apply; 164(1.53) — Refunded instalment deemed not paid for penalty/interest purposes.

(1.53) Penalties, interest not affected — For the purpose of the calculation of any penalty or interest under this Act, an instalment is deemed not to have been paid to the extent that all or any part of the instalment can reasonably be considered to have been refunded under subsection (1.52).

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 159(1), will add subsecs. 164(1.51)–(1.53), in force on Royal Assent.

Technical Notes: New subsections 164(1.51) to (1.53), which apply on Royal Assent, allow the Minister of National Revenue to refund excessive instalment amounts paid on account of a taxpayer's tax liability. In order for such a refund to be made, four conditions must be met. Three of these are set out in new subsection 164(1.51). First, the taxpayer must have paid one or more instalments of tax under Part I or, where the taxpayer is a corporation, Part I.3, VI, VI.1 or XIII of the Act. Second, it must be reasonable to conclude that the total amount of the instalments the taxpayer has paid exceeds the total amount of taxes payable by the taxpayer under those Parts for the year. Third, the Minister must be satisfied that the payment of the instalments has caused or will cause the taxpayer undue hardship.

The last condition is implied in new subsection 164(1.52). The availability of an instalment refund in a particular case is a matter of the Minister's discretion. The final condition is therefore that the Minister agree to make the refund. Similarly, new subsection 164(1.52) makes it clear that the amount of any instalment refund is to be decided by the Minister: the Minister may refund all or any part of an excessive instalment.

New subsection 164(1.53) provides that, for the purposes of computing interest and penalties, a taxpayer that receives an instalment refund is treated as not having paid the instalment to that extent.

(1.6) Refund of UI premium tax credit — Notwithstanding subsection (1), where an overpayment on account of a taxpayer's liability under this Part is deemed to have arisen under subsection 126.1(6) or (7), the Minister shall, with all due dispatch, refund the amount of the overpayment without application for it.

Proposed Repeal — 164(1.6)

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 159(2), will repeal subsec. 164(1.6), applicable after March 20, 2003.

Technical Notes: Subsection 164(1.6) provides rules concerning refunds of the UI premium tax credit. This subsection is repealed consequential to the repeal of section 126.1. For additional information, see the commentary to section 126.1.

Related Provisions: 164(3) — No interest on refund.

History: Subsec. 164(1.6) added by 1994, c. 8, subsec. 27(1), applicable after 1992.

(1.7) Limitation of repayment on objections and appeals — Subsection (1.1) does not apply in respect of an amount paid or security furnished under section 116 by a non-resident person.

History: Subsec. 164(1.7) added by 1994, c. 8, subsec. 164(1.7), applicable from May 12, 1994.

(1.8) Request to pay refund to province — An individual (other than a trust) may, in the individual's return of income for a taxation year, request the Minister to pay to Her Majesty in right of a prescribed province all or any

part of a refund for the year claimed by the individual in the return and, where the individual makes such a request,

(a) the Minister may make the payment to Her Majesty in right of the province in accordance with the request; and

(b) the amount of the payment is deemed to have been refunded under this section to the individual at the time a notice of an original assessment of tax payable under this Part by the individual for the year, or a notification that no tax is payable under this Part by the individual for the year, is sent to the individual.

Related Provisions: 241(4)(m) — Disclosure of information by CRA to prescribed province.

History: Subsec. 164(1.8) added by 1998, c. 19, subsec. 190(3), applicable to requests made in returns of income for 1997 *et seq.* taxation years filed after 1997.

Subsec. 190(12) of the said c. 19 provides that for the purpose of applying subsec. 164(1.8), Ontario is deemed to be a prescribed province until the *Income Tax Regulations* are amended to prescribe a province for the purpose of subsec. 164(1.8).

Regulations: None yet, but subsec. 190(12) of the 1995-97 technical bill (1998, c. 19) deems Ontario to be a prescribed province until Regulations are provided. Ontario is to be prescribed in the Regulations (Department of Finance Technical Notes, December 1997).

(2) Application to other debts — Instead of making a refund or repayment that might otherwise be made under this section, the Minister may, where the taxpayer is, or is about to become, liable to make any payment to Her Majesty in right of Canada or in right of a province, apply the amount of the refund or repayment to that other liability and notify the taxpayer of that action.

Related Provisions: 164(2.1) — Application of GST credit; 164(2.2) — Application to refunds under s. 122.61; 164(3.2) — Interest on refunds and repayments; 164(7) — Overpayment defined; 165 — Objections to assessments; 169 — Appeals; 172 — Appeals; 203 — Set-off of Part X refund; 222(1)"action" — Ten-year limitation period applies to 164(2); 224.1 — Set-off of tax debt against other amount owing by the Crown to the taxpayer; 227 — Withholding taxes; 241(4)(d)(xiii)(B) — Disclosure of information by CRA to provincial officials for set-off purposes.

History: Subsec. 164(2) amended by 1998, c. 19, subsec. 190(4), in force on June 18, 1998. Subsec. 164(2) formerly read:

(2) Instead of making a refund or repayment that might otherwise be made under this section, the Minister may, where the taxpayer is liable or about to become liable to make any payment to Her Majesty in right of Canada, apply the amount of the refund or repayment to that other liability and notify the taxpayer of that action.

Subsec. 164(2) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 136(2), to substitute "to Her Majesty in right of Canada" for "under this Act", and "other debts" for "other taxes" in the heading.

(2.1) Application respecting refunds under s. 122.5 [GST credit] — Where an amount deemed under section 122.5 to be paid by an individual during a month specified for a taxation year is applied under subsection (2) to a liability of the individual and the individual's return of income for the year is filed on or before the individual's balance-due day for the year, the amount is deemed to have been so applied on the day on which the amount would have been refunded if the individual were not liable to make a payment to Her Majesty in right of Canada.

History: Subsec. 164(2.1) amended by 1998, c. 19, subsec. 190(5), in force on June 18, 1998. Subsec. 164(2.1) formerly read:

(2.1) Where an amount deemed under section 122.5 to be paid by an individual during a month specified for a taxation year is, in accordance with subsection (2), applied to a liability of the individual, for the purposes of that subsection, the amount shall, to the extent that it is so applied, be deemed to be paid on the latest of

(a) the last day of the month,

(b) where the month is the first month specified for a taxation year ending after 1989, the day that is the earlier of the day the amount is applied and the last day of the second month specified for the year, and

(c) where the individual's return of income for the year or the individual's prescribed form for the year referred to in subsection 122.5(3) is filed after the day on or before which the return is required to be filed, the day the amount is applied.

(2.2) Application respecting refunds re section 122.61 [Child Tax Benefit] — Subsection (2) does not apply to a refund to be made to a taxpayer and arising because of section 122.61 except to the extent that the taxpayer's liability referred to in that subsection arose from the operation of paragraph 160.1(1)(a) with respect to an amount refunded to the taxpayer in excess of the amount to which the taxpayer was entitled because of section 122.61.

(2.3) [Child Tax Benefit] Form deemed to be a return of income — For the purpose of subsection (1), where a taxpayer files the form referred to in paragraph (b) of the definition "return of income" in section 122.6 for a taxation year, the form shall be deemed to be a return of the taxpayer's income for that year and a notice of assessment thereof shall be deemed to have been mailed by the Minister.

History: Subsecs. 164(2.2), (2.3) added by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 18(1), applicable to overpayments arising after 1992.

(3) Interest on refunds and repayments — Where under this section an amount in respect of a taxation year (other than an amount or portion of it that can reasonably be considered to arise from the operation of section 122.5, 122.61 or 126.1) is refunded or repaid to a taxpayer or applied to another liability of the taxpayer, the Minister shall pay or apply interest on it at the prescribed rate for the period beginning on the day that is the latest of the days referred to in the following paragraphs and ending on the day on which the amount is refunded, repaid or applied:

Proposed Amendment — 164(3) opening words

(3) Interest on refunds and repayments — If, under this section, an amount in respect of a taxation year (other than an amount, or a portion of the amount, that can reasonably be considered to arise from the operation of section 122.5 or 122.61) is refunded or repaid to a taxpayer or applied to another liability of the taxpayer, the Minister shall pay or apply interest on it at the prescribed rate for the period that begins on the day that is the latest of the days referred to in the following paragraphs and that ends on the day on which the amount is refunded, repaid or applied:

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 159(3), will amend the opening words of subsec. 164(3) to read as above, applicable in respect of forms filed after March 20, 2003.

Technical Notes: Subsection 164(3) provides for the payment of interest on tax refunds. Two amendments are made to the subsection. First, the preamble of that subsection is being amended to adapt the wording to the new terminology now used elsewhere the Act. Second, the reference to section 126.1 is deleted consequential on the repeal of that section.

(a) if the taxpayer is an individual, the day that is 30 days after the individual's balance-due day for the year;

(b) if the taxpayer is a corporation, the day that is 120 days after the end of the year;

(c) if the taxpayer is

(i) a corporation, the day that is 30 days after the day on which its return of income for the year was filed under section 150, unless the return was filed on or before the corporation's filing-due date for the year, and

(ii) an individual, the day that is 30 days after the day on which the individual's return of income for the year was filed under section 150;

(d) in the case of a refund of an overpayment, the day on which the overpayment arose; and

(e) in the case of a repayment of an amount in controversy, the day on which an overpayment equal to the amount of the repayment would have arisen if the total of all amounts payable on account of the taxpayer's liability under this Part for the year were the amount by which

(i) the lesser of the total of all amounts paid on account of the taxpayer's liability under this Part for the year and the total of all amounts assessed by the Minister as payable under this Part by the taxpayer for the year

exceeds

(ii) the amount repaid.

Related Provisions: 12(1)(c) — Interest is taxable; 20(1)(ll) — Deduction for refund interest repaid; 129(2.1) — Interest on dividend refund; 131(3.1), 132(2.1) — Interest on capital gains refund; 133(7.01) — Interest on allowable refund; 161.1 — Offset of refund interest against arrears interest; 221.1 — Application of interest where legislation retroactive; 248(11) — Interest compounded daily.

History: Subsec. 164(3) amended by 2003, c. 15, subsec. 118(1), applicable to taxation years that end after June 2003. It formerly read:

(3) Where under this section an amount in respect of a taxation year (other than an amount or portion thereof that can reasonably be considered to arise from the operation of section 122.5, 122.61 or 126.1) is refunded or repaid to a taxpayer or applied to another liability of the taxpayer, the Minister shall pay or apply interest on it at the prescribed rate for the period beginning on the day that is the latest of

(a) where the taxpayer is an individual, the day that is 45 days after the individual's balance-due day for the year,

(b) where the taxpayer is a corporation, the day that is 120 days after the end of the year,

(c) where the taxpayer is

(i) a corporation, the day on which its return of income for the year was filed under section 150, unless the return was filed on or before the corporation's filing-due date for the year, and

(ii) an individual, the day that is 45 days after the day on which the individual's return of income for the year was filed under section 150,

(d) in the case of a refund of an overpayment, the day the overpayment arose, and

(e) in the case of a repayment of an amount in controversy, the day an overpayment equal to the amount of the repayment would have arisen if the total of all amounts payable on account of the taxpayer's liability under this Part for the year were the amount by which

(i) the lesser of the total of all amounts paid on account of the taxpayer's liability under this Part for the year and the total of all amounts assessed by the Minister as payable under this Part by the taxpayer for the year

exceeds

(ii) the amount repaid,

and ending on the day the amount is refunded, repaid or applied, unless the amount of the interest so calculated is less than $1, in which event no interest shall be paid or applied under this subsection.

Paras. 164(3)(a), (c) amended by 1996, c 21, subsecs. 44(1), (2), applicable to 1995 *et seq.* Paras. (a) and (c) formerly read:

(a) where the taxpayer is an individual, the day that is 45 days after the day on or before which the taxpayer's return of income under this Part for the year was required to be filed under section 150 or would have been required to be so filed if tax under this Part were payable by the taxpayer for the year,

. . . . .

(c) the day or, where the taxpayer is an individual, the day that is 45 days after the day, on which the taxpayer's return of income under this Part for the year was filed under section 150, unless the return was filed on or before the day on or before which it was required to be filed,

The opening words of 164(3) amended by 1994, c. 8, subsec. 27(2), applicable after 1992. They formerly read:

(3) Where under this section an amount in respect of a taxation year (other than an amount or portion thereof that can reasonably be considered to arise because of section 122.5 or 122.61) is refunded or repaid to a taxpayer or applied to another liability of the taxpayer, the Minister shall pay or apply interest thereon at the prescribed rate for the period beginning on the day that is the latest of

Paras. 164(3)(a), (c) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsecs. 97(3), (4), applicable to returns of income filed after 1992. Paras. (a) and (c) formerly read:

(a) where the taxpayer is an individual, the day on or before which the taxpayer's return of income under this Part for the year was required to be filed under section 150 or would have been required to be so filed if tax under this Part were payable by the taxpayer for the year,

. . . . .

(c) the day on which the taxpayer's return of income under this Part for the year was filed under section 150, unless the return was filed on or before the day on or before which it was required to be filed, or would have been required to be filed if tax under this Part were payable by the taxpayer for the year,

That portion of subsec. 164(3) preceding para. (a) amended to add reference to s. 122.61, by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 18(2), applicable to overpayments arising after 1992.

Regulations: 4301(b) (prescribed rate of interest).

I.T. Application Rules: 62(2) (subsec. 164(3) applies to interest payable in respect of any period after December 23, 1971).

(3.1) Idem — Where at a particular time interest has been paid to, or applied to a liability of, a taxpayer under subsection (3) or (3.2) in respect of an overpayment and it is determined at a subsequent time that the actual overpayment was less than the overpayment in respect of which interest was paid or applied,

(a) the amount by which the interest that has been paid or applied exceeds the interest, if any, computed in respect of the amount that is determined at the subsequent time to be the actual overpayment shall be deemed to be an amount (in this subsection referred to as "the amount payable") that became payable under this Part by the taxpayer at the particular time;

(b) the taxpayer shall pay to the Receiver General interest at the prescribed rate on the amount payable computed from that particular time to the day of payment; and

(c) the Minister may at any time assess the taxpayer in respect of the amount payable and, where the Minister makes such an assessment, the provisions of this Division are applicable, with such modifications as the circumstances require, in respect of the assessment as though it had been made under section 152.

Related Provisions: 20(1)(ll) — Deduction on repayment of interest; 161.1 — Offset of refund interest against arrears interest; 221.1 — Application of interest where legislation retroactive; 248(11) — Interest compounded daily.

History: That portion of subsec. 164(3.1) preceding para. (a) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 136(3), to substitute "under sub-

section (3) or (3.2)" for "pursuant to subsection (3)", applicable to refunds for 1985 *et seq.*

Regulations: 4301(a) (prescribed rate of interest).

(3.2) Interest where amounts cancelled — Notwithstanding subsection (3), if an overpayment of a taxpayer for a taxation year is determined because of an assessment made under subsection 152(4.2) or 220(3.1) or (3.4) and an amount in respect of the overpayment is refunded to, or applied to another liability of, the taxpayer under subsection (1.5) or (2), the Minister shall pay or apply interest on the overpayment at the prescribed rate for the period beginning on the day that is 30 days after the day on which the Minister received a request in a manner satisfactory to the Minister to apply those subsections and ending on the day on which the amount is refunded or applied.

Related Provisions: 161.1 — Offset of refund interest against arrears interest; 221.1 — Application of interest where legislation retroactive; 248(11) — Interest compounded daily.

History: Subsec. 164(3.2) amended by 2003, c. 15, subsec. 118(2), applicable in respect of requests received by the Minister of National Revenue after June 2003. Subsec. (3.2) formerly read:

> (3.2) Idem — Notwithstanding subsection (3), where the amount of an overpayment of a taxpayer for a taxation year is determined because of an assessment made under subsection 152(4.2) or 220(3.1) or (3.4) and an amount in respect thereof is refunded to, or applied to another liability of, the taxpayer under subsection (1.5) or (2), the Minister shall pay or apply interest thereon at the prescribed rate for the period beginning on the day the Minister received the application therefor, in a form satisfactory to the Minister, and ending on the day the amount is refunded or applied, unless the amount of the interest so calculated is less than $1, in which case no interest shall be paid or applied under this subsection.

Subsec. 164(3.2) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 97(5), applicable to 1985 *et seq.* Subsec. (3.2) formerly read:

> (3.2) Notwithstanding subsection (3), where the amount of an overpayment of a taxpayer for a taxation year is determined because of subsection 152(4.2) or 220(3.4) and an amount in respect thereof is refunded to, or applied to another liability of, the taxpayer under subsection (1.5) or (2), the Minister shall pay or apply interest thereon at the prescribed rate for the period beginning on the day that the Minister received, in a form satisfactory to the Minister, the relevant application and ending on the day the amount is refunded or applied, unless the amount of the interest so calculated is less than $1, in which case no interest shall be paid or applied under this subsection.

Subsec. 164(3.2) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 136(4), applicable to refunds for 1985 *et seq.*

Regulations: 4301(b) (prescribed rate of interest).

(4) Interest on interest repaid — Where at any particular time interest has been paid to, or applied to a liability of, a taxpayer pursuant to subsection (3) in respect of the repayment of an amount in controversy made to, or applied to a liability of, the taxpayer and it is determined at a subsequent time that the repayment or a part thereof is payable by the taxpayer under this Part, the following rules apply:

(a) the interest so paid or applied on that part of the repayment that is determined at the subsequent time to be payable by the taxpayer under this Part shall be deemed to be an amount (in this subsection referred to as the "interest excess") that became payable under this Part by the taxpayer at the particular time;

(b) the taxpayer shall pay to the Receiver General interest at the prescribed rate on the interest excess computed from the particular time to the day of payment; and

(c) the Minister may at any time assess the taxpayer in respect of the interest excess and, where the Minister makes such an assessment, the provisions of this Division and Division J are applicable, with such modifications as the circumstances require, in respect of the assessment as though it had been made under section 152.

Related Provisions: 12(1)(c) — Interest is taxable; 20(1)(ll) — Deduction for interest repaid; 161.1 — Offset of refund interest against arrears interest; 221.1 — Application of interest where legislation retroactive; 248(11) — Interest compounded daily.

Selected Cases [subsec. 164(4)]: *MNR v. Gunnar Mining Ltd.*, [1970] C.T.C. 152 (Exch.) (Taxpayer not entitled to interest on overpayment; Tax Appeal Board lacks jurisdiction to substitute judgment previously delivered).

Regulations: 4301(a) (prescribed rate of interest).

I.T. Application Rules: 62(2) (subsec. 164(4) applies to interest payable in respect of any period after December 23, 1971).

(4.1) Duty of Minister — Where the Tax Court of Canada, the Federal Court of Appeal or the Supreme Court of Canada has, on the disposition of an appeal in respect of taxes, interest or a penalty payable under this Act by a taxpayer resident in Canada,

(a) referred an assessment back to the Minister for reconsideration and reassessment, or

(b) varied or vacated an assessment,

the Minister shall with all due dispatch, whether or not an appeal from the decision of the Court has been or may be instituted,

(c) where the assessment has been referred back to the Minister, reconsider the assessment and make a reassessment in accordance with the decision of the Court, unless otherwise directed in writing by the taxpayer, and

(d) refund any overpayment resulting from the variation, vacation or reassessment,

and the Minister may repay any tax, interest or penalties or surrender any security accepted therefor by the Minister to that taxpayer or any other taxpayer who has filed another objection or instituted another appeal if, having regard to the reasons given on the disposition of the appeal, the Minister is satisfied that it would be just and equitable to do so, but for greater certainty, the Minister may, in accordance with the provisions of this Act, the *Tax Court of Canada Act*, the *Federal Courts Act* or the *Supreme Court Act* as they relate to appeals from decisions of the Tax Court of Canada or the Federal Court of Appeal, appeal from the decision of the Court notwithstanding any variation or vacation of any assessment by the Court or any reassessment made by the Minister under paragraph (c).

Related Provisions: 152(1.2)(c) — Subsec. 164(4.1) does not apply to determination under 152(1.4); 169(2)(a) — Limitation of right to appeal.

History: The closing words of subsec. 164(4.1) amended by 2002, c. 8, para. 182(1)(t) to substitute "*Federal Courts Act*" for "*Federal Court Act*", and by para. 184(c) to substitute "Federal Court of Appeal" for "Federal Court", in force July 2, 2003.

Selected Cases [subsec. 164(4.1)]: *Indalex Ltd. v. R.*, [1986] 2 C.T.C. 482 (FCA) (Appeal from certain assessments partially successful and litigation continued; Minister issues reassessments in accordance with Trial Division judgment; such reassessments do not cancel original assessments).

(5) Effect of carryback of loss, etc. — For the purpose of subsection (3), the portion of any overpayment of the tax payable by a taxpayer for a taxation year that arose as a consequence of

(a) the deduction of an amount, in respect of a repayment under subsection 68.4(7) of the *Excise Tax Act*

made in a subsequent taxation year, in computing the amount determined under subparagraph 12(1)(x.1)(ii),

(a.1) any amount deducted under section 119 in respect of the disposition of a taxable Canadian property in a subsequent taxation year,

(b) the deduction of an amount under section 41 in respect of the taxpayer's listed-personal-property loss for a subsequent taxation year,

(c) the exclusion of an amount from the taxpayer's income for the year by virtue of section 49 in respect of the exercise of an option in a subsequent taxation year,

(d) the deduction of an amount under section 118.1 in respect of a gift made in a subsequent taxation year or under section 111 in respect of a loss for a subsequent taxation year,

(e) the deduction of an amount under subsection 126(2) in respect of an unused foreign tax credit (within the meaning assigned by subsection 126(7)), or under subsection 126(2.21) or (2.22) in respect of foreign taxes paid, for a subsequent taxation year,

(f) the deduction of an amount under subsection 127(5) in respect of property acquired or an expenditure made in a subsequent taxation year,

(g) the deduction of an amount under section 125.2 in respect of an unused Part VI tax credit (within the meaning assigned by subsection 125.2(3)) for a subsequent taxation year,

(h) the deduction of an amount under section 125.3 in respect of an unused Part I.3 tax credit (within the meaning assigned by subsection 125.3(3)) for a subsequent taxation year,

(h.01) the deduction of an amount under subsection 147.2(4) in computing the taxpayer's income for the year because of the application of subsection 147.2(6) as a result of the taxpayer's death in the following taxation year,

(h.02) the deduction under any of subsections 128.1(6) to (8) of an amount from the taxpayer's proceeds of disposition of a property, because of an election made in a return of income for a subsequent taxation year,

(h.1) the deduction of an amount in computing the taxpayer's income for the year by virtue of an election for a subsequent taxation year under paragraph (6)(c) or (d) by the taxpayer's legal representative,

(h.2) the deduction of an amount under subsection 181.1(4) in respect of an unused surtax credit (within the meaning assigned by subsection 181.1(6)) of the taxpayer for a subsequent taxation year, or

(h.3) the deduction of an amount under subsection 190.1(3) in respect of an unused Part I tax credit (within the meaning assigned by subsection 190.1(5)) of the taxpayer for a subsequent taxation year,

is deemed to have arisen on the day that is 30 days after the latest of

(i) the first day immediately following that subsequent taxation year,

(j) the day on which the taxpayer's or the taxpayer's legal representative's return of income for that subsequent taxation year was filed,

(k) where an amended return of the taxpayer's income for the year or a prescribed form amending the taxpayer's return of income for the year was filed under paragraph (6)(e) or subsection 49(4) or 152(6), the day on which the amended return or prescribed form was filed, and

(l) where, as a consequence of a request in writing, the Minister reassessed the taxpayer's tax for the year to take into account the deduction or exclusion, the day on which the request was made.

Related Provisions: 161(7) — Effect of loss carryback.

History: The portion of subsec. 164(5) between paras. (h.3) and (i) amended by 2003, c. 15, subsec. 118(3), applicable to taxation years that end after June 2003. The portion formerly read:

shall be deemed to have arisen on the day that is the latest of

Paras. 164(5)(a.1), (h.02) added by 2001, c. 17, subsecs. 156(2), (4), applicable to taxation years that end after October 1, 1996.

Para. 164(5)(e) amended by the said c. 17, subsec. 156(3), applicable to taxation years that end after October 1, 1996. The para. formerly read:

(e) the deduction of an amount under subsection 126(2) in respect of an unused foreign tax credit (within the meaning assigned by subsection 126(7)) for a subsequent taxation year,

Para. 164(5)(h.01) added by 1998, c. 19, subsec. 190(6), applicable to taxpayers who die after 1992.

Para. 164(5)(a) amended by 1997, c. 26, subsec. 86(1), applicable to 1997 *et seq.* Para. (a) formerly read:

(a) the deduction of an amount under subclause 12(1)(x.1)(ii)(A)(II) in respect of a fuel tax rebate repayment made in a subsequent taxation year,

Paras. 164(5)(h.2) and (h.3) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 97(6), (h.2) applicable to 1992 *et seq.*, and (h.3) applicable to 1991 *et seq.*

Para. 164(5)(a) added by 1994, c. 7, Sch. VI (1992, c. 29), subsec. 9(1), applicable to 1992 *et seq.*

(5.1) Interest — disputed amounts — Where a portion of a repayment made under subsection (1.1) or (4.1), or an amount applied under subsection (2) in respect of a repayment, can reasonably be regarded as being in respect of a claim made by the taxpayer in an objection to or appeal from an assessment of tax for a taxation year for a deduction or exclusion described in subsection (5) in respect of a subsequent taxation year, interest shall not be paid or applied on the portion for any part of a period that is before the latest of the dates described in paragraphs (5)(i) to (l).

History: Subsec. 164(5.1) amended by 2001, c. 17, subsec. 156(5), applicable to taxation years that end after October 1, 1996. The subsec. formerly read:

(5.1) Idem — Where a repayment made under subsection (1.1) or (4.1) or an amount applied under subsection (2) in respect of a repayment, or a part thereof, may reasonably be regarded as being in respect of a claim made by a taxpayer in an objection to or appeal from an assessment of tax for a taxation year for

(a) the deduction of an amount, in respect of a repayment under subsection 68.4(7) of the *Excise Tax Act* made in a subsequent taxation year, in computing the amount determined under subparagraph 12(1)(x.1)(ii),

(b) the deduction of an amount under section 41 in respect of the taxpayer's listed-personal-property loss for a subsequent taxation year,

(c) the exclusion of an amount from the taxpayer's income for the year by virtue of section 49 in respect of the exercise of an option in a subsequent taxation year,

(d) the deduction of an amount under section 118.1 in respect of a gift made in a subsequent taxation year or under section 111 in respect of a loss for a subsequent taxation year,

(e) the deduction of an amount under subsection 126(2) in respect of an unused foreign tax credit (within the meaning assigned by subsection 126(7)) for a subsequent taxation year,

(f) the deduction of an amount under subsection 127(5) in respect of property acquired or an expenditure made in a subsequent taxation year,

(g) the deduction of an amount under section 125.2 in respect of an unused Part VI tax credit (within the meaning assigned by subsection 125.2(3)) for a subsequent taxation year,

(h) the deduction of an amount under section 125.3 in respect of an unused Part I.3 tax credit (within the meaning assigned by subsection 125.3(3)) for a subsequent taxation year,

(h.01) the deduction of an amount under subsection 147.2(4) in computing the taxpayer's income for the year because of the application of subsection 147.2(6) as a result of the taxpayer's death in the following taxation year,

(h.1) the deduction of an amount in computing the taxpayer's income for the year by virtue of an election for a subsequent taxation year under paragraph (6)(c) or (d) by the taxpayer's legal representative,

(h.2) the deduction of an amount under subsection 181.1(4) in respect of an unused surtax credit (within the meaning assigned by subsection 181.1(6)) of the taxpayer for a subsequent taxation year, or

(h.3) the deduction of an amount under subsection 190.1(3) in respect of an unused Part I tax credit (within the meaning assigned by subsection 190.1(5)) of the taxpayer for a subsequent taxation year,

interest shall not be paid or applied thereon for any part of a period that is before the latest of

(i) the first day immediately following that subsequent taxation year,

(j) the day on which the taxpayer's or the taxpayer's legal representative's return of income for that subsequent taxation year was filed,

(k) where an amended return of the taxpayer's income for the year or a prescribed form amending the taxpayer's return of income for the year was filed under paragraph (6)(e) or subsection 49(4) or 152(6), the day on which the amended return or prescribed form was filed, and

(l) where, as a consequence of a request in writing, the Minister reassessed the taxpayer's tax for the year to take into account the deduction or exclusion, the day on which the request was made.

Para. 164(5.1)(h.01) added by 1998, c. 19, subsec. 190(7), applicable to taxpayers who die after 1992.

Para. 164(5.1)(a) amended by 1997, c. 26, subsec. 86(2), applicable to 1997 *et seq.* Para. (a) formerly read:

(a) the deduction of an amount under subclause 12(1)(x.1)(ii)(A)(II) in respect of a fuel tax rebate repayment made in a subsequent taxation year,

Paras. 164(5.1)(h.2) and (h.3) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 97(7), (h.2) applicable to 1992 *et seq.*, and (h.3) applicable to 1991 *et seq.*

Para. 164(5.1)(a) added by 1994, c. 7, Sch. VI (1992, c. 29), subsec. 9(2), applicable to 1992 *et seq.*

(6) Where disposition of property by legal representative of deceased taxpayer — Where in the course of administering the estate of a deceased taxpayer, the taxpayer's legal representative has, within the first taxation year of the estate,

(a) disposed of capital property of the estate so that the total of all amounts each of which is a capital loss from the disposition of a property exceeds the total of all amounts each of which is a capital gain from the disposition of a property, or

(b) disposed of all of the depreciable property of a prescribed class of the estate so that the undepreciated capital cost to the estate of property of that class at the end of the first taxation year of the estate is, by virtue of subsection 20(16) or any regulation made under paragraph 20(1)(a), deductible in computing the income of the estate for that year,

notwithstanding any other provision of this Act, the following rules apply:

(c) such parts of one or more capital losses of the estate from the disposition of properties in the year (the total of which is not to exceed the excess referred to in paragraph (a)) as the legal representative so elects, in prescribed manner and within a prescribed time, are deemed (except for the purpose of subsection 112(3) and this paragraph) to be capital losses of the deceased taxpayer from the disposition of the properties by the taxpayer in the taxpayer's last taxation year and not to be capital losses of the estate from the disposition of those properties,

(d) such part of the amount of any deduction described in paragraph (b) (not exceeding the amount that, but for this subsection, would be the total of the non-capital loss and the farm loss of the estate for its first taxation year) as the legal representative so elects, in prescribed manner and within a prescribed time, shall be deductible in computing the income of the taxpayer for the taxpayer's taxation year in which the taxpayer died and shall not be an amount deductible in computing any loss of the estate for its first taxation year,

(e) the legal representative shall, at or before the time prescribed for filing the election referred to in paragraphs (c) and (d), file an amended return of income for the deceased taxpayer for the taxpayer's taxation year in which the taxpayer died to give effect to the rules in those paragraphs, and

(f) in computing the taxable income of the deceased taxpayer for a taxation year preceding the year in which the taxpayer died, no amount may be deducted in respect of an amount referred to in paragraph (c) or (d).

Related Provisions: 40(3.61) — Application of 40(3.4) and (3.6) to loss carried back; 91(2) — FAPI reserve for blocked currency; 152(1) — Assessment; 152(6)(h) — Reassessment to give effect to election; 161(7)(b)(iii) — Effect of carryback of loss, etc.; 220(3.2), Reg. 600(b) — Late filing or revocation of election.

History: Para. 164(6)(c) amended by 1998, c. 19, subsec. 190(8), applicable to deaths that occur after 1993. Para. 164(6)(c) formerly read:

(c) such part of one or more capital losses from the disposition of properties referred to in paragraph (a) (the total of which amounts is not to exceed the excess referred to in that paragraph) as the legal representative so elects, in prescribed manner and within a prescribed time, shall be deemed to be capital losses of the deceased taxpayer from the disposition of the properties by the taxpayer in the taxpayer's taxation year in which the taxpayer died and not to be capital losses of the estate from the disposition of those properties for its first taxation year,

Clause 191 of 1998, c. 19, provides:

191. Where

(a) the first taxation year of an estate of an individual ended after April 26, 1995 and before 1997,

(b) the estate had a capital loss from the disposition after the year and before 1997 of a share of the capital stock of a corporation that was owned by the individual or the estate on April 26, 1995 and acquired by the estate as a consequence of the individual's death, and

(c) the individual's legal representative so elects in writing filed with the Minister of National Revenue within 6 months after the month in which this Act is assented to,

the following rules apply:

(d) the disposition is deemed to have occurred in the first taxation year of the estate,

(e) an election under paragraph 164(6)(c) of the Act, as enacted by subsection 190(8), for the year is deemed to have been filed on time if it is filed with the Minister of National Revenue

within 6 months after the month in which this Act is assented to, and

(f) an amended return of income under Part I of the Act for the individual's last taxation year is deemed for the purpose of paragraph 164(6)(e) of the Act to have been filed on time if it is filed with the Minister of National Revenue within 6 months after the month in which this Act is assented to.

Regulations: 1000 (prescribed manner, prescribed time).

Interpretation Bulletins: IT-140R3: Buy-sell agreements; IT-484R2: Business investment losses.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

(6.1) Realization of deceased employees' options — Notwithstanding any other provision of this Act, if a right to acquire securities (as defined in subsection 7(7)) under an agreement in respect of which a benefit was deemed by paragraph 7(1)(e) to have been received by a taxpayer (in this subsection referred to as "the right") is exercised or disposed of by the taxpayer's legal representative within the first taxation year of the estate of the taxpayer and the representative so elects in prescribed manner and on or before a prescribed day,

(a) the amount, if any, by which

(i) the amount of the benefit deemed by paragraph 7(1)(e) to have been received by the taxpayer in respect of the right

exceeds the total of

(ii) the amount, if any, by which the value of the right immediately before the time it was exercised or disposed of exceeds the amount, if any, paid by the taxpayer to acquire the right, and

(iii) where in computing the taxpayer's taxable income for the taxation year in which the taxpayer died an amount was deducted under paragraph 110(1)(d) in respect of the benefit deemed by paragraph 7(1)(e) to have been received by the taxpayer in that year by reason of paragraph 7(1)(e) in respect of that right, ½ of the amount, if any, by which the amount determined under subparagraph (i) exceeds the amount determined under subparagraph (ii),

shall be deemed to be a loss of the taxpayer from employment for the year in which the taxpayer died;

(b) there shall be deducted in computing the adjusted cost base to the estate of the right at any time the amount of the loss that would be determined under paragraph (a) if that paragraph were read without reference to subparagraph (a)(iii); and

(c) the legal representative shall, at or before the time prescribed for filing the election under this subsection, file an amended return of income for the taxpayer for the taxation year in which the taxpayer died to give effect to paragraph (a).

Related Provisions: 53(2)(t) — Deduction from adjusted cost base of right to acquire shares or units; 220(3.2), Reg. 600(b) — Late filing or revocation of election.

History: Subpara. 164(6.1)(a)(iii) amended by 2001, c. 17, subsec. 156(6) to replace the fraction "1/4" with "1/2", applicable to deaths that occur after February 27, 2000 except that, for deaths that occurred after February 27, 2000 and before October 18, 2000, the fraction "1/2" shall be read as the fraction "1/3".

The opening words of subsec. 164(6.1) amended by 1999, c. 22, s. 66, applicable to deaths that occur after February 1998. The opening words formerly read:

(6.1) Exercise or disposition of employee stock option by legal representative of deceased employee — Where, within the first taxation year of the estate of a deceased taxpayer, a right to acquire shares under an agreement in respect of which a benefit was deemed by paragraph 7(1)(e) to have been received by the taxpayer (in this subsection referred to as "the right") is exercised or disposed of by the taxpayer's legal representative, notwithstanding any other provision of this Act, where the taxpayer's legal representative elects in prescribed manner and on or before a prescribed day,

Subsec. 164(6.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 97(8), applicable to deaths occurring after July 13, 1990.

Regulations: 1000.1 (prescribed manner and day for making election).

(7) Definition of "overpayment" — In this section, "overpayment" of a taxpayer for a taxation year means

(a) where the taxpayer is not a corporation, the total of all amounts paid on account of the taxpayer's liability under this Part for the year minus all amounts payable in respect thereof; and

(b) where the taxpayer is a corporation, the total of all amounts paid on account of the corporation's liability under this Part or Parts I.3, VI or VI.1 for the year minus all amounts payable in respect thereof.

History: Subsec. 164(7) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 97(9), applicable to 1992 *et seq.* Subsec. (7) formerly read:

(7) In this section, "overpayment" of a taxpayer for a taxation year means the total of all amounts paid on account of the taxpayer's liability under this Part for the year minus all amounts payable in respect thereof.

Related Provisions [s. 164]: 144(9) — Refunds — employees profit sharing plans. See also Related Provisions at end of s. 163.

Selected Cases [s. 164]: *Koenig v. R.*, [1997] 2 C.T.C. 3077 (TCC) (Instruction to apply overpayment from earlier year to later year meant that taxpayer had paid taxes by due date).

Definitions [s. 164]: "allowable capital loss" — 38(b), 248(1); "amount", "assessment", "balance-due day" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "clear days" — *Interpretation Act* 27(1); "corporation" — 248(1), *Interpretation Act* 35(1); "depreciable property" — 13(21), 248(1); "eligible production corporation" — 125.5(1); "estate" — 104(1), 248(1); "farm loss" — 111(8); "Federal Court of Appeal" — *Federal Courts Act* s. 3; "filing-due date" — 248(1); "Her Majesty" — *Interpretation Act* 35(1); "individual" — 248(1); "investment tax credit" — 127(9), 248(1); "legal representative" — 248(1); "listed personal property" — 54, 248(1); "Minister" — 248(1); "net capital loss", "non-capital loss" — 111(8), 248(1); "non-resident" — 248(1); "overpayment" — 164(7); "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "property" — 248(1); "province" — *Interpretation Act* 35(1); "qualified corporation" — 125.4(1); "regulation" — 248(1); "resident in Canada" — 94(3)(a)(vii), 250; "security" — *Interpretation Act* 35(1); "share" — 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "testamentary trust" — 108(1), 248(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

164.1 [Repealed]

History: S. 164.1 repealed by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 19(2), applicable to 1993 *et seq.* S. 164.1 formerly read:

164.1 (1) Prepayment of child tax credit — Notwithstanding any other provision of this Act, the Minister may, after the beginning of a taxation year and without application therefor, pay to an individual for the year in respect of each eligible child (within the meaning assigned by subsection 122.2(2)) of the individual for the year, one or more amounts, the total of which does not exceed ⅔ of,

(a) where the child was under 6 years of age at the end of the preceding taxation year and no amount was deducted under section 63 for that year in respect of any child of the individual under 6 years of age at the end of that year, the total of the

amounts of $559[15] and $200[15] referred to in paragraph 122.2(1)(a), and

(b) in any other case, $559[15],

if

(c) an amount was deemed under subsection 122.2(1) to have been paid for the preceding taxation year by

(i) the individual, or

(ii) the individual's spouse, where that spouse died after the end of that preceding year,

in respect of the child, and

(d) for that preceding year,

(i) the total determined under subparagraph 122.2(1)(b)(i) in respect of the individual, or

(ii) the individual's income, where the individual's spouse died after the end of that preceding year,

did not exceed,

(iii) where the amount or amounts to be paid because of this subsection are in respect of 3 or more eligible children of the individual, $24,090, and

(iv) in any other case, ⅔ of $24,090.[15]

(2) Nature of payment — Each amount paid under subsection (1) to or applied under subsection (4) in respect of an individual for a taxation year shall be deemed to be on account of an amount deemed by subsection 122.2(1) to have been paid by the individual for the year.

(3) Idem — Where the total of all amounts paid under subsection (1) to or applied under subsection (4) in respect of an individual for a taxation year exceeds the amount deemed by subsection 122.2(1) to have been paid by the individual for the year, the excess shall be deemed to have been refunded to the individual on account of the individual's tax under this Part for the year on the day on or before which the individual's return of income under this Part for the year is required to be filed under section 150 or would be required to be so filed if tax under this Part were payable by him for the year.

(4) Applying amount on debt — Where an individual is liable or about to become liable to make any payment under this Act, the Minister may, instead of paying to the individual an amount that might otherwise be paid in a taxation year under subsection (1), apply the amount to the liability and notify the individual of that action.

All that portion of subsec. 164.1(1) following para. (b) substituted by subsec. 19(1) of the said c. 48, applicable to the 1992 taxation year. That portion formerly read:

if, for the preceding taxation year,

(c) an amount was deemed under subsection 122.2(1) to have been paid by the individual in respect of the child, and

(d) the total determined under subparagraph 122.2(1)(b)(i) in respect of the individual did not exceed,

(i) where the amount or amounts to be paid by reason of this subsection are in respect of 3 or more eligible children of the individual, $24,090, and

(ii) in any other case, ⅔ of $24,090.[15]

Para. 164.1(1)(a) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 137, to substitute "any child of the individual under 6 years of age at the end of that year" for "the child", applicable to 1989 *et seq.*

Objections to Assessments

165. (1) Objections to assessment — A taxpayer who objects to an assessment under this Part may serve on the Minister a notice of objection, in writing, setting out the reasons for the objection and all relevant facts,

(a) where the assessment is in respect of the taxpayer for a taxation year and the taxpayer is an individual (other than a trust) or a testamentary trust, on or before the later of

(i) the day that is one year after the taxpayer's filing-due date for the year, and

(ii) the day that is 90 days after the day of mailing of the notice of assessment; and

(b) in any other case, on or before the day that is 90 days after the day of mailing of the notice of assessment.

Related Provisions: 164(4) — Interest on overpayments; 165(1.1), (1.2) — Limitations on right to object; 165(1.11) — Large corporations — detail required on notice of objection; 165(2) — Service of notice of objection; 165(2.1) — Application of 165(1)(a); 165(3) — Duties of Minister on receipt of notice of objection; 166.1, 166.2 — Applications for extension of time to object; 167(1) — Application to Tax Court of Canada for time extension; 168(4) — Objection procedures apply to charity revocations, annulments, designations and refusals to register; 173(2), 174(5) — Time during consideration not to count; 189(8) — Objection to charity penalties and to receipting suspensions; 225.1(2) — Collection restrictions; 244(10) — Proof that no notice of objection filed; *Interpretation Act* 26 — Deadline on Sunday or holiday extended to next business day.

History: Subpara. 165(1)(a)(i) amended by 1996, c. 21, s. 45, applicable to 1995 *et seq.* Subpara. (a)(i) formerly read:

(i) the day that is one year after the balance-due day of the taxpayer for the year, and

Subsec. 165(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 138(1), applicable to objections made after December 17, 1991. Subsec. 165(1) formerly read:

165. (1) A taxpayer who objects to an assessment under this Part may, within 90 days from the day of mailing of the notice of assessment, serve on the Minister a notice of objection in duplicate in prescribed form setting out the reasons for the objection and all relevant facts.

Selected Cases [subsec. 165(1)]: *Imperial Oil Ltd. v. R.*, [2003] 4 C.T.C. 177 (FCA) (Initial assessment can be appealed); *Chevron Canada Resources Ltd. v. R.*, [1999] 3 C.T.C. 140 (FCA); rev'g [1997] 2 C.T.C. 2624 (TCC) (No objection allowed following agreement on certain computational matters); *LaForme v. Canada*, [1991] 2 C.T.C. 28 (FCTD) (Tax Court had no jurisdiction to hear appeal where no notice of objection to assessment filed; Federal Court precluded by s. 29 of *Federal Court Act* from granting relief and declarations sought); *R. v. Garry Bowl Ltd.*, [1974] C.T.C. 457 (FCA) (No objection possible where nil assessment); *Vineland Quarries & Crushed Stone Ltd. v. MNR*, [1971] C.T.C. 501, 635 (FCTD) (Appeal quashed where taxpayer had not filed notice of objection).

Information Circulars: 98-1R: Collections policies.

I.T. Technical News: 32 (taxpayer's opportunities to respond to assessments).

Application Policies: SR&ED 2000-02R: Guidelines for resolving claimants' SR&ED concerns.

Forms: T400A: Notice of objection. (The prescribed form does not have to be used, however. See 165(2)).

(1.1) Limitation of right to object to assessments or determinations — Notwithstanding subsection (1), where at any time the Minister assesses tax, interest, penalties or other amounts payable under this Part by, or makes a determination in respect of, a taxpayer

(a) under subsection 67.5(2) or 152(1.8), subparagraph 152(4)(b)(i) or subsection 152(4.3) or (6), 161.1(7), 164(4.1), 220(3.4) or 245(8) or in accordance with an order of a court vacating, varying or restoring an assessment or referring the assessment back to the Minister for reconsideration and reassessment,

(b) under subsection (3) where the underlying objection relates to an assessment or a determination made

[15]Indexed by s. 117.1 after 1988 — ed.

under any of the provisions or circumstances referred to in paragraph (a), or

(c) under a provision of an Act of Parliament requiring an assessment to be made that, but for that provision, would not be made because of subsections 152(4) to (5),

the taxpayer may object to the assessment or determination within 90 days after the day of mailing of the notice of assessment or determination, but only to the extent that the reasons for the objection can reasonably be regarded

(d) where the assessment or determination was made under subsection 152(1.8), as relating to any matter or conclusion specified in paragraph 152(1.8)(a), (b) or (c), and

(e) in any other case, as relating to any matter that gave rise to the assessment or determination

and that was not conclusively determined by the court, and this subsection shall not be read or construed as limiting the right of the taxpayer to object to an assessment or a determination issued or made before that time.

Related Provisions: 169(2) — Limitation of right to appeal.

History: Para. 165(1.1)(a) amended by 2000, c. 19, s. 51, applicable after 1999. The para. formerly read:

(a) under subsection 67.5(2) or 152(1.8), subparagraph 152(4)(b)(i) or subsection 152(4.3) or (6), 164(4.1), 220(3.4) or 245(8) or in accordance with an order of a court vacating, varying or restoring the assessment or referring the assessment back to the Minister for reconsideration and reassessment,

The portion of subsec. 165(1.1) before para. (b) and the portion after para. (c) amended by 1998, c. 19, subsecs. 192(1), (2), applicable in respect of determinations made after June 18, 1998. Those portions formerly read:

(1.1) Notwithstanding subsection (1), where at any time the Minister assesses tax, interest or penalties payable under this Part by, or makes a determination in respect of, a taxpayer

(a) under subsection 67.5(2), subparagraph 152(4)(b)(i) or subsection 152(4.3) or (6) or 164(4.1), 220(3.4) or 245(8) or in accordance with an order of a court vacating, varying or restoring the assessment or referring the assessment back to the Minister for reconsideration and reassessment,

. . . . .

the taxpayer may object to the assessment or determination within 90 days after the day of mailing of the notice of assessment or determination, but only to the extent that the reasons for the objection can reasonably be regarded as relating to a matter that gave rise to the assessment or determination and that was not conclusively determined by the court, and this subsection shall not be read or construed as limiting the right of the taxpayer to object to an assessment or a determination issued or made before that time.

Para. 165(1.1)(a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 98(1), to add reference to subsection 152(4.3).

Subsec. 165(1.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 138(1), applicable to objections made after December 17, 1991.

Selected Cases [subsec. 165(1.1)]: *Ahmad v. R.*, [2004] 2 C.T.C. 2766 (TCC) (No objection or appeal where issues settled in earlier appeal); *Sherway Centre Ltd. v. R.*, [2003] 1 C.T.C. 123 (FCA) (Provision does not allow taxpayer to achieve result that would be prohibited under 152(4.3)); *Chevron Canada Resources Ltd. v. R.*, [1999] 3 C.T.C. 140 (FCA); rev'g [1997] 2 C.T.C. 2624 (TCC) (No objection allowed following agreement on certain computational matters).

(1.11) Objections by large corporations — Where a corporation that was a large corporation in a taxation year (within the meaning assigned by subsection 225.1(8)) objects to an assessment under this Part for the year, the notice of objection shall

(a) reasonably describe each issue to be decided;

(b) specify in respect of each issue, the relief sought, expressed as the amount of a change in a balance (within the meaning assigned by subsection 152(4.4)) or a balance of undeducted outlays, expenses or other amounts of the corporation; and

(c) provide facts and reasons relied on by the corporation in respect of each issue.

Related Provisions: 165(1.12) — Late compliance with 165(1.11); 165(1.13) — Corporation may only object on grounds raised; 169(2.1)(a) — Appeal only on grounds raised in objection.

History: Subsec. 165(1.11) added by 1995, c. 21, s. 70, applicable after September 26, 1994 for notices of objection filed at any time except a notice of objection to an assessment for a taxation year where an appeal under Division J of the Act of the assessment has been instituted before June 23, 1995.

Subsec. 70(2) of 1995, c. 21 provides that where a taxpayer submits, to a Chief of Appeals referred to in subsec. 165(2), in writing before March 1995 the information required by subsec. 165(1.11) to be provided in a notice of objection served by the taxpayer before 1995, the taxpayer shall be deemed to have complied with subsec. 165(1.11) with respect to that notice.

Selected Cases [subsec. 165(1.11)]: *Newmont Canada Ltd. v. R.*, [2005] 2 C.T.C. 2792 (TCC) (Issue not raised in objection could not be raised on appeal); *Potash Corp. of Saskatchewan Inc. v. R.*, [2004] 2 C.T.C. 91 (FCA); rev'g [2003] 2 C.T.C. 2640 (TCC) (Reasonable description of each issue interpreted strictly).

I.T. Technical News: 32 (notice of objection of large corporation: impact of the *Potash Corp.* case).

(1.12) Late compliance — Notwithstanding subsection (1.11), where a notice of objection served by a corporation to which that subsection applies does not include the information required by paragraph (1.11)(b) or (c) in respect of an issue to be decided that is described in the notice, the Minister may in writing request the corporation to provide the information, and those paragraphs shall be deemed to be complied with in respect of the issue if, within 60 days after the request is made, the corporation submits the information in writing to a Chief of Appeals referred to in subsection (2).

History: Subsec. 165(1.12) added by 1995, c. 21, s. 70, applicable after September 26, 1994 to notices of objection filed at any time except a notice of objection to an assessment for a taxation year where an appeal under Division J of the Act of the assessment has been instituted before June 23, 1995.

(1.13) Limitation on objections by large corporations — Notwithstanding subsections (1) and (1.1), where under subsection (3) a particular assessment was made for a taxation year pursuant to a notice of objection served by a corporation that was a large corporation in the year (within the meaning assigned by subsection 225.1(8)), except where the objection was made to an earlier assessment made under any of the provisions or circumstances referred to in paragraph (1.1)(a), the corporation may object to the particular assessment in respect of an issue

(a) only if the corporation complied with subsection (1.11) in the notice with respect to that issue; and

(b) only with respect to the relief sought in respect of that issue as specified by the corporation in the notice.

Related Provisions: 165(1.14) — Application.

History: Subsec. 165(1.13) added by 1995, c. 21, s. 70, applicable after September 26, 1994 to notices of objection filed at any time except a notice of objection to an assessment for a taxation year where an appeal under Division J of the Act of the assessment has been instituted before June 23, 1995.

(1.14) Application of subsec. (1.13) — Where a particular assessment is made under subsection (3) pursuant to an objection made by a taxpayer to an earlier assessment, subsection (1.13) does not limit the right of the taxpayer to object to the particular assessment in respect of

an issue that was part of the particular assessment and not part of the earlier assessment.

History: Subsec. 165(1.14) added by 1995, c. 21, s. 70, applicable after September 26, 1994 to notices of objection filed at any time except a notice of objection to an assessment for a taxation year where an appeal under Division J of the Act of the assessment has been instituted before June 23 1995.

(1.15) Partnership — Notwithstanding subsection (1), where the Minister makes a determination under subsection 152(1.4) in respect of a fiscal period of a partnership, an objection in respect of the determination may be made only by one member of the partnership, and that member must be either

(a) designated for that purpose in the information return made under section 229 of the *Income Tax Regulations* for the fiscal period; or

(b) otherwise expressly authorized by the partnership to so act.

History: Subsec. 165(1.15) added by 1998, c. 19, subsec. 192(3), applicable in respect of determinations made after June 18, 1998.

(1.2) Determination of fair market value [Limitation on objections] — Notwithstanding subsection[s] (1) [and (1.1)], no objection may be made [by a taxpayer] to an assessment made under subsection 118.1(11), 152(4.2), 169(3) or 220(3.1) [nor, for greater certainty, in respect of an issue for which the right of objection has been waived in writing by the taxpayer].

Related Provisions: 169(2.2) — No appeal permitted where right to object or appeal waived.

History: Subsec. 165(1.2) amended by 1995, c. 38, s. 4, in force July 12, 1996. Subsec. 165(1.2) formerly read:

(1.2) Limitation on objections — Notwithstanding subsections (1) and (1.1), no objection may be made by a taxpayer to an assessment made under subsection 152(4.2), 169(3) or 220(3.1) nor, for greater certainty, in respect of an issue for which the right of objection has been waived in writing by the taxpayer.

The words in square brackets shown in the 1995, c. 38 version were unintentionally deleted by 1995, c. 38 and should be restored.

Subsec. 165(1.2) amended by 1995, c. 21, s. 70, applicable after September 26, 1994 to waivers signed at any time. Subsec. (1.2) formerly read:

(1.2) Idem — Notwithstanding subsection (1), no objection may be made to an assessment made under subsection 152(4.2), 169(3) or 220(3.1).

Subsec. 165(1.2) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 98(2), to add reference to subsections 169(3) and 220(3.1).

Subsec. 165(1.2) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 138(1), applicable after 1990.

Transfer Pricing Memoranda: TPM-02: Repatriation of funds by non-residents — Part XIII assessments.

(2) Service — A notice of objection under this section shall be served by being addressed to the Chief of Appeals in a District Office or a Taxation Centre of the Canada Customs and Revenue Agency and delivered or mailed to that Office or Centre.

Proposed Amendment — 165(2)

Application: Bill C-26 (Second Senate Reading June 29, 2005), subpara. 138(m)(i), will amend subsec. 165(2) to replace "Canada Customs and Revenue Agency" with "Canada Revenue Agency", in force on a day to be fixed by the Governor in Council.

Related Provisions: 165(6) — Acceptance of notice of objection; 189(8)(b) — Objection by charity to penalties or suspension of receipting privileges must be addressed to Assistant Commissioner, Appeals Branch; 248(7)(a) — Mail deemed received on day mailed.

History: Subsec. 165(2) amended by replacing the words "Department of National Revenue" with "Canada Customs and Revenue Agency" by 1999, c. 17, para. 168(a), proclaimed into force November 1, 1999.

"Department of National Revenue" substituted for "Department of National Revenue, Taxation" in subsec. 165(2) by 1994, c. 13, subsec. 8(1), in force May 12, 1994.

Subsec. 165(2) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 138(1), applicable to objections made after December 17, 1991. Subsec. 165(2) formerly read:

(2) A notice of objection under this section shall be served by being sent by registered mail addressed to the Deputy Minister of National Revenue for Taxation at Ottawa.

Selected Cases [subsec. 165(2)]: *Wichartz v. Canada*, [1994] 2 C.T.C. 2344 (TCC) (Informal letter of complaint held to constitute objection).

Forms: T400A: Notice of objection. (The prescribed form does not have to be used, however).

(2.1) Application — Notwithstanding any other provision of this Act, paragraph (1)(a) shall apply only in respect of assessments, determinations and redeterminations under this Part and Part I.2.

History: Subsec. 165(2.1) amended by 2001, c. 17, s. 157 to delete the reference to Part I.1, applicable to 2001 *et seq.*

Subsec. 165(2.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 138(1), applicable to objections made after December 17, 1991.

(3) Duties of Minister — On receipt of a notice of objection under this section, the Minister shall, with all due dispatch, reconsider the assessment and vacate, confirm or vary the assessment or reassess, and shall thereupon notify the taxpayer in writing of the Minister's action.

Related Provisions: 152(9) — Minister may raise new basis for assessment during appeal process; 165(5) — Normal reassessment limitations do not apply to reassessment under 165(3); 169 — Appeals; 189(8) — Suspension of charity's receipting privileges can be confirmed or vacated, but not varied; 244(5) — Proof of service by mail; 244(14) — Date of mailing presumed to be date of notification; 248(7)(a) — Mail deemed received on day mailed.

History: Subsec. 165(3) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 98(3). Subsec. (3) formerly read:

(3) On receipt of a notice of objection under this section, the Minister shall,

(a) with all due dispatch reconsider the assessment and vacate, confirm or vary the assessment or reassess, or

(b) where the taxpayer indicates in the notice of objection that the taxpayer wishes to appeal immediately to the Tax Court of Canada and waives reconsideration of the assessment and the Minister consents, file a copy of the notice of objection with the Registrar of that Court,

and the Minister shall thereupon notify the taxpayer by registered mail of the action taken.

Selected Cases [subsec. 165(3)]: *Magliocetti v. Canada*, [1996] 3 C.T.C. 2660 (TCC) (Taxpayer established on balance of probability that Minister had not mailed notice of assessment); *Bowen v. MNR*, [1991] 2 C.T.C. 266 (FCA) (Notice of confirmation of assessment received after deadline for filing notice of appeal and obtaining extension; application for extension of time for filing dismissed); *Walkem v. MNR*, [1971] C.T.C. 513 (FCTD) (Taxpayer's appeal dismissed against assessments replaced by subsequent reassessments).

I.T. Application Rules: 62(4).

Interpretation Bulletins: IT-241: Reassessments made after the four-year limit (archived).

Information Circulars: 98-1R: Collections policies.

Forms: RC4067: Protocol between the verification . . . branch and the appeals branch of the CRA.

(3.1) [Repealed]

History: Subsec. 165(3.1) repealed by 1998, c. 19, subsec. 192(4), applicable after August 27, 1995. Subsec. 165(3.1) formerly read:

(3.1) Decision by Minister of Human Resources Development — Notwithstanding subsection (3), on receipt of a notice of

objection to a determination that includes matters relating to whether, for the purposes of subdivision a.1 of Division E,

(a) a taxpayer is an eligible individual in respect of a qualified dependant,

(b) a person is a qualified dependant, or

(c) a person is a taxpayer's cohabiting spouse,

the Minister of National Revenue shall refer those matters to the Minister of Human Resources Development who shall, with all due dispatch, decide the matters and notify the Minister of National Revenue of the decision.

Subsec. 165(3.1) amended by 1996, c. 11, para. 95(h), to substitute "Minister of Human Resources Development" for "Minister of National Health and Welfare", in force July 12, 1996. This will effectively be superseded by the repeal of this provision as per draft legislation of April 26, 1995.

Subsec. 165(3.1) added by 1994, c. 7, Sch. VII (1992, c. 48), s. 20, deemed to have come into force January 1, 1993.

(3.2) [Repealed]

History: Subsec. 165(3.2) repealed by 1998, c. 19, subsec. 192(4), applicable after August 27, 1995. Subsec. 165(3.2) formerly read:

(3.2) Reconsideration of determination — On receipt of the notification of a decision of the Minister of Human Resources Development under subsection (3.1), the Minister of National Revenue shall, with all due dispatch, reconsider the determination to which the decision relates and vacate, confirm or vary the determination or redetermine in accordance with the decision, and shall thereupon notify the taxpayer in writing of that action.

Subsec. 165(3.2) amended by 1996, c. 11, para. 95(h), to substitute "Minister of Human Resources Development" for "Minister of National Health and Welfare", in force July 12, 1996. This will effectively be superseded by the repeal of this provision as per draft legislation of April 26, 1996.

Subsecs. 165(3.2) added by 1994, c. 7, Sch. VII (1992, c. 48), s. 20, deemed to have come into force January 1, 1993.

(4) [Repealed]

History: Subsec. 165(4) repealed by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 98(3). Subsec. (4) formerly read:

(4) Effect of filing of notice of objection — Where the Minister files a copy of a notice of objection pursuant to paragraph (3)(b), the Minister shall be deemed, for the purpose of section 169, to have confirmed the assessment to which the notice relates and the taxpayer who served the notice shall be deemed to have thereupon instituted an appeal in accordance with that section.

(5) Validity of reassessment — The limitations imposed under subsections 152(4) and (4.01) do not apply to a reassessment made under subsection (3).

History: Subsec. 165(5) amended by 1998, c. 19, subsec. 192(5), applicable after April 27, 1989. Subsec. 165(5) formerly read:

(5) A reassessment made by the Minister pursuant to subsection (3) is not invalid by reason only of not having been made within the period determined under paragraph 152(4)(b) or (c), as the case may be, within which the Minister may reassess tax payable.

Interpretation Bulletins: IT-241: Reassessments made after the four-year limit (archived).

(6) Validity of notice of objection — The Minister may accept a notice of objection served under this section that was not served in the manner required by subsection (2).

History: Subsec. 165(6) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 138(2), applicable to objections made after January 16, 1992. Subsec. (6) formerly read:

(6) Waiver as to service of notice — The Minister may accept a notice of objection under this section notwithstanding that it was not served in duplicate or in the manner required by subsection (2).

(7) Notice of objection not required — Where a taxpayer has served in accordance with this section a notice of objection to an assessment and thereafter the Minister reassesses the tax, interest, penalties or other amount in respect of which the notice of objection was served or makes an additional assessment in respect thereof and sends to the taxpayer a notice of the reassessment or of the additional assessment, as the case may be, the taxpayer may, without serving a notice of objection to the reassessment or additional assessment,

(a) appeal therefrom to the Tax Court of Canada in accordance with section 169; or

(b) amend any appeal to the Tax Court of Canada that has been instituted with respect to the assessment by joining thereto an appeal in respect of the reassessment or the additional assessment in such manner and on such terms, if any, as the Tax Court of Canada directs.

Related Provisions: 169(2.1)(b) — Grounds for appeal by large corporation.

History: That portion of subsec. 165(7) preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 138(3), applicable to 1986 *et seq.* That portion formerly read:

(7) No notice of objection required in respect of reassessment or additional assessment — Where a taxpayer has served a notice of objection to an assessment in accordance with this section and thereafter the Minister reassesses the taxpayer's tax for the taxation year in respect of which the notice of objection was served or makes an additional assessment in respect thereof, and sends to the taxpayer a notice of the reassessment or of the additional assessment, as the case may be, the taxpayer may, without serving a notice of objection to the reassessment or additional assessment,

Selected Cases [subsec. 165(7)]: *Lehner v. MNR*, [1997] 2 C.T.C. 309 (FCA) (Taxpayer not permitted to amend appeals disposed of by consent judgment); *Stephens v. R.*, [1977] C.T.C. 590 (FCTD) (Appeal from reassessment rejected when appeal from assessment disposed of).

Related Provisions [s. 165]: See Related Provisions at end of s. 163.

Selected Cases [s. 165]: *Lester v. R.*, [2005] 2 C.T.C. 2161 (TCC) (Solicitor's letter constituted notice of objection); *Nova Ban-Corp. Ltd. v. Tottrup*, [1989] 2 C.T.C. 304 (FCTD) (*Canada Business Corporations Act* does not provide basis for creditor to commence proceedings in the Federal Court in name of debtor in respect of assessment of tax against debtor).

Definitions [s. 165]: "amount", "assessment" — 248(1); "balance" — 152(4.4); "Canada Customs and Revenue Agency" — *Canada Customs and Revenue Agency Act* s. 4(1); "filing-due date" — 150(1), 248(1); "individual", "Minister", "prescribed" — 248(1); "large corporation" — 225.1(8); "Parliament" — *Interpretation Act* 35(1); "taxation year" — 249; "taxpayer" — 248(1); "testamentary trust" — 248(1); "trust" — 104(1), 108(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

General

166. Irregularities — An assessment shall not be vacated or varied on appeal by reason only of any irregularity, informality, omission or error on the part of any person in the observation of any directory provision of this Act.

Related Provisions: 152(3) — Liability for tax not affected by incorrect or incomplete assessment; 152(8) — Assessment valid despite error; 158 — Assessment payable forthwith; 165(3) — Objections — Duties of Minister; 168(4) — S. 166 applies to charity revocations, annulments, designations and refusals to register. See also Related Provisions at end of s. 163.

Selected Cases [s. 166]: *Kyte v. Canada*, [1997] 2 C.T.C. 15 (FCA) (Provision covers error in certificate amount in subsec. 227.1(2)).

Definitions [s. 166]: "assessment", "person" — 248(1).

166.1 (1) Extension of time [to object] by Minister — Where no notice of objection to an assessment has been served under section 165, nor any request under subsection 245(6) made, within the time limited by those provisions for doing so, the taxpayer may apply to the Minister to extend the time for serving the notice of objection or making the request.

Related Provisions: 168(4) — Application to charity revocations, annulments, designations and refusals to register; 244(10) — Proof that no notice of objection filed.

(2) Contents of application — An application made under subsection (1) shall set out the reasons why the notice of objection or the request was not served or made, as the case may be, within the time otherwise limited by this Act for doing so.

(3) How application made — An application under subsection (1) shall be made by being addressed to the Chief of Appeals in a District Office or a Taxation Centre of the Canada Customs and Revenue Agency and delivered or mailed to that Office or Centre, accompanied by a copy of the notice of objection or a copy of the request, as the case may be.

Proposed Amendment — 166.1(3)

Application: Bill C-26 (Second Senate Reading June 29, 2005), subpara. 138(m)(ii), will amend subsec. 166.1(3) to replace "Canada Customs and Revenue Agency" with "Canada Revenue Agency", in force on a day to be fixed by the Governor in Council.

Related Provisions: 248(7)(a) — Mail deemed received on day mailed.

History: Subsec. 166.1(3) amended by replacing the words "Department of National Revenue" with "Canada Customs and Revenue Agency" by 1999, c. 17, para. 168(b), proclaimed into force November 1, 1999.

"Department of National Revenue" substituted for "Department of National Revenue, Taxation" in subsec. 166.1(3) by 1994, c. 13, subsec. 8(1), applicable May 12, 1994.

(4) Idem — The Minister may accept an application under this section that was not made in the manner required by subsection (3).

(5) Duties of Minister — On receipt of an application made under subsection (1), the Minister shall, with all due dispatch, consider the application and grant or refuse it, and shall thereupon notify the taxpayer in writing of the Minister's decision.

Related Provisions: 166.2(1) — Extension of time by Tax Court; 244(14) — Date of mailing presumed to be date of notification; .

History: Subsec. 166.1(5) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 99. Subsec. (5) formerly read:

> (5) On receipt of an application made under subsection (1), the Minister shall, with all due dispatch, consider the application and grant or refuse it, and shall thereupon notify the taxpayer of the decision by registered mail.

(6) Date of objection or request if application granted — Where an application made under subsection (1) is granted, the notice of objection or the request, as the case may be, shall be deemed to have been served or made on the day the decision of the Minister is mailed to the taxpayer.

(7) When order to be made — No application shall be granted under this section unless

(a) the application is made within one year after the expiration of the time otherwise limited by this Act for serving a notice of objection or making a request, as the case may be; and

(b) the taxpayer demonstrates that

(i) within the time otherwise limited by this Act for serving such a notice or making such a request, as the case may be, the taxpayer

(A) was unable to act or to instruct another to act in the taxpayer's name, or

(B) had a *bona fide* intention to object to the assessment or make the request,

(ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application, and

(iii) the application was made as soon as circumstances permitted.

Related Provisions: 248(7)(a) — Mail deemed received on day mailed.

History: S. 166.1 added by 1994, c. 7, Sch. II (1991, c. 49), s. 139, applicable to applications filed after January 16, 1992.

Selected Cases [s. 166.1]: *Haight v. R.*, [2000] 4 C.T.C. 2546 (TCC) ("Shall" is normally mandatory unless interpretation would be utterly inconsistent with context and would render provisions irrational or meaningless).

Definitions [s. 166.1]: "assessment", "Minister", "taxpayer" — 248(1); "Canada Customs and Revenue Agency" — *Canada Customs and Revenue Agency Act* s. 4(1); "writing" — *Interpretation Act* 35(1).

166.2 (1) Extension of time [to object] by Tax Court — A taxpayer who has made an application under subsection 166.1[(1)] may apply to the Tax Court of Canada to have the application granted after either

(a) the Minister has refused the application, or

(b) 90 days have elapsed after service of the application under subsection 166.1(1) and the Minister has not notified the taxpayer of the Minister's decision,

but no application under this section may be made after the expiration of 90 days after the day on which notification of the decision was mailed to the taxpayer.

Related Provisions: 168(4) — Application to charity revocations, annulments, designations and refusals to register.

(2) How application made — An application under subsection (1) shall be made by filing in the Registry of the Tax Court of Canada, in accordance with the provisions of the *Tax Court of Canada Act*, three copies of the documents referred to in subsection 166.1(3) and three copies of the notification, if any, referred to in subsection 166.1(5).

Related Provisions: 248(7)(a) — Mail deemed received on day mailed.

History: Subsec. 166.2(2) amended by 2000, c. 30, s. 171, in force October 20, 2000 (Royal Assent). The subsec. formerly read:

> (2) How application made — An application under subsection (1) shall be made by filing in the Registry of the Tax Court of Canada, or by sending by registered mail addressed to an office of the Registry, 3 copies of the documents referred to in subsection 166.1(3) and 3 copies of the notification, if any, referred to in subsection 166.1(5).

Selected Cases [subsec. 166.2(2)]: *Bordieri v. Canada*, [1995] 2 C.T.C. 15 (FCA) (Courier service does not comply with statutory requirement).

(3) Copy to Commissioner — The Tax Court of Canada shall send a copy of each application made under this section to the office of the Commissioner of Customs and Revenue.

Proposed Amendment — 166.2(3)

Application: Bill C-26 (Second Senate Reading June 29, 2005), subpara. 140(e)(i), will amend subsec. 166.2(3) to replace "Commissioner of Customs and Revenue" with "Commissioner of Revenue", in force on a day to be fixed by the Governor in Council.

History: Subsec. 166.2(3) amended by replacing the words "Deputy Minister of National Revenue" with "Commissioner of Customs and Revenue" by 1999, c. 17, para. 167(a), proclaimed into force November 1, 1999.

"Deputy Minister of National Revenue" substituted for "Deputy Minister of National Revenue for Taxation" in subsec. 166.2(3) by 1994, c. 13, subsec. 7(1), applicable May 12, 1994.

(4) Powers of Court — The Tax Court of Canada may grant or dismiss an application made under subsection (1) and, in granting an application, may impose such terms as

it deems just or order that the notice of objection be deemed to have been served on the date of its order.

(5) When application to be granted — No application shall be granted under this section unless

(a) the application was made under subsection 166.1(1) within one year after the expiration of the time otherwise limited by this Act for serving a notice of objection or making a request, as the case may be; and

(b) the taxpayer demonstrates that

(i) within the time otherwise limited by this Act for serving such a notice or making such a request, as the case may be, the taxpayer

(A) was unable to act or to instruct another to act in the taxpayer's name, or

(B) had a *bona fide* intention to object to the assessment or make the request,

(ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application, and

(iii) the application was made under subsection 166.1(1) as soon as circumstances permitted.

Related Provisions: 169 — Appeals.

History: S. 166.2 added by 1994, c. 7, Sch. II (1991, c. 49), s. 139, applicable to applications filed after January 16, 1992.

Selected Cases [s. 166.2]: *Construction Dinamo Inc. v. R.*, [2000] 2 C.T.C. 2865 (TCC) (Objection mailed on last day was properly received).

Definitions [s. 166.2]: "Commissioner of Customs and Revenue" — *Canada Customs and Revenue Agency Act* s. 25; "Minister", "taxpayer" — 248(1).

167. (1) Extension of time to appeal — Where an appeal to the Tax Court of Canada has not been instituted by a taxpayer under section 169 within the time limited by that section for doing so, the taxpayer may make an application to the Court for an order extending the time within which the appeal may be instituted and the Court may make an order extending the time for appealing and may impose such terms as it deems just.

Selected Cases [subsec. 167(1)]: *Kershaw v. Canada*, [1992] 1 C.T.C. 301 (FCA) (Application to extend time to file notice of objection granted).

(2) Contents of application — An application made under subsection (1) shall set out the reasons why the appeal was not instituted within the time limited by section 169 for doing so.

History: Subsecs. 167(1), (2) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 139, applicable to applications filed after January 16, 1992. Those subsecs. formerly read:

167. (1) Application to Tax Court of Canada for time extension — Where no objection to an assessment under section 165, appeal to the Tax Court of Canada under section 169 or request under subsection 245(6) has been made or instituted within the time limited by that provision for doing so, an application may be made to the Tax Court of Canada for an order extending the time within which a notice of objection may be served, an appeal instituted or a request made, and the Court may, if in its opinion the circumstances of the case are such that it would be just and equitable to do so, make an order extending the time of objecting, appealing or making a request and may impose such terms as it deems just.

(2) Idem — The application referred to in subsection (1) shall set out the reasons why it was not possible to serve the notice of objection, institute the appeal to the Court or make the request under subsection 245(6), as the case may be, within the time otherwise limited by this Act for so doing.

(3) How application made — An application made under subsection (1) shall be made by filing in the Registry of the Tax Court of Canada, in accordance with the provisions of the *Tax Court of Canada Act*, three copies of the application accompanied by three copies of the notice of appeal.

Related Provisions: 165(2) — Service.

History: Subsec. 167(3) amended by 2000, c. 30, s. 172, in force October 20, 2000 (Royal Assent). The subsec. formerly read:

(3) How application made — An application under subsection (1) shall be made by filing in the Registry of the Tax Court of Canada, or by sending by registered mail addressed to an office of the Registry, 3 copies of the application accompanied by 3 copies of the notice of appeal.

Subsec. 167(3) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 139, applicable to applications filed after January 16, 1992. Subsec. 167(3) formerly read:

(3) An application under subsection (1) shall be made by filing with the Registrar of the Tax Court of Canada or by sending by registered mail addressed to the Registrar of the Tax Court of Canada at Ottawa three copies of the application accompanied by three copies of a notice of objection or notice of appeal, as the case may be.

(4) Copy to Deputy Attorney General — The Tax Court of Canada shall send a copy of each application made under this section to the office of the Deputy Attorney General of Canada.

History: Subsec. 167(4) added by 1994, c. 7, Sch. II (1991, c. 49), s. 139, applicable to applications filed after January 16, 1992.

(5) When order to be made — No order shall be made under this section unless

(a) the application is made within one year after the expiration of the time limited by section 169 for appealing; and

(b) the taxpayer demonstrates that

(i) within the time otherwise limited by section 169 for appealing the taxpayer

(A) was unable to act or to instruct another to act in the taxpayer's name, or

(B) had a *bona fide* intention to appeal,

(ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application,

(iii) the application was made as soon as circumstances permitted, and

(iv) there are reasonable grounds for the appeal.

Related Provisions: 169 — Appeal.

History: Subsec. 167(5) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 139, applicable to applications filed after January 16, 1992. Subsec. 167(5) formerly read:

(5) No order shall be made under subsection (1)

(a) unless the application to extend the time for objecting or appealing, or making the request, as the case may be, is made within one year after the expiration of the time otherwise limited by this Act for objecting to or appealing from the assessment in respect of which the application is made or for making the request under subsection 245(6), as the case may be;

(b) if the Tax Court of Canada has previously made an order extending the time for objecting to or appealing from the assessment or making the request, as the case may be; and

(c) unless the Tax Court of Canada is satisfied that

(i) but for the circumstances mentioned in subsection (1), an objection, appeal or request would have been made or instituted within the time otherwise limited by this Act for so doing,

(ii) the application was brought as soon as circumstances permitted it to be brought, and

(iii) there are reasonable grounds for objecting to or appealing from the assessment or making the request.

Selected Cases [subsec. 167(5)]: *Meer v. R.*, [2001] 3 C.T.C. 2537 (TCC) (Statutory periods for appeal may be relevant factor in determination of reasonable diligence); *Kershaw v. R.*, [1992] 1 C.T.C. 301 (FCA) (Application to extend time to file notice of objection granted); *Minuteman Press of Canada Co. Ltd. v. MNR*, [1988] 1 C.T.C. 440 (FCA) (Taxpayer's notice of appeal not application for extension of delays; appeal dismissed when filed after prescribed delay); *R. v. Pennington*, [1987] 1 C.T.C. 235 (FCA) (Circumstances not justifying application for extension of time to file late notice of objection); *R. v. Tohms*, [1985] 2 C.T.C. 130 (FCA) (Extension allowed due to physical condition of taxpayer); *MacIsaac v. R.*, [1983] C.T.C. 213 (FCTD) (Revision of assessments cannot be obtained after time for filing notice of objection expired); *Tic Toc Tours Ltd. v. MNR*, [1982] C.T.C. 264 (FCA) (Extension permitted where accountant failed to file notice of objection in time).

Definitions [s. 167]: "taxpayer" — 248(1).

Revocation of Registration of Certain Organizations and Associations

168. (1) Notice of intention to revoke registration — Where a registered charity or a registered Canadian amateur athletic association

(a) applies to the Minister in writing for revocation of its registration,

(b) ceases to comply with the requirements of this Act for its registration as such,

(c) fails to file an information return as and when required under this Act or a regulation,

(d) issues a receipt for a gift or donation otherwise than in accordance with this Act and the regulations or that contains false information,

(e) fails to comply with or contravenes any of sections 230 to 231.5, or

(f) in the case of a registered Canadian amateur athletic association, accepts a gift or donation the granting of which was expressly or impliedly conditional on the association making a gift or donation to another person, club, society or association,

the Minister may, by registered mail, give notice to the registered charity or registered Canadian amateur athletic association that the Minister proposes to revoke its registration.

Related Provisions: 149.1(2) — Revocation of registration of charity; 149.1(3) — Revocation of registration of public foundation; 149.1(4.1) — Revocation for abuse of disbursement quota; 149.1(6.4), (6.5) — Application of s. 168 to registered national arts service organizations; 149.1(23), (24) — Annulment of charity registration as alternative to revocation; 168(3) — Deemed revocation when certificate issued claiming charity supports terrorism; 168(4) — Objection to proposed revocation; 172(3)(a) — Appeal from revocation; 180(1) — Appeals to Federal Court of Appeal; 188(1) — Deemed year-end on notice of revocation; 188(1.1) — Revocation tax; 188.1(6)–(10) — Alternative penalties for failing to file information return and for incorrect receipts; 188.2(1), (2) — Suspension of charity's receipting privileges; 230(2) — Charity must keep records to allow Minister to determine if there are grounds for revocation of registration; 241(3.2)(g) — Revocation letter may be disclosed to the public; 244(5) — Proof of service by mail; 248(1)"registered Canadian amateur athletic association", "registered charity" — Application for registration; 248(7)(a) — Mail deemed received on day mailed.

Selected Cases [subsec. 168(1)]: *Canadian Committee for the Tel Aviv Foundation v. R.*, [2002] 2 C.T.C. 93 (FCA) (Charitable status revoked for failure to comply with proper standards of conduct); *Maccabi Canada v. MNR*, [1998] 4 C.T.C. 21 (FCA) (No demographic element to be read into definition of "registered Canadian amateur athletic association"); *Renaissance International v. MNR*, [1982] C.T.C. 393 (FCA) (Failing to file notice of intention to revoke registration violated rules of natural justice).

Interpretation Bulletins: IT-496R: Non-profit organizations.

Forms: RC4108: Registered charities and the *Income Tax Act* [guide]; T280: Registered charities and registered Canadian amateur athletic associations; T1189: Application to register a Canadian amateur athletic association under the ITA; T2050: Application to register a charity under the ITA; T2052: Registered Canadian amateur athletic association return of information; T4063: Registering a charity for income tax purposes [guide].

Registered Charities Newsletters: 4 (issuing receipts for gifts of art); 11 (audit of tax preparer lands registered charities and executive director in hot water); 13 (charities operating abroad: lessons from the court; about auditing charities); 23 (court news: procedural fairness when a result is inevitable).

Charities Policies: CPS-007: RCAAAs: Receipts — issuing policy.

(2) Revocation of registration — Where the Minister gives notice under subsection (1) to a registered charity or to a registered Canadian amateur athletic association,

(a) if the charity or association has applied to the Minister in writing for the revocation of its registration, the Minister shall, forthwith after the mailing of the notice, publish a copy of the notice in the *Canada Gazette*, and

(b) in any other case, the Minister may, after the expiration of 30 days from the day of mailing of the notice, or after the expiration of such extended period from the day of mailing of the notice as the Federal Court of Appeal or a judge of that Court, on application made at any time before the determination of any appeal pursuant to subsection 172(3) from the giving of the notice, may fix or allow, publish a copy of the notice in the *Canada Gazette*,

and on that publication of a copy of the notice, the registration of the charity or association is revoked.

Related Provisions: 149.1(4) — Revocation of registration of private foundation; 168(3) — Deemed revocation when certificate issued claiming charity supports terrorism; 172(3) — Appeal from refusal to register or revocation of registration; 180 — Appeals to Federal Court of Appeal; 188(1) — Revocation tax.

Registered Charities Newsletters: 11 (audit of tax preparer lands registered charities in hot water).

Forms: RC4108: Registered charities and the *Income Tax Act* [guide].

(3) *Charities Registration (Security Information) Act* [revocation for supporting terrorism] — Notwithstanding subsections (1), (2) and (4), if a registered charity is the subject of a certificate that is determined to be reasonable under subsection 7(1) of the *Charities Registration (Security Information) Act*, the registration of the charity is revoked as of the making of that determination.

Related Provisions: 172(3.1) — No appeal for charity that has certificate issued; 172(4.1) — Regular appeal suspended when certificate issued; 188(1) — Revocation tax (charity's assets forfeited to the Crown); 188(1) [proposed] — Deemed year-end upon determination.

History: Subsec. 168(3) amended by 2005, c. 19, s. 38, to substitute "(1), (2) and (4)" for "(1) and (2)", applicable in respect of notices issued by the Minister of National Revenue after June 12, 2005.

Subsec. 168(3) amended by 2001, c. 41, subsec. 127(2) to replace "paragraph 6(1)(d)" with "subsection 7(1)", in force June 28, 2002 (the proclamation into force of 2001, c. 27 (*Immigration and Refugee Protection Act*), s. 76).

Subsec. 168(3) added by 2001, c. 41, s. 114, in force December 24, 2001.

Registered Charities Newsletters: 12 (the new anti-terrorism law).

(4) Objection to proposal or designation — A person that is or was registered as a registered charity or is an applicant for registration as a registered charity that objects to a notice under subsection (1) or any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) may, on or before the day that is 90 days after the day on which the notice was mailed, serve on the Minister a written notice of objection in the manner authorized by the Minister, set-

ting out the reasons for the objection and all the relevant facts, and the provisions of subsections 165(1), (1.1) and (3) to (7) and sections 166, 166.1 and 166.2 apply, with any modifications that the circumstances require, as if the notice were a notice of assessment made under section 152.

Related Provisions: 172(3)(a.1) — Appeal to Federal Court of Appeal where objection rejected or not answered; 189(8.1)(a) — Objection to revocation is not an objection to revocation tax; 189(8.1)(b) — No appeal to Tax Court of Canada.

History: Subsec. 168(4) added by 2005, c. 19, s. 38, applicable in respect of notices issued by the Minister of National Revenue after June 12, 2005.

Registered Charities Newsletters: 19 (appeals process).

Definitions [s. 168]: "assessment" — 248(1); "contravene" — *Interpretation Act* 35(1); "Federal Court of Appeal" — *Federal Courts Act* s. 3; "Minister", "person", "registered Canadian amateur athletic association", "registered charity", "regulation" — 248(1); "writing" — *Interpretation Act* 35(1); "written" — *Interpretation Act* 35(1)"writing".

DIVISION J — APPEALS TO THE TAX COURT OF CANADA AND THE FEDERAL COURT OF APPEAL

History: The heading to Div. J amended by 2002, c. 8, s. 148 to substitute "Federal Court of Appeal" for "Federal Court", in force July 2, 2003.

169. (1) Appeal — Where a taxpayer has served notice of objection to an assessment under section 165, the taxpayer may appeal to the Tax Court of Canada to have the assessment vacated or varied after either

(a) the Minister has confirmed the assessment or reassessed, or

(b) 90 days have elapsed after service of the notice of objection and the Minister has not notified the taxpayer that the Minister has vacated or confirmed the assessment or reassessed,

but no appeal under this section may be instituted after the expiration of 90 days from the day notice has been mailed to the taxpayer under section 165 that the Minister has confirmed the assessment or reassessed.

Related Provisions: 152(9) — Minister may raise new basis for assessment during appeal; 167 — Application for time extension; 170 — Informal procedure appeals; 173(2), 174(5) — Time during consideration not to count; 175 — General procedure appeals; 179.1 — Where no reasonable grounds for appeal; 189(8) — Appeals of charity penalties and of suspension of charity's receipting privileges; 225.1(3) — Collection restrictions; *Interpretation Act* 26 — Deadline on Sunday or holiday extended to next business day.

Selected Cases [subsec. 169(1)]: *Kovacevic v. R.*, [2002] 4 C.T.C. 2325 (TCC) (Minister could not prove notice had been sent to taxpayer); *Dural Products Ltd. v. MNR*, [1992] 2 C.T.C. 2734 (TCC); on appeal (Dissolved former wholly-owned subsidiary's right of appeal against assessment cannot be assigned to parent corporation); *460354 Ontario Inc. v. MNR*, [1992] 2 C.T.C. 287 (FCTD) (Reassessment of dissolved corporation was valid administrative proceeding brought within 5 years of dissolution in accordance with Ontario *Business Corporations Act*, s. 241; appeal therefrom was valid as final stage of proceeding commenced by reassessment, and not commencement of an action).

Information Circulars: 98-1R: Collections policies.

Forms: T400A: Notice of objection.

(1.1) Ecological gifts — Where at any particular time a taxpayer has disposed of a property, the fair market value of which has been confirmed or redetermined by the Minister of the Environment under subsection 118.1(10.4), the taxpayer may, within 90 days after the day on which that Minister has issued a certificate under subsection 118.1(10.5), appeal the confirmation or redetermination to the Tax Court of Canada.

Related Provisions: 171(1.1) — Powers of Tax Court on appeal.

History: Subsec. 169(1.1) added by 2001, c. 17, s. 158, applicable in respect of gifts made after February 27, 2000, except that, where a certificate has been issued under subsection 118.1(10.5) before June 14, 2001, subsec. 169(1.1) shall be read as follows:

(1.1) Where at any particular time a taxpayer has disposed of a property, the fair market value of which has been confirmed or redetermined by the Minister of the Environment under subsection 118.1(10.4), the taxpayer may, within 90 days after the day on which the *Income Tax Amendments Act, 2000* receives royal assent [i.e. before September 13, 2001], appeal the confirmation or redetermination to the Tax Court of Canada.

(2) Limitation of right to appeal from assessments or determinations — Notwithstanding subsection (1), where at any time the Minister assesses tax, interest, penalties or other amounts payable under this Part by, or makes a determination in respect of, a taxpayer

(a) under subsection 67.5(2) or 152(1.8), subparagraph 152(4)(b)(i) or subsection 152(4.3) or (6), 164(4.1), 220(3.4) or 245(8) or in accordance with an order of a court vacating, varying or restoring the assessment or referring the assessment back to the Minister for reconsideration and reassessment,

(b) under subsection 165(3) where the underlying objection relates to an assessment or a determination made under any of the provisions or circumstances referred to in paragraph (a), or

(c) under a provision of an Act of Parliament requiring an assessment to be made that, but for that provision, would not be made because of subsections 152(4) to (5),

the taxpayer may appeal to the Tax Court of Canada within the time limit specified in subsection (1), but only to the extent that the reasons for the appeal can reasonably be regarded

(d) where the assessment or determination was made under subsection 152(1.8), as relating to any matter specified in paragraph 152(1.8)(a), (b) or (c), and

(e) in any other case, as relating to any matter that gave rise to the assessment or determination

and that was not conclusively determined by the Court, and this subsection shall not be read or construed as limiting the right of the taxpayer to appeal from an assessment or a determination issued or made before that time.

Related Provisions: 165(1.1) — Limitation of right to object to assessments or determinations.

History: The portion of subsec. 169(2) before para. (b) and the portion after para. (c) amended by 1998, c. 19, subsecs. 193(1), (2), applicable in respect of determinations made after June 18, 1998. Those portions formerly read:

(2) Notwithstanding subsection (1), where at any time the Minister assesses tax, interest or penalties payable under this Part by, or makes a determination in respect of, a taxpayer

(a) under subsection 67.5(2), subparagraph 152(4)(b)(i) or subsection 152(4.3) or (6), 164(4.1), 220(3.4) or 245(8) or in accordance with an order of a court vacating, varying or restoring the assessment or referring the assessment back to the Minister for reconsideration and reassessment,

. . . . .

the taxpayer may appeal to the Tax Court of Canada within the time limit specified in subsection (1) only to the extent that the reasons for the appeal can reasonably be regarded as relating to a matter that gave rise to the assessment or determination and that was not conclusively determined by the Court, and this subsection shall not be read or construed as limiting the right of the taxpayer to appeal from an assessment or a determination issued or made before that time.

Para. 169(2)(a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 100(1), to add reference to subsection 152(4.3).

S. 169 renumbered as subsec. 169(1), and subsec. (2) added, by 1994, c. 7, Sch. II (1991, c. 49), s. 140, applicable to appeals from assessments or determinations objected to after December 17, 1991.

Selected Cases [subsec. 169(2)]: *Ahmad v. R.*, [2004] 2 C.T.C. 2766 (TCC) (No objection or appeal where issues settled in earlier appeal); *Imperial Oil Ltd. v. R.*, [2003] 4 C.T.C. 177 (FCA) (Initial assessment can be appealed).

(2.1) Limitation on appeals by large corporations — Notwithstanding subsections (1) and (2), where a corporation that was a large corporation in a taxation year (within the meaning assigned by subsection 225.1(8)) served a notice of objection to an assessment under this Part for the year, the corporation may appeal to the Tax Court of Canada to have the assessment vacated or varied only with respect to

(a) an issue in respect of which the corporation has complied with subsection 165(1.11) in the notice, or

(b) an issue described in subsection 165(1.14) where the corporation did not, because of subsection 165(7), serve a notice of objection to the assessment that gave rise to the issue

and, in the case of an issue described in paragraph (a), the corporation may so appeal only with respect to the relief sought in respect of the issue as specified by the corporation in the notice.

Related Provisions: 171(1) — Jurisdiction of Tax Court on appeal.

History: Subsec. 169(2.1) added by 1995, c. 21, s. 71, applicable to appeals instituted after June 22, 1995.

Selected Cases [subsec. 169(2.1)]: *Potash Corp. of Saskatchewan Inc. v. R.*, [2004] 2 C.T.C. 91 (FCA); rev'g [2003] 2 C.T.C. 2640 (TCC) (Reasonable description of each issue interpreted strictly).

I.T. Technical News: 32 (notice of objection of large corporation: impact of the *Potash Corp.* case).

(2.2) Waived issues — Notwithstanding subsections (1) and (2), for greater certainty a taxpayer may not appeal to the Tax Court of Canada to have an assessment under this Part vacated or varied in respect of an issue for which the right of objection or appeal has been waived in writing by the taxpayer.

Related Provisions: 165(1.2) — No objection permitted where right to object waived.

History: Subsec. 169(2.2) added by 1995, c. 21, s. 71, applicable after June 22, 1995 to waivers signed at any time.

Selected Cases [subsec. 169(2.2)]: *Rainville v. R.*, [2002] 2 C.T.C. 2786 (TCC) (True intention of parties to a waiver must be ascertained).

Application Policies: SR&ED 2002-02R2: Experimental production and commercial production with experimental development work — allowable SR&ED expenditures; SR&ED 2004-03: Prototypes, Pilot Plants/Commercial Plants, Custom Products and Commercial Assets.

Transfer Pricing Memoranda: TPM-02: Repatriation of funds by non-residents — Part XIII assessments.

(3) Disposition of appeal on consent — Notwithstanding section 152, for the purpose of disposing of an appeal made under a provision of this Act, the Minister may at any time, with the consent in writing of the taxpayer, reassess tax, interest, penalties or other amounts payable under this Act by the taxpayer.

Related Provisions: 165(1.2) — Limitation of right to object; 169(4) — Provisions applicable; 225.1(1) — No collection restrictions following assessment.

(4) Provisions applicable — Division I applies, with such modifications as the circumstances require, in respect of a reassessment made under subsection (3) as though it had been made under section 152.

History: Subsecs. 169(3) and (4) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 100(2).

Selected Cases [s. 169]: *Main Rehabilitation Co. v. R.*, [2005] 1 C.T.C. 212 (FCA); leave to appeal to SCC refused 2005 CarswellNat 1110 (Issue on appeal is correctness of assessment, not process by which it was established); *Walker v. R.*, [2004] 4 C.T.C. 310 (FC) (Cannot end-run appeal process by attacking collection proceedings); *Valdis v. R.*, [2001] 1 C.T.C. 2827 (TCC) (Court has no jurisdiction to determine what amounts may have been withheld at source); *495187 Ontario Ltd. v. MNR*, [1992] 1 C.T.C. 356 (FCA) (Sole shareholder of dissolved corporation allowed to appeal reassessment against company); *Bowen v. MNR*, [1991] 2 C.T.C. 266 (FCA) (Notice of confirmation of assessment received after deadline for filing notice of appeal and obtaining extension; application for extension of time for filing dismissed); *Minuteman Press of Canada Co. Ltd. v. MNR*, [1988] 1 C.T.C. 440 (FCA) (Taxpayer's notice of appeal not found to be extension of time; appeal dismissed when filed after the 90-day limit); *Danielson v. MNR*, [1986] 2 C.T.C. 341 (FCTD) (Application for *certiorari* not appropriate procedure for appeal against assessment); *Hart et al. v. MNR*, [1986] 2 C.T.C. 63 (FCTD); appealed to FCA (May 30, 1986), File A-329-86 (Income tax assessment cannot be challenged by motion to quash); *Gibbs v. MNR*, [1984] C.T.C. 434 (FCTD) (Assessment cannot be challenged by motion to quash); *R. v. Parsons; R. v. Flemming Estate*, [1984] C.T.C. 352 (FCA) (Assessment can be challenged only upon appeal provisions, not by motion to quash); *R. v. B & J Music Ltd.*, [1980] C.T.C. 287 (FCTD) (Assessment not in issue; Tax Review Board had no jurisdiction to hear appeal).

Definitions [s. 169]: "assessment", "Minister" — 248(1); "Parliament" — *Interpretation Act* 35(1); "taxpayer" — 248(1); "writing" — *Interpretation Act* 35(1).

I.T. Application Rules [ss. 169–180]: 62(5).

170. (1) [Informal Procedure appeals —] Notice to Commissioner — Where an appeal is made to the Tax Court of Canada under section 18 of the *Tax Court of Canada Act*, the Court shall forthwith send a copy of the notice of the appeal to the office of the Commissioner of Customs and Revenue.

Proposed Amendment — 170(1)

Application: Bill C-26 (Second Senate Reading June 29, 2005), subpara. 140(e)(ii), will amend subsec. 170(1) to replace "Commissioner of Customs and Revenue" with "Commissioner of Revenue", in force on a day to be fixed by the Governor in Council.

History: Subsec. 170(1) amended by replacing the words "Deputy Minister of National Revenue" with "Commissioner of Customs and Revenue" by 1999, c. 17, para. 167(b), proclaimed into force November 1, 1999.

"Deputy Minister of National Revenue" substituted for "Deputy Minister of National Revenue for Taxation" in subsec. 170(1) by 1994, c. 13, subsec. 7(1), applicable May 12, 1994.

(2) Notice, etc., to be forwarded to Tax Court of Canada — Forthwith after receiving notice under subsection (1) of an appeal, the Commissioner of Customs and Revenue shall forward to the Tax Court of Canada copies of all returns, notices of assessment, notices of objection and notification, if any, that are relevant to the appeal.

Proposed Amendment — 170(2)

Application: Bill C-26 (Second Senate Reading June 29, 2005), subpara. 140(e)(ii), will amend subsec. 170(2) to replace "Commissioner of Customs and Revenue" with "Commissioner of Revenue", in force on a day to be fixed by the Governor in Council.

History: Subsec. 170(2) amended by replacing the words "Deputy Minister of National Revenue" with "Commissioner of Customs and Revenue" by 1999, c. 17, para. 167(b), proclaimed into force November 1, 1999.

"Deputy Minister of National Revenue" substituted for "Deputy Minister of National Revenue for Taxation" in subsec. 170(2) by 1994, c. 13, subsec. 7(1), applicable May 12, 1994.

Related Provisions [s. 170]: 169 — Appeal.

Definitions [s. 170]: "assessment" — 248(1); "Commissioner of Customs and Revenue" — *Canada Customs and Revenue Agency Act* s. 25.

I.T. Application Rules [s. 170]: 62(5).

171. (1) Disposal of appeal — The Tax Court of Canada may dispose of an appeal by

(a) dismissing it; or

(b) allowing it and

(i) vacating the assessment,

(ii) varying the assessment, or

(iii) referring the assessment back to the Minister for reconsideration and reassessment.

Related Provisions: 152(1.2) — Assessment — provisions applicable; 152(9) — Minister may raise new basis for assessment during appeal process; 169 — Appeal; 202(3) Returns and payment of estimated tax — provisions applicable; 227(7) — Withholding taxes; 227(10) — Assessment.

Selected Cases [subsec. 171(1)]: *Ashby v. Canada*, [1996] 1 C.T.C. 2464 (TCC) (Deductions made but not remitted differ from case where deductions not made); *Low (A.H.) v. Canada*, [1993] 2 C.T.C. 2227 (TCC) (Court had no jurisdiction to order payment of refund); *McCambridge v. R.*, [1979] C.T.C. 473 (FCA) (Appeal to Tax Review Board cannot be disposed of by administrative action; requires positive order or judgment by member of Tax Review Board).

(1.1) Ecological gifts — On an appeal under subsection 169(1.1), the Tax Court of Canada may confirm or vary the amount determined to be the fair market value of a property and the value determined by the Court is deemed to be the fair market value of the property determined by the Minister of the Environment.

History: Subsec. 171(1.1) added by 2001, c. 17, s. 159, applicable in respect of gifts made after February 27, 2000.

(2), (3) [Repealed under former Act]

(4) [Repealed]

History: Subsec. 171(4) repealed by 1994, c. 7, Sch. IX (1993, c. 27), s. 215, applicable June 10, 1993. Subsec. (4) formerly read:

(4) Copy of decision to Minister and appellant — On the disposition of an appeal referred to in section 18 of the *Tax Court of Canada Act*, the Tax Court of Canada shall forthwith forward, by registered mail, a copy of the decision and written reasons, if any, given therefor to the Minister and the appellant.

Definitions [s. 171]: "assessment", "Minister" — 248(1).

172. (1), (2) [Repealed under former Act]

(3) Appeal from refusal to register, revocation of registration, etc. — Where the Minister

(a) refuses to register an applicant for registration as a Canadian amateur athletic association,

(a.1) confirms a proposal, decision or designation in respect of which a notice was issued by the Minister to a person that is or was registered as a registered charity, or is an applicant for registration as a registered charity, under any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) and 168(1), or does not confirm or vacate that proposal, decision or designation within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal, decision or designation,

(b) refuses to accept for registration for the purposes of this Act any retirement savings plan,

(c) refuses to accept for registration for the purposes of this Act any profit sharing plan or revokes the registration of such a plan,

(d) refuses to issue a certificate of exemption under subsection 212(14),

(e) refuses to accept for registration for the purposes of this Act an education savings plan,

(e.1) sends notice under subsection 146.1(12.1) to a promoter that the Minister proposes to revoke the registration of an education savings plan,

(f) refuses to register for the purposes of this Act any pension plan or gives notice under subsection 147.1(11) to the administrator of a registered pension plan that the Minister proposes to revoke its registration,

(f.1) refuses to accept an amendment to a registered pension plan, or

(g) refuses to accept for registration for the purposes of this Act any retirement income fund,

the applicant or the organization, foundation, association or registered charity, as the case may be, in a case described in paragraph (a) or (a.1), the applicant in a case described in paragraph (b), (d), (e) or (g), a trustee under the plan or an employer of employees who are beneficiaries under the plan, in a case described in paragraph (c), the promoter in a case described in paragraph (e.1), or the administrator of the plan or an employer who participates in the plan, in a case described in paragraph (f) or (f.1), may appeal from the Minister's decision, or from the giving of the notice by the Minister, to the Federal Court of Appeal.

Related Provisions: 147.1(13) — Revocation of registration; 149.1(6.4) — Application to registered national arts service organizations; 168(2) — Revocation of registration of certain organizations; 172(3.1) — No appeal for charity that has registration revoked or refused for supporting terrorism; 172(4), (5) — Deemed refusal to register; 172(4.1) — Appeal suspended when certificate issued that charity supports terrorism; 175 — Institution of appeals; 180(1) — Deadline for filing notice of appeal; 189(8.1)(b) — Revocation of registration cannot be appealed to Tax Court of Canada; 204.81(9) — Right of appeal; 212(14) — Certificate of exemption.

History: Paras. 172(3)(a) and (a.1) amended by 2005, c. 19, subsec. 39(1), applicable in respect of notices issued by the Minister of National Revenue after June 12, 2005. The paras. formerly read:

(a) refuses to register an applicant for registration as a charitable organization, private foundation, public foundation or Canadian amateur athletic association, or gives notice under subsection 149.1(2), (3), (4) or (4.1) or 168(1) to any such organization, foundation or association that the Minister proposes to revoke its registration,

(a.1) designates or refuses to designate a registered charity pursuant to subsection 149.1(6.3) of this Act or subsection 110(8.1) or (8.2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952,

Para. 172(3)(e) and the closing words of subsec. 172(3) amended, and para. (e.1) added, by 1998, c. 19, subsecs. 46(1), (2), applicable after 1997. Para. 172(3)(e) and the closing words of subsec. 172(3) formerly read:

(e) refuses to accept for registration for the purposes of this Act any education savings plan or revokes the registration of any such plan,

. . . . .

the applicant or the organization, foundation, association or registered charity, as the case may be, in a case described in paragraph (a) or (a.1), the applicant in a case described in paragraph (b), (d), (e) or (g), a trustee under the plan or an employer of employees who are beneficiaries under the plan, in a case described in paragraph (c), or the administrator of the plan or an employer who participates in the plan, in a case described in paragraph (f) or (f.1), may appeal from the Minister's decision, or from the giving of the notice by the Minister, to the Federal Court of Appeal.

Para. 172(3)(a) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 141, to substitute "149.1(2), (3), (4) or (4.1) or 168(1)" for "168(1)", applicable after 1989.

Selected Cases [subsec. 172(3)]: *Interfaith Development Education Assn., Burlington v. MNR*, [1997] 3 C.T.C. 271 (FCA) (Restricted interpretation given to "advancement of education"); *Vancouver Regional FreeNet Association v. MNR*, [1996] 3 C.T.C. 102 (FCA) (Provision of access to information on Internet free of charge was charitable activity); *Polish Canadian Television Production Society v. MNR*, [1987] 1 C.T.C. 319 (FCA) (Application for registration as charitable organization for as-

sociation refused despite multicultural purposes); *Scarborough Community Legal Services v. R.*, [1985] 1 C.T.C. 98 (FCA) (Refusal of registration as charitable organization not subject to judicial process when decision strictly administrative).

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Forms: RC4108: Registered charities and the *Income Tax Act* [guide]; T285: Appeal from Minister's refusal to register as a charity or amateur athletic association.

(3.1) Exception — *Charities Registration (Security Information) Act* — Paragraphs (3)(a) and (a.1) do not apply to an applicant or a registered charity that is the subject of a certificate that has been determined to be reasonable under subsection 7(1) of the *Charities Registration (Security Information) Act*.

History: Subsec. 172(3.1) amended by 2001, c. 41, subsec. 127(3) to replace "paragraph 6(1)(d)" with "subsection 7(1)", in force June 28, 2002 (the proclamation into force of 2001, c. 27 (*Immigration and Refugee Protection Act*), s. 76).

Subsec. 172(3.1) added by 2001, c. 41, subsec. 115(1), in force December 24, 2001.

Registered Charities Newsletters: 12 (the new anti-terrorism law).

(4) Deemed refusal to register — For the purposes of subsection (3), the Minister shall be deemed to have refused

(a) to register an applicant for registration as a Canadian amateur athletic association,

(a.1) [Repealed]

(b) to accept for registration for the purposes of this Act any retirement savings plan or profit sharing plan,

(c) to issue a certificate of exemption under subsection 212(14),

(d) to accept for registration for the purposes of this Act any education savings plan, or

(e) [Repealed under former Act]

(f) to accept for registration for the purposes of this Act any retirement income fund,

where the Minister has not notified the applicant of the disposition of the application within 180 days after the filing of the application with the Minister, and, in any such case, subject to subsection (3.1), an appeal from the refusal to the Federal Court of Appeal pursuant to subsection (3) may, notwithstanding subsection 180(1), be instituted under section 180 at any time by filing a notice of appeal in the Court.

Related Provisions: 167(4) — Application for time extension; 172(4.1) — Appeal suspended when certificate issued that charity supports terrorism; 180 — Appeals to Federal Court of Appeal.

History: Para. 172(4)(a) amended and para. (a.1) repealed by 2005, c. 19, subsec. 39(2), applicable in respect of notices issued by the Minister of National Revenue after June 12, 2005. The paras. formerly read:

(a) to register an applicant for registration as a charitable organization, private foundation, public foundation or Canadian amateur athletic association,

(a.1) to designate a registered charity pursuant to an application under subsection 149.1(6.3) of this Act or subsection 110(8.2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952,

The closing words of subsec. 172(4) amended by 2001, c. 41, subsec. 115(2), in force December 24, 2001. The closing words formerly read:

where the Minister has not notified the applicant of the disposition of the application within 180 days after the filing of the application with the Minister, and, in any such case, an appeal from the refusal to the Federal Court of Appeal pursuant to subsection (3) may, notwithstanding anything in subsection 180(1), be instituted under section 180 at any time by filing a notice of appeal in the Court.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

(4.1) Exception — *Charities Registration (Security Information) Act* — An appeal referred to in subsection (3) or (4) is suspended when an applicant or a registered charity is, under subsection 5(1) of the *Charities Registration (Security Information) Act*, served with a copy of a certificate that has been signed under that Act, whether the appeal was instituted before or after the certificate was so signed, and the appeal is

(a) discontinued on the determination, under subsection 7(1) of that Act, that the certificate is reasonable; or

(b) reinstated as of the date the certificate is, under subsection 7(2) of that Act, quashed.

History: Paras. 172(4.1)(a) and (b) amended by 2001, c. 41, subsec. 127(4), in force June 28, 2002 (the proclamation into force of 2001, c. 27 (*Immigration and Refugee Protection Act*), s. 76). The paras. formerly read:

(a) discontinued on the determination that the certificate is reasonable under paragraph 6(1)(d) of that Act; or

(b) reinstated as of the date the certificate is quashed under paragraph 6(1)(d) of that Act.

Subsec. 172(4.1) added by 2001, c. 41, subsec. 115(3), in force December 24, 2001.

Registered Charities Newsletters: 12 (the new anti-terrorism law).

(5) Idem — For the purposes of subsection (3), the Minister shall be deemed to have refused

(a) to register for the purposes of this Act any pension plan, or

(b) to accept an amendment to a registered pension plan

where the Minister has not notified the applicant of the Minister's disposition of the application within 1 year after the filing of the application with the Minister, and, in any such case, an appeal from the refusal to the Federal Court of Appeal pursuant to subsection (3) may, notwithstanding anything in subsection 180(1), be instituted under section 180 at any time by filing a notice of appeal in the Court.

History: Subsec. 172(5) added by 1990, c. 35, subsec. 18(2), applicable after 1988.

(6) Application of subsec. 149.1(1) — The definitions in subsection 149.1(1) apply to this section.

Origin of subsec. 172(6): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsec. 149.1(1)).

Selected Cases [s. 172]: *Biron v. R.*, [2001] 2 C.T.C. 258 (FCA); leave to appeal to SCC refused (Aug. 9, 2001), File 28327 (Undischarged bankrupt had no power to take action without consent of trustee); *Interfaith Development Education Assn., Burlington v. MNR*, [1997] 3 C.T.C. 271 (FCA) (Restricted interpretation given to "advancement of education"); *Vancouver Regional FreeNet Association v. MNR*, [1996] 3 C.T.C. 102 (FCA) (Provision of access to information on Internet free of charge was charitable activity); *Polish Canadian Television Production Society v. MNR*, [1987] 1 C.T.C. 319 (FCA) (Application for registration as charitable organization for association refused despite multicultural purposes); *Scarborough Community Legal Services v. R.*, [1985] 1 C.T.C. 98 (FCA) (Refusal of registration as charitable organization not subject to judicial process when decision strictly administrative).

Definitions [s. 172]: "administrator" — 147.1(1); "Canadian amateur athletic association" — 110(8), 248(1); "charitable foundation", "charitable organization", "charitable purposes", "charity" — 149.1(1); "employee", "employer" — 248(1); "Federal Court of Appeal" — *Federal Courts Act* s. 3; "Minister", "person" — 248(1); "private foundation" — 149.1(1), 248(1); "profit sharing plan" — 147(1); "promoter" — 146.1(1); "public foundation" — 149.1(1), 248(1); "registered Canadian amateur athletic association", "registered charity" — 248(1); "registered education savings plan" — 146.1(1), 248(1); "registered pension plan" — 248(1); "retirement income fund" — 146.3(1), 248(1); "retirement savings plan" — 146(1), 248(1); "taxpayer" — 248(1).

Forms [s. 172]: RC4108: Registered charities and the *Income Tax Act* [guide].

173. (1) References to Tax Court of Canada — Where the Minister and a taxpayer agree in writing that a question of law, fact or mixed law and fact arising under this Act, in respect of any assessment, proposed assessment, determination or proposed determination, should be determined by the Tax Court of Canada, that question shall be determined by that Court.

Related Provisions: 174 — Reference of common questions to Tax Court; 225.1(4) — Collection by the Minister.

(2) Time during consideration not to count — The time between the day on which proceedings are instituted in the Tax Court of Canada to have a question determined pursuant to subsection (1) and the day on which the question is finally determined shall not be counted in the computation of

(a) the periods determined under subsection 152(4),

(b) the time for service of a notice of objection to an assessment under section 165, or

(c) the time within which an appeal may be instituted under section 169,

for the purpose of making an assessment of the tax payable by the taxpayer who agreed in writing to the determination of the question, for the purpose of serving a notice of objection thereto or for the purpose of instituting an appeal therefrom, as the case may be.

Definitions [s. 173]: "assessment", "Minister", "taxpayer" — 248(1); "writing" — *Interpretation Act* 35(1).

174. (1) Reference of common questions to Tax Court of Canada — Where the Minister is of the opinion that a question of law, fact or mixed law and fact arising out of one and the same transaction or occurrence or series of transactions or occurrences is common to assessments or proposed assessments in respect of two or more taxpayers, the Minister may apply to the Tax Court of Canada for a determination of the question.

Related Provisions: 173 — Reference to Tax Court; 225.1(4) — Collection by the Minister; 248(10) — Series of transactions.

Selected Cases [subsec. 174(1)]: *Quemet Corp. v. R.*, [1979] C.T.C. 414 (FCTD) (Joinder of taxpayer and vendor for evidence of fictitious purchases of goods "sold").

See also Selected Cases under subsec. 174(3).

(2) Application to Court — An application under subsection (1) shall set out

(a) the question in respect of which the Minister requests a determination,

(b) the names of the taxpayers that the Minister seeks to have bound by the determination of the question, and

(c) the facts and reasons on which the Minister relies and on which the Minister based or intends to base assessments of tax payable by each of the taxpayers named in the application,

and a copy of the application shall be served by the Minister on each of the taxpayers named in the application and on any other persons who, in the opinion of the Tax Court of Canada, are likely to be affected by the determination of the question.

(3) Where Tax Court of Canada may determine question — Where the Tax Court of Canada is satisfied that a determination of the question set out in an application under this section will affect assessments or proposed assessments in respect of two or more taxpayers who have been served with a copy of the application and who are named in an order of the Tax Court of Canada pursuant to this subsection, it may

(a) if none of the taxpayers so named has appealed from such an assessment, proceed to determine the question in such manner as it considers appropriate; or

(b) if one or more of the taxpayers so named has or have appealed, make such order joining a party or parties to that or those appeals as it considers appropriate and proceed to determine the question.

Selected Cases [subsec. 174(3)]: *R. v. Bisson*, [1978] C.T.C. 332 (FCTD) (Petition seeking joinder of parties allowed for determination of respective shareholdings); *R. v. Dain*, [1973] C.T.C. 801 (FCTD) (Application for joinder of parties must be made to tribunal seized with taxpayer's appeal, Federal Court had no jurisdiction from decision of Tax Review Board).

See also Selected Cases under subsec. 174(1).

(4) Determination final and conclusive — Subject to subsection (4.1), where a question set out in an application under this section is determined by the Tax Court of Canada, the determination thereof is final and conclusive for the purposes of any assessments of tax payable by the taxpayers named by it pursuant to subsection (3).

Selected Cases [subsec. 174(4)]: *Stern v. R.*, [1984] C.T.C. 647 (FCTD) (Former wife required to participate in litigation when joined as defendant).

(4.1) Appeal — Where a question set out in an application under this section is determined by the Tax Court of Canada, the Minister or any of the taxpayers who have been served with a copy of the application and who are named in an order of the Court pursuant to subsection (3) may, in accordance with the provisions of this Act, the *Tax Court of Canada Act*, or the *Federal Courts Act*, as they relate to appeals from decisions of the Tax Court of Canada, appeal from the determination.

History: Subsec. 174(4.1) amended by 2002, c. 8, para. 182(1)(t) to substitute "*Federal Courts Act*" for "*Federal Court Act*", in force July 2, 2003.

(5) Time during consideration of question not counted — The time between the day on which an application under this section is served on a taxpayer pursuant to subsection (2) and

(a) in the case of a taxpayer named in an order of the Tax Court of Canada pursuant to subsection (3), the day on which the determination becomes final and conclusive and not subject to any appeal, or

(b) in the case of any other taxpayer, the day on which the taxpayer is served with notice that the taxpayer has not been named in an order of the Tax Court of Canada pursuant to subsection (3),

shall not be counted in the computation of

(c) the periods determined under subsection 152(4),

(d) the time for service of a notice of objection to an assessment under section 165, or

(e) the time within which an appeal may be instituted under section 169,

for the purpose of making an assessment of the tax, interest or penalties payable by the taxpayer, serving a notice of objection thereto or instituting an appeal therefrom, as the case may be.

Selected Cases [s. 174]: *Miller v. R.*, [2005] 2 C.T.C. 2241 (TCC) (Party not added where addition would remove statutory protection of statute-barred year).

Definitions [s. 174]: "assessment", "Minister", "person", "series of transactions", "taxpayer" — 248(1).

175. Institution of appeals — An appeal to the Tax Court of Canada under this Act, other than one referred to in section 18 of the *Tax Court of Canada Act*, shall be instituted in the manner set out in that Act or in any rules made under that Act.

Related Provisions: 170(1) — Informal procedure appeals.

History: S. 175 amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 101. S. 175 formerly read:

> 175. (1) An appeal to the Tax Court of Canada under this Act, other than one referred to in section 18 of the *Tax Court of Canada Act*, shall be instituted
>
> (a) in the manner set out in the *Tax Court of Canada Act* or any rules made under that Act; or
>
> (b) by the filing by the Minister in the Registry of the Tax Court of Canada of a copy of a notice of objection pursuant to paragraph 165(3)(b).
>
> (2) Service of originating document — Where a copy of a notice of objection is filed in the Registry of the Tax Court of Canada by the Minister pursuant to paragraph 165(3)(b) and the Minister files the copy of the notice of objection, together with two additional copies thereof and a certificate as to the latest known address of the taxpayer, an officer of the Registry of the Court shall, after verifying the accuracy of the copies, forthwith on behalf of the Minister serve the copy of the notice of objection on the taxpayer by sending the additional copies thereof by registered mail addressed to the taxpayer at the address set out in the certificate.
>
> (3) Certificate — Where copies have been served on a taxpayer under subsection (2), a certificate signed by an officer of the Registry of the Tax Court of Canada as to the date of filing and the date of mailing of the copies shall be transmitted to the office of the Deputy Attorney General of Canada and that certificate is evidence of the date of filing and the date of service of the document referred to therein.

Selected Cases [s. 175]: *Laird v. R.*, [1987] 1 C.T.C. 255 (FCTD) (Not in interest of justice to resolve issue by default judgment when Crown failed to file defence within limitation period); *Tucker v. R.*, [1978] C.T.C. 700 (FCTD) (Each notice of objection should be treated as originating separate action); *Fredericton Housing Ltd. v. R.*, [1973] C.T.C. 400 (FCA) (Improperly signed statement of claim not voided when containing necessary facts); *Thorson v. MNR*, 72 D.T.C. 6459 (FCTD) (Application to strike out taxpayer's notice of appeal dismissed when case not beyond doubt).

Definitions [s. 175]: "Minister", "taxpayer" — 248(1).

176. (1) Notice, etc., to be forwarded to Tax Court of Canada — [Not in force due to court decisions — ed.] As soon as is reasonably practicable after receiving notice of an appeal to the Tax Court of Canada, other than one referred to in section 18 of the *Tax Court of Canada Act*, the Minister shall cause to be transmitted to the Tax Court of Canada and to the appellant, copies of all returns, notices of assessment, notices of objection and notifications, if any, that are relevant to the appeal.

Selected Cases [subsec. 176(1)]: *Gernhart v. R.*, [2000] 1 C.T.C. 192 (FCA); rev'g [1997] 2 C.T.C. 23 (FCTD) (Requirement to file income tax returns with Tax Court is unreasonable seizure; provision unconstitutional).

(2) Documents to be transferred to Federal Court of Appeal — As soon as is reasonably practicable after receiving notice of an appeal to the Federal Court of Appeal in respect of which section 180 applies, the Minister shall cause to be transmitted to the registry of that Court copies of all documents that are relevant to the decision of the Minister appealed from.

History: Subsec. 176(2) amended by 2002, c. 8, s. 149, in force July 2, 2003. The subsec. formerly read:

> (2) Documents to be transferred to Federal Court — As soon as is reasonably practicable after receiving notice of an appeal to the Federal Court of Appeal in respect of which section 180 applies, the Minister shall cause to be transmitted to the Registry of the Federal Court copies of all documents that are relevant to the decision of the Minister appealed from.

Definitions [s. 176]: "assessment" — 248(1); "Federal Court of Appeal" — *Federal Courts Act* s. 3; "Minister" — 248(1).

177, 178 [Repealed under former Act]

179. Hearings *in camera* — Proceedings in the Federal Court of Appeal under this Division may, on the application of the taxpayer, be held *in camera* if the taxpayer establishes to the satisfaction of the Court that the circumstances of the case justify *in camera* proceedings.

History: S. 179 amended by 2002, c. 8, para. 184(d) to substitute "Federal Court of Appeal" for "Federal Court", in force July 2, 2003.

Selected Cases [s. 179]: *Roseland Farms Ltd. v. Canada*, [1996] 1 C.T.C. 176 (FCA) (Names of investors permitted to be given *in camera*).

Definitions [s. 179]: "Federal Court of Appeal" — *Federal Courts Act* s. 3; "taxpayer" — 248(1).

179.1 No reasonable grounds for appeal — Where the Tax Court of Canada disposes of an appeal by a taxpayer in respect of an amount payable under this Part or where such an appeal has been discontinued or dismissed without trial, the Court may, on the application of the Minister and whether or not it awards costs, order the taxpayer to pay to the Receiver General an amount not exceeding 10% of any part of the amount that was in controversy in respect of which the Court determines that there were no reasonable grounds for the appeal, if in the opinion of the Court one of the main purposes for instituting or maintaining any part of the appeal was to defer the payment of any amount payable under this Part.

Related Provisions: 18(1)(t) — No deduction for payments under Act.

History: S. 179.1 amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 102, applicable after June 10, 1993, with respect to appeals instituted after June 1992. S. 179.1 formerly read:

> 179.1 Where the Tax Court of Canada disposes of an appeal by a taxpayer in respect of an amount payable under this Part or where such an appeal has been discontinued or dismissed without trial, the Court may, on the application of the Minister and whether or not it awards costs, order the taxpayer to pay to the Receiver General an amount not exceeding 10% of the amount that was in controversy if it determines that there were no reasonable grounds for the appeal and one of the main purposes for instituting or maintaining the appeal was to defer the payment of an amount payable under this Part.

Definitions [s. 179.1]: "amount", "Minister", "taxpayer" — 248(1).

180. (1) Appeals to Federal Court of Appeal — An appeal to the Federal Court of Appeal pursuant to subsection 172(3) may be instituted by filing a notice of appeal in the Court within 30 days from

(a) the day on which the Minister notifies a person under subsection 165(3) of the Minister's action in respect of a notice of objection filed under subsection 168(4),

(b) the mailing of notice to a registered Canadian amateur athletic association under subsection 168(1),

(c) the mailing of notice to the administrator of the registered pension plan under subsection 147.1(11),

(c.1) the sending of a notice to a promoter of a registered education savings plan under subsection 146.1(12.1), or

(d) the time the decision of the Minister to refuse the application for acceptance of the amendment to the registered pension plan was mailed, or otherwise communicated in writing, by the Minister to any person,

as the case may be, or within such further time as the Court of Appeal or a judge thereof may, either before or after the expiration of those 30 days, fix or allow.

Related Provisions: 172(4) — Deemed refusal to register; 212(14) — Certificate of exemption; 248(7)(a) — Mail deemed received on day mailed.

History: Paras. 180(1)(a) and (b) amended by 2005, c. 19, s. 40, applicable in respect of notices issued by the Minister of National Revenue after June 12, 2005. The paras. formerly read:

(a) the time the decision of the Minister to refuse the application for registration or for a certificate of exemption, to revoke the registration, to designate or to refuse to designate was mailed, or otherwise communicated in writing, by the Minister to the party instituting the appeal,

(b) the mailing of notice to the registered charity or registered Canadian amateur athletic association under subsection 149.1(2), (3), (4) or (4.1) or 168(1),

Para. 180(1)(c.1) added by 1998, c. 19, s. 47, applicable after 1997.

Para. 180(1)(b) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 142, to substitute "149.1(2), (3), (4) or (4.1) or 168(1)" for "168(1)", applicable after 1989.

Forms: T285: Appeal from Minister's refusal to register as a charity or amateur athletic association.

(2) No jurisdiction in Tax Court of Canada or Federal Court — Neither the Tax Court of Canada nor the Federal Court has jurisdiction to entertain any proceeding in respect of a decision of the Minister from which an appeal may be instituted under this section.

History: Subsec. 180(2) amended by 2002, c. 8, para. 183(1)(m) to substitute "Federal Court" for "Federal Court–Trial Division", in force July 2, 2003.

(3) Summary disposition of appeal — An appeal to the Federal Court of Appeal instituted under this section shall be heard and determined in a summary way.

Related Provisions: 172(4) — Deemed refusal to register; 176(2) — Transfer of relevant documents to the Federal Court of Appeal.

Definitions [s. 180]: "administrator" — 147.1(1); "Federal Court" — *Federal Courts Act* s. 4; "Federal Court of Appeal" — *Federal Courts Act* s. 3; "Minister", "person" — 248(1); "profit sharing plan" — 147(1); "promoter" — 146.1(1); "registered Canadian amateur athletic association", "registered charity", "registered pension plan" — 248(1); "writing" — *Interpretation Act* 35(1).

Forms [s. 180]: RC4108: Registered charities and the *Income Tax Act* [guide].

PART I.1 — INDIVIDUAL SURTAX

180.1 [Repealed]

History [Part I.1]: Part I.1 repealed by 2001, c. 17, s. 161, applicable to 2001 *et seq.* It formerly read:

180.1 (1) Individual surtax — Every individual shall pay a tax under this Part for each taxation year equal to 5% of the amount, if any, by which the tax payable under Part I by the individual for the year exceeds $15,500.

(1.1) Foreign tax deduction — There may be deducted from the tax otherwise payable under this Part for a taxation year (computed without reference to subsection (1.2)) by an individual the amount, if any, by which

(a) the total of all amounts that would be

(i) deductible by the individual under section 126 for the year, or

(ii) the individual's special foreign tax credit for the year determined under section 127.54,

if the references in section 126 to "the tax for the year otherwise payable under this Part by the taxpayer" were read as "the total of the tax for the year otherwise payable under this Part by the individual and the tax for the year that would be payable by the individual under Part I.1 but for subsections 180.1(1.1) and (1.2)"

exceeds

(b) the total of all amounts deductible by the individual under section 126 for the year and the individual's special foreign tax credit for the year determined under section 127.54.

(1.2) Deduction from tax [investment tax credit] — There may be deducted from the tax otherwise payable under this Part for a taxation year by an individual the amount, if any, by which the amount determined under paragraph 127(5)(a) in respect of the individual for the year exceeds the amount, if any, deducted under subsection 127(5) for the year by the individual other than an amount deemed by subsection (1.3) to be so deducted.

(1.3) Idem — For the purposes of this Act, the amount deducted under subsection (1.2) for a taxation year shall be deemed to be an amount deducted under subsection 127(5) for the year.

(1.4) Former resident — credit for tax paid — There may be deducted from the tax otherwise payable under this Part by an individual for a taxation year (computed without reference to subsections (1.1) and (1.2)) the amount, if any, by which

(a) the amount that would be deductible under section 119 in computing the individual's tax payable under Part I for the year if, in applying for that purpose paragraph (a) of the definition "tax for the year otherwise payable under this Part" in subsection 126(7), the reference in that paragraph to "tax payable under this Part for the year" were read as a reference to "the total of taxes that, but for subsections 180.1(1.1), (1.2) and (1.4), would be payable under this Part and Part I.1 for the year"

exceeds

(b) the amount deductible under section 119 in computing the individual's tax payable under Part I for the year.

(2) Meaning of tax payable under Part I — For the purposes of subsection (1), the tax payable under Part I by an individual for a taxation year is the amount, if any, by which

(a) the amount that would be the individual's tax payable under that Part for the year if that Part were read without reference to section 119, subsection 120(1) and sections 122.3, 126, 127, 127.4 and 127.54

exceeds

(b) if the individual was throughout the year a mutual fund trust, the least of the amounts determined under paragraphs (a), (b) and (c) of the description of A in the definition "refundable capital gains tax on hand" in subsection 132(4) in respect of the trust for the year, and

(c) in any other case, nil.

(3) Return — Every individual liable to pay tax under this Part for a taxation year shall, on or before the day on or before which the individual is required by section 150 to file a return of income for the year under Part I, or would be so required if the individual were liable to pay tax under Part I for the year,

(a) file with the Minister, without notice or demand therefor, a return for the year under this Part in prescribed form and containing prescribed information; and

(b) pay the tax under this Part for the year for which the individual is liable.

(4) Provisions applicable to Part — Sections 151, 152, 155, 156, 156.1 and 158 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Subsec. 180.1(1) amended by 2001, c. 17, subsec. 160(1), applicable to the 2000 taxation year. It formerly read:

(1) Individual surtax — Every individual shall pay a tax under this Part for each taxation year equal to 5% of the amount, if any, by which the tax payable under Part I by the individual for the year exceeds $12,500.

Subsec. 180.1(1.4) added, and subsec. 180.1(2) amended, by 2001, c. 17, subsec. 160(2), applicable after October 1, 1996. Subsec. 180.1(2) formerly read:

(2) Meaning of tax payable under Part I — For the purposes of subsection (1), the tax payable under Part I by an individual for a taxation year is the amount, if any, by which

(a) where section 119 is applicable in computing the individual's tax payable for the year, the amount that would be the individual's average tax for the year of averaging, as determined under paragraph 119(1)(d), if the expression "deductible

under subsection 127(5)" in that paragraph were read as "added under subsection 120(1) or deductible under sections 122.3, 126, 127 and 127.2 to 127.4", and

(b) in any other case, the amount that would be the individual's tax payable under that Part for the year if that Part were read without reference to subsection 120(1) and sections 122.3, 126, 127, 127.2 to 127.4 and 127.54

exceeds

(c) where the individual was throughout the year a mutual fund trust, the least of the amounts determined under paragraphs (a), (b) and (c) of the description of A in the definition "refundable capital gains tax on hand" in subsection 132(4) in respect of the trust for the year, and

(d) in any other case, nil.

Subsec. 180.1(1) amended by 2000, c. 19, subsec. 52(2), applicable to 2000 *et seq.* The subsec. formerly read:

(1) Individual surtax — Every individual shall pay a tax under this Part for each taxation year equal to the total of

(a) ½ of the amount, if any, by which

(i) 3% of the individual's tax payable under Part I for the year

exceeds

(ii) the amount, if any, by which

(A) $250

exceeds

(B) 6% of the amount, if any, by which

(I) the individual's tax payable under Part I for the year

exceeds

(II) $8,333, and

(b) 5% of the amount, if any, by which the tax payable under Part I by the individual for the year exceeds $12,500.

Para. 180.1(1)(a) amended by the said c. 19, subsec. 52(1), applicable to the 1999 taxation year. The para. formerly read:

(a) the amount, if any, by which

Para. 180.1(1)(a) amended by 1999, c. 22, s. 67, applicable to 1998 *et seq.* except that, in its application to the 1998 taxation year, the portion of subpara. 180.1(1)(a)(ii) before cl. (B), as amended, shall be read as follows:

(ii) 50% of the amount, if any, by which

(A) the lesser of $250 and the amount computed under subparagraph (i) for the year

exceeds

Para. (a) formerly read:

(a) 3% of the tax payable under Part I by the individual for the year, and

Subsecs. 180.1(1.2), (1.3) amended by 1994, c. 8, s. 28, applicable to taxation years beginning after 1993. Subsecs. (1.2) and (1.3) formerly read:

(1.2) There may be deducted from the tax otherwise payable under this Part for a taxation year by an individual an amount not exceeding the lesser of

(a) ¾ of the amount that would be the individual's tax otherwise payable under this Part for the year if the individual deducted the amount, if any, allowed to be deducted under subsection (1.1) for the year, and

(b) the amount, if any, by which the amount determined under paragraph 127(5)(b) in respect of the individual for the year exceeds the amount, if any, deducted by the individual under subsection 127(5) for the year.

(1.3) Amount deemed deducted under subsec. (1.2) — For the purposes of this Act, other than for the purpose of determining the amount under paragraph (1.2)(b) for the year, the amount deducted under subsection (1.2) for a taxation year shall be deemed to be an amount deducted under subsection 127(5) for the year.

Para. 180.1(1)(a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 103(1), to substitute "3% of the tax" for "5% of tax", applicable to 1992 *et seq.* except that for the 1992 taxation year the reference to "3%" shall be read as "4½%".

Subsec. 180.1(1.1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 103(2), applicable to 1988 *et seq.* Subsec. (1.1) formerly read:

(1.1) There may be deducted from the tax otherwise payable under this Part for a taxation year by an individual the amount, if any, by which

(a) the total of all amounts that would be

(i) deductible by the individual under section 126 for the year, or

(ii) the individual's special foreign tax credit for the year determined under section 127.54,

if the references in section 126 to "the tax for the year otherwise payable under this Part by the individual (or "taxpayer")" were read as "the total of the tax for the year otherwise payable under this Part by the individual (or "taxpayer") and the tax for the year that would be payable by the individual (or "taxpayer") under Part I.1 but for subsection 180.1(1.1)"

exceeds

(b) the total of all amounts deductible by the individual (or "taxpayer") under section 126 for the year and the individual's special foreign tax credit for the year determined under section 127.54.

Para. 180.1(1)(b) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 143, to substitute "5%" for "3%" and "$12,500" for "$15,000", applicable to 1991 *et seq.*

PART I.2 — TAX ON OLD AGE SECURITY BENEFITS

180.2 (1) Definitions — The definitions in this subsection apply in this Part.

"adjusted income" of an individual for a taxation year means the amount that would be the individual's income under Part I for the year if no amount were deductible under paragraph 60(w) nor included in respect of a gain from a disposition of property to which section 79 applies.

"base taxation year", in relation to a month, means

(a) where the month is any of the first 6 months of a calendar year, the taxation year that ended on December 31 of the second preceding calendar year, and

(b) where the month is any of the last 6 months of a calendar year, the taxation year that ended on December 31 of the preceding calendar year.

"return of income" in respect of an individual for a taxation year means

(a) where the individual was resident in Canada throughout the year, the individual's return of income (other than a return of income filed under subsection 70(2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) that is filed or required to be filed under Part I for the year, and

(b) in any other case, a prescribed form containing prescribed information.

Related Provisions: 60(v.1) — UI benefit repayment; 60(w) — Other deductions — tax under Part I.2.

History: Subsec. 180.2(1) added by 1996, c. 21, s. 46 applicable after June 1996. Former subsec. (1) (now subsec. (2)) read:

(1) Tax payable — Every individual (other than a trust) shall pay a tax under this Part for each taxation year that is equal to the lesser of

(a) the total of all amounts each of which is the amount of any pension, supplement or spouse's allowance under the *Old Age Security Act* included in computing the individual's income under Part I for the year, to the extent that no deduction is allowed under paragraph 60(n) for the year or any subsequent taxation year in respect of that amount, and

(b) 15% of the amount, if any, by which

(i) the amount that would be the individual's income under Part I for the year if no amount were

(A) deductible under paragraph 60(w), or

(B) included in respect of a gain from a disposition of property to which section 79 applies

in computing that income

exceeds

(ii) $50,000.[43]

Selected Cases [subsec. 180.2(1)]: *Swantje v. Canada*, [1996] 1 C.T.C. 355 (SCC) (Section not affected by Canada–Germany Tax Agreement).

(2) Tax payable — Every individual shall pay a tax under this Part for each taxation year equal to the amount determined by the formula

$$A(1 - B)$$

where

A is the lesser of

(a) the amount, if any, by which

(i) the total of all amounts each of which is the amount of any pension, supplement or spouse's or common-law partner's allowance under the *Old Age Security Act* included in computing the individual's income under Part I for the year

exceeds

(ii) the amount of any deduction allowed under subparagraph 60(n)(i) in computing the individual's income under Part I for the year, and

(b) 15% of the amount, if any, by which the individual's adjusted income for the year exceeds $50,000[44]; and

B is the rate of tax payable by the individual under Part XIII on amounts described in paragraph (a) of the description of A.

Related Provisions: 117.1(1)(b) — Indexing for inflation; 180.2(3) — Withholding of tax from OAS benefits.

History: Subsec. 180.2(2) amended by 2000, c. 12, Sch. 2, s. 7, to replace "spouse's"with "spouse's or common-law partner's", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subsec. 180.2(2) renumbered (from (1)) and amended by 1996, c. 21, s. 46, applicable to 1996 *et seq.* Former subsec. (2) (now subsec. (5)) read:

(2) Return — Every individual liable to pay tax under this Part for a taxation year shall, on or before the day on or before which the individual is required by section 150 to file a return of income for the year under Part I, or would be so required if the individual were liable to pay tax under Part I for the year,

(a) file with the Minister, without notice or demand therefor, a return for the year under this Part in prescribed form and containing prescribed information; and

(b) pay the tax under this Part for the year for which the individual is liable.

Remission Orders: *Dane Pocrnic Remission Order*, P.C. 2005-624 (remission where taxable lump sum paid all in one year due to government agency delay led to OAS clawback applying).

Forms: T1 General income tax return, lines 235 and 422; T4155: Old age security return of income guide for non-residents .

(3) Withholding — Where at any time Her Majesty pays an amount described in paragraph (a) of the description of A in subsection (2) in respect of a month to an individual, there shall be deducted or withheld from that amount on account of the individual's tax payable under this Part for the year the amount determined under subsection (4) in respect of that amount.

Related Provisions: 227 — Rules applicable to withholding.

History: Subsec. 180.2(3) added by 1996, c. 21, s. 46, applicable to amounts paid after June 1996. Former subsec. (3) (now subsec. (6)) read:

(3) Provisions applicable to Part — Sections 151, 152 and 158 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

(4) Determination of amount to be withheld — The amount determined in respect of a particular amount described in subsection (3) is

(a) where the individual has filed a return of income for the base taxation year in relation to the month in which the particular amount is paid, the lesser of

(i) the amount by which the particular amount exceeds the amount of tax payable under Part XIII by the individual on the particular amount, and

(ii) the amount determined by the formula

$$(0.0125A - \$665[44])(1–B)$$

where

A is the individual's adjusted income for the base taxation year, and

B is the rate of tax payable under Part XIII by the individual on the particular amount;

(b) where the individual has not filed a return of income for the base taxation year in relation to the month and

(i) the Minister has demanded under subsection 150(2) that the individual file the return, or

(ii) the individual was non-resident at any time in the base taxation year,

the amount by which the particular amount exceeds the amount of tax payable under Part XIII by the individual on the particular amount; and

(c) in any other case, nil.

Related Provisions: 117.1(1)(b) — Indexing for inflation; 180.2(5) — Obligation to file return; 257 — Formula cannot calculate to less than zero.

History: The formula in subpara. 180.2(4)(a)(ii) amended by 2001, c. 17, s. 162, applicable to amounts paid after November 1999. It formerly read:

$$(0.0125A - \$625)(1 - B)$$

Subsec. 180.2(4) added by 1996, c. 21, s. 46, applicable to amounts paid after June 1996.

(5) Return — Every individual liable to pay tax under this Part for a taxation year shall

(a) file with the Minister, without notice or demand therefor,

(i) where the individual is resident in Canada throughout the taxation year, a return for the year under this Part in prescribed form and containing prescribed information on or before the individual's filing-due date for the year, and

(ii) in any other case, a return of income for the year on or before the individual's balance-due day for the year; and

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[43]Indexed by s. 117.1 after 1988. See table after s. 117.1.

[44]Indexed by s. 117.1 — ed.

(b) pay the individual's tax payable under this Part for the year on or before the individual's balance-due day for the year.

Related Provisions: 180.2(4)(b)(ii) — No OAS benefits paid to non-resident who does not file return.

History: Subsec. 180.2(5) renumbered (from (2)) and amended by 1996, c. 21, s. 46, applicable to 1996 *et seq.*

Forms: T4155: Old age security return of income guide for non-residents.

(6) Provisions applicable to this Part — Subsection 150(3), sections 150.1, 151 and 152, subsections 153(1.1), (1.2) and (3), sections 155 to 156.1 and 158 to 167 and Division J of Part I apply to this Part with any modifications that the circumstances require.

History: Subsec. 180.2(6) renumbered (from (3)) and amended by 1996, c. 21, s. 46, applicable to 1996 *et seq.*

History [s. 180.2]: Para. 180.2(1)(a) amended by 1994, c. 7, Sch. VII (1992, c. 48), s. 21, to substitute, "*Old Age Security Act*" for "*Old Age Security Act* or family allowance under the *Family Allowances Act*", and "paragraph 60(n)" for "paragraph 60(n) or (p)", applicable to 1993 *et seq.*

Subpara. 180.2(1)(b)(i) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 144, applicable to 1989 *et seq.* That subpara. formerly read:

(i) the amount that would, but for paragraph 60(w), be the individual's income under Part I for the year

Selected Cases [s. 180.2]: *Côté v. R.*, [2002] 4 C.T.C. 2025 (TCC) ("Cap" on pension as limitation on maximum benefit upheld).

Definitions [s. 180.2]: "adjusted income" — 180.2(1); "amount", "balance-due day" — 248(1); "base taxation year" — 180.2(1); "calendar year" — *Interpretation Act* 37(1)(a); "common-law partner" — 248(1); "filing-due date" — 150(1), 248(1); "Her Majesty" — *Interpretation Act* 35(1); "individual" — 248(1); "Minister", "non-resident" — 248(1); "resident in Canada" — 250; "return of income" — 180.2(1); "tax payable" — 248(2); "taxation year" — 249.

Interpretation Bulletins: IT-326R3: Returns of deceased persons as "another person".

Part I.3 — Tax on Large Corporations

181. (1) Definitions — For the purposes of this Part,

"financial institution", in respect of a taxation year, means a corporation that at any time in the year is

(a) a bank or credit union,

(b) an insurance corporation that carries on business in Canada,

(c) authorized under the laws of Canada or a province to carry on the business of offering its services as a trustee to the public,

(d) authorized under the laws of Canada or a province to accept deposits from the public and carries on the business of lending money on the security of real estate or investing in mortgages or hypothecary claims on real estate,

Proposed Amendment — 181(1)"financial institution"(d)

(d) authorized under the laws of Canada or a province to accept deposits from the public and carries on the business of lending money on the security of real property or immovables or investing in indebtedness on the security of mortgages on real property or of hypothecs on immovables,

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), s. 257, will amend para. (d) of the definition "financial institution" in subsec. 181(1) to read as above, to come into force on Royal Assent.

Technical Notes: See under 12(4).

(e) a registered securities dealer,

(f) a mortgage investment corporation, or

(g) a prescribed corporation;

Proposed Amendment — 181(1)"financial institution"(g)

(g) a corporation

(i) listed in the schedule, or

(ii) all or substantially all of the assets of which are shares or indebtedness of financial institutions to which the corporation is related;

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 160, will amend para. (g) of the definition "financial institution" in subsec. 181(1) to read as above, applicable after December 22, 1997, but in applying the para. in respect of taxation years that end before December 20, 2002, it is to be read as follows:

(g) prescribed, or listed in the schedule;

Technical Notes: Subsection 181(1) sets out definitions for the purposes of the Part I.3 tax on large corporations. Among these is the term "financial institution," which is relevant for a number of purposes. Most importantly, corporations that are financial institutions compute their capital for the purposes of Part I.3 differently from other corporations. The status of a particular corporation is also relevant to corporations that invest in the particular corporation or hold its debt, since whether certain of those investments are counted in the investor corporation's "investment allowance" — and thus whether they will reduce their own tax under Part I.3 — depends, in part, on whether the particular corporation is a financial institution.

In addition to listing several types of corporations, the definition "financial institution" provides, in its paragraph (g), that the definition applies as well to a prescribed corporation. Currently, such corporations are prescribed under section 8604 of the Regulations. Paragraph (a) of that regulation provides that a corporation of which all or substantially all of the assets of which are shares or indebtedness of a financial institution (as defined in subsection 181(1)) to which the corporation is related, is itself prescribed to be a financial institution; the remaining paragraphs list particular corporations by name.

Paragraph (g) of the definition is amended to reflect a fundamental change in the technique by which these corporations will be identified as financial institutions. Rather than listing corporations in a regulation, this new approach is to list them in a schedule to the Act. Amended paragraph (g) therefore refers to corporations that are either listed in the schedule, as per new subparagraph (g)(i), or that are described in new subparagraph (g)(ii), currently paragraph (a) of section 8604 of the Regulations.

As a consequence to the changes to paragraph (g) of the definition, section 8604 of the Regulations is to be repealed and a schedule is added at the end of the Act. Subject to a number of deletions due primarily to name changes and amalgamations, the schedule lists those corporations that are currently prescribed under section 8604 immediately before its repeal. The schedule also lists a number of corporations that are not currently prescribed, but meet the requirements for treatment as financial institutions and have asked to be treated as such.

Transitional rules for paragraph (g) of the definition ensure that corporations prescribed before the repeal of Regulation 8604 retain the status that they would have had under paragraph (g) had it not been amended to exclude prescribed corporations.

As described above, a number of corporations currently not prescribed are listed in the schedule, effective as of dates that precede December 20, 2002. Transitional rules ensure that, for any taxation year that begins before December 20, 2002, no corporation that deals at arm's length with any of these corporations will lose an investment allowance as a result the corporation's change in status to a financial institution under paragraph (g) of the definition.

Related Provisions: 142.2(1)"financial institution"(a)(i), 248(1)"restricted financial institution"(e.1), "specified financial institution"(e.1) — Prescribed corporation under this definition deemed to be FI, RFI and SFI.

History: Para. (d) of the definition "financial institution" in subsec. 181(1) amended by 2001, c. 17, s. 220, to add "or hypothecary claims", in force June 14, 2001.

Para. (e) of the definition "financial institution" in subsec. 181(1) amended by 1995, c. 21, s. 72, applicable to taxation years that end after June 1989. Para. (e) formerly read:

(e) registered or licensed under the laws of a province to trade in securities,

Para. (f) of "financial institution" in subsec. 181(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 145, applicable to taxation years ending after June 1989. Para. (f) formerly read:

(f) a deposit insurance corporation (within the meaning assigned by subsection 137.1(5)) or a corporation deemed by subsection 137.1(5.1) to be a deposit insurance corporation, or

Regulations: 8604 [to be repealed] (prescribed corporations).

"long-term debt" means,

(a) in the case of a bank, its subordinated indebtedness (within the meaning assigned by section 2 of the *Bank Act*) evidenced by obligations issued for a term of not less than 5 years,

(b) in the case of an insurance corporation, its subordinated indebtedness (within the meaning assigned by section 2 of the *Insurance Companies Act*) evidenced by obligations issued for a term of not less than 5 years, and

(c) in the case of any other corporation, its subordinated indebtedness (within the meaning that would be assigned by section 2 of the *Bank Act* if the definition of that expression in that section were applied with such modifications as the circumstances require) evidenced by obligations issued for a term of not less than 5 years,

but does not include, where the corporation is a prescribed federal Crown corporation for the purpose of section 27, any indebtedness evidenced by obligations issued to and held by Her Majesty in right of Canada;

History: The definition "long-term debt" in subsec. 181(1) substituted by 1994, c. 21, s. 81, applicable after May 31, 1992. That definition formerly read:

"long-term debt" means

(a) in the case of a bank, its indebtedness evidenced by bank debentures within the meaning assigned by the *Bank Act*, and

(b) in the case of a financial institution that is not a bank, its subordinate indebtedness evidenced by obligations issued for a term of not less than 5 years (other than, where the financial institution is a prescribed federal Crown corporation for the purposes of section 27, such indebtedness evidenced by obligations issued to and held by Her Majesty in right of Canada);

Para. (b) of "long-term debt" amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 104, applicable to 1991 *et seq.* Para. (b) formerly read:

(b) in the case of a corporation that is not a bank, its subordinate indebtedness evidenced by obligations issued for a term of not less than 5 years;

I.T. Technical News: 28 (large corporations tax — long-term debt).

"reserves", in respect of a corporation for a taxation year, means the amount at the end of the year of all of the corporation's reserves, provisions and allowances (other than allowances in respect of depreciation or depletion) and, for greater certainty, includes any provision in respect of deferred taxes.

Related Provisions: 181.2(3) — Reserves included in capital tax base.

Interpretation Bulletins: IT-532: Part I.3 — tax on large corporations.

I.T. Technical News: 18 (*Oerlikon Aérospatiale* case).

Selected Cases [subsec. 181(1)]: *Manufacturers Life Insurance Co. v. R.*, [2000] 1 C.T.C. 2481 (TCC) (Balance sheet figures to be used for capital tax base; amounts were not "reserves" or "surpluses"); *Oerlikon Aérospatiale Inc. v. R.*, [1999] 4 C.T.C. 358 (FCA); leave to appeal to SCC refused (May 11, 2000), File 27532 (Accounting treatment governs computation of tax; reserves as shown in financial statements to be included).

(2) Prescribed expressions — For the purposes of this Part, the expressions "attributed surplus", "Canadian assets", "Canadian premiums", "Canadian reserve liabilities", "permanent establishment", "total assets", "total premiums" and "total reserve liabilities" have such meanings as may be prescribed.

Regulations: 8600 (prescribed meanings of expressions).

(3) Determining values and amounts — For the purposes of determining the carrying value of a corporation's assets or any other amount under this Part in respect of a corporation's capital, investment allowance, taxable capital or taxable capital employed in Canada for a taxation year or in respect of a partnership in which a corporation has an interest,

(a) the equity and consolidation methods of accounting shall not be used; and

(b) subject to paragraph (a) and except as otherwise provided in this Part, the amounts reflected in the balance sheet

(i) presented to the shareholders of the corporation (in the case of a corporation that is neither an insurance corporation to which subparagraph (ii) applies nor a bank) or the members of the partnership, as the case may be, or, where such a balance sheet was not prepared in accordance with generally accepted accounting principles or no such balance sheet was prepared, the amounts that would be reflected if such a balance sheet had been prepared in accordance with generally accepted accounting principles, or

(ii) accepted by the Superintendent of Financial Institutions, in the case of a bank or an insurance corporation that is required by law to report to the Superintendent, or the superintendent of insurance or other similar officer or authority of the province under whose laws the corporation is incorporated, in the case of an insurance corporation that is required by law to report to that officer or authority,

shall be used.

Related Provisions: 190(2) — Rules in 181(3) apply to Part VI also.

Selected Cases [subsec. 181(3)]: *Manufacturers Life Insurance Co. v. R.*, [2003] 2 C.T.C. 171 (FCA) (Amounts in financial statements are determinative of issues); *PCL Construction Management Inc. v. R.*, [2001] 1 C.T.C. 2132 (TCC) (Minister entitled to go behind balance sheet figures to determine character of amounts).

Interpretation Bulletins: IT-532: Part I.3 — tax on large corporations.

I.T. Technical News: 18 (*Oerlikon Aérospatiale* case); 22 (large corporation tax — capital tax cases); 29 (large corporations tax — outstanding cheques).

(4) Limitations respecting inclusions and deductions — Unless a contrary intention is evident, no provision of this Part shall be read or construed to require the inclusion or to permit the deduction, in computing the amount of a corporation's capital, investment allowance, taxable capital or taxable capital employed in Canada for a taxation year, of any amount to the extent that that amount has been included or deducted, as the case may be, in computing the first-mentioned amount under, in accordance with or by reason of any other provision of this Part.

Interpretation Bulletins: IT-532: Part I.3 — tax on large corporations.

Related Provisions: 190(2) — Rules in 181(4) apply to Part VI also; 248(28) — Similar rule for the Act as a whole.

Definitions [s. 181]: "amount" — 248(1); "bank" — 248(1), *Interpretation Act* 35(1); "business" — 248(1); "Canada" — 255; "carrying on business in Canada" — 253; "corporation" — 248(1), *Interpretation Act*

35(1); "credit union" — 137(6), 248(1); "financial institution" — 181(1); "Her Majesty" — *Interpretation Act* 35(1); "hypothecs" — Quebec *Civil Code* art. 2660; "immovables" — Quebec *Civil Code* art. 900–907; "insurance corporation" — 248(1); "mortgage investment corporation" — 130.1(6), 248(1); "province" — *Interpretation Act* 35(1); "registered securities dealer" — 248(1); "taxation year" — 249.

181.1 (1) Tax payable — Every corporation shall pay a tax under this Part for each taxation year equal to the amount obtained by multiplying the corporation's specified percentage for the taxation year by the amount, if any, by which

(a) its taxable capital employed in Canada for the year

exceeds

(b) its capital deduction for the year.

Related Provisions: 125.3 — Deduction re Part I.3 tax; 132.2(1)(o)(ii) [to be repealed], 132.2(3)(l)(ii) [draft] — Deemed taxation year of mutual fund corporation on reorganization; 157(1), (2.1) — Instalments — corporations; 161(1) — Interest; 161(4.1) — Interest — limitation respecting corporations; 181.1(1.1) — Specified percentage; 181.1(2) — Reduction for short taxation year; 181.1(4)(a) — Tax reduced by Part I surtax paid; 181.6 — Return; 190.1(1) — Financial institutions capital tax; 235 — Penalty on large corporation for late filing.

History: Subsec. 181.1(1) amended by 2003, c. 15, s. 85, applicable to 2004 *et seq.* Subsec. 181.1(1) formerly read:

(1) Every corporation shall pay a tax under this Part for each taxation year equal to 0.225% of the amount, if any, by which

(a) its taxable capital employed in Canada for the year

exceeds

(b) its capital deduction for the year.

The opening words of subsec. 181.1(1) amended by 1996, c. 21, s. 47, applicable to taxation years that end after February 27, 1995, except that, in its application to taxation years that began before February 28, 1995, there shall be deducted from the tax otherwise payable under subsec. 181.1(1), an amount equal to that proportion of 1/9 of the tax otherwise payable under that subsection of the Act that the number of days in the year that were before February 28, 1995 is of the number of days in the year.

For the purpose of applying subsection 125(5.1), the amount that would, but for subsecs. 181.1(2) and (4), be a corporation's tax payable under Part I.3 for a taxation year that began before February 28, 1995 shall be determined without reference to the above amendment to subsec. 181.1(1).

The opening words formerly read:

(1) Every corporation shall pay a tax under this Part for each taxation year equal to 0.2% of the amount, if any, by which

That portion of subsec. 181.1(1) preceding para. (a) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 146(1), to substitute "0.2%" for "0.175%", applicable to 1991 *et seq.* except that, in its application to taxation years commencing before 1991 and ending after 1990, there may be deducted from the tax otherwise payable under the subsec. an amount equal to that proportion of 1/8 of the tax otherwise payable under the subsec. that the number of days in the year that are before 1991 is of the number of days in the year.

Interpretation Bulletins: IT-532: Part I.3 — tax on large corporations.

(1.1) Specified percentage — For the purpose of subsection (1), the specified percentage of a corporation for a taxation year that ends after 2003 is the total of

(a) that proportion of 0.225% that the number of days in the taxation year that are before 2004 is of the number of days in the taxation year,

(b) that proportion of 0.200% that the number of days in the taxation year that are in 2004 is of the number of days in the taxation year,

(c) that proportion of 0.175% that the number of days in the taxation year that are in 2005 is of the number of days in the taxation year,

(d) that proportion of 0.125% that the number of days in the taxation year that are in 2006 is of the number of days in the taxation year, and

(e) that proportion of 0.0625% that the number of days in the taxation year that are in 2007 is of the number of days in the taxation year.

History: Subsec. 181.1(1.1) added by 2003, c. 15, s. 85, applicable to 2004 *et seq.*

(1.2) Exceptions — Notwithstanding subsection (1.1), for the purposes of applying subsection 125(5.1) and the definitions "unused surtax credit" in subsections (6) and 190.1(5), the amount of tax in respect of a corporation under subsection (1) for a taxation year is to be determined as if the specified percentage of the corporation for the taxation year were 0.225%.

History: Subsec. 181.1(1.2) added by 2003, c. 15, s. 85, applicable to 2004 *et seq.*

(2) Short taxation years — Where a taxation year of a corporation is less than 51 weeks, the amount determined under subsection (1) for the year in respect of the corporation shall be reduced to that proportion of that amount that the number of days in the year is of 365.

Related Provisions: 132.2(1)(o)(ii) [to be repealed], 132.2(3)(l)(ii) [draft] — Deemed taxation year of mutual fund corporation on reorganization.

History: Subsec. 181.1(2) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 105(1), applicable to 1992 *et seq.* Subsec. (2) formerly read:

(2) Where a taxation year of a corporation is less than 51 weeks, the tax payable under this Part for the year by the corporation shall be that proportion of its tax otherwise payable under this Part for the year that the number of days in the year is of 365.

(3) Where tax not payable — No tax is payable under this Part for a taxation year by a corporation

(a) that was a non-resident-owned investment corporation throughout the year;

(b) that was a bankrupt (within the meaning assigned by subsection 128(3)) at the end of the year;

(c) that was throughout the year exempt from tax under section 149 on all of its taxable income;

(d) that neither was resident in Canada nor carried on business through a permanent establishment in Canada at any time in the year;

(e) that was throughout the year a deposit insurance corporation (within the meaning assigned by subsection 137.1(5)) or a corporation deemed by subsection 137.1(5.1) to be a deposit insurance corporation; or

(f) that was throughout the year a corporation described in subsection 136(2) the principal business of which was marketing (including processing incidental to or connected therewith) natural products belonging to or acquired from its members or customers.

Related Provisions: 125.3(1) — Large corporations tax; 132.2(1)(o)(ii) [to be repealed], 132.2(3)(l)(ii) [draft] — Deemed taxation year of mutual fund corporation on reorganization.

History: Para. 181.1(3)(f) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 105(2), applicable to taxation years ending after June 1989.

Para. 181.1(3)(e) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 146(2), applicable to taxation years ending after June 1989.

Interpretation Bulletins: IT-347R2: Crown corporations (archived); IT-496R: Non-profit organizations; IT-532: Part I.3 — tax on large corporations.

(4) Deduction — There may be deducted from a corporation's tax otherwise payable under this Part for a taxation year an amount equal to the total of

(a) its Canadian surtax payable for the year, and

(b) such part as the corporation claims of its unused surtax credits for its 7 immediately preceding and 3 immediately following taxation years,

to the extent that that total does not exceed the amount by which

(c) the amount that would, but for this subsection, be its tax payable under this Part for the year

exceeds

(d) the total of all amounts each of which is the amount deducted under subsection 125.3(1) in computing the corporation's tax payable under Part I for a taxation year ending before 1992 in respect of its unused Part I.3 tax credit (within the meaning assigned by section 125.3) for the year.

Related Provisions: 87(2)(j.91) — Amalgamation; 87(2.11) — Vertical amalgamations; 125.2, 125.3 — Credit of Parts VI and I.3 tax against surtax before 1992; 161(7)(a)(ix), 164(5)(h.1), 164(5.1)(h.2) — Effect of carryback of loss etc.; 181.6 — Return.

History: Para. 181.1(4)(c) substituted by 1994, c. 21, s. 82, applicable to 1992 *et seq.* That para. formerly read:

(c) the amount that would, but for this section, be its tax payable under this Part for the year

Subsec. 181.1(4) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 105(3), applicable to 1992 *et seq.*

Interpretation Bulletins: IT-532: Part I.3 — tax on large corporations.

Forms: T2 SCH 37: Calculation of unused surtax credit.

(5) Idem — For the purposes of this subsection and subsections (4), (6) and (7),

(a) an amount may not be claimed under subsection (4) in computing a corporation's tax payable under this Part for a particular taxation year in respect of its unused surtax credit for another taxation year until its unused surtax credits, if any, for taxation years preceding the other year that may be claimed under this Part for the particular year have been claimed; and

(b) an amount in respect of a corporation's unused surtax credit for a taxation year may be claimed under subsection (4) in computing its tax payable under this Part for another taxation year only to the extent that it exceeds the total of all amounts each of which is an amount claimed in respect of that unused surtax credit in computing its tax payable under this Part or Part VI for a taxation year preceding that other year.

Related Provisions: 87(2.11) — Vertical amalgamations.

History: Subsec. 181.1(5) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 105(3), applicable to 1992 *et seq.*

(6) Definitions — For the purposes of this subsection and subsections (4), (5) and (7),

"Canadian surtax payable" of a corporation for a taxation year has the meaning assigned by subsection 125.3(4);

"unused surtax credit" for a taxation year ending after 1991

(a) of a corporation (other than a corporation that was throughout the year a financial institution, within the meaning assigned by section 190) means the amount, if any, by which

(i) its Canadian surtax payable for the year

exceeds the total of

(ii) the amount that would, but for subsection (4), be its tax payable under this Part for the year, and

(iii) the amount, if any, deducted under section 125.3 in computing the corporation's tax payable under Part I for the year, and

(b) of a corporation that was throughout the year a financial institution (within the meaning assigned by section 190) means the lesser of

(i) the amount, if any, by which

(A) its Canadian surtax payable for the year

exceeds the total of

(B) the amount that would, but for subsection (4), be its tax payable under this Part for the year, and

(C) the amount, if any, deducted under section 125.3 in computing the corporation's tax payable under Part I for the year, and

(ii) the amount, if any, by which its tax payable under Part I for the year exceeds the amount that would, but for subsection (4) and subsection 190.1(3), be the total of its taxes payable under Parts I.3 and VI for the year.

Related Provisions: 87(2.11) — Vertical amalgamations; 181.1(1.2) — Calculation to be based on tax rate of 0.225%; 181.5(1.1), (4.1) — Calculation to be based on threshold of $10 million; 256(9) — Date of acquisition of control.

History: Subsec. 181.1(6) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 105(3), applicable to 1992 *et seq.*

(7) Acquisition of control — Where at any time control of a corporation has been acquired by a person or group of persons, no amount in respect of its unused surtax credit for a taxation year ending before that time is deductible by the corporation for a taxation year ending after that time and no amount in respect of its unused surtax credit for a taxation year ending after that time is deductible by the corporation for a taxation year ending before that time, except that

(a) the corporation's unused surtax credit for a particular taxation year that ended before that time is deductible by the corporation for a taxation year that ends after that time (in this paragraph referred to as the "subsequent year") to the extent of that proportion of the corporation's Canadian surtax payable for the particular year that

(i) the amount, if any, by which

(A) the total of all amounts each of which is

(I) its income under Part I for the particular year from a business that was carried on by the corporation throughout the subsequent year for profit or with a reasonable expectation of profit, or

(II) where properties were sold, leased, rented or developed or services were rendered in the course of carrying on that business before that time, its income under Part I for the particular year from any other business all or substantially all of the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services

exceeds

(B) the total of all amounts each of which is an amount deducted under paragraph 111(1)(a) or (d) in computing its taxable income for the particular year in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of any business referred to in clause (A)

is of the greater of

(ii) the amount determined under subparagraph (i), and

(iii) the corporation's taxable income for the particular year; and

(b) the corporation's unused surtax credit for a particular taxation year that ends after that time is deductible by the corporation for a taxation year that ended before that time (in this paragraph referred to as the "preceding year") to the extent of that proportion of the corporation's Canadian surtax payable for the particular year that

(i) the amount, if any, by which

(A) the total of all amounts each of which is

(I) its income under Part I for the particular year from a business that was carried on by the corporation in the preceding year and throughout the particular year for profit or with a reasonable expectation of profit, or

(II) where properties were sold, leased, rented or developed or services were rendered in the course of carrying on that business before that time, the corporation's income under Part I for the particular year from any other business all or substantially all of the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services

exceeds

(B) the total of all amounts each of which is an amount deducted under paragraph 111(1)(a) or (d) in computing the corporation's taxable income for the particular year in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of any business referred to in clause (A)

is of the greater of

(ii) the amount determined under subparagraph (i), and

(iii) the corporation's taxable income for the particular year.

Related Provisions: 87(2.11) — Vertical amalgamations; 256(6)–(9) — Anti-avoidance — deemed exercise of right to increase voting power.

History: Paras. 181.1(7)(a) and (b) amended by 1998, c. 19, s. 194, applicable to acquisitions of control that occur after April 26, 1995. Paras. 181.1(7)(a) and (b) formerly read:

(a) where a business was carried on by the corporation in a taxation year ending before that time, its unused surtax credit for that year is deductible by the corporation for a particular taxation year ending after that time only if that business was carried on by the corporation for profit or with a reasonable expectation of profit throughout the particular year and only to the extent of that proportion of the corporation's tax payable under this Part for the particular year that

(i) the amount, if any, by which

(A) the total of its income under Part I for the particular year from that business and, where properties were sold, leased, rented or developed or services were rendered in the course of carrying on that business before that time, its income under Part I for the particular year from any other business substantially all of the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services

exceeds

(B) the total of all amounts each of which is an amount deducted under paragraph 111(1)(a) or (d) in computing its taxable income under Part I for the particular year in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of that business or the other business

is of the greater of

(ii) the amount determined under subparagraph (i), and

(iii) the corporation's taxable income under Part I for the particular year; and

(b) where a business was carried on by the corporation throughout a taxation year ending after that time, its unused surtax credit for that year is deductible by the corporation for a particular taxation year ending before that time only if that business was carried on by the corporation for profit or with a reasonable expectation of profit in the particular year and only to the extent of that proportion of the corporation's tax payable under this Part for the particular year that

(i) the amount, if any, by which

(A) the total of its income under Part I for the particular year from that business and, where properties were sold, leased, rented or developed or services were rendered in the course of carrying on that business before that time, its income under Part I for the particular year from any other business substantially all of the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services

exceeds

(B) the total of all amounts each of which is an amount deducted under paragraph 111(1)(a) or (d) in computing its taxable income under Part I for the particular year in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of that business or the other business

is of the greater of

(ii) the amount determined under subparagraph (i), and

(iii) the corporation's taxable income under Part I for the particular year.

Subsec. 181.1(7) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 105(3), applicable to 1992 *et seq.*

I.T. Technical News: 7 (control by a group — 50/50 arrangement).

Interpretation Bulletins: IT-532: Part I.3 — tax on large corporations.

Definitions [s. 181.1]: "acquired" — 256(7)–(9); "amount" — 181(3), 248(1); "business" — 248(1); "capital deduction" — 181.5(1); "Canadian surtax payable" — 125.3(4), 181.1(6); "carrying on business in Canada" — 253; "control" — 256(6)–(9); "corporation" — 248(1), *Interpretation Act* 35(1); "farm loss" — 111(8); "financial institution" — 190(1); "non-capital loss" — 111(8), 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "permanent establishment" — 181(2), Reg. 8602; "property" — 248(1); "resident in Canada" — 250; "specified percentage" — 181.1(1.1); "taxable capital employed in Canada" — 181.2(1), 181.3(1), 181.4; "taxable income" — 2(2), 248(1); "taxation year" — 249; "unused surtax credit" — 181.1(6).

181.2 (1) Taxable capital employed in Canada — The taxable capital employed in Canada of a corporation for a taxation year (other than a financial institution or a corporation that was throughout the year not resident in Canada) is the prescribed proportion of the corporation's taxable capital for the year.

Related Provisions: 66(12.6012) — Definition used for limitation on renunciation of Canadian development expenses to flow-through shareholder as Canadian exploration expense; 181(4) — Limitations respecting inclusions and deductions; 181.3(1) — Taxable capital employed in Canada of financial institution.

Regulations: 8601 (prescribed proportion).

(2) Taxable capital — The taxable capital of a corporation (other than a financial institution) for a taxation year is the amount, if any, by which its capital for the year exceeds its investment allowance for the year.

Related Provisions: 181(4) — Limitations respecting inclusions and deductions.

(3) Capital — The capital of a corporation (other than a financial institution) for a taxation year is the amount, if any, by which the total of

(a) the amount of its capital stock (or, in the case of a corporation incorporated without share capital, the amount of its members' contributions), retained earnings, contributed surplus and any other surpluses at the end of the year,

(b) the amount of its reserves for the year, except to the extent that they were deducted in computing its income for the year under Part I,

(b.1) the amount of its deferred unrealized foreign exchange gains at the end of the year,

(c) the amount of all loans and advances to the corporation at the end of the year,

(d) the amount of all indebtedness of the corporation at the end of the year represented by bonds, debentures, notes, mortgages, hypothecary claims, banker's acceptances or similar obligations,

(e) the amount of any dividends declared but not paid by the corporation before the end of the year,

(f) the amount of all other indebtedness (other than any indebtedness in respect of a lease) of the corporation at the end of the year that has been outstanding for more than 365 days before the end of the year, and

(g) where the corporation was a member of a partnership at the end of the year, that proportion of the amount, if any, by which

(i) the total of all amounts (other than amounts owing to the member or to other corporations that are members of the partnership) that would be determined under this paragraph and paragraphs (b) to (d) and (f) in respect of the partnership at the end of its last fiscal period that ends at or before the end of the year (if paragraphs (b) to (d) and (f) applied to partnerships in the same way that they apply to corporations)

Proposed Amendment — 181.2(3)(g)(i)

(i) the total of all amounts (other than amounts owing to the member or to other corporations that are members of the partnership) that would, if this paragraph and paragraphs (b) to (d) and (f) applied to partnerships in the same way that they apply to corporations, be determined under those paragraphs in respect of the partnership at the end of its last fiscal period that ends at or before the end of the year

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 161(1), will amend subpara. 181.2(3)(g)(i) to read as above, applicable to taxation years that begin after December 20, 2002.

Technical Notes: Section 181.2 is amended in two respects. First, subsections 181.2(3) and (5) are amended to clarify the effect of tiered partnerships: structures in which one partnership is a member of another partnership. Second, an amendment is made to subsection 181.2(3) to accommodate a change to the accounting presentation of redeemable preferred shares.

Tiered Partnerships

Subsection 181.2(3) defines the "capital" of a corporation, and in paragraph 181.2(3)(g) includes in a corporation's capital a pro-rata share of the reserves, deferred foreign exchange gains and indebtedness of any partnership of which it is a member. To determine those amounts, the relevant paragraphs of subsection 181.2(3) are applied to the partnership in the same way as they apply to corporations. Paragraph 181.2(3)(g) is amended so that it itself applies on this basis. As a result, the proration of the reserve, deferred gain and debt amounts will carry through any number of tiered partnerships.

Subsection 181.2(4) provides for the "investment allowance" by which, in broad terms, one corporation's investment in another is excluded from the first corporation's taxable capital. Subsection 181.2(5) determines the carrying value of an interest of a corporation in a partnership for this purpose. Subsection 181.2(5) is amended to ensure that the carrying value of an interest of a corporation in a particular partnership, for the purposes of subsection 181.2(4), includes the carrying value of an interest of the particular partnership in another partnership.

exceeds

(ii) the amount of the partnership's deferred unrealized foreign exchange losses at the end of that period

that the member's share of the partnership's income or loss for that period is of the partnership's income or loss for that period

exceeds the total of

(h) the amount of its deferred tax debit balance at the end of the year,

(i) the amount of any deficit deducted in computing its shareholders' equity at the end of the year, and

Proposed Amendment — 181.2(3)(i)

(i) the amount of any deficit deducted in computing its shareholders' equity (including, for this purpose, the amount of any provision for the redemption of preferred shares) at the end of the year,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 161(2), will amend para. 181.2(3)(i) to read as above, applicable to taxation years that begin after 1995.

Technical Notes: *Preferred Shares*

In general, a corporation's tax payable under Part I.3 of the Act is computed with reference to amounts reflected in the balance sheet of the corporation, as prepared in accordance with generally accepted accounting principles (GAAP).

The Canadian Institute of Chartered Accountants' *Handbook* (the Handbook), which is the principal authority of GAAP in Canada, requires that a liability of a corporation in respect of a redeemable preferred share be reflected on the corporation's balance sheet. The Handbook provides that this liability may be accounted for in one of two ways. Under the first method, the difference between the stated capital of a share and its redemption value is charged to retained earnings, which in some cases may result in the corporation having negative retained earnings or a deficit. Retained earnings are unaffected under the second method, under which a line account is set up reflecting the redemption liability of the preferred shares.

Current paragraph 181.2(3)(i) allows for a reduction of a corporation's capital, to the extent of any deficit deducted in computing the corporation's shareholders' equity. To accommodate the alternative presentation of a provision for the redemption of preferred shares, the paragraph is amended to refer explicitly to the amount of such a provision.

(j) any amount deducted under subsection 135(1) in computing its income under Part I for the year, to the extent that the amount can reasonably be regarded as being included in the amount determined under any of paragraphs (a) to (g) in respect of the corporation for the year.

(k) the amount of its deferred unrealized foreign exchange losses at the end of the year.

Possible Future Amendment — Joint debt

Letter from Dept. of Finance, August 6, 1997:

Dear [xxx]

This is in response to your memorandum dated July 29, 1997 respecting the application of the Large Corporation Tax (LCT) to joint debt. You are concerned that joint debt may be fully taxed in the hands of each co-borrower under the LCT, even though the advance is divided among those borrowers. Using the example provided in your note, a joint debt in the

amount of $400 million might be shared so that one party is advanced $100 million and the other, $300 million. You believe that the aggregate addition to capital in respect of the debt should be $400 million for the two borrowers; your concern is that, under the current law, each of them would be required to add $400 million to capital with the result that a total of $800 million would be subject to LCT.

Your concern is based on the current wording of subsection 181(3) of the Act, which provides that, "except as otherwise provided under this Part", the amounts to be used in calculating LCT are those set out on the taxpayer's balance sheet, prepared in accordance with GAAP. You feel that the definition of capital in paragraph 181.2(3) of the Act "provides otherwise" for these purposes, and hence, that the amounts set out on the balance sheet may not be relevant.

As you have described it, GAAP currently provides that only the portion of a jointly-incurred debt that is actually advanced to a borrower is recorded as a liability on the balance sheet. A note to the balance sheet indicates the full value of the joint debt in order to disclose the legal liability of the borrower for that part of the debt that was not received by that borrower. If subsection 181(3) applies, you reason that the taxpayers in your example would be taxed on $100 million and $300 million in capital respectively. If subsection 181(3) does not apply, each taxpayer would be taxed on the full amount of their legal indebtedness, being $400 million.

In our view, the definition of capital in subsection 181.2(3) of the Act does not constitute an exception to the application of subsection 181(3) of the Act. Rather, our intention — which we believe to be reflected in the existing legislation — is that subsection 181(3) apply to use the amounts reflected in a borrower's balance sheet to quantify the amounts included in its capital.

That being said, there may be a risk of double-counting in the application of the LCT to jointly-incurred debt. As notes to the financial statements are an integral part of the balance sheet, there is a possibility that the amount set out in the notes would be assessed as the corporation's capital in respect of a joint debt. If this were to occur, each co-borrower under a joint debt would be taxed for the full amount of the debt, irrespective of the amount actually advanced to that borrower.

In principle, we agree that the amount of a joint debt should only be taxed once, and we hope to discuss this matter further with Revenue Canada officials to determine whether that result can be achieved under the current law. If that proves unsuccessful, we are prepared to consider legislative changes to ensure this outcome. As noted, GAAP currently allocates joint debt based on the amount of cash advanced to each co-borrower — for LCT purposes, other factors may be relevant in making such an allocation. If a change to the law should prove necessary, we would be pleased [to] have your views in this respect.

If you would like to discuss this matter in more detail, please feel free to contact Robin Maley (992-4859) or Brian Ernewein (992-3045) of the Division directly.

Yours sincerely,

Len Farber
Director General, Tax Legislation Division

Related Provisions: 132.2(1)(o) — Deemed year-end of mutual fund corporation on reorganization; 181(4) — Limitations respecting inclusions and deductions.

History: Para. 181.2(3)(d) amended by 2001, c. 17, subsec. 221(1), to add "hypothecary claims,", in force June 14, 2001.

Paras. 181.2(3)(b.1) and 181.2(3)(k) added, para. 181.2(3)(g) amended, by 1998, c. 19, subsecs. 195(1) to (3), applicable to 1995 *et seq.* Para. 181.2(3)(g) formerly read:

> (g) where the corporation was a member of a partnership at the end of the year, that proportion of the total of all amounts (other than amounts owing to the member or to corporations that are other members of the partnership) that would be determined under this paragraph and paragraphs (b) to (f) in respect of the partnership at the end of its last fiscal period ending at or before the end of the year (if the references in paragraphs (b) to (f) to "corporation" were read as references to "partnership") that the member's share of the partnership's income or loss for that period is of the partnership's income or loss for that period,

Para. 181.2(3)(d) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 106(1), to add "bankers' acceptances", applicable to taxation years ending after December 20, 1991.

Para. 181.2(3)(j) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 147(1), applicable to taxation years ending after June 1989.

Selected Cases [subsec. 181.2(3)]: *Autobus Thomas Inc. v. R.*, [2002] 1 C.T.C. 1 (SCC); aff'g [2002] 1 C.T.C. 3 (FCA); aff'g [1999] 2 C.T.C. 2001 (TCC) (Amounts paid in respect of conditional sales contracts were "loans" by bank to taxpayer and included in capital); *PCL Construction Management Inc. v. R.*, [2001] 1 C.T.C. 2132 (TCC) (Minister entitled to go behind balance sheet figures to determine character of amounts); *Oerlikon Aérospatiale Inc. v. R.*, [1999] 4 C.T.C. 358 (FCA); leave to appeal to SCC refused (May 11, 2000), File 27532 (Capital includes all reserves not deducted in computation).

Interpretation Bulletins: IT-532: Part I.3 — tax on large corporations.

I.T. Technical News: 18 (*Oerlikon Aérospatiale* case); 29 (large corporations tax — outstanding cheques).

(4) Investment allowance — The investment allowance of a corporation (other than a financial institution) for a taxation year is the total of all amounts each of which is the carrying value at the end of the year of an asset of the corporation that is

(a) a share of another corporation,

(b) a loan or advance to another corporation (other than a financial institution),

(c) a bond, debenture, note, mortgage, hypothecary claim or similar obligation of another corporation (other than a financial institution),

(d) long-term debt of a financial institution,

(d.1) a loan or advance to, or a bond, debenture, note, mortgage, hypothecary claim or similar obligation of, a partnership all of the members of which, throughout the year, were other corporations (other than financial institutions) that were not exempt from tax under this Part (otherwise than because of paragraph 181.1(3)(d)),

Proposed Amendment — 181.2(4)(d.1)

Letter from Dept. of Finance, May 25, 2004:

Dear [xxx]

Thank you for your letter of February 3, 2004, in which you provide additional material regarding the application, to tiered partnership structures, of the investment allowance provisions in Part I.3 of the *Income Tax Act*. Further to our meeting on this matter, it was helpful to see set out the particular criteria that in your view ought to apply in order for a corporation that loans or advances funds to such a structure to recognize an investment allowance in respect of that debt.

As you know, although the proposed amendments to the Act announced in December 2002 and released again in February 2004 address certain issues around partnerships and the Part I.3 tax, they do not — and were not intended to — deal with the question you have raised. That question, in short, is whether under any circumstances the investment allowance of a corporation ought to include an amount in respect of the corporation's holding of debt of a partnership, not all of the members of which are corporations. In its current form, paragraph 181.2(4)(d.1) recognizes partnership debt only if all the members of the partnership are corporations (other than financial institutions) that either are not exempt from Part I.3 tax or are neither resident in Canada nor carrying on business in Canada through a permanent establishment. The provision thus has the effect that advances or loans to second- or lower-tiered partnerships do not support an investment allowance, since one or more members of such partnerships are necessarily not corporations.

You have suggested that the investment allowance ought to be available in some cases of multiple partnership tiers. That is, subject to certain additional criteria which I will return to in a moment, you propose that a debt investment in a particular partnership support an investment allowance if all of the members of the partnership that are not corporations are themselves partnerships that, either directly or through further layers of partnerships, are made up of corporations. This concept can perhaps be expressed most succinctly by defining a new term, "eligible partnership". An eligible partnership would (again, subject to some further criteria) be one all of the members of which are either corporations or other eligible partnerships. The carrying value of any loan or advance to (or bond, etc. of) an eligible partnership would be included in computing the investment allowance of a corporation other than a financial institution.

I agree that this is in principle an appropriate result. In policy terms, the fact that the debtor's corporate structure has been arranged to include

more than one layer of partnerships ought not necessarily to deny the holder of a debt an investment allowance. While as a practical matter there will often be ways of avoiding such a structure, or at least of relocating the debt, it is recognized that business and other considerations may make it difficult or undesirable in a particular instance to do that. For that reason, I am prepared to recommend an amendment to paragraph 181.2(4)(d.1), to be effective for the 2004 and subsequent taxation years, that would include in the investment allowance calculation the debt of what I have called "eligible partnerships."

At the same time, it will in my view be necessary both to define "eligible partnership", and to set out additional criteria that would be applicable in respect of debt issued by partnerships within a tiered partnership structure, with some care. In this regard, we would expect to make recommendations along the following lines:

- An eligible partnership could have no member that is a financial institution, or that is corporation that is exempt from tax under Part I.3 (otherwise than because it is non-resident and does not carry on business in Canada through a permanent establishment).
- Where a partnership's status as an eligible partnership is relevant in respect of a debt for a particular taxation year, the partnership would be required to maintain that status throughout the taxation year.
- For the purposes of including amounts in capital under paragraph 181.2(3)(g) in respect of a loan or an advance to an eligible partnership, the fiscal year-end of any intervening or higher-tiered partnership would be deemed to be the same as that of the debtor partnership.

Of course, we cannot offer any assurance that either the Minister of Finance or Parliament will agree with the recommendations that we intend to make in this regard. Nonetheless, we trust that this statement of our position is helpful.

Yours sincerely,

Brian Ernewein
Director, Tax Legislative Division, Tax Policy Branch

(e) an interest in a partnership, or

(f) a dividend payable to the corporation at the end of the year on a share of the capital stock of another corporation,

other than a share of the capital stock of, a dividend payable by, or indebtedness of, a corporation that is exempt from tax under this Part (otherwise than because of paragraph 181.1(3)(d)).

Proposed Amendment — Application of 181.2(4)(b), (c) and (d.1)

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 161(6), provides that in applying paras. 181.2(4)(b), (c) and (d.1) to a particular corporation in respect of an asset that is a loan or an advance to, or an obligation of, another corporation or partnership that the particular corporation holds at the end of a taxation year of the particular corporation that began before December 20, 2002, those paragraphs are to be read without reference to "(other than a financial institution)" and "(other than financial institutions)" if, at the end of the taxation year,

(a) the particular corporation deals at arm's length with the other corporation or the partnership, as the case may be; and

(b) the other corporation is a financial institution, or the partnership is not a partnership described in para. 181.2(4)(d.1), as the case may be, solely because of s. 160 and subsecs. 193(1) and (3) [of the amending legislation].

Technical Notes: See under 181.2(3)(g)(i).

Related Provisions: 181(4) — Limitations respecting inclusions and deductions; 181.2(6) — Deemed amount of loan.

History: Paras. 181.2(4)(c) and (d.1) amended by 2001, c. 17, subsecs. 221(2), (3), to add "hypothecary claim", in force June 14, 2001.

Para. 181.2(4)(d.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 106(2), applicable to 1991 *et seq.*

That portion of subsec. 181.2(4) following para. (e) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 147(2), applicable to taxation years ending after June 1989. That portion formerly read:

other than a share of the capital stock or indebtedness of a corporation that is exempt from tax under section 149 on all of its taxable income.

Selected Cases [subsec. 181.2(4)]: *Canadian Forest Products Ltd. v. R.*, [2004] 4 C.T.C. 2034 (TCC) (Unpresented cheques not part of corporation's capital); *Imperial Oil Ltd. v. R.*, [2003] 4 C.T.C. 177 (FCA) (Cash management system was not abuse of Act; possibility of double taxation); *Federated Co-operatives Ltd. v. R.*, [2001] 3 C.T.C. 269 (FCA); aff'g [2000] 2 C.T.C. 2382 (TCC) (Bankers' acceptances are not bonds, debentures, notes or similar obligations).

Interpretation Bulletins: IT-532: Part I.3 — tax on large corporations.

I.T. Technical News: 28 (large corporations tax — long-term debt).

(5) Value of interest in partnership — For the purposes of subsection (4), the carrying value, at the end of a taxation year, of an interest of a corporation in a partnership shall be deemed to be an amount equal to that proportion of

(a) the total of all amounts each of which is the carrying value of an asset of the partnership, at the end of its last fiscal period ending at or before the end of the year, described in any of paragraphs (4)(a) to (d) and (f), other than an asset that is a share of the capital stock of, a dividend payable by, or indebtedness of, a corporation that is exempt from tax under this Part (otherwise than because of paragraph 181.1(3)(d)),

that

(b) the corporation's share of the partnership's income or loss for that period

is of

(c) the partnership's income or loss for that period.

Proposed Amendment — 181.2(5)

(5) Value of interest in partnership — For the purposes of subsection (4) and this subsection, the carrying value at the end of a taxation year of an interest of a corporation or of a partnership (each of which is referred to in this subsection as the "member") in a particular partnership is deemed to be the member's specified proportion, for the particular partnership's last fiscal period that ends at or before the end of the taxation year, of the amount that would, if the particular partnership were a corporation, be the particular partnership's investment allowance at the end of that fiscal period.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 161(3), will amend subsec. 181.2(5) to read as above, applicable to taxation years that begin after December 20, 2002.

Technical Notes: See under 181.2(3)(g)(i).

Related Provisions: 248(1) — Definition of "specified proportion".

History: Para. 181.2(5)(a) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 147(3), applicable to taxation years ending after June 1989. That para. formerly read:

(a) the total of all amounts each of which is the carrying value of an asset of the partnership, at the end of its last fiscal period ending at or before the end of the year, described in paragraphs (4)(a) to (d) (other than an asset that is a share of the capital stock or indebtedness of a corporation that is exempt from tax under section 149 on all of its taxable income),

Interpretation Bulletins: IT-532: Part I.3 — tax on large corporations.

(6) Loan — For the purpose of subsection (4), where a corporation made a particular loan to a trust that neither

(a) made any loans or advances to nor received any loans or advances from, nor

(b) acquired any bond, debenture, note, mortgage, hypothecary claim or similar obligation of nor issued any bond, debenture, note, mortgage, hypothecary claim or similar obligation to

a person not related to the corporation, as part of a series of transactions in which the trust made a loan to another

corporation (other than a financial institution) to which the corporation is related, the least of

(c) the amount of the particular loan,

(d) the amount of the loan from the trust to the other corporation, and

(e) the amount, if any, by which

(i) the total of all amounts each of which is the amount of a loan from the trust to any corporation

exceeds

(ii) the total of all amounts each of which is the amount of a loan (other than the particular loan) from any corporation to the trust

at any time shall be deemed to be the amount of a loan from the corporation to the other corporation at that time.

Related Provisions: 248(10) — Series of transactions.

History: Para. 181.2(6)(b) amended by 2001, c. 17, subsec. 221(4), to add "hypothecary claim" (twice), in force June 14, 2001.

Subsec. 181.2(6) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 106(3), applicable after June 1989.

Interpretation Bulletins: IT-532: Part I.3 — tax on large corporations.

Definitions [s. 181.2]: "amount" — 181(3), 181.2(6), 248(1); "carrying value" — 181(3); "corporation" — 248(1), *Interpretation Act* 35(1); "financial institution" — 181(1); "fiscal period" — 249(2)(b), 249.1; "long-term debt" — 181(1); "permanent establishment" — 181(2), Reg. 8602; "preferred share" — 248(1); "reserves" — 181(1); "resident in Canada" — 250; "series of transactions" — 248(10); "share", "specified proportion" — 248(1); "taxation year" — 249.

181.3 (1) Taxable capital employed in Canada of financial institution — The taxable capital employed in Canada of a financial institution for a taxation year is the total of

(a) the total of all amounts each of which is the carrying value at the end of the year of an asset of the financial institution (other than property held by the institution primarily for the purpose of resale that was acquired by the financial institution, in the year or the preceding taxation year, as a consequence of another person's default, or anticipated default, in respect of a debt owed to the institution) that is tangible property used in Canada and, in the case of a financial institution that is an insurance corporation, that is non-segregated property, within the meaning assigned by subsection 138(12),

Proposed Amendment — 181.3(1)(a)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 258(1), will amend para. 181.3(1)(a) by substituting "tangible, or for civil law corporeal, property" for "tangible property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(b) the total of all amounts each of which is an amount in respect of a partnership in which the financial institution has an interest at the end of the year equal to that proportion of

(i) the total of all amounts each of which is the carrying value of an asset of the partnership, at the end of its last fiscal period ending at or before the end of the year, that is tangible property used in Canada

Proposed Amendment — 181.3(1)(b)(i)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 258(2), will amend subpara. 181.3(1)(b)(i) by substituting "tangible, or for civil law corporeal, property" for "tangible property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

that

(ii) the financial institution's share of the partnership's income or loss for that period

is of

(iii) the partnership's income or loss for that period, and

(c) an amount that is equal to

(i) in the case of a financial institution other than an insurance corporation, that proportion of its taxable capital for the year that its Canadian assets at the end of the year is of its total assets at the end of the year,

(ii) in the case of an insurance corporation that was resident in Canada at any time during the year and carried on a life insurance business at any time in the year, the total of

(A) that proportion of the amount, if any, by which the total of

(I) its taxable capital for the year, and

(II) the amount prescribed for the year in respect of the corporation

exceeds

(III) the amount prescribed for the year in respect of the corporation

that its Canadian reserve liabilities as at the end of the year is of the total of

(IV) its total reserve liabilities as at the end of the year, and

(V) the amount prescribed for the year in respect of the corporation, and

(B) the amount, if any, by which

(I) the amount of its reserves for the year (other than its reserves in respect of amounts payable out of segregated funds) that may reasonably be regarded as having been established in respect of its insurance businesses carried on in Canada

exceeds the total of

(II) the total of all amounts each of which is the amount of a reserve (other than a reserve described in subparagraph 138(3)(a)(i)) to the extent that it was included in the amount determined under subclause (I) and was deducted in computing its income under Part I for the year,

(III) the total of all amounts each of which is the amount of a reserve described in subparagraph 138(3)(a)(i) to the extent that it was included in the amount determined under subclause (I) and was deductible under subparagraph 138(3)(a)(i) in computing its income under Part I for the year, and

(IV) the total of all amounts each of which is the amount outstanding (including any interest accrued thereon) as at the end of the year in respect of a policy loan (within the meaning assigned by subsection 138(12)) made by the corporation, to the extent that it was deducted in computing the total determined under subclause (III),

(iii) in the case of an insurance corporation that was resident in Canada at any time in the year and

throughout the year did not carry on a life insurance business, that proportion of its taxable capital for the year that the total amount of its Canadian premiums for the year is of its total premiums for the year, and

(iv) in the case of an insurance corporation that was throughout the year not resident in Canada and carried on an insurance business in Canada at any time in the year, its taxable capital for the year.

Related Provisions: 181(4) — Limitations respecting inclusions and deductions; 190.11 — Taxable capital employed in Canada for Part VI tax.

History: Cl. 181.3(1)(c)(ii)(A) substituted by 1994, c. 21, subsec. 83(1), applicable

(a) to taxation years that end after February 25, 1992; and

(b) where a corporation elects under para. 84(2)(b) of the amending legislation [see under 190.11(b)(i) below], to its 1991 and subsequent taxation years; and, notwithstanding subsecs. 152(4) to (5), such assessments and determinations in respect of any taxation year shall be made as are consequential on the application of the above amendment to the corporation's taxation years that end before February 26, 1992.

Cl. (c)(ii)(A) formerly read:

(A) that proportion of its taxable capital for the year that its Canadian reserve liabilities as at the end of the year is of its total reserve liabilities as at the end of the year, and

Para. 181.3(1)(a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 107, applicable to taxation years ending after June 1989. Para. (a) formerly read:

(a) the total of all amounts each of which is the carrying value at the end of the year of an asset of the financial institution that is tangible property used in Canada (and, in the case of a financial institution that is an insurance corporation, that is non-segregated property, within the meaning assigned by subsection 138(12)),

Selected Cases [subsec. 181.3(1)]: *Royal Trust Co. v. R.*, [2001] 3 C.T.C. 2268 (TCC) (Accounting meaning of "tangible property" accepted).

Regulations: 8605 (prescribed amounts for 181.3(1)(c)(ii)(A)(II), (III) and (V)).

Interpretation Bulletins: IT-532: Part I.3 — tax on large corporations.

(2) Taxable capital of financial institution — The taxable capital of a financial institution for a taxation year is the amount, if any, by which its capital for the year exceeds its investment allowance for the year.

Related Provisions: 181(4) — Limitations respecting inclusions and deductions; 190.12 — Taxable capital for Part VI tax.

(3) Capital of financial institution — The capital of a financial institution for a taxation year is

(a) in the case of a financial institution, other than an authorized foreign bank or an insurance corporation, the amount, if any, by which the total at the end of the year of

(i) the amount of its long-term debt,

(ii) the amount of its capital stock (or, in the case of an institution incorporated without share capital, the amount of its members' contributions), retained earnings, contributed surplus and any other surpluses, and

(iii) the amount of its reserves for the year, except to the extent that they were deducted in computing its income under Part I for the year,

exceeds the total of

(iv) the amount of its deferred tax debit balance at the end of the year,

(v) the amount of any deficit deducted in computing its shareholders' equity at the end of the year, and

Proposed Amendment — 181.3(3)(a)(v)

(v) the amount of any deficit deducted in computing its shareholders' equity (including, for this purpose, the amount of any provision for the redemption of preferred shares) at the end of the year, and

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 162(1), will amend subpara. 181.3(3)(a)(v) to read as above, applicable to taxation years that begin after 1995.

Technical Notes: Section 181.3 provides rules for determining the capital, taxable capital, taxable capital employed in Canada and investment allowance of a financial institution (as defined in subsection 181(1)) for the purposes of the Part I.3 tax on large corporations.

Section 181.3 is amended in two respects. First, changes are made to several paragraphs of subsection 181.3(3) to accommodate a change to the accounting presentation of redeemable preferred shares. Second, a new subparagraph and a new clause are added, respectively, to paragraph 181.3(3)(c) and subparagraph 181.3(3)(d)(iv) to reflect the manner in which property and casualty insurers are required to account for claims reserves.

Preferred Shares

The accounting procedures described in the notes to amended section 181.2 are relevant to financial institutions as well as to other corporations, and readers may consult those notes for additional background. As in that section, the amendments introduced to section 181.3 include, in the computation of a deficit deducted in computing shareholders' equity, the amount of any provision for the redemption of preferred shares. This inclusion is added to three specific provisions: subparagraph 181.3(3)(a)(v) in respect of financial institutions other than insurers and authorized foreign banks; subparagraph 181.3(3)(b)(iv) in respect of Canadian-resident life insurance corporations; and subparagraph 181.3(3)(c)(v) in respect of other Canadian-resident insurance companies.

(vi) any amount deducted under subsection 130.1(1) or 137(2) in computing its income under Part I for the year, to the extent that the amount can reasonably be regarded as being included in the amount determined under subparagraph (i), (ii) or (iii) in respect of the institution for the year;

(b) in the case of an insurance corporation that was resident in Canada at any time in the year and carried on a life insurance business at any time in the year, the amount, if any, by which the total at the end of the year of

(i) the amount of its long-term debt, and

(ii) the amount of its capital stock (or, in the case of an insurance corporation incorporated without share capital, the amount of its members' contributions), retained earnings, contributed surplus and any other surpluses

exceeds the total of

(iii) the amount of its deferred tax debit balance at the end of the year, and

(iv) the amount of any deficit deducted in computing its shareholders' equity at the end of the year;

Proposed Amendment — 181.3(3)(b)(iv)

(iv) the amount of any deficit deducted in computing its shareholders' equity (including, for this purpose, the amount of any provision for the redemption of preferred shares) at the end of the year;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 162(2), will amend subpara. 181.3(3)(b)(iv) to read as above, applicable to taxation years that begin after 1995.

Technical Notes: See under 181.3(3)(a)(v).

(c) in the case of an insurance corporation that was resident in Canada at any time in the year and through-

out the year did not carry on a life insurance business, the amount, if any, by which the total at the end of the year of

(i) the amount of its long-term debt,

(ii) the amount of its capital stock (or, in the case of an insurance corporation incorporated without share capital, the amount of its members' contributions), retained earnings, contributed surplus and any other surpluses, and

(iii) the amount of its reserves for the year, except to the extent that they were deducted in computing its income under Part I for the year,

exceeds the total of

(iv) the amount of its deferred tax debit balance at the end of the year,

(v) the amount of any deficit deducted in computing its shareholders' equity at the end of the year, and

Proposed Amendment — 181.3(3)(c)(v)

(v) the amount of any deficit deducted in computing its shareholders' equity (including, for this purpose, the amount of any provision for the redemption of preferred shares) at the end of the year,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 162(3), will amend subpara. 181.3(3)(c)(v) to read as above, applicable to taxation years that begin after 1995.

Technical Notes: See under 181.3(3)(a)(v).

(vi) the total amount of its deferred acquisition expenses in respect of its property and casualty insurance business in Canada, to the extent that it can reasonably be attributed to an amount included in the amount determined under subparagraph (iii);

Proposed Addition — 181.3(3)(c)(vii)

(vii) any amount recoverable through reinsurance, to the extent that it can reasonably be regarded as being included in the amount determined under subparagraph (iii) in respect of a claims reserve;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 162(4), will add subpara. 181.3(3)(c)(vii), applicable to taxation years that begin after 1995.

Technical Notes: *Claims Reserves*

In general, a corporation is required to compute amounts relevant in determining its tax payable under Part I.3 of the Act using generally accepted accounting principles (GAAP).

The Canadian Institute of Chartered Accountants' *Handbook* (the Handbook), which is the principle [*sic*] authority of GAAP in Canada, requires that property and casualty insurers account for claims reserves on a gross basis, rather than net of reinsurance.

Paragraphs 181.3(3)(c) and (d) stipulate the amounts to be included in determining the capital of an insurance corporation resident in Canada (other than a life insurance corporation) and an insurance corporation not resident in Canada, respectively. Among other things, claims reserves are required under these paragraphs to be included in computing the capital of such a corporation.

New subparagraph 181.3(3)(c)(vii) and clause 181.3(3)(d)(iv)(F) allow such corporations to reduce their capital by an amount that is recoverable through reinsurance, to the extent that the amount relates to an amount that was included in capital as a claims reserve. In this way, claims reserves are included on a net of reinsurance basis under paragraphs 181.3(3)(c) and (d).

(d) in the case of an insurance corporation that was throughout the year not resident in Canada and carried on an insurance business in Canada at any time in the year, the total at the end of the year of

(i) the amount that is the greater of

(A) the amount, if any, by which

(I) the corporation's surplus funds derived from operations (as defined in subsection 138(12)) as of the end of the year, computed as if no tax were payable under this Part or Part VI for the year

exceeds the total of all amounts each of which is

(II) an amount on which the corporation was required to pay, or would but for subsection 219(5.2) have been required to pay, tax under Part XIV for a preceding taxation year, except the portion, if any, of the amount on which tax was payable, or would have been payable, because of subparagraph 219(4)(a)(i.1), and

(III) an amount on which the corporation was required to pay, or would but for subsection 219(5.2) have been required to pay, tax under subsection 219(5.1) for the year because of the transfer of an insurance business to which subsection 138(11.5) or (11.92) has applied, and

(B) the corporation's attributed surplus for the year,

(ii) any other surpluses relating to its insurance businesses carried on in Canada,

(iii) the amount of its long-term debt that may reasonably be regarded as relating to its insurance businesses carried on in Canada, and

(iv) the amount, if any, by which

(A) the amount of its reserves for the year (other than its reserves in respect of amounts payable out of segregated funds) that may reasonably be regarded as having been established in respect of its insurance businesses carried on in Canada

exceeds the total of

(B) the total of all amounts each of which is the amount of a reserve (other than a reserve described in subparagraph 138(3)(a)(i)) to the extent that it was included in the amount determined under clause (A) and was deducted in computing its income under Part I for the year,

(C) the total of all amounts each of which is the amount of a reserve described in subparagraph 138(3)(a)(i) to the extent that it was included in the amount determined under clause (A) and was deductible under subparagraph 138(3)(a)(i) in computing its income under Part I for the year,

(D) the total of all amounts each of which is the amount outstanding (including any interest accrued thereon) as at the end of the year in respect of a policy loan (within the meaning assigned by subsection 138(12)) made by the corporation, to the extent that it was deducted in computing the amount determined under clause (C), and

(E) the total amount of its deferred acquisition expenses in respect of its property and casualty

insurance business in Canada, to the extent that it can reasonably be attributed to an amount included in the amount determined under clause (A); and

Proposed Addition — 181.3(3)(d)(iv)(F)

(F) the total of all amounts each of which is an amount recoverable through reinsurance, to the extent that it can reasonably be regarded as being included in the amount determined under clause (A) in respect of a claims reserve; and

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 162(5), will add cl. 181.3(3)(d)(iv)(F), applicable to taxation years that begin after 1995.

Technical Notes: See under 181.3(3)(c)(vii).

(e) in the case of an authorized foreign bank, the total of

(i) 10% of the total of all amounts, each of which is the risk-weighted amount at the end of the year of an on-balance sheet asset or an off-balance sheet exposure of the bank in respect of its Canadian banking business that the bank would be required to report under the OSFI risk-weighting guidelines if those guidelines applied and required a report at that time, and

(ii) the total of all amounts, each of which is an amount at the end of the year in respect of the bank's Canadian banking business that

(A) if the bank were a bank listed in Schedule II to the *Bank Act*, would be required under the risk-based capital adequacy guidelines issued by the Superintendent of Financial Institutions and applicable at that time to be deducted from the bank's capital in determining the amount of capital available to satisfy the Superintendent's requirement that capital equal a particular proportion of risk-weighted assets and exposures, and

(B) is not an amount in respect of a loss protection facility required to be deducted from capital under the Superintendent's guidelines respecting asset securitization applicable at that time.

Related Provisions: 181(4) — Limitations respecting inclusions and deductions; 190.13 — Capital for Part VI tax.

History: The opening words of para. 181.3(3)(a) amended, and para. 181.3(3)(e) added, by 2001, c. 17, subsecs. 163(1), (2), applicable after June 27, 1999. The opening words formerly read:

(a) in the case of a financial institution other than an insurance corporation, the amount, if any, by which the total at the end of the year of

Subpara. 181.3(3)(d)(i) amended by 1998, c. 19, s. 196, applicable to 1994 *et seq.* Subpara. 181.3(3)(d)(i) formerly read:

(i) the greater of its surplus funds derived from operations (within the meaning assigned by subsection 138(12)), computed as if no tax were payable under this Part or Part VI for the year, and its attributed surplus for the year,

Subpara. 181.3(3)(c)(vi) added by 1994, c. 21, subsec. 83(2), applicable to 1992 *et seq.*

Subpara. 181.3(3)(d)(i) substituted by 1994, c. 21, subsec. 83(3), applicable to 1992 *et seq.* That subpara. formerly read:

(i) the greater of its surplus funds derived from operations (within the meaning assigned by subsection 138(12)) and its attributed surplus for the year,

Cl. 181.3(3)(d)(iv)(E) added by 1994, c. 21, subsec. 83(4), applicable to 1992 *et seq.*

Subpara. 181.3(3)(a)(vi) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 148(1), applicable to taxation years ending after June 1989.

I.T. Technical News: 28 (large corporations tax — long-term debt).

(4) Investment allowance of financial institution — The investment allowance for a taxation year of a corporation that is a financial institution is

(a) in the case of a corporation that was resident in Canada at any time in the year, the total of all amounts each of which is the carrying value at the end of the year of an eligible investment of the corporation;

(b) in the case of an insurance corporation that was throughout the year not resident in Canada, the total of all amounts each of which is the carrying value at the end of the year of an eligible investment of the corporation that was used or held by it in the year in the course of carrying on an insurance business in Canada;

(c) in the case of an authorized foreign bank, the total of all amounts each of which is the amount at the end of the year, before the application of risk weights, that the bank would be required to report under the OSFI risk-weighting guidelines if those guidelines applied and required a report at that time, of an eligible investment used or held by the bank in the year in the course of carrying on its Canadian banking business; and

(d) in any other case, nil.

Related Provisions: 181(4) — Limitations respecting inclusions and deductions; 181.3(5) — Meaning of "eligible investment"; 181.5(6) — Whether corporations related.

History: Subsec. 181.3(4) amended by 2001, c. 17, subsec. 163(3), applicable after June 27, 1999. Subsec. (4) formerly read:

(4) The investment allowance of a financial institution for a taxation year is,

(a) in the case of a financial institution that was resident in Canada at any time in the year, the total of all amounts each of which is the carrying value at the end of the year of an asset of the financial institution that is a share of the capital stock or long-term debt of another financial institution (other than an institution that is exempt from tax under this Part) that is related to the institution (and, in the case of a financial institution that is an insurance corporation, that is non-segregated property within the meaning assigned by subsection 138(12)),

(b) in the case of an insurance corporation that was throughout the year not resident in Canada, the total of all amounts each of which is the carrying value at the end of the year of an asset of the financial institution that

(i) is non-segregated property (within the meaning assigned by subsection 138(12)),

(ii) is a share of the capital stock or long-term debt of another financial institution (other than an institution that is exempt from tax under this Part) that is related to the institution, and

(iii) was used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada, and

(c) in any other case, nil,

and, for the purposes of this subsection, a credit union and another credit union of which the credit union is a shareholder or member shall be deemed to be related to each other.

Para. 181.3(4)(a), subpara. (4)(b)(ii) and that portion of subsec. (4) following para. (c) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 148(3), (4), (5), applicable to taxation years ending after June 1989. Those portions formerly read:

(a) in the case of a financial institution that was resident in Canada at any time in the year, the total of all amounts each of which is the carrying value at the end of the year of an asset of the financial institution that is a share of the capital stock or long-term debt of another financial institution that is related to the institution (and, in the case of a financial institution that is

an insurance corporation, that is non-segregated property, within the meaning assigned by subsection 138(12)),

. . . . .

(ii) is a share of the capital stock or long-term debt of another financial institution that is related to the institution, and

. . . . .

and, for the purposes of this subsection,

(d) a credit union and another credit union of which the credit union is a shareholder or member, as the case may be, shall be deemed to be related to each other, and

(e) a particular deposit insurance corporation (within the meaning assigned by subsection 137.1(5)), a subsidiary wholly owned corporation of the particular deposit insurance corporation that is deemed by subsection 137.1(5.1) to be a deposit insurance corporation and a corporation that in relation to the particular deposit insurance corporation is a member institution (within the meaning assigned by subsection 137.1(5)) shall be deemed to be related to each other.

(5) Interpretation — For the purpose of subsection (4),

(a) an eligible investment of a corporation is a share of the capital stock or long-term debt (and, where the corporation is an insurance corporation, is non-segregated property within the meaning assigned by subsection 138(12)) of a financial institution that at the end of the year

(i) is related to the corporation,

(ii) is not exempt from tax under this Part, and

(iii) is resident in Canada or can reasonably be regarded as using the proceeds of the share or debt in a business carried on by the institution through a permanent establishment (as defined by regulation) in Canada; and

(b) a credit union and another credit union of which the credit union is a shareholder or member are deemed to be related to each other.

History: Subsec. 181.3(5) added by 2001, c. 17, subsec. 163(3), applicable after June 27, 1999, except that in its application to taxpayers other than authorized foreign banks for taxation years that end before 2002, para. 181.3(5)(a) shall be read without reference to subpara. (iii).

Regulations: 8201 (meaning of "permanent establishment" for 181.3(5)(a)(iii)).

Selected Cases [s. 181.3]: *Manufacturers Life Insurance Co. v. R.*, [2000] 1 C.T.C. 2481 (TCC) (Balance sheet figures to be used for capital tax base; amounts were not "reserves" or "surpluses").

Definitions [s. 181.3]: "amount" — 181(3), 248(1); "attributed surplus" — 181(2), Reg. 2405(3), 8602; "authorized foreign bank", "bank", "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "Canadian assets" — 181(2), Reg. 8602; "Canadian banking business" — 248(1); "Canadian premiums", "Canadian reserve liabilities" — 181(2), Reg. 8602; "carrying on business in Canada" — 253; "carrying value" — 181(3); "corporation" — 248(1), *Interpretation Act* 35(1); "corporeal" — Quebec *Civil Code* art. 899, 906; "credit union" — 137(6), 248(1); "eligible investment" — 181.3(5); "financial institution" — 181(1); "fiscal period" — 249, 249.1; "insurance corporation", "life insurance business" — 248(1); "long-term debt" — 181(1); "OSFI risk-weighting guidelines" — 248(1); "permanent establishment" — Reg. 8201; "preferred share", "property", "regulation" — 248(1); "related" — 181.3(5)(b), 181.5(6), (7), 251(2); "reserves" — 181(1); "resident in Canada" — 250; "share", "shareholder", "subsidiary wholly-owned corporation" — 248(1); "taxation year" — 249; "total assets", "total premiums", "total reserve liabilities" — 181(2), Reg. 8602.

181.4 Taxable capital employed in Canada of non-resident — The taxable capital employed in Canada for a taxation year of a corporation (other than a financial institution) that was throughout the year not resident in Canada is the amount, if any, by which

(a) the total of all amounts each of which is the carrying value at the end of the year of an asset of the corporation used by it in the year in, or held by it in the year in the course of, carrying on any business carried on by it during the year through a permanent establishment in Canada

exceeds the total of

(b) the amount of the corporation's indebtedness at the end of the year (other than indebtedness described in any of paragraphs 181.2(3)(c) to (f)) that may reasonably be regarded as relating to a business carried on by it during the year through a permanent establishment in Canada,

(c) the total of all amounts each of which is the carrying value at the end of the year of an asset described in subsection 181.2(4) of the corporation that was used by it in the year in, or held by it in the year in the course of, carrying on any business carried on by it during the year through a permanent establishment in Canada, and

(d) the total of all amounts each of which is the carrying value at the end of the year of an asset of the corporation that

(i) is a ship or aircraft operated by the corporation in international traffic or is personal property used in its business of transporting passengers or goods by ship or aircraft in international traffic, and

Proposed Amendment — 181.4(d)(i)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), s. 259, will amend subpara. 181.4(d)(i) by substituting "personal or movable property" for "personal property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(ii) was used by the corporation in the year in, or held by it in the year in the course of, carrying on any business during the year through a permanent establishment in Canada,

if the country in which the corporation is resident imposed neither a capital tax for the year on similar assets nor a tax for the year on the income from the operation of a ship or aircraft in international traffic, of any corporation resident in Canada during the year.

History: Subpara. 181.4(d)(i) amended by 1998, c. 19, s. 197, applicable to 1995 *et seq.*

(i) is a ship or aircraft operated by the corporation in international traffic or is personal property used in its business of transporting passengers or goods in international traffic, and

Para. 181.4(d) added by 1994, c. 7, Sch. II (1991, c. 49), s. 149, applicable to taxation years ending after June 1989.

Definitions [s. 181.4]: "amount" — 181(3), 248(1); "business" — 248(1); "Canada" — 255; "carrying on business in Canada" — 253; "carrying value" — 181(3); "corporation" — 248(1), *Interpretation Act* 35(1); "financial institution" — 181(1); "international traffic" — 248(1); "movable" — Quebec *Civil Code* art. 900–907; "permanent establishment" — 181(2), Reg. 8602; "resident in Canada" — 250.

Interpretation Bulletins [s. 181.4]: IT-532: Part I.3 — tax on large corporations.

181.5 (1) Capital deduction — Subject to subsection (1.1), the capital deduction of a corporation for a taxation year is $50 million unless the corporation is related to another corporation at any time in the taxation year, in which case, subject to subsection (4), its capital deduction for the year is nil.

History: Subsec. 181.5(1) amended by 2003, c. 15, subsec. 86(1), applicable to 2004 *et seq.* Subsec. 181.5(1) formerly read:

> (1) The capital deduction of a corporation for a taxation year is $10,000,000 unless the corporation was related to another corporation at any time in the year, in which case, subject to subsection (4), its capital deduction for the year is nil.

(1.1) Exceptions — For the purposes of applying subsection 125(5.1), the definitions "unused surtax credit" in subsections 181.1(6) and 190.1(5), and subsection 225.1(8), the amount of tax in respect of a corporation under subsection 181.1(1) for a taxation year is to be determined as if the reference to "$50 million" in subsection (1) were a reference to "$10 million".

Related Provisions: 181.5(4.1) — Parallel rule re allocation of $10 million among associated corporations.

History: Subsec. 181.5(1.1) added by 2003, c. 15, subsec. 86(1), applicable to 2004 *et seq.*

(2) Related corporations — Subject to subsection (4.1), a corporation that is related to any other corporation at any time in a taxation year of the corporation that ends in a calendar year may file with the Minister in prescribed form an agreement on behalf of the related group of which the corporation is a member under which an amount that does not exceed $50 million is allocated among all corporations that are members of the related group for each taxation year of each such corporation ending in the calendar year and at a time when it was a member of the related group.

Related Provisions: 181.5(4) — Amount allocated; 181.5(6) — Corporations deemed not related.

History: Subsec. 181.5(2) amended by 2003, c. 15, subsec. 86(1), applicable to 2004 *et seq.* Subsec. 181.5(2) formerly read:

> (2) A corporation that is related to any other corporation at any time in a taxation year of the corporation ending in a calendar year may file with the Minister in prescribed form an agreement on behalf of the related group of which the corporation is a member under which an amount that does not exceed $10,000,000 is allocated among all corporations that are members of the related group for each taxation year of each such corporation ending in the calendar year and at a time when it was a member of the related group.

Interpretation Bulletins: IT-532: Part I.3 — tax on large corporations.

Forms: T2 SCH 36: Agreement among related corporations — Part I.3 tax.

(3) Allocation by Minister — Subject to subsection (4.1), the Minister may request a corporation that is related to any other corporation at the end of a taxation year to file with the Minister an agreement referred to in subsection (2) and, if the corporation does not file such an agreement within 30 days after receiving the request, the Minister may allocate an amount among the members of the related group of which the corporation is a member for the taxation year not exceeding $50 million.

History: Subsec. 181.5(3) amended by 2003, c. 15, subsec. 86(1), applicable to 2004 *et seq.* Subsec. 181.5(3) formerly read:

> (3) Idem — The Minister may request a corporation that is related to any other corporation at the end of a taxation year to file with the Minister an agreement referred to in subsection (2) and, if the corporation does not file such an agreement within 30 days after receiving the request, the Minister may allocate an amount among the members of the related group of which the corporation is a member for the year not exceeding $10,000,000.

(4) Idem — The least amount allocated for a taxation year to a member of a related group under an agreement described in subsection (2) or by the Minister pursuant to subsection (3) is the capital deduction of that member for that taxation year.

(4.1) Exceptions — For the purposes of applying subsection 125(5.1), the definitions "unused surtax credit" in subsections 181.1(6) and 190.1(5), and subsection 225.1(8), subsections (2) to (4) are to be read as if the amount determined under subsection (2) or (3), as the case may be, in respect of the corporation for the taxation year were that proportion of $10 million that the amount otherwise determined in respect of the corporation for the taxation year under that subsection is of $50 million.

History: Subsec. 181.5(4.1) added by 2003, c. 15, subsec. 86(2), applicable to 2004 *et seq.*

(5) Idem — Where a corporation (in this subsection referred to as the "first corporation") has more than one taxation year ending in the same calendar year and is related in 2 or more of those taxation years to another corporation that has a taxation year ending in that calendar year, the capital deduction of the first corporation for each such taxation year at the end of which it is related to the other corporation is an amount equal to its capital deduction for the first such taxation year.

(6) Idem — Two corporations that would, but for this subsection, be related to each other by reason only of

(a) the control of any corporation by Her Majesty in right of Canada or a province, or

(b) a right referred to in paragraph 251(5)(b),

are, for the purposes of this section and subsection 181.3(4), deemed not to be related to each other except that, where at any time a taxpayer has a right referred to in paragraph 251(5)(b) with respect to shares and it can reasonably be considered that one of the main purposes for the acquisition of the right was to avoid any limitation on the amount of a corporation's capital deduction for a taxation year, for the purpose of determining whether a corporation is related to any other corporation, the corporations are, for the purposes of this section, deemed to be in the same position in relation to each other as if the right were immediate and absolute and as if the taxpayer had exercised the right at that time.

Related Provisions: 256(6), (6.1) — Meaning of "control".

History: The closing words of subsec. 181.5(6) amended by 1998, c. 19, s. 198, applicable after April 26, 1995. The closing words formerly read:

> shall, for the purposes of this section and subsection 181.3(4), be deemed not to be related to each other except that, where at any time a taxpayer has a right referred to in paragraph 251(5)(b) with respect to shares and it may reasonably be considered that one of the main purposes of the acquisition of the right was to avoid any limitation on the amount of a corporation's capital deduction for a taxation year, for the purposes of determining whether a corporation is related to any other corporation, the corporations shall, for the purposes of this section, be deemed to be in the same position in relation to each other as if the taxpayer owned the shares.

(7) Related corporations that are not associated — For the purposes of subsection 181.3(4) and this section, a Canadian-controlled private corporation and another corporation to which it would, but for this subsection, be related at any time shall be deemed not to be related to each other at that time where the corporations are not associated with each other at that time.

History: Subsec. 181.5(7) added by 1994, c. 7, Sch. II (1991, c. 49), s. 150, applicable to 1991 *et seq.* and, where a corporation so elected by notifying the Minister of National Revenue in writing before 1992 [1994, c. 7, Sch. VIII (1993, c. 24), s. 159 provides that where such an election is made before December 11, 1993, the election shall be deemed to have been made before 1992] (and, where applicable, by filing with the Minister in prescribed form a revised agreement for the purposes of subsec. 181.5(2)), to its 1989 and 1990 taxation years.

Definitions [s. 181.5]: "amount" — 181(3), 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "control" — 256(6), (6.1); "corporation" —

248(1), *Interpretation Act* 35(1); "Her Majesty" — *Interpretation Act* 35(1); "Minister", "prescribed" — 248(1); "province" — *Interpretation Act* 35(1); "related" — 181.5(6), (7), 251(2); "related group" — 251(4); "share" — 248(1); "taxation year" — 249.

181.6 Return — Every corporation that is or would, but for subsection 181.1(4), be liable to pay tax under this Part for a taxation year shall file with the Minister, not later than the day on or before which the corporation is required by section 150 to file its return of income for the year under Part I, a return of capital for the year in prescribed form containing an estimate of the tax payable under this Part by it for the year.

Related Provisions: 150.1(5) — Electronic filing; 235 — Penalty for failure to file return even where no balance owing.

History: S. 181.6 amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 108, to add "that is or would, but for subsection 181.1(4), be", applicable to 1992 *et seq.*

Definitions [s. 181.6]: "corporation" — 248(1), *Interpretation Act* 35(1); "Minister" — 248(1); "taxation year" — 249.

Forms: T2 SCH 33: Part I.3 tax on large corporations; T2 SCH 34: Part I.3 tax on financial institutions; T2 SCH 35: Part I.3 tax on large insurance corporations; T2 SCH 342: Nova Scotia tax on large corporations; T2 SCH 343: Nova Scotia tax on large corporations — agreement among related corporations; T2 SCH 37: Calculation of unused surtax credit; T2 SCH 361: New Brunswick tax on large corporations; T2 SCH 362: New Brunswick tax on large corporations — agreement among related corporations.

181.7 Provisions applicable to Part — Sections 152, 158 and 159, subsection 161(11), sections 162 to 167 and Division J of Part I apply to this Part with such modifications as the circumstances require and, for the purpose of this section, paragraph 152(6)(a) shall be read as follows:

> "(a) a deduction under section 181.1(4) in respect of any unused surtax credit (within the meaning assigned by subsection 181.1(6)) for a subsequent taxation year,"

Related Provisions: 157(1), (2), (2.1) — Instalment and payment obligations; 161(1), (4.1) — Interest.

History: S. 181.7 substituted for 181.7 to 181.9 by 1994, c. 7, Sch. VIII (1993, c. 24), s. 109, applicable to 1992 *et seq.* Ss. 181.7 to 181.9 formerly read:

> 181.7 (1) Payment of tax — Every corporation liable to pay tax under this Part for a taxation year shall pay to the Receiver General in respect of the year
>
> (a) either
>
> (i) on or before the last day of each month in the year, 1/12 of the amount estimated by it to be its tax payable under this Part for the year,
>
> (ii) on or before the last day of each month in the year, 1/12 of its first instalment base for the year, or
>
> (iii) on or before the last day of each of the first two months in the year, 1/12 of its second instalment base for the year, and on or before the last day of each of the following months in the year, 1/10 of the amount by which its first instalment base for the year exceeds 1/6 of its second instalment base for the year; and
>
> (b) the remainder of its tax payable under this Part for the year, on or before the day on or before which the corporation is, pursuant to paragraph 157(1)(b), required to pay the remainder of its tax payable under Part I for the year or would be so required if a remainder of that tax were payable and, where the corporation so elects in its return of income under this Part for the year, if clause 157(1)(b)(i)(A) were read as follows:
>
> "(A) the corporation carried on an active business in Canada in the year or in its immediately preceding taxation year, and"
>
> (2) Instalment bases — In this section,
>
> (a) the first instalment base of a corporation for a particular taxation year is the product obtained when the tax payable under this Part by the corporation for its taxation year immediately preceding the particular year is multiplied by the ratio that 365 is of the number of days in that preceding year, and
>
> (b) the second instalment base of a corporation for a particular taxation year is the amount of the first instalment base of the corporation for its taxation year immediately preceding the particular year,
>
> but where a particular taxation year of a corporation that was formed as a result of an amalgamation or merger is its first taxation year ending after the amalgamation or merger, as the case may be,
>
> (c) its first instalment base for the particular year is the total of all amounts each of which is the product obtained when the tax payable under this Part by a corporation that entered into the amalgamation or merger, for its last taxation year preceding the amalgamation or merger is multiplied by the ratio that 365 is of the number of days in that year, and
>
> (d) its second instalment base for the particular year is the total of all amounts each of which is an amount equal to the first instalment base of a corporation that entered into the amalgamation or merger, for its last taxation year preceding the amalgamation or merger.
>
> 181.8 (1) Interest — Where, at any time after the day on or before which a corporation is required to pay the remainder of its tax payable under this Part for a taxation year,
>
> (a) the amount of its tax payable under this Part for the year
>
> exceeds
>
> (b) the total of all amounts each of which is the amount paid at or before that time on account of its tax payable and applied as at that time by the Minister against the corporation's liability for an amount payable under this Part for the year,
>
> the corporation shall pay to the Receiver General interest at a prescribed rate on the excess, computed for the period during which that excess is outstanding.
>
> (2) Idem — Where a corporation that is required by this Part to pay an instalment of tax has failed to pay all or any part thereof on or before the day on or before which the instalment was required to be paid, it shall pay to the Receiver General, in addition to the interest payable under subsection (1), interest at a prescribed rate on the amount that it failed to pay, computed from the day on or before which the amount was required to be paid to the earlier of the day of payment and the beginning of the period in respect of which the corporation is required to pay interest thereon under that subsection.
>
> (3) Limitation on instalments — For the purposes of subsection (2), where a corporation is required to pay an instalment of tax for a taxation year computed by reference to a method described in subsection 181.7(1), the corporation shall be deemed to have been liable to pay an instalment computed by reference to
>
> (a) its tax payable under this Part for the year,
>
> (b) its first instalment base for the year, or
>
> (c) its second instalment base for the year and its first instalment base for the year,
>
> whichever method gives rise to the least amount required to be paid by the corporation on or before the days referred to in subparagraphs 181.7(1)(a)(i) to (iii).
>
> 181.9 Provisions applicable to Part — Sections 152, 158 and 159, subsections 161(2.1), (2.2) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Para. 181.7(1)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 151, applicable to taxation years ending after June 1989, except that, in its application to taxation years ending before 1991, an election referred to in the para. made by a corporation by notifying the Minister of National Revenue in writing before 1992 [1994, c. 7, Sch. VIII (1993, c. 24), s. 159 provides that where such an election is made before December 11, 1993, the election shall be deemed to have been made before 1992] shall be deemed to have been made by the corporation in its return of income under Part I.3 for the taxation year to which the election relates. Para. 181.7(1)(b) formerly read:

> (b) the remainder of its tax payable under this Part for the year, on or before the day on or before which the corporation is, pursuant to paragraph 157(1)(b), required to pay the remainder of its tax payable under Part I for the year or would be so required if a remainder of that tax were payable.

Definitions [s. 181.7]: "unused surtax credit" — 181.1(6).

Interpretation Bulletins [s. 181.7]: IT-532: Part I.3 — tax on large corporations.

181.71 Provisions applicable — Crown corporations — Section 27 applies to this Part with any modifications that the circumstances require.

History: S. 181.71 added by 1998, c. 19, s. 199, applicable to taxation years that end after June 1989.

Interpretation Bulletins [s. 181.71]: IT-532: Part I.3 — tax on large corporations.

PART II — TOBACCO MANUFACTURERS' SURTAX

182. (1) Surtax — Every corporation shall pay a tax under this Part for each taxation year equal to 50% of the corporation's Part I tax on tobacco manufacturing profits for the year.

Related Provisions: 183 — Return and payment of tax.

History: Subsec. 182(1) amended to replace "40%" with "50%" by 2001, c. 16, s. 43, applicable to taxation years ending after April 5, 2001, except that, in its application to a corporation's taxation year that includes that day, the subsec., as amended, shall be read as follows:

(1) Surtax — Every corporation shall pay a tax under this Part for the corporation's taxation year that includes April 5, 2001, equal to the total of

(a) 40% of that proportion of the corporation's Part I tax on tobacco manufacturing profits for the year that the number of days in the year that are before April 6, 2001, is of the total number of days in the year, and

(b) 50% of that proportion of the corporation's Part I tax on tobacco manufacturing profits for the year that the number of days in the year that are after April 5, 2001, is of the total number of days in the year.

Subsec. 182(1) amended by 2000, c. 30, s. 173, applicable to taxation years that end after February 8, 2000. The subsec. formerly read:

(1) Surtax — Every corporation shall pay a tax under this Part for each taxation year equal to 40% of that proportion of the corporation's Part I tax on tobacco manufacturing profits for the year that

(a) the number of days in the year that are after February 8, 1994 and before February 9, 2000

is of

(b) the number of days in the year.

Para. 182(1)(a) amended by 1997, c. 26, s. 77, applicable to taxation years ending after February 8, 1997. Para. (a) formerly read:

(a) the number of days in the year that are after February 8, 1994 and before February 9, 1997

(2) Definitions — In this Part,

"Part I tax on tobacco manufacturing profits" of a corporation for a taxation year means 21% of the amount determined by the formula

$$\left(\frac{A \times B}{C}\right) - D$$

where

A is the amount that would be the corporation's Canadian manufacturing and processing profits for the year, within the meaning assigned by subsection 125.1(3), if the total of all amounts, each of which is the corporation's loss for the year from an active business, other than tobacco manufacturing, carried on by it in Canada, were equal to the lesser of

(a) that total otherwise determined, and

(b) the total of all amounts, each of which is the amount of the corporation's income for the year from an active business, other than tobacco manufacturing, carried on by it in Canada.

B is the corporation's tobacco manufacturing capital and labour cost for the year,

C is the total of the corporation's cost of manufacturing and processing capital for the year and its cost of manufacturing and processing labour for the year, within the meanings assigned by regulations made for the purposes of section 125.1, and

D is

(a) where the corporation is a Canadian-controlled private corporation throughout the year, the corporation's business limit for the year as determined for the purpose of section 125, and

(b) in any other case, nil;

Related Provisions: 257 — Formula cannot calculate to less than zero.

Regulations: 5202, 5204 (cost of manufacturing and processing capital, cost of manufacturing and processing labour).

"tobacco manufacturing" means any activity (other than farming) relating to the manufacture or processing in Canada of tobacco or tobacco products in or into any form that is, or would after any further activity become, suitable for smoking;

"tobacco manufacturing capital and labour cost" of a corporation for a taxation year means the total of the amounts that would be the corporation's cost of manufacturing and processing capital for the year and its cost of manufacturing and processing labour for the year, within the meanings assigned by regulations made for the purpose of section 125.1, if the manufacturing or processing referred to in the definition "qualified activities" in those regulations were tobacco manufacturing.

Regulations: 5202, 5204 (cost of manufacturing and processing capital, cost of manufacturing and processing labour).

History: S. 182 added by 1994, c. 29, s. 16, applicable to taxation years ending after February 8, 1994.

Definitions [s. 182]: "active business", "amount" — 248(1); "business limit" — 125(2)–(5); "Canada" — 255; "Canadian-controlled private corporation" — 125(7), 248(1); "carried on in Canada" — 253; "corporation" — 248(1), *Interpretation Act* 35(1); "farming" — 248(1); "Part I tax on tobacco manufacturing profits" — 182(2); "taxation year" — 249; "tobacco manufacturing", "tobacco manufacturing capital and labour cost" — 182(2).

183. (1) Return — Every corporation that is liable to pay tax under this Part for a taxation year shall file with the Minister a return for the year in prescribed form not later than the day on or before which the corporation is required by section 150 to file its return of income for the year under Part I.

Related Provisions: 150(1)(a) — Deadline for Part I return; 150.1(5) — Electronic filing.

Forms: T2 SCH 46: Part II — tobacco manufacturers' surtax.

(2) Payment — Every corporation shall pay to the Receiver General on or before its balance-due day for each taxation year its tax payable under this Part for the year.

History: Subsec. 183(2) amended by 2000, c. 30, s. 174, applicable to taxation years that end after February 8, 2000. The subsec. formerly read:

(2) Payment — Every corporation shall pay to the Receiver General on or before the later of June 30, 1994 and the last day of the second month after the end of each taxation year its tax payable under this Part for the year.

(3) Provisions applicable — Subsections 150(2) and (3), sections 151, 152, 158 and 159, subsections 161(1) and (11), sections 162 to 167 and Division J of Part I ap-

ply to this Part with such modifications as the circumstances require.

History: S. 183 added by 1994, c. 29, s. 16, applicable to taxation years ending after February 8, 1994.

Definitions [s. 183]: "balance-due day" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "Minister", "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "taxation year" — 249.

PART II.1 — TAX ON CORPORATE DISTRIBUTIONS

183.1 (1) Application of Part — This Part applies to a corporation (other than a mutual fund corporation) for a taxation year in which the corporation, at any time in the year,

(a) was a public corporation; or

(b) was resident in Canada and had a class of shares outstanding that were purchased and sold in the manner in which such shares normally are purchased and sold by any member of the public in the open market.

(2) Tax payable — Where, as a part of a transaction or series of transactions or events,

(a) a corporation, or any person with whom the corporation was not dealing at arm's length, has, at any time, paid an amount, directly or indirectly, to any person as proceeds of disposition of any property, and

(b) all or any portion of the amount may reasonably be considered, having regard to all the circumstances, to have been paid as a substitute for dividends that would otherwise have been paid in the normal course by the corporation,

the corporation shall, on or before its balance-due day for its taxation year that includes that time, pay tax of 45% of that amount or portion of it, as the case may be.

Related Provisions: 248(10) — Series of transactions.

History: The closing words of subsec. 183.1(2) amended by 2003, c. 15, s. 119, applicable to taxation years that begin after June 2003. The closing words formerly read:

> the corporation shall, on or before the day on or before which it is required to file its return of income under Part I for its taxation year that includes that time, pay a tax of 45% of that amount or portion thereof, as the case may be.

(3) Stock dividend — Where, as a part of a transaction or series of transactions or events,

(a) a share was issued by a corporation as a stock dividend and the amount of the stock dividend was less than the fair market value of the share at the time that it was issued, and

(b) the share or any other share of the capital stock of the corporation was purchased, directly or indirectly, by the corporation, or by a person with whom the corporation was not dealing at arm's length, for an amount in excess of its paid-up capital,

that excess shall, for the purposes of subsection (2), be deemed to have been paid as a substitute for dividends that would otherwise have been paid in the normal course by the corporation.

(4) Purchase of shares — Where, as a part of a transaction or series of transactions or events,

(a) a share of the capital stock of a corporation was purchased, directly or indirectly, by the corporation, or any person with whom the corporation was not dealing at arm's length, and

(b) any portion of the amount paid for the share may reasonably be considered, having regard to all the circumstances, as consideration for a dividend that had been declared, but not yet paid, on the share,

that portion of the amount shall, for the purposes of subsection (2), be deemed to have been paid as a substitute for dividends that would otherwise have been paid in the normal course by the corporation notwithstanding that the dividend was actually paid thereafter.

(5) Indirect payment — Where, as a part of a transaction or series of transactions or events, a person received a payment from a corporation, or from any person with whom the corporation was not dealing at arm's length, in consideration, in whole or in part, for paying an amount to any other person as proceeds of disposition of any property, the corporation shall, for the purposes of subsection (2), be deemed to have paid the amount indirectly to the other person.

(6) Where subsec. (2) does not apply — Subsection (2) does not apply if none of the purposes of the transaction or series of transactions or events referred to therein may reasonably be considered, having regard to all the circumstances, to have been to enable shareholders of a corporation who are individuals or non-resident persons to receive an amount, directly or indirectly, as proceeds of disposition of property rather than as a dividend on a share that was of a class that was listed on a stock exchange or that was purchased and sold in the manner in which shares are normally purchased and sold by any member of the public in the open market.

(7) Where subsec. 110.6(8) does not apply — Where this section has been applied in respect of an amount, subsection 110.6(8) does not apply to the capital gain in respect of which the amount formed all or a part of the proceeds of disposition.

Definitions [s. 183.1]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "arm's length" — 251(1); "Canada" — 255; "capital gain" — 39(1)(a), 248(1); "class of shares" — 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend", "employee", "individual" — 248(1); "mutual fund corporation" — 131(8), 248(1); "non-resident" — 248(1); "paid-up capital" — 89(1), 248(1); "person", "prescribed", "property" — 248(1); "public corporation" — 89(1), 248(1); "resident in Canada" — 250; "series of transactions" — 248(10); "share", "shareholder" — 248(1); "substituted property" — 248(5); "taxation year" — 249.

183.2 (1) Return — Every corporation liable to pay tax under this Part for a taxation year shall, on or before the day on or before which it is required to file its return of income under Part I for the year, file with the Minister a return for the year under this Part in prescribed form.

Related Provisions: 150.1(5) — Electronic filing.

Forms: T2141: Part II.1 tax return — tax on corporate distributions.

(2) Provisions applicable to Part — Subsections 150(2) and (3), sections 152, 158 and 159, subsections 160.1(1) and 161(1) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Definitions [s. 183.2]: "corporation" — 248(1), *Interpretation Act* 35(1); "Minister", "prescribed" — 248(1); "taxation year" — 249.

PART III — ADDITIONAL TAX ON EXCESSIVE ELECTIONS

184. (1) [Repealed under former Act]

(2) Tax on excessive elections — Where a corporation has elected in accordance with subsection 83(2), 130.1(4) or 131(1) in respect of the full amount of any dividend payable by it on shares of any class of its capital stock and the full amount of the dividend exceeds the portion thereof deemed by that subsection to be a capital dividend or capital gains dividend, as the case may be, the corporation shall, at the time of the election, pay a tax under this Part equal to 3/4 of the excess.

Proposed Amendment — 184(2)

(2) Tax on excessive elections — If a corporation has elected in accordance with subsection 83(2), 130.1(4) or 131(1) in respect of the full amount of any dividend payable by it on shares of any class of its capital stock (in this section referred to as the "original dividend") and the full amount of the original dividend exceeds the portion of the original dividend deemed by that subsection to be a capital dividend or capital gains dividend, as the case may be, the corporation shall, at the time of the election, pay a tax under this Part equal to 3/5 of the excess.

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 163, will amend subsec. 184(2) to read as above, applicable to original dividends paid by a corporation after its 1999 taxation year.

Technical Notes: Under section 83, a private corporation can identify a dividend as a "capital dividend," with the result that the dividend is not taxable to the shareholders who receive it. In concept, a capital dividend is a distribution of the non-taxable portion of the corporation's capital gains, which portion is recorded in the corporation's "capital dividend account". A similar mechanism allows mutual fund corporations and mortgage investment corporations to designate a dividend as a "capital gains dividend" — which is taxable to the shareholder, but as a capital gain.

Part III of the Act (sections 184 and 185) applies a special tax to a corporation that designates as a capital dividend or a capital gains dividend an amount that exceeds the amount available to be paid as such a dividend. If the corporation obtains the consent of its shareholders, it can avoid the special tax by treating the excess amount as a separate taxable dividend.

These amendments simplify Part III and update its language, reduce the rate of the special tax, and modify the requirement for shareholder consent to the recharacterization of an excessive dividend. These amendments apply to dividends that are paid by a corporation after its 1999 taxation year, with a special transitional rule for elections, described below in the notes to subsection 184(5).

Subsection 184(2) applies the tax under Part III of the Act to the amount by which a dividend paid by a corporation as a capital dividend or a capital gains dividend exceeds the amount eligible to be so designated. For greater clarity, the subsection is amended to refer to the full amount of the initial dividend as the "original dividend." That term is then used elsewhere in amended Part III.

The rate of tax imposed by subsection 184(2) is also changed, as part of a series of amendments that reflect recent and planned reductions in tax rates. The rate is reduced from 75% of the excess capital gains dividend to 60% of the excess.

Related Provisions: 18(1)(t) — Tax is non-deductible; 87(2)(z.2) — Amalgamation — continuing corporation; 184(3) — Election to treat excess as a separate dividend.

(2.1) Reduction of excess — Notwithstanding subsection (2), where a corporation has elected in accordance with subsection 83(2) in respect of the full amount of a dividend that became payable by it at a particular time in its 1988 taxation year and before June 18, 1987, the amount of the excess referred to in subsection (2) in respect of the dividend shall be deemed, for the purposes of subsection (2), to be the amount of the excess that would have been determined under subsection (2) in respect of the dividend if the corporation's taxation year had ended on December 31, 1987.

Proposed Repeal — 184(2.1)

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 163, will repeal subsec. 184(2.1), applicable to original dividends paid by a corporation after its 1999 taxation year.

Technical Notes: Subsection 184(2.1) is a transitional rule that applies to certain dividends that became payable before June 18, 1987. That subsection has lapsed and is repealed.

(3) Election to treat excess as separate dividend — Where, in respect of a dividend payable at a particular time after 1971, a corporation would, but for this subsection, be required to pay a tax under this Part equal to all or a portion of an excess referred to in subsection (2) of this section or subsection 184(1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, it may elect in prescribed manner on or before a day that is not later than 90 days after the day that is the later of December 15, 1977 and the day of mailing of the notice of assessment in respect of the tax that would otherwise be payable under this Part, and on such an election being made, subject to subsection (4), the following rules apply:

(a) the amount by which the full amount of the dividend exceeds the amount of the excess shall be deemed for the purposes of the election that the corporation made in respect of the dividend under subsection 83(2), 130.1(4) or 131(1) of this Act or subsection 83(1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, and for all other purposes of this Act to be the full amount of a separate dividend that became payable at the particular time;

(b) such part of the excess as the corporation may claim shall, for the purposes of any election in respect thereof under subsection 83(2), 130.1(4) or 131(1) of this Act or subsection 83(1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, and, where the corporation has so elected, for all purposes of this Act, be deemed to be the full amount of a separate dividend that became payable immediately after the particular time;

(c) the amount by which the excess exceeds any portion deemed by paragraph (b) to be a separate dividend for all purposes of this Act shall be deemed to be a separate dividend that is a taxable dividend that became payable at the particular time; and

(d) each person who held any of the issued shares of the class of shares of the capital stock of the corporation in respect of which the full amount of the dividend was paid shall be deemed

(i) not to have received any portion of the dividend, and

(ii) to have received at the time the dividend was paid the proportion of any separate dividend, determined under paragraph (a), (b) or (c), that the number of shares of that class held by the person at the time the dividend was paid is of the number of shares of that class outstanding at that time except that, for the purpose of Part XIII, a separate dividend that is a taxable dividend, a capital dividend or a life insurance capital dividend shall be deemed to have been paid on the day that the election in respect of this subsection is made.

Proposed Amendment — 184(3)

(3) Election to treat excess as separate dividend — If, in respect of an original dividend payable at a particular time, a corporation would, but for this subsection, be required to pay a tax under this Part in re-

spect of an excess referred to in subsection (2), and the corporation elects in prescribed manner on or before the day that is 90 days after the day of mailing of the notice of assessment in respect of the tax that would otherwise be payable under this Part, the following rules apply:

(a) the portion of the original dividend deemed by subsection 83(2), 130.1(4) or 131(1) to be a capital dividend or capital gains dividend, as the case may be, is deemed for the purposes of this Act to be the amount of a separate dividend that became payable at the particular time;

(b) if the corporation identifies in its election any part of the excess, that part is, for the purposes of any election under subsection 83(2), 130.1(4) or 131(1) in respect of that part, and, where the corporation has so elected, for all purposes of this Act, deemed to be the amount of a separate dividend that became payable immediately after the particular time;

(c) the amount by which the excess exceeds any portion deemed by paragraph (b) to be a separate dividend for all purposes of this Act is deemed to be a separate taxable dividend that became payable at the particular time; and

(d) each person who held any of the issued shares of the class of shares of the capital stock of the corporation in respect of which the original dividend was paid is deemed

(i) not to have received any portion of the original dividend, and

(ii) to have received, at the time that any separate dividend determined under any of paragraphs (a) to (c) became payable, the proportion of that dividend that the number of shares of that class held by the person at the particular time is of the number of shares of that class outstanding at the particular time except that, for the purpose of Part XIII the separate dividend is deemed to be paid on the day that the election in respect of this subsection is made.

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 163, will amend subsec. 184(3) to read as above, applicable to original dividends paid by a corporation after its 1999 taxation year.

Technical Notes: Subsection 184(3) allows a corporation that would otherwise be liable to tax under Part III in respect of an excessive capital dividend or capital gains dividend to treat the excess as a separate taxable dividend, and thus to avoid the tax. The subsection is amended to update and clarify its language.

Related Provisions: 184(4) — Concurrence with election; 184(5) — Exception for non-taxable shareholders; 220(3.2), Reg. 600(b) — Late filing or revocation of election.

Regulations: 2106 (prescribed manner).

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-66R6: Capital dividends.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

(3.1) Election to treat dividend as loan — Where a corporation has elected in accordance with subsection 83(1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in respect of the full amount of any dividend that became payable by it at a particular time after March 31, 1977 and before 1979 and the corporation made a reasonable attempt to correctly determine its tax-paid undistributed surplus on hand immediately before the particular time and its 1971 capital surplus on hand immediately before the particular time and all or any portion of the dividend

(a) has given rise to a gain from the disposition of a share of the corporation by virtue of subsection 40(3), or

(b) is an excess referred to in subsection 184(1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952,

if the corporation so elects under this subsection,

(c) in any case referred to in paragraph (a), not later than December 31, 1982 or such earlier day as is 90 days after the latest of

(i) February 26, 1981,

(ii) the day on which a notice of assessment or reassessment is mailed to a shareholder of the corporation in respect of a gain referred to in paragraph (a), and

(iii) such day as is agreed to by the Minister in writing, or

(d) in any other case, not later than 90 days after the later of

(i) February 26, 1981, and

(ii) the day on which the Minister notifies the corporation by registered letter that it has an excess referred to in subsection 184(1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in respect of the dividend,

and the penalty referred to in subsection (5) in respect of the election is paid by the corporation at the time the election is made, the following rules apply:

(e) the whole dividend or such portion of it as the corporation may claim shall, for the purposes of this Act, be deemed not to be a dividend but to be a loan made at the particular time by the corporation to the persons who received all or any portion of the dividend if the full amount of the loan is repaid to the corporation before such date as is stipulated by the Minister and the corporation satisfies such terms and conditions as are specified by the Minister, and

(f) sections 15 and 80.4 do not apply to such a loan.

Proposed Repeal — 184(3.1)

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 163, will repeal subsec. 184(3.1), applicable to original dividends paid by a corporation after its 1999 taxation year.

Technical Notes: See under 184(2.1).

Related Provisions: 248(7)(a) — Mail deemed received on day mailed.

Selected Cases [subsec. 184(3.1)]: *Special Risks Holdings Inc. v. Canada*, [1995] 1 C.T.C. 202 (FCA); affirming [1994] 2 C.T.C. 274 (FCTD) (No reasonable attempt to correctly determine surpluses).

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-66R6: Capital dividends.

(3.2) Idem — Where a corporation has elected in accordance with subsection 83(2) in respect of the full amount of any dividend that became payable by it at a particular time after December 3, 1985 and before 1986 and the corporation made a reasonable attempt to correctly determine its capital dividend account immediately before the particular time and all or any portion of the dividend is an excess referred to in subsection (2), if

(a) the corporation so elects under this subsection not later than 90 days after the later of

(i) December 19, 1986, and

(ii) the day on which the Minister notifies the corporation by registered letter that it has an excess referred to in subsection (2) in respect of the dividend, and

(b) the penalty referred to in subsection (5) in respect of the election is paid by the corporation at the time the election under this subsection is made,

the following rules apply:

(c) the whole dividend or such portion of it as the corporation may claim shall, for the purposes of this Act, be deemed not to be a dividend but to be a loan made at the particular time by the corporation to the persons who received all or any portion of the dividend if the full amount of the loan is repaid to the corporation before such date as is stipulated by the Minister and the corporation satisfies such terms and conditions as are specified by the Minister, and

(d) sections 15 and 80.4 do not apply to such a loan.

Proposed Repeal — 184(3.2)

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 163, will repeal subsec. 184(3.2), applicable to original dividends paid by a corporation after its 1999 taxation year.

Technical Notes: See under 184(2.1).

Related Provisions: 248(7)(a) — Mail deemed received on day mailed.

Interpretation Bulletins: IT-66R6: Capital dividends.

(4) Concurrence with election — An election under subsection (3) is not valid unless

(a) it is made with the concurrence of the corporation and all its shareholders

(i) who received or were entitled to receive all or any portion of the dividend in respect of which a tax would, but for subsection (3), be payable under this Part, and

(ii) whose addresses were known to the corporation; and

(b) either

(i) it is made on or before the day that is 30 months after the day on which the dividend became payable, or

(ii) each shareholder described in subparagraph (a)(i) concurs with the election, in which case, notwithstanding subsections 152(4) to (5), such assessment of the tax, interest and penalties payable by each such shareholder for any taxation year may be made as is necessary to take the corporation's election into account.

Proposed Amendment — 184(4)

(4) Concurrence with election — An election under subsection (3) is valid only if

(a) it is made with the concurrence of the corporation and all its shareholders

(i) who received or were entitled to receive all or any portion of the original dividend, and

(ii) whose addresses were known to the corporation; and

(b) either

(i) it is made on or before the day that is 30 months after the day on which the original dividend became payable, or

(ii) each shareholder described in subparagraph (a)(i) concurs with the election, in which case, notwithstanding subsections 152(4) to (5), any assessment of the tax, interest and penalties payable by each of those shareholders for any taxation year shall be made that is necessary to take the corporation's election into account.

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 163, will amend subsec. 184(4) to read as above, applicable to original dividends paid by a corporation after its 1999 taxation year.

Technical Notes: Subsection 184(4) sets out the requirements for shareholders' consent to the recharacterization, under subsection 184(3), of an excessive capital dividend or capital gains dividend. This subsection is amended to update and clarify its language.

Related Provisions: 185 — Assessment of tax.

(5) Penalty — The penalty in respect of an election under subsection (3.1) or (3.2) in relation to a particular dividend is an amount equal to the product obtained when $500 is multiplied by the proportion that the number of months or parts of months during the period commencing on the day the dividend became payable and ending on the day on which that election was made is of 12.

Proposed Amendment — 184(5)

(5) Exception for non-taxable shareholders — If each person who, in respect of an election made under subsection (3), is deemed by subsection (3) to have received a dividend at a particular time is also, at the particular time, a person all of whose taxable income is exempt from tax under Part I,

(a) subsection (4) does not apply to the election; and

(b) the election is valid only if it is made on or before the day that is 30 months after the day on which the original dividend became payable.

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 163, will amend subsec. 184(5) to read as above, applicable to original dividends paid by a corporation after its 1999 taxation year except that, for the purpose of subsec. 184(5), as amended, an election made before the 90th day after the amending legislation is assented to is deemed to have been made in a timely manner.

Technical Notes: New subsection 184(5) provides an exception to the shareholder consent requirements of subsection 184(4). Where a corporation wishes to recharacterize an excessive dividend under subsection 184(3), and the dividend was paid on a class of shares all of the holders of which are persons all of whose taxable income is exempt from tax (for example, registered plans), the corporation need not obtain the shareholders' consent. Instead, the only requirement imposed by new subsection 184(5) is that the corporation's election be made within 30 months after the time that the original (excessive) dividend became payable.

An election under new subsection 184(5) will be deemed to have been made in a timely manner if it is made within 90 days after these amendments receive Royal Assent.

Related Provisions: 18(1)(t) — Penalty is non-deductible; 220(3.1) — Waiver of penalty by CCRA.

History: Subsec. 184(4) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 152, applicable to elections made after July 13, 1990. Subsec. 184(4) formerly read:

(4) Concurrence with election — An election under subsection (3), (3.1) or (3.2) is not valid unless it is made with the concurrence of the corporation and all the shareholders who received or were entitled to receive all or any portion of the dividend in respect of which a tax would, but for subsection (3), (3.1) or (3.2), be payable under this Part or under Part I and whose addresses were known to the corporation.

Definitions [s. 184]: "amount", "assessment" — 248(1); "capital gain" — 39(1)(a), 248(1); "capital dividend" — 83(2), 248(1); "class of shares" — 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend", "life insurance capital dividend", "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "original dividend" — 184(2); "person", "prescribed", "share", "shareholder" — 248(1); "taxable divi-

dend" — 89(1), 248(1); "taxable income" — 248(1); "taxation year" — 249; "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-66R6: Capital dividends.

185. (1) Assessment of tax — The Minister shall, with all due dispatch, examine each election made by a corporation in accordance with subsection 83(2), 130.1(4) or 131(1), assess the tax, if any, payable under this Part in respect of the election and send a notice of assessment to the corporation.

Related Provisions: 184 — Tax on excessive election; 227(14) — No application to corporation exempt under s. 149.

(2) Payment of tax and interest — Where an election has been made by a corporation in accordance with subsection 83(2), 130.1(4) or 131(1) and the Minister mails a notice of assessment under this Part in respect of the election, that part of the amount assessed then remaining unpaid and interest thereon at the prescribed rate computed from the day of the election to the day of payment is payable forthwith by the corporation to the Receiver General.

Related Provisions: 221.1 — Application of interest where legislation retroactive; 248(7) — Mail deemed received on day mailed; 248(11) — Interest compounded daily.

Regulations: 4301(a) (prescribed rate of interest).

(3) Provisions applicable to Part — Subsections 152(3), (4), (5), (7) and (8) and 161(11), sections 163 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

(4) Joint and several liability from excessive elections — Each person who has received a dividend from a corporation in respect of which the corporation elected under subsection 83(2), 130.1(4) or 131(1) is jointly and severally liable with the corporation to pay that proportion of the corporation's tax payable under this Part because of the election that

Proposed Amendment — 185(4) opening words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 260(1), will amend the opening words of subsec. 185(4) by substituting "jointly and severally, or solidarily," for "jointly and severally", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(a) the amount of the dividend received by the person

is of

(b) the full amount of the dividend in respect of which the election was made,

but nothing in this subsection limits the liability of any person under any other provision of this Act.

Related Provisions: 185(5) — Assessment; 185(6) — Rules applicable.

History: Subsec. 185(4) added by 1994, c. 7, Sch. II (1991, c. 49), s. 153, applicable to dividends paid after July 13, 1990.

(5) Assessment — The Minister may, at any time after the last day on which a corporation may make an election under subsection 184(3) in respect of a dividend, assess a person in respect of any amount payable under subsection (4) in respect of the dividend, and the provisions of Division I of Part I apply, with such modifications as the circumstances require, to an assessment made under this subsection as though it were made under section 152.

History: Subsec. 185(5) added by 1994, c. 7, Sch. II (1991, c. 49), s. 153, applicable to dividends paid after July 13, 1990.

(6) Rules applicable — Where under subsection (4) a corporation and another person have become jointly and severally liable to pay part or all of the corporation's tax payable under this Part in respect of a dividend described in subsection (4),

Proposed Amendment — 185(6) opening words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 260(2), will amend the opening words of subsec. 185(6) by substituting "jointly and severally, or solidarily," for "jointly and severally", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(a) a payment at any time by the other person on account of the liability shall, to the extent of the payment, discharge the joint liability after that time; and

Proposed Amendment — 185(6)(a)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 260(3), will amend para. 185(6)(a) by substituting "their liability" for "the joint liability", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(b) a payment at any time by the corporation on account of its liability shall discharge the other person's liability only to the extent of the amount determined by the formula

$$(A - B) \times \frac{C}{D}$$

where

A is the total of

(i) the amount of the corporation's liability, immediately before that time, under this Part in respect of the full amount of the dividend, and

(ii) the amount of the payment,

B is the amount of the corporation's liability, immediately before that time, under this Act,

C is the amount of the dividend received by the other person, and

D is the full amount of the dividend.

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: Subsec. 185(6) added by 1994, c. 7, Sch. II (1991, c. 49), s. 153, applicable to dividends paid after July 13, 1990.

Definitions [s. 185]: "assessment" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend", "Minister", "person", "prescribed" — 248(1); "prescribed rate" — Reg. 4301.

Part IV — Tax on Taxable Dividends Received by Private Corporations

186. (1) Tax on assessable dividends — Every corporation (in this section referred to as the "particular corporation") that is at any time in a taxation year a private corporation or a subject corporation shall, on or before its balance-due day for the year, pay a tax under this Part for the year equal to the amount, if any, by which the total of

(a) 1/3 of all assessable dividends received by the particular corporation in the year from corporations other than payer corporations connected with it, and

(b) all amounts, each of which is an amount in respect of an assessable dividend received by the particular corporation in the year from a private corporation or a subject corporation that was a payer corporation connected with the particular corporation, equal to that proportion of the payer corporation's dividend refund

(within the meaning assigned by paragraph 129(1)(a)) for its taxation year in which it paid the dividend that

(i) the amount of the dividend received by the particular corporation

is of

(ii) the total of all taxable dividends paid by the payer corporation in its taxation year in which it paid the dividend and at a time when it was a private corporation or a subject corporation

exceeds 1/3 of the total of

(c) such part of the particular corporation's non-capital loss and farm loss for the year as it claims, and

(d) such part of the particular corporation's

(i) non-capital loss for any of its 10 taxation years immediately preceding or 3 taxation years immediately following the year, and

(ii) farm loss for any of its 10 taxation years immediately preceding or 3 taxation years immediately following the year

as it claims, not exceeding the portion thereof that would have been deductible under section 111 in computing its taxable income for the year if subparagraph 111(3)(a)(ii) were read without reference to the words "the particular taxation year and" and if the corporation had sufficient income for the year.

Related Provisions: 15.1(1), 15.2(1) — Interest on small business development bond or small business bond not a dividend for Part IV tax; 18(1)(t) — Part IV tax is non-deductible; 87(2.11) — Losses, etc., on amalgamation with subsidiary wholly-owned corporation; 88(1.1) — Non-capital losses, etc., of subsidiary; 88(1.3) — Computation of income and tax of parent; 129(1) — Part IV tax is refundable; 129(3)(b) — "Refundable dividend tax on hand"; 131(5) — Dividend refund to mutual fund corporation; 186(6) — Partnerships; 186.1 — Exempt corporations; 186.2 — Exempt dividends; 227(14) — No tax on corporation exempt under s. 149; 227(16) — Municipal or provincial corporation excepted.

History: Subpara. 186(1)(d)(i) amended by 2005, c. 19, s. 41 to substitute "10" for "7", applicable in respect of losses that arise in taxation years that end after March 22, 2004.

The opening words of subsec. 186(1) amended by 2003, c. 15, s. 120, applicable to taxation years that begin after June 2003. The opening words formerly read:

(1) Every corporation (in this section referred to as the "particular corporation") that is at any time in a taxation year a private corporation or a subject corporation shall, on or before the last day of the third month after the end of the year, pay a tax under this Part for the year equal to the amount, if any, by which the total of

Subsec. 186(1) amended by 1996, c. 21, subsec. 48(1), applicable to taxation years that end after June 1995 except that, in respect of any such taxation year that begins before July 1995,

(a) in the application of subsec. 186(1) to amounts described in paras. 186(1)(a) and (b) that were received by the corporation in the year and before July 1995, the references to "1/3" shall be read as "1/4";

(b) amounts deducted by the corporation for the year under paras. 186(1)(c) and (d)

(i) are deemed to have been deducted in respect of amounts described in paras. 186(1)(a) and (b) that were received by the corporation in the year and after June 1995, and

(ii) to the extent that the amounts so deducted exceed the amounts referred to in subpara. (i), are deemed to have been deducted in respect of amounts described in paras. 186(1)(a) and (b) that were received by the corporation in the year and before July 1995.

Subsec. (1) formerly read:

(1) **Tax on certain taxable dividends** — Every corporation (in this section referred to as the "particular corporation") that was, at any time in a taxation year, a corporation (other than a private corporation) resident in Canada and controlled, whether by reason of a beneficial interest in one or more trusts or otherwise, by or for the benefit of an individual (other than a trust) or a related group of individuals (other than trusts) (in this Part referred to as a "subject corporation") or a private corporation shall, on or before the last day of the third month after the end of the year, pay a tax under this Part for the year equal to 1/4 of the amount, if any, by which the total of

(a) all amounts received by the particular corporation in the year and at a time when it was a subject corporation or a private corporation as, on account of, in lieu of payment of or in satisfaction of, taxable dividends from corporations (other than payer corporations connected with it),

(i) that are deductible under subsection 112(1) from its income for the year, or

(ii) to the extent of the amounts in respect of those dividends that are deductible under paragraph 113(1)(a), (b) or (d) or subsection 113(2) from its income for the year, and

(b) all amounts, each of which is an amount in respect of a taxable dividend, in respect of which an amount is deductible under subsection 112(1) in computing its taxable income for the year, received by the particular corporation in the year and at a time when it was a subject corporation or a private corporation from a subject corporation or a private corporation that was a payer corporation connected with the particular corporation equal to that proportion of

(i) 4 times the dividend refund of the payer corporation for its taxation year in which it paid the dividend

that

(ii) the amount in respect of the dividend so received by the particular corporation

is of

(iii) the total of all taxable dividends paid by the payer corporation in its taxation year in which it paid the dividend and at a time when it was a subject corporation or a private corporation,

(b.1) [Repealed under former Act]

exceeds the total of

(c) such part of the particular corporation's non-capital loss and such part of its farm loss for the year as it may claim, and

(d) such part of the particular corporation's

(i) non-capital loss for a taxation year that is any of the 7 taxation years immediately preceding or the 3 taxation years immediately following the year, and

(ii) farm loss for a taxation year that is any of the 10 taxation years immediately preceding or the 3 taxation years immediately following the year

as it may claim, not exceeding the portion thereof that would have been deductible under section 111 in computing the corporation's taxable income for the year if subparagraph 111(3)(a)(ii) were read without reference to the words "the particular taxation year and" and if the corporation had sufficient income for the year.

That portion of para. 186(1)(a) and of 186(1)(b) preceding subpara. (i) of each amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsecs. 110(1) and (2), applicable to dividends received after 1992. Those portions formerly read:

(a) all amounts received by the particular corporation in the year as, on account or in lieu of payment of, or in satisfaction of, taxable dividends from corporations other than payer corporations connected with it,

. . . . .

(b) all amounts, each of which is an amount in respect of a taxable dividend, in respect of which an amount is deductible under subsection 112(1) from its income for the year, received by the particular corporation in the year from a corporation (in this section referred to as the "payer corporation") connected with the particular corporation equal to that proportion of

Subpara. 186(1)(b)(iii) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 110(3), applicable to dividends paid in the 1992 or a subsequent taxation year, except that with respect to dividends paid in a taxation year commencing before 1993 and ending after 1992, the subpara. shall be read as follows:

(iii) the total of all taxable dividends paid by the payer corporation in its taxation year in which it paid the dividend that were paid before 1993 or at a time when the payer corporation was a subject corporation or a private corporation

Subpara. (b)(iii) formerly read:

(iii) the total of all taxable dividends paid by the payer corporation in its taxation year in which it paid the dividend,

Interpretation Bulletins: IT-232R3: Losses — their deductibility in the loss year or in other years; IT-269R3: Part IV tax on taxable dividends received by a private corporation or a subject corporation; IT-328R3: Losses on shares on which dividends have been received.

Information Circulars: 88-2, para. 14: General anti-avoidance rule — section 245 of the *Income Tax Act*.

Advance Tax Rulings: ATR-32: Rollover of fixed assets from Opco into Holdco; ATR-35: Partitioning of assets to get specific ownership — "butterfly".

Forms: T2 SCH 3: Dividends received, taxable dividends paid, and Part IV tax calculation.

(1.1) Reduction where Part IV.1 tax payable — Notwithstanding subsection (1), where an assessable dividend was received by a corporation in a taxation year and was included in an amount in respect of which tax under Part IV.1 was payable by the corporation for the year, the tax otherwise payable under this Part by the corporation for the year shall be reduced

(a) where the assessable dividend is described in paragraph (1)(a), by 10% of the assessable dividend, and

(b) where the assessable dividend is described in paragraph (1)(b), by 30% of the amount determined under that paragraph in respect of the assessable dividend.

History: Subsec. 186(1.1) amended by 1996, c. 21, subsec. 48(1), applicable to taxation years that end after June 1995 except that, in applying amended subsec. (1.1) to any such taxation year that begins before July 1995 to amounts described in para. 186(1.1)(b) that were received by the corporation in the year and before July 1, 1995, the reference to "30%" shall be read as "40%". Subsec. (1.1) formerly read:

(1.1) Reduction in tax — Notwithstanding subsection (1), where a taxable dividend referred to in paragraph (1)(a) or (b) was received by a corporation in a taxation year and was included in an amount in respect of which tax under Part IV.1 was payable by the corporation for the year, the tax otherwise payable under this Part by the corporation for the year shall be reduced

(a) where the dividend is a taxable dividend referred to in paragraph (1)(a), by 10% of the amount determined in respect of that dividend under that paragraph; and

(b) where the dividend is a taxable dividend referred to in paragraph (1)(b), by 10% of the amount determined in respect of that dividend under that paragraph.

Interpretation Bulletins: IT-269R3: Part IV tax on taxable dividends received by a private corporation or a subject corporation.

(2) When corporation controlled — For the purposes of this Part, other than for the purpose of determining whether a corporation is a subject corporation, one corporation is controlled by another corporation if more than 50% of its issued share capital (having full voting rights under all circumstances) belongs to the other corporation, to persons with whom the other corporation does not deal at arm's length, or to the other corporation and persons with whom the other corporation does not deal at arm's length.

Related Provisions: 88(1)(d.2) — Winding-up — when taxpayer last acquired control; 111(3)(a) — Limitation on deductibility; 112(1) — Deduction of taxable dividends received by corporation resident in Canada; 113(1) — Deduction re dividend received from foreign affiliate; 186(7) — 186(2) applies to all uses of the term "connected" based on 186(4); 195(6) — Undue deferral of refundable tax.

Selected Cases [subsec. 186(2)]: *Olsen v. R.*, [2000] 3 C.T.C. 2299 (TCC) (Ordinary meaning of "control" applies for purposes of provision); *Special Risks Holdings Inc. v. R.*, [1986] 1 C.T.C. 201 (FCA) (Taxpayer exercising *de facto* control of subject corporation; arm's length relationship considered).

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations; IT-269R3: Part IV tax on taxable dividends received by a private corporation or a subject corporation; IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987; IT-489R: Non-arm's length sale of shares to a corporation.

(3) Definitions — The definitions in this subsection apply in this Part.

"assessable dividend" means an amount received by a corporation at a time when it is a private corporation or a subject corporation as, on account of, in lieu of payment of or in satisfaction of, a taxable dividend from a corporation, to the extent of the amount in respect of the dividend that is deductible under section 112, paragraph 113(1)(a), (b) or (d) or subsection 113(2) in computing the recipient corporation's taxable income for the year.

"subject corporation" means a corporation (other than a private corporation) resident in Canada and controlled, whether because of a beneficial interest in one or more trusts or otherwise, by or for the benefit of an individual (other than a trust) or a related group of individuals (other than trusts).

History: Subsec. 186(3) added by 1996, c. 21, subsec. 48(2), applicable to taxation years that end after June 1995.

(4) Corporations connected with particular corporation — For the purposes of this Part, a payer corporation is connected with a particular corporation at any time in a taxation year (in this subsection referred to as the "particular year") of the particular corporation if

(a) the payer corporation is controlled (otherwise than by virtue of a right referred to in paragraph 251(5)(b)) by the particular corporation at that time; or

(b) the particular corporation owned, at that time,

(i) more than 10% of the issued share capital (having full voting rights under all circumstances) of the payer corporation, and

(ii) shares of the capital stock of the payer corporation having a fair market value of more than 10% of the fair market value of all of the issued shares of the capital stock of the payer corporation.

Related Provisions: 186(2) — Extended meaning of "controlled"; 186(7) — 186(2) applies to all uses of the term "connected" in the Act.

Interpretation Bulletins: IT-269R3: Part IV tax on taxable dividends received by a private corporation or a subject corporation; IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987; IT-489R: Non-arm's length sale of shares to a corporation.

Advance Tax Rulings: ATR-42: Transfer of shares; ATR-55: Amalgamation followed by sale of shares.

(5) Deemed private corporation — A corporation that is at any time in a taxation year a subject corporation shall, for the purposes of paragraph 87(2)(aa) and section 129, be deemed to be a private corporation at that time, except that its refundable dividend tax on hand (within the meaning assigned by subsection 129(3)) at the end of the year shall be determined without reference to paragraph 129(3)(a).

History: Subsec. 186(5) amended by 1996, c. 21, subsec. 48(3), applicable to taxation years that end after June 1995. Subsec. (5) formerly read:

(5) A corporation that is at any time a subject corporation shall, for the purposes of paragraphs 87(2)(aa) and 88(1)(e.5) and section 129, be deemed to be a private corporation at that time, except that its refundable dividend tax on hand at the end of any taxation year shall be deemed to be the amount, if any, by which the total of

(a) the total of the taxes under this Part payable by the corporation for the year and any previous taxation years ending after it last became a subject corporation, and

(a.1) the amount, if any, of the corporation's addition at December 31, 1986 of refundable dividend tax on hand (within the meaning assigned by subsection 129(3.3)),

exceeds the total of

(b) the total of the corporation's dividend refunds for taxation years ending after it last became a subject corporation and before the year, and

(c) the amount, if any, of the corporation's reduction at December 31, 1987 of refundable dividend tax on hand (within the meaning assigned by subsection 129(3.5)).

That portion of subsec. 186(5) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 110(4), applicable to 1993 *et seq.* That portion formerly read:

(5) Presumption — A corporation that was at the end of a taxation year commencing after November 12, 1981 a subject corporation or a private corporation that was at any time in the year a subject corporation shall, for the purposes of paragraphs 87(2)(aa) and 88(1)(e.5) and section 129, be deemed to have been a private corporation at the times in the year that it was a subject corporation, except that its refundable dividend tax on hand at the end of the year shall be deemed to be the amount, if any, by which the total of

Interpretation Bulletins: IT-269R3: Part IV tax on taxable dividends received by a private corporation or a subject corporation; IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987.

(6) Partnerships — For the purposes of this Part,

(a) all amounts received in a fiscal period by a partnership as, on account or in lieu of payment of, or in satisfaction of, taxable dividends shall be deemed to have been received by each member of the partnership in the member's fiscal period or taxation year in which the partnership's fiscal period ends, to the extent of that member's share thereof; and

(b) each member of a partnership shall be deemed to own at any time that proportion of the number of the shares of each class of the capital stock of a corporation that are property of the partnership at that time that the member's share of all dividends received on those shares by the partnership in its fiscal period that includes that time is of the total of all those dividends.

(7) Interpretation — For greater certainty, where a provision of this Act or the regulations indicates that the term "connected" has the meaning assigned by subsection 186(4), that meaning shall be determined by taking into account the application of subsection 186(2) unless the provision expressly provides otherwise.

History: Subsec. 186(7) added by 2001, c. 17, s. 164, applicable after March 15, 2001, except that it does not apply for the purposes of applying the Act after March 15, 2001 with respect to actions or transactions of a taxpayer required to be carried out under an agreement in writing made by the taxpayer before March 16, 2001 if the taxpayer elects in writing that this subsection apply by filing the election including a copy of the agreement with the Minister of National Revenue before August 13, 2001 (60 days after Royal Assent).

Selected Cases [s. 186]: *943963 Ontario Inc. v. R.*, [1999] 4 C.T.C. 2119 (TCC) (Part IV tax applicable to all dividends and deemed dividends, including those from "safe income"); *L'Heureux v. Canada*, [1995] 1 C.T.C. 2850 (TCC) (Circular calculations of tax proper in certain "butterfly" transactions).

Definitions [s. 186]: "amount" — 248(1); "assessable dividend" — 186(3); "Canada" — 255; "class of shares" — 248(6); "connected" — 186(4); "controlled" — 186(2); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "dividend refund" — 129(1); "farm loss" — 111(8); "fiscal period" — 249(2), 249.1; "individual", "insurance corporation" — 248(1); "non-capital loss" — 111(8), 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "particular corporation" — 186(1); "person" — 248(1); "private corporation" — 89(1), 186(5), 227(16), 248(1); "related group" — 251(4); "resident in Canada" — 250; "share" — 248(1); "subject corporation" — 186(3); "taxable dividend" — 89(1), 186.2, 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "trust" — 104(1), 248(1).

Interpretation Bulletins [s. 186]: IT-269R3: Part IV tax on taxable dividends received by a private corporation or a subject corporation.

186.1 Exempt corporations — No tax is payable under this Part for a taxation year by a corporation

(a) that was, at any time in the year, a bankrupt (within the meaning assigned by subsection 128(3)); or

(b) that was, throughout the year,

(i) a bank,

(ii) a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as a trustee,

(iii) an insurance corporation,

(iv) a prescribed labour-sponsored venture capital corporation,

(v) a prescribed investment contract corporation,

(vi) a non-resident-owned investment corporation, or

(vii) a registered securities dealer that was throughout the year a member of a prescribed stock exchange in Canada.

Proposed Amendment — 186.1(b)(vii)

Letter from Dept. of Finance, January 18, 2002:

Dear [xxx]:

This is in response to your letter of May 25, 2001 and subsequent telephone conversations between you, [xxx], and Sanjeev Sivarulrasa of this Division. You have requested that we consider recommending an amendment to the *Income Tax Act* (Act) to take into account the demutualization of the Toronto Stock Exchange (TSE) as of April 3, 2000, in which "member firms" were converted to "participating organizations".

As I understand it, your concern has to do with the current wording of subparagraph 186.1(b)(vii), which exempts from Part IV tax a corporation that is "a registered securities dealer that was throughout the year a member of a prescribed stock exchange in Canada." Since demutualization of the TSE, "member firms" are now "participating organizations", and it is unclear whether the current wording of subparagraph 186.1(b)(vii) will continue to exempt from Part IV tax a registered securities dealer that is a "participating organization" of the TSE.

As you know, your request raised a number of potential issues, and we considered it important to review in this context the not-for-profit status of the TSE, the fact that its demutualization has now made it a for-profit corporation, and the appropriate tax treatment of any dividends that the TSE might have paid to its members after its demutualization. In the end, we have concluded that, since a "participating organization" of the TSE will have to meet the same qualifications as a "member firm", a registered securities dealer that is a participating organization ought to be exempt from Part IV tax. Accordingly, we will recommend that subparagraph 186.1(b)(vii) be amended as you request, effective April 3, 2000.

I cannot offer any assurance that either the Minister of Finance or Parliament will agree with the recommendation that I have described. Nonetheless, I hope that this statement of our position is helpful.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 131(11)(d) — Rules re prescribed labour-sponsored venture capital corporations; 227(14) — Application to exempt corporations; 227(16) — Application to municipal and provincial corporations.

History: Para. 186.1(b) amended by 1998, c. 19, s. 200, applicable after February 22, 1994 except that, in its application to taxation years that ended before 1997, the para. shall be read without reference to subpara. (vii). Para. 186.1(b) formerly read:

(b) that was, throughout the year, a prescribed labour-sponsored venture capital corporation, a prescribed investment contract corporation, an insurance corporation, a corporation described in para-

graph 39(5)(b) or (c) or a non-resident-owned investment corporation.

Definitions [s. 186.1]: "bank" — 248(1), *Interpretation Act* 35(1); "business" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "insurance corporation" — 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "prescribed" — 248(1); "prescribed labour-sponsored venture capital corporation" — Reg. 6701; "prescribed stock exchange in Canada" — Reg. 3200; "province" — *Interpretation Act* 35(1); "taxation year" — 249.

Regulations [s. 186.1]: 6701 (prescribed labour-sponsored venture capital corporation); 6703 (prescribed investment contract corporation).

Interpretation Bulletins [s. 186.1]: IT-269R3: Part IV tax on dividends received by a private corporation or a subject corporation.

186.2 Exempt dividends — For the purposes of subsection 186(1), dividends received in a taxation year by a corporation that was, throughout the year, a prescribed venture capital corporation from a corporation that was a prescribed qualifying corporation with respect to those dividends shall be deemed not to be taxable dividends.

Definitions [s. 186.2]: "corporation" — 248(1), *Interpretation Act* 35(1); "dividend", "prescribed" — 248(1); "prescribed venture capital corporation" — Reg. 6700; "taxable dividend" — 89(1), 248(1); "taxation year" — 249.

Regulations [s. 186.2]: 6700 (prescribed venture capital corporation); 6704 (prescribed qualifying corporation).

Interpretation Bulletins [s. 186.2]: IT-269R3: Part IV tax on dividends received by a private corporation or a subject corporation; IT-328R3: Losses on shares on which dividends have been received.

187. (1) Information return — Every corporation that is liable to pay tax under this Part for a taxation year in respect of a dividend received by it in the year shall, on or before the day on or before which it is required to file its return of income under Part I for the year, file a return for the year under this Part in prescribed form.

Related Provisions: 150(1)(a) — Corporations — Part I return; 150.1(5) — Electronic filing; 186 — Tax payable on certain taxable dividends.

Interpretation Bulletins: IT-269R3: Part IV tax on dividends received by a private corporation or a subject corporation.

Forms: T2: Corporation income tax return, "Part IV Tax on Taxable Dividends Received"; T2 SCH 50: Shareholder information.

(2) Interest — Where a corporation is liable to pay tax under this Part and has failed to pay all or any part thereof on or before the day on or before which the tax was required to be paid, it shall pay to the Receiver General interest at the prescribed rate on the amount that it failed to pay computed from the day on or before which the tax was required to be paid to the day of payment.

Related Provisions: 161.1 — Offset of refund interest against arrears interest; 221.1 — Application of interest where legislation retroactive; 248(11) — Interest compounded daily.

Regulations: 4301(a) (prescribed rate of interest).

(3) Provisions applicable to Part — Sections 151, 152, 158 and 159, subsections 161(7) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Definitions [s. 187]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend", "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "taxation year" — 249.

PART IV.1 — TAXES ON DIVIDENDS ON CERTAIN PREFERRED SHARES RECEIVED BY CORPORATIONS

187.1 Definition of "excepted dividend" — In this Part, "excepted dividend" means a dividend

(a) received by a corporation on a share of the capital stock of a foreign affiliate of the corporation, other than a dividend received by a specified financial institution on a share acquired in the ordinary course of the business carried on by the institution;

(b) received by a corporation from another corporation (other than a corporation described in any of paragraphs (a) to (f) of the definition "financial intermediary corporation" in subsection 191(1)) in which it has or would have, if the other corporation were a taxable Canadian corporation, a substantial interest (as determined under section 191) at the time the dividend was paid;

(c) received by a corporation that was, at the time the dividend was received, a private corporation or a financial intermediary corporation (within the meaning assigned by subsection 191(1));

(d) received by a corporation on a short-term preferred share of the capital stock of a taxable Canadian corporation other than a dividend described in paragraph (b) or (c) of the definition "excluded dividend" in subsection 191(1); or

(e) received by a corporation on a share (other than a taxable RFI share or a share that would be a taxable preferred share if the definition "taxable preferred share" in subsection 248(1) were read without reference to paragraph (a) of that definition) of the capital stock of a mutual fund corporation.

Related Provisions: 191(4)(d) — Deemed excepted dividend.

History: Para. 187.1(a) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 154, applicable to dividends received after 1987. Para. (a) formerly read:

> (a) received by a corporation on a share of the capital stock of a foreign affiliate of the corporation where the share was not acquired by the corporation in the ordinary course of the business carried on by the corporation;

Definitions [s. 187.1]: "business" — 248(1); "carrying on business" — 253; "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "foreign affiliate" — 248(1); "mutual fund corporation" — 131(8), 248(1); "private corporation" — 89(1), 248(1); "received" — 248(7); "share", "short-term preferred share" — 248(1); "taxable Canadian corporation" — 89(1), 248(1); "taxable preferred share", "taxable RFI share" — 248(1).

187.2 Tax on dividends on taxable preferred shares — Every corporation shall, on or before its balance-due day for a taxation year, pay a tax under this Part for the year equal to 10% of the total of all amounts each of which is a dividend, other than an excepted dividend, received by the corporation in the year on a taxable preferred share (other than a share of a class in respect of which an election under subsection 191.2(1) has been made) to the extent that an amount in respect of the dividend was deductible under section 112 or 113 or subsection 138(6) in computing its taxable income for the year or under subsection 115(1) in computing its taxable income earned in Canada for the year.

Related Provisions: 18(1)(t) — Tax is non-deductible; 87(4.2) — Exchanged shares; 186(1.1) — Reduction in tax; 187.4 — Amounts received by partnerships; 187.5 — Information return; 191(3) — Substantial interest; 191(4)(d) — Deemed dividends; 227(14) — No tax on corporation exempt under s. 149.

History: S. 187.2 amended by 2003, c. 15, s. 121, applicable to taxation years that begin after June 2003. It formerly read:

> 187.2 Every corporation shall, on or before the last day of the second month after the end of each taxation year, pay a tax under this Part for the year equal to 10% of the total of all amounts each of which is a dividend, other than an excepted dividend, received by the corporation in the year on a taxable preferred share (other than a share of a class in respect of which an election under subsection 191.2(1) has been made) to the extent that an amount in respect of the dividend was deductible under section 112 or 113 or subsection 138(6) in computing its taxable income for the year or under subsection 115(1) in computing its taxable income earned in Canada for the year.

Definitions [s. 187.2]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "excepted dividend" — 187.1; "received" — 248(7); "share" — 248(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxable preferred share" — 248(1); "taxation year" — 249.

Interpretation Bulletins: IT-88R2: Stock dividends.

Advance Tax Rulings: ATR-46: Financial difficulty.

Forms: T2 SCH 43: Calculation of Parts IV.1 and VI.1 taxes.

187.3 (1) Tax on dividends on taxable RFI shares — Every restricted financial institution shall, on or before its balance-due day for a taxation year, pay a tax under this Part for the year equal to 10% of the total of all amounts each of which is a dividend, other than an excepted dividend, received by the institution at any time in the year on a share acquired by any person before that time and after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 that was, at the time the dividend was paid, a taxable RFI share to the extent that an amount in respect of the dividend was deductible under section 112 or 113 or subsection 138(6) in computing its taxable income for the year or under subsection 115(1) in computing its taxable income earned in Canada for the year.

Related Provisions: 87(4.2) — Exchanged shares; 186(1.1) — Reduction in tax; 187.3(2) — Time of acquisition of share; 187.4 — Partnerships; 187.5 — Information return; 191(3) — Substantial interest.

History: Subsec. 187.3(1) amended by 2003, c. 15, s. 122, applicable to taxation years that begin after June 2003. Subsec. 187.3(1) formerly read:

> (1) Every restricted financial institution shall, on or before the last day of the second month after the end of each taxation year, pay a tax under this Part for the year equal to 10% of the total of all amounts each of which is a dividend, other than an excepted dividend, received by the institution at any time in the year on a share acquired by any person before that time and after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 that was, at the time the dividend was paid, a taxable RFI share to the extent that an amount in respect of the dividend was deductible under section 112 or 113 or subsection 138(6) in computing its taxable income for the year or under subsection 115(1) in computing its taxable income earned in Canada for the year.

Advance Tax Rulings: ATR-46: Financial difficulty.

(2) Time of acquisition of share — For the purposes of subsection (1),

(a) a share of the capital stock of a corporation acquired by a person after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 pursuant to an agreement in writing entered into before that time shall be deemed to have been acquired by that person before that time;

(b) a share of the capital stock of a corporation acquired by a person after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 and before 1988 as part of a distribution to the public made in accordance with the terms of a prospectus, preliminary prospectus, registration statement, offering memorandum or notice filed before 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 with a public authority pursuant to and in accordance with the securities legislation of the jurisdiction in which the shares are distributed shall be deemed to have been acquired by that person before that time;

(c) a share (in this paragraph referred to as the "new share") of the capital stock of a corporation that is acquired by a person after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 in exchange for

(i) a share of a corporation that was issued before 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 or is a grandfathered share, or

(ii) a debt obligation of a corporation that was issued before 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987, or issued after that time pursuant to an agreement in writing entered into before that time,

where the right to the exchange for the new share and all or substantially all the terms and conditions of the new share were established in writing before that time shall be deemed to have been acquired by that person before that time;

(d) a share of a class of the capital stock of a Canadian corporation listed on a prescribed stock exchange in Canada that is acquired by a person after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 on the exercise of a right

(i) that was issued before that time and listed on a prescribed stock exchange in Canada, and

(ii) the terms of which at that time included the right to acquire the share,

where all or substantially all the terms and conditions of the share were established in writing before that time shall be deemed to have been acquired by that person before that time;

(e) where a share that was owned by a particular restricted financial institution at 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 has, by one or more transactions between related restricted financial institutions, been transferred to another restricted financial institution, the share shall be deemed to have been acquired by the other restricted financial institution before that time unless at any particular time after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 and before the share was transferred to the other restricted financial institution the share was owned by a shareholder who, at that particular time, was a person other than a restricted financial institution related to the other restricted financial institution; and

(f) where, at any particular time, there has been an amalgamation within the meaning assigned by section 87, and

(i) each of the predecessor corporations was a restricted financial institution throughout the period from 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 to the particular time and the predecessor corporations were related to each other throughout that period, or

(ii) each of the predecessor corporations and the new corporation is a corporation described in any of paragraphs (a) to (d) of the definition "restricted financial institution" in subsection 248(1),

a taxable RFI share acquired by the new corporation from a predecessor corporation on the amalgamation shall be deemed to have been acquired by the new cor-

poration at the time it was acquired by the predecessor corporation.

Definitions [s. 187.3]: "amount" — 248(1); "class of shares" — 248(6); "dividend" — 248(1); "excepted dividend" — 187.1; "grandfathered share", "person" — 248(1); "prescribed stock exchange in Canada" — Reg. 3200; "related" — 251(2); "restricted financial institution", "share" — 248(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxable RFI share" — 248(1); "taxation year" — 249; "writing" — *Interpretation Act* 35(1).

Regulations [s. 187.3]: 3200 (prescribed stock exchange); 6201 (prescribed shares).

Interpretation Bulletins [s. 187.3]: IT-88R2: Stock dividends.

187.4 Partnerships — For the purposes of this Part,

(a) all amounts received in a fiscal period by a partnership as, on account or in lieu of payment of, or in satisfaction of, dividends shall be deemed to have been received by each member of the partnership in the member's fiscal period or taxation year in which the partnership's fiscal period ends, to the extent of that member's share thereof;

(b) each member of a partnership shall be deemed to own at any time that proportion of the number of the shares of each class of the capital stock of a corporation that are property of the partnership at that time that the member's share of all dividends received on those shares by the partnership in its fiscal period that includes that time is of the total of all those dividends; and

(c) a reference to a person includes a partnership.

Definitions [s. 187.4]: "amount" — 248(1); "class of shares" — 248(6); "dividend" — 248(1); "fiscal period" — 249(2), 249.1; "person" — 187.4(c), 248(1); "share" — 248(1); "taxation year" — 249.

187.5 Information return — Every corporation liable to pay tax under this Part for a taxation year shall file with the Minister, not later than the day on or before which it is required by section 150 to file its return of income for the year under Part I, a return for the year under this Part in prescribed form containing an estimate of the taxes payable by it under sections 187.2 and 187.3 for the year.

Related Provisions: 150.1(5) — Electronic filing.

Definitions [s. 187.5]: "corporation" — 248(1), *Interpretation Act* 35(1); "Minister", "prescribed" — 248(1); "taxation year" — 249.

Forms: T2 SCH 43: Calculation of Parts IV.1 and VI.1 taxes.

187.6 Provisions applicable to Part — Sections 152, 158 and 159, subsections 161(1), (2) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

187.61 Provisions applicable — Crown corporations — Section 27 applies to this Part with any modifications that the circumstances require.

History: S. 187.61 added by 1998, c. 19, s. 201, applicable after 1987.

PART V — TAX AND PENALTIES IN RESPECT OF REGISTERED CHARITIES

History [Part V]: The heading to Part V amended by 2005, c. 19, s. 42 to replace "Tax" with "Tax and Penalties", deemed to have come into force on March 23, 2004.

187.7 Application of subsec. 149.1(1) — The definitions in subsection 149.1(1) apply to this Part.

Origin of s. 187.7: R.S.C. 1985, c. 1 (5th Supp.).

188. (1) Deemed year-end on notice of revocation — If on a particular day the Minister issues a notice of intention to revoke the registration of a taxpayer as a registered charity under any of subsections 149.1(2) to (4.1) and 168(1) or it is determined, under subsection 7(1) of the *Charities Registration (Security Information) Act*, that a certificate served in respect of the charity under subsection 5(1) of that Act is reasonable on the basis of information and evidence available,

(a) the taxation year of the charity that would otherwise have included that day is deemed to end at the end of that day;

(b) a new taxation year of the charity is deemed to begin immediately after that day; and

(c) for the purpose of determining the charity's fiscal period after that day, the charity is deemed not to have established a fiscal period before that day.

Related Provisions: 188(2.1) — Conditions for 188(1) not to apply.

History: Subsec. 188(1) amended by 2005, c. 19, subsec. 43(1), applicable in respect of notices issued and certificates served by the Minister of National Revenue after June 12, 2005. The subsec. formerly read:

(1) Revocation tax — Where the registration of a charity is revoked, the charity shall, on or before the day (in this subsection referred to as the "payment day") in a taxation year that is one year after the day on which the revocation is effective,

(a) pay a tax under this Part for the year equal to the amount determined by the formula

$$A + B - C - D - E - F$$

where

A is the total of all amounts each of which is the fair market value of an asset of the charity on the day (in this section referred to as the "valuation day") that is 120 days before the day on which

(i) the notice of the Minister's intention to revoke the charity's registration is mailed, if the registration is revoked under subsection 168(2), or

(ii) the charity is, under subsection 5(1) of the *Charities Registration (Security Information) Act*, served with a copy of a certificate, if the registration is revoked under subsection 168(3).

B is the total of all amounts each of which is the amount of a gift for which it issued a receipt described in subsection 110.1(2) or 118.1(2) in the period (in this section referred to as the "winding-up period") that begins on the valuation day and ends immediately before the payment day, or an amount received by it in the winding-up period from a registered charity,

Proposed Amendment — Former 188(1)(a)B [temporary]

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 164, provides that in applying the description of B in para. 188(1)(a) in respect of gifts made to a charity after December 20, 2002, as those gifts are relevant in respect of notices of intention to revoke the registration of the charity and certificates under subsec. 5(1) of the *Charities Registration (Security Information) Act* that are issued by the Minister of National Revenue before June 13, 2005, that description is to be read with "which is the eligible amount" substituted for "which is the amount".

Technical Notes: Subsection 188(1) imposes a tax payable by a registered charity in respect of the revocation of the charity's registration. The tax is generally equal to the total of the value of the assets of the charity plus the amount of receipted donations and inter-charity gifts received by the charity after the "valuation day" of the charity's assets, net of certain eligible disbursements.

Subsection 188(1) is amended consequential to the addition of new subsection 248(31), in respect of gifts made after December 20, 2002, to refer to the "eligible amount" of a gift for which a receipt was issued by

the charity. For additional information, see the commentary to new subsection 248(31).

C is the total of all amounts each of which is the fair market value, at the time of the transfer, of an asset transferred by it in the winding-up period to a qualified donee,

D is the total of all amounts each of which is expended by it in the winding-up period on charitable activities carried on by it,

E is the total of all amounts each of which is paid by it in the winding-up period in respect of its debts that were outstanding on the valuation day and not included in determining the value of D, and

F is the total of all amounts each of which is a reasonable expense incurred by it in the winding-up period and not included in determining the value of D; and

(b) file with the Minister a return in prescribed form and containing prescribed information, without notice or demand therefor.

The description of A in para. 188(1)(a) amended by 2001, c. 41, s. 116, in force December 24, 2001. The description of A formerly read:

A is the total of all amounts each of which is the fair market value of an asset of the charity on the day (in this section referred to as the "valuation day") that is 120 days before the day on which notice of the Minister's intention to revoke its registration is mailed,

Subsec. 188(1) substituted by 1994, c. 21, s. 84, applicable where the registration of a charity is revoked pursuant to a notice of intention to revoke its registration that is mailed after 1992. That subsec. formerly read:

(1) Where the registration of a charity is revoked, the charity shall, on or before the day in a taxation year that is one year after the day on which the revocation is effective, pay a tax for the year under this Part equal to the amount, if any, by which the total of

(a) the fair market value, on the day that notice of the Minister's intention to revoke its registration is mailed, of all its assets on that day, and

(b) the total of all gifts for which it issued receipts described in subsection 110.1(2) or 118.1(2) after the day referred to in paragraph (a) and all amounts received after that day from registered charities

exceeds the total of

(c) the fair market value on the day referred to in paragraph (a) of each asset of the charity transferred by it to a qualified donee within the period commencing immediately after that day and expiring at the end of one year from the day on which the revocation is effective,

(d) amounts expended by it within the period described in paragraph (c) on charitable activities carried on by it,

(e) amounts paid by the charity after the day referred to in paragraph (a) in respect of *bona fide* debts of the charity that were outstanding on that day, and

(f) the amount of such reasonable expenses as are incurred by the charity within the period described in paragraph (c).

Para. 188(1)(b) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 155, applicable to 1988 *et seq.* Para. (b) formerly read:

(b) the total of all amounts each of which is an amount of a gift for which it issued a receipt described in paragraph 110.1(1)(a) or subsection 118.1(2) after the day referred to in paragraph (a) or an amount received after that date from a registered charity.

(1.1) Revocation tax — A charity referred to in subsection (1) is liable to a tax, for its taxation year that is deemed to have ended, equal to the amount determined by the formula

$$A - B$$

where

A is the total of all amounts, each of which is

(a) the fair market value of a property of the charity at the end of that taxation year,

(b) the amount of an appropriation (within the meaning assigned by subsection (2)) in respect of a property transferred to another person in the 120-day period that ended at the end of that taxation year, or

(c) the income of the charity for its winding-up period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 as if that period were a taxation year; and

B is the total of all amounts (other than the amount of an expenditure in respect of which a deduction has been made in computing income for the winding-up period under paragraph (c) of the description of A), each of which is

(a) a debt of the charity that is outstanding at the end of that taxation year,

(b) an expenditure made by the charity during the winding-up period on charitable activities carried on by it, and

(c) an amount in respect of a property transferred by the charity during the winding-up period and not later than the latter[45] of one year from the end of the taxation year and the day, if any, referred to in paragraph (1.2)(c), to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

Related Provisions: 149.1(1.1)(c) — Amount transferred under B(c) deemed not expended on charitable activities; 149.1(6.4) — Application to registered national arts service organizations; 188(1.2), (1.3) — "Winding-up period", "eligible donee"; 188(2) — Transferee of property liable for tax; 188(2.1) — Conditions for 188(1.1) not to apply; 189(6.1) — Return and payment required within one year; 189(6.2) — Reduction of revocation tax liability; 189(7) — Assessment of revocation tax; 225.1(1.1)(a) — No collection action for one year; 257 — Formula cannot calculate to less than zero.

History: Subsec. 188(1.1) added by 2005, c. 19, subsec. 43(1), applicable in respect of notices issued and certificates served by the Minister of National Revenue after June 12, 2005.

Forms: RC4108: Registered charities and the *Income Tax Act* [guide].

Charities Policies: CPC-020: Revocation tax.

(1.2) Winding-up period — In this Part, the winding-up period of a charity is the period that begins immediately after the day on which the Minister issues a notice of intention to revoke the registration of a taxpayer as a registered charity under any of subsections 149.1(2) to (4.1) and 168(1) (or, if earlier, immediately after the day on which it is determined, under subsection 7(1) of the *Charities Registration (Security Information) Act*, that a certificate served in respect of the charity under subsection 5(1) of that Act is reasonable on the basis of information and evidence available), and that ends on the day that is the latest of

(a) the day, if any, on which the charity files a return under subsection 189(6.1) for the taxation year deemed by subsection (1) to have ended, but not later than the day on which the charity is required to file that return,

(b) the day on which the Minister last issues a notice of assessment of tax payable under subsection (1.1) for that taxation year by the charity, and

[45] [*Sic.* Should be later — ed.]

(c) if the charity has filed a notice of objection or appeal in respect of that assessment, the day on which the Minister may take a collection action under section 225.1 in respect of that tax payable.

History: Subsec. 188(1.2) added by 2005, c. 19, subsec. 43(1), applicable in respect of notices issued and certificates served by the Minister of National Revenue after June 12, 2005.

(1.3) Eligible donee — In this Part, an eligible donee in respect of a particular charity is a registered charity

(a) of which more than 50% of the members of the board of directors or trustees of the registered charity deal at arm's length with each member of the board of directors or trustees of the particular charity;

(b) that is not the subject of a suspension under subsection 188.2(1);

(c) that has no unpaid liabilities under this Act or under the *Excise Tax Act*;

(d) that has filed all information returns required by subsection 149.1(14); and

(e) that is not the subject of a certificate under subsection 5(1) of the *Charities Registration (Security Information) Act* or, if it is the subject of such a certificate, the certificate has been determined under subsection 7(1) of that Act not to be reasonable.

History: Subsec. 188(1.3) added by 2005, c. 19, subsec. 43(1), applicable in respect of notices issued and certificates served by the Minister of National Revenue after June 12, 2005.

(2) Shared liability — revocation tax — A person who, after the time that is 120 days before the end of the taxation year of a charity that is deemed by subsection (1) to have ended, receives property from the charity, is jointly and severally, or solidarily, liable with the charity for the tax payable under subsection (1.1) by the charity for that taxation year for an amount not exceeding the total of all appropriations, each of which is the amount by which the fair market value of such a property at the time it was so received by the person exceeds the consideration given by the person in respect of the property.

Proposed Amendment — 188(2)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 261(1), will amend subsec. 188(2) by substituting "jointly and severally, or solidarily," for "jointly and severally", to come into force on Royal Assent.

Technical Notes: See under 12(4).

Related Provisions: 160(1) — General rule making transferee of property liable.

History: Subsec. 188(2) amended by 2005, c. 19, subsec. 43(1), applicable in respect of notices issued and certificates served by the Minister of National Revenue after June 12, 2005. The subsec. formerly read:

(2) Idem — A person (other than a qualified donee) who, after the valuation day of a charity, receives an amount from the charity is jointly and severally liable with the charity for the tax payable under subsection (1) by the charity in an amount not exceeding the amount by which the total of all such amounts so received by the person exceeds the total of all amounts each of which is

Proposed Amendment — Former 188(2) opening words

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 171(2), will amend the opening words of subsec. 188(2) [subsequently amended by S.C. 2005, c. 19] to replace "severally liable" with "severally, or solidarily, liable", in force on Royal Assent.

Technical Notes: See under 12(4).

(a) a portion of such an amount that is included in determining an amount in the description of C, D, E or F in subsection (1) in respect of the charity, or

(b) the consideration given by the person in respect of such an amount.

Subsec. 188(2) substituted by 1994, c. 21, s. 84, applicable where the registration of a charity is revoked pursuant to a notice of intention to revoke its registration that is mailed after 1992. That subsec. formerly read:

(2) A person (other than a qualified donee) who, on or after the day that notice of the Minister's intention to revoke the registration of a charity is mailed, receives any amount from that charity is jointly and severally liable with the charity for the tax imposed on the charity by subsection (1) in an amount not exceeding the amount by which the amount so received by the person from the charity exceeds the total of

(a) the total of amounts so received by the person from the charity each of which is an amount described in paragraph (1)(d), (e) or (f), and

(b) the consideration, if any, given by the person in respect of the amount so received by the person.

Charities Policies: CPC-020: Revocation tax.

Forms: RC4108: Registered charities and the *Income Tax Act* [guide].

(2.1) Non-application of revocation tax — Subsections (1) and (1.1) do not apply to a charity in respect of a notice of intention to revoke given under any of subsections 149.1(2) to (4.1) and 168(1) if the Minister abandons the intention and so notifies the charity or if

(a) within the one-year period that begins immediately after the taxation year of the charity otherwise deemed by subsection (1) to have ended, the Minister has registered the charity as a charitable organization, private foundation or public foundation; and

(b) the charity has, before the time that the Minister has so registered the charity,

(i) paid all amounts, each of which is an amount for which the charity is liable under this Act (other than subsection (1.1)) or the *Excise Tax Act* in respect of taxes, penalties and interest, and

(ii) filed all information returns required by or under this Act to be filed on or before that time.

History: Subsec. 188(2.1) added by 2005, c. 19, subsec. 43(1), applicable in respect of notices issued and certificates served by the Minister of National Revenue after June 12, 2005.

(3) Transfer of property tax — Where, as a result of a transaction or series of transactions, property owned by a registered charity that is a charitable foundation and having a net value greater than 50% of the net asset amount of the charitable foundation immediately before the transaction or series of transactions, as the case may be, is transferred before the end of a taxation year, directly or indirectly, to one or more charitable organizations and it may reasonably be considered that the main purpose of the transfer is to effect a reduction in the disbursement quota of the foundation, the foundation shall pay a tax under this Part for the year equal to the amount by which 25% of the net value of that property determined as of the day of its transfer exceeds the total of all amounts each of which is its tax payable under this subsection for a preceding taxation year in respect of the transaction or series of transactions.

Related Provisions: 149.1(6.4) — Application to registered national arts service organizations; 188(3.1) — 188(3) does not apply to gift to which penalty under 188.1(11) applies; 248(10) — Series of transactions.

Forms: RC4108: Registered charities and the *Income Tax Act* [guide].

(3.1) Non-application of subsec. (3) — Subsection (3) does not apply to a transfer that is a gift to which subsection 188.1(11) applies.

History: Subsec. 188(3.1) added by 2005, c. 19, subsec. 43(2), applicable in respect of taxation years that begin after March 22, 2004.

(4) Idem — Where property has been transferred to a charitable organization in circumstances described in sub-

section (3) and it may reasonably be considered that the organization acted in concert with a charitable foundation for the purpose of reducing the disbursement quota of the foundation, the organization is jointly and severally liable with the foundation for the tax imposed on the foundation by that subsection in an amount not exceeding the net value of the property.

Proposed Amendment — 188(4)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 261(2), will amend subsec. 188(4) by substituting "jointly and severally, or solidarily," for "jointly and severally", to come into force on Royal Assent.

Technical Notes: See under 12(4).

Forms: RC4108: Registered charities and the *Income Tax Act* [guide].

(5) Definitions — In this section,

"net asset amount" of a charitable foundation at any time means the amount determined by the formula

A – B

where

A is the fair market value at that time of all the property owned by the foundation at that time, and

B is the total of all amounts each of which is the amount of a debt owing by or any other obligation of the foundation at that time;

Related Provisions: 257 — Formula cannot calculate to less than zero.

"net value" of property owned by a charitable foundation, as of the day of its transfer, means the amount determined by the formula

A – B

where

A is the fair market value of the property on that day, and

B is the amount of any consideration given to the foundation for the transfer.

Related Provisions: 257 — Formula cannot calculate to less than zero.

Definitions [s. 188]: "amount" — 248(1); "arm's length" — 251(1); "assessment" — 248(1); "charitable foundation", "charitable organization", "charitable purposes", "charity", "disbursement quota" — 149.1(1), 187.7; "eligible amount" — 248(31), (41); "eligible donee" — 188(1.3); "fiscal period" — 249.1; "Minister" — 248(1); "net asset amount" — 188(5); "net value" — 188(5); "non-qualified investment" — 149.1(1), 187.7; "person", "prescribed" — 248(1); "private foundation" — 149.1(1), 248(1); "property" — 248(1); "public foundation" — 149.1(1), 248(1); "qualified donee", "qualified investment" — 149.1(1), 187.7; "registered charity" — 248(1); "related business" — 149.1(1), 187.7; "series of transactions" — 248(10); "specified gift" — 149.1(1), 187.7; "taxation year" — 249; "taxpayer" — 248(1); "valuation day" — 188(1)(a)A; "winding-up period" — 188(1.2).

188.1 (1) Penalties for charities — carrying on business — Subject to subsection (2), a registered charity is liable to a penalty under this Part equal to 5% of its gross revenue for a taxation year from any business that it carries on in the taxation year, if the registered charity

(a) is a private foundation; or

(b) is not a private foundation and the business is not a related business in relation to the charity.

Related Provisions: 149.1(2)(a) — Revocation of charitable organization for carrying on unrelated business; 149.1(3)(a) — Revocation of public foundation for carrying on unrelated business; 149.1(4)(a) — Revocation of private foundation for carrying on any business; 188.1(2) — Increased penalty on second assessment; 189(6.3) — Reduction of penalty if funds transferred to another charity; 189(7), (8) — Assessment of penalty and administrative procedures; 241(3.2)(g) — Penalty notice may be disclosed to the public.

(2) Increased penalty for subsequent assessment — A registered charity that, less than five years before a particular time, was assessed a liability under subsection (1) or this subsection, for a taxation year, is liable to a penalty under this Part equal to its gross revenue for a subsequent taxation year from any business that, after that assessment and in the subsequent taxation year, it carries on at the particular time if the registered charity

(a) is a private foundation; or

(b) is not a private foundation and the business is not a related business in relation to the charity.

Related Provisions: 188.2(1)(a) — Mandatory one-year suspension of charity's ability to issue receipts; 189(6.3) — Reduction of penalty if funds transferred to another charity; 189(7), (8) — Assessment of penalty and administrative procedures; 241(3.2)(g) — Penalty notice may be disclosed to the public.

(3) Control of corporation by a charitable foundation — If at a particular time a charitable foundation has acquired control (within the meaning of subsection 149.1(12)) of a particular corporation, the foundation is liable to a penalty under this Part for a taxation year equal to

(a) 5% of the total of all amounts, each of which is a dividend received by the foundation from the particular corporation in the taxation year and at a time when the foundation so controlled the particular corporation, except if the foundation is liable under paragraph (b) for a penalty in respect of the dividend; or

(b) if the Minister has, less than five years before the particular time, assessed a liability under paragraph (a) or this paragraph for a preceding taxation year of the foundation in respect of a dividend received from any corporation, the total of all amounts, each of which is a dividend received, after the particular time, by the foundation, from the particular corporation, in the taxation year and at a time when the foundation so controlled the particular corporation.

Related Provisions: 149.1(3)(c) — Revocation of public foundation for acquiring control of a corporation; 149.1(4)(c) — Revocation of private foundation for acquiring control of a corporation; 189(6.3) — Reduction of penalty if funds transferred to another charity; 189(7), (8) — Assessment of penalty and administrative procedures; 241(3.2)(g) — Penalty notice may be disclosed to the public.

(4) Undue benefits — A registered charity that, at a particular time in a taxation year, confers on a person an undue benefit is liable to a penalty under this Part for the taxation year equal to

(a) 105% of the amount of the benefit, except if the charity is liable under paragraph (b) for a penalty in respect of the benefit; or

(b) if the Minister has, less than five years before the particular time, assessed a liability under paragraph (a) or this paragraph for a preceding taxation year of the charity and the undue benefit was conferred after that assessment, 110% of the amount of the benefit.

Related Provisions: 149.1(1)"charitable foundation", 149.1(1)"charitable organization"(b) — No benefit to be available to any member, shareholder, etc.; 188.1(5) — Meaning of "undue benefit"; 188.2(1)(b) — One-year suspension of charity's ability to issue receipts; 189(6.3) — Reduction of penalty if funds transferred to another charity; 189(7), (8) — Assessment of penalty and administrative procedures; 241(3.2)(g) — Penalty notice may be disclosed to the public.

(5) Meaning of undue benefits — For the purposes of this Part, an undue benefit conferred on a person (referred

to in this Part as the "beneficiary") by a registered charity includes a disbursement by way of a gift or the amount of any part of the income, rights, property or resources of the charity that is paid, payable, assigned or otherwise made available for the personal benefit of any person who is a proprietor, member, shareholder, trustee or settlor of the charity, who has contributed or otherwise paid into the charity more than 50% of the capital of the charity, or who deals not at arm's length with such a person or with the charity, as well as any benefit conferred on a beneficiary by another person, at the direction or with the consent of the charity, that would, if it were not conferred on the beneficiary, be an amount in respect of which the charity would have a right, but does not include a disbursement or benefit to the extent that it is

(a) an amount that is reasonable consideration or remuneration for property acquired by or services rendered to the charity;

(b) a gift made, or a benefit conferred, in the course of a charitable act in the ordinary course of the charitable activities carried on by the charity, unless it can reasonably be considered that the eligibility of the beneficiary for the benefit relates solely to the relationship of the beneficiary to the charity; or

(c) a gift to a qualified donee.

Related Provisions: 149.1(1)"charitable foundation", 149.1(1)"charitable organization"(b) — No benefit to be available to any member, shareholder, etc.

(6) Failure to file information returns — Every registered charity that fails to file a return for a taxation year as and when required by subsection 149.1(14) is liable to a penalty equal to $500.

Related Provisions: 168(1)(c) — Revocation of registration for failing to file information return; 189(6.3) — Reduction of penalties exceeding $1,000 per taxation year if funds transferred to another charity; 189(7), (8) — Assessment of penalty and administrative procedures; 241(3.2)(g) — Penalty notice may be disclosed to the public.

(7) Incorrect information — Except where subsection (8) or (9) applies, every registered charity that issues, in a taxation year, a receipt for a gift otherwise than in accordance with this Act and the regulations is liable for the taxation year to a penalty equal to 5% of the amount reported on the receipt as representing the amount in respect of which a taxpayer may claim a deduction under subsection 110.1(1) or a credit under subsection 118.1(3).

Related Provisions: 168(1)(d) — Revocation of registration for issuing incorrect receipt; 188.1(8) — Increased penalty for subsequent assessment; 188.1(9) — Penalty for false statement relating to receipt; 189(6.3) — Reduction of penalty if funds transferred to another charity; 189(7), (8) — Assessment of penalty and administrative procedures; 225.1(1)(b) — No collection action for one year from assessment; 241(3.2)(g) — Assessment notice may be disclosed to the public.

(8) Increased penalty for subsequent assessment — Except where subsection (9) applies, if the Minister has, less than five years before a particular time, assessed a penalty under subsection (7) or this subsection for a taxation year of a registered charity and, after that assessment and in a subsequent taxation year, the charity issues, at the particular time, a receipt for a gift otherwise than in accordance with this Act and the regulations, the charity is liable for the subsequent taxation year to a penalty equal to 10% of the amount reported on the receipt as representing the amount in respect of which a taxpayer may claim a deduction under subsection 110.1(1) or a credit under subsection 118.1(3).

Related Provisions: 189(6.3) — Reduction of penalty if funds transferred to another charity; 189(7), (8) — Assessment of penalty and administrative procedures.

(9) False information — If at any time a person makes or furnishes, participates in the making of or causes another person to make or furnish a statement that the person knows, or would reasonably be expected to know but for circumstances amounting to culpable conduct (within the meaning assigned by subsection 163.2(1)), is a false statement (within the meaning assigned by subsection 163.2(1)) on a receipt issued by, on behalf of or in the name of another person for the purposes of subsection 110.1(2) or 118.1(2), the person (or, where the person is an officer, employee, official or agent of a registered charity, the registered charity) is liable for their taxation year that includes that time to a penalty equal to 125% of the amount reported on the receipt as representing the amount in respect of which a taxpayer may claim a deduction under subsection 110.1(1) or a credit under subsection 118.1(3).

Related Provisions: 163.2(2), (4) — Alternative penalties; 188.1(10) — No double penalty under 163.2 and 188.1(9); 188.2(1)(b) — Mandatory one-year suspension of charity's ability to issue receipts if penalties exceed $25,000; 189(6.3) — Reduction of penalty if funds transferred to another charity; 189(7), (8) — Assessment of penalty and administrative procedures.

(10) Maximum amount — A person who is liable at any time to penalties under both section 163.2 and subsection (9) in respect of the same false statement is liable to pay only the greater of those penalties.

(11) Delay of expenditure — If, in a taxation year, a registered charity has made a gift of property to another registered charity and it may reasonably be considered that one of the main purposes for the making of the gift was to unduly delay the expenditure of amounts on charitable activities, each of those charities is jointly and severally, or solidarily, liable to a penalty under this Act for its respective taxation year equal to 110% of the fair market value of the property.

Related Provisions: 149.1(4.1) — Revocation for making gift for purpose of undue delay; 188(3.1) — 188(3) does not apply to gift where 188.1(11) applies; 189(6.3) — Reduction of penalty if funds transferred to another charity; 189(7), (8) — Assessment of penalty and administrative procedures.

History: S. 188.1 added by 2005, c. 19, s. 44, applicable in respect of taxation years that begin after March 22, 2004.

Registered Charities Newsletters: 19 (introduction of intermediate sanctions).

Definitions [s. 188.1]: "amount" — 248(1); "arm's length" — 251(1); "assessment" — 248(1); "beneficiary" — 188.1(5); "business" — 248(1); "control" — 149.1(12), 256(5.1); "corporation" — 248(1), *Interpretation Act* 35(1); "culpable conduct" — 163.2(1); "dividend", "employee" — 248(1); "false statement" — 163.2(1); "gross revenue", "Minister", "officer", "person" — 248(1); "private foundation" — 149.1(1), 248(1); "property" — 248(1); "qualified donee" — 149.1(1), 248(1); "registered charity", "regulation" — 248(1); "related" — 251(2)–(6); "shareholder" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

188.2 (1) Notice of suspension with assessment — The Minister shall, with an assessment referred to in this subsection, give notice by registered mail to a registered charity that the authority of the charity to issue an official receipt referred to in Part XXXV of the *Income Tax Regulations* is suspended for one year from the day that is seven days after the notice is mailed, if the Minister has assessed the charity for a taxation year for

(a) a penalty under subsection 188.1(2);

(b) a penalty under paragraph 188.1(4)(b) in respect of an undue benefit, other than an undue benefit conferred by the charity by way of a gift; or

(c) a penalty under subsection 188.1(9) if the total of all such penalties for the taxation year exceeds $25,000.

Related Provisions: 188.2(3) — Effect of suspension; 188.2(4) — Application to Tax Court to postpone suspension; 189(8) — Notice of objection (s. 165) may be filed against suspension; 241(3.2)(g) — Suspension letter may be disclosed to the public.

(2) Notice of suspension — general — The Minister may give notice by registered mail to a registered charity that the authority of the charity to issue an official receipt referred to in Part XXXV of the *Income Tax Regulations* is suspended for one year from the day that is seven days after the notice is mailed

(a) if the charity contravenes any of sections 230 to 231.5; or

(b) if it may reasonably be considered that the charity has acted, in concert with another charity that is the subject of a suspension under this section, to accept a gift or transfer of property on behalf of that other charity.

Related Provisions: 188.2(4) — Application to Tax Court to postpone suspension; 189(8) — Notice of objection (s. 165) may be filed against suspension; 241(3.2)(g) — Suspension letter may be disclosed to the public.

(3) Effect of suspension — If the Minister has issued a notice to a registered charity under subsection (1) or (2), subject to subsection (4),

(a) the charity is deemed, in respect of gifts made and property transferred to the charity within the one-year period that begins on the day that is seven days after the notice is mailed, not to be a donee, described in paragraph 110.1(1)(a) or in the definition "total charitable gifts" in subsection 118.1(1), for the purposes of

(i) subsections 110.1(1) and 118.1(1),

(ii) the definitions "qualified donee" and "registered charity" in subsection 248(1), and

(iii) Part XXXV of the *Income Tax Regulations*; and

(b) if the charity is, during that period, offered a gift from any person, the charity shall, before accepting the gift, inform that person that

(i) it has received the notice,

(ii) no deduction under subsection 110.1(1) or credit under subsection 118.1(3) may be claimed in respect of a gift made to it in the period, and

(iii) a gift made in the period is not a gift to a qualified donee.

Related Provisions: 188.2(2)(b) — Suspension for charity that accepts gift on behalf of suspended charity.

(4) Application for postponement — If a notice of objection to a suspension under subsection (1) or (2) has been filed by a registered charity, the charity may file an application to the Tax Court of Canada for a postponement of that portion of the period of suspension that has not elapsed until the time determined by the Court.

Related Provisions: 188.2(5) — Grounds for postponement by Tax Court; 189(8) — Notice of objection (s. 165) may be filed against suspension.

(5) Grounds for postponement — The Tax Court of Canada may grant an application for postponement only if it would be just and equitable to do so.

History: S. 188.2 added by 2005, c. 19, s. 44, applicable in respect of taxation years that begin after March 22, 2004.

Definitions [s. 188.2]: "assessment" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "contravene" — *Interpretation Act* 35(1); "Minister", "person", "property" — 248(1); "qualified donee" — 149.1(1), 248(1); "registered charity" — 248(1); "taxation year" — 249.

189. (1) Tax regarding non-qualified investment — Where at any particular time in a taxation year a debt (other than a debt in respect of which subsection 80.4(1) applies or would apply but for subsection 80.4(3)) is owing by a taxpayer to a registered charity that is a private foundation and at that time the debt was a non-qualified investment of the foundation, the taxpayer shall pay a tax under this Part for the year equal to the amount, if any, by which

(a) the amount that would be payable as interest on that debt for the period in the year during which it was outstanding and was a non-qualified investment of the foundation if the interest were payable at such prescribed rates as are in effect from time to time during the period

exceeds

(b) the amount of interest for the year paid on that debt by the taxpayer not later than 30 days after the end of the year.

Related Provisions: 149.1(6.4) — Application to registered national arts service organizations.

Regulations: 4301(c) (prescribed rate of interest).

Forms: RC4108: Registered charities and the *Income Tax Act* [guide].

(2) Computation of interest on debt — For the purpose of paragraph (1)(a), where a debt in respect of which subsection (1) applies (other than a share or right that is deemed by subsection (3) to be a debt) is owing by a taxpayer to a private foundation, interest on that debt for the period referred to in that paragraph shall be computed at the least of

(a) such prescribed rates as are in effect from time to time during the period,

(b) the rate per annum of interest on that debt that, having regard to all the circumstances (including the terms and conditions of the debt), would have been agreed on, at the time the debt was incurred, had the taxpayer and the foundation been dealing with each other at arm's length and had the ordinary business of the foundation been the lending of money, and

(c) where that debt was incurred before April 22, 1982, a rate per annum equal to 6% plus 2% for each calendar year after 1982 and before the taxation year referred to in subsection (1).

Regulations: 4301(c) (prescribed rate of interest).

(3) Share deemed to be debt — For the purpose of subsection (1), where a share, or a right to acquire a share, of the capital stock of a corporation held by a private foundation at any particular time during the corporation's taxation year was at that time a non-qualified investment of the foundation, the share or right shall be deemed to be a debt owing at that time by the corporation to the foundation

(a) the amount of which was equal to,

(i) in the case of a share or right last acquired before April 22, 1982, the greater of its fair market value on April 21, 1982 and its cost amount to the foundation at the particular time, or

(ii) in any other case, its cost amount to the foundation at the particular time,

(b) that was outstanding throughout the period for which the share or right was held by the foundation during the year, and

(c) in respect of which the amount of interest paid in the year is equal to the total of all amounts each of which is the amount of a dividend received on the share by the foundation in the year,

and the reference in paragraph (1)(a) to "such prescribed rates as are in effect from time to time during the period" shall be read as a reference to "⅔ of such prescribed rates as are in effect from time to time during the period".

(4) Computation of interest with respect to a share — For the purposes of subsection (3), where a share or right in respect of which that subsection applies was last acquired before April 22, 1982, the reference therein to "⅔ of such prescribed rates as are in effect from time to time during the period" shall be read as a reference to "the lesser of

(a) a rate per annum equal to 4% plus 1% for each 5 calendar years contained in the period commencing after 1982 and ending before the particular time, and

(b) a rate per annum equal to ⅔ of such prescribed rates as are in effect from time to time during the year".

(5) Share substitution — For the purpose of subsection (3), where a share or right is acquired by a charity in exchange for another share or right in a transaction after April 21, 1982 to which section 51, 85, 85.1, 86 or 87 applies, it shall be deemed to be the same share or right as the one for which it was substituted.

(6) Taxpayer to file return and pay tax — Every taxpayer who is liable to pay tax under this Part (except a charity that is liable to pay tax under [sub]section 188(1)) for a taxation year shall, on or before the day on or before which the taxpayer is, or would be if tax were payable by the taxpayer under Part I for the year, required to file a return of income or an information return under Part I for the year,

(a) file with the Minister a return for the year in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax payable by the taxpayer under this Part for the year; and

(c) pay to the Receiver General the amount of tax payable by the taxpayer under this Part for the year.

Related Provisions: 150.1(5) — Electronic filing.

History: The opening words of subsec. 189(6), and para. (6)(c), substituted by 1994, c. 21, subsecs. 85(1), (2), applicable after 1992. The opening words and para. (c) formerly read:

(6) Every taxpayer who is liable to pay tax under this Part for a taxation year shall, on or before the day on or before which the taxpayer is required, or would be required if tax were payable by the taxpayer under Part I or if, in the case of a charity, the registration thereof had not been revoked, to file a return of income or an information return under Part I for the year,

. . . . .

(c) except where subsection 188(1) applies with respect to the payment of the tax, pay to the Receiver General the amount of tax payable by the taxpayer under this Part for the year.

Forms: T2046: Tax return where registration of a charity is revoked; T2140: Part V tax return — Tax on non-qualified investments issued of a registered charity.

(6.1) Revoked charity to file returns — Every taxpayer who is liable to pay tax under subsection 188(1.1) for a taxation year shall, on or before the day that is one year from the end of the taxation year, and without notice or demand,

(a) file with the Minister

(i) a return for the taxation year, in prescribed form and containing prescribed information, and

(ii) both an information return and a public information return for the taxation year, each in the form prescribed for the purpose of subsection 149.1(14); and

(b) estimate in the return referred to in subparagraph (a)(i) the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year; and

(c) pay to the Receiver General the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year.

Related Provisions: 188(1) — Deemed year-end on notice of revocation.

History: Subsec. 189(6.1) added by 2005, c. 19, s. 45, applicable in respect of notices issued by the Minister of National Revenue after June 12, 2005.

(6.2) Reduction of revocation tax liability — If the Minister has, during the one-year period beginning immediately after the end of a taxation year of a person, assessed the person in respect of the person's liability for tax under subsection 188(1.1) for that taxation year, has not after that period reassessed the tax liability of the person, and that liability exceeds $1,000, that liability is, at any particular time, reduced by the total of

(a) the amount, if any, by which

(i) the total of all amounts, each of which is an expenditure made by the charity, on charitable activities carried on by it, before the particular time and during the period (referred to in this subsection as the "post-assessment period") that begins immediately after a notice of the latest such assessment was mailed and ends at the end of the one-year period

exceeds

(ii) the income of the charity for the post-assessment period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 if that period were a taxation year, and

(b) all amounts, each of which is an amount, in respect of a property transferred by the charity before the particular time and during the post-assessment period to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

Related Provisions: 149.1(1.1)(c) — Amount transferred under (b) deemed not expended on charitable activities; 189(9)(a) — No interest on revocation tax to extent reduced by 189(6.2).

History: Subsec. 189(6.2) added by 2005, c. 19, s. 45, applicable in respect of notices issued by the Minister of National Revenue after June 12, 2005.

(6.3) Reduction of liability for penalties — If the Minister has assessed a registered charity in respect of the charity's liability for penalties under section 188.1 for a taxation year, and that liability exceeds $1,000, that liability is, at any particular time, reduced by the total of all

amounts, each of which is an amount, in respect of a property transferred by the charity after the day on which the Minister first assessed that liability and before the particular time to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the total of

(a) the consideration given by the person for the transfer, and

(b) the part of the amount in respect of the transfer that has resulted in a reduction of an amount otherwise payable under subsection 188(1.1).

Related Provisions: 149.1(1.1)(c) — Amount transferred under (b) deemed not expended on charitable activities; 189(9)(b) — No interest on penalties to extent reduced by 189(6.3).

History: Subsec. 189(6.3) added by 2005, c. 19, s. 45, applicable in respect of notices issued by the Minister of National Revenue after June 12, 2005.

(7) Minister may assess — Without limiting the authority of the Minister to revoke the registration of a registered charity, the Minister may also at any time assess a taxpayer in respect of any amount that a taxpayer is liable to pay under this Part.

Related Provisions: 189(8) — Objection to penalty and other administrative procedures; 221.1 — Application of interest where legislation retroactive; 248(11) — Interest compounded daily.

History: Subsec. 189(7) amended by 2005, c. 19, s. 45, applicable in respect of notices issued by the Minister of National Revenue after June 12, 2005. The subsec. formerly read:

(7) Interest — Where a taxpayer is liable to pay tax under this Part and has failed to pay all or any part thereof on or before the day on or before which the tax was required to be paid, the taxpayer shall pay to the Receiver General interest at the prescribed rate on the amount that the taxpayer failed to pay computed from the day on or before which the tax was required to be paid to the day of payment.

Regulations: 4301 (prescribed rate of interest).

(8) Provisions applicable to Part — Subsections 150(2) and (3), sections 152 and 158, subsection 161(11), sections 162 to 167 and Division J of Part I apply in respect of an amount assessed under this Part and of a notice of suspension under subsection 188.2(1) or (2) as if the notice were a notice of assessment made under section 152, with any modifications that the circumstances require including, for greater certainty, that a notice of suspension that is reconsidered or reassessed may be confirmed or vacated, but not varied, except that

(a) section 162 does not apply in respect of a return required to be filed under paragraph (6.1)(a); and

(b) the reference in each of subsections 165(2) and 166.1(3) to the expression "Chief of Appeals in a District Office or a Taxation Centre" is to be read as a reference to the expression "Assistant Commissioner, Appeals Branch".

Related Provisions: 189(8.1)(a) — Objection to revocation is not an objection to revocation tax; 189(8.1)(b) — Revocation of registration cannot be appealed to Tax Court of Canada; 189(9) — No interest on revocation tax or penalties to extent reduced by 189(6.2) or (6.3).

History: Subsec. 189(8) amended by 2005, c. 19, s. 45, applicable in respect of notices issued by the Minister of National Revenue after June 12, 2005. The subsec. formerly read:

(8) Subsections 150(2) and (3), sections 152 and 158, subsection 161(11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Registered Charities Newsletters: 19 (appeals process).

(8.1) Clarification re objections under subsection 168(4) — For greater certainty, in applying the provisions referred to in subsection (8), with any modifications that the circumstances require,

(a) a notice of objection referred to in subsection 168(4) does not constitute a notice of objection to a tax assessed under subsection 188(1.1); and

(b) an issue that could have been the subject of a notice of objection referred to in subsection 168(4) may not be appealed to the Tax Court of Canada under subsection 169(1).

Related Provisions: 172(3)(a.1) — Appeal of revocation to Federal Court of Appeal.

History: Subsec. 189(8.1) added by 2005, c. 19, s. 45, applicable in respect of notices issued by the Minister of National Revenue after June 12, 2005.

Registered Charities Newsletters: 19 (appeals process).

(9) Interest — Subsection 161(11) does not apply to a liability of a taxpayer for a taxation year

(a) under subsection 188(1.1) to the extent that the liability is reduced by subsection (6.2), or paid, before the end of the one-year period that begins immediately after the end of the taxation year deemed to have ended by paragraph 188(1)(a); or

(b) under section 188.1 to the extent that the liability is reduced by subsection (6.3), or paid, before the end of the one-year period that begins immediately after the liability was first assessed.

History: Subsec. 189(9) added by 2005, c. 19, s. 45, applicable in respect of notices issued by the Minister of National Revenue after June 12, 2005.

Selected Cases [s. 189]: *Jabs Construction Ltd. v. R.*, [1999] 3 C.T.C. 2556 (TCC) (Where specific provision allows for mitigation of tax results, no abuse, but rather, use of Act).

Definitions [s. 189]: "amount" — 248(1); "arm's length" — 251(1); "assessment", "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "charitable foundation", "charitable organization", "charitable purposes", "charity" — 149.1(1), 187.7; "corporation" — 248(1), *Interpretation Act* 35(1); "disbursement quota", "dividend" — 248(1); "eligible donee" — 188(1.3); "Minister" — 248(1); "non-qualified investment" — 149.1(1), 187.7; "person", "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "private foundation" — 149.1(1), 187.7, 248(1); "property" — 248(1); "public foundation", "qualified donee", "qualified investment" — 149.1(1), 187.7; "registered charity" — 248(1); "related business" — 149.1(1), 187.7; "share" — 248(1); "specified gift", "taxation year" — 149.1(1), 187.7; "taxation year" — 249; "taxpayer" — 248(1).

PART VI — TAX ON CAPITAL OF FINANCIAL INSTITUTIONS

190. (1) Definitions — For the purposes of this Part,

"financial institution" means a corporation that

(a) is a bank,

(b) is authorized under the laws of Canada or a province to carry on the business of offering its services as a trustee to the public,

(c) is authorized under the laws of Canada or a province to accept deposits from the public and carries on the business of lending money on the security of real estate or investing in mortgages or hypothecary claims on real estate,

Proposed Amendment — 190(1)"financial institution"(c)

(c) is authorized under the laws of Canada or a province to accept deposits from the public and carries on the business of lending money on the security of real property or immovables or investing in indebtedness

on the security of mortgages on real property or of hypothecs on immovables,

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), s. 262, will amend para. (c) of the definition "financial institution" in subsec. 190(1) to read as above, to come into force on Royal Assent.

Technical Notes: See under 12(4).

(d) is a life insurance corporation that carries on business in Canada, or

(e) is a corporation all or substantially all of the assets of which are shares or indebtedness of corporations described in any of paragraphs (a) to (d) or this paragraph to which the corporation is related;

Related Provisions: 253 — Extended meaning of "carrying on business in Canada".

History: Para. (c) of the definition "financial institution" in subsec. 190(1) amended by 2001, c. 17, s. 222, to add "or hypothecary claims", in force June 14, 2001.

Paras. (d), (e) added to "financial institution" in subsec. 190(1) by 1994, c. 7, Sch. II (1991, c. 49), subsec. 156(1), applicable to taxation years ending after February 20, 1990.

"long-term debt" means

(a) in the case of a bank, its subordinated indebtedness (within the meaning assigned by section 2 of the *Bank Act*) evidenced by obligations issued for a term of not less than 5 years,

(b) in the case of an insurance corporation, its subordinated indebtedness (within the meaning assigned by section 2 of the *Insurance Companies Act*) evidenced by obligations issued for a term of not less than 5 years, and

(c) in the case of any other corporation, its subordinated indebtedness (within the meaning that would be assigned by section 2 of the *Bank Act* if the definition of that expression in that section were applied with such modifications as the circumstances require) evidenced by obligations issued for a term of not less than 5 years;

History: The definition "long-term debt" in subsec. 190(1) substituted by 1994, c. 21, subsec. 86(1), applicable after May 31, 1992. That definition formerly read:

"long-term debt" means

(a) in the case of a bank, its indebtedness evidenced by bank debentures, within the meaning assigned by the *Bank Act*, and

(b) in the case of a corporation that is not a bank, its subordinate indebtedness evidenced by obligations issued for a term of not less than 5 years.

"reserves", in respect of a financial institution for a taxation year, means the amount at the end of the year of all of the institution's reserves, provisions and allowances (other than allowances in respect of depreciation or depletion) and, for greater certainty, includes any provision in respect of deferred taxes.

History: The definition "reserves" added to subsec. 190(1) by 1994, c. 21, subsec. 86(2), applicable to 1992 *et seq.*

Selected Cases [subsec. 190(1)]: *London Life Insurance Co. v. R.*, [2000] 3 C.T.C. 2622 (TCC) (Deferred taxes not included in ordinary meaning of "reserve").

(1.1) Prescribed meanings — For the purposes of this Part, the expressions "attributed surplus", "Canadian assets", "Canadian reserve liabilities", "total assets" and "total reserve liabilities" have the meanings that are prescribed.

History: Subsec. 190(1.1) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 156(2), applicable to taxation years ending after February 20, 1990. Subsec. (1.1) formerly read:

(1.1) Prescribed expressions — For the purposes of this Part, the expressions "Canadian assets" and "total assets" have the meanings as may be prescribed.

Regulations: 8603 (prescribed meanings of expressions).

(2) Application of subsecs. 181(3) and (4) — Subsections 181(3) and (4) apply to this Part with such modifications as the circumstances require.

History: Subsec. 190(2) substituted by 1994, c. 21, subsec. 86(3), applicable to 1992 *et seq.* That subsec. formerly read:

(2) Accounting method — For the purposes of reporting, calculating or determining an amount under this Part on a non-consolidated basis, the equity method of accounting shall not be used.

Definitions [s. 190]: "amount" — 248(1); "bank" — 248(1), *Interpretation Act* 35(1); "business" — 248(1); "Canada" — 255; "carrying on business in Canada" — 253; "corporation" — 248(1), *Interpretation Act* 35(1); "immovables" — Quebec *Civil Code* art. 900–907; "hypothecs" — Quebec *Civil Code* art. 2660; "life insurance corporation", "prescribed" — 248(1); "province" — *Interpretation Act* 35(1).

Calculation of Capital Tax

190.1 (1) Tax payable — Every corporation that is a financial institution at any time during a taxation year shall pay a tax under this Part for the year equal to 1.25% of the amount, if any, by which its taxable capital employed in Canada for the year exceeds its capital deduction for the year.

Related Provisions: 18(1)(t) — Tax is non-deductible; 125.2 — Deduction of Part VI tax; 157(1) — Instalment and payment obligations; 161(1), (4.1) — Interest; 181.1(1) — Large Corporations Tax; 190.1(1.1) — Additional tax on life insurance corporations; 190.1(1.2) — Additional tax on deposit-taking institutions; 190.1(3)(a) — Tax reduced by Part I surtax paid; 227(14) — No tax on corporation exempt under s. 149.

Application — s. 190.1: S. 157 of 1994, c. 7, Sch. II (1991, c. 49) provides that in its application to taxation years beginning before February 21, 1990 of corporations described in para. (d) or (e) of the definition "financial institution" in subsec. 190(1), s. 190.1 shall be read as follows:

190.1 Every corporation that is a financial institution at any time during a taxation year shall pay a tax under this Part for the year equal to that proportion of 1.25% of the amount, if any, by which its taxable capital employed in Canada for the year exceeds its capital deduction for the year that the number of days in the year that are after February 20, 1990 is of 365.

(1.1) Additional tax payable by life insurance corporations — Every life insurance corporation that carries on business in Canada at any time in a taxation year shall pay a tax under this Part for the year, in addition to any tax payable under subsection (1), equal to 1% of the amount determined by the formula

$$(A - B) \times \frac{C}{365}$$

where

A is its taxable capital employed in Canada for the year;

B is its capital allowance for the year; and

C is the number of days in the year that are after February 25, 1992 and before 2001.

Related Provisions: 18(1)(t) — Tax is non-deductible; 125.2(3)(a) — No carryback of additional tax to year where it did not apply; 157(1) — Instalment and payment obligations; 161(1), (4.1) — Interest; 190.1(3)(a) — Tax reduced by Part I surtax paid; 190.11 (Application rule) — Exclusion of deferred realized gains from taxable capital employed in Canada; 211.1 — Tax on investment income of life insurer; 227(14) — No tax on corporation exempt under s. 149; 257 — Formula cannot calculate to less than zero.

History: The description of C in subsec. 190.1(1.1) amended by 2001, c. 17, s. 165, applicable to taxation years that end after 1998. The description of C formerly read:

> C is the number of days in the year that are after February 25, 1992 and before 1999.

The description of C in subsec. 190.1(1.1) amended by 1997, c. 25, subsec. 53(1), applicable after February 25, 1992. The description of C formerly read:

> C is the number of days in the year that are after February 25, 1992 and before 1996.

Subsec. 190.1(1.1) added by 1994, c. 21, s. 87, applicable to taxation years ending after February 25, 1992 and, where a corporation elects under paragraph 88(2)(b) of the amending legislation [see under 190.11(b)(i) below], to its 1991 and subsequent taxation years, in which case:

> (a) the reference in subsec. 190.1(1.1) to "February 25, 1992" shall be read as a reference to "the day immediately preceding the first day of the corporation's first taxation year that ends after 1990", and
>
> (b) notwithstanding subsecs. 152(4) to (5), such assessments and determinations shall be made as are consequential on the application of subsec. 190.1(1.1) to the corporation's taxation years that end before February 26, 1992.

(1.2) Additional tax payable by deposit-taking institutions — Every corporation (other than a life insurance corporation) that is a financial institution at any time in a taxation year shall pay a tax under this Part for the year, in addition to any tax payable under subsection (1), equal to the amount determined by the formula

$$0.0015 \times (A - B) \times \frac{C}{365}$$

where

A is the corporation's taxable capital employed in Canada for the year;

B is its enhanced capital deduction for the year; and

C is the number of days in the year that are after February 27, 1995 and before November 2000.

Related Provisions: 190.1(3)(a) — Tax reduced by Part I surtax paid; 190.17 — Enhanced capital deduction; 257 — Formula cannot calculate to less than zero.

History: The description of C in subsec. 190.1(1.2) amended, retroactive to taxation years that end after February 27, 1995, as follows:

- by 2000, c. 19, s. 53 to substitute "2000" for "1999";
- by 1999, c. 22, s. 68 to substitute "1999" for "1998";
- by 1998, c. 19, s. 48 to substitute "1998" for "1997";
- by 1997, c. 25, subsec. 53(2) to substitute "1997" for "1996".

Subsec. 190.1(1.2) added by 1996, c. 21, subsec. 49(1), applicable to taxation years that end after February 27, 1995. Subsec. 49(4) of the said c. 21 provides that no interest is payable under subsec. 161(2) in respect of any amount that became payable before July 1995 because of subsec. 190.1(1.2).

Forms: T2 SCH 41: Agreement among related deposit-taking institutions.

(2) Short taxation years — Where a taxation year of a corporation is less than 51 weeks, the amount determined under subsection (1) for the year in respect of the corporation shall be reduced to that proportion of that amount that the number of days in the year is of 365.

History: Subsec. 190.1(2) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 111, applicable to 1992 *et seq.* and, where a corporation that was a financial institution (within the meaning assigned by s. 190) throughout each of its taxation years ending in 1991 so elects by notifying the Minister in writing before December 11, 1993, to its taxation years ending in 1991. Subsec. 190.1(2) formerly read:

> (2) Short taxation years — Where a taxation year of a corporation is less than 51 weeks, the tax payable for the year by the corporation under this Part shall be that proportion of its tax otherwise payable under this Part for the year that the number of days in the year is of 365.

(3) Deduction — There may be deducted in computing a corporation's tax payable under this Part for a taxation year an amount equal to the total of

(a) the amount, if any, by which

(i) the corporation's tax payable under Part I for the year

exceeds the lesser of

(ii) the corporation's Canadian surtax payable (within the meaning assigned by section 125.3) for the year, and

(iii) the amount that would, but for subsection 181.1(4), be its tax payable under Part I.3 for the year, and

(b) such part as the corporation claims of its unused Part I tax credits and unused surtax credits for its 7 taxation years immediately before and its 3 taxation years immediately after the year,

to the extent that that amount does not exceed the amount by which

(c) the amount that would, but for subsection (1.2) and this subsection, be its tax payable under this Part for the year

exceeds

(d) the total of all amounts each of which is the amount deducted under subsection 125.2(1) in computing the corporation's tax payable under Part I for a taxation year ending before 1992 in respect of its unused Part VI tax credit (within the meaning assigned by section 125.2) for the year.

Related Provisions: 87(2)(j.91) — Amalgamations — continuing corporation; 87(2.11) — Vertical amalgamations; 125.2(3)(a) — Limitation on carryover of Part VI tax; 161(7)(a)(x), 164(5)(h.2), 164(5.1)(h.3) — Effect of carryback of loss etc,; 190.2 — Return.

History: Para. 190.1(3)(c) amended by 1996, c. 21, subsec. 49(2), applicable to taxation years that end after February 27, 1995. Para. (c) formerly read:

> (c) the amount that would, but for this subsection, be its tax payable under this Part for the year

Subsec. 190.1(3) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 111, applicable to 1992 *et seq.* and, where a corporation that was a financial institution (within the meaning assigned by s. 190) throughout each of its taxation years ending in 1991 so elects by notifying the Minister in writing before December 11, 1993, to its taxation years ending in 1991, except that, in its application to such years,

> (a) paras. (a) and (b) shall be read as follows:
>
> "(a) the corporation's tax payable under Part I for the year, and
>
> (b) such part as the corporation claims of its unused Part I tax credits for its 7 taxation years immediately before and 3 taxation years immediately after the year," and
>
> (b) the reference in para. (d) to "1992" shall be read as "1991".

Forms: T2 SCH 42: Calculation of unused Part I tax credit.

(4) Idem — For the purposes of this subsection and subsections (3), (5) and (6),

(a) an amount may not be claimed under subsection (3) in computing a corporation's tax payable under this Part for a particular taxation year

(i) in respect of its unused Part I tax credit for another taxation year, until its unused Part I tax credits for taxation years preceding the other year that may be claimed under this Part for the particular year have been claimed, and

(ii) in respect of its unused surtax credit for another taxation year, until its unused surtax credits for taxation years preceding the other year that may be

claimed under Part I.3 or this Part for the particular year have been claimed; and

(b) an amount may be claimed under subsection (3) in computing a corporation's tax payable under this Part for a particular taxation year

(i) in respect of its unused Part I tax credit for another taxation year, only to the extent that it exceeds the total of all amounts each of which is the amount claimed in respect of that unused Part I tax credit in computing its tax payable under this Part for a taxation year preceding the particular year, and

(ii) in respect of its unused surtax credit for another taxation year, only to the extent that it exceeds the total of all amounts each of which is the amount claimed in respect of the unused surtax credit

(A) in computing its tax payable under this Part for a taxation year preceding the particular year, or

(B) in computing its tax payable under Part I.3 for the particular year or a taxation year preceding the particular year.

Related Provisions: 87(2.11) — Vertical amalgamations.

History: Subsec. 190.1(4) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 111, applicable to 1992 *et seq.* and, where a corporation that was a financial institution (within the meaning assigned by s. 190) throughout each of its taxation years ending in 1991 so elects by notifying the Minister in writing before December 11, 1993, to its taxation years ending in 1991, except that, in its application to such years, subsec. (4) shall be read without reference to subparas. (a)(ii) and (b)(ii).

(5) Definitions — For the purposes of subsections (3), (4) and (6),

"unused Part I tax credit" of a corporation for a taxation year ending after 1991 means the amount, if any, by which

(a) the corporation's tax payable under Part I for the year

exceeds the total of

(b) the amount that would, but for subsection (3), be its tax payable under this Part for the year, and

(c) the corporation's Canadian surtax payable (within the meaning assigned by section 125.3) for the year;

"unused surtax credit" of a corporation for a taxation year has the meaning assigned by subsection 181.1(6).

Related Provisions: 181.1(1.2) — Calculation to be based on tax rate of 0.225%; 181.5(1.1), (4.1) — Calculation to be based on capital deduction of $10 million.

Related Provisions [subsec. 190.1(5)]: 87(2.11) — Vertical amalgamations.

History: 1994, c. 21, subsec. 87(3), provides that where

(a) a corporation elected under subsec. 111(2) of S.C. 1993, c. 24 (Bill C-92), as described in the History annotation below,

and

(b) the corporation does not elect under para. 88(2)(b) of 1994, c. 21 [see under subpara. 190.11(b)(i), below],

for the purposes of determining the corporation's unused Part I tax credit for the 1991 taxation year, subsec. 190.1(5) shall be read as follows:

(5) For the purpose of computing the amount that may, because of paragraph (3)(b), be deducted by a corporation in computing its tax payable under this Part for a particular taxation year, in respect of its tax payable under Part I for a taxation year ending in 1991, and for the purposes of subsections (4) and (6), the corporation's "unused Part I tax credit" for the 1991 taxation year is the lesser of

(a) the amount, if any, by which its tax payable under Part I for the 1991 taxation year exceeds the amount that would, but for subsection (3), be its tax payable under this Part for that year, and

(b) its tax payable under this Part (determined without reference to subsections (1.1) and (3)) for the particular year.

Subsec. 190.1(5) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 111, applicable to 1992 *et seq.* and, where a corporation that was a financial institution (within the meaning assigned by s. 190) throughout each of its taxation years ending in 1991 so elects by notifying the Minister in writing before December 11, 1993, to its taxation years ending in 1991, except that, in its application to such years, subsec. (5) shall be read as follows [but see History annotation above]:

(5) For the purposes of this subsection and subsections (3), (4) and (6), "unused Part I tax credit" of a corporation for a taxation year ending after 1990 means the amount, if any, by which its tax payable under Part I for the year exceeds the amount that would, but for subsection (3), be its tax payable under this Part for the year.

(6) Acquisition of control — Where at any time control of a corporation was acquired by a person or group of persons, no amount in respect of its unused Part I tax credit or unused surtax credit for a taxation year ending before that time is deductible by the corporation for a taxation year ending after the time and no amount in respect of its unused Part I tax credit or unused surtax credit for a taxation year ending after that time is deductible by the corporation for a taxation year ending before that time, except that

(a) the corporation's unused Part I tax credit and unused surtax credit for a particular taxation year that ended before that time is deductible by the corporation for a taxation year that ends after that time (in this paragraph referred to as the "subsequent year") to the extent of that proportion of the corporation's tax payable under Part I for the particular year that

(i) the amount, if any, by which

(A) the total of all amounts each of which is

(I) its income under Part I for the particular year from a business that was carried on by the corporation for profit or with a reasonable expectation of profit throughout the subsequent year, or

(II) where properties were sold, leased, rented or developed or services were rendered in the course of carrying on that business before that time, its income under Part I for the particular year from any other business all or substantially all of the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services

exceeds

(B) the total of all amounts each of which is an amount deducted under paragraph 111(1)(a) or (d) in computing its taxable income for the particular year in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of any business referred to in clause (A)

is of the greater of

(ii) the amount determined under subparagraph (i), and

(iii) the corporation's taxable income for the particular year; and

(b) the corporation's unused Part I tax credit and unused surtax credit for a particular taxation year that ends after that time is deductible by the corporation

for a taxation year (in this paragraph referred to as the "preceding year") that ended before that time to the extent of that proportion of the corporation's tax payable under Part I for the particular year that

(i) the amount, if any, by which

(A) the total of all amounts each of which is

(I) its income under Part I for the particular year from a business that was carried on by the corporation in the preceding year and throughout the particular year for profit or with a reasonable expectation of profit, or

(II) where properties were sold, leased, rented or developed or services were rendered in the course of carrying on that business before that time, its income under Part I for the particular year from any other business all or substantially all of the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services

exceeds

(B) the total of all amounts each of which is an amount deducted under paragraph 111(1)(a) or (d) in computing its taxable income for the particular year in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of any business referred to in clause (A)

is of the greater of

(ii) the amount determined under subparagraph (i), and

(iii) the corporation's taxable income for the particular year.

Related Provisions: 87(2.11) — Vertical amalgamations; 256(6)–(9) — Anti-avoidance — deemed exercise of right to increase voting power.

History: Paras. 190.1(6)(a) and (b) amended by 1998, c. 19, s. 202, applicable to acquisitions of control that occur after April 26, 1995 Paras. 190.1(6)(a) and (b) formerly read:

(a) where a business was carried on by the corporation in a taxation year ending before that time, its unused Part I tax credit and unused surtax credit for that year are deductible by the corporation for a particular taxation year ending after that time only if that business was carried on by the corporation for profit or with a reasonable expectation of profit throughout the particular year and only to the extent of that proportion of the corporation's tax payable under this Part for the particular year that

(i) the amount, if any, by which

(A) the total of its income under Part I for the particular year from that business and, where properties were sold, leased, rented or developed or services were rendered in the course of carrying on that business before that time, its income under Part I for the particular year from any other business substantially all the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services

exceeds

(B) the total of all amounts each of which is an amount deducted under paragraph 111(1)(a) or (d) in computing its taxable income under Part I for the particular year in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of that business or the other business

is of the greater of

(ii) the amount determined under subparagraph (i), and

(iii) the corporation's taxable income under Part I for the particular year; and

(b) where a business was carried on by the corporation throughout a taxation year ending after that time, its unused Part I tax credit and unused surtax credit for that year are deductible by the corporation for a particular taxation year ending before that time only if that business was carried on by the corporation for profit or with a reasonable expectation of profit in the particular year and only to the extent of that proportion of the corporation's tax payable under this Part for the particular year that

(i) the amount, if any, by which

(A) the total of its income under Part I for the particular year from that business and, where properties were sold, leased, rented or developed or services were rendered in the course of carrying on that business before that time, its income under Part I for the particular year from any other business substantially all the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services

exceeds

(B) the total of all amounts each of which is an amount deducted under paragraph 111(1)(a) or (d) in computing its taxable income under Part I for the particular year in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of that business or the other business

is of the greater of

(ii) the amount determined under subparagraph (i), and

(iii) the corporation's taxable income under Part I for the particular year.

Subsec. 190.1(6) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 111, applicable to 1992 *et seq.* and, where a corporation that was a financial institution (within the meaning assigned by s. 190) throughout each of its taxation years ending in 1991 so elects by notifying the Minister in writing before December 11, 1993, to its taxation years ending in 1991, except that, in its application to such years, subsec. (6) shall be read without reference to the expressions "or unused surtax credit" and "and unused surtax credit".

I.T. Technical News: 7 (control by a group — 50/50 arrangement).

Definitions [s. 190.1]: "acquired" — 256(7)–(9); "amount" — 181(3), 190(2), 248(1); "business" — 248(1); "Canadian surtax payable" — 125.3(4); "capital allowance" — 190.16; "capital deduction" — 190.15; "control" — 256(6)–(9); "corporation" — 248(1), *Interpretation Act* 35(1); "enhanced capital deduction" — 190.17; "farm loss" — 111(8), 248(1); "financial institution" — 190(1); "non-capital loss" — 111(8), 248(1); "property" — 248(1); "tax payable" — 248(2); "taxable capital employed in Canada" — 190.11; "taxation year" — 249; "unused Part I credit", "unused surtax credit" — 190.1(5).

190.11 Taxable capital employed in Canada — For the purposes of this Part, the taxable capital employed in Canada of a financial institution for a taxation year is,

(a) in the case of a financial institution other than a life insurance corporation, that proportion of its taxable capital for the year that its Canadian assets at the end of the year is of its total assets at the end of the year;

(b) in the case of a life insurance corporation that was resident in Canada at any time in the year, the total of

(i) that proportion of the amount, if any, by which the total of

(A) its taxable capital for the year, and

(B) the amount prescribed for the year in respect of the corporation

exceeds

(C) the amount prescribed for the year in respect of the corporation

that its Canadian reserve liabilities as at the end of the year is of the total of

(D) its total reserve liabilities as at the end of the year, and

(E) the amount prescribed for the year in respect of the corporation, and

(ii) the amount, if any, by which

(A) the amount of its reserves for the year (other than its reserves in respect of amounts payable out of segregated funds) that can reasonably be regarded as having been established in respect of its insurance businesses carried on in Canada

exceeds the total of

(B) all amounts each of which is the amount of a reserve (other than a reserve described in subparagraph 138(3)(a)(i)), to the extent that it is included in the amount determined under clause (A) and is deducted in computing its income under Part I for the year,

(C) all amounts each of which is the amount of a reserve described in subparagraph 138(3)(a)(i), to the extent that it is included in the amount determined under clause (A) and is deductible under subparagraph 138(3)(a)(i) in computing its income under Part I for the year, and

(D) all amounts each of which is the amount outstanding (including any interest accrued thereon) at the end of the year in respect of a policy loan (within the meaning assigned by subsection 138(12)) made by the corporation, to the extent that it is deducted in computing the total determined under clause (C); and

(c) in the case of a life insurance corporation that was non-resident throughout the year, its taxable capital for the year.

Related Provisions: 181.3(1) — Taxable capital employed in Canada for Part I.3 tax; 257 — Formula cannot calculate to less than zero [applies to amending legislation by virtue of *Interpretation Act* subsec. 42(3)].

History: Clause 206 of 1998, c. 19, (as amended by 2001, c. 17, s. 252, and applicable to taxation years that end after 1998) reads as follows:

206. Where an amount in respect of deferred realized gains or losses of a life insurance corporation is added or deducted, as the case may be, in computing its taxable capital employed in Canada or capital under Part VI of the Act for a taxation year that ends after February 25, 1992 and began before 2001, the amount determined by the formula

$$(A - B) \times C/D$$

shall be deducted, or, where the amount is negative, the absolute value of the amount shall be added, in computing the corporation's taxable capital employed in Canada under Part VI of the Act for the year, where

A is the corporation's taxable capital employed in Canada for the year under Part VI of the Act (determined without reference to this section);

B is the amount that would be the value of A if no amount were added or deducted in computing the corporation's taxable capital employed in Canada or capital for the year under Part VI of the Act in respect of its deferred realized gains or losses, as the case may be;

C is the number of days in the year that are after February 25, 1992 and before 2001; and

D is the number of days in the year.

Subpara. 190.11(b)(i) substituted by 1994, c. 21, s. 88, applicable (by subsec. 88(2)):

(a) to taxation years that end after February 25, 1992; and

(b) where a corporation so elects by notifying Revenue Canada in writing before the end of December 1994, to its 1991 and subsequent taxation years; and where such an election is made, notwithstanding subsecs. 152(4) to (5), such assessments and determinations in respect of any taxation year shall be made to the corporation's taxation years ending before February 26, 1992 as are consequential on the election.

That subpara. formerly read:

(i) that proportion of its taxable capital for the year that its Canadian reserve liabilities at the end of the year is of its total reserve liabilities at the end of the year, and

S. 190.11 substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 158, applicable to taxation years ending after February 20, 1990. S. 190.11 formerly read:

190.11 For the purposes of this Part, the taxable capital employed in Canada of a corporation for a taxation year is that proportion of its taxable capital for the year that its Canadian assets for the year are of its total assets for the year.

Selected Cases [s. 190.11]: *London Life Insurance Co. v. R.*, [2000] 3 C.T.C. 2622 (TCC) (Deferred taxes not included in ordinary meaning of "reserve").

Definitions [s. 190.11]: "amount" — 181(3), 190(2), 248(1); "authorized foreign bank" — 248(1); "Canadian assets" — 190(1.1), Reg. 8602, 8603(a); "Canadian reserve liabilities" — 190(1.1), Reg. 2405(3), 8600, 8602, 8603(b), 8603(c); "capital allowance" — 190.16; "corporation" — 248(1), *Interpretation Act* 35(1); "financial institution" — 190(1); "life insurance corporation" — 248(1); "reserves" — 190(1); "resident in Canada" — 250; "taxable capital" — 190.12; "taxation year" — 249; "total assets" — 190(1.1), Reg. 8602, 8603(a), 8603(b); "total reserve liabilities" — 190(1.1), Reg. 2405(3), 8600, 8602, 8603(b), 8603(c).

Regulations: 8605 (prescribed amounts for 190.11(b)(i)(B), (C) and (E)).

190.12 Taxable capital — For the purposes of this Part, the taxable capital of a corporation for a taxation year is the amount, if any, by which its capital for the year exceeds the total determined under section 190.14 in respect of its investments for the year in financial institutions related to it.

Related Provisions: 181.3(2) — Taxable capital for Part I.3 tax.

Definitions [s. 190.12]: "amount" — 181(3), 190(2), 248(1); "capital" — 190.13; "corporation" — 248(1), *Interpretation Act* 35(1); "financial institution" — 190(1); "investments in financial institutions" — 190.14; "taxation year" — 249.

190.13 Capital — For the purposes of this Part, the capital of a financial institution for a taxation year is,

(a) in the case of a financial institution, other than an authorized foreign bank or a life insurance corporation, the amount, if any, by which the total at the end of the year of

(i) the amount of its long-term debt,

(ii) the amount of its capital stock (or, in the case of an institution incorporated without share capital, the amount of its members' contributions), retained earnings, contributed surplus and any other surpluses, and

(iii) the amount of its reserves, except to the extent that they were deducted in computing its income under Part I for the year,

exceeds the total at the end of the year of

(iv) the amount of its deferred tax debit balance, and

(v) the amount of any deficit deducted in computing its shareholders' equity;

Proposed Amendment — 190.13(a)(v)

(v) the amount of any deficit deducted in computing its shareholders' equity (including, for this purpose, the amount of any provision for the redemption of preferred shares);

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 165(1), will amend subpara. 190.13(a)(v) to read as above, applicable to taxation years that begin after 1995.

Technical Notes: Section 190.13 contains the rules for determining the capital of a financial institution for the purpose of Part VI of the Act. Section 190.13 is amended to accommodate a change to the accounting presentation of provisions for the redemption of preferred shares.

Generally accepted accounting principles (GAAP) are relevant to the determination of amounts referred to in section 190.13. The accounting procedures described in the notes to amended section 181.2 are therefore relevant in the context of Part VI of the Act, and readers may consult those notes for additional background. As in that section, the amendments introduced to section 190.13 include, in the computation of a deficit deducted in computing shareholders' equity, the amount of any provision for the redemption of preferred shares. This inclusion is added to two specific provisions: subparagraph 190.13(a)(v), in respect of financial institutions other than life insurers and authorized foreign banks; and subparagraph 190.13(b)(iv) in respect of Canadian-resident life insurance corporations.

(b) in the case of a life insurance corporation that was resident in Canada at any time in the year, the amount, if any, by which the total at the end of the year of

(i) the amount of its long-term debt, and

(ii) the amount of its capital stock (or, in the case of an insurance corporation incorporated without share capital, the amount of its members' contributions), retained earnings, contributed surplus and any other surpluses

exceeds the total at the end of the year of

(iii) the amount of its deferred tax debit balance, and

(iv) the amount of any deficit deducted in computing its shareholders' equity;

Proposed Amendment — 190.13(b)(iv)

(iv) the amount of any deficit deducted in computing its shareholders' equity (including, for this purpose, the amount of any provision for the redemption of preferred shares);

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 165(2), will amend subpara. 190.13(b)(iv) to read as above, applicable to taxation years that begin after 1995.

Technical Notes: See under 190.13(a)(v).

(c) in the case of a life insurance corporation that was non-resident throughout the year, the total at the end of the year of

(i) the amount that is the greater of

(A) the amount, if any, by which

(I) its surplus funds derived from operations (as defined in subsection 138(12)) as of the end of the year, computed as if no tax were payable under Part I.3 or this Part for the year

exceeds the total of all amounts each of which is

(II) an amount on which it was required to pay, or would but for subsection 219(5.2) have been required to pay, tax under Part XIV for a preceding taxation year, except the portion, if any, of the amount on which tax was payable, or would have been payable, because of subparagraph 219(4)(a)(i.1), and

(III) an amount on which it was required to pay, or would but for subsection 219(5.2) have been required to pay, tax under subsection 219(5.1) for the year because of the transfer of an insurance business to which subsection 138(11.5) or (11.92) has applied, and

(B) its attributed surplus for the year,

(ii) any other surpluses relating to its insurance businesses carried on in Canada,

(iii) the amount of its long-term debt that can reasonably be regarded as relating to its insurance businesses carried on in Canada, and

(iv) the amount, if any, by which

(A) the amount of its reserves for the year (other than its reserves in respect of amounts payable out of segregated funds) that can reasonably be regarded as having been established in respect of its insurance businesses carried on in Canada

exceeds the total of

(B) all amounts each of which is the amount of a reserve (other than a reserve described in subparagraph 138(3)(a)(i)), to the extent that it is included in the amount determined under clause (A) and is deducted in computing its income under Part I for the year,

(C) all amounts each of which is the amount of a reserve described in subparagraph 138(3)(a)(i), to the extent that it is included in the amount determined under clause (A) and is deductible under subparagraph 138(3)(a)(i) in computing its income under Part I for the year, and

(D) all amounts each of which is the amount outstanding (including any interest accrued thereon) at the end of the year in respect of a policy loan (within the meaning assigned by subsection 138(12)) made by the corporation, to the extent that it is deducted in computing the amount determined under clause (C); and

(d) in the case of an authorized foreign bank, the total of

(i) 10% of the total of all amounts, each of which is the risk-weighted amount at the end of the year of an on-balance sheet asset or an off-balance sheet exposure of the bank in respect of its Canadian banking business that the bank would be required to report under the OSFI risk-weighting guidelines if those guidelines applied and required a report at that time, and

(ii) the total of all amounts, each of which is an amount at the end of the year in respect of the bank's Canadian banking business that

(A) if the bank were a bank listed in Schedule II to the *Bank Act*, would be required under the risk-based capital adequacy guidelines issued by the Superintendent of Financial Institutions and applicable at that time to be deducted from the bank's capital in determining the amount of capital available to satisfy the Superintendent's requirement that capital equal a particular pro-

portion of risk-weighted assets and exposures, and

(B) is not an amount in respect of a loss protection facility required to be deducted from capital under the Superintendent's guidelines respecting asset securitization applicable at that time.

Related Provisions: 181.3(3) — Capital for Part I.3 tax.

History: The opening words of para. 190.13(a) amended, para. 190.13(d) added, by 2001, c. 17, s. 166, applicable after June 27, 1999. The opening words formerly read:

(a) in the case of a financial institution other than a life insurance corporation, the amount, if any, by which the total at the end of the year ofexceeds the total at the end of the year of

Subpara. 190.13(c)(i) amended by 1998, c. 19, s. 203, applicable to 1994 *et seq.* Subpara. 190.13(c)(i) formerly read:

(i) the greater of its surplus funds derived from operations (within the meaning assigned by subsection 138(12)), computed as if no tax were payable by it under Part I.3 or this Part for the year, and its attributed surplus for the year,

The opening words of para. 190.13(a) substituted by 1994, c. 21, subsec. 89(1), applicable to 1992 *et seq.* The opening words of that para. formerly read:

(a) in the case of a financial institution other than a life insurance corporation, the amount, if any, by which the total, computed at the end of the year on a non-consolidated basis, of

All that portion of para. 190.13(a) between subparas. (ii) and (iv) substituted by 1994, c. 21, subsec. 89(2), applicable to 1992 *et seq.* That portion of the para. formerly read:

(iii) the amount of its provisions or reserves (including, for greater certainty, any provision or reserve in respect of deferred taxes), except to the extent that they are deducted in computing its income under Part I for the year,

exceeds the total so computed of

The opening words of para. 190.13(b) substituted by 1994, c. 21, subsec. 89(3), applicable to 1992 *et seq.* The opening words of that para. formerly read:

(b) in the case of a life insurance corporation that was resident in Canada at any time in the year, the amount, if any, by which the total, computed at the end of the year on a non-consolidated basis, of

That portion of para. 190.13(b) between subparas. (ii) and (iii) substituted by 1994, c. 21, subsec. 89(4), applicable to 1992 *et seq.* That portion of the para. formerly read:

exceeds the total so computed of

All that portion of para. 190.13(c) preceding subpara. (ii) substituted by 1994, c. 21, subsec. 89(5), applicable to 1992 *et seq.* That portion of the para. formerly read:

(c) in the case of a life insurance corporation that was non-resident throughout the year, the total, computed at the end of the year on a non-consolidated basis, of

(i) the greater of its surplus funds derived from operations (within the meaning assigned by subsection 138(12)) and its attributed surplus for the year,

S. 190.13 substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 159, applicable to taxation years ending after February 20, 1990. S. 190.13 formerly read:

190.13 For the purposes of this Part, the capital of a corporation for a taxation year is the amount, if any, by which the total, computed at the end of the year on a non-consolidated basis, of

(a) the amount of its long-term debt,

(b) the amount of its capital stock (or, in the case of a corporation incorporated without share capital, the amount of its members' contributions), retained earnings, contributed surplus and any other surpluses, and

(c) the amount of its provisions or reserves (including, for greater certainty, any reserve or provision in respect of deferred taxes), except to the extent that they were deducted in computing its income under Part I for the year,

exceeds the total of

(d) the amount of its deferred tax debit balance, and

(e) the amount of any deficit deducted in computing its shareholders' equity at the end of the year.

Definitions [s. 190.13]: "amount" — 181(3), 190(2), 248(1); "attributed surplus" — 190(1.1), 190(2), Reg. 2405(3), 8600, 8602, 8603(b), (c); "authorized foreign bank", "Canadian banking business" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "financial institution" — 190(1); "insurance corporation", "life insurance corporation" — 248(1); "long-term debt" — 190(1); "preferred share" — 248(1); "reserves" — 190(1); "taxation year" — 249.

190.14 (1) Investment in related institutions — A corporation's investment for a taxation year in a financial institution related to it is

(a) in the case of a corporation that was resident in Canada at any time in the year, the total of all amounts each of which is the carrying value (or in the case of contributed surplus, the amount) at the end of the year of an eligible investment of the corporation in the financial institution;

(b) in the case of a life insurance corporation that was non-resident throughout the year, the total of all amounts each of which is the carrying value (or is, in the case of contributed surplus, the amount) at the end of the year of an eligible investment of the corporation in the financial institution that was used or held by the corporation in the year in the course of carrying on an insurance business in Canada (or that, in the case of contributed surplus, was contributed by the corporation in the course of carrying on that business); and

(c) in the case of a corporation that is an authorized foreign bank, the total of all amounts each of which is the amount at the end of the year, before the application of risk weights, that would be required to be reported under the OSFI risk-weighting guidelines if those guidelines applied and required a report at that time, of an eligible investment of the corporation in the financial institution that was used or held by the corporation in the year in the course of carrying on its Canadian banking business or, in the case of an eligible investment that is contributed surplus of the financial institution at the end of the year, the amount of the surplus contributed by the corporation in the course of carrying on that business.

Related Provisions: 190.14(2) — Meaning of "eligible investment".

(2) Interpretation — For the purpose of subsection (1), an eligible investment of a corporation in a financial institution is a share of the capital stock or long-term debt (and, where the corporation is an insurance corporation, is non-segregated property within the meaning assigned by subsection 138(12)) of the financial institution or any surplus of the financial institution contributed by the corporation (other than an amount otherwise included as a share or debt) if the financial institution at the end of the year is

(a) related to the corporation; and

(b) resident in Canada or can reasonably be regarded as using the surplus or the proceeds of the share or debt in a business carried on by the financial institution through a permanent establishment (as defined by regulation) in Canada.

Regulations: 8201 (meaning of "permanent establishment" for 190.14(2)(b)).

Related Provisions: 190.15(6) — Related financial institution.

History: S. 190.14 amended by 2001, c. 17, s. 167, applicable after June 27, 1999 except that, in its application to taxpayers other than authorized

foreign banks for taxation years that end before 2002, subsec. 190.14(2) shall be read without reference to para. (b). S. 190.14 formerly read:

> 190.14 Investment in related institutions — A corporation's investments for a taxation year in a financial institution related to it is,
>
> (a) in the case of a corporation that was resident in Canada at any time in the year, the total of
>
> (i) all amounts each of which is the carrying value at the end of the year of
>
> (A) any share of the capital stock of the financial institution, or
>
> (B) any long-term debt of the financial institution
>
> that is owned by the corporation at the end of the year (and, where the corporation is a life insurance corporation, that is non-segregated property within the meaning assigned by subsection 138(12)), and
>
> (ii) the amount of any surplus of the financial institution contributed by the corporation, other than an amount included under subparagraph (i); and
>
> (b) in the case of a life insurance corporation that was non-resident throughout the year, the total that would, if the corporation were resident in Canada in the year, be determined under paragraph (a) in respect of the corporation for the year in respect of shares and long-term debt of the financial institution that were used by the corporation in, or held by it in the year in the course of, carrying on an insurance business in Canada and in respect of surplus of the financial institution contributed by the corporation.

All that portion of subpara. 190.14(a)(i) preceding cl. (B) substituted by 1994, c. 21, s. 90, applicable to 1992 *et seq.* That portion of the subpara. formerly read:

> (i) the cost to it, that would be shown on its balance sheet at the end of the year if its balance sheet were prepared on a non-consolidated basis, of
>
> (A) any share of the capital stock of the financial institution, and

S. 190.14 substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 159, applicable to taxation years ending after February 20, 1990. S. 190.14 formerly read:

> 190.14 Investment in related institutions — A corporation's investments for a taxation year in a financial institution related to it is the total of
>
> (a) the cost to it, which would be shown on its balance sheet at the end of the year if its balance sheet were prepared on a non-consolidated basis, of
>
> (i) any share of the capital stock of the financial institution, and
>
> (ii) any long-term debt of the financial institution
>
> owned by the corporation at the end of the year, and
>
> (b) the amount of any surplus of the institution at the end of the year contributed by the corporation, other than an amount included under paragraph (a).

Definitions [s. 190.14]: "amount", "authorized foreign bank", "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "Canadian banking business" — 248(1); "carrying value" — 181(3), 190(2); "corporation" — 248(1), *Interpretation Act* 35(1); "eligible investment" — 190.14(2); "insurance corporation", "life insurance corporation", "non-resident", "OSFI risk-weighting guidelines" — 248(1); "permanent establishment" — Reg. 8201; "property", "regulation" — 248(1); "related" — 251(2)–(6); "resident in Canada" — 250; "share" — 248(1); "taxation year" — 249.

190.15 (1) Capital deduction — For the purposes of this Part, the capital deduction of a corporation for a taxation year during which it was at any time a financial institution is the total of $200,000,000 and the lesser of

(a) $20,000,000, and

(b) 1/5 of the amount, if any, by which its taxable capital employed in Canada for the year exceeds $200,000,000,

unless the corporation was related to another financial institution at the end of the year, in which case, subject to subsection (4), its capital deduction for the year is nil.

(2) Related financial institution — A corporation that is a financial institution at any time during a taxation year and that was related to another financial institution at the end of the year may file with the Minister an agreement in prescribed form on behalf of the related group of which the corporation is a member under which an amount that does not exceed the total of $200,000,000 and the lesser of

(a) $20,000,000, and

(b) 1/5 of the amount, if any, by which the total of all amounts, each of which is the taxable capital employed in Canada of a financial institution for the year that is a member of the related group, exceeds $200,000,000

is allocated among the members of the related group for the taxation year.

Related Provisions: 190.15(6) — Where corporations deemed not related.

Forms: T2 SCH 39: Agreement among related financial institutions Part VI tax.

(3) Idem — The Minister may request a corporation that is a financial institution at any time during a taxation year and that was related to any other financial institution at the end of the year to file with the Minister an agreement referred to in subsection (2) and, if the corporation does not file such an agreement within 30 days after receiving the request, the Minister may allocate an amount among the members of the related group of which the corporation is a member for the year not exceeding the total of $200,000,000 and the lesser of

(a) $20,000,000, and

(b) 1/5 of the amount, if any, by which the total of all amounts, each of which is the taxable capital employed in Canada of a financial institution for the year that is a member of the related group, exceeds $200,000,000.

History: Paras. 190.15(1)(b), (2)(b), (3)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 160(1)–(3), applicable to 1990 *et seq.* Those paras. formerly read:

> (b) 1/5 of the amount, if any, by which the amount that would be the corporation's taxable capital for the year if its capital deduction for the year were nil exceeds $200,000,000,
>
> . . . . .
>
> (b) 1/5 of the amount, if any, by which the total of all amounts, each of which is the amount that would be the taxable capital of a financial institution that is a member of the related group if its capital deduction for the year were nil, exceeds $200,000,000
>
> . . . . .
>
> (b) 1/5 of the amount if any, by which the total of all amounts, each of which is the amount that would be the taxable capital of a financial institution that is a member of the related group if its capital deduction for the year were nil, exceeds $200,000,000.

(4) Idem — For the purposes of this Part, the least amount allocated for a taxation year to each member of a related group under an agreement described in subsection (2) or by the Minister pursuant to subsection (3) is the capital deduction for the taxation year of that member, but, if no such allocation is made, the capital deduction of each member of the related group for that year is nil.

(5) Idem — Where a corporation (in this subsection referred to as the "first corporation") has more than one taxation year ending in the same calendar year and is related

in 2 or more of those taxation years to another corporation that has a taxation year ending in that calendar year, the capital deduction of the first corporation for each such taxation year at the end of which it is related to the other corporation is, for the purposes of this Part, an amount equal to its capital deduction for the first such taxation year.

Related Provisions: 190.16(5) — Rule in 190.15(5) applies to allocation of capital allowance; 190.17(5) — Rule in 190.15(5) applies to allocation of enhanced capital deduction.

(6) Idem — Two corporations that would, but for this subsection, be related to each other solely because of

(a) the control of any corporation by Her Majesty in right of Canada or a province, or

(b) a right referred to in paragraph 251(5)(b),

are, for the purposes of this section and section 190.14, deemed not to be related to each other except that, where at any time a taxpayer has a right referred to in paragraph 251(5)(b) with respect to shares and it can reasonably be considered that one of the main purposes for the acquisition of the right was to avoid any limitation on the amount of a corporation's capital deduction for a taxation year, for the purpose of determining whether a corporation is related to any other corporation, the corporations are, for the purpose of this section, deemed to be in the same position in relation to each other as if the right were immediate and absolute and as if the taxpayer had exercised the right at that time.

Related Provisions: 190.16(5) — Rule in 190.15(6) applies to allocation of capital allowance; 190.17(5) — Rule in 190.15(6) applies to allocation of enhanced capital deduction; 256(6), (6.1) — Meaning of "control".

History: The closing words of subsec. 190.15(6) amended by 1998, c. 19, s. 204, applicable after April 26, 1995. The closing words formerly read:

> shall, for the purposes of this section and section 190.14, be deemed not to be related to each other except that, where at any time a taxpayer has a right referred to in paragraph 251(5)(b) with respect to shares and it can reasonably be considered that one of the main purposes of the acquisition of the right was to avoid any limitation on the amount of a corporation's capital deduction for a taxation year, for the purpose of determining whether a corporation is related to any other corporation, the corporations shall, for the purposes of this section, be deemed to be in the same position in relation to each other as if the taxpayer owned the shares.

Subsec. 190.15(6) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 112, applicable to 1989 *et seq.*

Definitions [s. 190.15]: "amount" — 181(3), 190(2), 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "control" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "financial institution" — 190(1); "Her Majesty" — *Interpretation Act* 35(1); "Minister" — 248(1); "province" — *Interpretation Act* 35(1); "related" — 190.15(6), 251; "related group" — 251(4); "taxation year" — 249.

190.16 (1) Capital allowance [of life insurer] — For the purposes of this Part, the capital allowance for a taxation year of a life insurance corporation that carries on business in Canada at any time in the year is the total of

(a) $10,000,000,

(b) 1/2 of the amount, if any, by which the lesser of

(i) $50,000,000, and

(ii) its taxable capital employed in Canada for the year

exceeds $10,000,000,

(c) 1/4 of the amount, if any, by which the lesser of

(i) $100,000,000, and

(ii) its taxable capital employed in Canada for the year

exceeds $50,000,000,

(d) 1/2 of the amount, if any, by which the lesser of

(i) $300,000,000, and

(ii) its taxable capital employed in Canada for the year

exceeds $200,000,000, and

(e) 3/4 of the amount, if any, by which its taxable capital employed in Canada for the year exceeds $300,000,000,

unless the corporation is related at the end of the year to another life insurance corporation that carries on business in Canada, in which case, subject to subsection (4), its capital allowance for the year is nil.

(2) Related life insurance corporation — A life insurance corporation that carries on business in Canada at any time in a taxation year and that is related at the end of the year to another life insurance corporation that carries on business in Canada may file with the Minister an agreement, in prescribed form on behalf of the related group of life insurance corporations of which the corporation is a member, under which an amount that does not exceed the total of

(a) $10,000,000,

(b) 1/2 of the amount, if any, by which the lesser of

(i) $50,000,000, and

(ii) the total of all amounts, each of which is the taxable capital employed in Canada of a life insurance corporation for the year that is a member of the related group,

exceeds $10,000,000,

(c) 1/4 of the amount, if any, by which the lesser of

(i) $100,000,000, and

(ii) the total of all amounts, each of which is the taxable capital employed in Canada of a life insurance corporation for the year that is a member of the related group,

exceeds $50,000,000,

(d) 1/2 of the amount, if any, by which the lesser of

(i) $300,000,000, and

(ii) the total of all amounts, each of which is the taxable capital employed in Canada of a life insurance corporation for the year that is a member of the related group,

exceeds $200,000,000, and

(e) 3/4 of the amount, if any, by which the total of all amounts, each of which is the taxable capital employed in Canada of a life insurance corporation for the year that is a member of the related group, exceeds $300,000,000

is allocated among the members of that related group for the year.

Forms: T2 SCH 40: Agreement among related life insurance corporations.

(3) Idem — The Minister may request a life insurance corporation that carries on business in Canada at any time in a taxation year and that, at the end of the year, is related to any other life insurance corporation that carries on business in Canada to file with the Minister an agreement referred to in subsection (2) and, if the corporation does not file such an agreement within 30 days after receiving the request, the Minister may allocate among the

members of the related group of life insurance corporations of which the corporation is a member for the year an amount not exceeding the total of

(a) $10,000,000,

(b) 1/2 of the amount, if any, by which the lesser of

(i) $50,000,000, and

(ii) the total of all amounts, each of which is the taxable capital employed in Canada of a life insurance corporation for the year that is a member of the related group,

exceeds $10,000,000,

(c) 1/4 of the amount, if any, by which the lesser of

(i) $100,000,000, and

(ii) the total of all amounts, each of which is the taxable capital employed in Canada of a life insurance corporation for the year that is a member of the related group,

exceeds $50,000,000,

(d) 1/2 of the amount, if any, by which the lesser of

(i) $300,000,000, and

(ii) the total of all amounts, each of which is the taxable capital employed in Canada of a life insurance corporation for the year that is a member of the related group,

exceeds $200,000,000, and

(e) 3/4 of the amount, if any, by which the total of all amounts, each of which is the taxable capital employed in Canada of a life insurance corporation for the year that is a member of the related group, exceeds $300,000,000.

(4) Idem — For the purposes of this Part, the least amount allocated for a taxation year to a member of a related group under an agreement described in subsection (2) or by the Minister under subsection (3) is the capital allowance for that year of the member.

(5) Provisions applicable to Part — Subsections 190.15(5) and (6) apply to this section with such modifications as the circumstances require.

History [s. 190.16]: S. 190.16 added by 1994, c. 21, s. 91, applicable

(a) to taxation years ending after February 25, 1992; and

(b) where a corporation elects under para. 88(2)(b) of 1994, c. 21 [see under subpara. 190.11(b)(i) above], to its 1991 and subsequent taxation years; and, notwithstanding subsecs. 152(4) to (5), such assessments and determinations shall be made as are consequential on the application of s. 190.16 to the corporation's taxation years ending before February 26, 1992.

Definitions [s. 190.16]: "amount", "business" — 248(1); "Canada" — 255; "carrying on business in Canada" — 253; "life insurance corporation", "Minister", "prescribed" — 248(1); "related" — 251(2); "related group" — 251(4); "taxable capital employed in Canada" — 190.11; "taxation year" — 249.

190.17 (1) Enhanced capital deduction — For the purpose of subsection 190.1(1.2), the enhanced capital deduction of a corporation for a taxation year is $400,000,000, unless the corporation was related to a financial institution (other than a life insurance corporation) at the end of the year, in which case, subject to subsection (4), the corporation's enhanced capital deduction for the year is nil.

Related Provisions: 190.1(1.2) — Additional tax payable by deposit-taking institutions; 190.17(2)–(4) — Allocation of deduction among related institutions.

(2) Related financial institution — A corporation that is a financial institution at any time in a taxation year and that is related to another financial institution (other than a life insurance corporation) at the end of the year may file with the Minister an agreement in prescribed form on behalf of the related group of which the corporation is a member under which an amount that does not exceed $400,000,000 is allocated among the members of the group for the year.

(3) Minister's powers — The Minister may request a corporation that is a financial institution at any time in a taxation year and that is related to any other financial institution (other than a life insurance corporation) at the end of the year to file with the Minister an agreement referred to in subsection (2) and, if the corporation does not file such an agreement within 30 days after receiving the request, the Minister may allocate an amount that does not exceed $400,000,000 among the members of the related group of which the corporation is a member for the year.

(4) Least amount allocated — The least amount allocated for a taxation year to a member of a related group under an agreement described in subsection (2) or by the Minister under subsection (3) is the enhanced capital deduction for the taxation year of the member, but, if no such allocation is made, the enhanced capital deduction of the member for the year is nil.

(5) Provisions applicable to Part — Subsections 190.15(5) and (6) apply to this section with such modifications as the circumstances require.

History [s. 190.17]: S. 190.17 added by 1996, c. 21, s. 50, applicable to taxation years that end after February 27, 1995.

190.18 [Substituted *inter alia* by ss. 190.1–190.15]

190.19 [Repealed under former Act]

Administrative Provisions

190.2 Return — A corporation that is or would, but for subsection 190.1(3), be liable to pay tax under this Part for a taxation year shall file with the Minister, not later than the day on or before which the corporation is required by section 150 to file its return of income for the year under Part I, a return of capital for the year in prescribed form containing an estimate of the tax payable under this Part by it for the year.

Related Provisions: 150.1(5) — Electronic filing; 235 — Penalty for late filing of return even where no balance owing.

History: S. 190.2 amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 113, applicable to 1991 *et seq.* S. 190.2 formerly read:

> 190.2 A corporation liable to pay a tax under this Part for a taxation year shall file with the Minister, not later than the day on or before which the corporation is required by section 150 to file its return of income for the year under Part I, a return of capital for that year in prescribed form containing an estimate of the tax payable by it for the year.

Definitions [s. 190.2]: "corporation" — 248(1), *Interpretation Act* 35(1); "Minister", "prescribed" — 248(1); "tax payable" — 248(2); "taxation year" — 249.

Forms [s. 190.2]: T2 SCH 38: Part VI tax on capital of financial institutions; T2 SCH 42: Calculation of unused Part I tax credit.

190.21 Provisions applicable to Part — Sections 152, 158 and 159, subsection 161(11), sections 162 to 167 and Division J of Part I apply to this Part with such modi-

fications as the circumstances require and, for the purpose of this section, paragraph 152(6)(a) shall be read as follows:

"(a) a deduction under subsection 190.1(3) in respect of any unused surtax credit or unused Part I tax credit (within the meanings assigned by subsection 190.1(5)) for a subsequent taxation year,".

History: S. 190.21 substituted for ss. 190.21 to 190.24 by 1994, c. 7, Sch. VIII (1993, c. 24), s. 114, applicable to 1992 *et seq.*; and in its application to the 1991 taxation year, s. 190.24 shall be read as follows:

190.24 Provisions applicable to Part — Section 152, subsection 157(2.1), sections 158 and 159, subsection 161(2.1), (2.2), (7) and (11), sections 162 to 167 and Division J of Part I apply to this Part with such modifications as the circumstances require and, for the purpose of this section, paragraph 152(6)(a) shall be read as follows:

(a) a deduction under subsection 190.1(3) in respect of any unused Part I tax credit (within the meaning assigned by subsection 190.1(5)) for a subsequent taxation year,

Ss. 190.21 to 190.24 formerly read:

190.21 Payment of tax — Every corporation liable to pay tax under this Part for a taxation year shall pay to the Receiver General in respect of the year

(a) either

(i) on or before the last day of each month in the year, 1/12 of the amount estimated by it to be its tax payable under this Part for the year,

(ii) on or before the last day of each month in the year, 1/12 of its first instalment base for the year, or

(iii) on or before the last day of each of the first two months in the year, 1/12 of its second instalment base for the year, and on or before the last day of each of the following months in the year, 1/10 of the amount by which its first instalment base for the year exceeds 1/6 of its second instalment base for the year; and

(b) on or before the end of the second month following the end of the year, the remainder of its tax payable under this Part for the year.

190.22 Instalment bases — For the purposes of section 190.21,

(a) the first instalment base of a corporation for a particular taxation year is the product obtained when the tax payable under this Part by the corporation for its taxation year immediately preceding the particular year is multiplied by the ratio that 365 is of the number of days in that preceding year, and

(b) the second instalment base of a corporation for a particular taxation year is the amount of the first instalment base of the corporation for its taxation year immediately preceding the particular year,

but where a particular taxation year of a corporation that was formed as a result of an amalgamation or merger is its first taxation year ending after the amalgamation or merger, as the case may be,

(c) its first instalment base for the particular year is the total of all amounts each of which is the product obtained when the tax payable under this Part by a corporation, that entered into the amalgamation or merger, for its last taxation year preceding the amalgamation or merger is multiplied by the ratio that 365 is of the number of days in that year, and

(d) its second instalment base for the particular year is the total of all amounts each of which is an amount equal to the first instalment base of a corporation, that entered into the amalgamation or merger, for its last taxation year preceding the amalgamation or merger.

190.23 (1) Interest — Where at any time after the day on or before which a corporation is required to pay the remainder of its tax payable under this Part for a taxation year,

(a) the amount of its tax payable under this Part for the year

exceeds

(b) the total of all amounts each of which is an amount paid at or before that time on account of its tax payable and applied as at that time by the Minister against the corporation's liability for an amount payable under this Part for the year,

the corporation shall pay to the Receiver General interest at a prescribed rate on the excess, computed for the period during which that excess is outstanding.

(2) Idem — Where a corporation that is required by this Part to pay an instalment of tax has failed to pay all or any part thereof on or before the day on or before which the instalment was required to be paid, it shall pay to the Receiver General, in addition to the interest payable under subsection (1), interest at a prescribed rate on the amount that it failed to pay, computed from the day on or before which the amount was required to be paid to the earlier of the day of payment and the beginning of the period in respect of which the corporation is required to pay interest thereon under that subsection.

(3) Limitation on instalments — For the purposes of subsection (2), where a corporation is required to pay an instalment of tax for a taxation year computed by reference to a method described in section 190.21, the corporation shall be deemed to have been liable to pay an instalment computed by reference to

(a) its tax payable under this Part for the year,

(b) its first instalment base for the year, or

(c) its second instalment base for the year and its first instalment base for the year,

whichever method gives rise to the least amount required to be paid by the corporation on or before the days referred to in subparagraphs 190.21(a)(i) to (iii).

190.24 Provisions applicable to Part — Section 152, subsection 157(2.1), sections 158 and 159, subsections 161(2.1), (2.2) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Para. 161(1)(a) of 1994, c. 7, Sch. II (1991, c. 49) provides that in its application to taxation years commencing before July 1990 of corporations described in para. (d) or (e) of the definition "financial institution" in subsec. 190(1), s. 190.21 shall be read as follows:

190.21 Every corporation liable to pay tax under this Part for a taxation year shall pay to the Receiver General in respect of the year

(a) where the year ended before July 1990, the tax payable by it under this Part for the year on or before the later of July 31, 1990 and the end of the second month following the end of the year; and

(b) where the year ended after June 1990,

(i) either

(A) on or before July 31, 1990, an amount equal to that proportion of the amount estimated by it to be its tax payable under this Part for the year that

(I) the number of days in the year that are after February 20, 1990 and before July 1990

is of

(II) the number of days in the year that are after February 20, 1990,

and on or before the last day of each month ending in the year and after June 1990, an amount equal to the amount, if any, by which

(III) the amount estimated by it to be its tax payable under this Part for the year

exceeds

(IV) the amount payable by the corporation on or before July 31, 1990, as would be determined under this clause if this clause were read without reference to that part thereof following subclause (II) thereof

divided by the number of months ending in the year and after June 1990, or

(B) on or before July 31, 1990, an amount equal to that proportion of its first instalment base for the year that

(I) the number of days in the year that are after February 20, 1990 and before July 1990

is of

(II) the number of days in the year,

and on or before the last day of each month ending in the year and after June 1990, an amount equal to its first instalment base for the year divided by the number of months in the year, and

(ii) on or before the end of the second month following the end of the year, the remainder of its tax payable under this Part for the year.

Subsec. 161(2) of 1994, c. 7, Sch. II (1991, c. 49) provides that for the purposes of s. 190.22, the tax payable under Part VI by a corporation described in para. (d) or (e) of the definition "financial institution" in subsec. 190(1) shall be deemed to be

(a) for a taxation year ending before February 21, 1990, the amount that would be its tax payable under that Part for the year if that Part applied in respect of that year and its capital deduction under that Part for that year were its capital deduction under that Part for its first taxation year ending after February 20, 1990; and

(b) for its first taxation year ending after February 20, 1990, the product obtained when its tax payable under that Part for the year is multiplied by the ratio that the number of days in the year is of the number of days in the year after February 20, 1990.

Para. 161(1)(b) of 1994, c. 7, Sch. II (1991, c. 49) provides that in its application to taxation years commencing before July 1990 of corporations described in para. (d) or (e) of the definition "financial institution" in subsec. 190(1), subsec. 190.23(3) shall be read as follows:

(3) For the purposes of subsection (2), where a corporation is required to pay an instalment of tax for a taxation year computed by reference to a method described in section 190.21, the corporation shall be deemed to have been liable to pay an instalment computed by reference to

(a) its tax payable under this Part for the year, or

(b) its first instalment base for the year,

whichever method gives rise to the least amount required to be paid by the corporation on or before the days referred to in clauses 190.21(b)(i)(A) and (B).

190.211 Provisions applicable — Crown corporations — Section 27 applies to this Part with any modifications that the circumstances require.

History: S. 190.211 added by 1998, c. 19, subsec. 205(1), applicable after May 23, 1985.

PART VI.1 — TAX ON CORPORATIONS PAYING DIVIDENDS ON TAXABLE PREFERRED SHARES

191. (1) Definitions — In this Part,

"excluded dividend" means a dividend

(a) paid by a corporation to a shareholder that had a substantial interest in the corporation at the time the dividend was paid,

(b) paid by a corporation that was a financial intermediary corporation or a private holding corporation at the time the dividend was paid,

(c) paid by a particular corporation that would, but for paragraphs (h) and (i) of the definition "financial intermediary corporation" in this subsection, have been a financial intermediary corporation at the time the dividend was paid, except where the dividend was paid to a controlling corporation in respect of the particular corporation or to a specified person (within the meaning assigned by paragraph (h) of the definition "taxable preferred share" in subsection 248(1)) in relation to such a controlling corporation,

(d) paid by a mortgage investment corporation, or

(e) that is a capital gains dividend within the meaning assigned by subsection 131(1);

Related Provisions: 191(4)(d) — Deemed excluded dividend; 191(6) — Where corporation pays dividend to partnership.

"financial intermediary corporation" means a corporation that is

(a) a corporation described in subparagraph (b)(ii) of the definition "retirement savings plan" in subsection 146(1),

(b) an investment corporation,

(c) a mortgage investment corporation,

(d) a mutual fund corporation,

(e) a prescribed venture capital corporation, or

(f) a prescribed labour-sponsored venture capital corporation,

but does not include

(g) a prescribed corporation,

(h) a corporation that is controlled by or for the benefit of one or more corporations (each of which is referred to in this subsection as a "controlling corporation") other than financial intermediary corporations or private holding corporations unless the controlling corporations and specified persons (within the meaning assigned by paragraph (h) of the definition "taxable preferred share" in subsection 248(1)) in relation to the controlling corporations do not own in the aggregate shares of the capital stock of the corporation having a fair market value of more than 10% of the fair market value of all of the issued and outstanding shares of the capital stock of the corporation (those fair market values being determined without regard to any voting rights attaching to those shares), or

(i) any particular corporation in which another corporation (other than a financial intermediary corporation or a private holding corporation) has a substantial interest unless the other corporation and specified persons (within the meaning assigned by paragraph (h) of the definition "taxable preferred share" in subsection 248(1)) in relation to the other corporation do not own in the aggregate shares of the capital stock of the particular corporation having a fair market value of more than 10% of the fair market value of all of the issued and outstanding shares of the capital stock of the particular corporation (those fair market values being determined without regard to any voting rights attaching to those shares);

Related Provisions: 256(6), (6.1) — Meaning of "controlled".

Regulations: 6700 (prescribed venture capital corporation); 6701 (prescribed labour-sponsored venture capital corporation).

"private holding corporation" means a private corporation the only undertaking of which is the investing of its funds, but does not include

(a) a specified financial institution,

(b) any particular corporation that owns shares of another corporation in which it has a substantial interest, except where the other corporation would, but for that substantial interest, be a financial intermediary corporation or a private holding corporation, or

(c) any particular corporation in which another corporation owns shares and has a substantial interest, except where the other corporation would, but for that substantial interest, be a private holding corporation.

History: Para. (b) of "private holding corporation" in subsec. 191(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 162, applicable to 1988 *et seq.* Para. (b) formerly read:

(b) any particular corporation that owns shares of another corporation in which it has a substantial interest except where the other corporation is a financial intermediary corporation or a corporation that would, but for such substantial interest, be a private holding corporation, or

Related Provisions: 253.1 — Limited partner not considered to carry on business of partnership.

(2) Substantial interest — For the purposes of this Part, a shareholder has a substantial interest in a corporation at any time if the corporation is a taxable Canadian corporation and

(a) the shareholder is related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the corporation at that time; or

(b) the shareholder owned, at that time,

(i) shares of the capital stock of the corporation that would give the shareholder 25% or more of the votes that could be cast under all circumstances at an annual meeting of shareholders of the corporation,

(ii) shares of the capital stock of the corporation having a fair market value of 25% or more of the fair market value of all the issued shares of the capital stock of the corporation,

and either

(iii) shares (other than shares that would be taxable preferred shares if the definition "taxable preferred share" in subsection 248(1) were read without reference to subparagraph (b)(iv) thereof and if they were issued after June 18, 1987 and were not grandfathered shares) of the capital stock of the corporation having a fair market value of 25% or more of the fair market value of all those shares of the capital stock of the corporation, or

(iv) in respect of each class of shares of the capital stock of the corporation, shares of that class having a fair market value of 25% or more of the fair market value of all the issued shares of that class,

and for the purposes of this paragraph, a shareholder shall be deemed to own at any time each share of the capital stock of a corporation that is owned, otherwise than by reason of this paragraph, at that time by a person to whom the shareholder is related (otherwise than by reason of a right referred to in paragraph 251(5)(b)).

Related Provisions: 191(3) — Substantial interest.

(3) Idem — Notwithstanding subsection (2),

(a) where it can reasonably be considered that the principal purpose for a person acquiring an interest that would, but for this subsection, be a substantial interest in a corporation is to avoid or limit the application of Part I or IV.1 or this Part, the person shall be deemed not to have a substantial interest in the corporation;

(b) where it can reasonably be considered that the principal purpose for an acquisition of a share of the capital stock of a corporation (in this paragraph referred to as the "issuer") by any person (in this paragraph referred to as the "acquirer") who had, immediately after the time of the acquisition, a substantial interest in the issuer from another person who did not, immediately before that time, have a substantial interest in the issuer, was to avoid or limit the application of Part I or IV.1 or this Part with respect to a dividend on the share, the acquirer and specified persons (within the meaning assigned by paragraph (h) of the definition "taxable preferred share" in subsection 248(1)) in relation to the acquirer shall be deemed not to have a substantial interest in the issuer with respect to any dividend paid on the share;

(c) a corporation described in paragraphs (a) to (f) of the definition "financial intermediary corporation" in subsection (1) shall be deemed not to have a substantial interest in another corporation unless it is related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the other corporation;

(d) any partnership or trust, other than

(i) a partnership all the members of which are related to each other otherwise than by reason of a right referred to in paragraph 251(5)(b),

(ii) a trust in which each person who is beneficially interested is

(A) related (otherwise than because of a right referred to in paragraph 251(5)(b)) to each other person who is beneficially interested in the trust and who is not a registered charity, or

(B) a registered charity

and, for the purpose of this subparagraph, where a particular person who is beneficially interested in the trust is an aunt, uncle, niece or nephew of another person, the particular person and any person who is a child or descendant of the particular person shall be deemed to be related to the other person and to any person who is the child or descendant of the other person, or

(iii) a trust in which only one person (other than a registered charity) is beneficially interested,

shall be deemed not to have a substantial interest in a corporation; and

(e) where at any time a shareholder holds a share of the capital stock of a corporation to which paragraph (g) of the definition "taxable preferred share" in subsection 248(1) or paragraph (e) of the definition "taxable RFI share" in that subsection applies to deem the share to be a taxable preferred share or a taxable RFI share, the shareholder shall be deemed not to have a substantial interest in the corporation at that time.

Related Provisions: 248(25) — Beneficially interested.

History: Paras. 191(3)(a) and (b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 115(1), applicable to dividends paid or received after December 20, 1991. Paras. (a) and (b) formerly read:

(a) where it may reasonably be considered, having regard to all the circumstances, that the principal purpose for a person acquiring an interest that would, but for this subsection, be a substantial interest in a corporation is to avoid or limit the application of this Part or Part IV.1 the person shall be deemed not to have a substantial interest in the corporation;

(b) where it may reasonably be considered, having regard to all the circumstances, that the principal purpose for an acquisition of a share of the capital stock of a corporation (in this paragraph referred to as the "issuer") by any person (in this paragraph referred to as the "acquirer") that had, immediately after the time of the acquisition, a substantial interest in the issuer from another person that did not, immediately before that time, have a substantial interest in the issuer, was to avoid or limit the application of this Part or Part IV.1 with respect to a dividend on the share, the acquirer and specified persons (within the meaning assigned by paragraph (h) of the definition "taxable preferred share" in subsection 248(1)) in relation to the acquirer shall be deemed not to have a substantial interest in the issuer with respect to any dividend paid on the share;

Subparas. 191(3)(d)(ii) and (iii) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 115(2), applicable after 1990. Subparas. (d)(ii) and (iii) formerly read:

(ii) a trust in which all persons who are beneficially interested, within the meaning assigned by subsection 94(7), are related to each other (otherwise than by reason of a right referred to in paragraph 251(5)(b)) and, for the purposes of this subparagraph, where a particular person who is so beneficially interested in the trust is an aunt, uncle, niece or nephew of another person, the particular person and any person who is a child or descendant of the particular person shall be deemed to be related to the other person and any person who is a child or descendant of the other person, or

(iii) a trust in which only one person is beneficially interested, within the meaning assigned by subsection 94(7),

(4) Deemed dividends — Where at any particular time

(a) a share of the capital stock of a corporation is issued,

(b) the terms or conditions of a share of the capital stock of a corporation are changed, or

(c) an agreement in respect of a share of the capital stock of a corporation is changed or entered into,

and the terms or conditions of the share or the agreement in respect of the share specify an amount in respect of the share, including an amount for which the share is to be redeemed, acquired or cancelled (together with, where so provided, any accrued and unpaid dividends thereon) and where paragraph (a) applies, the specified amount does not exceed the fair market value of the consideration for which the share was issued, and where paragraph (b) or (c) applies, the specified amount does not exceed the fair market value of the share immediately before the particular time, the amount of any dividend deemed to have been paid on a redemption, acquisition or cancellation of the share to which subsection 84(2) or (3) applies shall

(d) for the purposes of this Part and section 187.2, be deemed to be an excluded dividend and an excepted dividend, respectively, unless

(i) where paragraph (a) applies, the share was issued for consideration that included a taxable preferred share, or

(ii) where paragraph (b) or (c) applies, the share was, immediately before the particular time, a taxable preferred share, and

(e) be deemed not to be a dividend to which subsection 112(2.1) or 138(6) applies to deny a deduction with respect to the dividend in computing the taxable income of a corporation under subsection 112(1) or (2) or 138(6), unless

(i) where paragraph (a) applies, the share was issued for consideration that included a term preferred share or for the purpose of raising capital or as part of a series of transactions or events the purpose of which was to raise capital, and

(ii) where paragraph (b) or (c) applies, the share was, immediately before the particular time, a term preferred share, or the terms or conditions of the share were changed, or the agreement in respect of the share was changed or entered into for the purpose of raising capital or as part of a series of transactions or events the purpose of which was to raise capital.

Related Provisions: 87(2)(rr) — Amalgamations — continuing corporation; 87(4.2)(f) — Amalgamations — where amount specified for purposes of 191(4); 248(10) — Series of transactions.

(5) Where subsec. (4) does not apply — Subsection (4) does not apply to the extent that the total of

(a) the amount paid on the redemption, acquisition or cancellation of the share, and

(b) all amounts each of which is an amount (other than an amount deemed by subsection 84(4) to be a dividend) paid, after the particular time and before the redemption, acquisition or cancellation of the share, on a reduction of the paid-up capital of the corporation in respect of the share

exceeds the specified amount referred to in subsection (4).

Proposed Addition — 191(6)

(6) Excluded dividend — partner — If at any time a corporation pays a dividend to a partnership, the corporation is, for the purposes of this subsection and paragraph (a) of the definition "excluded dividend" in subsection (1), deemed to have paid at that time to each member of the partnership a dividend equal to the amount determined by the formula

$$A \times B$$

where

A is the amount of the dividend paid to the partnership; and

B is the member's specified proportion for the last fiscal period of the partnership that ended before that time (or, if the partnership's first fiscal period includes that time, for that first fiscal period).

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 166, will add subsec. 191(6), applicable to dividends paid after December 20, 2002.

Technical Notes: Section 191 sets out a number of rules relating to the taxes imposed, under Part VI.1 of the Act, on taxable Canadian corporations that pay dividends of certain kinds. Those taxes are not payable in respect of "excluded dividends," a term defined in subsection 191(1). Dividends paid by a corporation to a shareholder that holds a "substantial interest" in the corporation are excluded dividends.

"Substantial interest" is itself defined in subsection 191(2). In general, a shareholder has a substantial interest in a corporation if the shareholder is related to the corporation (otherwise than because of a right under paragraph 251(5)(b)) or if the shareholder's holdings meet certain thresholds in terms of votes and value.

If a shareholder has a substantial interest in a corporation, and is also a member of a partnership that holds shares of the corporation, it is appropriate that a dividend paid by the corporation to the partnership be an excluded dividend, to the extent of the shareholder's interest in the dividend. To ensure this result, new subsection 191(6) is added to the rules that govern the Part VI taxes. The new subsection provides that a dividend paid to a partnership is, for the purposes of the "excluded dividend" definition, considered to have been paid ratably to each member of the partnership.

Three technical aspects of the new rule bear special mention. First, the apportionment of the dividend among the partners is based upon each partner's share of the partnership's income for its last fiscal period that ended before the corporation paid the dividend. (If the dividend was paid during the partnership's first fiscal period, the apportionment looks to that period.)

Second, to ensure appropriate effects where there is more than one tier of partnerships between the dividend-paying corporation and the person that holds a substantial interest in the corporation, the new provision applies to itself. That is, if a member of a partnership is itself a partnership, the rule will treat the dividend-paying corporation as having paid a proportionate amount as a dividend not only to the second partnership, but also to that second partnership's members.

Third, in apportioning a dividend among members of a partnership, new subsection 191(6) uses the new definition of "specified proportion," which is added to subsection 248(1). For further information, see the commentary to that amendment.

Related Provisions: 248(1) — Definition of "specified proportion".

Definitions [s. 191]: "amount" — 248(1); "aunt" — 252(2)(e); "beneficially interested" — 248(25); "capital gain" — 39(1)(a), 248(1); "child" — 252(1); "class of shares" — 248(6); "control" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "excluded dividend", "financial intermediary corporation" — 191(1); "fiscal period" — 249.1; "grandfathered share" — 248(1); "investment corporation" — 130(3)(a), 248(1); "mortgage investment corporation" — 130.1(6), 248(1); "mutual fund corporation" — 131(8), 248(1); "nephew", "niece" — 252(2)(g); "paid-up capital" — 89(1), 248(1); "person", "prescribed" — 248(1); "prescribed labour-sponsored venture capital corporation" — Reg. 6701; "prescribed venture capital corporation" — Reg. 6700; "private corporation" — 89(1), 248(1); "private holding corporation" — 191(1); "registered charity" — 248(1); "related" — 251(2); "series of transactions or events" — 248(10); "share", "shareholder", "specified financial institution" — 248(1); "specified person" — 248(1)"taxable preferred share"(h); "specified proportion" — 248(1); "substantial interest" — 191(2), (3); "taxable Canadian corporation" — 89(1), 248(1); "taxable income" — 2(2), 248(1); "taxable preferred share", "taxable RFI share", "term preferred share" — 248(1); "trust" — 104(1), 248(1), (3); "uncle" — 252(2)(e); "undertaking" — 253.1(a).

191.1 (1) Tax on taxable dividends — Every taxable Canadian corporation shall pay a tax under this Part for each taxation year equal to the amount, if any, by which

(a) the total of

(i) 66⅔% of the amount, if any, by which the total of all taxable dividends (other than excluded dividends) paid by the corporation in the year and after 1987 on short-term preferred shares exceeds the corporation's dividend allowance for the year,

Proposed Amendment — 191.1(1)(a)(i)

(i) 50% of the amount, if any, by which the total of all taxable dividends (other than excluded dividends) paid by the corporation in the year on short-term preferred shares exceeds the corporation's dividend allowance for the year,

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 167, will amend subpara. 191.1(1)(a)(i) to read as above, applicable to dividends paid by a corporation in 2003 *et seq.*

Technical Notes: Subsection 191.1(1) provides for a tax to be paid by a corporation that has paid taxable dividends on taxable preferred shares. In the case of short-term preferred shares, paragraph 191.1(1)(a) sets the rate of the tax at 66 ⅔% of the dividend. This rate produces an amount of tax equal to the amount of income tax that would have been collected had a corporate shareholder sought the same after-tax return in the form of interest. That result obtains, at the current 66 ⅔ percent rate, if interest income is assumed to be taxed at 40%.

As part of a series of amendments reflecting recent and planned reductions in income tax rates, the rate of tax under paragraph 191.1(1)(a) is reduced to 50% of the dividend amount. This provides the desired result on the basis of an assumed tax of 33.3% on interest income, as shown below.

	Dividend	Interest
Issuer		
To Holder	$66.67	$100.00
191.1(1)(a) tax	33.33	n/a
Total paid	$100.00	$100.00
Shareholder		
Receives	$66.67	$100.00
Part I tax	NIL	33.33
After tax	$66.67	$66.67

Letter from Dept. of Finance, August 2, 2002:

Dear [xxx]

I am writing further to your letter of July 31, 2002, regarding the rates of tax imposed under Part VI.1 of the *Income Tax Act* and the treatment, under Part I of the Act, of amounts paid under Part VI.1. Specifically, you have asked for written confirmation of this Division's intention to recommend certain changes in both of these areas. You have emphasized that this matter is of pressing concern for your client, and we have accordingly given your enquiry some priority.

This will confirm that we do intend to propose such changes, as part of a series of technical measures designed to reflect recent and planned reductions in corporate income tax rates. Our recommendation in respect of Part VI.1 will be that the rate of tax imposed by subparagraph 191.1(1)(a)(i) be reduced from 66⅔% to 50%. Complementing this, we will recommend that the factor to be applied in computing the deduction for Part I purposes [110(1)(k) — ed.] in respect of Part VI.1 taxes be adjusted from ¾ to 3. Both of these measures would apply for the 2003 and subsequent taxation years.

As you know, I cannot offer any assurance that either the Minister of Finance or Parliament will endorse these proposals. Nonetheless, I hope that this statement of our intentions is helpful.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

(ii) 40% of the amount, if any, by which the total of all taxable dividends (other than excluded dividends) paid by the corporation in the year and after 1987 on taxable preferred shares (other than short-term preferred shares) of all classes in respect of which an election under subsection 191.2(1) has been made exceeds the amount, if any, by which the corporation's dividend allowance for the year exceeds the total of the dividends referred to in subparagraph (i),

(iii) 25% of the amount, if any, by which the total of all taxable dividends (other than excluded dividends) paid by the corporation in the year and after 1987 on taxable preferred shares (other than short-term preferred shares) of all classes in respect of which an election under subsection 191.2(1) has not been made exceeds the amount, if any, by which the corporation's dividend allowance for the year exceeds the total of the dividends referred to in subparagraphs (i) and (ii), and

(iv) the total of all amounts each of which is an amount determined for the year in respect of the corporation under paragraph 191.3(1)(d)

exceeds

(b) the total of all amounts each of which is an amount determined for the year in respect of the corporation under paragraph 191.3(1)(c).

Related Provisions: 18(1)(t) — Tax is non-deductible; 87(4.2) — Exchanged shares; 110(1)(k) — Deduction of 3 x Part VI.1 tax from taxable income; 157(1)–(3) — Payment of Part VI.1 tax; 161(4.1) — Limitation respecting corporations; 191.3(6) — Payment by transferor corporation; 227(14) — No tax on corporation exempt under s. 149.

Interpretation Bulletins: IT-88R2: Stock dividends.

Advance Tax Rulings: ATR-46: Financial difficulty.

Forms: T2 SCH 43: Calculation of Parts IV.1 and VI.1 taxes.

(2) Dividend allowance — For the purposes of this section, a taxable Canadian corporation's "dividend allowance" for a taxation year is the amount, if any, by which

(a) $500,000

exceeds

(b) the amount, if any, by which the total of taxable dividends (other than excluded dividends) paid by it on taxable preferred shares, or shares that would be taxable preferred shares if they were issued after June 18, 1987 and were not grandfathered shares, in the calendar year immediately preceding the calendar year in which the taxation year ended exceeds $1,000,000,

unless the corporation is associated in the taxation year with one or more other taxable Canadian corporations, in which case, except as otherwise provided in this section, its dividend allowance for the year is nil.

Related Provisions: 87(2)(rr) — Amalgamations — continuing corporation.

Interpretation Bulletins: IT-88R2: Stock dividends.

(3) Associated corporations — If all of the taxable Canadian corporations that are associated with each other in a taxation year and that have paid taxable dividends (other than excluded dividends) on taxable preferred shares in the year have filed with the Minister in prescribed form an agreement whereby, for the purposes of this section, they allocate an amount to one or more of them for the taxation year, and the amount so allocated or the total of the amounts so allocated, as the case may be, is equal to the total dividend allowance for the year of those corporations and all other taxable Canadian corporations with which each such corporation is associated in the year, the dividend allowance for the year for each of the corporations is the amount so allocated to it.

Forms: T761: Calculation of Parts IV.1 and VI.1 taxes payable (Box 1).

(4) Total dividend allowance — For the purposes of this section, the "total dividend allowance" of a group of taxable Canadian corporations that are associated with each other in a taxation year is the amount, if any, by which

(a) $500,000

exceeds

(b) the amount, if any, by which the total of taxable dividends (other than excluded dividends) paid by those corporations on taxable preferred shares, or shares that would be taxable preferred shares if they were issued after June 18, 1987 and were not grandfathered shares, in the calendar year immediately preceding the calendar year in which the taxation year ended exceeds $1,000,000.

Related Provisions: 87(2)(rr) — Amalgamations — continuing corporation.

Interpretation Bulletins: IT-88R2: Stock dividends.

(5) Failure to file agreement — If any of the taxable Canadian corporations that are associated with each other in a taxation year and that have paid taxable dividends (other than excluded dividends) on taxable preferred shares in the year has failed to file with the Minister an agreement as contemplated by subsection (3) within 30 days after notice in writing by the Minister has been forwarded to any of them that such an agreement is required for the purpose of any assessment of tax under this Part, the Minister shall, for the purpose of this section, allocate an amount to one or more of them for the taxation year, which amount or the total of which amounts, as the case may be, shall equal the total dividend allowance for the year for those corporations and all other taxable Canadian corporations with which each such corporation is associated in the year, and the dividend allowance for the year of each of the corporations is the amount so allocated to it.

(6) Dividend allowance in short years — Notwithstanding any other provision of this section,

(a) where a corporation has a taxation year that is less than 51 weeks, its dividend allowance for the year is that proportion of its dividend allowance for the year determined without reference to this paragraph that the number of days in the year is of 365; and

(b) where a taxable Canadian corporation (in this paragraph referred to as the "first corporation") has more than one taxation year ending in a calendar year and is associated in two or more of those taxation years with another taxable Canadian corporation that has a taxation year ending in that calendar year, the dividend allowance of the first corporation for each taxation year in which it is associated with the other corporation ending in that calendar year is, subject to the application of paragraph (a), an amount equal to the amount that would be its dividend allowance for the first such taxation year if the allowance were determined without reference to paragraph (a).

Definitions [s. 191.1]: "amount" — 248(1); "associated" — 256; "calendar year" — *Interpretation Act* 37(1)(a); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "dividend allowance" — 191.1(2); "excluded dividend" — 191(1); "grandfathered share", "Minister", "prescribed", "share", "short-term preferred share" — 248(1); "taxable Canadian corporation", "taxable dividend" — 89(1), 248(1); "taxable preferred share" — 248(1); "taxation year" — 249; "total dividend allowance" — 191.1(4); "writing" — *Interpretation Act* 35(1).

191.2 (1) Election — For the purposes of determining the tax payable by reason of subparagraphs 191.1(1)(a)(ii) and (iii), a taxable Canadian corporation (other than a financial intermediary corporation or a private holding corporation) may make an election with respect to a class of its taxable preferred shares the terms and conditions of which require an election to be made under this subsection by filing a prescribed form with the Minister

(a) not later than the day on or before which its return of income under Part I is required by section 150 to be filed for the taxation year in which shares of that class are first issued or first become taxable preferred shares; or

(b) within the 6 month period commencing on any of the following days, namely,

(i) the day of mailing of any notice of assessment of tax payable under this Part or Part I by the corporation for that year,

(ii) where the corporation has served a notice of objection to an assessment described in subparagraph (i), the day of mailing of a notice that the Minister has confirmed or varied the assessment,

(iii) where the corporation has instituted an appeal in respect of an assessment described in subparagraph (i) to the Tax Court of Canada, the day of mailing of a copy of the decision of the Court to the taxpayer, and

(iv) where the corporation has instituted an appeal in respect of an assessment described in subparagraph (i) to the Federal Court of Appeal or the Supreme Court of Canada, the day on which the judgment of the Court is pronounced or delivered or the day on which the corporation discontinues the appeal.

Related Provisions: 87(4.2)(e) — Amalgamation; 187.2 — Tax on dividends on taxable preferred shares.

History: Subpara. 191.2(1)(b)(iv) amended by 2002, c. 8, para. 184(e) to substitute "Federal Court of Appeal" for "Federal Court of Canada", in force July 2, 2003.

Forms: T769: Election under section 191.2 by an issuer of taxable preferred shares to pay Part VI.1 tax at a rate of 40%.

(2) Time of election — An election with respect to a class of taxable preferred shares filed in accordance with

subsection (1) shall be deemed to have been filed before any dividend on a share of that class is paid.

(3) Assessment — Where an election has been filed under subsection (1), the Minister shall, notwithstanding subsections 152(4) and (5), assess or reassess the tax, interest or penalties payable under this Act by any corporation for any relevant taxation year in order to take into account the election.

Definitions [s. 191.2]: "assessment" — 248(1); "class" — 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "Federal Court of Appeal" — *Federal Courts Act* s. 3; "financial intermediary corporation" — 191(1); "Minister", "prescribed" — 248(1); "private holding corporation" — 191(1); "share" — 248(1); "tax payable" — 248(2); "taxable Canadian corporation" — 89(1), 248(1); "taxable preferred share" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 191.2]: IT-88R2: Stock dividends.

191.3 (1) Agreement respecting liability for tax — Where a corporation (in this section referred to as the "transferor corporation") and a taxable Canadian corporation (in this section referred to as the "transferee corporation") that was related (otherwise than because of a right referred to in paragraph 251(5)(b) or because of the control of any corporation by Her Majesty in right of Canada or a province) to the transferor corporation

(a) throughout a particular taxation year of the transferor corporation (or, where the transferee corporation came into existence in that year, throughout the part of that year in which the transferee corporation was in existence), and

(b) throughout the last taxation year of the transferee corporation ending at or before the end of the particular taxation year (or, where the transferor corporation came into existence in that last taxation year of the transferee corporation, throughout that part of that last year in which the transferor corporation was in existence)

file as provided in subsection (2) an agreement or amended agreement with the Minister under which the transferee corporation agrees to pay all or any portion, as is specified in the agreement, of the tax for that taxation year of the transferor corporation that would, but for the agreement, be payable under this Part by the transferor corporation (other than any tax payable by the transferor corporation by reason of another agreement made under this section), the following rules apply, namely,

(c) the amount of tax specified in the agreement is an amount determined for that taxation year of the transferor corporation in respect of the transferor corporation for the purpose of paragraph 191.1(1)(b),

(d) the amount of tax specified in the agreement is an amount determined in respect of the transferee corporation for its last taxation year ending at or before the end of that taxation year of the transferor corporation for the purpose of subparagraph 191.1(1)(a)(iv), and

(e) the transferor corporation and the transferee corporation are jointly and severally liable to pay the amount of tax specified in the agreement and any interest or penalty in respect thereof.

Proposed Amendment — 191.3(1)(e)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 263(1), will amend para. 191.3(1)(e) by substituting "jointly and severally, or solidarily," for "jointly and severally", to come into force on Royal Assent.

Technical Notes: See under 12(4).

Related Provisions: 87(2)(ss) — Amalgamations — continuing corporation; 110(1)(k) — Part VI.1 tax; 191.3(1.1) — Consideration for entering into agreement deemed to be nil; 191.3(6) — Payment by transferor corporation; 256(6), (6.1) — Meaning of "control".

History: The opening words of subsec. 191.3(1) and paras. (a) and (b) amended by 1998, c. 19, s. 207, applicable to taxation years of a transferor corporation that begin after 1994, except that the amendment to the opening words applies only to taxation years of the transferor corporation that end after April 26, 1995.

Subsec. 207(3) of the said c. 19 provides that where an agreement under subsec. 191.3(2) can be made between a transferor corporation and a transferee corporation solely because of the amendment to para. 191.3(1)(a) or (b), the agreement is deemed to have been filed on time if it is filed with the Minister of National Revenue before October 1998.

The opening words of subsec. 191.3(1) and paras. (a) and (b) formerly read:

(1) Where a corporation (in this section referred to as the "transferor corporation") and a taxable Canadian corporation (in this section referred to as the "transferee corporation") which was related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the transferor corporation

(a) throughout a taxation year of the transferor corporation, and

(b) throughout the last taxation year of the transferee corporation ending at or before the end of that taxation year of the transferor corporation,

Forms: T2 SCH 45: Agreement respecting liability for Part VI.1 tax.

(1.1) Consideration for agreement — For the purposes of Part I of this Act, where property is acquired at any time by a transferee corporation as consideration for entering into an agreement with a transferor corporation that is filed under this section,

(a) where the property was owned by the transferor corporation immediately before that time,

(i) the transferor corporation shall be deemed to have disposed of the property at that time for proceeds equal to the fair market value of the property at that time, and

(ii) the transferor corporation shall not be entitled to deduct any amount in computing its income as a consequence of the transfer of the property, except any amount arising as a consequence of subparagraph (i);

(b) the cost at which the property was acquired by the transferee corporation at that time shall be deemed to be equal to the fair market value of the property at that time;

(c) the transferee corporation shall not be required to add an amount in computing its income solely because of the acquisition at that time of the property; and

(d) no benefit shall be deemed to have been conferred on the transferor corporation as a consequence of the transferor corporation entering into an agreement filed under this section.

History: Subsec. 191.3(1.1) added by 1995, c. 21, s. 41, applicable to 1988 *et seq.*

(2) Manner of filing agreement — An agreement or amended agreement referred to in subsection (1) between a transferor corporation and a transferee corporation shall be deemed not to have been filed with the Minister unless

(a) it is in prescribed form;

(b) it is filed on or before the day on or before which the transferor corporation's return for the year in respect of which the agreement is filed is required to be filed under this Part or within the 90 day period commencing on the day of mailing of a notice of assessment of tax payable under this Part or Part I by the transferor corporation for the year or by the transferee

corporation for its taxation year ending in the calendar year in which the taxation year of the transferor corporation ends or the mailing of a notification that no tax is payable under this Part or Part I for that taxation year;

(c) it is accompanied by,

(i) where the directors of the transferor corporation are legally entitled to administer its affairs, a certified copy of their resolution authorizing the agreement to be made,

(ii) where the directors of the transferor corporation are not legally entitled to administer its affairs, a certified copy of the document by which the person legally entitled to administer the corporation's affairs authorized the agreement to be made,

(iii) where the directors of the transferee corporation are legally entitled to administer its affairs, a certified copy of their resolution authorizing the agreement to be made, and

(iv) where the directors of the transferee corporation are not legally entitled to administer its affairs, a certified copy of the document by which the person legally entitled to administer the corporation's affairs authorized the agreement to be made; and

(d) where the agreement is not an agreement to which subsection (4) applies, an agreement amending the agreement has not been filed in accordance with this section.

(e) [Repealed]

History: Para. 191.3(2)(e) repealed by 1994, c. 7, Sch. II (1991, c. 49), s. 163, applicable to 1989 *et seq.* Para. (e) formerly read:

(e) no tax is payable under Part I by the transferor corporation for its taxation year in respect of which the agreement is filed.

(3) Assessment — Where an agreement or amended agreement between a transferor corporation and a transferee corporation has been filed under this section with the Minister, the Minister shall, notwithstanding subsections 152(4) and (5), assess or reassess the tax, interest and penalties payable under this Act by the transferor corporation and the transferee corporation for any relevant taxation year in order to take into account the agreement or amended agreement.

(4) Related corporations — Where, at any time, a corporation has become related to another corporation and it may reasonably be considered, having regard to all the circumstances, that the main purpose of the corporation becoming related to the other corporation was to transfer, by filing an agreement or an amended agreement under this section, the benefit of a deduction under paragraph 110(1)(k) to a transferee corporation, the amount of the tax specified in the agreement shall, for the purposes of paragraph (1)(c), be deemed to be nil.

(5) Assessment of transferor corporation — The Minister may at any time assess a transferor corporation in respect of any amount for which it is jointly and severally liable by reason of paragraph (1)(e) and the provisions of Division I of Part I are applicable in respect of the assessment as though it had been made under section 152.

Proposed Amendment — 191.3(5)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 263(2), will amend subsec. 191.3(5) by substituting "jointly and severally, or solidarily," for "jointly and severally", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(6) Payment by transferor corporation — Where a transferor corporation and a transferee corporation are by reason of paragraph (1)(e) jointly and severally liable in respect of tax payable by the transferee corporation under subparagraph 191.1(1)(a)(iv) and any interest or penalty in respect thereof, the following rules apply:

Proposed Amendment — 191.3(6) opening words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 263(3), will amend the opening words of subsec. 191.3(6) by substituting "jointly and severally, or solidarily," for "jointly and severally", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(a) a payment by the transferor corporation on account of the liability shall, to the extent thereof, discharge the joint liability; and

Proposed Amendment — 191.3(6)(a)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 263(4), will amend para. 191.3(6)(a) by substituting "their liability" for "the joint liability", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(b) a payment by the transferee corporation on account of its liability discharges the transferor corporation's liability only to the extent that the payment operates to reduce the transferee corporation's liability under this Act to an amount less than the amount in respect of which the transferor corporation was, by paragraph (1)(e), made jointly and severally liable.

Proposed Amendment — 191.3(6)(b)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 263(5), will amend para. 191.3(6)(b) by substituting "jointly and severally, or solidarily," for "jointly and severally", to come into force on Royal Assent.

Technical Notes: See under 12(4).

Definitions [s. 191.3]: "acquired" — 256(7)–(9); "amount", "assessment" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "control" — 256(6)–(9); "corporation" — 248(1), *Interpretation Act* 35(1); "Her Majesty" — *Interpretation Act* 35(1); "Minister", "prescribed" — 248(1); "province" — *Interpretation Act* 35(1); "related" — 251(2); "tax payable" — 248(2); "taxable Canadian corporation" — 89(1), 248(1); "taxation year" — 249; "transferee corporation", "transferor corporation" — 191.3(1).

Interpretation Bulletins [s. 191.3]: IT-88R2: Stock dividends.

191.4 (1) Information return — Every corporation that is or would, but for section 191.3, be liable to pay tax under this Part for a taxation year shall, not later than the day on or before which it is required by section 150 to file its return of income for the year under Part I, file with the Minister a return for the year under this Part in prescribed form containing an estimate of the tax payable by it under this Part for the year.

Related Provisions: 150.1(5) — Electronic filing; 157(1) — Payment of Part VI.1 tax; 157(2), (2.1) — Special cases; 161(4.1) — Limitation respecting corporations.

Forms: T2 SCH 43: Calculation of Parts IV.1 and VI.1 taxes.

(2) Provisions applicable to Part — Sections 152, 158 and 159, subsection 161(11), sections 162 to 167 and Division J of Part I apply to this Part with such modifications as the circumstances require.

History: Subsec. 191.4(2) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 116, applicable to 1992 *et seq.* Subsec. (2) formerly read:

(2) Sections 152, 158 and 159, subsections 161(1), (2) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

(3) Provisions applicable — Crown corporations — Section 27 applies to this Part with any modifications that the circumstances require.

History: Subsec. 191.4(3) added by 1998, c. 19, s. 208, applicable after 1987.

Definitions [s. 191.4]: "corporation" — 248(1), *Interpretation Act* 35(1); "Minister", "prescribed" — 248(1); "tax payable" — 248(2); "taxation year" — 249.

PART VII — REFUNDABLE TAX ON CORPORATIONS ISSUING QUALIFYING SHARES

192. (1) Corporation to pay tax — Every corporation shall pay a tax under this Part for a taxation year equal to the total of all amounts each of which is an amount designated under subsection (4) in respect of a share issued by it in the year.

Related Provisions: 227.1(1) — Liability of directors for unpaid Part VII tax.

(2) Definition of "Part VII refund" — In this Part, the "Part VII refund" of a corporation for a taxation year means an amount equal to the lesser of

(a) the total of

(i) the amount, if any, by which the share-purchase tax credit of the corporation for the year exceeds the amount, if any, deducted in respect thereof by it for the year under subsection 127.2(1) from its tax otherwise payable under Part I for the year or the amount deemed by subsection 127.2(2) to have been paid on account of its tax payable under Part I for the year, as the case may be, and

(ii) such amount as the corporation may claim, not exceeding the amount that would, if paragraph (i) of the definition "investment tax credit" in subsection 127(9) were read without reference to the words "the year or", be its investment tax credit at the end of the year in respect of property acquired, or an expenditure made, after April 19, 1983 and on or before the last day of the year, and

(b) the refundable Part VII tax on hand of the corporation at the end of the year.

Related Provisions: 248(1)"lawyer" — Definition applies to entire Act.

Selected Cases [subsec. 192(2)]: *598606 Ontario Ltd. v. MNR*, [1993] 1 C.T.C. 2001 (TCC) (SRTC denied where issuer failed to file prescribed form within prescribed time).

(3) Definition of "refundable Part VII tax on hand" — In this Part, "refundable Part VII tax on hand" of a corporation at the end of a taxation year means the amount, if any, by which

(a) the total of the taxes payable by it under this Part for the year and all preceding taxation years

exceeds the total of

(b) the total of its Part VII refunds for all preceding taxation years, and

(c) the total of all amounts each of which is an amount of tax included in the total described in paragraph (a) in respect of a share that was issued by the corporation and that, at the time it was issued, was not a qualifying share.

Related Provisions: 248(1)"refundable Part VII tax on hand" — Definition applies to entire Act.

(4) Corporation may designate amount — Every taxable Canadian corporation may, by filing a prescribed form with the Minister at any time on or before the last day of the month immediately following the month in which it issued a qualifying share of its capital stock (other than a share issued before July, 1983 or after 1986, or a share in respect of which the corporation has, on or before that day, designated an amount under subsection 194(4)), designate, for the purposes of this Part and Part I, an amount in respect of that share not exceeding 25% of the amount by which

(a) the amount of the consideration for which the share was issued

exceeds

(b) the amount of any assistance (other than an amount included in computing the share-purchase tax credit of a taxpayer in respect of that share) provided or to be provided by a government, municipality or any other public authority in respect of, or for the acquisition of, the share.

Related Provisions: 127.2(10) — Election re first holder; 127.2(11) — Calculation of consideration; 193(2) — Corporation to make payment on account of tax; 193(7) — Avoidance of tax.

Regulations: 227 (information returns).

(4.1) Computing paid-up capital after designation — Where a corporation has designated an amount under subsection (4) in respect of shares issued at any time after May 23, 1985, in computing, at any particular time after that time, the paid-up capital in respect of the class of shares of the capital stock of the corporation that includes those shares

(a) there shall be deducted the amount, if any, by which

(i) the increase as a result of the issue of those shares in the paid-up capital in respect of all shares of that class, determined without reference to this subsection as it applies to those shares,

exceeds

(ii) the amount, if any, by which the total amount of consideration for which those shares were issued exceeds the total amount designated by the corporation under subsection (4) in respect of those shares; and

(b) there shall be added an amount equal to the lesser of

(i) the amount, if any, by which

(A) the total of all amounts each of which is an amount deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of that class paid by the corporation after May 23, 1985 and before the particular time

exceeds

(B) the total that would be determined under clause (A) if this Act were read without reference to paragraph (a), and

(ii) the total of all amounts each of which is an amount required by paragraph (a) to be deducted in computing the paid-up capital in respect of that class of shares after May 23, 1985 and before the particular time.

Related Provisions: 127.2(8) — Deemed cost of designated share.

(5) Presumption — For the purposes of this Act, the Part VII refund of a corporation for a taxation year shall be deemed to be an amount paid on account of its tax under this Part for the year on the last day of the second month following the end of the year.

(6) Definition of "qualifying share" — In this Part, "qualifying share", at any time, means a prescribed share of the capital stock of a taxable Canadian corporation issued after May 22, 1985 and before 1987.

Related Provisions: 248(1)"qualifying share" — Definition applies to entire Act.

Regulations: 6203 (prescribed shares).

(7) Effect of obligation to acquire shares — When determining under section 251 whether a corporation and any other person do not deal with each other at arm's length for the purposes of any regulations made for the purposes of subsection (6), a person who has an obligation in equity, under a contract or otherwise, either immediately or in the future and either absolutely or contingently, to acquire shares in a corporation, shall be deemed to be in the same position in relation to the control of the corporation as if that person owned the shares.

(8) Late designation — Where a taxable Canadian corporation that issued a share does not designate an amount under subsection (4) in respect of the share on or before the day on or before which the designation was required by that subsection, the corporation shall be deemed to have made the designation on that day if

(a) the corporation has filed with the Minister a prescribed information return relating to the share-purchase tax credit in respect of the share within the time that it would have been so required to file the return had the designation been made on that day, and

(b) within 3 years after that day, the corporation has

(i) designated an amount in respect of the share by filing a prescribed form with the Minister, and

(ii) paid to the Receiver General, at the time the prescribed form referred to in subparagraph (i) is filed, an amount that is a reasonable estimate of the penalty payable by the corporation for the late designation in respect of the share,

except that, where the Minister has mailed a notice to the corporation that a designation has not been made in respect of the share under subsection (4), the designation and payment described in paragraph (b) must be made by the corporation on or before the day that is 90 days after the day of the mailing.

(9) Penalty for late designation — Where, pursuant to subsection (8), a corporation made a late designation in respect of a share issued in a month, the corporation shall pay, for each month or part of a month that elapsed during the period beginning on the last day on or before which an amount could have been designated by the corporation under subsection (4) in respect of the share and ending on the day that the late designation is made, a penalty for the late designation in respect of the share in an amount equal to 1% of the amount designated in respect of the share, except that the maximum penalty payable under this subsection by the corporation for a month shall not exceed $500.

(10) Deemed deduction — For the purposes of this Act, other than the definition "investment tax credit" in subsection 127(9), the amount, if any, claimed under subparagraph (2)(a)(ii) by a taxpayer for a taxation year shall be deemed to have been deducted by the taxpayer under subsection 127(5) for the year.

(11) Restriction — Where at any time a corporation has designated an amount under subsection (4) in respect of a share, no amount may be designated by the corporation at any subsequent time in respect of that share.

Selected Cases [s. 192]: *598606 Ontario Ltd. v. MNR*, [1993] 1 C.T.C. 2001 (TCC); appealed to FCTD (Feb. 11, 1993), File T-367-93 (Failure to make designation by filing prescribed form disentitles taxpayer to claim share-purchase tax credit).

Definitions [s. 192]: "amount" — 248(1); "arm's length" — 251(1); "class of shares" — 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend", "Minister" — 248(1); "paid-up capital" — 89(1), 248(1); "person", "property" — 248(1); "qualifying share" — 192(6), 248(1); "share" — 248(1); "taxable Canadian corporation" — 89(1), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

Interpretation Bulletins [s. 192]: IT-328R3: Losses on shares on which dividends have been received.

193. (1) Corporation to file return — Every corporation that is liable to pay tax under this Part for a taxation year shall, on or before the day on or before which it is required to file its return of income under Part I for the year, file with the Minister a return for the year under this Part in prescribed form.

(2) Corporation to make payment on account of tax — Where, in a particular month in a taxation year, a corporation issues a share in respect of which it designates an amount under section 192, the corporation shall, on or before the last of the month following the particular month, pay to the Receiver General on account of its tax payable under this Part for the year an amount equal to the total of all amounts so designated.

(3) Interest — Where a corporation is liable to pay tax under this Part and has failed to pay all or any part or instalment thereof on or before the day on or before which the tax or instalment, as the case may be, was required to be paid, it shall pay to the Receiver General interest at the prescribed rate on the amount that it failed to pay computed from the day on or before which the amount was required to be paid to the day of payment.

Related Provisions: 248(11) — Interest compounded daily.

Regulations: 4301(a) (prescribed rate of interest).

(4) Idem — For the purposes of computing interest payable by a corporation under subsection (3) for any month or months in the period commencing on the first day of a taxation year and ending two months after the last day of the year in which period the corporation has designated an amount under section 192 in respect of a share issued by it in a particular month in the year, the corporation shall be deemed to have been liable to pay, on or before the last day of the month immediately following the particular month, a part or an instalment of tax for the year equal to that proportion of the amount, if any, by which its tax payable under this Part for the year exceeds its Part VII refund for the year that

(a) the total of all amounts so designated by it under section 192 in respect of shares issued by it in the particular month

is of

(b) the total of all amounts so designated by it under section 192 in respect of shares issued by it in the year.

(5) Evasion of tax — Where a corporation that is liable to pay tax under this Part in respect of a share issued by it wilfully, in any manner whatever, evades or attempts to evade payment of the tax and a purchaser of the share or, where the purchaser is a partnership, a member of the partnership knew or ought to have known, at the time the share was acquired, that the corporation would wilfully evade or attempt to evade the tax, for the purposes of section 127.2, the share shall be deemed not to have been acquired.

(6) Undue deferral — Where, in a transaction or as part of a series of transactions, a taxpayer acquires a share of a corporation that the taxpayer controls (within the meaning assigned by subsection 186(2)) and it may reasonably be considered that one of the main purposes of the acquisition was to reduce for a period interest on the taxpayer's liability for tax under this Part, the share shall, for the purposes of section 127.2 and this Part (other than this subsection), be deemed not to have been acquired by the taxpayer and not to have been issued by the corporation until the end of that period.

Related Provisions: 248(10) — Series of transactions.

(7) Avoidance of tax — Where, as part of a series of transactions or events one of the main purposes of which may reasonably be considered to be the avoidance of tax that might otherwise have been or become payable under Part II by any corporation, a particular corporation has issued a share in a taxation year in respect of which it has designated an amount under subsection 192(4), the particular corporation shall, on or before the last day of the second month after the end of the year, pay a tax under this Part for the year equal to 125% of the amount of tax under Part II that is or may be avoided by reason of the series of transactions or events.

(7.1) Tax on excess — Where a corporation has in a taxation year made an election under subsection 127.2(10) in respect of any share that was part of a distribution of shares referred to in that subsection and, at the end of that year or any subsequent taxation year,

(a) the total of the amounts designated under subsection 192(4) in respect of those shares as evidenced by the prescribed information returns required by regulation to be filed with the Minister by a taxpayer other than the corporation

exceeds

(b) the total of the amounts designated under subsection 192(4) in respect of those shares acquired by the taxpayer and in respect of which another taxpayer was required by regulation to provide the taxpayer with a prescribed information return relating to the designation under that subsection,

the taxpayer is liable to pay a tax under this Part for the taxation year at the end of which there is such an excess equal to the amount of the excess, which tax is to be paid to the Receiver General within 60 days after the end of the taxation year, and the excess shall be included in determining the total under paragraph (b) for any taxation year of the taxpayer subsequent to that year.

(8) Provisions applicable to Part — Sections 151, 152, 158 and 159, subsection 161(11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Definitions [s. 193]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "Minister" — 248(1); "person" — 127.2(9), 248(1); "prescribed" — 248(1); "series of transactions" — 248(10); "share", "taxpayer" — 248(1); "taxation year" — 249.

PART VIII — REFUNDABLE TAX ON CORPORATIONS IN RESPECT OF SCIENTIFIC RESEARCH AND EXPERIMENTAL DEVELOPMENT TAX CREDIT

194. (1) Corporation to pay tax — Every corporation shall pay a tax under this Part for a taxation year equal to 50% of the total of all amounts each of which is an amount designated under subsection (4) in respect of a share or debt obligation issued by it in the year or a right granted by it in the year.

Related Provisions: 227.1(1) — Liability of directors for unpaid Part VIII tax.

Selected Cases [subsec. 194(1)]: *Revelations Research Ltd. v. MNR*, [1992] 1 C.T.C. 2136 (TCC) (Development of "synthetic intelligence" hardware system not "scientific research and experimental development"); *Bechthold Resources Ltd. v. MNR*, [1986] 1 C.T.C. 195 (FCTD) (Assessment can be made before return required to be filed; liability does not depend on notice of assessment); *WTC Western Technologies Corp. v. MNR*, [1986] 1 C.T.C. 110 (FCTD) (Filing return is condition precedent before assessment under Part VIII could issue; assessment and requirement to pay quashed).

(2) Definition of "Part VIII refund" — In this Act, the "Part VIII refund" of a corporation for a taxation year means an amount equal to the lesser of

(a) the total of

(i) the amount, if any, by which the scientific research and experimental development tax credit of the corporation for the year exceeds the amount, if any, deducted by it under subsection 127.3(1) from its tax otherwise payable under Part I for the year, and

(ii) such amount as the corporation may claim, not exceeding 50% of the amount, if any, by which

(A) the total of all expenditures made by it after April 19, 1983 and in the year or the immediately preceding taxation year each of which is an expenditure (other than an expenditure prescribed for the purposes of the definition "qualified expenditure" in subsection 127(9)) claimed under paragraph 37(1)(a) or (b) to the extent that the expenditure is specified by the corporation in its return of income under Part I for the year

exceeds the total of

(B) the total of all expenditures each of which is an expenditure made by it in the immediately preceding taxation year, to the extent that the expenditure was included in determining the total under clause (A) and resulted in

(I) a refund to it under this Part for the immediately preceding taxation year,

(II) a deduction by it under subsection 37(1) for the immediately preceding taxation year, or

(III) a deduction by it under subsection 127(5) for any taxation year, and

(C) twice the portion of the total of amounts each of which is an amount deducted by it in computing its income for the year or the imme-

diately preceding taxation year under section 37.1 that can reasonably be considered to relate to expenditures that were included in determining the total under clause (A), and

(b) the refundable Part VIII tax on hand of the corporation at the end of the year.

Related Provisions: 37(1)(g) — Reduction of amount deductible; 87(2)(l) — Amalgamations — continuation; 248(1)"Part VIII refund" — Definition applies to entire Act.

(3) Definitions — In this Part,

"debt obligation" has the meaning assigned by paragraph (d) of the description of A in the formula found in the definition "scientific research and experimental development tax credit" in subsection 127.3(2);

Origin of subsec. 194(3)"debt obligation": R.S.C. 1985, c. 1 (5th Supp.). Formerly included in subpara. 127.3(2)(a)(iv) (now para. 127.3(2)"scientific research and experimental development tax credit"A(d)).

"refundable Part VIII tax on hand" of a corporation at the end of a taxation year means the amount, if any, by which

(a) the total of the taxes payable by it under this Part for the year and all preceding taxation years

exceeds

(b) the total of its Part VIII refunds for all preceding taxation years.

Related Provisions: 248(1)"refundable Part VIII tax on hand" — Definition applies to entire Act.

(4) Corporation may designate amount — Every taxable Canadian corporation may, by filing a prescribed form with the Minister at any time on or before the last day of the month immediately following a month in which it issued a share or debt obligation or granted a right under a scientific research and experimental development financing contract (other than a share or debt obligation issued or a right granted before October, 1983, or a share in respect of which the corporation has, on or before that day, designated an amount under subsection 192(4)) designate, for the purposes of this Part and Part I, an amount in respect of that share, debt obligation or right not exceeding the amount by which

(a) the amount of the consideration for which it was issued or granted, as the case may be,

exceeds

(b) in the case of a share, the amount of any assistance (other than an amount included in computing the scientific research and experimental development tax credit of a taxpayer in respect of that share) provided, or to be provided by a government, municipality or any other public authority in respect of, or for the acquisition of, that share.

Related Provisions: 127.3(9) — Election re first holder; 127.3(10) — Calculation of consideration; 195(2) — Corporation to make payment on account of tax; 195(3), (4) — Interest on amount in default; 195(7) — Avoidance of tax.

Selected Cases [subsec. 194(4)]: *Donat Flamand Inc. v. MNR*, [2001] 3 C.T.C. 130 (FCTD) (Opinion letter obtained on basis of fraud ineffective to establish qualified debenture even where investors unaware of misrepresentation); *Eta Performance Systems Corp. v. MNR*, [1993] 1 C.T.C. 2710 (TCC) (Scientific research does not include routine data collection or research in social sciences or humanities); *Groupmark Canada Ltd. v. Canada*, [1993] 1 C.T.C. 234 (FCTD) (Amounts paid to related company before and after SRTC note issued were "consideration" for note); *United Equities Ltd. v. MNR*, [1992] 2 C.T.C. 214 (FCTD) (Taxpayer eligible for scientific research tax credit despite late filing since requirements for remedying delay met).

Regulations: 226 (information return).

(4.1) Computing paid-up capital after designation — Where a corporation has designated an amount under subsection (4) in respect of shares issued at any time after May 23, 1985, in computing, at any particular time after that time, the paid-up capital in respect of the class of shares of the capital stock of the corporation that includes those shares

(a) there shall be deducted the amount, if any, by which

(i) the increase as a result of the issue of those shares in the paid-up capital in respect of all shares of that class, determined without reference to this subsection as it applies to those shares,

exceeds

(ii) the amount, if any, by which the total amount of consideration for which those shares were issued exceeds 50% of the amount designated by the corporation under subsection (4) in respect of those shares; and

(b) there shall be added an amount equal to the lesser of

(i) the amount, if any, by which

(A) the total of all amounts each of which is an amount deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of that class paid by the corporation after May 23, 1985 and before the particular time

exceeds

(B) the total that would be determined under clause (A) if this Act were read without reference to paragraph (a), and

(ii) the total of all amounts each of which is an amount required by paragraph (a) to be deducted in computing the paid-up capital in respect of that class of shares after May 23, 1985 and before the particular time.

Related Provisions: 127.3(6) — Deemed cost of designated share, debt obligation or right.

(4.2) Where amount may not be designated — Notwithstanding subsection (4), no amount may be designated by a corporation in respect of

(a) a share issued by the corporation after October 10, 1984, other than

(i) a qualifying share issued before May 23, 1985, or

(ii) a qualifying share issued after May 22, 1985 and before 1986

(A) under the terms of an agreement in writing entered into by the corporation before May 23, 1985, other than pursuant to an option to acquire the share if the option was not exercised before May 23, 1985, or

(B) as part of a lawful distribution to the public in accordance with a prospectus, preliminary prospectus or registration statement filed before May 24, 1985 with a public authority in Canada pursuant to and in accordance with the securities legislation of Canada or of any province and, where required by law, accepted for filing by that public authority;

(b) a share or debt obligation issued or a right granted by the corporation after October 10, 1984, other than a

share or debt obligation issued or a right granted before 1986

(i) under the terms of an agreement in writing entered into by the corporation before October 11, 1984, other than pursuant to an option to acquire the share, debt obligation or right if the option was not exercised before October 11, 1984, or

(ii) where arrangements, evidenced in writing, for the issue of the share or debt obligation or the granting of the right were substantially advanced before October 10, 1984; or

Selected Cases [subpara. 194(4.2)(b)(ii)]: *Mort (C.L.) v. Canada*, [1993] 1 C.T.C. 99 (FCTD) (Financing arrangements were "substantially advanced" when moratorium on SRTC program announced and qualified for grandfathering).

(c) a share or debt obligation issued, or a right granted, at any time after June 15, 1984, by a corporation that was an excluded corporation (within the meaning assigned by subsection 127.1(2)) at that time.

Selected Cases [subsec. 194(4.2)]: *Donat Flamand Inc. v. MNR*, [2001] 3 C.T.C. 130 (FCTD) (Opinion letter obtained on basis of fraud ineffective to establish qualified debenture even where investors unaware of misrepresentation); *First Fund Genesis Corporation v. Canada*, [1991] 2 C.T.C. 14 (FCTD) (Valid designation where purchase "substantially advanced" prior to statutory deadline).

(5) Presumption — For the purposes of this Act, the Part VIII refund of a corporation for a taxation year shall be deemed to be an amount paid on account of its tax under this Part for the year on the last day of the second month following the end of the year.

Selected Cases [subsec. 194(5)]: *Groupmark Canada Ltd. v. Canada*, [1993] 1 C.T.C. 234 (FCTD) (Amounts paid to related company before and after SRTC note issued were "consideration" for note).

(6) Definition of "scientific research and experimental development financing contract" — In this Part, "scientific research and experimental development financing contract" means a contract in writing pursuant to which an amount is paid by a person to a corporation as consideration for the granting by the corporation to that person of any right, either absolute or contingent, to receive income, other than interest or dividends.

(7) Late designation — Where a taxable Canadian corporation that issued a share or debt obligation or granted a right under a scientific research and experimental development financing contract does not designate an amount under subsection (4) in respect of the share, debt obligation or right on or before the day on or before which the designation was required by that subsection, the corporation shall be deemed to have made the designation on that day if

(a) the corporation has filed with the Minister a prescribed information return relating to the scientific research and experimental development tax credit in respect of the share, debt obligation or right within the time that it would have been so required to file the return had the designation been filed on that day, and

(b) within 3 years after that day, the corporation has

(i) designated an amount in respect of the share, debt obligation or right by filing a prescribed form with the Minister, and

(ii) paid to the Receiver General, at the time the prescribed form referred to in subparagraph (i) is filed, an amount that is a reasonable estimate of the penalty payable by the corporation for the late designation in respect of the share, debt obligation or right,

except that, where the Minister has mailed a notice to the corporation that a designation has not been made in respect of the share, debt obligation or right under subsection (4), the designation and payment described in paragraph (b) must be made by the corporation on or before the day that is 90 days after the day of the mailing.

Selected Cases [subsec. 194(7)]: *Spiegel v. Canada*, [1997] 1 C.T.C. 2587 (TCC) (Curative provisions to be given liberal construction); *United Equities Ltd. v. MNR*, [1992] 2 C.T.C. 214 (FCTD) (Taxpayer eligible for scientific research tax credit despite late filing since requirements for remedying delay met).

Regulations: 226(2) (prescribed information return).

Forms: T661: Claim for SR&ED in Canada.

(8) Penalty for late designation — Where, pursuant to subsection (7), a corporation made a late designation in respect of a share or debt obligation issued, or a right granted, in a month, the corporation shall pay, for each month or part of a month that elapsed during the period beginning on the last day on or before which an amount could have been designated by the corporation under subsection (4) in respect of the share, debt obligation or right and ending on the day that the late designation is made, a penalty for the late designation in respect of the share, debt obligation or right in an amount equal to 1% of the amount designated in respect of the share, debt obligation or right, except that the maximum penalty payable under this subsection by the corporation for a month shall not exceed $500.

Selected Cases [subsec. 194(8)]: *United Equities Ltd. v. MNR*, [1992] 2 C.T.C. 214 (FCTD) (Taxpayer eligible for scientific research tax credit despite late filing since requirements for remedying delay met).

(9) Restriction — Where at any time a corporation has designated an amount under subsection (4) in respect of a share, debt obligation or right, no amount may be designated by the corporation at any subsequent time in respect of that share, debt obligation or right.

Definitions [s. 194]: "amount" — 248(1); "Canada" — 255; "class of shares" — 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "debt obligation" — 194(3); "dividend", "Minister" — 248(1); "paid-up capital" — 89(1), 248(1); "person" — 127.3(7), 248(1); "prescribed" — 248(1); "province" — *Interpretation Act* 35(1); "qualifying share" — 192(6), 248(1); "refundable Part VIII tax on hand" — 194(3); "scientific research and experimental development financing contract" — 194(6); "share" — 248(1); "taxable Canadian corporation" — 89(1), 248(1); "taxation year" — 249; "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [s. 194]: IT-151R5: Scientific research and experimental development expenditures.

195. (1) Corporation to file return — Every corporation that is liable to pay tax under this Part for a taxation year shall, on or before the day on or before which it is required to file its return of income under Part I for the year, file with the Minister a return for the year under this Part in prescribed form.

Selected Cases [subsec. 195(1)]: *WTC Western Technologies Corp. v. MNR*, [1986] 1 C.T.C. 110 (FCTD) (Filing return is condition precedent before assessment under Part VIII could issue; assessment and requirement to pay quashed).

(2) Corporation to make payment on account of tax — Where, in a particular month in a taxation year, a corporation issues a share or debt obligation, or grants a right, in respect of which it designates an amount under section 194, the corporation shall, on or before the last day of the month following the particular month, pay to the Receiver General on account of its tax payable under this Part for the year an amount equal to 50% of the total of all amounts so designated.

Selected Cases [subsec. 195(2)]: *Eta Performance Systems Corp. v. MNR*, [1993] 1 C.T.C. 2710 (TCC) (Scientific research does not include routine data collection or research in social sciences or humanities); *GR Block Research & Development (1981) Corp. v. MNR*, [1987] 1 C.T.C. 253 (FCTD) (Assessments must be appealed through statutory procedure; liability to pay tax arises before assessment has been made); *Optical Recording Corp. v. R.*, [1986] 2 C.T.C. 454 (FCTD) (Order quashing assessment and seizure conditional on result of Crown's appeal).

(3) Interest — Where a corporation is liable to pay tax under this Part and has failed to pay all or any part or instalment thereof on or before the day on or before which the tax or instalment, as the case may be, was required to be paid, it shall pay to the Receiver General interest at the prescribed rate on the amount that it failed to pay computed from the day on or before which the amount was required to be paid to the day of payment.

Related Provisions: 248(11) — Interest compounded daily.

Regulations: 4301(a) (prescribed rate of interest).

(4) Idem — For the purposes of computing interest payable by a corporation under subsection (3) for any month or months in the period commencing on the first day of a taxation year and ending two months after the last day of the year in which period the corporation has designated an amount under section 194 in respect of a share or debt obligation issued, or right granted, by it in a particular month in the year, the corporation shall be deemed to have been liable to pay, on or before the last day of the month immediately following the particular month, a part or an instalment of tax for the year equal to that proportion of the amount, if any, by which its tax payable under this Part for the year exceeds its Part VIII refund for the year that

(a) the total of all amounts so designated by it under section 194 in respect of shares or debt obligations issued, or rights granted, by it in the particular month

is of

(b) the total of all amounts so designated by it under section 194 in respect of shares or debt obligations issued, or rights granted, by it in the year.

(5) Evasion of tax — Where a corporation that is liable to pay tax under this Part in respect of a share or debt obligation issued or a right granted by it wilfully, in any manner whatever, evades or attempts to evade payment of the tax and a purchaser of the share, debt obligation or right or, where the purchaser is a partnership, a member of the partnership knew or ought to have known, at the time the share, debt obligation or right was acquired, that the corporation would wilfully evade or attempt to evade the tax, for the purposes of section 127.3, the share, debt obligation or right shall be deemed not to have been acquired.

(6) Undue deferral — Where, in a transaction or as part of a series of transactions, a taxpayer acquires a share or debt obligation of a corporation or a right granted by a corporation and the corporation is controlled (within the meaning assigned by subsection 186(2)) by the taxpayer and it may reasonably be considered that one of the main purposes of the acquisition was to reduce for a period interest on the taxpayer's liability for tax under this Part, the share, debt obligation or right shall, for the purposes of this Part (other than this subsection) and section 127.3, be deemed not to have been acquired by the taxpayer and not to have been issued or granted, as the case may be, by the corporation until the end of that period.

(7) Avoidance of tax — Where, as part of a series of transactions or events one of the main purposes of which may reasonably be considered to be the avoidance of tax that might otherwise have been or become payable under Part II of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, by any corporation, a particular corporation has issued a share or debt obligation or granted a right in a taxation year in respect of which it has designated an amount under subsection 194(4), the particular corporation shall, on or before the last day of the second month after the end of the year, pay a tax under this Part for the year equal to 125% of the amount of tax under Part II of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, that is or may be avoided by reason of the series of transactions or events.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

(7.1) Tax on excess — Where a corporation has in a taxation year made an election under subsection 127.3(9) in respect of any share or debt obligation that was part of a distribution of shares or debt obligations referred to in that subsection and, at the end of that year or any subsequent taxation year,

(a) the total of the amounts designated under subsection 194(4) in respect of those shares or debt obligations as evidenced by the prescribed information returns required by regulation to be filed with the Minister by a taxpayer other than the corporation

exceeds

(b) the total of the amounts designated under subsection 194(4) in respect of those shares or debt obligations acquired by the taxpayer and in respect of which another taxpayer was required by regulation to provide the taxpayer with a prescribed information return relating to the designation under that subsection,

the taxpayer is liable to pay a tax under this Part, for the taxation year at the end of which there is such an excess, equal to 50% of the excess, which tax is to be paid to the Receiver General within 60 days after the end of the taxation year, and the excess shall be included in determining the total under paragraph (b) for any taxation year of the taxpayer subsequent to that year.

(8) Provisions applicable to Part — Sections 151, 152, 158 and 159, subsection 161(11), sections 162 to 167 (except subsections 164(1.1) to (1.3)) and Division J of Part I are applicable to this Part with such modifications as the circumstances require and, for greater certainty, the Minister may assess, before the end of a taxation year, an amount payable under this Part for the year.

Definitions [s. 195]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "Minister" — 248(1); "person" — 127.3(7), 248(1); "prescribed", "series of transactions or events", "share" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

PART IX — TAX ON DEDUCTION UNDER SECTION 66.5

196. (1) Tax in respect of cumulative offset account — Every corporation shall pay a tax under this Part for each taxation year equal to 30% of the amount deducted under subsection 66.5(1) in computing its income for the year.

Related Provisions: 18(1)(t) — Tax is non-deductible.

(2) Return — Every corporation that is liable to pay tax under this Part for a taxation year shall file with the Min-

ister, not later than the day on or before which it is required under section 150 to file a return of its income for the year under Part I, a return for the year under this Part in prescribed form containing an estimate of the amount of tax payable by it under this Part for the year.

Related Provisions: 150.1(5) — Electronic filing.

Forms: T2099: Part IX tax return.

(3) Instalments — Where a corporation is liable to pay tax for a taxation year under this Part, the corporation shall pay in respect of the year, to the Receiver General

(a) on or before the last day of each month in the year, an amount equal to 1/12 of the amount of tax payable by it under this Part for the year; and

(b) the remainder, if any, of the tax payable by it under this Part for the year, on or before its balance-due day for the year.

History: Para. 196(3)(b) amended by 2003, c. 15, s. 123, applicable to taxation years that begin after June 2003. Para. 196(3)(b) formerly read:

(b) the remainder, if any, of the tax payable by it under this Part for the year, on or before the end of the second month following the end of the year.

(4) Provisions applicable to Part — Sections 152, 158 and 159, subsections 161(1) and (2), sections 162 to 167 and Division J of Part I are applicable to this Part, with such modifications as the circumstances require.

Definitions [Part IX]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "Minister", "prescribed" — 248(1); "tax payable" — 248(2); "taxation year" — 249.

Part X — Taxes on Deferred Profit Sharing Plans and Revoked Plans

198. (1) Tax on non-qualified investments and use of assets as security — Every trust governed by a deferred profit sharing plan or revoked plan that

(a) acquires a non-qualified investment, or

(b) uses or permits to be used any property of the trust as security for a loan,

shall pay a tax equal to the fair market value of

(c) the non-qualified investment at the time it was acquired by the trust, or

(d) the property used as security at the time it commenced to be so used.

Related Provisions: 147(14) — DPSP — revocation of registration; 198(4), (5) — Refund of tax on disposition of investment or release of security; 199–204 — Taxes on deferred profit sharing plans; 207.1(2) — Tax payable while non-qualifying investment held by DPSP; 259(1) — Proportional holdings in trust property.

(2) Payment of tax — A trustee of a trust liable to pay tax under subsection (1) shall remit the amount of the tax to the Receiver General within 10 days of the day on which the non-qualified investment is acquired or the property is used as security for a loan, as the case may be.

(3) Trustee liable for tax — Where a trustee of a trust liable to pay tax under subsection (1) does not remit to the Receiver General the amount of the tax within the time specified in subsection (2), the trustee is personally liable to pay on behalf of the trust the full amount of the tax and is entitled to recover from the trust any amount paid by the trustee as tax under this section.

(4) Refund of tax on disposition of non-qualified investment — Where a trust disposes of a property that, when acquired, was a non-qualified investment, the trust is, on application in accordance with section 202, entitled to a refund of an amount equal to the lesser of

(a) the amount of the tax imposed under this section as a result of the acquisition of the property, and

(b) the proceeds of disposition of the property.

Related Provisions: 198(6) — Special rules re life insurance policies; 200 — Distribution deemed disposition; 202(4) — Application to certain provisions of Part I; 203 — Application to other taxes.

(5) Refund of tax on recovery of property given as security — Where a loan, for which a trust has used or permitted to be used trust property as security, ceases to be extant, the trust is, on application in accordance with section 202, entitled to a refund of an amount equal to the amount remaining, if any, when

(a) the net loss (exclusive of payments by the trust as or on account of interest) sustained by the trust in consequence of its using or permitting to be used the property as security for the loan and not as a result of a change in the fair market value of the property

is deducted from

(b) the tax imposed under this section in consequence of the trust's using or permitting to be used the property as security for the loan.

Related Provisions: 202(4) — Application of certain provisions of Part I; 203 — Application to other taxes.

(6) Special rules relating to life insurance policies — For the purposes of this section,

(a) the acquisition of an interest in or the payment of an amount under a life insurance policy shall be deemed not to be the acquisition of a non-qualified investment, and

(b) the disposition of an interest in a life insurance policy shall be deemed not to be the disposition of a non-qualified investment,

except that where a trust governed by a deferred profit sharing plan or revoked plan makes a payment under or to acquire an interest in a life insurance policy, other than a life insurance policy under which

(c) the trust is, or by virtue of the payment about to become, the only person entitled to any rights or benefits under the policy (other than the rights or benefits of the insurer),

(d) the cash surrender value of the policy (exclusive of accumulated dividends) is or will be, at or before the end of the year in which the insured person attains 69 years of age, if all premiums under the policy are paid, not less than the maximum total amount (exclusive of accumulated dividends) payable by the insurer under the policy, and

(e) the total of the premiums payable in any year under the policy is not greater than the total of the amounts that, if the annual premiums had been payable in monthly instalments, would have been payable as such instalments in the 12 months commencing with the date the policy was issued,

the making of the payment shall be deemed to be the acquisition of a non-qualified investment at a cost equal to the amount of the payment.

Related Provisions: 139.1(13) — No application to conversion benefit on demutualization of insurer; 146(11) — RRSP — life insurance policies.

History: Para. 198(6)(d) amended by 1997, c. 25, s. 54, applicable after 1996, except that

(a) it does not apply to a policy held by a trust where the trust acquired the policy before 1997;

(b) it does not apply to a policy where the insured person attained 70 years of age before 1997; and

(c) in applying para. (d) to a policy where the insured person attained 69 years of age in 1996, the reference in that para. to "69 years of age" shall be read as "70 years of age".

Para. (d) formerly read:

(d) the cash surrender value of the policy (exclusive of accumulated dividends) is or will be, at a time before the 71st anniversary of the birth of the insured person, if all premiums under the policy are paid, not less than the maximum total amount (exclusive of accumulated dividends) payable by the insurer under the policy, and

Interpretation Bulletins: IT-408R: Life insurance policies as investments of RRSPs and DPSPs (archived).

(6.1) Idem — A life insurance policy giving an option to the policyholder to receive annuity payments that otherwise complies with paragraph (6)(d) shall be deemed,

(a) where the option has not been exercised, to comply with that paragraph; and

(b) where at a particular time the option is exercised, to have been disposed of at that time for an amount equal to the cash surrender value of the policy immediately before that time, and an annuity contract shall be deemed to have been acquired at that time at a cost equal to that amount.

Interpretation Bulletins: IT-408R: Life insurance policies as investments of RRSPs and DPSPs (archived).

(7) Idem — Notwithstanding subsection (6), where the total of all payments made in a year by a trust governed by a deferred profit sharing plan or revoked plan under or to acquire interests in life insurance policies in respect of which the trust is the only person entitled to any rights or benefits (other than the rights or benefits of the insurer) does not exceed an amount equal to 25% of the total of all amounts paid by employers to the trust in the year under the plan for the benefit of beneficiaries thereunder, the making of the payments under or to acquire interests in such policies shall be deemed, for the purposes of this section, not to be the acquisition of non-qualified investments.

Interpretation Bulletins: IT-408R: Life insurance policies as investments of RRSPs and DPSPs (archived).

(8) Idem — Where a trust surrenders, cancels, assigns or otherwise disposes of its interest in a life insurance policy,

(a) the trust shall be deemed, for the purposes of subsection (4), to have disposed of each non-qualified investment that, by virtue of payments under the policy, it was deemed by subsection (6) to have acquired; and

(b) the proceeds of the disposition shall be deemed to be the amount, if any, by which

(i) the amount received by the trust in consequence of the surrender, cancellation, assignment or other disposition of its interest in the policy

exceeds the total of

(ii) each amount paid by the trust under or to acquire an interest in the policy, the payment of which is deemed by this section not to be the acquisition of a non-qualified investment, and

(iii) the cash surrender value on December 21, 1966 of the interest of the trust in the policy on that date.

Related Provisions: 146(11) — RRSP — life insurance policies; 202(5) — Interest; 204 — "Qualified investment".

Definitions [s. 198]: "amount", "annuity" — 248(1); "deferred profit sharing plan" — 147(1), 248(1); "disposition" — 198(6)(b), 200; "dividend", "employer", "insurer" — 248(1); "life insurance policy" — 138(12), 248(1); "non-qualified investment" — 204; "person", "property" — 248(1); "revoked plan" — 204; "trust" — 104(1), 248(1), (3).

Information Circulars [s. 198]: 77-1R4: Deferred profit sharing plans.

199. (1) Tax on initial non-qualified investments not disposed of — Every trust governed by a deferred profit sharing plan or revoked plan shall pay a tax

(a) for 1967, equal to the amount, if any, by which 20% of the initial base of the trust exceeds the proceeds of disposition of its initial non-qualified investments disposed of after December 21, 1966 and before 1968;

(b) for 1968, equal to the amount, if any, by which 40% of the initial base of the trust exceeds the total of

(i) the proceeds of disposition of its initial non-qualified investments disposed of after December 21, 1966 and before 1969, and

(ii) the tax payable by the trust determined under paragraph (a);

(c) for 1969, equal to the amount, if any, by which 60% of the initial base of the trust exceeds the total of

(i) the proceeds of disposition of its initial non-qualified investments disposed of after December 21, 1966 and before 1970, and

(ii) the tax payable by the trust determined under paragraphs (a) and (b); and

(d) for 1970, equal to the amount, if any, by which 100% of the initial base of the trust exceeds the total of

(i) the proceeds of disposition of its initial non-qualified investments disposed of after December 21, 1966 and before 1971, and

(ii) the tax payable by the trust determined under paragraphs (a), (b) and (c).

Related Provisions: 201 — Tax on forfeitures.

(2) Refund — Where at the end of a year,

(a) the total of all taxes paid by a trust under subsection (1)

exceeds

(b) the total of

(i) all refunds made to the trust under this subsection, and

(ii) the amount, if any, by which the initial base of the trust exceeds the proceeds of disposition of its initial non-qualified investments disposed of after December 21, 1966 and before the end of the year,

the trust is, on application in accordance with section 202, entitled to a refund equal to the amount by which the total described in paragraph (a) exceeds the total described in paragraph (b).

Related Provisions: 201 — Tax on forfeitures; 202(2) — Returns and payment of estimated tax; 202(4) — Application of certain provisions of Part I; 203 — Application to other taxes.

Definitions [s. 199]: "amount" — 248(1); "deferred profit sharing plan" — 147(1), 248(1); "disposition" — 198(6)(b), 200; "initial base" — 204; "initial non-qualified investment" — 204; "revoked plan" — 204; "trust" — 104(1), 248(1), (3).

Information Circulars [s. 199]: 77-1R4: Deferred profit sharing plans.

200. Distribution deemed disposition — For the purposes of this Part, a distribution by a trust of a non-qualified investment to a beneficiary of the trust shall be deemed to be a disposition of that non-qualified investment and the proceeds of disposition of that non-qualified investment shall be deemed to be its fair market value at the time of the distribution.

Definitions [s. 200]: "non-qualified investment" — 204; "trust" — 104(1), 248(1), (3).

201. Tax where inadequate consideration on purchase or sale — Every trust governed by a deferred profit sharing plan or a revoked plan shall, for each calendar year after 1990, pay a tax equal to 50% of the total of all amounts each of which is, by reason of subsection 147(18), an amount taxable under this section for the year.

Definitions [s. 201]: "amount" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "deferred profit sharing plan" — 147(1), 248(1); "revoked plan" — 204; "trust" — 104(1), 248(1), (3).

Information Circulars: 77-1R4: Deferred profit sharing plans.

202. (1) Returns and payment of estimated tax — Within 90 days from the end of each year after 1965, a trustee of every trust governed by a deferred profit sharing plan or revoked plan shall

(a) file with the Minister a return for the year under this Part in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax payable by the trust under this Part for the year;

(c) estimate in the return the amount of any refund to which the trust is entitled under this Part for the year; and

(d) pay to the Receiver General the unpaid balance of the trust's tax for the year minus any refund to which it is entitled under this Part, or apply in the return for any amount owing to it.

Related Provisions: 150.1(5) — Electronic filing.

Forms: T3D: Income tax return for DPSP or revoked DPSP.

(2) Consideration of application for refund — Where a trustee of a trust has made application for an amount owing to it pursuant to subsection (1), the Minister shall

(a) consider the application;

(b) determine the amount of any refund; and

(c) send to the trustee a notice of refund and any amount owing to the trust, or a notice that no refund is payable.

Related Provisions: 198(4) — Refund of tax on disposition of non-qualified investment; 198(5) — Refund of tax on recovery of property given as security.

(3) Provisions applicable to Part — Subsection 150(2), sections 152 and 158, subsections 161(1) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require and, for the purposes of the application of those provisions to this Part, a notice of refund under this section shall be deemed to be a notice of assessment.

(4) Provisions applicable to refunds — Subsections 164(3) to (4) are applicable, with such modifications as the circumstances require, to refunds of tax under subsection 198(4) or (5) or 199(2).

Related Provisions: 198 — Tax on non-qualified investments and use of assets as security; 199 — Tax on initial non-qualified investments not disposed of.

(5) Interest — In addition to the interest payable under subsection 161(1), where a taxpayer is required by section 198 to pay a tax and has failed to pay all or any part thereof on or before the day on or before which the tax was required to be paid, the taxpayer shall pay to the Receiver General interest at the prescribed rate on the amount that the taxpayer failed to pay computed from the day on or before which the amount was required to be paid to the day of payment or to the beginning of the period in respect of which the taxpayer is required by subsection 161(1) to pay interest thereon, whichever is earlier.

Related Provisions: 202(6) — Deemed payment of tax; 221.1 — Application of interest where legislation retroactive; 248(11) — Interest compounded daily.

Regulations: 4301(a) (prescribed rate of interest).

I.T. Application Rules: 62(2) (subsec. 202(5) applies to interest payable in respect of any period after December 23, 1971).

(6) Deemed payment of tax — For the purposes of subsections 161(1) and 202(5), where a trust is liable to pay tax under this Part on the acquisition by it of a non-qualified investment or on the use of its property as security for a loan, it shall, except to the extent that the tax has previously been paid, be deemed to have paid tax on the date on which the property is disposed of or on which the loan ceases to be extant, as the case may be, in an amount equal to the refund referred to in subsection 198(4) in respect of that property or subsection 198(5) in respect of the loan, as the case may be.

Related Provisions: 161(1) — Interest; 198(4) — Refund of tax on disposition of non-qualified investment; 198(5) — Refund of tax on recovery of property given as security.

Definitions [s. 202]: "amount", "assessment" — 248(1); "deferred profit sharing plan" — 147(1), 248(1); "Minister" — 248(1); "non-qualifying investment" — 204; "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "property" — 248(1); "revoked plan" — 204; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

203. Application to other taxes — Instead of making a refund to which a trust is entitled under subsection 198(4) or (5) or 199(2), the Minister may, where the trust is liable or about to become liable to make another payment under this Act, apply the amount of the refund or any part thereof to that other liability and notify a trustee of the trust of that action.

Related Provisions: 164(2) — Set-off of Part I refund; 222(1)"action" — Ten-year limitation period applies to s. 203; 224.1 — Recovery by set-off.

Definitions [s. 203]: "amount", "Minister" — 248(1); "trust" — 104(1), 248(1), (3).

204. Definitions — In this Part,

"equity share" means

(a) a share, other than an excluded share or a non-participating share, the owner of which has, as owner thereof, a right

(i) to a dividend, and

(ii) to a part of the surplus of the corporation after repayment of capital and payment of dividend arrears on the redemption of the share, a reduction of the capital of the corporation or the winding-up of the corporation,

at least as great, in any event, as the right of the owner of any other share, other than a non-participating share, of the corporation, when the magnitude of the right in each case is expressed as a rate based on the paid-up capital value of the share to which the right relates, or

(b) a share, other than an excluded share or a non-participating share, the owner of which has, as owner thereof, a right

(i) to a dividend, after a dividend at a rate not in excess of 12% per annum of the paid-up capital value of each share has been paid to the owners of shares of a class other than the class to which that share belongs, and

(ii) to a part of the surplus of the corporation after repayment of capital and payment of dividend arrears on the redemption of the share, a reduction of the capital of the corporation or the winding-up of the corporation, after a payment of a part of the surplus at a rate not in excess of 10% of the paid-up capital value of each share has been made to the owners of shares of a class other than the class to which that share belongs,

at least as great, in any event, as the right of the owner of any other share, other than a non-participating share, of the corporation, when the magnitude of the right in each case is expressed as a rate based on the paid-up capital value of the share to which the right relates;

"excluded share" means each share of the capital stock of a private corporation where

(a) the paid-up capital of the corporation that is represented by all its issued and outstanding shares that would, but for this definition, be equity shares is less than 50% of the paid-up capital of the corporation that is represented by all its issued and outstanding shares other than non-participating shares, or

(b) a non-participating share of the corporation is issued and outstanding and the owner of which has, as owner thereof, a right to a dividend

(i) at a fixed annual rate in excess of 12%, or

(ii) at an annual rate not in excess of a fixed maximum annual rate, if the fixed maximum annual rate is in excess of 12%,

when the right to the dividend is expressed as a rate based on the paid-up capital value of the share to which the right relates;

"initial base" of a trust means the total of the values of all initial non-qualified investments held by the trust on December 21, 1966 when each such investment is valued at the lower of

(a) its cost to the trust, and

(b) its fair market value on December 21, 1966;

"initial non-qualified investment" of a trust means an investment held by the trust on December 21, 1966 that was, on that date, a non-qualified investment but does not include

(a) any interest in a life insurance policy, or

(b) an equity share that would be a qualified investment if the date of acquisition of the share were December 21, 1966;

"non-participating share" means

(a) in the case of a private corporation, a share the owner of which is not entitled to receive, as owner thereof, any dividend, other than a dividend, whether cumulative or not,

(i) at a fixed annual rate or amount, or

(ii) at an annual rate or amount not in excess of a fixed annual rate or amount, and

(b) in the case of a corporation other than a private corporation, any share other than a common share;

"non-qualified investment" means property that is not a qualified investment for a trust governed by a deferred profit sharing plan or revoked plan within the meaning of the definition "qualified investment" in this subsection;

Information Circulars: 77-1R4: Deferred profit sharing plans.

"paid-up capital value" of a share means the amount determined by the formula

$$\frac{A}{B}$$

where

A is the paid-up capital of the corporation that is represented by the shares of the class to which that share belongs, and

B is the number of shares of that class that are in fact issued and outstanding;

"qualified investment" for a trust governed by a deferred profit sharing plan or revoked plan means

(a) money (other than money the fair market value of which exceeds its stated value as legal tender in the country of issuance or money that is held for its numismatic value) and deposits (within the meaning assigned by the *Canada Deposit Insurance Corporation Act* or with a branch in Canada of a bank) of such money standing to the credit of the trust,

(b) bonds, debentures, notes, mortgages, hypothecary claims or similar obligations described in clause 212(1)(b)(ii)(C), whether issued before, on or after April 15, 1966,

(c) bonds, debentures, notes or similar obligations (other than those described in paragraph 147(2)(c))

(i) issued by a corporation the shares of which are listed on a prescribed stock exchange in Canada, or

(ii) issued by an authorized foreign bank and payable at a branch in Canada of the bank,

(d) shares listed on a prescribed stock exchange in Canada,

(e) equity shares of a corporation by which, before the date of acquisition by the trust of the shares, payments have been made in trust to a trustee under the plan for the benefit of beneficiaries thereunder, if the shares are of a class in respect of which

(i) there is no restriction on their transferability, and

(ii) in each of 4 taxation years of the corporation in the period of the corporation's 5 consecutive taxation years that ended less than 12 months before the date of acquisition of the shares by the trust,

and in the corporation's last taxation year in that period, the corporation

(A) paid a dividend on each share of the class of an amount not less than 4% of the cost per share of the shares to the trust, or

(B) had earnings attributable to the shares of the class of an amount not less than the amount obtained when 4% of the cost per share to the trust of the shares is multiplied by the total number of shares of the class that were outstanding immediately after the acquisition,

(f) guaranteed investment certificates issued by a trust company incorporated under the laws of Canada or of a province,

(g) investment contracts described in subparagraph (b)(ii) of the definition "retirement savings plan" in subsection 146(1) and issued by a corporation approved by the Governor in Council for the purposes of that subparagraph,

(h) shares listed on a prescribed stock exchange in a country other than Canada, and

(i) such other investments as may be prescribed by regulations of the Governor in Council made on the recommendation of the Minister of Finance;

Related Provisions: 87(10) — New share issued on amalgamation of public corporation deemed to be listed on prescribed stock exchange; 132.2(1)(k) [to be repealed], 132.2(3)(h) [draft] — Where share ceases to be qualified investment due to mutual fund reorganization; 146(1)"qualified investment"(a) — Certain investments in s. 204 are qualified investments for RRSPs; 146.1(1)"qualified investment"(a) — Certain investments in s. 204 are qualified investments for RESPs; 146.3(1)"qualified investment"(a) — Certain investments in s. 204 are qualified investments for RRIFs; 248(1)"qualifying environmental trust"(e) — Trust must acquire only certain qualified investments.

Regulations: 221 (information return by issuer of qualified investment); 3200, 3201 (prescribed stock exchanges; but see also ITA 87(10)); 4900(1)–(3), (7), (11), 4901(2) (investments prescribed as qualified investments).

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs.

Information Circulars: 77-1R4: Deferred profit sharing plans.

Forms: T3F: Investments prescribed to be qualified or not to be foreign property information return.

"revoked plan" means a deferred profit sharing plan the registration of which has been revoked by the Minister pursuant to subsection 147(14) or (14.1).

History: Paras. (a) and (c) of the definition "qualified investment" in s. 204 amended by 2001, c. 17, s. 168, applicable after June 27, 1999 except that, before 2003, para. (a) shall be read as follows:

(a) money (other than money the fair market value of which exceeds its stated value as legal tender in the country of issuance or money that is held for its numismatic value) and deposits (within the meaning assigned by the *Canada Deposit Insurance Corporation Act* or with a bank listed in Schedule I or II to the *Bank Act* or with a branch in Canada of an authorized foreign bank) of such money standing to the credit of the trust,

Paras. (a) and (c) formerly read:

(a) money that is legal tender in Canada, other than money the fair market value of which exceeds its stated value as legal tender, and deposits (within the meaning assigned by the *Canada Deposit Insurance Corporation Act* or with a bank) of such money standing to the credit of the trust,

. . . . .

(c) bonds, debentures, notes or similar obligations of a corporation the shares of which are listed on a prescribed stock exchange in Canada, other than those described in paragraph 147(2)(c),

Para. (b) of the definition "qualified investment" in s. 204 amended by the said c. 17, s. 223, to add ", hypothecary claims", in force June 14, 2001.

Definitions [s. 204]: "amount", "authorized foreign bank" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "common share" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan" — 147(1), 248(1); "dividend" — 248(1); "equity share", "excluded share", "initial non-qualified investment" — 204; "investment corporation" — 130(3), 248(1); "life insurance policy" — 138(12), 248(1); "listed" — 87(10) "Minister" — 248(1); "non-participating share", "non-qualified investment", "paid-up capital value" — 204; "prescribed" — 248(1); "prescribed stock exchange in a country other than Canada" — Reg. 3201; "prescribed stock exchange in Canada" — Reg. 3200; "private corporation" — 89(1), 248(1); "property" — 248(1); "province" — *Interpretation Act* 35(1); "qualified investment" — 204; "regulation" — 248(1); "revoked plan" — 204; "share" — 248(1); "taxation year" — 249; "trust" — 104(1), 248(1), (3).

PART X.1 — TAX IN RESPECT OF OVER-CONTRIBUTIONS TO DEFERRED INCOME PLANS

204.1 (1) Tax payable by individuals [before 1991] — Where, at the end of any month after May, 1976, an individual has an excess amount for a year in respect of registered retirement savings plans, the individual shall, in respect of that month, pay a tax under this Part equal to 1% of that portion of the total of all those excess amounts that has not been paid by those plans to the individual before the end of that month.

Related Provisions: 18(1)(t) — Tax is non-deductible; 146(2)(c.1) — RRSP must permit payment to taxpayer to reduce overcontributions; 204.1(2.1) — Tax payable by individuals — contributions after 1990; 204.3 — Return and payment of tax.

Remission Orders: *Certain Taxpayers Remission Order, 1998-2*, P.C. 1998-2092, s. 2 (judges in Quebec who made contributions in 1989 or 1990).

Advance Tax Rulings: ATR-24: RRSP damages suit against investment management companies.

(2) Amount deemed repaid — For the purposes of subsection (1), where an amount in respect of a plan has been included in computing an individual's income pursuant to paragraph 146(12)(b), that amount shall be deemed to have been paid to the individual by the plan at the time referred to in that paragraph.

(2.1) Tax payable by individuals — contributions after 1990 [RRSP overcontributions] — Where, at the end of any month after December, 1990, an individual has a cumulative excess amount in respect of registered retirement savings plans, the individual shall, in respect of that month, pay a tax under this Part equal to 1% of that cumulative excess amount.

Related Provisions: 18(1)(t) — Tax is non-deductible; 146(2)(c.1) — RRSP must permit payment to taxpayer to reduce overcontributions; 204.1(4) — Waiver of tax by CCRA; 204.3 — Return and payment of tax.

Advance Tax Rulings: ATR-24: RRSP damages suit against investment management companies.

Forms: T1-OVP: Individual tax return for RRSP excess contributions; T1-OVP-S: Simplified individual tax return for RRSP excess contributions; T4040: RRSPs and other registered plans for retirement [guide].

(3) Tax payable by deferred profit sharing plan — Where, at the end of any month after May, 1976, a trust governed by a deferred profit sharing plan has an excess amount, the trust shall, in respect of that month, pay a tax under this Part equal to 1% of the excess amount.

Related Provisions: 204.2(4) — Definition of "excess amount" for a DPSP.

(4) Waiver of tax — Where an individual would, but for this subsection, be required to pay a tax under subsection

(1) or (2.1) in respect of a month and the individual establishes to the satisfaction of the Minister that

(a) the excess amount or cumulative excess amount on which the tax is based arose as a consequence of reasonable error, and

(b) reasonable steps are being taken to eliminate the excess,

the Minister may waive the tax.

Definitions [s. 204.1]: "amount" — 248(1); "cumulative excess amount" — 204.2(1.1); "deferred profit sharing plan" — 147(1), 248(1); "excess amount" — 204.2(1), (4); "individual", "Minister" — 248(1); "registered retirement savings plan" — 146(1), 248(1); "trust" — 104(1), 248(1), (3).

Interpretation Bulletins [s. 204.1]: IT-124R6: Contributions to registered retirement savings plans.

204.2 (1) Definition of "excess amount for a year in respect of registered retirement savings plans" [before 1991] — "Excess amount for a year in respect of registered retirement savings plans" of an individual at a particular time means,

(a) where the excess amount is for a year after 1990, nil; and

(b) where the excess amount is for a year before 1991, the amount, if any, by which the total of

(i) all amounts paid by the individual to such plans under which the individual or the individual's spouse or common-law partner is the annuitant, other than amounts

(A) to which paragraph 60(j), (j.01), (j.1), (j.2) or (l) applies or would, if the individual were resident in Canada throughout the year, apply, or

(B) transferred to the plan in accordance with any of subsections 146(16), 147(19) and 147.3(1) and (4) to (7), and

(ii) all gifts made to such a plan under which the individual is the annuitant, other than gifts made thereto by the individual's spouse or common-law partner,

in the year and before the particular time, exceeds the total of

(iii) all amounts that may be deducted in computing the individual's income for the immediately preceding year in respect of those payments, and

(iv) the greater of $5,500 and the amount that may be deducted in computing the individual's income for the year in respect of those payments.

Related Provisions: 128(2)(d), (d.2) — Where individual bankrupt; 204.1(1) — Tax payable by individuals; 204.2(3) — When retirement savings plan deemed to be a registered plan.

History: Subsec. 204.2(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subsec. 204.2(1) substituted by 1990, c. 35, subsec. 22(1), applicable with respect to payments made to RRSPs after 1987, except that in its application with respect to such payments made in 1988,

(a) cl. 204.2(1)(b)(i)(A) shall be read without reference to "(j.2)", and

(b) cl. 204.2(1)(b)(i)(B) shall be read as follows:

"(B) transferred to the plan in accordance with subsection 146(16), and"

Subsec. 204.2(1) formerly read:

204.2 (1) "Excess amount for a year in respect of registered retirement savings plans" defined — "Excess amount for a year in respect of registered retirement savings plans" of an individual at a particular time means the amount by which the aggregate of

(a) all amounts paid by him to such plans under which he or his spouse is the annuitant, other than amounts to which paragraph 60(j), (j.1), (l) or subsection 146(16) applies or would, if the individual were resident in Canada throughout the year, apply, and

(b) all gifts made to such a plan under which he is the annuitant, other than gifts made thereto by his spouse,

in the year and before the particular time, exceeds the aggregate of

(c) all amounts that the taxpayer is entitled to deduct in computing his income for the immediately preceding year in respect of those payments, and

(d) the greater of $5,500 and the amount the taxpayer is entitled to deduct in computing his income for the year in respect of those payments.

Para. 204.2(1)(d) substituted for paras. (d), (e) by 1986, c. 55, s. 71, applicable with respect to payments made to a registered retirement savings plan after 1985. Paras. 204.2(1)(d), (e) formerly read:

(d) $5,500, and

(e) the amount that the taxpayer would be entitled to deduct in computing his income for the year in respect of those payments by virtue of subsection 146(5.3) if section 146 were read without reference to subsection (5.5) thereof.

Para. 204.2(1)(e) added by 1984, c. 45, s. 84, applicable to 1984 *et seq.*

Paras. 204.2(1)(a), (4)(a) substituted by 1980-81-82-83, c. 140, subsecs. 114(1), (2), applicable, as to para. 204.2(1)(a), to 1981 *et seq.*, and, as to para. 204.2(4)(a), to months ending after May, 1976. Paras. 204.2(1)(a), (4)(a) formerly read:

(a) all amounts paid by him to such plans under which he or his spouse is the annuitant, other than amounts to which paragraph 60(j) or (l) or subsection 146(16) have application, and

. . . . .

(a) the aggregate of contributions made after May 25, 1976 by an employee who is or is about to become a member of the plan, to the extent that his contributions exceed $5,500 in a year, less any such contributions that have been returned to the employee before that particular time, and

All that portion of subsec. 204.2(1) following para. (b) substituted by 1979, c. 5, s. 58, applicable to 1977 *et seq.* That portion formerly read:

in the year, after May 25, 1976 and before the particular time, exceeds the greater of

(c) the aggregate of amounts that the taxpayer is entitled to deduct in computing his income for that year and the immediately preceding year in respect of those payments, and

(d) $5,500.

Advance Tax Rulings: ATR-24: RRSP damages suit against investment management companies.

Forms: T1-OVP: Individual tax return for RRSP excess contributions; T1-OVP-S: Simplified individual tax return for RRSP excess contributions; T1-OVP Sched.: Calculating the amount of RRSP contributions made before 1991 that are subject to tax.

(1.1) Cumulative excess amount in respect of RRSPs — The cumulative excess amount of an individual in respect of registered retirement savings plans at any time in a taxation year is the amount, if any, by which

(a) the amount of the individual's undeducted RRSP premiums at that time

exceeds

(b) the amount determined by the formula

$$A + B + R + C + D + E$$

where

A is the individual's unused RRSP deduction room at the end of the preceding taxation year,

B is the amount, if any, by which

(i) the lesser of the RRSP dollar limit for the year and 18% of the individual's earned income

(as defined in subsection 146(1)) for the preceding taxation year

exceeds the total of all amounts each of which is

(ii) the individual's pension adjustment for the preceding taxation year in respect of an employer, or

(iii) a prescribed amount in respect of the individual for the year,

C is, where the individual attained 18 years of age in a preceding taxation year, $2,000, and in any other case, nil,

D is the group RRSP amount in respect of the individual at that time,

E is, where the individual attained 18 years of age before 1995, the individual's transitional amount at that time, and in any other case, nil, and

R is the individual's total pension adjustment reversal for the year.

Related Provisions: 204.1(2.1) — Tax payable by individuals — Contributions after 1990; 204.2(1.2) — Undeducted RRSP premiums; 204.2(1.3) — Group RRSP amount; 204.2(1.5) — Transitional amount.

History: The formula in para. 204.2(1.1)(b) amended, the description of R added, by 1998, c. 19, subsecs. 49(1), (2), applicable to 1998 *et seq.* The formula in para. 204.2(1.1)(b) formerly read:

$$A + B + C + D + E$$

Para. 204.2(1.1)(b) amended by 1996, c. 21, subsec. 51(1), applicable to 1996 *et seq.* Para. (b) formerly read:

(b) the amount determined by the formula

$$A + B - C + M$$

where

A is the individual's unused RRSP deduction room at the end of the immediately preceding taxation year,

B is the amount, if any, by which the lesser of the RRSP dollar limit for the year and 18% of the individual's earned income (within the meaning assigned by subsection 146(1)) for the immediately preceding taxation year exceeds the total of all amounts each of which is the individual's pension adjustment for the immediately preceding taxation year in respect of an employer or a prescribed amount in respect of the taxpayer for the year,

C is the individual's net past service pension adjustment, at that time, for the year, and

M is, where the individual attained 18 years of age in a preceding taxation year, $8,000, and otherwise, nil.

Regulations: 8308(2), 8308.2, 8308.4(2), 8309 (prescribed amounts for "B").

Interpretation Bulletins: IT-307R4: Spousal or common-law registered retirement savings plans.

Advance Tax Rulings: ATR-24: RRSP damages suit against investment management companies.

Forms: T1-OVP: Individual tax return for RRSP excess contributions; T1-OVP-S: Simplified individual tax return for RRSP excess contributions.

(1.2) Undeducted RRSP premiums — For the purposes of subsection (1.1) and the description of K in paragraph (1.3)(a), the amount of undeducted RRSP premiums of an individual at any time in a taxation year is the amount determined by the formula

$$H + I - J$$

where

H is, for taxation years ending before 1992, nil, and for taxation years ending after 1991, the amount, if any, by which

(a) the amount of the individual's undeducted RRSP premiums at the end of the immediately preceding taxation year

exceeds

(b) the total of the amounts deducted under subsections 146(5) and (5.1) in computing the individual's income for the immediately preceding taxation year, to the extent that each amount was deducted in respect of premiums paid under registered retirement savings plans in or before that preceding year,

I is the total of all amounts each of which is

(a) a premium (within the meaning assigned by subsection 146(1)) paid by the individual in the year and before that time under a registered retirement savings plan under which the individual or the individual's spouse or common-law partner was the annuitant (within the meaning assigned by subsection 146(1)) at the time the premium was paid, other than

(i) an amount paid to the plan in the first 60 days of the year and deducted in computing the individual's income for the immediately preceding taxation year,

(ii) an amount paid to the plan in the year and deducted under paragraph 60(j), (j.1), (j.2) or (l) in computing the individual's income for the year or the immediately preceding taxation year,

(iii) an amount transferred to the plan on behalf of the individual in accordance with any of subsections 146(16), 147(19) and 147.3(1) and (4) to (7) or in circumstances to which subsection 146(21) applies,

(iv) an amount deductible under subsection 146(6.1) in computing the individual's income for the year or a preceding taxation year,

(v) where the individual is a non-resident person, an amount that would, if the individual were resident in Canada throughout the year and the immediately preceding taxation year, be deductible under paragraph 60(j), (j.1), (j.2) or (l) in computing the individual's income for the year or the immediately preceding taxation year, or

(vi) an amount paid to the plan in the year that is not deductible in computing the individual's income for the year because of subparagraph 146(5)(a)(iv.1) or (5.1)(a)(iv), or

(b) a gift made in the year and before that time to a registered retirement savings plan under which the individual is the annuitant (within the meaning assigned by subsection 146(1)), other than a gift made thereto by the individual's spouse or common-law partner, and

J is the amount, if any, by which

(a) the total of all amounts each of which is an amount (other than the portion thereof that reduces the amount on which tax is payable by the individual under subsection 204.1(1)) received by the individual in the year and before that time out of or

under a registered retirement savings plan or a registered retirement income fund and included in computing the individual's income for the year

exceeds

(b) the amount deducted under paragraph 60(l) in computing the individual's income for the year.

Related Provisions: 204.2(1.4) — Deemed receipt where RRSP or RRIF amended; 204.2(3) — When retirement savings plan deemed to be registered plan; 257 — Formula cannot calculate to less than zero.

History: The description of I in subsec. 204.2(1.2) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

The opening words of subsec. 204.2(1.2) amended by 1996, c. 21, subsec. 51(2), applicable to 1996 *et seq.* Subsec. (1.2) formerly read:

(1.2) For the purposes of subsection (1.1), the amount of undeducted RRSP premiums of an individual at any time in a taxation year is the amount determined by the formula

Subpara. (a)(vi) added to the description of I in subsec. 204.2(1.2) by 1995, c. 3, s. 49, applicable to 1994 *et seq.*

Subpara. (a)(iii) of the description of I in subsec. 204.2(1.2) substituted by 1994, c. 21, s. 92, applicable to 1992 *et seq.* That subpara. formerly read:

(iii) an amount transferred to the plan on behalf of the individual in accordance with any of subsections 146(16), 147(19) and 147.3(1) and (4) to (7),

(1.3) Group RRSP amount — For the purposes of this section, the group RRSP amount in respect of an individual at any time in a taxation year is the lesser of

(a) the lesser of the value of F and the amount determined by the formula

$$F - (G - K)$$

where

F is the lesser of

(i) the total of all amounts each of which is a qualifying group RRSP premium paid by the individual, to the extent that the premium is included in determining the value of I in subsection (1.2) in respect of the individual at that time, and

(ii) the RRSP dollar limit for the following taxation year,

G is the amount that would be determined under paragraph (1.1)(b) in respect of the individual at that time if the values of C, D and E in that paragraph were nil, and

K is

(i) where the year is the 1996 taxation year, the amount, if any, by which the amount of the individual's undeducted RRSP premiums at the beginning of the year exceeds the individual's cumulative excess amount in respect of registered retirement savings plans at the end of the 1995 taxation year, and

(ii) in any other case, the group RRSP amount in respect of the individual at the end of the preceding taxation year, and

(b) the amount that would be the individual's cumulative excess amount in respect of registered retirement savings plans at that time if the value of D in paragraph (1.1)(b) were nil.

Related Provisions: 146(1) — Meaning of "net past service pension adjustment" for RRSP rules; 204.2(1.2) — Undeducted RRSP premiums; 204.2(1.31) — Qualifying group RRSP premium; 257 — Formula amounts cannot calculate to less than zero.

History: Subsec. 204.2(1.3) repealed and substituted by 1996, c. 21, subsec. 51(3), applicable to 1996 *et seq.* Subsec. (1.3) formerly read:

(1.3) Net past service pension adjustment — For the purposes of subsection (1.1), the net past service pension adjustment of an individual, at any time, for a taxation year is the positive or negative amount determined by the formula

$$P - G$$

where

P is the total of all amounts each of which is the accumulated PSPA of the individual for the year in respect of an employer, determined as of that time in accordance with prescribed rules; and

G is the amount of the individual's PSPA withdrawals for the year, determined as of that time in accordance with prescribed rules.

All that portion of subsec. 204.2(1.3) preceding the description of G amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 117, applicable after 1988. That portion formerly read:

(1.3) For the purposes of subsection (1.1), the net past service pension adjustment of an individual, at any time, for a taxation year is the amount determined by the formula

$$P - (F + G)$$

where

P is the total of all amounts each of which is the accumulated PSPA of the individual for the year in respect of an employer, determined as of that time in accordance with prescribed rules,

F is the amount of the individual's PSPA transfers for the year, determined as of that time in accordance with prescribed rules, and

Regulations: 8303(2) (accumulated PSPA before 1996); 8307(5) (individual's PSPA withdrawals before 1996).

(1.31) Qualifying group RRSP premium — For the purpose of the description of F in paragraph (1.3)(a), a qualifying group RRSP premium paid by an individual is a premium paid under a registered retirement savings plan where

(a) the plan is part of a qualifying arrangement,

(b) the premium is an amount to which the individual is entitled for services rendered by the individual (whether or not as an employee), and

(c) the premium was remitted to the plan on behalf of the individual by the person or body of persons that is required to remunerate the individual for the services, or by an agent for that person or body,

but does not include the part, if any, of a premium that, by making (or failing to make) an election or exercising (or failing to exercise) any other right under the arrangement after beginning to participate in the arrangement and within 12 months before the time the premium was paid, the individual could have prevented from being paid under the plan and that would not as a consequence have been required to be remitted on behalf of the individual to another registered retirement savings plan or to a registered pension plan in respect of a money purchase provision of the plan.

Related Provisions: 204.2(1.32) — Qualifying arrangement.

History: Subsec. 204.2(1.31) added by 1996, c. 21, subsec. 51(3), applicable to 1996 *et seq.*

(1.32) Qualifying arrangement — For the purpose of paragraph (1.31)(a), a qualifying arrangement is an arrangement under which premiums that satisfy the conditions in paragraphs (1.31)(b) and (c) are remitted to registered retirement savings plans on behalf of two or more individuals, but does not include an arrangement where it is reasonable to consider that one of the main purposes of the arrangement is to reduce tax payable under this Part.

History: Subsec. 204.2(1.32) added by 1996, c. 21, subsec. 51(3), applicable to 1996 *et seq.*

(1.4) Deemed receipt where RRSP or RRIF amended — For the purposes of subsection (1.2),

(a) where an amount in respect of a registered retirement savings plan has been included in computing an individual's income pursuant to paragraph 146(12)(b), that amount shall be deemed to have been received by the individual out of the plan at the time referred to in that paragraph; and

(b) where an amount in respect of a registered retirement income fund has been included in computing an individual's income pursuant to paragraph 146.3(11)(b), that amount shall be deemed to have been received by the individual out of the fund at the time referred to in that paragraph.

(1.5) Transitional amount — For the purpose of the description of E in paragraph (1.1)(b), an individual's transitional amount at any time in a taxation year is the lesser of

(a) $6,000, and

(b) where the value of L is nil, nil, and in any other case, the amount determined by the formula

$$L - M$$

where

L is the amount, if any, by which

(i) the amount that would be determined under subsection (1.2) to be the amount of the individual's undeducted RRSP premiums at that time if

(A) the value of I in that subsection were determined for the 1995 taxation year without including premiums paid after February 26, 1995,

(B) the value of I in that subsection were nil for the 1996 and subsequent taxation years, and

(C) the value of J in that subsection were determined for the 1995 and subsequent taxation years without including the part, if any, of an amount received by the individual out of or under a registered retirement savings plan or registered retirement income fund that can reasonably be considered to be in respect of premiums paid after February 26, 1995 by the individual under a registered retirement savings plan

exceeds

(ii) the total of all amounts each of which is an amount deducted under subsection 146(5) or (5.1) in computing the individual's income for a preceding taxation year, to the extent that the amount was deducted in respect of premiums paid after that year (other than premiums paid before February 27, 1995), and

M is the amount that would be determined by the formula in paragraph (1.1)(b) in respect of the individual at that time if the values of D and E in that paragraph were nil and section 257 did not apply to that formula.

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: Subsec. 204.2(1.5) added by 1996, c. 21, subsec. 51(4), applicable to 1996 *et seq.*

(2) Where terminated plan deemed to continue to exist — Notwithstanding paragraph 146(12)(a), for the purposes of this Part, where a registered retirement savings plan ceases to exist and a payment or transfer of funds out of that plan has been made to which subsection 146(16) applied, if an individual's excess amount for a year in respect of registered retirement savings plans would have been greater had that plan not ceased to exist, for the purpose of computing the excess amount for a year in respect of registered retirement savings plans for so long as the individual or the individual's spouse or common-law partner is the annuitant under any registered retirement savings plan under which an annuity has not commenced to be paid to the annuitant, the plan that ceased to exist shall be deemed to remain in existence and the individual or the individual's spouse or common-law partner, as the case may be, shall be deemed to continue to be the annuitant thereunder.

History: Subsec. 204.2(2) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

(3) When retirement savings plan deemed to be a registered plan — Where a retirement savings plan under which an individual or the individual's spouse or common-law partner is the annuitant (within the meaning assigned by subsection 146(1)) is accepted by the Minister for registration, for the purpose of determining

(a) the amount of undeducted RRSP premiums of the individual at any time, and

(b) the excess amount for a year in respect of registered retirement savings plans of the individual at any time,

the retirement savings plan shall be deemed to have become a registered retirement savings plan on the later of the day on which the plan came into existence and May 25, 1976.

History: Subsec. 204.2(3) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

(4) Definition of "excess amount" for a DPSP — "Excess amount" at any time for a trust governed by a deferred profit sharing plan means the total of all amounts each of which is

(a) such portion of the total of all contributions made to the trust before that time and after May 25, 1976 by a beneficiary under the plan, other than

(i) contributions that have been deducted by the beneficiary under paragraph 60(k) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952,

(ii) amounts transferred to the plan on behalf of the beneficiary in accordance with subsection 147(19), or

(iii) the portion of the contributions (other than contributions referred to in subparagraphs (i) and (ii)) made by the beneficiary in each calendar year before 1991 not in excess of $5,500,

as has not been returned to the beneficiary before that time; or

(b) a gift received by the trust before that time and after May 25, 1976.

Related Provisions: 147(2)(a.1) — Acceptance of plan for registration.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Definitions [s. 204.2]: "amount", "annuity" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "common-law partner" — 248(1); "cumulative excess amount" — 204.2(1.1); "deferred profit sharing plan" — 147(1), 248(1); "employer" — 248(1); "excess amount" — 204.2(1), (4); "group RRSP amount" — 204.2(1.3); "individual", "Minister" — 248(1); "net past service pension adjustment" — 204.2(1.3); "past service pension adjustment" — 248(1), Reg. 8303; "pension adjustment" — 248(1), Reg. 8301(1); "premium" — 146(1); "prescribed" — 248(1); "qualifying arrangement" — 204.2(1.31); "qualifying group RRSP premium" — 204.2(1.31); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "RRSP dollar limit" — 146(1), 248(1); "resident in Canada" — 250; "retirement savings plan" — 146(1), 248(1); "taxation year" — 249; "taxpayer" — 104(1), 248(1); "total pension adjustment reversal" — 248(1); "transitional amount" — 204.2(1.5); "trust" — 104(1), 248(1), (3); "undeducted RRSP premiums" — 204.2(1.2).

Interpretation Bulletins [s. 204.2]: IT-124R6: Contributions to registered retirement savings plans.

204.3 (1) Return and payment of tax — Within 90 days after the end of each year after 1975, a taxpayer to whom this Part applies shall

(a) file with the Minister a return for the year under this Part in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax, if any, payable by the taxpayer under this Part in respect of each month in the year; and

(c) pay to the Receiver General the amount of tax, if any, payable by the taxpayer under this Part in respect of each month in the year.

Related Provisions: 150.1(5) — Electronic filing.

Information Circulars: 78-14R3: Guidelines for trust companies and other persons responsible for filing T3IND, T3G, T3D, T3P, T3s, T3RI and T3F returns.

Forms: T1-OVP: Individual tax return for RRSP excess contributions; T1-OVP-S: Simplified individual tax return for RRSP excess contributions; T1-OVP Sched.: Calculating the amount of RRSP contributions made before 1991 that are subject to tax; T3D: Income tax return for DPSP or revoked DPSP; T3IND: T3IND income tax return for RRSP, RRIF, or RESP.

(2) Provisions applicable to Part — Subsections 150(2) and (3), sections 152 and 158, subsections 161(1) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Definitions [s. 204.3]: "amount", "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "prescribed", "taxpayer" — 248(1).

Interpretation Bulletins [s. 204.3]: IT-124R6: Contributions to registered retirement savings plans.

PART X.2 — TAX IN RESPECT OF REGISTERED INVESTMENTS

204.4 (1) Definition of "registered investment" — In this Part, "registered investment" means a trust or a corporation that has applied in prescribed form as of a particular date in the year of application and has been accepted by the Minister as of that date as a registered investment for one or more of the following:

(a) registered retirement savings plans,

(b) [Repealed under former Act]

(c) registered retirement income funds, and

(d) deferred profit sharing plans

and that has not been notified by the Minister that it is no longer registered under this Part.

Related Provisions: 206(2.01) — Part XI tax payable by registered investments; 248(1)"registered investment" — Definition applies to entire Act.

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs.

(2) Acceptance of applicant for registration — The Minister may accept for registration for the purposes of this Part any applicant that is

(a) a trust that has as its sole trustee a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee if, on the particular date referred to in subsection (1),

(i) all the property of the applicant is held in trust for the benefit of not fewer than 20 beneficiaries and

(A) not fewer than 20 beneficiaries are taxpayers described in any of paragraphs 149(1)(o) to (o.2), (o.4) or (s), or

(B) not fewer than 100 beneficiaries are taxpayers described in paragraph 149(1)(r) or (x),

(ii) the total of

(A) the fair market value at the time of acquisition of its

(I) shares, marketable securities and cash, and

(II) bonds, debentures, mortgages, hypothecary claims, notes and other similar obligations, and

Proposed Amendment — 204.4(2)(a)(ii) after (A)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 264(1), will amend the portion of subpara. 204.4(2)(a)(ii) after cl. (A) by substituting "real or immovable property" for "real property" in three places, to come into force on Royal Assent.

Technical Notes: See under 12(4).

(B) the amount by which the fair market value at the time of acquisition of its real property that may reasonably be regarded as being held for the purpose of producing income from property exceeds the total of all amounts each of which is owing by it on account of its acquisition of the real property

is not less than 80% of the amount by which the fair market value at the time of acquisition of all its property exceeds the total of all amounts each of which is owing by it on account of its acquisition of real property,

(iii) the fair market value at the time of acquisition of its shares, bonds, mortgages, hypothecary claims and other securities of any one corporation or debtor (other than bonds, mortgages, hypothecary claims and other securities of or guaranteed by Her Majesty in right of Canada or a province or Canadian municipality) is not more than 10% of the amount by which the fair market value at the time of acquisition of all its property exceeds the total of all amounts each of which is an amount owing by it on account of its acquisition of real property,

(iv) the amount by which

(A) the fair market value at the time of acquisition of any one of its real properties

exceeds

(B) the total of all amounts each of which is owing by it on account of its acquisition of the real property

is not more than 10% of the amount by which the fair market value at the time of acquisition of all its property exceeds the total of all amounts each of which is owing by it on account of its acquisition of real property,

Proposed Amendment — 204.4(2)(a)(iii), (iv)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 264(2), will amend subparas. 204.4(2)(a)(iii) and (iv) by substituting "real or immovable" for "real", once in subpara. (iii) and three times in subpara. (iv), to come into force on Royal Assent.

Technical Notes: See under 12(4).

(v) not less than 95% of the income of the applicant for its most recently completed fiscal period, or where no such period exists, that part of its current fiscal period before the particular date, was derived from investments described in subparagraph (ii),

(vi) the total value of all interests in the applicant owned by all trusts or corporations described in any of paragraphs 149(1)(o) to (o.2), (o.4) or (s) to which any one employer, either alone or together with persons with whom the employer was not dealing at arm's length, has made contributions does not exceed 25% of the value of all its property,

(vii) the total value of all interests in the applicant owned by all trusts described in paragraph 149(1)(r) or (x) to which any one taxpayer, either alone or together with persons with whom the taxpayer was not dealing at arm's length, has made contributions does not exceed 25% of the value of all its property, and

(viii) the applicant does not hold property acquired by it after May 26, 1975 that is

(A) a mortgage or hypothecary claim (other than a mortgage or hypothecary claim insured under the *National Housing Act* or by a corporation that offers its services to the public in Canada as an insurer of mortgages and that is approved as a private insurer of mortgages by the Superintendent of Financial Institutions pursuant to the powers assigned to the Superintendent under subsection 6(1) of the *Office of the Superintendent of Financial Institutions Act*), or an interest therein, in respect of which the mortgagor or hypothecary debtor is the annuitant under a registered retirement savings plan or a registered retirement income fund, or a person with whom the annuitant is not dealing at arm's length, if any of the funds of a trust governed by such a plan or fund have been used to acquire an interest in the applicant, or

Proposed Amendment — 204.4(2)(a)(viii)(A)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 264(3), will amend cl. 204.4(2)(a)(viii)(A) by substituting "mortgages or hypothecary claims" for "mortgages" in two places and "interest therein, or for civil law a right therein," for "interest therein,", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(B) a bond, debenture, note or similar obligation issued by a cooperative corporation (within the meaning assigned by subsection 136(2)) or a credit union that has granted any benefit or privilege to any annuitant or beneficiary under a plan or fund referred to in subsection (1) that is dependent on or related to

(I) ownership by a trust governed by any such plan or fund of shares, bonds, debentures, notes or similar obligations of the cooperative corporation or credit union, or

(II) ownership by the applicant of shares, bonds, debentures, notes or similar obligations of the cooperative corporation or credit union if the trust governed by any such plan or fund has used any of its funds to acquire an interest in the applicant;

(b) a trust that

(i) would be a trust described in paragraph (a) if that paragraph were read without reference to subparagraphs (a)(i), (vi) and (vii), and

(ii) holds only prescribed investments for the type of plan or fund in respect of which it has applied for registration;

(c) a mutual fund trust;

(d) a trust that

(i) would be a mutual fund trust if paragraph 132(6)(c) were not applicable, and

(ii) holds only prescribed investments for the type of plan or fund in respect of which it has applied for registration;

(e) a mutual fund corporation or investment corporation; or

(f) a corporation that

(i) would be a mutual fund corporation or investment corporation if it could have elected to be a public corporation under paragraph (b) of the definition "public corporation" in subsection 89(1) had the conditions prescribed therefor required only that a class of shares of its capital stock be qualified for distribution to the public, and

(ii) holds only prescribed investments for the type of plan or fund in respect of which it has applied for registration.

Related Provisions: 204.6(1), (2), (3) — Tax payable.

History: Cls. 204.4(2)(a)(i)(A) and (B) and subparas. (2)(a)(vi) and (vii) amended, by 2005, c. 30, subsecs. 12(1), (2), applicable to taxation years that begin after 2004. The cls. and subparas. formerly read:

(A) not fewer than 20 beneficiaries are taxpayers described in paragraph 205(a) or (c), or

(B) not fewer than 100 beneficiaries are taxpayers described in paragraph 205(b) or (e),

. . . . .

(vi) the total value of all interests in the applicant owned by all trusts or corporations described in paragraph 205(a) or (c) to which any one employer, either alone or together with persons with whom the employer was not dealing at arm's length, has made contributions does not exceed 25% of the value of all its property,

(vii) the total value of all interests in the applicant owned by all trusts described in paragraph 205(b) or (e) to which any one taxpayer, either alone or together with persons with whom the taxpayer was not dealing at arm's length, has made contributions does not exceed 25% of the value of all its property, and

Cls. 204.4(2)(a)(ii)(A) and (viii)(A) amended by 2001, c. 17, subsecs. 224(1), (3), applicable to property acquired after March 16, 2001. The cls. formerly read:

> (A) the fair market value at the time of acquisition of its shares, bonds, mortgages, marketable securities and cash, and
>
> . . . . .
>
> (A) a mortgage (other than a mortgage insured under the *National Housing Act*), or an interest therein, in respect of which the mortgagor is the annuitant under a registered retirement savings plan or a registered retirement income fund, or a person with whom the annuitant is not dealing at arm's length, if any of the funds of a trust governed by such a plan or fund have been used to acquire an interest in the applicant, or

Subpara. 204.4(2)(a)(iii) amended by the said c. 17, subsec. 224(2), to add ", hypothecary claims" (twice), in force June 14, 2001.

Regulations: 4900, 4901 (prescribed investments).

Forms: T3RI: Registered investment and income tax return; T2217: Application for registration as a registered investment.

(3) Revocation of registration — The Minister shall notify a registered investment that it is no longer registered

(a) on being satisfied that, at a date subsequent to its registration date, it no longer satisfies one or more of the conditions necessary for it to be acceptable for registration under this Part, other than a condition the failure of which to satisfy would make it liable for tax under section 204.6; or

(b) within 30 days after receipt of a request in prescribed form from the registered investment for termination of its registration.

Related Provisions: 204.4(4) — Suspension of revocation; 204.4(5) — Cancellation of revocation.

(4) Suspension of revocation — Notwithstanding a notification to a taxpayer under subsection (3), for the purposes of sections 204.6 and 204.7, the taxpayer is deemed to be a registered investment for each month or part of a month after the notification during which an interest in, or a share of the capital stock of, the taxpayer continues, by virtue of having been a registered investment, to be a qualified investment for a plan or fund referred to in subsection (1).

History: Subsec. 204.4(4) amended by 2005, c. 30, subsec. 12(3), applicable to taxation years that begin after 2004. The subsec. formerly read:

> (4) Notwithstanding a notification to a taxpayer under subsection (3), for the purposes of sections 204.6 and 204.7 and Part XI, the taxpayer shall be deemed to be a registered investment for each month or part thereof after the notification during which an interest in, or a share of the capital stock of, the taxpayer continues, by virtue of having been a registered investment, to be a qualified investment for a plan or fund referred to in subsection (1).

(5) Cancellation of revocation — Where a registered investment has been notified pursuant to paragraph (3)(a) and within 3 months from the date of notification it satisfies the Minister that it is acceptable for registration under this Part, the Minister may declare the notification to be a nullity.

(6) Successor trust — Where at any time in a year a particular trust described in paragraph (2)(a) or (b) has substantially the same beneficiaries and can reasonably be regarded as being a continuation of another trust that was a registered investment in the year or the immediately preceding year, for the purposes of this Part, the particular trust shall be deemed to be the same trust as the other trust.

(7) Deemed registration of registered investment — Where at the end of any month a registered investment could qualify for acceptance at that time under subsection (2), it shall be deemed for the purposes of section 204.6 to have been registered under the first of the following paragraphs under which it is registrable regardless of the paragraph under which it was accepted for registration by the Minister:

(a) paragraph (2)(c) or (e), as the case may be;

(b) paragraph (2)(a);

(c) paragraph (2)(d) or (f), as the case may be; and

(d) paragraph (2)(b).

Definitions [s. 204.4]: "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "class of shares" — 248(6); "cooperative corporation" — 136(2); "corporation" — 248(1), *Interpretation Act* 35(1); "credit union" — 248(1); "deferred profit sharing plan" — 147(1), 248(1); "employer" — 248(1); "fiscal period" — 249.1; "Her Majesty" — *Interpretation Act* 35(1); "hypothecary" — Quebec *Civil Code* art. 2660; "immovable" — Quebec *Civil Code* art. 900–907; "insurer" — 248(1); "investment corporation" — 130(3), 248(1); "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "mutual fund corporation" — 131(8), 248(1); "mutual fund trust" — 132(6)–(7), 248(1); "person", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "public corporation" — 89(1), 248(1); "registered investment" — 204.4(1), 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "related" — 251(2)–(6); "share", "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

204.5 Publication of list in *Canada Gazette* — Each year the Minister shall cause to be published in the *Canada Gazette* a list of all registered investments as of December 31 of the preceding year.

Definitions [s. 204.5]: "Minister" — 248(1); "registered investment" — 204.4(1), 248(1).

204.6 (1) Tax payable — Where at the end of any month a taxpayer that is a registered investment described in paragraph 204.4(2)(b), (d) or (f) holds property that is not a prescribed investment for that taxpayer, it shall, in respect of that month, pay a tax under this Part equal to 1% of the fair market value at the time of its acquisition of each such property.

Related Provisions: 204.4(3) and (4) — Revocation of registration; 205 — Application of Part XI; 259 — Proportional holdings in trust property.

Regulations: 4901 (prescribed investment).

(2) Tax payable — Where at the end of any month a taxpayer that is a registered investment described in paragraph 204.4(2)(a) or (b) holds property that is a share, bond, mortgage, hypothecary claim or other security of a corporation or debtor (other than bonds, mortgages, hypothecary claims and other securities of or guaranteed by Her Majesty in right of Canada or a province or Canadian municipality), it shall, in respect of that month, pay a tax under this Part equal to 1% of the amount, if any, by which

(a) the total of all amounts each of which is the fair market value of such a property at the time of its acquisition

exceeds

(b) 10% of the amount by which

(i) the total of all amounts each of which is the fair market value, at the time of acquisition, of one of its properties

exceeds

(ii) the total of all amounts each of which is an amount owing by the trust at the end of the month in respect of the acquisition of real property.

Proposed Amendment — 204.6(2)(b)(ii)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 265(1), will amend subpara. 204.6(2)(b)(ii) by substituting "real property or immovables" for "real property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

Related Provisions: 205 — Application of Part XI; 259 — Proportional holdings in trust property.

History: The opening words of subsec. 204.6(2) amended by 2001, c. 17, s. 225, to add ", hypothecary claim" and ", hypothecary claims", in force June 14, 2001.

(3) Idem — Where at the end of any month a taxpayer that is a registered investment described in paragraph 204.4(2)(a) holds real property, it shall, in respect of that month, pay a tax under this Part equal to 1% of the total of all amounts each of which is the amount by which the excess of

(a) the fair market value at the time of its acquisition of any one real property of the taxpayer

over

(b) the total of all amounts each of which was an amount owing by it at the end of the month on account of its acquisition of the real property

was greater than 10% of the amount by which the total of all amounts each of which is the fair market value at the time of its acquisition of a property held by it at the end of the month exceeds the total of all amounts each of which was an amount owing by it at the end of the month on account of its acquisition of real property.

Proposed Amendment — 204.6(3)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 265(2), will amend subsec. 204.6(3) by substituting "real or immovable property" for "real property" in four places, to come into force on Royal Assent.

Technical Notes: See under 12(4).

Related Provisions: 205 — Application of Part XI.

Definitions [s. 204.6]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "Her Majesty" — *Interpretation Act* 35(1); "immovable" — Quebec *Civil Code* art. 900–907; "prescribed", "property" — 248(1); "registered investment" — 204.4(1), 248(1); "share", "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

204.7 (1) Return and payment of tax — Within 90 days from the end of each taxation year commencing after 1980, a registered investment shall

(a) file with the Minister a return for the year under this Part in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax, if any, payable by it under this Part for the year; and

(c) pay to the Receiver General the amount of tax, if any, payable by it under this Part for the year.

Related Provisions: 150.1(5) — Electronic filing.

Forms: T3RI: Registered investment and income tax return.

(2) Liability of trustee — Where the trustee of a registered investment that is liable to pay tax under this Part does not remit to the Receiver General the amount of the tax within the time specified in subsection (1), the trustee is personally liable to pay on behalf of the registered investment the full amount of the tax and is entitled to recover from the registered investment any amount paid by the trustee as tax under this section.

(3) Provisions applicable to Part — Subsections 150(2) and (3), sections 152 and 158, subsections 161(1) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Definitions [s. 204.7]: "amount", "Minister", "prescribed" — 248(1); "registered investment" — 204.4(1), 248(1); "taxation year" — 249.

PART X.3 — LABOUR-SPONSORED VENTURE CAPITAL CORPORATIONS

History: The heading "Labour-Sponsored Venture Capital Corporations" before s. 204.8 amended by 1998, c. 19, s. 50, applicable after February 18, 1997. It formerly read:

Registered Labour-Sponsored Venture Capital Corporations

Proposed Amendment — Part X.3

Federal budget, supplementary information, February 16, 1999: *RRSP withdrawals under the Home Buyers' Plan (HBP) and the Lifelong Learning Plan (LLP)*

The HBP and the LLP allow a qualifying individual to withdraw RRSP funds on a tax-free basis to purchase a home or to pay for education. HBP withdrawals are repayable over a 15-year period, while LLP withdrawals are repayable over a 10-year period. To the extent that a scheduled repayment for a year is not made, it is added in computing the participant's income for the year.

The Quebec government has proposed to allow individuals to withdraw proceeds from the redemption of provincial LSVCC shares held within an RRSP, without the provincial LSVCC credit being recovered if the withdrawal is made under the HBP or the LLP. Under existing law, the federal credit will not be recovered in these circumstances. Individuals making such withdrawals are expected to acquire replacement shares in annual amounts determined under the existing HBP and LLP repayment schedules. These replacement purchases are not eligible for the Quebec LSVCC credit. Where an individual fails to acquire LSVCC replacement shares, a special Quebec tax of 15 per cent of the shortfall is imposed on the individual to recover the LSVCC credit that Quebec provided on the purchase of the redeemed shares.

The budget proposes that purchases of replacement shares in Quebec LSVCCs likewise not be eligible for the federal LSVCC credit. In addition, where an individual fails to acquire a replacement share, it is proposed to levy a federal penalty tax that matches the special 15 per cent Quebec tax. These proposals will apply from the date the corresponding Quebec proposals apply.

Similar changes are not contemplated for federally-registered LSVCCs or LSVCCs registered in other provinces. Because shares in Quebec LSVCCs are not normally redeemable until retirement, amounts on which an LSVCC credit was paid will be available for small business investment for a considerable period of time even if withdrawn under the HBP or the LLP for part of that time. In contrast, because shares in federally-registered LSVCCs or in LSVCCs registered in other provinces may generally be redeemed without a recovery of the federal credit after eight years, it would be inappropriate to allow the amounts invested in these shares not to be available for small business investment for any length of time in that period.

204.8 (1) Definitions — In this Part,

"annuitant" has the meaning assigned by subsection 146(1);

"eligible business entity", at any time, means a particular entity that is

(a) a prescribed corporation, or

(b) a Canadian partnership or a taxable Canadian corporation, all or substantially all of the fair market value of the property of which is, at that time, attributable to

(i) property used in a specified active business carried on by the particular entity or by a corporation controlled by the particular entity,

(ii) shares of the capital stock or debt obligations of one or more entities that, at that time, are eligible business entities related to the particular entity, or

(iii) any combination of properties described in subparagraph (i) or (ii);

Related Provisions: 256(6), (6.1) — Meaning of "controlled".

History: The definition "eligible business entity" in subsec. 204.8(1) amended by 2000, c. 19, subsec. 54(2), applicable to 1999 *et seq.* The definition formerly read:

"eligible business entity", at any time, means a particular entity that is a Canadian partnership or a taxable Canadian corporation, all or substantially all of the fair market value of the property of which is, at that time, attributable to

(a) property used in a specified active business carried on by the particular entity or by a corporation controlled by the particular entity,

(b) shares of the capital stock or debt obligations of one or more entities that, at that time, are eligible business entities related to the particular entity, or

(c) any combination of properties described in paragraph (a) or (b);

Regulations: 4801.02 (prescribed corporation for para. (a)).

"eligible investment" of a particular corporation means

(a) a share that was issued to the particular corporation and that is a share of the capital stock of a corporation that was an eligible business entity at the time the share was issued,

(b) a particular debt obligation that was issued to the particular corporation by an entity that was an eligible business entity at the time the particular debt obligation was issued where

(i) the entity is not restricted by the terms of the particular debt obligation or by the terms of any agreement related to that obligation from incurring other debts,

(ii) the particular debt obligation, if secured, is secured solely by a floating charge on the assets of the entity or by a guarantee referred to in paragraph (c), and

(iii) the particular debt obligation, by its terms or any agreement relating to that obligation, is subordinate to all other debt obligations of the entity, except that, where the entity is a corporation, the particular debt obligation need not be subordinate to

(A) a debt obligation, issued by the entity, that is prescribed to be a small business security, or

(B) a debt obligation owing to a shareholder of the entity or to a person related to any such shareholder,

(c) a guarantee provided by the particular corporation in respect of a debt obligation that would, if the debt obligation had been issued to the particular corporation at the time the guarantee was provided, have been at that time an eligible investment because of paragraph (b), or

(d) an option or a right granted by an eligible business entity that is a corporation, in conjunction with the issue of a share or debt obligation that is an eligible investment, to acquire a share of the capital stock of the eligible business entity that would be an eligible investment if that share were issued at the time that the option or right was granted,

if the following conditions are satisfied:

(e) immediately after the time the share or debt obligation was issued, the guarantee was provided or the option or right was granted, as the case may be, the total of the costs to the particular corporation of all shares, options, rights and debt obligations of the eligible business entity and all corporations related to it and 25% of the amount of all guarantees provided by the particular corporation in respect of debt obligations of the eligible business entity and the related corporations does not exceed the lesser of $15,000,000 and 10% of the shareholders' equity in the particular corporation, determined in accordance with generally accepted accounting principles, on a cost basis and without taking into account any unrealized gains or losses on the investments of the particular corporation, and

(f) immediately before the time the share or debt obligation was issued, the guarantee was provided or the option or right was granted, as the case may be,

(i) the carrying value of the total assets of the eligible business entity and all corporations (other than prescribed labour-sponsored venture capital corporations) related to it (determined in accordance with generally accepted accounting principles on a consolidated or combined basis, where applicable) did not exceed $50,000,000, and

(ii) the total of

(A) the number of employees of the eligible business entity and all corporations related to it who normally work at least 20 hours per week for the entity and the related corporations, and

(B) ½ of the number of other employees of the entity and the related corporations,

did not exceed 500;

Related Provisions: 204.81(4) — Determination of cost.

History: Cl. (b)(iii)(A) of "eligible investment" in subsec. 204.8(1) amended by 2005, c. 30, s. 13, applicable to taxation years that begin after 2004. The clause formerly read:

(A) a debt obligation issued by the entity that is prescribed to be a small business security for the purposes of paragraph (a) of the definition "small business property" in subsection 206(1), or

The portion of the definition "eligible investment" in s. 204.8 after para. (d) amended by 1998, c. 19, s. 51, applicable to property acquired after February 18, 1997. That portion of the definition formerly read:

if, immediately after the time the share or debt obligation was issued, the guarantee was provided or the option or right was granted, as the case may be,

(e) the total of the costs to the particular corporation of all shares, options, rights and debt obligations of the eligible business entity and all corporations related to it and 25% of the amount of all guarantees provided by the particular corporation in respect of debt obligations of such eligible business entity and any corporation related to it does not exceed the lesser of $10,000,000 and 10% of the shareholders' equity in the particular corporation at that time, determined in accordance with generally accepted accounting principles, on a cost basis and without taking into account any unrealized gains or losses on the investments of the particular corporation,

(f) the carrying value of the total assets of the eligible business entity and all corporations related to it (determined in accordance with generally accepted accounting principles on a consolidated or combined basis, where applicable) does not exceed $50,000,000, and

(g) the number of employees of the eligible business entity and all corporations related to it does not exceed 500;

Para. (a) of "eligible investment" in s. 204.8 amended by 1994, c. 8, subsec. 29(1), to delete "that is prescribed for the purposes of subsections 110.6(8) and (9)", applicable after December 2, 1992.

Para. (f) of "eligible investment" in s. 204.8 amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 118(1), to substitute "$50,000,000" for "$35,000,000", applicable to 1992 *et seq.*

Regulations: 5100(2) (prescribed small business security for (b)(iii)(A)); 6701 (prescribed labour-sponsored venture capital corporation, for subpara. (f)(i)).

"eligible labour body" means a trade union, as defined in the *Canada Labour Code*, that represents employees in more than one province, or an organization that is composed of 2 or more such unions;

History: "Eligible labour body" added to s. 204.8 by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 118(3), applicable to 1992 *et seq.*

"labour-sponsored funds tax credit" — [Repealed]

History: The definition "labour-sponsored funds tax credit" in s. 204.8 repealed by 1997, c. 25, subsec. 55(1), applicable after 1995. It formerly read:

> "labour-sponsored funds tax credit" has the meaning assigned by subsection 127.4(1);

"national central labour body" — [Repealed]

History: "National central labour body" in s. 204.8 repealed by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 118(2), applicable to 1992 *et seq.* That definition formerly read:

> "national central labour body" means an organization that is composed of not fewer than 2 trade unions, as defined in the *Canada Labour Code*, each of which represents employees in more than one province;

"original acquisition" of a share has the meaning assigned by subsection 127.4(1);

History: The definition "original acquisition" added to s. 204.8 by 1997, c. 25, subsec. 55(4), applicable after 1995.

"original purchaser" — [Repealed]

History: The definition "original purchaser" in s. 204.8 repealed by 1997, c. 25, subsec. 55(2), applicable to corporations that are incorporated after March 5, 1996. It formerly read:

> "original purchaser", in relation to a share, means the individual to whom the share was issued;

"registered labour-sponsored venture capital corporation" — [Repealed]

History: The definition "registered labour-sponsored venture capital corporation" in s. 204.8 repealed by 1997, c. 25, subsec. 55(1), applicable after 1995. It formerly read:

> "registered labour-sponsored venture capital corporation" means a corporation registered under subsection 204.81(1);

"reserve" means property described in any of paragraphs (a), (b), (c), (f) and (g) of the definition "qualified investment" in section 204;

"revoked corporation" means a corporation the registration of which has been revoked under subsection 204.81(6);

Related Provisions: 211.7(1)"revoked corporation" — Definition for Part XII.5.

"specified active business", at any time, means an active business that is carried on in Canada where

(a) at least 50% of the full-time employees employed at that time in respect of the business are employed in Canada, and

(b) at least 50% of the salaries and wages paid to employees employed at that time in respect of the business are reasonably attributable to services rendered in Canada by the employees;

History: The definition "specified active business" in s. 204.8 amended by 1998, c. 19, s. 209, applicable after 1988. It formerly read:

> "specified active business", at any time, means an active business that is carried on in Canada where, at that time,
>
> (a) at least 50% of the full-time employees employed in respect of the business are employed in Canada, and
>
> (b) at least 50% of the salaries and wages paid to employees employed in respect of the business are reasonably attributable to services rendered in Canada by the employees.

"specified individual", in respect of a share, means an individual (other than a trust) whose labour-sponsored funds tax credit (as defined by subsection 127.4(6)) in respect of the original acquisition of the share is not nil or would not be nil if this Act were read without reference to paragraphs 127.4(6)(b) and (d).

History: The definition "specified individual" in s. 204.8 amended by 1997, c. 25, subsec. 55(3), applicable after 1995. It formerly read:

> "specified individual", in respect of a share, means an individual (other than a trust) whose labour-sponsored funds tax credit for a taxation year would take into account the amount of consideration paid to acquire, or to subscribe for, the share if the information return described in paragraph 204.81(6)(c) in respect of the share were filed as required under paragraph 127.4(3)(b).

The definition "specified individual" added to s. 204.8 by 1994, c. 8, subsec. 29(2), applicable after December 2, 1992.

"start-up period" of a corporation means

(a) subject to paragraph (c), in the case of a corporation that first issued Class A shares before February 17, 1999, the corporation's taxation year in which it first issued those shares and the four following taxation years,

(b) subject to paragraph (c), in the case of a corporation that first issues Class A shares after February 16, 1999, the corporation's taxation year in which it first issues those shares and the following taxation year, or

(c) where a corporation files an election with its return under this Part for a particular taxation year of the corporation that ends after 1998 and that is referred to in paragraph (a) or (b), the period, if any, consisting of the taxation years referred to in paragraph (a) or (b), as the case may be, other than the particular year and all taxation years following the particular year.

History [204.8(1)"start-up period"]: The definition "start-up period" added to subsec. 204.8(1) by 2000, c. 19, subsec. 54(3), applicable after 1997.

History [204.8(1)]: Section 204.8 renumbered as subsec. 204.8(1) by 2000, c. 19, subsec. 54(1), applicable to 1999 *et seq.*

(2) When venture capital business discontinued — For the purposes of section 127.4, this Part and Part XII.5, a corporation discontinues its venture capital business

(a) at the time its articles cease to comply with paragraph 204.81(1)(c) and would so cease to comply if it had been incorporated after December 5, 1996;

(b) at the time it begins to wind-up;

(c) immediately before the time it amalgamates or merges with one or more other corporations to form one corporate entity (other than an entity deemed by paragraph 204.85(3)(d) to have been registered under this Part);

(d) at the time it becomes a revoked corporation, if one of the grounds on which the Minister could revoke its registration for the purposes of this Part is set out in paragraph 204.81(6)(a.1); or

(e) at the first time after the revocation of its registration for the purposes of this Part that it fails to comply

with any of the provisions of its articles governing its authorized capital, the management of its business and affairs, the reduction of paid-up capital or the redemption or transfer of its Class A shares.

Related Provisions: 127.4(1.1) — Application to labour-sponsored funds tax credit; 204.841 — Penalty tax on discontinuance of venture capital business; 211.8(1.1) — Rule applies to 211.8(1).

(3) Date of issue of Class A shares — For the purposes of this Part and subsection 211.8(1), in determining the time of the issue or the original acquisition of Class A shares, identical Class A shares held by a person are deemed to be disposed of by the person in the order in which the shares were issued.

Related Provisions: 211.8(1.1) — Rule applies to 211.8(1).

History: Subsecs. 204.8(2) and (3) added by 2000, c. 19, subsec. 54(4), applicable after February 16, 1999.

Definitions [s. 204.8]: "active business", "amount", "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "Canadian partnership" — 102, 248(1); "controlled" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "eligible business entity", "eligible investment" — 204.8(1); "employed", "employee", "individual", "Minister" — 248(1); "original acquisition" — 127.4(1), 204.8(1); "paid-up capital" — 89(1), 248(1); "person", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "related" — 251(2)–(6); "revoked corporation" — 204.8(1); "security" — *Interpretation Act* 35(1); "share", "shareholder" — 248(1); "specified active business" — 204.8(1); "taxable Canadian corporation" — 89(1), 248(1); "taxation year" — 249; "trust" — 104(1), 248(1), (3).

204.81 (1) Conditions for registration — The Minister may register a corporation for the purposes of this Part if, in the opinion of the Minister, it complies with the following conditions:

(a) the corporation has applied in prescribed form to the Minister for registration;

(b) the corporation was caused to be incorporated under the *Canada Business Corporations Act* by an eligible labour body; and

(c) the articles of the corporation provide that

(i) the business of the corporation is restricted to assisting the development of eligible business entities and to creating, maintaining and protecting jobs by providing financial and managerial advice to such entities and by investing funds of the corporation in eligible investments and reserves,

(ii) the authorized capital of the corporation shall consist only of

(A) Class A shares that are issuable only to individuals (other than trusts) and trusts governed by registered retirement savings plans, that entitle their holders

(I) to receive notice of and, subject to the *Canada Business Corporations Act*, to attend and vote at all meetings of the shareholders of the corporation,

(II) to receive dividends at the discretion of the board of directors of the corporation, and

(III) to receive, on dissolution of the corporation, all the assets of the corporation that remain after payment of all amounts payable to the holders of all other classes of shares of the corporation,

(B) Class B shares that are issuable only to and may be held only by eligible labour bodies, that entitle each of those shareholders

(I) to receive notice of and, subject to the *Canada Business Corporations Act*, to attend and vote at all meetings of the shareholders of the corporation, and

(II) to receive, on dissolution of the corporation, an amount equal to the amount of the consideration received by the corporation on the issue of the Class B shares,

but that do not entitle them to receive dividends, and

(C) any additional classes of shares that are authorized, if the rights, privileges, restrictions and conditions attached to the shares are approved by the Minister of Finance,

(iii) the business and affairs of the corporation shall be managed by a board of directors, at least ½ of whom are appointed by the Class B shareholders,

(iv) the corporation shall not reduce its paid-up capital in respect of a class of shares (other than Class B shares) otherwise than by way of a redemption of shares of the corporation or in such other manner as is prescribed,

(v) the corporation shall not redeem a Class A share in respect of which an information return described in paragraph (6)(c) has been issued unless

(A) where the share is held by the specified individual in respect of the share, a spouse or common-law partner or former spouse or common-law partner of that individual or a trust governed by a registered retirement savings plan or registered retirement income fund under which that individual, spouse or common-law partner is the annuitant,

(I) a request in writing to redeem the share is made by the holder to the corporation and the information return referred to in paragraph (6)(c) has been returned to the corporation, or

(II) [Repealed]

(III) the corporation is notified in writing that the specified individual in respect of the share became disabled and permanently unfit for work or terminally ill after the share was issued,

(B) there is no specified individual in respect of the share,

(C) [Repealed]

(D) the corporation is notified in writing that the share is held by a person on whom the share has devolved as a consequence of the death of

(I) a holder of the share, or

(II) an annuitant under a trust governed by a registered retirement savings plan or registered retirement income fund that was a holder of the share,

(E) the redemption occurs more than 8 years after the day on which the share was issued, or

Proposed Amendment — 204.81(1)(c)(v)(E)

(E) the redemption occurs

(I) more than eight years after the day on which the share was issued, or

(II) if the day that is eight years after that issuance is in February or March of a calendar year, in February or on March 1st of that calendar year but not more than 31 days before that day, or

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 169(1), will amend cl. 204.81(1)(c)(v)(E) to read as above, applicable after February 6, 2000 to corporations incorporated at any time.

Technical Notes: Section 204.81 sets out the conditions for the registration of labour-sponsored venture capital corporations (LSVCCs). Subsection 204.81(1) permits the Minister of National Revenue to register a corporation as an LSVCC under Part X.3 if its articles satisfy specified conditions, and other requirements are met. Subparagraph 204.81(1)(c)(v) sets out the requirements of a federally-registered LSVCC's articles regarding the circumstances in which the LSVCC may redeem shares of its capital stock. The current rule generally provides, pursuant to clause 204.81(1)(c)(v)(E), a minimum holding period of eight years for corporations that are incorporated after March 5, 1996.

Clause 204.81(1)(c)(v)(E) is amended to require that the articles of a federally-registered LSVCC provide that the LSVCC shall not redeem its shares unless the redemption occurs either

- more than eight years after the day on which the share was issued, or
- in February or on March 1st but not more than 31 days before the day that is eight years after the day on which the share was issued.

Department of Finance news release, February 7, 2000: See under 211.8(1)(a).

(F) the holder of the share has satisfied such other conditions as are prescribed,

(vi) [Repealed]

(vii) the corporation shall not register a transfer of a Class A share by the specified individual in respect of the share, a spouse or common-law partner of the specified individual or a trust governed by a registered retirement savings plan or registered retirement income fund under which the specified individual or spouse or common-law partner is the annuitant, unless

(A) no information return has been issued under paragraph (6)(c) in respect of the share,

(B) [Repealed]

(C) the transfer is to the specified individual, a spouse or common-law partner or former spouse or common-law partner of the specified individual or a trust governed by a registered retirement savings plan or registered retirement income fund under which the specified individual or the spouse or common-law partner or former spouse or common-law partner of the specified individual is the annuitant,

(D) the corporation is notified in writing that the transfer occurs as a consequence of the death of the specified individual or a spouse or common-law partner of the specified individual,

(E) the corporation is notified in writing that the transfer occurs after the specified individual dies,

(F) [Repealed]

(G) the corporation is notified in writing that the specified individual became disabled and permanently unfit for work or terminally ill after the share was issued and before the transfer, or

(H) such other conditions as are prescribed are satisfied;

(viii) the corporation shall not pay any fee or remuneration to a shareholder, director or officer of the corporation unless the payment was approved by a resolution of the directors of the corporation, and

(ix) the corporation shall not make any investment in an eligible business entity with which the corporation or any of the directors of the corporation does not deal at arm's length unless

(A) the corporation would deal at arm's length with the eligible business entity but for the corporation's interest as the holder of eligible investments in such entity, or

(B) the investment was approved by special resolution of the shareholders of the corporation before the investment was made.

Related Provisions: 131(8) — Prescribed LSVCC deemed to be a mutual fund corporation; 131(11) — Rules respecting prescribed LSVCCs; 204.81(1.1), (1.2) — Application before 2004; 204.81(6)(a), (a.1) — Revocation of registration for failure to comply with conditions; 211.7 — Recovery of credit from provincial LSVCCs; 211.8(1) — Clawback of credit on disposition of approved share; 211.9(a)(ii) — Refund of clawback; 248(1)"registered labour-sponsored venture capital corporation" — Definition of RLSVCC for entire Act; 248(8) — Occurrences as a consequence of death.

History: The opening words of cl. 204.81(1)(c)(v)(A) amended by 2000, c. 12, s. 137, applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced under 248(1)"common-law partner". The opening words formerly read:

(A) where the share is held by the specified individual in respect of the share, a spouse or former spouse of that individual or a trust governed by a registered retirement savings plan or registered retirement income fund under which that individual or spouse is the annuitant,

Subpara. 204.81(1)(c)(vii) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Cl. 204.81(1)(c)(ii)(C) amended by 1998, c. 19, s. 52, applicable after 1996. Cl. 204.81(1)(c)(ii)(C) formerly read:

(C) such additional classes of shares without voting rights (except as may be required by law) as are authorized, where the rights, privileges, restrictions and conditions attached to the shares are determined by the board of directors of the corporation and approved by the Minister of Finance,

Cl. 204.81(1)(c)(ii)(B), subpara. (c)(iii), the opening words of subpara. (c)(v), subcl. (c)(v)(A)(I), cl. (c)(v)(E) amended, subcl. (c)(v)(A)(II), cl. (c)(v)(C), subpara. (c)(vi) and cl. (c)(vii)(B) repealed, by 1997, c. 25, subsecs. 56(1)-(8), applicable to corporations that are incorporated after March 5, 1996. Those provisions formerly read:

(B) Class B shares that are issuable only to and may be held only by the eligible labour body that caused the corporation to be incorporated and that entitle the eligible labour body

(I) to receive notice of and, subject to the *Canada Business Corporations Act*, to attend and vote at all meetings of the shareholders of the corporation, and

(II) to receive, on dissolution of the corporation, an amount equal to the amount of the consideration received by the corporation on the issue of the Class B shares,

but that do not entitle the eligible labour body to receive dividends, and

. . . . .

(iii) the business and affairs of the corporation shall be managed by a board of directors at least ½ of whom are appointed by the eligible labour body that caused the corporation to be incorporated,

. . . . .

(v) subject to the provision described in subparagraph (vi), the corporation may redeem a Class A share in respect of which an information return described in paragraph (6)(c) has been issued only if

. . . . .

(I) a request in writing to redeem the share is made by the holder to the corporation within 60 days after the day on which the share was issued to the original purchaser and the information return referred to in paragraph (6)(c) has been returned to the corporation,

(II) the corporation is notified in writing that the specified individual in respect of the share has retired from the workforce or ceased to be resident in Canada, or

. . . . .

(C) the time of redemption is on or after the day on which the specified individual in respect of the share attained, or would, but for death, have attained the age of 65 years,

. . . . .

(E) the redemption occurs more than 5 years after the day on which the share was issued, or

. . . . .

(vi) unless a Class A share has been issued and outstanding for at least 2 years, the corporation shall not be permitted to redeem the share solely because the specified individual in respect of the share attains 65 years of age or the corporation is notified that the specified individual

(A) has retired from the workforce, or

(B) has ceased to be resident in Canada,

. . . . .

(B) the transfer occurs more than 5 years after the day on which the share was issued,

Cl. 204.81(1)(c)(vii)(E) amended and cl. (F) repealed, by 1997, c. 25, subsec. 56(9), applicable to corporations that are incorporated after December 5, 1996. Those cls. formerly read:

(E) the corporation is notified in writing that the transfer occurs after the specified individual dies, retires from the workforce or ceases to be resident in Canada,

(F) the specified individual attains 65 years of age,

The opening words of para. 204.81(1)(c) amended by 1994, c. 8, subsec. 30(1), applicable after 1988. They formerly read:

(c) the articles of incorporation of the corporation provide that

The opening words of cl. 204.81(1)(c)(ii)(A), that portion of subpara. 204.81(1)(c)(ii) following subcl. (A)(III) repealed, and subparas. 204.81(c)(v) to (vii) amended, by 1994, c. 8, subsecs. 30(2) to (4), applicable after December 2, 1992 except that, where a corporation was registered under subsec. 204.81(1) before December 3, 1992, the amendment applies to the corporation on and after the earlier of

(a) November 30, 1994, and

(b) the first day after December 2, 1992 on which the articles of incorporation of the corporation are amended.

The substituted and repealed portions formerly read:

(A) Class A shares that are issuable only to individuals (other than trusts), that entitle the holders thereof

. . . . .

and that, where an information return described in paragraph (6)(c) was issued in respect thereof, are redeemable or transferable only in the circumstances described in subparagraph (v) or (vii), as the case may be,

. . . . .

(v) subject to the provision described in subparagraph (vi), the corporation may redeem a Class A share in respect of which an information return described in paragraph (6)(c) was issued only if the corporation is requested in writing by the holder of the share to redeem it and

(A) where the share is held by the original purchaser,

(I) the request is made within 60 days after the day on which the share was issued to the original purchaser, the information return referred to in paragraph (6)(c) was returned to the corporation and the share is not held as an investment of a registered retirement savings plan, or

(II) the corporation is notified in writing that the original purchaser has retired from the workforce, has attained 65 years of age, has ceased to be a resident of Canada or has, after acquiring the share, become disabled and permanently unfit for work or become terminally ill,

(B) where the holder of the share is not the original purchaser, the time of redemption is on or after the day on which the original purchaser attained, or would, but for death, have attained the age of 65 years,

(C) the share is held by an individual who notifies the corporation in writing that the share has devolved on the individual as a consequence of the death of a shareholder of the corporation,

(D) the share is held as an investment of a registered retirement savings plan under which the original purchaser or the original purchaser's spouse is the annuitant and the original purchaser has died or, where the original purchaser is living, the corporation is notified in writing that the original purchaser

(I) has retired from the workforce or has attained 65 years of age,

(II) has, after acquiring the share, become disabled and permanently unfit for work or become terminally ill, or

(III) has ceased to be a resident of Canada,

(E) the share is held as an investment of a registered retirement savings plan under which the original purchaser or the original purchaser's spouse is not an annuitant and the time of redemption is on or after the day on which the original purchaser attained, or would, but for death, have attained the age of 65 years,

(F) the redemption occurs more than 5 years after the day on which the share was issued, or

(G) the holder of the share has satisfied such other conditions as are prescribed,

(vi) the corporation shall not, because of the original purchaser of a share described in subparagraph (v)

(i) having retired from the workforce,

(ii) having attained 65 years of age, or

(iii) having ceased to be a resident of Canada,

redeem the share until it has been issued and outstanding for at least 2 years,

(vii) the corporation shall not register a transfer by the original purchaser, or by a registered retirement savings plan under which the original purchaser or the original purchaser's spouse is the annuitant, of a Class A share in respect of which an information return described in paragraph (6)(c) was issued, except where the transfer occurs more than 5 years after the day on which the share was issued, or where the corporation is notified in writing that the share is being transferred

(A) to be held as an investment of a registered retirement savings plan under which the original purchaser or the original purchaser's spouse is the annuitant,

(B) as a consequence of the death of the original purchaser,

(C) at a time when the original purchaser

(I) has retired from the workforce or has attained 65 years of age,

(II) has, after acquiring the share, become disabled and permanently unfit for work or become terminally ill, or

(III) has ceased to be a resident of Canada, or

(D) in accordance with such other conditions as are prescribed,

"Eligible labour body" substituted for "national central labour body" in para. (b), cl. (c)(ii)(B) and subpara. (c)(iii) of subsec. 204.81(1) by 1994, c. 7, Sch. VIII (1993, c. 24), s. 119, applicable to 1992 *et seq.*

Regulations: 6706 (prescribed conditions for 204.81(1)(c)(v)(G)).

Forms: T5005: Application to register a labour-sponsored venture capital corporation.

Proposed Addition — 204.81(1.1), (1.2)

(1.1) Corporations incorporated before March 6, 1996 — In applying clause (1)(c)(v)(E) in relation to any time before 2004 in respect of a corporation incorporated before March 6, 1996, the references in that

clause to "eight" are replaced with references to "five" if, at that time, the relevant statements in the corporation's articles refer to "five".

(1.2) Deemed provisions in articles — In applying subsection (1) in relation to any time before 2004, to a corporation incorporated before February 7, 2000, if the articles of the corporation comply with subclause (1)(c)(v)(E)(I) (as modified, where relevant, by subsection (1.1)), those articles are deemed to provide the statement required by subclause (1)(c)(v)(E)(II).

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 169(2), will add subsecs. 204.81(1.1) and (1.2), applicable after February 6, 2000.

Technical Notes: However, federally-registered LSVCCs that were incorporated before March 6, 1996 may contain statements in their articles that provide that the LSVCC shall not redeem certain of its shares unless the redemption occurs more than five years after the day on which such a share was issued. New subsection 204.81(1.1) provides that in applying clause 204.81(1)(c)(v)(E), at any time before 2004, in respect of a corporation incorporated before March 6, 1996, the references in that clause to the word "eight" are replaced with references to the word "five" if, at that time, the relevant statements in the corporation's articles refer to the word "five". This is intended to ensure that the extended (February, or March 1st) redemption provisions required of a federally-registered LSVCC's articles apply equally to shares originally subject to a minimum five year holding period and those subject to a minimum eight year holding period.

New subsection 204.81(1.2) is a transitional rule that provides a federally-registered LSVCC, incorporated before February 7, 2000, with a reasonable amount of time to amend its articles as required by clause 204.81(1)(c)(v)(E). Subsection 204.81(1.2) provides that, in applying subsection 204.81(1) at any time before 2004 to such an LSVCC, if the LSVCC's articles comply with subclause 204.81(1)(c)(v)(E)(I) (as modified by subsection 204.81(1.1)) those articles are deemed to provide the statement required by subclause 204.81(1)(c)(v)(E)(II).

New subsections 204.81(1.1) and (1.2) apply after February 6, 2000. These amendments are part of a set of amendments, announced by the Minister of Finance (News Release 2000-009, dated February 7, 2000 [reproduced under 211.8(1)(a)B(i)(B), (C) — ed.]) concerning the redemption requirements for federally-registered LSVCCs. For information on a related amendment, see the commentary to subsection 211.8(1).

(2) Registration number — On registering a corporation under subsection (1), the Minister shall assign to it a registration number.

(3) Successive registrations — Where an eligible labour body causes more than one corporation to be registered under this Part, for the purposes of paragraph (6)(h) and section 204.82, each of those corporations shall be deemed

(a) to have issued a Class A share at the earliest time any such corporation issued a Class A share,

and, where the corporation did not exist at the time referred to in paragraph (a),

(b) to have been in existence during the particular period beginning immediately before that time and ending immediately after the corporation was incorporated, and

(c) to have had, throughout the particular period, fiscal periods ending on the same calendar day in each year in the particular period as the calendar day on which its first fiscal period after it was incorporated ended.

History: "Eligible labour body" substituted for "national central labour body" in subsec. 204.81(3) by 1994, c. 7, Sch. VIII (1993, c. 24), s. 119, applicable to 1992 *et seq.*

(4) Determination of cost — For the purposes of this Part, the cost at any time to a corporation of an eligible investment that is a guarantee shall be deemed to be 25% of the amount of the debt obligation subject to the guarantee at that time.

(5) Registration date — Where the Minister registers a corporation for the purposes of this Part, the corporation shall be deemed to have become so registered on the later of

(a) the day the application for registration of the plan is received by the Minister, and

(b) where in the application for registration a day is specified as the day on which the registration is to take effect, that day.

(6) Revocation of registration — The Minister may revoke the registration of a corporation for the purposes of this Part where

(a) the articles of the corporation do not comply with paragraph (1)(c) and would not comply with that paragraph if the corporation had been incorporated after December 5, 1996;

(a.1) the corporation does not comply with any of the provisions of its articles described in paragraph (1)(c), except where there would be no failure to comply if the provisions of its articles were consistent with the articles of a corporation that would be permitted to be registered under this Part if it had been incorporated after December 5, 1996;

(b) an individual acquires or irrevocably subscribes and pays for a Class A share of the capital stock of the corporation in the period beginning on the 61st day of a calendar year and ending on the 60th day of the following calendar year and the corporation fails to file with the Minister an information return in prescribed form containing prescribed information before April of that following calendar year;

(c) an individual acquires or irrevocably subscribes and pays for a Class A share of the capital stock of the corporation in the period beginning on the 61st day of a calendar year and ending on the 60th day of the following calendar year and the corporation fails to issue to the individual before April of that following calendar year an information return in prescribed form stating the amount of the consideration paid for the share in that period;

(d) the corporation issues more than one information return described in paragraph (c) in respect of the same acquisition of or subscription for a Class A share;

(e) the financial statements of the corporation presented to its shareholders are not prepared in accordance with generally accepted accounting principles;

(f) the corporation fails within 6 months after the end of any taxation year to have an independent valuation of its shares made as of the end of that year;

(g) [Repealed]

(h) the corporation does not pay the tax or penalty payable under section 204.82 by it on or before the day on or before which that tax or penalty is required to be paid;

(i) tax was payable under subsection 204.82(3) by the corporation for 3 or more taxation years;

(j) the corporation provides a guarantee that is an eligible investment and fails to maintain, at any time during the term of the guarantee, a reserve equal to the cost to the corporation of the guarantee at that time;

(k) the corporation pays a fee or commission in excess of a reasonable amount in respect of the offering for sale, or the sale, of its shares; or

(l) the corporation has a monthly deficiency in 18 or more months in any 36-month period.

Related Provisions: 127.4(6)(b) — No labour-sponsored funds tax credit unless return under 204.81(6)(c) filed with tax return; 204.8(1)"revoked corporation", 211.7(1)"revoked corporation" — Corporations whose registration has been revoked; 204.81(4) — Determination of cost; 204.81(7), (8) — Notice of intent to revoke registration; 204.81(8.1) — Voluntary de-registration.

History: Para. 204.81(6)(g) repealed by 2000, c. 19, subsec. 55(1), applicable after February 16, 1999. Para. (g) formerly read:

(g) at any time in any of the first 5 taxation years of the corporation beginning with the taxation year in which the corporation first issues a Class A share, the corporation does not have eligible investments or reserves the cost to the corporation of which equals or is greater than 80% of the amount by which the total consideration received by it for Class A shares issued by it before that time exceeds the total of all amounts paid by it before that time to its shareholders as a return of capital on such shares;

Paras. 204.81(6)(a) and (a.1) amended by 1997, c. 25, subsec. 56(10), applicable after March 5, 1996. Paras. (a) and (a.1) formerly read:

(a) the articles of the corporation do not comply with paragraph (1)(c);

(a.1) the corporation does not comply with any of the provisions of its articles of incorporation described in paragraph (1)(c);

Paras. 204.81(6)(a), (a.1) substituted for para. (a) by 1994, c. 8, subsec. 30(5), applicable after 1988. Para. (a) formerly read:

(a) the corporation fails to comply with any of the provisions of its articles of incorporation described in paragraph (1)(c);

Forms: T2152: Part X.3 tax return for an LSVCC; T2152 SCH 1: Calculating tax under subsec. 204.82(2); T2152A: Part X.3 tax return and request for a refund for an LSVCC; T5006: Statement of registered labour-sponsored venture capital corporation Class A shares; T5006 Summ: Summary of registered LSVCC Class A shares.

(7) Notice of intent to revoke registration — Where the Minister proposes to revoke the registration of a corporation under subsection (6), the Minister shall, by registered mail, give notice to the corporation of the proposal.

Related Provisions: 244(5) — Proof of service by mail; 248(7)(a) — Mail deemed received on day mailed; 204.81(9) — Appeal of decision to revoke registration.

(8) Idem — Where the Minister gives notice under subsection (7) to a registered labour-sponsored venture capital corporation, the Minister may, after the expiration of 30 days after the day of mailing of the notice, or after the expiration of such extended period after the day of mailing as the Federal Court of Appeal or a judge thereof, on application made at any time before the determination of any appeal under subsection (9) from the giving of the notice, may fix or allow, publish a copy of the notice in the *Canada Gazette* and, on the publication of a copy of the notice, the registration of the corporation is revoked.

(8.1) Voluntary de-registration — Where at any time the Minister receives a certified copy of a resolution of the directors of a corporation seeking the revocation of the corporation's registration under this Part,

(a) the registration is revoked at that time; and

(b) the Minister shall, with all due dispatch, give notice in the *Canada Gazette* of the revocation.

Related Provisions: 204.81(6) — Revocation of registration; 204.81(8.2) — Actual date of receipt applies.

(8.2) Application of subsection 248(7) — Subsection 248(7) does not apply for the purpose of subsection (8.1).

History: Subsecs. 204.81(8.1) and (8.2) added by 2000, c. 19, subsec. 55(2), applicable to resolutions received by the Minister of National Revenue after June 29, 2000.

(9) Right of appeal — Where the Minister refuses to accept a corporation for registration under subsection (1) or gives notice of a proposal to revoke the registration of a corporation under subsection (7), the corporation may appeal to the Federal Court of Appeal from the decision or from the giving of the notice.

Related Provisions: 168(3) — Parallel rule for appeal of revocation of charity registration.

Definitions [s. 204.81]: "amount" — 248(1); "annuitant" — 146(1), 204.8(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "class of shares" — 248(6); "common-law partner" — 248(1); "consequence of the death" — 248(8); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "eligible business entity", "eligible investment", "eligible labour body" — 204.8(1); "Federal Court of Appeal" — *Federal Courts Act* s. 3; "fiscal period" — 249.1; "individual", "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "officer" — 248(1); "paid-up capital" — 89(1), 248(1); "person", "prescribed", "registered labour-sponsored venture capital corporation" — 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "reserve" — 204.8(1); "share", "shareholder" — 248(1); "specified individual" — 204.8(1); "taxation year" — 249; "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

204.82 (1) Recovery of credit — Where, at any time that is both in a taxation year included in the start-up period of a corporation that was registered under this Part and before its venture capital business is first discontinued,

(a) 80% of the amount, if any, by which the total consideration received by it for Class A shares issued by it before that time exceeds the total of all amounts paid by it before that time to its shareholders as a return of capital on such shares

exceeds

(b) the total of all amounts each of which is the cost to the corporation of an eligible investment or reserve of the corporation at that time,

the corporation shall pay a tax under this Part for the year equal to the amount determined by the formula

$$(A \times 20\%) - B$$

where

A is the greatest amount by which the amount determined under paragraph (a) exceeds the amount determined under paragraph (b) for the year, and

B is the total of all taxes payable under this subsection by the corporation for preceding taxation years.

Related Provisions: 204.81(4) — Determination of cost; 257 — Formula cannot calculate to less than zero.

History: The opening words of subsec. 204.82(1) amended by 2000, c. 19, subsec. 56(1), applicable to 1999 *et seq.* The opening words formerly read:

Where, at any time in a taxation year referred to in paragraph 204.81(6)(g) of a corporation that was registered under this Part,

(2) Liability for tax — Each corporation that has been registered under this Part shall, in respect of each month that ends before its venture capital business is first discontinued and in a particular taxation year of the corporation that begins after the end of the corporation's start-up period (or, where the corporation has no start-up period, that begins after the time the corporation first issues a Class A share), pay a tax under this Part equal to the amount obtained when the greatest investment shortfall at any time that is in the month and in the particular year (in

this section and sections 204.81 and 204.83 referred to as the "monthly deficiency") is multiplied by 1/60 of the prescribed rate of interest in effect during the month.

Related Provisions: 204.82(2.1), (2.2) — Investment shortfall.

History: Subsec. 204.82(2) amended by 2000, c. 19, subsec. 56(2), applicable to 1999 *et seq.* Subsec. 204.82(2) formerly read:

(2) Liability for tax — Each corporation that has been registered under this Part shall, in respect of each month that ends in a particular taxation year of the corporation that begins after the end of the corporation's last taxation year referred to in paragraph 204.81(6)(g), pay a tax under this Part equal to the amount obtained when the greatest investment shortfall at any time that is in the month and in the particular year (in this section and sections 204.81 and 204.83 referred to as the "monthly deficiency") is multiplied by 1/60 of the prescribed rate of interest during the month.

Subsec. 204.82(2) amended by 1998, c. 19, subsec. 53(3), applicable to taxation years that end after February 1997. Subsec. 204.82(2) formerly read:

(2) Where, at any time in a month in a particular taxation year of a corporation that was registered under this Part that began after the end of the corporation's last taxation year referred to in paragraph 204.81(6)(g), 60% of the least of

(a) the amount of the shareholders' equity in the corporation determined at the end of the taxation year immediately preceding the particular taxation year, without taking into account any unrealized gains or losses in respect of eligible investments of the corporation, and

(a.1) the amount of the shareholders' equity in the corporation determined at the end of the second taxation year before the particular taxation year, without taking into account any unrealized gains or losses in respect of eligible investments of the corporation, and

(b) the amount of the shareholders' equity in the corporation, determined at the end of the particular taxation year, without taking into account any unrealized gains or losses in respect of eligible investments of the corporation,

exceeds

(c) the total of all amounts, each of which is the cost to the corporation of an eligible investment of the corporation at that time,

the corporation shall, in respect of that month, pay a tax under this Part equal to the amount obtained when the greatest such excess in the month (in this section and sections 204.81 and 204.83 referred to as the "monthly deficiency") is multiplied by a percentage equal to 1/60 of the prescribed rate of interest in effect for the month.

The opening words of subsec. 204.82(2) amended by the said c. 19, subsec. 53(1), applicable to taxation years that end after 1994 and before March 1997. The opening words formerly read:

(2) Where, at any time in a month in a particular taxation year of a corporation that was registered under this Part beginning after the end of the corporation's last taxation year referred to in paragraph 204.81(6)(g), 60% of the lesser of

Para. 204.82(2)(a.1) added by the said c. 19, subsec. 53(2), applicable to taxation years that end after 1994 and before March 1997.

Regulations: 4301 (prescribed rate of interest).

Forms: T2152-SCH1: Calculating tax under subsec. 204.82(2).

(2.1) Determination of investment shortfall — Subject to subsection (2.2), a corporation's investment shortfall at any time in a particular taxation year is the amount determined by the formula

$$A - B - C$$

where

A is 60% of the lesser of

(a) the amount, if any, by which the amount of the shareholders' equity in the corporation at the end of the preceding taxation year exceeds the specified adjustment in respect of the shareholders' equity in the corporation at the end of that year, and

(b) the amount, if any, by which the amount of the shareholders' equity in the corporation at the end of the particular taxation year exceeds the specified adjustment in respect of the shareholders' equity in the corporation at the end of the particular year;

B is the greater of

(a) the total of all amounts each of which is the adjusted cost to the corporation of an eligible investment of the corporation at that time, and

(b) 50% of the total of all amounts each of which is

(i) the adjusted cost to the corporation of an eligible investment of the corporation at the beginning of the particular year, or

(ii) the adjusted cost to the corporation of an eligible investment of the corporation at the end of the particular year; and

C is 60% of the amount, if any, by which

(a) the total of all amounts each of which is a tax or penalty under subsection (3) or (4), or a prescribed tax or penalty, paid before that time by the corporation (other than the portion, if any, of that tax or penalty the liability for which resulted in a reduction in the amount of the shareholders' equity at the end of any preceding taxation year)

exceeds

(b) the total of all amounts each of which is a refund before that time of any portion of the total described in paragraph (a).

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: The formula, and paras. (a) and (b) of the description of A, in subsec. 204.82(2.1) amended, and the description of C added to subsec. 204.82(2.1), by 1999, c. 22, subsecs. 69(1) to (3), applicable to taxation years that begin after 1997. The formula and paras. (a) and (b) of the description of A formerly read:

$$A - B$$

. . . . .

(a) the amount of the shareholders' equity in the corporation at the end of the preceding taxation year, and

(b) the amount of the shareholders' equity in the corporation at the end of the particular year; and

Subsec. 204.82(2.1) added by 1998, c. 19, subsec. 53(3), applicable to taxation years that end after February 1997 except that, for taxation years that end before 1999, the amount determined under paragraph (b) of the description of B is deemed to be nil.

(2.2) Investment shortfall — For the purpose of this subsection and for the purpose of computing a corporation's investment shortfall under subsection (2.1) at any time in a taxation year (in this subsection referred to as the "relevant year"),

(a) unrealized gains and losses in respect of its eligible investments shall not be taken into account in computing the amount of the shareholders' equity in the corporation;

(b) where

(i) the relevant year ends after 1998, and

(ii) it is expected that a redemption of its Class A shares will occur after the end of a particular taxation year and, as a consequence, the amount of the shareholders' equity in the corporation at the end of the particular year would otherwise be reduced to take into account the expected redemption,

subject to paragraph (c), the amount (or, where the relevant year ends in 1999, 2000, 2001 or 2002, 20%,

40%, 60% or 80%, respectively of the amount) expected to be redeemed shall not be taken into account in determining the amount of the shareholders' equity in the corporation at the end of the particular year;

(c) paragraph (b) does not apply to a redemption expected to be made after the end of a taxation year where

(i) the redemption is made within 60 days after the end of the year, and

(ii) either

(A) tax under Part XII.5 became payable as a consequence of the redemption, or

(B) tax under Part XII.5 would not have become payable as a consequence of the redemption if the redemption had occurred at the end of the year; and

(c.1) the specified adjustment in respect of shareholders' equity in the corporation at the end of a taxation year is the amount determined by the formula

$$(A \times (B/C)) - D$$

where

A is the shareholders' equity at the end of the year,

B is the total of

(i) the fair market value at the end of the year of all Class A shares issued by it before March 6, 1996 and more than five years before the end of the year,

(ii) the fair market value at the end of the year of all Class A shares issued by it after March 5, 1996 and more than eight years before the end of the year,

(iii) the fair market value at the end of the year of all Class A shares issued by it in the last 60 days of the year, and

(iv) if the corporation so elects in writing filed with the Minister not more than six months after the end of the year and is not a revoked corporation at the end of the year, the fair market value at the end of the year of all shares of classes, of the capital stock of the corporation, to which clause 204.81(1)(c)(ii)(C) applies,

C is the fair market value at the end of the year of all shares issued by it, and

D is the amount by which the shareholders' equity in the corporation at the end of the year has been reduced to take into account the expected subsequent redemption of shares of the capital stock of the corporation; and

(d) the adjusted cost to the corporation of an eligible investment of the corporation at any time is

(i) 150% of the cost to the corporation of the eligible investment at that time where the eligible investment is

(A) a property acquired by the corporation after February 18, 1997 (other than a property to which subparagraph (i.1) applies) that would be an eligible investment of the corporation if the reference to "$50,000,000" in paragraph (f) of the definition "eligible investment" in subsection 204.8(1) were read as "$10,000,000", or

(B) a share of the capital stock of a prescribed corporation,

(i.1) 200% of the cost to the corporation of the eligible investment at that time where the eligible investment is a property acquired by the corporation after February 16, 1999 (other than a property described in clause (i)(B)) that would be an eligible investment of the corporation if the reference to "$50,000,000" in paragraph (f) of the definition "eligible investment" in subsection 204.8(1) were read as "$2,500,000", and

(ii) in any other case, the cost to the corporation of the eligible investment of the corporation at that time.

Related Provisions: 257 — Formula cannot calculate to less than zero; Reg. 5100(1)"eligible corporation"(f) — Corporation that makes election under (c.1) does not qualify for foreign property exception.

History: Subpara. 204.82(2.2)(d)(i) amended, and subpara. (i.1) added, by 2000, c. 19, subsec. 56(3), applicable to 1999 *et seq.* Subpara. (i) formerly read:

(i) where the eligible investment is a property acquired by the corporation after February 18, 1997 that would be an eligible investment of the corporation if the reference to "$50,000,000" in paragraph (f) of the definition "eligible investment" in section 204.8 were read as "$10,000,000", 150% of the cost to the corporation of the eligible investment of the corporation at that time, and

The opening words of subsec. 204.82(2.2) amended, and para. 204.82(2.2)(c.1) added, by 1999, c. 22, subsecs. 69(4), (5), applicable to taxation years that begin after 1997. The opening words formerly read:

(2.2) For the purpose of computing a corporation's investment shortfall under subsection (2.1) at any time in a taxation year (in this subsection referred to as the "relevant year"),

Subsec. 204.82(2.2) added by 1998, c. 19, subsec. 53(3), applicable to taxation years that end after February 1997.

Regulations: 4801.02 (prescribed corporation for 204.82(2.2)(d)(i)(B)).

(3) Recovery of credit — Where a corporation is liable under subsection (2) to pay a tax in respect of 12 consecutive months (in this subsection referred to as the "particular period"), the corporation shall pay a tax under this Part for a taxation year in respect of each particular period that ends in the year equal to the total of the amounts determined by the formula

$$\left(\frac{A}{12} \times 20\%\right) - (B - C)$$

where

A is the total of the monthly deficiencies for each month in the particular period;

B is the total of all taxes payable by the corporation under subsection (1) for preceding taxation years and taxes payable by it under this subsection in respect of a period ending before the end of the particular period; and

C is the total of all amounts refunded under section 204.83 in respect of the tax paid under this subsection by the corporation for preceding taxation years.

Related Provisions: 204.82(4) — Penalty; 204.83(1) — Refund of amount paid; 257 — Formula cannot calculate to less than zero.

(4) Penalty — Where a corporation is liable under subsection (3) to pay a tax for a taxation year, the corporation shall pay, in addition to the tax payable under that subsection, a penalty for the year equal to that tax.

Related Provisions: 18(1)(t) — Penalty is non-deductible; 204.83(1) — Refund of 80% of penalty; 211.7 — Recovery of credit from shareholder where share redeemed or disposed of.

(5) Provincially registered LSVCCs — Where

(a) an amount (other than interest on an amount to which this subsection applies or an amount payable

under or as a consequence of a prescribed provision of a law of a province) is payable to the government of a province by a corporation,

(b) the amount is payable as a consequence of a failure to acquire sufficient properties of a character described in the law of the province,

(c) the corporation has been prescribed for the purpose of the definition "approved share" in subsection 127.4(1), and

(d) the corporation is not a registered labour-sponsored venture capital corporation or a revoked corporation,

the corporation shall pay a tax under this Part for the taxation year in which the amount became payable equal to that amount.

Related Provisions: 204.83(2) — Refund; 204.86(2) — Return and payment of tax.

History: Subsec. 204.82(5) added by 1998, c. 19, subsec. 53(4), applicable to liabilities arising after February 18, 1997.

Regulations: 6707 (prescribed provision of a law of a province (Ontario)).

(6) Further matching of amounts payable to a province — Where

(a) a particular amount is payable (other than interest on an amount to which this subsection applies) by a registered labour-sponsored venture capital corporation or a revoked corporation to the government of a province as a consequence of a failure of a prescribed corporation to acquire sufficient properties of a character described in a law of the province, and

(b) the particular amount became payable before the corporation first discontinued its venture capital business,

the corporation shall pay a tax under this Part for the taxation year in which the particular amount became payable equal to that amount.

Related Provisions: 204.83(2) — Refund of tax paid under 204.82(6).

History: Subsec. 204.82(6) added by 2000, c. 19, subsec. 56(4), applicable to 1999 *et seq.*

Regulations: 4801.02 (prescribed corporation for 204.82(6)(a)).

Definitions [s. 204.82]: "adjusted cost" — 204.82(2.2)(d); "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "eligible investment" — 204.8(1); "investment shortfall" — 204.82(2.1), (2.2); "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "particular period" — 204.82(3); "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "property" — 248(1); "province" — *Interpretation Act* 35(1); "registered labour-sponsored venture capital corporation" — 248(1); "relevant year" — 204.82(2.2); "reserve", "revoked corporation" — 204.8(1); "share", "shareholder" — 248(1); "shareholders' equity" — 204.82(2.2)(a), (b); "specified adjustment" — 204.82(2.2)(c.1); "start-up period" — 204.8(1); "taxation year" — 249; "writing" — *Interpretation Act* 35(1).

204.83 (1) Refunds for federally registered LSVCCs — If a corporation is required, under subsections 204.82(3) and (4), to pay a tax and a penalty under this Part for a taxation year, it has no monthly deficiency throughout any period of 12 consecutive months (in this section referred to as the "second period") that begins after the 12-month period in respect of which the tax became payable (in this section referred to as the "first period") and it so requests in an application filed with the Minister in prescribed form, the Minister shall refund to it an amount equal to the total of the amount that was paid under subsection 204.82(3) and 80% of the amount that was paid under subsection 204.82(4) in respect of the first period on or before the later of

(a) the 30th day after receiving the application, and

(b) the 60th day after the end of the second period.

Forms: T2152A: Part X.3 tax return and request for a refund for an LSVCC.

(2) Refunds of amounts payable to provinces — Where

(a) the government of a province refunds, at any time, an amount to a corporation,

(b) the refund is of an amount that had been paid in satisfaction of a particular amount payable in a taxation year of the corporation, and

(c) tax was payable under subsection 204.82(5) or (6) by the corporation for a taxation year because the particular amount became payable,

the corporation is deemed to have paid at that time an amount equal to the refund on account of its tax payable under this Part for the year.

History: Subsec. 204.83(2) amended by 2000, c. 19, s. 57, applicable to 1999 *et seq.* Subsec. 204.83(2) formerly read:

(2) Refunds for other LSVCCs — Where

(a) the government of a province refunds, at any time, an amount to a corporation,

(b) the refund is of an amount that had been paid in satisfaction of a particular amount payable in a taxation year of the corporation, and

(c) tax was payable under subsection 204.82(5) by the corporation for a taxation year because the particular amount became payable,

the corporation is deemed to have paid at that time an amount equal to the refund on account of its tax payable under this Part for the year.

Subsec. 204.83(1) amended by 1999, c. 22, s. 70, applicable after June 16, 1999, except that for the purpose of the subsec., as amended, applications received by the Minister of National Revenue before June 17, 1999 are deemed to have been received on that day. Subsec. (1) formerly read:

(1) If a corporation is required, under subsections 204.82(3) and (4), to pay a tax and a penalty under this Part for a taxation year and, throughout any period of 12 consecutive months (in this section referred to as the "second period") that begins after the 12-month period in respect of which the tax became payable (in this section referred to as the "first period"), the corporation has no monthly deficiency and files with the Minister the return required under this Part for the taxation year in which the second period ends, the Minister shall refund to the corporation an amount equal to the total of the amount that was paid under subsection 204.82(3) and 80% of the amount that was paid under subsection 204.82(4) in respect of the first period.

S. 204.83 amended by 1998, c. 19, s. 54, applicable after February 18, 1997. S. 204.83 formerly read:

204.83 Refund of tax and penalty — Where a corporation is required, under subsections 204.82(3) and (4), to pay a tax and a penalty under this Part for a taxation year and, throughout any period of 12 consecutive months (in this section referred to as the "second period") beginning after the 12-month period in respect of which the tax became payable (in this section referred to as the "first period"), the corporation has no monthly deficiency and files with the Minister the return required under this Part for the taxation year in which the second period ends, the Minister shall refund to the corporation an amount equal to the total of the amount that was paid under subsection 204.82(3) and 80% of the amount that was paid under subsection 204.82(4) in respect of the first period.

Definitions [s. 204.83]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "first period" — 204.83(1); "Minister" — 248(1); "month", "province" — *Interpretation Act* 35(1); "second period" — 204.83(1); "taxation year" — 249.

204.84 Penalty — Every corporation that for a taxation year issues an information return described in paragraph 204.81(6)(c) in respect of

(a) the issuance of a share when the corporation was a revoked corporation, or

(b) a subscription in respect of a share if the share is not issued on or before the day that is 180 days after the day the information return was issued,

is liable to a penalty for the year equal to the amount of the consideration for which the share was or was to be issued.

Related Provisions: 18(1)(t) — Penalty is non-deductible.

Definitions [s. 204.84]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "revoked corporation" — 204.8(1); "share" — 248(1); "taxation year" — 249.

204.841 Penalty tax where venture capital business discontinued — Where, at a particular time in a taxation year, a particular corporation that is a registered labour-sponsored venture capital corporation or a revoked corporation first discontinues its venture capital business, the particular corporation shall pay a tax under this Part for the year equal to the total of all amounts each of which is the amount in respect of a Class A share of the capital stock of the particular corporation outstanding immediately before the particular time that is determined by the formula

$$A \times B$$

where

A is

(a) if the original acquisition of the share was before March 6, 1996 and less than five years before the particular time, 4% of the consideration received by the particular corporation for the issue of the share,

(b) if the original acquisition of the share was after March 5, 1996 and less than eight years before the particular time, 1.875% of the consideration received by the particular corporation for the issue of the share, and

(c) in any other case, nil; and

B is

(a) if the original acquisition of the share was before March 6, 1996, the number obtained when the number of whole years throughout which the share was outstanding before the particular time is subtracted from five, and

(b) in any other case, the number obtained when the number of whole years throughout which the share was outstanding is subtracted from eight.

Related Provisions: 204.8(2) — Determining when an RLSVCC discontinues its business.

History: S. 204.841 added by 2000, c. 19, s. 58, applicable to businesses discontinued after February 16, 1999.

Definitions [s. 204.841]: "amount", "business" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "discontinues" — 204.8(2); "original acquisition" — 127.4(1), 204.8(1); "registered labour-sponsored venture capital corporation" — 248(1); "revoked corporation" — 204.8(1); "share" — 248(1); "taxation year" — 249.

204.85 (1) Dissolution of federally registered LSVCCs — A registered labour-sponsored venture capital corporation or a revoked corporation that has issued any Class A shares shall send written notification of any proposed amalgamation, merger, liquidation or dissolution of the corporation to the Minister at least 30 days before the amalgamation, merger, liquidation or dissolution, as the case may be.

(2) Dissolution of other LSVCCs — Where

(a) an amount (other than interest on an amount to which this subsection applies or an amount payable under or as a consequence of a prescribed provision of a law of a province) is payable to the government of a province by a corporation,

(b) the amount is payable as a consequence of the amalgamation or merger of the corporation with another corporation, the winding-up or dissolution of the corporation or the corporation ceasing to be registered under a law of the province,

(c) the corporation has been prescribed for the purpose of the definition "approved share" in subsection 127.4(1), and

(d) the corporation is not a registered labour-sponsored venture capital corporation or a revoked corporation,

the corporation shall pay a tax under this Part for the taxation year in which the amount became payable equal to that amount.

(3) Amalgamations and mergers — For the purposes of section 127.4, this Part and Part XII.5, where two or more corporations (each of which is referred to in this subsection as a "predecessor corporation") amalgamate or merge to form one corporate entity (in this subsection referred to as the "new corporation") and at least one of the predecessor corporations was, immediately before the amalgamation or merger, a registered labour-sponsored venture capital corporation or a revoked corporation,

(a) subject to paragraphs (d) and (e), the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

(b) where a predecessor corporation was authorized to issue a class of shares to which clause 204.81(1)(c)(ii)(C) applies, the new corporation is deemed to have received approval from the Minister of Finance to issue substantially similar shares at the time of the amalgamation or merger;

(c) where a share of a predecessor corporation (in this paragraph referred to as the "predecessor share") is replaced on the amalgamation or merger by a new share of the new corporation,

(i) the new share

(A) is deemed not to have been issued on the amalgamation or merger, and

(B) is deemed to have been issued by the new corporation at the time the predecessor corporation issued the predecessor share, and

(ii) if the new share was issued to a person who acquired the predecessor share as a consequence of a transfer the registration of which by the predecessor corporation was permitted under paragraph 204.81(1)(c), the issuance of the new share is deemed to be in compliance with the conditions described in paragraph 204.81(1)(c);

(d) the Minister is deemed to have registered the new corporation for the purposes of this Part unless

(i) the new corporation is not governed by the *Canada Business Corporations Act*,

(ii) one or more of the predecessor corporations was a registered labour-sponsored venture capital corporation the venture capital business of which was discontinued before the amalgamation or merger,

(iii) one or more of the predecessor corporations was, immediately before the amalgamation or merger, a revoked corporation,

(iv) immediately after the amalgamation or merger, the articles of the new corporation do not comply with paragraph 204.81(1)(c), or

(v) shares other than Class A shares of the capital stock of the new corporation were issued to any shareholder of the new corporation in satisfaction of any share (other than a share to which clause 204.81(1)(c)(ii)(B) or (C) applied) of a predecessor corporation;

(e) where paragraph (d) does not apply, the new corporation is deemed to be a revoked corporation;

(f) subsection 204.82(1) does not apply to the new corporation; and

(g) subsection 204.82(2) shall, in its application to the new corporation, be read without reference to the words "that begins after the end of the corporation's start-up period (or, where the corporation has no start-up period, that begins after the time the corporation first issues a Class A share)".

Related Provisions: 87 — General rules for amalgamations; 127.4(1.1) — Application to labour-sponsored funds tax credit; 211.7(2) — Effect of amalgamation on Part XII.5 tax; 211.8(1.1) — Rule applies to 211.8(1).

History: Subsec. 204.85(1) amended by 2000, c. 19, subsec. 59(1), applicable to amalgamations, mergers, liquidations and dissolutions that occur later than July 29, 2000. Subsec. 204.85(1) formerly read:

> 204.85 (1) Dissolution [or amalgamation] of federally registered LSVCCs — If a registered labour-sponsored venture capital corporation or a revoked corporation has issued any Class A shares, it shall not be amalgamated or merged with another corporation, or be liquidated or dissolved, except with the written permission of the Minister of Finance and on any terms and conditions that are specified by that Minister.

Subsec. 204.85(3) added by the said c. 19, subsec. 59(2), applicable to amalgamations and mergers that occur after February 16, 1999.

S. 204.85 amended by 1998, c. 19, s. 55, subsec. (1) applicable after July 1997, and subsec. (2) applicable after February 18, 1997. S. 204.85 formerly read:

> 204.85 Prohibition against dissolution — A registered labour-sponsored venture capital corporation or a revoked corporation shall not, if it has issued any Class A shares, liquidate or dissolve except with the written permission of the Minister of Finance and on such terms and conditions as are specified by that Minister.

Definitions [s. 204.85]: "amount", "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "class of shares" — 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "Minister", "prescribed" — 248(1); "province" — *Interpretation Act* 35(1); "registered labour-sponsored venture capital corporation" — 248(1); "revoked corporation" — 204.8(1); "share", "shareholder" — 248(1); "start-up period" — 204.8(1); "taxation year" — 249; "written" — *Interpretation Act* 35(1)"writing".

204.86 (1) Return and payment of tax for federally-registered LSVCCs — Every registered labour-sponsored venture capital corporation and every revoked corporation shall

(a) on or before its filing-due date for a taxation year, file with the Minister a return for the year under this Part in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax and penalties, if any, payable under this Part by it for the year; and

(c) on or before its balance-due day for the year, pay to the Receiver General the amount of tax and penalties, if any, payable under this Part by it for the year.

Related Provisions: 150.1(5) — Electronic filing.

(2) Return and payment of tax for other LSVCCs — Where tax is payable under this Part for a taxation year by a corporation because of subsection 204.82(5) or 204.85(2), the corporation shall

(a) on or before its filing-due date for the year, file with the Minister a return for the year under this Part in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax payable under this Part by it for the year; and

(c) on or before its balance-due day for the year, pay to the Receiver General the amount of tax payable under this Part by it for the year.

Related Provisions: 150.1(5) — Electronic filing.

History: Paras. 204.86(1)(c) and (2)(c) amended by 2003, c. 15, s. 124, applicable to taxation years that begin after June 2003. The paras. formerly read:

> (1)(c) within 90 days after the end of the year, pay to the Receiver General the amount of tax and penalties, if any, payable under this Part by it for the year.
>
> . . . . .
>
> (2)(c) within 90 days after the end of the year, pay to the Receiver General the amount of tax payable under this Part by it for the year.

S. 204.86 amended by 1998, c. 19, s. 56, applicable to taxation years that end after February 18, 1997. S. 204.86 formerly read:

> 204.86 Return and payment of tax — Every registered labour-sponsored venture capital corporation and every revoked corporation shall
>
> (a) on or before the day on or before which it is required by section 150 to file its return of income under Part I for a taxation year, file with the Minister a return for the year under this Part in prescribed form and containing prescribed information, without notice or demand therefor;
>
> (b) estimate in the return the amount of tax and penalties, if any, payable under this Part by it for the year; and
>
> (c) within 90 days after the end of each taxation year, pay to the Receiver General the amount of tax and penalties, if any, payable under this Part by it for the year.

Definitions [s. 204.86]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "filing-due date", "Minister", "prescribed", "registered labour-sponsored venture capital corporation" — 248(1); "revoked corporation" — 204.8(1); "taxation year" — 249.

Forms [s. 204.86]: T2152: Part X.3 tax return for an LSVCC; T2152 SCH 1: Calculating tax under subsec. 204.82(2); T2152A: Part X.3 tax return and request for a refund for an LSVCC.

204.87 Provisions applicable to Part — Subsection 150(3), sections 152 and 158, subsections 161(1) and (11), sections 162 to 164 and 165 to 167, Division J of Part I and section 227.1 apply to this Part, with such modifications as the circumstances require.

History [Part X.3]: Part X.3 (ss. 204.8 to 204.87) added by 1994, c. 7, Sch. II (1991, c. 49), s. 164, applicable after 1988, except that subpara. 204.81(1)(c)(vi) does not apply to shares purchased before 1991.

PART X.4 — TAX IN RESPECT OF OVERPAYMENTS TO REGISTERED EDUCATION SAVINGS PLANS

204.9 (1) Definitions — The definitions in this subsection apply in this Part.

History: The opening words of subsec. 204.9(1) amended by 1998, c. 19, subsec. 57(1), applicable for the purpose of determining tax under Part X.4 of the Act for months that are after 1996. The opening words formerly read:

In this Part, subject to subsection (2),

"excess amount" for a year at any time in respect of an individual means the amount, if any, by which the total of all contributions made after February 20, 1990 in the year and before that time into all registered education savings plans by or on behalf of all subscribers in respect of the individual exceeds the lesser of

(a) the RESP annual limit for the year, and

(b) the amount, if any, by which the RESP lifetime limit for the year exceeds the total of all contributions made into registered education savings plans by or on behalf of all subscribers in respect of the individual in all preceding years.

Related Provisions: 146.1(2)(k) — Limit on annual RESP contributions; 204.9(2)(a) — Where agreement entered into before February 21, 1990.

History: Subsec. 204.9(1)"excess amount" amended by 1998, c. 19, subsec. 57(1), applicable for the purpose of determining tax under Part X.4 of the Act for months that are after 1996. The definition formerly read:

"excess amount", for a year at any time in respect of a beneficiary, means the amount, if any, by which the total of all payments made after February 20, 1990 in the year and before that time into all registered education savings plans by or on behalf of all subscribers in respect of the beneficiary exceeds the lesser of

(a) $2,000, and

(b) the amount, if any, by which $42,000 exceeds the total of all payments made into registered education savings plans by or on behalf of all subscribers in respect of the beneficiary in all preceding years;

Paras. (a) and (b) of the definition "excess amount" in subsec. 204.9(1) amended by 1997, c. 25, s. 57, applicable to months that end after 1995, except that, for payments made after 1989 and before 1996,

(a) the reference to "$2,000" in para. (a) of the definition shall be read as "$1,500" and

(b) the reference to "$42,000" in para. (b) of the definition shall be read as "$31,500".

Paras. (a) and (b) formerly read:

(a) $1,500, and

(b) the amount, if any, by which $31,500 exceeds the total of all payments made into registered education savings plans by or on behalf of all subscribers in respect of the beneficiary in all preceding years;

"RESP lifetime limit" for a year means,

(a) for 1990 to 1995, $31,500; and

(b) for 1996 and subsequent years, $42,000.

History: Subsec. 204.9(1)"RESP lifetime limit" added by 1998, c. 19, subsec. 57(1), applicable for the purpose of determining tax under Part X.4 of the Act for months that are after 1996.

"subscriber's gross cumulative excess" at any time in respect of an individual means the total of all amounts each of which is the subscriber's share of the excess amount for a relevant year at that time in respect of the individual and, for the purpose of this definition, a relevant year at any time is a year that began before that time.

History: Subsec. 204.9(1)"subscriber's gross cumulative excess" added by 1998, c. 19, subsec. 57(1), applicable for the purpose of determining tax under Part X.4 of the Act for months that are after 1996.

"subscriber's share of the excess amount" for a year at any time in respect of an individual means the amount determined by the formula

$$(A/B) \times C$$

where

A is the total of all contributions made after February 20, 1990, in the year and before that time into all registered education savings plans by or on behalf of the subscriber in respect of the individual;

B is the total of all contributions made after February 20, 1990, in the year and before that time into all registered education savings plans by or on behalf of all subscribers in respect of the individual; and

C is the excess amount for the year at that time in respect of the individual.

Related Provisions: 204.9(2)(b) — Where agreement entered into before February 21, 1990.

History: Subsec. 204.9(1)"subscriber's share of the excess amount" amended by 1998, c. 19, subsec. 57(1), applicable for the purpose of determining tax under Part X.4 of the Act for months that are after 1996. The definition formerly read:

"subscriber's share of the excess amount", for a year at any time in respect of a beneficiary, means the amount determined by the formula

$$\frac{A}{B} \times C$$

where

A is the total of all payments made in the year and before that time into all registered education savings plans by or on behalf of the subscriber in respect of the beneficiary,

B is the total of all payments made in the year and before that time into all registered education savings plans by or on behalf of all subscribers in respect of the beneficiary, and

C is the excess amount for the year at that time in respect of the beneficiary.

(1.1) Application of subsec. 146.1(1) — The definitions in subsection 146.1(1) apply to this Part.

(2) Agreements before February 21, 1990 — Where a subscriber is required, pursuant to an agreement in writing entered into before February 21, 1990, to make payments of specified amounts on a periodic basis into a registered education savings plan in respect of a beneficiary, and the subscriber makes at least one payment under the agreement before that day,

(a) the excess amount for a year in respect of the beneficiary shall be deemed not to exceed the excess amount for the year that would be determined under subsection (1) if the total of all such payments made in the year and, where the agreement so provides, amounts paid in the year in satisfaction of the requirement to make such payments under all such agreements by all such subscribers in respect of the beneficiary were equal to the lesser of the amounts described in paragraphs (a) and (b) of the definition "excess amount" in subsection (1); and

(b) in determining a subscriber's share of an excess amount for a year, any payment included in the total described in paragraph (a) in respect of the year shall be excluded in determining the values for A and B in the definition "subscriber's share of the excess amount" in subsection (1).

(3) Refunds from unregistered plans — For the purposes of subsection (1) and section 146.1, where an individual entered into an education savings plan before February 21, 1990, pursuant to a preliminary prospectus issued by a promoter, and the promoter refunds all payments made into the plan and all income accrued thereon to the individual, each payment made by the individual into a registered education savings plan before December 31, 1990 shall be deemed to be a payment made before February 21, 1990, to the extent that the total of all such payments does not exceed the amount so refunded to the individual.

(4) New beneficiary — For the purposes of this Part, if at any particular time an individual (in this subsection referred to as the "new beneficiary") becomes a beneficiary under a registered education savings plan in place of another individual (in this subsection referred to as the "former beneficiary") who ceased at or before the particular time to be a beneficiary under the plan,

(a) except as provided by paragraph (b), each contribution made at an earlier time by or on behalf of a subscriber into the plan in respect of the former beneficiary is deemed also to have been made at that earlier time in respect of the new beneficiary;

(b) except for the purpose of applying this subsection to a replacement of a beneficiary after the particular time, applying subsection (5) to a distribution after the particular time and applying subsection 204.91(3) to events after the particular time, paragraph (a) does not apply as a consequence of the replacement at the particular time of the former beneficiary if

(i) the new beneficiary had not attained 21 years of age before the particular time and a parent of the new beneficiary was a parent of the former beneficiary, or

(ii) both beneficiaries were connected by blood relationship or adoption to an original subscriber under the plan and neither had attained 21 years of age before the particular time; and

(c) except where paragraph (b) applies, each contribution made by or on behalf of a subscriber under the plan in respect of the former beneficiary under the plan is, without affecting the determination of the amount withdrawn from the plan in respect of the new beneficiary, deemed to have been withdrawn at the particular time from the plan to the extent that it was not withdrawn before the particular time.

History: Para. 204.9(4)(b) amended by 1999, c. 22, s. 71, applicable to replacements of beneficiaries that occur after 1997. It formerly read:

(b) except for the purpose of applying this subsection to a replacement of a beneficiary after the particular time, applying subsection 204.9(5) to a distribution after the particular time and applying subsection 204.91(3) to events after the particular time, paragraph 204.9(4)(a) does not apply as a consequence of the replacement at the particular time of the former beneficiary where the new beneficiary had not attained 21 years of age at the particular time and a parent of the new beneficiary was a parent of the former beneficiary; and

Subsec. 204.9(4) amended by 1998, c. 19, subsec. 57(2), applicable to replacements of beneficiaries and distributions that occur after 1996. Subsec. 204.9(4) formerly read:

(4) For the purposes of this Part,

(a) where at any time an individual (in this paragraph referred to as the "new beneficiary") becomes a beneficiary under a registered education savings plan in place of another individual (in this paragraph referred to as the "former beneficiary") who ceases at that time to be a beneficiary under the plan, all payments made before that time into the plan in respect of the former beneficiary shall be deemed to have been made in respect of the new beneficiary; and

(b) where at any time property is transferred from a trust governed by a registered education savings plan (in this paragraph referred to as the "transferor plan") to a trust governed by another registered education savings plan (in this paragraph referred to as the "transferee plan"), unless a beneficiary under the transferee plan was, immediately before that time, a beneficiary under the transferor plan, all payments made before that time in respect of all beneficiaries under the transferor plan shall be deemed to have been made in respect of the beneficiaries under the transferee plan.

(5) Transfers between plans — For the purposes of this Part, if property held by a trust governed by a registered education savings plan (in this subsection referred to as the "transferor plan") is distributed at a particular time to a trust governed by another registered education savings plan (in this subsection referred to as the "transferee plan"),

(a) except as provided by paragraphs (b) and (c), the amount of the distribution is deemed not to have been contributed into the transferee plan;

(b) subject to paragraph (c), each contribution made at any earlier time by or on behalf of a subscriber into the transferor plan in respect of a beneficiary under the transferor plan is deemed also to have been made at that earlier time by the subscriber in respect of each beneficiary under the transferee plan;

(c) except for the purpose of applying this subsection to a distribution after the particular time, applying subsection (4) to a replacement of a beneficiary after the particular time and applying subsection 204.91(3) to events after the particular time, paragraph (b) does not apply as a consequence of the distribution where

(i) any beneficiary under the transferee plan was, immediately before the particular time, a beneficiary under the transferor plan, or

(ii) a beneficiary under the transferee plan had not attained 21 years of age at the particular time and a parent of the beneficiary was a parent of an individual who was, immediately before the particular time, a beneficiary under the transferor plan;

(d) where subparagraph (c)(i) or (ii) applies in respect of the distribution, the amount of the distribution is deemed not to have been withdrawn from the transferor plan; and

(e) each subscriber under the transferor plan is deemed to be a subscriber under the transferee plan.

Related Provisions: 146.1(2)(g.2), (i.2) — Restrictions on transfers between RESPs; 146.1(6.1) — Effect of transfers between RESPs.

History: Subsec. 204.9(5) added by 1998, c. 19, subsec. 57(2), applicable to replacements of beneficiaries and distributions that occur after 1996.

Definitions: "amount" — 248(1); "beneficiary" — 146.1(1), 204.9(1.1); "contribution", "education savings plan" — 146.1(1), 204.9(1.1); "excess amount" — 204.9(1); "individual" — 248(1); "parent" — 252(2)(a); "property" — 248(1); "registered education savings plan" — 146.1(1), 204.9(1.1), 248(1); "RESP annual limit" — 146.1(1), 204.9(1.1); "RESP lifetime limit" — 204.9(1); "share" — 248(1); "subscriber" — 146.1(1), 204.9(1.1); "subscriber's share of the excess amount" — 204.9(1); "trust" — 146.1(1), 204.9(1.1); "writing" — *Interpretation Act* 35(1).

204.91 (1) Tax payable by subscribers — Every subscriber under a registered education savings plan shall pay a tax under this Part in respect of each month equal to 1% of the amount, if any, by which

(a) the total of all amounts each of which is the subscriber's gross cumulative excess at the end of the month in respect of an individual

exceeds

(b) the total of all amounts each of which is the portion of such an excess that has been withdrawn from a registered education savings plan before the end of the month.

Regulations: 103(8) (withholding of tax at source).

(2) Waiver of tax — If a subscriber under a registered education savings plan would, but for this subsection, be required to pay a tax in respect of a month under subsection (1) in respect of an individual, the Minister may waive or cancel all or part of the tax where it is just and equitable to do so having regard to all the circumstances, including

(a) whether the tax arose as a consequence of reasonable error;

(b) whether, as a consequence of one or more transactions or events to which subsection 204.9(4) or (5) applies, the tax is excessive; and

(c) the extent to which further contributions could be made into registered education savings plans in respect of the individual before the end of the month without causing additional tax to be payable under this Part if this Part were read without reference to this subsection.

(3) Marriage [or common-law partnership] breakdown — If at any time an individual (in this subsection referred to as the "former subscriber") ceases to be a subscriber under a registered education savings plan as a consequence of the settlement of rights arising out of, or on the breakdown of, the marriage or common-law partnership of the former subscriber and another individual (in this subsection referred to as the "current subscriber") who is a subscriber under the plan immediately after that time, for the purpose of determining tax payable under this Part in respect of a month that ends after that time, each contribution made before that time into the plan by or on behalf of the former subscriber is deemed to have been made into the plan by the current subscriber and not by or on behalf of the former subscriber.

(4) Deceased subscribers — For the purpose of applying this section where a subscriber has died, the subscriber's estate is deemed to be the same person as, and a continuation of, the subscriber for each month that ends after the death.

Related Provisions [s. 204.91]: 18(1)(t) — Tax is non-deductible.

History: Subsec. 204.91(3) amended by 2000, c. 12, Sch. 2, s. 9, to replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

S. 204.91 amended by 1998, c. 19, s. 58, subsec. (1) applicable for the purpose of determining tax under Part X.4 of the Act for months that are after 1996, subsec. (2) applicable for the purpose of determining tax under Part X.4 of the Act for months that are after January 1990, and subsecs. (3) and (4) applicable for the purpose of determining tax under Part X.4 of the Act for months that are after 1997. S. 204.91 formerly read:

> 204.91 Tax payable by subscribers — Each subscriber under a registered education savings plan shall, in respect of each month, pay a tax under this Part equal to 1% of the subscriber's share of each excess amount for a year at the end of that month in respect of a beneficiary or former beneficiary under the plan, to the extent that the amount of the share is not withdrawn from the plan before the end of that month.

Definitions [s. 204.91]: "amount", "common-law partnership" — 248(1); "contribution" — 146.1(1), 204.9(1.1); "estate" — 104(1), 248(1); "individual", "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "person" — 248(1); "registered education savings plan" — 146.1(1), 204.9(1.1), 248(1); "subscriber" — 146.1(1), 204.9(1.1); "subscriber's gross cumulative excess" — 204.9(1).

204.92 Return and payment of tax — Every person who is liable to pay tax under this Part in respect of a month in a year shall, within 90 days after the end of the year,

(a) file with the Minister a return for the year under this Part in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax, if any, payable under this Part by the person in respect of each month in the year; and

(c) pay to the Receiver General the amount of tax, if any, payable by the person under this Part in respect of each month in the year.

Related Provisions: 150.1(5) — Electronic filing.

Definitions [s. 204.92]: "amount", "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "person", "prescribed" — 248(1).

Regulations: 103(8) (withholding of tax at source).

Forms: T1E-OVP: Individual income tax return for RESP overpayments.

204.93 Provisions applicable to Part — Subsections 150(2) and (3), sections 152, 158 and 159, subsections 161(1) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part, with such modifications as the circumstances require.

History [Part X.4]: Part X.4 (ss. 204.9 to 204.93) added by 1994, c. 7, Sch. II (1991, c. 49), s. 165, applicable to months ending after January 1990, except that a return referred to in s. 204.92 that was filed before March 16, 1992 shall be deemed to have been filed in accordance with the requirements of that section and a payment referred to in that section that was paid before March 16, 1992 shall be deemed to have been paid in accordance with the requirements of that section.

PART X.5 — PAYMENTS UNDER REGISTERED EDUCATION SAVINGS PLANS

204.94 (1) Definitions — The definitions in subsection 146.1(1) apply for the purposes of this Part, except that the definition "subscriber" in that subsection shall be read without reference to paragraph (c).

(2) Charging provision — Every person shall pay a tax under this Part for each taxation year equal to the amount determined by the formula

$$(A + B - C) \times D$$

where

A is the total of all amounts each of which is an accumulated income payment made at any time that is

(a) either

(i) under a registered education savings plan under which the person is a subscriber at that time, or

(ii) under a registered education savings plan under which there is no subscriber at that time, where the person has been a spouse or common-law partner of an individual who was a subscriber under the plan, and

(b) included in computing the person's income under Part I for the year;

B is the total of all amounts each of which is an accumulated income payment that is

(a) not included in the value of A in respect of the person for the year, and

(b) included in computing the person's income under Part I for the year;

C is the lesser of

(a) the lesser of the value of A in respect of the person for the year and the total of all amounts each of which is an amount deducted under subsection 146(5) or (5.1) in computing the person's income under Part I for the year, and

(b) the amount, if any, by which $50,000 exceeds the total of all amounts each of which is an amount determined under paragraph (a) in respect of the person for a preceding taxation year; and

D is

(a) where a tax, similar to the tax provided under this Part, is payable by the person for the year under a law of the province of Quebec, 12%, and

(b) in any other case, 20%.

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: Subsec. 204.94(2) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

The formula in subsec. 204.94(2), and para. (b) of the description of C amended, and the description of D added, by 1999, c. 22, subsecs. 72(1)–(3), the formula and the description of D applicable to 1998 *et seq.*, and para. (b) applicable to 1999 *et seq.* The formula and para. (b) formerly read:

$$0.2 \times (A + B - C)$$

. . . . .

(b) the amount, if any, by which $40,000 exceeds the total of all amounts each of which is an amount determined under paragraph 204.94(2)C(a) in respect of the person for a preceding taxation year.

Subsec. 204.94(2) added by 1998, c. 19, s. 59, applicable to 1998 *et seq.*

Regulations: 103(8) (withholding of 20% at source).

(3) Return and payment of tax — Every person who is liable to pay tax under this Part for a taxation year shall, on or before the person's filing-due date for the year,

(a) file with the Minister a return for the year under this Part in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax payable under this Part by the person for the year; and

(c) pay to the Receiver General the amount of tax payable under this Part by the person for the year.

Related Provisions: 156.1(1)"net tax owing"(b)A — Part X.5 tax included in calculation of instalment threshold.

(4) Administrative rules — Subsections 150(2) and (3), sections 152, 155 to 156.1 and 158 to 167 and Division J of Part I apply with any modifications that the circumstances require.

Related Provisions: 156.1(1)"net tax owing"(b)A — Part X.5 tax included in calculation of instalment threshold.

Regulations: 103(8) (withholding of 20% at source).

History: Part X.5 (s. 204.94) added by 1998, c. 19, s. 59, applicable to 1998 *et seq.*

Definitions [s. 204.94]: "accumulated income payment" — 146.1(1), 204.94(1); "amount", "common-law partner", "filing-due date", "individual", "Minister", "person", "prescribed" — 248(1); "registered education savings plan" — 146.1(1), 204.94(1), 248(1); "subscriber" — 204.94; "tax payable" — 248(2); "taxation year" — 249.

PART XI — TAX IN RESPECT OF CERTAIN PROPERTY ACQUIRED BY TRUSTS, ETC., GOVERNED BY DEFERRED INCOME PLANS

205. [Repealed]

History: Part XI (ss. 205–207) repealed by 2005, c. 30, s. 14, applicable to months that end after 2004. S. 205 formerly read:

205. Application of Part — This Part applies in respect of a taxpayer that is

(a) a corporation described in paragraph 149(1)(o.1) or (o.2) or a trust described in paragraph 149(1)(o) or (o.4), other than a trust described in paragraph 149(1)(o)

(i) established for the exclusive benefit of non-residents working outside Canada, or

(ii) the only beneficiaries of which are persons whose entitlement thereunder arises by virtue of employment outside Canada;

(b) a trust governed by a registered retirement savings plan;

(c) a trust governed by a deferred profit sharing plan;

(d) [Repealed under former Act]

(e) a trust governed by a registered retirement income fund;

(f) a registered investment; or

(g) any other person, other than a prescribed person, exempt from tax under Part I on its taxable income.

206. [Repealed]

History: Part XI (ss. 205–207) repealed by 2005, c. 30, s. 14, applicable to months that end after 2004. S. 206 formerly read:

206. (1) Definitions — In this Part,

"affiliate" of a corporation (in this definition referred to as the "parent corporation") at any time is any other corporation where, at that time,

(a) the parent corporation controls the other corporation,

(b) the parent corporation or a corporation controlled by the parent corporation owns

(i) shares of the capital stock of the other corporation that would give the parent corporation or the corporation controlled by the parent corporation 25% or more of the votes that could be cast under all circumstances at an annual meeting of shareholders of that other corporation, and

(ii) shares of the capital stock of the other corporation having a fair market value of 25% or more of the fair market value of all the issued shares of the capital stock of that other corporation, or

(c) the other corporation is controlled by a particular corporation and the parent corporation or a corporation controlled by the parent corporation owns

(i) shares of the capital stock of the particular corporation that would give the parent corporation or the corporation controlled by the parent corporation 25% or more of the votes that could be cast under all circumstances at an annual meeting of shareholders of the particular corporation, and

(ii) shares of the capital stock of the particular corporation having a fair market value of 25% or more of the fair market value of all the issued shares of the capital stock of the particular corporation;

"carrying value" of a property of a corporation or partnership at any time means

(a) where a balance sheet of the corporation or the partnership as of that time was presented to the shareholders of the corporation or the members of the partnership and the balance sheet was prepared using generally accepted accounting principles and was not prepared using the equity or consolidation method

of accounting, the amount in respect of the property reflected in the balance sheet, and

(b) in any other case, the amount that would have been reflected in a balance sheet of the corporation or the partnership as of that time if the balance sheet had been prepared in accordance with generally acceptable accounting principles and neither the equity nor consolidation method of accounting were used;

"cost amount" at any time of a taxpayer's capital interest in a trust that is foreign property is deemed to be the greater of

(a) the cost amount of the interest, determined without reference to this definition, and

(b) where that time is more than 60 days after the end of a taxation year of the trust, the amount that would be the cost amount of the interest if new units of the trust had been issued in satisfaction of each amount payable

(i) after 2000 and at or before the end of the taxation year, by the trust in respect of the interest,

(ii) to which subparagraph 53(2)(h)(i.1) applies (or would apply if that subparagraph were read without reference to clauses (A) and (B) of that subparagraph), and

(iii) that has not been satisfied at or before that time by the issue of new units of the trust or by a payment of an amount by the trust;

Proposed Amendment — Former 206(1)"cost amount"(b)(i)–(iii)

(i) after 2000 and at or before the end of the taxation year, by the trust in respect of the interest (otherwise than as proceeds of disposition of the interest), and

(ii) that has not been satisfied at or before that time by the issue of new units of the trust or by a payment of an amount by the trust;

(iii) [Repealed]

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 171(2), will replace subparas. (b)(i)–(iii) of the definition "cost amount" in former subsec. 206(1) [repealed by S.C. 2005, c. 30] with subparas. (b)(i) and (ii) to read as above, applicable to months that end after December 20, 2002 and before 2005.

Technical Notes: Part XI of the Act set out rules for a 1% per month penalty tax on excess foreign property held by deferred income plans. Part XI was repealed, effective for months that end after 2004, in *Budget Implementation Act, 2005, S.C. 2005, c. 30*. A number of amendments are being made to Part XI that are effective prior to its repeal.

"Cost amount" is defined in subsection 206(1) for the purposes of Part XI. The definition was introduced in 2001 to deal with arrangements that provided for trust income to be "capitalized" without the trust issuing new units. Under the definition, the cost amount otherwise determined of a taxpayer's interest in such a trust reflects the capitalized amounts. The definition is amended to clarify that it applies to trusts under which all beneficiaries are registered plan trusts (e.g., trusts described in paragraph (e) of the definition "trust" in subsection 108(1)).

"designated value" of a property at any time means the greater of

(a) the fair market value at that time of the property, and

(b) the carrying value at that time of the property;

"excluded share" means

(a) a share that is of a class of shares listed on a prescribed stock exchange in Canada, where no share of that class has been issued after December 4, 1985 (otherwise than pursuant to an agreement in writing entered into before 5:00 p.m. Eastern Standard Time on December 4, 1985),

(b) a share last acquired after 1995 that is of a class of shares listed on a prescribed stock exchange in Canada, where

(i) no share of that class has been issued after July 20, 1995 (otherwise than pursuant to an agreement in writing made before July 21, 1995), and

(ii) the share would not be foreign property if the expression "primarily from foreign property" in paragraph (d.1) of the definition "foreign property" in this subsection were read as "primarily from portfolio investments in property that is foreign property" and that paragraph were read without reference to "(other than an excluded share)", and

(c) a share last acquired after 1995 as a consequence of the exercise of a right acquired before 1996 where the share would not be foreign property if the expression "primarily from foreign property" in paragraph (d.1) of the definition "foreign property" in this subsection were read as "primarily from portfolio investments in property that is foreign property" and that paragraph were read without reference to "(other than an excluded share)";

"foreign property" means

(a) tangible property situated outside Canada except automotive equipment registered in Canada,

(b) automotive equipment not registered in Canada pursuant to the laws of Canada or a province,

(c) intangible property (other than any property described in paragraphs (d) to (g)) situated outside Canada including, without restricting the generality of the foregoing, any patent under the laws of a country other than Canada and any licence in respect thereof,

(d) any share of the capital stock of a corporation other than a Canadian corporation,

(d.1) except as provided by subsection (1.1), any share (other than an excluded share) of the capital stock of, or any debt obligation issued by, a corporation (other than an investment corporation, mutual fund corporation or registered investment) that is a Canadian corporation, where shares of the corporation can reasonably be considered to derive their value, directly or indirectly, primarily from foreign property,

Proposed Amendment — Former 206(1)"foreign property"(d.1)

(d.1) any share (other than an excluded share) of the capital stock of, or any debt obligation (other than a debt obligation described in subparagraph (g)(iii)) issued by, a corporation (other than an investment corporation, a mutual fund corporation or a registered investment) that is a Canadian corporation, if shares of the corporation can reasonably be considered to derive their value, directly or indirectly, primarily from foreign property,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 171(3), will amend para. (d.1) of the definition "foreign property" in former subsec. 206(1) [repealed by S.C. 2005, c. 30] to read as above, applicable to months that end after October 2003 and before 2005.

Technical Notes: "Foreign property" is defined in subsection 206(1). Under paragraph (d.1) of the definition, foreign property includes certain shares and debt issued by Canadian corporations, if shares of the corporation may reasonably be considered to derive their value primarily from foreign property. Paragraph (g) of the definition treats as foreign property the indebtedness of a non-resident person other than indebtedness issued by various international organizations or indebtedness issued by an authorized foreign bank and payable at a Canadian branch of that bank.

Paragraphs (d.1) and (g) are amended to provide that a mortgage obligation that is fully secured by real property situated in Canada is not foreign property. These amendments apply to months that end after October 2003 and before 2005.

(e) except as prescribed, any share of the capital stock of a mutual fund corporation or investment corporation that is not a registered investment, other than a share of the capital stock of an investment corporation that was last acquired before October 14, 1971,

(f) any property that, under the terms or conditions thereof or any agreement relating thereto, is convertible into, is exchangeable for or confers a right to acquire, property that is foreign property, but not including property that is

(i) a share of the capital stock of a Canadian corporation listed on a prescribed stock exchange in Canada, or

(ii) a right issued before 1984 and listed on a prescribed stock exchange in Canada to acquire a share of the capital stock of a Canadian corporation,

(g) indebtedness of a non-resident person, other than

(i) indebtedness issued by an authorized foreign bank and payable at a branch in Canada of the bank, or

(ii) indebtedness issued or guaranteed by

(A) the International Bank for Reconstruction and Development,

(B) the International Finance Corporation,

(C) the Inter-American Development Bank,

(D) the Asian Development Bank,

(E) the Caribbean Development Bank,

(F) the European Bank for Reconstruction and Development,

(G) the African Development Bank, or

(H) a prescribed person,

Proposed Addition — Former 206(1)"foreign property"(g)(iii)

(iii) a debt obligation that is fully secured by a mortgage, charge, hypothec or similar instrument in respect of real or immovable property situated in Canada or that would be fully secured were it not for a decline in the fair market value of the property after the debt obligation was issued,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 171(4), will add subpara. (g)(iii) to the definition "foreign property" in former subsec. 206(1) [repealed by S.C. 2005, c. 30], applicable to months that end after October 2003 and before 2005.

Technical Notes: See under 206(1)"foreign property"(d.1) above.

Letter from Dept. of Finance, November 3, 2003:

Dear [xxx]

This is in reply to your letter of September 22, 2003 in which you seek an amendment to the *Income Tax Act* to address certain practical difficulties of monitoring the foreign property character of Canadian-based commercial mortgage-backed securities (CMBS).

We understand that CMBS in Canada are generally issued as certificates representing undivided co-ownership interests in a pool of mortgage loans secured by commercial real property situated in Canada. To determine the foreign property character of the certificates, it is necessary to determine the character of each of the mortgage loans in the pool based on the attributes of the issuer. As the issuers are typically private corporations, obtaining the information necessary to make on-going determinations as to the applicability of paragraphs (d.1) and (g) of the "foreign property" definition in subsection 206(1) and subsection 206(1.1) is time-consuming and expensive. Finally, we understand that the foreign property component of typical CMBS offerings in Canada is minimal.

Given these factors, we are prepared to recommend relief. In particular, we will recommend to the Minister of Finance that the *Income Tax Act* be amended, effective for months ending after October 2003, to exclude from the definition "foreign property" certificates representing undivided co-ownership interests in a pool of mortgage loans secured by real property situated in Canada, subject to the following conditions:

- at the time of issuance of the certificates, not more than 20% of the total amount of the mortgage loans in the pool would otherwise constitute foreign property;
- at the time of issuance of the certificates, not more than 20% of the total amount of the mortgage loans in the pool is attributable to mortgage loans issued by a single person or related group;
- the certificates are issued as part of an offering of at least $25 million;
- the amount of each mortgage loan in the pool, at the time [of] its issuance, (together with the amount of any other debt of equal or superior rank) does not exceed the fair market value, at that time, of the real property subject to the mortgage loan; and
- no mortgage loan is added to the pool after issuance of the certificates unless it is non-foreign property.

As you are aware, we are also considering possibility of providing a more general exclusion for any mortgage loan in respect of real property situated in Canada. If a decision is made to provide a general exclusion, it would be communicated by way of public announcement. [Subpara. (g)(iii) provides this more general exclusion — ed.]

I trust this addresses your concerns and thank you for writing.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, June 30, 2004: See under Reg. 4900(1)(j).

(h) any interest in or right to any property that is foreign property by virtue of paragraphs (a) to (g), and

(i) except as prescribed by regulation, any interest in, or right to acquire an interest in, a trust (other than a registered investment) or a partnership;

"investment activity" of a particular corporation means any business carried on by the corporation, or any holding of property by the corporation otherwise than as part of a business carried on by the corporation, the principal purpose of which is to derive income from, or to derive profits from the disposition of,

(a) shares (other than shares of the capital stock of another corporation in which the particular corporation has a significant interest, where the primary activity of the other corporation is not an investment activity),

(b) interests in trusts,

(c) indebtedness (other than indebtedness owing by another corporation in which the particular corporation has a significant interest, where the primary activity of the other corporation is not an investment activity),

(d) annuities,

(e) commodities or commodities futures purchased or sold, directly or indirectly in any manner whatever, on a commodities or commodities futures exchange (except commodities manufactured, produced, grown, extracted or processed by the corporation or another corporation with which the corporation does not deal at arm's length),

(f) currencies (other than currencies in the form of numismatic coins),

(g) interests in funds or entities other than corporations, partnerships and trusts,

(h) interests or options in respect of property described in any of paragraphs (a) to (g), or

(i) any combination of properties described in any of paragraphs (a) to (h);

"qualified property" of a corporation means a property (other than a debt obligation or share issued by an affiliate of the corporation or by any corporation related to the corporation) owned by the corporation and used by it or an affiliate of the corporation in a specified active business carried on by it or the affiliate;

"significant interest" has the meaning that would be assigned by section 142.2 if that section were read without reference to paragraphs 142.2(3)(b) and (c);

"small business investment amount" of a taxpayer for a month means the greater of

(a) the total of the cost amounts of all small business properties to the taxpayer at the end of the month, and

(b) the quotient obtained when the total of all amounts determined for each of the three preceding months, each of which is the total of the cost amounts of all small business properties to the taxpayer at the end of that preceding month, is divided by three;

"small business property" of a taxpayer at a particular time means property acquired by the taxpayer after October 31, 1985 that is at that particular time

(a) a property prescribed to be a small business security,

(b) a share of a class of the capital stock of a corporation prescribed to be a small business investment corporation,

(c) an interest of a limited partner in a partnership prescribed to be a small business investment limited partnership, or

(d) an interest in a trust prescribed to be a small business investment trust,

where

(e) the taxpayer is a prescribed person in respect of the property, or

(f) throughout the period that began at the time the property was first acquired (otherwise than by a broker or dealer in securities)

and ends at the particular time, the property was not owned by any person other than

(i) the taxpayer,

(ii) a trust governed by a particular registered retirement income fund or registered retirement savings plan if

(A) the taxpayer is another trust governed by a registered retirement income fund or registered retirement savings plan, and

(B) the annuitant under the particular fund or plan (or the spouse, common-law partner, former spouse or former common-law partner of that annuitant) is also the annuitant under the fund or plan referred to in clause (A), or

(iii) an annuitant under a registered retirement income fund or registered retirement savings plan that governs the taxpayer, or a spouse, common-law partner, former spouse or former common-law partner of that annuitant;

"specified active business" carried on by a corporation, at any time, means a particular business that is carried on by the corporation in Canada where

(a) the corporation employs in the particular business at that time more than 5 full-time employees and at least

(i) 50% of the full-time employees employed by the corporation at that time in the particular business are employed in Canada, and

(ii) 50% of the salaries and wages paid to employees employed at that time in the particular business are reasonably attributable to services rendered in Canada by the employees, or

(b) one or more other corporations associated with the corporation provide, in the course of carrying on one or more other active businesses, managerial, administrative, financial, maintenance or other similar services to the corporation in respect of the particular business and

(i) the corporation could reasonably be expected to require more than 5 full-time employees at that time in respect of the particular business if those services had not been provided,

(ii) at least 50% of the full-time employees employed at that time by the corporation in the particular business and by the other corporations in the other active businesses are employed in Canada, and

(iii) at least 50% of the salaries and wages paid to employees employed at that time by the corporation in the particular business and by the other corporations in the other active businesses are reasonably attributable to services rendered in Canada by the employees,

but does not include a business carried on by the corporation the principal purpose of which is to derive income from, or from the disposition of, shares and debt obligations the value of which can reasonably be considered to derive, directly or indirectly, primarily from foreign property;

"specified proportion" of a member of a partnership for a fiscal period of the partnership means the proportion that the member's share of the total income or loss of the partnership for the partnership's fiscal period is of the partnership's total income or loss for that period and, for the purpose of this definition, where that income or loss for a period is nil, that proportion shall be computed as if the partnership had income for that period in the amount of $1,000,000.

Proposed Repeal — Former 206(1)"specified proportion"

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 171(1), will repeal the definition "specified proportion" in former subsec. 206(1) [repealed by S.C. 2005, c. 30], applicable after December 20, 2002.

Technical Notes: Subsection 206(1) includes a definition of a partner's "specified proportion" of a partnership for a fiscal period. To enable the definition to be used for other purposes as well, it is moved to subsection 248(1), and is repealed in subsection 206(1), effective after December 20, 2002.

(1.1) Exception where substantial Canadian presence — Property described in paragraph (d.1) of the definition "foreign property" in subsection (1) does not, at a particular time, include property of a taxpayer that is a share or debt obligation that was issued by a corporation that, at the particular time, is a Canadian corporation where

(a) either at any time in any of the last 15 months beginning before the time (in this subsection referred to as the "acquisition time") when the property was last acquired before the particular time by the taxpayer or at any time in the calendar year that includes the acquisition time, the total of all amounts each of which is the designated value of a qualified property of the corporation or an affiliate of the corporation exceeded $50,000,000;

(b) the particular time is not later than the end of the 15th month ending after the acquisition time and, at any time in any of the last 15 months beginning before the acquisition time, the total of all amounts each of which is the designated value of a qualified property of the corporation or another corporation controlled by the corporation exceeded 50% of the lesser of the fair market value of all of the corporation's property and the carrying value of all of the corporation's property;

(c) the particular time is after the acquisition time and, at any time in any of the first 15 months beginning after the acquisition time, the total of all amounts each of which is the designated value of a qualified property of the corporation or another corporation controlled by the corporation exceeded 50% of the lesser of the fair market value of all of the corporation's property and the carrying value of all of the corporation's property;

(d) the particular time is after 1995 and, at the particular time,

(i) either

(A) the corporation was incorporated or otherwise formed under the laws of Canada or a province, or

(B) where the corporation was not required to maintain an office under the laws by or under which it was incorporated, the maintenance of an office in Canada is required under the constitutional documents of the corporation,

(ii) the corporation maintains an office in Canada, and

(iii) any of the following conditions applies, namely,

(A) the corporation employs more than 5 individuals in Canada full time and those individuals are not employed primarily in connection with

(I) an investment activity of the corporation or another corporation with which the corporation does not deal at arm's length,

(II) a business carried on by the corporation through a partnership of which the corporation is not a majority interest partner, or

(III) a business carried on by another corporation with which the corporation does not deal at arm's length through a partnership of which that other corporation is not a majority interest partner,

(B) another corporation that is controlled by the corporation employs more than 5 individuals in Canada full time and those individuals are not employed primarily in connection with

(I) an investment activity of the other corporation or another corporation with which the other corporation does not deal at arm's length,

(II) a business carried on by the other corporation through a partnership of which the other corporation is not a majority interest partner, or

(III) a business carried on by another corporation with which the other corporation does not deal at arm's length through a partnership of which that other corporation is not a majority interest partner,

(C) the total amount incurred by the corporation for the services (other than services relating to an investment activity of the corporation or another corporation with which the corporation does not deal at arm's length) of employees and other individuals rendered in Canada in any calendar year that ends in any of the last 15 months that end before the particular time exceeds $250,000,

(D) the total amount incurred by another corporation that is controlled by the corporation for the services

(other than services relating to an investment activity of the other corporation or another corporation with which the other corporation does not deal at arm's length) of employees and other individuals rendered in Canada in any calendar year that ends in any of the last 15 months that end before the particular time exceeds $250,000, or

(E) in the calendar year that includes the particular time the corporation was continued from a jurisdiction outside Canada, or incorporated or otherwise formed and the total amount incurred in the year by the corporation for the services (other than services relating to an investment activity of the corporation or another corporation with which the corporation does not deal at arm's length) of employees and other individuals rendered in Canada exceeds $250,000; or

(e) the particular time is after 1995 and, at the particular time, all or substantially all of the property of the corporation is not foreign property.

(1.2) Partnerships — For the purposes of paragraphs (1.1)(a) to (c) and this subsection,

(a) a member of a partnership

(i) is deemed not to own any interest in the partnership at any time, and

(ii) is deemed to own the member's specified proportion for the partnership's first fiscal period that ends at or after that time of each property that would, if the assumption in paragraph 96(1)(c) were made, be owned by the partnership at that time; and

(b) the carrying value at that time of that specified proportion of a partnership's property is deemed to be that specified proportion of the carrying value at that time to the partnership of that property.

(1.3) Interpretation — For the purpose of paragraph (1.1)(d),

(a) an employee of a corporation is deemed to be employed in Canada where the corporation's permanent establishment (as defined by regulation) to which the employee principally reports is situated in Canada; and

(b) services are deemed to be rendered in Canada to a corporation where the permanent establishment (as defined by regulation) for which the services are rendered is situated in Canada.

(1.4) Rights in respect of foreign property — For the purpose of determining whether a property owned by a taxpayer is foreign property at any time because of paragraph (f) or (h) of the definition "foreign property" in subsection (1), it shall be assumed that each other property not owned at that time by the taxpayer was acquired immediately before that time by the taxpayer.

(1.5) Identical property — Notwithstanding paragraphs (d.1), (f) and (h) of the definition "foreign property" in subsection (1), a property shall not be considered to be foreign property at a particular time of a taxpayer because of any of those paragraphs where

(a) the property is

(i) a share or debt obligation issued by a Canadian corporation, or

(ii) an interest in, a right to, a property that is convertible into or a property that is exchangeable for, a share or debt obligation issued by a Canadian corporation; and

(b) the property, or the share or obligation referred to in subparagraph (a)(ii), is identical to another property that is owned at the particular time by the taxpayer and that is not foreign property at the particular time of the taxpayer.

(2) Tax payable — Where, at the end of any month,

(a) the amount, if any, by which

(i) the total of all amounts each of which is the cost amount of a foreign property to a taxpayer described in any of paragraphs 205(a) to (f)

exceeds the total of

(ii) where the taxpayer is described in any of paragraphs 205(b), (c) and (e), all amounts each of which is the cost amount to the taxpayer of a foreign property that was not at the end of the month a qualified investment (within the meaning assigned by subsection 146(1) or 146.3(1) or section 204, as the case may be) of the taxpayer, and

(iii) all amounts (other than an amount included in respect of the taxpayer for the month under subparagraph (ii)) each of which is the cost amount to the taxpayer of foreign property that became foreign property of the taxpayer after its last acquisition by the taxpayer and at a time that is not more than 24 months before the end of the month,

exceeds the total of

(b) 30% of the total of all amounts each of which is the cost amount of a property to the taxpayer, and

(c) in the case of a taxpayer described in paragraph 205(a), (b), (c) or (e), other than a taxpayer described in paragraph 149(1)(o.2), the lesser of

(i) three times the small business investment amount of the taxpayer for the month, and

(ii) 20% of the total of all amounts each of which is the cost amount of a property to the taxpayer,

the taxpayer shall, in respect of that month, pay a tax under this Part equal to 1% of the lesser of the excess and the total of all amounts each of which is the cost amount to the taxpayer of each of its foreign properties that was acquired after June 18, 1971.

(2.01) [Tax payable by] Registered investments — Notwithstanding subsection (2), the tax payable under this section by a registered investment in respect of a month is equal to the lesser of

(a) the tax that would, but for this subsection, be payable by the registered investment in respect of the month, and

(b) the greater of

(i) 20% of the amount determined under paragraph (a), and

(ii) the amount determined by the formula

$$\$5{,}000 + (A \times B/C)$$

where

A is equal to the amount determined under paragraph (a),

B is equal to

(A) where the registered investment is a trust, the total of all amounts each of which is the fair market value at the end of the month of an interest in the registered investment that is held at that time by a taxpayer described in any of paragraphs 205(a) to (f) or by a mutual fund corporation, investment corporation, mutual fund trust, prescribed trust or prescribed partnership, and

(B) where the registered investment is a corporation, the total of all amounts each of which is the fair market value at the end of the month of a share of the capital stock of the registered investment that is held at that time by a taxpayer described in any of paragraphs 205(a) to (f) or by a mutual fund corporation, investment corporation, mutual fund trust, prescribed trust or prescribed partnership, and

C is equal to

(A) where the registered investment is a trust, the total of all amounts each of which is the fair market value at the end of the month of an interest in the registered investment that is held at that time, and

(B) where the registered investment is a corporation, the total of all amounts each of which is the fair market value at the end of the month of a share of the capital stock of the registered investment that is held at that time.

(2.1) Exemption — Notwithstanding section 205, subsection (2) does not apply to a trust described in paragraph 149(1)(o.4) or a corporation described in paragraph 149(1)(o.2) in respect of any month that falls within a period for which the trustee or the corporation, as the case may be, elects in accordance with subsections 259(1) and (3).

(3) [Repealed]

(3.1) Acquisition of qualifying security — For the purpose of applying subparagraph (2)(a)(iii) at or after a particular time, where a qualifying security in relation to another security is acquired at the particular time by the taxpayer referred to in subsection (3.2) in re-

spect of the security, and the security is foreign property at that time,

(a) the qualifying security is deemed to have been last acquired by the taxpayer at the time the other security was last acquired by the taxpayer;

(b) where the other security was not foreign property immediately before the particular time, the qualifying security is deemed to have become foreign property at the particular time; and

(c) where the other security was foreign property immediately before the particular time, the qualifying security is deemed to have become foreign property at the time the other security became foreign property.

(3.2) Qualifying security — For the purpose of subsection (3.1), a qualifying security in relation to another security means

(a) a security issued at any time by a corporation to a taxpayer

(i) in exchange for another security acquired before that time by the taxpayer, and

(ii) in the course of

(A) a corporate merger or reorganization of capital,

(B) a transaction or series of transactions in which control of the corporation that issued the other security is acquired by a person or group of persons, or

(C) a transaction or series of transactions in which all or substantially all of the issued and outstanding shares (other than shares held immediately before the transaction or the beginning of the series by a particular person or related group) of the corporation that issued the other security are acquired by the particular person or related group; or

(b) a security acquired by a taxpayer from a corporation pursuant to a distribution with respect to another security that is an eligible distribution described in subsection 86.1(2).

(4) Non-arm's length transactions — For the purposes of this Part, where at any time a taxpayer acquires property, otherwise than pursuant to a transfer of property to which paragraph (f) or (g) of the definition "disposition" in subsection 248(1) applies, from a person with whom the taxpayer does not deal at arm's length for no consideration or for consideration less than the fair market value of the property at that time, the taxpayer is deemed to acquire the property at that fair market value, and for those purposes, a particular trust is deemed not to deal at arm's length with another trust if a person who is beneficially interested in the particular trust is at that time also beneficially interested in the other trust.

The definition "cost amount" added to subsec. 206(1) by 2001, c. 17, subsec. 169(2), applicable to months that end after February 2001.

Para. (g) of the definition "foreign property" in subsec. 206(1) amended by the said c. 17, subsec. 169(1), applicable after June 27, 1999. It formerly read:

(g) indebtedness of a non-resident person, other than indebtedness issued or guaranteed by

(i) the International Bank for Reconstruction and Development,

(i.1) the International Finance Corporation,

(ii) the Inter-American Development Bank,

(iii) the Asian Development Bank,

(iv) the Caribbean Development Bank,

(iv.1) the European Bank for Reconstruction and Development,

(iv.2) the African Development Bank, or

(v) a prescribed person,

Cl. (f)(ii)(B) and subpara. (f)(iii) of the definition "small business property" in subsec. 206(1) amended by the said c. 17, s. 241, applicable to 2001 *et seq.* except that, if a taxpayer and a person have jointly elected pursuant to s. 144 of the *Modernization of Benefits and Obligations Act* [2000, c. 12], in respect of the 1998, 1999 or 2000 taxation years, the amendment applies to the taxpayer and the person in respect of the applicable taxation year and subsequent taxation years. Cl. (f)(ii)(B) and subpara. (f)(iii) formerly read:

(B) the annuitant under the particular fund or plan (or the spouse or former spouse of that annuitant) is also the annuitant under the fund or plan referred to in clause (A), or

(iii) an annuitant under a registered retirement income fund or registered retirement savings plan that governs the taxpayer, or a spouse or former spouse of that annuitant;

Subsec. 206(3.1) amended by the said c. 17, subsec. 169(3), applicable to months that end after 1997. Subsec. 206(3.1) formerly read:

(3.1) Reorganizations, etc. — Where

(a) a security (in this subsection referred to as the "new security") is issued at a particular time by a corporation to a taxpayer

(i) in exchange for another security acquired before the particular time by the taxpayer, and

(ii) in the course of

(A) a corporate merger or reorganization of capital, or

(B) a transaction in which control of the corporation that issued the other security is acquired by a person or a group of persons, and

(b) the new security is foreign property at the particular time,

for the purposes of applying subparagraph (2)(a)(iii) to the taxpayer at or after the particular time,

(c) the new security shall be deemed to have been last acquired by the taxpayer at the time the other security was last acquired by the taxpayer,

(d) where the other security was not foreign property immediately before the particular time, the new security shall be deemed to have become foreign property at the particular time, and

(e) where the other security was foreign property immediately before the particular time, the new security shall be deemed to have become foreign property at the time the other security became foreign property.

Subsec. 206(3.2) added by the said c. 17, subsec. 169(3), applicable to months that end after 1997.

Subsec. 206(4) amended by the said c. 17, subsec. 169(4), applicable in respect of property acquired after December 23, 1998. It formerly read:

(4) For the purposes of this Part, where a taxpayer has acquired property from a person with whom the taxpayer was not dealing at arm's length for no consideration or for consideration less than the fair market value thereof at the time of the acquisition, the taxpayer shall be deemed to have acquired the property at that fair market value, and for those purposes, a trust shall be deemed not to deal at arm's length with another trust if any person is beneficially interested in both trusts.

The definition "small business investment amount" and the portion of "small business property" following para. (d), in subsec. 206(1) amended by 2000, c. 19, subsecs. 60(1), (2), applicable to months that end after 1997. The definitions formerly read:

"small business investment amount" of a taxpayer for a month means the quotient obtained when the total of all amounts determined for each of the three preceding months, each of which is the total of the cost amounts of all small business properties to the taxpayer at the end of that preceding month, is divided by three;

. . . . .

where the taxpayer is

(e) a prescribed person in respect of the property, or

(f) the first person (other than a broker or dealer in securities) to have acquired the property and the taxpayer has owned the property continuously since it was so acquired.

Subsec. 206(2) amended by 2000, c. 14, s. 41 to substitute "30%" for "20%", applicable to months that end after 1999, except that for months in 2000 the reference to "30%" shall be read as "25%".

The definitions "affiliate", "carrying value", "designated value", "excluded share", "qualified property", "specified active business" and "specified proportion" added to subsec. 206(1) by 1998, c. 19, subsec. 210(3), applicable to shares and indebtedness acquired after December 4, 1985 (otherwise than pursuant to an agreement in writing made before 5:00 p.m. E.S.T. on December 4, 1985).

Paras. (d.1) and (e) of the definition "foreign property" in subsec. 206(1) amended by the said c. 19, subsec. 210(1), para. (d.1) applicable to shares and indebtedness acquired after December 4, 1985 (otherwise than pursuant to an agreement in writing made before 5:00 p.m. E.S.T. on December 4, 1985) except that, with respect to shares and indebtedness last acquired before 1996, the reference to "primarily from foreign property" in that paragraph shall be read as a reference to "primarily from portfolio invest-

ments in property that is foreign property", and para. (e) applicable to months that end after June 1995. Paras. (d.1) and (e) formerly read:

(d.1) any share of the capital stock of or any debt obligation issued by a Canadian corporation, if shares of the corporation may reasonably be considered to derive their value, directly or indirectly, primarily from portfolio investments in property that is foreign property, but not including a share of a corporation listed on a prescribed stock exchange in Canada that is of a class of the capital stock of the corporation no share of which has been issued after December 4, 1985 (otherwise than pursuant to an agreement in writing entered into before 5:00 p.m. Eastern Standard Time on December 4, 1985),

(e) any share of the capital stock of a mutual fund corporation that is neither an investment corporation nor a registered investment, except as prescribed by regulation,

Subparas. (g)(iv.1) and (iv.2) added to the definition "foreign property" by the said c. 19, subsec. 210(2), (iv.1) applicable to months after March 1991, and (iv.2) applicable to months after 1996.

The definitions "investment activity" and "significant interest" added to subsec. 206(1) by the said, c. 19, subsec. 210(3), applicable after 1995.

Subsecs. 206(1.1) to (1.5) added by the said c. 19, subsec. 210(4), applicable after December 4, 1985.

Subsec. 206(2.01) added by the said c. 19, subsec. 210(5), applicable to months that end after 1992.

Subsec. 206(3) repealed by the said c. 19, subsec. 210(6), applicable to months that end after June 1995. Subsec. 206(3) formerly read:

(3) Shares in investment corporation — Notwithstanding the definition "foreign property" in subsection (1), a share of the capital stock of an investment corporation (other than a registered investment) acquired after October 13, 1971 by a taxpayer to whom this Part applies and owned by the taxpayer at a particular time shall, except as prescribed by regulation, be deemed to be a foreign property of the taxpayer at that time.

The opening words of para. (g) of "foreign property" in subsec. 206(1) substituted by 1994, c. 21, subsec. 93(1), applicable to months after 1992. The opening words of that para. formerly read:

(g) any bond, debenture, mortgage, note or similar obligation of, or issued by, a person not resident in Canada, except any such bond, debenture, mortgage, note or similar obligation issued or guaranteed by

Subsec. 206(2.1) substituted by the said c. 21, subsec. 93(2), applicable to 1992 *et seq.* That subsec. formerly read:

(2.1) Exemption — Notwithstanding section 205, subsection (2) shall not apply in respect of a trust described in paragraph 149(1)(o.4) in respect of any month that falls within a period in respect of which the trustee has elected in accordance with subsection 259(2).

Para. 206(2)(a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 120(1), applicable to months ending after December 20, 1991. Para. (a) formerly read:

(a) the total of all amounts each of which is the cost amount of a foreign property to a taxpayer described in any of paragraphs 205(a) to (f) (other than, where the taxpayer is described in any of paragraphs (b), (c) and (e), a foreign property that was not at the end of the month a qualified investment, within the meaning assigned by subsection 146(1) or 146.3(1) or section 204, as the case may be, of the taxpayer.)

Subsec. 206(3.1) added by the said, c. 7, Sch. VIII (1993, c. 24), subsec. 120(2), applicable to months ending after December 20, 1991.

Subpara. (g)(i.1) added to "foreign property" by 1994, c. 7, Sch. II (1991, c. 49), subsec. 166(1), applicable after July 13, 1990.

Para. 206(2)(b) amended by the said c. 7, Sch. II (1991, c. 49), subsec. 166(2), to substitute "20% " for "10% ", applicable to months ending after 1989 except that for months in 1990, 1991, 1992 and 1993 the reference in para. (b) to "20%" shall be read as "12%", "14%", "16%" and "18%" respectively.

Subpara. 206(2)(c)(ii) substituted by the said c. 7, Sch. II (1991, c. 49), subsec. 166(3), applicable to months ending after 1989. That subpara. formerly read:

(ii) two times the amount determined under paragraph (b),

206.1 [Repealed]

History: Part XI (ss. 205–207) repealed by 2005, c. 30, s. 14, applicable to months that end after 2004. S. 206.1 formerly read:

206.1 Tax in respect of acquisition of shares — Where at any time a taxpayer to which this Part applies makes an agreement (otherwise than as a consequence of the acquisition or writing by it of an option listed on a prescribed stock exchange) to acquire a share of the capital stock of a corporation (otherwise than from the corporation) at a price that may differ from the fair market value of the share at the time the share may be acquired, the taxpayer shall, in respect of each month during which the taxpayer is a party to the agreement, pay a tax under this Part equal to the total of all amounts each of which is the amount, if any, by which

(a) the amount of a dividend paid on the share at a time in the month at which the taxpayer is a party to the agreement

exceeds

(b) the amount, if any, of the dividend that is received by the taxpayer.

S. 206.1 amended by 1998, c. 19, s. 211, applicable to agreements entered into after 1992 except that, in its application to agreements entered into after 1992 and before April 26, 1995, s. 206.1 shall be read as follows:

206.1 Where at any time a taxpayer to which this Part applies enters into an agreement (otherwise than as a consequence of the acquisition or writing by it of an option listed on a prescribed stock exchange) to acquire a share of the capital stock of a corporation (otherwise than from the corporation) at a price that may differ from the fair market value of the share at the time the share may be acquired, the taxpayer shall, in respect of each month during which the taxpayer is a party to the agreement, pay a tax under this Part equal to the lesser of

(a) the total of all amounts each of which is the amount, if any, by which

(i) the amount of a dividend paid on the share at a time in the month at which the taxpayer is a party to the agreement

exceeds

(ii) the amount, if any, of the dividend that is received by the taxpayer, and

(b) 1% of the fair market value of the share at the time the agreement is entered into.

The sec. formerly read:

206.1 Tax in respect of acquisition of shares — Where at any time a taxpayer to which this Part applies enters into an agreement (otherwise than as a consequence of the acquisition or writing by it of an option listed on a prescribed stock exchange) to acquire a share of the capital stock of a corporation (otherwise than from the corporation) at a price that may differ from the fair market value thereof at the time the share may be acquired, the taxpayer shall, in respect of each month during which the taxpayer is a party to the agreement, pay a tax under this Part equal to 1% of the fair market value of the share at the time that the agreement is entered into.

S. 206.1 substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 167, applicable to agreements entered into after July 13, 1990. S. 206.1 formerly read:

206.1 Tax in respect of acquisition of shares — Where at any time a taxpayer to which this Part applies has entered into an agreement (otherwise than pursuant to the acquisition or writing by it of an option listed on a prescribed stock exchange) to acquire shares of the capital stock of a corporation from a person other than the corporation at a price that may differ from the fair market value thereof at the time they may be acquired, the taxpayer shall, in respect of each month during which it is a party to the agreement, pay a tax under this Part equal to 1% of the maximum amount that the taxpayer is or may be required to pay for the shares under the agreement.

207. [Repealed]

History: Part XI (ss. 205–207) repealed by 2005, c. 30, s. 14, applicable to months that end after 2004. S. 207 formerly read:

207. (1) Return and payment of tax — Within 90 days after the end of each year after 1971, a taxpayer to whom this Part applies shall

(a) file with the Minister a return for the year under this Part in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax, if any, payable by the taxpayer under this Part in respect of each month in the year; and

(c) pay to the Receiver General the amount of tax, if any, payable by the taxpayer under this Part in respect of each month in the year.

(2) **Liability of trustee** — Where the trustee of a taxpayer that is liable to pay tax under this Part does not remit to the Receiver General the amount of the tax within the time specified in subsection (1), the trustee is personally liable to pay on behalf of the taxpayer the full amount of the tax and is entitled to recover from the taxpayer any amount paid by the trustee as tax under this section.

(3) **Provisions applicable to Part** — Subsections 150(2) and (3), sections 152 and 158, subsections 161(1) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

PART XI.1 — TAX IN RESPECT OF DEFERRED INCOME PLANS AND OTHER TAX EXEMPT PERSONS

History: Heading of Part XI.1 amended by 2005, c. 30, s. 15, applicable to months that end after 2004. The heading formerly read:

Tax in respect of Certain Property Held by Trusts Governed by Deferred Income Plans

207.1 (1) Tax payable by trust under registered retirement savings plan [holding non-qualified investment] — Where, at the end of any month, a trust governed by a registered retirement savings plan holds property that is neither a qualified investment (within the meaning assigned by subsection 146(1)) nor a life insurance policy in respect of which, but for subsection 146(11), subsection 146(10) would have applied as a consequence of its acquisition, the trust shall, in respect of that month, pay a tax under this Part equal to 1% of the fair market value of the property at the time it was acquired by the trust of all such property held by it at the end of the month, other than

(a) property, the fair market value of which was included, by virtue of subsection 146(10), in computing the income, for any year, of an annuitant (within the meaning assigned by subsection 146(1)) under the plan; and

(b) property acquired by the trust before August 25, 1972.

Related Provisions: 146(10) — Tax on beneficiary when RRSP acquires non-qualified investment; 146(10.1) — Tax on RRSP's income from non-qualified investment; 205 — Part XI tax; 206 — Tax payable; 207.2 — Return and payment of tax; 259(1) — Proportional holdings in trust property.

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs.

(2) Tax payable by trust under deferred profit sharing plan [holding non-qualified investment] — Where, at the end of any month, a trust governed by a deferred profit sharing plan holds property that is neither a qualified investment (within the meaning assigned by section 204) nor a life insurance policy (referred to in paragraphs 198(6)(c) to (e) or subsection 198(6.1)), the trust shall, in respect of that month, pay a tax under this Part equal to 1% of the fair market value of the property at the time it was acquired by the trust of all such property held by it at the end of the month, other than

(a) property in respect of the acquisition of which the trust has paid or is liable to pay a tax under subsection 198(1); and

(b) property acquired by the trust before August 25, 1972.

Related Provisions: 198(1) — Tax on acquisition of non-qualified investment; 205 — Part XI tax; 207.2 — Return and payment of tax; 259(1) — Proportional holdings in trust property.

(3) Tax payable by trust under registered education savings plan [holding non-qualified investment] — Every trust governed by a registered education savings plan shall, in respect of any month, pay a tax under this Part equal to 1% of the total of all amounts each of which is the fair market value of a property, at the time it was acquired by the trust, that

(a) is not a qualified investment (as defined in subsection 146.1(1)) for the trust; and

(b) is held by the trust at the end of the month.

Related Provisions: 207.2 — Return and payment of tax.

History: Subsec. 207.1(3) added by 1999, c. 22, s. 73, applicable to 1999 *et seq.*

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs.

(4) Tax payable by trust under registered retirement income fund [holding non-qualified investment] — Where, at the end of any month after 1978, a trust governed by a registered retirement income fund holds property that is not a qualified investment (within the meaning assigned by subsection 146.3(1)), the trust shall, in respect of that month, pay a tax under this Part equal to 1% of the fair market value of the property at the time it was acquired by the trust of all such property held by it at the end of the month other than property, the fair market value of which was included by virtue of subsection 146.3(7) in computing the income for any year of an annuitant (within the meaning assigned by subsection 146.3(1)) under the fund.

Related Provisions: 146.3(7) — Tax on beneficiary when RRIF acquires non-qualified investment; 146.3(9) — Tax on income from non-qualified investments; 205 — Part XI tax; 207.2 — Return and payment of tax; 259(1) — Proportional holdings in trust property.

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs.

(5) Tax payable in respect of agreement to acquire shares — Where at any time a taxpayer whose taxable income is exempt from tax under Part I makes an agreement (otherwise than as a consequence of the acquisition or writing by it of an option listed on a prescribed stock exchange) to acquire a share of the capital stock of a corporation (otherwise than from the corporation) at a price that may differ from the fair market value of the share at the time the share may be acquired, the taxpayer shall, in respect of each month during which the taxpayer is a party to the agreement, pay a tax under this Part equal to the total of all amounts each of which is the amount, if any, by which the amount of a dividend paid on the share at a time in the month at which the taxpayer is a party to the agreement exceeds the amount, if any, of the dividend that is received by the taxpayer.

History: Subsec. 207.1(5) added by 2005, c. 30, s. 16, applicable to months that end after 2004.

Former subsec. 207.1(5) repealed by 1994, c. 8, s. 31, applicable to property held after October 1985. Subsec. (5) formerly read:

(5) **Tax on excessive small business property holdings** — Where at the end of any month a trust governed by a registered retirement savings plan or registered retirement income fund holds a

prescribed property, the trust shall, in respect of that month, pay a tax under this Part equal to 1% of the amount, if any, by which

(a) the total of the fair market values, at the time of acquisition, of all prescribed properties held by the trust at the end of the month

exceeds

(b) 50% of the total of the fair market values, at the time of acquisition, of all properties held by the trust at the end of the month.

Regulations [subsec. 207.1(5)]: 3200, 3201 (prescribed stock exchange).

Related Provisions [s. 207.1]: 205 — Application of Part XI — deferred income plan trust property; 206 — Tax payable; 207.2 — Return and payment of tax; 259(1) — Proportional holdings in trust property.

Definitions [s. 207.1]: "amount" — 248(1); "annuitant" — 146.3(1); "corporation" — 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan" — 147(1), 248(1); "dividend" — 248(1); "life insurance policy" — 138(12), 248(1); "month" — *Interpretation Act* 35(1); "prescribed stock exchange" — 248(29), Reg. 3200, 3201; "property" — 248(1); "qualified investment" — 146(1), 146.1(1), 146.3(1), 204; "registered education savings plan" — 146.1(1), 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "share", "taxable income", "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

Regulations [s. 207.1]: 4901(1.1) (prescribed property).

Information Circulars [s. 207.1]: 77-1R4: Deferred profit sharing plans.

207.2 (1) Return and payment of tax — Within 90 days after the end of each year, a taxpayer to whom this Part applies shall

(a) file with the Minister a return for the year under this Part in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax, if any, payable by it under this Part in respect of each month in the year; and

(c) pay to the Receiver General the amount of tax, if any, payable by it under this Part in respect of each month in the year.

Related Provisions: 150.1(5) — Electronic filing.

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs.

Information Circulars: 78-14R3: Guidelines for trust companies and other persons responsible for filing T3IND, T3G, T3D, T3P, T3s, T3RI and T3F returns.

Forms: T3D: Income tax return for DPSP or revoked DPSP; T3G: Certification of no tax liability by a group of RRSPs, RRIFs, or RESPs; T3GR: Group income tax and information return for RRSP, RRIF or RESP trusts (and worksheets); T3IND: T3IND income tax return for RRSP, RRIF, or RESP.

(2) Liability of trustee — Where the trustee of a trust that is liable to pay tax under this Part does not remit to the Receiver General the amount of the tax within the time specified in subsection (1), the trustee is personally liable to pay on behalf of the trust the full amount of the tax and is entitled to recover from the trust any amount paid by the trustee as tax under this section.

(3) Provisions applicable to Part — Subsections 150(2) and (3), sections 152 and 158, subsections 161(1) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Definitions [s. 207.2]: "amount", "Minister", "prescribed", "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

Possible Future Addition [abandoned] — Tax on Pension Funds Holding Income Trusts (likely s. 207.21)

Federal budget, Supplementary Information, March 23, 2004: *Income Trusts*

. . . [Notice of Ways and Means Motion resolutions (12)-(14) no longer reproduced — ed.]

Budget 2004 proposes two measures to limit the level of investment that a pension fund can place in business income trusts.

First, it is proposed that restricted investment property holdings of pension funds (RPP trusts, RPP corporations and tax-exempt pension investment corporations) be limited to no more than 1% of the book value of the fund's assets. Excess restricted investment property holdings would be subject to a 1% per-month penalty tax. For this purpose:

- Restricted investment property would include direct holdings (units and debt) of business income trusts. It would also include holdings of investment vehicles such as mutual fund trusts, which give pension funds indirect exposure to business income trust investments.
- Holdings in an investment vehicle would be restricted investment property if more than 1% of its holdings consist of restricted investment property. This treatment would be similar to the manner in which investment vehicles are generally treated for the purposes of the foreign property limit.

Second, it is proposed that investment by pension funds will be limited to no more than 5% of the units of any business income trust. Excess holdings in any given business income trust would also be subject to a 1% per-month penalty tax based on the fair market value of the excess units held.

Restricted investment property will not include investments in resource royalty trusts and REITs, given that pension funds can invest directly in the type of property held by those entities. Deferred income plans that are not RPPs, such as RRSPs and registered retirement income funds (RRIFs), will not be affected by these proposals.

Existing investments by pension funds in business income trusts will be given transitional relief. Specifically, existing investments in restricted investment property would not give rise to penalty tax themselves, but they would be taken into account in determining the extent to which new restricted investment property investments could be acquired. This transitional relief for direct holdings in business income trusts would cease after 10 years. Transitional relief for indirect holdings, however, would cease after five years in recognition of the greater risk for pension funds to expand their holdings in income trusts through indirect investments such as pooled investment vehicles and other mutual funds.

To ensure that investment vehicles such as mutual funds have sufficient time to develop systems required to monitor the new limits and possibly restructure their portfolios, it is proposed that these penalty taxes apply for months that end after 2004.

Department of Finance news release, May 18, 2004: *Minister of Finance Announces Consultations on Pension Fund Investment in Business Income Trusts*

. . .

Since the March 23, 2004 tabling of the budget, several pension funds, financial market stakeholders and provincial governments have raised concerns about the proposed investment limits. In response to these representations — including a request from the Government of Ontario — the proposals to limit pension fund investment in business income trusts will be suspended.

Officials will consult with representatives of the pension fund industry, the investment industry, provincial governments and other interested parties. Details of the consultation process will be released soon. Following consultations, the Government will issue legislative proposals. [Detailed Backgrounder not reproduced — ed.]

Federal budget, Supplementary Information, February 23, 2005: *Income Trusts*

In the 2004 budget, the Government identified a risk to tax revenue posed by business income trusts, which have grown considerably in recent years. As flow-through entities, business income trusts shift the point of taxation from the corporation to the investor. Where the investor is taxable, the revenue loss to Government is small. However, where the investor is tax-exempt, the net fiscal impact may be significant.

The 2004 budget noted that expected provincial legislation to limit the liability of investors in income trusts could stimulate additional investment in business income trusts, including by tax-exempt entities, thereby contributing to further erosion of tax revenues. Accordingly, to protect tax reve-

nues while still allowing the business income trust market to develop in an orderly manner, the 2004 budget proposed to limit the level of pension fund investment in business income trusts.

After the tabling of the 2004 budget, however, a number of stakeholders expressed concern about the impact of the proposals. In response, the Government decided to suspend the implementation of these measures and to engage in further consultation.

The decision in the budget to eliminate the foreign property rule [see under 206(2) — ed.] also lifts a restriction that applied, under this rule, to investments in limited partnerships. Limited partnerships have many of the same characteristics, from a tax policy perspective, as business income trusts and other flow-through entities, and correspondingly pose many of the same policy issues.

The Government will consult stakeholders on tax issues related to business income trusts and other flow-through entities. A consultation paper will be released by the Department of Finance shortly after the budget. The consultation will be open and transparent and will involve third parties to ensure a range of views is engaged on a broad spectrum of options.

The Government will continue to monitor developments in the markets for business income trusts and other flow-through entities during the consultation process. Future initiatives, if any, will be taken following these consultations and in full consideration of the costs and benefits related to business income trusts and other flow-through entities.

PART XI.2 — TAX IN RESPECT OF DISPOSITIONS OF CERTAIN PROPERTIES

207.3 Tax payable by institution or public authority — Every institution or public authority that, at any time in a year, disposes of an object within 10 years after the object became an object described in subparagraph 39(1)(a)(i.1) shall pay a tax under this Part, in respect of the year, equal to 30% of the object's fair market value at that time, unless the disposition was made to another institution or public authority that was, at that time, designated under subsection 32(2) of the *Cultural Property Export and Import Act* either generally or for a specified purpose related to that object.

Related Provisions: 118.1(7.1) — No tax on deemed disposition upon gift of cultural property.

History: S. 207.3 amended by 1999, c. 22, s. 74, applicable to dispositions made after February 23, 1998. It formerly read:

> 207.3 Any institution or public authority that, at any time in a year, disposes of an object within 5 years after the object became an object described in subparagraph 39(1)(a)(i.1) shall, in respect of that year, pay a tax under this Part equal to 30% of the fair market value of the object at the time the object was so disposed of, unless the disposition was made to another institution or public authority that was, at the time of the disposition, designated under subsection 32(2) of the *Cultural Property Export and Import Act* either generally or for a specified purpose related to that object.

S. 207.3 substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 168, applicable to dispositions after December 11, 1988. S. 207.3 formerly read:

> 207.3 Tax payable by institution or public authority in Canada — Any institution or public authority that, at any time in a year, disposes of an object within five years of the object becoming an object described in subparagraph 39(1)(a)(i.1) shall, in respect of that year, pay a tax under this Part equal to thirty per cent of the fair market value of the object at the time the object was so disposed of, unless the disposition was made to another institution or public authority that was, at the time of the disposition, designated under subsection 32(2) of the *Cultural Property Export and Import Act* either generally or for a purpose related to that object.

Interpretation Bulletins: IT-407R4: Dispositions of cultural property to designated Canadian institutions.

207.31 Tax payable by recipient of an ecological gift — Any charity or municipality that at any time in a taxation year, without the authorization of the Minister of the Environment or a person designated by that Minister, disposes of or changes the use of a property described in paragraph 110.1(1)(d) or in the definition "total ecological gifts" in subsection 118.1(1) and given to the charity or municipality after February 27, 1995 shall, in respect of the year, pay a tax under this Part equal to 50% of the amount that would be determined for the purposes of section 110.1 or 118.1, if this Act were read without reference to subsections 110.1(3) and 118.1(6), to be the fair market value of the property if the property were given to the charity or municipality immediately before the disposition or change.

Proposed Amendment — 207.31

207.31 Tax payable by recipient of an ecological gift — Any charity, municipality or public body performing a function of government in Canada (referred to in this section as the "recipient") that at any time in a taxation year, without the authorization of the Minister of the Environment or a person designated by that Minister, disposes of or changes the use of a property described in paragraph 110.1(1)(d) or in the definition "total ecological gifts" in subsection 118.1(1) and given to the recipient shall, in respect of the year, pay a tax under this Part equal to 50% of the amount that would be determined for the purposes of section 110.1 or 118.1, if this Act were read without reference to subsections 110.1(3) and 118.1(6), to be the fair market value of the property if the property were given to the recipient immediately before the disposition or change.

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 172, will amend subsec. 207.31 to read as above, applicable in respect of dispositions of or changes of use of property after July 18, 2005.

Technical Notes: Section 207.31 imposes a tax on charities and Canadian municipalities where, without the approval of the Minister of the Environment, they dispose of or change the use of property donated to them as an ecological gift. The tax is equal to 50% of the amount that is the fair market value of the property at the time of the disposition or change in use as determined for the purposes of section 110.1 or 118.1.

Section 207.31 is amended, in respect of dispositions of or changes of use of property after July 18, 2005, to clarify that it also applies to a public body performing a function of government in Canada. For more information, refer to the commentary for subsection 118.1(1) and paragraph 149(1)(d.5).

Related Provisions: 110.1(5), 118.1(12) — Fair market value of ecological servitude, covenant or easement; 118.1(10.1)–(10.5) — Determination of fair market value by Minister of the Environment; 207.4(1) — Return and payment of tax.

History: S. 207.31 amended by 2001, c. 17, s.170, applicable in respect of dispositions or changes of use that occur after November 1999. It formerly read:

> 207.31 Any charity or municipality that, at any time in a taxation year, without the authorization of the Minister of the Environment, or a person designated by that Minister, disposes or changes the use of a property described in paragraph 110.1(1)(d) or in the definition "total ecological gifts" in subsection 118.1(1) and given to the charity or municipality after February 27, 1995 shall, in respect of the year pay a tax under this Part equal to 50% of the fair market value of the property at the time of the disposition or change.

S. 207.31 added by 1996, c. 21, s. 53, applicable after February 27, 1995.

Definitions [s. 207.31]: "fair market value" — 110.1(5); "property" — 248(1); "taxation year" — 249.

207.4 (1) Return and payment of tax — Any institution, public authority, charity or municipality that is liable

to pay a tax under subsection 207.3 or 207.31 in respect of a year shall, within 90 days after the end of the year,

(a) file with the Minister a return for the year under this Part in prescribed form and containing prescribed information without notice or demand therefor;

(b) estimate in the return the amount of tax payable by it under this Part in respect of the year; and

(c) pay to the Receiver General the amount of tax payable by it under this Part in respect of the year.

Related Provisions: 150.1(5) — Electronic filing.

History: The opening words of subsec. 207.4(1) amended by 1996, c. 21, s. 54, applicable after February 27, 1995. The opening words formerly read:

(1) Any institution or public authority that is liable to pay a tax under section 207.3 in respect of a year shall, within 90 days after the end of that year,

Forms: T913: Part XI.2 tax return — tax for the disposition of certain properties.

(2) Provisions applicable to Part — Subsections 150(2) and (3), sections 152 and 158, subsections 161(1) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Definitions [s. 207.4]: "Minister", "prescribed" — 248(1).

History: The heading of Part XI.2 amended by 1996, c. 21, s. 52, applicable after February 27, 1995. The heading formerly read "Tax in respect of Certain Property Disposed of by Certain Public Authorities or Institutions".

Part XI.3 — Tax in respect of Retirement Compensation Arrangements

207.5 (1) Definitions — In this Part,

"RCA trust" under a retirement compensation arrangement means

(a) any trust deemed by subsection 207.6(1) to be created in respect of subject property of the arrangement, and

(b) any trust governed by the arrangement;

"refundable tax" of a retirement compensation arrangement at the end of a taxation year of an RCA trust under the arrangement means the amount, if any, by which the total of

(a) 50% of all contributions made under the arrangement while it was a retirement compensation arrangement and before the end of the year, and

(b) 50% of the amount, if any, by which

(i) the total of all amounts each of which is the income (determined as if this Act were read without reference to paragraph 82(1)(b)) of an RCA trust under the arrangement from a business or property for the year or a preceding taxation year or a capital gain of the trust for the year or a preceding taxation year,

exceeds

(ii) the total of all amounts each of which is a loss of an RCA trust under the arrangement from a business or property for the year or a preceding taxation year or a capital loss of the trust for the year or a preceding taxation year,

exceeds

(c) 50% of all amounts paid as distributions to one or more persons (including amounts that are required by paragraph 12(1)(n.3) to be included in computing the recipient's income) under the arrangement while it was a retirement compensation arrangement and before the end of the year, other than a distribution paid where it is established, by subsequent events or otherwise, that the distribution was paid as part of a series of payments and refunds of contributions under the arrangement;

Related Provisions: 207.5(2) — Deemed refundable tax on election; 207.6(7)(c) — Where amount transferred from one RCA to another; 248(10) — Series of payments and refunds. See additional Related Provisions at end of Part XI.3.

"subject property of a retirement compensation arrangement" means property that is held in connection with the arrangement.

(2) Election — Notwithstanding the definition "refundable tax" in subsection (1), where the custodian of a retirement compensation arrangement so elects in the return under this Part for a taxation year of an RCA trust under the arrangement and all the subject property, if any, of the arrangement (other than a right to claim a refund under subsection 164(1) or 207.7(2)) at the end of the year consists only of cash, debt obligations, shares listed on a prescribed stock exchange, or any combination thereof, an amount equal to the total of

(a) the amount of that cash at the end of the year,

(b) the total of all amounts each of which is the greater of the principal amount of such a debt obligation outstanding at the end of the year and the fair market value of the obligation at the end of the year, and

(c) the fair market value of those shares at the end of the year

shall be deemed for the purposes of this Part to be the refundable tax of the arrangement at the end of the year.

Related Provisions [s. 207.5]: See at end of Part XI.3.

Definitions [s. 207.5]: "amount" — 248(1); "capital gain", "capital loss" — 39(1), 248(1); "custodian" — 248(1)"retirement compensation arrangement"; "person", "prescribed" — 248(1); "prescribed stock exchange" — 248(29), Reg. 3200, 3201; "property" — 248(1); "RCA trust" — 207.5(1); "refundable tax" — 207.5(1), (2); "retirement compensation arrangement" — 248(1); "series" — 248(10); "share" — 248(1); "subject property" — 207.5(1); "taxation year" — 249; "trust" — 104(1), 248(1), (3).

Regulations [s. 207.5]: 3200, 3201 (prescribed stock exchanges).

Forms [s. 207.5]: T735: Application for a remittance number for tax withheld from an RCA.

207.6 (1) Creation of trust — In respect of the subject property of a retirement compensation arrangement, other than subject property of the arrangement held by a trust governed by a retirement compensation arrangement, for the purposes of this Part and Part I, the following rules apply:

(a) an *inter vivos* trust is deemed to be created on the day that the arrangement is established;

(b) the subject property of the arrangement is deemed to be property of the trust and not to be property of any other person; and

(c) the custodian of the arrangement is deemed to be the trustee having ownership or control of the trust property.

Related Provisions: 207.6(7) — Transfer from RCA to another RCA. See also Related Provisions at end of Part XI.3.

Forms: T4041: Retirement compensation arrangements guide.

(2) Life insurance policies — For the purposes of this Part and Part I, where by virtue of a plan or arrangement an employer is obliged to provide benefits that are to be received or enjoyed by any person on, after or in contemplation of any substantial change in the services rendered by a taxpayer, the retirement of a taxpayer or the loss of an office or employment of a taxpayer, and where the employer, former employer or a person or partnership with whom the employer or former employer does not deal at arm's length acquires an interest in a life insurance policy that may reasonably be considered to be acquired to fund, in whole or in part, those benefits, the following rules apply in respect of the plan or arrangement if it is not otherwise a retirement compensation arrangement and is not excluded from the definition "retirement compensation arrangement", in subsection 248(1), by any of paragraphs (a) to (l) and (n) thereof:

(a) the person or partnership that acquired the interest is deemed to be the custodian of a retirement compensation arrangement;

(b) the interest is deemed to be subject property of the retirement compensation arrangement;

(c) an amount equal to twice the amount of any premium paid in respect of the interest or any repayment of a policy loan thereunder is deemed to be a contribution under the retirement compensation arrangement; and

(d) any payment received in respect of the interest, including a policy loan, and any amount received as a refund of refundable tax is deemed to be an amount received out of or under the retirement compensation arrangement by the recipient and not to be a payment of any other amount.

(3) Incorporated employee — For the purpose of the provisions of this Act relating to retirement compensation arrangements, where

(a) a corporation that at any time carried on a personal services business, or an employee of the corporation, enters into a plan or arrangement with a person or partnership (referred to in this subsection as the "employer") to whom or which the corporation renders services, and

(b) the plan or arrangement provides for benefits to be received or enjoyed by any person on, after or in contemplation of the cessation of, or any substantial change in, the services rendered by the corporation, or an employee of the corporation, to the employer,

the following rules apply:

(c) the employer and the corporation are deemed to be an employer and employee, respectively, in relation to each other, and

(d) any benefits to be received or enjoyed by any person under the plan or arrangement are deemed to be benefits to be received or enjoyed by the person on, after or in contemplation of a substantial change in the services rendered by the corporation.

Related Provisions: 18(1)(p) — Limitation on deductions re incorporated employees. See additional Related Provisions at end of Part XI.3.

(4) Deemed contribution — Where at any time an employee benefit plan becomes a retirement compensation arrangement as a consequence of a change of the custodian of the plan or as a consequence of the custodian ceasing either to carry on business through a fixed place of business in Canada or to be licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee,

(a) for the purposes of this Part and Part I, the custodian of the plan is deemed to have made a contribution to the arrangement immediately after that time, in an amount equal to the fair market value at that time of all the properties of the plan; and

(b) for the purposes of section 32.1, that amount is deemed to be a payment made at that time out of or under the plan to or for the benefit of employees or former employees of the employers who contributed to the plan.

Related Provisions: See Related Provisions and Definitions at end of Part XI.3.

(5) Resident's arrangement — For the purposes of this Act, where a resident's contribution has been made under a plan or arrangement (in this subsection referred to as the "plan"),

(a) the plan is deemed, in respect of its application to all resident's contributions made under the plan and all property that can reasonably be considered to be derived from those contributions, to be a separate arrangement (in this subsection referred to as the "residents' arrangement") independent of the plan in respect of its application to all other contributions and property that can reasonably be considered to derive from those other contributions;

(b) the residents' arrangement is deemed to be a retirement compensation arrangement; and

(c) each person and partnership to whom a contribution is made under the residents' arrangement is deemed to be a custodian of the residents' arrangement.

Related Provisions: 207.6(5.1) — Resident's contribution; 252.1 — Where union is employer. See additional Related Provisions at end of Part XI.3.

History: Subsec. 207.6(5) substituted by 1994, c. 21, s. 94, applicable after October 8, 1986. That subsec. formerly read:

(5) For the purposes of the provisions of this Act relating to retirement compensation arrangements, where a contribution has been made under a plan or arrangement (in this subsection referred to as the "plan") that would, but for paragraph (l) of the definition "retirement compensation arrangement", in subsection 248(1), be a retirement compensation arrangement, to the extent that the contribution can reasonably be considered to have been made at any particular time in respect of services rendered by an employee who

(a) was resident in Canada at the time the services were rendered, and

(b) where the employee was a member of the plan before the employee became a resident of Canada, had been so resident for more than 60 of the 72 months preceding the time the services were rendered,

the following rules apply:

(c) another plan or arrangement (in this subsection referred to as the "resident's arrangement") is deemed to be established at the particular time,

(d) the resident's arrangement is deemed to be a separate arrangement independent of the plan,

(e) the resident's arrangement is deemed to be a retirement compensation arrangement the custodian of which is the recipient of the contribution,

(f) the contribution is deemed to have been made under the resident's arrangement and not under the plan, and

(g) all property that can reasonably be considered to derive from the contribution is deemed to be property held in connec-

tion with the resident's arrangement and not in connection with the plan.

Regulations: 6804(4)–(6) (prescribed contribution).

(5.1) Resident's contribution — For the purpose of subsection (5), "resident's contribution" means such part of a contribution made under a plan or arrangement (in this subsection referred to as the "plan") at a time when the plan would, but for paragraph (l) of the definition "retirement compensation arrangement" in subsection 248(1), be a retirement compensation arrangement as

(a) is not a prescribed contribution; and

(b) can reasonably be considered to have been made in respect of services rendered by an individual to an employer in a period

(i) throughout which the individual was resident in Canada and rendered services to the employer that were primarily services rendered in Canada or services rendered in connection with a business carried on by the employer in Canada (or a combination of such services), and

(ii) at the beginning of which the individual had been resident in Canada throughout at least 60 of the 72 preceding calendar months, where the individual was non-resident at any time before the period and became a member of the plan before the end of the month after the month in which the individual became resident in Canada,

and, for the purpose of this paragraph, where benefits provided to an individual under a particular plan or arrangement are replaced by benefits under another plan or arrangement, the other plan or arrangement shall be deemed, in respect of the individual, to be the same plan or arrangement as the particular plan or arrangement.

Related Provisions: 252.1 — Where union is employer.

History: Subsec. 207.6(5.1) added by 1994, c. 21, s. 94, applicable after October 8, 1986.

Regulations: 6804(4)–(6) (prescribed contribution).

(6) Prescribed plan or arrangement — For the purposes of the provisions of this Act relating to retirement compensation arrangements, the following rules apply in respect of a prescribed plan or arrangement:

(a) the plan or arrangement shall be deemed to be a retirement compensation arrangement;

(b) an amount credited at any time to the account established in the accounts of Canada or a province in connection with the plan or arrangement shall be, except to the extent that it is in respect of a refund determined under subsection 207.7(2), deemed to be a contribution under the plan or arrangement at that time;

(c) the custodian of the plan or arrangement shall be deemed to be

(i) where the account is established in the accounts of Canada, Her Majesty in right of Canada, and

(ii) where the account is established in the accounts of a province, Her Majesty in right of that province; and

(d) the subject property of the plan or arrangement, at any time, shall be deemed to include an amount of cash equal to the balance at that time in the account.

Related Provisions: See at end of Part XI.3.

History: Subsec. 207.6(6) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 121, applicable after 1991.

Regulations: 103(7)(a)(ii) (no withholding on transfer under 207.6(6)); 6802 (prescribed plan or arrangement).

(7) Transfers — Where an amount (other than an amount that is part of a series of periodic payments) is transferred directly to a retirement compensation arrangement (other than an arrangement the custodian of which is non-resident or which is deemed by subsection (5) to be a retirement compensation arrangement) from another retirement compensation arrangement,

(a) the amount shall not, solely because of the transfer, be included in computing a taxpayer's income under Part I;

(b) no deduction may be made in respect of the amount in computing a taxpayer's income under Part I; and

(c) the amount is considered, for the purpose of the definition "refundable tax" in subsection 207.5(1), to be paid as a distribution to one or more persons under the arrangement from which the amount is transferred and to be a contribution made under the arrangement to which the amount is transferred.

Related Provisions: 60(t)(ii)(A), (A.1), (E), 60(u)(ii)(A), (A.1), (E) — Whether amounts transferred under 207.6(7) deductible; 212(1)(j) — Transfer not subject to non-resident withholding tax.

History: Subsec. 207.6(7) added by 1998, c. 19, s. 212, applicable to amounts transferred after 1995.

Regulations: 103(7)(a)(iii) (no withholding on transfer under 207.6(7)); 6802.1(2) (prescribed plans and arrangements).

Definitions [s. 207.6]: "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 255; "carrying on business" — 253; "corporation" — 248(1), *Interpretation Act* 35(1); "custodian" — 248(1)"retirement compensation arrangement"; "employee", "employee benefit plan", "employer", "employment" — 248(1); "Her Majesty" — *Interpretation Act* 35(1); "individual" — 248(1); "*inter vivos* trust" — 108(1), 248(1); "life insurance policy" — 138(12), 248(1); "non-resident", "office", "person", "prescribed" — 248(1); "prescribed plan or arrangement" — Reg. 6801, 6802, 6802.1, 6803; "property" — 248(1); "province" — *Interpretation Act* 35(1); "refundable tax" — 207.5(1); "resident in Canada" — 250; "residents' arrangement" — 207.6(5)(b); "resident's contribution" — 207.6(5.1); "retirement compensation arrangement" — 248(1); "subject property" — 207.5(1); "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

Forms [s. 207.6]: T733: Application for an RCA account number.

207.7 (1) Tax payable — Every custodian of a retirement compensation arrangement shall pay a tax under this Part for each taxation year of an RCA trust under the arrangement equal to the amount, if any, by which the refundable tax of the arrangement at the end of the year exceeds the refundable tax of the arrangement at the end of the immediately preceding taxation year, if any.

Related Provisions: See at end of Part XI.3.

Forms: T4041: Retirement compensation arrangements guide.

(2) Refund — Where the custodian of a retirement compensation arrangement has filed a return under this Part for a taxation year within three years after the end of the year, the Minister

(a) may, on mailing the notice of assessment for the year or a notification that no tax is payable for the year, refund without application therefor an amount equal to the amount, if any, by which the refundable tax of the arrangement at the end of the immediately preceding year exceeds the refundable tax of the arrangement at the end of the year; and

(b) shall, with all due dispatch, make such a refund after mailing the notice of assessment if application therefor has been made in writing by the custodian

within three years after the day of mailing of a notice of an original assessment for the year or of a notification that no tax is payable for the year.

Related Provisions: 207.6(6) — Prescribed plan or arrangement. See additional Related Provisions at end of Part XI.3.

(3) Payment of tax — Every custodian of a retirement compensation arrangement shall, within 90 days after the end of each taxation year of an RCA trust under the arrangement,

(a) file with the Minister a return for the year under this Part in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax, if any, payable by the custodian under this Part for the year; and

(c) pay to the Receiver General the amount of tax, if any, payable by the custodian under this Part for the year.

Related Provisions: 147.1(3) — Postponement of filing deadline where RCA is registered as pension plan; 150.1(5) — Electronic filing; 248(7) — Return deemed received on day mailed. See additional Related Provisions at end of Part XI.3.

(4) Provisions applicable to Part — Subsections 150(2) and (3), sections 152 and 158, subsections 161(1) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Definitions [s. 207.7]: "amount", "assessment" — 248(1) ; "custodian" — 248(1)"retirement compensation arrangement"; "Minister", "prescribed" — 248(1) ; "RCA trust", "refundable tax" — 207.5(1); "retirement compensation arrangement" — 248(1); "tax payable" — 248(2); "taxation year" — 249; "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

Forms [s. 207.7]: T3-RCA: Part XI.3 tax return; T4A-RCA Summ: Return of distributions from an RCA; T735: Application for a remittance number for tax withheld from an RCA; T737-RCA: Statement of contributions paid to a custodian of an RCA.

Related Provisions [Part XI.3]: 8(1)(m.2) — Deduction for employee RCA contributions; 87(2)(j.3) — Amalgamations — continuation of corporation; 107.2 — Distribution by RCA to beneficiary; 149(1)(q.1) — RCA trust exempt from Part I tax; 153(1)(p)–(r) — Withholding of tax at source on contribution to RCA, distribution out of RCA, and purchase of interest in RCA; 160.3 — Joint and several liability — RCA benefits; 227(8.2) — Liability for failure to withhold.

PART XII — TAX IN RESPECT OF CERTAIN ROYALTIES, TAXES, LEASE RENTALS, ETC., PAID TO A GOVERNMENT BY A TAX EXEMPT PERSON

Repeal [effective 2007] — Part XII

Application: S.C. 2003, c. 28 (Bill C-48, Royal Assent November 7, 2003), s. 15, repeals Part XII, applicable to taxation years that begin after 2006.

208. (1) Tax payable by exempt person — [Repealed effective 2007] Where in a taxation year an amount (other than an amount to which paragraph 18(1)(l.1) or (m) applies) was paid, payable, distributed or distributable in any manner whatever by a person (other than a prescribed person) who was exempt from tax under Part I on that person's taxable income to anyone in respect of any production from a Canadian resource property of the person of petroleum, natural gas or other related hydrocarbons or of metals or minerals to any stage that is not beyond the specified stage or in respect of any revenue or income that may reasonably be regarded as attributable to that production, the person shall, in respect of the year, pay a tax under this Part equal to 33⅓% of the lesser of

(a) the total of all amounts in respect of the property, each of which is

(i) an amount that became receivable in the year and that was required by paragraph 12(1)(o) to be included in computing the person's income for the year,

(ii) an amount that was paid or became payable by the person in the year and that by virtue of paragraph 18(1)(l.1) or (m) was not deductible in computing the person's income for the year,

(iii) an amount by which the person's proceeds of disposition were increased by virtue of subsection 69(6) in the year, or

(iv) an amount by which the person's cost of acquisition was decreased by virtue of subsection 69(7) in the year, and

(b) the proportion of the amount determined under paragraph (a) that

(i) the total of all amounts each of which is an amount (other than an amount to which paragraph 18(1)(l.1) or (m) applies) that was paid, payable, distributed or distributable by the person in the year in any manner whatever to

(A) another person (other than a person whose taxable income is exempt from tax under Part I), or

(B) another person whose taxable income is exempt from tax under Part I, where the amount was paid, payable, distributed or distributable as part of a transaction or event or series of transactions or events to which any person whose taxable income is not exempt from tax under Part I was a party

in respect of any production from the property of petroleum, natural gas or other related hydrocarbons or of metals or minerals to any stage that is not beyond the specified stage or in respect of any revenue or income that can reasonably be regarded as attributable to that production

is of

(ii) the amount, if any, by which the total of

(A) the income of the person from the property for the year from the production of petroleum, natural gas or other related hydrocarbons or of metals or minerals to any stage that is not beyond the specified stage, computed in accordance with Part I on the assumption that the property was the person's only source of income and that the person was allowed only those deductions in computing income from the property (other than a deduction under paragraph 20(1)(v.1) or section 65) that may reasonably be regarded as applicable to that income from the property, and

(B) the amount determined under subparagraph (i)

exceeds

(C) the amount determined under paragraph (a).

Related Provisions: 208(1.1) — Meaning of "specified stage"; 248(10) — Series of transactions.

History: Subpara. 208(1)(b)(i) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 169, applicable to 1988 *et seq.* That subpara. formerly read:

> (i) the total of all amounts each of which is an amount (other than an amount to which paragraph 18(1)(l.1) or (m) applies) that was paid, payable, distributed or distributable in the year in any manner whatever to anyone in respect of any production from the property of petroleum, natural gas or other related hydrocarbons or of metals or minerals to any stage that is not beyond the specified stage or in respect of any revenue or income that may reasonably be regarded as attributable to that production

Regulations: 1216 (prescribed person).

(1.1) Definition of "specified stage" — For the purpose of subsection (1), "specified stage" means, in respect of the production from a Canadian resource property of a substance,

(a) where the substance is petroleum or related hydrocarbons (other than natural gas), the crude oil stage or its equivalent;

(b) where the substance is natural gas, the stage of natural gas that is acceptable to a common carrier of natural gas;

(c) where the substance is a metal or mineral (other than iron, sulphur or petroleum or related hydrocarbons), the prime metal stage or its equivalent;

(d) where the substance is iron, the pellet stage or its equivalent; and

(e) where the substance is sulphur, the marketable sulphur stage.

History: Subsec. 208(1.1) amended by 1997, c. 25, s. 58, applicable to taxation years that begin after 1996. Subsec. (1.1) formerly read:

> (1.1) For the purpose of subsection (1), "specified stage" means, in respect of the production from a Canadian resource property
>
> (a) where the production is petroleum, natural gas or related hydrocarbons from an oil or gas well or a mineral resource, the crude oil stage or its equivalent;
>
> (b) where the production is metal or minerals (other than iron or petroleum or related hydrocarbons) from a mineral resource, the prime metal stage or its equivalent; and
>
> (c) where the production is iron from a mineral resource, the pellet stage or its equivalent.

(2) Return and payment of tax — A person liable to pay a tax under this Part in respect of a year shall, on or before its balance-due day for a taxation year,

(a) file with the Minister a return for the year under this Part in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax payable by the person under this Part in respect of the year; and

(c) pay to the Receiver General the tax payable by the person under this Part for the year.

Related Provisions: 150.1(5) — Electronic filing.

History: The opening words of subsec. 208(2) amended by 2003, c. 15, s. 125, applicable to taxation years that begin after June 2003. The opening words formerly read:

> (2) A person liable to pay a tax under this Part in respect of a year shall, within 3 months from the end of the year,

Forms: T2026: Part XII tax return — tax on payments to the Crown by a tax exempt person.

(3) Liability of trustee — Where a trustee of a trust liable to pay tax under subsection (1) does not pay to the Receiver General the amount of the tax within the time specified in subsection (2), the trustee is personally liable to pay on behalf of the trust the full amount of the tax and is entitled to recover from the trust any amount paid by the trustee as tax under this section.

(4) Provisions applicable to Part — Subsections 150(2) and (3), sections 152 and 158, subsections 161(1) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Repeal [effective 2007] — 208

See at beginning of Part XII.

Definitions [s. 208]: "amount" — 248(1); "Canadian resource property" — 66(15), 248(1); "mineral resource", "mineral", "Minister", "person", "prescribed", "property" — 248(1); "series of transactions" — 248(10); "specified stage" — 208(1.1); "tar sands" — 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "trust" — 248(1), (3).

Part XII.1 — Tax on Carved-out Income

209. (1) Definitions — For the purposes of this Part,

"carved-out income" of a person for a taxation year from a carved-out property means the amount, if any, by which

(a) the person's income for the year attributable to the property computed under Part I on the assumption that in computing that income no deduction was allowed under section 20 (other than a deduction under paragraph 20(1)(v.1) [until 2007 — ed.]), subdivision e of Division B of Part I or section 104,

Amendment [effective 2007] — 209(1)"carved-out income"(a)

(a) the person's income for the year attributable to the property computed under Part I on the assumption that in computing income no deduction was allowed under section 20, subdivision e of Division B of Part I or section 104,

Application: S.C. 2003, c. 28 (Bill C-48, Royal Assent November 7, 2003), s. 16, amends para. (a) of the definition "carved-out income" in subsec. 209(1) to read as above, applicable to taxation years that begin after 2006.

exceeds the total of

(b) the amount deducted under subsection 66.4(2) in computing the person's income for the year to the extent that it may reasonably be considered to be attributable to the property, and

(c) to the extent that the property is an interest in a bituminous sands deposit or oil shale deposit, the amount deducted under subsection 66.2(2) in computing the person's income for the year to the extent that it can reasonably be considered to be attributable to the cost of that interest;

Related Provisions: 66(14.6) — Deduction of carved-out income; 209(6) — Partnerships.

History: Para. (c) of the definition "carved-out income" in subsec. 209(1) amended by 1997, c. 25, s. 59, applicable after March 6, 1996. Para. (c) formerly read:

> (c) to the extent that the property is an interest in a bituminous sands deposit, oil sands deposit or oil shale deposit, the amount deducted under subsection 66.2(2) in computing the person's income for the year to the extent that it may reasonably be considered to be attributable to the cost of that interest;

"carved-out property" of a person means

(a) a Canadian resource property where

(i) all or substantially all of the amount that the person is or may become entitled to receive in respect of the property may reasonably be considered to be limited to a maximum amount or to an amount determinable by reference to a stated quantity of production from a mineral resource or an accumulation of petroleum, natural gas or related hydrocarbons,

(ii) the period of time during which the person's interest in the income attributable to the property may reasonably be expected to continue is

(A) where the property is a head lease or may reasonably be considered to derive from a head lease, less than the lesser of 10 years and the remainder of the term of the head lease, and

(B) in any other case, less than 10 years,

(iii) the person's interest in the income attributable to the property, expressed as a percentage of production for any period, may reasonably be expected to be reduced substantially,

(A) where the property is a head lease or may reasonably be considered to derive from a head lease, at any time before

(I) the expiration of a period of 10 years commencing when the property was acquired, or

(II) the expiration of the term of the head lease,

whichever occurs first, and

(B) in any other case, at any time before the expiration of a period of 10 years commencing when the property was acquired, or

(iv) another person has a right under an arrangement to acquire, at any time, the property or a portion thereof or a similar property from the person and it is reasonable to consider that one of the main reasons for the arrangement, or any series of transactions or events that includes the arrangement, was to reduce or postpone tax that would, but for this subparagraph, be payable under this Part, or

(b) an interest in a partnership or trust that holds a Canadian resource property where it is reasonable to consider that one of the main reasons for the existence of the interest is to reduce or postpone the tax that would, but for this paragraph, be payable under this Part,

but does not include

(c) an interest in respect of a property that was acquired by the person solely in consideration of the person's undertaking under an agreement to incur Canadian exploration expense or Canadian development expense in respect of the property and, where the agreement so provides, to acquire gas or oil well equipment (as defined in subsection 1104(2) of the *Income Tax Regulations*) in respect of the property,

(c.1) an interest in respect of a property that was retained by the person under an agreement under which another person obtained an absolute or conditional right to acquire another interest in respect of the property, if the other interest is not carved-out property of the other person because of paragraph (c),

Proposed Amendment — 209(1)"carved-out property"(c), (c.1)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), s. 266, will amend paras. (c) and (c.1) of the definition "carved-out property" in subsec. 209(1) by substituting "an interest, or for civil law a right," for "an interest" in each, and in para. (c.1), "another interest, or for civil law another right," for "another interest" and "other interest or right," for "other interest", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(d) a particular property acquired by the person under an arrangement solely as consideration for the sale of a Canadian resource property (other than a property that, immediately before the sale was a carved-out property of the person) that relates to the particular property except where it is reasonable to consider that one of the main reasons for the arrangement, or any series of transactions or events that includes the arrangement, was to reduce or postpone tax that would, but for this paragraph, be payable under this Act,

(e) a property retained or reserved by the person out of a Canadian resource property (other than a property that, immediately before the transaction by which the retention or reservation is made, was a carved-out property of the person) that was disposed of by the person except where it is reasonable to consider that one of the main reasons for the retention or reservation, or any series of transactions or events in which the property or interest was retained or reserved, was to reduce or postpone tax that would, but for this paragraph, be payable under this Act,

(f) a property acquired by the person from a taxpayer with whom the person did not deal at arm's length at the time of the acquisition and the property was acquired by the taxpayer or a person with whom the taxpayer did not deal at arm's length

(i) pursuant to an agreement in writing to do so entered into before July 20, 1985, or

(ii) under the circumstances described in this paragraph or paragraph (d) or (e),

except where it is reasonable to consider that one of the main reasons for the acquisition of the property, or any series of transactions or events in which the property was acquired, was to reduce or postpone tax that would, but for this paragraph, be payable under this Act,

(f.1) where the taxable income of the person is exempt from tax under Part I, a property of the person that

(i) does not relate to property of a person whose taxable income is not exempt from tax under Part I, and

(ii) is not, and does not relate to, property that was at any time a carved-out property of any other person, or

(g) a prescribed property;

Related Provisions: 209(6) — Partnerships; 248(10) — Series of transactions.

History: Para. (c) of "carved-out property" in subsec. 209(1) substituted, and (c.1) added, by 1994, c. 7, Sch. II (1991, c. 49), subsec. 170(1), applicable to property acquired after July 19, 1985. Para. (c) formerly read:

(c) an interest in respect of a property that was acquired by the person under an agreement solely in consideration of the person's undertaking to incur Canadian exploration expense or Canadian development expense in respect of the property,

Para. (f.1) of "carved-out property" in subsec. 209(1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 170(2), applicable to property acquired after 1987.

Regulations: 7600 (prescribed property).

"head lease" means a contract under which

(a) Her Majesty in right of Canada or a province grants, or

(b) an owner in fee simple, other than Her Majesty in right of Canada or a province, grants for a period of not less than 10 years

any right, licence or privilege to explore for, drill for or take petroleum, natural gas or related hydrocarbons in Canada or to prospect, explore, drill or mine for minerals in a mineral resource in Canada;

"term" of a head lease includes all renewal periods in respect of the head lease.

(2) Tax — Every person shall pay a tax under this Part for each taxation year equal to 45% of the total of the person's carved-out incomes for the year from carved-out properties.

Related Provisions: 18(1)(t) — Tax is non-deductible; 66(14.6) — Deduction of carved-out income.

History: Subsec. 209(2) substituted by 1994, c. 21, s. 95, applicable to 1992 *et seq.* That subsec. formerly read:

(2) Every person shall pay a tax under this Part for each taxation year equal to 50% of the total of the person's carved-out incomes for the year from carved-out properties.

(3) Return — Every person liable to pay tax under this Part for a taxation year shall file with the Minister, not later than the day on or before which the person is or would be, if the person were liable to pay tax under Part I for the year, required under section 150 to file a return of the person's income for the year under Part I, a return for the year under this Part in prescribed form containing an estimate of the amount of tax payable by the person under this Part for the year.

Related Provisions: 150.1(5) — Electronic filing.

Forms: T2096: Part XII.1 tax return — tax on carved-out income.

(4) Payment of tax — Where a person is liable to pay tax for a taxation year under this Part, the person shall pay in respect of the year, to the Receiver General

(a) on or before the last day of each month in the year, an amount equal to 1/12 of the amount of tax payable by the person under this Part for the year; and

(b) the remainder, if any, of the tax payable by the person under this Part for the year, on or before the person's balance-due day for the year.

History: Para. 209(4)(b) amended by 2003, c. 15, s. 126, applicable to taxation years that begin after June 2003. Para. 209(4)(b) formerly read:

(b) the remainder, if any, of the tax payable by the person under this Part for the year, on or before the end of the second month following the end of the year.

(5) Provisions applicable to Part — Subsections 150(2) and (3) and sections 152, 158 and 159, subsections 161(1), (2) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

(6) Partnerships — For the purposes of subsection (1), a partnership shall be deemed to be a person and its taxation year shall be deemed to be its fiscal period.

Definitions [s. 209]: "amount" — 248(1); "arm's length" — 251(1); "bituminous sands" — 248(1); "Canada" — 255; "Canadian development expense" — 66.2(5), 248(1); "Canadian exploration expense" — 66.1(6), 248(1); "Canadian resource property" — 66(15), 248(1); "carved-out income", "carved-out property" — 209(1); "fiscal period" — 249(2)(b), 249.1; "head lease" — 209(1); "Her Majesty" — *Interpretation Act* 35(1); "mineral resource", "mineral", "Minister" — 248(1); "person" — 209(6), 248(1); "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "series of transactions" — 248(10); "tax payable" — 248(2); "taxable income" — 2(2), 248(1); "taxation year" — 209(6), 249; "taxpayer" — 248(1); "term" — 209(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

PART XII.2 — TAX ON DESIGNATED INCOME OF CERTAIN TRUSTS

210. Designated beneficiary — In this Part, a "designated beneficiary" under a trust at any time means a beneficiary under the trust that was, at that time,

(a) a non-resident person;

(b) a non-resident-owned investment corporation;

(c) a person exempt from tax under Part I by reason of subsection 149(1), where that person acquired an interest in the trust after October 1, 1987 directly or indirectly from a beneficiary under the trust except

(i) where the interest was owned continuously since October 1, 1987 or the date on which the interest was created, whichever is later, by persons exempt from tax under Part I by reason of subsection 149(1), or

(ii) where the person was a trust governed by

(A) a registered retirement savings plan, or

(B) a registered retirement income fund,

and acquired the interest, directly or indirectly, from an individual or the spouse or common-law partner or former spouse or common-law partner of the individual who was, immediately after the interest was acquired, a beneficiary under the trust governed by the fund or plan;

(d) a trust resident in Canada (other than a testamentary trust, a mutual fund trust or a trust exempt, because of subsection 149(1), from tax under Part I on all or part of its taxable income), if

(i) a person described in paragraph (a), (b) or (c),

(ii) a partnership described in paragraph (e), or

(iii) a trust (other than a trust resident in Canada that is a testamentary trust)

is, at that time, a beneficiary thereunder; or

(e) a partnership, if a person described in paragraph (a), (b) or (d), a partnership or a person exempt from tax under Part I by reason of subsection 149(1) is, at that time, a member thereof.

Proposed Amendment — 210

210. (1) Definitions — The following definitions apply in this Part.

"designated beneficiary", under a particular trust at any time, means a beneficiary, under the particular trust, who is at that time

(a) a non-resident person;

(b) a non-resident-owned investment corporation;

(c) a person who is, because of subsection 149(1), exempt from tax under Part I on all or part of their taxable income and who acquired an interest as a beneficiary under the particular trust after October 1, 1987 directly or indirectly from a beneficiary under the particular trust except if

(i) the interest was, at all times after the later of October 1, 1987 and the day on which the interest

was created, held by persons who were exempt from tax under Part I on all of their taxable income because of subsection 149(1), or

(ii) the person is a trust, governed by a registered retirement savings plan or a registered retirement income fund, who acquired the interest, directly or indirectly, from an individual or the spouse or common-law partner, or former spouse or common-law partner, of the individual who was, immediately after the interest was acquired, a beneficiary under the trust governed by the fund or plan;

(d) another trust (referred to in this paragraph as the "other trust") that is not a testamentary trust, a mutual fund trust or a trust that is exempt because of subsection 149(1) from tax under Part I on all or part of its taxable income, if any beneficiary under the other trust is at that time

(i) a non-resident person,

(ii) a non-resident-owned investment corporation,

(iii) a trust that is not

(A) a testamentary trust,

(B) a mutual fund trust,

(C) a trust that is exempt because of subsection 149(1) from tax under Part I on all or part of its taxable income, or

(D) a trust

(I) whose interest, at that time, in the other trust was held, at all times after the day on which the interest was created, either by it or by persons who were exempt because of subsection 149(1) from tax under Part I on all of their taxable income, and

(II) none of the beneficiaries under which is, at that time, a designated beneficiary under it, or

(iv) a person or partnership that

(A) is a designated beneficiary under the other trust because of paragraph (c) or (e), or

(B) would be a designated beneficiary under the particular trust because of paragraph (c) or (e) if, instead of being a beneficiary under the other trust, the person or partnership were at that time a beneficiary, under the particular trust, whose interest as a beneficiary under the particular trust were

(I) identical to its interest (referred to in this clause as the "particular interest") as a beneficiary under the other trust,

(II) acquired from each person or partnership from whom it acquired the particular interest, and

(III) held, at all times after the later of October 1, 1987 and the day on which the particular interest was created, by the same persons or partnerships that held the particular interest at those times; or

(e) a particular partnership any of the members of which is at that time

(i) another partnership, except if

(A) each such other partnership is a Canadian partnership,

(B) the interest of each such other partnership in the particular partnership is held, at all times after the day on which the interest was created, by the other partnership or by persons who were exempt because of subsection 149(1) from tax under Part I on all of their taxable income,

(C) the interest of each member, of each such other partnership, that is a person exempt because of subsection 149(1) from tax under Part I on all or part of its taxable income was held, at all times after the day on which the interest was created, by that member or by persons who were exempt because of subsection 149(1) from tax under Part I on all of their taxable income, and

(D) the interest of the particular partnership in the particular trust was held, at all times after the day on which the interest was created, by the particular partnership or by persons who were exempt because of subsection 149(1) from tax under Part I on all of their taxable income,

(ii) a non-resident person,

(iii) a non-resident-owned investment corporation,

(iv) another trust that is, under paragraph (d), a designated beneficiary of the particular trust or that would, under paragraph (d), be a designated beneficiary of the particular trust if the other trust were at that time a beneficiary under the particular trust whose interest as a beneficiary under the particular trust were

(A) acquired from each person or partnership from whom the particular partnership acquired its interest as a beneficiary under the particular trust, and

(B) held, at all times after the later of October 1, 1987 and the day on which the particular partnership's interest as a beneficiary under the particular trust was created, by the same persons or partnerships that held that interest of the particular partnership at those times, or

(v) a person exempt because of subsection 149(1) from tax under Part I on all or part of its taxable income except if the interest of the particular partnership in the particular trust was held, at all times after the day on which the interest was created, by the particular partnership or by persons who were exempt because of subsection 149(1) from tax under Part I on all of their taxable income.

Technical Notes: Section 210 is amended so that a number of definitions that apply for the purposes of Part XII.2 are now found in new subsection 210(1). In addition, new subsection 210(2) replaces section 210.1, which is being repealed.

New subsection 210(1) contains the definitions "designated beneficiary" (previously found in section 210) and "designated income" (previously found in subsection 210.2(2)). These definitions apply in Part XII.2.

Under paragraphs (a) and (b) of the definition "designated beneficiary", a designated beneficiary includes, respectively, a non-resident person and a non-resident-owned investment corporation. Under paragraph (c) of the definition, a person exempt from tax under Part I of the Act is treated as a designated beneficiary because of owning an interest in a trust (acquired from a beneficiary under the trust) unless, generally speaking, no taxable entity previously owned that interest. Under paragraph (d) of the definition, a trust is a designated beneficiary of another

trust if a beneficiary of the trust includes, generally, either a person or partnership described in any of paragraphs (a), (b), (c) or (e) of the definition or another trust (other than a testamentary trust resident in Canada). Under paragraph (e) of the definition, a partnership is a designated beneficiary of a trust if a member of the partnership is a person described in paragraph (a), (b) or (d) of the definition, another partnership or a person exempt from tax under Part I by reason of subsection 149(1).

The opening words of the definition "designated beneficiary" are amended so that the references in the definition to a "trust" under which there may be a designated beneficiary are references to a "particular trust".

Paragraph (c) of the definition "designated beneficiary" is amended to clarify that a designated beneficiary of a particular trust includes, except as provided in subparagraphs (e)(i) and (ii) of the definition, a person who is, because of subsection 149(1), exempt from tax under Part I on all or part of their taxable income and who acquired an interest in the particular trust after October 1, 1987 directly or indirectly from a beneficiary under the particular trust.

Paragraph (d) of the definition "designated beneficiary" is amended so that a designated beneficiary of a particular trust includes another trust (in this commentary referred to as the "other trust") having as a beneficiary any one of the following persons or partnerships:

- under subparagraphs (d)(i) and (ii) of the definition, a non-resident person (including a trust) or a non-resident-owned investment corporation;
- under subparagraphs (d)(iii) of the definition, any trust, other than
  - — a testamentary trust (however, note that if the testamentary trust were non-resident, the other trust would be treated as a designated beneficiary of the particular trust because of subparagraph (d)(i)),
  - — a mutual fund trust,
  - — a trust that is exempt because of subsection 149(1) from tax under Part I on all or part of its taxable income (however, note that under subparagraph (d)(iv), described below, such a trust may cause the other trust to be a designated beneficiary of the particular trust), and
  - — a trust none of the beneficiaries under which is, at that time, a designated beneficiary under it and whose interest, at that time, in the other trust was held, at all times after the day on which the interest was created, either by it or by persons who were exempt because of subsection 149(1) from tax under Part I on all of their taxable income;
- under subparagraph (d)(iv) of the definition, a person (including a trust) or partnership that
  - — is a designated beneficiary under the other trust because of paragraph (c) of the definition (i.e., a person who is, because of subsection 149(1), exempt from tax under Part I on all or part of their taxable income and who acquired an interest in the particular trust after October 1, 1987 directly or indirectly from a beneficiary under the particular trust) or because of paragraph (e) of the definition, or
  - — would, based on the assumptions set out it in clause (d)(iv)(B), be a designated beneficiary under the particular trust because of paragraph (c) or (e) of the definition.

Note that a person or partnership that is a beneficiary of the other trust need only be described in any of one of subparagraphs (d)(i) to (iv) in order for the other trust to be a designated beneficiary of the particular trust. Note also that references in paragraph (d) of the definition to the expression "resident in Canada" are removed as these are unnecessary given that paragraph (a) of the definition provides that a non-resident person is a designated beneficiary.

Paragraph (d) of the definition is also amended to provide that the other trust will not be treated, under that paragraph, as a designated beneficiary of the particular trust if it is a testamentary trust, a mutual fund trust, or a trust that is exempt because of subsection 149(1) from tax under Part I on all or part of its taxable income. However, these excluded trusts may be treated as designated beneficiaries of the particular trust under paragraphs (a) or (c) of that definition (e.g., a non-resident testamentary trust).

Amended paragraph (e) of the definition provides, in new subparagraph (e)(i), that a designated beneficiary of a particular trust includes a particular partnership any of the members of which is another partnership. However, no such other partnership will cause the particular partnership to be a designated beneficiary under the particular partnership if

- all such other partnerships are Canadian partnerships (as defined in subsection 102(1)),
- the interest of each such other partnership in the particular partnership is held, at all times after the day on which the interest was created, by the other partnership or by persons who were exempt because of subsection 149(1) from tax under Part I on all of their taxable income,
- the interest of each member, of each such other partnership, that is a person exempt because of subsection 149(1) from tax under Part I on all or part of its taxable income was held, at all times after the day on which the interest was created, by that member or by persons who were exempt because of subsection 149(1) from tax under Part I on all of their taxable income, and
- the particular partnership's beneficial interest in the particular trust is held, at all times after the day on which the interest was created, by the particular partnership or by persons who were exempt because of subsection 149(1) from tax under Part I on all of their taxable income.

Under subparagraphs (e)(ii) to (iv), a particular partnership will be a designated beneficiary under a particular trust if any one of the partnership's members is a non-resident person, a non-resident-owned investment corporation, or a specified person. For this purpose, a specified person means a trust that is a designated beneficiary of the particular trust because of paragraph (d) of the definition or a trust that would be such a designated beneficiary on the following assumptions: the other trust were at that time a beneficiary under the particular trust whose interest as a beneficiary under the particular trust were

- acquired from each person or partnership from whom the particular partnership acquired its interest as a beneficiary under the particular trust, and
- held at all times after the later of October 1, 1987 and the day on which the particular partnership's interest as a beneficiary under the particular trust was created, by the same persons or partnerships that held at those times that interest of the particular partnership.

New subparagraph (e)(v) of the definition provides that a particular partnership will be a designated beneficiary of a particular trust if any of the members of the particular partnership is a person exempt because of subsection 149(1) from tax under Part I on all or part of its taxable income, unless the interest of the particular partnership in the particular trust was held, at all times after the day on which the interest was created, by the particular partnership or by persons who were exempt because of subsection 149(1) from tax under Part I on all of their taxable income.

Note that, for the purposes of the definition "designated beneficiary", a new rule in section 132.2 applies in respect of certain trust units acquired by a beneficiary under a "qualifying exchange" (as defined in subsection 132.2(1)). For more detail, see the commentary on section 132.2.

"designated income", of a trust for a taxation year, means the amount that would be the income of the trust for the year determined under section 3 if

(a) this Act were read without reference to subsections 104(6), (12) and (30);

(b) the trust had no income other than taxable capital gains from dispositions described in paragraph (c) and incomes from

(i) real or immovable properties in Canada (other than Canadian resource properties),

(ii) timber resource properties,

(iii) Canadian resource properties (other than properties acquired by the trust before 1972), and

(iv) businesses carried on in Canada;

(c) the only taxable capital gains and allowable capital losses referred to in paragraph 3(b) were from

(i) dispositions of taxable Canadian property, and

(ii) dispositions of particular property (other than property described in any of subparagraphs

128.1(4)(b)(i) to (iii)), or property for which the particular property is substituted, that was transferred at any particular time to a particular trust in circumstances in which subsection 73(1) or 107.4(3) applied, if

(A) it is reasonable to conclude that the property was so transferred in anticipation that a person beneficially interested at the particular time in the particular trust would subsequently cease to reside in Canada, and a person beneficially interested at the particular time in the particular trust did subsequently cease to reside in Canada, or

(B) when the property was so transferred, the terms of the particular trust satisfied the conditions in subparagraph 73(1.01)(c)(i) or (iii), and it is reasonable to conclude that the transfer was made in connection with the cessation of residence, on or before the transfer, of a person who was, at the time of the transfer, beneficially interested in the particular trust and a spouse or common-law partner, as the case may be, of the transferor of the property to the particular trust; and

(d) the only losses referred to in paragraph 3(d) were losses from sources described in any of subparagraphs (b)(i) to (iv).

Technical Notes: The tax under Part XII.2 of the Act is calculated by reference to a trust's "designated income" (as determined under subsection 210.2(2)).

Subsection 210.2(2) is being replaced (for more detail, see the commentary below) and the definition "designated income" is now found in subsection 210(1).

Paragraphs (a), (b) and (d) of the new definition "designated income" in subsection 210(1) are largely unchanged from the equivalent provisions found in repealed subsection 210.2(2).

Paragraph (c) of the new definition replaces paragraph 210.2(2)(b). Under subparagraph (c)(i), designated income is calculated by reference to taxable capital gains and allowable capital losses from dispositions of the trust's taxable Canadian property. Subparagraph (c)(ii) provides that a trust's designated income is also calculated by reference to taxable capital gains and allowable capital losses from a disposition by the trust of particular property (other than property described in any of subparagraphs 128.1(4)(b)(i) to (iii)).

In this context, particular property (or property for which the particular property is a substitute) must be property (referred to in this commentary as the "transferred property") that was transferred to a particular trust in circumstances in which subsection 73(1) or 107.4(3) applied. This condition will be met whether the particular trust is the trust in respect of which the designated income is being determined, or any other trust to which the transferred property was transferred in circumstances in which subsection 73(1) or 107.4(3) applied and that subsequently transferred, directly or indirectly, the property to the trust in respect of which the designated income is being determined.

In addition, clauses (c)(ii)(A) and (B) of the definition require

- that it be reasonable to conclude that the transferred property was, at a particular time, transferred to the particular trust in anticipation of the emigration of a person beneficially interested at the particular time in the particular trust and that a person (whether the anticipated person or another) beneficially interested at that time in the particular trust subsequently ceases to reside in Canada, or

- at the particular time that the transferred property was transferred to the particular trust, that the terms of the particular trust satisfy the conditions in subparagraph 73(1.01)(c)(i) or (iii) and that it be reasonable to conclude that the transfer was made in connection with the cessation of residence, on or before that time, of a person who was, at that time, beneficially interested in the particular trust and a spouse or common-law partner, as the case may be, of the transferor of the transferred property to the particular trust.

Related Provisions: 248(5) — Substituted property.

(2) Tax not payable — No tax is payable under this Part for a taxation year by a trust that was throughout the year

(a) a testamentary trust;

(b) a mutual fund trust;

(c) exempt from tax under Part I because of subsection 149(1);

(d) a trust to which paragraph (a), (a.1) or (c) of the definition "trust" in subsection 108(1) applies; or

(e) non-resident.

Technical Notes: See under 210.1 below.

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 173, will amend s. 210 to read as above, applicable to 1996 *et seq.* except that para. (c) of the definition "designated income" in subsec. 210(1), as amended, is to be read

(a) in respect of dispositions that occur after October 1, 1996 and before December 21, 2002, as follows:

(c) the only taxable capital gains and allowable capital losses referred to in paragraph 3(b) were from dispositions of taxable Canadian property; and;

and

(b) in respect of dispositions that occur in a 1996 taxation year and before October 2, 1996, as follows:

(c) the only taxable capital gains and allowable capital losses referred to in paragraph 3(b) were from dispositions of property that would have been taxable Canadian property if, at no time in the year, the trust had been resident in Canada; and.

Letter from Dept. of Finance, December 11, 2003:

Dear [xxx]

Thank you for your letter of April 11, 2003, concerning the proposed definition "designated beneficiary" in Part XII.2 of the *Income Tax Act* (the "Act"), contained in the legislative proposals relating to income tax released by the Finance Minister on December 20, 2002. I would also like to acknowledge our meeting of May 13, 2003 and your subsequent discussions with Mr. Grant Nash of this Division.

As you know, Part XII.2 of the Act seeks to avoid the minimization of tax on specified Canadian-source income earned by non-residents through a Canadian-resident trust. Part XII.2 is also intended to discourage arrangements between taxable and tax-exempt beneficiaries designed to allow taxable income earned by a trust to be flowed through to tax-exempt beneficiaries after the acquisition of the trust unit by the tax-exempt beneficiary from the taxable beneficiary. Part XII.2, therefore, plays an important role in protecting the Canadian tax base and ensuring that taxpayers that use trust intermediaries to hold property do not obtain income advantages that are not available to taxpayers that hold such property directly.

Part XII.2 tax is levied at the trust level, but generally is payable only where a trust has a "designated beneficiary". Under the proposed definition "designated beneficiary" contained in the legislative proposals, a designated beneficiary under a particular trust would include a particular partnership if any member of the particular partnership were another partnership. In your letter, you are seeking a modification to that definition so that the particular partnership would not be treated as a designated beneficiary of the trust if it were a Canadian partnership the membership interests in which trade on a prescribed stock exchange.

We have considered the arrangement that you have identified and a number of other arrangements involving partnerships that invest directly, or indirectly through other partnerships, in trusts. In light of these deliberations, we are prepared to recommend modifications to the definition "designated beneficiary", but we are of the view that in dealing with partnership arrangements under Part XII.2 it is appropriate that partnerships be required to ascertain the characteristics of their members in order for a partnership to avoid characterization as a designated beneficiary under a trust. Accordingly, the modifications that we would support in this context would be narrower than those that you proposed.

In particular, a particular partnership that is a beneficiary of a trust will continue to be treated as a designated beneficiary under the trust if any of its members is another partnership. However, we will recommend that any such other partnership, that is a member of the particular part-

nership, will not cause the particular partnership to be a designated beneficiary under the trust if:

- that other partnership is a Canadian partnership (as defined by subsection 248(1) of the Act),
- that other partnership is a limited partnership whose interest in the particular partnership is held, at all times after the day on which the interest was created, by it or by persons ("eligible persons") who were exempt because of subsection 149(1) from Part I tax on all of their taxable income,
- the interest of each member, of the other partnership, that is a person exempt because of subsection 149(1) from Part I tax on all or part of its taxable income was held, at all times after the day on which the interest was created, by that member or by eligible persons, and
- the beneficial interest of the particular partnership in the trust was held, at all times after the day on which the interest was created, by the particular partnership or by eligible persons.

Based on our discussions with you, we are also prepared to recommend that these modifications be effective for the 2001 and subsequent taxation years.

Thank you for writing to us on this matter.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, June 13, 2001:

Dear [xxx]

I am writing in reply to your letters to Mr. Len Farber of March 5 and March 9, 2001 and your letter of April 10, 2001 to Mr. Grant Nash of this Division, concerning the rules for designated beneficiaries in section 210 of the *Income Tax Act* (the "Act").

The definition "designated beneficiary" in section 210 applies for the purposes of Part XII.2 of the Act. One of the objectives of Part XII.2 tax is to prevent the minimization of tax on specified Canadian-source income that would otherwise arise where a Canadian trust's income is distributed to a non-resident and is subject only to Part XIII tax. Part XII.2 tax is also meant to discourage transactions between taxable and tax-exempt beneficiaries designed to allow taxable income earned by a trust to be flowed-through to tax-exempt beneficiaries after the acquisition of a trust unit by the tax-exempt beneficiary from the taxable beneficiaries.

We understand that you have seen a sanitized version of two earlier letters issued by us [below — ed.] in which we agreed to recommend changes to the definition "designated beneficiary" in section 210 of the Act. Under the structure described in the earlier letters ("double-tier structure"), registered pension plans and other investors would invest in units issued by a unit trust ("top fund"). The top fund would in turn invest in units issued by other trusts ("bottom funds"). In the earlier letter, we agreed to recommend changes so that the top fund would not be considered a designated beneficiary of the bottom fund solely because the beneficiaries of the top fund include a person exempt from tax under Part I of the Act. However, under the recommended changes, a top fund would be considered a designated beneficiary of the bottom fund if the top fund acquired its interest in the bottom fund directly or indirectly from another beneficiary of the bottom fund, unless the interest was owned, at all times after the creation of the bottom fund, by the top fund or a person exempt from tax under Part I of the Act because of subsection 149(1).

You have asked that we clarify whether it was intended that the proposed changes would accommodate structures of more than two levels of trust ("multiple-tier structures"). In particular, you have described a structure in which the units of the top fund are held by a third unit trust (i.e. pooled fund arrangement) the units of which are in turn held by other trusts none of which is a designated beneficiary of the third trust. You have also indicated that similar pooled fund arrangements may be used involving multiple levels of unit trusts.

In light of the policy objectives of Part XII.2, we are prepared to recommend a further change to the definition "designated beneficiary". In particular, we will recommend that a top fund be treated as a designated beneficiary of a bottom fund, subject to the exceptions described below, where the top fund acquires its interest directly from the bottom fund or directly or indirectly from another beneficiary of the bottom fund. However, the top fund would not be a designated beneficiary of the bottom fund at a particular time where it meets two conditions. The first condition would be that its interest in the bottom fund be owned at all times after the date on which the bottom fund was created by the top fund or a person exempt from tax under Part I because of subsection 149(1). The second condition would be that none of the beneficiaries of the top fund be a designated beneficiary of the top fund. We will further recommend that these amendments be effective for the 1996 and subsequent taxation years.

Thank you for writing to us on this matter.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, December 9, 1999:

Dear [xxx]

Thank you for your letter of October 20, 1999 concerning the definition "designated beneficiary" in section 210 of the *Income Tax Act*. I apologize for the delay in responding to you.

I am attaching a copy of our earlier letter to you of September 3, 1996 in which we agree to recommend changes to the definition "designated beneficiary" so that Part XII.2 tax is not exigible in the circumstances of certain kinds of "tiering" arrangements involving trusts (such as, for example, those arrangements described in your letters of October 20, 1999 and June 10, 1996). It continues to be our intention to recommend inclusion of this amendment in a future technical bill.

Thank you for writing.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, May 25, 1998:

Dear [xxx]

I am writing in reply to your letter of May 13, 1998 concerning the rules for designated beneficiaries in section 210 of the *Income Tax Act*. I understand that you have had access to a sanitized version of a letter from this Division on the same subject dated September 3, 1996.

Your letter contemplates a structure involving a number of different trusts resident in Canada and partnerships. Under this structure, a trust governed by a registered pension plan and other investors resident in Canada will have interests in a trust (the "middle trust"). The middle trust will invest in units issued by a unit trust (the "bottom trust"). In addition, a registered charity and other taxpayers resident in Canada will invest in a partnership which, in turn, will invest in units issued by the bottom trust. We also assume from the comments in your letter that neither the middle trust nor the partnership will acquire units of the bottom trust from other unitholders of the trust, but will instead acquire their units directly from the bottom trust.

One of the objectives of Part XII.2 tax is to prevent the minimization of tax on specified Canadian-source income that would otherwise arise where a Canadian trust's income is distributed to a non-resident and is subject only to Part XIII tax. Part XII.2 tax is also meant to discourage transactions between taxable and tax-exempt beneficiaries designed to allow "lumpy" taxable income earned by a trust to be flowed-through to tax-exempt beneficiaries after the acquisition of a trust unit by the tax-exempt beneficiary from the taxable beneficiaries.

Given the existing structure and objectives of Part XII.2, we agree it would be anomalous for either the middle trust or partnership in the circumstances described above to be treated as "designated beneficiaries" under the bottom trust. I am prepared to recommend amendments to eliminate this anomaly. I expect these amendments will be introduced in a future technical bill and be effective from no later than the beginning of this year.

Thank you for writing to us on this matter.

Yours sincerely,

Daniel MacIntosh
Director, Tax Legislation Division

Letter from Dept. of Finance, September 3, 1996:

Dear [xxx]

This is in reply to your letter of June 10, 1996 to Simon Thompson regarding a suggested change to the definition of "designated beneficiary" in section 210 of the *Income Tax Act*.

Your letter contemplates a structure involving a number of different trusts resident in Canada. Under this structure, registered pension plans and other investors resident in Canada will invest in trust units issued by one unit trust (the "top fund"). The top fund will invest in units issued by other unit trusts (the "bottom funds"). You have asked that section 210 of the Act be amended so the top fund will *not* be a "designated beneficiary" of the bottom funds as a consequence of the top fund hav-

ing beneficiaries (i.e., registered pension plans) which are exempt from tax under Part I of the Act.

We agree that one of the objectives of Part XII.2 tax is to prevent the minimization of tax on specified Canadian-source income that would otherwise arise where a Canadian trust's income is distributed to a non-resident and is subject only to Part XIII tax. However, Part XII.2 tax is also meant to discourage transactions between taxable and tax-exempt beneficiaries designed to allow "lumpy" taxable income earned by a trust to be flowed-through to tax-exempt beneficiaries after the acquisition of a trust unit by the tax-exempt beneficiary from the taxable beneficiaries.

In view of the second objective of Part XII.2 tax, described above, it would be difficult to recommend the amendment referred to above by itself. However, I understand that you have discussed this matter with one of my staff and are amenable to an additional amendment in this context. The additional amendment would, in effect, provide that the top fund would be a "designated beneficiary" under a bottom fund if it acquired an interest in the bottom fund directly or indirectly from a beneficiary under the bottom fund (except where the interest was owned, at each time after the date on which the bottom fund was created, by the top fund or a person exempt from tax under Part I of the Act because of subsection 149(1) of the Act). The combination of the two amendments would meet the both of the policy objectives. I am prepared to recommend that these amendments be introduced in a future technical bill and be effective from a date that will accommodate the planned structure described in your letter.

Thank you for writing to us on this matter.

Yours sincerely,

Len Farber
Director, Tax Legislation Division

Definitions [s. 210]: "allowable capital loss" — 38(b), 248(1); "amount" — 248(1); "beneficially interested" — 248(25); "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "Canadian partnership" — 102, 248(1); "Canadian resource property" — 66(15), 248(1); "common-law partner" — 248(1); "designated beneficiary", "designated income" — 210(1); "disposition", "individual" — 248(1); "mutual fund trust" — 132(6)–(7),132.2(3)(n), 248(1); "non-resident" — 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "person", "property" — 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "spouse" — 252(3); "substituted" — 248(5); "taxable Canadian property" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxable income" — 248(1); "taxation year" — 249; "testamentary trust" — 108(1), 248(1); "timber resource property" — 13(21), 248(1); "trust" — 104(1), 248(1), (3).

Related Provisions: 104(31) — Credit to be included in income of beneficiary; 132.2(2)(3)(g)(iii) — Effect of mutual fund rollover; 210.3(2) — Non-resident beneficiary taxed in Canada deemed not to be designated beneficiary; 252(3) — Extended meaning of "spouse" and "former spouse".

History: Para. 210(c) amended by 2000, c. 12, Sch. 2, s. 2, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

The opening words of para. 210(d) substituted by 1994, c. 21, s. 96, applicable to 1993 *et seq.* The opening words of that para. formerly read:

> (d) a trust resident in Canada (other than a testamentary trust or a trust exempt from tax under Part I by reason of subsection 149(1)), if

Definitions [s. 210]: "common-law partner" — 248(1); "designated income" — 210.2(2); "former spouse" — 252(3); "immovable" — Quebec *Civil Code* art. 900–907; "individual" — 248(1); "mutual fund trust" — 132(6)–(7),132.2(3)(n), 248(1); "non-resident" — 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "person" — 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "resident in Canada" — 250; "spouse" — 252(3); "taxable income" — 248(1); "testamentary trust" — 108(1), 248(1); "trust" — 104(1), 248(1), (3).

210.1 Application of Part — This Part does not apply in a taxation year to a trust that was throughout the year

(a) a testamentary trust;

(b) a mutual fund trust;

(c) a trust that was exempt from tax under Part I by reason of subsection 149(1);

(d) a trust described in paragraph (a), (a.1) or (c) of the definition "trust" in subsection 108(1); or

(e) a non-resident trust.

Proposed Repeal — 210.1

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 173, will repeal s. 210.1, applicable to 1996 *et seq.*

Technical Notes: Section 210.1 provides a list of types of trusts to which Part XII.2 does not apply.

Section 210.1 is being repealed. The list of types of trusts to which Part XII.2 does not apply is now found in new subsection 210(2). New subsection 210(2), consequential on the amendments to the definition "designated beneficiary" (described in the commentary above), also clarifies that it applies only to determine to which trusts the special Part XII.2 tax does not apply. Subsection 210(2) does not apply, for example, to determine whether a trust referred to in that subsection may have a designated beneficiary.

Related Provisions: 132(6.2) — Retention of status as mutual fund trust; 132.2(2)(3)(g)(iii) — Effect of mutual fund rollover; 253 — Extended meaning of carrying on business.

History: Para. 210.1(d) amended by 2001, c. 17, s. 171, applicable to 1999 *et seq.* It formerly read:

> (d) a trust described in paragraph (a) or (c) of the definition of that expression in subsection 108(1); or

Definitions [s. 210.1]: "mutual fund trust" — 132(6)–(7), 132.2(1)(q) [to be repealed], 132.2(3)(n) [draft], 248(1); "non-resident" — 248(1); "taxation year" — 249; "testamentary trust" — 108(1), 248(1); "trust" — 104(1), 248(1), (3).

210.2 (1) Tax on income of trust — Subject to section 210.3, where an amount in respect of the income of a trust for a taxation year is or would, if all beneficiaries under the trust were persons resident in Canada to whom Part I was applicable, be included in computing the income under Part I of a person by reason of subsection 104(13) or 105(2), the trust shall pay a tax under this Part in respect of the year equal to 36% of the least of

(a) the designated income of the trust for the year,

(b) the amount that, but for subsections 104(6) and (30), would be the income of the trust for the year, and

(c) 100/64 of the amount deducted under paragraph 104(6)(b) in computing the trust's income under Part I for the year.

Related Provisions: 18(1)(t) — Tax under Part XII.2 is deductible; 104(30) — Part XII.2 tax deductible in computing income of trust; 210.1, 210.3 — Where no tax payable.

Information Circulars: 77-16R4: Non-resident income tax.

(1.1) Amateur athlete trusts — Notwithstanding section 210.1, where an amount described in subsection 143.1(2) in respect of an amateur athlete trust would, if Part I were applicable, be required to be included in computing the income for a taxation year of a designated beneficiary under the trust, the trust shall pay a tax under this Part in respect of the year equal to 36% of 100/64 of that amount.

Proposed Repeal — 210.2(1.1)

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 174(1), will repeal subsec. 210.2(1.1), applicable to 1996 *et seq.*

Technical Notes: See under 210.2(2) below.

History: Subsec. 210.2(1.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 122, applicable to 1992 *et seq.*

Forms: T3ATH-IND: Amateur athlete trust income tax return.

(2) Designated income — For the purposes of subsection (1), the designated income of a trust for a taxation

year means the amount that, but for subsections 104(6), (12) and (30), would be the income of the trust for the year determined under section 3 if

(a) it had no income other than taxable capital gains from dispositions described in paragraph (b) and incomes from

(i) real properties in Canada (other than Canadian resource properties),

(ii) timber resource properties,

(iii) Canadian resource properties (other than properties acquired by the trust before 1972), and

(iv) businesses carried on in Canada;

(b) the only taxable capital gains and allowable capital losses referred to in paragraph 3(b) were from dispositions of taxable Canadian property; and

(c) the only losses referred to in paragraph 3(d) were losses from sources described in subparagraphs (a)(i) to (iv).

Proposed Amendment — 210.2(2)

(2) Amateur athlete trusts — Notwithstanding subsection 210(2), a trust shall pay a tax under this Part in respect of a particular taxation year of the trust equal to 56.25% of the amount that is required by subsection 143.1(2) to be included in computing the income under Part I for a taxation year of a beneficiary under the trust, if

(a) the beneficiary is at any time in the particular taxation year a designated beneficiary under the trust; and

(b) the particular taxation year ends in that taxation year of the beneficiary.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 174(1), will amend subsec. 210.2(2) to read as above, applicable to 1996 *et seq.* ("Designated income" is moved to 210; this provision was 210.2(1.1).)

Technical Notes: Subsection 210.2(1.1) extends the tax under Part XII.2 to amateur athlete trusts, which are provided for in section 143.1, in circumstances where amounts are distributed by such trusts to non-resident beneficiaries.

Subsection 210.2(1.1) is amended by renumbering it as subsection 210.2(2). In addition, the reference in that subsection to section 210.1 is, given that section's renumbering as subsection 210(2), replaced with a reference to subsection 210(2). The amended subsection also replaces the existing reference to the phrase "36% of 10%" with the numerical equivalent of "56.25%". Finally, the provision is amended to clarify that Part XII.2 tax applies to a trust for a particular taxation year of the trust on the amount that is required by subsection 143.1(2) to be included in computing the income under Part I for a taxation year of a beneficiary under the trust, only if

- the beneficiary is at any time in the particular taxation year a designated beneficiary under the trust, and
- the particular taxation year ends in that taxation year of the beneficiary.

Related Provisions: 104(7.01)(b)(i) — No deduction under 104(6) for designated income of trust.

History: Para. 210.2(2)(b) amended by 2001, c. 17, s. 172, applicable after October 1, 1996. It formerly read:

(b) the only taxable capital gains and allowable capital losses referred to in paragraph 3(b) were from dispositions of property that would have been taxable Canadian property if, at no time in the year, the trust had been resident in Canada; and

(3) Tax deemed paid by beneficiary — Where an amount (in this subsection and subsection 210.3(2) referred to as the "income amount") in respect of the income of a trust for a taxation year is, by reason of subsection 104(13) or 105(2), included in computing

(a) the income under Part I of a person who was not at any time in the year a designated beneficiary under the trust, or

(b) the income of a non-resident person (other than a person who, at any time in the year, would be a designated beneficiary under the trust if section 210 were read without reference to paragraph 210(a)) that is subject to tax under Part I by reason of subsection 2(3) and is not exempt from tax under Part I by reason of a provision contained in a tax convention or agreement with another country that has the force of law in Canada,

Proposed Amendment — 210.2(3)(b)

(b) the income of a non-resident person (other than a person who, at any time in the year, would be a designated beneficiary under the trust if section 210 were read without reference to paragraph (a) of the definition "designated beneficiary" in that section) that is subject to tax under Part I by reason of subsection 2(3) and is not exempt from tax under Part I by reason of a provision contained in a tax treaty,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 174(3), will amend para. 210.2(3)(b) to read as above, applicable to 1996 *et seq.*, except that in applying para. 210.2(3)(b) for the 1996 and 1997 taxation years, "treaty" is to be read as "convention or agreement with another country that has the force of law in Canada".

Technical Notes: Note as well that paragraph 210.2(3)(b) is amended to ensure that subsection 210.2(3) does not apply to a non-resident person that would be a designated beneficiary under the trust if the definition "designated beneficiary" in subsection 210(1) were read without reference to its paragraph (a).

an amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the tax paid under this Part by the trust for the year,

B is the income amount in respect of the person, and

C is the total of all amounts each of which is an amount that is or would be, if all beneficiaries under the trust were persons resident in Canada to whom Part I was applicable, included in computing the income under Part I of a beneficiary under the trust by reason of subsection 104(13) or 105(2) in respect of the year,

shall, if designated by the trust in respect of the person in its return for the year under this Part, be deemed to be an amount paid on account of the person's tax payable under Part I for the person's taxation year in which the taxation year of the trust ends, on the day that is 90 days after the end of the taxation year of the trust.

Related Provisions: 104(31) — Amount deemed payable by trust to beneficiary; 210.3(2) — Where non-resident beneficiary already taxed in Canada.

Interpretation Bulletins: IT-342R: Trusts — Income payable to beneficiaries.

(4) Designations in respect of partnerships — Where a taxpayer is a member of a partnership in respect of which an amount is designated by a trust for a taxation year of the trust (in this subsection referred to as the "particular year") under subsection (3),

(a) no amount shall be deemed to be paid on account of the partnership's tax payable under Part I by reason

of subsection (3) except in the application of that subsection for the purposes of subsection 104(31), and

(b) an amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount so designated,

B is the amount that may reasonably be regarded as the share of the taxpayer in the designated income of the trust received by the partnership in the fiscal period of the partnership in which the particular year ends (that fiscal period being referred to in this subsection as the "partnership's period"), and

C is the designated income received by the partnership from the trust in the partnership's period,

shall be deemed to be an amount paid on account of the taxpayer's tax payable under Part I for the person's taxation year in which the partnership's period ends, on the last day of that year.

(5) Returns — A trust shall, within 90 days after the end of each taxation year,

(a) file with the Minister a return for the year under this Part in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax, if any, payable by it under this Part for the year; and

(c) pay to the Receiver General the tax, if any, payable by it under this Part for the year.

Related Provisions: 150.1(5) — Electronic filing.

Forms: T3 SCH 10: Part XII.2 tax and Part XIII non-resident withholding tax.

(6) Liability of trustee — A trustee of a trust is personally liable to pay to the Receiver General on behalf of the trust the full amount of any tax payable by the trust under this Part to the extent that the amount is not paid to the Receiver General within the time specified in subsection (5), and the trustee is entitled to recover from the trust any such amount paid by the trustee.

(7) Provisions applicable to Part — Subsections 150(2) and (3), sections 152 and 158, subsections 161(1) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Definitions [s. 210.2]: "allowable capital loss" — 38(b), 248(1); "amateur athlete trust" — 143.1(1)(a), 248(1); "amount" — 248(1); "beneficially interested" — 248(25); "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "Canadian resource property" — 66(15), 248(1); "carrying on business" — 253; "common-law partner" — 248(1); "designated beneficiary" — 210; "disposition" — 248(1); "fiscal period" — 249(2)(b), 249.1; "income amount" — 210.2(3); "Minister", "non-resident", "person", "prescribed", "property" — 248(1); "resident in Canada" — 250; "substituted" — 248(5); "tax payable" — 248(2); "tax treaty", "taxable Canadian property" — 248(1); "taxable capital gain" — 38(a), 248(2); "taxation year" — 249; "taxpayer" — 248(1); "timber resource property" — 13(21), 248(1); "trust" — 104(1), 248(1), (3).

210.3 (1) Where no designated beneficiaries — No tax is payable under this Part by a trust for a taxation year in respect of which the trustee has certified in the trust's return under this Part for the year that no beneficiary under the trust was a designated beneficiary in the year.

(2) Where beneficiary deemed not designated — Where a trust would, if the trust paid tax under this Part for a taxation year, be entitled to designate an amount under subsection 210.2(3) in respect of a non-resident beneficiary and the income amount in respect of the beneficiary is included in computing the income of the beneficiary which is subject to tax under Part I by reason of subsection 2(3) and is not exempt from tax under Part I by reason of a provision contained in a tax convention or agreement with another country that has the force of law in Canada, for the purposes of subsection (1), the beneficiary shall be deemed not to be a designated beneficiary of the trust at any time in the year.

Definitions [s. 210.3]: "amount" — 248(1); "designated beneficiary" — 210; "income amount" — 210.2(3); "non-resident" — 248(1); "taxation year" — 249; "trust" — 104(1), 248(1), (3).

PART XII.3 — TAX ON INVESTMENT INCOME OF LIFE INSURERS

211. (1) Definitions — For the purposes of this Part,

"existing guaranteed life insurance policy", at any time, means a non-participating life insurance policy in Canada in respect of which

(a) the amount of every premium that became payable before that time and after December 31, 1989,

(b) the number of premium payments under the policy, and

(c) the amount of each benefit under the policy at that time

were fixed and determined on or before December 31, 1989;

"life insurance policy" includes a benefit under

(a) a group life insurance policy, and

(b) a group annuity contract

but does not include

(c) that part of a policy in respect of which the policyholder is deemed by paragraph 138.1(1)(e) to have an interest in a related segregated fund trust, or

(d) a reinsurance arrangement;

History: The definitions "life insurance policy" and "life insurance policy in Canada" in subsec. 211(1) amended by 1997, c. 25, s. 60, applicable to 1996 *et seq.* The definitions formerly read:

"life insurance policy" and "life insurance policy in Canada" do not include

(a) that part of a policy in respect of which the policyholder is deemed by paragraph 138.1(1)(e) to have an interest in a related segregated fund trust, or

(b) a reinsurance arrangement;

"life insurance policy in Canada" means a life insurance policy issued or effected by an insurer on the life of a person resident in Canada at the time the policy was issued or effected;

History: See under "life insurance policy" above.

"net interest rate", in respect of a liability, benefit, risk or guarantee under a life insurance policy of an insurer for a taxation year, is the positive amount, if any, determined by the formula

$$(A - B) \times C$$

where

A is the simple arithmetic average determined as of the first day of the year of the average yield (expressed as a percentage per year rounded to 2 decimal points) in each of the 60 immediately preceding months prevailing on all domestic Canadian-dollar Government of

Canada bonds outstanding on the last Wednesday of that month that have a remaining term to maturity of more than 10 years,

B is

(a) in the case of a guaranteed benefit provided under the terms and conditions of the policy as they existed on March 2, 1988, other than a policy where, at any time after March 2, 1988, its terms and conditions relating to premiums and benefits were changed (otherwise than to give effect to the terms and conditions that were determined before March 3, 1988), the greater of

(i) the rate of interest (expressed as a percentage per year) used by the insurer in determining the amount of the guaranteed benefit, and

(ii) 4%, and

(b) in any other case, nil, and

C is

(a) in the case of a guaranteed benefit to which paragraph (a) of the description of B applies, 65%, and

(b) in any other case, 55%;

Related Provisions: 257 — Formula cannot calculate to less than zero.

"non-participating life insurance policy" means a life insurance policy that is not a participating life insurance policy;

"participating life insurance policy" has the meaning assigned by subsection 138(12);

"policy loan" has the meaning assigned by subsection 138(12);

"registered life insurance policy" means a life insurance policy issued or effected

(a) as a registered retirement savings plan, or

(b) pursuant to a registered retirement savings plan, a deferred profit sharing plan or a registered pension plan;

"reinsurance arrangement" does not include an arrangement under which an insurer has assumed the obligations of the issuer of a life insurance policy to the policyholder;

"segregated fund" has the meaning given that expression in subsection 138.1(1);

"specified transaction or event", in respect of a life insurance policy, means

(a) a change in underwriting class,

(b) a change in premium because of a change in frequency of premium payments within a year that does not alter the present value, at the beginning of the year, of the total premiums to be paid under the policy in the year,

(c) an addition under the terms of the policy as they existed on

(i) in the case of an existing guaranteed life insurance policy, December 31, 1989,

(ii) in any other case, March 2, 1988,

of accidental death, dismemberment, disability or guaranteed purchase option benefits,

(d) the deletion of a rider,

(e) redating lapsed policies within the reinstatement period referred to in paragraph (g) of the definition "disposition" in subsection 148(9) or redating for policy loan indebtedness,

(f) a change in premium because of a correction of erroneous information,

(g) the payment of a premium after its due date, or no more than 30 days before its due date, as established on or before

(i) in the case of an existing guaranteed life insurance policy, December 31, 1989, and

(ii) in any other case, March 2, 1988, and

(h) the payment of an amount described in paragraph (a) of the definition "premium" in subsection 148(9);

"taxable life insurance policy" of an insurer at any time means a life insurance policy in Canada issued by the insurer (or in respect of which the insurer has assumed the obligations of the issuer of the policy to the policyholder), other than a policy that is at that time

(a) an existing guaranteed life insurance policy,

(b) an annuity contract (including a settlement annuity),

(c) a registered life insurance policy,

(d) a registered pension plan, or

(e) a retirement compensation arrangement.

(2) Riders and changes in terms — For the purposes of this Part,

(a) any rider added at any time after March 2, 1988 to a life insurance policy shall be deemed to be a separate life insurance policy issued and effected at that time; and

(b) a change in the terms or conditions of a life insurance policy resulting from a specified transaction or event shall be deemed not to have occurred and not to be a change.

History: S. 211 substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 171(1), applicable to taxation years beginning after 1989 and, where an insurer has made an election under subsec. 172(3) of 1994, c. 7, Sch. II (1991, c. 49) (see under s. 211.1), to all taxation years of the insurer to which the election relates and, where such an election is made,

(a) in respect of each taxation year of the insurer to which the election relates, each reference to "December 31, 1989" in the definitions in subsec. 211(1), as the reference relates to a life insurance policy, shall be read as a reference to the later of

(i) the day the policy was issued, and

(ii) March 2, 1988; and

(b) notwithstanding subsecs. 152(4) to (5), such assessments of tax, interest and penalties shall be made as are necessary to give effect to the election to the extent it applies in respect of this section.

1994, c. 7, Sch. II (1991, c. 49), subsec. 171(2) provides that in its application to taxation years ending after 1987 and beginning before 1990 (except a taxation year of an insurer to which subsec. 172(1) of c. 49 applies because of an election made by the insurer under subsec. 172(3) of c. 49 — see under s. 211.1), s. 211 shall be read as though it included the following definition:

"benefits payable under a life insurance policy" includes

(a) a policy dividend, an experience rating refund and a refund of premiums under the policy,

(b) any amount payable under a reinsurance arrangement in respect of the policy, and

(c) any amount deemed by paragraph 138.1(1)(g) to be a payment under the terms and conditions of the policy,

but does not include a policy loan or interest on funds left on deposit with the insurer under the terms of the policy;

S. 211 formerly read:

211. Definitions — For the purposes of this Part,

"Canada security" has the meaning assigned by subsection 138(12);

"gross investment revenue" has the meaning assigned by subsection 138(12);

"life insurance policy" and "life insurance policy in Canada" do not include any part of the policy in respect of which the policyholder is deemed by paragraph 138.1(1)(e) to have an interest in a related segregated fund trust;

"non-segregated property" has the meaning assigned by subsection 138(12);

"policy loan" has the meaning assigned by subsection 138(12);

"property used in the year in, or held in the year in the course of" carrying on a life insurance business in Canada, in the case of an insurer (other than a resident of Canada that does not carry on a life insurance business) that carried on an insurance business in Canada and in a country other than Canada, has the meaning assigned by subsection 138(12);

"registered life insurance policy" means a life insurance policy (other than an annuity contract) issued or effected as a registered retirement savings plan or pursuant to such a plan, a fund or deferred profit sharing plan or a registered pension plan;

"segregated fund" has the meaning assigned by subsection 138(12).

Definitions [s. 211]: "annuity", "business" — 248(1); "Canada" — 255; "carrying on business" — 253; "deferred profit sharing plan" — 147(1); "insurer", "life insurance business" — 248(1); "life insurance policy", "life insurance policy in Canada" — 138(12), 211(1), 248(1); "person" — 248(1); "property", "registered pension plan" — 248(1); "registered retirement savings plan" — 146(1), 248(1); "resident in Canada" — 250; "taxation year" — 249; "trust" — 104(1), 248(1), (3).

211.1 (1) Tax payable — Every life insurer shall pay a tax under this Part for each taxation year equal to 15% of its taxable Canadian life investment income for the year.

Related Provisions: 18(1)(t) — Tax is non-deductible; 138(3)(g) — Part XII.3 tax deductible by insurer; 190.1(1.1) — Additional capital tax on life insurance corporations.

(2) Taxable Canadian life investment income — For the purposes of this Part, the taxable Canadian life investment income of a life insurer for a taxation year is the amount, if any, by which its Canadian life investment income for the year exceeds the total of its Canadian life investment losses for the ten taxation years immediately preceding the year, to the extent that those losses were not deducted in computing its taxable Canadian life investment income for any preceding taxation year.

Related Provisions: 87(2.2) — Amalgamation of insurance corporations; 138(11.5)(k) — Transfer of business by non-resident insurer.

History: Subsec. 211.1(2) amended by 2005, c. 19, s. 46, applicable in respect of losses that arise in taxation years that end after March 22, 2004. The subsec. formerly read:

(2) For the purposes of this Part, the taxable Canadian life investment income of a life insurer for a taxation year is the amount, if any, by which its Canadian life investment income for the year exceeds the total of its Canadian life investment losses for such of the 7 taxation years immediately preceding the year that begin after 1989, to the extent that those losses were not deducted in computing its taxable Canadian life investment income for any preceding taxation year.

Subsec. 211.1(2) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 172, applicable to taxation years beginning after 1989. Subsec. (2) formerly read:

(2) Taxable Canadian life investment income — For the purposes of this Part, the taxable Canadian life investment income of a life insurer for a taxation year is the amount, if any, by which its Canadian life investment income for the year exceeds the total of its Canadian life investment losses for such of the 7 taxation years immediately preceding the year that commence after June 17, 1987 and end after 1987, to the extent that those losses have not been deducted in computing its taxable Canadian life investment income for any preceding taxation year.

(3) Canadian life investment income — For the purposes of this Part, the Canadian life investment income or loss of a life insurer for a taxation year is the positive or negative amount determined by the formula

$$A + B - C$$

where

A is, subject to subsection (4), the total of all amounts, each of which is in respect of a liability, benefit, risk or guarantee under a life insurance policy that was at any time in the year a taxable life insurance policy of the insurer, determined by multiplying the net interest rate in respect of the liability, benefit, risk or guarantee for the year by ½ of the total of

(a) the maximum amount that would be determined under paragraph 1401(1)(a), (c) or (d) of the *Income Tax Regulations* (other than an amount that would be determined under subparagraph 1401(1)(d)(ii) of those Regulations in respect of a disabled life) in respect of the insurer for the year in respect of the liability, benefit, risk or guarantee if subsection 1401(1) of those Regulations applied to all life insurance policies and if that amount were determined without reference to any policy loan or reinsurance arrangement, and

(b) the maximum amount that would be determined under paragraph 1401(1)(a), (c) or (d) of the *Income Tax Regulations* (other than an amount that would be determined under subparagraph 1401(1)(d)(ii) of those Regulations in respect of a disabled life) in respect of the insurer for the preceding taxation year in respect of the liability, benefit, risk or guarantee if subsection 1401(1) of those Regulations applied to all life insurance policies and if that amount were determined without reference to any policy loan or reinsurance arrangement;

B is the total of all amounts, each of which is the positive or negative amount in respect of a life insurance policy that was at any time in the year a taxable life insurance policy of the insurer, determined by the formula

$$D - E$$

where

D is, subject to subsection (4), the amount determined by multiplying the percentage determined in the description of A in the definition "net interest rate" in subsection 211(1) in respect of the year by ½ of the total of

(a) the maximum amount that would be determined under paragraph 1401(1)(c.1) of the *Income Tax Regulations* in respect of the insurer for the year in respect of the policy if subsection 1401(1) of those Regulations applied to all life insurance policies and if that amount were determined without reference to any policy loan or reinsurance arrangement, and

(b) the maximum amount that would be determined under paragraph 1401(1)(c.1) of the *Income Tax Regulations* in respect of the insurer for the preceding taxation year in respect of the policy if subsection 1401(1) of those Regulations applied to all life insurance policies and if that amount were determined without reference

to any policy loan or reinsurance arrangement, and

E is the amount, if any, by which

(a) the total of all amounts determined in respect of the insurer under the description of D in respect of the policy for the year and any preceding taxation years ending after 1989

exceeds the total of

(b) all amounts determined in respect of the insurer under the description of E in respect of the policy for taxation years ending before the year, and

(c) the amount, if any, by which

(i) the maximum amount that would be determined under paragraph 1401(1)(c.1) of the *Income Tax Regulations* in respect of the insurer for the year in respect of the policy if subsection 1401(1) of those Regulations applied to all life insurance policies and if that amount were determined without reference to any policy loan or reinsurance arrangement

exceeds

(ii) the maximum amount that would be determined under paragraph 1401(1)(c.1) of the *Income Tax Regulations* in respect of the insurer for its last 1989 taxation year in respect of the policy if subsection 1401(1) of those Regulations applied to all life insurance policies and if that amount were determined without reference to any policy loan or reinsurance arrangement; and

C is the total of all amounts each of which is 100% of the amount required to be included in computing the income of a policyholder under section 12.2 or paragraph 56(1)(j) for which the insurer is required by regulation to prepare an information return in respect of the calendar year ending in the taxation year, in respect of a taxable life insurance policy of the insurer, except that the reference in this description to 100% shall be read as a reference to,

(a) where paragraph (a) of the description of B in the definition "net interest rate" in subsection 211(1) applies for any taxation year in respect of a guaranteed benefit under the policy,

0% for calendar years before 1991,
5% for 1991,
10% for 1992,
15% for 1993,
20% for 1994,
25% for 1995,
30% for 1996,
35% for 1997,
40% for 1998,
45% for 1999, and
50% for calendar years after 1999,

and

(b) where the policy was at any time after 1989 an existing guaranteed life insurance policy,

0% for the calendar year in which it became a taxable life insurance policy of the insurer,
0% for the first following calendar year,
0% for the second following calendar year,
5% for the third following calendar year,
10% for the fourth following calendar year,
15% for the fifth following calendar year,
20% for the sixth following calendar year,
25% for the seventh following calendar year,
30% for the eighth following calendar year,
35% for the ninth following calendar year,
40% for the tenth following calendar year,
45% for the eleventh following calendar year, and
50% for the twelfth following and subsequent calendar years.

Related Provisions: 257 — Formula amounts cannot calculate to less than zero.

History: The portion of the descriptions of A and D in subsec. 211.1(3) before para. (a) amended by 1998, c. 19, subsecs. 213(1), (2), applicable to 1992 *et seq.* Those portions formerly read:

A is the total of all amounts, each of which is in respect of a liability, benefit, risk or guarantee under a life insurance policy that was at any time in the year a taxable life insurance policy of the insurer, determined by multiplying the net interest rate in respect of the liability, benefit, risk or guarantee for the year by the amount equal to ½ of the total of

. . . . .

D is the amount determined by multiplying the percentage determined in the description of A in the definition "net interest rate" in subsection 211(1) in respect of the year by the amount equal to ½ of the total of

Paras. (a) and (b) of the description of A, paras. (a) and (b) of the description of D in the description of B, and para. (c) of the description of E in the description of B, in subsec. 211.1(3), amended by 1997, c. 25, s. 61, applicable to 1996 *et seq.* The paras. formerly read:

(a) the maximum amount that would be deductible under paragraph 1401(1)(a), (c) or (d) of the *Income Tax Regulations* (other than an amount that the insurer can claim under subparagraph 1401(1)(d)(ii) of the Regulations in respect of a disabled life) in computing the insurer's income for the year in respect of the liability, benefit, risk or guarantee, if that amount were determined without reference to any policy loan or reinsurance arrangement, and

(b) the maximum amount that would have been deductible under paragraph 1401(1)(a), (c) or (d) of the Regulations (other than an amount that the insurer can claim under subparagraph 1401(1)(d)(ii) of the Regulations in respect of a disabled life) in computing the insurer's income for the immediately preceding taxation year in respect of the liability, benefit, risk or guarantee, if that amount were determined without reference to any policy loan or reinsurance arrangement;

. . . . .

(a) the maximum amount that would be deductible under paragraph 1401(1)(c.1) of the *Income Tax Regulations* in computing the insurer's income for the year in respect of the policy, if that amount were determined without reference to any policy loan or reinsurance arrangement, and

(b) the maximum amount that would have been deductible under paragraph 1401(1)(c.1) of the Regulations in computing the insurer's income for the immediately preceding taxation year in respect of the policy, if that amount were determined without reference to any policy loan or reinsurance arrangement, and

. . . . .

(c) the amount, if any, by which

(i) the maximum amount that would be deductible under paragraph 1401(1)(c.1) of the *Income Tax Regulations* in computing the insurer's income for the year in respect of the policy, if that amount were determined without reference to any policy loan or reinsurance arrangement

exceeds

(ii) the maximum amount that would be deductible under paragraph 1401(1)(c.1) of the Regulations in computing the insurer's last 1989 taxation year in respect of the policy, if that amount were determined without reference to any policy loan or reinsurance arrangement; and

Subsec. 211.1(3) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 172(1), applicable (by subsec. 172(3)) to taxation years commencing after

1989 and, where an insurer so elected in respect of the insurer's taxation years beginning after 1987 or 1988 and before 1990 by notifying the Minister of National Revenue in writing before July 1991, to all taxation years of the insurer to which the election relates and, where such an election was made,

(a) in respect of each taxation year of the insurer to which the election relates, each reference to "1989" in subsec. 211.1(3) shall be read as a reference to the year immediately preceding the first taxation year to which the election relates; and

(b) notwithstanding subsecs. 152(4) to (5), such assessments of tax, interest and penalties shall be made as are necessary to give effect to the election.

Also (by 1994, c. 7, Sch. II (1991, c. 49), subsec. 172(2)), in their application to taxation years commencing after June 17, 1987 and before 1990 that end after 1987 (except a taxation year of an insurer to which subsec. 172(1) of c. 49 applies because of an election made by the insurer as mentioned above),

(a) the description of C in subsec. 211.1(3) shall be read as follows:

C is the positive or negative amount that would be determined to be the insurer's income or loss, respectively, for the year under Part I from carrying on a life insurance business in Canada, if

(a) no amount were included in that determination in respect of segregated funds of the insurer,

(b) no amount were included in that determination under paragraph 12(1)(d) or (d.1), section 12.3, paragraph 20(1)(l) or (l.1) or subsection 20(26), under a prescribed provision of this Act or, in respect of the amount deducted under paragraph 138(3)(c) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it applied to taxation years beginning before June 18, 1987, in computing its income for the immediately preceding taxation year, under paragraph 138(4)(a),

(c) the amount, if any, determined under paragraph (g) of the description of A in respect of the insurer for the year were included in that determination,

(d) the maximum amounts deductible in computing that income under subparagraphs 138(3)(a)(i), (ii) and (iv) were deducted in that determination,

(e) for the purposes of paragraph 138(4)(a), the maximum amounts deductible under subparagraphs 138(3)(a)(i), (ii) and (iv) were deducted in computing the insurer's income or loss, as the case may be, for the immediately preceding taxation year, and

(f) in respect of the insurer's first taxation year beginning after June 17, 1987 and ending after 1987,

(i) the amounts referred to in paragraph (e) in respect of the insurer's immediately preceding taxation year were the maximum amounts that would be deductible under subparagraphs 138(3)(a)(i), (ii) and (iv) for that preceding year if those subparagraphs applied to that year, and

(ii) the prescribed amount of the insurer's 1968 reserve adjustment were nil;

and

(b) the description of G in subsec. 211.1(3) shall be read as follows:

G is the total of all amounts each of which is the prescribed portion of an amount that would be included under section 12.2 or paragraph 56(1)(j) in computing the income of a policyholder for a taxation year ending in the year, if all taxation years were calendar years, in respect of life insurance policies in Canada (other than annuity contracts and prescribed arrangements) of the insurer.

Subsec. 211.1(3) formerly read:

(3) Canadian life investment income — For the purposes of this Part, the Canadian life investment income or loss, as the case may be, of a life insurer for a taxation year is the positive or negative amount, respectively, determined by the formula

$$A - B - C - D + E - F - G$$

where

A is the positive or negative amount, as the case may be, determined by totalling the following amounts in respect of the insurer for the year:

(a) the total of all amounts included under subsection 138(9) in computing the insurer's income for the year from carrying on a life insurance business in Canada,

(b) where subsection 138(9) does not apply to the insurer, its gross investment revenue for the year from such of its non-segregated property as was property used in the year in, or held in the year in the course of, carrying on a life insurance business in Canada,

(c) the amount included under paragraph 138(4)(b) in computing the insurer's income for the year,

(d) the amount included under paragraph 138(4)(c) in computing the insurer's income for the year,

(e) the total of all amounts that accrued to, or became receivable or were received by, the insurer in the year as, on account of or in lieu of payment of, interest in respect of policy loans made under the terms of its life insurance policies in Canada, to the extent not included in computing its Canadian life investment income for a preceding taxation year,

(f) the total of all gains made by the insurer in the year from dispositions of such of its non-segregated property (other than property that is a Canada security or capital property) as was property used in the year in, or held in the year in the course of, carrying on a life insurance business in Canada, and

(g) the amount, if any, by which

(i) the total of all taxable capital gains of the insurer for the year from dispositions of such of its non-segregated property as was property used in the year in, or held in the year in the course of, carrying on a life insurance business in Canada

exceeds

(ii) the total of all allowable capital losses of the insurer for the year and all preceding taxation years commencing after June 17, 1987 and ending after 1987 from dispositions of such of its non-segregated property as was property used in the year in, or held in the year in the course of, carrying on a life insurance business in Canada to the extent that those losses have not reduced an amount determined under this paragraph in determining the Canadian life investment income for a preceding taxation year,

and deducting from that total the total of the following amounts in respect of the insurer for the year:

(h) the amount deductible under paragraph 138(3)(b) in computing the insurer's income for the year,

(i) the amount deductible under paragraph 138(3)(d) in computing the insurer's income for the year,

(j) the total of all losses sustained by the insurer in the year from dispositions of such of its non-segregated property (other than property that is a Canada security or capital property) as was property used in the year in, or held in the year in the course of, carrying on a life insurance business in Canada,

(k) the total of all expenses deducted in computing the insurer's income under Part I for the year to the extent that those expenses were incurred for the purposes of managing its non-segregated property and may reasonably be regarded as having been incurred for the purposes of earning any amount included under paragraphs (a) to (f) for the year,

(l) the total of all amounts that became payable by the insurer in respect of the year as, on account of or in lieu of payment of, interest on amounts on deposit with the insurer in accordance with the terms of its life insurance policies in Canada, and

(m) the total of amounts (other than amounts included under paragraph (k) or (l)) deducted in computing the insurer's income for the year under paragraphs 20(1)(a), (c), (d) and (p), to the extent that each such amount may rea-

sonably be regarded as relating to any amount included under paragraphs (a) to (f) for the year;

B is the total of all amounts deducted in computing the insurer's income for the year under Part I from carrying on a life insurance business in Canada (net of expense allowances under reinsurance arrangements included in computing that income) except to the extent that any such amount

(a) is included in an amount determined in respect of the insurer for the year under any of paragraphs (j) to (m) of the description of A,

(b) was paid or payable by the insurer in respect of benefits payable under a life insurance policy,

(c) is deductible under paragraph 20(1)(l) or (l.1) or subsection 20(26) or 138(3) in computing its income from carrying on a life insurance business in Canada, or

(d) may reasonably be considered to relate to segregated funds of the insurer;

C is the positive or negative amount, as the case may be, that would be determined to be the insurer's income or loss, respectively, for the year under Part I from carrying on a life insurance business in Canada, if

(a) no amount were included in that determination in respect of segregated funds of the insurer,

(b) no amount were included in that determination under paragraph 12(1)(d) or (d.1), section 12.3, paragraph 20(1)(l) or (l.1) or subsection 20(26), under a prescribed provision of this Act, or under paragraph 138(4)(a) in respect of the amount deducted under paragraph 138(3)(c) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in computing its income for the immediately preceding taxation year,

(c) the amount, if any, determined under paragraph (g) of the description of A in respect of the insurer for the year were included in that determination, and

(d) the maximum amounts deductible under subparagraphs 138(3)(a)(i), (ii) and (iv) in computing the insurer's income for the year were deducted in that determination and on the assumption that the maximum amounts so deductible in computing its income for the immediately preceding year had been deducted;

D is the positive or negative amount, as the case may be, attributable to registered life insurance policies, registered pension plans, annuity contracts and prescribed arrangements, determined in accordance with prescribed rules, in respect of the insurer for the year;

E is the positive or negative amount, as the case may be, determined by totalling the term insurance component and the amortization adjustment amount, determined in accordance with prescribed rules, in respect of the insurer for the year;

F is the amount of guaranteed interest, determined in accordance with prescribed rules, in respect of the insurer for the year; and

G is the prescribed portion of amounts that would, but for subsection 12(8) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, be included in computing the income of policyholders under section 12.2, paragraph 56(1)(j) or subparagraph 115(1)(a)(vi), for taxation years ending in the year, if all taxation years were calendar years, in respect of life insurance policies in Canada (other than annuity contracts and prescribed arrangements) of the insurer.

The description of D in subsec. 211.1(3) amended by 1990, c. 35, s. 29, to substitute "registered pension plans" for "registered pension funds or plans", applicable after 1985.

Selected Cases [subsec. 211.1(3)]: *Excelsior Life Insurance Co. v. R.*, [1985] 1 C.T.C. 213 (FCTD) (Expenses deductible in computing income from life insurance business apply to segregated or non-segregated property when calculating its net Canadian life investment income).

Regulations [subsec. 211.1(3)]: 1900 (for taxation years that began after June 17, 1987 and before 1990 that end after 1987).

(4) Short taxation year — Where a taxation year of a life insurer is less than 51 weeks, the values of A and D in subsection (3) for the year are that proportion of those values otherwise so determined that the number of days in the year (other than February 29) is of 365.

History: Subsec. 211.1(4) added by 1998, c. 19, subsec. 213(3), applicable to 1992 *et seq.*

Definitions [s. 211.1]: "allowable capital loss" — 38(b), 248(1); "amount", "annuity", "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "capital property" — 54, 248(1); "carrying on business" — 253; "insurer", "life insurance business" — 248(1); "life insurance policy" — 138(12), 211, 248(1); "life insurer", "prescribed", "property", "registered pension plan" — 248(1); "taxation year" — 249. See also 211(1).

211.2 Return — Every life insurer shall file with the Minister, not later than the day on or before which it is required by section 150 to file its return of income for a taxation year under Part I, a return of taxable Canadian life investment income for that year in prescribed form containing an estimate of the tax payable by it under this Part for the year.

Related Provisions: 150.1(5) — Electronic filing.

Definitions [s. 211.2]: "life insurer", "Minister", "prescribed" — 248(1); "taxation year" — 249.

Forms: T2142: Part XII.3 tax return — tax on investment income of life insurers.

211.3 (1) Instalments — Every life insurer shall, in respect of each of its taxation years, pay to the Receiver General on or before the last day of each month in the year, an amount equal to 1/12 of the lesser of

(a) the amount estimated by the insurer to be the annualized tax payable under this Part by it for the year, and

(b) the annualized tax payable under this Part by the insurer for the immediately preceding taxation year.

(2) Annualized tax payable — For the purposes of subsections (1) and 211.5(2), the annualized tax payable under this Part by a life insurer for a taxation year is the amount determined by the formula

$$(365/A) \times B$$

where

A is

(a) if the year is less than 357 days, the number of days in the year (other than February 29), and

(b) otherwise, 365; and

B is the tax payable under this Part by the insurer for the year.

History: S. 211.3 amended by 1998, c. 19, s. 214, applicable to taxation years that begin after 1995. S. 211.3 formerly read:

211.3 **Instalments** — Every life insurer shall pay to the Receiver General on or before the last day of each three month period, if any, in a taxation year an instalment determined by the formula

$$\frac{A}{B} \times C$$

where

A is the number of months in the year within the three month period;

B is the number of months in the year; and

C is the lesser of

(a) the tax payable under this Part by the insurer for the year, and

(b) the tax payable under this Part by the insurer for the immediately preceding taxation year.

Definitions [s. 211.3]: "annualized tax payable" — 211.3(2); "life insurer" — 248(1); "tax payable" — 248(2); "taxation year" — 249.

211.4 Payment of remainder of tax — Every life insurer shall pay, on or before its balance-due day for a taxation year, the remainder, if any, of the tax payable under this Part by the insurer for the year.

History: S. 211.4 amended by 2003, c. 15, s. 127, applicable to taxation years that begin after June 2003. S. 211.4 formerly read:

> 211.4 Every life insurer shall pay, on or before the last day of the second month ending after the end of a taxation year, the remainder, if any, of the tax payable under this Part by the insurer for the year.

Definitions [s. 211.4]: "insurer", "life insurer" — 248(1); "taxation year" — 249.

211.5 (1) Provisions applicable to Part — Section 152, subsection 157(2.1), sections 158 and 159, subsections 161(1), (2), (2.1), (2.2) and (11), sections 162 to 167 and Division J of Part I apply to this Part, with such modifications as the circumstances require.

(2) Interest on instalments — For the purposes of subsection 161(2) and section 163.1 as they apply to this Part, a life insurer is, in respect of a taxation year, deemed to have been liable to pay, on or before the last day of each month in the year, an instalment equal to 1/12 of the lesser of

(a) the annualized tax payable under this Part by the insurer for the year, and

(b) the annualized tax payable under this Part by the insurer for the immediately preceding taxation year.

Related Provisions: 211.3(2) — Annualized tax payable.

History [s. 211.5]: S. 211.5 renumbered as subsec. 211.5(1) and subsec. (2) added by 1998, c. 19, s. 215, applicable to taxation years that begin after 1995.

S. 211.5 repealed and s. 211.6 renumbered as 211.5, and amended, by 1994, c. 7, Sch. II (1991, c. 49), s. 173, applicable to 1990 *et seq.* Ss. 211.5, 211.6 formerly read:

> 211.5 Interest — Where a life insurer has failed to pay all or any instalment of tax under this Part on or before the day on or before which it was required to be paid, the insurer shall pay to the Receiver General interest at the prescribed rate on the amount that it failed to pay, computed from the day on or before which the amount was required to be paid to the day of payment.
>
> 211.6 Provisions applicable to Part — Sections 152, 158 and 159, subsection 161(1), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Definitions [s. 211.5]: "annualized tax payable" — 211.3(2); "life insurer" — 248(1); "taxation year" — 249.

PART XII.4 — TAX ON QUALIFYING ENVIRONMENTAL TRUSTS

211.6 (1) Charging provision — Every trust that is a qualifying environmental trust at the end of a taxation year shall pay a tax under this Part for the year equal to 28% of its income under Part I for the year.

Proposed Amendment — 211.6(1)

211.6 Charging provision — (1) Every trust that is a qualifying environmental trust at the end of a taxation year (other than a trust that is at that time described by paragraph 149(1)(z.1) or (z.2)) shall pay a tax under this Part for the year equal to 28% of its income under Part I for that taxation year.

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 175, will amend subsec. 211.6(1) to read as above, applicable to 1997 *et seq.*

Technical Notes: Part XII.4 imposes a special tax on qualifying environmental trusts, as defined under subsection 248(1). Subsection 211.6(1) is the charging provision of Part XII.4. It requires a qualifying environmental trust to pay a tax equal to 28% of its income for the year.

Subsection 211.6(1) is amended to provide that a trust that is described by new paragraphs 149(1)(z.1) or (z.2), even if it is a qualifying environmental trust, is not subject to Part XII.4 tax.

Related Provisions: 127.41 — Part XII.4 tax credit to beneficiary; 149(1)(z) — No Part I tax on trust.

History: Subsec. 211.6(1) amended by 1998, c. 19, s. 61, applicable to 1997 *et seq.* Subsec. 211.6(1) formerly read:

> (1) Every trust that is a mining reclamation trust at the end of a taxation year shall pay a tax under this Part for the year equal to 28% of its income under Part I for the year.

Subsec. 211.6(1) added by 1995, c. 3, s. 50, applicable to 1994 *et seq.*

(2) Computation of income — For the purpose of subsection (1), the income under Part I of a qualifying environmental trust shall be computed as if this Act were read without reference to subsections 104(4) to (31) and sections 105 to 107.

History: Subsec. 211.6(2) amended by 1998, c. 19, s. 61, applicable to 1997 *et seq.* Subsec. 211.6(2) formerly read:

> (2) For the purpose of subsection (1), the income under Part I of a mining reclamation trust shall be computed as if this Act were read without reference to subsections 104(4) to (31) and sections 105 to 107.

Subsec. 211.6(2) added by 1995, c. 3, s. 50, applicable to 1994 *et seq.*

(3) Return — Every trust that is a qualifying environmental trust at the end of a taxation year shall file with the Minister on or before its filing-due date for the year a return for the year under this Part in prescribed form containing an estimate of the amount of its tax payable under this Part for the year.

Related Provisions: 150.1(5) — Electronic filing.

History: Subsec. 211.6(3) amended by 1998, c. 19, s. 61, applicable to 1997 *et seq.* Subsec. 211.6(3) formerly read:

> (3) Every trust that is a mining reclamation trust at the end of a taxation year shall file with the Minister on or before the day that is 90 days after the end of the year a return for the year under this Part in prescribed form containing an estimate of the amount of tax payable under this Part for the year by the trust.

Subsec. 211.6(3) added by 1995, c. 3, s. 50, applicable to 1994 *et seq.*

Forms: T3M: Environmental trust income tax return.

(4) Payment of tax — Every trust shall pay to the Receiver General its tax payable under this Part for each taxation year on or before its balance-due day for the year.

History: Subsec. 211.6(4) amended by 1998, c. 19, s. 61, applicable to 1997 *et seq.* Subsec. 211.6(4) formerly read:

> (4) Each trust shall pay in respect of each taxation year to the Receiver General its tax payable under this Part for the year on or before the day that is 90 days after the end of the year.

Subsec. 211.6(4) added by 1995, c. 3, s. 50, applicable to 1994 *et seq.*

(5) Provisions applicable to Part — Subsections 150(2) and (3), sections 152, 158 and 159, subsections 161(1) and (11), sections 162 to 167 and Division J of Part I apply to this Part, with such modifications as the circumstances require.

History [subsec. 211.6(5)]: Subsec. 211.6(5) added by 1995, c. 3, s. 50, applicable to 1994 *et seq.*

History [s. 211.6]: The heading before s. 211.6 amended by 1998, c. 19, s. 60, applicable to 1997 *et seq.* It formerly read:

Tax on Mining Reclamation Trusts

Definitions [s. 211.6]: "amount"; "balance-due day", "filing-due date" — 248(1); "mining reclamation trust", "Minister", "prescribed", "qualifying environmental trust" — 248(1); "taxation year" — 11(2), 249; "trust" — 104(1), 248(1); "trust's year" — 107.3(1).

PART XII.5 — RECOVERY OF LABOUR-SPONSORED FUNDS TAX CREDIT

211.7 (1) Definitions — The definitions in this section apply for the purposes of this Part.

"approved share" has the meaning assigned by subsection 127.4(1).

"labour-sponsored funds tax credit" in respect of a share is

(a) where the original acquisition of the share occurred before 1996, 20% of the net cost of the share on that acquisition; and

(b) in any other case, the amount that would be determined under subsection 127.4(6) in respect of the share if this Act were read without reference to paragraphs 127.4(6)(b) and (d).

"net cost" has the meaning assigned by subsection 127.4(1).

"original acquisition" has the meaning assigned by subsection 127.4(1).

"qualifying trust" has the meaning assigned by subsection 127.4(1).

"revoked corporation" means a corporation the registration of which has been revoked under subsection 204.81(6).

(2) Amalgamations and mergers — For the purposes of this Part, where two or more corporations (each of which is referred to in this subsection as a "predecessor corporation") amalgamate or merge to form a corporate entity deemed by paragraph 204.85(3)(d) to have been registered under Part X.3, the shares of each predecessor corporation are deemed not to be redeemed, acquired or cancelled by the predecessor corporation on the amalgamation or merger.

History: S. 211.7 renumbered as subsec. 211.7(1) and subsec. 211.7(2) added by 2000, c. 19, s. 61, applicable after February 16, 1999.

S. 211.7 added by 1997, c. 25, s. 62, applicable to redemptions, acquisitions, cancellations and dispositions that occur after November 15, 1995, except that s. 211.7 does not apply

(a) to any redemption that occurs before 1998 of a share of the capital stock of a corporation that was registered under subsec. 204.81(1), where an amount determined under regulations made for the purpose of cl. 204.81(1)(c)(v)(F) is directed to be remitted to the Receiver General in order to permit the redemption; and

(b) to any disposition that occurs before 1998, where an amount is required to be remitted to the government of a province as a consequence of the disposition and a portion of the amount is in respect of the recovery of a tax credit that is provided under subsection 127.4(2) in respect of the share.

Definitions [s. 211.7]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "net cost", "original acquisition" — 127.4(1), 211.7(1); "share" — 248(1).

211.8 (1) Disposition of approved share — Where an approved share of the capital stock of a registered labour-sponsored venture capital corporation or a revoked corporation is, before the first discontinuation of its venture capital business, redeemed, acquired or cancelled by the corporation less than eight years after the day on which the share was issued (other than in circumstances described in subclause 204.81(1)(c)(v)(A)(I) or (III) or clause 204.81(1)(c)(v)(B) or (D)) or any other share that was issued by any other labour-sponsored venture capital corporation is disposed of, the person who was the shareholder immediately before the redemption, acquisition, cancellation or disposition shall pay a tax under this Part equal to the lesser of

(a) the amount determined by the formula

$$A \times B$$

where

A is

(i) where the share was issued by a registered labour-sponsored venture capital corporation or a revoked corporation, the labour-sponsored funds tax credit in respect of the share, and

(ii) where the share was issued by any other labour-sponsored venture capital corporation and was at any time an approved share, the amount, if any, required to be remitted to the government of a province as a consequence of the redemption, acquisition, cancellation or disposition (otherwise than as a consequence of an increase in the corporation's liability for a penalty under a law of the province), and

B is

(i) nil, where the share was issued by a registered labour-sponsored venture capital corporation or a revoked corporation, the original acquisition of the share was before March 6, 1996 and the redemption, acquisition, cancellation or disposition is

(A) more than 2 years after the day on which it was issued, where the redemption, acquisition, cancellation or disposition is permitted under the articles of the corporation because an individual attains 65 years of age, retires from the workforce or ceases to be resident in Canada, or

(B) more than 5 years after the day on which it was issued,

Proposed Amendment — 211.8(1)(a)B(i)(B), (C)

(B) more than five years after its issuance, or

(C) if the day that is five years after its issuance is in February or March of a calendar year, in February or on March 1st of that calendar year but not more than 31 days before that day,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 176(1), will amend cl. (i)(B) of the description of B in para. 211.8(1)(a) to read as above, and add cl. (i)(C), applicable to redemptions, acquisitions, cancellations and dispositions that occur after November 15, 1995.

Technical Notes: Subsection 211.8(1) provides that the special tax under Part XII.5 generally applies where shares in a federally-registered LSVCC that qualify for the federal LSVCC tax credit are redeemed prior to the expiry of a minimum period. In the case of shares the "original acquisition" (as defined in subsection 127.4(1)) of which occurred before March 6, 1996, there is no recovery of the tax credit for a share redeemed more than five years after the day on which the share was issued. For shares the original acquisition of which occurs after March 5, 1996, the recovery generally applies where a share is redeemed less than eight years after the day on which it was issued.

Subsection 211.8(1) is amended so that there is no Part XII.5 tax in respect of the redemption by a federally-registered LSVCC of a share the original acquisition of which was after March 5, 1996, if the redemption occurs on a day that is in February or on March 1st of a calendar year and that day is no more than 31 days before the day that is eight years

after the day on which the share was issued. For a share the original acquisition of which occurred before March 6, 1996, the circumstances in which there is no recovery of the tax credit are extended to include the redemption of the share on a day that is in February or on March 1st of a calendar year if that day is no more than 31 days before the day that is five years after the day on which the share was issued.

This amendment is part of a set of amendments, announced by the Minister of Finance (News Release 2000-009, dated February 7, 2000) concerning the redemption requirements for federally-registered LSVCCs. The set of amendments is intended to accommodate taxpayers wishing to acquire new LSVCC shares in the first 60 days of a year using the proceeds from the redemption of LSVCC shares. Other related changes include amendments to section 204.81. For additional information, see the commentary on those provisions.

Example 1

On February 2nd, 1998 a federally-registered LSVCC redeemed 200 Class A shares owned by Charles. The original acquisition by Charles of the shares was on March 1, 1993, the same day on which the shares were issued. The issuing LSVCC was incorporated on December 1, 1992. The LSVCC's Articles comply with the applicable registration requirements.

Results:

1. Under new clause (i)(C) of the description of B in paragraph 211.8(1)(a), there will be no recovery of the tax credit on the redemption of the 200 shares because the original acquisition of the shares was before March 6, 1996 and the redemption occurred on a day in February not more than 31 days before the day that is five years after the day on which the shares were issued.

2. Because of new subsection 204.81(1.2), subsection 204.81(6) would not apply to allow the Minister of National Revenue to revoke the LSVCC's registration solely because of the redemption.

Example 2

On February 15, 2005 a federally-registered LSVCC redeemed 200 Class A shares owned by Marguerite. The circumstances of the redemption are not described in any of the provisions, described in clauses 204.81(1)(c)(v)(A) to (D), of the LSVCC's articles. The original acquisition by Marguerite of the first 100 shares was on March 1, 1997, although the shares were issued on March 12th, 1997. The original acquisition by Marguerite of the second 100 shares was on February 29, 2000, the same day on which the shares were issued. The LSVCC was incorporated on May 1, 1996.

Results:

1. Under new subparagraph (i.1) of the description of B in paragraph 211.8(1)(a), there will be no recovery of the tax credit on the redemption of the first 100 shares because the redemption occurred in February on a day not more than 31 days before the day that is eight years after the day on which the shares were issued. Subparagraph (i) of the description of variable B in paragraph 211.8(1)(a) does not apply because the original acquisition of the shares was not before March 6, 1996.

2. Under new subparagraph (i.1) of the description of B in paragraph 211.8(1)(a), there will be a recovery of the tax credit on the redemption of the second 100 shares because the redemption occurred less than eight years after the day on which the share was issued and more than 31 days before the day that is eight years after the day on which the shares were issued.

3. Because of new subsection 204.81(1.2), subsection 204.81(6) would not apply to allow the Minister of National Revenue to revoke the LSVCC's registration solely because of the redemption of the first 100 shares. However, the early redemption by the corporation of the second 100 shares, in violation of the provisions of its articles described in clause 204.81(1)(c)(v)(E), authorizes the Minister of National Revenue to revoke the LSVCC's registration under subsection 204.81(6).

Department of Finance news release, February 7, 2000: *Finance Minister Announces Minor Change to the Redemption Requirements for Federal LSVCCs*

Finance Minister Paul Martin today announced that he would propose a minor change affecting federally-registered labour-sponsored venture capital corporations (LSVCCs). The proposed change provides an exemption from the rules governing the recovery of the federal LSVCC tax credit.

Shares in federally-registered LSVCCs that qualify for the federal LSVCC tax credit must be held for a minimum period. Where a share is redeemed prior to the expiry of the minimum period, the federal LSVCC tax credit for the share is generally recovered. In the case of shares issued before March 6, 1996, there is no recovery of the tax credit for a share redeemed more than five years after the day on which the share was issued. For shares issued after March 5, 1996, the recovery applies where a share is redeemed less than eight years after the day on which it was issued.

The proposed change will, for the purpose of the recovery provisions, treat a share redeemed in February or on March 1st as having been redeemed 30 days later. For example, existing LSVCC shares issued on March 1, 1995 and redeemed on February 29, 2000 would be exempt from a recovery of the federal LSVCC tax credit that was associated with the original acquisition of the shares.

This measure is intended to accommodate taxpayers wishing to acquire new LSVCC shares in the first 60 days of a year with the proceeds from the redemption of LSVCC shares. In these circumstances, a taxpayer would generally be entitled to claim a tax credit for the preceding year in respect of an acquisition of the new shares and would not be subject to a tax penalty with respect to the redemption of the existing shares. In addition, any necessary changes will be made to ensure that an LSVCC's registration cannot be revoked as a result of having redeemed LSVCC shares in these circumstances. It is proposed that this change apply from the inception of the rules governing the recovery of the LSVCC tax credit.

[See also proposed amendment to 204.81(1)(c)(v)(E) — ed.]

For further information: Grant Nash, Tax Policy Branch, (613) 992-5287; Karl Littler, Senior Advisor, Tax Policy, Office of the Minister of Finance, (613) 996-7861; Jean-Michel Catta, Public Affairs and Operations Division, (613) 996-8080.

Proposed Addition — 211.8(1)(a)B(i.1)

(i.1) nil, where the share was issued by a registered labour-sponsored venture capital corporation or a revoked corporation, the original acquisition of the share was after March 5, 1996 and the redemption, acquisition or cancellation is in February or on March 1st of a calendar year but is not more than 31 days before the day that is eight years after the day on which the share was issued,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 176(2), will add subpara. 211.8(1)(a)B(i.1), applicable to redemptions, acquisitions, cancellations and dispositions that occur after November 15, 1995.

Technical Notes: See under 211.8(1)(a)B(i)(B), (C) above.

(ii) one, in any other case where the share was issued by a registered labour-sponsored venture capital corporation or a revoked corporation, and

(iii) in any other case, the quotient obtained when the labour-sponsored fund tax credit in respect of the share is divided by the tax credit provided under a law of a province in respect of any previous acquisition of the share, and

(b) the amount that would, but for subsection (2), be payable to the shareholder because of the redemption, acquisition, cancellation or disposition (determined after taking into account the amount determined under subparagraph (ii) of the description of A in paragraph (a)).

Related Provisions: 204.8(2) — Determining when an RLSVCC discontinues its business; 204.8(3) — Order of disposition of shares; 211.8(1.1) — Rules of application; 211.8(2) — Withholding and remittance of tax; 211.9 — Refund of clawback; 227(10.01) — Assessment of amount payable by resident of Canada; 227(10.1)(c) — Assessment of amount payable by non-resident; Reg. 6706 — Repayment of credit by national LSVCCs.

(1.1) Rules of application — Subsections 204.8(2) and (3) and 204.85(3) apply for the purpose of subsection (1).

(2) Withholding and remittance of tax — Where a person or partnership (in this section referred to as the

"transferee") redeems, acquires or cancels a share and, as a consequence, tax is payable under this Part by the person who was the shareholder immediately before the redemption, acquisition or cancellation, the transferee shall

(a) withhold from the amount otherwise payable on the redemption, acquisition or cancellation to the shareholder the amount of the tax;

(b) within 30 days after the redemption, acquisition or cancellation, remit the amount of the tax to the Receiver General on behalf of the shareholder; and

(c) submit with the remitted amount a statement in prescribed form.

Related Provisions: 211.8(3) — Liability for failure to withhold; 211.9 — Refund of clawback; 227 — Withholding taxes — administration and enforcement; 227(5)(a.1) — Person who has influence over payment may be liable for failure to withhold; 227(6) — Application of excess amount withheld; 227(8.3)(c) — Interest on amounts not withheld.

Forms: T1149: Remittance form for labour-sponsored funds tax credits withheld on redeemed shares.

(3) Liability for tax — Where a transferee has failed to withhold any amount as required by subsection (2) from an amount paid or credited to a shareholder, the transferee is liable to pay as tax under this Part on behalf of the shareholder the amount the transferee failed to withhold, and is entitled to recover that amount from the shareholder.

Related Provisions: 227(10.01) — Assessment of amount payable by resident of Canada; 227(10.1)(c) — Assessment of amount payable by non-resident.

History: The opening words of subsec. 211.8(1) amended and subsec. 211.8(1.1) added by 2000, c. 19, subsecs. 62(1), (2), applicable to redemptions, acquisitions, cancellations and dispositions that occur after February 16, 1999. The opening words of subsec. (1) formerly read:

(1) Where an approved share of the capital stock of a registered labour-sponsored venture capital corporation or a revoked corporation is redeemed, acquired or cancelled by the corporation less than 8 years after the day on which the share was issued (other than in circumstances described in subclause 204.81(1)(c)(v)(A)(I) or (III) or clause 204.81(1)(c)(v)(B) or (D)) or any other share that was issued by any other labour-sponsored venture capital corporation is disposed of, the person who was the shareholder immediately before the redemption, acquisition, cancellation or disposition shall pay a tax under this Part equal to the lesser of

S. 211.8 added by 1997, c. 25, s. 62; subsec. 211.8(1) applicable to redemptions, acquisitions, cancellations and dispositions that occur after November 15, 1995, except that it does not apply

(a) to any redemption that occurs before 1998 of a share of the capital stock of a corporation that was registered under subsec. 204.81(1), where an amount determined under regulations made for the purpose of cl. 204.81(1)(c)(v)(F) is directed to be remitted to the Receiver General in order to permit the redemption; and

(b) to any disposition that occurs before 1998, where an amount is required to be remitted to the government of a province as a consequence of the disposition and a portion of the amount is in respect of the recovery of a tax credit that is provided under subsec. 127.4(2) in respect of the share;

subsecs. 211.8(2) and (3) applicable to redemptions, acquisitions and cancellations that occur after April 25, 1997.

Definitions [s. 211.8]: "approved share" — 127.4(1), 211.7(1); "business" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "discontinuation" — 204.8(2); "disposition", "individual" — 248(1); "labour-sponsored funds tax credit" — 211.7(1); "original acquisition" — 127.4(1), 211.7(1); "person", "prescribed" — 248(1); "province" — *Interpretation Act* 35(1); "registered labour-sponsored venture capital corporation" — 248(1); "resident in Canada" — 250; "revoked corporation" — 211.7(1); "share", "shareholder" — 248(1); "transferee" — 211.8(2).

211.9 Refund — The Minister may pay to an individual (other than a trust) in respect of the disposition of a share, if application for the payment has been made in writing by the individual and filed with the Minister no later than two years after the end of the calendar year in which the disposition occurred, an amount not exceeding the lesser of

(a) the tax paid under this Part in respect of a disposition of the share, and

(b) 15% of the net cost of the share on the original acquisition by the individual (or by a qualifying trust for the individual in respect of the share).

Related Provisions: 127.4(6)(d) — Labour-sponsored funds credit is nil where amount has been refunded under 211.9.

History: S. 211.9 amended by 2000, c. 19, s. 63, applicable to dispositions that occur after 1998. S. 211.9 formerly read:

211.9 Refund of clawback — The Minister may pay to an individual (other than a trust) an amount not exceeding the lesser of

(a) either

(i) the tax paid under this Part in respect of a disposition of a share, or

(ii) the amount determined under regulations made for the purpose of clause 204.81(1)(c)(v)(F) that was remitted to the Receiver General in respect of a disposition of an approved share, and

(b) the amount, if any, by which

(i) 15% of the net cost of the share on the original acquisition by the individual (or by a qualifying trust for the individual in respect of the share)

exceeds

(ii) the amount deducted under subsection 127.4(2) in respect of the original acquisition of the share by the individual (or by a qualifying trust for the individual in respect of the share)

if application for the payment has been made in writing by the individual and filed with the Minister no later than 2 years after the end of the calendar year in which the disposition occurred.

S. 211.9 added by 1997, c. 25, s. 62, applicable after April 25, 1997, except that

(a) the reference to "15%" in subpara. 211.9(b)(i) shall be read as "20%" in respect of a disposition of a share the original acquisition of which was before March 6, 1996; and

(b) any application filed under that section before 1998 is deemed to be filed on a timely basis.

Definitions [s. 211.9]: "amount" — 248(1); "approved share" — 127.4(1), 211.7(1); "calendar year" — *Interpretation Act* 37(1)(a); "disposition", "individual", "Minister" — 248(1); "net cost", "original acquisition", "qualifying trust" — 127.4(1), 211.7(1); "regulation", "share" — 248(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

PART XII.6 — TAX ON FLOW-THROUGH SHARES

211.91 (1) Tax imposed — Every corporation shall pay a tax under this Part in respect of each month (other than January) in a calendar year equal to the amount determined by the formula

$$\left(A + \frac{B}{2} - C - \frac{D}{2}\right) \times \left(\frac{E}{12} + \frac{F}{10}\right)$$

where

A is the total of all amounts each of which is an amount that the corporation purported to renounce in the year under subsection 66(12.6) or (12.601) because of the application of subsection 66(12.66) (other than an amount purported to be renounced in respect of expenses incurred or to be incurred in connection with production or potential production in a province where a tax, similar to the tax provided under this Part, is payable by the corporation under the laws of the prov-

ince as a consequence of the failure to incur the expenses that were purported to be renounced);

B is the total of all amounts each of which is an amount that the corporation purported to renounce in the year under subsection 66(12.6) or (12.601) because of the application of subsection 66(12.66) and that is not included in the value of A;

C is the total of all expenses described in paragraph 66(12.66)(b) that are

(a) made or incurred by the end of the month by the corporation, and

(b) in respect of the purported renunciations in respect of which an amount is included in the value of A;

D is the total of all expenses described in paragraph 66(12.66)(b) that are

(a) made or incurred by the end of the month by the corporation, and

(b) in respect of the purported renunciations in respect of which an amount is included in the value of B;

E is the rate of interest prescribed for the purpose of subsection 164(3) for the month; and

F is

(a) one, where the month is December, and

(b) nil, in any other case.

Related Provisions: 18(1)(t), 20(1)(nn) — Tax under Part XII.6 is deductible; 66(18) — Members of partnerships; 87(4.4)(e)–(h) — Amalgamation of principal-business corporations; 211.91(2) — Return and payment of tax; 257 — Formula cannot calculate to less than zero.

Regulations: 4301(b) (prescribed rate of interest under 164(3), for 211.91(1)E).

(2) Return and payment of tax — A corporation liable to tax under this Part in respect of one or more months in a calendar year shall, before March of the following calendar year,

(a) file with the Minister a return for the year under this Part in prescribed form containing an estimate of the tax payable under this Part by it in respect of each month in the year; and

(b) pay to the Receiver General the amount of tax payable under this Part by it in respect of each month in the year.

(3) Provisions applicable to Part — Subsections 150(2) and (3), sections 152, 158 and 159, subsections 161(1) and (11), sections 162 to 167 and Division J of Part I apply to this Part, with any modifications that the circumstances require.

History: Part XII.6 (s. 211.91) added by 1997, c. 25, s. 62, applicable to the 1997 and subsequent calendar years.

Definitions [s. 211.91]: "amount" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "corporation" — 248(1), *Interpretation Act* 35(1); "Minister", "prescribed" — 248(1); "province" — *Interpretation Act* 35(1).

PART XIII — TAX ON INCOME FROM CANADA OF NON-RESIDENT PERSONS

212. (1) Tax — Every non-resident person shall pay an income tax of 25% on every amount that a person resident in Canada pays or credits, or is deemed by Part I to pay or credit, to the non-resident person as, on account or in lieu of payment of, or in satisfaction of,

Related Provisions: 94(3)(a)(viii), (ix), 104(7.01) — Application to trust deemed resident in Canada; 212(13.3)(a) — Authorized foreign bank deemed resident in Canada; 214(1) — No deductions from tax; 215(1) — Requirement to withhold and remit; 216 — Election to pay tax on net income from rents and timber royalties; 217 — Election to file return under Part I in respect of certain kinds of income; 218.3(2)(c) — Withholding tax on mutual fund distributions to non-residents; 227 — Withholding taxes — administration and enforcement; Reg. 105 — Withholding on payments to non-residents for services; Reg. 805 — No tax where income attributable to permanent establishment or taxable under 115(1)(a)(iii.3).

I.T. Application Rules [subsec. 212(1)]: 10(4) (application to debts issued before 1976); 10(6) (reduction of 25% rate by treaty).

Interpretation Bulletins [subsec. 212(1)]: IT-77R: Securities in satisfaction of income debt (archived); IT-360R2: Interest payable in a foreign currency. See also list at end of s. 212.

Information Circulars [subsec. 212(1)]: 76-12R5: Applicable rate of Part XIII tax on amounts paid or credited to persons in countries with which Canada has a tax convention; 77-16R4: Non-resident income tax.

I.T. Technical News [subsec. 212(1)]: 11 (reporting of amounts paid out of an employee benefit plan); 14 (meaning of "credited" for purposes of Part XIII withholding tax).

Forms [subsec. 212(1)]: NR4: Statement of amounts paid or credited to non-residents of Canada; NR4 Summ: Return of amounts paid or credited to non-residents of Canada; NR4(OAS): Statement of OAS pension paid or credited to non-residents of Canada; NR601: Non-resident ownership certificate — withholding tax; NR602: Non-resident ownership certificate — no withholding tax; T1136: OAS return of income; T1141: Information return in respect of transfers or loans to a non-resident trust; T1142: Information return in respect of distributions from and indebtedness to a non-resident trust; T4061: Non-resident withholding tax guide.

(a) **management fee** — a management or administration fee or charge;

Related Provisions: 212(4) — Meaning of "management or administration fee or charge"; Reg. 105 — Withholding tax on payments to non-residents for services. See additional Related Provisions at beginning of subsec. 212(1).

Selected Cases [para. 212(1)(a)]: *Peter Cundill & Associates Ltd. v. Canada*, [1991] 2 C.T.C. 221 (FCA) (Fees paid by Canadian corporation to Bermuda subsidiary taxable, not at arm's length since both corporations controlled by same "mind"); *Alberta Gas Ethylene Co. v. Canada*, [1990] 2 C.T.C. 171 (FCA) (Interest on loan by non-resident subsidiary to resident parent subject to withholding tax; agency argument rejected).

Regulations: 202(1)(a) (information return); 805 (no tax where income attributable to permanent establishment).

Interpretation Bulletins: IT-468R: Management or administrative fees paid to non-residents. See also at end of s. 212.

Information Circulars: 87-2R: International transfer pricing. See also at beginning of subsec. 212(1).

Forms: See at beginning of subsec. 212(1).

(b) **interest** — interest except

(i) **[NRO]** — interest payable by a non-resident-owned investment corporation,

(ii) **[government-guaranteed debt]** — interest payable on

(A) bonds of or guaranteed by the Government of Canada issued on or before December 20, 1960,

(B) bonds of or guaranteed by the Government of Canada issued after December 20, 1960, and before April 16, 1966, the interest on which is payable to the government or central bank of a country other than Canada or to any international organization or agency prescribed by regulation, or

(C) bonds, debentures, notes, mortgages, hypothecary claims or similar obligations

(I) of or guaranteed by the Government of Canada,

(II) of the government of a province or an agent thereof,

(III) of a municipality in Canada or a municipal or public body performing a function of government in Canada,

(IV) of a corporation, commission or association to which any of paragraphs 149(1)(d) to (d.6) applies, or

(V) of an educational institution or a hospital if repayment of the principal amount thereof and payment of the interest thereon is to be made, or is guaranteed, assured or otherwise specifically provided for or secured by the government of a province,

issued after April 15, 1966,

(iii) **[foreign currency debt]** — interest payable in a currency other than Canadian currency to a person with whom the payer is dealing at arm's length, on

(A) any obligation where the evidence of indebtedness was issued on or before December 20, 1960,

(B) any obligation where the evidence of indebtedness was issued after December 20, 1960, if the obligation was entered into under an agreement in writing made on or before that day, under which the obligee undertook to advance, on or before a specified day, a specified amount at a specified rate of interest or a rate of interest to be determined as provided in the agreement, to the extent that the interest payable on the obligation is payable

(I) in respect of a period ending not later than the earliest day on which, under the terms of the obligation determined as of the time it was entered into, the obligee would be entitled to demand payment of the principal amount of the obligation or the amount outstanding as or on account of the principal amount thereof, as the case may be, if the terms of the obligation determined as of that time provided for that payment on or after a specified day, or

(II) in respect of a period ending not later than one year after the time the obligation was entered into, in any other case,

(C) any bond, debenture or similar obligation issued after December 20, 1960, for the issue of which arrangements were made on or before that day with a dealer in securities, if the existence of the arrangements for the issue of the bond, debenture or similar obligation can be established by evidence in writing given or made on or before that day,

(D) an amount not repayable in Canadian currency deposited with an institution that was at the time the amount was deposited or at the time the interest was paid or credited a prescribed financial institution,

(E) any obligation entered into in the course of carrying on a business in a country other than Canada, to the extent that the interest payable on the obligation is deductible in computing the income of the payer under Part I from a business carried on by the payer in such a country, or that, but for subsection 18(2) or section 21, would have been so deductible, or

(F) any obligation entered into by the payer after December 20, 1960, on assuming an obligation referred to in clause (A) in consideration or partial consideration for the purchase by the payer of property of the vendor that constituted security for that obligation, if the payer on entering into the obligation undertook to pay the same amount of money on or before the same date and at the same rate of interest as the vendor of the property had undertaken in respect of the obligation under which the vendor was the obligor,

(for the purpose of this subparagraph, interest expressed to be computed by reference to Canadian currency shall be deemed to be payable in Canadian currency),

(iv) **[exemption certificate]** — interest payable on any bond, debenture or similar obligation to a person with whom the payer is dealing at arm's length and to whom a certificate of exemption that is in force on the day the amount is paid or credited was issued under subsection (14),

Proposed Amendment — 212(1)(b)(iv)

(iv) interest payable to a person with whom the payer is dealing at arm's length and to whom a certificate of exemption that is in force on the day the amount is paid or credited was issued under subsection (14),

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 177(1), will amend subpara. 212(1)(b)(iv) to read as above, applicable to 1998 *et seq.*

Technical Notes: Paragraph 212(1)(b) both applies tax under Part XIII to interest paid or credited by a person resident in Canada to a non-resident person and includes a number of exemptions from the tax. One of these, in subparagraph 212(1)(b)(iv), is for interest payable to an arm's length person who holds a valid "certificate of exemption". These certificates, issued by the Minister of National Revenue under the authority provided by subsection 212(14), are generally available to foreign pension entities, charities and certain other tax-exempt entities.

In its current form, subparagraph 212(1)(b)(iv) applies only to interest on a "bond, debenture or similar obligation." Since this restriction may unduly limit the scope of the provision, it is broadened to encompass all forms of indebtedness. It should be noted, however, that no change is made to the requirement that the Canadian-resident payer of the interest and the non-resident recipient deal at arm's length.

(v) **[life insurance business outside Canada]** — interest payable to a person with whom the payer is dealing at arm's length on any obligation entered into in the course of carrying on a life insurance business in a country other than Canada,

(vi) [Repealed under former Act]

(vii) **[5-year corporate debt]** — interest payable by a corporation resident in Canada to a person with whom that corporation is dealing at arm's length on any obligation where the evidence of indebtedness was issued by that corporation after June 23, 1975 if under the terms of the obligation or any agreement relating thereto the corporation

may not under any circumstances be obliged to pay more than 25% of

(A) where the obligation is one of a number of obligations that comprise a single debt issue of obligations that are identical in respect of all rights (in equity or otherwise, either immediately or in the future and either absolutely or contingently) attaching thereto, except as regards the principal amount thereof, the total of the principal amount of those obligations, or

(B) in any other case, the principal amount of the obligation,

within 5 years from the date of issue of that single debt issue or that obligation, as the case may be, except

(C) in the event of a failure or default under the said terms or agreement,

(D) if the terms of the obligation or any agreement relating thereto become unlawful or are changed by virtue of legislation or by a court, statutory board or commission,

(E) if the person exercises a right under the terms of the obligation or any agreement relating thereto to convert the obligation into, or exchange the obligation for, a prescribed security, or

(F) in the event of the person's death;

Proposed Amendment — 212(1)(b)(vii) — No novation when authorized foreign bank assumes debts of subsidiary

Letter from Dept. of Finance, December 18, 2001: See under 142.7(8)(d).

(viii) **[mortgage on real property outside Canada]** — interest payable on a mortgage, hypothecary claim or similar obligation secured by, or on an agreement for sale or similar obligation with respect to, real property situated outside Canada or an interest in any such real property except to the extent that the interest payable on the obligation is deductible in computing the income of the payer under Part I from a business carried on by the payer in Canada or from property other than real property situated outside Canada,

Proposed Amendment — 212(1)(b)(viii)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 267(1), will amend subpara. 212(1)(b)(viii) by substituting "such real property, or to immovables situated outside Canada or a real right in any such immovable," for "such real property" and "real or immovable property" for "real property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(ix) **[deposit in foreign branch of Canadian bank]** — interest payable in Canadian currency on account of an amount in Canadian currency deposited in a country other than Canada with a branch or office of a payer who

(A) is, or is eligible to become, a member of the Canadian Payments Association, or

(B) is a credit union that is a shareholder or member of a body corporate or organization that is a central for the purposes of the *Canadian Payments Association Act*,

to a person with whom the payer is dealing at arm's length,

(x) **[prescribed international organization]** — interest payable to a prescribed international organization or agency,

(xi) **[International Banking Centre deposit]** — interest payable on an amount deposited with a prescribed financial institution for the period during which the amount was an eligible deposit (within the meaning assigned by subsection 33.1(1)) of the institution, and

(xii) **[securities lending arrangement]** — interest payable under a securities lending arrangement by a lender under the arrangement that is a financial institution prescribed for the purpose of clause (iii)(D), or a registered securities dealer resident in Canada, on money provided to the lender either as collateral or as consideration for the particular security lent or transferred under the arrangement where

Proposed Amendment — 212(1)(b)(xii) opening words

(xii) interest payable by a lender under a securities lending arrangement, if the lender and the borrower deal with each other at arm's length and the lender is a financial institution prescribed for the purpose of clause (iii)(D), or a registered securities dealer resident in Canada, on money provided to the lender either as collateral or as consideration for the particular security lent or transferred under the arrangement where

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 177(2), will amend the opening words of subpara. 212(1)(b)(xii) to read as above, applicable to arrangements made after 2002.

Technical Notes: Subparagraph 212(1)(b)(xii) provides an exemption for interest payable under certain securities lending arrangements by registered or licensed securities dealers resident in Canada. Given the current definition of "securities lending arrangement" in subsection 260(1), this exemption is only available to dealers who are dealing at arm's length with the other parties to the arrangements.

Consequential to the amendments to the definition of "securities lending arrangement" in subsection 260(1), which now includes certain arrangements between non-arm's length parties, the amendment to subparagraph 212(1)(b)(xii) confirms that the exemption is limited to arm's length arrangements.

(A) the particular security is an obligation referred to in subparagraph (ii) or an obligation of the government of any country, province, state, municipality or other political subdivision,

(B) the amount of money so provided at any time during the term of the arrangement does not exceed 110% of the fair market value at that time of the particular security, and

(C) the arrangement was neither intended, nor made as a part of a series of securities lending arrangements, loans or other transactions that was intended, to be in effect for more than 270 days,

Proposed Addition — 212(1)(b)(xiii)

(xiii) **[securities lending arrangement]** — an amount paid or credited under a securities lending arrangement that is deemed by subpara-

graph 260(8)(c)(i) to be a payment made by a borrower to a lender of interest if

(A) the securities lending arrangement was entered into by the borrower in the course of carrying on a business outside Canada, and

(B) the security that is transferred or lent to the borrower under the securities lending arrangement is described in paragraph (b) or (c) of the definition "qualified security" in subsection 260(1) and issued by a non-resident issuer;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 177(3), will add subpara. 212(1)(b)(xiii), applicable to securities lending arrangements entered into after May 1995, except that in its application to arrangements made before 2002, the reference to "subparagraph 260(8)(c)(i)" in the subpara. is to be read as "subparagraph 260(8)(a)(i)".

Technical Notes: Securities lending arrangements often include an obligation for one party to compensate the other for certain income amounts. In the absence of special rules, these compensation payments may be subject to tax under Part XIII if they are paid by a person resident in Canada to a non-resident person.

New subparagraph 212(1)(b)(xiii) exempts from tax under Part XIII certain interest compensation payments made to a non-resident by a borrower resident in Canada under a securities lending arrangement. For this exemption to apply,

- the payments must be made by the borrower in the course of carrying on its business outside of Canada; and
- the borrowed securities must be issued by a non-resident issuer.

Letter from Dept. of Finance, February 18, 2002: See under 212(2.1).

and for the purpose of this paragraph, where interest is payable on an obligation, other than a prescribed obligation, and all or any portion of the interest is contingent or dependent on the use of or production from property in Canada or is computed by reference to revenue, profit, cash flow, commodity price or any other similar criterion or by reference to dividends paid or payable to shareholders of any class of shares of the capital stock of a corporation, the interest shall be deemed not to be interest described in subparagraphs (ii) to (vii) and (ix);

Related Provisions: 134.1 — Transitional rule re elimination of NROs; 142.7(8)(d) — Application of 212(1)(b)(vii) on conversion of foreign bank subsidiary to branch; 212(3) — Replacement obligations issued by corporations in financial difficulty; 212(6)–(8) — Reduced tax on interest on pre-1961 provincial bonds; 212(9)(c) — Exemption for interest received by mutual fund trust and paid to non-resident; 212(13.3)(a) — Authorized foreign bank deemed resident in Canada; 212(15) — CD-insured obligations deemed not to be guaranteed by Government of Canada; 212(18) — Return by financial institutions; 212(19) — Tax on dealers re excess amount exempted under securities lending arrangement; 214(2) — Income and capital combined; 214(3)(e) — Deemed payments; 214(4) — Securities; 214(6) — Deemed interest; 214(7), (7.1) — Sale of obligation; 214(11) — Application to payments deemed made by NRO; 214(15) — Deemed interest; 218 — Loan to wholly-owned subsidiary; 240(2) — Interest coupon to be identified; 248(4.1) — Meaning of "real right" in 212(1)(b)(viii); 248(10) — Series of transactions; 248(12) — Identical properties; 260(8) — Securities lending arrangement — deemed payment of interest; Canada-U.S. Tax Treaty:Art. XI — Taxation of interest. See additional Related Provisions at beginning of 212(1).

History: The opening words of cl. 212(1)(b)(ii)(C) and subpara. 212(1)(b)(viii) amended by 2001, c. 17, subsecs. 226(1), (2), to add ", hypothecary claims" and ", hypothecary claim" respectively, in force June 14, 2001.

Subcl. 212(1)(b)(ii)(C)(IV) amended by the said c. 17, subsec. 173(1), applicable to amounts paid or credited after 1998. Subcl. 212(1)(b)(ii)(C)(IV) formerly read:

(IV) of a corporation, commission or association not less than 90% of the shares or capital of which is owned by Her Majesty in right of a province or by a Canadian municipality, or of a subsidiary wholly-owned corporation that is subsidiary to such a corporation, commission or association, or

The opening words of subpara. 212(1)(b)(xii) amended by 1995, c. 21, subsec. 73(1), applicable to securities lending arrangements entered into after May 28, 1993. The opening words formerly read:

(xii) interest payable under a securities lending arrangement by a lender under the arrangement that is a financial institution prescribed for the purpose of clause (iii)(D), or a person resident in Canada who is registered or licensed under the laws of a province to trade in securities, on money provided to the lender either as collateral or as consideration for the particular security lent or transferred under the arrangement where

Subpara. 212(1)(b)(xii) added by 1994, c. 21, subsec. 97(1), applicable to securities lending arrangements entered into after May 28, 1993.

Subpara. 212(1)(b)(iv) amended, and cl. (vii)(F) added, by 1994, c. 7, Sch. VIII (1993, c. 24), subsecs. 123(1) and (2), applicable (by subsec. 123(5) as amended by 1994, c. 21, s. 137) to amounts paid or credited after 1991 except that in its application to amounts paid or credited to a person in respect of obligations acquired before 1992 by the person or by a person related to the person, subpara. (b)(iv) applies with respect to amounts paid or credited after 1994. That subpara. formerly read:

(iv) interest payable on any bond, debenture or similar obligation issued after June 13, 1963 to a person to whom a certificate of exemption that is in force on the day the amount is paid or credited has been issued under subsection (14),

Cl. 212(1)(b)(vii)(C) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 174(1), applicable to amounts paid or credited after 1986. That cl. formerly read:

(C) in the event of a failure or default under the terms of the agreement relating to the obligation,

Selected Cases [para. 212(1)(b)]: *Easter Law Trust (Trustee of) v. R.*, [2005] 1 C.T.C. 2078 (TCC) (Interest included in cost of goods sold of trader not subject to withholding tax); *Kinguk Trawl Inc. v. R.*, [2002] 1 C.T.C. 2229 (TCC) (Interest on credit line advances not exempt from Canadian tax); *General Electric Capital Equipment Finance Inc. v. R.*, [2002] 1 C.T.C. 217 (FCA); aff'g [2000] 4 C.T.C. 82 (FCTD) (Change of most fundamental terms of notes created new obligations); *Munich Reinsurance Co. (Canada Branch) v. R.*, [2000] 2 C.T.C. 2785 (TCC) (Statutory obligation to refund interest not a debenture); *Wenger's Ltd. v. MNR*, [1992] 2 C.T.C. 2479 (TCC) (Late payment "surcharge" on sale price of goods was "interest"); *Pullman v. R.*, [1983] C.T.C. 52 (FCTD) (Interest on loans funded by non-resident but made by resident broker subject to tax); *R. v. Melford Developments Inc.*, [1982] C.T.C. 330 (SCC) (Payments for bank guarantee under Canada-Germany Income Tax Agreement not payments of interest subject to tax); *Cutlers Guild Ltd. v. R.*, [1981] C.T.C. 115 (FCTD) (Interest payments made to non-resident lender subject to tax even when taxpayer carrying on business in Canada); *Associates Corporation of North America v. R.*, [1980] C.T.C. 215 (FCA) (Guarantee fees not considered interest); *R. v. Immobiliaire Canada Ltd.*, [1977] C.T.C. 481 (FCTD) (Payment to transferor does not represent payment of interest upon purchase of obligation with accrued interest owing); *Rodmon Construction Inc. v. R.*, [1975] C.T.C. 73 (FCTD) (Taxpayer not liable for tax on payments made to vendor where payments did not include interest); *Swiss Bank Corp. v. MNR*, [1972] C.T.C. 614 (SCC) (Exemption from withholding tax on interest paid in foreign currency disallowed upon failure to meet arm's length requirement of provision).

Regulations: 202(1)(b) (information return); 806, 806.1 (prescribed international organization or agency); 806.2 (prescribed obligation); 1600 (prescribed countries for ITAR 10(4)); 6208 (prescribed security); 7900 (prescribed financial institutions).

Remission Orders: *Churchill Falls (Labrador) Corporation Withholding Tax Remission Order*, P.C. 1968-832 (no withholding on interest on first mortgage bonds sold in the U.S. by Churchill Falls (Labrador) Corp.).

I.T. Application Rules: 10(5) (certificate of exemption in force since 1971).

Interpretation Bulletins: IT-155R3: Exemption from non-resident tax or interest payable on certain bonds, debentures, notes, hypothecs or similar obligations; IT-265R3: Payments of income and capital combined (archived); IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs; IT-360R2: Interest payable in a foreign currency; IT-361R3: Exemption from Part XIII tax on interest payments to non-residents; IT-430R3: Life insurance proceeds received by a provate corporation or a partnership as a consequence. See also at end of s. 212.

Information Circulars: See at beginning of subsec. 212(1).

I.T. Technical News: 9 (exemption from withholding tax under 212(1)(b)(vii)(C)); 11 (paragraph 212(1)(b) — postamble); 16 (*Crown Forest* case); 30 (withholding tax on interest).

Advance Tax Rulings: ATR-49: Long-term foreign debt; ATR-69: Withholding tax on interest paid to non-resident persons;.

Forms: See at beginning of subsec. 212(1).

(c) **estate or trust income** — income of or from an estate or a trust to the extent that the amount

(i) is included in computing the income of the non-resident person under subsection 104(13), except to the extent that the amount is deemed by subsection 104(21) to be a taxable capital gain of the non-resident person, or

(ii) can reasonably be considered (having regard to all the circumstances including the terms and conditions of the estate or trust arrangement) to be a distribution of, or derived from, an amount received by the estate or trust as, on account of, in lieu of payment of or in satisfaction of, a dividend on a share of the capital stock of a corporation resident in Canada, other than a taxable dividend;

Related Provisions: 94(3)(a)(ix) [proposed] — Application to trust deemed resident in Canada; 104(11) — Dividend received from NRO; 132(5.1), (5.2) — Deemed dividend on distribution of gain derived from taxable Canadian property by mutual fund trust; 212(2)(b) — Withholding tax on capital dividends; 212(9) — Exemptions; 212(10) — Trust established before 1949; 212(11) — Payment to a beneficiary as income of trust; 212(13) — Non-resident payor deemed resident in Canada; 212(17) — No withholding tax on payments from employee benefit plan or employee trust; 214(3)(f), (f.1) — Deemed payments; 218.3(2)(c) — Withholding tax on mutual fund distributions to non-residents; 250.1(b) — Calculation of income of non-resident person; Canada-U.S. Tax Treaty:Art. XXII:2 — Estate or trust income. See additional Related Provisions at beginning of subsec. 212(1).

History: Subpara. 212(1)(c)(i) amended by 2001, c. 17, subsec. 173(2), applicable to amounts paid or credited after December 17, 1999. Subpara. 212(1)(c)(i) formerly read:

(i) would, if the non-resident person were a person resident in Canada to whom Part I applied, be included in computing the income of the non-resident person under subsection 104(13), except to the extent that the amount is deemed by subsection 104(21) to be a taxable capital gain of the non-resident person, or

Para. 212(1)(c) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 174(2), applicable to amounts paid or credited (or deemed under the Act to have been paid or credited) by an estate or a trust after July 13, 1990. Para. 212(1)(c) formerly read:

(c) estate or trust income — income of or from an estate or trust to the extent that the amount would, if the non-resident person were a person resident in Canada to whom Part I was applicable, be included in computing the income of the non-resident person by reason of subsection 104(13), except to the extent that the amount is deemed by subsection 104(21) to be a taxable capital gain of the non-resident person;

Regulations: 202(1)(c) (information return).

Interpretation Bulletins: IT-342R: Trusts — income payable to beneficiaries; IT-465R: Non-resident beneficiaries of trusts; IT-500R: RRSPs — death of an annuitant; IT-531: Eligible funeral arrangements. See also at end of s. 212.

Information Circulars: See at beginning of subsec. 212(1).

Forms: See at beginning of subsec. 212(1).

(d) **rents, royalties, etc.** — rent, royalty or similar payment, including, but not so as to restrict the generality of the foregoing, any payment

(i) for the use of or for the right to use in Canada any property, invention, trade-name, patent, trademark, design or model, plan, secret formula, process or other thing whatever,

(ii) for information concerning industrial, commercial or scientific experience where the total amount payable as consideration for that information is dependent in whole or in part on

(A) the use to be made of, or the benefit to be derived from, that information,

(B) production or sales of goods or services, or

(C) profits,

(iii) for services of an industrial, commercial or scientific character performed by a non-resident person where the total amount payable as consideration for those services is dependent in whole or in part on

(A) the use to be made of, or the benefit to be derived from, those services,

(B) production or sales of goods or services, or

(C) profits,

but not including a payment made for services performed in connection with the sale of property or the negotiation of a contract,

(iv) made pursuant to an agreement between a person resident in Canada and a non-resident person under which the non-resident person agrees not to use or not to permit any other person to use any thing referred to in subparagraph (i) or any information referred to in subparagraph (ii), or

Proposed Amendment — 212(1)(d)(iv)

(iv) unless paragraph (i) applies to the amount, made pursuant to an agreement between a person resident in Canada and a non-resident person under which the non-resident person agrees not to use or not to permit any other person to use any thing referred to in subparagraph (i) or any information referred to in subparagraph (ii), or

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 177(5), will amend subpara. 212(1)(d)(iv) to read as above, applicable to amounts paid or credited after October 7, 2003.

Technical Notes: Paragraph 212(1)(d) describes various amounts, in the nature of rent, royalties and similar payments, on which tax under Part XIII of the Act is imposed. Subparagraphs 212(1)(d)(vi) through (xi) list payments to which the tax does not apply. Three changes have been made to paragraph 212(1)(d).

First, subparagraph 212(1)(d)(iv), which concerns payments made in respect of an agreement between a person resident in Canada and a non-resident person under which the non-resident person agrees not to use or not to permit any other person to use any thing referred to in subparagraph (d)(i), is amended so that it does not apply to certain restrictive covenant amounts to which new paragraph 212(1)(i) applies. This change applies to amounts paid or credited after October 7, 2003.

(v) that was dependent on the use of or production from property in Canada whether or not it was an instalment on the sale price of the property, but not including an instalment on the sale price of agricultural land,

but not including

(vi) a royalty or similar payment on or in respect of a copyright in respect of the production or reproduction of any literary, dramatic, musical or artistic work,

(vii) a payment in respect of the use by a railway company or by a person whose principal business is that of a common carrier of property that is railway rolling stock as defined in the definition "rolling stock" in section 2 of the *Railway Act*

(A) if the payment is made for the use of that property for a period or periods not expected to

exceed in the aggregate 90 days in any 12 month period, or

(B) in any other case, if the payment is made pursuant to an agreement in writing entered into before November 19, 1974;

(viii) a payment made under a *bona fide* cost-sharing arrangement under which the person making the payment shares on a reasonable basis with one or more non-resident persons research and development expenses in exchange for an interest in any or all property or other things of value that may result therefrom,

(ix) a rental payment for the use of or the right to use outside Canada any corporeal property,

Proposed Amendment — 212(1)(d)(viii), (ix)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 267(2), will amend subparas. 212(1)(d)(viii) and (ix) by substituting "interest, or for civil law a right," for "interest" in subpara. (viii) and "tangible, or for civil law corporeal, property" for "tangible property" in subpara. (ix), to come into force on Royal Assent.

Technical Notes: See under 12(4).

(x) any payment made to a person with whom the payer is dealing at arm's length, to the extent that the amount thereof is deductible in computing the income of the payer under Part I from a business carried on by the payer in a country other than Canada, or

(xi) a payment made to a person with whom the payer is dealing at arm's length for the use of or the right to use property that is

(A) an aircraft,

(B) furniture, fittings or equipment attached to an aircraft, or

(C) a spare part for property described in clause (A) or (B);

Proposed Addition — 212(1)(d)(xi)(D)

(D) air navigation equipment utilized in the provision of services under the *Civil Air Navigation Services Commercialization Act* or computer software the use of which is necessary for the operation of that equipment that is used by the payer for no other purpose; or

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 177(6), will add cl. 212(1)(d)(xi)(D), applicable to payments made after July 2003.

Technical Notes: Second, subparagraph 212(1)(d)(xi), which currently provides that Part XIII tax does not apply to payments made to an arm's length person for the use of property that is an aircraft, certain attachments thereto as well as to spare parts for such property, is amended, applicable after July 2003, to also apply to air navigation equipment utilized in the provision of services under the *Civil Air Navigation Services Commercialization Act*, and to computer software that is necessary to the operation of that equipment that is used by the payer for no other purpose.

Letter from Dept. of Finance, May 13, 2003:

Dear [xxx]

This letter responds to submissions received in respect of a financing transaction in which [xxx] proposes to enter into a lease leaseback arrangement with U.S. investors in respect of its [xxx].

In order to facilitate this financing structure you have asked that the exemption from non-resident withholding tax presently available for rent payments made in respect of [aircraft] and attached equipment be extended to [xxx]. You have submitted that such an exemption would be consistent with the current exemption for [aircraft] and is required to facilitate [xxx] participation in a financing structure that delivers U.S. tax benefits for investors outside of Canada.

Based on your assurance that the proposed lease financing transaction referred to in your submission meets all of the requirements of the U.S. Internal Revenue Code, I am prepared to recommend Parliament approve an amendment to the *Income Tax Act* to provide for an expansion of the list of equipment, presently eligible for exemption from non-resident withholding tax under section 212(1)(d) of the *Income Tax Act*, to include [xxx] utilized pursuant to the [xxx]. If Parliament approves this recommendation, it would have effect for the 2003 and subsequent taxation years.

Yours very truly,

John Manley
Minister of Finance

Proposed Addition — 212(1)(d)(xii)

(xii) an amount to which subsection (5) would apply if that subsection were read without reference to "to the extent that the amount relates to that use or reproduction";

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 177(7), will add subpara. 212(1)(d)(xii), applicable to 2000 *et seq.*

Technical Notes: Third, new subparagraph 212(1)(d)(xii) clarifies that subsection 212(5), which is amended as described below, is the sole provision in Part XIII that applies the tax to payments for rights in or to use a film or video that is used or reproduced in Canada. This change applies for the 2000 and subsequent taxation years.

Related Provisions: 212(5) — Motion picture films; 212(9)(b) — Exemption for royalty payment received by trust and paid to non-resident; 216 — Alternative re rents and timber royalties; Canada-U.S. Tax Treaty:Art. VI — Income from real property; Art. XII — Royalties. See additional Related Provisions at beginning of subsec. 212(1).

History: Subpara. 212(1)(d)(xi) added by 1994, c. 7, Sch. VI (1992, c. 29), s. 10, applicable to payments made after December 6, 1991 under agreements entered into after 1990.

Selected Cases [para. 212(1)(d)]: *Transocean Offshore Ltd. v. R.*, [2005] 2 C.T.C. 183 (FCA); aff'g [2004] 5 C.T.C. 2133 (TCC) (Payment to replace rent otherwise payable was "in lieu of" rent); *Zainul & Shazma Holdings Ltd. v. R.*, 2004 CarswellNat 3342 (TCC) (Up-front licence fee not a rent, royalty or similar payment); *Syspro Software Ltd. v. R.*, [2003] 4 C.T.C. 3001 (TCC) (Software is literary work); *Angoss International Ltd. v. R.*, [1999] 2 C.T.C. 2259 (TCC) (Copyright payments for computer software exempt from withholding tax); *Hasbro Canada Inc. v. R.*, [1999] 1 C.T.C. 2512 (TCC) (Payments to non-resident purchasing agents were for services, not information); *Entre Computer Centers Inc. v. Canada*, [1997] 1 C.T.C. 2291 (TCC) (Commercial reality more important than nomenclature used to describe arrangements); *Crown Forest Industries Ltd. v. Canada*, [1992] 2 C.T.C. 1 (FCTD) (Corporation liable to, but exempt from, US tax was resident in US under treaty by virtue of place of management and business); *Jarlan v. R.*, [1984] C.T.C. 375 (FCTD) (Awards for invention paid to non-resident considered income from employment, not royalties); *R. v. Saint John Shipbuilding and Dry Dock Co. Ltd.*, [1980] C.T.C. 352 (FCA) (Payments for privilege of using property indefinitely to non-resident corporation not subject to tax when not rentals or royalties); *R. v. Farmparts Distributing Ltd.*, [1980] C.T.C. 205 (FCA) (Although payments for use of trade names and logos considered taxable, payment for right to buy and resell machine not subject to tax); *MNR v. Burland (C.I.) Properties Ltd.*, 68 D.T.C. 5220 (SCC) (Property tax payments paid for benefit of non-resident landowner subject to tax).

Regulations: 202(1)(d) (information return).

Interpretation Bulletins: IT-303: Know-how and similar payments to non-residents; IT-393R2: Elections re tax on rents and timber royalties — non-residents; IT-438R2: Crown charges — resource properties in Canada; IT-494: Hire of ships and aircraft from non-residents. See also at end of s. 212.

Information Circulars: See at beginning of subsec. 212(1).

I.T. Technical News: 23 (computer software); 25 (e-commerce — payments for digital products not royalties).

Forms: See at beginning of subsec. 212(1).

(e) **timber royalties** — a timber royalty in respect of a timber resource property or a timber limit in Canada (which, for the purposes of this Part, includes any con-

sideration for a right under or pursuant to which a right to cut or take timber from a timber resource property or a timber limit in Canada is obtained or derived, to the extent that the consideration is dependent on, or computed by reference to, the amount of timber cut or taken);

Related Provisions: 13(21) — Timber resource property defined; 212(13) — Non-resident payor deemed resident in Canada; 216 — Alternative re rents and timber royalties. See additional Related Provisions at beginning of subsec. 212(1).

Regulations: 202(1)(e) (information return).

Interpretation Bulletins: IT-393R2: Election re tax on rents and timber royalties — non-residents. See also at end of s. 212.

Information Circulars: See at beginning of subsec. 212(1).

Forms: See at beginning of subsec. 212(1).

(f) [Repealed]

History: Para. 212(1)(f) repealed by 1997, c. 25, s. 63, applicable to amounts paid and credited after April 1997. Para. (f) formerly read:

(f) alimony [or support] — alimony or other payment for the support of the non-resident person, children of the non-resident person or both the non-resident person and children of the non-resident person that would, under paragraph 56(1)(b), (c) or (c.1), be included in computing the non-resident person's income if the non-resident person were resident in Canada;

(g) **patronage dividend** — a patronage dividend, that is, a payment made pursuant to an allocation in proportion to patronage as defined by section 135 or an amount that would, under subsection 135(7), be included in computing the non-resident person's income if that person were resident in Canada;

Related Provisions: See at beginning of subsec. 212(1).

Regulations: 202(1)(g) (information return).

Interpretation Bulletins: IT-362R: Patronage dividends. See also at end of s. 212.

Information Circulars: See at beginning of subsec. 212(1).

Forms: See at beginning of subsec. 212(1).

(h) **pension benefits** — a payment of a superannuation or pension benefit, other than

(i), (ii) [Repealed]

(iii) an amount or payment referred to in subsection 81(1) to the extent that that amount or payment would not, if the non-resident person had been resident in Canada throughout the taxation year in which the payment was made, be included in computing that person's income,

(iii.1) the portion of the payment that is transferred by the payer on behalf of the non-resident person, pursuant to an authorization in prescribed form, to a registered pension plan, registered retirement savings plan or registered retirement income fund and that

(A) because of subsection 146(21) or 147.3(9) would not, if the non-resident person had been resident in Canada throughout the taxation year in which the payment was made, be included in computing the non-resident person's income, or

(B) by reason of paragraph 60(j) or (j.2) would, if the non-resident person had been resident in Canada throughout the year, be deductible in computing the non-resident person's income for the year,

(iii.2) an amount referred to in paragraph 110(1)(f) to the extent that the amount would, if the non-resident person had been resident in Canada throughout the taxation year in which the amount was paid, be deductible in computing that person's taxable income or that of the spouse or common-law partner of that person,

(iv) in the case of a payment described in section 57, that portion of the payment that would, by virtue of that section, not be included in the recipient's income for the taxation year in which it was received, if the recipient were resident in Canada throughout that year, or

(iv.1) the portion of the payment that is transferred by the payer on behalf of the non-resident person, pursuant to an authorization in prescribed form, to acquire an annuity contract in circumstances to which subsection 146(21) applies,

except such portion, if any, of the payment as may reasonably be regarded as attributable to services rendered by the person, to or in respect of whom the payment is made, in taxation years

(v) during which the person at no time was resident in Canada, and

(vi) throughout which the person was not employed, or was only occasionally employed, in Canada;

Related Provisions: 128.1(10)"excluded right or interest"(a)(viii), (g) — No deemed disposition of pension rights on emigration; 180.2(2)B — Reduction in OAS clawback to reflect non-resident withholding tax; 180.2(4)(b)(ii), 180.2(5)(a)(ii) — No OAS benefits paid to non-resident who has not filed return; 215(5) — Regulations reducing amount to be deducted or withheld; 217 — Election to pay tax under Part I instead of withholding tax; Canada-U.S. Tax Treaty:Art. XVIII — Pensions and annuities. See additional Related Provisions at beginning of subsec. 212(1).

History: Para. 212(1)(h) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subparas. 212(1)(h)(i) and (ii) repealed by 1996, c. 21, s. 55, applicable to payments made after 1995. Subparas. (h)(i) and (ii) formerly read:

(i) a pension or supplement under the *Old Age Security Act* or a similar payment under a law of a province,

(ii) a benefit under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act,

Cl. 212(1)(h)(iii.1)(A) substituted by 1994, c. 21, subsec. 97(2), applicable to payments made after August 1992. That cl. formerly read:

(A) by reason of subsection 147.3(9) would not, if the non-resident person had been resident in Canada throughout the taxation year in which the payment was made, be included in computing the non-resident person's income, or

Subpara. 212(1)(h)(iv.1) added by 1994, c. 21, subsec. 97(3), applicable to payments made after August 1992.

That portion of subpara. 212(1)(h)(iii.1) preceding cl. (A) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 123(3), applicable to payments made after August 29, 1990. Subpara. (iii.1) formerly read:

(iii.1) that portion of the payment that is transferred by the payer on behalf of the non-resident person, pursuant to an authorization in prescribed form, to a registered pension plan or registered retirement savings plan and that

Selected Cases [para. 212(1)(h)]: *Nanne v. R.*, [2000] 1 C.T.C. 2776, [2000] 1 C.T.C. 3002 (TCC) (Hockey players only ocasionally employed in Canada; frequency not affected by predictability or regularity; no withholding tax on pension payments); *R. v. Sun Life Assurance of Canada*, [1980] C.T.C. 418 (FCA) (Employee pension plan amounts transferred to trustee of U.S. subsidiary's plan in respect of relocated employees taxable); *R. v. Cruikshank*, [1977] C.T.C. 344 (FCTD) ("Pension" in Canada-France Tax Convention includes "superannuation or pension benefit" under *Income Tax Act*).

Regulations: 202(2)(a) (information return).

Interpretation Bulletins: IT-76R2: Exempt portion of pension when employee has been a non-resident; IT-397R: Amounts excluded from income — statutory exemptions and certain pensions, allowances and com-

pensations; IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada. See also at end of s. 212.

Information Circulars: See at beginning of 212(1).

Forms: NRTA1: Authorization for non-resident tax exemption. See also at beginning of subsec. 212(1).

(i) [Repealed under former Act]

Proposed Addition — 212(1)(i)

(i) **restrictive covenant [non-competition agreement] amount** — an amount that would, if the non-resident person had been resident in Canada throughout the taxation year in which the amount was received or receivable, be required by paragraph 56(1)(m) or subsection 56.4(2) to be included in computing the non-resident person's income for the taxation year;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 177(8), will add para. 212(1)(i), applicable to amounts paid or credited after October 7, 2003.

Technical Notes: New paragraph 212(1)(i) includes, as amounts subject to the withholding tax, two amounts. First, the withholding tax applies to an amount in respect of a restrictive covenant to which new subsection 56.4(2) applies. Second, the withholding tax applies to an amount to which new paragraph 56(1)(m) applies (an amount received on a bad debt previously deducted).

Related Provisions: 212(13)(g) — Where non-resident makes payment in respect of restrictive covenant.

(j) **benefits** — any benefit described in any of subparagraphs 56(1)(a)(iii) to (vi), any amount described in paragraph 56(1)(x) or (z) (other than an amount transferred under circumstances in which subsection 207.6(7) applies) or the purchase price of an interest in a retirement compensation arrangement;

Related Provisions: 128.1(10)"excluded right or interest"(a)(ix), (h) — No deemed disposition of rights on emigration; 214(3)(b.1) — Deemed payments; 215(5) — Regulations reducing amount to be deducted or withheld; 217 — Election to pay tax under Part I instead of withholding tax. See additional Related Provisions at beginning of subsec. 212(1).

History: Para. 212(1)(j) amended by 1998, c. 19, subsec. 216(1), applicable to amounts paid or credited after 1995. Para. 212(1)(j) formerly read:

(j) benefits — any benefit described in any of subparagraphs 56(1)(a)(iii) to (vi), any amount described in paragraph 56(1)(x) or (z) or the purchase price of an interest in a retirement compensation arrangement;

Regulations: 202(2)(b) (information return).

Interpretation Bulletins: IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada. See also at end of s. 212.

Information Circulars: See at beginning of subsec. 212(1).

Forms: See at beginning of subsec. 212(1).

(j.1) **retiring allowances** — a payment of any allowance described in subparagraph 56(1)(a)(ii), except

(i) such portion, if any, of the payment as may reasonably be regarded as attributable to services rendered by the person, to or in respect of whom the payment is made, in taxation years

(A) during which the person at no time was resident in Canada, and

(B) throughout which the person was not employed, or was only occasionally employed, in Canada, and

(ii) the portion of the payment transferred by the payer on behalf of the non-resident person pursuant to an authorization in prescribed form to a registered pension plan or to a registered retirement savings plan under which the non-resident person is the annuitant (within the meaning assigned by subsection 146(1)) that would, if the non-resident person had been resident in Canada throughout the year, be deductible in computing the income of the non-resident person by virtue of paragraph 60(j.1);

Related Provisions: 128.1(10)"excluded right or interest"(d) — No deemed disposition of right to retiring allowance on emigration; 215(5) — Regulations reducing deduction or withholding; 217 — Election to pay tax under Part I instead of withholding tax. See additional Related Provisions at beginning of subsec. 212(1).

Regulations: 202(2)(b) (information return).

Interpretation Bulletins: IT-337R4: Retiring allowances; IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada. See also at end of s. 212.

Information Circulars: See at beginning of subsec. 212(1).

Forms: NRTA1: Authorization for non-resident tax exemption. See also at beginning of subsec. 212(1).

(k) **supplementary unemployment benefit plan payments** — a payment by a trustee under a registered supplementary unemployment benefit plan;

Related Provisions: 128.1(10)"excluded right or interest"(a)(xi) — No deemed disposition of rights on emigration; 212(13)(e) — Payment by non-resident deemed made by resident of Canada; 215(5) — Regulations reducing amount to be deducted or withheld; 217 — Election to pay tax under Part I instead of withholding tax. See additional Related Provisions at beginning of 212(1).

Regulations: 202(2)(c) (information return).

Interpretation Bulletins: IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada. See also at end of s. 212.

Information Circulars: See at beginning of subsec. 212(1).

Forms: See at beginning of subsec. 212(1).

(l) **registered retirement savings plan payments** — a payment out of or under a registered retirement savings plan or a plan referred to in subsection 146(12) as an "amended plan" that would, if the non-resident person had been resident in Canada throughout the taxation year in which the payment was made, be required by section 146 to be included in computing the income of the non-resident person for the year, other than the portion thereof that

(i) has been transferred by the payer on behalf of the non-resident person pursuant to an authorization in prescribed form

(A) to a registered retirement savings plan under which the non-resident person is the annuitant (within the meaning assigned by subsection 146(1)),

(B) to acquire an annuity described in subparagraph 60(l)(ii) under which the non-resident person is the annuitant, or

(C) to a carrier (within the meaning assigned by subsection 146.3(1)) as consideration for a registered retirement income fund under which the non-resident person is the annuitant (within the meaning assigned by subsection 146.3(1)), and

(ii) would, if the non-resident person had been resident in Canada throughout the year, be deductible in computing the income of the non-resident person for the year by virtue of paragraph 60(l);

Related Provisions: 128.1(10)"excluded right or interest"(a)(i) — No deemed disposition of rights on emigration; 146(16) — RRSP — deduction on transfer of funds; 212(13)(e) — Payment by non-resident deemed made by resident of Canada; 214(3)(c) — Deemed payments; 215(5) — Regulations reducing amount to be deducted or withheld; 217 — Election to pay tax under Part I instead of withholding tax; Canada-U.S. Tax Treaty:Art. XXIX:5 — Election for income accruing in RRSP not to be taxed until paid out; *Income Tax Conventions Interpretation Act* 5.1 — Definition of "pension" for tax treaty purposes. See additional Related Provisions at beginning of subsec. 212(1).

Regulations: 202(2)(d) (information return).

Interpretation Bulletins: IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada; IT-500R: RRSPs — death of an annuitant. See also at end of s. 212.

Information Circulars: 72-22R9: Registered retirement savings plans. See also at beginning of subsec. 212(1).

Forms: NRTA1: Authorization for non-resident tax exemption. See also at beginning of subsec. 212(1).

(m) **deferred profit sharing plan payments** — a payment under a deferred profit sharing plan or a plan referred to in subsection 147(15) as a "revoked plan" that would, if the non-resident person had been resident in Canada throughout the taxation year in which the payment was made, be required by section 147, if it were read without reference to subsections 147(10.1) and (20), to be included in computing the non-resident person's income for the year, other than the portion thereof that is transferred by the payer on behalf of the non-resident person, pursuant to an authorization in prescribed form, to a registered pension plan or registered retirement savings plan and that

(i) by reason of subsection 147(20) would not, if the non-resident person had been resident in Canada throughout the year, be included in computing the non-resident person's income, or

(ii) by reason of paragraph 60(j.2) would, if the non-resident person had been resident in Canada throughout the year, be deductible in computing the non-resident person's income for the year;

Related Provisions: 128.1(10)"excluded right or interest"(a)(iv) — No deemed disposition of rights on emigration; 212(13)(e) — Payment by non-resident deemed made by resident of Canada; 214(3)(d) — Deemed payments; 215(5) — Regulations reducing amount to be deducted or withheld; 217 — Election to pay tax under Part I instead of withholding tax. See additional Related Provisions at beginning of subsec. 212(1).

Regulations: 202(2)(e) (information return).

Interpretation Bulletins: IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada. See also at end of s. 212.

Information Circulars: See at beginning of subsec. 212(1).

Forms: NRTA1: Authorization for non-resident tax exemption. See also at beginning of subsec. 212(1).

(n) **income-averaging annuity contract payments** — a payment under an income-averaging annuity contract, any proceeds of the surrender, cancellation, redemption, sale or other disposition of an income-averaging annuity contract, or any amount deemed by subsection 61.1(1) to have been received by the non-resident person as proceeds of the disposition of an income-averaging annuity contract;

Related Provisions: 61 — IAACs; 128.1(10)"excluded right or interest"(f)(ii) — No deemed disposition of rights on emigration; 212(13)(e) — Payment by non-resident deemed made by resident of Canada; 214(3)(b) — Deemed payments. See additional Related Provisions at beginning of 212(1).

Selected Cases [para. 212(1)(n)]: *Scott Estate v. R.*, [1988] 1 C.T.C. 45 (FCTD) ("Life annuity" in Canada-U.S. Tax Convention does not include amounts for termination of income-averaging annuity contract).

Regulations: 202(2)(f) (information return).

Interpretation Bulletins: IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada. See also at end of s. 212.

Information Circulars: See at beginning of subsec. 212(1).

Forms: See at beginning of subsec. 212(1).

(o) **other annuity payments** — a payment under an annuity contract (other than a payment in respect of an annuity issued in the course of carrying on a life insurance business in a country other than Canada) to the extent of the amount in respect of the interest of the non-resident person in the contract that, if the non-resident person had been resident in Canada throughout the taxation year in which the payment was made,

(i) would be required to be included in computing the income of the non-resident person for the year, and

(ii) would not be deductible in computing that income;

Related Provisions: 56(1)(d) — Annuity payments required to be included in income of resident; 128.1(10)"excluded right or interest"(f)(i) — No deemed disposition of rights on emigration; 240(1) — Taxable and non-taxable obligations defined. See also at beginning of 212(1).

Regulations: 202(2)(g) (information return).

Interpretation Bulletins: IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada. See also at end of s. 212.

Information Circulars: See at beginning of subsec. 212(1).

Forms: See at beginning of subsec. 212(1).

(p) **payments from RHOSP** — a payment out of or under a fund, plan or trust that was at the end of 1985 a registered home ownership savings plan (within the meaning assigned by paragraph 146.2(1)(h) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1985 taxation year), other than

(i) the portion of the payment that is a refund of an excess described in paragraph 146.2(7)(a) of that Act (as it read in its application to the 1985 taxation year) made on or before April 30, 1986, and

(ii) the portion of the payment that can reasonably be considered to be income of the fund, plan or trust after 1985;

Related Provisions: 214(3)(g) — Deemed payments. See additional Related Provisions at beginning of 212(1).

Regulations: 202(2)(h) (information return).

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada. See also at end of s. 212.

Information Circulars: See at beginning of subsec. 212(1).

Forms: See at beginning of subsec. 212(1).

(q) **registered retirement income fund payments** — a payment out of or under a registered retirement income fund that would, if the non-resident person had been resident in Canada throughout the taxation year in which the payment was made, be required by section 146.3 to be included in computing the non-resident person's income for the year, other than the portion thereof that

(i) has been transferred by the payer on behalf of the non-resident person pursuant to an authorization in prescribed form

(A) to a registered retirement savings plan under which the non-resident person is the annuitant (within the meaning assigned by subsection 146(1)),

(B) to acquire an annuity described in subparagraph 60(l)(ii) under which the non-resident person is the annuitant, or

(C) to a carrier (within the meaning assigned by subsection 146.3(1)) as consideration for a registered retirement income fund under which the non-resident person is the annuitant (within the meaning assigned by subsection 146.3(1)), and

(ii) would, if the non-resident person had been resident in Canada throughout the year, be deductible in computing the non-resident person's income for the year by reason of paragraph 60(l);

Related Provisions: 128.1(10)"excluded right or interest"(a)(ii) — No deemed disposition of rights on emigration; 212(13)(e) — Payment by non-resident deemed made by resident of Canada; 214(3)(i) — Deemed payments; 215(5) — Regulations reducing amount to be deducted or withheld; 217 — Election to pay tax under Part I instead of withholding tax. See additional Related Provisions at beginning of 212(1).

Regulations: 202(2)(i) (information return).

Interpretation Bulletins: IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada. See also at end of s. 212.

Information Circulars: See at beginning of subsec. 212(1).

Forms: NRTA1: Authorization for non-resident tax exemption. See also at beginning of subsec. 212(1).

(r) **registered education savings plan** — a payment that is

(i) required by paragraph 56(1)(q) to be included in computing the non-resident person's income under Part I for a taxation year, and

(ii) not required to be included in computing the non-resident person's taxable income or taxable income earned in Canada for the year;

Related Provisions: 214(3)(j) — Deemed payments. See additional Related Provisions at beginning of subsec. 212(1).

History: Para. 212(1)(r) amended by 1998, c. 19, s. 62, applicable to amounts paid or credited after February 28, 1979. Para. 212(1)(r) formerly read:

(r) a payment in respect of a registered education savings plan that would, if the non-resident person had been resident in Canada throughout the taxation year in which the payment was made, be required by section 146.1 to be included in computing the person's income for the year;

Regulations: 202(2)(j) (information return).

Information Circulars: See at beginning of subsec. 212(1).

Forms: See at beginning of subsec. 212(1).

(s) **home insulation or energy conversion grants** — a grant under a prescribed program of the Government of Canada relating to home insulation or energy conversion;

Related Provisions: See at beginning of subsec. 212(1).

Regulations: 202(2)(k) (information return).

Information Circulars: See at beginning of subsec. 212(1).

Forms: See at beginning of subsec. 212(1).

(t) **NISA Fund No. 2 payments** — a payment out of a NISA Fund No. 2 to the extent that that amount would, if Part I applied, be required by subsection 12(10.2) to be included in computing the person's income for a taxation year;

Related Provisions: 128.1(10)"excluded right or interest"(i) — No deemed disposition on emigration; 214(3)(l) — Deemed payments. See additional Related Provisions at beginning of subsec. 212(1).

History: Para. 212(1)(t) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 123(4), applicable to payments made after 1990.

Regulations: 202(2.1) (information return).

Information Circulars: See at beginning of subsec. 212(1).

Forms: See at beginning of subsec. 212(1).

(u) **amateur athlete trust payments** — a payment in respect of an amateur athlete trust that would, if Part I applied, be required by section 143.1 to be included in computing the person's income for a taxation year; or

Related Provisions: 214(3)(k) — Deemed payments. See additional Related Provisions at beginning of subsec. 212(1).

History: Para. 212(1)(u) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 123(4), applicable to payments made after 1991.

Information Circulars: See at beginning of subsec. 212(1).

(v) **payments under an eligible funeral arrangement** — a payment made by a custodian (within the meaning assigned by subsection 148.1(1)) of an arrangement that was, at the time it was established, an eligible funeral arrangement, to the extent that such amount would, if the non-resident person were resident in Canada, be included because of subsection 148.1(3) in computing the person's income.

Related Provisions: 212(13)(e) — Payment by non-resident deemed made by resident of Canada.

History: Para. 212(1)(v) added by 1995, c. 21, subsec. 64(1), applicable to amounts paid or credited after October 21, 1994.

Regulations: 202(2)(m) (information return); 204(3)(d.1) (cemetery care trust need not file T3 return).

Information Circulars: IT-531: Eligible funeral arrangements. See at beginning of subsec. 212(1).

Related Provisions, I.T. Application Rules, Information Circulars, I.T Technical News, Forms — subsec. 212(1): See at beginning of subsec. 212(1), before para. (a).

(2) Tax on dividends — Every non-resident person shall pay an income tax of 25% on every amount that a corporation resident in Canada pays or credits, or is deemed by Part I or Part XIV to pay or credit, to the non-resident person as, on account or in lieu of payment of, or in satisfaction of,

(a) a taxable dividend (other than a capital gains dividend within the meaning assigned by subsection 130.1(4), 131(1) or 133(7.1)), or

(b) a capital dividend.

Related Provisions: 40(3.7) — Stop-loss rule where non-resident has received dividends; 84 — Deemed dividends; 94(3)(a)(ix) [proposed] — Application to trust deemed resident in Canada; 128.1(1)(c.1) — Deemed dividend to non-resident corporation before it becomes resident in Canada; 131(5.1), (5.2) — Deemed dividend on distribution of gain derived from taxable Canadian property by mutual fund corporation; 139.1(4)(f)(ii) — Dividend deemed received on demutualization of insurance corporation; 212(1)(b)(xiii), 212(2.1) — Securities lending arrangement — no tax on dividend compensation payments and deemed dividends; 212(1)(c)(ii) — Estate or trust income derived from capital dividend; 212(13.3)(a) — Authorized foreign bank deemed resident in Canada; 212.1, 212.2 — Deemed dividends on surplus strips by non-resident; 213(1) — Where tax not payable; 214(1) — No deductions; 214(3)(a) — Deemed payments; 214(12) — Application of 214(2); 215(1), (1.1) — Requirement to withhold and remit; 218.3(2)(c) — Withholding tax on mutual fund distributions to non-residents; 219 — Branch tax; 227(10), (10.1) — Assessment; 250(5) — Anti-avoidance rule re corporate residence; 257 — Formula cannot calculate to less than zero; Canada-U.S. Tax Treaty:Art. X — Taxation of dividends.

Selected Cases [subsec. 212(2)]: *Placements Serco Ltée v. R.*, [1988] 1 C.T.C. 213 (FCA) ("Dividend" includes deemed dividend); *R. v. Canada Southern Railway Co.*, [1986] 1 C.T.C. 284 (FCA); leave to appeal to SCC refused (1986), 71 N.R. 402 (note), (sub nom. *Can. Southern Railway Co. v. Canada)* (Dividends reduced by agreement taxable to shareholder/lessee of rolling stock); *Hunter Douglas Ltd. v. R.*, [1979] C.T.C. 424 (FCTD) (By virtue of Canada-Netherlands Tax Convention, no withholding tax on dividends to non-residents); *Bendix Automotive of Canada Ltd. v. R.*, [1978] C.T.C. 194 (FCA) (Exchange value was basis of withholding tax on share dividend to non-resident); *Deltona Corporation v. MNR*, [1973] C.T.C. 215 (SCC) (Dividend paid to non-residents subject to withholding tax); *Zehnder & Co. v. MNR*, [1970] C.T.C. 85 (Exch.) (Dividends paid to non-resident shareholders subject to withholding tax where company resident under general tests of residency).

Regulations: 202(1)(g) (information return); 805 (where no withholding tax).

Interpretation Bulletins: IT-66R6: Capital dividends; IT-96R6: Options granted by corporations to acquire shares, bonds, or debentures and by trusts to acquire trust units; IT-119R4: Debts of shareholders and certain persons connected with shareholders; IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt; IT-430R3: Life insurance proceeds received by a private corporation or a partnership as a consequence of death; IT-465R: Non-resident beneficiaries of trusts; IT-468R: Management or administration fees paid to non-residents. See also at end of s. 212.

Information Circulars: 77-16R4: Non-resident income tax; 88-2 Supplement, para. 7: General anti-avoidance rule — section 245 of the *Income Tax Act*.

I.T. Technical News: 14 (meaning of "credited" for purposes of Part XIII withholding tax).

Transfer Pricing Memoranda: TPM-02: Repatriation of funds by non-residents — Part XIII assessments.

Forms: NR4: Statement of amounts paid or credited to non-residents of Canada; NR4 Summ: Return of amounts paid or credited to non-residents of Canada; NR4(OAS): Statement of OAS pension paid or credited to non-residents of Canada; NR601: Non-resident ownership certificate — withholding tax; NR602: Non-resident ownership certificate — no withholding tax; T2 SCH 19: Non-resident shareholder information; T1136: OAS return of income; T4061: Non-resident withholding tax guide.

Proposed Addition — 212(2.1)

(2.1) Exempt dividends — Subsection (2) does not apply to an amount paid or credited, by a borrower, under a securities lending arrangement if

(a) the amount is deemed by subparagraph 260(8)(c)(i) to be a dividend;

(b) the securities lending arrangement was entered into by the borrower in the course of carrying on a business outside Canada; and

(c) the security that is transferred or lent to the borrower under the securities lending arrangement is a share of a class of the capital stock of a non-resident corporation.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 177(9), will add subsec. 212(2.1), applicable to securities lending arrangements entered into after May 1995, except that in its application to arrangements made before 2002, the reference to "subparagraph 260(8)(c)(i)" in para. 212(2.1)(a) is to be read as "subparagraph 260(8)(a)(i)".

Technical Notes: New subsection 212(2.1) is added to exempt from Part XIII tax certain dividend compensation payments made to a non-resident by a Canadian securities borrower under a securities lending arrangement if

- the payments were deemed to be dividends by subparagraph 260(8)(c)(i);
- the payments were made by the borrower in the course of carrying on its business outside of Canada; and
- the borrowed securities were issued by a non-resident issuer.

Letter from Dept. of Finance, February 18, 2002:

Dear [xxx]

I am writing in reply to your email message of December 3, 2001 to Joseph Lam of this Division regarding the application of paragraph 260(8)(a) and Part XIII of the *Income Tax Act* (the "Act").

In your email, you describe a situation where a Canadian resident financial institution, in the course of carrying on its business outside Canada through foreign branches and, indirectly, through foreign subsidiaries, borrows or acquires shares issued by a non-Canadian issuer in a transaction with an arm's length non-resident and the Canadian financial institution makes a "dividend compensation payment" to the non-resident. You represent that the transaction satisfies the definition of "securities lending arrangement" in section 260 of the Act, and, as it is fully collateralized, the payment is deemed to be a dividend for the purposes of Part XIII by virtue of paragraph 260(8)(a).

We recognize that under certain circumstances there should be, in policy terms, no Canadian non-resident withholding tax on dividend compensation payments made by a foreign branch of a Canadian financial institution, in the course of carrying on its business outside Canada, to a non-resident. Consequently, we are prepared to recommend amendments to the Act to exempt from Canadian non-resident withholding tax payments that are deemed to be dividends by virtue of paragraph 260(8)(a), where the payments are made pursuant to a securities lending arrangement entered into in the course of carrying on a business outside Canada, the securities lent or sold are securities of a foreign issuer, and the securities lender is at arm's length with the Canadian securities borrower. In addition, we are prepared to recommend that the amendments apply to securities lending arrangements entered into after May 1995.

While we cannot provide assurance that the Minister will accept our recommendations, we intend to include measures along the line described above in the next package of income tax technical amendments.

We trust that the above satisfies your requirements.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

(3) Replacement obligations — For the purpose of subparagraph (1)(b)(vii), an obligation (in this subsection referred to as the "replacement obligation") issued by a corporation resident in Canada wholly or in substantial part and either directly or indirectly in exchange or substitution for an obligation or a part of an obligation (in this subsection referred to as the "former obligation") shall, where

(a) the replacement obligation was issued

(i) as part of a proposal to, or an arrangement with, its creditors that was approved by a court under the *Bankruptcy and Insolvency Act*,

(ii) at a time when all or substantially all of its assets were under the control of a receiver, receiver-manager, sequestrator or trustee in bankruptcy, or

(iii) at a time when, because of financial difficulty, the issuing corporation or another corporation resident in Canada with which it does not deal at arm's length was in default, or could reasonably be expected to default, on the former obligation,

(b) the proceeds from the issue of the replacement obligation can reasonably be regarded as having been used by the issuing corporation or another corporation with which it does not deal at arm's length in the financing of its active business carried on in Canada immediately before the time when the replacement obligation was issued, and

Proposed Repeal — 212(3)(b)

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 177(10), will repeal para. 212(3)(b), applicable to replacement obligations issued after 2000.

Technical Notes: Among the exceptions to the imposition of tax under Part XIII of the Act on interest is one found in subparagraph 212(1)(b)(vii) for interest paid by a corporation resident in Canada on its medium- and long-term arm's length debt. Subsection 212(3), which applies for the purpose of subparagraph 212(1)(b)(vii), allows a corporation in certain circumstances of financial difficulty to treat a debt obligation that replaces another as having been issued when that other obligation was issued. The circumstances in which this is possible are set out in paragraphs 212(3)(a) to (c). Paragraph 212(3)(b) requires that, for the subsection to apply, it must be possible to regard the proceeds of the replacement borrowing as being used in financing an active business that was carried on in Canada, by the issuing company or one with which it does not deal at arm's length, immediately before the replacement obligation was issued.

There is no clear basis in tax policy for this requirement. The condition in paragraph 212(3)(b) is repealed for replacement debt obligations that are issued after 2000.

Letter from Dept. of Finance, June 11, 2001:

Dear [xxx]

I am writing in response to your fax of June 6, 2001, regarding paragraph 212(3)(b) of the *Income Tax Act* (the "Act"). [xxx]

Paragraph 212(1)(b) of the Act imposes withholding tax on interest paid or credited by a person resident of Canada to a non-resident, subject to a number of exceptions. Among these exceptions is the "long-term debt" rule in subparagraph 212(1)(b)(vii): in very broad terms, interest on corporate debt with a term of 5 years or longer is exempt from tax.

In 1994, the Act was amended to facilitate refinancing in certain cases of financial difficulty. The principle behind the amendment was that in such cases, replacing a long-term debt obligation that benefited from subparagraph (vii) ought not to cause withholding tax to apply. The new rule is found in subsection 212(3) of the Act. Paragraph 212(3)(b) requires that,

for the subsection to apply, it must be possible to regard the proceeds of the replacement borrowing as being used by the issuing corporation (or a corporation with which it does not deal at arm's length) in financing an active business carried on in Canada immediately before the replacement obligation was issued.

As I understand it, [xxx] happens not to carry out most of its operations in Canada. Instead, the company is present, through its subsidiaries, in a number of foreign countries. This may make it difficult for [xxx] to meet the paragraph 212(3)(b) requirement. You have therefore suggested that the requirement be modified or eliminated.

Having reviewed the matter in response to your suggestion, I agree that there is no clear basis in tax policy for the requirement, and it is my view that subsection 212(3) would serve its function equally well if the requirement were removed. We are therefore prepared to recommend that the Act be amended to delete paragraph 212(3)(b), with application to replacement obligations issued after June 10, 2001.

I can, as you know, offer no assurance that the Minister of Finance or Parliament itself will accept this recommendation. However, I have no reason to believe that this modest change will prove controversial, and I expect that we will be able to include it in a package of draft technical amendments to be released later this year.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

[Virtually identical letter issued May 28, 2002 to another person — ed.]

(c) all interest on the former obligation was (or would be, if the person to whom that interest was paid or credited were non-resident) exempt from tax under this Part because of subparagraph (1)(b)(vii),

be deemed to have been issued when the former obligation was issued.

History: Subsec. 212(3) added by 1994, c. 21, subsec. 97(4), applicable to replacement obligations issued after June 1993.

Interpretation Bulletins: IT-361R3: Exemption from Part XIII tax on interest payments to non-residents.

(4) Interpretation of "management or administration fee or charge" — For the purpose of paragraph (1)(a), "management or administration fee or charge" does not include any amount paid or credited or deemed by Part I to have been paid or credited to a non-resident person as, on account or in lieu of payment of, or in satisfaction of,

(a) a service performed by the non-resident person if, at the time the non-resident person performed the service

(i) the service was performed in the ordinary course of a business carried on by the non-resident person that included the performance of such a service for a fee, and

(ii) the non-resident person and the payer were dealing with each other at arm's length, or

(b) a specific expense incurred by the non-resident person for the performance of a service that was for the benefit of the payer,

to the extent that the amount so paid or credited was reasonable in the circumstances.

Selected Cases [subsec. 212(4)]: *Peter Cundill & Associates Ltd. v. Canada*, [1991] 2 C.T.C. 221 (FCA) (Fees paid by Canadian corporation to Bermuda subsidiary taxable, not at arm's length since both corporations controlled by same "mind"); *Windsor Plastic Products Ltd. v. R.*, [1986] 1 C.T.C. 331 (FCTD) (Withholding tax payable where management company not dealing at arm's length).

Interpretation Bulletins: IT-468R: Management or administration fees paid to non-residents. See also at end of s. 212.

(5) Motion picture films — Every non-resident person shall pay an income tax of 25% on every amount that a person resident in Canada pays or credits, or is deemed by Part I to pay or credit, to the non-resident person as, on account or in lieu of payment of, or in satisfaction of, payment for a right in or to the use of

(a) a motion picture film, or

(b) a film, video tape or other means of reproduction for use in connection with television (other than solely in connection with and as part of a news program produced in Canada),

that has been or is to be used or reproduced in Canada.

Proposed Amendment — 212(5) closing words

that has been, or is to be, used or reproduced in Canada to the extent that the amount relates to that use or reproduction.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 177(12), will amend the closing words of subsec. 212(5) to read as above, applicable to 2000 *et seq.*

Technical Notes: Subsection 212(5) applies tax under Part XIII to, in general terms, any amount that a person resident in Canada pays to a non-resident person for a right in or to the use of a motion picture film or video product that has been or is to be used or reproduced in Canada (otherwise than for a news program). As presently worded, the subsection can be read as applying even if the payment in question is not for that Canadian use or reproduction, but relates instead to employment of the film or video in some other country. Accordingly, subsection 212(5) is amended to impose tax only to the extent that the amount of the payment relates to the use or reproduction of the product in Canada.

Related Provisions: 212(1)(d) — Withholding tax — royalties; 214(1) — No deduction; 215(1) — Requirement to withhold and remit.

Selected Cases [subsec. 212(5)]: *CBS/Fox Co. v. Canada*, [1996] 1 C.T.C. 3 (FCTD) (Motion picture film includes video tape); *MCA Television Ltd. v. Canada*, [1994] 2 C.T.C. 148 (FCTD) (Motion picture films did not include films for television purposes under Canada-US Tax Convention); *Twentieth Century Fox Film Corp. v. R.*, [1985] 2 C.T.C. 328 (FCTD) (Payments by Canadian branch for right to use motion picture not subject to withholding tax where included in non-resident's income from business in Canada); *Vauban Productions v. R.*, [1979] C.T.C. 262 (FCA) (Payments for lease of rights to use motion picture subject to withholding tax).

Regulations: 202(1)(h) (information return).

Forms: NR4: Statement of amounts paid or credited to non-residents of Canada; NR4 Summ: Return of amounts paid or credited to non-residents of Canada.

(5.1) Acting services — Notwithstanding any regulation made under paragraph 214(13)(c), every person who is either a non-resident individual who is an actor or that is a corporation related to such an individual shall pay an income tax of 23% on every amount paid or credited, or provided as a benefit, to or on behalf of the person for the provision in Canada of the acting services of the actor in a film or video production.

Related Provisions: 115(2.1) — Actor's income not considered earned in Canada unless election made; 115(2.2) — Where corporation makes payment to actor in later year; 150(1)(a)(i)(B) — No requirement for actor to file Canadian tax return; 153(1)(a), (g) — No Part I withholding on payments to actor; 212(5.2) — Relief from double tax on corporation payment; 212(5.3) — Reduction in withholding for undue hardship; 212(13.1)(a.1) — Where payor is a partnership; 215(1) — Payor's requirement to withhold and remit tax; 216.1 — Election by actor to be taxed under Part I.

Regulations: 202(1.1) (information return).

(5.2) Relief from double taxation — Where a corporation is liable to tax under subsection (5.1) in respect of an amount for acting services of an actor (in this subsection referred to as the "corporation payment") and the corporation pays, credits or provides as a benefit to the actor an amount for those acting services (in this subsection referred to as the "actor payment"), no tax is payable

under subsection (5.1) with respect to the actor payment except to the extent that it exceeds the corporation payment.

(5.3) Reduction of withholding — If the Minister is satisfied that the deduction or withholding otherwise required by section 215 from an amount described in subsection (5.1), would cause undue hardship, the Minister may determine a lesser amount to be deducted or withheld and that lesser amount is deemed to be the amount so required to be deducted or withheld.

Related Provisions: 153(1.1) — Parallel rule for withholding generally.

History: Subsecs. 212(5.1) to (5.3) added by 2001, c. 17, subsec. 173(3), applicable to amounts paid, credited or provided after 2000.

Forms: T1213: Request to reduce tax deductions at source.

(6) Interest on provincial bonds from wholly-owned subsidiaries — Where an amount described by subsection (1) relates to interest on bonds or other obligations of or guaranteed by Her Majesty in right of a province or interest on bonds or other obligations provision for the payment of which was made by a statute of a provincial legislature, the tax payable under subsection (1) is 5% of that amount.

Related Provisions: 212(7) — Application of subsec. 212(6); 240(1) — Taxable and non-taxable obligations defined.

(7) Where subsec. (6) does not apply — Subsection (6) does not apply to interest on any bond or other obligation described therein that was issued after December 20, 1960, except any such bond or other obligation for the issue of which arrangements were made on or before that day with a dealer in securities, if the existence of the arrangements for the issue of the bond or other obligation can be established by evidence in writing given or made on or before that day.

Related Provisions: 212(8) — Bonds issued in exchange for earlier bonds.

(8) Bonds issued after December 20, 1960 in exchange for earlier bonds — For the purposes of this Part, where any bond, except a bond to which clause (1)(b)(ii)(C) applies, was issued after December 20, 1960 in exchange for a bond issued on or before that day, it shall, if the terms on which the bond for which it was exchanged was issued conferred on the holder thereof the right to make the exchange, be deemed to have been issued on or before December 20, 1960.

Interpretation Bulletins: IT-360R2: Interest payable in a foreign currency. See also list at end of s. 212.

(9) Exemptions — Where

(a) a dividend or interest is received by a trust from a non-resident-owned investment corporation,

(b) an amount (in this subsection referred to as the "royalty payment") is received by a trust as, on account of, in lieu of payment of or in satisfaction of, a royalty on or in respect of a copyright in respect of the production or reproduction of any literary, dramatic, musical or artistic work, or

(c) interest is received by a mutual fund trust maintained primarily for the benefit of non-resident persons

Proposed Addition — 212(9)(d)

(d) a dividend or interest is received by a trust created under a reinsurance trust agreement, to which the Superintendent of Financial Institutions is a party, established in accordance with guidelines issued by the Superintendent relating to reinsurance arrangements with unregistered insurers

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 177(13), will add para. 212(9)(d), applicable to amounts paid or credited after 2000 to non-resident persons.

Technical Notes: Subsection 212(9) provides an exemption from withholding tax under Part XIII of the Act with respect to certain amounts of a trust's income that are paid or credited to a non-resident beneficiary under the trust and that would otherwise be subject to withholding tax under paragraph 212(1)(c). The exemption currently applies only in respect of amounts that are attributable to income of the trust in the form of: dividends or interest received by the trust from a non-resident-owned investment corporation; certain artistic royalties; and interest, where the trust is a mutual fund maintained primarily for the benefit of non-resident persons. If no Part XIII tax would have been payable with respect to the dividends, interest or royalties if they had been paid directly to the beneficiary, no Part XIII tax is payable with respect to a distribution from trust income to nonresident beneficiaries that derives from the dividends, interest or royalties.

Subsection 212(9) is amended to add a fourth type of trust income to this list of exemptions. In certain circumstances, Canada's Superintendent of Financial Institutions may require a non-resident reinsurer that reinsures Canadian risks to place assets in a trust in Canada. Such a "reinsurance trust" may earn dividend or interest income, which is payable to the non-resident. In recognition of the regulatory requirement for these trusts, subsection 212(9) is amended to provide that, if the dividends or interest would not have borne Canadian tax if the non-resident had earned them directly, they may be distributed to the non-resident free of Part XIII tax.

Letter from Dept. of Finance, June 8, 2001:

Dear [xxx]

Thank you for your letter of February 28, 2001 concerning the application of non-resident withholding tax under paragraph 212(1)(c) of the *Income Tax Act* (the "Act") in the context of reinsurance trusts required to be used in certain circumstances under guidelines issued by the Office of the Superintendent of Financial Institutions (OSFI).

The issue arises when a life insurance company (the "primary insurer") regulated by OSFI cedes insurance risks to a non-resident reinsurer that is not supervised by OSFI. OSFI's Guideline A dealing with minimum capital requirements does not give credit for such "unregistered reinsurance" that would reduce the primary insurer's capital requirements unless, pursuant to Guideline B-3 on Unregistered Reinsurance, the reinsurer's potential liability under the reinsurance arrangement is secured in an approved manner. This security is effectively a substitute for minimum capital requirements for the reinsurer imposed by either OSFI or a provincial government.

The primary method of providing such security is for the reinsurer to enter into a reinsurance trust arrangement, supervised by OSFI, in which assets are placed in a Canadian trust, to be available to meet the reinsurer's liability to the primary insurer under the reinsurance arrangement. Since the principal amount of the assets of the trust normally must be sufficient to meet the potential reinsurance liability, the reinsurance trust agreement generally provides that any income realized on the assets in the trust — usually government securities — is immediately payable to the reinsurer.

Where the reinsurer is non-resident, even if interest on the underlying assets would normally be free of withholding tax if held directly — as in the case of government bonds — interest income payable to the reinsurer will normally be subject to tax under paragraph 212(1)(c) as a distribution of trust income. Subsection 212(11) deems amounts paid or credited to a person beneficially interested in a trust to be paid as trust income regardless of their source. By way of exception, subsection 212(9) provides that in certain specified cases, no tax is payable under paragraph 212(1)(c) if the underlying payment received by the trust would not have been subject to withholding tax if it had been paid directly to the non-resident. None of the specified cases, however, covers the present situation.

Given the regulatory role performed by reinsurance trusts, we will recommend that subsection 212(9) of the Act be extended to interest received by a trust created under a reinsurance trust agreement to which OSFI is a party established in accordance with OSFI's guidelines relating to reinsurance arrangements with unregistered reinsurers. We will recommend that this amendment be effective for amounts paid or credited to a non-resident person after 2000 as income of or from such a trust.

While I cannot give any assurance that the Minister or Parliament will agree with our recommendation in this regard, I hope that this statement of our position is helpful to you.

If you have any further questions with respect to this issue, please contact Lawrence Purdy of the Tax Legislation Division at 996-0602.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

and a particular amount is paid or credited to a non-resident person as income of or from the trust and can reasonably be regarded as having been derived from the dividend, interest or royalty payment, as the case may be, no tax is payable because of paragraph (1)(c) as a consequence of the payment or crediting of the particular amount if no tax would have been payable under this Part in respect of the dividend, interest or royalty payment, as the case may be, if it had been paid directly to the non-resident person instead of to the trust.

Related Provisions: 104(10) — Where property owned for non-residents; 104(11) — Dividend received from non-resident-owned investment corporation; 134.1 — Transitional rule re elimination of NROs.

History: Subsec. 212(9) amended by 1998, c. 19, subsec. 216(2), applicable to amounts paid or credited after April 1995 to non-resident persons. Subsec. 212(9) formerly read:

> (9) No tax is payable under paragraph (1)(c) on an amount paid or credited to a non-resident person as income of or from a trust if it may reasonably be regarded as having been derived from
>
> (a) dividends or interest received by the trustee from a non-resident-owned investment corporation, or
>
> (b) amounts received as, on account or in lieu of payment of, or in satisfaction of a royalty on or in respect of a copyright in respect of the production or reproduction of any literary, dramatic, musical or artistic work,
>
> on which no tax would have been payable under this Part if they had been paid by the non-resident-owned investment corporation or person paying the amounts in respect of copyright to the non-resident person instead of to the trustee.

Interpretation Bulletins: IT-465R: Non-resident beneficiaries of trusts. See also list at end of s. 212.

(10) Trust beneficiaries residing outside of Canada — Where all the beneficiaries of a trust established before 1949 reside, during a taxation year, in one country other than Canada and all amounts included in computing the income of the trust for the taxation year were received from persons resident in that country, no tax is payable under paragraph (1)(c) on an amount paid or credited in the taxation year to a beneficiary as income of or from the trust.

Interpretation Bulletins: IT-465R: Non-resident beneficiaries of trusts. See also list at end of s. 212.

(11) Payment to beneficiary as income of trust — An amount paid or credited by a trust or an estate to a beneficiary or other person beneficially interested therein shall be deemed, for the purpose of paragraph (1)(c) and without limiting the generality thereof, to have been paid or credited as income of the trust or estate, regardless of the source from which the trust or estate derived it.

Related Provisions: 107(5) — Distribution to non-resident; 248(25) — Meaning of "beneficially interested".

History: Subsec. 212(11) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 174(3), applicable to amounts paid or credited after July 13, 1990. Subsec. 212(11) formerly read:

> (11) Where an amount has been paid or credited by a trust or estate to a beneficiary or other person beneficially interested therein (otherwise than on a distribution or payment of capital), it shall, regardless of the source from which the trust or estate derived it, be deemed, for the purpose of paragraph (1)(c) and without limiting the generality that paragraph, to have been paid or credited as income of the trust or estate.

Interpretation Bulletins: IT-465R: Non-resident beneficiaries of trusts. See also list at end of s. 212.

(11.1), (11.2) [Repealed under former Act]

(12) Deemed payments to spouse, etc. — Where by reason of subsection 56(4) or (4.1) or any of sections 74.1 to 75 of this Act or section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, there is included in computing a taxpayer's income under Part I for a taxation year an amount paid or credited to a non-resident person in the year, no tax is payable under this section on that amount.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-369R: Attribution of trust income to settlor; IT-438R2: Crown charges — resource properties in Canada; IT-440R2: Transfer of rights to income. See also at end of s. 212.

(13) Rent and other payments — For the purposes of this section, where a non-resident person pays or credits an amount as, on account or in lieu of payment of, or in satisfaction of,

(a) rent for the use in Canada of property (other than property that is rolling stock as defined in section 2 of the *Railway Act*),

(b) a timber royalty in respect of a timber resource property or a timber limit in Canada,

(c) a payment of a superannuation or pension benefit under a registered pension plan or of a distribution to one or more persons out of or under a retirement compensation arrangement,

(d) a payment of a retiring allowance or a death benefit to the extent that the payment is deductible in computing the payer's taxable income earned in Canada,

(e) a payment described in any of paragraphs (1)(k) to (n), (q) and (v), or

(f) interest on any mortgage, hypothecary claim or other indebtedness entered into or issued or modified after March 31, 1977 and secured by real property situated in Canada or an interest therein to the extent that the amount so paid or credited is deductible in computing the non-resident person's taxable income earned in Canada or the amount on which the non-resident person is liable to pay tax under Part I,

Proposed Amendment — 212(13)(f)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 267(3), will amend para. 212(13)(f) by substituting "interest therein, or by immovables situated in Canada or real rights therein," for "interest therein", to come into force on Royal Assent.

Technical Notes: See under 12(4).

Proposed Addition — 212(13)(g)

(g) an amount to which paragraph (1)(i) applies if that amount affects, or is intended to affect, in any way whatever,

(i) the acquisition or provision of property or services in Canada,

(ii) the acquisition or provision of property or services outside Canada by a person resident in Canada, or

(iii) the acquisition or provision outside Canada of a taxable Canadian property,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 177(14), will add para. 212(13)(g), applicable to amounts paid or credited after October 7, 2003.

Technical Notes: Subsection 212(13) imposes non-resident withholding tax on certain payments made by one non-resident to another non-

resident. Subsection 212(13) is amended to add new paragraph (g), which imposes non-resident withholding tax on amounts paid or credited by a non-resident for a restrictive covenant to which new paragraph 212(1)(i) applies, if the amount affects, or is intended to affect, in any way whatever,

- the acquisition or provision of property or services in Canada,
- the acquisition or provision of property or services outside Canada by a person resident in Canada, or
- the acquisition or provision outside of Canada of a taxable Canadian property.

the non-resident person shall be deemed in respect of that payment to be a person resident in Canada.

Related Provisions: 13(21) — Timber resource property defined; 248(4.1) — Meaning of "real rights" in 212(13)(f).

History: Para. 212(13)(f) amended by 2001, c. 17, subsec. 226(3), to add ", hypothecary claim, ", in force June 14, 2001.

Para. 212(13)(e) amended by 1995, c. 21, subsec. 64(2), applicable to amounts paid or credited after October 21, 1994. Para. (e) formerly read:

(e) a payment described in any of paragraphs (1)(k) to (n) and (q), or

Regulations: 202(4) (information return).

(13.1) Application of Part XIII tax where payer or payee is a partnership — For the purposes of this Part, other than section 216,

(a) where a partnership pays or credits an amount to a non-resident person, the partnership shall, in respect of the portion of that amount that is deductible, or that would but for section 21 be deductible in computing the amount of the income or loss, as the case may be, referred to in paragraph 96(1)(f) or (g) if the references therein to "a particular place" and "that particular place" were read as references to "Canada", be deemed to be a person resident in Canada;

(a.1) where a partnership pays, credits or provides to a non-resident person an amount described in subsection (5.1), the partnership is deemed in respect of the amount to be a person; and

(b) where a person resident in Canada pays or credits an amount to a partnership (other than a Canadian partnership within the meaning assigned by section 102), the partnership shall be deemed, in respect of that payment, to be a non-resident person.

Related Provisions: 212(13.3)(b) — Authorized foreign bank deemed resident for purposes of meaning of "Canadian partnership" in para. (b); 227(15) — Partnership included in "person".

History: Para. 212(13.1)(a.1) added by 2001, c. 17, subsec. 173(4), applicable to amounts paid, credited or provided after 2000.

Selected Cases [subsec. 212(13.1)]: *Randall v. R.*, [1985] 1 C.T.C. 268 (FCTD) (Partner, not actively participating in operation of business but participating in profits, taxable as non-resident carrying on business in Canada).

Regulations: 202(5) (information return).

Interpretation Bulletins: IT-81R: Partnerships — income of non-resident partners. See also at end of s. 212.

(13.2) Application of Part XIII tax where non-resident operates in Canada — For the purposes of this Part, where in a taxation year

(a) a non-resident person whose business was carried on principally in Canada, or

(b) a non-resident person who

(i) manufactures or processes goods in Canada,

(ii) operates an oil or gas well in Canada or extracts petroleum or natural gas from a natural accumulation thereof in Canada, or

(iii) extracts minerals from a mineral resource in Canada

pays or credits an amount (other than an amount to which subsection (13) applies) to another non-resident person, the first-mentioned non-resident person shall be deemed, in respect of the portion of that amount that was deductible in computing that person's taxable income earned in Canada for any taxation year, to be a person resident in Canada.

Proposed Amendment — 212(13.2)

(13.2) Application of Part XIII tax — non-resident operates in Canada — For the purposes of this Part, a particular non-resident person, who in a taxation year pays or credits to another non-resident person an amount other than an amount to which subsection (13) applies, is deemed to be a person resident in Canada in respect of the portion of the amount that is deductible in computing the particular non-resident person's taxable income earned in Canada for any taxation year from a source that is neither a treaty-protected business nor a treaty-protected property.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 177(15), will amend subsec. 212(13.2) to read as above, applicable to amounts paid or credited under obligations entered into after December 20, 2002.

Technical Notes: Subsection 212(13.2) is one of several provisions that extend Part XIII tax to apply in particular circumstances — in this case, for the most part, the payment by a non-resident of royalties and similar amounts in respect of a Canadian income source. The principle that underlies subsection 212(13.2) is that if a non-resident has Canadian-source business or resource income, and can deduct in computing that income (strictly speaking, in computing "taxable income earned in Canada") a payment to another non-resident, that payment ought to be treated for purposes of Part XIII tax as though it had been made by a person resident in Canada. This is accomplished by treating the first non-resident — the one making the payment — as a person resident in Canada for those purposes.

In its current form, subsection 212(13.2) applies only if the non-resident making the payment carries on business principally in Canada, manufactures or processes goods in Canada or carries out any of various resource activities here. On the other hand, the rule does not explicitly link that business or activity to the deductibility of the payment: it can be read as applying whether or not the payment is made in relation to the particular business or activity.

Accordingly, subsection 212(13.2) is amended to apply in respect of any portion of a payment (other than one to which the generally comparable rule in subsection 212(13) applies) made by one non-resident person to another that is deductible in computing the first non-resident's taxable income earned in Canada from any source. The only exceptions are payments that are deductible in respect of treaty-protected businesses or treaty-protected properties (as defined in subsection 248(1)).

Letter from Dept. of Finance, May 14, 2003:

KPMG LLP, Montréal, Québec

Dear Mr. [xxx]

I am writing in response to your letter of February 25, 2003, to Lawrence Purdy of this Division. In that letter, you identify a concern with the effective date that has been proposed, in the December 2002 draft technical amendments, for a change to subsection 212(13.2) of the *Income Tax Act*. The question you raise is an important one, and I appreciate your patience in awaiting this reply.

Subsection 212(13.2) treats certain non-resident persons as though they were resident in Canada, for purposes of the non-resident withholding tax applied by Part XIII of the Act. Specifically, the provision in its current form applies to a non-resident person who either carries on business principally in Canada, manufactures or processes goods here, or extracts Canadian mineral or oil and gas resources, and makes a payment to another non-resident that is deductible in computing the payer's taxable income earned in Canada. Where it applies, the subsection deems the payer to be resident in Canada in respect of the payment, with the result that Part XIII tax may be required to be withheld.

The draft technical amendments released on December 20, 2002 propose to extend this deeming rule to any non-resident who pays to another non-resident an amount that is deductible in computing the payer's taxable income earned in Canada from a source that is neither a treaty-protected business nor a treaty-protected property. As a practical matter, this would make subsection 212(13.2) potentially applicable to any non-resident who carries on business in Canada — provided, in the case of a resident of a country with which Canada has a tax treaty, that the business is carried on through a Canadian permanent establishment.

I gather from your letter that you do not question the policy basis for this amendment, but rather its entry into force. As proposed, the amendment would apply to amounts paid or credited after December 20, 2002. You suggest that this may impose an inappropriate burden on a non-resident who was already obliged to pay to another non-resident an amount — such as interest — that will now attract withholding tax. Had it known when it negotiated the debt that withholding tax could apply, the borrower (who may be required to spare the lender any Canadian tax effect) might have structured the borrowing to conform to the exception in subparagraph 212(1)(b)(vii), or might have borrowed from a Canadian lender. The alternative of renegotiating the loan now could be costly and difficult for both parties.

I agree that applying this measure in respect of debt obligations that are already outstanding could unduly inconvenience some taxpayers, and that a less abrupt entry into force would not be objectionable in policy terms. We will therefore recommend that the version of the amendment that is submitted to Parliament apply the change to amounts paid under obligations entered into after December 20, 2002.

While I can, as you know, offer no assurance that the Minister of Finance of Parliament as a whole will accept our recommendation, I trust that our intentions in this regard respond to your concerns.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, September 30, 2003:

Dear [xxx]

I am writing in response to your letter of August 27, 2003, to Lawrence Purdy of this Division. In that letter you refer to a comfort letter dated May 14, 2003 regarding the December 2002 proposed amendment to subsection 212(13.2) of the *Income Tax Act*. In our May 14 letter we stated that we would recommend that the version of the amendment that is submitted to Parliament apply the change to amounts paid under obligations entered into after December 20, 2002. The specific example we responded to concerned a debt obligation. You have asked us to confirm that the proposed grandfathering will apply to any obligation entered into on or before December 20, 2002, and not be restricted to debt obligations.

We confirm that we intend to recommend that the proposed grandfathering apply to any obligation entered into on or before December 20, 2002, and not be restricted to debt obligations. Therefore, as set out in your letter, royalties paid to a non-resident corporation pursuant to a trademark licence agreement entered into on or before December 20, 2002 are not intended to be subject to the proposed amendment.

While we can, as you know, offer no assurance that the Minister of Finance or Parliament as a whole will accept our recommendations, we trust that our intentions in this regard respond to your concerns.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Regulations: 202(6) (information return).

(13.3) Application of Part XIII to authorized foreign bank — An authorized foreign bank is deemed to be resident in Canada for the purposes of

(a) this Part, in respect of any amount paid or credited to or by the bank in respect of its Canadian banking business; and

(b) the application in paragraph (13.1)(b) of the definition "Canadian partnership" in respect of a partnership interest held by the bank in the course of its Canadian banking business.

Proposed Amendment — 212(13.3) — Property held by authorized foreign bank

Letter from Dept. of Finance, July 13, 2001:

Dear [xxx]

I am writing in response to your letter of May 3, 2001 to James Greene, formerly of this Division, regarding the *Income Tax Act*'s recently-enacted rules for the taxation of foreign bank branches. Although your letter raises several different questions, including matters of administration as well as of policy and legislative design, I understand from subsequent contacts with your colleague [xxx] that the most pressing issue for you and your clients at this time relates to non-resident withholding tax. I propose, therefore, in this reply to address only that point, reserving your other questions for further consideration.

On the issue of the obligation to withhold amounts on account of tax, you identify three areas of concern. The first is with respect to the payment by a resident of Canada to an authorized foreign bank of an amount, such as interest, that would ordinarily be subject to tax under Part XIII of the Act. Under new subsection 212(13.3) of the Act, the bank is deemed to be resident in Canada for this purpose — and the payer need not withhold tax — provided the interest is "in respect of (the bank's) Canadian banking business." You point out that it is not clear how the Canadian-resident payer will know whether this test is met, given that the payer can be expected to have only limited information about the bank's operations. You ask whether provisions comparable to Regulations 800 to 804 (which apply to non-resident insurers) might be contemplated, under which the bank itself, rather than those making payments to it, would be responsible for any tax arising under Part XIII.

A second, related point concerns the withholding obligations that may arise, under Part I of the Act and Regulation 105, in respect of payments made by a resident of Canada to an authorized foreign bank for services provided by the bank. Although there is no rule deeming the bank to be resident in Canada, many of the considerations that led to such a rule in the context of Part XIII tax are relevant here as well: the bank's business is carried on in Canada, and a person making a payment to the bank cannot always be presumed to know the details of the bank's situation.

Third, you ask whether we anticipate recommending that the withholding and clearance obligations under section 116 of the Act, which generally apply where a non-resident disposes of taxable Canadian property, not apply in respect of property held in an authorized foreign bank's Canadian banking business.

On each of these three points the current requirements, as they apply to the Canadian business of an authorized foreign bank, do seem in policy terms excessive. It is therefore our general intention to propose that the requirements be moderated. Although the details of any relieving proposals remain to be determined, the broad direction of our thinking is as follows. First, with respect to Part XIII taxation, it should be possible to provide that the payor's reasonable belief, or a presumption based on the payee's address, will suffice to relieve the payor from possible liability. A similar test could be applied for purposes of an exemption from the withholding requirements of Regulation 105 [see now Reg. 105(2)(b) — ed.]. Finally, the definition "excluded property" in section 116 could be expanded to cover property held by an authorized foreign bank in the course of carrying on its Canadian banking business; such a change could be made either in the statutory definition itself [this has been done: see 116(6)(f) — ed.] or in Regulation 810.

While our views on these points are subject to further refinement, and I can offer no assurance that the Minister will accept our recommendations, we expect that measures along the general lines I have described will be included in the next package of draft technical amendments. This is currently scheduled for release later this year. The changes would apply after June 27, 1999, to coincide with other aspects of the taxation rules for authorized foreign banks.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 94.1(2)(t) — Authorized foreign bank deemed resident in Canada for foreign investment entity rules; 218.2 — Branch interest tax on authorized foreign banks.

History: Subsec. 212(13.3) added by 2001, c. 17, subsec. 173(5), applicable after June 27, 1999.

(14) Certificate of exemption — The Minister may, on application, issue a certificate of exemption to any

non-resident person who establishes to the satisfaction of the Minister that

(a) an income tax is imposed under the laws of the country of which the non-resident person is a resident;

(b) the non-resident person is exempt under the laws referred to in paragraph (a) from the payment of income tax to the government of the country of which the non-resident person is a resident; and

(c) the non-resident person is

(i) a person who is or would be, if the non-resident person were resident in Canada, exempt from tax under section 149,

(ii) a trust or corporation that is operated exclusively to administer or provide superannuation, pension, retirement or employee benefits, or

(iii) a trust, corporation or other organization constituted and operated exclusively for charitable purposes, no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof.

Related Provisions: 172(3) — Appeal from refusal to issue certificate; 172(4) — Deemed refusal to register; 212(1)(b)(iv) — No withholding tax where certificate of exemption; Reg. 6804(1) — Definition of "qualifying entity" — same conditions; Canada-U.S. Tax Treaty:Art. XXI:2 — Exemption from cross-border income tax.

History: Subpara. 212(14)(c)(ii) amended by 1999, c. 22, s. 75, applicable to certificates of exemption under the subsec. made after February 23, 1998 except that, with respect to applications submitted before 1999, the reference in the subpara. to "operated exclusively" shall be read as a reference to "operated principally". The subpara. formerly read:

(ii) a trust or corporation established or incorporated principally in connection with, or the principal purpose of which is to administer or provide benefits under, one or more superannuation, pension or retirement funds or plans or any funds or plans established to provide employee benefits, or

I.T. Application Rules: 10(5).

Information Circulars: 77-16R4: Non-resident income tax.

Forms: NR6A: Application for certificate of exemption.

(15) Certain obligations — For the purposes of subparagraph (1)(b)(ii), after November 18, 1974 interest on a bond, debenture, note, mortgage, hypothecary claim or similar obligation that is insured by the Canada Deposit Insurance Corporation is deemed not to be interest with respect to an obligation guaranteed by the Government of Canada.

History: Subsec. 212(15) amended by 2001, c. 17, subsec. 226(4), to add ", hypothecary claim,", in force June 14, 2001.

Interpretation Bulletins: IT-155R3: Exemption from non-resident tax on interest payable on certain bonds, debentures, notes, hypothecs or similar obligations. See also list at end of s. 212.

(16) Payments for temporary use of rolling stock — Clause (1)(d)(vii)(A) does not apply to a payment in a year for the temporary use of railway rolling stock by a railway company to a person resident in a country other than Canada unless that country grants substantially similar relief for the year to the company in respect of payments received by it for the temporary use by a person resident in that country of railway rolling stock.

(17) Exception — This section is not applicable to payments out of or under an employee benefit plan or employee trust.

Interpretation Bulletins: IT-502: Employee benefit plans and employee trusts. See also list at end of s. 212.

(18) Return by financial institutions and registered securities dealers — Every person who in a taxation year is a prescribed financial institution for the purpose of clause (1)(b)(iii)(D) or a person resident in Canada who is a registered securities dealer shall

(a) within 6 months after the end of the year file with the Minister a return in prescribed form if in the year the person paid or credited an amount to a non-resident person in respect of which the non-resident person is, because of clause (1)(b)(iii)(D) or subparagraph (1)(b)(xii), not liable to pay tax under this Part; and

(b) on demand from the Minister, served personally or by registered letter, file within such reasonable time as may be stipulated in the demand, an undertaking in prescribed form relating to the avoidance of payment of tax under this Part.

Related Provisions: 150.1(5) — Electronic filing; 212(19) — Tax on securities traders; 248(7)(a) — Mail deemed received on day mailed.

History: The opening words of subsec. 212(18) amended by 1995, c. 21, subsec. 73(2), applicable to taxation years that end after May 28, 1993. The opening words formerly read:

(18) Return by financial institution or securities traders — Every person who in a taxation year is a prescribed financial institution for the purpose of clause (1)(b)(iii)(D) or a person resident in Canada who is registered or licensed under the laws of a province to trade in securities shall

All that portion of subsec. 212(18) preceding para. (b) substituted by 1994, c. 21, subsec. 97(5), applicable to taxation years that end after May 28, 1993. That portion of the subsec. formerly read:

(18) Return by financial institutions — Every person who in a taxation year is a prescribed financial institution for the purposes of clause (1)(b)(iii)(D) shall

(a) within 6 months from the end of the taxation year file with the Minister a return in prescribed form containing prescribed information if in the taxation year the person paid or credited an amount to a non-resident person in respect of which the non-resident person is by virtue of clause (1)(b)(iii)(D) not liable to pay tax under this Part; and

Forms: NR4: Statement of amounts paid or credited to non-residents of Canada; NR4 Summ: Return of amounts paid or credited to non-residents of Canada; NR601: Non-resident ownership certificate — withholding tax; NR602: Non-resident ownership certificate — no withholding tax; T4061: Guide for payers of non-resident tax.

(19) Tax on registered securities dealers — Every taxpayer who is a registered securities dealer resident in Canada shall pay a tax under this Part equal to the amount determined by the formula

$$\frac{1}{365} \times .25 \times (A - B) \times C$$

where

A is the total of all amounts each of which is the amount of money provided before the end of a day to the taxpayer (and not returned or repaid before the end of the day) by or on behalf of a non-resident person as collateral or as consideration for a security that was lent or transferred under a securities lending arrangement described in subparagraph (1)(b)(xii),

B is the total of

(a) all amounts each of which is the amount of money provided before the end of the day by or on behalf of the taxpayer (and not returned or repaid before the end of the day) to a non-resident person as collateral or as consideration for a security described in clause (1)(b)(xii)(A) that was lent or transferred under a securities lending arrangement, and

(b) the greater of

(i) 10 times the greatest amount determined under those laws to be the capital employed by the taxpayer at the end of the day, and

Proposed Amendment — 212(19)B(b)(i)

(i) 10 times the greatest amount determined, under the laws of the province or provinces in which the taxpayer is a registered securities dealer, to be the capital employed by the taxpayer at the end of the day, and

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 177(16), will amend subpara. (b)(i) of the description of B in subsec. 212(19) to read as above, applicable to securities lending arrangements entered into after May 28, 1993.

Technical Notes: Subsection 212(19) imposes a tax on Canadian-resident registered securities dealers that enter into certain securities lending arrangements described in subparagraph 212(1)(b)(xii). The tax is calculated, by formula, based in part on the capital or the margin requirement of the relevant provincial laws governing the registration or license of securities dealers.

An earlier amendment to subsection 212(19) removed a reference to the provincial laws under which the taxpayer is registered or licensed. The subsection is further amended, as a consequence of that earlier change, to replace the words "those laws" in subparagraph (b)(i) of the description of B in the formula (which no longer have any clear antecedent), with a specific reference to the provincial legislation that govern the registration or license of securities dealers.

(ii) 20 times the greatest amount of capital required under those laws to be maintained by the taxpayer as a margin in respect of securities described in clause (1)(b)(xii)(A) at the end of the day, and

C is the prescribed rate of interest in effect for the day,

and shall remit that amount to the Receiver General on or before the 15th day of the month after the month in which the day occurs.

Related Provisions: 212(18) — Return by securities traders; 227(9) — Penalty on tax not paid; 227(9.3) — Interest on tax not paid; 257 — Formula cannot calculate to less than zero.

History: The portion of subsec. 212(19) before the formula amended by 1995, c. 21, subsec. 73(3), applicable to securities lending arrangements entered into after May 28, 1993. That portion formerly read:

(19) Tax on securities traders — Every taxpayer resident in Canada who is registered or licensed under the laws of one or more provinces to trade in securities shall pay a tax under this Part equal to the amount determined by the formula

Subsec. 212(19) added by 1994, c. 21, subsec. 97(6), applicable to securities lending arrangements entered into after May 28, 1993.

Definitions [s. 212]: "active business" — 248(1); "amateur athlete trust" — 143.1(1)(a), 248(1); "amount" — 248(1); "annuitant" — 146(1), 146.3(1); "annuity", "authorized foreign bank" — 248(1); "arm's length" — 251(1); "bank" — 248(1), *Interpretation Act* 35(1); "beneficially interested" — 248(25); "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "Canadian banking business" — 248(1); "Canadian partnership" — 102, 248(1); "capital dividend" — 83(2), 248(1); "capital gain" — 39(1)(a), 248(1); "capital property" — 54, 248(1); "class of shares", "common-law partner" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "corporeal" — Quebec *Civil Code* art. 899, 906; "credit union" — 137(6), 248(1); "custodian" — 148.1(1); "death benefit" — 248(1); "deferred profit sharing plan" — 147(1), 248(1); "dividend" — 248(1); "eligible funeral arrangement" — 148.1(1), 248(1); "employed", "employee benefit plan", "employee trust" — 248(1); "estate" — 104(1), 248(1); "Her Majesty" — *Interpretation Act* 35(1); "identical" — 248(12); "immovable" — Quebec *Civil Code* art. 900–907; "income-averaging annuity contract" — 61(4), 248(1); "individual", "insurer" — 248(1); "legislature" — *Interpretation Act* 35(1)"legislative assembly"; "management or administration fee or charge" — 212(4); "mineral resource", "Minister", "NISA Fund No. 2", "non-resident" — 212(13.3), 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "OSFI risk-weighting guidelines", "oil or gas well", "person", "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "principal amount", "property" — 248(1); "province" — *Interpretation Act* 35(1); "real rights" — 248(4.1); "registered education savings plan" — 146.1(1), 248(1); "registered pension plan" — 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "registered securities dealer" — 248(1); "registered supplementary unemployment benefit plan" — 145(1), 248(1); "regulation" — 248(1); "related" — 251(2)–(6); "replacement obligation" — 212(3); "resident in Canada" — 212(13.3), 250; "retirement compensation arrangement", "retiring allowance" — 248(1); "securities lending arrangement" — 248(1), 260(1); "series" — 248(10); "share", "shareholder" — 248(1); "subsidiary wholly-owned corporation", "superannuation or pension benefit" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxable dividend" — 89(1), 248(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 249; "taxpayer", "timber resource property" — 13(21), 248(1); "treaty-protected business", "treaty-protected property" — 248(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [s. 212]: IT-88R2: Stock dividends; IT-109R2: Unpaid amounts; IT-168R3: Athletes and players employed by football, hockey and similar clubs; IT-221R3: Determination of an individual's residence status; IT-280R: Employees profit sharing plans — payments computed by reference to profits. See also at beginning of 212(1).

212.1 (1) Non-arm's length sales of shares by non-residents — If a non-resident person, a designated partnership or a non-resident-owned investment corporation (in this section referred to as the "non-resident person") disposes of shares (in this section referred to as the "subject shares") of any class of the capital stock of a corporation resident in Canada (in this section referred to as the "subject corporation") to another corporation resident in Canada (in this section referred to as the "purchaser corporation") with which the non-resident person does not (otherwise than because of a right referred to in paragraph 251(5)(b)) deal at arm's length and, immediately after the disposition, the subject corporation is connected (within the meaning that would be assigned by subsection 186(4) if the references in that subsection to "payer corporation" and "particular corporation" were read as "subject corporation" and "purchaser corporation", respectively) with the purchaser corporation,

(a) the amount, if any, by which the fair market value of any consideration (other than any share of the capital stock of the purchaser corporation) received by the non-resident person from the purchaser corporation for the subject shares exceeds the paid-up capital in respect of the subject shares immediately before the disposition shall, for the purposes of this Act, be deemed to be a dividend paid at the time of the disposition by the purchaser corporation to the non-resident person and received at that time by the non-resident person from the purchaser corporation; and

(b) in computing the paid-up capital at any particular time after March 31, 1977 of any particular class of shares of the capital stock of the purchaser corporation, there shall be deducted that proportion of the amount, if any, by which the increase, if any, by virtue of the disposition, in the paid-up capital, computed without reference to this section as it applies to the disposition, in respect of all of the shares of the capital stock of the purchaser corporation exceeds the amount, if any, by which

(i) the paid-up capital in respect of the subject shares immediately before the disposition

exceeds

(ii) the fair market value of the consideration described in paragraph (a),

that the increase, if any, by virtue of the disposition, in the paid-up capital, computed without reference to this section as it applies to the disposition, in respect of the particular class of shares is of the increase, if any, by virtue of the disposition, in the paid-up capital, computed without reference to this section as it applies to the disposition, in respect of all of the issued shares of the capital stock of the purchaser corporation.

Related Provisions: 54"proceeds of disposition"(k) — Exclusion of deemed dividend from proceeds; 84(7) — When dividend payable; 84.1 — Similar rule for residents of Canada; 186(7) — Interpretation of "connected"; 212.1 — Deemed dividend on surplus strip to non-resident; 212.2 — Deemed dividend on surplus strip to non-resident insurer.

History: The opening words of subsec. 212.1(1) amended by 1999, c. 22, subsec. 76(1), applicable after February 23, 1998. The opening words formerly read:

(1) Where a non-resident person or a non-resident-owned investment corporation (in this section referred to as the "non-resident person") disposes of shares (in this section referred to as the "subject shares") of any class of the capital stock of a Canadian corporation (in this section referred to as the "subject corporation") to another Canadian corporation (in this section referred to as the "purchaser corporation") with which the non-resident person does not (otherwise than by reason of a right referred to in paragraph 251(5)(b)) deal at arm's length and, immediately after the disposition, the subject corporation is connected (within the meaning of subsection 186(4), on the assumption that the references therein to "payer corporation" and "particular corporation" were read as "subject corporation" and "purchaser corporation", respectively) with the purchaser corporation,

Selected Cases [subsec. 212.1(1)]: *Placements Serco Ltée v. R.*, [1988] 1 C.T.C. 213 (FCA) ("Deemed dividend" includes transaction without actual transfer of funds).

Interpretation Bulletins: See at end of s. 212.1.

Information Circulars: 77-16R4: Non-resident income tax.

(2) Idem — In computing the paid-up capital at any particular time after March 31, 1977 of any particular class of shares of the capital stock of a corporation, there shall be added an amount equal to the lesser of

(a) the amount, if any, by which

(i) the total of all amounts each of which is an amount deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of the particular class paid after March 31, 1977 and before the particular time by the corporation and received by a non-resident-owned investment corporation or by a person who is not a corporation resident in Canada

exceeds

(ii) the total that would be determined under subparagraph (i) if this Act were read without reference to paragraph (1)(b), and

(b) the total of all amounts each of which is an amount required by paragraph (1)(b) to be deducted in computing the paid-up capital in respect of the particular class of shares after March 31, 1977 and before the particular time.

(3) Idem — For the purposes of this section,

(a) in respect of any disposition described in subsection (1) by a non-resident person of shares of the capital stock of a subject corporation to a purchaser corporation, the non-resident person shall, for greater certainty, be deemed not to deal at arm's length with the purchaser corporation if the non-resident person was,

(i) immediately before the disposition, one of a group of less than 6 persons that controlled the subject corporation, and

(ii) immediately after the disposition, one of a group of less than 6 persons that controlled the purchaser corporation, each member of which was a member of the group referred to in subparagraph (i);

(b) for the purposes of determining whether or not a particular non-resident person (in this paragraph referred to as the "taxpayer") referred to in paragraph (a) was a member of a group of less than 6 persons that controlled a corporation at any time, any shares of the capital stock of that corporation owned at that time by

(i) the taxpayer's child (within the meaning assigned by subsection 70(10)), who is under 18 years of age, or the taxpayer's spouse or common-law partner,

(ii) a trust of which the taxpayer, a person described in subparagraph (i) or a corporation described in subparagraph (iii) is a beneficiary,

(iii) a corporation controlled by the taxpayer, a person described in subparagraph (i), a trust described in subparagraph (ii) or any combination thereof, or

(iv) a partnership of which the taxpayer or a person described in one of paragraphs (i) to (iii) is a majority interest partner or a member of a majority interest group of partners (as defined in subsection 251.1(3))

shall be deemed to be owned at that time by the taxpayer and not by the person who actually owned the shares at that time;

(c) a trust and a beneficiary of the trust or a person related to a beneficiary of the trust shall be deemed not to deal with each other at arm's length;

(d) for the purpose of paragraph (a),

(i) a group of persons in respect of a corporation means any 2 or more persons each of whom owns shares of the capital stock of the corporation,

(ii) a corporation that is controlled by one or more members of a particular group of persons in respect of that corporation shall be considered to be controlled by that group of persons, and

(iii) a corporation may be controlled by a person or a particular group of persons notwithstanding that the corporation is also controlled or deemed to be controlled by another person or group of persons;

(e) a "designated partnership" means a partnership of which either a majority interest partner or every member of a majority interest group of partners (as defined in subsection 251.1(3)) is a non-resident person or a non-resident-owned investment corporation; and

(f) in this subsection, a person includes a partnership.

Related Provisions: 256(6), (6.1) — Meaning of "controlled".

History: Subsec. 212.1(3) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subpara. 212.1(3)(b)(iv), paras. 212.1(3)(e) and (f) added by 1999, c. 22, subsecs. 76(2), (3), applicable after February 23, 1998.

Para. 212.1(3)(d) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 124, applicable to dispositions occurring after December 20, 1991.

Subparas. 212.1(3)(b)(i)–(iii) substituted and para. (c) added by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 175(1), (2), applicable to dispositions occurring after July 13, 1990. Those subparas. formerly read:

(i) the taxpayer's spouse,

(ii) an *inter vivos* trust of which the taxpayer, the spouse, a corporation described in subparagraph (iii) or any combination thereof is a beneficiary, or

(iii) a corporation controlled by the taxpayer, the spouse, a trust described in subparagraph (ii) or any combination thereof

(4) Where section does not apply — Notwithstanding subsection (1), this section does not apply in respect of a disposition by a non-resident corporation of shares of a subject corporation to a purchaser corporation that immediately before the disposition controlled the non-resident corporation.

Related Provisions: 256(6), (6.1) — Meaning of "controlled".

Definitions [s. 212.1]: "amount" — 248(1); "arm's length" — 212.1(3)(c), 251(1); "Canada" — 255; "Canadian corporation" — 89(1), 248(1); "child" — 70(10), 252(1); "class of shares" — 248(6); "common-law partner" — 248(1); "connected" — 186(4), (7); "control" — 212.1(3)(d); "controlled" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "designated partnership" — 212.1(3)(e); "dividend" — 248(1); "group" — 212.1(3)(d); "majority interest partner", "non-resident" — 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "owned" — 212.1(3)(b); "paid-up capital" — 89(1), 248(1); "person" — 212.1(3)(f), 248(1); "received" — 248(7); "resident in Canada" — 250; "share" — 248(1); "taxpayer" — 248(1); "trust" — 104(1), 108(1), 248(1), (3).

Interpretation Bulletins [s. 212.1]: IT-88R2: Stock dividends; IT-109R2: Unpaid amounts; IT-489R: Non-arm's length sale of shares to a corporation.

212.2 (1) Application [demutualization surplus stripping] — This section applies where

(a) a taxpayer disposes at a particular time of a share of the capital stock of a corporation resident in Canada (or any property more than 10% of the fair market value of which can be attributed to shares of the capital stock of corporations resident in Canada) to

(i) a person resident in Canada,

(ii) a partnership in which any person resident in Canada has, directly or indirectly, an interest, or

(iii) a person or partnership that acquires the share or the property in the course of carrying on a business through a permanent establishment in Canada, as defined in the *Income Tax Regulations*;

(b) subsection 212.1(1) does not apply to the disposition;

(c) the taxpayer is non-resident at the particular time;

(d) it is reasonable to conclude that the disposition is part of an expected series of transactions or events that includes the issue after December 15, 1998 of a particular share of the capital stock of a particular insurance corporation resident in Canada on the demutualization (within the meaning assigned by subsection 139.1(1)) of the particular corporation and

(i) after the particular time, the redemption, acquisition or cancellation of the particular share, or a share substituted for the particular share, by the particular corporation or the issuer of the substituted share, as the case may be,

(ii) after the particular time, an increase in the level of dividends declared or paid on the particular share or a share substituted for the particular share, or

(iii) the acquisition, at or after the particular time, of the particular share or a share substituted for the particular share by

(A) a person not dealing at arm's length with the particular corporation or with the issuer of the substituted share, as the case may be, or

(B) a partnership any direct or indirect interest in which is held by a person not dealing at arm's length with the particular corporation or with the issuer of the substituted share, as the case may be; and

(e) at the particular time, the person described in subparagraph (a)(i) or (iii) or any person who has, directly or indirectly, an interest in the partnership described in subparagraph (a)(ii) or (iii) knew, or ought reasonably to have known, of the expected series of transactions or events described in paragraph (d).

Related Provisions: 248(10) — Series of transactions.

Regulations: No regulation defining "permanent establishment" as yet (though Reg. 8201 would be the logical choice).

(2) Deemed dividend — For the purposes of this Part, where property is disposed of at any time by a taxpayer to a person or partnership in circumstances in which this section applies,

(a) a taxable dividend is deemed to be paid at that time by the person or partnership to the taxpayer and received at the time by the taxpayer;

(b) the amount of the dividend is deemed to be equal to the amount determined by the formula

$$A - ((A/B) \times C)$$

where

A is the portion of the proceeds of disposition of the property that can reasonably be attributed to the fair market value of shares of a class of the capital stock of a corporation resident in Canada,

B is the fair market value immediately before that time of shares of that class, and

C is the paid-up capital immediately before that time of that class of shares; and

(c) in respect of the dividend, the person or partnership is deemed to be a corporation resident in Canada.

Related Provisions [subsec. 212.2(2)]: 54"proceeds of disposition"(k) — Exclusion of deemed dividend from proceeds.

History: S. 212.2 added by 2000, c. 19, s. 64, applicable after December 15, 1998.

Definitions [s. 212.2]: "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "class of shares" — 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "demutualization" — 139.1(1); "disposition", "dividend", "insurance corporation", "non-resident" — 248(1); "paid-up capital" — 89(1), 248(1); "person", "property" — 248(1); "resident in Canada" — 250; "series of transactions" — 248(10); "share" — 248(1); "taxable dividend" — 89(1), 248(1); "taxpayer" — 248(1).

213. (1) Tax non-payable by non-resident person — Tax is not payable by a non-resident person under subsection 212(2) on a dividend in respect of a share of the capital stock of a foreign business corporation if not less than 90% of the total of the amounts received or receivable by it that are required to be included in computing its income for the taxation year in which the dividend was paid was received or receivable in respect of the op-

eration by it of public utilities or from mining, transporting and processing of ore in a country in which

(a) if the non-resident person is an individual, the non-resident person resides; or

(b) if the non-resident person is a corporation, individuals who own more than 50% of its share capital (having full voting rights under all circumstances) reside.

Forms: T4061: Non-resident withholding tax guide.

(2) Idem — For the purposes of this section, if 90% of the total of the amounts received or receivable by a corporation that are required to be included in computing its income for a taxation year was received or receivable in respect of the operation by it of public utilities or from the mining, transporting and processing of ore, an amount received or receivable in that year from that corporation by another corporation shall, if it is required to be included in computing the receiving corporation's income for the year, be deemed to have been received by the receiving corporation in respect of the operation by it of public utilities or from the mining, transporting and processing of ore by it in the country in which the public utilities were operated or the mining, transporting and processing of ore was carried out by the payer corporation.

(3) Corporation deemed to be foreign business corporation — For the purposes of this section, a corporation shall be deemed to be a foreign business corporation at a particular time if it would have been a foreign business corporation within the meaning of section 71 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952 (as that section read in its application to the 1971 taxation year), for the taxation year of the corporation in which the particular time occurred, if that section had been applicable to that taxation year.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Definitions [s. 213]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "foreign business corporation" — 213(3); "individual", "non-resident", "person" — 248(1); "taxation year" — 249.

Interpretation Bulletins [s. 213]: IT-109R2: Unpaid amounts.

214. (1) No deductions — The tax payable under section 212 is payable on the amounts described therein without any deduction from those amounts whatever.

Related Provisions: 216 — Option to pay tax on the net rather than the gross.

I.T. Application Rules: 10(6) (tax limited to treaty rate).

Interpretation Bulletins: IT-88R2: Stock dividends; IT-109R2: Unpaid amounts; IT-438R2: Crown charges — resource properties in Canada; IT-465R: Non-resident beneficiaries of trusts.

(2) Income and capital combined — Where paragraph 16(1)(b) would, if Part I were applicable, result in a part of an amount being included in computing the income of a non-resident person, that part of the amount shall, for the purposes of this Part, be deemed to have been paid or credited to the non-resident person in respect of property, services or otherwise, depending on the nature of that part of the amount.

Related Provisions: 214(12) — Application.

Interpretation Bulletins: IT-88R2: Stock dividends; IT-265R3: Payments of income and capital combined (archived).

(3) Deemed payments — For the purposes of this Part,

(a) where section 15 or subsection 56(2) would, if Part I were applicable, require an amount to be included in computing a taxpayer's income, that amount shall be deemed to have been paid to the taxpayer as a dividend from a corporation resident in Canada;

(b) where paragraph 56(1)(f) would, if Part I were applicable, require an amount to be included in computing an individual's income, that amount shall be deemed to have been paid to the individual under an income-averaging annuity contract;

(b.1) where paragraph 56(1)(y) would, if Part I were applicable, require an amount to be included in computing a taxpayer's income, that amount shall be deemed to have been paid to the taxpayer to acquire an interest in a retirement compensation arrangement;

(c) where, because of subsection 146(8.1), (8.8), (8.91), (9), (10) or (12), an amount would, if Part I applied, be required to be included in computing a taxpayer's income, that amount shall be deemed to have been paid to the taxpayer as a payment under a registered retirement savings plan or an amended plan (within the meaning assigned by subsection 146(12)), as the case may be;

(d) where, by virtue of subsection 147(10), (13) or (15), an amount would, if Part I were applicable, be required to be included in computing a taxpayer's income, that amount shall be deemed to have been paid to the taxpayer as a payment under a deferred profit sharing plan or a plan referred to in subsection 147(15) as a "revoked plan", as the case may be;

(e) where subsection 130.1(2) would, if Part I were applicable, deem an amount received by a shareholder of a mortgage investment corporation to have been received by the shareholder as interest, that amount shall be deemed to have been paid to the shareholder as interest on a bond issued after 1971;

(f) where subsection 104(13) would, if Part I were applicable, require any part of an amount payable by a trust in its taxation year to a beneficiary to be included in computing the income of the non-resident person who is a beneficiary of the trust, that part shall be deemed to be an amount paid or credited to that person as income of or from the trust on the earlier of

(i) the day on which the amount was paid or credited, and

(ii) the day that is 90 days after the end of the taxation year

and not at any subsequent time when the amount was actually paid or credited;

(f.1) where paragraph 132.1(1)(d) would, if Part I were applicable, require an amount to be included in computing a taxpayer's income for a taxation year by reason of a designation by a mutual fund trust under subsection 132.1(1), that amount shall be deemed to be an amount paid or credited to that person as income of or from the trust on the day of the designation;

(g) where an individual who is a beneficiary under a fund, plan or trust that was a registered home ownership savings plan (within the meanings assigned by subparagraphs 146.2(1)(a) and (h) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as they read in their application to the 1985 taxation year) on December 31, 1985 dies, an amount equal to the fair market value of the property in the fund, plan or trust at the time of death shall be deemed, for the purposes of section 212, to have been paid to the individual at the time of death as a payment

out of or under a fund, plan or trust that was at the end of 1985 a registered home ownership savings plan;

(h) [Repealed under former Act]

(i) where, because of subsection 146.3(4), (6), (6.1), (7) or (11), an amount would, if Part I applied, be required to be included in computing a taxpayer's income, that amount shall be deemed to have been paid to the taxpayer as a payment under a registered retirement income fund;

(j) [Repealed]

(k) where, because of subsection 143.1(2), an amount distributed at any time by an amateur athlete trust would, if Part I were applicable, be required to be included in computing an individual's income, that amount shall be deemed to have been paid at that time to the individual as a payment in respect of an amateur athlete trust; and

(l) where, because of subsection 12(10.2), an amount would at any particular time, if Part I were applicable, be required to be included in computing a taxpayer's income, that amount shall be deemed to have been paid by Her Majesty in right of Canada at that time to the taxpayer out of the taxpayer's NISA Fund No. 2.

Related Provisions: 94(3)(a)(iii) [proposed], 104(7.01) — Trusts that are deemed resident in Canada; 214(3.1) — Time of deemed payment; 218.3(10) — 214(3)(f) applies to mutual fund distributions withholding tax; 227(6.1) — Repayment of non-resident shareholder loan.

History: Para. 214(3)(j) repealed by 1998, c. 19, s. 63, applicable after 1997. Para. 214(3)(j) formerly read:

> (j) where, by virtue of subsection 146.1(14), an amount would, if Part I were applicable, be required to be included in computing a taxpayer's income, that amount shall be deemed to have been paid to the taxpayer as a payment in respect of a registered education savings plan;

Para. 214(3)(c) substituted by 1994, c. 21, subsec. 98(1), applicable to payments made after 1992. That para. formerly read:

> (c) where, by virtue of subsection 146(8.1), (8.8), (8.91), (9), (10) or (12) or 146.3(6.1), an amount would, if Part I were applicable, be required to be included in computing a taxpayer's income, that amount shall be deemed to have been paid to the taxpayer as a payment under a registered retirement savings plan or a plan referred to in subsection 146(12) as an "amended plan", as the case may be;

Para. 214(3)(i) substituted by 1994, c. 21, subsec. 98(2), applicable to payments made after 1992. That para. formerly read:

> (i) where, by reason of subsection 146.3(4), (6), (7) or (11), an amount would, if Part I were applicable, be required to be included in computing a taxpayer's income, that amount shall be deemed to have been paid to the taxpayer as a payment under a registered retirement income fund;

Paras. 214(3)(k) and (l) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 125(1), para. (k) applicable to amounts distributed after 1991, and (l) applicable after 1990.

Selected Cases [subsec. 214(3)]: *Gillette Canada Inc. v. R.*, [2003] 3 C.T.C. 27 (FCA); aff'g [2001] 4 C.T.C. 2884 (TCC) (Debtor-creditor relationship required for subsec. 15(2) to apply).

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-88R2: Stock dividends; IT-96R6: Options to acquire shares, bonds or debentures and by trusts to acquire trust units; IT-109R2: Unpaid amounts; IT-119R4: Debts of shareholders, certain persons connected with shareholders, etc.; IT-335R2: Indirect payments; IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt; IT-432R2: Benefits conferred on shareholders; IT-465R: Non-resident beneficiaries of trusts; IT-468R: Management or administration fees paid to non-residents; IT-500R: RRSPs — death of an annuitant.

Information Circulars: 77-16R4: Non-resident income tax; 72-22R9: Registered retirement savings plans.

(3.1) Time of deemed payment — Except as otherwise expressly provided, each amount deemed by subsection (3) to have been paid shall be deemed to have been paid at the time of the event or transaction as a consequence of which the amount would, if Part I were applicable, be required to be included in computing a taxpayer's income.

(4) Securities — Where, if section 76 were applicable in computing a non-resident person's income, that section would require an amount to be included in computing the income, that amount shall, for the purpose of this Part, be deemed to have been, at the time the non-resident person received the security, right, certificate or other evidence of indebtedness, paid to the non-resident person on account of the debt in respect of which the non-resident person received it.

Related Provisions: 214(5) — Interpretation.

Interpretation Bulletins: IT-77R: Securities in satisfaction of an income debt (archived); IT-88R2: Stock dividends; IT-109R2: Unpaid amounts.

(5) Interpretation — Subsection (4) is enacted for greater certainty and shall not be construed as limiting the generality of the other provisions of this Part defining amounts on which tax is payable.

(6) Deemed interest — Where, in respect of interest stipulated to be payable, on a bond, debenture, bill, note, mortgage, hypothecary claim or similar obligation that has been assigned or otherwise transferred by a non-resident person to a person resident in Canada, subsection 20(14) would, if Part I were applicable, require an amount to be included in computing the transferor's income, that amount is, for the purposes of this Part, deemed to be a payment of interest on that obligation made by the transferee to the transferor at the time of the assignment or other transfer of the obligation, if

(a) the obligation was issued by a person resident in Canada;

(b) the obligation was not an obligation described in paragraph (8)(a) or (b); and

(c) the assignment or other transfer is not an assignment or other transfer referred to in paragraph (7.1)(b).

Related Provisions: 214(7.1) — Sale of obligation; 214(9) — Deemed resident; 214(11) — Application to non-resident-owned investment corporation; 214(14) — Deemed assignment of obligation.

History: The opening words of subsec. 214(6) amended by 2001, c. 17, subsec. 227(1), to add ", hypothecary claim", in force June 14, 2001.

Para. 214(6)(b) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 176(1), to substitute "described in paragraph (8)(a) or (b)" for "referred to in paragraph (8)(a), (b) or (c)", applicable to obligations assigned or otherwise transferred after July 13, 1990.

Interpretation Bulletins: IT-410R: Debt obligations — accrued interest on transfer (archived).

Information Circulars: 77-16R4: Non-resident income tax.

(7) Sale of obligation — Where

(a) a non-resident person has at any time assigned or otherwise transferred to a person resident in Canada a bond, debenture, bill, note, mortgage, hypothecary claim or similar obligation issued by a person resident in Canada,

(b) the obligation was not an excluded obligation, and

(c) the assignment or other transfer is not an assignment or other transfer referred to in paragraph (7.1)(b),

the amount, if any, by which

(d) the price for which the obligation was assigned or otherwise transferred at that time,

exceeds

(e) the price for which the obligation was issued,

shall, for the purposes of this Part, be deemed to be a payment of interest on that obligation made by the person resident in Canada to the non-resident person at that time.

Related Provisions: 16(6) — Indexed debt obligations; 214(7.1) — Sale of obligation; 214(8) — Meaning of "excluded obligation"; 214(9) — Deemed resident; 214(10) — Reduction of tax; 214(11) — Application to non-resident-owned investment corporation; 214(14) — Deemed assignment of obligation; 215(5) — Regulations reducing amount to be deducted or withheld.

History: Para. 214(7)(a) amended by 2001, c. 17, subsec. 227(2), to add ", hypothecary claim", in force June 14, 2001.

Interpretation Bulletins: IT-88R2: Stock dividends; IT-109R2: Unpaid amounts; IT-360R2: Interest payable in a foreign currency.

Information Circulars: 77-16R4: Non-resident income tax.

(7.1) Idem — Where

(a) a person resident in Canada has at a particular time assigned or otherwise transferred an obligation to a non-resident person,

(b) the non-resident person has at a subsequent time assigned or otherwise transferred the obligation back to the person resident in Canada, and

(c) subsection (6) or (7) would apply with respect to the assignment or other transfer referred to in paragraph (b), if those subsections were read without reference to paragraphs (6)(c) and (7)(c),

the amount, if any, by which

(d) the price for which the obligation was assigned or otherwise transferred at the subsequent time,

exceeds

(e) the price for which the obligation was assigned or otherwise transferred at the particular time,

shall, for the purposes of this Part, be deemed to be a payment of interest on that obligation made by the person resident in Canada to the non-resident person at the subsequent time.

Related Provisions: 214(11) — Application to non-resident-owned investment corporation; 214(14) — Deemed assignment of obligation.

Interpretation Bulletins: IT-88R2: Stock dividends; IT-109R2: Unpaid amounts; IT-410R: Debt obligations — accrued interest on transfer (archived).

Information Circulars: 77-16R4: Non-resident income tax.

(8) Meaning of "excluded obligation" — For the purposes of subsection (7), "excluded obligation" means any bond, debenture, bill, note, mortgage, hypothecary claim or similar obligation

(a) the interest on which is exempt from tax under this Part because of subparagraph 212(1)(b)(ii), (iii) or (vii);

(b) that is prescribed to be a public issue security; or

(c) that is not an indexed debt obligation and that was issued for an amount not less than 97% of the principal amount thereof, and the yield from which, expressed in terms of an annual rate on the amount for which the obligation was issued (which annual rate shall, if the terms of the obligation or any agreement relating thereto conferred on the holder thereof a right to demand payment of the principal amount of the obligation or the amount outstanding as or on account of the principal amount thereof, as the case may be, before the maturity of the obligation, be calculated on the basis of the yield that produces the highest annual rate obtainable either on the maturity of the obligation or conditional on the exercise of any such right) does not exceed 4/3 of the interest stipulated to be payable on the obligation, expressed in terms of an annual rate on

(i) the principal amount thereof, if no amount is payable on account of the principal amount before the maturity of the obligation, and

(ii) the amount outstanding from time to time as or on account of the principal amount thereof, in any other case.

History: The opening words of subsec. 214(8) amended by 2001, c. 17, subsec. 227(3), to add ", hypothecary claim", in force June 14, 2001.

That portion of para. 214(8)(c) preceding subpara. (i) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 125(2), to add "that is not an indexed debt obligation and", applicable to indexed debt obligations issued after October 16, 1991.

Subsec. 214(8) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 176(2), applicable to obligations assigned or otherwise transferred after July 13, 1990. Subsec. 214(8) formerly read:

(8) Definition of "excluded obligation" — In subsection (7),"excluded obligation" means any bond, debenture, bill, note, mortgage or similar obligation,

(a) referred to in subparagraph 212(1)(b)(ii) or (iii),

(b) if, under the terms of the obligation or any agreement relating thereto, the issuer thereof is not obliged to pay more than 25% of the principal amount thereof within 5 years of the date of its issue except in the event of a failure or default under the said terms or agreement,

(c) that is prescribed to be a public issue security, or

(d) that was issued for an amount not less than 97% of the principal amount thereof, and the yield from which, expressed in terms of an annual rate on the amount for which the obligation was issued (which annual rate shall, if the terms of the obligation or any agreement relating thereto conferred on the holder thereof a right to demand payment of the principal amount of the obligation or the amount outstanding as or on account of the principal amount thereof, as the case may be, before the maturity of the obligation, be calculated on the basis of the yield that produces the highest annual rate obtainable either on the maturity of the obligation or conditional on the exercise of any such right) does not exceed 4/3 of the interest stipulated to be payable on the obligation, expressed in terms of an annual rate on

(i) the principal amount of the obligation, if no amount is payable on account of the principal amount before the maturity of the obligation, or

(ii) the amount outstanding from time to time as or on account of the principal amount of the obligation, in any other case.

Regulations: No prescribed public issue security yet under 214(8)(b).

(9) Deemed resident — Where

(a) the assignment or other transfer of an obligation to a non-resident person carrying on business in Canada would be described in subsection (6) or (7) if those subsections were read without reference to paragraphs (6)(c) and (7)(c) and if that non-resident person were a person resident in Canada, and

(b) that non-resident person

(i) may deduct, under subsection 20(14), in computing the non-resident person's taxable income earned in Canada for a taxation year an amount in respect of interest on the obligation, or

(ii) may deduct, under Part I, in computing the non-resident person's taxable income earned in Canada for a taxation year an amount in respect of any amount paid on account of the principal amount of the obligation,

the non-resident person shall, with respect to the assignment or other transfer of the obligation, be deemed, for the purposes of this Part, to be a person resident in Canada.

Related Provisions: 214(14) — Assignment of obligation.

Interpretation Bulletins: IT-88R2: Stock dividends; IT-109R2: Unpaid amounts; IT-410R: Debt obligations — accrued interest on transfer (archived).

(10) Reduction of tax — Where a non-resident person has assigned or otherwise transferred to a person resident in Canada an obligation

(a) on which an amount of interest was deemed by subsection (6) or (7) to have been paid, and

(b) that the non-resident person had previously acquired from a person resident in Canada,

the amount of the tax under this Part that the non-resident person is liable to pay in respect thereof shall be deemed, for the purpose of subsection 227(6), to be that proportion of the tax the non-resident person would otherwise have been liable to pay in respect thereof that

(c) the number of days in the period commencing with the day the obligation was last acquired by the non-resident person from a person resident in Canada and ending with the day the obligation was last assigned or otherwise transferred by the non-resident person to a person resident in Canada

is of

(d) the number of days in the period commencing with the day the obligation was issued and ending with the day the obligation was last assigned or otherwise transferred by the non-resident person to a person resident in Canada.

Related Provisions: 214(14) — Deemed assignment of obligation.

Interpretation Bulletins: IT-88R2: Stock dividends; IT-109R2: Unpaid amounts; IT-410R: Debt obligations — accrued interest on transfer (archived).

(11) Application of para. 212(1)(b) — In respect of any payment of interest deemed by subsection (6), (7) or (7.1) to have been made by a non-resident-owned investment corporation on the assignment or other transfer of an obligation, paragraph 212(1)(b) shall be read and construed without reference to subparagraph 212(1)(b)(i).

(12) Where subsec. (2) does not apply — Subsection (2) does not apply in respect of a payment to a non-resident person under any obligation in respect of which that person is liable to pay tax under this Part by reason of subsection (7) or (7.1).

(13) Regulations respecting residents — The Governor in Council may make general or special regulations, for the purposes of this Part, prescribing

(a) who is or has been at any time resident in Canada;

(b) where a person was resident in Canada as well as in some other place, what amounts are taxable under this Part; and

(c) where a non-resident person carried on business in Canada, what amounts are taxable under this Part or what portion of the tax under this Part is payable by that person.

Regulations: 802 (amounts taxable).

(14) Assignment of obligation — For the purposes of this section, any transaction or event by which an obligation held by a non-resident person is redeemed in whole or in part or is cancelled shall be deemed to be an assignment of the obligation by the non-resident person.

Interpretation Bulletins: IT-88R2: Stock dividends; IT-109R2: Unpaid amounts; IT-360R2: Interest payable in a foreign currency.

(15) Standby charges and guarantee fees — For the purposes of this Part,

(a) where a non-resident person has entered into an agreement under the terms of which the non-resident person agrees to guarantee the repayment, in whole or in part, of the principal amount of a bond, debenture, bill, note, mortgage, hypothecary claim or similar obligation of a person resident in Canada, any amount paid or credited as consideration for the guarantee is deemed to be a payment of interest on that obligation; and

(b) where a non-resident person has entered into an agreement under the terms of which the non-resident person agrees to lend money, or to make money available, to a person resident in Canada, any amount paid or credited as consideration for so agreeing to lend money or to make money available shall, if the non-resident person would be liable to tax under this Part in respect of interest payable on any obligation issued under the terms of the agreement on the date it was entered into, be deemed to be a payment of interest.

History: Para. 214(15)(a) amended by 2001, c. 17, subsec. 227(4), to add ", hypothecary claim", deemed to have come into force on March 1, 1994.

Selected Cases [subsec. 214(15)]: *R. v. Melford Developments Inc.*, [1982] C.T.C. 330 (SCC) (Annual payments in consideration for loan guarantee not "interest" and not subject to withholding tax under terms of Canada-Germany Income Tax Agreement; but see now *Income Tax Conventions Interpretation Act*, s. 3).

Advance Tax Rulings: ATR-49: Long-term foreign debt.

Definitions [s. 214]: "amateur athlete trust" — 143.1(1)(a), 248(1); "amount" — 248(1); "assignment" — 214(14); "business" — 248(1); "Canada" — 255; "carried on business in Canada" — 253; "corporation" — 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan" — 147(1), 248(1); "dividend" — 248(1); "excluded obligation" — 214(8); "Governor in Council", "Her Majesty" — *Interpretation Act* 35(1); "income-averaging annuity contract" — 61(4), 248(1); "indexed debt obligation", "individual" — 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q) [to be repealed], 132.2(3)(n) [draft], 248(1); "NISA Fund No. 2", "non-resident" — 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "person", "prescribed", "principal amount", "property" — 248(1); "registered education savings plan" — 146.1(1), 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "regulation" — 248(1); "resident in Canada" — 250; "retirement compensation arrangement", "shareholder" — 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

215. (1) Withholding and remittance of tax — When a person pays, credits or provides, or is deemed to have paid, credited or provided, an amount on which an income tax is payable under this Part, or would be so payable if this Part were read without reference to subsection 216.1(1), the person shall, notwithstanding any agreement or law to the contrary, deduct or withhold from it the amount of the tax and forthwith remit that amount to the Receiver General on behalf of the non-resident person on account of the tax and shall submit with the remittance a statement in prescribed form.

Proposed Amendment — 215(1)

215. Withholding and remittance of tax — (1) When a person pays, credits or provides, or is deemed to have paid, credited or provided, an amount on which an income tax is payable under this Part, or would be so payable if this Act were read without reference to subparagraph 94(3)(a)(viii) and to subsection 216.1(1), the person shall, notwithstanding any agreement or law to the contrary, deduct or withhold from it the amount of

the tax and forthwith remit that amount to the Receiver General on behalf of the non-resident person on account of the tax and shall submit with the remittance a statement in prescribed form.

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), s. 38, will amend subsec. 215(1) to read as above, applicable to trust taxation years that begin after 2002, and to trust taxation years that begin

(a) after 2000, if the trust makes a valid election under para. (a) of the Application of the amendment to s. 94; and

(b) after 2001, if the trust makes a valid election under para. (a) or (b) of the Application of the amendment to s. 94.

Technical Notes: Subsection 215(1) provides that, where a resident of Canada pays or is deemed to pay an amount to a non-resident person in respect of which the non-resident person is liable for withholding tax under Part XIII, the payer is required to withhold the tax from the amount and remit it to the Receiver General on behalf of the non-resident.

Subsection 215(1) is amended to ensure that, where an amount is paid or credited (or deemed to be paid or credited) to a trust that is deemed, by paragraph 94(3)(a), to be resident in Canada for the purpose of determining the trust's liability for tax under Part XIII, the payer is required to withhold the tax that would otherwise be payable by the trust and to remit it to the Receiver General.

For more detail on the application of Part XIII to trusts deemed, under paragraph 94(3)(a), to be resident in Canada, and to payers of amounts to such trusts, see the commentary on subsection 94(3) and (4) and subsections 216(4.1).

This amendment applies to trust taxation years that begin after 2002. It also applies to trust taxation years that begin

- after 2000 if the trust makes a valid election under the coming-into-force provision of new section 94, and
- after 2001 if the trust makes a valid election under the coming-into-force provision of new section 94.

Related Provisions: 94(4)(c) [proposed] — Application of rule deeming non-resident trust to be resident in Canada; 215(1.1) — Limitation on requirement to withhold tax on corporate immigration; 215(5) — Regulations reducing deduction or withholding; 215(6) — Liability for tax; 227 — Withholding taxes — administration and enforcement; 227.1 — Liability of directors; 248(7)(b)(i) — Remittance deemed made when received.

History: Subsec. 215(1) amended by 2001, c. 17, subsec. 174(1), applicable to amounts paid, credited or provided after 2000. It formerly read:

(1) Deduction and payment of tax — When a person pays or credits or is deemed to have paid or credited an amount on which an income tax is payable under this Part, the person shall, notwithstanding any agreement or law to the contrary, deduct or withhold therefrom the amount of the tax and forthwith remit that amount to the Receiver General on behalf of the non-resident person on account of the tax and shall submit therewith a statement in prescribed form.

Selected Cases [subsec. 215(1)]: *Curragh Inc. v. Canada*, [1995] 1 C.T.C. 2163 (TCC) (Withholding required if payor knows that non-resident is beneficial owner of amount to be paid); *Wenger's Ltd. v. MNR*, [1992] 2 C.T.C. 2479 (TCC) (Late payment "surcharge" on sale price of goods was "interest"); *Nestle Enterprises Ltd. v. MNR*, [1991] 2 C.T.C. 2627 (TCC) (Penalty and interest upheld on grounds taxpayer had failed to "forthwith remit" withholding tax); *Forest et al. v. R.*, 80 D.T.C. 6149 (FCTD) (Payments into non-residents' Canadian RRSPs not subject to withholding tax).

Regulations: 105 (withholding of 15% on fees for services); 202 (information return); 800 (no withholding on amounts paid or credited to authorized foreign bank or non-resident insurer); 805 (where withholding not required); 809 (reduction in withholding).

Interpretation Bulletins: IT-88R2: Stock dividends; IT-465R: Non-resident beneficiaries of trusts.

Information Circulars: 77-16R4: Non-resident income tax.

Advance Tax Rulings: ATR-49: Long-term foreign debt; ATR-69: Withholding tax on interest paid to non-resident persons;.

I.T. Technical News: 14 (meaning of "credited" for purposes of Part XIII withholding tax).

Forms: NR4 Summ: Return of amounts paid or credited to non-residents of Canada; NR7-R: Application for refund of non-resident tax withheld; T3 SCH 10: Part XII.2 tax and Part XIII non-resident withholding tax.

(1.1) Exception — corporate immigration — Subsection (1) does not apply in respect of a dividend deemed to be paid under paragraph 128.1(1)(c.1) by a corporation to a non-resident corporation with which the corporation was dealing at arm's length.

History: Subsec. 215(1.1) added by 1999, c. 22, s. 77, applicable after February 23, 1998.

(2) Idem [amount paid by agent] — Where an amount on which an income tax is payable under this Part is paid or credited by an agent or other person on behalf of the debtor either by way of redemption of bearer coupons or warrants or otherwise, the agent or other person by whom the amount was paid or credited shall, notwithstanding any agreement or law to the contrary, deduct or withhold and remit the amount of the tax and shall submit therewith a statement in prescribed form as required by subsection (1) and shall thereupon, for purposes of accounting to or obtaining reimbursement from the debtor, be deemed to have paid or credited the full amount to the person otherwise entitled to payment.

Related Provisions: 94(4)(c) [proposed] — Application of rule deeming non-resident trust to be resident in Canada; 215(5) — Regulations reducing deduction or withholding; 215(6) — Liability for tax; 227(8)–(8.4) — Liabilities arising from failure to withhold or deduct amount; 227.1 — Liability of directors.

Regulations: 202(2) (information return); 800 (no withholding on amounts paid or credited to authorized foreign bank or non-resident insurer); 805 (where withholding not required); 809 (reduction in withholding).

I.T. Technical News: 14 (meaning of "credited" for purposes of Part XIII withholding tax).

(3) Idem [amount paid to agent] — Where an amount on which an income tax is payable under this Part was paid or credited to an agent or other person for or on behalf of the person entitled to payment without the tax having been deducted or withheld under subsection (1), the agent or other person shall, notwithstanding any agreement or law to the contrary, deduct or withhold therefrom the amount of the tax and forthwith remit that amount to the Receiver General on behalf of the person entitled to payment in payment of the tax and shall submit therewith a statement in prescribed form, and the agent or other person shall thereupon, for purposes of accounting to the person entitled to payment, be deemed to have paid or credited that amount to that person.

Related Provisions: 94(4)(c) [proposed] — Application of rule deeming non-resident trust to be resident in Canada; 215(5) — Regulations reducing deduction or withholding; 215(6) — Liability for tax; 216(4), (4.1) — Optional method of payment; 227(8)–(8.4) — Liabilities arising from failure to withhold or deduct amount; 227.1 — Liability of directors.

Regulations: 202(3) (information return); 800 (no withholding on amounts paid or credited to authorized foreign bank or non-resident insurer); 805 (where withholding not required); 809 (reduction in withholding).

Interpretation Bulletins: IT-393R2: Election re tax on rents and timber royalties — non-residents.

I.T. Technical News: 14 (meaning of "credited" for purposes of Part XIII withholding tax).

Forms: NR7-R: Application for refund of non-resident tax withheld.

(4) Regulations creating exceptions — The Governor in Council may make regulations with reference to any non-resident person or class of non-resident persons who carries or carry on business in Canada, providing that subsections (1) to (3) are not applicable to amounts paid to or credited to that person or those persons and requir-

ing the person or persons to file an annual return on a prescribed form and to pay the tax imposed by this Part within a time limited in the regulations.

Related Provisions: 162(7) — Penalty for failure to comply with regulation; 227(9) — Penalty on tax not paid; 227(9.3) — Interest on tax not paid; 227.1 — Liability of directors; 235 — Penalty for failure to make returns.

Regulations: 800, 801, 803, 805.

Forms: T2016: Part XIII tax return — tax on income from Canada of approved non-resident insurers.

(5) Regulations reducing deduction or withholding — The Governor in Council may make regulations in respect of any non-resident person or class of non-resident persons to whom any amount is paid or credited as, on account of, in lieu of payment of or in satisfaction of, any amount described in any of paragraphs 212(1)(h), (j) to (m) and (q) reducing the amount otherwise required by any of subsections (1) to (3) to be deducted or withheld from the amount so paid or credited.

Related Provisions: 190.15(6) — Related financial institution; 212(1) — Tax on Canadian income of non-residents; 212(2) — Tax on dividends; 227.1 — Liability of directors.

History: Subsec. 215(5) amended by 2001, c. 17, subsec. 174(2), applicable after April 1997. It formerly read:

> (5) The Governor in Council may make regulations in respect of any non-resident person or class of non-resident persons to whom any amount is paid or credited as, on account of, in lieu of payment of or in satisfaction of, any amount described in any of paragraphs 212(1)(f), (h), (j) to (m) and (q) reducing the amount otherwise required by any of subsections (1) to (3) to be deducted or withheld from the amount so paid or credited.

Subsec. 215(5) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 177, applicable to amounts paid or credited after July 13, 1990. Subsec. 215(5) formerly read:

> (5) Regulations reducing amount to be deducted or withheld — The Governor in Council may make regulations with reference to any non-resident person or class of non-resident persons to whom any amount is paid or credited as, on account or in lieu of payment of, or in satisfaction of, any amount described in paragraph 212(1)(f), (h), (j), (k), (l), (m) or (q) reducing the amount otherwise required by subsections (1) to (3) to be deducted or withheld from the amount so paid or credited.

Regulations: 805 (where withholding not required); 809 (reduction in withholding).

Forms: NR5: Application by a non-resident of Canada for a reduction in the amount of non-resident tax required to be withheld; NR7-R: Application for refund of non-resident tax withheld.

(6) Liability for tax — Where a person has failed to deduct or withhold any amount as required by this section from an amount paid or credited or deemed to have been paid or credited to a non-resident person, that person is liable to pay as tax under this Part on behalf of the non-resident person the whole of the amount that should have been deducted or withheld, and is entitled to deduct or withhold from any amount paid or credited by that person to the non-resident person or otherwise recover from the non-resident person any amount paid by that person as tax under this Part on behalf thereof.

Related Provisions: 94(4)(c) [proposed] — Application of rule deeming non-resident trust to be resident in Canada; 227(8.4) — Parallel provision for other withholding taxes; 227.1 — Liability of directors where corporation fails to withhold.

Selected Cases [subsec. 215(6)]: *RMM Canadian Enterprises Inc. v. R.*, [1997] 3 C.T.C. 2103 (TCC) (Agent or instrumentality used to distribute deemed didvidend under s. 215 or s. 159); *Harrowston Corp. v. Canada*, [1997] 1 C.T.C. 101 (FCA) (Liability to pay tax did not result in deductible bad debt); *Crown Forest Industries Ltd. v. Canada*, [1992] 2 C.T.C. 1 (FCTD); aff'd (Nov. 8, 1993), Doc. A-1103-92, A-1104-92, A-1105-92 (FCA) (Corporation liable to, but exempt from, US tax was resident in US under treaty by virtue of place of management and business); *Alberta Gas Ethylene Co. Ltd. v. Canada*, [1990] 2 C.T.C. 171 (FCA) (Interest on loan by non-resident subsidiary to resident parent subject to withholding tax; agency argument rejected); *R. v. Saint John Shipbuilding and Dry Dock Co. Ltd.*, [1980] C.T.C. 352 (FCA) (Payments for use of data stored on computer tape not taxable); *R. v. Farmparts Distributing Ltd.*, [1980] C.T.C. 205 (FCA) (Payments for merchandising technique were taxable within scope of "plan", "process" or "property"; payments for right to buy and sell machine not "rent, royalties or similar payments").

Selected Cases [s. 215]: *Wright v. R.*, [2001] 3 C.T.C. 2426 (TCC) (Where non-resident elects under s. 216, no further liability for withholding taxes under s. 215).

Definitions [s. 215]: "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 255; "carry on business in Canada" — 253; "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "Governor in Council" — *Interpretation Act* 35(1); "non-resident", "person", "prescribed", "regulation" — 248(1).

Interpretation Bulletins [s. 215]: IT-88R2: Stock dividends; IT-109R2: Unpaid amounts; IT-362R: Patronage dividends.

216. (1) Alternatives re rents and timber royalties — Where an amount has been paid during a taxation year to a non-resident person or to a partnership of which that person was a member as, on account of, in lieu of payment of or in satisfaction of, rent on real property in Canada or a timber royalty, that person may, within 2 years (or, where that person has filed an undertaking described in subsection (4) in respect of the year, within 6 months) after the end of the year, file a return of income under Part I in the form prescribed for a person resident in Canada for that year and the non-resident person shall, without affecting the liability of the non-resident person for tax otherwise payable under Part I, thereupon be liable, in lieu of paying tax under this Part on that amount, to pay tax under Part I for the year as though

Proposed Amendment — 216(1) opening words

216. (1) Alternatives re rents and timber royalties — If an amount has been paid during a taxation year to a non-resident person or to a partnership of which that person was a member as, on account of, in lieu of payment of or in satisfaction of, rent on real or immovable property in Canada or a timber royalty, that person may, within two years (or, if that person has filed an undertaking described in subsection (4) in respect of the year, within six months) after the end of the year, file a return of income under Part I for that year in prescribed form. On so filing and without affecting the liability of the non-resident person for tax otherwise payable under Part I, the non-resident person is, in lieu of paying tax under this Part on that amount, liable to pay tax under Part I for the year as though

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 179(1), will amend the opening words of subsec. 216(1) to read as above, applicable to taxation years that end after December 20, 2002.

Technical Notes: Section 216 allows a non-resident person to file a return of income under Part I in respect of rent on real property in Canada or timber royalties and to pay, instead of the non-resident withholding tax under Part XIII, tax under Part I on the basis of the non-resident's income from the rent or royalties.

Subsection 216(1), which provides the basic rule permitting a non-resident to be taxed under Part I of the Act on this income, is amended to improve its structure and language. Most of the changes are stylistic; the amendment also updates the subsection's reference to the form of the non-resident's Part I tax return, to reflect the implementation of a special return for these non-residents.

(a) the non-resident person were a person resident in Canada and not exempt from tax under section 149;

(b) the non-resident person's income from the non-resident person's interest in real property in Canada, timber resource properties and timber limits in Canada and the non-resident person's share of the income of a partnership of which the non-resident person was a member from its interest in real property in Canada, timber resource properties and timber limits in Canada were the non-resident person's only income;

Proposed Amendment — 216(1)(b)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 268(1), will amend para. 216(1)(b) by substituting "real property, or real right in immovables, in Canada and interest in, or for civil law right in" for "real property in Canada" in two places, to come into force on Royal Assent.

Technical Notes: See under 12(4).

(c) the non-resident person were entitled to no deductions from income for the purpose of computing the non-resident person's taxable income; and

(d) the non-resident person were entitled to no deductions under sections 118 to 118.9 in computing the non-resident person's tax payable under Part I for the year.

Proposed Amendment — Recapture on donation of rental property to charity

Letter from Dept. of Finance, February 15, 2000: See under 118.1(5.4), (6).

Related Provisions: 13(21) — "Timber resource property"; 96 — Partnerships and their members; 120(1) — Additional tax on income not earned in a province; 150.1(5) — Electronic filing; 216(8) — Restriction on deduction; 220(3) — Extension of time for making return; 248(4) — Interest in real property; 248(4.1) — Meaning of "real right in immovables"; 250.1(b) — Calculation of income of non-resident person.

History: That portion of subsec. 216(1) preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 178, applicable to taxation years ending after July 13, 1990. That portion formerly read:

> 216. (1) Where an amount has been paid during a taxation year to a non-resident person, or to a partnership of which the non-resident person was a member, as, on account or in lieu of payment of, or in satisfaction of, rent on real property in Canada or a timber royalty, the non-resident person may, within 2 years from the end of the taxation year, file a return of income under Part I in the form prescribed for a person resident in Canada for that taxation year and shall, without affecting the non-resident person's liability for tax otherwise payable under Part I, thereupon be liable, in lieu of paying tax under this Part on that amount, to pay tax under Part I for that taxation year as though

Selected Cases [subsec. 216(1)]: *R. v. Merali*, [1988] 1 C.T.C. 320 (FCA) (Non-capital losses not deductible to non-resident electing under provision carried forward to year in respect of which taxpayer became resident).

Interpretation Bulletins: IT-81R: Partnerships — income of non-resident partners; IT-88R2: Stock dividends; IT-109R2: Unpaid amounts; IT-121R3: Election to capitalize cost of borrowed money (archived); IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-434R: Rental of real property by individual.

Information Circulars: 77-16R4: Non-resident income tax.

Forms: T1 General: Individual income tax return; T2 Short: Return — for eligible corporations; T2 SCH 97: Additional information on non-resident corporations in Canada; T3: Statement of trust income allocations and designations; NR6: Undertaking to file an income tax return by a non-resident receiving rent from real property or receiving a timber royalty; T1159: Income tax return for electing under s. 216; T4144: Income tax guide for electing under section 216.

(2) Idem — Where a non-resident person has filed a return of income under Part I as permitted by this section, the amount deducted under this Part from

(a) rent on real property or from timber royalties paid to the person, and

(b) the person's share of the rent on real property or from timber royalties paid to a partnership of which the person is a member

Proposed Amendment — 216(2)(a), (b)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 268(2), will amend paras. 216(2)(a) and (b) by substituting "real or immovable property" for "real property" in each, to come into force on Royal Assent.

Technical Notes: See under 12(4).

and remitted to the Receiver General shall be deemed to have been paid on account of tax under this section and any portion of the amount so remitted to the Receiver General in a taxation year on the person's behalf in excess of the person's liability for tax under this Act for the year shall be refunded to the person.

(3) Idem — Part I is applicable, with such modifications as the circumstances require, to payment of tax under this section.

(4) Optional method of payment — Where a non-resident person or, in the case of a partnership, each non-resident person who is a member of the partnership files with the Minister an undertaking in prescribed form to file within 6 months after the end of a taxation year a return of income under Part I for the year as permitted by this section, a person who is otherwise required by subsection 215(3) to remit in the year, in respect of the non-resident person or the partnership, an amount to the Receiver General in payment of tax on rent on real property or on a timber royalty may elect under this section not to remit under that subsection, and if that election is made, the elector shall,

Proposed Amendment — 216(4) opening words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 268(3), will amend the opening words of subsec. 216(4) by substituting "real or immovable property" for "real property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(a) when any amount is available out of the rent or royalty received for remittance to the non-resident person or the partnership, as the case may be, deduct 25% of the amount available and remit the amount deducted to the Receiver General on behalf of the non-resident person or the partnership on account of the tax under this Part; and

(b) if the non-resident person or, in the case of a partnership, a non-resident person who is a member of the partnership

(i) does not file a return for the year in accordance with the undertaking, or

(ii) does not pay under this section the tax the non-resident person or member is liable to pay for the year within the time provided for payment,

pay to the Receiver General, on account of the non-resident person's or the partnership's tax under this Part, on the expiration of the time for filing or payment, as the case may be, the full amount that the elector would otherwise have been required to remit in the year in respect of the rent or royalty minus the amounts that the elector has remitted in the year under paragraph (a) in respect of the rent or royalty.

Possible Future Amendment — Requirement for non-resident to post security

Letter from Dept. of Finance, June 17, 1996:

Mr. Donald H. Watkins, Chair, Taxation Section, The Canadian Bar Association

Mr. Robert Spindler, C.A., Chair, Taxation Committee, Canadian Institute of Chartered Accountants

Dear Messrs. Watkins and Spindler:

At our recent meeting we discussed the possibility of revising the Canadian income tax rules governing the taxation of rental income earned by non-resident owners of Canadian real estate. This letter outlines a proposal that would, if implemented, place the risk of a non-resident's non-compliance with the Canadian tax system on the non-resident rather than the non-resident's Canadian property agent.

In general, Part XIII of the *Income Tax Act* levies a withholding tax of 25% on rental payments made by Canadians to non-resident owners of Canadian real property. Where the non-resident collects the rent through a Canadian agent (who is typically a building or property manager), the agent is responsible for ensuring that 25% of the gross rental payments are remitted to Revenue Canada. An exception to this general rule exists where a non-resident elects, under section 216 of the Act, to file a Canadian income tax return in respect of the rental income and pay tax on the net property income.

To make the election the non-resident and the non-resident's Canadian agent are required to provide an undertaking to Revenue Canada to file an income tax return for the rental income within six months of the end of the relevant year. Where an election is made, the rule requiring the Canadian agent to remit 25% of the gross rental payments to Revenue Canada does not apply; instead, only 25% of the net amount of rent received by the agent need be remitted. However, if the non-resident fails to either file an income tax return or pay his tax liability within the time required under the election, the Canadian agent becomes liable for the amount that the agent would ordinarily have been required to withhold under Part XIII of the Act (ie., 25% of the gross rental payments) less the amount of tax actually remitted. The non-resident's tax liability is placed on the Canadian agent in an attempt to protect the government from the loss of any tax revenue arising from the non-resident's failure to pay the required tax. This mechanism is necessary because, in practice, it would be very difficult to enforce a tax liability on non-resident property owners.

We are considering alternatives to the current system which may reduce the liability of Canadian agents while at the same time protecting Canada's tax base. To achieve these objectives, we are prepared to consider a system which would require non-resident property owners to post security with Revenue Canada in order to take advantage of the election to file an income tax return and avoid having tax withheld on the gross amount of the rental payments. Where the non-resident fails to pay the required amount of tax within the specified time, the government would be able to look to the security; accordingly, the Canadian agent's exposure to tax could be reduced. In this context, acceptable security could be similar to that which is required under section 116 of the Act.

Finance is not, however, committed to this proposal; it remains our view that the current system works reasonably well from the government's viewpoint, and implementation of the alternative proposal would be considered only if it were thought to provide a better system from the taxpayer's perspective. This alternative has been outlined to a number of real estate organizations and other interested parties from whom we hope to gather comments over the course of the coming months.

I would also note that at our recent meeting you raised the possibility of considering changes to the existing time limits for filing a Part I income tax return under subsection 216(4). We would be pleased to receive written comments on your suggestion for modifying those time limits or on the alternative system outlined above.

Yours sincerely,

Len Farber
Director, Tax Legislation Division

Related Provisions: 96 — Partnerships and their members; 216(1) — Alternative re rents and timber royalties.

History: Subsec. 216(4) amended by 1998, c. 19, s. 217, applicable to amounts paid or credited after November 1991. Subsec. 216(4) formerly read:

> (4) Where a non-resident person or each non-resident person who is a member of a partnership has filed with the Minister an undertaking in prescribed form to file a return of income under Part I for a taxation year as permitted by this section but within 6 months from the end of the taxation year, a person who is otherwise required by subsection 215(3) to remit in the year an amount to the Receiver General in payment of tax on rent on real property or in payment of tax on a timber royalty may elect, by virtue of this section, not to remit under that subsection but if the [elector] does so elect
>
> (a) the [elector] shall, when any amount is available out of the rent or royalty received for remittance to the non-resident person or the partnership, as the case may be, deduct therefrom 25% thereof and remit the amount deducted to the Receiver General on behalf of the non-resident person or the partnership on account of the tax under this Part, and
>
> (b) the [elector] shall, if the non-resident person or each non-resident person who is a member of the partnership
>
> (i) does not file a return for the taxation year in accordance with the undertaking filed by the non-resident person or member with the Minister, or
>
> (ii) does not pay the tax the non-resident person or member is liable to pay for the taxation year under this section within the time limited for payment,
>
> pay to the Receiver General, on the expiration of the time for filing or payment, as the case may be, the full amount that the [elector] would otherwise have been required to remit in the year minus the amounts that the [elector] has remitted in the year under paragraph (a).

Forms: NR6: Undertaking to file an income tax return by a non-resident receiving rent from real property or receiving a timber royalty; T1159: Income tax return for electing under s. 216; T2 SCH 97: Additional information on non-resident corporations in Canada; T4144: Income tax guide for electing under section 216.

Proposed Addition — 216(4.1)

(4.1) Optional method of payment — If a trust is deemed by subsection 94(3) to be resident in Canada for a taxation year for the purpose of computing the trust's income for the year, a person who is otherwise required by subsection 215(3) to remit in the year, in respect of the trust, an amount to the Receiver General in payment of tax on rent on real or immovable property or on a timber royalty may elect in prescribed form filed with the Minister under this subsection not to remit under subsection 215(3) in respect of amounts received after the election is made, and if that election is made, the elector shall,

(a) when any amount is available out of the rent or royalty received for remittance to the trust, deduct 25% of the amount available and remit the amount deducted to the Receiver General on behalf of the trust on account of the trust's tax under Part I; and

(b) if the trust does not file a return for the year as required by section 150, or does not pay the tax that the trust is liable to pay under Part I for the year within the time required by that Part, on the expiration of the time for filing or payment, as the case may be, pay to the Receiver General, on account of the trust's tax under Part I, the amount by which the full amount that the elector would otherwise have been required to remit in the year in respect of the rent or royalty exceeds the amounts that the elector has remitted in the year under paragraph (a) in respect of the rent or royalty.

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), s. 39, will add subsec. 216(4.1), applicable to trust taxation years that begin after 2002, except that an election referred to in the subsec. as amended is deemed to have been filed with the Minister of National Revenue on a timely basis if it is filed with the Minister on or before the trust's filing-due date for the taxation year of the trust that includes the day on which the amending legislation is assented to.

Technical Notes: In general, Part XIII imposes a withholding tax of 25% on rental payments made by Canadians to non-resident owners of Canadian real property. An exception to this general rule exists where a non-resident chooses, under subsection 216(4), to file a Canadian in-

come tax return in respect of the rental income and timber royalty income and pay tax on the net amount of such income. Where the conditions of subsection 216(4) are satisfied, the rule requiring a Canadian payer (or agent of the payee pursuant to s. 215(3)) to remit 25% of the gross payment to the CCRA does not apply; instead, only 25% of the net amount of income received by the non-resident's agent need be remitted.

Although an otherwise non-resident trust to which paragraph 94(3)(a) applies is deemed resident in Canada for the purposes of determining the trust's liability under Part XIII on amounts paid or credited to the trust, for the purpose of determining the liability of a Canadian payer on amounts paid or credited to the trust, the trust is effectively treated as resident in Canada (see paragraph 94(4)(c) and section 215).

Subsection 216(4.1) is introduced to provide a measure of relief in these circumstances. Under that subsection, if a trust is deemed by subsection 94(3) to be resident in Canada for a taxation year for the purpose of computing the trust's income for the year, a person who is otherwise required by subsection 215(3) to remit in the year, in respect of the trust, an amount to the Receiver General in payment of tax on rent on real property or on a timber royalty may elect in prescribed form filed with the Minister under this subsection not to remit under subsection 215(3) in respect of amounts received after the election is made. Under paragraphs 216(4.1)(a) and (b), if that election is made, the elector shall,

- when any amount is available out of the rent or royalty received for remittance to the trust, deduct 25% of the amount available and remit the amount deducted to the Receiver General on behalf of the trust on account of the trust's tax under Part I; and
- if the trust does not file a return for the year as required by section 150, or does not pay the tax that the trust is liable to pay under Part I for the year within the time required by that Part, on the expiration of the later of the time for filing or payment, as the case may be, pay to the Receiver General, on account of the trust's tax under Part I, the amount by which the full amount that the elector would otherwise have been required to remit in the year in respect of the rent or royalty exceeds the amounts that the elector has remitted in the year under paragraph 216(4.1)(a) in respect of the rent or royalty.

(5) Disposition by non-resident of interest in real property, timber resource property or timber limit — Where a person or a trust of which that person is a beneficiary has filed a return of income under Part I for a taxation year as permitted by this section or as required by section 150 and, in computing the amount of the person's income under Part I an amount has been deducted under paragraph 20(1)(a), or is deemed by subsection 107(2) to have been allowed under that paragraph, in respect of real property in Canada, a timber resource property or a timber limit in Canada, the person shall, within the time prescribed by section 150 for filing a return of income under Part I, file a return of income under Part I, in the form prescribed for a person resident in Canada, for any subsequent taxation year in which the person was a non-resident person and in which that real property, timber resource property or timber limit or any interest therein is disposed of, within the meaning of section 13, by the person or by a partnership of which the person is a member, and the person shall, without affecting the person's liability for tax otherwise payable under Part I, thereupon be liable, in lieu of paying tax under this Part on any amount paid, or deemed by this Part to have been paid to the person or to a partnership of which the person is a member in that subsequent taxation year in respect of any interest in real property, timber resource property or timber limit in Canada, to pay tax under Part I for that subsequent taxation year as though

Proposed Amendment — 216(5) opening words

(5) Disposition by non-resident — If a person or a trust under which a person is a beneficiary has filed a return of income under Part I for a taxation year as permitted by this section or as required by section 150 and, in computing the amount of the person's income under Part I an amount has been deducted under paragraph 20(1)(a), or is deemed by subsection 107(2) to have been allowed under that paragraph, in respect of property that is real property in Canada — or an interest therein — or an immovable in Canada — or a real right therein — , a timber resource property or a timber limit in Canada, the person shall file a return of income under Part I in prescribed form on or before the person's filing-due date for any subsequent taxation year in which the person is non-resident and in which the person, or a partnership of which the person is a member, disposes of that property or any interest, or for civil law any right, in it. On so filing and without affecting the person's liability for tax otherwise payable under Part I, the person is, in lieu of paying tax under this Part on any amount paid, or deemed by this Part to have been paid, in that subsequent taxation year in respect of any interest in, or for civil law any right in, that property to the person or to a partnership of which the person is a member, liable to pay tax under Part I for that subsequent taxation year as though

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 179(2), will amend the opening words of subsec. 216(5) to read as above, applicable to taxation years that end after December 20, 2002.

Technical Notes: In general terms, subsection 216(5) requires that a person who has previously made an election under subsection 216(1), and who has claimed capital cost allowance in computing income under the subsection, must file a return of income for the year in which the property that was the subject of the election is disposed of. Subsection 216(5) is modified in the same manner as subsection 216(1), again with the main change being an updated description of the relevant form.

Letter from Dept. of Finance, February 15, 2000: See under 118.1(5.4), (6).

(a) the person were a person resident in Canada and not exempt from tax under section 149;

(b) the person's income from the person's interest in real property, timber resource property or timber limits in Canada and the person's share of the income of a partnership of which the person was a member from its interest in real property, timber resource property or timber limits in Canada were the person's only income;

Proposed Amendment — 216(5)(b)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 268(4), will amend para. 216(5)(b) by substituting "real property, or real right in immovables, in Canada or interest in, or for civil law right in" for "real property" in two places and "resource properties and" for "resource property or" in two places, to come into force on Royal Assent.

Technical Notes: See under 12(4).

(c) the person were entitled to no deductions from income for the purpose of computing the person's taxable income; and

(d) the person were entitled to no deductions under sections 118 to 118.9 in computing the person's tax payable under Part I for the year.

Related Provisions: 110.1(3)(b)(i), 118.1(6)(b)(i) — Reduced recapture on donation of property to charity; 150.1(5) — Electronic filing; 216(6) — Saving provision; 216(7) — Election; 216(8) — Restriction on deduction; 248(4) — Interest in real property; 248(4.1) — Meaning of "real right in immovables".

Selected Cases [subsec. 216(5)]: *R. v. Arnos et al.*, [1982] 1 C.T.C. 186 (FCA) (Under *Canada-U.S. Tax Convention*, recapture not applicable to non-resident beneficiary after Canadian trustee transferred property on which capital cost allowance was deducted); *Deitcher v. R.*, [1979] C.T.C. 500 (FCTD) (Capital cost allowance deducted by non-resident electing to be taxed as resident recaptured on sale of property); *Bessemer Trust Co. v. MNR*, [1973] C.T.C. 12 (FCA) (Capital cost allowance deducted by non-

resident trust electing to be taxed as resident recaptured on sale of property).

(6) Saving provision — Subsection (5) does not apply to require a non-resident person

(a) to file a return of income under Part I for a taxation year unless, by filing that return, there would be included in computing the non-resident person's income under Part I for that year an amount by virtue of section 13; or

(b) to include in computing the non-resident person's income for a taxation year any amount to the extent that that amount has been included in computing the non-resident person's taxable income earned in Canada for that taxation year by virtue of any provision of this Act other than subsection (5).

Related Provisions: 13(1) — Recaptured depreciation.

(7) Election — Where, by virtue of subsection (5), a non-resident person is liable to pay tax under Part I for a taxation year, for greater certainty section 61 is not applicable in computing the non-resident person's income for the year.

Proposed Repeal — 216(7)

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 179(3), will repeal subsec. 216(7), in force on Royal Assent.

Technical Notes: Subsection 216(7) provides that the rules in section 61, dealing with income averaging annuity contracts, do not apply in computing a non-resident person's income for a taxation year in respect of which subsection 216(5) applies to the person. Since section 61 is no longer relevant to any current transaction, subsection 216(7) is repealed.

(8) Restriction on deduction — For greater certainty, in determining the amount of tax payable by a non-resident person under Part I for a taxation year by reason of subsection (1) or (5), no deduction in computing the non-resident person's income or tax payable under Part I for the year shall be made to the extent that such a deduction by non-resident persons is not permitted under Part I.

Selected Cases [s. 216]: *Wright v. R.*, [2001] 3 C.T.C. 2426 (TCC) (Where non-resident elects under s. 216, no further liability for withholding taxes under s. 215).

Definitions [s. 216]: "amount" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "filing-due date" — 248(1); "immovable" — Quebec *Civil Code* art. 900–907; "interest" — in real property 248(4); "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "non-resident" — 248(1); "person", "prescribed", "property" — 248(1); "real right in immovables" — 248(4.1); "resident in Canada" — 250; "tax payable" — 248(2); "taxable income" — 2(2), 248(1); "taxation year" — 249; "timber resource property" — 13(21), 248(1); "trust" — 104(1), 248(1), (3).

Interpretation Bulletins [s. 216]: See under subsec. 216(1).

216.1 (1) Alternative re acting services — No tax is payable under this Part on any amount described in subsection 212(5.1) that is paid, credited or provided to a non-resident person in a taxation year if the person

(a) files with the Minister, on or before the person's filing-due date for the year, a return of income under Part I for the year; and

(b) elects in the return to have this section apply for the year.

Related Provisions: 215(1) — Payor required to withhold even if election filed; 216.1(2) — Amounts withheld and remitted credited against Part I obligation; 216.1(3) — Where corporation makes payment to actor.

(2) Deemed Part I payment — If in respect of a particular amount paid, credited or provided in a taxation year, a non-resident person has complied with paragraphs (1)(a) and (b), any amount deducted or withheld and remitted to the Receiver General on behalf of the person on account of tax under subsection 212(5.1) in respect of the particular amount is deemed to have been paid on account of the person's tax under Part I.

(3) Deemed election and restriction — Where a corporation payment (within the meaning assigned by subsection 212(5.2)) has been made to a non-resident corporation in respect of an actor and at any time the corporation makes an actor payment (within the meaning assigned by subsection 212(5.2)) to or for the benefit of the actor, if the corporation makes an election under subsection (1) for the taxation year in which the corporation payment is made, the actor is deemed to make an election under subsection (1) for the taxation year of the actor in which the corporation makes the actor payment.

History: S. 216.1 added by 2001, c. 17, s. 175, applicable to 2001 *et seq.*

Definitions [s. 216.1]: "actor payment" — 212(5.2); "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "corporation payment" — 212(5.2); "filing-due date", "Minister", "non-resident", "person" — 248(1); "taxation year" — 249.

217. (1) Alternative re Canadian benefits — In this section, a non-resident person's "Canadian benefits" for a taxation year is the total of all amounts each of which is an amount paid or credited in the year and in respect of which tax under this Part would, but for this section, be payable by the person because of any of paragraphs 212(1)(h), (j) to (m) and (q).

(2) Part I return — No tax is payable under this Part in respect of a non-resident person's Canadian benefits for a taxation year if the person

(a) files with the Minister, within 6 months after the end of the year, a return of income under Part I for the year; and

(b) elects in the return to have this section apply for the year.

Related Provisions: 150.1(5) — Electronic filing; 217(3)–(6) — Part I tax payable when election made.

Forms: See at end of s. 217.

(3) Taxable income earned in Canada — Where a non-resident person elects under paragraph (2)(b) for a taxation year, for the purposes of Part I

(a) the person is deemed to have been employed in Canada in the year; and

(b) the person's taxable income earned in Canada for the year is deemed to be the greater of

(i) the amount that would, but for subparagraph (ii), be the person's taxable income earned in Canada for the year if

(A) paragraph 115(1)(a) included the following subparagraph after subparagraph (i):

"(i.1) the non-resident person's Canadian benefits for the year, within the meaning assigned by subsection 217(1),", and

(B) paragraph 115(1)(f) were read as follows:

"(f) such of the other deductions permitted for the purpose of computing taxable income as can reasonably be considered wholly applicable to the amounts described in subparagraphs (a)(i) to (vi).", and

(ii) the person's income (computed without reference to subsection 56(8)) for the year minus the total of such of the deductions permitted for the pur-

pose of computing taxable income as can reasonably be considered wholly applicable to the amounts described in subparagraphs 115(1)(a)(i) to (vi).

Related Provisions: 2(3) — Tax payable under Part I as a result of being deemed employed in Canada; 250.1(b) — Calculation of income of non-resident person.

(4) Tax credits — limitation — Sections 118 to 118.91 and 118.94 do not apply in computing the tax payable under Part I for a taxation year by a non-resident person who elects under paragraph (2)(b) for the year, unless

(a) where section 114 applies to the person for the year, all or substantially all of the person's income for the year is included in computing the person's taxable income for the year; or

(b) in any other case, all or substantially all of the person's income for the year is included in computing the amount determined under subparagraph (3)(b)(i) in respect of the person for the year.

(5) Tax credits allowed — In computing the tax payable under Part I for a taxation year by a non-resident person to whom neither paragraph (4)(a) nor paragraph (4)(b) applies for the year there may, notwithstanding section 118.94 and subsection (4), be deducted the lesser of

(a) the total of

(i) such of the amounts that would have been deductible under any of section 118.2, subsections 118.3(2) and (3) and sections 118.6, 118.8 and 118.9 in computing the person's tax payable under Part I for the year if the person had been resident in Canada throughout the year, as can reasonably be considered wholly applicable, and

(ii) the amounts that would have been deductible under any of sections 118 and 118.1, subsection 118.3(1) and sections 118.5 and 118.7 in computing the person's tax payable under Part I for the year if the person had been resident in Canada throughout the year, and

(b) the appropriate percentage for the year of the person's Canadian benefits for the year.

(6) Special credit — In computing the tax payable under Part I for a taxation year by a non-resident who elects under paragraph (2)(b) for the year, there may be deducted the amount determined by the formula

$$A \times \left(\frac{(B - C)}{B} \right)$$

where

A is the amount of tax under Part I that would, but for this subsection, be payable by the person for the year;

B is the amount determined under subparagraph (3)(b)(ii) in respect of the person for the year; and

C is the amount determined under subparagraph (3)(b)(i) in respect of the person for the year.

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: Subpara. 217(3)(b)(ii) amended by 1998, c. 19, s. 64, applicable to 1997 *et seq.* Subpara. 217(3)(b)(ii) formerly read:

(ii) the person's income for the year, minus the total of such of the deductions permitted for the purpose of computing taxable income as can reasonably be considered wholly applicable to the amounts described in subparagraphs 115(1)(a)(i) to (vi).

S. 217 amended by 1997, c. 25, s. 64, applicable to 1997 *et seq.* S. 217 formerly read:

217. Election respecting certain payments — Where by virtue of any one or more of paragraphs 212(1)(f), (h), (j) to (m) and (q) a non-resident person would otherwise be liable to pay tax under this Part on one or more amounts paid or credited to the non-resident person in a taxation year and that person has, within 6 months after the end of the year, filed a return of income under Part I for the year and so elected therein, the following rules apply:

(a) notwithstanding subsection 212(1), no tax under this Part is payable by the non-resident person on those amounts;

(b) notwithstanding section 115, for the purposes of computing that person's taxable income earned in Canada for the year,

(i) paragraph 115(1)(a) shall be read as though it included the following subparagraph:

"(i.1) amounts paid or credited to the non-resident person in the year on which that person would, under any of paragraphs 212(1)(f), (h), (j) to (m) and (q) be liable to pay tax under Part XIII if no election were made under section 217,", and

(ii) all that portion of subsection 115(1) following paragraph (c) shall be read as follows:

"minus the total of such of the deductions from income permitted for the purpose of computing taxable income as may reasonably be considered wholly applicable"; and

(c) notwithstanding sections 118.91 and 118.94, where the non-resident person is an individual more than ½ of whose income for the year is included in the individual's taxable income or taxable income earned in Canada for the year, as the case may be, section 118.94 shall, where the individual so elects in the return, be applied in respect of the individual for the year as if it read as follows:

"118.94 Sections 118 to 118.91 do not apply for the purpose of computing the tax payable under this Part for a taxation year by an individual who was non-resident at any time in the year, except that for the purpose of computing the tax payable under this Part for the year there may be deducted the total of

(a) such of the amounts that would have been deductible under any of section 118.2, subsections 118.3(2) and (3) and sections 118.6, 118.8 and 118.9 for the purpose of computing the individual's tax payable under this Part for the year if the individual had been resident in Canada throughout the year, as can reasonably be considered wholly applicable, and

(b) the amounts that would have been deductible under sections 118 and 118.1, subsection 118.3(1) and sections 118.5 and 118.7 for the purpose of computing the individual's tax payable under this Part for the year if the individual had been resident in Canada throughout the year,

not exceeding the appropriate percentage for the year of the total of all amounts each of which is an amount paid or credited to the individual in the year on which the individual would, under any of paragraphs 212(1)(f), (h), (j) to (m) and (q) be liable to pay tax under Part XIII if no election were made under section 217."

Subpara. 217(b)(i) and the closing words of the version of s. 118.94 quoted within para. 217(c) amended by 1996, c. 21, subsecs. 56(1), (2), applicable to 1996 *et seq.* Subpara. (b)(i) and the closing words of s. 118.94 quoted in 217(c) formerly read:

(i) there shall be added to the total of the amounts determined under subparagraphs 115(1)(a)(i) to (v) in respect of that person the total of amounts each of which is an amount paid or credited to the non-resident person in the year on which that person would, by virtue of any one or more of paragraphs 212(1)(f), (h), (j) to (m) and (q), be liable to pay tax under this Part if paragraph 212(1)(h) were read without reference to subparagraphs 212(1)(h)(i) and (ii), and

and read the closing words of 118.94 as quoted in 217(c) as follows:

not exceeding the appropriate percentage for the year of the total of all amounts each of which is an amount paid or credited to the individual in the year on which the individual would, under any of paragraphs 212(1)(f), (h), (j) to (m) and (q), be liable to pay tax

under Part XIII if paragraph 212(1)(h) were read without reference to subparagraphs 212(1)(h)(i) and (ii), and no election were made under section 217.

Para. 217(c) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 179(1), applicable to 1991 *et seq.*; and (by subsec. 179(3)), for the 1988 to 1990 taxation years, paras. 118.94(a) and (b), as those paras. apply for the purpose of para. 217(c), shall be read as follows:

(a) such of the amounts that would have been deductible under any of section 118.2, subsections 118.3(2) and (3) and sections 118.6, 118.8 and 118.9 for the purpose of computing the individual's tax payable under this Part for the year if the individual had been resident in Canada throughout the year, as can reasonably be considered to be wholly applicable; and

(b) the amounts that would have been deductible under sections 118 and 118.1, subsection 118.3(1) and sections 118.5 and 118.7 for the purpose of computing the individual's tax payable under this Part for the year if the individual had been resident in Canada throughout the year.

Para. 217(c) formerly read:

(c) notwithstanding section 118.94, where the person is an individual, that section shall be read as follows:

"118.94 Sections 118 to 118.9 do not apply for the purpose of computing the tax payable under this Part for a taxation year by a non-resident individual except that for the purpose of computing the individual's tax payable under this Part for the year there may be deducted

(a) such of the amounts that would have been deductible under any of sections 118.1 and 118.2, subsections 118.3(2) and (3) and sections 118.5 to 118.9 for the purpose of computing the individual's tax payable under this Part for the year had the individual been resident in Canada throughout the year, as may reasonably be considered wholly applicable; and

(b) the amounts that would have been deductible under section 118 and subsection 118.3(1) for the purpose of computing the individual's tax payable under this Part for the year had the individual been resident in Canada throughout the year."

Selected Cases [s. 217]: *Yaremy v. Canada*, [1994] 2 C.T.C. 2402 (TCC) (Election under s. 217 could not later be reversed).

Definitions [s. 217]: "amount", "appropriate percentage" — 248(1); "Canada" — 255; "Canadian benefits" — 217(1); "individual", "Minister", "non-resident", "person" — 248(1); "resident in Canada" — 250; "tax payable" — 248(2); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 249.

Interpretation Bulletins [s. 217]: IT-88R2: Stock dividends; IT-109R2: Unpaid amounts; IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits (archived); IT-337R2: Retiring allowances.

Forms [s. 217]: NR5: Application by a non-resident of Canada for reduction in the amount of non-resident tax required to be withheld; NR7-R: Application for refund of non-resident tax withheld; T4056: Emigrants and income tax [guide]; T4145: Electing under section 217 of the *Income Tax Act* [guide].

218. (1) Loan to wholly-owned subsidiary — For the purposes of this Act, where

(a) a non-resident corporation (in this section referred to as the "parent corporation") is indebted to

(i) a person resident in Canada, or

(ii) a non-resident insurance corporation carrying on business in Canada,

(in this section referred to as the "creditor") under an arrangement whereby the parent corporation is required to pay interest in Canadian currency, and

(b) the parent corporation has lent the money in respect of which it is so indebted, or a part thereof, to a subsidiary wholly-owned corporation resident in Canada whose principal business is the making of loans (in this section referred to as the "subsidiary corporation") under an arrangement whereby the subsidiary corporation is required to repay the loan to the parent corporation with interest at the same rate as is payable by the parent corporation to the creditor,

the amount so lent by the parent corporation to the subsidiary corporation shall be deemed to have been borrowed by the parent corporation as agent of the subsidiary corporation and interest paid by the subsidiary corporation to the parent corporation that has been paid by the parent corporation to the creditor shall be deemed to have been paid by the subsidiary corporation to the creditor and not by the subsidiary corporation to the parent corporation or by the parent corporation to the creditor.

(2) Idem — Where a parent corporation has lent money to a subsidiary wholly-owned corporation resident in Canada whose principal business is not the making of loans and the money has been lent by that corporation to a subsidiary corporation wholly-owned by it and resident in Canada whose principal business is the making of loans, the loan by the parent corporation shall be deemed, for the purpose of subsection (1), to have been a loan to a subsidiary wholly-owned corporation whose principal business is the making of loans.

(3) Election — This section does not apply in respect of any payment of interest unless the parent corporation and the creditor have executed, and filed with the Minister, an election in prescribed form.

Forms: T2023: Election in respect of loans from non-residents.

(4) Application of election — An election filed under subsection (3) does not apply in respect of any payment of interest made more than 12 months before the date on which the election was filed with the Minister.

Related Provisions: 17 — Inclusion of deemed interest in income of corporation resident in Canada.

Definitions [s. 218]: "business" — 248(1); "carrying on business in Canada" — 253; "corporation" — 248(1), *Interpretation Act* 35(1); "insurance corporation", "Minister", "non-resident" — 248(1); "parent corporation" — 218(1)(a); "person", "prescribed" — 248(1); "resident in Canada" — 250; "subsidiary corporation" — 218(1)(b); "subsidiary wholly-owned corporation" — 248(1).

Interpretation Bulletins [s. 218]: IT-88R2: Stock dividends; IT-109R2: Unpaid amounts.

218.1 Application of s. 138.1 — In respect of life insurance policies for which all or any part of an insurer's reserves vary in amount depending on the fair market value of a specified group of properties, the rules contained in section 138.1 apply for the purposes of this Part.

Origin of s. 218.1: R.S.C. 1985, c. 1 (5th Supp.). (Formerly contained in opening words of 138.1.)

Definitions [s. 218.1]: "amount", "insurer", "life insurance policy" — 248(1).

Part XIII.1 — Additional Tax on Authorized Foreign Banks

218.2 (1) Branch interest tax — Every authorized foreign bank shall pay a tax under this Part for each taxation year equal to 25% of its taxable interest expense for the year.

Related Provisions: 157(1)(a)(i) — Monthly instalments required; 218.2(2) — Taxable interest expense; 218.2(3), (4) — Effect of treaties on tax rate; 218.2(5) — Administration of Part XIII.1 tax.

(2) Taxable interest expense — The taxable interest expense of an authorized foreign bank for a taxation year is 15% of the amount, if any, by which

(a) the total of all amounts on account of interest that are deducted under section 20.2 in computing the bank's income for the year from its Canadian banking business

exceeds

(b) the total of all amounts that are included in paragraph (a) and that are in respect of a liability of the bank to another person or partnership.

(3) Where tax not payable — No tax is payable under this Part for a taxation year by an authorized foreign bank if

(a) the bank is resident in a country with which Canada has a tax treaty at the end of the year; and

(b) no tax similar to the tax under this Part would be payable in that country for the year by a bank resident in Canada carrying on business in that country during the year.

(4) Rate limitation — Despite any other provision of this Act, the reference in subsection (1) to 25% shall, in respect of a taxation year of an authorized foreign bank that is resident in a country with which Canada has a tax treaty on the last day of the year, be read as a reference to,

(a) if the treaty specifies the maximum rate of tax that Canada may impose under this Part for the year on residents of that country, that rate;

(b) if the treaty does not specify a maximum rate as described in paragraph (a) but does specify the maximum rate of tax that Canada may impose on a payment of interest in the year by a person resident in Canada to a related person resident in that country, that rate; and

(c) in any other case, 25%.

(5) Provisions applicable to Part — Sections 150 to 152, 158, 159, 160.1 and 161 to 167 and Division J of Part I apply to this Part with any modifications that the circumstances require.

Related Provisions: 157(1)(a)(i) — Monthly instalments required.

History: S. 218.2 (Part XIII.1) added by 2001, c. 17, s. 176, applicable to taxation years that end after June 27, 1999.

Definitions [s. 218.2]: "amount", "authorized foreign bank", "bank", "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "Canadian banking business" — 248(1); "person" — 248(1); "related" — 251(2)–(6); "resident", "resident in Canada" — 250; "tax treaty" — 248(1); "taxable interest expense" — 218.2(2); "taxation year" — 249.

Forms: T2 SCH 97: Additional information on non-resident corporations in Canada.

PART XIII.2 — NON-RESIDENT INVESTORS IN CANADIAN MUTUAL FUNDS

218.3 (1) Definitions — The following definitions apply in this Part.

"assessable distribution", in respect of a Canadian property mutual fund investment, means the portion of any amount that is paid or credited, by the mutual fund that issued the investment, to a non-resident investor who holds the investment, and that is not otherwise subject to tax under Part I or Part XIII.

Related Provisions: 53(2)(h)(i.1)(B)(III) — Assessable distribution not deducted from adjusted cost base of capital interest in trust.

"Canadian property mutual fund investment" means a share of the capital stock of a mutual fund corporation, or a unit of a mutual fund trust, if

(a) the share or unit is listed on a prescribed stock exchange; and

(b) more than 50% of the fair market value of the share or unit is attributable to one or more properties each of which is real property in Canada, a Canadian resource property or a timber resource property.

Regulations: 3200, 3201 (prescribed stock exchanges).

"Canadian property mutual fund loss" — of a non-resident investor for a taxation year for which the non-resident investor has filed, on or before their filing-due date for the taxation year, a return of income under this Part in prescribed form, in respect of a Canadian property mutual fund investment — means the lesser of

(a) the non-resident investor's loss (for greater certainty as determined under section 40) for the taxation year from the disposition of the Canadian property mutual fund investment, and

(b) the total of all assessable distributions that were paid or credited on the Canadian property mutual fund investment after the non-resident investor last acquired the investment and at or before the time of the disposition.

"non-resident investor" means a non-resident person or a partnership other than a Canadian partnership.

"unused Canadian property mutual fund loss", of a non-resident investor for a taxation year, means the portion of the total of the non-resident investor's Canadian mutual fund property losses for preceding taxation years that has neither reduced under subsection (3) the amount of tax payable, nor increased under subsection (5) the amount of a refund of tax paid, under this Part for any preceding taxation year.

(2) Tax payable — If at any time a person (referred to in this section as the "payer") pays or credits, to a non-resident investor who holds a Canadian property mutual fund investment, an amount as, on account of, in lieu of payment of or in satisfaction of, an assessable distribution,

(a) the non-resident investor is deemed for the purposes of this Act, other than section 150, to have disposed at that time, for proceeds equal to the amount of the assessable distribution, of a property

(i) that is a taxable Canadian property the adjusted cost base of which to the non-resident investor immediately before that time is nil, and

(ii) that is in all other respects identical to the Canadian property mutual fund investment;

(b) the non-resident investor is liable to pay an income tax of 15% on the amount of any gain (for greater certainty as determined under section 40) from the disposition; and

(c) the payer shall, notwithstanding any agreement or law to the contrary,

(i) deduct or withhold 15% from the amount paid or credited,

(ii) immediately remit that amount to the Receiver General on behalf of the non-resident investor on account of the tax, and

(iii) submit with the remittance a statement in prescribed form.

Related Provisions: 115(1)(b) — Disposition deemed under 218.3(2) excluded from non-resident's taxable income earned in Canada; 218.3(2) — Non-resident may file return to reduce losses; 218.3(10), 227.1 — Directors of corporation liable for unremitted tax.

(3) Use of losses — If a non-resident investor files, on or before their filing-due date for a taxation year, a return of income under this Part in prescribed form for the taxation year, the non-resident investor is liable, instead of paying tax under paragraph (2)(b) in respect of any amount paid or credited in the taxation year, to pay an income tax of 15% for the taxation year on the amount, if any, by which

(a) the total of the non-resident investor's gains under subsection (2) for the taxation year

exceeds

(b) the total of the non-resident investor's Canadian property mutual fund losses for the year and the non-resident investor's unused Canadian property mutual fund loss for the taxation year.

Related Provisions: 218.3(4) — Tax deemed paid; 218.3(5)-(7) — Refund and carryback; 218.3(8), (9) — Application to partnership.

Forms: T1262: Part XIII.2 tax return for non-resident's investments in Canadian mutual funds.

(4) Deemed tax paid — If a non-resident investor files, on or before their filing-due date for a taxation year, a return of income under this Part in prescribed form for the taxation year, any amount that is remitted to the Receiver General in respect of an assessable distribution paid or credited to the non-resident investor in the taxation year is deemed to have been paid on account of the non-resident investor's tax under subsection (3) for the taxation year.

Forms: T1262: Part XIII.2 tax return for non-resident's investments in Canadian mutual funds.

(5) Refund — The amount, if any, by which the total of all amounts paid on account of a non-resident investor's tax under subsection (3) for a taxation year exceeds the non-resident investor's liability for tax under this Part for the taxation year shall be refunded to the non-resident investor.

(6) Excess loss — carryback — If a non-resident investor files, on or before their filing-due date for a taxation year, a return of income under this Part in prescribed form for the taxation year, the Minister shall refund to the non-resident investor an amount equal to the lesser of

(a) the total amount of tax under this Part paid by the non-resident investor in each of the three preceding taxation years, to the extent that the Minister has not previously refunded that tax, and

(b) 15% of the amount, if any, by which

(i) the total of the non-resident investor's Canadian property mutual fund losses for the taxation year and the non-resident investor's unused Canadian property mutual fund loss for the taxation year

exceeds

(ii) the total of all assessable distributions paid or credited to the non-resident investor in the taxation year.

Related Provisions: 218.3(7) — Ordering.

(7) Ordering — In applying subsection (6), amounts of tax are to be considered to be refunded in the order in which they were paid.

(8) Partnership filing-due date — For the purposes of this Part, the taxation year of a partnership is its fiscal period and the filing-due date for the taxation year is to be determined as if the partnership were a corporation.

(9) Partnership — member resident in Canada — If a non-resident investor is a partnership a member of which is resident in Canada, the portion of the tax paid by the partnership under this Part in respect of an assessable distribution paid or credited to the partnership in a particular taxation year of the partnership (or, if the partnership files a return of income for the particular taxation year in accordance with subsection (3), the portion of the tax paid by the partnership under that subsection for the taxation year) that can reasonably be considered to be the member's share is deemed

(a) to be an amount paid on account of that member's liability for tax under Part I for that member's taxation year in which the particular taxation year of the partnership ends; and

(b) except for the purposes of this subsection, to be neither a tax paid on account of the partnership's tax under this Part nor a tax paid by the partnership.

(10) Provisions applicable — Section 150.1, subsections 161(1), (7) and (11), sections 162 to 167, Division J of Part I, paragraph 214(3)(f), subsections 215(2), (3) and (6) and sections 227 and 227.1 apply to this Part with any modifications that the circumstances require.

History: S. 218. 3 (Part XIII.2) added by 2005, c. 19, s. 47, applicable to distributions paid or credited after 2004.

Definitions [s. 218.3]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "assessable distribution" — 218.3(1); "Canada" — 255, *Interpretation Act* 35(1); "Canadian partnership" — 102, 248(1); "Canadian property mutual fund investment", "Canadian property mutual fund loss" — 218.3(1); "Canadian resource property" — 66(15), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition" — 248(1); "filing-due date" — 218.3(8), 248(1); "fiscal period" — 249.1; "Minister" — 248(1); "mutual fund corporation" — 131(8), 248(1); "mutual fund trust" — 132(6)–(7),132.2(3)(n), 248(1); "non-resident" — 248(1); "non-resident investor" — 218.3(1); "payer" — 218.3(2); "person", "prescribed" — 248(1); "prescribed stock exchange" — 248(29), Reg. 3200, 3201; "property" — 248(1); "resident in Canada" — 250; "share", "taxable Canadian property" — 248(1); "taxation year" — 218.3(8), 249; "timber resource property" — 13(21), 248(1); "unused Canadian property mutual fund loss" — 218.3(1).

PART XIV — ADDITIONAL TAX [BRANCH TAX] ON NON-RESIDENT CORPORATIONS

History: The heading before s. 219 amended by 1998, c. 19, s. 218, in force on June 18, 1998. The heading formerly read:

Additional Tax on Corporations (other than Canadian Corporations) Carrying on Business in Canada

219. (1) Additional tax [branch tax] — Every corporation that is non-resident in a taxation year shall, on or before its balance-due day for the year, pay a tax under this Part for the year equal to 25% of the amount, if any, by which the total of

(a) the corporation's taxable income earned in Canada for the year (in this subsection referred to as the corporation's "base amount"),

(b) the amount deducted because of section 112 and paragraph 115(1)(e) in computing the corporation's base amount,

(c) the amount deducted under paragraph 20(1)(v.1) in computing the corporation's base amount, other than any portion of the amount so deducted that was de-

ductible because of the membership of the corporation in a partnership,

Repeal [effective 2007] — 219(1)(c)

Application: S.C. 2003, c. 28 (Bill C-48, Royal Assent November 7, 2003), subsec. 17(1), repeals para. 219(1)(c), applicable to taxation years that begin after 2006.

(d) the amount, if any, by which the total of all amounts each of which is a taxable capital gain of the corporation for the year from a disposition of a taxable Canadian property exceeds the total of all amounts each of which is

(i) an allowable capital loss of the corporation for the year from a disposition of a taxable Canadian property, or

(ii) an amount deductible because of paragraphs 111(1)(b) and 115(1)(e) in computing the corporation's base amount,

(e) the total of all amounts each of which

(i) is an amount in respect of a grant or credit that can reasonably be considered to have been received by the corporation in the year as a reimbursement or repayment of, or as indemnification or compensation for, an amount deducted because of

(A) paragraph (j), as it read in its application to the 1995 taxation year, in computing the amount determined under this subsection for a preceding taxation year that began before 1996, or

(B) paragraph (k) in computing the amount determined under this subsection for the year or for a preceding taxation year that began after 1995, and

(ii) was not included in computing the corporation's base amount for any taxation year,

Amendment [effective 2007] — 219(1)(e)

(e) the total of all amounts each of which is an amount in respect of a grant or credit that

(i) can reasonably be considered to have been received by the corporation in the year as a reimbursement or repayment of, or as indemnification or compensation for, an amount deducted because of paragraph (j), as it read in its application to the 1995 taxation year, in computing the amount determined under this subsection for a preceding taxation year that began before 1996, and

(ii) was not included in computing the corporation's base amount for any taxation year,

Application: S.C. 2003, c. 28 (Bill C-48, Royal Assent November 7, 2003), subsec. 17(2), amends para. 219(1)(e) to read as above, applicable to taxation years that begin after 2006.

(f) where, at any time in the year, the corporation has made one or more dispositions described in paragraph (l) of qualified property, the total of all amounts each of which is an amount in respect of one of those dispositions equal to the amount, if any, by which the fair market value of the qualified property at the time of the disposition exceeds the corporation's proceeds of disposition of the property, and

(g) the amount, if any, claimed for the immediately preceding taxation year under paragraph (j) by the corporation,

exceeds the total of

(h) that proportion of the total of

(i) the total of the taxes payable under Parts I, I.3 and VI for the year by the corporation, determined without reference to subsection (1.1), and

(ii) the total of the income taxes payable to the government of a province for the year by the corporation, determined without reference to subsection (1.1),

that the corporation's base amount is of the amount that would, if this Act were read without reference to subsection (1.1), be the corporation's base amount,

(i) the total of all amounts each of which is the amount of interest or a penalty paid by the corporation in the year

(i) under this Act, or

(ii) on or in respect of an income tax payable by it to the government of a province under a law of the province relating to income tax,

to the extent that the interest or penalty was not deductible in computing its base amount for any taxation year,

(j) where the corporation was carrying on business in Canada at the end of the year, the amount claimed by the corporation for the year, not exceeding the amount prescribed to be its allowance for the year in respect of its investment in property in Canada,

(k) the portion of the total of all amounts, each of which is an amount by which the corporation's base amount is increased because of paragraph 12(1)(o) or 18(1)(l.1) or (m) or subsection 69(6) or (7), that is not deductible under paragraph (h) or (j), and

Repeal [effective 2007] — 219(1)(k)

Application: S.C. 2003, c. 28 (Bill C-48, Royal Assent November 7, 2003), subsec. 17(3), repeals para. 219(1)(k), applicable to taxation years that begin after 2006.

(l) where the corporation has at any time in the year disposed of property (in this paragraph and paragraph (f) referred to as "qualified property") used by it immediately before that time for the purpose of gaining or producing income from a business carried on by it in Canada to a Canadian corporation (in this paragraph referred to as the "purchaser corporation") that was, immediately after the disposition, a qualified related corporation of the corporation for consideration that includes a share of the capital stock of the purchaser corporation, the total of all amounts each of which is an amount in respect of a disposition in the year of a qualified property equal to the amount, if any, by which

(i) the fair market value of the qualified property at the time of the disposition

exceeds the total of

(ii) the amount, if any, by which the paid-up capital in respect of the issued and outstanding shares of the capital stock of the purchaser corporation increased because of the disposition, and

(iii) the fair market value, at the time of receipt, of the consideration (other than shares) given by the purchaser corporation for the qualified property.

Related Provisions: 18(1)(t) — Tax is non-deductible; 52(7) — Cost of shares of subsidiary; 115.2 — Non-resident investment or pension fund deemed not to be carrying on business in Canada; 134 — Status of non-resident-owned investment corporation for purposes of s. 219;

142.7(10)(b) — Addition under 219(1)(g) for branch-establishment dividend of foreign entrant bank; 218.2 — Branch interest tax on foreign banks; 219(1.1) — Excluded gains; 219(2) — Exempt corporations; 219.1 — Corporate emigration — 25% tax; 219.2 — Limitation on rate of Part XIV tax to dividend rate under treaties; Canada-U.K. Tax Treaty:Art. 22:3 — Limitation on branch tax; Canada-U.S. Tax Treaty:Art. X:6(d) — Exemption for first $500,000 of earnings and rate limited to 5%.

History: The opening words of subsec. 219(1) amended by 2003, c. 15, s. 128, applicable to taxation years that begin after June 2003. The opening words formerly read:

(1) Every corporation that is non-resident in a taxation year shall, on or before its filing-due date for the year, pay a tax under this Part for the year equal to 25% of the amount, if any, by which the total of

Para. 219(1)(b) amended by 2001, c. 17, subsec. 177(1), applicable to 1998 *et seq.* Para. (b) formerly read:

(b) the amount deducted because of section 112 and paragraph 115(1)(d.1) in computing the corporation's base amount,

Para. 219(1)(d) amended by the said c. 17, subsec. 177(2), by replacing the expression "1/3 of the amount" with "the amount", applicable to taxation years that end after February 27, 2000 except that, for such taxation years that ended before October 18, 2000, the reference to the expression "the amount" shall be read as a reference to the expression "1/2 of the amount".

Subsec. 219(1) amended by 1998, c. 19, subsec. 219(1), applicable to taxation years that begin after 1995 except that, in its application to taxation years that began in 1996, the reference in paragraph 219(1)(g) of the Act to "paragraph (j)" shall be read as a reference to "paragraph (h), as it read in its application to the 1995 taxation year, or paragraph (j)". Subsec. 219(1) formerly read:

(1) Every corporation carrying on business in Canada at any time in a taxation year (other than a corporation that was, throughout the year, a Canadian corporation) shall, on or before the day on or before which it is required to file a return of income under Part I for the year, pay a tax under this Part for the year equal to 25% of the amount by which the total of

(a) the corporation's amount taxable (within the meaning given that expression in section 123) for the taxation year,

(a.1) the amount deducted by the corporation under section 112 in computing the amount referred to in paragraph (a),

(a.2) the amount deducted by the corporation under subsection 115(1) in computing the amount referred to in paragraph (a) that was an amount the deduction of which was permitted under section 112,

(a.3) the amount deducted under paragraph 20(1)(v.1) by the corporation in computing the amount referred to in paragraph (a), other than any portion of the amount so deducted that was deductible because of the membership of the corporation in a partnership,

(a.4) where, at any time in the taxation year, the corporation has made one or more dispositions as described in paragraph (k) of qualified property, the total of all amounts each of which is an amount in respect of such a disposition equal to the amount, if any, by which the fair market value of the qualified property at the time of the disposition exceeds the amount of the corporation's proceeds of disposition of the property,

(b) the amount claimed by the corporation under paragraph (h) for the immediately preceding taxation year, and

(c) where the corporation was resident in Canada at any time in the year, the amount claimed under paragraph (i) for the immediately preceding taxation year,

exceeds the total of,

(d) where the corporation was, throughout the year, not resident in Canada, the lesser of

(i) the amount, if any, by which the total of amounts each of which is a taxable capital gain of the corporation for the year from a disposition of a taxable Canadian property that was not property used in the year in, or held in the year in the course of, carrying on business in Canada, exceeds the total of amounts each of which is an allowable capital loss of the corporation for the year from a disposition of any such property, and

(ii) the amount that would be determined under subparagraph (i) for the year if it were read without reference to the expression "that was not property used in the year in, or held in the year in the course of, carrying on business in Canada",

(e) the total of the taxes payable by it under Parts I, I.3 and VI for the year less, where the corporation was at no time in the year resident in Canada, that proportion of the tax payable by it under Part I for the year that the amount determined under paragraph (d) in respect of the corporation for the year is of the corporation's amount taxable for the year,

(f) any income taxes payable by the corporation to the government of a province in respect of the year (to the extent that those taxes were not deductible under Part I in computing its income for the year from businesses carried on by it in Canada) less, where the corporation was, at no time in the year, resident in Canada, that proportion thereof that the amount determined under paragraph (d) in respect of the corporation for the year is of the corporation's amount taxable for the year,

(f.1) the total of all amounts each of which is the amount of interest or a penalty paid by it in the year

(i) under this Act, or

(ii) on or in respect of income taxes payable by it to the government of a province under a law of the province relating to income tax,

to the extent that the interest or penalty was not deductible in computing its income under Part I for any taxation year from a business carried on by it in Canada,

(g) where the corporation was resident in Canada at any time in the year

(i) the amount deducted under section 126 from the tax for the year otherwise payable by the corporation under Part I, and

(ii) 1/2 of the lesser of the corporation's taxable income for the year and the amount, if any, by which

(A) the total of such of its incomes for the year from businesses or properties and its taxable capital gains for the year from disposition of property as were from sources in countries other than Canada

exceeds

(B) the total of such of its losses for the year from businesses or properties and its allowable capital losses for the year from dispositions of property as were from sources in countries other than Canada,

(h) where the corporation was, at the end of the year, carrying on business in Canada, such amount as the corporation may claim for the year, not exceeding the amount prescribed to be its allowance for the year in respect of its investment in property in Canada,

(i) where the corporation was resident in Canada at any time in the year, such amount as the corporation may claim for the year, not exceeding the amount, if any, by which

(i) the total of dividends paid by it after it last became resident in Canada, while it was resident in Canada and before the end of the year

exceeds

(ii) the total of amounts determined under subparagraph (g)(ii) in respect of the corporation for taxation years ending after it last became resident in Canada and not later than the end of the year,

(j) such portion of the total of all amounts, each of which is an amount by which the amount referred to in paragraph (a) is increased by virtue of paragraph 12(1)(o), 18(1)(l.1) or (m) or subsection 69(6) or (7), as is not deductible under paragraph (f) or (h), and

(k) where, at any time after December 11, 1979, the corporation has, in the taxation year, disposed of property (in this paragraph and paragraph (a.4) referred to as "qualified property") used by it immediately before that time for the purpose of gaining or producing income from a business carried on by it in Canada to a Canadian corporation that was, immediately after the disposition, its subsidiary wholly-owned corporation (in this paragraph referred to as the "purchaser corporation") for consideration that includes shares of the capital stock of the purchaser corporation, the total of all amounts each of which is an amount in

respect of a disposition in the year of a qualified property equal to the amount, if any, by which

(i) the fair market value of the qualified property at the time of its disposition

exceeds the total of

(ii) the amount, if any, by which the paid-up capital in respect of the issued and outstanding shares of the capital stock of the purchaser corporation increased by virtue of the disposition, and

(iii) the fair market value, at the time of receipt, of the consideration (other than shares) given by the purchaser corporation for the qualified property.

Para. 219(1)(a.3) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 126(1), applicable after December 20, 1991. Para. (a.3) formerly read:

(a.3) the amount deducted by the corporation under paragraph 20(1)(v.1) in computing the amount referred to in paragraph (a),

Para. 219(1)(e) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 126(2), applicable to taxation years ending after June 1989. Para. (e) formerly read:

(e) the tax payable by it under Part I for the year less, where the corporation was, at no time in the year, resident in Canada, that proportion thereof that the amount determined under paragraph (d) in respect of the corporation for the year is of the corporation's amount taxable for the year,

Para. 219(1)(f.1) added by 1994, c. 7, Sch. II (1991, c. 49), s. 180, applicable to interest and penalties paid in 1988 *et seq*.

Regulations: 808 (allowance in respect of investment in property in Canada).

Interpretation Bulletins: See list at end of s. 219.

Forms: T2 SCH 20: Part XIV tax — Branch tax.

(1.1) Excluded gains — For the purpose of subsection (1), the definition "taxable Canadian property" in subsection 248(1) shall be read without reference to paragraphs (a) and (c) to (k) of that definition and as if the only interests or options referred to in paragraph (l) of that definition were those in respect of property described in paragraph (b) of that definition.

Proposed Amendment — 219(1.1)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), s. 269, will amend subsec. 219(1.1) by substituting "options, interests or rights" for "interests or options", to come into force on Royal Assent.

Technical Notes: See under 12(4).

History: Subsec. 219(1.1) amended by 2001, c. 17, subsec. 177(3), applicable after October 1, 1996. It formerly read:

(1.1) For the purposes of subsection (1), paragraph 115(1)(b) shall be read without reference to subparagraphs (i) and (iii) to (xii).

Subsec. 219(1.1) added by 1998, c. 19, subsec. 219(1), applicable to taxation years that begin after 1995.

(2) Exempt corporations — No tax is payable under this Part for a taxation year by a corporation that was, throughout the year,

(a) [Repealed]

(b) a corporation whose principal business was

(i) the transportation of persons or goods,

(ii) communications, or

(iii) mining iron ore in Canada; or

(c) a corporation exempt from tax under section 149.

History: Para. 219(2)(a) repealed by 2001, c. 17, subsec. 177(4), applicable to taxation years that end after June 27, 1999. Para. (a) formerly read:

(a) a bank;

Selected Cases [subsec. 219(2)]: *Twentieth Century Fox Film Corp. v. MNR*, [2002] 3 C.T.C. 324 (FCA); aff'g [2001] 2 C.T.C. 63 (FCTD) (No exemption for branch tax where taxpayer not in communications business).

(3) Provisions applicable to Part — Sections 150 to 152, 154, 158, 159 and 161 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Selected Cases [subsec. 219(3)]: *Twentieth Century Fox Film Corp. v. MNR*, [2001] 2 C.T.C. 63 (FCTD) (Statutory right to appeal overrides s. 18.5 of *Federal Court Act*).

Interpretation Bulletins: See list at end of s. 219.

(4) Non-resident insurers — No tax is payable under subsection (1) for a taxation year by a non-resident insurer, but where it elects, in prescribed manner and within the prescribed time, to deduct, in computing its Canadian investment fund as of the end of the immediately following taxation year, an amount not greater than the amount, if any, by which

(a) the amount, if any, by which the total of

(i) the insurer's surplus funds derived from operations as of the end of the year, and

(i.1) where, in any particular taxation year that began before the end of the year, the insurer transferred to a taxable Canadian corporation with which it did not deal at arm's length any designated insurance property of the insurer for the particular year, and

(A) the property was transferred before December 16, 1987 and subsection 138(11.5) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, applied in respect of the transfer, or

(B) the property was transferred before November 22, 1985 and subsection 85(1) of that Act applied in respect of the transfer,

the amount, if any, by which

(C) the total of the fair market value, at the time of the transfer, of all such property

exceeds

(D) the total of the insurer's proceeds of disposition of all such property,

exceeds the total of

(ii) each amount on which the insurer has paid tax under this Part for a previous taxation year,

(iii) the amount, if any, by which the insurer's accumulated 1968 deficit exceeds the amount of the insurer's maximum tax actuarial reserves for its 1968 taxation year for its life insurance policies in Canada,

(iv) the insurer's loss, if any, for each of its 5 consecutive taxation years ending with its 1968 taxation year, from all insurance businesses (other than its life insurance business) carried on by it in Canada (computed without reference to section 30 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to those years), except to the extent that any such loss was deductible in computing its taxable income for any of its taxation years ending before 1969, and

(v) the total of all amounts in respect of which the insurer has filed an election under subsection (5.2) for a previous taxation year in accordance with that subsection,

exceeds

(b) the amount of the insurer's attributed surplus for the year,

the insurer shall, on or before the day on or before which it is required to file a return under Part I for the year, pay a tax for the year equal to 25% of the amount, if any, by which the amount it has so elected to deduct exceeds the amount in respect of which it filed an election under subsection (5.2) for the year in accordance with that subsection.

Related Provisions: 181.3(3)(d)(i)(A), 190.13(c)(i)(A) — Effect on capital tax.

History: The opening words of subpara. 219(4)(a)(i.1) amended by 1997, c. 25, subsec. 65(1), applicable to 1997 *et seq.* The opening words formerly read:

(i.1) where, in any taxation year commencing before the end of the year, the insurer transferred to a taxable Canadian corporation with which it did not deal at arm's length any property used by it in the year in, or held by it in the year in the course of (within the meaning assigned by subsection 138(12)), carrying on an insurance business in Canada, and

Regulations: 2403(1) (prescribed manner and time).

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: See list at end of s. 219.

(5) [Repealed under former Act]

(5.1) Additional tax on insurer — Where a non-resident insurer ceases in a taxation year to carry on all or substantially all of an insurance business in Canada, it shall, on or before its filing-due date for the year, pay a tax for the year equal to 25% of the amount, if any, by which

(a) that portion of the amount determined under paragraph (4)(a) for the year in respect of the insurer that can reasonably be attributed to the business, including the disposition by it of property that was its designated insurance property in respect of the business for the year in which the disposition occurred,

exceeds

(b) the amount the insurer and a qualified related corporation of the insurer jointly elect in accordance with subsection (5.2) for the year in respect of the business.

Related Provisions: 18(1)(t) — Tax is non-deductible.

History: Subsec. 219(5.1) amended by 1997, c. 25, subsec. 65(2), applicable to 1997 *et seq.* Subsec. (5.1) formerly read:

(5.1) Where, in a particular taxation year, a non-resident insurer has ceased to carry on all or substantially all of an insurance business in Canada, it shall, on or before the day on or before which it is required to file a return of income under Part I for the particular year, pay a tax for the year equal to 25% of the amount, if any, by which

(a) that portion of the amount determined under paragraph (4)(a) for the particular year in respect of the non-resident insurer that can reasonably be attributed to the business including the disposition by it of property that was, at the time of the disposition, used by it in the year in, or held by it in the year in the course of (within the meaning assigned by subsection 138(12)), carrying on the business

exceeds

(b) the amount in respect of which the non-resident insurer and a qualified related corporation of the insurer have jointly elected in accordance with subsection (5.2) for the particular year in respect of the business.

(5.2) Election by non-resident insurer — Where

(a) a non-resident insurer has ceased to carry on all or substantially all of an insurance business in Canada in a taxation year, and

(b) the insurer has transferred the business to a qualified related corporation of the insurer and the insurer and the corporation have elected to have subsection 138(11.5) apply in respect of the transfer,

the insurer and the corporation may elect, in prescribed manner and within prescribed time, to reduce the amount in respect of which the insurer would otherwise be liable to pay tax under subsection (5.1) by an amount not exceeding the lesser of

(c) the amount determined under paragraph (5.1)(a) in respect of the insurer in respect of the business, and

(d) the total of the paid-up capital of the shares of the capital stock of the corporation received by the insurer as consideration for the transfer of the business and any contributed surplus arising on the issue of those shares.

Related Provisions: 138(11.9) — Computation of contributed surplus; 181.3(3)(d)(i)(A), 190.13(c)(i)(A) — Effect on capital tax.

Regulations: 2403(2) (prescribed manner and time).

Interpretation Bulletins: See list at end of s. 219.

(5.3) Deemed payment of dividend — Where, at any time in a taxation year,

(a) a qualified related corporation of a non-resident insurer ceases to be a qualified related corporation of that insurer, or

(b) the tax deferred account of a qualified related corporation of a non-resident insurer exceeds the total of the paid-up capital in respect of all the shares of the capital stock of the corporation and its contributed surplus,

the corporation shall be deemed to have paid, immediately before that time, a dividend to the insurer in an amount equal to

(c) where paragraph (a) is applicable, the balance of the tax deferred account of the corporation at that time, or

(d) where paragraph (b) is applicable, the amount of the excess referred to in that paragraph at that time.

Related Provisions: 138(11.9) — Computation of contributed surplus.

Interpretation Bulletins: See list at end of s. 219.

(6) [Repealed under former Act]

(7) Definitions — In this Part,

"accumulated 1968 deficit" of a life insurer means such amount as can be established by the insurer to be its deficit as of the end of its 1968 taxation year from carrying on its life insurance business in Canada on the assumption that the amounts of its assets and liabilities (including reserves of any kind)

(a) as of the end of any taxation year before its 1968 taxation year, were the amounts thereof determined for the purposes of the Superintendent of Insurance for Canada or other similar officer, and

(b) as of the end of its 1968 taxation year, were

(i) in respect of depreciable property, the capital cost thereof as of the first day of its 1969 taxation year,

(ii) in respect of policy reserves, the insurer's maximum tax actuarial reserves for its 1968 taxation year for life insurance policies issued by it in the course of carrying on its life insurance business in Canada, and

(iii) in respect of other assets and liabilities, the amounts thereof determined as of the end of that year for the purpose of computing its income for its 1969 taxation year;

History: The definition "accumulated 1968 deficit" in subsec. 219(7) amended by 1997, c. 25, subsec. 65(3), applicable to 1997 *et seq.* The definition formerly read:

"accumulated 1968 deficit" has the meaning assigned by subsection 138(12);

"attributed surplus" of an insurer for a taxation year has the meaning assigned by regulation;

History: The definition "attributed surplus" in subsec. 219(7) amended by 1997, c. 25, subsec. 65(3), applicable to 1997 *et seq.* The definition formerly read:

"attributed surplus for the year" has the meaning prescribed for that expression;

Regulations: 2400(4)(b) [since 1999]; 2405(3) [pre-1999] (meaning of "attributed surplus for the year").

"Canadian investment fund" has the meaning prescribed for that expression;

Regulations: 2400(4)(b) [since 1999]; 2405(3) [pre-1999] (meaning of "Canadian investment fund").

"maximum tax actuarial reserves" has the meaning assigned by subsection 138(12);

"surplus funds derived from operations" has the meaning assigned by subsection 138(12);

"tax deferred account" of a qualified related corporation at any time means the amount determined by the formula

$$A - B$$

where

A is the total of all amounts each of which is an amount in respect of which the qualified related corporation and a non-resident insurer have elected jointly before that time in accordance with subsection (5.2), and

B is the total of all amounts each of which is the amount of a dividend deemed by subsection (5.3) to have been paid by the qualified related corporation before that time.

Related Provisions: 257 — Formula cannot calculate to less than zero.

Interpretation Bulletins: See list at end of s. 219.

(8) Meaning of "qualified related corporation" — For the purposes of this Part, a corporation is a "qualified related corporation" of a particular corporation if it is resident in Canada and all of the issued and outstanding shares (other than directors' qualifying shares) of its capital stock (having full voting rights under all circumstances) are owned by

(a) the particular corporation,

(b) a subsidiary wholly-owned corporation of the particular corporation,

(c) a corporation of which the particular corporation is a subsidiary wholly-owned corporation,

(d) a subsidiary wholly-owned corporation of a corporation of which the particular corporation is also a subsidiary wholly-owned corporation, or

(e) any combination of corporations each of which is a corporation described in paragraph (a), (b), (c) or (d),

and, for the purpose of this subsection, a subsidiary wholly-owned corporation of a particular corporation includes any subsidiary wholly-owned corporation of a corporation that is a subsidiary wholly-owned corporation of the particular corporation.

Related Provisions: 134 — Status of non-resident-owned investment corporation for purposes of s. 219.

History: Subsec. 219(8) amended by 1998, c. 19, subsec. 219(2), applicable to taxation years that begin after 1995. Subsec. 219(8) formerly read:

(8) For the purposes of this Part, a corporation is a "qualified related corporation" of a non-resident insurer if it is resident in Canada and all of the issued and outstanding shares (other than directors' qualifying shares) of the capital stock of the corporation (having full voting rights under all circumstances) are owned by

(a) the insurer,

(b) a subsidiary wholly-owned corporation of the insurer,

(c) a corporation of which the insurer is a subsidiary wholly-owned corporation,

(d) a subsidiary wholly-owned corporation of a corporation of which the insurer is also a subsidiary wholly-owned corporation, or

(e) any combination of corporations each of which is a corporation described in paragraph (a), (b), (c) or (d),

and, for the purpose of this subsection, a subsidiary wholly-owned corporation of a particular corporation includes any subsidiary wholly-owned corporation of a corporation that is a subsidiary wholly-owned corporation of the particular corporation.

Definitions [s. 219]: "accumulated 1968 deficit" — 138(12), 219(7); "allowable capital loss" — 38(b), 248(1); "amount" — 248(1); "arm's length" — 251(1); "attributed surplus" — 219(7), Reg. 2400(4)(b); "base amount" — 219(1)(a); "business" — 248(1); "Canada" — 255; "Canadian corporation" — 89(1), 248(1); "Canadian investment fund" — 219(7), Reg. 2400(4)(b); "carrying on business" — 253; "corporation" — 248(1), *Interpretation Act* 35(1); "depreciable property" — 13(21), 248(1); "designated insurance property" — 138(12), 248(1); "dividend" — 248(1); "filing-due date" — 248(1); "insurer" — 248(1); "life insurance policy" — 138(12), 248(1); "life insurer" — 248(1); "maximum tax actuarial reserve" — 138(12), 219(7); "non-resident" — 248(1); "paid-up capital" — 89(1), 248(1); "person", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "qualified property" — 219(1)(l); "qualified related corporation" — 219(8); "qualifying share" — 192(6), 248(1) *[not intended to apply to s. 219]*; "regulation" — 248(1); "resident in Canada" — 250; "share" — 248(1); "subsidiary wholly-owned corporation" — 219(8), 248(1); "surplus funds derived from operations" — 138(12), 219(7); "tax deferred account" — 219(7); "taxable Canadian corporation" — 89(1), 248(1); "taxable Canadian property" — 219(1.1), 248(1); "taxable capital gain" — 38(a), 248(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 248(1); "taxation year" — 249.

Interpretation Bulletins [s. 219]: IT-137R3: Additional tax on certain corporations carrying on business in Canada; IT-393R2: Election re tax on rents and timber royalties — non-residents.

219.1 Corporate emigration — Where a taxation year of a corporation is deemed by paragraph 128.1(4)(a) to have ended at any time, the corporation shall, on or before its filing-due date for the year, pay a tax under this Part for the year equal to 25% of the amount, if any, by which

(a) the fair market value of all the property owned by the corporation immediately before that time

exceeds the total of

(b) the paid-up capital in respect of all the issued and outstanding shares of the capital stock of the corporation immediately before that time,

(c) all amounts (other than amounts payable by the corporation in respect of dividends and amounts payable under this section) each of which is a debt owing by the corporation, or an obligation of the corporation to pay an amount, that is outstanding at that time, and

(d) where a tax was payable by the corporation under subsection 219(1) or this section for a preceding taxation year that began before 1996 and after the corporation last became resident in Canada, 4 times the total of all amounts that would, but for sections 219.2 and 219.3 and any agreement or convention between the Government of Canada and the government of any

other country that has the force of law in Canada, have been so payable.

Related Provisions: 219.3 — Limitation of tax under 219.1 to rate under treaty; Canada-U.S. Tax Treaty:Art. IV:3 (Protocol) — Continuance in other jurisdiction.

History: S. 219.1 amended by 1998, c. 19, s. 220, applicable to 1996 *et seq.* S. 219.1 formerly read:

> 219.1 Where at any time a corporation ceases to be a Canadian corporation, it shall, on or before the day on or before which it is required to file a return of income under Part I for its last taxation year that began before that time, pay a tax under this Part for that year equal to 25% of the amount, if any, by which the fair market value at that time of all the property owned by the corporation exceeds the total of
>
> (a) the paid-up capital in respect of all the issued and outstanding shares of the capital stock of the corporation at that time, and
>
> (b) all amounts, other than amounts payable by the corporation in respect of dividends and amounts payable under this section, each of which is the amount of any debt owing by the corporation, or any other obligation of the corporation to pay an amount, that is outstanding at that time.

S. 219.1 substituted by 1994, c. 21, s. 99, applicable after 1992 except that, where a corporation elects in accordance with paragraph 111(4)(a) of 1994, c. 21 (see under 250(5.1)), s. 219.1 as amended applies to the corporation from the time at which the corporation was first granted articles of continuation (or similar constitutional documents) in another jurisdiction. That section formerly read:

> 219.1 Where a taxation year of a corporation is deemed by section 88.1 to have ended, it shall, on or before the day on or before which it is required to file a return of income under Part I for the year, pay a tax under this Part for that year equal to 25% of the amount, if any, by which
>
> (a) the total of all amounts each of which is the proceeds of disposition deemed by virtue of paragraph 88.1(e) to have been received by the corporation
>
> exceeds the total of
>
> (b) the paid-up capital in respect of all the issued and outstanding shares of the capital stock of the corporation immediately before the end of the year, and
>
> (c) all amounts, other than amounts payable by the corporation in respect of dividends, each of which is the amount of any debt owing by the corporation, or any other obligation of the corporation to pay an amount, that was outstanding at the end of the year.

Definitions [s. 219.1]: "amount" — 248(1); "Canadian corporation" — 89(1), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "paid-up capital" — 89(1), 248(1); "property" — 248(1); "share" — 248(1); "taxation year" — 249.

Interpretation Bulletins: IT-137R3: Additional tax on certain corporations carrying on business in Canada; IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada.

219.2 Limitation on rate of branch tax — Notwithstanding any other provision of this Act, where an agreement or convention between the Government of Canada and the government of another country that has the force of law in Canada

(a) does not limit the rate of tax under this Part on corporations resident in that other country, and

(b) provides that, where a dividend is paid by a corporation resident in Canada to a corporation resident in that other country that owns all of the shares of the capital stock of the corporation resident in Canada, the rate of tax imposed on the dividend shall not exceed a specified rate,

any reference in section 219 to a rate of tax shall, in respect of a taxation year of a corporation to which that agreement or convention applies on the last day of that year, be read as a reference to the specified rate.

Related Provisions: Canada-U.S. Tax Treaty:Art. X:2 — Limit on withholding tax rate on dividends.

History: S. 219.2 substituted by 1994, c. 21, s. 100, applicable to 1985 *et seq.* That section formerly read:

> 219.2 Limitation on rate of Part XIV tax — Notwithstanding any other provision of this Act, where an agreement or convention between the Government of Canada and the government of any other country that has the force of law in Canada
>
> (a) does not limit the rate of tax under this Part on corporations resident in that other country, and
>
> (b) provides that where a dividend is paid by a corporation resident in Canada to a resident of that other country the rate of tax imposed thereon shall not exceed a specified rate,
>
> any reference in this Part to a rate of tax shall, in respect of a taxation year of a corporation to which that agreement or convention applies on the last day of that year, be read as a reference to the specified rate.

Definitions [s. 219.2]: "Canada" — 255; "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "property" — 248(1); "resident in Canada" — 250; "share" — 248(1); "taxation year" — 249.

Interpretation Bulletins: IT-137R3: Additional tax on certain corporations carrying on business in Canada.

219.3 Effect of tax treaty — For the purpose of section 219.1, where an agreement or convention between the Government of Canada and the government of another country that has the force of law in Canada provides that the rate of tax imposed on a dividend paid by a corporation resident in Canada to a corporation resident in the other country that owns all of the shares of the capital stock of the corporation resident in Canada shall not exceed a specified rate, the reference in section 219.1 to "25%" shall, in respect of a corporation that ceased to be resident in Canada and to which the agreement or convention applies at the beginning of its first taxation year after its taxation year that is deemed by paragraph 128.1(4)(a) to have ended, be read as a reference to the specified rate unless it can reasonably be concluded that one of the main reasons that the corporation became resident in the other country was to reduce the amount of tax payable under this Part or Part XIII.

History: S. 219.3 amended by 1998, c. 19, s. 220.1, applicable to 1996 *et seq.* S. 219.3 formerly read:

> 219.3 Effect of tax agreement or convention — For the purpose of section 219.1, where an agreement or convention between the Government of Canada and the government of another country that has the force of law in Canada provides that, where a dividend is paid by a corporation resident in Canada to a corporation resident in that other country that owns all of the shares of the capital stock of the corporation resident in Canada, the rate of tax imposed on the dividend shall not exceed a specified rate, the reference in section 219.1 to a rate of tax shall, in respect of a corporation that ceased to be a Canadian corporation and to which the agreement or convention applies on the first day of the taxation year after the taxation year in which the corporation ceased to be a Canadian corporation, be read as a reference to the specified rate unless, having regard to all the circumstances, it can reasonably be concluded that one of the main reasons for the corporation becoming resident in that other country was to reduce the amount of tax payable under this Part or Part XIII.

S. 219.3 added by 1994, c. 21, s. 100, applicable to 1985 *et seq.* except that, in applying s. 219.3 to taxation years that end before July 1993, it shall be read without reference to the words "unless, having regard to all the circumstances, it can reasonably be concluded that one of the main reasons for the corporation becoming resident in that other country was to reduce the amount of tax payable under this Part or Part XIII".

Definitions [s. 219.3]: "Canadian corporation" — 89(1), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "resident in Canada" — 250; "share" — 248(1); "taxation year" — 249.

PART XV — ADMINISTRATION AND ENFORCEMENT

Administration

220. (1) Minister's duty — The Minister shall administer and enforce this Act and the Commissioner of Customs and Revenue may exercise all the powers and perform the duties of the Minister under this Act.

Proposed Amendment — 220(1)

Application: Bill C-26 (Second Senate Reading June 29, 2005), subpara. 140(e)(iii), will amend subsec. 220(1) to replace "Commissioner of Customs and Revenue" with "Commissioner of Revenue", in force on a day to be fixed by the Governor in Council.

Related Provisions: 166 — Assessment not to be vacated by reason of CRA failure to follow proper procedures; 220(2.01) — Delegation of powers; *Canada Customs and Revenue Agency Act* — Establishment of CCRA; *Interpretation Act* 24(2) — Power of others to act for Minister; *Interpretation Act* 31(2) — Ancillary powers granted to enable work to be done.

History: Subsec. 220(1) amended by 1999, c. 17, s. 164, proclaimed into force November 1, 1999. The subsec. formerly read:

> (1) The Minister shall administer and enforce this Act and control and supervise all persons employed to carry out or enforce this Act and the Deputy Minister of National Revenue may exercise all the powers and perform the duties of the Minister under this Act.

"Deputy Minister of National Revenue" substituted for "Deputy Minister of National Revenue for Taxation" in subsec. 220(1) by 1994, c. 13, subsec. 7(1), applicable May 12, 1994.

Selected Cases [subsec. 220(1)]: *Wenger's Ltd. v. MNR*, [1992] 2 C.T.C. 2479 (TCC) (Late payment "surcharge" on sale price of goods was "interest").

Regulations: 900 (delegation of powers and duties to other officials).

I.T. Technical News: 8 (publication of advance tax rulings); 9 (electronic publication of severed rulings); 14 (the Income Tax rulings and Interpretations Directorate — common deficiencies or omissions in requests for advance rulings); 18 (The advance income tax rulings process — practical problems and possible solutions).

(2) Officers, clerks and employees — Such officers, clerks and employees as are necessary to administer and enforce this Act shall be appointed or employed in the manner authorized by law.

Related Provisions: 220(2.01) — Delegation of powers; *Interpretation Act* 23(1) — Public officers hold office during pleasure; *Interpretation Act* 31(2) — Ancillary powers granted to enable work to be done.

(2.01) Delegation — The Minister may authorize an officer or a class of officers to exercise powers or perform duties of the Minister under this Act.

Related Provisions: *Interpretation Act* 23(1) — Public officers hold office during pleasure; *Interpretation Act* 31(2) — Ancillary powers granted to enable work to be done.

History: Subsec. 220(2.01) added by 1998, c. 19, subsec. 221(1), in force on June 18, 1998.

Subsec. 221(3) of the said c. 19 provides:

> Any power or duty of the Minister of National Revenue delegated to an officer or a class of officers by a regulation made under para. 221(1)(f) before [June 18, 1998] continues to be delegated to that officer or that class of officers until an authorization by that Minister made under subsec. 220(2.01) changes the delegation of that power or duty.

Transfer Pricing Memoranda: TPM-03: Downward transfer pricing adjustments under subsec. 247(2).

(2.1) Waiver of filing of documents — Where any provision of this Act or a regulation requires a person to file a prescribed form, receipt or other document, or to provide prescribed information, the Minister may waive the requirement, but the person shall provide the document or information at the Minister's request.

History: Subsec. 220(2.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 127(1), applicable to 1992 *et seq.*

Selected Cases [subsec. 220(2.1)]: *Dorothea Knitting Mills Ltd. v. MNR*, [2005] 2 C.T.C. 64 (FC) (Minister's reliance on criteria with no legislative foundation was improper).

Interpretation Bulletins: IT-495R3: Child care expenses.

Charities Policies: CPC-016: Religious charities — Form T3010.

Application Policies: SR&ED 2000-02R: Guidelines for resolving claimants' SR&ED concerns.

(3) Extensions for returns — The Minister may at any time extend the time for making a return under this Act. However, the extension does not apply for the purpose of calculating a penalty that a person is liable to pay under section 162 if the person fails to make the return within the period of the extension.

Related Provisions: 127.4(5.1) — Authorization for late LSVCC investments; 146(22) — Authorization for late RRSP contributions; 220(3.2) — Late filing of elections.

History: Subsec. 220(3) amended by 2003, c. 15, s. 129, applicable in respect of extensions granted after February 18, 2003. The subsec. formerly read:

> (3) The Minister may at any time extend the time for making a return under this Act.

Selected Cases [subsec. 220(3)]: *Kutlu v. R.*, [2000] 4 C.T.C. 129 (FCTD) (Minister's discretion improperly exercised).

(3.1) Waiver of penalty or interest — The Minister may, on or before the day that is ten calendar years after the end of a taxation year of a taxpayer (or in the case of a partnership, a fiscal period of the partnership) or on application by the taxpayer or partnership on or before that day, waive or cancel all or any portion of any penalty or interest otherwise payable under this Act by the taxpayer or partnership in respect of that taxation year or fiscal period, and notwithstanding subsections 152(4) to (5), any assessment of the interest and penalties payable by the taxpayer or partnership shall be made that is necessary to take into account the cancellation of the penalty or interest.

Related Provisions: 161.3 — CCRA discretion to cancel interest and penalty up to $25; 164(1.5) — Late refund of overpayment; 164(3.2) — Interest on refunds and repayments; 165(1.2) — Limitation of right to object; 225.1(1) — No collection restrictions following assessment.

History: Subsec. 220(3.1) amended by 2005, c. 19, s. 48, applicable after 2004, except that if a taxpayer or a partnership has, before 2005, applied to the Minister of National Revenue under the subsec. in respect of a taxation year or fiscal period, the subsec. is to be read in respect of that taxation year or fiscal period as follows:

> (3.1) The Minister may waive or cancel all or any portion of any penalty or interest otherwise payable under this Act by a taxpayer or partnership in respect of a taxation year or fiscal period, as the case may be, and notwithstanding subsections 152(4) to (5), any assessment of the interest and penalties payable by the taxpayer or partnership shall be made that is necessary to take into account the cancellation of the penalty or interest.

The subsec. formerly read:

> (3.1) The Minister may at any time waive or cancel all or any portion of any penalty or interest otherwise payable under this Act by a taxpayer or partnership and, notwithstanding subsections 152(4) to (5), such assessment of the interest and penalties payable by the taxpayer or partnership shall be made as is necessary to take into account the cancellation of the penalty or interest.

Subsec. 220(3.1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 127(2), applicable to 1985 *et seq.* Subsec. (3.1) formerly read:

> (3.1) The Minister may at any time waive or cancel all or any portion of any penalty or interest otherwise payable under this Act by a taxpayer or a partnership.

Subsec. 220(3.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 181(1), applicable to penalties and interest in respect of 1985 *et seq.*

Selected Cases [subsec. 220(3.1)]: *Elwell v. MNR*, [2004] 4 C.T.C. 263 (FC) (Minister should have exercised discretion in favour of taxpayer); *Johnston v. R.*, [2003] 4 C.T.C. 32 (FCTD) (Misapprehension as to relevant facts allows court to interfere with exercise of discretion); *Harold v. Canada (CCRA)*, [2003] 4 C.T.C. 21 (FCTD) (Standard of review is patent unreasonableness); *Robertson v. MNR*, [2003] 2 C.T.C. 78 (FCTD) (Minister's decision tainted by erroneous findings of fact); *Edwards v. Canada (CCRA)*, [2002] 3 C.T.C. 339 (FCTD) (Standard for review of exercise of discretion is patent unreasonableness); *MacKay v. Canada (CCRA)*, [2002] 2 C.T.C. 138 (FCTD) (Standard for review of exercise of discretion is "patent unreasonableness"); *Edison v. R.*, [2001] 3 C.T.C. 233 (FCTD) (Officers taking part in decision not to apply provision should not also be part of review process); *Hillier v. Canada (A.G.)*, [2001] 3 C.T.C. 157 (FCA); rev'g [2001] 1 C.T.C. 12 (FCTD) (Courts will interfere with exercise of discretion if conduct does not meet statutory standard); *Syal v. Canada (A.-G.)*, [1999] 3 C.T.C. 666 (FCTD) (Discretion under fairness package is Minister's, not Court's); *Bilida v. MNR*, [1997] 2 C.T.C. 143 (FCTD) (Court will review Minister's decision if all relevant factors not considered); *Taylor v. Canada*, [1995] 2 C.T.C. 2133 (TCC) (Provision applies only to penalties and interest payable after assessment); *Housser v. Canada*, [1994] 2 C.T.C. 2233 (TCC) (Court will not second-guess Minister on exercise of discretion); *Montgomery v. Canada*, [1994] 2 C.T.C. 57 (FCTD) (Minister's power to waive interest and penalties applies to 1985 and subsequent years); *Wasson (P.G.) v. Canada*, [1993] 2 C.T.C. 2338 (TCC) (Court had no jurisdiction to make declaratory judgment that Minister wrong not to waive interest and penalties).

Information Circulars: 92-2: Guidelines for the cancellation and waiver of interest and penalties; 98-1R: Collections policies.

Forms: T4060: Collections policies [guide].

(3.2) Late, amended or revoked elections — The Minister may extend the time for making an election or grant permission to amend or revoke an election if

(a) the election was otherwise required to be made by a taxpayer or by a partnership, under a prescribed provision, on or before a day in a taxation year of the taxpayer (or in the case of a partnership, a fiscal period of the partnership); and

(b) the taxpayer or the partnership applies, on or before the day that is ten calendar years after the end of the taxation year or the fiscal period, to the Minister for that extension or permission.

Related Provisions: 60(l), 60(l)(iv) — Minister may accept late rollover of RRSP after death to spouse, child or grandchild; 127.4(5.1) — Authorization for late LSVCC investments; 146(22) — Authorization for late RRSP contributions; 220(3) — Late filing allowed by extending time for return; 220(3.21) — Certain designations deemed to be elections; 220(3.3) — Date of late election, amended election or revocation; 220(3.4) — Consequential assessment; 220(3.5) — Penalty for late filed, amended or revoked elections.

History: Subsec. 220(3.2) amended by 2005, c. 19, s. 48, applicable in respect of applications made after 2004. The subsec. formerly read:

(3.2) Where

(a) an election by a taxpayer or a partnership under a provision of this Act or a regulation that is a prescribed provision was not made on or before the day on or before which the election was otherwise required to be made, or

(b) a taxpayer or partnership has made an election under a provision of this Act or a regulation that is a prescribed provision,

the Minister may, on application by the taxpayer or the partnership, extend the time for making the election referred to in paragraph (a) or grant permission to amend or revoke the election referred to in paragraph (b).

Subsec. 220(3.2) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 181(1), applicable to elections in respect of 1985 *et seq.*

Selected Cases [subsec. 220(3.2)]: *Coster v. R.*, [2003] 3 C.T.C. 2163 (TCC) (Only Minister can grant extension); *McNabb Family Trust v. Canada*, [1996] 3 C.T.C. 126 (FCTD) (Test is whether Minister acted arbitrarily or unfairly, not what Court might have decided).

Regulations: 600 (prescribed provisions).

Interpretation Bulletins: IT-120R5: Principal residence.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

(3.21) Designations and allocations — For the purpose of subsection (3.2),

(a) a designation in any form prescribed for the purpose of paragraph 80(2)(i) or any of subsections 80(5) to (11) or 80.03(7) is deemed to be an election under a prescribed provision of this Act; and

(b) a designation or allocation under subsection 132.11(6) is deemed to be an election under a prescribed provision of this Act.

History: Subsec. 220(3.21) amended by 1999, c. 22, s. 78, in force June 17, 1999. It formerly read:

(3.21) Designations under section 80 and subsection 80.03(7) — For the purposes of subsection (3.2), a designation in any form prescribed for the purpose of paragraph 80(2)(i) or any of subsections 80(5) to (11) or 80.03(7) shall be deemed to be an election under a prescribed provision of this Act.

Subsec. 220(3.21) added by 1995, c. 21, s. 42, applicable June 22, 1995.

(3.3) Date of late election, amended election or revocation — Where, under subsection (3.2), the Minister has extended the time for making an election or granted permission to amend or revoke an election,

(a) the election or the amended election, as the case may be, shall be deemed to have been made on the day on or before which the election was otherwise required to be made and in the manner in which the election was otherwise required to be made, and, in the case of an amendment to an election, that election shall be deemed, otherwise than for the purposes of this section, never to have been made; and

(b) the election that was revoked shall be deemed, otherwise than for the purposes of this section, never to have been made.

Related Provisions: 220(3.4) — Assessment to take late filing into account.

History: Subsec. 220(3.3) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 181(1), applicable to elections in respect of 1985 *et seq.*

(3.4) Assessments — Notwithstanding subsections 152(4), (4.01), (4.1) and (5), such assessment of the tax, interest and penalties payable by each taxpayer in respect of any taxation year that began before the day an application is made under subsection (3.2) to the Minister shall be made as is necessary to take into account the election, the amended election or the revocation, as the case may be, referred to in subsection (3.3).

Related Provisions: 164(1.5) — Refunds; 164(3.2) — Interest on refunds and repayments; 165(1.1) — Limitation of right to object to assessment or determination; 169(2)(a) — Limitation of right to appeal.

History: Subsec. 220(3.4) amended by 1998, c. 19, subsec. 221(2), applicable to elections in respect of 1985 *et seq.* Subsec. 220(3.4) formerly read:

(3.4) Notwithstanding subsections 152(4), (4.1) and (5), such assessment of the tax, interest and penalties payable by each taxpayer in respect of any taxation year commencing before the day an application is made under subsection (3.2) to the Minister shall be made as is necessary to take into account the election, the amended election or the revocation, as the case may be, referred to in subsection (3.3).

Subsec. 220(3.4) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 181(1), applicable to elections in respect of 1985 *et seq.*

(3.5) Penalty for late filed, amended or revoked elections — Where, on application by a taxpayer or a partnership, the Minister extends the time for making an election or grants permission to amend or revoke an elec-

tion, the taxpayer or the partnership, as the case may be, is liable to a penalty equal to the lesser of

(a) $8,000, and

(b) the product obtained when $100 is multiplied by the number of complete months from the day on or before which the election was required to be made to the day the application was made in a form satisfactory to the Minister.

Related Provisions: 220(3.6) — Assessment of penalty.

History: Subsec. 220(3.5) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 181(1), applicable to elections in respect of 1985 *et seq.*

(3.6) Unpaid balance of penalty — The Minister shall, with all due dispatch, examine each election, amended election and revoked election referred to in subsection (3.3), assess any penalty payable and send a notice of assessment to the taxpayer or the partnership, as the case may be, and the taxpayer or the partnership, as the case may be, shall pay forthwith to the Receiver General the amount, if any, by which the penalty so assessed exceeds the total of all amounts previously paid on account of that penalty.

Related Provisions: 161(11)(c) — Interest on penalties.

History: Subsec. 220(3.6) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 181(1), applicable to elections in respect of 1985 *et seq.*

(3.7) Idem — The provisions of Divisions I and J of Part I apply, with such modifications as the circumstances require, to an assessment made under this section as though it had been made under section 152.

History: Subsec. 220(3.7) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 181(1), applicable to elections in respect of 1985 *et seq.*

(4) Security — The Minister may, if the Minister considers it advisable in a particular case, accept security for payment of any amount that is or may become payable under this Act.

Related Provisions: 159(2) — Certificate before distribution; 222(8)(b) — Extension of 10-year limitation period on collection action while security held; 222.1 — Application to awards of court costs.

Regulations: 2200 (Minister may discharge security).

(4.1) Idem — Where a taxpayer has objected to or appealed from an assessment under this Act, the Minister shall, while the objection or appeal is outstanding, accept adequate security furnished by or on behalf of the taxpayer for payment of the amount in controversy except to the extent that the Minister may collect the amount because of subsection 225.1(7).

Related Provisions: 222(8)(b) — Extension of 10-year limitation period on collection action while security held.

History: Subsec. 220(4.1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 127(3). Subsec. (4.1) formerly read:

(4.1) Idem where objection or appeal — Where a taxpayer has objected to or appealed from an assessment under this Act, the Minister shall accept adequate security furnished by or on behalf of the taxpayer for payment of the amount in controversy while the objection [or] appeal is outstanding.

(4.2) Surrender of excess security — Where at any time a taxpayer requests in writing that the Minister surrender any security accepted by the Minister under subsection (4) or (4.1), the Minister shall surrender the security to the extent that the value of the security exceeds the total of amounts payable under this Act by the taxpayer at that time.

Related Provisions: 222.1 — Application to awards of court costs.

(4.3) Security furnished by a member institution of a deposit insurance corporation — The Minister shall accept adequate security furnished by or on behalf of a taxpayer that is a member institution in relation to a deposit insurance corporation (within the meaning assigned by subsection 137.1(5)) for payment of

(a) the tax payable under this Act by the taxpayer for a taxation year, to the extent that the amount of that tax exceeds the amount that that tax would be if no amount that the taxpayer is obliged to repay to the corporation were included under paragraph 137.1(10)(a) or (b) in computing the taxpayer's income for the year or a preceding taxation year, and

(b) interest payable under this Act by the taxpayer on the amount determined under paragraph (a),

until the earlier of

(c) the day on which the taxpayer's obligation referred to in paragraph (a) to repay the amount to the corporation is settled or extinguished, and

(d) the day that is 10 years after the end of the year.

History: Para. 220(4.3)(a) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 181(2), to substitute "for the year or a preceding taxation year" for "for the year", applicable after July 13, 1990.

(4.4) Additional security — The adequacy of security furnished by or on behalf of a taxpayer under subsection (4.3) shall be determined by the Minister and the Minister may require additional security to be furnished from time to time by or on behalf of the taxpayer where the Minister determines that the security that has been furnished is no longer adequate.

History: Subsec. 220(4.4) added by 1987, c. 46, s. 65, applicable after February 17, 1987.

(4.5) Security for departure tax — If an individual who is deemed by subsection 128.1(4) to have disposed of a property (other than a right to a benefit under, or an interest in a trust governed by, an employee benefit plan) at any particular time in a taxation year (in this section referred to as the individual's "emigration year") elects, in prescribed manner on or before the individual's balance-due day for the emigration year, that this subsection and subsections (4.51) to (4.54) apply in respect of the emigration year,

(a) the Minister shall, until the individual's balance-due day for a particular taxation year that begins after the particular time, accept adequate security furnished by or on behalf of the individual on or before the individual's balance-due day for the emigration year for the lesser of

(i) the amount determined by the formula

$$A - B - [((A - B)/A) \times C]$$

where

A is the total amount of taxes under Parts I and I.1 that would be payable by the individual for the emigration year if the exclusion or deduction of each amount referred to in paragraph 161(7)(a) were not taken into account,

B is the total amount of taxes under those Parts that would have been so payable if each property (other than a right to a benefit under, or an interest in a trust governed by, an employee benefit plan) deemed by subsection 128.1(4) to have been disposed of at the particular time, and that has not been subsequently disposed of before the beginning of the particular year, were not deemed by subsection 128.1(4) to have been

disposed of by the individual at the particular time, and

C is the total of all amounts deemed under this or any other Act to have been paid on account of the individual's tax under this Part for the emigration year, and

(ii) if the particular year immediately follows the emigration year, the amount determined under subparagraph (i), and in any other case, the amount determined under this paragraph in respect of the individual for the taxation year that immediately precedes the particular year; and

(b) except for the purposes of subsections 161(2), (4) and (4.01),

(i) interest under this Act for any period that ends on the individual's balance-due day for the particular year and throughout which security is accepted by the Minister, and

(ii) any penalty under this Act computed with reference to an individual's tax payable for the year that was, without reference to this paragraph, unpaid

shall be computed as if the particular amount for which adequate security has been accepted under this subsection were an amount paid by the individual on account of the particular amount.

Related Provisions: 128.1(6) — Tax cancelled if emigrant returns to Canada; 128.3 — Shares acquired on rollover deemed to be same shares for 220(4.5); 152(10) — Posted security deemed not to be tax assessed for purposes of administration of provincial tax; 220(4.51) — Exemption for first $25,000 of security; 220(4.52) — Security effective only for departure tax; 220(4.53) — Where security proves inadequate; 220(4.54) — Extension of time for making election; 220(4.7) — Reduction in security for undue hardship; 257 — Formula cannot calculate to less than zero.

Forms: T1244: Election, under subsec. 220(4.5) of the *ITA*, to defer the payment of tax on income re deemed disposition of property.

(4.51) Deemed security — If an individual (other than a trust) elects under subsection (4.5) that that subsection apply in respect of a taxation year, for the purposes of this subsection and subsections (4.5) and (4.52) to (4.54), the Minister is deemed to have accepted at any time after the election is made adequate security for a total amount of taxes payable under Parts I and I.1 by the individual for the emigration year equal to the lesser of

(a) the total amount of those taxes that would be payable for the year by an *inter vivos* trust resident in Canada (other than a trust described in subsection 122(2)) the taxable income of which for the year is $50,000, and

(b) the greatest amount for which the Minister is required to accept security furnished by or on behalf of the individual under subsection (4.5) at that time in respect of the emigration year,

and that security is deemed to have been furnished by the individual before the individual's balance-due day for the emigration year.

(4.52) Limit — Notwithstanding subsections (4.5) and (4.51), the Minister is deemed at any time not to have accepted security under subsection (4.5) in respect of an individual's emigration year for any amount greater than the amount, if any, by which

(a) the total amount of taxes that would be payable by the individual under Parts I and I.1 for the year if the exclusion or deduction of each amount referred to in paragraph 161(7)(a), in respect of which the day determined under paragraph 161(7)(b) is after that time, were not taken into account

exceeds

(b) the total amount of taxes that would be determined under paragraph (a) if this Act were read without reference to subsection 128.1(4).

(4.53) Inadequate security — Subject to subsection (4.7), if it is determined at any particular time that security accepted by the Minister under subsection (4.5) is not adequate to secure the particular amount for which it was furnished by or on behalf of an individual,

(a) subject to a subsequent application of this subsection, the security shall be considered after the particular time to secure only the amount for which it is adequate security at the particular time;

(b) the Minister shall notify the individual in writing of the determination and shall accept adequate security, for all or any part of the particular amount, furnished by or on behalf of the individual within 90 days after the day of notification; and

(c) any security accepted in accordance with paragraph (b) is deemed to have been accepted by the Minister under subsection (4.5) on account of the particular amount at the particular time.

Related Provisions: 220(4.54)(c) — Extension of 90-day period under (4.53)(b).

(4.54) Extension of time — If in the opinion of the Minister it would be just and equitable to do so, the Minister may at any time extend

(a) the time for making an election under subsection (4.5);

(b) the time for furnishing and accepting security under subsection (4.5); or

(c) the 90-day period for the acceptance of security under paragraph (4.53)(b).

(4.6) Security for tax on distributions of taxable Canadian property to non-resident beneficiaries — Where

(a) solely because of the application of subsection 107(5), paragraphs 107(2)(a) to (c) do not apply to a distribution by a trust in a particular taxation year (in this section referred to as the trust's "distribution year") of taxable Canadian property, and

(b) the trust elects, in prescribed manner on or before the trust's balance-due day for the distribution year, that this subsection and subsections (4.61) to (4.63) apply in respect of the distribution year,

the following rules apply:

(c) the Minister shall, until the trust's balance-due day for a subsequent taxation year, accept adequate security furnished by or on behalf of the trust on or before the trust's balance-due day for the distribution year for the lesser of

(i) the amount determined by the formula

$$A - B - [((A - B)/A) \times C]$$

where

A is the total amount of taxes under Parts I and I.1 that would be payable by the trust for the distribution year if the exclusion or deduction of each amount referred to in paragraph 161(7)(a) were not taken into account,

B is the total amount of taxes under those Parts that would have been so payable if the rules in subsection 107(2) (other than the election referred to in that subsection) had applied to each disposition by the trust in the distribution year of property (other than property subsequently disposed of before the beginning of the subsequent year) to which paragraph (a) applies, and

C is the total of all amounts deemed under this or any other Act to have been paid on account of the trust's tax under this Part for the distribution year, and

(ii) where the subsequent year immediately follows the distribution year, the amount determined under subparagraph (i), and in any other case, the amount determined under this paragraph in respect of the trust for the taxation year that immediately precedes the subsequent year, and

(d) except for the purposes of subsections 161(2), (4) and (4.01),

(i) interest under this Act for any period ending on the trust's balance-due day for the subsequent year and throughout which security is accepted by the Minister, and

(ii) any penalty under this Act computed with reference to the trust's tax payable for the year that was, without reference to this paragraph, unpaid

shall be computed as if the particular amount for which adequate security has been accepted under this subsection were an amount paid by the trust on account of the particular amount.

Related Provisions: 128.3 — Shares acquired on rollover deemed to be same shares for 220(4.6); 152(10) — Posted security deemed not to be tax assessed for purposes of administration of provincial tax; 220(4.61) — Security effective only for tax caused by 107(5); 220(4.62) — Where security proves inadequate; 220(4.63) — Extension of time for making election; 220(4.7) — Reduction in security for undue hardship; 257 — Formula cannot calculate to less than zero.

(4.61) Limit — Notwithstanding subsection (4.6), the Minister is deemed at any time not to have accepted security under that subsection in respect of a trust's distribution year for any amount greater than the amount, if any, by which

(a) the total amount of taxes that would be payable by the trust under Parts I and I.1 for the year if the exclusion or deduction of each amount referred to in paragraph 161(7)(a), in respect of which the day determined under paragraph 161(7)(b) is after that time, were not taken into account

exceeds

(b) the total amount of taxes that would be determined under paragraph (a) if paragraphs 107(2)(a) to (c) had applied to each distribution by the trust in the year of property to which paragraph (1)(a) applies.

(4.62) Inadequate security — Subject to subsection (4.7), where it is determined at any particular time that security accepted by the Minister under subsection (4.6) is not adequate to secure the particular amount for which it was furnished by or on behalf of a trust,

(a) subject to a subsequent application of this subsection, the security shall be considered after the particular time to secure only the amount for which it is adequate security at the particular time;

(b) the Minister shall notify the trust in writing of the determination and shall accept adequate security, for all or any part of the particular amount, furnished by or on behalf of the trust within 90 days after the notification; and

(c) any security accepted in accordance with paragraph (b) is deemed to have been accepted by the Minister under subsection (4.6) on account of the particular amount at the particular time.

(4.63) Extension of time — Where in the opinion of the Minister it would be just and equitable to do so, the Minister may at any time extend

(a) the time for making an election under subsection (4.6);

(b) the time for furnishing and accepting security under subsection (4.6); or

(c) the 90-day period for the acceptance of the security under paragraph (4.62)(b).

(4.7) Undue hardship — If, in respect of any period of time, the Minister determines that an individual who has made an election under either of subsection (4.5) or (4.6)

(a) cannot, without undue hardship, pay or reasonably arrange to have paid on the individual's behalf, an amount of taxes to which security under that subsection would relate, and

(b) cannot, without undue hardship, provide or reasonably arrange to have provided on the individual's behalf, adequate security under that subsection,

the Minister may, in respect of the election, accept for the period security different from, or of lesser value than, that which the Minister would otherwise accept under that subsection.

Related Provisions: 220(4.71) — Transactions entered into to create hardship to be ignored.

(4.71) Limit — In making a determination under subsection (4.7), the Minister shall ignore any transaction that is a disposition, lease, encumbrance, mortgage, hypothec, or other voluntary restriction by a person or partnership of the person's or partnership's rights in respect of a property, if the transaction can reasonably be considered to have been entered into for the purpose of influencing the determination.

History [220(4.5)–(4.71)]: Subsecs. 220(4.5) to (4.71) added by 2001, c. 17, s. 178, applicable to dispositions and distributions that occur at any time after October 1, 1996 except that,

(a) the reference to "$50,000" in para. 220(4.51)(a) shall be read as a reference to "$75,000" in respect of emigration years that are before 2001; and

(b) if an individual ceased to be resident in Canada, or a distribution by a trust occurred to which para. 220(4.6)(a) applies in respect of the trust, before the particular day on which the amending legislation is assented to,

(i) an election by the individual under subsec. 220(4.5), or by the trust under subsec. 220(4.6), as the case may be, in respect of the taxation year that includes that time is deemed to have been made in a timely manner if it is made on or before the individual's filing-due date for the taxation year that includes the particular day; and

(ii) security furnished by or on behalf of the individual under subsec. 220(4.5), or by or on behalf of the trust under subsec. 220(4.6), as the case may be, is deemed to have been furnished in a timely manner if it is furnished on or before the individual's filing-due date for the taxation year that includes the particular day.

(5) Administration of oaths — Any officer or servant employed in connection with the administration or enforcement of this Act, if designated by the Minister for the purpose, may, in the course of that employment, ad-

minister oaths and take and receive affidavits, declarations and affirmations for the purposes of or incidental to the administration or enforcement of this Act or regulations made thereunder, and every officer or servant so designated has for those purposes all the powers of a commissioner for administering oaths or taking affidavits.

Related Provisions: *Interpretation Act* 19 — Administration of oaths.

(6) Assignment by corporation — Notwithstanding section 67 of the *Financial Administration Act* and any other provision of a law of Canada or a province, a corporation may assign any amount payable to it under this Act.

Related Provisions: 220(7) — Assignment not binding on federal government.

History: Subsec. 220(6) added by 1997, c. 25, s. 66, applicable to assignments made after March 5, 1996.

(7) Effect of assignment — An assignment referred to in subsection (6) is not binding on Her Majesty in right of Canada and, without limiting the generality of the foregoing,

(a) the Minister is not required to pay to the assignee the assigned amount;

(b) the assignment does not create any liability of Her Majesty in right of Canada to the assignee; and

(c) the rights of the assignee are subject to all equitable and statutory rights of set-off in favour of Her Majesty in right of Canada.

History: Subsec. 220(7) added by 1997, c. 25, s. 66, applicable to assignments made after March 5, 1996.

Definitions [s. 220]: "amount", "assessment", "balance-due day" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Commissioner of Customs and Revenue" — *Canada Customs and Revenue Agency Act* s. 25; "corporation" — 248(1), *Interpretation Act* 35(1); "deposit insurance corporation" — 137.1(5); "disposition" — 248(1); "distribution year" — 220(4.6)(a); "emigration year" — 220(4.5); "employed", "employee benefit plan", "employment" — 248(1); "fiscal period" — 249.1; "Her Majesty" — *Interpretation Act* 35(1); "individual", "insurance corporation" — 248(1); "*inter vivos* trust" — 108(1), 248(1); "Minister", "non-resident" — 248(1); "oath" — *Interpretation Act* 35(1); "officer" — 248(1)"office"; "person", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "regulation" — 248(1); "resident in Canada" — 250; "security" — *Interpretation Act* 35(1); "servant" — 248(1)"employment"; "tax payable" — 248(2); "taxable Canadian property", "taxable income" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "undue hardship" — 220(4.71); "writing" — *Interpretation Act* 35(1).

221. (1) Regulations — The Governor in Council may make regulations

(a) prescribing anything that, by this Act, is to be prescribed or is to be determined or regulated by regulation;

(b) prescribing the evidence required to establish facts relevant to assessments under this Act;

(c) to facilitate the assessment of tax where deductions or exemptions of a taxpayer have changed in a taxation year;

(d) requiring any class of persons to make information returns respecting any class of information required in connection with assessments under this Act;

(d.1) requiring any person or partnership to provide any information including their name, address, Social Insurance Number or business number to any class of persons required to make an information return containing that information;

(e) requiring a person who is, by a regulation made under paragraph (d), required to make an information return to supply a copy of the information return or of a prescribed part thereof to the person to whom the information return or part thereof relates;

(f) [Repealed]

Selected Cases [para. 221(1)(f)]: *Doyle v. MNR*, [1989] 2 C.T.C. 270 (FCTD) (Abeyance letter may be signed by taxpayer's designated agent and an officer of Appeals Division).

(g) providing for the retention by way of deduction or set-off of the amount of a taxpayer's income tax or other indebtedness under this Act out of any amount or amounts that may be or become payable by Her Majesty to the taxpayer in respect of salary or wages;

(h) defining the classes of persons who may be regarded as dependent for the purposes of this Act;

(i) defining the classes of non-resident persons who may be regarded for the purposes of this Act

(i) as a spouse or common-law partner supported by a taxpayer, or

(ii) as a person dependent or wholly dependent on a taxpayer for support,

and specifying the evidence required to establish that a person belongs to any such class; and

(j) generally to carry out the purposes and provisions of this Act.

Related Provisions: 65(2) — Regulations permitting resource allowances; 147.1(18) — Authority for regulations re registered pension plans; 214(13), 215(4), (5) — Regulations re non-resident withholding tax; 221(2) — Effect of regulations; 221(3) — Regulations binding Crown; 233 — Demands for information returns; 244(12) — Judicial notice to be taken of regulations; *Interpretation Act* 31(4) — Power to repeal, amend or vary regulations.

History: Subsec. 221(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Para. 221(1)(d.1) amended and para. 221(1)(f) repealed by 1998, c. 19, subsecs. 222(1), (2), in force on June 18, 1998. Paras. 221(1)(d.1) and (f) formerly read:

> (d.1) requiring any person to provide any information including that person's name, address and Social Insurance Number to any class of persons required to make an information return containing that information;
>
> . . . . .
>
> (f) authorizing a designated officer or class of officers to exercise powers or perform duties of the Minister under this Act;

Subsec. 221(3) of the said c. 19 provides:

> Any power or duty of the Minister of National Revenue delegated to an officer or a class of officers by a regulation made under para. 221(1)(f) before [June 18, 1998] continues to be delegated to that officer or that class of officers until an authorization by that Minister made under subsec. 220(2.01) changes the delegation of that power or duty.

Selected Cases [subsec. 221(1)]: *Milley et al. v. Granby Const. & Equipment Ltd. et al.*, [1974] C.T.C. 701 (BC CA) (Minister may delegate power to seize records under subsec. 231(4)).

Regulations: Part I – Part XCIII. For regulations under paras. 221(1)(d), (e), see Part II; under para. (g), see Part XXV.

Information Circulars: 82-2R2: SIN legislation that relates to the preparation of information slips.

(2) Effect — A regulation made under this Act shall have effect from the date it is published in the *Canada Gazette* or at such time thereafter as may be specified in the regulation unless the regulation provides otherwise and it

(a) has a relieving effect only;

(b) corrects an ambiguous or deficient enactment that was not in accordance with the objects of this Act or the *Income Tax Regulations*;

(c) is consequential on an amendment to this Act that is applicable before the date the regulation is published in the *Canada Gazette*; or

(d) gives effect to a budgetary or other public announcement, in which case the regulation shall not, except where paragraph (a), (b) or (c) applies, have effect

(i) before the date on which the announcement was made, in the case of a deduction or withholding from an amount paid or credited, and

(ii) before the taxation year in which the announcement is made, in any other case.

Selected Cases: *Savard v. R.*, [1998] 1 C.T.C. 2430 (TCC) (White Paper constituted "budgetary or public announcement").

(3) Regulations binding Crown — Regulations made under paragraph (1)(d) or (e) are binding on Her Majesty in right of Canada or a province.

History: Subsec. 221(3) added by 1994, c. 7, Sch. II (1991, c. 49), s. 182, applicable after 1990.

(4) Incorporation by reference — A regulation made under this Act may incorporate by reference material as amended from time to time.

History: Subsec. 221(4) added by 1998, c. 19, subsec. 222(3), applicable to any regulation, regardless of whether it is made before or after June 18, 1998.

Definitions [s. 221]: "amount", "assessment", "business number", "common-law partner" — 248(1); "Governor in Council", "Her Majesty" — *Interpretation Act* 35(1); "Minister", "non-resident" — 248(1); "person", "prescribed" — 248(1); "province" — *Interpretation Act* 35(1); "regulation", "salary or wages" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

221.1 Application of interest — For greater certainty, where an amendment to this Act or an amendment or enactment that relates to this Act applies to or in respect of any transaction, event or time, or any taxation year, fiscal period or other period of time or part thereof (in this section referred to as the "application time") occurring, or that is, before the day on which the amendment or enactment is assented to or promulgated, for the purposes of the provisions of this Act that provide for payment of, or liability to, any interest, the amendment or enactment shall, unless a contrary intention is evident, be deemed to have come into force at the beginning of the last taxation year beginning before the application time.

History: S. 221.1 added by 1994, c. 7, Sch. II (1991, c. 49), s. 183, applicable to amendments and enactments assented to or promulgated after 1989 and shall be deemed to have come into force on January 1, 1990.

Definitions [s. 221.1]: "fiscal period" — 249(2)(b), 249.1; "taxation year" — 11(2), 249.

221.2 Re-appropriation of amounts — Where a particular amount was appropriated to an amount (in this section referred to as the "debt") that is or may become payable by a person under any enactment referred to in paragraphs 223(1)(a) to (d), the Minister may, on application by the person, appropriate the particular amount, or a part thereof, to another amount that is or may become payable under any such enactment and, for the purposes of any such enactment,

(a) the later appropriation shall be deemed to have been made at the time of the earlier appropriation;

(b) the earlier appropriation shall be deemed not to have been made to the extent of the later appropriation; and

(c) the particular amount shall be deemed not to have been paid on account of the debt to the extent of the later appropriation.

Related Provisions: 161.1 — Offsetting of refund interest and arrears interest.

History: S. 221.2 added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 128.

Definitions [s. 221.2]: "amount", "Minister", "person" — 248(1).

Collection

222. (1) Definitions — The following definitions apply in this section.

"action" means an action to collect a tax debt of a taxpayer and includes a proceeding in a court and anything done by the Minister under subsection 129(2), 131(3), 132(2) or 164(2), section 203 or any provision of this Part.

"tax debt" means any amount payable by a taxpayer under this Act.

(2) Debts to Her Majesty — A tax debt is a debt due to Her Majesty and is recoverable as such in the Federal Court or any other court of competent jurisdiction or in any other manner provided by this Act.

(3) No actions after limitation period — The Minister may not commence an action to collect a tax debt after the end of the limitation period for the collection of the tax debt.

Related Provisions: 222(4), (5) — Limitation period.

(4) Limitation period — The limitation period for the collection of a tax debt of a taxpayer

(a) begins

(i) if a notice of assessment, or a notice referred to in subsection 226(1), in respect of the tax debt is mailed to or served on the taxpayer, after March 3, 2004, on the day that is 90 days after the day on which the last one of those notices is mailed or served, and

(ii) if subparagraph (i) does not apply and the tax debt was payable on March 4, 2004, or would have been payable on that date but for a limitation period that otherwise applied to the collection of the tax debt, on March 4, 2004; and

(b) ends, subject to subsection (8), on the day that is 10 years after the day on which it begins.

Related Provisions: 222(5) — Restart of limitation period; 222(8) — Extension of limitation period.

(5) Limitation period restarted — The limitation period described in subsection (4) for the collection of a tax debt of a taxpayer restarts (and ends, subject to subsection (8), on the day that is 10 years after the day on which it restarts) on any day, before it would otherwise end, on which

(a) the taxpayer acknowledges the tax debt in accordance with subsection (6);

(b) the Minister commences an action to collect the tax debt; or

(c) the Minister, under subsection 159(3) or 160(2) or paragraph 227(10)(a), assesses any person in respect of the tax debt.

Related Provisions: 222(6), (7) — Meaning of "acknowledges".

(6) Acknowledgement of tax debts — A taxpayer acknowledges a tax debt if the taxpayer

(a) promises, in writing, to pay the tax debt;

(b) makes a written acknowledgement of the tax debt, whether or not a promise to pay can be inferred from the acknowledgement and whether or not it contains a refusal to pay; or

(c) makes a payment, including a purported payment by way of a negotiable instrument that is dishonoured, on account of the tax debt.

Related Provisions: 222(7) — Acknowledgment by agent or legal representative.

(7) Agent or legal representative — For the purposes of this section, an acknowledgement made by a taxpayer's agent or legal representative has the same effect as if it were made by the taxpayer.

(8) Extension of limitation period — In computing the day on which a limitation period ends, there shall be added the number of days on which one or more of the following is the case:

(a) the Minister may not, because of any of subsections 225.1(2) to (5), take any of the actions described in subsection 225.1(1) in respect of the tax debt;

(b) the Minister has accepted and holds security in lieu of payment of the tax debt;

(c) if the taxpayer was resident in Canada on the applicable date described in paragraph (4)(a) in respect of the tax debt, the taxpayer is non-resident; or

(d) an action that the Minister may otherwise take in respect of the tax debt is restricted or not permitted by any provision of the *Bankruptcy and Insolvency Act*, of the *Companies' Creditors Arrangement Act* or of the *Farm Debt Mediation Act*.

(9) Bar to claims — Notwithstanding any law of Canada or a province, Her Majesty is not liable for any claim that arises because the Minister collected a tax debt after the end of any limitation period that applied to the collection of the tax debt and before March 4, 2004.

(10) Orders after March 3, 2004 and before effect — Notwithstanding any order or judgment made after March 3, 2004 that declares a tax debt not to be payable by a taxpayer, or that orders the Minister to reimburse to a taxpayer a tax debt collected by the Minister, because a limitation period that applied to the collection of the tax debt ended before royal assent to any measure giving effect to this section, the tax debt is deemed to have become payable on March 4, 2004.

Related Provisions: 225.1 — Collection restrictions.

History: S. 222 amended by 2004, c. 22, s. 50, in force May 14, 2004. The section formerly read:

> 222. Debts to Her Majesty — All taxes, interest, penalties, costs and other amounts payable under this Act are debts due to Her Majesty and recoverable as such in the Federal Court of Canada or any other court of competent jurisdiction or in any other manner provided by this Act.

Selected Cases [s. 222]: *Canada (Attorney General) v. National Bank of Canada*, [2004] 4 C.T.C. 193 (FCA); leave to appeal to SCC refused 2004 CarswellNat 3585 (Minister has priority to secured creditors).

Selected Cases [former s. 222]: *Markevich v. Canada*, [1999] 2 C.T.C. 104 (FCTD) (Provincial limitation statutes do not override Act); *MNR v. 2440-1986 Quebec Inc.*, [1990] 2 C.T.C. 149 (FCTD) (Valid seizure of goods sold to avoid tax liability); *Clarkson Co. Ltd. v. Canada*, [1989] 1 C.T.C. 142 (FCA) (Crown may set off debt to taxpayer against tax debt to Crown); *R. v. Sands Motor Hotel Ltd. et al.*, [1984] C.T.C. 612 (Sask QB) (Dividends paid out prior to assessment set aside and preferred shares redeemed to protect Crown as creditor under *Business Corporations Act* (Sask.)).

Definitions [s. 222]: "acknowledges" — 222(6); "action" — 222(1); "amount", "assessment" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "Federal Court" — *Federal Courts Act* s. 4; "Her Majesty" — *Interpretation Act* 35(1); "legal representative" — 248(1); "limitation period" — 222(4); "Minister", "non-resident", "person" — 248(1); "province" — *Interpretation Act* 35(1); "resident in Canada" — 250; "security" — *Interpretation Act* 35(1); "tax debt" — 222(1); "taxpayer" — 248(1); "writing" — *Interpretation Act* 35(1); "written" — *Interpretation Act* 35(1)"writing".

Information Circulars: 98-1R: Collections policies.

I.T. Technical News: 22 (limitation laws on collection actions).

222.1 Court costs — Where an amount is payable by a person to Her Majesty because of an order, judgment or award of a court in respect of the costs of litigation relating to a matter to which this Act applies, subsections 220(4) and (4.2) and sections 223, 224 to 225 and 226 apply to the amount as if the amount were a debt owing by the person to Her Majesty on account of tax payable by the person under this Act.

History: S. 222.1 added by 1998, c. 19, s. 223, applicable to amounts that are payable after June 18, 1998, including amounts that became payable before June 18, 1998.

Definitions [s. 222.1]: "amount" — 248(1); "Her Majesty" — *Interpretation Act* 35(1); "person" — 248(1).

223. (1) Definition of "amount payable" — For the purposes of subsection (2), an "amount payable" by a person means any or all of

(a) an amount payable under this Act by the person;

(a.1) [Repealed]

(b) an amount payable under the *Employment Insurance Act* by the person;

(b.1) an amount payable under the *Unemployment Insurance Act* by the person;

(c) an amount payable under the *Canada Pension Plan* by the person; and

(d) an amount payable by the person under an Act of a province with which the Minister of Finance has entered into an agreement for the collection of taxes payable to the province under that Act.

Related Provisions: 221.2 — Transfers of balances between accounts; 223.1(1) — Application.

History: Para. 223(1)(b.1) added by 1998, c. 19, subsec. 224(1), deemed to have come into force on June 30, 1996.

Para. 223(1)(b) amended by 1996, c. 23, para. 187(d), to substitute "*Employment Insurance Act*" for "*Unemployment Insurance Act*", in force June 30, 1996.

(2) Certificates — An amount payable by a person (in this section referred to as a "debtor") that has not been paid or any part of an amount payable by the debtor that has not been paid may be certified by the Minister as an amount payable by the debtor.

Related Provisions: 222(3) — Ten-year limitation on collection action; 222.1 — Application to awards of court costs; 225.1 — No collection action for 90 days or if objection filed; 231.2(1) — requirement to provide information or documents for collection purposes; 231.6(1) — foreign-based documents sought for collection purposes.

Selected Cases [subsec. 223(2)]: *Gadbois v. MNR*, [2003] 1 C.T.C. 353 (FCA) (Federal Court has powers necessary to enforce its own judgments); *Royal Bank of Canada v. Canada*, [1992] 2 C.T.C. 427 (BC CA) (Provision did not contravene s. 8 of the *Charter* or para. 1(a) of the *Bill of Rights*); *Wright v. A.G. Can.*, [1988] 1 C.T.C. 107 (Ont. D.C.) (Crown priority over spouse claiming arrears in support payments not violation of *Charter*); *Bois de Construction du Nord (1971) Ltée v. R.*, [1987] 1 C.T.C. 333 (FCA) (Federal Court has jurisdiction to hear and order provisional seizure); *Lennox Industries (Canada) Ltd. v. R.*, [1987] 1 C.T.C.

171 (FCTD) (Equality provisions of *Charter* inapplicable to Crown's priority as creditor); *Morgan Trust Co. v. Dellelce et al.*, [1985] 2 C.T.C. 370 (Ont SC) (Shares in RRSP account subject to seizure but trustee of RRSP has no obligation under Crown's third-party demand where money not yet payable to taxpayer); *Stephens Estate v. R.*, [1985] 2 C.T.C. 149 (FCTD) (Re-filing of writs not new seizure after temporary lifting of same); *384238 Ontario Ltd. et al. v. R.*, [1984] C.T.C. 523 (FCA) (Suit against Crown for conversion of company's assets seized for individual's tax liabilities dismissed where Crown did not use assets as owner; trespass action estopped where individual treated assets as his own); *Charron Estate v. R.*, [1984] C.T.C. 237 (FCTD) (Certificate quashed where Minister's opinion not supported by facts); *Frankel v. R.*, [1984] C.T.C. 259 (FCTD) (Taxpayer and corporations entered into agreement with Minister re tax debts; Minister, failing to observe notations on cheques as to applicable debt, did not act improperly; taxpayer's personal debt remained unpaid); *R. v. Van de Wygerd*, [1983] C.T.C. 99 (FCTD) (Subsequent to filing certificate, seizure of property sold by taxpayer set aside where fraud not proven); *Chouinard et al. v. Saint-Martin et al.*, [1982] C.T.C. 177 (FCTD) (Seizure of property transferred pursuant to order valid where certificate filed before deed of transfer registered under *Civil Code*); *Athenian Construction Ltd. v. R.*, 81 D.T.C. 5352 (FCTD) (After filing certificate, Crown's application for attachment order dismissed where improper procedure employed); *Re Gero*, [1979] C.T.C. 309 (FCTD) (RRSP funds subject to seizure); *R. v. Restaurant and Bar La Seigneurie de Sept-Iles Inc.*, [1977] C.T.C. 96 (FCTD) (Seizure by Crown of assets used as security on bank loan was valid; rather than opposing seizure, bank permitted to recover amounts from proceeds of sale as creditor under article 604 of Quebec *Code of Civil Procedure*); *R. v. Williams*, [1975] C.T.C. 397 (FCTD) (No direction required for amount to be payable).

Information Circulars: 98-1R: Collections policies.

(3) Registration in court — On production to the Federal Court, a certificate made under subsection (2) in respect of a debtor shall be registered in the Court and when so registered has the same effect, and all proceedings may be taken thereon, as if the certificate were a judgment obtained in the Court against the debtor for a debt in the amount certified plus interest thereon to the day of payment as provided by the statute or statutes referred to in subsection (1) under which the amount is payable and, for the purpose of any such proceedings, the certificate shall be deemed to be a judgment of the Court against the debtor for a debt due to Her Majesty, enforceable in the amount certified plus interest thereon to the day of payment as provided by that statute or statutes.

Related Provisions: 161(1) — Interest; 161(11) — Interest on penalties; 222(3) — Ten-year limitation on collection action; 222.1 — Application to awards of court costs; 223.1(1) — Application; 225.1 — No collection action for 90 days or if objection filed; 227.1(2)(a) — Liability of directors; 248(11) — Compound interest.

History: Subsec. 223(3) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 129. Subsec. (3) formerly read:

> (3) Registration in Court — On production to the Federal Court, a certificate made under subsection (2) in respect of a debtor shall be registered in the Court and when so registered has the same effect, and all proceedings may be taken thereon, as if the certificate were a judgment obtained in the Court against the debtor for a debt in the amount certified plus interest thereon to the day of payment as provided by law and, for the purposes of any such proceedings, the certificate shall be deemed to be a judgment of the Court against the debtor for a debt due to Her Majesty enforceable in the amount certified plus interest thereon to the day of payment as provided by law.

Selected Cases [subsec. 223(3)]: *Kune v. R.*, [1982] C.T.C. 300 (FCTD) (Stay of execution granted with respect to real property, but not personal, property where taxpayer provided evidence of fire insurance, mortgage and tax payment); *Re Van Gastel*, [1982] C.T.C. 61 (FCTD) (Federal Court exercised jurisdiction to indefinitely stay further execution of writ of *fieri facias* issued by it where Minister failed to deal with objection "with all due dispatch"); *R. v. Rumball*, [1981] C.T.C. 9 (FCTD) (Stay of execution only granted where seizure made and assessment under objection or appeal).

(4) Costs — All reasonable costs and charges incurred or paid in respect of the registration in the Court of a certificate made under subsection (2) or in respect of any proceedings taken to collect the amount certified are recoverable in like manner as if they had been included in the amount certified in the certificate when it was registered.

(5) Charge on property — A document issued by the Federal Court evidencing a certificate in respect of a debtor registered under subsection (3), a writ of that Court issued pursuant to the certificate or any notification of the document or writ (such document, writ or notification in this section referred to as a "memorial") may be filed, registered or otherwise recorded for the purpose of creating a charge, lien or priority on, or a binding interest in, property in a province, or any interest in such property, held by the debtor in the same manner as a document evidencing

Proposed Amendment — 223(5) opening words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 270(1), will amend the opening words of subsec. 223(5) by substituting "interest in, or for civil law any right in, such property" for "interest in such property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

> (a) a judgment of the superior court of the province against a person for a debt owing by the person, or
>
> (b) an amount payable or required to be remitted by a person in the province in respect of a debt owing to Her Majesty in right of the province

may be filed, registered or otherwise recorded in accordance with or pursuant to the law of the province to create a charge, lien or priority on, or a binding interest in, the property or interest.

Related Provisions: 222(3) — Ten-year limitation on collection action; 223(11.1) — Where charge registered under *Bankruptcy and Insolvency Act*; 223.1(1) — Application; 225.1 — No collection action for 90 days or if objection filed; 248(4) — Interest in real property.

History: Subsec. 223(5) amended by 1998, c. 19, subsec. 224(2), in force June 18, 1998. Subsec. 224(5) formerly read:

> (5) Charge on land — A document (in this section referred to as a "memorial") issued by the Federal Court evidencing a certificate in respect of a debtor registered under subsection (3) may be filed, registered or otherwise recorded for the purpose of creating a charge or lien on or otherwise binding land in a province, or any interest therein, held by the debtor in the same manner as a document evidencing a judgment of the superior court of the province against a person for a debt owing by the person may be filed, registered or otherwise recorded in accordance with the law of the province to create a charge or lien on or otherwise bind land, or any interest therein, held by the person.

(6) Creation of charge — If a memorial has been filed, registered or otherwise recorded under subsection (5),

> (a) a charge, lien or priority is created on, or a binding interest is created in, property in the province, or any interest in such property, held by the debtor, or
>
> (b) such property or interest in the property is otherwise bound,

in the same manner and to the same extent as if the memorial were a document evidencing a judgment referred to in paragraph (5)(a) or an amount referred to in paragraph (5)(b), and the charge, lien, priority or binding interest created shall be subordinate to any charge, lien, priority or binding interest in respect of which all steps necessary to make it effective against other creditors were taken before the time the memorial was filed, registered or otherwise recorded.

Proposed Amendment — 223(6)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 270(2), will amend subsec. 223(6) by substituting "interest in, or for civil law any right in, such property" for "interest in such property" in para. (a) and "interest or right" for "interest" in para. (b), to come into force on Royal Assent.

Technical Notes: See under 12(4).

Related Provisions: 223(11.1) — Where charge registered under *Bankruptcy and Insolvency Act*; 223.1(1) — Application; 248(4) — Interest in real property.

History: Subsec. 223(6) amended by 1998, c. 19, subsec. 224(2), in force June 18, 1998. Subsec. 224(6) formerly read:

> (6) Idem — Where a memorial has been filed, registered or otherwise recorded under subsection (5), a charge or lien is created on land in the province, or any interest therein, held by the debtor, or such land or interest is otherwise bound, in the same manner and to the same extent as if the memorial were a document evidencing a judgment of the superior court of the province.

(7) Proceedings in respect of memorial — If a memorial is filed, registered or otherwise recorded in a province under subsection (5), proceedings may be taken in the province in respect of the memorial, including proceedings

(a) to enforce payment of the amount evidenced by the memorial, interest on the amount and all costs and charges paid or incurred in respect of

(i) the filing, registration or other recording of the memorial, and

(ii) proceedings taken to collect the amount,

(b) to renew or otherwise prolong the effectiveness of the filing, registration or other recording of the memorial,

(c) to cancel or withdraw the memorial wholly or in respect of any of the property or interests affected by the memorial, or

(d) to postpone the effectiveness of the filing, registration or other recording of the memorial in favour of any right, charge, lien or priority that has been or is intended to be filed, registered or otherwise recorded in respect of any property or interest affected by the memorial,

Proposed Amendment — 223(7)(c), (d)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 270(3), will amend paras. 223(7)(c) and (d) by substituting "property, or interests or rights," for "property or interests" in para. (b) and "property, or interest or right," for "property or interest" in para. (c), to come into force on Royal Assent.

Technical Notes: See under 12(4).

in the same manner and to the same extent as if the memorial were a document evidencing a judgment referred to in paragraph (5)(a) or an amount referred to in paragraph (5)(b), except that if in any such proceeding or as a condition precedent to any such proceeding any order, consent or ruling is required under the law of the province to be made or given by the superior court of the province or a judge or official of the court, a like order, consent or ruling may be made or given by the Federal Court or a judge or official of the Federal Court and, when so made or given, has the same effect for the purposes of the proceeding as if it were made or given by the superior court of the province or a judge or official of the court.

Related Provisions: 222(3) — Ten-year limitation on collection action; 225.1 — No collection action for 90 days or if objection filed.

History: Subsec. 223(7) amended by 1998, c. 19, subsec. 224(2), in force June 18, 1998. Subsec. 224(7) formerly read:

> (7) Where a memorial of a certificate in respect of a debtor registered under subsection (3) is filed, registered or otherwise recorded as permitted under subsection (5), proceedings may be taken in respect thereof, including proceedings
>
> (a) to enforce payment of the amount certified in the certificate, interest thereon and all costs and charges paid or incurred in respect of
>
> (i) the filing, registration or other recording of the memorial, and
>
> (ii) proceedings taken to collect the amount,
>
> (b) to renew or otherwise prolong the effectiveness of the filing, registration or other recording of the memorial,
>
> (c) to cancel or withdraw the memorial wholly or in respect of one or more parcels of land or interests in land affected by the memorial, or
>
> (d) to postpone the effectiveness of the filing, registration or other recording of the memorial in favour of any right, charge or lien that has been or is intended to be filed, registered or otherwise recorded in respect of any land or interest in land affected by the memorial,
>
> in the same manner and subject to the same restrictions and limitations as though the memorial were a document evidencing a judgment of the superior court of the province except that, where in any such proceeding or as a condition precedent to any such proceeding any order, consent or ruling is required under the law of the province to be made or given by the superior court of the province or a judge or official thereof, a like order, consent or ruling may be made or given by the Federal Court or a judge or official thereof and, when so made or given, has the same effect for the purposes of the proceeding as though made or given by the superior court of the province or a judge or official thereof.

(8) Presentation of documents — If

(a) a memorial is presented for filing, registration or other recording under subsection (5) or a document relating to the memorial is presented for filing, registration or other recording for the purpose of any proceeding described in subsection (7) to any official in the land, personal property or other registry system of a province, it shall be accepted for filing, registration or other recording, or

Proposed Amendment — 223(8)(a)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 270(4), will amend para. 223(8)(a) by substituting "land registry system, personal property or movable property registry system," for "land, personal property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(b) access is sought to any person, place or thing in a province to make the filing, registration or other recording, the access shall be granted

in the same manner and to the same extent as if the memorial or document relating to the memorial were a document evidencing a judgment referred to in paragraph (5)(a) or an amount referred to in paragraph (5)(b) for the purpose of a like proceeding, as the case may be, except that, if the memorial or document is issued by the Federal Court or signed or certified by a judge or official of the Court, any affidavit, declaration or other evidence required under the law of the province to be provided with or to accompany the memorial or document in the proceedings is deemed to have been provided with or to have accompanied the memorial or document as so required.

Related Provisions: 223.1(1) — Application.

History: Subsec. 223(8) amended by 1998, c. 19, subsec. 224(2), in force June 18, 1998. Subsec. 224(8) formerly read:

> (8) Where a memorial of a certificate registered under subsection (3) is presented for filing, registration or other recording as permitted under subsection (5), or any document relating to the memorial

is presented for filing, registration or other recording for the purpose of any proceeding described in subsection (7), to any officer of a superior court of a province or to any official in the land registry system of a province, it shall be accepted for filing, registration or other recording as though it were a like document issued from the superior court of the province or prepared in respect of a document evidencing a judgment of the superior court of the province for the purpose of a like proceeding, as the case may be, except that, where the memorial or document is issued by the Federal Court or signed or certified by a judge or official thereof, any affidavit, declaration or other evidence required under the law of the province to be provided with or to accompany the memorial or document in such proceedings shall be deemed to have been provided with or to have accompanied the memorial or document as so required.

(9) Sale, etc. — Notwithstanding any law of Canada or of a province, a sheriff or other person shall not, without the written consent of the Minister, sell or otherwise dispose of any property, or publish any notice or otherwise advertise in respect of any sale or other disposition of any property pursuant to any process issued or charge, lien, priority or binding interest created in any proceeding to collect an amount certified in a certificate made under subsection (2), interest on the amount and costs, but if that consent is subsequently given, any property that would have been affected by such a process, charge, lien, priority or binding interest if the Minister's consent had been given at the time the process was issued or the charge, lien, priority or binding interest was created, as the case may be, shall be bound, seized, attached, charged or otherwise affected as it would be if that consent had been given at the time the process was issued or the charge, lien, priority or binding interest was created, as the case may be.

Related Provisions: 223.1(1) — Application.

History: Subsec. 223(9) amended by 1998, c. 19, subsec. 224(2), in force June 18, 1998. Subsec. 224(9) formerly read:

(9) Notwithstanding any law of Canada or of a province, a sheriff or other person shall not, without the written consent of the Minister, sell or otherwise dispose of any property, or publish any notice or otherwise advertise in respect of any sale or other disposition of any property pursuant to any process issued or charge or lien created in any proceeding to collect an amount certified in a certificate made under subsection (2), interest thereon and costs but any property that would have been affected by such a process, charge or lien had the Minister's consent been given at the time the process was issued or the charge or lien was created, as the case may be, shall be bound, seized, attached, charged or otherwise affected as it would be had that consent been given at the time the process was issued or the charge or lien was created, as the case may be.

(10) Completion of notices, etc. — If information required to be set out by any sheriff or other person in a minute, notice or document required to be completed for any purpose cannot, by reason of subsection (9), be so set out, the sheriff or other person shall complete the minute, notice or document to the extent possible without that information and, when the consent of the Minister is given under that subsection, a further minute, notice or document setting out all the information shall be completed for the same purpose, and the sheriff or other person having complied with this subsection is deemed to have complied with the Act, regulation or rule requiring the information to be set out in the minute, notice or document.

Related Provisions: 223.1(1) — Application.

History: Subsec. 223(10) amended by 1998, c. 19, subsec. 224(2), in force June 18, 1998. Subsec. 224(10) formerly read:

(10) Where information required to be set out by any sheriff or other person in a minute, notice or document required to be completed for any purpose cannot, by reason of subsection (9), be so set out, the sheriff or other person shall complete the minute, notice or document to the extent possible without that information and, when the consent of the Minister is given for the purpose of that subsection, a further minute, notice or document setting out all the information shall be completed for the same purpose, and the sheriff or other person having complied with this subsection shall be deemed to have complied with the Act, regulation or rule requiring the information to be set out in the minute, notice or document.

(11) Application for an order — A sheriff or other person who is unable, by reason of subsection (9) or (10), to comply with any law or rule of court is bound by any order made by a judge of the Federal Court, on an *ex parte* application by the Minister, for the purpose of giving effect to the proceeding, charge, lien, priority or binding interest.

Related Provisions: 223.1(1) — Application.

History: Subsec. 223(11) amended by 1998, c. 19, subsec. 224(2), in force June 18, 1998. Subsec. 224(11) formerly read:

(11) A sheriff or other person who is unable, by reason of subsection (9) or (10), to comply with any law or rule of court shall be bound by such order as may be made by a judge of the Federal Court, on an *ex parte* application by the Minister, for the purpose of giving effect to the proceeding, charge or lien.

(11.1) Deemed security — When a charge, lien, priority or binding interest created under subsection (6) by filing, registering or otherwise recording a memorial under subsection (5) is registered in accordance with subsection 87(1) of the *Bankruptcy and Insolvency Act*, it is deemed

(a) to be a claim that is secured by a security and that, subject to subsection 87(2) of that Act, ranks as a secured claim under that Act; and

(b) to also be a claim referred to in paragraph 86(2)(a) of that Act.

History: Subsec. 223(11.1) amended by 2000, c. 30, s. 175, to replace the term "security claim" with "secured claim", deemed to have come into force on June 18, 1998.

Subsec. 223(11.1) added by 1998, c. 19, subsec. 224(2), in force June 18, 1998.

(12) Details in certificates and memorials — Notwithstanding any law of Canada or of a province, in any certificate made under subsection (2) in respect of a debtor, in any memorial evidencing the certificate or in any writ or document issued for the purpose of collecting an amount certified, it is sufficient for all purposes

(a) to set out, as the amount payable by the debtor, the total of amounts payable by the debtor without setting out the separate amounts making up that total; and

(b) to refer to the rate of interest to be charged on the separate amounts making up the amount payable in general terms as interest at the rate prescribed under this Act applicable from time to time on amounts payable to the Receiver General without indicating the specific rates of interest to be charged on each of the separate amounts or to be charged for any particular period of time.

Related Provisions [subsec. 223(12)]: 223.1(1) — Application; 225.1 — Collection restrictions.

Selected Cases [s. 223]: *Ross v. R.*, [2003] 1 C.T.C. 19 (FCA) (Certificate registered within provincial limitation period sufficient to preserve tax debt and support writ of execution); *Prodor v. R.*, [1997] 3 C.T.C. 179 (FCTD) (Applicable interest rate is that prescribed in particular statute, not as provided in *Federal Court Act*); *Optical Recording Laboratories Inc. v. Canada*, [1990] 2 C.T.C. 524 (FCA) (Reassessment held not to nullify a certificate previously filed which includes tax payable under previous assessment; where reassessment adds nothing to assessment, it nullifies previous certificate); *Bougie v. Canada*, [1990] 2 C.T.C. 365 (FCTD) (Beneficiary under will liable for tax debts of deceased despite having received discharge issued in error).

Definitions [s. 223]: "amount" — 223(1), 248(1); "Federal Court" — *Federal Courts Act* s. 4; "Her Majesty" — *Interpretation Act* 35(1); "interest" — in real property 248(4); "memorial" — 223(5); "Minister" —

248(1); "movable" — Quebec *Civil Code* art. 900–907; "person", "property" — 248(1); "province" — *Interpretation Act* 35(1); "superior court" — *Interpretation Act* 35(1).

Regulations [s. 223]: 4301 (prescribed rate of interest).

223.1 (1) Application of subsecs. 223(1) to (8) and (12) — Subsections 223(1) to (8) and (12) are applicable with respect to certificates made under section 223 or section 223 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, after 1971 and documents evidencing such certificates that were issued by the Federal Court and that were filed, registered or otherwise recorded after 1977 under the laws of a province, except that, where any such certificate or document was the subject of an action pending in a court on February 10, 1988 or the subject of a court decision given on or before that date, section 223 shall be read, for the purposes of applying it with respect to that certificate or document, as section 223 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, read at the time the certificate was registered or the document was issued, as the case may be.

(2) Application of subsecs. 223(9) to (11) — Subsections 223(9) to (11) are applicable with respect to certificates made under section 223, or section 223 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, after September 13, 1988.

Origin of s. 223.1: R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in rules of application in 1988, c. 55, s. 168).

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Definitions [s. 223.1]: "Federal Court" — *Federal Courts Act* s. 4; "province" — *Interpretation Act* 35(1).

224. (1) Garnishment — Where the Minister has knowledge or suspects that a person is, or will be within one year, liable to make a payment to another person who is liable to make a payment under this Act (in this subsection and subsections (1.1) and (3) referred to as the "tax debtor"), the Minister may in writing require the person to pay forthwith, where the moneys are immediately payable, and in any other case as and when the moneys become payable, the moneys otherwise payable to the tax debtor in whole or in part to the Receiver General on account of the tax debtor's liability under this Act.

Related Provisions: 222(3) — Ten-year limitation on collection action; 222.1 — Application to awards of court costs; 224(4) — Liability on failure to comply; 224(5), (6) — Service of garnishee; 225.1 — No collection action for 90 days or if objection filed; 231.2(1) — requirement to provide information or documents for collection purposes; 231.6(1) — foreign-based documents sought for collection purposes; 244(5), (6) — Proof of service by mail or personal service; 248(7)(a) — Mail deemed received on day mailed.

History: Subsec. 462(2.1) of the *Bank Act*, added by 2005, c. 19, s. 57, provides:

> 462. (2.1) Notices: Minister of National Revenue — Despite subsections (1) and (2), a notice, demand, order or other document issued with respect to a customer of a bank constitutes notice to the bank and fixes the bank with knowledge of its contents and, where applicable, is binding on property belonging to the customer and in the possession of the bank or on money owing to the customer by reason of an account in the bank, if it is sent to the branch of the bank referred to in subsection (1) or (2), an office of the bank referred to in paragraph (3)(a) or any other office agreed to by the bank and the Minister of National Revenue and it relates to
>
> (a) the administration of an Act of Parliament by the Minister of National Revenue; or
>
> (b) the administration of an Act of the legislature of a province or legislation made by an aboriginal government, where the Minister or the Minister of National Revenue has entered into a tax collection agreement under an Act of Parliament with the government of the province or the aboriginal government.

Parallel provisions were added by 2005, c. 19, ss. 58, 59 and 64 respectively as *Bank Act* subsec. 579(2.1) (for authorized foreign banks), *Cooperative Credit Associations Act* subsec. 385.32(2.1) (credit unions) and *Trust and Loan Companies Act* subsec. 448(2.1) (trust companies).

Subsec. 224(1) substituted by 1994, c. 21, subsec. 101(1), applicable to requirements and notifications made after 1992, except that, in applying the subsec. to requirements and notifications made on or before June 15, 1994, the reference to "one year" shall be read as "90 days". That subsec. formerly read:

> (1) Where the Minister has knowledge or suspects that a person is or will be, within 90 days, liable to make a payment to another person who is liable to make a payment under this Act (in this subsection and subsections (1.1) and (3) referred to as the "tax debtor"), the Minister may, by registered letter or by a letter served personally, require that person to pay forthwith, where the moneys are immediately payable, and in any other case, as and when the moneys become payable, the moneys otherwise payable to the tax debtor in whole or in part to the Receiver General on account of the tax debtor's liability under this Act.

Selected Cases [subsec. 224(1)]: *Lessard v. R.*, [2003] 3 C.T.C. 2824 (TCC) (No debtor-creditor relationship between partners vis-à-vis share of profits; requirement to pay held invalid); *Maritime Life Assurance Co. v. R.*, [2000] 4 C.T.C. 98 (FCA); [1997] 3 C.T.C. 2561 (TCC) (Where no right to get cash value of policy that is part of RRSP, insurer not a person liable to make a payment); *Wellgate International Ltd. v. MNR*, [2000] 3 C.T.C. 257 (FCTD) (Collection proceedings could not be used to give Federal Court jurisdiction to determine underlying matters); *Markevich v. Canada*, [1999] 2 C.T.C. 104 (FCTD) (Provincial limitation statutes do not override Act); *National Trust Co. v. R.*, [1998] 4 C.T.C. 26 (FCA); rev'g [1997] 1 C.T.C. 2549 (TCC) (Trustee of RRSP was person "liable to make a payment"); *Bank of Montreal v. MNR*, [1992] 1 C.T.C. 2292 (TCC) (Bank served with garnishment order not liable for honouring cheques drawn on trust account by wife of tax debtor); *Manufacturers Life Insurance Co. v. MNR*, [1991] 2 C.T.C. 2171 (TCC) (Provision inapplicable to force insurer to pay money under policy since no amount actually payable to taxpayer at time of attempted garnishment); *Chhabra v. Canada*, [1989] 2 C.T.C. 13 (FCTD) (Damages for unfair or malicious treatment of taxpayer awarded against Crown garnishing 75% of gross income and failing to attempt settlement of debt reasonably); *Ontario Development Corp. v. Canada*, [1989] 1 C.T.C. 319 (FCTD) (Book debts absolutely assigned before Crown's third-party demand not subject to garnishment); *De Coninck v. Royal Trust Corp.*, [1989] 1 C.T.C. 179 (NB CA) (Relationship between depositor and trust company administering RRSP is that of *cestui que* trust and trustee, not debtor and creditor, and trustee is not person "liable to make a payment" within scope of provision); *Lennox Industries (Canada) Ltd. v. R.*, [1987] 1 C.T.C. 171 (FCTD) (*Charter* inapplicable to Crown's priority over other creditors); *R. v. Royal Bank of Canada*, [1986] 2 C.T.C. 211 (FCA) (Actual notice to company's debtors not required to validly assign debts in manner opposable to Crown's third-party demand; constructive notice by registration sufficient); *Sorenson v. MNR*, 82 D.T.C. 6246 (FCA) (Garnishment may take place without prior filing of certificate); *Canadian Imperial Bank of Commerce v. R.*, [1981] C.T.C. 435 (FCTD) (Bank's s. 88 (now s. 178) security under *Bank Act* and general assignment of book debts have priority over Crown's third-party demand); *Qureshi et al. v. MNR*, [1979] C.T.C. 216 (FCTD) (Administrative decision of Minister whether or not to rely on garnishment not subject to judicial review); *Jamison v. Federal Business Development Bank et al.*, 78 D.T.C. 6482 (BC SC) (Service of demand does not transfer property in the debt).

Information Circulars: 98-1R: Collections policies.

(1.1) Idem — Without limiting the generality of subsection (1), where the Minister has knowledge or suspects that within 90 days

> (a) a bank, credit union, trust company or other similar person (in this section referred to as the "institution") will lend or advance moneys to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by, a tax debtor who is indebted to the institution and who has granted security in respect of the indebtedness, or

(b) a person, other than an institution, will lend or advance moneys to, or make a payment on behalf of, a tax debtor who the Minister knows or suspects

(i) is employed by, or is engaged in providing services or property to, that person or was or will be, within 90 days, so employed or engaged, or

(ii) where that person is a corporation, is not dealing at arm's length with that person,

the Minister may in writing require the institution or person, as the case may be, to pay in whole or in part to the Receiver General on account of the tax debtor's liability under this Act the moneys that would otherwise be so lent, advanced or paid and any moneys so paid to the Receiver General shall be deemed to have been lent, advanced or paid, as the case may be, to the tax debtor.

Related Provisions: 222(3) — Ten-year limitation on collection action; 222.1 — Application to awards of court costs; 224(4.1) — Liability on failure to comply; 224(5), (6) — Service of garnishee; 225.1 — No collection action for 90 days or if objection filed; 231.2(1) — requirement to provide information or documents for collection purposes; 231.6(1) — foreign-based documents sought for collection purposes; 244(5), (6) — Proof of service by mail or personal service; 248(7)(a) — Mail deemed received on day mailed.

History: The closing words of subsec. 224(1.1) substituted by 1994, c. 21, subsec. 101(2), applicable to requirements and notifications made after 1992. The closing words of that subsec. formerly read:

the Minister may, by registered letter or by a letter served personally, require the institution or person, as the case may be, to pay in whole or in part to the Receiver General on account of the tax debtor's liability under this Act the moneys that would otherwise be so lent, advanced or paid and any moneys so paid to the Receiver General shall be deemed to have been lent, advanced or paid, as the case may be, to the tax debtor.

Information Circulars: 98-1R: Collections policies.

(1.2) Idem — Notwithstanding any other provision of this Act, the *Bankruptcy and Insolvency Act*, any other enactment of Canada, any enactment of a province or any law, but subject to subsections 69(1) and 69.1(1) of the *Bankruptcy and Insolvency Act* and section 11.4 of the *Companies' Creditors Arrangement Act*, where the Minister has knowledge or suspects that a particular person is, or will become within one year, liable to make a payment

Proposed Amendment — 224(1.2) opening words

(1.2) Garnishment — Notwithstanding any other provision of this Act, the *Bankruptcy and Insolvency Act*, any other enactment of Canada, any enactment of a province or any law, but subject to subsections 69(1), 69.1(1) and 69.2(1) of the *Bankruptcy and Insolvency Act* and section 11.09 of the *Companies' Creditors Arrangement Act*, if the Minister has knowledge or suspects that a particular person is, or will become within one year, liable to make a payment

Application: Bill C-55 (*Wage Earner Protection Program Act*, First Reading June 3, 2005), s. 139, will amend the opening words of subsec. 224(1.2) to read as above, in force on a day to be fixed by order of the Governor in Council.

(a) to another person (in this subsection referred to as the "tax debtor") who is liable to pay an amount assessed under subsection 227(10.1) or a similar provision, or

(b) to a secured creditor who has a right to receive the payment that, but for a security interest in favour of the secured creditor, would be payable to the tax debtor,

the Minister may in writing require the particular person to pay forthwith, where the moneys are immediately payable, and in any other case as and when the moneys become payable, the moneys otherwise payable to the tax debtor or the secured creditor in whole or in part to the Receiver General on account of the tax debtor's liability under subsection 227(10.1) or the similar provision, and on receipt of that requirement by the particular person, the amount of those moneys that is so required to be paid to the Receiver General shall, notwithstanding any security interest in those moneys, become the property of Her Majesty to the extent of that liability as assessed by the Minister and shall be paid to the Receiver General in priority to any such security interest.

Related Provisions: 222(3) — Ten-year limitation on collection action; 224(4) — Liability on failure to comply; 224(5), (6) — Service of garnishee; 244(5), (6) — Proof of service by mail or personal service; 248(7)(a) — Mail deemed received on day mailed.

History: Subsec. 224(1.2) amended by 1997, c. 12, s. 128, to add "and section 11.4 of the *Companies' Creditors Arrangement Act*" following "*Bankruptcy and Insolvency Act*", in force September 30, 1997.

The opening words of subsec. 224(1.2) substituted by 1994, c. 21, subsec. 101(3), applicable to requirements and notifications made after June 15, 1994. The opening words formerly read:

(1.2) Notwithstanding any other provision of this Act, the *Bankruptcy and Insolvency Act* (except paragraphs 69(1)(c) and 69.1(1)(c) of that Act), any other enactment of Canada, any enactment of a province or any law, but subject to paragraphs 69(1)(c) and 69.1(1)(c) of the *Bankruptcy and Insolvency Act*, where the Minister has knowledge or suspects that a particular person is or will become, within 90 days, liable to make a payment

The closing words of subsec. 224(1.2) substituted by 1994, c. 21, subsec. 101(4), applicable to requirements and notifications made after 1992. The closing words formerly read:

the Minister may, by registered letter or by a letter served personally, require the particular person to pay forthwith, where the moneys are immediately payable, and in any other case, as and when the moneys become payable, the moneys otherwise payable to the tax debtor or the secured creditor in whole or in part to the Receiver General on account of the tax debtor's liability under subsection 227(10.1) or a similar provision, and on receipt of that letter by the particular person, the amount of those moneys that is required by that letter to be paid to the Receiver General shall, notwithstanding any security interest in those moneys, become the property of Her Majesty to the extent of that liability as assessed by the Minister and shall be paid to the Receiver General in priority to any such security interest.

That portion of subsec. 224(1.2) following para. (b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 130. That portion formerly read:

the Minister may, by registered letter or by a letter served personally, require the particular person to pay forthwith, where the moneys are immediately payable, and in any other case, as and when the moneys become payable, the moneys otherwise payable to the tax debtor or the secured creditor in whole or in part to the Receiver General on account of the tax debtor's liability under subsection 227(10.1) or a similar provision, and on receipt of that letter by the particular person, the amount of those moneys that is required by that letter to be paid to the Receiver General shall, notwithstanding any security interest in those moneys, become the property of Her Majesty and shall be paid to the Receiver General in priority to any such security interest.

That portion of subsec. 224(1.2) preceding para. (a) substituted by 1994, c. 7, Sch. V (1992, c. 27), s. 91, deemed to have come into force November 30, 1992. That portion formerly read:

(1.2) Notwithstanding any other provision of this Act, the *Bankruptcy Act*, any other enactment of Canada, any enactment of a province or any law, where the Minister has knowledge or suspects that a particular person is or will become, within 90 days, liable to make a payment

Selected Cases [subsec. 224(1.2)]: *Gagne v. MNR*, [2003] 2 C.T.C. 213 (FCTD) (Contestation of garnishment proceedings not permitted as collateral attack on assessment); *Re United Used Auto & Truck Parts Ltd.*, [2000] 3 C.T.C. 338 (BC SC) (Requirement to pay requires underlying assessment); *Nova Scotia Business Development Corp. v. Wandyn Inn*

Ltd., [2000] 2 C.T.C. 402 (NS SC) (Funds were owned by Minister, who could determine application); *Banque Royale du Canada v. Canada*, [1999] 2 C.T.C. 303 (FCA); aff'g [1998] 2 C.T.C. 183 (FCTD) (Managing accounts receiveable not same as assignment).

See also at end of s. 224

Information Circulars: 98-1R: Collections policies.

I.T. Technical News: 6 (enhanced garnishment takes priority over builders' lien claimants).

(1.3) Definitions — In subsection (1.2),

"secured creditor" means a person who has a security interest in the property of another person or who acts for or on behalf of that person with respect to the security interest and includes a trustee appointed under a trust deed relating to a security interest, a receiver or receiver-manager appointed by a secured creditor or by a court on the application of a secured creditor, a sequestrator, or any other person performing a similar function;

Related Provisions: 227(5.1)(h) — Secured creditor jointly liable for unremitted withholding tax.

"security interest" means any interest in property that secures payment or performance of an obligation and includes an interest created by or arising out of a debenture, mortgage, hypothec, lien, pledge, charge, deemed or actual trust, assignment or encumbrance of any kind whatever, however or whenever arising, created, deemed to arise or otherwise provided for;

Proposed Amendment — 224(1.3)"security interest"

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), s. 271, will amend the definition "security interest" in subsec. 224(1.3) by substituting "interest in, or for civil law any right in, property" for "interest in property" and "interest, or for civil law a right, created" for "interest created", to come into force on Royal Assent.

Technical Notes: See under 12(4).

History: The definition "security interest" in subsec. 224(1.3) amended by 2001, c. 17, s. 228, to add "hypothec,", in force June 14, 2001.

"similar provision" means a provision, similar to subsection 227(10.1), of any Act of a province that imposes a tax similar to the tax imposed under this Act, where the province has entered into an agreement with the Minister of Finance for the collection of the taxes payable to the province under that Act.

Selected Cases [subsec. 224(1.3)]: *MNR v. Schwab Construction Ltd.*, [2003] 3 C.T.C. 426 (Sask CA) (Leases and conditional sales contracts not "security interests" when bankrupt in possession as lessee and not as owner).

See also at end of s. 224

(1.4) Garnishment — Provisions of this Act that provide that a person who has been required to do so by the Minister must pay to the Receiver General an amount that would otherwise be lent, advanced or paid to a taxpayer who is liable to make a payment under this Act, or to that taxpayer's secured creditor, apply to Her Majesty in right of Canada or a province.

History: Subsec. 224(1.4) added by 1994, c. 21, subsec. 101(5), applicable June 15, 1994.

(2) Minister's receipt discharges original liability — The receipt of the Minister for moneys paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment.

(3) Idem — Where the Minister has, under this section, required a person to pay to the Receiver General on account of a liability under this Act of a tax debtor moneys otherwise payable by the person to the tax debtor as interest, rent, remuneration, a dividend, an annuity or other periodic payment, the requirement applies to all such payments to be made by the person to the tax debtor until the liability under this Act is satisfied and operates to require payments to the Receiver General out of each such payment of such amount as is stipulated by the Minister in the requirement.

Related Provisions: 224(4) — Liability on failure to comply.

History: Subsec. 224(3) substituted by 1994, c. 21, subsec. 101(6), applicable to requirements and notifications made after 1992. That subsec. formerly read:

> (3) Continuing garnishment until liability satisfied — Where the Minister has, under this section, required a person to pay to the Receiver General on account of the liability under this Act of a tax debtor moneys otherwise payable by the person to the tax debtor as interest, rent, remuneration, a dividend, an annuity or other periodic payment, the requirement is applicable to all such payments to be made by the person to the tax debtor until the liability under this Act is satisfied and operates to require payments to the Receiver General out of each such payment of such amount as may be stipulated by the Minister in the registered letter or letter served personally.

(4) Failure to comply with subsec. (1), (1.2) or (3) requirement — Every person who fails to comply with a requirement under subsection (1), (1.2) or (3) is liable to pay to Her Majesty an amount equal to the amount that the person was required under subsection (1), (1.2) or (3), as the case may be, to pay to the Receiver General.

Related Provisions: 227(10) — Assessment.

(4.1) Failure to comply with subsec. (1.1) requirement — Every institution or person that fails to comply with a requirement under subsection (1.1) with respect to moneys to be lent, advanced or paid is liable to pay to Her Majesty an amount equal to the lesser of

(a) the total of moneys so lent, advanced or paid, and

(b) the amount that the institution or person was required under that subsection to pay to the Receiver General.

Related Provisions: 227(10) — Assessments.

(5) Service of garnishee — Where a person carries on business under a name or style other than the person's own name, notification to the person of a requirement under subsection (1), (1.1) or (1.2) may be addressed to the name or style under which the person carries on business and, in the case of personal service, shall be deemed to be validly served if it is left with an adult person employed at the place of business of the addressee.

History: Subsec. 224(5) substituted by 1994, c. 21, subsec. 101(7), applicable to requirements and notifications made after 1992. That subsec. formerly read:

> (5) Service of garnishee — Where the person who is or is about to become indebted or liable under this section carries on business under a name or style other than the person's own name, the registered or other letter under subsections (1) and (1.2) may be addressed to the name or style under which the person carries on business and, in the case of personal service, shall be deemed to have been validly served if it has been left with an adult person employed at the place of business of the addressee.

(6) Idem — Where persons carry on business in partnership, notification to the persons of a requirement under subsection (1), (1.1) or (1.2) may be addressed to the partnership name and, in the case of personal service, shall be deemed to be validly served if it is served on one of the partners or left with an adult person employed at the place of business of the partnership.

Related Provisions: 244(20)(b) — Service of documents on partnerships.

History: Subsecs. 224(6) substituted by 1994, c. 21, subsec. 101(7), applicable to requirements and notifications made after 1992. That subsec. formerly read:

> (6) Service on partnership — Where the persons who are or are about to become indebted or liable under this section carry on business in partnership, the registered or other letter under subsections (1) and (1.2) may be addressed to the partnership name and, in the case of personal service, shall be deemed to have been validly served if it has been served on one of the partners or left with an adult person employed at the place of business of the partnership.

Selected Cases [s. 224]: *Pigott Project Management Ltd. v. Land-Rock Resources Ltd.*, [1996] 1 C.T.C. 395 (SCC) (Section applies in priority to general assignment of book debts); *Trans Gas Ltd. v. Mid-Plains Contractors Ltd.*, [1993] 1 C.T.C. 280 (Sask CA); aff'd [1995] 1 W.W.R. 1 (SCC) (Provision neither *ultra vires* nor unreasonable seizure); *Canadian Asbestos Services Ltd. v. Bank of Montreal*, [1993] 1 C.T.C. 48 (Ont Gen Div) (Crown bound by order under *Companies' Creditors Arrangement Act*); *Re Gaston H. Poulin Contractor Ltd.*, [1992] 2 C.T.C. 373 (Ont Gen Div) (Crown not bound by order under *Companies' Creditors Arrangement Act*); *Toronto-Dominion Bank v. Canada*, [1990] 2 C.T.C. 542 (FCTD) (General assignment of book debts absolutely transfers all property therein to assignee; such debts cannot be subject to Crown's third-party demand); *Lloyds Bank Canada v. International Warranty Co.*, [1990] 2 C.T.C. 360 (Alta CA); leave to appeal to SCC refused (1989), 104 N.R. 320 (note) (Section 224 neither creates a trust nor effects a transfer of property in favour of the Crown, and has no effect on creditors' priorities); *Cameron v. Canada*, [1990] 2 C.T.C. 299 (FCTD) (Minister successfully garnished assigned book debts where not registered under the *Assignment of Book Debts Act* (Ontario)); *Royal Bank of Canada v. Canada*, [1990] 2 C.T.C. 285 (Sask QB); aff'd [1991] 1 C.T.C. 532 (Sask CA) (1987 amendments to s. 224 substantially altered the rights of the Crown as established in earlier jurisprudence; Crown's third-party demand preferred to right of secured creditor).

Definitions [s. 224]: "amount", "annuity" — *Interpretation Act* 35(1); "bank" — 248(1), *Interpretation Act* 35(1); "business" — 248(1); "Canada" — 255; "carrying on business" — 253; "dividend", "employed", "employee", "employer" — 248(1); "Her Majesty" — *Interpretation Act* 35(1); "institution" — 224(1.1)(a); "Minister", "person", "property" — 248(1); "province" — *Interpretation Act* 35(1); "tax debtor" — 224(1); "tax payable" — 248(2); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

224.1 Recovery by deduction or set-off — Where a person is indebted to Her Majesty under this Act or under an Act of a province with which the Minister of Finance has entered into an agreement for the collection of the taxes payable to the province under that Act, the Minister may require the retention by way of deduction or set-off of such amount as the Minister may specify out of any amount that may be or become payable to the person by Her Majesty in right of Canada.

Related Provisions: 164(2) — Set-off of refund against other amount owing by the taxpayer to the Crown or a province; 203 — Set-off of Part X refunds; 222(3) — Ten-year limitation on collection action; 222.1 — Application to awards of court costs; 225.1 — No collection action for 90 days or if objection filed; 231.2(1) — requirement to provide information or documents for collection purposes; 231.6(1) — foreign-based documents sought for collection purposes.

Selected Cases [s. 224.1]: *Mintzer v. Canada*, [1996] 1 C.T.C. 249 (FCA) (Set-off at common law and "compensation" in civil law not the same; different result might have occurred in Quebec).

Definitions [s. 224.1]: "amount" — 248(1); "Her Majesty" — *Interpretation Act* 35(1); "Minister", "person" — 248(1); "province" — *Interpretation Act* 35(1).

Information Circulars: 98-1R: Collections policies.

224.2 Acquisition of debtor's property — For the purpose of collecting debts owed by a person to Her Majesty under this Act or under an Act of a province with which the Minister of Finance has entered into an agreement for the collection of taxes payable to the province under that Act, the Minister may purchase or otherwise acquire any interest in the person's property that the Minister is given a right to acquire in legal proceedings or under a court order or that is offered for sale or redemption and may dispose of any interest so acquired in such manner as the Minister considers reasonable.

Proposed Amendment — 224.2

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), s. 272, will amend s. 224.2 by substituting "interest in, or for civil law any right in," for "interest in" and "interest or right so acquired" for "interest so acquired", to come into force on Royal Assent.

Technical Notes: See under 12(4).

Related Provisions: 222(3) — Ten-year limitation on collection action; 222.1 — Application to awards of court costs; 231.2(1) — requirement to provide information or documents for collection purposes; 231.6(1) — foreign-based documents sought for collection purposes.

Definitions [s. 224.2]: "Her Majesty" — *Interpretation Act* 35(1); "Minister", "person" — 248(1); "province" — *Interpretation Act* 35(1).

224.3 (1) Payment of moneys seized from tax debtor — Where the Minister has knowledge or suspects that a particular person is holding moneys that were seized by a police officer in the course of administering or enforcing the criminal law of Canada from another person (in this section referred to as the "tax debtor") who is liable to make a payment under this Act or under an Act of a province with which the Minister of Finance has entered into an agreement for the collection of taxes payable to the province under that Act and that are restorable to the tax debtor, the Minister may in writing require the particular person to turn over the moneys otherwise restorable to the tax debtor in whole or in part to the Receiver General on account of the tax debtor's liability under this Act or under the Act of the province, as the case may be.

Related Provisions: 222(3) — Ten-year limitation on collection action; 222.1 — Application to awards of court costs; 225.1 — No collection action for 90 days or if objection filed; 231.2(1) — requirement to provide information or documents for collection purposes; 231.6(1) — foreign-based documents sought for collection purposes; 244(5), (6) — Proof of service by mail or personal service; 248(7)(a) — Mail deemed received on day mailed.

History: Subsec. 224.3(1) substituted by 1994, c. 21, s. 102, applicable to requirements made after 1992. That subsec. formerly read:

> (1) Where the Minister has knowledge or suspects that a person is holding moneys that were seized by a police officer in the course of administering or enforcing the criminal law of Canada from another person who is liable to make a payment under this Act or under an Act of a province with which the Minister of Finance has entered into an agreement for the collection of taxes payable to the province under that Act (in this section referred to as the "tax debtor") and that are restorable to the tax debtor, the Minister may, by registered letter or by a letter served personally, require that person to turn over the moneys otherwise restorable to the tax debtor in whole or in part to the Receiver General on account of the tax debtor's liability under this Act or under the Act of the province, as the case may be.

Information Circulars: 98-1R: Collections policies.

(2) Receipt of Minister — The receipt of the Minister for moneys turned over as required by this section is a good and sufficient discharge of the requirement to restore the moneys to the tax debtor to the extent of the amount so turned over.

Definitions [s. 224.3]: "Minister", "person" — 248(1); "province" — *Interpretation Act* 35(1); "tax debtor" — 224.3(1); "writing" — *Interpretation Act* 35(1).

225. (1) Seizure of chattels — Where a person has failed to pay an amount as required by this Act, the Minister may give 30 days notice to the person by registered mail addressed to the person's latest known address of the Minister's intention to direct that the person's goods and chattels be seized and sold, and, if the person fails to

make the payment before the expiration of the 30 days, the Minister may issue a certificate of the failure and direct that the person's goods and chattels be seized.

Proposed Amendment — 225(1)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 273(1), will amend subsec. 225(1) by substituting "chattels, or movable property," for "chattels" in two places, to come into force on Royal Assent.

Technical Notes: See under 12(4).

Related Provisions: 222(3) — Ten-year limitation on collection action; 222.1 — Application to awards of court costs; 225.1 — No collection action for 90 days or if objection filed; 231.2(1) — requirement to provide information or documents for collection purposes; 231.6(1) — foreign-based documents sought for collection purposes; 244(5) — Proof of service by mail; 248(7) — Mail deemed received on day mailed.

Selected Cases [subsec. 225(1)]: *R. v. Bourassa*, [1984] C.T.C. 331 (FCTD) (Unoccupied mobile home subject to seizure); *MNR v. Alliance Blindée Ltée*, [1982] C.T.C. 266 (FCTD) (Creditors failing to exercise rights cannot oppose seizure).

Information Circulars: 98-1R: Collections policies.

(2) Sale of seized property — Property seized under this section shall be kept for 10 days at the cost and charges of the owner and, if the owner does not pay the amount owing together with the costs and charges within the 10 days, the property seized shall be sold by public auction.

(3) Notice of sale — Except in the case of perishable goods, notice of the sale setting out the time and place thereof, together with a general description of the property to be sold shall, a reasonable time before the goods are sold, be published at least once in one or more newspapers of general local circulation.

(4) Surplus returned to owner — Any surplus resulting from the sale after deduction of the amount owing and all costs and charges shall be paid or returned to the owner of the property seized.

(5) Exemptions from seizure — Such goods and chattels of any person in default as would be exempt from seizure under a writ of execution issued out of a superior court of the province in which the seizure is made are exempt from seizure under this section.

Proposed Amendment — 225(5)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 273(2), will amend subsec. 225(5) by substituting "chattels, or movable property," for "chattels", to come into force on Royal Assent.

Technical Notes: See under 12(4).

Related Provisions: 226(2) — Taxpayer leaving Canada or defaulting.

Definitions [s. 225]: "assessment", "Minister" — 248(1); "movable" — Quebec *Civil Code* art. 900–907; "person", "property" — 248(1); "province", "superior court" — *Interpretation Act* 35(1).

225.1 (1) Collection restrictions [90 days] — If a taxpayer is liable for the payment of an amount assessed under this Act, other than an amount assessed under subsection 152(4.2), 169(3) or 220(3.1), the Minister shall not, until after the collection-commencement day in respect of the amount, do any of the following for the purpose of collecting the amount:

(a) commence legal proceedings in a court,

(b) certify the amount under section 223,

(c) require a person to make a payment under subsection 224(1),

(d) require an institution or a person to make a payment under subsection 224(1.1),

(e) require the retention of the amount by way of deduction or set-off under section 224.1,

(f) require a person to turn over moneys under subsection 224.3(1), or

(g) give a notice, issue a certificate or make a direction under subsection 225(1).

[Closing words repealed]

Related Provisions: 164(1.1) — Refund to taxpayer of amount under objection or appeal; 222(3) — Ten-year limitation on collection action; 225.1(1.1) — Collection-commencement day; 225.1(6), (7) — Limitations on collection restrictions; 225.2 — Immediate collection on jeopardy assessment.

History: The opening words of subsec. 225.1(1) amended by 2005, c. 19, subsec. 49(1), applicable in respect of notices issued by the Minister of National Revenue after June 12, 2005. They formerly read:

> (1) Where a taxpayer is liable for the payment of an amount assessed under this Act, other than an amount assessed under subsection 152(4.2), 169(3) or 220(3.1), the Minister shall not, for the purpose of collecting the amount,

The closing words of subsec. 225.1(1) repealed by the said c. 19, subsec. 49(2), applicable in respect of notices issued by the Minister of National Revenue after June 12, 2005. They formerly read:

> until after the day that is 90 days after the day of the mailing of the notice of assessment.

The opening words of subsec. 225.1(1) amended by 1998, c. 19, s. 225, in force June 18, 1998. They formerly read:

> (1) Where a taxpayer is liable for the payment of an amount assessed under this Act, the Minister shall not, for the purpose of collecting the amount,

That portion of subsec. 225.1(1) following para. (g) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 131(1). That portion formerly read:

> before the day that is 90 days after the day of mailing of the notice of assessment.

Selected Cases [subsec. 225.1(1)]: *Thériault-Sabourin v. MNR*, [2003] 2 C.T.C. 296 (FCTD) (While emphasis normally on taxpayer's future conduct, past conduct may also be relevant); *Cormier v. Canada (No. 2)*, [1991] 1 C.T.C. 410 (FCTD) (Provision not to be applied retroactively).

Information Circulars: 98-1R: Collections policies.

(1.1) Collection-commencement day — The collection-commencement day in respect of an amount is

(a) in the case of an amount assessed under subsection 188(1.1) in respect of a notice of intention to revoke given under subsection 168(1) or any of subsections 149.1(2) to (4.1), one year after the day on which the notice was mailed;

(b) in the case of an amount assessed under section 188.1, one year after the day on which the notice of assessment was mailed; and

(c) in any other case, 90 days after the day on which the notice of assessment was mailed.

Related Provisions: 225.2 — Immediate collection on jeopardy assessment.

History: Subsec. 225.1(1.1) added by 2005, c. 19, subsec. 49(3), applicable in respect of notices issued by the Minister of National Revenue after June 12, 2005.

(2) Idem [while under objection] — Where a taxpayer has served a notice of objection under this Act to an assessment of an amount payable under this Act, the Minister shall not, for the purpose of collecting the amount in controversy, take any of the actions described in paragraphs (1)(a) to (g) until after the day that is 90 days after the day on which notice is mailed to the taxpayer that the Minister has confirmed or varied the assessment.

Related Provisions: 222(8)(a) — Extension of 10-year limitation period on collection action while 225.1(2) applies; 225.1(6), (7) — Limitations on collection restrictions.

History: Subsec. 225.1(2) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 131(2), to substitute "until after" for "before".

(3) Idem [while under appeal to TCC] — Where a taxpayer has appealed from an assessment of an amount payable under this Act to the Tax Court of Canada, the Minister shall not, for the purpose of collecting the amount in controversy, take any of the actions described in paragraphs (1)(a) to (g) before the day of mailing of a copy of the decision of the Court to the taxpayer or the day on which the taxpayer discontinues the appeal, whichever is the earlier.

Related Provisions: 179.1 — Penalty applied by Court where appeal filed solely for delay; 222(8)(a) — Extension of 10-year limitation period on collection action while 225.1(3) applies; 225.1(6), (7) — Limitations on collection restrictions.

Selected Cases [subsec. 225.1(3)]: *Cormier v. Canada (No. 2)*, [1991] 1 C.T.C. 410 (FCTD) (Provision not to be applied retroactively).

(4) Idem [while under reference to TCC] — Where a taxpayer has agreed under subsection 173(1) that a question should be determined by the Tax Court of Canada, or where a taxpayer is served with a copy of an application made under subsection 174(1) to that Court for the determination of a question, the Minister shall not take any of the actions described in paragraphs (1)(a) to (g) for the purpose of collecting that part of an amount assessed, the liability for payment of which will be affected by the determination of the question, before the day on which the question is determined by the Court.

Related Provisions: 222(8)(a) — Extension of 10-year limitation period on collection action while 225.1(4) applies; 225.1(6), (7) — Limitations on collection restrictions.

(5) Idem [waiting for test case] — Notwithstanding any other provision in this section, where a taxpayer has served a notice of objection under this Act to an assessment or has appealed to the Tax Court of Canada from an assessment and agrees in writing with the Minister to delay proceedings on the objection or appeal, as the case may be, until judgment has been given in another action before the Tax Court of Canada, the Federal Court of Appeal or the Supreme Court of Canada in which the issue is the same or substantially the same as that raised in the objection or appeal of the taxpayer, the Minister may take any of the actions described in paragraphs (1)(a) to (g) for the purpose of collecting the amount assessed, or a part thereof, determined in a manner consistent with the decision or judgment of the Court in the other action at any time after the Minister notifies the taxpayer in writing that

(a) the decision of the Tax Court of Canada in that action has been mailed to the Minister,

(b) judgment has been pronounced by the Federal Court of Appeal in that action, or

(c) judgment has been delivered by the Supreme Court of Canada in that action,

as the case may be.

Related Provisions: 222(8)(a) — Extension of 10-year limitation period on collection action while 225.1(5) applies.

History: Subsec. 225.1(5) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 184, to substitute "Tax Court of Canada from an assessment" for "Tax Court of Canada or Federal Court–Trial Division from the assessment" and "Federal Court of Appeal" for "Federal Court" (twice), deemed to have come into force on January 1, 1991.

Selected Cases [subsec. 225.1(5)]: *Webster v. MNR*, [2004] 1 C.T.C. 338 (FCA); aff'g [2003] 2 C.T.C. 64 (FCTD) (Minister can institute collection pursuant to agreement to await outcome of third party appeals, even if taxpayer later files own appeal); *Markevich v. Canada*, [1999] 2 C.T.C. 104 (FCTD) (Provincial limitation statutes do not override Act); *Canada v. Satellite Earth Station Technology Inc.*, [1989] 2 C.T.C. 291 (FCTD) (Once taxpayer meets evidentiary burden to raise reasonable doubt about sufficiency of Crown's evidence, on balance of probabilities, Crown must prove collection would be jeopardized by delay (Note subsequent change in legislation)); *Doyle v. MNR*, [1989] 2 C.T.C. 270 (FCTD) (Abeyance letter under provision may be signed by taxpayer's designated agent and officer of Appeals Division).

(6) Where subsecs. (1) to (4) do not apply — Subsections (1) to (4) do not apply with respect to

(a) an amount payable under Part VIII;

(b) an amount required to be deducted or withheld, and required to be remitted or paid, under this Act or the Regulations;

(c) an amount of tax required to be paid under section 116 or a regulation made under subsection 215(4) but not so paid;

(d) the amount of any penalty payable for failure to remit or pay an amount referred to in paragraph (b) or (c) as and when required by this Act or a regulation made under this Act; and

(e) any interest payable under a provision of this Act on an amount referred to in this paragraph or any of paragraphs (a) to (d).

Related Provisions: 225.2 — Collection in jeopardy.

History: Para. 225.1(6)(b) amended by 2001, c. 17, s. 179, in force June 14, 2001. Para. 225.1(6)(b) formerly read:

(b) an amount deducted or withheld, and required to be remitted or paid, under this Act or a regulation made under this Act;

Information Circulars: 98-1R: Collections policies.

(7) Idem — large corporations — Where an amount has been assessed under this Act in respect of a corporation for a taxation year in which it was a large corporation, subsections (1) to (4) do not apply to limit any action of the Minister to collect

(a) at any time on or before the particular day that is 90 days after the day of the mailing of the notice of assessment, ½ of the amount so assessed; and

(b) at any time after the particular day, the amount, if any, by which the amount so assessed exceeds the total of

(i) all amounts collected before that time with respect to the assessment, and

(ii) ½ of the amount in controversy at that time.

History: Subsec. 225.1(7) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 131(3), applicable after June 10, 1993 except that, where a taxpayer has served a notice of objection or has instituted an appeal under the Act with respect to a notice of assessment of tax, interest or penalties under the Act mailed before 1992,

(a) the reference in para. (a) to "½" shall, in its application before 1994 with respect to all proceedings concerning the subject-matter of the notice of objection or the appeal, be read as "¼"; and

(b) the reference in subpara. (b)(ii) to "½" shall, in its application before 1994 with respect to all proceedings concerning the subject-matter of the notice of objection or the appeal, be read as "¾".

Information Circulars: 98-1R: Collections policies.

(8) Definition of "large corporation" — For the purposes of this section, a "large corporation" in a particular taxation year means

(a) a corporation by which tax under Part I.3 is payable,

(i) where the particular year ended before July 1989, for its first taxation year that ends after June 1989, or

(ii) where the particular year ended after June 1989, for the particular year,

or would, but for subsection 181.1(4), have been so payable, or

(b) a corporation that, at the end of the particular year, is related (for the purpose of section 181.5, as that section reads in its application to the 1992 taxation year) to a corporation that is a large corporation in its taxation year that includes the end of the particular year,

and, for the purpose of subparagraph (a)(i), a corporation formed as a result of the amalgamation or merger of 2 or more predecessor corporations shall be deemed to be the same corporation as, and a continuation of, each of the predecessor corporations.

Related Provisions: 164(1.1) — Repayment on objections and repeals; 165(1.11), (1.13), 169(2.1) — Limitations on objections and appeals by large corporations; 181.5(1.1), (4.1) — Application of Part I.3 tax for purposes of 225.1(8); 220(4.1) — Security; 225.1(8) — Definition of "large corporation".

History: Paras. 225.1(8)(a) and (b) substituted by 1994, c. 21, s. 103, applicable June 15, 1994. Those paras. formerly read:

(a) a corporation by which tax under Part I.3 is payable,

(i) where the particular year ended before July 1989, for its first taxation year ending after June 1989, or

(ii) where the particular year ended after June 1989, for the particular year,

or would, but for section 181.1, have been so payable, or

(b) a corporation that, at the end of the particular year, is related (for the purposes of section 181.5) to a corporation that is a large corporation in its taxation year that includes the end of the particular year,

Subsec. 225.1(8) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 131(3), applicable after June 10, 1993.

Selected Cases [subsec. 225.1(8)]: *Potash Corp. of Saskatchewan Inc. v. R.*, [2004] 2 C.T.C. 91 (FCA); rev'g [2003] 2 C.T.C. 2640 (TCC) (Reasonable description of each issue interpreted strictly).

Selected Cases [s. 225.1]: *Re 144945 Canada Inc.*, [2003] 4 C.T.C. 112 (FCTD) (Standard applied was balance of probabilities); *Re Milne*, [1995] 1 C.T.C. 122 (FCTD) (Collection proceedings not stayed out of consideration for effect on market of disposition of assets).

Definitions [s. 225.1]: "amount", "assessment" — 248(1); "collection-commencement day" — 225.1(1.1); "corporation" — 248(1), *Interpretation Act* 35(1); "Federal Court of Appeal" — *Federal Courts Act* s. 3; "large corporation" — 225.1(8); "Minister", "person" — 248(1); "regulation" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "writing" — *Interpretation Act* 35(1).

225.2 [Jeopardy orders] — (1) Definition of "judge" — In this section, "judge" means a judge or a local judge of a superior court of a province or a judge of the Federal Court.

(2) Authorization to proceed forthwith [jeopardy order] — Notwithstanding section 225.1, where, on *ex parte* application by the Minister, a judge is satisfied that there are reasonable grounds to believe that the collection of all or any part of an amount assessed in respect of a taxpayer would be jeopardized by a delay in the collection of that amount, the judge shall, on such terms as the judge considers reasonable in the circumstances, authorize the Minister to take forthwith any of the actions described in paragraphs 225.1(1)(a) to (g) with respect to the amount.

Related Provisions: 164(1.2) — Delay of refund where collection of tax in jeopardy.

Selected Cases [subsec. 225.2(2)]: *MNR v. Arab*, [2005] 2 C.T.C. 107 (FC) (Jeopardy order maintained where taxpayer had large amounts of unexplained cash); *Re Sagman*, [2005] 1 C.T.C. 165 (FC) (Jeopardy order varied in light of new evidence); *MNR v. Services M.L. Marengère Inc.*, [2000] 1 C.T.C. 229 (FCTD) (Jeopardy order justified where passage of time affected ability to collect taxes); *Deputy Minister of National Revenue (Taxation) v. Kung*, [1999] 1 C.T.C. 48 (BC SC) (Cutting off ties with Canada and selling assets sufficient grounds for jeopardy order); *MNR v. 159890 Canada Inc.*, [1997] 3 C.T.C. 284 (FCTD) (Jeopardy orders not to be sought where other means available to Minister to secure tax).

Information Circulars: 98-1R: Collections policies.

(3) Notice of assessment not sent — An authorization under subsection (2) in respect of an amount assessed in respect of a taxpayer may be granted by a judge notwithstanding that a notice of assessment in respect of that amount has not been sent to the taxpayer at or before the time the application is made where the judge is satisfied that the receipt of the notice of assessment by the taxpayer would likely further jeopardize the collection of the amount, and for the purposes of sections 222, 223, 224, 224.1, 224.3 and 225, the amount in respect of which an authorization is so granted shall be deemed to be an amount payable under this Act.

(4) Affidavits — Statements contained in an affidavit filed in the context of an application under this section may be based on belief with the grounds therefor.

(5) Service of authorization and of notice of assessment — An authorization granted under this section in respect of a taxpayer shall be served by the Minister on the taxpayer within 72 hours after it is granted, except where the judge orders the authorization to be served at some other time specified in the authorization, and, where a notice of assessment has not been sent to the taxpayer at or before the time of the application, the notice of assessment shall be served together with the authorization.

(6) How service effected — For the purposes of subsection (5), service on a taxpayer shall be effected by

(a) personal service on the taxpayer; or

(b) service in accordance with directions, if any, of a judge.

Related Provisions: 244(6) — Proof of personal service.

(7) Application to judge for direction — Where service on a taxpayer cannot reasonably otherwise be effected as and when required under this section, the Minister may, as soon as practicable, apply to a judge for further direction.

(8) Review of authorization — Where a judge of a court has granted an authorization under this section in respect of a taxpayer, the taxpayer may, on 6 clear days notice to the Deputy Attorney General of Canada, apply to a judge of the court to review the authorization.

Related Provisions: *Interpretation Act* 27(1) — Calculation of clear days.

(9) Limitation period for review application — An application under subsection (8) shall be made

(a) within 30 days from the day on which the authorization was served on the taxpayer in accordance with this section; or

(b) within such further time as a judge may allow, on being satisfied that the application was made as soon as practicable.

(10) Hearing *in camera* — An application under subsection (8) may, on the application of the taxpayer, be heard *in camera*, if the taxpayer establishes to the satisfaction of the judge that the circumstances of the case justify *in camera* proceedings.

(11) Disposition of application — On an application under subsection (8), the judge shall determine the ques-

tion summarily and may confirm, set aside or vary the authorization and make such other order as the judge considers appropriate.

Related Provisions: 225.2(13) — No appeal from judge's decision.

(12) Directions — Where any question arises as to the course to be followed in connection with anything done or being done under this section and there is no direction in this section with respect thereto, a judge may give such direction with regard thereto as, in the opinion of the judge, is appropriate.

(13) No appeal from review order — No appeal lies from an order of a judge made pursuant to subsection (11).

Selected Cases [s. 225.2]: *Moss (R.) v. MNR*, [2001] 2 C.T.C. 91 (FCA) (Jeopardy orders may cover assets in excess of tax owed); *Moss (D.) v. R.*, [1998] 1 C.T.C. 2999 (TCC) (Appeal against issuance of jeopardy order is only against reasonable apprehension of jeopardy, not against underlying assessment); *Steele v. Canada*, [1996] 2 C.T.C. 279 (Sask QB) (Jeopardy order set aside where collection possible from taxpayer's spouse); *Canada v. Landru (S.)*, [1993] 1 C.T.C. 93 (Sask QB) (Mere suspicion of jeopardized collection not sufficient to justify jeopardy order); *Dep. MNR v. Atchison*, [1989] 1 C.T.C. 342 (BC SC) ("Jeopardy" orders set aside where Minister failed to make full disclosure of facts; in applying *ex parte*, Minister must act in utmost good faith); *Chudina et al. v. Dep. A.G. Can.*, [1988] 1 C.T.C. 303 (BC SC) (Seizure set aside where debtor not given opportunity to appeal or make payment); *1853-9049 Quebec Inc. v. R.*, [1986] 2 C.T.C. 486 (FCTD) (Immediate payment not required where no evidence that delay will endanger collection; burden on Crown); *Danielson v. Dep. A.G. Can.*, [1986] 2 C.T.C. 380 (FCTD) (Crown must show that actual jeopardy in collection arose from delay, not merely that collection is in jeopardy *per se*); *Danielson v. Dep. A.G. Can.*, [1986] 2 C.T.C. 42 (FCTD) (Execution of writ of seizure obtained after payment forthwith demanded was enjoined until hearing of objection to applicability of subsec. 225.2(1) where taxpayer gave express undertaking not to dispose of assets not seized or remove funds in excess of personal living requirements).

Definitions [s. 225.2]: "amount" — 248(1); "clear days" — *Interpretation Act* 27(1); "Federal Court" — *Federal Courts Act* s. 4; "Minister" — 248(1); "province" — *Interpretation Act* 35(1); "superior court" — *Interpretation Act* 35(1); "taxpayer" — 248(1).

Information Circulars [s. 225.2]: 73-10R3: Tax evasion.

226. (1) Taxpayer leaving Canada — Where the Minister suspects that a taxpayer has left or is about to leave Canada, the Minister may, before the day otherwise fixed for payment, by notice served personally or by registered letter addressed to the taxpayer's latest known address, demand payment of the amount of all taxes, interest and penalties for which the taxpayer is liable or would be liable if the time for payment had arrived, and that amount shall be paid forthwith by the taxpayer notwithstanding any other provision of this Act.

Related Provisions: 128.1(4) — Tax effects of ceasing to be resident in Canada; 222(4)(a)(i) — Beginning of limitation period for collection action; 222.1 — Application to awards of court costs; 225.2 — Immediate collection of amounts owing; 231.2(1) — requirement to provide information or documents for collection purposes; 231.6(1) — foreign-based documents sought for collection purposes; 248(7)(a) — Notice deemed received on day mailed.

Information Circulars: 98-1R: Collections policies.

(2) Idem — Where a taxpayer has failed to pay, as required, any tax, interest or penalties demanded under this section, the Minister may direct that the goods and chattels of the taxpayer be seized and subsections 225(2) to (5) apply, with respect to the seizure, with such modifications as the circumstances require.

Proposed Amendment — 226(2)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), s. 274, will amend subsec. 226(2) by substituting "taxpayer fails" for "taxpayer has failed" and "chattels, or movable property," for "chattels", to come into force on Royal Assent.

Technical Notes: See under 12(4).

Related Provisions: 222(3) — Ten-year limitation on collection action; 222.1 — Application to awards of court costs; 231.2(1) — requirement to provide information or documents for collection purposes; 231.6(1) — foreign-based documents sought for collection purposes.

History [s. 226]: S. 226 substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 185. S. 226 formerly read:

> 226. (1) Taxpayer leaving Canada or defaulting — Where the Minister suspects that a taxpayer is about to leave Canada, the Minister may before the day otherwise fixed for payment, by notice served personally or by registered letter addressed to the taxpayer, demand payment of all taxes, interest and penalties for which the taxpayer is liable or would be liable if the time for payment had arrived, and the same shall be paid forthwith notwithstanding any other provision of this Act.
>
> (2) Seizure on failure to pay — Where a person has failed to pay tax, interest or penalties demanded under this section as required, the Minister may direct that the goods and chattels of the taxpayer be seized and subsections 225(2) to (5) are, thereupon, applicable with such modifications as the circumstances require.

Selected Cases [s. 226]: *Carolus v. MNR*, [1976] C.T.C. 608 (FCTD) (Trailers held not to be principal residences not exempted from seizure under subsec. 2(1) *Exemptions Act* (Alta.)).

Definitions [s. 226]: "Minister" — 248(1); "movable" — Quebec *Civil Code* art. 900–907; "taxpayer" — 248(1).

227. (1) Withholding taxes — No action lies against any person for deducting or withholding any sum of money in compliance or intended compliance with this Act.

Selected Cases [subsec. 227(1)]: *Tenn-Yuk v. R.*, [2004] 2 C.T.C. 3191 (TCC) (Due diligence defence failed for non-inside director who should have known other director inexperienced); *Smith v. R.*, [2001] 2 C.T.C. 192 (FCA) (Directors' obligations fall short of guarantee that deductions will be paid); *Mollenhauer Ltd. v. Canada*, [1992] 2 C.T.C. 121 (FCTD) (Contractor paying salaries of employees of subcontractor required to withhold and remit source deductions); *Lomex Inc. v. MNR*, [1992] 2 C.T.C. 2678 (TCC) (Extension of time to file notice of objection granted in respect of purported simultaneous violation of several statutes in addition to *Income Tax Act*).

(2) Return filed with person withholding — Where a person (in this subsection referred to as the "payer") is required by regulations made under subsection 153(1) to deduct or withhold from a payment to another person an amount on account of that other person's tax for the year, that other person shall, from time to time as prescribed, file a return with the payer in prescribed form.

Related Provisions: 162(7) — Failure to comply with regulation; 227(3) — Where return is not filed.

Regulations: 107 (deadline for employee to file TD1 return).

Forms: TD1: Personal tax credits return.

(3) Failure to file return — Every person who fails to file a return as required by subsection (2) is liable to have the deduction or withholding under section 153 on account of the person's tax made as though the person were a person who is neither married nor in a common-law partnership and is without dependants.

History [subsec. 227(3)]: Subsec. 227(3) amended by 2000, c. 12, s. 138, applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced under 248(1)"common-law partner". The subsec. formerly read:

> (3) Failure to file return — Every person who fails to file a return as required by subsection (2) is liable to have the deduction or withholding under section 153 on account of the person's tax made as though the person were an unmarried person without dependants.

(4) Trust for moneys deducted — Every person who deducts or withholds an amount under this Act is deemed,

notwithstanding any security interest (as defined in subsection 224(1.3)) in the amount so deducted or withheld, to hold the amount separate and apart from the property of the person and from property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for the security interest would be property of the person, in trust for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act.

Related Provisions: 227(4.1) — Extension of trust; 227(4.2) — Meaning of security interest; 227(4.3) — Application to the Crown.

History: Subsec. 227(4) amended by 1998, c. 19, subsec. 226(1), deemed to have come into force on June 15, 1994. Subsec. 227(4) formerly read:

> (4) Money held in trust — Every person who deducts or withholds an amount under this Act shall be deemed to hold the amount so deducted or withheld in trust, separate and apart from the person's own moneys, for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act, and Her Majesty has a lien and charge on the property and assets of the person whether or not the person has kept the amount separate and apart or is in receivership, bankruptcy or liquidation or has made an assignment.

Subsec. 227(4) substituted by 1994, c. 21, subsec. 104(1), applicable June 15, 1994. That subsec. formerly read:

> (4) Money held in trust for Her Majesty — Every person who deducts or withholds any amount under this Act shall be deemed to hold the amount so deducted or withheld in trust for Her Majesty.

Selected Cases [subsec. 227(4)]: *Royal Bank v. Tuxedo Transport Ltd.*, [2000] 3 C.T.C. 331 (BC CA) (Trust in favour of Minister comes into being when funds are deducted or withheld, so Minister can oppose interests of secured creditors); *Roynat Inc. v. Ja-Sha Trucking & Leasing Ltd. (No. 2)*, [1992] 2 C.T.C. 139 (Man. C.A.) (Statutory trusts under subsecs. 227(4) and (5) conflicted with and took priority over provisions of *Personal Property Security Act*).

Information Circulars: 98-1R: Collections policies.

(4.1) Extension of trust — Notwithstanding any other provision of this Act, the *Bankruptcy and Insolvency Act* (except sections 81.1 and 81.2 of that Act), any other enactment of Canada, any enactment of a province or any other law, where at any time an amount deemed by subsection (4) to be held by a person in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act, property of the person and property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for a security interest (as defined in subsection 224(1.3)) would be property of the person, equal in value to the amount so deemed to be held in trust is deemed

> (a) to be held, from the time the amount was deducted or withheld by the person, separate and apart from the property of the person, in trust for Her Majesty whether or not the property is subject to such a security interest, and
>
> (b) to form no part of the estate or property of the person from the time the amount was so deducted or withheld, whether or not the property has in fact been kept separate and apart from the estate or property of the person and whether or not the property is subject to such a security interest

and is property beneficially owned by Her Majesty notwithstanding any security interest in such property and in the proceeds thereof, and the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.

Related Provisions: 227(4.2) — Meaning of security interest; 227(4.3) — Application to the Crown.

History: Subsec. 227(4.1) added by 1998, c. 19, subsec. 226(1), deemed to have come into force on June 15, 1994.

Selected Cases [subsec. 227(4.1)]: *Canada (Attorney General) v. National Bank of Canada*, [2004] 4 C.T.C. 193 (FCA); leave to appeal to SCC refused 2004 CarswellNat 3585 (Minister has priority to secured creditors); *First Vancouver Finance v. MNR*, [2002] 3 C.T.C. 285 (SCC) (Trust in favour of Minister established when failure to remit, but effective as of date of withholding. Trust attaches to all assets except those sold for value); *Royal Bank v. Tuxedo Transport Ltd.*, [2000] 3 C.T.C. 331 (BC CA); rev'g [1999] 3 C.T.C. 393 (BC SC) (Trust in favour of Minister comes into being when funds are deducted or withheld, so Minister can oppose interests of secured creditors; Receiver was not secured creditor and not person acting on behalf of secured creditor).

(4.2) Meaning of security interest — For the purposes of subsections (4) and (4.1), a security interest does not include a prescribed security interest.

Related Provisions: 227(4.3) — Application to the Crown.

History: Subsec. 227(4.2) added by 1998, c. 19, subsec. 226(1), deemed to have come into force on June 15, 1994.

Regulations: 2201 (prescribed security interest).

(4.3) Application to Crown — For greater certainty, subsections (4) to (4.2) apply to Her Majesty in right of Canada or a province where Her Majesty in right of Canada or a province is a secured creditor (within the meaning assigned by subsection 224(1.3)) or holds a security interest (within the meaning assigned by that subsection).

History: Subsec. 227(4.3) added by 2001, c. 17, subsec. 180(1), in force June 14, 2001.

(5) Payments by trustees, etc. — Where a specified person in relation to a particular person (in this subsection referred to as the "payer") has any direct or indirect influence over the disbursements, property, business or estate of the payer and the specified person, alone or together with another person, authorizes or otherwise causes a payment referred to in subsection 135(3) or 153(1), or on or in respect of which tax is payable under Part XII.5 or XIII, to be made by or on behalf of the payer, the specified person

Proposed Amendment — 227(5) opening words

Application: The August 15, 2005 draft legislation (2005 Budget second bill), subsec. 14(1), will amend the opening words of subsec. 227(5) to substitute "135(3), 135.1(7)" for "135(3)", applicable after 2005.

Technical Notes: Subsection 227(5) provides that a person who has influence over the property or affairs of another person and who authorises or causes certain payments to be made by the other person that are subject to deductions at source, is deemed to have made the payment and is jointly and severally, or solidarily, liable with the other person for any amount payable under the Act in respect of these payments and for any amount payable in respect of the failure to deduct and remit the amount payable under the Act. The subsection is amended as a consequence of the addition of the new rules in section 135.1 relating to the payment of tax-deferred patronage dividends by agricultural cooperative corporations. In particular, subsection 227(5) is amended to refer to the withholding obligation on the redemption, acquisition or cancellation of a tax deferred cooperative share in subsection 135.1(7).

> (a) is, for the purposes of subsections 135(3) and 153(1), section 215 and this section, deemed to be a person who made the payment;
>
> (a.1) is, for the purpose of subsection 211.8(2), deemed to be a person who redeemed, acquired or cancelled a share and made the payment as a consequence of the redemption, acquisition or cancellation;

Proposed Amendment — 227(5)(a.1)

(a.1) is, for the purposes of subsections 135.1(7) and 211.8(2), deemed to be a person who redeemed, acquired or cancelled a share and made the payment as a consequence of the redemption, acquisition or cancellation;

Application: The August 15, 2005 draft legislation (2005 Budget second bill), subsec. 14(2), will amend para. 227(5)(a.1) to read as above. applicable after 2005.

Technical Notes: See under 227(5) opening words above.

(b) is jointly and severally liable with the payer to pay to the Receiver General

Proposed Amendment — 227(5)(b) opening words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 275(1), will amend the opening words of para. 227(5)(b) by substituting "jointly and severally, or solidarily," for "jointly and severally", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(i) all amounts payable by the payer because of any of subsections 135(3), 153(1) and 211.8(2) and section 215 in respect of the payment, and

Proposed Amendment — 227(5)(b)(i)

(i) all amounts payable by the payer because of any of subsections 135(3), 135.1(7), 153(1) and 211.8(2) and section 215 in respect of the payment, and

Application: The August 15, 2005 draft legislation (2005 Budget second bill), subsec. 14(3), will amend subpara. 227(5)(b)(i) to read as above. applicable after 2005.

Technical Notes: See under 227(5) opening words above.

(ii) all amounts payable under this Act by the payer because of any failure to comply with any of those provisions in respect of the payment; and

(c) is entitled to deduct or withhold from any amount paid or credited by the specified person to the payer or otherwise recover from the payer any amount paid under this subsection by the specified person in respect of the payment.

Related Provisions: 227(5.1) — Specified person; 227(5.2) — "Person" includes partnership.

History: The portion of subsec. 227(5) before subpara. (b)(ii) amended by 1997 c. 25, subsec. 67(1), applicable April 25, 1997. That portion formerly read:

(5) Where a specified person in relation to a particular person (in this subsection referred to as the "payer") has any direct or indirect influence over the disbursements, property, business or estate of the payer and the specified person, alone or together with another person, authorizes or otherwise causes a payment referred to in subsection 135(3) or 153(1), or on which tax is payable under Part XIII, to be made by or on behalf of the payer, the specified person

(a) is, for the purposes of subsections 135(3) and 153(1), section 215 and this section, deemed to be a person who made the payment;

(b) is jointly and severally liable with the payer to pay to the Receiver General

(i) all amounts payable by the payer because of any of subsections 135(3) and 153(1) and section 215 in respect of the payment, and

Subsec. 227(5) added by 1996, c. 21, s. 57, applicable June 20, 1996.

Former subsec. 227(5) repealed by 1994, c. 21, subsec. 104(1), applicable June 15, 1994. That subsec. formerly read:

(5) Amount in trust not part of estate — Notwithstanding any provision of the *Bankruptcy and Insolvency Act*, in the event of any liquidation, assignment, receivership or bankruptcy of or by a person, an amount equal to any amount

(a) deemed by subsection (4) to be held in trust for Her Majesty, or

(b) deducted or withheld under an Act of a province with which the Minister of Finance has entered into an agreement for the collection of taxes payable to the province under that Act that is deemed under that Act to be held in trust for Her Majesty in right of the province

shall be deemed to be separate from and form no part of the estate in liquidation, assignment, receivership or bankruptcy, whether or not that amount has in fact been kept separate and apart from the person's own moneys or from the assets of the estate.

That portion of subsec. 227(5) preceding para. (a) amended to substitute "*Bankruptcy and Insolvency Act*" for "*Bankruptcy Act*", by 1992, c. 27, para. 90(1)(q), deemed to have come into force November 30, 1992.

Selected Cases [subsec. 227(5)]: *Roll v. R.*, [2001] 1 C.T.C. 143 (FCA) (Bare trustee has no independent authority; not liable for failure to remit source deductions).

(5.1) Definition of "specified person" — In subsection (5), a "specified person" in relation to a particular person means a person who is, in relation to the particular person or the disbursements, property, business or estate of the particular person,

(a) a trustee;

(b) a liquidator;

(c) a receiver;

(d) an interim receiver;

(e) a receiver-manager;

(f) a trustee in bankruptcy or other person appointed under the *Bankruptcy and Insolvency Act*;

(g) an assignee;

(h) a secured creditor (as defined in subsection 224(1.3));

(i) an executor, a liquidator of a succession or an administrator;

(j) any person acting in a capacity similar to that of a person referred to in any of paragraphs (a) to (i);

(k) a person appointed (otherwise than as an employee of the creditor) at the request of, or on the advice of, a secured creditor in relation to the particular person to monitor, or provide advice in respect of, the disbursements, property, business or estate of the particular person under circumstances such that it is reasonable to conclude that the person is appointed to protect or advance the interests of the creditor; or

(l) an agent of a specified person referred to in any of paragraphs (a) to (k).

History: Para. 227(5.1)(i) amended by 2001, c. 17, s. 229, in force June 14, 2001. The para. formerly read:

(i) an executor or administrator;

Subsec. 227(5.1) added by 1996, c. 21, s. 57, applicable June 20, 1996.

(5.2) "Person" includes partnership — For the purposes of this section, references in subsections (5) and (5.1) to persons include partnerships.

Related Provisions: 227(15) — "Person" includes partnerships for certain purposes throughout s. 227.

History: Subsec. 227(5.2) added by 1996, c. 21, s. 57, applicable June 20, 1996.

Possible Future Amendment — 227(5.2)–(5.4)

(5.2) Interference with remittance — Where at any time

(a) an amount (in this subsection referred to as the "amount to be remitted") that is deducted or withheld from a payment (in this subsection referred to as the "gross payment") is required by a provision of this Act to be remitted by a particular person on account of the tax of another person,

(b) a secured creditor (as defined in subsection 224(1.3)) in relation to the particular person has influence over the issuance or clearance of the payment of the amount to be remitted, and

(c) the secured creditor, alone or together with another person, exercises that influence for the purpose of

(i) postponing the remittance of the amount to be remitted,

(ii) subordinating the remittance of the amount to be remitted, in favour of the payment of other amounts, or

(iii) causing the amount to be remitted not to be remitted,

and the remittance of the amount to be remitted is postponed or subordinated or the amount to be remitted is not remitted, as the case may be,

the secured creditor

(d) is, for the purposes of subsections 135(3) and 153(1), section 215 and this section, deemed to be a person who made the gross payment and is deemed to be a person who deducted or withheld the amount to be remitted from the gross payment,

(e) is, notwithstanding any other provision of this Act, jointly and severally liable with the particular person to pay to the Receiver General

(i) all amounts payable by the particular person because of any of subsections 135(3) and 153(1) and section 215 in respect of the gross payment, and

(ii) all amounts payable under this Act by the particular person because of any failure to comply with any of those provisions in respect of the gross payment, and

(f) is entitled to deduct or withhold from any amount paid or credited by the secured creditor to the particular person, or otherwise recover from the particular person, any amount paid under this subsection by the secured creditor in respect of the amount to be remitted.

Technical Notes: New subsection 227(5.2) provides a new rule for imposing joint and several liability on certain secured creditors who interfere with the remittance of source deductions. Under this new rule it need not be established that a secured creditor actually causes or authorizes a payment — which is subject to source deduction — before joint and several liability arises. It is sufficient to show that an amount is deducted at source from a payment (hereafter referred to as a "gross payment") that the secured creditor has influence over the issuance or clearance of that gross payment and that the secured creditor exercises that influence for the purpose of interfering with the remittance of source deductions. Interference may take place by way of postponing a remittance, subordinating a remittance in favour of another payment or simply causing a remittance not to be made.

A typical example is the situation of a financial institution that has influential control over a person and that, in the course of providing banking services to the person (usually in financial difficulty) who is liable to deduct certain amounts from the remuneration of its employees, interferes with the remittance of these deductions by preventing the issuance of, stopping or refusing to clear a remittance cheque made to the Receiver General while issuing, clearing, or honouring other cheques made to suppliers or other creditors. This might be done in order to enhance trade receivables and limit the secured creditor's own risks.

Generally, it is not intended that the refusal of a cheque or other means of payment for lack of sufficient funds or other legitimate banking reasons be regarded as influence that is exercised for the purpose of interfering with the payment of source deductions. However, it is intended that a secured creditor that refuses to extend credit in respect of a source deduction payment and that subsequently extends credit in respect of other similar payments made to another party, be considered as exercising influence for the purpose of interfering with source deductions.

Where the circumstances described in new subsection 227(5.2) exist, the secured creditor will be deemed to have made the payment and will become jointly and severally liable with the person making the gross payment to pay all amounts payable in respect of the gross payment and all amounts payable by that person for the failure to deduct and remit the amounts payable. This will include the amount of tax not remitted, interest, and penalties. However, exceptions to this rule are contained in new subsections 227(5.3) and (5.4). A specific right to recover amounts paid by the secured creditor on behalf of the person making the gross payment is provided in paragraph 227(5.2)(f).

(5.3) Exception where all cheques stopped — Where on a day a secured creditor in relation to a person stops or refuses a cheque or other means of payment or remittance drawn on the secured creditor by the person for an amount to be remitted by the person to the Receiver General, subsection (5.2) does not apply in respect of that stopping or refusal if, throughout the period that begins at the end of that day and ends when the amount is paid to the Receiver General, the creditor stops or refuses all cheques and all other means of payment or remittance drawn on the creditor by the person (other than cheques payable, or other means of payment or remittance, to the Receiver General and other than cheques certified on or before that day).

Technical Notes: New subsections 227(5.3) and (5.4) provide certain exceptions to the joint and several liability rules which apply to secured creditors. Subsection 227(5.3) deals with the case in which a cheque or other means of payment is stopped or refused by the secured creditor. Joint and several liability will not arise in this case if the secured creditor also stops or refuses all other cheques presented and payments made starting immediately after that day, except cheques or payments made to the Receiver General or cheques certified on or before that day. Using the example of the financial institution that stops a remittance cheque (referred to in the commentary on subsection 227(5.2)), no joint and several liability would arise if the financial institution were to stop or refuse (until payment in full of the amount to be paid or remitted) all other cheques made to any other creditor of the person and presented at any time after the day on which it stopped the cheque payable to the Receiver General.

(5.4) Other exceptions — Where subsection (5.2) would, but for this subsection, apply to a secured creditor in relation to a person because the creditor has exercised influence in respect of an amount to be remitted by the person to the Receiver General, that subsection does not apply where

(a) the person does not make any payment or disbursement (other than payments or disbursements to the Receiver General) at and after the time referred to in that subsection until the amount to be remitted is paid to the Receiver General;

(b) the exercise of the influence is only a refusal, or an expression of intention to refuse, to supply to the person any further property or services until a payment for property sold or leased or services rendered to the person is received by the creditor; or

(c) the exercise of the influence is pursuant to a decree, order or judgment of a competent tribunal in Canada.

Technical Notes: Similarly, new subsection 227(5.4) provides relief from joint and several liability where a person does not make any other payment or disbursement at or after the time the secured creditor exercises influence in respect of an amount to be paid or remitted by the person to the Receiver General.

New paragraph 227(5.4)(b) provides, for greater certainty, that a refusal by a secured creditor to continue to supply property or services because of the non-payment for such property or services will not give rise to joint and several liability.

Under new paragraph 227(5.4)(c), court actions such as collection and conservation measures will not be regarded as exercising influence for the purpose of interfering with a remittance. In addition, where a court orders a secured creditor to make a payment in priority to a remittance, the secured creditor will not be regarded as having exercised influence for the purpose of interfering with a remittance.

Application: The December 12, 1995 Notice of Ways and Means Motion would have added subsecs. 227(5.2)–(5.4) as above (and would have numbered what is now 227(5.2) as 227(5.5)), to come into force on Royal Assent. However, these provisions (and the parallel rules in 323.1 of the *Excise Tax Act* for GST remittances) were dropped in the revised Notice of Ways and Means Motion of March 28, 1996 (Bill C-36 — 1995 Budget bill). Officials at the Department of Finance advise that implementation of these rules has been deferred following consultations with the banks and other financial institutions, which have promised voluntary compliance. The CCRA has been monitoring this compliance in order to make a determination as to whether to proceed with these rules. The most recent information from the Dept. of Finance is that no decision has yet been made, and the proposals are still "on hold".

(6) Excess withheld, returned or applied — Where a person on whose behalf an amount has been paid under Part XII.5 or XIII to the Receiver General was not liable to pay tax under that Part or where the amount so paid is in excess of the amount that the person was liable to pay, the Minister shall, on written application made no later than 2 years after the end of the calendar year in which the amount was paid, pay to the person the amount so paid or such part of it as the person was not liable to pay, unless the person is or is about to become liable to make a payment to Her Majesty in right of Canada, in which case the Minister may apply the amount otherwise payable under this subsection to that liability and notify the person of that action.

History: Subsec. 227(6) amended by 1997, c. 25, subsec. 67(2), applicable April 25, 1997. Subsec. (6) formerly read:

> (6) Where a person on whose behalf an amount has been paid under Part XIII to the Receiver General was not liable to pay tax under that Part or where the amount so paid is in excess of the amount that the person was liable to pay, the Minister shall, on written application made no later than 2 years after the end of the calendar year in which the amount was paid, pay to the person the amount so paid or such part of it as the person was not liable to pay, unless the person is or is about to become liable to make a payment to Her Majesty in right of Canada, in which case the Minister may apply the amount otherwise payable under this subsection to that liability and notify the person of that action.

Subsec. 227(6) substituted by 1994, c. 21, subsec. 104(1), applicable June 15, 1994. That subsec. formerly read:

> (6) Withheld money returned or applied otherwise — Where a person on whose behalf an amount has been paid to the Receiver General after having been deducted or withheld under Part XIII was not liable to pay any tax under that Part or where the amount so paid to the Receiver General on the person's behalf is in excess of the tax that the person was liable to pay, the Minister shall, on application in writing made within two years from the end of the calendar year in which the amount was paid, pay to the person the amount so paid or such part thereof as the person was not liable to pay, unless the person is otherwise liable or about to become liable to make a payment under this Act, in which case the Minister may apply the amount otherwise payable under this subsection to that payment and notify the person of that fact.

Forms: NR7-R: Application for refund of non-resident tax withheld.

(6.1) Repayment of non-resident shareholder loan — Where, in respect of a loan from or indebtedness to a corporation or partnership, a person on whose behalf an amount was paid to the Receiver General under Part XIII because of subsection 15(2) and paragraph 214(3)(a) repays the loan or indebtedness or a portion of it and it is established by subsequent events or otherwise that the repayment was not made as part of a series of loans or other transactions and repayments, the Minister shall, on written application made no later than 2 years after the end of the calendar year in which the repayment is made, pay to the person an amount equal to the lesser of

(a) the amount so paid to the Receiver General in respect of the loan or indebtedness or portion of it, as the case may be, and

(b) the amount that would be payable to the Receiver General under Part XIII if a dividend described in paragraph 212(2)(a) equal in amount to the amount of the loan or indebtedness repaid were paid by the corporation or partnership to the person at the time of the repayment,

unless the person is or is about to become liable to make a payment to Her Majesty in right of Canada, in which case the Minister may apply the amount otherwise payable under this subsection to that liability and notify the person of that action.

Related Provisions: 227(7.1) — Determination of amount under subsec. (6.1); 248(10) — Series of transactions.

History: Subsec. 227(6.1) added by 1994, c. 21, subsec. 104(1), applicable to repayments made after December 21, 1992.

Interpretation Bulletins: IT-119R4: Debts of shareholders and certain persons connected with shareholders.

Transfer Pricing Memoranda: TPM-02: Repatriation of funds by non-residents — Part XIII assessments.

(7) Application for assessment — Where, on application under subsection (6) by or on behalf of a person to the Minister in respect of an amount paid under Part XII.5 or XIII to the Receiver General, the Minister is not satisfied

(a) that the person was not liable to pay any tax under that Part, or

(b) that the amount paid was in excess of the tax that the person was liable to pay,

the Minister shall assess any amount payable under that Part by the person and send a notice of assessment to the person, and sections 150 to 163, subsections 164(1) and (1.4) to (7), sections 164.1 to 167 and Division J of Part I apply with any modifications that the circumstances require.

History: Subsec. 227(7) amended by 1997, c. 25, subsec. 67(3), applicable April 25, 1997. Subsec. (7) formerly read:

> (7) Where, on application under subsection (6) by or on behalf of a person to the Minister in respect of an amount paid under Part XIII to the Receiver General, the Minister is not satisfied
>
> (a) that the person was not liable to pay any tax under that Part, or
>
> (b) that the amount paid was in excess of the tax that the person was liable to pay,
>
> the Minister shall assess the person for any amount payable under Part XIII by the person and send a notice of assessment to the person, and sections 150 to 163, subsections 164(1) and (1.4) to (7), sections 164.1 to 167 and Division J of Part I apply with such modifications as the circumstances require.

Subsec. 227(7) substituted by 1994, c. 21, subsec. 104(1), applicable June 15, 1994. That subsec. formerly read:

> (7) Idem — Where, on application by or on behalf of a person to the Minister pursuant to subsection (6) in respect of an amount paid to the Receiver General that was deducted or withheld under Part XIII, the Minister is not satisfied
>
> (a) that the person was not liable to pay any tax under that Part, or
>
> (b) that the amount paid to the Receiver General was in excess of the tax that the person was liable to pay,
>
> the Minister shall assess the person for any amount payable by the person under Part XIII and send a notice of assessment to the person, whereupon sections 150 to 163, subsections 164(1) and (1.4) to (7), sections 164.1 to 167 and Division J of Part I are applicable with such modifications as the circumstances require.

(7.1) Application for determination — Where, on application under subsection (6.1) by or on behalf of a person to the Minister in respect of an amount paid under Part XIII to the Receiver General, the Minister is not sat-

isfied that the person is entitled to the amount claimed, the Minister shall, at the person's request, determine, with all due dispatch, the amount, if any, payable under subsection (6.1) to the person and shall send a notice of determination to the person, and sections 150 to 163, subsections 164(1) and (1.4) to (7), sections 164.1 to 167 and Division J of Part I apply with such modifications as the circumstances require.

History: Subsec. 227(7.1) added by 1994, c. 21, subsec. 104(1), applicable to repayments made after December 21, 1992.

(8) Penalty — Subject to subsection (8.5), every person who in a calendar year has failed to deduct or withhold any amount as required by subsection 153(1) or section 215 is liable to a penalty of

(a) 10% of the amount that should have been deducted or withheld; or

(b) where at the time of the failure a penalty under this subsection was payable by the person in respect of an amount that should have been deducted or withheld during the year and the failure was made knowingly or under circumstances amounting to gross negligence, 20% of that amount.

Related Provisions: 147.1(3) — Deemed registration; 161(11) — Interest on penalties; 227(8.3) — Interest on amounts not deducted or withheld; 227(8.4) — Non-resident employees and patronage dividends; 227(9) — Penalty; 227(9.5) — Each establishment considered a separate person; 227(10) — Assessment; 227(10.2) — Joint and several liability re contributions to RCA; 252.1 — Where union is employer.

History: Para. 227(8)(b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 132(1), applicable after 1992, except with respect to amounts required to be remitted before 1993. Para. (b) formerly read:

(b) where the person had at the time of the failure been assessed a penalty under this subsection in respect of an amount that should have been deducted or withheld during the year, 20% of the amount that should have been deducted or withheld.

Selected Cases [subsec. 227(8)]: *Mollenhauer Ltd. v. Canada*, [1992] 2 C.T.C. 121 (FCTD) (Contractor which undertook to pay subcontractor's employees' "salary or wages or other remuneration" liable for failing to make and remit source deductions despite not being "employer"); *Comanche Drilling Ltd. (Receiver of) v. MNR*, [1989] 1 C.T.C. 428 (FCTD) (Receiver with power to borrow money to operate business liable for unremitted source deductions and penalty); *R. v. Moulton Ltd.*, [1976] C.T.C. 416 (FCTD) (In action against garnishee, Crown required to prove taxpayer liable to make payment under Act).

I.T. Application Rules: 62(2) (subsec. 227(8) applies to interest payable in respect of any period after December 23, 1971).

Interpretation Bulletins: IT-494: Hire of ships and aircraft from non-residents.

Information Circulars: 77-16R4: Non-resident income tax; 92-2: Guidelines for the cancellation and waiver of interest and penalties.

Transfer Pricing Memoranda: TPM-02: Repatriation of funds by non-residents — Part XIII assessments; TPM-06: Bundled transactions.

(8.1) Joint and several liability — Where a particular person has failed to deduct or withhold an amount as required under subsection 153(1) or section 215 in respect of an amount that has been paid to a non-resident person, the non-resident person is jointly and severally liable with the particular person to pay any interest payable by the particular person pursuant to subsection (8.3) in respect thereof.

Proposed Amendment — 227(8.1)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 275(2), will amend subsec. 227(8.1) by substituting "jointly and severally, or solidarily," for "jointly and severally", to come into force on Royal Assent.

Technical Notes: See under 12(4).

Related Provisions: 227(10) — Assessment.

(8.2) Retirement compensation arrangement deductions — Where a person has failed to deduct or withhold any amount as required under subsection 153(1) in respect of a contribution under a retirement compensation arrangement, that person is liable to pay to Her Majesty an amount equal to the amount of the contribution, and each payment on account of that amount is deemed to be, in the year in which the payment is made,

(a) for the purposes of paragraph 20(1)(r), a contribution by the person to the arrangement; and

(b) an amount on account of tax payable by the custodian under Part XI.3.

Related Provisions: 147.1(3) — Deemed registration; 153(1)(p) — Withholding required; 227(10) — Assessment; 227(10.2) — Joint and several liability re contributions to RCA; 252.1 — Where union is employer.

(8.3) Interest on amounts not deducted or withheld — A person who fails to deduct or withhold any amount as required by subsection 135(3), 153(1) or 211.8(2) or section 215 shall pay to the Receiver General interest on the amount at the prescribed rate, computed

Proposed Amendment — 227(8.3) opening words

(8.3) Interest on amounts not deducted or withheld — A person who fails to deduct or withhold any amount as required by subsection 135(3), 135.1(7), 153(1) or 211.8(2) or section 215 shall pay to the Receiver General interest on the amount at the prescribed rate, computed

Application: The August 15, 2005 draft legislation (2005 Budget second bill), subsec. 14(4), will amend the opening words of subsec. 227(8.3) to read as above, applicable after 2005.

Technical Notes: Subsection 227(8.3) provides that a person who fails to deduct or withhold an amount, as required by a number of specified provisions, is liable for interest with respect to the amount that person fails to deduct or withhold. The subsection is amended as a consequence of the addition of the new rules in section 135.1 relating to the payment of tax-deferred patronage dividends by agricultural cooperative corporations. In particular, subsection 227(8.3) is amended to refer to the withholding obligation on the redemption, acquisition or cancellation of a tax deferred co-operative share in subsection 135.1(7).

(a) in the case of an amount required by subsection 153(1) to be deducted or withheld from a payment to another person, from the fifteenth day of the month immediately following the month in which the amount was required to be deducted or withheld, or from such earlier day as may be prescribed for the purposes of subsection 153(1), to,

(i) where that other person is not resident in Canada, the day of payment of the amount to the Receiver General, and

(ii) where that other person is resident in Canada, the earlier of the day of payment of the amount to the Receiver General and April 30 of the year immediately following the year in which the amount was required to be deducted or withheld;

(b) in the case of an amount required by subsection 135(3) or section 215 to be deducted or withheld, from the day on which the amount was required to be deducted or withheld to the day of payment of the amount to the Receiver General; and

Proposed Amendment — 227(8.3)(b)

(b) in the case of an amount required by subsection 135(3) or 135.1(7) or section 215 to be deducted or withheld, from the day on which the amount was re-

quired to be deducted or withheld to the day of payment of the amount to the Receiver General; and

Application: The August 15, 2005 draft legislation (2005 Budget second bill), subsec. 14(5), will amend para. 227(8.3)(b) to read as above. applicable after 2005.

Technical Notes: See under 227(8.3) opening words.

(c) in the case of an amount required by subsection 211.8(2) to be withheld, from the day on or before which the amount was required to be remitted to the Receiver General to the day of the payment of the amount to the Receiver General.

Related Provisions: 221.1 — Application of interest where legislation retroactive; 227(8.1) — Joint and several liability; 227(10) — Assessment; 227(10.2) — Joint and several liability re contributions to RCA; 248(11) — Compound interest; 252.1 — Where union is employer.

History: The opening words of subsec. 227(8.3) amended, and para. (c) added, by 1997, c. 25, subsecs. 67(4), (5), applicable April 25, 1997. The opening words formerly read:

(8.3) A person who fails to deduct or withhold any amount as required by subsection 135(3) or 153(1) or section 215 shall pay to the Receiver General interest on the amount at the prescribed rate, computed

That portion of subsec. 227(8.3) preceding para. (a) substituted, para (b) amended to add reference to subsec. 135(3), by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 186(1), (2), applicable after July 13, 1990. That portion formerly read:

(8.3) Where a person has failed to deduct or withhold any amount as required by subsection 153(1) or section 215, the person shall pay to the Receiver General interest on the amount at the prescribed rate computed

Selected Cases [subsec. 227(8.3)]: *Wright v. R.*, [2001] 3 C.T.C. 2426 (TCC) (Where non-resident elects under s. 216, no further liability for withholding taxes under s. 215).

Regulations: 4301(a) (prescribed rate of interest).

Information Circulars: 92-2: Guidelines for the cancellation and waiver of interest and penalties.

(8.4) Liability to pay amount not deducted or withheld — A person who fails to deduct or withhold any amount as required under

(a) subsection 135(3) in respect of a payment made to another person, or

Proposed Amendment — 227(8.4)(a)

(a) (a) subsection 135(3) or 135.1(7) in respect of a payment made to another person, or

Application: The August 15, 2005 draft legislation (2005 Budget second bill), subsec. 14(6), will amend para. 227(8.4)(a) to read as above. applicable after 2005.

Technical Notes: Subsection 227(8.4) provides that where a payor is required under subsection 135(3) to deduct or withhold any amount in respect of a payment made to another person, or is required under subsection 153(1) to deduct or withhold an amount from a payment to a non-resident person has failed to do so, the payor is liable to pay tax under the Act the whole of the amount that should have been deducted or withheld and the payor may recover from the person any such amount paid on their behalf. The subsection is amended as a consequence of the addition of the new rules in section 135.1 relating to the payment of tax-deferred patronage dividends by agricultural cooperative corporations. In particular, subsection 227(8.4) is amended to refer to the withholding obligation on the redemption, acquisition or cancellation of a tax deferred cooperative share in subsection 135.1(7).

(b) subsection 153(1) in respect of an amount paid to another person who is non-resident or who is resident in Canada solely because of paragraph 250(1)(a)

is liable to pay as tax under this Act on behalf of the other person the whole of the amount that should have been so deducted or withheld and is entitled to deduct or withhold from any amount paid or credited by the person to the other person or otherwise to recover from the other person any amount paid by the person as tax under this Part on behalf of the other person.

Related Provisions: 215(6) — Parallel provision for non-resident withholding tax; 227(10) — Assessment.

History: Subsec. 227(8.4) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 186(3), applicable after July 13, 1990. Subsec. 227(8.4) formerly read:

(8.4) A person who has failed to deduct or withhold any amount as required under subsection 153(1) in respect of an amount paid to another person who is not resident in Canada, or who is resident in Canada only by reason of paragraph 250(1)(a), is liable to pay as tax under this Act on behalf of the other person the whole of the amount that should have been deducted or withheld, and is entitled to deduct or withhold from any amount the person pays or credits to the other person or otherwise recover from the other person any amount paid by the person as tax under this Part on behalf of the other person.

(8.5) [Repealed]

History: Subsec. 227(8.5) repealed by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 132(2), applicable after 1992, except with respect to amounts required to be remitted before 1993. Subsec. (8.5) formerly read:

(8.5) Payments from same establishment — Where a person has failed to deduct or withhold any amount in respect of a payment described in paragraph 153(1)(a), subsection (8) shall be read as follows:

"(8) Every person who in a calendar year has failed to deduct or withhold a particular amount as required by paragraph 153(1)(a) in respect of a payment made by the person from an establishment of the person is liable to a penalty of

(a) 10% of the particular amount that should have been deducted or withheld; or

(b) where the person had at the time of the failure been assessed a penalty under this subsection for failing to deduct or withhold during the year another amount so required to be deducted or withheld in respect of a payment made by the person from the same establishment of the person, 20% of the particular amount that should have been deducted or withheld."

(9) Penalty — Subject to subsection (9.5), every person who in a calendar year has failed to remit or pay as and when required by this Act or a regulation an amount deducted or withheld as required by this Act or a regulation or an amount of tax that the person is, by section 116 or by a regulation made under subsection 215(4), required to pay is liable to a penalty of

(a) 10% of that amount; or

(b) where at the time of the failure a penalty under this subsection was payable by the person in respect of an amount that should have been remitted or paid during the year and the failure was made knowingly or under circumstances amounting to gross negligence, 20% of that amount.

Proposed Amendment — Reduction in penalty for brief failure to remit

CCRA news release, June 20, 2003: *CCRA lowers the penalties on late payroll remittances*

The Canada Customs and Revenue Agency (CCRA) announced today that it will be lowering the penalties for employers who voluntarily pay their payroll remittances, but are a few days late. Starting in July, the CCRA will implement graduated penalty rates replacing the current flat penalty rate of 10%.

As a result of ongoing discussions with employers and associations, such as the Canadian Payroll Association, the CCRA agreed that the penalty structure needed to be less punitive. The CCRA is committed to building a fairer and more responsive taxation system, which focuses on good performance and deters employers who chronically remit late.

This is good news for employers who make every effort to remit but are late within a few days of the due date. With the new revised structure, penalties of 3% will be applied to remittances that are late 3 days or less,

5% for remittances that are 4 or 5 days late, 7% for remittances that are 6 or 7 days late, and 10% for remittances that are 8 or more days late.

There will be no changes to the penalty for failing to deduct or withhold. Employers who fail to remit or pay as and when required will still be subject to penalties of 10%, or 20% when the failure was made knowingly or under circumstances amounting to gross negligence.

The CCRA is implementing this change as a pilot project and will inform employers of this new penalty structure. Starting June 23, 2003, a verse explaining the incremental structure will be included on statements of payroll accounts sent to employers. Please note that the fairness provision to cancel or waive penalty and interest continues to apply.

Related Provisions: 227(8) — Penalty; 227(9.1) — Penalty; 227(9.3) — Interest on certain tax not paid; 227(9.5) — Each establishment considered a separate person; 227(10.1) — Assessment; 227(10.2) — Joint and several liability re contributions to RCA; 248(7) — Receipt of things mailed; 252.1 — Where union is employer.

History: Para. 227(9)(b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 132(3), applicable after 1992, except with respect to amounts required to be remitted before 1993. Para. (9)(b) formerly read:

> (b) 20% of that amount, where the person had at the time of the failure been assessed a penalty under this subsection in respect of a previous failure during the year.

Selected Cases [subsec. 227(9)]: *Storrie v. Canada*, [1996] 2 C.T.C. 2596 (TCC) (Lack of clarity resolved in favour of taxpayer); *Cana Construction Co. v. Canada*, [1995] 1 C.T.C. 2122 (TCC) (Prime contractor maintained full control of funds to pay wages and required to withhold source deduction); *Electrocan Systems Ltd. v. Canada*, [1989] 1 C.T.C. 244 (FCA) (Late remittance resulted in penalty); *A.G. Can. v. Coopers and Lybrand Ltd.*, 86 D.T.C. 6243 (BC SC) (Penalty imposed after date of filing bankruptcy proposal not provable claim).

Regulations: Part I (amount required to be withheld).

I.T. Application Rules: 62(2) (subsec. 227(9) applies to interest payable in respect of any period after December 23, 1971).

Information Circulars: 92-2: Guidelines for the cancellation and waiver of interest and penalties.

(9.1) Penalty — Notwithstanding any other provision of this Act, any other enactment of Canada, any enactment of a province or any other law, the penalty for failure to remit an amount required to be remitted by a person on or before a prescribed date under subsection 153(1), subsection 21(1) of the *Canada Pension Plan*, subsection 53(1) of the *Unemployment Insurance Act* and subsection 82(1) of the *Employment Insurance Act* shall, unless the person who is required to remit the amount has, knowingly or under circumstances amounting to gross negligence, delayed in remitting the amount or has, knowingly or under circumstances amounting to gross negligence, remitted an amount less than the amount required, apply only to the amount by which the total of all amounts so required to be remitted on or before that date exceeds $500.

History: Subsec. 227(9.1) amended by 1998, c. 19, subsec. 226(2), deemed to have come into force on June 30, 1996. Subsec. 227(9.1) formerly read:

> (9.1) Idem — Notwithstanding any other provision of this Act, any other enactment of Canada, any enactment of Canada, any enactment of a province or any other law, the penalty for failure to remit an amount required to be remitted by a person on or before a prescribed date under subsection 153(1), subsection 21(1) of the *Canada Pension Plan* and subsection 82(1) of the *Employment Insurance Act* shall, unless the person who is required to remit the amount has, knowingly or under circumstances amounting to gross negligence, delayed in remitting the amount or has, knowingly or under circumstances amounting to gross negligence, remitted an amount less than the amount required, apply only to the amount by which the total of all amounts so required to be remitted on or before that date exceeds $500.

Subsec. 227(9.1) amended by 1996, c. 23, s. 176, in force June 30, 1996. Subsec. (9.1) formerly read:

> (9.1) Notwithstanding any other provision of this Act, any other enactment of Canada, any enactment of a province or any other law, the penalty for failure to remit an amount required to be remitted by a person on or before a prescribed date under subsection 153(1), subsection 21(1) of the *Canada Pension Plan* and subsection 53(1) of the *Unemployment Insurance Act* shall, unless the person who is required to remit the amount has, knowingly or under circumstances amounting to gross negligence, delayed in remitting the amount or has, knowingly or under circumstances amounting to gross negligence, remitted an amount less than the amount required, apply only to the amount by which the total of all amounts so required to be remitted on or before that date exceeds $500.

Subsec. 227(9.1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 132(4), applicable after 1992, except with respect to amounts required to be remitted before 1993. Subsec. (9.1) formerly read:

> (9.1) Notwithstanding any other provision of this Act, any other enactment of Canada, any enactment of a province or any law, the penalty for failure to remit an amount required to be remitted by a person on or before a prescribed date under subsection 153(1), subsection 21(1) of the *Canada Pension Plan* and subsection 53(1) of the *Unemployment Insurance Act* shall, unless the person required to remit the amount has wilfully delayed in remitting the amount or wilfully remitted an amount less than the amount required, apply only to the amount by which the total of all amounts each of which is an amount so required to be remitted on or before that date exceeds $500.

(9.2) Interest on amounts deducted or withheld but not remitted — Where a person has failed to remit as and when required by this Act or a regulation an amount deducted or withheld as required by this Act or a regulation, the person shall pay to the Receiver General interest on the amount at the prescribed rate computed from the day on which the person was so required to remit the amount to the day of remittance of the amount to the Receiver General.

Related Provisions: 221.1 — Application of interest where legislation retroactive; 227(10.1) — Assessment; 227(10.2) — Joint and several liability re contributions to RCA; 248(11) — Compound interest; 252.1 — Where union is employer.

Regulations: 4301(a) (prescribed rate of interest).

Information Circulars: 92-2: Guidelines for the cancellation and waiver of interest and penalties.

(9.3) Interest on certain tax not paid — Where a person fails to pay an amount of tax that, because of section 116, subsection 212(19) or a regulation made under subsection 215(4), the person is required to pay, as and when the person is required to pay it, the person shall pay to the Receiver General interest on the amount at the prescribed rate computed from the day on or before which the amount was required to be paid to the day of payment of the amount to the Receiver General.

Related Provisions: 221.1 — Application of interest where legislation retroactive; 227(10.1) — Assessment; 248(11) — Compound interest.

History: Subsec. 227(9.3) substituted by 1994, c. 21, subsec. 104(2), applicable after May 28, 1993. That subsec. formerly read:

> (9.3) Where a person has failed to pay an amount of tax that the person is, by section 116 or a regulation made under subsection 215(4), required to pay, as and when the person was so required to pay it, the person shall pay to the Receiver General interest on the amount at the prescribed rate computed from the day on or before which the amount was required to be paid to the day of payment of the amount to the Receiver General.

Regulations: 4301 (prescribed rate of interest).

(9.4) Liability to pay amount not remitted — A person who has failed to remit as and when required by this Act or a regulation an amount deducted or withheld from a payment to another person as required by this Act or a regulation is liable to pay as tax under this Act on behalf of the other person the amount so deducted or withheld.

Related Provisions: 227(10.1) — Assessment; 227(10.2) — Joint and several liability re contributions to RCA; 252.1 — Where union is employer.

(9.5) Payment from same establishment — In applying paragraphs (8)(b) and (9)(b) in respect of an amount required by paragraph 153(1)(a) to be deducted or withheld, each establishment of a person shall be deemed to be a separate person.

History: Subsec. 227(9.5) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 132(5), applicable after 1992, except with respect to amounts required to be remitted before 1993. Subsec. (9.5) formerly read:

(9.5) Where a person has failed to remit or pay an amount deducted or withheld in respect of a payment described in paragraph 153(1)(a), subsection (9) shall be read as follows:

"(9) Every person who in a calendar year has failed to remit or pay as and when required by this Act or a regulation a particular amount deducted or withheld as required by paragraph 153(1)(a) in respect of a payment made by the person from an establishment of the person is liable to a penalty of

(a) 10% of the particular amount that should have been remitted or paid; or

(b) where the person had at the time of the failure been assessed a penalty under this subsection for failure to remit or pay during the year another amount so required to be remitted or paid in respect of an amount so deducted or withheld by the person in respect of a payment made by the person from the same establishment of the person, 20% of the amount that should have been remitted or paid."

Information Circulars: 92-2: Guidelines for the cancellation and waiver of interest and penalties.

(10) Assessment — The Minister may at any time assess any amount payable under

(a) subsection (8), (8.1), (8.2), (8.3) or (8.4) or 224(4) or (4.1) or section 227.1 or 235 by a person,

(b) subsection 237.1(7.4) by a person or partnership,

(c) subsection (10.2) by a person as a consequence of a failure of a non-resident person to deduct or withhold any amount, or

(d) Part XIII by a person resident in Canada,

and, where the Minister sends a notice of assessment to that person or partnership, Divisions I and J of Part I apply with any modifications that the circumstances require.

Related Provisions: 222(5)(c) — Restart of 10-year collection limitation period.

History: Subsec. 227(10) amended by 1998, c. 19, subsec. 226(3), applicable after December 1, 1994. Subsec. 227(10) formerly read:

(10) The Minister may assess

(a) any person for any amount payable by that person under subsection (8), (8.1), (8.2), (8.3) or (8.4) or 224(4) or (4.1) or section 227.1 or 235,

(a.1) any person for any amount payable under subsection (10.2) by the person as a consequence of a failure by a non-resident person to deduct or withhold any amount, and

(b) any person resident in Canada for any amount payable by that person under Part XIII,

and, where the Minister sends a notice of assessment to that person, Divisions I and J of Part I are applicable with such modifications as the circumstances require.

Para. 227(10)(a.1) added by 1994, c. 21, subsec. 104(3), applicable June 15, 1994.

Para. 227(10)(a) amended to add reference to s. 235 by 1994, c. 7, Sch. II (1991, c. 49), subsec. 186(4).

Selected Cases [subsec. 227(10)]: *Markevich v. Canada*, [1999] 2 C.T.C. 104 (FCTD) (Provincial limitation statutes do not override Act).

(10.01) Part XII.5 [assessment] — The Minister may at any time assess any amount payable under Part XII.5 by a person resident in Canada and, where the Minister sends a notice of assessment to that person, Divisions I and J of Part I apply with any modifications that the circumstances require.

History: Subsec. 227(10.01) added by 1997, c. 25, subsec. 67(6), applicable April 25, 1997.

(10.1) Idem — The Minister may at any time assess

(a) any amount payable under section 116 or subsection (9), (9.2), (9.3) or (9.4) by any person,

(b) any amount payable under subsection (10.2) by any person as a consequence of a failure by a non-resident person to remit any amount, and

(c) any amount payable under Part XII.5 or XIII by any non-resident person,

and, where the Minister sends a notice of assessment to the person, sections 150 to 163, subsections 164(1) and (1.4) to (7), sections 164.1 to 167 and Division J of Part I apply with such modifications as the circumstances require.

Related Provisions: 224(1.2) — Garnishment of payments redirected to secured creditors.

History: Paras. 227(10.1)(a) to (c) substituted for paras. (a) to (b) by 1997, c. 25, subsec. 67(7), applicable April 25, 1997. Paras. (a) to (b) formerly read:

(a) any person for any amount payable under section 116 or subsection (9), (9.2), (9.3) or (9.4) by the person,

(a.1) any person for any amount payable under subsection (10.2) by the person as a consequence of a failure by a non-resident person to remit any amount, and

(b) any non-resident person for any amount payable under Part XIII by the person,

Subsec. 227(10.1) substituted by 1994, c. 21, subsec. 104(4), applicable to amounts that become payable after 1990 except that, in applying subsec. 227(10.1) to amounts that became payable before June 15, 1994, it shall be read without reference to para. (a.1) thereof. That subsec. formerly read:

(10.1) Idem — The Minister may assess

(a) any person for any amount payable by that person under subsection (9), (9.2), (9.3) or (9.4), and

(b) any non-resident person for any amount payable by that person under Part XIII,

and, where the Minister sends a notice of assessment to that person, sections 150 to 163, subsections 164(1) and (1.4) to (7), sections 164.1 to 167 and Division J of Part I are applicable with such modifications as the circumstances require.

Selected Cases [subsec. 227(10.1)]: *Re United Used Auto & Truck Parts Ltd.*, [2000] 3 C.T.C. 338 (BC SC) (Requirement to pay requires underlying assessment); *Spa Springs Parks Ltd. v. Mineral Water Company of Canada Ltd.*, [1992] 2 C.T.C. 154 (NS TD) (Crown priority extends to related interest and penalties).

(10.2) Joint and several liability re contributions to RCA — Where a non-resident person fails to deduct, withhold or remit an amount as required by subsection 153(1) in respect of a contribution under a retirement compensation arrangement that is paid on behalf of the employees or former employees of an employer with whom the non-resident person does not deal at arm's length, the employer is jointly and severally liable with the non-resident person to pay any amount payable under subsection (8), (8.2), (8.3), (9), (9.2) or (9.4) by the non-resident person in respect of the contribution.

Proposed Amendment — 227(10.2)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 275(3), will amend subsec. 227(10.2) by substituting "jointly and severally, or solidarily," for "jointly and severally", to come into force on Royal Assent.

Technical Notes: See under 12(4).

Related Provisions: 227(10)(c) — Assessment for failure to deduct or withhold; 227(10.1)(c) — Assessment for failure to remit tax.

History: Subsec. 227(10.2) added by 1994, c. 21, subsec. 104(5), applicable June 15, 1994.

Former (10.2), (10.3)–(10.9) [Repealed]

History: Former subsec. 227(10.2), and subsec. (10.3) to (10.9), repealed by 1993, c. 24, s. 153. (Subsec. (10.9), which was added in the R.S.C. 1985 (5th Supp.) consolidation, taking the place of the application rule in 1986, c. 6, subsec. 118(4), provided that subsecs. (10.2) to (10.8) would come into force on a day to be proclaimed. That proclamation never occurred.)

(11) Withholding tax — Provisions of this Act requiring a person to deduct or withhold an amount in respect of taxes from amounts payable to a taxpayer are applicable to Her Majesty in right of Canada or a province.

(12) Agreement not to deduct void — Where this Act requires an amount to be deducted or withheld, an agreement by the person on whom that obligation is imposed not to deduct or withhold is void.

(13) Minister's receipt discharges debtor — The receipt of the Minister for an amount deducted or withheld by any person as required by or under this Act is a good and sufficient discharge of the liability of any debtor to the debtor's creditor with respect thereto to the extent of the amount referred to in the receipt.

(14) Application of other Parts — Parts IV, IV.1, VI and VI.1 do not apply to any corporation for any period throughout which it is exempt from tax because of section 149.

Related Provisions: 181.1(3)(c) — Exemption from Part I.3 tax; 186.1 — Part IV tax — exempt corporations; 219(2) — Part XIV tax — exempt corporations; 227(16) — Part IV tax — municipal or provincial corporation.

History: Subsec. 227(14) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 186(5), applicable to any period or part of a period referred to in the subsec. that is after 1989. Subsec. (14) formerly read:

> (14) Where Parts III, IV, IV.1, VI and VI.1 are not applicable — Parts III, IV, IV.1, VI and VI.1 are not applicable to any corporation for any period throughout which it is exempt from tax under section 149.

Interpretation Bulletins: IT-269R3: Part IV tax on taxable dividends received by a private corporation or a subject corporation; IT-347R2: Crown corporations (archived); IT-496R: Non-profit organizations.

(15) Partnership included in "person" — In this section, a reference to a "person" with respect to any amount deducted or withheld or required to be deducted or withheld is deemed to include a partnership.

Related Provisions: 96 — Partnerships and their members; 212(13.1) — Application of Part XIII tax to partnership; 227(5.2) — "Person" includes partnership for purposes of certain provisions.

History: Subsec. 227(15) amended by 1997, c. 25, subsec. 67(8), applicable April 25, 1997. Subsec. (15) formerly read:

> (15) In this section a reference to "person" with respect to any amount or any tax deducted or withheld from an amount under Part XIII shall be deemed to include a partnership that is with respect to that amount deemed for the purposes of that Part to be a person resident in Canada or a non-resident person.

(16) Municipal or provincial corporation excepted — A corporation that at any time in a taxation year would be a corporation described in any of paragraphs 149(1)(d) to (d.6) but for a provision of an appropriation Act is deemed not to be a private corporation for the purposes of Part IV with respect to that year.

History: Subsec. 227(16) amended by 2001, c. 17, subsec. 180(2), applicable to taxation years that begin after 1998. It formerly read:

> (16) A corporation that at any time during the taxation year would be a corporation described in paragraph 149(1)(d) but for a provision of an appropriation Act shall be deemed not to be a private corporation for the purposes of Part IV.

Interpretation Bulletins [subsec. 227(16)]: IT-269R3: Part IV tax on taxable dividends received by a private corporation or a subject corporation; IT-347R2: Crown corporations (archived).

Definitions [s. 227]: "Act" — *Interpretation Act* 35(1); "amount", "assessment" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "common-law partnership" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "custodian" — 248(1)"retirement compensation arrangement"; "employee", "employer" — 248(1); "estate" — 104(1), 248(1); "Her Majesty" — *Interpretation Act* 35(1); "Minister", "non-resident" — 248(1); "person" — 227(5.2), (15), 248(1); "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "private corporation" — 89(1), 248(1); "property" — 248(1); "province" — *Interpretation Act* 35(1); "public corporation" — 89(1), 248(1); "regulation" — 248(1); "resident in Canada" — 250; "retirement compensation arrangement", "salary or wages" — 248(1); "secured creditor" — 224(1.3); "security interest" — 224(1.3), 227(4.2); "series" — 248(10); "specified person" — 227(5.1); "tax payable" — 248(2); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

227.1 (1) Liability of directors for failure to deduct — Where a corporation has failed to deduct or withhold an amount as required by subsection 135(3) or section 153 or 215, has failed to remit such an amount or has failed to pay an amount of tax for a taxation year as required under Part VII or VIII, the directors of the corporation at the time the corporation was required to deduct, withhold, remit or pay the amount are jointly and severally liable, together with the corporation, to pay that amount and any interest or penalties relating thereto.

Proposed Amendment — 227.1(1)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), s. 276, will amend subsec. 227.1(1) by substituting "jointly and severally, or solidarily," for "jointly and severally", to come into force on Royal Assent.

Technical Notes: See under 12(4).

Proposed Amendment — 227.1(1)

(1) Liability of directors for failure to deduct — Where a corporation has failed to deduct or withhold an amount as required by subsection 135(3) or 135.1(7) or section 153 or 215, has failed to remit such an amount or has failed to pay an amount of tax for a taxation year as required under Part VII or VIII, the directors of the corporation at the time the corporation was required to deduct, withhold, remit or pay the amount are jointly and severally, or solidarily, liable, together with the corporation, to pay that amount and any interest or penalties relating to it.

Application: The August 15, 2005 draft legislation (2005 Budget second bill), s. 15, will amend subsec. 227.1(1) to read as above, applicable after 2005.

Technical Notes: Subsection 227.1(1) provides that directors of a corporation are jointly and severally, or solidarily, liable in specific circumstances for the withholding tax obligations imposed on the corporation under section 135, 153 or 215. The subsection is amended as a consequence of the addition of the new rules in section 135.1 relating to the payment of tax-deferred patronage dividends by agricultural cooperative corporations. In particular, subsection 227.1(1) is amended to refer to the withholding obligation on the redemption, acquisition or cancellation of a tax deferred cooperative share in subsection 135.1(7).

Related Provisions: 159(2) — Requirement for clearance certificate before distributing property; 204.87 — S. 227.1 applies to Part X.3 tax; 222(5)(c) — Restart of 10-year collection limitation period when director assessed under 227(10)(a); 227(10) — Assessment; 236 — Execution of documents by corporations; 242 — Officers and directors guilty of corporation's offences.

Selected Cases [subsec. 227.1(1)]: *Dirienzo v. R.*, [2000] 3 C.T.C. 2363 (TCC) (Mere formal position as director may not engender vicarious liability); *Holmes v. R.*, [2000] 3 C.T.C. 2235 (TCC) (Franchisor's exercise of control removed powers of directors to act); *Wheeliker v. R.* (April

20, 2000), File 27319 (SCC); leave to appeal refused from [1999] 2 C.T.C. 395 (FCA); rev'g [1998] 1 C.T.C. 2021 (TCC) (Provisions apply to volunteer directors as well as professionals); *Storrie v. Canada*, [1996] 2 C.T.C. 2596 (TCC) (Lack of clarity resolved in favour of taxpayer); *MacCormack v. MNR*, [1995] 2 C.T.C. 2410D (TCC) (Distinctions between directors who are liable and those who are not); *Roll v. MNR*, [1992] 2 C.T.C. 2060 (TCC); appealed to FCTD (July 14, 1992), File T-1736-92 (Director liable for failure to remit source deductions prior to date of resignation); *Robitaille v. Canada*, [1990] 1 C.T.C. 121 (FCTD) (Where decisions as to cheques issued from accounts of company in liquidation made by the bank appointed as controller, no liability of directors); *Danielson v. MNR*, [1986] 2 C.T.C. 341 (FCTD) (Assessment pursuant to provision cannot be quashed by way of application for *certiorari*); *Danielson v. Dep. A.G. Can.*, [1986] 2 C.T.C. 42 (FCTD) (Pending determination of ultimate liability, interim injunction against execution of seizure granted to director having no active role in company's affairs nor knowledge of its business).

Information Circulars: 89-2R: Directors' liability — s. 227.1 of the *Income Tax Act* and s. 323 of the *Excise Tax Act*; 98-1R: Collections policies.

(2) Limitations on liability — A director is not liable under subsection (1), unless

(a) a certificate for the amount of the corporation's liability referred to in that subsection has been registered in the Federal Court under section 223 and execution for that amount has been returned unsatisfied in whole or in part;

(b) the corporation has commenced liquidation or dissolution proceedings or has been dissolved and a claim for the amount of the corporation's liability referred to in that subsection has been proved within six months after the earlier of the date of commencement of the proceedings and the date of dissolution; or

(c) the corporation has made an assignment or a bankruptcy order has been made against it under the *Bankruptcy and Insolvency Act* and a claim for the amount of the corporation's liability referred to in that subsection has been proved within six months after the date of the assignment or bankruptcy order.

History: Para. 227.1(2)(c) amended by 2004, c. 25, s. 202 to replace both instances of "receiving order" with "bankruptcy order", in force December 15, 2004.

Para. 227.1(2)(c) amended by 1992, c. 27, para. 90(1)(q), to substitute "*Bankruptcy and Insolvency Act*" for "*Bankruptcy Act*", deemed to have come into force November 30, 1992.

Selected Cases [subsec. 227.1(2)]: *Murray v. R.*, [1997] 3 C.T.C. 2971 (TCC) (Duty of director is to prevent failure to make source deductions, not fix the problem after the fact); *Kyte v. Canada*, [1997] 2 C.T.C. 15 (FCA) (Correct amount in certificate merely directory, not mandatory); *Kyte v. Canada*, [1996] 1 C.T.C. 151 (FCTD) (Error in directory provision of the Act does not invalidate assessment).

Information Circulars: 89-2R: Directors' liability — s. 227.1 of the *Income Tax Act* and s. 323 of the *Excise Tax Act*.

(3) Idem — A director is not liable for a failure under subsection (1) where the director exercised the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

Selected Cases [subsec. 227.1(3)]: *Mann v. R.*, [2005] 1 C.T.C. 2744 (TCC) (Outside director who sought and received assurances that source deductions made and remitted not liable); *Cameron v. R.*, [2001] 3 C.T.C. 200 (FCA) (Due diligence falls short of perfection or being foolproof); *Rulton v. R.*, [2001] 2 C.T.C. 2213 (TCC) (Test for due diligence not purely subjective); *Dirienzo v. R.*, [2000] 3 C.T.C. 2363 (TCC) (Mere formal position as director may not engender vicarious liability); *Holmes v. R.*, [2000] 3 C.T.C. 2235 (TCC) (Franchisor's exercise of control removed powers of directors to act); *Cadrin v. R.*, [1999] 3 C.T.C. 366 (FCA) (Despite different standards for outside directors, they cannot be completely passive); *Sanford v. Canada*, [1996] 1 C.T.C. 2016 (TCC) ("Minimal" director exercised sufficient due diligence); *Edwards v. MNR*, [1995] 1 C.T.C. 2373 (TCC) (Due diligence required is to prevent failure to make remittances, not to cure default after the fact); *Hadad v. Canada*, [1994] 2 C.T.C. 2214 (TCC) (Failure to be prescient about fall in price of crude oil not equated to lack of care, diligence and skill).

Information Circulars: 89-2R: Directors' liability — s. 227.1 of the *Income Tax Act* and s. 323 of the *Excise Tax Act*.

(4) Limitation period — No action or proceedings to recover any amount payable by a director of a corporation under subsection (1) shall be commenced more than two years after the director last ceased to be a director of that corporation.

Selected Cases [subsec. 227.1(4)]: *Markevich v. Canada*, [1999] 2 C.T.C. 104 (FCTD) (Provincial limitation statutes do not override Act).

Information Circulars: 89-2R: Directors' liability — s. 227.1 of the *Income Tax Act* and s. 323 of the *Excise Tax Act*.

(5) Amount recoverable — Where execution referred to in paragraph (2)(a) has issued, the amount recoverable from a director is the amount remaining unsatisfied after execution.

(6) Preference — Where a director pays an amount in respect of a corporation's liability referred to in subsection (1) that is proved in liquidation, dissolution or bankruptcy proceedings, the director is entitled to any preference that Her Majesty in right of Canada would have been entitled to had that amount not been so paid and, where a certificate that relates to that amount has been registered, the director is entitled to an assignment of the certificate to the extent of the director's payment, which assignment the Minister is hereby empowered to make.

(7) Contribution — A director who has satisfied a claim under this section is entitled to contribution from the other directors who were liable for the claim.

Selected Cases [s. 227.1]: *McKinnon v. R.*, [2004] 2 C.T.C. 2302 (TCC) (Cash shortage could not have been foreseen by director; due diligence defence allowed); *Pitchford v. R.*, [2003] 3 C.T.C. 2853 (TCC) (Hope of eventual tax credits to fund source deduction insufficient due diligence defence); *Worrell v. R.*, [2001] 1 C.T.C. 79 (FCA) (Principles of due diligence defence considered; effort must be directed to prevent failure to remit); *Cadrin v. R.*, [1999] 3 C.T.C. 366 (FCA) (Despite different standards for outside directors, they cannot be completely passive); *Wheeliker v. R.* (April 20, 2000), File 27319 (SCC); leave to appeal refused from [1999] 2 C.T.C. 395 (FCA); rev'g [1998] 1 C.T.C. 2021 (TCC) (Provisions apply to volunteer directors as well as professionals); *Soper v. R.*, [1997] 3 C.T.C. 242 (FCA) (Standard of care is "objective subjective" and directors not to be considered as homogeneous group of professionals with single, unchanging standard of conduct); *Temple v. R.*, [1997] 2 C.T.C. 2678 (TCC) ("Deemed" employer not liable for source deductions); *Giglio v. R.*, [1997] 2 C.T.C. 2608 (TCC) (Resignation as director not effective retroactively); *Kalef v. Canada*, [1996] 2 C.T.C. 1 (FCA) (Appointment of trustee does cause director to cease to hold office); *Page v. Canada*, [1996] 1 C.T.C. 2697 (TCC) (Minister ordered to produce records, but not tax returns, relating to decision not to assess other directors); *Wollitzer v. Canada*, [1995] 1 C.T.C. 2996 (TCC) (Minister failed to prove that proof of claim was filed in bankruptcy proceedings; claim against director dismissed); *Lindthaler (M.G.) v. MNR*, [1992] 2 C.T.C. 2570 (TCC) (Assessment setting out only one global amount of liability under four statutes invalid); *Corazza (F.) v. MNR*, [1992] 2 C.T.C. 2023 (TCC) (Assessment setting out only one global amount of liability under four statutes invalid); *Re Norris*, [1989] 2 C.T.C. 185 (Ont CA) (Notice of assessment sufficient documentation to file proof of claim under *Bankruptcy Act*); *MNR v. Reaume*, [1989] 1 C.T.C. 267 (FCA) (Assessment "in respect of liability under s. 227.1 of the *Income Tax Act*" does not include liabilities under other statutes).

Definitions [s. 227.1]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "Federal Court" — *Federal Courts Act* s. 4; "Her Majesty" — *Interpretation Act* 35(1); "Minister" — 248(1).

228. Applying payments under collection agreements — Where a payment is made to the Minister on account of tax under this Act, an Act of a province that imposes a tax similar to the tax imposed under this Act, or any two or more such Acts, such part of that payment as

is applied by the Minister in accordance with the provisions of a collection agreement entered into under Part III of the *Federal-Provincial Fiscal Arrangements Act* against the tax payable by a taxpayer for a taxation year under this Act discharges the liability of the taxpayer for that tax only to the extent of the part of the payment so applied, notwithstanding that the taxpayer directed that the payment be applied in a manner other than that provided in the collection agreement or made no direction as to its application.

Related Provisions: 154 — Tax transfer payments.

History: S. 228 amended by 1995, c. 17, subsec. 45(2), to substitute "*Federal-Provincial Fiscal Arrangements Act*" for "*Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act*", in force April 1, 1996.

Definitions [s. 228]: "Minister" — 248(1); "province" — *Interpretation Act* 35(1); "taxation year" — 249; "taxpayer" — 248(1).

229. Receipt of taxes by banks — A chartered bank in Canada shall receive for deposit, without any charge for discount or commission, any cheque made payable to the Receiver General in payment of tax, interest or penalty imposed by this Act, whether drawn on the bank receiving the cheque or on any other chartered bank in Canada.

History: S. 229 repealed by R.S.C. 1985, c. 1 (5th Supp.), s. 229.1, applicable as of a day to be fixed by proclamation.

"Receiver General" substituted for "Receiver General of Canada" by 1980-81-82-83, c. 48, s. 115.

Definitions [s. 229]: "bank" — 248(1); "Canada" — 255, *Interpretation Act* 35(1).

229.1 (1) Section 229 is repealed.

(2) Subsection (1) shall come into force on a day to be fixed by proclamation.

Origin of 229.1: S. 229.1 enacted by R.S.C. 1985, c. 1 (5th Supp.). (Formerly contained in S.C. 1986, c. 6, s. 119.)

Definitions [s. 229.1]: "proclamation" — *Interpretation Act* 35(1).

General

230. (1) Records and books — Every person carrying on business and every person who is required, by or pursuant to this Act, to pay or collect taxes or other amounts shall keep records and books of account (including an annual inventory kept in prescribed manner) at the person's place of business or residence in Canada or at such other place as may be designated by the Minister, in such form and containing such information as will enable the taxes payable under this Act or the taxes or other amounts that should have been deducted, withheld or collected to be determined.

Related Provisions: 150.1(4) — Record of return filed electronically; 230(4.1) — Requirement to keep electronic records; 238(1) — Punishment for failing to comply.

Regulations: 1800 (prescribed manner of keeping inventory).

Information Circulars: 77-9R: Books, records and other requirements for taxpayers having foreign affiliates; 78-10R4: Books and records retention/destruction; 05-1: Electronic record keeping.

Forms: RC4409: Keeping records [guide].

(1.1) [Repealed under former Act]

(2) Idem — Every registered charity and registered Canadian amateur athletic association shall keep records and books of account at an address in Canada recorded with the Minister or designated by the Minister containing

(a) information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under this Act;

(b) a duplicate of each receipt containing prescribed information for a donation received by it; and

(c) other information in such form as will enable the Minister to verify the donations to it for which a deduction or tax credit is available under this Act.

Related Provisions: 149.1(6.4) — Rules apply to registered national arts service organizations; 168(1)(e) — Revocation of charity registration for failing to comply; 188.2(2)(a) — Suspension of charity's receipting privileges for failing to comply; 238(1) — Punishment for failing to comply.

History: Subsec. 230(2) substituted by 1994, c. 21, s. 105, applicable after December 21, 1992. That subsec. formerly read:

> (2) Idem, charities, etc. — Every registered charity and registered Canadian amateur athletic association shall keep records and books of account (including a duplicate of each receipt containing prescribed information for a donation received by it) at an address in Canada recorded with the Minister or designated by the Minister in such form and containing such information as will enable the donations to it that are deductible under this Act to be verified.

Regulations: 216 (information return); 3502 (prescribed information for receipts).

Information Circulars: 78-10R4: Books and records retention/destruction.

Registered Charities Newsletters: 5 (where and why does the Department require your registered charity to keep books and records?); 10 (books and records); 13 (about auditing charities); 20 (financial controls — books and records [when operating outside Canada]).

Charities Policies: CPS-007: RCAAAs: Receipts — issuing policy; CPS-014: Computer-generated official donation receipts.

Forms: RC4108: Registered charities and the *Income Tax Act* [guide].

(2.1) Idem, lawyers — For greater certainty, the records and books of account required by subsection (1) to be kept by a person carrying on business as a lawyer (within the meaning assigned by subsection 232(1)) whether by means of a partnership or otherwise, include all accounting records of the lawyer, including supporting vouchers and cheques.

Selected Cases [subsec. 230(2.1)]: *Heath v. Canada*, [1990] 2 C.T.C. 28 (BC SC) (Solicitor's trust account ledger was on "accounting record of a lawyer" subject to Crown's inspection).

(3) Minister's requirement to keep records, etc. — Where a person has failed to keep adequate records and books of account for the purposes of this Act, the Minister may require the person to keep such records and books of account as the Minister may specify and that person shall thereafter keep records and books of account as so required.

Related Provisions: 230.1(3) — Application to political party's or candidate's records; 238(1) — Punishment for failing to comply.

Selected Cases [subsec. 230(3)]: *Merchant (2000) Ltd. v. Canada (A.-G.)*, [2000] 3 C.T.C. 291 (FCTD) (Minister not entitled to serve requirement to keep adequate books and records); *Canada v. McKinlay Transport Ltd.*, [1990] 2 C.T.C. 103 (SCC) (Crown's demand under provision amounted to seizure within s. 8 of the *Charter*, but not an unreasonable one; such demand can be contested on ground that Minister engaged in fishing expedition).

Information Circulars: 78-10R4: Books and records retention/destruction; 05-1: Electronic record keeping.

(4) Limitation period for keeping records, etc. — Every person required by this section to keep records and books of account shall retain

(a) the records and books of account referred to in this section in respect of which a period is prescribed, to-

gether with every account and voucher necessary to verify the information contained therein, for such period as is prescribed; and

(b) all other records and books of account referred to in this section, together with every account and voucher necessary to verify the information contained therein, until the expiration of six years from the end of the last taxation year to which the records and books of account relate.

Related Provisions: 150.1(4) — Record of return filed electronically; 168(1)(e) — Revocation of charity registration for failing to comply; 188.2(2)(a) — Suspension of charity's receipting privileges for failing to comply; 230(4.1) — Requirement to keep electronic records; 230.1(3) — Application to political party's or candidate's records; 238(1) — Punishment for failing to comply.

Regulations: 5800 (required retention periods).

Information Circulars: 78-10R4: Books and records retention/destruction; 05-1: Electronic record keeping.

Forms: RC4108: Registered charities and the *Income Tax Act* [guide]; T137: Request for destruction of books and records.

(4.1) Electronic records — Every person required by this section to keep records who does so electronically shall retain them in an electronically readable format for the retention period referred to in subsection (4).

Related Provisions: 230(4.2) — Exemption from requirement; 238(1) — Punishment for failing to comply.

History: Subsec. 230(4.1) added by 1998, c. 19, s. 227, in force June 18, 1998.

Information Circulars: 78-10R4: Books and records retention/destruction; 05-1: Electronic record keeping.

(4.2) Exemptions — The Minister may, on such terms and conditions as are acceptable to the Minister, exempt a person or a class of persons from the requirement in subsection (4.1).

History: Subsec. 230(4.2) added by 1998, c. 19, s. 227, in force June 18, 1998.

Information Circulars: 78-10R4: Books and records retention/destruction; 05-1: Electronic record keeping.

(5) Exception — Where, in respect of any taxation year, a person referred to in subsection (1) has not filed a return with the Minister as and when required by section 150, that person shall retain every record and book of account that is required by this section to be kept and that relates to that taxation year, together with every account and voucher necessary to verify the information contained therein, until the expiration of six years from the day the return for that taxation year is filed.

Related Provisions: 238(1) — Punishment for failing to comply.

(6) Exception where objection or appeal — Where a person required by this section to keep records and books of account serves a notice of objection or where that person is a party to an appeal to the Tax Court of Canada under this Act, that person shall retain every record, book of account, account and voucher necessary for dealing with the objection or appeal until, in the case of the serving of a notice of objection, the time provided by section 169 to appeal has elapsed or, in the case of an appeal, until the appeal is disposed of and any further appeal in respect thereof is disposed of or the time for filing any such further appeal has expired.

Information Circulars: 78-10R4: Books and records retention/destruction.

(7) Exception where demand by Minister — Where the Minister is of the opinion that it is necessary for the administration of this Act, the Minister may, by registered letter or by a demand served personally, require any person required by this section to keep records and books of account to retain those records and books of account, together with every account and voucher necessary to verify the information contained therein, for such period as is specified in the letter or demand.

Related Provisions: 244(5), (6) — Proof of service by mail or personal service; 248(7)(a) — Mail deemed received on day mailed.

Information Circulars: 78-10R4: Books and records retention/destruction.

(8) Permission for earlier disposal — A person required by this section to keep records and books of account may dispose of the records and books of account referred to in this section, together with every account and voucher necessary to verify the information contained therein, before the expiration of the period in respect of which those records and books of account are required to be kept if written permission for their disposal is given by the Minister

Related Provisions: 230.1(3) — Application to political party's or candidate's records; 238(1) — Offences.

Forms: T137: Request for destruction of books and records.

Definitions [s. 230]: "allowable capital loss" — 38(b), 248(1); "amount", "business" — 248(1); "Canada" — 255; "inventory" — 248(1); "lawyer" — 232(1); "Minister", "person", "prescribed" — 248(1); "record" — 150.1(4), 248(1); "registered Canadian amateur athletic association", "registered charity" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxation year" — 249; "taxpayer" — 248(1).

230.1 (1) Records re monetary contributions — *Canada Elections Act* — Every agent authorized under the *Canada Elections Act* to accept monetary contributions referred to in that Act shall keep records, sufficient to enable each monetary contribution within the meaning assigned by subsection 127(4.1) that they receive and the expenditures that they make to be verified, including a duplicate of the receipt referred to in subsection 127(3) for each of those monetary contributions) at

(a) in the case of an agent other than an official agent of a candidate, the address recorded in the registry of parties or of electoral district associations referred to in the *Canada Elections Act*; and

(b) in the case of an official agent of a candidate, the agent's address set out in the nomination papers filed under that Act with the returning officer when the candidate was a prospective candidate or any other address that the Minister designates.

Related Provisions: 127(3)–(4.2) — Credit for political contributions; 238(1) — Punishment for failing to comply.

History: Subsec. 230.1(1) amended by 2003, c. 19, s. 74, in force January 1, 2004, except that

(a) on and after June 19, 2003 but before January 1, 2004, s. 230.1 is to be read as amended except that para. 230.1(1)(a) is to be read without reference to the expression "or of registered associations";

(b) if the day on which the amendment comes into force occurs during an election period, within the meaning assigned by the *Canada Elections Act*, para. 230.1(1)(a) is to be read, in respect of that election, as described in (a) above.

This transitional rule in para. (a) above is technically meaningless because it does not refer to the words "a provincial division of a registered party", which were added at the Commons committee stage before the 2003 election financing bill received Third Reading in the House of Commons.

Subsec. 230.1(1) formerly read:

230.1 (1) Records and books re political contributions — Every registered agent of a registered party and the official agent of each candidate at an election of a member or members to serve in the House of Commons of Canada shall keep records and books of account sufficient to enable the amounts contributed that are received

by the agent and expenditures that are made by the agent to be verified (including duplicates of all receipts for amounts contributed, containing prescribed information and signed by the agent) at

(a) in the case of a registered agent, the agent's address recorded in the registry maintained by the Chief Electoral Officer pursuant to subsection 33(1) of the *Canada Elections Act*; and

(b) in the case of an official agent, an address in Canada recorded with or designated by the Minister.

That portion of subsec. 230.1(1) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 133(1), applicable to 1992 *et seq.* That portion formerly read:

(1) Books and records relating to political contributions — Every registered agent of a registered party and the official agent of each candidate at an election of a member or members to serve in the House of Commons of Canada shall keep records and books of account sufficient to enable the amounts contributed received by the agent and expenditures made by the agent to be verified (including duplicates of all receipts for amounts contributed, signed by the registered agent or official agent, as the case may be, other than any such duplicate receipts filed by the agent under subsection (2)) at

Regulations: 2000, 2002 (contents of receipts).

Information Circulars: 75-2R7: Contributions to a registered party, a registered association or to a candidate at a federal election; 05-1: Electronic record keeping.

(2) Information return — Each agent to whom subsection (1) applies shall file with the Minister an information return in prescribed form and containing prescribed information. The return is to be filed within the period for the filing of a financial transactions return or an electoral campaign return, as the case may be, under the *Canada Elections Act*.

Related Provisions: 230.1(4) — Reports to chief electoral officer; 238(1) — Punishment for failing to comply.

History: Subsec. 230.1(2) amended by 2003, c. 19, s. 74, in force January 1, 2004. Subsec. 230.1(2) formerly read:

(2) Return of information — Each person to whom subsection (1) applies shall,

(a) in the case of a registered agent, at such times, not more frequently than annually, as are prescribed by the Minister, and

(b) in the case of an official agent, within the time within which a return is required to be submitted by the agent to a returning officer under section 228 of the *Canada Elections Act*,

file with the Minister a return of information in prescribed form and containing prescribed information.

That portion of subsec. 230.1(2) after para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 133(2), applicable to 1992 *et seq.* That portion formerly read:

(b) in the case of an official agent, within the time within which a return is required to be submitted by the agent to a returning officer pursuant to section 228 of the *Canada Elections Act*,

file with the Minister a return of information, in prescribed form and containing prescribed information, together with the duplicates of all receipts referred to in that subsection signed by that person since the later of the day any previous such information return was filed by that person and August 1, 1974.

Regulations: 2001 (time for filing return).

Information Circulars: 75-2R7: Contributions to a registered party, a registered association or to a candidate at a federal election.

Forms: T2092: Contributions to a registered party or to a registered association — information return; T2093: Contributions to a candidate at an election — information return.

(3) Application of subsecs. 230(3) to (8) — Subsections 230(3) to (8) apply, with any modifications that the circumstances require, in respect of the keeping of records by agents as required by subsection (1).

History: Subsec. 230.1(3) amended by 2003, c. 19, s. 74, in force January 1, 2004. Subsec. 230.1(3) formerly read:

(3) Application of subsecs. 230(3) to (8) — Subsections 230(3) to (8) apply, with such modifications as the circumstances require, in respect of the records and books of account required by subsection (1) to be kept and in respect of the persons thereby required to keep them.

Regulations: 5800(2) (retention period for records and books of account).

Information Circulars: 78-10R4: Books and records retention/destruction; 05-1: Electronic record keeping.

(4) [Repealed]

History: Subsec. 230.1(4) repealed by 1994, c. 21, s. 106, applicable June 15, 1994. That subsec. formerly read:

(4) Notwithstanding section 241, the Minister shall, as soon as is reasonably possible after each election and at such other time as is appropriate having regard to the time of receipt by the Minister of returns of information under subsection (2), forward to the Chief Electoral Officer a report that is based on all such returns of information as have been received by the Minister since the most recent such report and that sets out the total of amounts contributed to each registered party and the total of amounts contributed to each candidate at an election of a member or members to serve in the House of Commons of Canada since the most recent such report, and, on receipt thereof by the Chief Electoral Officer, the report is a public record and may be inspected by any person on request during normal business hours.

Subsec. 230.1(4) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 133(3), applicable to 1992 *et seq.* Subsec. (4) formerly read:

(4) Reports to Chief Electoral Officer — The Minister shall, notwithstanding section 241, as soon as is reasonably possible after each election and at such other time as is appropriate having regard to the time of receipt by the Minister of returns of information under subsection (2), forward to the Chief Electoral Officer a report based on all such returns of information and duplicate receipts as have been received by the Minister since the most recent such report, setting out the total of amounts contributed to each registered party and the total of amounts contributed to each candidate at an election of a member or members to serve in the House of Commons of Canada since the most recent such report, and, on receipt thereof by the Chief Electoral Officer, the report is a public record and may be inspected by any person on request during normal business hours.

(5) [Repealed]

History: Subsec. 230.1(5) repealed by 1994, c. 21, s. 106, applicable June 15, 1994. That subsec. formerly read:

(5) No report to enable identification of contributor — No report under subsection (4) shall contain information that would enable any person to identify a person by whom a contribution to a registered party or candidate was made.

(6) [Repealed]

History: Subsec. 230.1(6) amended by 2003, c. 19, s. 74, in force January 1, 2004. Subsec. 230.1(6) formerly read:

(6) Definitions — In this section, the terms "candidate", "official agent", "registered agent" and "registered party" have the meanings assigned to them by section 2 of the *Canada Elections Act*.

(7) [Repealed]

Origin of subsec. 230.1(7): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsecs. 127(4.1)).

History: Subsec. 230.1(7) amended by 2003, c. 19, s. 74, in force January 1, 2004. Subsec. 230.1(7) formerly read:

(7) Definition of "amount contributed" — In this section, "amount contributed" by a taxpayer has the meaning assigned by subsection 127(4.1).

Canada Elections Act, s. 2: See note to subsec. 127(4).

Definitions [s. 230.1]: "amount contributed" — 127(4.1), 230.1(7); "candidate" — 230.1(6); "Minister" — 248(1); "monetary contribution" — 127(4.1); "official agent" — 230.1(6); "person", "prescribed", "record" — 248(1); "registered agent", "registered party" — 230.1(6).

231. Definitions — In sections 231.1 to 231.7,

"authorized person" means a person authorized by the Minister for the purposes of sections 231.1 to 231.5;

"document" includes money, a security and a record;

"dwelling-house" means the whole or any part of a building or structure that is kept or occupied as a permanent or temporary residence and includes

(a) a building within the curtilage of a dwelling-house that is connected to it by a doorway or by a covered and enclosed passageway, and

(b) a unit that is designed to be mobile and to be used as a permanent or temporary residence and that is being used as such a residence;

"judge" means a judge of a superior court having jurisdiction in the province where the matter arises or a judge of the Federal Court.

History: The opening words of s. 231 amended by 2001, c. 17, s. 181, in force on June 14, 2001. The opening words formerly read:

231. In sections 231.1 to 231.6,

The definition "documents" in s. 231 amended by 1998, c. 19, s. 228, in force June 18, 1998. The definition formerly read:

"documents" includes money, securities and any of the following, whether computerized or not: books, records, letters, telegrams, vouchers, invoices, accounts and statements (financial or otherwise);

Selected Cases [s. 231]: *R. v. Jones*, [2000] 4 C.T.C. 27 (Alta QB) (Requirement to file return applied, even if income may be exempt from tax); *R. v. Kerntopf*, [1999] 3 C.T.C. 555 (Alta QB) (Re-seizure of documents previously seized under 231.3(3) by means of search warrant under *Criminal Code* upheld); *Stasiv, Mitton and Smith v. Canada*, [1984] 1 C.T.C. 171 (Ont SC) ("Judge" does not include a judge of the Ontario Supreme Court appointed pursuant to the *Courts of Justice Act* (Ontario)).

Definitions [s. 231]: "Federal Court" — *Federal Courts Act* s. 4; "Minister", "person" — 248(1); "province" — *Interpretation Act* 35(1); "record" — 248(1); "superior court" — *Interpretation Act* 35(1).

231.1 (1) [Audits,] inspections — An authorized person may, at all reasonable times, for any purpose related to the administration or enforcement of this Act,

(a) inspect, audit or examine the books and records of a taxpayer and any document of the taxpayer or of any other person that relates or may relate to the information that is or should be in the books or records of the taxpayer or to any amount payable by the taxpayer under this Act, and

(b) examine property in an inventory of a taxpayer and any property or process of, or matter relating to, the taxpayer or any other person, an examination of which may assist the authorized person in determining the accuracy of the inventory of the taxpayer or in ascertaining the information that is or should be in the books or records of the taxpayer or any amount payable by the taxpayer under this Act,

and for those purposes the authorized person may

(c) subject to subsection (2), enter into any premises or place where any business is carried on, any property is kept, anything is done in connection with any business or any books or records are or should be kept, and

(d) require the owner or manager of the property or business and any other person on the premises or place to give the authorized person all reasonable assistance and to answer all proper questions relating to the administration or enforcement of this Act and, for that purpose, require the owner or manager to attend at the premises or place with the authorized person.

Related Provisions: 168(1)(e) — Revocation of charity registration for failing to comply; 188.2(2)(a) — Suspension of charity's receipting privileges for failing to comply; 230 — Requirement to keep books and records; 231.2 — Requirements for information; 231.3 — Search warrants; 231.5(2) — No person shall hinder or molest auditor; 231.7 — Court order for compliance with audit; 232(3.1) — Examination of documents where privilege claimed; 237.1(8) — Application to tax shelter disclosure rules; 238(1) — Punishment for failing to comply; *Interpretation Act* 31(2) — Ancillary powers granted to enable work to be done.

Selected Cases [subsec. 231.1(1)]: *Jurchison v. R.*, [2000] 1 C.T.C. 2762 (TCC) (Assessment may not be quashed where some evidence not illegally obtained); *R. v. Xidos*, [2000] 1 C.T.C. 370 (NS SC) (Minister has right to demand information during audit phase); *R. v. Yip*, [2000] 2 C.T.C. 66 (Alta Prov Ct) (Taxpayers to be advised when audits not routine); *R. v. Jarvis*, [1998] 3 C.T.C. 252 (Alta QB) (Positive duty on part of Minister to advise taxpayer when audit changes from compliance to investigation leading to possible criminal charges); *Lipsey v. MNR*, [1984] C.T.C. 208 (FCTD) (Minister enjoined from authorizing investigation under provision subsequent to previous order on appeal quashing authorization to conduct search and seizure).

Information Circulars: 71-14R3: The tax audit; 78-10R4: Books and records retention/destruction; 94-4R: International transfer pricing — advance pricing arrangements (APAs); 94-4R-SR: APAs for small businesses.

I.T. Technical News: 32 (taxpayer's opportunities to respond to assessments).

Transfer Pricing Memoranda: TPM-04: Third-party information.

Forms: RC4024: Enhancing service for large businesses: the audit protocol; real-time audit, concurrent audit, single-window focus [guide]; RC4188: What you should know about audits [pamphlet]; RC4409: Keeping records [guide].

Registered Charities Newsletters: 13 (about auditing charities).

(2) Prior authorization — Where any premises or place referred to in paragraph (1)(c) is a dwelling-house, an authorized person may not enter that dwelling-house without the consent of the occupant except under the authority of a warrant under subsection (3).

(3) Application — Where, on *ex parte* application by the Minister, a judge is satisfied by information on oath that

(a) there are reasonable grounds to believe that a dwelling-house is a premises or place referred to in paragraph (1)(c),

(b) entry into the dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act, and

(c) entry into the dwelling-house has been, or there are reasonable grounds to believe that entry will be, refused,

the judge may issue a warrant authorizing an authorized person to enter the dwelling-house subject to such conditions as are specified in the warrant but, where the judge is not satisfied that entry into the dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act, the judge may

(d) order the occupant of the dwelling-house to provide to an authorized person reasonable access to any document or property that is or should be kept in the dwelling-house, and

(e) make such other order as is appropriate in the circumstances to carry out the purposes of this Act,

to the extent that access was or may be expected to be refused and that the document or property is or may be expected to be kept in the dwelling-house.

History: Subsec. 231.1(3) substituted by 1994, c. 21, s. 107, applicable June 15, 1994. That subsec. formerly read:

(3) Where, on *ex parte* application by the Minister, a judge is satisfied by information on oath

(a) that there are reasonable grounds to believe that a dwelling-house is a premises or place referred to in paragraph (1)(c),

(b) that entry into the dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act, and

(c) that entry into the dwelling-house has been refused or that there are reasonable grounds to believe that entry thereto will be refused,

the judge shall issue a warrant authorizing an authorized person to enter that dwelling-house subject to such conditions as may be specified in the warrant but, where the judge is not satisfied that entry into that dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act, the judge shall

(d) order the occupant of the dwelling-house to provide reasonable access to an authorized person to any document or property that is or should be kept therein, and

(e) make such other order as is appropriate in the circumstances to carry out the purposes of this Act

to the extent that access has been or may be expected to be refused and that the document or property is or may be expected to be kept in the dwelling-house.

Selected Cases [s. 231.1]: *Wilder v. R.*, 2002 CarswellBC 2176 (BC SC) (Requirements for pre-existing documents not overturned); *Bjellebo v. R.*, [2002] 3 C.T.C. 39 (Ont Gen Div) (Covert nature of preliminary criminal investigation not abuse of administrative powers); *Dwyer v. R.*, [2001] 3 C.T.C. 2755 (TCC) (Searches not unconstitutional despite issuance of warrants based on unconstitutional provision); *Norwood v. R.*, [2000] 2 C.T.C. 2900 (TCC) (Document copied clandestinely by tax auditor was illegal search and seizure); *R. v. Melnychuk*, [1999] 3 C.T.C. 255 (Sask Prov Ct) (Search warrant quashed where taxpayer not informed that investigation was under way); *R. v. Warawa*, [1998] 1 C.T.C. 345 (Alta QB) (Where information demanded is not for audit, but for prosecution, rights of taxpayer protected and information may not be used in subsequent prosecution); *Baron v. Canada*, [1991] 1 C.T.C. 125 (FCA); aff'd [1993] 1 C.T.C. 111 (SCC) (Provision held to be of no force and effect because absence of judicial discretion in subsec. 231.3(3) violated the *Charter*).

Definitions [s. 231.1]: "amount" — 248(1); "authorized person", "documents", "dwelling-house" — 231; "inventory" — 248(1); "judge" — 231; "Minister" — 248(1); "oath" — *Interpretation Act* 35(1); "property", "record", "taxpayer" — 248(1).

231.2 (1) Requirement to provide documents or information — Notwithstanding any other provision of this Act, the Minister may, subject to subsection (2), for any purpose related to the administration or enforcement of this Act, including the collection of any amount payable under this Act by any person, by notice served personally or by registered or certified mail, require that any person provide, within such reasonable time as is stipulated in the notice,

Proposed Amendment — 231.2(1) opening words

231.2 Requirement to provide documents or information — **(1)** Notwithstanding any other provision of this Act, the Minister may, subject to subsection (2), for any purpose related to the administration or enforcement of this Act (including the collection of any amount payable under this Act by any person), of a listed international agreement or, for greater certainty, of a tax treaty with another country, by notice served personally or by registered or certified mail, require that any person provide, within such reasonable time as is stipulated in the notice,

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 182, will amend the opening words of subsec. 231.2(1) to read as above, in force on Royal Assent.

Technical Notes: Subsection 231.2(1) provides that, notwithstanding any other provision of the Act, the Minister of National Revenue may by notice require that any person provide information or any document for any purpose relating to the administration or enforcement of the Act. An exception is made where the information or document relates to an unnamed person or persons, in which case the procedure set out in subsections 231.1(2) to (6) must be followed.

Subsection 231.2(1) is amended to provide that the Minister may by notice require any person to provide information or any document relating to the administration or enforcement of the Act, of a listed international agreement or, for greater certainty, of a tax treaty with another country.

A "listed international agreement" is newly defined in subsection 248(1) to mean the *Convention on Mutual Administrative Assistance in Tax Matters*, concluded at Strasbourg on January 25, 1988 and the *Convention between the Government of Canada and the Government of the United Mexican States for the Exchange of Information with Respect to Taxes*, signed at Mexico City on March 16, 1990. A "tax treaty" is defined in subsection 248(1) to mean a comprehensive agreement for the elimination of double taxation on income between the Canadian and foreign government that has the force of law in Canada at that time.

(a) any information or additional information, including a return of income or a supplementary return; or

(b) any document.

Related Provisions: 94.1(2)(p)–(r), 94.2(2)(d) — Effect of failure to respond to demand re foreign investment entity; 150(2) — Demand to file income tax return; 168(1)(e) — Revocation of charity's registration for failure to comply; 188.2(2)(a) — Suspension of charity's receipting privileges for failing to comply; 231.1(1)(b) — Examination of inventory; 231.5(1) — Copy of taxpayer's document may be used in court proceedings; 231.5(2) — No person shall hinder or molest auditor; 231.7 — Court order for compliance with requirement; 232(2) — Solicitor-client privilege defence; 232(3.1) — Examination of documents where privilege claimed; 237.1(8) — Application to tax shelter disclosure; 238(1) — Punishment for failure to comply; 244(5), (6) — Proof of service by mail or personal service; 244(9) — Copy of taxpayer's document may be used in court proceedings; 248(7)(a) — Mail deemed received on day mailed.

History: The opening words of subsec. 231.2(1) amended by 2000, c. 30, s. 108, in force October 20, 2000. The opening words formerly read:

(1) Requirement to provide documents or information — Notwithstanding any other provision of this Act, the Minister may, subject to subsection (2), for any purpose related to the administration or enforcement of this Act, by notice served personally or by registered or certified mail, require that any person provide, within such reasonable time as is stipulated in the notice,

Selected Cases [subsec. 231.2(1)]: *Artistic Ideas Inc. v. Canada (CCRA)*, [2005] 2 C.T.C. 25 (FCA) (Names of donors allowed to be redacted); *R. v. Wells*, [2005] 1 C.T.C. 332 (BC SC) (Due diligence relevant in attempts to file corporate returns); *R. v. Gibbs*, [2004] 5 C.T.C. 152 (BC Prov Ct) (Strict liability offences give rise only to due diligence defences); *Tower v. M.N.R.*, [2003] 4 C.T.C. 263 (FCA) (Requirement to provide facts and knowledge does not limit response to existing documents); *Fraser Milner Casgrain v. MNR*, [2002] 4 C.T.C. 210 (FCTD) (Relevance not a basis for refusal to respond to requirements, if documents not protected by solicitor-client privilege); *Van Egmond v. R.*, [2002] 2 C.T.C. 236 (BC CA) (Client list of taxpayer whose activity was under investigation was accessible by way of requirement); *R. v. Ehli*, [2000] 3 C.T.C. 298 (Alta CA) (Signature stamp was sufficient where properly affixed); *R. v. Vinkle*, [1999] 2 C.T.C. 212 (BC SC) (Not necessary to show Canadian residency or tax liability as prerequisite to demand); *Burnett v. MNR*, [1999] 1 C.T.C. 31 (FCTD) (Instructions and description of services protected by privilege); *AGT Ltd. v. Canada (A.-G.)*, [1997] 2 C.T.C. 275 (FCA) (Once seizure ruled constitutional, statutory analysis all that remained where requirements issued by Minister); *Interprovincial Pipe Line Inc. v. MNR*, [1995] E.T.C. 2147, 95 D.T.C. 5642 (Provision of privileged documents to auditors for purposes of statutory audit was limited waiver and did not affect privilege of documents); *Aulakh v. Canada*, [1995] 2 C.T.C. 526 (Alta Prov Ct) (Crown has choice of proceeding under s. 150 or by way of prosecution); *Montreal Aluminum Processing Inc. v. Canada*, [1992] 2 C.T.C. 358 (FCA) (Order to strike claim opposing legally suspect requirement upheld); *Morena v. MNR*, [1991] 1 C.T.C. 78 (FCTD); appealed to FCA (Nov. 12, 1990), File A-986-90 (Requirement to provide information that may disclose private transactions involving persons not under investigation held valid); *Tyler v. MNR*, [1991] 1 C.T.C. 13 (FCA) (Minister prohibited from communicating information obtained under provision to RCMP during period in which drug trafficking charges remained outstanding); *R. v. Gill*, [1990] 2 C.T.C. 318 (BC Co Ct) (Requirements to provide information issued after company dissolved and struck from Register of Companies had no effect even where company subsequently restored to Register under subsec. 286(2) of the *Company Act* (B.C.)); *Skalbania N.M., Ltd. v. Canada*, [1989] 2 C.T.C. 183 (BC Co Ct) (Provision applies only to demands to facilitate ongoing investigation; appeal from conviction under provision for failure to file returns allowed where demand should have been made under another provision); *Tyler v. MNR*, [1989] 1 C.T.C. 153 (FCTD); rev'd [1991] 1 C.T.C. 13 (FCA) (Minister may require production of information under

provision during criminal proceedings against taxpayer); *R. v. Rosenberg et al.*, [1987] 1 C.T.C. 385 (Ont SC) (Demand under provision required only where taxpayer withholds consent to inspect documents).

Information Circulars: 78-10R4: Books and records retention/destruction; 05-1: Electronic record keeping.

I.T. Technical News: 32 (CRA access to accountants' or auditors' working papers).

(2) Unnamed persons — The Minister shall not impose on any person (in this section referred to as a "third party") a requirement under subsection (1) to provide information or any document relating to one or more unnamed persons unless the Minister first obtains the authorization of a judge under subsection (3).

Selected Cases [subsec. 231.2(2)]: *MNR v. Toronto Dominion Bank*, [2004] 4 C.T.C. 82 (FC); aff'd [2005] 2 C.T.C. 37 (FCA) (Minister requires judicial authorization to obtain information from bank regarding unnamed third party); *Chilton Insurance Consultation Inc. v. Canada*, [1996] 2 C.T.C. 185 (Sask QB) (Company struck off provincial Register still liable to file tax returns; director personally liable to penalty).

(3) Judicial authorization — On *ex parte* application by the Minister, a judge may, subject to such conditions as the judge considers appropriate, authorize the Minister to impose on a third party a requirement under subsection (1) relating to an unnamed person or more than one unnamed person (in this section referred to as the "group") where the judge is satisfied by information on oath that

(a) the person or group is ascertainable; and

(b) the requirement is made to verify compliance by the person or persons in the group with any duty or obligation under this Act.

(c), (d) [Repealed]

Related Provisions: 168(1)(e) — Revocation of charity's registration for failure to comply; 188.2(2)(a) — Suspension of charity's receipting privileges for failing to comply; 231.2(5), (6) — Judicial review of authorization; 232(2), (3.1) — Solicitor-client privilege defence; 237.1(8) — Application to tax shelter disclosure; 238(1) — Punishment for failure to comply.

History: Paras. 231.2(3)(c) and (d) repealed by 1996, c. 21, subsec. 58(1), applicable June 20, 1996. Paras. (c) and (d) formerly read:

> (c) it is reasonable to expect, based on any grounds, including information (statistical or otherwise) or past experience relating to the group or any other persons, that the person or any person in the group may have failed or may be likely to fail to provide information that is sought pursuant to the requirement or to otherwise comply with this Act; and
>
> (d) the information or document is not otherwise more readily available.

Selected Cases [subsec. 231.2(3)]: *MNR v. Toronto Dominion Bank*, [2005] 2 C.T.C. 37 (FCA); aff'g [2004] 4 C.T.C. 82 (FC) (Minister requires judicial authorization to force disclosure of unknown holder of bank account); *National Foundation for Christian Leadership v. MNR*, [2005] 1 C.T.C. 349 (FCA) (Minister's request for judicial authorization not misleading); *Fédération des Caisses Populaires Desjardins de Québec v. MNR*, [1997] 2 C.T.C. 159 (Que SC) (Requirement voided where specific taxpayers not identified).

(4) Service of authorization — Where an authorization is granted under subsection (3), it shall be served together with the notice referred to in subsection (1).

(5) Review of authorization — Where an authorization is granted under subsection (3), a third party on whom a notice is served under subsection (1) may, within 15 days after the service of the notice, apply to the judge who granted the authorization or, where the judge is unable to act, to another judge of the same court for a review of the authorization.

Selected Cases [subsec. 231.2(5)]: *Capital Vision Inc. v. MNR*, [2003] 2 C.T.C. 42 (FCTD) (Requirements invalid where Minister did not fairly state purpose).

(6) Powers on review — On hearing an application under subsection (5), a judge may cancel the authorization previously granted if the judge is not then satisfied that the conditions in paragraphs (3)(a) and (b) have been met and the judge may confirm or vary the authorization if the judge is satisfied that those conditions have been met.

History: Subsec. 231.2(6) amended by 1996, c. 21, subsec. 58(2), applicable June 20, 1996. Subsec. (6) formerly read:

> (6) On hearing an application under subsection (5), a judge may cancel the authorization previously granted if the judge is not then satisfied that the conditions in paragraphs (3)(a) to (d) have been met and the judge may confirm or vary the authorization if the judge is satisfied that those conditions have been met.

(7) [Repealed under former Act]

Selected Cases [s. 231.2]: *R. v. Wilder*, [2004] 4 C.T.C. 91 (BC SC) (Search warrants required when investigation crosses line between audit and penal purpose); *MNR v. Stern*, [2004] 4 C.T.C. 52 (FC) (Minister not precluded by bankruptcy from requiring information from taxpayer); *Tower v. MNR*, [2003] 4 C.T.C. 263 (FCA); rev'g [2002] 4 C.T.C. 220 (FCTD) (No policy reason to elevate accountant confidentiality to level of privilege); *Pitney Bowes of Canada Ltd. v. R.*, [2003] 3 C.T.C. 98 (FCTD) ("Common privilege" held to exist regarding legal opinions); *Pacific Network Services Ltd. v. MNR*, [2003] 1 C.T.C. 333 (FCTD) (Requirements can be issued to fulfill treaty obligations); *Belgravia Investments Ltd. v. R.*, [2002] 3 C.T.C. 482 (FCTD) (Mere possession of document by lawyer does not make it privileged and not all communications are privileged); *R. v. Vickers*, [2000] 3 C.T.C. 305 (Alta Prov Ct) (No abuse of requirements process where auditor was suspicious about possible evasion of tax, but had no ground yet to believe in guilt); *R. v. Kloster*, [1999] 3 C.T.C. 242 (BC Prov Ct) (Use to which seized items is put governs admissibility, not what was in minds of government agents at time of search); *Vancouver Trade Mart Inc. (Trustee of) v. Canada (A.-G.)*, [1998] 1 C.T.C. 79 (FCTD) (Trustee's working papers required to be produced); *Canadian Forest Products Ltd. v. MNR*, [1996] 3 C.T.C. 240 (FCTD) (Requirement regarding unidentified taxpayers required judicial approval); *Radke v. MNR*, [1996] 3 C.T.C. 86 (BC SC) (Documents not privileged where *prima facie* case of fraud established); *Sand Exploration Ltd. et al No. 2 v. MNR*, [1995] 2 C.T.C. 140 (FCTD) (No fishing expedition when requirements of provision met where Minister seeking names of unnamed taxpayers from third party); *Sand Exploration Ltd. et al No. 1 v. MNR*, [1995] 2 C.T.C. 137 (FCTD) (Taxpayer must lead evidence of apprehended harm if orders to be suspended); *Andison v. MNR*, [1995] 1 C.T.C. 203 (FCTD) (Judicial authorization must be obtained before demand for information can be enforced with respect to unnamed persons).

Definitions [s. 231.2]: "document", "judge" — 231; "listed international agreement", "Minister" — 248(1); "oath" — *Interpretation Act* 35(1); "person" — 248(1); "third party" — 231.2(2).

Information Circulars [s. 231.2]: 73-10R3: Tax evasion.

231.3 (1) Search warrant — A judge may, on *ex parte* application by the Minister, issue a warrant in writing authorizing any person named therein to enter and search any building, receptacle or place for any document or thing that may afford evidence as to the commission of an offence under this Act and to seize the document or thing and, as soon as practicable, bring it before, or make a report in respect of it to, the judge or, where the judge is unable to act, another judge of the same court to be dealt with by the judge in accordance with this section.

Related Provisions: See at end of 231.3.

Selected Cases [subsec. 231.3(1)]: *Solvent Petroleum Extraction Inc. v. MNR*, [1989] 2 C.T.C. 177 (FCA); leave to appeal to SCC refused (1989), 105 N.R. 159 (note); application for reconsideration refused (July 9, 1992), Doc. 21556 (Once conditions of provision met, judge must issue a warrant; in course of executing warrant, officer may seize anything officer considers evidence of commission of crime); *Clayton F. K., Group Ltd. et al. v. MNR et al.*, [1988] 1 C.T.C. 353 (FCA) (Factors in considering constitutional validity of seizure and enabling provision); *Hellenic Import-Export Co. Ltd. et al. v. MNR et al.*, [1987] 1 C.T.C. 281 (BC SC) (Warrants to search business premises and personal residence under provision quashed where Minister previously had documents in question with taxpayer's consent).

Information Circulars: 73-10R3: Tax evasion.

(2) Evidence in support of application — An application under subsection (1) shall be supported by information on oath establishing the facts on which the application is based.

Selected Cases [subsec. 231.3(2)]: *Donovan v. Canada*, [1994] 2 C.T.C. 426 (NB QB) (Misleading and incorrect statement in information led to quashing of search warrants).

(3) Evidence — A judge may issue the warrant referred to in subsection (1) where the judge is satisfied that there are reasonable grounds to believe that

(a) an offence under this Act was committed;

(b) a document or thing that may afford evidence of the commission of the offence is likely to be found; and

(c) the building, receptacle or place specified in the application is likely to contain such a document or thing.

Related Provisions: See at end of 231.3.

History: Subsec. 231.3(3) substituted by 1994, c. 21, s. 108, applicable June 15, 1994. That subsec. formerly read:

(3) A judge shall issue the warrant referred to in subsection (1) where the judge is satisfied that there are reasonable grounds to believe that

(a) an offence under this Act has been committed;

(b) a document or thing that may afford evidence of the commission of the offence is likely to be found; and

(c) the building, receptacle or place specified in the application is likely to contain such a document or thing.

Selected Cases [subsec. 231.3(3)]: *R. v. Precision Mechanics Ltd. et al.*, [1986] 2 C.T.C. 240 (Que SC) (Evidence in support of application obtained in manner infringing upon taxpayer's *Charter* rights inadmissible); *Thyssen Canada Ltd. v. R.*, [1984] C.T.C. 64 (FCTD) (Audit with taxpayer's consent did not constitute formal search and seizure within scope of *Charter*).

(4) Contents of warrant — A warrant issued under subsection (1) shall refer to the offence for which it is issued, identify the building, receptacle or place to be searched and the person alleged to have committed the offence and it shall be reasonably specific as to any document or thing to be searched for and seized.

(5) Seizure of document — Any person who executes a warrant under subsection (1) may seize, in addition to the document or thing referred to in that subsection, any other document or thing that the person believes on reasonable grounds affords evidence of the commission of an offence under this Act and shall as soon as practicable bring the document or thing before, or make a report in respect thereof to, the judge who issued the warrant or, where the judge is unable to act, another judge of the same court to be dealt with by the judge in accordance with this section.

Related Provisions: 231.5(1) — Copy of document seized may be used in court proceedings; 231.5(2) — Compliance; 244(9) — Copy of document seized may be used in court proceedings.

Information Circulars: 73-10R3: Tax evasion.

(6) Retention of things seized — Subject to subsection (7), where any document or thing seized under subsection (1) or (5) is brought before a judge or a report in respect thereof is made to a judge, the judge shall, unless the Minister waives retention, order that it be retained by the Minister, who shall take reasonable care to ensure that it is preserved until the conclusion of any investigation into the offence in relation to which the document or thing was seized or until it is required to be produced for the purposes of a criminal proceeding.

Selected Cases [subsec. 231.3(6)]: *Kohli v. Moase*, [1989] 1 C.T.C. 492 (NB CA) (Where documents seized under s. 231.3, taxpayer's civil actions against individual tax officials and police dismissed; proper remedy was pursuant to subsecs. (6) and (7)).

(7) Return of things seized — Where any document or thing seized under subsection (1) or (5) is brought before a judge or a report in respect thereof is made to a judge, the judge may, of the judge's own motion or on summary application by a person with an interest in the document or thing on three clear days notice of application to the Deputy Attorney General of Canada, order that the document or thing be returned to the person from whom it was seized or the person who is otherwise legally entitled thereto if the judge is satisfied that the document or thing

(a) will not be required for an investigation or a criminal proceeding; or

(b) was not seized in accordance with the warrant or this section.

Related Provisions: *Interpretation Act* 27(1) — Meaning of "clear days". See additional Related Provisions at end of s. 231.3.

Selected Cases [subsec. 231.3(7)]: *Kohli v. Moase*, [1989] 1 C.T.C. 492 (NB CA) (Where documents seized under s. 231.3, taxpayer's civil actions against individual tax officials and police dismissed; proper remedy was pursuant to subsecs. (6) and (7)).

(8) Access and copies — The person from whom any document or thing is seized pursuant to this section is entitled, at all reasonable times and subject to such reasonable conditions as may be imposed by the Minister, to inspect the document or thing and to obtain one copy of the document at the expense of the Minister.

Information Circulars [subsec. 231.3(8)]: 73-10R3: Tax evasion.

Related Provisions [s. 231.3]: 168(1)(e) — Revocation of charity registration for failing to comply; 188.2(2)(a) — Suspension of charity's receipting privileges for failing to comply; 232(3) — Seizure of certain documents where privilege claimed; 237.1(8) — Application to tax shelter disclosure rules; 238(1) — Punishment for failing to comply.

Selected Cases [s. 231.3]: *Donovan v. R.*, [2000] 3 C.T.C. 209 (FCA) (Assessment will be vacated only when entire foundation of assessment would be destroyed without illegally obtained evidence); *O'Neill Motors Ltd. v. R.*, [1998] 3 C.T.C. 385 (FCA); aff'd [1996] 1 C.T.C. 2714 (TCC) (Assessments vacated where documents improperly seized); *Canada (A.-G.) v. Sander*, [1996] 1 C.T.C. 74 (BC CA) (Taxpayer granted access to legal opinions of Department of Justice in criminal matter); *Del Zotto v. Canada*, [1995] 2 C.T.C. 298 (FCTD) (Court must be satisfied as to real purpose of inquiry before lifting stay of proceedings); *Kourtessis (C.) v. MNR*, [1993] 1 C.T.C. 301 (SCC) (Provision contravened s. 8 of the *Charter*); *Baron (B.) v. Canada*, [1993] 1 C.T.C. 111 (SCC) (Provision contravened s. 8 of the *Charter*; now reversed by amendment to legislation); *Knox Contracting v. Canada*, [1990] 2 C.T.C. 262 (SCC) (Without provision for an appeal in federal legislation, decision to issue search warrant is without recourse because provision is criminal in nature and provincial rules of civil procedure inapplicable).

Definitions [s. 231.3]: "clear days" — *Interpretation Act* 27(1); "documents", "judge" — 231; "Minister" — 248(1); "oath" — *Interpretation Act* 35(1); "person" — 248(1); "writing" — *Interpretation Act* 35(1).

231.4 (1) Inquiry — The Minister may, for any purpose related to the administration or enforcement of this Act, authorize any person, whether or not the person is an officer of the Canada Customs and Revenue Agency, to make such inquiry as the person may deem necessary with reference to anything relating to the administration or enforcement of this Act.

Proposed Amendment — 231.4(1)

Application: Bill C-26 (Second Senate Reading June 29, 2005), subpara. 138(m)(iii), will amend subsec. 231.4(1) to replace "Canada Customs and

Revenue Agency" with "Canada Revenue Agency", in force on a day to be fixed by the Governor in Council.

Related Provisions: 231.5(2) — Compliance. See also Related Provisions and Definitions at end of 231.4.

History: Subsec. 231.4(1) amended by replacing the words "Department of National Revenue" with "Canada Customs and Revenue Agency" by 1999, c. 17, para. 168(c), proclaimed into force November 1, 1999.

(2) Appointment of hearing officer — Where the Minister, pursuant to subsection (1), authorizes a person to make an inquiry, the Minister shall forthwith apply to the Tax Court of Canada for an order appointing a hearing officer before whom the inquiry will be held.

(3) Powers of hearing officer — For the purposes of an inquiry authorized under subsection (1), a hearing officer appointed under subsection (2) in relation thereto has all the powers conferred on a commissioner by sections 4 and 5 of the *Inquiries Act* and that may be conferred on a commissioner under section 11 thereof.

Inquiries Act: Ss. 4, 5 of the *Inquiries Act*, R.S., c. I-13, provide:

> 4. The commissioners have the power of summoning before them any witnesses, and of requiring them to
>
> (a) give evidence, orally or in writing, and on oath or, if they are persons entitled to affirm in civil matters on solemn affirmation; and
>
> (b) produce such documents and things as the commissioners deem requisite to the full investigation of the matters into which they are appointed to examine.
>
> 5. The commissioners have the same power to enforce the attendance of witnesses and to compel them to give evidence as is vested in any court of record in civil cases.

Selected Cases [subsec. 231.4(3)]: *462657 Ontario Ltd. v. MNR*, [1989] 2 C.T.C. 218 (FCTD); appealed to FCA (Oct. 2, 1989), File A-452-89 (Hearing officer's subpoena did not constitute a search and seizure).

(4) When powers to be exercised — A hearing officer appointed under subsection (2) in relation to an inquiry shall exercise the powers conferred on a commissioner by section 4 of the *Inquiries Act* in relation to such persons as the person authorized to make the inquiry considers appropriate for the conduct thereof but the hearing officer shall not exercise the power to punish any person unless, on application by the hearing officer, a judge of a superior or county court certifies that the power may be exercised in the matter disclosed in the application and the applicant has given to the person in respect of whom the applicant proposes to exercise the power 24 hours notice of the hearing of the application or such shorter notice as the judge considers reasonable.

(5) Rights of witness at inquiry — Any person who gives evidence in an inquiry authorized under subsection (1) is entitled to be represented by counsel and, on request made by the person to the Minister, to receive a transcript of the evidence given by the person.

(6) Rights of person whose affairs are investigated — Any person whose affairs are investigated in the course of an inquiry authorized under subsection (1) is entitled to be present and to be represented by counsel throughout the inquiry unless the hearing officer appointed under subsection (2) in relation to the inquiry, on application by the Minister or a person giving evidence, orders otherwise in relation to the whole or any part of the inquiry on the ground that the presence of the person and the person's counsel, or either of them, would be prejudicial to the effective conduct of the inquiry.

Related Provisions [s. 231.4]: 168(1)(e) — Revocation of charity registration for failing to comply; 188.2(2)(a) — Suspension of charity's receipting privileges for failing to comply; 238(1) — Punishment for failing to comply.

Selected Cases [s. 231.4]: *Del Zotto v. Canada*, [1999] 1 C.T.C. 113 (SCC); rev'g [1997] 3 C.T.C. 199 (FCA) (Provision does not infringe on rights protected by ss. 7 and 8 of the *Charter*); *Del Zotto v. Canada*, [1995] 2 C.T.C. 298 (FCTD) (Court must be satisfied as to real purpose of inquiry before lifting stay of proceedings).

Definitions [s. 231.4]: "Canada Customs and Revenue Agency" — *Canada Customs and Revenue Agency Act* s. 4(1); "judge" — 231; "Minister", "person" — 248(1).

Information Circulars [s. 231.4]: 73-10R3: Tax evasion.

231.5 (1) Copies — Where any document is seized, inspected, audited, examined or provided under any of sections 231.1 to 231.4, the person by whom it is seized, inspected, audited or examined or to whom it is provided or any officer of the Canada Customs and Revenue Agency may make, or cause to be made, one or more copies thereof and, in the case of an electronic document, make or cause to be made a print-out of the electronic document, and any document purporting to be certified by the Minister or an authorized person to be a copy of the document, or to be a print-out of an electronic document, made pursuant to this section is evidence of the nature and content of the original document and has the same probative force as the original document would have if it were proven in the ordinary way.

Proposed Amendment — 231.5(1)

Application: Bill C-26 (Second Senate Reading June 29, 2005), subpara. 138(m)(iv), will amend subsec. 231.5(1) to replace "Canada Customs and Revenue Agency" with "Canada Revenue Agency", in force on a day to be fixed by the Governor in Council.

Related Provisions: 244(9) — Copy of taxpayer's document may be used in court proceedings.

History: Subsec. 231.5(1) amended by replacing the words "Department of National Revenue" with "Canada Customs and Revenue Agency" by 1999, c. 17, para. 168(d), proclaimed into force November 1, 1999.

Subsec. 231.5(1) amended by 1998, c. 19, s. 229, applicable to copies and print-outs made after June 18, 1998. Subsec. 231.5(1) formerly read:

> (1) Where any document is seized, inspected, examined or provided under sections 231.1 to 231.4, the person by whom it is seized, inspected or examined or to whom it is provided or any officer of the Department of National Revenue may make, or cause to be made, one or more copies thereof and any document purporting to be certified by the Minister or an authorized person to be a copy made pursuant to this section is evidence of the nature and content of the original document and has the same probative force as the original document would have if it had been proven in the ordinary way.

Selected Cases [subsec. 231.5(1)]: *Canada v. Betterest Vinyl Manufacturing Ltd.*, [1990] 2 C.T.C. 292 (BC CA) (Copies are admissible where there is evidence to support their accuracy; if so, Minister need not show that originals are unavailable).

(2) Compliance — No person shall, physically or otherwise, interfere with, hinder or molest an official (in this subsection having the meaning assigned by subsection 241(10)) doing anything that the official is authorized to do under this Act or attempt to interfere with, hinder or molest any official doing or prevent or attempt to prevent an official from doing, anything that the official is authorized to do under this Act, and every person shall, unless the person is unable to do so, do everything that the person is required to do by or under subsection (1) or sections 231.1 to 231.4.

Related Provisions [subsec. 231.5(2)]: 168(1)(e) — Revocation of charity registration for failing to comply; 188.2(2)(a) — Suspension of charity's receipting privileges for failing to comply; 231.7 — Court order for compliance with audit or demand; 238(1) — Punishment for failing to comply.

History: Subsec. 231.5(2) amended by 2001, c. 17, s. 182, in force June 14, 2001. It formerly read:

> (2) No person shall hinder, molest or interfere with any person doing anything that the person is authorized by or pursuant to subsection (1) or sections 231.1 to 231.4 to do or prevent or attempt to prevent any person doing any such thing and, notwithstanding any other Act or law, every person shall, unless the person is unable to do so, do everything the person is required to do by or pursuant to subsection (1) or sections 231.1 to 231.4.

Definitions [s. 231.5]: "authorized person", "documents" — 231; "Canada Customs and Revenue Agency" — *Canada Customs and Revenue Agency Act* s. 4(1); "Minister" — 248(1); "official" — 241(10); "person" — 248(1).

Information Circulars [s. 231.5]: 73-10R3: Tax evasion.

231.6 (1) Definition of "foreign-based information or document" — For the purposes of this section, "foreign-based information or document" means any information or document that is available or located outside Canada and that may be relevant to the administration or enforcement of this Act, including the collection of any amount payable under this Act by any person.

History: Subsec. 231.6(1) amended by 2000, c. 30, s. 177, in force October 20, 2000. The subsec. formerly read:

> (1) For the purposes of this section, "foreign-based information or document" means any information or document that is available or located outside Canada and may be relevant to the administration or enforcement of this Act.

Selected Cases [subsec. 231.6(1)]: *Bernick v. R.*, 2002 CarswellOnt 2356 (Ont SCJ) (Identity of other parties relevant to Minister's determination of taxpayer's liability; information to be produced).

(2) Requirement to provide foreign-based information — Notwithstanding any other provision of this Act, the Minister may, by notice served personally or by registered or certified mail, require that a person resident in Canada or a non-resident person carrying on business in Canada provide any foreign-based information or document.

Proposed Administrative Change — International Tax Audits

Federal budget, Supplementary Information, February 23, 2005: *International Tax Enforcement*

Those who try to evade tax are subject to a wide range of compliance and collection measures, as well as interest and penalty charges. In extreme cases, fines and imprisonment can be imposed under the criminal law. The Canada Revenue Agency (CRA) applies these rules in keeping with the Government's commitment to the great majority of Canadians who pay their income taxes fully and on time.

Governments around the world cooperate in the fight against international tax evasion. For example, Canada has treaties with over 80 other countries providing for the exchange of tax-related information. In some cases, Canada and its treaty partners assist in each other's tax collections. This global cooperation is intensifying, but international tax evasion and aggressive international tax planning continue.

The budget proposes to invest $30 million annually in enhanced CRA audit and collection activities in this area. These resources will be used to increase audit and compliance capacity with respect to cross-border and international transactions, using a risk-based approach. Additional revenues generated through increased audit and enforcement are expected to offset this cost.

CRA news release, August 9, 2005: *Revenue Minister McCallum Announces the Creation of 11 Centres of Expertise to Address Aggressive International Tax Planning*

John McCallum, Minister of National Revenue, today announced the creation of 11 centres of expertise across Canada in an ongoing effort to address aggressive tax planning. The announcement was made at the London Tax Services Office, where one of the centres is located.

"I am committed to ensuring a level playing field for all Canadians, and that is why I take the issue of tax havens seriously," said Minister McCallum. "The CRA is continually challenging aggressive international tax planning structures and the new Centres of Expertise will equip the CRA with even more tools to ensure that everyone is paying their required share of taxes."

The Centres of Expertise represent a new way of doing business for the CRA. By bringing together audit professionals from the areas of international tax, special audits and tax avoidance to create teams of experts, the CRA is ensuring a more coordinated approach in addressing aggressive international tax planning and the abusive use of tax havens.

Besides London, there will be Centres of Expertise located at Tax Services Offices in Laval, Halifax, Saint John, Montréal, Toronto West, Ottawa, Winnipeg, Calgary, Vancouver and Burnaby.

This initiative is possible as a result of an annual $30 million investment announced in the 2005 Federal Budget to enhance the CRA's compliance activities.

The CRA continues to work closely with all its partners to meet the tax compliance challenges posed by the opening of international markets.

Related Provisions: 231.6(4) — Application for review by court; 231.6(8) — Consequences of failure to comply; 233.1–233.7 — Requirement to file annual information returns with respect to non-resident dealings; 244(5) — Proof of service by mail; 248(7)(a) — Mail deemed received on day mailed.

Information Circulars: 77-9R: Books, records and other requirements for taxpayers having foreign affiliates; 78-10R4: Books and records retention/destruction.

(3) Notice — The notice referred to in subsection (2) shall set out

(a) a reasonable period of time of not less than 90 days for the production of the information or document;

(b) a description of the information or document being sought; and

(c) the consequences under subsection (8) to the person of the failure to provide the information or documents being sought within the period of time set out in the notice.

Related Provisions: *Interpretation Act* s. 27 — Computation of time.

(4) Review of foreign information requirement — The person on whom a notice of a requirement is served under subsection (2) may, within 90 days after the service of the notice, apply to a judge for a review of the requirement.

Selected Cases [subsec. 231.6(4)]: *European Marine Contractors Ltd. v. Canada (CCRA)*, [2004] 2 C.T.C. 226 (FC) (Filing income tax return made audit a virtual certainty and foreign information required to be provided).

(5) Powers on review — On hearing an application under subsection (4) in respect of a requirement, a judge may

(a) confirm the requirement;

(b) vary the requirement as the judge considers appropriate in the circumstances; or

(c) set aside the requirement if the judge is satisfied that the requirement is unreasonable.

(6) Idem — For the purposes of paragraph (5)(c), the requirement to provide the information or document shall not be considered to be unreasonable because the information or document is under the control of or available to a non-resident person that is not controlled by the person served with the notice of the requirement under subsection (2) if that person is related to the non-resident person.

Related Provisions: 256(6), (6.1) — Meaning of "controlled".

Selected Cases [subsec. 231.6(6)]: *Re Hertel et al.*, [1987] 1 C.T.C. 15 (BC SC) (So as not to interfere with independence of judiciary, "shall" interpreted as permissive); *Smith v. MNR*, 82 D.T.C. 6198 (NB CA) (Once judge decides that requirements of provision are satisfied, only an indefinite order may be granted).

(7) Time during consideration not to count — The period of time between the day on which an application

for review of a requirement is made pursuant to subsection (4) and the day on which the review is decided shall not be counted in the computation of

(a) the period of time set out in the notice of the requirement; and

(b) the period of time within which an assessment may be made pursuant to subsection 152(4).

(8) Consequence of failure — If a person fails to comply substantially with a notice served under subsection (2) and if the notice is not set aside by a judge pursuant to subsection (5), any court having jurisdiction in a civil proceeding relating to the administration or enforcement of this Act shall, on motion of the Minister, prohibit the introduction by that person of any foreign-based information or document covered by that notice.

Related Provisions [subsec. 231.6(8)]: 143.2(13), (14) — Effect of information outside Canada on tax shelter investments.

Selected Cases [subsec. 231.6(8)]: *Glaxo Smithkline Inc. v. R.*, [2003] 4 C.T.C. 2916 (TCC) (Court has little discretion regarding order once request for information has been refused or ignored).

Definitions [s. 231.6]: "Canada" — 255; "carrying on business" — 253; "controlled" — 256(6), (6.1); "documents", "judge" — 231; "Minister", "non-resident", "person" — 248(1); "related" — 251(2); "resident in Canada" — 250.

231.7 (1) Compliance order — On summary application by the Minister, a judge may, notwithstanding subsection 238(2), order a person to provide any access, assistance, information or document sought by the Minister under section 231.1 or 231.2 if the judge is satisfied that

(a) the person was required under section 231.1 or 231.2 to provide the access, assistance, information or document and did not do so; and

(b) in the case of information or a document, the information or document is not protected from disclosure by solicitor-client privilege (within the meaning of subsection 232(1)).

Related Provisions: 231.5(2) — Compliance with audit or demand required; 231.7(2) — Five clear days' notice required; 231.7(3) — Conditions can be imposed on order; 231.7(4) — Contempt of court for failure to comply; 231.7(5) — Appeal of order.

Information Circulars: 78-10R4: Books and records retention/destruction.

(2) Notice required — An application under subsection (1) must not be heard before the end of five clear days from the day the notice of application is served on the person against whom the order is sought.

(3) Judge may impose conditions — A judge making an order under subsection (1) may impose any conditions in respect of the order that the judge considers appropriate.

(4) Contempt of court — If a person fails or refuses to comply with an order, a judge may find the person in contempt of court and the person is subject to the processes and the punishments of the court to which the judge is appointed.

(5) Appeal — An order by a judge under subsection (1) may be appealed to a court having appellate jurisdiction over decisions of the court to which the judge is appointed. An appeal does not suspend the execution of the order unless it is so ordered by a judge of the court to which the appeal is made.

History: S. 231.7 added by 2001, c. 17, s. 183, in force June 14, 2001.

Definitions [s. 231.7]: "clear days" — *Interpretation Act* 27(1); "document", "judge" — 231; "Minister", "person" — 248(1).

232. (1) [Solicitor-client privilege] Definitions — In this section,

"custodian" means a person in whose custody a package is placed pursuant to subsection (3);

Related Provisions: 230(2.1) — Books and records.

"judge" means a judge of a superior court having jurisdiction in the province where the matter arises or a judge of the Federal Court;

Selected Cases [subsec. 232(1)"judge"]: *Stasiv Mitton & Smith v. Canada*, [1989] 1 C.T.C. 171 (Ont SC) ("Judge" does not include a judge of the Ontario Supreme Court appointed pursuant to the *Courts of Justice Act*); *Herman et al. v. Dep. A.G. Can.*, [1978] C.T.C. 728 (SCC) (Judge's order under provision made in capacity of judge, and not subject to review under s. 28 of *Federal Court Act*).

"lawyer" means, in the province of Quebec, an advocate or notary and, in any other province, a barrister or solicitor;

Related Provisions: 248(1)"lawyer" — Definition applies to entire Act.

"officer" means a person acting under the authority conferred by or under sections 231.1 to 231.5;

"solicitor-client privilege" means the right, if any, that a person has in a superior court in the province where the matter arises to refuse to disclose an oral or documentary communication on the ground that the communication is one passing between the person and the person's lawyer in professional confidence, except that for the purposes of this section an accounting record of a lawyer, including any supporting voucher or cheque, shall be deemed not to be such a communication.

Selected Cases [subsec. 232(1)"solicitor-client privilege"]: *Belgravia Investments Ltd. v. R.*, [2002] 3 C.T.C. 482 (FCTD) (Mere possession of document by lawyer does not make it privileged and not all communications are privileged); *Heath v. Canada*, [1990] 2 C.T.C. 28 (BC SC) (Solicitor's trust account ledger was "accounting record of a lawyer" and excluded from solicitor-client privilege); *MNR v. Lawrence*, [1989] 1 C.T.C. 289 (FCTD) (Solicitor-client privilege is lost where *prima facie* case of fraud established); *Visser and MNR*, [1989] 1 C.T.C. 192 (PEI SC) (Voluntary disclosure by taxpayer of material part of communication implicitly waives privilege); *Playfair Developments Ltd. v. Dep. MNR*, [1985] 1 C.T.C. 302 (Ont SC) (Provision does not give judge jurisdiction to determine whether or not communications sought are relevant to Minister's inquiry; "accounting record" interpreted); *Brunner and Lay (Canada) Ltd. v. Dep. A.G. Can.*, [1984] C.T.C. 534 (FCTD) (Interoffice memoranda between solicitors privileged); *Kent Steel Products Ltd. v. R.*, 76 D.T.C. 6253 (Ont SC) (Documents related to tax minimization, but not tax fraud, are privileged); *Re Goodman & Carr et al.*, [1968] C.T.C. 484 (Ont SC) (Documents privileged unless definite charge of fraud made; communications between solicitor and accountant of taxpayer not privileged); *Re Missiaen*, [1967] C.T.C. 579 (Alta. S.C.) (Communications between solicitor and accountant not privileged).

(2) Solicitor-client privilege defence — Where a lawyer is prosecuted for failure to comply with a requirement under section 231.2 with respect to information or a document, the lawyer shall be acquitted if the lawyer establishes to the satisfaction of the court

(a) that the lawyer, on reasonable grounds, believed that a client of the lawyer had a solicitor-client privilege in respect of the information or document; and

(b) that the lawyer communicated to the Minister, or some person duly authorized to act for the Minister, the lawyer's refusal to comply with the requirement together with a claim that a named client of the lawyer had a solicitor-client privilege in respect of the information or document.

Selected Cases [subsec. 232(2)]: *Cineplex Odeon Corp. v. Canada*, [1994] 2 C.T.C. 293 (Ont Gen Div) (Inadvertent disclosure without consent of client does not operate to waive privilege); *Crown Zellerbach Canada Ltd. v. Dep. A.G. Can.*, [1982] C.T.C. 121 (BC SC) (Communica-

tions between taxpayer and its president/counsel were privileged to extent made in latter's capacity as counsel).

(3) Seizure of certain documents where privilege claimed — Where, pursuant to section 231.3, an officer is about to seize a document in the possession of a lawyer and the lawyer claims that a named client of the lawyer has a solicitor-client privilege in respect of that document, the officer shall, without inspecting, examining or making copies of the document,

(a) seize the document and place it, together with any other document in respect of which the lawyer at the same time makes the same claim on behalf of the same client, in a package and suitably seal and identify the package; and

(b) place the package in the custody of the sheriff of the district or county in which the seizure was made or, if the officer and the lawyer agree in writing on a person to act as custodian, in the custody of that person.

Selected Cases [subsec. 232(3)]: *143471 Canada Inc., Quebec v.*, [1995] 1 C.T.C. 27 (SCC) (Impounded documents to be kept until constitutionality of impunged sections of legislation determined. Protection of individuals preferred to convenience of Minister); *Re Bowlen et al.*, [1971] C.T.C. 682 (BC SC) (No privilege where *prima facie* case of fraud established).

(3.1) Examination of certain documents where privilege claimed — Where, pursuant to section 231.1, an officer is about to inspect or examine a document in the possession of a lawyer or where, pursuant to section 231.2, the Minister has required provision of a document by a lawyer, and the lawyer claims that a named client or former client of the lawyer has a solicitor-client privilege in respect of the document, no officer shall inspect or examine the document and the lawyer shall

(a) place the document, together with any other document in respect of which the lawyer at the same time makes the same claim on behalf of the same client, in a package and suitably seal and identify the package or, if the officer and the lawyer agree, allow the pages of the document to be initialed and numbered or otherwise suitably identified; and

(b) retain it and ensure that it is preserved until it is produced to a judge as required under this section and an order is issued under this section in respect of the document.

History: The opening words of subsec. 232(3.1) amended by 1998, c. 19, s. 230, in force June 18, 1998. The opening words formerly read:

(3.1) Where, pursuant to sections 231.1 and 231.2, an officer is about to inspect or examine a document in the possession of a lawyer and the lawyer claims that a named client of the lawyer has a solicitor-client privilege in respect of that document, the officer shall not inspect or examine the document and the lawyer shall

(4) Application to judge — Where a document has been seized and placed in custody under subsection (3) or is being retained under subsection (3.1), the client, or the lawyer on behalf of the client, may

(a) within 14 days after the day the document was so placed in custody or commenced to be so retained apply, on three clear days notice of motion to the Deputy Attorney General of Canada, to a judge for an order

(i) fixing a day, not later than 21 days after the date of the order, and place for the determination of the question whether the client has a solicitor-client privilege in respect of the document, and

(ii) requiring the production of the document to the judge at that time and place;

(b) serve a copy of the order on the Deputy Attorney General of Canada and, where applicable, on the custodian within 6 days of the day on which it was made and, within the same time, pay to the custodian the estimated expenses of transporting the document to and from the place of hearing and of safeguarding it; and

(c) if the client or lawyer has proceeded as authorized by paragraph (b), apply at the appointed time and place for an order determining the question.

Related Provisions: *Interpretation Act* 27(1), (2) — Calculation of days and clear days.

Selected Cases [subsec. 232(4)]: *Archean Energy Ltd v. MNR*, [1998] 1 C.T.C. 398 (Alta QB) (Claim for solicitor-client privilege by one taxpayer may preserve claim for others in same business transaction); *Radke v. MNR*, [1996] 3 C.T.C. 86 (BC SC) (Documents not privileged where *prima facie* case of fraud established); *Leo Gray v. Canada*, [1994] 2 C.T.C. 409 (Ont Gen Div) (Course of conduct by Department of Justice counsel operated as functional waiver of 14 day period); *Solvent Petroleum Extraction Inc. v. MNR*, [1990] 2 C.T.C. 291 (FCTD) (Order to deliver documents under subsec. 232(6) denied where provisions of subsec. 232(4) not observed; judge has no jurisdiction to extend 14 day period in para. 232(4)(a)); *Vespoli et al. v. R.*, [1982] C.T.C. 418 (FCTD); rev'd in part [1984] C.T.C. 519 (FCA) (Judge has no jurisdiction under provision to determine relevance of documents or reasonableness of seizure); *Vespoli et al. v. R.*, [1982] C.T.C. 365 (FCTD); rev'd on other grounds [1984] C.T.C. 519 (FCA) (Application made within delay where notice of motion filed within 14 days and returnable over one month after date of seizure, the earliest possible date after vacation); *Cotroneo v. Dep. A.G. Can.*, [1982] C.T.C. 131 (FCTD) (No privilege where *prima facie* case of fraud established); *Cotroneo v. Dep. A.G. Can.*, [1982] C.T.C. 67 (FCTD); aff'd on reconsideration [1982] C.T.C. 131 (FCTD) (*Prima facie* case of fraud requires affidavit evidence on knowledge, not information and belief); *Re Romeo's Place Victoria Ltd. et al.*, [1981] C.T.C. 380 (FCTD) (Crown not permitted to examine documents held to be irrelevant); *Edmonds v. Dep. A.G. Can.*, [1980] C.T.C. 192 (Que SC) (Crown's allegation of possible fraud was insufficient to dislodge privilege); *Herman et al. v. Dep. A.G. Can.*, [1978] C.T.C. 728 (SCC) (Federal Court of Appeal denied jurisdiction to hear an appeal from lower court determination of privilege); *Easton v. A.G. Can.*, [1976] C.T.C. 290 (FCA) (Application to set aside order for delivery of seized documents to officials of Revenue Canada dismissed where neither client nor solicitor applied, under provision, for order determining privilege).

(5) Disposition of application — An application under paragraph (4)(c) shall be heard *in camera*, and on the application

(a) the judge may, if the judge considers it necessary to determine the question, inspect the document and, if the judge does so, the judge shall ensure that it is repackaged and resealed; and

(b) the judge shall decide the matter summarily and,

(i) if the judge is of the opinion that the client has a solicitor-client privilege in respect of the document, shall order the release of the document to the lawyer, and

(ii) if the judge is of the opinion that the client does not have a solicitor-client privilege in respect of the document, shall order

(A) that the custodian deliver the document to the officer or some other person designated by the Commissioner of Customs and Revenue, in the case of a document that was seized and placed in custody under subsection (3), or

(B) that the lawyer make the document available for inspection or examination by the officer or other person designated by the Commissioner of Customs and Revenue, in the case of a document that was retained under subsection (3.1),

and the judge shall, at the same time, deliver concise reasons in which the judge shall identify the document without divulging the details thereof.

Proposed Amendment — 232(5)

Application: Bill C-26 (Second Senate Reading June 29, 2005), subpara. 140(e)(iv), will amend subsec. 232(5) to replace both instances of "Commissioner of Customs and Revenue" with "Commissioner of Revenue", in force on a day to be fixed by the Governor in Council.

History: Subsec. 232(5) amended by replacing the words "Deputy Minister of National Revenue" with "Commissioner of Customs and Revenue" by 1999, c. 17, para. 167(c), proclaimed into force November 1, 1999.

"Deputy Minister of National Revenue" substituted for "Deputy Minister of National Revenue for Taxation" in subsec. 232(5), by 1994, c. 13, subsec. 7(1), applicable May 12, 1994.

(6) Order to deliver or make available — Where a document has been seized and placed in custody under subsection (3) or where a document is being retained under subsection (3.1) and a judge, on the application of the Attorney General of Canada, is satisfied that neither the client nor the lawyer has made an application under paragraph (4)(a) or, having made that application, neither the client nor the lawyer has made an application under paragraph (4)(c), the judge shall order

(a) that the custodian deliver the document to the officer or some other person designated by the Commissioner of Customs and Revenue, in the case of a document that was seized and placed in custody under subsection (3); or

(b) that the lawyer make the document available for inspection or examination by the officer or other person designated by the Commissioner of Customs and Revenue, in the case of a document that was retained under subsection (3.1).

Proposed Amendment — 232(6)

Application: Bill C-26 (Second Senate Reading June 29, 2005), subpara. 140(e)(iv), will amend subsec. 232(6) to replace both instances of "Commissioner of Customs and Revenue" with "Commissioner of Revenue", in force on a day to be fixed by the Governor in Council.

History: Subsec. 232(6) amended by replacing the words "Deputy Minister of National Revenue" with "Commissioner of Customs and Revenue" by 1999, c. 17, para. 167(c), proclaimed into force November 1, 1999.

"Deputy Minister of National Revenue" substituted for "Deputy Minister of National Revenue for Taxation" in subsec. 232(6), by 1994, c. 13, subsec. 7(1), applicable May 12, 1994.

(7) Delivery by custodian — The custodian shall

(a) deliver the document to the lawyer

(i) in accordance with a consent executed by the officer or by or on behalf of the Deputy Attorney General of Canada or the Commissioner of Customs and Revenue, or

(ii) in accordance with an order of a judge under this section; or

(b) deliver the document to the officer or some other person designated by the Commissioner of Customs and Revenue

(i) in accordance with a consent executed by the lawyer or the client, or

(ii) in accordance with an order of a judge under this section.

Proposed Amendment — 232(7)

Application: Bill C-26 (Second Senate Reading June 29, 2005), subpara. 140(e)(iv), will amend subsec. 232(7) to replace both instances of "Commissioner of Customs and Revenue" with "Commissioner of Revenue", in force on a day to be fixed by the Governor in Council.

History: Subsec. 232(7) amended by replacing the words "Deputy Minister of National Revenue" with "Commissioner of Customs and Revenue" by 1999, c. 17, para. 167(c), proclaimed into force November 1, 1999.

"Deputy Minister of National Revenue" substituted for "Deputy Minister of National Revenue for Taxation" in subsec. 232(7), by 1994, c. 13, subsec. 7(1), applicable May 12, 1994.

(8) Continuation by another judge — Where the judge to whom an application has been made under paragraph (4)(a) cannot for any reason act or continue to act in the application under paragraph (4)(c), the application under paragraph (4)(c) may be made to another judge.

(9) Costs — No costs may be awarded on the disposition of any application under this section.

(10) Directions — Where any question arises as to the course to be followed in connection with anything done or being done under this section, other than subsection (2), (3) or (3.1), and there is no direction in this section with respect thereto, a judge may give such direction with regard thereto as, in the judge's opinion, is most likely to carry out the object of this section of allowing solicitor-client privilege for proper purposes.

(11) Prohibition — The custodian shall not deliver a document to any person except in accordance with an order of a judge or a consent under this section or except to any officer or servant of the custodian for the purposes of safeguarding the document.

(12) Idem — No officer shall inspect, examine or seize a document in the possession of a lawyer without giving the lawyer a reasonable opportunity of making a claim under this section.

(13) Authority to make copies — At any time while a document is in the custody of a custodian under this section, a judge may, on an *ex parte* application of the lawyer, authorize the lawyer to examine or make a copy of the document in the presence of the custodian or the judge by an order that shall contain such provisions as may be necessary to ensure that the document is repackaged and that the package is resealed without alteration or damage.

(14) Waiver of claim of privilege — Where a lawyer has, for the purpose of subsection (2), (3) or (3.1), made a claim that a named client of the lawyer has a solicitor-client privilege in respect of information or a document, the lawyer shall at the same time communicate to the Minister or some person duly authorized to act for the Minister the address of the client last known to the lawyer so that the Minister may endeavour to advise the client of the claim of privilege that has been made on the client's behalf and may thereby afford the client an opportunity, if it is practicable within the time limited by this section, of waiving the claim of privilege before the matter is to be decided by a judge or other tribunal.

(15) Compliance — No person shall hinder, molest or interfere with any person doing anything that that person is authorized to do by or pursuant to this section or prevent or attempt to prevent any person doing any such thing and, notwithstanding any other Act or law, every person shall, unless the person is unable to do so, do everything the person is required to do by or pursuant to this section.

Related Provisions: 238(1) — Punishment for failing to comply.

Selected Cases [s. 232]: *Lavallee, Rackel & Heintz v. R.*, [2002] 4 C.T.C. 143 (SCC) (*Criminal Code* s. 488.1 unconstitutional, violating solicitor-client privilege).

Definitions [s. 232]: "clear days" — *Interpretation Act* 27(1); "Commissioner of Customs and Revenue" — *Canada Customs and Revenue Agency Act* s. 25; "county" — *Interpretation Act* 35(1); "custodian" — 232(1); "Federal Court" — *Federal Courts Act* s. 4; "judge", "lawyer" — 232(1); "Minister" — 248(1); "officer" — 232(1); "person" — 248(1); "province" — *Interpretation Act* 35(1); "record" — 248(1); "servant" — 248(1) (under "employment"); "solicitor-client privilege" — 232(1); "superior court", "writing" — *Interpretation Act* 35(1).

Information Circulars [s. 232]: 73-10R3: Tax evasion.

233. (1) Information return — Every person shall, on written demand from the Minister served personally or otherwise, whether or not the person has filed an information return as required by this Act or the regulations, file with the Minister, within such reasonable time as is stipulated in the demand, the information return if it has not been filed or such information as is designated in the demand.

Related Provisions: 150(2) — Demands for returns; 162 — Penalties; 244(5) — Proof of service by mail; 244(6) — Proof of personal service; 248(7)(a) — Mail deemed received on day mailed.

Regulations: 200–233 (information returns).

(2) Partnerships — Every partnership shall, on written demand from the Minister served personally or otherwise on any member of the partnership, file with the Minister, within such reasonable time as is stipulated in the demand, an information return required under section 233.3, 233.4 or 233.6.

Related Provisions: 150(2) — Demands for returns; 162 — Penalties; 233(3) — Tiers of partnerships; 244(5) — Proof of service by mail; 244(6) — Proof of personal service; 244(20)(b) — Service of documents on partnerships; 248(7)(a) — Mail deemed received on day mailed.

(3) Application to members of partnerships — For the purposes of this subsection and subsection (2), a person who is a member of a partnership that is a member of another partnership is deemed to be a member of the other partnership.

History: S. 233 amended by 1997, c. 25, s. 68, applicable to returns required to be filed on or before a day that is after April 29, 1998. S. 233 formerly read:

> 233. Information return — Every person shall, on written demand from the Minister served personally or otherwise, whether or not the person has filed an information return as required by this Act or a regulation, file with the Minister, within such reasonable time as is stipulated in the demand, such information as is designated therein.

S. 233 amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 134. S. 233 formerly read:

> 233. Every person shall, on demand from the Minister, served personally or by registered mail, and whether or not the person has filed an information return as required by a regulation made under paragraph 221(1)(d), file with the Minister, within such reasonable time as may be stipulated in the demand, such information as is designated therein.

Definitions [s. 233]: "Minister" — 248(1); "person", "regulation" — 248(1).

Information Circulars [s. 233]: 77-9R: Books, records and other requirements for taxpayers having foreign affiliates.

233.1 [Reporting transactions with related non-residents] — (1) Definitions — The definitions in this subsection apply in this section.

"reportable transaction" means

(a) in the case of

(i) a reporting person for a taxation year who is not resident in Canada at any time in the year, or

(ii) a reporting partnership for a fiscal period no member of which is resident in Canada in the period,

a transaction or series of transactions that relate in any manner whatever to a business carried on in Canada by the reporting person or partnership in the year or period or a preceding taxation year or period; and

(b) in any other case, a transaction or series of transactions that relate in any manner whatever to a business carried on by a reporting person (other than a business carried on by a reporting person as a member of a partnership) or partnership in a taxation year or fiscal period.

Related Provisions: 248(10) — Series of transactions.

"reporting partnership" for a fiscal period means a partnership

(a) a member of which is resident in Canada in the period; or

(b) that carries on a business in Canada in the period.

"reporting person" for a taxation year means a person who, at any time in the year,

(a) is resident in Canada; or

(b) is non-resident and carries on a business (other than a business carried on as a member of a partnership) in Canada.

"transaction" includes an arrangement or event.

Related Provisions [233.1(1)"transaction"]: 245(1)"transaction" — Parallel definition under general anti-avoidance rule; 247(1) — Parallel definition re transfer pricing.

(2) Reporting person's information return — Subject to subsection (4), a reporting person for a taxation year shall, on or before the reporting person's filing-due date for the year, file with the Minister, in respect of each non-resident person with whom the reporting person does not deal at arm's length in the year and each partnership of which such a non-resident person is a member, an information return for the year in prescribed form containing prescribed information in respect of the reportable transactions in which the reporting person and the non-resident person or the partnership, as the case may be, participated in the year.

Related Provisions: 152(4)(b)(iii) — Reassessment period extended by 3 years re non-arm's length transactions with non-residents; 162(7), (10), (10.1) — Penalty for failure to file; 163(2.4)(a) — Penalty of $24,000 for false statement or omission; 233.2–233.7 — Foreign reporting requirements; 247 — Transfer pricing rules; Canada-U.S. Tax Treaty:Art. IX — Adjustments on non-arm's length transactions.

Forms: T106: Information return of non-arm's length transactions with non-residents.

(3) Reporting partnership's information return — Subject to subsection (4), a reporting partnership for a fiscal period shall, on or before the day on or before which a return is required by section 229 of the *Income Tax Regulations* to be filed in respect of the period or would be required to be so filed if that section applied to the reporting partnership, file with the Minister, in respect of each non-resident person with whom the reporting partnership, or a member of the reporting partnership, does not deal at arm's length in the period and each partnership of which such a non-resident person is a member, an information return for the period in prescribed form containing prescribed information in respect of the reportable transactions in which the reporting partnership and the non-resi-

dent person or the partnership, as the case may be, participated in the period.

Related Provisions: 152(4)(b)(iii) — Reassessment period extended by 3 years re non-arm's length transactions with non-residents; 162(7), (10), (10.1) — Penalty for failure to file; 163(2.4)(a) — Penalty of $24,000 for false statement or omission; 233.1(5) — Tiers of partnerships; 233.2–233.7 — Foreign reporting requirements; 247 — Transfer pricing rules; Canada-U.S. Tax Treaty:Art. IX — Adjustments on non-arm's length transactions.

(4) *De minimis* exception — A reporting person or partnership that, but for this subsection, would be required under subsection (2) or (3) to file an information return for a taxation year or fiscal period is not required to file the return unless the total of all amounts, each of which is the total fair market value of the property or services that relate to a reportable transaction in which the reporting person or partnership and any non-resident person with whom the reporting person or partnership, or a member of the reporting partnership, does not deal at arm's length in the year or period, or a partnership of which such a non-resident person is a member, as the case may be, participated in the year or period, exceeds $1,000,000.

(5) Deemed member of partnership — For the purposes of this section, a person who is a member of a partnership that is a member of another partnership is deemed to be a member of the other partnership.

History [s. 233.1]: S. 233.1 amended by 1998, c. 19, s. 231, applicable to taxation years and fiscal periods that begin after 1997. S. 233.1 formerly read:

> 233.1 Information return with respect to certain non-resident persons — Every corporation that, at any time in a taxation year, was resident in Canada or carried on business in Canada shall, in respect of each non-resident person with whom it was not dealing at arm's length at any time in the year, file with the Minister, within 6 months from the end of the year, an annual information return for the year in prescribed form and containing prescribed information in respect of transactions with that person.

Definitions [s. 233.1]: "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 255; "carries on a business in Canada", "carry on business in Canada" — 253; "filing-due date" — 248(1); "fiscal period" — 249.1; "Minister", "non-resident" — 248(1); "person", "prescribed", "property" — 248(1); "reportable transaction", "reporting partnership", "reporting person" — 233.1(1); "resident in Canada" — 250; "series" — 248(10); "taxation year" — 249; "transaction" — 233.1(1).

Information Circulars [s. 233.1]: 87-2R: International transfer pricing; 77-9R: Books, records and other requirements for taxpayers having foreign affiliates.

233.2 [Reporting transfers or loans to foreign trusts] — (1) Definitions — The definitions in this subsection apply in this section.

"exempt trust" means

(a) a trust that is governed by a foreign retirement arrangement;

(b) a trust that

(i) is resident in a country under the laws of which an income tax is imposed,

(ii) is exempt under the laws referred to in subparagraph (i) from the payment of income tax to the government of that country,

(iii) is established principally in connection with, or the principal purpose of which is to administer or provide benefits under, one or more superannuation, pension or retirement funds or plans or any funds or plans established to provide employee benefits, and

(iv) is either

(A) maintained primarily for the benefit of non-resident individuals, or

(B) governed by an employees profit sharing plan; or

(c) a trust

(i) where the interest of each beneficiary under the trust is described by reference to units, and

(ii) that complies with prescribed conditions.

Related Provisions: 233.6(2)(a) — No reporting required on distribution from certain exempt trusts.

Regulations: Reg. 4801.1 (prescribed conditions for subpara. (c)(ii)).

"specified beneficiary" at any time under a trust means

(a) any person beneficially interested in the trust who is not at that time

(i) a mutual fund corporation,

(ii) a non-resident-owned investment corporation,

(iii) a person (other than a trust) all of whose taxable income for the person's taxation year that includes that time is exempt from tax under Part I,

(iv) a trust all of the taxable income of which for its taxation year that includes that time is exempt from tax under Part I,

(v) a mutual fund trust,

(vi) a trust described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1),

(vii) a registered investment,

(viii) a trust in which all persons beneficially interested are persons described in subparagraphs (i) to (vii),

(ix) a particular person who is beneficially interested in the trust solely because the particular person is beneficially interested in an exempt trust or a trust described in this subparagraph or any of subparagraphs (iv) to (vi), nor

(x) a particular person who is beneficially interested in the trust only because of a right that is subject to a contingency, where at that time the identity of the particular person as a person beneficially interested in the trust is impossible to determine; or

(b) any person described at that time in any of subparagraphs (a)(i) to (x) who is beneficially interested in the trust, where it is reasonable to consider that the person became beneficially interested in the trust as part of a transaction or event or series of transactions or events one of the purposes of which is to limit the reporting in respect of the trust that would, but for this paragraph, be required under subsection (4).

Proposed Repeal — 233.2(1)"specified beneficiary"

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 40(1), will repeal the definition "specified beneficiary" in subsec. 233.2(1), applicable on the same basis as the amendment of subsec. 233.2(2).

Technical Notes: Existing section 233.2 requires certain persons who have made transfers or loans to a "specified foreign trust", or to a non-resident corporation that is a controlled foreign affiliate of such a trust, to file annual information returns with respect to the trust. A "specified foreign trust", as defined in subsection 233.2, includes a trust with a "specified beneficiary" resident in Canada. As defined in subsection 233.2(1), a "specified beneficiary" is generally any beneficiary under the trust with the exception of persons listed in subparagraphs (a)(i) to (x) of the definition. For a return to be required to be filed as a consequence of a transfer or loan, it is necessary to have a "non-arm's length indicator", as set out in

subsection 233.2(2), apply in respect of the transfer or loan. One of the cases where a "non-arm's length indicator" applies in respect of a transfer to a trust is where the transferor is a "specified beneficiary" under the trust. Subsection 233.2(3) provides a look-through rule so that, where a partnership transfers property, it is considered to have been transferred by members of the partnership.

New section 94 sets out new rules governing the taxation of non-resident trusts. In order to be consistent with the new rules:

- the definitions "specified beneficiary" and "specified foreign trust" in section 233.2 are repealed,
- there is no longer a requirement for a "non-arm's length indicator", so the existing rule in subsection 233.2(2) is repealed,
- except as described below, the definitions and rules of application in subsections 94(1), (2) and (10) to (13) apply because of amended subsection 233.2(2), and
- there is no longer a requirement for an explicit look-through rule for partnerships in section 233.2, given that the rule in paragraph 94(2)(o) applies because of amended subsection 233.2(2). Consequently, subsection 233.2(3) is repealed.

Related Provisions: 248(10) — Series of transactions; 248(25) — Extended meaning of "beneficially interested".

"specified foreign trust" at any time means a trust (other than an exempt trust) that is non-resident at that time where either

(a) there is a specified beneficiary under the trust who at that time

(i) is resident in Canada,

(ii) is a corporation or trust with which a person resident in Canada does not deal at arm's length, or

(iii) is a controlled foreign affiliate of a person resident in Canada; or

(b) at that time the terms or conditions of the trust or any arrangement in respect of the trust

(i) permit persons (other than persons described in any of subparagraphs (a)(i) to (viii) of the definition "specified beneficiary") who are not beneficially interested in the trust at that time to become, because of the exercise of any discretion by any person or partnership, beneficially interested in the trust after that time, or

(ii) allow property to be distributed, directly or indirectly, to another trust that immediately after the receipt of the distribution can reasonably be expected to be a specified foreign trust.

Proposed Repeal — 233.2(1)"specified foreign trust"

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 40(1), will repeal the definition "specified foreign trust" in subsec. 233.2(1), applicable on the same basis as the amendment of subsec. 233.2(2).

Technical Notes: See under 233.2(1)"specified beneficiary".

Related Provisions: 248(25) — Extended meaning of "beneficially interested".

(2) Non-arm's length indicators — For the purpose of this section,

(a) a non-arm's length indicator applies to a trust at a particular time with respect to a transfer of property made at an earlier time to the trust or a corporation where

(i) immediately after the earlier time the transferor was

(A) a specified beneficiary under the trust,

(B) a person related to a specified beneficiary under the trust,

(C) an uncle, aunt, nephew or niece of a specified beneficiary under the trust, or

(D) a trust or corporation that had, directly or indirectly in any manner whatever, previously acquired the transferred property from a person described in clause (A), (B) or (C),

(ii) the fair market value at the earlier time of the transferred property was greater than the amount, if any, by which

(A) the total fair market value at the earlier time of the consideration, if any, given to the transferor for the transfer of property at the earlier time

exceeds

(B) the portion of the total described in clause (A) that is attributable to the fair market value of an interest as a beneficiary in the trust or a share or debt issued by the corporation,

(iii) the consideration received by the transferor in respect of the transfer included indebtedness on which

(A) interest was not charged in respect of a period that began before the particular time,

(B) interest was charged in respect of a period that began before the particular time at a rate that was less than the lesser of

(I) the prescribed rate that was in effect at the earlier time, and

(II) the rate that would, having regard to all the circumstances, have been agreed on at the earlier time between parties dealing with each other at arm's length,

(C) any interest that was payable at the end of any calendar year that ended at or before the particular time was unpaid on the day that is 180 days after the end of that calendar year, or

(D) the amount of interest that was payable at the end of any calendar year that ended at or before the particular time was paid on or before the day that is 180 days after the end of that calendar year and it is established, by subsequent events or otherwise, that the payment was made as part of a series of loans or other transactions and repayments,

(iv) the property transferred was a share of the capital stock of a corporation or an interest in another trust and a specified beneficiary under the trust is related to the corporation or the other trust or would be so related if paragraph 80(2)(j) applied for the purposes of this subparagraph, or

(v) the transfer was made as part of a series of transactions or events one of the purposes of which was to avoid the application of this paragraph; and

(b) a non-arm's length indicator applies to a trust at a particular time with respect to a loan made at an earlier time where

(i) interest was not charged on the loan in respect of a period that began before the particular time,

(ii) interest was charged on the loan in respect of a period that began before the particular time at a rate that was less than the lesser of

(A) the prescribed rate that was in effect at the earlier time, and

(B) the rate that would, having regard to all the circumstances, have been agreed on at the earlier time between parties dealing with each other at arm's length,

(iii) any interest on the loan that was payable at the end of any calendar year that ended at or before the particular time was unpaid on the day that is 180 days after the end of that calendar year,

(iv) the amount of interest on the loan that was payable at the end of any calendar year that ended at or before the particular time was paid on or before the day that is 180 days after the end of that calendar year and it is established, by subsequent events or otherwise, that the payment was made as part of a series of loans or other transactions and repayments, or

(v) the loan was made as part of a series of transactions or events one of the purposes of which was to avoid the application of this paragraph.

Proposed Amendment — 233.2(2)

(2) Rule of application — In this section and paragraph 233.5(c.1), subsections 94(1), (2) and (10) to (13) apply, except that the references to the expression "(other than a restricted property)" in the definition "arm's length transfer" in subsection 94(1) are to be read as references to the expression "(other than property that is not described in any of subclauses (b)(i)(A)(I) to (III) but to which paragraph 94(2)(g) applies)".

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 40(2), will amend subsec. 233.2(2) to read as above, applicable to returns in respect of trust taxation years that begin after 2002, and to returns in respect of trust taxation years that begin

(a) after 2000, if the return relates to a trust that makes a valid election under para. (a) of the Application of the amendment to s. 94; and

(b) after 2001, if the return relates to a trust makes a valid election under para. (a) or (b) of the Application of the amendment to s. 94.

A return required to be filed because of this amendment is deemed to have been filed with the Minister of National Revenue on a timely basis if it is filed with the Minister of National Revenue on or before the trust's filing-due date for the taxation year of the trust that includes the day on which the amending legislation is assented to.

Technical Notes: See under 233.2(1)"specified beneficiary".

Related Provisions: 233.2(3) — Property transferred or lent by partnership; 248(10) — Series of transactions or events; 252(2) — Extended meaning of "uncle", "aunt", "nephew" and "niece".

Regulations: Reg. 4301(c) (prescribed rate of interest for 233.2(2)(a)(iii)(B)(I) and 233.2(2)(b)(ii)(A).

(3) Partnerships — For the purpose of this section, where property is transferred or lent at any time by a partnership, the property is deemed to have been transferred or lent at that time by each of the members of the partnership.

Proposed Repeal — 233.2(3)

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 40(2), will repeal subsec. (3), applicable on the same basis as the amendment of subsec. 233.2(2).

Technical Notes: See under 233.2(1)"specified beneficiary".

(4) Filing information on specified foreign trusts — Where

(a) at any time (in this subsection referred to as the "transfer time") before the end of a trust's taxation year (in this subsection referred to as the "trust's year"), property was transferred or lent, either directly or indirectly in any manner whatever, by any person (in this subsection referred to as the "transferor") to

(i) the trust, or

(ii) a corporation that, at the transfer time, would have been a controlled foreign affiliate of the trust if the trust had been resident in Canada,

(b) the trust was a specified foreign trust at any time in the trust's year, and

(c) a non-arm's length indicator applied to the trust at the end of the trust's year in respect of the transfer or loan,

the following rules apply:

(d) where the transferor is resident in Canada at the end of the trust's year, the transferor shall make an information return in respect of the trust's year in prescribed form and file it with the Minister on or before the transferor's filing-due date for the transferor's taxation year that includes the end of the trust's year, and

(e) where

(i) the transferor was, at the transfer time, a corporation that would have been a controlled foreign affiliate of a particular person if the particular person had been resident in Canada, and

(ii) the particular person is resident in Canada at the end of the trust's year,

the particular person shall make an information return in respect of the trust's year in prescribed form and file it with the Minister on or before the filing-due date for the particular person's taxation year that includes the end of the trust's year.

Proposed Amendment — 233.2(4)

(4) Filing information on foreign trusts — A person shall file an information return in prescribed form, in respect of a taxation year of a particular trust (other than an exempt trust or a trust described in any of paragraphs (c) to (h) of the definition "exempt foreign trust" in subsection 94(1)), with the Minister on or before the person's filing-due date for the person's taxation year in which the particular trust's taxation year ends if

(a) the particular trust is non-resident at a specified time in that taxation year of the particular trust;

(b) the person is a contributor, a connected contributor or a resident contributor to the particular trust; and

(c) the person

(i) is resident in Canada at that specified time, and

(ii) is not, at that specified time,

(A) a mutual fund corporation,

(B) a non-resident-owned investment corporation,

(C) a person all of whose taxable income for the person's taxation year that includes that time is exempt from tax under Part I,

(D) a mutual fund trust,

(E) a trust described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1),

(F) a registered investment,

(G) a trust in which all persons beneficially interested are persons described in clauses (A) to (F), or

(H) a person who is a contributor to the particular trust by reason only of being a contributor to a trust described in any of clauses (C) to (G).

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 40(3), will amend subsec. 233.2(4) to read as above, applicable on the same basis as the repeal of subsec. 233.2(2). However, for trust taxation years that end on or before July 18, 2005, paras. 233.2(4)(a) and (b) are to be read as follows:

(a) the particular trust is non-resident at the end of that taxation year of the particular trust;

(b) a contribution has been made by the person to the particular trust at any time in that taxation year of the particular trust or in a preceding taxation year of the particular trust; and

A return required to be filed by a person because of subsec. 233.2(4), as amended, is deemed to have been filed with the Minister of National Revenue on a timely basis if it is filed with the Minister on or before the person's filing-due date for the person's taxation year that includes the day on which the amending legislation is assented to.

Technical Notes: Under amended subsection 233.2(4), reporting will generally be required for a taxation year of a person if the person is a "contributor", "connected contributor" or "resident contributor" to a trust that is non-resident at a "specified time" in the taxation year, of the trust, that ends in that taxation year of the taxpayer. Because of amended subsection 233.2(2), the expressions "contributor", "contribution", "connected contributor", "resident contributor" and "specified time" generally carry the same meaning as in new section 94 (including by reference to deeming rules such as, for example, 94(12) and (13)), with most of the same exceptions for "arm's length transfers" contained in the definition of that expression in subsection 94(1). However, the exception in that definition against transfers of "restricted property" (as defined in subsection 94(1)) is extended to apply to most transfers described in paragraph 94(2)(g) (unless the transfer involves, generally, an issuance of a unit or share from a mutual fund trust, a mutual fund corporation or a corporation other than a closely-held corporation, as the case may be), with the result that such transfers do not give rise to an exception to the obligations for reporting under subsection 233.2(4). It should be noted that amended subsection 233.2(2) also applies for the purpose of new paragraph 233.5(c.1).

New subparagraph 233.2(4)(c)(ii) sets out a list of persons for whom reporting obligations are not imposed. This list is consistent with the list of beneficiaries who are not treated as "specified beneficiaries" under the existing rules in section 233.2.

Amended subsection 233.2(4) also exempts contributors from filing information returns with regard to trusts described in paragraphs (e) to (h) of the new definition "exempt foreign trust" in subsection 94(1). For more information in this regard, see the commentary on that definition.

Proposed Addition — 233.2(4.1)

(4.1) Similar arrangements — In this section and sections 162, 163 and 233.5, a person's obligations under subsection (4) (except to the extent that they are waived in writing by the Minister) are to be determined as if a transfer or loan were a contribution to which paragraph (4)(b) applied, an arrangement or entity were a non-resident trust throughout the calendar year that includes the time referred to in paragraph (a) and that calendar year were a taxation year of the arrangement or entity, if

(a) the person at any time, directly or indirectly, transferred or loaned the property to be held

(i) under the arrangement and the arrangement is governed by laws that are not laws of Canada or a province, or

(ii) by the entity and the entity is a non-resident entity (as defined by subsection 94.1(1));

(b) the transfer or loan is not an arm's length transfer;

(c) the transfer or loan is not solely in exchange for property that would be described in paragraphs (a) to (i) of the definition "specified foreign property" in subsection 233.3(1) if that definition were read without reference to paragraphs (j) to (q);

(d) the arrangement or entity is not a trust in respect of which the person would, if this Act were read without reference to this subsection, be required to file an information return for a taxation year that includes that time; and

(e) the arrangement or entity is, for a taxation year or fiscal period of the arrangement or entity that includes that time, not

(i) an exempt foreign trust,

(ii) a foreign affiliate in respect of which the person is a reporting entity (within the meaning assigned by subsection 233.4(1)), or

(iii) an exempt trust.

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 40(3), will add subsec. 233.2(4.1), applicable on the same basis as the repeal of subsec. 233.2(2).

Technical Notes: New subsection 94(3) provides that, where a non-resident trust has a resident contributor or resident beneficiary at the end of the trust's taxation year, the trust is generally taxed on its income in Canada for the year as if the trust were resident in Canada. However, the deeming provisions in subsection 94(3) apply only to arrangements that are considered to be trusts for Canadian income tax purposes. In some cases, there may be doubt as to whether a given arrangement is a trust for Canadian income tax purposes.

New subsection 233.2(4.1), in combination with subsection 233.2(4), imposes a filing obligation on contributors to certain entities or arrangements in respect of which reporting is not otherwise required. One of the key objectives of subsection 233.2(4.1) is to ensure that claims that section 94 does not apply can be reviewed by the CCRA.

More specifically, new subsection 233.2(4.1) applies where property has, directly or indirectly, been transferred or loaned by a person to be held

- under an arrangement governed by laws that are not laws of Canada or a province, or
- by a non-resident entity (as defined in subsection 94.1(1)).

The person must, where certain additional conditions are satisfied, file the information return referred to in amended subsection 233.2(4).

New subsection 233.2(4.1) provides that, except as the Minister of National Revenue otherwise permits in writing, the person has obligations under amended subsection 233.2(4) if all of the following conditions are satisfied:

- the transfer or loan is not an arm's length transfer (within the meaning that would be assigned by the definition "arm's length transfer" in subsection 94(1) as amended by subsection 233.2(2));
- the transfer or loan is not solely in exchange for property that would be described in paragraphs (a) to (i) of the definition "specified foreign property" in subsection 233.3(1) if that definition were read without reference to paragraphs (j) to (q) of that definition;
- the entity or arrangement is not a trust in respect of which the person would, without reference to subsection 233.2(4.1) and the explicit exemptions for filing returns contained in subsection 233.2(4), be required to file an information return for a taxation year that includes that time; and
- the entity or arrangement is, for a taxation year or fiscal period that includes that time, not

(i) an exempt foreign trust (as defined in subsection 94(1)),

(ii) foreign affiliate in respect of which the person is a reporting entity (as defined in subsection 233.4(1)), or

(iii) an exempt trust (as defined in subsection 233.2(1)).

Where the above conditions are satisfied, the person's obligations under subsection 233.2(4) and related provisions are determined as if:

- the transfer were a contribution to which paragraph 233.2(4)(a) applied;
- the entity or arrangement were a trust not resident in Canada throughout the calendar year that includes the time of the transfer or loan; and
- the taxation year of the entity or arrangement were that calendar year.

Related Provisions: 94(7)(b) [proposed] — Limitation on person's liability for trust's tax when return filed; 162(10), (10.1) — Penalty for failure to file; 163(2.4)(b) — Minimum $24,000 penalty for false statement or omission; 220(2.1) — Waiver of filing requirement; 220(3) — Extension of time to file return; 233.2(2) — Presence of non-arm's length indicators; 233.2(4.1) — Similar arrangements; 233.2(5) — Election to use other person's information return; 233.3(3) — Requirement to file return re foreign property; 233.5 — Due diligence exception; 233.6(2)(b) — No return required on distribution from trusts where return required under 233.2; 233.7 — No requirement to file in first year of immigration; 248(25.1) — Transfer to non-resident bare trust.

Forms: T1141: Information return re transfers or loans to a non-resident trust.

(5) Joint filing — Where information returns in respect of a trust's taxation year would, but for this subsection, be required to be filed under subsection (4) by a particular person and another person, and the particular person identifies the other person in an election filed in writing with the Minister, for the purposes of applying this Act to the particular person

(a) the information return filed by the other person shall be treated as if it had been filed by the particular person;

(b) the information required to be provided with the return by the particular person shall be deemed to be the information required to be provided by the other person with the return;

(c) the day on or before which the return is required to be filed by the particular person is deemed to be the later of the day on or before which

(i) the return would, but for this subsection, have been required to have been filed by the particular person, and

(ii) the return is required to have been filed by the other person; and

(d) each act and omission of the other person in respect of the return is deemed to be an act or omission of the particular person.

History [s. 233.2]: Subpara. (b)(iv) of the definition "exempt trust" in subsec. 233.2(1) amended by 1998, c. 19, subsec. 232(1), applicable to returns in respect of trusts' taxation years that begin after 1995. Subpara. (b)(iv) of the definition formerly read:

(iv) is maintained primarily for the benefit of non-resident individuals; or

The portion of para. (b) of the definition "specified foreign trust" in subsec. 233.2(1) before subpara. (ii) and para. 233.2(4)(c), amended by the said c. 19, subsecs. 232(2), (3), applicable after November 1997. The portion of para. (b) of the definition "specified foreign trust" before subpara. (ii) and para. 233.2(4)(c) formerly read:

(b) at that time the terms of the trust

(i) permit persons (other than persons described in any of subparagraphs (a)(i) to (viii) of the definition "specified beneficiary") to be added as beneficiaries under the trust after that time who are not beneficially interested in the trust at that time and who may be resident in Canada at the time of being so added, or

. . . . .

(c) unless paragraph (b) of the definition "specified foreign trust" in subsection (1) applies, a non-arm's length indicator applied to the trust at the end of the trust's year with respect to the transfer or loan,

S. 233.2 added by 1997, c. 25, s. 69, applicable to returns in respect of trusts' taxation years that begin after 1995, except that such a return in respect of a taxation year that ends in 1996, 1997 or 1998 is required to be filed on or before the later of

(a) April 30, 1998, and

(b) the day on or before which the return is otherwise required to be filed.

Definitions [s. 233.2]: "amount" — 248(1); "arm's length" — 251(1); "aunt" — 252(2)(e); "beneficially interested" — 248(25); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "controlled foreign affiliate" — 94.1(2)(h), 95(1), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "exempt foreign trust" — 94(1); "exempt trust" — 233.2(1); "employee" — 248(1); "employees profit sharing plan" — 144(1), 248(1); "filing-due date" — 248(1); "foreign retirement arrangement" — 248(1), Reg. 6803; "individual" — 248(1); "mutual fund corporation" — 131(8), (8.1), 248(1); "Minister" — 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q) [to be repealed], 132.2(3)(n) [draft], 248(1); "nephew", "niece" — 252(2)(g); "non-arm's length indicator" — 233.2(2); "non-resident" — 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "person", "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "property" — 248(1); "registered investment" — 204.4(1), 248(1); "related" — 251(2); "resident in Canada" — 250; "series" — 248(10); "specified beneficiary", "specified foreign trust" — 233.2(1); "taxation year" — 249; "transferor" — 233.2(4)(a); "trust" — 104(1), 248(1), (3); "trust's year" — 233.2(4)(a); "uncle" — 252(2)(e); "writing" — *Interpretation Act* 35(1).

233.3 [Reporting foreign property] — (1) Definitions — The definitions in this subsection apply in this section.

"reporting entity" for a taxation year or fiscal period means a specified Canadian entity for the year or period where, at any time (other than a time when the entity is non-resident) in the year or period, the total of all amounts each of which is the cost amount to the entity of a specified foreign property of the entity exceeds $100,000.

Related Provisions: 233.6(2)(c) — No return required on distribution from certain trusts to reporting entity.

"specified Canadian entity" for a taxation year or fiscal period means

(a) a taxpayer resident in Canada in the year that is not

(i) a mutual fund corporation,

(ii) a non-resident-owned investment corporation,

(iii) a person (other than a trust) all of whose taxable income for the year is exempt from tax under Part I,

(iv) a trust all of the taxable income of which for the year is exempt from tax under Part I,

(v) a mutual fund trust,

(vi) a trust described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1),

(vii) a registered investment, nor

(viii) a trust in which all persons beneficially interested are persons described in subparagraphs (i) to (vii); and

(b) a partnership (other than a partnership all the members of which are taxpayers referred to in any of subparagraphs (a)(i) to (viii)) where the total of all amounts, each of which is a share of the partnership's income or loss for the period of a non-resident member, is less than 90% of the income or loss of the partnership for the period, and, where the income and loss of the partnership are nil for the period, the income of the partnership for the period is deemed to be $1,000,000 for the purpose of determining a member's

share of the partnership's income for the purpose of this paragraph.

Related Provisions: 94(1)(c)(i) [to be repealed], 94(3)(a)(vi) [proposed] — Certain trusts deemed resident in Canada; 248(25) — Meaning of "beneficially interested".

"specified foreign property" of a person or partnership means any property of the person or the partnership that is

(a) funds or intangible property which are situated, deposited or held outside Canada,

(b) tangible property situated outside Canada,

Proposed Amendment — 233.3(1)"specified foreign property"(a), (b)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 277(1), will amend paras. (a) and (b) of the definition "specified foreign property" in subsec. 233.3(1) by substituting "intangible property, or for civil law incorporeal property, situated" for "intangible property which are situated" in para. (a), and "tangible property, or for civil law corporeal property," for "tangible property" in para. (b), to come into force on Royal Assent.

Technical Notes: See under 12(4).

(c) a share of the capital stock of a non-resident corporation,

(d) an interest in a non-resident trust or a trust that, but for section 94, would be a non-resident trust for the purpose of this section,

Proposed Amendment — 233.3(1)"specified foreign property"(d)

(d) an interest in a non-resident trust,

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 41(4), will amend para. (d) of the definition "specified foreign property" in subsec. 233.3(1) to read as above, applicable to returns in respect of trust taxation years that begin after 2002, and to returns in respect of trust taxation years that begin

(a) after 2000, if the return relates to a trust that makes a valid election under para. (a) of the Application of the amendment to s. 94; and

(b) after 2001, if the return relates to a trust that makes a valid election under para. (a) or (b) of the Application of the amendment to s. 94.

Technical Notes: Section 233.3 provides reporting requirements in respect of foreign property. In general terms, it provides that certain taxpayers resident in Canada and certain partnerships must file an information return with respect to their "specified foreign property" if the total cost amount of such property exceeds $100,000. For this purpose, "specified foreign property" (as defined in subsection 233.3(1)) includes an interest in a non-resident trust or a trust that would be non-resident were it not for section 94. It does not include an interest in a non-resident trust that was not acquired for consideration by the person or partnership.

Paragraph (d) of the definition "specified foreign property" is amended by eliminating the reference to section 94. Under new subparagraph 94(3)(a)(vi), a trust is deemed to be resident in Canada only for the purpose of determining its obligation to file a return under section 233.3. As a result, the trust will be treated as a specified Canadian entity and reporting entity for purposes of section 233.3. In respect of the obligations of a person or partnership that has an interest in the trust, paragraph 94(3)(a) does not apply to deem the trust to be resident in Canada. This amendment is consequential on amendments to section 94. As a result, an interest in a trust, otherwise deemed to be resident in Canada will be considered a specified foreign property, unless otherwise expressly excluded.

Proposed Addition — 233.3(1)"specified foreign property"(d.1)

(d.1) an interest in an insurance policy that is deemed by subsection 94.2(11) to be a participating interest in a non-resident entity,

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 41(5), will add para. (d.1) to the definition "specified foreign property" in subsec. 233.3(1), applicable to returns for taxation years that begin after 2002.

Technical Notes: Paragraph (d.1) of the definition is introduced so that specified foreign property includes an interest in an insurance policy issued by a non-resident insurer, if the mark-to-market regime in section 94.2 applies in respect of the interest. New paragraph (d.1) of the definition applies to returns for taxation years that begin after 2002. For further information in this regard, see the commentary on new subsection 94.2(11).

(e) an interest in a partnership that owns or holds specified foreign property,

(f) an interest in, or right with respect to, an entity that is non-resident,

(g) indebtedness owed by a non-resident person,

(h) an interest in or right, under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently, to any property (other than any property owned by a corporation or trust that is not the person) that is specified foreign property, and

Proposed Amendment — 233.3(1)"specified foreign property"(h)

(h) an interest in, or for civil law a right in, or a right — under a contract in equity or otherwise either immediately or in the future and either absolutely or contingently — to, any property (other than any property owned by a corporation or trust that is not the person) that is specified foreign property, and

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 277(2), will amend para. (h) of the definition "specified foreign property" in subsec. 233.3(1) to read as above, to come into force on Royal Assent.

Technical Notes: See under 12(4).

(i) property that, under the terms or conditions thereof or any agreement relating thereto, is convertible into, is exchangeable for or confers a right to acquire, property that is specified foreign property,

but does not include

(j) property that is used or held exclusively in the course of carrying on an active business of the person or partnership (determined as if the person or partnership were a corporation resident in Canada),

(k) a share of the capital stock or indebtedness of a non-resident corporation that is a foreign affiliate of the person or partnership for the purpose of section 233.4,

(l) an interest in, or indebtedness of, a non-resident trust that is a foreign affiliate of the person or partnership for the purpose of section 233.4,

Proposed Repeal — 233.3(1)"specified foreign property"(l)

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 41(6), will repeal para. (l) of the definition "specified foreign property" in subsec. 233.3(1), applicable on the same basis as the amendment to para. (d).

Technical Notes: Paragraph (l) of the definition is repealed to eliminate a reference to trusts that are treated as foreign affiliates. This reference is no longer necessary in light of new subsection 94(1), under which non-resident trusts are no longer treated as foreign affiliates.

(m) an interest in a non-resident trust that was not acquired for consideration by either the person or partnership or a person related to the person or partnership,

(n) an interest in a trust described in paragraph (a) or (b) of the definition "exempt trust" in subsection 233.2(1),

(o) an interest in a partnership that is a specified Canadian entity,

(o.1) a right with respect to, or indebtedness of, an authorized foreign bank that is issued by, and payable or otherwise enforceable at, a branch in Canada of the bank,

(p) personal-use property of the person or partnership, and

(q) an interest in or right to acquire a property that is described in any of paragraphs (j) to (p).

Proposed Amendment — 233.3(1)"specified foreign property"(q)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 277(3), will amend para. (q) of the definition "specified foreign property" in subsec. 233.3(1) by substituting "an interest in, or for civil law a right in, or a right to acquire," for "an interest in or right to acquire", to come into force on Royal Assent.

Technical Notes: See under 12(4).

Related Provisions: 94.2(10)(a), (c) — Treatment of foreign insurance policies.

(2) Application to members of partnerships — For the purpose of this section, a person who is a member of a partnership that is a member of another partnership

(a) is deemed to be a member of the other partnership; and

(b) the person's share of the income or loss of the other partnership is deemed to be equal to the amount of that income or loss to which the person is directly or indirectly entitled.

(3) Returns respecting foreign property — A reporting entity for a taxation year or fiscal period shall file with the Minister for the year or period a return in prescribed form on or before the day that is

(a) where the entity is a partnership, the day on or before which a return is required by section 229 of the *Income Tax Regulations* to be filed in respect of the fiscal period of the partnership or would be required to be so filed if that section applied to the partnership; and

(b) where the entity is not a partnership, the entity's filing-due date for the year.

Related Provisions: 94(1)(c)(i) [to be repealed], 94(3)(a)(vi) [proposed] — Application to trust deemed resident in Canada; 94.1(2)(p)–(r), 94.2(2)(d) — Effect of failing to provide information re foreign investment entity; 162(7), (10), (10.1) — Penalty for failure to file; 163(2.4)(c) — Minimum $24,000 penalty for false statement or omission; 220(2.1) — Waiver of filing requirement; 220(3) — Extension of time to file return; 233(2) — Demand for return by partnership; 233.2(4) — Requirement to file return re transfers to foreign trusts; 233.7 — No requirement to file in first year of immigration.

Forms: T1 General: Income tax and benefit return; T1135: Foreign income verification statement.

History [s. 233.3]: Para. (o.1) added to the definition "specified foreign property" in subsec. 233.3(1) by 2001, c. 17, s. 184, applicable after June 27, 1999.

S. 233.3 added by 1997, c. 25, s. 69, applicable (as amended by 1999, c. 22, s. 91, deemed to have come into force on April 25, 1997) to returns for taxation years and fiscal periods that begin after 1997, except that such a return for a taxation year or fiscal period that ends in 1998 is required to be filed on or before the later of

(a) April 30, 1999, and

(b) the day on or before which the return is otherwise required to be filed.

Definitions [s. 233.3]: "active business", "amount", "authorized foreign bank", "bank" — 248(1); "beneficially interested" — 248(25); "Canada" — 255, *Interpretation Act* 35(1); "corporation" — 248(1), *Interpretation Act* 35(1); "corporeal property" — Quebec *Civil Code* art. 899, 906; "cost amount", "filing-due date" — 248(1); "fiscal period" — 249.1; "foreign affiliate" — 95(1), 248(1); "incorporeal property" — Quebec *Civil Code* art. 899, 906; "insurance policy", "Minister" — 248(1); "mutual fund corporation" — 131(8), 248(1); "mutual fund trust" — 132(6)–(7), 248(1); "non-resident" — 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "participating interest" — 94.1(1), 94.1(2)(s), 248(1); "person" — 248(1); "personal-use property" — 54, 248(1); "prescribed", "property" — 248(1); "registered investment" — 204.4(1), 248(1); "related" — 251(2)–(6); "reporting entity" — 233.3(1); "resident in Canada" — 94(1)(c)(i) [to be repealed], 94(3)(a)(vi) [proposed], 250; "share" — 248(1); "specified Canadian entity", "specified foreign property" — 233.3(1); "taxable income" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

233.4 [Reporting foreign affiliates] — (1) Reporting entity — For the purpose of this section, "reporting entity" for a taxation year or fiscal period means

(a) a taxpayer resident in Canada (other than a taxpayer all of whose taxable income for the year is exempt from tax under Part I) of which a non-resident corporation is a foreign affiliate at any time in the year;

(b) a taxpayer resident in Canada (other than a taxpayer all of whose taxable income for the year is exempt from tax under Part I) of which a non-resident trust is a foreign affiliate at any time in the year; and

Proposed Repeal — 233.4(1)(b)

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 42(1), will repeal para. 233.4(1)(b), applicable to taxation years and fiscal periods that begin after 2002, and to taxation years and fiscal periods that begin

(a) after 2000, if the taxation year or fiscal period relates to a trust the taxation year of which begins in 2001 or 2002 and the trust makes a valid election under para. (a) of the Application of the amendment to s. 94; and

(b) after 2001, if the taxation year or fiscal period relates to a trust the taxation year of which begins in 2002 and the trust makes a valid election under para. (a) or (b) of the Application of the amendment to s. 94.

Technical Notes: Section 233.4 provides reporting requirements in respect of foreign affiliates. In general terms, it provides that taxpayers resident in Canada (or certain partnerships) of which a non-resident corporation or non-resident trust is a foreign affiliate must file an information return in respect of the affiliate.

Subsections 233.4(1) and (2) are amended to eliminate references to foreign affiliates that are non-resident trusts. These references are no longer necessary in light of new subsection 94(1), under which non-resident trusts are no longer treated as foreign affiliates.

(c) a partnership

(i) where the total of all amounts, each of which is a share of the partnership's income or loss for the period of a non-resident member, is less than 90% of the income or loss of the partnership for the period, and, where the income and loss of the partnership are nil for the period, the income of the partnership for the period is deemed to be $1,000,000 for the purpose of determining a member's share of the partnership's income for the purpose of this subparagraph, and

(ii) of which a non-resident corporation or trust is a foreign affiliate of which[46] at any time in the fiscal period.

Proposed Amendment — 233.4(1)(c)(ii)

(ii) of which a non-resident corporation is a foreign affiliate at any time in the fiscal period.

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 42(2), will amend subpara. 233.4(1)(c)(ii) to read as above, applicable on the same basis as the repeal of para. 233.4(1)(b).

Technical Notes: See under 233.4(1)(b).

Related Provisions: 94(1)(c)(i) [to be repealed], 94(3)(a)(vi) [proposed] — Certain trusts deemed resident in Canada.

(2) Rules of application — For the purpose of this section, in determining whether a non-resident corporation or trust is a foreign affiliate or a controlled foreign affiliate of a taxpayer resident in Canada or of a partnership

Proposed Amendment — 233.4(2) opening words

(2) Rules of application — For the purpose of this section, in determining whether a non-resident corporation is a foreign affiliate or a controlled foreign affiliate of a taxpayer resident in Canada or of a partnership

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 42(3), will amend the opening words of subsec. 233.4(2) to read as above, applicable on the same basis as the repeal of para. 233.4(1)(b).

Technical Notes: See under 233.4(1)(b).

(a) paragraph (b) of the definition "equity percentage" in subsection 95(4) shall be read as if the reference to "any corporation" were a reference to "any corporation other than a corporation resident in Canada";

(b) the definitions "direct equity percentage" and "equity percentage" in subsection 95(4) shall be read as if a partnership were a person; and

(c) the definitions "controlled foreign affiliate" and "foreign affiliate" in subsection 95(1) shall be read as if a partnership were a taxpayer resident in Canada.

Related Provisions: 94(1)(d) — Trust deemed to be controlled foreign affiliate.

(3) Application to members of partnerships — For the purpose of this section, a person who is a member of a partnership that is a member of another partnership

(a) is deemed to be a member of the other partnership; and

(b) the person's share of the income or loss of the other partnership is deemed to be equal to the amount of that income or loss to which the person is directly or indirectly entitled.

Related Provisions: 162(7), (10), (10.1) — Penalty for failure to file.

(4) Returns respecting foreign affiliates — A reporting entity for a taxation year or fiscal period shall file with the Minister for the year or period a return in prescribed form in respect of each foreign affiliate of the entity in the year or period within 15 months after the end of the year or period.

Related Provisions: 162(10), (10.1) — Penalty for failure to file; 163(2.4)(d) — Minimum $24,000 penalty for false statement or omission; 220(2.1) — Waiver of filing requirement; 220(3) — Extension of time to file return; 233(2) — Demand for return by partnership; 233.6(2)(d) — No return required on distribution from trust where return required under 233.4; 233.7 — No requirement to file in first year of immigration.

Forms: T1134-A: Information return re foreign affiliates that are not controlled foreign affiliates; T1134-B: Information return re controlled foreign affiliates.

History [s. 233.4]: S. 233.4 added by 1997, c. 25, s. 69, applicable to returns for taxation years and fiscal periods that begin after 1995, except that such a return for a taxation year or fiscal period that ends in 1996, 1997 or 1998 is required to be filed on or before the later of

(a) June 30, 1998, and

(b) the day on or before which the return is otherwise required to be filed.

Definitions [s. 233.4]: "amount" — 248(1); "Canada" — 255; "controlled foreign affiliate" — 94.1(2)(h), 95(1), 248(1); "corporation" — 94(1)(d), 248(1), *Interpretation Act* 35(1); "filing-due date" — 248(1); "fiscal period" — 249.1; "foreign affiliate" — 95(1), 233.4(2), 248(1); "non-resident" — 248(1); "person" — 248(1); "reporting entity" — 233.4(1); "resident in Canada" — 94(1)(c)(i) [to be repealed], 94(3)(a)(vi) [proposed], 250; "taxation year" — 249; "trust" — 104(1), 248(1), (3).

233.5 Due diligence exception — The information required in a return filed under section 233.2 or 233.4 does not include information that is not available, on the day on which the return is filed, to the person or partnership required to file the return where

(a) there is a reasonable disclosure in the return of the unavailability of the information;

(b) before that day, the person or partnership exercised due diligence in attempting to obtain the information;

(c) if

(i) the return is required to be filed under section 233.2, or

(ii) the return is required to be filed under section 233.4 by a person or partnership in respect of a corporation that is a controlled foreign affiliate, for the purpose of that section, of the person or partnership,

it was reasonable to expect, at the time of each transaction, if any, entered into by the person or partnership after March 5, 1996 that gives rise to the requirement to file the return or that affects the information to be reported in the return, that sufficient information would be available to the person or partnership to comply with that section; and

Proposed Amendment — 233.5(c), (c.1), (c.2)

(c) if the return is required to be filed under section 233.2 in respect of a trust, at the time of each transaction, if any, entered into by the person or partnership after March 5, 1996 and before June 23, 2000 that gave rise to the requirement to file a return for a taxation year of the trust that began before 2003 or that affects the information to be reported in the return, it was reasonable to expect that sufficient information would be available to the person or partnership to comply with section 233.2 in respect of each taxation year of the trust that began before 2003;

(c.1) if the return is required to be filed under section 233.2, at the time of each contribution (determined with reference to subsection 233.2(2)) made by the person or partnership after June 22, 2000 that gives rise to the requirement to file the return or that affects the information to be reported in the return, it was reasonable to expect that sufficient information would be available to the person or partnership to comply with section 233.2;

[46] *Sic.* Will be fixed by Proposed Amendment.

(c.2) if the return is required to be filed under section 233.4 by a person or partnership in respect of a corporation that is a controlled foreign affiliate for the purpose of that section of the person or partnership, at the time of each transaction, if any, entered into by the person or partnership after March 5, 1996 that gives rise to the requirement to file the return or that affects the information to be reported in the return, it was reasonable to expect that sufficient information would be available to the person or partnership to comply with section 233.4; and

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), s. 43, will amend para. 233.5(c) to read as above, and add paras. (c.1) and (c.2), applicable to returns in respect of taxation years that begin after 2002, and to taxation years that begin

in 2001 or 2002, if the trust makes a valid election under para. (a) of the Application of the amendment to s. 94, in which case s. 233.5 shall be read, in respect of the trust, without reference to para. 233.5(c); and

(b) in 2002, if the trust makes a valid election under para. (a) or (b) of the Application of the amendment to s. 94, in which case s. 233.5 shall be read, in respect of the trust, without reference to para. 233.5(c).

Technical Notes: Section 233.5 provides that, where specified conditions set out in paragraphs 233.5(a) to (d) are met, information required in a return filed under section 233.2 or 233.4 does not include information that is not available to the person or partnership required to file the return. In the case of a return required to be filed by a person or partnership under section 233.2, paragraph 233.5(c) provides that it must be reasonable for the person or partnership to expect, at the time of each transaction entered into by the person or partnership after March 5, 1996 that either gives rise to the requirement to file the return or that affects the information to be reported in the return, that sufficient information would be available to the person or partnership to comply with section 233.2.

Paragraph 233.5(c) is amended so that it applies only in connection with transactions entered into before June 23, 2000 that gave rise to the requirement to file a return for a taxation year of the trust that began before 2003. In connection with trust returns required to be filed for trust taxation years that began before 2003, it must be reasonable for the person or partnership to expect that sufficient information would have been available to the person or partnership to comply with section 233.2 if the proposed amendments to section 94 were not taken into account.

Paragraph 223.5(c) is also amended so that it does not apply to returns required to be filed under section 233.4. It is replaced in this respect by new paragraph 233.5(c.2), without any change in the specified conditions for such returns.

Paragraph 233.5(c.1) is introduced in connection with returns required to be filed under section 233.2 by a person or partnership for a taxation year of the trust that begins after 2002. Where "contributions" (determined with reference to subsection 233.2(2), referred to in the commentary above) are made after June 22, 2000, relief under section 233.5 is available only if it was reasonable for the person or partnership to expect, at the time of each such contribution that either gives rise to the requirement to file the return or that affects the information to be reported in the return, that sufficient information would be available to the person or partnership to comply with section 233.2.

This amendment applies to returns in respect of taxation years that begin after 2002. It also applies to returns in respect of taxation years that begin

- in 2001 or 2002, if the trust makes a valid election under the coming-into-force provision for new section 94, in which case section 233.5 shall be read, in respect of the trust, without reference to paragraph 233.5(c), and
- in 2002, if the trust makes a valid election under the coming-into-force provision of new section 94 Act, in which case section 233.5 shall be read, in respect of the trust, without reference to paragraph 233.5(c).

(d) if the information subsequently becomes available to the person or partnership, it is filed with the Minister not more than 90 days after it becomes so available.

Related Provisions: 233.2(4.1) — Foreign arrangements similar to trusts.

History [s. 233.5]: S. 233.5 added by 1997, c. 25, s. 69, applicable to returns required to be filed on or before a day that is after April 29, 1998.

Definitions [s. 233.5]: "corporation" — 248(1), *Interpretation Act* 35(1); "controlled foreign affiliate" — 94.1(2)(h), 95(1), 248(1); "Minister" — 248(1); "person" — 248(1).

233.6 (1) Returns respecting distributions from non-resident trusts — Where a specified Canadian entity (as defined by subsection 233.3(1)) for a taxation year or fiscal period receives a distribution of property from, or is indebted to, a non-resident trust (other than a trust that was an excluded trust in respect of the year or period of the entity or an estate that arose on and as a consequence of the death of an individual) in the year or period and the entity is beneficially interested in the trust at any time in the year or period, the entity shall file with the Minister for the year or period a return in prescribed form on or before the day that is

(a) where the entity is a partnership, the day on or before which a return is required by section 229 of the *Income Tax Regulations* to be filed in respect of the fiscal period of the partnership or would be required to be so filed if that section applied to the partnership; and

(b) where the entity is not a partnership, the entity's filing-due date for the year.

Related Provisions: 162(7) — Penalty for failure to file; 163(2.4)(e) — Minimum $2,500 penalty for false statement or omission; 220(2.1) — Waiver of filing requirement; 220(3) — Extension of time to file return; 233.6(2) — Meaning of "excluded trust"; 233.7 — No requirement to file in first year of immigration; 248(25) — Extended meaning of "beneficially interested".

Forms: T1142: Information return re distributions from and indebtedness to a non-resident trust.

(2) Excluded trust defined — For the purpose of subsection (1), an excluded trust in respect of the taxation year or fiscal period of an entity means

(a) a trust described in paragraph (a) or (b) of the definition "exempt trust" in subsection 233.2(1) throughout the portion of the year or period during which the trust was extant;

(b) a trust in respect of which the entity is required by section 233.2 to file a return in respect of each taxation year of the trust that ends in the entity's year;

(c) a trust an interest in which is at any time in the year or period specified foreign property (as defined by subsection 233.3(1)) of the entity, where the entity is a reporting entity (as defined by subsection 233.3(1)) for the year or period; and

(d) a trust in respect of which the entity is required by section 233.4 to file a return for the year or period.

Related Provisions [subsec. 233.6(2)]: 233(1) — Demand for return by partnership.

History [s. 233.6]: S. 233.6 added by 1997, c. 25, s. 69, applicable (as amended by 1999, c. 22, s. 91, deemed to have come into force on April 25, 1997) to returns for taxation years and fiscal periods that begin after 1995, except that

(a) such a return for a taxation year or fiscal period that ended in 1996, 1997 or 1998 is required to be filed on or before the later of

(i) April 30, 1998, and

(ii) the day on or before which the return is otherwise required to be filed;

(b) for taxation years and fiscal periods that began before 1998, subsec. 233.6(2) shall be read without reference to para. 233.6(2)(c); and

(c) for returns for taxation years and fiscal periods that began after 1995 and before 1998, the reference to "specified Canadian entity" in subsec. 233.6(1) shall have the meaning that would be assigned to that expression by subsec. 233.3(1) if it applied for those returns.

Definitions [s. 233.6]: "beneficially interested" — 248(25); "consequence of the death" — 248(8); "excluded trust" — 233.6(2).

233.7 Exception for first-year residents — Notwithstanding sections 233.2, 233.3, 233.4 and 233.6, a person who, but for this section, would be required under any of those sections to file an information return for a taxation year, is not required to file the return if the person is an individual (other than a trust) who first became resident in Canada in the year.

History [s. 233.7]: S. 233.7 added by 1997, c. 25, s. 69, applicable to returns required to be filed on or before a day that is after April 29, 1998.

Definitions [s. 233.7]: "individual", "person" — 248(1); "resident in Canada" — 250; "taxation year" — 249; "trust" — 104(1), 248(1), (3).

234. (1) Ownership certificates — Before a bearer coupon or warrant representing either interest or dividends payable by any debtor or cheque representing dividends or interest payable by a non-resident debtor is negotiated by or on behalf of a resident of Canada, there shall be completed by or on behalf of the resident an ownership certificate in prescribed form.

Related Provisions: 162(4) — Failure to complete ownership certificate.

Forms: NR601: Non-resident ownership certificate — withholding tax; NR602: Non-resident ownership certificate — no withholding tax; T600: Ownership certificate; T600B: Ownership certificate.

(2) Idem — An ownership certificate completed pursuant to subsection (1) shall be delivered in such manner, at such time and at such place as may be prescribed.

Regulations: 207 (prescribed time).

Forms: NR601: Non-resident ownership certificate — withholding tax; NR602: Non-resident ownership certificate — no withholding tax.

(3) Idem — The operation of this section may be extended by regulation to bearer coupons or warrants negotiated by or on behalf of non-resident persons.

(4)–(6) [Repealed under former Act]

Definitions [s. 234]: "amount", "dividend", "individual", "non-resident", "person", "prescribed", "regulation" — 248(1); "resident of Canada" — 94(3)(a)(viii), 250; "trust" — 104(1), 248(1), (3).

234.1 [Repealed under former Act]

235. Penalty for failing to file corporate returns [large corporations] — Every corporation that fails to file a return for a taxation year as and when required by section 150, 181.6 or 190.2 is liable, in addition to any penalty otherwise provided, to a penalty for each such failure equal to the amount determined by the formula

$$.0025 \text{ A} \times \text{B}$$

where

A is the total of the taxes that would be payable under Parts I.3 and VI by the corporation for the year if this Act were read without reference to subsections 181.1(4) and 190.1(3); and

B is the number of complete months, not exceeding 40, from the later of

(a) the day on or before which the return was required to be filed, and

(b) December 17, 1991,

to the day on which the return is filed.

Related Provisions: 18(1)(t) — No deduction for penalties; 161(11) — Interest on unpaid penalties; 220(3.1) — Waiver of penalty by CCRA; 227(10)(a) — Assessment.

History: The description of A in s. 235 amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 135, applicable to 1991 *et seq.* That description formerly read:

A is the total of the taxes payable under Parts I.3 and VI by the corporation for the year; and

S. 235 enacted by 1994, c. 7, Sch. II (1991, c. 49), s. 187, in force December 17, 1991.

Definitions [s. 235]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "taxation year" — 249.

Information Circulars: 00-1R: Voluntary disclosures program.

236. Execution of documents by corporations — A return, certificate or other document made by a corporation pursuant to this Act or a regulation shall be signed on its behalf by the President, Secretary or Treasurer of the corporation or by any other officer or person thereunto duly authorized by the Board of Directors or other governing body of the corporation.

Related Provisions: 227.1 — Liability of directors; 242 — officers and directors of corporation guilty of corporate offences.

Definitions [s. 236]: "corporation" — 248(1), *Interpretation Act* 35(1); "officer", "person", "regulation" — 248(1).

237. (1) Social Insurance Number — Every individual (other than a trust) who was resident or employed in Canada at any time in a taxation year and who files a return of income under Part I for the year, or in respect of whom an information return is to be made by a person pursuant to a regulation made under paragraph 221(1)(d), shall,

(a) on or before the first day of February of the year immediately following the year for which the return of income is filed, or

(b) within 15 days after the individual is requested by the person to provide his[47] Social Insurance Number,

apply to the Minister of Human Resources Development in prescribed form and manner for the assignment to the individual of a Social Insurance Number unless the individual has previously been assigned, or made application to be assigned, a Social Insurance Number.

Proposed Amendment — 237(1) closing words

Application: S.C. 2005, c. 34 (Bill C-23, Royal Assent July 20, 2005), s. 70, amended the closing words of subsec. 237(1) to replace "Minister of Human Resources Development" with "Canada Employment Insurance Commission", in force on a day to be fixed by order of the Governor in Council, provided that that day is the same as fixed under s. 70 of Bill C-22.

Related Provisions: 162(6) — Penalty for failure to provide Social Insurance Number; 221(1)(d.1) — Regulations may require disclosure of Social Insurance Number; 237(1.1), (2) — Obligations re Social Insurance Number; 239(2.3) — Offence re Social Insurance Number.

History: The closing words of subsec. 237(1) amended by 1998, c. 19, subsec. 233(1), in force June 18, 1998. The closing words formerly read:

apply to the Minister of Human Resources Development in prescribed form and manner for the assignment to the individual of a Social Insurance Number unless the individual has previously been assigned, or made application to be assigned, a Social Insurance Number and shall provide that number in any return filed under this Act or, at the request of any person required to make an information

[47] *Sic.* Should be "the individual's".

return pursuant to this Act or the regulations requiring the individual's Social Insurance Number, to that person.

Subsec. 237(1) amended by 1996, c. 11, para. 95(h), to substitute "Minister of Human Resources Development" for "Minister of National Health and Welfare", in force July 12, 1996.

Regulations: 3800 (how Social Insurance Number to be applied for).

Information Circulars: 82-2R2: SIN legislation that relates to the preparation of information slips.

Forms: T600: Ownership certificate; T1261: Application for a CRA Individual tax number (ITN) for non-residents.

(1.1) Production of number — Every person and partnership shall provide

(a) in the case of an individual (other than a trust), the individual's Social Insurance Number, and

(b) in any other case, the person's or partnership's business number

in any return filed under this Act or, at the request of any person required to make an information return pursuant to this Act or the regulations requiring either number, to that person.

History: Subsec. 237(1.1) added by 1998, c. 19, subsec. 233(2), in force June 18, 1998.

(2) Number required in information returns — For the purposes of this Act and the regulations, a person required to make an information return requiring a Social Insurance Number or a business number of a person or partnership

(a) shall make a reasonable effort to obtain the number from the person or partnership; and

(b) shall not knowingly use, communicate or allow to be communicated, otherwise than as required or authorized under this Act or a regulation, the number without the written consent of the person or partnership.

Related Provisions: 162(6) — Failure to provide Social Insurance Number; 237(3) — Communication to related person allowed; 237(4) — Communication allowed to agent during insurance demutualization; 239(2.3) — Offence re Social Insurance Number or business number.

History: Para. 237(2)(b) amended to add the words "or authorized" by 2000, c. 19, subsec. 65(1), in force June 29, 2000.

Subsec. 237(2) amended by 1998, c. 19, subsec. 233(2), in force June 18, 1998. Subsec. 237(2) formerly read:

(2) Idem — For the purposes of this Act and the regulations, a person required to make an information return requiring an individual's Social Insurance Number

(a) shall make a reasonable effort to obtain from the individual the individual's Social Insurance Number; and

(b) shall not knowingly use, communicate or allow to be communicated, otherwise than as required under this Act or a regulation, the individual's Social Insurance Number without the individual's written consent.

Information Circulars: 82-2R2: SIN legislation that relates to the preparation of information slips.

(3) Authority to communicate number — A particular person may communicate, or allow to be communicated, a Social Insurance Number or business number to another person related to the particular person where the other person is required, by this Act or the Regulations, to make an information return that requires the Social Insurance Number or business number.

(4) Authority to communicate number [for demutualization] — An insurance corporation may communicate, or allow to be communicated, to another person the Social Insurance Number or business number of a particular person or partnership where

(a) the other person became the holder of a share of the capital stock of the insurance corporation, or of a holding corporation (in this subsection having the meaning assigned by subsection 139.1(1)) in respect of the insurance corporation, on the share's issuance in connection with the demutualization (as defined by subsection 139.1(1)) of the insurance corporation;

(b) the other person became the holder of the share in the other person's capacity as nominee or agent for the particular person or partnership pursuant to an arrangement established by the insurance corporation or a holding corporation in respect of the insurance corporation; and

(c) the other person is required, by this Act or the Regulations, to make an information return, in respect of the disposition of the share or income from the share, that requires the Social Insurance Number or business number.

History: Subsecs. 237(3) and (4) added by 2000, c. 19, subsec. 65(2), in force June 29, 2000.

Definitions [s. 237]: "business number" — 248(1); "Canada" — 255; "demutualization" — 139.1(1); "employed" — 248(1); "holding corporation" — 139.1(1); "individual" — 248(1); ; "person", "prescribed", "regulation" — 248(1); "related" — 251(1)–(6); "taxation year" — 249; "trust" — 104(1), 248(1), (3); "written" — *Interpretation Act* 35(1)"writing".

237.1 (1) Definitions — In this section,

"gifting arrangement" means any arrangement under which it may reasonably be considered, having regard to statements or representations made or proposed to be made in connection with the arrangement, that if a person were to enter into the arrangement, the person would

(a) make a gift to a qualified donee, or a contribution referred to in subsection 127(4.1), of property acquired by the person under the arrangement; or

(b) incur a limited-recourse amount that can reasonably be considered to relate to a gift to a qualified donee or a contribution referred to in subsection 127(4.1).

Proposed Amendment — 237.1(1)"gifting arrangement"(b)

(b) incur a limited-recourse debt, determined under subsection 143.2(6.1), that can reasonably be considered to relate to a gift to a qualified donee or a monetary contribution referred to in subsection 127(4.1);

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 183, will amend para. (b) of the definition "gifting arrangement" in subsec. 237.1(1) to read as above, applicable in respect of gifts and monetary contributions made after 6:00 p.m. (EST) on December 5, 2003.

Technical Notes: Subsection 237.1(1) provides definitions of terms that apply for the purpose of tax shelter identification and the definition of "tax shelter investment" in subsection 143.2(1). The definition "gifting arrangement" includes an arrangement in respect of which it may reasonably be expected, having regard to representations made, that if a taxpayer makes a gift or political contribution under the arrangement, a person (whether or not it is the taxpayer) will incur an indebtedness in respect of which recourse is limited. This definition is amended in respect of gifts and contributions made after 6:00 p.m. (EST), December 5, 2003, to also refer to a limited-recourse debt determined under new subsection 143.2(6.1). For additional details regarding limited-recourse debt in respect of a gift, see the commentary to subsection 143.2(6.1).

Department of Finance news release, December 5, 2003: These measures implement proposals introduced in Budget 2003 that address charitable donation arrangements that were promoted in recent years in-

volving the use of limited-recourse debt. [See under 248(35)–(41) for full text of news release — ed.]

Federal budget, Supplementary Information, February 18, 2003: See under 143.2(6.1).

Related Provisions: 248(35)–(37) — Value of gift limited to cost if acquired within 3 years or as gifting arrangement.

History: The definition "gifting arrangement" added to subsec. 237.1(1) by 2003, c. 15, subsec. 87(2), the opening words applicable after February 18, 2003, para. (a) applicable in respect of property acquired, and gifts, contributions, statements and representations made, after February 18, 2003, and para. (b) applicable in respect of property acquired, and statements and representations made, after February 18, 2003.

"person" includes a partnership;

History: The definition "person" added to subsec. 237.1(1) by 1998, c. 19, subsec. 234(3), applicable after November 1994.

"promoter" in respect of a tax shelter means a person who in the course of a business

(a) sells or issues, or promotes the sale, issuance or acquisition of, the tax shelter,

(b) acts as an agent or adviser in respect of the sale or issuance, or the promotion of the sale, issuance or acquisition, of the tax shelter, or

(c) accepts, whether as a principal or agent, consideration in respect of the tax shelter,

and more than one person may be a tax shelter promoter in respect of the same tax shelter;

Related Provisions: 163.2 — Penalty for false statement by tax shelter promoter.

History: Paras. (a) and (b) of the definition "promoter" in subsec. 237.1(1) amended, and para. (c) added, by 1998, c. 19, subsec. 234(2), applicable after December 1, 1994. Paras. (a) and (b) of the definition formerly read:

(a) sells, issues or promotes the sale, issuance or acquisition of an interest in the tax shelter, or

(b) acts as an agent or adviser in respect of the sale or issuance, or the promotion of the sale, issuance or acquisition, of an interest in the tax shelter,

"tax shelter" means

(a) a gifting arrangement described by paragraph (b) of the definition "gifting arrangement"; and

(b) a gifting arrangement described by paragraph (a) of the definition "gifting arrangement", or a property (including any right to income) other than a flow-through share or a prescribed property, in respect of which it can reasonably be considered, having regard to statements or representations made or proposed to be made in connection with the gifting arrangement or the property, that, if a person were to enter into the gifting arrangement or acquire an interest in the property, at the end of a particular taxation year that ends within four years after the day on which the gifting arrangement is entered into or the interest is acquired,

(i) the total of all amounts each of which is

(A) an amount, or a loss in the case of a partnership interest, represented to be deductible in computing the person's income for the particular year or any preceding taxation year in respect of the gifting arrangement or the interest in the property (including, if the property is a right to income, an amount or loss in respect of that right that is stated or represented to be so deductible), or

(B) any other amount stated or represented to be deemed under this Act to be paid on account of the person's tax payable, or to be deductible in computing the person's income, taxable income or tax payable under this Act, for the particular year or any preceding taxation year in respect of the gifting arrangement or the interest in the property, other than an amount so stated or represented that is included in computing a loss described in clause (A),

would equal or exceed

(ii) the amount, if any, by which

(A) the cost to the person of the property acquired under the gifting arrangement, or of the interest in the property at the end of the particular year, determined without reference to section 143.2,

would exceed

(B) the total of all amounts each of which is the amount of any prescribed benefit that is expected to be received or enjoyed, directly or indirectly, in respect of the property acquired under the gifting arrangement, or of the interest in the property, by the person or another person with whom the person does not deal at arm's length.

Proposed Administrative Change — International Tax Shelter Information Centre

CRA news release, May 3, 2004: *Canada, Australia, United Kingdom and the United States agree to establish a Joint International Tax Shelter Information Centre*

The Honourable Stan Keyes, Minister of National Revenue, today announced that the Tax Commissioners of Canada, Australia, the United Kingdom and the United States have established a joint task force to increase collaboration and coordinate information about abusive tax transactions by signing a Memorandum of Understanding in Williamsburg, Virginia on April 23, 2004.

While the tax administrations operate primarily within their own borders, many abusive tax transactions employ strategies that cross borders, and many of the promoters of these transactions operate globally. The joint task force will assist the respective tax administrations in addressing challenges arising from abusive tax transactions. An initial focus of the work will include the ways in which financial products are used in abusive tax schemes by corporations and individuals to reduce their tax liabilities, and the identification of promoters developing and marketing those products.

Setting up a joint task force will enable the four countries to:

- Share expertise, best practices and experiences in the field of tax administration to identify and better understand abusive tax transactions and emerging schemes, as well as those who promote them;
- Exchange information about specific abusive transactions and their promoters and investors within the framework of each countries' existing bilateral tax treaties; and
- Carry out their individual abusive tax transaction enforcement activities more effectively and efficiently.

The protection of privacy is a primary concern of the Government of Canada. Consequently the exchange of taxpayer information will be closely monitored to ensure the respect of all applicable Canadian laws, as well as the privacy protection provisions in each country's existing tax treaties.

Officials of the four tax administrations will work together in Washington, DC, during the initial phase of the task force's operations. The Commissioners will review the operation of the task force after twelve months.

I.T. Technical News: 32 (joint international tax shelter information centre).

Related Provisions: 18.1(1)"tax shelter" — Definition for purposes of matchable expenditure rules; 53(2)(c)(i.3) — Tax shelter excluded from certain ACB reductions; 127.52(1)(c.3) — Minimum tax on tax shelter deductions; 143.2(1)"tax shelter investment"(a) — Definition includes a tax shelter under 237.1(1); 143.2(6), (6.1) — Limitations on cost of tax shelter; 163.2(1)"excluded activity"(a)(i) — No good-faith reliance defence for advisor assessed third-party penalty re tax shelter; 248(1)"tax shelter" — Definition applies to entire Act; 249.1(5) — Election for non-cal-

endar year-end not permitted for tax shelters; Reg. 1100(20.1) — limitation on CCA claim for computer software tax shelter property.

History: The definition "tax shelter" in subsec. 237.1(1) amended by 2003, c. 15, subsec. 87(1), the opening words applicable after February 18, 2003, para. (a) applicable in respect of property acquired, and gifts, contributions, statements and representations made, after February 18, 2003, and para. (b) applicable in respect of property acquired, and statements and representations made, after February 18, 2003. The definition formerly read:

> "tax shelter" means any property (including, for greater certainty, any right to income) in respect of which it can reasonably be considered, having regard to statements or representations made or proposed to be made in connection with the property, that, if a person were to acquire an interest in the property, at the end of a particular taxation year that ends within 4 years after the day on which the interest is acquired,
>
> (a) the total of all amounts each of which is
>
> (i) an amount, or a loss in the case of a partnership interest, represented to be deductible in computing income in respect of the interest in the property (including, where the property is a right to income, an amount or loss in respect of that right that is represented to be deductible) and expected to be incurred by or allocated to the person for the particular year or any preceding taxation year, or
>
> (ii) any other amount represented to be deductible in computing income or taxable income in respect of the interest in the property and expected to be incurred by or allocated to the person for the particular year or any preceding taxation year, other than any amount included in computing a loss described in subparagraph (i),
>
> would equal or exceed
>
> (b) the amount, if any, by which
>
> (i) the cost to the person of the interest in the property at the end of the particular year, determined without reference to section 143.2,
>
> would exceed
>
> (ii) the total of all amounts each of which is the amount of any prescribed benefit that is expected to be received or enjoyed, directly or indirectly, in respect of the interest in the property by the person or another person with whom the person does not deal at arm's length,
>
> but does not include property that is a flow-through share or a prescribed property.

The definition "tax shelter" in subsec. 237.1(1) amended by 1998, c. 19, subsec. 234(1), applicable after November 1994. The definition formerly read:

> "tax shelter" means any property in respect of which it may reasonably be considered having regard to statements or representations made or proposed to be made in connection with the property that, if a person were to acquire an interest in the property, at the end of any particular taxation year ending within 4 years after the day on which the interest is acquired,
>
> (a) the total of all amounts each of which is
>
> (i) a loss represented to be deductible in computing income in respect of the interest in the property and expected to be incurred by or allocated to the person for the particular year or any preceding taxation year, or
>
> (ii) any other amount represented to be deductible in computing income or taxable income in respect of the interest in the property and expected to be incurred by or allocated to the person for the particular year or any preceding taxation year, other than any amount included in computing a loss described in subparagraph (i),
>
> would exceed
>
> (b) the amount, if any, by which
>
> (i) the cost to the person of the interest in the property at the end of the particular year,
>
> would exceed
>
> (ii) the total of all amounts each of which is the amount of any prescribed benefit that is expected to be received or enjoyed directly or indirectly in respect of the interest in the property, by the person or another person with whom the person does not deal at arm's length
>
> but does not include property that is a flow-through share or a prescribed property.

Subpara. (a)(ii) of the definition "tax shelter" in subsec. 237.1(1) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 188(1), to substitute "the particular year or any preceding taxation year" for "the particular year", applicable to interests acquired after August 1989.

Regulations: 231(6), (6.1) (prescribed benefit for subpara. (b)(ii)); 231(7) (prescribed property).

(2) Application — A promoter in respect of a tax shelter shall apply to the Minister in prescribed form for an identification number for the tax shelter unless an identification number therefor has previously been applied for.

Related Provisions: 237.1(4) — Sale without identification number prohibited; 237.1(7.4) — Penalty for false information or selling shelter without number; 237.2 — Application of s. 237.1.

Information Circulars: 89-4: Tax shelter reporting.

Forms: T5001: Application for tax shelter identification number and undertaking to keep books and records.

(3) Identification — On receipt of an application under subsection (2) for an identification number for a tax shelter, together with prescribed information and an undertaking satisfactory to the Minister that books and records in respect of the tax shelter will be kept and retained at a place in Canada that is satisfactory to the Minister, the Minister shall issue an identification number for the tax shelter.

Related Provisions: 237.1(5) — Number is for administrative purposes only.

Information Circulars: 89-4: Tax shelter reporting.

(4) Sales prohibited — No person shall, whether as a principal or an agent, sell or issue, or accept consideration in respect of, a tax shelter before the Minister has issued an identification number for the tax shelter.

Related Provisions: 237.1(7.4) — Penalty for false information or selling shelter without number; 237.2 — Application of s. 237.1.

History: Subsec. 237.1(4) amended by 1998, c. 19, subsec. 234(4), applicable after December 1, 1994. Subsec. 237.1(4) formerly read:

> (4) No person shall, whether as a principal or an agent, sell or issue, or accept a contribution towards the acquisition of, an interest in a tax shelter before the Minister has issued an identification number for the tax shelter.

Information Circulars: 89-4: Tax shelter reporting.

(5) Providing tax shelter number — Every promoter in respect of a tax shelter shall

(a) make reasonable efforts to ensure that all persons who acquire or otherwise invest in the tax shelter are provided with the identification number issued by the Minister for the tax shelter;

(b) prominently display on the upper right-hand corner of any statement of earnings prepared by or on behalf of the promoter in respect of the tax shelter the identification number issued for the tax shelter; and

(c) on every written statement made after 1995 by the promoter that refers either directly or indirectly and either expressly or impliedly to the issuance by the Canada Customs and Revenue Agency of an identification number for the tax shelter, as well as on the copies of the portion of the information return to be forwarded pursuant to subsection (7.3), prominently display

Proposed Amendment — 237.1(5)(c) opening words

Application: Bill C-26 (Second Senate Reading June 29, 2005), subpara. 138(m)(v), will amend the opening words of para. 237.1(5)(c) to replace

"Canada Customs and Revenue Agency" with "Canada Revenue Agency", in force on a day to be fixed by the Governor in Council.

(i) where the statement or return is wholly or partly in English, the following:

"The identification number issued for this tax shelter shall be included in any income tax return filed by the investor. Issuance of the identification number is for administrative purposes only and does not in any way confirm the entitlement of an investor to claim any tax benefits associated with the tax shelter."

(ii) where the statement or return is wholly or partly in French, the following:

"Le numéro d'inscription attribué à cet abri fiscal doit figurer dans toute déclaration d'impôt sur le revenu produite par l'investisseur. L'attribution de ce numéro n'est qu'une formalité administrative et ne confirme aucunement le droit de l'investisseur aux avantages fiscaux découlant de cet abri fiscal."

and

(iii) where the statement includes neither English nor French, the following:

"The identification number issued for this tax shelter shall be included in any income tax return filed by the investor. Issuance of the identification number is for administrative purposes only and does not in any way confirm the entitlement of an investor to claim any tax benefits associated with the tax shelter.

Le numéro d'inscription attribué à cet abri fiscal doit figurer dans toute déclaration d'impôt sur le revenu produite par l'investisseur. L'attribution de ce numéro n'est qu'une formalité administrative et ne confirme aucunement le droit de l'investisseur aux avantages fiscaux découlant de cet abri fiscal."

Related Provisions: 163.2 — Penalty for false statement by tax shelter promoter; 239(2.1) — Incorrect identification number.

History: Para. 237.1(5)(c) amended by replacing the words "Department of National Revenue" with "Canada Customs and Revenue Agency" by 1999, c. 17, para. 168(d), proclaimed into force November 1, 1999.

Subsec. 237.1(5) amended by 1998, c. 19, subsec. 234(4), applicable after December 1, 1994. Subsec. 237.1(5) formerly read:

(5) Providing identification number — Every promoter in respect of a tax shelter shall make reasonable efforts to ensure that all persons who acquire an interest in the tax shelter are provided with the identification number issued by the Minister for the tax shelter.

Regulations: 231(5) (disclosure requirements in providing identification number; now incorporated into ITA 237.1(5)).

Information Circulars: 89-4: Tax shelter reporting.

(6) Deductions and claims disallowed — No amount may be deducted or claimed by a person in respect of a tax shelter unless the person files with the Minister a prescribed form containing prescribed information, including the identification number for the tax shelter.

Related Provisions: 143.2 — Limitation on tax shelter expenditure; 237.2 — Application of s. 237.1.

History: Subsec. 237.1(6) amended by 1998, c. 19, subsec. 234(4), applicable after December 1, 1994. Subsec. 237.1(6) formerly read:

(6) Deduction disallowed — In computing the amount of income, taxable income or taxable income earned in Canada of, or tax or other amount payable by, or refundable to, a taxpayer under this Act for a taxation year, or any other amount that is relevant for the purposes of computing that amount, no amount may be deducted in respect of an interest in a tax shelter unless the taxpayer files with the Minister a prescribed form containing prescribed information, including the identification number for the shelter.

Subsec. 237.1(6) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 188(2), applicable to interests acquired after 1990. Subsec. 237.1(6) formerly read:

(6) In computing the amount of income, taxable income, taxable income earned in Canada, tax or other amount payable by, or refundable to a taxpayer under this Act for a taxation year, or any other amount that is relevant for the purposes of computing that amount, no amount may be claimed or deducted by the taxpayer in respect of an interest in a tax shelter unless the taxpayer provides the Minister with the identification number for the shelter.

Selected Cases [subsec. 237.1(6)]: *Clayton v. R.*, [2004] 1 C.T.C. 2265 (TCC) (Prescribed information required if loss to be claimed); *Fitzgerald v. R.*, [2000] 3 C.T.C. 2011 (TCC) (Doubt expressed that provision enforceable).

Information Circulars: 89-4: Tax shelter reporting.

Forms: T5004: Claim for tax shelter loss or deduction. See also under subsec. 237.1(7).

(6.1) Deductions and claims disallowed — No amount may be deducted or claimed by any person for any taxation year in respect of a tax shelter of the person where any person is liable to a penalty under subsection (7.4) or 162(9) in respect of the tax shelter or interest on the penalty and

(a) the penalty or interest has not been paid; or

(b) the penalty and interest have been paid, but an amount on account of the penalty or interest has been repaid under subsection 164(1.1) or applied under subsection 164(2).

Related Provisions: 237.1(6.2) — No time limit on assessment; 237.1(7.4) — Penalty for false information or selling shelter without number.

History: Subsec. 237.1(6.1) added by 1998, c. 19, subsec. 234(4), applicable after December 1, 1994.

(6.2) Assessments — Notwithstanding subsections 152(4) to (5), such assessments, determinations and redeterminations may be made as are necessary to give effect to subsection (6.1).

Related Provisions: 143.2(15) — Late assessment to implement tax shelter deduction rules.

History: Subsec. 237.1(6.2) added by 1998, c. 19, subsec. 234(4), applicable after December 1, 1994.

(7) Information return — Every promoter in respect of a tax shelter who accepts consideration in respect of the tax shelter or who acts as a principal or agent in respect of the tax shelter in a calendar year shall, in prescribed form and manner, file an information return for the year containing

(a) the name, address and either the Social Insurance Number or business number of each person who so acquires or otherwise invests in the tax shelter in the year,

(b) the amount paid by each of those persons in respect of the tax shelter, and

(c) such other information as is required by the prescribed form

unless an information return in respect of the tax shelter has previously been filed.

Related Provisions: 237.1(7.1)–(7.3) — Administrative requirements for returns; 237.2 — Application of s. 237.1.

History: Subsec. 237.1(7) amended by 1998, c. 19, subsec. 234(4), applicable after December 1, 1994 except that the reference in para. (a) to "business number" is applicable after June 17, 1998.

(7) Every promoter in respect of a tax shelter from whom an interest in the tax shelter was acquired, who accepted a contribution in respect of an acquisition of an interest in the tax shelter or who acted as an agent in respect of an acquisition of an interest in the tax shelter in a calendar year shall, in the prescribed form and manner, make an information return for that year containing

(a) the name, address and Social Insurance Number of each person who so acquired an interest in the tax shelter in the year,

(b) the amount paid by each such person for the interest, and

(c) such other information as may be required by the prescribed form,

unless an information return in respect of the acquisition has previously been made.

Regulations: 231(2)–(4) (prescribed manner).

Information Circulars: 89-4: Tax shelter reporting.

Forms: T5003: Statement of tax shelter information; T5003 Summ: Summary of tax shelter information; T5004: Claim for tax shelter loss or deduction; T5016: Summary information for tax shelters that are partnerships or for partnerships that allocated renounced resource expenses to their members.

(7.1) Time for filing return — An information return required under subsection (7) to be filed in respect of the acquisition of an interest in a tax shelter in a calendar year shall be filed with the Minister on or before the last day of February of the following calendar year.

Related Provisions: 237.1(7.2) — Return required within 30 days of discontinuing business or activity.

History: Subsec. 237.1(7.1) added by 1998, c. 19, subsec. 234(4), applicable after December 1, 1994.

(7.2) Time for filing — special case — Notwithstanding subsection (7.1), where a person is required under subsection (7) to file an information return in respect of a business or activity and the person discontinues that business or activity, the return shall be filed on or before the earlier of

(a) the day referred to in subsection (7.1); and

(b) the day that is 30 days after the day of the discontinuance.

History: Subsec. 237.1(7.2) added by 1998, c. 19, subsec. 234(4), applicable after December 1, 1994.

(7.3) Copies to be provided — Every person required to file a return under subsection (7) shall, on or before the day on or before which the return is required to be filed with the Minister, forward to each person to whom the return relates 2 copies of the portion of the return relating to that person.

History: Subsec. 237.1(7.3) added by 1998, c. 19, subsec. 234(4), applicable after December 1, 1994.

(7.4) Penalty — Every person who files false or misleading information with the Minister in respect of an application under subsection (2) or, whether as a principal or as an agent, sells, issues or accepts consideration in respect of a tax shelter before the Minister has issued an identification number for the tax shelter is liable to a penalty equal to the greater of

(a) $500, and

(b) 25% of the total of all amounts each of which is the consideration received or receivable from a person in respect of the tax shelter before the correct information is filed with the Minister or the identification number is issued, as the case may be.

Related Provisions: 161(11)(b.1) — Interest on penalty; 163(2.9) — Where partnership is liable to penalty; 227(10)(b) — Assessment of penalty at any time; 237.1(6.1) — No deduction allowed while tax shelter penalty unpaid.

History: Subsec. 237.1(7.4) added by 1998, c. 19, subsec. 234(4), applicable after December 1, 1994.

(8) Application of sections 231 to 231.3 — Without restricting the generality of sections 231 to 231.3, where an application under subsection (2) with respect to a tax shelter has been made, notwithstanding that a return of income has not been filed by any taxpayer under section 150 for the taxation year of the taxpayer in which an amount is claimed as a deduction in respect of the tax shelter, sections 231 to 231.3 apply, with such modifications as the circumstances require, for the purpose of permitting the Minister to verify or ascertain any information in respect of the tax shelter.

Information Circulars [subsec. 237.1(8)]: 89-4: Tax shelter reporting.

Selected Cases [s. 237.1]: *Haggarty v. R.*, [2003] 4 C.T.C. 2535 (TCC) (No deduction for tax shelter losses where required information not provided).

Definitions [s. 237.1]: "amount" — 248(1); "arm's length" — 251(1); "business", "business number" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "flow-through share" — 66(15), 248(1); "gifting arrangement" — 237.1(1); "limited-recourse amount" — 143.2(1), 248(1); "limited-recourse debt" — 143.2(6.1); "Minister" — 248(1); "person" — 237.1(1), 248(1); "prescribed" — 248(1); "promoter" — 237.1(1); "property" — 248(1); "qualified donee" — 149.1(1), 248(1); "record", "share" — 248(1); "tax shelter" — 237.1(1), 248(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 249; "written" — *Interpretation Act* 35(1)"writing".

237.2 Application of section 237.1 — Section 237.1 is applicable with respect to interests acquired after August 31, 1989.

Origin of s. 237.2: R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the rule of application in 1988, c. 55, subsec. 180(2)).

Offences and Punishment

238. (1) Offences and punishment — Every person who has failed to file or make a return as and when required by or under this Act or a regulation or who has failed to comply with subsection 116(3), 127(3.1) or (3.2), 147.1(7) or 153(1), any of sections 230 to 232 or a regulation made under subsection 147.1(18) or with an order made under subsection (2) is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to

(a) a fine of not less than $1,000 and not more than $25,000; or

(b) both the fine described in paragraph (a) and imprisonment for a term not exceeding 12 months.

Related Provisions: 162, 163 — Penalties; 242 — Where corporation is guilty of offence; 243 — Minimum fine; 244(4) — Summary conviction charges must be laid within 8 years; *Interpretation Act* 34(1) — Indictable and summary conviction offences; *Interpretation Act* 34(2) — *Criminal Code* provisions apply.

Selected Cases [subsec. 238(1)]: *R. v. Euerby (V.J.)*, [1992] 2 C.T.C. 149 (BC SC) (Penalty for failure to comply with notice to file return not cruel and unusual punishment under *Charter*); *Canada v. J.P. Consultants*, [1990] 2 C.T.C. 514 (Man PC) (Taxpayer continuing to rely on advice of accountant whose actions had already resulted in charges against taxpayer had no defence of due diligence to charge of failing to file returns); *Licht v. Canada*, [1990] 2 C.T.C. 477 (FCTD) (Court extended 10-day delay to file information to 60 days where Crown could not show harm caused by extension); *R. v. Merkle*, [1979] C.T.C. 519 (Alta CA) (Taxpayer established defence of due diligence against charge of failing to file a return where he directed his accountant to do so within a "reasonable time"); *R. v. Subacious*, [1978] C.T.C. 610 (Ont CA) (Failure to file a return results in a separate offence for each successive day return not filed).

Information Circulars: 00-1R: Voluntary disclosures program.

(2) Compliance orders — Where a person has been convicted by a court of an offence under subsection (1) for a failure to comply with a provision of this Act or a regulation, the court may make such order as it deems proper in order to enforce compliance with the provision.

Related Provisions: 231.7 — Compliance order for assistance with audit or demand.

Selected Cases [subsec. 238(2)]: *Henneberry v. R.*, [2004] 1 C.T.C. 238 (NS Prov Ct) (Court's jurisdiction to make order unaffected by bankruptcy); *R. v. Jacques*, [2000] 2 C.T.C. 475 (BC SC) (Filling "N/A" in portion of tax return relating to income constituted failure to file return); *R. v. Grimwood*, [1988] 1 C.T.C. 44 (SCC) (Failure to comply with a demand to provide information pursuant to subsec. 231(3) results in a separate offence for each demand not complied with); *Hartmann v. R.*, [1971] C.T.C. 396 (Sask DC) (Where company convicted under provision, sole officer also convicted for participating with company in offence); *R. v. Sakellis*, [1970] C.T.C. 342 (Ont CA) (Offence of failure to remit source deductions impossible to commit until expiry of time provided for such remittance).

Information Circulars: 73-10R3: Tax evasion.

(3) Saving — Where a person has been convicted under this section of failing to comply with a provision of this Act or a regulation, the person is not liable to pay a penalty imposed under section 162 or 227 for the same failure unless the person was assessed for that penalty or that penalty was demanded from the person before the information or complaint giving rise to the conviction was laid or made.

Selected Cases [s. 238]: *R. v. Jones*, [2000] 4 C.T.C. 27 (Alta QB) (Requirement to file return applied, even if income may be exempt from tax).

Definitions [s. 238]: "person", "regulation" — 248(1).

239. (1) Other offences and punishment — Every person who has

(a) made, or participated in, assented to or acquiesced in the making of, false or deceptive statements in a return, certificate, statement or answer filed or made as required by or under this Act or a regulation,

(b) to evade payment of a tax imposed by this Act, destroyed, altered, mutilated, secreted or otherwise disposed of the records or books of account of a taxpayer,

(c) made, or assented to or acquiesced in the making of, false or deceptive entries, or omitted, or assented to or acquiesced in the omission, to enter a material particular, in records or books of account of a taxpayer,

(d) wilfully, in any manner, evaded or attempted to evade compliance with this Act or payment of taxes imposed by this Act, or

Selected Cases [para. 239(1)(d)]: *R. v. Ricci*, [2005] 1 C.T.C. 40 (Ont CA) (Mistrial refused where accused represented by agent and had presented no evidence); *R. v. Klundert*, [2004] 5 C.T.C. 20 (Ont CA) (Honest belief that Act was unconstitutional not relevant to culpability); *Canada v. Caseley*, [1991] 1 C.T.C. 211 (PEI SC) (Penalty may be levied under provision notwithstanding previous penalty under subsec. 163(2) imposed for same acts); *R. v. Redpath Industries Ltd. et al.*, [1984] C.T.C. 483 (Que SC) (Crown must prove that tax is payable for purposes of establishing evasion charges); *R. v. Paveley*, [1976] C.T.C. 477 (Sask CA) (Express refusal to file return does not, in itself, imply intent to deceive, nor satisfy requirements of charge of wilful evasion); *R. v. Kidd*, 74 D.T.C. 6574 (Ont SC) (Failure to sign inaccurate return no defence to evasion charge); *R. v. Poynton*, [1972] C.T.C. 411 (Ont SC) (Failure to report fraudulently obtained amounts as income constituted evasion).

(e) conspired with any person to commit an offence described by paragraphs (a) to (d),

is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to

(f) a fine of not less than 50%, and not more than 200%, of the amount of the tax that was sought to be evaded, or

Selected Cases [para. 239(1)(f)]: *R. v. Lettroy*, [2000] 2 C.T.C. 478 (Ont SCJ) (Accused to be given time to pay fine).

(g) both the fine described in paragraph (f) and imprisonment for a term not exceeding 2 years.

Related Provisions: 163(2) — Penalty — false statements; 239(1.1) — Offences re refunds and credits; 239(2) — Prosecution on indictment; 242 — Where corporation is guilty of offence; 243 — Minimum fine; 244(4) — Summary conviction charges must be laid within 8 years; *Interpretation Act* 34(1) — Indictable and summary conviction offences; *Interpretation Act* 34(2) — *Criminal Code* provisions apply.

Selected Cases [subsec. 239(1)]: *Kelly v. R.*, [2005] 2 C.T.C. 2059 (TCC) (Crown not required to establish exact amount of tax sought to be evaded); *R. v. Jarvis*, [2003] 1 C.T.C. 135 (SCC) (Taxpayer must be warned when investigation turns from determination of tax liability to determination of penal liability); *Ross v. R.*, [2002] 4 C.T.C. 461 (NS Prov Ct) (Net worth assessment approach can be used in prosecutions); *Anderson v. R.*, [2002] 3 C.T.C. 197 (Sask QB) (Materials obtained by compulsion for purposes of tax evasion prosecution must be obtained by properly issued warrant or evidence will be excluded); *R. v. Yip*, [2000] 2 C.T.C. 66 (Alta Prov Ct) (Taxpayers to be advised when audits not routine); *R. v. Michaud*, [2000] 1 C.T.C. 366 (NB QB) ("Every person" is broad enough to include preparer of tax return); *Jurchison v. R.*, [2000] 1 C.T.C. 2762 (TCC) (Assessment may not be quashed where some evidence not illegally obtained); *R. v. Anderson*, [2000] 1 C.T.C. 108 (Sask Prov Ct) (Evidence from improper search and seizure excluded); *Neeb v. Canada*, [1997] 2 C.T.C. 2343 (TCC) (No identity of issues in criminal and civil proceedings since tax liability can only be determined by Tax Court); *Canada v. Cancor Software Corp.*, [1990] 2 C.T.C. 479 (Ont CA); leave to appeal to SCC refused (1991), 130 N.R. 394 (note) (Under ss. 548 and 549 of *Criminal Code*, judge has authority to commit accused to trial for offences under *Income Tax Act*); *Canada v. Maplesden*, [1990] 2 C.T.C. 276 (Alta QB) (Crown must prove *actus reus* and *mens rea* beyond reasonable doubt); *Canada v. Hutton*, [1990] 2 C.T.C. 258 (Alta CA) (Where taxpayer and his defrauded principal agreed to treat funds diverted by taxpayer as loans, taxpayer had no *mens rea* for evasion in respect of return filed after agreement); *Cipriani v. R.*, [1988] 1 C.T.C. 394 (Ont CA) (Sections 7 and 24 of the *Charter* inapplicable to admissible statements voluntarily made to investigator); *Lucier v. R.*, [1988] 1 C.T.C. 230 (Ont CA) (Crown must establish *mens rea* for conviction of wilfully evading taxes); *R. v. Landes et al.*, [1988] 1 C.T.C. 124 (Que SC) (Taxpayer wrongly characterizing income as capital gain acquitted of evasion charge where error not so glaring as to lead to conclusion that deliberate evasion committed); *R. v. Sharma*, [1987] 2 C.T.C. 253 (Ont SC) (Prosecution under provision in addition to penalties under subsec. 163(2) not violation of *Charter*); *Rans Construction (1966) Ltd. et al. v R.*, [1987] 2 C.T.C. 206 (FCTD) (Taxpayer permitted to appeal assessment in respect of years for which criminal charges successfully prosecuted); *Century 21 Ramos Realty Inc. v. R.*, [1987] 1 C.T.C. 340, (sub nom. *Ramos v. R.*) (Ont CA); leave to appeal to SCC refused (1987), 44 D.L.R. (4th) vii (note) (Taxpayer convicted of evasion after benefit of amount unreported attributed to taxpayer under subsec. 56(2)); *Knox Contracting Ltd. et al. v. R.*, [1986] 2 C.T.C. 194 (NB QB) (Search warrants obtained under s. 443 of *Criminal Code* held to be inapplicable to documents sought for purposes of *Income Tax Act*); *Spencer v. R.*, [1985] 2 C.T.C. 310 (SCC) (Resident's right to liberty and security of the person not violated when compelled to testify in Canada regarding information obtained as bank manager in Bahamas, where such disclosure constituted criminal offence); *Collins v. R.*, [1985] 1 C.T.C. 342 (Ont CA) (Having paid tax in U.S. after being charged with evasion in Canada not a defence); *Sturgess v. R.*, [1984] C.T.C. 1 (FCTD) (Taxpayer claiming to be too busy to file return convicted of evasion; "evasion" interpreted); *R. v. Lavoie*, [1970] C.T.C. 476 (Sask CA) (Taxpayer convicted of separate offences under paras. (a) and (b); both offences arose from same facts).

I.T. Application Rules: 65.1(b) (where offence committed before December 23, 1971).

Interpretation Bulletins: IT-99R5: Legal and accounting fees.

Information Circulars: 73-10R3: Tax evasion; 78-10R4: Books and records retention/destruction; 00-1R: Voluntary disclosures program; 05-1: Electronic record keeping.

Registered Charities Newsletters: 11 (audit of tax preparer lands registered charities and executive director in hot water).

(1.1) Offences re refunds and credits — Every person who obtains or claims a refund or credit under this Act to which the person or any other person is not entitled or obtains or claims a refund or credit under this Act in an amount that is greater than the amount to which the person or other person is entitled

(a) by making, or participating in, assenting to or acquiescing in the making of, a false or deceptive statement in a return, certificate, statement or answer filed or made under this Act or a regulation,

(b) by destroying, altering, mutilating, hiding or otherwise disposing of a record or book of account of the person or other person,

(c) by making, or assenting to or acquiescing in the making of, a false or deceptive entry in a record or book of account of the person or other person,

(d) by omitting, or assenting to or acquiescing in an omission to enter a material particular in a record or book of account of the person or other person,

(e) wilfully in any manner, or

(f) by conspiring with any person to commit any offence under this subsection,

is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to

(g) a fine of not less than 50% and not more than 200% of the amount by which the amount of the refund or credit obtained or claimed exceeds the amount, if any, of the refund or credit to which the person or other person, as the case may be, is entitled, or

(h) both the fine described in paragraph (g) and imprisonment for a term not exceeding 2 years.

Related Provisions: 239(2) — Prosecution on indictment.

History: Subsec. 239(1.1) added by 1998, c. 19, subsec. 235(1), in force June 18, 1998.

(2) Prosecution on indictment — Every person who is charged with an offence described in subsection (1) or (1.1) may, at the election of the Attorney General of Canada, be prosecuted on indictment and, if convicted, is, in addition to any penalty otherwise provided, liable to

(a) a fine of not less than 100% and not more than 200% of

(i) where the offence is described in subsection (1), the amount of the tax that was sought to be evaded, and

(ii) where the offence is described in subsection (1.1), the amount by which the amount of the refund or credit obtained or claimed exceeds the amount, if any, of the refund or credit to which the person or other person, as the case may be, is entitled; and

(b) imprisonment for a term not exceeding 5 years.

Related Provisions: 243 — Minimum fine; *Interpretation Act* 34(1) — Indictable and summary conviction offences; *Interpretation Act* 34(2) — *Criminal Code* provisions apply.

History: Subsec. 239(2) amended by 1998, c. 19, subsec. 235(2), in force June 18, 1998. Subsec. 239(2) formerly read:

(2) Every person who is charged with an offence described in subsection (1) may, at the election of the Attorney General of Canada, be prosecuted on indictment and, if convicted, is, in addition to any penalty otherwise provided, liable to

(a) a fine of not less than 100%, and not more than 200%, of the amount of the tax that was sought to be evaded; and

(b) imprisonment for a term not exceeding 5 years.

Selected Cases [subsec. 239(2)]: *R. v. Terracina*, [2000] 2 C.T.C. 486 (Ont SCJ) (Three-year concurrent sentences imposed on multiple offences).

Interpretation Bulletins: IT-99R5: Legal and accounting fees.

Information Circulars: 73-10R3: Tax evasion.

(2.1) Providing incorrect tax shelter identification number — Every person who wilfully provides another person with an incorrect identification number for a tax shelter is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to

(a) a fine of not less than 100%, and not more than 200%, of the cost to the other person of that person's interest in the shelter;

(b) imprisonment for a term not exceeding 2 years; or

(c) both the fine described in paragraph (a) and the imprisonment described in paragraph (b).

Related Provisions: 237.1 — Tax shelters; 242 — Where corporation is guilty of offence; 243 — Minimum fine;.

Information Circulars: 89-4: Tax shelter reporting.

(2.2) Offence with respect to confidential information — Every person who

(a) contravenes subsection 241(1), or

(b) knowingly contravenes an order made under subsection 241(4.1)

is guilty of an offence and liable on summary conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months, or to both.

Related Provisions: 122.64(4) — Offence; 239(2.21) — Offence with respect to confidential information; 239(2.22) — Definitions; 242 — Where corporation is guilty of offence; 244(4) — Summary conviction charges must be laid within 8 years.

History: Subsec. 239(2.2) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 136. Subsec. (2.2) formerly read:

(2.2) Every person

(a) who contravenes subsection 241(1), or

(b) to whom information has been provided pursuant to subsection 241(4) and who knowingly uses, communicates or allows to be communicated that information for any purpose other than that for which it was provided,

is guilty of an offence and liable on summary conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or to both.

(2.21) Idem — Every person

(a) to whom taxpayer information has been provided for a particular purpose under paragraph 241(4)(b), (c), (e), (h), (k), (n), (o) or (p), or

(b) who is an official to whom taxpayer information has been provided for a particular purpose under paragraph 241(4)(a), (d), (f), (f.1), (i) or (j.1)

and who for any other purpose knowingly uses, provides to any person, allows the provision to any person of, or allows any person access to, that information is guilty of an offence and liable on summary conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months, or to both.

History: Para. 239(2.21)(b) amended by 2001, c. 41, s. 117 to add reference to para. (f.1), in force December 24, 2001.

Para. 239(2.21)(a) amended by 2001, c. 17, s. 185, to add reference to paras. (o) and (p), in force June 14, 2001.

Para. 239(2.21)(a) amended by 1999, c. 26, s. 40, in force June 17, 1999. The para. formerly read:

(a) to whom taxpayer information has been provided for a particular purpose under paragraph 241(4)(b), (c), (e), (h) or (k), or

Para. 239(2.21)(b) amended by 1998, c. 21, s. 96, in force on June 18, 1998. The para. formerly read:

(b) who is an official to whom taxpayer information has been provided for a particular purpose under paragraph 241(4)(a), (d), (f) or (i)

(2.22) Definitions — In subsection (2.21), "official" and "taxpayer information" have the meanings assigned by subsection 241(10).

History: Subsecs. 239(2.21) and (2.22) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 136.

(2.3) Offence with respect to an identification number — Every person to whom the Social Insurance Number of an individual or to whom the business number of a taxpayer or partnership has been provided under this Act or a regulation, and every officer, employee and agent of such a person, who without written consent of the individual, taxpayer or partnership, as the case may be, knowingly uses, communicates or allows to be communicated the number (otherwise than as required or authorized by law, in the course of duties in connection with the administration or enforcement of this Act or for a purpose for which it was provided by the individual, taxpayer or partnership, as the case may be) is guilty of an offence and liable on summary conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months, or to both.

Related Provisions: 237(2)(b) — Social Insurance Number not to be used or communicated without individual's consent; 242 — Where corporation is guilty of offence.

History: Subsec. 239(2.3) amended by 1998, c. 19, subsec. 235(3), in force June 18, 1998. Subsec. 239(2.3) formerly read:

(2.3) Offence with respect to Social Insurance Number — Every person to whom the Social Insurance Number of an individual has been provided under this Act or a regulation, and every officer, employee and agent of such a person, who without the individual's written consent knowingly uses, communicates or allows to be communicated the Social Insurance Number (otherwise than as required or authorized by law, in the course of duties in connection with the administration or enforcement of this Act, or for a purpose for which it was provided by the individual) is guilty of an offence and liable on summary conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months, or to both.

Subsec. 239(2.3) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 189. Subsec. 239(2.3) formerly read:

(2.3) Offence with respect to Social Insurance Number — Every person to whom the Social Insurance Number of an individual has been provided pursuant to this Act or a regulation who knowingly uses or communicates, or allows to be communicated, the number for any purpose other than that for which it was so provided or for which the person has been authorized in writing by the individual is guilty of an offence and liable on summary conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or to both.

Information Circulars: 82-2R2: SIN legislation that relates to the preparation of information slips.

(3) Penalty on conviction — Where a person is convicted under this section, the person is not liable to pay a penalty imposed under section 162, 163 or 163.2 for the same contravention unless the penalty is assessed before the information or complaint giving rise to the conviction was laid or made.

History: Subsec. 239(3) amended by 2000, c. 19, s. 66, in force June 29, 2000. Subsec. 239(3) formerly read:

(3) Where a person is convicted under this section, the person is not liable to pay a penalty imposed under section 162 or 163 for the same contravention unless the penalty was assessed before the information or complaint giving rise to the conviction was laid or made.

Subsec. 239(3) amended by 1998, c. 19, subsec. 235(4), in force June 18, 1998. Subsec. 239(3) formerly read:

(3) Where a person has been convicted under this section of wilfully, in any manner, evading or attempting to evade payment of taxes imposed by Part I, the person is not liable to pay a penalty imposed under section 162 or 163 for the same evasion or attempt unless the person was assessed for that penalty before the information or complaint giving rise to the conviction was laid or made.

(4) Stay of appeal — Where, in any appeal under this Act, substantially the same facts are at issue as those that are at issue in a prosecution under this section, the Minister may file a stay of proceedings with the Tax Court of Canada and thereupon the proceedings before that Court are stayed pending final determination of the outcome of the prosecution.

Selected Cases [subsec. 239(4)]: *Deutsch v. R.*, [1983] C.T.C. 369 (FCA) (Proceeding commenced by statement of claim held to be appeal for purposes of the provision and stayed accordingly); *Popovich Equipment Co. v. R.*, [1979] C.T.C. 65 (FCA) (For appeal to be stayed prosecution must be in relation to same taxpayer).

(5) Offence and punishment without reference to subsec. 120(2.2) [aboriginals] — In determining whether an offence under this Act, for which a person may on summary conviction or indictment be liable for a fine or imprisonment, has been committed, and in determining the punishment for such an offence, this Act is to be read without reference to subsection 120(2.2).

History: Subsec. 239(5) added by 2005, c. 19, s. 50, in force on May 13, 2005 (Royal Assent).

Selected Cases [s. 239]: *R. v. Madraga*, [2000] 2 C.T.C. 230 (Sask Prov Ct) (Failure to pay fines may lead to imprisonment); *Lavers v. British Columbia (Minister of Finance)*, [1990] 1 C.T.C. 265 (BC CA) (Penalties imposed as consequence of assessment neither criminal nor quasi-criminal in nature and were beyond scope of "offence" under *Charter*).

Definitions [s. 239]: "business number" — 248(1); "contravene" — *Interpretation Act* 35(1); "individual", "Minister" — 248(1); "official" — 239(2.22), 241(10); "person", "record", "regulation", "taxpayer" — 248(1); "tax shelter" — 237.1(1), 248(1); "taxpayer information" — 239(2.22), 241(10).

240. (1) Definition of "taxable obligation" and "non-taxable obligation" — In this section, "taxable obligation" means any bond, debenture or similar obligation the interest on which would, if paid by the issuer to a non-resident person, be subject to the payment of tax under Part XIII by that non-resident person at the rate provided in subsection 212(1) (otherwise than by virtue of subsection 212(6)), and "non-taxable obligation" means any bond, debenture or similar obligation the interest on which would not, if paid by the issuer to a non-resident person, be subject to the payment of tax under Part XIII by that non-resident person.

(2) Interest coupon to be identified in prescribed manner — offence and punishment — Every person who, at any time after July 14, 1966, issues

(a) any taxable obligation, or

(b) any non-taxable obligation

the right to interest on which is evidenced by a coupon or other writing that does not form part of, or is capable of being detached from, the evidence of indebtedness under the obligation is, unless the coupon or other writing is

marked or identified in prescribed manner by the letters "AX" in the case of a taxable obligation, and by the letter "F" in the case of a non-taxable obligation, on the face thereof, guilty of an offence and liable on summary conviction to a fine not exceeding $500.

Regulations [subsec. 240(2)]: 807 (prescribed manner of identification of obligation).

Definitions [s. 240]: "non-resident", "person" — 248(1); "writing" — *Interpretation Act* 35(1).

241. (1) Provision of information — Except as authorized by this section, no official shall

(a) knowingly provide, or knowingly allow to be provided, to any person any taxpayer information;

(b) knowingly allow any person to have access to any taxpayer information; or

(c) knowingly use any taxpayer information otherwise than in the course of the administration or enforcement of this Act, the *Canada Pension Plan*, the *Unemployment Insurance Act* or the *Employment Insurance Act* or for the purpose for which it was provided under this section.

Related Provisions: 122.64(2) — Communication of Child Tax Benefit information to provinces; 122.64(3) — Communication of name and address for enforcement of family support orders; 149.1(15) — Charities — information can be communicated; 230.1(4) — Reports to chief electoral officer; 237(2)(b) — Communication of Social Insurance Number; 239(2.2) — Offence; 241(3) — Communication of information; 241(3.2) — Charities — additional information that may be communicated; 241(4) — Exceptions; 241(11) — Meaning of "this Act".

History: Para. 241(1)(c) amended by 1998, c. 19, subsec. 236(1), deemed to have come into force on June 30, 1996. Para. 241(1)(c) formerly read:

(c) knowingly use any taxpayer information otherwise than in the course of the administration or enforcement of this Act, the *Canada Pension Plan* or the *Employment Insurance Act* or for the purpose for which it was provided under this section.

Para. 241(1)(c) amended by 1996, c. 23, para. 187(d), to substitute "*Employment Insurance Act*" for "*Unemployment Insurance Act*", in force June 30, 1996.

Subsec. 241(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 137(1). Subsec. (1) formerly read:

(1) Prohibited communication of information — Except as authorized by this section, no official or authorized person shall

(a) knowingly communicate or knowingly allow to be communicated to any person any information obtained by or on behalf of the Minister for the purposes of this Act or the *Petroleum and Gas Revenue Tax Act*;

(b) knowingly allow any person to inspect or to have access to any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act or the *Petroleum and Gas Revenue Tax Act*; or

(c) knowingly use, other than in the course of the duties of the official or authorized person in connection with the administration or enforcement of this Act or the *Petroleum and Gas Revenue Tax Act*, any information obtained by or on behalf of the Minister for the purposes of this Act or the *Petroleum and Gas Revenue Tax Act*.

Selected Cases [subsec. 241(1)]: *McAvan Holdings v. BDO Dunwoody Ltd.*, [2003] 4 C.T.C. 90 (Ont Master) (Documents in possession of Minister were nevertheless under taxpayer's control and ordered produced on discovery); *Canada (Information Commissioner) v. Chairman of Canadian Cultural Property Export Review Board*, [2002] 4 C.T.C. 55 (FCA) (Information in public domain not protected by provision); *Canadian Council of Christian Charities v. Canada (Minister of Finance)*, [1999] 3 C.T.C. 123 (FCTD) (Access to tax policy documents restricted); *Diversified Holdings Ltd. v. Canada*, [1989] 2 C.T.C. 10 (FCTD); aff'd [1991] 1 C.T.C. 118 (FCA) (In an action by taxpayer against the Crown, documents related to actions taken by Revenue Canada giving rise to the litigation not privileged under provision); *R. et al. v. Lau*, [1987] 2 C.T.C. 63 (FCA) (Revenue Canada permitted to use its employee's false return as cause for dismissal); *Wilder et al. v. R. et al.*, [1987] 1 C.T.C. 273 (FCTD) (U.S. tax authorities receiving information in unauthorized manner may be sued by taxpayer in tort); *AMP of Canada Ltd. v. R.*, [1987] 1 C.T.C. 256 (FCTD) (Taxpayer permitted to discover competitor's financial statements used by Crown to compare figures); *A.G. Can. v. Thibault*, [1987] 1 C.T.C. 156 (Que CA) (Police permitted to seize documents in Revenue Canada's possession for purposes of criminal investigation); *Glover v. MNR*, [1982] C.T.C. 29 (SCC) (Divorce proceeding order that Revenue Canada disclose certain information quashed); *Tucar v. Tucar*, 81 D.T.C. 5166 (Ont UFC) (In divorce proceedings, although court lacks jurisdiction to order Minister to disclose information, it may order taxpayer to authorize Minister to make disclosure); *MNR v. Huron Steel Fabricators (London) Ltd.*, [1973] C.T.C. 422 (FCA) (Minister ordered to disclose returns of a taxpayer with whom another taxpayer alleged transactions disallowed by Minister).

Information Circulars: 94-4R: International transfer pricing — advance pricing arrangements (APAs); 94-4R-SR: APAs for small businesses.

I.T. Technical News: 8 (publication of advance tax rulings); 9 (electronic publication of severed rulings).

Application Policies: SR&ED 95-04: Conflict of interest.

Transfer Pricing Memoranda: TPM-04: Third-party information.

Forms: T1013: Authorizing or cancelling a representative.

(2) Idem, in legal proceedings — Notwithstanding any other Act of Parliament or other law, no official shall be required, in connection with any legal proceedings, to give or produce evidence relating to any taxpayer information.

Related Provisions: 149.1(15) — Charities — information may be communicated.

History: Subsec. 241(2) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 137(1). Subsec. (2) formerly read:

(2) Notwithstanding any other Act or law, no official or authorized person shall be required, in connection with any legal proceedings,

(a) to give evidence relating to any information obtained by or on behalf of the Minister for the purposes of this Act or the *Petroleum and Gas Revenue Tax Act*; or

(b) to produce any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act or the *Petroleum and Gas Revenue Tax Act*.

Selected Cases [subsec. 241(2)]: *Diversified Holdings Ltd. v. Canada*, [1989] 2 C.T.C. 10 (FCTD); aff'd [1991] 1 C.T.C. 118 (FCA) (In action by taxpayer against Crown, documents related to actions taken by Revenue Canada giving rise to the litigation not privileged).

(3) Communication where proceedings have been commenced — Subsections (1) and (2) do not apply in respect of

(a) criminal proceedings, either by indictment or on summary conviction, that have been commenced by the laying of an information or the preferring of an indictment, under an Act of Parliament; or

(b) any legal proceedings relating to the administration or enforcement of this Act, the *Canada Pension Plan*, the *Unemployment Insurance Act* or the *Employment Insurance Act* or any other Act of Parliament or law of a province that provides for the imposition or collection of a tax or duty.

Related Provisions: 241(11) — Meaning of "this Act".

History: Para. 241(3)(b) amended by 1998, c. 19, subsec. 236(2), deemed to have come into force on June 30, 1996. Para. 241(3)(b) formerly read:

(b) any legal proceedings relating to the administration or enforcement of this Act, the *Canada Pension Plan* or the *Employment Insurance Act* or any other Act of Parliament or law of a province that provides for the imposition or collection of a tax or duty.

Para. 241(3)(b) amended by 1996, c. 23, para. 187(d), to substitute "*Employment Insurance Act*" for "*Unemployment Insurance Act*", in force June 30, 1996.

Subsec. 241(3) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 137(1). Subsec. (3) formerly read:

(3) Exception for criminal or tax proceedings — Subsections (1) and (2) do not apply in respect of criminal proceedings, either by indictment or on summary conviction, that have been commenced

by the laying of an information, under an Act of Parliament, or in respect of proceedings relating to the administration or enforcement of this Act or the *Petroleum and Gas Revenue Tax Act*.

Selected Cases [subsec. 241(3)]: *Harris v. R.*, [2001] 1 C.T.C. 148 (FCA); rev'g in part [2001] 1 C.T.C. 280 (FCTD) (Provision may not apply when issue relates to administration of the Act); *Tyler v. MNR*, [1989] 1 C.T.C. 153 (FCTD) (Minister may obtain information before criminal proceedings have been completed).

Information Circulars: 87-2R: International transfer pricing.

(3.1) Circumstances involving danger — The Minister may provide to appropriate persons any taxpayer information relating to imminent danger of death or physical injury to any individual.

History: Subsec. 241(3.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 137(1).

(3.2) Registered charities — An official may provide to any person the following taxpayer information relating to another person that was at any time a registered charity (in this subsection referred to as the "charity"):

(a) a copy of the charity's governing documents, including its statement of purpose;

(b) any information provided in prescribed form to the Minister by the charity on applying for registration under this Act;

(c) the names of the persons who at any time were the charity's directors and the periods during which they were its directors;

(d) a copy of the notification of the charity's registration, including any conditions and warnings;

(e) if the registration of the charity has been revoked or annulled, a copy of the entirety of or any part of any letter sent by or on behalf of the Minister to the charity relating to the grounds for the revocation or annulment;

(f) financial statements required to be filed with an information return referred to in subsection 149.1(14);

(g) a copy of the entirety of or any part of any letter or notice by the Minister to the charity relating to a suspension under section 188.2 or an assessment of tax or penalty under this Act (other than the amount of a liability under subsection 188(1.1)); and

(h) an application by the charity, and information filed in support of the application, for a designation, determination or decision by the Minister under subsection 149.1(6.3), (7), (8) or (13).

Proposed Amendment — 241(3.2)(h)

(h) an application by the charity, and information filed in support of the application, for a designation, determination or decision by the Minister under subsection 149.1(5)[,] (6.3), (7), (8) or (13).

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 184(1), will amend para. 241(3.2)(h) to read as above, applicable to documents that are sent by the Minister of National Revenue, or that are filed or required to be filed with that Minister, after May 13, 2005.

Technical Notes: Paragraph 241(3.2)(h) permits a government official to release information that a registered charity has filed in support of an application for special status or an exemption under the Act, as well as any response to such an application (e.g., a request for permission to accumulate assets). Paragraph 241(3.2)(h) is amended, applicable upon Royal Assent, to include information relating to an application made under subsection 149.1(5) for an amount to be deemed an expenditure on charitable activities carried on by the charity.

Related Provisions: 149.1(6.4) — Rule applies to registered national arts service organizations; 149.1(15) — Disclosure permitted of information in public information return.

History: Para. 241(3.2)(e) amended, and paras. (f) to (h) added, by 2005, c. 19, s. 51, applicable to documents that are sent by the Minister of National Revenue, or that are filed or required to be filed with that Minister, after May 13, 2005 (Royal Assent). Para. (e) formerly read:

(e) if the registration of the charity has been revoked, a copy of any letter sent by or on behalf of the Minister to the charity relating to the grounds for the revocation.

The opening words of subsec. 241(3.2) amended by 2001, c. 17, subsec. 186(1), in force June 14, 2001. The opening words formerly read:

(3.2) An official may provide to any person the following taxpayer information relating to a charity that at any time was a registered charity:

Subsec. 241(3.2) added by 1998, c. 19, s. 65, in force June 18, 1998.

Registered Charities Newsletters: 8 (increased transparency).

Forms: T1235: Directors/trustees worksheet.

(4) Where taxpayer information may be disclosed — An official may

(a) provide to any person taxpayer information that can reasonably be regarded as necessary for the purposes of the administration or enforcement of this Act, the *Canada Pension Plan*, the *Unemployment Insurance Act* or the *Employment Insurance Act*, solely for that purpose;

(b) provide to any person taxpayer information that can reasonably be regarded as necessary for the purposes of determining any tax, interest, penalty or other amount that is or may become payable by the person, or any refund or tax credit to which the person is or may become entitled, under this Act or any other amount that is relevant for the purposes of that determination;

(c) provide to the person who seeks a certification referred to in paragraph 147.1(10)(a) the certification or a refusal to make the certification, solely for the purposes of administering a registered pension plan;

(d) provide taxpayer information

(i) to an official of the Department of Finance solely for the purposes of the formulation or evaluation of fiscal policy,

(ii) to an official solely for the purposes of the initial implementation of a fiscal policy or for the purposes of the administration or enforcement of an Act of Parliament that provides for the imposition and collection of a tax or duty,

(iii) to an official solely for the purposes of the administration or enforcement of a law of a province that provides for the imposition or collection of a tax or duty,

(iv) to an official of the government of a province solely for the purposes of the formulation or evaluation of fiscal policy,

(v) to an official of the Department of Natural Resources or of the government of a province solely for the purposes of the administration or enforcement of a program of the Government of Canada or of the province relating to the exploration for or exploitation of Canadian petroleum and gas resources,

(vi) to an official of the government of a province that has received or is entitled to receive a payment referred to in this subparagraph, or to an official of the Department of Natural Resources, solely for the purposes of the provisions relating to payments to a province in respect of the taxable income of corporations earned in the offshore area with respect to

the province under the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, chapter 28 of the Statutes of Canada, 1988, the *Canada-Newfoundland Atlantic Accord Implementation Act*, chapter 3 of the Statutes of Canada, 1987, or similar Acts relating to the exploration for or exploitation of offshore Canadian petroleum and gas resources,

(vi.1) to an official of the Department of Natural Resources solely for the purpose of determining whether property is prescribed energy conservation property or whether an outlay or expense is a Canadian renewable and conservation expense,

(vii) to an official solely for the purposes of the administration or enforcement of the *Pension Benefits Standards Act, 1985* or a similar law of a province,

(vii.1) to an official solely for the purpose of the administration or enforcement of the *Canada Education Savings Act* or a program administered pursuant to an agreement entered into under section 12 of that Act,

(viii) to an official of the Department of Veterans Affairs solely for the purposes of the administration of the *War Veterans Allowance Act* or Part XI of the *Civilian War-related Benefits Act*,

Proposed Amendment — 241(4)(d)(viii) [not yet in force]

(viii) to an official of the Department of Veterans Affairs solely for the purposes of the administration of the *War Veterans Allowance Act*, the *Canadian Forces Members and Veterans Re-establishment and Compensation Act* or Part XI of the *Civilian War-related Benefits Act*,

Application: S.C. 2005, c. 21 (Bill C-45, Royal Assent May 13, 2005), s. 103, will amend subpara. 241(4)(d)(viii) to read as above, in force on a day to be proclaimed by the Governor in Council.

(ix) to an official of a department or agency of the Government of Canada or of a province as to the name, address, occupation, size or type of business of a taxpayer, solely for the purposes of enabling that department or agency to obtain statistical data for research and analysis,

(x) to an official of the Canada Employment Insurance Commission or the Department of Employment and Immigration solely for the purpose of the administration or enforcement of, or the evaluation or formation of policy for the purposes of, the *Unemployment Insurance Act*, the *Employment Insurance Act* or an employment program of the Government of Canada,

Proposed Amendment — 241(4)(d)(x)

(x) to an official of the Canada Employment Insurance Commission, the Department of Human Resources and Skills Development or the Department of Social Development, solely for the purpose of the administration or enforcement of the *Employment Insurance Act*, an employment program of the Government of Canada or the evaluation or formation of policy for that Act or program,

Application: S.C. 2005, c. 34 (Bill C-23, Royal Assent July 20, 2005), subsec. 71(2), amended subpara. 241(4)(d)(x) to read as above, in force on a day to be fixed by order of the Governor in Council, provided that that day is the same as fixed under s. 70 of Bill C-22.

(xi) to an official of the Department of Agriculture and Agri-Food or of the government of a province solely for the purposes of the administration or enforcement of a program of the Government of Canada or of the province established under an agreement entered into under the *Farm Income Protection Act*,

(xii) to an official of the Department of Canadian Heritage or a member of the Canadian Cultural Property Export Review Board solely for the purposes of administering sections 32 to 33.2 of the *Cultural Property Export and Import Act*,

(xiii) to an official solely for the purposes of setting off against any sum of money that may be due or payable by Her Majesty in right of Canada a debt due to

(A) Her Majesty in right of Canada, or

(B) Her Majesty in right of a province, or

(xiv) to an official solely for the purposes of section 7.1 of the *Federal-Provincial Fiscal Arrangements Act*;

Proposed Addition — 241(4)(d)(xv), (xvi)

(xv) to a person employed or engaged in the service of an office or agency, of the Government of Canada or of a province, whose mandate includes the provision of assistance (as defined in subsection 125.4(1) or 125.5(1)) in respect of film or video productions or film or video production services, solely for the purpose of the administration or enforcement of the program under which the assistance is offered, or

(xvi) to an official of the Canadian Radio-television and Telecommunications Commission, solely for the purpose of the administration or enforcement of a regulatory function of that Commission;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 184(2), will add subparas. 241(4)(d)(xv) and (xvi), in force on Royal Assent.

Technical Notes: Subsection 241(4) authorizes the limited communication of information to government officials outside of the Canada Revenue Agency.

New subparagraph 241(4)(d)(xv) allows information in respect of film or video productions to be communicated to officials of an office or agency of the government of Canada or of a province that provides a program of assistance for such productions. The information may be communicated only for the purpose of administration or enforcement under the program. New subparagraph 241(4)(d)(xvi) extends this authority to communicate information to an official of the Canadian Radio-television and Telecommunications Commission, solely for the purpose of the administration or enforcement of a regulatory function of that Commission.

(e) provide taxpayer information, or allow the inspection of or access to taxpayer information, as the case may be, under, and solely for the purposes of,

(i) subsection 36(2) or section 46 of the *Access to Information Act*,

(ii) section 13 of the *Auditor General Act*,

(iii) section 92 of the *Canada Pension Plan*,

(iv) a warrant issued under subsection 21(3) of the *Canadian Security Intelligence Service Act*,

(v) an order made under subsection 462.48(3) of the *Criminal Code*,

(vi) section 26 of the *Cultural Property Export and Import Act*,

(vii) section 79 of the *Family Orders and Agreements Enforcement Assistance Act*,

(viii) paragraph 33.11(a) of the *Old Age Security Act*,

(ix) subsection 34(2) or section 45 of the *Privacy Act*,

(x) section 24 of the *Statistics Act*,

(xi) section 9 of the *Tax Rebate Discounting Act*, or

(xii) a provision contained in a tax convention or agreement between Canada and another country that has the force of law in Canada;

Proposed Amendment — 241(4)(e)(xii)

(xii) a provision contained in a tax treaty or in a listed international agreement;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 184(3), will amend subpara. 241(4)(e)(xii) to read as above, in force on Royal Assent.

Technical Notes: Subparagraph 241(4)(e)(xii) is amended to provide that an official may provide taxpayer information, or allow the inspection of or access to taxpayer information under and solely for the purposes of a provision contained in a tax treaty or in a listed international agreement.

A "listed international agreement" is newly defined in subsection 248(1) to mean the *Convention on Mutual Administrative Assistance in Tax Matters*, concluded at Strasbourg on January 25, 1988 and the *Convention between the Government of Canada and the Government of the United Mexican States for the Exchange of Information with Respect to Taxes*, signed at Mexico City on March 16, 1990. A "tax treaty" is defined in subsection 248(1) to mean a comprehensive agreement for the elimination of double taxation on income between the Canadian and foreign government that has the force of law in Canada at that time.

(f) provide taxpayer information solely for the purposes of sections 23 to 25 of the *Financial Administration Act*;

(f.1) provide taxpayer information to an official solely for the purposes of the administration and enforcement of the *Charities Registration (Security Information) Act*;

(g) use taxpayer information to compile information in a form that does not directly or indirectly reveal the identity of the taxpayer to whom the information relates;

(h) use, or provide to any person, taxpayer information solely for a purpose relating to the supervision, evaluation or discipline of an authorized person by Her Majesty in right of Canada in respect of a period during which the authorized person was employed by or engaged by or on behalf of Her Majesty in right of Canada to assist in the administration or enforcement of this Act, the *Canada Pension Plan*, the *Unemployment Insurance Act* or the *Employment Insurance Act*, to the extent that the information is relevant for the purpose;

(i) provide access to records of taxpayer information to the Librarian and Archivist of Canada or a person acting on behalf of or under the direction of the Librarian and Archivist, solely for the purposes of section 12 of the *Library and Archives of Canada Act*, and transfer such records to the care and control of such persons solely for the purposes of section 13 of that Act;

(j) use taxpayer information relating to a taxpayer to provide information to the taxpayer;

(j.1) provide taxpayer information to an official or a designated person solely for the purpose of permitting the making of an adjustment to

(i) a social assistance payment made on the basis of a means, needs or income test, or

(ii) a payment pursuant to a prescribed law of a province in respect of a child within the meaning of the prescribed law,

where the purpose of the adjustment is to take into account the amount determined for C in subsection 122.61(1) in respect of a person for a taxation year;

(k) provide, or allow inspection of or access to, taxpayer information to or by any person otherwise legally entitled to it under an Act of Parliament solely for the purposes for which that person is entitled to the information;

(l) provide the business number, name, address, telephone number and facsimile number of a holder of a business number to an official of a department or agency of the Government of Canada or of a province solely for the purpose of the administration or enforcement of an Act of Parliament or a law of a province, if the holder of the business number is required by that Act or that law to provide the information (other than the business number) to the department or agency;

(m) provide taxpayer information to an official of the government of a province solely for use in the management or administration by that government of a program relating to payments under subsection 164(1.8);

(n) provide taxpayer information to any person, solely for the purposes of the administration or enforcement of a law of a province that provides for workers' compensation benefits;

(o) provide taxpayer information to any person solely for the purpose of enabling the Chief Statistician, within the meaning assigned by section 2 of the *Statistics Act*, to provide to a statistical agency of a province data concerning business activities carried on in the province, where the information is used by the agency solely for research and analysis and the agency is authorized under the law of the province to collect the same or similar information on its own behalf in respect of such activities; or

(p) provide taxpayer information to a police officer (within the meaning assigned by subsection 462.48(17) of the *Criminal Code*) solely for the purpose of investigating whether an offence has been committed under the *Criminal Code*, or the laying of an information or the preferring of an indictment, where

(i) such information can reasonably be regarded as being necessary for the purpose of ascertaining the circumstances in which an offence under the *Criminal Code* may have been committed, or the identity of the person or persons who may have committed an offence, with respect to an official, or with respect to any person related to that official,

(ii) the official was or is engaged in the administration or enforcement of this Act, and

(iii) the offence can reasonably be considered to be related to that administration or enforcement.

Proposed Amendment — 241(4) — Social Insurance Number disclosure

Letter from Dept. of Finance, March 17, 1999:

Dear [xxx]

This is in reply to your letter of March 12, 1999 to Simon Thompson with respect to the transfer of Social Insurance Numbers and business numbers from [xxx] to a nominee.

We understand that [xxx] plans to put in place an arrangement under which legal ownership of shares will, in many cases, be with a nominee of the shareholders. The nominee will receive dividend payments on the shares for which it is the registered owner, and will then distribute each dividend to the beneficial owners of the shares. As a consequence, the nominee will have an independent tax-reporting obligation under subsection 201(2) of the *Income Tax Regulations*. Under the existing law and the proposed amendments to it that were released on December 15, 1998, we agree that it may not be technically possible for [xxx] to provide Social Insurance Numbers and business numbers of beneficial owners to the nominee.

Given the reasons for the creation of the nominee in these circumstances, and in the interests of ensuring timely and complete reporting with regard to Social Insurance Numbers and business numbers, we are prepared to recommend an amendment to the *Income Tax Act*. The amendment would, in the circumstance set out in your letter, allow the transfer of this information to the nominee for the purpose of allowing the nominee to comply with tax reporting requirements.

Thank you for writing.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Proposed Amendment — Information used in administering *Children's Special Allowances Act*

Letter from Dept. of Finance, October 12, 2004:

Ms. Maureen Tapp, Director, Special Programs and Partnerships Division, Benefit Programs Directorate, Canada Revenue Agency

Dear Ms. Tapp:

I am writing in reply to your letter of January 21, 2004, and further to discussions with CRA officials, concerning the administration of the child disability benefit with respect to allowances paid under the *Children's Special Allowances Act*.

The 2003 Budget provided for the payment of a child disability benefit under the child tax benefit program and the CSA in respect of children who, by reason of severe and prolonged mental or physical impairments, qualify for the disability tax credit (DTC) under the *Income Tax Act* (ITA). However, while DTC information is available for the administration of payments made as part of the child tax benefit program, this information is not currently available to be used in administering the CSA. [xxx].

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

cc: Legislative Policy Directorate, Policy and Planning Directorate

Related Provisions: 37(3) — Consultation with other government departments to determine R&D claims; 122.62(9) — Consultation with Health and Welfare for determining Child Tax Benefit; 122.64(2)(a) — Communication of Child Tax Benefit information to provinces; 122.64(3) — Communication of name and address for enforcement of family support orders; 146.1(14)(a) — Reference to *Canada Education Savings Act* in 241(4)(d)(vii.1) includes reference to earlier *DHRD Act*; 149.1(15) — Registered charity's information return may be communicated to public; 230.1(4) — Reports to chief electoral officer; 239(2.21) — Offence with respect to confidential information; 241(5) — Disclosure to taxpayer or with taxpayer's consent; 241(11) — Meaning of "this Act"; Canada-U.S. Tax Treaty:Art. XXVII — Exchange of information with U.S. government (for 241(4)(e)(xii)).

History: Subpara. 241(4)(d)(vii.1) amended by 2004, c. 26, s. 22, in force December 15, 2004. The subpara. formerly read:

> (vii.1) to an official of the Department of Human Resources Development or to a prescribed official solely for the purpose of the administration or enforcement of Part III.1 of the *Department of Human Resources Development Act*,

Para. 241(4)(i) amended by 2004, c. 11, s. 32, proclaimed into force May 21, 2004. The para. formerly read:

> (i) provide access to records of taxpayer information to the National Archivist of Canada or a person acting on behalf of or under the direction of the National Archivist of Canada, solely for the purposes of section 5 of the *National Archives of Canada Act*, and transfer such records to the care and control of such persons solely for the purposes of section 6 of that Act;

Para. 241(4)(f.1) added by 2001, c. 41, s. 118, in force December 24, 2001.

Paras. 241(4)(o) and (p) added by 2001, c. 17, subsec. 186(2), para. (o) applicable June 14, 2001 to information relating to 1997 *et seq.* and, for the purpose of subsec. 17(2) of the *Statistics Act*, where such information was collected before June 14, 2001, the information is deemed to have been collected at the time at which it is provided to a provincial agency pursuant to para. 241(4)(o); para. (p) in force June 14, 2001.

Para. 241(4)(n) added by 1999, c. 26, s. 41, in force June 17, 1999.

Subpara. 241(4)(d)(viii) amended by 1999, c. 10, s. 45, to substitute "*Civilian War-related Benefits Act*" for "*Merchant Navy Veteran and Civilian War-related Benefits Act*", proclaimed into force on May 1, 1999.

Subpara. 241(4)(d)(vii.1), para. 241(4)(j.1) added and subpara. 241(4)(e)(viii) amended by 1998, c. 21 ss. 75, 97 and 120, in force on June 18, 1998. Subpara. 241(4)(e)(viii) formerly read:

> (viii) paragraph 33(3)(a) of the *Old Age Security Act*,

Para. 241(4)(a), subpara. 241(4)(d)(x), para. 241(4)(h) amended by 1998, c. 19, subsecs. 236(3), (4) and (7), deemed to have come into force on June 30, 1996. Those paras. and subpara. formerly read:

> (a) provide to any person taxpayer information that can reasonably be regarded as necessary for the purpose of the administration or enforcement of this Act, the *Canada Pension Plan* or the *Employment Insurance Act*, solely for that purpose;
>
> . . . . .
>
> (x) to the Canada Employment Insurance Commission, or to an official, or a member of a class of officials, of the Department of Human Resources Development, solely for the purposes of the administration or enforcement of, or the evaluation or formulation of policy for the purposes of, the *Employment Insurance Act* or an employment program of the Government of Canada,
>
> . . . . .
>
> (h) use, or provide to any person, taxpayer information solely for a purpose relating to the supervision, evaluation or discipline of an authorized person by Her Majesty in right of Canada in respect of a period during which the authorized person was employed by or engaged by or on behalf of Her Majesty in right of Canada to assist in the administration or enforcement of this Act, the *Canada Pension Plan* or the *Employment Insurance Act*, to the extent that the information is relevant for that purpose;

Cl. 241(4)(d)(xiii)(B) amended, para. 241(4)(m) added, by the said c. 19, subsecs. 236(5) and (8), in force June 18, 1998. Cl. 241(4)(d)(xiii)(B) formerly read:

> (B) Her Majesty in right of a province on account of taxes payable to the province where an agreement exists between Canada and the province under which Canada is authorized to collect the taxes on behalf of the province, or
>
> . . . . .

Subpara. 241(4)(e)(vii) amended by the said c. 19, subsec. 236(6), deemed to have come into force on May 1, 1997. Subpara. 241(4)(e)(vii) formerly read:

> (vii) section 62 of the *Family Orders and Agreements Enforcement Assistance Act*,

Subpara. 241(4)(d)(vi.1) amended by 1997, c. 25, s. 70, applicable April 25, 1997. Subpara. (d)(vi.1) formerly read:

> (vi.1) to an official of the Department of Natural Resources solely for the purpose of determining whether property is prescribed energy conservation property,

Subpara. 241(4)(d)(x) amended by 1996, c. 11, s. 63, in force July 12, 1996, to substitute "Canada Employment Insurance Commission or to an official, or a member of a class of officials, of the Department of Human Resources Development" for "Canada Employment and Immigration Commission or the Department of Employment and Immigration".

Subpara. 241(4)(d)(xii) amended by 1995, c. 38, s. 5, in force July 12, 1996, to substitute "sections 32 to 33.2" for "sections 32 and 33".

Subpara. 241(4)(d)(xii) amended by 1995, c. 11, para. 45(b), in force July 12, 1996, to substitute "Department of Canadian Heritage" for "Department of Communications".

Para. 241(4)(a), subpara. 241(4)(d)(x), and para. 241(4)(h) amended by 1996, c. 23, para. 187(d), to substitute "*Employment Insurance Act*" for "*Unemployment Insurance Act*", in force June 30, 1996.

Para. 241(4)(l) added by 1996, c. 21, subsec. 59(1), applicable June 20, 1996.

Subpara. 241(4)(d)(xiv) amended by 1995, c. 17, subsec. 45(2), to substitute "*Federal-Provincial Fiscal Arrangements Act*" for "*Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act*", in force April 1, 1996.

Subpara. 241(4)(d)(vi.1) added by 1995, c. 3, subsecs. 51(1) and (3), applicable after February 21, 1994.

Subparas. 241(4)(d)(v) and (vi) amended by 1994, c. 41, subsec. 38(1), in force January 12, 1995. Subparas. (v) and (vi) formerly read:

> (v) to an official of the Department of Energy, Mines and Resources or of the government of a province solely for the purposes of the administration or enforcement of a program of the Government of Canada or of the province relating to the exploration for or exploitation of Canadian petroleum and gas resources,
>
> (vi) to an official of the government of a province that has received or is entitled to receive a payment referred to in this subparagraph, or to an official of the Department of Energy, Mines and Resources, solely for the purposes of the provisions relating to payments to a province in respect of the taxable income of corporations earned in the offshore area with respect to the province under the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, chapter 28 of the Statutes of Canada, 1988, the *Canada-Newfoundland Atlantic Accord Implementation Act*, chapter 3 of the Statutes of Canada, 1987, or similar Acts relating to the exploration for or exploitation of offshore Canadian petroleum and gas resources,

Subpara. 241(4)(d)(xi) amended by 1994, c. 38, subsec. 26(1), to substitute "Department of Agriculture and Agri-Food" for "Department of Agriculture", in force January 12, 1995.

Subsec. 241(4) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 137(1), applicable as of June 10, 1993. Subsec. (4) formerly read:

> (4) Other exceptions — An official or authorized person may,
>
> (a) in the course of the duties of the official or authorized person in connection with the administration or enforcement of this Act or the *Petroleum and Gas Revenue Tax Act*,
>
> (i) communicate or allow to be communicated to an official or authorized person information obtained by or on behalf of the Minister for the purposes of this Act or the *Petroleum and Gas Revenue Tax Act*, and
>
> (ii) allow an official or authorized person to inspect or to have access to any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act or the *Petroleum and Gas Revenue Tax Act*;
>
> (b) under prescribed conditions, communicate or allow to be communicated information obtained under this Act or the *Petroleum and Gas Revenue Tax Act*, or allow inspection of or access to any written statement furnished under this Act or the *Petroleum and Gas Revenue Tax Act*, to the government of any province in respect of which information and written statements obtained by the government of the province, for the purpose of a law of the province that imposes a tax similar to the tax imposed under this Act or the *Petroleum and Gas Revenue Tax Act*, are communicated or furnished on a reciprocal basis to the Minister;
>
> (c) communicate or allow to be communicated information obtained under this Act or the *Petroleum and Gas Revenue Tax Act*, or allow inspection of or access to any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act or the *Petroleum and Gas Revenue Tax Act*, to or by any person otherwise legally entitled thereto;
>
> (d) communicate or allow to be communicated to a taxpayer information obtained under this Act or the *Petroleum and Gas Revenue Tax Act* that may reasonably be regarded as necessary for the purposes of determining any tax, interest, penalty or other amount payable by the taxpayer or any refund or tax credit to which the taxpayer is entitled under this Act or the *Petroleum and Gas Revenue Tax Act*;
>
> (e) communicate or allow to be communicated to a taxpayer information obtained under this Act or the *Petroleum and Gas Revenue Tax Act* from a transferor of property to the taxpayer that relates to the cost, capital cost or adjusted cost base to the taxpayer of the property, if, under any provision of this Act or the *Petroleum and Gas Revenue Tax Act* or the *Income Tax Application Rules*, the cost, capital cost or adjusted cost base is an amount other than the consideration paid by the taxpayer for that property;
>
> (e.1) communicate or allow to be communicated to the person who seeks a certification referred to in paragraph 147.1(10)(a) the certification or a refusal to make the certification, for the purposes of administering a registered pension plan;
>
> (f) communicate or allow to be communicated information obtained under this Act or the *Petroleum and Gas Revenue Tax Act*
>
> (i) to an official of the Department of Finance solely for the purposes of evaluating and formulating tax policy,
>
> (ii) to an official of the Department of National Revenue, Customs and Excise, solely for the purposes of administering or enforcing the *Customs Act*, the *Customs Tariff*, the *Excise Tax Act* or the *Excise Act*,
>
> (iii) to an official of the Department of Energy, Mines and Resources or to the government of a province solely for the purposes of administering or enforcing a prescribed program of the Government of Canada or of the province relating to the exploration for or exploitation of Canadian petroleum and gas resources,
>
> (iv) to an official of the appropriate department or agency of the Government of Canada solely for the purpose of administering subsection 127(11.3) and the definitions "approved project" and "approved project property" in subsection 127(9),
>
> (v) to the government of a province that has received or is entitled to receive a payment referred to in this subparagraph or to an official of the Department of Energy, Mines and Resources solely for the purposes of the provisions relating to payments to a province in respect of the taxable income of corporations earned in the offshore area with respect to the province under the *Canada–Nova Scotia Oil and Gas Agreement Act*, chapter 29 of the Statutes of Canada, 1984, the *Canada-Newfoundland Atlantic Accord Implementation Act*, chapter 3 of the Statutes of Canada, 1987, or similar Acts relating to the exploration for or exploitation of offshore Canadian petroleum and gas resources, and
>
> (vi) to an official of the Office of the Superintendent of Financial Institutions solely for the purpose of providing the Minister with advice with respect to any matter relating to pension plans;
>
> (f.1) communicate or allow to be communicated information obtained under this Act or the *Petroleum and Gas Revenue Tax Act* to an official of the Department of Veterans Affairs solely for the purposes of administering the *War Veterans Allowance Act* or Part XI of the *Merchant Navy Veteran and Civilian War-related Benefits Act*;
>
> (g) communicate or allow to be communicated information obtained under this Act or the *Petroleum and Gas Revenue Tax Act* as to the name, address, occupation or size or type of business of a taxpayer to an official of a department or agency of the Government of Canada or of a province, solely for the purpose of enabling that department or agency to obtain statistical data for research and analysis;
>
> (h) communicate or allow to be communicated information obtained under this Act or the *Petroleum and Gas Revenue Tax Act* to an official of the Canada Employment Immigration Commission or the Department of Employment and Immigration solely for the purposes of administering, evaluating or enforcing the *Unemployment Insurance Act* or a prescribed employment program;
>
> (h.1) communicate or allow to be communicated to a taxpayer information obtained under this Act, regarding expenses in respect of which a deduction is denied under subsection 18(2) or

(3.1) to any other taxpayer, that is necessary for the purpose of determining the cost or adjusted cost base, as the case may be, to the taxpayer of any property;

(h.2) communicate or allow to be communicated to a taxpayer information obtained under this Act from a corporation that previously owned or had an interest in property of the taxpayer that relates to the control of the corporation or the question whether the corporation was exempt from tax under Part I on its taxable income if it is necessary for the purposes of determining under this Act whether a gain from a disposition of the property accrued while the property was a property of a corporation controlled directly or indirectly in any manner whatever by one or more non-resident persons or of a corporation exempt from tax under Part I on its taxable income;

(i) communicate or allow to be communicated, pursuant to an order made under subsection 462.48(3) of the *Criminal Code*, information obtained under this Act;

(j) communicate or allow to be communicated to an official, solely for the purposes of administering or enforcing the *Pension Benefits Standards Act, 1985* or a similar law of a province,

(i) information obtained under this Act

(A) as to the identity of a pension plan in respect of which application for registration for the purposes of this Act has, at any time, been made,

(B) as to the names and addresses of the persons who are, have been or will be responsible for the administration of a pension plan referred to in clause (A),

(C) as to the names and addresses of the employers who participate, have participated or will participate in a pension plan referred to in clause (A),

(D) as to the terms of a pension plan referred to in clause (A), a trust deed, insurance contract or other document relating to the funding of benefits under such a plan or an amendment or proposed amendment to such a plan or document, or

(E) as to the date of termination or partial termination of a pension plan referred to in clause (A),

(ii) information as to whether a pension plan is or was a registered pension plan,

(iii) the date of registration of a pension plan that is or was a registered pension plan, or

(iv) in the case of a pension plan the registration of which under this Act has been refused or revoked, the date of the refusal or revocation and the reason therefor;

(k) communicate or allow to be communicated information obtained under this Act to an official of the Department of Agriculture or to an official of the government of a province solely for the purposes of administering or enforcing a program of the Government of Canada or of the province established under an agreement entered into pursuant to the *Farm Income Protection Act*;

(l) communicate or allow to be communicated information obtained under this Act to an official of the Department of Communications or a member of the Canadian Cultural Property Export Review Board, solely for the purpose of administering the provisions of sections 32 and 33 of the *Cultural Property Export and Import Act*; or

(m) communicate or allow to be communicated information obtained under this Act to an official or authorized person for the purpose of setting off against any sum of money that is due or payable by Her Majesty in right of Canada a debt due to

(i) Her Majesty in right of Canada, or

(ii) Her Majesty in right of a province on account of taxes payable to the province where an agreement exists between Canada and the province under which Canada is authorized to collect the taxes on behalf of the province.

Para. 241(4)(f.1) amended by 1994, c. 7, Sch. IV (1992, c. 24), s. 16, to substitute "Merchant Navy Veteran and Civilian War-related Benefits Act" for "Civilian War Pensions and Allowances Act", deemed to have come into force July 1, 1992.

Para. 241(4)(g) amended to substitute "size or type of business" for "type of business", and "for the purpose of" for "for the purposes of", and paras. (l), (m) added, by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 190(1), (2).

Selected Cases [subsec. 241(4)]: *Van Egmond v. R.*, [2002] 2 C.T.C. 236 (BC CA) (Client list of taxpayer whose activity was under investigation was accessible by way of requirement).

Regulations: 3004 (prescribed law of a province for 241(4)(j.1)(ii)); 8200.1 (prescribed energy conservation property for 241(4)(d)(vi.1)).

Transfer Pricing Memoranda: TPM-04: Third-party information.

Forms: T1013: Authorizing or cancelling a representative.

(4.1) Measures to prevent unauthorized use or disclosure — The person who presides at a legal proceeding relating to the supervision, evaluation or discipline of an authorized person may order such measures as are necessary to ensure that taxpayer information is not used or provided to any person for any purpose not relating to that proceeding, including

(a) holding a hearing *in camera*;

(b) banning the publication of the information;

(c) concealing the identity of the taxpayer to whom the information relates; and

(d) sealing the records of the proceeding.

Related Provisions: 239(2.2) — Offence with respect to confidential information; 238(1) — Punishment for failing to comply.

History: Subsec. 241(4.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 137(1).

(5) Disclosure to taxpayer or on consent — An official may provide taxpayer information relating to a taxpayer

(a) to the taxpayer; and

(b) with the consent of the taxpayer, to any other person.

Related Provisions: 238(1) — Punishment for failing to comply; 241(4)(j) — Disclosure to taxpayer permitted.

History: Subsec. 241(5) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 137(1). Subsec. (5) formerly read:

(5) Return of copy of books, etc. — Notwithstanding anything in this section, the Minister may permit a copy of any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act or the *Petroleum and Gas Revenue Tax Act* to be given to the person from whom the book, record, writing, return or other document was obtained or the legal representative of that person, or to the agent of that person or of the legal representative authorized in writing in that behalf.

Selected Cases [subsec. 241(5)]: *McAvan Holdings v. BDO Dunwoody Ltd.*, [2003] 4 C.T.C. 90 (Ont Master) (Documents in possession of Minister were nevertheless under taxpayer's control and ordered produced on discovery).

Transfer Pricing Memoranda: TPM-04: Third-party information.

Forms: T1013: Authorizing or cancelling a representative.

(6) Appeal from order or direction — An order or direction that is made in the course of or in connection with any legal proceedings and that requires an official or authorized person to give or produce evidence relating to any taxpayer information may, by notice served on all interested parties, be appealed forthwith by the Minister or by the person against whom the order or direction is made to

(a) the court of appeal of the province in which the order or direction is made, in the case of an order or direction made by a court or other tribunal established by or pursuant to the laws of the province, whether or not that court or tribunal is exercising a jurisdiction conferred by the laws of Canada; or

(b) the Federal Court of Appeal, in the case of an order or direction made by a court or other tribunal established by or pursuant to the laws of Canada.

History: That portion of subsec. 241(6) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 137(2). That portion formerly read:

> (6) An order or direction made in the course of or in connection with any legal proceedings requiring an official or authorized person to give evidence relating to any information or produce any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act or the *Petroleum and Gas Revenue Tax Act*, may, by notice served on all interested parties, be appealed forthwith by the Minister or by the person against whom the order or direction is made to

(7) Disposition of appeal — The court to which an appeal is taken pursuant to subsection (6) may allow the appeal and quash the order or direction appealed from or dismiss the appeal, and the rules of practice and procedure from time to time governing appeals to the courts shall apply, with such modifications as the circumstances require, to an appeal instituted pursuant to that subsection.

(8) Stay of order or direction — An appeal instituted pursuant to subsection (6) shall stay the operation of the order or direction appealed from until judgment is pronounced.

(9) [Repealed under former Act]

Proposed Addition — 241(9)

(9) Information may be communicated — The Minister of Canadian Heritage may communicate or otherwise make available to the public, in any manner that that Minister considers appropriate, the following taxpayer information in respect of a Canadian film or video production certificate (as defined under subsection 125.4(1)) that has been issued or revoked:

(a) the title of the production for which the Canadian film or video production certificate was issued;

(b) the name of the taxpayer to whom the Canadian film or video production certificate was issued;

(c) the names of the producers of the production;

(d) the names of the individuals in respect of whom and places in respect of which that Minister has allotted points in respect of the production in accordance with regulations made for the purpose of section 125.4;

(e) the total number of points so allotted; and

(f) any revocation of the Canadian film or video production certificate.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 184(4), will add subsec. 241(9), in force on Royal Assent.

Technical Notes: New subsection 241(9), which applies on Royal Assent, is added to provide authority to the Minister of Canadian Heritage to publish certain information relevant to the Canadian film or video production tax credit program. The information includes the title of a film or video production in respect of which a certificate has been issued or revoked by that Minister, as well as the names of producers and artists in respect of which that Minister has allotted "points" in determining whether the production is a "Canadian film or video production" under proposed [now promulgated — ed.] section 1106 of the Regulations.

(10) Definitions — In this section,

"authorized person" means a person who is engaged or employed, or who was formerly engaged or employed, by or on behalf of Her Majesty in right of Canada to assist in carrying out the provisions of this Act, the *Canada Pension Plan*, the *Unemployment Insurance Act* or the *Employment Insurance Act*;

Related Provisions: 241(11) — Meaning of "this Act".

History: The definition "authorized person" in subsec. 241(10) amended by 1998, c. 19, subsec. 236(10), deemed to have come into force on June 30, 1996. The definition formerly read:

> "authorized person" means a person who is engaged or employed, or who was formerly engaged or employed, by or on behalf of Her Majesty in right of Canada to assist in carrying out the provisions of this Act, the *Canada Pension Plan* or the *Employment Insurance Act*;

The definition of "authorized person" in subsec. 241(10) amended by 1996, c. 23, para. 187(d), to substitute "*Employment Insurance Act*" for the "*Unemployment Insurance Act*", in force June 30, 1996.

"Authorized person" in subsec. 241(10) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 137(3). That definition formerly read:

> "authorized person" means any person engaged or employed, or formerly engaged or employed, by or on behalf of Her Majesty in right of Canada or a province to assist in carrying out the purposes and provisions of this Act or the *Petroleum and Gas Revenue Tax Act*;

"business number" — [Repealed]

History: The definition "business number" in subsec. 241(10) repealed by 1998, c. 19, subsec. 236(9), in force June 18, 1998. The definition formerly read:

> "business number" means the number (other than a Social Insurance Number) used by the Minister to identify
>
> (a) a corporation or partnership, or
>
> (b) any other association or taxpayer that carries on a business or is required by this Act to deduct or withhold an amount from an amount paid or credited or deemed to be paid or credited under this Act;

The definition "business number" added to subsec. 241(10) by 1996, c. 21, subsec. 59(2), applicable June 20, 1996.

"court of appeal" has the meaning assigned by the definition "court of appeal" in section 2 of the *Criminal Code*;

History: "Court of appeal" in subsec. 241(10) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 137(3). That definition formerly read:

> "court of appeal" has the meaning assigned by paragraphs (a) to (j) of the definition "court of appeal" in section 2 of the *Criminal Code*;

"designated person" means any person who is employed in the service of, who occupies a position of responsibility in the service of, or who is engaged by or on behalf of,

(a) a municipality in Canada, or

(b) a public body performing a function of government in Canada,

or any person who was formerly so employed, who formerly occupied such a position or who was formerly so engaged;

History: The definition "designated person" added to subsec. 241(10) by 1998, c. 21, subsec. 97(3), in force on June 18, 1998.

"official" means any person who is employed in the service of, who occupies a position of responsibility in the service of, or who is engaged by or on behalf of,

(a) Her Majesty in right of Canada or a province, or

(b) an authority engaged in administering a law of a province similar to the *Pension Benefits Standards Act, 1985*,

or any person who was formerly so employed, who formerly occupied such a position or who was formerly so engaged and, for the purposes of subsection 239(2.21), subsections (1) and (2), the portion of subsection (4) before paragraph (a), and subsections (5) and (6), includes a designated person;

History: The closing words of the definition "official" in subsec. 241(10) amended by 1998, c. 21, subsec. 97(2), in force on June 18, 1998. The closing words formerly read:

> or any person who was formerly so employed, who formerly occupied such a position or who was formerly so engaged;

"Official" in subsec. 241(10) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 137(3). That definition formerly read:

> "official" means any person employed in or occupying a position of responsibility
>
> (a) in the service of Her Majesty in right of Canada or a province, or
>
> (b) in the service of an authority engaged in administering a law of a province similar to the *Pension Benefits Standards Act, 1985*
>
> or any person formerly so employed or formerly occupying a position therein.

Application Policies: SR&ED 95-04: Conflict of interest.

"taxpayer information" means information of any kind and in any form relating to one or more taxpayers that is

(a) obtained by or on behalf of the Minister for the purposes of this Act, or

(b) prepared from information referred to in paragraph (a),

but does not include information that does not directly or indirectly reveal the identity of the taxpayer to whom it relates.

Related Provisions: 122.64(1) — Confidentiality of information; 241(11) — Meaning of "this Act".

History: "Taxpayer information" added to subsec. 241(10) by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 137(3).

Selected Cases [subsec. 241(10)]: *Canada (Information Commissioner) v. Chairman of Canadian Cultural Property Export Review Board*, [2002] 4 C.T.C. 55 (FCA) (Information in public domain not protected by provision); *Canadian Council of Christian Charities v. Canada (Minister of Finance)*, [1999] 3 C.T.C. 123 (FCTD) (Access to tax policy documents restricted).

(11) PGRT Act references — The references in subsections (1), (3), (4) and (10) to "this Act" shall be read as references to "this Act or the *Petroleum and Gas Revenue Tax Act*".

History: Subsec. 241(11) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 137(3).

Selected Cases [s. 241]: *Silicate Holdings Ltd. v. R.*, [2001] 2 C.T.C. 2222 (TCC) (Mere fact that certain confidential information disclosed does not give right to further disclosures); *Harris v. R.*, [2001] 1 C.T.C. 148 (FCA); rev'g in part [2001] 1 C.T.C. 280 (FCTD) (Provision may not apply when issue relates to administration of the Act); *Page v. Canada*, [1996] 1 C.T.C. 2697 (TCC) (Minister ordered to produce records, but not tax returns, relating to decision not to assess other directors); *Crestbrook Forest Industries v. Canada*, [1991] 2 C.T.C. 195 (FCTD); aff'd [1992] 1 C.T.C. 100 (FCA) (Confidential documents used by Minister as basis for assessment to be disclosed to taxpayer, even where supplied by other taxpayers who object to production); *Diversified Holdings Ltd. v. Canada*, [1991] 1 C.T.C. 118 (FCA) (Docket notations made by collection investigation officers on internal self-generated documents not based on information given to Revenue Canada under the Act not confidential); *Tyler v. MNR*, [1991] 1 C.T.C. 13 (FCA) (Minister prohibited from communicating information obtained under provision to RCMP during period in which drug trafficking charges remained outstanding).

Definitions [s. 241]: "adjusted cost base" — 54, 248(1); "amount", "assessment" — 248(1); "authorized person" — 241(10); "business" — 248(1); "business number" — 248(1); "Canada" — 255; "Canadian film or video production certificate" — 125.4(1); "corporation" — 248(1), *Interpretation Act* 35(1); "court of appeal" — 241(10); "designated person" — 241(10); "employed", "employer" — 248(1); "Federal Court of Appeal" — *Federal Courts Act* s. 3; "Her Majesty" — *Interpretation Act* 35(1); "individual", "listed international agreement", "Minister", "Newfoundland offshore area", "non-resident", "office" — 248(1); "official" — 241(10); "Parliament" — *Interpretation Act* 35(1); "person", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "record", "registered charity", "registered pension plan" — 248(1); "related" — 251(2)–(6); "tax treaty" — 248(1); "taxable income" — 2(2), 248(1); "taxpayer" — 248(1); "taxpayer information" — 241(10); "this Act" — 241(11); "writing" — *Interpretation Act* 35(1).

242. Officers, etc., of corporations — Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.

Related Provisions: 227.1 — Liability of directors; 236 — Corporate directors and officers entitled to execute documents.

Selected Cases [s. 242]: *R. v. Gibbs*, [2004] 5 C.T.C. 152 (BC Prov Ct) (Strict liability offences give rise only to due diligence defences); *R. v. Léger*, [2004] 4 C.T.C. 320 (NB Prov Ct) (Provision requires proof of full *mens rea*); *R. v. Bodnarchuk*, [2004] 4 C.T.C. 314 (BC Prov Ct) (Crown must show failure of individual director to have been involved in corporate failure to comply); *R. v. Gibbs* (2003), [2004] 5 C.T.C. 137 (BC Prov Ct) (Due diligence (the only available defence) not established); *Chilton Insurance Consultation Inc. v. Canada*, [1996] 2 C.T.C. 185 (Sask QB) (Company struck off provincial Register still liable to file tax returns; director personally liable to penalty); *R. v. Swendson*, [1987] 2 C.T.C. 199 (Alta QB) (Although Crown need not prove *mens rea*, it must establish corporation's guilt and defendant's participation).

Definitions [s. 242]: "corporation" — 248(1), *Interpretation Act* 35(1); "officer" — 248(1)"office".

Information Circulars: 73-10R3: Tax evasion.

243. Power to decrease punishment — Notwithstanding the *Criminal Code* or any other statute or law in force on June 30, 1948, the court has, in any prosecution or proceeding under this Act, no power to impose less than the minimum fine or imprisonment fixed by this Act or to suspend sentence.

Procedure and Evidence

244. (1) Information or complaint — An information or complaint under this Act may be laid or made by any officer of the Canada Customs and Revenue Agency, by a member of the Royal Canadian Mounted Police or by any person thereto authorized by the Minister and, where an information or complaint purports to have been laid or made under this Act, it shall be deemed to have been laid or made by a person thereto authorized by the Minister and shall not be called in question for lack of authority of the informant or complainant except by the Minister or by a person acting for the Minister or Her Majesty.

Proposed Amendment — 244(1)

Application: Bill C-26 (Second Senate Reading June 29, 2005), subpara. 138(m)(vi), will amend subsec. 244(1) to replace "Canada Customs and Revenue Agency" with "Canada Revenue Agency", in force on a day to be fixed by the Governor in Council.

(2) Two or more offences — An information or complaint in respect of an offence under this Act may be for one or more offences and no information, complaint, warrant, conviction or other proceeding in a prosecution under this Act is objectionable or insufficient by reason of the fact that it relates to two or more offences.

(3) Venue — An information or complaint in respect of an offence under this Act may be heard, tried or determined by any court, judge or justice if the accused is resident, carrying on business, found or apprehended or is in custody within the territorial jurisdiction of the court, judge or justice, as the case may be, although the matter

of the information or complaint did not arise within that jurisdiction.

(4) Limitation period — An information or complaint under the provisions of the *Criminal Code* relating to summary convictions, in respect of an offence under this Act, may be laid or made at any time but not later than 8 years after the day on which the matter of the information or complaint arose.

Selected Cases [subsec. 244(4)]: *Giles v. Print Three et al.*, [1988] 1 C.T.C. 1 (Ont SC) (Subpoena issued against director of taxation upheld because his testimony relevant to interpretation of provision and application of *Charter*); *Smerchanski v. MNR*, [1976] C.T.C. 488 (SCC) (Taxpayer who settled with Crown to avoid prosecution not permitted to impugn settlement on grounds of duress subsequent to expiry of limitation period).

(5) Proof of service by mail — Where, by this Act or a regulation, provision is made for sending by mail a request for information, notice or demand, an affidavit of an officer of the Canada Customs and Revenue Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has knowledge of the facts in the particular case, that such a request, notice or demand was sent by registered letter on a named day to the person to whom it was addressed (indicating the address) and that the officer identifies as exhibits attached to the affidavit the post office certificate of registration of the letter or a true copy of the relevant portion thereof and a true copy of the request, notice or demand, shall, in the absence of proof to the contrary, be received as evidence of the sending and of the request, notice or demand.

Proposed Amendment — 244(5)

Application: Bill C-26 (Second Senate Reading June 29, 2005), subpara. 138(m)(vii), will amend subsec. 244(5) to replace "Canada Customs and Revenue Agency" with "Canada Revenue Agency", in force on a day to be fixed by the Governor in Council.

Related Provisions: 244(11) — Presumption that affidavit valid; 244(14) — Mailing date deemed to be date of notice; 248(7)(a) — Mail deemed received on day mailed; *Interpretation Act* 25(1) — Evidence is rebuttable.

History: Subsec. 244(5) amended by replacing the words "Department of National Revenue" with "Canada Customs and Revenue Agency" by 1999, c. 17, para. 168(f), proclaimed into force November 1, 1999.

(6) Proof of personal service — Where, by this Act or a regulation, provision is made for personal service of a request for information, notice or demand, an affidavit of an officer of the Canada Customs and Revenue Agency sworn before a commissioner or other person authorized to take affidavits setting out that the officer has knowledge of the facts in the particular case, that such a request, notice or demand was served personally on a named day on the person to whom it was directed and that the officer identifies as an exhibit attached to the affidavit a true copy of the request, notice or demand, shall, in the absence of proof to the contrary, be received as evidence of the personal service and of the request, notice or demand.

Proposed Amendment — 244(6)

Application: Bill C-26 (Second Senate Reading June 29, 2005), subpara. 138(m)(vii), will amend subsec. 244(6) to replace "Canada Customs and Revenue Agency" with "Canada Revenue Agency", in force on a day to be fixed by the Governor in Council.

Related Provisions: 244(11) — Presumption that affidavit valid; *Interpretation Act* 25(1) — Evidence is rebuttable.

History: Subsec. 244(6) amended by replacing the words "Department of National Revenue" with "Canada Customs and Revenue Agency" by 1999, c. 17, para. 168(f), proclaimed into force November 1, 1999.

(7) Proof of failure to comply — Where, by this Act or a regulation, a person is required to make a return, statement, answer or certificate, an affidavit of an officer of the Canada Customs and Revenue Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and that after a careful examination and search of those records the officer has been unable to find in a given case that the return, statement, answer or certificate, as the case may be, has been made by that person, shall, in the absence of proof to the contrary, be received as evidence that in that case that person did not make the return, statement, answer or certificate, as the case may be.

Proposed Amendment — 244(7)

Application: Bill C-26 (Second Senate Reading June 29, 2005), subpara. 138(m)(vii), will amend subsec. 244(7) to replace "Canada Customs and Revenue Agency" with "Canada Revenue Agency", in force on a day to be fixed by the Governor in Council.

Related Provisions: 244(11) — Presumption that affidavit valid; *Interpretation Act* 25(1) — Evidence is rebuttable.

History: Subsec. 244(7) amended by replacing the words "Department of National Revenue" with "Canada Customs and Revenue Agency" by 1999, c. 17, para. 168(f), proclaimed into force November 1, 1999.

Selected Cases [subsec. 244(7)]: *R. v. Jacques*, [2000] 2 C.T.C. 475 (BC SC) (Taxpayer unable to establish returns filed); *Maritime Construction Ltd. v. Canada*, [1989] 1 C.T.C. 306 (NB QB) (Appeals from convictions for failing to file returns allowed where trial judge refused to allow cross-examination on affidavits taken under provision).

(8) Proof of time of compliance — Where, by this Act or a regulation, a person is required to make a return, statement, answer or certificate, an affidavit of an officer of the Canada Customs and Revenue Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and that after careful examination of those records the officer has found that the return, statement, answer or certificate was filed or made on a particular day, shall, in the absence of proof to the contrary, be received as evidence that it was filed or made on that day and not prior thereto.

Proposed Amendment — 244(8)

Application: Bill C-26 (Second Senate Reading June 29, 2005), subpara. 138(m)(vii), will amend subsec. 244(8) to replace "Canada Customs and Revenue Agency" with "Canada Revenue Agency", in force on a day to be fixed by the Governor in Council.

Related Provisions: 244(11) — Presumption that affidavit valid; *Interpretation Act* 25(1) — Evidence is rebuttable.

History: Subsec. 244(8) amended by replacing the words "Department of National Revenue" with "Canada Customs and Revenue Agency" by 1999, c. 17, para. 168(f), proclaimed into force November 1, 1999.

(9) Proof of documents — An affidavit of an officer of the Canada Customs and Revenue Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and that a document annexed to the affidavit is a document or true copy of a document, or a print-out of an electronic document, made by or on behalf of the Minister or a person exercising a power of the Minister or by or on behalf of a taxpayer, is evidence of the nature and contents of the document.

Proposed Amendment — 244(9)

Application: Bill C-26 (Second Senate Reading June 29, 2005), subpara. 138(m)(vii), will amend subsec. 244(9) to replace "Canada Customs and Revenue Agency" with "Canada Revenue Agency", in force on a day to be fixed by the Governor in Council.

Related Provisions: 231.5(1) — Copy of document seized or examined may be used in court proceedings; 244(11) — Presumption that affidavit valid; *Interpretation Act* 25(1) — Evidence is rebuttable.

History: Subsec. 244(9) amended by replacing the words "Department of National Revenue" with "Canada Customs and Revenue Agency" by 1999, c. 17, para. 168(f), proclaimed into force November 1, 1999.

Subsec. 244(9) amended by 1998, c. 19, subsec. 237(1), in force June 18, 1998. Subsec. 244(9) formerly read:

> (9) An affidavit of an officer of the Department of National Revenue, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and that a document annexed thereto is a document or true copy of a document made by or on behalf of the Minister or a person exercising the powers of the Minister or by or on behalf of a taxpayer, shall, in the absence of proof to the contrary, be received as evidence of the nature and contents of the document and shall be admissible in evidence and have the same probative force as the original document would have if it had been proven in the ordinary way.

(10) Proof of no appeal — An affidavit of an officer of the Canada Customs and Revenue Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and has knowledge of the practice of the Agency and that an examination of those records shows that a notice of assessment for a particular taxation year or a notice of determination was mailed or otherwise communicated to a taxpayer on a particular day under this Act and that, after careful examination and search of those records, the officer has been unable to find that a notice of objection or of appeal from the assessment or determination or a request under subsection 245(6), as the case may be, was received within the time allowed, shall, in the absence of proof to the contrary, be received as evidence of the statements contained in it.

Proposed Amendment — 244(10)

Application: Bill C-26 (Second Senate Reading June 29, 2005), subpara. 138(m)(vii), will amend subsec. 244(10) to replace "Canada Customs and Revenue Agency" with "Canada Revenue Agency", in force on a day to be fixed by the Governor in Council.

Related Provisions: 244(11) — Presumption that affidavit valid; *Interpretation Act* 25(1) — Evidence is rebuttable.

History: Subsec. 244(10) amended by 1999, c. 17, subsec. 166(1), proclaimed into force November 1, 1999. The subsec. formerly read:

> (10) An affidavit of an officer of the Department of National Revenue, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and has knowledge of the practice of the Department and that an examination of the records shows that a notice of assessment for a particular taxation year or a notice of determination was mailed or otherwise communicated to a taxpayer on a particular day pursuant to this Act and that, after careful examination and search of those records, the officer has been unable to find that a notice of objection or of appeal from the assessment or determination or a request under subsection 245(6), as the case may be, was received within the time allowed therefor, shall, in the absence of proof to the contrary, be received as evidence of the statements contained therein.

(11) Presumption — Where evidence is offered under this section by an affidavit from which it appears that the person making the affidavit is an officer of the Canada Customs and Revenue Agency, it is not necessary to prove the person's signature or that the person is such an officer nor is it necessary to prove the signature or official character of the person before whom the affidavit was sworn.

Proposed Amendment — 244(11)

Application: Bill C-26 (Second Senate Reading June 29, 2005), subpara. 138(m)(vii), will amend subsec. 244(11) to replace "Canada Customs and Revenue Agency" with "Canada Revenue Agency", in force on a day to be fixed by the Governor in Council.

History: Subsec. 244(11) amended by replacing the words "Department of National Revenue" with "Canada Customs and Revenue Agency" by 1999, c. 17, para. 168(g), proclaimed into force November 1, 1999.

(12) Judicial notice — Judicial notice shall be taken of all orders or regulations made under this Act without those orders or regulations being specially pleaded or proven.

(13) Proof of documents — Every document purporting to have been executed under, or in the course of the administration or enforcement of, this Act over the name in writing of the Minister, the Deputy Minister of National Revenue, the Commissioner of Customs and Revenue or an officer authorized to exercise a power or perform a duty of the Minister under this Act is deemed to have been signed, made and issued by the Minister, the Deputy Minister, the Commissioner or the officer unless it has been called in question by the Minister or by a person acting for the Minister or Her Majesty.

Proposed Amendment — 244(13)

(13) Proof of documents — Every document purporting to have been executed under, or in the course of the administration or enforcement of, this Act over the name in writing of the Minister, the Deputy Minister of National Revenue, the Commissioner of Customs and Revenue, the Commissioner of Revenue or an officer authorized to exercise a power or perform a duty of the Minister under this Act is deemed to have been signed, made and issued by the Minister, the Deputy Minister, the Commissioner of Customs and Revenue, the Commissioner of Revenue or the officer unless it has been called in question by the Minister or by a person acting for the Minister or Her Majesty.

Application: Bill C-26 (Second Senate Reading June 29, 2005), s. 120, will amend subsec. 244(13) to read as above, in force on a day to be fixed by the Governor in Council.

History: Subsec. 244(13) amended by 1999, c. 17, para. 169(f), proclaimed into force November 1, 1999. The subsec. formerly read:

> (13) Every document purporting to have been executed under, or in the course of the administration or enforcement of, this Act over the name in writing of the Minister, the Deputy Minister of National Revenue or an officer authorized to exercise a power or perform a duty of the Minister under this Act is deemed to have been signed, made and issued by the Minister, the Deputy Minister or the officer unless it has been called in question by the Minister or by a person acting for the Minister or Her Majesty.

Subsec. 244(13) amended by 1998, c. 19, subsec. 237(2), in force June 18, 1998. The subsec. formerly read:

> (13) Every document purporting to be an order, direction, demand, notice, certificate, requirement, decision, assessment, discharge of mortgage or other document purporting to have been executed under, or in the course of administration or enforcement of, this Act over the name in writing of the Minister, the Deputy Minister of National Revenue or any officer authorized by regulation to exercise powers or perform duties of the Minister under this Act shall be deemed to be a document signed, made and issued by the Minister, the Deputy Minister or the officer unless it has been called in question by the Minister or by a person acting for the Minister or Her Majesty.

"Deputy Minister of National Revenue" substituted for "Deputy Minister of National Revenue for Taxation" in subsec. 244(13), by 1994, c. 13, subsec. 7(1), applicable May 12, 1994.

(13.1) [Repealed]

History: Subsec. 244(13.1) repealed by 1994, c. 13, s. 10, applicable May 12, 1994. Subsec. (13.1) formerly read:

> (13.1) Revenue Canada, Taxation — The words "Revenue Canada, Taxation" and the words "*Revenu Canada (Impôt)*" in any doc-

ument issued or executed under or in the course of the administration or enforcement of this Act over the name in writing of the Minister, the Deputy Minister of National Revenue for Taxation or any officer authorized by regulation to exercise powers or perform duties of the Minister under this Act are deemed to be a reference to the "Department of National Revenue" and "*ministère du Revenu national*".

Department of National Revenue Act (as amended by 1994, c. 13) s. 3.1:

3.1 Either or both of the expressions "Revenue Canada" and "Revenu Canada" may be used to refer to the Department of National Revenue.

(14) Mailing date — For the purposes of this Act, where any notice or notification described in subsection 149.1(6.3), 152(3.1), 165(3) or 166.1(5) or any notice of assessment or determination is mailed, it shall be presumed to be mailed on the date of that notice or notification.

Related Provisions: 244(5) — Proof of service by mail; 244(15) — Assessment deemed made on date of mailing; 248(7)(a) — Mail deemed received on day mailed; *Interpretation Act* 26 — Deadline on Sunday or holiday extended to next business day.

History: Subsec. 244(14) amended by 1998, c. 19, subsec. 237(2), in force June 18, 1998. Subsec. 244(14) formerly read:

(14) For the purposes of this Act, the day of mailing of any notice or notification described in subsection 149.1(6.3), 152(4) or 166.1(5) or of any notice of assessment shall be presumed to be the date of that notice or notification.

Subsec. 244(14) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 191(1), to substitute "152(4) or 166.1(5)" for "152(4), 192(8) or 194(7)".

(15) Date when assessment made — Where any notice of assessment or determination has been sent by the Minister as required by this Act, the assessment or determination is deemed to have been made on the day of mailing of the notice of the assessment or determination.

Related Provisions: 244(5) — Proof of service by mail; 244(14) — Date of mailing presumed to be date of notice; *Interpretation Act* 26 — Deadline on Sunday or holiday extended to next business day.

History: Subsec. 244(15) amended by 1998, c. 19, subsec. 237(2), in force June 18, 1998. Subsec. 244(15) formerly read:

(15) Where any notice of an assessment has been sent by the Minister as required by this Act, the assessment shall be deemed to have been made on the day of mailing of the notice of the assessment.

Selected Cases [subsecs. 244(14), (15)]: *Gaudreau v. R.*, [1998] 1 C.T.C. 2769 (TCC) (Minister entitled to use old address even when correspondence from taxpayer shows new address, if no formal request for change of address).

(16) Forms prescribed or authorized — Every form purporting to be a form prescribed or authorized by the Minister shall be deemed to be a form authorized under this Act by the Minister unless called in question by the Minister or by a person acting for the Minister or Her Majesty.

Related Provisions: *Interpretation Act* 32 — Deviations from a prescribed form.

History: Subsec. 244(16) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 191(2). Subsec. 244(16) formerly read:

(16) Every form purporting to be a form prescribed or authorized by the Minister shall be deemed to be a form prescribed by order of the Minister under this Act unless called in question by the Minister or some person acting for him or Her Majesty.

Selected Cases [subsec. 244(16)]: *Cal Investments Ltd. v. Canada*, [1990] 2 C.T.C. 418 (FCTD) (Waiver on prescribed form was valid even though missing corporate seal).

(17) Proof of return in prosecution for offence — In any prosecution for an offence under this Act, the production of a return, certificate, statement or answer required by or under this Act or a regulation, purporting to have been filed or delivered by or on behalf of the person charged with the offence or to have been made or signed by or on behalf of that person shall, in the absence of proof to the contrary, be received as evidence that the return, certificate, statement or answer was filed or delivered, or was made or signed, by or on behalf of that person.

Related Provisions: *Interpretation Act* 25(1) — Evidence is rebuttable.

(18) Idem, in proceedings under Division J of Part I — In any proceedings under Division J of Part I, the production of a return, certificate, statement or answer required by or under this Act or a regulation, purporting to have been filed or delivered, or to have been made or signed, by or on behalf of the taxpayer shall in the absence of proof to the contrary be received as evidence that the return, certificate, statement or answer was filed or delivered, or was made or signed, by or on behalf of the taxpayer.

Related Provisions: *Interpretation Act* 25(1) — Evidence is rebuttable.

(19) Proof of statement of non-receipt — In any prosecution for an offence under this Act, an affidavit of an officer of the Canada Customs and Revenue Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and that an examination of the records shows that an amount required under this Act to be remitted to the Receiver General on account of tax for a year has not been received by the Receiver General, shall, in the absence of proof to the contrary, be received as evidence of the statements contained therein.

Proposed Amendment — 244(19)

Application: Bill C-26 (Second Senate Reading June 29, 2005), subpara. 138(m)(viii), will amend subsec. 244(19) to replace "Canada Customs and Revenue Agency" with "Canada Revenue Agency", in force on a day to be fixed by the Governor in Council.

Related Provisions: 244(11) — Presumption that affidavit valid; *Interpretation Act* 25(1) — Evidence is rebuttable.

History: Subsec. 244(19) amended by replacing the words "Department of National Revenue" with "Canada Customs and Revenue Agency" by 1999, c. 17, para. 168(g), proclaimed into force November 1, 1999.

(20) Members of partnerships — For the purposes of this Act,

(a) a reference in any notice or other document to the firm name of a partnership shall be read as as a reference to all the members thereof; and

(b) any notice or other document shall be deemed to have been provided to each member of a partnership if the notice or other document is mailed to, served on or otherwise sent to the partnership

(i) at its latest known address or place of business, or

(ii) at the latest known address

(A) where it is a limited partnership, of any member thereof whose liability as a member is not limited, or

(B) in any other case, of any member thereof.

Related Provisions: 96(3) — Election by members; 152(1.4)–(1.8) — Binding determination of partnership income or loss; 224(6) — Service of garnishment notice on partnership.

History: Subsec. 244(20) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 191(3).

(21) Proof of return filed — For the purposes of this Act, a document presented by the Minister purporting to be a print-out of the information in respect of a taxpayer

received under section 150.1 by the Minister from a person shall be received as evidence and, in the absence of evidence to the contrary, is proof of the return filed by the person under that section.

Related Provisions: *Interpretation Act* 25(1) — Evidence is rebuttable.

History: Subsec. 244(21) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 138, applicable to 1992 *et seq.*

(22) Filing of information returns — Where a person who is required by this Act or a regulation to file an information return in prescribed form with the Minister meets the criteria specified in writing by the Minister, the person may at any time file the information return with the Minister by way of electronic filing (within the meaning assigned by subsection 150.1(1)) and the person shall be deemed to have filed the information return with the Minister at that time, and a document presented by the Minister purporting to be a print-out of the information so received by the Minister shall be received as evidence and, in the absence of evidence to the contrary, is proof of the information return so deemed to have been filed.

Related Provisions: Reg. 205.1 — Electronic filing of information returns required if more than 500 returns being filed; *Interpretation Act* 25(1) — Evidence is rebuttable.

History: Subsec. 244(22) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 138, applicable after 1991.

Selected Cases [s. 244]: *Sykes v. R.*, [1998] 1 C.T.C. 2639 (TCC) (Computer-generated copies of assessments insufficient to establish date of mailing).

Definitions [s. 244]: "assessment", "business" — 248(1); "Canada Customs and Revenue Agency" — *Canada Customs and Revenue Agency Act* s. 4(1); "Commissioner of Customs and Revenue" — *Canada Customs and Revenue Agency Act* s. 25; "day of mailing" — 244(14); "Her Majesty" — *Interpretation Act* 35(1); "Minister", "person", "prescribed", "record", "regulation" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "writing" — *Interpretation Act* 35(1).

PART XVI — TAX AVOIDANCE

245. [General Anti-Avoidance Rule — GAAR] — (1) Definitions — In this section,

"tax benefit" means a reduction, avoidance or deferral of tax or other amount payable under this Act or an increase in a refund of tax or other amount under this Act, and includes a reduction, avoidance or deferral of tax or other amount that would be payable under this Act but for a tax treaty or an increase in a refund of tax or other amount under this Act as a result of a tax treaty;

History: The definition "tax benefit" in subsec. 245(1) amended by 2005, c. 19, subsec. 52(1), deemed, for the purpose of s. 245, to thave come into force on September 13, 1988, and applicable with respect to transactions entered into after September 12, 1988. The definition formerly read:

> "tax benefit" means a reduction, avoidance or deferral of tax or other amount payable under this Act or an increase in a refund of tax or other amount under this Act;

Advance Tax Rulings: ATR-41: Convertible preferred shares; ATR-44: Utilization of deductions and credits within a related corporate group.

"tax consequences" to a person means the amount of income, taxable income, or taxable income earned in Canada of, tax or other amount payable by or refundable to the person under this Act, or any other amount that is relevant for the purposes of computing that amount;

"transaction" includes an arrangement or event.

Related Provisions: 233.1(1)"transaction" — Parallel definition for reporting non-arm's length transactions with non-residents; 247(1) — Parallel definition re transfer pricing.

Selected Cases [subsec. 245(1)]: *Gibson Petroleum Co. v. R.*, [1997] 3 C.T.C. 2453 (TCC) (Fair market value of the assets had been used to determine capital cost and assets had been acquired for purpose of gaining or producing income; no application of provision); *Central Supply Co. (1972) Ltd. v. R.*, [1997] 3 C.T.C. 102 (FCA) (Deductions permitted under specific provisions of the Act may nevertheless unduly or artificially reduce income); *Foremanet et al. v MNR*, [1996] 1 C.T.C. 265 (FCTD) (Statutory language required where "series" of transactions attacked); *Fording Coal Ltd. v. Canada*, [1996] 1 C.T.C. 230 (FCA) (Successor rules construed from perspective of normal business practice and public purpose in determining artificiality. (Majority decision)).

Interpretation Bulletins: IT-233R: Lease-option agreements; sale-leaseback agreements (archived); IT-532: Part I.3 — tax on large corporations.

(2) General anti-avoidance provision [GAAR] — Where a transaction is an avoidance transaction, the tax consequences to a person shall be determined as is reasonable in the circumstances in order to deny a tax benefit that, but for this section, would result, directly or indirectly, from that transaction or from a series of transactions that includes that transaction.

Related Provisions: 56(2) — Indirect payments; 246 — Benefit conferred on a person; 247(2)(b)(ii) — GAAR test in transfer-pricing rules; 248(10) — Series of transactions; Canada-U.S. Tax Treaty:Art. XXIX-A: Limitations on using treaty benefits.

Selected Cases [subsec. 245(2)]: *Howe v. R.*, [2005] 1 C.T.C. 2243 (TCC) (Limited partnership not formed primarily for tax benefit); *Nadeau v. R.*, [1999] 3 C.T.C. 2235 (TCC) (Scheme of statute is that surplus is to be withdrawn by dividends); *Husky Oil Ltd. v. Canada*, [1995] 1 C.T.C. 460 (FCA); affirming [1995] 1 C.T.C. 2184 (TCC) (Tax benefit was obtained, but not "conferred" by arm's length party; provision inapplicable. Appeal to FCA dismissed.).

Interpretation Bulletins: IT-291R3: Transfer of property to a corporation under subsection 85(1); IT-489R: Non-arm's length sale of shares to a corporation.

Information Circulars: 88-2 and Supplement: General anti-avoidance rule — section 245 of the *Income Tax Act*.

I.T. Technical News: 3 (loss utilization within a corporate group); 9 (loss consolidation within a corporate group); 16 (*Neuman* case; *Duha Printers* case and GAAR statistics; *Continental Bank* case); 19 (Change in position in respect of GAAR — section 7); 22 (general anti-avoidance rule); 25 (refreshing losses); 30 (corporate loss utilization transactions; tax avoidance); 32 (update on GAAR reviews).

Advance Tax Rulings: ATR-41: Convertible preferred shares; ATR-42: Transfer of shares; ATR-43: Utilization of a non-resident-owned investment corporation as a holding corporation; ATR-44: Utilization of deductions and credits within a related corporate group; ATR-47: Transfer of assets to Realtyco; ATR-50: Structured settlement; ATR-53: Purification of a small business corporation; ATR-54: Reduction of paid-up capital; ATR-55: Amalgamation followed by sale of shares; ATR-56: Purification of a family farm corporation; ATR-57: Transfer of property for estate planning purposes; ATR-58: Divisive reorganization; ATR-60: Joint exploration corporations; ATR-66: Non-arm's length transfer of debt followed by a winding-up and a sale of shares.

Transfer Pricing Memoranda: TPM-02: Repatriation of funds by non-residents — Part XIII assessments.

(3) Avoidance transaction — An avoidance transaction means any transaction

(a) that, but for this section, would result, directly or indirectly, in a tax benefit, unless the transaction may reasonably be considered to have been undertaken or arranged primarily for *bona fide* purposes other than to obtain the tax benefit; or

(b) that is part of a series of transactions, which series, but for this section, would result, directly or indirectly, in a tax benefit, unless the transaction may reasonably be considered to have been undertaken or arranged primarily for *bona fide* purposes other than to obtain the tax benefit.

Related Provisions: 248(10) — Series of transactions.

Selected Cases [subsec. 245(3)]: *Fraser Milner Casgrain v. MNR*, [2002] 4 C.T.C. 210 (FCTD) (Tax planning information may be relevant to purpose test); *Canadian Pacific Ltd. v. R.*, [2002] 2 C.T.C. 197 (FCA);

aff'g [2001] 1 C.T.C. 2190 (TCC) (Transaction cannot be re-characterized to make it an avoidance transaction); *OSFC Holdings Ltd. v. R.*, [2001] 4 C.T.C. 82 (FCA); aff'g [1999] 3 C.T.C. 2649 (TCC) (Person receiving tax benefit need not be same person that arranged transactions); *Fredette v. R.*, [2001] 3 C.T.C. 2468 (TCC) ("Stacked" partnerships for income deferral purposes were a misuse or abuse of statutory provisions); *Owen Holdings Ltd. v. R.*, [1997] 3 C.T.C. 2286 (TCC) (Legislative drafting documents relating to s. 245 not subject to production); *RMM Canadian Enterprises Inc. v. R.*, [1997] 3 C.T.C. 2103 (TCC) (Scheme would have been caught by GAAR if other rules had been insufficient); *McNichol v. Canada*, [1997] 2 C.T.C. 2088 (TCC) (Choice of one method of accomplishing transaction over another resulted in tax benefit).

Information Circulars: 88-2 and Supplement: General anti-avoidance rule — section 245 of the *Income Tax Act*.

Advance Tax Rulings: ATR-41: Convertible preferred shares; ATR-42: Transfer of shares; ATR-44: Utilization of deductions and credits within a related corporate group; ATR-54: Reduction of paid-up capital; ATR-55: Amalgamation followed by sale of shares; ATR-56: Purification of a family farm corporation; ATR-57: Transfer of property for estate planning purposes; ATR-58: Divisive reorganization.

(4) Application of subsec. (2) — Subsection (2) applies to a transaction only if it may reasonably be considered that the transaction

(a) would, if this Act were read without reference to this section, result directly or indirectly in a misuse of the provisions of any one or more of

(i) this Act,

(ii) the *Income Tax Regulations*,

(iii) the *Income Tax Application Rules*,

(iv) a tax treaty, or

(v) any other enactment that is relevant in computing tax or any other amount payable by or refundable to a person under this Act or in determining any amount that is relevant for the purposes of that computation; or

(b) would result directly or indirectly in an abuse having regard to those provisions, other than this section, read as a whole.

Related Provisions: ITCIA 4.1 — Application of GAAR to tax treaty interpretation.

History: Subsec. 245(4) amended by 2005, c. 19, subsec. 52(2), applicable with respect to transactions entered into after September 12, 1988. The subsec. formerly read:

(4) Where subsec. (2) does not apply — For greater certainty, subsection (2) does not apply to a transaction where it may reasonably be considered that the transaction would not result directly or indirectly in a misuse of the provisions of this Act or an abuse having regard to the provisions of this Act, other than this section, read as a whole.

Selected Cases [subsec. 245(4)]: *Canada Trustco Mortgage Co. v. R.*, [2004] 2 C.T.C. 276 (FCA); aff'g [2003] 4 C.T.C. 2009 (TCC) (No clear and unambiguous policy demonstrated); *CIT Financial Ltd. v. R.*, [2004] 1 C.T.C. 2992 (TCC) (Claiming CCA on artificially inflated values was abuse of subsec. 20(1). Minister has no discretion as to application of GAAR); *Produits Forestiers Donohue Inc. c. R.*, [2003] 3 C.T.C. 160 (FCA) (No evidence of underlying purpose; no abuse).

I.T. Technical News: See under 245(2).

Advance Tax Rulings: ATR-42: Transfer of shares; ATR-44: Utilization of deductions and credits within a related corporate group; ATR-54: Reduction of paid-up capital; ATR-55: Amalgamation followed by sale of shares; ATR-56: Purification of a family farm corporation; ATR-58: Divisive reorganization.

(5) Determination of tax consequences — Without restricting the generality of subsection (2), and notwithstanding any other enactment,

(a) any deduction, exemption or exclusion in computing income, taxable income, taxable income earned in Canada or tax payable or any part thereof may be allowed or disallowed in whole or in part,

(b) any such deduction, exemption or exclusion, any income, loss or other amount or part thereof may be allocated to any person,

(c) the nature of any payment or other amount may be recharacterized, and

(d) the tax effects that would otherwise result from the application of other provisions of this Act may be ignored,

in determining the tax consequences to a person as is reasonable in the circumstances in order to deny a tax benefit that would, but for this section, result, directly or indirectly, from an avoidance transaction.

History: The portion of subsec. 245(5) before (c) amended by 2005, c. 19, subsec. 52(3), applicable with respect to transactions entered into after September 12, 1988. The portion formerly read:

(5) Without restricting the generality of subsection (2),

(a) any deduction in computing income, taxable income, taxable income earned in Canada or tax payable or any part thereof may be allowed or disallowed in whole or in part,

(b) any such deduction, any income, loss or other amount or part thereof may be allocated to any person,

(6) Request for adjustments — Where with respect to a transaction

(a) a notice of assessment, reassessment or additional assessment involving the application of subsection (2) with respect to the transaction has been sent to a person, or

(b) a notice of determination pursuant to subsection 152(1.11) has been sent to a person with respect to the transaction,

any person (other than a person referred to in paragraph (a) or (b)) shall be entitled, within 180 days after the day of mailing of the notice, to request in writing that the Minister make an assessment, reassessment or additional assessment applying subsection (2) or make a determination applying subsection 152(1.11) with respect to that transaction.

Related Provisions: 166.1 — Extension of time by Minister; 167(1) — Application to Tax Court of Canada for time extension; 244(10) — Proof that no notice of objection filed.

Selected Cases [subsec. 245(6)]: *S.T.B. Holdings Ltd. v. R.*, [2003] 1 C.T.C. 36 (FCA); aff'g [2002] 1 C.T.C. 2814 (TCC) (Reliance on GAAR need not appear on face of assessment. GAAR can be used as alternative assessing mechanism. GAAR cannot be used by taxpayers for self-assessment; only Minister can do so, by way of assessment).

(7) Exception — Notwithstanding any other provision of this Act, the tax consequences to any person, following the application of this section, shall only be determined through a notice of assessment, reassessment, additional assessment or determination pursuant to subsection 152(1.11) involving the application of this section.

Selected Cases [subsec. 245(7)]: *S.T.B. Holdings Ltd. v. R.*, [2003] 1 C.T.C. 36 (FCA); aff'g [2002] 1 C.T.C. 2814 (TCC) (Reliance on GAAR need not appear on face of assessment. GAAR can be used as alternative assessing mechanism. GAAR cannot be used by taxpayers for self-assessment; only Minister can do so, by way of assessment).

(8) Duties of Minister — On receipt of a request by a person under subsection (6), the Minister shall, with all due dispatch, consider the request and, notwithstanding subsection 152(4), assess, reassess or make an additional assessment or determination pursuant to subsection 152(1.11) with respect to that person, except that an assessment, reassessment, additional assessment or determination may be made under this subsection only to the extent that it may reasonably be regarded as relating to the transaction referred to in subsection (6).

Related Provisions: 165(1.1) — Limitation of right to object to assessments or redetermination; 169(2)(a) — Limitation of right to appeal.

Selected Cases [subsec. 245(8)]: *S.T.B. Holdings Ltd. v. R.*, [2003] 1 C.T.C. 36 (FCA); aff'g [2002] 1 C.T.C. 2814 (TCC) (Reliance on GAAR need not appear on face of assessment. GAAR can be used as alternative assessing mechanism. GAAR cannot be used by taxpayers for self-assessment; only Minister can do so, by way of assessment).

Selected Cases [s. 245]: *Bradley Holdings Ltd.*, [2004] 3 C.T.C. 2432 (TCC) (Amendment to Minister's pleadings to raise GAAR in context of treaty application allowed); *Imperial Oil Ltd. v. R.*, [2004] 2 C.T.C. 190 (FCA) (Policy underlying misuse or abuse must be clear. Taking advantage of loophole not necessarily a misuse. Some provisions may be invitations to act); *Hill v. R.*, [2003] 4 C.T.C. 2548 (TCC) (Payment of obligation can be funded by creditor without making a circular transaction. Minister must do more than recite the provision to demonstrate underlying purpose); *Imperial Oil Ltd. v. R.*, [2003] 4 C.T.C. 177 (FCA) (Cash management system was not abuse of Act; possibility of double taxation); *Jabin Investments Ltd. v. R.*, [2003] 2 C.T.C. 25 (FCA) (If a provision of the Act is not used, it follows that it cannot have been misused); *Mathew v. R.*, [2003] 1 C.T.C. 2045 (TCC) (Constitutionality of GAAR approved); *Produits Forestiers Donohue Inc.*, [2003] 3 C.T.C. 160 (FCA) (Loss on disposition of shares when many of underlying assets retained in corporate group not misuse or abuse); *Duncan v. R.*, [2002] 4 C.T.C. 1 (FCA); aff'g [2001] 2 C.T.C. 2284 (TCC) (Statutory purpose of CCA scheme apparent and was abused by transactions); *Canadian Pacific Ltd. v. R.*, [2002] 2 C.T.C. 197 (FCA); aff'g [2001] 1 C.T.C. 2190 (TCC) (Transaction as a whole must be considered); *722540 Ontario Inc.*, [2002] 1 C.T.C. 2872 (TCC) (Loan proceeds not used for purposes of gaining income, but solely to get access to tax losses; interest not deductible); *Geransky v. R.*, [2001] 2 C.T.C. 2147 (TCC) (Using specific provisions of the Act in course of commercial transaction and applying them in accordance with their terms is not "misuse or abuse"); *Gregory v. R.*, [2000] 4 C.T.C. 271 (FCA) (Factual background needed to determine whether provision unconstitutional for vagueness); *Longley v. MNR*, [2000] 2 C.T.C. 382 (BC CA); aff'g [1999] 4 C.T.C. 108 (BC SC) (Additional award beyond punitive damages not warranted); *Husky Oil Ltd. v. R.*, [1999] 4 C.T.C. 2691 (TCC) (GAAR not applicable where proper business actions taken); *OSFC Holdings Ltd. v. R.*, [1999] 3 C.T.C. 2649 (TCC); aff'd *OSFC Holdings Ltd. v. R.*, [2001] 4 C.T.C. 82 (FCA) (Incidental application of relieving provision insufficient to avoid application of rule); *Jabs Construction Ltd. v. R.*, [1999] 3 C.T.C. 2556 (TCC) (Where specific provision allows for mitigation of tax results, no abuse, but rather, use of Act).

Selected Cases [old (pre-GAAR) s. 245]: *Shell Canada Ltd. v. R.*, [1999] 4 C.T.C. 313 (SCC); rev'g *Shell Canada Ltd. v. R.*, [1998] 2 C.T.C. 207 (FCA); rev'g on other grounds [1997] 3 C.T.C. 2238 (TCC) (Object and spirit rule cannot be invoked in face of clear statutory provisions); *Bigras v. R.*, [1999] 1 C.T.C. 2374 (TCC) (Provision applicable only where income amount sought to be made a capital gain. Courts will not add transactions to a series); *Adams v. R.*, [1998] 2 C.T.C. 333 (FCA); rev'g [1996] 1 C.T.C. 2916 (TCC) (Tenant inducement payment by partners to themselves disallowed); *Schultz (T.M.G.) v. Canada*, [1993] 2 C.T.C. 2409 (TCC) (Provision [former 245(1)] not void for vagueness); *Mark Resources Inc. v. Canada*, [1993] 2 C.T.C. 2259 (TCC) (Structure intended to permit foreign affiliate to use foreign losses at cost to resident taxpayer of interest expense on money borrowed to contribute capital to affiliate did not result in artificial reduction of income); *W.F. Botkin Construction Ltd. v. Canada*, [1993] 1 C.T.C. 2765 (TCC) (Loss on loan guarantee nil where no commercial reality to transaction other than to benefit taxpayer's children); *Rosner Management Inc. v. MNR*, [1993] 1 C.T.C. 2153 (TCC) (Corporation had no substance; test under former subsec. 247(3) was whether corporation would have been incorporated but for tax advantage); *Nueman (M.) v. MNR*, [1992] 2 C.T.C. 2074 (TCC); aff'd (Dec. 14, 1993), Doc. T-2281-92 (FCTD) (Transaction solely for tax purposes not contrary to Act); *Moloney (M.) v. Canada*, [1992] 2 C.T.C. 227 (FCA); leave to appeal to SCC refused (1993), 154 N.R. 244 (note) (Sole purpose of "scheme" was to obtain tax refunds, not to earn income); *Kieboom (A.) v. MNR*, [1992] 2 C.T.C. 59 (FCA) (Taxpayer "transferred property" to related parties by reducing his equity in a corporation from 90 to 50 percent on the subscription for shares by the related parties); *Goulard v. MNR*, [1992] 1 C.T.C. 2396 (TCC) (Interest deductions allowed since reasonable and did not artificially reduce taxpayer's income); *Friedberg v. Canada*, [1992] 1 C.T.C. 1 (FCA); aff'd [1993] 2 C.T.C. 306 (SCC) (Little used but generally accepted accounting method did not artificially reduce taxpayer's income); *Canada v. Irving Oil Ltd.*, [1991] 1 C.T.C. 350 (FCA); leave to appeal to SCC refused (1991), 136 N.R. 320 (note), (sub nom. *Irving Oil Ltd. v. MNR*) (Oil sold to offshore company which resold to resident for higher price did not artificially reduce income); *Compagnie Idéal Body Inc. v. Canada*, [1989] 2 C.T.C. 187 (FCTD) (Bonus paid not avoidance transaction where there was history of such payments; amount unreasonable in the circumstances); *R. v. Lyall*, [1977] C.T.C. 267 (Ont Co Ct) (Specific provisions of *Income Tax Act* prevail over more general provision of *Canada Evidence Act*).

Definitions [s. 245]: "amount", "assessment", "Minister", "person" — 248(1); "series of transactions" — 248(10); "tax benefit", "tax consequences" — 245(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "tax treaty" — 248(1); "transaction" — 245(1); "writing" — *Interpretation Act* 35(1).

Information Circulars [s. 245]: 88-2 and Supplement: General anti-avoidance rule — section 245 of the *Income Tax Act*.

246. (1) Benefit conferred on a person — Where at any time a person confers a benefit, either directly or indirectly, by any means whatever, on a taxpayer, the amount of the benefit shall, to the extent that it is not otherwise included in the taxpayer's income or taxable income earned in Canada under Part I and would be included in the taxpayer's income if the amount of the benefit were a payment made directly by the person to the taxpayer and if the taxpayer were resident in Canada, be

(a) included in computing the taxpayer's income or taxable income earned in Canada under Part I for the taxation year that includes that time; or

(b) where the taxpayer is a non-resident person, deemed for the purposes of Part XIII to be a payment made at that time to the taxpayer in respect of property, services or otherwise, depending on the nature of the benefit.

Related Provisions: 56(2) — Inclusion in income of indirect payments; 142.7(4) — Deemed value of property on rollover from foreign bank subsidiary to branch.

Selected Cases [subsec. 246(1)]: *Vaillancourt v. Canada*, [1991] 2 C.T.C. 42 (FCA) (Condominium was residential and within Class 31); *Laxton v. Canada*, [1989] 2 C.T.C. 85 (FCA) (Interest-free loan in lieu of management fees was "benefit" within scope of provision); *Boardman et al. v. R.*, [1986] 1 C.T.C. 103 (FCTD); appealed to FCA (Dec. 20, 1985), File A-1015-85 (Transfer of real property to spouse pursuant to court order was benefit to transferor equal to amount of the property's fair market value); *R. v. Littler*, [1978] C.T.C. 235 (FCA) (Difference between price and fair market value in transaction between father and sons not gift); *Phaneuf Estate v. R.*, [1978] C.T.C. 21 (FCTD) (Difference between fair market value and price of shares purchased by employee pursuant to controlling shareholder's will was gift, not employee benefit); *R. v. Immobiliaire Canada Ltd.*, [1977] C.T.C. 481 (FCTD) (Canadian subsidiary purchased debt obligation from parent and also paid parent amount corresponding to accrued interest conferred benefit on parent to the extent it received full value of accumulated interest without deduction for withholding tax); *Levine Estate v. MNR*, [1973] C.T.C. 219 (FCTD) (Where father and a son both given right to subscribe to new shares but only the son did so, father benefitted son to extent son's equity interest increased).

Interpretation Bulletins: IT-432R2: Benefits conferred on shareholders.

(2) Arm's length — Where it is established that a transaction was entered into by persons dealing at arm's length, *bona fide* and not pursuant to, or as part of, any other transaction and not to effect payment, in whole or in part, of an existing or future obligation, no party thereto shall be regarded, for the purpose of this section, as having conferred a benefit on a party with whom the first-mentioned party was so dealing.

Interpretation Bulletins [subsec. 246(2)]: IT-432R2: Benefits conferred on shareholders.

Transfer Pricing Memoranda: TPM-03: Downward transfer pricing adjustments under subsec. 247(2).

Related Provisions [s. 246]: 56(2) — Indirect payments; 245(2) — General anti-avoidance rule.

Definitions [s. 246]: "amount" — 248(1); "arm's length" — 251(1); "Canada" — 255; "non-resident", "person", "property" — 248(1); "resident in Canada" — 250; "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 249; "taxpayer" — 248(1).

PART XVI.1 — TRANSFER PRICING

247. (1) Definitions — The definitions in this subsection apply in this section.

"arm's length allocation" means, in respect of a transaction, an allocation of profit or loss that would have occurred between the participants in the transaction if they had been dealing at arm's length with each other.

Related Provisions: 9(1) — Normal computation of profit.

History: The definition "arm's length allocation" in subsec. 247(1) added by 1998, c. 19, s. 238, applicable to taxation years and fiscal periods that begin after 1997.

"arm's length transfer price" means, in respect of a transaction, an amount that would have been a transfer price in respect of the transaction if the participants in the transaction had been dealing at arm's length with each other.

History: The definition "arm's length allocation" in subsec. 247(1) added by 1998, c. 19, s. 238, applicable to taxation years and fiscal periods that begin after 1997.

Information Circulars: 87-2R: International transfer pricing.

"documentation-due date" for a taxation year or fiscal period of a person or partnership means

(a) in the case of a person, the person's filing-due date for the year; or

(b) in the case of a partnership, the day on or before which a return is required by section 229 of the *Income Tax Regulations* to be filed in respect of the period or would be required to be so filed if that section applied to the partnership.

History: The definition "documentation-due date" in subsec. 247(1) added by 1998, c. 19, s. 238, applicable to taxation years and fiscal periods that begin after 1997.

"qualifying cost contribution arrangement" means an arrangement under which reasonable efforts are made by the participants in the arrangement to establish a basis for contributing to, and to contribute on that basis to, the cost of producing, developing or acquiring any property, or acquiring or performing any services, in proportion to the benefits which each participant is reasonably expected to derive from the property or services, as the case may be, as a result of the arrangement.

Related Provisions: 247(4) — Contemporaneous documentation.

History: The definition "qualifying cost contribution arrangement" in subsec. 247(1) added by 1998, c. 19, s. 238, applicable to taxation years and fiscal periods that begin after 1997.

"tax benefit" has the meaning assigned by subsection 245(1).

History: The definition "tax benefit" in subsec. 247(1) amended by 2005, c. 19, s. 53, applicable to taxation years and fiscal periods that begin after 1997. The definition formerly read:

> "tax benefit" means a reduction, avoidance or deferral of tax or other amount payable under this Act or an increase in a refund of tax or other amount under this Act.

The definition "tax benefit" in subsec. 247(1) added by 1998, c. 19, s. 238, applicable to taxation years and fiscal periods that begin after 1997.

"transaction" includes an arrangement or event.

Related Provisions: 233.1(1)"transaction" — Parallel definition for reporting non-arm's length transactions with non-residents; 245(1) — Parallel definition for general anti-avoidance rule.

History: The definition "transaction" in subsec. 247(1) added by 1998, c. 19, s. 238, applicable to taxation years and fiscal periods that begin after 1997.

Transfer Pricing Memoranda: TPM-06: Bundled transactions.

"transfer price" means, in respect of a transaction, an amount paid or payable or an amount received or receivable, as the case may be, by a participant in the transaction as a price, a rental, a royalty, a premium or other payment for, or for the use, production or reproduction of, property or as consideration for services (including services provided as an employee and the insurance or reinsurance of risks) as part of the transaction.

History: The definition "transfer price" in subsec. 247(1) added by 1998, c. 19, s. 238, applicable to taxation years and fiscal periods that begin after 1997.

Information Circulars: 87-2R: International transfer pricing.

"transfer pricing capital adjustment" of a taxpayer for a taxation year means the total of

(a) all amounts each of which is

(i) ½ of the amount, if any, by which the adjusted cost base to the taxpayer of a capital property (other than a depreciable property) is reduced in the year because of an adjustment made under subsection (2),

(ii) ¾ of the amount, if any, by which the adjusted cost base to the taxpayer of an eligible capital expenditure of the taxpayer in respect of a business is reduced in the year because of an adjustment made under subsection (2), or

(iii) the amount, if any, by which the capital cost to the taxpayer of a depreciable property is reduced in the year because of an adjustment made under subsection (2); and

(b) all amounts each of which is that proportion of the total of

(i) ½ of the amount, if any, by which the adjusted cost base to a partnership of a capital property (other than a depreciable property) is reduced in a fiscal period that ends in the year because of an adjustment made under subsection (2),

(ii) ¾ of the amount, if any, by which the adjusted cost base to a partnership of an eligible capital expenditure of the partnership in respect of a business is reduced in a fiscal period that ends in the year because of an adjustment made under subsection (2), and

(iii) the amount, if any, by which the capital cost to a partnership of a depreciable property is reduced in the period because of an adjustment made under subsection (2),

that

(iv) the taxpayer's share of the income or loss of the partnership for the period

is of

(v) the income or loss of the partnership for the period,

and where the income and loss of the partnership are nil for the period, the income of the partnership for the period is deemed to be $1,000,000 for the purpose of determining a taxpayer's share of the partnership's income for the purpose of this definition.

History: The definition "transfer pricing capital adjustment" in subsec. 247(1) amended by 2001, c. 17, subsec. 187(1), applicable to taxation years that end after February 27, 2000 except that, for a taxation year of a taxpayer that includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, the reference to the fraction "½" shall be read as a reference to the fraction in para.

38(a), as amended by 2001, c. 17, that applies to the taxpayer for that year. The definition formerly read:

> "transfer pricing capital adjustment" of a taxpayer for a taxation year means the total of
>
> (a) all amounts each of which is
>
> (i) 3/4 of the amount, if any, by which the adjusted cost base to the taxpayer of a capital property (other than a depreciable property) or an eligible capital expenditure of the taxpayer in respect of a business is reduced in the year because of an adjustment made under subsection (2), or
>
> (ii) the amount, if any, by which the capital cost to the taxpayer of a depreciable property is reduced in the year because of an adjustment made under subsection (2); and
>
> (b) all amounts each of which is that proportion of the total of
>
> (i) 3/4 of the amount, if any, by which the adjusted cost base to a partnership of a capital property (other than a depreciable property) or an eligible capital expenditure of a partnership in respect of a business is reduced in a fiscal period that ends in the year because of an adjustment made under subsection (2), and
>
> (ii) the amount, if any, by which the capital cost to a partnership of a depreciable property is reduced in the period because of an adjustment made under subsection (2),
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> that
>
> (iii) the taxpayer's share of the income or loss of the partnership for the period
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> is of
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> (iv) the income or loss of the partnership for the period,
>
> and where the income and loss of the partnership are nil for the period, the income of the partnership for the period is deemed to be $1,000,000 for the purpose of determining a taxpayer's share of the partnership's income for the purpose of this definition.

The definition "transfer pricing capital adjustment" in subsec. 247(1) added by 1998, c. 19, s. 238, applicable to taxation years and fiscal periods that begin after 1997.

Information Circulars: 87-2R: International transfer pricing.

"transfer pricing capital setoff adjustment" of a taxpayer for a taxation year means the amount, if any, that would be the taxpayer's transfer pricing capital adjustment for the year if the references, in the definition "transfer pricing capital adjustment", to "reduced" were read as "increased".

History: The definition "transfer pricing capital setoff adjustment" in subsec. 247(1) added by 1998, c. 19, s. 238, applicable to taxation years and fiscal periods that begin after 1997.

"transfer pricing income adjustment" of a taxpayer for a taxation year means the total of all amounts each of which is the amount, if any, by which an adjustment made under subsection (2) (other than an adjustment included in determining a transfer pricing capital adjustment of the taxpayer for a taxation year) would result in an increase in the taxpayer's income for the year or a decrease in a loss of the taxpayer for the year from a source if that adjustment were the only adjustment made under subsection (2).

History: The definition "transfer pricing income adjustment" in subsec. 247(1) added by 1998, c. 19, s. 238, applicable to taxation years and fiscal periods that begin after 1997.

"transfer pricing income setoff adjustment" of a taxpayer for a taxation year means the total of all amounts each of which is the amount, if any, by which an adjustment made under subsection (2) (other than an adjustment included in determining a transfer pricing capital setoff adjustment of the taxpayer for a taxation year) would result in a decrease in the taxpayer's income for the year or an increase in a loss of the taxpayer for the year from a source if that adjustment were the only adjustment made under subsection (2).

History: The definition "transfer pricing income setoff adjustment" in subsec. 247(1) added by 1998, c. 19, s. 238, applicable to taxation years and fiscal periods that begin after 1997.

(2) Transfer pricing adjustment — Where a taxpayer or a partnership and a non-resident person with whom the taxpayer or the partnership, or a member of the partnership, does not deal at arm's length (or a partnership of which the non-resident person is a member) are participants in a transaction or a series of transactions and

> (a) the terms or conditions made or imposed, in respect of the transaction or series, between any of the participants in the transaction or series differ from those that would have been made between persons dealing at arm's length, or
>
> (b) the transaction or series
>
> (i) would not have been entered into between persons dealing at arm's length, and
>
> (ii) can reasonably be considered not to have been entered into primarily for *bona fide* purposes other than to obtain a tax benefit,

any amounts that, but for this section and section 245, would be determined for the purposes of this Act in respect of the taxpayer or the partnership for a taxation year or fiscal period shall be adjusted (in this section referred to as an "adjustment") to the quantum or nature of the amounts that would have been determined if,

> (c) where only paragraph (a) applies, the terms and conditions made or imposed, in respect of the transaction or series, between the participants in the transaction or series had been those that would have been made between persons dealing at arm's length, or
>
> (d) where paragraph (b) applies, the transaction or series entered into between the participants had been the transaction or series that would have been entered into between persons dealing at arm's length, under terms and conditions that would have been made between persons dealing at arm's length.

Related Provisions: 115.2(4) — Non-resident investment or pension fund deemed not to deal at arm's length with Canadian service provider; 142.7(4) — Deemed value of property on rollover from foreign bank subsidiary to branch; 247(3) — Penalty; 247(6) — Tiers of partnerships; 247(7) — Exclusion for loan to subsidiary; 247(7.1) — Exclusion for guarantee provided to subsidiary; 247(10) — Adjustment only if appropriate; Canada-U.S. Tax Treaty:Art. IX — Adjustments on transactions between related persons; Canada-U.S. Tax Treaty:Art. XII:7 — Where royalties excessive due to special relationship.

History: Subsec. 247(2) added by 1998, c. 19, s. 238, applicable to taxation years and fiscal periods that begin after 1997.

Information Circulars: 87-2R: International transfer pricing; 94-4R: International transfer pricing — advance pricing arrangements (APAs); 94-4R-SR: APAs for small businesses.

I.T. Technical News: 32 (application of penalties).

Transfer Pricing Memoranda: TPM-01: Referrals to the transfer pricing review committee; TPM-02: Repatriation of funds by non-residents — Part XIII assessments; TPM-03: Downward transfer pricing adjustments under subsec. 247(2); TPM-04: Third-party information; TPM-06: Bundled transactions.

(3) Penalty — A taxpayer (other than a taxpayer all of whose taxable income for the year is exempt from tax under Part I) is liable to a penalty for a taxation year equal

to 10% of the amount determined under paragraph (a) in respect of the taxpayer for the year, where

(a) the amount, if any, by which

(i) the total of

(A) the taxpayer's transfer pricing capital adjustment for the year, and

(B) the taxpayer's transfer pricing income adjustment for the year

exceeds the total of

(ii) the total of all amounts each of which is the portion of the taxpayer's transfer pricing capital adjustment or transfer pricing income adjustment for the year that can reasonably be considered to relate to a particular transaction, where

(A) the transaction is a qualifying cost contribution arrangement in which the taxpayer or a partnership of which the taxpayer is a member is a participant, or

(B) in any other case, the taxpayer or a partnership of which the taxpayer is a member made reasonable efforts to determine arm's length transfer prices or arm's length allocations in respect of the transaction, and to use those prices or allocations for the purposes of this Act, and

(iii) the total of all amounts, each of which is the portion of the taxpayer's transfer pricing capital setoff adjustment or transfer pricing income setoff adjustment for the year that can reasonably be considered to relate to a particular transaction, where

(A) the transaction is a qualifying cost contribution arrangement in which the taxpayer or a partnership of which the taxpayer is a member is a participant, or

(B) in any other case, the taxpayer or a partnership of which the taxpayer is a member made reasonable efforts to determine arm's length transfer prices or arm's length allocations in respect of the transaction, and to use those prices or allocations for the purposes of this Act,

is greater than

(b) the lesser of

(i) 10% of the amount that would be the taxpayer's gross revenue for the year if this Act were read without reference to subsection (2), subsections 69(1) and (1.2) and section 245, and

(ii) $5,000,000.

Related Provisions: 247(4) — Requirement for contemporaneous documentation; 247(3) — Determination of partner's gross revenue; 247(9) — Anti-avoidance rule re increases in gross revenue; 247(11) — Payment and assessment of penalty.

History: Subsec. 247(3) added by 1998, c. 19, s. 238, applicable with respect to adjustments made under subsec. 247(2) for taxation years and fiscal periods that begin after 1998, except that subsec. 247(3) does not apply to transactions completed before September 11, 1997.

Information Circulars: 87-2R: International transfer pricing; 94-4R: International transfer pricing — advance pricing arrangements (APAs); 94-4R-SR: APAs for small businesses.

Transfer Pricing Memoranda: TPM-01: Referrals to the transfer pricing review committee; TPM-03: Downward transfer pricing adjustments under subsec. 247(2); TPM-06: Bundled transactions.

(4) Contemporaneous documentation — For the purposes of subsection (3) and the definition "qualifying cost contribution arrangement" in subsection (1), a taxpayer or a partnership is deemed not to have made reasonable efforts to determine and use arm's length transfer prices or arm's length allocations in respect of a transaction or not to have participated in a transaction that is a qualifying cost contribution arrangement, unless the taxpayer or the partnership, as the case may be,

(a) makes or obtains, on or before the taxpayer's or partnership's documentation-due date for the taxation year or fiscal period, as the case may be, in which the transaction is entered into, records or documents that provide a description that is complete and accurate in all material respects of

(i) the property or services to which the transaction relates,

(ii) the terms and conditions of the transaction and their relationship, if any, to the terms and conditions of each other transaction entered into between the participants in the transaction,

(iii) the identity of the participants in the transaction and their relationship to each other at the time the transaction was entered into,

(iv) the functions performed, the property used or contributed and the risks assumed, in respect of the transaction, by the participants in the transaction,

(v) the data and methods considered and the analysis performed to determine the transfer prices or the allocations of profits or losses or contributions to costs, as the case may be, in respect of the transaction, and

(vi) the assumptions, strategies and policies, if any, that influenced the determination of the transfer prices or the allocations of profits or losses or contributions to costs, as the case may be, in respect of the transaction;

(b) for each subsequent taxation year or fiscal period, if any, in which the transaction continues, makes or obtains, on or before the taxpayer's or partnership's documentation-due date for that year or period, as the case may be, records or documents that completely and accurately describe each material change in the year or period to the matters referred to in any of subparagraphs (a)(i) to (vi) in respect of the transaction; and

(c) provides the records or documents described in paragraphs (a) and (b) to the Minister within 3 months after service, made personally or by registered or certified mail, of a written request therefor.

Related Provisions: 244(5) — Proof of service by mail or request under 247(4)(c); 248(7) — Mail sent under 247(4)(c) deemed received on day mailed.

History: Subsec. 247(4) added by 1998, c. 19, s. 238, applicable with respect to adjustments made under subsec. 247(2) for taxation years and fiscal periods that begin after 1998, except that

(a) subsec. 247(4) does not apply to transactions completed before September 11, 1997; and

(b) a record or document made or obtained or provided to the Minister of National Revenue by a taxpayer or a partnership on or before the taxpayer's or partnership's documentation-due date for the taxpayer's or partnership's first taxation year or fiscal period, as the case may be, that begins after 1998 is deemed for the purpose of subsec. 247(4) to have been so made, obtained or provided on a timely basis.

Information Circulars: 87-2R: International transfer pricing; 94-4R: International transfer pricing — advance pricing arrangements (APAs); 94-4R-SR: APAs for small businesses.

Transfer Pricing Memoranda: TPM-02: Repatriation of funds by non-residents — Part XIII assessments; TPM-06: Bundled transactions.

(5) Partner's gross revenue — For the purpose of subparagraph (3)(b)(i), where a taxpayer is a member of a partnership in a taxation year, the taxpayer's gross revenue for the year as a member of the partnership from any activities carried on by means of the partnership is deemed to be that proportion of the amount that would be the partnership's gross revenue from the activities if it were a taxpayer (to the extent that amount does not include amounts received or receivable from other partnerships of which the taxpayer is a member in the year), for a fiscal period of the partnership that ends in the year, that

(a) the taxpayer's share of the income or loss of the partnership from its activities for the period

is of

(b) the income or loss of the partnership from its activities for the period,

and where the income and loss of the partnership from its activities are nil for the period, the income of the partnership from its activities for the period is deemed to be $1,000,000 for the purpose of determining a taxpayer's share of the partnership's income from its activities for the purpose of this subsection.

Related Provisions: 247(6) — Tiers of partnerships; 248(1) — Definition of "gross revenue".

History: Subsec. 247(5) added by 1998, c. 19, s. 238, applicable with respect to adjustments made under subsec. 247(2) for taxation years and fiscal periods that begin after 1998, except that subsec. 247(5) does not apply to transactions completed before September 11, 1997.

(6) Deemed member of partnership — For the purposes of this section, where a person is a member of a partnership that is a member of another partnership,

(a) the person is deemed to be a member of the other partnership; and

(b) the person's share of the income or loss of the other partnership is deemed to be equal to the amount of that income or loss to which the person is directly or indirectly entitled.

History: Subsec. 247(6) added by 1998, c. 19, s. 238, applicable to taxation years and fiscal periods that begin after 1997.

(7) Exclusion for loans to certain controlled foreign affiliates — Where, in a taxation year of a corporation resident in Canada, a non-resident person owes an amount to the corporation, the non-resident person is a controlled foreign affiliate of the corporation for the purpose of section 17 throughout the period in the year during which the amount is owing and it is established that the amount owing is an amount owing described in paragraph 17(8)(a) or (b), subsection (2) does not apply to adjust the amount of interest paid, payable or accruing in the year on the amount owing.

History: Subsec. 247(7) amended by 1999, c. 22, s. 79, applicable to taxation years that begin after February 23, 1998. The subsec. formerly read:

(7) Exclusion for loans to subsidiary — Subsection (2) does not apply to a transaction that is a loan referred to in subsection 17(3).

Subsec. 247(7) added by 1998, c. 19, s. 238, applicable to taxation years and fiscal periods that begin after 1997.

Proposed Addition — 247(7.1) [subject to further amendment per January 2005 letter below]

(7.1) Exclusion for guarantees in respect of certain controlled foreign affiliates — Subsection (2) will not apply to adjust the amount of consideration paid, payable or accruing to a corporation resident in Canada (referred to in this subsection as the "parent") in a particular taxation year of the parent for the providing of a guarantee of the repayment, in whole or in part, of an amount owing by a non-resident person to a person or partnership (referred to in this subsection as the "lender"), if

(a) the parent provided the guarantee pursuant to an agreement in writing entered into with the lender or with a person or partnership related to the lender,

(b) the non-resident person is a controlled foreign affiliate of the parent for the purpose of section 17 throughout the period in the particular year during which the amount owing is owing, and

(c) it is established that the amount owing would, if the amount owing were an amount owing to the parent, be an amount owing described in paragraph 17(8)(a) or (b).

Application: The draft legislation accompanying a March 11, 2003 comfort letter will add subsec. 247(7.1), applicable to taxation years of a taxpayer that begin after "Announcement Date", except that, if the taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which the amending legislation is assented to,

(a) subsec. 247(7.1) applies to taxation years of the taxpayer that begin after 1997,

(b) in applying subsec. 247(7.1) to taxation years that begin before February 24, 1998, s. 17 shall be read as it read on "Announcement Date", and

(c) in applying subsec. 247(7.1), any assessment of a taxpayer's tax, interest and penalties payable under that Act for any of those taxation years of the taxpayer that begin before ["Announcement Date" + 1] shall, notwithstanding subsecs. 152(4) to (5), be made that is necessary to take the election into account.

Letter from Dept. of Finance, March 11, 2003:

Dear [xxx]

I am writing in response to your letter dated December 19, 2002 in which you requested that an amendment be made to the transfer pricing rules in section 247 of the *Income Tax Act* to exclude explicitly from the ambit of those rules, certain loan guarantees provided by Canadian resident corporations in respect of their controlled foreign affiliates.

In your letter, you noted that subsection 247(7) of the Act provides an exception, from the ambit of the transfer pricing rules, for certain loans made by a Canadian resident parent corporation to its controlled foreign affiliates. Specifically, that subsection provides that where a non-resident person owes an amount to a corporation resident in Canada, the non-resident person is a controlled foreign affiliate of the corporation for the purposes of section 17 of the Act and the amount owing is described in either paragraph 17(8)(a) or (b), subsection 247(2) will not apply to adjust the amount of interest paid, payable or accruing in the year on the amount owing. In general terms, an amount owing is described in paragraph 17(8)(a) or (b) if it arose as a loan, or advance of money, that was used by the affiliate to earn active business income or if it arose in the course of an active business carried on by the affiliate.

We agree that it would be appropriate in tax policy terms to provide for a parallel exception to the transfer pricing rules for guarantees provided by Canadian resident corporations in respect of controlled foreign affiliates. Accordingly, we are prepared to recommend to the Minister of Finance that the Act be amended to provide that subsection 247(2) of the Act will not apply to adjust the amount of consideration paid, payable or accruing to a corporation resident in Canada (the "parent") in a particular taxation year of the parent for the providing of a guarantee of the repayment, in whole or in part, of an amount owing by a non-resident person to a person or partnership (the "lender"), if

- the parent provided the guarantee pursuant to an agreement in writing entered into with the lender or with a person related to the lender,
- the non-resident person is a controlled foreign affiliate of the parent for the purpose of section 17 of the Act throughout the period in the particular year during which the amount owing is owing, and
- it is established that the amount owing would, if the amount owing were an amount owing to the parent, be an amount owing described in paragraph 17(8)(a) or (b).

If these recommendations are acted upon, I would anticipate that the amendment would be included in a future technical bill.

We will recommend that the amendment apply prospectively, with taxpayers having an option to also apply it to taxation years that begin after 1997. For taxation years that begin before February 24, 1998, the above-noted definition (of "controlled foreign affiliate") and descriptions from section 17, as it currently reads, would be applied.

I wish to thank you for raising this matter with us.

Yours sincerely,

Len Farber
General Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, January 24, 2005:

Dear [xxx]

I am writing in response to your letter dated October 27 and 28, 2004 in connection with section 247 of the *Income Tax Act* (the "Act").

In a comfort letter dated March 11, 2003 issued on behalf of the Tax Legislation Division, we indicated that we were prepared to recommend to the Minister of Finance an amendment to the Act in connection with section 247. The March 11, 2003 letter was drafted to address particular sets of circumstances.

In your correspondence, you ask that our recommended amendments to the Minister be modified to address a broader range of circumstances under which a corporation resident in Canada may guarantee an amount owing by a non-resident but not provide that guarantee in writing. To support your request, you cite examples of where a corporation resident in Canada could provide a guarantee of a non-resident's debt without written agreements between the corporation resident in Canada and the lender.

We concur with your view. Accordingly, we are prepared to recommend to the Minister of Finance that the Act be amended so that subsection 247(2) of the Act will not apply to adjust the amount of consideration paid, payable or accruing to a corporation resident in Canada (the "parent") in a particular taxation year of the parent for the provision of a guarantee of the repayment, in whole or in part, of an amount owing by a non-resident person, if

- the non-resident person is a controlled foreign affiliate of the parent for the purpose of section 17 of the Act throughout the period in the particular year during which the amount owing is owing, and
- it is established that the amount owing would, if the amount owing were an amount owing to the parent, be an amount owing described in paragraph 17(8)(a) or (b).

If these recommendations are acted upon, I would anticipate that the amendment would be included in a future technical bill.

We will recommend that the amendment apply prospectively, with taxpayers having an option to also apply it to taxation years that begin after 1997. For taxation years that begin before February 24, 1998, the above-noted definition (of "controlled foreign affiliate") and descriptions from section 17, as it currently reads, would be applied.

In your correspondence, you also suggested that the Act be amended to provide that subsection 247(2) of the Act not apply to adjust the amount of consideration paid, payable or accruing to a corporation resident in Canada for the giving of a guarantee of the amounts owing by a controlled foreign affiliate of the corporation resident in Canada as lessee under a lease of property. Although there may be some similarities as between a guarantee relating to a debt obligation and a guarantee relating to a lease obligation, I am not prepared, at this time, to recommend such an amendment without comprehensive review of the facts and information concerning the lease arrangements referred to in your letter. Should you provide the required facts and information, we will study your suggestion as part of our ongoing review of the provisions of the Act.

Thank you for your correspondence.

Yours sincerely,

Len Farber
General Director, Tax Legislation Division, Tax Policy Branch

(8) Provisions not applicable — Where subsection (2) would, if this Act were read without reference to sections 67 and 68 and subsections 69(1) and (1.2), apply to adjust an amount under this Act, sections 67 and 68 and subsections 69(1) and (1.2) shall not apply to determine the amount if subsection (2) is applied to adjust the amount.

History: Subsec. 247(8) added by 1998, c. 19, s. 238, applicable to taxation years and fiscal periods that begin after 1997.

(9) Anti-avoidance — For the purposes of determining a taxpayer's gross revenue under subparagraph (3)(b)(i) and subsection (5), a transaction or series of transactions is deemed not to have occurred, if one of the purposes of the transaction or series was to increase the taxpayer's gross revenue for the purpose of subsection (3).

Related Provisions: 248(10) — Series of transactions.

History: Subsec. 247(9) added by 1998, c. 19, s. 238, applicable with respect to adjustments made under subsec. 247(2) for taxation years and fiscal periods that begin after 1998, except that subsec. 247(9) does not apply to transactions completed before September 11, 1997.

(10) No adjustment unless appropriate — An adjustment (other than an adjustment that results in or increases a transfer pricing capital adjustment or a transfer pricing income adjustment of a taxpayer for a taxation year) shall not be made under subsection (2) unless, in the opinion of the Minister, the circumstances are such that it would be appropriate that the adjustment be made.

History: Subsec. 247(10) added by 1998, c. 19, s. 238, applicable to taxation years and fiscal periods that begin after 1997.

Information Circulars: 87-2R: International transfer pricing.

Transfer Pricing Memoranda: TPM-03: Downward transfer pricing adjustments under subsec. 247(2).

(11) Provisions applicable to Part — Sections 152, 158, 159, 162 to 167 and Division J of Part I apply to this Part, with such modifications as the circumstances require.

History: Subsec. 247(11) added by 1998, c. 19, s. 238, applicable to taxation years and fiscal periods that begin after 1997.

Definitions [s. 247]: "adjusted cost base" — 54, 248(1); "adjustment" — 247(2); "amount" — 248(1); "arm's length" — 115.2(4), 251(1); "arm's length allocation", "arm's length transfer price" — 247(1); "business" — 248(1); "capital property" — 54, 248(1); depreciable property" — 13(21), 248(1); "documentation-due date" — 247(1); "eligible capital expenditure" — 14(5), 248(1); "employee", "filing-due date" — 248(1); "fiscal period" — 249.1; "gross revenue" — 247(5), (9), 248(1); "Minister", "non-resident" — 248(1); "property" — 248(1); "person" — 248(1); "qualifying cost contribution arrangement" — 247(1); "reasonable efforts" — 247(4); "record" — 248(1); "series" — 248(10); "tax benefit" — 247(1); "taxation year" — 249; "taxpayer" — 248(1); "transaction", "transfer price", "transfer pricing capital adjustment", "transfer pricing capital setoff adjustment", "transfer pricing income adjustment", "transfer pricing income setoff adjustment" — 247(1); "written" — *Interpretation Act* 35(1) ["writing"].

PART XVII — INTERPRETATION

248. (1) Definitions — In this Act,

"active business", in relation to any business carried on by a taxpayer resident in Canada, means any business carried on by the taxpayer other than a specified investment business or a personal services business;

Related Provisions: 95(1) — Meaning of "active business" of a foreign affiliate for FAPI purposes; 125(1) — Small business deduction; 125(7)"active business" — Meaning of "active business" for purposes of the small business deduction; 248(1) — Small business corporation.

Interpretation Bulletins: IT-73R6: The small business deduction; IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs; IT-406R2: Tax payable by an *inter vivos* trust.

"additional voluntary contribution" to a registered pension plan means a contribution that is made by a member to the plan, that is used to provide benefits under a money purchase provision (within the meaning assigned by subsection 147.1(1)) of the plan and that is not required as a general condition of membership in the plan;

Related Provisions: 60.2 — Refund of undeducted past service AVCs; 147.2(4) — Amount of employee's pension contributions deductible.

Interpretation Bulletins: IT-167R6: Registered pension plans — employee's contributions.

"adjusted cost base" has the meaning assigned by section 54;

Related Provisions: 40(1) — Calculation of gain or loss for capital gain/loss purposes.

"adjustment time" has the meaning assigned by subsection 14(5);

"allowable business investment loss" has the meaning assigned by section 38;

Related Provisions: 3(d) — Income for taxation year — application of allowable business investment losses; 111(1)(a), 111(8)"non-capital loss" — Carryforward of allowable business investment losses.

"allowable capital loss" has the meaning assigned by section 38;

Related Provisions: 3(b)(ii) — Income for taxation year — application of allowable capital losses.

"*alter ego* trust" means a trust to which paragraph 104(4)(a) would apply if that paragraph were read without reference to subparagraph 104(4)(a)(iii) and clauses 104(4)(a)(iv)(B) and (C);

Related Provisions: 73(1.01)(c)(ii) — Rollover on transfer to alter ego trust; 104(5.8) — Transfers from alter ego trust to another trust; 104(6)(b)(ii.1), (iii) — Deduction from income of trust; 104(15)(a) — Preferred beneficiary election; 107(4)(a)(ii) — Distribution of property to person other than taxpayer; 248(1)"joint partner trust" — Parallel trust where spouse is also a beneficiary.

History: The definition "*alter ego* trust" added to subsec. 248(1) by 2001, c. 17, subsec. 188(5), applicable to trusts created after 1999.

"amateur athlete trust" has the meaning assigned by subsection 143.1(1);

History: "Amateur athlete trust" enacted by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 139(7), applicable to 1988 *et seq.*

"amortized cost" of a loan or lending asset at any time to a taxpayer means the amount, if any, by which the total of

(a) in the case of a loan made by the taxpayer, the total of all amounts advanced in respect of the loan at or before that time,

(b) in the case of a loan or lending asset acquired by the taxpayer, the cost of the loan or lending asset to the taxpayer,

(c) in the case of a loan or lending asset acquired by the taxpayer, the part of the amount, if any, by which

(i) the principal amount of the loan or lending asset at the time it was so acquired

exceeds

(ii) the cost to the taxpayer of the loan or lending asset

that was included in computing the taxpayer's income for any taxation year ending at or before that time,

(c.1) the total of all amounts each of which is an amount in respect of the loan or lending asset that was included in computing the taxpayer's income for a taxation year that ended at or before that time in respect of changes in the value of the loan or lending asset attributable to the fluctuation in the value of a currency of a country other than Canada relative to Canadian currency,

(d) where the taxpayer is an insurer, any amount in respect of the loan or lending asset that was deemed by reason of paragraph 142(3)(a) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1977 taxation year, to be a gain for any taxation year ending at or before that time, and

(e) the total of all amounts each of which is an amount in respect of the loan or lending asset that was included under paragraph 12(1)(i) in computing the taxpayer's income for any taxation year ending at or before that time

exceeds the total of

(f) the part of the amount, if any, by which

(i) the amount referred to in subparagraph (c)(ii)

exceeds

(ii) the amount referred to in subparagraph (c)(i)

that was deducted in computing the taxpayer's income for any taxation year ending at or before that time,

(f.1) the total of all amounts each of which is an amount in respect of the loan or lending asset that was deducted in computing the taxpayer's income for a taxation year that ended at or before that time in respect of changes in the value of the loan or lending asset attributable to the fluctuation in the value of a currency of a country other than Canada relative to Canadian currency,

(g) the total of all amounts that, at or before that time, the taxpayer had received as or on account or in lieu of payment of or in satisfaction of the principal amount of the loan or lending asset,

(h) where the taxpayer is an insurer, any amount in respect of the loan or lending asset that was deemed by reason of paragraph 142(3)(b) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1977 taxation year, to be a loss for any taxation year ending at or before that time, and

(i) the total of all amounts each of which is an amount in respect of the loan or lending asset deducted under paragraph 20(1)(p) in computing the taxpayer's income for any taxation year ending at or before that time;

Related Provisions: 138(13) — Variation in amortized of certain insurers.

History: Paras. (c.1) and (f.1) added to the definition "amortized cost" by 1995, c. 21, subsecs. 59(1), (2), applicable to taxation years that begin after June 17, 1987 and end after 1987.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-442R: Bad debts and reserves for doubtful debts.

"amount" means money, rights or things expressed in terms of the amount of money or the value in terms of money of the right or thing, except that,

(a) notwithstanding paragraph (b), in any case where subsection 112(2.1), (2.2) or (2.4), or section 187.2 or 187.3 or subsection 258(3) or (5) applies to a stock dividend, the "amount" of the stock dividend is the greater of

(i) the amount by which the paid-up capital of the corporation that paid the dividend is increased by reason of the payment of the dividend, and

(ii) the fair market value of the share or shares paid as a stock dividend at the time of payment,

(b) in any case where section 191.1 applies to a stock dividend, the "amount" of the stock dividend for the purposes of Part VI.1 is the greater of

(i) the amount by which the paid-up capital of the corporation that paid the dividend is increased by reason of the payment of the dividend, and

(ii) the fair market value of the share or shares paid as a stock dividend at the time of payment,

and for any other purpose the amount referred to in subparagraph (i), and

Proposed Addition — 248(1)"amount"(b.1)

(b.1) in the case of a stock dividend paid by a corporation that is, when the dividend is paid, a non-resident corporation, the "amount" of any stock dividend is, except where subsection 95(7) applies to the dividend, the greater of

(i) the amount by which the paid-up capital of the corporation that paid the dividend is increased by reason of the payment of the dividend, and

(ii) the fair market value of the share or shares paid as a stock dividend at the time of payment, and

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 44(1), will add para. (b.1) to the definition "amount" in subsec. 248(1), applicable to dividends declared on or [after] July 18, 2005.

Technical Notes: The expression "amount" is defined in subsection 248(1) to mean money, rights or things expressed in terms of the amount of money or the value in terms of money of the right or thing. A number of special definitions, that apply in limited circumstances, of "amount" are set out in paragraphs (a) to (c) of the definition.

The definition "amount" is amended to add new paragraph (b.1). New paragraph (b.1) of that definition provides that in the case of a stock dividend paid by a non-resident corporation, the amount of any stock dividend is, except where subsection 95(7) applies to the dividend, the greater of two amounts. The first is the amount by which the paid-up capital of the corporation that paid the dividend is increased by reason of the payment of the dividend. The second is the fair market value of the share or shares paid as a stock dividend at the time of payment.

(c) in any other case, the "amount" of any stock dividend is the amount by which the paid-up capital of the corporation that paid the dividend is increased by reason of the payment of the dividend;

Related Provisions: 95(7) — "Amount" of stock dividend paid by foreign affiliate.

Selected Cases [subsec. 248(1)"amount"]: *King Rentals Ltd. v. Canada*, [1995] 2 C.T.C. 2612 (TCC) (Consideration for debt was amount of debt for which shares were issued and credit made to share capital, not fair market value of the debt); *Praxair Canada Inc. v. MNR*, [1993] 1 C.T.C. 130 (FCTD) (Creditor accepting shares of debtor in satisfaction of unpaid interest received "amount" equal to fair market value of shares, not amount of par value); *Laxton v. Canada*, [1989] 2 C.T.C. 85 (FCA) ("Amount" of benefit from interest-free loan should be reduced by taxpayer's share of costs of loan).

Interpretation Bulletins: IT-88R2: Stock dividends.

Information Circulars: 88-2, para. 26: General anti-avoidance rule — section 245 of the *Income Tax Act*.

Charities Policies: CPS-009: Holding of property for charities.

"annuity" includes an amount payable on a periodic basis whether payable at intervals longer or shorter than a year and whether payable under a contract, will or trust or otherwise;

Related Provisions: 56(1)(d), 60(a), 212(1)(o) — Annuity payments taxable; 128.1(10)"excluded right or interest"(f) — Emigration — no deemed disposition of right under annuity contract; Canada-U.S. Tax Treaty:Art. XVIII:4 — Meaning of "annuities" for treaty purposes; *Income Tax Conventions Interpretation Act* 5 — Meaning of "annuity" for treaty purposes.

Selected Cases [subsec. 248(1)"annuity"]: *Rumack v. MNR*, [1992] 1 C.T.C. 57 (FCA); leave to appeal to SCC refused (1992), 143 N.R. 393 (note) (Lottery prize of $1,000 per month for life sponsored by charitable association, which funded the prize by purchasing annuity from life insurance company was held to be an annuity).

"appropriate percentage" for a taxation year means the lowest percentage referred to in subsection 117(2) that is applicable in determining tax payable under Part I for the year;

"assessment" includes a reassessment;

Related Provisions: 152 — Assessments; 244(14) — Assessment presumed mailed on date stated on notice; 244(15) — Assessment deemed made on date of mailing.

"authorized foreign bank" has the meaning assigned by section 2 of the *Bank Act*;

Related Provisions: 20.2 — Interest deduction; 94.1(2)(t) — Authorized foreign bank deemed resident in Canada for foreign investment entity rules; 115(1)(a)(vii) — Taxable income earned in Canada; 116(6)(f) — No s. 116 certificate required on disposition of bank's Canadian banking business property; 126(1.1) — Foreign tax credit; 142.7 — Conversion of foreign bank affiliate to branch; 181.3(3)(e), (4)(c), 190.13(d), 190.14(1)(c) — Capital tax; 212(13.3) — Application of non-resident withholding tax; 218.2 — Branch interest tax.

History: The definition "authorized foreign bank" added to s. 248(1) by 2001, c. 17, subsec. 188(5), applicable after June 27, 1999.

"automobile" means

(a) a motor vehicle that is designed or adapted primarily to carry individuals on highways and streets and that has a seating capacity for not more than the driver and 8 passengers,

but does not include

(b) an ambulance,

(b.1) a clearly marked emergency-response vehicle that is used in connection with or in the course of an individual's office or employment with a fire department or the police,

(b.2) a clearly marked emergency medical response vehicle that is used, in connection with or in the course of an individual's office or employment with an emergency medical response or ambulance service, to carry emergency medical equipment together with one or more emergency medical attendants or paramedics,

(c) a motor vehicle acquired primarily for use as a taxi, a bus used in a business of transporting passengers or a hearse used in the course of a business of arranging or managing funerals,

(d) except for the purposes of section 6, a motor vehicle acquired to be sold, rented or leased in the course of carrying on a business of selling, renting or leasing motor vehicles or a motor vehicle used for the purpose of transporting passengers in the course of carrying on a business of arranging or managing funerals, and

(e) a motor vehicle

(i) of a type commonly called a van or pick-up truck, or a similar vehicle, that has a seating capacity for not more than the driver and two passengers and that, in the taxation year in which it is acquired or leased, is used primarily for the transportation of goods or equipment in the course of gaining or producing income,

(ii) of a type commonly called a van or pick-up truck, or a similar vehicle, the use of which, in the taxation year in which it is acquired or leased, is all or substantially all for the transportation of goods,

equipment or passengers in the course of gaining or producing income, or

(iii) of a type commonly called a pick-up truck that is used in the taxation year in which it is acquired or leased primarily for the transportation of goods, equipment or passengers in the course of earning or producing income at one or more locations in Canada that are

(A) described, in respect of any of the occupants of the vehicle, in subparagraph 6(6)(a)(i) or (ii), and

(B) at least 30 kilometres outside the nearest point on the boundary of the nearest urban area, as defined by the last census dictionary published by Statistics Canada before the year, that has a population of at least 40,000 individuals as determined in the last census published by Statistics Canada before the year.

Related Provisions: 248(1) — "motor vehicle", "passenger vehicle".

History: Para. (b.2) added to the definition "automobile" in subsec. 248(1) by 2005, c. 30, subsec. 17(1), applicable to 2005 *et seq.*

Para. (b.1) added to the definition "automobile" in subsec. 248(1) by 2003, c. 15, subsec. 88(2), applicable to 2003 *et seq.*

Para. (e) of the definition "automobile" amended by the said c. 15, subsec. 88(4), applicable to taxation years that begin after 2002. The para. formerly read:

(e) a motor vehicle of a type commonly called a van or pick-up truck or a similar vehicle

(i) that has a seating capacity for not more than the driver and 2 passengers and that, in the taxation year in which it is acquired, is used primarily for the transportation of goods or equipment in the course of gaining or producing income, or

(ii) the use of which, in the taxation year in which it is acquired, is all or substantially all for the transportation of goods, equipment or passengers in the course of gaining or producing income;

"Automobile" substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(1), applicable to taxation years and fiscal periods beginning after June 17, 1987 that end after 1987. That definition formerly read:

"automobile" means

(a) a motor vehicle that is designed or adapted primarily to carry individuals and their personal luggage and that has a seating capacity for not more than the driver and 8 passengers, and

(b) a motor vehicle that is

(i) of a type commonly called a station wagon or van or a similar vehicle if it is equipped in a reasonably permanent way to carry more than the driver and 2 passengers but not more than the driver and 8 passengers, or

(ii) of a type commonly called a van or pick-up truck or a similar vehicle unless it is designed or adapted to carry not more than the driver and 2 passengers and is used primarily for the transportation of goods or equipment in the course of a business or for the purpose of earning income,

but does not include

(c) an ambulance,

(d) a motor vehicle acquired primarily for use as a taxi or in connection with funerals, or

(e) except for the purposes of section 6, a motor vehicle acquired to be sold, rented or leased in the course of carrying on a business of selling, renting or leasing motor vehicles;

Selected Cases [subsec. 248(1)"automobile"]: *Fox v. R.*, [2003] 4 C.T.C. 2224 (TCC) (Pickup truck not "automobile").

Interpretation Bulletins: IT-521R: Motor vehicle expenses claimed by self-employed individuals; IT-522R: Vehicle, travel and sales expenses of employees.

"balance-due day" of a taxpayer for a taxation year means,

(a) where the taxpayer is a trust, the day that is 90 days after the end of the year,

(b) where the taxpayer is an individual who died after October in the year and before May in the following taxation year, the day that is 6 months after the day of death,

(c) in any other case where the taxpayer is an individual, April 30 in the following taxation year, and

(d) where the taxpayer is a corporation,

(i) the day that is three months after the day on which the taxation year (in this subparagraph referred to as the "current year") ends, if

(A) an amount was deducted under section 125 in computing the corporation's tax payable under this Part for the current year or for its preceding taxation year,

(B) the corporation is, throughout the current year, a Canadian-controlled private corporation, and

(C) either

(I) in the case of a corporation that is not associated with another corporation in the current year, its taxable income for its preceding taxation year (determined before taking into consideration the specified future tax consequences for that preceding taxation year) does not exceed its business limit for that preceding taxation year, or

(II) in the case of a corporation that is associated with one or more other corporations in the current year, the total of the taxable incomes of the corporation and of those other corporations for their last taxation years that ended in the last calendar year that ended before the end of the current year (determined before taking into consideration the specified future tax consequences for those last taxation years) does not exceed the total of the business limits of the corporation and of those other corporations for those last taxation years, and

(ii) the day that is two months after the day on which the taxation year ends, in any other case;

Related Provisions: 87(2)(oo.1) — Balance-due day of amalgamated corporation; 88(1)(e.9) — Balance-due day on windup of corporation; 150(1) — Returns; 156.1(4) — Payment of balance — individuals who pay instalments; 157(1)(b) — Corporation to pay balance by balance-due day; 157.1(2) — Deferral of balance-due day in January-March 2002; 158 — Payment of balance on assessment; *Interpretation Act* 26 — Deadline on Sunday or holiday extended to next business day; 256 — Associated corporations.

History: Para. (d) of the definition "balance-due day" in subsec. 248(1) amended by 2002, c. 9, s. 44, applicable to taxation years that end after 2001. The para. formerly read:

(d) where the taxpayer is a corporation, the day on or before which the corporation is required under section 157 to pay the remainder of its tax payable under Part I for the year or would be so required if such a remainder were payable;

The definition "balance-due day" in subsec. 248(1) amended by 1997, c. 25, subsec. 71(1), applicable to 1996 *et seq.* It formerly read:

"balance-due day" of an individual for a taxation year means

(a) where the individual is a trust, the day that is 90 days after the end of the year,

(b) where the individual died after October in the year and before May in the immediately following taxation year, the day that is 6 months after the day of death, and

(c) in any other case, April 30 in the immediately following taxation year;

"Balance-due day" added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(14), applicable after 1989.

Information Circulars: 98-1R: Collection policies.

"bank" means a bank within the meaning assigned by section 2 of the *Bank Act* or an authorized foreign bank;

History: The definition "bank" added to s. 248(1) by 2001, c. 17, subsec. 188(5), applicable after June 27, 1999.

"bankrupt" has the meaning assigned by the *Bankruptcy and Insolvency Act*;

Related Provisions: 80(1)"forgiven amount"B(i) — Debt forgiveness rules do not apply when debtor is bankrupt; 128 — Rules on bankruptcy.

History: The definition "bankrupt" added by 1995, c. 21, subsec. 43(2), applicable to taxation years that end after February 21, 1994.

"benefit under a deferred profit sharing plan" received by a taxpayer in a taxation year means the total of all amounts each of which is an amount received by the taxpayer in the year from a trustee under the plan, minus any amounts deductible under subsections 147(11) and (12) in computing the income of the taxpayer for the year;

Related Provisions: 56(1)(i), 147(10) — DPSP benefits taxable.

"bituminous sands" means sands or other rock materials containing naturally occurring hydrocarbons (other than coal) which hydrocarbons have

(a) a viscosity, determined in a prescribed manner, equal to or greater than 10,000 centipoise, or

(b) a density, determined in a prescribed manner, equal to or less than 12 degrees API;

History: The definition "bituminous sands" added to subsec. 248(1) by 1997, c. 25, subsec. 71(3), applicable after March 6, 1996.

Regulations: 1107 (prescribed manner for determining viscosity and density).

"borrowed money" includes the proceeds to a taxpayer from the sale of a post-dated bill drawn by the taxpayer on a bank;

Related Provisions: 15.1(4), 15.2(4) — Money borrowed for small business development bond or small business bond deemed used for purpose of earning income from business or property; 20(1)(c) — Interest on money borrowed for certain purposes is deductible; 20(2), (3) — Rules re borrowed money.

Interpretation Bulletins: IT-121R3: Election to capitalize cost of borrowed money (archived); IT-533: Interest deductibility and related issues.

"business" includes a profession, calling, trade, manufacture or undertaking of any kind whatever and, except for the purposes of paragraph 18(2)(c), section 54.2, subsection 95(1) and paragraph 110.6(14)(f), an adventure or concern in the nature of trade but does not include an office or employment;

Related Provisions: 253 — Extended meaning of "carrying on business" in Canada; 253.1 — Certain limited partners deemed not to carry on business for certain purposes.

History: The definition "business" amended by 1995, c. 21, s. 47, applicable to taxation years that end after 1994. The definition formerly read:

> "business" includes a profession, calling, trade, manufacture or undertaking of any kind whatever and, except for the purposes of paragraph 18(2)(c), section 54.2 and paragraph 110.6(14)(f), an adventure or concern in the nature of trade but does not include an office or employment;

Selected Cases [subsec. 248(1)"business"]: *Dansereau v. R.*, [2002] 1 C.T.C. 19 (FCA); rev'g [2000] 1 C.T.C. 2582 (TCC) ("Business" extends to any endeavour that occupies time and labour with a view to profit); *Synchrosat Ltd. v. R.*, [2001] 1 C.T.C. 2159 (TCC) ("Adventure" may occur over long period of time and evolve into business); *Timmins v. R.*, [1999] 2 C.T.C. 133 (FCA) (Not necessary for there to be predominant profit motive for business to be carried on); *Loewen (H.R.) v. MNR*, [1993] 1 C.T.C. 212 (FCTD) (Acquisition and disposition of SRTC debenture was adventure in nature of trade); *Moloney v. Canada*, [1992] 2 C.T.C. 227 (FCA); leave to appeal to SCC refused (May 6, 1993), Doc. 23336 [unreported] (Deduction of business expenses disallowed; no business actually carried on); *Pollock v. Canada*, [1990] 1 C.T.C. 196 (FCTD); appealed to FCA (Jan. 19, 1990), File A-75/76- 90 (Disposition of shares acquired pursuant to employee stock option plan was adventure in nature of trade); *London Life Insurance Co. v. Canada*, [1990] 1 C.T.C. 43 (FCA) (Taxpayer entering agency agreement with Bermuda firm "carried on an insurance business in a country other than Canada". Expenses related to excess computer capacity provided to taxpayer's subsidiary for latter to sell to public were beyond scope of insurance business and not deductible); *Grohne v. Canada*, [1989] 1 C.T.C. 434 (FCTD) (Director/shareholder and president receiving shares pursuant to standby agreement not engaged in adventure in nature of trade).

Adventure in the nature of trade: *Synchrosat Ltd. v. R.*, [2001] 1 C.T.C. 2159 (TCC) ("Adventure" may occur over long period of time and evolve into business); *Walton v. R.*, [1982] C.T.C. 228 (FCTD) (Adventure in nature of trade where city planner, having knowledge of real estate opportunities, acquired and disposed of three leased dwelling houses); *R. v. Lague, Leopold, Inc.*, [1981] C.T.C. 348 (FCTD) (Assignment of contractual rights was disposition of eligible capital property, not adventure in nature of trade); *Bossin v. R.*, [1976] C.T.C. 358 (FCTD) (Irrespective of nature of commodity, where intention is to resell quickly, there is an adventure in nature of trade); *MNR v. Freud*, [1968] C.T.C. 438 (SCC) (Expenses of unsuccessfully promoting sports car prototype deductible expenses of adventure in nature of trade); *MNR v. Eldridge*, [1964] C.T.C. 545 (Exch.) (Income from illegal business taxable).

Interpretation Bulletins: IT-153R3: Land developers — subdivision and development costs and carrying charges on land; IT-206R: Separate businesses; IT-218R: Profit, capital gains and losses from the sale of real estate, including farmland and inherited land and conversion of real estate from capital property to inventory and vice versa; IT-371: Rental property — meaning of "principal business"; IT-459: Adventure or concern in the nature of trade.

Forms: RC4100: Employee or Self-Employed?.

"business limit" of a corporation for a taxation year means the amount determined under section 125 to be its business limit for the year;

Related Provisions: 125(2)–(5.1) — Determination of business limit.

History: The definition "business limit" added to subsec. 248(1) by 1997, c. 25, subsec. 71(3), applicable after May 23, 1985.

"business number" means the number (other than a Social Insurance Number) used by the Minister to identify

(a) a corporation or partnership, or

(b) any other association or taxpayer that carries on a business or is required by this Act to deduct or withhold an amount from an amount paid or credited or deemed to be paid or credited under this Act

and of which the Minister has notified the corporation, partnership, association or taxpayer;

History: The definition "business number" amended by 1998, c. 19, subsec. 239(6), in force on June 18, 1998.

Registered Charities Newsletters: 14 (Business Number and donation receipts); 15 (registered charities as internal divisions of other charities).

"Canadian banking business" means the business carried on by an authorized foreign bank through a permanent establishment (as defined by regulation) in Canada, other than business conducted through a representative office registered or required to be registered under section 509 of the *Bank Act*;

Related Provisions: 116(6)(f) — No s. 116 certificate required on disposition of property of Canadian banking business.

History: The definition "Canadian banking business" added to s. 248(1) by 2001, c. 17, subsec. 188(5), applicable after June 27, 1999.

Regulations: Reg. 8201 (meaning of "permanent establishment").

"Canadian-controlled private corporation" has the meaning assigned by subsection 125(7);

Related Provisions: 248(1) — "Small business corporation".

I.T. Application Rules: 50(1) (status for 1972 taxation year).

Interpretation Bulletins: IT-458R2: Canadian-controlled private corporations.

"Canadian corporation" has the meaning assigned by subsection 89(1);

"Canadian development expense" has the meaning assigned by subsection 66.2(5);

"Canadian exploration and development expenses" has the meaning assigned by subsection 66(15);

"Canadian exploration expense" has the meaning assigned by subsection 66.1(6);

"Canadian field processing" means, except as otherwise prescribed,

(a) the processing in Canada of raw natural gas at a field separation and dehydration facility,

(b) the processing in Canada of raw natural gas at a natural gas processing plant to any stage that is not beyond the stage of natural gas that is acceptable to a common carrier of natural gas,

(c) the processing in Canada of hydrogen sulphide derived from raw natural gas to any stage that is not beyond the marketable sulphur stage,

(d) the processing in Canada of natural gas liquids, at a natural gas processing plant where the input is raw natural gas derived from a natural accumulation of natural gas, to any stage that is not beyond the marketable liquefied petroleum stage or its equivalent,

(e) the processing in Canada of crude oil (other than heavy crude oil recovered from an oil or gas well or a tar sands deposit) recovered from a natural accumulation of petroleum to any stage that is not beyond the crude oil stage or its equivalent, and

(f) prescribed activities

and, for the purposes of paragraphs (b) to (d),

(g) gas is not considered to cease to be raw natural gas solely because of its processing at a field separation and dehydration facility until it is received by a common carrier of natural gas, and

(h) where all or part of a natural gas processing plant is devoted primarily to the recovery of ethane, the plant, or the part of the plant, as the case may be, is considered not to be a natural gas processing plant;

History: Para. (g) of the definition "Canadian field processing" in subsec. 248(1) amended by 1998, c. 19, subsec. 239(2), applicable after 1996. Para. (g) formerly read:

(g) gas is not considered to cease to be raw natural gas solely because of its processing at a field separation and dehydration facility, and

The definition "Canadian field processing" added to subsec. 248(1) by 1997, c. 25, subsec. 71(3), applicable after 1996.

"Canadian oil and gas property expense" has the meaning assigned by subsection 66.4(5);

"Canadian partnership" has the meaning assigned by section 102;

Related Provisions: 80(1) — "Eligible Canadian partnership".

Interpretation Bulletins: IT-123R6: Transactions involving eligible capital property.

"Canadian resource property" has the meaning assigned by subsection 66(15);

"capital dividend" has the meaning assigned by section 83;

"capital gain" for a taxation year from the disposition of any property has the meaning assigned by section 39;

"capital interest" of a taxpayer in a trust has the meaning assigned by subsection 108(1);

"capital loss" for a taxation year from the disposition of any property has the meaning assigned by section 39;

"capital property" has the meaning assigned by section 54;

"cash method" has the meaning assigned by subsection 28(1);

History: "Cash method" enacted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(14), applicable after 1988.

Selected Cases [subsec. 248(1)"cash method"]: *Dansereau v. R.*, [2002] 1 C.T.C. 19 (FCA); rev'g [2000] 1 C.T.C. 2582 (TCC) (Cash basis cannot be denied simply because business is complicated).

"cemetery care trust" has the meaning assigned by subsection 148.1(1);

Related Provisions: 248(1)"disposition"(f)(vi) — Rollover from one trust to another.

History: The definition "cemetery care trust" added to subsec. 248(1) by 1998, c. 19, subsec. 239(6), applicable after 1992.

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

"common-law partner", with respect to a taxpayer at any time, means a person who cohabits at that time in a conjugal relationship with the taxpayer and

(a) has so cohabited with the taxpayer for a continuous period of at least one year, or

(b) would be the parent of a child of whom the taxpayer is a parent, if this Act were read without reference to paragraphs 252(1)(c) and (e) and subparagraph 252(2)(a)(iii),

and, for the purposes of this definition, where at any time the taxpayer and the person cohabit in a conjugal relationship, they are, at any particular time after that time, deemed to be cohabiting in a conjugal relationship unless they were not cohabiting at the particular time for a period of at least 90 days that includes the particular time because of a breakdown of their conjugal relationship;

Proposed Amendment — 248(1)"common-law partner"

"common-law partner", with respect to a taxpayer at any time, means a person who cohabits at that time in a conjugal relationship with the taxpayer and

(a) has so cohabited throughout the 12-month period that ends at that time, or

(b) would be the parent of a child of whom the taxpayer is a parent, if this Act were read without reference to paragraphs 252(1)(c) and (e) and subparagraph 252(2)(a)(iii),

and, for the purpose of this definition, where at any time the taxpayer and the person cohabit in a conjugal relationship, they are, at any particular time after that time, deemed to be cohabiting in a conjugal relationship unless they were living separate and apart at the particular time for a period of at least 90 days that includes the particular time because of a breakdown of their conjugal relationship;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 185(1), will amend the definition "common-law partner" in subsec. 248(1) to read as above, applicable in determining whether a person is, for 2001 *et seq.*, a common-law partner of a taxpayer, except the amendment does not apply to so determine whether a person is a common-law partner of a taxpayer for a taxation year to which a valid election, made under s. 144 of the *Modernization of Benefits and Obligations Act*, applied before February 27, 2004. However, after February 26, 2004, no such election may be made to affect a current or subsequent taxation year.

Technical Notes: An individual becomes the common-law partner of another individual once they have cohabited in a conjugal relationship for at least one year. Paragraph (a) of the definition "common-law partner" in subsection 248(1) is amended, effective for the 2001 and subsequent taxation years, to clarify that, for an individual to be considered the common-law partner of another person at a particular time, the individual and that other person need to have cohabited in a conjugal relationship throughout the twelve-month period that ends at that particular time.

History: The definition "common-law partner" added to subsec. 248(1) by 2000, c. 12, subsec. 139(2), applicable to 2001 *et seq.*, in force July 31, 2000.

Ss. 144 to 146 of 2000, c. 12 provide the following transitional rules:

> 144. Where a taxpayer and a person who would have been the taxpayer's common-law partner in the 1998, 1999 or 2000 taxation year, if sections 130 to 142 applied to the applicable year, jointly elect in respect of that year by notifying the Minister of National Revenue in prescribed manner on or before their filing due date for the year in which this Act receives royal assent, those sections apply to the taxpayer and the person in respect of the applicable taxation year and subsequent taxation years.
>
> 145. Where, but for the application of sections 130 to 142, paragraphs 56(1)(b) and 60(b) of the *Income Tax Act* would not apply to amounts paid and received pursuant to an order or a written agreement made before the coming into force of this section, those paragraphs do not apply unless the payor and the recipient of the amounts jointly elect to have those paragraphs apply to those amounts for the 2001 and following taxation years by notifying the Minister of National Revenue in prescribed manner on or before their filing due date for the year in which this Act receives royal assent.
>
> 146. Despite subsections 152(4) to (5) of the *Income Tax Act*, the Minister of National Revenue may make any assessment or reassessment and additional assessment of tax, interest and penalties and may make any determinations and redeterminations that are necessary to give effect to section 144 for any taxation year.

Interpretation Bulletins: IT-495R3: Child care expenses.

"common-law partnership" means the relationship between two persons who are common-law partners of each other;

History: The definition "common-law partnership" added to subsec. 248(1) by 2000, c. 12, subsec. 139(2), applicable to 2001 *et seq.*, in force July 31, 2000.

"common share" means a share the holder of which is not precluded on the reduction or redemption of the capital stock from participating in the assets of the corporation beyond the amount paid up on that share plus a fixed premium and a defined rate of dividend;

Related Provisions: 248(1) — "Preferred share".

Interpretation Bulletins: IT-116R3: Rights to buy additional shares.

"controlled foreign affiliate" has the meaning assigned by subsection 95(1);

Proposed Amendment — 248(1)"controlled foreign affiliate"

"controlled foreign affiliate" has, except as expressly otherwise provided in this Act, the meaning assigned by subsection 95(1);

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 44(2), will amend the definition "controlled foreign affiliate" in subsec. 248(1) to read as above, applicable to taxation years that begin after 2002.

Technical Notes: The expression "controlled foreign affiliate" is defined to have the meaning assigned by subsection 95(1).

This definition is amended so that it applies except as expressly otherwise provided in the Act. See, for example, the definition "controlled foreign affiliate" in subsection 17(15).

Related Provisions: 17(15)"controlled foreign affiliate" — Definition applicable to loan by corporation to non-resident; 94(3)(a)(x) [proposed] — Application to trust deemed resident in Canada; 94.1(2)(h) — Where entity deemed to be CFA and thus excluded from foreign investment entity rules.

History: The definition "controlled foreign affiliate" added to subsec. 248(1) by 1997, c. 25, subsec. 71(3), applicable after 1995.

"corporation" includes an incorporated company;

Related Provisions: 227.1 — Liability of directors; 236 — Execution of documents by corporations; 242 — Officers, directors and agents guilty of corporation's offences; *Interpretation Act* 21(1) — Powers vested in corporation; *Interpretation Act* 35(1) — Corporation does not include partnership that is separate legal entity.

Interpretation Bulletins: IT-343R: Meaning of the term "corporation" [for purposes of the definition of "foreign affiliate"]; IT-432R2: Benefits conferred on shareholders.

I.T. Technical News: 20 (Delaware Revised Uniform Partnership Act); 25 (partnership issues).

"corporation incorporated in Canada" includes a corporation incorporated in any part of Canada before or after it became part of Canada;

Related Provisions: 250(5.1) — Corporation continued outside Canada deemed incorporated in new jurisdiction.

"cost amount" to a taxpayer of any property at any time means, except as expressly otherwise provided in this Act,

(a) where the property was depreciable property of the taxpayer of a prescribed class, the amount that would be that proportion of the undepreciated capital cost to the taxpayer of property of that class at that time that the capital cost to the taxpayer of the property is of the capital cost to the taxpayer of all property of that class that had not been disposed of by the taxpayer before that time if subsection 13(7) were read without reference to paragraph 13(7)(e) and if

(i) paragraph 13(7)(b) were read as follows:

"(b) where a taxpayer, having acquired property for some other purpose, has commenced at a later time to use it for the purpose of gaining or producing income, the taxpayer shall be deemed to have acquired it at that later time at a capital cost to the taxpayer equal to the fair market value of the property at that later time;", and

(ii) subparagraph 13(7)(d)(i) were read as follows:

"(i) if the use regularly made by the taxpayer of the property for the purpose of gaining or producing income has increased, the taxpayer shall be deemed to have acquired at that time depreciable property of that class at a capital cost equal to the proportion of its fair market value at that time that the amount of the increase in the use regularly made by the taxpayer of the property for that purpose is of the whole of the use regularly made of the property, and"

(b) where the property was capital property (other than depreciable property) of the taxpayer, its adjusted cost base to the taxpayer at that time,

(c) where the property was property described in an inventory of the taxpayer, its value at that time as determined for the purpose of computing the taxpayer's income,

(c.1) where the taxpayer was a financial institution in its taxation year that includes that time and the property was a mark-to-market property for the year, the cost to the taxpayer of the property,

Proposed Addition — 248(1)"cost amount"(c.2)

(c.2) where the cost at that time to the taxpayer of the property is determined under subsection 94.2(13), the cost so determined,

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 44(3), will add para. (c.2) to the definition "cost amount" in subsec. 248(1), applicable to taxation years that begin after 2002.

Technical Notes: This definition is used throughout the Act, particularly in provisions relating to the transfer of properties to and from corporations, trusts and partnerships.

New paragraph (c.2) of the definition provides that, where a cost of property to a taxpayer is determined as of any time under new subsection 94.2(13), that cost is also the "cost amount", under subsection 248(1), of the property to the taxpayer at that time.

(d) where the property was eligible capital property of the taxpayer in respect of a business, 4/3 of the amount that would, but for subsection 14(3), be determined by the formula

$$A \times \frac{B}{C}$$

where

A is the cumulative eligible capital of the taxpayer in respect of the business at that time,

B is the fair market value at that time of the property, and

C is the fair market value at that time of all the eligible capital property of the taxpayer in respect of the business,

(d.1) where the property was a loan or lending asset (other than a net income stabilization account or a property in respect of which paragraph (b), (c), (c.1) or (d.2) applies), the amortized cost of the property to the taxpayer at that time,

(d.2) where the taxpayer was a financial institution in its taxation year that includes that time and the property was a specified debt obligation (other than a mark-to-market property for the year), the tax basis of the property to the taxpayer at that time,

(e) where the property was a right of the taxpayer to receive an amount, other than property that is

(i) a debt the amount of which was deducted under paragraph 20(1)(p) in computing the taxpayer's income for a taxation year that ended before that time,

(ii) a net income stabilization account,

(iii) a right in respect of which paragraph (b), (c), (c.1), (d.1) or (d.2) applies, or

(iv) a right to receive production (as defined in subsection 18.1(1)) to which a matchable expenditure (as defined in subsection 18.1(1)) relates,

the amount the taxpayer has a right to receive,

(e.1) where the property was a policy loan (within the meaning assigned by subsection 138(12)) of an insurer, nil,

(e.2) where the property is an interest of a beneficiary under a qualifying environmental trust, nil, and

(f) in any other case, the cost to the taxpayer of the property as determined for the purpose of computing the taxpayer's income, except to the extent that that cost has been deducted in computing the taxpayer's income for any taxation year ending before that time;

and, for the purposes of this definition, "financial institution", "mark-to-market property" and "specified debt obligation" have the meanings assigned by subsection 142.2(1), and "tax basis" has the meaning assigned by subsection 142.4(1);

Related Provisions: 13(7) — Rule affecting capital cost of depreciable property; 13(33) — Consideration given for depreciable capital; 52(3) — Cost of stock dividend; 53 — Adjusted cost base — adjustments; 70(14) — Order of disposal of depreciable property on death; 86.1(3) — Cost amount adjustments on foreign spin-off; 93(1.4)(b) — Cost amount of share of foreign affiliate; 108(1) — Meaning of "cost amount" of capital interest in a trust; 206(1)"cost amount" — Meaning of "cost amount" of capital interest in a trust that is foreign property; 248(25.3) — Deemed cost of trust units.

History: Subpara. (e)(iv) added to the definition "cost amount" by 1998, c. 19, subsec. 239(3), applicable after November 17, 1996.

Para. (e.2) of the definition "cost amount" in subsec. 248(1) amended by the said c. 19, subsec. 66(2), applicable after 1995. Para. (e.2) formerly read:

(e.2) where the property is an interest of a beneficiary under a mining reclamation trust, nil, and

Para. (c.1) added to the definition "cost amount" by 1995, c. 21, subsec. 59(3), applicable to taxation years that begin after October 1994.

Paras. (d.1) and (d.2) added to the definition "cost amount" and para. (e) amended by 1995, c. 21, subsec. 59(4), applicable to the determination of cost amount at a time after February 22, 1994. Para. (e) formerly read:

(e) where the property was a debt owing to the taxpayer (other than the amount in respect of such property that was deducted under paragraph 20(1)(p) in computing the taxpayer's income for a taxation year ending before that time or of a net income stabilization account) or any other right of the taxpayer to receive an amount (other than a right to receive an amount in respect of a net income stabilization account), the amortized cost of the property to the taxpayer at that time or, where the property does not have an amortized cost to the taxpayer, the amount of the debt or right that was outstanding at that time,

The closing words added to the definition "cost amount" by 1995, c. 21, subsec. 59(5), applicable to the determination of cost amount at a time after February 22, 1994.

Para. (e.2) added to the definition "cost amount" by 1995, c. 3, subsec. 52(3), applicable after 1993.

Paras. (d) and (e) of "cost amount" amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 139(2), para. (d) applicable (by subsec. 139(11), as amended by 1994, c. 21, s. 138)

(a) in the case of a corporation, to taxation years of the corporation beginning after June 1988, and

(b) in any other case, to fiscal periods commencing after 1987,

except that, in its application before July 14, 1990, para. (d) shall be read as follows:

(d) where the property was eligible capital property in respect of a business, 4/3 of the amount that would, but for subsection 14(3), be the cumulative eligible capital of the taxpayer in respect of the business at that time,

and para. (e) applicable to 1991 *et seq.* Paras. (d) and (e) formerly read:

(d) where the property was eligible capital property of the taxpayer in respect of a business, the amount that would, but for subsection 14(3), be that proportion of the cumulative eligible capital of the taxpayer in respect of the business at that time that

(i) the fair market value at that time of the property

is of

(ii) the fair market value at that time of all of the eligible capital property of the taxpayer in respect of the business,

(e) where the property was a debt owing to the taxpayer (other than the amount in respect of that property that was deducted under paragraph 20(1)(p) in computing the taxpayer's income for a taxation year ending before that time) or any other right of the taxpayer to receive an amount, the amortized cost of the property to the taxpayer at that time or, where the property does not have an amortized cost to the taxpayer, the amount of the debt or right that was outstanding at that time,

Paras. (a), (d) of "cost amount" substituted by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 192(2), (3), para. (a) applicable after May 22, 1985; para. (d) applicable after 1987 except that before July 14, 1990 the para. shall be read as follows:

(d) where the property was eligible capital property of the taxpayer in respect of a business, the amount that would, but for subsection 14(3), be the cumulative eligible capital of the taxpayer in respect of the business at that time,

Paras. (a), (d) formerly read:

(a) where the property was depreciable property of the taxpayer of a prescribed class, that proportion of the undepreciated capital cost to the taxpayer of property of that class at that time that the capital cost to the taxpayer of the property is of the capital cost to the taxpayer of all property of that class,

. . . . .

(d) where the property was eligible capital property of the taxpayer in respect of a business, the cumulative eligible capital of the taxpayer in respect of the business at that time,

Selected Cases [subsec. 248(1)"cost amount"]: *Canada v. Dresden Farm Equipment Ltd.*, [1989] 1 C.T.C. 99 (FCA) (No inventory deduction for dealer/agent selling goods he did not own because there was no cost amount).

I.T. Application Rules: 18 (property acquired before 1972).

Interpretation Bulletins: IT-142R3: Settlement of debts on the winding-up of a corporation; IT-220R2: CCA — Proceeds of disposition of depreciable property; IT-291R3: Transfer of property to a corporation under subsection 85(1); IT-457R: Election by professionals to exclude work in progress from income; IT-471R: Merger of partnerships; IT-488R2: Winding-up of 90%-owned taxable Canadian corporation (archived); IT-528: Transfers of funds between registered plans.

"credit union" has the meaning assigned by subsection 137(6);

"cumulative eligible capital" has the meaning assigned by subsection 14(5);

"death benefit" means the total of all amounts received by a taxpayer in a taxation year on or after the death of an employee in recognition of the employee's service in an office or employment minus

(a) where the taxpayer is the only person who has received such an amount and who is a surviving spouse or common-law partner of the employee (which person is, in this definition, referred to as the "surviving spouse or common-law partner"), the lesser of

(i) the total of all amounts so received by the taxpayer in the year, and

(ii) the amount, if any, by which $10,000 exceeds the total of all amounts received by the taxpayer in preceding taxation years on or after the death of the employee in recognition of the employee's service in an office or employment, or

(b) where the taxpayer is not the surviving spouse or common-law partner of the employee, the lesser of

(i) the total of all amounts so received by the taxpayer in the year, and

(ii) that proportion of

(A) the amount, if any, by which $10,000 exceeds the total of all amounts received by the surviving spouse or common-law partner of the employee at any time on or after the death of the employee in recognition of the employee's service in an office or employment

that

(B) the amount described in subparagraph (i)

is of

(C) the total of all amounts received by all taxpayers other than the surviving spouse or common-law partner of the employee at any time on or after the death of the employee in recognition of the employee's service in an office or employment;

Related Provisions: 56(1)(a)(iii) — Death benefit included in income; 104(28) — Death benefit flowed through trust; 128.1(10)"excluded right or interest"(h) — Emigration — no deemed disposition of right to death benefit.

History: The definition "death benefit" in subsec. 248(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

That portion of para. (a) of "death benefit" preceding subpara. (i) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 139(3), applicable to 1993 *et seq.* That portion formerly read:

(a) where the taxpayer is the surviving spouse of the employee, the lesser of

Interpretation Bulletins: IT-508R: Death benefits.

"deferred amount" at the end of a taxation year under a salary deferral arrangement in respect of a taxpayer means

(a) in the case of a trust governed by the arrangement, any amount that a person has a right under the arrangement at the end of the year to receive after the end of the year where the amount has been received, is receivable or may at any time become receivable by the trust as, on account or in lieu of salary or wages of the taxpayer for services rendered in the year or a preceding taxation year, and

(b) in any other case, any amount that a person has a right under the arrangement at the end of the year to receive after the end of the year,

and, for the purposes of this definition, a right under the arrangement shall include a right that is subject to one or more conditions unless there is a substantial risk that any one of those conditions will not be satisfied;

"deferred profit sharing plan" has the meaning assigned by subsection 147(1);

"depreciable property" has the meaning assigned by subsection 13(21);

Related Provisions: See under 13(21)"depreciable property".

Selected Cases [subsec. 248(1)"depreciable property"]: *Gordon v. Canada*, [1995] 2 C.T.C. 2185 (TCC) (Uncompleted film held to be "depreciable property". Terminal loss allowed).

I.T. Application Rules: 18, 20 (property acquired before 1972).

"designated insurance property" has the meaning assigned by subsection 138(12);

History: The definition "designated insurance property" added to subsec. 248(1) by 1997, c. 25, subsec. 71(3), applicable to 1997 *et seq.*

"designated surplus" — [Repealed under former Act]

"disposition" of any property, except as expressly otherwise provided, includes

(a) any transaction or event entitling a taxpayer to proceeds of disposition of the property,

(b) any transaction or event by which,

(i) where the property is a share, bond, debenture, note, certificate, mortgage, agreement of sale or similar property, or an interest in it, the property is redeemed in whole or in part or is cancelled,

Proposed Amendment — 248(1)"disposition"(b)(i)

(i) where the property is a share, bond, debenture, note, certificate, mortgage, hypothecary claim, agreement of sale or similar property, or an interest, or for civil law a right, in it, the property is in whole or in part redeemed, acquired or cancelled,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 185(3), will amend subpara. (b)(i) of the definition "disposition" in subsec. 248(1) to read as above, applicable to redemptions, acquisitions and cancellations that occur after December 23, 1998 and, where a particular redemption, acquisition or cancellation occurs before December 21, 2002, any assessment of a taxpayer's tax, interest and penalties payable under the Act for a taxation year that includes the time at which the particular redemption, acquisition or cancellation occurred shall, notwithstanding subsecs. 152(4) to (5), be made that is necessary to take into account the application of the amendment.

Technical Notes: The expression "disposition" is used throughout the Act, particularly in provisions relating to transactions involving property.

The definition "disposition" was added to subsection 248(1) by S.C. 2001, chapter 17, ss. 188(5) [formerly Bill C-22] [2001 technical bill — ed.]. In general, that definition is applicable to transactions and events that occur after December 23, 1998. The former definition "disposition" was contained in section 54, applicable to transactions and events that occurred before December 24, 1998.

Under the definition "disposition" in subsection 248(1), a "disposition" of any property includes a transaction or an event described in any of paragraphs (a) to (d) of that definition but does not include a transaction or an event described in any of paragraphs (e) to (m) of that definition.

Under subparagraph (b)(i) of that definition, a disposition of a property includes any transaction or event by which, where the property is a share, bond, debenture, note, certificate, mortgage, agreement of sale or similar property, or an interest in it, the property "is redeemed in whole or in part or is cancelled".

The definition "disposition" in subsection 248(1) is amended in the following ways.

First, subparagraph (b)(i) of the definition now provides that a disposition of property includes any transaction or event by which, where the property is a share, bond, debenture, note, certificate, mortgage, agreement of sale or similar property, or an interest in it, the property "is in whole or in part redeemed, acquired or cancelled". This amendment makes it clear that a disposition will also include a transaction or event by which the property is acquired.

In connection with redemptions, acquisitions and cancellations that occur before December 24, 1998, see the commentary to new subsection 248(1.1).

(ii) where the property is a debt or any other right to receive an amount, the debt or other right is settled or cancelled,

(iii) where the property is a share, the share is converted because of an amalgamation or merger,

(iv) where the property is an option to acquire or dispose of property, the option expires, and

(v) a trust, that can reasonably be considered to act as agent for all the beneficiaries under the trust with respect to all dealings with all of the trust's property (unless the trust is described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1)), ceases to act as agent for a beneficiary under the trust with respect to any dealing with any of the trust's property,

(c) any transfer of the property to a trust or, where the property is property of a trust, any transfer of the property to any beneficiary under the trust, except as provided by paragraph (f) or (k), and

(d) where the property is, or is part of, a taxpayer's capital interest in a trust, except as provided by paragraph (h) or (i), a payment made after 1999 to the taxpayer from the trust that can reasonably be considered to have been made because of the taxpayer's capital interest in the trust,

but does not include

(e) any transfer of the property as a consequence of which there is no change in the beneficial ownership of the property, except where the transfer is

(i) from a person or a partnership to a trust for the benefit of the person or the partnership,

(ii) from a trust to a beneficiary under the trust, or

(iii) from one trust maintained for the benefit of one or more beneficiaries under the trust to another trust maintained for the benefit of the same beneficiaries,

(f) any transfer of the property as a consequence of which there is no change in the beneficial ownership of the property, where

(i) the transferor and the transferee are trusts,

(ii) the transfer is not by a trust resident in Canada to a non-resident trust,

Proposed Amendment — 248(1)"disposition"(f)(i), (ii)

(i) the transferor and the transferee are trusts that are, at the time of the transfer, resident in Canada,

(ii) [Repealed]

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 185(4), will replace subparas. (f)(i) and (ii) of the definition "disposition" in subsec. 248(1) with subpara. (f)(i), applicable to transfers that occur after February 27, 2004.

Technical Notes: Third, the definition "disposition" in subsection 248(1) is also amended by restricting the circumstances in which a transfer of property between trusts will not be treated as a disposition. In particular, paragraph (f) of the definition is amended so that a transfer of property from a trust to another trust will avoid, under that paragraph, characterization as a disposition only if both trusts are, at the time of the transfer, resident in Canada.

(iii) the transferee does not receive the property in satisfaction of the transferee's right as a beneficiary under the transferor trust,

(iv) the transferee held no property immediately before the transfer (other than property the cost of which is not included, for the purposes of this Act, in computing a balance of undeducted outlays, expenses or other amounts in respect of the transferee),

(v) the transferee does not file a written election with the Minister on or before the filing-due date for its taxation year in which the transfer is made (or on such later date as is acceptable to the Minister) that this paragraph not apply,

(vi) if the transferor is an amateur athlete trust, a cemetery care trust, an employee trust, an *inter vivos* trust deemed by subsection 143(1) to exist in respect of a congregation that is a constituent part of a religious organization, a related segregated fund trust (in this paragraph having the meaning assigned by section 138.1), a trust described in paragraph 149(1)(o.4) or a trust governed by an eligible funeral arrangement, an employees profit shar-

ing plan, a registered education savings plan or a registered supplementary unemployment benefit plan, the transferee is the same type of trust, and

(vii) the transfer results, or is part of a series of transactions or events that results, in the transferor ceasing to exist and, immediately before the time of the transfer or the beginning of that series, as the case may be, the transferee never held any property or held only property having a nominal value,

(g) [Repealed]

(h) where the property is part of a capital interest of a taxpayer in a trust (other than a personal trust or a trust prescribed for the purpose of subsection 107(2)) that is described by reference to units issued by the trust, a payment after 1999 from the trust in respect of the capital interest, where the number of units in the trust that are owned by the taxpayer is not reduced because of the payment,

(i) where the property is a taxpayer's capital interest in a trust, a payment to the taxpayer after 1999 in respect of the capital interest to the extent that the payment

(i) is out of the income of the trust (determined without reference to subsection 104(6)) for a taxation year or out of the capital gains of the trust for the year, if the payment was made in the year or the right to the payment was acquired by the taxpayer in the year, or

(ii) is in respect of an amount designated in respect of the taxpayer by the trust under subsection 104(20),

Proposed Amendment — 248(1)"disposition"(i)

Letter from Dept. of Finance, March 7, 2003: See under 132.11(4).

(j) any transfer of the property for the purpose only of securing a debt or a loan, or any transfer by a creditor for the purpose only of returning property that had been used as security for a debt or a loan,

(k) any transfer of the property to a trust as a consequence of which there is no change in the beneficial ownership of the property, where the main purpose of the transfer is

(i) to effect payment under a debt or loan,

(ii) to provide assurance that an absolute or contingent obligation of the transferor will be satisfied, or

(iii) to facilitate either the provision of compensation or the enforcement of a penalty, in the event that an absolute or contingent obligation of the transferor is not satisfied,

(l) any issue of a bond, debenture, note, certificate, mortgage or hypothecary claim, and

(m) any issue by a corporation of a share of its capital stock, or any other transaction that, but for this paragraph, would be a disposition by a corporation of a share of its capital stock;

Proposed Addition — 248(1)"disposition"(n)

(n) a redemption, an acquisition or a cancellation of a share or of a right to acquire a share (which share or which right, as the case may be, is referred to in this paragraph as the "security") of the capital stock of a corporation (referred to in this paragraph as the "issuing corporation") held by another corporation (referred to in this paragraph as the "disposing corporation") if

(i) the redemption, acquisition or cancellation occurs as part of a merger or combination of two or more corporations (including the issuing corporation and the disposing corporation) to form one corporate entity (referred to in this paragraph as the "new corporation"),

(ii) the merger or combination is

(A) an amalgamation (within the meaning assigned by subsection 87(1)) to which subsection 87(11) does not apply,

(B) an amalgamation (within the meaning assigned by subsection 87(1)) to which subsection 87(11) applies, if the issuing corporation and the disposing corporation are described by subsection 87(11) as the parent and the subsidiary, respectively, or

(C) a foreign merger (within the meaning assigned by subsection 87(8.1)), and

(iii) either

(A) the disposing corporation receives no consideration for the security, or

(B) in the case of a foreign merger (within the meaning assigned by subsection 87(8.1)), the disposing corporation receives no consideration for the security other than property that was, immediately before the foreign merger, owned by the issuing corporation and that, on the foreign merger, becomes property of the new corporation;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 185(5), will add para. (n) to the definition "disposition" in subsec. 248(1), applicable on the same basis as the amendment to subpara. (b)(i) above.

Technical Notes: Second, paragraph (n) is added to the definition. New paragraph (n) provides that a redemption, an acquisition or a cancellation of a share, or of a right to be issued a share, (which share or which right, as the case may be, is referred to as the "security") of the capital stock of a corporation (the "issuing corporation") held by another corporation (the "disposing corporation") is considered not to be a "disposition" in the case where

- the redemption, acquisition or cancellation occurs as part of a merger or combination of two or more corporations (including the issuing corporation and the disposing corporation) to form one corporate entity (referred to as the "new corporation"),
- the merger or combination is
  - an amalgamation (within the meaning assigned by subsection 87(1)) to which subsection 87(11) does not apply,
  - an amalgamation (within the meaning assigned by subsection 87(1)) to which subsection 87(11) applies, if the issuing corporation and the disposing corporation are described by subsection 87(11) as the parent and the subsidiary, respectively, or
  - a foreign merger (within the meaning assigned by subsection 87(8.1)), and
- either
  - the disposing corporation receives no consideration for the security, or
  - in the case of a foreign merger (within the meaning assigned by subsection 87(8.1)), the disposing corporation receives no consideration for the security other than property that was, immediately before the foreign merger, owned by the issuing corporation and that, on the foreign merger, becomes property of the new corporation.

In connection with redemptions, acquisitions and cancellations that occur before December 24, 1998, see the commentary to new subsection 248(1.1).

Letter from Dept. of Finance, April 12, 2002:

Dear [xxx]

I am writing in reply to your faxed letter dated January 23, 2002 to Mr. Wally Conway in which you expressed concerns about the provisions in the *Income Tax Act* (the "Act") relating to the cancellation of shares of a predecessor corporation on an "amalgamation" (within the meaning of subsection 87(1) of the Act) or on a "foreign merger" (within the meaning of subsection 87(8.1)).

In your letter, you give the following example of a foreign merger:

1. A corporation ("Canco") resident in Canada owns all of the outstanding shares of a non-resident corporation ("Holdco").
2. Holdco owns all of the outstanding shares of another non-resident corporation ("Parentco").
3. Parentco owns all of the outstanding shares of another non-resident corporation ("Subco").
4. Under the foreign corporate law, Subco is merged into Parentco.

In your letter, you note that you would expect that the relevant foreign law would generally deem the shares of Subco held by Parentco to be cancelled for no consideration on the merger. However, you speculate that it is possible that the law in some foreign jurisdictions may deem the consideration for such shares to be the property of Subco that would, on the merger, be transferred or otherwise become property of the corporate entity formed on the merger.

Subsection 87(4) of the Act deals with the tax consequences, to a shareholder of a corporation, upon an amalgamation involving the corporation where the consideration received by that shareholder for the disposition of the shares held by that shareholder in the capital stock of the corporation consists only of shares of the capital stock of another corporation resulting from the merger. Paragraph 95(2)(d) ensures that subsection 87(4), with necessary changes to reflect a foreign merger, applies in the case of a foreign merger. However, as you note in your letter, subsection 87(4) does not apply to a shareholder where that shareholder is itself a corporation that is part of the amalgamation or foreign merger. Thus, referring to your example, subsection 87(4) would not apply to Parentco in its capacity as a shareholder of Subco.

In the context of foreign mergers involving foreign affiliates of a taxpayer, if the shares are not excluded property (within the meaning of subsection 95(1)), it is possible that foreign accrual property income of a foreign affiliate of the taxpayer could arise on the merger as a result of the non-applicability of subsection 87(4). Similarly, in the context of domestic amalgamations, capital gains or losses could arise on the amalgamation as a result of the non-applicability of subsection 87(4). In our view, these tax results are unintended.

We will, therefore, recommend to the Minister of Finance that the Act be amended so as to exclude from being a "disposition" for the purposes of the Act a cancellation of a share of the capital stock of a corporation (the "issuing corporation") held by another corporation (the "disposing corporation") where

- the cancellation occurred as part of a merger or combination of two or more corporations, that included the issuing corporation and the disposing corporation, to form one corporate entity (the "new corporation"),
- the merger or combination is an amalgamation to which subsection 87(11) did not apply, or is a foreign merger, and
- the disposing corporation received no consideration for the share or, in the case of a foreign merger, received no consideration for the share other than property that was, immediately before the foreign merger, owned by the issuing corporation and that, on the foreign merger, became property of the new corporation.

It will be recommended that this amendment apply to both past and future cancellations of shares.

Thank you for writing.

Yours sincerely,

Brian Ernewein

Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 43(2) — No capital loss on capital interest of trust on payment out of trust's income or gains; 48.1(1) — Gain when small business corporation becomes public; 49(1) — Granting of option is a dispostion; 49(5) — Extension or renewal of option; 49.1 — Satisfaction of obligation is not a disposition of property; 51(1)(c) — Conversion of convertible property deemed not to be a disposition; 53(2)(h)(i.1), (i.2) — Reduction in ACB of capital interest of trust re amount payable before 2000; 69(1)(b)(iii) — Deemed proceeds on disposition to a trust where no change in beneficial ownership; 69(1)(c) — Deemed acquisition at fair market value where disposition with no change in beneficial interest; 70(5) — Deemed disposition on death; 80.03(2), (4) — Deemed capital gain on disposition of property following debt forgiveness; 87(4) — Shares of predecessor corporation; 94(4)(f) [proposed] — Deeming non-resident trust to be resident in Canada does not apply to subpara. (f)(ii); 104(1) — Reference to trust or estate; 104(5.3) — Election by trust to postpone deemed disposition; 104(5.8) — Transfer where para. (f) applies; 107(2), (2.1) — Effect of distribution of property by trust; 107.4 — Rollover on "qualifying disposition" to a trust; 128.1(1)(b) — Deemed disposition of property on becoming resident in Canada; 128.1(4) — Deemed disposition on emigration; 248(1.1) — Parallel rule to para. (n) before December 24, 1998; 248(10) — Series of transactions; 248(25.1) — Where para. (f) applies — continuation of trust; 248(25.2) — Where para. (j) applies — trust deemed to be agent.

History: Para. (c) amended by 2005, c. 30, subsec. 17(2) to replace "(f), (g) or (k)" with "(f) or (k)", applicable to dispositions that occur after 2004.

Para. (g) repealed by the said c. 30, subsec. 17(3), applicable to dispositions that occur after 2004. The para. formerly read:

(g) any transfer of the property where

(i) the transferor is a trust governed by a registered retirement savings plan or a trust governed by a registered retirement income fund,

(ii) the transferee is a trust governed by a registered retirement savings plan or a trust governed by a registered retirement income fund,

(iii) the annuitant under the plan or fund that governs the transferor is also the annuitant under the plan or fund that governs the transferee,

(iv) the transferee held no property immediately before the transfer (other than property the cost of which is not included, for the purposes of this Act, in computing a balance of undeducted outlays, expenses or other amounts in respect of the transferee),

(v) the transferee does not file a written election with the Minister on or before the filing-due date for its taxation year in which the transfer is made (or on such later day as is acceptable to the Minister) that this paragraph not apply, and

(vi) the transfer results, or is part of a series of transactions or events that results, in the transferor ceasing to exist and, immediately before the time of the transfer or the beginning of that series, as the case may be, the transferee never held any property or held only property having a nominal value,

The definition "disposition" added to subsec. 248(1) by 2001, c. 17, subsec. 188(5), applicable to transactions and events that occur after December 23, 1998, except that paras. (f) and (g) shall not apply for the purposes of the Act (other than s. 107.4) to a transfer of property, that occurred before 2000, by a trust governed by a registered retirement savings plan to a trust governed by a registered retirement income fund (or to a transfer by a trust governed by a registered retirement income fund to a trust governed by a registered retirement savings plan) unless the transferee trust files a written election with the Minister of National Revenue on or before the filing-due date for its taxation year in which the transfer is made (or on such later day as is acceptable to the Minister) that para. (f) or (g), as the case may be, of that definition apply.

Interpretation Bulletins: IT-65: Stock splits and consolidations; IT-96R6: Options to acquire shares, bonds or debentures and by trusts to acquire trust units; IT-102R2: Conversion of property, other than real property, from or to inventory; IT-124R6: Contributions to registered retirement savings plans; IT-125R4: Dispositions of resource properties; IT-126R2: Meaning of "winding-up"; IT-133: Stock exchange transactions — date of disposition of shares; IT-146R4: Shares entitling shareholders to choose taxable or capital dividends; IT-170R: Sale of property — when included in income computation; IT-182: Compensation for loss of business income or property used in a business; IT-218R: Profit, capital gains and losses from the sale of real estate, including farmland and inherited land and conversion of real estate from capital property to inventory and vice versa; IT-220R2: Capital cost allowance — proceeds of disposition of depreciable property; IT-334R2: Miscellaneous receipts; IT-444R: Corporations — involuntary dissolutions; IT-448: Dispositions — changes in terms of securities; IT-488R2: Winding-up of 90%-owned taxable Canadian corporations (archived); IT-505: Mortgage foreclosures and conditional sales repossessions (archived).

I.T. Technical News: 3 (loss utilization within a corporate group); 7 (revocable living trusts, protective trusts, bare trusts); 14 (changes in terms of debt obligations); 15 (tax consequences of the adoption of the "euro" currency).

Advance Tax Rulings: ATR-1: Transfer of legal title in land to bare trustee co.poration — mortgagee's requirements sole reason for transfer; ATR-54: Reduction of paid-up capital.

"dividend" includes a stock dividend (other than a stock dividend that is paid to a corporation or to a mutual fund trust by a non-resident corporation);

Related Provisions: 15(3), (4) — Interest or dividend on income bond or debenture; 52(3) — Cost of stock dividend; 55(2) — Capital gains stripping — Deemed dividend; 82(1) — Dividends included in income; 84 — Deemed dividend; 90 — Dividend from non-resident corporation; 93(1) — Election re disposition of share in foreign affiliate; 128.1(1)(c.1), (c.2) — Deemed dividends on corporation becoming resident in Canada; 137(4.2) — Credit unions — deemed interest deemed not to be a dividend; 139.1(4)(f) — Deemed dividend on demutualization of insurance corporation; 139.2 — Deemed dividend on distribution by mutual holding corporation; 212.2 — Deemed dividend on surplus strip to non-resident insurer; 258 — Certain amounts deemed to be or not to be dividends.

History: "Dividend" substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(1), applicable to stock dividends paid to a corporation or to a mutual fund trust

(a) after May 23, 1985 and before 1991, where the corporation or trust, as the case may be, so elected by notifying the Minister of National Revenue in writing before July 1991, and

(b) in any other case, after 1990,

and, notwithstanding subsecs. 152(4) to (5), such assessments of tax, interest and penalties shall be made as are necessary to give effect to an election by a taxpayer pursuant to paragraph (a) above. "Dividend" formerly read:

"dividend" includes a stock dividend;

Interpretation Bulletins: IT-67R3: Taxable dividends from corporations resident in Canada; IT-88R2: Stock dividends; IT-243R4: Dividend refund to private corporations.

"dividend rental arrangement" of a person means any arrangement entered into by the person where it may reasonably be considered that

(a) the main reason for the person entering into the arrangement was to enable the person to receive a dividend on a share of the capital stock of a corporation, other than a dividend on a prescribed share or a share described in paragraph (e) of the definition "term preferred share" in this subsection or an amount deemed to be received as a dividend on a share of the capital stock of a corporation by reason of subsection 15(3), and

(b) under the arrangement someone other than that person bears the risk of loss or enjoys the opportunity for gain or profit with respect to the share in any material respect,

and for greater certainty includes any arrangement under which

(c) a corporation at any time receives on a particular share a taxable dividend that would, but for subsection 112(2.3), be deductible in computing its taxable income or taxable income earned in Canada for the taxation year that includes that time, and

(d) the corporation is obligated to pay to another person an amount as compensation for

(i) that dividend,

(ii) a dividend on a share that is identical to the particular share, or

(iii) a dividend on a share that, during the term of the arrangement, can reasonably be expected to provide to a holder of the share the same or substantially the same proportionate risk of loss or opportunity for gain as the particular share,

that, if paid, would be deemed by subsection 260(5) to have been received by that other person as a taxable dividend;

Proposed Amendment — 248(1)"dividend rental arrangement"

"dividend rental arrangement", of a person or a partnership (each of which is referred to in this definition as the "person"),

(a) means any arrangement entered into by the person where it can reasonably be considered that

(i) the main reason for the person entering into the arrangement was to enable the person to receive a dividend on a share of the capital stock of a corporation, other than a dividend on a prescribed share or on a share described in paragraph (e) of the definition "term preferred share" in this subsection or an amount deemed by subsection 15(3) to be received as a dividend on a share of the capital stock of a corporation, and

(ii) under the arrangement someone other than that person bears the risk of loss or enjoys the opportunity for gain or profit with respect to the share in any material respect, and

(b) includes, for greater certainty, any arrangement under which

(i) a corporation at any time receives on a particular share a taxable dividend that would, if this Act were read without reference to subsection 112(2.3), be deductible in computing its taxable income or taxable income earned in Canada for the taxation year that includes that time, and

(ii) the corporation or a partnership of which the corporation is a member is obligated to pay to another person or partnership an amount

(A) that is compensation for

(I) the dividend described in subparagraph (i),

(II) a dividend on a share that is identical to the particular share, or

(III) a dividend on a share that, during the term of the arrangement, can reasonably be expected to provide to a holder of the share the same or substantially the same proportionate risk of loss or opportunity for gain as the particular share, and

(B) that, if paid, would be deemed by subsection 260(5.1) to have been received by that other person or partnership, as the case may be, as a taxable dividend;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 185(2), will amend the definition "dividend rental arrangement" in subsec. 248(1) to read as above, applicable

(a) to arrangements made after December 20, 2002; and

(b) to an arrangement made after November 2, 1998 and before December 21, 2002 if the parties to the arrangement jointly so elect in writing and file the election with the Minister of National Revenue within 90 days after the amending legislation is assented to, except that the reference to "subsection 260(5.1)" in cl. (b)(ii)(B) of the definition, as amended, is to be, in the application of that definition to any of those arrangements made before 2002, read as "subsection 260(5)".

For arrangements made after 2001 and before December 21, 2002 other than an arrangement to which para. (b) above applies, the portion of para. (d) of the definition after subpara. (iii) is to be read as follows:

that, if paid, would be deemed by subsection 260(5.1) to have been received by that other person as a taxable dividend.

Technical Notes: A "dividend rental arrangement" is, in general terms, an arrangement under which one person receives a dividend on a share that has been borrowed from another person who retains the risk of loss or opportunity for gain from fluctuations in the share value. To clarify its application where a partnership is a party to the arrangement, the definition is restructured and amended; its language is also updated in certain respects.

Under the amended definition, the "person" who is the subject of the arrangement — that is, the person who enters into the arrangement in order to receive a dividend — may be a partnership or a person as otherwise defined.

Existing paragraph (c) of the definition ensures that the definition includes an arrangement under which a corporation receives a taxable dividend that would be deductible but for subsection 112(2.3), and is obligated to make dividend compensation payments. This paragraph is replaced by new paragraph (b), which adds to the arrangements described one in which it is not the corporation receiving the dividend that is obligated to make the compensation payment, but rather a partnership of which the corporation is a member.

At first reading, new paragraph (b) may seem asymmetrical, in that it expressly covers the case where a partnership is obligated to make the compensation payment, but not the case where a partnership receives the taxable dividend. In fact, the paragraph covers both: since in the latter case the corporate partner is itself already considered to receive the dividend, it is not necessary to add a reference to the partnership in that regard.

The reference to "subsection 260(5)" in this definition is replaced with "subsection 260(5.1)" consequential to the amendments to section 260.

The amended definition applies to arrangements made after December 20, 2002; it also applies to an arrangement made after November 2, 1998 and before the day after December 20, 2002, if the parties jointly elect in writing filed with the Minister of National Revenue within 90 days after this Act has been assented to, except that before 2002 the reference to "subsection 260(5.1)" in the amended definition should be read as "subsection 260(5)".

Related Provisions: 82(1)(a)(i) — Taxable dividends received; 112(2.3) — Intercorporate dividends — where no deduction permitted; 126(4.2) — No foreign tax credit on short-term securities acquisitions; 260(6.1) — Deductible amount under securities lending arrangement.

History: That portion of the definition "dividend rental arrangement" after para. (b) added by 1995, c. 21, subsec. 74(1), applicable to dividends received at any time by a corporation on shares acquired

(a) before that time and after April 1989, where the corporation so elects by notifying the Minister of National Revenue in writing before 1996; and

(b) before that time and after June 1994, in any other case.

Interpretation Bulletins: IT-67R3: Taxable dividends from corporations resident in Canada.

"eligible capital amount" has the meaning assigned by subsection 14(1);

"eligible capital expenditure" has the meaning assigned by subsection 14(5);

"eligible capital property" has the meaning assigned by section 54;

"eligible funeral arrangement" has the meaning assigned by subsection 148.1(1);

Related Provisions: 248(1)"disposition"(f)(vi) — Rollover from one trust to another.

History: The definition "eligible funeral arrangement" added by 1995, c. 21, s. 65, applicable after 1992.

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

"eligible relocation" means a relocation of a taxpayer where

(a) the relocation occurs to enable the taxpayer

(i) to carry on a business or to be employed at a location in Canada (in section 62 and this subsection referred to as "the new work location"), or

(ii) to be a student in full-time attendance enrolled in a program at a post-secondary level at a location of a university, college or other educational institution (in section 62 and in this subsection referred to as "the new work location"),

(b) both the residence at which the taxpayer ordinarily resided before the relocation (in section 62 and this subsection referred to as "the old residence") and the residence at which the taxpayer ordinarily resided after the relocation (in section 62 and this subsection referred to as "the new residence") are in Canada, and

(c) the distance between the old residence and the new work location is not less than 40 kilometres greater than the distance between the new residence and the new work location

except that, in applying subsections 6(19) to (23) and section 62 in respect of a relocation of a taxpayer who is absent from but resident in Canada, this definition shall be read without reference to the words "in Canada" in subparagraph (a)(i), and without reference to paragraph (b);

Related Provisions: 6(19)–(22) — Employer subsidy of housing loss; 6(23) — Employer-provided mortgage subsidy is taxable; 62 — Deduction for moving expenses.

History: The definition "eligible relocation" added to subsec. 248(1) by 1999, c. 22, subsec. 80(12), applicable to all taxation years.

I.T. Technical News: 6 (road distance to be used instead of "as the crow flies").

"employed" means performing the duties of an office or employment;

Selected Cases [subsec. 248(1)"employed"]: *Boardman v. R.*, [1979] C.T.C. 159 (FCTD) (Taxpayer held to be an employee despite contract ascribing independent contractor status).

"employee" includes officer;

Related Provisions: 248(1)"employment" — Further meaning of "employee".

Selected Cases [subsec. 248(1)"employee"]: *Grohne v. Canada*, [1989] 1 C.T.C. 434 (FCTD) (Director/shareholder and president receiving shares below fair market value did not receive benefit in respect of office or employment).

Interpretation Bulletins: IT-525R: Performing artists.

Forms: CPT-1: Request for a ruling as to the status of a worker under the Canada Pension Plan or Employment Insurance Act; RC4100: Employee or Self-Employed?.

"employee benefit plan" means an arrangement under which contributions are made by an employer or by any person with whom the employer does not deal at arm's length to another person (in this Act referred to as the "custodian" of an employee benefit plan) and under which one or more payments are to be made to or for the benefit of employees or former employees of the employer or persons who do not deal at arm's length with any such employee or former employee (other than a payment that, if section 6 were read without reference to subparagraph 6(1)(a)(ii) and paragraph 6(1)(g), would not be required to be included in computing the income of the recipient), but does not include

(a) a fund or plan referred to in subparagraph 6(1)(a)(i) or paragraph 6(1)(d) or (f),

(b) a trust described in paragraph 149(1)(y),

(c) an employee trust,

(c.1) a salary deferral arrangement, in respect of a taxpayer, under which deferred amounts are required to be included as benefits under paragraph 6(1)(a) in computing the taxpayer's income,

(c.2) a retirement compensation arrangement,

(d) an arrangement the sole purpose of which is to provide education or training for employees of the employer to improve their work or work-related skills and abilities, or

(e) a prescribed arrangement;

Related Provisions: 6(1)(g) — Amount received from employee benefit plan taxable; 12(11) — Definitions — "investment contract"; 32.1 — Deductions to employer re employee benefit plan; 94(1)"exempt foreign trust"(f) [proposed] — Employee benefit plan excluded from non-resident trust rules; 104(6)(a.1) — Deduction in computing income of employee benefit plan; 104(13)(b) — Income inclusion to trust; 107.1 — Distribution by employee benefit plan; 128.1(10)"excluded right or interest"(a)(v) — No deemed disposition of rights on emigration; 212(17) — No non-resident withholding tax on payments from employee benefit plan.

History: Para. (e) of "employee benefit plan" substituted by 1994, c. 21, subsec. 109(2), applicable after 1979. That para. formerly read:

(e) a prescribed fund or plan;

Selected Cases [subsec. 248(1)"employee benefit plan"]: *Canada v. Chrysler Canada Ltd. (No. 3)*, [1992] 2 C.T.C. 95 (FCTD) (Employee stock ownership plan was "stock option" under s. 7, not "employee benefit plan").

Regulations: 6800 (prescribed plan, prescribed arrangement).

Interpretation Bulletins: IT-502: Employee benefit plans and employee trusts.

Advance Tax Rulings: ATR-17: Employee benefit plan — purchase of company shares; ATR-21: Pension benefit from an unregistered pension plan.

"employee trust" means an arrangement (other than an employees profit sharing plan, a deferred profit sharing plan or a plan referred to in subsection 147(15) as a "revoked plan") established after 1979

(a) under which payments are made by one or more employers to a trustee in trust solely to provide to employees or former employees of

(i) the employer, or

(ii) a person with whom the employer does not deal at arm's length,

benefits the right to which vests at the time of each such payment and the amount of which does not depend on the individual's position, performance or compensation as an employee,

(b) under which the trustee has, since the commencement of the arrangement, each year allocated to individuals who are beneficiaries thereunder, in such manner as is reasonable, the amount, if any, by which the total of all amounts each of which is

(i) an amount received under the arrangement by the trustee in the year from an employer or from a person with whom the employer does not deal at arm's length,

(ii) the amount that would, if this Act were read without reference to subsection 104(6), be the income of the trust for the year (other than a taxable capital gain from the disposition of property) from a property or other source other than a business, or

(iii) a capital gain of the trust for the year from the disposition of property

exceeds the total of all amounts each of which is

(iv) the loss of the trust for the year (other than an allowable capital loss from the disposition of property) from a property or other source other than a business, or

(v) a capital loss of the trust for the year from the disposition of property, and

(c) the trustee of which has elected to qualify the arrangement as an employee trust in its return of income filed within 90 days from the end of its first taxation year;

Related Provisions: 6(1)(h) — Amounts received from employee trust taxable; 104(6)(a) — Deduction in computing income of employee trust; 107.1 — Distribution by employee trust; 128.1(10)"excluded right or interest"(e)(i) — No deemed disposition on emigration; 212(17) — No non-resident withholding tax on payments from employee trust; 248(1)"disposition"(f)(vi) — Rollover from one trust to another.

Interpretation Bulletins: IT-502: Employee benefit plans and employee trusts.

"employees profit sharing plan" has the meaning assigned by subsection 144(1);

"employer", in relation to an officer, means the person from whom the officer receives the officer's remuneration;

Related Provisions: 6(2) — Definition of "employer" for automobile standby charge; 6(17) — Extended definition for disability insurance top-up payments; 80.4(1)(b)(i) — Definition of "employer" for employee loans; 81(3)(c) — Definition of "employer" for municipal officer's expense allowance; 207.6(3)(a) — Definition of "employer" for incorporated employee/RCA rules; 252.1 — Application of pension rules where union is employer.

"employment" means the position of an individual in the service of some other person (including Her Majesty or a foreign state or sovereign) and "servant" or "employee" means a person holding such a position;

Selected Cases [subsec. 248(1)"employment"]: *Scott v. Canada*, [1991] 1 C.T.C. 395 (FCTD) (Options received by director in recognition of services rendered received in respect of employment; director can be considered employee without receiving remuneration for services).

Interpretation Bulletins: IT-525R: Performing artists.

Forms: CPT-1: Request for a ruling as to the status of a worker under the Canada Pension Plan or Employment Insurance Act.

"estate" has the meaning assigned by subsection 104(1);

Related Provisions: 128(1)(b) — Where corporation bankrupt; 128(2)(b) — Where individual bankrupt.

"estate of the bankrupt" has the same meaning as in the *Bankruptcy and Insolvency Act*;

History: The definition "estate of the bankrupt" added by 1995, c. 21, subsec. 43(2), applicable to taxation years that end after February 21, 1994.

"exempt income" means property received or acquired by a person in such circumstances that it is, because of any provision of Part I, not included in computing the person's income, but does not include a dividend on a share or a support amount (as defined in subsection 56.1(4));

Related Provisions: 81 — Amounts not included in income; 149 — Exempt taxpayers.

History: The definition "exempt income" in subsec. 248(1) amended by 1997, c. 25, subsec. 71(1), applicable after 1996. It formerly read:

"exempt income" means money or property received or acquired by a person in such circumstances that it is, by reason of any provision in Part I, not included in computing the person's income, but for greater certainty does not include a dividend on a share;

"farming" includes tillage of the soil, livestock raising or exhibiting, maintaining of horses for racing, raising of poultry, fur farming, dairy farming, fruit growing and the keeping of bees, but does not include an office or employment under a person engaged in the business of farming;

Related Provisions: 28–31 — Rules for computing income from farming.

Selected Cases [subsec. 248(1)"farming"]: *Levy v. MNR*, [1990] 2 C.T.C. 83 (FCTD) (Member of syndicate that bred and raced horses held to be in farming business despite not actively participating); *Juster v. R.*, [1974] C.T.C. 681 (FCA) (Horse trader held to be engaged in farming); *Maber v. MNR*, [1971] C.T.C. 866 (FCTD) (After selling large part of ranch, taxpayer making improvements and constructions on remaining land in preparation for cattle ranching held engaged in continuation of original activity).

Interpretation Bulletins: IT-156R: Feedlot operators (archived); IT-268R3: *Inter vivos* transfer of farm property to child; IT-433R: Farming or fishing — use of cash method.

"farm loss" has the meaning assigned by subsection 111(8);

Related Provisions: 31(1), (1.1), 248(1) — Definition of "restricted farm loss"; 111(9) — Farm loss where taxpayer not resident in Canada.

History: "Farm loss" added by 1984, c. 1, subsec. 104(2), applicable to 1983 *et seq.*

"filing-due date" for a taxation year of a taxpayer means the day on or before which the taxpayer's return of income under Part I for the year is required to be filed or would be required to be filed if tax under that Part were payable by the taxpayer for the year;

Related Provisions: 150(1) — Due dates for filing returns; *Interpretation Act* 26 — Deadline on Sunday or holiday extended to next business day.

History: The definition "filing-due date" added by 1996, c. 21, subsec. 60(2), applicable after 1993.

Application Policies: SR&ED 2004-02: Filing requirements for claiming SR&ED carried out in Canada.

"fiscal period" — [Repealed]

History: The definition "fiscal period" repealed by 1996, c. 21, subsec. 60(1), applicable to fiscal periods that begin after 1994. It formerly read:

> "fiscal period" means the period for which the accounts of the business of the taxpayer have been ordinarily made up and accepted for purposes of assessment under this Act and, in the absence of an established practice, the fiscal period is that adopted by the taxpayer, but no fiscal period may exceed
>
> (a) in the case of a corporation, 53 weeks, and
>
> (b) in the case of any other taxpayer, 12 months,
>
> and no change in a usual and accepted fiscal period may be made for the purposes of this Act without the concurrence of the Minister;

Selected Cases [248(1)"fiscal period"]: *Bishay v. MNR*, [1996] 1 C.T.C. 2286 (FCTD) (Unilateral change of year-end by taxpayer prohibited).

"fishing" includes fishing for or catching shell fish, crustaceans and marine animals but does not include an office or employment under a person engaged in the business of fishing;

Interpretation Bulletins: IT-433R: Farming or fishing use of cash method.

"flow-through share" has the meaning assigned by subsection 66(15);

History: The definition "flow-through share" added to subsec. 248(1) by 1998, c. 19, subsec. 239(6), applicable after November 1994.

Proposed Addition — 248(1)"foreign accrual property income"

"foreign accrual property income" has the meaning assigned by section 95;

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 44(6), will add the definition "foreign accrual property income" to subsec. 248(1), applicable to taxation years that begin after 2002.

Technical Notes: The definition "foreign accrual property income" is included in subsection 248(1) so that the definition of this expression in section 95 applies for the purposes of the Act.

Related Provisions: 95(1)"foreign accrual property income", 95(2) — Definition.

"foreign affiliate" has the meaning assigned by subsection 95(1);

Interpretation Bulletins: IT-343R: Meaning of the term "corporation"; IT-119R4: Debts of shareholders and certain persons connected with shareholders.

"foreign currency" means currency of a country other than Canada;

History: The definition "foreign currency" added to s. 248(1) by 2001, c. 17, subsec. 188(5), applicable after June 27, 1999.

"foreign exploration and development expenses" has the meaning assigned by subsection 66(15);

Proposed Addition — 248(1)"foreign investment entity"

"foreign investment entity" has the meaning assigned by section 94.1;

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 44(6), will add the definition "foreign investment entity" to subsec. 248(1), applicable to taxation years that begin after 2002.

Technical Notes: The definition "foreign investment entity" is included in subsection 248(1) so that the definition of this expression in subsection 94.1(1) applies for the purposes of the Act.

"foreign resource expense" has the meaning assigned by subsection 66.21(1);

History: The definition "foreign resource expense" added to s. 248(1) by 2001, c. 17, subsec. 188(5), applicable after 2000.

"foreign resource pool expenses" of a taxpayer means the taxpayer's foreign resource expenses in respect of all countries and the taxpayer's foreign exploration and development expenses;

History: The definition "foreign resource pool expenses" added to s. 248(1) by 2001, c. 17, subsec. 188(5), applicable after 2000.

"foreign resource property" has the meaning assigned by subsection 66(15), and a foreign resource property in respect of a country means a foreign resource property that is

(a) a right, licence or privilege to explore for, drill for or take petroleum, natural gas or related hydrocarbons in that country,

(b) a right, licence or privilege to

(i) store underground petroleum, natural gas or related hydrocarbons in that country, or

(ii) prospect, explore, drill or mine for minerals in a mineral resource in that country,

(c) an oil or gas well in that country or real property in that country the principal value of which depends on its petroleum or natural gas content (but not including depreciable property),

Proposed Amendment — 248(1)"foreign resource property"(c)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 278(1), will amend para. (c) of the definition "foreign resource property" in subsec. 248(1) by substituting "real or immovable property" for "real property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(d) a rental or royalty computed by reference to the amount or value of production from an oil or gas well in that country or from a natural accumulation of petroleum or natural gas in that country,

(e) a rental or royalty computed by reference to the amount or value of production from a mineral resource in that country,

Proposed Amendment — 248(1)"foreign resource property"(d), (e)

(d) any right to a rental or royalty computed by reference to the amount or value of production from an oil or gas well in that country, or from a natural accumulation of petroleum or natural gas in that country, if the payer of the rental or royalty has an interest in, or for civil law a right in, the well or accumulation, as the case may be, and 90% or more of the rental or royalty is payable out of, or from the proceeds of, the production from the well or accumulation,

(e) any right to a rental or royalty computed by reference to the amount or value of production from a mineral resource in that country, if the payer of the rental or royalty has an interest in, or for civil law a right in, the mineral resource and 90% or more of the rental or royalty is payable out of, or from the proceeds of, the production from the mineral resource,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 185(6), will amend paras. (d) and (e) of the definition "foreign resource property" in subsec. 248(1) to read as above, applicable to property acquired after December 20, 2002.

Technical Notes: The definition "foreign resource property" in subsection 248(1) is structured to parallel the definition "Canadian resource property" in subsection 66(15), with the necessary modifications to reflect the location of the property outside Canada. This definition is amended, effective for property acquired after December 20, 2002, as a consequence of changes to the definition "Canadian resource property".

(f) a real property in that country the principal value of which depends upon its mineral resource content (but not including depreciable property), or

Proposed Amendment — 248(1)"foreign resource property"(f)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 278(2), will amend para. (f) of the definition "foreign resource property" in subsec. 248(1) by substituting "real or immovable property" for "real property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(g) a right to or interest in any property described in any of paragraphs (a) to (f), other than such a right or interest that the taxpayer has by reason of being a beneficiary of a trust;

Proposed Amendment — 248(1)"foreign resource property"(g)

(g) a right to or an interest in — or for civil law a right in or to — any property described in any of paragraphs (a) to (f), other than a right or an interest that the taxpayer has because the taxpayer is a beneficiary under a trust or a member of a partnership;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 185(7), will amend para. (g) of the definition "foreign resource property" in subsec. 248(1) to read as above, applicable to property acquired after December 20, 2002.

Technical Notes: See under 248(1)"foreign resource property"(d), (e).

History: The definition "foreign resource property" in subsec. 248(1) amended by 2001, c. 17, subsec. 188(1), applicable after 2000. It formerly read:

> "foreign resource property" has the meaning assigned by subsection 66(15);

"foreign retirement arrangement" means a prescribed plan or arrangement;

Related Provisions: 12(11) — Definitions — "investment contract"; 56(12) — Distribution from FRA included in income; 81(1)(r) — Exemption for income from FRA; 94(1)"exempt foreign trust"(e) — Arrangement excluded from non-resident trust rules; 128.1(10)"excluded right or interest"(a)(x) — No deemed disposition on emigration.

History: "Foreign retirement arrangement" enacted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(14), applicable to 1990 *et seq.*

Regulations: 6803 (prescribed plan or arrangement is U.S. IRA).

"former business property" of a taxpayer means a capital property of the taxpayer that was used by the taxpayer or a person related to the taxpayer primarily for the purpose of gaining or producing income from a business, and that was real property of the taxpayer or an interest of the taxpayer in real property, but does not include

Proposed Amendment — 248(1)"former business property" opening words

"former business property", in respect of a taxpayer, means a capital property of the taxpayer that was used by the taxpayer or a person related to the taxpayer primarily for the purpose of gaining or producing income from a business, and that was real or immovable property of the taxpayer, an interest of the taxpayer in real property, a right of the taxpayer in an immovable or a property that is the subject of a valid election under subsection 13(4.2), but does not include

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 185(8), will amend the opening words of the definition "former business property" in subsec. 248(1) to read as above, applicable in respect of dispositions and terminations that occur after December 20, 2002.

Technical Notes: The definition "former business property" in subsection 248(1) describes properties the voluntarily disposition of which by a taxpayer are eligible for elections under subsections 13(4) and 44(1) to defer the recapture of depreciation and capital gains. Subject to certain exceptions, a former business property is generally real property or an interest in real property used primarily in a business. The definition is amended, applicable after December 20, 2002, to include a franchise, concession or license for a limited period that is wholly attributable to the carrying on of a business in a fixed place and that is the subject of a valid election under new subsection 13(4.2). For further information, refer to the commentary to new subsections 13(4.2) and (4.3).

(a) a rental property of the taxpayer,

(b) land subjacent to a rental property of the taxpayer,

(c) land contiguous to land referred to in paragraph (b) that is a parking area, driveway, yard or garden or that is otherwise necessary for the use of the rental property referred to therein, or

(d) a leasehold interest in any property described in paragraphs (a) to (c),

and, for the purpose of this definition, "rental property" of a taxpayer means real property owned by the taxpayer, whether jointly with another person or otherwise, and used by the taxpayer in the taxation year in respect of which the expression is being applied principally for the purpose of gaining or producing gross revenue that is rent (other than property leased by the taxpayer to a person related to the taxpayer and used by that related person principally for any other purpose), but, for greater certainty, does not include a property leased by the taxpayer

or the related person to a lessee, in the ordinary course of a business of the taxpayer or the related person of selling goods or rendering services, under an agreement by which the lessee undertakes to use the property to carry on the business of selling or promoting the sale of the goods or services of the taxpayer or the related person;

Proposed Amendment — 248(1)"former business property" closing words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 278(3), will amend the closing words of the definition "former business property" in subsec. 248(1) by substituting "real or immovable property" for "real property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

Related Provisions: 13(4), 44(1)(b), 44(6) — Rollovers of former business property replaced by new property; 87(2)(l.3) — Amalgamations — replacement property; 248(4) — Interest in real property.

History: That portion of "former business property" preceding para. (a) and that portion following para. (d) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 192(4), (5), applicable to dispositions of property occurring after July 13, 1990. Those portions formerly read:

> "former business property" of a taxpayer means a capital property that was used by the taxpayer primarily for the purpose of gaining or producing income from a business, and that was real property or an interest therein of the taxpayer, but does not include
>
> . . . . .
>
> and, for the purposes of this definition, "rental property" of a taxpayer means real property owned by the taxpayer, whether jointly with another person or otherwise, if the property was used by the taxpayer in the taxation year in respect of which the expression is being applied principally for the purpose of gaining or producing gross revenue that is rent, but, for greater certainty, does not include a property leased by the taxpayer to a lessee, in the ordinary course of the taxpayer's business of selling goods or rendering services, under an agreement by which the lessee undertakes to use the property to carry on the business of selling or promoting the sale of the taxpayer's goods or services;

Selected Cases [subsec. 248(1)"former business property"]: *Glaxo Wellcome Inc. v. R.*, [1999] 4 C.T.C. 371 (FCA); aff'g [1996] 1 C.T.C. 2904 (TCC) (Property must have been "used" in the business, not merely held); *Buonincontri v. R.*, [1985] 1 C.T.C. 370 (FCTD) (Rental property held not to be business property).

Interpretation Bulletins: IT-491: Former business property.

"goods and services tax" means the tax payable under Part IX of the *Excise Tax Act*;

Related Provisions: 6(1)(e.1), 15(1.4) — Employee and shareholder benefits; 248(15)–(18) — Rules with respect to GST.

"grandfathered share" means

(a) a share of the capital stock of a corporation issued after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 pursuant to an agreement in writing entered into before that time,

(b) a share of the capital stock of a corporation issued after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 and before 1988 as part of a distribution to the public made in accordance with the terms of a prospectus, preliminary prospectus, registration statement, offering memorandum or notice filed before 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 with a public authority pursuant to and in accordance with the securities legislation of the jurisdiction in which the shares are distributed,

(c) a share (in this paragraph referred to as the "new share") of the capital stock of a corporation that is issued after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 in exchange for

(i) a share of a corporation that was issued before 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 or is a grandfathered share, or

(ii) a debt obligation of a corporation that was

(A) issued before 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987, or

(B) issued after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 under an agreement in writing entered into before that time, or after that time and before 1988 as part of a distribution to the public made in accordance with the terms of a prospectus, preliminary prospectus, registration statement, offering memorandum or notice filed before that time with a public authority under and in accordance with the securities legislation of the jurisdiction in which the debt obligation is distributed,

where the right to the exchange and all or substantially all the terms and conditions of the new share were established in writing before that time, and

(d) a share of a class of the capital stock of a Canadian corporation listed on a prescribed stock exchange that is issued after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 on the exercise of a right that

(i) was issued before that time, that was issued after that time under an agreement in writing entered into before that time or that was issued after that time and before 1988 as part of a distribution to the public made in accordance with the terms of a prospectus, preliminary prospectus, registration statement, offering memorandum or notice filed before that time with a public authority under and in accordance with the securities legislation of the jurisdiction in which the rights were distributed, and

(ii) was listed on a prescribed stock exchange,

where all or substantially all the terms and conditions of the right and the share were established in writing before that time,

except that a share that is deemed under the definition "short-term preferred share", "taxable preferred share" or "term preferred share" in this subsection or under subsection 112(2.22) to have been issued at any time is deemed after that time not to be a grandfathered share for the purposes of that provision;

Related Provisions: 87(4.2), (4.3) — Amalgamation.

History: The closing words of the definition "grandfathered share" in subsec. 248(1) amended by 2001, c. 17, subsec. 188(3), applicable in respect of dividends received after 1998. The closing words formerly read:

> except that a share that is deemed under the definition "short-term preferred share", "taxable preferred share" or "term preferred share" in this subsection or under subsection 112(2.2) to have been issued at any time shall be deemed after that time not to be a grandfathered share for the purposes of that provision;

Subpara. (c)(ii) and para. (d) of "grandfathered share" substituted by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 192(6), (7), applicable to shares issued, or deemed by the Act to have been issued, after 8 p.m. EDST, June 18, 1987. Subpara. (c)(ii) and para. (d) formerly read:

> (ii) a debt obligation of a corporation that was issued before 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987, or issued after that time pursuant to an agreement in writing entered into before that time
>
> . . . . .
>
> (d) a share of a class of the capital stock of a Canadian corporation listed on a prescribed stock exchange that is issued after 8:00 p.m.

Eastern Daylight Saving Time, June 18, 1987 on the exercise of a right

(i) that was issued before that time and listed on a prescribed stock exchange in Canada, and

(ii) the terms of which at that time included the right to acquire the share,

where all or substantially all the terms and conditions of the share were established in writing before that time,

Regulations: 3200 (prescribed stock exchange in Canada).

"gross revenue" of a taxpayer for a taxation year means the total of

(a) all amounts received in the year or receivable in the year (depending on the method regularly followed by the taxpayer in computing the taxpayer's income) otherwise than as or on account of capital, and

(b) all amounts (other than amounts referred to in paragraph (a)) included in computing the taxpayer's income from a business or property for the year by virtue of paragraph 12(1)(o) [until 2007 — ed.] or subsection 12(3) or (4) or section 12.2 of this Act or subsection 12(8) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952;

Amendment [effective 2007] — 248(1)"gross revenue"(b)

(b) all amounts (other than amounts referred to in paragraph (a)) included in computing the taxpayer's income from a business or property for the year because of subsection 12(3) or (4) or section 12.2 of this Act or subsection 12(8) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952.

Application: S.C. 2003, c. 28 (Bill C-48, Royal Assent November 7, 2003), s. 18, amends para. (b) of the definition "gross revenue" in subsec. 248(1) to read as above, applicable to taxation years that begin after 2006.

Related Provisions: 149(9) — Limitation re gross revenue of non-profit SR&ED corporation; 247(5), (9) — Determination of gross revenue for transfer pricing rules.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

"group term life insurance policy" means a group life insurance policy under which the only amounts payable by the insurer are

(a) amounts payable on the death or disability of individuals whose lives are insured in respect of, in the course of or because of, their office or employment or former office or employment, and

(b) policy dividends or experience rating refunds;

Related Provisions: 6(1)(a)(i), 6(4) — $25,000 group term life insurance not a taxable benefit before July 1994; 18(9.01) — Limitation on deduction for premiums paid; 138(15) — Meaning of "group term insurance policy"; Reg. 1408(2) — Definition does not apply to regulations re policy reserves.

History: The definition "group term life insurance policy" amended by 1995, c. 3, subsec. 52(2), applicable to insurance provided in respect of periods that are after June 1994. The definition formerly read:

"group term life insurance policy", with respect to a taxpayer, means, subject to subsection 138(15), a group life insurance policy under which no amount is payable to a person other than the group policyholder as a result of contributions made to or under the policy by the employer of the taxpayer before the death or disability of the taxpayer;

Interpretation Bulletins: IT-529: Flexible employee benefit programs.

"home relocation loan" means a loan received by an individual or the individual's spouse or common-law partner in circumstances where the individual has commenced employment at a location in Canada (in this definition referred to as the "new work location") and by reason thereof has moved from the residence in Canada at which, before the move, the individual ordinarily resided (in this definition referred to as the "old residence") to a residence in Canada at which, after the move, the individual ordinarily resided (in this definition referred to as the "new residence") if

(a) the distance between the old residence and the new work location is at least 40 kilometres greater than the distance between the new residence and the new work location,

(b) the loan is used to acquire a dwelling, or a share of the capital stock of a cooperative housing corporation acquired for the sole purpose of acquiring the right to inhabit a dwelling owned by the corporation, where the dwelling is for the habitation of the individual and is the individual's new residence,

(c) the loan is received in the circumstances described in subsection 80.4(1), or would have been so received if subsection 80.4(1.1) had applied to the loan at the time it was received, and

(d) the loan is designated by the individual to be a home relocation loan, but in no case shall more than one loan in respect of a particular move, or more than one loan at any particular time, be designated as a home relocation loan by the individual;

Related Provisions: 6(23) — Employer-provided mortgage subsidy is taxable; 15(2)(a)(ii) — Housing loan to shareholder; 80.4(4) — Home purchase or relocation loan to employee.

History: The definition "home relocation loan" in subsec. 248(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Para. (c) of "home relocation loan" amended by 1999, c. 22, subsec. 80(1), applicable after February 23, 1998. Para. (c) formerly read:

(c) the loan is received in the circumstances described in subsection 80.4(1), and

Para. (b) of "home relocation loan" substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(8), applicable to 1985 *et seq*. Para. (b) formerly read:

(b) the loan is used to acquire a dwelling for the habitation of the individual that is the new residence,

Interpretation Bulletins: IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt.

"income-averaging annuity contract" of an individual means, except for the purposes of section 61, a contract

(a) that is an income-averaging annuity contract within the meaning assigned by subsection 61(4), and

(b) in respect of which the individual has made a deduction under section 61 in computing the individual's income for a taxation year;

Related Provisions: 128.1(10)"excluded right or interest"(f)(ii) — Emigration — no deemed disposition of right under IAAC.

"income bond" or **"income debenture"** of a corporation (in this definition referred to as the "issuing corporation") means a bond or debenture in respect of which interest or dividends are payable only to the extent that the issuing corporation has made a profit before taking into account the interest or dividend obligation and that was issued

(a) before November 17, 1978,

(b) after November 16, 1978 and before 1980 pursuant to an agreement in writing to do so made before November 17, 1978 (in this definition referred to as an "established agreement"), or

(c) by an issuing corporation resident in Canada for a term that may not, in any circumstances, exceed 5 years,

(i) as part of a proposal to or an arrangement with its creditors that had been approved by a court under the *Bankruptcy and Insolvency Act*,

(ii) at a time when all or substantially all of its assets were under the control of a receiver, receiver-manager, sequestrator or trustee in bankruptcy, or

(iii) at a time when, by reason of financial difficulty, the issuing corporation or another corporation resident in Canada with which it does not deal at arm's length was in default, or could reasonably be expected to default, on a debt obligation held by a person with whom the issuing corporation or the other corporation was dealing at arm's length and the bond or debenture was issued either wholly or in substantial part and either directly or indirectly in exchange or substitution for that obligation or a part thereof,

and, in the case of a bond or debenture issued after November 12, 1981, the proceeds from the issue may reasonably be regarded as having been used by the issuing corporation or a corporation with which it was not dealing at arm's length in the financing of its business carried on in Canada immediately before the bond or debenture was issued,

and, for the purposes of this definition,

(d) where the terms or conditions of an established agreement were amended after November 16, 1978, the agreement shall be deemed to have been made after that date, and

(e) where

(i) at any particular time the terms or conditions of a bond or debenture issued pursuant to an established agreement or of any agreement relating to such a bond or debenture have been changed,

(ii) under the terms or conditions of a bond or debenture acquired in the ordinary course of the business carried on by a specified financial institution or a partnership or trust (other than a testamentary trust) or under the terms or conditions of any agreement relating to any such bond or debenture (other than an agreement made before October 24, 1979 to which the issuing corporation or any person related thereto was not a party), the owner thereof could at any particular time after November 16, 1978 require, either alone or together with one or more taxpayers, the repayment, acquisition, cancellation or conversion of the bond or debenture otherwise than by reason of a failure or default under the terms or conditions of the bond or debenture or any agreement that related to, and was entered into at the time of, the issuance of the bond or debenture,

(iii) at any particular time after November 16, 1978, the maturity date of a bond or debenture was extended or the terms or conditions relating to the repayment of the principal amount thereof were changed,

(iv) at a particular time a specified financial institution (or a partnership or trust of which a specified financial institution or a person related to the institution is a member or beneficiary) acquires a bond or debenture that

(A) was issued before November 17, 1978 or under an established agreement,

(B) was issued to a person other than a corporation that was, at the time of issue,

(I) described in any of paragraphs (a) to (e) of the definition "specified financial institution", or

(II) a corporation that was controlled by one or more corporations described in subclause (I) and, for the purpose of this subclause, one corporation is controlled by another corporation if more than 50% of its issued share capital (having full voting rights under all circumstances) belongs to the other corporation, to persons with whom the other corporation does not deal at arm's length, or to the other corporation and persons with whom the other corporation does not deal at arm's length,

(C) was acquired from a person that was, at the time the person last acquired the bond or debenture and at the particular time, a person other than a corporation described in any of paragraphs (a) to (f) of that definition, and

(D) was acquired otherwise than under an agreement in writing made before October 24, 1979, or

(v) at a particular time after November 12, 1981, a specified financial institution (or a partnership or trust of which a specified financial institution or a person related to the institution is a member or beneficiary) acquires a bond or debenture that

(A) was not a bond or debenture referred to in paragraph (c),

(B) was acquired from a person that was, at the particular time, a corporation described in any of paragraphs (a) to (f) of the definition "specified financial institution", and

(C) was acquired subject to or conditional on a guarantee agreement (within the meaning that would be assigned by subsection 112(2.2) if the reference in that subsection to a "share" were read as a reference to an "income bond" or "income debenture") that was entered into after November 12, 1981,

the bond or debenture shall, for the purposes of determining at any time after the particular time whether it is an income bond or income debenture, be deemed to have been issued at the particular time otherwise than pursuant to an established agreement;

Related Provisions: 15(3), (4) — Payment on income bond deemed to be a dividend; 15.1, 15.2 — Small business bonds and small business development bonds; 248(13) — Interests in trusts and partnerships; 256(6), (6.1) — Meaning of "controlled".

History: Subparas. (e)(iv) and (v) of the definition "income bond" or "income debenture" in subsec. 248(1) amended by 1999, c. 22, subsec. 80(2), applicable to taxation years that begin after 1998 except that, in the application of the amendment to a bond or debenture acquired from a corporation that last acquired the bond or debenture in a taxation year that began before 1999,

(a) the expression "at the time the person last acquired the bond or debenture and at the particular time, a person other than a corporation described in any of paragraphs (a) to (f) of that definition" in cl. (e)(iv)(C) of the definition, as amended, shall be read as "at the time

the person last acquired the bond or debenture, a corporation described in subclause (B)(I) or (II), and at the particular time, a corporation described in any of paragraphs (a) to (f) of that definition"; and

(b) the expression "a corporation described in any of paragraphs (a) to (f) of the definition" in cl. (e)(v)(B) of the definition, as amended, shall be read as "a corporation described in subclause (iv)(B)(I) or (II) of the definition".

Subparas. (e)(iv) and (v) formerly read:

(iv) at any particular time after October 23, 1979, a bond or debenture issued before November 17, 1978 or a bond or debenture issued pursuant to an established agreement (other than a bond or debenture issued to a corporation described in any of paragraphs (a) to (f) of the definition "specified financial institution" in this subsection) is acquired (otherwise than pursuant to an agreement in writing made before October 24, 1979) from a person (other than a corporation described in any of paragraphs (a) to (f) of that definition) by a specified financial institution or by a partnership or trust of which a specified financial institution or a person related thereto is a member or beneficiary, or

(v) at any particular time after November 12, 1981, a bond or debenture (other than a bond or debenture referred to in paragraph (c)) is acquired by a specified financial institution or by a partnership or trust of which a specified financial institution or a person related thereto is a member or beneficiary from a corporation described in any of paragraphs (a) to (f) of the definition "specified financial institution" in this subsection and the acquisition is subject to or conditional on a guarantee agreement (within the meaning that would be assigned by subsection 112(2.2) if the reference therein to a "share" were read as a reference to an "income bond" or "income debenture") that was entered into after November 12, 1981,

Subpara. (c)(i) of "income bond" amended by 1994, c. 7, Sch. V (1992, c. 27), para. 90(1)(q), to substitute "*Bankruptcy and Insolvency Act*" for "*Bankruptcy Act*", in force November 30, 1992.

Selected Cases [subsec. 248(1)"income bond"]: *R. v. RoyNat Ltd.*, [1981] C.T.C. 93 (FCTD) (Bonds guaranteed by third parties, not "income bonds").

Interpretation Bulletins: IT-52R4: Income bonds and income debentures (archived); IT-527: Distress preferred shares.

"income debenture" — [See under "income bond".]

"income interest" of a taxpayer in a trust has the meaning assigned by subsection 108(1);

"indexed debt obligation" means a debt obligation the terms or conditions of which provide for an adjustment to an amount payable in respect of the obligation for a period during which the obligation was outstanding that is determined by reference to a change in the purchasing power of money;

Related Provisions: 16(6) — Indexed debt obligations; 142.3(2) — Indexed debt obligation not subject to rules re income from specified debt obligations; 142.4(5)(a)(i) — Disposition of indexed debt obligation.

History: "Indexed debt obligation" added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 139(7), applicable to indexed debt obligations issued after October 16, 1991.

"indexed security", "indexed security investment plan" — [Repealed under former Act]

"individual" means a person other than a corporation;

Related Provisions: 104(2) — Trust deemed to be an individual.

Interpretation Bulletins: IT-123R6, para. 11: Transactions involving eligible capital property.

"insurance corporation" means a corporation that carries on an insurance business;

Related Provisions: 138(1) — Corporation deemed to carry on insurance business; 148(10)(a) — Issuer of annuity contracts deemed to be insurer for certain purposes; 186.1(b) — Insurance corporation not liable for Part IV tax.

"insurance policy" includes a life insurance policy;

History: The definition "insurance policy" added to subsec. 248(1) by 2000, c. 19, subsec. 67(1), applicable after December 15, 1998.

"insurer" has the meaning assigned by this subsection to the expression "insurance corporation";

Related Provisions: See under "insurance corporation" above.

"*inter vivos* trust" has the meaning assigned by subsection 108(1);

Related Provisions: 149(5) — Exception re investment income of certain clubs; 207.6(1) — Definitions (re RCA tax).

"international traffic" means, in respect of a non-resident person carrying on the business of transporting passengers or goods, any voyage made in the course of that business where the principal purpose of the voyage is to transport passengers or goods

(a) from Canada to a place outside Canada,

(b) from a place outside Canada to Canada, or

(c) from a place outside Canada to another place outside Canada;

Related Provisions: 250(6) — Residence of international shipping corporation; Canada-U.S. Tax Treaty:Art. III:1(h) — Meaning of "international traffic" for treaty purposes; Art. XV:3 — Exemption for U.S. resident employee; Art. XXIII:3 — Capital tax on ship or aircraft employed in international traffic.

Interpretation Bulletins: IT-494: Hire of ships and aircraft from non-residents.

"inventory" means a description of property the cost or value of which is relevant in computing a taxpayer's income from a business for a taxation year or would have been so relevant if the income from the business had not been computed in accordance with the cash method and, with respect to a farming business, includes all of the livestock held in the course of carrying on the business;

Proposed Amendment — 248(1)"inventory"

"inventory" means a description of property of a taxpayer (other than a property in respect of which subsection 94.1(4) or 94.2(3) applies to the taxpayer for a taxation year) the cost or value of which is relevant in computing the taxpayer's income from a business for a taxation year or would have been so relevant if the income from the business had not been computed in accordance with the cash method and, with respect to a farming business, includes all of the livestock held in the course of carrying on the business;

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 44(4), will amend the definition "inventory" in subsec. 248(1) to read as above, applicable to fiscal periods that begin after 2002.

Technical Notes: A taxpayer's "inventory" is generally described in subsection 248(1) as a description of property the cost or value of which is relevant in computing a taxpayer's income from a business for a taxation year. Rules for "inventory" in section 10 and elsewhere in the Act affect the calculation of a taxpayer's income from business.

The definition "inventory" is amended to exclude property of a taxpayer that is subject to the application of subsection 94.1(4) or 94.2(3) in respect of the taxpayer.

Letter from Dept. of Finance, August 11, 2003:

Dear [xxx]

Thank you for your letter of May 1, 2003, concerning the application to property included in the inventory of a business of the provisions contained in the legislative proposals on foreign investment entities ("FIE proposals") that were tabled as a Notice of Ways and Means Motion on October 11, 2002 [since retabled October 30, 2003 — ed.]. I wish also to acknowledge your discussions on this subject with Grant Nash of this Division.

In your letter you request that the definition "exempt interest" in proposed subsection 94.1(1) of the *Income Tax Act* be expanded to include participating interests that are included in the inventory of a business and that are valued using the method prescribed under section 1801 of

the *Income Tax Regulations*. These regulations permit the taxpayer to use the property's fair market value ("FMV"), but only if FMV valuations are used to value all properties of the taxpayer included in the inventories of the business. Under the FIE proposals, if the participating interests were not to have a readily obtainable fair market value ("ROFMV"), as defined in proposed subsection 94.2(1) of the Act, they would be subject to the imputed income regime under proposed section 94.1. You are concerned that there could be a risk of double taxation in the event that the application of section 94.1 did not operate to suspend the requirement that the taxpayer include the participating interests in the inventory of its business.

You also suggest, as an alternative to exempting the participating interests under the "exempt interest" definition, the possibility of a modification to the FIE proposals so that such participating interests would not be subject to the imputed income regime, but instead would be subject only to the to the mark-to-market regime under proposed section 94.2 of the FIE proposals. However, you raise concerns about possible double taxation in the event that the participating interests were to be subject both to that proposed mark-to-market regime and subsection 10(1).

In this regard we note that, in the case of inventory, the proposed change, contained in the FIE proposals, to the definition "inventory" in subsection 248(1) of the Act would exclude from inventory under the Act any property that would be subject to the mark-to-market regime under proposed section 94.2 of the Act. We are of the view that this proposed change to the definition "inventory" would prevent the double taxation that might otherwise arise, in respect of the application of the mark-to-market regime under proposed section 94.2, in the absence of relief under any other provisions of the Act.

We are prepared to recommend that the FIE proposals be modified to further amend the definition "inventory" in subsection 248(1) of the Act to exclude from inventory under the Act any property that would be subject to the imputed income regime under proposed section 94.1. This modification would prevent the double taxation that might otherwise arise, in respect of the application of proposed section 94.1 to a taxpayer's participating interest, by suspending the requirement that the taxpayer include the participating interest in the inventory of its business. We will recommend that these modifications be effective for the same period as the FIE proposals generally.

Of course, we cannot offer any assurance that either the Minister of Finance or Parliament will agree with the recommendation that we intend to make in this regard. Nonetheless, we trust that this statement of our position is helpful.

Thank you for writing.

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 10(1), (1.01) — Valuation of inventory property; 10(5) — Certain property deemed to be inventory; 66.3(1)(a)(ii) — Certain exploration and development shares deemed to be inventory; 142.5 — Mark-to-market rules for securities held by financial institutions; 142.6(3), (4) — Certain property of financial institution deemed not to be inventory; 231.1(1)(b) — Examination of inventory.

History: "Inventory" substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(1), applicable to fiscal periods beginning after 1988. That definition formerly read:

> "inventory" means a description of property the cost or value of which is relevant in computing a taxpayer's income from a business for a taxation year;

Selected Cases [subsec. 248(1)"inventory"]: *Ruland Realty Ltd. v. R.*, [1998] 4 C.T.C. 2313 (TCC) (Obligations to acquire land were choses in action, which qualified as property and as inventory); *Friesen (J.) v. Canada*, [1993] 2 C.T.C. 113 (FCA); reconsideration refused (Sept. 9, 1993), Doc. A-449-92 (FCA); rev'd [1995] 2 C.T.C. 369 (SCC) (Asset of adventure in nature of trade is inventory); *Canada v. Dresden Farm Equipment Ltd.*, [1989] 1 C.T.C. 99 (FCA) (No inventory deduction for dealer/agent selling goods he did not own).

Interpretation Bulletins: IT-51R2: Supplies on hand at the end of a fiscal year; IT-218R: Profit, capital gains and losses from the sale of real estate, including farmland and inherited land and conversion of real estate from capital property to inventory and vice versa; IT-427R: Livestock of farmers; IT-457R: Election by professionals to exclude work in progress from income; IT-473R: Inventory valuation.

"investment corporation" has the meaning assigned by subsection 130(3);

"investment tax credit" has the meaning assigned by subsection 127(9);

"joint spousal or common-law partner trust" means a trust to which paragraph 104(4)(a) would apply if that paragraph were read without reference to subparagraph 104(4)(a)(iii) and clause 104(4)(a)(iv)(A);

Related Provisions: 73(1.01)(c)(ii) — Rollover on transfer to joint partner trust; 104(5.8) — Transfers from joint partner trust to another trust; 104(6)(b)(ii.1), (iii) — Deduction from income of trust; 104(15)(a) — Preferred beneficiary election; 107(4)(a)(iii) — Distribution of property to person other than taxpayer or partner; 248(1)"*alter ego* trust" — Parallel trust where partner is not a beneficiary.

History: The definition "joint spousal or common-law partner trust" added to subsec. 248(1) by 2001, c. 17, subsec. 188(5), applicable to trusts created after 1999.

"lawyer" has the meaning assigned by subsection 232(1);

"legal representative" of a taxpayer means a trustee in bankruptcy, an assignee, a liquidator, a curator, a receiver of any kind, a trustee, an heir, an administrator, an executor, a liquidator of a succession, a committee, or any other like person, administering, winding up, controlling or otherwise dealing in a representative or fiduciary capacity with the property that belongs or belonged to, or that is or was held for the benefit of, the taxpayer or the taxpayer's estate;

History: The definition "legal representative" in subsec. 248(1) amended by 2001, c. 17, subsec. 230(1), to add "a liquidator of a succession,", in force June 14, 2001.

The definition "legal representative" added to subsec. 248(1) by 1998, c. 19, subsec. 239(6), in force June 18, 1998.

"lending asset" means a bond, debenture, mortgage, hypothecary claim, note, agreement of sale or any other indebtedness or a prescribed share, but does not include a prescribed property;

Related Provisions: 95(1)"lending of money" closing words — Extended definition for FAPI purposes; 142.2(1) — Definition of "specified debt obligation".

History: The definition "lending asset" in subsec. 248(1) amended by 2001, c. 17, subsec. 230(1), to add "hypothecary claim,", in force June 14, 2001.

The definition "lending asset" in subsec. 248(1) amended by 1998, c. 19, subsec. 239(1), applicable

> (a) to taxation years that end after September 1997; and
>
> (b) to a taxpayer's taxation years that end after 1995 and before October 1997 where the taxpayer files an election in accordance with para. 81(1)(b) of c. 19 [see under 20(1)(l)].

The definition formerly read:

> "lending asset" means a bond, debenture, mortgage, note, agreement of sale or any other indebtedness or a prescribed share, but does not include a prescribed security;

Regulations: 6209 (prescribed share, prescribed security, prescribed property).

Interpretation Bulletins: IT-442R: Bad debts and reserves for doubtful debts.

"licensed annuities provider" has the meaning assigned by subsection 147(1);

History: The definition "licensed annuities provider" added to subsec. 248(1) by1998, c. 19, subsec. 239(6), applicable after 1996.

"life insurance business" includes

> (a) an annuities business, and
>
> (b) the business of issuing contracts all or any part of the issuer's reserves for which vary in amount depending on the fair market value of a specified group of assets,

carried on by a life insurance corporation or a life insurer;

Related Provisions: 138(1)(b) — Corporation deemed carrying on (life) insurance business.

"life insurance capital dividend" has the meaning assigned by subsection 83(2.1);

"life insurance corporation" means a corporation that carries on a life insurance business that is not a business described in paragraph (a) or (b) of the definition "life insurance business" in this subsection, whether or not the corporation also carries on a business described in either of those paragraphs;

Related Provisions: 148(10)(a) — Issuer of annuity contracts deemed to be life insurer for certain purposes.

"life insurance policy" has the meaning assigned by subsection 138(12);

Related Provisions: 211(1) — Definitions.

"life insurance policy in Canada" has the meaning assigned by subsection 138(12);

"life insurer" has the meaning assigned by this subsection to the expression "life insurance corporation";

"limited partnership loss" has the meaning assigned by subsection 96(2.1);

Related Provisions: 111(9) — Limited partnership loss where taxpayer not resident in Canada.

"limited-recourse amount" means an amount that is a limited-recourse amount under section 143.2.

History: The definition "limited-recourse amount" added to s. 248(1) by 2003, c. 15, subsec. 88(5), applicable after February 18, 2003.

Proposed Addition — 248(1)"listed international agreement"

"listed international agreement" means

(a) the *Convention on Mutual Administrative Assistance in Tax Matters*, concluded at Strasbourg on January 25, 1988, and

(b) the *Convention between the Government of Canada and the Government of the United Mexican States for the Exchange of Information with Respect to Taxes*, signed at Mexico City on March 16, 1990;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 185(12), will add the definition "listed international agreement" to subsec. 248(1), in force on Royal Assent.

Technical Notes: The definition of "listed international agreement" is added to subsection 248(1) as a consequence of the amendments to subsection 231.2(1) and subparagraph 241(4)(e)(xii). The agreements included in the definition are the *Convention on Mutual Administrative Assistance in Tax Matters*, concluded at Strasbourg on January 25, 1988 and the *Convention between the Government of Canada and the Government of the United Mexican States for the Exchange of Information with Respect to Taxes*, signed at Mexico City on March 16, 1990.

"listed personal property" has the meaning assigned by section 54;

"majority interest partner" of a particular partnership at any time means a person or partnership (in this definition referred to as the "taxpayer")

(a) whose share of the particular partnership's income from all sources for the last fiscal period of the particular partnership that ended before that time (or, if the particular partnership's first fiscal period includes that time, for that period) would have exceeded 1/2 of the particular partnership's income from all sources for that period if the taxpayer had held throughout that period each interest in the partnership that the taxpayer or a person affiliated with the taxpayer held at that time, or

(b) whose share, if any, together with the shares of every person with whom the taxpayer is affiliated, of the total amount that would be paid to all members of the particular partnership (otherwise than as a share of any income of the partnership) if it were wound up at that time exceeds 1/2 of that amount;

Related Provisions: 251.1 — Affiliated persons.

History: The definition "majority interest partner" added to subsec. 248(1) by 1998, c. 19, subsec. 239(6), applicable after April 26, 1995.

"mineral" includes ammonite gemstone, bituminous sands, calcium chloride, coal, kaolin, oil shale and silica, but does not include petroleum, natural gas or a related hydrocarbon not expressly referred to in this definition;

Related Provisions: *Interpretation Act* 8(2.1), (2.2) — Application to exclusive economic zone and continental shelf.

History: The definition "mineral" in subsec. 248(1) amended by 1998, c. 19, subsec. 239(1), applicable to taxation years and fiscal periods that begin after 1996 except that,

(a) for greater certainty, that definition shall not result in a characterization of expenditures made or costs incurred in a taxation year or fiscal period that began before 1997 as a Canadian exploration expense, Canadian development expense, Canadian exploration and development expense or foreign exploration and development expense or an increase in any amount deductible under s. 65 as a consequence of an expenditure made or cost incurred before 1997; and

(b) where, as a consequence of the application of that definition, a person's property would, but for this paragraph, be recharacterized as Canadian resource property or foreign resource property at the beginning of the person's first taxation year or fiscal period that begins after 1996, for the purposes of the Act the property is deemed

(i) to have been disposed of by the person immediately before that time for proceeds equal to its cost amount to the person at that time, and

(ii) to have been reacquired at that time by the person for the same amount.

The definition formerly read:

"mineral" includes bituminous sands, calcium chloride, coal, kaolin, oil sands, oil shale and silica, but does not include petroleum, natural gas or a related hydrocarbon not expressly referred to in this definition;

The definition "mineral" added to subsec. 248(1) by 1994, c. 21, subsec. 109(5), applicable to taxation years commencing after 1984, except that the definition shall be read without reference to the word "kaolin" in respect of taxation years ending before 1988.

Interpretation Bulletins: IT-125R4: Dispositions of resource properties.

"mineral resource" means

(a) a base or precious metal deposit,

(b) a coal deposit,

(c) a bituminous sands deposit or oil shale deposit, or

(d) a mineral deposit in respect of which

(i) the Minister of Natural Resources has certified that the principal mineral extracted is an industrial mineral contained in a non-bedded deposit,

(ii) the principal mineral extracted is ammonite gemstone, calcium chloride, diamond, gypsum, halite, kaolin or sylvite, or

(iii) the principal mineral extracted is silica that is extracted from sandstone or quartzite;

Related Provisions: *Interpretation Act* 8(2.1), (2.2) — Application to exclusive economic zone and continental shelf.

History: Subpara. (d)(ii) of the definition "mineral resource" in subsec. 248(1) amended by 1998, c. 19, subsec. 239(4), applicable to taxation years and fiscal periods that begin after 1996 except that,

(a) for greater certainty, the amendment shall not result in a characterization of expenditures made or costs incurred in a taxation year or fiscal period that began before 1997 as a Canadian exploration expense, Canadian development expense, Canadian exploration and development expense or foreign exploration and development expense or an increase in any amount deductible under s. 65 as a consequence of an expenditure made or cost incurred before 1997; and

(b) where, as a consequence of the application of this amendment, a person's property would, but for this paragraph, be recharacterized as Canadian resource property or foreign resource property at the beginning of the person's first taxation year or fiscal period that begins after 1996, for the purposes of the Act the property is deemed

(i) to have been disposed of by the person immediately before that time for proceeds equal to its cost amount to the person at that time, and

(ii) to have been reacquired at that time by the person for the same amount.

Subpara. (d)(ii) formerly read:

(ii) the principal mineral extracted is calcium chloride, diamond, gypsum, halite, kaolin or sylvite, or

Para. (c) of the definition "mineral resource" in subsec. 248(1) amended by 1997, c. 25, subsec. 71(2), applicable after March 6, 1996. Para. (c) formerly read:

(c) a bituminous sands deposit, oil sands deposit or oil shale deposit, or

Subpara. (d)(i) of "mineral resource" amended by 1994, c. 41, para. 37(1)(o), in force January 12, 1995. Subpara. (i) formerly read:

(i) the Minister of Energy, Mines and Resources has certified that the principal mineral extracted is an industrial mineral contained in a non-bedded deposit,

Subpara. (d)(ii) of the definition "mineral resource" substituted by 1994, c. 21, subsec. 109(3), applicable to taxation years commencing after 1984, except that the subpara. shall be read without reference to the word "kaolin" in respect of taxation years ending before 1988 and without reference to the word "diamond" in respect of taxation years ending before 1993. That subpara. formerly read:

(ii) the principal mineral extracted is sylvite, halite, gypsum or kaolin, or

Interpretation Bulletins: IT-125R4: Dispositions of resource properties; IT-492: CCA — Industrial mineral mines.

"minerals" — [Repealed]

History: The definition "minerals" repealed by 1994, c. 21, subsec. 109(1), applicable to taxation years commencing after 1984 (but see the definition "mineral" above, which essentially replaces it). That definition formerly read:

"minerals" does not include petroleum, natural gas or related hydrocarbons (except coal, bituminous sands, oil sands or oil shale);

"mining reclamation trust" — [Repealed]

History: The definition "mining reclamation trust" in subsec. 248(1) repealed by 1998, c. 19, subsec. 66(1), applicable after 1997 and, if an election is made by a trust in accordance with para. (i) of the definition "qualifying environmental trust" in subsec. 248(1),

(a) the trust is deemed to have never been a mining reclamation trust; and

(b) notwithstanding subsecs. 152(4) to (5), the Minister of National Revenue may before 2000 make any assessments and reassessments that are necessary to give effect to the election.

The definition formerly read:

"mining reclamation trust" at any time means a trust resident in a province and maintained at that time for the sole purpose of funding the reclamation of a mine in the province, where the first contribution to the trust was made after 1991, no amount was distributed before February 23, 1994 from the trust and the maintenance of the trust is or may become required under the terms of a contract entered into with Her Majesty in right of Canada or the province or is or may become required pursuant to a law of Canada or the province, but does not include a trust

(a) where that contract was not entered into or that law was not enacted, as the case may be, on or before the later of

(i) the day that is one year after the day the trust was created, and

(ii) January 1, 1996,

(b) that relates to the reclamation of a mine that at that time is a clay pit (other than a kaolin pit), a deposit of peat, a gravel pit, a peat bog, a sand pit, a shale pit or a stone quarry or that relates to the reclamation of a well,

(c) that is not maintained at that time to secure the mining reclamation obligations of one or more persons or partnerships that are beneficiaries under the trust,

(d) that at that time has a trustee other than

(i) Her Majesty in right of Canada or the province, or

(ii) a corporation resident in Canada that is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee,

(e) that borrows money at that time,

(f) that acquired at that time any property that is not described in any of paragraphs (a), (b) and (f) of the definition "qualified investment" in section 204,

(g) that did not comply with prescribed conditions at that time, or

(h) that was at any previous time not a mining reclamation trust;

The definition "mining reclamation trust" added by 1995, c. 3, subsec. 52(4), applicable after 1993 except with respect to a trust the first contribution to which was made before February 23, 1994 and that elects in writing filed with the Minister of National Revenue before 1996 that this definition not apply to the trust.

"Minister" means the Minister of National Revenue;

Related Provisions: 220 — Administration of the Act.

Regulations: 900 (delegation of authority by the Minister to specific officials).

"money purchase limit" for a calendar year has the meaning assigned by subsection 147.1(1);

"mortgage investment corporation" has the meaning assigned by subsection 130.1(6);

"motor vehicle" means an automotive vehicle designed or adapted to be used on highways and streets but does not include

(a) a trolley bus, or

(b) a vehicle designed or adapted to be operated exclusively on rails;

Related Provisions: 248(1) — "automobile", "passenger vehicle".

Interpretation Bulletins: IT-521R: Motor vehicle expenses claimed by self-employed individuals; IT-522R: Vehicle, travel and sales expenses of employees.

"mutual fund corporation" has the meaning assigned by subsection 131(8);

Related Provisions: 131(8.1) — Meaning of "mutual fund corporation".

"mutual fund trust" has the meaning assigned by subsection 132(6);

Related Provisions: 132(6.1), (6.2), (7), 132.2(1)(q) [to be repealed], 132.2(3)(n) [draft] — Extensions and limitations to definition of mutual fund trust.

"NISA Fund No. 2" means the portion of a taxpayer's net income stabilization account described in paragraph 8(2)(b) of the *Farm Income Protection Act*;

Related Provisions: 248(1) — "net income stabilization account".

History: "NISA Fund No. 2" enacted by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 139(7), applicable to 1991 *et seq.*

Interpretation Bulletins: IT-291R3: Transfer of property to a corporation under subsection 85(1).

Forms: RC4060: Farming income and the CAIS program [guide]; T1163: Statement A — CAIS program information and statement of farming activities for individuals; T1164: Statement B — CAIS program information and statement of farming activities for additional farming operations; T1165: Statement of farming activities for Ontario self directed risk management (SDRM); T1175: CAIS/Farming — calculation of CCA and business-use-of-home expenses.

"net capital loss" has the meaning assigned by subsection 111(8), except as otherwise expressly provided;

Related Provisions: 104(21.5) — Definition for purposes of trust's 2000 transition; 105(21.5) — Definition of net capital losses for trust allocations of capital gains in 2000; 111(1)(b) — Application of net capital losses; 111(9) — Net capital loss of person not resident in Canada.

History: The definition "net capital loss" in subsec. 248(1) amended by 2001, c. 17, subsec. 188(1), applicable to taxation years that end after February 27, 2000. It formerly read:

> "net capital loss" has the meaning assigned by subsection 111(8);

"net income stabilization account" means an account of a taxpayer under the net income stabilization account program under the *Farm Income Protection Act*;

Related Provisions: 248(1) — "NISA Fund No. 2".

History: "Net income stabilization account" enacted by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 139(7), applicable to 1991 *et seq.*

Forms: RC4060: Farming income and the CAIS program [guide]; T1163: CAIS program information and statement of farming activities for individuals; T1164: CAIS program information and statement of farming activities for additional farming operations; T1165: Statement of farming activities for Ontario self directed risk management (SDRM); T1175: CAIS/Farming — calculation of CCA and business-use-of-home expenses.

"Newfoundland offshore area" has the meaning assigned to the expression "offshore area" by the *Canada-Newfoundland Atlantic Accord Implementation Act*, chapter 3 of the Statutes of Canada, 1987;

"non-capital loss" has the meaning assigned by subsection 111(8);

Related Provisions: 111(1)(a) — Application of non-capital losses; 111(9) — Non-capital loss of person not resident in Canada.

"non-resident" means not resident in Canada;

Related Provisions: 2(3) — Tax payable by non-resident persons; 94–94.4 — Non-resident trusts and foreign investment entities; 94(3)(a) — Certain trusts deemed resident in Canada; 138.1(1)(c)(iii) — Insurer deemed non-resident in respect of segregated fund property used outside Canada; 250 — Resident in Canada.

"non-resident-owned investment corporation" has the meaning assigned by subsection 133(8);

"Nova Scotia offshore area" has the meaning assigned to the expression "offshore area" by the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, chapter 28 of the Statutes of Canada, 1988;

Related Provisions: 124(4)"province" — Taxable income earned in offshore area deemed earned in a province.

"OSFI risk-weighting guidelines" means the guidelines, issued by the Superintendent of Financial Institutions under the authority of section 600 of the *Bank Act*, requiring an authorized foreign bank to provide to the Superintendent on a periodic basis a return of the bank's risk-weighted on-balance sheet assets and off-balance sheet exposures, that apply as of August 8, 2000;

History: The definition "OSFI risk-weighting guidelines" added to subsec. 248(1) by 2001, c. 17, subsec. 188(5), applicable after June 27, 1999.

"office" means the position of an individual entitling the individual to a fixed or ascertainable stipend or remuneration and includes a judicial office, the office of a minister of the Crown, the office of a member of the Senate or House of Commons of Canada, a member of a legislative assembly or a member of a legislative or executive council and any other office, the incumbent of which is elected by popular vote or is elected or appointed in a representative capacity and also includes the position of a corporation director, and "officer" means a person holding such an office;

Selected Cases [subsec. 248(1)"office"]: *Alexander v. MNR*, [1969] C.T.C. 715 (Exch.) (Hospital radiologist and department head held to be independent contractor).

Interpretation Bulletins: IT-377R: Director's, executor's or juror's fees (archived).

"officer" — [See the final words of "office" above.]

"oil or gas well" means any well (other than an exploratory probe or a well drilled from below the surface of the earth) drilled for the purpose of producing petroleum or natural gas or of determining the existence, location, extent or quality of a natural accumulation of petroleum or natural gas, but, for the purpose of applying sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a) in respect of property acquired after March 6, 1996, does not include a well for the extraction of material from a deposit of bituminous sands or oil shales;

History: The definition "oil or gas well" in subsec. 248(1) amended by 1997, c. 25, subsec. 71(1), applicable after March 6, 1996. It formerly read:

> "oil or gas well" means any well (other than an exploratory probe or a well drilled from below the surface of the earth) drilled for the purpose of producing petroleum or natural gas or of determining the existence, location, extent or quality of a natural accumulation of petroleum or natural gas;

Interpretation Bulletins: IT-125R4: Dispositions of resource properties.

"overseas Canadian Forces school staff" means personnel employed outside Canada whose services are acquired by the Minister of National Defence under a prescribed order relating to the provision of educational facilities outside Canada;

Related Provisions: 250(1)(d.1) — Optional deemed residence in Canada.

Regulations: 6600 (prescribed order).

"paid-up capital" has the meaning assigned by subsection 89(1);

"paid-up capital deficiency" — [Repealed under former Act]

"Part VII refund" has the meaning assigned by subsection 192(2);

Origin of "Part VII refund": R.S.C. 1985, c. 1 (5th Supp.).

"Part VIII refund" has the meaning assigned by subsection 194(2);

Origin of "Part VIII refund": R.S.C. 1985, c. 1 (5th Supp.).

"participant" — [Repealed under former Act]

Proposed Addition — 248(1)"participating interest"

"participating interest" has the meaning assigned by section 94.1;

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 44(6), will add the definition "participating interest" to subsec. 248(1), applicable to taxation years that begin after 2002.

Technical Notes: The definition "participating interest" is included in subsection 248(1) so that the definition of this expression in subsection 94.1(1) applies for the purposes of the Act.

"passenger vehicle" means an automobile acquired after June 17, 1987 (other than an automobile acquired after that date pursuant to an obligation in writing entered into before June 18, 1987) and an automobile leased under a lease entered into, extended or renewed after June 17, 1987;

Regulations: Sch. II:Cl. 10, Sch. II:Cl. 10.1, Sch. II:Cl. 16.

Interpretation Bulletins: IT-291R3: Transfer of property to a corporation under subsection 85(1); IT-521R: Motor vehicle expenses claimed by self-employed individuals; IT-522R: Vehicle, travel and sales expenses of employees.

"past service pension adjustment" of a taxpayer for a calendar year in respect of an employer has the meaning assigned by regulation;

Regulations: 8303(1).

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Forms: T215: Past service pension adjustment exempt from certification; T215 Segment; T215 Summ: Summary of past service pension adjustments exempt from certification; T1004: Applying for the certification of a provisional PSPA; T1006: Designating an RRSP withdrawal as a qualifying withdrawal; T4104: Past service pension adjustment guide.

"pension adjustment" of a taxpayer for a calendar year in respect of an employer has the meaning assigned by regulation;

Related Provisions: 146(5.21) — Anti-avoidance.

Regulations: 8301(1).

Forms: T4084: Pension Adjustment Guide.

"person", or any word or expression descriptive of a person, includes any corporation, and any entity exempt, because of subsection 149(1), from tax under Part I on all or part of the entity's taxable income and the heirs, executors, liquidators of a succession, administrators or other legal representatives of such a person, according to the law of that part of Canada to which the context extends;

Related Provisions: 33.1(2)(a) — "Person" includes partnership for international banking centre rules; 66(16) — "Person" includes partnership for flow-through share rules; 79(1), 79.1(1) — Includes partnership for rules re seizure of property by creditor; 80(1), 80.01(1) — Includes partnership for debt forgiveness rules; 127.2(9), 127.3(7) — Includes partnership for SPTC and SRTC rules; 139.1(1) — Includes partnership for insurance demutualization; 187.4(c) — Includes partnership for Part IV.1 tax; 209(6) — Includes partnership for purposes of tax on carved-out income; 227(5.2), (15) — Includes partnership for certain purposes re withholding tax; 237.1(1) — Includes partnership for tax shelter identification rules; 251.1(4) — Includes partnership for definition of affiliated persons; Canada-U.S. Tax Treaty:Art. III:1(e) — Meaning of "person" for treaty purposes.

History: "Person" amended by 2001, c. 17, subsec. 230(1), to add "liquidators of a succession,", in force June 14, 2001.

"Person" substituted by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 139(1). "Person" formerly read:

> "person", or any word or expression descriptive of a person, includes any body corporate, and the heirs, executors, administrators or other legal representatives of the person, according to the law of that part of Canada to which the context extends;

Interpretation Bulletins: IT-216: Corporation holds property as agent for shareholder (archived); IT-379R: Employees profit sharing plans — allocations to beneficiaries.

Information Circulars: 78-10R4: Books and records retention/destruction; 05-1: Electronic record keeping.

I.T. Technical News: 25 (partnership issues).

Advance Tax Rulings: ATR-1: Transfer of legal title in land to bare trustee.

"personal or living expenses" includes

(a) the expenses of properties maintained by any person for the use or benefit of the taxpayer or any person connected with the taxpayer by blood relationship, marriage or common-law partnership or adoption, and not maintained in connection with a business carried on for profit or with a reasonable expectation of profit,

(b) the expenses, premiums or other costs of a policy of insurance, annuity contract or other like contract if the proceeds of the policy or contract are payable to or for the benefit of the taxpayer or a person connected with the taxpayer by blood relationship, marriage or common-law partnership or adoption, and

(c) expenses of properties maintained by an estate or trust for the benefit of the taxpayer as one of the beneficiaries;

Related Provisions: 18(1)(h), 56(1)(o)(i) — No deduction for personal or living expenses.

History: The definition "personal or living expenses" in subsec. 248(1) amended by 2000, c. 12, Sch. 2, s. 9, to replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Selected Cases [subsec. 248(1)"personal or living expenses"]: *McNeill v. Canada*, [1989] 2 C.T.C. 310 (FCTD) (MURB unit was acquired as source of income with a reasonable expectation of profit).

"personal services business" has the meaning assigned by subsection 125(7);

"personal trust" means

(a) a testamentary trust, or

(b) an *inter vivos* trust, no beneficial interest in which was acquired for consideration payable directly or indirectly to

(i) the trust, or

(ii) any person who has made a contribution to the trust by way of transfer, assignment or other disposition of property,

but, after 1999, does not include a unit trust;

Related Provisions: 107.4(3)(i) — Trust deemed not to be personal trust; 108(6) — Where terms of trust are varied; 108(7) — Meaning of "acquired for consideration"; 110.6(16) — Extension of definition for purposes of capital gains exemption; 128.1(10)"excluded right or interest"(j) — No deemed disposition on emigration of beneficiary; 251(1)(b) — Trust deemed not at arm's length with beneficiary.

History: The portion of the definition "personal trust" after subpara. (b)(ii) amended by 2001, c. 17, subsec. 188(4), applicable after December 23, 1998. That portion formerly read:

> and, for the purposes of this paragraph and paragraph 53(2)(h), where all the beneficial interests in a particular *inter vivos* trust acquired by way of the transfer, assignment or other disposition of property to the particular trust were acquired by
>
> (iii) one person, or
>
> (iv) 2 or more persons who would be related to each other if
>
> (A) a trust and another person were related to each other, where the other person is a beneficiary under the trust or is related to a beneficiary under the trust, and
>
> (B) a trust and another trust were related to each other, where a beneficiary under the trust is a beneficiary under the other trust or is related to a beneficiary under the other trust,
>
> any beneficial interest in the particular trust acquired by such a person shall be deemed to have been acquired for no consideration;

All that portion of para. (b) of "personal trust" following subpara. (ii) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 139(4), applicable after 1987. That portion formerly read:

> and, for the purposes of this paragraph and paragraph 53(2)(h), where an *inter vivos* trust is created by way of the transfer, assignment or other disposition of property by an individual (or two or more individuals each of whom was, at the time the trust was created, related to each of the other individuals), any beneficial interest in the trust acquired by the individual, or individuals, at the time the

trust was created shall be deemed to have been acquired for no consideration;

Interpretation Bulletins: IT-342R: Trusts — Income payable to beneficiaries; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-385R2: Disposition of an income interest in a trust.

"personal-use property" has the meaning assigned by section 54;

"post-1971 spousal or common-law partner trust" means a trust that would be described in paragraph 104(4)(a) if that paragraph were read without reference to subparagraph 104(4)(a)(iv);

Related Provisions: 104(6)(b)(ii), (iii) — Deduction from income of trust; 104(15)(a) — Preferred beneficiary election; 107(4)(a)(i) — Distribution of property to person other than taxpayer or partner.

History: The definition "post-1971 spousal or common-law partner trust" added to subsec. 248(1) by 2001, c. 17, subsec. 188(5), applicable to trusts created after 1971.

"preferred share" means a share other than a common share;

"prescribed" means

(a) in the case of a form, the information to be given on a form or the manner of filing a form, authorized by the Minister,

(a.1) in the case of the manner of making or filing an election, authorized by the Minister, and

(b) in any other case, prescribed by regulation or determined in accordance with rules prescribed by regulation;

Related Provisions: 147.1(18) — Regulation re pension plans; 220(3.21) — Certain designations in prescribed form deemed to be elections; 221 — Regulations generally; 244(16) — Forms prescribed or authorized; 248(1) — "Regulation"; *Interpretation Act* 32 — Deviations from prescribed form acceptable.

History: Para. (a) of "prescribed" substituted and para. (a.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(9). Para. (a) formerly read:

(a) in the case of a form or the information to be given on a form, prescribed by order of the Minister, and

Selected Cases [subsec. 248(1)"prescribed"]: *Cal Investments Ltd. v. Canada*, [1990] 2 C.T.C. 418 (FCTD) (Where a taxpayer and defrauded principal agreed to treat funds diverted as loans, taxpayer had no *mens rea* for evasion in respect of return filed after agreement. Waiver without corporate seal valid where signed by an officer of the company with implied authority; corporate seal discretionary provision for Minister's benefit).

Regulations: Part I–XCII.

Application Policies: SR&ED 2004-02: Filing requirements for claiming SR&ED carried out in Canada.

"principal amount", in relation to any obligation, means the amount that, under the terms of the obligation or any agreement relating thereto, is the maximum amount or maximum total amount, as the case may be, payable on account of the obligation by the issuer thereof, otherwise than as or on account of interest or as or on account of any premium payable by the issuer conditional on the exercise by the issuer of a right to redeem the obligation before the maturity thereof;

Related Provisions: 80.02(2)(a) — Principal amount of distress preferred share.

I.T. Application Rules: 26(1.1) (where obligation was outstanding on January 1, 1972).

I.T. Technical News: 25 (foreign exchange losses).

"private corporation" has the meaning assigned by subsection 89(1);

"private foundation" has the meaning assigned by section 149.1;

History: The definition "private foundation" added to subsec. 248(1) by 1998, c. 19, subsec. 66(3), applicable after 1996.

"private health services plan" means

(a) a contract of insurance in respect of hospital expenses, medical expenses or any combination of such expenses, or

(b) a medical care insurance plan or hospital care insurance plan or any combination of such plans,

except any such contract or plan established by or pursuant to

(c) a law of a province that establishes a health care insurance plan as defined in section 2 of the *Canada Health Act*, or

(d) an Act of Parliament or a regulation made thereunder that authorizes the provision of a medical care insurance plan or hospital care insurance plan for employees of Canada and their dependants and for dependants of members of the Royal Canadian Mounted Police and the regular force where such employees or members were appointed in Canada and are serving outside Canada;

Related Provisions: 6(1)(a)(i) — Employer's contribution to private health services plan not a taxable benefit; 20.01 — Deduction from business income for premiums paid to plan; 118.2(2)(q) — Medical expense credit for premiums paid to private health services plan.

History: Para. (c) of the definition "private health services plan" in subsec. 248(1) amended by 1999, c. 22, subsec. 80(3), deemed to have come into force on April 1, 1996. It formerly read:

(c) a law of a province that establishes a health care insurance plan in respect of which the province receives contributions from Canada for insured health services provided under the plan pursuant to the *Federal-Provincial Fiscal Arrangements Act*, or

Para. (c) of "private health services plan" amended by 1995, c. 17, subsec. 45(2), to substitute "*Federal-Provincial Fiscal Arrangements Act*" for "*Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act*", in force April 1, 1996.

Interpretation Bulletins: IT-339R2: Meaning of "private health services plan"; IT-529: Flexible employee benefit programs.

Advance Tax Rulings: ATR-8: Self-insured health and welfare trust fund; ATR-23: Private health services plan.

"professional corporation" means a corporation that carries on the professional practice of an accountant, dentist, lawyer, medical doctor, veterinarian or chiropractor;

Related Provisions: 249.1(1)(b) — Year-end of professional corporation.

History: The definition "professional corporation" added by 1996, c. 21, subsec. 60(2), applicable after 1994.

"profit sharing plan" has the meaning assigned by subsection 147(1);

"property" means property of any kind whatever whether real or personal or corporeal or incorporeal and, without restricting the generality of the foregoing, includes

Proposed Amendment — 248(1)"property" opening words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 278(4), will amend the opening words of the definition "property" in subsec. 248(1) by substituting "personal, immovable or movable, tangible or intangible," for "personal", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(a) a right of any kind whatever, a share or a chose in action,

(b) unless a contrary intention is evident, money,

(c) a timber resource property, and

(d) the work in progress of a business that is a profession;

Related Provisions: 9(1), 9(3) — Income from property; 79(1), 79.1(1) — Definition of property for purposes of rules re seizure of property by creditor; 248(5) — Meaning of substituted property.

Selected Cases [subsec. 248(1)"property"]: *Manrell v. R.*, [2003] 3 C.T.C. 50 (FCA); rev'g [2002] 1 C.T.C. 2543 (TCC) (Right to compete is not "property"); *RSI Research Ltd. v. Canada*, [1993] 2 C.T.C. 2378 (TCC) (Right to portion of revenues was "property"); *Sani Sport Inc. v. Canada*, [1990] 2 C.T.C. 15 (FCA) (Amount paid for loss of business use of expropriated land was capital gain).

I.T. Application Rules: 26(6) (property disposed of and reacquired from June 19 to December 31, 1971).

Interpretation Bulletins: IT-334R2: Miscellaneous receipts; IT-432R2: Benefits conferred on shareholders; IT-457R: Election by professionals to exclude work in progress from income.

Application Policies: SR&ED 2000-04R2: Recapture of investment tax credit.

Advance Tax Rulings: ATR-60: Joint exploration corporations.

"province" — [Repealed under former Act]

"public corporation" has the meaning assigned by subsection 89(1);

"public foundation" has the meaning assigned by section 149.1;

History: The definition "public foundation" added to subsec. 248(1) by 1998, c. 19, subsec. 66(3), applicable after 1996.

"qualified donee" has the meaning assigned by subsection 149.1(1).

Related Provisions: 188.2(3)(a)(ii) — Effect of suspension of charity's receipting privileges.

History: The definition "qualified donee" added to subsec. 248(1) by 2001, c. 17, subsec. 188(5), applicable after 1998.

"qualifying environmental trust" at any time means a trust resident in a province and maintained at that time for the sole purpose of funding the reclamation of a site in the province that had been used primarily for, or for any combination of, the operation of a mine, the extraction of clay, peat, sand, shale or aggregates (including dimension stone and gravel) or the deposit of waste, where the maintenance of the trust is or may become required under the terms of a contract entered into with Her Majesty in right of Canada or the province or is or may become required under a law of Canada or the province and the contract was entered into or that law was enacted, as the case may be, on or before the later of January 1, 1996 and the day that is one year after the day on which the trust was created, but does not include a trust

(a) that relates at that time to the reclamation of a well,

(b) that is not maintained at that time to secure the reclamation obligations of one or more persons or partnerships that are beneficiaries under the trust,

(c) that at that time has a trustee other than

(i) Her Majesty in right of Canada or the province, or

(ii) a corporation resident in Canada that is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee,

(d) that borrows money at that time,

(e) that acquired at that time any property that is not described in any of paragraphs (a), (b) and (f) of the definition "qualified investment" in section 204,

(f) to which the first contribution was made before 1992,

(g) from which any amount was distributed before February 23, 1994,

(h) if that time is before 1998 and the trust is not a mining reclamation trust at that time,

(i) to which the first contribution was made before 1996,

(ii) from which any amount was distributed before February 19, 1997, or

(iii) any interest in which was disposed of before February 19, 1997,

(i) that elected in writing filed with the Minister, before 1998 or before April of the year following the year in which the first contribution to the trust was made, never to have been a qualifying environmental trust, or

(j) that was at any previous time during its existence not a qualifying environmental trust;

Related Provisions: 12(1)(z.1), (z.2) — Income from trust or from sale of interest; 20(1)(ss), (tt) — Deduction for contribution to trust or acquisition of interest; 75(3)(c.1) — Reversionary trust rules do not apply; 107.3(1), (2) — Rules applying to trust; 107.3(3) — Where trust ceases to be qualifying environmental trust; 127.41 — Tax credit to beneficiary of trust; 149(1)(z) — No Part I tax on trust; 211.6 — Part XII.4 tax on trust; 248(1)"cost amount"(e.2) — Cost amount of interest in trust is zero; 250(7) — Trust deemed resident in province where site is located.

History: The definition "qualifying environmental trust" addded to subsec. 248(1) by 1998, c. 19, subsec. 66(3), applicable after 1991.

Proposed Addition — 248(1) "qualifying member"

"qualifying member", in respect of a partnership at any time, means a person that is at that time a qualifying member of the partnership for the purposes of subdivision i of Division B because of paragraph 95(2)(o);

Application: The February 27, 2004 draft legislation (Part 2 — foreign affiliates), s. 134, will add the definition "qualifying member" to subsec. 248(1), applicable to taxation years that end after 1999.

Technical Notes: The definition "qualifying member" is added to subsection 248(1).

Under this definition a qualifying member, in respect of a partnership at any time, means a person that is at that time a qualifying member of the partnership for the purposes of subdivision i of Division B of Part I of the Act because of paragraph 95(2)(o). For more detail, see the commentary to new paragraphs 95(2)(o) and (q).

This definition is also relevant for the purposes of the amendments to the definitions "exempt earnings" and "exempt loss" in subsection 5907(1) of the Regulations. For more detail, see the commentary to that subsection.

The addition of the definition "qualifying member" applies to taxation years that end after 1999.

"qualifying share" has the meaning assigned by subsection 192(6);

Proposed Addition — 248(1)"qualifying trust annuity"

"qualifying trust annuity" has the meaning assigned by subsection 60.011(2);

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 185(12), will add the definition "qualifying trust annuity" to subsec. 248(1), applicable after 1998.

Technical Notes: The term "qualifying trust annuity" is added to subsection 248(1), and is defined to have the meaning assigned by new subsection 60.011(2). A distinguishing feature of a qualifying trust annuity is that the annuitant is a trust. Special provisions relating to qualifying trust annuities are set out in sections 60.011, 75.2, 148 and 160.2. (Refer to the explanatory notes on those provisions for further details.)

"RRSP deduction limit" has the meaning assigned by subsection 146(1);

"RRSP dollar limit" has the meaning assigned by subsection 146(1);

"record" includes an account, an agreement, a book, a chart or table, a diagram, a form, an image, an invoice, a letter, a map, a memorandum, a plan, a return, a statement, a telegram, a voucher, and any other thing containing information, whether in writing or in any other form;

History: The definition "record" added to subsec. 248(1) by 1998, c. 19, subsec. 239(6), in force on June 18, 1998.

Information Circulars: 78-10R4: Books and records retention/destruction.

Forms: RC4409: Keeping records [guide].

"refundable Part VII tax on hand" has the meaning assigned by subsection 192(3);

"refundable Part VIII tax on hand" has the meaning assigned by subsection 194(3);

"registered Canadian amateur athletic association" means an association that was created under any law in force in Canada, that is resident in Canada and that

(a) is a person described in paragraph 149(1)(l), and

(b) has, as its primary purpose and its primary function, the promotion of amateur athletics in Canada on a nation-wide basis,

that has applied to the Minister in prescribed form for registration, that has been registered and whose registration has not been revoked under subsection 168(2);

Related Provisions: 143.1 — Amateur athletes' reserve funds.

Selected Cases: *Maccabi Canada v. MNR*, [1998] 4 C.T.C. 21 (FCA) (No demographic element to be read into definition).

Interpretation Bulletins: IT-168R3: Athletes and players employed by football, hockey and similar clubs; IT-496R: Non-profit organizations.

Forms: T1189: Application to register a Canadian amateur athletic association under the ITA.

Registered Charities Newsletters: 2 (revised publications and forms).

Charities Policies: CPS-007: RCAAAs: Receipts — issuing policy; CPS-011: Registration of Canadian amateur athletic associations.

"registered charity" at any time means

(a) a charitable organization, private foundation or public foundation, within the meanings assigned by subsection 149.1(1), that is resident in Canada and was either created or established in Canada, or

(b) a branch, section, parish, congregation or other division of an organization or foundation described in paragraph (a), that is resident in Canada and was either created or established in Canada and that receives donations on its own behalf,

that has applied to the Minister in prescribed form for registration and that is at that time registered as a charitable organization, private foundation or public foundation;

Proposed Amendment — Public benefit test for charity registration

CRA Charities announcement, September 30, 2004: *Consultation on Proposed Guidelines for Registering a Charity: Meeting the Public Benefit Test*

Registered charities have told the CRA that they require more information relating to the criteria applied and the process involved for attaining registered status. As part of our ongoing sector outreach initiative we are now releasing draft guidelines on the test for public benefit, a fundamental requirement for every charitable endeavour. The purpose of the guidelines is to provide basic information about the requirement and to clarify the meaning of the term "public benefit" as we understand and apply it when we make determinations of charitable status under the ITA.

The CRA wants to hear from charities and individuals involved in charitable work as well as government departments and the public generally. We seek your views about whether these guidelines are easy to understand and apply but also welcome comments about all aspects of the proposed guidelines. Please feel free to forward this information to groups who may not be regular visitors to our site, but who may be interested in contributing their views.

We will consider all comments received by December 15, 2004.

Please send all replies in writing to the attention of Jocelyne Dumoulin by email to consultation-policy-politique@ccra-adrc.gc.ca [or:] Charities Directorate, CRA, Tower A, 320 Queen Street, Ottawa ON K1A 0L5; fax (613) 948-1320

[The full text of this consultation document (34 pages) can be found on *TaxPartner*, *taxnet.pro* or cra.gc.ca/charities — ed.]

Related Provisions: 149(1)(f) — No tax on registered charity; 149.1 — Rules for charities; 149.1(4.1)(c) — Revocation of registration if false statement made to obtain it; 149.1(6.3) — Designation as public foundation, etc; 149.1(6.4) — Registered national arts service organization treated as registered charity; 149.1(22) — Notice of refusal to register charity; 149.1(23) — Annulment of charity registration; 188.2(3)(a)(ii) — Effect of suspension of charity's receipting privileges; Canada-U.S. Tax Treaty:Art. XXI — Exempt organizations.

Selected Cases: *Vancouver Society of Immigrant & Visible Minority Women v. MNR*, [1999] 2 C.T.C. 1 (SCC); aff'g [1996] 2 C.T.C. 88 (FCA) (Valid charitable organization must be constituted exclusively for charitable purposes); *Vancouver Regional FreeNet Association v. MNR*, [1996] 3 C.T.C. 102 (FCA) (Provision of access to information on Internet free of charge was charitable activity).

Interpretation Bulletins: IT-496R: Non-profit organizations.

Forms: RC4106: Registered charities operating outside Canada [guide]; RC4108: Registered charities and the *Income Tax Act* [guide]; T2050: Application to register a charity under the ITA; T2095: Canadian charities — application for re-designation; T4063: Registering a charity for income tax purposes [guide].

Registered Charities Newsletters: 2 (revised publications and forms); 8 (changes in departmental policy on applications for re-registration); 10 (re-registration fee); 11 (renewal in the Charities Directorate; consultation on registering organizations that provide rental housing for low-income; facts about charities); 12 (promoting volunteerism: *Grand Forks Volunteer Society v. MNR*); 13 (from the Director General); 14 (registration process speeds up); 15 (facts and figures about charities and the CCRA; registered charities as internal divisions of other charities); 16 (issues: amalgamations, mergers, and consolidations); 18 (statistics on charities); 19 (new charity representative position created; facts and figures about charities and the CRA in 2003; what is the difference between a registered charity and a non-profit organization?); 20 (working outside Canada — board of directors); 21 (when is an amalgamation not an amalgamation?); 23 (facts and figures about charities and the CRA in 2004).

Charities Policies: CPS-017: Effective date of registration. See under 149.1(1)"charitable organization" for Policies on what organizations will be registered.

"registered education savings plan" has the meaning assigned by subsection 146.1(1);

"registered home ownership savings plan" — [Repealed under former Act]

"registered investment" has the meaning assigned by subsection 204.4(1);

"registered labour-sponsored venture capital corporation" means a corporation that was registered under subsection 204.81(1), the registration of which has not been revoked;

History: The definition "registered labour-sponsored venture capital corporation" added to subsec. 248(1) by 1997, c. 25, subsec. 71(3), applicable after 1995.

"registered national arts service organization", at any time, means a national arts service organization that has been registered by the Minister under subsection 149.1(6.4), which registration has not been revoked;

History: "Registered national arts organization" enacted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(14), applicable after July 13, 1990.

"registered pension fund or plan" — [Repealed under former Act]

"registered pension plan" means a pension plan that has been registered by the Minister for the purposes of this Act, which registration has not been revoked;

Related Provisions: 147.1(2) — Registration of plan; 147.1(3) — Deemed registration; 128.1(10)"excluded right or interest"(a)(viii) — No deemed disposition of pension rights on emigration.

Selected Cases [subsec. 248(1)"registered pension plan"]: *Kamil v. R.*, [1999] 1 C.T.C. 2447 (TCC) (U.S. 401K plan is not a "registered pension plan").

I.T. Application Rules: 17(8) (reference to RPP includes reference to approved plan before RPP amendment in 1990).

Interpretation Bulletins: IT-167R6: Registered pension plans — employee's contributions; IT-528: Transfers of funds between registered plans.

Forms: T510: Application to register a pension plan.

"registered retirement income fund" has the meaning assigned by subsection 146.3(1);

"registered retirement savings plan" has the meaning assigned by subsection 146(1);

"registered securities dealer" means a person registered or licensed under the laws of a province to trade in securities, in the capacity of an agent or principal, without any restriction as to the types or kinds of securities in which that person may trade;

Related Provisions: 142.2(1)"investment dealer", 142.5 — Corporation subject to mark-to-market rules.

History: The definition "registered securities dealer" added by 1995, c. 21, subsec. 74(2), applicable after April 26, 1989.

"registered supplementary unemployment benefit plan" has the meaning assigned by subsection 145(1);

"regulation" means a regulation made by the Governor in Council under this Act;

Related Provisions: 65(2) — Regulations allowing resource allowances; 147.1(18) — Regulations re pension plans; 215(5) — Regulations reducing amount to be deducted or withheld; 221 — Regulations generally; 248(1) — "Prescribed".

"restricted farm loss" has the meaning assigned by subsection 31(1.1);

Related Provisions: 111(1)(c) — Application of restricted farm losses; 111(9) — Restricted farm loss where taxpayer not resident in Canada.

History: The definition "restricted farm loss" amended by 1995, c. 21, subsec. 43(1), applicable to taxation years that end after February 21, 1994. The definition formerly read:

> "restricted farm loss" has the meaning assigned by subsection 31(1);

"restricted financial institution" means

(a) a bank,

(b) a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee,

(c) a credit union,

(d) an insurance corporation,

(e) a corporation whose principal business is the lending of money to persons with whom the corporation is dealing at arm's length or the purchasing of debt obligations issued by such persons or a combination thereof,

(e.1) a corporation described in paragraph (g) of the definition "financial institution" in subsection 181(1), or

(f) a corporation that is controlled by one or more corporations described in any of paragraphs (a) to (e.1);

Related Provisions: 131(10) — Mutual fund corporation or investment corporation — election not to be restricted financial institution; 142.2(1)"financial institution" — Definition for mark-to-market and related rules; 256(6), (6.1) — Meaning of "controlled".

History: Para. (f) of the definition "restricted financial institution" in subsec. 248(1) amended, and para. (e.1) added, by 1999, c. 22, subsec. 80(4), applicable to taxation years that begin after 1998. Para. (f) formerly read:

> (f) a corporation that is controlled by one or more corporations described in any of paragraphs (a) to (e);

Regulations: 8604 [to be repealed] (prescribed financial institutions).

I.T. Technical News: 25 (*Silicon Graphics* case — dispersed control is not control).

"retirement compensation arrangement" means a plan or arrangement under which contributions (other than payments made to acquire an interest in a life insurance policy) are made by an employer or former employer of a taxpayer, or by a person with whom the employer or former employer does not deal at arm's length, to another person or partnership (in this definition and in Part XI.3 referred to as the "custodian") in connection with benefits that are to be or may be received or enjoyed by any person on, after or in contemplation of any substantial change in the services rendered by the taxpayer, the retirement of the taxpayer or the loss of an office or employment of the taxpayer, but does not include

(a) a registered pension plan,

(b) a disability or income maintenance insurance plan under a policy with an insurance corporation,

(c) a deferred profit sharing plan,

(d) an employees profit sharing plan,

(e) a registered retirement savings plan,

(f) an employee trust,

(g) a group sickness or accident insurance plan,

(h) a supplementary unemployment benefit plan,

(i) a vacation pay trust described in paragraph 149(1)(y),

(j) a plan or arrangement established for the purpose of deferring the salary or wages of a professional athlete for [the athlete's] services as such with a team that participates in a league having regularly scheduled games (in this definition referred to as an "athlete's plan"), where

(i) the plan or arrangement would, but for paragraph (j) of the definition "salary deferral arrangement" in this subsection, be a salary deferral arrangement, and

(ii) in the case of a Canadian team, the custodian of the plan or arrangement carries on business through a fixed place of business in Canada and is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee,

(k) a salary deferral arrangement, whether or not deferred amounts thereunder are required to be included as benefits under paragraph 6(1)(a) in computing a taxpayer's income,

(l) a plan or arrangement (other than an athlete's plan) that is maintained primarily for the benefit of non-residents in respect of services rendered outside Canada,

(m) an insurance policy, or

(n) a prescribed plan or arrangement,

and, for the purposes of this definition, where a particular person holds property in trust under an arrangement that, if the property were held by another person, would be a retirement compensation arrangement, the arrangement shall be deemed to be a retirement compensation arrangement of which the particular person is the custodian;

Related Provisions: 8(1)(m.2) — Employee RCA contributions; 12(11) — Definitions — "investment contract"; 75(3)(a) — Reversionary trust rules do not apply to RCA ; 94(1)"exempt foreign trust"(e) — RCA excluded from non-resident trust rules; 128.1(10)"excluded right or interest"(a)(ix) — No deemed disposition of right to RCA on emigration; 207.6(2) — Life insurance policies; 207.6(4) — Deemed contribution; 207.6(5) — Resident's arrangement; 252.1(c), (d) — All branches of a union deemed to be a single employer.

Regulations: 6802 (prescribed plan or arrangement).

Interpretation Bulletins: IT-529: Flexible employee benefit programs.

Advance Tax Rulings: ATR-45: Share appreciation rights plan.

Forms: T733: Application for "A retirement compensation arrangement" (RCA) identification account; T4041: Retirement compensation arrangements guide.

"retirement income fund" has the meaning assigned by subsection 146.3(1);

"retirement savings plan" has the meaning assigned by subsection 146(1);

"retiring allowance" means an amount (other than a superannuation or pension benefit, an amount received as a consequence of the death of an employee or a benefit described in subparagraph 6(1)(a)(iv)) received

(a) on or after retirement of a taxpayer from an office or employment in recognition of the taxpayer's long service, or

(b) in respect of a loss of an office or employment of a taxpayer, whether or not received as, on account or in lieu of payment of, damages or pursuant to an order or judgment of a competent tribunal,

by the taxpayer or, after the taxpayer's death, by a dependant or a relation of the taxpayer or by the legal representative of the taxpayer;

Related Provisions: 56(1)(a)(ii) — Inclusion in income; 60(j.1) — Rollover of retiring allowance to RRSP; 60(o.1)(ii) — Deduction of legal expenses incurred to obtain retiring allowance; 128.1(10)"excluded right or interest"(d) — No deemed disposition of right to retiring allowance on emigration; 248(8) — Occurrences as a consequence of death.

Selected Cases [subsec. 248(1)"retiring allowance"]: *Fawkes v. R.*, [2004] 5 C.T.C. 2430 (TCC) ("In respect of" includes "in association with" loss of taxpayer's position); *Fostey v. R.*, [1999] 4 C.T.C. 2575 (TCC) (New employment so radically different from old that payment from old was regarded as retiring allowance); *Schwartz v. Canada*, [1996] 1 C.T.C. 303 (SCC) (Retiring allowance not related to employment which never started); *Merrins v. Canada*, [1995] 1 C.T.C. 111 (FCTD) (Amount received on settlement of grievance arising from lay-off was "retiring allowance"); *Doyle v. R.*, [1983] C.T.C. 339 (FCTD) (No genuine retirement from office of director of wound-up company where its business transferred to another company and managed by same individual as director of second company); *Lorenzen v. R.*, [1981] C.T.C. 377 (FCTD) (Retiring allowance disallowed where former president/director of wound-up company continued to manage transferred business as president/director of transferee company).

Interpretation Bulletins: IT-99R5: Legal and accounting fees; IT-337R4: Retiring allowances; IT-365R2: Damages, settlements and similar receipts; IT-508R: Death benefits.

I.T. Technical News: 7 (retiring allowances); 19 (Retiring allowances — clarification to Interpretation Bulletin IT-337R3); 20 (retiring allowances — effect of re-employment or employment with affiliate).

Application Policies: SR&ED 2004-01: Retiring allowance.

Advance Tax Rulings: ATR-12: Retiring allowance.

"salary deferral arrangement", in respect of a taxpayer, means a plan or arrangement, whether funded or not, under which any person has a right in a taxation year to receive an amount after the year where it is reasonable to consider that one of the main purposes for the creation or existence of the right is to postpone tax payable under this Act by the taxpayer in respect of an amount that is, or is on account or in lieu of, salary or wages of the taxpayer for services rendered by the taxpayer in the year or a preceding taxation year (including such a right that is subject to one or more conditions unless there is a substantial risk that any one of those conditions will not be satisfied), but does not include

(a) a registered pension plan,

(b) a disability or income maintenance insurance plan under a policy with an insurance corporation,

(c) a deferred profit sharing plan,

(d) an employees profit sharing plan,

(e) an employee trust,

(f) a group sickness or accident insurance plan,

(g) a supplementary unemployment benefit plan,

(h) a vacation pay trust described in paragraph 149(1)(y),

(i) a plan or arrangement the sole purpose of which is to provide education or training for employees of an employer to improve their work or work-related skills and abilities,

(j) a plan or arrangement established for the purpose of deferring the salary or wages of a professional athlete for the services of the athlete as such with a team that participates in a league having regularly scheduled games,

(k) a plan or arrangement under which a taxpayer has a right to receive a bonus or similar payment in respect of services rendered by the taxpayer in a taxation year to be paid within 3 years following the end of the year, or

(l) a prescribed plan or arrangement;

Related Provisions: 6(1)(i) — Income inclusion on payment from SDA; 6(11) — Income inclusion on having right to payment from SDA; 12(11) — Definitions — "investment contract"; 56(1)(w) — Income inclusion on payment from SDA; 128.1(10)"excluded right or interest"(a)(vii), (b) — No deemed disposition of right to SDA on emigration.

Regulations: 6801 (prescribed plan or arrangement).

Interpretation Bulletins: IT-109R2: Unpaid amounts; IT-168R3: Athletes and players employed by football, hockey and similar clubs; IT-529: Flexible employee benefit programs.

I.T. Technical News: 7 (salary deferral arrangement — paragraph (k)).

Advance Tax Rulings: ATR-39: Self-funded leave of absence; ATR-45: Share appreciation rights plan; ATR-64: Phantom stock award plan.

"salary or wages", except in sections 5 and 63 and the definition "death benefit" in this subsection, means the income of a taxpayer from an office or employment as computed under subdivision a of Division B of Part I and includes all fees received for services not rendered in the course of the taxpayer's business but does not include superannuation or pension benefits or retiring allowances;

Related Provisions: Reg. 2900(9) — Exclusions from "salary or wages" for SR&ED prescribed proxy amount.

Interpretation Bulletins: IT-99R5: Legal and accounting fees.

Application Policies: SR&ED 96-06: Directly undertaking, supervising or supporting v. "directly engaged" SR&ED salary and wages..

"scientific research and experimental development" means systematic investigation or search that is carried out in a field of science or technology by means of experiment or analysis and that is

(a) basic research, namely, work undertaken for the advancement of scientific knowledge without a specific practical application in view,

(b) applied research, namely, work undertaken for the advancement of scientific knowledge with a specific practical application in view, or

(c) experimental development, namely, work undertaken for the purpose of achieving technological advancement for the purpose of creating new, or improving existing, materials, devices, products or processes, including incremental improvements thereto,

and, in applying this definition in respect of a taxpayer, includes

(d) work undertaken by or on behalf of the taxpayer with respect to engineering, design, operations research, mathematical analysis, computer programming, data collection, testing or psychological research, where the work is commensurate with the needs, and directly in support, of work described in paragraph (a), (b), or (c) that is undertaken in Canada by or on behalf of the taxpayer,

but does not include work with respect to

(e) market research or sales promotion,

(f) quality control or routine testing of materials, devices, products or processes,

(g) research in the social sciences or the humanities,

(h) prospecting, exploring or drilling for, or producing, minerals, petroleum or natural gas,

(i) the commercial production of a new or improved material, device or product or the commercial use of a new or improved process,

(j) style changes, or

(k) routine data collection;

Related Provisions: 37(3) — CCRA may obtain advice from certain sources as to whether an activity is SR&ED; 37(8) — Amounts deemed not to be expenditures on SR&ED; 37(13) — Linked work deemed to be SR&ED.

History: The definition "scientific research and experimental development" amended by 1998, c. 19, subsec. 239(1), applicable to work performed by a taxpayer after February 27, 1995 except that, for the purposes of paras. 149(1)(j) and (8)(b), that definition does not apply to work performed pursuant to an agreement in writing made by the taxpayer before February 28, 1995. The definition formerly read:

> "scientific research and experimental development" has the meaning assigned by regulation;

For discussion of what qualifies as SR&ED, see *Northwest Hydraulic Consultants Ltd.*, [1998] 3 C.T.C. 2520 (TCC).

The definition "scientific research and experimental development" added by 1996, c. 21, subsec. 60(2), applicable to work performed after February 27, 1995 except that, for the purposes of paras. 149(1)(j) and (8)(b), that definition does not apply to work performed pursuant to an agreement in writing entered into before February 28, 1995.

Selected Cases [subsec. 248(1)"SR&ED"]: *Northwest Hydraulic Consultants Ltd. v. R.*, [1998] 3 C.T.C. 2520 (TCC) (Court approved criteria in IC 86-4R3 as indicative of SR&ED).

Regulations: 2900 (meaning of "scientific research and experimental development" (no longer applicable now that the full definition is in the Act).

Information Circulars: 86-4R2 Supplement 1: Automotive industry application paper; 86-4R2 Supplement 2: Aerospace industry application paper; 86-4R3: Scientific research and experimental development; 94-1: Plastics industry application paper; 94-2: Machinery and equipment industry application paper; 97-1: Administrative guidelines for software development.

Application Policies: SR&ED 94-03: Testing activities on new substances required by the Canadian Protection Act (CEPA); SR&ED 95-01R: Linked activities — Reg. 2900(1)(d); SR&ED 95-02: Science eligibility guidelines for the oil and gas mining industries; SR&ED 95-03: Claims for ISO 9000 registration; SR&ED 95-04R: Conflict of interest with regard to outside consultants; SR&ED 96-02: Tests and studies required to meet requirements in regulated industries; SR&ED 96-08: Eligibility of the preparation of new drug submissions; SR&ED 96-09R: Eligibility of Clinical Research in the Pharmaceutical Industry; SR&ED 2001-02: Multinational clinical trials; SR&ED 2002-02R2: Experimental production and commercial production with experimental development work — allowable SR&ED expenditures; SR&ED 2004-03: Prototypes, Pilot Plants/Commercial Plants, Custom Products and Commercial Assets.

Forms: T2 SCH 301: Newfoundland research and development tax credit; T2 SCH 340: Nova Scotia research and development tax credit; T2 SCH 380: Manitoba research and development tax credit; T2 SCH 403: Saskatchewan research and development tax credit; T661: Claim for SR&ED in Canada; T4088: Claiming scientific research and experimental development expenditures — guide to form T661.

"scientific research and experimental development financing contract" has the meaning assigned by subsection 194(6);

Origin of "scientific research and experimental development financing contract": R.S.C. 1985, c. 1 (5th Supp.). (Formerly included in subsec. 194(6).)

"scientific research and experimental development tax credit" of a taxpayer for a taxation year has the meaning assigned by subsection 127.3(2);

Origin of "scientific research and experimental development tax credit": R.S.C. 1985, c. 1 (5th Supp.). (Formerly included in subsec. 127.3(2).)

"securities lending arrangement" has the meaning assigned by subsection 260(1);

History: The definition "securities lending arrangement" added to subsec. 248(1) by 1994, c. 21, subsec. 109(6), applicable to 1993 *et seq.*

"self-contained domestic establishment" means a dwelling-house, apartment or other similar place of residence in which place a person as a general rule sleeps and eats;

Interpretation Bulletins: IT-91R4: Employment at special work sites or remote work locations; IT-352R2: Employee's expenses, including work space in home expenses; IT-513R: Personal tax credits.

"separation agreement" includes an agreement by which a person agrees to make payments on a periodic basis for the maintenance of a former spouse or common-law partner, children of the marriage or common-law partnership or both the former spouse or common-law partner and children of the marriage or common-law partnership, after the marriage or common-law partnership has been dissolved whether the agreement was made before or after the marriage or common-law partnership was dissolved;

History: The definition "separation agreement" in subsec. 248(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", and by Sch. 2, s. 9, to replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

"servant" — [See under "employment".]

"share" means a share or fraction of a share of the capital stock of a corporation and, for greater certainty, a share of the capital stock of a corporation includes a share of the

capital of a cooperative corporation (within the meaning assigned by subsection 136(2)) and a share of the capital of a credit union;

Proposed Amendment — 248(1)"share"

"share", except as the context otherwise requires, means a share or a fraction of a share of the capital stock of a corporation and, for greater certainty, a share of the capital stock [the word "stock" should be deleted — ed.] of a corporation includes a share of the capital of a cooperative corporation (within the meaning assigned by subsection 136(2)) and a share of the capital of a credit union;

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 44(5), will amend the definition "share" in subsec. 248(1) to read as above, applicable to taxation years that begin after 2002.

Technical Notes: The definition "share" is amended so that it applies except as the context otherwise requires. For example, if the context requires that the expression "share" refer to a portion of an amount or thing, then it would not carry the meaning otherwise assigned by subsection 248(1).

Related Provisions: 132.2(1)"share" — Definition of "share" for mutual fund corporation rollovers; 132.2(2) [to be repealed], 132.2(1) [draft] — Definition of "share" for mutual fund corporation rollovers; 142.2(1)"mark-to-market property"(a), 142.5 — Mark-to-market rules for financial institutions.

History: "Share" substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(1), applicable after 1988. "Share" formerly read:

> "share" means a share or fraction thereof of the capital stock of a corporation;

Interpretation Bulletins: IT-116R3: Rights to buy additional shares; IT-392: Meaning of the term "share".

Advance Tax Rulings: ATR-26: Share exchange.

"shareholder" includes a member or other person entitled to receive payment of a dividend;

Interpretation Bulletins: IT-116R3: Rights to buy additional shares; IT-432R2: Benefits conferred on shareholders.

"share-purchase tax credit" of a taxpayer for a taxation year has the meaning assigned by subsection 127.2(6);

"short-term preferred share" of a corporation at any particular time means a share, other than a grandfathered share, of the capital stock of the corporation issued after December 15, 1987 that at that particular time

(a) is a share where, under the terms and conditions of the share, any agreement relating to the share or any modification of those terms and conditions or that agreement, the corporation or a specified person in relation to the corporation is or may, at any time within 5 years from the date of its issue, be required to redeem, acquire or cancel, in whole or in part, the share (unless the requirement to redeem, acquire or cancel the share arises only in the event of the death of the shareholder or by reason only of a right to convert or exchange the share) or to reduce the paid-up capital of the share, and for the purposes of this paragraph

(i) an agreement in respect of a share of the capital stock of a corporation shall be read without reference to that part of the agreement under which a person agrees to acquire the share for an amount

(A) in the case of a share (other than a share that would, but for that part of the agreement, be a taxable preferred share) the agreement in respect of which provides that the share is to be acquired within 60 days after the day on which the agreement was entered into, that does not exceed the greater of the fair market value of the share at the time the agreement was entered into, determined without reference to the agreement, and the fair market value of the share at the time of the acquisition, determined without reference to the agreement, or

(B) that does not exceed the fair market value of the share at the time of the acquisition, determined without reference to the agreement, or for an amount determined by reference to the assets or earnings of the corporation where that determination may reasonably be considered to be used to determine an amount that does not exceed the fair market value of the share at the time of the acquisition, determined without reference to the agreement, and

(ii) "shareholder" includes a shareholder of a shareholder, or

(b) is a share that is convertible or exchangeable at any time within 5 years from the date of its issue, unless

(i) it is convertible into or exchangeable for

(A) another share of the corporation or a corporation related to the corporation that, if issued, would not be a short-term preferred share,

(B) a right or warrant that, if exercised, would allow the person exercising it to acquire only a share of the corporation or a corporation related to the corporation that, if issued, would not be a short-term preferred share, or

(C) both a share described in clause (A) and a right or warrant described in clause (B), and

(ii) all the consideration receivable for the share on the conversion or exchange is the share described in clause (i)(A) or the right or warrant described in clause (i)(B) or both, as the case may be, and for the purposes of this subparagraph, where a taxpayer may become entitled on the conversion or exchange of a share to receive any particular consideration (other than consideration described in any of clauses (i)(A) to (C)) in lieu of a fraction of a share, the particular consideration shall be deemed not to be consideration unless it may reasonably be considered that the particular consideration was receivable as part of a series of transactions or events one of the main purposes of which was to avoid or limit the application of Part IV.1 or VI.1,

and, for the purposes of this definition,

(c) where at any particular time after December 15, 1987, otherwise than pursuant to a written arrangement to do so entered into before December 16, 1987, the terms or conditions of a share of the capital stock of a corporation that are relevant to any matter referred to in any of paragraphs (a), (b), (f) and (h) are established or modified, or any agreement in respect of any such matter to which the corporation or a specified person in relation to the corporation is a party, is changed or entered into, the share shall be deemed after that particular time to have been issued at that particular time,

(d) where at any particular time after December 15, 1987 a particular share of the capital stock of a corporation has been issued or its terms or conditions have been modified or an agreement in respect of the share is modified or entered into, and it may reasonably be considered, having regard to all the circumstances, in-

cluding the rate of interest on any debt obligation or the dividend provided on any short-term preferred share, that

(i) but for the existence at any time of such a debt obligation or such a short-term preferred share, the particular share would not have been issued or its terms or conditions modified or the agreement in respect of the share would not have been modified or entered into, and

(ii) one of the main purposes for the issue of the particular share or the modification of its terms or conditions or the modification or entering into the agreement in respect of the share was to avoid or limit the tax payable under subsection 191.1(1),

the particular share shall be deemed after that particular time to have been issued at that particular time and to be a short-term preferred share of the corporation,

(e) where at any particular time after December 15, 1987, otherwise than pursuant to a written arrangement to do so entered into before December 16, 1987, the terms or conditions of a share of the capital stock of a corporation are modified or established or any agreement in respect of the share has been changed or entered into, and as a consequence thereof the corporation or a specified person in relation to the corporation may reasonably be expected to redeem, acquire or cancel (otherwise than by reason of the death of the shareholder or by reason only of a right to convert or exchange the share that would not cause the share to be a short-term preferred share by reason of paragraph (b)), in whole or in part, the share, or to reduce its paid-up capital, within 5 years from the particular time, the share shall be deemed to have been issued at that particular time and to be a short-term preferred share of the corporation after the particular time until the time that such reasonable expectation ceases to exist and, for the purposes of this paragraph,

(i) an agreement in respect of a share of the capital stock of a corporation shall be read without reference to that part of the agreement under which a person agrees to acquire the share for an amount

(A) in the case of a share (other than a share that would, but for that part of the agreement, be a taxable preferred share) the agreement in respect of which provides that the share is to be acquired within 60 days after the day on which the agreement was entered into, that does not exceed the greater of the fair market value of the share at the time the agreement was entered into, determined without reference to the agreement, and the fair market value of the share at the time of the acquisition, determined without reference to the agreement, or

(B) that does not exceed the fair market value of the share at the time of the acquisition, determined without reference to the agreement, or for an amount determined by reference to the assets or earnings of the corporation where that determination may reasonably be considered to be used to determine an amount that does not exceed the fair market value of the share at the time of the acquisition, determined without reference to the agreement, and

(ii) "shareholder" includes a shareholder of a shareholder,

(f) where a share of the capital stock of a corporation was issued after December 15, 1987 and at the time the share was issued the existence of the corporation was, or there was an arrangement under which it could be, limited to a period that was within 5 years from the date of its issue, the share shall be deemed to be a short-term preferred share of the corporation unless the share is a grandfathered share and the arrangement is a written arrangement entered into before December 16, 1987,

(g) where a share of the capital stock of a corporation is acquired at any time after December 15, 1987 by the corporation or a specified person in relation to the corporation and the share is at any particular time after that time acquired by a person with whom the corporation or a specified person in relation to the corporation was dealing at arm's length if this Act were read without reference to paragraph 251(5)(b), from the corporation or a specified person in relation to the corporation, the share shall be deemed after that particular time to have been issued at that particular time,

(h) where at any particular time after December 15, 1987, otherwise than pursuant to a written arrangement to do so entered into before December 16, 1987, as a result of the terms or conditions of a share of the capital stock of a corporation or any agreement entered into by the corporation or a specified person in relation to the corporation, any person (other than the corporation or an individual other than a trust) was obligated, either absolutely or contingently and either immediately or in the future, to effect any undertaking within 5 years after the day on which the share was issued (in this paragraph referred to as a "guarantee agreement") including any guarantee, covenant or agreement to purchase or repurchase the share, and including the lending of funds or the placing of amounts on deposit with, or on behalf of the shareholder or a specified person in relation to the shareholder given

(i) to ensure that any loss that the shareholder or a specified person in relation to the shareholder may sustain, by reason of the ownership, holding or disposition of the share or any other property is limited in any respect, and

(ii) as part of a transaction or event or series of transactions or events that included the issuance of the share,

the share shall be deemed after that particular time to have been issued at the particular time and to be at and immediately after the particular time a short-term preferred share, and for the purposes of this paragraph, where a guarantee agreement in respect of a share is given at any particular time after December 15, 1987, otherwise than pursuant to a written arrangement to do so entered into before December 16, 1987, the share shall be deemed to have been issued at the particular time and the guarantee agreement shall be deemed to have been given as part of a series of transactions that included the issuance of the share,

(i) a share that is, at the time a dividend is paid thereon, a share described in paragraph (e) of the definition "term preferred share" in this subsection during the applicable time period referred to in that paragraph or a prescribed share shall, notwithstanding any other provision of this definition, be deemed not to be a short-term preferred share at that time, and

(j) "specified person" has the meaning assigned by paragraph (h) of the definition "taxable preferred share" in this subsection;

Proposed Amendment — 248(1)"short-term preferred share"

Letter from Department of Finance, May 11, 2005:

Dear [xxx]

Thank you for your letter of April 14, 2005 regarding paragraph (f) of the definition of "short-term preferred share" in subsection 248(1) of the *Income Tax Act*. That provision specifies that a share of the capital stock of a corporation that is issued in circumstances where the existence of the corporation was, or there was an agreement under which it could be, limited to a period within 5 years from the date of its issue is deemed to be a short-term preferred share of the corporation.

In your letter you have described a situation where employees of a company were granted stock options under an employee stock option plan at a time when the existence of the company was not limited. Although the options remain unvested, they will automatically vest following the decision of the company to sell all or substantially all of its assets and then liquidate, which it intends to do in the near future. Since the employees will be able to exercise their options only following the decision to liquidate the corporation, any share issued in those circumstances would be deemed to be a short-term preferred share.

The rules applicable to taxable preferred shares, of which short-term preferred shares are a subset, are intended to apply to situations where corporations that are not in need of an interest deduction, instead of issuing debt, issue equity having debt-like characteristics. One such debt-like characteristic is repayment within a fixed time period, which can be achieved indirectly with a limitation on the existence of the corporation, effectively guaranteeing that the "equity" investment will be returned within a certain period of time.

You have asked that shares issued pursuant to a grant of options occurring under an employee stock option plan or other employee arrangement, where such grant occurs at a time when the existence of the corporation was not limited to a period within 5 years from the date of grant, be excluded from the definition of short-term preferred share.

It does not seem appropriate that shares issued in the circumstances you describe should be brought into the ambit of the taxable preferred share rules. Consequently, we are prepared to recommend to the Minister of Finance that such an amendment be made to the definition. Of course, we cannot offer any assurance that either the Minister of Finance or Parliament will agree with the recommendation that we intend to make in this regard. Nonetheless, we trust that this statement of our position is helpful.

Thank you for bringing this matter to our attention.

Yours sincerely,

Len Farber
General Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 87(4.2) — Amalgamation; 248(10) — Series of transactions.

Regulations: 6201(8) (prescribed shares).

Advance Tax Rulings: ATR-46: Financial difficulty.

"small business bond" has the meaning assigned by section 15.2;

"small business corporation", at any particular time, means, subject to subsection 110.6(15), a particular corporation that is a Canadian-controlled private corporation all or substantially all of the fair market value of the assets of which at that time is attributable to assets that are

(a) used principally in an active business carried on primarily in Canada by the particular corporation or by a corporation related to it,

(b) shares of the capital stock or indebtedness of one or more small business corporations that are at that time connected with the particular corporation (within the meaning of subsection 186(4) on the assumption that the small business corporation is at that time a "payer corporation" within the meaning of that subsection), or

(c) assets described in paragraphs (a) and (b),

including, for the purpose of paragraph 39(1)(c), a corporation that was at any time in the 12 months preceding that time a small business corporation, and, for the purpose of this definition, the fair market value of a net income stabilization account shall be deemed to be nil;

Related Provisions: 110.6(2.1) — Capital gains deduction — qualified small business corporation shares; 110.6(14)(b) — Interpretation rule for capital gains exemption purposes; 110.6(15) — Value of assets of corporation; 136(1) — Whether cooperative corporation can be a small business corporation; 137(7) — Whether credit union can be a small business corporation; 186(7) — Interpretation of "connected" for para. (b).

History: That portion of "small business corporation" following para. (c) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 139(5), applicable to 1991 *et seq.* That portion formerly read:

> and, for the purposes of paragraph 39(1)(c), includes a corporation that was at any time in the 12 months preceding that time a small business corporation;

All that portion of "small business corporation" preceding para. (c) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 192(10), (11), paras. (a), (b) applicable to 1988 *et seq.*, and that portion preceding para. (a) applicable after June 17, 1987, except before September 14, 1988 it shall be read as follows:

> "small business corporation" at any particular time means, subject to subsection 110.6(15), a particular corporation that is a Canadian-controlled private corporation all or substantially all of the assets of which were at that time

That portion of the definition formerly read:

> "small business corporation" at any particular time means a particular corporation that is a Canadian-controlled private corporation all or substantially all of the fair market value of the assets of which at that time was attributable to assets that were
>
> (a) used in an active business carried on primarily in Canada by the particular corporation or by a corporation related to it,
>
> (b) shares of the capital stock of one or more small business corporations that were at that time connected with the particular corporation (within the meaning of subsection 186(4) on the assumption that the small business corporation was at that time a "payer corporation" within the meaning of that subsection) or a bond, debenture, bill, note, mortgage or similar obligation issued by such a connected corporation, or

Interpretation Bulletins: IT-268R3: *Inter vivos* transfer of farm property to child; IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs; IT-484R2: Business investment losses.

Advance Tax Rulings: ATR-53: Purification of a small business corporation; ATR-55: Amalgamation followed by sale of shares.

"small business development bond" has the meaning assigned by section 15.1;

"specified employee" of a person means an employee of the person who is a specified shareholder of the person or who does not deal at arm's length with the person;

Related Provisions: 15(2.7) — Meaning of specified employee of a partnership for purpose of shareholder appropriations and loans.

History: The definition "specified employee" added to subsec. 248(1) by 1994, c. 8, s. 32, applicable to taxation years ending after December 2, 1992.

"specified financial institution", at any time, means

(a) a bank,

(b) a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee,

(c) a credit union,

(d) an insurance corporation,

(e) a corporation whose principal business is the lending of money to persons with whom the corporation is dealing at arm's length or the purchasing of debt obli-

gations issued by such persons or a combination thereof,

(e.1) a corporation described in paragraph (g) of the definition "financial institution" in subsection 181(1),

(f) a corporation that is controlled by one or more corporations described in any of paragraphs (a) to (e.1) and, for the purpose of this paragraph, one corporation is controlled by another corporation if more than 50% of its issued share capital (having full voting rights under all circumstances) belongs to the other corporation, to persons with whom the other corporation does not deal at arm's length, or to the other corporation and persons with whom the other corporation does not deal at arm's length, or

(g) a corporation that is related to a particular corporation described in any of paragraphs (a) to (f), other than a particular corporation described in paragraph (e) or (e.1) the principal business of which is the factoring of trade accounts receivable that

(i) the particular corporation acquired from a related person,

(ii) arose in the course of an active business carried on by a person (in this paragraph referred to as the "business entity") related at that time to the particular corporation, and

(iii) at no particular time before that time were held by a person who was related to the business entity;

Related Provisions: 248(14) — Related corporations; 256(6), (6.1) — Meaning of "controlled".

History: The opening words of the definition "specified financial institution" in subsec. 248(1) and paras. (f) and (g) of the definition amended, and para. (e.1) added, by 1999, c. 22, subsecs. 80(5), (6), applicable for the purpose of determining the status of a particular corporation as a specified financial institution, for all purposes of the Act, for taxation years of the particular corporation that begin after 1998. The opening words and paras. (e) and (f) formerly read:

"specified financial institution" means

. . . . .

(f) a corporation that is controlled by one or more corporations described in any of paragraphs (a) to (e) and for the purposes of this paragraph, one corporation is controlled by another corporation if more than 50% of its issued share capital (having full voting rights under all circumstances) belongs to the other corporation, to persons with whom the other corporation does not deal at arm's length, or to the other corporation and persons with whom the other corporation does not deal at arm's length, or

(g) a corporation related to a corporation described in any of paragraphs (a) to (f);

Regulations: 8604 [to be repealed] (prescribed financial institutions).

"specified future tax consequence" for a taxation year means

(a) the consequence of the deduction or exclusion of an amount referred to in paragraph 161(7)(a),

(b) the consequence of a reduction under subsection 66(12.73) of a particular amount purported to be renounced by a corporation after the beginning of the year to a person or partnership under subsection 66(12.6) or (12.601) because of the application of subsection 66(12.66), determined as if the purported renunciation would, but for subsection 66(12.73), have been effective only where

(i) the purported renunciation occurred in January, February or March of a calendar year,

(ii) the effective date of the purported renunciation was the last day of the preceding calendar year,

(iii) the corporation agreed in that preceding calendar year to issue a flow-though share to the person or partnership,

(iv) the particular amount does not exceed the amount, if any, by which the consideration for which the share is to be issued exceeds the total of all other amounts purported by the corporation to have been renounced under subsection 66(12.6) or (12.601) in respect of that consideration,

(v) paragraphs 66(12.66)(c) and (d) are satisfied with respect to the purported renunciation, and

(vi) the form prescribed for the purpose of subsection 66(12.7) in respect of the purported renunciation is filed with the Minister before May of the calendar year; and

(c) the consequence of an adjustment or a reduction described in subsection 161(6.1);

Related Provisions: 127(10.2)A — Effect of specified future tax consequence (SFTC) on investment tax credits; 156.1(1.1), (1.2), 157(2)(c), (d), 157(2.1)(a), 161(4)(a), 161(4.01)(a), 161(4.1)(a) — Effect of SFTC on instalment obligations and instalment interest; 161(6.2) — Flow-through share renunciations and one-year look-back — effect of SFTC on interest; 162(11) — Effect of SFTC on penalties.

History: Para. (c) added to the definition "specified future tax consequence" in subsec. 248(1) by 1999, c. 22, subsec. 80(7), applicable to 1998 *et seq.*

The definition "specified future tax consequence" added to subsec. 248(1) by 1997, c. 25, subsec. 71(3), applicable to 1996 *et seq.*; and, for greater certainty, for taxation years that ended before 1996, there are deemed to be no specified future tax consequences.

"specified individual" has the meaning assigned by subsection 120.4(1);

History: The definition "specified individual" added to subsec. 248(1) by 2000, c. 19, subsec. 67(1), applicable to 2000 *et seq.*

"specified investment business" has the meaning assigned by subsection 125(7);

"specified member" of a partnership in a fiscal period or taxation year of the partnership, as the case may be, means

(a) any member of the partnership who is a limited partner (within the meaning assigned by subsection 96(2.4)) of the partnership at any time in the period or year, and

(b) any member of the partnership, other than a member who is

(i) actively engaged in those activities of the partnership business that are other than the financing of the partnership business, or

(ii) carrying on a similar business as that carried on by the partnership in its taxation year, otherwise than as a member of a partnership,

on a regular, continuous and substantial basis throughout that part of the period or year during which the business of the partnership is ordinarily carried on and during which the member is a member of the partnership;

Related Provisions: 40(3.131), 127.52(2.1) — Anti-avoidance.

Interpretation Bulletins: IT-151R5: Scientific research and experimental development expenditures.

Proposed Addition — 248(1)"specified participating interest"

"specified participating interest", means a property of a taxpayer that is

(a) a participating interest of the taxpayer, other than an exempt interest (as defined by subsection 94.1(1)) of the taxpayer, in a foreign investment entity, or

(b) a participating interest of the taxpayer in a tracking entity (in this paragraph, as defined by subsection 94.2(1)), other than

(i) an exempt interest (as would be defined by subsection 94.1(1) if the definition "exempt interest" in that subsection were read without reference to subparagraphs (a)(i) and (ii) of that definition) of the taxpayer, in a tracking entity, or

(ii) a participating interest in respect of which subsection 94.2(9) does not apply to the taxpayer solely because of paragraph 94.2(9)(e);

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 44(6), will add the definition "specified participating interest" to subsec. 248(1), applicable to taxation years that begin after 2002.

Technical Notes: This definition is used throughout the Act, particularly in provisions relating to the transfer of properties to and from corporations, trusts, partnerships, spouses or common-law partners. In general, a transfer of property that is a specified participating interest will not qualify for special rules in the Act that would otherwise allow the transferor of the property to defer recognition, for income tax purposes, of any accrued gains or losses in respect of the property.

A specified participating interest at any time means a property of a taxpayer that at that time is a "participating interest" (e.g., a share of a non-resident corporation, or a beneficial interest in a non-resident trust) of the taxpayer in a "foreign investment entity" (as those expressions are defined in subsection 94.1(1)). However, if the interest is at that time an "exempt interest" (as defined in subsection 94.1(1)) of the taxpayer in the foreign investment entity, it will not be at that time a specified participating interest.

A specified participating interest at any time also means a property of a taxpayer that at that time is a participating interest of the taxpayer in a "tracking entity" (as defined in subsection 94.2(1)). However, if the interest is at that time an exempt interest of the taxpayer in the tracking entity, it will not be at that time a specified participating interest, unless the tracking entity is a controlled foreign affiliate of the taxpayer or is a qualifying entity that is a foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest (within the meaning assigned by paragraph 95(2)(m)). In addition, if the interest is at that time an interest, of the taxpayer in the tracking entity, that is a participating interest in respect of which subsection 94.2(9) does not apply to the taxpayer solely because of paragraph 94.2(9)(e), it will not be at that time a specified participating interest.

For more detail on the definitions "participating interest", "tracking entity", "exempt interest", and "foreign investment entity", see the commentary on those definitions.

Related Provisions: 51(4)(b), 73(1), 85(1.1)(b), 85.1(4)(b), 85.1(6)(f), 88(3)(b), 97(2), 107(4.01) — Rollovers do not apply to SPI; 98(7) — Where partnership holding SPI ceases to exist.

Proposed Addition — 248(1)"specified proportion"

"specified proportion", of a member of a partnership for a fiscal period of the partnership, means the proportion that the member's share of the total income or loss of the partnership for the partnership's fiscal period is of the partnership's total income or loss for that period and, for the purpose of this definition, where that income or loss for a period is nil, that proportion shall be computed as if the partnership had income for that period in the amount of $1,000,000;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 185(12), will add the definition "specified proportion" to subsec. 248(1), applicable after December 20, 2002.

Technical Notes: The definition "specified proportion" of a member of a partnership for a fiscal period of the partnership is currently found in subsection 206(1). The apportionment that results from the definition is, however, useful for many purposes of the Act, and a number of other provisions apply the same concept. For simplicity, the definition is moved to subsection 248(1). As a result, for all purposes of the Act a partner's specified proportion for the period is that proportion of the partnership's total income or loss for that period that is the member's share. If the partnership's income or loss for the period is nil, the proportion is computed as if the partnership had $1 million of income for the period.

"specified shareholder" of a corporation in a taxation year means a taxpayer who owns, directly or indirectly, at any time in the year, not less than 10% of the issued shares of any class of the capital stock of the corporation or of any other corporation that is related to the corporation and, for the purposes of this definition,

(a) a taxpayer shall be deemed to own each share of the capital stock of a corporation owned at that time by a person with whom the taxpayer does not deal at arm's length,

(b) each beneficiary of a trust shall be deemed to own that proportion of all such shares owned by the trust at that time that the fair market value at that time of the beneficial interest of the beneficiary in the trust is of the fair market value at that time of all beneficial interests in the trust,

(c) each member of a partnership shall be deemed to own that proportion of all the shares of any class of the capital stock of a corporation that are property of the partnership at that time that the fair market value at that time of the member's interest in the partnership is of the fair market value at that time of the interests of all members in the partnership,

(d) an individual who performs services on behalf of a corporation that would be carrying on a personal services business if the individual or any person related to the individual were at that time a specified shareholder of the corporation shall be deemed to be a specified shareholder of the corporation at that time if the individual, or any person or partnership with whom the individual does not deal at arm's length, is, or by virtue of any arrangement, may become, entitled, directly or indirectly, to not less than 10% of the assets or the shares of any class of the capital stock of the corporation or any corporation related thereto, and

(e) notwithstanding paragraph (b), where a beneficiary's share of the income or capital of the trust depends on the exercise by any person of, or the failure by any person to exercise, any discretionary power, the beneficiary shall be deemed to own each share of the capital stock of a corporation owned at that time by the trust;

Related Provisions: 18(5), (5.1) — Alternate definition for thin capitalization rules; 55(3.2)(a), 55(3.3) — Extended meanings for capital gains strip rules; 88(1)(c.2)(iii) — Restriction on definition for windups.

History: Para. (e) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 139(6), applicable after 1991.

Interpretation Bulletins: IT-73R6: The small business deduction; IT-88R2: Stock dividends; IT-153R3: Land developers — subdivision and development costs and carrying charges on land; IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs; IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt; IT-432R2: Benefits conferred on shareholders.

Advance Tax Rulings: ATR-36: Estate freeze.

"split income" has the meaning assigned by subsection 120.4(1);

History: The definition "split income" added to subsec. 248(1) by 2000, c. 19, subsec. 67(1), applicable to 2000 *et seq.*

"stock dividend" includes any dividend (determined without reference to the definition "dividend" in this subsection) paid by a corporation to the extent that it is paid by the issuance of shares of any class of the capital stock of the corporation;

Related Provisions: 15(1.1) — Where stock dividend designed to confers benefit on shareholder; 52(3) — Cost of stock dividend; 95(7) — Stock dividend received from foreign affiliate; 248(1) — "Amount" (of stock dividend); 248(5)(b) — Stock dividend is deemed to be substituted property.

History: "Stock dividend" amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(1), to add the phrase in parentheses.

Interpretation Bulletins: IT-67R3: Taxable dividends from corporations resident in Canada; IT-88R2: Stock dividends.

Information Circulars: 88-2 para. 26: General anti-avoidance rule — section 245 of the *Income Tax Act*.

"subsidiary controlled corporation" means a corporation more than 50% of the issued share capital of which (having full voting rights under all circumstances) belongs to the corporation to which it is subsidiary;

"subsidiary wholly-owned corporation" means a corporation all the issued share capital of which (except directors' qualifying shares) belongs to the corporation to which it is subsidiary;

Proposed Amendment — 248(1)"subsidiary wholly-owned corporation"

Letter from Department of Finance, November 5, 2004:

Dear [xxx]

Thank you for your letter of September 16, 2004 regarding the definition of "subsidiary wholly-owned corporation" in subsection 248(1) of the *Income Tax Act* (the "Act") as it relates to subsection 138(11.94) of the Act. Subsection 138(11.94) of the Act provides for the transfer on a rollover basis of an insurance business carried on in Canada by an insurer resident in Canada to a corporation resident in Canada that is a "subsidiary wholly-owned corporation" of that insurer.

In your letter and in your conversations with officials of the department, you requested that, for the purposes of subsection 138(11.94), the definition "subsidiary wholly-owned corporation" be modified in anticipation of a proposed transfer of an insurance business as part of a reorganization of a corporate group. At present, the definition "subsidiary wholly-owned corporation" means a corporation all of the issued shares of which (other than directors' qualifying shares) belong to the particular corporation of which it is a subsidiary. You have asked that, for the purposes of subsection 138(11.94), the definition "subsidiary wholly-owned corporation" be defined in respect of a particular corporation in such a manner that the holding of issued shares of the capital stock of the subsidiary by other corporations that are subsidiary wholly-owned corporations of the particular corporation are permitted.

We are of the view that, for the purposes of subsection 138(11.94), it would be appropriate to modify the definition "subsidiary wholly-owned corporation" in the manner requested. We are prepared to recommend that, for the purposes of subsection 138(11.94), the definition "subsidiary wholly-owned corporation" be defined in respect of a particular corporation resident in Canada, in effect, to have the same meaning as "qualified related corporation" in subsection 219(8) of the Act.

In the absence of any information suggesting that this issue has arisen in the past, we would recommend that the modified definition "subsidiary wholly-owned corporation" apply to transfers, after October 2004, of insurance businesses to which subsection 138(11.94) applies. If this recommendation is acted upon, the amendment will be included in a future technical bill.

Thank you for bringing this matter to our attention.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 87(1.4) — Definition of "subsidiary wholly-owned corporation"; 87(2.11) — Losses, etc., on amalgamation with subsidiary wholly-owned corporation.

Interpretation Bulletins: IT-98R2: Investment corporations (archived).

"superannuation or pension benefit" includes any amount received out of or under a superannuation or pension fund or plan and, without restricting the generality of the foregoing, includes any payment made to a beneficiary under the fund or plan or to an employer or former employer of the beneficiary thereunder

(a) in accordance with the terms of the fund or plan,

(b) resulting from an amendment to or modification of the fund or plan, or

(c) resulting from the termination of the fund or plan;

Related Provisions: 6(1)(g) — Employee benefit plan benefits; 56(1)(a)(i) — Superannuation or pension benefit included in income.

Interpretation Bulletins: IT-499R: Superannuation or pension benefits; IT-508R: Death benefits.

"supplementary unemployment benefit plan" has the meaning assigned by subsection 145(1);

"tar sands" means bituminous sands or oil shales extracted, otherwise than by a well, from a mineral resource, but, for the purpose of applying sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a) in respect of property acquired after March 6, 1996, includes material extracted by a well from a deposit of bituminous sands or oil shales;

History: The definition "tar sands" in subsec. 248(1) amended by 1997, c. 25, subsec. 71(1), applicable after March 6, 1996. It formerly read:

> "tar sands" means bituminous sands, oil sands or oil shales extracted, otherwise than by a well, from a mineral resource;

"tax shelter" has the meaning assigned by subsection 237.1(1);

"tax treaty" with a country at any time means a comprehensive agreement or convention for the elimination of double taxation on income, between the Government of Canada and the government of the country, which has the force of law in Canada at that time;

Related Provisions: 108(1)"exempt property" — Property exempted by tax treaty.

History: 2005, c. 19, subsec. 52(4) states that the definition "tax treaty" in subsec. 248(1) is deemed, for the purpose of s. 245, to have come into force on September 13, 1988.

The definition "tax treaty" added to subsec. 248(1) by 1999, c. 22, subsec. 80(12), applicable to 1998 *et seq.*

"taxable Canadian corporation" has the meaning assigned by subsection 89(1);

"taxable Canadian property" of a taxpayer at any time in a taxation year means a property of the taxpayer that is

(a) real property situated in Canada,

Proposed Amendment — 248(1)"taxable Canadian property"(a)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 278(5), will amend para. (a) of the definition "taxable Canadian property" in subsec. 248(1) by substituting "real or immovable property" for "real property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(b) property used or held by the taxpayer in, eligible capital property in respect of, or property described in

an inventory of, a business carried on in Canada, other than

(i) property used in carrying on an insurance business, and

(ii) where the taxpayer is non-resident, ships and aircraft used principally in international traffic and personal property pertaining to their operation if the country in which the taxpayer is resident does not impose tax on gains of persons resident in Canada from dispositions of such property,

Proposed Amendment — 248(1)"taxable Canadian property"(b)(ii)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 278(6), will amend subpara. (b)(ii) of the definition "taxable Canadian property" in subsec. 248(1) by substituting "personal or movable property" for "personal property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(c) if the taxpayer is an insurer, its designated insurance property for the year,

(d) a share of the capital stock of a corporation resident in Canada (other than a non-resident-owned investment corporation if, on the first day of the year, the corporation owns neither taxable Canadian property nor property referred to in any of paragraphs (m) to (o), or a mutual fund corporation) that is not listed on a prescribed stock exchange,

Proposed Amendment — 248(1)"taxable Canadian property"(d)

Letter from Dept. of Finance, July 3, 2001: See under 55(6).

(e) a share of the capital stock of a non-resident corporation that is not listed on a prescribed stock exchange if, at any particular time during the 60-month period that ends at that time,

(i) the fair market value of all of the properties of the corporation each of which was

(A) a taxable Canadian property,

(B) a Canadian resource property,

(C) a timber resource property,

(D) an income interest in a trust resident in Canada, or

(E) an interest in or option in respect of a property described in any of clauses (B) to (D), whether or not the property exists,

Proposed Amendment — 248(1)"taxable Canadian property"(e)(i)(E)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 278(7), will amend cl. (e)(i)(E) of the definition "taxable Canadian property" in subsec. 248(1) by substituting "an option in respect of, or an interest in, or for civil law a right in," for "an interest in or option in respect of", to come into force on Royal Assent.

Technical Notes: See under 12(4).

was greater than 50% of the fair market value of all of its properties, and

(ii) more than 50% of the fair market value of the share was derived directly or indirectly from one or any combination of

(A) real property situated in Canada,

Proposed Amendment — 248(1)"taxable Canadian property"(e)(ii)(A)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 278(8), will amend cl. (e)(ii)(A) of the definition "taxable Canadian property" in subsec. 248(1) by substituting "real or immovable property" for "real property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(B) Canadian resource properties, and

(C) timber resource properties,

(f) a share that is listed on a prescribed stock exchange and that would be described in paragraph (d) or (e) if those paragraphs were read without reference to the words "that is not listed on a prescribed stock exchange", or a share of the capital stock of a mutual fund corporation, if at any time during the 60-month period that ends at that time the taxpayer, persons with whom the taxpayer did not deal at arm's length, or the taxpayer together with all such persons owned 25% or more of the issued shares of any class of the capital stock of the corporation that issued the share,

(g) an interest in a partnership if, at any particular time during the 60-month period that ends at that time, the fair market value of all of the properties of the partnership each of which was

(i) a taxable Canadian property,

(ii) a Canadian resource property,

(iii) a timber resource property,

(iv) an income interest in a trust resident in Canada, or

(v) an interest in or option in respect of a property described in any of subparagraphs (ii) to (iv), whether or not that property exists,

Proposed Amendment — 248(1)"taxable Canadian property"(g)(v)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 278(9), will amend subpara. (g)(v) of the definition "taxable Canadian property" in subsec. 248(1) by substituting "an option in respect of, or an interest in, or for civil law a right in," for "an interest in or option in respect of", to come into force on Royal Assent.

Technical Notes: See under 12(4).

was greater than 50% of the fair market value of all of its properties,

(h) a capital interest in a trust (other than a unit trust) resident in Canada,

(i) a unit of a unit trust (other than a mutual fund trust) resident in Canada,

(j) a unit of a mutual fund trust if, at any time during the 60-month period that ends at that time, not less than 25% of the issued units of the trust belonged to the taxpayer, to persons with whom the taxpayer did not deal at arm's length, or to the taxpayer and persons with whom the taxpayer did not deal at arm's length,

(k) an interest in a non-resident trust if, at any particular time during the 60-month period that ends at that time,

(i) the fair market value of all of the properties of the trust each of which was

(A) a taxable Canadian property,

(B) a Canadian resource property,

(C) a timber resource property,

(D) an income interest in a trust resident in Canada, or

(E) an interest in or option in respect of a property described in any of clauses (B) to (D), whether or not that property exists

Proposed Amendment — 248(1)"taxable Canadian property"(k)(i)(E)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 278(10), will amend cl. (k)(i)(E) of the definition "taxable Canadian property" in subsec. 248(1) by substituting "an option in respect of, or an interest in, or for civil law a right in," for "an interest in or option in respect of", to come into force on Royal Assent.

Technical Notes: See under 12(4).

was greater than 50% of the fair market value of all of its properties, and

(ii) more than 50% of the fair market value of the interest was derived directly or indirectly from one or any combination of

(A) real property situated in Canada,

Proposed Amendment — 248(1)"taxable Canadian property"(k)(ii)(A)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 278(11), will amend cl. (k)(ii)(A) of the definition "taxable Canadian property" in subsec. 248(1) by substituting "real or immovable property" for "real property", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(B) Canadian resource properties, and

(C) timber resource properties, or

(l) an interest in or option in respect of a property described in any of paragraphs (a) to (k), whether or not that property exists,

Proposed Amendment — 248(1)"taxable Canadian property"(l)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 278(12), will amend para. (l) of the definition "taxable Canadian property" in subsec. 248(1) by substituting "an option in respect of, or an interest in, or for civil law a right in," for "an interest in or option in respect of", to come into force on Royal Assent.

Technical Notes: See under 12(4).

and, for the purposes of section 2, subsection 107(2.001) and sections 128.1 and 150, and for the purpose of applying paragraphs 85(1)(i) and 97(2)(c) to a disposition by a non-resident person, includes

(m) a Canadian resource property,

(n) a timber resource property,

(o) an income interest in a trust resident in Canada,

(p) a right to a share of the income or loss under an agreement referred to in paragraph 96(1.1)(a), and

(q) a life insurance policy in Canada;

Related Provisions: 13(4.1)(c) — Replacement of depreciable TCP with new TCP; 44(5)(c) — Replacement of capital TCP with new TCP; 55(6) — Reorganization share deemed listed on prescribed stock exchange for purposes of this definition; 85(1)(i), 85.1(1)(a) — Shares received on rollover of TCP deemed to be TCP; 87(10) — New share issued on amalgamation of public corporation deemed to be listed on prescribed stock exchange; 107(2)(d.1) — TCP status retained on rollout of trust property to beneficiary; 115(1)(b) — Non-resident taxed on gain on disposition of TCP; 116 — Certificate required where non-resident disposes of TCP; 131(5.1), (5.2) — Mutual fund corporation — distribution of gain on TCP; 132(5.1), (5.2) — Mutual fund trust — distribution of gain on TCP; 141(5) — Demutualized life insurance corporation or holding corporation deemed not to be TCP; 219(1.1) — Restricted definition for branch tax purposes. See also Related Provisions annotation to 115(1).

History: The definition "taxable Canadian property" amended by 2001, c. 17, subsec. 188(2), applicable after October 1, 1996 except that, in its application before December 24, 1998, the portion of para. (b) before subpara. (i) shall be read as follows:

(b) capital property used by the taxpayer in carrying on a business in Canada, other than

The definition formerly read:

"taxable Canadian property" has the meaning assigned by subsection 115(1) except that, for the purposes only of sections 2, 128.1 and 150, the expression "taxable Canadian property" includes

(a) a Canadian resource property,

(b) a timber resource property,

(c) an income interest in a trust resident in Canada,

(d) a right to a share of the income or loss under an agreement referred to in paragraph 96(1.1)(a), and

(e) a life insurance policy in Canada;

The opening words of the definition "taxable Canadian property" in subsec. 248(1) amended by 1999, c. 22, subsec. 80(8), applicable to taxation years that begin after 1998. The opening words formerly read:

"taxable Canadian property" has the meaning assigned by subsection 115(1) except that, for the purposes only of sections 2 and 128.1, the expression "taxable Canadian property" includes

The opening words of the definition "taxable Canadian property" substituted by 1994, c. 21, subsec. 109(4), applicable after 1992 except that, where a corporation has elected in accordance with paragraph 111(4)(a) of 1994, c. 21 (see subsec. 250(5.1)), the amended definition applies to the corporation from the time at which the corporation was first granted articles of continuation (or similar constitutional documents) in any jurisdiction. The opening words of that definition formerly read:

"taxable Canadian property" has the meaning assigned by subsection 115(1) except that, for the purposes only of section 2, the expression "taxable Canadian property" includes

Para. (e) added to "taxable Canadian property" by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(12), applicable to dispositions occurring after July 13, 1990.

Interpretation Bulletins: IT-420R3: Non-residents — income earned in Canada.

Forms: T2 SCH 91: Information concerning claims for treaty-based exemptions.

"taxable capital gain" has the meaning assigned by section 38;

"taxable dividend" has the meaning assigned by subsection 89(1);

"taxable income" has the meaning assigned by subsection 2(2), except that in no case may a taxpayer's taxable income be less than nil;

"taxable income earned in Canada" means a taxpayer's taxable income earned in Canada determined in accordance with Division D of Part I, except that in no case may a taxpayer's taxable income earned in Canada be less than nil;

Related Provisions: 2(3) — Tax on taxable income earned in Canada; 115(1) — Non-resident's taxable income earned in Canada.

"taxable net gain" from dispositions of listed personal property has the meaning assigned by section 41;

"taxable preferred share" at any particular time means

(a) a share issued after December 15, 1987 that is a short-term preferred share at that particular time, or

(b) a share (other than a grandfathered share) of the capital stock of a corporation issued after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 where, at that particular time by reason of the terms or conditions of the share or any agreement in respect of the

share or its issue to which the corporation, or a specified person in relation to the corporation, is a party,

(i) it may reasonably be considered, having regard to all the circumstances, that the amount of the dividends that may be declared or paid on the share (in this definition referred to as the "dividend entitlement") is, by way of a formula or otherwise

(A) fixed,

(B) limited to a maximum, or

(C) established to be not less than a minimum (including any amount determined on a cumulative basis) and with respect to the dividend that may be declared or paid on the share there is a preference over any other dividend that may be declared or paid on any other share of the capital stock of the corporation,

(ii) it may reasonably be considered, having regard to all the circumstances, that the amount that the shareholder is entitled to receive in respect of the share on the dissolution, liquidation or winding-up of the corporation or on the redemption, acquisition or cancellation of the share (unless the requirement to redeem, acquire or cancel the share arises only in the event of the death of the shareholder or by reason only of a right to convert or exchange the share) or on a reduction of the paid-up capital of the share by the corporation or by a specified person in relation to the corporation (in this definition referred to as the "liquidation entitlement") is, by way of a formula or otherwise

(A) fixed,

(B) limited to a maximum, or

(C) established to be not less than a minimum,

and, for the purposes of this subparagraph, "shareholder" includes a shareholder of a shareholder,

(iii) the share is convertible or exchangeable at any time, unless

(A) it is convertible into or exchangeable for

(I) another share of the corporation or a corporation related to the corporation that, if issued, would not be a taxable preferred share,

(II) a right or warrant that, if exercised, would allow the person exercising it to acquire only a share of the corporation or a corporation related to the corporation that, if issued, would not be a taxable preferred share, or

(III) both a share described in subclause (I) and a right or warrant described in subclause (II), and

(B) all the consideration receivable for the share on the conversion or exchange is the share described in subclause (A)(I) or the right or warrant described in subclause (A)(II) or both, as the case may be, and, for the purposes of this clause, where a taxpayer may become entitled on the conversion or exchange of a share to receive any particular consideration (other than consideration described in any of subclauses (A)(I) to (III)) in lieu of a fraction of a share, the particular consideration shall be deemed not to be consideration unless it may reasonably be considered that the particular consideration was receivable as part of a series of transactions or events one of the main purposes of which was to avoid or limit the application of Part IV.1 or VI.1, or

(iv) any person (other than the corporation) was, at or immediately before that particular time, obligated, either absolutely or contingently, and either immediately or in the future, to effect any undertaking (in this subparagraph referred to as a "guarantee agreement"), including any guarantee, covenant or agreement to purchase or repurchase the share, and including the lending of funds to or the placing of amounts on deposit with, or on behalf of, the shareholder or any specified person in relation to the shareholder given

(A) to ensure that any loss that the shareholder or a specified person in relation to the shareholder may sustain by reason of the ownership, holding or disposition of the share or any other property is limited in any respect, or

(B) to ensure that the shareholder or a specified person in relation to the shareholder will derive earnings by reason of the ownership, holding or disposition of the share or any other property,

and the guarantee agreement was given as part of a transaction or event or a series of transactions or events that included the issuance of the share and, for the purposes of this paragraph, where a guarantee agreement in respect of a share is given at any particular time after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987, otherwise than pursuant to a written arrangement to do so entered into before 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987, the share shall be deemed to have been issued at the particular time and the guarantee agreement shall be deemed to have been given as part of a series of transactions that included the issuance of the share,

but does not include a share that is at the particular time a prescribed share or a share described in paragraph (e) of the definition "term preferred share" in this subsection during the applicable time period referred to in that paragraph and, for the purposes of this definition,

(c) the dividend entitlement of a share of the capital stock of a corporation shall be deemed not to be fixed, limited to a maximum or established to be not less than a minimum where all dividends on the share are determined solely by reference to the dividend entitlement of another share of the capital stock of the corporation or of another corporation that controls the corporation that would not be a taxable preferred share if

(i) this definition were read without reference to paragraph (f),

(ii) the other share were issued after June 18, 1987, and

(iii) the other share were not a grandfathered share, a prescribed share or a share described in paragraph (e) of the definition "term preferred share" in this subsection,

(d) the liquidation entitlement of a share of the capital stock of a corporation shall be deemed not to be fixed, limited to a maximum or established to be not less than a minimum where all the liquidation entitlement is determinable solely by reference to the liquidation entitlement of another share of the capital stock of the corporation or of another corporation that controls the

corporation that would not be a taxable preferred share if

(i) this definition were read without reference to paragraph (f),

(ii) the other share were issued after June 18, 1987, and

(iii) the other share were not a grandfathered share, a prescribed share or a share described in paragraph (e) of the definition "term preferred share" in this subsection,

(e) where at any particular time after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987, otherwise than pursuant to a written arrangement to do so entered into before 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987, the terms or conditions of a share of the capital stock of a corporation that are relevant to any matter referred to in any of subparagraphs (b)(i) to (iv) are established or modified or any agreement in respect of any such matter, to which the corporation or a specified person in relation to the corporation is a party, is changed or entered into, the share shall, for the purpose of determining after the particular time whether it is a taxable preferred share, be deemed to have been issued at that particular time, unless

(i) the share is a share described in paragraph (b) of the definition "grandfathered share" in this subsection, and

(ii) the particular time is before December 16, 1987 and before the time at which the share is first issued,

(f) an agreement in respect of a share of the capital stock of a corporation shall be read without reference to that part of the agreement under which a person agrees to acquire the share for an amount

(i) in the case of a share the agreement in respect of which provides that the share is to be acquired within 60 days after the day on which the agreement was entered into, that does not exceed the greater of the fair market value of the share at the time the agreement was entered into, determined without reference to the agreement, and the fair market value of the share at the time of the acquisition, determined without reference to the agreement, or

(ii) that does not exceed the fair market value of the share at the time of the acquisition, determined without reference to the agreement, or for an amount determined by reference to the assets or earnings of the corporation where that determination may reasonably be considered to be used to determine an amount that does not exceed the fair market value of the share at the time of the acquisition, determined without reference to the agreement,

(g) where

(i) it may reasonably be considered that the dividends that may be declared or paid to a shareholder at any time on a share (other than a prescribed share or a share described in paragraph (e) of the definition "term preferred share" in this subsection during the applicable time period referred to in that paragraph) of the capital stock of a corporation issued after December 15, 1987 or acquired after June 15, 1988 are derived primarily from dividends received on taxable preferred shares of the capital stock of another corporation, and

(ii) it may reasonably be considered that the share was issued or acquired as part of a transaction or event or series of transactions or events one of the main purposes of which was to avoid or limit the application of Part IV.1 or VI.1,

the share shall be deemed at that time to be a taxable preferred share, and

(h) "specified person", in relation to any particular person, means another person with whom the particular person does not deal at arm's length or any partnership or trust of which the particular person or the other person is a member or beneficiary, respectively;

Related Provisions: 87(4.2) — Amalgamation; 248(1) — "Grandfathered share"; 248(10) — Series of transactions; 248(13) — Interest in trust or partnerships.

Regulations: 6201(7), (8) (prescribed shares).

I.T. Technical News: 7 (taxable preferred shares — stock dividend in lieu of cash dividend).

Advance Tax Rulings: ATR-46: Financial difficulty.

"taxable RFI share" at any particular time means a share of the capital stock of a corporation issued before 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 or a grandfathered share of the capital stock of a corporation, where at the particular time under the terms or conditions of the share or any agreement in respect of the share,

(a) it may reasonably be considered, having regard to all the circumstances, that the amount of the dividends that may be declared or paid on the share (in this definition referred to as the "dividend entitlement") is, by way of a formula or otherwise

(i) fixed,

(ii) limited to a maximum, or

(iii) established to be not less than a minimum, or

(b) it may reasonably be considered, having regard to all the circumstances, that the amount that the shareholder is entitled to receive in respect of the share on the dissolution, liquidation or winding-up of the corporation (in this definition referred to as the "liquidation entitlement") is, by way of formula or otherwise

(i) fixed,

(ii) limited to a maximum, or

(iii) established to be not less than a minimum,

but does not include a share that is at the particular time a prescribed share, a term preferred share, a share described in paragraph (e) of the definition "term preferred share" in this subsection during the applicable time period referred to in that paragraph or a taxable preferred share and, for the purposes of this definition,

(c) the dividend entitlement of a share of the capital stock of a corporation shall be deemed not to be fixed, limited to a maximum or established to be not less than a minimum where all dividends on the share are determined solely by reference to the dividend entitlement of another share of the capital stock of the corporation or of another corporation that controls the corporation that would not be a taxable preferred share if

(i) the definition "taxable preferred share" in this subsection were read without reference to paragraph (f) of that definition,

(ii) the other share were issued after June 18, 1987, and

(iii) the other share were not a grandfathered share, a prescribed share or a share described in paragraph (e) of the definition "term preferred share" in this subsection,

(d) the liquidation entitlement of a share of the capital stock of a corporation shall be deemed not to be fixed, limited to a maximum or established to be not less than a minimum where all the liquidation entitlement is determinable solely by reference to the liquidation entitlement of another share of the capital stock of the corporation or of another corporation that controls the corporation that would not be a taxable preferred share if

(i) the definition "taxable preferred share" in this subsection were read without reference to paragraph (f) of that definition,

(ii) the other share were issued after June 18, 1987, and

(iii) the other share were not a grandfathered share, a prescribed share or a share described in paragraph (e) of the definition "term preferred share" in this subsection, and

(e) where

(i) it may reasonably be considered that the dividends that may be declared or paid to a shareholder at any time on a share (other than a prescribed share or a share described in paragraph (e) of the definition "term preferred share" in this subsection during the applicable time period referred to in that paragraph) of the capital stock of a corporation issued after December 15, 1987 or acquired after June 15, 1988 are derived primarily from dividends received on taxable RFI shares of the capital stock of another corporation, and

(ii) it may reasonably be considered that the share was issued or acquired as part of a transaction or event or series of transactions or events one of the main purposes of which was to avoid or limit the application of Part IV.1,

the share shall be deemed at that time to be a taxable RFI share;

Related Provisions: 87(4.2) — Amalgamation; 187.3(1) — Tax on dividends on taxable RFI share; 248(10) — Series of transactions.

Regulations: 6201(4), (5.1), (9)–(11) (prescribed shares).

Advance Tax Rulings: ATR-46: Financial difficulty.

"tax-paid undistributed surplus on hand" — [Repealed under former Act]

"taxpayer" includes any person whether or not liable to pay tax;

Related Provisions: 143.2(1) — "Taxpayer" includes partnership for tax shelter investment cost rules.

Interpretation Bulletins: IT-291R3: Transfer of property to a corporation under subsection 85(1).

"term preferred share" of a corporation (in this definition referred to as the "issuing corporation") means a share of a class of the capital stock of the issuing corporation if the share was issued or acquired after June 28, 1982 and, at the time the share was issued or acquired, the existence of the issuing corporation was, or there was an arrangement under which it could be, limited or, in the case of a share issued after November 16, 1978 if

(a) under the terms or conditions of the share, any agreement relating to the share or any modification of those terms or conditions or that agreement,

(i) the owner thereof may cause the share to be redeemed, acquired or cancelled (unless the owner of the share may cause the share to be redeemed, acquired or cancelled by reason only of a right to convert or exchange the share) or cause its paid-up capital to be reduced,

(ii) the issuing corporation or any other person or partnership is or may be required to redeem, acquire or cancel, in whole or in part, the share (unless the requirement to redeem, acquire or cancel the share arises by reason only of a right to convert or exchange the share) or to reduce its paid-up capital,

(iii) the issuing corporation or any other person or partnership provides or may be required to provide any form of guarantee, security or similar indemnity or covenant (including the lending of funds to or the placing of amounts on deposit with, or on behalf of, the holder thereof or any person related thereto) with respect to the share, or

(iv) the share is convertible or exchangeable unless

(A) it is convertible into or exchangeable for

(I) another share of the issuing corporation or a corporation related to the issuing corporation that, if issued, would not be a term preferred share,

(II) a right or warrant that, if exercised, would allow the person exercising it to acquire only a share of the issuing corporation or a corporation related to the issuing corporation that, if issued, would not be a term preferred share, or

(III) both a share described in subclause (I) and a right or warrant described in subclause (II), and

(B) all the consideration receivable for the share on the conversion or exchange is the share described in subclause (A)(I) or the right or warrant described in subclause (A)(II) or both, as the case may be, and, for the purposes of this clause, where a taxpayer may become entitled on the conversion or exchange of a share to receive any particular consideration (other than consideration described in any of subclauses (A)(I) to (III)) in lieu of a fraction of a share, the particular consideration shall be deemed not to be consideration unless it may reasonably be considered that the particular consideration was receivable as part of a series of transactions or events one of the main purposes of which was to avoid or limit the application of subsection 112(2.1) or 258(3), or

(b) the owner thereof acquired the share after October 23, 1979 and is

(i) a corporation described in any of paragraphs (a) to (e.1) of the definition "specified financial institution",

(ii) a corporation that is controlled by one or more corporations described in subparagraph (i),

(iii) a corporation that acquired the share after December 11, 1979 and is related to a corporation referred to in subparagraph (i) or (ii), or

(iv) a partnership or trust of which a corporation referred to in subparagraph (i) or (ii) or a person related thereto is a member or a beneficiary,

that (either alone or together with any of such corporations, partnerships or trusts) controls or has an absolute or contingent right to control or to acquire control of the issuing corporation,

but does not include a share of the capital stock of a corporation

(c) that was issued after November 16, 1978 and before 1980 pursuant to an agreement in writing to do so made before November 17, 1978 (in this definition referred to as an "established agreement"),

(d) that was issued as a stock dividend

(i) before April 22, 1980 on a share of the capital stock of a public corporation that was not a term preferred share, or

(ii) after April 21, 1980 on a share that was, at the time the stock dividend was paid, a share prescribed for the purposes of paragraph (f),

(d.1) that is listed on a prescribed stock exchange in Canada and was issued before April 22, 1980 by

(i) a corporation referred to in any of paragraphs (a) to (d) of the definition "specified financial institution" in this subsection,

(ii) a corporation whose principal business is the lending of money or the purchasing of debt obligations or a combination thereof, or

(iii) an issuing corporation associated with a corporation described in subparagraph (i) or (ii),

(e) for a period not exceeding ten years and, in the case of a share issued after November 12, 1981, for a period not exceeding five years, from the date of its issuance, which share was issued by a corporation resident in Canada,

(i) as part of a proposal to, or an arrangement with, its creditors that had been approved by a court under the *Bankruptcy and Insolvency Act*,

(ii) at a time when all or substantially all of its assets were under the control of a receiver, receiver-manager, sequestrator or trustee in bankruptcy, or

(iii) at a time when, by reason of financial difficulty, the issuing corporation or another corporation resident in Canada with which it does not deal at arm's length was in default, or could reasonably be expected to default, on a debt obligation held by a person with whom the issuing corporation or the other corporation was dealing at arm's length and the share was issued either wholly or in substantial part and either directly or indirectly in exchange or substitution for that obligation or a part thereof,

and, in the case of a share issued after November 12, 1981, the proceeds from the issue may reasonably be regarded as having been used by the issuing corporation or a corporation with which it was not dealing at arm's length in the financing of its business carried on in Canada immediately before the share was issued,

(f) that is a prescribed share, or

(f.1) that is a taxable preferred share held by a specified financial institution that acquired the share

(i) before December 16, 1987, or

(ii) before 1989 pursuant to an agreement in writing entered into before December 16, 1987,

other than a share deemed by paragraph (c) of the definition "short-term preferred share" in this subsection or by paragraph (i.2) to have been issued after December 15, 1987 or a share that would be deemed by paragraph (e) of the definition "taxable preferred share" in this subsection to have been issued after December 15, 1987 if the references therein to "8:00 p.m. Eastern Daylight Saving Time, June 18, 1987" were read as references to "December 15, 1987",

and, for the purposes of this definition,

(g) where the terms or conditions of an established agreement were amended after November 16, 1978, the agreement shall be deemed to have been made after that date,

(h) where

(i) at any particular time the terms or conditions of a share issued pursuant to an established agreement or of any agreement relating to such a share have been changed,

(ii) under the terms or conditions of

(A) a share of a class of the capital stock of the issuing corporation issued before November 17, 1978 (other than a share that was listed on November 16, 1978 on a prescribed stock exchange in Canada),

(B) a share issued pursuant to an established agreement,

(C) any agreement between the issuing corporation and the owner of a share described in clause (A) or (B), or

(D) any agreement relating to a share described in clause (A) or (B) made after October 23, 1979,

the owner thereof could at any particular time after November 16, 1978 require, either alone or together with one or more taxpayers, the redemption, acquisition, cancellation, conversion or reduction of the paid-up capital of the share otherwise than by reason of a failure or default under the terms or conditions of the share or any agreement that related to, and was entered into at the time of, the issuance of the share,

(iii) in respect of a share issued before November 17, 1978, at any particular time after November 16, 1978 the redemption date was extended or the terms or conditions relating to its redemption, acquisition, cancellation, conversion or reduction of its paid-up capital were changed,

(iv) at a particular time after October 23, 1979 and before November 13, 1981, a specified financial institution (or a partnership or trust of which a specified financial institution or a person related to the institution is a member or beneficiary) acquired a share that

(A) was issued before November 17, 1978 or under an established agreement,

(B) was issued to a person other than a corporation that was, at the time of issue,

(I) described in any of paragraphs (a) to (e) of the definition "specified financial institution", or

(II) a corporation that was controlled by one or more corporations described in subclause (I) and, for the purpose of this subclause, one corporation is controlled by another corporation if more than 50% of its issued share capital (having full voting rights under all circumstances) belongs to the other corporation, to persons with whom the other corporation does not deal at arm's length, or to the other corporation and persons with whom the other corporation does not deal at arm's length,

(C) was acquired from a person that was, at the particular time, a person other than a corporation described in subclause (B)(I) or (II), and

(D) was acquired otherwise than under an agreement in writing made before October 24, 1979,

(v) at any particular time after November 12, 1981

(A) in respect of

(I) a share (other than a share referred to in paragraph (e) or a share listed on November 13, 1981 on a prescribed stock exchange in Canada) issued after November 16, 1978 and before November 13, 1981, or

(II) a share issued after November 12, 1981 and before 1983 pursuant to an agreement in writing to do so made before November 13, 1981 (in this definition referred to as a "specified agreement")

the owner thereof could require, either alone or together with one or more taxpayers, the redemption, acquisition, cancellation, conversion or reduction of the paid-up capital of the share otherwise than by reason of a failure or default under the terms or conditions of the share or any agreement that related to, and was entered into at the time of, the issuance of the share, or

(B) the redemption date of

(I) a share issued after November 16, 1978 and before November 13, 1981 or

(II) a share issued pursuant to a specified agreement

was extended or the terms or conditions relating to its redemption, acquisition, cancellation, conversion or reduction of its paid-up capital were changed, or

(vi) at a particular time after November 12, 1981, a specified financial institution (or a partnership or trust of which a specified financial institution or a person related to the institution is a member or beneficiary) acquired a share (other than a share referred to in paragraph (e)) that

(A) was issued before November 13, 1981 or under a specified agreement,

(B) was acquired from a partnership or person, other than a person that was, at the particular time, a corporation described in any of paragraphs (a) to (f) of the definition "specified financial institution" in this subsection,

(C) was acquired in an acquisition that was not subject to nor conditional on a guarantee agreement, within the meaning assigned by subsection 112(2.2), entered into after November 12, 1981, and

(D) was acquired otherwise than under an agreement in writing made before October 24, 1979 or a specified agreement,

the share shall, for the purposes of determining at any time after the particular time whether it is a term preferred share, be deemed to have been issued at the particular time otherwise than pursuant to an established or specified agreement,

(i) where the terms or conditions of a share of the capital stock of the issuing corporation are modified or established after June 28, 1982 and as a consequence thereof the issuing corporation, any person related thereto or any partnership or trust of which the issuing corporation or a person related thereto is a member or a beneficiary may reasonably be expected at any time to redeem, acquire or cancel, in whole or in part, the share or to reduce its paid-up capital, the share shall be deemed as from the date of the modification or as from the date of the establishment, as the case may be, to be a share described in paragraph (a),

(i.1) where

(i) it may reasonably be considered that the dividends that may be declared or paid at any time on a share (other than a prescribed share or a share described in paragraph (e) during the applicable time period referred to in that paragraph) of the capital stock of a corporation issued after December 15, 1987 or acquired after June 15, 1988 are derived primarily from dividends received on term preferred shares of the capital stock of another corporation, and

(ii) it may reasonably be considered that the share was issued or acquired as part of a transaction or event or series of transactions or events one of the main purposes of which was to avoid or limit the application of subsection 112(2.1) or 138(6),

the share shall be deemed at that time to be a term preferred share acquired in the ordinary course of business,

(i.2) where at any particular time after December 15, 1987, otherwise than pursuant to a written arrangement to do so entered into before December 16, 1987, the terms or conditions of a taxable preferred share of the capital stock of a corporation relating to any matter referred to in subparagraphs (a)(i) to (iv) have been modified or established, or any agreement in respect of the share relating to any such matter has been changed or entered into by the corporation or a specified person (within the meaning assigned by paragraph (h) of the definition "taxable preferred share" in this subsection) in relation to the corporation, the share shall be deemed after that particular time to have been issued at that particular time, and,

(j) where a particular share of the capital stock of a corporation has been issued or its terms and conditions have been modified and it may reasonably be considered, having regard to all circumstances (including the

rate of interest on any debt or the dividend provided on any term preferred share), that

(i) but for the existence at any time of the debt or the term preferred share, the particular share would not have been issued or its terms or conditions modified, and

(ii) one of the main purposes for the issue of the particular share or for the modification of its terms or conditions was to avoid a limitation provided by subsection 112(2.1) or 138(6) in respect of a deduction,

the particular share shall be deemed after December 31, 1982 to be a term preferred share of the corporation;

Related Provisions: 80(1) — Definition of "distress preferred share"; 87(4.1) — Amalgamations — exchanged shares; 112(2.1) — No deduction on intercorporate dividends; 112(2.6)"exempt share"(c) — Distress preferred shares excluded from restrictions on collateralized preferred shares; 248(10) — Series of transactions; 248(13) — Interests in trusts or partnerships; 256(1.6) — Fair market valuation; 256(6), (6.1) — Meaning of "controlled"; Canada-U.S. Tax Treaty:Art. XXIX-A:5(c) — Meaning of "debt substitute share".

History: Subparas. (b)(i) and (h)(iv) of the definition "term preferred share" in subsec. 248(1) amended by 1999, c. 22, subsecs. 80(9) and (10), applicable to taxation years that begin after 1998. Subparas. (b)(i) and (h)(iv) formerly read:

(i) a corporation described in any of paragraphs (a) to (e) of the definition "specified financial institution" in this subsection,

. . . . .

(iv) a share issued before November 17, 1978 or a share issued pursuant to an established agreement (other than a share issued to a corporation described in any of paragraphs (a) to (f) of the definition "specified financial institution" in this subsection), is, at any particular time after October 23, 1979 and before November 13, 1981 acquired (otherwise than pursuant to an agreement in writing made before October 24, 1979) from a person (other than a corporation described in any of paragraphs (a) to (f) of that definition) by a specified financial institution or by a partnership or trust of which a specified financial institution or a person related thereto is a member or a beneficiary,

Subpara. (h)(vi) of the definition "term preferred share" in subsec. 248(1) amended by the said c. 22, subsec. 80(11), applicable to taxation years that begin after 1998 except that, in its application to a share acquired from a corporation that last acquired the share in a taxation year that began before 1999, the expression "described in any of paragraphs (a) to (f) of the definition "specified financial institution" in this subsection," in cl. (h)(vi)(B), as amended, shall be read as "described in subclause (iv)(B)(I) or (II)". Subpara. (h)(vi) formerly read:

(vi) a share (other than a share referred to in paragraph (e)) issued before November 13, 1981 or a share issued pursuant to a specified agreement is, at any particular time after November 12, 1981, acquired (otherwise than pursuant to an agreement in writing made before October 24, 1979 or otherwise than pursuant to a specified agreement) from a partnership or person (other than an acquisition from a corporation described in any of paragraphs (a) to (f) of the definition "specified financial institution" in this subsection where that acquisition is neither subject to nor conditional on a guarantee agreement, within the meaning assigned by subsection 112(2.2), entered into after November 12, 1981) by a specified financial institution or by a partnership or trust of which a specified financial institution or a person related thereto is a member or a beneficiary,

Para. (d.1) of the definition "term preferred share" in subsec. 248(1) amended by 1998, c. 19, subsec. 239(5), applicable after February 22, 1994. Para. (d.1) formerly read:

(d.1) that was issued before April 22, 1980 by a corporation described in any of paragraphs 39(5)(b) to (f) or by an issuing corporation associated with any such corporation and is listed on a prescribed stock exchange in Canada,

"Term preferred share" amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(13), to add the word "or" at the end of para. (a), applicable after June 18, 1987.

Subpara. (e)(i) of "term preferred share" amended by 1994, c. 7, Sch. V (1992, c. 27), para. 90(1)(q), to substitute "*Bankruptcy and Insolvency Act*" for "*Bankruptcy Act*", in force November 30, 1992.

Selected Cases [subsec. 248(1)"term preferred share"]: *Citibank Canada v. R.*, [2002] 2 C.T.C. 171 (FCA) (Instruments did not have character of debt, such as repayment, default).

Regulations: 3200 (prescribed stock exchange in Canada); 6201 (prescribed shares).

Interpretation Bulletins: IT-527: Distress preferred shares.

I.T. Technical News: 25 (*Silicon Graphics* case — dispersed control is not control).

Advance Tax Rulings: ATR-5: Preferred shares exchangeable for common shares; ATR-10: Issue of term preferred shares; ATR-18: Term preferred shares; ATR-46: Financial difficulty.

"termination payment" — [Repealed under former Act]

"testamentary trust" has the meaning assigned by subsection 108(1);

Related Provisions: 248(3) — Rules applicable in relation to the Province of Quebec.

"timber resource property" has the meaning assigned by subsection 13(21);

Interpretation Bulletins: IT-373R2: Woodlots.

"total pension adjustment reversal" of a taxpayer for a calendar year has the meaning assigned by regulation;

Related Provisions: 147.1(18)(t) — Authorization for regulations determining TPAR.

History: The definition "total pension adjustment reversal" added to subsec. 248(1) by 1998, c. 19, subsec. 66(3), applicable after 1996.

Regulations: 8304.1 (pension adjustment reversal).

Forms: RC4137: Pension adjustment reversal guide; T4104: Past service pension adjustment guide.

"Treasury Board" means the Treasury Board established by section 5 of the *Financial Administration Act*;

"treaty-protected business" of a taxpayer at any time means a business in respect of which any income of the taxpayer for a period that includes that time would, because of a tax treaty with another country, be exempt from tax under Part I;

History: The definition "treaty-protected business" added to subsec. 248(1) by 1999, c. 22, subsec. 80(12), applicable to 1998 *et seq.*

"treaty-protected property" of a taxpayer at any time means property any income or gain from the disposition of which by the taxpayer at that time would, because of a tax treaty with another country, be exempt from tax under Part I;

Related Provisions: 13(4.1)(d) — Replacement of depreciable property that is not treaty-protected property; 44(5)(d) — Replacement of capital property that is not treaty-protected property.

History: The definition "treaty-protected property" added to subsec. 248(1) by 1999, c. 22, subsec. 80(12), applicable to 1998 *et seq.*

"trust" has the meaning assigned by subsection 104(1);

Related Provisions: 94(3)(a) [proposed] — Trust deemed resident in Canada for certain purposes; 108(1) — Meaning of "trust"; 146.1(1) — RESPs — "Meaning of trust"; 149(5) — Exception re investment income of certain clubs; 207.6(1) — Definitions (re RCA tax); 233.2(4) — Reporting requirement re transfers to foreign trust; 233.6(1) — Reporting requirement re distributions from foreign trust; 248(3) — Deemed trusts in Quebec; 248(25.1) — Trust-to-trust transfers — deemed same trust.

"undepreciated capital cost" to a taxpayer of depreciable property of a prescribed class has the meaning assigned by subsection 13(21);

"unit trust" has the meaning assigned by subsection 108(2);

Related Provisions: 248(1)"personal trust" — Unit trust deemed not to be a personal trust.

"unused RRSP deduction room" of a taxpayer at the end of a taxation year has the meaning assigned by subsection 146(1);

"unused scientific research and experimental development tax credit" of a taxpayer for a taxation year has the meaning assigned by subsection 127.3(2);

"unused share-purchase tax credit" of a taxpayer for a taxation year has the meaning assigned by subsection 127.2(6);

"1971 capital surplus on hand", "1971 undistributed income on hand" — [Repealed under former Act]

Selected Cases [subsec. 248(1)]: *Friesen (J.) v. Canada*, [1995] 2 C.T.C. 369 (SCC) (Plain meaning rule applies to interpretation of Act).

Proposed Addition — 248(1.1)

(1.1) Non-disposition before December 24, 1998 — A redemption, an acquisition or a cancellation, at any particular time after 1971 and before December 24, 1998, of a share or of a right to acquire a share (which share or which right, as the case may be, is referred to in this subsection as the "security") of the capital stock of a corporation (referred to in this subsection as the "issuing corporation") held by another corporation (referred to in this subsection as the "disposing corporation") is not a disposition (within the meaning of the definition "disposition" in section 54 as that section read in its application to transactions and events that occurred at the particular time) of the security if

(a) the redemption, acquisition or cancellation occurred as part of a merger or combination of two or more corporations (including the issuing corporation and the disposing corporation) to form one corporate entity (referred to in this subsection as the "new corporation");

(b) the merger or combination is

(i) an amalgamation (within the meaning assigned by subsection 87(1) as it read at the particular time) to which subsection 87(11) if in force, and as it read, at the particular time did not apply,

(ii) an amalgamation (within the meaning assigned by subsection 87(1) as it read at the particular time) to which subsection 87(11) if in force, and as it read, at the particular time applies, if the issuing corporation and the disposing corporation are described by subsection 87(11) (if in force, and as it read, at the particular time) as the parent and the subsidiary, respectively, or

(iii) a foreign merger (within the meaning assigned by subsection 87(8.1) as it read at the particular time); and

(c) either

(i) the disposing corporation received no consideration for the security, or

(ii) in the case of a foreign merger (within the meaning assigned by subsection 87(8.1) as it read at the particular time), the disposing corporation received no consideration for the security other than property that was, immediately before the foreign merger, owned by the issuing corporation and that, on the foreign merger, became property of the new corporation.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 185(13), will add subsec. 248(1.1), in force on Royal Assent. In applying subsec. 248(1.1) to a particular redemption, acquisition or cancellation, any assessment of a taxpayer's tax, interest and penalties payable under the Act for a taxation year that includes the time at which the particular redemption, acquisition or cancellation occurred shall, notwithstanding subsecs. 152(4) to (5), be made that is necessary to take into account the application of the new subsection.

Technical Notes: The definition "disposition" was added to subsection 248(1) by S.C. 2001, chapter 17, subsection 188(5) [formerly Bill C-22]. In general, that definition applies to transactions and events that occur after December 23, 1998. The former definition "disposition" was contained in section 54, applicable to transactions and events that occurred before December 24, 1998.

New paragraph (n) is added to the definition "disposition" in subsection 248(1), applicable to redemptions, acquisitions and cancellations of certain securities that occur after December 23, 1998. For more detail, see the commentary to subsection 248(1).

New subsection 248(1.1) is added to deal, in a corresponding fashion, with such redemptions, acquisitions and cancellations that occurred before December 24, 1998.

New subsection 248(1.1) provides that a redemption, an acquisition or a cancellation, at any particular time after 1971 and before December 24, 1998, of a share or of a right to acquire a share (which share or which right, as the case may be, is referred to as the "security") of the capital stock of a corporation (referred to as the "issuing corporation") held by another corporation (referred to as the "disposing corporation") is not a disposition of the security within the meaning of the definition "disposition" in section 54 (as that section read in its application to transactions and events that occur at the particular time), if

- the redemption, acquisition or cancellation occurred as part of a merger or combination of two or more corporations (including the issuing corporation and the disposing corporation) to form one corporate entity (referred to as the "new corporation"),
- the merger or combination is
  - an amalgamation (within the meaning assigned by subsection 87(1) as it read at the particular time) to which subsection 87(11) if in force, and as it read, at the particular time did not apply,
  - an amalgamation (within the meaning assigned by subsection 87(1) as it read at the particular time) to which subsection 87(11) if in force, and as it read, at the particular time applies, if the issuing corporation and the disposing corporation are described by subsection 87(11) (if in force, and as it read, at the particular time) as the parent and the subsidiary, respectively, or
  - a foreign merger (within the meaning assigned by subsection 87(8.1) as it read at the particular time), and
- either
  - the disposing corporation received no consideration for the security, or
  - in the case of a foreign merger (within the meaning assigned by subsection 87(8.1) as it read at the particular time), the disposing corporation received no consideration for the security other than property that was, immediately before the foreign merger, owned by the issuing corporation and that, on the foreign merger, became property of the new corporation.

Related Provisions: 248(1)"disposition"(n) — Same rule after December 23, 1998.

(2) Tax payable — In this Act, the tax payable by a taxpayer under any Part of this Act by or under which provision is made for the assessment of tax means the tax payable by the taxpayer as fixed by assessment or reassessment subject to variation on objection or on appeal, if any, in accordance with the provisions of that Part.

Related Provisions: 117(1) — Meaning of "tax payable" for purposes of sections 117–127.4.

(3) Rules applicable in relation to the Province of Quebec [deemed trusts] — For the purposes of the

application of this Act in relation to the Province of Quebec,

(a) a usufruct shall be deemed to be a trust, created by will where the usufruct was so established, and property subject to a usufruct shall be deemed to have been transferred to the trust, on the death of the testator and as a consequence thereof where the usufruct arises on death, and to be held in trust and not otherwise;

(b) a right of use or habitation shall be deemed to be a trust, created by will where the right was so established, and property subject to such a right shall be deemed to have been transferred to the trust, on the death of the testator and as a consequence thereof where the right arises on death, and to be held in trust and not otherwise;

(c) a substitution shall be deemed to be a trust, created by will where the substitution was so established, and property subject to a substitution shall be deemed to have been transferred to the trust, on the death of the testator and as a consequence thereof where the substitution arises on death, and to be held in trust and not otherwise;

(d) property subject to rights and obligations under an arrangement (other than a trust) that

(i) is established by or under a written contract that

(A) is governed by the laws of the Province of Quebec, and

(B) provides that, for the purposes of this Act, the arrangement shall be considered to be a trust, and

(ii) creates rights and obligations that are substantially similar to the rights and obligations under a trust (determined without reference to this subsection),

shall be deemed to be held in trust and not otherwise, and such an arrangement shall be deemed to be a trust;

(e) a person who has a right (whether immediate or future and whether absolute or contingent) to receive all or any part of the income or capital in respect of property referred to in paragraph (a), (b), (c) or (d) shall be deemed to be beneficially interested in the trust referred to in that paragraph; and

(f) property in relation to which any person has, at any time,

(i) the right of ownership,

(ii) a right as a lessee in an emphyteutic lease, or

(iii) a right as a beneficiary in a trust

shall, notwithstanding that such property is subject to a servitude, be deemed to be beneficially owned by the person at that time.

Proposed Amendment — 248(3)

(3) Certain arrangements under civil law — For the purposes of this Act,

(a) if at any time property is subject to a usufruct, right of use or habitation, or substitution,

(i) the usufruct, right of use or habitation, or substitution, as the case may be, is deemed to be at that time

(A) a trust, and

(B) where the usufruct, right of use or habitation, or substitution, as the case may be, is created by will, a trust created by will,

(ii) the property is deemed

(A) where the usufruct, right of use or habitation, or substitution, as the case may be, arises on the death of a testator, to have been transferred to the trust on and as a consequence of the death of the testator, and not otherwise, and

(B) where the usufruct, right of use or habitation, or substitution, as the case may be, arises otherwise, to have been transferred (at the time it first became subject to the usufruct, right of use or habitation, or substitution, as the case may be) to the trust by the person that granted the usufruct, right of use or habitation, or substitution, and

(iii) the property is deemed to be, throughout the period in which it is subject to the usufruct, right of use or habitation, or substitution, as the case may be, held by the trust, and not otherwise;

(b) if at any time property is property of a foundation (other than a foundation that is at that time a corporation or trust determined without reference to this paragraph),

(i) the foundation is deemed to be at that time

(A) a trust, and

(B) where the foundation is created by will, a trust created by will,

(ii) the property is deemed to have been transferred (at the time it first became property of the foundation) to the trust by the person from whom the foundation acquired the property, and

(iii) the property is deemed to be, throughout the period in which it is property of the foundation, held by the trust, and not otherwise;

(c) an arrangement (other than a partnership or an arrangement that is a trust determined without reference to this paragraph) is deemed to be a trust and property subject to rights and obligations under the arrangement is, if the arrangement is deemed by this paragraph to be a trust, deemed to be held in trust and not otherwise, where the arrangement

(i) is established before October 31, 2003 by or under a written contract that

(A) is governed by the laws of the Province of Quebec, and

(B) provides that, for the purposes of this Act, the arrangement shall be considered to be a trust, and

(ii) creates rights and obligations that are substantially similar to the rights and obligations under a trust (determined without reference to this subsection);

(d) a person who has a right (whether immediate or future and whether absolute or contingent) to receive all or part of the income or capital in respect of property that is referred to in any of paragraphs (a) to (c) is deemed to be beneficially interested in the trust; and

(e) notwithstanding that a property is at any time subject to a servitude, the property is deemed to be

beneficially owned by a person at that time if, at that time, the person has in relation to the property

(i) the right of ownership,

(ii) a right as a lessee under an emphyteusis, or

(iii) a right as a beneficiary in a trust.

Application: The July 18, 2005 draft legislation (Part 1 — NRTs and FIEs), subsec. 44(7), will amend subsec. 248(3) to read as above, applicable to taxation years that begin after October 30, 2003.

Technical Notes: Subsection 248(3) provides a number of rules that apply for the purposes of applying the Act in relation to the Province of Quebec.

Paragraphs 248(3)(a) to (d) deem certain institutions or arrangements created under the laws of the Province of Quebec to be trusts for those purposes. Paragraph 248(3)(e) clarifies that a person is deemed to be beneficially interested in a trust if the person has any right to receive the income or the capital in respect of property that is deemed, under any of paragraphs 248(3)(a) to (d), to be held in trust. Paragraph 248(3)(f) provides that a person beneficially owns property, even if there is a servitude in respect of the property, in relation to which the person has the rights described in any of subparagraphs 238(3)(f)(i) to (iii).

Subsection 248(3) is amended so that it applies generally for the purposes of the Act.

The rules found in paragraphs 248(3)(a) to (c) are now found in new paragraph 248(3)(a), which sets out the treatment as a trust of certain civil law institutions.

New paragraph 248(3)(b) ensures that the rules in the Act that apply to trusts (including the rules in new sections 94 to 94.4) also apply to foundations. Where property is at any time property of a foundation (and the foundation is not otherwise treated as a trust or corporation for purposes of the Act), the foundation is deemed under paragraph 248(3)(b) to be at that time a trust, and where the foundation is created by will, to be a trust created by will. Such property is deemed to have been acquired (at the time it first became property of the foundation) by the trust from the person that transferred the property to the foundation, and the property is deemed to be, throughout the period in which it is property of the foundation, held by the trust, and not otherwise.

The provisions of paragraph 248(3)(d) are now found in paragraph 248(3)(c). However, note that new paragraph 248(3)(c) clarifies that it is intended to apply only in respect of arrangements that are neither partnerships nor trusts determined without reference to paragraph 248(3)(c). In addition, new paragraph 248(3)(c) applies only to an arrangement established before October 31, 2003. This recognizes that amendments to the *Civil Code of Quebec* have rendered unnecessary the provision's original purpose i.e., to allow for the characterization, in the Province of Quebec, of certain entities as trusts under the Act even though they may not technically constitute trusts under the civil law of Quebec.

The provisions of paragraphs 248(3)(e) and (f) are found in new paragraphs 248(3)(d) and (e), respectively. In the latter, the obsolete terms "lessee under an emphyteutic lease" / *droit de preneur dans un bail emphytéotique* are replaced with "lessee under an emphyteusis" / *droit d'emphytéote*, the new terminology used in the *Civil Code of Québec*.

Related Provisions: 248(3.1) — Gift of bare ownership of immovables; 248(8) — Occurrences as a consequence of death; 248(9.1) — Trust created by taxpayer's will; 248(25) — Beneficially interested; *Interpretation Act* 8.1, 8.2 — Common law and civil law equally authoritative.

History: Subsec. 248(3) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(15), applicable

(a) after 1990 with respect to property the ownership of which was acquired after 1990;

(b) after 1990 with respect to property that became subject to a usufruct, a right of use or habitation, a substitution, an emphyteutic lease or a trust after 1990;

(c) after 1989 with respect to property that became subject to a usufruct, a right of use or habitation or a substitution after 1989 and before 1991, where the persons who so acquire interests in the property elected jointly by notifying the Minister of National Revenue in writing before 1992 [1994, c. 7, Sch. VIII (1993, c. 24), s. 159 provides that such an election made before December 11, 1993 shall be deemed to have been made before 1992]; and

(d) to 1989 *et seq.* with respect to property that became subject to an arrangement referred to in para. 248(3)(d) in the 1989 or any subsequent taxation year.

Subsec. 248(3) formerly read:

(3) References to property beneficially owned and to beneficial owner of property — In its application in relation to the Province of Quebec, a reference in this Act to any property that is or was beneficially owned by any person shall be read as including a reference to property in relation to which any person has or had the full ownership whether or not the property is or was subject to a servitude, or has or had a right as a usufructuary, a lessee in an emphyteutic lease, an institute in a substitution or a beneficiary in a trust; and a reference in this Act to the beneficial owner of any property shall be read as including a reference to a person who has or had, accordingly as the context requires, such ownership as a right in relation to that property.

Selected Cases [subsec. 248(3)]: *R. v. Construction Bérou Inc.*, [2000] 2 C.T.C. 174 (FCA) (Purposive interpretation of provision); *Larose v. MNR*, [1992] 2 C.T.C. 2339 (TCC); amended (Nov. 18, 1991), Doc. 87-294(IT) (TCC) [unreported] (Assessment in respect of sale of properties upheld even though court decision and other circumstances had denied taxpayer proceeds of sale; right to dispose of properties had been transferred to purchaser).

Interpretation Bulletins: IT-305R4: Testamentary spouse trusts; IT-437R: Ownership of property (principal residence).

Proposed Addition — 248(3.1)

(3.1) Gift of bare ownership of immovables — Subsection (3) does not apply in respect of a usufruct or a right of use of an immovable in circumstances where a taxpayer disposes of the bare ownership of the immovable by way of a gift to a donee described in the definition "total charitable gifts", "total Crown gifts" or "total ecological gifts" in subsection 118.1(1) and retains, for life, the usufruct or the right of use.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 185(14), will add subsec. 248(3.1), applicable to dispositions that occur after July 18, 2005.

Technical Notes: Under civil law, where a property is subject to dismemberment such as a usufruct or a right of use established in favour of an individual while another has the bare ownership, subsection 248(3) deems the property subject to such a usufruct or right of use to have been transferred to a trust. The whole property will thus be disposed of. Subsection 248(3), as it now reads, does not provide for any exception where the bare ownership of an immovable is gifted to a registered charity. New subsection 248(3.1) provides relief, similar to the exception found in subsection 43.1(1) for life interests created at common law, where the usufruct or right of use of an immovable is retained by a taxpayer but the bare ownership of the immovable is gifted in circumstances where the gift generates entitlement to a charitable donations credit.

Under new subsection 248(3.1) and subsection 69(1), the dismemberment will entail a disposition only of the bare ownership of an immovable for an amount equal to its fair market value (FMV). In the case of capital property, the adjusted cost base (ACB) of the property will be divided under subsection 43(1) pro rata between the bare ownership and usufruct or right of use. The usufruct or right of use will be considered to have been disposed of only when it is actually disposed of or is otherwise deemed to be disposed of by the taxpayer.

Example

Mrs. A, whose property is governed by the civil law of the province of Québec, owns as capital property an immovable worth $100,000, which has an ACB of $10,000. She creates a dismemberment of the property by giving the bare ownership (FMV of $60,000) to a registered charitable organization and retaining the right of use (FMV of $40,000).

Under the present rules, subsections 248(3) and 69(1) apply and Mrs. A is considered to have disposed of the immovable at its FMV ($100,000) in favour of a deemed trust. A gain of $90,000 is triggered ($100,000 - $10,000).

Because of new subsection 248(3.1) and subsection 69(1), there is a disposition only of the bare ownership for proceeds of disposition equal to its FMV, i.e. $60,000. This amount can be included in the calculation of her charitable gifts credit. The ACB attributable to the bare ownership is $6,000 ($10,000 × 6/10). This transaction will give rise to a gain of $54,000 ($60,000 - $6,000). Mrs. A retains the right of use of the immovable and there is no disposition of this

right. At death, a deemed disposition of her right of use will occur at FMV (established in the same way as for a life estate and remainder interest).

(4) Interest in real property — In this Act, an interest in real property includes a leasehold interest in real property but does not include an interest as security only derived by virtue of a mortgage, hypothecary claim, agreement for sale or similar obligation.

Related Provisions: 43.1(1) — Life estates in real property; 248(4.1) — Real right in an immovable under Quebec civil law; *Interpretation Act* 8.1, 8.2 — Common law and civil law equally authoritative.

History: Subsec. 248(4) amended by 2001, c. 17, subsec. 230(2), to add "hypothecary claim,", in force June 14, 2001.

Proposed Addition — 248(4.1)

(4.1) Real right in immovables — In this Act, a real right in an immovable includes a lease but does not include a security right derived by virtue of a hypothecary claim, agreement for sale or similar obligation.

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 278(14), will add subsec. 248(4.1), to come into force on Royal Assent.

Technical Notes: Subsection 248(4) of the current legislation uses the term "*droit sur un bien immeuble*" in the French version as equivalent for the term "interest in real property" used in the English version. The term refers to the relationship between a person and property and for purposes of the ITA includes a leasehold interest but not an interest as security.

Subsection 248(4) is amended so as to provide, for common law purposes, the scope of the term "interest in real property." Reference to the civil law term "hypothecary claim" is removed from the English version of the provision. Furthermore, the term "*intérêt sur un bien réel*" is added in the French version of the Act. This term is the French equivalent of the common law term "interest in real property".

For civil law purposes, new subsection 248(4.1) is added in both linguistic versions of the Act. The scope of the civil law term "real right in immovables" / "*droit réel sur un immeuble*" is adjusted in a similar manner as its common law counterpart by including the lease and excluding security rights.

Related Provisions: 248(4) — Interest in real property under common law; *Interpretation Act* 8.1, 8.2 — Common law and civil law equally authoritative.

(5) Substituted property — For the purposes of this Act, other than paragraph 98(1)(a),

(a) where a person has disposed of or exchanged a particular property and acquired other property in substitution therefor and subsequently, by one or more further transactions, has effected one or more further substitutions, the property acquired by any such transaction shall be deemed to have been substituted for the particular property; and

(b) any share received as a stock dividend on another share of the capital stock of a corporation shall be deemed to be property substituted for that other share.

Interpretation Bulletins: IT-244R3: Gifts by individuals of life insurance policies as charitable donations; IT-369R: Attribution of trust income to settlor; IT-489R: Non-arm's length sale of shares to a corporation; IT-511R: Interspousal and certain other transfers and loans of property.

(6) "Class" of shares issued in series — In its application in relation to a corporation that has issued shares of a class of its capital stock in one or more series, a reference in this Act to the "class" shall be read, with such modifications as the circumstances require, as a reference to a "series of the class".

Interpretation Bulletins: IT-328R3: Losses on shares on which dividends have been received.

(7) [Deemed date of] Receipt of things mailed — For the purposes of this Act,

(a) anything (other than a remittance or payment described in paragraph (b)) sent by first class mail or its equivalent shall be deemed to have been received by the person to whom it was sent on the day it was mailed; and

(b) the remittance or payment of an amount

(i) deducted or withheld, or

(ii) payable by a corporation,

as required by this Act or a regulation shall be deemed to have been made on the day on which it is received by the Receiver General.

Related Provisions: 153(1) [closing words] — Certain remittances must be made directly to a financial institution; 204.81(8.2) — Rule in 248(7) does not apply to voluntary de-registration of LSVCC; 244(5) — Proof of service by mail; 244(14) — Mailing date presumed to be date of assessment or notice; Reg. 110 — Certain remittances must be made directly to a financial institution.

Interpretation Bulletins: IT-433R: Farming or fishing — use of cash method.

Charities Policies: CPS-017: Effective date of registration.

(8) Occurrences as a consequence of death — For the purpose of this Act,

(a) a transfer, distribution or acquisition of property under or as a consequence of the terms of the will or other testamentary instrument of a taxpayer or the taxpayer's spouse or common-law partner or as a consequence of the law governing the intestacy of a taxpayer or the taxpayer's spouse or common-law partner shall be considered to be a transfer, distribution or acquisition of the property as a consequence of the death of the taxpayer or the taxpayer's spouse or common-law partner, as the case may be;

(b) a transfer, distribution or acquisition of property as a consequence of a disclaimer, release or surrender by a person who was a beneficiary under the will or other testamentary instrument or on the intestacy of a taxpayer or the taxpayer's spouse or common-law partner shall be considered to be a transfer, distribution or acquisition of the property as a consequence of the death of the taxpayer or the taxpayer's spouse or common-law partner, as the case may be; and

(c) a release or surrender by a beneficiary under the will or other testamentary instrument or on the intestacy of a taxpayer with respect to any property that was property of the taxpayer immediately before the taxpayer's death shall be considered not to be a disposition of the property by the beneficiary.

Related Provisions: 248(9) — Definitions; 248(9.1) — Whether trust created by taxpayer's will.

History: Subsec. 248(8) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Interpretation Bulletins: IT-305R4: Testamentary spouse trusts; IT-313R2: Eligible capital property — rules where a taxpayer has ceased carrying on a business or has died; IT-349R3: Intergenerational transfers of farm property on death; IT-385R2: Disposition of an income interest in a trust; IT-449R: Meaning of "vested indefeasibly" (archived); IT-500R: RRSPs — death of an annuitant.

(9) Definitions — In subsection (8),

"disclaimer" includes a renunciation of a succession made under the laws of the Province of Quebec that is not made in favour of any person, but does not include any disclaimer made after the period ending 36 months after

the death of the taxpayer unless written application therefor has been made to the Minister by the taxpayer's legal representative within that period and the disclaimer is made within such longer period as the Minister considers reasonable in the circumstances;

History: The definition "disclaimer" in subsec. 248(9) substituted by 1994, c. 21, subsec. 109(7), applicable June 15, 1994. That definition formerly read:

> "disclaimer" includes a renunciation of a succession made under the laws of the Province of Quebec that is not made in favour of any person;

Interpretation Bulletins ["disclaimer"]: IT-305R4: Testamentary spouse trusts; IT-313R2: Eligible capital property — rules where a taxpayer has ceased carrying on a business or has died; IT-349R3: Intergenerational transfers of farm property on death.

"release or surrender" means

(a) a release or surrender made under the laws of a province (other than the Province of Quebec) that does not direct in any manner who is entitled to benefit therefrom, or

(b) a gift *inter vivos* made under the laws of the Province of Quebec of an interest in, or right to property of, a succession that is made to the person or persons who would have benefited if the donor had made a renunciation of the succession that was not made in favour of any person,

and that is made within the period ending 36 months after the death of the taxpayer or, where written application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister considers reasonable in the circumstances.

Interpretation Bulletins ["release or surrender"]: IT-305R4: Testamentary spouse trusts; IT-313R2: Eligible capital property — rules where a taxpayer has ceased carrying on a business or has died; IT-349R3: Intergenerational transfers of farm property on death.

(9.1) How trust created — For the purposes of this Act, a trust shall be considered to be created by a taxpayer's will if the trust is created

(a) under the terms of the taxpayer's will; or

(b) by an order of a court in relation to the taxpayer's estate made under any law of a province that provides for the relief or support of dependants.

Related Provisions: 108(1)"testamentary trust" — Trust created by taxpayer's will is a testamentary trust; 248(3) — Whether usufruct, right of use or habitation or substitution in Quebec deemed to be trust created by taxpayer's will.

History: Subsec. 248(9.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 139(8), applicable to 1990 *et seq.*

Interpretation Bulletins: IT-305R4: Testamentary spouse trusts.

(9.2) Vested indefeasibly — For the purposes of this Act, property shall be deemed not to have vested indefeasibly

(a) in a trust under which a taxpayer's spouse or common-law partner is a beneficiary, where the trust is created by the will of the taxpayer, unless the property vested indefeasibly in the trust before the death of the spouse or common-law partner; and

(b) in an individual (other than a trust), unless the property vested indefeasibly in the individual before the death of the individual.

Related Provisions: 248(9.1) — Whether trust created by taxpayer's will.

History: Subsec. 248(9.2) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subsec. 248(9.2) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 139(8), applicable in respect of deaths occurring after December 20, 1991.

Interpretation Bulletins: IT-305R4: Testamentary spouse trusts; IT-449R: Meaning of "vested indefeasibly" (archived).

(10) Series of transactions — For the purposes of this Act, where there is a reference to a series of transactions or events, the series shall be deemed to include any related transactions or events completed in contemplation of the series.

Selected Cases [subsec. 248(10)]: *Canutilities Holdings Ltd. v. R.*, [2004] 4 C.T.C. 210 (FCA) (Preordination plus ability to carry out transaction may produce "series"); *Meager Creek Holdings Ltd. v. R.*, [1998] 4 C.T.C. 2090 (TCC) (Must be some connection between events for "series" of transactions to occur).

Advance Tax Rulings: ATR-56: Purification of a family farm corporation; ATR-57: Transfer of property for estate planning purposes; ATR-58: Divisive reorganization.

I.T. Technical News: 22 (series of transactions).

(11) Compound interest — Interest computed at a prescribed rate under any of subsections 129(2.1) and (2.2), 131(3.1) and (3.2), 132(2.1) and (2.2), 133(7.01) and (7.02), 159(7), 160.1(1), 161(1), (2) and (11), 161.1(5), 164(3) to (4), 181.8(1) and (2) (as those two subsections read in their application to the 1991 and earlier taxation years), 185(2), 187(2) and 189(7), section 190.23 (as it read in its application to the 1991 and earlier taxation years) and subsections 193(3), 195(3), 202(5) and 227(8.3), (9.2) and (9.3) of this Act and subsection 182(2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952 (as that subsection read in its application to taxation years beginning before 1986) and subsection 191(2) of that Act (as that subsection read in its application to the 1984 and earlier taxation years) shall be compounded daily and, where interest is computed on an amount under any of those provisions and is unpaid or unapplied on the day it would, but for this subsection, have ceased to be computed under that provision, interest at the prescribed rate shall be computed and compounded daily on the unpaid or unapplied interest from that day to the day it is paid or applied and shall be paid or applied as would be the case if interest had continued to be computed under that provision after that day.

Related Provisions: 221.1 — Application of interest where legislation retroactive.

History: Subsec. 248(11) amended to add reference to subsec. 161.1(5) and substitute "(as those two subsections read in their application to the 1991 and earlier taxation years)" for "(as these two subsections read in their application to the 1991 and earlier taxation years)" by 2000, c. 19, subsec. 67(2), applicable after 1999.

Subsec. 248(11) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 139(9), applicable to refunds paid or applied with respect to taxation years beginning after 1991. Subsec. (11) formerly read:

> (11) Interest computed at a prescribed rate under any of subsections 159(7), 160.1(1), 161(1), (2) and (11), 164(3) to (4), 181.8(1) and (2), 185(2), 187(2) and 189(7), section 190.23, subsections 193(3), 195(3), 202(5) and 227(8.3), (9.2) and (9.3) of this Act, subsection 182(2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it applied to taxation years beginning before 1987, and subsection 191(2) of that Act as it applied to the 1972 to 1984 taxation years shall be compounded daily and, where interest is computed on an amount under any of those provisions and is unpaid on the day it would, but for this subsection, have ceased to be computed under that provision, interest at the prescribed rate shall be computed and compounded daily on the unpaid interest from that day to the day it is paid and shall be paid or credited as would have been the case if interest had continued to be computed under that provision after that day.

Subsec 248(11) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(16), to substitute the list of sections, applicable to 1990 *et seq.* That list formerly read:

> subsections 159(7), 160.1(1), 161(1), (2) and (11), 164(3) to (4), 181.8(1) and (2), 185(2), 187(2) and 189(7), section 190.23, subsections 191(2), 193(3), 195(3) and 202(5), section 211.5 and subsections 227(8.3), (9.2) and (9.3) of this Act and subsection 182(2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952,

Selected Cases [subsec. 248(11)]: *Exxonmobil Canada Ltd. v. R.*, [2004] 2 C.T.C. 2427 (TCC) (Interest is simple, not compound, unless otherwise indicated).

Regulations: 4301 (prescribed rate of interest).

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

(12) Identical properties — For the purposes of this Act, one bond, debenture, bill, note or similar obligation issued by a debtor is identical to another such obligation issued by that debtor if both are identical in respect of all rights (in equity or otherwise, either immediately or in the future and either absolutely or contingently) attaching thereto, except as regards the principal amount thereof.

Related Provisions: 14(13), 18(16) — Deemed identical properties for superficial loss/pregnant loss rules; 18.1(12) — Identical properties for matchable-expenditure rules; 40(3.5) — Deemed identical properties for superficial loss/pregnant loss rules; 47 — Capital gains treatment of identical properties; 54"superficial loss" [closing words] — Deemed identical properties for superficial loss/pregnant loss rules; 138(11.1) — Identical properties of life insurance corporation; 206(1.5) — Identical property rule for determining foreign property.

I.T. Application Rules: 26(8)–(8.4) — Identical properties owned since before 1972.

Interpretation Bulletins: IT-387R2: Meaning of "identical properties".

(13) Interests in trusts and partnerships — Where after November 12, 1981 a person has an interest in a trust or partnership, whether directly or indirectly through an interest in any other trust or partnership or in any manner whatever, the person shall, for the purposes of the definitions "income bond", "income debenture" and "term preferred share" in subsection (1), paragraph (h) of the definition "taxable preferred share" in that subsection, subsections 84(4.2) and (4.3) and 112(2.6) and section 258, be deemed to be a beneficiary of the trust or a member of the partnership, as the case may be.

(14) Related corporations — For the purpose of paragraph (g) of the definition "specified financial institution" in subsection (1), where in the case of 2 or more corporations it can reasonably be considered, having regard to all the circumstances, that one of the main reasons for the separate existence of those corporations in a taxation year is to limit or avoid the application of subsection 112(2.1) or (2.2) or 138(6), the 2 or more corporations shall be deemed to be related to each other and to each other corporation to which any such corporation is related.

History: Subsec. 248(14) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(17), to substitute "For the purpose of" for "For the purposes of" and "can reasonably" for "may reasonably", and to add "and to each other corporation to which any such corporation is related", applicable after July 13, 1990.

(15) Goods and services tax — change of use — For the purposes of this Act, where a liability for the goods and services tax is incurred in respect of a change of use at any time of a property, the liability so incurred shall be deemed to have been incurred immediately after that time in respect of the acquisition of the property.

(16) Goods and services tax — input tax credit and rebate — For the purposes of this Act, other than this subsection and subsection 6(8), an amount claimed by a taxpayer as an input tax credit or rebate with respect to the goods and services tax in respect of a property or service shall be deemed to be assistance from a government in respect of the property or service that is received by the taxpayer

(a) where the amount was claimed by the taxpayer as an input tax credit in a return under Part IX of the *Excise Tax Act* for a reporting period under that Act,

(i) at the time the goods and services tax in respect of the input tax credit was paid or became payable, if the tax was paid or became payable in the reporting period, or

(ii) if no such tax was paid or became payable in respect of the input tax credit in the reporting period, at the end of the reporting period; or

(b) where the amount was claimed as a rebate with respect to the goods and services tax, at the time the amount was received or credited.

Proposed Amendment — 248(16)

(16) Goods and services tax — input tax credit and rebate — For the purposes of this Act, other than this subsection and subsection 6(8), an amount claimed by a taxpayer as an input tax credit or rebate with respect to the goods and services tax in respect of a property or service is deemed to be assistance from a government in respect of the property or service that is received by the taxpayer

(a) where the amount was claimed by the taxpayer as an input tax credit in a return under Part IX of the *Excise Tax Act* for a reporting period under that Act,

(i) at the particular time that is the earlier of the time that the goods and services tax in respect of the input tax credit was paid and the time that it became payable,

(A) if the particular time is in the reporting period, or

(B) if,

(I) the taxpayer's threshold amount, determined in accordance with subsection 249(1) of the *Excise Tax Act*, is greater than $500,000 for the taxpayer's fiscal year (within the meaning assigned by that Act) that includes the particular time, and

(II) the taxpayer claimed the input tax credit at least 120 days before the end of the normal reassessment period, as determined under subsection 152(3.1), for the taxpayer in respect of the taxation year that includes the particular time,

(ii) at the end of the reporting period, if

(A) subparagraph (i) does not apply, and

(B) the taxpayer's threshold amount, determined in accordance with subsection 249(1) of the *Excise Tax Act*, is $500,000 or less for the fiscal year (within the meaning assigned by that Act) of the taxpayer that includes the particular time, and

(iii) in any other case, on the last day of the taxpayer's earliest taxation year

(A) that begins after the taxation year that includes the particular time, and

(B) for which the normal reassessment period, as determined under subsection 152(3.1), for

the taxpayer ends at least 120 days after the time that the input tax credit was claimed; or

(b) where the amount was claimed as a rebate with respect to the goods and services tax, at the time the amount was received or credited.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 185(16), will amend subsec. 248(16) to read as above, applicable in respect of input tax credits that become eligible to be claimed in taxation years that begin after December 20, 2002.

Technical Notes: Subsection 248(16) provides rules under which amounts received by, or credited to, a taxpayer as an input tax credit or rebate with respect to the goods and services tax (GST) are deemed to be assistance from a government received by a taxpayer. As a consequence, such amounts are either included in income or reduce the cost or capital cost of the related property, or the amount of the related expenditure or expenditure pool, for tax purposes.

Subsection 248(16) also specifies the time at which the receipt (or credit) of an input tax credit or rebate is deemed to be received as assistance. With respect to input tax credits, subparagraph 248(16)(a)(i) provides that the assistance (i.e., the input tax credit) is considered to be received by a taxpayer at the time the GST in respect of the input tax credit was paid or became payable by the taxpayer if the GST was paid or became payable in the same reporting period under the *Excise Tax Act* in which the input tax credit was claimed. If a taxpayer does not claim the input tax credit in the same reporting period in which the GST was paid or became payable, subparagraph 248(16)(a)(ii) includes the amount of assistance in the taxpayer's income for the taxation year that includes the end of the reporting period in which the taxpayer claimed the input tax credit.

Subsection 248(16) is amended in three respects for input tax credits that become eligible to be claimed in taxation years that begin after December 20, 2002.

First, subparagraph 248(16)(a)(i) is amended to extend its application to cases where the input tax credit is claimed by a taxpayer in a reporting period that is subsequent to the period in which the related GST was paid or became payable if

- the taxpayer's threshold amount (as determined under subsection 249(1) of the *Excise Tax Act*) is greater than $500,000 for the taxpayer's fiscal year (as defined by that Act) that includes the earlier of the time that the GST in respect of the input tax credit was paid and the time that it became payable, and
- the taxpayer claimed the input tax credit at least 120 days before the end of the normal reassessment period (as determined under subsection 152(3.1) of the *Income Tax Act*) for the taxpayer in respect of the taxation year that includes that earlier time.

In general, the change to this subparagraph means that an input tax credit of a taxpayer (who is a GST filer with a threshold amount greater than $500,000 for GST purposes) is considered to have been received at the time the related GST was paid or became payable, even though the input tax credit is claimed in a later GST reporting period. However, this is the case only if the taxpayer claims the input tax credit at least 120 days before the taxation year in which the GST was paid or became payable becomes statute-barred for income tax purposes.

Second, subparagraph 248(16)(a)(ii) is amended to provide that an input tax credit is considered to be received at the end of the reporting period in which it is claimed only if

- subparagraph 248(16)(a)(i) does not apply, and
- the taxpayer's threshold amount (as determined under subsection 249(1) of the *Excise Tax Act*) is $500,000 or less for the fiscal year of the taxpayer that includes the earlier of the time that the GST in respect of the input tax credit was paid or became payable.

Thus, subparagraph 248(16)(a)(ii) does not apply if subparagraph 248(16)(a)(i) applies. Where subparagraph 248(16)(a)(i) does not apply, subparagraph 248(16)(a)(ii) provides that the input tax credit is considered to have been received at the end of the reporting period in which it is claimed only if the taxpayer's threshold amount for GST purposes was $500,000 or less at the time the GST was paid or became payable.

Third, new subparagraph 248(16)(a)(iii) is added to apply in any other case. If applicable, that subparagraph provides that the input tax credit is considered to have been received on the last day of the taxpayer's earliest taxation year

- that begins after the taxation year that includes the earlier of the time that the GST in respect of the input tax credit was paid and the time that it became payable, and
- for which the normal reassessment period for the taxpayer ends at least 120 days after the time at which the input tax credit was claimed.

Reference should also made to the commentary to new subsection 248(17.1) of the *Income Tax Act* which provides a special rule in respect of the timing of a claim in respect of certain input tax credits assessed under the *Excise Tax Act*.

Related Provisions: 8(11) — GST rebate deemed not to be reimbursement for employment expense purposes; 12(1)(x) — Inclusion in income; 12(2.2) — Deemed outlay or expense; 13(7.1) — Deemed capital cost of certain property; 37(1)(d) — Scientific research and experimental development; 53(2)(k) — Reduction in adjusted cost base; 66.1(6)"cumulative Canadian exploration expense"J — Assistance reduces CCEE; 66.2(5)"cumulative Canadian development expense"M — Assistance reduces CCDE; 66.4(5)"cumulative Canadian oil and gas property expense"I — Assistance reduces CCOGPE; 248(16.1) — Parallel rule for QST; 248(17) — Application of 248(16) to passenger vehicles and aircraft; 248(17.2) — Timing of deemed assistance where GST assessed; 248(18) — GST — repayment of input tax credit.

Interpretation Bulletins: IT-273R2: Government assistance — general comments.

Proposed Addition — 248(16.1)

(16.1) Quebec input tax refund and rebate — For the purpose of this Act, other than this subsection and subsection 6(8), an amount claimed by a taxpayer as an input tax refund or a rebate with respect to the Quebec sales tax in respect of a property or service is deemed to be assistance from a government in respect of the property or service that is received by the taxpayer

(a) where the amount was claimed by the taxpayer as an input tax refund in a return under *An Act respecting the Québec sales tax*, R.S.Q., c. T-0.1, for a reporting period under that Act,

(i) at the particular time that is the earlier of the time that the Quebec sales tax in respect of the input tax refund was paid and the time that it became payable,

(A) if the particular time is in the reporting period, or

(B) if,

(I) the taxpayer's threshold amount, determined in accordance with section 462 of that Act is greater than $500,000 for the taxpayer's fiscal year (within the meaning assigned by that Act) that includes the particular time, and

(II) the taxpayer claimed the input tax refund at least 120 days before the end of the normal reassessment period, as determined under subsection 152(3.1), for the taxpayer in respect of the taxation year that includes the particular time,

(ii) at the end of the reporting period, if

(A) subparagraph (i) does not apply, and

(B) the taxpayer's threshold amount, determined in accordance with section 462 of that Act is $500,000 or less for the fiscal year (within the meaning assigned by that Act) of the taxpayer that includes the particular time, and

(iii) in any other case, on the last day of the taxpayer's earliest taxation year

(A) that begins after the taxation year that includes the particular time, and

(B) for which the normal reassessment period, as determined under subsection 152(3.1), for the taxpayer ends at least 120 days after the time that the input tax refund was claimed; or

(b) where the amount was claimed as a rebate with respect to the Quebec sales tax, at the time the amount was received or credited.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 185(17), will add subsec. 248(16.1), applicable in respect of input tax refunds and rebates that become eligible to be claimed in taxation years that begin after February 27, 2004.

Technical Notes: New subsection 248(16.1) provides special rules for amounts received, or credited to, a taxpayer as an input tax refund or rebate in respect of Quebec sales tax. Such amounts are either included in a taxpayer's income or reduce the cost or capital cost of the related property, or the amount of the related expenditure or expenditure pool, for tax purposes.

In general, an input tax refund in respect of Quebec sales tax may — depending on the circumstances — have to be included in a taxpayer's income in the taxation year in which the taxpayer may first claim the refund, rather than the year in which it is received. A rebate of Quebec sales tax is included in income at the time the rebate is received or credited. For a more detailed explanation of the application of subsection 248(16.1), reference should be made to the commentary accompanying amendments to subsection 248(16), which provides analogous special rules in respect of the timing of the inclusion in income of certain input tax credits and rebates assessed under the *Excise Tax Act*.

Related Provisions: 12(1)(x) — Inclusion in income; 12(2.2) — Deemed outlay or expense; 13(7.1) — Deemed capital cost of certain property; 37(1)(d) — Scientific research and experimental development; 53(2)(k) — Reduction in adjusted cost base; 66.1(6)"cumulative Canadian exploration expense"J — Assistance reduces CCEE; 66.2(5)"cumulative Canadian development expense"M — Assistance reduces CCDE; 66.4(5)"cumulative Canadian oil and gas property expense"I — Assistance reduces CCOGPE; 248(16) — Parallel rule for GST; 248(17.1) — Application of 248(16) to passenger vehicles and aircraft; 248(17.3) — Timing of deemed assistance where QST assessed; 248(18.1) — Repayment of input tax refund.

(17) Application of subsec. (16) to passenger vehicles and aircraft — Where the input tax credit of a taxpayer under Part IX of the *Excise Tax Act* in respect of a passenger vehicle or aircraft is determined with reference to subsection 202(4) of the *Excise Tax Act*, subparagraphs (16)(a)(i) and (ii) shall, as they apply in respect of such property, be read as follows:

Proposed Amendment — 248(17) opening words

(17) Application of subsection (16) to passenger vehicles and aircraft — If the input tax credit of a taxpayer under Part IX of the *Excise Tax Act* in respect of a passenger vehicle or aircraft is determined with reference to subsection 202(4) of that Act, subparagraphs (16)(a)(i) to (iii) are to be read as they apply in respect of the passenger vehicle or aircraft, as the case may be, as follows:

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 185(18), will amend the opening words of subsec. 248(17) to read as above, applicable in respect of input tax credits that become eligible to be claimed in taxation years that begin after December 20, 2002.

Technical Notes: Subsection 248(17) applies in the case of an input tax credit in respect of a passenger vehicle or aircraft claimable by an individual or partnership where the credit is determined by reference to capital cost allowance in respect of the vehicle or aircraft (i.e., where there is less than exclusive use in commercial activity). Subsection 248(17) is amended to reflect the amendments made to subsection 248(16) as described in the commentary to that subsection.

"(i) at the beginning of the first taxation year or fiscal period of the taxpayer commencing after the end of the taxation year or fiscal period, as the case may be, in which the goods and services tax in respect of such property was considered for the purposes of determining the input tax credit to be payable, if the tax was considered for the purposes of determining the input tax credit to have become payable in the reporting period, or

(ii) if no such tax was considered for the purposes of determining the input tax credit to have become payable in the reporting period, at the end of the reporting period; or"

Related Provisions: 248(17.1) — Parallel rule for QST.

Proposed Addition — 248(17.1)

(17.1) Application of subsection (16.1) to passenger vehicles and aircraft — If the input tax refund of a taxpayer under *An Act respecting the Québec sales tax*, R.S.Q., c. T-0.1, in respect of a passenger vehicle or aircraft is determined with reference to section 252 of that Act, subparagraphs (16.1)(a)(i) to (iii) are to be read as they apply in respect of the passenger vehicle or aircraft, as the case may be, as follows:

"(i) at the beginning of the first taxation year or fiscal period of the taxpayer that begins after the end of the taxation year or fiscal period, as the case may be, in which the Quebec sales tax in respect of such property was considered for the purposes of determining the input tax refund to be payable, if the tax was considered for the purposes of determining the input tax refund to have become payable in the reporting period, or

(ii) if no such tax was considered for the purposes of determining the input tax refund to have become payable in the reporting period, at the end of the reporting period; or".

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 185(19), will add subsec. 248(17.1), applicable in respect of input tax refunds and rebates that become eligible to be claimed in taxation years that begin after February 27, 2004.

Technical Notes: New subsection 248(17.1) applies in the case of an input tax refund of Quebec sales tax, in respect of a passenger vehicle or aircraft, claimable by an individual or partnership where the credit is determinable by reference to capital cost allowance in respect of the vehicle or aircraft (that is, where there is less than exclusive use in commercial activity). In general, this subsection defers the time the input tax refund is considered to be received for income tax purposes to the taxation year or fiscal period following that in which Quebec sales tax in respect of the property is considered as payable for the purposes of determining the input tax refund. This avoids circularity with subsection 248(16.1). The provision preserves the proper timing between the input tax refund entitlement and the adjustment to the capital cost. This change applies in respect of Quebec input tax refunds that become eligible to be claimed in taxation years that begin after February 27, 2004.

Related Provisions: 248(17) — Parallel rule for GST.

Proposed Addition — 248(17.2)

(17.2) Input tax credit on assessment — An amount in respect of an input tax credit that is deemed by subsection 296(5) of the *Excise Tax Act* to have been claimed in a return or application filed under Part IX of that Act is deemed to have been so claimed for the reporting period under that Act that includes the time

when the Minister makes the assessment referred to in that subsection.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 185(19), will add subsec. 248(17.2), applicable in respect of input tax credits that become eligible to be claimed in taxation years that begin after December 20, 2002.

Technical Notes: New subsection 248(17.2) determines, in respect of input tax credits that become eligible to be claimed in taxation years that begin after December 20, 2002, the time at which an input tax credit is considered to have been claimed in respect of certain input tax credit assessments made under the *Excise Tax Act* (ETA).

This subsection provides that, if an amount in respect of an input tax credit is deemed by subsection 296(5) of the ETA to have been claimed in a return or application filed under Part IX of that Act, the input tax credit is deemed to have been claimed for the GST reporting period that includes the time the Minister of National Revenue makes the GST assessment.

Accordingly, the rule in clause 248(16)(a)(i)(A) of the *Income Tax Act* (ITA) relating to the time at which an input tax credit is considered to have been received cannot apply to an input tax credit to which subsection 296(5) of the ETA applies. However, the other rules in paragraph 248(16)(a) of the ITA that determine the time at which an input tax credit is received are to be applied on the basis that an input tax credit (to which subsection 296(5) of the ETA applies) is not claimed by the taxpayer until the reporting period that includes the time at which the input tax credit is actually assessed — i.e., not the reporting period to which the assessment relates but the reporting period in which the input tax credit is deemed to be claimed for GST purposes.

Related Provisions: 248(17.3) — Parallel rule for QST.

Proposed Addition — 248(17.3)

(17.3) Quebec input tax refund on assessment — An amount in respect of an input tax refund that is deemed by section 30.5 of *An Act respecting the Ministère du Revenu*, R.S.Q., c. M-31, to have been claimed is deemed to have been so claimed for the reporting period under *An Act respecting the Québec sales tax*, R.S.Q., c. T- 0.1, that includes the day on which an assessment is issued to the taxpayer indicating that the refund has been allocated under that section 30.5.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 185(19), will add subsec. 248(17.3), applicable in respect of input tax refunds and rebates that become eligible to be claimed in taxation years that begin after February 27, 2004.

Technical Notes: New subsection 248(17.3) provides that an input tax refund of Quebec sales tax, that is deemed to be claimed by section 30.5 of *An Act respecting the Quebec Revenue Minister*, is deemed to be claimed for the reporting period under *An Act respecting Quebec Sales Tax* that includes the day on which an assessment is issued to the taxpayer indicating that the refund has been allocated to the taxpayer.

Related Provisions: 248(17.2) — Parallel rule for GST.

(18) Goods and services tax — repayment of input tax credit — For the purposes of this Act, where an amount is added at a particular time in determining the net tax of a taxpayer under Part IX of the *Excise Tax Act* in respect of an input tax credit relating to property or a service that had been previously deducted in determining the net tax of the taxpayer, that amount shall be deemed to be assistance repaid at the particular time in respect of the property or service pursuant to a legal obligation to repay all or part of that assistance.

Related Provisions: 20(1)(hh) — Deduction for repayment of assistance; 39(13) — Capital loss on repayment of assistance; 53(1)(e)(ix)(B) — Adjusted cost base of partnership interest; 127(10.7) — Investment tax credit — repayment of assistance; 248(18.1) — Parallel rule for QST.

Proposed Addition — 248(18.1)

(18.1) Repayment of Quebec input tax refund — For the purposes of this Act, if an amount is added at a particular time in determining the net tax of a taxpayer under *An Act respecting the Québec sales tax*, R.S.Q., c. T-0.1, in respect of an input tax refund relating to property or service that had been previously deducted in determining the net tax of the taxpayer, that amount is deemed to be assistance repaid at the particular time in respect of the property or service under a legal obligation to repay all or part of that assistance.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 185(20), will add subsec. 248(18.1), applicable after February 27, 2004.

Technical Notes: New subsection 248(18.1) provides that an amount added in determining net tax of a taxpayer under *An Act respecting Quebec Sales Tax* in respect of an input tax refund relating to a property or service that had previously been deducted in computing such net tax is treated as assistance repaid under a legal obligation to repay that assistance. Such an amount could be so added under Quebec law pursuant to an assessment of Quebec sales tax. As a consequence, such an amount will either be deducted in computing income under paragraph 20(1)(hh) or will increase the cost or capital cost of the related property or the amount of the related expenditure or expenditure pool for tax purposes (as provided under subsection 13(7.1), paragraphs 37(1)(c) and 53(2)(k) and under the definitions "cumulative Canadian exploration expense" in subsection 66.1(6), "cumulative Canadian development expense" in subsection 66.2(5) and "cumulative Canadian oil and gas property expense" in subsection 66.4(5)).

Related Provisions: 20(1)(hh) — Deduction for repayment of assistance; 39(13) — Capital loss on repayment of assistance; 53(1)(e)(ix)(B) — Adjusted cost base of partnership interest; 127(10.7) — Investment tax credit — repayment of assistance; 248(18) — Parallel rule for GST.

(19) When property available for use — Except as otherwise provided, property shall be considered to have become available for use for the purposes of this Act at the time at which it has, or would have if it were depreciable property, become available for use for the purpose of subsection 13(26).

Related Provisions: 13(27)–(31) — Meaning of "available for use"; 37(1.2) — R&D capital expenditures; 127(11.2) — Investment tax credit.

History: Subsec. 248(19) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(18), applicable after 1989.

(20) Partition of property — Subject to subsections (21) to (23), for the purposes of this Act, where at any time a property owned by two or more persons is the subject of a partition, the following rules apply, notwithstanding any retroactive or declaratory effect of the partition:

(a) each such person who had an interest in the property immediately before that time shall be deemed not to have disposed at that time of that proportion, not exceeding 100%, of the interest that the fair market value of that person's interest in the property immediately after that time is of the fair market value of that person's interest in the property immediately before that time,

(b) each such person who has an interest in the property immediately after that time shall be deemed not to have acquired at that time that proportion of the interest that the fair market value of that person's interest in the property immediately before that time is of the fair market value of that person's interest in the property immediately after that time,

(c) each such person who had an interest in the property immediately before that time shall be deemed to have had until that time, and to have disposed at that time of, that proportion of the person's interest to which paragraph (a) does not apply,

(d) each such person who has an interest in the property immediately after that time shall be deemed not to have had before that time, and to have acquired at that time, that proportion of the person's interest to which paragraph (b) does not apply, and

(e) paragraphs (a) to (d) do not apply where the interest of the person is an interest in fungible tangible property described in that person's inventory,

and, for the purposes of this subsection, where an interest in the property is an undivided interest, the fair market value of the interest at any time shall be deemed to be equal to that proportion of the fair market value of the property at that time that the interest is of all the undivided interests in the property.

Proposed Amendment — 248(20)

(20) Partition of property — Subject to subsections (21) to (23), for the purposes of this Act, where at any time a property owned by two or more persons is the subject of a partition, the following rules apply, notwithstanding any retroactive or declaratory effect of the partition:

(a) each such person who had, immediately before that time, an interest in, or for civil law a right in, the property (which interest or right in the property is referred to in this subsection and subsection (21) as an "interest" or a "right", as the case may be) shall be deemed not to have disposed at that time of that proportion, not exceeding 100%, of the interest or right that the fair market value of that person's interest or right in the property immediately after that time is of the fair market value of that person's interest or right in the property immediately before that time,

(b) each such person who has an interest or right in the property immediately after that time shall be deemed not to have acquired at that time that proportion of the interest or right that the fair market value of that person's interest or right in the property immediately before that time is of the fair market value of that person's interest or right in the property immediately after that time,

(c) each such person who had an interest or a right in the property immediately before that time shall be deemed to have had until that time, and to have disposed at that time of, that proportion of the person's interest or right to which paragraph (a) does not apply,

(d) each such person who has an interest or a right in the property immediately after that time shall be deemed not to have had before that time, and to have acquired at that time, that proportion of the person's interest or right to which paragraph (b) does not apply, and

(e) paragraphs (a) to (d) do not apply where the interest or right of the person is an interest or a right in fungible tangible property, or for civil law fungible corporeal property described in that person's inventory,

and, for the purposes of this subsection, where an interest or a right in the property is an undivided interest or right, the fair market value of the interest or right at any time shall be deemed to be equal to that proportion of the fair market value of the property at that time that the interest or right is of all the undivided interests or rights in the property.

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 278(15), will amend subsec. 248(20) to read as above, to come into force on Royal Assent.

Technical Notes: See under 12(4).

Related Provisions: 248(21) — Subdivision of property; 248(22) — Matrimonial regimes.

History: The opening words of subsec. 248(20) amended by 2001, c. 17, subsec. 230(3), to substitute "owned by two" for "jointly owned by 2", in force June 14, 2001.

Subsec. 248(20) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(18), applicable after July 13, 1990 except that the subsec. does not apply to a partition effected before 1992

(a) pursuant to the terms of an agreement in writing entered into on or before that day; or

(b) in accordance with a confirmation in writing from the Department of National Revenue or a provincial department of revenue as to the tax consequences of that partition, where the confirmation is in respect of a written request received by such department on or before that day.

(21) Subdivision of property — Where a property that was owned by two or more persons is the subject of a partition among those persons and, as a consequence thereof, each such person has, in the property, a new interest the fair market value of which immediately after the partition, expressed as a percentage of the fair market value of all the new interests in the property immediately after the partition, is equal to the fair market value of that person's undivided interest immediately before the partition, expressed as a percentage of the fair market value of all the undivided interests in the property immediately before the partition,

(a) subsection (20) does not apply to the property, and

(b) the new interest of each such person shall be deemed to be a continuation of that person's undivided interest in the property immediately before the partition,

and, for the purposes of this subsection,

(c) subdivisions of a building or of a parcel of land that are established in the course of, or in contemplation of, a partition and that are co-owned by the same persons who co-owned the building or the parcel of land, or by their assignee, shall be regarded as one property, and

(d) where an interest in the property is or includes an undivided interest, the fair market value of the interest shall be determined without regard to any discount or premium that applies to a minority or majority interest in the property.

Proposed Amendment — 248(21)

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 278(15), will amend subsec. 248(21) by substituting "interest or right" for "interest" in seven places throughout, "interests or rights" for "interests" twice in the opening words, and "interest or a right in the property" for "interest in the property" in para. (d), to come into force on Royal Assent.

Technical Notes: See under 12(4).

Related Provisions: 248(20) — Partition of property.

History: The opening words of subsec. 248(21) and para. 248(21)(c) amended by 2001, c. 17, subsecs. 230(4), (5), to substitute "owned by two" for "jointly owned by 2" in the opening words, and "co-owned" for "jointly owned" (twice) in para. (c), in force June 14, 2001.

Subsec. 248(21) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(18), applicable after July 13, 1990.

(22) Matrimonial regimes — Where at any time property could, as the consequence of the dissolution of a matrimonial regime between 2 spouses or common-law

partners, be the subject of a partition, for the purposes of this Act

(a) where that property was owned by one of the spouses or common-law partners immediately before it became subject to that regime and had not subsequently been disposed of before that time, it shall be deemed to be owned at that time by that spouse or common-law partner and not by the other spouse or common-law partner; and

(b) in any other case, the property shall be deemed to be owned by the spouse or common-law partner who has the administration of that property at that time and not by the other spouse or common-law partner.

Related Provisions: 248(20) — Partition of property; 248(21) — Subdivision of property; 248(23) — Dissolution of a matrimonial regime; 252(3) — Extended meaning of "spouse".

History: Subsec. 248(22) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subsec. 248(22) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(18), applicable after July 13, 1990.

Interpretation Bulletins: IT-325R2: Property transfers after separation, divorce and annulment; IT-437R: Ownership of property (principal residence); IT-511R: Interspousal and certain other transfers and loans of property.

(23) Dissolution of a matrimonial regime — Where, immediately after the dissolution of a matrimonial regime (other than a dissolution occurring as a consequence of death), the owner of a property that was subject to that regime is not the person, or the estate of the person, who is deemed by subsection (22) to have been the owner of the property immediately before the dissolution, the person shall be deemed for the purposes of this Act to have transferred the property to the person's spouse or common-law partner immediately before the dissolution.

Related Provisions: 110.6(14)(g) — Related persons, etc.; 252(3) — Extended meaning of "spouse".

History: Subsec. 248(23) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subsec. 248(23) substituted by 1994, c. 21, subsec. 109(8), applicable to dissolutions and deaths occurring after December 21, 1992. That subsec. formerly read:

> (23) Where the owner, immediately after the dissolution of a matrimonial regime, of a property that was subject to that regime is not the person, or the estate of the person, who, because of subsection (22), was the owner of the property immediately before the dissolution, that person shall be deemed, for the purposes of this Act, to have transferred the property to that person's spouse immediately before the dissolution or, if the dissolution occurs as a consequence of the death of one of the spouses, immediately before the time that is immediately before the death.

Subsec. 248(23) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(18), applicable after July 13, 1990.

Interpretation Bulletins: IT-325R2: Property transfers after separation, divorce and annulment; IT-437R: Ownership of property (principal residence); IT-511R: Interspousal and certain other transfers and loans of property.

(23.1) Transfers after death — Where, as a consequence of the laws of a province relating to spouses' and common-law partners' interests in respect of property as a result of marriage or common-law partnership, property is, after the death of a taxpayer,

Proposed Amendment — 248(23.1) opening words

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), subsec. 278(16), will amend the opening words of subsec. 248(23.1) by substituting "interests or rights" for "interests", to come into force on Royal Assent.

Technical Notes: See under 12(4).

(a) transferred or distributed to a person who was the taxpayer's spouse or common-law partner at the time of the death, or acquired by that person, the property shall be deemed to have been so transferred, distributed or acquired, as the case may be, as a consequence of the death; or

(b) transferred or distributed to the taxpayer's estate, or acquired by the taxpayer's estate, the property shall be deemed to have been so transferred, distributed or acquired, as the case may be, immediately before the time that is immediately before the death.

History: Subsec. 248(23.1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner"; by 2000, c. 12, Sch. 2, s. 7, to replace "spouse's"with "spouse's or common-law partner's"; and by 2000, c. 12, Sch. 2, s. 9, to replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subsec. 248(23.1) added by 1994, c. 21, subsec. 109(8), applicable to dissolutions and deaths occurring after December 21, 1992.

Interpretation Bulletins: IT-313R2: Eligible capital property — rules where a taxpayer has ceased carrying on a business or has died.

(24) Accounting methods — For greater certainty, it is hereby declared that, unless specifically required, neither the equity nor the consolidation method of accounting shall be used to determine any amount for the purposes of this Act.

Related Provisions: 61.3(1)(b)C(i) — Repetition of rule for purposes of debt forgiveness reserve calculation.

History: Subsec. 248(24) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(18), applicable December 17, 1991.

(25) Beneficially interested — For the purposes of this Act,

(a) a person or partnership beneficially interested in a particular trust includes any person or partnership that has any right (whether immediate or future, whether absolute or contingent or whether conditional on or subject to the exercise of any discretion by any person or partnership) as a beneficiary under a trust to receive any of the income or capital of the particular trust either directly from the particular trust or indirectly through one or more trusts or partnerships;

(b) except for the purpose of this paragraph, a particular person or partnership is deemed to be beneficially interested in a particular trust at a particular time where

(i) the particular person or partnership is not beneficially interested in the particular trust at the particular time,

(ii) because of the terms or conditions of the particular trust or any arrangement in respect of the particular trust at the particular time, the particular person or partnership might, because of the exercise of any discretion by any person or partnership, become beneficially interested in the particular trust at the particular time or at a later time, and

(iii) at or before the particular time, either

(A) the particular trust has acquired property, directly or indirectly in any manner whatever, from

(I) the particular person or partnership,

(II) another person with whom the particular person or partnership, or a member of the particular partnership, does not deal at arm's length,

(III) a person or partnership with whom the other person referred to in subclause (II) does not deal at arm's length,

(IV) a controlled foreign affiliate of the particular person or of another person with whom the particular person or partnership, or a member of the particular partnership, does not deal at arm's length, or

(V) a non-resident corporation that would, if the particular partnership were a corporation resident in Canada, be a controlled foreign affiliate of the particular partnership, or

(B) a person or partnership described in any of subclauses (A)(I) to (V) has given a guarantee on behalf of the particular trust or provided any other financial assistance whatever to the particular trust; and

(c) a member of a partnership that is beneficially interested in a trust is deemed to be beneficially interested in the trust.

Related Provisions: 94(1) — Meaning of "beneficiary" for non-resident trust; 104(1.1) — Restricted meaning of "beneficiary" of a trust; 108(1) — "Beneficiary"; 248(3) — Certain persons in Quebec deemed to be beneficially interested in trust.

History: Subsec. 248(25) amended by 1998, c. 19, subsec. 239(7), applicable after 1997. Subsec. 248(25) formerly read:

(25) For the purposes of this Act, a person or partnership beneficially interested in a particular trust includes any person or partnership that has any right (whether immediate or future, whether absolute or contingent or whether conditional on or subject to the exercise of any discretionary power by any person or persons) as a beneficiary under a trust to receive any of the income or capital of the particular trust either directly from the particular trust or indirectly through one or more other trusts.

Subsec. 248(25) amended by 1997, c. 25, subsec. 71(4), applicable after 1996. Subsec. (25) formerly read:

(25) For the purposes of this Act, a person or partnership is beneficially interested in a particular trust if the person or partnership has any right (whether immediate or future, whether absolute or contingent or whether conditional on or subject to the exercise of any discretionary power by any person or persons) as a beneficiary under a trust to receive any of the income or capital of the particular trust either directly from the particular trust or indirectly through one or more other trusts.

Subsec. 248(25) substituted by 1994, c. 21, subsec. 109(9), applicable after 1990. Subsec. (25) formerly read:

(25) For the purposes of this Act, a person or partnership is beneficially interested in a trust if the person or partnership has any right (whether immediate or future, whether absolute or contingent or whether conditional on or subject to the exercise of any discretionary power by any person or persons) to receive any of the income or capital of the trust either directly from the trust or indirectly through one or more other trusts.

Subsec. 248(25) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 139(10), applicable after 1990.

Interpretation Bulletins: IT-394R2: Preferred beneficiary election; IT-511R: Interspousal and certain other transfers and loans of property.

(25.1) Trust-to-trust transfers — Where at any time a particular trust transfers property to another trust (other than a trust governed by a registered retirement savings plan or by a registered retirement income fund) in circumstances to which paragraph (f) of the definition "disposition" in subsection (1) applies, without affecting the personal liabilities under this Act of the trustees of either trust or the application of subsection 104(5.8) and paragraph 122(2)(f), the other trust is deemed to be after that time the same trust as, and a continuation of, the particular trust.

Proposed Amendment — 248(25.1)

(25.1) Trust-to-trust transfers — Where at any time a particular trust transfers property to another trust (other than a trust governed by a registered retirement savings plan or by a registered retirement income fund) in circumstances to which paragraph (f) of the definition "disposition" in subsection (1) applies, without affecting the personal liabilities under this Act of the trustees of either trust or the application of subsection 104(5.8) and paragraph 122(2)(f), the other trust is deemed to be after that time the same trust as, and a continuation of, the particular trust, and for greater certainty, if the property was deemed to be taxable Canadian property of the particular trust by paragraph 51(1)(f), 85(1)(i) or 85.1(1)(a), subsection 85.1(5) or 87(4) or (5) or paragraph 97(2)(c) or 107(2)(d.1), the property is deemed to be taxable Canadian property of the other trust.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 185(21), will amend subsec. 248(25.1) to read as above, applicable in respect of transfers that occur after December 23, 1998.

Technical Notes: Subsection 248(25.1) applies where there is a transfer of a property from a particular trust to another trust (other than a RRSP trust or RRIF trust) in circumstances to which paragraph (f) of the definition "disposition" in subsection 248(1) (see the commentary above) applies. The result of the application of paragraph (f) is that the transfer does not constitute a disposition. Where this is the case, subsection 248(25.1) deems the other trust after the particular time to be the same trust as, and a continuation of, the particular trust.

Subsection 248(25.1) is amended, for greater certainty, to ensure that where the transferred property is deemed under a number of specified provisions to be taxable Canadian property of the particular trust, the property continues to be taxable Canadian property of the other trust.

Related Provisions: 104(1.1) — Restricted meaning of "beneficiary" despite 248(25.1); 104(5.8) — Transfers between trusts; 108(1) — Definition of "capital interest"; 233.2(4) — Disclosure of transfer to CCRA; 248(1)"disposition"(c) — Disposition incudes transfer to a trust.

(25.2) Trusts to ensure obligations fulfilled — Except for the purpose of this subsection, where at any time property is transferred to a trust in circumstances to which paragraph (k) of the definition "disposition" in subsection (1) applies, the trust is deemed to deal with the property as agent for the transferor throughout the period that begins at the time of the transfer and ends at the time of the first change after that time in the beneficial ownership of the property.

(25.3) Cost of trust interest — The cost to a taxpayer of a particular unit of a trust is deemed to be equal to the amount described in paragraph (a) where

(a) the trust issues the particular unit to the taxpayer directly in satisfaction of a right to enforce payment of an amount by the trust in respect of the taxpayer's capital interest in the trust;

(b) at the time that the particular unit is issued, the trust is neither a personal trust nor a trust prescribed for the purpose of subsection 107(2); and

(c) either

(i) the particular unit is capital property and subparagraph 53(2)(h)(i.1) applies in respect of the amount described in paragraph (a), or would apply if that subparagraph were read without reference to clauses 53(2)(h)(i.1)(A) and (B), or

Proposed Amendment — 248(25.3)(c)(i)

(i) the particular unit is capital property and the amount is not proceeds of disposition of a capital interest in the trust, or

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 185(22), will amend subpara. 248(25.3)(c)(i) to read as above, applicable to units issued after December 20, 2002.

Technical Notes: Subsection 248(25.3) of the *Income Tax Act* applies where a trust (other than a personal trust or a trust prescribed for the purpose of subsection 107(2)) issues particular units of the trust to a taxpayer directly in satisfaction of a right to a qualifying amount payable from the trust in respect of the taxpayer's capital interest in the trust. In such a case, the cost to the taxpayer of the particular units is deemed to equal the amount so payable. Subparagraph 248(25.3)(c)(i) provides that in the case of particular units of a trust that are capital property, a qualifying amount payable is one that causes, or but for clauses 53(2)(h)(i.1)(A) and (B) would cause, a reduction under subparagraph 53(2)(h)(i.1) to the adjusted cost base of the taxpayer's capital interest in the trust.

Subparagraph 248(25.3)(c)(i) is amended to provide that, in the case of particular units of a trust that are capital property, a qualifying amount payable is an amount payable that does not represent proceeds of disposition of a capital interest in the trust.

(ii) the particular unit is not capital property and subparagraph 53(2)(h)(i.1) does not apply in respect of the amount described in paragraph (a) but would so apply if that subparagraph were read without reference to clauses 53(2)(h)(i.1)(A) and (B).

(25.4) Where acquisition by another of right to enforce — If at a particular time a taxpayer's capital interest in a trust includes a right to enforce payment of an amount by the trust, the amount shall be added at the particular time to the cost otherwise determined to the taxpayer of the capital interest where

(a) immediately after the particular time there is a disposition by the taxpayer of the capital interest;

(b) as a consequence of the disposition, the right to enforce payment of the amount is acquired by another person or partnership; and

(c) if the right to enforce payment of the amount had been satisfied by a payment to the taxpayer by the trust, there would have been no disposition of that right for the purposes of this Act because of the application of paragraph (i) of the definition "disposition" in subsection (1).

Related Provisions: 107(1.1) — Cost of capital interest in a trust.

History [248(25.1)–(25.4)]: Subsecs. 248(25.1) to (25.4) added by 2001, c. 17, subsec. 188(6), subsecs. (25.1), (25.2) and (25.4) applicable to transfers that occur after December 23, 1998, and subsec. (25.3) applicable to 1999 *et seq.*

(26) Debt obligations — For greater certainty, where at any time a person or partnership (in this subsection referred to as the "debtor") becomes liable to repay money borrowed by the debtor or becomes liable to pay an amount (other than interest)

(a) as consideration for any property acquired by the debtor or services rendered to the debtor, or

(b) that is deductible in computing the debtor's income,

for the purposes of applying the provisions of this Act relating to the treatment of the debtor in respect of the liability, the liability shall be considered to be an obligation, issued at that time by the debtor, that has a principal amount at that time equal to the amount of the liability at that time.

Related Provisions: 43 — Partial disposition of capital property; 142.4(9) — Partial disposition of specified debt obligation by financial institution.

History: Subsec. 248(26) added by 1995, c. 21, subsec. 43(3), applicable to taxation years that end after February 21, 1994.

(27) Parts of debt obligations — For greater certainty,

(a) unless the context requires otherwise, an obligation issued by a debtor includes any part of a larger obligation that was issued by the debtor;

(b) the principal amount of that part shall be considered to be the portion of the principal amount of that larger obligation that relates to that part; and

(c) the amount for which that part was issued shall be considered to be the portion of the amount for which that larger obligation was issued that relates to that part.

Related Provisions: 43 — Partial disposition of capital property; 142.4(9) — Partial disposition of specified debt obligation by financial institution.

History: Subsec. 248(27) added by 1995, c. 21, subsec. 43(3), applicable to taxation years that end after February 21, 1994.

(28) Limitation respecting inclusions, deductions and tax credits — Unless a contrary intention is evident, no provision of this Act shall be read or construed

(a) to require the inclusion or permit the deduction, either directly or indirectly, in computing a taxpayer's income, taxable income or taxable income earned in Canada, for a taxation year or in computing a taxpayer's income or loss for a taxation year from a particular source or from sources in a particular place, of any amount to the extent that the amount has already been directly or indirectly included or deducted, as the case may be, in computing such income, taxable income, taxable income earned in Canada or loss, for the year or any preceding taxation year;

(b) to permit the deduction, either directly or indirectly, in computing a taxpayer's tax payable under any Part of this Act for a taxation year of any amount to the extent that the amount has already been directly or indirectly deducted in computing such tax payable for the year or any preceding taxation year; or

(c) to consider an amount to have been paid on account of a taxpayer's tax payable under any Part of this Act for a taxation year to the extent that the amount has already been considered to have been paid on account of such tax payable for the year or any preceding taxation year.

Related Provisions: 181(4), 190(2) — Similar rules for Part I.3 and Part VI taxes.

History: Subsec. 248(28) added by 1996, c. 21, subsec. 60(3), applicable to taxation years that end after July 19, 1995.

(29) Prescribed stock exchange rule — A part, division or subdivision of a stock exchange that is prescribed for the purpose of any provision of this Act is deemed for that purpose to be a prescribed stock exchange.

History: Subsec. 248(29) added by 2001, c. 17, subsec. 188(7), applicable after October 1999.

Proposed Addition — 248(30)–(33)

Technical Notes: At common law, it is generally the view that a gift includes only a property transferred voluntarily, without any contractual obligation and with no advantage of a material character returned to the transferor.

In contrast, under section 1806 of the *Civil Code of Quebec* ("CCQ"), a gift in Quebec is a contract by which ownership of property is transferred by gratuitous title. However, the rights of ownership may be separated, such that it may be possible for a transferor to transfer part of the rights of ownership without any material advantage returned (i.e., by way of gift) and to transfer the other part separately for consideration. It is therefore possible, in Quebec, to sell a property to a charity at a price below fair market value, resulting in a gift of the difference.

Under both the common law and the CCQ, it is generally accepted that a transfer of property is not a gift unless the donor is impoverished by the transfer to the benefit of the donee and it is the donor's intention to enrich the donee without consideration.

At common law there is generally no ability to separate the rights of ownership of a single property in the course of making a gift. As such, at common law a contract to dispose of a property to a charity at a price below fair market value would not generally be considered to include a gift.

Nevertheless, there have been certain decisions made under the common law where it has been found that a transfer of property to a charity was made partly in consideration for services and partly as a gift.

Subsections 248(30), (31) and (32) are added to the Act to clarify the circumstances under which taxpayers and donees may be eligible for tax benefits available under the Act in respect of the impoverishment of a taxpayer in favour of a donee. In addition to the clarification provided by these new rules, on December 24, 2002, the Canada Customs and Revenue Agency released guidelines (*Income Tax Technical News No. 26*) that describe how it will apply the new rules to various situations and fundraising methods commonly used in the charitable sector. Subsection 248(34) provides technical rules regarding the repayment of debt that previously reduced the eligible amount of a gift. Subsections 248(35) to (39) provide technical rules regarding the eligible amount of a gift or the value of property transferred and benefits receivable, that apply in calculating the eligible amount of a gift or political contribution. New subsection (40) requires a qualified donee to inquire of a donor as to the existence of certain information that the donee would require in order to determine the eligible amount to report on a receipt, if the value of the gift exceeds $5,000. New subsection (41) deems the eligible amount of a gift to be nil if a donor fails to provide that information.

In general, these provisions are intended to reflect the policy that the amount eligible for an income tax benefit to a donor, by way of a charitable donation deduction or credit or a political contributions tax credit, should reflect the economic impact on the donor (before considering the income tax benefit) of the gift or contribution.

(30) Intention to give — The existence of an amount of an advantage in respect of a transfer of property does not in and by itself disqualify the transfer from being a gift to a qualified donee if

(a) the amount of the advantage does not exceed 80% of the fair market value of the transferred property; or

(b) the transferor of the property establishes to the satisfaction of the Minister that the transfer was made with the intention to make a gift.

Technical Notes: For the transfer of property to qualify as a gift, it is necessary that the transfer be voluntary and with the intention to make a gift. At common law, where the transferor of the property has received any form of consideration or benefit, it is generally presumed that such an intention is not present. New subsection 248(30), which applies in respect of transfers of property after December 20, 2002 to qualified donees (such as registered charities), allows the opportunity to rebut this presumption. New paragraph 248(30)(a) provides that the existence of an amount of an advantage to the transferor will not necessarily disqualify the transfer from being a gift if the amount of the advantage does not exceed 80% of the fair market value of the transferred property.

Example

Mr. Short transfers land and a building with a fair market value of $300,000 to a registered charity. The charity assumes liability for an outstanding $100,000 mortgage on the property. The assumption of the mortgage by the charity does not necessarily disqualify the transfer from being a gift for the purposes of the Act.

If the value of the mortgage is equal to the outstanding amount (e.g., the interest rate and terms and conditions are representative of current market conditions), the eligible amount of the gift, in respect of which Mr. Short may be entitled to a tax credit under subsection 118.1(3), is $200,000.

If the amount of an advantage in respect of a transfer of property exceeds 80% of the fair market value of the transferred property, new paragraph 248(30)(b) provides that the transfer will not necessarily be disqualified from being a gift if the transferor can establish to the satisfaction of the Minister of National Revenue that the transfer was made with the intention to make a gift.

In the above example, if the amount of the mortgage outstanding had been greater than $240,000, Mr. Short (or the charity on Mr. Short's behalf) could apply to the Minister of National Revenue for a determination as to whether the transfer was made with the intention to make a gift.

It is generally accepted that the tax benefit available to a taxpayer, by way of a charitable donation deduction or credit, is not considered an advantage or benefit that would reflect a lack of donative intent on the part of a taxpayer. However, there may be circumstances where the intention of a taxpayer to make a gift is in doubt because of the combination of tax and other benefits to the taxpayer. If the primary motivation of a taxpayer for entering into a transaction or series of transactions is to return a profit to the taxpayer by way of a combination of tax and other benefits, the taxpayer may not be impoverished by the transfer of a property to a charity. Subsection 248(30) is not intended to allow a taxpayer to profit by the making of a gift.

Department of Finance news release, December 5, 2003: The Minister also released draft amendments relating to limited-recourse debt and "split-receipting." These measures implement proposals introduced in Budget 2003 that address charitable donation arrangements that were promoted in recent years involving the use of limited-recourse debt. [See 143.2(6.1) and 248(34) — ed.] The draft amendments also incorporate changes put forward in December 2002 relating to the right to receive a benefit in respect of the donation. [See under 248(35)–(41) for full text of news release — ed.]

I.T. Technical News: 26 (proposed guidelines on split-receipting).

Registered Charities Newsletters: 15 (new interim guidelines on gifts affect split-receipting); 17 (Q&A on split-receipting).

Charities Policies: CPC-025: Gift — expenses — volunteer; CPC-026: Fundraising — third-party fundraisers.

(31) Eligible amount of gift or monetary contribution [split receipting] — The eligible amount of a gift or monetary contribution is the amount by which the fair market value of the property that is the subject of the gift or monetary contribution exceeds the amount of the advantage, if any, in respect of the gift or monetary contribution.

Technical Notes: New subsection 248(31), which applies in respect of gifts and political contributions made after December 20, 2002, defines the eligible amount of a gift or contribution as the amount by which the fair market value of the property that is the subject of the gift or contribution exceeds the amount of the advantage, if any, in respect of the gift or contribution. Subsection 248(31) is added concurrently with amendments to subsections 110.1(1) and 118.1(1), which describe the types of gifts in respect of which an eligible amount will qualify for a deduction (for corporations) or a tax credit (for individuals). The amount of the advantage in respect of a gift or contribution is described in new subsection 248(32).

It is proposed that subsections 3501(1), (1.1) and (6) of the Regulations be amended to provide that official receipts issued by a registered organization in respect of a gift made after December 20, 2002 contain, in addition to the information already prescribed, the eligible amount of the gift.

Related Provisions: 38.1 — Allocation of capital gain where advantage exists; 110.1(3) — Fair market value of property donated by corporation; 118.1(6) — FMV of property donated by individual; 118.1(7)(d) — Determination of FMV of gift of art by artist; 127(4.1) — Monetary contribution (political); 248(30) — Existence of advantage does not negate gift; 248(32) — Determination of amount of advantage; 248(39)(a) — Anti-avoidance — selling property and donat-

ing proceeds; 248(40) — Donee must make inquiry re circumstances of donation over $5,000; 248(41) — Donation value deemed nil if taxpayer does not inform donee of circumstances requiring reduction.

I.T. Technical News: 26 (proposed guidelines on split-receipting).

Registered Charities Newsletters: 15 (new interim guidelines on gifts affect split-receipting); 16 (important reminder for those selling annuities to donors); 17 (Q&A on split-receipting); 18 (can businesses receive receipts for donations made out of their inventory?); 23 (did you know? golf tournaments).

Charities Policies: CPC-025: Gift — expenses — volunteer; CPC-026: Fundraising — third-party fundraisers.

(32) Amount of advantage — The amount of the advantage in respect of a gift or monetary contribution by a taxpayer is the total of

(a) the total of all amounts, other than an amount referred to in paragraph (b), each of which is the value, at the time the gift or monetary contribution is made, of any property, service, compensation, use or other benefit that the taxpayer, or a person or partnership who does not deal at arm's length with the taxpayer, has received, obtained or enjoyed, or is entitled, either immediately or in the future and either absolutely or contingently, to receive, obtain, or enjoy

(i) that is consideration for the gift or monetary contribution,

(ii) that is in gratitude for the gift or monetary contribution, or

(iii) that is in any other way related to the gift or monetary contribution, and

(b) the limited-recourse debt, determined under subsection 143.2(6.1), in respect of the gift or monetary contribution at the time the gift or monetary contribution is made.

Technical Notes: New subsection 248(32), which generally applies in respect of gifts or political contributions made after December 20, 2002, describes the amount of an advantage in respect of a gift or contribution as, in general, the total value of all property, services, compensation or other benefits to which the donor of a property is entitled.

Subsection 248(32) is added concurrently with the addition of subsection 248(31), which defines the eligible amount of a gift or contribution, and with the amendment of subsection 127(3) in respect of contributions to a political party. The amount of an advantage reduces the eligible amount of a gift or contribution.

In general, new subsection 248(32) is intended to apply in respect of any transaction or series of transactions having either the purpose or the effect of reducing the economic impact to a donor of a gift or contribution. This includes, for instance, situations where a charity invests funds or acquires property in a manner that benefits the donor. The reduction to an eligible amount also includes an advantage that is partial consideration for, or in gratitude for, the gift or contribution, or is in any way related to the gift or contribution. An example would include the option of a donor to satisfy or pay a loan by assigning or transferring to another person a property (including the rights under an insurance policy) that has less economic value than the amount of loan outstanding. Another example would include an assumption of a donor's risk by a charity, where the acquisition, directly or indirectly, of an interest in a property of the donor by the charity may have the effect of reducing the potential loss of the donor from that investment. (However, a tax credit or deduction resulting from a charitable donation is not considered a benefit.)

An advantage may exist even though it is not received at the time of the gift or contribution. For example, it may have been received prior to the time of the gift or may be contingent or receivable in the future. The advantage may accrue either to the donor or to a person not dealing at arm's length with the donor. It is not necessary that the advantage be receivable from the donee.

Paragraph 248(32)(b) includes as an advantage any limited-recourse debt in respect of the gift or contribution. For additional details regarding limited-recourse debt, see the commentary to new subsection 143.2(6.1).

It is proposed that subsections 2000(1) and (6) and 3501(1), (1.1) and (6) of the Regulations be amended to provide that official receipts issued by a registered organization or political party in respect of a gift or contribution contain, in addition to the information already prescribed, the eligible amount and the amount of the advantage, if any, in respect of the gift or contribution.

Related Provisions: 248(30) — Existence of advantage does not negate gift; 248(33) — Deemed cost of property acquired; 248(34) — Repayment of limited-recourse debt.

I.T. Technical News: 26 (proposed guidelines on split-receipting).

Registered Charities Newsletters: 15 (new interim guidelines on gifts affect split-receipting); 17 (Q&A on split-receipting); 22 (advantages received by a donor: promotion, advertising, and sponsorship); 23 (did you know? golf tournaments).

Charities Policies: CPC-025: Gift — expenses — volunteer; CPC-026: Fundraising — third-party fundraisers.

(33) Cost of property acquired by donor — The cost to a taxpayer of a property, acquired by the taxpayer in circumstances where subsection (32) applies to include the value of the property in computing the amount of the advantage in respect of a gift or monetary contribution, is equal to the fair market value of the property at the time the gift or monetary contribution is made.

Technical Notes: New subsection 248(33), which applies in respect of gifts or political contributions made after December 20, 2002, provides that the cost to a taxpayer of property acquired by the taxpayer in the course of the making of a gift or contribution by the taxpayer is the fair market value of the property at the time of the making of the gift or contribution. The fair market value of such a property is relevant in computing the amount of the advantage in respect of the gift or contribution under subsection 248(32).

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 185(23), will add subsecs. 248(30)–(33), applicable in respect of gifts and monetary contributions made after December 20, 2002, except that subsec. 248(32) is to be read without reference to

(i) its para. (b) in respect of gifts and monetary contributions made before February 19, 2003, and

(ii) its subpara. (a)(iii) in respect of gifts and monetary contributions made before 6:00 p.m. EST on December 5, 2003.

I.T. Technical News: 26 (proposed guidelines on split-receipting).

Registered Charities Newsletters: 17 (Q&A on split-receipting).

Proposed Addition — 248(34)

(34) Repayment of limited-recourse debt — If at any time in a taxation year a taxpayer has paid an amount (in this subsection referred to as the "repaid amount") on account of the principal amount of an indebtedness which was, before that time, an unpaid principal amount that was a limited-recourse debt referred to in subsection 143.2(6.1) (in this subsection referred to as the "former limited-recourse debt") in respect of a gift or monetary contribution (in this subsection referred to as the "original gift" or "original monetary contribution", respectively, as the case may be) of the taxpayer (otherwise than by way of assignment or transfer of a guarantee, security or similar indemnity or covenant, or by way of a payment in respect of which any taxpayer referred to in subsection 143.2(6.1) has incurred an indebtedness that would be a limited-recourse debt referred to in that subsection if that indebtedness were in respect of a gift or monetary contribution made at the time that that indebtedness was incurred), the following rules apply:

(a) if the former limited-recourse debt is in respect of the original gift, for the purposes of sections 110.1 and 118.1, the taxpayer is deemed to have made in the taxation year a gift to a qualified donee, the eligi-

ble amount of which deemed gift is the amount, if any, by which

(i) the amount that would have been the eligible amount of the original gift, if the total of all such repaid amounts paid at or before that time were paid immediately before the original gift was made,

exceeds

(ii) the total of

(A) the eligible amount of the original gift, and

(B) the eligible amount of all other gifts deemed by this paragraph to have been made before that time in respect of the original gift; and

(b) if the former limited-recourse debt is in respect of the original monetary contribution, for the purposes of subsection 127(3), the taxpayer is deemed to have made in the taxation year a monetary contribution referred to in that subsection, the eligible amount of which is the amount, if any, by which

(i) the amount that would have been the eligible amount of the original monetary contribution, if the total of all such repaid amounts paid at or before that time were paid immediately before the original monetary contribution was made,

exceeds

(ii) the total of

(A) the eligible amount of the original monetary contribution, and

(B) the eligible amount of all other monetary contributions deemed by this paragraph to have been made before that time in respect of the original monetary contribution.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 185(23), will add subsec. 248(34), applicable in respect of gifts and monetary contributions made after February 18, 2003.

Technical Notes: New subsection 248(34), which applies in respect of gifts or political contributions made after February 18, 2003, generally provides that a repayment of the principal amount of a limited-recourse debt in respect of a gift or political contribution is deemed to be a gift in the year it is paid. However, in some circumstances the total amount of limited-recourse debt and other advantages to the donor may exceed the fair market value of the property transferred to a charity, resulting in no eligible amount to the donor under subsection 248(31). In this case, the donor must pay off the excess amount before any amount will be allowed as a gift. Also, a payment financed by other limited-recourse debt or made by way of assignment or transfer of a guarantee, security or similar indemnity or covenant is not recognized for these purposes. For example, the assumption of a taxpayer's limited-recourse debt by another person, in exchange for an insurance policy in favour of the taxpayer that guarantees a particular rate of return on an investment held by any person, would not qualify as a deemed gift under subsection 248(34).

Department of Finance news release, December 5, 2003: The Minister also released draft amendments relating to limited-recourse debt and "split-receipting." These measures implement proposals introduced in Budget 2003 that address charitable donation arrangements that were promoted in recent years involving the use of limited-recourse debt. [See under 248(35)-(41) for full text of news release — ed.]

Proposed Addition — 248(35)–(41)

(35) Deemed fair market value — For the purposes of subsection (31), paragraph 69(1)(b) and subsections 110.1(2.1) and (3) and 118.1(5.4) and (6), the fair market value of a property that is the subject of a gift made by a taxpayer to a qualified donee is deemed to be the lesser of the fair market value of the property otherwise determined and the cost, or in the case of capital property, the adjusted cost base, of the property to the taxpayer immediately before the gift is made if

(a) the taxpayer acquired the property under a gifting arrangement that is a tax shelter as defined in subsection 237.1(1); or

(b) except where the gift is made as a consequence of the taxpayer's death,

(i) the taxpayer acquired the property less than 3 years before the day that the gift is made [see proposed exception in comfort letter below — ed.], or

(ii) the taxpayer acquired the property less than 10 years before the day that the gift is made and it is reasonable to conclude that, at the time the taxpayer acquired the property, one of the main reasons for the acquisition was to make a gift of the property to a qualified donee.

Technical Notes: New subsection 248(35), which applies in respect of gifts made after 6:00 p.m. (EST), December 5, 2003, provides that the fair market value of a property that is the subject of a gift is, for the purposes of determining the eligible amount of a gift under subsection 248(31), deemed to be the lesser of the actual fair market value of the property and its cost to the donor. This rule applies if the property was acquired by the donor as part of a gifting arrangement that is a tax shelter. For more information on gifting arrangements, refer to the commentary for subsection 237.1(1).

Unless the donation is made as a consequence of the donor's death, this rule also applies if the property was acquired

- less than three years before the time of donation, or
- less than 10 years before that time, if one of the main purposes of acquisition was to gift the property to a qualified donee.

Letter from Dept. of Finance, December 23, 2004:

Dear [xxx]

SUBJECT: Draft Amendments Regarding Charitable Donations

I am writing in regard to your letter of April 15, 2004 and your subsequent discussions with us, concerning the draft amendments to the *Income Tax Act* ("the Act") proposed by the Minister of Finance on December 5, 2003. You have suggested that these proposed amendments be revised to grandfather gifts made pursuant to a written undertaking given before that date.

It is our view that such a basis for grandfathering could be problematic in the area of gifting, since it may be argued as a matter of law that a promise to make a gift is not enforceable. However, we have read with interest the submissions of others who have suggested that proposed subsection 248(35) of the Act not apply in respect of newly-issued shares acquired in the context of a rollover of property to a corporation. We also understand that, in the situation you describe, the donated shares are publicly listed shares that do not meet the exception in proposed paragraph 248(36)(c) of the Act because the gift will be made to a private foundation.

The proposed rule in subsection 248(35) is not, in general, intended to apply in respect of property that has been held for longer than three years and was not originally acquired with an expectation of donation. Accordingly, a result that would cause subsection 248(35) to apply simply because that property has been substituted with another property for the purposes of making a donation, would be inconsistent with the intent of the proposed rule. However, we would have policy concerns if an exception to the proposed rule could be used by a donor, or a related group of taxpayers that includes the donor, to avoid the application of the rule to property that has been held less than three years or acquired with an expectation of donation.

To accommodate your concerns, without creating an opportunity for avoidance, we are prepared to recommend to the Minister of Finance that an exception to proposed subsection 248(35) apply in respect of the donation of certain shares of a private corporation controlled by the donor or a person related to the donor. These shares would be exempted from the proposed rule if they were received as consideration for property, transferred to the corporation, to which subsection 248(35) would not have applied if instead that property had been donated, at the time of the transfer, by the transferor to a qualified donee. However, no tax de-

duction or credit would be available if it could reasonably be concluded that a particular gift was related to a transaction or series of transactions in respect of which one of the purposes was to avoid the application of subsection 248(35) to any gift of any property.

We will recommend that this exception have the same coming-into-force as subsection 248(35) of the Act.

Of course, I can offer no assurance that the Minister of Finance will agree with the recommendation that I have described. Nonetheless, I hope that this discussion is helpful.

Yours sincerely,

Len Farber
General Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 237.1(1) — Definitions of "gifting arrangement" and "tax shelter"; 248(36) — Non-arm's length acquisition by donor; 248(37) — Exceptions; 248(38) — Anti-avoidance rule — artificial transactions; 248(39) — Anti-avoidance — selling property and donating proceeds; 248(40) — Donee must make inquiry re circumstances of donation over $5,000; 248(41) — Donation value deemed nil if taxpayer does not inform donee of circumstances requiring reduction.

Registered Charities Newsletters: 18 (charitable donation tax shelter arrangements).

(36) Non-arm's length transaction — If a taxpayer acquired a property that is the subject of a gift to which subsection (35) applies because of subparagraph (35)(b)(i) or (ii) and the property was, at any time within the 3-year or 10-year period, respectively, that ends when the gift was made, acquired by a person or partnership with whom the taxpayer does not deal at arm's length, for the purpose of applying subsection (35), the cost, or in the case of capital property, the adjusted cost base, of the property to the taxpayer immediately before the gift is made is deemed to be equal to the lowest amount that is the cost, or in the case of capital property, the adjusted cost base, to the taxpayer or any of those persons or partnerships immediately before the property was disposed of by that person or partnership.

Technical Notes: New subsection 248(36) applies in conjunction with subsection 248(35), to "look-back" to discern whether a donated property was previously acquired by a person dealing non-arm's length with the donor. If subsection 248(35) applies because the donor acquired the property within the three years of donation, then if a non-arm's length person owned that property within that three-year period, the value of the gift to the donor will be the lower of the taxpayer's cost and the lowest cost to any such non-arm's length person.

Similarly, the rule will apply if subsection (35) applies because the taxpayer acquired the property within the last ten years and one of the main reasons of the acquisition was to gift the property, if a non-arm's length person acquired that property within that ten-year period.

Related Provisions: 248(40) — Donee must make inquiry re circumstances of donation over $5,000; 248(41) — Donation value deemed nil if taxpayer does not inform donee of circumstances requiring reduction.

(37) Non-application of subsection (35) — Subsection (35) does not apply to a gift

(a) of inventory;

(b) of real property or an immovable situated in Canada;

(c) of an object referred to in subparagraph 39(1)(a)(i.1);

(d) of property to which paragraph 38(a.1) or (a.2) would apply, if those paragraphs were read without reference to the expression "other than a private foundation";

(e) of a share of the capital stock of a corporation if

(i) the share was issued by the corporation to the donor,

(ii) immediately before the gift, the corporation was controlled by the donor, a person related to the donor or a group of persons each of whom is related to the donor, and

(iii) subsection (35) would not have applied in respect of the consideration for which the share was issued had that consideration been donated by the donor to the qualified donee when the share was so donated; or

(f) by a corporation of property if

(i) the property was acquired by the corporation in circumstances to which subsection 85(1) or (2) applied,

(ii) immediately before the gift, the shareholder from whom the corporation acquired the property controlled the corporation or was related to a person or each member of a group of persons that controlled the corporation, and

(iii) subsection (35) would not have applied in respect of the property had the property not been transferred to the corporation and had the shareholder made the gift to the qualified donee when the corporation so made the gift.

Technical Notes: New subsection 248(37) provides exceptions to the application of subsection 248(35) where the property that is the subject of a gift is an ecological gift, inventory, real property situated in Canada, publicly-traded securities or cultural property, the value of which is certified by the *Cultural Property Export Review Board*.

In some circumstances, a shareholder might transfer a property to a controlled corporation in exchange for shares issued by the corporation, and then donate the shares. Alternatively, the corporation might donate the property it received. If subsection 248(35) would not have applied to a gift of a property by a shareholder, either because it is a type of property referred to above or because subsection 248(35) would not apply to the shareholder in any event, and if the shareholder donates the share, subsection 248(37) will further exempt the share from the application of subsection 248(35). If subsections 85(1) or 85(2) applied to the transfer of such an exempt property to the corporation, then subsection 248(37) will preclude the application of subsection 248(35) to that property if it is then donated by the corporation.

(38) Artificial transactions — The eligible amount of a particular gift of property by a taxpayer is nil if it can reasonably be concluded that the particular gift relates to a transaction or series of transactions

(a) one of the purposes of which is to avoid the application of subsection (35) to a gift of any property; or

(b) that would, if this Act were read without reference to this paragraph, result in a tax benefit to which subsection 245(2) applies.

Technical Notes: New subsection 248(38) applies in respect of gifts made after 6:00 p.m. (EST), December 5, 2003, to prevent a donor from avoiding the application of subsection 248(35) by disposing and reacquiring a property before donating it to a qualified donee. If this is the purpose of any transaction or series of transactions that includes a disposition or acquisition of a property, for such gifts made before July 18, 2005, the cost of the property to the donor for the purpose of subsection 248(35) is deemed to be the lowest cost incurred by the taxpayer at any time to acquire that property or an identical property.

For gifts made on or after July 18, 2005, the eligible amount is deemed to be nil if a transaction or series of transactions

- has, as one of its purposes, the avoidance of the application of subsection 248(35), or
- would otherwise result in a tax benefit to which the General Anti-Avoidance Rule in subsection 245(2) would otherwise apply.

For example, the eligible amount of a gift resulting from a transaction or series to which subsection 248(38) would apply, if the gift were made before July 18, 2005, would be deemed to be nil if instead the gift were made on or on or after July 18, 2005.

The objectives of the provisions in the Act related to gifting are generally described above under the heading "Gifts and Contributions", but are not limited to that description.

Related Provisions: 248(40) — Donee must make inquiry re circumstances of donation over $5,000; 248(41) — Donation value deemed nil if taxpayer does not inform donee of circumstances requiring reduction.

(39) Substantive gift [selling property and donating proceeds] — If a taxpayer disposes of a property (in this subsection referred to as the "substantive gift") that is a capital property or an eligible capital property of the taxpayer, to a recipient that is a registered party, a provincial division of a registered party, a registered association or a candidate, as those terms are defined in the *Canada Elections Act*, or that is a qualified donee, subsection (35) would have applied in respect of the substantive gift if it had been the subject of a gift by the taxpayer to a qualified donee, and all or a part of the proceeds of disposition of the substantive gift are (or are substituted, directly or indirectly in any manner whatever, for) property that is the subject of a gift or monetary contribution by the taxpayer to the recipient or any person dealing not at arm's length with the recipient, the following rules apply:

(a) for the purpose of subsection (31), the fair market value of the property that is the subject of the gift or monetary contribution made by the taxpayer is deemed to be that proportion of the lesser of the fair market value of the substantive gift and the cost, or if the substantive gift is capital property of the taxpayer, the adjusted cost base, of the substantive gift to the taxpayer immediately before the disposition to the recipient, that the fair market value otherwise determined of the property that is the subject of the gift or monetary contribution is of the proceeds of disposition of the substantive gift;

(b) if the substantive gift is capital property of the taxpayer, for the purpose of the definitions "proceeds of disposition" of property in subsection 13(21) and section 54, the sale price of the substantive gift is to be reduced by the amount by which the fair market value of the property that is the subject of the gift (determined without reference to this section) exceeds the fair market value determined under paragraph (a); and

(c) if the substantive gift is eligible capital property of the taxpayer, the amount determined under paragraph (a) in the description of E in the definition "cumulative eligible capital" in subsection 14(5) in respect of the substantive gift is to be reduced by the amount by which the fair market value of the property that is the subject of the gift (determined without reference to this section) exceeds the fair market value determined under paragraph (a).

Technical Notes: New subsection 248(39), which applies in respect of gifts made after February 26, 2004, prevents a donor from avoiding the application of subsection 248(35) by disposing a property (the "substantive gift") to a qualified donee and donating the proceeds, rather than donating the property itself. The provision applies similarly in respect of political contributions. The fair market value of the gift or contribution of the proceeds, for the purpose of determining its eligible amount under subsection 248(31), is deemed to be the lesser of the fair market value of the property sold and its cost. Subsection 248(39) does not apply if subsection 248(35) would not have applied to a gift by the taxpayer of that property.

Related Provisions: 248(40) — Donee must make inquiry re circumstances of donation over $5,000; 248(41) — Donation value deemed nil if taxpayer does not inform donee of circumstances requiring reduction.

(40) Reasonable inquiry — A person shall not issue a receipt referred to in subsection 110.1(2), 118.1(2) or 127(3), with a stated eligible amount in excess of $5,000, unless the person has made reasonable inquiry as to the existence of any circumstances in respect of which subsection (31), (35), (36), (38) or (39) requires that the eligible amount of the gift or monetary contribution be less than the fair market value, determined without reference to subsection (35), and subsections 110.1(3) and 118.1(6), of the property that is the subject of the gift or monetary contribution.

Technical Notes: New subsection 248(40), which applies in respect of gifts and monetary contributions made after 2005, requires a person issuing a receipt for tax purposes, with a stated eligible amount in excess of $5,000, to inquire as to whether certain circumstances exist that would result in an eligible amount being reported on the receipt that is less than the fair market value of the property (determined without reference to the Act). In particular, such information would include that relevant to the application of subsections 248(31), (35), (36), (38) or (39). This would include, for example

- the existence of an amount of an advantage in respect of a gift of property or a contribution, including any limited recourse debt as defined under subsection 143.2(6.1);
- whether a gifted property was acquired in the context of a tax shelter;
- whether a gifted property was acquired by the donor in the last three years and, if so, the lowest cost to the donor and to any person dealing non-arm's length with the donor who acquired the property at any time in the last three years; or
- if not acquired in the last three years, whether the gifted property was acquired by the donor in the last ten years mainly for the purpose of making a gift and, if so, the lowest cost to the donor and to any person dealing non-arm's length with the donor who acquired the property at any time in the last ten years.

However, a donee need not enquire as to whether the donor will be electing under subsection 110.1(3) or 118.1(6) to reduce amount reported as the fair market value of the gift.

For more information, refer to the commentary for subsections 110.1(3), 118.1(6), 143.2(6.1) and 248(31), (35), (36), (38) and (39).

Related Provisions: 248(41) — Eligible amount deemed nil if information not provided.

(41) Information not provided — Notwithstanding subsection (31), the eligible amount of a gift or monetary contribution made by a taxpayer is nil if the taxpayer does not — before a receipt referred to in subsection 110.1(2), 118.1(2) or 127(3), as the case may be, is issued in respect of the gift or monetary contribution — inform the qualified donee or the recipient, as the case may be, of any circumstances in respect of which subsection (31), (35), (36), (38) or (39) requires that the eligible amount of the gift or monetary contribution be less than the fair market value, determined without reference to subsection (35) and subsections 110.1(3) and 118.1(6), of the property that is the subject of the gift or monetary contribution.

Technical Notes: New subsection 248(41), which applies in respect of gifts and monetary contributions made after 2005, provides that the eligible amount of a gift is nil if, before an official charitable receipt receipt is issued by a donee, the donor fails to inform the donee of information that would be relevant to the application of subsections 248(31), (35), (36), (38) or (39). The donee requires such information for correct the preparation of the receipt. For more information, refer to the commentary for those provisions and subsection 248(40).

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 185(23), will add subsecs. 248(35)–(41), applicable in respect of gifts and monetary contributions made after December 20, 2002, except that

(a) subsecs. 248(35), (37) and (38) do not apply in respect of gifts made before 6:00 p.m. EST on December 5, 2003 and, in respect of

gifts made after that time but before July 18, 2005, subsec. 248(38) is to be read as follows:

(38) If it can reasonably be concluded that one of the reasons for a series of transactions, that includes a disposition or acquisition of a property of a taxpayer that is the subject of a gift by the taxpayer, is to increase the amount that would be deemed by subsection (35) to be the fair market value of the property, the cost of the property for the purpose of that subsection is deemed to be the lowest cost to the taxpayer to acquire that property or an identical property at any time.

(b) subsec. 248(36) does not apply in respect of gifts or monetary contributions made before July 18, 2005;

(c) subsec. 248(39) does not apply in respect of gifts or monetary contributions made before February 27, 2004; and

(d) subsecs. 248(40) and (41) do not apply in respect of gifts and monetary contributions made before 2006.

Department of Finance news release, December 5, 2003: *Government Announces Restrictions on Charitable Donation Tax Shelter Arrangements*

John Manley, Deputy Prime Minister and Minister of Finance, today released draft amendments to the *Income Tax Act* limiting the tax benefits of charitable donations made under tax shelter and other arrangements.

The amendments proposed today respond to concerns that various promoters are marketing charitable gifting schemes to the public in which property acquired by a taxpayer is donated to a charity at a value represented to be in excess of the taxpayer's acquisition cost. These "buy-low, donate-high" arrangements provide taxpayers with a tax benefit greater than their actual cost of the donated property. These proposed amendments will not apply to gifts of publicly traded securities, certified cultural property, ecological gifts, or real property situated in Canada.

As of 6:00 p.m. EST on December 5, 2003, the value of a gift of property for charitable donation purposes will be limited to a donor's cost of the property, where it is donated within three years of acquisition by the donor or is otherwise acquired through a gifting arrangement or in contemplation of donation.

The Minister also released draft amendments relating to limited-recourse debt and "split-receipting." These measures implement proposals introduced in Budget 2003 that address charitable donation arrangements that were promoted in recent years involving the use of limited-recourse debt [see 143.2(6.1), 237.1(1)"gifting arrangement"(b) and 248(34) — ed.]. The draft amendments also incorporate changes put forward in December 2002 relating to the right to receive a benefit in respect of the donation [see 248(30)–(33) — ed.].

References in the draft legislation to "Announcement Time" should be read as referring to 6:00 p.m. EST on December 5, 2003.

For further information: Andrée Houde, Public Affairs and Operations Division, (613) 996-8080; Mike Scandiffio, Communications Advisor, Office of the Deputy Prime Minister and Minister of Finance, (613) 996-7861; Ed Short, Tax Policy Branch, (613) 996-0599; Christiane Maurice, Tax Policy Branch, (613) 996-9593.

Definitions [s. 248]: "acquired for consideration" — 108(7); "active business" — 248(1); "adjusted cost base" — 54, 248(1); "advantage" — 248(32); "affiliated" — 251.1; "amateur athlete trust" — 143.1(1), 248(1); "amount" — 248(1); "arm's length" — 251(1); "assessment" — 248(1); "associated" — 256; "authorized foreign bank" — 248(1); "bank" — 248(1), *Interpretation Act* 35(1); "beneficially interested" — 248(25); "bituminous sands", "business", "business limit" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255, *Interpretation Act* 35(1); "Canadian-controlled private corporation" — 125(7), 248(1); "Canadian resource property" — 66(15), 248(1); "capital gain" — 39(1), 248(1); "capital interest" — 108(1), 248(1); "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "carrying on business" — 253; "cemetery care trust" — 148.1(1), 248(1); "child" — 252(1); "common-law partner", "common-law partnership", "common share" — 248(1); "connected" — 186(4), (7), 251(6); "consequence of the death", "consequence of the taxpayer's death" — 248(8); "consideration" — 108(7); "controlled" — 256(6), (6.1); "controlled foreign affiliate" — 94.1(2)(h), 95(1), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "corporeal property" — Quebec *Civil Code* art. 899, 906; "custodian" — 248(1)"retirement compensation arrangement"; "deferred amount" — 248(1); "deferred profit sharing plan" — 147(1), 248(1); "depreciable property" — 13(21), 248(1); "designated insurance property" — 138(12), 248(1); "disclaimer" — 248(9); "disposition", "dividend" — 248(1); "eligible amount" — 248(31), (41); "eligible capital property" — 54, 248(1); "eligible funeral arrangement" — 148.1(1), 248(1); "employed", "employee trust" — 248(1); "employees profit sharing plan" — 144(1), 248(1); "employment" — 248(1); "exempt interest" — 94.1(1); "fair market value" — 248(35); "filing-due date" — 248(1); "financial institution" — 142.2(1); "fiscal period" — 249(2)(b), 249.1; "foreign exploration and development expenses" — 66(15), 248(1); "foreign investment entity" — 94.1(1), 248(1); "foreign merger" — 87(8.1); "foreign resource expense" — 66.21(1), 248(1); "gifting arrangement" — 237.1(1); "goods and services tax", "grandfathered share", "gross revenue" — 248(1); "Her Majesty" — *Interpretation Act* 35(1); "immovable" — Quebec *Civil Code* art. 900–907; "income interest", "individual", "insurance policy", "insurer" — 248(1); "*inter vivos* trust" — 108(1), 248(1); "interest in real property" — 248(4); "international traffic", "inventory", "lending asset" — 248(1); "life insurance policy", "life insurance policy in Canada" — 138(12), 248(1); "limited-recourse debt" — 143.2(6.1); "mark-to-market property" — 142.2(1); "mineral" — 248(1); "mineral resource", "Minister" — 248(1); "Minister of Natural Resources" — *Department of Natural Resources Act* s. 3; "monetary contribution" — 127(4.1), *Canada Elections Act* s. 2(1); "month" — *Interpretation Act* 35(1); "movable" — Quebec *Civil Code* art. 900–907; "mutual fund corporation" — 131(8), 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q) [to be repealed], 132.2(3)(n) [draft], 248(1); "net income stabilization account", "non-resident" — 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "office", "oil or gas well" — 248(1); "parent" — 252(2)(a); "Parliament" — *Interpretation Act* 35(1); "participating interest" — 94.1(1), 94.1(2)(s), 248(1); "passenger vehicle" — 248(1); "permanent establishment" — Reg. 8201; "person" — 248(1); "personal services business" — 125(7), 248(1); "personal trust", "prescribed" — 248(1); "prescribed plan or arrangement" — Reg. 6801, 6802, 6802.1, 6803; "prescribed rate" — Reg. 4301; "prescribed stock exchange" — 248(29), Reg. 3200, 3201; "prescribed stock exchange in Canada" — Reg. 3200; "principal amount", "property" — 248(1); "province" — *Interpretation Act* 35(1); "qualified donee" — 149.1(1), 248(1); "qualifying environmental trust" — 248(1); "qualifying member" — 95(2)(o)–(r), 248(1); "registered education savings plan" — 146.1(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "registered securities dealer" — 248(1); "registered supplementary unemployment benefit plan" — 145(1), 248(1); "regular force" — *Interpretation Act* 35(1); "regulation" — 248(1); "related" — 248(14), 251; "release or surrender" — 248(9); "resident" — 250; "resident in a province" — 250(7); "resident in Canada" — 250; "restricted financial institution" — 248(1); "salary or wages" — 248(1); "security" — *Interpretation Act* 35(1); "series of transactions" — 248(10); "share", "specified financial institution", "specified future tax consequence" — 248(1); "specified investment business" — 125(7), 248(1); "specified debt obligation" — 142.2(1); "specified person" — 248(1)"short-term preferred share"(j), 248(1)"taxable preferred share"(h); "spouse" — 252(3); "supplementary unemployment benefit plan" — 145(1), 248(1); "tar sands" — 248(1); "tax basis" — 142.4(1); "tax shelter" — 237.1(1); "tax treaty", "taxable Canadian property" — 248(1); "taxable dividend" — 89(1), 248(1); "taxable income" — 2(2); "taxable income earned in Canada" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "testamentary trust" — 108(1), 248(1); "timber resource property" — 13(21), 248(1); "trust" — 104(1), 248(1), (3); "unit trust" — 108(2), 248(1); "usufruct" — Quebec *Civil Code* art. 1120-1171; "writing" — *Interpretation Act* 35(1); "written" — *Interpretation Act* 35(1)"writing".

249. (1) Definition of "taxation year" — For the purpose of this Act, a "taxation year" is

(a) in the case of a corporation, a fiscal period, and

(b) in the case of an individual, a calendar year,

and when a taxation year is referred to by reference to a calendar year, the reference is to the taxation year or years coinciding with, or ending in, that year.

Proposed Amendment — 249(1), (1.1)

249. (1) Definition of "taxation year" — Except as expressly otherwise provided in this Act, a "taxation year" is

(a) in the case of a corporation, a fiscal period;

(b) in the case of an individual (other than a testamentary trust), a calendar year; and

(c) in the case of a testamentary trust, the period for which the accounts of the trust are made up for purposes of assessment under this Act.

(1.1) References to calendar year — When a taxation year is referred to by reference to a calendar year, the reference is to the taxation year or taxation years that coincide with, or that end in, that calendar year.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 186(1), will amend subsec. 249(1) to read as above, and add subsec. (1.1), applicable after December 20, 2002.

Technical Notes: Subsection 249(1) sets out, for purposes of the Act, the definition "taxation year". Paragraph 249(1)(a) provides that in the case of a corporation, a taxation year is a fiscal period. Paragraph 249(1)(b) provides that the taxation year of an individual is the calendar year. Subsection 249(1) also provides that when a taxation year is referred to by reference to a calendar year, the reference is to the taxation year or years coinciding with, or ending in, that year.

Subsection 249(1) is amended to clarify that the definition "taxation year" contained in that subsection applies for purposes of the Act except as otherwise provided. For examples of exceptions, which apply for limited purposes, see the definitions "taxation year" in subsections 95(1) and 149.1(1).

Subsection 249(1) is also amended to add new paragraph 249(1)(c), which provides that the taxation year of a testamentary trust is the period for which the accounts of the trust are made up for purposes of assessment under the Act. This definition was previously contained in paragraph 104(23)(a), which is being repealed.

New subsection 249(1.1) provides that, when a taxation year is referred to by reference to a calendar year, the reference is to the taxation year or taxation years that coincide with, or that end in, that calendar year. This rule combines the identical rules previously found in paragraph 104(23)(b), which is repealed, and subsection 249(1).

These amendments apply after December 20, 2002. For a related set of amendments, see the commentary on paragraphs 104(23)(a) and (b).

Related Provisions: 11(2) — Reference to "taxation year" of individual who carries on a business; 14(4) — Taxation year of individual — eligible capital property rules; 20(16.2) — Taxation year of individual — terminal loss rules; 87(2)(a) — Deemed year-end and new taxation year on amalgamation; 95(1)"taxation year" — Taxation year of foreign affiliate; 96(1)(b) — Taxation year of partnership; 104(23) — Testamentary trusts; 128(2)(d) — Deemed year-end where individual bankrupt; 128.1(1)(a) — Deemed year-end and new taxation year on becoming resident in Canada; 128.1(4)(a) — Deemed year-end and new taxation year on ceasing to be resident in Canada; 132.11 — Election for mutual fund trust to have December 15 year-end; 132.2(1)(b) [to be repealed], 132.2(3)(b) [draft] — Deemed year-end and new taxation year on transfer of property between mutual funds; 144(11) — Deemed year-end on EPSP becoming DPSP; 149(10)(a) — Taxation year of corporation becoming or ceasing to be exempt; 149.1(1) — Taxation year of registered charity; 188(1) — Deemed year-end on notice of revocation of charity registration; 249(2), (3) — References to "taxation year" and "fiscal period"; 249(4) — Deemed year-end on change of control; 249(5), (6) — Rules for testamentary trust; 250.1(a) — Taxation year of non-resident person.

Regulations: 1104(1) (taxation year of individual for capital cost allowance purposes).

Interpretation Bulletins: IT-184R: Deferred cash purchase tickets issued by Canadian Wheat Board; IT-363R2: Deferred profit sharing plans — deductibility of employer contributions and taxation of amounts received by a beneficiary (archived).

(2) References to certain taxation years and fiscal periods — For the purposes of this Act,

(a) a reference to a taxation year ending in another year includes a reference to a taxation year ending coincidentally with that other year; and

(b) a reference to a fiscal period ending in a taxation year includes a reference to a fiscal period ending coincidentally with that year.

Related Provisions: 249(1) — "Taxation year"; 250.1(a) — Taxation year of non-resident person.

History: Para. 249(2)(b) amended by 1995, c. 3, s. 53, applicable to fiscal periods that end after 1993. Para. (b) formerly read:

(b) a reference to a fiscal period of a partnership ending in a taxation year includes a reference to a fiscal period of the partnership ending coincidentally with that year.

(3) Deemed year end where fiscal period exceeds 365 days — Notwithstanding subsection (1), where the fiscal period of a corporation exceeds 365 days and by reason thereof the corporation does not have a taxation year that ends in a particular calendar year, for the purposes of this Act, the corporation's first taxation year ending in the immediately following calendar year shall be deemed to end on the last day of the particular calendar year.

(4) Year end on change of control — Where at any time control of a corporation (other than a corporation that is a foreign affiliate of a taxpayer resident in Canada and that did not carry on a business in Canada at any time in its last taxation year beginning before that time) is acquired by a person or group of persons, for the purposes of this Act,

(a) subject to paragraph (c), the taxation year of the corporation that would, but for this paragraph, have included that time shall be deemed to have ended immediately before that time;

(b) a new taxation year of the corporation shall be deemed to have commenced at that time;

(c) subject to paragraph 128(1)(d), section 128.1, and paragraphs 142.6(1)(a) and 149(10)(a), and notwithstanding subsections (1) and (3), where the taxation year of the corporation that would, but for this subsection, have been its last taxation year that ended before that time would, but for this paragraph, have ended within the 7-day period that ended immediately before that time, that taxation year shall, except where control of the corporation was acquired by a person or group of persons within that period, be deemed to end immediately before that time where the corporation so elects in its return of income under Part I for that taxation year; and

(d) for the purpose of determining the corporation's fiscal period after that time, the corporation shall be deemed not to have established a fiscal period before that time.

Related Provisions: 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 149(10) — Exempt corporations; 256(6)–(9) — Whether control acquired.

History: Para. 249(4)(c) amended by 1995, c. 21, s. 60, applicable after February 22, 1994. Para. (c) formerly read:

(c) subject to paragraph 128(1)(d), section 128.1 and paragraph 149(10)(a), and notwithstanding subsections (1) and (3), where the taxation year of the corporation that would, but for this subsection, have been its last taxation year that ended before that time would, but for this paragraph, have ended within the 7-day period that ended immediately before that time, that taxation year shall, except where control of the corporation was acquired by a person or group of persons within that period, be deemed to end immediately before that time where the corporation so elects in its return of income under Part I for that taxation year; and

Para. 249(4)(c) substituted by 1994, c. 21, s. 110, applicable after 1992 except that, where a corporation has elected in accordance with paragraph 111(4)(a) of 1994, c. 21 (see subsec. 250(5.1)), the amended para. applies to the time at which the corporation was first granted articles of continuation (or similar constitutional documents) in any jurisdiction. That para. formerly read:

(c) subject to paragraphs 88.1(c), 128(1)(d) and 149(10)(a), and notwithstanding subsections (1) and (3), where the taxation year of the corporation that would, but for this subsection, have been its last taxation year ending before that time and would, but for this paragraph, have ended within the seven day period ending immediately before that time, that taxation year shall, except where control of the corporation has been acquired by a person or group of persons within the seven day period ending immediately before that time, be deemed to end immediately before that time where the corporation

so elects in its return of income under Part I for that taxation year; and

That portion of subsec. 249(4) preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 193, applicable to acquisitions of control occurring after July 13, 1990. That portion formerly read:

(4) Deemed year end where change of control occurs — Where, at any time, control of a corporation has been acquired by a person or group of persons, the following rules apply:

Interpretation Bulletins: IT-151R5: Scientific research and experimental development expenditures; IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987.

I.T. Technical News: 7 (control by a group — 50/50 arrangement).

Proposed Addition — 249(5), (6)

(5) Testamentary trusts — The period for which the accounts of a testamentary trust are made up for the purposes of an assessment under this Act may not exceed 12 months and no change in the time when such a period ends may be made for the purposes of this Act without the concurrence of the Minister.

Technical Notes: New subsection 249(5) is added consequential on the repeal of paragraph 104(23)(a).

Subsection 249(5) provides that the period for which the accounts of a testamentary trust are made up for purposes of assessment under the Act may not exceed 12 months and that no change in the time when such a period ends may be made for the purposes of the Act without the concurrence of the Minister of National Revenue. The rule was previously found in paragraph 104(23)(a), which is being repealed.

This amendment applies after December 20, 2002. For a related set of amendments, see the commentary on paragraphs 104(23)(a) and (b) and subsection 249(1) and (1.1).

Related Provisions: 249(6) — Deemed year-end on loss of testamentary trust status.

(6) Loss of testamentary trust status — If at a particular time after December 20, 2002 a transaction or event, described in any of paragraphs (b) to (d) of the definition "testamentary trust" in subsection 108(1), occurs and as a result of that occurrence a trust or estate is not a testamentary trust, the following rules apply:

(a) the fiscal period for a business or property of the trust or estate that would, if this Act were read without reference to this subsection and those paragraphs, have included the particular time is deemed to have ended immediately before the particular time;

(b) the taxation year of the trust or estate that would, if this Act were read without reference to this subsection and those paragraphs, have included the particular time is deemed to have ended immediately before the particular time;

(c) a new taxation year of the trust or estate is deemed to have started at the particular time; and

(d) in determining the fiscal period of the trust or estate after the particular time, the trust or estate is deemed not to have established a fiscal period before that time.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 186(2), will add subsecs. 249(5) and (6), subsec. (5) applicable after December 20, 2002 and subsec. (6) applicable after July 18, 2005 and, if a trust or estate so elects in writing by filing the election with the Minister of National Revenue on or before its filing-due date for its taxation year in which the amending legislation is assented to, it also applies to that trust or estate, as the case may be, after December 20, 2002.

Technical Notes: New subsection 249(6) provides a set of rules that apply where a trust or estate loses its status under the Act as a "testamentary trust". This loss of status will generally occur where property has been contributed or loaned to the trust or estate in circumstances described in any of paragraphs (b) to (d) of the definition "testamentary trust" in subsection 108(1) or where the trust or estate has been created by someone other than the deceased person on and as a consequence of whose death the trust or estate arose (in this regard, see paragraph (a) of that definition). Under the existing rules in the Act, where a transaction or event described in any of those paragraphs occurs at a particular time, the trust or estate will lose its status as a testamentary trust for its entire taxation year that would otherwise include that time. As a result, the trust will be treated as an *inter vivos* trust at all times after the end of its last taxation year, if any, throughout which it was a testamentary trust. As such, its first taxation year after that last taxation year will be, given the definition "taxation year" in subsection 249(1), the calendar year.

New subsection 249(6) provides transitional relief for trusts or estates that lose their "testamentary trust" status. Under that subsection, if at a particular time after December 20, 2002 a transaction or event, described in any of paragraphs (b) to (d) of the definition "testamentary trust" in subsection 108(1), occurs and as a result of that occurrence a trust or estate is not a testamentary trust, a number of special rules apply in determining its taxation years and fiscal periods. (Note that a trust or estate that fails to qualify as a testamentary trust because of paragraph (a) of the definition "testamentary trust" will be an *inter vivos* trust from its creation and is, therefore, not in need of this transitional relief.) In particular,

- under paragraph 249(6)(a), the fiscal period, for a business or property of the trust or estate, that would, if the Act were read without reference to subsection 249(6) and paragraphs (b) to (d) of the definition "testamentary trust", have included the particular time, is deemed to have ended immediately before the particular time. Subsection 249.1(3) ensures that the next fiscal period starts at the particular time and subsection 249.1(1) requires that that next fiscal period end no later than the calendar year in which it began (i.e. the new taxation year) — this is because the trust would then have become an *inter vivos* trust.
- the taxation year of the trust or estate that would, if this Act were read without reference to this subsection and paragraphs (b) to (d) of the definition "testamentary trust", have included the particular time is deemed to have ended immediately before the particular time. As a result, the trust or estate maintains testamentary trust status until the offside event occurs.
- a new taxation year of the trust or estate is deemed to have started at the particular time.
- in determining the fiscal period of the trust or estate after the particular time, the trust or estate is deemed not to have established a fiscal period before that time.

New subsection 249(6) applies after July 18, 2005. However, if a trust or estate elects in writing filed with the Minister of National Revenue on or before its filing-due date for its taxation year in which the subsection receives Royal Assent, it also applies to that trust or estate, as the case may be, after December 20, 2002.

Example:

Trust A was created on and as a consequence of the death of John Smith in 2004. Trust A has a November 30 year-end. For its 2004 and 2005 taxation years, Trust A is a testamentary trust. On April 15, 2006, Trust A becomes indebted to a beneficiary of the trust by way of an interest-free loan.

Results:

(i) Existing scheme of the Act

Because of paragraph (d) of the definition "testamentary trust", Trust A cannot qualify as a testamentary trust at any time in its taxation year that began December 1, 2005. Therefore, Trust A becomes an inter vivos trust effective December 1, 2005. Trust A would, as an inter vivos trust, have a December 31, 2005 year-end, with an April 1, 2006 filing-due date.

(ii) New Subsection 249(6)

Because of paragraph (d) of the definition "testamentary trust", Trust A cannot qualify as a testamentary trust. Its taxation year that began December 1, 2005 is deemed to have ended immediately before April 15, 2006 — that is to say, on April 14, 2006 (Assume that a reference to time in the legislation is to a day.) Therefore, Trust A maintains its status as a testamentary trust throughout the stub year that began on December 1, 2005 and ended on April 14, 2006. The trust would have 90 days from the end of that taxation year to file its return of income for the stub year. A new taxation year is deemed to begin April 15, 2006. As the April 15, 2006 loan occurs in the new taxation year, Trust A is an inter vivos trust throughout the new taxation year, which, accordingly, will end on

December 31, 2006. As a result, Trust A is able to maintain testamentary trust status until the time immediately before the offside event. With respect to any late-filing for the stub year, relief may be available under the provisions in section 220.

Definitions [s. 249]: "acquired" — 256(7)–(9); "assessment" — 248(1); "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "carry on a business in Canada", "carry on business in Canada" — 253; "control" — 256(6)–(9); "corporation" — 248(1), *Interpretation Act* 35(1); "estate" — 104(1), 248(1); "fiscal period" — 248(1), 249(2)(b), 249.1; "foreign affiliate" — 95(1), 248(1); "individual", "Minister", "person" — 248(1); "month" — *Interpretation Act* 35(1); "property" — 248(1); "taxation year" — 249; "testamentary trust" — 108(1), 248(1); "trust" — 104(1), 248(1), (3).

249.1 (1) Definition of "fiscal period" — For the purposes of this Act, a "fiscal period" of a business or a property of a person or partnership means the period for which the person's or partnership's accounts in respect of the business or property are made up for purposes of assessment under this Act, but no fiscal period may end

(a) in the case of a corporation, more than 53 weeks after the period began,

(b) in the case of

(i) an individual (other than an individual to whom section 149 or 149.1 applies or a testamentary trust),

(i.1) a fiscal period of an inter vivos trust (other than a fiscal period to which paragraph 132.11(1)(c) applies),

(ii) a partnership of which

(A) an individual (other than a testamentary trust or an individual to whom section 149 or 149.1 applies),

(B) a professional corporation, or

(C) a partnership to which this subparagraph applies,

would, if the fiscal period ended at the end of the calendar year in which the period began, be a member of the partnership in the period, or

(iii) a professional corporation that would, if the fiscal period ended at the end of the calendar year in which the period began, be in the period a member of a partnership to which subparagraph (ii) applies,

after the end of the calendar year in which the period began unless, in the case of a business, the business is not carried on in Canada, is a prescribed business or is carried on by a prescribed person or partnership,

(c) in any other case, more than 12 months after the period began,

and, for the purpose of this subsection, the activities of a person to whom section 149 or 149.1 applies are deemed to be a business.

Related Provisions: 25(1) — Optional continuation of year-end after disposing of business; 34.2 — Reserve in respect of 1995 stub period income; 96(1.01) — Income allocation to former partner; 96(1.1) — Allocation of share of income to retiring partner; 99(2) — Optional continuation of original year-end of partnership that ceases to exist; 128.1(4)(a.1) — Deemed end of fiscal period on emigration; 249.1(2), (3) — Interpretation; 249.1(4), (5) — Election for non-calendar year-end.

History: The closing words of para. 249.1(1)(b) amended by 2001, c. 17, s. 189, applicable to fiscal periods that begin after 1994. The closing words formerly read:

after the end of the calendar year in which the period began unless, in the case of a business, the business is not carried on in Canada or is a prescribed business, and

Subpara. 249.1(1)(b)(i) amended, and subpara. (i.1) added, by 1999, c. 22, s. 81, applicable to fiscal periods that begin after December 15, 1997. Subpara. (i) formerly read:

(i) an individual (other than a testamentary trust or an individual to whom section 149 or 149.1 applies),

Selected Cases [subsec. 249.1(1)]: *Cho v. R.*, [2000] 2 C.T.C. 2714 (TCC) (Provision applies to businesses started before end of 1994).

Regulations: 8901 (Gaz Métropolitain LP is prescribed partnership for closing words of 249.1(1)(b)).

I.T. Technical News: 8 (bankrupt corporation — change of fiscal period).

(2) Not a member of a partnership — For the purpose of subparagraph (1)(b)(ii) and subsection (4), a person or partnership that would not have a share of any income or loss of a partnership for a fiscal period of the partnership, if the period ended at the end of the calendar year in which the period began, is deemed not to be a member of the partnership in that fiscal period.

Related Provisions: 96(1.01) — Income allocation to former partner.

(3) Subsequent fiscal periods — Where a fiscal period of a business or a property of a person or partnership ends at any time, the subsequent fiscal period, if any, of the business or property of the person or partnership is deemed to begin immediately after that time.

(4) Alternative method — Paragraph (1)(b) does not apply to a fiscal period of a business carried on, throughout the period of time that began at the beginning of the fiscal period and ended at the end of the calendar year in which the fiscal period began,

(a) by an individual (otherwise than as a member of a partnership), or

(b) by an individual as a member of a partnership, where throughout that period

(i) each member of the partnership is an individual, and

(ii) the partnership is not a member of another partnership,

where

(c) in the case of an individual

(i) who is referred to in paragraph (a), or

(ii) who is a member of a partnership no member of which is a testamentary trust,

an election in prescribed form to have paragraph (1)(b) not apply is filed with the Minister by the individual on or before the individual's filing-due date, and with the individual's return of income under Part I, for the taxation year that includes the first day of the first fiscal period of the business that begins after 1994, and

(d) in the case of an individual who is a member of a partnership a member of which is a testamentary trust, an election in prescribed form to have paragraph (1)(b) not apply is filed with the Minister by the individual on or before the earliest of the filing-due dates of the members of the partnership for a taxation year that includes the first day of the first fiscal period of the business that begins after 1994.

Related Provisions: 34.1(1) — Additional income adjustment where election made; 96(1.01) — Income allocation to former partner; 96(1.1) — Allocation of share of income to retiring partner; 96(3) — Election by members of partnership; 249.1(5) — Alternative method not applicable to tax shelter; 249.1(6) — Revocation of election; Reg. 600(b.1) — Late filing of election by January 31, 1998.

(5) Alternative method not applicable to tax shelter investments — Subsection (4) does not apply

to a particular fiscal period of a business where, in a preceding fiscal period or throughout the period of time that began at the beginning of the particular period and ended at the end of the calendar year in which the particular period began, the expenditures made in the course of carrying on the business were primarily the cost or capital cost of tax shelter investments (as defined in subsection 143.2(1)).

History: Subsec. 249.1(5) amended by 1998, c. 19, s. 240, applicable to fiscal periods that begin after 1994. Subsec. 249.1(5) formerly read:

(5) Alternative method not applicable to tax shelter — Subsection (4) does not apply to a particular fiscal period of a business where, in a preceding fiscal period or throughout the period of time that began at the beginning of the particular period and ended at the end of the calendar year in which the particular period began, the expenditures made in the course of carrying on the business were primarily the cost or capital cost of tax shelters (within the meaning assigned by subsection 237.1(1)).

(6) Revocation of election — Subsection (4) does not apply to fiscal periods of a business carried on by an individual that begin after the beginning of a particular taxation year of the individual where

(a) an election in prescribed form to revoke an election filed under subsection (4) in respect of the business is filed with the Minister; and

(b) the election to revoke is filed

(i) in the case of an individual

(A) who is not a member of a partnership, or

(B) who is a member of a partnership no member of which is a testamentary trust,

by the individual on or before the individual's filing-due date, and with the individual's return of income under Part I, for the particular taxation year, and

(ii) in [the] case of an individual who is a member of a partnership a member of which is a testamentary trust, by the individual on or before the earliest of the filing-due dates of the members of the partnership for a taxation year that includes the first day of the first fiscal period of the business that begins after the beginning of the particular year.

Related Provisions: 96(3) — Election by members of partnership.

(7) Change of fiscal period — No change in the time when a fiscal period ends may be made for the purposes of this Act without the concurrence of the Minister.

Related Provisions: 87(2)(j.91), (qq) — Change in fiscal period after amalgamation; 149(10)(a) — Change in fiscal period on becoming or ceasing to be exempt; 249(4)(d) — Change in fiscal period allowed after change in control of corporation.

Interpretation Bulletins: IT-179R: Change of fiscal period.

Registered Charities Newsletters: 5 (how can you get the Department's permission to change your charity's fiscal period?).

History: S. 249.1 added by 1996, c. 21, s. 61, applicable to fiscal periods that begin after 1994.

Definitions [s. 249.1]: "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "carried on in Canada" — 253; "corporation" — 248(1), *Interpretation Act* 35(1); "filing-due date" — 150(1), 248(1); "individual" — 248(1); "member" — of partnership 249.1(2); "Minister" — 248(1); "person", "prescribed", "professional corporation", "property" — 248(1); "testamentary trust" — 108(1), 248(1).

250. (1) Person deemed resident — For the purposes of this Act, a person shall, subject to subsection (2), be deemed to have been resident in Canada throughout a taxation year if the person

(a) sojourned in Canada in the year for a period of, or periods the total of which is, 183 days or more;

(b) was, at any time in the year, a member of the Canadian Forces;

(c) was, at any time in the year,

(i) an ambassador, minister, high commissioner, officer or servant of Canada, or

(ii) an agent-general, officer or servant of a province,

and was resident in Canada immediately prior to appointment or employment by Canada or the province or received representation allowances in respect of the year;

(d) performed services, at any time in the year, in a country other than Canada under a prescribed international development assistance program of the Government of Canada and was resident in Canada at any time in the 3 month period preceding the day on which those services commenced;

(d.1) was, at any time in the year, a member of the overseas Canadian Forces school staff who filed his or her return for the year on the basis that the person was resident in Canada throughout the period during which the person was such a member;

(e) [Repealed]

(f) was at any time in the year a child of, and dependent for support on, an individual to whom paragraph (b), (c), (d) or (d.1) applies and the person's income for the year did not exceed the amount used under paragraph (c) of the description of B in subsection 118(1) for the year;

(g) was at any time in the year, under an agreement or a convention with one or more other countries that has the force of law in Canada, entitled to an exemption from an income tax otherwise payable in any of those countries in respect of income from any source (unless all or substantially all of the person's income from all sources was not so exempt), because at that time the person was related to or a member of the family of an individual (other than a trust) who was resident in Canada.

Related Provisions: 6(1)(b)(ii), (iii) — No tax on certain allowances to deemed residents; 14(8) — Deemed residence in Canada for cumulative eligible capital recapture; 64.1 — Application to deemed resident; 94(1)(c)(i) [to be repealed], 94(3)(a) [proposed] — Offshore trust deemed resident in Canada; 94(5) [proposed] — Trust deemed to cease being resident in Canada; 110.6(5) — Deemed residence in Canada for capital gains exemption; 115(2) — Certain persons deemed employed in Canada; 118.5(2) — Tuition credit — application to deemed residents; 120(1) — Federal surtax on non-resident's income not earned in a province; 138.1(1)(c)(ii) — Insurer deemed resident in Canada in respect of segregated fund property used in Canada; 214(13)(a) — Regulations deeming person resident in Canada for purposes of Part XIII; 250(3) — "Resident" includes ordinarily resident; 250(6.1) — Deemed residence of trust that ceases to exist; Canada-U.S. Tax Treaty:Art. IV:5 — Residence of government employee working in the other country.

History: Para. 250(1)(f) amended by 2000, c. 19, s. 68, applicable to 1999 *et seq.* except that, in its application to the 1999 taxation year, the reference to "the amount used under paragraph (c) of the description of B in subsection 118(1) for the year" shall be read as a reference to "$7,044". Para. 250(1)(f) formerly read:

(f) was at any time in the year a child of, and dependent for support on, an individual to whom paragraph (b), (c), (d) or (d.1) applies and the person's income for the year did not exceed the total of $500 and the amount used under paragraph (c) of the description of B in subsection 118(1) for the year; or

Para. 250(1)(e) repealed by 1999, c. 22, subsec. 82(1), applicable after February 23, 1998 except that, where

(a) any person would, but for para. 250(1)(e),

(i) have been non-resident at any time before February 24, 1998, and

(ii) not have become resident in Canada after that time and before February 24, 1998, and

(b) the person does not elect in writing filed with the Minister of National Revenue with the person's return of income under Part I of the Act for the 1998 taxation year to have the repeal of para. (e) apply after February 23, 1998,

the repeal of para. (e) does not apply in respect of the person before the first time after February 23, 1998 that the person would, but for para. 250(1)(e), cease to be resident in Canada. Para. 250(1)(e) formerly read:

(e) was resident in Canada in any previous year and was, at any time in the year, the spouse of a person described in paragraph (b), (c), (d) or (d.1) living with that person;

Para. 250(1)(f) amended by the said c. 22, subsec. 82(2), applicable to 1998 *et seq.* Para. (f) formerly read:

(f) was at any time in the year a child of, and dependent for support on, an individual to whom paragraph (b), (c), (d) or (d.1) applies and the person's income for the year did not exceed the amount used for the year under paragraph (c) of the description of B in subsection 118(1).

Para. 250(1)(g) added by the said c. 22, subsec. 82(3), applicable after February 23, 1998.

Para. 250(1)(f) substituted by 1994, c. 21, subsec. 111(1), applicable to 1993 *et seq.* That subsec. formerly read:

(f) was at any time in the year a child of an individual described in paragraph (b), (c), (d) or (d.1) and the person's income for the year did not exceed the amount used under paragraph (c) of the description of B in subsection 118(1) for the year.

Para. 250(1)(f) substituted by 1994, c. 7, Sch. VII (1992, c. 48), s. 22, applicable to 1993 *et seq.* Para. (f) formerly read:

(f) was at any time in the year a child of a person described in paragraph (b), (c), (d) or (d.1) and a dependant, as described in paragraph 118(1)(d), of that person.

Selected Cases [subsec. 250(1)]: *Gardner v. R.*, [2002] 1 C.T.C. 302 (FCA) (Tax Court has no jurisdiction to determine Ontario residence and amount of Ontario taxes); *Naud v. MNR*, [1993] 1 C.T.C. 2008 (TCC) (Provision which deems foreign taxpayer resident in Canada under certain circumstances does not preclude such taxpayer being resident in a given province; Minister not required to reimburse source deductions under Quebec Act); *Griffiths v. R.*, [1978] C.T.C. 372 (FCTD) (Retaining investments and boat registration in Canada not incompatible with severing Canadian residential ties); *Strachan v. R.*, [1973] C.T.C. 416 (FCTD) (Crown employee resident between 1963 and 1971 remained resident after transfer to India).

Regulations: 3400 (prescribed international development assistance program, for 250(1)(d)).

Remission Orders: *Income Earned in Quebec Income Tax Remission Order*, P.C. 1989-1204 (remission to certain individuals linked with Quebec but not resident in a province on the last day of the year).

Interpretation Bulletins: IT-91R4: Employment at special work sites or remote work locations; IT-106R3: Crown corporation employees abroad; IT-178R3: Moving expenses; IT-221R3: Determination of an individual's residence status; IT-447: Residence of trust or estate; IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada; IT-513R: Personal tax credits; IT-516R2: Tuition tax credit.

Forms: NR73: Determination of residency status (leaving Canada); NR74: Determination of residency status (entering Canada).

(2) Idem — Where at any time in a taxation year a person described in paragraph (1)(b), (c) or (d) ceases to be a person so described, or a person described in paragraph (1)(d.1) ceases to be a member of the overseas Canadian Forces school staff, that person shall be deemed to have been resident in Canada throughout the part of the year preceding that time and the spouse or common-law partner and child of that person who by reason of paragraph (1)(e) or (f) would, but for this subsection, be deemed to have been resident in Canada throughout the year shall be deemed to have been resident in Canada throughout that part of the year.

History: Subsec. 250(2) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

(3) Ordinarily resident — In this Act, a reference to a person resident in Canada includes a person who was at the relevant time ordinarily resident in Canada.

Selected Cases [subsec. 250(3)]: *Harris-Eze v. R.*, [2002] 1 C.T.C. 2174 (TCC) (Indicia of taxpayer's attachments to Canada insufficient to result in being "ordinarily resident"); *McFadyen v. R.*, [2000] 4 C.T.C. 2573 (TCC) (Proof of foreign residence provided by foreign government given little weight); *Erikson v. R.*, [1975] C.T.C. 624 (FCTD) (Resident between 1958 and 1969 broke residential ties in 1970 despite keeping assets in Canada and returning during summer to visit children living with ex-wife); *R. v. Reeder*, [1975] C.T.C. 256 (FCTD) (Resident and employee of Canadian subsidiary of foreign company abroad 246 days for training remained resident); *Schujahn v. MNR*, [1962] C.T.C. 364 (Exch.) (Intention not relevant; residence is question of fact).

Interpretation Bulletins: IT-221R3: Determination of a individual's residence status.

(4) Corporation deemed resident — For the purposes of this Act, a corporation shall be deemed to have been resident in Canada throughout a taxation year if

(a) in the case of a corporation incorporated after April 26, 1965, it was incorporated in Canada;

(b) in the case of a corporation that

(i) was incorporated before April 9, 1959,

(ii) was, on June 18, 1971, a foreign business corporation (within the meaning of section 71 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1971 taxation year) that was controlled by a corporation resident in Canada,

(iii) throughout the 10 year period ending on June 18, 1971, carried on business in any one particular country other than Canada, and

(iv) during the period referred to in subparagraph (iii), paid dividends to its shareholders resident in Canada on which its shareholders paid tax to the government of the country referred to in that subparagraph,

it was incorporated in Canada and, at any time in the taxation year or at any time in any preceding taxation year commencing after 1971, it was resident in Canada or carried on business in Canada; and

(c) in the case of a corporation incorporated before April 27, 1965 (other than a corporation to which subparagraphs (b)(i) to (iv) apply), it was incorporated in Canada and, at any time in the taxation year or at any time in any preceding taxation year of the corporation ending after April 26, 1965, it was resident in Canada or carried on business in Canada.

Related Provisions: 126(1.1)(a) — Authorized foreign bank deemed resident in Canada for foreign tax credit purposes; 128.2 — Predecessor corporations take on residence status of amalgamated corporation; 212(13.3) — Authorized foreign bank deemed resident in Canada for withholding tax purposes; 214(13)(a) — Regulations deeming person resident in Canada for purposes of Part XIII; 250(5) — Corporation deemed not resident; 250(5.1) — Continuance outside Canada; 256(6), (6.1) — Meaning of "controlled".

Selected Cases [subsec. 250(4)]: *R. v. Gurd's Products Co. Ltd.*, [1985] 2 C.T.C. 85 (FCA); leave to appeal to SCC refused (1985), 64 N.R. 156 (note), (sub nom. *Gurd's Products Co. v. MNR)* (Canadian subsidiary through which U.S. parent conducted business with Iraq held carrying on business in Canada and deemed resident); *Birmount Holdings Ltd. v. R.*, [1978] C.T.C. 358 (FCA) (Company carrying on business in Canada

where acquisition and disposition of real estate held adventure in nature of trade).

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada.

(5) Deemed non-resident — Notwithstanding any other provision of this Act (other than paragraph 126(1.1)(a)), a person is deemed not to be resident in Canada at a time if, at that time, the person would, but for this subsection and any tax treaty, be resident in Canada for the purposes of this Act but is, under a tax treaty with another country, resident in the other country and not resident in Canada.

Related Provisions: 128.1(4) — Corporation becoming non-resident; 219.1 — Tax payable when corporation becomes non-resident.

History: Subsec. 250(5) amended by 2001, c. 17, subsec. 190(1), applicable after June 27, 1999, except that if on February 24, 1998 an individual who would, but for a tax treaty (within the meaning assigned by subsection 248(1)), be resident in Canada for the purposes of the Act is, under the tax treaty, resident in another country, the subsec. as amended does not apply to the individual until the first time after June 27, 1999 at which the individual becomes, under a tax treaty, resident in a country other than Canada. Subsec. 250(5) formerly read:

> (5) Notwithstanding any other provision of this Act, a person is deemed not to be resident in Canada at a time if, at that time, the person would, but for this subsection and any tax treaty, be resident in Canada for the purposes of this Act but is, under a tax treaty with another country, resident in the other country and not resident in Canada.

Subsec. 250(5) amended by 1999, c. 22, subsec. 82(4), applicable (as amended by 2001, c. 17, s. 253) after February 24, 1998 except that, if on that day an individual who would, but for a tax treaty (as defined in subsec. 248(1)), be resident in Canada for the purposes of the *Income Tax Act* is, under the tax treaty, resident in another country, the amendment does not apply to the individual until the first time after February 24, 1998 at which the individual becomes, under a tax treaty, resident in a country other than Canada. The subsec. formerly read:

> (5) Corporation deemed not resident — Notwithstanding subsection (4), for the purposes of this Act, a corporation, other than a prescribed corporation, shall be deemed to be not resident in Canada at any time if, by virtue of an agreement or convention between the Government of Canada and the government of another country that has the force of law in Canada, it would at that time, if it had income from a source outside Canada, not be subject to tax on that income under Part I.

Regulations: No prescribed corporations to date.

Interpretation Bulletins: IT-137R3: Additional tax on certain corporations carrying on business in Canada.

(5.1) Continued corporation — Where a corporation is at any time (in this subsection referred to as the "time of continuation") granted articles of continuance (or similar constitutional documents) in a particular jurisdiction, the corporation shall

(a) for the purposes of applying this Act (other than subsection (4)) in respect of all times from the time of continuation until the time, if any, of continuation in a different jurisdiction, be deemed to have been incorporated in the particular jurisdiction and not to have been incorporated in any other jurisdiction; and

(b) for the purpose of applying subsection (4) in respect of all times from the time of continuation until the time, if any, of continuation in a different jurisdiction, be deemed to have been incorporated in the particular jurisdiction at the time of continuation and not to have been incorporated in any other jurisdiction.

Related Provisions: 54"superficial loss"(c) — Non-application of superficial loss rule where corporation has elected for 250(5.1) to apply before 1993; 88.1 — Repeal of 88.1 before 1993 where corporation so elects; Canada-U.S. Tax Treaty:Art. IV:3 — Continuation in other jurisdictions.

History: Subsec. 250(5.1) added by 1994, c. 21, subsec. 111(2), applicable to

(a) a corporation that was at any time before 1993 granted articles of continuance or similar constitutional documents in a jurisdiction and that elects, by notifying Revenue Canada in writing before the end of December 1994, to have subsec. 250(5.1) apply to those articles or other documents, from the time at which the corporation was granted those articles or other documents, and

(b) a corporation with respect to articles of continuance or similar constitutional documents granted after 1992, except where

(i) the articles or other documents were granted before July 1994,

(ii) arrangements, evidenced in writing, for obtaining the articles or other documents were substantially advanced before December 21, 1992, and

(iii) the corporation elects, by notifying Revenue Canada in writing before the end of December 1994, to have subsec. 250(5.1) not apply,

and, notwithstanding subsections 152(4) to (5), such assessments and determinations in respect of any taxation year shall be made as are necessary to give effect to elections made under paragraph (a).

Interpretation Bulletins: IT-137R3: Additional tax on certain corporations carrying on business in Canada.

(6) Residence of international shipping corporation — For the purposes of this Act, a corporation that was incorporated or otherwise formed under the laws of a country other than Canada or of a state, province or other political subdivision of such a country shall be deemed to be resident in that country throughout a taxation year and not to be resident in Canada at any time in the year, where

(a) the corporation

(i) has as its principal business in the year the operation of ships that are used primarily in transporting passengers or goods in international traffic (determined on the assumption that the corporation is non-resident and that, except where paragraph (c) of the definition "international traffic" in subsection 248(1) applies, any port or other place on the Great Lakes or St. Lawrence River is in Canada), or

(ii) holds throughout the year shares of one or more other corporations, each of which

(A) is a subsidiary wholly-owned corporation of the corporation as defined by subsection 87(1.4), and

(B) is deemed by this subsection to be resident in a country other than Canada throughout the year,

and at no time in the year is the total of the cost amounts to the corporation of all those shares less than 50% of the total of the cost amounts to it of all its property;

(b) all or substantially all of the corporation's gross revenue for the year consists of

(i) gross revenue from the operation of ships in transporting passengers or goods in that international traffic,

(ii) dividends from one or more other corporations each of which

(A) is a subsidiary wholly-owned corporation of the corporation, as defined by subsection 87(1.4), and

(B) is deemed by this subsection to be resident in a country other than Canada throughout each of its taxation years that began after February 1991 and before the last time at which it paid any of those dividends, or

(iii) a combination of amounts described in subparagraph (i) or (ii); and

(c) the corporation was not granted articles of continuance in Canada before the end of the year.

Related Provisions: 81(1)(c) — Amounts not included in income — ship or aircraft of non-resident; Canada-U.S. Tax Treaty:Art. VIII — International shipping.

History: Paras. 250(6)(a) and (b) amended by 1998, c. 19, s. 241, applicable to 1995 *et seq.* Paras. 250(6)(a) and (b) formerly read:

(a) the corporation's principal business in the year consists of the operation of ships that are used primarily in transporting passengers or goods in international traffic (determined on the assumption that the corporation is non-resident and that, except where paragraph (c) of the definition "international traffic" in subsection 248(1) applies, any port or other place on the Great Lakes or St. Lawrence River is in Canada);

(b) all or substantially all of the corporation's gross revenue for the year is from the operation of ships in transporting passengers or goods in such international traffic; and

Subsec. 250(6) added by 1994, c. 7, Sch. II (1991, c. 49), s. 194, applicable to taxation years commencing after February 1991.

(6.1) Residence of *inter vivos* trusts — For the purposes of provisions of this Act that apply to a trust for a taxation year only where the trust has been resident in Canada throughout the year, where a particular trust ceases at any time to exist and the particular trust was resident in Canada immediately before that time, the particular trust is deemed to be resident in Canada throughout the period that begins at that time and ends at the end of the year.

Related Provisions: 132(6.2) — Parallel rule for mutual fund trust that ceases to qualify as such.

History: Subsec. 250(6.1) added by 2001, c. 17, subsec. 190(2), applicable to 1990 *et seq.*

Interpretation Bulletins: IT-447: Residence of trust or estate.

(7) Residence of a qualifying environmental trust — For the purposes of this Act, where a trust resident in Canada would be a qualifying environmental trust at any time if it were resident at that time in the province in which the site to which the trust relates is situated, the trust is deemed to be resident at that time in that province and in no other province.

History: Subsec. 250(7) amended by 1998, c. 19, s. 67, applicable after 1995. Subsec. 250(7) formerly read:

(7) Residence of a mining reclamation trust — For the purposes of this Act, where a trust resident in Canada would be a mining reclamation trust at any time if it were resident at that time in the province in which the mine to which the trust relates is situated, the trust shall be deemed to be resident at that time in that province and in no other province.

Subsec. 250(7) added by 1995, c. 3, s. 54, applicable after 1993.

Selected Cases [s. 250]: *Dixon v. R.*, [2001] 3 C.T.C. 205 (FCA) (Taxpayer returning to become ordinarily resident is not "sojourner").

Definitions [s. 250]: "amount", "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "carried on business in Canada" — 253; "child" — 252(1); "common-law partner" — 248(1); "controlled" — 256(6), (6.1); "corporation", "employment", "gross revenue" — 248(1); "incorporated in Canada" — 248(1)"corporation incorporated in Canada"; "individual", "international traffic", "non-resident", "overseas Canadian Forces school staff", "person", "prescribed" — 248(1); "province" — *Interpretation Act* 35(1); "qualifying environmental trust" — 248(1); "related" — 251(2)–(6); "servant" — 248(1)"employment"; "subsidiary wholly-owned corporation" — 87(1.4), 248(1); "tax treaty" — 248(1); "taxation year" — 249; "trust" — 104(1), 248(1), (3).

250.1 Non-resident person's taxation year and income — For greater certainty, unless the context requires otherwise

(a) a taxation year of a non-resident person shall be determined, except as otherwise permitted by the Minister, in the same manner as the taxation year of a person resident in Canada; and

(b) a person for whom income for a taxation year is determined in accordance with this Act includes a non-resident person.

Related Provisions: 2(3) — Tax on taxable income earned in Canada of non-resident; 115(1) — Calculation of taxable income earned in Canada of non-resident.

History: S. 250.1 added by 2001, c. 17, s. 191, applicable after December 17, 1999.

Definitions [s. 250.1]: "Minister", "non-resident", "person" — 248(1); "resident in Canada" — 250; "taxation year" — 249.

251. (1) Arm's length — For the purposes of this Act,

(a) related persons shall be deemed not to deal with each other at arm's length;

(b) a taxpayer and a personal trust (other than a trust described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1)) are deemed not to deal with each other at arm's length if the taxpayer, or any person not dealing at arm's length with the taxpayer, would be beneficially interested in the trust if subsection 248(25) were read without reference to subclauses 248(25)(b)(iii)(A)(II) to (IV); and

(c) where paragraph (b) does not apply, it is a question of fact whether persons not related to each other are at a particular time dealing with each other at arm's length.

Proposed Amendment — 251(1)(c)

(c) in any other case, it is a question of fact whether persons not related to each other are, at a particular time, dealing with each other at arm's length.

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 187, will amend para. 251(1)(c) to read as above, applicable after December 23, 1998.

Technical Notes: Subsection 251(1) provides a set of rules that determine whether persons are considered, for the purposes of the Act, to deal with each other at arm's length. Paragraph 251(1)(a) deems related persons not to deal with each other at arm's length. Paragraph 251(1)(b) deems a taxpayer and a personal trust (other than a trust described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1)) not to deal with each other at arm's length if the taxpayer, or any person not dealing at arm's length with the taxpayer, is beneficially interested in the trust. Paragraph 251(1)(c) provides that, where paragraph 251(1)(b) does not apply, it is a question of fact whether persons not related to each other are at a particular time dealing with each other at arm's length.

Paragraph 251(1)(c) is amended to clarify that it applies in any case where paragraphs (a) and (b) do not apply.

Related Provisions: 7(1.11) — Whether mutual fund trust at arm's length with corporation for purposes of stock option rules; 55(4) — Arm's length dealings; 55(5)(e) — Siblings deemed to deal at arm's length for purposes of s. 55; 66(17) — Non-arm's length partnerships; 84.1(2)(b), (d) — Non-arm's length sale of shares; 88(1)(d.2) — Whether parties dealing at arm's length for bump of cost base of property on windup of corporation; 94(15) — Application to non-resident trust rules; 94.1(2)(f) — Application to foreign investment entity rules; 95(2.1) — Whether taxpayer dealing with foreign affiliate at arm's length for certain purposes; 107.4(4) — Certain dispositions by trust deemed not at arm's length; 143.2(14) — Parties deemed not dealing at arm's length for tax shelter cost calculation where information located outside Canada; 212.1(3)(c) — Non-arm's length sales of shares by non-residents; 247 — Calculation of profit on non-arm's length transactions with non-residents (transfer pricing); 248(25) — Meaning of "beneficially interested"; Reg.

1102(20) — Taxpayers deemed at arm's length for certain purposes relating to depreciable property; Reg. 1204(1.2) — Whether partners and partnerships deal at arm's length for purposes of resource allowance.

History: Para. 251(1)(b) amended and para. (c) added by 2001, c. 17, s. 192, applicable after December 23, 1998, except that para. (b) shall, for the purpose of applying the definition "taxable Canadian property" in subsec. 248(1), not apply in respect of property acquired before December 24, 1998. Para. 251(1)(b) formerly read:

> (b) it is a question of fact whether persons not related to each other were at a particular time dealing with each other at arm's length.

Selected Cases [subsec. 251(1)]: *Gosselin v. R.*, [1997] 2 C.T.C. 2830 (TCC) (50-50 shareholding meant factual non-arm's length); *Robson Leather Co. Ltd. v. MNR*, [1977] C.T.C. 132 (FCA) (Sale of patent rights not at arm's length where both companies indirectly controlled by same individual); *Swiss Bank Corp. v. MNR*, [1972] C.T.C. 614 (SCC) (Interposition of managing agent between payor and payee of interest did not create arm's length relation).

Interpretation Bulletins: IT-419R2: Meaning of arm's length.

Advance Tax Rulings: ATR-58: Divisive reorganization.

Forms: RC4108: Registered charities and the *Income Tax Act* [guide].

(2) Definition of "related persons" — For the purpose of this Act, "related persons", or persons related to each other, are

(a) individuals connected by blood relationship, marriage or common-law partnership or adoption;

(b) a corporation and

(i) a person who controls the corporation, if it is controlled by one person,

(ii) a person who is a member of a related group that controls the corporation, or

(iii) any person related to a person described in subparagraph (i) or (ii); and

(c) any two corporations

(i) if they are controlled by the same person or group of persons,

(ii) if each of the corporations is controlled by one person and the person who controls one of the corporations is related to the person who controls the other corporation,

(iii) if one of the corporations is controlled by one person and that person is related to any member of a related group that controls the other corporation,

(iv) if one of the corporations is controlled by one person and that person is related to each member of an unrelated group that controls the other corporation,

(v) if any member of a related group that controls one of the corporations is related to each member of an unrelated group that controls the other corporation, or

(vi) if each member of an unrelated group that controls one of the corporations is related to at least one member of an unrelated group that controls the other corporation.

Related Provisions: 55(5)(e) — Siblings deemed not related for purposes of s. 55; 80(2)(j) — Interpretation of "related" for debt forgiveness rules; 104(5.7)(b) — Designated contributor; 190.15(6) — Related financial institution; 248(14) — Corporations deemed related for certain purposes; 251(3) — Corporations related through a third corporation; 251(3.1), (3.2) — Amalgamated corporation deemed related to predecessors; 251(6) — Meaning of blood relationship, marriage and adoption; 256(6), (6.1) — Meaning of "controlled"; Canada-U.S. Tax Treaty:Art. IX:2 — Meaning of "related" for treaty purposes.

History: Para. 251(2)(a) amended by 2000, c. 12, Sch. 2, s. 10, to replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Selected Cases [subsec. 251(2)]: *Duha Printers (Western) Ltd. v. R.*, [1998] 3 C.T.C. 303 (SCC); Reversed [1996] 3 C.T.C. 19 (FCA) (Documents of constitutional or constating nature may be used to determine relationship and *de jure* control); *R. v. Mars Finance Inc. et al.*, [1980] C.T.C. 216 (FCTD) (Where *de jure* control established, issue of *de facto* control could not be considered).

Interpretation Bulletins: IT-363R2: Deferred profit sharing plans — deductibility of employer contributions and taxation of amounts received by a beneficiary (archived); IT-419R2: Meaning of arm's length; IT-495R3: Child care expenses; IT-513R: Personal tax credits.

Forms: RC4108: Registered charities and the *Income Tax Act* [guide].

(3) Corporations related through a third corporation — Where two corporations are related to the same corporation within the meaning of subsection (2), they shall, for the purposes of subsections (1) and (2), be deemed to be related to each other.

(3.1) Relation where amalgamation or merger — Where there has been an amalgamation or merger of two or more corporations and the new corporation formed as a result of the amalgamation or merger and any predecessor corporation would have been related immediately before the amalgamation or merger if the new corporation were in existence at that time, and if the persons who were the shareholders of the new corporation immediately after the amalgamation or merger were the shareholders of the new corporation at that time, the new corporation and any such predecessor corporation shall be deemed to have been related persons.

Related Provisions: 251(3.2) — Further deeming on amalgamation of related corporations.

Interpretation Bulletins: IT-419R2: Meaning of arm's length.

(3.2) Amalgamation of related corporations — Where there has been an amalgamation or merger of 2 or more corporations each of which was related (otherwise than because of a right referred to in paragraph (5)(b)) to each other immediately before the amalgamation or merger, the new corporation formed as a result of the amalgamation or merger and each of the predecessor corporations is[48] deemed to have been related to each other.

History: Subsec. 251(3.2) added by 1998, c. 19, subsec. 242(1), applicable to amalgamations and mergers that occur after 1996.

(4) Definitions concerning groups — In this Act,

"related group" means a group of persons each member of which is related to every other member of the group;

Interpretation Bulletins: IT-419R2: Meaning of arm's length.

"unrelated group" means a group of persons that is not a related group.

Interpretation Bulletins: IT-419R2: Meaning of arm's length.

(5) Control by related groups, options, etc. — For the purposes of subsection (2) and the definition "Canadian-controlled private corporation" in subsection 125(7),

(a) where a related group is in a position to control a corporation, it shall be deemed to be a related group that controls the corporation whether or not it is part of a larger group by which the corporation is in fact controlled;

[48] *Sic*. Should be "are" — ed.

(b) where at any time a person has a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently,

(i) to, or to acquire, shares of the capital stock of a corporation or to control the voting rights of such shares, the person shall, except where the right is not exercisable at that time because the exercise thereof is contingent on the death, bankruptcy or permanent disability of an individual, be deemed to have the same position in relation to the control of the corporation as if the person owned the shares at that time,

(ii) to cause a corporation to redeem, acquire or cancel any shares of its capital stock owned by other shareholders of the corporation, the person shall, except where the right is not exercisable at that time because the exercise thereof is contingent on the death, bankruptcy or permanent disability of an individual, be deemed to have the same position in relation to the control of the corporation as if the shares were so redeemed, acquired or cancelled by the corporation at that time,

(iii) to, or to acquire or control, voting rights in respect of shares of the capital stock of a corporation, the person is, except where the right is not exercisable at that time because its exercise is contingent on the death, bankruptcy or permanent disability of an individual, deemed to have the same position in relation to the control of the corporation as if the person could exercise the voting rights at that time, or

(iv) to cause the reduction of voting rights in respect of shares, owned by other shareholders, of the capital stock of a corporation, the person is, except where the right is not exercisable at that time because its exercise is contingent on the death, bankruptcy or permanent disability of an individual, deemed to have the same position in relation to the control of the corporation as if the voting rights were so reduced at that time; and

(c) where a person owns shares in two or more corporations, the person shall as shareholder of one of the corporations be deemed to be related to himself, herself or itself as shareholder of each of the other corporations.

Related Provisions: 17(11.1) — Limitation on 251(5)(b) re loans to non-residents; 110.6(14)(b) — Right under share purchase agreement does not trigger 251(5)(b) for purposes of capital gains exemption; 256(6), (6.1) — Meaning of "controlled"; 256(8) — Deemed acquisition of shares.

History: The opening words of para. 251(5)(b) amended, subparas. 251(5)(b)(iii) and (iv) added, by 1998, c. 19, subsecs. 242(2), (3), applicable after April 26, 1995. The opening words formerly read:

(b) where a person has a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently

Subparas. 251(5)(b)(i), (ii) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 195, applicable after July 13, 1990. Subparas. 251(5)(b)(i), (ii) formerly read:

(i) to, or to acquire, shares in a corporation, or to control the voting rights of shares in a corporation, the person shall, except where the contract provides that the right is not exercisable until the death, bankruptcy or permanent disability of an individual designated therein, be deemed to have the same position in relation to the control of the corporation as if the person owned the shares, or

(ii) to cause a corporation to redeem, acquire or cancel any shares of its capital stock owned by other shareholders of the corporation, the person shall, except where the contract provides that the right is not exercisable until the death, bankruptcy or permanent disability of an individual designated therein, be deemed to have the same position in relation to the control of the corporation as if the shares were redeemed, acquired or cancelled by the corporation; and

Selected Cases [subsec. 251(5)]: *H.T. Hoy Holdings Ltd. v. R.*, [1997] 2 C.T.C. 2874 (TCC) (Right to redeem shares under certain circumstances not contemplated under former provision); *R. v. Lusita Holdings Ltd.*, [1984] C.T.C. 335 (FCA) (Power to force resignation of other trustee did not give co-trustee the "right to control the voting rights of the shares" owned by trust); *Rostal Sales Agency Ltd. v. R.*, [1983] C.T.C. 5 (FCTD) (Trust settlor without power to remove trustee had no control over shares owned by trust); *Toric Optical Ltd. v. R.*, [1978] C.T.C. 436 (FCTD) (For purposes of former para. 139(5d)(b) [now paragraph 251(5)(b)], right to acquire "shareholder equity" is same as right to acquire shares).

Interpretation Bulletins: IT-64R4: Corporations: association and control; IT-151R5: Scientific research and experimental development expenditures; IT-243R4: Dividend refund to private corporations; IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987; IT-400: Exploration and development expenses — meaning of principal-business corporation; IT-419R2: Meaning of arm's length; IT-458R2: Canadian-controlled private corporation.

Advance Tax Rulings: ATR-13: Corporations not associated;.

(6) Blood relationship, etc. — For the purposes of this Act, persons are connected by

(a) blood relationship if one is the child or other descendant of the other or one is the brother or sister of the other;

(b) marriage if one is married to the other or to a person who is so connected by blood relationship to the other; and

(b.1) common-law partnership if one is in a common-law partnership with the other or with a person who is connected by blood relationship to the other; and

(c) adoption if one has been adopted, either legally or in fact, as the child of the other or as the child of a person who is so connected by blood relationship (otherwise than as a brother or sister) to the other.

History: Para. 251(6)(b.1) added by 2000, c. 12, s. 140, applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Interpretation Bulletins: IT-419R2: Meaning of arm's length; IT-495R3: Child care expenses; IT-513R: Personal tax credits.

Forms: RC4108: Registered charities and the *Income Tax Act* [guide].

Selected Cases [s. 251]: *Madsen v. R.*, [2001] 1 C.T.C. 244 (FCA) (Provisions of subsec. 69(1) apply to partnerships even though partnerships are not taxpayers); *Longley v. MNR*, [2000] 2 C.T.C. 382 (BC CA); aff'g [1999] 4 C.T.C. 108 (BC SC) (Minister held liable for damages and punitive damages where acting in bad faith against legal advice received); *Alteco Inc. v. Canada*, [1993] 2 C.T.C. 2087 (TCC) (Holder of 51 percent of shares not in control of or related to corporation where composition of board of directors determined under unanimous shareholder agreement).

Definitions [s. 251]: "beneficially interested" — 248(25); "brother" — 252(2); "child" — 252(1); "common-law partnership" — 248(1); "connected" — 251(6); "control", "controlled" — 256(6), (6.1); "corporation", "individual" — 248(1); "person" — 248(1); "personal trust" — 251.1; "related group" — 251(4); "share", "shareholder" — 248(1); "sister" — 252(2); "unrelated group" — 251(4).

251.1 (1) Definition of "affiliated persons" — For the purposes of this Act, "affiliated persons", or persons affiliated with each other, are

(a) an individual and a spouse or common-law partner of the individual;

(b) a corporation and

(i) a person by whom the corporation is controlled,

(ii) each member of an affiliated group of persons by which the corporation is controlled, and

(iii) a spouse or common-law partner of a person described in subparagraph (i) or (ii);

(c) two corporations, if

(i) each corporation is controlled by a person, and the person by whom one corporation is controlled is affiliated with the person by whom the other corporation is controlled,

(ii) one corporation is controlled by a person, the other corporation is controlled by a group of persons, and each member of that group is affiliated with that person, or

(iii) each corporation is controlled by a group of persons, and each member of each group is affiliated with at least one member of the other group;

(d) a corporation and a partnership, if the corporation is controlled by a particular group of persons each member of which is affiliated with at least one member of a majority-interest group of partners of the partnership, and each member of that majority-interest group is affiliated with at least one member of the particular group;

(e) a partnership and a majority interest partner of the partnership;

(f) two partnerships, if

(i) the same person is a majority-interest partner of both partnerships,

(ii) a majority-interest partner of one partnership is affiliated with each member of a majority-interest group of partners of the other partnership, or

(iii) each member of a majority-interest group of partners of each partnership is affiliated with at least one member of a majority-interest group of partners of the other partnership;

(g) a person and a trust, if the person

(i) is a majority-interest beneficiary of the trust, or

(ii) would, if this subsection were read without reference to this paragraph, be affiliated with a majority-interest beneficiary of the trust; and

(h) two trusts, if a contributor to one of the trusts is affiliated with a contributor to the other trust and

(i) a majority-interest beneficiary of one of the trusts is affiliated with a majority-interest beneficiary of the other trust,

(ii) a majority-interest beneficiary of one of the trusts is affiliated with each member of a majority-interest group of beneficiaries of the other trust, or

(iii) each member of a majority-interest group of beneficiaries of each of the trusts is affiliated with at least one member of a majority-interest group of beneficiaries of the other trust.

Related Provisions: 251.1(3), (4) — Definitions and interpretation; 256(6), (6.1) — Meaning of "controlled".

History: Paras. 251.1(1)(g) and (h) added by 2005, c. 19, subsec. 54(1), applicable in determining whether persons are, at any time after March 22, 2004, affiliated.

Subsec. 251.1(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Subsec. 251.1(1) added by 1998, c. 19, s. 243, applicable after April 26, 1995.

Interpretation Bulletins: IT-291R3: Transfer of property to a corporation under subsection 85(1).

I.T. Technical News: 9 (loss consolidation within a corporate group — "affiliated" test to apply).

(2) Affiliation where amalgamation or merger — Where at any time 2 or more corporations (in this subsection referred to as the "predecessors") amalgamate or merge to form a new corporation, the new corporation and any predecessor are deemed to have been affiliated with each other where they would have been affiliated with each other immediately before that time if

(a) the new corporation had existed immediately before that time; and

(b) the persons who were the shareholders of the new corporation immediately after that time had been the shareholders of the new corporation immediately before that time.

History: Subsec. 251.1(2) added by 1998, c. 19, s. 243, applicable after April 26, 1995.

(3) Definitions — The definitions in this subsection apply in this section.

"affiliated group of persons" means a group of persons each member of which is affiliated with every other member.

"beneficiary", under a trust, includes a person beneficially interested in the trust.

"contributor", to a trust, means a person who has at any time made a loan or transfer of property, either directly or indirectly, in any manner whatever, to or for the benefit of the trust other than, if the person deals at arm's length with the trust at that time and is not immediately after that time a majority-interest beneficiary of the trust,

(a) a loan made at a reasonable rate of interest; or

(b) a transfer made for fair market value consideration.

"controlled" means controlled, directly or indirectly in any manner whatever.

Related Provisions: 256(5.1), (6.2) — Controlled directly or indirectly — control in fact.

"majority-interest beneficiary", of a trust at any time, means a person whose interest as a beneficiary, if any, at that time

(a) in the income of the trust has, together with the interests as a beneficiary in the income of the trust of all persons with whom the person is affiliated, a fair market value that is greater than 50% of the fair market value of all the interests as a beneficiary in the income of the trust; or

(b) in the capital of the trust has, together with the interests as a beneficiary in the capital of the trust of all persons with whom the person is affiliated, a fair market value that is greater than 50% of the fair market value of all the interests as a beneficiary in the capital of the trust.

"majority-interest group of beneficiaries", of a trust at any time, means a group of persons each of whom is a beneficiary under the trust at that time such that

(a) if one person held the interests as a beneficiary of all of the members of the group, that person would be a majority-interest beneficiary of the trust; and

(b) if any member of the group were not a member, the test described in paragraph (a) would not be met.

"majority-interest group of partners" of a partnership means a group of persons each of whom has an interest in the partnership such that

(a) if one person held the interests of all members of the group, that person would be a majority interest partner of the partnership; and

(b) if any member of the group were not a member, the test described in paragraph (a) would not be met.

History: The definitions "beneficiary", "contributor", "majority-interest beneficiary" and "majority-interest group of beneficiaries" added to subsec. 251.1(3) by 2005, c. 19, subsec. 54(2), applicable in determining whether persons are, at any time after March 22, 2004, affiliated.

Subsec. 251.1(3) added by 1998, c. 19, s. 243, applicable after April 26, 1995.

(4) Interpretation — For the purposes of this section,

(a) persons are affiliated with themselves;

(b) a person includes a partnership;

(c) notwithstanding subsection 104(1), a reference to a trust does not include a reference to the trustee or other persons who own or control the trust property; and

(d) in determining whether a person is affiliated with a trust,

(i) if the amount of income or capital of the trust that a person may receive as a beneficiary under the trust depends on the exercise by any person of, or the failure by any person to exercise, a discretionary power, that person is deemed to have fully exercised, or to have failed to exercise, the power, as the case may be,

(ii) the interest of a person in a trust as a beneficiary is disregarded in determining whether the person deals at arm's length with the trust if the person would, in the absence of the interest as a beneficiary, be considered to deal at arm's length with the trust,

(iii) a trust is not a majority interest beneficiary of another trust unless the trust has an interest as a beneficiary in the income or capital, as the case may be, of the other trust, and

(iv) in determining whether a contributor to one trust is affiliated with a contributor to another trust, individuals connected by blood, marriage, common-law partnership or adoption are deemed to be affiliated with one another.

History: Paras. 251.1(4)(c) and (d) added by 2005, c. 19, subsec. 54(3), applicable in determining whether persons are, at any time after March 22, 2004, affiliated, except that para. (d) is to be read without reference to subpara. (iv) in determining whether persons are, before September 16, 2004, affiliated.

Subsec. 251.1(4) added by 1998, c. 19, s. 243, applicable after April 26, 1995.

Definitions [s. 251.1]: "affiliated" — 251.1(1); "affiliated group" — 251.1(3); "amount" — 248(1); "arm's length" — 251(1); "beneficiary" — — 251.1(3); "common-law partner" — 248(1); "contributor" — 251.1(3); "control", "controlled" — 256(6), (6.1); "controlled directly or indirectly" — 256(5.1), (6.2); "corporation" — 248(1), *Interpretation Act* 35(1); "individual" — 248(1); "majority-interest beneficiary", "majority-interest group of beneficiaries" — 251.1(3); "majority-interest group of partners" — 251.1(3); "majority interest partner" — 248(1); "person" — 248(1), 251.1(4)(b); "property" — 248(1); "trust" — 104(1), 248(1), (3).

252. (1) Extended meaning of "child" — In this Act, words referring to a child of a taxpayer include

(a) a person of whom the taxpayer is the legal parent;

(b) a person who is wholly dependent on the taxpayer for support and of whom the taxpayer has, or immediately before the person attained the age of 19 years had, in law or in fact, the custody and control;

(c) a child of the taxpayer's spouse or common-law partner;

(d) [Repealed]

(e) a spouse or common-law partner of a child of the taxpayer.

Related Provisions: 70(10) — Extended meaning of "child" for certain purposes; 75.1(2) — Extended meaning of "child"; 110.6(1) — Extended meaning of "child" for purposes of capital gains exemption.

History: Para. 252(1)(a) amended by 2005, c. 33, subsec. 12(1), in force on July 20, 2005 (Royal Assent). The para. formerly read:

(a) a person of whom the taxpayer is the natural parent whether the person was born within or outside marriage;

Para. 252(1)(d) repealed by the said c. 33, subsec. 12(2), in force on July 20, 2005 (Royal Assent). The para. formerly read:

(d) an adopted child of the taxpayer; and

Subsec. 252(1) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

I.T. Application Rules: 20(1.11) (extended meaning of "child" re disposition of depreciable property owned since before 1972); 26(20) (extended meaning of "child" re transfer of farmland owned since before 1972).

Interpretation Bulletins: IT-268R4: *Inter vivos* transfer of farm property to child; IT-349R3: Intergenerational transfers of farm property on death; IT-394R2: Preferred beneficiary election; IT-495R3: Child care expenses; IT-513R: Personal tax credits; IT-516R2: Tuition tax credit.

(2) Relationships — In this Act, words referring to

(a) a parent of a taxpayer include a person

(i) whose child the taxpayer is,

(ii) whose child the taxpayer had previously been within the meaning of paragraph (1)(b), or

(iii) who is a parent of the taxpayer's spouse or common-law partner;

(b) a brother of a taxpayer include a person who is

(i) the brother of the taxpayer's spouse or common-law partner, or

(ii) the spouse or common-law partner of the taxpayer's sister;

(c) a sister of a taxpayer include a person who is

(i) the sister of the taxpayer's spouse or common-law partner, or

(ii) the spouse or common-law partner of the taxpayer's brother;

(d) a grandparent of a taxpayer include a person who is

(i) the grandfather or grandmother of the taxpayer's spouse or common-law partner, or

(ii) the spouse or common-law partner of the taxpayer's grandfather or grandmother;

(e) an aunt or uncle of a taxpayer include the spouse or common-law partner of the taxpayer's aunt or uncle, as the case may be;

(f) a great-aunt or great-uncle of a taxpayer include the spouse or common-law partner of the taxpayer's great-aunt or great-uncle, as the case may be; and

(g) a niece or nephew of a taxpayer include the niece or nephew, as the case may be, of the taxpayer's spouse or common-law partner.

Related Provisions: 252(1) — Extended meaning of "child".

History: Subsec. 252(2) amended by 2000, c. 12, Sch. 2, s. 1, to replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner".

Paras. 252(2)(e) and (f) amended by 2000, c. 12, subsec. 141(1), applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner". The paras. formerly read:

(e) an aunt or great-aunt of a taxpayer include the spouse of the taxpayer's uncle or great-uncle, as the case may be;

(f) an uncle or great-uncle of a taxpayer include the spouse of the taxpayer's aunt or great-aunt, as the case may be; and

Subsec. 252(2) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 140(1), applicable after 1992. Subsec. (2) formerly read:

(2) Definitions concerning parents and other relatives — In this Act, words referring to a parent of a taxpayer include a person whose child the taxpayer is, in the taxation year in respect of which the expression is being employed, within the meaning of subsection (1) or whose child the taxpayer had previously been within the meaning of paragraph (1)(b), and

(a) "brother" includes brother-in-law;

(b) "grandparent" includes grandmother-in-law and grandfather-in-law;

(c) "parent" includes mother-in-law and father-in-law; and

(d) "sister" includes sister-in-law.

Interpretation Bulletins: IT-349R3: Intergenerational transfers of farm property on death; IT-513R: Personal tax credits; IT-495R3: Child care expenses; IT-513R: Personal tax credits; IT-516R2: Tuition tax credit.

(3) Extended meaning of "spouse" and "former spouse" — For the purposes of paragraph 56(1)(b), section 56.1, paragraphs 60(b) and (j), section 60.1, subsections 70(6) and (6.1), 73(1) and (5) and 104(4), (5.1) and (5.4), the definition "pre-1972 spousal trust" in subsection 108(1), subsection 146(16), subparagraph 146.3(2)(f)(iv), subsections 146.3(14), 147(19), 147.3(5) and (7) and 148(8.1) and (8.2), the definition "small business property" in subsection 206(1), subparagraph 210(c)(ii) and subsections 248(22) and (23), "spouse" and "former spouse" of a particular individual include another individual who is a party to a void or voidable marriage with the particular individual.

Proposed Amendment — 252(3)

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 188, will amend subsec. 252(3) to replace "subparagraph 210(c)(ii) and subsections 248(22) and (23)" with "subsections 210(1) and 248(22) and (23)", applicable to 1996 *et seq.*

Technical Notes: Subsection 252(3) extends the meaning of the terms "spouse" and "former spouse" to include, for a number of purposes, a party to a void or voidable marriage.

The provision is amended consequential on amendments to Part XII.2 of the Act, which add a new reference to "spouse" in the definition "designated income" and maintain the existing references to "spouse" and "former spouse" in the definition "designated beneficiary" in subsection 210(1). For more detail, see the commentary on subsection 210(1).

Related Provisions: 147.1(1) — RPP — Definition of spouse; Reg. 8500(5) — Rule in 252(3) applies to Regs. 8500–8520.

History: Subsec. 252(3) amended by 2005, c. 33, subsec. 12(3) to delete "of the opposite sex" and to replace "voidable or void" with "void or voidable", in force on July 20, 2005 (Royal Assent).

Subsec. 252(3) amended by 2003, c. 15, s. 89, applicable after 2003. The subsec. formerly read:

(3) For the purposes of paragraphs 56(1)(b) and (c), section 56.1, paragraphs 60(b), (c) and (j), section 60.1, subsections 70(6) and (6.1), 73(1) and (5) and 104(4), (5.1) and (5.4), the definition "pre-1972 spousal trust" in subsection 108(1), subsection 146(16), subparagraph 146.3(2)(f)(iv), paragraph 146.3(14)(b), subsections 147.3(5) and (7) and 148(8.1) and (8.2), the definition "small business property" in subsection 206(1), subparagraph 210(c)(ii) and subsections 248(22) and (23), "spouse" and "former spouse" of a particular individual include another individual of the opposite sex who is a party to a voidable or void marriage with the particular individual.

Subsec. 252(3) amended to add the words "the definition "small business property" in subsection 206(1)" by 2000, c. 19, s. 69, applicable to 1998 *et seq.*

Subsec. 252(3) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 140(2), applicable to 1991 *et seq.* Subsec. (3) formerly read:

(3) For the purposes of paragraphs 56(1)(b) and (c), section 56.1, paragraphs 60(b), (c) and (j), section 60.1, subsections 73(1) and 146(16), subparagraph 146.3(2)(f)(iv), paragraph 146.3(14)(b), subsections 147.3(5) and (7) and 148(8.1) and (8.2), subparagraph 210(c)(ii) and subsections 248(22) and (23), "spouse" and "former spouse" include a party to a voidable or void marriage, as the case may be.

Subsec. 252(3) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 196, applicable after 1989. Subsec. 252(3) formerly read:

(3) For the purposes of paragraphs 56(1)(b) and (c), section 56.1, paragraphs 60(b), (c) and (j), section 60.1, subsections 73(1) and 146(16), subparagraph 146.3(2)(f)(iv), paragraph 146.3(14)(b), subsections 147.3(5) and (7) and 148(8) and subparagraph 210(c)(ii), "spouse" and "former spouse" include a party to a voidable or void marriage, as the case may be.

Interpretation Bulletins: IT-305R4: Testamentary spouse trusts; IT-307R4: Spousal or common-law registered retirement savings plans; IT-325R2: Property transfers after separation, divorce and annulment.

(4) [Repealed.]

History: Subsec. 252(4) repealed by 2000, c. 12, subsec. 141(2), applicable to 2001 *et seq.*, in force July 31, 2000. See also the transitional rules reproduced in the History to 248(1)"common-law partner". Subsec. 252(4) formerly read:

(4) Idem — In this Act,

(a) words referring to a spouse at any time of a taxpayer include the person of the opposite sex who cohabits at that time with the taxpayer in a conjugal relationship and

(i) has so cohabited with the taxpayer throughout a 12-month period ending before that time, or

(ii) would be a parent of a child of whom the taxpayer would be a parent, if this Act were read without reference to paragraph (1)(e) and subparagraph (2)(a)(iii)

and, for the purposes of this paragraph, where at any time the taxpayer and the person cohabit in a conjugal relationship, they shall, at any particular time after that time, be deemed to be cohabiting in a conjugal relationship unless they were not cohabiting at the particular time for a period of at least 90 days that includes the particular time because of a breakdown of their conjugal relationship;

(b) references to marriage shall be read as if a conjugal relationship between 2 individuals who are, because of paragraph (a), spouses of each other were a marriage;

(c) provisions that apply to a person who is married apply to a person who is, because of paragraph (a), a spouse of a taxpayer; and

(d) provisions that apply to a person who is unmarried do not apply to a person who is, because of paragraph (a), a spouse of a taxpayer.

Subpara. 252(4)(a)(ii) amended by 1998, c. 19, s. 244, applicable after 1992. Subpara. 252(4)(a)(ii) formerly read:.

(ii) is a parent of a child of whom the taxpayer is a parent (otherwise than because of the application of subparagraph (2)(a)(iii))

Subpara. 252(4)(a)(ii) substituted by 1994, c. 21, s. 112, applicable after 1992. That subpara. formerly read:

(ii) is a parent of a child of whom the taxpayer is a parent

Subsec. 252(4) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 140(3), applicable after 1992.

Selected Cases [subsec. 252(4)]: *Rosenberg v. Canada (A.-G.)*, [2000] 2 C.T.C. 83 (Ont CA); rev'g [2000] 2 C.T.C. 78 (Ont Gen Div) ("Spouse" includes same sex).

Definitions [s. 252]: "common-law partner" — 248(1); "former spouse" — 252(3); "person" — 248(1); "taxpayer" — 248(1).

Interpretation Bulletins [s. 252]: IT-419R2: Meaning of "arm's length".

Forms [s. 252]: RC4108: Registered charities and the *Income Tax Act* [guide].

252.1 Union [as] employer — All the structural units of a trade union, including each local, branch, national and international unit, shall be deemed to be a single employer and a single entity for the purposes of the provisions of this Act and the regulations relating to

(a) pension adjustments and past service pension adjustments for years after 1994;

(b) the determination of whether a pension plan is, in a year after 1994, a multi-employer plan or a specified multi-employer plan (within the meanings assigned by subsection 147.1(1));

(c) the determination of whether a contribution made under a plan or arrangement is a resident's contribution (within the meaning assigned by subsection 207.6(5.1)); and

(d) the deduction or withholding and the remittance of any amount as required by subsection 153(1) in respect of a contribution made after 1991 under a retirement compensation arrangement.

Related Provisions: Reg. 6804(3) — Election by union re foreign pension plan.

History: S. 252.1 added by 1994, c. 21, s. 113, applicable after October 8, 1986.

Definitions [s. 252.1]: "amount" — 248(1); "multi-employer plan" — 147.1(1), Reg. 8500(1), 8510(1); "past service pension adjustment" — 248(1), Reg. 8303(1); "pension adjustment" — 248(1), Reg. 8301(1); "retirement compensation arrangement" — 248(1); "specified multi-employer plan" — 147.1(1), Reg. 8510(2), (3).

253. Extended meaning of "carrying on business" [in Canada] — For the purposes of this Act, where in a taxation year a person who is a non-resident person or a trust to which Part XII.2 applies

(a) produces, grows, mines, creates, manufactures, fabricates, improves, packs, preserves or constructs, in whole or in part, anything in Canada whether or not the person exports that thing without selling it before exportation,

(b) solicits orders or offers anything for sale in Canada through an agent or servant, whether the contract or transaction is to be completed inside or outside Canada or partly in and partly outside Canada, or

Selected Cases [para. 253(b)]: *Maya Forestales S.A. v. R.*, [2005] 2 C.T.C. 2655 (TCC) (Signing contracts in Canada held to be carrying on business in Canada).

(c) disposes of

(i) Canadian resource property, except where an amount in respect of the disposition is included under paragraph 66.2(1)(a) or 66.4(1)(a),

(ii) property (other than depreciable property) that is a timber resource property or an interest therein or option in respect thereof, or

(iii) property (other than capital property) that is real property situated in Canada, including an interest therein or option in respect thereof, whether or not the property is in existence,

Proposed Amendment — 253(c)(ii), (iii)

(ii) property (other than depreciable property) that is a timber resource property, an option in respect of a timber resource property or an interest in, or for civil law a right in, a timber resource property, or

(iii) property (other than capital property) that is real or immovable property situated in Canada, including an option in respect of such property or an interest in, or for civil law a real right in, such property, whether or not the property is in existence,

Application: The July 18, 2005 draft legislation (Part 3 — bijuralism), s. 279, will amend subparas. 253(c)(ii) and (iii) to read as above, to come into force on Royal Assent.

Technical Notes: See under 12(4).

the person shall be deemed, in respect of the activity or disposition, to have been carrying on business in Canada in the year.

Related Provisions: 115.2 — Non-resident investment or pension fund deemed not to be carrying on business in Canada for certain purposes; 248(4) — Meaning of "interest in real property"; 248(4.1) — Real right in immovable property.

History: S. 253 substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 197, applicable to 1990 *et seq.* except that, with respect to dispositions occurring before February 21, 1990 and dispositions occurring after February 20, 1990 pursuant to agreements in writing entered into before February 21, 1990, s. 253 shall be read without reference to para. (c) and the expression "in respect of the activity or disposition". S. 253 formerly read:

253. Where, in a taxation year, a non-resident person

(a) produced, grew, mined, created, manufactured, fabricated, improved, packed, preserved or constructed, in whole or in part, anything in Canada whether or not the person exported that thing without selling it prior to exportation, or

(b) solicited orders or offered anything for sale in Canada through an agent or servant whether the contract or transaction was to be completed inside or outside Canada or partly in and partly outside Canada,

the person shall be deemed, for the purposes of this Act, to have been carrying on business in Canada in the year.

Selected Cases [s. 253]: *R. v. Gurd's Products Co. Ltd.*, [1985] 2 C.T.C. 85 (FCA); leave to appeal to SCC refused (1985), 64 N.R. 156 (note), (sub nom. *Gurd's Products Co. v. MNR)* (Canadian subsidiary through which U.S. parent conducted business with Iraq was carrying on business in Canada and deemed resident); *Sudden Valley Inc. v. R.*, [1976] C.T.C. 775 (FCA) (Canadian advertising of U.S. real estate was an invitation to treat, not an offer; no business carried on in Canada).

Definitions [s. 253]: "amount", "business" — 248(1); "Canada" — 255; "Canadian resource property" — 66(15), 248(1); "capital property" — 54, 248(1); "depreciable property" — 13(21), 248(1); "immovable" — Quebec *Civil Code* art. 900–907; "interest" — 248(4); "non-resident", "person", "property" — 248(1); "real right" — 248(4.1); "servant" — 248(1)"employment"; "taxation year" — 249; "timber resource property" — 13(21), 248(1).

Interpretation Bulletins [s. 253]: IT-420R3: Non-residents — income earned in Canada.

253.1 Investments in limited partnerships [deemed not carrying on business] — For the purposes of subparagraph 108(2)(b)(ii), paragraphs 130.1(6)(b), 131(8)(b), 132(6)(b) and 149(1)(o.2), the definition "private holding corporation" in subsection 191(1) and regulations made for the purposes of paragraphs 149(1)(o.3) and (o.4), where a trust or corporation holds an interest as a member of a partnership and, by operation of any law governing the arrangement in respect of the partnership, the liability of the member as a member of the partnership is limited, the member shall not, solely because of its acquisition and holding of that interest, be considered to carry on any business or other activity of the partnership.

Proposed Amendment — 253.1

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 189, will amend s. 253.1 to replace "132(6)(b)" with "132(6)(b), 146.1(2.1)(c)" and "where a trust or corporation" with "if a trust or corpo-

ration", applicable after 1997 except that, for taxation years that end after December 16, 1999 and before 2003, s. 253.1 is to be read as follows:

> 253.1 For the purposes of subparagraph 108(2)(b)(ii), paragraphs 130.1(6)(b), 131(8)(b), 132(6)(b), 146.1(2.1)(c) and 149(1)(o.2), the definition "private holding corporation" in subsection 191(1) and regulations made for the purposes of paragraphs 149(1)(o.3) and (o.4), if a trust or corporation is a member of a partnership and, by operation of any law governing the arrangement in respect of the partnership, the liability of the member as a member of the partnership is limited, the member is deemed
>
> (a) to undertake an investing of its funds because of its acquisition and holding of its interest as a member of the partnership; and
>
> (b) not to carry on any business or other activity of the partnership.

Technical Notes: Section 253.1 applies for specified provisions of the Act and Regulations where a trust or corporation holds an interest as a limited partner in a limited partnership. It provides that the trust or corporation will not, solely because of its acquisition and holding of the limited partnership interest, be considered to carry on any business or other activity of the partnership.

Section 253.1 is amended so that it also applies for the purpose of paragraph 146.1(2.1)(c), which provides that the registration of a registered education savings plan (RESP) is revocable if a trust governed by the plan carries on a business. The amendment to section 253.1 ensures that the acquisition and holding of a limited partnership interest by an RESP trust does not jeopardize the registered status of the plan, provided the interest is a qualified investment for the trust.

Letter from Dept. of Finance, January 31, 2002:

Dear [xxx]

This is in reply to your fax of August 3, 2001 regarding an anomaly that arises in connection with limited partnership investments by registered education savings plans (RESPs). I regret the delay in reply.

Paragraph 146.1(2.1)(c) of the *Income Tax Act* provides that the registration of an RESP is revocable if a trust governed by the plan begins carrying on a business. You are concerned that this rule effectively prevents RESP trusts from acquiring and holding units of publicly listed limited partnerships. If an RESP trust were to acquire such a unit, the registration of the plan would be revocable because the trust would be considered to be carrying on a business.

We agree that this result is unintended. We will recommend to the Minister of Finance that the Act be amended to ensure the acquisition and holding of a limited partnership unit by an RESP trust does not jeopardize the registered status of the plan, provided the unit is a qualified investment for the trust. We will recommend that the amendment apply as of the introduction of subsection 146.1(2.1).

I trust this addresses your concerns and thank you for writing.

Yours sincerely,

Brian Ernewein, Director, Tax Legislation Division, Tax Policy Branch

c.c.: Patricia Spice, Registered Plans Directorate, CCRA

History: S. 253.1 added by 2001, c. 17, s. 193, applicable after 1992, except that for taxation years that end after December 16, 1999 and before 2003, the section shall be read as follows:

> 253.1 For the purposes of subparagraph 108(2)(b)(ii), paragraphs 130.1(6)(b), 131(8)(b), 132(6)(b) and 149(1)(o.2), the definition "private holding corporation" in subsection 191(1) and regulations made for the purposes of paragraphs 149(1)(o.3) and (o.4), where a trust or corporation is a member of a partnership and, by operation of any law governing the arrangement in respect of the partnership, the liability of the member as a member of the partnership is limited, the member is deemed
>
> (a) to undertake an investing of its funds because of its acquisition and holding of its interest as a member of the partnership; and
>
> (b) not to carry on any business or other activity of the partnership.

Definitions [s. 253.1]: "business" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "regulation" — 248(1); "trust" — 104(1), 248(1), (3).

254. Contract under pension plan — Where a document has been issued or a contract has been entered into before July 31, 1997 purporting to create, to establish, to extinguish or to be in substitution for, a taxpayer's right to an amount or amounts, immediately or in the future, out of or under a superannuation or pension fund or plan,

(a) if the rights provided for in the document or contract are rights provided for by the superannuation or pension plan or are rights to a payment or payments out of the superannuation or pension fund, and the taxpayer acquired an interest under the document or in the contract before that day, any payment under the document or contract is deemed to be a payment out of or under the superannuation or pension fund or plan and the taxpayer is deemed not to have received, by the issuance of the document or entering into the contract, an amount out of or under the superannuation or pension fund or plan; and

(b) if the rights created or established by the document or contract are not rights provided for by the superannuation or pension plan or a right to payments out of the superannuation or pension fund, an amount equal to the value of the rights created or established by the document or contract shall be deemed to have been received by the taxpayer out of or under the superannuation or pension fund or plan when the document was issued or the contract was entered into.

Related Provisions: 60(j.2) — Transfer to spousal RRSP; 147.3(10) — Taxation of amount transferred; 147.4(2) — Amendment to RPP annuity contract; 147.4(3) — Substitution of new RPP annuity contract; 147.4(4) — Conversion of pension rights before 1997 to annuity contract commencing after age 69.

History: The portion of s. 254 before para. (b) amended by 1998, c. 19, s. 245, applicable after July 30, 1997. The portion formerly read:

> 254. For greater certainty it is hereby declared that, where a document has been issued or a contract entered into (either before, on or after September 15, 1953) purporting to create, to establish, to extinguish or to be in substitution for, a taxpayer's right to an amount or amounts, immediately or in the future, out of or under a superannuation or pension fund or plan,
>
> (a) if the rights provided for in the document or contract are rights provided for by the superannuation or pension plan or are rights to a payment or payments out of the superannuation or pension fund, any payment under the document or contract is a payment out of or under the superannuation or pension fund or plan and the taxpayer shall be deemed not to have received, by the issuance of the document or entering into the contract, an amount out of or under the superannuation or pension fund or plan; and

Definitions [s. 254]: "amount", "taxpayer" — 248(1).

Interpretation Bulletins: IT-499R: Superannuation or pension benefits.

Information Circulars: 72-13R8: Employees' pension plans; 74-1R5: Form T2037 — Notice of purchase of annuity with "plan" funds.

Forms: T2037: Notice of purchase of annuity with "plan" funds.

255. "Canada" — For the purposes of this Act, "Canada" is hereby declared to include and to have always included

(a) the sea bed and subsoil of the submarine areas adjacent to the coasts of Canada in respect of which the Government of Canada or of a province grants a right, licence or privilege to explore for, drill for or take any minerals, petroleum, natural gas or any related hydrocarbons; and

(b) the seas and airspace above the submarine areas referred to in paragraph (a) in respect of any activities carried on in connection with the exploration for or exploitation of the minerals, petroleum, natural gas or hydrocarbons referred to in that paragraph.

Related Provisions: 37(1.3) — SR&ED within 200 nautical miles offshore is deemed done in Canada; 127(9)"qualified property" closing words — "Canada" includes prescribed offshore region for certain investment tax credit purposes; 248(1)"corporation incorporated in Canada" — "Canada" includes areas before they were part of Canada; 250 — Extended meaning of "resident in Canada"; 253 — Extended meaning of "carrying on business in Canada"; *Income Tax Conventions Interpretation Act* s. 5 — Meaning of "Canada" for treaty purposes; *Interpretation Act* 8(2.1), (2.2) — Application to exclusive economic zone and continental shelf; *Interpretation Act* 35(1) — "Canada" includes internal waters and territorial seas; Canada-U.S. Tax Treaty:Art. III:1(a) — Meaning of "Canada" for treaty purposes.

Definitions [s. 255]: "mineral" — 248(1); "province" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-494: Hire of ships and aircraft from non-residents.

256. (1) Associated corporations — For the purposes of this Act, one corporation is associated with another in a taxation year if, at any time in the year,

(a) one of the corporations controlled, directly or indirectly in any manner whatever, the other;

(b) both of the corporations were controlled, directly or indirectly in any manner whatever, by the same person or group of persons;

(c) each of the corporations was controlled, directly or indirectly in any manner whatever, by a person and the person who so controlled one of the corporations was related to the person who so controlled the other, and either of those persons owned, in respect of each corporation, not less than 25% of the issued shares of any class, other than a specified class, of the capital stock thereof;

(d) one of the corporations was controlled, directly or indirectly in any manner whatever, by a person and that person was related to each member of a group of persons that so controlled the other corporation, and that person owned, in respect of the other corporation, not less than 25% of the issued shares of any class, other than a specified class, of the capital stock thereof; or

(e) each of the corporations was controlled, directly or indirectly in any manner whatever, by a related group and each of the members of one of the related groups was related to all of the members of the other related group, and one or more persons who were members of both related groups, either alone or together, owned, in respect of each corporation, not less than 25% of the issued shares of any class, other than a specified class of the capital stock thereof.

Related Provisions: 18(2.2)–(2.4) — Associated corps share $1,000,000 base level deduction; 37(9.5) — Extended meaning of "associated" for SR&ED specified-employee payment limitation; 125(2)–(4) — Associated corps share $200,000 income limit for small business deduction; 127(10.2)–(10.4) — Associated corps share $2,000,000 expenditure limit for investment tax credit; 127.1(2) — Associated corps share $200,000 taxable income limit to be qualifying corps for refundable investment tax credit; 128(1)(f) — Bankrupt corporation deemed not associated; 129(6) — Investment income from associated corporation deemed active business income; 157(1)(b)(i)(D)(II) — Later final payment of tax where associated corps' taxable incomes do not exceed $200,000; 191.1(2)–(4) — Associated corps share dividend allowance for Part VI.1 tax; 256(1.1) — "Specified class" defined; 256(1.2) — Control, etc.; 256(1.5) — Person deemed related to self; 256(5.1), (6.2) — Control in fact; 256(6.1) — Simultaneous control by different persons.

Selected Cases [subsec. 256(1)]: *L.D.G. 2000 Inc. v. R.* (2002), [2004] 1 C.T.C. 2286 (TCC) (Corporation controlled in fact); *Société Foncière D'Investissement*, [1996] 3 C.T.C. 2537 (TCC) (Notion of *de facto* control implicit in statutory language); *Holiday Luggage Mfg. Co. Inc. et al. v. R.*, [1987] 1 C.T.C. 23 (FCTD) (Non-resident not a "corporation" for purposes of provision); *R. v. Fast, B.B., & Sons Distributors Ltd.*,, [1986] 1 C.T.C. 299 (FCA) (Where only one member of related group owned shares of two corporations, related group, *qua* group, did not own shares of the corporations); *Special Risks Holdings Inc. v. R.*, [1986] 1 C.T.C. 201 (FCA) (Corporation not dealing at arm's length with another corporation was in *de facto* control of the latter); *R. v. Imperial General Properties Ltd.*, [1985] 2 C.T.C. 299 (SCC) (Shareholder with only 50% of voting rights had power to wind up company; held to control company); *Rostal Sales Agency Ltd. v. R.*, [1983] C.T.C. 5 (FCTD) (Trust settlor without power to remove trustee had no control over shares owned by trust); *Southside Car Market Ltd. et al. v. R.*, [1982] C.T.C. 214 (FCTD) (Corporation cannot be controlled by both "the same person" and by a "group of persons"); *Entrepôt Métropolitain de Meubles Ltée v. MNR*, [1981] C.T.C. 425 (FCTD) (Where a group of shareholders holds enough shares to have right to control company, actual control need not be exercised for provision to apply); *Imperial General Properties Ltd. v. R.*, [1981] C.T.C. 331 (FCTD); aff'd [1983] C.T.C. 27, (sub nom. *R. v. Imperial General Properties Ltd.)* (FCA); rev'd [1985] 2 C.T.C. 299, (sub nom. *R. v. Imperial General Properties Ltd.)* (SCC) (Two companies not associated where one held 50% of voting shares of the other while remaining shares held by group of other shareholders); *Fawcett, H.A., & Son Ltd. v. R.*, [1980] C.T.C. 293 (FCA) (Where father's shares inherited two days before father's fiscal year-end, companies controlled by son associated with those controlled by father in taxation year of father's death); *Regal Wholesale Ltd. v. R.*, [1977] C.T.C. 202 (FCA) (Beneficial ownership of shares transferred without registration of change); *R. v. Alroy Industries Ltd.*, [1976] C.T.C. 388 (FCTD) (Companies associated where one held irrevocable option to buy all shares of other); *Danalan Investments Ltd. v. MNR*, [1973] C.T.C. 251 (FCTD) (Three companies associated where majority of shares of each held by individual and his nominees); *Allied Farm Equipment Ltd. v. MNR*, [1972] C.T.C. 619 (FCA) (Non-resident company not a "corporation" for purposes of provision); *MNR v. Werner, Fritz, Ltd.*, [1972] C.T.C. 274 (FCTD) (Shares deemed owned by a third party by virtue of an option to purchase shares continue to belong to potential vendor for purposes of associated corporations provisions until option exercised); *International Iron & Metal Co. Ltd. v. MNR*, [1972] C.T.C. 242 (SCC) (*De jure* control sufficient for purposes of associated companies); *Madill, S., Ltd. v. MNR*, [1972] C.T.C. 47 (FCTD) (*De jure* control by group of persons where shares held indirectly); *MNR v. Consolidated Holding Co. Ltd.*, [1972] C.T.C. 18 (SCC) (Companies associated where controlling shareholders held controlling shares of other *qua* executors and trustees); *Oakfield Developments (Toronto) Ltd. v. MNR*, [1971] C.T.C. 283 (SCC) (Forty-three companies associated where group owned 50% of shares of each corporation, resulting in group's capacity to, *inter alia*, wind up companies; factors to consider); *Angelo-B.C. Distributors Ltd. v. MNR*, [1970] C.T.C. 138 (Exch.) (Absent direct evidence to contrary, shares presumed held for benefit of nominal owners); *Donald Applicators Ltd. et al. v. MNR*, [1969] C.T.C. 98 (Exch.); aff'd [1971] C.T.C. 402 (note) (SCC) (Company controlled by and associated with another which held all Class B shares of former; although the Class B shares carried no vote for directors, they entitled holder to change powers of directors); *Vina-Rug (Canada) Ltd. v. MNR*, [1968] C.T.C. 1 (SCC) (Companies associated once any group of shareholders owns majority of shares of each).

Interpretation Bulletins: IT-64R4: Corporations: association and control.

Advance Tax Rulings: ATR-13: Corporations not associated.

(1.1) Definition of "specified class" — For the purposes of subsection (1), "specified class" means a class of shares of the capital stock of a corporation where, under the terms or conditions of the shares or any agreement in respect thereof,

(a) the shares are not convertible or exchangeable;

(b) the shares are non-voting;

(c) the amount of each dividend payable on the shares is calculated as a fixed amount or by reference to a fixed percentage of an amount equal to the fair market value of the consideration for which the shares were issued;

(d) the annual rate of the dividend on the shares, expressed as a percentage of an amount equal to the fair market value of the consideration for which the shares were issued, cannot in any event exceed,

(i) where the shares were issued before 1984, the rate of interest prescribed for the purposes of sub-

section 161(1) at the time the shares were issued, and

(ii) where the shares were issued after 1983, the prescribed rate of interest at the time the shares were issued; and

(e) the amount that any holder of the shares is entitled to receive on the redemption, cancellation or acquisition of the shares by the corporation or by any person with whom the corporation does not deal at arm's length cannot exceed the total of an amount equal to the fair market value of the consideration for which the shares were issued and the amount of any unpaid dividends thereon.

Related Provisions: 256(1.2) — Control, etc.; 256(1.5) — Person deemed related to self.

History: Para. 256(1.1)(d) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 198(1), to substitute subparas. (i) and (ii) for "the prescribed rate of interest at the time the shares were issued", applicable to 1989 *et seq.*

Regulations: 4301(c) (prescribed rate of interest).

Interpretation Bulletins: IT-64R4: Corporations: association and control.

(1.2) Control, etc. — For the purposes of this subsection and subsections (1), (1.1) and (1.3) to (5),

(a) a group of persons in respect of a corporation means any two or more persons each of whom owns shares of the capital stock of the corporation;

(b) for greater certainty,

(i) a corporation that is controlled by one or more members of a particular group of persons in respect of that corporation shall be considered to be controlled by that group of persons, and

(ii) a corporation may be controlled by a person or a particular group of persons notwithstanding that the corporation is also controlled or deemed to be controlled by another person or group of persons;

(c) a corporation shall be deemed to be controlled by another corporation, a person or a group of persons at any time where

(i) shares of the capital stock of the corporation having a fair market value of more than 50% of the fair market value of all the issued and outstanding shares of the capital stock of the corporation, or

(ii) common shares of the capital stock of the corporation having a fair market value of more than 50% of the fair market value of all the issued and outstanding common shares of the capital stock of the corporation

are owned at that time by the other corporation, the person or the group of persons, as the case may be;

(d) where shares of the capital stock of a corporation are owned, or deemed by this subsection to be owned, at any time by another corporation (in this paragraph referred to as the "holding corporation"), those shares shall be deemed to be owned at that time by any shareholder of the holding corporation in a proportion equal to the proportion of all those shares that

(i) the fair market value of the shares of the capital stock of the holding corporation owned at that time by the shareholder

is of

(ii) the fair market value of all the issued shares of the capital stock of the holding corporation outstanding at that time;

(e) where, at any time, shares of the capital stock of a corporation are property of a partnership, or are deemed by this subsection to be owned by the partnership, those shares shall be deemed to be owned at that time by each member of the partnership in a proportion equal to the proportion of all those shares that

(i) the member's share of the income or loss of the partnership for its fiscal period that includes that time

is of

(ii) the income or loss of the partnership for its fiscal period that includes that time

and for this purpose, where the income and loss of the partnership for its fiscal period that includes that time are nil, that proportion shall be computed as if the partnership had had income for that period in the amount of $1,000,000;

(f) where shares of the capital stock of a corporation are owned, or deemed by this subsection to be owned, at any time by a trust,

(i) in the case of a testamentary trust under which one or more beneficiaries were entitled to receive all of the income of the trust that arose before the date of death of one or the last surviving of those beneficiaries (in this paragraph referred to as the "distribution date") and no other person could, before the distribution date, receive or otherwise obtain the use of any of the income or capital of the trust,

(A) where any such beneficiary's share of the income or capital therefrom depends on the exercise by any person of, or the failure by any person to exercise, any discretionary power, those shares shall be deemed to be owned at any time before the distribution date by the beneficiary, and

(B) where clause (A) does not apply, those shares shall be deemed to be owned at any time before the distribution date by any such beneficiary in a proportion equal to the proportion of all those shares that the fair market value of the beneficial interest in the trust of the beneficiary is of the fair market value of the beneficial interests in the trust of all those beneficiaries,

(ii) where a beneficiary's share of the accumulating income or capital therefrom depends on the exercise by any person of, or the failure by any person to exercise, any discretionary power, those shares shall be deemed to be owned at that time by the beneficiary, except where subparagraph (i) applies and that time is before the distribution date,

(iii) in any case where subparagraph (ii) does not apply, a beneficiary shall be deemed at that time to own the proportion of those shares that the fair market value of the beneficial interest in the trust of the beneficiary is of the fair market value of all beneficial interests in the trust, except where subparagraph (i) applies and that time is before the distribution date, and,

(iv) in the case of a trust referred to in subsection 75(2), the person referred to in that subsection from whom property of the trust or property for which it was substituted was directly or indirectly received shall be deemed to own those shares at that time; and

(g) in determining the fair market value of a share of the capital stock of a corporation, all issued and outstanding shares of the capital stock of the corporation shall be deemed to be non-voting.

Related Provisions: 127(10.22), (10.23), 127.1(2.2), (2.3) — Non-application of 256(1.2) to SR&ED credit in certain cases; 248(5) — Substituted property; 256(1.5) — Person deemed related to self; 256(1.6) — Exception; 256(6.1) — Simultaneous control by different persons.

Selected Cases [subsec. 256(1.2)]: *Rosario Poirier Inc. v. R.*, [2002] 4 C.T.C. 2346 (TCC) (Board resolution gave control in fact; small business deduction to be shared).

Interpretation Bulletins: IT-64R4: Corporations: association and control.

(1.3) Parent deemed to own shares — Where at any time shares of the capital stock of a corporation are owned by a child who is under 18 years of age, for the purpose of determining whether the corporation is associated at that time with any other corporation that is controlled, directly or indirectly in any manner whatever, by a parent of the child or by a group of persons of which the parent is a member, the shares shall be deemed to be owned at that time by the parent unless, having regard to all the circumstances, it can reasonably be considered that the child manages the business and affairs of the corporation and does so without a significant degree of influence by the parent.

Related Provisions: 256(1.2) — Control, etc.; 256(1.5) — Person deemed related to self; 256(5.1), (6.2) — Control in fact.

History: Subsec. 256(1.3) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 198(2), applicable retroactively to its introduction (see History note to subsec. (1.6)). Subsec. (1.3) formerly read:

(1.3) Where, at any time, shares of the capital stock of a corporation are owned by a child who is under 18 years of age, for the purposes of determining if the corporation is associated at that time with any other corporation that is controlled, directly or indirectly in any manner whatever, by a parent of the child or by a group of persons of which the parent is a member, those shares shall be deemed to be owned at that time by the parent or the group, as the case may be, unless, having regard to all the circumstances, it may reasonably be considered that the child manages the business and affairs of the corporation and does so without a significant degree of influence by the parent.

Interpretation Bulletins: IT-64R4: Corporations: association and control.

(1.4) Options and rights — For the purpose of determining whether a corporation is associated with another corporation with which it is not otherwise associated, where a person or any partnership in which the person has an interest has a right at any time under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently,

(a) to, or to acquire, shares of the capital stock of a corporation, or to control the voting rights of shares of the capital stock of a corporation, the person or partnership shall, except where the right is not exercisable at that time because the exercise thereof is contingent on the death, bankruptcy or permanent disability of an individual, be deemed to own the shares at that time, and the shares shall be deemed to be issued and outstanding at that time; or

(b) to cause a corporation to redeem, acquire or cancel any shares of its capital stock owned by other shareholders of a corporation, the person or partnership shall, except where the right is not exercisable at that time because the exercise thereof is contingent on the death, bankruptcy or permanent disability of an individual, be deemed at that time to have the same position in relation to control of the corporation and ownership of shares of its capital stock as if the shares were redeemed, acquired or cancelled by the corporation.

Related Provisions: 256(1.2) — Control, etc.; 256(1.5) — Person deemed related to self; 256(1.6) — Exception; 256(5.1) — Control in fact.

History: Subsec. 256(1.4) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 198(2), applicable retroactively to its introduction (see History note to subsec. (1.6)). Subsec. (1.4) formerly read:

(1.4) For the purposes of determining if a corporation is associated at any time with any other corporation that is controlled, directly or indirectly in any manner whatever, by a person, or by a group of persons of which the person is a member, where the person, or any partnership in which the person has an interest, has a right at any time under contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently,

(a) to, or to acquire, shares of the capital stock of the corporation, or to control the voting rights of shares of the capital stock of the corporation, the person or partnership shall, except where the contract provides that the right is not exercisable until the death, bankruptcy or permanent disability of an individual designated therein, be deemed to own the shares at that time and the shares shall be deemed to be issued and outstanding at that time; or

(b) to cause the corporation to redeem, acquire or cancel any shares of its capital stock owned by other shareholders of the corporation, the person or partnership shall, except where the contract provides that the right is not exercisable until the death, bankruptcy or permanent disability of an individual designated therein, be deemed at that time to have had the same position in relation to control of the corporation and ownership of shares of its capital stock as if the shares were redeemed, acquired or cancelled by the corporation.

Interpretation Bulletins: IT-64R4: Corporations: association and control.

(1.5) Person related to himself, herself or itself — For the purposes of subsections (1) to (1.4) and (1.6) to (5), where a person owns shares in two or more corporations, the person shall as shareholder of one of the corporations be deemed to be related to himself, herself or itself as shareholder of each of the other corporations.

Related Provisions: 256(1.2) — Control, etc.

Interpretation Bulletins: IT-64R4: Corporations: association and control.

(1.6) Exception — For the purposes of subsection (1.2) and notwithstanding subsection (1.4), any share that is

(a) described in paragraph (e) of the definition "term preferred share" in subsection 248(1) during the applicable time referred to in that paragraph, or

(b) a share of a specified class within the meaning of subsection (1.1)

shall be deemed not to have been issued and outstanding and not to be owned by any shareholder and an amount equal to the greater of the paid-up capital of the share and the amount, if any, that any holder of the share is entitled to receive on the redemption, cancellation or acquisition of the share by the corporation shall be deemed to be a liability of the corporation.

Related Provisions: 256(1.2) — Control, etc.; 256(1.5) — Person deemed related to self.

(2) Corporations associated through a third corporation — Where two corporations

(a) would, but for this subsection, not be associated with each other at any time, and

(b) are associated, or are deemed by this subsection to be associated, with the same corporation (in this subsection referred to as the "third corporation") at that time,

they shall, for the purposes of this Act, be deemed to be associated with each other at that time, except that, for the purposes of section 125, where the third corporation is not a Canadian-controlled private corporation at that time or elects, in prescribed form, for its taxation year that includes that time not to be associated with either of the other two corporations, the third corporation shall be deemed not to be associated with either of the other two corporations in that taxation year and its business limit for that taxation year shall be deemed to be nil.

Related Provisions: 256(1.2) — Control, etc.; 256(1.5) — Person deemed related to self.

Selected Cases [subsec. 256(2)]: *Allied Farm Equipment Ltd. v. MNR*, [1972] C.T.C. 619 (FCA) (Corporation not taxable under Part I not a "corporation" for purposes of provision).

Interpretation Bulletins: IT-64R4: Corporations: association and control; IT-243R4: Dividend refund to private corporations.

Advance Tax Rulings: ATR-13: Corporations not associated.

Forms: T2 SCH 28: Election not to be an associated corporation.

(2.1) Anti-avoidance — For the purposes of this Act, where, in the case of two or more corporations, it may reasonably be considered that one of the main reasons for the separate existence of those corporations in a taxation year is to reduce the amount of taxes that would otherwise be payable under this Act or to increase the amount of refundable investment tax credit under section 127.1, the two or more corporations shall be deemed to be associated with each other in the year.

Selected Cases [subsec. 256(2.1)]: *LJP Sales Agency Inc. v. R.*, [2004] 2 C.T.C. 2278 (TCC) (Even if professional advisors aware of tax advantages, possible that purpose of separate existence was not to reduce taxes); *Hughes Homes Inc. v. R.*, [1998] 1 C.T.C. 2367 (TCC) (Asset protection and wife's separate business interests were main reasons for separate existence; no deemed association).

Interpretation Bulletins: IT-64R4: Corporations: association and control.

Advance Tax Rulings: ATR-13: Corporations not associated.

(3) Saving provision — Where one corporation (in this subsection referred to as the "controlled corporation") would, but for this subsection, be associated with another corporation in a taxation year by reason of being controlled, directly or indirectly in any manner whatever, by the other corporation or by reason of both of the corporations being controlled, directly or indirectly in any manner whatever, by the same person at a particular time in the year (which corporation or person so controlling the controlled corporation is in this subsection referred to as the "controller") and it is established to the satisfaction of the Minister that

(a) there was in effect at the particular time an agreement or arrangement enforceable according to the terms thereof, under which, on the satisfaction of a condition or the happening of an event that it is reasonable to expect will be satisfied or happen, the controlled corporation will

(i) cease to be controlled, directly or indirectly in any manner whatever, by the controller, and

(ii) be or become controlled, directly or indirectly in any manner whatever, by a person or group of persons, with whom or with each of the members of which, as the case may be, the controller was at the particular time dealing at arm's length, and

(b) the purpose for which the controlled corporation was at the particular time so controlled was the safeguarding of rights or interests of the controller in respect of

(i) any indebtedness owing to the controller the whole or any part of the principal amount of which was outstanding at the particular time, or

(ii) any shares of the capital stock of the controlled corporation that were owned by the controller at the particular time and that were, under the agreement or arrangement, to be redeemed by the controlled corporation or purchased by the person or group of persons referred to in subparagraph (a)(ii),

the controlled corporation and the other corporation with which it would otherwise be so associated in the year shall be deemed, for the purpose of this Act, not to be associated with each other in the year.

Related Provisions: 256(1.2) — Control, etc.; 256(1.5) — Person deemed related to self; 256(5.1), (6.2) — Controlled directly or indirectly; 256(6.1) — Simultaneous control by different persons.

Selected Cases [subsec. 256(3)]: *MNR v. Werner, Fritz, Ltd.*, [1972] C.T.C. 274 (FCTD) (Shares deemed owned by third party by virtue of option to purchase shares continue to belong to potential vendor for purposes of associated corporations provisions until option exercised).

Interpretation Bulletins: IT-64R4: Corporations: association and control.

(4) Saving provision — Where one corporation would, but for this subsection, be associated with another corporation in a taxation year by reason of both of the corporations being controlled by the same executor, liquidator of a succession or trustee and it is established to the satisfaction of the Minister

(a) that the executor, liquidator or trustee did not acquire control of the corporations as a result of one or more estates or trusts created by the same individual or two or more individuals not dealing with each other at arm's length, and

(b) that the estate or trust under which the executor, liquidator or trustee acquired control of each of the corporations arose only on the death of the individual creating the estate or trust,

the two corporations are deemed, for the purposes of this Act, not to be associated with each other in the year.

Related Provisions: 256(1.2) — Control, etc.; 256(1.5) — Person deemed related to self; 256(6.1) — Simultaneous control by different persons.

History: Subsec. 256(4) amended by 2001, c. 17, s. 231, in force June 14, 2001. Subsec. 256(4) formerly read:

(4) Where one corporation would, but for this subsection, be associated with another corporation in a taxation year by reason of both of the corporations being controlled by the same trustee or executor and it is established to the satisfaction of the Minister

(a) that the trustee or executor did not acquire control of the corporations as a result of one or more trusts or estates created by the same individual or two or more individuals not dealing with each other at arm's length, and

(b) that the trust or estate under which the trustee or executor acquired control of each of the corporations arose only on the death of the individual creating the trust or estate,

the two corporations shall be deemed, for the purposes of this Act, not to be associated with each other in the year.

Interpretation Bulletins: IT-64R4: Corporations: association and control.

(5) Idem — Where one corporation would, but for this subsection, be associated with another corporation in a taxation year, by reason only that the other corporation is a trustee under a trust pursuant to which the corporation is controlled, the two corporations shall be deemed, for the purposes of this Act, not to be associated with each other

in the year unless, at any time in the year, a settlor of the trust controlled or is a member of a related group that controlled the other corporation that is the trustee under the trust.

Related Provisions: 256(1.2) — Control, etc.; 256(1.5) — Person deemed related to self; 256(6.1) — Simultaneous control by different persons.

Interpretation Bulletins: IT-64R4: Corporations; association and control.

(5.1) Control in fact — For the purposes of this Act, where the expression "controlled, directly or indirectly in any manner whatever," is used, a corporation shall be considered to be so controlled by another corporation, person or group of persons (in this subsection referred to as the "controller") at any time where, at that time, the controller has any direct or indirect influence that, if exercised, would result in control in fact of the corporation, except that, where the corporation and the controller are dealing with each other at arm's length and the influence is derived from a franchise, licence, lease, distribution, supply or management agreement or other similar agreement or arrangement, the main purpose of which is to govern the relationship between the corporation and the controller regarding the manner in which a business carried on by the corporation is to be conducted, the corporation shall not be considered to be controlled, directly or indirectly in any manner whatever, by the controller by reason only of that agreement or arrangement.

Related Provisions: 256(6) — Idem; 256(6.2) — Simultaneous control — application of 256(6.1).

Selected Cases [subsec. 256(5.1)]: *Lenester Sales Ltd. v. R.*, [2004] 4 C.T.C. 15 (FCA); aff'g [2003] 4 C.T.C. 2772 (TCC) (Control of franchiser did not amount to control in fact); *L.D.G. 2000 Inc. v. R.* (2002), [2004] 1 C.T.C. 2286 (TCC) (Corporation controlled in fact); *Rosario Poirier Inc. v. R.*, [2002] 4 C.T.C. 2346 (TCC) (Board resolution gave control in fact; small business deduction to be shared); *Mimetix Pharmaceuticals Inc. v. R.*, [2002] 1 C.T.C. 2188 (TCC); aff'd [2003] 3 C.T.C. 72 (FCA) (*De facto* control exercised by non-resident shareholder precluded company from being CCPC); *HSC Research Development Corp. v. Canada*, [1995] 1 C.T.C. 2283 (TCC) (1988 amendments changed law to include concept of *de facto* control).

Interpretation Bulletins: IT-64R4: Corporations: association and control; IT-236R4: Reserves — disposition of capital property (archived); IT-313R2: Eligible capital property — rules where a taxpayer has ceased carrying on a business or has died; IT-291R2: Transfer of property to a corporation under subsection 85(1); IT-458R2: Canadian-controlled private corporation.

I.T. Technical News: 25 (*Silicon Graphics* case); 32 (control in fact: impact of recent jurisprudence).

(6) Idem — For the purposes of this Act, where a corporation (in this subsection referred to as the "controlled corporation") would, but for this subsection, be regarded as having been controlled or controlled, directly or indirectly in any manner whatever, by a person or partnership (in this subsection referred to as the "controller") at a particular time and it is established that

(a) there was in effect at the particular time an agreement or arrangement enforceable according to the terms thereof, under which, on the satisfaction of a condition or the happening of an event that it is reasonable to expect will be satisfied or happen, the controlled corporation will

(i) cease to be controlled, or controlled, directly or indirectly in any manner whatever, as the case may be, by the controller, and

(ii) be or become controlled, or controlled, directly or indirectly in any manner whatever, as the case may be, by a person or group of persons, with whom or with each of the members of which, as the case may be, the controller was at the particular time dealing at arm's length, and

(b) the purpose for which the controlled corporation was at the particular time so controlled, or controlled, directly or indirectly in any manner whatever, as the case may be, was the safeguarding of rights or interests of the controller in respect of

(i) any indebtedness owing to the controller the whole or any part of the principal amount of which was outstanding at the particular time, or

(ii) any shares of the capital stock of the controlled corporation that were owned by the controller at the particular time and that were, under the agreement or arrangement, to be redeemed by the controlled corporation or purchased by the person or group of persons referred to in subparagraph (a)(ii),

the controlled corporation is deemed not to have been controlled by the controller at the particular time.

Related Provisions: 256(5.1), (6.2) — Controlled directly or indirectly; 256(6.1) — Simultaneous control by different persons.

History: The closing words of subsec. 256(6) amended by 1998, c. 19, subsec. 246(1), applicable to taxation years that begin after 1988. The closing words formerly read:

> the controlled corporation shall be deemed, for the purposes of that provision, not to have been controlled by the controller at the particular time.

Interpretation Bulletins: IT-64R4: Corporations: association and control; IT-458R2: Canadian-controlled private corporation.

(6.1) Simultaneous control — For the purposes of this Act and for greater certainty,

(a) where a corporation (in this paragraph referred to as the "subsidiary") would be controlled by another corporation (in this paragraph referred to as the "parent") if the parent were not controlled by any person or group of persons, the subsidiary is controlled by

(i) the parent, and

(ii) any person or group of persons by whom the parent is controlled; and

(b) where a corporation (in this paragraph referred to as the "subject corporation") would be controlled by a group of persons (in this paragraph referred to as the "first-tier group") if no corporation that is a member of the first-tier group were controlled by any person or group of persons, the subject corporation is controlled by

(i) the first-tier group, and

(ii) any group of one or more persons comprised of, in respect of every member of the first-tier group, either the member, or a person or group of persons by whom the member is controlled.

Related Provisions: 256(6.2) — Application to 256(5.1).

History: Subsec. 256(6.1) added by 2001, c. 17, s. 194, applicable to taxation years that begin after November 1999.

(6.2) Application to control in fact — In its application to subsection (5.1), subsection (6.1) shall be read as if the references in subsection (6.1) to "controlled" were references to "controlled, directly or indirectly in any manner whatever,".

History: Subsec. 256(6.2) added by 2001, c. 17, s. 194, applicable to taxation years that begin after November 1999.

(7) Acquiring control — For the purposes of subsections 10(10), 13(21.2) and (24), 14(12) and 18(15), sections 18.1 and 37, subsection 40(3.4), the definition "su-

perficial loss" in section 54, section 55, subsections 66(11), (11.4) and (11.5), 66.5(3) and 66.7(10) and (11), section 80, paragraph 80.04(4)(h), subsections 85(1.2), 88(1.1) and (1.2) and 110.1(1.2), sections 111 and 127, subsection 249(4) and this subsection,

(a) control of a particular corporation shall be deemed not to have been acquired solely because of

(i) the acquisition at any time of shares of any corporation by

(A) a particular person who acquired the shares from a person to whom the particular person was related (otherwise than because of a right referred to in paragraph 251(5)(b)) immediately before that time,

(B) a particular person who was related to the particular corporation (otherwise than because of a right referred to in paragraph 251(5)(b)) immediately before that time,

(C) an estate that acquired the shares because of the death of a person, or

(D) a particular person who acquired the shares from an estate that arose on the death of another person to whom the particular person was related, or

Proposed Addition — 256(7)(a)(i)(E)

(E) a corporation on a distribution (within the meaning assigned by subsection 55(1)) by a specified corporation (within the meaning assigned by that subsection) if a dividend, to which subsection 55(2) does not apply because of paragraph 55(3)(b), is received in the course of the reorganization in which the distribution occurs,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 190(2), will add cl. 256(7)(a)(i)(E), applicable to acquisitions of shares that occur after 2000.

Technical Notes: Paragraph 256(7)(a) describes the circumstances where control of a corporation (or a corporation controlled by the corporation) is considered not to have been acquired for the purposes of certain provisions of the Act. That paragraph is amended in two ways.

First, subparagraph 256(7)(a)(i) is amended effective with respect to the acquisition of shares after 2000 to add clause (E) which precludes an acquisition of control of a corporation on a distribution (within the meaning assigned by subsection 55(1)) by a specified corporation (within the meaning assigned by that subsection) if a dividend is received in the course of a spin-off distribution in which no portion of the dividend is treated as a capital gain by the anti-avoidance rule in subsection 55(2) because of the application of the exception for certain reorganizations under paragraph 55(3)(b).

Example:

Facts:

Pubco is a specified corporation under the butterfly rules in section 55 and a person or group of persons does not control it. Pubco owns all of the shares of Subco. In the course of a distribution (as defined by subsection 55(1)), Pubco distributes the Subco shares to Newco, which is established in the course of the reorganization for the purposes of the distribution. The same shareholders that own all of the shares of Pubco own all of the shares of Newco. Because there is no person or group of persons that control Pubco and Newco, an acquisition of control of Subco would occur upon Newco's acquisition of the Subco shares on the distribution despite the fact the same shareholders own Pubco and Newco.

Application:

In this example, new clause 256(7)(a)(i)(E) provides that there is no acquisition of control of Subco by Newco if Pubco's distribution of its Subco shares to Newco is a distribution to which the anti-avoidance rule in subsection 55(2) does not apply because the distribution complies with the exception in paragraph 55(3)(b).

Second, new subparagraph 256(7)(a)(iii), which applies to the acquisition of shares after 2000, provides that, where there is an acquisition of any shares of a corporation, there is no acquisition of control of the corporation by a related group of persons if each member of each group of persons that controls the corporation was related to the corporation immediately before the change of control.

Example:

Facts:

Corporation X has issued 100 common shares with 1 vote per share. There are no other issued shares. Mr. X owns 51% of Corporation X's issued shares. Ms. D who is the daughter of Mr. X owns 49% of the common shares issued by Corporation X. Mr. X has de jure control of Corporation X.

Mr. X disposes of 10 shares of Corporation X to Mr. Z, an arm's length person. Consequently, Mr. X no longer has de jure control, and a group of persons acquires de jure control of Corporation X.

Application:

If Mr. X and Ms. D form a related group of persons that otherwise acquires control of Corporation X upon the disposition of shares by Mr. X, new subparagraph 256(7)(a)(iii) deems no acquisition of control if no other group of persons that includes Mr. Z acquires control of Corporation X. It is a question of fact whether Mr. X and Ms. D form a group of persons that would otherwise acquire control of Corporation X and, if so, whether there exists another group of persons that also acquires control. Depending on the circumstances, Mr. X and Ms. D; Mr. X and Mr. Z; Ms. D and Mr. Z; or Mr. X, Ms. D and Mr. Z could form a group of persons that acquires control of Corporation X. Consequently, new subparagraph 256(7)(a)(iii) applies only if, in this example, Mr. X and Ms. D form a group of persons that control Corporation X and there exists no other group of persons (which includes Mr. Z) that acquires control of Corporation X.

Letter from Dept. of Finance, July 3, 2001:

Dear [xxx]

This is in reply to your firm's letters of December 22, 2000, January 24 and 31, February 5, 9 and 23, 2001, and telephone conversations with members of this Division regarding the application of section 55 of the *Income Tax Act* (the "Act") to a proposed Canadian public corporation spin-off.

You have expressed the concern that the mechanics of a public spin-off butterfly under paragraph 55(3)(b) of the Act should not, by and of themselves, result in any acquisition of control on a "no types of property" Canadian public corporation spin-off. As well, you are concerned that certain shares referred to below should not be considered to be taxable Canadian property for the purposes of the Act. I propose to address each matter separately.

Acquisition of Control

Under paragraph 55(3)(b) of the Act, a Canadian public corporation ("Pubco") will spin-off the shares of its subsidiary corporation ("Subco") to a newly created public corporation ("Newco"). We understand that, pursuant to a Plan of Arrangement, the shareholders of Pubco will exchange their common shares for common shares and "special" shares of Pubco. Pubco shareholders will transfer to Newco, in exchange for common shares of Newco, their special Pubco shares, which have a total value equal to the value of the Subco shares owned by Pubco. Pubco will transfer all of its Subco shares to Newco in consideration for preferred shares of Newco. There will be a cross repurchase of the special Pubco shares held by Newco and the Newco preferred shares held by Pubco. Pubco will be a "specified corporation" within the meaning of subsection 55(1) of the Act in relation to the distribution of the shares of Subco.

Your concern is that Newco will acquire control of Subco on the acquisition of the Subco shares from Pubco, with the result that the acquisition of control and successor rules under the Act will apply to Subco after its acquisition by Newco.

We agree there should not be an acquisition of control and the successor rules of the Act should not apply to the acquisition of the Subco shares by Newco in the circumstances you describe provided the spin-off of Subco is not subsequently tainted. In this regard therefore we will recommend to the Minister of Finance that the Act be amended to ensure there is no acquisition of control in these circumstances.

In particular, we will recommend an amendment [now 256(7)(a)(i)(E) — ed.] which will provide that where Pubco, a "specified corporation" within the meaning of subsection 55(1) of the Act, spins off its shares of Subco to Newco in the course of a reorganization

in which all the dividends that are received are ones to which paragraph 55(3)(b) of the Act applies, control of Subco will be considered not to have been acquired solely as a result of the acquisition of the Subco shares by Newco. We will also recommend that such an amendment be effective for acquisitions made after 2000. If the recommendation is acted upon, we anticipate that such an amendment would be included in a future technical bill.

Taxable Canadian Property

As well, because of subparagraph 115(1)(b)(iv) of the Act, the special shares of Pubco that will be acquired by a non-resident shareholder of Pubco pursuant to a Plan of Arrangement will be considered to be taxable Canadian property for the purposes of the Act. Under the provisions of sections 85 and 85.1 of the Act, the taxable Canadian property status of the special shares issued by Pubco will cause the Newco shares acquired by the non-resident in exchange for the non-resident's special shares of Pubco to be taxable Canadian property of the non-resident even though the Newco shares will be listed on a prescribed stock exchange. As well, the special shares of Pubco will not be excluded property for the purpose of subsection 116(3) of the Act because the definition "excluded property" in subsection 116(6) applies in the case of shares of the capital stock of a corporation only if the shares are listed on a prescribed stock exchange.

In these circumstances, we agree that the Newco shares should not be considered to be taxable Canadian property by reason only of a deeming rule that applies on the exchange of the special shares for the Newco shares (i.e., because subparagraph 115(1)(b)(iv) applied before the exchange to the special shares of Newco). Consequently, we will recommend to the Minister of Finance that the Act be amended [now 55(6) — ed.] to ensure that the above-mentioned special shares of Pubco held by a non-resident shareholder will not be considered to be taxable Canadian property of the non-resident in these circumstances for the purposes of the Act. We will recommend that such an amendment be effective for such special shares issued by a public corporation after April 26, 1995 where the shares are issued by the corporation as part of the series of transactions or events that includes a distribution of property by the corporation in the course of a butterfly reorganization. The date of April 26, 1995 is the date upon which the related amendments to paragraph 115(1)(b) took effect. If the recommendation is acted upon, we anticipate that such an amendment would be included in a future technical bill.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

(ii) the redemption or cancellation at any particular time of, or a change at any particular time in the rights, privileges, restrictions or conditions attaching to, shares of the particular corporation or of a corporation controlling the particular corporation, where each person and each member of each group of persons that controls the particular corporation immediately after the particular time was related (otherwise than because of a right referred to in paragraph 251(5)(b)) to the corporation

(A) immediately before the particular time, or

(B) immediately before the death of a person, where the shares were held immediately before the particular time by an estate that acquired the shares because of the person's death;

Proposed Addition — 256(7)(a)(iii)

(iii) the acquisition at any time of shares of the particular corporation if

(A) the acquisition of those shares would otherwise result in the acquisition of control of the particular corporation at that time by a related group of persons, and

(B) each member of each group of persons that controls the particular corporation at that time was related (otherwise than because of a right referred to in paragraph 251(5)(b)) to the particular corporation immediately before that time;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 190(3), will add subpara. 256(7)(a)(iii), applicable to acquisitions of shares that occur after 2000.

Technical Notes: See under 256(7)(a)(i)(E) above.

(b) where at any time 2 or more corporations (each of which is referred to in this paragraph as a "predecessor corporation") have amalgamated to form one corporate entity (in this paragraph referred to as the "new corporation"),

(i) control of a corporation is deemed not to have been acquired by any person or group of persons solely because of the amalgamation unless it is deemed by subparagraph (ii) or (iii) to have been so acquired,

(ii) a person or group of persons that controls the new corporation immediately after the amalgamation and did not control a predecessor corporation immediately before the amalgamation is deemed to have acquired immediately before the amalgamation control of the predecessor corporation and of each corporation it controlled immediately before the amalgamation (unless the person or group of persons would not have acquired control of the predecessor corporation if the person or group of persons had acquired all the shares of the predecessor corporation immediately before the amalgamation), and

(iii) control of a predecessor corporation and of each corporation it controlled immediately before the amalgamation is deemed to have been acquired immediately before the amalgamation by a person or group of persons

(A) unless the predecessor corporation was related (otherwise than because of a right referred to in paragraph 251(5)(b)) immediately before the amalgamation to each other predecessor corporation,

(B) unless, if one person had immediately after the amalgamation acquired all the shares of the new corporation's capital stock that the shareholders of the predecessor corporation, or of another predecessor corporation that controlled the predecessor corporation, acquired on the amalgamation in consideration for their shares of the predecessor corporation or of the other predecessor corporation, as the case may be, the person would have acquired control of the new corporation as a result of the acquisition of those shares, or

(C) unless this subparagraph would, but for this clause, deem control of each predecessor corporation to have been acquired on the amalgamation where the amalgamation is an amalgamation of

(I) two corporations, or

(II) two corporations (in this subclause referred to as the "parents") and one or more other corporations (each of which is in this subclause referred to as a "subsidiary") that would, if all the shares of each subsidiary's capital stock that were held immediately before the amalgamation by the parents had been held by one person, have been controlled by that person;

(c) subject to paragraph (a), where 2 or more persons (in this paragraph referred to as the "transferors") dispose of shares of the capital stock of a particular corporation in exchange for shares of the capital stock of another corporation (in this paragraph referred to as the "acquiring corporation"), control of the acquiring corporation and of each corporation controlled by it immediately before the exchange is deemed to have been acquired at the time of the exchange by a person or group of persons unless

(i) the particular corporation and the acquiring corporation were related (otherwise than because of a right referred to in paragraph 251(5)(b)) to each other immediately before the exchange, or

(ii) if all the shares of the acquiring corporation's capital stock that were acquired by the transferors on the exchange were acquired at the time of the exchange by one person, the person would not control the acquiring corporation;

(d) where at any time shares of the capital stock of a particular corporation are disposed of to another corporation (in this paragraph referred to as the "acquiring corporation") for consideration that includes shares of the acquiring corporation's capital stock and, immediately after that time, the acquiring corporation and the particular corporation are controlled by a person or group of persons who

(i) controlled the particular corporation immediately before that time, and

(ii) did not, as part of the series of transactions or events that includes the disposition, cease to control the acquiring corporation,

control of the particular corporation and of each corporation controlled by it immediately before that time is deemed not to have been acquired by the acquiring corporation solely because of the disposition; and

(e) where at any time all the shares of the capital stock of a particular corporation are disposed of to another corporation (in this paragraph referred to as the "acquiring corporation") for consideration that consists solely of shares of the acquiring corporation's capital stock and, immediately after that time,

(i) the acquiring corporation is not controlled by any person or group of persons, and

(ii) the fair market value of the shares of the capital stock of the particular corporation is not less than 95% of the fair market value of all the assets of the acquiring corporation,

control of the particular corporation and of each corporation controlled by it immediately before that time is deemed not to have been acquired by the acquiring corporation solely because of the disposition.

Proposed Amendment — 256(7)(e)

(e) control of a particular corporation and of each corporation controlled by it immediately before a particular time is deemed not to have been acquired at the particular time by a corporation (in this paragraph referred to as the "acquiring corporation") if at the particular time, the acquiring corporation acquires shares of the particular corporation's capital stock for consideration that consists solely of shares of the acquiring corporation's capital stock, and if

(i) immediately after the particular time

(A) the acquiring corporation owns all the shares of each class of the particular corporation's capital stock (determined without reference to shares of a specified class, within the meaning assigned by paragraph 88(1)(c.8)),

(B) the acquiring corporation is not controlled by any person or group of persons, and

(C) the fair market value of the shares of the particular corporation's capital stock that are owned by the acquiring corporation is not less than 95% of the fair market value of all of the assets of the acquiring corporation, or

(ii) any of clauses (i)(A) to (C) do not apply and the acquisition occurs as part of a plan of arrangement that, on completion, results in

(A) the acquiring corporation (or a new corporation that is formed on an amalgamation of the acquiring corporation and a subsidiary wholly-owned corporation of the acquiring corporation) owning all the shares of each class of the particular corporation's capital stock (determined without reference to shares of a specified class, within the meaning assigned by paragraph 88(1)(c.8)),

(B) the acquiring corporation (or the new corporation) not being controlled by any person or group of persons, and

(C) the fair market value of the shares of the particular corporation's capital stock that are owned by the acquiring corporation (or the new corporation) being not less than 95% of the fair market value of all of the assets of the acquiring corporation (or the new corporation).

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 190(4), will amend para. 256(7)(e) to read as above, applicable in respect of shares acquired after 1999.

Technical Notes: Paragraph 256(7)(e) provides that, where certain conditions are satisfied, control of a particular corporation will be considered not to have been acquired solely because of a disposition of all of the shares of the particular corporation for consideration consisting solely of shares of the acquiring corporation. These conditions include a requirement that, immediately after the disposition, the acquiring corporation is not controlled by a person or group of persons and that the fair market value of the shares of the particular corporation is not less than 95% of the fair market value of all of the assets of the acquiring corporation.

Paragraph 256(7)(e) is amended, for shares acquired after 1999, to ensure that it applies on the acquisition of any shares of the capital stock of the particular corporation by the acquiring corporation if, immediately after the acquisition, the acquiring corporation owns all of the shares of the capital stock of the particular corporation (other than shares of a specified class) and the 95% test is met. This provision is also amended to deem control not to be acquired if shares of the particular corporation are acquired as part of a plan of arrangement and, upon completion of the arrangement, the acquiring corporation owns all the shares of the capital stock of the particular corporation (other than shares of a specified class) and the 95% test is met. Thus, amended paragraph 256(7)(e) may apply in circumstances where the acquiring corporation owns shares of the capital stock of the particular corporation before the acquisition being examined. In addition, amended paragraph 256(7)(e) excludes shares of a specified class, as defined in paragraph 88(1)(c.8), from the determination of whether the acquiring corporation has acquired all of the shares of the particular corporation. Shares of a specified class are excluded on the basis that they are non-voting securities similar to debt and should not be considered in determining whether control has been acquired for the purpose of paragraph 256(7)(e).

This amendment also ensures that, in circumstances where the acquisition occurs as part of a plan of arrangement, the acquiring corporation includes a new corporation formed on an amalgamation of the acquiring corporation and a subsidiary controlled corporation of the acquiring corporation. As a result, paragraph 256(7)(e) may apply to a situation where the acquiring corporation owns shares of the particular corporation indirectly through a subsidiary controlled corporation if the acquiring corporation and the subsidiary controlled corporation are amalgamated as part of a plan of arrangement that includes the acquisition.

Related Provisions: 139.1(18) — Control deemed not acquired on demutualization of insurer; 256(8.1) — Corporations without share capital.

History: The opening words of subsec. 256(7) amended by 2005, c. 19, s. 55 to replace "subsections 85(1.2) and 88(1.1) and (1.2)" with "subsections 85(1.2), 88(1.1) and (1.2) and 110.1(1.2)", applicable in respect of gifts made after March 22, 2004.

The opening words of subsec. 256(7) amended by 1998, c. 19, subsec. 246(2), applicable after April 26, 1995 except that the reference to section 18.1 is applicable after November 17, 1996. The opening words formerly read:

> (7) For the purposes of subsection 13(24), sections 37 and 55, subsections 66(11), (11.4) and (11.5), 66.5(3) and 66.7(10) and (11), section 80, paragraph 80.04(4)(h), subsections 85(1.2), 87(2.1) and (2.11), 88(1.1) and (1.2) and 89(1.1), sections 111 and 127 and subsection 249(4),

Subpara. 256(7)(a)(ii) amended by the said c. 19, subsec. 246(3), applicable to 1994 *et seq.* Subpara. 256(7)(a)(ii) formerly read:

> (ii) the redemption or cancellation at any time of shares of the particular corporation or of a corporation controlling the particular corporation, where the person or each member of the group of persons that controls the corporation immediately after that time was related to the corporation (otherwise than because of a right referred to in paragraph 251(5)(b)) immediately before that time; and

Para. 256(7)(b) amended, paras. (c), (d) and (e) added, by the said c. 19, subsec. 246(4), para. 256(7)(b) applicable

> (a) to mergers that occur after April 26, 1995, other than a merger that occurs pursuant to a written agreement made before that day where the corporate entity formed by the merger so elects before January 1999; and
>
> (b) to a merger that occurred after 1992 and before April 26, 1995 where the corporate entity formed by the merger so elects before January 1999;

para. 256(7)(c) applicable to exchanges that occur after April 26, 1995, other than an exchange that occurs pursuant to a written agreement made before that day; and paras. 256(7)(d) and (e) applicable after April 26, 1995 except that, with respect to acquisitions of shares that occur before June 20, 1996 or pursuant to a written agreement made before June 20, 1996, subpara. 256(7)(e)(ii) shall be read as follows:

> (ii) all or substantially all of the fair market value of the shares of the acquiring corporation's capital stock is attributable to the shares acquired by it at that time,

Para. 256(7)(b) formerly read:

> (b) where there has been an amalgamation (within the meaning assigned by section 87) of two or more corporations after November 12, 1981, and a person or group of persons controlled the new corporation immediately after the amalgamation and did not control a particular predecessor corporation immediately before the amalgamation, that person or group of persons shall be deemed to have acquired control of the particular predecessor corporation immediately before the amalgamation unless control would not have been acquired if the person or group of persons that controlled the new corporation immediately after the amalgamation had acquired all of the shares of the particular predecessor corporation immediately before the amalgamation.

The opening words of subsec. 256(7) amended by 1995, c. 21, subsec. 44(1), applicable to amalgamations, acquisitions, redemptions and cancellations that occur after February 21, 1994. The opening words formerly read:

> (7) For the purposes of subsection 13(24), sections 37 and 55, subsections 66(11), (11.4) and (11.5), 66.5(3), 66.7(10) and (11), 85(1.2), 87(2.1) and (2.11), 88(1.1) and (1.2) and 89(1.1), sections 111 and 127 and subsection 249(4),

The opening words of subsec. 256(7) amended by 1995, c. 3, subsec. 55(1), applicable to amalgamations, acquisitions, redemptions and cancellations that occur after February 21, 1994. The opening words formerly read:

> (7) For the purposes of subsection 13(24), section 37, subsections 66(11), (11.4) and (11.5), 66.5(3), 66.7(10) and (11), 85(1.2), 87(2.1) and (2.11), 88(1.1) and (1.2) and 89(1.1), sections 111 and 127 and subsection 249(4),

All that portion of subsec. 256(7) preceding para. (b) substituted by 1994, c. 21, s. 114, applicable to acquisitions, redemptions and cancellations occurring after 1992. That portion of the subsec. formerly read:

> (7) Control deemed not to be acquired — For the purposes of subsection 13(24), section 37, subsections 66(11), (11.4) and (11.5), 66.5(3), 66.7(10) and (11), 85(1.2), 87(2.1), 88(1.1) and (1.2) and 89(1.1), sections 111 and 127 and subsection 249(4),
>
> (a) a person shall be deemed not to have acquired control of a particular corporation, or of any corporation controlled by it, because of the redemption, acquisition or cancellation of shares of the particular corporation if that person
>
> (i) was, immediately before the share redemption, acquisition or cancellation, related (otherwise than because of a right referred to in paragraph 251(5)(b)) to the particular corporation,
>
> (ii) was an executor, administrator or trustee of an estate who acquired the shares by virtue of the death of any other person,
>
> (iii) acquired the shares by way of a distribution from an estate arising on the death of another person with whom the first-mentioned person was related, or
>
> (iv) was a corporation formed by an amalgamation (within the meaning of section 87) of two or more predecessor corporations each of which was related (otherwise than by virtue of a right referred to in paragraph 251(5)(b)) to the particular corporation immediately before the amalgamation; and

All that portion of subsec. 256(7) preceding subpara. (a)(ii) amended by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 198(3), (4), to add reference to subsec. 85(1.2), applicable to dispositions occurring after 1984, and to substitute all that portion of para. (a) preceding subsec. (ii), applicable with respect to redemptions, acquisitions and cancellations of shares occurring after 1989, except that, in applying the para. to a person who so elected by notifying the Minister of National Revenue in writing before 1992 [1994, c. 7, Sch. VIII (1993, c. 24), s. 159 provides that such an election made before December 11, 1993 shall be deemed to have been made before 1992], the references therein to "redemption" and "cancellation" shall be read as references to "redemption after July 13, 1990" and "cancellation after July 13, 1990", respectively. The substitution portion of para. (a) formerly read:

> (a) where shares of a particular corporation have been acquired by a person after March 31, 1977, that person shall be deemed not to have acquired control of the particular corporation by virtue of that share acquisition if that person
>
> (i) was, immediately before the share acquisition, related (otherwise than by virtue of a right referred to in paragraph 251(5)(b)) to the particular corporation,

Selected Cases [subsec. 256(7)]: *Duha Printers (Western) Ltd. v. R.*, [1998] 3 C.T.C. 303 (SCC); Reversed [1996] 3 C.T.C. 19 (FCA) (Documents of constitutional or constating nature may be used to determine relationship and *de jure* control).

Interpretation Bulletins: IT-64R4: Corporations: association and control; IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987.

I.T. Technical News: 7 (control by a group — 50/50 arrangement); 16 (*Duha Printers* case).

Advance Tax Rulings: ATR-7: Amalgamation involving losses and control.

(8) Deemed exercise of right — Where at any time a taxpayer acquires a right referred to in paragraph 251(5)(b) in respect of a share and it can reasonably be concluded that one of the main purposes of the acquisition is

(a) to avoid any limitation on the deductibility of any non-capital loss, net capital loss, farm loss or any ex-

pense or other amount referred to in subsection 66(11), 66.5(3) or 66.7(10) or (11),

(b) to avoid the application of subsection 10(10) or 13(24), paragraph 37(1)(h) or subsection 55(2) or 66(11.4) or (11.5), paragraph 88(1)(c.3) or subsection 111(4), (5.1), (5.2) or (5.3), 181.1(7) or 190.1(6),

(c) to avoid the application of paragraph (j) or (k) of the definition "investment tax credit" in subsection 127(9),

(d) to avoid the application of section 251.1, or

(e) to affect the application of section 80,

the taxpayer is deemed to be in the same position in relation to the control of the corporation as if the right were immediate and absolute and as if the taxpayer had exercised the right at that time for the purpose of determining whether control of a corporation has been acquired for the purposes of subsections 10(10) and 13(24), section 37, subsections 55(2), 66(11), (11.4) and (11.5), 66.5(3), 66.7(10) and (11), section 80, paragraph 80.04(4)(h), subparagraph 88(1)(c)(vi), paragraph 88(1)(c.3), sections 111 and 127 and subsections 181.1(7), 190.1(6) and 249(4), and in determining for the purpose of section 251.1 whether a corporation is controlled by any person or group of persons.

Related Provisions: 256(8.1) — Corporations without share capital.

History: Subsec. 256(8) amended by 1998, c. 19, subsec. 246(5), applicable after February 21, 1994 except that,

(a) in its application after February 21, 1994 and before June 24, 1994, subsec. 256(8) shall be read as follows:

(8) Where at any time a taxpayer acquires a right referred to in paragraph 251(5)(b) in respect of shares and it can reasonably be concluded that one of the main purposes of the acquisition is

(a) to avoid any limitation on the deductibility of any non-capital loss, net capital loss, farm loss or any expense or other amount referred to in subsection 66(11), 66.5(3) or 66.7(10) or (11),

(b) to avoid the application of subsection 13(24), paragraph 37(1)(h), subsection 66(11.4) or (11.5), paragraph 88(1)(c.3) or subsection 111(4), (5.1), (5.2) or (5.3),

(c) to avoid the application of paragraph (j) or (k) of the definition "investment tax credit" in subsection 127(9), or

(d) to affect the application of section 80,

the taxpayer is deemed to have acquired the shares at that time for the purpose of determining whether control of the corporation has been acquired for the purposes of subsection 13(24), section 37, subsections 66(11), (11.4) and (11.5), 66.5(3) and 66.7(10) and (11), section 80, paragraph 80.04(4)(h), subparagraph 88(1)(c)(vi), paragraph 88(1)(c.3), sections 111 and 127 and subsection 249(4).

and

(b) in its application after June 23, 1994 and before April 27, 1995, subsec. 256(8) shall be read as follows:

(8) Where at any time a taxpayer acquires a right referred to in paragraph 251(5)(b) in respect of shares and it can reasonably be concluded that one of the main purposes of the acquisition is

(a) to avoid any limitation on the deductibility of any non-capital loss, net capital loss, farm loss or any expense or other amount referred to in subsection 66(11), 66.5(3) or 66.7(10) or (11),

(b) to avoid the application of subsection 13(24), paragraph 37(1)(h), subsection 55(2), 66(11.4) or (11.5), paragraph 88(1)(c.3) or subsection 111(4), (5.1), (5.2) or (5.3),

(c) to avoid the application of paragraph (j) or (k) of the definition "investment tax credit" in subsection 127(9), or

(d) to affect the application of section 80,

the taxpayer is deemed to have acquired the shares at that time for the purpose of determining whether control of the corporation has been acquired for the purposes of subsection 13(24), sections 37 and 55, subsections 66(11), (11.4) and (11.5), 66.5(3) and 66.7(10) and (11), section 80, paragraph 80.04(4)(h) subparagraph 88(1)(c)(vi), paragraph 88(1)(c.3), sections 111 and 127 and subsection 249(4).

Subsec. 256(8) formerly read:

(8) Deemed acquisition of shares — Where at any time a taxpayer acquires a right referred to in paragraph 251(5)(b) with respect to shares and it can reasonably be concluded that one of the main purposes of the acquisition is

(a) to avoid any limitation on the deductibility of any non-capital loss, net capital loss, farm loss, expense or other amount referred to in subsection 66(11), 66.5(3) or 66.7(10) or (11),

(b) to avoid the application of subsection 13(24), paragraph 37(1)(h) or subsection 55(2), 66(11.4) or (11.5) or 111(4), (5.1), (5.2) or (5.3),

(c) to avoid the application of paragraph (j) or (k) of the definition "investment tax credit" in subsection 127(9), or

(d) to affect the application of section 80,

in determining whether control of the corporation is acquired for the purposes of subsection 13(24), sections 37 and 55, subsections 66(11), (11.4) and (11.5), 66.5(3) and 66.7(10) and (11), section 80, paragraph 80.04(4)(h), sections 111 and 127 and subsection 249(4), the taxpayer shall be deemed to have acquired the shares at that time.

Subsec. 256(8) amended by 1995, c. 21, subsec. 44(2), applicable to acquisitions that occur after February 21, 1994, except that, with respect to acquisitions that occur before June 24, 1993,

(a) paragraph 256(8)(b) shall be read without reference to subsec. 55(2); and

(b) the concluding portion of subsection 256(8) shall be read without reference to s. 55.

Subsec. (8) formerly read:

(8) Deemed acquisition of shares — Where at any time a taxpayer has acquired a right referred to in paragraph 251(5)(b) with respect to shares and it can reasonably be concluded that one of the main purposes of the acquisition was to avoid

(a) any limitation on the deductibility of any non-capital loss, net capital loss, farm loss, expense or other amount referred to in subsection 66(11), 66.5(3) or 66.7(10) or (11),

(b) the application of subsection 13(24), paragraph 37(1)(h), or subsection 55(2), 66(11.4) or (11.5), 111(4), (5.1), (5.2) or (5.3), or

(c) the application of paragraph (j) or (k) of the definition "investment tax credit" in subsection 127(9),

in determining whether control of a corporation has been acquired for the purposes of subsection 13(24), sections 37 and 55, subsections 66(11), (11.4) and (11.5), 66.5(3) and 66.7(10) and (11), sections 111 and 127 and subsection 249(4), the taxpayer shall be deemed to have acquired the shares at that time.

That portion of subsec. 256(8) after para. (a) amended by 1995, c. 3, subsec. 55(2), applicable to acquisitions that occur after June 23, 1994. That portion formerly read:

(b) the application of subsection 13(24), paragraph 37(1)(h) or subsection 66(11.4) or (11.5), 111(4), (5.1), (5.2) or (5.3), or

(c) the application of paragraph (j) or (k) of the definition "investment tax credit" in subsection 127(9),

in determining whether control of the corporation has been acquired for the purposes of subsection 13(24), section 37, subsections 66(11), (11.4) and (11.5), 66.5(3), 66.7(10) and (11), sections 111 and 127 and subsection 249(4), the taxpayer shall be deemed to have acquired the shares at that time.

Interpretation Bulletins: IT-64R4: Corporations: association and control.

(8.1) Corporations without share capital — For the purposes of subsections (7) and (8),

(a) a corporation incorporated without share capital is deemed to have a capital stock of a single class;

(b) each member, policyholder and other participant in the corporation is deemed to be a shareholder of the corporation; and

(c) the membership, policy or other interest in the corporation of each of those participants is deemed to be the number of shares of the corporation's capital stock that the Minister considers reasonable in the circumstances, having regard to the total number of participants in the corporation and the nature of their participation.

History: Subsec. 256(8.1) added by 1998, c. 19, subsec. 246(5), applicable after April 26, 1995.

(9) Date of acquisition of control — For the purposes of this Act, where control of a corporation is acquired by a person or group of persons at a particular time on a day, control of the corporation shall be deemed to have been acquired by the person or group of persons, as the case may be, at the commencement of that day and not at the particular time unless the corporation elects in its return of income under Part I filed for its taxation year ending immediately before the acquisition of control not to have this subsection apply.

Related Provisions: 220(3.2), Reg. 600(b) — Late filing or revocation of election; 249(4) — Deemed year end where change of control occurs; Reg. 6204(4) — Subsec. 256(9) ignored for purposes of "specified person" in determining prescribed shares under 110(1)(d).

Definitions [s. 256]: "amount" — 248(1); "arm's length" — 251(1); "associated" — 256; "business" — 248(1); "Canada" — 255; "Canadian-controlled private corporation" — 125(7), 248(1); "child" — 252(1); "class of shares" — 248(6); "common share" — 248(1); "controlled directly or indirectly" — 256(5.1), (6.2); "corporation", "dividend" — 248(1); "distribution date" — 256(1.2)(f)(i); "estate" — 104(1), 248(1); "farm loss" — 111(8), 248(1); "fiscal period" — 249(2)(b), 249.1; "group" — 256(1.2)(a); "individual" — 248(1); "investment tax credit" — 127(9), 248(1); "Minister" — 248(1); "net capital loss", "non-capital loss" — 111(8), 248(1); "paid-up capital" — 89(1), 248(1); "parent" — 252(2); "person", "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "principal amount", "property" — 248(1); "related" — 251(2)–(6); "related group" — 251(4); "series of transactions" — 248(10); "share", "shareholder" — 248(1); "specified class" — 88(1)(c.8), 256(1.1); "subsidiary wholly-owned corporation" — 248(1); "substituted property" — 248(5); "taxation year" — 249; "taxpayer" — 248(1); "testamentary trust" — 108(1), 248(1); "trust" — 104(1), 248(1), (3).

257. Negative amounts — Except as specifically otherwise provided, where an amount or a number is required under this Act to be determined or calculated by or in accordance with an algebraic formula, if the amount or number when so determined or calculated would, but for this section, be a negative amount or number, it shall be deemed to be nil.

Related Provisions: 248(1)"taxable income" — Taxable income cannot be less than nil.

Definitions [s. 257]: "amount" — 248(1).

258. (1) [Repealed under former Act]

(2) Deemed dividend on term preferred share — Notwithstanding subsection 15(3), an amount paid or payable after 1978 as interest on or as an amount in lieu of interest in respect of

(a) any interest or dividend payable after November 16, 1978 on an income bond or an income debenture issued before November 17, 1978 or pursuant to an agreement in writing made before that date, or

(b) a dividend that became payable or in arrears after November 16, 1978 on a share of the capital stock of a corporation that is not a term preferred share by reason of having been issued before November 17, 1978 or pursuant to an agreement in writing made before that date,

shall, for the purposes of subsections 112(2.1) and 138(6), be deemed to be a dividend received on a term preferred share.

Related Provisions: 248(13) — Interests in trusts and partnerships.

Interpretation Bulletins: IT-52R4: Income bonds and income debentures (archived).

(3) Deemed interest on preferred shares — Subject to subsection (4), for the purposes of paragraphs 12(1)(c) and (k) and sections 113 and 126, each amount that is a dividend received in a taxation year on

(a) a term preferred share by a specified financial institution resident in Canada from a corporation not resident in Canada, or

(b) any other share that

(i) is a grandfathered share, or

(ii) was issued before 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 and is not deemed by subsection 112(2.22) to have been issued after that time

by a corporation from a corporation not resident in Canada, if the dividend would have been a dividend in respect of which no deduction could have been made under subsection 112(1) or (2) or 138(6) because of subsection 112(2.2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read on June 17, 1987, if the corporation that paid the dividend were a taxable Canadian corporation

shall be deemed to be interest received in the year and not a dividend received on a share of the capital stock of a corporation.

Related Provisions: 248(1) — "amount" — stock dividend; 248(13) — Interests in trusts and partnerships.

History: Subpara. 258(3)(b)(ii) amended by 2001, c. 17, s. 195, applicable in respect of dividends received after 1998. Subpara.(3)(b)(ii) formerly read:

(ii) was issued before 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 and was not deemed by paragraph 112(2.2)(f) to have been issued after that time

Para. 258(3)(b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 141, applicable to dividends received or deemed to be received on shares acquired after 8:00 p.m. EDST, June 18, 1987. Para. (3)(b) formerly read:

(b) any other share by a corporation from a corporation not resident in Canada, if the dividend would have been a dividend in respect of which no deduction could have been made under subsection 112(1) or (2) or 138(6) by reason of subsection 112(2.2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read on June 17, 1987 if the corporation that paid the dividend were a taxable Canadian corporation

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Interpretation Bulletins: IT-88R2: Stock dividends.

(4) Exception — Subsection (3) is not applicable to a dividend described in paragraph (3)(a) if the share on which the dividend was paid was not acquired in the ordinary course of the business carried on by the corporation.

(5) Deemed interest on certain shares — For the purposes of paragraphs 12(1)(c) and (k) and sections 113 and 126, a dividend received after June 18, 1987 and in a taxation year from a corporation not resident in Canada, other than a corporation in which the recipient had or would have, if the corporation were a taxable Canadian corporation, a substantial interest (within the meaning assigned by section 191), on a share, if the dividend would have been a dividend in respect of which no deduction could have been made under subsection 112(1) or (2) or 138(6) by reason of subsection 112(2.2) or (2.4) if the corporation that paid the dividend were a taxable Cana-

dian corporation, shall be deemed to be interest received in the year and not a dividend received on a share of the capital stock of the payer corporation.

Related Provisions: 248(1)"amount" — stock dividend; 248(13) — Interests in trusts and partnerships.

Definitions [s. 258]: "amount" — 248(1); "Canada" — 255; "corporation", "dividend", "income bond", "grandfathered share", "person" — 248(1); "resident in Canada" — 250; "share" — 248(1); "specified financial institution" — 248(1); "taxable Canadian corporation" — 89(1), 248(1); "taxation year" — 249; "term preferred share" — 248(1); "trust" — 248(1), (3); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [s. 258]: IT-88R2: Stock dividends.

259. (1) Proportional holdings in trust property — For the purposes of subsections 146(6), (10) and (10.1) and 146.3(7), (8) and (9) and Parts X, X.2 and XI.1, if at any time a taxpayer that is a registered investment or that is described in paragraph 149(1)(r), (s), (u) or (x) acquires, holds or disposes of a particular unit in a qualified trust and the qualified trust elects for any period that includes that time to have this subsection apply,

Proposed Amendment — 259(1) opening words

259. Proportional holdings in trust property — **(1)** For the purposes of subsections 146(6), (10) and (10.1), 146.1(2.1) and 146.3(7), (8) and (9) and Parts X, X.2 and XI.1, if at any time a taxpayer that is a registered investment or that is described in paragraph 149(1)(r), (s), (u) or (x) acquires, holds or disposes of a particular unit in a qualified trust and the qualified trust elects for any period that includes that time to have this subsection apply,

Application: The July 18, 2005 draft legislation (Part 2 — technical), s. 191, will amend the opening words of subsec. 259(1) to read as above, applicable to 2000 *et seq.*, except that in their application to taxation years that begin before 2005, the opening words are to be read as follows:

> 259. (1) For the purposes of subsections 146(6), (10) and (10.1), 146.1(2.1) and 146.3(7), (8) and (9) and Parts X, X.2, XI and XI.1, if at any time a taxpayer described in section 205 acquires, holds or disposes of a particular unit in a qualified trust and the qualified trust elects for any period that includes that time to have this subsection apply,

Technical Notes: Subsection 259(1) provides a "look-through" rule that applies to certain taxpayers (including trusts governed by RRSPs) that acquire units of a "qualified trust". If the qualified trust so elects, each taxpayer is deemed to acquire, hold and dispose of its proportionate interest in the underlying assets of the qualified trust. This rule can benefit a taxpayer where the direct investment in the units of the qualified trust would constitute a non-qualified investment. By "looking through" to the underlying assets of the qualified trust, a taxpayer may be able to reduce or eliminate the tax penalties that result from holding non-qualified investments.

Subsection 259(1) is amended so that it applies for the purpose of the registration rules for registered education savings plans (RESPs). Under subsection 146.1(2.1), the registration of an RESP is revocable if a trust governed by the plan holds a non-qualified investment. This amendment will permit an RESP trust to make a direct investment in a qualified trust that is itself a non-qualified investment, without jeopardizing the registered status of the RESP, provided the qualified trust restricts its holdings to qualified investments.

(a) the taxpayer shall be deemed not to acquire, hold or dispose of at that time, as the case may be, the particular unit;

(b) where the taxpayer holds the particular unit at that time, the taxpayer shall be deemed to hold at that time that proportion (referred to in this subsection as the "specified portion") of each property (in this subsection referred to as a "relevant property") held by the trust at that time that one (or, where the particular unit is a fraction of a whole unit, that fraction) is of the number of units of the trust outstanding at that time;

(c) [Repealed]

(d) where that time is the later of

(i) the time the trust acquires the relevant property, and

(ii) the time the taxpayer acquires the particular unit,

the taxpayer shall be deemed to acquire the specified portion of a relevant property at that time;

(e) where that time is the time the specified portion of a relevant property is deemed by paragraph (d) to have been acquired, the fair market value of the specified portion of the relevant property at that time shall be deemed to be the specified portion of the fair market value of the relevant property at the time of its acquisition by the trust;

(f) where that time is the time immediately before the time the trust disposes of a particular relevant property, the taxpayer shall be deemed to dispose of, immediately after that time, the specified portion of the particular relevant property for proceeds equal to the specified portion of the proceeds of disposition to the trust of the particular relevant property;

(g) where that time is the time immediately before the time the taxpayer disposes of the particular unit, the taxpayer shall be deemed to dispose of, immediately after that time, the specified portion of each relevant property for proceeds equal to the specified portion of the fair market value of that relevant property at that time; and

(h) where the taxpayer is deemed because of this subsection

(i) to have acquired a portion of a relevant property as a consequence of the acquisition of the particular unit by the taxpayer and the acquisition of the relevant property by the trust, and

(ii) subsequently to have disposed of the specified portion of the relevant property,

the specified portion of the relevant property shall, for the purposes of determining the consequences under this Act of the disposition and without affecting the proceeds of disposition of the specified portion of the relevant property, be deemed to be the portion of the relevant property referred to in subparagraph (i).

Related Provisions: 206(2.1) — Exemption from Part XI tax when election made.

(2) [Repealed]

(3) Election — An election by a qualified trust under subsection (1) shall be made by the qualified trust filing a prescribed form with the Minister and shall apply for the period

(a) that begins on the later of

(i) the day that is 15 months before the day on which the election is filed, and

(ii) the day, if any, that is designated by the qualified trust in the election; and

(b) that ends on the earlier of

(i) the day on which the qualified trust files with the Minister a notice of revocation of the election, and

(ii) the day, if any, that is designated by the qualified trust in the notice of revocation and that is not before the day that is 15 months before the day on which the notice of revocation is filed.

Related Provisions: 206(2.1) — Exemption from Part XI tax when election made.

Interpretation Bulletins: IT-412R2: Foreign property of registered plans.

Forms: T1024: Election to deem a proportional holding in qualified trust/corporate property.

(4) Requirement to provide information — Where a qualified trust elects under subsection (1),

(a) it shall provide notification of the election

(i) within 30 days after making the election, to each person who held a unit in the qualified trust at any time in the period before the election was made and during which the election is applicable, and

(ii) at the time of acquisition, to each person who acquires a unit in the qualified trust at any time in the period after the election was made and during which the election is applicable; and

(b) if a person who holds a unit in the qualified trust at any time in the period during which the election is applicable makes a written request to the qualified trust for information that is necessary for the purpose of determining the consequences under this Act of the election for that person, the qualified trust shall provide to the person that information within 30 days after receiving the request.

(5) Definitions — In this section,

"qualified corporation" — [Repealed]

"qualified trust" at any time means a trust (other than a registered investment or a trust that is prescribed to be a small business investment trust) where

(a) each trustee of the trust at that time is a corporation that is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as a trustee or a person who is a trustee of a trust governed by a registered pension plan,

(b) all the interests of the beneficiaries under the trust at that time are described by reference to units of the trust all of which are at that time identical to each other,

(c) it has never before that time borrowed money except where the borrowing was for a term not exceeding 90 days and the borrowing was not part of a series of loans or other transactions and repayments, and

(d) it has never before that time accepted deposits.

Related Provisions: 149(1)(o.4) — No tax payable by master trust; 248(10) — Series of transactions; 248(12) — Identical properties.

Regulations: 5103 (prescribed small business investment trust; needs to be amended to apply for 259(5) rather than 259(3)).

History [s. 259]: Opening words of subsec. 259(1) amended by 2005, c. 30, subsec. 18(1), applicable to taxation years that begin after 2004. The opening words formerly read:

For the purposes of subsections 146(6), (10) and (10.1) and 146.3(7), (8) and (9) and Parts X, X.2, XI and XI.1, where at any time a taxpayer described in section 205 acquires, holds or disposes of a particular unit in a qualified trust and the trust elects for any period that includes that time to have the provisions of this subsection apply,

Para. 259(1)(c) and subsec. 259(2) repealed by the said c. 30, subsecs. 18(2), (3), applicable to taxation years that begin after 2004. The para. and subsec. formerly read:

(c) the cost amount to the taxpayer at that time of the specified portion of a relevant property shall be deemed to be equal to the specified portion of the cost amount at that time to the trust of the relevant property;

. . . . .

(2) Proportional holdings in corporate property — Subsection (1) applies to an election by a qualified corporation as if

(a) the reference to "a qualified trust" were read as "the capital stock of a qualified corporation";

(b) the references to "unit" were read as "share"; and

(c) the references to "the trust" were read as "the corporation".

Subsecs. 259(3) and (4) amended by the said c. 30, subsec. 18(4), applicable to taxation years that begin after 2004. The subsecs. formerly read:

(3) The election by a trust or a corporation (in this subsection referred to as the "elector") under subsection (1) shall be made by the elector filing a prescribed form with the Minister and shall apply for the period beginning 15 months before the day of filing thereof (or such later time as the elector designates in its election) and ending at such time as the election is revoked by the elector filing with the Minister a notice of revocation (or at such earlier time within the 15-month period before the day on which the notice of revocation is filed with the Minister as the elector designates in its notice of revocation).

(4) Where a trust or a corporation elects under subsection (1),

(a) it shall, not more than 30 days after making the election, notify each person who, before the election is made and during the period for which the election is made, held a unit in the trust or a share in the capital stock of the corporation, as the case may be, of the election; and

(b) where any person who holds such a unit or share during the period for which the election is made makes a written request to the trust or the corporation for information that is necessary for the purpose of determining the consequences under this Act of the election for that person, the trust or the corporation, as the case may be, shall provide the person with that information not more than 30 days after the receipt of the request.

The definition "qualified corporation" in subsecs. 259(5) amended by the said c. 30, subsec. 18(5), applicable to taxation years that begin after 2004. The definition formerly read:

"qualified corporation" at any time means a corporation described in paragraph 149(1)(o.2) where, at that time,

(a) all the issued and outstanding shares of the capital stock of the corporation are identical to each other, or

(b) all the issued and outstanding shares of the capital stock of the corporation are held by one person;

S. 259 substituted by 1994, c. 21, s. 115, subsecs. (1), (3) and (5) applicable to periods occurring after 1985, subsec. (2) applicable to periods occurring after 1991, and subsec. (4) applicable to elections made after December 21, 1992. That section formerly read:

259. (1) Proportional holdings in trust property — For the purposes of subsections 146(6), (10) and (10.1) and 146.3(7) to (9) and Parts X, X.2, XI and XI.1 of this Act and subsections 146.2(12), (13) and (14) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, where at any time a taxpayer described in section 205 acquires, holds or disposes of an interest in a qualified trust and the trust elects for any period that includes that time to have the provisions of this subsection apply, the taxpayer shall be deemed

(a) not to acquire, hold or dispose of at that time, as the case may be, that interest in the trust;

(b) to hold at that time that proportion (in this subsection referred to as the taxpayer's "specified portion") of each property of the trust that the number of units of the trust held by the taxpayer at that time is of the number of units of the trust outstanding at that time, and the cost amount to the trust of the taxpayer's specified portion of each such property shall be deemed to be the cost amount to the taxpayer of the taxpayer's specified portion of the property;

(c) to acquire the taxpayer's specified portion of each property of the trust at the later of

(i) the date the trust acquires the property, and

(ii) the date the taxpayer acquires the interest in the trust,

and the fair market value, at the time of acquisition by the taxpayer, of the taxpayer's specified portion of the property shall be deemed to be the fair market value of that specified portion of the property at the time of its acquisition by the trust; and

(d) to dispose of the taxpayer's specified portion of each property of the trust at the earlier of

(i) the date the trust disposes of the property, and

(ii) the date the taxpayer disposes of the interest in the trust

for proceeds equal to,

(iii) where subparagraph (i) applies, the proceeds of disposition to the trust of the taxpayer's specified portion of the property, and

(iv) where subparagraph (ii) applies, the fair market value, immediately before the disposition of the interest, of the taxpayer's specified portion of the property.

(2) Election — The election by a trust under subsection (1) shall be made by the trust filing a prescribed form with the Minister and shall be applicable in respect of the period commencing 15 months before the date of filing thereof (or such later time as the trust may designate in its election) and ending at such time as the election is revoked by the trust filing with the Minister a notice of revocation (or at such earlier time within the 15 month period immediately preceding the date on which the notice of revocation is filed with the Minister as the trust may designate in its notice of revocation).

(3) Definition of "qualified trust" — In this section, "qualified trust" means a trust, other than a registered investment or a trust that is prescribed to be a small business investment trust, where

(a) each trustee of the trust is a corporation that is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee or a person who is a trustee of a trust governed by a registered pension fund or plan;

(b) the interests of the beneficiaries under the trust are described by reference to units of the trust that are identical in all respects and any difference between the interest in the trust of each beneficiary and the interest in the trust of each other beneficiary is dependent solely on the difference in the number of units held by those beneficiaries;

(c) it has never borrowed money except where the borrowing was for a term not exceeding 90 days and was not part of a series of loans or other transactions and repayments;

(d) it has never accepted deposits; and

(e) it complies with prescribed conditions.

Para. 259(3)(c) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 142, applicable to borrowings occurring after 1990. Para. (3)(c) formerly read:

(c) it has never borrowed money;

Definitions [s. 259]: "business" — 248(1); "Canada" — 255; "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount" — 248(1); "identical" — 248(12); "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "person", "prescribed" — 248(1); "province" — *Interpretation Act* 35(1); "qualified trust" — 259(5); "registered investment" — 204.4(1), 248(1); "registered pension plan" — 248(1); "relevant property" — 259(1)(b); "series" — 248(10); "share" — 248(1); "small business investment trust" — Reg. 5103; "series" — 248(10); "specified portion" — 259(1)(b); "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "written" — *Interpretation Act* 35(1) ["writing"].

Regulations [s. 259]: 5103 (small business investment trust).

260. (1) Definitions — In this section,

Proposed Addition — 260(1)"dealer compensation payment"

"dealer compensation payment" means an amount received by a taxpayer as compensation, for an underlying payment,

(a) from a registered securities dealer resident in Canada who paid the amount in the ordinary course of a business of trading in securities, or

(b) in the ordinary course of the taxpayer's business of trading in securities, where the taxpayer is a registered securities dealer resident in Canada;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 192(5), will add the definition "dealer compensation payment" to subsec. 260(1), applicable to arrangements made after 2001.

Technical Notes: "Dealer compensation payment" is one of the newly-defined terms, introduced not to effect any substantive change to the relevant rules but only for simplicity and clarity. A dealer compensation payment is an amount paid or received as compensation for an underlying payment by a registered securities dealer who is resident in Canada and who pays or receives the amount in the ordinary course of its business of trading in securities.

"qualified security" means

(a) a share of a class of the capital stock of a corporation that is listed on a prescribed stock exchange or of a class of the capital stock of a corporation that is a public corporation by reason of the designation of the class by the corporation in an election made under subparagraph (b)(i) of the definition "public corporation" in subsection 89(1) or by the Minister in a notice to the corporation under subparagraph (b)(ii) of that definition,

(b) a bond, debenture, note or similar obligation of a corporation described in paragraph (a) or of a corporation that is controlled by such a corporation,

(c) a bond, debenture, note or similar obligation of or guaranteed by the government of any country, province, state, municipality or other political subdivision, or a corporation, commission, agency or association controlled by any such person, or

(d) a warrant, right, option or similar instrument with respect to a share described in paragraph (a);

Proposed Addition — 260(1)"qualified security"(e)

(e) a qualified trust unit;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 192(1), will add para. (e) to the definition "qualified security" in subsec. 260(1), applicable to arrangements made after 2001.

Technical Notes: The securities lending arrangement rules apply only to securities that are qualified securities. A new paragraph (e) is added to the definition "qualified security" to include a qualified trust unit.

Letter from Dept. of Finance, December 11, 2002:

Dear [xxx]

I am writing in response to your letters concerning the application of the *Income Tax Act*'s securities lending rules to listed units of mutual fund trusts.

In your letters and our subsequent discussions, you represent that listed mutual fund trust units ought to be included as "qualified securities" for purposes of the securities lending arrangements ("SLA") rules in section 260 of the *Income Tax Act*. You explain that some taxpayers have already made loans of listed mutual fund trust units. You further state that most of the lenders are mutual funds, and suggest that such lenders need to clarify as much as possible their tax position on the lent trust units before their current taxation year ends.

We agree that the attributes of listed mutual fund trust units, in the context of the SLA rules, are very similar to those of listed stocks and bonds. Therefore, we are prepared to recommend an amendment to the

SLA rules to treat listed mutual fund trust units as "qualified securities" for the purposes of ensuring that there would be no disposition by lenders as a result of the loan of such securities. Subject to further submissions, we would propose that this change apply to loans of listed mutual fund units after 2001.

As you know, we have not been able — based on the material provided to us [xxx] — to reach a decision to recommend changes relating to the income tax treatment of compensation payments received by lenders or of compensation payments made by borrowers. However, we remain open to consider further representations on these issues.

Should this recommendation be acted upon it will be presented in a Technical Bill to be tabled at the first opportunity for consideration by Parliament.

Yours sincerely,

Len Farber
General Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: 212(1)(b)(xii), (xiii) — Exemption from withholding tax.

Regulations: 3200, 3201 (prescribed stock exchanges).

Proposed Addition — 260(1)"qualified trust unit"

"qualified trust unit" means a unit of a mutual fund trust that is listed on a prescribed stock exchange;

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 192(5), will add the definition "qualified trust unit" to subsec. 260(1), applicable to arrangements made after 2001.

Technical Notes: A "qualified trust unit" is defined to mean a unit of a mutual fund trust that is listed on a prescribed stock exchange.

"securities lending arrangement" means an arrangement under which

(a) a person (in this section referred to as the "lender") transfers or lends at any particular time a qualified security to another person (in this section referred to as the "borrower") with whom the lender deals at arm's length,

Proposed Amendment — 260(1)"securities lending arrangement"(a)

(a) a person (in this section referred to as the "lender") transfers or lends at any particular time a qualified security to another person (in this section referred to as the "borrower"),

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 192(2), will amend para. (a) of the definition "securities lending arrangement" in subsec. 260(1) to read as above, applicable to arrangements made after 2002.

Technical Notes: There are three amendments to the definition "securities lending arrangement".

Paragraph (a) of the existing definition provides that in order for there to be a securities lending arrangement, the lender and the borrower of a security must be dealing at arm's length. The amendment to paragraph (a) extends the definition to include an arrangement entered into by non-arm's length parties. New paragraph (e) provides that where the lender and borrower do not deal with each other at arm's length, the arrangement must be of a term not exceeding 270 days and must not be part of a series of securities lending arrangements, loans or other transactions intended to be in effect for more than 270 days.

(b) it may reasonably be expected, at the particular time, that the borrower will transfer or return after the particular time to the lender a security (in this section referred to as an "identical security") that is identical to the security so transferred or lent,

(c) where the qualified security is a share of the capital stock of a corporation, the borrower is obligated to pay to the lender amounts equal to and as compensation for all dividends, if any, paid on the security that would have been received by the borrower if the borrower had held the security throughout the period beginning after the particular time and ending at the time an identical security is transferred or returned to the lender, and

Proposed Amendment — 260(1)"securities lending arrangement"(c)

(c) the borrower is obligated to pay to the lender amounts equal to and as compensation for all amounts, if any, paid on the security that would have been received by the borrower if the borrower had held the security throughout the period that begins after the particular time and that ends at the time an identical security is transferred or returned to the lender,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 192(3), will amend para. (c) of the definition "securities lending arrangement" in subsec. 260(1) to read as above, applicable to arrangements made after 2001.

Technical Notes: Paragraph (c) of the existing definition provides that where a borrowed security is a share, the borrower must be obligated to pay to the lender a dividend compensation payment in order for the transaction to be a securities lending arrangement. This paragraph is amended to apply a comparable requirement in respect of all arrangements. This recognizes and codifies the commercial reality that compensation payments are required to be made by the borrower to the lender in all securities lending arrangements, and not just those arrangements involving shares.

(d) the lender's risk of loss or opportunity for gain or profit with respect to the security is not changed in any material respect,

Proposed Addition — 260(1)"securities lending arrangement"(e)

(e) if the lender and the borrower do not deal with each other at arm's length, it is not intended that the arrangement, nor any series of securities lending arrangements, loans or other transactions of which the arrangement is a part, be in effect for more than 270 days,

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 192(4), will add para. (e) to the definition "securities lending arrangement" in subsec. 260(1), applicable to arrangements made after 2002.

Technical Notes: See under 260(1)"securities lending arrangement"(a).

but does not include an arrangement one of the main purposes of which may reasonably be considered to be to avoid or defer the inclusion in income of any gain or profit with respect to the security.

Related Provisions: 112(2.3) — Dividend rental arrangements; 248(1)"securities lending arrangement" — Definition applies to entire Act; 248(12) — Identical properties; 256(6), (6.1) — Meaning of "controlled".

History: Para. (c) of "securities lending arrangement" substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 199(1), applicable to transfers, loans and payments made after April 26, 1989. Para. (c) formerly read:

(c) the borrower is obligated to pay to the lender amounts equal to and as compensation for all dividends, if any, paid on the security after the particular time and before an identical security is transferred or returned to the lender, and

Proposed Addition — 260(1)"security distribution", "SLA compensation payment", "underlying payment"

"security distribution" means an amount that is

(a) an underlying payment, or

(b) an SLA compensation payment, or a dealer compensation payment, that is deemed by subsection

(5.1) to be an amount received as an amount described by any of paragraphs (5.1)(a) to (c);

Technical Notes: "Security distribution" is a newly-defined term, introduced not to effect any substantive change to the relevant rules but only for simplicity and clarity. A security distribution is an amount, in respect of a borrowed security, that is either an underlying payment paid by the issuer of the security (for example as a dividend or a trust distribution) or a dealer compensation payment, or an SLA compensation payment.

"SLA compensation payment" means an amount paid pursuant to a securities lending arrangement as compensation for an underlying payment;

Technical Notes: "SLA compensation payment" is a newly-defined term, introduced not to effect any substantive change to the relevant rules but only for simplicity and clarity. An SLA compensation payment is an amount paid pursuant to a securities lending arrangement as compensation for an underlying payment.

"underlying payment" means an amount paid on a qualified security by the issuer of the security.

Technical Notes: "Underlying payment" is a newly-defined term. As with most of the other new definitions in this subsection, this term is defined for simplicity and clarity. An underlying payment is an amount paid on a qualified security by the issuer of the security.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 192(5), will add the definitions "security distribution", "SLA compensation payment" and "underlying payment" to subsec. 260(1), applicable to arrangements made after 2001.

(2) Non-disposition — Subject to subsections (3) and (4), for the purposes of this Act, any transfer or loan by a lender of a security under a securities lending arrangement shall be deemed not to be a disposition of the security and the security shall be deemed to continue to be property of the lender and, for the purposes of this subsection, a security shall be deemed to include an identical security that has been transferred or returned to the lender under the arrangement.

Related Provisions: 260(10), (11) — Application to partnerships.

(3) Disposition of right — Where, at any time, a lender receives property (other than an identical security or an amount deemed by subsection (4) to have been received as proceeds of disposition) in satisfaction of or in exchange for the lender's right under a securities lending arrangement to receive the transfer or return of an identical security, for the purposes of this Act the lender shall be deemed to have disposed at that time of the security that was transferred or lent for proceeds of disposition equal to the fair market value of the property received for the disposition of the right (other than any portion thereof that is deemed to have been received by the lender as a taxable dividend), except that section 51, 85.1, 86 or 87, as the case may be, shall apply in computing the income of the lender with respect to any such disposition as if the security transferred or lent had continued to be the lender's property and the lender had received the property directly.

(4) Idem — Where, at any time, it may reasonably be considered that a lender would have received proceeds of disposition for a security that was transferred or lent under a securities lending arrangement, if the security had not been transferred or lent, the lender shall be deemed to have disposed of the security at that time for those proceeds of disposition.

(5) Deemed dividend — For the purposes of this Act, any amount received (other than an amount received as proceeds of disposition or an amount received by a corporation under an arrangement where it may reasonably be considered that one of the main reasons for the corporation entering into the arrangement was to enable it to receive an amount that would otherwise have been deemed by this subsection to be a dividend)

(a) under a securities lending arrangement from a person resident in Canada, or a person not resident in Canada where the amount was paid in the course of carrying on business in Canada through a permanent establishment as defined by regulation, or

(b) by or from a person who is a registered securities dealer resident in Canada, where the amount is received or paid, as the case may be, in the ordinary course of the business of trading in securities carried on by the dealer,

as compensation for a taxable dividend paid on a share of the capital stock of a public corporation that is a qualified security shall, to the extent of the amount of that dividend, be deemed to have been received as a taxable dividend on the share from the corporation.

Proposed Amendment — 260(5), (5.1)

(5) Where subsection (5.1) applies — (5) Subsection (5.1) applies to a taxpayer for a taxation year in respect of a particular amount (other than an amount received as proceeds of disposition or an amount received by a person under an arrangement where it may reasonably be considered that one of the main reasons for the person entering into the arrangement was to enable the person to receive an SLA compensation payment or a dealer compensation payment that would be deductible in computing the taxable income, or not included in computing the income, for any taxation year of the person) received by the taxpayer in the taxation year

(a) as an SLA compensation payment,

(i) from a person resident in Canada, or

(ii) from a non-resident person who paid the particular amount in the course of carrying on business in Canada through a permanent establishment as defined by regulation; or

(b) as a dealer compensation payment.

(5.1) Deemed character of compensation payments — If this subsection applies in respect of a particular amount received by a taxpayer in a taxation year as an SLA compensation payment or as a dealer compensation payment, the particular amount is deemed, to the extent of the underlying payment to which the amount relates, to have been received by the taxpayer in the taxation year as,

(a) where the underlying payment is a taxable dividend paid on a share of the capital stock of a public corporation (other than an underlying payment to which paragraph (b) applies), a taxable dividend on the share;

(b) where the underlying payment is paid by a trust on a qualified trust unit issued by the trust,

(i) an amount of the trust's income that was, to the extent that subsection 104(13) applied to the underlying payment,

(A) paid by the trust to the taxpayer as a beneficiary under the trust, and

(B) designated by the trust in respect of the taxpayer to the extent of a valid designation, if any, by the trust under this Act in respect of the recipient of the underlying payment, and

(ii) to the extent that the underlying payment is a distribution of a property from the trust, a distribution of that property from the trust; or

(c) in any other case, interest.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 192(6), will amend subsec. 260(5) to read as above, and add subsec. (5.1), applicable to arrangements made after 2001, except that, if the parties to an arrangement jointly so elect in writing and file the election with the Minister of National Revenue within 90 days after the day on which the amending legislation is assented to, subsec. 260(5.1) is to be read, in its application to SLA compensation payments or dealer compensation payments received under the arrangement before February 28, 2004, without reference to para. 260(5.1)(b), para. (c) or paras. (b) and (c), as specified by the parties in the election.

Technical Notes: Subsection 260(5), in its current form, treats dividend compensation payments that are received under specified circumstances as dividends. The subsection also, however, denies this dividend treatment where the amount is received by a corporation and one of the main reasons for the corporation entering into the arrangement was to enable it to receive an amount that would be treated as a dividend by the subsection.

Subsection 260(5) is reorganized into two subsections, and these subsections incorporate three newly-defined terms: "dealer compensation payment", "SLA compensation payment" and "underlying payment".

New subsection 260(5) describes the circumstances under which the compensation payment deeming rule, now found in new subsection 260(5.1), applies. The deeming rule applies where an amount is received under a securities lending arrangement under one of these circumstances: from a person resident in Canada, from a person not resident in Canada where the amount was paid in the course of carrying on business in Canada through a permanent establishment, or from or by a registered securities dealer. These are essentially the same as the circumstances specified prior to the amendment.

Also, the anti-avoidance rule in this subsection — which currently addresses only the case of an amount that would otherwise be received by a corporation as a dividend — is amended to include all otherwise non-taxable amounts that may be received under a securities lending arrangement, by any person. This amendment recognizes that with the introduction of qualified trust units as "qualified securities," a person may be treated as having received any of several kinds of non-taxable amounts.

New subsection 260(5.1) treats a given compensation payment as one of three things: a dividend, an amount paid by a trust and having the same characteristics, source and purpose as the "underlying payment" amount paid by the trust directly, or interest. The overall effect of the provision is, in addition to replicating the former dividend deeming rule, to deem compensation payments in respect of payments from a trust to have the same characteristics, source and purpose as if the amounts were paid by the trust.

These amendments apply to securities lending arrangements made after 2001 except that if the parties to an arrangement file a joint election in writing within 90 days after Royal Assent of this amendment with the Minister of National Revenue, the parties may elect such that either one or both of the deeming rules in paragraph 260(5.1)(b) or (c) will not apply with respect to non-dividend compensation payments received before February 28, 2004. Taxpayers may wish to make this election to leave open the possibility that these non-dividend compensation payments had a different characterization under the law prior to these amendments.

Related Provisions: 18(1)(v.) — No deduction for underlying payment deemed received by another person; 260(5) — Conditions for 260(5.1) to apply; 260(6) — Deductibility of compensation for security distribution; 260(7) — Dividend refund.

Related Provisions: 82(1)(a)(ii)(B) — Amount deemed received by another person excluded from taxable dividends of individual; 248(1)"dividend rental arrangement"(d)) [to be repealed], (b)(ii)(B) [draft] — Dividend rental arrangement where 260(5) applies; 260(10)–(12) — Application to partnerships.

History: Para. 260(5)(b) amended by 1995, c. 21, subsec. 75(1), applicable to transfers, loans and payments made after April 26, 1989. Para. (b) formerly read:

(b) by or from a person resident in Canada who is registered or licensed under the laws of a province to trade in securities where the amount is received or paid, as the case may be, in the ordinary course of the business of trading or dealing in securities carried on by that person,

Regulations: 8201 (permanent establishment).

Interpretation Bulletins: IT-67R3: Taxable dividends from corporations resident in Canada.

(6) Non-deductibility — In computing a taxpayer's income under Part I from a business or property

(a) where the taxpayer is not a registered securities dealer, no deduction shall be made in respect of an amount that, if paid, would be deemed by subsection (5) to have been received by another person as a taxable dividend; and

(b) where the taxpayer is a registered securities dealer, no deduction shall be made in respect of more than 2/3 of that amount.

Proposed Amendment — 260(6)

(6) Deductibility — In computing the income of a taxpayer under Part I from a business or property for a taxation year, there may be deducted a particular amount, paid by the taxpayer in the year as an SLA compensation payment or as a dealer compensation payment, that is equal to

(a) if the taxpayer is a registered securities dealer and the particular amount is deemed by subsection (5.1) to have been received as a taxable dividend, no more than 2/3 of the particular amount; or

(b) if the particular amount is in respect of an amount other than an amount that is, or is deemed by subsection (5.1) to have been, received as a taxable dividend,

(i) where the taxpayer disposes of the borrowed security and includes the gain or loss, if any, from the disposition in computing its income from a business, the particular amount, or

(ii) in any other case, the lesser of

(A) the particular amount, and

(B) the amount, if any, in respect of the security distribution to which the SLA compensation payment or dealer compensation payment relates that is included in computing the income, and not deducted in computing the taxable income, for any taxation year of the taxpayer or of any person to whom the taxpayer is related.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 192(6), will amend subsec. 260(6) to read as above, applicable to arrangements made after 2001.

Technical Notes: Subsection 260(6) limits the extent to which a person who makes a dividend compensation payment under a securities lending arrangement may deduct the payment in computing income from a business or property. In brief, the subsection denies a deduction for any dividend compensation payment made by persons other than registered securities dealers, and provides that registered securities dealers may deduct up to 2/3 of the dividend compensation payments they make.

Amended subsection 260(6) retains this 2/3 dividend compensation payment deduction for registered securities dealers. It also allows any taxpayer — including but not limited to registered securities dealers — a deduction in respect of compensation payments, either SLA compensation payments or dealer compensation payments, that are not dividend compensation payments. The amount of this new deduction is computed differently depending on the actions of the taxpayer in question (the one who made the payment and seeks to deduct it). If the taxpayer has disposed of the borrowed security and has included any resulting gain or loss in computing business income, the compensation payment is fully deductible. In any other case, new subsection 260(6) allows a deduction to the extent of the lesser of (i) the compensation payment and (ii) the

amount, to which the compensation payment relates, included in the taxable income of the taxpayer or persons related to it.

Related Provisions: 260(6.1) — Deductible amount; 260(10), (11) — Application to partnerships.

History: Subsec. 260(6) amended by 1995, c. 21, subsec. 75(2), applicable to payments made after June 1989. Subsec. (6) formerly read:

(6) In computing the income of a taxpayer under Part I from a business or property, no deduction shall be made in respect of an amount that, if paid, would be deemed by subsection (5) to have been received by another person as a taxable dividend.

(6.1) Deductible amount — Notwithstanding subsection (6), there may be deducted in computing a corporation's income under Part I from a business or property for a taxation year an amount equal to the lesser of

(a) the amount that the corporation is obligated to pay to another person under an arrangement described in paragraphs (c) and (d) of the definition "dividend rental arrangement" in subsection 248(1) that, if paid, would be deemed by subsection (5) to have been received by another person as a taxable dividend, and

Proposed Amendment — 260(6.1)(a)

(a) the total of all amounts each of which is an amount that the corporation becomes obligated in the taxation year to pay to another person under an arrangement described in paragraph (b) of the definition "dividend rental arrangement" in subsection 248(1) that, if paid, would be deemed by subsection (5.1) to have been received by another person as a taxable dividend; and

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 192(7), will amend para. 260(6.1)(a) to read as above, applicable to

(a) arrangements made after December 20, 2002;

(b) an arrangement made after November 2, 1998 and before December 21, 2002 if the parties to the arrangement have made the election described in the Application note to the proposed amendment to 248(1)"dividend rental arrangement", except that, in its application to an arrangement made before 2002, the reference to "subsection [260](5.1)" in para. 260(6.1)(a) is to be read as "subsection (5)"; and

(c) an arrangement, other than an arrangement to which para. (b) above applies, made after 2001 and before December 21, 2002, except that, in its application before December 21, 2002, para. 260(6.1)(a) is to be read as follows:

(a) the amount that the corporation is obligated to pay to another person under an arrangment described in paragraphs (c) and (d) of the definition "dividend rental arrangement" in subsection 248(1) that, if paid, would be deemed by subsection (5.1) to have been received by another person as a taxable dividend; and

Technical Notes: Subsection 260(6.1) provides a deduction for dividend compensation payments made pursuant to certain dividend rental arrangements. The amount deductible is the lesser of the amount the corporation is obligated to pay as compensation under the arrangement and the amount of the dividends received by the corporation under the arrangement that were identified in its return of income as amounts which are not deductible because of subsection 112(2.3).

Paragraph 260(6.1)(a) is amended to clarify that the amount described in that paragraph is the total of all amounts that the corporation becomes obligated in the taxation year to pay to another person as compensation under certain dividend rental arrangements.

Also, paragraph 260(6.1)(a) of the English version of the Act is amended, as a consequence of the amendments to the definition "dividend rental arrangement" in subsection 248(1), by replacing the reference to "paragraphs (c) and (d)" of that definition to a reference to "paragraph (b)" of that definition.

(b) the amount of the dividends received by the corporation under the arrangement that were identified in its return of income under Part I for the year as an amount in respect of which no amount was deductible because of subsection 112(2.3) in computing the taxpayer's taxable income or taxable income earned in Canada.

Related Provisions: 260(7)(b) — No dividend refund on amount deductible under 260(6.1); 260(10), (11) — Application to partnerships.

History: Subsec. 260(6.1) added by 1995, c. 21, subsec. 75(2), applicable to payments made

(a) after April 1989, where the corporation has elected under subsec. 74(3) (of 1995, c. 21 — see under 248(1)"dividend rental arrangement"), except that, for the purposes of para. 260(6.1)(b), a dividend received after April 1989 and before July 1994 that was identified in the corporation's return of income under Part I of the Act for its first taxation year that ends after June 22, 1995 shall be deemed to have been identified in its return of income under that Part for its taxation year in which the dividend was received; and

(b) after June 1994, in any other case.

(7) Dividend refund — For the purposes of section 129,

(a) any amount paid by a corporation that is not a registered securities dealer (other than an amount for which a deduction in computing income may be claimed under subsection (6.1)), and

(b) 1/3 of any amount paid by a corporation that is a registered securities dealer (other than an amount for which a deduction in computing income may be claimed under subsection (6.1))

that is deemed by subsection (5) to have been received by another person as a taxable dividend shall be deemed to have been paid by the corporation as a taxable dividend.

Proposed Amendment — 260(7)

(7) Dividend refund — For the purpose of section 129, if a corporation pays an amount for which no deduction in computing the corporation's income may be claimed under subsection (6.1) and subsection (5.1) deems the amount to have been received by another person as a taxable dividend,

(a) the corporation is deemed to have paid the amount as a taxable dividend, where the corporation is not a registered securities dealer; and

(b) the corporation is deemed to have paid 1/3 of the amount as a taxable dividend, where the corporation is a registered securities dealer.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 192(8), will amend subsec. 260(7) to read as above, applicable to arrangements made after 2001.

Technical Notes: Subsection 260(7) provides that, where a corporation makes a payment which is deemed by the former subsection 260(5) to be a taxable dividend, the corporation will also be entitled to treat the amount as the payment of a dividend for the purposes of section 129.

Subsection 260(7) is amended to replace the reference "subsection 260(5)" with "subsection 260(5.1)" and is reorganized for clarity and simplicity and specifically not to effect any substantive changes to the rule.

History: Subsec. 260(7) amended by 1995, c. 21, subsec. 75(2), applicable to payments made after June 1989, except that in its application to payments made after June 1989 and before July 1994 with respect to a corporation that has not elected under subsec. 74(3) (of 1995, c. 21 — see under 248(1)"dividend rental arrangement"), subsec. 260(7) shall be read without reference to the expression "(other than an amount for which a deduction in computing income may be claimed under subsection (6.1))". Subsec. (7) formerly read:

(7) For the purposes of section 129, any amount paid by a corporation that is deemed by subsection (5) to have been received by another person as a taxable dividend shall be deemed to have been paid by the corporation as a taxable dividend.

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations.

(8) Non-resident withholding tax — For the purposes of Part XIII,

(a) any amount paid or credited under a securities lending arrangement by or on behalf of the borrower to the lender as compensation for any interest or dividend paid in respect of the security shall be deemed to be a payment made by the borrower to the lender of interest, except that where, throughout the term of the securities lending arrangement, the borrower has provided the lender under the arrangement with money in an amount of, or securities described in paragraph (c) of the definition "qualified security" in subsection (1) that have a fair market value of, not less than 95% of the fair market value of the security and the borrower is entitled to enjoy, directly or indirectly, the benefits of all or substantially all income derived from, and opportunity for gain with respect of, the money or securities,

(i) the amount paid or credited shall, to the extent of the amount of the interest or dividend paid in respect of the security, be deemed to be a payment made by the borrower to the lender of interest or a dividend, as the case may be, payable on the security,

(ii) the amount paid or credited shall, to the extent of the amount of the interest, if any, paid in respect of the security, be deemed for the purpose of subparagraph 212(1)(b)(vii) to have been payable by the issuer of the security, and

(iii) the security shall be deemed to be a security described in subparagraph 212(1)(b)(ii) if it is a security described in paragraph (c) of the definition "qualified security" in subsection (1), and

(b) any amount paid or credited under a securities lending arrangement by or on behalf of the borrower to the lender as, on account of, in lieu of payment of or in satisfaction of, a fee for the use of the security shall be deemed to be a payment made by the borrower to the lender of interest and, for the purposes of this paragraph, where the borrower has at any time provided the lender with money, either as collateral or consideration for the security, and the borrower does not under the arrangement pay or credit a reasonable amount to the lender as, on account of, in lieu of payment of or in satisfaction of, a fee for the use of the security, the amount, if any, by which

(i) interest on the money computed at the prescribed rates in effect during the term of the arrangement

exceeds

(ii) the amount, if any, by which any amount that the lender pays or credits to the borrower under the arrangement exceeds the amount of the money

shall be deemed to be an amount paid under the arrangement by the borrower to the lender as a fee for the use of the security, at the time that an identical security is or can reasonably be expected to be transferred or returned to the lender,

and, for the purposes of Part XIII and any agreement or convention between the Government of Canada and the government of another country that has the force of law in Canada, any amount deemed by this subsection (other than subparagraph (a)(i) or (ii)) to be a payment of interest shall be deemed not to be payable on or in respect of the security.

Proposed Amendment — 260(8)–(8.2)

(8) Non-resident withholding tax — For the purpose of Part XIII, any amount paid or credited under a securities lending arrangement by or on behalf of the borrower to the lender

(a) as an SLA compensation payment is, subject to paragraph (b) or (c), deemed to be a payment of interest made by the borrower to the lender;

(b) as an SLA compensation payment in respect of a security that is a qualified trust unit, is deemed, to the extent of the amount of the underlying payment to which the SLA compensation payment relates, to be an amount paid by the trust and having the same character and composition as the underlying payment;

(c) as an SLA compensation payment, if the security is not a qualified trust unit and throughout the term of the securities lending arrangement, the borrower has provided the lender under the arrangement with money in an amount of, or securities described in paragraph (c) of the definition "qualified security" in subsection (1) that have a fair market value of, not less than 95% of the fair market value of the security and the borrower is entitled to enjoy, directly or indirectly, the benefits of all or substantially all income derived from, and opportunity for gain with respect of, the money or securities,

(i) is, to the extent of the amount of the interest or dividend paid in respect of the security, deemed to be a payment made by the borrower to the lender of interest or a dividend, as the case may be, payable on the security, and

(ii) is, to the extent of the amount of the interest, if any, paid in respect of the security, deemed

(A) for the purpose of subparagraph 212(1)(b)(vii) to have been payable by the issuer of the security, and

(B) to have been payable on a security that is a security described in subparagraph 212(1)(b)(ii) where the security is a security described in paragraph (c) of the definition "qualified security" in subsection (1); and

(d) as, on account of, in lieu of payment of or in satisfaction of, a fee for the use of the security is deemed to be a payment of interest made by the borrower to the lender.

Technical Notes: Subsection 260(8) applies special rules, for the purposes of Part XIII of the Act, to payments made under securities lending arrangements. The subsection has two main aspects: rules that ensure the appropriate treatment for Part XIII purposes of compensation payments; and a rule that in certain circumstances will treat a borrower as having paid to a lender a "borrow fee".

In addition to incorporating the newly added definitions, SLA compensation payments and underlying payments (which do not effect any substantive changes), the subsection is rearranged into three separate subsections. Amended subsection 260(8) retains the previous rules for compensation payments relating to interest and dividends, confining them to amounts paid on a security that is not a qualified trust unit. Subsection 260(8) also provides for compensation payments made in respect of a borrowed qualified trust unit: these are treated as payments from a trust and as having the same character and composition as the trust payments for which they compensate.

(8.1) Deemed fee for borrowed security — For the purpose of paragraph (8)(d), if under a securities lending arrangement the borrower has at any time provided the lender with money, either as collateral or consideration for the security, and the borrower does not, under

the arrangement, pay or credit a reasonable amount to the lender as, on account of, in lieu of payment of or in satisfaction of, a fee for the use of the security, the borrower is deemed to have, at the time that an identical security is or can reasonably be expected to be transferred or returned to the lender, paid to the lender under the arrangement an amount as a fee for the use of the security equal to the amount, if any, by which

(a) the interest on the money computed at the prescribed rates in effect during the term of the arrangement

exceeds

(b) the amount, if any, by which any amount that the lender pays or credits to the borrower under the arrangement exceeds the amount of the money.

(8.2) Effect for tax treaties — In applying subsection (8), any amount, paid or credited under a securities lending arrangement by or on behalf of the borrower to the lender, that is deemed by paragraph (8)(a), (b) or (d) to be a payment of interest, is deemed for the purposes of any tax treaty not to be payable on or in respect of the security.

Technical Notes: New subsection 260(8.1) provides for a deemed borrow fee, on the same basis as the existing paragraph 260(8)(b). New subsection 260(8.2) similarly preserves the effect of the existing postamble to subsection 260(8) in relation to tax treaties.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 192(8), will replace subsec. 260(8) with subsecs. 260(8)–(8.2), applicable to arrangements made after 2001.

Related Provisions: 212(1)(b)(xii), (xiii), 212(2.1) — Exemptions from non-resident withholding tax; 212(19) — Special tax on securities dealers re non-resident withholding tax exemption; 260(8.1) — Deemed fee for 260(8)(d); 260(8.2) — Effect for tax treaty purposes.

History: Subpara. 260(8)(a)(iii) added by 1994, c. 21, s. 116, applicable to securities lending arrangements entered into after May 28, 1993.

Subsec. 260(8) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 199(2), applicable to transfers, loans and payments made after April 26, 1989, except that, in its application to transfers, loans and payments made before May 27, 1989, para. 260(8)(a) shall be read as follows:

(a) any payment made by or on behalf of the borrower to the lender as compensation for any interest or dividend paid in respect of the security shall be deemed to be a payment by the borrower to the lender of interest or a dividend, as the case may be, on the security; and

Subsec. 260(8) formerly read:

(8) For the purposes of Part XIII,

(a) any payment made under a securities lending arrangement by or on behalf of the borrower to the lender as compensation for any interest or dividend paid in respect of the security shall be deemed to be a payment made by the borrower to the lender of interest, except that where, throughout the term of the securities lending arrangement the borrower has provided to the lender under the arrangement cash in an amount of, or securities described in paragraph (c) of the definition "qualified security" in subsection (1) that have a fair market value of, not less than 95% of the fair market value of the security and the borrower is entitled to enjoy, directly or indirectly, the benefits of substantially all income derived from and opportunity for gain with respect to the cash or securities, the payment shall be deemed to be a payment by the borrower to the lender of interest or a dividend, as the case may be, payable on the security; and

(b) any payment made under a securities lending arrangement by or on behalf of a borrower of a security to the lender for the use of the security shall be deemed to be a payment made by the borrower to the lender of interest and, for the purposes of this paragraph, any profit earned by the lender that may reasonably be considered to have resulted from the securities lending arrangement, other than any payment made by or on behalf of the borrower to the lender as compensation for any interest or dividend paid on the security, shall be deemed to be a payment made under the securities lending arrangement by the borrower of the security to the lender for the use of the security.

(9) Restricted financial institution — For the purposes of subsection 187.3(1), where at any time a dividend is received by a restricted financial institution on a share that was last acquired before that time pursuant to an obligation of a borrower to return or transfer a share under a securities lending arrangement, an acquisition of the share under the arrangement shall be deemed at and after that time not to be an acquisition of the share.

Proposed Addition — 260(10)–(12)

(10) Partnerships — For the purpose of this section,

(a) a person includes a partnership; and

(b) a partnership is deemed to be a registered securities dealer if each member of the partnership is a registered securities dealer.

Technical Notes: A "securities lending arrangement" (SLA) is defined in subsection 260(1) as a particular transaction between two persons: the "lender" and the "borrower" of a security. A partnership — which for most purposes of the Act is not a person — can be a party to a transaction that would be an SLA if the partnership were a person. In such a case, it is appropriate in policy terms for the arrangement to be treated as an SLA. New subsections (10), (11) and (12) are added to section 260 to bring partnerships within the SLA rules.

New subsection 260(10) provides that, for the purposes of section 260, a person includes a partnership. This allows a partnership to be either the borrower or the lender in respect of an SLA. The subsection also treats a partnership as a registered securities dealer, if all of its members are themselves registered securities dealers.

Related Provisions: 260(11) — Corporate partners.

(11) Corporate members of partnerships — A corporation that is, in a taxation year, a member of a partnership is deemed

(a) for the purpose of applying subsection (5) in respect of the taxation year,

(i) to receive its specified proportion, for each fiscal period of the partnership that ends in the taxation year, of each amount received by the partnership in that fiscal period, and

(ii) in respect of the receipt of its specified proportion of that amount, to be the same person as the partnership;

(b) for the purpose of applying paragraph (6.1)(a) in respect of the taxation year, to become obligated to pay its specified proportion, for each fiscal period of the partnership that ends in the taxation year, of the amount the partnership becomes, in that fiscal period, obligated to pay to another person under the arrangement described in that paragraph; and

(c) for the purpose of applying section 129 in respect of the taxation year, to have paid

(i) if the partnership is not a registered securities dealer, the corporation's specified proportion, for each fiscal period of the partnership that ends in the taxation year, of each amount paid by the partnership (other than an amount for which a deduction in computing income may be claimed under subsection (6.1) by the corporation), and

(ii) if the partnership is a registered securities dealer, 1/3 of the corporation's specified proportion, for each fiscal period of the partnership that ends in the taxation year, of each amount paid by the partnership (other than an amount for which a deduction in computing income may be claimed under subsection (6.1) by the corporation).

Technical Notes: A transaction's status as an SLA is relevant to, among other things, the tax treatment of amounts paid and received in compensation for dividends or interest on the security that is transferred or lent. New subsections 260(11) and (12) are added to ensure the appropriate treatment of these amounts in a case where a corporation or an individual is a member of a partnership that has entered into an SLA.

- Under new paragraph 260(11)(a), a corporation that is a member of a partnership is treated for the purpose of subsection 260(5) as having received its "specified proportion" (now defined in subsection 248(1)) of each compensation payment or amount in respect of proceeds of disposition that is described in subsection 260(5) and was received by the partnership. It is also treated as being the same person as the partnership, thus ensuring that the partnership's reasons for entering into the arrangement (which are relevant to the applicability of the subsection) are attributed to the corporation.

- New paragraph 260(11)(b) treats the corporation as being obligated to pay its specified proportion of each dividend compensation payment described in paragraph 260(6.1)(a).

- New paragraph 260(11)(c) treats the corporation, for the purpose of applying the dividend refund rules in section 129, as having paid its specified proportion of each non-deductible dividend compensation payment made by the partnership.

(12) Individual members of partnerships — An individual that is, in a taxation year, a member of a partnership is deemed

(a) for the purpose of applying subsection (5) in respect of the taxation year,

(i) to receive the individual's specified proportion, for each fiscal period of the partnership that ends in the taxation year, of each amount received by the partnership in that fiscal period, and

(ii) in respect of the receipt of the individual's specified proportion of that amount, to be the same person as the partnership; and

(b) for the purpose of clause 82(1)(a)(ii)(B), to have paid the individual's specified proportion, for each fiscal period of the partnership that ends in the year, of each amount paid by the partnership in that fiscal period that is deemed by subsection (5.1) to have been received by another person as a taxable dividend.

Technical Notes:

- New paragraph 260(12)(a) performs for individuals who are members of a partnership the same functions as new paragraph 260(11)(a) does for corporations that are partners.

- New paragraph 260(12)(b) treats an individual partner as having paid, for the purpose of clause 82(1)(a)(ii)(B), the individual's specified proportion of each dividend compensation payment paid by the partnership that is deemed by new subsection 260(5.1) to have been received by another person as a taxable dividend.

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 192(9), will add subsecs. 260(10) to (12), applicable to

(a) arrangements made after December 20, 2002; and

(b) an arrangement made after November 2, 1998 and before December 21, 2002 if the parties to the arrangement have made the election described in the Application note to the amendment to 248(1)"dividend rental arrangement", except that, in its application to an arrangement made before 2002, the reference to "subsection [260](5.1)" in para. 260(12)(b) is to be read as "subsection (5)".

Definitions [s. 260]: "amount", "business" — 248(1); "carrying on business in Canada" — 253; "corporation" — 248(1), *Interpretation Act* 35(1); "dealer compensation payment" — 260(1); "disposition", "dividend", "individual" — 248(1); "fiscal period" — 249(2)(b), 249.1; "mutual fund trust" — 132(6)–(7),132.2(3)(n), 248(1); "non-resident" — 248(1); "permanent establishment" — Reg. 8201; "person", "prescribed", "property" — 248(1); "public corporation" — 89(1), 248(1); "qualified trust unit" — 260(1); "registered securities dealer", "regulation" — 248(1); "related" — 251(2)–(6); "resident in Canada" — 250; "SLA compensation payment", "security distribution" — 260(1); "securities lending arrangement" — 248(1), 260(1); "series" — 248(10); "share", "specified proportion", "tax treaty", — 248(1); "taxable dividend" — 89(1), 248(1); ""taxable income"" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "underlying payment" — 260(1).

Grandfathering of Various Amendments Announced on April 26, 1995: 1998, c. 19, s. 247 reads as follows:

247. (1) **Exception to coming-into-force** — Subsections 73(4), 74(5), subsection 18(13) of the Act, as enacted by subsection 79(2) and subsections 89(1), (2) and (6), 94(1) and (2), 95(1), 116(3) to (5), 120(1) and 124(1) and (2) do not apply to the disposition of property by a person or partnership (in this subsection and subsection (2) referred to as the "transferor") that occurred before 1996

(a) to a person who was obliged on April 26, 1995 to acquire the property pursuant to the terms of an agreement in writing made on or before that day; or

(b) in a transaction, or as part of a series of transactions, the arrangements for which, evidenced in writing, were substantially advanced before April 27, 1995, other than a transaction or series a main purpose of which can reasonably be considered to have been to enable an unrelated person to obtain the benefit of

(i) any deduction in computing income, taxable income, taxable income earned in Canada or tax payable under the Act, or

(ii) any balance of undeducted outlays, expenses or other amounts.

(2) **Election** — Notwithstanding subsection (1), subsection 18(13) of the Act, as enacted by subsection 79(2), and the other subsections of this Act referred to in subsection (1) apply to a disposition in respect of which the transferor has filed with the Minister of National Revenue before the end of the third month after the month in which this Act is assented to [i.e., before October 1998 — ed.] an election in writing to have those subsections apply.

(3) **Interpretation** — For the purpose of subsection (1),

(a) a person shall be considered not to be obliged to acquire property where the person can be excused from the obligation if there is a change to the Act or if there is an adverse assessment under the Act;

(b) an "unrelated person" means any person who was not, or a partnership any member of which was not, related (otherwise than because of paragraph 251(5)(b) of the Act) to the transferor at the time of the disposition; and

(c) a person is deemed to be related to a partnership of which that person is a majority interest partner.

The following are the provisions of the Act affected by the indicated provisions of 1998, c. 19:

Amending Bill	*ITA Provision*
73(4)	13(21.1), (21.2) [new]
74(5)	14(12), (13) [new]
79(2)	18(13) [amended]
89(1)	40(2)(e) [repeal]
89(2)	40(2)(h)(i) [amended]
89(6)	40(3.3)–(3.6) [new]
94(1)	53(1)(f.1), (f.11) [amended]
94(2)	53(1)(f.2) [amended]
95(1)	54"superficial loss" [amended]
116(3)	85(4) [repeal]
116(4)	85(5) [amended]
116(5)	85(5.1) [repeal]
120(1)	93(4) [amended]
124(1)	97(2) [amended]
124(2)	97(3)[repeal], (3.1) [repeal]

Proposed Addition — Schedule

SCHEDULE : LISTED CORPORATIONS

(Subsection 181(1)"financial institution"(g)(i))

2419726 Canada Inc.[49]
AmeriCredit Financial Services of Canada Ltd.
AVCO Financial Services Quebec Limited
Bombardier Capital Ltd.
Canaccord Capital Credit Corporation/Corporation de crédit Canaccord capital
Canadian Cooperative Agricultural Financial Services
Canadian Home Income Plan Corporation
Citibank Canada Investment Funds Limited
Citicapital Commercial Corporation/Citicapital Corporation Commerciale
Citi Cards Canada Inc./Cartes Citi Canada Inc.
Citi Commerce Solutions of Canada Ltd.
CitiFinancial Canada East Corporation/CitiFinancière, corporation du Canada Est
CitiFinancial Canada, Inc./CitiFinancière Canada, Inc.
CitiFinancial Mortgage Corporation/CitiFinancière, corporation de prêts hypothécaires[49]
CitiFinancial Mortgage East Corporation/CitiFinancière, corporation de prêts hypothécaires de l'Est[49]
Citigroup Finance Canada Inc.
Crédit Industriel Desjardins
CU Credit Inc.
Ford Credit Canada Limited
GE Card Services Canada Inc./GE Services de Cartes du Canada Inc.[49]
General Motors Acceptance Corporation of Canada Limited
GMAC Residential Funding of Canada, Limited
Household Commercial Canada Inc.
Household Finance Corporation of Canada
Household Finance Corporation Limited
Household Realty Corporation Limited
Hudson's Bay Company Acceptance Limited
John Deere Credit Inc./Crédit John Deere Inc.
Merchant Retail Services Limited
PACCAR Financial Ltd./Compagnie Financière Paccar Ltée
Paradigm Fund Inc./Le Fonds Paradigm Inc.
Prêts étudiants Atlantique Inc./Atlantic Student Loans Inc.
Principal Fund Incorporated
RT Mortgage-Backed Securities Limited
RT Mortgage-Backed Securities II Limited
State Farm Finance Corporation of Canada/Corporation de Crédit State Farm du Canada
Trans Canada Credit Corporation
Trans Canada Retail Services Company/Société de services de détails trans Canada
Wells Fargo Financial Canada Corporation

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsecs. 193(1)–(4), will add the Schedule after s. 260, deemed to have come into force on December 20, 2002 so as to, on the dates set out below, list each of the following corporations in the schedule:[50]

(a) 2419726 Canada Inc., January 1, 1998 except that, in its application

(i) after May 1999 and before April 2002, the reference in the schedule to that corporation is to be read as "CitiFinancial Canada, Inc./CitiFinancière Canada, Inc.", and

(ii) after 1997 and before June 1999, the reference in the schedule to that corporation is to be read as "Commercial Credit Corporation CCC Limited/Corporation De Credit Commerciale CCC Limitée";

(b) AmeriCredit Financial Services of Canada Ltd., June 30, 2001;

(c) Canaccord Capital Credit Corporation/Corporation de crédit Canaccord capital, September 25, 2000;

(d) Citibank Canada Investment Funds Limited, December 31, 2001;

(e) Citicapital Commercial Corporation/Citicapital Corporation Commerciale, January 1, 2000 except that, in its application after 1999 and before July 2001, the reference in the schedule to that corporation is to be read as "Associates Commercial Corporation of Canada Ltd./Les Associés, Corporation Commerciale du Canada Ltee";

(f) Citi Cards Canada Inc./Cartes Citi Canada Inc., September 25, 2003;

(g) Citi Commerce Solutions of Canada Ltd., January 1, 2003;

(h) CitiFinancial Canada East Company/CitiFinancière, corporation du Canada Est, December 23, 1997 except that, in its application

(i) after April 2001 and before April 2002, the reference in the schedule to that corporation is to be read as "CitiFinancial Services of Canada East Company/CitiFinancière, compagnie de services du Canada Est",

(ii) after September 26, 1999 and before May 2001, the reference in the schedule to that corporation is to be read as "Associates Financial Services of Canada East Company/Les Associés, Compagnie de Services Financiers du Canada Est".

(iii) after February 12, 1998 and before September 27, 1999, the reference in the schedule to that corporation is to be read as "Avco Financial Services Canada East Company/Compagnie Services Financiers Avco Canada Est".

(iv) after December 29, 1997 and before February 13, 1998, the reference in the schedule to that corporation is to be read as "Avco Financial Services Canada East Company/Services Financiers Avco Canada Est Compagnie", and

(v) after December 22, 1997 and before December 30, 1997, the reference in the schedule to that corporation is to be read as a reference to "Avco Financial Services Canada East Company";

(i) CitiFinancial Canada, Inc./CitiFinancière Canada, Inc., March 2, 1998 except that, in its application

(i) after April 2001 and before April 2002, the reference in the schedule to that corporation is to be read as "CitiFinancial Services of Canada, Ltd./CitiFinancière, services du Canada, Ltée", and

(ii) after March 1, 1998 and before May 2001, the reference in the schedule to that corporation is to be read as "Associates Financial Services of Canada Ltd./Les Associés, Services Financières du Canada Ltée";

(j) CitiFinancial Mortgage Corporation/CitiFinancière, corporation de prêts hypothécaires, March 2, 1998, except that, in its application after March 1, 1998 and before May 2001, the reference in the schedule to that corporation is to be read as "Associates Mortgage Corporation/Les Associés, Corporation de Prêts Hypothécaires";

(k) CitiFinancial Mortgage East Corporation/CitiFinancière, corporation de prêts hypothocaires de l'Est, December 23, 1997, except that, in its application

(i) after November 2, 1999 and before May 2001, the reference in the schedule to that corporation is to be read as "Associates Mortgage East Corporation/Les Associés, Corporation de Prêts Hypothécaires de l'Est",

[49]To be deleted; see Proposed Amendment below.

[50]Also see Proposed Amendment to the Schedule, below.

(ii) after September 27, 1999 and before November 3, 1999, the reference in the schedule to that corporation is to be read as "Associates Mortgage East Corporation/Les Associés, Corporation de Financiers du Prêts Hypothécaires de l'Est",

(iii) after February 12, 1998 and before September 28, 1999, the reference in the schedule to that corporation is to be read as "Avco Financial Services Realty East Company/Compagnie Services Financiers Immobiliers Avco Est",

(iv) after December 29, 1997 and before February 13, 1998, the reference in the schedule to that corporation is to be read as "Avco Financial Services Realty East Company/Services Financiers Immobiliers Avco Est Compagnie", and

(v) after December 22, 1997 and before December 30, 1997, the reference in the schedule to that corporation is to be read as "Avco Financial Services Realty East Company";

(l) Citigroup Finance Canada Inc., January 1, 1998, except that, in its application after 1997 and before June 11, 2003, the reference in the schedule to that corporation is to be read as "Associates Capital Corporation of Canada/Corporation de capital associés du Canada";

(m) Ford Credit Canada Limited, December 23, 1997 [deemed to have been, from July 1, 1989 to December 22, 1997, prescribed by a regulation under para. 181(1)(g)];

(n) GE Card Services Canada Inc./GE Services de Cartes du Canada Inc., August 2, 2000;

(o) GMAC Residential Funding of Canada, Limited, January 1, 2003;

(p) John Deere Credit Inc./Crédit John Deere Inc., January 1, 1999;

(q) PACCAR Financial Ltd./Compagnie Financière Paccar Ltée, January 1, 2003;

(r) Paradigm Fund Inc./Le Fonds Paradigm Inc., January 1, 2002;

(s) Prêts étudiants Atlantique Inc./Atlantic Student Loans Inc., January 1, 1998 except that, in its application after 1997 and before June 13, 2002, the reference in the schedule to that corporation is to be read as "Prêts étudiants Acadie Inc./Acadia Student Loans Inc.";

(t) State Farm Finance Corporation of Canada/Corporation de Crédit State Farm du Canada., January 1, 2002 except that, in its application after 2001 and before May 2002, the reference in the schedule to that corporation is to be read as "VNB Financial Services Inc./Services financiers VNB, Inc.";

(u) Trans Canada Retail Services Company/Société de services de détails trans Canada, January 1, 1999 except that, in its application after 1998 and before January 15, 2002, the reference in the schedule to that corporation is to be read as "National Retail Credit Services Company/Société de services de credit aux détaillants national"; and

(v) Wells Fargo Financial Canada Corporation, January 1, 1999, except that, in its application after 1998 and before September 7, 2001, the reference in the schedule to that corporation is to be read as "Norwest Financial Canada Company".

Proposed Amendment — Schedule

Application: The July 18, 2005 draft legislation (Part 2 — technical), subsec. 193(5), will amend the proposed Schedule by removing from the list, as of the dates set out below, the following corporations:

(a) GE Card Services Canada Inc./GE Services Cartes du Canada Inc., January 1, 2003;

(b) 2419726 Canada Inc., March 31, 2002;

(c) CitiFinancial Mortgage Corporation/CitiFinancière, corporation de prêts hypothécaires, March 31, 2002; and

(d) CitiFinancial Mortgage East Corporation/CitiFinancière, corporation de prêts hypothocaires de l'Est, April 1, 2002.

Technical Notes: For information about this new schedule, see the commentary to subsection 181(1) [181(1)"financial institution"(g) — ed.].

Letter from Dept. of Finance, December 11, 2000:

Dear [xxx]

Thank you for your letter dated October 3, 2000 on behalf of [xxx] requesting that it be prescribed as a financial institution for the purpose of the Large Corporations Tax ("LCT") in Part I.3 of the *Income Tax Act* (the "Act").

It is our understanding that the principal business of [xxx] will be to provide loans to [xxx] investors [xxx]. We also understand that [xxx] will be in direct competition with banks and other corporations that are financial institutions for LCT purpose [xxx].

Based on these understandings, we are prepared to recommend that [xxx] be prescribed as a financial institution for the purposes of the LCT. We ask [xxx] to advise us, however, if the nature of the company's business changes, so that its status for LCT purposes can be re-examined.

You have advised that there are no current or anticipated arm's length holders of shares or debt in [xxx] that would potentially lose entitlement to an LCT investment allowance if [xxx] were prescribed. Based on this, we are prepared to recommend that [xxx] be prescribed as of its date of incorporation, September 25, 2000. This recommendation will be made on the condition that no debt (other than long-term debt within the meaning of subsection 181(1) of the Act) issued by [xxx] is held by an unrelated corporation (other than a financial institution within the meaning of that subsection) prior to December 1, 2001.

I cannot offer any assurance that either the Minister of Finance or Cabinet will agree with the recommendation that we intend to make in this regard. Nonetheless, I hope that this statement of our position is helpful.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, March 6, 2001:

Dear [xxx]

I am writing in response to your letter dated December 18, 1998 on behalf of [xxx] requesting that it be prescribed as a financial institution for the purpose of the Large Corporations Tax ("LCT") in Part I.3 of the *Income Tax Act* (the "Act"). As you are aware, the need for additional information to develop a clearer understanding of [xxx] business necessitated several exchanges of information between your colleagues and [xxx] principal and my officials. Nonetheless, I apologize for the delay in concluding our decision in this case.

It is our understanding that the principal business of [xxx] is to provide loans to individuals and corporations for investment in SEC-approved U.S. mutual funds and other securities. We also understand that [xxx] competes with banks, trust companies, credit unions and other prescribed financial institutions for clients. We understand that [xxx] income is primarily comprised of the spread between its interest revenue on these loans and the interest cost of its own financing.

Based on these understandings, we are prepared to recommend that [xxx] be prescribed as a financial institution for the purposes of the LCT. We ask [xxx] to advise us, however, if the nature of the company's business changes, so that its status for LCT purposes can be re-examined.

You have advised that some of [xxx] funding is received from third party corporations that would potentially lose entitlement to an LCT investment allowance if [xxx] were prescribed. The Department's policy is to recommend prescribing a corporation on a fully prospective basis with an additional delay where necessary to protect third party investors. Based on the information you have provided, we are prepared to recommend that [xxx] be prescribed as of January 1, 2002.

I cannot offer any assurance that either the Minister of Finance or Cabinet will agree with the recommendation that we intend to make in this regard. Nonetheless, I hope that this statement of our position is helpful.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, April 9, 2001:

Dear [xxx]

Thank you for your letter dated November 13, 2000 requesting that [xxx] be prescribed as a financial institution for the purpose of the Large Corporations Tax ("LCT") in Part I.3 of the *Income Tax Act* (the "Act").

It is our understanding that the principal business of [xxx] is to provide loans to individuals and closely-held private entities to finance automobiles, real estate and general consumer and commercial needs. We understand that [xxx] income is primarily comprised of the spread between its interest revenue on these loans and the interest cost of its own financing. You advised that [xxx] competes with banks and other prescribed financial institutions such as automotive credit corporations and other retail and small business lenders. You have indicated that [xxx] does not carry on any leasing business.

Based on these understandings, we are prepared to recommend that [xxx] be prescribed as a financial institution for the purposes of the

LCT. We ask that [xxx] advise us, however, if the nature of the company's business changes, so that its status for LCT purposes can be re-examined.

The Department's policy is to recommend prescribing a corporation on a fully prospective basis with additional time delays where necessary to protect third party investors. According to the documentation you provided [xxx] does not have any third party investors that would lose an investment allowance as a result of [xxx] being prescribed as a financial institution. Based on this, we are prepared to recommend that [xxx] be prescribed with effect from the beginning of its taxation year beginning January 1, 2002. This recommendation will be made on the condition that no debt (other than long-term debt within the meaning of subsection 181(1) of the Act) issued by [xxx] is held by an unrelated corporation (other than a financial institution within the meaning of that subsection) prior to January 1, 2002. For greater certainty, the existence of banker's acceptances drawn by [xxx] would not be considered to violate this condition since they are effectively considered for LCT purposes to be held by the accepting bank rather than the third party investors who buy them.

Since prescription must be formally effected through a regulation approved by Cabinet, I cannot offer any assurance that either the Minister of Finance or Cabinet will agree with the recommendation that we intend to make in this regard. Nonetheless, I hope that this statement of our position is helpful.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, April 29, 2002:

Dear [xxx]

This is further to your letter of September 25, 2001, in which you advise of your client's change in name from [xxx]. As you note, our letter of December 10, 1998 confirmed our intention to recommend that [xxx] be prescribed for the purposes of paragraph (g) of the definition "financial institution" in subsection 181(1) of the *Income Tax Act*, and you now request that this recommendation reflect this name change.

We understand from your letter that [xxx] continues to conduct the same business activities as were carried on prior to this name change, and upon which our earlier decision was made to recommend that [xxx] be prescribed. We also understand from the Certificate of Name Change, enclosed with your letter, that this change was effective [xxx]. Given these understandings, we confirm that our recommendation to treat [xxx] as a financial institution will reflect this name change as of the date it took effect.

As you know, I cannot offer any assurance that the Minister of Finance will agree with the recommendations that we intend to make in this regard. Nonetheless, I hope that this statement of our position is helpful.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, January 14, 2003:

Dear [xxx]

Thank you for your letters dated October 2, 2001 and October 31, 2002, in which you request that two companies — one of which is not yet incorporated, and to which you refer as "[xxx] Newco" — be prescribed under paragraph (g) of the definition of "financial institution" in subsection 181(1) of the *Income Tax Act* (the Act).

As you may know, the proposals announced on December 20, 2002 to amend the Act provide for, among other things, a fundamental change in the manner in which corporations are identified under paragraph (g) as being financial institutions. Rather than listing these corporations in a regulation, this new approach is to list them in a schedule to the Act. It is proposed that this change be made effective after December 22, 1997. As a result, requests to be prescribed under this paragraph with effective dates after December 22, 1997 — as is the case with your request — will be treated as requests to be listed in the schedule to the Act.

It is our understanding that the principal business of Newco will be to carry out the functions of a credit card issuer pursuant to an agreement with a sister corporation. [xxx] will continue to be liable to the credit card company and its members as the named issuer, and cardmember agreements will remain between [xxx] and the cardholders. Newco will, however, own the indebtedness under such credit card accounts, and borrow funds from related corporations to finance its loans to cardholders.

In respect of the other corporation [xxx] of [xxx] we understand that it currently operates as a "private label" credit card issuer and acquirer for Canadian retailers. It raises funds from related corporations.

We also understand that [xxx] Newco and [xxx] will, in carrying on their credit card businesses, be in direct competition with banks and other corporations that are financial institutions for Part I.3 purposes.

Based on these understandings, we are prepared to recommend that [xxx] Newco and [xxx] be listed in the schedule to the Act for the purposes of paragraph (g) of the definition "financial institution" in subsection 181(1). However, we ask that each of [xxx] and [xxx] Newco (once incorporated) provide us with a note explaining that it will advise us if the nature of the company's business changes, so that its treatment as a financial institution under paragraph (g) can be re-examined.

I understand from your letter and conversations you have had with Ryan Hall of this Division that you have asked that [xxx] be listed with effect for taxation years ending after December 30, 2002, and that [xxx] Newco be listed effective as of its date of incorporation. As you know, the Department's policy is to recommend listing a corporation on a fully prospective basis with additional time delays where necessary to protect third party investors. You have advised that, upon its incorporation, there will be no arm's length holders of debt in Newco that would potentially lose entitlement to a Part I.3 investment allowance if it were listed. Based on this and that [xxx] Newco has not yet been incorporated, we are prepared to recommend that [xxx] Newco be listed as of its date of incorporation. With respect to [xxx] we are prepared to recommend that it be listed as a financial institution effective for taxation years beginning after 2002, given your assurance that it has not raised any public debt. Both recommendations will be made on the condition that no debt (other than long-term debt within the meaning of subsection 181(1) of the Act) issued by either corporation is held by an unrelated corporation (other than a financial institution within the meaning of that subsection) prior to December 31, 2003.

Further, this recommendation will only be made in respect of [xxx] Newco if it is incorporated before December 31, 2003, following which time any request to list this company will be assessed anew.

To facilitate this request, we ask that the incorporation date and the name of the [xxx] Newco be provided to us shortly after its incorporation.

I cannot offer any assurance that the Minister of Finance will agree with the recommendations that we intend to make in this regard. Nonetheless, I trust this statement of our position is helpful.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, May 16, 2003:

Dear [xxx]

Thank you for your letter of March 25, 2003, concerning the proposed treatment of [xxx] as a financial institution for the purposes of paragraph (g) of the definition "financial institution" in subsection 181(1) of the *Income Tax Act*. As you note in your letter, the proposed amendments to the Act released on December 20, 2002 provide that [xxx] change in status will be effective after December 30, 2000. You now ask that we recommend changing the proposed measures so that [xxx] change in status will not be effective until after December 31, 2002.

Our letter of June 30, 2000, which responded to your letter of June 30, 1999, indicated our intention to recommend that [xxx] be prescribed as a financial institution, effective for its taxation year ending December 31, 2000 and subsequent years. However, we made our recommendation conditional upon no debt (other than long term debt as defined in subsection 181(1)) having been issued by [xxx] and held by an unrelated corporation (other than a financial institution as defined in that subsection) prior to June 30, 2001.

You explain that [xxx] has not issued debt in the public market, given its understanding that doing so before actually becoming a prescribed (now listed) financial institution would jeopardize its prescription request. As we understand it, it would seem as though [xxx] operated as if it would not be treated as a financial institution as of either December 31, 2000 or June 30, 2001. Rather, it would appear as though [xxx] and other members of its corporate group, have operated since December 31, 2000 as if [xxx] would not be treated as a financial institution until measures were adopted to that effect. As we understand it, certain investments made from within the group to [xxx] during this time would not qualify as investment allowance inclusions if the effective date of [xxx] change in status as currently proposed were to be adopted. As a result, you explain that the corporate group would incur greater tax liability under Part

I.3 for the 2000, 2001, and 2002 taxation years than would be the case if [xxx] were not treated as a financial institution for these years.

Given that these extraordinary circumstances were in part created by the delay in finalizing the process by which to list [xxx] as a financial institution, we consider that it would be appropriate to recommend the change you have requested. To that end, we intend to recommend that the proposed amendment to the Act be changed so that [xxx] will be listed effective after 2002.

I cannot offer any assurance that either the Minister of Finance or Cabinet will agree with the recommendation that we intend to make in this regard. Nonetheless, I trust that this statement of our position is helpful.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, October 22, 2003:

Dear [xxx]

I am writing further to your letter of August 15, 2002, as well as [xxx] facsimile to Ryan Hall, of the Tax Legislation Division, dated November 6, 2002, concerning [xxx] (the corporation). As you know, we provided the corporation with two letters dated April 9, and May 15, 2001 indicating our intention to recommend that the corporation be treated as a financial institution for the purposes of paragraph (g) of the definition "financial institution" in subsection 181(1) of the *Income Tax Act* effective January 1, 2002, and the proposed technical amendments to the Act released December 20, 2002 incorporate this recommendation. You now advise that the corporation has changed its name to [xxx], effective May 1, 2002, and request that the proposed amendments be updated to reflect this change.

Given our understanding that this name change does not materially affect the activities of the corporation as a financial institution, we are prepared to recommend that the proposed amendments be modified as requested.

I trust that this statement of our position is helpful.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

[Similar letters dated Oct. 15, 2003 and Oct. 22, 2003 to two other corporations — ed.]

Letter from Dept. of Finance, December 23, 2003:

Dear [xxx]

Thank you for your letter dated August 30, 2002, in which you request that [xxx] (the Company) be treated as a financial institution for the purposes of paragraph (g) of the definition "financial institution" in subsection 181(1) of the *Income Tax Act* (the "Act").

As you know, the proposed amendments to the *Act* announced in December 2002 provide for, among other things, a fundamental change in the manner in which corporations are identified under paragraph (g) as being financial institutions. Rather than listing these corporations in a regulation, this new approach is to list them in a schedule to the *Act*. It is proposed that this change be made effective after December 22, 1997. As a result, requests to be prescribed under this paragraph with effective dates after December 22, 1997 — as is the case with your request — will be treated as requests to be listed in the schedule.

We understand that the Company carries on a nation-wide business of originating and acquiring residential mortgages, scrutinizing and selling mortgage loans in the capital market, investing in and servicing a portfolio of mortgage loans and mortgage-backed securities, and originating construction loans and lines of credit for medium and large homebuilders. You describe the income earned from these activities as falling within three categories: gains on the sale of mortgage-backed securities or pools of mortgage loans; portfolio income derived from the spread between the yields on its mortgage loans, lines of credit, and securities held on its balance sheet and the costs of liabilities used to fund these income sources; and fee income from originating mortgages and lines of credit, as well as for servicing the mortgage loans or securitizations.

You advise that the Company is in direct competition with banks and other corporations treated as financial institutions for the purposes of Part I.3 of the *Act*, particularly those corporations carrying on residential mortgage businesses.

Based on the foregoing, we are prepared to recommend that the Company be listed in the schedule. However, we ask that the Company provide us with written assurances that it will advise the Department if the nature of the Company's business changes, so that its treatment as a financial institution for these purposes may be re-examined.

I understand from conversations your colleague, [xxx] has had with Ryan Hall of this Division that the Company requests that it be listed with effect for the 2003 and subsequent taxation years. The Department's policy is to recommend listing a corporation on a fully prospective basis with additional time delays where necessary to protect third party investors. [xxx] has advised that there are no current or anticipated arm's length holders of debt in the Company that would potentially lose entitlement to a Part I.3 investment allowance if it were listed. Based on this, and the date of your request, we are prepared to recommend that the Company be listed with effect as requested. However, this recommendation will be made provided no debt issued by the Company (other than long-term debt within the meaning of subsection 181(1)) is held by any unrelated corporation (other than a financial institution within the meaning of that subsection) prior to July 2004.

I cannot offer any assurance that the Minister of Finance will agree with the recommendations that we intend to make in this regard. Nonetheless, I trust this statement of our position is helpful.

Yours sincerely

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, April 27, 2004:

Dear [xxx]

Thank you for your letter of June 25, 2003, in which you request that two companies — both of which are not yet incorporated, and to which you refer as [xxx] and [xxx] — be listed as financial institutions under paragraph (g) of the "financial institution" definition in subsection 181(1) of the *Income Tax Act*.

As you know, the proposed amendments to the Act announced in December 2002 and reiterated in February 2004 provide for, among other things, a fundamental change in the manner in which corporations are identified under paragraph (g) as being financial institutions. Rather than listing these corporations in a regulation, this new approach is to list them in a schedule to the Act. It is proposed that this change be made effective after December 22, 1997. As a result, requests to be treated as financial institutions under this paragraph with effective dates after December 22, 1997 — as is the case with your request — will be treated as requests to be listed in the schedule.

We understand from your letter and discussions with Ryan Hall, of this Division, that this request is made in the context of a proposed tax structure, in which two corporations [xxx] would borrow funds (which would not qualify as "long-term debt" for the purposes of Part I.3 of the Act) from third-party lenders through a partnership ("Partnership A"). [xxx] which the above-noted legislative proposals add to the schedule to the Act effective after December 30, 2001, would also be a partner of Partnership A until at least July 2004. Partnership A would in turn incorporate another corporation ([xxx]), with which Partnership A would form another partnership ("Partnership B"). Partnership A would contribute the borrowed funds to Partnership B, which in turn would loan the funds to various related financial institutions resident in Canada ("the related financial institutions").

Although you advise that the structure is not intended to produce income tax benefits under Part I of the Act, adopting the proposed structure would increase the Part I.3 tax liability of the corporate group, which presently borrows third-party funds through a related financial institution. By virtue of being a financial institution, this related financial institution does not include in its taxable capital indebtedness that is not long-term debt, as defined for Part I.3 purposes. [xxx] on the other hand, would include such borrowings in their taxable capital, since they would not be financial institutions under any of the paragraphs in the "financial institution" definition, including under subparagraph (g)(ii) of the definition.

Although ostensibly outside the technical scope of the definition, you suggest that [xxx] fall within the policy intent of subparagraph (g)(ii), given that all of their assets are interests in a tiered partnership structure of which the underlying assets are indebtedness of financial institutions with which [xxx] are related. While you suggest in your letter that there may be a basis in law to argue that Partnerships A and B can be disregarded in determining whether [xxx] are financial institutions under the subparagraph, it would appear (judging from the position taken by the Canada Revenue Agency in its technical interpretation numbered 9712385, to which you refer) that CRA considers the better view to be that the assets of a partnership of which a corporation is a member are not considered in applying subparagraph (g)(ii) to the corporation. Listing [xxx] would therefore seem to be the only way in which, under the

proposed structure, the corporations could attain financial institution status for Part I.3 purposes.

Looking only at the policy underlying Part I.3, we agree that it would be appropriate in the present case to disregard Partnerships A and B in determining whether [xxx] are financial institutions under subparagraph (g)(ii), and are prepared to recommend that the corporations be listed strictly on that basis. We therefore ask that each corporation, once incorporated, provide us with a note undertaking to advise the Department if its assets or those of Partnerships A and B change such that it may no longer be reasonably said that all or substantially all of its assets, whether held directly or through the partnerships, are shares or debt of a related financial institution, so that its status under paragraph (g) can be re-examined.

You request that both corporations be listed with effect from the date of their incorporation. As you know, the Department's policy is to recommend listing a corporation on a fully prospective basis with additional time delays where necessary to protect third-party investors. You have advised that, upon their incorporation, no arm's length party will hold debt in either of [xxx] that would potentially lose entitlement to a Part I.3 investment allowance if either of the corporations were listed. Based on this and the fact that they have not yet been incorporated, we are prepared to recommend that [xxx] be listed as of their date of incorporation. These recommendations will be made provided no debt (other than long-term debt, as defined for Part I.3 purposes) issued by either corporation is held by an unrelated corporation (other than a financial institution, as defined for Part I.3 purposes) prior to July 2004.

Further, this recommendation will only be made in respect of either corporation if it is incorporated before December 31, 2004, following which time any request for financial institution status will be assessed anew.

To facilitate this request, we ask that the incorporation dates and names of the corporations be provided to us shortly after their incorporation.

I cannot offer any assurance that the Minister of Finance will agree with the recommendations that we intend to make in this regard. Nonetheless, I trust this statement of our position is helpful.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, May 18, 2004:

Dear [xxx]

Thank you for your letter of September 26, 2003, in which you request that [xxx] be listed as a financial institution for the purposes of paragraph (g) of the "financial institution" definition in subsection 181(1) of the *Income Tax Act*.

As you know, the proposed amendments to the Act announced in December 2002 and reiterated in February 2004 provide for, among other things, a fundamental change in the manner in which corporations are identified under paragraph (g) as being financial institutions. Rather than listing these corporations in a regulation, this new approach is to list them in a schedule to the Act. It is proposed that this change be made effective after December 22, 1997. As a result, requests to be treated as financial institutions under this paragraph with effective dates after December 22, 1997 — as is the case with your request — will be treated as requests to be listed in the schedule.

We understand from your letter and discussions with Ryan Hall, of this Division, that [xxx] business consists of providing loans to [xxx], and that these operations are financed solely by borrowings from a resident corporation that is a financial institution for Part I.3 purposes. We also understand that [xxx] in carrying on its business competes directly with other financial institutions.

Based on these understandings, we are prepared to recommend that [xxx] be listed in the schedule to the Act for the purposes of paragraph (g) of the definition "financial institution" in subsection 181(1). However, we ask that [xxx] provide us with written assurances that it will advise the Department if the nature of its business changes, so that its treatment as a financial institution for these purposes may be re-examined.

You request in your letter that [xxx] be listed effective April 8, 2002. As you know, however, the Department's policy is to recommend listing a corporation on a fully prospective basis with additional time delays where necessary to protect third-party investors. You have advised that no arm's length party will hold debt in [xxx] that would potentially lose entitlement to a Part I.3 investment allowance upon [xxx] being listed. Based on this, we are prepared to recommend that [xxx] be listed effective for the 2004 and subsequent taxation years. This recommendation will be made provided no debt (other than long-term debt, as defined for Part I.3 purposes) issued by [xxx] is held by an unrelated corporation (other than a financial institution, as defined for Part I.3 purposes) prior to 2005.

I cannot offer any assurance that the Minister of Finance will agree with the recommendations that we intend to make in this regard. Nonetheless, I trust this statement of our position is helpful.

Yours sincerely,

Brian Ernewein
Director, Tax Legislative Division, Tax Policy Branch

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INCOME TAX APPLICATION RULES

REVISED STATUTES OF CANADA 1985, CHAPTER 2 (5TH SUPPLEMENT), AS AMENDED BY 1994, cc. 7, 21; 1995, cc. 3, 21; 1997, c. 25; 1998, c. 19; 2001, c. 17, 2005, c. 30.

7. Short title — This Act may be cited as the *Income Tax Application Rules*.

PART I — INCOME TAX APPLICATION RULES, 1971

Interpretation

8. Definitions — In this Act,

"amended Act" means, according to the context in which that expression appears,

(a) the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as amended by section 1 of chapter 63 of the Statutes of Canada, 1970-71-72, and by any subsequent Act, and

(b) the *Income Tax Act*, as amended from time to time;

"former Act" means the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it was before being amended by section 1 of chapter 63 of the Statutes of Canada, 1970-71-72.

Definitions [ITAR 8]: "Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952" — ITAR 69.

Application of 1970-71-72, c. 63, s. 1

9. Application of 1970-71-72, c. 63, s. 1 — Subject to the amended Act and this Act, section 1 of chapter 63 of the Statutes of Canada, 1970-71-72, applies to the 1972 and subsequent taxation years.

Related Provisions: ITAR 65.1 — Part XV of amended Act.

Definitions [ITAR 9]: "amended Act" — ITAR 8; "taxation year" — ITA 249.

9.1 [Repealed under former Act]

Application of Part XIII of Amended Act

10. (1)–(3) [Repealed under former Act]

(4) Application of Part XIII of amended Act — Where an amount is paid or credited by a person resident in Canada to a non-resident person

(a) who is resident in a prescribed country, and

(b) with whom the person resident in Canada was dealing at arm's length,

as, on account or in lieu of payment of or in satisfaction of, interest payable on any bond, debenture, mortgage, note or similar obligation issued before 1976 by the person resident in Canada to the non-resident person, for the purposes of computing the tax under Part XIII of the amended Act payable by the non-resident person on the amount, the reference in subsection 212(1) of that Act to "25%" shall be read as a reference to "15%".

Regulations: 1600 (prescribed country).

(5) Certificates of exemption — Any certificate of exemption issued by the Minister under subsection 106(9) of the former Act that was in force on December 31, 1971 shall, for the purposes of subparagraph 212(1)(b)(iv) of the amended Act,

(a) be deemed to have been issued under subsection 212(14) of the amended Act; and

(b) be deemed

(i) in respect of interest payable on any bond, debenture or similar obligation acquired on or before December 31, 1971 by the person to whom the certificate was issued, to have been in force on January 1, 1972 and thereafter without interruption,

except that if the person to whom the certificate was issued has ceased at any time after 1971 to be exempt, under the laws of the country of which the person is a resident, from the payment of income tax to the government of that country, the certificate ceases to be in force

(iii) in respect of interest described in subparagraph (i), on the day on which the person first so ceased to be exempt.

Information Circulars: 77-16R4: Non-resident income tax.

(6) Limitation on non-resident's tax rate — Notwithstanding any provision of the amended Act, where an agreement or convention between the Government of Canada and the government of any other country that has the force of law in Canada provides that where an amount is paid or credited, or deemed to be paid or credited, to a resident of that other country the rate of tax imposed thereon shall not exceed a specified rate,

(a) any reference in Part XIII of the amended Act to a rate in excess of the specified rate shall, in respect of such an amount, be read as a reference to the specified rate; and

(b) except where the amount can reasonably be attributed to a business carried on by that person in Canada, that person shall, for the purpose of the agreement or convention in respect of the amount, be deemed not to have a permanent establishment in Canada.

Definitions [ITAR 10]: "amended Act" — ITAR 8; "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "former Act" — ITAR 8; "Minister", "non-resident", "person", "prescribed" — ITA 248(1); "resident", "resident in Canada" — ITA 250.

11. (1)–(3) [Repealed under former Act]

(4) [Repealed under former Act]

References and Continuation of Provisions

12. Definitions — In this section and sections 13 to 18,

"enactment" has the meaning assigned by section 2 of the *Interpretation Act*;

"new law" — [Not included in R.S.C. 1985]

"old law" means the *Income War Tax Act, The 1948 Income Tax Act*, and the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as amended from time to time otherwise than by section 1 of chapter 63 of the Statutes of Canada, 1970-71-72, or any subsequent Act;

"*The 1948 Income Tax Act*"; means *The Income Tax Act*, chapter 52 of the Statutes of Canada, 1948, together with all Acts passed in amendment thereof.

Definitions [ITAR 12]: "Canada" — ITA 255, *Interpretation Act* 35(1); "Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952" — ITAR 69.

13. (1) References relating to same subject-matter — Subject to this Act and unless the context otherwise requires, a reference in any enactment to a particular Part or provision of the amended Act shall be construed, as regards any transaction, matter or thing to which the old law applied, to include a reference to the Part or provision, if any, of the old law relating to, or that may reasonably be regarded as relating to, the same subject-matter.

Interpretation Bulletins: IT-474R: Amalgamations of Canadian corporations.

Definitions [ITAR 13]: "amended Act" — ITAR 8; "enactment", "old law" — ITAR 12.

14. Part IV of former Act — Part IV of the former Act is continued in force but does not apply in respect of gifts made after 1971.

Definitions [ITAR 14]: "former Act" — ITAR 8.

15. Part VIII of former Act — Part VIII of the former Act is continued in force but as though the references in that Part that, according to the context in which they appear, are references to or to provisions of the *Income Tax Act* were read as references to or to provisions of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as amended from time to time otherwise than by section 1 of chapter 63 of the Statutes of Canada, 1970-71-72, or any subsequent Act.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

Definitions [ITAR 15]: "former Act" — ITAR 8; "Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952" — ITAR 69.

16. Construction of certain references — In any enactment, a reference by number to any provision of the *Income Tax Act* that, according to the context in which the reference appears, is a reference to

(a) a provision of Part IV of the former Act,

(b) a provision of Part VIII of the former Act, or

(c) a provision of the amended Act having the same number as a provision described in paragraph (a) or (b),

shall, for greater certainty, be read as a reference to the provision described in paragraph (a), (b) or (c), as the case may be, and not to any other provision of the *Income Tax Act* or the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, having the same number.

Definitions [ITAR 16]: "amended Act" — ITAR 8; "enactment" — ITAR 12; "former Act" — ITAR 8; "Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952" — ITAR 69.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

17. (1) *Income War Tax Act*, s. 8 — A taxpayer may deduct from the tax otherwise payable under Part I of the amended Act for a taxation year such amount as would, if the *Income War Tax Act* applied to the taxation year, be deductible from tax because of subsections 8(6), (7) and (7A) of the *Income War Tax Act*.

(2) S.C. 1947, c. 63, s. 16 — There may be deducted in computing income for a taxation year under Part I of the amended Act an amount that would be deductible under section 16 of chapter 63 of the Statutes of Canada, 1947, from income as defined by the *Income War Tax Act* if that Act applied to the taxation year.

(3) Idem — There may be deducted from the tax for a taxation year otherwise payable under Part I of the amended Act an amount that would be deductible under section 16 of chapter 63 of the Statutes of Canada, 1947, from the total of taxes payable under the *Income War Tax Act* and *The Excess Profits Tax Act, 1940*, if those Acts applied to the taxation year.

(4) Retrospection — Where there is a reference in the amended Act to any act, matter or thing done or existing before a taxation year, it shall be deemed to include a reference to the act, matter or thing, even though it was done or existing before the commencement of that Act.

(5) Amount not previously included as income — Where, on the application of a method adopted by a taxpayer for computing income from a business, other than a business that is a profession, or farm or property for a taxation year to which the amended Act applies, an amount received in the year would not be included in computing the taxpayer's income for the year because on the application of that method it would have been included in computing the taxpayer's income for the purposes of the *Income Tax Act* or the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, for a preceding taxation year in respect of which it was receivable, if the amount was not included in computing the income for the preceding year, it shall be included in computing the income for the year in which it was received.

I.T. Application Rules: 69 (meaning of "chapter 148 of ...").

(6) S.C. 1949 (2nd S.), c. 25, s. 53 — There may be deducted in computing income for a taxation year under Part I of the amended Act an amount that would be deductible under section 53 of chapter 25 of the Statutes of Canada, 1949 (Second Session), in computing income under *The 1948 Income Tax Act* if that Act applied to the taxation year.

(7) Idem — There may be deducted from the tax for a taxation year otherwise payable under Part I of the amended Act an amount that would be deductible under section 53 of chapter 25 of the Statutes of Canada, 1949 (Second Session) from the tax payable under Part I of *The 1948 Income Tax Act* if that Act applied to the taxation year.

(8) Registered pension plan — A reference in the amended Act to a registered pension plan shall, in respect of a period while the plan was an approved superannuation or pension fund or plan, be construed as a reference to that approved superannuation or pension fund or plan.

Definitions [ITAR 17]: "amended Act" — ITAR 8; "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "commencement" — *Interpretation Act* 35(1); "Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952" — ITAR 69; "property", "registered pension plan" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "The 1948 Income Tax Act" — ITAR 12.

18. (1) General depreciation provisions — Where the capital cost to a taxpayer of any depreciable property

that was acquired by him before 1972 was required by any provision of the old law to be determined for the purpose of computing the amount of any deduction under any such provision in respect of that property, or would have been required by any provision of the old law to be determined for that purpose if any deduction under any such provision had been claimed by the taxpayer in respect of that property, the amount of the capital cost so required to be determined or that would have been so required to be determined, as the case may be, shall be deemed, for all purposes of the amended Act, to be the capital cost to the taxpayer of that property.

(2) Idem — Where a taxpayer has acquired depreciable property before the beginning of the 1949 taxation year, for the purposes of section 13 of the amended Act and any regulations made under paragraph 20(1)(a) of that Act an amount equal to the total of

(a) all deductions allowed in computing the taxpayer's income for the purpose of the *Income War Tax Act* as "special depreciation", "extra depreciation" or allowances in lieu of depreciation for property the taxpayer had at the beginning of the 1949 taxation year (except deductions allowed under subparagraph 6(1)(n)(ii) of that Act), and

(b) ½ of all amounts allowed to the taxpayer under subparagraph 6(1)(n)(ii) of that Act for property that the taxpayer had at the beginning of the 1949 taxation year,

shall be deemed to have been allowed to the taxpayer under regulations made under paragraph 20(1)(a) of the amended Act in computing income for a taxation year before the 1949 taxation year.

(3) Provisoes not applicable — The second and third provisoes to paragraph 6(1)(n) of the *Income War Tax Act* do not apply to sales made after the beginning of the 1949 taxation year.

(4) Reference to depreciation — Reference in this section to depreciation shall be deemed to include a reference to allowances in respect of depreciable property of a taxpayer made under paragraph 5(1)(a) of the *Income War Tax Act*.

(5) Deduction deemed depreciation — An amount deducted under paragraph 5(1)(u) of the *Income War Tax Act* in respect of amounts of a capital nature shall, for the purpose of this section, be deemed to be depreciation taken into account in ascertaining the taxpayer's income for the purpose of that Act or in ascertaining the taxpayer's loss for the taxation year for which it was deducted.

Definitions [ITAR 18]: "amended Act" — ITAR 8; "amount" — ITA 248(1); "depreciable property" — ITA 13(21), 248(1); "depreciation" — ITAR 18(4), (5); "old law" — ITAR 12; "property" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

Special Transitional Rules

19. (1) Income maintenance payments — Notwithstanding section 9, paragraph 6(1)(f) of the amended Act does not apply in respect of amounts received by a taxpayer in a taxation year that were payable to the taxpayer in respect of the loss, in consequence of an event occurring before 1974, of all or any part of the taxpayer's income from an office or employment, under a plan, described in that paragraph, that was established before June 19, 1971.

(2) Effect of certain changes made in plan established before June 19, 1971 — For the purposes of this section, a plan described in paragraph 6(1)(f) of the amended Act that was in existence before June 19, 1971 does not cease to be a plan established before that date solely because of changes made therein on or after that date for the purpose of ensuring that the plan qualifies as one entitling the employer of persons covered under the plan to a reduction, as provided for by subsection 50(2) of the *Unemployment Insurance Act*, in the amount of the employer's premium payable under that Act in respect of insured persons covered under the plan.

Interpretation Bulletins: IT-54: Wage loss replacement plans (archived); IT-85R2: Health and welfare trusts for employees; IT-428: Wage loss replacement plans.

Definitions [ITAR 19]: "amended Act" — ITAR 8; "amount", "employer", "employment", "office", "person" — ITA 248(1); "plan" — ITA 6(1)(f), ITAR 19(2); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

20. (1) Depreciable property — Where the capital cost to a taxpayer of any depreciable property acquired by the taxpayer before 1972 and owned by the taxpayer without interruption from December 31, 1971 until such time after 1971 as the taxpayer disposed of it is less than the fair market value of the property on valuation day and less than the proceeds of disposition thereof otherwise determined,

(a) for the purposes of section 13 of the amended Act, subdivision c of Division B of Part I of that Act and any regulations made under paragraph 20(1)(a) of that Act, the taxpayer's proceeds of disposition of the property shall be deemed to be an amount equal to the total of its capital cost to the taxpayer and the amount, if any, by which the proceeds of disposition thereof otherwise determined exceed the fair market value of the property on valuation day;

(b) where the property has, by one or more transactions or events (other than the death of a taxpayer to which subsection 70(5) of the amended Act applies) between persons not dealing at arm's length, become vested in another taxpayer

(i) for the purposes of the amended Act (other than, where paragraph 13(7)(e) of that Act applies in determining the capital cost to that other taxpayer of the property, for the purposes of paragraphs 8(1)(j) and (p) and sections 13 and 20 of that Act), that other taxpayer shall be deemed to have acquired the property at a capital cost equal to the proceeds deemed to have been received for the property by the person from whom that other taxpayer acquired the property, and

(ii) for the purposes of this subsection, that other taxpayer shall be deemed to have acquired the property before 1972 at a capital cost equal to the capital cost of the property to the taxpayer who actually owned the property at the end of 1971, and to have owned it without interruption from December 31, 1971 until such time after 1971 as that other taxpayer disposed of it; and

(c) where the disposition occurred because of an election under subsection 110.6(19) of the amended Act,

(i) for the purposes of that Act (other than paragraphs 8(1)(j) and (p) and sections 13 and 20

of that Act), the taxpayer is deemed to have reacquired the property at a capital cost equal to

(A) where the amount designated in respect of the property in the election did not exceed 110% of the fair market value of the property at the end of February 22, 1994, the taxpayer's proceeds of disposition determined under paragraph (a) in respect of the disposition of the property that immediately preceded the reacquisition minus the amount, if any, by which the amount designated in respect of the property in the election exceeded that fair market value, and

(B) in any other case, the amount otherwise determined under subsection 110.6(19) of that Act to be the cost to the taxpayer of the property immediately after the reacquisition referred to in that subsection minus the amount by which the fair market value of the property on valuation day exceeded the capital cost of the property at the time it was last acquired before 1972, and

(ii) for the purposes of this subsection, the taxpayer's capital cost of the property after the reacquisition shall be deemed to be equal to the taxpayer's capital cost of the property before the reacquisition and the taxpayer shall be considered to have owned the property without interruption from December 31, 1971 until such time after February 22, 1994 as the taxpayer disposes of it.

Related Provisions: ITAR 20(1.1) — Rollover to spouse, spouse trust or child; ITAR 20(1.2) — Other rollovers; ITA 257 — Formulas cannot calculate to less than zero [rule does not apply explicitly to the ITARs].

History: The portion of para. 20(1)(c) before subpara. (ii) amended by 1998, c. 19, s. 248, applicable to 1994 *et seq.* The portion formerly read:

(c) where the taxpayer is deemed by subsection 110.6(19) of the amended Act to have reacquired the property,

(i) for the purposes of that Act (other than, where paragraph 13(7)(e) of that Act applies in determining the capital cost to the taxpayer of the property, for the purposes of paragraphs 8(1)(j) and (p) and sections 13 and 20 of that Act), the taxpayer shall be deemed to have reacquired the property at a capital cost equal to the taxpayer's proceeds of disposition of the property determined under paragraph (a) in respect of the disposition that immediately preceded the reacquisition, and

Subpara. 20(1)(b)(i) amended by 1995, c. 3, subsec. 56(1), applicable to acquisitions of property that occur after May 22, 1985. Subpara. (i) formerly read:

(i) for the purposes of section 13 of the amended Act, subdivision c of Division B of Part I of that Act and any regulations made under paragraph 20(1)(a) of that Act, that other taxpayer shall be deemed to have acquired the property at a capital cost equal to the proceeds deemed to have been received for the property by the person from whom that other taxpayer acquired the property, and

Para. 20(1)(c) added by 1995, c. 3, subsec. 56(2), applicable to 1994 *et seq.*

Selected Cases [subsec. 20(1)]: *Fletcher Challenge Canada Ltd. v. R.*, [2000] 3 C.T.C. 281 (FCA); leave to appeal to SCC refused (March 29, 2001), File 28172 (SCC) (No "disposition" where license agreements expired).

Interpretation Bulletins: IT-209R: *Inter vivos* gifts of capital property to individuals directly or through trusts; IT-217R: Depreciable property owned on December 31, 1971 (archived); IT-220R2: CCA — proceeds of disposition of depreciable property; IT-268R4: *Inter vivos* transfer of farm property to child; IT-432R2: Benefits conferred on shareholders; IT-488R2: Winding-up of 90%-owned taxable Canadian corporations (archived).

(1.1) Where depreciable property disposed of to spouse, common-law partner, trust or child — Subsection (1) does not apply in any case where

(a) subsection 70(6) or 73(1) of the amended Act applies in respect of the disposition by a taxpayer of any depreciable property of a prescribed class to the spouse, common-law partner, trust or transferee, as the case may be, referred to therein, and

(b) subsection 70(9) of the amended Act applies in respect of the disposition by a taxpayer of any depreciable property of a prescribed class to a child referred to therein,

except that where the spouse, common-law partner, trust, transferee or child, as the case may be, subsequently disposes of the property at any time, subsection (1) applies as if the spouse, common-law partner, trust, transferee or child, as the case may be, had acquired the property before 1972 and owned it without interruption from December 31, 1971 until that time.

History: Subsec. 20(1.1) amended by 2000, c. 12, s. 147, to replace "spouse" with "spouse, common-law partner", applicable to 2001 *et seq.*, in force July 31, 2000, subject to subsec. 147(3) of 2000, c. 12, which provides:

(3) Where a taxpayer and a person have jointly elected pursuant to section 144 of this Act [reproduced in the History note to 248(1)"common-law partner" — ed.] in respect of the 1998, 1999 or 2000 taxation years, [this amendment] applies to the taxpayer and the person in respect of the applicable taxation year and subsequent taxation years.

Interpretation Bulletins: IT-209R: *Inter vivos* gifts of capital property to individuals directly or through trusts; IT-217R: Depreciable property owned on December 31, 1971 (archived).

(1.11) Extended meaning of "child" — For the purposes of subsection (1.1), "child" of a taxpayer includes

(a) a child of the taxpayer's child;

(b) a child of the taxpayer's child's child; and

(c) a person who, at any time before attaining the age of 21 years, was wholly dependent on the taxpayer for support and of whom the taxpayer had, at that time, in law or in fact, the custody and control.

Related Provisions: ITA 70(10) — Extended meaning of "child".

(1.2) Other transfers of depreciable property — Where, because of a transaction or an event in respect of which any of subsections 70(5), 85(1), (2) and (3), 87(2), section 88, subsections 97(2), 98(3) and (5) and 107(2) of the amended Act applies, a taxpayer has at any particular time after 1971 acquired any depreciable property of a prescribed class from a person who acquired the property before 1972 and owned it without interruption from December 31, 1971 until the particular time, for the purposes of subsection (1) the taxpayer shall be deemed to have acquired the property before 1972 and to have owned it without interruption from December 31, 1971 until such time after 1971 as the taxpayer disposed of it.

Interpretation Bulletins: IT-209R: *Inter vivos* gifts of capital property to individuals directly or through trusts; IT-217R: Depreciable property owned on December 31, 1971 (archived); IT-488R2: Winding-up of 90%-owned taxable Canadian corporation (archived).

(1.3) Transfers before 1972 not at arm's length — Without restricting the generality of section 18, where any depreciable property has been transferred before 1972 in circumstances such that subsection 20(4) of the former Act would, if that provision applied to transfers of property made in the 1972 taxation year, apply, paragraph 69(1)(b) of the amended Act does not apply to the transfer and subsection 20(4) of the former Act applies thereto.

(1.4) Depreciable property received as dividend in kind — The capital cost to a taxpayer, as of any particular time after 1971, of any depreciable property (other than depreciable property referred to in subsection (1.3) or deemed by subparagraph (1)(b)(ii) to have been acquired by the taxpayer before 1972) acquired by the taxpayer before 1972 as, on account of, in lieu of payment of or in satisfaction of, a dividend payable in kind (other than a stock dividend) in respect of a share owned by the taxpayer of the capital stock of a corporation, shall be deemed to be the fair market value of that property at the time the property was so received.

(2) Recapture of capital cost allowances — In determining a taxpayer's income for a taxation year from farming or fishing, subsection 13(1) of the amended Act does not apply in respect of the disposition by the taxpayer of property acquired by the taxpayer before 1972 unless the taxpayer has elected to make a deduction for that or a preceding taxation year, in respect of the capital cost of property acquired by the taxpayer before 1972, under regulations made under paragraph 20(1)(a) of that Act other than a regulation providing solely for an allowance for computing income from farming or fishing.

(3) Depreciable property of partnership of prescribed class — For the purposes of the amended Act, where a partnership had, on December 31, 1971, partnership property that was depreciable property of a prescribed class,

(a) the capital cost to the partnership of each property of that class shall be deemed to be an amount determined as follows:

(i) determine, for each person who, by reason of having been a member of the partnership on the later of June 18, 1971 and the day the partnership was created, and thereafter without interruption until December 31, 1971, can reasonably be regarded as having had an interest in the property of that class on December 31, 1971, the person's acquisition cost in respect of property of that class,

(ii) determine, for each such person, the amount that is that proportion of the person's acquisition cost in respect of property of that class that 100% is of the person's percentage in respect of property of that class,

(iii) select the amount determined under subparagraph (ii) for a person described therein that is not greater than any amount so determined for any other such person,

(iv) determine that proportion of the amount selected under subparagraph (iii) (in this subsection referred to as the "capital cost of that class") that the fair market value on December 31, 1971 of that property is of the fair market value on that day of all property of that class,

and the amount determined under subparagraph (iv) is the capital cost to the partnership of that property;

(b) for the purposes of sections 13 and 20 of the amended Act and any regulations made under paragraph 20(1)(a) of that Act, the undepreciated capital cost to the partnership of property of that class as of any time after 1971 shall be computed as though the amount, if any, by which the capital cost of that class to the partnership exceeds the undepreciated cost to the partnership of that class had been allowed to the partnership in respect of property of that class under regulations made under paragraph 20(1)(a) of the amended Act in computing income for taxation years before that time;

(c) in computing the income for the 1972 and subsequent taxation years of each person who was a member of the partnership on June 18, 1971 and thereafter without interruption until December 31, 1971, there may be deducted such amount as the person claims for the year, not exceeding the amount, if any, by which the total of

(i) the lesser of

(A) the amount, if any, by which the amount that was the capital cost to the person of all property of that class exceeds the percentage, equal to the person's percentage in respect of property of that class, of the capital cost of that class to the partnership, and

(B) the amount that was the undepreciated capital cost to the person of property of that class as of December 31, 1971, and

(ii) the amount, if any, by which

(A) the undepreciated capital cost to the person of property of that class as of December 31, 1971, less the amount, if any, determined under subparagraph (i) in respect of property of that class,

exceeds

(B) the percentage, equal to the person's percentage in respect of property of that class, of the undepreciated cost to the partnership of that class,

exceeds the total of all amounts deducted under this paragraph in computing the person's income for preceding taxation years; and, for the purposes of section 3 of the amended Act, the amount so claimed shall be deemed to be a deduction permitted by subdivision e of Division B of Part I of that Act; and

(d) notwithstanding paragraph (c), a person who became a member of the partnership after June 18, 1971 and who was a member of the partnership thereafter without interruption until December 31, 1971 shall be deemed to be a person described in paragraph (c) and the amount that may be claimed thereunder as a deduction in computing the person's income for any taxation year shall not exceed 10% of the total of the amounts determined under subparagraphs (c)(i) and (ii).

(4) Definitions — In subsection (3),

"acquisition cost" of a person who was a member of a partnership on December 31, 1971 in respect of depreciable property of a prescribed class that was partnership property of the partnership on December 31, 1971 means the total of the undepreciated capital cost to that person of property of that class as of December 31, 1971 and the total depreciation allowed to the person before 1972 in respect of property of that class;

"percentage" of a member of a partnership in respect of any depreciable property of a prescribed class that was partnership property of the partnership on December 31, 1971 means the interest of the member of the partnership in property of that class, expressed as a percentage of the total of the interests of all members of the partnership in property of that class on that day;

"undepreciated cost to the partnership" of any class of depreciable property means an amount determined as follows:

(a) determine, for each person who, because of having been a member of the partnership on the later of June 18, 1971 and the day the partnership was created, and thereafter without interruption until December 31, 1971, can reasonably be regarded as having had an interest in property of that class on December 31, 1971, the amount, if any, by which the undepreciated capital cost to the person of property of that class as of December 31, 1971 exceeds the amount, if any, determined under subparagraph (3)(c)(i) for the person in respect of property of that class,

(b) determine, for each such person, the amount that is that proportion of the amount determined under paragraph (a) that 100% is of the person's percentage in respect of property of that class, and

(c) select the amount determined under paragraph (b) for a person described therein that is not greater than any amount so determined for any other such person,

and the amount selected under paragraph (c) is the undepreciated cost to the partnership of that class.

(5) Other depreciable property of partnership — For the purposes of the amended Act, where a partnership had, on December 31, 1971, any particular partnership property that was depreciable property other than depreciable property of a prescribed class,

(a) the cost to the partnership of the particular property shall be deemed to be the amount that would be determined under paragraph (3)(a) to be the capital cost thereof if

(i) the particular property constituted a prescribed class of property, and

(ii) the acquisition cost of each person described therein in respect of the particular property were its actual cost to the person or the amount at which the person was deemed by subsection 20(6) of the former Act to have acquired it, as the case may be;

(b) for the purposes of sections 13 and 20 of the amended Act and any regulations made under paragraph 20(1)(a) of that Act, the undepreciated capital cost of property of any class as of any particular time after 1971 shall be computed as if the amount, if any, by which

(i) the amount determined under paragraph (a) to have been the cost to the partnership of the particular property,

exceeds

(ii) the amount that would be determined under the definition "undepreciated cost to the partnership" in subsection (4) to be the undepreciated cost to the partnership of any class of depreciable property comprising the particular property if

(A) paragraph (a) of that definition were read without reference to the words "the later of June 18, 1971 and the day the partnership was created, and thereafter without interruption until",

(B) the amount determined under subparagraph (3)(c)(i) for any person in respect of that class were nil, and

(C) the undepreciated capital cost to each person described in the definition "acquisition cost" in subsection (4) of the particular property as of December 31, 1971 were the amount, if any, by which the amount assumed by subparagraph (a)(ii) to have been the acquisition cost of the person in respect of the property exceeds the total of all amounts allowed to the person in respect of the property under regulations made under paragraph 11(1)(a) of the former Act in computing income for taxation years ending before 1972,

had been allowed to the partnership in respect of the particular property under regulations made under paragraph 20(1)(a) of the amended Act in computing income for taxation years ending before the particular time; and

(c) in computing the income for the 1972 and subsequent taxation years of each person who was, on December 31, 1971, a member of the partnership, there may be deducted such amount as the person claims for the year, not exceeding the amount, if any, by which

(i) the amount by which

(A) the amount assumed by clause (b)(ii)(C) to have been the undepreciated capital cost to the person of the particular property as of December 31, 1971

exceeds

(B) a percentage of the amount determined under subparagraph (b)(ii) in respect of the particular property, equal to the percentage that would be the person's percentage (within the meaning assigned by subsection (4)) in respect of the particular property if that property constituted a prescribed class,

exceeds

(ii) the total of all amounts deducted under this paragraph in computing the person's income for preceding taxation years;

and for the purposes of section 3 of the amended Act the amount so claimed shall be deemed to be a deduction permitted by subdivision e of Division B of Part I of that Act.

Related Provisions: Reg. 1701(2) — Maximum CCA deduction from farming or fishing business where ITAR 20(5) applies.

Definitions [ITAR 20]: "acquired" — ITAR 20(1)(b)(ii), 20(1.2); "acquisition cost" — ITAR 20(4); "amended Act" — ITAR 8; "amount" — ITA 248(1); "arm's length" — ITA 251(1); "capital cost" — ITAR 20(1)(c)(ii), 20(1.4); "capital cost of that class" — ITAR 20(3)(a)(iv); "child" — ITAR 20(1.11); "common-law partner" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "depreciable property" — ITA 13(21), 248(1); "dividend", "farming", "fishing" — ITA 248(1); "former Act" — ITAR 8; "owned" — ITAR 20(1)(b)(ii), 20(1.2); "percentage" — ITAR 20(4); "person", "prescribed", "property", "regulation", "share" — ITA 248(1); "stock dividend" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3); "undepreciated capital cost" — ITA 13(21), 248(1); "undepreciated cost to the partnership" — ITAR 20(4); "valuation day" — ITAR 24.

21. (1) Goodwill and other nothings — Where as a result of a disposition occurring after 1971 a taxpayer has or may become entitled to receive an amount (in this section referred to as the "actual amount") in respect of a business carried on by the taxpayer throughout the period beginning January 1, 1972 and ending immediately after the disposition occurred, for the purposes of section 14 of the amended Act the amount that the taxpayer has or may

become entitled to receive shall be deemed to be the total of

(a) an amount equal to a percentage, equal to 40% plus the percentage (not exceeding 60%) obtained when 5% is multiplied by the number of full calendar years ending in the period and before the transaction occurred, of the amount, if any, by which the actual amount exceeds the portion thereof referred to in subparagraph (b)(i), and

(b) an amount equal to the lesser of

(i) the percentage, described in paragraph (a), of such portion, if any, of the actual amount as may reasonably be considered as being the consideration received by him for the disposition of, or for allowing the expiration of, a government right, and

(ii) the amount, if any, by which the portion described in subparagraph (i) exceeds the greater of

(A) the total of all amounts each of which is an outlay or expenditure made or incurred by the taxpayer as a result of a transaction that occurred before 1972 for the purpose of acquiring the government right, or the taxpayer's original right in respect of the government right, to the extent that the outlay or expenditure was not otherwise deducted in computing the income of the taxpayer for any taxation year and would, if made or incurred by the taxpayer as a result of a transaction that occurred after 1971, be an eligible capital expenditure of the taxpayer, and

(B) the fair market value to the taxpayer as at December 31, 1971 of the taxpayer's specified right in respect of the government right, if no outlay or expenditure was made or incurred by the taxpayer for the purpose of acquiring the right or, if an outlay or expenditure was made or incurred, if that outlay or expenditure would have been an eligible capital expenditure of the taxpayer if it had been made or incurred as a result of a transaction that occurred after 1971.

Related Provisions: ITA 14(1.02) — Election re property acquired with pre-1972 outlays.

Interpretation Bulletins: IT-268R4: *Inter vivos* transfer of farm property to child; IT-488R2: Winding-up of 90%-owned taxable Canadian corporations (archived). See also list at end of ITAR 21.

(2) Idem — Where the taxpayer and the person by whom the actual amount has become payable to the taxpayer were not dealing with each other at arm's length, for the purposes of computing the income of that person the portion of the actual amount in excess of the amount deemed by subsection (1) to be the amount that has become payable to the taxpayer shall be deemed not to have been an outlay, expense or cost, as the case may be, of that person.

Interpretation Bulletins: IT-268R4: *Inter vivos* transfer of farm property to child. See also list at end of ITAR 21.

(2.1) Idem — Where after 1971 a taxpayer has acquired a particular government right referred to in subsection (1)

(a) from a person with whom the taxpayer was not dealing at arm's length, or

(b) under an agreement with a person with whom the taxpayer was not dealing at arm's length, if under the terms of the agreement that person allowed the right to expire so that the taxpayer could acquire a substantially similar right from the authority that had issued the right to that person,

and an actual amount subsequently becomes payable to the taxpayer as consideration for the disposition by the taxpayer of, or for the taxpayer allowing the expiration of, the particular government right or any other government right acquired by the taxpayer for the purpose of effecting the continuation, without interruption, of rights that are substantially similar to the rights that the taxpayer had under the particular government right, for the purpose of section 14 of the amended Act, the amount that has so become payable to the taxpayer shall be deemed to be the amount that would, if that person and the taxpayer had at all times been the same person, be determined under subsection (1) to be the amount that would have become so payable to the taxpayer.

Interpretation Bulletins: See list at end of ITAR 21.

(2.2) Amalgamations — For the purposes of this section, an amalgamation (within the meaning of section 87 of the amended Act) of two or more Canadian corporations shall be deemed to be a transaction between persons not dealing at arm's length.

(3) Definitions — In this section,

"government right" of a taxpayer means a right or licence

(a) that enables the taxpayer to carry on a business activity in accordance with a law of Canada or of a province or Canadian municipality, to an extent to which the taxpayer would otherwise be unable to carry it on in accordance therewith,

(b) that was granted or issued by Her Majesty in right of Canada or a province or a Canadian municipality, or by a department, board, agency or any other body authorized by or under a law of Canada, a province or a Canadian municipality to grant or issue such a right or licence, and

(c) that was acquired by the taxpayer

(i) as a result of a transaction that occurred before 1972, or

(ii) at a particular time for the purpose of effecting the continuation, without interruption, of rights that are substantially similar to the rights that the taxpayer had under a government right held by the taxpayer before the particular time;

"original right" of a taxpayer in respect of a government right means a right or licence

(a) described in the definition "government right" in this subsection, and

(b) acquired by the taxpayer as a result of a transaction that occurred before 1972 for a purpose other than the purpose described in subparagraph (c)(ii) of that definition,

if the government right was acquired by the taxpayer for the purpose of effecting the continuation, without interruption, of rights that are substantially similar to the rights that the taxpayer had under the right or licence;

"specified right" of a taxpayer in respect of a government right means a right owned by a taxpayer on December 31, 1971 that was

(a) an original right, or

(b) a government right that was acquired by the taxpayer in substitution for the original right or that was one of a series of government rights acquired by the taxpayer for the purpose of effecting the continuation, without interruption, of rights that are substantially

similar to the rights that the taxpayer had under the original right.

Definitions [ITAR 21]: "actual amount" — ITAR 21(1); "amended Act" — ITAR 8; "amount" — ITA 248(1); "arm's length" — ITAR 21(2.2); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian corporation" — ITA 89(1), 248(1); "eligible capital expenditure" — ITA 14(5), 248(1); "government right" — ITAR 21(3); "Her Majesty" — *Interpretation Act* 35(1); "original right" — ITAR 21(3); "person" — ITA 248(1); "province" — *Interpretation Act* 35(1); "specified right" — ITAR 21(3); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

Interpretation Bulletins [ITAR 21]: IT-123R6: Transactions involving eligible capital property; IT-313R2: Eligible capital property — rules where a taxpayer has ceased carrying on a business or has died; IT-474R: Amalgamations of Canadian corporations.

22. [Repealed under former Act]

23. (1), (2) [Repealed under former Act]

(3) Rules applicable [to professional business] — For the purposes of computing the income of a taxpayer for a taxation year ending after 1971 from a business that is a profession,

(a) there may be deducted such amount as the taxpayer claims, not exceeding the lesser of

(i) the amount deducted under this paragraph in computing the taxpayer's income from the business for the preceding taxation year, and

(ii) the taxpayer's investment interest in the business at the end of the year;

(b) where the taxation year is the taxpayer's 1972 taxation year, the amount deducted under paragraph (a) in computing the taxpayer's income for the preceding taxation year from the business shall be deemed to be an amount equal to the taxpayer's 1971 receivables in respect of the business;

(c) there shall be included the amount deducted under paragraph (a) in computing the taxpayer's income for the preceding taxation year from the business; and

(d) there shall be included amounts received by the taxpayer in the year on account of debts in respect of the business that were established by the taxpayer to have become bad debts before the end of the 1971 fiscal period of the business.

Related Provisions: ITA 34 — Income from a professional business.

Interpretation Bulletins: IT-242R: Retired partners; IT-278R2: Death of a partner or of a retired partner. See also list at end of ITAR 23.

Forms: T2032: Statement of professional activities.

(4) Application of para. (3)(a) — Paragraph (3)(a) does not apply to allow a deduction in computing the income of a taxpayer from a business that is a profession

(a) for the taxation year in which the taxpayer died; or

(b) for any taxation year, if,

(i) in the case of a taxpayer who at no time in that year was resident in Canada, the taxpayer ceased to carry on the business, or

(ii) in the case of any other taxpayer, the taxpayer ceased to be resident in Canada and ceased to carry on the business

at any time in that year or the following year.

Interpretation Bulletins: IT-242R: Retired partners; IT-278R2: Death of a partner or of a retired partner. See also list at end of ITAR 23.

(4.1) Certain persons deemed to be carrying on business by means of partnership — For the purposes of paragraph (a) of the definition "investment interest" in subsection (5),

(a) where subsection 98(1) of the amended Act applies, the persons who are deemed not to have ceased to be members of a partnership because of that subsection shall be deemed to be carrying on business in Canada by means of that partnership; and

(b) a taxpayer who has a residual interest in a partnership (within the meaning assigned by section 98.1 of the amended Act) shall be deemed to be carrying on business in Canada by means of that partnership.

(5) Definitions — In this section,

"investment interest" in a business at the end of a taxation year means

(a) in the case of a taxpayer other than a corporation, the total of all amounts each of which is an amount in respect of a proprietorship or partnership by means of which the taxpayer carried on that business in Canada in the year, equal to,

(i) in respect of each such proprietorship, the amount, if any, by which

(A) the total of such of the amounts that were included in computing the taxpayer's income for that or a preceding taxation year as were receivable by the taxpayer at the end of the fiscal period of the proprietorship ending in the taxation year,

exceeds

(B) the amount claimed under paragraph 20(1)(l) of the amended Act as a reserve for doubtful debts in computing the taxpayer's income from the business for the fiscal period of the proprietorship ending in the year, and

(ii) in respect of each such partnership, the adjusted cost base to the taxpayer of the taxpayer's interest in the partnership immediately after the end of the fiscal period of the partnership ending in the year,

(b) in the case of a taxpayer that is a corporation, the lesser of

(i) the amount thereof that would be determined under paragraph (a) in respect of the corporation if that paragraph applied to a taxpayer that is a corporation, and

(ii) that proportion of its 1971 receivables in respect of the business that

(A) the amount, if any, by which 10 exceeds the number of its taxation years ending after 1971 and either before or coincidentally with the taxation year,

is of

(B) 10;

Interpretation Bulletins: See list at end of ITAR 23.

"1971 receivables" in respect of a business of a taxpayer means the total of

(a) all amounts that became receivable by the taxpayer in respect of property sold or services rendered in the course of the business (within the meaning given that expression in section 34 of the amended Act) in taxation years ending before 1972 and that were not included in computing the taxpayer's income for any such taxation year, other than debts that were established by the taxpayer to have become bad debts

before the end of the 1971 fiscal period of the business, and

(b) the total of all amounts each of which is an amount, in respect of each partnership by means of which the taxpayer carried on that business before 1972, equal to such portion of the total that would be determined under paragraph (a) in respect of the partnership, if the references in that paragraph to "the taxpayer" were read as references to "the partnership", as is designated by the taxpayer in the taxpayer's return of income under Part I of the amended Act for the year to be attributable to the taxpayer, except that where the total of the portions so designated by all members of the partnership is less than the total that would be so determined under paragraph (a) in respect of the partnership, the Minister may designate the portion of that total that is attributable to the taxpayer, in which case the portion so designated by the Minister in respect of the taxpayer shall be deemed to be the portion so designated by the taxpayer.

Definitions [ITAR 23]: "1971 receivables" — ITAR 23(5); "adjusted cost base" — ITA 54, 248(1); "amended Act" — ITAR 8; "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "carried on that business in Canada" — ITA 253, ITAR 23(4.1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "fiscal period" — ITA 249.1; "investment interest" — ITAR 23(5); "Minister" — ITA 248(1); "person", "property" — ITA 248(1); "resident in Canada" — ITA 250; "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

Interpretation Bulletins [ITAR 23]: IT-188R: Sale of accounts receivable; IT-189R: Corporations used by practising members of professions; IT-212R3: Income of deceased persons — rights or things.

24. Definition of "valuation day" for capital gains and losses — In this Act, "valuation day" means

(a) December 22, 1971, in relation to any property prescribed to be a publicly-traded share or security; and

(b) December 31, 1971, in relation to any other property.

Regulations: 4400 (prescribed property).

Definitions [ITAR 24]: "prescribed", "property", "share" — ITA 248(1).

25. [Not included in R.S.C. 1985]

26. (1) Capital gains subject to tax — The provisions of subdivision c of Division B of Part I of the amended Act apply to dispositions of property made after 1971 and to transactions or events occurring after 1971 because of which any disposition of property was made or deemed to have been made in accordance with the provisions of that subdivision.

Interpretation Bulletins: IT-330R: Dispositions of capital property subject to warranty, covenant, etc. (archived). See also list at end of ITAR 26.

(1.1) Principal amount of certain obligations — For the purposes of subsection 39(3) and section 80 of the amended Act, the principal amount of any debt or other obligation of a taxpayer to pay an amount that was outstanding on January 1, 1972 (in this subsection referred to as an "obligation") shall be deemed to be the lesser of

(a) the principal amount, otherwise determined for the purposes of the amended Act, of the obligation, and

(b) the fair market value, on valuation day, of the obligation,

and in applying paragraph 39(3)(a) of the amended Act to an obligation, the reference in that paragraph to "the amount for which the obligation was issued" shall be read as a reference to "the lesser of the principal amount of the obligation and the amount for which the obligation was issued".

Related Provisions: ITAR 26(30) — Disposition by non-resident of taxable Canadian property.

Interpretation Bulletins: IT-293R: Debtor's gain on settlement of debt. See also list at end of ITAR 26.

(2) [Repealed under former Act]

(3) Cost of acquisition of capital property owned on Dec. 31, 1971 — For the purpose of computing the adjusted cost base to a taxpayer of any capital property (other than depreciable property or an interest in a partnership) that was owned by the taxpayer on December 31, 1971 and thereafter without interruption until such time as the taxpayer disposed of it, its cost to the taxpayer shall be deemed to be the amount that is neither the greatest nor the least of the following three amounts, namely:

(a) its actual cost to the taxpayer or, if the property was an obligation, its amortized cost to the taxpayer on January 1, 1972,

(b) its fair market value on valuation day, and

(c) the amount, if any, by which the total of

(i) the taxpayer's proceeds of disposition of the property, determined without reference to subsection 13(21.1) of the amended Act,

(ii) all amounts required by subsection 53(2) of the amended Act to be deducted in computing its adjusted cost base to the taxpayer immediately before the disposition, and

(iii) all amounts described in clause (5)(c)(ii)(B) that are relevant in computing its adjusted cost base to the taxpayer immediately before the disposition,

exceeds the total of

(iv) all amounts required by subsection 53(1) of the amended Act (other than paragraphs 53(1)(f.1) to (f.2)) to be added in computing its adjusted cost base to the taxpayer immediately before the disposition, and

(v) all amounts described in clause (5)(c)(i)(B) that are relevant in computing its adjusted cost base to the taxpayer immediately before the disposition,

except that where two or more of the amounts determined under paragraphs (a) to (c) in respect of any property are the same amount, that amount shall be deemed to be its cost to the taxpayer.

Related Provisions: ITAR 26(7) — Election for cost to be V-day value; ITAR 26(29) — No tax-free zone following election to trigger capital gains exemption; ITAR 26(30) — Disposition by non-resident of taxable Canadian property; ITAR 35(1) — No application to disposition by foreign affiliate for purposes of FAPI.

History: Subpara. 26(3)(c)(iv) amended by 1995, c. 21, subsec. 79(1), applicable to taxation years that end after February 21, 1994. Subpara. (iv) formerly read:

(iv) all amounts required by subsection 53(1) of the amended Act (other than paragraphs 53(1)(f.1) and (f.2)) to be added in computing its adjusted cost base to the taxpayer immediately before the disposition, and

Regulations: 4400, Sch. VII (V-day values for publicly-traded shares).

Interpretation Bulletins: IT-65: Stock splits and consolidations; IT-78: Capital property owned on December 31, 1971 — identical properties (archived); IT-84: Capital property owned on December 31, 1971 — median rule (tax-free zone) (archived); IT-93: Capital property owned on December 31, 1971 — meaning of actual cost and amortized cost (archived); IT-107: Costs of disposition of capital property affected by the median rule (archived); IT-130: Capital property owned on December 31, 1971 — actual cost of property owned by a testamentary trust; IT-209R: *Inter vivos*

gifts of capital property to individuals directly or through trusts; IT-268R4: *Inter vivos* transfer of farm property to child; IT-319: Cost of obligations owned on December 31, 1971 (archived). See also list at end of ITAR 26.

Information Circulars: 72-25R4: Business equity valuations.

Advance Tax Rulings: ATR-35: Partitioning of assets to get specific ownership — "butterfly".

Forms: T1105: Supplementary schedule for dispositions of capital property acquired before 1972; T2080–T2085, T2090: Capital dispositions supplementary schedules.

(4) Determination of cost where property not disposed of — For the purpose of computing the adjusted cost base to a taxpayer of any capital property (other than depreciable property or an interest in a partnership) at any particular time before the taxpayer disposed of it, where the property was owned by the taxpayer on December 31, 1971 and thereafter without interruption until the particular time, its cost to the taxpayer shall be deemed to be the amount that would be determined under subsection (3) to be its cost to the taxpayer if the taxpayer had disposed of it at the particular time and the taxpayer's proceeds of disposition had been its fair market value at that time.

Related Provisions: ITAR 26(7) — Election for cost to be V-day value.

Forms: T1105: Supplementary schedule for dispositions of capital property acquired before 1972.

(5) Where property disposed of in transaction not at arm's length — Where any capital property (other than depreciable property or an interest in a partnership) that was owned by a taxpayer (in this subsection referred to as the "original owner") on June 18, 1971 has, by one or more transactions or events between persons not dealing at arm's length, become vested in another taxpayer (in this subsection referred to as the "subsequent owner") and the original owner has not elected under subsection (7) in respect of the property, notwithstanding the provisions of the amended Act, for the purposes of computing, at any particular time after 1971, the adjusted cost base of the property to the subsequent owner,

(a) the subsequent owner shall be deemed to have owned the property on June 18, 1971 and thereafter without interruption until the particular time;

(b) for the purposes of this section, the actual cost of the property to the subsequent owner or, if the property was an obligation, its amortized cost to him on January 1, 1972 shall be deemed to be the amount that was its actual cost or its amortized cost on January 1, 1972, as the case may be, to the original owner; and

(c) where the property became vested in the subsequent owner after 1971, there shall be added to the cost to the subsequent owner of the property (as determined under subsection (3)) the amount, if any, by which

(i) the total of all amounts each of which is

(A) a capital gain (other than any amount deemed by subsection 40(3) of the amended Act to be a capital gain) from the disposition after 1971 of the property by a person who owned the property before it so became vested in the subsequent owner,

(B) an amount required by subsection 53(1) of the amended Act to be added in computing the adjusted cost base of the property to a person (other than the subsequent owner) described in clause (A),

(C) an amount determined under paragraph 88(1)(d) of the amended Act in computing the cost of the property to the subsequent owner or a person who owned the property before it became vested in the subsequent owner, or

(D) an amount by which a gain otherwise determined of a person who owned the property before it became so vested in the subsequent owner was reduced because of paragraph 40(2)(b) or (c) of the amended Act,

exceeds

(ii) the total of amounts each of which is

(A) a capital loss or an amount that would, but for paragraph 40(2)(e) and subsection 85(4) of the amended Act (as that Act read in its application to property disposed of on or before April 26, 1995) and paragraphs 40(2)(e.1) and (e.2) and subsection 40(3.3) of the amended Act, be a capital loss from the disposition to a corporation after 1971 of the property by a person who owned the property before it became vested in the subsequent owner, or

(B) an amount required by subsection 53(2) of the amended Act to be deducted in computing the adjusted cost base of the property to a person (other than the subsequent owner) described in clause (A),

and there shall be deducted from the cost to the subsequent owner of the property the amount, if any, by which the total determined under subparagraph (ii) exceeds the total determined under subparagraph (i).

Related Provisions: ITAR 26(30) — Disposition by non-resident of taxable Canadian property.

History: Cl. 26(5)(c)(ii)(A) amended by 1998, c. 19, subsec. 249(1), applicable to dispositions that occur after April 26, 1995. Cl. (A) formerly read:

(A) a capital loss or an amount that would, but for paragraph 40(2)(e), (e.1) or (e.2) or subsection 85(4) of the amended Act, be a capital loss from the disposition to a corporation after 1971 of the property by a person who owned the property before it so vested in the subsequent owner, or

Cl. 26(5)(c)(ii)(A) amended by 1995, c. 21, subsec. 79(2), applicable to taxation years that end after February 21, 1994. Cl. (A) formerly read:

(A) a capital loss or an amount that would, but for paragraph 40(2)(e) or subsection 85(4) of the amended Act, be a capital loss from the disposition to a corporation after 1971 of the property by a person who owned the property before it so became vested in the subsequent owner, or

Interpretation Bulletins: IT-132R2: Capital property owned on December 31, 1971 — non-arm's length transactions (archived); IT-199: Identical properties: acquired in non-arm's length transactions (archived); IT-209R: *Inter vivos* gifts of capital property to individuals directly or through trusts; IT-268R4: *Inter vivos* transfer of farm property to child; IT-370: Trusts — capital property owned on December 31, 1971 (archived); IT-432R2: Benefits conferred on shareholders; IT-488R2: Winding-up of 90%-owned taxable Canadian corporations (archived). See also list at end of ITAR 26.

Advance Tax Rulings: ATR-35: Partitioning of assets to get specific ownership — "butterfly".

(5.1) Idem — For the purposes of subsection (5), an amalgamation (within the meaning assigned by section 87 of the amended Act) of two or more Canadian corporations shall be deemed to be a transaction between persons not dealing at arm's length.

(5.2) Transfer of capital property to a corporation — For the purposes of subsection (5), where a taxpayer has disposed of capital property after May 6, 1974

to a corporation in respect of which an election under section 85 of the amended Act was made, the disposition shall be deemed to be a transaction between persons not dealing at arm's length.

(6) Reacquired property — Where a taxpayer has, at any time after June 18, 1971 and before 1972, disposed of any property owned by the taxpayer on that day and has, within 30 days after that time, reacquired the same property or acquired a substantially identical property, for the purposes of this section

(a) the taxpayer shall be deemed to have owned the property so reacquired or the substantially identical property so acquired, as the case may be, on June 18, 1971 and thereafter without interruption until the time when the taxpayer so reacquired or acquired it, as the case may be;

(b) where the property was property so reacquired, its actual cost or its amortized cost on January 1, 1972, as the case may be, to the taxpayer shall be determined as if the taxpayer had not so disposed of and so reacquired it; and

(c) where the property was substantially identical property so acquired, its actual cost or its amortized cost on January 1, 1972, as the case may be, to the taxpayer shall be deemed to be the amount that was the actual cost or the amortized cost on January 1, 1972, as the case may be, to the taxpayer of the property so disposed of by the taxpayer.

(7) Election re cost — Where, but for this subsection, the cost to an individual of any property actually owned by the individual on December 31, 1971 would be determined under subsection (3) or (4) otherwise than because of subsection (5) and the individual has so elected, in prescribed manner and not later than the day on or before which the individual is required by Part I of the amended Act to file a return of income for the first taxation year in which the individual disposes of all or any part of the property, other than

(a) personal-use property of the individual that was not listed personal property or real property,

(b) listed personal property, if the individual's gain or loss, as the case may be, from the disposition thereof was, because of subsection 46(1) or (2) of the amended Act, nil,

(c) the individual's principal residence, if the individual's gain from the disposition thereof was, because of paragraph 40(2)(b) of the amended Act, nil,

(d) personal-use property of the individual that was real property (other than the individual's principal residence), if the individual's gain from the disposition thereof was, because of subsection 46(1) or (2) of the amended Act, nil, or

(e) any other property, the proceeds of disposition of which are equal to its fair market value on valuation day,

the cost to the individual of each capital property (other than depreciable property, an interest in a partnership or any property described in any of paragraphs (a) to (e) that was disposed of by the individual before that taxation year) actually owned by the individual on December 31, 1971 shall be deemed to be its fair market value on valuation day.

Selected Cases [subsec. 26(7)]: *R. v. Adelman*, [1998] 1 C.T.C. 133 (FCA) (Requirement to elect is mandatory, not directory).

Regulations: 4700 (prescribed manner).

Interpretation Bulletins: IT-139R: Capital property owned on December 31, 1971 — fair market value (archived). See also list at end of ITAR 26.

Forms: T1105: Supplementary schedule for dispositions of capital property acquired before 1972; T2076: Valuation Day value election for capital properties owned on December 31, 1971.

(8) Identical properties — For the purposes of computing, at any particular time after 1971, the adjusted cost base to a taxpayer of any capital property (other than depreciable property or an interest in a partnership) that was owned by the taxpayer on December 31, 1971 and thereafter without interruption until the particular time, if the property was one of a group of identical properties owned by the taxpayer on December 31, 1971,

(a) section 47 of the amended Act does not apply;

(b) where the property was an obligation,

(i) for the purpose of paragraph (3)(a), its amortized cost to the taxpayer on January 1, 1972 shall be deemed to be that proportion of the total of the amortized costs to the taxpayer on January 1, 1972 of all obligations of that group that the principal amount of the obligation is of the total of the principal amounts of all obligations of that group, and

(ii) for the purpose of paragraph (3)(b), its fair market value on valuation day shall be deemed to be that proportion of the fair market value on that day of all obligations of that group that the principal amount of the obligation is of the total of the principal amounts of all obligations of that group;

(c) where the property was not an obligation,

(i) for the purpose of paragraph (3)(a), its actual cost to the taxpayer shall be deemed to be the quotient obtained when the total of the actual costs to the taxpayer of all properties of that group is divided by the number of properties of that group, and

(ii) for the purpose of paragraph (3)(b), its fair market value on valuation day shall be deemed to be the quotient obtained when the fair market value on that day of all properties of that group is divided by the number of properties of that group;

(d) for the purpose of distinguishing any such property from an otherwise identical property acquired and disposed of by the taxpayer before 1972, properties acquired by the taxpayer at any time shall be deemed to have been disposed of by the taxpayer before properties acquired by the taxpayer after that time; and

(e) for the purposes of distinguishing any such property from an otherwise identical property acquired by the taxpayer after 1971, properties owned by the taxpayer on December 31, 1971 shall be deemed to have been disposed of by the taxpayer before properties acquired by the taxpayer at a later time.

Interpretation Bulletins: IT-78: Capital property owned on December 31, 1971 — identical properties (archived); IT-115R2: Fractional interest in shares; IT-199: Identical properties acquired in non-arm's length transactions (archived); IT-387R2: Meaning of "identical properties". See also list at end of ITAR 26.

(8.1) Idem — For the purposes of subsection (8), any property of a life insurance corporation that would, but for this subsection, be identical to any other property of

the corporation shall be deemed not to be identical to that other property unless both properties are

(a) included in the same segregated fund of the corporation;

(b) non-segregated property used in the year in, or held in the course of, carrying on a life insurance business in Canada; or

(c) non-segregated property used in the year in, or held in the course of, carrying on an insurance business in Canada, other than a life insurance business.

Interpretation Bulletins: IT-387R2: Meaning of "identical properties". See also list at end of ITAR 26.

(8.2) Idem — For the purposes of subsection (8), any bond, debenture, bill, note or other similar obligation issued by a debtor is identical to any other such obligation issued by that debtor if both are identical in respect of all rights (in equity or otherwise, either immediately or in the future and either absolutely or contingently) attaching thereto, except as regards the principal amount thereof.

Interpretation Bulletins: IT-387R2: Meaning of "identical properties". See also list at end of ITAR 26.

(8.3) Idem — Where a corporation resident in Canada has, after 1971, received a stock dividend in respect of a share owned on June 18, 1971 and December 31, 1971 by it or by a corporation with which it did not deal at arm's length of the capital stock of a foreign affiliate of that corporation and the share or shares received as the stock dividend are identical to the share in respect of which the stock dividend was received, the share or shares received as the stock dividend may, at the option of the corporation, be deemed for the purposes of subsection (5) to be capital property owned by it on June 18, 1971 and for the purposes of this subsection, paragraph (3)(c) and subsection (8) to be capital property owned by it on June 18, 1971 and December 31, 1971 and not to be property acquired by the corporation after 1971 for the purposes of paragraph (8)(e).

(8.4) Idem — Where a corporation resident in Canada has, after 1971, received a stock dividend in respect of a share acquired by it after June 18, 1971 from a person with whom it was dealing at arm's length and owned by it on December 31, 1971 of the capital stock of a foreign affiliate of that corporation and the share or shares received as the stock dividend are identical to the share in respect of which the stock dividend was received, the share or shares received as the stock dividend may, at the option of the corporation, be deemed for the purposes of this subsection, paragraph (3)(c) and subsection (8) to be capital property owned by it on December 31, 1971 and not to be property acquired by the corporation after 1971 for the purposes of paragraph (8)(e).

(8.5) Amalgamation — For the purposes of subsections (8.3) and (8.4), where there has been an amalgamation (within the meaning of section 87 of the amended Act), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation.

(9) Cost of interest in partnership — For the purpose of computing, at any particular time after 1971, the adjusted cost base to a taxpayer of an interest in a partnership of which he was a member on December 31, 1971 and thereafter without interruption until the particular time, the cost to the taxpayer of the interest shall be deemed to be the amount that is neither the greatest nor the least of the following three amounts, namely:

(a) its actual cost to the taxpayer as of the particular time,

(b) the amount determined under subsection (9.1) in respect of the interest as of the particular time, and

(c) the amount, if any, by which the total of the fair market value of the interest at the particular time and all amounts required by subsection 53(2) of the amended Act to be deducted in computing its adjusted cost base to the taxpayer immediately before the particular time exceeds the total of all amounts required by subsection 53(1) of the amended Act to be added in computing its adjusted cost base to the taxpayer immediately before the particular time,

except that where two or more of the amounts determined under paragraphs (a) to (c) in respect of the interest are the same amount, that amount shall be deemed to be its cost to the taxpayer.

Forms: T4A-RCA Supp: Statement of amounts paid from an RCA; T2065: Determination of adjusted cost base of a partnership interest.

(9.1) Determination of amount for purposes of subsec. (9) — For the purposes of subsection (9), the amount determined under this subsection in respect of a taxpayer's interest in a partnership as of a particular time is the amount, if any, by which the total of

(a) the taxpayer's share, determined at the beginning of the first fiscal period of the partnership ending after 1971, of the tax equity of the partnership at the particular time,

(b) such part of any contribution of capital made by the taxpayer to the partnership (otherwise than by way of loan) before 1972 and after the beginning of the partnership's first fiscal period ending after 1971, as cannot reasonably be regarded as a gift made to, or for the benefit of, any other member of the partnership who was related to the taxpayer, and

(c) the amount of any consideration that became payable by the taxpayer after 1971 to any other person to acquire, after 1971, any right in respect of the partnership, the sole purpose of the acquisition of which was to increase the taxpayer's interest in the partnership,

exceeds the total of

(d) all amounts received by the taxpayer before 1972 and after the beginning of the partnership's first fiscal period ending after 1971 as, on account of, in lieu of payment of or in satisfaction of, a distribution of the taxpayer's share of the partnership profits or partnership capital, and

(e) all amounts each of which is an amount in respect of the disposition by the taxpayer after 1971 and before the particular time of a part of the taxpayer's interest in the partnership, equal to such portion of the adjusted cost base to the taxpayer of the interest immediately before the disposition as may reasonably be regarded as attributable to the part so disposed of.

(9.2) Where interest acquired before 1972 and after beginning of 1st fiscal period ending after 1971 — Where a taxpayer has, before 1972 and after the beginning of the first fiscal period of a partnership ending after 1971, acquired an interest in the partnership from another person, subsection (9.1) applies as if, for the purposes of paragraphs (a), (b) and (d) thereof, the taxpayer had had in respect of the interest, throughout the period

beginning at the beginning of that fiscal period and ending at the time the taxpayer acquired the interest, the same position in relation to the partnership as the taxpayer would have had in relation thereto if, throughout that period, the taxpayer had been the owner of the interest.

(9.3) Amounts deemed to be required to be deducted in respect of interest in partnership — For the purpose of computing, at any particular time after 1971, the adjusted cost base to a taxpayer of an interest in a partnership of which the taxpayer was a member on December 31, 1971 and thereafter without interruption until the particular time, the lesser of

(a) the amount, if any, by which

(i) the total of all amounts in respect of the interest determined under paragraph (9.1)(d)

exceeds

(ii) the total of

(A) the taxpayer's share, determined at the beginning of the first fiscal period of the partnership ending after 1971, of the tax equity of the partnership at the particular time, and

(B) the amount in respect of the interest determined under paragraph (9.1)(b), and

(b) the amount, if any, by which

(i) the total of all amounts in respect of the interest determined as of the particular time under paragraphs (14)(e) to (g)

exceeds

(ii) the total of all amounts in respect of the interest determined as of the particular time under paragraphs (14)(a) to (d),

shall be deemed to be required by subsection 53(2) of the amended Act to be deducted.

(9.4) Application of section 53 of amended Act in respect of interest in partnership — For the purpose of computing, at any particular time after 1971, the adjusted cost base to a taxpayer of an interest in a partnership of which the taxpayer was a member on December 31, 1971 and thereafter without interruption until the particular time,

(a) the reference in clause 53(1)(e)(i)(B) of the amended Act to "relating to" shall be read as a reference to "relating to section 14 or to"; and

(b) clause 53(2)(c)(i)(B) of the amended Act shall be read as follows:

"(B) paragraphs 12(1)(o) and (z.5), 18(1)(m) and 20(1)(v.1), section 31, subsection 40(2), section 55 and subsections 69(6) and (7) of this Act, paragraphs 20(1)(gg) and 81(1)(r) and (s) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, and the provisions of the *Income Tax Application Rules* relating to section 14, and"

History: Para. 26(9.4)(b) amended by 1997, c. 25, s. 72, applicable for the purpose of computing the adjusted cost base of property after 1996. Para. (b) formerly read:

(b) clause 53(2)(c)(i)(B) of the amended Act shall be read as follows:

"(B) paragraphs 12(1)(o), 18(1)(m) and 20(1)(v.1), section 31, subsection 40(2), section 55 and subsections 69(6) and (7) of this Act, paragraphs 20(1)(gg) and 81(1)(r) and (s) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, and the provisions of the *Income Tax Application Rules* relating to section 14, and"

(10) Where paragraph 128.1(1)(b) applies — Where subsection 48(3) of the amended Act, as it read in its application before 1993, or paragraph 128.1(1)(b) of the amended Act applies for the purpose of determining the cost to a taxpayer of any property, this section does not apply for that purpose.

History: ITAR 26(10) amended by 1994, c. 21, s. 118, applicable after 1992 except that, where a corporation elects in accordance with para. 111(4)(a) of 1994, c. 21 (see subsec. 250(5.1)), the amended subsec. applies to the corporation from the time the corporation was first granted articles of continuation (or similar constitutional documents) in any jurisdiction. That subsec. formerly read:

(10) Where subsec. 48(3) applies — Where subsection 48(3) of the amended Act applies for the purpose of determining the cost to a taxpayer of any property, this section does not apply for that purpose.

(11) Fair market value of publicly-traded securities — For the purposes of this section, the fair market value on valuation day of any property prescribed to be a publicly-traded share or security shall be deemed to be the greater of the amount, if any, prescribed in respect of that property and the fair market value of that property, otherwise determined, on valuation day.

Regulations: 4400 (prescribed property); Sch. VII (list of fair market values of publicly-traded securities).

Interpretation Bulletins: IT-84: Capital property owned on December 31, 1971 — Median rule (Tax-free zone) (archived). See also list at end of ITAR 26.

Information Circulars: 72-25R4: Business equity valuations.

(11.1) Fair market value of share of foreign affiliate — For the purposes of computing the fair market value

(a) on December 31, 1971, or

(b) at any subsequent time for the purposes of subsection (4),

of any shares owned by a taxpayer resident in Canada of the capital stock of a foreign affiliate of the taxpayer, the fair market value at that time of any asset owned by the foreign affiliate at that time

(c) that was subsequently acquired by the taxpayer from the foreign affiliate

(i) as a dividend payable in kind,

(ii) as a benefit the amount of which was deemed by paragraph 80.1(4)(b) of the amended Act to have been received by the taxpayer as a dividend from the foreign affiliate, or

(iii) as consideration for the settlement or extinguishment of an obligation described in subsection 80.1(5) of the amended Act, and

(d) in respect of which subsection 80.1(4) or (5), as the case may be, of the amended Act applies because of an election described in that subsection made by the taxpayer,

shall be deemed to be the principal amount of that asset.

(11.2) Idem — For the purposes of computing the fair market value on December 31, 1971 of any shares owned by a taxpayer resident in Canada of the capital stock of a foreign affiliate of the taxpayer, the fair market value on that day of any asset owned by the foreign affiliate on that day

(a) that was subsequently acquired by the taxpayer from the foreign affiliate as described in paragraph 80.1(6)(a) or (b) of the amended Act, and

(b) in respect of which subsection 80.1(1) of the amended Act applies because of an election described in subsection 80.1(6) of that Act made by the taxpayer,

shall be deemed to be the principal amount of that asset.

(12) Definitions — In this section,

"amortized cost" to a taxpayer of any obligation on January 1, 1972 means

(a) the principal amount of the obligation, if its actual cost to the taxpayer was less than 100% but not less than 95% of that principal amount and the obligation was issued before November 8, 1969,

(b) the actual cost to the taxpayer of the obligation, if the actual cost to the taxpayer thereof was less than 105% but not less than 100% of the principal amount thereof, and

(c) in any other case, the actual cost to the taxpayer of the obligation, plus that proportion of the discount or minus that proportion of the premium, as the case may be, in respect thereof that

(i) the number of full months in the period commencing with the day the taxpayer last acquired the obligation and ending with valuation day,

is of

(ii) the number of full months in the period commencing with the day the taxpayer last acquired the obligation and ending with the date of its maturity;

Interpretation Bulletins: IT-319: Cost of obligations owned on December 31, 1971 (archived). See also list at end of ITAR 26.

"capital property" of a taxpayer means any depreciable property of the taxpayer, and any property (other than depreciable property) any gain or loss from the disposition of which would, if the property were disposed of after 1971, be a capital gain or a capital loss, as the case may be, of the taxpayer;

"discount" in respect of any obligation owned by a taxpayer means the amount, if any, by which the principal amount thereof exceeds its actual cost to the taxpayer determined without reference to subsection (3);

"eligible capital property" of a taxpayer means any property, ½ of any amount payable to the taxpayer as consideration for the disposition of which would, if the property were disposed of after 1971, be an eligible capital amount in respect of a business within the meaning assigned by subsection 14(1) of the amended Act;

"obligation" means a bond, debenture, bill, note, mortgage, hypothecary claim or agreement of sale;

History: The definition "obligation" in subsec. 26(12) amended by 2001, c. 17, subsec. 232(1), in force June 14, 2001. It formerly read:

"obligation" means a bond, debenture, bill, note, mortgage or agreement of sale;

"premium" in respect of any obligation owned by a taxpayer means the amount, if any, by which its actual cost to the taxpayer determined without reference to subsection (3) exceeds the principal amount thereof;

"tax equity" of a partnership at any particular time means the amount, if any, by which the total of amounts each of which is

(a) the amount of any money of the partnership on hand at the beginning of its first fiscal period ending after 1971,

(b) the cost amount to the partnership, at the beginning of that fiscal period, of any partnership property other than capital property or eligible capital property,

(c) an amount in respect of any property (other than depreciable property) that was, at the beginning of that fiscal period, capital property of the partnership, equal to,

(i) where the property was disposed of before 1972, the proceeds of disposition thereof,

(ii) where the property was disposed of after 1971 and before the particular time, the amount determined under this section to be its cost to the partnership for the purposes of computing its adjusted cost base to the partnership immediately before it was disposed of, and

(iii) in any other case, the amount determined under this section to be its cost to the partnership for the purposes of computing its adjusted cost base to the partnership immediately before the particular time,

(d) an amount in respect of any prescribed class of depreciable property of the partnership, equal to the amount, if any, by which the total of the undepreciated capital cost to the partnership of property of that class as of January 1, 1972 exceeds the capital cost to the partnership of property of that class acquired by it after the beginning of that fiscal period and before 1972,

(e) an amount in respect of any other depreciable property of the partnership at the beginning of that fiscal period, equal to the amount by which

(i) the actual cost of the property to the partnership, or the amount at which the partnership was deemed to have acquired the property under subsection 20(6) of the Act as it read in its application to the 1971 taxation year, as the case may be,

exceeds

(ii) the total of all amounts in respect of the cost of the property that were allowed under paragraph 11(1)(a) of the Act as it read in computing the income from the partnership of the members thereof for taxation years ending before 1972,

(f) an amount in respect of any property that was, at the beginning of that fiscal period, partnership property that was depreciable property, equal to

(i) where the property was disposed of before 1972, the proceeds of disposition thereof minus the amount, if any, by which the lesser of

(A) the proceeds of disposition thereof, and

(B) the capital cost of the property,

exceeds

(C) in respect of depreciable property of a prescribed class, the undepreciated capital cost of all of the property of that class at the time of the disposition, or

(D) in respect of any other depreciable property, the amount that would be determined under paragraph (e) if the words "at the beginning of that fiscal period" were read as "at the time of the disposition",

(ii) where the property was disposed of after 1971 and before the particular time, the amount, if any, by which the lesser of

(A) the proceeds of disposition thereof, and

(B) the fair market value of the property on valuation day,

exceeds the capital cost to the partnership of the property, and

(iii) in any other case, the amount, if any, by which

(A) the lesser of the fair market value of the property on valuation day and its fair market value at the particular time

exceeds

(B) the capital cost to the partnership of the property, or

(g) an amount in respect of any business carried on by the partnership in its 1971 fiscal period and thereafter without interruption until the particular time, equal to the amount, if any, by which

(i) 2 times the eligible capital amounts (within the meaning assigned by section 14 of the amended Act) in respect of the business (computed without reference to section 21 of this Act) that would have become payable to the partnership

would exceed

(ii) the amount that would be deemed by subsection 21(1) to be the amount that had become payable to the partnership

if the partnership had disposed of the business at the particular time for an amount equal to its fair market value at that time,

exceeds the total of all amounts each of which is the amount of any debt owing by the partnership, or any other obligation of the partnership to pay an amount, that was outstanding at the beginning of the partnership's first fiscal period ending after 1971, minus such part, if any, thereof as would, if the amount had been paid by the partnership in that fiscal period, have been deductible in computing its income for that fiscal period.

(13) Meaning of "actual cost" — For the purposes of this section, the "actual cost" to a person of any property means, except as expressly otherwise provided in this section, the amount, if any, by which

(a) its cost to the person computed without regard to the provisions of this section

exceeds

(b) such part of that cost as was deductible in computing the person's income for any taxation year ending before 1972.

Interpretation Bulletins: IT-93: Capital property owned on December 31, 1971 — meaning of actual cost and amortized cost (archived). See also list at end of ITAR 26.

(14) Idem — For the purposes of this section, the "actual cost" to a taxpayer, as of any particular time after 1971, of an interest in a partnership of which the taxpayer was a member on December 31, 1971 and thereafter without interruption until the particular time means the amount, if any, by which the total of

(a) the cost to the taxpayer of the interest, computed as of the particular time without regard to the provisions of this section,

(b) the total of all amounts each of which is an amount in respect of a fiscal period of the partnership that ended before 1972, equal to the total of

(i) the amount that the taxpayer's income from the partnership for the taxation year of the taxpayer in which the period ended would have been, if the former Act had been read without reference to subsection 83(5) of that Act, and

(ii) the taxpayer's share, determined at the end of the period, of all profits made from dispositions in the period of capital assets that were partnership property of the partnership, to the extent that those profits were not included in computing the income or loss, as the case may be, from the partnership, of any member thereof,

(c) where the taxpayer had, before 1972, made a contribution of capital to the partnership otherwise than by way of loan, such part of the contribution as cannot reasonably be regarded as a gift made to, or for the benefit of, any other member of the partnership who was related to the taxpayer, and

(d) where, by means of the partnership, the taxpayer carried on before 1972 a business that was a profession, the amount that the taxpayer's 1971 receivables (within the meaning assigned by subsection 23(5)) in respect of the business would have been if, before 1972, the taxpayer had carried on no businesses except by means of the partnership,

exceeds the total of

(e) all amounts each of which is an amount in respect of the disposition by the taxpayer before the particular time of a part of the taxpayer's interest in the partnership, equal to such portion of,

(i) where the disposition was made before 1972, the actual cost to the taxpayer of the interest, and

(ii) in any other case, the adjusted cost base to the taxpayer of the interest immediately before the disposition,

as can reasonably be regarded as attributable to the part so disposed of,

(f) all amounts each of which is an amount in respect of a fiscal period of the partnership that ended before 1972, equal to the total of

(i) the amount that would have been the taxpayer's loss from the partnership for the taxation year of the taxpayer in which the period ended if the former Act had been read without reference to subsection 83(5) of that Act,

(ii) the taxpayers' share, determined at the end of the period, of all losses sustained from dispositions in the period of capital assets that were partnership property of the partnership, to the extent that those losses were not included in computing the loss or income, as the case may be, from the partnership, of any member thereof, and

(iii) the taxpayer's share, determined at the end of the period, of such of the drilling and exploration expenses, including all general geological and geophysical expenses incurred by the partnership while the taxpayer was a member thereof, on or in respect of exploring or drilling for petroleum or natural gas in Canada as were incurred in the period and after 1948, to the extent that those expenses were not deducted in computing the taxpayer's income from the partnership for the taxpayer's 1971 or any preceding taxation year, and

(g) all amounts received by the taxpayer before 1972 as, on account of, in lieu of payment of or in satisfaction of, a distribution of the taxpayer's share of the partnership profits or partnership capital.

(15) Idem — For the purposes of this section and subsection 88(2.1) of the amended Act, the "actual cost" to a taxpayer, as of any particular time after 1971, of any shares (in this subsection referred to as "new shares") of any class of the capital stock of a new corporation formed as a result of an amalgamation of two or more corporations (within the meaning of section 85I of the former Act as it read in its application to the 1971 taxation year) that were

(a) owned by the taxpayer on December 31, 1971, and thereafter without interruption until the particular time, and

(b) acquired by the taxpayer by the conversion, because of the amalgamation, of shares of the capital stock of a predecessor corporation into shares of the capital stock of the new corporation,

means that proportion of the actual cost to the taxpayer of any shares owned by the taxpayer that were so converted because of the amalgamation that the fair market value, immediately after the amalgamation, of the new shares of that class so acquired by the taxpayer is of the fair market value, immediately after the amalgamation, of all of the shares of the capital stock of the new corporation so acquired by the taxpayer.

(16) Idem — For the purposes of this section, the "actual cost" to an individual, as of any particular time after 1971, of any share of the capital stock of a corporation that was

(a) owned by the individual on December 31, 1971 and thereafter without interruption until the particular time, and

(b) acquired by the individual in a taxation year before 1972 under an agreement referred to in subsection 85A(1) of the former Act as it read in its application to that taxation year,

means an amount equal to the greater of

(c) the actual cost to the individual of the share computed without regard to this subsection, and

(d) the fair market value of the share at the time the individual so acquired it.

(17) Idem — For the purposes of this section and subsection 88(2.1) of the amended Act, the "actual cost" to a taxpayer, as of any particular time after 1971, of any capital property received by the taxpayer before 1972 and owned by the taxpayer thereafter without interruption until the particular time means,

(a) where the property was so received as, on account of, in lieu of payment of or in satisfaction of, a dividend payable in kind (other than a stock dividend) in respect of a share owned by the taxpayer of the capital stock of a corporation, the fair market value of that property at the time the property was so received;

(b) where the property so received was a share of the capital stock of a corporation received by the taxpayer as a stock dividend, the amount that, because of the receipt of the share, was deemed by subsection 81(3) of the former Act to have been received by the taxpayer as a dividend; and

(c) where the property was so received from a pension fund or plan, an employees profit sharing plan, a retirement savings plan, a deferred profit sharing plan or a supplementary unemployment benefit plan, the fair market value of that property at the time the property was so received.

(17.1) Application — Where a taxpayer is deemed to have acquired a property because of subsection 138(11.3) of the amended Act, this section does not apply in respect of any subsequent disposition or deemed disposition of the property.

Interpretation Bulletins: IT-88R2: Stock dividends. See also list at end of ITAR 26.

(18) Transfer of farm land by a farmer to [the farmer's] child at death — Where

(a) a taxpayer owned, on December 31, 1971 and thereafter without interruption until the taxpayer's death, any land referred to in subsection 70(9) of the amended Act,

(b) the land has, on or after the death of the taxpayer and as a consequence thereof, been transferred or distributed to a child of the taxpayer who was resident in Canada immediately before the death of the taxpayer, and

(c) it can be shown, within the period ending 36 months after the death of the taxpayer or, where written application therefor has been made to the Minister by the legal representative of the taxpayer within that period, within such longer period as the Minister considers reasonable in the circumstances, that the land has become vested indefeasibly in the child,

the following rules apply:

(d) paragraph 70(9)(b) of the amended Act does not apply for the purpose of determining the cost to the child of the land or part thereof, as the case may be, and

(e) subsection (5) applies in respect of the transfer or distribution of the land to the child as if the references in that subsection to "June 18, 1971" were references to "December 31, 1971".

Related Provisions: ITAR 26(20) — Extended meaning of "child".

Interpretation Bulletins: IT-349R3: Intergenerational transfers of farm property on death; IT-449R: Meaning of "vested indefeasibly" (archived). See also list at end of ITAR 26.

(19) *Inter vivos* transfer of farm land by a farmer to child — Where a taxpayer owned, on December 31, 1971, and thereafter without interruption until a transfer thereof by the taxpayer to the taxpayer's child, in circumstances to which subsection 73(3) of the amended Act applies, land referred to in that subsection,

(a) paragraph 73(3)(d) of the amended Act does not apply for the purpose of determining the cost to the child of the land; and

(b) subsection (5) shall apply in respect of the transfer of the land to the child as if the references in that subsection to "June 18, 1971" were references to "December 31, 1971".

Related Provisions: ITAR 26(20) — Extended meaning of "child".

Interpretation Bulletins: IT-268R4: *Inter vivos* transfer of farm property to child. See also list at end of ITAR 26.

(20) Extended meaning of "child" — For the purposes of subsections (18) and (19), "child" of a taxpayer includes

(a) a child of the taxpayer's child;

(b) a child of the taxpayer's child's child; and

(c) a person who, at any time before attaining the age of 21 years, was wholly dependent on the taxpayer for support and of whom the taxpayer had, at that time, in law or in fact, the custody and control.

Related Provisions: ITA 70(10) — Extended meaning of "child".

(21) Shares received on amalgamation — Where, after May 6, 1974, there has been an amalgamation (within the meaning assigned by section 87 of the amended Act) of two or more corporations (each of which is in this subsection referred to as a "predecessor corporation") to form one corporate entity (in this subsection referred to as the "new corporation"), and

(a) any shareholder (except any predecessor corporation) owned shares of the capital stock of a predecessor corporation on December 31, 1971 and thereafter without interruption until immediately before the amalgamation,

(b) any shares referred to in paragraph (a) were shares of one class of the capital stock of a predecessor corporation (in this subsection referred to as the "old shares"),

(c) no consideration was received by the shareholder for the disposition of the old shares on the amalgamation other than shares of one class of the capital stock of the new corporation (in this subsection referred to as the "new shares"), and

(c.1) the cost of the new shares received by the shareholder because of the amalgamation was determined otherwise than because of paragraph 87(4)(e) of the amended Act,

notwithstanding any other provision of this Act or of the amended Act, for the purposes of subsection 88(2.1) of the amended Act and of determining the cost to the taxpayer and the adjusted cost base to the taxpayer of the new shares,

(d) the property that was the old shares shall be deemed not to have been disposed of by the shareholder because of the amalgamation but to have been altered, in form only, because of the amalgamation and to have continued in existence in the form of the new shares, and

(e) the property that is the new shares shall be deemed not to have been acquired by the shareholder because of the amalgamation but to have been in existence prior thereto in the form of the old shares that were altered, in form only, because of the amalgamation.

Related Provisions: ITAR 26(30) — Disposition by non-resident of taxable Canadian property.

(22) Options received on amalgamations — Where, after May 6, 1974, there has been an amalgamation (within the meaning assigned by section 87 of the amended Act) of two or more corporations (each of which is in this subsection referred to as a "predecessor corporation") to form one corporate entity (in this subsection referred to as the "new corporation") and a taxpayer has acquired an option to acquire capital property that was shares of the capital stock of the new corporation (in this subsection referred to as the "new option") as sole consideration for the disposition on the amalgamation of an option to acquire shares of the capital stock of a predecessor corporation (in this subsection referred to as the "old option") owned by the taxpayer on December 31, 1971 and thereafter without interruption until immediately before the amalgamation, notwithstanding any other provision of this Act or of the amended Act, for the purposes of subsection 88(2.1) of the amended Act and of determining the cost to the taxpayer and the adjusted cost base to the taxpayer of the new option,

(a) the property that was the old option shall be deemed not to have been disposed of by the taxpayer because of the amalgamation but to have been altered, in form only, because of the amalgamation and to have continued in existence in the form of the new option; and

(b) the property that is the new option shall be deemed not to have been acquired by the taxpayer because of the amalgamation but to have been in existence prior thereto in the form of the old option that was altered, in form only, because of the amalgamation.

(23) Obligations received on amalgamations — Where, after May 6, 1974, there has been an amalgamation (within the meaning assigned by section 87 of the amended Act) of two or more corporations (each of which is in this subsection referred to as a "predecessor corporation") to form one corporate entity (in this subsection referred to as the "new corporation") and a taxpayer has acquired a capital property that was a bond, debenture, note, mortgage, hypothecary claim or other similar obligation of the new corporation (in this subsection referred to as the "new obligation") as sole consideration for the disposition on the amalgamation of a bond, debenture, note, mortgage, hypothecary claim or other similar obligation respectively of a predecessor corporation (in this subsection referred to as the "old obligation") owned by the taxpayer on December 31, 1971 and thereafter without interruption until immediately before the amalgamation, notwithstanding any other provision of this Act or of the amended Act, for the purposes of subsection 88(2.1) of the amended Act and of determining the cost to the taxpayer and the adjusted cost base to the taxpayer of the new obligation,

(a) the property that was the old obligation shall be deemed not to have been disposed of by the taxpayer because of the amalgamation but to have been altered, in form only, because of the amalgamation and to have continued in existence in the form of the new obligation; and

(b) the property that is the new obligation shall be deemed not to have been acquired by the taxpayer because of the amalgamation but to have been in existence prior thereto in the form of the old obligation that was altered, in form only, because of the amalgamation.

History: The opening words of subsec. 26(23) amended by 2001, c. 17, subsec. 232(2), to add "hypothecary claim" (in two places), in force June 14, 2001. The opening words formerly read:

(24) Convertible properties — Where there has been an exchange to which subsection 51(1) of the amended Act applies on which a taxpayer has acquired shares of one class of the capital stock of a corporation (in this subsection referred to as the "new shares") in exchange for a share, bond, debenture or note of the corporation (in this subsection referred to as the "old property") owned by the taxpayer on December 31, 1971 and thereafter without interruption until immediately before the time of the exchange, notwithstanding any other provision of this Act or of the amended Act, for the purposes of subsection 88(2.1) of the amended Act and, where the exchange occurred after May 6, 1974, for the purposes of determining

the cost to the taxpayer and the adjusted cost base to the taxpayer of the new shares,

(a) the property that was the old property shall be deemed not to have been disposed of by the taxpayer because of the exchange but to have been altered, in form only, because of the exchange and to have continued in existence in the form of the new shares; and

(b) the property that is the new shares shall be deemed not to have been acquired by the taxpayer because of the exchange but to have been in existence prior thereto in the form of the old property that was altered, in form only, because of the exchange.

Interpretation Bulletins: IT-146R3: Shares entitling shareholders to choose taxable or other kinds of dividends; IT-474R: Amalgamations of Canadian corporations. See also list at end of ITAR 26.

(25) Bond conversion — Where, after May 6, 1974, there has been an exchange to which section 51.1 of the amended Act applies on which a taxpayer has acquired a bond of a debtor (in this subsection referred to as the "new bond") in exchange for another bond of the same debtor (in this subsection referred to as the "old bond") owned by the taxpayer on December 31, 1971 and thereafter without interruption until immediately before the exchange, notwithstanding any other provision of this Act or of the amended Act, for the purposes of subsection 88(2.1) of the amended Act and of determining the cost to the taxpayer and the adjusted cost base to the taxpayer of the new bond,

(a) the property that was the old bond shall be deemed not to have been disposed of by the taxpayer because of the exchange but to have been altered, in form only, because of the exchange and to have continued in existence in the form of the new bond; and

(b) the property that is the new bond shall be deemed not to have been acquired by the taxpayer because of the exchange but to have been in existence prior thereto in the form of the old bond that was altered, in form only, because of the exchange.

(26) Share for share exchange — Where, after May 6, 1974, there has been an exchange to which subsection 85.1(1) of the amended Act applies on which a taxpayer has acquired shares of any particular class of the capital stock of a corporation (in this subsection referred to as the "new shares") in exchange for shares of any particular class of the capital stock of another corporation (in this subsection referred to as the "old shares") owned by the taxpayer on December 31, 1971 and thereafter without interruption until immediately before the exchange, notwithstanding any other provision of this Act or of the amended Act, for the purposes of subsection 88(2.1) of the amended Act and of determining the cost to the taxpayer and the adjusted cost base to the taxpayer of the new shares,

(a) the property that was the old shares shall be deemed not to have been disposed of by the taxpayer because of the exchange but to have been altered, in form only, because of the exchange and to have continued in existence in the form of the new shares; and

(b) the property that is the new shares shall be deemed not to have been acquired by the taxpayer because of the exchange but to have been in existence prior thereto in the form of the old shares that were altered, in form only, because of the exchange.

Interpretation Bulletins: IT-450R: Share for share exchange.

(27) Reorganization of capital — Where, after May 6, 1974, there has been a reorganization of the capital of a corporation to which section 86 of the amended Act applies on which a taxpayer has acquired shares of a particular class of the capital stock of the corporation (in this subsection referred to as the "new shares") as the sole consideration for the disposition on the reorganization of shares of another class of the capital stock of the corporation (in this subsection referred to as the "old shares") owned by the taxpayer on December 31, 1971 and thereafter without interruption until immediately before the reorganization and the cost to the taxpayer of the new shares was determined otherwise than because of subsection 86(2) of the amended Act, notwithstanding any other provision of this Act or of the amended Act, for the purposes of subsection 88(2.1) of the amended Act and of determining the cost to the taxpayer and the adjusted cost base to the taxpayer of the new shares,

(a) the property that was the old shares shall be deemed not to have been disposed of by the taxpayer because of the reorganization but to have been altered, in form only, because of the reorganization and to have continued in existence in the form of the new shares; and

(b) the property that is the new shares shall be deemed not to have been acquired by the taxpayer by virtue of the reorganization but to have been in existence prior thereto in the form of the old shares that were altered, in form only, because of the reorganization.

Advance Tax Rulings: ATR-22R: Estate freeze using share exchange.

(28) Idem — Where a taxpayer acquired a property (in this subsection referred to as the "first property") in circumstances to which any of subsections (5) and (21) to (27) applied and subsequently acquires, in exchange for or in consideration for the disposition of the first property, another property in circumstances to which any of subsections (21) to (27) would apply if the taxpayer had owned the first property on December 31, 1971 and thereafter without interruption until the time of the subsequent acquisition, for the purposes of applying subsections (21) to (27) in respect of that subsequent acquisition, the taxpayer shall be deemed to have owned the first property on December 31, 1971 and thereafter without interruption until the time of the subsequent acquisition.

History: Subsec. 26(28) added by 1994, c. 7, Sch. II (1991, c. 49), s. 200, applicable to acquisitions of property occurring after July 13, 1990, except that, where the taxpayer so elected by notifying the Minister of National Revenue in writing either before 1993 or in the taxpayer's return of income under Part I of the Act for the taxation year in which the taxpayer disposed of the property, the subsec. applies to acquisitions occurring after May 6, 1974 and before July 14, 1990 with respect to property that was owned by the taxpayer on July 13, 1990.

Interpretation Bulletins: IT-450R: Share for share exchange.

(29) Effect of election under subsection 110.6(19) — Where subsection 110.6(19) of the amended Act applies to a particular property, for the purposes of determining the cost and the adjusted cost base to a taxpayer of any property at any time after February 22, 1994, the particular property shall be deemed not to have been owned by any taxpayer on December 31, 1971.

Related Provisions: ITAR 26(30) — Disposition by non-resident of taxable Canadian property.

History: Subsec. 26(29) added by 1995, c. 3, s. 57, in force March 26, 1995.

(30) Additions to taxable Canadian property — Subsections (1.1) to (29) do not apply to a disposition by a non-resident person of a property

(a) that the person last acquired before April 27, 1995;

(b) that would not be a taxable Canadian property immediately before the disposition if section 115 of the amended Act were read as it applied to dispositions that occurred on April 26, 1995; and

(c) that would be a taxable Canadian property immediately before the disposition if section 115 of the amended Act were read as it applied to dispositions that occurred on January 1, 1996.

Related Provisions: ITA 40(9) — Gains limited to those accruing after April 1995.

History: Subsec. 26(30) amended by 2001, c. 17, s. 249, applicable to dispositions that occur after October 1, 1996. Subsec. 26(30) formerly read:

(30) Subsections (1.1) to (29) do not apply to a disposition by a non-resident person of a taxable Canadian property that would not be a taxable Canadian property immediately before the disposition if section 115 of the amended Act were read as it applied to dispositions that occurred on April 26, 1995.

Subsec. 26(30) added by 1998, c. 19, subsec. 249(3), applicable to dispositions that occur after April 26, 1995.

Definitions [ITAR 26]: "actual cost" — ITAR 26(5)(b), (6)(b), (c), (8)(c)(i), 26(13)–(17); "adjusted cost base" — ITA 54, 248(1); "amended Act" — ITAR 8; "amortized cost" — ITAR 26(5)(b), (6)(b), (c), 26(12); "amount" — ITA 248(1); "arm's length" — ITAR 26(5.1), (5.2); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian corporation" — ITA 89(1), 248(1); "capital gain" — ITA 39(1), 248(1); "capital loss" — ITA 39(1)(b), 248(1); "capital property" — ITA 54, ITAR 26(8.3), (8.4), (12); "child" — ITAR 26(20); "consequence" — 248(8); "corporation" — ITA 248(1), ITAR 26(8.5); "cost amount" — ITA 248(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "depreciable property" — ITA 13(21), 248(1); "discount" — ITAR 26(12); "dividend" — ITA 248(1); "eligible capital amount" — ITA 14(1), 248(1); "eligible capital property" — ITAR 26(12); "employees profit sharing plan" — ITA 144(1), 248(1); "fair market value on valuation day" — ITAR 26(8)(b)(ii), (c)(ii), 26(11); "first property" — ITAR 26(28); "fiscal period" — ITA 249.1; "foreign affiliate" — ITA 95(1), 248(1); "former Act" — ITAR 8; "identical" — ITA 248(12), ITAR 26(8.1), (8.2); "Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952", "Income Tax Application Rules, 1971" — ITAR 69; "individual", "legal representative", "life insurance business", "life insurance corporation" — ITA 248(1); "listed personal property" — ITA 54, 248(1); "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "new bond" — ITAR 26(25); "new corporation" — ITAR 26(21)–(23); "new obligation" — ITAR 26(23); "new option" — ITAR 26(22); "new shares" — ITAR 26(21)(c), 26(24), (26), (27); "non-resident" — ITA 248(1); "obligation" — ITAR 26(1.1), (12); "old bond" — ITAR 26(25); "old obligation", "old option" — ITAR 26(22); "old property" — ITAR 26(24); "old shares" — ITAR 26(21)(b), 26(26), (27); "original owner" — ITAR 26(5); "owned" — ITAR 26(6)(a), 26(28); "person" — ITA 248(1); "personal-use property" — ITA 54, 248(1); "predecessor corporation" — ITAR 26(21)–(23); "premium" — ITAR 26(12); "prescribed", "principal amount", "property" — ITA 248(1); "related" — ITA 251(2)–(6); "resident in Canada" — ITA 250; "retirement savings plan" — ITA 146(1), 248(1); "share", "shareholder", "stock dividend" — ITA 248(1); "subsequent owner" — ITAR 26(5); "supplementary unemployment benefit plan" — ITA 145(1), 248(1); "tax equity" — ITAR 26(12); "taxable Canadian property" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "undepreciated capital cost" — ITA 13(21), 248(1); "valuation day" — ITAR 24; "writing" — *Interpretation Act* 35(1); "written" — *Interpretation Act* 35(1)"writing".

26.1 (1) Change of use of property before 1972 — For the purposes of paragraph 40(2)(b) and the definition "principal residence" in section 54 of the amended Act, where a taxpayer owned, on December 31, 1971, a property that is a housing unit, a leasehold interest in a housing unit or a share of the capital stock of a cooperative housing corporation, if the housing unit was, or if the share was acquired for the sole purpose of acquiring the right to inhabit, a housing unit owned by the corporation that was ordinarily inhabited by the taxpayer, and the taxpayer began at any time thereafter but before 1972 to use the property for the purpose of gaining or producing income therefrom, or for the purpose of gaining or producing income from a business, and the taxpayer elected in the taxpayer's return of income for the 1974 or 1975 taxation year as if the taxpayer had begun to use the property for the purpose of gaining or producing income therefrom or for the purpose of gaining or producing income from a business on January 1, 1972, the taxpayer shall be deemed to have made an election under subsection 45(2) of the amended Act in the taxpayer's return of income for the 1972 taxation year and to have so begun to use the property.

(2) No capital cost allowance while election in force — Where the taxpayer has made the election described in subsection (1), no amount may be deducted under paragraph 20(1)(a) of the amended Act for the 1974 and subsequent taxation years in respect of property referred to in that subsection while the election remains in force.

Definitions [ITAR 26.1]: "amended Act" — ITAR 8; "amount", "business" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "property", "share" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

27, 28. [Repealed under former Act]

29. (1) Deduction from income of petroleum or natural gas corporation — A corporation whose principal business is production, refining or marketing of petroleum, petroleum products or natural gas or exploring or drilling for petroleum or natural gas may deduct, in computing its income for a taxation year, the lesser of

(a) the total of such of the drilling and exploration expenses, including all general geological and geophysical expenses, incurred by it on or in respect of exploring or drilling for petroleum or natural gas in Canada as were incurred during the calendar years 1949 to 1952, to the extent that they were not deductible in computing income for a previous taxation year, and

(b) of that total, an amount equal to its income for the taxation year if no deduction were allowed under this section or section 65, 66 or 66.1 of the amended Act minus the deductions allowed for the year under subsections (9), (10) and (25) of this section and sections 112 and 113 of the amended Act.

Related Provisions: ITA 87(1.2) — New corporation deemed continuation of predecessor; ITAR 29(31) — Multiple deductions.

History: Para. 29(1)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 201(1), applicable to taxation years ending after February 17, 1987. That para. formerly read:

(b) of that total, an amount that would be equal to its income for the taxation year if no deduction were allowed under this section or section 65, 66 or 66.1 of the amended Act, minus the deductions allowed for the year under subsections (9), (10) and (25) of this section, sections 112 and 113 of the amended Act and subsections 66(6) and (7) and 66.1(4) and (5) of the *Income tax Act*, chapter 148 of the Revised Statutes of Canada, 1952.

(2) Deduction from income of mining corporation — A corporation whose principal business is mining or exploring for minerals may deduct, in computing its income for a taxation year, the lesser of

(a) the total of such of the prospecting, exploration and development expenses incurred by it in searching for

minerals in Canada as were incurred during 1952, to the extent that they were not deductible in computing income for a preceding taxation year, and

(b) of that total, an amount equal to its income for the taxation year if no deduction were allowed under this section or section 65, 66 or 66.1 of the amended Act minus the deductions allowed for the year under subsections (9), (10) and (25) of this section and sections 112 and 113 of the amended Act,

if the corporation has filed certified statements of those expenses and has satisfied the Minister that it has been actively engaged in prospecting and exploring for minerals in Canada by means of qualified persons and has incurred the expenses for those purposes.

History: Para. 29(2)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 201(2), applicable to taxation years ending after February 17, 1987. That para. formerly read:

(b) of that total, an amount that would be equal to its income for the taxation year if no deduction were allowed under this section or section 65, 66 or 66.1 of the amended Act, minus the deductions allowed for the year under subsections (9), (10) and (25) of this section, sections 112 and 113 of the amended Act and subsections 66(6) and (7) and 66.1(4) and (5) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952,

(3) Deduction from income of petroleum or natural gas corporation or mining corporation — A corporation whose principal business is

(a) production, refining or marketing of petroleum, petroleum products or natural gas, or exploring or drilling for petroleum or natural gas, or

(b) mining or exploring for minerals,

may deduct, in computing its income for a taxation year, the lesser of

(c) the total of such of

(i) the drilling and exploration expenses, including all general geological and geophysical expenses, incurred by it on or in respect of exploring or drilling for petroleum or natural gas in Canada, and

(ii) the prospecting, exploration and development expenses incurred by it in searching for minerals in Canada,

as were incurred after 1952 and before April 11, 1962, to the extent that they were not deductible in computing income for a previous taxation year, and

(d) of that total, an amount equal to its income for the taxation year if no deduction were allowed under this section or section 65, 66 or 66.1 of the amended Act minus the deductions allowed for the year under subsections (1), (2), (9), (10) and (25) of this section and sections 112 and 113 of the amended Act.

Related Provisions: ITAR 29(31) — Multiple deductions.

History: Para. 29(3)(d) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 201(3), applicable to taxation years ending after February 17, 1987. That para. formerly read:

(d) of that total, an amount that would be equal to its income for the taxation year if no deduction were allowed under this section or section 65, 66 or 66.1 of the amended Act, minus the deductions allowed for the year under subsections (1), (2), (9), (10) and (25) of this section, sections 112 and 113 of the amended Act and subsections 66(6) and (7) and 66.1(4) and (5) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952.

(4) Deduction from income of petroleum corporation, etc. — A corporation whose principal business is

(a) production, refining or marketing of petroleum, petroleum products or natural gas, or exploring or drilling for petroleum or natural gas,

(b) mining or exploring for minerals,

(c) processing mineral ores for the purpose of recovering metals therefrom,

(d) a combination of

(i) processing mineral ores for the purpose of recovering metals therefrom, and

(ii) processing metals recovered from the ores so processed,

(e) fabricating metals, or

(f) operating a pipeline for the transmission of oil or natural gas,

may deduct, in computing its income for a taxation year, the lesser of

(g) the total of such of

(i) the drilling and exploration expenses, including all general geological and geophysical expenses, incurred by it on or in respect of exploring or drilling for petroleum or natural gas in Canada, and

(ii) the prospecting, exploration and development expenses incurred by it on searching for minerals in Canada,

as were incurred after April 10, 1962 and before 1972, to the extent that they were not deductible in computing income for a previous taxation year, and

(h) of that total, an amount equal to its income for the taxation year if no deduction were allowed under this subsection or section 65, 66 or 66.1 of the amended Act minus the deductions allowed for the year under subsection 66(2) and sections 112 and 113 of the amended Act.

Related Provisions: ITAR 29(31) — Multiple deductions.

History: Para. 29(4)(h) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 201(4), applicable to taxation years ending after February 17, 1987. That para. formerly read:

(h) of that total, an amount that would be equal to its income for the taxation year if no deduction were allowed under this subsection or section 65, 66 or 66.1 of the amended Act, minus the deductions allowed for the year under subsection 66(2) and sections 112 and 113 of the amended Act and subsections 66(6) and (7) and 66.1(4) and (5) of the *Income Tax Act*, Revised Statutes of Canada, 1952.

(5) Application of para. (4)(g) — In applying paragraph 4(g) to a corporation described in paragraph (4)(f), the reference in paragraph (4)(g) to "April 10, 1962" shall be read as a reference to "June 13, 1963".

(6), (7), (8) [Repealed effective 2007]

History: Subsecs. 29(6) to (8) repealed by 1997, c. 25, s. 73, applicable to renunciations made

(a) after 2006, in respect of a payment or loan received by a joint exploration corporation before March 6, 1996;

(b) after 2006, in respect of a payment or loan received by a joint exploration corporation after March 5, 1996 under an agreement in writing made

(i) by the corporation before March 6, 1996, or

(ii) by another corporation before March 6, 1996, where

(A) the other corporation controlled the corporation at the time the agreement was made, or

(B) the other corporation undertook, at the time the agreement was made, to form the corporation; and

(c) after March 5, 1996, in any other case.

Subsecs. (6) to (8) formerly read:

(6) Joint exploration corporation may renounce expenses — A joint exploration corporation may, in any particular taxation year or within 6 months after the end of that year, elect in prescribed form to renounce in favour of another corporation described in subsection (4) an agreed portion of the total of such of

(a) the drilling and exploration expenses, including all general geological and geophysical expenses, incurred by the joint exploration corporation on or in respect of exploring or drilling for petroleum or natural gas in Canada, and

(b) the prospecting, exploration and development expenses incurred by the joint exploration corporation in searching for minerals in Canada,

as were incurred by the joint exploration corporation during a period after 1956 and before April 11, 1962 throughout which the other corporation was a shareholder corporation, to the extent that the total of those expenses exceeds any amount deductible under subsection (3) in respect thereof by the joint exploration corporation in computing its income for any taxation year preceding the particular year, and on the election the agreed portion

(c) shall be deemed, for the purposes of subsection (4) of this section and sections 66, 66.1 and 66.2 of the amended Act, to be expenses described in paragraphs (a) and (b) of this subsection incurred by the other corporation during its taxation year in which the particular taxation year ends, and

(d) shall be subtracted from the total described in paragraph (3)(c) in determining the amount deductible by the joint exploration corporation under subsection (3) in computing its income.

(7) Idem — A joint exploration corporation may, in any particular taxation year or within 6 months from the end of that year, elect in prescribed form to renounce in favour of another corporation described in subsection (4) an agreed portion of the total of such of

(a) the drilling and exploration expenses, including all general geological and geophysical expenses, incurred by the joint exploration corporation on or in respect of exploring or drilling for petroleum or natural gas in Canada, and

(b) the prospecting, exploration and development expenses incurred by the joint exploration corporation in searching for minerals in Canada,

as were incurred by the joint exploration corporation during a period after April 10, 1962 and before 1972 throughout which the other corporation was a shareholder corporation, to the extent that the total of those expenses exceeds any amount deductible under subsection (4) in respect thereof by the joint exploration corporation in computing its income for any taxation year preceding the particular year, and on the election the agreed portion

(c) shall be deemed, for the purposes of subsection (4) of this section and sections 66, 66.1 and 66.2 of the amended Act, to be expenses described in paragraphs (a) and (b) of this subsection incurred by the other corporation during its taxation year in which the particular taxation year ends, and

(d) shall be subtracted from the total described in paragraph (4)(g) in determining the amount deductible by the joint exploration corporation under subsection (4) in computing its income.

(8) Definitions — For the purposes of subsections (6) and (7),

"agreed portion" in respect of a corporation that was a shareholder corporation of a joint exploration corporation means such amount as is agreed on between the joint exploration corporation and the other corporation not exceeding

(a) the payments referred to in paragraph (c) of the definition "shareholder corporation" in this subsection made by the other corporation to the joint exploration corporation during the period it was a shareholder corporation in respect of the expenses incurred by the joint exploration corporation referred to in paragraphs (6)(a) and (b) or (7)(a) and (b), as the case may be,

minus

(b) the total of the amounts, if any, previously renounced by the joint exploration corporation under subsection (6) or (7), as the case may be, in favour of the other corporation;

"joint exploration corporation" means a corporation

(a) whose principal business is of a class described in paragraph (3)(a) or (b), and

(b) that has not at any time since its incorporation had more than 10 shareholders (not including any individual holding a share for the sole purpose of qualifying as a director);

a "shareholder corporation" of a joint exploration corporation means a corporation that for the period in respect of which the expression is being applied

(a) was a shareholder of the joint exploration corporation,

(b) was a corporation whose principal business was of a class described in subsection (4), and

(c) made payments to the joint exploration corporation in respect of the expenses incurred by the joint exploration corporation referred to in paragraphs (6)(a) and (b) or (7)(a) and (b), as the case may be.

(9) Deduction from income from businesses of associations, etc. — There may be deducted in computing the income of a taxpayer for a taxation year from the businesses of all associations, partnerships or syndicates formed for the purpose of exploring or drilling for petroleum or natural gas and of which the taxpayer was a member or partner, the lesser of

(a) the total of the taxpayer's share of such of the drilling and exploration expenses, including all general geological and geophysical expenses, incurred by all those associations, partnerships or syndicates while the taxpayer was a member or partner thereof, on or in respect of exploring or drilling for petroleum or natural gas in Canada as were incurred after 1948 and before April 11, 1962, to the extent that they were not deductible in computing the taxpayer's income for a preceding taxation year, and

(b) of that total, an amount equal to the taxpayer's income from the businesses of all those associations, partnerships or syndicates for the taxation year, computed before making any deduction under this section or section 65, 66, or 66.1 of the amended Act.

(10) Idem — There may be deducted in computing the income of a taxpayer for the taxation year from the businesses of all associations, partnerships or syndicates formed for the purpose of exploring or drilling for petroleum or natural gas and of which the taxpayer was a member or partner, the lesser of

(a) the total of the taxpayer's share of such of the drilling and exploration expenses, including all general geological and geophysical expenses incurred by all those associations, partnerships or syndicates while the taxpayer was a member or partner thereof, on or in respect of exploring or drilling for petroleum or natural gas in Canada as were incurred after April 10, 1962 and before 1972, to the extent that they were not deductible in computing the taxpayer's income for a previous taxation year, and

(b) of that total, an amount equal to the taxpayer's income from the businesses of all those associations, partnerships or syndicates for the taxation year computed before making any deduction under this section or section 65, 66, or 66.1 of the amended Act, minus the deduction allowed for the year under subsection (9) of this section.

Related Provisions: 127.52(1)(e) — Limitation on deduction for minimum tax purposes.

(11) Deduction from income of corporation — A corporation, other than a corporation described in subsec-

tion (4), may deduct, in computing its income for a taxation year, the lesser of

(a) the total of such of

(i) the drilling and exploration expenses, including all general geological and geophysical expenses, incurred by it on or in respect of exploring or drilling for petroleum or natural gas in Canada, and

(ii) the prospecting, exploration and development expenses incurred by it in searching for minerals in Canada,

as were incurred after April 10, 1962 and before 1972, to the extent that they were not deductible in computing income for a preceding taxation year, and

(b) of that total, an amount that would be equal to the total of

(i) its income for the taxation year from operating an oil or gas well in Canada in which the corporation has an interest,

(ii) its income for the taxation year from royalties in respect of an oil or gas well in Canada,

(iii) any amount included in computing its income for the taxation year because of subsection (17), and

(iv) the amount, if any, included under paragraph 59(3.2)(b) or (c) of the amended Act in computing its income for the year,

if no deduction were allowed under this section or section 65, 66 or 66.1 of the amended Act minus the deductions allowed for the year under subsections (9) and (10) of this section and subsection 66(2) of the amended Act.

History: Subpara. 29(11)(b)(iv) substituted applicable to 1985 *et seq.*, and that portion of 29(11)(b) following subpara. (iv) substituted applicable to taxation years ending after February 17, 1987, by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 201(5), (6). Those portions formerly read:

> (iv) the total described in clause 66(3)(b)(ii)(C) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1984 and preceding taxation years in respect of the corporation for the year,
>
> if no deduction were allowed under this section, section 65, 66 or 66.1 of the amended Act, minus the deductions allowed for the year under subsections (9) and (10) of this section, subsection 66(2) of the amended Act and subsections 66(6) and (7) and 66.1(4) and (5) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952.

(12) Deduction by individual of exploration expenses — There may be deducted, in computing an individual's income for a taxation year, the lesser of

(a) the total of such of

(i) the drilling and exploration expenses, including all general geological and geophysical expenses, incurred by the individual on or in respect of exploring or drilling for petroleum or natural gas in Canada, and

(ii) the individual's share of the drilling and exploration expenses, including all general geological and geophysical expenses incurred by all associations, partnerships or syndicates described in subsection (9), while the individual was a member or partner thereof, on or in respect of exploring or drilling for petroleum or natural gas in Canada,

as were incurred after April 10, 1962 and before 1972, to the extent that they were not deductible in computing the individual's income for a preceding taxation year, and

(b) of that total, an amount that would be equal to the total of

(i) the individual's income for the taxation year from a business that consisted of the operation of an oil or gas well in Canada in which the individual had an interest,

(ii) the individual's income for the taxation year from royalties in respect of an oil or gas well in Canada,

(iii) any amount included in computing the individual's income for the taxation year because of subsection (17), and

(iv) the amount, if any, included under paragraph 59(3.2)(b) or (c) of the amended Act in computing the individual's income for the year,

if no deduction were allowed under this section or section 65, 66 or 66.1 of the amended Act, minus the deductions allowed for the year under subsections (9) and (10) of this section.

Related Provisions: 127.52(1)(e) — Limitation on deduction for minimum tax purposes.

History: Subpara. 29(12)(b)(iv) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 201(7), applicable to 1985 *et seq.* That subpara. formerly read:

> (iv) the total described in clause 66(3)(b)(ii)(C) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1984 and preceding taxation years in respect of an individual for the year,

(13) Limitation re payments for exploration and drilling rights — In computing a deduction under subsection (1), (3) or (9), no amount shall be included in respect of a payment for or in respect of a right, licence or privilege to explore for, drill for or take petroleum or natural gas, acquired before April 11, 1962, other than an annual payment not exceeding $1 per acre.

(14) Exploration and drilling rights; payments deductible — Where an association, partnership or syndicate described in subsection (9) or a corporation or individual has, after April 10, 1962 and before 1972, acquired under an agreement or other contract or arrangement a right, licence or privilege to explore for, drill for or take in Canada petroleum, natural gas or other related hydrocarbons (except coal) under which agreement, contract or arrangement there was not acquired any other right to, over or in respect of the land in respect of which such right, licence or privilege was so acquired except the right

(a) to explore for, drill for or take materials and substances (whether liquid or solid and whether hydrocarbons or not) produced in association with the petroleum, natural gas or other related hydrocarbons (except coal) or found in any water contained in an oil or gas reservoir, or

(b) to enter on, use and occupy as much of the land as is necessary for the purpose of exploiting the right, licence or privilege,

an amount paid in respect of the acquisition thereof that was paid

(c) before 1972, shall, for the purposes of subsections (4), (7), (10), (11) and (12), be deemed to be a drilling or exploration expense on or in respect of exploring or drilling for petroleum or natural gas in Canada incurred at the time of its payment,

(d) after 1971 and before May 7, 1974, shall, for the purposes of the amended Act, be deemed to be Canadian exploration and development expenses (within

the meaning assigned by subsection 66(15) of the amended Act) incurred at the time of its payment, and

(e) after May 6, 1974, shall, for the purposes of the amended Act, be deemed to be a Canadian development expense (within the meaning assigned by paragraph 66.2(5)(a) of the amended Act) incurred at the time of its payment.

(15) Idem — In applying subsection (14) for the purposes of subsection (7), the expression "after April 10, 1962 and before 1972" in subsection (14) shall be read as "after April 10, 1962 and before April 27, 1965".

(16) Receipts for exploration or drilling rights included in income — Where a right, licence or privilege to explore for, drill for or take in Canada petroleum, natural gas or other related hydrocarbons (except coal) was disposed of after April 10, 1962 and before October 23, 1968

(a) by a corporation described in subsection (4),

(b) by a corporation, other than a corporation described in subsection (4), that was at the time of acquisition of the right, licence or privilege a corporation described in subsection (4), or

(c) by an association, partnership or syndicate described in subsection (9),

any amount received by the corporation, association, partnership or syndicate as consideration for the disposition thereof shall be included in computing its income for its fiscal period in which the amount was received, unless the corporation, association, partnership or syndicate

(d) acquired the right, licence or privilege by inheritance or bequest, or

(e) acquired the right, licence or privilege before April 11, 1962 and disposed of it before November 9, 1962.

(17) Idem — Where a right, licence or privilege to explore for, drill for or take in Canada petroleum, natural gas or other related hydrocarbons (except coal) that was acquired after April 10, 1962 and before 1972 by an individual or a corporation other than a corporation described in subsection (4), was subsequently disposed of before October 23, 1968, any amount received by the taxpayer as consideration for the disposition thereof shall be included in computing the taxpayer's income for the taxation year in which the amount was received, unless the right, licence or privilege was acquired by the taxpayer by inheritance or bequest.

(18) Idem — Subsections (16) and (17) do not apply to any disposition by an association, partnership or syndicate described in subsection (9) or a corporation or an individual of any right, licence or privilege described in subsection (14) or (16) unless the right, licence or privilege was acquired by the association, partnership, syndicate or corporation or individual, as the case may be, under an agreement, contract or arrangement described in subsection (14).

(19) Idem — For the purposes of subsections (16) and (17),

(a) where an association, partnership or syndicate described in subsection (9) or a corporation or an individual has disposed of any interest in land that includes a right, licence or privilege described in subsection (14) that was acquired under an agreement, contract or arrangement described in that subsection, the proceeds of disposition of the interest shall be deemed to be proceeds of disposition of the right, licence or privilege; and

(b) where an association, partnership or syndicate described in subsection (9) or a corporation or an individual has acquired a right, licence or privilege described in subsection (14) under an agreement, contract or arrangement described in that subsection and subsequently disposes of any interest

(i) in such right, licence or privilege, or

(ii) in the production of wells situated on the land to which the right, licence or privilege relates,

the proceeds of disposition of the interest shall be deemed to be proceeds of disposition of the right, licence or privilege.

(20) Idem — Subsections (11), (12) and (17) do not apply in computing the income for a taxation year of a taxpayer whose business includes trading or dealing in rights, licences or privileges to explore for, drill for or take in Canada petroleum, natural gas or other related hydrocarbons (except coal).

(21) Bonus payments — Notwithstanding subsection (13), where a corporation whose principal business is of the class described in paragraph (3)(a) or (b) or an association, partnership or syndicate formed for the purpose of exploring or drilling for petroleum or natural gas has after 1952 paid an amount (other than a rental or royalty) to the government of Canada or a province for

(a) the right to explore for petroleum or natural gas on a specified parcel of land in Canada (which right is, for greater certainty, declared to include a right of the type commonly referred to as a "licence", "permit" or "reservation"), or

(b) a legal lease of the right to take or remove petroleum or natural gas from a specified parcel of land in Canada,

and before April 11, 1962 acquired the rights in respect of which the amount was so paid and, before any well came into production on the land in reasonable commercial quantities, the corporation, association, partnership or syndicate surrendered all the rights so acquired (including, in respect of a right of the kind described in paragraph (a), all rights thereunder to any lease and all rights under any lease made thereunder) without receiving any consideration therefor or repayment of any part of the amount so paid, the amount so paid shall, for the purposes of subsections (3), (4), (7), (9) and (10) of this section, and for the purposes of subsections 66(1),(10) and (10.1) and the definitions "Canadian exploration and development expenses" in subsection 66(15) and "Canadian exploration expense" in subsection 66.1(6) of the amended Act, be deemed to have been a drilling or exploration expense on or in respect of exploring or drilling for petroleum or natural gas in Canada or a Canadian exploration expense described in paragraph (a) of the definition "Canadian exploration expense" in subsection 66.1(6) of the amended Act, as the case may be, incurred by the corporation, association, partnership or syndicate during the taxation year in which the rights were so surrendered.

(22) Idem — In applying the provisions of subsection (25) to determine the amount that may be deducted by a successor corporation in computing its income for a taxation year, where the predecessor corporation has paid an

amount (other than a rental or royalty) to the government of Canada or a province for

(a) the right to explore for petroleum or natural gas on a specified parcel of land in Canada (which is, for greater certainty, declared to include a right of the type commonly referred to as a "licence", "permit" or "reservation"), or

(b) a legal lease of the right to take or remove petroleum or natural gas from a specified parcel of land in Canada,

if, before the predecessor corporation was entitled, by virtue of subsection (21), to any deduction in computing its income for a taxation year in respect of the amount so paid, the property of the predecessor corporation was acquired by the successor corporation before April 11, 1962 in the manner set out in subsection (25), and the successor corporation did, before any well came into production in reasonable commercial quantities on the land referred to in paragraph (a) or (b), surrender all the rights so acquired by the predecessor corporation (including in respect of a right of the kind described in paragraph (a), all rights thereunder to any lease and all rights under any lease made thereunder) without receiving any consideration therefor or payment of any part of the amount so paid by the predecessor corporation, the amount so paid by the predecessor corporation shall be added to the amount determined under paragraph 25(c).

(23) Expenses incurred for specified considerations not deductible — For the purposes of this section and section 53 of chapter 25 of the Statutes of Canada, 1949 (Second Session), it is declared that expenses incurred before 1972 by a corporation, association, partnership or syndicate on or in respect of exploring or drilling for petroleum or natural gas in Canada or in searching for minerals in Canada do not and never did include expenses so incurred by that corporation, association, partnership or syndicate under an agreement under which it undertook to incur those expenses in consideration for

(a) shares of the capital stock of a corporation that owned or controlled the mineral rights;

(b) an option to purchase shares of the capital stock of a corporation that owned or controlled the mineral rights; or

(c) a right to purchase shares of the capital stock of a corporation that was to be formed for the purpose of acquiring or controlling the mineral rights.

(24) Exception — Notwithstanding subsection (23), a corporation whose principal business is

(a) production, refining or marketing of petroleum, petroleum products or natural gas or exploring or drilling for petroleum or natural gas, or

(b) mining or exploring for minerals,

may deduct, in computing its income for a taxation year, the lesser of

(c) the total of such of

(i) the drilling and exploration expenses, including all general geological and geophysical expenses, incurred by it on or in respect of exploring or drilling for petroleum or natural gas in Canada, and

(ii) the prospecting, exploration and development expenses incurred by it in searching for minerals in Canada,

as were incurred after 1953 and before 1972,

(iii) under an agreement under which it undertook to incur those expenses for a consideration mentioned in paragraph (23)(a), (b) or (c), and

(iv) to the extent that they were not deductible in computing income for a preceding taxation year, and

(d) of that total, an amount equal to its income for the taxation year if no deduction were allowed under this subsection or subsection (4) or under section 65, 66 or 66.1 of the amended Act minus the deductions allowed for the year under subsection 66(2) and sections 112 and 113 of the amended Act,

but where a corporation has incurred expenses in respect of which this subsection authorizes a deduction from income for a taxation year, no deduction in respect of those expenses may be made in computing the income of any other corporation or from the business of an association, partnership or syndicate for any taxation year.

Related Provisions: ITAR 29(25) — Successor rule.

History: Para. 29(24)(d) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 201(8), applicable to taxation years ending after February 17, 1987. That para. formerly read:

(d) of that total, an amount that would be equal to its income for the taxation year if no deduction were allowed under this subsection or subsection (4) or section 65, 66, or 66.1 of the amended Act, minus the deductions allowed for the year under subsection 66(2) and sections 112 and 113 of the amended Act and subsections 66(6) and (7) and 66.1(4) and (5) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952,

(25) Successor rule — Notwithstanding subsection (24) and subject to subsections 66.7(6) and (7) of the amended Act, where a corporation (in this subsection referred to as the "successor") whose principal business is

(a) production, refining or marketing of petroleum, petroleum products or natural gas, or exploring or drilling for petroleum or natural gas, or

(b) mining or exploring for minerals,

has, at any time after 1954, acquired a particular Canadian resource property (whether by way of a purchase, amalgamation, merger, winding-up or otherwise) from another person whose principal business was a business described in paragraph (a) or (b), there may be deducted by the successor in computing its income for a taxation year an amount not exceeding the total of all amounts each of which is an amount determined in respect of an original owner of the particular property that is the lesser of

(c) the total of

(i) the drilling and exploration expenses, including all general geological and geophysical expenses, incurred before 1972 by the original owner on or in respect of exploring or drilling for petroleum or natural gas in Canada, and

(ii) the prospecting, exploration and development expenses incurred before 1972 by the original owner in searching for minerals in Canada,

to the extent that those expenses

(iii) were not otherwise deducted in computing the income of the successor for the year, were not deducted in computing the income of the successor for any preceding taxation year and were not deductible by the original owner or deducted by any predecessor owner of the particular property in computing income for any taxation year, and

(iv) would, but for the provisions of any of this subsection and paragraphs (1)(b), (2)(b), (3)(d), (4)(h) and (24)(d), have been deductible in computing the income of the original owner or any predecessor owner of the particular property for the taxation year preceding the taxation year in which the particular property was acquired by the successor, and

(d) the amount, if any, by which

(i) the part of its income for the year that may reasonably be regarded as being attributable to

(A) the amount included in computing its income for the year under paragraph 59(3.2)(c) of the amended Act that can reasonably be regarded as being attributable to the disposition by it in the year or a preceding taxation year of any Canadian resource properties owned by the original owner and each predecessor owner of the particular property before the acquisition of the particular property by the successor to the extent that the proceeds of the disposition have not been included in determining an amount under this clause or clause 66.7(1)(b)(i)(A) or (3)(b)(i)(A) or paragraph 66.7(10)(g) of the amended Act for a preceding taxation year, or

(B) production from the particular property,

computed as if no deduction were allowed under this section or subdivision e of Division B of Part I of the amended Act,

exceeds

(ii) the total of all other amounts deducted under this subsection and subdivision e of Division B of Part I of the amended Act for the year that can reasonably be regarded as attributable to the part of its income for the year described in subparagraph (i) in respect of the particular property.

Related Provisions: ITA 66(15) — "predecessor owner"; ITA 66.6 — No application on acquisition from tax-exempt person; ITA 66.7 — Successor rules; ITA 66.7(2.3) — Successor of foreign resource expense — income deemed not attributable to production from Canadian resource property.

History: Subpara. 29(25)(c)(iii) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 201(9), applicable to taxation years ending after February 17, 1987. That subpara. formerly read:

(iii) were not deducted by the successor in computing its income for a preceding taxation year, and were not deductible by the original owner or deducted by any predecessor owner of the particular property in computing income for any taxation year, and

Forms: T2010: Election to deduct resource expenses upon acquisition of resource property by a corporation.

(25.1) Definitions — For the purposes of subsection (25), the terms "Canadian resource property", "original owner", "predecessor owner" and "production" have the same meanings assigned by subsection 66(15) of the amended Act.

(26) Processing or fabricating corporation — A reference in subsection (3), (21), (24) or (25) to a corporation whose principal business is mining or exploring for minerals shall, for the purposes of this section, be deemed to include a reference to a corporation whose principal business is

(a) processing mineral ores for the purpose of recovering metals therefrom,

(b) a combination of

(i) processing mineral ores for the purpose of recovering metals therefrom, and

(ii) processing metals recovered from the ores so processed, or

(c) fabricating metals,

but in applying the provisions of this section to any such corporation the references, respectively, in subsections (3), (21), (24) and (25) to the years 1952, 1953 and 1954 shall be read as a reference in each case to the year 1956.

(27) Meaning of "drilling and exploration expenses" — For the purposes of this section, "drilling and exploration expenses" incurred on or in respect of exploring or drilling for petroleum or natural gas in Canada include expenses incurred on or in respect of

(a) drilling or converting a well for the disposal of waste liquids from a petroleum or natural gas well in Canada;

(b) drilling for water or gas for injection into a petroleum or natural gas formation in Canada; and

(c) drilling or converting a well for the injection of water or gas to assist in the recovery of petroleum or natural gas from another well in Canada.

(28) Deduction from expenses — For the purposes of this section, there shall be deducted in computing

(a) drilling and exploration expenses incurred by a taxpayer on or in respect of exploring or drilling for petroleum or natural gas in Canada, and

(b) prospecting, exploration and development expenses incurred by a taxpayer in searching for minerals in Canada,

any amount paid to the taxpayer before 1972 under the *Northern Mineral Exploration Assistance Regulations* made under an appropriation Act that provides for payments in respect of the Northern Mineral Grants Program, and there shall be included in computing such expenses any amount, except an amount in respect of interest, paid by the taxpayer before 1972 under those Regulations to Her Majesty in right of Canada.

(29) [Repealed under former Act]

(30) Inclusion in "drilling and exploration expenses" — For the purposes of this section, "drilling and exploration expenses" incurred on or in respect of exploring or drilling for petroleum or natural gas in Canada include an annual payment made for the preservation of a right, licence or privilege described in subsection (14).

(31) General limitation — Where a corporation, association, partnership or syndicate has incurred expenses the deduction of which from income is authorized under more than one provision of this section, it is not entitled to make the deduction under more than one provision but is entitled to select the provision under which to make the deduction.

(32) Deduction for provincial tax — Where a corporation whose principal business is production, refining or marketing of petroleum, petroleum products or natural gas or exploring or drilling for petroleum or natural gas could have deducted an amount in respect of expenditures of the corporation in connection with exploration or drilling for petroleum or natural gas incurred in a preceding taxation year from the tax payable under a provincial statute for the 1952 or a subsequent taxation year if the pro-

vincial statute were applicable to that year, the corporation may deduct from the tax otherwise payable by it under Part I of the amended Act for the year an amount not exceeding the amount that would have been so deductible.

(33) Definition of "provincial statute" — For the purposes of subsection (32), "provincial statute" means a statute imposing a tax on the incomes of corporations enacted by the legislature of a province in 1949 and, for the purpose of that subsection, an amount deductible thereunder for one year shall, for the purpose of computing the deduction for a subsequent year, be deemed to have been deductible under the provincial statute.

(34) Expenses deductible under certain enactments deemed not otherwise deductible — Where expenses are or have been, under this section, section 8 of the *Income War Tax Act*, section 16 of chapter 63 of the Statutes of Canada, 1947, section 16 of chapter 53 of the Statutes of Canada, 1948, section 53 of chapter 25 of the Statutes of Canada, 1949 (Second Session) or section 83A of the former Act, deductible from or in computing a taxpayer's income, or where any amount is or has been deductible in respect of expenses under any of those provisions from taxes otherwise payable, it is declared that no amount in respect of the same expenses is or has been deductible under any other authority in computing the income or from the income of that taxpayer or any other taxpayer for any taxation year.

Related Provisions [ITAR 29]: ITA 87(1.2) — New corporation deemed continuation of predecessor.

Definitions [ITAR 29]: "amended Act" — ITAR 8; "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian development expense" — ITA 66.2(5), 248(1); "Canadian exploration and development expenses" — ITA 66(15), 248(1); "Canadian exploration expense" — ITA 66.1(6), 248(1); "Canadian resource property" — ITA 66(15), ITAR 29(25.1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "deductible" — ITAR 29(33); "drilling or exploration expense" — ITAR 29(14)(c), 29(27), (30); "expenses incurred before 1972" — ITAR 29(23); "fiscal period" — ITA 249.1; "former Act" — ITAR 8; "Her Majesty" — *Interpretation Act* 35(1); "individual" — ITA 248(1); "legislature" — *Interpretation Act* 35(1)"legislative assembly"; "mineral", "Minister", "oil or gas well" — ITA 248(1); "original owner" — ITA 66(15), ITAR 29(25.1); "person" — ITA 248(1); "predecessor owner" — ITA 66(15), ITAR 29(25.1); "prescribed" — ITA 248(1); "production" — ITA 66(15), ITAR 29(25.1); "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "provincial statute" — ITAR 29(33); "related" — ITA 251(2)–(6); "share", "shareholder" — ITA 248(1); "successor" — ITAR 29(25); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

30. (1), (2) [Repealed under former Act]

(3) Reference to this Act in amended Act — In subsection 66(14) of the amended Act, "any amount deductible under the *Income Tax Application Rules*" in respect of that subsection means any amount deductible under section 29 of this Act.

Definitions [ITAR 30]: "amended Act" — ITAR 8; "amount" — ITA 248(1).

31. Application of section 67 of amended Act — In respect of any outlay or expense made or incurred by a taxpayer before 1972, section 67 of the amended Act shall be read without reference to the words "in respect of which any amount is".

Definitions [ITAR 31]: "amended Act" — ITAR 8; "amount", "taxpayer" — ITA 248(1).

32. (1) Application of para. 69(1)(a) of amended Act — Paragraph 69(1)(a) of the amended Act does not apply to deem a taxpayer by whom anything was acquired at any time before 1972 to have acquired it at its fair market value at that time, unless, if subsection 17(1) of the former Act had continued to apply, that fair market value would have been deemed to have been paid or to be payable therefor for the purpose of computing the taxpayer's income from a business.

(2) Application of para. 69(1)(b) of amended Act — Paragraph 69(1)(b) of the amended Act does not apply to deem a taxpayer by whom anything was disposed of at any time before the 1972 taxation year to have received proceeds of disposition therefor equal to its fair market value at that time.

(3) Application of para. 69(1)(c) of amended Act — For greater certainty, paragraph 69(1)(c) of the amended Act applies to property acquired by a taxpayer before, at or after the end of 1971.

Definitions [ITAR 32]: "amended Act" — ITAR 8; "business" — ITA 248(1); "former Act" — ITAR 8; "property" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

32.1 (1)–(3.2) [Repealed under former Act]

(4) Capital dividend account — Where a dividend became payable, or was paid if that time was earlier, by a corporation in a taxation year at a particular time that was before May 7, 1974, for the purpose of computing the corporation's capital dividend account immediately before the particular time, all amounts each of which is an amount in respect of a capital loss from the disposition of property in the taxation year and before the particular time shall be deemed to be nil.

(5), (6) [Repealed under former Act]

Definitions [ITAR 32.1]: "amount" — ITA 248(1); "capital dividend" — ITA 83(2)–(2.4), 248(1); "capital loss" — ITA 39(1)(b), 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "dividend", "property" — ITA 248(1); "taxation year" — ITA 249.

33. [Repealed under former Act]

34. (1) Amalgamations — Notwithstanding section 9, subsections 85I(1) and (2) of the former Act continue to apply with such modifications as, in the circumstances, are necessary by virtue of this Act, in respect of any amalgamation of two or more corporations before 1972.

(2), (3) [Repealed under former Act]

(4) Idem — In applying the provisions of subsection 29(25) to determine the amount that may be deducted by the successor or second successor corporation, as the case may be, in computing its income under Part I of the amended Act for a taxation year, where a predecessor corporation has paid an amount (other than a rental or royalty) to the government of Canada or a province for

(a) the right to explore for petroleum or natural gas on a specified parcel of land in Canada (which right is, for greater certainty, declared to include a right of the type commonly referred to as a "licence", "permit" or "reservation"), or

(b) a legal lease of the right to take or remove petroleum or natural gas from a specified parcel of land in Canada,

and before April 11, 1962 acquired the rights in respect of which the amount was so paid, if, before the predecessor corporation was entitled because of subsection 29(21) to any deduction in computing its income for a taxation year

in respect of the amount so paid, the property of the predecessor corporation was acquired by the successor or second successor corporation, as the case may be, and at any time, before any well came into production in reasonable commercial quantities on the land referred to in paragraph (a) or (b), the successor or second successor corporation, as the case may be, surrendered all the rights so acquired by the predecessor corporation (including, in respect of a right of the kind described in paragraph (a), all rights thereunder to any lease and all rights under any lease made thereunder) without receiving any consideration therefor or payment of any part of the amount so paid by the predecessor corporation, the amount so paid by the predecessor corporation shall be added at that time to the amount determined under subparagraph 29(25)(c)(i).

(5), (6) [Repealed under former Act]

(7) Definition of "amalgamation" — In this section, "amalgamation" has the meaning assigned by section 85I of the former Act.

(8) [Repealed under former Act]

Interpretation Bulletins [ITAR 34]: IT-60R2: 1971 undistributed income on hand.

Definitions [ITAR 34]: "amalgamation" — ITAR 34(7); "amended Act" — ITAR 8; "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "former Act" — ITAR 8; "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "taxation year" — ITA 249.

35. (1) Foreign affiliates — Section 26 does not apply in determining for the purposes of section 91 of the amended Act the amount of any taxable capital gain or allowable capital loss of a foreign affiliate of a taxpayer.

(2) Idem — Any corporation that was a foreign affiliate of a taxpayer on January 1, 1972 shall be deemed, for the purposes of subdivision i of Division B of Part I of the amended Act, to have become a foreign affiliate of the taxpayer on that day.

(3) [Repealed under former Act]

(4) Idem — Any corporation that was deemed to be a foreign affiliate of a taxpayer at any time prior to May 7, 1974 because of an election made by the taxpayer in accordance with subparagraph 95(1)(b)(iv) of the amended Act, as it read before being amended by chapter 26 of the Statutes of Canada, 1974-75-76, shall be deemed to have been a foreign affiliate of the taxpayer at that time.

Definitions [ITAR 35]: "allowable capital loss" — ITA 38(b), 248(1); "amended Act" — ITAR 8; "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "foreign affiliate" — ITA 95(1), 248(1); "taxable capital gain" — ITA 38(a), 248(1); "taxpayer" — ITA 248(1).

35.1 [Repealed under former Act]

36. Application of paras. 107(2)(b) to (d) of amended Act — In computing the income of a taxpayer for the taxpayer's 1972 or any subsequent taxation year, paragraphs 107(2)(b) to (d) of the amended Act do not apply in respect of any property of a trust distributed by the trust to the taxpayer at any time before the commencement of the taxpayer's 1972 taxation year.

Definitions [ITAR 36]: "amended Act" — ITAR 8; "property" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

37–39. [Repealed under former Act]

40. (1) Payments out of pension funds, etc. — In the case of

(a) a single payment

(i) out of or under a superannuation or pension fund or plan

(A) on the death, withdrawal or retirement from employment of an employee or former employee,

(B) on the winding-up of the fund or plan in full satisfaction of all rights of the payee in or under the fund or plan, or

(C) to which the payee is entitled because of an amendment to the plan although the payee continues to be an employee to whom the plan applies,

(ii) upon retirement of an employee in recognition of long service and not made out of or under a superannuation fund or plan,

(iii) under an employees profit sharing plan in full satisfaction of all rights of the payee in or under the plan, to the extent that the amount thereof would otherwise be included in computing the payee's income for the year in which the payment was received, or

(iv) under a deferred profit sharing plan on the death, withdrawal or retirement from employment of an employee or former employee, to the extent that the amount thereof would otherwise be included in computing the payee's income for the year in which the payment was received,

(b) a payment or payments made by an employer to an employee or former employee on or after retirement in respect of loss of office or employment, if made in the year of retirement or within one year after that year, or

(c) a payment or payments made as a death benefit, if made in the year of death or within one year after that year,

the payment or payments made in a taxation year ending after 1971 and before 1974 may, at the option of the taxpayer by whom it is or they are received, be deemed not to be income of the taxpayer for the purpose of Part I of the amended Act, in which case the taxpayer shall pay, in addition to any other tax payable for the year, a tax on the payment or total of the payments equal to the proportion thereof that

(d) the total of the taxes otherwise payable by the employee under that Part for the 3 years immediately preceding the taxation year (before making any deduction under section 120, 121 or 126 or subsection 127(3) of the amended Act),

is of

(e) the total of the employee's incomes for those 3 years.

(2) Employee not resident in Canada — Where a taxpayer has elected that a payment or payments of one of the classes described in paragraphs (1)(a) to (c) in respect of an employee or former employee who was not resident in Canada throughout the whole of the 3 years referred to in paragraph (1)(e) shall be deemed not to be income of the taxpayer for the purpose of Part I of the amended Act, the tax payable under this section is that proportion of the amount on which the tax is payable that

(a) the total of the taxes that would have been payable by the employee under that Part for the 3 years re-

ferred to in paragraph (1)(e) (before making any deduction under section 120, 121 or 126 or subsection 127(3) of the amended Act) if the employee had been resident in Canada throughout those years and the employee's incomes for those years had been from sources in Canada,

is of

(b) the total of the employee's incomes for those 3 years,

and, in such a case, the election is not valid unless the taxpayer has filed with the election, a return of the employee's incomes for each of the 3 years in the same form and containing the same information as the return that the employee, or the employee's legal representative, would have been required to file under that Part if the employee had been resident in Canada in those years.

(3) Determination of amount of payment — In determining the amount of any payment or payments made in a taxation year out of or under a superannuation or pension fund or plan, under a deferred profit sharing plan or as a retiring allowance that is deemed, for the purposes of this section, not to be income of the taxpayer by whom it is or they are received, there shall be subtracted from the amount of the payment or payments so made

(a) the total of all amounts deductible under paragraph 60(j) of the amended Act in computing the taxpayer's income for that year; and

(b) any amount deductible under paragraph 60(m) of the amended Act because of that payment or those payments in computing the taxpayer's income for that year.

(4) Idem — In determining the amount of any payment or payments made in a taxation year as a death benefit that is deemed, for the purpose of this section, not to be income of the taxpayer by whom it is or they are received, there shall be subtracted from the amount of the payment or payments so made any amount deductible under paragraph 60(m) of the amended Act because of that payment or those payments in computing the taxpayer's income for that year.

(5) Maximum amount for election — For the purpose of determining the amount of any payment or payments of one or more of the classes described in subsection (1) made in a taxation year that may be deemed, for the purposes of this section, not to be income of the taxpayer by whom it is or they are received, the maximum amount in respect of which an election may be made by the taxpayer under subsection (1) for the taxation year in respect of such payment or payments is,

(a) in the case of a payment or payments of a class described in subsection (1) made to the taxpayer on the death of an employee or former employee in respect of whom the payment or payments are made, the amount of the payment or the total amount of the payments, as the case may be, minus any amount subtracted therefrom under subsection (3) or (4);

(b) in the case of one or more single payments of a class described in subparagraph (1)(a)(i), (iii) or (iv), other than a payment described in paragraph (a) of this subsection, the lesser of

(i) the amount of the payment or the total amount of the payments, as the case may be, minus any amount subtracted therefrom under subsection (3), and

(ii) the amount by which

(A) the product obtained by multiplying $1,500 by the number of consecutive 12 month periods included in the period throughout which the taxpayer was a member of any plan or plans described in subparagraph (1)(a)(i), (iii) or (iv) (in this subsection referred to as a "retirement plan"),

(I) out of or under which a payment was made to the taxpayer in the taxation year or a preceding taxation year ending after April 26, 1965, and

(II) to which an employer of the taxpayer has made a contribution on behalf of the taxpayer,

exceeds

(B) the total of all amounts each of which is an amount that, because of a payment to the taxpayer after April 26, 1965,

(I) out of or under a retirement plan to which the employer referred to in subclause (A)(II) made a contribution on behalf of the taxpayer, or

(II) by the employer referred to in subclause (A)(II),

was deemed not to be income of the taxpayer for the purpose of Part I of the amended Act for a preceding taxation year because of an election made by the taxpayer under subsection (1); and

(c) in the case of a payment or payments of the class described in subparagraph (1)(a)(ii) or paragraph (1)(b), other than a payment described in paragraph (a) or (b) of this subsection, the lesser of

(i) the amount of the payment or the total amount of the payments, as the case may be, minus any amount subtracted therefrom pursuant to subsection (3), and

(ii) the amount by which

(A) the product obtained by multiplying $1,000 by the number of years during which the taxpayer was an employee of the employer who made the payment

exceeds

(B) the total of

(I) the total of all amounts each of which is an amount that, because of a payment to the taxpayer after April 26, 1965 by an employer referred to in clause (A) or a payment to the taxpayer after that date out of or under a retirement plan to which such an employer made a contribution on behalf of the taxpayer, was deemed not to be income of the taxpayer for the purpose of Part I of the amended Act for a preceding taxation year by reason of an election made by the taxpayer under subsection (1), and

(II) the total of all amounts each of which is an amount that, because of a payment to the taxpayer after April 26, 1965 out of or under a retirement plan to which an employer referred to in clause (A) made a contribution on behalf of the taxpayer, may be deemed, by subsection (1), not to be income of the

taxpayer for the purpose of that Part for the taxation year.

(6) Idem — For the purpose of subsection (5),

(a) where all or substantially all of the property used in carrying on the business of a person who was an employer of an employee (in this subsection referred to as the "former employer")

(i) has been purchased by a person who, because of the purchase, or

(ii) has been acquired by bequest or inheritance, or because of an amalgamation (within the meaning assigned by section 85I of the former Act), by a person who, by reason of the acquisition,

became an employer of the employee, and who subsequently made a payment of a class described in paragraph (5)(c) in respect of the employee or former employee, the employee or former employee shall be deemed to have been an employee of that employer throughout the period he or she was an employee of the former employer; and

(b) a taxpayer may, in computing the number of years during which the taxpayer was a member of a superannuation or pension fund or plan (in this subsection referred to as the "subsequent plan"), include the number of years during which the taxpayer was a member of another plan (in this subsection referred to as the "former plan") if the taxpayer had received an amount out of or under the former plan all or part of which amount was deductible under paragraph 60(j) of the amended Act in computing the taxpayer's income for the taxation year in which the amount was received, because of the fact that all or part of the amount, as the case may be, was paid by the taxpayer to or under the subsequent plan as described in clause 60(j)(i)(A) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1978 and preceding taxation years.

(7) Limitation — This section applies in respect of any payment or payments described in subparagraph (1)(a)(i) or (iv) made in a taxation year ending after 1973, except that the amount of the payment or the total amount of the payments, as the case may be, shall be deemed to be the lesser of the amount thereof otherwise determined and the total of the amounts that the taxpayer would have received out of or under the plan described in subparagraph (1)(a)(i) or (iv), as the case may be, if

(a) the taxpayer had withdrawn from the plan on January 1, 1972;

(b) there had been no change in the terms and conditions of the plan after June 18, 1971 and before January 2, 1972; and

(c) any term or condition of the plan that would, in the event that the taxpayer had withdrawn from the plan on January 1, 1972, have reduced the amount of any payment or payments that would, if the taxpayer remained a member of the plan for a specified period of time after December 31, 1971, have been made to the taxpayer in respect of years ending before 1972 were not a term or condition of the plan.

(8) Application rule — For the purposes of paragraphs (1)(d) and (2)(a), there may be deducted from the total referred to in those paragraphs 9% of the portion of that total that is attributable to the 1974, 1975 or 1976 taxation year.

Related Provisions [ITAR 40]: ITA 127.52(1)(j) — ITAR 40 ignored for minimum tax purposes.

Definitions [ITAR 40]: "amended Act" — ITAR 8; "amount", "business", "death benefit" — ITA 248(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "employee" — ITA 248(1), ITAR 40(6); "employees profit sharing plan" — ITA 144(1), 248(1); "employer", "employment" — ITA 248(1); "former Act" — ITAR 8; "former employer" — ITAR 40(6)(a); "former plan" — ITAR 40(6)(b); "Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952" — ITAR 69; "legal representative" — ITA 248(1); "month" — *Interpretation Act* 35(1); "office", "person", "property" — ITA 248(1); "resident in Canada" — ITA 250; "retiring allowance" — ITA 248(1); "subsequent plan" — ITAR 40(6)(b); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

Interpretation Bulletins [ITAR 40]: IT-281R2: Elections on single payments from a deferred profit-sharing plan (archived).

Information Circulars [ITAR 40]: 74-21R: Payments out of pension and deferred profit sharing plans.

41–48. [Repealed under former Act]

49. (1) Tax deemed payable under amended Act — Where, because of section 40, any tax is payable in addition to or in lieu of any amount of tax payable under Part I of the amended Act for a taxation year, that tax shall be deemed to be payable under Part I of the amended Act for that taxation year.

(2) Application of section 13 — In applying section 13 to section 40, subsection 13(1) shall be read without reference to the words "subject to this Act and unless the context otherwise requires".

(3) Computation of tax deemed payable under amended Act — In computing, under section 40 of this Act or any of section 39 and sections 41 to 48 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, any tax that is payable in addition to or in lieu of any amount of tax payable under Part I of the amended Act by an individual for a taxation year,

(a) a reference to section 120 of the amended Act does not include a reference to paragraph 33(1)(a) of the former Act; and

(b) for the purposes of paragraph 33(1)(a) of the former Act and subsection 120(1) of the amended Act, all of the income of the individual for that or any preceding taxation year shall be deemed to have been income earned in the year in a province.

Definitions [ITAR 49]: "amended Act" — ITAR 8; "amount" — ITA 248(1); "former Act" — ITAR 8; "Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952" — ITAR 69; "individual" — ITA 248(1); "province" — *Interpretation Act* 35(1); "taxation year" — ITA 249.

50. (1) Status of certain corporations — For the purposes of the amended Act, a corporation that was, throughout that portion of its 1972 taxation year that is in 1972, a private corporation, a Canadian-controlled private corporation or a public corporation shall be deemed to have been throughout that taxation year a private corporation, a Canadian-controlled private corporation or a public corporation, as the case may be.

(2) Election to be public corporation — For the purposes of the definition "public corporation" in subsection 89(1) of the amended Act, where at any particular time before 1973 a corporation elected in the manner referred to in subparagraph (b)(i) of that definition to be a public corporation and at any time after 1971 and before the time of the election the corporation complied with the condi-

tions referred to in that subparagraph, the corporation shall,

(a) at such time after 1971 and before the particular time as is specified in the election to be the effective date thereof, or

(b) where no time described in paragraph (a) is specified in the election to be the effective date thereof, at the particular time,

be deemed to have elected in the manner referred to in that subparagraph to be a public corporation and to have complied with the conditions referred to therein.

(3) Designation by Minister — For the purposes of the definition "public corporation" in subsection 89(1) of the amended Act, where at any particular time before March 22, 1972 the Minister, by notice in writing to a corporation, designated the corporation to be a public corporation or not to be a public corporation, as the case may be, and at the time of the designation the corporation complied with the conditions referred to in subparagraph (b)(i) or (c)(i) of that definition, as the case may be, the corporation shall, at such time as is specified by the Minister in the notice, be deemed

(a) to have been designated by the Minister, by notice in writing to the corporation, to be a public corporation or not to be a public corporation, as the case may be; and

(b) to have complied with the conditions referred to in subparagraph (b)(i) or (c)(i) of that definition, as the case may be.

Definitions [ITAR 50]: "amended Act" — ITAR 8; "Canadian-controlled private corporation" — ITA 125(7), 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "Minister" — ITA 248(1); "private corporation", "public corporation" — ITA 89(1), 248(1); "taxation year" — ITA 249; "writing" — *Interpretation Act* 35(1).

51–56.1 [Repealed under former Act]

57. (1)–(8) [Repealed under former Act]

(9) Capital dividend account — In computing a specified personal corporation's capital dividend account at any time after the end of its 1972 taxation year, there shall be added to the total of the amounts described in paragraphs (a) and (b) of the definition "capital dividend account" in subsection 89(1) of the amended Act the total of its net capital gains (within the meaning assigned by subsection 51(3) of the *Income Tax Application Rules, 1971*, Part III of Chapter 63 of the Statutes of Canada, 1970-71-72, as it read before October 29, 1985) for its 1972 taxation year and that proportion of the total of its incomes for that year, other than

(a) any taxable capital gains of the corporation for the year from dispositions of property, and

(b) any amounts that were, because of subsection 57(3) of the *Income Tax Application Rules, 1971*, Part III of chapter 63 of the Statutes of Canada, 1970-71-72, as it read before October 29, 1985 or under the provisions of subsection 67(1) of the former Act that applied because of subsection 57(12) of those Rules as it read before that date, required to be included in computing the income of the specified personal corporation for its 1972 taxation year,

that the number of days in that portion of the 1972 taxation year that is in 1972 is of the number of days in the whole year.

Related Provisions: ITAR 69 (meaning of "*Income Tax Application Rules, 1971*, Part III of chapter 63 of the Statutes of Canada, 1970-71-72").

(10) [Repealed under former Act]

(11) Meaning of "specified personal corporation" — For the purposes of this section, a corporation is a specified personal corporation if

(a) part of its 1972 taxation year was before and part thereof after the beginning of 1972; and

(b) during the whole of the period beginning on the earlier of June 18, 1971 and the beginning of its 1972 taxation year and ending at the end of its 1972 taxation year, it was a personal corporation within the meaning assigned by section 68 of the former Act.

(12) [Repealed under former Act]

Definitions [ITAR 57]: "amended Act" — ITAR 8; "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "capital dividend" — ITA 83(2)–(2.4), 248(1); "capital gain" — ITA 39(1), 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "dividend" — ITA 248(1); "former Act" — ITAR 8; "Income Tax Application Rules, 1971" — ITAR 69; "property" — ITA 248(1); "specified personal corporation" — ITAR 57(11); "taxable capital gain" — ITA 38(a), 248(1); "taxation year" — ITA 249.

57.1 [Repealed under former Act]

58. (1) Credit unions — For the purpose of computing the income of a credit union for the 1972 and subsequent taxation years,

(a) property of the credit union that is a bond, debenture, mortgage or agreement of sale owned by it at the beginning of its 1972 taxation year shall be valued at its actual cost to the credit union,

(i) plus a reasonable amount in respect of the amortization of the amount by which the principal amount of the property at the time it was acquired by the credit union exceeds its actual cost to the credit union, or

(ii) minus a reasonable amount in respect of the amortization of the amount by which its actual cost to the credit union exceeds the principal amount of the property at the time it was acquired by the credit union;

(b) property of the credit union that is a debt owing to the credit union (other than property described in paragraph (a) or a debt that became a bad debt before its 1972 taxation year) acquired by it before the beginning of its 1972 taxation year shall be valued at any time at the amount thereof outstanding at that time;

(c) any depreciable property acquired by the credit union in a taxation year ending before 1972 shall be deemed to have been acquired by it on the last day of its 1971 taxation year at a capital cost equal to

(i) in the case of any building or automotive equipment owned by it on the last day of its 1971 taxation year, the amount, if any, by which the depreciable cost to the credit union of the building or equipment, as the case may be, exceeds the product obtained when the number of full taxation years in the period beginning on the first day of the taxation year following the taxation year in which the building or equipment, as the case may be, was acquired by it and ending with the last day of its 1971 taxation year is multiplied by, in the case of a building, 2½%, and in the case of equipment, 15%, of its de-

preciable cost (and for the purposes of this subparagraph, a capital improvement or capital addition to a building owned by a credit union shall be deemed not to be part of the building but to be a separate and distinct building acquired by it, if the cost to the credit union of the improvement or addition, as the case may be, exceeded $10,000),

(ii) in the case of any leasehold interest, the proportion of the capital cost thereof to the credit union (determined without regard to this subparagraph) that

(A) the number of months in the period commencing with the first day of the credit union's 1972 taxation year and ending with the day on which the leasehold interest expires

is of

(B) the number of months in the period beginning with the day on which the credit union acquired the leasehold interest and ending with the day on which the leasehold interest expires, and

(iii) in the case of any property (other than a building, automotive equipment or leasehold interest) acquired by the credit union after 1961, the amount, if any, by which the depreciable cost to the credit union of such property exceeds the product obtained when the number of full taxation years beginning with the first day of the taxation year following the taxation year in which the property was acquired by it and ending with the last day of its 1971 taxation year is multiplied by ½ the relevant percentage of the depreciable cost to the credit union of the property; and

(d) the undepreciated capital cost to the credit union as of the first day of its 1972 taxation year of depreciable property of a prescribed class acquired by it before that taxation year is the total of the amounts determined under paragraph (c) to be the capital costs to it as of that day of all property of that class.

(1.1) Exception — For the purpose of computing a capital gain from the disposition of depreciable property acquired by a credit union in a taxation year ending before 1972, the capital cost of the property shall be its capital cost determined without reference to paragraph (1)(c).

(2)–(3.1) [Repealed under former Act]

(3.2) Determination of maximum cumulative reserve at end of taxation year — Notwithstanding the definition "maximum cumulative reserve" in subsection 137(6) of the amended Act, for the purposes of section 137 of the amended Act a credit union's maximum cumulative reserve at the end of any particular year is the amount, if any, by which its maximum cumulative reserve at that time, determined under that definition without regard to this subsection, exceeds the lesser of

(a) its maximum cumulative reserve, determined under that definition without regard to this subsection, at the end of its 1971 taxation year, and

(b) the amount, if any, by which its 1971 reserve exceeds the total of the amounts deemed by subsection 58(2) of the *Income Tax Application Rules, 1971*, Part III of chapter 63 of the Statutes of Canada, 1970-71-72, to have been deducted by it in computing its income for its 1971 taxation year.

Related Provisions: ITAR 69 (meaning of "*Income Tax Application Rules, 1971*, Part III of chapter 63 of the Statutes of Canada, 1970-71-72").

(3.3) Idem — Notwithstanding subsection (3.2), where at any time after May 6, 1974 there has been an amalgamation (within the meaning assigned by section 87 of the amended Act) of two or more credit unions to form a new credit union, the maximum cumulative reserve of the new credit union shall be deemed to be the amount by which its maximum cumulative reserve, determined under the definition of that term in subsection 137(6) of the amended Act, exceeds the total of all amounts, if any, each of which is the lesser of the amounts referred to in paragraphs (3.2)(a) and (b) in respect of each of the predecessor corporations.

(3.4) Idem — Notwithstanding subsection (3.2), where a credit union (in this subsection referred to as the acquirer) has, at any time after May 6, 1974, acquired otherwise than by way of amalgamation all or substantially all of the assets of another credit union, the maximum cumulative reserve of the acquirer shall be the amount by which the acquirer's maximum cumulative reserve, determined under the definition of that term in subsection 137(6) of the amended Act, exceeds the total of

(a) the lesser of the amounts determined under paragraphs (3.2)(a) and (b) in respect of the acquirer, and

(b) the lesser of the amounts determined under paragraphs (3.2)(a) and (b) in respect of the other credit union.

(4), (4.1) [Repealed under former Act]

(5) Definitions — In this section,

"depreciable cost" to a credit union of any property means the actual cost to it of the property or the amount at which it is deemed by subsection 13(7) of the amended Act to have acquired the property, as the case may be;

"relevant percentage" in relation to a prescribed class of property is the percentage prescribed in respect of that class by any regulations made under paragraph 11(1)(a) of the former Act;

"1971 reserve" of a credit union means the amount, if any, by which the total of all amounts each of which is

(a) the amount of any money of the credit union on hand at the beginning of its 1972 taxation year,

(b) an amount in respect of any property described in paragraph (1)(a) or (b), equal to the amount at which it is required by those paragraphs to be valued at the beginning of its 1972 taxation year,

(c) an amount in respect of depreciable property of a prescribed class owned by the credit union on the first day of its 1972 taxation year, equal to the amount determined under paragraph (1)(d) to be the undepreciated capital cost thereof to the credit union as of that day, or

(d) an amount in respect of any capital property (other than depreciable property) owned by the credit union at the beginning of its 1972 taxation year, equal to its cost to the credit union computed without reference to the provisions of section 26,

exceeds the total of all amounts each of which is

(e) the amount of any debt owing by the credit union or of any other obligation of the credit union to pay an amount, that was outstanding at the beginning of its

1972 taxation year, excluding, for greater certainty, any share in the credit union of any member thereof, or

(f) the amount, as of the beginning of the credit union's 1972 taxation year, of any share in the credit union of any member thereof.

Definitions [ITAR 58]: "1971 reserve" — ITAR 58(5); "amended Act" — ITAR 8; "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "capital gain" — ITA 39(1), 248(1); "capital property" — ITA 54, 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "credit union" — ITA 248(1); "depreciable cost" — ITAR 58(5); "depreciable property" — ITA 13(21), 248(1); "former Act" — ITAR 8; "Income Tax Application Rules, 1971" — ITAR 69; "month" — *Interpretation Act* 35(1); "prescribed", "principal amount", "property" — ITA 248(1); "relevant percentage" — ITAR 58(5); "share" — ITA 248(1); "taxation year" — ITA 249; "undepreciated capital cost" — ITA 13(21), 248(1).

Interpretation Bulletins [ITAR 58]: IT-483: Credit unions (archived).

59. (1) [Repealed under former Act]

(2) Non-resident-owned investment corporation — In its application to the 1972 and subsequent taxation years of a corporation, section 133 of the amended Act shall be read as if, in respect of such portion of any period described in the definition "non-resident-owned investment corporation" in subsection 133(8) of that Act as ended before the beginning of the corporation's 1976 taxation year, paragraph (a) of that definition were read as follows:

"(a) at least 95% of the total value of its issued shares, and all of its bonds, debentures and other funded indebtedness, were

(i) beneficially owned by non-resident persons (other than any foreign affiliate of a taxpayer resident in Canada),

(ii) owned by trustees for the benefit of non-resident persons or their unborn issue, or

(iii) owned by a corporation, whether incorporated in Canada or elsewhere, at least 95% of the total value of the issued shares of which and all of the bonds, debentures and other funded indebtedness of which were beneficially owned by non-resident persons or owned by trustees for the benefit of non-resident persons or their unborn issue, or by two or more such corporations;".

Definitions [ITAR 59]: "amended Act" — ITAR 8; "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "foreign affiliate" — ITA 95(1), 248(1); "non-resident", "person" — ITA 248(1); "resident in Canada" — ITA 250; "share" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

60. [Repealed under former Act]

60.1 Taxes payable by insurer under Part IA of former Act — For the purposes of the description of F in the definition "surplus funds derived from operations" in subsection 138(12) of the amended Act, the reference in that description to "this Part" shall be deemed to be a reference to "this Part and Part IA of the former Act".

Definitions [ITAR 60.1]: "amended Act" — ITAR 8.

61. (1) Registered retirement savings plans — For the purposes of the definition "non-qualified investment" in subsection 146(1) of the amended Act, property acquired after June 18, 1971 and before 1972 by a trust governed by a registered retirement savings plan shall, if owned or held by the trust on January 1, 1972, be deemed to have been acquired by the trust on January 1, 1972.

(2) [Not included in R.S.C. 1985]

Definitions [ITAR 61]: "amended Act" — ITAR 8; "property" — ITA 248(1); "registered retirement savings plan" — ITA 146(1), 248(1); "trust" — ITA 104(1), 248(1), (3).

62. (1) Assessments — Subsections 152(4) and (5) of the amended Act apply in respect of any assessment made after December 23, 1971, except that subsection 152(5) of that Act does not apply in respect of any such assessment made in consequence of a waiver filed with the Minister before December 23, 1971 in the form and within the time referred to in subsection 152(4) of that Act.

(2) Interest — Subsections 161(1) and (2), 164(3) and (4), 202(5) and 227(8) and (9) of the amended Act, subsection 183(2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, and subsection 195(1) of that Act as it read in its application in respect of dividends paid or received before April 1, 1977, in so far as those subsections relate to the rate of interest payable thereunder, apply in respect of interest payable in respect of any period after December 23, 1971.

(3) [Repealed under former Act]

(4) Objections to assessment — Subsection 165(3) of the amended Act applies in respect of any notice of objection served on the Minister after December 23, 1971.

(5) Appeals — Division J of Part I of the amended Act applies in respect of any appeal or application instituted or made, as the case may be, after December 23, 1971.

(6) Appeals to Federal Court — Any appeal to the Federal Court instituted, within 2 years after December 23, 1971 and in accordance with Division J of Part I of the former Act and any rules made thereunder (as those rules read immediately before December 23, 1971), shall be deemed to have been instituted in the manner provided by the amended Act, and any document served on the Minister or a taxpayer in connection with an appeal so instituted in the manner provided in that Division and those rules shall be deemed to have been served in the manner provided by the amended Act.

Definitions [ITAR 62]: "amended Act" — ITAR 8; "assessment", "dividend" — ITA 248(1); "Federal Court" — *Federal Courts Act* s. 4; "former Act" — ITAR 8; "Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952" — ITAR 69; "Minister", "taxpayer" — ITA 248(1).

63–64.3 [Repealed under former Act]

65. [Repealed]

History: S. 65 repealed by 2005, c. 30, s. 19, applicable to months that end after 2004. The section formerly read:

65. (1) Part XI of amended Act — Where, at any particular time after June 18, 1971 and before July 1, 1972, a taxpayer described in section 205 of the amended Act has acquired a foreign property that was

(a) a share of the capital stock of a corporation that would be a mutual fund corporation if paragraph 131(8)(a) of the amended Act were read without reference to the words "that was a public corporation",

(b) a unit of a trust that would be a mutual fund trust if subsection 132(6) of the amended Act were read without reference to paragraph 132(6)(c), or

(c) an interest, as a beneficiary under a trust, in property held subject to the trust by a trust company incorporated under the laws of Canada or a province, if

(i) throughout the 1971 taxation year of the trust,

(A) all the property of the trust was held in trust for the benefit of not less than 20 beneficiaries, and

(I) not less than 20 of the beneficiaries were taxpayers described in paragraph 205(a) or (c) of the amended Act, or

(II) not less than 100 of the beneficiaries were taxpayers described in paragraph 205(b) of the amended Act,

(B) not less than 80% of all the property of the trust consisted of shares, bonds, mortgages, marketable securities or cash, and

(C) not more than 10% of all the property of the trust consisted of shares, bonds, mortgages or other securities of any one corporation or debtor other than Her Majesty in right of Canada or of a province or a Canadian municipality,

(ii) not less than 95% of the income of the trust for its 1971 taxation year was derived from investments described in clause (i)(B),

(iii) the total value of all such interests owned by all beneficiaries mentioned in clause (i)(A) to which any one employer has made or may make contributions did not exceed, at any time in the 1971 taxation year of the trust, 25% of the value of all the property of the trust at that time, and

(iv) the total value of all such interests owned by all beneficiaries mentioned in subclause (i)(A)(II) to which any one taxpayer has paid or may pay premiums does not exceed, at any time in the 1971 taxation year of the trust, 25% of the value of all the property of the trust at that time,

the property shall, to the extent that the cost to the taxpayer thereof does not exceed the amount, if any, by which the taxpayer's foreign investment limit exceeds the total of the costs to it of all foreign properties described in paragraphs (a) to (c) acquired by the taxpayer after June 18, 1971 and before the particular time, be deemed

(d) for the purposes of Part XI of the amended Act, to have been acquired before June 19, 1971 and not to have been acquired after June 18, 1971, and

(e) where the taxpayer was a trust governed by a registered retirement savings plan, notwithstanding the definition "qualified investment" in subsection 146(1) of the amended Act, to have been a qualified investment for the purposes of section 146 of that Act.

(1.1) Idem — Where, at any particular time after October 13, 1971 and before July 1, 1972, a taxpayer to whom Part XI of the amended Act applies has acquired a foreign property that was a share of the capital stock of a corporation that would be an investment corporation if subparagraph 130(3)(a)(i) of the amended Act were read without reference to the words "that was a public corporation", for the purposes of subsection (1) the share so acquired shall be deemed to be a share described in paragraph (1)(a).

(2) Definition of "foreign investment limit" — In subsection (1), "foreign investment limit" of a taxpayer means the total of

(a) the taxpayer's income from property for its 1971 taxation year,

(b) where the taxpayer was, throughout its 1971 taxation year, a taxpayer described in paragraph 205(a) of the amended Act, all amounts each of which is such portion of any amount paid or contributed by any person to or under the plan in 1971 as was deductible in computing that person's income for the 1971 taxation year under paragraph 11(1)(g) or (h) of the former Act, or as would have been deductible in computing that income under paragraph 11(1)(i) of the former Act if that paragraph were read (except for the purposes of subparagraph 11(1)(i)(iii) of that Act) without reference to subparagraph 11(1)(i)(ii) of that Act,

(c) where the taxpayer was, throughout its 1971 taxation year, a trust governed by a registered retirement savings plan, all amounts each of which is such portion of any premium paid in 1971 by the annuitant under the plan as was deductible under subsection 79B(5) of the former Act in computing the annuitant's income for the 1971 taxation year, and

(d) where the taxpayer was, throughout its 1971 taxation year, a trust governed by a deferred profit sharing plan, all amounts each of which is such portion of any amount paid by an employer to a trustee under the plan as was deductible under subsection 79C(7) of the former Act in computing the employer's income for the 1971 taxation year.

(3) Foreign property acquired by registered retirement savings plan — Where, at any particular time after 1971 and before July 1, 1974, a trust governed by a registered retirement savings plan acquired a foreign property described in paragraph (1)(a) or (b) or a foreign property that would be described in paragraph (1)(c) if the references in that paragraph to the "1971 taxation year" of the trust were read as references to the "1972 and 1973 taxation years" of the trust, the property shall, to the extent that the cost to the trust thereof did not exceed the amount, if any, by which the trust's foreign reinvestment limit exceeded the total of the cost to it of all such foreign properties so acquired by it after 1971 and before the particular time, be deemed

(a) for the purposes of Part XI of the amended Act, to have been acquired before June 19, 1971 and not to have been acquired after June 18, 1971; and

(b) notwithstanding the definition "qualified investment" in subsection 146(1) of the amended Act, to have been a qualified investment for the purposes of section 146 of that Act.

(4) Definition of "foreign reinvestment limit" — In subsection (3), "foreign reinvestment limit" of a trust governed by a registered retirement savings plan means such portion of the total of

(a) the trust's income from property for its 1972 and 1973 taxation years,

(b) all amounts each of which is such portion of any premium paid by the annuitant under the plan as was deductible under subsection 146(5) of the amended Act in computing the annuitant's income for the 1972 or 1973 taxation year,

(c) all amounts each of which is a capital gains dividend (within the meaning assigned by subsection 131(1) of the amended Act) received by the trust in its 1972 or 1973 taxation year, and

(d) 2 times the total of all amounts each of which is, because of subsection 104(21) of the amended Act, deemed to be a taxable capital gain of the trust for its 1972 or 1973 taxation year,

as was, under the terms and conditions of the plan as fixed on or before June 18, 1971, required to be invested by the trust in foreign property described in paragraph (1)(a) or (b) or foreign property that would be described in paragraph (1)(c) if the references in that paragraph to the "1971 taxation year" of the trust were read as references to the "1971 and 1972 taxation years" of the trust.

(5) Shares of a mutual fund corporation received on amalgamation — Where, after May 25, 1976, there has been an amalgamation (within the meaning assigned by section 87 of the amended Act) of two or more mutual fund corporations (each of which corporations is in this subsection referred to as a "predecessor corporation") to form one corporate entity (in this subsection referred to as the "new corporation"), and

(a) any shareholder that is a taxpayer described in any of paragraphs 205(a), (b) or (c) of the amended Act owned shares of the capital stock of a predecessor corporation (in this subsection referred to as the "old shares") on June 18, 1971 and thereafter without interruption until immediately before the amalgamation,

(b) any shares referred to in paragraph (a) were foreign property (within the meaning assigned by subsection 206(1) of the amended Act) immediately before the amalgamation, and

(c) no consideration was received by the shareholder for the disposition of the old shares on the amalgamation, other than shares of the capital stock of the new corporation (in this subsection referred to as the "new shares"),

notwithstanding any other provision of this Act or of the amended Act, for the purpose of subsection 206(2) of the amended Act, the taxpayer shall be deemed not to have acquired the new shares after June 18, 1971.

All that portion of subsec. 65(5) following para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 202, applicable to periods occurring after October 1985. That portion formerly read:

> (b) any shares referred to in paragraph (a) were foreign property (within the meaning assigned by subsection 206(2) of the amended Act) immediately before the amalgamation, and
>
> (c) no consideration was received by the shareholder for the disposition of the old shares on the amalgamation other than shares of the capital stock of the new corporation (in this subsection referred to as the "new shares"),
>
> notwithstanding any other provision of this Act or the amended Act, for the purposes of subsection 206(1) of the amended Act, the taxpayer is deemed to have acquired the new shares prior to June 18, 1971.

65.1 Part XV of amended Act — For greater certainty,

(a) section 9 does not apply in respect of the repeal, by section 1 of chapter 63 of the Statutes of Canada, 1970-71-72, of Part V of the former Act and the substitution therefor, by that section, of Part XV of the amended Act, and

(b) in its application in respect of any offence described in subsection 239(1) of the amended Act that was committed before December 23, 1971, paragraph 239(1)(f) of the amended Act shall be read as follows:

> "(f) a fine of not less than $25 and not more than $10,000 plus, in an appropriate case, an amount not exceeding double the amount of the tax that should have been shown to be payable or that was sought to be evaded, or".

Definitions [ITAR 65.1]: "amended Act" — ITAR 8; "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "former Act" — ITAR 8.

66. (1) Part II of former Act — For greater certainty, Part II of the former Act applies only in respect of elections made thereunder before 1972.

(2) [Repealed under former Act]

Definitions [ITAR 66]: "former Act" — ITAR 8.

67. (1)–(4) [Not included in R.S.C. 1985]

(5) Prescription of unpaid amounts — Her Majesty in right of Canada is not liable, and no action shall be taken, for or in respect of any unrefunded instalment of tax paid under Part IID of the former Act or any interest thereon where

(a) a repayment date with respect to the instalment was prescribed by regulation and reasonable efforts were made thereafter to locate the corporation or trust entitled to the refund;

(b) at least 5 years have elapsed since publication in the *Canada Gazette* of the regulation referred to in paragraph (a); and

(c) no claim whatever has been received by or on behalf of Her Majesty from the corporation or trust entitled to the refund.

Definitions [ITAR 67]: "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "former Act" — ITAR 8; "Her Majesty" — *Interpretation Act* 35(1); "prescribed", "regulation" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

68. [Not included in R.S.C. 1985]

PART II — TRANSITIONAL CONCERNING THE 1985 STATUTE REVISION

Origin of Part II: R.S.C. 1985, c. 1 (5th Supp.) (ss. 69–78).

69. Definitions — In this Act and the *Income Tax Act*, unless the context otherwise requires,

"*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952" means that Act as amended by section 1 of chapter 63 of the Statutes of Canada, 1970-71-72, and by any subsequent Act that received royal assent before December, 1991;

"*Income Tax Application Rules, 1971*, Part III of chapter 63 of the Statutes of Canada, 1970-71-72" means that Act as amended by any subsequent Act that received royal assent before December, 1991.

Definitions [ITAR 69]: "Canada" — ITA 255, *Interpretation Act* 35(1).

Application of the 1971 Acts and the Revised Acts

70. Application of *Income Tax Application Rules, 1971*, 1970-71-72, c. 63 — Subject to this Act and the *Income Tax Act* and unless the context otherwise requires,

(a) sections 7 to 9 and 12 to 68 of the *Income Tax Application Rules, 1971*, Part III of chapter 63 of the Statutes of Canada, 1970-71-72, apply with respect to taxation years that ended before December, 1991; and

(b) section 10 of the *Income Tax Application Rules, 1971*, Part III of chapter 63 of the Statutes of Canada, 1970-71-72, applies with respect to amounts paid or credited before December, 1991.

Definitions [ITAR 70]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Income Tax Application Rules, 1971" — ITAR 69; "taxation year" — ITA 249.

71. Application of this Act — Subject to this Act and the *Income Tax Act* and unless the context otherwise requires,

(a) sections 7 to 9 and 12 to 78 of this Act apply with respect to taxation years that end after November, 1991; and

(b) section 10 of this Act applies with respect to amounts paid or credited after November, 1991.

Definitions [ITAR 71]: "amount" — ITA 248(1); "taxation year" — ITA 249.

72. Application of *Income Tax Act*, R.S.C., 1952, c. 148 — Subject to this Act and the *Income Tax Act* and unless the context otherwise requires, the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, applies as follows:

(a) Parts I, I.1, I.2, I.3, II.1, IV, IV.1, V, VI, VI.1, VII, VIII, IX, XI.3, XII, XII.1, XII.2, XII.3 and XIV of that Act apply with respect to taxation years that ended before December 1991;

(b) Part III of that Act applies with respect to dividends that became payable before December, 1991;

(c) Parts X, X.1, X.2, XI, XI.1 and XI.2 of that Act apply with respect to calendar years that ended before December, 1991;

(d) Part XIII of that Act applies with respect to amounts paid or credited before December, 1991; and

(e) Parts XV, XVI and XVII of that Act apply before December, 1991.

History: ITAR 72(a) amended by 1994, c. 21, s. 119, deemed to have come into force on March 1, 1994. That para. formerly read:

(a) Parts I, I.1, I.2, I.3, II.1, IV, IV.1, V, VI, VI.1, VII, VIII, IX, XI.3, XII, XII.2, XII.3 and XIV of that Act apply with respect to taxation years that ended before December, 1991;

Definitions [ITAR 72]: "amount", "dividend" — ITA 248(1); "Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952" — ITAR 69; "taxation year" — ITA 249.

73. Application of *Income Tax Act* — Subject to this Act and the *Income Tax Act* and unless the context otherwise requires, the *Income Tax Act* applies as follows:

(a) Parts I, I.1, I.2, I.3, II.1, IV, IV.1, V, VI, VI.1, VII, VIII, IX, XI.3, XII, XII.1, XII.2, XII.3 and XIV of that Act apply with respect to taxation years that end after November 1991;

(b) Part III of that Act applies with respect to dividends that become payable after November, 1991;

(c) Parts X, X.1, X.2, XI, XI.1 and XI.2 of that Act apply with respect to calendar years that end after November, 1991;

(d) Part XIII of that Act applies with respect to amounts paid or credited after November, 1991; and

(e) Parts XV, XVI and XVII of that Act apply after November, 1991.

History: ITAR 73(a) amended by 1994, c. 21, s. 120, deemed to have come into force on March 1, 1994. That para. formerly read:

(a) Parts I, I.1, I.2, I.3, II.1, IV, IV.1, V, VI, VI.1, VII, VIII, IX, XI.3, XII, XII.2, XII.3 and XIV of that Act apply with respect to taxation years that end after November, 1991;

Definitions [ITAR 73]: "amount", "dividend" — ITA 248(1); "taxation year" — ITA 249.

Application of Certain Provisions

74. Definition of "provision" — In sections 75 to 78, "provision" means the whole or part of a provision.

75. Continued effect of amending and application provisions — For greater certainty, where an enactment passed after 1971 in amendment of the *Income Tax Application Rules, 1971*, Part III of chapter 63 of the Statutes of Canada, 1970-71-72, or of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, contains an amending, repeal, application or other provision that, immediately before the coming into force of the fifth supplement to the Revised Statutes of Canada, 1985, has any effect on, or in connection with, the application of either or both of those Acts, that provision has, on the coming into force of that supplement, the same effect on, or in connection with, the application of either this Act or the *Income Tax Act* or both.

Definitions [ITAR 75]: "Canada" — ITA 255, *Interpretation Act* 35(1); "Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952", "Income Tax Application Rules, 1971" — ITAR 69; "provision" — ITAR 74.

76. Application of section 75 — Section 75 is applicable whether or not this Act or the *Income Tax Act*, as the case may be, contains, or contains the tenor of or any reference to,

(a) the amending, repeal, application or other provision referred to in that section; or

(b) any provision of the *Income Tax Application Rules, 1971*, Part III of chapter 63 of the Statutes of Canada, 1970-71-72, or the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, expressed or intended to be the subject of or otherwise affected by that amending, repeal, application or other provision.

Definitions [ITAR 76]: "Canada" — ITA 255, *Interpretation Act* 35(1); "Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952", "Income Tax Application Rules, 1971" — ITAR 69; "provision" — ITAR 74.

77. Continued effect of repealed provisions — For greater certainty, where a provision of the *Income Tax Application Rules, 1971*, Part III of chapter 63 of the Statutes of Canada, 1970-71-72, or the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, was repealed at any time after 1971 but, immediately before the coming into force of the fifth supplement to the Revised Statutes of Canada, 1985, continues to be applied to any extent or otherwise to have any effect on, or in connection with, the application of either or both of those Acts, the repealed provision, on the coming into force of that supplement, continues to be so applied or to have that effect on, or in connection with, the application of either this Act or the *Income Tax Act* or both.

Definitions [ITAR 77]: "Canada" — ITA 255, *Interpretation Act* 35(1); "Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952", "Income Tax Application Rules, 1971" — ITAR 69; "provision" — ITAR 74.

78. Application of section 77 — Section 77 is applicable whether or not this Act or the *Income Tax Act*, as the case may be, contains any reference to the repealed provision referred to in that section or to the subject-matter of that provision.

Definitions [ITAR 78]: "provision" — ITAR 74.

79. (1) Effect of amendments on former ITA — Where a provision of an enactment amends the *Income Tax Act* or affects the application of the *Income Tax Act* and the provision applies to or with respect to a period, transaction or event to which the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, applies, the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, shall be read as if it had been amended or its application had been affected by the provision, with such modifications as the circumstances require, to the extent of the provision's application to or with respect to that period, transaction or event.

(2) Effect of amendments on former ITAR — Where a provision of an enactment amends this Act or affects the application of this Act and the provision applies to or with respect to a period, transaction or event to which the *Income Tax Application Rules, 1971*, Part III of chapter 63 of the Statutes of Canada, 1970-71-72, apply, the *Income Tax Application Rules, 1971*, Part III of chapter 63 of the Statutes of Canada, 1970-71-72, shall be read as if they had been amended or their application had been affected by the provision, with such modifications as the circumstances require, to the extent of the provision's application to or with respect to that period, transaction or event.

History: ITAR 79 added by 1994, c. 21, s. 121, deemed to have come into force on March 2, 1994.

Definitions [ITAR 79]: "Canada" — ITA 255, *Interpretation Act* 35(1); "Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952", "Income Tax Application Rules, 1971" — ITAR 69.

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INCOME TAX REGULATIONS

CONSOLIDATED REGULATIONS OF CANADA, CHAPTER 945

(CONSOLIDATED AS OF DECEMBER 31, 1977)

PROCLAIMED IN FORCE AUGUST 15, 1979, AS AMENDED TO AUGUST 17, 2005

Note: Editorial annotations have been added in square brackets to update references to the ITA where the numbering of the provision has changed as a result of the R.S.C. 1985, c. 1 (5th Supp.) consolidation. (See Reg. 700(3) as an example.)

1. Short title — These Regulations may be cited as the *Income Tax Regulations*.

2. Interpretation — In these Regulations, "Act" means the *Income Tax Act*.

PART I — TAX DEDUCTIONS

History: Part I was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

100. Interpretation — (1) [Definitions] — In this Part and in Schedule I,

"employee" means any person receiving remuneration;

"employer" means any person paying remuneration;

"estimated deductions" means, in respect of a taxation year, the total of the amounts estimated to be deductible by an employee for the year under any of paragraphs 8(1)(f), (h), (h.1), (i) and (j) of the Act and determined by the employee for the purpose of completing the form referred to in subsection 107(2);

History: "Estimated deductions" amended by P.C. 1994-372, subsec. 1(1), March 10, 1994, *Canada Gazette*, Part II, March 23, 1994, effective January 1, 1993.

"Estimated deductions" amended by P.C. 1989-2105, subsec. 1(2), October 19, 1989, *Canada Gazette*, Part II, November 8, 1989, effective July 1, 1988.

"Estimated deductions" substituted by P.C. 1983-1137, subsec. 1(1), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, effective from January 1, 1982.

"Estimated deductions" added by P.C. 1980-3375, s. 1, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, in force January 1, 1981.

"exemptions" — [Revoked]

History: "Exemptions" revoked by P.C. 1989-2105, subsec. 1(1), October 19, 1989, *Canada Gazette*, Part II, November 8, 1989, effective July 1, 1988.

Cl. (a)(ii)(E) of "exemptions" in subsec. 100(1) added by P.C. 1988-1105, s. 1, June 6, 1988, *Canada Gazette*, Part II, June 22, 1988, applicable to 1987 *et seq.*

Cl. (a)(ii)(B) of "exemptions" in subsec. 100(1) substituted by P.C. 1987-1478, s. 1, July 30, 1987, *Canada Gazette*, Part II, August 19, 1987, effective from January 1, 1986.

Para. (b) of "exemptions" in subsec. 100(1) substituted by P.C. 1983-2717, subsec. 1(1), September 1, 1983, *Canada Gazette*, Part II, September 14, 1983, effective from January 1, 1983.

Cls. 100(1)(a)(ii)(B), (C) of "exemptions" substituted by P.C. 1977-3520, December 15, 1977, *Canada Gazette*, Part II, January 11, 1978, effective January 1, 1978.

"pay period" includes

(a) a day,

(b) a week,

(c) a two week period,

(d) a semi-monthly period,

(e) a month,

(f) a four week period,

(g) one tenth of a calendar year, or

(h) one twenty-second of a calendar year;

History: "Pay period" added by P.C. 1981-1557, subsec. 1(1), June 11, 1981, *Canada Gazette*, Part II, June 24, 1981 effective commencing January 1, 1981.

"personal credits" means, in respect of a particular taxation year, the greater of

(a) the amount referred to in paragraph 118(1)(c) of the Act, and

(b) the aggregate of the credits which the employee would be entitled to claim for the year under

(i) subsections 118(1), (2) and (3) of the Act if the description of A in those subsections were read as "is equal to one",

(ii) subsections 118.3(1) and (2) of the Act if the description of A in subsection 118.3(1) of the Act were read as "is equal to one" and if subsection 118.3(1) of the Act were read without reference to paragraph (c) thereof,

(iii) subsections 118.5(1) and 118.6(2) of the Act if subsection 118.5(1) of the Act were read without reference to "the product obtained when the appropriate percentage for the year is multiplied by" and the description of A in subsection 118.6(2) of the Act were read as "is equal to one", and after deducting from the aggregate of the amounts determined under those subsections the excess over $3,000 of the aggregate of amounts that the employee claims to expect to receive in the year on account of a scholarship, fellowship or bursary,

(iv) section 118.8 of the Act if the formula A + B - C in that section were read as

$$(A + B) / C$$

where

A is the value of A in that section,

B is the value of B in that section, and

C is the appropriate percentage for the year.

(v) section 118.9 of the Act if the formula A - B in section 118.81 of the Act were read as

$$A / B$$

where

A is the value of A set out in that section, and

B is the appropriate percentage for the year.

History: The definition "personal credits" in subsec. 100(1) amended by P.C. 2001-1115, subsec. 1(1), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to 2001 *et seq.*

"Personal credits" substituted by P.C. 1994-372, subsec. 1(2), March 10, 1994, *Canada Gazette*, March 23, 1994, effective January 1, 1993.

"Personal credits" added by P.C. 1989-2105, subsec. 1(3), October 19, 1989, *Canada Gazette*, November 8, 1989, effective July 1, 1988.

"remuneration" includes any payment that is

(a) in respect of

(i) salary or wages, or

(ii) commissions or other similar amounts fixed by reference to the volume of the sales made or the contracts negotiated (referred to as "commissions" in this Part),

paid to an officer or employee or former officer or employee,

(a.1) in respect of an employee's gratuities required under provincial legislation to be declared to the employee's employer,

(b) a superannuation or pension benefit (including an annuity payment made pursuant to or under a superannuation or pension fund or plan),

(b.1) an amount of a distribution out of or under a retirement compensation arrangement,

(c) a retiring allowance,

(d) a death benefit,

(e) a benefit under a supplementary unemployment benefit plan,

(f) a payment under a deferred profit sharing plan or a plan referred to in section 147 of the Act as a "revoked plan", reduced, if applicable, by amounts determined under subsections 147(10.1), (11) and (12) of the Act,

(g) a benefit under the *Employment Insurance Act*,

(h) an amount that is required by paragraph 56(1)(r) of the Act to be included in computing a taxpayer's income, except the portion of the amount that relates to child care expenses and tuition costs,

(i) a payment made during the lifetime of an annuitant referred to in the definition "annuitant" in subsection 146(1) of the Act out of or under a registered retirement savings plan of that annuitant, other than

(i) a periodic annuity payment, or

(ii) a payment made by a person who has reasonable grounds to believe that the payment may be deducted under subsection 146(8.2) of the Act in computing the income of any taxpayer,

(j) a payment out of or under a plan referred to in subsection 146(12) of the Act as an "amended plan" other than

(i) a periodic annuity payment, or

(ii) where paragraph 146(12)(a) of the Act applied to the plan after May 25, 1976, a payment made in a year subsequent to the year in which that paragraph applied to the plan, or

(j.1) a payment made during the lifetime of an annuitant referred to in the definition "annuitant" in subsection 146.3(1) of the Act under a registered retirement income fund of that annuitant, other than a particular payment to the extent that

(i) the particular payment is in respect of the minimum amount (in this paragraph having the meaning assigned by subsection 146.3(1) of the Act) under the fund for a year, or

(ii) where the fund governs a trust, the particular payment would be in respect of the minimum amount under the fund for a year if each amount that, at the beginning of the year, is scheduled to be paid after the time of the particular payment and in the year to the trust under an annuity contract that is held by the trust both at the beginning of the year and at the time of the particular payment, is paid to the trust in the year,

(k) a benefit described in section 5502,

(l) an amount as, on account or in lieu of payment of, or in satisfaction of, proceeds of the surrender, cancellation or redemption of an income-averaging annuity contract,

(m) in respect of an amount that can reasonably be regarded as having been received, in whole or in part, as consideration or partial consideration for entering into a contract of service, where the service is to be performed in Canada, or for an undertaking not to enter into such a contract with another party, or

(n) a payment out of a registered education savings plan other than

(i) a refund of payments,

(ii) an educational assistance payment, or

(iii) an amount, up to $50,000, of an accumulated income payment that is made to a subscriber, as defined in subsection 204.94(1) of the Act, or if there is no subscriber at that time, that is made to a person that has been a spouse or common-law partner of an individual who was a subscriber, if

(A) that amount is transferred to an RRSP in which the annuitant is either the recipient of the payment or the recipient's spouse, and

(B) it is reasonable for the person making the payment to believe that that amount is deductible for the year by the recipient of the payment within the limits provided for in subsection 146(5) or (5.1) of the Act;

History: The opening words of para. (i) of the definition "remuneration" in subsec. 100(1) amended to replace "subparagraph 146(1)(a)(i)" with "the definition "annuitant" in subsection 146(1)" by P.C. 2001-1115, subsec. 1(2), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to 2001 *et seq.*

The word "spouse" replaced with "spouse or common-law partner" in subpara. (n)(iii) of the definition "remuneration" in subsec. 100(1), by P.C. 2001-957, para. 14(a), May 31, 2001, *Canada Gazette*, Part II, June 20, 2001, applicable to 2001 *et seq.*, except that if a taxpayer and a person have jointly elected pursuant to s. 144 of the *Modernization of Benefits and Obligations Act* (S.C. 2000, c. 12), in respect of the 1998, 1999 or 2000 taxation year, the amendment applies to the taxpayer and the person in respect of the applicable taxation year *et seq.*

Para. (j.1) of "remuneration" amended by P.C. 2000-184, s. 1, February 17, 2000, *Canada Gazette*, Part II, March 1, 2000, applicable to 1998 *et seq.*

Para. (n) of "remuneration" added by P.C. 1998-2275, s. 1, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to 1998 *et seq.*

Paras. (g) and (h) of "remuneration" amended by P.C. 1998-2270, subsec. 1(1), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to 1998 *et seq.*

Para. (a.1) of "remuneration" added by P.C. 1998-654, subsec. 1(2), April 23, 1998, *Canada Gazette*, Part II, May 13, 1998, applicable after 1997.

Para. (k) of "remuneration" amended by P.C. 1995-1023, s. 1, June 23, 1995, *Canada Gazette*, Part II, July 12, 1995, applicable to benefits paid after October 1991.

Para. (i) of "remuneration" substituted by P.C. 1991-2540, s. 1, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable in respect of payments made after 1990.

Para. (b.1) of "remuneration" added by P.C. 1989-379, s. 1, March 9, 1989, *Canada Gazette*, Part II, March 29, 1989, applicable in respect of amounts paid after March 27, 1987.

Subparas. (i)(i) and (j)(i) of "remuneration" substituted and para. (j.1) added by P.C. 1987-2250, s. 1, November 6, 1987, *Canada Gazette*, Part II, November 25, 1987.

Para. (m) of "remuneration" added by P.C. 1986-1345, s. 1, June 5, 1986, *Canada Gazette*, Part II, June 25, 1986, applicable to payments made after June 30, 1986.

Paras. (a), (h) and (k) of "remuneration" substituted by P.C. 1983-1137, subsecs. 1(2) to (4), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983; para. (a) effective from March 30, 1983; para. (h) effective from August 2, 1982; para. (k) applicable with respect to benefits paid after 1981, except that in its application to payments made after November 12, 1981 in respect of a termination of an office or employment that occurred on or before that date para. (k) shall be read as follows:

"(k) a termination payment, or"

Para. (a) of "remuneration" substituted by P.C. 1980-3375, s. 1, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, in force January 1, 1981.

Paras. (i), (j) of "remuneration" substituted by P.C. 1980-3209, s. 1, November 27, 1980, *Canada Gazette*, Part II, December 10, 1980.

Para. (i) of "remuneration" added, para. (j) (formerly (i)) substituted, and para. (j) renumbered (l) (as amended by P.C. 1980-2226, s. 1, August 27, 1980, *Canada Gazette*, Part II, September 10, 1980) by P.C. 1980-1735, s. 1, June 26, 1980, *Canada Gazette*, Part II, July 9, 1980, effective commencing June 30, 1978.

Para. (k) of "remuneration" added by P.C. 1980-1366, May 22, 1980, *Canada Gazette*, Part II, June 11, 1980.

Para. 100(1)(i) of "remuneration" substituted by P.C. 1978-1038, s. 1, April 6, 1978, *Canada Gazette*, Part II, April 26, 1978.

Para. (f) of "remuneration" substituted, paras. (h) to (j) of "remuneration" added by P.C. 1977-3520, December 15, 1977, *Canada Gazette*, Part II, January 11, 1978, effective January 1, 1978, para. (h) effective March 1, 1978.

Interpretation Bulletins: IT-75R4: Scholarships, fellowships, bursaries, prizes, research grants and financial assistance.

"total remuneration" means, in respect of a taxation year, the total of all amounts each of which is an amount referred to in paragraph (a) or (a.1) of the definition "remuneration".

History: "Total remuneration" amended by P.C. 1998-654, subsec. 1(1), April 23, 1998, *Canada Gazette*, Part II, May 13, 1998, applicable after 1997.

"Total remuneration" added by P.C. 1980-3375, s. 1, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, in force January 1, 1981.

(2) [Indexing] — Where the amount of any credit referred to in paragraph (a) or (b) of the definition "personal credits" in subsection (1) is subject to an annual adjustment under section 117.1 of the Act, such amount shall, in a particular taxation year, be subject to that annual adjustment.

History: Subsec. 100(2) amended to replace "subparagraph (a)(i) or (ii)" with "paragraph (a) or (b)" by P.C. 2001-1115, subsec. 1(3), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to 2001 *et seq.*

Subsec. 100(2) amended by P.C. 1989-2105, subsec. 1(4), October 19, 1989, *Canada Gazette*, November 8, 1989, effective July 1, 1988.

Subsec. 100(2) substituted by P.C. 1983-2717, subsec. 1(2), September 1, 1983, *Canada Gazette*, Part II, September 14, 1983, effective from January 1, 1983.

Subsec. 100(2) substituted by P.C. 1981-1557, subsec. 1(2), June 11, 1981, *Canada Gazette*, Part II, June 24, 1981, effective commencing January 1, 1981.

(3) [Amounts excluded from base for withholding] — For the purposes of this Part, where an employer deducts or withholds from a payment of remuneration to an employee one or more amounts each of which is

(a) a contribution to or under a registered pension fund or plan,

(b) dues described in subparagraph 8(1)(i)(iv), (v) or (vi) of the Act paid on account of the employee,

(b.1) a contribution by the employee under subparagraph 8(1)(m.2) of the Act,

(c) a premium under a registered retirement savings plan, to the extent that the employer believes on reasonable grounds that the premium is deductible under paragraph 60(j.1) or subsection 146(5) or (5.1) of the Act in computing the employee's income for the taxation year in which the payment of remuneration is made, or

(d) an amount that is deductible under paragraph 60(b) of the Act,

the balance remaining after deducting or withholding this amount, as the case may be, shall be deemed to be the amount of that payment of remuneration.

Related Provisions: Reg. 100(3.1) — Northern Canada residents.

History: Paras. 100(3)(c) and (d) amended by P.C. 2001-1053, subsec. 1(1), June 7, 2001, *Canada Gazette*, Part II, June 20, 2001.

Para. 100(3)(b.1) added and (d) amended by P.C. 1997-1471, subsecs. 1(1) and (2), October 9, 1997, *Canada Gazette*, Part II, October 29, 1997, applicable beginning on May 1, 1997.

Paras. 100(3)(c) and (d) added by P.C. 1994-372, subsec. 1(3), March 10, 1994, *Canada Gazette*, Part II, March 23, 1994, effective January 1, 1993.

Subsec. 100(3) substituted by P.C. 1989-2105, subsec. 1(5), October 19, 1989, *Canada Gazette*, Part II, November 8, 1989, effective July 1, 1988.

Interpretation Bulletins: IT-75R4: Scholarships, fellowships, bursaries, prizes, research grants and financial assistance.

I.T. Technical News: 19 (Retiring allowances — clarification to Interpretation Bulletin IT-337R3 — (d): Deductions at source.

(3.1) [Northern residents' deduction] — For the purposes of this Part, where an employee has claimed a deduction for a taxation year under paragraph 110.7(1)(b) of the Act as shown on the return most recently filed by the employee with the employee's employer pursuant to subsection 227(2) of the Act, the amount of remuneration otherwise determined, including the amount deemed by subsection (3) to be the amount of that payment of remuneration, paid to the employee for a pay period shall be reduced by an amount equal to the amount of the deduction divided by the maximum number of pay periods in the year in respect of the appropriate pay period.

History: Subsec. 100(3.1) substituted by P.C. 1994-372, subsec. 1(4), March 10, 1994, *Canada Gazette*, Part II, March 23, 1994, effective January 1, 1993.

Subsec. 100(3.1) added, by P.C. 1989-2105, subsec. 1(5), October 19, 1989, *Canada Gazette*, Part II, November 8, 1989, effective July 1, 1988.

(3.2) [Repealed]

History: Subsec. 100(3.2) repealed by P.C. 2001-1053, subsec. 1(2), June 7, 2001, *Canada Gazette*, Part II, June 20, 2001.

Subsec. 100(3.2) added by P.C. 1997-1471, subsec. 1(3), October 9, 1997, *Canada Gazette*, Part II, October 29, 1997, applicable beginning on May 1, 1997.

(4) [Establishment of the employer] — For the purposes of this Part, where an employee is not required to report for work at any establishment of the employer, he shall be deemed to report for work

(a) in respect of remuneration that is salary, wages or commissions, at the establishment of the employer from which the remuneration is paid; or

(b) in respect of remuneration other than salary, wages or commissions, at the establishment of the employer in the province where the employee resides at the time the remuneration is paid but, if the employer does not have an establishment in that province at that time, he shall, for the purposes of this paragraph, be deemed to have an establishment in that province.

History: Subsec. 100(4) substituted by P.C. 1980-3375, s. 1, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, in force January 1, 1981.

(5) [LSVCC share purchase] — For the purposes of this Part, where an employer deducts or withholds from a payment of remuneration to an employee an amount in respect of the acquisition by the employee of an approved share, as defined in subsection 127.4(1) of the Act, there shall be deducted from the amount determined under paragraph 102(1)(e) or (2)(e), as the case may be, in respect of that payment the lesser of

(a) $750, and

(b) 15% of the amount deducted or withheld in respect of the acquisition of an approved share.

History: The opening words of subsec. 100(5) amended by P.C. 2005-1133, s. 1, June 7, 2005, *Canada Gazette*, Part II, June 29, 2005 to substitute "paragraph 102(1)(e) or (2)(e)" for "paragraph 102(1)(e) or (2)(f)", applicable to 2001 *et seq.*

Subsec. 100(5) amended by P.C. 1998-2270, subsec. 1(2), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to 1998 *et seq.*

Subsec. 100(5) added by P.C. 1994-372, subsec. 1(5), March 10, 1994, *Canada Gazette*, Part II, March 23, 1994, effective January 1, 1993.

Definitions [Reg. 100]: "accumulated income payment" — ITA 146.1(1); "amount", "annuity" — ITA 248(1); "appropriate percentage" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "commissions" — Reg. 100(1)"remuneration"(a)(ii); "common-law partner" — ITA 248(1); "death benefit" — ITA 248(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "educational assistance payment" — ITA 146.1(1); "employee", "employer" — Reg. 100(1); "income-averaging annuity contract" — ITA 248(1); "minimum amount" — ITA 146.3(1); "month" — *Interpretation Act* 35(1); "officer" — ITA 248(1); "pay period" — Reg. 100(1); "person" — ITA 248(1); "personal credits" — Reg. 100(1); "personal or living expenses" — ITA 248(1); "province" — *Interpretation Act* 35(1); "refund of payments" — ITA 146.1(1); "registered education savings plan" — ITA 146.1(1), 248(1); "registered pension fund or plan" — ITA 248(1); "registered retirement income fund" — ITA 146.3(1), 248(1); "registered retirement savings plan" — ITA 146(1), 248(1); "remuneration" — Reg. 100(1); "retirement compensation arrangement", "retiring allowance", "salary or wages", "share" — ITA 248(1); "subscriber" — ITA 146.1(1); "supplementary unemployment benefit plan" — ITA 145(1), 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

101. Deductions and remittances — Every person who makes a payment described in subsection 153(1) of the Act in a taxation year shall deduct or withhold therefrom, and remit to the Receiver General, such amount, if any, as is determined in accordance with rules prescribed in this Part.

Related Provisions: ITA 227 — Obligations with respect to amounts withheld; Reg. Sch. I — Ranges of remuneration for Reg. 102(1)(c) and (d).

History: S. 101 substituted by P.C. 1981-1557, s. 2, June 11, 1981, *Canada Gazette*, Part II, June 24, 1981, effective commencing January 1, 1981.

Definitions [Reg. 101]: "amount", "person", "prescribed" — ITA 248(1); "taxation year" — ITA 249.

102. Periodic payments — (1) [Amount to be withheld] — Except as otherwise provided in this Part, the amount to be deducted or withheld by an employer

(a) from any payment of remuneration (in this subsection referred to as the "payment") made to an employee in his taxation year where he reports for work at an establishment of the employer in a province, in Canada beyond the limits of any province or outside Canada, and

(b) for any pay period in which the payment is made by the employer

shall be determined for each payment in accordance with the following rules:

(c) an amount that is a notional remuneration for the year in respect of

(i) a payment to the employee, and

(ii) the amount, if any, of gratuities referred to in paragraph (a.1) of the definition "remuneration" in subsection 100(1)

is deemed to be the amount determined by the formula

$$A \times B$$

where

A is the amount that is deemed for the purpose of this paragraph to be the mid-point of the applicable range of remuneration for the pay period, as provided in Schedule I, in which falls the total of

(A) the payment referred to in subparagraph (i) made in the pay period, and

(B) the amount of gratuities referred to in subparagraph (ii) declared by the employee for the pay period, and

B is the maximum number of such pay periods in that year;

(d) if the employee is not resident in Canada at the time of the payment, no personal credits will be allowed for the purposes of this subsection and, if the employee is resident in Canada at the time of the payment, the employee's personal credits for the year are deemed to be the mid-point of the range of amounts of personal credits for a taxation year as provided for in section 2 of Schedule I;

(e) an amount (in this subsection referred to as the "notional tax for the year") shall be computed in respect of that employee by

(i) calculating the amount of tax payable for the year, as if that amount were calculated under subsection 117(2) of the Act and adjusted annually pursuant to section 117.1 of the Act, on the amount determined in accordance with paragraph (c) as if that amount represented the employee's amount taxable for that year,

and deducting the aggregate of

(ii) the amount determined in accordance with paragraph (d) multiplied by the appropriate percentage for the year,

(iii) an amount equal to

(A) the amount determined in accordance with paragraph (c) multiplied by the employee's premium rate for the year under the *Employment Insurance Act*, not exceeding the maximum amount of the premiums payable by the employee for the year under that Act,

multiplied by

(B) the appropriate percentage for the year, and

(iv) an amount equal to

(A) the product obtained when the difference between the amount determined in accordance

with paragraph (c) and the amount determined under section 20 of the *Canada Pension Plan* for the year is multiplied by the employee's contribution rate for the year under the *Canada Pension Plan* or under a provincial pension plan as defined in subsection 3(1) of that Act, not exceeding the maximum amount of such contributions payable by the employee for the year under the plan,

multiplied by

(B) the appropriate percentage for the year;

(f) the amount determined in accordance with paragraph (e) shall be increased by, where applicable, the tax as determined under subsection 120(1) of the Act;

(g) where the amount of notional remuneration for the year is income earned in the Province of Quebec, the amount determined in accordance with paragraph (e) shall be reduced by an amount that is the aggregate of

(i) the amount that is deemed to be paid under subsection 120(2) of the Act as if there were no other source of income or loss for the year, and

(ii) the amount by which the amount referred to in subparagraph (i) is increased by virtue of section 27 of the *Federal-Provincial Fiscal Arrangements Act*; and

(h) [Revoked]

(i) the amount to be deducted or withheld shall be computed by

(i) dividing the amount of the notional tax for the year by the maximum number of pay periods for the year in respect of the appropriate pay period, and

(ii) rounding the amount determined under subparagraph (i) to the nearest multiple of five cents or, if such amount is equidistant from two such multiples, to the higher multiple.

Related Provisions: Reg. 100(4) — Where employee not required to report for work at an establishment of the employer; Reg. 102(5) — Commission employees — exception; Reg. 102(6) — Exception for high-risk Canadian Forces and police income.

History: Para. 102(1)(d) amended by P.C. 2001-1115, subsec. 2(1), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to 2001 *et seq.*

Para. 102(1)(f) amended by the said P.C. 2001-1115, subsec. 2(2), applicable to 2001 *et seq.*

Cl. 102(1)(e)(iii)(A) amended by P.C. 1998-2270, subsec. 2(1), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to 1998 *et seq.*

Para. 102(1)(c) amended by P.C. 1998-654, s. 2, April 23, 1998, *Canada Gazette*, Part II, May 13, 1998, applicable after 1997.

Subpara. 102(1)(g)(ii) amended by 1995, c. 17, subsec. 45(2), to substitute "*Federal-Provincial Fiscal Arrangements Act*" for "*Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act*", in force April 1, 1996.

Paras. 102(1)(d) and (e) substituted by P.C. 1994-372, subsecs. 2(1) and (2), March 10, 1994, *Canada Gazette*, Part II, March 23, 1994, effective January 1, 1993.

Cls. 102(1)(e)(iii)(A), (iv)(A) amended, para. (h) revoked by P.C. 1992-2347, subsecs. 1(1) to (3), November 19, 1992, *Canada Gazette*, Part II, December 2, 1992, effective January 1, 1992.

Cl. 102(1)(e)(iii)(A) amended by P.C. 1992-291, subsec. 1(1), February 20, 1992, *Canada Gazette*, Part II, March 11, 1992, effective as of July 1, 1991.

Cl. 102(1)(e)(iv)(A) amended by P.C. 1991-1643, subsec. 1(1), September 5, 1991, *Canada Gazette*, Part II, September 25, 1991, effective January 1, 1991.

Cl. 102(1)(e)(iv)(A) amended by P.C. 1991-732, subsec. 1(1), April 18, 1991, *Canada Gazette*, Part II, May 8, 1991, effective January 1, 1990.

Para. 102(1)(c), subpara. (1)(f)(i), and that portion of para. (1)(g) preceding subpara. (i) amended by P.C. 1991-230, subsecs. 1(1) to (3), February 14, 1991, *Canada Gazette*, Part II, February 27, 1991, effective July 1, 1989.

Subpara. 102(1)(e)(iv) amended by P.C. 1990-432, subsec. 1(1), March 8, 1990, *Canada Gazette*, Part II, March 28, 1990, effective January 1, 1989.

Paras. 102(1)(d) to (i) substituted for 102(1)(d) to (g) by P.C. 1989-2105, subsec. 2(1), October 19, 1989, *Canada Gazette*, Part II, November 8, 1989, effective July 1, 1988.

Subpara. 102(1)(f)(iii) substituted by P.C. 1988-1041, subsec. 1(1), June 2, 1988, *Canada Gazette*, Part II, June 22, 1988, effective commencing January 1, 1987.

Subpara. 102(1)(g)(iii) substituted by P.C. 1988-1041, subsec. 1(2), June 2, 1988, *Canada Gazette*, Part II, June 22, 1988, effective commencing January 1, 1988.

Subpara. 102(1)(g)(iii) substituted by P.C. 1987-1478, subsec. 2(1), July 30, 1987, *Canada Gazette*, Part II, August 19, 1987, effective from January 1, 1987.

Subpara. 102(1)(f)(iii) substituted by P.C. 1986-1345, subsec. 2(1), June 5, 1986, *Canada Gazette*, Part II, June 25, 1986, applicable to the 1986 taxation year.

Cl. 102(1)(f)(iv)(A) substituted by P.C. 1986-1345, subsec. 2(2), June 5, 1986, *Canada Gazette*, Part II, June 25, 1986, effective commencing January 1, 1981.

Subpara. 102(1)(g)(iii) substituted by P.C. 1986-1345, subsec. 2(3), June 5, 1986, *Canada Gazette*, Part II, June 25, 1986, effective commencing January 1, 1986.

Cl. 102(1)(f)(iv)(B) amended by P.C. 1985-1645, s. 1, May 16, 1985, *Canada Gazette*, Part II, May 29, 1985, effective from April 1, 1983.

Subpara. 102(1)(g)(iii) substituted by P.C. 1985-1645, May 16, 1985, subsec. 2(1), *Canada Gazette*, Part II, May 29, 1985, effective January 1, 1984 except that, in its application to the period from January 1, 1984 to December 31, 1984, references to "$12,470" shall be read as references to "$11,920".

Para. 102(1)(d) substituted by P.C. 1984-3916, December 6, 1984, *Canada Gazette*, Part II, December 26, 1984.

Para. 102(1)(d) substituted by P.C. 1984-3684, subsec. 1(1), November 15, 1984, *Canada Gazette*, Part II, November 28, 1984, effective from January 1, 1984.

Subpara. 102(1)(f)(iii) substituted, subpara. 102(1)(f)(v) added by P.C. 1984-3684, subsecs. 1(2) and (3), November 15, 1984, *Canada Gazette*, Part II, November 28, 1984, effective from January 1, 1984.

Subpara. 102(1)(f)(i) substituted by P.C. 1983-2717, subsec. 2(1), September 1, 1983, *Canada Gazette*, Part II, September 14, 1983, effective from January 1, 1983.

All that portion of subpara. 102(1)(g)(iii) preceding clause (A) substituted by P.C. 1983-2717, subsec. 2(2), September 1, 1983, *Canada Gazette*, Part II, September 14, 1983, effective from January 1, 1983.

Subparas. 102(1)(f)(i) to (iii) substituted by P.C. 1983-1137, s. 2, April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, effective from January 1, 1982.

All that portion of subpara. 102(1)(g)(iii) preceding clause (A) substituted by P.C. 1983-1137, subsec. 2(2), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, effective from January 1, 1982.

Subsecs. 102(1) substituted by P.C. 1981-1557, s. 3, June 11, 1981, *Canada Gazette*, Part II, June 24, 1981, effective January 1, 1981.

Remission Orders: *Income Earned in Quebec Income Tax Remission Order*, P.C. 1989-1204 (reduction in withholdings for certain income related to Quebec).

Forms: T4001: Employers' Guide to Payroll Deductions — Basic Information (guide).

(2) [Commission employees] — Where an employee has elected pursuant to subsection 107(2) and has not revoked such election, the amount to be deducted or withheld by the employer from any payment of remuneration (in this subsection referred to as the "payment") that is

(a) a payment in respect of commissions or is a combined payment of commissions and salary or wages, or

(b) a payment in respect of salary or wages where that employee receives a combined payment of commissions and salary or wages,

made to that employee in his taxation year where he reports for work at an establishment of the employer in a province, in Canada beyond the limits of any province or outside Canada, shall be determined for each payment in accordance with the following rules:

(c) an employee's "estimated annual taxable income" shall be determined by using the formula

$$A - B$$

where

A is the amount of that employee's total remuneration in respect of the year as recorded by the employee on the form referred to in subsection 107(2), and

B is the amount of that employee's expenses in respect of the year as recorded by that employee on that form;

(d) if the employee is not resident in Canada at the time of the payment, no personal credits will be allowed for the purposes of this subsection and if the employee is resident in Canada at the time of the payment, the employee's personal credits for the year shall be the total claim amount as recorded by that employee on the return for the year referred to in subsection 107(1);

(e) an amount (in this subsection referred to as the "notional tax for the year") shall be calculated in respect of that employee by using the formula

$$C - [(D + E + F) \times G] + H - I$$

where

C is the amount of tax payable for the year, calculated as if that amount of tax were computed under subsection 117(2) of the Act and adjusted annually pursuant to section 117.1 of the Act, on the amount determined under paragraph (c) as if that amount represented the employee's amount taxable for that year,

D is the amount determined in accordance with paragraph (d),

E is the amount determined in the description of A in paragraph (c) multiplied by the employee's premium rate for the year under the *Employment Insurance Act*, not exceeding the maximum amount of the premiums payable by the employee for the year under that Act,

F is the amount determined in the description of A in paragraph (c) less the amount for the year determined under section 20 of the *Canada Pension Plan* multiplied by the employee's contribution rate for the year under that Act or under a provincial pension plan as defined in section 3 of that Act, not exceeding the maximum amount of such contributions payable by the employee for the year under the plan,

G is the appropriate percentage for the year,

H is, where applicable, the tax as determined under subsection 120(1) of the Act,

I is, where the amount of total remuneration for the year is income earned in the Province of Quebec, an amount equal to the aggregate of

(i) the amount that would be deemed to have been paid under subsection 120(2) of the Act with respect to the employee if the notional tax for the year for the employee were determined without reference to the elements H, I and J in this formula and if that tax were that employee's tax payable under Part I of the Act for that year, as if there were no other source of income or loss for the year, and

(ii) the amount by which the amount referred to in subparagraph (i) is increased by virtue of section 27 of the *Federal-Provincial Fiscal Arrangements Act*;

(f) the employee's notional rate of tax for a year is calculated by dividing the amount determined under paragraph (e) by the amount referred to in the description of A in paragraph (c) in respect of that employee and expressed as a decimal fraction rounded to the nearest hundredth, or where the third digit is equidistant from two consecutive one-thousandths, to the higher thereof;

(g) the amount to be deducted or withheld in respect of any payment made to that employee shall be determined by multiplying the payment by the appropriate decimal fraction determined pursuant to paragraph (f).

(h) [Repealed]

Related Provisions: ITA 257 — Negative amounts in formulas; Reg. 102(5) — Commission employees — exception.

History: Paras. 102(2)(c) to (g) substituted for paras. (c) to (h), by P.C. 2001-1115, subsec. 2(3), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to 2001 *et seq.*

The description of C in para. 102(2)(f) amended by P.C. 1998-2270, subsec. 2(2), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to 1998 *et seq.*

Subpara. 102(2)(f)(ii) amended by 1995, c. 17, subsec. 45(2), to substitute "*Federal-Provincial Fiscal Arrangements Act*" for "*Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act*", in force April 1, 1996.

The description of B in subpara. 102(2)(d)(ii) and para. 102(2)(f) amended by P.C. 1994-1370, subsecs. 1(1), (2), August 16, 1994, *Canada Gazette*, Part II, September 7, 1994.

Cl. 102(2)(d)(i)(B) amended by P.C. 1994-372, subsec. 2(3), March 10, 1994, *Canada Gazette*, Part II, March 23, 1994, effective January 1, 1993.

Subpara. 102(2)(d)(ii), paras. 102(2)(e), (f) and the opening words of (g) amended by P.C. 1992-2347, subsecs. 1(4)–(6), November 19, 1992, *Canada Gazette*, Part II, December 2, 1992, effective January 1, 1992.

The description of B in subpara. 102(2)(d)(ii) amended by P.C. 1992-291, subsec. 1(2), February 20, 1992, *Canada Gazette*, Part II, March 11, 1992, effective as of July 1, 1991.

That portion of subpara. 102(2)(d)(ii) preceding the description of A, and the descriptions of C and E, amended by P.C. 1991-1643, subsecs. 1(2) to (4), September 5, 1991, *Canada Gazette*, Part II, September 25, 1991, effective January 1, 1991.

That portion of subpara. 102(2)(d)(ii) preceding the description of A, and the descriptions of C and E, amended by P.C. 1991-732, subsecs. 1(2) to (4), April 18, 1991, *Canada Gazette*, Part II, May 8, 1991, effective January 1, 1990.

Cl. 102(2)(f)(ii)(A) amended by P.C. 1991-230, subsec. 1(4), February 14, 1991, *Canada Gazette*, Part II, February 27, 1991, effective July 1, 1989.

Subpara. 102(2)(d)(ii) amended by P.C. 1990-432, subsecs. 1(2) to (4), March 8, 1990, *Canada Gazette*, Part II, March 28, 1990, to substitute the formula and the descriptions of C and E, effective January 1, 1989.

Para. 102(2)(d) substituted, subparas. 102(2)(f)(i) to (iv) substituted for (i) to (v) by P.C. 1989-2105, subsecs. 2(2), (3), October 19, 1989, *Canada Gazette*, Part II, November 8, 1989, effective July 1, 1988.

Subpara. 102(2)(f)(iii) substituted by P.C. 1988-1041, subsec. 1(3), June 2, 1988, *Canada Gazette*, Part II, June 22, 1988, effective commencing January 1, 1987.

Subpara. 102(2)(f)(iii) substituted by P.C. 1986-1345, subsec. 2(4), June 5, 1986, *Canada Gazette*, Part II, June 25, 1986, applicable to the 1986 taxation year.

Cl. 102(2)(f)(iv)(B) amended by P.C. 1985-1645, s. 1, May 16, 1985, *Canada Gazette*, Part II, May 29, 1985, effective from April 1, 1983.

Subpara. 102(2)(d)(ii) substituted and subpara. 102(2)(d)(iii) revoked, subpara. 102(2)(f)(iii) substituted and subpara. 102(2)(f)(v) added by P.C. 1984-3684, subsecs. 1(4)–(6), November 15, 1984, *Canada Gazette*, Part II, November 28, 1984, effective from January 1, 1984.

Subpara. 102(2)(f)(i) substituted by P.C. 1983-2717, s. 3, September 1, 1983, *Canada Gazette*, Part II, September 14, 1983, effective from January 1, 1983.

Subparas. 102(2)(f)(i) to (iii) and cl. 102(2)(d)(i)(B) substituted by P.C. 1983-1137, subsecs. 2(3), (4), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, effective from January 1, 1982.

Remission Orders: *Income Earned in Quebec Income Tax Remission Order*, P.C. 1989-1204 (reduction in withholdings for certain income related to Quebec).

(3) [Revoked]

History: Subsec. 102(3) revoked by P.C. 1989-2105, subsec. 2(4), October 19, 1989, *Canada Gazette*, Part II, November 8, 1989, effective July 1, 1988.

Subpara. 102(3)(f)(iii) substituted by P.C. 1988-1041, subsec. 1(4), June 2, 1988, *Canada Gazette*, Part II, June 22, 1988, effective commencing January 1, 1987.

Subpara. 102(3)(a)(ii) substituted by P.C. 1987-1478, subsec. 2(2), July 30, 1987, *Canada Gazette*, Part II, August 19, 1987, effective from January 1, 1986.

Subpara. 102(3)(f)(iii) substituted by P.C. 1986-1345, subsec. 2(5), June 5, 1986, *Canada Gazette*, Part II, June 25, 1986, applicable to the 1986 taxation year.

Para. 102(3)(a) substituted by P.C. 1985-1645, May 16, 1985, subsec. 2(2), *Canada Gazette*, Part II, May 29, 1985, effective January 1, 1985.

Para. 102(3)(d) substituted by P.C. 1985-1645, May 16, 1985, subsec. 2(3), *Canada Gazette*, Part II, May 29, 1985, effective January 1, 1985.

Cl. 102(3)(f)(iv)(B) amended by P.C. 1985-1645, s. 1, May 16, 1985, *Canada Gazette*, Part II, May 29, 1985, effective from April 1, 1983.

Subpara. 102(3)(d)(ii) substituted by P.C. 1984-3684, s. 1, November 15, 1984, *Canada Gazette*, Part II, November 28, 1984, effective from January 1, 1984.

Subpara. 102(3)(f)(iii) substituted and subpara. 102(3)(f)(v) added by P.C. 1984-3684, s. 1, November 15, 1984, *Canada Gazette*, Part II, November 28, 1984, effective from January 1, 1984.

Para. 102(3)(a) substituted by P.C. 1983-2717, subsec. 4(1), September 1, 1983, *Canada Gazette*, Part II, September 14, 1983, effective from January 1, 1983.

Subpara. 102(3)(f)(i) substituted by P.C. 1983-2717, subsec. 4(2), September 1, 1983, *Canada Gazette*, Part II, September 14, 1983, effective from January 1, 1983.

Para. 102(3)(a) substituted by P.C. 1983-1137, subsec. 2(5), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, effective from January 1, 1982.

Subparas. 102(3)(f)(i) to (iii) substituted by P.C. 1983-1137, subsec. 2(6), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, effective from January 1, 1982.

Subsecs. 102(2), (3) substituted by P.C. 1981-1557, s. 3, June 11, 1981, *Canada Gazette*, Part II, June 24, 1981, effective January 1, 1981.

(4) [Revoked]

History: Subsec. 102(4) revoked by P.C. 1981-1557, s. 3, June 11, 1981, *Canada Gazette*, Part II, June 24, 1981, effective January 1, 1981.

(5) [Commission employees — exception] — Notwithstanding subsections (1) and (2), no amount shall be deducted or withheld in the year by an employer from a payment of remuneration to an employee in respect of commissions earned by the employee in the immediately preceding year where those commissions were previously reported by the employer as remuneration of the employee in respect of that year on an information return.

History: Subsec. 102(5) substituted by P.C. 1989-2105, subsec. 2(5), October 19, 1989, *Canada Gazette*, Part II, November 8, 1989, effective July 1, 1988.

Subsec. 102(5) added by P.C. 1980-3375, s. 2, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, in force January 1, 1981.

(6) Canadian Forces and police — exception — Despite subsection (1), no amount shall be deducted or withheld in the year by an employer from an amount determined in accordance with subparagraph 110(1)(f)(v) of the Act.

History: Subsec. 102(6) added by P.C. 2005-1133, s. 2, June 7, 2005, *Canada Gazette*, Part II, June 29, 2005, applicable to 2004 *et seq.*

Former subsec. 102(6) revoked by P.C. 1983-1137, subsec. 2(7), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, effective from January 1, 1982.

Former subsec. 102(6) added by P.C. 1980-3375, s. 2, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, in force January 1, 1981.

Definitions [Reg. 102]: "amount" — ITA 248(1); "amount taxable" — ITA 117(2); "appropriate percentage" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "commissions", "employee", "employer" — Reg. 100(1); "establishment of the employer" — Reg. 100(4); "estimated annual taxable income" — Reg. 102(2)(c); "estimated deductions" — Reg. 100(1); "form" — Reg. 102(2)(c); "notional net remuneration for the year" — Reg. 102(2)(e); "notional tax for the year" — Reg. 102(1)(e), 102(2)(f); "pay period" — Reg. 100(1); "payment" — Reg. 102(1)(a), 102(2); "personal credits" — Reg. 100(1); "province" — *Interpretation Act* 35(1); "remuneration"(a)(ii) — Reg. 100(1); "resident in Canada" — ITA 250; "salary or wages" — ITA 248(1); "taxation year" — ITA 249; "total remuneration" — Reg. 100(1).

103. Non-periodic payments — **(1)** Where a payment in respect of a bonus or retroactive increase in remuneration is made by an employer to an employee whose total remuneration from the employer (including the bonus or retroactive increase) may reasonably be expected not to exceed $5,000 in the taxation year of the employee in which the payment is made, the employer shall deduct or withhold, in the case of an employee who reports for work at an establishment of the employer

(a) in any province, 10 per cent, or

(b) in Canada beyond the limits of any province or outside Canada, 15 per cent,

(c)–(n) [Repealed]

of such payment in lieu of the amount determined under section 102.

History: Paras. 103(1)(a) and (b) substituted for paras. (a) to (n) by P.C. 2001-1115, subsec. 3(1), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to 2001 *et seq.*

Para. 103(1)(a), subparas. 103(4)(a)(i), (b)(i) and (c)(i), amended by P.C. 2000-1334, subsecs. 1(1), (7), (13) and (19), August 23, 2000, *Canada Gazette*, Part II, September 13, 2000, deemed to have come into force January 1, 2000.

Paras. 103(1)(b), (d), (f), (h) and (k), subparas. 103(4)(a)(ii), (iv), (vi), (viii) and (xi), (b)(ii), (iv), (vi), (viii) and (xi), and (c)(ii), (iv), (vi), (viii) and (xi), amended by the said P.C. 2000-1334, subsecs. 1(2)–(6), (8)–(12), (14)–(18), (20)–(24), deemed to have come into force July 1, 2000.

Paras. 103(1)(b), (f) and (g) amended by P.C. 1999-2205, subsecs. 1(1), (3), December 16, 1999, *Canada Gazette*, Part II, January 5, 2000, effective from July 1, 1999.

Para. 103(1)(d) amended by the said P.C. 1999-2205, subsec. 1(2), effective from January 1, 1999.

Para. 103(1)(m) added, and (n) renumbered from (m), by the said P.C. 1999-2205, subsec. 1(4), effective from April 1, 1999.

Para. 103(1)(j) amended by P.C. 1998-2271, subsec. 1(2), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, effective from January 1, 1998.

Paras. 103(1)(a) to (d), (f) to (l) ((j) as amended by subsec. 1(2)) amended by the said P.C. 1998-2271, subsecs. 1(1), (3), effective from July 1, 1998.

Paras. 103(1)(c), (d) and (f) amended by P.C. 1997-1744, subsecs. 1(1), (2), November 27, 1997, *Canada Gazette*, Part II, December 10, 1997, effective from July 1, 1997.

Paras. 103(1)(f) and (j) amended by P.C. 1997-290, subsecs. 1(1), (2), March 4, 1997, *Canada Gazette*, Part II, March 19, 1997, effective from January 1, 1997.

Paras. 103(1)(f) and (i) amended by P.C. 1996-1557, subsecs. 1(1), (2), October 8, 1996, *Canada Gazette*, Part II, October 30, 1996, effective from July 1, 1996.

Para. 103(1)(h) amended by P.C. 1996-500, subsec. 1(1), April 16, 1996, *Canada Gazette*, Part II, May 1, 1996, effective commincing July 1, 1995.

Paras. 103(1)(d), (f) and (k) amended by P.C. 1994-1370, subsecs. 2(1) to (3), August 16, 1994, *Canada Gazette*, Part II, September 7, 1994, effective from July 1, 1993.

Paras. 103(1)(a) to (d) and (f) to (l) amended by P.C. 1994-372, subsecs. 3(1), (2), March 10, 1994, *Canada Gazette*, Part II, March 23, 1994, effective from January 1, 1993.

Paras. 103(1)(a) to (d) and (f) to (l) amended by P.C. 1993-1552, July 21, 1993, *Canada Gazette*, Part II, August 11, 1993, effective from July 1, 1992.

Para. 103(1)(b) amended by P.C. 1992-2347, subsec. 2(1), November 19, 1992, *Canada Gazette*, Part II, December 2, 1992, effective January 1, 1992.

Para. 103(1)(b) amended by P.C. 1992-291, subsec. 2(1), February 20, 1992, *Canada Gazette*, Part II, March 11, 1992, effective as of July 1, 1991.

Paras. 103(1)(c), (l) amended by P.C. 1991-1643, subsec. 2(1), September 5, 1991, *Canada Gazette*, Part II, September 25, 1991, effective commencing January 1, 1991.

Paras. 103(1)(a), (f) (g) amended effective January 1, 1990, (c), (l) amended effective July 1, 1990, by P.C. 1991-732, subsecs. 2(1) to (4), April 18, 1991, *Canada Gazette*, Part II, May 8, 1991.

Paras. 103(1)(a) to (d) and (f) to (l) substituted by P.C. 1991-230, subsecs. 2(1) and (2), February 14, 1991, *Canada Gazette*, Part II, February 27, 1991, effective July 1, 1989.

Paras. 103(1)(b), (f) and (i) substituted by P.C. 1990-432, subsecs. 2(1) to (3), March 8, 1990, *Canada Gazette*, Part II, March 28, 1990, effective January 1, 1989.

Paras. 103(1)(b), (d), (f), (i) substituted by P.C. 1989-2105, subsecs. 3(1) to (4), October 19, 1989, *Canada Gazette*, Part II, November 8, 1989, effective July 1, 1988.

Paras. 103(1)(i) and (j) substituted by P.C. 1988-1041, subsec. 2(1), June 2, 1988, *Canada Gazette*, Part II, June 22, 1988, effective January 1, 1988.

Paras. 103(1)(g) to (j) substituted by P.C. 1988-309, subsec. 1(1), February 25, 1988, *Canada Gazette*, Part II, March 16, 1988, effective July 1, 1987.

Para. 103(1)(b) substituted by P.C. 1987-1478, subsec. 3(1), July 30, 1987, *Canada Gazette*, Part II, August 19, 1987, effective January 1, 1987.

Paras. 103(1)(a) to (d) and (f) to (l) substituted by P.C. 1987-827, subsecs. 1(1) and (2), April 30, 1987, *Canada Gazette*, Part II, May 13, 1987, effective July 1, 1986.

Paras. 103(1)(f) and (j) substituted by P.C. 1986-1345, subsecs. 3(1) and 3(2), June 5, 1986, *Canada Gazette*, Part II, June 25, 1986, effective January 1, 1986.

Para. 103(1)(h) substituted by P.C. 1985-2956, subsec. 1(1), October 3, 1985, *Canada Gazette*, Part II, October 16, 1985, effective July 1, 1985.

Paras. 103(1)(d), (i), (k) substituted by P.C. 1984-3684, subsecs. 2(1) to (3), November 15, 1984, *Canada Gazette*, Part II, November 28, 1984, effective January 1, 1984.

Paras. 103(1)(d) and (k) substituted by P.C. 1984-775, subsecs. 1(1) and (2), March 8, 1984, *Canada Gazette*, Part II, March 21, 1984, effective July 1, 1983.

Paras. 103(1)(c) and (d) substituted by P.C. 1983-2717, subsec. 5(1), September 1, 1983, *Canada Gazette*, Part II, September 14, 1983, effective January 1, 1983.

Paras. 103(1)(a), (c) and (d) substituted by P.C. 1983-1195, subsecs. 1(1) and 1(2), April 21, 1983, *Canada Gazette*, Part II, May 11, 1983, effective July 1, 1982.

Paras. 103(1)(a) to (d), (f) to (l) substituted by P.C. 1983-1137, subsecs. 3(1) and 3(2), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, effective from January 1, 1982.

Paras. 103(1)(f), (h), (k)–(m) substituted by P.C. 1981-1557, subsecs. 4(1)–(3), June 11, 1981, *Canada Gazette*, Part II, June 24, 1981, paras. 103(1)(f), (h) in force July 1, 1981, paras. 103(1)(k)–(m) effective January 1, 1981.

Paras. 103(1)(b), (k) substituted by P.C. 1980-3375, s. 3, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, in force January 1, 1981.

Para. 103(1)(b) substituted by P.C. 1980-2226, s. 3, August 27, 1980, *Canada Gazette*, Part II, September 10, 1980, effective July 1, 1980.

Para. 103(1)(j) substituted by P.C. 1979-2622, September 27, 1979, *Canada Gazette*, Part II, October 10, 1979, effective July 1, 1979.

Paras. 103(1)(d), (h) substituted by P.C. 1979-1258, April 11, 1979, *Canada Gazette*, Part II, May 9, 1979, effective January 1, 1979.

Para. 103(1)(h) substituted by P.C. 1978-2461, August 9, 1978, *Canada Gazette*, Part II, August 23, 1978, effective July 1, 1978.

Para. 103(1)(g) substituted by P.C. 1978-1585, May 11, 1978, *Canada Gazette*, Part II, May 24, 1978, effective March 1, 1978.

Paras. 103(1)(d), (h), (k) substituted, para. 103(1)(l) added, by P.C. 1978-1038, April 6, 1978, *Canada Gazette*, Part II, April 26, 1978.

Remission Orders: *Income Earned in Quebec Income Tax Remission Order*, P.C. 1989-1204 (reduction in withholdings for certain income related to Quebec).

(2) [Bonus] — Where a payment in respect of a bonus is made by an employer to an employee whose total remuneration from the employer (including the bonus) may reasonably be expected to exceed $5,000 in the taxation year of the employee in which the payment is made, the amount to be deducted or withheld therefrom by the employer is

(a) the amount determined under section 102 in respect of an assumed remuneration equal to the aggregate of

(i) the amount of regular remuneration paid by the employer to the employee in the pay period in which the remuneration is paid, and

(ii) an amount equal to the bonus payment divided by the number of pay periods in the taxation year of the employee in which the payment is made

minus

(b) the amount determined under section 102 in respect of the amount of regular remuneration paid by the employer to the employee in the pay period

multiplied by

(c) the number of pay periods in the taxation year of the employee in which the payment is made.

(3) [Retroactive pay increase] — Where a payment in respect of a retroactive increase in remuneration is made by an employer to an employee whose total remuneration from the employer (including the retroactive increase) may reasonably be expected to exceed $5,000 in the taxation year of the employee in which the payment is made, the amount to be deducted or withheld therefrom by the employer is

(a) the amount determined under section 102 in respect of the new rate of remuneration

minus

(b) the amount determined under section 102 in respect of the previous rate of remuneration

multiplied by

(c) the number of pay periods in respect of which the increase in remuneration is retroactive.

(4) [Lump sum payment] — Subject to subsection (5), where a lump sum payment is made by an employer to an employee who is a resident of Canada,

(a) if the payment does not exceed $5,000, the employer shall deduct or withhold therefrom, in the case of an employee who reports for work at an establishment of the employer

(i) in Quebec, 5 per cent,

(ii) in any other province, 7 per cent, or

(iii) in Canada beyond the limits of any province or outside Canada, 10 per cent,

(iv)–(xiv) [Repealed]

of such payment in lieu of the amount determined under section 102;

(b) if the payment exceeds $5,000 but does not exceed $15,000, the employer shall deduct or withhold therefrom, in the case of an employee who reports for work at an establishment of the employer

(i) in Quebec, 10 per cent,

(ii) in any other province, 13 per cent, or

(iii) in Canada beyond the limits of any province or outside Canada, 20 per cent,

(iv)–(xiv) [Repealed]

of such payment in lieu of the amount determined under section 102; and

(c) if the payment exceeds $15,000, the employer shall deduct or withhold therefrom, in the case of an employee who reports for work at an establishment of the employer

(i) in Quebec, 15 per cent,

(ii) in any other province, 20 per cent, or

(iii) in Canada beyond the limits of any province or outside Canada, 30 per cent,

(iv)–(xiv) [Repealed]

of such payment in lieu of the amount determined under section 102.

History: Subparas. 103(4)(a)(i) to (iii) substituted for subparas. (i) to (xiv), by P.C. 2001-1115, subsec. 3(2), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to 2001 *et seq.*

Subparas. 103(4)(b)(i) to (iii) substituted for subparas. (i) to (xiv), by the said P.C. 2001-1115, subsec. 3(3), applicable to 2001 *et seq.*

Subparas. 103(4)(c)(i) to (iii) substituted for subparas. (i) to (xiv), by the said P.C. 2001-1115, subsec. 3(4), applicable to 2001 *et seq.*

Paras. 103(4)(a)(ii), (vi) and (vii), (b)(ii), (vi) and (vii), (c)(ii), (vi) and (vii), amended by P.C. 1999-2205, subsecs. 1(5), (7), (9), (11), (13) and (15), December 16, 1999, *Canada Gazette*, Part II, January 5, 2000, effective from July 1, 1999.

Paras. 103(4)(a)(iv), (b)(iv) and (c)(iv) amended by the said P.C. 1999-2205, subsecs. 1(6), (10) and (14), effective from January 1, 1999.

Paras. 103(4)(a)(xiii), (b)(xiii) and (c)(xiii) added, and (a)(xiv), (b)(xiv) and (c)(xiv) renumbered from (a)(xiii), (b)(xiii), and (c)(xiii), respectively, by the said P.C. 1999-2205, subsecs. 1(8), (12) and (16), effective from April 1, 1999.

Subparas. 103(4)(a)(x), (b)(x) and (c)(x) amended by P.C. 1998-2271, subsecs. 1(5), (8) and (11), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, effective from January 1, 1998.

Subparas. 103(4)(a)(i) to (iv) and (vi) to (xii), 103(4)(b)(i) to (iv) and (vi) to (xii), and 103(4)(c)(i) to (iv) and (vi) to (xii) amended by the said P.C. 1998-2271, subsecs. 1(4), (6), (7), (9), (10) and (12), effective from July 1, 1998.

Subparas. 103(4)(a)(iii), (iv) and (vi), 103(4)(b)(iii), (iv) and (vi), and 103(4)(c)(iii), (iv) and (vi) amended by P.C. 1997-1744, subsecs. 1(3) to (8), November 27, 1997, *Canada Gazette*, Part II, December 10, 1997, effective from July 1, 1997.

Subparas. 103(4)(a)(vi), (a)(x), 103(4)(b)(vi), (b)(x), and subpara. 103(4)(c)(vi), (c)(x) amended by P.C. 1997-290, subsecs. 1(3) to (8), March 4, 1997, *Canada Gazette*, Part II, March 19, 1997, effective commencing January 1, 1997.

Subparas. 103(4)(a)(vi), (a)(x), 103(4)(b)(vi), (b)(x), and subpara. 103(4)(c)(vi), (c)(x) amended by P.C. 1996-1557, subsecs. 1(3) to (8), October 8, 1996, *Canada Gazette*, Part II, October 30, 1996, effective commencing July 1, 1996.

Subpara. 103(4)(a)(viii), subpara. 103(4)(b)(viii), and subpara. 103(4)(c)(viii), amended by P.C. 1996-500, subsecs. 1(2) to (4), April 16, 1996, *Canada Gazette*, Part II, May 1, 1996, effective commencing July 1, 1995.

Subparas. 103(4)(a)(iv), (vi) and (xi), subparas. 103(4)(b)(iv), (vi) and (xi), subparas. 103(4)(c)(iv), (vi) and (xi), amended by P.C. 1994-1370, subsecs. 2(4) to (12), August 16, 1994, *Canada Gazette*, Part II, September 7, 1994, effective from July 1, 1993.

Subparas. (i) to (iv) and (vi) to (xii) of paras. 103(4)(a), (b) and (c) amended by P.C. 1994-372, subsecs. 3(3) to (8), March 10, 1994, *Canada Gazette*, Part II, March 23, 1994, effective from January 1, 1993.

Subparas. (i) to (iv) and (vi) to (xii) of paras. 103(4)(a), (b) and (c) amended by P.C. 1993-1552, July 21, 1993, *Canada Gazette*, Part II, August 11, 1993, effective from July 1, 1992.

Subparas. 103(4)(a)(ii), (b)(ii), (c)(ii) amended by P.C. 1992-2347, subsecs. 2(2) to (4), November 19, 1992, *Canada Gazette*, Part II, December 2, 1992, effective January 1, 1992.

Subpara. (ii) of paras. 103(4)(a), (b), (c) amended by P.C. 1992-291, s. 2, February 20, 1992, *Canada Gazette*, Part II, March 11, 1992, effective July 1, 1991.

Subparas. (iii) and (xii) of paras. 103(4)(a), (b), (c) amended by P.C. 1991-1643, subsecs. 2(3) to (8), September 5, 1991, *Canada Gazette*, Part II, September 25, 1991, effective January 1, 1991.

Subparas. (i), (vi), (vii) of paras. 103(4)(a), (b) and (c) amended effective January 1, 1990, subparas. (iii), (xii) of those paras. amended effective July 1, 1990, by P.C. 1991-732, subsec. 2(5) to (16), April 18, 1991, *Canada Gazette*, Part II, May 8, 1991.

Subparas. 103(4)(a)(i) to (iv) and (vi) to (xii), (4)(b)(i) to (iv) and (vi) to (xii), and (4)(c)(i) to (iv) and (vi) to (xii) substituted by P.C. 1991-230, subsecs. 2(3) to (8), February 14, 1991, *Canada Gazette*, Part II, February 27, 1991, effective July 1, 1989.

Subparas. 103(4)(a)(ii), (vi), (ix), (b)(ii), (vi), (ix), (c)(ii), (vi), (ix) substituted by P.C. 1990-432, subsecs. 2(4) to (12), March 8, 1990, *Canada Gazette*, Part II, March 28, 1990, effective January 1, 1989.

Subparas. 103(4)(a)(ii), (iv), (vi), (ix), (b)(ii), (iv), (vi), (ix), (c)(ii), (iv), (vi), (ix) substituted by P.C. 1989-2105, subsecs. 3(5) to (16), October 19, 1989, *Canada Gazette*, Part II, November 8, 1989, effective July 1, 1988.

Subparas. 103(4)(a)(ix) and (x), (b)(ix) and (x), (c)(ix) and (x) substituted by P.C. 1988-1041, subsecs. 2(2) to (4), June 2, 1988, *Canada Gazette*, Part II, June 22, 1988, effective January 1, 1988.

Subparas. 103(4)(a)(vii) to (x), (b)(vii) to (x), (c)(vii) to (x) substituted by P.C. 1988-309, subsecs. 1(2) to (4), February 25, 1988, *Canada Gazette*, Part II, March 16, 1988, effective July 1, 1987.

Subparas. 103(4)(a)(ii), (b)(ii), (c)(ii) substituted by P.C. 1987-1478, subsecs. 3(2) to (4), July 30, 1987, *Canada Gazette*, Part II, August 19, 1987, effective January 1, 1987.

Subparas. 103(4)(a)(i) to (iv) and (vi) to (xii), (b)(i) to (iv) and (vi) to (xii), and (c)(i) to (iv) and (vi) to (xii) substituted by P.C. 1987-827, subsecs. 1(3) to (8), April 30, 1987, *Canada Gazette*, Part II, May 13, 1987, effective July 1, 1986.

Subparas. 103(4)(a)(vi), (x), (4)(b)(vi), (x), (4)(c)(vi), (x) substituted by P.C. 1986-1345, subsecs. 3(3) to 3(8), June 5, 1986, *Canada Gazette*, Part II, June 25, 1986, effective January 1, 1986.

Subparas. 103(4)(a)(viii), (b)(viii), (c)(viii) substituted by P.C. 1985-2956, subsecs. 1(2)–(4), October 3, 1985, *Canada Gazette*, Part II, October 16, 1985, effective July 1, 1985.

Subparas. 103(4)(a)(iv), (ix), (xi), 103(4)(b)(iv), (ix), (xi), 103(4)(c)(iv), (ix), (xi) substituted by P.C. 1984-3684, subsecs. 2(4) to (12), November 15, 1984, *Canada Gazette*, Part II, November 28, 1984, effective January 1, 1984.

Subparas. 103(4)(a)(iv) and (xi), 103(4)(b)(iv) and (xi), 103(4)(c)(iv) and (xi) substituted by P.C. 1984-775, subsecs. 1(3) to 1(8), March 8, 1984, *Canada Gazette*, Part II, March 21, 1984, effective July 1, 1983.

Subparas. 103(4)(a)(iii) and (iv), 103(4)(b)(iii) and (iv), 103(4)(c)(iii) and (iv) substituted by P.C. 1983-2717, subsecs. 5(2) to (4), September 1,

1983, *Canada Gazette*, Part II, September 14, 1983, effective January 1, 1983.

Subparas. 103(4)(a)(i), (iii), (iv), 103(4)(b)(i), (iii), (iv), 103(4)(c)(i), (iii), (iv) substituted by P.C. 1983-1195, subsecs. 1(3) to 1(8), April 21, 1983, *Canada Gazette*, Part II, May 11, 1983, effective July 1, 1982.

Subparas. 103(4)(a)(i) to (iv), (vi) to (xii), 103(4)(b)(i) to (iv), (vi) to (xii), 103(4)(c)(i) to (iv), (vi) to (xii) substituted by P.C. 1983-1137, subsecs. 3(3) to 3(8), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, effective January 1, 1982.

Subparas. 103(4)(a)(vi), (viii), (xi)–(xiii), (b)(vi), (viii), (xi)–(xiii), (c)(vi), (viii), (xi)–(xiii) substituted by P.C. 1981-1557, subsecs. 4(4)–(12), June 11, 1981, subparas. 103(4)(a)(vi), (viii), (b)(vi), (viii), (c)(vi), (viii) in force July 1, 1981, subparas. 103(4)(a)(xi)–(xiii), (b)(xi)–(xiii), (c)(xi)–(xiii) effective January 1, 1981.

Subparas. 103(4)(a)(ii), (xi); (b)(ii), (xi); (c)(ii), (xi) substituted by P.C. 1980-3375, s. 3(3)–(8), December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, in force January 1, 1981.

Subparas. 103(4)(a)(ii), (b)(ii), (c)(ii) substituted by P.C. 1980-2226, s. 3, August 27, 1980, *Canada Gazette*, Part II, September 10, 1980, effective July 1, 1980.

Subparas. 103(4)(a)(x), (b)(x), (c)(x), substituted by P.C. 1979-2622, September 27, 1979, *Canada Gazette*, Part II, October 10, 1979, effective July 1, 1979.

Subparas. 103(4)(a)(iv), (viii), (b)(iv), (viii), (c)(iv), (viii), substituted by P.C. 1979-1258, April 11, 1979, *Canada Gazette*, Part II, May 9, 1979, effective January 1, 1979.

Subparas. 103(4)(a)(viii), (b)(viii), (c)(viii), substituted by P.C. 1978-2461, August 9, 1978, *Canada Gazette*, Part II, August 23, 1978, effective July 1, 1978.

Subparas. 103(4)(a)(vii), (b)(vii), (c)(vii), substituted by P.C. 1978-1585, May 11, 1978, *Canada Gazette*, Part II, May 24, 1978, effective March 1, 1978.

Subparas. 103(4)(a)(iv), (viii), (xi), (b)(iv), (viii), (xi), (c)(iv), (viii), (xi) substituted, subparas. 103(4)(a)(xii), (b)(xii), (c)(xii) added, by P.C. 1978-1038, April 6, 1978, *Canada Gazette*, Part II, April 26, 1978.

All that portion of subsection 103(4) preceding para. (a) substituted by P.C. 1977-3520, December 15, 1977, *Canada Gazette*, Part II, January 11, 1978, effective January 1, 1978.

Remission Orders: *Income Earned in Quebec Income Tax Remission Order*, P.C. 1989-1204 (reduction in withholdings for certain income related to Quebec).

Forms: T1036: Home buyers' plan — request to withdraw funds from an RRSP.

(5) [Lump sum pension payment] — Where the payment referred to in subsection (4) would be pension income or qualified pension income of the employee in respect of which subsection 118(3) of the Act would apply if the definition "pension income" in subsection 118(7) of the Act were read without reference to subparagraphs (a)(ii) and (iii) thereof, the payment shall be deemed to be the amount of the payment minus

(a) where the payment does not exceed the amount taxable referred to in paragraph 117(2)(a) of the Act, as adjusted annually pursuant to section 117.1 of the Act, the lesser of $1,000 and the amount of the payment;

(b) where the payment exceeds the amount referred to in paragraph (a) but does not exceed $61,509, $727;

(c) where the payment exceeds $61,509 but does not exceed $100,000, $615; and

(d) where the payment exceeds $100,000, $552.

History: Paras. 103(5)(b) to (d) substituted for paras. (b) and (c) by P.C. 2001-1115, subsec. 3(5), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to 2001 *et seq.*

Paras. 103(5)(a) to (c) amended by P.C. 1992-2347, subsec. 2(5), November 19, 1992, *Canada Gazette*, Part II, December 2, 1992, effective January 1, 1992.

Paras. 103(5)(a) to (c) amended by P.C. 1991-1634, subsec. 2(9), September 5, 1991, *Canada Gazette*, Part II, September 25, 1991, effective commencing January 1, 1991.

Paras. 103(5)(a) to (c) amended by P.C. 1991-732, subsec. 2(17), April 18, 1991, *Canada Gazette*, Part II, May 8, 1991, effective January 1, 1990.

Paras. 103(5)(a), (b), (c) substituted by P.C. 1990-432, subsec. 2(13), March 8, 1990, *Canada Gazette*, Part II, March 28, 1990, effective January 1, 1989.

Subsec. 103(5) substituted by P.C. 1989-2105, subsec. 3(17), October 19, 1989, *Canada Gazette*, Part II, November 8, 1989, effective July 1, 1988.

That portion of subsec. 103(5) preceding para. (a) substituted by P.C. 1987-2250, subsec. 2(1), November 6, 1987, *Canada Gazette*, Part II, November 25, 1987.

That portion of subsec. 103(5) preceding paragraph (a) substituted by P.C. 1983-2717, subsec. 5(5), September 1, 1983, *Canada Gazette*, Part II, September 14, 1983, effective January 1, 1983.

(6) ["Lump sum payment"] — For the purposes of subsection (4), a "lump sum payment" means a payment that is

(a) a payment described in subparagraph 40(1)(a)(i) or (iii) or paragraph 40(1)(c) of the *Income Tax Application Rules*,

(b) a payment under a deferred profit sharing plan or a plan referred to in section 147 of the Act as a "revoked plan", except a payment referred to in subparagraph 147(2)(k)(v) of the Act,

(c) a payment made during the lifetime of an annuitant referred to in the definition "annuitant" in subsection 146(1) of the Act out of or under a registered retirement savings plan of that annuitant, other than

(i) a periodic annuity payment, or

(ii) a payment made by a person who has reasonable grounds to believe that the payment may be deducted under subsection 146(8.2) of the Act in computing the income of any taxpayer,

(d) a payment out of or under a plan referred to in subsection 146(12) of the Act as an "amended plan" other than

(i) a periodic annuity payment, or

(ii) where paragraph 146(12)(a) of the Act applied to the plan after May 25, 1976, a payment made in a year subsequent to the year in which that paragraph applied to the plan,

(d.1) a payment made during the lifetime of an annuitant referred to in the definition "annuitant" in subsection 146.3(1) of the Act under a registered retirement income fund of that annuitant, other than a payment to the extent that it is in respect of the minimum amount (within the meaning assigned by subsection 146.3(1) of the Act) under the fund for a year,

(e) a retiring allowance,

(f) a payment of an amount as, on account or in lieu of payment of, or in satisfaction of, proceeds of the surrender, cancellation or redemption of an income-averaging annuity contract, or

(g) a payment described in paragraph (n) of the definition "remuneration" in subsection 100(1).

Related Provisions: Reg. 100(3)(c) — No source withholding required where amount paid directly to employee's RRSP by employer.

History: The opening words of para. 103(6)(c) amended to replace "subparagraph 146(1)(a)(i)" with "the definition "annuitant" in subsection 146(1)" by P.C. 2001-1115, subsec. 3(6), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to 2001 *et seq.*

Para. 103(6)(d.1) amended by the said P.C. 2001-1115, subsec. 3(7), applicable to 2001 *et seq.*

Para. 103(6)(g) added by P.C. 1998-2275, subsec. 2(1), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to 1998 *et seq.*

Para. 103(6)(a) amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Para. 103(6)(c) substituted by P.C. 1991-2540, s. 2, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable in respect of payments made after 1990.

Subparas. 103(6)(c)(i) and 103(6)(d)(i) substituted and para. 103(6)(d.1) added by P.C. 1987-2250, subsecs. 2(2)–(4), November 6, 1987, *Canada Gazette*, Part II, November 25, 1987.

Paras. 103(6)(a) and (e) substituted by P.C. 1983-1137, subsecs. 3(9) and 3(10), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, applicable with respect to amounts received in respect of any termination of an office or employment after November 12, 1981, except that in its application to payments made after November 12, 1981 in respect of a termination of an office or employment that occurred on or before that date paragraph 103(6)(a) shall be read as follows:

"(a) a payment described in subparagraphs 40(1)(a)(i) to (iii) or paragraph 40(1)(b) or (c) of the *Income Tax Application Rules, 1971*,"

and paragraph 103(6)(e) shall be read as follows:

"(e) a termination payment paid in a single payment, or"

Paras. 103(6)(c), (d) substituted by P.C. 1980-3209, s. 2, November 27, 1980, *Canada Gazette*, Part II, December 10, 1980.

Para. 103(6)(c) added, para. (d) (formerly (c)) substituted and para. (d) renumbered (f) (as amended by P.C. 1980-2226, s. 3, August 27, 1980, *Canada Gazette*, Part II, September 10, 1980) by P.C. 1980-1735, s. 2, June 26, 1980, *Canada Gazette*, Part II, July 9, 1980, effective June 30, 1978.

Para. 103(6)(e) added by P.C. 1980-1366, s. 2, May 22, 1980, *Canada Gazette*, Part II, June 11, 1980.

Para. 103(6)(c) substituted by P.C. 1978-1038, April 6, 1978, *Canada Gazette*, Part II, April 26, 1978.

Subsec. 103(6) substituted by P.C. 1977-3520, December 15, 1977, *Canada Gazette*, Part II, January 11, 1978.

(7) [Retirement compensation arrangement] — For the purposes of subsection 153(1) of the Act, the amount to be deducted or withheld by a person shall be 50 per cent

(a) of the contribution made by the person under a retirement compensation arrangement, other than

(i) a contribution made by the person as an employee,

(ii) a contribution made to a plan or arrangement that is a prescribed plan or arrangement for the purposes of subsection 207.6(6) of the Act, or

(iii) a contribution made by way of a transfer from another retirement compensation arrangement under circumstances in which subsection 207.6(7) of the Act applies; or

(b) of the payment by the person to a resident of Canada of an amount on account of the purchase price of an interest in a retirement compensation arrangement.

History: Para. 103(7)(a) amended by P.C. 1999-2211, s. 1, December 16, 1999, *Canada Gazette*, Part II, January 5, 2000, applicable after 1991 except that in its application to contributions made before 1996, para. (a) shall be read without reference to subpara. 103(7)(a)(iii).

Para. 103(7)(a) amended by P.C. 1998-2270, s. 3, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to amounts transferred after 1995.

Subsec. 103(7) added by P.C. 1989-379, s. 2, March 9, 1989, *Canada Gazette*, Part II, March 29, 1989, applicable in respect of amounts paid after March 27, 1987.

Forms: T4041: Retirement Compensation Arrangements Guide (guide).

(8) [RESP payment] — Every employer making a payment described in paragraph (n) of the definition "remuneration" in subsection 100(1) shall withhold — in addition to any other amount required to be withheld under Part I of these Regulations — on account of the tax payable under Part X.5 of the Act, an amount equal to

(a) where the amount is paid in the province of Quebec, 12 per cent of the payment, and

(b) in any other case, 20 per cent of the payment.

History: Subsec. 103(8) amended by P.C. 1999-2205, subsec. 1(17), December 16, 1999, *Canada Gazette*, Part II, January 5, 2000, effective from June 17, 1999.

Subsec. 103(8) added by P.C. 1998-2275, subsec. 2(2), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to 1998 *et seq.*

Definitions [Reg. 103]: "amount" — ITA 248(1); "amount taxable" — ITA 117(2); "annuity" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "employee", "employer" — Reg. 100(1); "establishment of the employer" — Reg. 100(4); "income-averaging annuity contract" — ITA 248(1); "lump sum payment" — Reg. 103(6); "minimum amount" — ITA 146.3(1); "pay period" — Reg. 100(1); "person" — ITA 248(1); "province" — *Interpretation Act* 35(1); "registered retirement income fund" — ITA 146.3(1), 248(1); "registered retirement savings plan" — ITA 146(1), 248(1); "remuneration" — Reg. 100(1); "resident of Canada" — ITA 250; "retirement compensation arrangement", "retiring allowance" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "total remuneration" — Reg. 100(1).

104. Deductions not required — (1) [Repealed]

History: Subsec. 104(1) repealed by P.C. 2001-1115, s. 4, June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to 2001 *et seq.*

Subsec. 104(1) substituted by P.C. 1994-372, s. 4, March 10, 1994, *Canada Gazette*, Part II, March 23, 1994, effective January 1, 1993.

Subsec. 104(1) amended by P.C. 1992-2347, s. 3, November 19, 1992, *Canada Gazette*, Part II, December 2, 1992, effective January 1, 1992.

Subsec. 104(1) substituted by P.C. 1989-2105, s. 4, October 19, 1989, *Canada Gazette*, Part II, November 8, 1989, effective July 1, 1988.

(2) [Employee not in Canada] — No amount shall be deducted or withheld from a payment in accordance with section 102 or 103 in respect of an employee who was neither employed nor resident in Canada at the time of payment except in respect of

(a) remuneration described in subparagraph 115(2)(e)(i) of the Act that is paid to a non-resident person who has in the year, or had in any previous year, ceased to be resident in Canada; or

(b) remuneration reasonably attributable to the duties of any office or employment performed or to be performed in Canada by the non-resident person.

History: Para. 104(2)(b) amended by P.C. 1997-1471, s. 2, October 9, 1997, *Canada Gazette*, Part II, October 29, 1997, applicable beginning on May 1, 1997.

Subsec. 104(2) substituted by P.C. 1978-1585, May 11, 1978, *Canada Gazette*, Part II, May 24, 1978, effective March 1, 1978.

Interpretation Bulletins: IT-161R3: Non-residents — Exemption from tax deductions at source on employment income (archived).

(3) [Home Buyers' Plan] — No amount shall be deducted or withheld from a payment made by a person during the lifetime of an annuitant referred to in paragraph (a) of the definition "annuitant" in subsection 146(1) of the Act out of or under a registered retirement savings plan of the annuitant where, at the time of the payment, the annuitant has certified in prescribed form to the person that

(a) a written agreement has been entered into to acquire a home by either

(i) the annuitant, or

(ii) a disabled person who is related to the annuitant and who is entitled to the credit for mental or physical impairment under subsection 118.3 (1) of the Act;

(b) the annuitant intends that the home be used as a principal place of residence in Canada for the annuitant or the disabled person, as the case may be, within one year after its acquisition;

(c) the home has not been previously owned by the annuitant, the annuitant's spouse or common-law partner, the disabled person or the spouse or common-law partner of that person;

(d) the annuitant was resident in Canada;

(e) the total amount of the payment and all other such payments received by the annuitant in respect of the home at or before the time of payment does not exceed $20,000;

(f) except where the annuitant certifies that he or she is a disabled person entitled to the credit for mental or physical impairment under subsection 118.3(1) of the Act or certifies that the payment is being withdrawn for the benefit of such a disabled person, the annuitant is a qualifying homebuyer at the time of the certification; and

(g) where the annuitant has withdrawn an eligible amount, within the meaning assigned by subsection 146.01(1) of the Act, before the calendar year of the certification, the total of all eligible amounts received by the annuitant before that calendar year does not exceed the total of all amounts previously designated under subsection 146.01(3) of the Act or included in computing the annuitant's income under subsection 146.01(4) or (5) of the Act.

Related Provisions: Reg. 104(3.01), (3.1), (4) — Interpretation.

History: The word "spouse" replaced with "spouse or common-law partner" in para. 104(3)(c), by P.C. 2001-957, para. 14(b), May 31, 2001, *Canada Gazette*, Part II, June 20, 2001, applicable to 2001 *et seq.*, except that if a taxpayer and a person have jointly elected pursuant to s. 144 of the *Modernization of Benefits and Obligations Act* (S.C. 2000, c. 12), in respect of the 1998, 1999 or 2000 taxation year, the amendment applies to the taxpayer and the person in respect of the applicable taxation year *et seq.*

Subsec. 104(3) amended by P.C. 1998-2272, subsec. 1(1), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to payments made after 1998.

Also see history at end of s. 104.

(3.01) ["Qualifying homebuyer"] — For the purpose of subsection (3), the annuitant is a qualifying homebuyer at a particular time unless

(a) the annuitant had an owner-occupied home in the period beginning on January 1 of the fourth calendar year preceding the particular time, and ending on the thirty-first day before the particular time; or

(b) the annuitant's spouse or common-law partner, in the period referred to in paragraph (a), had an owner-occupied home that was inhabited by the annuitant at any time during the annuitant's marriage to the spouse or the annuitant's common-law partnership with the common-law partner.

History: Para. 104(3.01)(b) amended by P.C. 2001-957, s. 1, May 31, 2001, *Canada Gazette*, Part II, June 20, 2001, applicable to 2001 *et seq.*, except that if a taxpayer and a person have jointly elected pursuant to s. 144 of the *Modernization of Benefits and Obligations Act* (S.C. 2000, c. 12), in respect of the 1998, 1999 or 2000 taxation year, the amendment applies to the taxpayer and the person in respect of the applicable taxation year *et seq.*

Subsec. 104(3.01) added by P.C. 1998-2272, subsec. 1(1), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to payments made after 1998.

(3.1) ["Owner-occupied home"] — For the purpose of subsection (3.01), an individual shall be considered to have had an owner-occupied home at any time where the home was owned, whether jointly with another person or otherwise, by the individual at that time and inhabited by the individual as the individual's principal place of residence at that time.

History: Subsec. 104(3.1) amended by P.C. 1998-2272, subsec. 1(1), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to payments made after 1998.

Also see history at end of s. 104.

(4) ["Home"] — For the purposes of subsections (3), (3.01) and (3.1), "home" means

(a) a housing unit;

(b) a share of the capital stock of a cooperative housing corporation, where the holder of the share is entitled to possession of a housing unit; and

(c) where the context so requires, the housing unit to which a share described in paragraph (b) relates.

History [Reg. 104]: Subsec. 104(4) amended by P.C. 1998-2272, subsec. 1(2), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to payments made after 1998.

That portion of subsec. 104(3) before para. (a), and 104(4) before para. (a) substituted, paras. (3)(b.1) and (b.2), and subsec. (3.1) added, by P.C. 1994-438, March 17, 1994, *Canada Gazette*, Part II, April 5, 1994, applicable to payments made after March 1, 1994.

Subsec. 104(3) amended by P.C. 1993-271, February 11, 1993, *Canada Gazette*, Part II, February 24, 1993.

Subsecs. 104(3), (4) added by P.C. 1992-480, March 19, 1992, *Canada Gazette*, Part II, April 8, 1992, applicable in respect of payments made after February 25, 1992 and before March 2, 1993.

Definitions [Reg. 104]: "amount" — ITA 248(1); "annuitant" — ITA 146.1(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "common-law partner", "common-law partnership" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "eligible amount" — ITA 146.01(1); "employed", "employee", "employer" — Reg. 100(1); "employment" — ITA 248(1); "home" — Reg. 104(4); "individual" — ITA 248(1); "non-resident", "office" — ITA 248(1); "owner-occupied home" — Reg. 104(3.1); "person", "prescribed" — ITA 248(1); "qualifying homebuyer" — Reg. 104(3.01); "registered retirement savings plan" — ITA 146(1), 248(1); "remuneration" — Reg. 100(1); "resident in Canada" — ITA 250; "share" — ITA 248(1); "written" — *Interpretation Act* 35(1)"writing".

104.1 Lifelong Learning Plan — (1) No amount shall be deducted or withheld from a payment made by a person during the lifetime of an annuitant referred to in paragraph (a) of the definition "annuitant" in subsection 146(1) of the Act out of or under a registered retirement savings plan of the annuitant where, at the time of the payment, the annuitant has certified in prescribed form to the person that

(a) at the time of certification, the annuitant or the annuitant's spouse or common-law partner

(i) is a full-time student in a qualifying educational program,

(ii) is a part-time student in a qualifying educational program and is entitled to the credit for mental or physical impairment under subsection 118.3(1) of the Act, or

(iii) has received notification in writing of his or her entitlement, either absolutely or conditionally, to enrol before March of the year that follows the year of certification as

(A) a full-time student in a qualifying educational program, or

(B) a part-time student in a qualifying educational program where the annuitant or the annuitant's spouse or common-law partner is entitled

to the credit for mental or physical impairment under subsection 118.3(1) of the Act;

(b) the annuitant is resident in Canada;

(c) the total amount of the payment and all other such payments received by the annuitant for a year at or before that time does not exceed $10,000; and

(d) the total payments received by the annuitant do not exceed $20,000 throughout the period in which the annuitant participates in the Lifelong Learning Plan.

Related Provisions: Reg. 104.1(2) — Interpretation.

Forms: RC96: LLP — request to withdraw funds from an RRSP.

(2) ["Qualifying educational program"] — For the purpose of subsection (1), a "qualifying educational program" means a qualifying educational program at a designated educational institution (as those expressions are defined in subsection 118.6(1) of the Act), except that a reference to a "qualifying educational program" shall be read

(a) without reference to paragraphs (a) and (b) of that definition; and

(b) as if the reference to"3 consecutive weeks" in that definition were a reference to "3 consecutive months".

History: The word "spouse" replaced with "spouse or common-law partner" in para. 104.1(1)(a), by P.C. 2001-957, para. 14(c), May 31, 2001, *Canada Gazette*, Part II, June 20, 2001, applicable to 2001 *et seq.*, except that if a taxpayer and a person have jointly elected pursuant to s. 144 of the *Modernization of Benefits and Obligations Act* (S.C. 2000, c. 12), in respect of the 1998, 1999 or 2000 taxation year, the amendment applies to the taxpayer and the person in respect of the applicable taxation year *et seq.*

S. 104.1 added by P.C. 1998-2256, s. 2, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to payments made after 1998.

Definitions [Reg. 104.1]: "amount" — ITA 248(1); "annuitant — ITA 146(1); "common-law partner" — ITA 248(1); "prescribed" — ITA 248(1); "qualifying educational program" — Reg. 104.1(2); "registered retirement savings plan" — ITA 146(1), 248(1); "resident in Canada" — ITA 250.

105. Non-residents — **(1)** Every person paying to a non-resident person a fee, commission or other amount in respect of services rendered in Canada, of any nature whatever, shall deduct or withhold 15 per cent of such payment.

(2) Subsection (1) does not apply to a payment described in the definition "remuneration" in subsection 100(1).

Proposed Amendment — Reg. 105(2)

(2) Subsection (1) does not apply to a payment

(a) described in the definition "remuneration" in subsection 100(1); or

(b) made to a registered non-resident insurer (within the meaning assigned by section 804) or to an authorized foreign bank.

Application: The February 13, 2003 draft regulations (foreign bank branches), s. 1, (pre-published in the *Canada Gazette*, Part I, February 15, 2003), will amend subsec. 105(2) to read as above, applicable after June 27, 1999.

Regulatory Impact Analysis Statement: Subsection 105(2) excludes certain payments from the withholding requirement under Part I of the Act. This subsection is amended to exclude payments made to an authorized foreign bank and a registered non-resident insurer.

Letter from Dept. of Finance, November 19, 2001:

Dear [xxx]:

I am writing in reply to your fax letter of October 17, 2001 to Joseph Lam of this Division, regarding the income taxation of foreign bank branches, particularly under Income Tax Regulation 105. That provision requires tax to be withheld from amounts paid to a non-resident in respect of services.

In your letter, you explain that your client currently operates in Canada through a wholly owned subsidiary and renders services to its customers in Canada. Also, your client is in the process of establishing an "authorized foreign bank" (the "Branch") within the meaning of subsection 248(1) of the *Income Tax Act*. You are concerned that after the establishment of the Branch the application of Regulation 105 would require substantial revision of the existing service agreements of your clients, which is a prohibitively expensive exercise. You further explain that effective January 1, 2002 your client will make periodic instalment payments with respect to its Part I tax liabilities and will maintain a significant presence in Canada.

Therefore, you request confirmation (a) that Regulation 105(1) is not intended to apply to authorized foreign banks and (b) that our Department will introduce amendments to explicitly provide that no withholding is required.

In response to your request, we would like to explain that Regulation 105 in its present form applies to all payments for services paid to non-residents. However, we recognize that such a withholding requirement under Regulation 105 is excessive in the case of authorized foreign banks. Therefore, it is our general intention to propose to moderate the requirements. Although the details of any proposals remain to be determined, they should generally provide exemption to the resident payer from the withholding obligation. It is also our intention to recommend that the changes be effective after June 27, 1999 coinciding with the other aspects of the taxation rules of authorized foreign bank.

While our views on this issue are subject to further refinement and I can offer no assurance that the Minister will accept our recommendations, we expect that measures along the lines I have described will be included in the next package of draft income tax technical amendments.

I trust that the above will satisfy your requirements.

Yours sincerely,

Brian Ernewein,
Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, October 23, 2001:

Dear [xxx]:

I am writing in reply to your letter of October 10, 2001 to Joseph Lam of this Division, regarding the income taxation of foreign bank branches, particularly under Income Tax Regulation 105. That provision requires tax to be withheld from amounts paid to a non-resident in respect of services.

In your letter, you express your concerns that the withholding obligation in Regulation 105 is inequitable and results in financial hardship to your client. You explain that the fees being paid are earned in the Canadian banking business of your client, in respect of which your client makes regular tax instalments, and the additional withholding burden would adversely impact the cash flows of your client. As a result, you request legislative relief to address this type of situation and a comfort letter that our Department intends to recommend that this legislation be retroactive to the business commencement date of a foreign bank branch.

In response to your representation, we recognize that the current withholding requirement under Regulation 105 is probably excessive from a policy perspective. Therefore, it is our general intention to propose to moderate the requirements. Although the details of any proposals remain to be determined, they should generally provide exemption to the resident payer from the withholding obligation. It is also our intention to recommend that the changes be effective after June 27, 1999, which coincides with the other aspects of the taxation rules of authorized foreign banks.

While our views on this issue are subject to further refinement and I can offer no assurance that the Minister will accept our recommendations, we expect that measures along the lines I have described will be included in the next package of draft income tax technical amendments.

I trust that the above will satisfy your requirements.

Yours sincerely,

Brian Ernewein,
Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, July 13, 2001: See under ITA 212(13.3).

Related Provisions [Reg. 105]: ITA 212(1)(a) — Withholding tax on fees for management services; Canada-U.S. Tax Treaty:Art. XIV — Inde-

pendent personal services; Art. XVII — Limitation on withholding re U.S. residents.

Information Circulars [Reg. 105]: 75-6R2: Required withholding from amounts paid to non-residents performing services in Canada.

Transfer Pricing Memoranda [Reg. 105]: TPM-06: Bundled transactions.

Forms [Reg. 105]: R105: Regulation 105 waiver application; T2 SCH 97: Additional information on non-resident corporations in Canada; T4A-NR: Statement of fees (etc.) paid to non-residents for services rendered in Canada.

Definitions [Reg. 105]: "amount", "authorized foreign bank" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "commission" — Reg. 100(1)"remuneration"(a)(ii); "non-resident", "person" — ITA 248(1); "registered non-resident insurer" — Reg. 804; "remuneration" — Reg. 100(1).

105.1 Fishermen's election — **(1)** Notwithstanding section 100, in this section,

"amount of remuneration" paid to a fisherman means

(a) where a boat crewed by one or more fishermen engaged in making a catch is owned, together with the gear, by a person, other than a member of the crew, to whom the catch is to be delivered for subsequent sale or other disposition, such portion of the proceeds from the disposition of the catch that is payable to the fisherman in accordance with an arrangement under which the proceeds of disposition of the catch are to be distributed (in this section referred to as a "share arrangement");

(b) where the boat or gear used in making a catch is owned or leased by a fisherman who alone or with another individual engaged under a contract of service makes the catch, such portion of the proceeds from the disposition of the catch that remains after deducting therefrom

(i) the amount in respect of any portion of the catch not caught by the fisherman or the other individual,

(ii) the amount payable to the other individual under the contract of service, and

(iii) the amount of such proportionate share of the catch as is attributable to the expenses of the operation of the boat or its gear pursuant to their share arrangement;

(c) where a crew includes the owner of the boat or gear (in this paragraph referred to as the "owner") and any other fisherman engaged in making a catch, such portion of the proceeds from the disposition of the catch that remains after deducting therefrom

(i) in the case of an owner,

(A) the amount in respect of that portion of the catch not caught by the crew or an owner,

(B) the aggregate of all amounts each of which is an amount payable to a crew member (other than the owner) pursuant to their share arrangement or to an individual engaged under a contract of service, and

(C) the amount of such proportionate share of the catch as is attributable to the expenses of the owner's operation of the boat or its gear pursuant to their share arrangement, or

(ii) in the case of any other crew member, such proceeds from the disposition of the catch as is payable to him in accordance with their share arrangement; or

(d) in any other case, the proceeds of disposition of the catch payable to the fisherman;

"catch" means a catch of shell fish, crustaceans, aquatic animals or marine plants caught or taken from any body of water;

"crew" means one or more fishermen engaged in making a catch;

"fisherman" means an individual engaged in making a catch other than under a contract of service.

(2) Every person paying at any time in a taxation year an amount of remuneration to a fisherman who, pursuant to paragraph 153(1)(n) of the Act, has elected for the year in prescribed form in respect of all such amounts shall deduct or withhold 20% of each such amount paid to the fisherman while the election is in force.

History: S. 105.1 added by P.C. 1983-2717, s. 6, September 1, 1983, *Canada Gazette*, Part II, September 14, 1983, effective from March 30, 1983.

Definitions [Reg. 105.1]: "amount" — ITA 248(1); "amount of remuneration" — Reg. 105.1(1); "catch", "crew" — Reg. 105.1(1)(d); "disposition" — ITA 248(1); "fisherman" — Reg. 105.1(1)(d); "individual" — ITA 248(1); "owner" — Reg. 105.1(1)(c); "person", "prescribed" — ITA 248(1); "remuneration" — Reg. 100(1); "share" — ITA 248(1); "share arrangement" — Reg. 105.1(1)(a); "taxation year" — ITA 249.

106. Variations in deductions — **(1)** Where an employer makes a payment of remuneration to an employee in his taxation year

(a) for a period for which no provision is made in Schedule I, or

(b) for a pay period referred to in Schedule I in an amount that is greater than any amount provided for therein,

(c), (d) [Repealed]

the amount to be deducted or withheld by the employer from any such payment is that proportion of the payment that the tax that may reasonably be expected to be payable under the Act by the employee with respect to the aggregate of all remuneration that may reasonably be expected to be paid by the employer to the employee in respect of that taxation year is of such aggregate.

(2), (3) [Revoked]

History [Reg. 106]: Paras. 106(1)(c) and (d) repealed by P.C. 2001-1115, s. 5, June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to 2001 *et seq.*

Para. 106(1)(d) substituted by P.C. 1989-2105, s. 5, October 19, 1989, *Canada Gazette*, Part II, November 8, 1989, effective July 1, 1988.

Para. 106(1)(d) substituted by P.C. 1985-1645, May 16, 1985, s. 3, *Canada Gazette*, Part II, May 29, 1985, effective January 1, 1985.

Para. 106(1)(d) substituted, subsecs. 106(2) and (3) revoked by P.C. 1984-3684, s. 3, November 15, 1984, *Canada Gazette*, Part II, November 28, 1984, effective from January 1, 1984.

Para. 106(1)(d) substituted by P.C. 1983-2717, s. 7, September 1, 1983, *Canada Gazette*, Part II, September 14, 1983, effective from January 1, 1983.

Para. 106(1)(d) substituted by P.C. 1983-1137, s. 4, April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, effective from January 1, 1982.

S. 106 substituted by P.C. 1981-1557, s. 5, June 11, 1981, *Canada Gazette*, Part II, June 24, 1981, effective commencing January 1, 1981.

Definitions [Reg. 106]: "amount", "employee", "employer", "estimated deductions", "pay period", "personal credits", "remuneration" — Reg. 100(1); "taxation year" — ITA 249; "total remuneration" — Reg. 100(1).

107. Employee's returns — **(1) [Due date for TD1]** — The return required to be filed by an employee

under subsection 227(2) of the Act shall be filed by the employee with the employer when the employee commences employment with that employer and a new return shall be filed thereunder within 7 days of the date on which a change occurs that may reasonably be expected to result in a change in the employee's personal credits for the year.

Related Provisions: Reg. 104 — No deduction required where employee claims no tax payable.

History: Subsec. 107(1) amended by P.C. 1989-2105, subsec. 6(1), October 19, 1989, *Canada Gazette*, Part II, November 8, 1989, effective July 1, 1988.

Forms: TD1: Personal tax credits return.

(2) [Commission employees] — Notwithstanding subsection (1), where, in a year, an employee receives payments in respect of commissions or in respect of commissions and salary or wages, and the employee elects to file a prescribed form for the year in addition to the return referred to in that subsection, that form shall be filed with the employee's continuing employer on or before January 31 of that year and, where applicable, within one month after the employee commences employment with a new employer or within one month after the date on which a change occurs that may reasonably be expected to result in a substantial change in the employee's estimated total remuneration for the year or estimated deductions for the year.

Related Provisions: Reg. 102(2) — Amount to be withheld.

History: Subsec. 107(2) amended by P.C. 2001-1115, s. 6, June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to 2001 *et seq.*

Para. 107(2)(a) amended by P.C. 1989-2105, subsec. 6(2), October 19, 1989, *Canada Gazette*, Part II, November 8, 1989, effective July 1, 1988.

Subsec. 107(2) substituted by P.C. 1981-1557, s. 6, June 11, 1981, *Canada Gazette*, Part II, June 24, 1981, effective January 1, 1981.

Forms: TD1X: Statement of commission income and expenses for payroll tax deductions.

(3) Where, in a taxation year, an employee has elected to file the prescribed form referred to in subsection (2) and has filed such form with his employer, the employee may at any time thereafter in the year revoke that election and such revocation is effective from the date that he notifies his employer in writing of his intention.

History: S. 107 substituted by P.C. 1980-3375, s. 5, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, in force January 1, 1981.

Definitions [Reg. 107]: "commissions" — Reg. 100(1)"remuneration"(a)(ii); "employee", "employer" — Reg. 100(1); "employment" — ITA 248(1); "estimated deductions" — Reg. 100(1); "month" — *Interpretation Act* 35(1); "personal credits" — Reg. 100(1); "prescribed", "salary or wages" — ITA 248(1); "taxation year" — ITA 249; "total remuneration" — Reg. 100(1); "writing" — *Interpretation Act* 35(1).

108. Remittances to Receiver General — (1) [Deadline] — Subject to subsections (1.1), (1.11) and (1.12), amounts deducted or withheld in a month under subsection 153(1) of the Act shall be remitted to the Receiver General on or before the 15th day of the following month.

Forms: RC4163: Employers' guide-remitting payroll deductions; T4001: Employers' guide to payroll deductions — basic information (guide). See also under ITA 153(1).

(1.1) [Large employers] — Subject to subsection (1.11), where the average monthly withholding amount of an employer for the second calendar year preceding a particular calendar year is

(a) equal to or greater than $15,000 and less than $50,000, all amounts deducted or withheld from payments described in the definition "remuneration" in subsection 100(1) that are made in a month in the particular calendar year by the employer shall be remitted to the Receiver General

(i) in respect of payments made before the 16th day of the month, on or before the 25th day of the month, and

(ii) in respect of payments made after the 15th day of the month, on or before the 10th day of the following month; or

(b) equal to or greater than $50,000, all amounts deducted or withheld from payments described in the definition "remuneration" in subsection 100(1) that are made in a month in the particular calendar year by the employer shall be remitted to the Receiver General on or before the third day, not including a Saturday or holiday, after the end of the following periods in which the payments were made,

(i) the period beginning on the first day and ending on the 7th day of the month,

(ii) the period beginning on the 8th day and ending on the 14th day of the month,

(iii) the period beginning on the 15th day and ending on the 21st day of the month, and

(iv) the period beginning on the 22nd day and ending on the last day of the month.

(1.11) [Option to use preceding year as base] — Where an employer referred to in paragraph (1.1)(a) or (b) would otherwise be required to remit in accordance with that paragraph the amounts withheld or deducted under subsection 153(1) of the Act in respect of a particular calendar year, the employer may elect to remit those amounts

(a) in accordance with subsection (1), if the average monthly withholding amount of the employer for the calendar year preceding the particular calendar year is less than $15,000 and the employer has advised the Minister that the employer has so elected; or

(b) if the average monthly withholding amount of the employer for the calendar year preceding the particular calendar year is equal to or greater than $15,000 and less than $50,000 and the employer has advised the Minister that the employer has so elected,

(i) in respect of payments made before the 16th day of a month in the particular calendar year, on or before the 25th day of the month, and

(ii) in respect of payments made after the 15th day of a month in [the] particular calendar year, on or before the 10th day of the following month.

(1.12) [Quarterly remittance] — If at any time

(a) the average monthly withholding amount in respect of an employer for either the first or the second calendar year before the particular calendar year that includes that time is less than $1,000,

(b) throughout the 12-month period before that time, the employer has remitted, on or before the day on or before which the amounts were required to be remitted, all amounts each of which was required to be

(i) deducted or withheld under subsection 153(1) of the Act, or

(ii) remitted under Part IX of the *Excise Tax Act*, and

(c) throughout the 12-month period before that time, the employer has filed all returns each of which was

required to be filed under this Act or Part IX of the *Excise Tax Act* on or before the day on or before which those returns were required to be filed under those Acts,

all amounts deducted or withheld from payments described in the definition "remuneration" in subsection 100(1) that are made by the employer in a month that ends after that time and that is in the particular calendar year may be remitted to the Receiver General

(d) in respect of such payments made in January, February and March of the particular calendar year, on or before the 15th day of April of the particular year,

(e) in respect of such payments made in April, May and June of the particular calendar year, on or before the 15th day of July of the particular year,

(f) in respect of such payments made in July, August and September of the particular calendar year, on or before the 15th day of October of the particular year, and

(g) in respect of such payments made in October, November and December of the particular calendar year, on or before the 15th day of January of the year following the particular year.

History: Subsec. 108(1) amended and (1.12) added by P.C. 1997-1473, October 9, 1997, s. 3, *Canada Gazette*, Part II, October 29, 1997, applicable to amounts and contributions required to be remitted to the Receiver General after October 1997.

Subsecs. 108(1) and (1.1) amended, and (1.11) added, by P.C. 1993-321, February 23, 1993, *Canada Gazette*, Part II, March 10, 1993, applicable in respect of amounts deducted or withheld from payments made after March 10, 1993.

Subsec. 108(1.1) substituted by P.C. 1989-2390, December 7, 1989, *Canada Gazette*, Part II, December 20, 1989, applicable in respect of amounts deducted or withheld from payments made after 1989.

Subsec. 108(1.1) added by P.C. 1987-2476, December 10, 1987, *Canada Gazette*, Part II, December 23, 1987, applicable in respect of amounts deducted or withheld from payments made after 1987.

Forms: RC4163: Employers' guide-remitting payroll deductions. See also under ITA 153(1).

(1.2) ["Average monthly withholding amount"] — For the purposes of this section, average monthly withholding amount, in respect of an employer for a particular calendar year, is the quotient obtained when

(a) the aggregate of all amounts each of which is an amount required to be remitted with respect to the particular year under

(i) subsection 153(1) of the Act and a similar provision of a law of a province which imposes a tax upon the income of individuals, where the province has entered into an agreement with the Minister of Finance for the collection of taxes payable to the province, in respect of payments described in the definition "remuneration" in subsection 100(1),

(ii) subsection 21(1) of the *Canada Pension Plan*, or

(iii) subsection 82(1) of the *Employment Insurance Act* or subsection 53(1) of the *Unemployment Insurance Act*,

by the employer or, where the employer is a corporation, by each corporation associated with the corporation in a taxation year of the employer ending in the second calendar year following the particular year

is divided by

(b) the number of months in the particular year, not exceeding twelve, for which such amounts were required to be remitted by the employer and, where the employer is a corporation, by each corporation associated with it in a taxation year of the employer ending in the second calendar year following the particular year.

Related Provisions: Reg. 108(1.3) — Where business transferred.

History: Subpara. 108(1.2)(a)(iii) amended by P.C. 1998-2270, s. 4, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to 1998 *et seq.*

Subparas 108(1.2)(a)(ii), (iii) amended by P.C. 1991-1643, s. 3, September 5, 1991, *Canada Gazette*, Part II, September 25, 1991, effective as of December 13, 1988.

Subsec. 108(1.2) added by P.C. 1987-2476, December 10, 1987, *Canada Gazette*, Part II, December 23, 1987, applicable in respect of amounts deducted or withheld from payments made after 1987.

(1.3) [Where business transferred] — For the purposes of subsection (1.2), where a particular employer that is a corporation has acquired in a taxation year of the corporation ending in a particular calendar year all or substantially all of the property of another employer used by the other employer in a business

(a) in a transaction in respect of which an election was made under subsection 85(1) or (2) of the Act,

(b) by virtue of an amalgamation within the meaning assigned to that term by section 87 of the Act, or

(c) as the result of a winding-up in respect of which subsection 88(1) of the Act is applicable,

the other employer shall be deemed to be a corporation associated with the particular employer in the taxation year and each taxation year ending at any time in the next two following calendar years.

History: Subsec. 108(1.3) added by P.C. 1987-2476, December 10, 1987, *Canada Gazette*, Part II, December 23, 1987, applicable in respect of amounts deducted or withheld from payments made after 1987.

(2) [Ceasing to carry on business] — Where an employer has ceased to carry on business, any amount deducted or withheld under subsection 153(1) of the Act that has not been remitted to the Receiver General shall be paid within 7 days of the day when the employer ceased to carry on business.

(3) [Return] — Remittances made to the Receiver General under subsection 153(1) of the Act shall be accompanied by a return in prescribed form.

(4) [Unclaimed dividends, interest on proceeds] — Amounts deducted or withheld under subsection 153(4) of the Act shall be remitted to the Receiver General within 60 days after the end of the taxation year subsequent to the 12-month period referred to in that subsection.

Definitions [Reg. 108]: "amount" — ITA 248(1); "associated" — ITA 256, Reg. 108(1.3); "average monthly withholding amount" — Reg. 108(1.2); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "employer" — Reg. 100(1); "holiday" — *Interpretation Act* 35(1); "individual", "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "prescribed", "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "remuneration" — Reg. 100(1); "taxation year" — ITA 249.

109. Elections to increase deductions — **(1)** Any election under subsection 153(1.2) of the Act shall be made by filing with the person making the payment or class of payments referred to therein (in this section referred to as the "payer") the form prescribed by the Minister for that purpose.

(2) [Variation] — A taxpayer who has made an election in the manner prescribed by subsection (1) may require

that the amount deducted or withheld pursuant to that election be varied by filing with the payer the form prescribed by the Minister for that purpose.

(3) [Time allowed to comply] — An election made in the manner prescribed by subsection (1) or a variation made pursuant to subsection (2) need not be taken into account by the payer in respect of the first payment to be made to the taxpayer after the election or variation, as the case may be, unless the election or variation, as the case may be, is made within such time, in advance of the payment, as may reasonably be required by the payer.

Definitions [Reg. 109]: "amount", "Minister" — ITA 248(1); "payer" — Reg. 109(1); "person", "prescribed", "taxpayer" — ITA 248(1).

110. Prescribed persons — (1) [Large employers] — The following are prescribed persons for the purposes of subsection 153(1) of the Act:

(a) an employer who is required, under subsection 153(1) of the Act and in accordance with paragraph 108(1.1)(b), to remit amounts deducted or withheld; and

(b) a person or partnership who, acting on behalf of one or more employers, remits the following amounts in a particular calendar year and whose average monthly remittance, in respect of those amounts, for the second calendar year preceding the particular calendar year, is equal to or greater than $50,000,

(i) amounts required to be remitted under subsection 153(1) of the Act and a similar provision of a law of a province that imposes a tax on the income of individuals, where the province has entered into an agreement with the Minister of Finance for the collection of taxes payable to the province, in respect of payments described in the definition "remuneration" in subsection 100(1),

(ii) amounts required to be remitted under subsection 21(1) of the *Canada Pension Plan*, and

(iii) amounts required to be remitted under subsection 82(1) of the *Employment Insurance Act* or subsection 53(1) of the *Unemployment Insurance Act*.

(2) [Average monthly remittance] — For the purposes of paragraph (1)(b), the average monthly remittance made by a person or partnership on behalf of all the employers for whom that person or partnership is acting, for the second calendar year preceding the particular calendar year, is the quotient obtained when the aggregate, for that preceding year, of all amounts referred to in subparagraphs (1)(b)(i) to (iii) remitted by the person or partnership on behalf of those employers is divided by the number of months, in that preceding year, for which the person or partnership remitted those amounts.

History: Subpara. 110(1)(b)(iii) amended by P.C. 1998-2270, s. 5, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to 1998 *et seq.*

S. 110 added by P.C. 1993-1947, December 2, 1993, *Canada Gazette*, Part II, December 15, 1993.

Definitions [Reg. 110]: "amount" — ITA 248(1); "average monthly remittance" — Reg. 110(2); "Canada" — ITA 255, *Interpretation Act* 35(1); "employer" — Reg. 100(1); "individual" — ITA 248(1); "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "person", "prescribed" — ITA 248(1); "province" — *Interpretation Act* 35(1); "remuneration" — Reg. 100(1).

PART II — INFORMATION RETURNS

History: Part II was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

Information Circulars: 82-2R2: Social insurance number legislation that relates to the preparation of information slips.

200. Remuneration and benefits [T4 or T4A] — (1) Every person who makes a payment described in subsection 153(1) of the Act (other than an annuity payment in respect of an interest in an annuity contract to which subsection 201(5) applies) shall make an information return in prescribed form in respect of the payment unless an information return in respect of the payment has been made under sections 202, 214, 237 or 238.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

History: Subsec. 200(1) amended to add reference to Reg. 237 and 238 by P.C. 2002-2169, s. 1, December 12, 2002, *Canada Gazette*, Part II, January 1, 2003, effective January 1, 2003.

Subsec. 200(1) substituted by P.C. 1983-3586, s. 1, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

I.T. Technical News: 11 (reporting of amounts paid out of an employee benefit plan).

Forms: See at end of Reg. 200.

(2) [Various payments — T4A] — Every person who makes a payment as or on account of, or who confers a benefit or allocates an amount that is,

(a) a scholarship, fellowship or bursary, or a prize for achievement in a field of endeavour ordinarily carried on by the recipient thereof (other than a prize prescribed by section 7700),

(b) a grant to enable the recipient thereof to carry on research or any similar work,

(c) an amount that is required by paragraph 56(1)(r) of the Act to be included in computing a taxpayer's income,

(d) a benefit under regulations made under an *Appropriation Act* providing for a scheme of transitional assistance benefits to persons employed in the production of products to which the *Canada-United States Agreement on Automotive Products*, signed on January 16, 1965, applies,

(e) a benefit described in section 5502,

(f) an amount payable to a taxpayer on a periodic basis in respect of the loss of all or any part of his income from an office or employment, pursuant to

(i) a sickness or accident insurance plan,

(ii) a disability insurance plan, or

(iii) an income maintenance insurance plan,

to or under which his employer has made a contribution,

(g) an amount or benefit the value of which is required by paragraph 6(1)(a), (e) or (h) or subsection 6(9) of the Act to be included in computing a taxpayer's income from an office or employment, other than a payment referred to in subsection (1),

(h) a benefit the amount of which is required by virtue of subsection 15(5) of the Act to be included in computing a shareholder's income,

(i) a benefit deemed by subsection 15(9) of the Act to be a benefit conferred on a shareholder by a corporation, or

(j) a payment out of a registered education savings plan, other than a refund of payments,

shall make an information return in prescribed form in respect of such payment or benefit except where subsection (3) or (4) applies with respect to the payment or benefit.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

History: Para. 200(2)(j) added by P.C. 1998-2275, s. 3, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to 1998 *et seq.*

Para. 200(2)(c) amended by P.C. 1998-2270, s. 6, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to 1998 *et seq.*

Para. 200(2)(e) amended by P.C. 1995-1023, s. 2, June 23, 1995, *Canada Gazette*, Part II, July 12, 1995, applicable to benefits paid after October 1991.

Para. 200(2)(a) amended by P.C. 1989-1923, s. 1, September 28, 1989, *Canada Gazette*, Part II, October 11, 1989, applicable to 1983 *et seq.*

Paras. 200(2)(c), (e), (g) and (h) and all that portion of subsec. 200(2) following para. (i) substituted by P.C. 1983-3585, subsecs. 1(1) to (4), November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

All that portion of subsec. 200(2) preceding para. (a) and para. 200(2)(g) substituted by P.C. 1981-3209, s. 1, November 12, 1981, *Canada Gazette*, Part II, November 25, 1981, effective with respect to amounts allocated in respect of 1980 *et seq.*

All those portions of subsec. 200(2) preceding para. (a) and following para. (i) substituted, and para. (i) added by P.C. 1979-3327, s. 1, December 6, 1979, *Canada Gazette*, Part II, December 26, 1979, effective in respect of 1979 *et seq.*

Para. 200(2)(g) substituted by P.C. 1978-3629, s. 1, November 30, 1978, *Canada Gazette*, Part II, December 13, 1978, applicable to 1979 *et seq.*

Interpretation Bulletins: IT-75R4: Scholarships, fellowships, bursaries, prizes, research grants and financial assistance; IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt.

I.T. Technical News: 11 (reporting of amounts paid out of an employee benefit plan).

Forms: See at end of Reg. 200.

(3) **[Automobile benefits — T4]** — Where a benefit is included in computing a taxpayer's income from an office or employment pursuant to paragraph 6(1)(a) or (e) of the Act in respect of an automobile made available to the taxpayer or to a person related to the taxpayer by a person related to the taxpayer's employer, the employer shall make an information return in prescribed form in respect of the benefit.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

History: Subsec. 200(3) added by P.C. 1983-3585, subsec. 1(5), November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

(4) **[Automobile benefits — shareholder]** — Where a benefit is included in computing the income of a shareholder of a corporation by virtue of subsection 15(5) of the Act in respect of an automobile made available to the shareholder or to a person related to the shareholder by a person related to the corporation, the corporation shall make an information return in prescribed form in respect of the benefit.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

History: Subsec. 200(4) added by P.C. 1983-3585, subsec. 1(5), November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

(5) **[Employee stock option deferral]** — Where a particular qualifying person (within the meaning assigned by subsection 7(7) of the Act) has agreed to sell or issue a security (within the meaning assigned by that subsection) of the particular qualifying person (or of a qualifying person with which it does not deal at arm's length) to a taxpayer who is an employee of the particular qualifying person (or of a qualifying person with which it does not deal at arm's length) and the taxpayer has acquired the security under the agreement in circumstances to which subsection 7(8) of the Act applied, each of the particular qualifying person, the qualifying person of which the security is acquired and the qualifying person which is the taxpayer's employer shall, for the particular taxation year in which the security is acquired, make an information return in the prescribed form in respect of the benefit from employment that the taxpayer would be deemed to have received in the particular taxation year in respect of the acquisition of the security if the Act were read without reference to subsection 7(8) and, for this purpose, an information return made by one of the qualifying persons in respect of the taxpayer's acquisition of the security is deemed to have been made by each of the qualifying persons.

History: Subsec. 200(5) added by P.C. 2003-1497, s. 1, October 2, 2003, *Canada Gazette*, Part II, October 22, 2003, applicable to 2000 *et seq.*

Definitions [Reg. 200]: "amount", "annuity" — ITA 248(1); "arm's length" — ITA 251(1); "automobile" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "employed" — ITA 248(1); "employee", "employer", "employment", "office", "person", "personal or living expenses", "prescribed" — ITA 248(1); "qualifying person" — ITA 7(7); "refund of payments" — ITA 146.1(1); "registered education savings plan" — ITA 146.1(1), 248(1); "related" — ITA 251(2)–(6); "shareholder" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

Forms [Reg. 200]: RC4120: Employee's Guide: Filing the T4 Slip; RC4157(E): Employers' Guide: Filing the T4A Slip and Summary Form; T2 SCH 97: Additional information on non-resident corporations in Canada; T4: Statement of remuneration paid; T4 Segment; T4 Summ: Summary of remuneration paid; T4A: Statement of pension, retirement, annuity and other income; T4A Segment; T4A Summ: Summary of pension, retirement, annuity and other income; T4A-NR: Statement of fees (etc.) paid to non-residents for services rendered in Canada; T4A-RCA: Statement of amounts paid from an RCA; T4A-RCA Summ: Return of distributions from an RCA; T4F: Statement of fishing income; T695: T4A/T4A-NR data tape transmittal; T737-RCA: Statement of contributions paid to a custodian of an RCA; T737-RCA Summ: Return of contributions paid to a custodian of an RCA; T4001: Employers' Guide to Payroll Deductions — Basic Information (guide).

201. Investment income [T5 or T4A] — (1) Every person who makes a payment to a resident of Canada as or on account of

(a) a dividend or an amount deemed by the Act to be a dividend (other than a dividend deemed to have been paid to a person under any of subsections 84(1) to (4) of the Act where, pursuant to subsection 84(8) of the Act, those subsections do not apply to deem the dividend to have been received by the person),

(b) interest (other than the portion of the interest to which any of subsections (4) to (4.2) applies)

(i) on a fully registered bond or debenture,

(ii) in respect of

(A) money on loan to,

(B) money on deposit with, or

(C) property of any kind deposited or placed with,

a corporation, association, organization or institution,

(iii) in respect of an account with an investment dealer or broker,

(iv) paid by an insurer in connection with an insurance policy or an annuity contract, or

(v) on an amount owing in respect of compensation for property expropriated,

(c) a royalty payment in respect of the use of a work or invention or a right to take natural resources,

(d) a payment referred to in subsection 16(1) of the Act that can reasonably be regarded as being in part a payment of interest or other payment of an income nature and in part a payment of a capital nature, where the payment is made by a corporation, association, organization or institution,

(e) an amount paid from a person's NISA Fund No. 2, or

(f) an amount that is required by subsection 148.1(3) of the Act to be added in computing a person's income for a taxation year

shall make an information return in prescribed form in respect of the portion of such payment for which an information return has not previously been made under this section.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

History: The opening words of para. 201(1)(b) amended by P.C. 1996-1419, subsec. 1(1), September 11, 1996, *Canada Gazette*, Part II, October 2, 1996, applicable to debt obligations issued after October 16, 1991.

Para. 201(1)(f) added by P.C. 1996-765, s. 1, May 28, 1996, *Canada Gazette*, Part II, June 12, 1996, applicable to payments made after 1995.

Para. 201(1)(e) added by P.C. 1993-1939, s. 1, December 2, 1993, *Canada Gazette*, Part II, December 15, 1993, applicable after 1993 in respect of amounts paid after 1992.

All that portion of para. 201(1)(b) preceding subparagraph (i) and all that portion of subsec. 201(1) following para. (d) substituted by P.C. 1983-3586, subsecs. 2(1) and (2), November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

Para. 201(1)(a) substituted by P.C. 1983-3585, s. 2, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

Subpara. 201(1)(b)(v) added by P.C. 1979-3327, s. 2, December 6, 1979, *Canada Gazette*, Part II, December 26, 1979, effective in respect of 1980 *et seq.*

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

Forms: RC4157(E): Employers' Guide: Filing the T4A Slip and Summary Form; T1 Sched. 4: Statement of investment income; T3 Sched. 8: Investment income, carrying charges, and gross-up amount of dividends retained by the trust; T4A: Statement of pension, retirement, annuity and other income; T4A Segment; T4A Summ: Summary of pension, retirement, annuity and other income; T5: Statement of investment income; T5 Summ: Return of investment income; T619: Magnetic media transmittal; T4015: T5 Guide — return of investment income (guide); T4031: Computer specifications for data filed on Magnetic Media — T5, T5008, T4RSP, T4RIF, NR4, and T3; T4126: How to file the T5 return of investment income (guide).

(2) [Nominees and agents] — Every person who receives as nominee or agent for a person resident in Canada a payment to which subsection (1) applies shall make an information return in prescribed form in respect of such payment.

Proposed Amendment — Reg. 201(2) — Social Insurance Number disclosure

Letter from Dept. of Finance, March 17, 1999: See under ITA 241(4).

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

History: Subsec. 201(2) substituted by P.C. 1983-3586, subsec. 2(3), *Canada Gazette*, Part II, November 24, 1983.

I.T. Technical News: 11 (U.S. spin-offs (divestitures) — dividends in kind).

Forms: T5: Statement of investment income; T5 Summ: Return of investment income.

(3) [Bearer coupons, etc.] — Where a person negotiates a bearer coupon, warrant or cheque representing interest or dividends referred to in subsection 234(1) of the Act for another person resident in Canada and the name of the beneficial owner of the interest or dividends is not disclosed on an ownership certificate completed pursuant to that subsection, the person negotiating the coupon, warrant or cheque, as the case may be, shall make an information return in prescribed form in respect of the payment received.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

(4) [Annual interest accrual] — A person or partnership that is indebted in a calendar year under a debt obligation in respect of which subsection 12(4) of the Act and paragraph (1)(b) apply with respect to a taxpayer shall make an information return in prescribed form in respect of the amount that would, if the year were a taxation year of the taxpayer, be included as interest in respect of the debt obligation in computing the taxpayer's income for the year.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

History: Subsec. 201(4) amended by P.C. 1996-1419, subsec. 1(2), September 11, 1996, *Canada Gazette*, Part II, October 2, 1996, applicable to debt obligations issued after October 16, 1991.

Subsec. 201(4) substituted by P.C. 1991-172, s. 1, January 31, 1991, *Canada Gazette*, Part II, February 13, 1991, applicable with respect to investment contracts acquired or materially altered after 1989.

Subsec. 201(4) substituted by P.C. 1986-842, s. 1, April 10, 1986, *Canada Gazette*, Part II, April 30, 1986, applicable to 1985 *et seq.*

Subsec. 201(4) added by P.C. 1983-3586, subsec. 2(4), November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

(4.1) [Indexed debt obligation] — A person or partnership that is indebted in a calendar year under an indexed debt obligation in respect of which paragraph (1)(b) applies shall, for each taxpayer who holds an interest in the debt obligation at any time in the year, make an information return in prescribed form in respect of the amount that would, if the year were a taxation year of the taxpayer, be included as interest in respect of the debt obligation in computing the taxpayer's income for the year.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

History: Subsec. 201(4.1) added by P.C. 1996-1419, subsec. 1(2), September 11, 1996, *Canada Gazette*, Part II, October 2, 1996, applicable to debt obligations issued after October 16, 1991.

(4.2) [Nominee or agent — debt obligation] — Where, at any time in a calendar year, a person or partnership holds, as nominee or agent for a taxpayer resident in Canada, an interest in a debt obligation referred to in paragraph (1)(b) that is

(a) an obligation in respect of which subsection 12(4) of the Act applies with respect to the taxpayer, or

(b) an indexed debt obligation,

that person or partnership shall make an information return in prescribed form in respect of the amount that would, if the year were a taxation year of the taxpayer, be included as interest in respect of the debt obligation in computing the taxpayer's income for the year.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

History: Subsec. 201(4.2) added by P.C. 1996-1419, subsec. 1(2), September 11, 1996, *Canada Gazette*, Part II, October 2, 1996, applicable to debt obligations issued after October 16, 1991.

(5) [Insurers] — Every insurer (within the meaning assigned by paragraph 148(10)(a) of the Act) who is a party to a life insurance policy (within the meaning assigned by paragraph 138(12)(f) [138(12)"life insurance policy"] of the Act) in respect of which an amount is to be included in computing a taxpayer's income pursuant to subsection 12.2(1), (3) or (5) or paragraph 56(1)(d.1) of the Act shall make an information return in prescribed form in respect of that amount.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

History: Subsec. 201(5) substituted by P.C. 1991-172, s. 1, January 31, 1991, *Canada Gazette*, Part II, February 13, 1991, applicable with respect to life insurance policies acquired or materially altered after 1989.

Subsec. 201(5) added by P.C. 1983-3586, subsec. 2(4), November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

(6) [Debt obligation in bearer form] — Every person who makes a payment to, or acts as a nominee or agent for, an individual resident in Canada in respect of the disposition or redemption of a debt obligation in bearer form shall make an information return in prescribed form in respect of the transaction indicating the proceeds of disposition or the redemption amount and such other information as may be required by the prescribed form.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

Forms: T-BD(1) Supp: Statement of disposition — debt obligation in bearer form (single transaction); T-BD(2) Supp: Statement of disposition — debt obligations in bearer form (multiple transactions); T-BD(3) Summ and T-BD(4) Int Summ: Return of investment income debt obligations; T4031: Computer specifications for data filed on Magnetic Media — T5, T5008, T4RSP, T4RIF, NR4, and T3; T4091: Return of securities transactions [guide]; T5008: Statement of securities transactions; T5008 Segment; T5008 Summ: Return of securities transactions.

(7) ["Debt obligation in bearer form"] — For the purposes of subsection (6), "debt obligation in bearer form" means any debt obligation in bearer form other than

(a) a debt obligation that is redeemed for the amount for which the debt obligation was issued;

(b) a debt obligation described in paragraph 7000(1)(b); and

(c) a coupon, warrant or cheque referred to in subsection 207(1).

History: Subsecs. 201(6) and (7) added by P.C. 1988-2452, October 31, 1988, *Canada Gazette*, Part II, November 9, 1988, applicable after 1988.

Definitions [Reg. 201]: "amount", "annuity" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "debt obligation in bearer form" — Reg. 201(7); "disposition", "dividend", "indexed debt obligation", "individual", "insurance policy", "insurer" — ITA 248(1); "life insurance policy" — ITA 138(12), 248(1); "person", "prescribed", "property" — ITA 248(1); "resident in Canada", "resident of Canada" — ITA 250; "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

202. Payments to non-residents [NR4] — (1) Every person resident in Canada who pays or credits, or is deemed by Part I or Part XIII of the Act to pay or credit, to a non-resident person an amount as, on account or in lieu of payment of, or in satisfaction of,

(a) a management or administration fee or charge,

(b) interest,

(c) income of or from an estate or trust,

(d) rent, royalty or a similar payment referred to in paragraph 212(1)(d) of the Act, including any payment described in any of subparagraphs 212(1)(d)(i) to (viii) of the Act,

(e) a timber royalty as described in paragraph 212(1)(e) of the Act,

(f) [Repealed]

(g) a dividend, including a patronage dividend as described in paragraph 212(1)(g) of the Act, or

(h) a payment for a right in or to the use of

(i) a motion picture film, or

(ii) a film or video tape for use in connection with television,

shall, in addition to any other return required by the Act or these Regulations, make an information return in prescribed form in respect of such amount.

Related Provisions: Reg. 202(1.1), (2) — Other payments to non-residents; Reg. 202(7), (8) — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

History: Para. 202(1)(f) repealed by P.C. 2002-2169, s. 2, December 12, 2002, *Canada Gazette*, Part II, January 1, 2003, effective January 1, 2003.

Para. 202(1)(i) revoked by P.C. 1988-390, s. 1, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, applicable with respect to dividends paid after May 23, 1985, other than dividends declared on or before that date.

Para. 202(1)(i) added by P.C. 1980-1366, s. 3, May 22, 1980, *Canada Gazette*, Part II, June 11, 1980, effective November 17, 1978.

The November 29, 2004 draft regulations (pre-published in *Canada Gazette* Part I, December 4, 2004), s. 1, will add subsec. 202(1.1), in force upon publication in the *Canada Gazette*, Part II.

Forms: NR4 Supp: Statement of amounts paid or credited to non-residents of Canada; NR4 Summ: Return of amounts paid or credited to non-residents of Canada; NR4(OAS): Statement of OAS pension paid or credited to non-residents of Canada; NR14: Formal demand for non-resident tax information return; T2 SCH 19: Non-resident shareholder information; T1136: OAS return of income; T4031: Computer specifications for data filed on Magnetic Media — T5, T5008, T4RSP, T4RIF, NR4, and T3.

(1.1) [Payment to non-resident actor — NR4] — Every person who pays or credits an amount, or provides a benefit to or on behalf of a person who is either a non-resident individual who is an actor or that is a corporation related to such an individual, for the provision in Canada of acting services of the actor in a film or video production, shall, in addition to any other return required by the Act or these Regulations, make an information return in prescribed form in respect of such payment, credit or benefit.

Related Provisions: ITA 215(5.1)–(5.2) — Withholding tax.

History: Subsec. 202(1.1) added by P.C. 2005-694, s. 1, May 3, 2005, *Canada Gazette*, Part II, May 18, 2005, in force May 18, 2005.

(2) [Various payments to non-residents] — Every person resident in Canada who pays or credits, or is deemed by Part I or Part XIII of the Act to pay or credit, to a non-resident person an amount as, on account or in lieu of payment of, or in satisfaction of,

(a) a payment of a superannuation or pension benefit,

(b) a payment of any allowance or benefit described in any of subparagraphs 56(1)(a)(ii) to (vi) of the Act,

(c) a payment by a trustee under a registered supplementary unemployment benefit plan,

(d) a payment out of or under a registered retirement savings plan or a plan referred to in subsection 146(12) of the Act as an amended plan,

(e) a payment under a deferred profit sharing plan or a plan referred to in subsection 147(15) of the Act as a revoked plan,

(f) a payment under an income-averaging annuity contract, any proceeds of the surrender, cancellation, redemption, sale or other disposition of an income-averaging annuity contract, or any amount deemed by subsection 61.1(1) of the Act to have been received by the non-resident person as proceeds of the disposition of an income-averaging annuity contract,

(g) an annuity payment not described in any other paragraph of this subsection or subsection (1),

(h) a payment or a portion thereof, to which paragraph 212(1)(p) of the Act applies, out of or under a fund, plan, or trust that was on December 31, 1985 a registered home ownership savings plan (within the meaning assigned by paragraph 146.2(1)(h) of the Act as it read in its application to the 1985 taxation year),

(i) a payment out of or under a registered retirement income fund,

(j) a payment that is or that would be, if paragraph 212(1)(r) of the Act were read without reference to subparagraph 212(1)(r)(ii), a payment described in that paragraph in respect of a registered education savings plan,

(k) a grant under a program prescribed for the purposes of paragraph 212(1)(s) of the Act,

(l) a payment described in paragraph 212(1)(j) of the Act in respect of a retirement compensation arrangement, or

(m) a payment described in paragraph 212(1)(v) of the Act,

shall, in addition to any other return required by the Act or these Regulations, make an information return in prescribed form in respect of such amount.

Related Provisions: Reg. 202(7), (8) — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

History: Para. 202(2)(m) added by P.C. 1999-2212, s. 1, December 16, 1999, *Canada Gazette*, Part II, January 5, 2000, applicable to payments made or credited after 1999.

Para. 202(2)(j) amended by P.C. 1998-2275, s. 4, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to 1998 *et seq.*

Para. 202(2)(l) added by P.C. 1988-1476, July 21, 1988, *Canada Gazette*, Part II, August 3, 1988, applicable with respect to amounts paid or credited after March 27, 1987.

Para. 202(2)(h) substituted by P.C. 1986-1103, s. 1, May 8, 1986, *Canada Gazette*, Part II, May 28, 1986, applicable to amounts paid after 1985.

Paras. 202(2)(b) and (h) substituted by P.C. 1983-3585, s. 3, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

Para. 202(2)(k) added by P.C. 1981-3209, s. 2, November 12, 1981, *Canada Gazette*, Part II, November 25, 1981, effective in respect of grants paid or credited after 1980.

Para. 202(2)(b) amended, para. 202(2)(j) added by P.C. 1980-1366, s. 4, May 22, 1980, *Canada Gazette*, Part II, June 11, 1980, effective March 1, 1979.

Para. 202(2)(i) added by P.C. 1979-1725, June 21, 1979, *Canada Gazette*, Part II, July 11, 1979, effective for the period commencing June 30, 1978.

Forms: NR4 Supp: Statement of amounts paid or credited to non-residents of Canada; NR4 Summ: Return of amounts paid or credited to non-residents of Canada; NR4A-RCA: Statement of amounts paid to non-residents of Canada to which para. 212(1)(j) applies; NR14: Formal demand for non-resident tax information return.

(2.1) [NISA Fund No. 2] — Every person resident in Canada who pays an amount to a non-resident person from a NISA Fund No. 2 shall, in addition to any other return required by the Act or these Regulations, make an information return in prescribed form in respect of the amount.

Related Provisions: Reg. 202(7), (8) — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

History: Subsec. 202(2.1) added by P.C. 1993-1939, subsec. 2(1), December 2, 1993, *Canada Gazette*, Part II, December 15, 1993, applicable after 1993 in respect of amounts paid after 1992.

(3) [Nominee or agent] — Every person who is paid or credited with an amount referred to in subsection (1), (2) or (2.1) for or on behalf of a non-resident person shall make an information return in prescribed form in respect of the amount.

Related Provisions: Reg. 202(7), (8) — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

History: Subsec. 202(3) amended by P.C. 1993-1939, subsec. 2(2), December 2, 1993, *Canada Gazette*, Part II, December 15, 1993, applicable after 1993 in respect of amounts paid after 1992.

(4) [Non-resident payer deemed resident in Canada] — A non-resident person who is deemed, under subsection 212(13) of the Act, to be a person resident in Canada for the purposes of section 212 of the Act shall be deemed, in the same circumstances, to be a person resident in Canada for the purposes of subsections (1) and (2).

(5) [Partnership payer deemed resident in Canada] — A partnership that is deemed, under paragraph 212(13.1)(a) of the Act, to be a person resident in Canada for the purposes of Part XIII of the Act shall be deemed, in the same circumstances, to be a person resident in Canada for the purposes of subsections (1) and (2).

(6) [Non-resident payer carrying on business in Canada] — A non-resident person who is deemed, under subsection 212(13.2) of the Act, to be a person resident in Canada for the purposes of Part XIII of the Act shall be deemed, in the same circumstances, to be a person resident in Canada for the purposes of subsections (1) and (2).

(7) [Filing deadline] — Subject to subsection (8), an information return required under this section shall be filed on or before March 31 and shall be in respect of the preceding calendar year.

(8) [Filing deadline — trust or estate] — Where an amount referred to in subsection (1) or (2) is income of or from an estate or trust, the information return required under this section in respect thereof shall be filed within 90 days from the end of the taxation year of the estate or trust in which the amount was paid or credited and shall be in respect of that taxation year.

Definitions [Reg. 202]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "disposition", "dividend" — ITA 248(1); "estate" — ITA 104(1), 248(1); "income-averaging annuity contract", "individual", "non-resident", "person", "prescribed" — ITA 248(1); "registered education savings plan" — ITA 146.1(1), 248(1); "registered home ownership savings plan" — ITA 248(1); "registered retirement income fund" — ITA 146.3(1), 248(1); "registered retirement savings plan" — ITA 146(1), 248(1); "registered supplementary unemployment benefit plan" — ITA 145(1), 248(1); "re-

lated" — ITA 251(2)–(6); "resident" — ITA 250, Reg. 202(4), (5), (6); "resident in Canada" — ITA 250; "retirement compensation arrangement", "superannuation or pension benefit" — ITA 248(1); "taxation year" — ITA 249; "trust" — ITA 104(1), 248(1), (3).

Forms [Reg. 202]: NR4 Supp: Statement of amounts paid or credited to non-residents of Canada; NR4 Summ: Return of amounts paid or credited to non-residents of Canada.

203. [Repealed]

History: S. 203 repealed by P.C. 2002-2169, s. 3, December 12, 2002, *Canada Gazette*, Part II, January 1, 2003, effective January 1, 2003.

204. Estates and trusts — (1) [Trustee to file return] — Every person having the control of, or receiving income, gains or profits in a fiduciary capacity, or in a capacity analogous to a fiduciary capacity, shall make a return in prescribed form in respect thereof.

Related Provisions: ITA 150(1)(c) — Trust tax return; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

Information Circulars: 78-5R3: Communal organizations; 78-14R3: Guidelines for trust companies, etc.

Forms: T3: Statement of trust income allocations and designations; T3ATH-IND: Amateur athlete trust income tax return; T3D: Deferred profit sharing plan or revoked plan information return and income tax return; T3F: Mutual fund, pooled fund and investment corporation information return; T3G: Certification of no tax liability by a group of RRSPs, RRIFs, or RESPs; T3GR: Group income tax and information return for RRSP, RRIF or RESP trusts (and worksheets); T3IND: T3IND income tax return for RRSP, RRIF, or RESP; T3P: Employee's pension plan income tax return; T3RET: Trust income tax and information return; T3S: Supplementary unemployment benefit plan — income tax return; T4031: Computer specifications for data filed on Magnetic Media — T5, T5008, T4RSP, T4RIF, NR4, and T3.

(2) [Filing deadline] — The return required under this section shall be filed within 90 days from the end of the taxation year and shall be in respect of the taxation year.

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

(3) [Exceptions] — Subsection (1) does not require a trust to make a return for a taxation year at the end of which it is

(a) governed by a deferred profit sharing plan or by a plan referred to in subsection 147(15) of the Act as a revoked plan;

(b) governed by an employees profit sharing plan;

(c) a registered charity;

(d) governed by an eligible funeral arrangement;

(d.1) a cemetery care trust; or

(e) governed by a registered education savings plan.

Related Provisions: ITA 148.1 — Eligible funeral arrangements; ITA 149.1(14) — Charity information return; Reg. 201(1)(f) — Eligible funeral arrangement information return; Reg. 212 — EPSP information return.

History: Para. 204(3)(d.1) added by P.C. 1999-2212, s. 2, December 16, 1999, *Canada Gazette*, Part II, January 5, 2000, applicable to 1998 *et seq.*

Para. 204(3)(e) added by P.C. 1998-2275, s. 5, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to 1998 *et seq.*

The opening words of subsec. 204(3) amended, and para. 204(3)(d) added, by P.C. 1996-765, s. 2, May 28, 1996, *Canada Gazette*, Part II, June 12, 1996, applicable to 1993 *et seq.*

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

Definitions [Reg. 204]: "deferred profit sharing plan" — ITA 147(1), 248(1); "employees profit sharing plan" — ITA 144(1), 248(1); "person", "prescribed", "registered charity" — ITA 248(1); "taxation year" — ITA 249; "trust" — ITA 104(1), 248(1), (3).

205. Date returns to be filed — (1) All returns required under this Part shall be filed with the Minister without notice or demand and, unless otherwise specifically provided, on or before the last day of February in each year and shall be in respect of the preceding calendar year.

Related Provisions: Reg. 202(7), (8), 203(2), 204(2), 205(2) — Exceptions.

(2) [Where business discontinued] — Where a person who is required to make a return under this Part discontinues his business or activity, the return shall be filed within 30 days of the day of the discontinuance of the business or activity and shall be in respect of any calendar year or a portion thereof prior to the discontinuance of the business or activity for which a return has not previously been filed.

Definitions [Reg. 205]: "business", "Minister", "person" — ITA 248(1).

205.1 Electronic filing — A person who is required to make an information return under this Part, or who files an information return on behalf of a person who is required to make an information return under this Part, shall file the information return with the Minister in an electronic format if more than 500 such returns are to be filed for the calendar year.

Proposed Amendment — Reg. 205.1

205.1 Electronic filing — (1) A person who is required to make an information return under this Part, or who files an information return on behalf of a person who is required to make an information return under this Part, shall transmit the information return to the Minister in the prescribed electronic form if more than 500 information returns are to be filed by that person for the calendar year.

(2) Every transmission referred to in subsection (1) shall include, in the prescribed electronic form, a summary of the information returns contained in the transmission.

(3) For the purposes of subsections 162(7) to (8) of the Act, failure to make a transmission as required by subsections (1) and (2) is deemed to be failure to file an information return as and when required by the Act or these Regulations.

Application: The May 2, 2005 draft regulations (pre-published in *Canada Gazette*, Part I, May 7, 2005), s. 1, will amend s. 215.1 to read as above, applicable to 2001 *et seq.*

Regulatory Impact Analysis Statement: Section 205.1 was added to the *Income Tax Regulations* (the Regulations) in 1999. Until 2001, as a transitional measure, the Canada Revenue Agency (CRA) did not issue penalties for the failure to comply with this new requirement. In 2001, taxpayers were notified that the penalties provided for in subsection 162(7) of the *Income Tax Act* (the Act) would be applied for the failure to file these large returns electronically.

At that time, and for the first time, CRA officials realized that a strict interpretation of the provisions of section 205.1 of the Regulations, taken with the penalty provisions of subsection 162(7) of the Act, would result in the imposition of minimum penalties of $5,000 per day, to a maximum of $1.25 million, for the failure by a taxpayer to file returns electronically.

Owing to the obvious excess of this penalty, the CRA limited the penalty to $100 per day, to a maximum of $2,500, by characterizing the transmission itself as one information return and applying the provisions of subsection 162(7) against that return. This penalty reduction was made using the authority of the Minister to waive all or part of a penalty, as set out in subsection 220(3.1) of the Act.

This amendment to section 205.1 of the Regulations will make it clear in law that the "failure" that will attract a penalty is the failure to file the

"package" of returns electronically; it is not the failure to file each of the individual information returns included in the package.

Alternatives

No alternative was considered to these amendments.

This is the only manner in which the Regulations can be amended to address the unintended consequence of the failure to comply with section 205.1 of the Regulations.

Benefits and costs

There are no costs of these amendments to taxpayers, tax practitioners or the CCRA.

Taxpayers will benefit, as this amendment clarifies the original intent of the CRA with respect to a failure to comply with section 205.1 of the Regulations. Taxpayers will also benefit since the "reduced penalty" will no longer be subject to the discretionary application of a Ministerial waiver.

Consultation

Officials of the Department of Finance were consulted on this amendment.

Contact: Mr. Grant Wilkinson, Legislative Policy Directorate, Place de Ville, Tower A, 22nd floor, 320 Queen Street, Ottawa, Ontario K1A 0L5, (613) 957-2079 (telephone), grant.wilkinson@ccra-adrc.gc.ca (electronic mail).

Related Provisions: ITA 162(7) — Penalty for failure to comply; ITA 244(22) — Electronic filing permitted.

History: S. 205.1 added by P.C. 1998-2273 s. 1, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable in respect of returns required to be filed for the 1999 and subsequent calendar years.

Definitions [Reg. 205.1]: "calendar year" — *Interpretation Act* 37(1)(a); "Minister", "person", "prescribed" — ITA 248(1).

206. Legal representatives and others — **(1)** Where a person, who is required to make a return under this Part, has died, such return shall be filed by his legal representative within 90 days of the date of death and shall be in respect of any calendar year or a portion thereof prior to the date of death for which a return has not previously been filed.

(2) [Trustee in bankruptcy, etc.] — Every trustee in bankruptcy, assignee, liquidator, curator, receiver, trustee or committee and every agent or other person administering, managing, winding-up, controlling or otherwise dealing with the property, business, estate or income of a person who has not filed a return as required by this Part shall file such return.

Definitions [Reg. 206]: "legal representative", "person", "property" — ITA 248(1).

207. Ownership certificates — **(1)** An ownership certificate completed pursuant to section 234 of the Act shall be delivered to the debtor or encashing agent at the time the coupon, warrant or cheque referred to in that section is negotiated.

(2) The debtor or encashing agent to whom an ownership certificate has been delivered pursuant to subsection (1) shall forward it to the Minister on or before the 15th day of the month following the month the coupon, warrant or cheque, as the case may be, was negotiated.

(3) The operation of section 234 of the Act is extended to a bearer coupon or warrant negotiated by or on behalf of a non-resident person who is subject to tax under Part XIII of the Act in respect of such a coupon or warrant.

Forms: T600, T600B: Ownership certificate; NR601: Non-resident ownership certificate — withholding tax; NR602: Non-resident ownership certificate — no withholding tax.

Definitions [Reg. 207]: "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "non-resident", "person" — ITA 248(1).

208. Dispositions of income-averaging annuity contracts — Every person who carries on a business referred to in paragraph 61(4)(b) [61(4)"income-averaging annuity contract"] of the Act shall make an information return in prescribed form in respect of

(a) any amount paid by that person to a resident of Canada as, on account or in lieu of payment of, or in satisfaction of, proceeds of the surrender, cancellation, redemption, sale or other disposition of an income-averaging annuity contract; or

(b) any amount deemed by subsection 61.1(1) of the Act to have been received by an individual resident in Canada as proceeds of the disposition of an income-averaging annuity contract that was made with that person.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

History: All that portion of s. 208 preceding para. (a) substituted by P.C. 1983-3585, s. 4, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, effective from November 13, 1981.

Definitions [Reg. 208]: "amount", "annuity", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "disposition", "income-averaging annuity contract", "individual", "person", "prescribed" — ITA 248(1); "resident in Canada", "resident of Canada" — ITA 250.

Forms: T4A: Statement of pension, retirement, annuity and other income; T4A Segment; T4A Summ: Summary of pension, retirement, annuity and other income.

209. Distribution of taxpayers' portions of returns — **(1)** Every person who is required by section 200, 201, 202, 204, 208, 212, 214, 215, 217, 218, 223, 226, 227, 228, 229, 230, 232, 233 or 234 to make an information return shall forward to each taxpayer to whom the return relates two copies of the portion of the return that relates to that taxpayer.

History: Subsec. 209(1) amended by P.C. 1993-1939, s. 3, December 2, 1993, *Canada Gazette*, Part II, December 15, 1993, applicable after 1993 in respect of amounts paid after 1992.

Subsec. 209(1) amended by P.C. 1992-1567, s. 1, July 16, 1992, *Canada Gazette*, Part II, August 12, 1992, applicable to 1991 *et seq.*

Subsec. 209(1) amended by P.C. 1989-2156, s. 1, October 26, 1989, *Canada Gazette*, Part II, November 8, 1989.

Subsec. 209(1) substituted by P.C. 1987-1681, s. 1, August 14, 1987, *Canada Gazette*, Part II, September 2, 1987, effective after December 18, 1986.

Subsec. 209(1) substituted by P.C. 1985-374, s. 1, February 7, 1985, *Canada Gazette*, Part II, February 20, 1985.

(2) The copies referred to in subsection (1) shall be sent to the taxpayer at his last known address or delivered to him in person, on or before the date the return is required to be filed with the Minister.

(3) A person may send a document, as required under subsection (1), in an electronic format if the person has received the express consent of the taxpayer, and in that case, the person shall send a single copy to the taxpayer, on or before the date on which the return referred to in subsection (1) is to be filed with the Minister.

History: Subsec. 209(3) added by P.C. 2002-2169, s. 4, December 12, 2002, *Canada Gazette*, Part II, January 1, 2003, effective January 1, 2003.

(4) In subsection (3), "express consent" means consent given in writing or in an electronic format.

History: Subsec. 209(4) added by P.C. 2002-2169, s. 4, December 12, 2002, *Canada Gazette*, Part II, January 1, 2003, effective January 1, 2003.

Definitions [Reg. 209]: "express consent" — Reg. 209(4); "Minister", "person", "taxpayer" — ITA 248(1).

210. Tax deduction information — Every person who makes or has at any time made a payment described in section 153 of the Act and every person who pays or credits or has at any time paid or credited, or is deemed by Part I or Part XIII of the Act to pay or credit or to have at any time paid or credited, an amount described in Part XIII of the Act shall, on demand by registered letter from the Minister make an information return in prescribed form containing the information required therein and shall file the return with the Minister within such reasonable time as may be stipulated in the registered letter.

Definitions [Reg. 210]: "amount", "Minister", "person", "prescribed" — ITA 248(1).

Forms: T4-T4A: Summary of remuneration paid.

211. Accrued bond interest — **(1)** Every financial company making a payment in respect of accrued interest by virtue of redemption, assignment or other transfer of a bond, debenture or similar security (other than an income bond, an income debenture or an investment contract in respect of which subsection 201(4) applies), shall make an information return in prescribed form.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns.

History: Subsec. 211(1) substituted by P.C. 1991-172, s. 2, January 31, 1991, *Canada Gazette*, Part II, February 13, 1991, applicable with respect to investment contracts acquired or materially altered after 1989.

(2) The return referred to in subsection (1) shall be forwarded to the Minister on or before the 15th day of the month following the month in which the payment referred to in subsection (1) is made.

(3) For the purposes of this section, a financial company includes a bank, an investment dealer, a stockbroker, a trust company and an insurance company.

(4) The provisions of subsection (1) do not apply to a payment made by one financial company to another financial company.

Definitions [Reg. 211]: "bank" — ITA 248(1), *Interpretation Act* 35(1); "financial company" — Reg. 211(3); "income bond", "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "prescribed" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

Forms: T600 or T600B: Ownership certificate.

212. Employees profit sharing plans — **(1)** Every trustee of an employees profit sharing plan shall make an information return in prescribed form.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

(2) Notwithstanding subsection (1), the return required under this section may be filed by the employer instead of by the trustee.

Related Provisions: Reg. 205 — Date return due.

Definitions [Reg. 212]: "employees profit sharing plan" — ITA 144(1), 248(1); "employer", "prescribed" — ITA 248(1).

Forms: T4PS: Statement of employee profit-sharing plan allocations and payments; T4PS Segment; T4PS Summ: Employee profit-sharing plan payments and allocations.

213. Electric, gas or steam corporations — **(1)** Every corporation engaged in the distribution or generation of electrical energy, gas or steam shall make an information return in prescribed form in respect of each taxation year of the corporation.

(2) The return required under this section shall be filed within 6 months from the end of the taxation year in respect of which the return is made.

Definitions [Reg. 213]: "corporation" — ITA 248(1), *Interpretation Act* 35(1); "month" — *Interpretation Act* 35(1); "prescribed" — ITA 248(1); "taxation year" — ITA 249.

214. Registered retirement savings plans — **(1)** Every person who pays any of the following amounts shall make an information return in prescribed form:

(a) an amount that is required by subsection 146(8) of the Act to be included in computing the income of a taxpayer for a taxation year;

(b) an amount that is an eligible amount, within the meaning of subsection 146.01(1) of the Act; or

(c) an amount that is an eligible amount, within the meaning of subsection 146.02(1) of the Act.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

History: Subsec. 214(1) amended by P.C. 2002-2169, subsec. 5(1), December 12, 2002, *Canada Gazette*, Part II, January 1, 2003, effective on the day on which ITA 146.01(8) is repealed (as proposed in draft legislation of Dec. 20, 2002). Para. 214(1)(b) is applicable to payments made in 2002 *et seq.*, and para. 214(1)(c) to payments made in 1999 *et seq.*

Forms: See at end of Reg. 214.

(2) Where, in a taxation year, subsection 146(6), (7), (9), or (10) of the Act is applicable in respect of a trust governed by a registered retirement savings plan, the trustee of such a plan shall make an information return in prescribed form.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

Forms: See at end of Reg. 214.

(3) Where, in respect of an amended plan referred to in subsection 146(12) of the Act, an amount is required to be included in computing the income of a taxpayer for a taxation year, the issuer of the plan shall make an information return in prescribed form.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

History: Subsec. 214(3) substituted by P.C. 1983-3835, s. 5, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

Forms: See at end of Reg. 214.

(4) Where subsection 146(8.8) of the Act deems an amount to be received by an annuitant as a benefit out of or under a registered retirement savings plan and such amount is required by subsection 146(8) of the Act to be included in computing the income of that annuitant for a taxation year, the issuer of the plan shall make an information return in prescribed form.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

History: Subsec. 214(4) substituted by P.C. 1983-3585, s. 5, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

Subsec. 214(4) added by P.C. 1980-1735, s. 3, June 26, 1980, *Canada Gazette*, Part II, July 9, 1980, effective June 30, 1978.

Forms: See at end of Reg. 214.

(5) If a payment or transfer of property to which subsection 146(16) of the Act applies is made, the issuer of the plan from which the payment or transfer was made shall make an information return in prescribed form in respect of the payment or transfer.

Proposed Amendment — Reg. 214(5)

(5) If a payment or transfer of property to which paragraph 146(16)(b) of the Act applies is made from a plan, the issuer of the plan shall make an information return in prescribed form in respect of the payment or transfer.

Application: The May 16, 2005 draft regulations (deferred income plans), s. 1, (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend subsec. 214(5) to read as above, applicable after 2002.

Regulatory Impact Analysis Statement: These amendments implement income tax measures announced in the 2003 and 2005 budgets, as well as make technical refinements to the existing regulatory structure. The amendments are to Parts II, XLIX, L, LI, LXXIII, LXXXII, LXXXIII and LXXXV of the *Income Tax Regulations* . . .

(a) Part II: information returns

Subsections 214(5) and 215(5) of the Regulations require the filing of information returns in connection with transfers from RRSPs and RRIFs. Subsection 214(5) is amended to correct an editorial error. Subsection 215(5) is amended as a consequence of a restructuring of subsection 146.3(14) of the Act. These amendments do not represent a change to existing reporting requirements. . . .

Alternatives

No alternatives were considered. These amendments implement measures announced in the 2003 and 2005 budgets and make technical refinements to the existing regulatory framework.

Benefits and costs

The RRSP and RRIF reporting changes [Reg. 214(5), 215(5) — ed.] are housekeeping in nature. The amendments to the qualified investment rules [Reg. 4900(1) — ed.] expand the investment options for deferred income plans and address technical concerns. The DPSP amendments [Reg. 8301(2), (15) — ed.] address technical concerns. The amendments to the PSPA rules [Reg. 8303(5) — ed.] ensure that accrued pension benefits can be improved to reflect increases to the defined benefit limit without reducing the plan member's RRSP contribution room. The amendments relating to unregistered retirement arrangements [Reg. 8308.1, 8309 — ed.] and the foreign property rules [Reg. 5000 — ed.] are consequential on changes to the Act. The money purchase RPP amendments [Reg. 7308(4), 8506 — ed.] will allow members to choose to benefit from the flexibility that a RRIF offers without having to assume greater responsibility for investment decisions or to pay the higher investment fees typically charged on individual plans. The revenue implications associated with these amendments are expected to be minimal.

The inclusion of paramedics in the list of public safety occupations [Reg. 8500(1) — ed.] recognizes the similarities of that occupation with the occupations of firefighter and police officer in relation to physical and perceptual job capabilities that decline with age and the aim of ensuring public safety. The extension of the 2.33 percent maximum pension accrual rate [Reg. 8503(3)(g)(i) — ed.] will ensure consistent treatment for all public safety occupations. The revenue implications associated with these two amendments were reflected in the 2005 budget.

Consultation

These amendments were developed in consultation with the Canada Revenue Agency, the Department of Justice and other interested parties.

The DPSP amendments were released in draft form, together with detailed explanatory notes, by the Department of Finance on December 20, 2002. No changes are being made to the proposed regulations as a result of this consultative process.

The changes to the provisions governing PSPAs, QLPs and money purchase RPPs were first announced in the 2003 budget. Proposed regulatory amendments to implement these budget measures and to modify the qualified investment rules were released by the Department of Finance on February 27, 2004, together with detailed explanatory notes. These regulations reflect a number of changes to the previously proposed regulations arising from consultations, which followed the February 2004 release.

Specifically, the revised qualified investment regulations relax or eliminate certain qualification conditions initially proposed in the February 2004 release.

The changes to the QLP rules (which apply only until the repeal of Part L of the Regulations) involve primarily the conditions applicable to the general partner and limited partners of a partnership. The draft regulations released in February 2004 were very specific as to how allocations to the general partner were to be determined. The revised regulations are less specific, thus giving more flexibility in determining how such allocations are to be determined. The revised regulations also impose certain conditions on the requirements for limited partners to make capital contributions to the partnership. Finally, the revised regulations further expand the list of allowable investments to include certain short-term investments in mutual fund trusts.

The changes to the PSPA rules respond to concerns that the PSPA relief initially proposed in the February 2004 release was too narrow. The revised regulations extend the proposed relief to benefit increases that occur after 2005, provided that certain additional conditions are satisfied. The revised regulations also provide relief to combination money purchase/defined benefit pension arrangements where the limit on benefits under the defined benefit component is determined by reference to a percentage of the current defined benefit limit. The PSPA amendments were also expanded to take into account the increases to the defined benefit limit announced in the 2005 budget.

The February 2004 release included a proposal that would have required earnings under a money purchase provision of an RPP to be allocated to members' accounts on at least a monthly basis, whereas the existing rules require only that allocations be made annually. The revised regulations do not contain this change. Instead, the minimum withdrawal rules for variable benefits take into account unallocated earnings.

The amendments to the qualified investment rules to allow investments in gold and silver, the foreign property amendments and the amendments relating to public safety occupations were announced in the 2005 budget.

Strategic environmental assessment

These amendments are not expected to have any significant environmental impact.

Contact: Dave Wurtele, Tax Legislation Division, Department of Finance, L'Esplanade Laurier, 140 O'Connor Street, Ottawa, Ontario K1A 0G5, (613) 992-4390.

Technical Notes, February 27, 2004: Subsection 214(5) requires issuers of registered retirement savings plans (RRSPs) to file information returns for transfers from RRSPs. It is intended that this reporting requirement apply only for transfers relating to a division of property arising on the breakdown of a marriage or common-law partnership. However, a recent amendment to subsection 214(5) inadvertently broadened the kinds of transfers to which it applies. Subsection 214(5) is amended to correct this result by replacing the reference in it to subsection ITA 146(16) with a reference to paragraph 146(16)(b), effective after 2002.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

History: Subsec. 214(5) amended by P.C. 2002-2169, subsec. 5(2), December 12, 2002, *Canada Gazette*, Part II, January 1, 2003, effective January 1, 2003.

Subsec. 214(5) amended by P.C. 2001-957, subsec. 2(1), May 31, 2001, *Canada Gazette*, Part II, June 20, 2001, applicable to 2001 *et seq.*, except that if a taxpayer and a person have jointly elected pursuant to s. 144 of the *Modernization of Benefits and Obligations Act* (S.C. 2000, c. 12), in respect of the 1998, 1999 or 2000 taxation year, the amendment applies to the taxpayer and the person in respect of the applicable taxation year *et seq.*

Subsec. 214(5) substituted by P.C. 1991-2540, s. 3, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable in respect of transfers and payments made after 1987.

Subsec. 214(5) added by P.C. 1983-3585, s. 5, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, applicable with respect to transfers and payments made on and after November 24, 1983.

Forms: See at end of Reg. 214.

(6) [Repealed]

History: Subsec. 214(6) repealed by P.C. 2002-2169, subsec. 5(3), December 12, 2002, *Canada Gazette*, Part II, January 1, 2003, effective January 1, 2003.

Subsec. 214(6) added by P.C. 1983-3585, s. 5, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

(7) In this section, "annuitant" and "issuer" have the meanings assigned by subsection 146(1) of the Act.

History: Subsec. 214(7) amended by P.C. 2002-2169, subsec. 5(4), December 12, 2002, *Canada Gazette*, Part II, January 1, 2003, effective January 1, 2003.

The definition "spouse" in subsec. 214(7) repealed by P.C. 2001-957, subsec. 2(2), May 31, 2001, *Canada Gazette*, Part II, June 20, 2001, applicable to 2001 *et seq.*, except that if a taxpayer and a person have jointly elected pursuant to s. 144 of the *Modernization of Benefits and Obligations Act* (S.C. 2000, c. 12), in respect of the 1998, 1999 or 2000 taxation year, the amendment applies to the taxpayer and the person in respect of the applicable taxation year *et seq.*

Subsec. 214(7) substituted by P.C. 1991-2540, s. 3, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable in respect of transfers and payments made after 1987.

Subsec. 214(7) added by P.C. 1983-3585, s. 5, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

Definitions [Reg. 214]: "amount" — ITA 248(1); "annuitant" — ITA 146(1), Reg. 214(7); "common-law partner" — ITA 248(1); "individual" — ITA 248(1); "issuer" — ITA 146(1), Reg. 214(7); "person", "prescribed" — ITA 248(1); "registered retirement savings plan" — ITA 146(1), 248(1); "spouse" — ITA 146(1.1), Reg. 214(7); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

Forms [Reg. 214]: T4RSP Segment; T4RSP Summ: Return of registered retirement savings plan income; T4RSP Supp: Statement of registered retirement savings plan income; T4031: Computer specifications for data filed on Magnetic Media — T5, T5008, T4RSP, T4RIF, NR4, and T3; T4079: T4RSP and T4RIF guide.

214.1 [RRSP contributions — annual return] — (1) The issuer of a registered retirement savings plan shall make an information return in prescribed form in respect of the amounts that have been paid by the annuitant, or by the spouse or common-law partner of the annuitant, under the plan in a contribution year

(a) as consideration for any contract referred to in paragraph (a) of the definition "retirement savings plan" in subsection 146(1) of the Act to pay a retirement income; or

(b) as a contribution or deposit referred to in paragraph (b) of that definition for the purpose stated in that paragraph.

(2) For greater certainty and for the purposes of subsection (1), amounts that have been paid do not include amounts that have been paid or transferred under the plan in accordance with subsection 146(16) of the Act, or those that have been transferred under the plan in accordance with any of subsections 146(21), 146.3(14), 147(19) or 147.3(1), (4) or (5) to (7) of the Act.

(3) The return shall be filed with the Minister on or before the 1st day of May of the year in which the contribution year ends and shall be in respect of the contribution year.

(4) The following definitions apply in this section.

"contribution year" means the period beginning on 61st day of one year and ending on the 60th day of the following year.

"issuer" has the same meaning as in subsection 146(1) of the Act, with any modifications that the circumstances require.

History: S. 2141.1 added by P.C. 2005-694, s. 2, May 3, 2005, *Canada Gazette*, Part II, May 18, 2005, applicable to payments or transfers received after March 1, 2004, by the issuers of registered retirement saving plans.

Definitions [Reg. 214.1]: "amount" — ITA 248(1); "contribution year", "issuer" — Reg. 214.1(3); "Minister", "prescribed" — ITA 248(1); "registered retirement savings plan" — ITA 146(1), 248(1).

215. Registered retirement income funds — (1) In this section, "annuitant" and "carrier" have the meanings assigned by subsection 146.3(1) of the Act.

History: Subsec. 215(1) amended by P.C. 2002-2169, subsec. 6(1), December 12, 2002, *Canada Gazette*, Part II, January 1, 2003, effective January 1, 2003.

(2) Every carrier of a registered retirement income fund who pays out of or under it an amount any portion of which is required under subsection 146.3(5) of the Act to be included in computing the income of a taxpayer shall make an information return in prescribed form in respect of the amount.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

Forms: T4RIF: Statement of income from a registered retirement income fund; T4RIF Segment; T4RIF Summary; T4031: Computer specifications for data filed on Magnetic Media — T5, T5008, T4RSP, T4RIF, NR4, and T3; T4079: T4RSP and T4RIF guide.

(3) Where subsection 146.3(4), (7), (8) or (10) of the Act applies in respect of any transaction or event with respect to property of a registered retirement income fund, the carrier of the fund shall make an information return in prescribed form in respect of the transaction or event.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

Forms: T4RIF: Statement of income from a registered retirement income fund; T4RIF Segment; T4RIF Summary; T4031: Computer specifications for data filed on Magnetic Media — T5, T5008, T4RSP, T4RIF, NR4, and T3; T4079: T4RSP and T4RIF guide.

(4) Where an amount is deemed under subsection 146.3(6) or (12) of the Act to be received by an annuitant out of or under a registered retirement income fund, the carrier of the fund shall make an information return in prescribed form in respect of the amount.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

Forms: T4RIF: Statement of income from a registered retirement income fund; T4RIF Segment; T4RIF Summary; T4031: Computer specifications for data filed on Magnetic Media — T5, T5008, T4RSP, T4RIF, NR4, and T3; T4079: T4RSP and T4RIF guide.

(5) If a transfer of an amount to which paragraph 146.3(14)(b) of the Act applies is made, the carrier of the fund from which the transfer is made shall make an information return in prescribed form in respect of the transfer.

Proposed Amendment — Reg. 215(5)

(5) If a transfer of an amount to which subsection 146.3(14) of the Act applies is made from a fund, the carrier of the fund shall make an information return in prescribed form in respect of the transfer.

Application: The May 16, 2005 draft regulations (deferred income plans), s. 2, (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend subsec. 215(5) to read as above, applicable after 2003.

Regulatory Impact Analysis Statement: See under Reg. 214(5).

Technical Notes, February 27, 2004: Subsection 215(5) requires carriers of registered retirement income funds (RRIFs) to file information returns for transfers from RRIFs relating to a division of property arising on the breakdown of a marriage or common-law partnership. Subsection 215(5) is amended, effective after 2003, to replace the reference to paragraph 146.3(14)(b) of the Act with a reference to subsection 146.3(14). This amendment is strictly consequential to a restructuring of subsection 146.3(14) and does not represent a change to existing reporting requirements.

Related Provisions [Reg. 215(5)]: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

History: Subsec. 215(5) added by P.C. 2002-2169, subsec. 6(2), December 12, 2002, *Canada Gazette*, Part II, January 1, 2003, applicable to transfers made in 2002 *et seq.*

History [Reg. 215]: S. 215 added by P.C. 1984-3917, December 6, 1984, *Canada Gazette*, Part II, December 26, 1984.

Former s. 215 repealed by P.C. 1984-3789, s. 1, November 29, 1984, *Canada Gazette*, Part II, December 12, 1984.

Definitions [Reg. 215]: "amount" — ITA 248(1); "annuitant" — ITA 146.3(1), Reg. 215(1); "carrier" — ITA 146.3(1), Reg. 215(1); "prescribed", "property" — ITA 248(1); "registered retirement income fund" — ITA 146.3(1), 248(1); "taxpayer" — ITA 248(1).

216. Registered Canadian amateur athletic associations — (1) Every registered Canadian amateur athletic association shall make an information return in prescribed form for each fiscal period of the association within six months after the end of the fiscal period.

History: Subsec. 216(1) substituted by P.C. 1986-2590, s. 2, November 20, 1986, *Canada Gazette*, Part II, December 10, 1986, applicable to 1984 *et seq.*

Interpretation Bulletins: IT-496R: Non-profit organizations.

(2) For the purposes of this section, "fiscal period" means the period for which the accounts of the registered Canadian amateur athletic association have been ordinarily made up and, in the absence of an established practice, the fiscal period is that adopted by the association but no such fiscal period shall exceed 12 months.

Definitions [Reg. 216]: "fiscal period" — Reg. 216(2); "month" — *Interpretation Act* 35(1); "prescribed", "registered Canadian amateur athletic association" — ITA 248(1).

Forms [Reg. 216]: T2052: Registered charities and registered Canadian amateur athletic associations — Return of information.

217. Disposition of interest in annuities and life insurance policies — (1) In this section,

"disposition" has the meaning assigned by subsection 148(9) of the Act and includes anything deemed to be a disposition of a life insurance policy under subsection 148(2) of the Act;

"insurer" has the meaning assigned by paragraph 148(10)(a) of the Act;

"life insurance policy" has the meaning assigned by subsection 138(12) of the Act.

(2) Where by reason of a disposition of an interest in a life insurance policy an amount is required, pursuant to paragraph 56(1)(j) of the Act, to be included in computing the income of a taxpayer and the insurer that is the issuer of the policy is a party to, or is notified in writing of, the disposition, the insurer shall make an information return in prescribed form in respect of the amount.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

History: The definitions "disposition" and "life insurance policy" in subsec. 217(1) amended by P.C. 2002-2169, s. 7, December 12, 2002, *Canada Gazette*, Part II, January 1, 2003, effective January 1, 2003.

S. 217 substituted by P.C. 1984-3917, December 6, 1984, *Canada Gazette*, Part II, December 26, 1984.

S. 217 substituted by P.C. 1978-1585, May 11, 1978, *Canada Gazette*, Part II, May 24, 1978.

Definitions [Reg. 217]: "amount" — ITA 248(1); "disposition" — ITA 248(1), Reg. 217(1); "insurer" — ITA 148(10)(a), Reg. 217(1); "life insurance policy" — ITA 138(12), Reg. 217(1); "prescribed", "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Forms: T5: Statement of investment income; T5 Summ: Return of investment income.

218. Patronage payments — (1) Every person who, within the meaning of section 135 of the Act, makes payments to residents of Canada pursuant to an allocation in proportion to patronage shall make an information return in prescribed form in respect of payments so made.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

(2) Every person who receives a payment referred to in subsection (1) as nominee or agent for another person resident in Canada shall make an information return in prescribed form in respect of the payment so received.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

Definitions [Reg. 218]: "Canada" — ITA 255, *Interpretation Act* 35(1); "person", "prescribed" — ITA 248(1); "resident", "resident in Canada" — ITA 250.

Forms [Reg. 218]: RC4157(E): Employers' Guide: Filing the T4A Slip and Summary Form; T4A: Statement of pension, retirement, annuity and other income; T4A Segment; T4A Summ: Summary of pension, retirement, annuity and other income.

219. [Repealed]

History: S. 219 repealed by P.C. 2002-2169, s. 8, December 12, 2002, *Canada Gazette*, Part II, January 1, 2003, effective January 1, 2003.

220. Cash bonus payments on Canada Savings Bonds — (1) Every person authorized to redeem Canada Savings Bonds (in this section referred to as the "redemption agent") who pays an amount in respect of a Canada Savings Bond as a cash bonus that the Government of Canada has undertaken to pay (other than any amount of interest, bonus or principal agreed to be paid at the time of the issue of the bond under the terms of the bond) shall make an information return in prescribed form in respect of such payment.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns.

(2) Every redemption agent required by subsection (1) to make an information return shall

(a) issue to the payee, at the time the cash bonus is paid, two copies of the portion of the return relating to him; and

(b) file the return with the Minister on or before the 15th day of the month following the month in which the cash bonus was paid.

Definitions [Reg. 220]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "person", "prescribed" — ITA 248(1); "redemption agent" — Reg. 220(1).

221. Qualified investments and foreign property —

Proposed Amendment — Reg. 221 heading

Application: The May 16, 2005 draft regulations (deferred income plans), s. 3, (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend the heading to s. 221 by deleting "and foreign property", deemed to have come into force June 29, 2005

Regulatory Impact Analysis Statement: Section 221 requires certain types of corporations and trusts to file an information return in respect of a taxation year whenever the corporation or trust makes certain claims with regard to the foreign property rule in Part XI of the Act or the eligibility of its shares or units for investment by deferred income plans. Section 221 is

amended to reflect the repeal of Part XI in the *Budget Implementation Act, 2005*.

[See also under Reg. 214(5).]

(1) In this section, "reporting person" means

(a) a mutual fund corporation;

(b) an investment corporation;

(c) a mutual fund trust;

(d) a pooled fund trust (within the meaning assigned by subsection 5000(7));

(e) a resource property trust (within the meaning assigned by subsection 5000(7));

(f) a trust that would be a mutual fund trust if Part XLVIII were read without reference to paragraph 4801(b);

(g) a trust described in paragraph 65(1)(c) of the *Income Tax Application Rules*;

(h) a small business investment trust (within the meaning assigned by subsection 5103(1)); or

(i) a trust described in paragraph 149(1)(o.4) of the Act.

Proposed Repeal — Reg. 221(1)(d), (e), (g) and (i)

Application: The May 16, 2005 draft regulations (deferred income plans), s. 4, (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will repeal paras. 221(d), (e), (g) and (i), deemed to have come into force June 29, 2005

Regulatory Impact Analysis Statement: See under Reg. 221 heading above and also under Reg. 214(5).

(2) Where in any taxation year a reporting person (other than a registered investment) claims that a share of its capital stock issued by it, or an interest as a beneficiary under it, is a qualified investment under section 146, 146.1, 146.3 or 204 of the Act, the reporting person shall, in respect of the year and within 90 days after the end of the year, make an information return in prescribed form.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns.

(3) Where in any taxation year a reporting person (other than a registered investment) claims that a share of its capital stock issued by it, or that an interest of a beneficiary under it, is not foreign property for the purpose of section 206 of the Act, the reporting person shall, in respect of the year and within 90 days after the end of the year, make an information return in prescribed form.

Proposed Repeal — Reg. 221(3)

Application: The May 16, 2005 draft regulations (deferred income plans), s. 4, (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will repeal subsec 221(3), deemed to have come into force June 29, 2005

Regulatory Impact Analysis Statement: See under Reg. 221 heading above and also under Reg. 214(5).

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns.

History: Subsec. 221(2) amended to add reference to ITA 146.1 by P.C. 2001-1106, s. 1, June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to 1999 *et seq.*

S. 221 amended by P.C. 2000-183, s. 1, February 17, 2000, *Canada Gazette*, Part II, March 1, 2000, applicable to taxation years beginning after 1995.

Paras. 221(a) and (b) substituted by P.C. 1985-374, February 7, 1985, s. 2, *Canada Gazette*, Part II, February 20, 1985, applicable to taxation years commencing after 1983.

Definitions [Reg. 221]: "business" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "foreign property" — ITA 206(1); "investment corporation" — ITA 130(3), 248(1); "mutual fund corporation" — ITA 131(8), 248(1); "mutual fund trust" — ITA 132(6)–(7), 132.2(1)(q) [to be repealed], 132.2(3)(n) [draft], 248(1); "person", "prescribed", "property" — ITA 248(1); "registered investment" — ITA 204.4(1), 248(1); "reporting person" — Reg. 221(1); "share" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

Information Circulars: 78-14R3: Guidelines for trust companies, etc.

Forms: T3F: Investments prescribed to be qualified or not to be foreign property information return.

222. [Repealed]

History: S. 222 repealed by P.C. 2000-183, s. 1, February 17, 2000, *Canada Gazette*, Part II, March 1, 2000, applicable to taxation years beginning after 1995.

223. Registered home ownership savings plans — **(1)** Every person who, before May 23, 1985, pays an amount out of or under a registered home ownership savings plan to a resident of Canada as a beneficiary under the plan shall make an information return in prescribed form.

History: Subsec. 223(1) substituted by P.C. 1986-1103, subsec. 2(1), May 8, 1986, *Canada Gazette*, Part II, May 28, 1986.

Subsec. 223(1) substituted by P.C. 1983-3585, subsec. 6(1), November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

(2) Every trustee or depositary that is party to a registered home ownership savings plan the registration of which is revoked during a taxation year pursuant to subsection 146.2(7) or (7.1) of the Act shall make an information return in prescribed form with respect to any amount that is deemed by subsection 146.2(8) of the Act to have been received by the beneficiary of that plan.

History: Subsec. 223(2) substituted by P.C. 1983-3585, subsec. 6(1), November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

(3) Every trustee or depositary that is party to a registered home ownership savings plan, the beneficiary of which is a resident of Canada and has been deemed by subsection 146.2(9) of the Act to have received an amount during a taxation year and before May 23, 1985, shall make an information return in prescribed form.

History: Subsec. 223(3) substituted by P.C. 1986-1103, subsec. 2(2), May 8, 1986, *Canada Gazette*, Part II, May 28, 1986.

Subsec. 223(3) substituted by P.C. 1983-3585, subsec. 6(1), November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

(3.1) Every trustee or depositary that, after May 22, 1985 and before 1986, was a party to a registered home ownership savings plan, any of the income of which is required by subsection 146.2(22) of the Act to be included in computing the income of a taxpayer for the 1985 taxation year, shall make an information return in prescribed form.

History: Subsec. 223(3.1) added by P.C. 1986-1103, subsec. 2(2), May 8, 1986, *Canada Gazette*, Part II, May 28, 1986.

(4) Every trustee of a trust governed by a registered home ownership savings plan shall make an information return in prescribed form, where in a taxation year a taxpayer who is a beneficiary under the plan

(a) is required pursuant to subsection 146.2(12) or (15) of the Act to include an amount in computing his income; or

(b) is allowed pursuant to subsection 146.2(13) or (16) of the Act to deduct an amount in computing his income.

(5) In this section

"beneficiary" has the meaning assigned by paragraph 146.2(1)(a) of the Act as it read in its application to the 1985 taxation year;

"depositary" has the meaning assigned by subparagraph 146.2(1)(d)(ii) of the Act as it read in its application to the 1985 taxation year;

"registered home ownership savings plan" has the meaning assigned by paragraph 146.2(1)(h) of the Act as it read in its application to the 1985 taxation year.

History: The definitions "beneficiary" and "depositary" substituted and "registered home ownership savings plan" added by P.C. 1986-1103, subsec. 2(3), May 8, 1986, *Canada Gazette*, Part II, May 28, 1986.

Subsec. 223(5) added by P.C. 1983-3585, subsec. 6(2), November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

Definitions [Reg. 223]: "amount" — ITA 248(1); "beneficiary" — Reg. 223(5); "Canada" — ITA 255, *Interpretation Act* 35(1); "depositary" — Reg. 223(5); "person", "prescribed" — ITA 248(1); "registered home ownership savings plan" — Reg. 223(5); "resident of Canada" — ITA 250; "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

224. Canadian home insulation program and Canada oil substitution program — Where an amount has been paid to a person pursuant to a program prescribed for the purposes of paragraph 12(1)(u), 56(1)(s) and 212(1)(s) of the Act, the payor shall

(a) make an information return in prescribed form in respect of such payment; and

(b) forward to the person at his latest known address on or before the date the return is required to be filed with the Minister two copies of the portion of the return relating to that person.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns.

History: The heading preceding s. 224 and all that portion of s. 224 preceding para. (a) substituted by P.C. 1981-3209, s. 4, November 12, 1981, *Canada Gazette*, Part II, November 25, 1981, effective in respect of 1981 *et seq.* except that with respect to the references to para. 212(1)(s) of the Act effective in respect of grants paid or credited after 1980.

S. 224 added by P.C. 1978-1139, s. 1, April 13, 1978, *Canada Gazette*, Part II, April 26, 1978, applicable to the 1977 and subsequent taxation years, except that any information return that is required to be filed pursuant to this section before the coming into force of this Order, may be filed at any time before or within one month after the coming into force of this Order.

Definitions [Reg. 224]: "amount", "Minister", "person", "prescribed" — ITA 248(1).

225. Certified films and video tapes — **(1)** Where principal photography or taping of a film or tape (within the meanings assigned by subsection 1100(21)) has occurred during a year or has been completed within 60 days after the end of the year, the producer of the film or tape or production company that produced the film or tape, or an agent of the producer or production company, shall

(a) make an information return in prescribed form in respect of any person who owns an interest in the film or tape at the end of the year; and

(b) forward to the person referred to in paragraph (a) at his latest known address on or before the date the return is required to be filed with the Minister two copies of the portion of the return relating to that person.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns.

(2) The return required under this section shall be filed on or before March 31 and shall be in respect of the preceding calendar year.

History: S. 225 added by P.C. 1982-279, January 28, 1982, *Canada Gazette*, Part II, February 10, 1982, effective in respect of 1981 *et seq.*

Definitions [Reg. 225]: "film or tape" — Reg. 1100(21); "Minister", "person", "prescribed" — ITA 248(1).

Forms: T1-CP Summ: Summary of certified productions.

226. Scientific research tax credits — **(1)** In this section,

"administrator" has the meaning assigned by paragraph 47.1(1)(a) of the Act;

"designated security" means a security issued or granted by a corporation in respect of which the corporation has designated an amount pursuant to subsection 194(4) of the Act;

"first purchaser" in relation to a designated security, means the first person (other than a trader or dealer in securities) to be the registered holder of the designated security;

"security" means

(a) a share of the capital stock of a corporation,

(b) a debt obligation issued by a corporation, or

(c) a right granted by a corporation under a scientific research financing contract;

"trader or dealer in securities" has the meaning assigned by paragraph 47.1(1)(l) of the Act.

(2) Each corporation that has designated an amount under subsection 194(4) of the Act in respect of a security issued or granted by it shall make an information return in prescribed form in respect of each such security.

(3) Each trader or dealer in securities who has acquired and disposed of a designated security during the course of the primary distribution thereof pursuant to a public offering shall make an information return in prescribed form in respect of each such designated security.

(4) Each bank, credit union and trust company that, as agent, acquired a designated security for the first purchaser thereof shall make an information return in prescribed form in respect of each such designated security.

(5) Each trader or dealer in securities who, as administrator of an indexed security investment plan, acquired a designated security for the first purchaser thereof shall make an information return in prescribed form in respect of each such designated security.

(6) Notwithstanding subsection 205(1), any return required to be made

(a) under subsection (2), in respect of a security issued by a corporation before March 1, 1984,

(b) under subsection (3), in respect of a designated security disposed of as described in subsection (3) before March 1, 1984, or

(c) under subsection (4) or (5), in respect of a designated security acquired as described in subsection (4) or (5), as the case may be, before March 1, 1984,

shall be filed on or before March 31, 1984.

Definitions [Reg. 226]: "administrator" — ITA 47.1(1)(a), Reg. 226(1); "amount" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "designated security" — Reg. 226(1); "disposed" — ITA 248(1)"disposition"; "first purchaser" — Reg. 226(1); "prescribed" —

ITA 248(1); "security", "trader or dealer in securities" — Reg. 226(1); "trust" — ITA 104(1), 248(1), (3).

227. Share purchase tax credits — (1) In this section,

"administrator" has the meaning assigned by paragraph 47.1(1)(a) of the Act;

"designated share" means a share of the capital stock of a corporation in respect of which the corporation has designated an amount pursuant to subsection 192(4) of the Act;

"first purchaser", in relation to a designated share, means the first person (other than a trader or dealer in securities) to be the registered holder of the share;

"trader or dealer in securities" has the meaning assigned by paragraph 47.1(1)(l) of the Act.

(2) Each corporation that has designated an amount under subsection 192(4) of the Act in respect of a share issued by it shall make an information return in prescribed form in respect of each such share.

(3) Each trader or dealer in securities who has acquired and disposed of a designated share during the course of the primary distribution thereof pursuant to a public offering shall make an information return in prescribed form in respect of each such designated share.

(4) Each bank, credit union and trust company that, as agent, acquired a designated share for the first purchaser thereof shall make an information return in prescribed form in respect of each such designated share.

(5) Each trader or dealer in securities who, as administrator of an indexed security investment plan, acquired a designated share for the first purchaser thereof shall make an information return in prescribed form in respect of each such designated share.

Definitions [Reg. 227]: "administrator" — ITA 47.1(1)(a), Reg. 227(1); "amount" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "designated share" — Reg. 227(1); "disposed" — ITA 248(1)"disposition"; "first purchaser" — Reg. 227(1); "indexed security investment plan" — ITA 47.1 [repealed]; "prescribed" — ITA 248(1); "share" — ITA 248(1); "trader or dealer in securities" — Reg. 227(1); "trust" — ITA 104(1), 248(1), (3).

History: Ss. 226 and 227 added by P.C. 1985-374, February 7, 1985, s. 3, *Canada Gazette*, Part II, February 20, 1985, applicable to shares and debts issued, rights granted and acquisitions and dispositions occurring after 1982.

228. Resource flow-through shares — (1) Each corporation that has renounced an amount under subsection 66(12.6), (12.601), (12.62) or (12.64) of the Act to a person shall make an information return in prescribed form in respect of the amount renounced.

(2) The return required under subsection (1) shall be filed with the Minister together with the prescribed form required to be filed under subsection 66(12.7) of the Act in respect of the amount renounced.

Related Provisions [Reg. 228]: Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

History: Subsec. 228(1) amended by P.C. 1996-494, s. 1, April 16, 1996, *Canada Gazette*, Part II, May 1, 1996, applicable after December 2, 1992.

S. 228 added by P.C. 1987-1681, s. 2, August 14, 1987, *Canada Gazette*, Part II, September 2, 1987, effective after December 18, 1986.

Definitions [Reg. 228]: "amount" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "Minister", "person", "prescribed" — ITA 248(1).

Forms: T2 SCH 12: Resource-related deductions; T101: Statement of resource expense; T101A: Claim for renouncing CEEs and CDEs; T101B: Claim for adjustments to CEEs and CDEs previously renonounced; T101C: Part XII.6 tax return; T101D: Summary of assistance; T1229: Statement of exploration and development expenses and depletion allowances.

229. Partnership return — (1) Every member of a partnership that carries on a business in Canada, or that is a Canadian partnership, at any time in a fiscal period of the partnership shall make for that period an information return in prescribed form containing the following information:

(a) the income or loss of the partnership for the fiscal period;

(b) the name, address and, in the case of an individual, the social insurance number of each member of the partnership who is entitled to a share referred to in paragraph (c) or (d) for the fiscal period;

(c) the share of each member of the income or loss of the partnership for the fiscal period;

(d) the share of each member for the fiscal period of each deduction, credit or other amount in respect of the partnership that is relevant in determining the member's income, taxable income, tax payable or other amount under the Act;

(e) the prescribed information contained in the form prescribed for the purposes of subsection 37(1) of the Act, where the partnership has made an expenditure in respect of scientific research and experimental development in the fiscal period; and

(f) such other information as may be required by the prescribed form.

Related Provisions: ITA 96(1) — Taxation of partnership income; ITA 152(1.4) — Determination by CCRA of income or loss of partnership; ITA 233.1(3) — Information return for partnership re non-arm's length transactions with non-residents; ITA 233.3 — Requirement to file information return re foreign property; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer; Reg. 229(2) — Only one partner need file; Reg. 236 — Partners to provide information.

Information Circulars: 82-2R2: SIN legislation that relates to the preparation of information slips; 89-5R: Partnership information return.

Forms: T1229: Statement of exploration and development expenses and depletion allowances; T4068: Guide for the partnership information return; T5011: Application for a partnership's filer identification number; T5013: Statement of partnership income; T5013 Summ: Partnership information return; T5014: Partnership capital cost allowance schedule; T5015: Reconciliation of partner's capital account; T5016: Summary information for tax shelters that are partnerships or for partnerships that allocated renounced resource expenses to their members; T5017: Calculation of deduction for cumulative eligible capital of a partnership.

(2) For the purposes of subsection (1), an information return made by any member of a partnership shall be deemed to have been made by each member of the partnership.

(3) Every person who holds an interest in a partnership as nominee or agent for another person shall make an information return in prescribed form in respect of that interest.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

(4) [Revoked]

(5) Subject to subsection (6), a return required by this section shall be filed with the Minister without notice or demand

(a) in the case of a fiscal period of a partnership all the members of which are corporations throughout the fiscal period, within five months after the end of the fiscal period;

(b) in the case of a fiscal period of a partnership all the members of which are individuals throughout the fiscal period, on or before the last day of March in the calendar year immediately following the calendar year in which the fiscal period ended or with which the fiscal period ended coincidentally; and

(c) in the case of any other fiscal period of a partnership, on or before the earlier of

(i) the day that is five months after the end of the fiscal period, and

(ii) the last day of March in the calendar year immediately following the calendar year in which the fiscal period ended or with which the fiscal period ended coincidentally.

Forms: See under Reg. 229(1).

(6) Where a partnership discontinues its business or activity, the return required under this section shall be filed, in respect of any fiscal period or portion thereof prior to the discontinuance of the business or activity for which a return has not previously been filed under this section, on or before the earlier of

(a) the day that is 90 days after the discontinuance of the business or activity, and

(b) the day the return is required to be filed under subsection (5).

History: Subsec. 229(4) revoked by P.C. 1993-1691, August 26, 1993, *Canada Gazette*, Part II, September 8, 1993.

S. 229 added by P.C. 1989-2156, s. 2, October 26, 1989, *Canada Gazette*, Part II, November 8, 1989, subsecs. (1) to (5) applicable

(a) in the case of a fiscal period of a partnership all the members of which are corporations throughout the fiscal period, in respect of fiscal periods ending after August 31, 1989, and

(b) in any other case, in respect of fiscal periods ending after December 31, 1988,

except that a return that is required by subsection 229(5) to be filed at any time before March 31, 1990 may be filed on or before that date.

Subsec. (6) is applicable in respect of the discontinuance of the business or activity of a partnership occurring after December 31, 1989.

Selected Cases [Reg. 229]: *Katepwa Park Golf Partnership v. R.*, [2000] 3 C.T.C. 2043 (TCC) (Provision sufficiently unclear to make delay mandatory).

Definitions [Reg. 229]: "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "carries on a business in Canada" — ITA 253; "corporation" — ITA 248(1), *Interpretation Act* 35(1); "fiscal period" — ITA 249.1; "individual", "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "person", "prescribed", "scientific research and experimental development", "share", "taxable income" — ITA 248(1).

230. Security transactions — (1) In this section,

"publicly traded" means, with respect to any security,

(a) a security that is listed or posted for trading on a stock exchange, commodity exchange, futures exchange or any other exchange, or

(b) a security in respect of the sale and distribution of which a prospectus, registration statement or similar document has been filed with a public authority;

"sale" includes the granting of an option and a short sale;

"security" means

(a) a publicly traded share of the capital stock of a corporation,

(b) a publicly traded debt obligation,

(c) a debt obligation of or guaranteed by

(i) the Government of Canada,

(ii) the government of a province or an agent thereof,

(iii) a municipality in Canada,

(iv) a municipal or public body performing a function of government in Canada, or

(v) the government of a foreign country or of a political subdivision of a foreign country or a local authority of such a government,

(d) a publicly traded interest in a trust,

(e) a publicly traded interest in a partnership,

(f) an option or contract in respect of any property described in any of paragraphs (a) to (e), or

(g) a publicly traded option or contract in respect of any property including any commodity, financial futures, foreign currency or precious metal or in respect of any index relating to any property;

"trader or dealer in securities" means

(a) a person who is registered or licensed under the laws of a province to trade in securities, or

(b) a person who in the ordinary course of business makes sales of securities as agent on behalf of others.

(2) [Information return on trading — T5008] — Every trader or dealer in securities who, in a calendar year, purchases a security as principal or sells a security as agent for any vendor shall make an information return for the year in prescribed form in respect of the purchase or sale.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer; Reg. 230(7) — Exceptions.

Forms: T5008: Statement of securities transactions; T5008 Summ: Return of securities transactions.

(3) [Information return on redeeming securities] — Every person (other than an individual who is not a trust) who in a calendar year redeems, acquires or cancels in any manner whatever any securities issued by that person shall make an information return for the year in prescribed form in respect of each such transaction, other than a transaction to which section 51, 51.1, 86 (if there is no consideration receivable other than new shares) or 87 or subsection 98(3) or (6) of the Act applies.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer; Reg. 230(4) — Application.

(4) [Application of subsec. (3)] — Subsection (3) applies to

(a) Her Majesty in right of Canada or a province;

(b) a municipal or public body performing a function of government in Canada; and

(c) an agent of a person referred to in paragraph (a) or (b).

(5) [Gold and silver] — Every person who, in the ordinary course of a business of buying and selling precious metals in the form of certificates, bullion or coins, makes a payment in a calendar year to another person in respect

of a sale by that other person of any such property shall make an information return for that year in prescribed form in respect of each such sale.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

(6) [Nominee or agent] — Every person who, while acting as nominee or agent for another person in respect of a sale or other transaction to which subsection (2), (3) or (5) applies, receives the proceeds of the sale or other transaction shall, where the transaction is carried out in the name of the nominee or agent, make an information return in prescribed form in respect of the sale or other transaction.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer; Reg. 230(7) — Exceptions.

(7) [Exceptions] — This section does not apply in respect of

(a) a purchase of a security by a trader or dealer in securities from another trader or dealer in securities other than a non-resident trader or dealer in securities;

(b) a sale of currencies or precious metals in the form of jewellery, works of art or numismatic coins;

(c) a sale of precious metals by a person who, in the ordinary course of business, produces or sells precious metals in bulk or in commercial quantities;

(d) a sale of securities by a trader or dealer in securities on behalf of a person who is exempt from tax under Part I of the Act; or

(e) a redemption by the issuer or an agent of the issuer of a debt obligation where

(i) the debt obligation was issued for its principal amount,

(ii) the redemption satisfies all of the issuer's obligations in respect of the debt obligation,

(iii) each person with an interest in the debt obligation is entitled in respect thereof to a proportion of all payments of principal equal to the proportion to which the person is entitled of all payments other than principal, and

(iv) an information return is required under another section of this Part to be made as a result of the redemption in respect of each person with an interest in the debt obligation.

Related Provisions: Reg. 205 — Date return due.

History: Subsec. 230(3) amended by P.C. 2002-2169, s. 9, December 12, 2002, *Canada Gazette*, Part II, January 1, 2003, effective January 1, 2003.

S. 230 added by P.C. 1989-2156, s. 2, October 26, 1989, *Canada Gazette*, Part II, November 8, 1989, applicable in respect of purchases, sales, redemptions, acquisitions or cancellations of securities occurring after December 31, 1990.

Definitions [Reg. 230]: "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "foreign currency" — ITA 248(1); "Her Majesty" — *Interpretation Act* 35(1); "individual", "non-resident" — ITA 248(1); "person", "prescribed", "principal amount", "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "publicly traded", "sale", "security" — Reg. 230(1); "share" — ITA 248(1); "trader or dealer in securities" — Reg. 230(1); "trust" — ITA 104(1), 248(1), (3).

231. Information respecting tax shelters — (1) [Definitions] — In this section, "promoter" in respect of a tax shelter and "tax shelter" have the meanings assigned by subsection 237.1(1) of the Act.

(2)–(5) [Repealed]

(6) [Prescribed benefit] — For the purposes of paragraph (b) of the definition "tax shelter" in subsection 237.1(1) of the Act, "prescribed benefit" in respect of an interest in a property means any amount that may reasonably be expected, having regard to statements or representations made in respect of the interest, to be received or enjoyed by a person (in this subsection referred to as "the purchaser") who acquires the interest, or a person with whom the purchaser does not deal at arm's length, which receipt or enjoyment would have the effect of reducing the impact of any loss that the purchaser may sustain in respect of the interest, and includes such an amount

(a) that is, either immediately or in the future, owed to any other person by the purchaser or a person with whom the purchaser does not deal at arm's length, to the extent that

(i) liability to pay that amount is contingent,

(ii) payment of that amount is or will be guaranteed by, security is or will be provided by, or an agreement to indemnify the other person to whom the amount is owed is or will be entered into by

(A) a promoter in respect of the interest,

(B) a person with whom the promoter does not deal at arm's length, or

(C) a person who is to receive a payment (other than a payment made by the purchaser) in respect of the guarantee, security or agreement to indemnify,

(iii) the rights of that other person against the purchaser, or against a person with whom the purchaser does not deal at arm's length, in respect of the collection of all or part of the purchase price are limited to a maximum amount, are enforceable only against certain property, or are otherwise limited by agreement, or

(iv) payment of that amount is to be made in a foreign currency or is to be determined by reference to its value in a foreign currency and it may reasonably be considered, having regard to the history of the exchange rate between the foreign currency and Canadian currency, that the aggregate of all such payments, when converted to Canadian currency at the exchange rate expected to prevail at the date on which each such payment would be required to be made, will be substantially less than that aggregate would be if each such payment was converted to Canadian currency at the time that each such payment became owing,

(b) that the purchaser or a person with whom the purchaser does not deal at arm's length is entitled at any time to, directly or indirectly, receive or have available

(i) as a form of assistance from a government, municipality or other public authority, whether as a grant, subsidy, forgiveable loan, deduction from tax or investment allowance, or as any other form of assistance, or

(ii) by reason of a revenue guarantee or other agreement in respect of which revenue may be earned by the purchaser or a person with whom the purchaser does not deal at arm's length, to the extent that the revenue guarantee or other agreement may reasonably be considered to ensure that the purchaser or person will receive a return of all or a

portion of the purchaser's outlays in respect of the interest,

Proposed Amendment — Reg. 231(6)(b)

Federal budget, Supplementary Information, February 18, 2003: In order to avoid a double counting of tax credits in the formula used to determine if a property or an arrangement is a tax shelter, it is proposed that the definition of "prescribed benefits" in paragraph 231(6)(b) of the *Income Tax Regulations* be amended to exclude any federal tax credit already taken into account in determining whether tax credits and deductions exceed net cost. Provincial tax credits would continue to be considered prescribed benefits.

[The rest of this proposal was enacted; see ITA 237.1(1)"gifting arrangement" and "tax shelter" — ed.]

(c) that is the proceeds of disposition to which the purchaser may be entitled by way of an agreement or other arrangement under which the purchaser has a right, either absolutely or contingently, to dispose of the interest (otherwise than as a consequence of the purchaser's death), including the fair market value of any property that the agreement or arrangement provides for the acquisition of in exchange for all or any part of the interest, and

(d) that is owed to a promoter, or a person with whom the promoter does not deal at arm's length, by the purchaser or a person with whom the purchaser does not deal at arm's length in respect of the interest,

but, except as otherwise provided in subparagraph (b)(ii), does not include profits earned in respect of the interest.

Related Provisions: Reg. 231(6.1) — Inclusion of certain limited-recourse amounts.

(6.1) [Prescribed benefit] — For the purpose of paragraph (b) of the definition "tax shelter" in subsection 237.1(1) of the Act, "prescribed benefit" in respect of an interest in a property includes an amount that is a limited-recourse amount because of subsection 143.2(1), (7) or (13) of the Act, but does not include an amount of indebtedness that is a limited-recourse amount

(a) solely because it is not required to be repaid within 10 years from the time the indebtedness arose where the debtor would, if the interest were acquired by the debtor immediately after that time, be

(i) a partnership

(A) at least 90% of the fair market value of the property of which is attributable to the partnership's tangible capital property located in Canada, and

(B) at least 90% of the value of all interests in which are held by limited partners (within the meaning assigned by subsection 96(2.4) of the Act) of the partnership,

except where it is reasonable to conclude that one of the main reasons for the acquisition of one or more properties by the partnership, or for the acquisition of one or more interests in the partnership by limited partners, is to avoid the application of this subsection, or

(ii) a member of a partnership having fewer than six members, except where

(A) the partnership is a member of another partnership,

(B) there is a limited partner (within the meaning assigned by subsection 96(2.4) of the Act) of the partnership,

(C) less than 90% of the fair market value of the partnership's property is attributable to the partnership's tangible capital property located in Canada, or

(D) it is reasonable to conclude that one of the main reasons for the existence of one of two or more partnerships, one of which is the partnership, or the acquisition of one or more properties by the partnership, is to avoid the application of this section to the member's indebtedness,

(b) of a partnership

(i) where

(A) the indebtedness is secured by and used to acquire the partnership's tangible capital property located in Canada (other than rental property, within the meaning assigned by subsection 1100(14), leasing property, within the meaning assigned by subsection 1100(17), or specified energy property, within the meaning assigned by subsection 1100(25)), and

(B) the person to whom the indebtedness is repayable is a member of the Canadian Payments Association, and

(ii) throughout the period during which any amount is outstanding in respect of the indebtedness,

(A) at least 90% of the fair market value of the property of which is attributable to tangible capital property located in Canada of the partnership,

(B) at least 90% of the value of all interests in which are held by limited partners (within the meaning assigned by subsection 96(2.4) of the Act) that are corporations, and

(C) the principal business of each such limited partner is related to the principal business of the partnership,

except where it is reasonable to conclude that one of the main reasons for the acquisition of one or more properties by the partnership, or for the acquisition of one or more interests in the partnership by limited partners, is to avoid the application of this subsection, or

(c) of a corporation where the amount is a *bona fide* business loan made to the corporation for the purpose of financing a business that the corporation operates and the loan is made pursuant to a loan program of the Government of Canada or of a province the purpose of which is to extend financing to small- and medium-sized businesses.

(7) [Prescribed property] — For the purposes of the definition "tax shelter" in subsection 237.1(1) of the Act, "prescribed property" in relation to a tax shelter means property that is a registered pension plan, a registered retirement savings plan, a deferred profit sharing plan, a registered retirement income fund, a registered education savings plan or a property in respect of which paragraph 40(2)(i) of the Act is applicable.

History [Reg. 231]: Subsecs. 231(2) and (3) repealed by P.C. 2002-2169, s. 10, December 12, 2002, *Canada Gazette*, Part II, January 1, 2003, effective January 1, 2003.

The opening words of para. 231(6)(b) amended by P.C. 2001-1378, s. 1, August 1, 2001, *Canada Gazette*, Part II, August 15, 2001, effective August 15, 2001.

Subsec. 231(6.1) added by P.C. 2000-1000, subsec. 1(4), June 21, 2000, *Canada Gazette*, Part II, July 5, 2000, applicable after November 1994.

The portion of subsec. 231(6) before cl. (a)(ii)(B) and the portion after subpara. (b)(i) amended by the said P.C. 2000-1000, subsecs. 1(2), (3), applicable to taxation years ending after July 5, 2000.

Subsecs. 231(4) and (5) repealed by the said P.C. 2000-1000, subsec. 1(1), applicable after 1995.

Subsec. 231(7) amended by P.C. 1991-2540, s. 8, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable after 1985.

S. 231 added by P.C. 1989-2156, s. 2, October 26, 1989, *Canada Gazette*, Part II, November 8, 1989, applicable in respect of interests acquired after August 31, 1989.

Definitions [Reg. 231]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "associated" — ITA 256; "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "capital property" — ITA 54, 248(1); "consequence of the purchaser's death" — ITA 248(8); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "disposes" — ITA 248(1)"disposition"; "disposition", "foreign currency" — ITA 248(1); "limited-recourse amount" — ITA 143.2(1); "Minister" — ITA 248(1); "person" — ITA 248(1); "promoter" — ITA 237.1(1), Reg. 231(1); "property" — ITA 248(1); "registered education savings plan" — ITA 146.1(1), 248(1); "registered pension plan" — ITA 248(1); "related" — ITA 251(2)–(6); "security" — *Interpretation Act* 35(1); "tax shelter" — ITA 237.1(1), Reg. 231(1); "written" — *Interpretation Act* 35(1)"writing".

232. Workers' compensation — (1) [Information return — payment] — Every person who pays an amount in respect of compensation described in subparagraph 110(1)(f)(ii) of the Act shall make an information return in prescribed form in respect of that payment.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer; Reg. 232(4) — Exceptions.

Forms: T4115: T5007 guide — return of benefits (guide); T5007: Statement of benefits; T5007 Summ: Summary of benefit payments.

(2) [Information return — award] — Where a workers' compensation board, or a similar body, adjudicates a claim for compensation described in subparagraph 110(1)(f)(ii) of the Act and stipulates the amount of the award, that board or body shall make an information return in prescribed form in respect of the amount of the award.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer; Reg. 232(4) — Exceptions.

(3) [Deadline] — A return required under this section must be filed on or before the last day of February of each year and shall be in respect of

(a) the preceding calendar year, if the return is required under subsection (1); and

(b) the amount of the award that pertains to the preceding calendar year, if the return is required under subsection (2).

(4) [Exceptions] — Subsections (1) and (2) are not applicable in respect of a payment or an award in respect of

(a) medical expenses incurred by or on behalf of the employee;

(b) funeral expenses in respect of the employee;

(c) legal expenses in respect of the employee;

(d) job training or counselling of the employee; or

(e) the death of the employee, other than periodic payments made after the death of the employee.

Definitions [Reg. 232]: "amount", "employee", "person", "prescribed" — ITA 248(1).

233. Social assistance — (1) [Information return] — Every person who makes a payment described in paragraph 56(1)(u) of the Act shall make an information return in prescribed form in respect of the payment.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer; Reg. 233(2) — Exceptions.

Forms: T4115: T5007 guide — return of benefits (guide); T5007 Summ: Return of benefit payments — summary; T5007 Supp: Statement of benefits.

(2) [Exceptions] — Subsection (1) is not applicable in respect of a payment that

(a) is in respect of medical expenses incurred by or on behalf of the payee;

(b) is in respect of child care expenses, within the meaning assigned by paragraph 63(3)(a) [63(3)"child care expense"] of the Act, incurred by or on behalf of the payee or a person related to the payee;

(c) is in respect of funeral expenses in respect of a person related to the payee;

(d) is in respect of legal expenses incurred by or on behalf of the payee or a person related to the payee;

(e) is in respect of job training or counselling of the payee or a person related to the payee;

(f) is paid in a particular year as a part of a series of payments, the total of which in the particular year does not exceed $500; or

(g) is not a part of a series of payments.

Related Provisions: ITA 248(10) — Series of transactions; Reg. 205 — Date return due.

History: Ss. 232, 233 added by P.C. 1992-1567, s. 2, July 16, 1992, *Canada Gazette*, Part II, August 12, 1992, applicable to 1991 *et seq.*

Definitions [Reg. 233]: "child" — ITA 252(1); "person", "prescribed" — ITA 248(1); "related" — ITA 251(2)–(6); "series" — ITA 248(10).

234. Farm support payments — **(1)** Every government, municipality or municipal or other public body (in sections 235 and 236 referred to as the "government payer") or producer organization or association that makes a payment of an amount that is a farm support payment (other than an amount paid out of a net income stabilization account) to a person or partnership shall make an information return in prescribed form in respect of the amount.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent (or one emailed) to taxpayer.

Forms: AGR-1SUM: Return of farm support payments.

(2) For the purposes of subsection (1) "farm support payment" includes

(a) a payment that is computed with respect to an area of farm land;

(b) a payment that is made in respect of a unit of farm commodity grown or disposed of or a farm animal raised or disposed of; and

(c) a rebate of, or compensation for, all or a portion of

(i) a cost or capital cost incurred in respect of farming, or

(ii) unsowed or unplanted land or crops, or destroyed crops, farm animals or other farm output.

Related Provisions: Reg. 205 — Date return due; Reg. 235, 236 — Identification of recipients.

History: S. 234 added by P.C. 1993-1939, s. 4, December 2, 1993, *Canada Gazette*, Part II, December 15, 1993, applicable after 1993 in respect of amounts paid after 1992.

Definitions [Reg. 234]: "amount" — ITA 248(1); "disposed" — ITA 248(1)"disposition"; "farm support payment" — Reg. 234(2); "farming", "net income stabilization account" — ITA 248(1); "prescribed" — ITA 248(1).

235. Identifier information — Every corporation or trust for which an information return is required to be made under these Regulations by a government payer or by a producer organization or association shall provide its legal name, address and income tax identification number to the government payer or the producer organization or association, as the case may be.

History: S. 235 added by P.C. 1993-1939, s. 4, December 2, 1993, *Canada Gazette*, Part II, December 15, 1993, applicable after 1993 in respect of amounts paid after 1992.

Definitions [Reg. 235]: "corporation" — ITA 248(1), *Interpretation Act* 35(1); "government payer" — Reg. 234(1); "trust" — ITA 104(1), 248(1), (3).

236. [Members of partnership] — Every person who is a member of a partnership for which an information return is required to be made under these Regulations by a government payer or by a producer organization or association shall provide the government payer or the producer organization or association, as the case may be, with the following information:

(a) the person's legal name, address and Social Insurance Number, or, where the person is a trust or is not an individual, the person's income tax identification number; and

(b) the partnership's name and business address.

Related Provisions: Reg. 229 — Partnership information return.

History: S. 236 added by P.C. 1993-1939, s. 4, December 2, 1993, *Canada Gazette*, Part II, December 15, 1993, applicable after 1993 in respect of amounts paid after 1992.

Definitions [Reg. 236]: "business" — ITA 248(1); "government payer" — Reg. 234(1); "individual" — ITA 248(1); "person" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

Information Circulars: 82-2R2: SIN legislation that relates to the preparation of information slips.

237. Contract for goods and services [for federal government] — **(1)** The definitions in this subsection apply in this section.

"federal body" means a department or a Crown corporation, within the meaning of section 2 of the *Financial Administration Act*.

"payee" means a person or partnership to whom an amount is paid or credited in respect of goods for sale or lease, or services rendered, by or on behalf of the person or the partnership.

(2) [Information return] — A federal body that pays or credits an amount to a payee shall file an information return in prescribed form in respect of the amount on or before March 31 in each year in respect of the preceding calendar year.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 237(3) — Exceptions.

Forms: T1204: Government service contract payments; T4026: Government service contract payments; T4027: Statement of contract payments; T5011: Application for a partnership's filer identification number.

(3) [Exceptions] — Subsection (2) does not apply in respect of an amount

(a) all or substantially all of which is paid or credited in the year in respect of goods for sale or lease by the payee;

(b) to which section 212 of the Act applies;

(c) that is not required to be included in computing the income of the payee, if the payee is an employee of the federal body;

(d) that is paid or credited in respect of services rendered outside Canada by a payee who was not resident in Canada during the period in which the services were rendered; or

(e) that is paid or credited in respect of a program administered under the *Witness Protection Program Act* or any other similar program.

History [Reg. 237]: Para. 237(3)(b) amended to delete reference to ITA 153 by P.C. 2002-2169, s. 11, December 12, 2002, *Canada Gazette*, Part II, January 1, 2003, effective January 1, 2003.

S. 237 added by P.C. 1998-2274, s. 1, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, the definition "federal body" applicable to amounts paid or credited after 1998 except that for amounts paid or credited in 1998, the definition shall be read without the words "or Crown corporation", the remainder applicable to amounts paid or credited after 1997.

Definitions [Reg. 237]: "calendar year" — *Interpretation Act* 35(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "employee" — ITA 248(1); "federal body" — Reg. 237(1); "payee" — Reg. 237(1); "person" — ITA 248(1); "prescribed" — ITA 248(1); "resident in Canada" — ITA 250.

238. Reporting of payments in respect of construction activities — **(1) ["Construction activities"]** — In this section, "construction activities" includes the erection, excavation, installation, alteration, modification, repair, improvement, demolition, destruction, dismantling or removal of all or any part of a building, structure, surface or sub-surface construction, or any similar property.

Forms: T5018: Statement of contract payments; T5018 Summ: Summary of contract payments.

(2) [Information return] — Every person or partnership that pays or credits, in a reporting period, an amount in respect of goods or services rendered on their behalf in the course of construction activities shall make an information return in the prescribed form in respect of that amount, if the person's or partnership's business income for that reporting period is derived primarily from those activities.

Related Provisions: Reg. 238(5) — Exceptions.

Forms: T4027: Computer specifications for data filed on magnetic media — T5018; T5018: Statement of contract payments; T5018 Summ: Summary of contract payments; RC4406: Will you do it for cash? [pamphlet].

(3) [Reporting period] — The reporting period may be either on a calendar year basis or a fiscal period basis. Once a period is chosen, it cannot be changed for subsequent years, unless the Minister authorizes it.

(4) [Deadline] — The return shall be filed within six months after the end of the reporting period to which it pertains.

(5) [Exceptions] — Subsection (2) does not apply in respect of an amount

(a) all of which is paid or credited in the reporting period in respect of goods for sale or lease by the person or partnership;

(b) to which section 212 of the Act applies; or

(c) that is paid or credited in respect of services rendered outside Canada by a person or partnership who was not resident in Canada during the period in which the services were rendered.

History: Para. 238(5)(b) amended to delete reference to ITA 153 by P.C. 2002-2169, s. 12, December 12, 2002, *Canada Gazette*, Part II, January 1, 2003, effective January 1, 2003.

S. 238 added by P.C. 1999-2204, December 16, 1999, *Canada Gazette*, Part II, January 5, 2000, applicable to reporting periods that begin after 1998, except that the information return to be filed for the first reporting period is not required to be filed until June 30, 2000.

Definitions [Reg. 238]: "business" — ITA 248(1); "Canada" — ITA 255; "construction activities" — Reg. 238(1); "month" — *Interpretation Act* 35(1); "person", "prescribed", "property" — ITA 248(1); "reporting period" — Reg. 238(3); "resident in Canada" — ITA 250.

PART III — ANNUITIES AND LIFE INSURANCE POLICIES

History: Heading substituted by P.C. 1983-3530, subsec. 1(1), November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

Heading substituted by P.C. 1982-1421, subsec. 1(1), May 13, 1982, *Canada Gazette*, Part II, May 26, 1982.

Part III was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

Heading substituted by P.C. 1968-33, subsec. 1(1), January 4, 1968, *Canada Gazette*, Part II, January 24, 1968.

300. Capital element of annuity payments — (1) For the purposes of paragraphs 32.1(3)(b) and 60(a) of the Act, where an annuity is paid under a contract (other than an income-averaging annuity contract or an annuity contract purchased pursuant to a deferred profit sharing plan or pursuant to a plan referred to in subsection 147(15) of the Act as a "revoked plan") at a particular time, that part of the annuity payment determined in prescribed manner to be a return of capital is that proportion of a taxpayer's interest in the annuity payment that the adjusted purchase price of the taxpayer's interest in the contract at that particular time is of his interest, immediately before the commencement under the contract of payments to which paragraph 56(1)(d) of the Act applies, in the total of the payments

(a) to be made under the contract, in the case of a contract for a term of years certain; or

(b) expected to be made under the contract, in the case of a contract under which the continuation of the payments depends in whole or in part on the survival of an individual.

History: Subsec. 300(1) substituted by P.C. 1983-3530, subsec. 1(1), November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, applicable to taxation years commencing after 1982.

Subsec. 300(1) substituted by P.C. 1982-1421, subsec. 1(1), May 13, 1982, *Canada Gazette*, Part II, May 26, 1982, effective with respect to annuity contracts under which annuity payments commence after 1979 except that in its application to annuity contracts under which payments commence before 1982 it shall be read as follows:

300. (1) For the purposes of paragraphs 32.1(3)(b) and 60(a) of the Act, if an annuity is paid under a contract, the amount deemed to be a return of capital is that proportion of each annuity payment that the consideration for, or purchase price of, the contract is of the total of the payments

(a) to be made under the contract, in the case of a contract for a term of years certain; or

(b) expected to be made, in the case of a contract under which the continuation of the payments depends in whole or in part on the survival of an individual.

(1.1) For the purposes of subsections (1) and (2), "annuity payment" does not include any portion of a payment under a contract the amount of which cannot be reasonably determined immediately before the commencement of payments under the contract except where the payment of such portion cannot be so determined because the continuation of the annuity payments under the contract depends in whole or in part on the survival of an individual.

History: Subsec. 300(1.1) added by P.C. 1982-1421, subsec. 1(1), May 13, 1982, *Canada Gazette*, Part II, May 26, 1982, effective with respect to annuity contracts under which annuity payments commence after 1981.

(2) For the purposes of this section and section 305,

(a) where the continuance of the annuity payments under any contract depends in whole or in part on the survival of an individual, the total of the payments expected to be made under the contract

(i) shall, in the case of a contract that provides for equal payments and does not provide for a guaranteed period of payment, be equal to the product obtained by multiplying the aggregate of the annuity payments expected to be received throughout a year under the contract by the complete expectations of life using the table of mortality known as the *1971 Individual Annuity Mortality Table* as published in Volume XXIII of the *Transactions of the Society of Actuaries*, or

(ii) shall, in any other case, be calculated in accordance with subparagraph (i) with such modifications as the circumstances may require;

(b) except as provided in subsections (3) and (4), "adjusted purchase price" of a taxpayer's interest in an annuity contract at a particular time means the amount that would be determined at that time in respect of that interest under paragraph 148(9)(a) [148(9)"adjusted cost basis"] of the Act if that paragraph were read without reference to subparagraph (viii) [k] thereof;

(c) where the continuance of the annual payments under any contract depends on the survival of a person, the age of that person on any date as of which a calculation is being made shall be determined by subtracting the calendar year of his birth from the calendar year in which such date occurs; and

(d) where the continuance of the annual payments under any contract depends on the survival of a person, and where, in the event of the death of that person before the annual payments aggregate a stated sum, the contract provides that the unpaid balance of the stated sum shall be paid, either in a lump sum or instalments, then, for the purpose of determining the expected term of the contract, the contract shall be deemed to provide for the continuance of the payments thereunder for a minimum term certain equal to the nearest integral number of years required to complete the payment of the stated sum;

(e) [Revoked]

History: All that portion of subsec. 300(2) preceding para. (a), para. 300(2)(b) substituted by P.C. 1983-3530, subsecs. 1(2), 1(3), November 17, 1983, *Canada Gazette*, Part II, November 24, 1983. All that portion of subsec. 300(2) preceding para. (a), as substituted, applicable to taxation years commencing after 1982; paragraph 300(2)(b), as substituted, effective November 12, 1981. Para. 300(2)(e) revoked by P.C. 1983-3530, subsec. 1(4), November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, applicable to taxation years commencing after 1982.

Subpara. 300(2)(a)(i) substituted by P.C. 1982-2862, September 22, 1982, *Canada Gazette*, Part II, October 13, 1982, effective with respect to annuity contracts under which annuity payments commence after 1981.

Paras. 300(2)(a), (b) substituted by P.C. 1982-1421, subsec. 1(2), May 13, 1982, *Canada Gazette*, Part II, May 26, 1982, effective with respect to annuity contracts under which annuity payments commence after 1981.

(3) Where

(a) an annuity contract is a life annuity contract entered into before November 17, 1978 under which the annuity payments commence on the death of an individual,

(a.1) [Revoked]

(b) an annuity contract (other than an annuity contract described in paragraph (a)) is

(i) a life annuity contract entered into before October 23, 1968, or

(ii) any other annuity contract entered into before January 4, 1968,

under which the annuity payments commence

(iii) on the expiration of a term of years, and

(iv) before the later of January 1, 1970 or the tax anniversary date of the annuity contract,

the adjusted purchase price of a taxpayer's interest in the annuity contract shall be

(c) the lump sum, if any, that the person entitled to the annuity payments might have accepted in lieu thereof, at the date the annuity payments commence;

(d) if no lump sum described in paragraph (c) is provided for in the contract, the sum ascertainable from the contract as the present value of the annuity at the date the annuity payments commence; and

(e) if no lump sum described in paragraph (c) is provided for in the contract and no sum is ascertainable under paragraph (d),

(i) in the case of a contract issued under the *Government Annuities Act*, the premiums paid, accumulated with interest at the rate of four per cent per annum to the date the annuity payments commence, and

(ii) in the case of any other contract, the present value of the annuity payments at the date on which payments under the contract commence, computed by applying

(A) a rate of interest of four per cent per annum where the payments commence before 1972 and 5½ per cent per annum where the payments commence after 1971, and

(B) the provisions of subsection (2) where the payments depend on the survival of a person.

History: Para. 300(3)(a.1) revoked and para. 300(3)(b) substituted by P.C. 1983-3530, subsecs. 1(5) and 1(6), November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, applicable to taxation years commencing after 1982.

All that portion of subsec. 300(3) preceding para. (c) substituted by P.C. 1982-1421, subsec. 1(3), May 13, 1982, *Canada Gazette*, Part II, May 25, 1982, effective January 1, 1982.

(4) Where an annuity contract would be described in paragraph (3)(b) if the reference in subparagraph (iv) thereof to "before the later of" were read as a reference to "on or after the later of", the adjusted purchase price of a taxpayer's interest in the annuity contract at a particular time shall be the greater of

(a) the aggregate of

(i) the amount that would be determined in respect of that interest under paragraph (3)(c), (d) or (e), as the case may be, if the date referred to therein was the tax anniversary date of the contract and not the date the annuity payments commence, and

(ii) the adjusted purchase price that would be determined in respect of that interest if the words "and after the tax anniversary date" were inserted in each of subparagraphs 148(9)(a)(i) to (iii.1) and (vi) [148(9)"adjusted cost basis"A to D and H] of the Act immediately following the words "before that time" in each of those subparagraphs; and

(b) the amount determined under paragraph (2)(b) in respect of that interest.

History: Subpara. 300(4)(a)(ii) substituted by P.C. 1983-3530, subsec. 1(7), November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, applicable to taxation years commencing after 1982.

Subsec. 300(4) substituted by P.C. 1982-1421, subsec. 1(4), May 13, 1982, *Canada Gazette*, Part II, May 25, 1982, effective with respect to annuity contracts under which annuity payments commence after 1981.

Definitions [Reg. 300]: "adjusted purchase price" — Reg. 300(2)(b), 300(3), (4); "amount", "annuity" — ITA 248(1); "annuity payment" — Reg. 300(1.1); "commencement" — *Interpretation Act* 35(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "income-averaging annuity contract", "individual" — ITA 248(1); "life annuity contract" — Reg. 301(1), (2); "person", "prescribed" — ITA 248(1); "tax anniversary date" — Reg. 310; "taxpayer" — ITA 248(1); "total of the payments" — Reg. 300(2)(a).

301. Life annuity contracts — **(1)** For the purposes of this Part and section 148 of the Act, "life annuity contract" means any contract under which a person authorized under the laws of Canada or a province to carry on in Canada an annuities business agrees to make annuity payments to an individual (in this section referred to as "the annuitant") or jointly to two or more individuals (each of whom is referred to as "the annuitant" in this section), which payments are, by the terms of the contract,

(a) to be paid annually or at more frequent periodic intervals;

(b) to commence on a specified day; and

(c) to continue throughout the lifetime of the annuitant or one or more of the annuitants.

Proposed Amendment — Life annuity contracts

Letter from Dept. of Finance, September 12, 2002:

Dear [xxx]

This is in reply to your letter dated June 12, 2002 concerning third-party life annuity contracts and the definition of adjusted cost basis (ACB) found in subsection 148(9) of the *Income Tax Act* (the Act).

In your letter you have recommended that the definition "adjusted cost basis" in subsection 148(9) of the Act be amended to replace the term "life annuity contract" currently found therein with the term "annuity contract". You have indicated that the term "life annuity contract", as defined in subsection 301(1) of the *Income Tax Regulations* (the Regulations), is overly restrictive because it excludes certain third-party life annuity contracts under which annuity payments are dependent on the life of an individual but the annuitants are either not individuals or are not the individual on whose life the annuity payments are dependent. You have pointed out that subsection 12.2(1) of the Act may inappropriately require an income inclusion in respect of interests in such third-party life annuity contracts because mortality gains and losses affect the determination of the accumulating fund in respect of the interest but not the ACB of the interest.

You have also requested that the amendments be effective for the 1981 and subsequent taxation years (the effective date for subsection 12.2(1)), in order to reflect the historical industry practice which, in your view, provides the appropriate tax result.

We agree with your conclusion that the definition "life annuity contract" in subsection 301(1) of the Regulations is overly restrictive and can result in inappropriate income inclusions under subsection 12.2(1) of the Act. We do, however, envision a different solution to this issue than that which you have suggested. In particular, we propose to recommend to the Minister of Finance that the definition "life annuity contract" in subsection

301(1) of the Regulations be amended to include life annuity contracts under which the annuitant is a partnership or a person as well as life annuity contracts under which the annuity payments are based on the life of an individual who is not the annuitant. We also propose to recommend to the Minister of Finance that the proposed amendments to the definition "life annuity contract" in subsection 301(1) of the Regulations be made applicable to taxation years that end after 1996. However, in calculating the adjusted cost basis to a policyholder of the policyholder's interest in a life insurance policy for taxation years that end after 1996, the proposed amendments will be made applicable, for the purposes of applying the definition "adjusted cost basis" in subsection 148(9) of the Act, to taxation years that end after 1980.

If the recommendation is accepted we will begin the process of submitting the amendments to the *Income Tax Regulations* for approval and promulgation.

Thank you for bringing this matter to our attention.

Yours sincerely,

Len Farber
General Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: Reg. 301(2) — Interpretation.

History: All that portion of subsec. 301(1) preceding para. (a) substituted by P.C. 1983-3530, s. 2, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, effective November 12, 1981.

(2) [Interpretation] — For the purposes of subsection (1), a contract shall not fail to be a life annuity contract by reason that

(a) the contract provides that the annuity payments may be assigned by the annuitant or owner;

(b) the contract provides for annuity payments to be made for a period ending upon the death of the annuitant or for a specified period of not less than 10 years, whichever is the lesser;

(c) the contract provides for annuity payments to be made for a specified period or throughout the lifetime of the annuitant, whichever is longer, to the annuitant and thereafter, if the specified period is the longer, to a specified person;

(d) the contract provides, in addition to the annuity payments to be made throughout the lifetime of the annuitant, for a payment to be made upon the annuitant's death;

(e) the contract provides that the date

(i) on which the annuity payments commence, or

(ii) on which the contract holder becomes entitled to proceeds of the disposition,

may be changed with respect to the whole contract or any portion thereof at the option of the annuitant or owner; or

(f) the contract provides that all or a portion of the proceeds payable at any particular time under the contract may be received in the form of an annuity contract other than a life annuity contract.

History: Paras. 301(1)(a)–(d) revoked and substituted by 301(1)(a)–(c), (2)(a), (e) substituted, (f) added by P.C. 1982-1421, s. 2, May 13, 1982, *Canada Gazette*, Part II, May 26, 1982, effective January 1, 1982.

Subsec. 301(1) amended by P.C. 1980-1241, May 8, 1980, *Canada Gazette*, Part II, May 28, 1980, effective in respect of 1978 *et seq.*

Definitions [Reg. 301]: "annuitant" — Reg. 301(1); "annuity", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "individual" — ITA 248(1); "life annuity contract" — Reg. 301(1), (2); "person" — ITA 248(1); "proceeds of the disposition" — ITA 148(9), Reg. 310; "province" — *Interpretation Act* 35(1).

302. [Revoked]

History: S. 302 revoked by P.C. 1983-3530, s. 3, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, applicable to taxation years commencing after 1982.

S. 302 added by P.C. 1982-1421, s. 3, May 13, 1982, *Canada Gazette*, Part II, May 26, 1982, applicable to taxation years commencing after October 28, 1980.

303. (1) Where in a taxation year the rights of a holder under an annuity contract cease upon termination or cancellation of the contract and

(a) the aggregate of all amounts, each of which is an amount in respect of the contract that was included in computing the income of the holder for the year or any previous taxation year by virtue of subsection 12(3) of the Act

exceeds the aggregate of

(b) such proportion of the amount determined under paragraph (a) that the annuity payments made under the contract before the rights of the holder have ceased is of the total of the payments expected to be made under the contract, and

(c) the aggregate of all amounts, each of which is an amount in respect of the contract that was deductible in computing the income of the holder for the year or any previous year by virtue of subsection (2),

the amount of such excess may be deducted by the holder under subsection 20(19) of the Act in computing his income for the year.

History: Para. 303(1)(b) substituted by P.C. 1983-3530, s. 4, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, effective commencing November 12, 1981.

(2) For the purposes of subsection 20(19) of the Act, where an annuity contract was acquired after December 19, 1980 and annuity payments under the contract commenced before 1982, the amount that may be deducted by a holder under that subsection in respect of an annuity contract for a taxation year is that proportion of

(a) the aggregate of all amounts, each of which is an amount that was included in computing the income of the holder for any previous taxation year by virtue of subsection 12(3) of the Act in respect of the contract

that

(b) the aggregate of all annuity payments received by the holder in the year in respect of the contract

is of

(c) the total of the payments determined under paragraph 300(1)(a) or (b) in respect of the holder's interest in the contract.

History: S. 303 added by P.C. 1982-1421, s. 3, May 13, 1982, *Canada Gazette*, Part II, May 26, 1982; subsec. 303(1) applicable to taxation years commencing after October 28, 1980; subsec. 303(2) effective from December 1980.

Definitions [Reg. 303]: "amount", "annuity" — ITA 248(1); "taxation year" — ITA 249.

304. Prescribed annuity contracts — **(1)** For the purposes of this Part and subsections 12.2(1), (3) and (4) and paragraph 148(2)(b) of the Act, prescribed annuity contract for a taxation year means

Proposed Amendment — Reg. 304(1) opening words — Application to ITA 94.2(11)

Technical Notes to ITA 94.2(11), July 18, 2005: [...] the interest in the policy was, on the anniversary day (as defined in subsection 12.2(11)) of the policy that occurs in the taxation year, an exempt policy (as defined in subsection 12.2(11)) or a prescribed annuity contract (as defined in section 304 of the *Income Tax Regulations* — in this regard, it is intended that amendments be proposed to section 304 of the Regulations to reflect this change) [...]

(a) an annuity contract purchased pursuant to a registered pension plan, a registered retirement savings plan, a deferred profit sharing plan or a plan referred to in subsection 147(15) of the Act as a revoked plan;

(b) an annuity contract described in paragraph 148(1)(c) or (e) of the Act; and

(c) an annuity contract

(i) under which annuity payments have commenced in the taxation year or a preceding taxation year,

(ii) issued by a corporation described in any of paragraphs 39(5)(b) to (d) or clause 146(1)(j)(ii)(B) [146(1)"retirement savings plan"(b)(ii)] of the Act, a life insurance corporation, a registered charity or a corporation (other than a mutual fund corporation or a mortgage investment corporation) the principal business of which is the making of loans (which corporation or charity is in this section referred to as an "issuer"),

Proposed Amendment — Reg. 304(1)(c)(ii)

(ii) issued by a life insurance corporation, a registered charity, a corporation referred to in any of paragraphs (a) to (c) of the definition "specified financial institution" in subsection 248(1) of the Act or subparagraph (b)(ii) of the definition "retirement savings plan" in subsection 146(1) of the Act or a corporation (other than a mutual fund corporation or a mortgage investment corporation) the principal business of which is the making of loans (which corporation or charity is referred to in this section as the "issuer"),

Application: The June 1, 1995 draft regulations (securities held by financial institutions), s. 1, will amend subpara. 304(1)(c)(ii) to read as above, applicable after February 22, 1994.

Technical Notes: Section 304 prescribes certain annuity contracts for exclusion from the rules in the *Income Tax Act* that require income from insurance policies to be reported on an accrual basis. Paragraph 304(1)(c) provides an exclusion for an annuity under which payments have commenced if a number of other conditions are also satisfied. Subparagraph 304(1)(c)(ii) requires that the annuity have been issued by a person specified in that provision. Acceptable issuers include corporations described in any of paragraphs 39(5)(b) to (d) of the Act — banks, trust companies and credit unions.

Subsection 39(5) of the Act is being amended to replace several of its paragraphs by a reference to "financial institutions" (as defined in subsection 142.2(1) of the Act). Consequently, subparagraph 304(1)(c)(ii) is amended to refer to corporations referred to in any of paragraphs (a) to (c) of the definition of "specified financial institution" in subsection 248(1) of the Act, which are the same corporations as were referred to in paragraphs 39(5)(b) to (d).

(iii) each holder of which

(A) is an individual, other than a trust that is neither a testamentary trust nor a trust described in paragraph 104(4)(a) of the Act (in this paragraph referred to as a "specified trust"),

(B) is an annuitant under the contract, and

(C) throughout the taxation year, dealt at arm's length with the issuer,

(iv) the terms and conditions of which require that, from the time the contract meets the requirements of this paragraph,

(A) all payments made out of the contract be equal annuity payments made at regular intervals but not less frequently than annually, subject to the holder's right to vary the frequency and quantum of payments to be made out of the contract in any taxation year without altering the present value at the beginning of the year of the total payments to be made in that year out of the contract,

(B) the annuity payments thereunder continue for a fixed term or

(I) if the holder is an individual (other than a trust), for the life of the first holder or until the later of the death of the first holder and the death of any one of the spouse, common-law partner, former spouse, former common-law partner, brothers and sisters (in this subparagraph referred to as "the survivor") of the first holder, or

(II) if the holder is a specified trust, for the life of the spouse or common-law partner who is entitled to receive the income of the trust,

Proposed Amendment — Reg. 304(1)(c)(iv)(B)(II)

Letter from Dept. of Finance, July 29, 2002:

Dear [xxx]

Thank you for your letter dated May 6, 2002, concerning section 304 of the *Income Tax Regulations* (the "Regulations") and its application to *alter ego* trusts.

Section 304 defines a "prescribed annuity contract" for a taxation year for the purposes of subsection 12.2(1) and paragraph 148(2)(b) of the *Income Tax Act* (the "Act"). *Alter ego* trusts and joint spousal and common-law partner trusts are trusts described in paragraph 104(4)(a) of the Act and as you mentioned in your letter, these trusts would appear to qualify as a specified trust eligible to hold prescribed annuities under clause 304(1)(c)(iii)(A) of the Regulations.

However, it would appear that an *alter ego* trust would not be able to acquire an annuity contract that is a prescribed annuity contract because subclauses 304(1)(c)(iv)(B)(II) and 304(1)(c)(iv)(C)(II) require, in the case of a specified trust, that the terms of the contract determine annuity payments by reference to the "spouse or common-law partner who is entitled to receive the income of the trust". *Alter ego* trusts do not comply with those subclauses because, in the case of *alter ego* trusts, the annuity payments would be determined by reference to the individual who is entitled to receive the income of the trust and not by reference to the spouse or common-law partner. As a result, you have requested that those subclauses be amended to allow *alter ego* trusts to hold prescribed annuity contracts.

From a policy perspective, it appears appropriate to permit an *alter ego* trust to be eligible to hold a prescribed annuity contract if all the other conditions of section 304 of the Regulations are met. This treatment would be in accordance with the treatment of the other trusts described in paragraph 104(4)(a) of the Act. Consequently, we are prepared to recommend to the Minister of Finance that amendments be made to subclauses 304(1)(c)(iv)(B)(II) and 304(1)(c)(iv)(C)(II) of the Regulations to permit an *alter ego* trust to hold a prescribed annuity contract. Further, we intend to recommend that the amendments apply to the taxation years that begin after 2001.

Of course, I can offer no assurance that the Minister of Finance will agree with the recommendation that I have described. Nonetheless, I hope that this statement of our position is helpful.

Thank you for bringing this matter to our attention.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Proposed Amendment — Reg. 304(1)(c)(iv)(B)

Letter from Dept. of Finance, June 27, 2003:

Dear [xxx]

Thank you for your letter dated October 22, 2002, concerning section 304 of the *Income Tax Regulations* (the "Regulations") and its application to last survivor annuity contracts held by joint spousal or common-law partner trusts.

Section 304 defines a "prescribed annuity contract" for a taxation year for the purposes of subsection 12.2(1) and paragraph 148(2)(b) of the *Income Tax Act* (the "Act"). Alter ego trusts and joint spousal or common-law partner trusts are trusts described in paragraph 104(4)(a) of the Act and, as you mentioned in your letter and as confirmed by the Department in a comfort letter sent to your attention dated July 29, 2002, these trusts qualify as a specified trust under clause 304(1)(c)(iii)(A) of the Regulations.

However, a last survivor annuity contract, the annuity payments of which are determined by reference to the later of the death of an individual and the death of the individual's spouse or common-law partner who is entitled to receive the income of the trust, is not included in the definition of "prescribed annuity contract" in section 304 of the Regulations when held by a specified trust.

From a policy perspective, it appears appropriate for a last survivor annuity contract held by a specified trust to be prescribed as a prescribed annuity contract if all the other conditions of section 304 of the Regulations are met and the last survivor is the person that established the trust or the survivor as defined in that section. This treatment would be in accordance with the treatment under section 304 of the Regulation of last survivor annuity contracts held by individuals.

Consequently, we are prepared to recommend to the Minister of Finance that amendments be made to section 304 of the Regulations to ensure that last survivor annuity contracts held by specified trusts as defined in section 304 of the Regulations be prescribed annuity contracts if all the other conditions of that section are met and the last survivor is the person that established the trust or the survivor as defined in that section.

You also mentioned in your letter that clause 304(1)(c)(iv)(B) of the Regulations does not provide for the situation where testamentary trusts (which are not specified trusts) hold annuity contracts that do not continue for a fixed term. From a policy perspective and in order to be consistent with clause 304(1)(c)(iv)(C) of the Regulations, we are prepared to recommend an amendment to the Regulations to prescribe this type of annuity contract under clause 304(1)(c)(iv)(B) where the payments continue for the life of any beneficiary entitled to receive the income from the trust.

Further, we intend to recommend that these proposed amendments apply to the 2000 and following taxation years.

Of course, I can offer no assurance that the Minister of Finance will agree with the recommendation that I have described. Nonetheless, I hope that this statement of our position is helpful.

Thank you for bringing this matter to our attention.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

(C) where the annuity payments are to be made over a term that is guaranteed or fixed, the guaranteed or fixed term not [to] extend beyond the time at which

(I) in the case of a joint and last survivor annuity, the younger of the first holder and the survivor,

(II) if the holder is a specified trust, the spouse or common-law partner who is entitled to receive the income of the trust,

Proposed Amendment — Reg. 304(1)(c)(iv)(C)(II)

Letter from Dept. of Finance, July 29, 2002: See under Reg. 304(1)(c)(iv)(B)(II).

(III) if the holder is a testamentary trust other than a specified trust, the youngest beneficiary under the trust,

(IV) where the contract is held jointly, the younger of the first holders, or

(V) in any other case, the first holder,

would, if he survived, attain the age of 91 years,

(D) no loans exist under the contract and the holder's rights under the contract not be disposed of otherwise than on the holder's death or, if the holder is a specified trust, on the death of the spouse or common-law partner who is entitled to receive the income of the trust, and

(E) no payments be made out of the contract other than as permitted by this section,

(v) none of the terms and conditions of which provide for any recourse against the issuer for failure to make any payment under the contract, and

(vi) where annuity payments under the contract have commenced

(A) before 1987, in respect of which a holder thereof has notified the issuer in writing, before the end of the taxation year, that the contract is to be treated as a prescribed annuity contract,

(B) after 1986, in respect of which a holder thereof has not notified the issuer in writing, before the end of the taxation year in which the annuity payments under the contract commenced, that the contract is not to be treated as a prescribed annuity contract, or

(C) after 1986, in respect of which a holder thereof has notified the issuer in writing, before the end of the taxation year in which the annuity payments under the contract commenced, that the contract is not to be treated as a prescribed annuity contract and a holder thereof has rescinded the notification by so notifying the issuer in writing before the end of the taxation year.

Proposed Amendment — Reg. 304(1)

Department of Finance news release, December 19, 1996: An annuity contract issued as a RRIF will not be subject to the accrual rules under section 12.2 of the Act.

This amendment will be implemented by way of an amendment to subsection 304(1) of the Regulations. It is contemplated that it will apply to taxation years that begin after 1986, given that the original amendments to the Act that gave rise to the need for this amendment applied after 1986.

[For the full text of this news release, see under ITA 206(1)"foreign property" — ed.]

Department of Finance news release, October 23, 1997: [See under ITA 12.2(1) — ed.]

(2) Notwithstanding subsection (1), an annuity contract shall not fail to be a prescribed annuity contract by reason that

(a) where the contract provides for a joint and last survivor annuity or is held jointly, the terms and conditions thereof provide that there will be a decrease in the amount of the annuity payments to be made under the contract from the time of death of one of the annuitants thereunder;

(b) the terms and conditions thereof provide that where the holder thereof dies at or before the time he attains the age of 91 years, the contract will terminate and an amount will be paid out of the contract not exceeding the amount, if any, by which the total premiums paid under the contract exceeds the total annuity payments made under the contract;

(c) where the annuity payments are to be made over a term that is guaranteed or fixed, the terms and conditions thereof provide that as a consequence of the death of the holder thereof during the guaranteed or fixed term any payments that, but for the death of the holder, would be made during the term may be commuted into a single payment; or

(d) the terms and conditions thereof, as they read on December 1, 1982 and at all subsequent times, provide that the holder participates in the investment earnings of the issuer and that the amount of such participation is to be paid within 60 days after the end of the year in respect of which it is determined.

(3) For the purposes of this section, the annuitant under an annuity contract is deemed to be the holder of the contract where

(a) the contract is held by another person in trust for the annuitant; or

(b) the contract was acquired by the annuitant under a group term life insurance policy under which life insurance was effected on the life of another person in respect of, in the course of, or by virtue of the office or employment or former office or employment of that other person.

(4) In this section,

"annuitant" under an annuity contract, at any time, means a person who, at that time, is entitled to receive annuity payments under the contract;

"spouse" of a particular individual includes another individual of the opposite sex who is a party to a void or voidable marriage with the particular individual.

History: Cl. 304(1)(c)(iii)(A), subcl. (c)(iv)(B)(I) and (II), (iv)(C)(II) and (III), cl. (iv)(D), and the definition "spouse" in subsec. 304(4), amended by P.C. 2001-957, s. 3, May 31, 2001, *Canada Gazette*, Part II, June 20, 2001, applicable to 2001 *et seq.*, except that if a taxpayer and a person have jointly elected pursuant to s. 144 of the *Modernization of Benefits and Obligations Act* (S.C. 2000, c. 12), in respect of the 1998, 1999 or 2000 taxation year, the amendment applies to the taxpayer and the person in respect of the applicable taxation year *et seq.*

That portion of subsec. 304(1) preceding para. (a) replaced by P.C. 1994-940, s. 1, June 2, 1994, *Canada Gazette*, Part II, June 15, 1994, applicable after 1989.

Subsec. 304(1), paras. 304(2)(a) and (c) substituted, subsecs. 304(3) and (4) added, by P.C. 1988-1115, s. 1, June 9, 1988, *Canada Gazette*, Part II, June 22, 1988, applicable to taxation years commencing after 1986.

That portion of subsec. 304(1) preceding para. (a) substituted by P.C. 1988-390, s. 2, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, effective January 1, 1983.

That portion of subsec. 304(1) preceding para. (a) substituted by P.C. 1986-1048, s. 1, May 1, 1986, *Canada Gazette*, Part II, May 14, 1986, applicable to taxation years commencing after 1982.

S. 304 substituted by P.C. 1983-3530, s. 5, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, applicable to taxation years commencing after 1982.

S. 304 added by P.C. 1982-1421, s. 3, May 13, 1982, *Canada Gazette*, Part II, May 26, 1982; subsecs. 304(1)–(4) effective with respect to annuity contracts under which annuity payments commence after 1981; subsec. 304(5) applicable to taxation years commencing after October 28, 1980.

Definitions [Reg. 304]: "amount" — ITA 248(1); "annuitant" — Reg. 304(4); "annuity" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "common-law partner" — ITA 248(1); "consequence of the death" — ITA 248(8); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "disposed" — ITA 248(1)"disposition"; "employment", "group term life insurance policy" — ITA 248(1); "holder" — Reg. 304(3); "individual" — ITA 248(1); "issuer" — Reg. 304(1)(c)(ii); "life insurance corporation" — ITA 248(1); "mortgage investment corporation" — ITA 130.1(6), 248(1); "mutual fund corporation" — ITA 131(8), 248(1); "office", "person", "prescribed" — ITA 248(1); "prescribed annuity contract" — Reg. 304(1), (2); "registered pension plan" — ITA 248(1); "specified trust" — Reg. 304(1)(c)(iii)(A); "spouse" — Reg. 304(4); "survivor" — Reg. 304(1)(c)(iv)(B)(I); "taxation year" — ITA 249; "testamentary trust" — ITA 108(1), 248(1); "trust" — ITA 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies.

305. Unallocated income accrued before 1982 — **(1)** For the purposes of section 12.2 and paragraph 56(1)(d.1) of the Act, the amount at any time of "unallocated income accrued in respect of the interest before 1982, as determined in prescribed manner", in respect of a taxpayer's interest in an annuity contract (other than an interest last acquired after December 1, 1982) or in a life insurance policy referred to in subsection (3), means the amount, if any, by which

(a) the accumulating fund at December 31, 1981 in respect of the interest

exceeds the aggregate of

(b) his adjusted cost basis (within the meaning assigned by paragraph 148(9)(a) [148(9)"adjusted cost basis"] of the Act) at December 31, 1981 in respect of the interest; and

(c) that proportion of the amount, if any, by which the amount determined under paragraph (a) exceeds the amount determined under paragraph (b) that

(i) the aggregate of all amounts each of which is the amount of an annuity payment received before that time in respect of the interest

is of

(ii) the taxpayer's interest, immediately before the commencement of payments under the contract, in the total of the annuity payments

(A) to be made under the contract, in the case of a contract for a term of years certain, or

(B) expected to be made under the contract, in the case of a contract under which the continuation of the payments depends in whole or in part on the survival of an individual.

(2) For the purposes of paragraph (1)(c), "annuity payment" does not include any portion of a payment under a contract the amount of which cannot be reasonably determined immediately before the commencement of payments under the contract except where such portion cannot be so determined because the continuation of the annuity payments under the contract depends in whole or in part on the survival of an individual.

(3) For the purposes of this section, an interest in an annuity contract to which subsection 12.2(9) of the Act applies shall be deemed to be a continuation of the interest in the life insurance policy in respect of which it was issued.

History: S. 305 added by P.C. 1983-3530, s. 5, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, applicable to taxation years commencing after 1982.

Definitions [Reg. 305]: "amount", "annuity" — ITA 248(1); "annuity payment" — Reg. 305(2); "commencement" — *Interpretation Act* 35(1); "continuation" — Reg. 305(3); "individual" — ITA 248(1); "life insurance policy" — ITA 138(12), Reg. 310; "prescribed", "taxpayer" — ITA 248(1); "total of the payments" — Reg. 300(2)(a).

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies.

306. Exempt policies — **(1)** For the purposes of this Part and subsection 12.2(11) of the Act, "exempt policy" at any time means a life insurance policy (other than an annuity contract or a deposit administration fund policy) in respect of which the following conditions are met at that time:

(a) if that time is a policy anniversary of the policy, the accumulating fund of the policy at that time (determined without regard to any policy loan) does not exceed the total of the accumulating funds at that time of

the exemption test policies issued at or before that time in respect of the policy;

(b) assuming that the terms and conditions of the policy do not change from those in effect on the last policy anniversary of the policy at or before that time and, where necessary, making reasonable assumptions about all other factors (including, in the case of a participating life insurance policy within the meaning assigned by subsection 138(12) of the Act, the assumption that the amounts of dividends paid will be as shown in the dividend scale), it is reasonable to expect that the condition in paragraph (a) will be met on each policy anniversary of the policy on which the policy could remain in force after that time and before the date determined under subparagraph (3)(d)(ii) with respect to the exemption test policies issued in respect of the policy;

(c) the condition in paragraph (a) was met on all policy anniversaries of the policy before that time; and

(d) the condition in paragraph (b) was met at all times on and after the first policy anniversary of the policy and before that time.

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies.

(2) For the purposes of subsection (1), a life insurance policy that is an exempt policy on its first policy anniversary shall be deemed to have been an exempt policy from the time of its issue until that anniversary.

(3) For the purposes of this section and section 307, a separate exemption test policy shall be deemed to have been issued to a policyholder in respect of a life insurance policy

(a) on the date of issue of the life insurance policy, and

(b) on each policy anniversary of the life insurance policy where the amount of the benefit on death thereunder exceeds 108 per cent of the amount of the benefit on death thereunder on the later of the date of its issue and the date of its preceding anniversary, if any,

and, for the purpose of determining whether the accumulating fund of the life insurance policy on any particular policy anniversary meets the condition in paragraph (1)(a), each such exemption test policy shall be deemed

(c) to have a benefit on death that is uniform throughout the term of the exemption test policy and equal to

(i) where the exemption test policy is the first such policy issued in respect of the life insurance policy, the amount on that policy anniversary of the benefit on death of the life insurance policy less the total of all amounts each of which is the amount on that policy anniversary of the benefit on death of another exemption test policy issued on or before that policy anniversary in respect of the life insurance policy, and

(ii) in any other case, the amount by which the benefit on death of the life insurance policy on the date the exemption test policy was issued exceeds 108 per cent of the amount of the benefit on death of the life insurance policy on the later of the date of issue of the life insurance policy and the date of its preceding policy anniversary, if any;

(d) to pay the amount of its benefit on death on the earlier of

(i) the date of death of the person whose life is insured under the life insurance policy, and

(ii) the later of

(A) ten years after the date of issue of the life insurance policy, and

(B) the date that the person whose life is insured would, if he survived, attain the age of 85 years; and

(e) to be a life insurance policy in Canada issued by a life insurer that carried on its life insurance business in Canada.

(4) Notwithstanding subsections (1) to (3),

(a) where at any particular time the amount of the benefit on death of a life insurance policy is reduced, an amount equal to such reduction (such amount is in this paragraph referred to as "the reduction") shall be applied at that time to reduce the amount of the benefit on death of exemption test policies issued before that time in respect of the life insurance policy (other than the exemption test policy issued in respect thereof pursuant to paragraph (3)(a)), in the order in which the dates of their issuance are proximate to the particular time, by an amount equal to the lesser of

(i) the portion, if any, of the reduction not applied to reduce the benefit on death of one or more other such exemption test policies, and

(ii) the amount, immediately before that time, of the benefit on death of the relevant exemption test policy;

(b) where on the tenth or on any subsequent policy anniversary of a life insurance policy, the accumulating fund thereof (computed without regard to any policy loan then outstanding in respect of the policy) exceeds 250 per cent of the accumulating fund thereof on its third preceding policy anniversary (computed without regard to any policy loan then outstanding in respect of the policy), each exemption test policy deemed by subsection (3) to have been issued before that time in respect of the life insurance policy shall be deemed to have been issued on the later of the date of that third preceding policy anniversary and the date on which it was deemed by subsection (3) to have been issued; and

(c) where at one or more times after December 1, 1982

(i) a prescribed premium has been paid by a taxpayer in respect of an interest in a life insurance policy (other than an annuity contract or a deposit administration fund policy) last acquired on or before that date, or

(ii) an interest in a life insurance policy (other than an annuity contract or a deposit administration fund policy) issued on or before that date has been acquired by a taxpayer from the person who held the interest continuously since that date,

the policy shall be deemed to have been an exempt policy from the date of its issue until the earliest of those times that occurred after December 1, 1982; and

(d) a life insurance policy that ceases to be an exempt policy (other than by reason of its conversion into an annuity contract) on a policy anniversary shall be deemed to be an exempt policy on that anniversary

(i) if, had that anniversary occurred 60 days after the date on which it did in fact occur, the policy would have been an exempt policy on that later date, or

(ii) if the person whose life is insured under the policy dies on that anniversary or within 60 days thereafter.

History: Subsecs. 306(1), (2) and (3) replaced by P.C. 1994-940, s. 2, June 2, 1994, *Canada Gazette*, Part II, June 15, 1994, applicable

(a) with respect to a life insurance policy issued after March 26, 1992, other than a policy for which written application was made on or before March 26, 1992; and

(b) with respect to a life insurance policy amended at any time after March 26, 1992 to increase the amount of the benefit on death.

S. 306 added by P.C. 1983-3530, s. 5, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, applicable to taxation years commencing after 1982.

Definitions [Reg. 306]: "accumulating fund" — Reg. 307(1); "amount", "annuity" — ITA 248(1); "benefit on death" — Reg. 310; "Canada" — ITA 255, *Interpretation Act* 35(1); "dividend" — ITA 248(1); "exempt policy" — Reg. 306(1), (2), 306(4)(d); "life insurance business" — ITA 248(1); "life insurance policy" — ITA 138(12), Reg. 310; "life insurance policy in Canada" — ITA 138(12), 248(1); "life insurer", "person" — ITA 248(1); "policy anniversary" — Reg. 310; "policy loan" — ITA 148(9), Reg. 310; "prescribed" — ITA 248(1); "prescribed premium" — Reg. 309(1); "reduction" — Reg. 306(4)(a); "taxpayer" — ITA 248(1).

307. Accumulating funds — (1) For the purposes of this Part and section 12.2, paragraph 56(1)(d.1) and section 148 of the Act, "accumulating fund" at any particular time means,

(a) in respect of a taxpayer's interest in an annuity contract (other than a contract issued by a life insurer), the amount that is the greater of

(i) the amount, if any, by which the cash surrender value of his interest at that time exceeds the amount payable, if any, in respect of a loan outstanding at that time made under the contract in respect of the interest, and

(ii) the amount, if any, by which

(A) the present value at that time of future payments to be made out of the contract in respect of his interest

exceeds the aggregate of

(B) the present value at that time of future premiums to be paid under the contract in respect of his interest, and

(C) the amount payable, if any, in respect of a loan outstanding at that time, made under the contract in respect of his interest;

(b) in respect of a taxpayer's interest in a life insurance policy (other than an exemption test policy or an annuity contract to which paragraph (1)(a) applies), the product obtained when,

(i) where the policy is not a deposit administration fund policy and the particular time is immediately after the death of any person on whose life the life insurance policy is issued or effected, the aggregate of the maximum amounts that could be determined by the life insurer immediately before the death in respect of the policy under paragraph 1401(1)(c) and subparagraph 1401(1)(d)(i) if the mortality rates used were adjusted to reflect the assumption that the death would occur at the time and in the manner that it did occur, and

(ii) in any other case, the maximum amount that could be determined at that particular time by the life insurer under paragraph 1401(1)(a), computed as though there were only one deposit administration fund policy, or under paragraph 1401(1)(c), as the case may be, in respect of the policy

is multiplied by

(iii) the taxpayer's proportionate interest in the policy,

assuming for the purposes of this paragraph that the life insurer carried on its life insurance business in Canada, its taxation year ended at the particular time and the policy was a life insurance policy in Canada; and

(c) in respect of an exemption test policy,

(i) where the policy was issued at least 20 years before the particular time, the amount that would be determined at that particular time by the life insurer under clause 1401(1)(c)(ii)(A) in respect of the policy if the insurer's taxation year ended at that particular time, and

(ii) in any other case, the product obtained when the amount that would be determined under subparagraph (i) in respect of the policy on its twentieth policy anniversary is multiplied by the quotient obtained when the number of years since the policy was issued is divided by 20.

(2) For the purposes of subsection (1), when computing the accumulating fund of an interest described in

(a) paragraph (1)(a), the amounts determined under clauses (1)(a)(ii)(A) and (B) shall be computed using,

(i) where an interest rate for a period used by the issuer when the contract was issued in determining the terms of the contract was less than any rate so used for a subsequent period, the single rate that would, if it applied for each period, have produced the same terms, and

(ii) in any other case, the rates used by the issuer when the contract was issued in determining the terms of the contract;

(b) paragraph (1)(b), where an interest rate used for a period by a life insurer in computing the relevant amounts in paragraph 1403(1)(a) or (b) is determined under paragraph 1403(1)(c), (d) or (e), as the case may be, and that rate is less than an interest rate so determined for a subsequent period, the single rate that could, if it applied for each period, have been used in determining the premiums for the policy shall be used; and

(c) paragraph (1)(c)

(i) the rates of interest and mortality used and the age of the person whose life is insured shall be the same as those used in computing the amounts described in paragraph 1403(1)(a) or (b) in respect of the life insurance policy in respect of which the exemption test policy was issued except that

(A) where the life insurance policy is one to which paragraph 1403(1)(e) applies and the amount determined under subparagraph 1401(1)(c)(i) in respect of that policy is greater than the amount determined under subparagraph 1401(1)(c)(ii) in respect thereof, the rates of interest and mortality used may be those used in computing the cash surrender values of that policy, and

(B) where an interest rate for a period otherwise determined under this subparagraph in respect of that interest is less than an interest rate so determined for a subsequent period, the single rate that could, if it applied for each period, have

been used in determining the premiums for the life insurance policy shall be used, and

(ii) notwithstanding subparagraph (i),

(A) where the rates referred to in subparagraph (i) do not exist, the minimum guaranteed rates of interest used under the life insurance policy to determine cash surrender values and the rates of mortality under the *Commissioners 1958 Standard Ordinary Mortality Table*, as published in Volume X of the *Transactions of the Society of Actuaries*, relevant to the person whose life is insured under the life insurance policy shall be used, or

(B) where, in respect of the life insurance policy in respect of which the exemption test policy was issued, the period over which the amount determined under clause 1401(1)(c)(ii)(A) does not extend to the date determined under subparagraph 306(3)(d)(ii), the weighted arithmetic mean of the interest rates used to determine such amount shall be used for the period that is after that period and before that date.

(3) Notwithstanding paragraph (2)(c),

(a) in the case of a life insurance policy issued after April 30, 1985, no rate of interest used for the purpose of determining the accumulating fund in respect of an exemption test policy issued in respect thereof shall be less than 4 per cent per annum; and

(b) in the case of a life insurance policy issued before May 1, 1985, no rate of interest used for the purpose of determining the accumulating fund in respect of an exemption test policy issued in respect thereof shall be less than 3 per cent per annum.

(4) For the purposes of paragraph (1)(c),

(a) where on the date of issue of an exemption test policy the person whose life is insured has attained the age of 75 years, the references in paragraph (1)(c) to "20" and "twentieth" shall be read as references to "10" and "tenth" respectively; and

(b) where on the date of issue of an exemption test policy the person whose life is insured has attained the age of 66 years but not the age of 75 years, the references in paragraph (1)(c) to "20" and "twentieth" shall be read as references to

(i) the number obtained when the number of years by which the age of the person whose life is insured exceeds 65 years is subtracted from 20, and

(ii) the adjectival form of the number obtained by performing the computation described in subparagraph (i),

respectively.

(5) In this section, any amount determined by reference to section 1401 shall be determined

(a) without regard to section 1402;

(b) as if each reference therein to the term "policy loan" were read as if that term had the meaning assigned by paragraph 148(9)(e) [148(9)"policy loan"] of the Act; and

(c) as if clauses 1401(1)(c)(i)(B) and 1401(1)(c)(ii)(C) were read without reference to the expression "or the interest thereon that has accrued to the insurer at the end of the year".

History: Cl. 307(2)(c)(ii)(B) amended (to correct an incorrect reference) by P.C. 1991-769, s. 1, April 25, 1991, *Canada Gazette*, Part II, May 8, 1991, applicable to taxation years commencing after 1982.

Para. 307(5)(c) added by P.C. 1984-3789, s. 2, November 29, 1984, *Canada Gazette*, Part II, December 12, 1984, applicable to taxation years commencing after 1982.

S. 307 added by P.C. 1983-3530, s. 5, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, applicable to taxation years commencing after 1982.

Definitions [Reg. 307]: "accumulating fund" — Reg. 307(1); "amount" — ITA 248(1); "amount payable" — ITA 138(12), Reg. 310; "annuity" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "cash surrender value" — ITA 148(9), Reg. 310; "insurer", "life insurance business" — ITA 248(1); "life insurance policy", "life insurance policy in Canada" — ITA 138(12), Reg. 310; "life insurer", "person" — ITA 248(1); "policy anniversary" — Reg. 310; "policy loan" — ITA 148(9), Reg. 310; "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies.

308. Net cost of pure insurance and mortality gains and losses — (1) For the purposes of subparagraph 20(1)(e.2)(ii) and paragraph (a) of the description of L in the definition "adjusted cost basis" in subsection 148(9) of the Act, the net cost of pure insurance for a year in respect of a taxpayer's interest in a life insurance policy is the product obtained when the probability, computed on the basis of the rates of mortality under the 1969-75 mortality tables of the Canadian Institute of Actuaries published in Volume XVI of the Proceedings of the Canadian Institute of Actuaries or on the basis described in subsection (1.1), that a person who has the same relevant characteristics as the person whose life is insured will die in the year is multiplied by the amount by which

(a) the benefit on death in respect of the taxpayer's interest at the end of the year

exceeds

(b) the accumulating fund (determined without regard to any policy loan outstanding) in respect of the taxpayer's interest in the policy at the end of the year or the cash surrender value of such interest at the end of the year, depending on the method regularly followed by the life insurer in computing net cost of pure insurance.

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies; IT-309R2: Premiums on life insurance used as collateral.

(1.1) Where premiums for a particular class of life insurance policy offered by a life insurer do not depend directly on smoking or sex classification, the probability referred to in subsection (1) may be determined using rates of mortality otherwise determined provided that for each age for such class of life insurance policy, the expected value of the aggregate net cost of pure insurance, calculated using such rates of mortality, is equal to the expected value of the aggregate net cost of pure insurance, calculated using the rates of mortality under the 1969-75 mortality tables of the Canadian Institute of Actuaries published in Volume XVI of the Proceedings of the Canadian Institute of Actuaries.

(2) Subject to subsection (4), for the purposes of this section and subparagraph 148(9)(a)(v.1) [148(9)"adjusted cost basis"G] of the Act, a "mortality gain" immediately before the end of any calendar year after 1982 in respect of a taxpayer's interest in a life annuity contract means such reasonable amount in respect of his interest therein at that time that the life insurer determines to be the in-

crease to the accumulating fund in respect of the interest that occurred during that year as a consequence of the survival to the end of the year of one or more of the annuitants thereunder.

(3) Subject to subsection (4), for the purposes of this section and subparagraph 148(9)(a)(xi) [148(9)"adjusted cost basis"(c)] of the Act, a "mortality loss" immediately before a particular time after 1982 in respect of an interest in a life annuity contract disposed of immediately after that particular time as a consequence of the death of an annuitant thereunder means such reasonable amount that the life insurer determines to be the decrease, as a consequence of the death, in the accumulating fund in respect of the interest assuming that, in determining such decrease, the accumulating fund immediately after the death is determined in the manner described in subparagraph 307(1)(b)(i).

(4) In determining an amount for a year in respect of an interest in a life annuity contract under subsection (2) or (3), the expected value of the mortality gains in respect of the interest for the year shall be equal to the expected value of the mortality losses in respect of the interest for the year and the mortality rates for the year used in computing those expected values shall be those that would be relevant to the interest and that are specified under such of paragraphs 1403(1)(c), (d) and (e) as are applicable.

History: That portion of subsec. 308(1) before para. (a) replaced by P.C. 1994-940, s. 3, June 2, 1994, *Canada Gazette*, Part II, June 15, 1994, applicable to years ending after 1989, except that for taxation years that ended before December 1991, the reference in subsec. 308(1) to "subparagraph 20(1)(e.2)(ii) and paragraph (a) of the description of L in the definition "adjusted cost basis" in subsection 148(9)" shall be read as "subparagraphs 20(1)(e.2)(ii) and 148(9)(a)(ix)".

That portion of subsec. 308(1) preceding para. (a) substituted and subsec. (1.1) added by P.C. 1991-769, subsecs. 2(1), (2), April 25, 1991, *Canada Gazette*, Part II, May 8, 1991, applicable to 1986 *et seq.*

S. 308 added by P.C. 1983-3530, s. 5, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, applicable to taxation years commencing May 31, 1985. S.C. 1984, c. 1, subsec. 82(4) provides that s. 308 is deemed to have been validly made on November 17, 1983, with effect as indicated above as if para. 148(9)(a) of the *Income Tax Act* as amended by 1984, c. 1, had been in force on that date.

Definitions [Reg. 308]: "accumulating fund" — Reg. 307(1); "amount", "annuity" — ITA 248(1); "benefit on death" — Reg. 310; "cash surrender value" — ITA 148(9), Reg. 310; "consequence of the death" — ITA 248(8); "disposed" — ITA 248(1)"disposition"; "life annuity contract" — Reg. 301(1), (2); "life insurance policy" — ITA 138(12), Reg. 310; "life insurer" — ITA 248(1); "mortality gain" — Reg. 308(2); "mortality loss" — Reg. 308(3); "person" — ITA 248(1); "policy loan" — ITA 148(9), Reg. 310; "probability" — Reg. 308(1.1); "taxpayer" — ITA 248(1).

309. Prescribed premiums and prescribed increases — (1) For the purposes of subsections 12.2(9) and 89(2) of the Act, section 306 and this section, a premium at any time under a life insurance policy is a "prescribed premium" if the total amount of one or more premiums paid at that time under the policy exceeds the amount of premium that, under the policy, was scheduled to be paid at that time and that was fixed and determined on or before December 1, 1982, adjusted for such of the following transactions and events that have occurred after that date in respect of the policy:

(a) a change in underwriting class;

(b) a change in premium due to a change in frequency of premium payments within a year that does not alter the present value, at the beginning of the year, of the total premiums to be paid under the policy in the year;

(c) an addition or deletion of accidental death or guaranteed purchase option benefits or disability benefits that provide for annuity payments or waiver of premiums;

(d) a premium adjustment as a result of interest, mortality or expense considerations, or of a change in the benefit on death under the policy relating to an increase in the Consumer Price Index (as published by Statistics Canada under the authority of the *Statistics Act*) where such adjustment

(i) is made by the life insurer on a class basis pursuant to the policy's terms as they read on December 1, 1982, and

(ii) is not made as a result of the exercise of a conversion privilege under the policy;

(e) a change arising from the provision of an additional benefit on death under a participating life insurance policy (within the meaning assigned by paragraph 138(12)(k) [138(12)"participating life insurance policy"] of the Act) as, on account or in lieu of payment of, or in satisfaction of

(i) policy dividends or other distributions of the life insurer's income from its participating life insurance business as determined under section 2402, or

(ii) interest earned on policy dividends that are held on deposit by the life insurer;

(f) redating lapsed policies within the reinstatement period referred to in subparagraph 148(9)(c)(vi) [148(9)"disposition"(g)] of the Act or redating for policy loan indebtedness;

(g) a change in premium due to a correction of erroneous information contained in the application for the policy;

(h) payment of a premium after its due date, or payment of a premium no more than 30 days before its due date, as established on or before December 1, 1982; and

(i) the payment of an amount described in subparagraph 148(9)(e.1)(i) [148(9)"premium"(a)] of the Act.

(2) For the purposes of subsections 12.2(9) and 89(2) of the Act, a "prescribed increase" in a benefit on death under a life insurance policy has occurred at any time where the amount of the benefit on death under the policy at that time exceeds the amount of the benefit on death at that time under the policy that was fixed and determined on or before December 1, 1982, adjusted for such of the following transactions and events that have occurred after that date in respect of the policy:

(a) an increase resulting from a change described in paragraph (1)(e);

(b) a change as a result of interest, mortality or expense considerations, or an increase in the Consumer Price Index (as published by Statistics Canada under the authority of the *Statistics Act*) where such change is made by the life insurer on a class basis pursuant to the policy's terms as they read on December 1, 1982;

(c) an increase in consequence of the prepayment of premiums (other than prescribed premiums) under the policy where such increase does not exceed the aggregate of the premiums that would otherwise have been paid;

(d) an increase in respect of a policy for which

(i) the benefit on death was, at December 1, 1982, a specific mathematical function of the policy's

cash surrender value or factors including the policy's cash surrender value, and

(ii) that function has not changed since that date,

unless any part of such increase is attributable to a prescribed premium paid in respect of a policy or to income earned on such a premium; and

(e) an increase that is granted by the life insurer on a class basis without consideration and not pursuant to any term of the contract.

(3) For the purposes of subsections (1) and (2), a life insurance policy that is issued as a result of the exercise of a renewal privilege provided under the terms of another policy as they read on December 1, 1982 shall be deemed to be a continuation of that other policy.

(4) For the purposes of subsection (2), a life insurance policy that is issued as a result of the exercise of a conversion privilege provided under the terms of another policy as they read on December 1, 1982 shall be deemed to be a continuation of that other policy except that any portion of the policy relating to the portion of the benefit on death, immediately before the conversion, that arose as a consequence of an event occurring after December 1, 1982 and described in paragraph (1)(e) shall be deemed to be a separate life insurance policy issued at the time of the conversion.

History: S. 309 added by P.C. 1983-3530, s. 5, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, applicable to taxation years commencing after 1982.

Definitions [Reg. 309]: "amount", "annuity" — ITA 248(1); "benefit on death" — Reg. 310; "Canada" — ITA 255, *Interpretation Act* 35(1); "cash surrender value" — ITA 148(9), Reg. 310; "continuation" — Reg. 309(3), (4); "dividend", "insurer", "life insurance business" — ITA 248(1); "life insurance policy" — ITA 138(12), Reg. 310; "life insurer" — ITA 248(1); "policy loan" — ITA 148(9), Reg. 310; "prescribed" — ITA 248(1); "prescribed premium" — Reg. 309(1).

Interpretation Bulletins: IT-66R6: Capital dividends; IT-87R2: Policyholders' income from life insurance policies.

310. Interpretation — For the purposes of sections 300, 301 and 304 to 309 and this section,

"amount payable" has the meaning assigned by paragraph 138(12)(b.1) [138(12)"amount payable"] of the Act;

"benefit on death" does not include policy dividends or any interest thereon held on deposit by an insurer or any additional amount payable as a result of accidental death;

"cash surrender value" has the meaning assigned by paragraph 148(9)(b) [148(9)"cash surrender value"] of the Act;

"life insurance policy" has the meaning assigned by paragraph 138(12)(f) [138(12)"life insurance policy"] of the Act;

"life insurance policy in Canada" has the meaning assigned by paragraph 138(12)(g) [138(12)"life insurance policy in Canada"] of the Act;

"policy anniversary" includes, where a life insurance policy was in existence throughout a calendar year and there would not otherwise be a policy anniversary in the year in respect of the policy, the end of the calendar year;

"policy loan" has the meaning assigned by paragraph 148(9)(e) [148(9)"policy loan"] of the Act;

"proceeds of the disposition" has the meaning assigned by paragraph 148(9)(e.2) [148(9)"proceeds of the disposition"] of the Act;

"tax anniversary date" in relation to an annuity contract means the second anniversary date of the contract to occur after October 22, 1968.

History: S. 310 added by 1983-3530, s. 5, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, applicable to taxation years commencing after 1982.

Definitions [Reg. 310]: "amount" — ITA 248(1); "amount payable" — ITA 138(12), Reg. 310; "annuity", "dividend", "insurer" — ITA 248(1); "life insurance policy" — ITA 138(12), Reg. 310.

PART IV — TAXABLE INCOME EARNED IN A PROVINCE BY A CORPORATION

History: Part IV was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

400. Interpretation — **(1)** For the purposes of paragraph 124(4)(a) [124(4)"taxable income earned in the year in a province"] of the Act, a corporation's "taxable income earned in the year in a province" means the aggregate of the taxable incomes of the corporation earned in the year in each of the provinces.

History: Subsec. 400(1) substituted by P.C. 1981-808, s. 1, March 26, 1981, *Canada Gazette*, Part II, April 8, 1981, applicable to the 1980 and subsequent taxation years.

Subsec. 400(1) substituted by P.C. 1978-3101, s. 1, October 12, 1978, *Canada Gazette*, Part II, October 25, 1978, applicable to the 1978 and subsequent taxation years.

(2) [Permanent establishment] — For the purposes of this Part, "permanent establishment" in respect of a corporation means a fixed place of business of the corporation, including an office, a branch, a mine, an oil well, a farm, a timberland, a factory, a workshop or a warehouse, and

(a) where the corporation does not have any fixed place of business it means the principal place in which the corporation's business is conducted;

(b) where a corporation carries on business through an employee or agent, established in a particular place, who has general authority to contract for his employer or principal or who has a stock of merchandise owned by his employer or principal from which he regularly fills orders which he receives, the corporation shall be deemed to have a permanent establishment in that place;

(c) an insurance corporation is deemed to have a permanent establishment in each province and country in which the corporation is registered or licensed to do business;

(d) where a corporation, otherwise having a permanent establishment in Canada, owns land in a province, such land shall be deemed to be a permanent establishment;

(e) where a corporation uses substantial machinery or equipment in a particular place at any time in a taxation year it shall be deemed to have a permanent establishment in that place;

(f) the fact that a corporation has business dealings through a commission agent, broker or other independent agent or maintains an office solely for the purchase of merchandise shall not of itself be held to

mean that the corporation has a permanent establishment; and

(g) the fact that a corporation has a subsidiary controlled corporation in a place or a subsidiary controlled corporation engaged in trade or business in a place shall not of itself be held to mean that the corporation is operating a permanent establishment in that place.

Related Provisions: Reg. 5906 — Carrying on business in a country.

History: All that portion of subsec. 400(2) preceding para. (a) amended by P.C. 1994-139, subsec. 1(1), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable after 10:00 p.m. EDST, April 26, 1989.

All that portion of subsec. 400(2) preceding para. (a) substituted by P.C. 1986-772, s. 1, March 26, 1986, *Canada Gazette*, Part II, April 16, 1986, effective after October 31, 1985.

Interpretation Bulletins: IT-177R2: Permanent establishment of a corporation in a province; IT-393R2: Election re tax on rents and timber royalties — non-residents.

I.T. Technical News: 2 (permanent establishment in province through an agent).

Definitions [Reg. 400]: "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "employee", "employer", "insurance corporation", "office" — ITA 248(1); "permanent establishment" — Reg. 400(2); "province" — *Interpretation Act* 35(1); "subsidiary controlled corporation" — ITA 248(1); "taxable income" — Reg. 413(1); "taxation year" — ITA 249.

401. Computation of taxable income — The amount of taxable income of a corporation earned in a year in a particular province shall be determined in accordance with the provisions of this Part.

Forms: T2 SCH 383: Manitoba corporation tax calculation; T2 SCH 384: Manitoba co-operative education tax credit; T2 SCH 385: Manitoba odour control tax credit; T2 SCH 411: Saskatchewan corporation tax calculation; T2 SCH 424: B.C. two-year tax holiday for new small businesses; T2 SCH 427: B.C. corporation tax calculation.

Definitions [Reg. 401]: "amount" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "province" — *Interpretation Act* 35(1); "taxable income" — Reg. 413(1).

402. General rules — **(1)** Where, in a taxation year, a corporation had a permanent establishment in a particular province and had no permanent establishment outside that province, the whole of its taxable income for the year shall be deemed to have been earned therein.

(2) Where, in a taxation year, a corporation had no permanent establishment in a particular province, no part of its taxable income for the year shall be deemed to have been earned therein.

(3) Except as otherwise provided, where, in a taxation year, a corporation had a permanent establishment in a province and a permanent establishment outside that province, the amount of its taxable income that shall be deemed to have been earned in the year in the province is

(a) in any case other than a case specified in paragraph (b) or (c), ½ the aggregate of

(i) that proportion of its taxable income for the year that the gross revenue for the year reasonably attributable to the permanent establishment in the province is of its total gross revenue for the year, and

(ii) that proportion of its taxable income for the year that the aggregate of the salaries and wages paid in the year by the corporation to employees of the permanent establishment in the province is of the aggregate of all salaries and wages paid in the year by the corporation;

(b) in any case where the gross revenue for the year of the corporation is nil, that proportion of its taxable income for the year that the aggregate of the salaries and wages paid in the year by the corporation to employees of the permanent establishment in the province is of the aggregate of all salaries and wages paid in the year by the corporation; and

(c) in any case where the aggregate of the salaries and wages paid in the year by the corporation is nil, that proportion of its taxable income for the year that the gross revenue for the year reasonably attributable to the permanent establishment in the province is of its total gross revenue for the year.

Interpretation Bulletins: IT-177R2: Permanent establishment of a corporation in a province.

Forms: T2S-TC: Tax calculation supplementary — corporations.

(4) [Attribution to permanent establishment] — For the purpose of determining the gross revenue for the year reasonably attributable to a permanent establishment in a province or country other than Canada, within the meaning of subsection (3), the following rules shall apply:

(a) where the destination of a shipment of merchandise to a customer to whom the merchandise is sold is in the particular province or country, the gross revenue derived therefrom shall be attributable to the permanent establishment in the province or country;

(b) except as provided in paragraph (c), where the destination of a shipment of merchandise to a customer to whom the merchandise is sold is in a province or country other than Canada in which the taxpayer has no permanent establishment, if the person negotiating the sale may reasonably be regarded as being attached to the permanent establishment in the particular province or country, the gross revenue derived therefrom shall be attributable to that permanent establishment;

(c) where the destination of a shipment of merchandise to a customer to whom the merchandise is sold is in a country other than Canada in which the taxpayer has no permanent establishment,

(i) if the merchandise was produced or manufactured or produced and manufactured, entirely in the particular province by the taxpayer, the gross revenue derived therefrom shall be attributable to the permanent establishment in the province, or

(ii) if the merchandise was produced or manufactured, or produced and manufactured, partly in the particular province and partly in another place by the taxpayer, the gross revenue derived therefrom attributable to the permanent establishment in the province shall be that proportion thereof that the salaries and wages paid in the year to employees of the permanent establishment in the province where the merchandise was partly produced or manufactured (or partly produced and manufactured) is of the aggregate of the salaries and wages paid in the year to employees of the permanent establishments where the merchandise was produced or manufactured (or produced and manufactured);

(d) where a customer to whom merchandise is sold instructs that shipment be made to some other person and the customer's office with which the sale was negotiated is located in the particular province or country, the gross revenue derived therefrom shall be attributable to the permanent establishment in the province or country;

(e) except as provided in paragraph (f), where a customer to whom merchandise is sold instructs that shipment be made to some other person and the customer's office with which the sale was negotiated is located in a province or country other than Canada in which the taxpayer has no permanent establishment, if the person negotiating the sale may reasonably be regarded as being attached to the permanent establishment in the particular province or country, the gross revenue derived therefrom shall be attributable to that permanent establishment;

(f) where a customer to whom merchandise is sold instructs that shipment be made to some other person and the customer's office with which the sale was negotiated is located in a country other than Canada in which the taxpayer has no permanent establishment,

(i) if the merchandise was produced or manufactured, or produced and manufactured, entirely in the particular province by the taxpayer, the gross revenue derived therefrom shall be attributable to the permanent establishment in the province, or

(ii) if the merchandise was produced or manufactured, or produced and manufactured, partly in the particular province and partly in another place by the taxpayer, the gross revenue derived therefrom attributable to the permanent establishment in the province shall be that proportion thereof that the salaries and wages paid in the year to employees of the permanent establishment in the province where the merchandise was partly produced or manufactured (or partly produced and manufactured) is of the aggregate of the salaries and wages paid in the year to employees of the permanent establishments where the merchandise was produced or manufactured (or produced and manufactured);

(g) where gross revenue is derived from services rendered in the particular province or country, the gross revenue shall be attributable to the permanent establishment in the province or country;

(h) where gross revenue is derived from services rendered in a province or country other than Canada in which the taxpayer has no permanent establishment, if the person negotiating the contract may reasonably be regarded as being attached to the permanent establishment of the taxpayer in the particular province or country, the gross revenue shall be attributable to that permanent establishment;

(i) where standing timber or the right to cut standing timber is sold and the timber limit on which the timber is standing is in the particular province or country, the gross revenue from such sale shall be attributable to the permanent establishment of the taxpayer in the province or country; and

(j) gross revenue which arises from leasing land owned by the taxpayer in a province and which is included in computing its income under Part I of the Act shall be attributable to the permanent establishment, if any, of the taxpayer in the province where the land is situated.

Interpretation Bulletins: IT-177R2: Permanent establishment of a corporation in a province.

(4.1) For the purposes of subsections (3) and (4), where, in a taxation year,

(a) the destination of a shipment of merchandise to a customer to whom the merchandise is sold by a corporation is in a country other than Canada or the customer to whom merchandise is sold by a corporation instructs that the shipment of merchandise be made by the corporation to another person and the customer's office with which the sale was negotiated is located in a country other than Canada,

(b) the corporation has a permanent establishment in the other country, and

(c) the corporation is not subject to taxation on its income under the laws of the other country, or its gross revenue derived from the sale is not included in computing the income or profit or other base for income or profits taxation by the other country, because of

(i) the provisions of any taxing statute of the other country, or

(ii) the operation of any tax treaty or convention between Canada and the other country,

the following rules apply:

(d) with respect to the gross revenue derived from the sale,

(i) paragraphs 4(a) and (d) do not apply,

(ii) that portion of paragraph 4(c) preceding subparagraph (i) thereof shall be read as follows:

"(c) where the destination of a shipment of merchandise to a customer to whom the merchandise is sold is in a country other than Canada," and

(iii) that portion of paragraph 4(f) preceding subparagraph (i) thereof shall be read as follows:

"(f) where a customer to whom the merchandise is sold instructs that shipment be made to some other person and the customer's office with which the sale was negotiated is located in a country other than Canada,"; and

(e) for the purposes of subparagraph (3)(a)(ii), paragraph (3)(b) and subparagraphs (4)(c)(ii) and (f)(ii), salaries and wages paid in the year to employees of any permanent establishment of the corporation located in that other country shall be deemed to be nil.

History: Subsec. 402(4.1) added by P.C. 1994-662, s. 1, April 28, 1994, *Canada Gazette*, Part II, May 18, 1994, applicable to taxation years commencing after 1992, and where the corporation so elects by notifying the Minister of National Revenue in writing by November 30, 1994, to taxation years ending after 1991.

(5) For the purposes of subsection (3), "gross revenue" does not include interest on bonds, debentures or mortgages, dividends on shares of capital stock, or rentals or royalties from property that is not used in connection with the principal business operations of the corporation.

(6) For the purposes of subsection (3), where part of the corporation's operations were conducted in partnership with one or more other persons

(a) the corporation's gross revenue for the year, and

(b) the salaries and wages paid in the year by the corporation,

shall include, in respect of those operations, only that proportion of

(c) the total gross revenue of the partnership for its fiscal period ending in or coinciding with the year, and

(d) the total salaries and wages paid by the partnership in its fiscal period ending in or coinciding with the year,

respectively, that

(e) the corporation's share of the income or loss of the partnership for the fiscal period ending in or coinciding with the year,

is of

(f) the total income or loss of the partnership for the fiscal period ending in or coinciding with the year.

(7) Where a corporation pays a fee to another person under an agreement pursuant to which that other person or employees of that other person perform services for the corporation that would normally be performed by employees of the corporation, the fee so paid shall be deemed to be salary paid in the year by the corporation and that part of the fee that may reasonably be regarded as payment in respect of services rendered at a particular permanent establishment of the corporation shall be deemed to be salary paid to an employee of that permanent establishment.

(8) For the purposes of subsection (7), a fee does not include a commission paid to a person who is not an employee of the corporation.

History: Subsec. 402(3), all that portion of subsec. 402(4) preceding para. (a), subsec. 402(b) substituted by P.C. 1980-3346, s. 1, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, effective in respect of taxation years of corporations commencing after 1980.

Definitions [Reg. 402]: "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "dividend", "employee" — ITA 248(1); "fee" — Reg. 402(8); "fiscal period" — ITA 249.1; "gross revenue" — Reg. 402(4), (5), (6); "office" — ITA 248(1); "permanent establishment" — Reg. 400(2); "person", "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "salaries and wages paid in the year" — Reg. 413(1); "share" — ITA 248(1); "taxable income" — Reg. 413(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "total gross revenue for the year" — Reg. 413(2).

Interpretation Bulletins: IT-177R2: Permanent establishment of a corporation in a province.

402.1 Transitional — Taxable income earned in the 1978 taxation year in the Northwest Territories — Where in its 1978 taxation year a corporation had a permanent establishment in the Northwest Territories, its taxable income earned in the year in the Northwest Territories is that proportion of the amount thereof otherwise determined in accordance with this Part that the number of days in that portion of the 1978 taxation year of the corporation that is in 1978 is of the number of days in the whole of that taxation year.

History: S. 402.1 added by P.C. 1978-3101, s. 2, October 12, 1978, *Canada Gazette*, Part II, October 25, 1978.

402.2 Transitional — Taxable income earned in the 1980 taxation year in the Yukon Territory — Where in its 1980 taxation year a corporation had a permanent establishment in the Yukon Territory, its taxable income earned in the year in the Yukon Territory is that proportion of the amount thereof otherwise determined in accordance with this Part that the number of days in that portion of the 1980 taxation year of the corporation that is in 1980 is of the number of days in the whole of that taxation year.

History: S. 402.2 added by P.C. 1981-808, s. 2, March 26, 1981, *Canada Gazette*, Part II, April 8, 1981.

403. Insurance corporations — **(1)** Notwithstanding subsections 402(3) and (4), the amount of taxable income that shall be deemed to have been earned in a taxation year in a particular province by an insurance corporation is that proportion of its taxable income for the year that the aggregate of

(a) its net premiums for the year in respect of insurance on property situated in the province, and

(b) its net premiums for the year in respect of insurance, other than on property, from contracts with persons resident in the province,

is of the total of such of its net premiums for the year as are included in computing its income for the purposes of Part I of the Act.

(2) In this section, "net premiums" of a corporation for a taxation year means the aggregate of the gross premiums received by the corporation in the year (other than consideration received for annuities), minus the aggregate for the year of

(a) premiums paid for reinsurance,

(b) dividends or rebates paid or credited to policyholders, and

(c) rebates or returned premiums paid in respect of the cancellation of policies,

by the corporation.

(3) For the purposes of subsection (1), where an insurance corporation had no permanent establishment in a taxation year in a particular province,

(a) each net premium for that year in respect of insurance on property situated in the particular province shall be deemed to be a net premium in respect of insurance on property situated in the province in which the permanent establishment of the corporation to which the net premium is reasonably attributable is situated; and

(b) each net premium for that year in respect of insurance, other than on property, from contracts with persons resident in the particular province shall be deemed to be a net premium in respect of insurance, other than on property, from contracts with persons resident in the province in which the permanent establishment of the corporation to which the net premium is reasonably attributable is situated.

Definitions [Reg. 403]: "amount" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "dividend", "insurance corporation" — ITA 248(1); "net premiums" — Reg. 403(2), (3); "permanent establishment" — Reg. 400(2); "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "taxable income" — Reg. 413(1); "taxation year" — ITA 249.

404. Chartered banks — **(1)** Notwithstanding subsections 402(3) and (4), the amount of taxable income that shall be deemed to have been earned by a chartered bank in a taxation year in a province in which it had a permanent establishment is 1/3 of the aggregate of

Proposed Amendment — Reg. 404(1) opening words

404. Banks — **(1)** Notwithstanding subsections 402(3) and (4), the amount of taxable income that is deemed to have been earned by a bank in a taxation year in a province in which it had a permanent establishment is 1/3 of the total of

Application: The February 13, 2003 draft regulations (foreign bank branches), ss. 2 and 3, (pre-published in the *Canada Gazette*, Part I, February 15, 2003), will amend the heading to s. 404, in force on the day on which these Regulations are registered, and the opening words of subsec. 404(1) to read as above, applicable after June 27, 1999.

Regulatory Impact Analysis Statement: *Tax Abatement*

A corporation that has taxable income earned in a province is eligible for a 10 percent federal tax abatement under section 124 of the Act, and Part IV of the Regulations prescribes the meaning of "taxable income earned in a province".

Former subsection 404(1) prescribes the taxable income earned in a province for chartered banks. This amendment changes the reference from "chartered bank" to "bank" to reflect the fact that for the purpose of the Act a "bank" now includes an authorized foreign bank or a bank within the meaning assigned by the *Bank Act*.

(a) that proportion of its taxable income for the year that the aggregate of the salaries and wages paid in the year by the bank to employees of its permanent establishment in the province is of the aggregate of all salaries and wages paid in the year by the bank, and

(b) twice that proportion of its taxable income for the year that the aggregate amount of loans and deposits of its permanent establishment in the province for the year is of the aggregate amount of all loans and deposits of the bank for the year.

Related Provisions: Reg. 413(3) — Application to authorized foreign bank.

(2) For the purposes of subsection (1), the amount of loans for a taxation year is 1/12 of the aggregate of the amounts outstanding, on the loans made by the bank, at the close of business on the last day of each month in the year.

(3) For the purposes of subsection (1), the amount of deposits for a taxation year is 1/12 of the aggregate of the amounts on deposit with the bank at the close of business on the last day of each month in the year.

(4) For the purposes of subsections (2) and (3), loans and deposits do not include bonds, stocks, debentures, items in transit and deposits in favour of Her Majesty in right of Canada.

History: Subsec. 404(1) substituted by P.C. 1980-3346, s. 2, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, effective in respect of taxation years of corporations commencing after 1980.

Definitions [Reg. 404]: "all loans and deposits of the bank for the year" — Reg. 413(3); "amount" — ITA 248(1); "bank" — ITA 248(1), *Interpretation Act* 35(1); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "deposits" — Reg. 404(3), (4); "employee" — ITA 248(1); "Her Majesty" — *Interpretation Act* 35(1); "loans" — Reg. 404(2), (4); "month" — *Interpretation Act* 35(1); "permanent establishment" — Reg. 400(2); "province" — *Interpretation Act* 35(1); "salaries and wages paid in the year" — Reg. 413(1); "taxable income" — Reg. 413(1); "taxation year" — ITA 249.

405. Trust and loan corporations — (1) Notwithstanding subsections 402(3) and (4), the amount of taxable income that shall be deemed to have been earned in a taxation year by a trust and loan corporation, trust corporation or loan corporation in a province in which it had a permanent establishment is that proportion of its taxable income for the year that the gross revenue for the year of its permanent establishment in the province is of the total gross revenue for the year of the corporation.

(2) In subsection (1), "gross revenue for the year of its permanent establishment in the province" means the aggregate of the gross revenue of the corporation for the year arising from

(a) loans secured by lands situated in the province;

(b) loans, not secured by land, to persons residing in the province;

(c) loans

(i) to persons residing in a province or country other than Canada in which the corporation has no permanent establishment, and

(ii) administered by a permanent establishment in the province,

except loans secured by land situated in a province or country other than Canada in which the corporation has a permanent establishment; and

(d) business conducted at the permanent establishment in the province, other than revenue in respect of loans.

History: S. 405 substituted by P.C. 1980-3346, s. 3, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, effective in respect of taxation years of corporations commencing after 1980.

Definitions [Reg. 405]: "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "gross revenue" — ITA 248(1); "gross revenue for the year of its permanent establishment in the province" — Reg. 405(2); "permanent establishment" — Reg. 400(2); "person" — ITA 248(1); "province" — *Interpretation Act* 35(1); "taxable income" — Reg. 413(1); "taxation year" — ITA 249; "trust" — ITA 104(1), 248(1), (3).

406. Railway corporations — (1) Notwithstanding subsections 402(3) and (4), the amount of taxable income that shall be deemed to have been earned by a railway corporation in a taxation year in a province in which it had a permanent establishment is, unless subsection (2) applies, 1/2 the aggregate of

(a) that proportion of the taxable income of the corporation for the year that the equated track miles of the corporation in the province is of the equated track miles of the corporation in Canada; and

(b) that proportion of the taxable income of the corporation for the year that the gross ton miles of the corporation for the year in the province is of the gross ton miles of the corporation for the year in Canada.

(2) Where a corporation to which subsection (1) would apply, if this subsection did not apply thereto, operates an airline service, ships or hotels or receives substantial revenues that are petroleum or natural gas royalties, or does a combination of two or more of those things, the amount of its taxable income that shall be deemed to have been earned in a taxation year in a province in which it had a permanent establishment is the aggregate of the amounts computed

(a) by applying the provisions of section 407 to that part of its taxable income for the year that may reasonably be considered to have arisen from the operation of the airline service;

(b) by applying the provisions of section 410 to that part of its taxable income for the year that may reasonably be considered to have arisen from the operation of the ships;

(c) by applying the provisions of section 402 to that part of its taxable income for the year that may reasonably be considered to have arisen from the operation of the hotels;

(d) by applying the provisions of section 402 to that part of its taxable income for the year that may reasonably be considered to have arisen from the ownership by the taxpayer of petroleum or natural gas rights or any interest therein; and

(e) by applying the provisions of subsection (1) to the remaining portion of its taxable income for the year.

(3) In this section, "equated track miles" in a specified place means the aggregate of

(a) the number of miles of first main track,

(b) 80 per cent of the number of miles of other main tracks, and

(c) 50 per cent of the number of miles of yard tracks and sidings,

in that place.

(4) For the purpose of making an allocation under paragraph (2)(b), a reference in section 410 to "salaries and wages paid in the year by the corporation to employees" shall be read as a reference to salaries and wages paid by the corporation to employees employed in the operation of permanent establishments (other than ships) maintained for the shipping business.

(5) For the purpose of making an allocation under paragraph (2)(c),

(a) a reference in section 402 to "gross revenue for the year reasonably attributable to the permanent establishment in the province" shall be read as a reference to the gross revenue of the taxpayer from operating hotels therein;

(b) a reference in section 402 to "total gross revenue for the year" shall be read as a reference to the total gross revenue of the taxpayer for the year from operating hotels; and

(c) a reference in section 402 to "salaries and wages paid in the year by the corporation to employees" shall be read as a reference to salaries and wages paid to employees engaged in the operations of its hotels.

(6) Notwithstanding subsection 402(5), for the purpose of making an allocation under paragraph (2)(d),

(a) a reference in section 402 to "gross revenue for the year reasonably attributable to the permanent establishment in the province" shall be read as a reference to the gross revenue of the taxpayer from the ownership by the taxpayer of petroleum and natural gas rights in lands in the province and any interest therein;

(b) a reference in section 402 to "total gross revenue for the year" shall be read as a reference to the total gross revenue of the taxpayer from ownership by the taxpayer of petroleum and natural gas rights and any interest therein; and

(c) a reference in section 402 to "salaries and wages paid in the year by the corporation to employees" shall be read as a reference to salaries and wages paid to employees employed in connection with the corporation's petroleum and natural gas rights and interests therein.

History: All that portion of subsec. 406(1) preceding para. (a), and subsec. 406(2) substituted by P.C. 1980-3346, s. 4, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, effective in respect of taxation years of corporations commencing after 1980.

Definitions [Reg. 406]: "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "employed", "employee" — ITA 248(1); "equated track miles" — Reg. 406(3); "gross revenue" — ITA 248(1); "permanent establishment" — Reg. 400(2); "province" — *Interpretation Act* 35(1); "taxable income" — Reg. 413(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

407. Airline corporations — **(1)** Notwithstanding subsections 402(3) and (4), the amount of taxable income that shall be deemed to have been earned in a taxation year by an airline corporation in a province in which it had a permanent establishment is the amount that is equal to ¼ of the aggregate of

(a) that proportion of its taxable income for the year that the capital cost of all the corporation's fixed assets, except aircraft, in the province at the end of the year is of the capital cost of all its fixed assets, except aircraft, in Canada at the end of the year; and

(b) that proportion of its taxable income for the year that three times the number of revenue plane miles flown by its aircraft in the province during the year is of the total number of revenue plane miles flown by its aircraft in Canada during the year other than miles flown in a province in which the corporation had no permanent establishment.

(2) For the purposes of this section, "revenue plane miles flown" shall be weighted according to take-off weight of the aircraft operated.

(3) For the purposes of this section, "take-off weight" of an aircraft means

(a) for an aircraft in respect of which an application form for a Certificate of Airworthiness has been submitted to and accepted by the Department of Transport, the maximum permissible take-off weight, in pounds, shown on the form; and

(b) for any other aircraft, the weight, in pounds, that may reasonably be considered to be the equivalent of the weight referred to in paragraph (a).

History: Para. 407(1)(b) substituted by P.C. 1994-662, s. 2, April 28, 1994, *Canada Gazette*, Part II, May 18, 1994, applicable to taxation years commencing after 1992.

Subsec. 407(1) substituted by P.C. 1980-3346, s. 5, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, effective in respect of taxation years of corporations commencing after 1980.

Subsecs. 407(2), (3) substituted by P.C. 1978-1004, s. 1, April 6, 1978, *Canada Gazette*, Part II, April 26, 1978, applicable to taxation years commencing on and after January 1, 1978.

Definitions [Reg. 407]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "permanent establishment" — Reg. 400(2); "province" — *Interpretation Act* 35(1); "revenue plane miles flown" — Reg. 407(2); "take-off weight" — Reg. 407(3); "taxable income" — Reg. 413(1); "taxation year" — ITA 249.

408. Grain elevator operators — Notwithstanding subsections 402(3) and (4), the amount of taxable income of a corporation whose chief business is the operation of grain elevators that shall be deemed to have been earned by that corporation in a taxation year in a province in which it had a permanent establishment is ½ of the aggregate of

(a) that proportion of its taxable income for the year that the number of bushels of grain received in the year in the elevators operated by the corporation in the province is of the total number of bushels of grain received in the year in all the elevators operated by the corporation; and

(b) that proportion of its taxable income for the year that the aggregate of salaries and wages paid in the year by the corporation to employees of its permanent establishment in the province is of the aggregate of all salaries and wages paid in the year by the corporation.

History: S. 408 substituted by P.C. 1980-3346, s. 6, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, effective in respect of taxation years of corporations commencing after 1980.

Definitions [Reg. 408]: "amount", "business" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "employee" — ITA 248(1); "permanent establishment" — Reg. 400(2); "province" — *Interpretation*

Act 35(1); "salaries and wages paid in the year", "taxable income" — Reg. 413(1); "taxation year" — ITA 249.

409. Bus and truck operators — Notwithstanding subsections 402(3) and (4), the amount of taxable income of a corporation whose chief business is the transportation of goods or passengers (other than by the operation of a railway, ship or airline service) that shall be deemed to have been earned by that corporation in a taxation year in a province in which it had a permanent establishment is ½ of the aggregate of

(a) that proportion of its taxable income for the year that the number of kilometres driven by the corporation's vehicles, whether owned or leased, on roads in the province in the year is of the total number of kilometres driven by those vehicles in the year on roads other than roads in provinces or countries in which the corporation had no permanent establishment; and

(b) that proportion of its taxable income for the year that the aggregate of salaries and wages paid in the year by the corporation to employees of its permanent establishment in the province is of the aggregate of all salaries and wages paid in the year by the corporation.

History: Para. 409(a) substituted by P.C. 1986-1251, s. 1, May 29, 1986, *Canada Gazette*, Part II, June 11, 1986, applicable to 1985 *et seq.*

S. 409 substituted by P.C. 1980-3346, s. 7, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, effective in respect of taxation years of corporations commencing after 1980.

Definitions [Reg. 409]: "amount", "business" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "employee" — ITA 248(1); "permanent establishment" — Reg. 400(2); "province" — *Interpretation Act* 35(1); "salaries and wages paid in the year", "taxable income" — Reg. 413(1); "taxation year" — ITA 249.

410. Ship operators — **(1)** Notwithstanding subsections 402(3) and (4), the amount of taxable income of a corporation whose chief business is the operation of ships that shall be deemed to have been earned by the corporation in a taxation year in a province in which it had a permanent establishment is the aggregate of,

(a) that portion of its allocable income for the year that its port-call-tonnage in the province is of its total port-call-tonnage in all the provinces in which it had a permanent establishment; and

(b) if its taxable income for the year exceeds its allocable income for the year, that proportion of the excess that the aggregate of the salaries and wages paid in the year by the corporation to employees of the permanent establishment (other than a ship) in the province is of the aggregate of salaries and wages paid in the year by the corporation to employees of its permanent establishments (other than ships) in Canada.

(2) In this section,

(a) "allocable income for the year" means that proportion of the taxable income of the corporation for the year that its total port-call-tonnage in Canada is of its total port-call-tonnage in all countries; and

(b) "port-call-tonnage" in a province or country means the aggregate of the products obtained by multiplying, for each ship operated by the corporation, the number of calls made in the year by that ship at ports in that province or country by the number of tons of the registered net tonnage of that ship.

History: S. 410 substituted by P.C. 1980-3346, s. 7, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, effective in respect of taxation years of corporations commencing after 1980.

Definitions [Reg. 410]: "allocable income for the year" — Reg. 410(2)(a); "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "employee" — ITA 248(1); "permanent establishment" — Reg. 400(2); "port-call tonnage" — Reg. 410(2)(b); "province" — *Interpretation Act* 35(1); "salaries and wages paid in the year by the corporation to employees" — Reg. 406(4); "taxable income" — Reg. 413(1); "taxation year" — ITA 249.

411. Pipeline operators — Notwithstanding subsections 402(3) and (4), the amount of taxable income of a corporation whose chief business is the operation of a pipeline that shall be deemed to have been earned by that corporation in a taxation year in a province in which it had a permanent establishment is ½ of the aggregate of

(a) that proportion of its taxable income for the year that the number of miles of pipeline of the corporation in the province is of the number of miles of pipeline of the corporation in all the provinces in which it had a permanent establishment; and

(b) that proportion of its taxable income for the year that the aggregate of the salaries and wages paid in the year by the corporation to employees of its permanent establishment in the province is of the aggregate of salaries and wages paid in the year by the corporation to employees of its permanent establishments in Canada.

History: S. 411 substituted by P.C. 1980-3346, s. 7, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, effective in respect of taxation years of corporations commencing after 1980.

Definitions [Reg. 411]: "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "employee" — ITA 248(1); "permanent establishment" — Reg. 400(2); "province" — *Interpretation Act* 35(1); "salaries and wages paid in the year", "taxable income" — Reg. 413(1); "taxation year" — ITA 249.

412. Divided businesses — Where part of the business of a corporation for a taxation year, other than a corporation described in section 403, 404, 405, 406, 407, 408, 409, 410 or 411, consisted of operations normally conducted by a corporation described in one of those sections, the corporation and the Minister may agree to determine the amount of taxable income deemed to have been earned in the year in a particular province to be the aggregate of the amounts computed

(a) by applying the provisions of such of those sections as would have been applicable if it had been a corporation described therein to the portion of its taxable income for the year that might reasonably be considered to have arisen from that part of the business; and

(b) by applying the provisions of section 402 to the remaining portion of its taxable income for the year.

Definitions [Reg. 412]: "amount", "business" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "Minister" — ITA 248(1); "province" — *Interpretation Act* 35(1); "taxable income" — Reg. 413(1); "taxation year" — ITA 249.

413. Non-resident corporations — **(1)** For the purposes of this Part, where a corporation is not resident in Canada, "salaries and wages paid in the year" by the corporation does not include salaries and wages paid to employees of a permanent establishment outside Canada and "taxable income" shall be deemed to refer to taxable income earned in Canada as determined under section 115 of the Act.

(2) For the purposes of paragraph 402(3)(a), where a corporation is not resident in Canada, "total gross revenue for the year" of the corporation does not include gross revenue reasonably attributable to a permanent establishment outside Canada.

Proposed Addition — Reg. 413(3)

(3) For the purpose of paragraph 404(1)(b), in the case of an authorized foreign bank, "all loans and deposits of the bank for the year" shall be read as a reference to "all loans and deposits of the bank for the year in respect of its Canadian banking business".

Application: The February 13, 2003 draft regulations (foreign bank branches), s. 4, (pre-published in the *Canada Gazette*, Part I, February 15, 2003), will add subsec. 413(3), applicable after June 27, 1999.

Regulatory Impact Analysis Statement: Section 413 defines certain terms, such as "salaries and wages paid in the year" and "total gross revenue for the year", for the purposes of Part IV of the Regulations. New subsection 413(3) of the Regulations prescribes the meaning of all loans and deposits of an authorized foreign bank for the purpose of paragraph 404(1)(b) of the Regulations, which as stated above determines the taxable income earned in a province by a corporation..

Definitions [Reg. 413]: "authorized foreign bank" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian banking business" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "employee", "gross revenue" — ITA 248(1); "permanent establishment" — Reg. 400(2); "resident in Canada" — ITA 250; "taxable income" — Reg. 413(1); "taxable income earned in Canada" — ITA 248(1).

414. Nova Scotia offshore area — For the purpose of subsection 123(2) of the Act, the "amount taxable earned by the corporation in the year in the Nova Scotia offshore area", in respect of a corporation for a taxation year, means the amount of taxable income of the corporation earned in the year that would be allocated under this Part to the Nova Scotia offshore area if the reference to the word "province" in this Part were read as "Nova Scotia offshore area".

Definitions [Reg. 414]: "corporation" — ITA 248(1), *Interpretation Act* 35(1); "Nova Scotia offshore area" — Reg. 415; "taxation year" — ITA 249.

415. For the purposes of this Part and subsection 123(2) of the Act, "Nova Scotia offshore area" has the meaning assigned to the expression "offshore area" by subsection 63(1) of the *Canada-Nova Scotia Oil and Gas Agreement Act*.

History: Ss. 414 and 415 added by P.C. 1985-2433, August 7, 1985, *Canada Gazette*, Part II, August 21, 1985, applicable to taxation years commencing after June 22, 1984.

Part V — Non-Resident-Owned Investment Corporations

History: Part V was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

500. Elections — Any election by a corporation to be taxed under section 133 of the Act shall be made by forwarding by registered mail to the Director–Taxation at the District Office of the Department of National Revenue, Taxation that serves the area in which the head office of the corporation is located the following documents:

(a) a letter stating that the corporation elects to be taxed under the said section 133;

(b) a certified copy of the resolution of the directors of the corporation authorizing the election to be made; and

(c) a certified list showing

(i) the names and addresses of the registered shareholders and the number of shares of each class held by each,

(ii) the names and addresses of the holders of the corporation's bonds, debentures, or other funded indebtedness, if any, and

(iii) the names and addresses of the beneficial owners of shares, bonds, debentures, or other funded indebtedness in cases where the registered shareholders or holders, as the case may be, are not the beneficial owners.

History: S. 500 amended by P.C. 1983-867, March 25, 1983, *Canada Gazette*, Part II, April, 1983, to substitute "Director–Taxation at the District Office of the Department of National Revenue, Taxation that serves the area in which the head office of the corporation is located" for "Deputy Minister of National Revenue for Taxation at Ottawa", and to remove the requirement to file duplicate copies of the documents listed.

Definitions [Reg. 500]: "corporation" — ITA 248(1), *Interpretation Act* 35(1); "office", "share", "shareholder" — ITA 248(1).

501. Elections revoked — Any election to be taxed under section 133 of the Act shall be revoked by a corporation by forwarding by registered mail to the Deputy Minister of National Revenue for Taxation at Ottawa the following documents in duplicate:

(a) a letter stating that the corporation revokes its election; and

(b) a certified copy of the resolution of the directors of the corporation authorizing the election to be revoked.

Definitions [Reg. 501]: "corporation" — ITA 248(1), *Interpretation Act* 35(1); "Minister" — ITA 248(1).

502. Certificates of changes of ownership — A corporation which is taxable under section 133 of the Act shall attach to its return of income required under subsection 150(1) of the Act, a certified statement showing any changes during the taxation year in the information referred to in paragraph 500(c).

Definitions [Reg. 502]: "corporation" — ITA 248(1), *Interpretation Act* 35(1); "taxation year" — ITA 249.

503. [Revoked]

History: S. 503 revoked by P.C. 1980-502, s. 1, February 8, 1980, *Canada Gazette*, Part II, February 27, 1980, effective January 1, 1979.

Part VI — Elections

600. [Prescribed provisions for late elections] — For the purposes of paragraphs 220(3.2)(a) and (b) of the Act, the following are prescribed provisions:

(a) section 21 of the Act;

(b) subsections 7(10), [12.2(4),] 13(4), (7.4) and (29), 14(6), 44(1) and (6), 45(2) and (3), 50(1), 53(2.1), 70(6.2), (9), (9.1), (9.2) and (9.3), 72(2), 73(1), 80.1(1), 82(3), 83(2), 104(5.3) and (14), 143(2), 146.01(7), 164(6) and (6.1), 184(3) and 256(9) of the Act;

(c) paragraphs 12(2.2)(b), 66.7(7)(c), (d) and (e) and (8)(c), (d) and (e), 80.01(4)(c), 86.1(2)(f) and 128.1(4)(d) [and 128.1(6)(a) and (c), (7)(d) and (g) and (8)(c)] of the Act; and

Proposed Amendment — Reg. 600(b), (c)

Canada Revenue Agency Erratum, June 23, 2005: The most recent amendments to section 600 of the *Income Tax Regulations* — SOR/2005-

185 — inadvertently remove elections previously included in paragraphs 600(b) and (c). The correct text of those paragraphs is as follows:

(b) subsections 7(10), 12.2(4), 13(4), (7.4) and (29), 14(6), 44(1) and (6), 45(2) and (3), 50(1), 53(2.1), 70(6.2), (9), (9.1), (9.2) and (9.3), 72(2), 73(1), 80.1(1), 82(3), 83(2), 104(5.3) and (14), 143(2), 146.01(7), 164(6) and (6.1), 184(3) and 256(9) of the Act;

(c) paragraphs 12(2.2)(b), 66.7(7)(c), (d) and (e) and (8)(c), (d) and (e), 80.01(4)(c), 86.1(2)(f) and 128.1(4)(d), (6)(a) and (c), (7)(d) and (g) and (8)(c) of the Act; and

A regulatory amendment will be put forward as soon as possible to correct this error.

(d) subsections 1103(1), (2) and (2d) and 5907(2.1) of these Regulations.

History: Paras. 600(b) and (c) amended by P.C. 2005-1133, s. 3, June 7, 2005, *Canada Gazette*, Part II, June 29, 2005, effective June 29, 2005.

S. 600 amended by P.C. 2005-694, s. 3, May 3, 2005, *Canada Gazette*, Part II, May 18, 2005, in force May 18, 2005 except that the references in para. 600(c) to ITA 128.1(6)(a) and (c), (7)(d) and (g) and (8)(c) apply in respect of changes of residence occurring after October 1, 1996.

Para. 600(c) amended by P.C. 2002-531, s. 1, April 11, 2002, *Canada Gazette*, Part II, April 24, 2002, to add reference to ITA 86.1(2)(f), in force April 11, 2002.

Para. 600(b) amended by P.C. 2001-1106, s. 2, June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, to add reference to ITA 143(2) and delete reference to ITA 80(3), applicable to an election in respect of 1998 *et seq.* that is made under ITA 143(2) as it applies to 1998 *et seq.*

Para 600(b.1) repealed by P.C. 1998-2270, s. 7, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, deemed to have come into force on February 1, 1998.

Paras. 600(b) and (c) amended and (b.1) added by P.C. 1997-1472, s. 1, October 9, 1997, *Canada Gazette*, Part II, October 29, 1997, effective October 29, 1997.

Paras. 600(b), (c) and (d) amended by P.C. 1996-214, February 20, 1996, *Canada Gazette*, Part II, March 6, 1996, effective March 6, 1996.

Paras. 600(b), (c) and (d) amended and para. (c.1) added, by P.C. 1995-1210, July 26, 1995, *Canada Gazette*, Part II, August 9, 1995.

Paras. 600(b) and (c) amended by P.C. 1993-1942, December 2, 1993, *Canada Gazette*, Part II, December 15, 1993.

Part VI (s. 600) added by P.C. 1992-914, May 7, 1992, *Canada Gazette*, Part II, May 20, 1992 effective commencing December 17, 1991.

Former Part VI "Credit Union Reserves", revoked by P.C. 1990-2779, s. 1, December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years commencing after June 17, 1987 that end after 1987.

Definitions [Reg. 600]: "Canada" — ITA 255, *Interpretation Act* 35(1); "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "prescribed" — ITA 248(1).

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

PART VII — LOGGING TAXES ON INCOME

History: Part VII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

Heading preceding s. 700 substituted by P.C. 1978-1315, s. 1, April 20, 1978, *Canada Gazette*, Part II, May 10, 1978.

700. Logging — **(1)** Except as provided in subsection (2), for the purposes of paragraph 127(2)(a) [127(2)"income for the year from logging operations in the province"] of the Act "income for the year from logging operations in the province" means the aggregate of

(a) where standing timber is cut in the province by the taxpayer or logs cut from standing timber in the province are acquired by the taxpayer and the logs so obtained are sold by the taxpayer in the province before or on delivery to a sawmill, pulp or paper plant or other place for processing logs, the taxpayer's income for the year from the sale, other than any portion thereof that was included in computing the taxpayer's income from logging operations in the province for a previous year;

(b) where standing timber in the province or the right to cut standing timber in the province is sold by the taxpayer, the taxpayer's income for the year from the sale, other than any portion thereof that was included in computing the taxpayer's income from logging operations in the province for a previous year;

(c) where standing timber is cut in the province by the taxpayer or logs cut from standing timber in the province are acquired by the taxpayer, if the logs so obtained are

(i) exported from the province and are sold by him prior to or on delivery to a sawmill, pulp or paper plant or other place for processing logs, or

(ii) exported from Canada,

the amount computed by deducting from the value, as determined by the province, of the logs so exported in the year, the aggregate of the costs of acquiring, cutting, transporting and selling the logs; and

(d) where standing timber is cut in the province by the taxpayer or logs cut from standing timber in the province are acquired by the taxpayer, if the logs are processed by the taxpayer or by a person on his behalf in a sawmill, pulp or paper plant or other place for processing logs in Canada, the income of the taxpayer for the year from all sources minus the aggregate of

(i) his income from sources other than logging operations carried on in Canada and other than the processing in Canada by him or on his behalf and sale by him of logs, timber and products produced therefrom,

(ii) each amount included in the aggregate determined under this subsection by virtue of paragraph (a), (b) or (c), and

(iii) an amount equal to eight per cent of the original cost to him of properties described in Schedule II used by him in the year in the processing of logs or products derived therefrom or, if the amount so determined is greater than 65 per cent of the income remaining after making the deductions under subparagraphs (i) and (ii), 65 per cent of the income so remaining or, if the amount so determined is less than 35 per cent of the income so remaining, 35 per cent of the income so remaining.

History: Paras. 700(1)(a), (b) substituted by P.C. 1992-1862, August 27, 1992, *Canada Gazette*, Part II, September 9, 1992, applicable in respect of taxation years beginning after 1990.

All that portion of para. 700(1)(d) preceding subpara. (ii) and all that portion of para. 700(2)(b) preceding subpara. (ii) substituted by P.C. 1987-2355, November 26, 1987, *Canada Gazette*, Part II, December 9, 1987, applicable to taxation years ending after December 9, 1987.

(2) Where the taxpayer cuts standing timber or acquires logs cut from standing timber in more than one province, for the purposes of paragraph 127(2)(a) [127(2)"income for the year from logging operations in the province"] of the Act "income for the year from logging operations in the province" means the aggregate of

(a) the amounts determined in respect of that province in accordance with paragraphs (1)(a), (b) and (c); and

(b) where the logs are processed by the taxpayer or by a person on his behalf in a sawmill, pulp or paper plant or other place for processing logs in Canada, an amount equal to the proportion of the income of the

taxpayer for the year from all sources minus the aggregate of

(i) his income from sources other than logging operations carried on in Canada and other than the processing in Canada by him or on his behalf and sale by him of logs, timber and products produced therefrom,

(ii) the aggregate of amounts determined in respect of each province in accordance with paragraphs (1)(a), (b) and (c), and

(iii) an amount equal to eight per cent of the original cost to him of properties described in Schedule II used by him in the year in the processing of logs or products derived therefrom or, if the amount so determined is greater than 65 per cent of the income remaining after making the deductions under subparagraphs (i) and (ii), 65 per cent of the income so remaining or, if the amount so determined is less than 35 per cent of the income so remaining, 35 per cent of the income so remaining,

that

(iv) the quantity of standing timber cut in the province in the year by the taxpayer and logs cut from standing timber in the province acquired by the taxpayer in the year,

is of

(v) the total quantity of standing timber cut and logs acquired in the year by the taxpayer.

Forms: T2 SCH 21: Federal foreign income tax credits and federal logging tax credit.

(3) For the purposes of paragraph 127(2)(b) [127(2)"logging tax"] of the Act, the tax imposed by the legislature of

(a) the Province of British Columbia under the *Logging Tax Act* of that province, and

(b) [Revoked]

(c) the Province of Quebec under Part VII of the *Taxation Act* of that province,

are each declared to be a tax of general application on income from logging operations.

History: Para. 700(3)(b) revoked, (c) substituted by P.C. 1982- 3879, December 16, 1982, *Canada Gazette*, Part II, January 12, 1983, applicable, as to para. 700(3)(b), in respect of taxation years ending after March 30, 1972, and, as to para. 700(3)(c), in respect of 1972 *et seq.*

Definitions [Reg. 700]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "legislature" — *Interpretation Act* 35(1)"legislative assembly"; "person" — ITA 248(1); "province" — *Interpretation Act* 35(1); "taxpayer" — ITA 248(1).

701. [Revoked]

History: S. 701 revoked by P.C. 1978-1315, s. 2, April 20, 1978, *Canada Gazette*, Part II, May 10, 1978.

PART VIII — NON-RESIDENT TAXES

History: Part VIII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

800. Registered non-resident insurers — For the purposes of subsection 215(4) of the Act, subsections 215(1), (2) and (3) of the Act do not apply to amounts paid or credited to a registered non-resident insurer.

Proposed Amendment — Reg. 800

800. Authorized foreign banks and non-resident insurers — Subsections 215(1), (2) and (3) of the Act do not apply to amounts paid or credited to an authorized foreign bank or to a registered non-resident insurer.

Application: The February 13, 2003 draft regulations (foreign bank branches), s. 5, (pre-published in the *Canada Gazette*, Part I, February 15, 2003), will amend s. 800 to read as above, applicable to taxation years that end after June 27, 1999.

Technical Notes, December 20, 2002: Section 800 provides that amounts paid or credited to a registered non-resident insurer are not subject to the withholding obligations set out in subsections 215(1), (2) and (3) of the Act. The section is to be amended to apply as well to amounts paid or credited to an authorized foreign bank, and to update its structure.

Regulatory Impact Analysis Statement: Sections 800 to 803 currently exempt a resident payer from the withholding responsibility imposed under Part XIII of the Act on payments made to a registered non-resident insurer. Also, these sections outline the compliance rules applicable to a registered non-resident insurer. These sections are amended to apply to an authorized foreign bank as well.

Alternatives

These Regulations are necessary for the application of the taxation regime of foreign bank branches. Therefore, no alternatives were considered.

Benefits and Costs

These amending Regulations are essential for the application of the taxation regime of the foreign bank branches, and there should be no additional costs in the administration of these Regulations.

Consultation

These amendments were developed through extensive consultations with representatives of the banking sector, both Canadian and foreign, and the Canada Customs and Revenue Agency.

In addition, all stakeholders were given an opportunity to comment on the tax rules for authorized foreign banks when those rules were released in a draft form on August 8, 2000 [and December 20, 2002 — ed.].

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Definitions [Reg. 800]: "amount", "authorized foreign bank" — ITA 248(1); "registered non-resident insurer" — Reg. 804.

801. Filing of returns by non-resident insurers — For the purposes of subsection 215(4) of the Act, where a taxpayer is a registered non-resident insurer in a taxation year, the taxpayer shall file a return in respect thereof in prescribed form with the Minister within the six month period immediately following the end of the year.

Proposed Amendment — Reg. 801

801. Filing of returns by non-resident insurers — A taxpayer that is an authorized foreign bank or a registered non-resident insurer at any time in a taxation year shall file a return in respect the year in prescribed form with the Minister on or before its filing-due date for the year.

Application: The February 13, 2003 draft regulations (foreign bank branches), s. 5, (pre-published in the *Canada Gazette*, Part I, February 15, 2003), will amend s. 801 to read as above, applicable to taxation years that end after June 27, 1999, except that the return required to be filed under section 801 by an authorized foreign bank is deemed to have been filed with the Minister of National Revenue in a timely manner if it is so filed on or before the later of

(a) the day on or before which it would, but for this subsec., be required to be filed; and

(b) the day that is 6 months after the day on which this Regulation is registered.

Technical Notes, December 20, 2002: Section 801 of the Regulations requires a non-resident insurer to file a return in respect of tax payable by it under Part XIII of the Act. The section is to be amended to apply the same requirement to an authorized foreign bank.

This amendment is to apply to taxation years that end after June 27, 1999, except that the return required to be filed by an authorized foreign bank is deemed to have been filed with the Minister of National Revenue in a timely manner if it is filed on or before the later of

- the day on or before which it would otherwise be required to be filed (that is, the bank's filing-due date for the taxation year in question); and
- the day that is 6 months after the day on which this Regulation is registered.

Regulatory Impact Analysis Statement: See under Reg. 800 above.

History: S. 801 substituted by P.C. 1990-2002, s. 1, September 20, 1990, *Canada Gazette*, Part II, October 10, 1990, applicable in respect of taxation years beginning after June 17, 1987 and ending after 1987.

Definitions [Reg. 801]: "authorized foreign bank", "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "prescribed" — ITA 248(1); "registered non-resident insurer" — Reg. 804; "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

Forms: T2016: Part XIII tax return — tax on income from Canada of approved non-resident insurers.

802. Amounts taxable — For the purposes of paragraph 214(13)(c) of the Act, the amounts taxable under Part XIII of the Act in a relevant taxation year of a taxpayer are amounts paid or credited to the taxpayer in the relevant taxation year other than amounts included pursuant to Part I of the Act in computing the taxpayer's income from a business carried on by it in Canada.

Proposed Amendment — Reg. 802

802. Amounts taxable — The amounts that are taxable under Part XIII of the Act in a taxation year of a taxpayer that is an authorized foreign bank or a registered non-resident insurer are amounts paid or credited to the taxpayer in the year other than amounts included under Part I of the Act in computing the taxpayer's income from a business carried on by it in Canada.

Application: The February 13, 2003 draft regulations (foreign bank branches), s. 5, (pre-published in the *Canada Gazette*, Part I, February 15, 2003), will amend s. 802 to read as above, applicable to taxation years that end after June 27, 1999.

Technical Notes, December 20, 2002: Section 802 of the Regulations ensures that Parts I and XIII of the Act do not overlap in respect of a registered non-resident insurer's income from carrying on business in Canada. In general terms, the section provides that, to the extent such income is dealt with by Part I, it is not subject to taxation under Part XIII. In its current form, section 802 is not clearly confined to registered non-resident insurers. As a result, its relationship to section 805, which deals with the same subject in respect of other taxpayers, is also unclear.

Section 802 is to be amended to clarify its application, and to provide that it applies as well to authorized foreign banks. This amendment is to apply to taxation years that end after June 27, 1999.

Regulatory Impact Analysis Statement: See under Reg. 800 above.

Definitions [Reg. 802]: "authorized foreign bank", "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "registered non-resident insurer" — Reg. 804; "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

803. Payment of tax by non-resident insurers — For the purposes of subsection 215(4) of the Act, a taxpayer shall pay to the Receiver General, on or before the last day on which the return in respect of a relevant taxation year is required to be filed pursuant to section 801, the tax payable by the taxpayer under Part XIII of the Act on amounts referred to in section 802 in respect of the relevant taxation year.

Proposed Amendment — Reg. 803

803. Payment of tax by non-resident insurers — Authorized foreign banks and registered non-resident insurers shall pay to the Receiver General, on or before their filing-due dates for a taxation year, the tax payable by them under Part XIII of the Act.

Application: The February 13, 2003 draft regulations (foreign bank branches), s. 5, (pre-published in the *Canada Gazette*, Part I, February 15, 2003), will amend s. 803 to read as above, applicable to taxation years that end after June 27, 1999.

Technical Notes, December 20, 2002: Section 803 of the Regulations provides that a registered non-resident insurer must pay its Part XIII tax owing in respect of a taxation year on or before the day on which its return under Regulation 801 in respect of the year is due. The section is to be amended to clarify its scope and meaning, and to provide that it is to apply as well to authorized foreign banks. This amendment is to apply to taxation years that end after June 27, 1999.

Regulatory Impact Analysis Statement: See under Reg. 800 above.

Definitions [Reg. 803]: "authorized foreign bank", "amount" — ITA 248(1); "registered non-resident insurer" — Reg. 804; "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

804. Interpretation — In this Part, "registered non-resident insurer" means a non-resident corporation approved to carry on business in Canada under the *Insurance Companies Act*.

History: S. 804 replaced by P.C. 2000-1714, November 30, 2000, *Canada Gazette*, Part II, December 20, 2000, s. 1, applicable after May 1992.

The heading preceding s. 800, and ss. 800 to 804, were substituted by P.C. 1979-1485, May 17, 1979, *Canada Gazette*, Part II, June 13, 1979, effective for 1978 *et seq.*

Definitions [Reg. 804]: "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "non-resident" — ITA 248(1).

805. Other non-resident persons — **(1)** Every non-resident person who carries on business in Canada shall be taxable under Part XIII of the Act on all amounts otherwise taxable under that Part except those amounts that

(a) may reasonably be attributed to the business carried on by him through a permanent establishment (within the meaning assigned by subsection 400(2) or that would be assigned by that subsection if he were a corporation) in Canada; or

(b) are required by subparagraph 115(1)(a)(iii.3) of the Act to be included in computing his taxable income earned in the year in Canada.

(2) Where the Minister is satisfied that under subsection (1) an amount is not taxable under Part XIII of the Act, he may permit payment to be made to the non-resident person without any deduction being made under section 215 of the Act.

(3) Subsections (1) and (2) do not apply in respect of amounts upon which tax under Part XIII of the Act is payable in a relevant taxation year by a taxpayer required by section 801 to file the return described in that section in respect of that year.

Proposed Amendment — Reg. 805 (repealing 805(2), (3))

805. Other non-resident persons — Subject to section 802, every non-resident person who carries on busi-

ness in Canada is taxable under Part XIII of the Act on all amounts otherwise taxable under that Part except those amounts that

(a) may reasonably be attributed to the business carried on by the person through a permanent establishment (within the meaning assigned by subsection 400(2) or that would be assigned by that subsection if the person were a corporation) in Canada; or

(b) are required by subparagraph 115(1)(a)(iii.3) of the Act to be included in computing the person's taxable income earned in Canada for the year.

Application: The February 13, 2003 draft regulations (foreign bank branches), s. 6, will amend subsec. 805(1) to read as above and repeal subsecs. (2) and (3), applicable to taxation years that end after June 27, 1999.

Technical Notes, December 20, 2002: Section 805 of the Regulations provides rules for determining whether an amount is taxable under Part XIII of the Act, in a case where the non-resident recipient of the amount carries on a business in Canada. In general terms, the section provides that an amount paid to a non-resident is taxable under Part XIII of the Act if that amount cannot reasonably be attributed to a business carried on by the non-resident through a permanent establishment in Canada.

Section 805 is to be amended to update its structure and language, and to clarify its relationship to section 802 of the Regulations — in effect, that section 805 is not applicable to authorized foreign banks and registered non-resident insurers.

History: Para 805(1)(a) substituted by P.C. 1988-390, s. 3, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988.

Para. 805(1)(b) substituted by P.C. 1984-3789, s. 3, November 29, 1984, *Canada Gazette*, Part II, December 12, 1984.

Subsec. 805(1) substituted by P.C. 1981-2208, s. 1, August 19, 1981, *Canada Gazette*, Part II, September 9, 1981, applicable to taxation years ending after December 11, 1979.

Definitions [Reg. 805]: "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "carries on business in Canada" — ITA 253; "corporation" — ITA 248(1), *Interpretation Act* 35(1); "non-resident" — ITA 248(1); "permanent establishment" — Reg. 400(2); "person", "taxable income" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

Interpretation Bulletins [Reg. 805]: IT-420R3: Non-residents — income earned in Canada; IT-438R2: Crown charges — resource properties in Canada.

806. International organizations and agencies — For the purposes of clause 212(1)(b)(ii)(B) of the Act, the following international organizations and agencies are hereby prescribed:

(a) Bank for International Settlements;

(b) European Fund;

(c) International Bank for Reconstruction and Development;

(d) International Development Association;

(e) International Finance Corporation; and

(f) International Monetary Fund.

806.1 For the purposes of subparagraph 212(1)(b)(x) of the Act, the Bank for International Settlements and the European Bank for Reconstruction and Development are prescribed international agencies.

History: S. 806.1 substituted by P.C. 1994-270, February 16, 1994, *Canada Gazette*, Part II, March 9, 1994, applicable after 1990.

S. 806.1 added by P.C. 1988-390, s. 4, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, effective May 24, 1985.

806.2 Prescribed obligation — For the purpose of paragraph 212(1)(b) of the Act, an obligation is a prescribed obligation if it is an indexed debt obligation and no amount payable in respect of it is

(a) contingent or dependent upon the use of, or production from, property in Canada; or

(b) computed by reference to

(i) revenue, profit, cash flow, commodity price or any other similar criterion, other than a change in the purchasing power of money, or

(ii) dividends paid or payable to shareholders of any class of shares.

History: S. 806.2 amended by P.C. 1996-1419, s. 2, September 11, 1996, *Canada Gazette*, Part II, October 2, 1996, applicable to debt obligations issued after October 16, 1991.

S. 806.2 added by P.C. 1993-1331, June 16, 1993, *Canada Gazette*, Part II, June 30, 1993, applicable in respect of debt obligations issued after October 16, 1991.

Definitions [Reg. 806.2]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "class of shares" — ITA 248(6); "dividend", "indexed debt obligation", "prescribed", "property", "share", "shareholder" — ITA 248(1).

Interpretation Bulletins: IT-361R3: Exemption from Part XIII tax on interest payments to non-residents.

807. Identification of obligations — For the purposes of subsection 240(2) of the Act, the letters "AX" or the letter "F" as the case may be, shall be clearly and indelibly printed in gothic or similar style capital letters of seven point or larger size either as a prefix to the coupon number or on the lower right hand corner of each coupon or other writing issued in evidence of a right to interest on an obligation referred to in that subsection.

Definitions [Reg. 807]: "writing" — *Interpretation Act* 35(1).

808. Allowances in respect of investment in property in Canada — (1) [Allowance] — For the purposes of paragraph 219(1)(h) of the Act, a corporation's allowance for a taxation year in respect of its investment in property in Canada is hereby prescribed to be the amount, if any, by which

Proposed Amendment — Reg. 808(1) opening words

808. (1) For the purposes of paragraph 219(1)(j) of the Act, the allowance of a corporation (other than an authorized foreign bank) for a taxation year in respect of its investment in property in Canada is prescribed to be the amount, if any, by which

Application: The February 13, 2003 draft regulations (foreign bank branches), subsec. 7(1), (pre-published in the *Canada Gazette*, Part I, February 15, 2003), will amend the opening words of subsec. 808(1) to read as above, applicable to taxation years that begin after 1995, except that in applying the amendment to taxation years ending before June 28, 1999, it is to be read without reference to "(other than an authorized foreign bank)".

Regulatory Impact Analysis Statement: See under Reg. 808(8) below.

(a) the corporation's qualified investment in property in Canada at the end of the year,

exceeds

(b) the aggregate of

(i) all allowances computed under this section as it read in its application to each of the taxation years of the corporation that ended before 1972 to the extent that for those taxation years such allowances reduced the amount on which the corporation was

taxable under subsection 110B(1) of the Act as it read in its application to those taxation years, and

(ii) the capital investment of the corporation in property in Canada at the end of the corporation's 1960 taxation year, determined under this section as it read in its application to the 1961 taxation year.

Related Provisions: Reg. Reg. 808(1.1) — Where corporation becomes resident in Canada.

Interpretation Bulletins: IT-137R3: Additional tax on certain corporations carrying on business in Canada.

Proposed Addition — Reg. 808(1.1)

(1.1) [Where corporation becomes resident] — Notwithstanding subsection (1), if a corporation becomes resident in Canada at a particular time, the corporation's allowance in respect of its investment in property in Canada for its last taxation year that ended before the particular time is prescribed to be nil.

Application: The October 27, 1998 draft regulations, s. 1, will add 808(1.1), applicable to corporations that become resident in Canada after February 23, 1998.

Technical Notes: Subsection 808(1) of the Regulations specifies the amount of a corporation's allowance in respect of investment in property in Canada for the purposes of the "branch tax" imposed under Part XIV of the Act.

New subsection 808(1.1) provides that where a corporation becomes resident in Canada, the corporation's investment allowance for the taxation year that is deemed to end immediately before immigration is nil. Since the corporation will be unable to claim an investment allowance, it will be liable to pay branch tax on any unremitted profits of a Canadian branch arising in the year or deferred in respect of previous years. Effectively, for an immigrating corporation, unremitted profits of a Canadian branch are treated similarly to the undistributed surplus of a Canadian corporation in which the immigrating corporation holds shares, which is deemed to be distributed as a dividend by paragraph 128.1(1)(c.1) of the Act.

New subsection 808(1.1) applies to corporations that become resident in Canada after February 23, 1998.

(2) ["Qualified investment in . . ."] — For the purposes of subsection (1), where, at the end of a taxation year, a corporation is not a member of a partnership that was carrying on business in Canada at any time in the year, the corporation's "qualified investment in property in Canada at the end of the year" is the amount, if any, by which the aggregate of

(a) the cost amount to the corporation, at the end of the year, of land in Canada owned by it at that time for the purpose of gaining or producing income from a business carried on by it in Canada, other than land that is

(i) described in the corporation's inventory,

(ii) depreciable property,

(iii) a Canadian resource property, or

(iv) land the cost of which is or was deductible in computing the corporation's income,

(b) an amount equal to the aggregate of the cost amount to the corporation, immediately after the end of the year, of each depreciable property in Canada owned by it for the purpose of gaining or producing income from a business carried on by it in Canada,

(c) an amount equal to 4/3 of the cumulative eligible capital of the corporation immediately after the end of the year in respect of each business carried on by it in Canada,

(d) where the corporation is not a principal-business corporation, within the meaning assigned by paragraph 66(15)(h) [66(15)"principal-business corporation"] of the Act, an amount equal to the aggregate of the corporation's

(i) Canadian exploration and development expenses, within the meaning assigned by paragraph 66(15)(b) [66(15)"Canadian exploration and development expenses"] of the Act, incurred by the corporation before the end of the year except to the extent that such expenses were deducted by the corporation in computing its income for the year or for a previous taxation year, and

(ii) cumulative Canadian exploration expense, within the meaning assigned by paragraph 66.1(6)(b) [66.1(6)"cumulative Canadian exploration expense"] of the Act, at the end of the year minus any deduction under subsection 66.1(3) of the Act in computing the corporation's income for the year,

(d.1) an amount equal to the corporation's cumulative Canadian development expense, within the meaning assigned by paragraph 66.2(5)(b) [66.2(5)"cumulative Canadian development expense"] of the Act, at the end of the year minus any deduction under subsection 66.2(2) of the Act in computing the corporation's income for the year,

(d.2) an amount equal to the corporation's cumulative Canadian oil and gas property expense, within the meaning assigned by paragraph 66.4(5)(b) [66.4(5)"cumulative Canadian oil and gas property expense"] of the Act, at the end of the year minus any deduction under subsection 66.4(2) of the Act in computing the corporation's income for the year,

Proposed Amendment — Reg. 808(2)(d)–(d.2)

(d) where the corporation is not a principal-business corporation, within the meaning assigned by subsection 66(15) of the Act, an amount equal to the total of the corporation's

(i) Canadian exploration and development expenses incurred by the corporation before the end of the year, except to the extent that those expenses were deducted in computing the corporation's income for the year or for a previous taxation year, and

(ii) cumulative Canadian exploration expense, within the meaning assigned by subsection 66.1(6) of the Act, at the end of the year minus any deduction under subsection 66.1(3) of the Act in computing the corporation's income for the year,

(d.1) an amount equal to the corporation's cumulative Canadian development expense, within the meaning assigned by subsection 66.2(5) of the Act, at the end of the year minus any deduction under subsection 66.2(2) of the Act in computing the corporation's income for the year,

(d.2) an amount equal to the corporation's cumulative Canadian oil and gas property expense, within the meaning assigned by subsection 66.4(5) of the Act, at the end of the year minus any deduction under subsection 66.4(2) of the Act in computing the corporation's income for the year,

Application: The February 13, 2003 draft regulations (foreign bank branches), subsec. 7(2), (pre-published in the *Canada Gazette*, Part I, February 15, 2003), will amend paras. 808(2)(d) to (d.2) to read as above, in force on the day on which this Regulation is registered.

Regulatory Impact Analysis Statement: *Branch Tax*

Part XIV of the Act imposes a tax on non-resident corporations carrying on a business in Canada through a branch. The purpose of this tax is to put those non-resident corporations in a similar position for Canadian tax purposes as non-residents who carry on business in Canada through a Canadian subsidiary.

Branch tax is levied at a flat rate of 25 per cent on a non-resident corporation's taxable income from Canadian sources, with certain adjustments, including an allowance for its investment in property in Canada. A corporation's allowance for investment in property in Canada is computed under section 808 of the Regulations.

Paragraphs 808(2)(h) and (p), subparagraphs 808(2)(l)(i), (n)(ii) and (iii), and (o)(ii) and (iii) are amended to reflect earlier amendments to Part XIV of the Act.

. . .

Paragraphs 808(2)(d) to (d.2), subparagraphs 808(2)(l)(ii) and 808(5)(j)(ii) generally refer to rules applicable to resource property in the computation of the "qualified investment in property in Canada". These paragraphs are revised as the miscellaneous program amendments of the Department of Finance.

(e) an amount equal to the aggregate of the cost amount to the corporation at the end of the year of each debt owing to it, or any other right of the corporation to receive an amount, that was outstanding as a result of the disposition by it of property in respect of which an amount would be included, by virtue of paragraph (a), (b), (c) or (h), in its qualified investment in property in Canada at the end of the year if the property had not been disposed of by it before the end of that year,

(f) an amount equal to the aggregate of the cost amount to the corporation at the end of the year of each property, other than a Canadian resource property, that was described in the corporation's inventory in respect of a business carried on by it in Canada,

(g) an amount equal to the aggregate of the cost amount to the corporation at the end of the year of each debt (other than a debt referred to in paragraph (e) or a debt the amount of which was deducted under paragraph 20(1)(p) of the Act in computing the corporation's income for the year) owing to it

(i) in respect of any transaction by virtue of which an amount has been included in computing its income for the year or for a previous year from a business carried on by it in Canada, or

(ii) where any part of its ordinary business carried on in Canada was the lending of money, in respect of a loan made by the corporation in the ordinary course of that part of its business,

(h) where the corporation was resident in Canada at any time in the year, an amount equal to the aggregate of the cost amount to the corporation at the end of the year of any property in Canada owned by it

(i) the cost amount of which is not included in its qualified investment in property in Canada at the end of the year by virtue of paragraph (a) or (b) or subparagraph (g)(i), but would be so included if those provisions were read without the phrase "from a business carried on by it in Canada",

(ii) that is a share of the capital stock of a corporation that was not described in the corporation's inventory in respect of a business carried on by it in Canada, or

(iii) that is a bond, debenture, bill, note, mortgage or similar obligation that was not described in the corporation's inventory in respect of a business carried on by it in Canada (other than an obligation referred to in subparagraph (3)(a)(iii), a debt referred to in paragraph (e) or (g) or a debt the amount of which was deducted under paragraph 20(1)(p) of the Act in computing the corporation's income for the year), and

Proposed Repeal — Reg. 808(2)(h)

Application: The February 13, 2003 draft regulations (foreign bank branches), subsec. 7(3), (pre-published in the *Canada Gazette*, Part I, February 15, 2003), will repeal para. 808(2)(h), applicable to taxation years that begin after 1995.

Regulatory Impact Analysis Statement: See under Reg. 808(2)(d)–(d.2) above.

(i) an amount equal to the allowable liquid assets of the corporation at the end of the year,

exceeds the aggregate of

(j) an amount equal to the aggregate of each amount deducted by the corporation under paragraph 20(1)(l), (l.1) or (n) or subsection 64(1), (1.1) or (1.2) of the Act in computing its income for the year from a business carried on by it in Canada;

(k) an amount equal to the aggregate of all amounts each of which is an amount deducted by the corporation in the year under subparagraph 40(1)(a)(iii) or 44(1)(e)(iii) of the Act in respect of a debt referred to in paragraph (e);

(l) an amount equal to the aggregate of each amount owing by the corporation at the end of the year on account of

(i) the purchase price of property that is referred to in paragraph (a), (b), (f) or (h) or that would be so referred to but for the fact that it has been disposed of before the end of the year,

Proposed Amendment — Reg. 808(2)(l)(i)

(i) the purchase price of property that is referred to in paragraph (a), (b) or (f) or that would be so referred to but for the fact that it has been disposed of before the end of the year,

Application: The February 13, 2003 draft regulations (foreign bank branches), subsec. 7(4), (pre-published in the *Canada Gazette*, Part I, February 15, 2003), will amend subpara. 808(2)(l)(i) to read as above, applicable to taxation years that begin after 1995.

Regulatory Impact Analysis Statement: See under Reg. 808(2)(d)–(d.2) above.

(ii) Canadian exploration and development expenses, Canadian exploration expense, Canadian development expense or Canadian oil and gas property expense, within the meanings assigned by paragraphs 66(15)(b) [66(15)"Canadian exploration and development expenses"], 66.1(6)(a) [66.1(6)"Canadian exploration expense"], 66.2(5)(a) [66.2(5)"Canadian development expense"] and 66.4(5)(a) [66.4(5)"Canadian oil and gas property expense"] of the Act, respectively,

Proposed Amendment — Reg. 808(2)(l)(ii)

(ii) Canadian exploration and development expenses, Canadian exploration expense, Canadian development expense or Canadian oil and gas property expense,

Application: The February 13, 2003 draft regulations (foreign bank branches), subsec. 7(5), (pre-published in the *Canada Gazette*, Part I, February 15, 2003), will amend subpara. 808(2)(l)(ii) to read as above, in force on the day on which this Regulation is registered.

Regulatory Impact Analysis Statement: See under Reg. 808(2)(d)–(d.2) above.

(iii) an eligible capital expenditure made or incurred by the corporation before the end of the year in respect of a business carried on by it in Canada, or

(iv) any other outlay or expense made or incurred by the corporation to the extent that it was deducted in computing its income for the year or for a previous taxation year from a business carried on by it in Canada;

(m) an amount equal to the aggregate of all amounts each of which is an amount equal to that proportion of the amount owing (other than an amount owing on account of an outlay or expense referred to in paragraph (l)) by the corporation at the end of the year on account of an obligation outstanding at any time in the year in respect of which interest is stipulated to be payable by it that

(i) the interest paid or payable on the obligation by the corporation in respect of the year that is deductible, or would be deductible but for subsection 18(2), (3.1) or (4) or section 21 of the Act, in computing its income for the year from a business carried on by it in Canada,

is of

(ii) the interest paid or payable on the obligation by the corporation in respect of the year;

(n) the amount, if any, by which

(i) the amount (referred to in this paragraph as "Part I liability"), if any, by which the tax payable for the year by the corporation under Part I of the Act exceeds the amount, if any, paid by the corporation before the end of the year on account thereof,

exceeds

(ii) where the corporation was, throughout the year, not resident in Canada, that proportion of the Part I liability that the amount, if any, determined under paragraph 219(1)(d) of the Act in respect of the corporation for the year is of the corporation's amount taxable (within the meaning given to that expression in section 123 of the Act) for the year, or

(iii) in any other case, nil;

Proposed Amendment — Reg. 808(2)(n)(ii), (iii)

(ii) that proportion of the Part I liability that the amount, if any, in respect of the corporation for the year that is the lesser of

(A) the amount, if any, by which the total of all amounts each of which is a taxable capital gain of the corporation for the year from a disposition of a taxable Canadian property that was not used or held by it in the year in the course of carrying on business in Canada exceeds the total of all amounts each of which is an allowable capital loss of the corporation for the year from a disposition of such a property, and

(B) the amount that would be determined under clause (A) for the year if it were read without reference to the expression "that was not used or held by it in the year in the course of carrying on business in Canada",

is of the corporation's taxable income earned in Canada for the year; and

Application: The February 13, 2003 draft regulations (foreign bank branches), subsec. 7(6), (pre-published in the *Canada Gazette*, Part I, February 15, 2003), will amend subpara. 808(2)(n)(ii) to read as above, and repeal subpara. (iii), applicable to taxation years that begin after 1995.

Regulatory Impact Analysis Statement: See under Reg. 808(2)(d)–(d.2) above.

(o) the amount, if any, by which

(i) the amount (referred to in this paragraph as "provincial tax liability"), if any, by which any income taxes payable for the year by the corporation to the government of a province (to the extent that such taxes were not deductible under Part I of the Act in computing the corporation's income for the year from a business carried on by it in Canada) exceeds the amount, if any, paid by the corporation before the end of the year on account thereof,

exceeds

(ii) where the corporation was, throughout the year, not resident in Canada, that proportion of the provincial tax liability that the amount, if any, determined under paragraph 219(1)(d) of the Act in respect of the corporation for the year is of the corporation's amount taxable (within the meaning given to that expression in section 123 of the Act) for the year, or

(iii) in any other case, nil; and,

Proposed Amendment — Reg. 808(2)(o)(ii), (iii)

(ii) that proportion of the provincial tax liability that the amount, if any, in respect of the corporation for the year that is the lesser of

(A) the amount, if any, by which the total of all amounts each of which is a taxable capital gain of the corporation for the year from a disposition of a taxable Canadian property that was not used or held by it in the year in the course of carrying on business in Canada exceeds the total of all amounts each of which is an allowable capital loss of the corporation for the year from a disposition of such a property, and

(B) the amount that would be determined under clause (A) for the year if it were read without reference to the expression "that was not used or held by it in the year in the course of carrying on business in Canada"

is of the corporation's taxable income earned in Canada for the year.

Application: The February 13, 2003 draft regulations (foreign bank branches), subsec. 7(7), (pre-published in the *Canada Gazette*, Part I, February 15, 2003), will amend subpara. 808(2)(o)(ii) to read as above, and repeal subpara. (iii), applicable to taxation years that begin after 1995.

Regulatory Impact Analysis Statement: See under Reg. 808(2)(d)–(d.2) above.

(p) where the corporation was resident in Canada at any time in the year, an amount equal to the aggregate of

(i) an amount equal to the aggregate of each amount deducted by the corporation in the year

under paragraph 20(1)(l) or (l.1) or subsection 64(1), (1.1) or (1.2) of the Act in computing its income for the year from a source other than

(A) a business carried on by it in Canada, or

(B) a property situated outside Canada,

(ii) an amount equal to the aggregate of each amount owing by the corporation at the end of the year on account of any outlay or expense made or incurred by the corporation to the extent that it was deducted in computing its income for the year or for a previous taxation year from a source other than

(A) a business carried on by it in Canada, or

(B) a property situated outside Canada, and

(iii) an amount equal to the aggregate of all amounts each of which is an amount equal to that proportion of the amount owing (other than an amount owing on account of an outlay or expense referred to in subparagraph (ii) or paragraph (l)) by the corporation at the end of the year on account of an obligation outstanding at any time in the year in respect of which interest is stipulated to be payable by it that

(A) the interest paid or payable on the obligation by the corporation in respect of the year that is deductible, or would be deductible but for subsection 18(2), (3.1) or (4) or section 21 of the Act, in computing its income for the year from a source other than

(I) a business carried on by it in Canada, or

(II) a property situated outside Canada,

is of

(B) the interest paid or payable on the obligation by the corporation in respect of the year.

Proposed Repeal — Reg. 808(2)(p)

Application: The February 13, 2003 draft regulations (foreign bank branches), subsec. 7(8), (pre-published in the *Canada Gazette*, Part I, February 15, 2003), will repeal para. 808(2)(p), applicable to taxation years that begin after 1995.

Regulatory Impact Analysis Statement: See under Reg. 808(2)(d)–(d.2) above.

History: Subpara. 808(2)(h)(iii) amended by P.C. 1994-1817, para. 62(a), November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Paras. 808(2)(j), (p) substituted by P.C. 1990-2779, subsecs. 2(1), (2), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years commencing after June 17, 1987 that end after 1987.

Para. 808(2)(c) amended by P.C. 1990-754, subsec. 1(1), April 26, 1990, *Canada Gazette*, Part II, May 9, 1990, applicable in respect of taxation years commencing after June 1988.

Para. 808(2)(k), subpara. (m)(i) and cl. (p)(iii)(A) preceding subcl. (I) substituted by P.C. 1984-3789, subsecs. 4(1)–(3), November 29, 1984, *Canada Gazette*, Part II, December 12, 1984, effective as to subpara. (m)(i) and cl. (p)(iii)(A) commencing January 1, 1982.

Paras. 808(2)(d.2) added, (j) substituted, subpara. 808(2)(l)(ii), all that portion of subpara. 808(2)(p)(i) preceding cl. (A) substituted by P.C. 1981-2208, subsecs. 2(1)–(4), August 19, 1981, *Canada Gazette*, Part II, September 9, 1981, applicable to taxation years ending after December 11, 1979.

(3) ["Allowable liquid assets ..."] — For the purposes of paragraph (2)(i), the "allowable liquid assets of the corporation at the end of the year" is an amount equal to the lesser of

(a) the aggregate of

(i) the amount of Canadian currency owned by the corporation at the end of that year,

(ii) the balance standing to the credit of the corporation at the end of that year as or on account of amounts deposited with a branch or other office in Canada of

(A) a bank,

(B) a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee, or

(C) a credit union, and

(iii) an amount equal to the aggregate of the cost amount to the corporation at the end of that year of each bond, debenture, bill, note, mortgage or similar obligation that was not described in the corporation's inventory in respect of a business carried on by it in Canada (other than a debt referred to in paragraph (2)(e) or (g) or a debt the amount of which was deducted under paragraph 20(1)(p) of the Act in computing the corporation's income for the year), that was issued by a person resident in Canada with whom the corporation was dealing at arm's length and that matures within one year after the date on which it was acquired by the corporation,

to the extent that such amounts are attributable to the profits of the corporation from carrying on a business in Canada, or are used or held by the corporation in the year in the course of carrying on a business in Canada; and

(b) an amount equal to 4/3 of the quotient obtained by dividing

(i) the aggregate of all amounts that would otherwise be determined under subparagraphs (a)(i), (ii) and (iii) if the references therein to "at the end of that year" were read as references to "at the end of each month in that year",

by

(ii) the number of months in that year.

History: Cl. 808(3)(a)(ii)(A) amended by P.C. 1994-1817, para. 47(a), November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Subpara. 808(3)(a)(iii) amended, and that portion of para. (a) following subpara. (iii) added, by P.C. 1993-1548, July 21, 1993, *Canada Gazette*, Part II, August 11, 1993, applicable to taxation years ending after August 11, 1993.

(4) ["Qualified investment in ..."] — For the purposes of subsection (1), where, at the end of a taxation year, a corporation is a member of a partnership that was carrying on business in Canada at any time in that year, the corporation's qualified investment in property in Canada at the end of the year is an amount equal to the aggregate of

(a) the amount, if any, that would be determined under subsection (2) if the corporation were not, at the end of the year, a member of a partnership that was carrying on business in Canada at any time in the year; and

(b) an amount equal to the portion of the amount of the partnership's qualified investment in property in Canada at the end of the last fiscal period of the partnership ending in the taxation year of the corporation that may reasonably be attributed to the corporation, having regard to all the circumstances including the rights the corporation would have, if the partnership ceased to exist, to share in the distribution of the property owned by the partnership for the purpose of

gaining or producing income from a business carried on by it in Canada.

(5) ["Qualified investment . . ." of partnership] — For the purposes of subsection (4), a partnership's "qualified investment in property in Canada" at the end of a fiscal period is the amount, if any, by which the aggregate of

(a) the cost amount to the partnership, at the end of the fiscal period, of land in Canada owned by it at that time for the purpose of gaining or producing income from a business carried on by it in Canada, other than land that is

(i) described in the inventory of the partnership,

(ii) depreciable property,

(iii) a Canadian resource property, or

(iv) land the cost of which is or was deductible in computing the income of the partnership or the income of a member of the partnership,

(b) an amount equal to the aggregate of the cost amount to the partnership immediately after the end of the fiscal period, of each depreciable property in Canada owned by it for the purpose of gaining or producing income from a business carried on by it in Canada,

(c) an amount equal to 4/3 of the cumulative eligible capital of the partnership immediately after the end of the fiscal period in respect of each business carried on by it in Canada,

(d) an amount equal to the aggregate of the cost amount to the partnership at the end of the fiscal period of each debt owing to it, or any other right of the partnership to receive an amount, that was outstanding as a result of the disposition by it of property in respect of which an amount would be included, by virtue of paragraph (a), (b) or (c), in its qualified investment in property in Canada at the end of the fiscal period if the property had not been disposed of by it before the end of that fiscal period,

(e) an amount equal to the aggregate of the cost amount to the partnership at the end of the fiscal period of each property, other than a Canadian resource property, that was described in the partnership's inventory in respect of a business carried on by it in Canada,

(f) an amount equal to the aggregate of the cost amount to the partnership at the end of the fiscal period of each debt (other than a debt referred to in paragraph (d) or a debt the amount of which was deducted under paragraph 20(1)(p) of the Act in computing the partnership's income for the fiscal period) owing to it

(i) in respect of any transaction by virtue of which an amount has been included in computing its income for the fiscal period or for a previous fiscal period or in computing the income of a member of the partnership for a previous taxation year from a business carried on in Canada by the partnership, or

(ii) where any part of its ordinary business carried on in Canada was the lending of money, in respect of a loan made by the partnership in the ordinary course of that part of its business, and

(g) an amount equal to the allowable liquid assets of the partnership at the end of the fiscal period,

exceeds the aggregate of

(h) an amount equal to the aggregate of each amount deducted by the partnership under paragraph 20(1)(l), (l.1) or (n) or subsection 64(1), (1.1) or (1.2) of the Act in computing its income for the fiscal period from a business carried on by it in Canada;

(i) an amount equal to the aggregate of all amounts each of which is an amount deducted by the partnership in the fiscal period under subparagraph 40(1)(a)(iii) or 44(1)(e)(iii) of the Act in respect of a debt referred to in paragraph (d);

(j) an amount equal to the aggregate of each amount owing by the partnership at the end of the fiscal period on account of

(i) the purchase price of property that is referred to in paragraph (a), (b) or (e) or that would be so referred to but for the fact that it has been disposed of before the end of the fiscal period,

(ii) Canadian exploration and development expenses, Canadian exploration expense, Canadian development expense or Canadian oil and gas property expense, within the meanings assigned by paragraphs 66(15)(b) [66(15)"Canadian exploration and development expenses"], 66.1(6)(a) [66.1(6)"Canadian exploration expense"] and 66.2(5)(a) [66.2(5)"Canadian development expense"] and 66.4(5)(a) [66.4(5)"Canadian oil and gas property expense"] of the Act, respectively,

Proposed Amendment — Reg. 808(5)(j)(ii)

(ii) Canadian exploration and development expenses, Canadian exploration expense, Canadian development expense or Canadian oil and gas property expense,

Application: The February 13, 2003 draft regulations (foreign bank branches), subsec. 7(9), (pre-published in the *Canada Gazette*, Part I, February 15, 2003), will amend subpara. 808(5)(j)(ii) to read as above, in force on the day on which this Regulation is registered.

Regulatory Impact Analysis Statement: See under Reg. 808(2)(d)–(d.2) above.

(iii) an eligible capital expenditure made or incurred by the partnership before the end of the fiscal period in respect of a business carried on by it in Canada, or

(iv) any other outlay or expense made or incurred by the partnership to the extent that it was deducted in computing its income for the fiscal period or for a previous fiscal period, or in computing the income of a member of the partnership for a previous taxation year, from a business carried on in Canada by the partnership; and

(k) an amount equal to the aggregate of all amounts each of which is an amount equal to that proportion of the amount owing (other than an amount owing on account of an outlay or expense referred to in paragraph (j)) by the partnership at the end of the fiscal period on account of an obligation outstanding at any time in the period in respect of which interest is stipulated to be payable by it that

(i) the interest paid or payable on the obligation by the partnership in respect of the fiscal period that is deductible, or would be deductible but for subsection 18(2) or (3.1) or section 21 of the Act, in computing its income for the fiscal period from a business carried on by it in Canada,

is of

(ii) the interest paid or payable on the obligation by the partnership in respect of the fiscal period.

History: Para. 808(5)(h) substituted by P.C. 1990-2779, subsec. 2(3), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years commencing after June 17, 1987 that end after 1987.

Para. 808(5)(c) amended by P.C. 1990-754, subsec. 1(2), April 26, 1990, *Canada Gazette*, Part II, May 9, 1990, applicable in respect of fiscal periods commencing after 1987.

Para. 808(5)(i) and subpara. 808(5)(k)(i), substituted by P.C. 1984-3789, subsecs. 4(4), (5), November 29, 1984, *Canada Gazette*, Part II, December 12, 1984, effective as to subpara. (k)(i) commencing January 1, 1982.

Para. 808(5)(h), subpara. 808(5)(j)(ii) substituted by P.C. 1981-2208, subsecs. 2(5), (6), August 19, 1981, *Canada Gazette*, Part II, September 9, 1981, applicable to taxation years ending after December 11, 1979.

(6) ["Allowable liquid assets ..." of partnership] — For the purposes of paragraph (5)(g), the "allowable liquid assets of the partnership at the end of the fiscal period" is an amount equal to the lesser of

(a) the aggregate of

(i) the amount of Canadian currency owned by the partnership at the end of that fiscal period,

(ii) the balance standing to the credit of the partnership at the end of that fiscal period as or on account of amounts deposited with a branch or other office in Canada of

(A) a bank,

(B) a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee, or

(C) a credit union, and

(iii) an amount equal to the aggregate of the cost amount to the partnership at the end of that fiscal period of each bond, debenture, bill, note, mortgage, hypothec or similar obligation that was not described in the partnership's inventory in respect of a business carried on by it in Canada (other than a debt referred to in paragraph (5)(d) or (f) or a debt the amount of which was deducted under paragraph 20(1)(p) of the Act in computing the partnership's income for the fiscal period), that was issued by a person resident in Canada with whom all the members of the partnership were dealing at arm's length and that matures within one year after the date on which it was acquired by the partnership; and

Proposed Addition — Reg. 808(6)(a) closing words

to the extent that those amounts are attributable to the profits of the partnership from carrying on a business in Canada, or are used or held by the partnership in the year in the course of carrying on a business in Canada; and

Application: The February 13, 2003 draft regulations (foreign bank branches), subsec. 7(10), (pre-published in the *Canada Gazette*, Part I, February 15, 2003), will add the above new closing words to para. 808(6)(a), deemed to have come into force on August 8, 2000.

Regulatory Impact Analysis Statement: A non-resident corporation's allowance for investment in property in Canada is computed on the basis of its "qualified investment in property in Canada". "Qualified investment in property in Canada" includes a corporation's "allowable liquid assets" and its share of the "allowable liquid assets" of a partnership of which the corporation is a member. The amendment to paragraph 808(6)(a) clarifies that the allowable liquid assets of a partnership do not include amounts that were not either generated by or intended for the use of its business carried on in Canada.

(b) an amount equal to 4/3 of the quotient obtained by dividing

(i) the aggregate of all amounts that would otherwise be determined under subparagraphs (a)(i), (ii) and (iii) if the references therein to "at the end of that fiscal period" were read as references to "at the end of each month in that fiscal period",

by

(ii) the number of months in that fiscal period.

History: Cl. 808(6)(a)(ii)(A) amended by P.C. 1994-1817, para. 47(b), November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

(7) [Partnerships] — Subsections (4) to (6) shall be read and construed as if each of the assumptions in paragraphs 96(1)(a) to (g) of the Act were made.

Proposed Addition — Reg. 808(8)

(8) [Allowance of authorized foreign bank] — For the purpose of paragraph 219(1)(j) of the Act, the allowance of an authorized foreign bank for a taxation year in respect of its investment in property in Canada is prescribed to be the amount, if any, by which

(a) the average of all amounts, each of which is the amount for a calculation period (within the meaning assigned by subsection 20.2(1) of the Act) of the bank for the year that is the greater of

(i) the amount determined by the formula

$$0.05 \times A$$

where

A is the amount of the element A in the formulae in subsection 20.2(3) of the Act for the period, and

(ii) the amount by which

(A) the total of the cost amount to the bank, at the end of the period (or, in the case of depreciable property or eligible capital property, immediately after the end of the year), of each asset in respect of the bank's Canadian banking business that is an asset recorded in the books of account of the business in a manner consistent with the manner in which it is required to be treated for the purpose of the branch financial statements (within the meaning assigned by subsection 20.2(1) of the Act) for the year

exceeds

(B) the amount equal to the total of

(I) the amount determined by the formula

$$L + BA$$

where

L is the amount of the element L in the formulae in subsection 20.2(3) of the Act for the period, and

BA is the amount of the element BA in the formulae in subsection 20.2(3) of the Act for the period, and

(II) the amount claimed by the bank under clause 20.2(3)(b)(ii)(A) of the Act

exceeds

(b) the total of all amounts each of which is an amount that would be determined under paragraph (2)(j), (k), (n) or (o) if that provision applied to the

bank for the year, except to the extent that the amount reflects a liability of the bank that has been included in the element L in the formulae in subsection 20.2(3) of the Act for the bank's last calculation period for the year.

Application: The February 13, 2003 draft regulations (foreign bank branches), subsec. 7(11), (pre-published in the *Canada Gazette*, Part I, February 15, 2003), will add subsec. 808(8), applicable after June 27, 1999.

Regulatory Impact Analysis Statement: Subsection 808(1) computes the allowance for investment in property for all non-resident corporations. This subsection is amended to specifically exclude authorized foreign bank from these computational rules, and new subsection 808(8) is added to compute the allowance for investment in property in Canada for an authorized foreign bank.

Definitions [Reg. 808]: "allowable capital loss" — ITA 38(b), 248(1); "allowable liquid assets of the corporation at the end of the year" — Reg. 808(3); "allowable liquid assets of the partnership at the end of the fiscal period" — Reg. 808(6); "amount" — ITA 248(1); "amount taxable" — ITA 123(1); "arm's length" — ITA 251(1); "authorized foreign bank" — ITA 248(1); "bank" — ITA 248(1), *Interpretation Act* 35(1); "branch financial statements" — ITA 20.2(1); "business" — ITA 248(1); "calculation period" — ITA 20.2(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian banking business" — ITA 248(1); "Canadian development expense" — ITA 66.2(5), 248(1); "Canadian exploration and development expenses" — ITA 66(15), 248(1); "Canadian exploration expense" — ITA 66.1(6), 248(1); "Canadian oil and gas property expense" — ITA 66.4(5), 248(1); "carrying on a business in Canada", "carrying on business in Canada" — ITA 253; "corporation" — ITA 248(1), *Interpretation Act* 35(1); "cost amount", "credit union" — ITA 248(1); "cumulative eligible capital" — ITA 14(5), 248(1); "depreciable property" — ITA 13(21), 248(1); "disposed" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "eligible capital expenditure" — ITA 14(5), 248(1); "fiscal period" — ITA 249.1; "inventory" — ITA 248(1); "month" — *Interpretation Act* 35(1); "office" — ITA 248(1); "Part I liability" — Reg. 808(2)(n)(i); ; "person", "prescribed", "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "provincial tax liability" — Reg. 808(2)(o)(i); "qualified investment in property in Canada at the end of the fiscal period" — Reg. 808(5); "qualified investment in property in Canada at the end of the year" — Reg. 808(2), (4); "resident in Canada" — ITA 250; "share", "taxable Canadian property" — ITA 248(1); "taxable capital gain" — ITA 38(a), 248(1); "taxable income earned in Canada" — ITA 248(1); "taxation year" — ITA 249.

Interpretation Bulletins [Reg. 808]: IT-137R3: Additional tax on certain corporations carrying on business in Canada.

809. Reduction of certain amounts to be deducted or withheld — **(1)** Subject to subsection (2), where a non-resident person (in this section referred to as the "payee") has filed with the Minister the payee's required statement for the year, the amount otherwise required by subsections 215(1) to (3) of the Act to be deducted or withheld from any qualifying payment paid or credited by a person resident in Canada (in this section referred to as the "payer") to the payee in the year and after the required statement for the year was so filed is hereby reduced by the amount determined in accordance with the following rules:

(a) determine the amount by which

(i) the amount that would, if the payee does not make an election in respect of the year under section 217 of the Act, be the tax payable by the payee under Part XIII of the Act on the aggregate of the amounts estimated by him in his required statement for the year pursuant to paragraph (a) of the definition "required statement" in subsection (4),

exceeds

(ii) the amount that would, if the payee makes the election referred to in subparagraph (i), be the tax payable (on the assumption that no portion of the payee's income for the year was income earned in the year in a province) by the payee under Part I of the Act on his estimated taxable income calculated by him in his required statement for the year pursuant to paragraph (b) of the definition "required statement" in subsection (4),

(b) determine the percentage that the amount determined under paragraph (a) is of the aggregate of the amounts estimated by him in his required statement for the year pursuant to paragraph (a) of the definition "required statement" in subsection (4),

(c) where the determination of a percentage under paragraph (b) results in a fraction, disregard the fraction for the purposes of paragraph (d),

(d) multiply the percentage determined under paragraph (b) by the amount of the qualifying payment,

and the product obtained under paragraph (d) is the amount by which the amount required to be deducted or withheld is reduced.

Forms: NR5: Application by a non-resident of Canada for a reduction in the amount of non-resident tax required to be withheld; NR7-R: Application for refund of non-resident tax withheld.

(2) Subsection (1) does not apply to reduce the amount to be deducted or withheld from a qualifying payment if, after the qualifying payment has been paid or credited by the payer, the aggregate of all qualifying payments that the payer has paid or credited to the payee in the year would exceed the amount estimated, in respect of that payer, by the payee in his required statement for the year pursuant to paragraph (a) of the definition "required statement" in subsection (4).

(3) Where a payee has filed with the Minister a written notice indicating that certain information or estimates in the payee's required statement for the year are incorrect and setting out the correct information or estimates that should be substituted therefor or where the Minister is satisfied that certain information or estimates in a payee's required statement for the year are incorrect and that the Minister has the correct information or estimates that should be substituted therefor, for the purposes of making the calculations in subsection (1) with respect to any qualifying payment paid or credited to the payee after the time when he has filed that notice or after the time when the Minister is so satisfied, as the case may be, the incorrect information or estimates shall be disregarded and the required statement for the year shall be deemed to contain only the correct information or estimates.

(4) In this section,

"qualifying payment" in relation to a non-resident person means any amount

(a) paid or credited, or to be paid or credited, to him as, on account or in lieu of payment of, or in satisfaction of, any amount described in paragraph 212(1)(f) or (h) or in any of paragraphs 212(1)(j), (k), (l), (m) or (q) of the Act, and

(b) on which tax under Part XIII of the Act is, or would be, but for an election by him under section 217 of the Act, payable by him;

"required statement" of a payee for a taxation year means a written statement signed by him that contains, in respect of the payee,

(a) the name and address of each payer of a qualifying payment in the year and, in respect of each such payer, an estimate by the payee of the aggregate of such qualifying payments, and

(b) a calculation by him of his estimated taxable income earned in Canada for the year, on the assumption that he makes the election in respect of the year under section 217 of the Act, and such information as may be necessary for the purpose of estimating such income.

History: Para. (a) of "qualifying payment" substituted by P.C. 1981-2208, s. 3, August 19, 1981, *Canada Gazette*, Part II, September 9, 1981, applicable with respect to payments made after 1979.

Definitions [Reg. 809]: "amount", "Minister", "non-resident" — ITA 248(1); "payee", "payer" — Reg. 809(1); "person" — ITA 248(1); "province" — *Interpretation Act* 35(1); "qualifying payment", "required statement" — Reg. 809(4); "resident in Canada" — ITA 250; "taxable income" — ITA 248(1); "taxable income earned in Canada" — ITA 248(1); "taxation year" — ITA 249; "written" — *Interpretation Act* 35(1)"writing".

810. Excluded property of non-resident persons — (1) For the purposes of paragraph 116(6)(e) of the Act, any property that is

(a) property of a non-resident insurer that is a qualified insurance corporation,

(b) an option in respect of property referred to in any of paragraphs 116(6)(a) to (d) of the Act and paragraph (a) whether or not such property is in existence, or

(c) an interest in property referred to in paragraph 116(6)(a), (c) or (d) of the Act or paragraph (a) or (b),

is prescribed to be excluded property.

(2) For the purposes of this section, a non-resident insurer is a "qualified insurance corporation" throughout the period during which it

(a) was licensed or otherwise authorized under the laws of Canada or a province to carry on an insurance business in Canada; and

(b) carried on an insurance business, within the meaning of subsection 138(1) of the Act, in Canada.

Proposed Repeal — Reg. 810

Application: The February 13, 2003 draft regulations (foreign bank branches), s. 8, (pre-published in the *Canada Gazette*, Part I, February 15, 2003), will repeal s. 810, applicable after June 27, 1999.

Regulatory Impact Analysis Statement: Section 810 of the Regulations prescribes the meaning of excluded property of certain non-resident insurers for the purposes of paragraph 116(6)(e) of the Act. This section is repealed, as the substance of this section has been included in paragraph 116(6)(e) of the Act.

Definitions [Reg. 810]: "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "insurance corporation", "insurer", "non-resident", "prescribed", "property" — ITA 248(1); "province" — *Interprétation Act* 35(1); "qualified insurance corporation" — Reg. 810(2).

PART IX — [REPEALED]

History: Part IX repealed by P.C. 2002-2169, s. 13, December 12, 2002, *Canada Gazette*, Part II, January 1, 2003, effective January 1, 2003.

Paras. 900(2)(f), 900(15)(f), amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Paras. 900(2)(a), (b) and (d.1), (5a), (6)(a) and (b), (8)(a), (10)(a), (b), (12)(a), (13)(a), (b), subsec. 900(14), amended, by P.C. 1994-1132, s. 1, July 4, 1994, *Canada Gazette*, Part II, July 27, 1994.

Subsecs. 900(7), (15)–(18) added by the said P.C. 1994-1132, subsecs. 1(5), (12).

Paras. 900(11)(a) to (c) substituted for paras. (a) to (d) by the said P.C. 1994-1132, subsec. 1(8).

Paras. 900(2)(b), (3)(b), (4)(a), (6)(b), (8)(a), (10)(b), (13)(b), and subpara. (2)(i) amended, (2)(i.1) added, by P.C. 1993-1043, s. 1, May 25, 1993, *Canada Gazette*, Part II, June 16, 1993.

Former subsec. 900(7) revoked by the said P.C. 1993-1043, subsec. 1(6).

Paras. 900(2)(b), (d), (d.1), (3)(b), (4)(b), subsecs. 900(5), (11), that portion of subsec. 900(6) preceding para. (a), and para. (b), paras. 900(7)(a), (e), (8)(a), (10)(b), (c), amended by P.C. 1992-290, s. 1, February 20, 1992, *Canada Gazette*, Part II, March 11, 1992.

That portion of subsec. 900(9) preceding para. (b) amended and para. (d) added by the said P.C. 1992-290, subsecs. 1(11), (12).

That portion of subsec. 900(12) preceding para. (b) amended by the said P.C. 1992-290, subsec. 1(15).

That portion of subsec. 900(13) preceding para. (a) amended by the said P.C. 1992-290, subsec. 1(16).

Subsec. 900(14) substituted for subsecs. (14) to (16) by the said P.C. 1992-290, subsec. 1(17).

Paras. 900(7)(c), (9)(b) amended by P.C. 1991-2540, s. 8, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable after 1985.

Paras. 900(2)(b), (10)(b) amended by P.C. 1991-731, subsecs. 1(1), (2), April 18, 1991, *Canada Gazette*, Part II, May 8, 1991.

Paras. 900(2)(b), (10)(b) amended, paras. 900(11)(a), (a.1) transposed, and (a) amended, by P.C. 1991-50, subsecs. 1(1)–(3), January 17, 1991, *Canada Gazette*, Part II, January 30, 1991.

Paras. 900(2)(b), (d), (7)(b), (8)(a), (10)(b), (c), (11)(a), (12)(a) substituted, (11)(a.1), (12)(a.1) added, by P.C. 1989-1257, s. 1, June 29, 1989, *Canada Gazette*, Part II, July 19, 1989.

That portion of subsec. 900(3) preceding para. (a) substituted by the said P.C. 1989-1257, subsec. 1(3).

Subsecs. 900(5), (14) substituted by the said P.C. 1989-1257, subsecs. 1(4), (10).

Paras. 900(2)(b), (d), (d.1), (10)(b), (12)(a), and subsec. 900(14) substituted by P.C. 1988-590, subsecs. 1(1)–(5), March 30, 1988, *Canada Gazette*, Part II, April 27, 1988.

Paras. 900(2)(b), (d), (d.1), (f) to (h) substituted, (i), (j) added, by P.C. 1987-1477, subsecs. 1(1) to (3), July 30, 1987, *Canada Gazette*, Part II, August 19, 1987.

Subsecs. 900(3), (8), (11) substituted by the said P.C. 1987-1477, subsecs. 1(4), (10), (14).

Para. 900(6)(b) substituted and (d) added by the said P.C. 1987-1477, subsecs. 1(5), (6).

All that portion of subsec. 900(7) preceding para. (c) substituted, (c.1) and (e) added, by the said P.C. 1987-1477, subsecs. 1(7) to (9).

All that portion of subsec. 900(9) preceding para. (b) substituted by the said P.C. 1987-1477, subsec. 1(11).

Para. 900(10)(b) substituted, (e) added, by the said P.C. 1987-1477, subsecs. 1(12), (13).

Subsecs. 900(12) to (15), former (16) added by P.C. 1987-1477, subsec. 1(14), July 30, 1987, *Canada Gazette*, Part II, August 19, 1987.

Paras. 900(2)(b), (10)(b), substituted by P.C. 1986-924, subsecs. 1(1), (4), April 17, 1986, *Canada Gazette*, Part II, April 30, 1986.

Subsecs. 900(5), (6) substituted, subsec. 900(11) added, by the said P.C. 1986-924, subsecs. 1(2), (3), (5).

Paras. 900(2)(b), (d) substituted by P.C. 1985-3529, December 5, 1985, *Canada Gazette*, Part II, December 25, 1985.

Paras. 900(2)(b), 900(10)(b), subsec. 900(5) substituted by P.C. 1984-1980, June 7, 1984, *Canada Gazette*, Part II, June 27, 1984.

Paras. 900(2)(a), 900(6)(a) and (b) substituted by P.C. 1983-3188, subsecs. 1(1), (2), October 13, 1983, *Canada Gazette*, Part II, October 26, 1983.

Subsec. 900(5) substituted by P.C. 1983-3015, s. 1, September 29, 1983, *Canada Gazette*, Part II, October 12, 1983.

Para. 900(2)(b) substituted by P.C. 1982-2895, s. 1, September 22, 1982, *Canada Gazette*, Part II, October 13, 1982, effective commencing September 20, 1982.

All that portion of subsec. 900(4) preceding para. (a) substituted by P.C. 1982-2138, July 15, 1982, *Canada Gazette*, Part II, July 28, 1982.

Paras. 900(2)(b), (d), (7)(a), (9)(a) substituted, (2)(d.1) added, by P.C. 1981-1680, subsecs. 1(1)–(4), June 18, 1981, *Canada Gazette*, Part II, July 8, 1981.

Subsec. 900(5) substituted by P.C. 1980-2949, s. 1, October 30, 1980, *Canada Gazette*, Part II, November 12, 1980.

Subsec. 900(11) revoked by P.C. 1980-2080, July 31, 1980, *Canada Gazette*, Part II, August 13, 1980.

Paras. 900(2)(a), (h) substituted, 900(10)(e) revoked, by P.C. 1980-541, s. 1, February 20, 1980, *Canada Gazette*, Part II, March 12, 1980.

All that portion of subsec. 900(4) preceding para. (a) substituted, subsec. 900(11) added, by P.C. 1979-2971, November 1, 1979, *Canada Gazette*, Part II, November 14, 1979, effective January 1, 1980.

Part IX was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

All that portion of subsec. 900(6) preceding para. (a) substituted by P.C. 1978-3628, November 30, 1978, *Canada Gazette*, Part II, December 13, 1978, effective February 1, 1979.

Subsec. 900(10) added by P.C. 1978-3118, October 12, 1978, *Canada Gazette*, Part II, October 25, 1978.

Para. 900(2)(b), subsec. 900(5) substituted by P.C. 1978-2532, August 9, 1978, *Canada Gazette*, Part II, August 23, 1978.

PART X — ELECTION IN RESPECT OF DECEASED TAXPAYERS

History: Part X was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 14, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

1000. Property dispositions — (1) Any election under subsection 164(6) of the Act shall be made by the legal representative of a deceased taxpayer by filing with the Minister the following documents:

(a) a letter from the legal representative specifying

(i) the part of the one or more capital losses from the disposition of properties, if any, under paragraph 164(6)(c) of the Act, and

(ii) the part of the amount, if any, under paragraph 164(6)(d) of the Act

in respect of which the election is made;

(b) where an amount is specified under subparagraph (a)(i), a schedule of the capital losses and capital gains referred to in paragraph 164(6)(a) of the Act;

(c) where an amount is specified under subparagraph (a)(ii),

(i) a schedule of the amounts of undepreciated capital cost described in paragraph 164(6)(b) of the Act,

(ii) a statement of the amount that, but for subsection 164(6) of the Act, would be the non-capital loss of the estate for its first taxation year, and

(iii) a statement of the amount that, but for subsection 164(6) of the Act, would be the farm loss of the estate for its first taxation year.

History: That portion of subsec. 1000(1) preceding para. (b) substituted, and paras. (d), (e) revoked, by P.C. 1988-390, s. 5, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, applicable with respect to deaths occurring after December 31, 1984, except that the documents referred to in subsec. 1000(1) may be filed before September 14, 1988.

Subpara. 1000(1)(c)(iii) added by P.C. 1985-2277, s. 1, July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable to 1983 *et seq.* except that, for the purposes of subsec. 1000(2), the statement referred to in subpara. 1000(1)(c)(iii) may be filed at any time before November 6, 1985.

(2) The documents referred to in subsection (1) shall be filed not later than the day that is the later of

(a) the last day provided by the Act for the filing of a return that the legal representative of a deceased taxpayer is required or has elected to file under the Act in respect of the income of that deceased taxpayer for the taxation year in which he died; and

(b) the day the return of the income for the first taxation year of the deceased taxpayer's estate is required to be filed under paragraph 150(1)(c) of the Act.

Definitions [Reg. 1000]: "amount" — ITA 248(1); "capital gain" — ITA 39(1), 248(1); "disposition" — ITA 248(1); "estate" — ITA 104(1), 248(1); "farm loss" — ITA 111(8), 248(1); "legal representative", "Minister" — ITA 248(1); "non-capital loss" — ITA 111(8), 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "undepreciated capital cost" — ITA 13(21), 248(1).

1000.1 Realization of [deceased employee's] options — (1) An election under subsection 164(6.1) of the Act shall be made by the legal representative of a deceased taxpayer by filing with the Minister a letter from the legal representative setting out the following:

(a) the amount of the benefit referred to in subparagraph 164(6.1)(a)(i) of the Act;

(b) the value of the right, and the amount paid for the right, referred to in subparagraph 164(6.1)(a)(ii) of the Act;

(c) the deducted amount, referred to in subparagraph 164(6.1)(a)(iii) of the Act; and

(d) the amount of the loss referred to in paragraph 164(6.1)(b) of the Act.

(2) The letter shall be filed not later than the day that is the later of

(a) the last day provided by the Act for the filing of a return that the legal representative of a deceased taxpayer is required or has elected to file under the Act in respect of the income of that deceased taxpayer for the taxation year in which he or she died, and

(b) the day the return of the income for the first taxation year of the deceased taxpayer's estate is required to be filed under paragraph 150(1)(c) of the Act.

History: S. 1000.1 added by P.C. 2005-694, s. 4, May 3, 2005, *Canada Gazette*, Part II, May 18, 2005, applicable to deaths occurring after July 13, 1990, except that the letter referred to in subsec. 1000.1(2) may be filed before November 15, 2005.

Definitions [Reg. 1000.1]: "amount" — ITA 248(1); "estate" — ITA 104(1), 248(1); "legal representative", "Minister" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

1001. Annual instalments — Any election by a deceased taxpayer's legal representative under subsection 159(5) of the Act shall be made by filing with the Minister the prescribed form on or before the day on or before which payment of the first of the "equal consecutive annual instalments" referred to in that subsection is required to be made.

Definitions [Reg. 1001]: "legal representative", "Minister", "prescribed", "taxpayer" — ITA 248(1).

Forms: T2075: Election to defer payment of income tax, under subsection 159(5) by a deceased taxpayer's legal representative or trustee.

PART XI — CAPITAL COST ALLOWANCES

Related Provisions [Part XI]: ITA 20(1.1) — Definitions in ITA 13(21) apply to regulations.

History [Part XI]: Part XI was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

Interpretation Bulletins [Part XI]: IT-285R2: Capital cost allowance — general comments.

Forms [Part XI]: T776: Statement of real estate rentals; T777: Statement of employment expenses; T5014: Partnership capital cost allowance schedule.

DIVISION I — DEDUCTIONS ALLOWED

1100. (1) For the purposes of paragraphs 8(1)(j) and (p) and 20(1)(a) of the Act, the following deductions are allowed in computing a taxpayer's income for each taxation year:

History: That portion of subsec. 1100(1) preceding para. (a) substituted by P.C. 1991-2272, subsec. 1(1), November 21, 1991, *Canada Gazette*, Part II, December 4, 1991, applicable to 1988 *et seq.*

(a) **rates** — subject to subsection (2), such amount as he may claim in respect of property of each of the following classes in Schedule II not exceeding in respect of property

(i) of Class 1, 4 per cent,

Related Provisions: Reg. 1100(1)(zc).

(ii) of Class 2, 6 per cent,

Related Provisions: Reg. 1101(5i) — Separate class.

(iii) of Class 3, 5 per cent,

Related Provisions: Reg. 1100(1)(sb), (zc).

(iv) of Class 4, 6 per cent,

(v) of Class 5, 10 per cent,

(vi) of Class 6, 10 per cent,

Related Provisions: Reg. 1100(1)(sb), (zc).

(vii) of Class 7, 15 per cent,

(viii) of Class 8, 20 per cent,

Related Provisions: Reg. 1100(1)(sb), (zc).

(ix) of Class 9, 25 per cent,

(x) of Class 10, 30 per cent,

Related Provisions: Reg. 1100(1)(m) — Additional allowance — Canadian film or video production; Reg. 1100(1)(zc) — Additional allowance — railway expansion and modernization property; Reg. 1100(21) — Certified films and video tapes — limitation on CCA; Reg. 1100(21.1) — Non-certified films and video tapes — limitation on CCA; Reg. 1101(5a), (5k), (5k.1) — Separate classes for telecommunications spacecraft, certified productions and Canadian film or video productions.

(x.1) of Class 10.1, 30 per cent,

Related Provisions: Reg. 1101(1af) — Separate class.

(xi) of Class 11, 35 per cent,

(xii) of Class 12, 100 per cent,

Related Provisions: Reg. 1100(1)(l), 1100(21), (21.1), (22).

(xiii) of Class 16, 40 per cent,

(xiv) of Class 17, 8 per cent,

(xv) of Class 18, 60 per cent,

(xvi) of Class 22, 50 per cent,

(xvii) of Class 23, 100 per cent,

(xviii) of Class 25, 100 per cent,

(xix) of Class 26, 5 per cent,

(xx) of Class 28, 30 per cent,

Related Provisions: Reg. 1100(1)(w), 1100(1)(zc)(i)(H).

(xxi) of Class 30, 40 per cent,

Related Provisions: Reg. 1101(5a) — Separate class.

(xxii) of Class 31, 5 per cent,

Related Provisions: Reg. 1101(5b) — Separate class.

(xxiii) of Class 32, 10 per cent,

Related Provisions: Reg. 1101(5b) — Separate class.

(xxiv) of Class 33, 15 per cent,

(xxv) of Class 35, 7 per cent,

Related Provisions: Reg. 1100(1)(zc).

(xxvi) of Class 37, 15 per cent,

(xxvii) of Class 41, 25 per cent,

Related Provisions: Reg. 1100(1)(y), (ya).

(xxviii) of Class 42, 12 per cent,

(xxix) of Class 43, 30 per cent,

(xxix.1) of Class 43.1, 30 per cent, and

(xxx) of Class 44, 25 per cent,

Proposed Addition — Computers

(xxxi) of Class 45, 45 per cent, and

Application: The June 27, 2005 draft regulations (CCA — introduction of cls. 45 & 46), subsec. 1(1), (pre-published in the *Canada Gazette*, Part I, July 9, 2005) will add subpara. 1100(1)(a)(xxxi), deemed in force on March 23, 2004.

Regulatory Impact Analysis Statement: These amendments affect the capital cost allowance (CCA) rates applicable for the purposes of calculating depreciation of capital property for income tax purposes. A portion of the capital cost of a taxpayer's depreciable capital property is deductible as CCA each year in computing the taxpayer's income. The maximum CCA rate for each type of depreciable property is set out in the *Income Tax Regulations* (the Regulations). The useful lives of capital assets can change over time for several reasons, including technological obsolescence and changing market conditions. The Government's assessment of CCA rates is therefore an ongoing process to ensure that, in general, CCA rates reflect the useful life of depreciable assets and that the CCA rates do not impede the ability of Canadian firms to invest and compete.

As part of this review, the 2004 Budget announced certain adjustments to the CCA rates for computer equipment and data network infrastructure equipment.

In particular, these amendments

- provide for new Class 45 (45 percent CCA rate) applicable to certain computer equipment generally acquired after March 22, 2004;
- amend the definition of "exempt property" in paragraph 1100(1.13)(a) of the Regulations to exempt certain computer equipment from the specified leasing property rules;
- amend subsection 1101(5p) of the Regulations to remove a reference to Class 10 assets, to ensure that the separate class election provisions will not apply to computer equipment that is Class 45 property;
- provide for new Class 46 (30 percent CCA rate) applicable to data network infrastructure equipment acquired after March 22, 2004;
- add the definition of "data network infrastructure equipment" to subsection 1104(2) of the Regulations; and
- add, in paragraph 4600(2)(k) of the Regulations (investment tax credits for certain qualified properties acquired in Atlantic Canada), relieving references to new Classes 45 and 46 consequential to the introduction of those classes.

These amendments apply, in general, to property acquired after March 22, 2004. The tax policy rationale underlying these changes is discussed at pages 332 to 335 of Annex 9 of the Budget Plan of 2004. The amendments, except the change to paragraph 4600(2)(k) of the Regulations, were first released in draft form for public consultation on September 16, 2004 (see Appendix A of the Legislative Proposals, Draft Regulations and Explanatory Notes Relating to *Income Tax* concerning the 2004 Budget [reproduced below — ed]).

Alternatives

These amendments are necessary to implement Budget 2004 proposals. These amendments ensure that the Regulations remain relevant in a rapidly changing economic and technological environment. No other alternatives were considered.

Benefits and costs

The Budget 2004 estimated the cost of these amendments to be $110 million in fiscal 2004-05 and $255 million during fiscal 2005-06. The costs and any revenue impacts arising in subsequent fiscal years have not been estimated. Since CCA deductions by taxpayers are discretionary in some cases and CCA rate changes only result in timing differences in revenue receipts, it is difficult to quantify the economic impact of these amendments.

Consultation

The CCA treatment accorded computer equipment and data network infrastructure equipment were the subject matter of a number of pre-

budget submissions received by the Department of Finance from industry stakeholders. The Department of Finance held extensive consultation with officials of the Department of Industry and the Canada Customs and Revenue Agency during its pre-budget deliberations on this issue. These CCA changes are the outcome of those submissions and consultations. In addition, these amendments were released in draft form on September 16, 2004.

Strategic environmental assessment

These amendments are part of the Government's ongoing review of CCA rates, which is conducted to ensure that, in general, CCA rates reflect the useful life of depreciable assets and that the CCA rates do not impede the ability of Canadian firms to invest and compete. The CCA rates are changed, where appropriate, to provide for neutrality in the tax system. These CCA rate changes are not expected to change taxpayers' purchasing habits and, therefore, it is not likely that the amendments will have any significant environmental impact.

Contact: Kerry Harnish, Tax Legislation Division, Department of Finance, L'Esplanade Laurier, 140 O'Connor Street, Ottawa, Ontario K1A 0G5, (613) 992-4385.

Technical Notes (September 16, 2004): Subsection 1100(1) sets out the capital cost allowance (CCA) rates that taxpayers may claim with respect to specified classes of depreciable property.

Subsection 1100(1) is amended to provide a

- 45% CCA rate for property included in new Class 45, which is certain computer equipment; and
- 30% CCA rate for property included in new Class 46, which is data network infrastructure equipment (as defined by subsection 1104(2)).

Federal budget, Supplementary Information, March 23, 2004: See under Schedule II, Class 45.

Proposed Addition — Data Network Equipment

(xxxii) of Class 46, 30 per cent,

Application: The June 27, 2005 draft regulations (CCA — introduction of cls. 45 & 46), subsec. 1(1), (pre-published in the *Canada Gazette*, Part I, July 9, 2005) will add subpara. 1100(1)(a)(xxxii), deemed in force on March 23, 2004.

Regulatory Impact Analysis Statement and Technical Notes (September 16, 2004): See under Reg. 1100(1)(a)(xxxi) above.

Federal budget, Supplementary Information, March 23, 2004: See under Schedule II, Class 46.

of the undepreciated capital cost to him as of the end of the taxation year (before making any deduction under this subsection for the taxation year) of property of the class;

Related Provisions [Reg. 1100(1)(a)]: Reg. 1100(2) — Half-year rule; Reg. 1100(3) — Short taxation year; Reg. 1700 — CCA rates for farming or fishing property acquired before 1972. See also list at end of Reg. 1100(1).

History: Subpara. 1100(1)(a)(xxix.1) added by P.C. 1997-1033, subsec. 1(1), July 25, 1997, Canada Gazette, Part II, August 20, 1997, applicable after February 21, 1994.

Subpara. 1100(1)(a)(xxx) added by P.C. 1994-231, subsec. 1(1), February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to property acquired after April 26, 1993.

Subpara. 1100(1)(a)(xxix) added by P.C. 1994-230, s. 1, February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to property acquired after February 25, 1992.

Subpara. 1100(1)(a)(xxviii) added by P.C. 1994-139, subsec. 2(1), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired by a taxpayer after December 23, 1991, other than property acquired pursuant to an agreement in writing entered into by the taxpayer before December 24, 1991, except that where the taxpayer so elects in a letter filed with the Minister of National Revenue before August 9, 1994, or in a letter that is attached to the taxpayer's return of income for the taxpayer's first taxation year ending after December 23, 1991, then subpara. 1100(1)(a)(xxviii) applies to property acquired by the taxpayer after the beginning of that year.

Subpara. 1100(1)(a)(x.1) added by the said P.C. 1991-2272, subsec. 1(2), applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

Subpara. 1100(1)(a)(xxvii) added by P.C. 1989-2464, subsec. 1(1), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable to 1988 *et seq.*

That portion of para. 1100(1)(a) preceding subpara. (i) substituted by P.C. 1983-1083, subsec. 1(1), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, applicable in respect of property (other than property described in Class 31 of Schedule II or paragraph (n) of Class 12 of that schedule) acquired or disposed of after November 12, 1981, property described in the said Class 31 acquired or disposed of after 1981 and property described in paragraph (n) of the said Class 12 acquired or disposed of after 1982.

Subpara. 1100(1)(a)(xxvi) added by P.C. 1982-599, subsec. 1(1), February 25, 1982, *Canada Gazette*, Part II, March 10, 1982.

Subpara. 1100(1)(a)(xix) substituted by P.C. 1979-1488, subsec. 1(1), May 17, 1979, *Canada Gazette*, Part II, June 13, 1979.

That portion of para. 1100(1)(a) following subpara. (xxv) substituted by P.C. 1978-1315, subsec. 3(1), April 20, 1978, *Canada Gazette*, Part II, May 10, 1978.

Interpretation Bulletins [Reg. 1100(1)(a)]: IT-285R2: CCA — General comments; IT-521R: Motor vehicle expenses claimed by self-employed individuals; IT-522R: Vehicle, travel and sales expenses of employees.

Information Circulars [Reg. 1100(1)(a)]: 84-1: Revision of capital cost allowance claims and other permissive deductions.

Proposed Amendments — CCA rates

Federal budget, Supplementary Information, February 23, 2005: *Capital Cost Allowance*

A portion of the capital cost of depreciable property is deductible as capital cost allowance (CCA) each year, with the CCA rate for each type of property set out in the *Income Tax Regulations*. CCA rates should, as a general principle, reflect the useful life of an asset and thus provide adequate recognition of capital costs.

The useful life of assets can change over time for several reasons, including technological change. The assessment of CCA rates is therefore an ongoing process. As part of this continuing review, the budget proposes adjustments to CCA rates for hydrocarbon transmission pipelines and related pumping and compression equipment, combustion turbines generating electricity, electricity transmission and distribution equipment, and cables used for telecommunications infrastructure. [See Proposed Amendments under Reg. Schedule II, Classes 1, 3 and 17(a.1) — ed.]

The Government will continue to assess the appropriateness of CCA rates to ensure that they reflect, as closely as possible, the useful life of assets.

(b) **Class 13** — such amount as the taxpayer may claim in respect of the capital cost to the taxpayer of property of Class 13 in Schedule II, not exceeding

(i) where the capital cost of the property, other than property described in subparagraph (2)(a)(v), (vi) or (vii), was incurred in the taxation year and after November 12, 1981, 50 per cent of the amount for the year calculated in accordance with Schedule III, and

(ii) in any other case, the amount for the year calculated in accordance with Schedule III,

and, for the purposes of this paragraph and Schedule III, the capital cost to a taxpayer of a property shall be deemed to have been incurred at the time at which the property became available for use by the taxpayer;

Related Provisions: Reg. 1102(4), (5) — Improvements or alterations to leased properties; Reg. 1700(4) — Property of a farmer owned since before 1972.

History: Para. 1100(1)(b) substituted by P.C. 1994-139, subsec. 2(2), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired after 1989.

Subpara. 1100(1)(b)(i) amended by P.C. 1991-465, subsec. 1(1), March 14, 1991, *Canada Gazette*, Part II, March 27, 1991, applicable in respect of taxation years ending after April 26, 1989.

Para. 1100(1)(b) substituted by P.C. 1983-1083, subsec. 1(2), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, applicable in respect of property (other than property described in Class 31 of Schedule II or para-

graph (n) of Class 12 of that schedule) acquired or disposed of after November 12, 1981, property described in the said Class 31 acquired or disposed of after 1981 and property described in paragraph (n) of the said Class 12 acquired or disposed of after 1982.

Interpretation Bulletins: IT-324: CCA — Emphyteutic lease (archived); IT-464R: CCA — Leasehold interests.

(c) **Class 14** — such amount as he may claim in respect of property of Class 14 in Schedule II not exceeding the lesser of

(i) the aggregate of the amounts for the year obtained by apportioning the capital cost to him of each property over the life of the property remaining at the time the cost was incurred, and

(ii) the undepreciated capital cost to him as of the end of the taxation year (before making any deduction under this subsection for the taxation year) of property of the class;

Related Provisions: Reg. 1100(1)(a)(xxx) — 25% CCA rate for certain patents; Reg. 1100(3) — Short taxation year rule does not apply to Reg. 1100(1)(c); Reg. 1100(9) — Patents.

Interpretation Bulletins: IT-143R3: Meaning of eligible capital expenditure; IT-477: CCA — Patents, franchises, concessions and licences.

(d) **in lieu of double depreciation** — such additional amount as he may claim not exceeding in the case of property described in each of the classes in Schedule II, the lesser of

(i) one-half the amount that would have been allowed to him in respect of property of that class under subparagraph 6(n)(ii) of the *Income War Tax Act* if that Act were applicable to the taxation year, and

(ii) the undepreciated capital cost to him as of the end of the taxation year (before making any deduction under this paragraph for the taxation year) of property of the class;

(e) **timber limits and cutting rights** — such amount as he may claim not exceeding the amount calculated in accordance with Schedule VI in respect of the capital cost to him of a property, other than a timber resource property, that is a timber limit or a right to cut timber from a limit;

Related Provisions: Reg. 1100(3) — Short taxation year rule does not apply to Reg. 1100(1)(e); Reg. 1101(3) — Separate class; Reg. 5202"cost of capital"(a), 5204"cost of capital"(a) — Manufacturing and processing credit.

Interpretation Bulletins: IT-481: Timber resource property and timber limits.

(f) **Class 15** — such amount as he may claim not exceeding the amount calculated in accordance with Schedule IV, in respect of the capital cost to him of property of Class 15 in Schedule II;

Related Provisions: Reg. 1100(3) — Short taxation year rule does not apply to Reg. 1100(1)(f); Reg. 1102(7) — River improvements; Reg. 1102(17) — Recreational property; Reg. 5202"cost of capital"(a), 5204"cost of capital"(a) — Manufacturing and processing credit.

(g) **industrial mineral mines** — such amount as he may claim not exceeding the amount calculated in accordance with Schedule V in respect of the capital cost to him of a property that is an industrial mineral mine or a right to remove industrial minerals from an industrial mineral mine;

Related Provisions: Reg. 1100(3) — Short taxation year rule does not apply to Reg. 1100(1)(g); Reg. 1101(4) — Separate class; Reg. 1104(3) — "Industrial mineral mine"; Reg. 3900 — Deduction for mining taxes; Reg. 5202"cost of capital"(a), 5204"cost of capital"(a) — Manufacturing and processing credit.

Interpretation Bulletins: IT-423: Sale of sand, gravel or top soil (archived); IT-492: Industrial mineral mines.

(h) [Revoked]

History: Para. 1100(1)(h) and heading revoked by P.C. 1978-1315, subsec. 3(2), April 20, 1978, *Canada Gazette*, Part II, May 10, 1978.

(i) **additional allowances — fishing vessels** — such additional amount as he may claim in the case of property of a separate class prescribed by subsection 1101(2) not exceeding the lesser of

(i) the amount by which the depreciation that could have been taken on the property, if the Orders in Council referred to in that subsection were applicable to the taxation year, exceeds the amount allowed under paragraph (a) in respect of the property, and

(ii) the undepreciated capital cost to him as of the end of the taxation year (before making any deduction under this paragraph for the taxation year) of property of the class;

Interpretation Bulletins: IT-267R2: CCA — vessels.

(j), (k) [Repealed]

History [Reg. 1100(1)(j), (k)]: Paras. 1100(1)(j), (k) repealed by P.C. 1995-775, subsec. 1(1), May 16, 1995, *Canada Gazette*, Part II, May 31, 1995, applicable to property acquired on or after May 31, 1995.

(l) **additional allowances — certified productions** — such additional amount as he may claim in respect of property for which a separate class is prescribed by subsection 1101(5k) not exceeding the lesser of

(i) the aggregate of his income for the year from that property and from property described in paragraph (n) of Class 12 in Schedule II, determined before making any deduction under this paragraph, and

(ii) the undepreciated capital cost to him of property of that separate class as of the end of the year before making any deduction under this paragraph for the year;

Related Provisions: Reg. 1100(3) — Short taxation year rule does not apply to Reg. 1100(1)(l).

History: Para. 1100(1)(l) added by P.C. 1988-2795, subsec. 1(1), December 22, 1988, *Canada Gazette*, Part II, January 18, 1989, applicable in respect of property acquired after 1987.

Former para. 1100(1)(l) and heading revoked by P.C. 1978-1315, subsec. 3(3), April 20, 1978, *Canada Gazette*, Part II, May 10, 1978.

(m) **additional allowance — Canadian film or video production** — such additional amount as the taxpayer claims in respect of property for which a separate class is prescribed by subsection 1101(5k.1) not exceeding the lesser of

(i) the taxpayer's income for the year from the property, determined before making any deduction under this paragraph, and

(ii) the undepreciated capital cost to the taxpayer of the property of that separate class at the end of the year (before making any deduction under this paragraph for the year and computed without reference to subsection (2));

History: Para. 1100(1)(m) added by P.C. 2005-698, subsec. 1(1), May 3, 2005, *Canada Gazette*, Part II, May 18, 2005, applicable to 1995 *et seq.*

Former para. 1100(1)(m) and heading revoked by P.C. 1978-1315, subsec. 3(3), April 20, 1978, *Canada Gazette*, Part II, May 10, 1978.

(n) **Class 19** — where the taxpayer is a corporation that had a degree of Canadian ownership in the taxation year, or is an individual who was resident in Can-

ada in the taxation year for not less than 183 days, such amount as he may claim in respect of property of Class 19 in Schedule II that was acquired in a particular taxation year not exceeding the lesser of

(i) 50 per cent of the capital cost thereof to him, and

(ii) the amount by which the capital cost thereof to him exceeds the aggregate of the amounts deducted in respect thereof in computing his income for previous taxation years,

but the aggregate of amounts deductible for a taxation year in respect of property acquired in each of the particular taxation years, under this paragraph, shall not exceed the undepreciated capital cost to him as of the end of the taxation year (before making any deduction under this subsection for the taxation year) of property of the class;

Related Provisions: Reg. 1100(1)(o).

(o) **[Class 19]** — where the taxpayer is not entitled to make a deduction under paragraph (n) in computing his income for a taxation year, such amount as he may claim in respect of property of Class 19 in Schedule II not exceeding 20 per cent of the undepreciated capital cost to him as of the end of the taxation year (before making any deduction under this subsection for the taxation year) of property of the class;

(p) **Class 20** — such amount as he may claim in respect of property of Class 20 in Schedule II that was acquired in a particular taxation year not exceeding the lesser of

(i) 20 per cent of the capital cost thereof to him, and

(ii) the amount by which the capital cost thereof to him exceeds the aggregate of the amounts deducted in respect thereof in computing his income for previous taxation years,

but the aggregate of amounts deductible for a taxation year in respect of property acquired in each of the particular taxation years, under this paragraph, shall not exceed the undepreciated capital cost to him as of the end of the taxation year (before making any deduction under this subsection for the taxation year) of property of the class;

(q) **Class 21** — such amount as he may claim in respect of property of Class 21 in Schedule II that was acquired in a particular taxation year not exceeding the lesser of

(i) 50 per cent of the capital cost thereof to him, and

(ii) the amount by which the capital cost thereof to him exceeds the aggregate of the amounts deducted in respect thereof in computing his income for previous taxation years,

but the aggregate of amounts deductible for a taxation year in respect of property acquired in each of the particular taxation years, under this paragraph, shall not exceed the undepreciated capital cost to him as of the end of the taxation year (before making any deduction under this subsection for the taxation year) of property of the class;

(r), (s), (sa) [Revoked]

History: Paras. 1100(1)(r), (s), (sa) revoked by P.C. 1978-1315, subsec. 3(4), April 20, 1978, *Canada Gazette*, Part II, May 10, 1978.

(sb) **additional allowances — grain storage facilities** — such additional amount as he may claim in respect of property included in Class 3, 6 or 8 in Schedule II

(i) that is

(A) a grain elevator situated in that part of Canada that is defined in section 2 of the *Canada Grain Act* as the "Eastern Division" the principal use of which

(I) is the receiving of grain directly from producers for storage or forwarding or both,

(II) is the receiving and storing of grain for direct manufacture or processing into other products, or

(III) has been certified by the Minister of Agriculture to be the receiving of grain that has not been officially inspected or weighed,

(B) an addition to a grain elevator described in clause (A),

(C) fixed machinery installed in a grain elevator in respect of which, or in respect of an addition to which, an additional amount has been or may be claimed under this paragraph,

(D) fixed machinery, designed for the purpose of drying grain, installed in a grain elevator described in clause (A),

(E) machinery designed for the purpose of drying grain on a farm, or

(F) a building or other structure designed for the purpose of storing grain on a farm,

(ii) that was acquired by the taxpayer in the taxation year or in one of the three immediately preceding taxation years, at a time that was after April 1, 1972 but before August 1, 1974, and

(iii) that was not used for any purpose whatever before it was acquired by the taxpayer,

not exceeding the lesser of

(iv) where the property is included in Class 3, 22 per cent of the capital cost thereof, where the property is included in Class 6, 20 per cent of the capital cost thereof or where the property is included in Class 8,

(A) 14 per cent of the capital cost thereof in the case of property referred to in clause (i)(C), (D) or (F), and

(B) 14 per cent of the lesser of $15,000 and the capital cost thereof in the case of property described in clause (i)(E), and

(v) the undepreciated capital cost to him as of the end of the taxation year (before making any deduction under this paragraph for the taxation year) of property of the class;

(t) **Classes 24, 27, 29 and 34** — for the taxation year that includes November 12, 1981, such amount as he may claim in respect of property of each of Classes 24, 27, 29 and 34 in Schedule II not exceeding the aggregate of

(i) 50 per cent of the lesser of

(A) the capital cost to him of all designated property of the class acquired by him in the year, and

(B) the undepreciated capital cost to him of property of the class as of the end of the year (computed as if no amount were included in respect of property, other than designated property of the class, acquired after November 12, 1981 and before making any deduction under this paragraph for the year),

(ii) the amount, if any, by which the amount determined under clause (i)(B) in respect of the class exceeds the amount determined under clause (i)(A) in respect of the class, and

(iii) the lesser of

(A) 25 per cent of the capital cost to him of all property, other than designated property, of the class acquired by him in the year, and

(B) the undepreciated capital cost to him of property of the class as of the end of the year (before making any deduction under this paragraph for the year);

Related Provisions: Reg. 1100(24) — Specified energy property.

(ta) **[Classes 24, 27, 29 and 34]** — for taxation years commencing after November 12, 1981, such amount as he may claim in respect of property of each of Classes 24, 27, 29 and 34 in Schedule II not exceeding the aggregate of

(i) the aggregate of

(A) the lesser of

(I) 50 per cent of the capital cost to him of all designated property of the class acquired by him in the year, and

(II) the undepreciated capital cost to him of property of the class as of the end of the year (before making any deduction under this paragraph for the year and, where any of the property referred to in subclause (I) was acquired by virtue of a specified transaction, computed as if no amount were included in respect of property, other than designated property of the class acquired by him in the year), and

(B) 25 per cent of the lesser of

(I) the undepreciated capital cost to him of property of the class as of the end of the year (computed as if no amount were included in respect of designated property of the class acquired by him in the year and before making any deduction under this paragraph for the year), and

(II) the capital cost to him of all property, other than designated property, of the class acquired by him in the year, and

(ii) the lesser of

(A) the amount, if any, by which

(I) the undepreciated capital cost to him of property of the class as of the end of the year (before making any deduction under this paragraph for the year)

exceeds

(II) the capital cost to him of all property of the class acquired by him in the year, and

(B) an amount equal to the aggregate of

(I) 50 per cent of the capital cost to him of all property of the class acquired by him in the immediately preceding taxation year, other than designated property of the class acquired in a specified transaction, and

(II) the amount, if any, by which the amount determined under clause (A) for the year with respect to the class exceeds the aggregate of 75 per cent of the capital cost to him of all property, other than designated property, of the class acquired by him in the immediately preceding taxation year and 50 per cent of the capital cost to him of designated property of the class acquired by him in the immediately preceding taxation year, other than designated property of the class acquired in a specified transaction,

and for the purposes of this paragraph and paragraph (t), "designated property" of a class means

(iii) property of the class acquired by him before November 13, 1981,

(iv) property deemed to be designated property of the class by virtue of paragraph (2.1)(g) or (2.2)(j), and

(v) property described in subparagraph (2)(a)(v), (vi) or (vii),

and, for the purposes of this paragraph,

(vi) "specified transaction" means a transaction to which subsection 85(5), 87(1), 88(1), 97(4) or 98(3) or (5) of the Act applies, and

(vii) subject to paragraph (2.2)(j), a property shall be deemed to have been acquired by a taxpayer at the time at which the property became available for use by the taxpayer;

Related Provisions: Reg. 1100(2.2)(j); Reg. 1100(24) — Specified energy property.

History: That portion of para. 1100(1)(ta) following subpara. (iv) substituted by P.C. 1994-139, subsec. 2(3), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired after 1989.

Subpara. 1100(1)(ta)(v) added by P.C. 1991-465, subsec. 1(2), March 14, 1991, *Canada Gazette*, Part II, March 27, 1991, applicable in respect of taxation years ending after April 26, 1989.

The heading preceding para. 1100(1)(t) and para. 1100(1)(t) substituted and para. 1100(1)(ta) added by P.C. 1983-1083, subsec. 1(3), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, applicable in respect of taxation years ending after November 12, 1981.

Interpretation Bulletins: IT-147R3: CCA — Accelerated write-off of manufacturing and processing machinery and equipment; IT-336R: CCA — Pollution control property (archived).

(u) [Revoked]

History: Para. 1100(1)(u) revoked by P.C. 1978-1315, subsec. 3(5), April 20, 1978, *Canada Gazette*, Part II, May 10, 1978.

(v) **Canadian vessels** — such amount as the taxpayer may claim in respect of property that is

(i) a vessel described in subsection 1101(2a),

(ii) included in a separate prescribed class because of subsection 13(14) of the Act, or

(iii) a property that has been constituted a prescribed class by subsection 24(2) of Chapter 91 of the Statutes of Canada, 1966-67,

not exceeding the lesser of

(iv) where the property, other than property described in subparagraph (2)(a)(v), (vi) or (vii), was acquired in the taxation year and after November 12, 1981, 16 2/3 per cent of the capital cost thereof to the taxpayer and, in any other case, 33 1/3 per cent of the capital cost thereof to the taxpayer, and

(v) the undepreciated capital cost to the taxpayer as of the end of the taxation year (before making any deduction under this paragraph for the taxation year) of property of the class,

and, for the purposes of subparagraph (iv), a property shall be deemed to have been acquired by a taxpayer at the time at which the property became available for use by the taxpayer for the purposes of the Act;

History: Para. 1100(1)(v) and its heading were amended by subsec. 2(4) of P.C. 1994-139, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, the heading and subpara. (i) applicable with respect to property acquired after July 13, 1990, the rest applicable with respect to property acquired after 1989.

Subpara. 1100(1)(v)(iv) amended by P.C. 1991-465, subsec. 1(3), March 14, 1991, *Canada Gazette*, Part II, March 27, 1991, applicable in respect of taxation years ending after April 26, 1989.

All that portion of para. 1100(1)(v) preceding subpara. (v) substituted by P.C. 1983-1083, subsec. 1(4), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, applicable in respect of property (other than property described in Class 31 of Schedule II or paragraph (n) of Class 12 of that schedule) acquired or disposed of after November 12, 1981, property described in the said Class 31 acquired or disposed of after 1981 and property described in paragraph (n) of the said Class 12 acquired or disposed of after 1982.

Interpretation Bulletins: IT-267R2: CCA — Vessels.

Advance Tax Rulings: ATR-52: Accelerated rate of CCA for vessels.

(va) **additional allowances — offshore drilling vessels** — such additional amount as he may claim in respect of property for which a separate class is prescribed by subsection 1101(2b) not exceeding 15 per cent of the undepreciated capital cost to him of property of that class as of the end of the taxation year (before making any deduction under this subsection for the taxation year);

Interpretation Bulletins: IT-267R2: CCA — vessels.

(w) **additional allowances — Class 28** — subject to section 1100A, such additional amount as he may claim in respect of property described in Class 28 acquired for the purpose of gaining or producing income from a mine or in respect of property acquired for the purpose of gaining or producing income from a mine and for which a separate class is prescribed by subsection 1101(4a), not exceeding the lesser of

(i) the taxpayer's income for the year from the mine, determined without reference to paragraph 12(1)(z.5) of the Act and before making any deduction under this paragraph, paragraph (x), (y) or (ya), paragraph 20(1)(v.1) of the Act, section 65, 66, 66.1, 66.2 or 66.7 of the Act or section 29 of the *Income Tax Application Rules*, and

Proposed Amendment [effective 2007] — Reg. 1100(1)(w)(i)

(i) the taxpayer's income for the year from the mine, before making any deduction under this paragraph, paragraph (x), (y) or (ya), section 65, 66, 66.1, 66.2 or 66.7 of the Act or section 29 of the *Income Tax Application Rules*, and

Application: The June 9, 2003 draft regulations (natural resources), subsec. 1(1), will amend subpara. 1100(1)(w)(i) to read as above, applicable to taxation years that begin after 2006.

Technical Notes: Paragraphs 1100(1)(w) to (ya) allow an accelerated capital cost allowance, up to the amount of specified income from one or more mines, with respect to certain mining assets. For this purpose, a taxpayer's income is computed without reference to a taxpayer's resource allowance, resource loss or certain resource deductions.

Paragraphs 1100 (w) to (ya) are amended for taxation years that begin after 2006, to remove the reference to paragraphs 20(1)(v.1) (resource allowance) and 12(1)(z.5) (resource loss) of the Act, consequential upon the repeal of those paragraphs.

(ii) the undepreciated capital cost to him of property of that class as of the end of the taxation year (before making any deduction under this paragraph for the taxation year);

Related Provisions: Reg. 1100(3) — Short taxation year rule does not apply to Reg. 1100(1)(w); Reg. 1104(5), (6.1) — Income from a mine.

History: Subpara. 1100(1)(w)(i) amended by P.C. 1999-629, subsec. 1(1), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to taxation years that begin after 1996.

Subpara. 1100(1)(w)(i) amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Subpara. 1100(1)(w)(i) substituted by P.C. 1989-2464, subsec. 1(2), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable to 1988 *et seq.*

That portion of para. 1100(1)(w) preceding subpara. (i) thereof substituted by P.C. 1985-465, s. 1, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985.

(x) subject to section 1100A, such additional amount as he may claim in respect of property acquired for the purpose of gaining or producing income from more than one mine and for which a separate class is prescribed by subsection 1101(4b), not exceeding the lesser of

(i) the taxpayer's income for the year from the mines, determined without reference to paragraph 12(1)(z.5) of the Act and before making any deduction under this paragraph, paragraph (ya), paragraph 20(1)(v.1) of the Act, section 65, 66, 66.1, 66.2 or 66.7 of the Act or section 29 of the *Income Tax Application Rules*, and

Proposed Amendment [effective 2007] — Reg. 1100(1)(x)(i)

(i) the taxpayer's income for the year from the mines, before making any deduction under this paragraph, paragraph (ya), section 65, 66, 66.1, 66.2 or 66.7 of the Act or section 29 of the *Income Tax Application Rules*, and

Application: The June 9, 2003 draft regulations (natural resources), subsec. 1(2), will amend subpara. 1100(1)(x)(i) to read as above, applicable to taxation years that begin after 2006.

Technical Notes: See under Reg. 1100(1)(w)(i) above.

(ii) the undepreciated capital cost to him of property of that class as of the end of the taxation year (before making any deduction under this paragraph for the taxation year);

Related Provisions: Reg. 1100(3) — Short taxation year rule does not apply to Reg. 1100(1)(x); Reg. 1104(5), (6.1) — Income from a mine; Reg. 1104(7) — Interpretation.

History: Subpara. 1100(1)(x)(i) amended by P.C. 1999-629, subsec. 1(2), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to taxation years that begin after 1996.

Subpara. 1100(1)(x)(i) amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Subpara. 1100(1)(x)(i) substituted by P.C. 1989-2464, subsec. 1(3), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable to 1988 *et seq.*

(y) **additional allowances — Class 41** — such additional amount as the taxpayer may claim in respect of property acquired for the purpose of gaining or producing income from a mine and for which a separate class is prescribed by subsection 1101(4c), not exceeding the lesser of

(i) the taxpayer's income for the year from the mine, determined without reference to paragraph

12(1)(z.5) of the Act and before making any deduction under this paragraph, paragraph (x) or (ya), paragraph 20(1)(v.1) of the Act, section 65, 66, 66.1, 66.2 or 66.7 of the Act or section 29 of the *Income Tax Application Rules*, and

Proposed Amendment [effective 2007] — Reg. 1100(1)(y)(i)

(i) the taxpayer's income for the year from the mine, before making any deduction under this paragraph, paragraph (x) or (ya), section 65, 66, 66.1, 66.2 or 66.7 of the Act or section 29 of the *Income Tax Application Rules*, and

Application: The June 9, 2003 draft regulations (natural resources), subsec. 1(3), will amend subpara. 1100(1)(y)(i) to read as above, applicable to taxation years that begin after 2006.

Technical Notes: See under Reg. 1100(1)(w)(i) above.

(ii) the undepreciated capital cost to the taxpayer of property of that class as of the end of the taxation year (computed without reference to subsection (2) and before making any deduction under this paragraph for the taxation year);

Related Provisions: Reg. 1100(3) — Short taxation year rule does not apply to Reg. 1100(1)(y); Reg. 1104(5), (6.1) — Income from a mine; Reg. 1104(7) — Interpretation.

History: Subpara. 1100(1)(y)(i) amended by P.C. 1999-629, subsec. 1(3), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to taxation years that begin after 1996.

Subpara. 1100(1)(y)(i) amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Subpara. 1100(1)(y)(ii) amended by P.C. 1992-2335, Sch. II, subsec. 1(1), November 19, 1992, *Canada Gazette*, Part II, December 2, 1992, applicable to 1988 *et seq*.

Para. 1100(1)(y) added by P.C. 1989-2464, subsec. 1(4), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable to 1988 *et seq*.

The heading preceding para. 1100(1)(y) and para. 1100(1)(y) revoked by P.C. 1983-1083, subsec. 1(5), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, applicable in respect of taxation years ending after November 12, 1981.

(ya) **[property for more than one mine]** — such additional amount as the taxpayer may claim in respect of property acquired for the purpose of gaining or producing income from more than one mine and for which a separate class is prescribed by subsection 1101(4d), not exceeding the lesser of

(i) the taxpayer's income for the year from the mines, determined without reference to paragraph 12(1)(z.5) of the Act and before making any deduction under this paragraph, paragraph 20(1)(v.1) of the Act, section 65, 66, 66.1, 66.2 or 66.7 of the Act or section 29 of the *Income Tax Application Rules*, and

Proposed Amendment [effective 2007] — Reg. 1100(1)(ya)(i)

(i) the taxpayer's income for the year from the mines, before making any deduction under this paragraph, section 65, 66, 66.1, 66.2 or 66.7 of the Act or section 29 of the *Income Tax Application Rules*, and

Application: The June 9, 2003 draft regulations (natural resources), subsec. 1(4), will amend subpara. 1100(1)(ya)(i) to read as above, applicable to taxation years that begin after 2006.

Technical Notes: See under Reg. 1100(1)(w)(i) above.

(ii) the undepreciated capital cost to the taxpayer of property of that class as of the end of the taxation year (computed without reference to subsection (2) and before making any deduction under this paragraph for the taxation year);

Related Provisions: Reg. 1100(3) — Short taxation year rule does not apply to Reg. 1100(1)(ya); Reg. 1104(5), (6.1) — Income from a mine; Reg. 1104(7) — Interpretation.

History: Subpara. 1100(1)(ya)(i) amended by P.C. 1999-629, subsec. 1(4), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to taxation years that begin after 1996.

Subpara. 1100(1)(ya)(i) amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Para. 1100(1)(ya) added by P.C. 1989-2464, subsec. 1(4), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable to 1988 *et seq*.

(z) **additional allowances — railway cars** — such additional amount as the taxpayer may claim in respect of property for which a separate class is prescribed by paragraph 1101(5d)(c) not exceeding eight per cent of the undepreciated capital cost to the taxpayer of property of that class as of the end of the taxation year (before making any deduction under this subsection for the taxation year);

History: Para. 1100(1)(z) amended by P.C. 1991-465, subsec. 1(4), March 14, 1991, *Canada Gazette*, Part II, March 27, 1991, applicable after April 26, 1989.

(z.1a) **[additional allowance — railway cars]** — such additional amount as the taxpayer may claim in respect of property for which a separate class is prescribed by paragraph 1101(5d)(d), (e) or (f), not exceeding six per cent of the undepreciated capital cost to the taxpayer of property of that class as of the end of the taxation year (before making any deduction under this subsection for the taxation year);

Related Provisions: Reg. 1103(2i) — Election to include Class 7(h) property in Class 35.

History: Para. 1100(1)(z.1a) added by P.C. 1991-465, subsec. 1(5), March 14, 1991, *Canada Gazette*, Part II, March 27, 1991, applicable

(a) in respect of property acquired by a taxpayer after April 26, 1989 for rent or lease to another person;

(b) to the 1990 and subsequent taxation years in respect of property acquired by a taxpayer before April 27, 1989 for rent or lease to another person, except that the reference to "six" in para. 1100(1)(z.1a) shall be read as a reference to "7 in respect of the 1990 taxation year, to "7 ⅓" in respect of the 1991 taxation year, to "7" in respect of the 1992 taxation year, to "6 ⅔" in respect of the 1993 taxation year, and to "6⅓" in respect of the 1994 taxation year; and

(c) in respect of property acquired by a taxpayer after February 2, 1990, other than

(i) property acquired for rent or lease to another person,

(ii) property acquired pursuant to an agreement in writing entered into before February 3, 1990, or

(iii) property under construction by or on behalf of the taxpayer before February 3, 1990.

(z.1b) **[railway property]** — where throughout the taxation year the taxpayer was a common carrier that owned and operated a railway, such additional amount as the taxpayer may claim in respect of property for which a separate class is prescribed by subsection 1101(5d.1), not exceeding three per cent of the undepreciated capital cost to the taxpayer of property of that class as of the end of the year (before making any deduction under this subsection for the year);

History: Para. 1100(1)(z.1b) added by P.C. 1994-139, subsec. 2(5), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired after December 6, 1991.

Proposed Addition — Reg. 1100(1)(z.1c)

(z.1c) **[railway property]** — where throughout the taxation year the taxpayer was a common carrier that owned and operated a railway, such additional amount as the taxpayer may claim in respect of pro-

perty for which a separate class is prescribed by subsection 1101(5d.2), not exceeding 6% of the undepreciated capital cost to the taxpayer of property of that class as of the end of the year (before making any deduction under this subsection for the year);

Application: The March 16, 2001 draft regulations (CCA), s. 1, will add para. (z.1c), applicable to property acquired after February 27, 2000.

Technical Notes: New paragraph 1100(1)(z.1c) provides an additional 6% capital cost allowance ("CCA") deduction for railway property of a common carrier that owns and operates a railway and that is included in a separate Class 35 (7% CCA rate) because of new subsection 1101(5d.2). This additional CCA allowance is consequential to changes to the CCA rate applicable to certain railway assets more fully described below in the commentary to new subsection 1103(2i) and amended Class 7 (15% CCA rate).

Related Provisions: Reg. 1103(2i) — Election to include Class 7(h) property in Class 35.

(za) **additional allowances — railway track and related property** — such additional amount as he may claim in respect of property for which a separate class is prescribed by subsection 1101(5e) not exceeding four per cent of the undepreciated capital cost to him of property of that class as of the end of the taxation year (before making any deduction under this subsection for the taxation year);

History: Para. 1100(1)(za) added by P.C. 1978-344, s. 1, February 9, 1978, *Canada Gazette*, Part II, February 22, 1978, effective after March 31, 1977.

(za.1) **[railway track and related property]** — where throughout the taxation year the taxpayer was a common carrier that owned and operated a railway, such additional amount as the taxpayer may claim in respect of property for which a separate class is prescribed by subsection 1101(5e.1), not exceeding six per cent of the undepreciated capital cost to the taxpayer of property of that class as of the end of the year (before making any deduction under this subsection for the year);

History: Para. 1100(1)(za.1) added by P.C. 1994-139, subsec. 2(6), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired after December 6, 1991.

(za.2) **[trestles]** — where throughout the taxation year the taxpayer was a common carrier that owned and operated a railway, such additional amount as the taxpayer may claim in respect of property for which a separate class is prescribed by subsection 1101(5e.2), not exceeding five per cent of the undepreciated capital cost to the taxpayer of property of that class as of the end of the year (before making any deduction under this subsection for the year);

History: Para. 1100(1)(za.2) added by P.C. 1994-139, subsec. 2(6), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired after December 6, 1991.

(zb) **[trestles]** — such additional amount as he may claim in respect of property for which a separate class is prescribed by subsection 1101(5f) not exceeding three per cent of the undepreciated capital cost to him of property of that class as of the end of the taxation year (before making any deduction under this subsection for the taxation year);

History: Para. 1100(1)(zb) added by P.C. 1978-344, s. 1, February 9, 1978, *Canada Gazette*, Part II, February 22, 1978, effective after March 31, 1977.

(zc) **additional allowances — railway expansion and modernization property** — where the taxpayer owns and operates a railway as a common carrier, such additional amount as he may claim in respect of property of a class in Schedule II (in this paragraph referred to as "designated property" of the class)

(i) that is

(A) included in Class 1 in Schedule II by virtue of paragraph (h) or (i) of that Class,

(B) a bridge, culvert, subway or tunnel included in Class 1 in Schedule II that is ancillary to railway track and grading,

(C) a trestle included in Class 3 in Schedule II that is ancillary to railway track and grading,

(D) included in Class 6 in Schedule II by virtue of paragraph (j) of that Class,

(E) machinery or equipment included in Class 8 in Schedule II that is ancillary to

(I) railway track and grading, or

(II) railway traffic control or signalling equipment, including switching, block signalling, interlocking, crossing protection, detection, speed control or retarding equipment, but not including property that is principally electronic equipment or systems software therefor,

(F) machinery or equipment included in Class 8 in Schedule II that

(I) was acquired principally for the purpose of maintaining or servicing, or

(II) is ancillary to and used as part of,

a railway locomotive or railway car,

(G) included in Class 10 in Schedule II by virtue of subparagraph (m)(i), (ii) or (iii) of that Class,

(H) included in Class 28 in Schedule II by virtue of subparagraph (d)(ii) of that Class (other than property referred to in subparagraph (m)(iv) of Class 10), or

(I) included in Class 35 in Schedule II,

(ii) that was acquired by him principally for use in or is situated in Canada,

(iii) that was acquired by him in respect of the railway in the taxation year or in one of the four immediately preceding taxation years, at a time that was after April 10, 1978 but before 1988, and

(iv) that was not used for any purpose whatever before it was acquired by him,

not exceeding the lesser of

(v) six per cent of the aggregate of the capital cost to him of the designated property of the class, and

(vi) the undepreciated capital cost to him as of the end of the taxation year (after making all deductions claimed by him under other provisions of this subsection for the taxation year but before making any deduction under this paragraph for the taxation year) of property of the class;

History: Subpara. 1100(1)(zc)(iii) substituted by P.C. 1984-2044, s. 1, June 14, 1984, *Canada Gazette*, Part II, June 27, 1984.

Para. 1100(1)(zc) added by P.C. 1979-1488, subsec. 1(2), May 17, 1979, *Canada Gazette*, Part II, June 13, 1979, effective from April 11, 1978.

(zd) **Class 38** — such amount as the taxpayer may claim in respect of property of Class 38 in Schedule II

not exceeding that percentage which is the aggregate of

(i) that proportion of 40 per cent that the number of days in the taxation year that are in 1988 is of the number of days in the taxation year that are after 1987,

(ii) that proportion of 35 per cent that the number of days in the taxation year that are in 1989 is of the number of days in the taxation year, and

(iii) that proportion of 30 per cent that the number of days in the taxation year that are after 1989 is of the number of days in the taxation year

of the undepreciated capital cost to the taxpayer of property of that class as of the end of the taxation year (before making any deduction under this paragraph for the taxation year);

(ze) **Class 39** — such amount as the taxpayer may claim in respect of property of Class 39 in Schedule II not exceeding that percentage which is the aggregate of

(i) that proportion of 40 per cent that the number of days in the taxation year that are in 1988 is of the number of days in the taxation year that are after 1987,

(ii) that proportion of 35 per cent that the number of days in the taxation year that are in 1989 is of the number of days in the taxation year,

(iii) that proportion of 30 per cent that the number of days in the taxation year that are in 1990 is of the number of days in the taxation year, and

(iv) that proportion of 25 per cent that the number of days in the taxation year that are after 1990 is of the number of days in the taxation year

of the undepreciated capital cost to the taxpayer of property of that class as of the end of the taxation year (before making any deduction under this paragraph for the taxation year);

Interpretation Bulletins: IT-147R3: CCA — Accelerated write-off of manufacturing and processing machinery and equipment.

(zf) **Class 40** — such amount as the taxpayer may claim in respect of property of Class 40 in Schedule II not exceeding that percentage which is the aggregate of

(i) that proportion of 40 per cent that the number of days in the taxation year that are in 1988 is of the number of days in the taxation year that are after 1987,

(ii) that proportion of 35 per cent that the number of days in the taxation year that are in 1989 is of the number of days in the taxation year, and

(iii) that proportion of 30 per cent that the number of days in the taxation year that are in 1990 is of the number of days in the taxation year

of the undepreciated capital cost to the taxpayer of property of that class as of the end of the taxation year (before making any deduction under this paragraph for the taxation year);

History [Reg. 1100(1)(zd)–(zf)]: Paras. 1100(1)(zd) to (zf) added by P.C. 1989-2464, subsec. 1(5), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable to 1988 *et seq.*

Interpretation Bulletins [Reg. 1100(1)(zf)]: IT-147R3: CCA — Accelerated write-off of manufacturing and processing machinery and equipment.

(zg) **additional allowance — year 2000 computer hardware and systems software** — where the taxpayer

(i) has elected for the year in prescribed manner,

(ii) was not in the year a large corporation, as defined in subsection 225.1(8) of the Act, or a partnership any member of which was such a corporation in a taxation year that included any time that is in the partnership's year, and

(iii) acquired property included in paragraph (f) of Class 10 in Schedule II

(A) in the year,

(B) after 1997 and before November 1999, and

(C) for the purpose of replacing property that was acquired before 1998 that has a material risk of malfunctioning because of the change of the calendar year to 2000 and that is described in paragraph (f) of Class 10, or paragraph (o) of Class 12, in Schedule II,

such additional amount as the taxpayer claims in respect of all property described in subparagraph (iii) not exceeding the least of

(iv) the amount, if any, by which $50,000 exceeds the total of

(A) the total of all amounts each of which is an amount claimed by the taxpayer under this paragraph for a preceding taxation year,

(B) the total of all amounts each of which is an amount claimed by the taxpayer for the year or a preceding taxation year under paragraph (zh), and

(C) the total of all amounts each of which is an amount claimed under this paragraph or paragraph (zh) by a corporation for a taxation year in which it was associated with the taxpayer,

(v) 85% of the capital cost to the taxpayer of all property described in subparagraph (iii), and

(vi) the undepreciated capital cost to the taxpayer as of the end of the year (computed without reference to subsection (2) and after making all deductions claimed under other provisions of this subsection for the year but before making any deduction under this paragraph for the year) of property included in Class 10 in Schedule II; and

I.T. Technical News: 14 (millennium bug expenditures).

(zh) **additional allowance — year 2000 computer software** — where the taxpayer

(i) has elected for the year in prescribed manner,

(ii) was not in the year a large corporation, as defined in subsection 225.1(8) of the Act, or a partnership any member of which was such a corporation in a taxation year that included any time that is in the partnership's year, and

(iii) acquired property included in paragraph (o) of Class 12 in Schedule II

(A) in the year,

(B) after 1997 and before November 1999, and

(C) for the purpose of replacing property that was acquired before 1998 that has a material risk of malfunctioning because of the change of

the calendar year to 2000 and that is described in paragraph (f) of Class 10, or paragraph (o) of Class 12, in Schedule II,

such additional amount as the taxpayer claims in respect of all property described in subparagraph (iii) not exceeding the least of

(iv) the amount, if any, by which $50,000 exceeds the total of

(A) the total of all amounts each of which is an amount claimed by the taxpayer under this paragraph for a preceding taxation year,

(B) the total of all amounts each of which is an amount claimed by the taxpayer for the year or a preceding taxation year under paragraph (zg), and

(C) the total of all amounts each of which is an amount claimed under this paragraph or paragraph (zg) by a corporation for a taxation year in which it was associated with the taxpayer,

(v) 50% of the capital cost to the taxpayer of all property described in subparagraph (iii), and

(vi) the undepreciated capital cost to the taxpayer as of the end of the year (computed without reference to subsection (2) and after making all deductions claimed under other provisions of this subsection for the year but before making any deduction under this paragraph for the year) of property included in Class 12 in Schedule II.

History [Reg. 1100(1)(zg), (zh)]: Paras. 1100(1)(zg) and (zh) added by P.C. 2000-1000, subsec. 2(1), June 21, 2000, *Canada Gazette*, Part II, July 5, 2000, applicable to 1998 *et seq.*

I.T. Technical News: 14 (millennium bug expenditures).

Related Provisions [Reg. 1100(1)]: Reg. 1100(1.1) — Specified leasing property; Reg. 1100(3) — Taxation year less than 12 months; Reg. 1100(11) — Rental properties; Reg. 1100(15) — Leasing properties; ITA 20(1.1) — Definitions in ITA 13(21) apply to regulations.

Interpretation Bulletins [Reg. 1100(1)]: See at beginning of Reg. Part XI.

Forms [Reg. 1100(1)]: See at beginning of Reg. Part XI.

(1.1) [Specified leasing property — limitation] — Notwithstanding subsections (1) and (3), the amount deductible by a taxpayer for a taxation year in respect of a property that is a specified leasing property at the end of the year is the lesser of

(a) the amount, if any, by which the aggregate of

(i) all amounts that would be considered to be repayments in the year or a preceding year on account of the principal amount of a loan made by the taxpayer if

(A) the taxpayer had made the loan at the time that the property last became a specified leasing property and in a principal amount equal to the fair market value of the property at that time,

(B) interest had been charged on the principal amount of the loan outstanding from time to time at the rate, determined in accordance with section 4302, in effect at the earlier of

(I) the time, if any, before the time referred to in subclause (II), at which the taxpayer last entered into an agreement to lease the property, and

(II) the time that the property last became a specified leasing property

(or, where a particular lease provides that the amount paid or payable by the lessee of the property for the use of, or the right to use, the property varies according to prevailing interest rates in effect from time to time, and the taxpayer so elects, in respect of all of the property that is the subject of the particular lease, in the taxpayer's return of income under Part I of the Act for the taxation year of the taxpayer in which the particular lease was entered into, the rate determined in accordance with section 4302 that is in effect at the beginning of the period for which the interest is being calculated), compounded semi-annually not in advance, and

(C) the amounts that were received or receivable by the taxpayer before the end of the year for the use of, or the right to use, the property before the end of the year and after the time it last became a specified leasing property were blended payments of principal and interest, calculated in accordance with clause (B), on the loan applied firstly on account of interest on principal, secondly on account of interest on unpaid interest, and thirdly on account of principal, and

(ii) the amount that would have been deductible under this section for the taxation year (in this subparagraph referred to as the "particular year") that includes the time (in this subparagraph referred to as the "particular time") at which the property last became a specified leasing property of the taxpayer, if

(A) the property had been transferred to a separate prescribed class at the later of

(I) the beginning of the particular year, and

(II) the time at which the property was acquired by the taxpayer,

(B) the particular year had ended immediately before the particular time, and

(C) where the property was not a specified leasing property immediately before the particular time, subsection (3) had applied,

exceeds

(iii) the aggregate of all amounts deducted by the taxpayer in respect of the property by reason of this subsection before the commencement of the year and after the time at which it last became a specified leasing property; and

(b) the amount, if any, by which,

(i) the aggregate of all amounts that would have been deducted by the taxpayer under this Part in respect of the property under paragraph 20(1)(a) of the Act in computing the income of the taxpayer for the year and all preceding taxation years had this subsection and subsections (11) and (15) not applied, and had the taxpayer, in each such year deducted under paragraph 20(1)(a) of the Act the maximum amount allowed under this Part, read without reference to this subsection and subsection (11) and (15), in respect of the property,

exceeds

(ii) the total depreciation allowed to the taxpayer before the commencement of the year in respect of the property.

Related Provisions: ITA 16.1 — Election to treat lease as a sale; Reg. 1100(1.11) — Meaning of "specified leasing property"; Reg. 1100(1.12); Reg. 4302 — Prescribed rate of interest.

I.T. Technical Notes: No. 21 (cancellation of Interpretation Bulletin IT-233R).

(1.11) ["Specified leasing property"] — In this section and subsection 1101(5n), "specified leasing property" of a taxpayer at any time means depreciable property (other than exempt property) that is

(a) used at that time by the taxpayer or a person with whom the taxpayer does not deal at arm's length principally for the purpose of gaining or producing gross revenue that is rent or leasing revenue,

(b) the subject of a lease at that time to a person with whom the taxpayer deals at arm's length and that, at the time the lease was entered into, was a lease for a term of more than one year, and

(c) the subject of a lease of property where the tangible property, other than exempt property, that was the subject of the lease had, at the time the lease was entered into, an aggregate fair market value in excess of $25,000,

but, for greater certainty, does not include intangible property (including systems software and property referred to in paragraph (w) of Class 10 or paragraph (n) or (o) of Class 12 in Schedule II).

Related Provisions: Reg. 1100(1.12)–(1.3), (17.2) — Interpretation; Reg. 1101(5n) — Separate class.

(1.12) [Specified leasing property — new property] — Notwithstanding subsections (1) and (1.1), where, in a taxation year, a taxpayer has acquired a property that was not used by the taxpayer for any purpose in that year and the first use of the property by the taxpayer is a lease of the property in respect of which subsection (1.1) applies, the amount allowed to the taxpayer under subsection (1) in respect of the property for the year shall be deemed to be nil.

(1.13) [Specified leasing property — interpretation] — For the purposes of this section,

(a) "exempt property" means

(i) general purpose office furniture or office equipment included in Class 8 in Schedule II (including, for greater certainty, mobile office equipment such as cellular telephones and pagers) or general purpose electronic data processing equipment and ancillary data processing equipment, included in paragraph (f) of Class 10 in Schedule II, other than any individual piece thereof having a capital cost to the taxpayer in excess of $1,000,000,

Proposed Addition — Reg. 1100(1.13)(a)(i.1)

(i.1) general-purpose electronic data processing equipment and ancillary data processing equipment, included in Class 45 in Schedule II, other than any individual item of that type of equipment having a capital cost to the taxpayer in excess of $1,000,000,

Application: The June 27, 2005 draft regulations (CCA — introduction of cls. 45 & 46), subsec. 1(2), (pre-published in the *Canada Gazette*, Part I, July 9, 2005), will add subpara. 1100(1.13)(a)(i.1), deemed in force on March 23, 2004.

Regulatory Impact Analysis Statement: See under Reg. 1100(1)(a)(xxxi) (Computers) above.

Technical Notes (September 16, 2004): Paragraph 1100(1.13)(a) defines property that is "exempt property" for the purposes of the specified leasing property rules, which may apply to restrict a taxpayer's deduction of CCA in respect of specified leasing property.

Paragraph 1100(1.13)(a) is amended to add new subparagraph (i.1), which provides that certain computer equipment included in new Class 45 (other than an individual item of such equipment that has a capital cost in excess of $1 million) is exempt property for the purpose of the specified leasing property rules.

(ii) furniture, appliances, television receivers, radio receivers, telephones, furnaces, hot-water heaters and other similar properties, designed for residential use,

(iii) a property that is a motor vehicle that is designed or adapted primarily to carry individuals on highways and streets and that has a seating capacity for not more than the driver and eight passengers, or a motor vehicle of a type commonly called a van or pick-up truck, or a similar vehicle,

(iv) a truck or tractor that is designed for hauling freight on highways,

(v) a trailer that is designed for hauling freight and to be hauled under normal operating conditions by a truck or tractor described in subparagraph (iv),

(vi) a building or part thereof included in Class 1, 3, 6, 20, 31 or 32 in Schedule II (including component parts such as electric wiring, plumbing, sprinkler systems, air-conditioning equipment, heating equipment, lighting fixtures, elevators and escalators) other than a building or part thereof leased primarily to a lessee that is

(A) a person who is exempt from tax by reason of section 149 of the Act,

(B) a person who uses the building in the course of carrying on a business the income from which is exempt from tax under Part I of the Act by reason of any provision of the Act, or

(C) a Canadian government, municipality or other Canadian public authority,

who owned the building or part thereof at any time before the commencement of the lease (other than at any time during a period ending not later than one year after the later of the date the construction of the building or part thereof was completed and the date the building or part thereof was acquired by the lessee),

(vii) vessel mooring space, and

(viii) property that is included in Class 35 in Schedule II,

and for the purposes of subparagraph (i), where a property is owned by two or more persons or partnerships, or any combination thereof, the capital cost of the property to each such person or partnership shall be deemed to be the total of all amounts each of which is the capital cost of the property to such a person or partnership;

(b) property shall be deemed to be the subject of a lease for a term of more than one year at any time where, at that time

(i) the property had been leased by the lessee thereunder, a person with whom the lessee does not deal at arm's length, or any combination thereof, for a period of more than one year ending at that time, or

(ii) it is reasonable, having regard to all the circumstances, to conclude that the lessor thereunder knew or ought to have known that the lessee thereunder, a person with whom the lessee does not deal

at arm's length, or any combination thereof, would lease the property for more than one year; and

(c) for the purposes of paragraph (1.11)(c), where it is reasonable, having regard to all the circumstances, to conclude that one of the main reasons for the existence of two or more leases was to avoid the application of subsection (1.1) by reason of each such lease being a lease of property where the tangible property, other than exempt property, that was the subject of the lease had an aggregate fair market value, at the time the lease was entered into, not in excess of $25,000, each such lease shall be deemed to be a lease of tangible property that had, at the time the lease was entered into, an aggregate fair market value in excess of $25,000.

Related Provisions: Reg. 1100(1.14); Reg. 8200 — Prescribed property for leasing rules.

History: Subpara. 1100(1.13)(a)(iii) amended by P.C. 1994-139, subsec. 2(7), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, deemed applicable (by P.C. 2001-1378, s. 11, August 1, 2001, *Canada Gazette*, Part II, August 15, 2001), notwithstanding P.C. 1991-465 dated March 14, 1991 and subsec. 35(6) of the Schedule to P.C. 1994-139 dated January 27, 1994, in respect of leases entered into after 10:00 p.m. EDST, April 26, 1989, other than leases entered into pursuant to an agreement in writing entered into before that time under which the lessee thereunder has the right to require the lease of the property, and for these purposes a lease in respect of which a material change has been agreed to by the parties to it effective at any particular time that is after 10:00 p.m. EDST, April 26, 1989, is deemed to have been entered into at that particular time.

Subpara. 1100(1.13)(a)(viii) amended by the said P.C. 1994-139, subsec. 2(8), applicable to property acquired after December 23, 1991, other than property acquired by the taxpayer before 1993

(a) pursuant to an agreement in writing entered into before December 24, 1991, or

(b) that was under construction by or on behalf of the taxpayer on December 23, 1991.

(1.14) [Specified leasing property — election] — For the purposes of subsection (1.11) and notwithstanding subsection (1.13), where a taxpayer referred to in subsection (16) so elects in the taxpayer's return of income under Part I of the Act for a taxation year in respect of the year and all subsequent taxation years, all of the property of the taxpayer that is the subject of leases entered into in those years shall be deemed not to be exempt property for those years and the aggregate fair market value of all of the tangible property that is the subject of each such lease shall be deemed to have been, at the time the lease was entered into, in excess of $25,000.

(1.15) [Specified leasing property — term of more than one year] — Subject to subsection (1.16) and for the purposes of subsection (1.11), where at any time a taxpayer acquires property that is the subject of a lease with a remaining term at that time of more than one year from a person with whom the taxpayer was dealing at arm's length, the taxpayer shall be deemed to have entered into a lease of the property at that time for a term of more than one year.

(1.16) [Specified leasing property — amalgamation] — Where, at any time, a taxpayer acquires from a person with whom the taxpayer is not dealing at arm's length, or by virtue of an amalgamation (within the meaning assigned by subsection 87(1) of the Act), property that was specified leasing property of the person from whom the taxpayer acquired it, the taxpayer shall, for the purposes of paragraph (1.1)(a) and for the purpose of computing the income of the taxpayer in respect of the lease for any period after the particular time, be deemed to be the same person as, and a continuation of, that person.

(1.17) [Specified leasing property — replacement property] — For the purposes of subsections (1.1) and (1.11), where at any particular time a property (in this subsection referred to as a "replacement property") is provided by a taxpayer to a lessee for the remaining term of a lease as a replacement for a similar property of the taxpayer (in this subsection referred to as the "original property") that was leased by the taxpayer to the lessee, and the amount payable by the lessee for the use of, or the right to use, the replacement property is the same as the amount that was so payable in respect of the original property, the following rules apply:

(a) the replacement property shall be deemed to have been leased by the taxpayer to the lessee at the same time and for the same term as the original property;

(b) the amount of the loan referred to in clause (1.1)(a)(i)(A) shall be deemed to be equal to the amount of that loan determined in respect of the original property;

(c) the amount determined under subparagraph (1.1)(a)(ii) in respect of the replacement property shall be deemed to be equal to the amount so determined in respect of the original property;

(d) all amounts received or receivable by the taxpayer for the use of, or the right to use, the original property before the particular time shall be deemed to have been received or receivable, as the case may be, by the taxpayer for the use of, or the right to use, the replacement property; and

(e) the original property shall be deemed to have ceased to be subject to the lease at the particular time.

History: Para. 1100(1.17)(b) amended by P.C. 1992-2335, Sch. II, subsec. 1(3), November 19, 1992, *Canada Gazette* Part II, December 2, 1992, applicable *ab initio*.

(1.18) [Specified leasing property — breakdown of property] — For the purposes of subsection (1.1), where for any period of time any amount that would have been received or receivable by a taxpayer during that period in respect of the use of, or the right to use, a property of the taxpayer during that period is not received or receivable by the taxpayer as a consequence of a breakdown of the property during that period and before the lease of that property is terminated, that amount shall be deemed to have been received or receivable, as the case may be, by the taxpayer.

(1.19) [Specified leasing property — addition or alteration] — For the purposes of subsections (1.1) and (1.11), where at any particular time

(a) an addition or alteration (in this subsection referred to as "additional property") is made by a taxpayer to a property (in this subsection referred to as the "original property") of the taxpayer that is a specified leasing property at the particular time, and

(b) as a consequence of the addition or alteration, the aggregate amount receivable by the taxpayer after the particular time for the use of, or the right to use, the original property and the additional property exceeds the amount so receivable in respect of the original property,

the following rules apply:

(c) the taxpayer shall be deemed to have leased the additional property to the lessee at the particular time,

(d) the term of the lease of the additional property shall be deemed to be greater than one year,

(e) the prescribed rate in effect at the particular time in respect of the additional property shall be deemed to be equal to the prescribed rate in effect in respect of the lease of the original property at the particular time,

(f) subsection (1.11) shall be read without reference to paragraph (c) thereof in respect of the additional property, and

(g) the excess described in paragraph (b) shall be deemed to be an amount receivable by the taxpayer for the use of, or the right to use, the additional property.

(1.2) [Specified leasing property — renegotiation of lease] — For the purposes of subsections (1.1) and (1.11), where at any time

(a) a lease (in this subsection referred to as the "original lease") of property is in the course of a *bona fide* renegotiation, and

(b) as a result of the renegotiation, the amount paid or payable by the lessee of the property for the use of, or the right to use, the property is altered in respect of a period after that time (otherwise than by reason of an addition or alteration to which subsection (1.19) applies),

the following rules apply:

(c) the original lease shall be deemed to have expired and the renegotiated lease shall be deemed to be a new lease of the property entered into at that time, and

(d) paragraph (1.13)(b) shall not apply in respect of any period before that time during which the property was leased by the lessee or a person with whom the lessee did not deal at arm's length.

(1.3) [Specified leasing property — lease of building] — For the purposes of subsections (1.1) and (1.11), where a taxpayer leases to another person a building or part thereof that is not exempt property, the references to "one year" in paragraphs (1.11)(b) and (1.13)(b), subsection (1.15) and paragraph (1.19)(d) shall in respect of that building or part thereof be read as references to "three years".

Related Provisions: Reg. 1100(1.13) — Meaning of "exempt property".

History: Subsec. 1100(1.1) to (1.3) added by P.C. 1991-465, subsec. 1(6), March 14, 1991, *Canada Gazette*, Part II, March 27, 1991, applicable in respect of leases entered into after 10:00 p.m. EDST, April 26, 1989, other than leases entered into pursuant to an agreement in writing entered into before that time under which the lessee thereunder has the right to require the lease of the property (and for these purposes a lease in respect of which a material change has been agreed to by the parties thereto effective at any particular time that is after 10:00 p.m. EDST, April 26, 1989 shall be deemed to have been entered into at that particular time), except that

(a) subsec. 1100(1.12) is applicable in respect of property acquired after April 26, 1989;

(b) in its application to leases entered into before February 3, 1990 or after February 2, 1990 pursuant to an agreement in writing entered into before February 3, 1990 under which the lessee thereunder has the right to require the lease of the property,

(i) subsec. 1100(1.3) shall not apply,

(ii) subpara. 1100(1.13)(a)(vi) shall be read as follows:

"(vi) a building or part thereof (including component parts such as electric wiring, plumbing, sprinkler systems, air-conditioning equipment, heating equipment, lighting fixtures, elevators and escalators),", and

(iii) cl. 1100(1.1)(a)(i)(B) shall be read without reference to subcl. (I) and to the words "the earlier of";

(c) in their application to leases entered into on or before March 14, 1991 or after that day pursuant to an agreement in writing entered into on or before that day under which the lessee thereunder has the right to require the lease of the property, subpara. 1100(1.13)(a)(iv) and (v), shall be read as follows:

"(iv) a truck or tractor that is designed for use on highways,

(v) a trailer that is designed to be hauled under normal operating conditions by a truck or tractor described in subparagraph (iv),"; and

(d) any election made under cl. 1100(1.1)(a)(i)(B) or subsec. 1100(1.14) that is made on or before September 24, 1991 shall be deemed to be a valid election under that clause or subsec. 1100(1.14), as the case may be.

(2) Property acquired in the year [Half-year rule] — Where at the end of a taxation year of a taxpayer

(a) the aggregate of all amounts, each of which is an amount added

(i) by reason of subparagraph 13(21)(f)(i) [13(21)"undepreciated capital cost"A] of the Act in respect of a property acquired in the year or that became available for use by the taxpayer in the year, or

(ii) by reason of subparagraph 13(21)(f)(ii.1) [13(21)"undepreciated capital cost"C] or (ii.2) [D] of the Act in respect of an amount repaid in the year

to the undepreciated capital cost to the taxpayer of property of a class in Schedule II, other than

(iii) property included in paragraph (1)(v), paragraph (w) of Class 10 or any of paragraphs (a) to (c), (e) to (i), (k), (l) and (p) to (s) of Class 12,

(iv) property included in any of Classes 13, 14, 15, 23, 24, 27, 29 and 34,

(v) where the taxpayer was a corporation described in subsection (16) throughout the year, property that was specified leasing property of the taxpayer at that time,

(vi) property that was deemed to have been acquired by the taxpayer in a preceding taxation year by reason of the application of paragraph 16.1(1)(b) of the Act in respect of a lease to which the property was subject immediately before the time at which the taxpayer last acquired the property, and

(vii) property considered to have become available for use by the taxpayer in the year by reason of paragraph 13(27)(b) or (28)(c) of the Act

exceeds

(b) the aggregate of all amounts, each of which is an amount deducted

(i) by virtue of subparagraph 13(21)(f)(iv) [13(21)"undepreciated capital cost"F] or (v) [G] of the Act in respect of property disposed of in the year, or

(ii) by virtue of subparagraph 13(21)(f)(viii) [13(21)"undepreciated capital cost"J] of the Act in respect of an amount the taxpayer received or was entitled to receive in the year

from the undepreciated capital cost to him of property of the class,

the amount that the taxpayer may deduct for the year under subsection (1) in respect of property of the class shall be determined as if the undepreciated capital cost to him as of the end of the year (before making any deduction under subsection (1) for the year) of property of the class were reduced by an amount equal to 50 per cent of the amount by which the aggregate determined under par-

agraph (a) exceeds the aggregate determined under paragraph (b).

Related Provisions: Reg. 1100(1)(ta)(v), Reg. 1100(2.1) — Grandfathering for property acquired before 1983; Reg. 1100(2.2), (2.3) — Half-year rule does not apply to acquisition on butterfly or from related person who owned it for a year; Reg. 1100(2.21) — Effect of deemed disposition and reacquisition; Reg. 1100(2.4) — Rental automobiles.

History: Subpara. 1100(2)(a)(iii) amended by P.C. 2005-698, subsec. 1(2), May 3, 2005, *Canada Gazette*, Part II, May 18, 2005, applicable to property acquired after December 12, 1995.

Subpara. 1100(2)(a)(i) amended and subpara. (a)(vii) added by P.C. 1994-139, subsecs. 2(9) and (10), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired after 1989.

Para. 1100(2)(a) substituted by P.C. 1991-465, subsec. 1(7), March 14, 1991, *Canada Gazette*, Part II, March 27, 1991, applicable in respect of taxation years ending after April 26, 1989, except that subpara. 1100(2)(a)(ii) is applicable to 1985 *et seq*.

That portion of para. 1100(2)(a) following subpara. (ii) amended by P.C. 1990-2067, s. 1, September 27, 1990, *Canada Gazette*, Part II, October 10, 1990, applicable in respect of property acquired after August 8, 1989.

That portion of para. 1100(2)(a) following subpara. (ii) substituted by P.C. 1989-2464, subsec. 1(6), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired by a taxpayer after 1987 other than property acquired by the taxpayer before 1990

(a) pursuant to an obligation in writing entered into by the taxpayer before June 18, 1987,

(b) that was under construction by or on behalf of the taxpayer on June 18, 1987, or

(c) that is a fixed and integral part of property under construction by or on behalf of the taxpayer on June 18, 1987.

That portion of para. 1100(2)(a) following subpara. (ii) substituted by P.C. 1988-2795, subsec. 1(2), December 22, 1988, *Canada Gazette*, Part II, January 18, 1989, applicable in respect of property acquired after 1987.

Interpretation Bulletins: IT-283R2: CCA — Videotapes, videotape cassettes, films, computer software and master recording media (archived); IT-469R: CCA — Earth-moving equipment; IT-521R: Motor vehicle expenses claimed by self-employed individuals; IT-522R: Vehicle, travel and sales expenses of employees; IT-525R: Performing artists.

Advance Tax Rulings: ATR-11: "50% rule" on non-arm's length transactions.

Forms: T2 SCH 8: Capital cost allowance.

(2.1) [Grandfathering — acquisition before 1983] — Where a taxpayer has, after November 12, 1981 and before 1983, acquired or incurred a capital cost in respect of a property of a class in Schedule II and

(a) he was obligated to acquire the property under the terms of an agreement in writing entered into before November 13, 1981 (or, where the property is a property described in Class 31 in Schedule II, before 1982),

(b) he or a person with whom he was not dealing at arm's length commenced the construction, manufacture or production of the property before November 13, 1981 (or, where the property is a property described in Class 31 in Schedule II, before 1982),

(c) he or a person with whom he was not dealing at arm's length had made arrangements, evidenced in writing for the construction, manufacture or production of the property that were substantially advanced before November 13, 1981 and the construction, manufacture or production commenced before June 1, 1982, or

(d) he was obligated to acquire the property under the terms of an agreement in writing entered into before June 1, 1982 where arrangements, evidenced in writing, for the acquisition or leasing of the property were substantially advanced before November 13, 1981,

the following rules apply:

(e) no amount shall be included under paragraph (2)(a) in respect of the property;

(f) where the property is a property to which paragraph (1)(b) applies, that paragraph shall be read, in respect of the property, as "such amount, not exceeding the amount for the year calculated in accordance with Schedule III, as he may claim in respect of the capital cost to him of property of Class 13 in Schedule II";

(g) where the property is a property of a class to which paragraph (1)(t) or (ta) applies, the property shall be deemed to be designated property of the class; and

(h) where the property is a property described in paragraph (1)(v), subparagraph (iv) thereof shall be read, in respect of the property, as "33⅓ per cent of the capital cost thereof to him, and".

(2.2) [Exception to half-year rule] — Where a property of a class in Schedule II is acquired by a taxpayer

(a) in the course of a reorganization in respect of which, if a dividend were received by a corporation in the course of the reorganization, subsection 55(2) of the Act would not be applicable to the dividend by reason of the application of paragraph 55(3)(b) of the Act, or

(b), (c), (d) [Revoked]

(e) from a person with whom the taxpayer was not dealing at arm's length (otherwise than by virtue of a right referred to in paragraph 251(5)(b) of the Act) at the time the property was acquired,

and where

(f) the property was depreciable property of the person from whom it was acquired and was owned continuously by that person for the period from

(i) a day that was at least 364 days before the end of the taxation year of the taxpayer during which he acquired the property, or

(ii) November 12, 1981

to the day it was acquired by the taxpayer, or

(g) the rules provided in subsection (2.1) or this subsection applied in respect of the property for the purpose of determining the allowance under subsection (1) to which the person from whom the taxpayer acquired the property was entitled,

the following rules apply:

(h) no amount shall be included under paragraph (2)(a) in respect of the property;

(i) where the property is a property to which paragraph (1)(b) applies, that paragraph shall be read, in respect of the property, as "such amount, not exceeding the amount for the year calculated in accordance with Schedule III, as he may claim in respect of the capital cost to him of property of Class 13 in Schedule II";

(j) where the property is a property of a class to which paragraph (1)(ta) applies,

(i) the property shall be deemed to be designated property of the class,

(ii) for the purposes of computing the amount determined under paragraph (1)(ta) for any taxation year of the taxpayer ending after the time the property was actually acquired by the taxpayer, the property shall be deemed, other than for the pur-

poses of paragraph (f), to have been acquired by the taxpayer immediately after the commencement of the taxpayer's first taxation year that commenced after the time that is the earlier of

(A) the time the property was last acquired by the transferor of the property, and

(B) where the property was transferred in a series of transfers to which this subsection applies, the time the property was last acquired by the first transferor in that series,

unless

(C) where clause (A) applies, the property was acquired by the taxpayer before the end of the taxation year of the transferor of the property that includes the time at which that transferor acquired the property, or

(D) where clause (B) applies, the property was acquired by the taxpayer before the end of the taxation year of the first transferor that includes the time at which that transferor acquired the property;

(iii) where the taxpayer is a corporation that was incorporated or otherwise formed after the end of the transferor's, or where applicable, the first transferor's, taxation year in which the transferor last acquired the property, the taxpayer shall be deemed, for the purposes of subparagraph (ii),

(A) to have been in existence throughout the period commencing immediately before the end of that year and ending immediately after the taxpayer was incorporated or otherwise formed, and

(B) to have had, throughout the period referred to in clause (A), fiscal periods ending on the day of the year on which the taxpayer's first fiscal period ended; and

(iv) the property shall be deemed to have become available for use by the taxpayer at the earlier of

(A) the time it became available for use by the taxpayer, and

(B) if applicable,

(I) the time it became available for use by the person from whom the taxpayer acquired the property, determined without reference to paragraphs 13(27)(c) and (28)(d) of the Act, or

(II) the time it became available for use by the first transferor in a series of transfers of the same property to which this subsection applies, determined without reference to paragraphs 13(27)(c) and (28)(d) of the Act; and

(k) where the property is a property described in paragraph (1)(v), subparagraph (iv) thereof shall be read, in respect of the property, as "33 1/3 per cent of the capital cost thereof to him, and".

Related Provisions: ITA 248(10) — Series of transfers; Reg. 1100(2.21) — Effect of deemed disposition and reacquisition; Reg. 1100(2.3) — No inclusion under Reg. 1100(2)(b); Reg. 1102(20) — Non-arm's length exception.

Interpretation Bulletins [Reg. 1100(2.1), (2.2)]: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987; IT-464R: CCA — Leasehold interests.

Advance Tax Rulings: ATR-11: "50% rule" on non-arm's length transactions.

(2.21) [Half-year rule — effect of deemed disposition] — Where a taxpayer is deemed by a provision of the Act to have disposed of and acquired or reacquired a property,

(a) for the purposes of paragraph (2.2)(e) and subsections (19), 1101(1ad) and 1102(14) and (14.1), the acquisition or reacquisition shall be deemed to have been from a person with whom the taxpayer was not dealing at arm's length at the time of the acquisition or reacquisition; and

(b) for the purposes of paragraphs (2.2)(f) and (g), the taxpayer shall be deemed to be the person from whom the taxpayer acquired or reacquired the property.

(2.3) Where a taxpayer has disposed of a property and, by virtue of paragraph (2.2)(h), no amount is required to be included under paragraph (2)(a) in respect of the property by the person that acquired the property, no amount shall be included by the taxpayer under paragraph (2)(b) in respect of the disposition of the property.

Advance Tax Rulings: ATR-11: "50% rule" on non-arm's length transactions.

(2.4) For the purposes of subsection (2), where a taxpayer has disposed of property described in Class 10 of Schedule II that would qualify as property described in paragraph (e) of Class 16 of Schedule II if the property had been acquired by the taxpayer after November 12, 1981, the proceeds of disposition of the property shall be deemed to be proceeds of disposition of property described in Class 16 of Schedule II and not of property described in Class 10 of Schedule II.

History: Subpara. 1100(2.2)(j)(iv) added by P.C. 1995-775, subsec. 1(2), May 16, 1995, *Canada Gazette*, Part II, May 31, 1995, applicable to property acquired after 1989.

Para. 1100(2.2)(j) substituted by P.C. 1994-139, subsec. 2(11), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired after 1987.

Para. 1100(2.2)(a) substituted for (a) to (d) by P.C. 1989-2464, subsec. 1(7), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired by a taxpayer after June 17, 1987 other than property acquired after that date and before 1990 pursuant to an agreement in writing entered into by the taxpayer before June 18, 1987.

Subsec. 1100(2.21) added by subsec. 1(8) of the said P.C. 1989-2464, applicable in respect of property acquired after November 12, 1981.

Para. 1100(2.2)(a) substituted by P.C. 1988-1473, subsec. 1(1), July 21, 1988, *Canada Gazette*, Part II, August 3, 1988, applicable to taxation years commencing after 1984.

All that portion of para. 1100(2)(a) following subpara. (ii) substituted by P.C. 1984-3995, December 13, 1984, s. 1, *Canada Gazette*, Part II, January 9, 1985, applicable in respect of property acquired after 1983.

Subsec. 1100(2.3) substituted by P.C. 1983-1413, s. 1, May 12, 1983, *Canada Gazette*, Part II, May 25, 1983, applicable in respect of property disposed of after November 12, 1981.

Subsecs. 1100(2), (2.1), (2.2), (2.3) and (2.4) added by P.C. 1983-1083, subsec. 1(6), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, applicable in respect of property (other than property described in Class 31 of Schedule II or paragraph (n) of Class 12 of that schedule) acquired or disposed of after November 12, 1981, property described in the said Class 31 acquired or disposed of after 1981 and property described in paragraph (n) of the said Class 12 acquired or disposed of after 1982.

Subsec. 1100(2) and heading "Terminal losses", subsecs. (2a), (2b) revoked by P.C. 1978-1315, s. 4, April 20, 1978, *Canada Gazette*, Part II, May 10, 1978, applicable to taxation years commencing on and after May 26, 1976 and ending on and after April 1, 1977.

(2.5) [Disposition of luxury automobile] — Where in a particular taxation year a taxpayer disposes of a property included in Class 10.1 in Schedule II that was

owned by the taxpayer at the end of the immediately preceding taxation year,

(a) the deduction allowed under subsection (1) in respect of the property in computing the taxpayer's income for the year shall be determined as if the property had not been disposed of in the particular year and the number of days in the particular year were one-half of the number of days in the particular year otherwise determined; and

(b) no amount shall be deducted under subsection (1) in respect of the property in computing the taxpayer's income for any subsequent taxation year.

History: Subsec. 1100(2.5) added by P.C. 1994-103, s. 1, January 20, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to taxation years and fiscal periods commencing after June 17, 1987 and ending after 1987.

Interpretation Bulletins: IT-521R: Motor vehicle expenses claimed by self-employed individuals; IT-522R: Vehicle, travel and sales expenses of employees.

(3) [Taxation year less than 12 months] — Where a taxation year is less than 12 months, the amount allowed as a deduction under this section, other than under any of paragraphs (1)(c), (e), (f), (g), (l), (m), (w), (x), (y), (ya), (zg) and (zh), shall not exceed that proportion of the maximum amount otherwise allowable that the number of days in the taxation year is of 365.

Related Provisions: Reg. 1100(1.1) — Specified leasing property; Reg. 1104(1) — "taxation year".

History: Subsec. 1100(3) amended by P.C. 2005-698, subsec. 1(3), May 3, 2005, *Canada Gazette*, Part II, May 18, 2005, applicable to 1995 *et seq.*

Subsec. 1100(3) amended to add reference to paras. "(zg) or (zh)" by P.C. 2000-1000, subsec. 2(2), June 21, 2000, *Canada Gazette*, Part II, July 5, 2000, applicable to 1995 *et seq.* except that, in its application to the 1995, 1996 and 1997 taxation years, it shall be read without said reference.

Subsec. 1100(3) substituted by P.C. 1994-139, subsec. 2(12), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1986 *et seq.*

Subsec. 1100(3) substituted by P.C. 1983-1083, subsec. 1(7), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, applicable in respect of taxation years commencing after 1981.

Subsec. 1100(3) substituted for subsecs. 1100(3), (3a), (3b) by P.C. 1978-1315, s. 5, April 20, 1978, *Canada Gazette*, Part II, May 10, 1978.

Interpretation Bulletins: IT-147R3: CCA — Accelerated write-off of manufacturing and processing machinery and equipment; IT-434R: Rental of real property by individual; IT-441: Certified feature productions and certified short productions (archived).

(4) [Reserved]

(5) [Revoked]

History: Subsec. 1100(5) and heading revoked by P.C. 1978-1315, s. 6, April 20, 1978, *Canada Gazette*, Part II, May 10, 1978.

(6) [Revoked]

History: Subsec. 1100(6) revoked by P.C. 1991-2272, subsec. 1(3), November 21, 1991, *Canada Gazette*, Part II, December 4, 1991, applicable to 1988 *et seq.*

Subsec. 1100(6) substituted by P.C. 1982-599, subsec. 1(2), February 25, 1982, *Canada Gazette*, Part II, March 10, 1982, applicable to 1980 *et seq.*

(7) [Reserved]

(8) Railway sidings — Where a taxpayer, other than an operator of a railway system, has made a capital expenditure pursuant to a contract or arrangement with an operator of a railway system under which a railway siding that does not become the taxpayer's property is constructed to provide service to the taxpayer's place of business or to a property acquired by the taxpayer for the purpose of gaining or producing income, there is hereby allowed to the taxpayer, in computing income for the taxation year from the business or property, as the case may be, a deduction equal to such amount as he may claim not exceeding four per cent of the amount remaining, if any, after deducting from the capital expenditure the aggregate of all amounts previously allowed as deductions in respect of the expenditure.

(9) Patents — Where a part or all of the cost of a patent is determined by reference to the use of the patent, in lieu of the deduction allowed under paragraph (1)(c), a taxpayer, in computing his income for a taxation year from a business or property, as the case may be, may deduct such amount as he may claim in respect of property of Class 14 in Schedule II not exceeding the lesser of

(a) the aggregate of

(i) that part of the capital cost determined by reference to the use of the patent in the year, and

(ii) the amount that would be computed under subparagraph (1)(c)(i) if the capital cost of the patent did not include the amounts determined by reference to the use of the patent in that year and previous years; and

(b) the undepreciated capital cost to him as of the end of the taxation year (before making any deduction under this subsection for the taxation year) of property of the class.

Interpretation Bulletins: IT-477: CCA — Patents, franchises, concessions and licences.

(9.1) [Class 44] — Where a part or all of the capital cost to a taxpayer of property that is a patent, or a right to use patented information, is determined by reference to the use of the property and that property is included in Class 44 in Schedule II, in lieu of the deduction allowed under paragraph (1)(a), there may be deducted in computing the taxpayer's income for a taxation year from a business or property such amount as the taxpayer may claim in respect of property of the class not exceeding the lesser of

(a) the total of

(i) that part of the capital cost that is determined by reference to the use of the property in the year, and

(ii) the amount that would be deductible for the year by reason of paragraph (1)(a) in respect of property of the class if the capital cost of the property of the class did not include the amounts determined under subparagraph (i) for the year and preceding taxation years; and

(b) the undepreciated capital cost to the taxpayer as of the end of the taxation year (before making any deduction under this subsection for the taxation year) of property of the class.

Related Provisions: Reg. 1100(1)(a)(xxx) — Alternative 25% write-off for patents.

History: Subsec. 1100(9.1) added by P.C. 1994-231, subsec. 1(2), February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to property acquired after April 26, 1993.

(10) [Reserved]

(11) Rental properties — Notwithstanding subsection (1), in no case shall the aggregate of deductions, each of which is a deduction in respect of property of a prescribed class owned by a taxpayer that includes rental property owned by him, otherwise allowed to the taxpayer by vir-

tue of subsection (1) in computing his income for a taxation year, exceed the amount, if any, by which

(a) the aggregate of amounts each of which is

(i) his income for the year from renting or leasing a rental property owned by him, computed without regard to paragraph 20(1)(a) of the Act, or

(ii) the income of a partnership for the year from renting or leasing a rental property of the partnership, to the extent of the taxpayer's share of such income,

exceeds

(b) the aggregate of amounts each of which is

(i) his loss for the year from renting or leasing a rental property owned by him, computed without regard to paragraph 20(1)(a) of the Act, or

(ii) the loss of a partnership for the year from renting or leasing a rental property of the partnership, to the extent of the taxpayer's share of such loss.

Related Provisions: ITA 127.52(3)"rental or leasing property" — Minimum tax; Reg. 1100(12) — Exceptions; Reg. 1100(14) — Meaning of "rental property".

Selected Cases [Reg. 1100(11)]: *Stephens v. R.*, [2000] 1 C.T.C. 2360 (TCC) (Recreational vehicles subject to leasing property rules); *Phillips v. R.*, [2000] 1 C.T.C. 2314 (TCC) (Recreational vehicles subject to leasing property rules); *Satin Finish Hardwood Flooring (Ontario) Ltd. v. R.*, [1997] 2 C.T.C. 2915 (TCC) (Amount of capital employed and cash flow from real estate more important than number of employees in other sector of business for purposes of qualifying as "principal business"); *Roopchan v. Canada*, [1995] 2 C.T.C. 2423 (TCC) (Reasonable expectation of profit to be determined without reference to CCA for rental purposes).

Interpretation Bulletins: IT-195R4: Rental property — CCA restrictions; IT-274R: Rental properties — Capital cost of $50,000 or more; IT-304R2: Condominiums; IT-367R3: Capital cost allowance — multiple-unit residential buildings (archived); IT-434R: Rental of real property by individual.

Forms: T776: Statement of real estate rentals.

(12) [Rental properties — exceptions] — Subject to subsection (13), subsection (11) does not apply in respect of a taxation year of a taxpayer that was, throughout the year,

(a) a life insurance corporation, or a corporation whose principal business was the leasing, rental, development or sale, or any combination thereof, of real property owned by it; or

(b) a partnership each member of which was a corporation described in paragraph (a).

Related Provisions: Reg. 1100(13) — Exception.

History: All that portion of subsec. 1100(12) preceding para. (a) substituted by P.C. 1982-599, subsec. 1(3), February 25, 1982, *Canada Gazette*, Part II, March 10, 1982.

Selected Cases [Reg. 1100(12)]: *Satin Finish Hardwood Flooring (Ontario) Ltd. v. R.*, [1997] 2 C.T.C. 2915 (TCC) (Amount of capital employed and cash flow from real estate more important than number of employees in other sector of business for purposes of qualifying as "principal business").

Interpretation Bulletins: IT-195R4: Rental property — CCA restrictions; IT-371: Meaning of "principal business".

(13) [Rental properties — leasehold interest] — For the purposes of subsection (11), where a taxpayer or partnership has a leasehold interest in a property that is property of Class 1, 3 or 6 in Schedule II by virtue of subsection 1102(5) and the property is leased by the taxpayer or partnership to a person who owns the land, an interest therein or an option in respect thereof, on which the property is situated, this section shall be read without reference to subsection (12) with respect to that property.

Related Provisions: Reg. 1101(5h) — Separate classes.

History: Subsec. 1100(13) substituted by P.C. 1989-2464, subsec. 1(9), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable to 1988 *et seq.*

Subsec. 1100(13) added by P.C. 1982-599, subsec. 1(4), February 25, 1982, *Canada Gazette*, Part II, March 10, 1982, applicable in respect of lease-leaseback agreements entered into after March 10, 1982.

Interpretation Bulletins: IT-195R4: Rental property — CCA restrictions.

(14) ["Rental property"] — In this section and section 1101, "rental property" of a taxpayer or a partnership means

(a) a building owned by the taxpayer or the partnership, whether owned jointly with another person or otherwise, or

(b) a leasehold interest in real property, if the leasehold interest is property of Class 1, 3, 6 or 13 in Schedule II and is owned by the taxpayer or the partnership,

if, in the taxation year in respect of which the expression is being applied, the property was used by the taxpayer or the partnership principally for the purpose of gaining or producing gross revenue that is rent, but, for greater certainty, does not include a property leased by the taxpayer or the partnership to a lessee, in the ordinary course of the taxpayer's or partnership's business of selling goods or rendering services, under an agreement by which the lessee undertakes to use the property to carry on the business of selling, or promoting the sale of, the taxpayer's or partnership's goods or services.

Related Provisions: ITA 127.52(3)"rental or leasing property" — Minimum tax; Reg. 1100(14.1) — Interpretation; Reg. 1101(1ac), (1ae) — Separate classes; Reg. 2411(4)B(e) — Insurers.

History: Para. 1100(14)(a) substituted by P.C. 1989-2464, subsec. 1(10), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable to 1994 *et seq.*

Para. 1100(14)(b) substituted by subsec. 1(11) of the said P.C. 1989-2464, applicable to 1988 *et seq.*

Interpretation Bulletins: IT-195R4: Rental property — CCA restrictions; IT-274R: Rental properties — Capital cost of $50,000 or more; IT-304R2: Condominiums; IT-367R3: Capital cost allowance — multiple-unit residential buildings (archived).

(14.1) ["Gross revenue"] — For the purposes of subsection (14), gross revenue derived in a taxation year from

(a) the right of a person or partnership, other than the owner of a property, to use or occupy the property or a part thereof, and

(b) services offered to a person or partnership that are ancillary to the use or occupation by the person or partnership of the property or the part thereof

shall be considered to be rent derived in that year from the property.

Related Provisions: Reg. 1100(14.2) — Exception.

Interpretation Bulletins: IT-195R4: Rental property — CCA restrictions.

(14.2) ["Gross revenue" — exception] — Subsection (14.1) does not apply in any particular taxation year to property owned by

(a) a corporation, where the property is used in a business carried on in the year by the corporation;

(b) an individual, where the property is used in a business carried on in the year by the individual in which he is personally active on a continuous basis through-

out that portion of the year during which the business is ordinarily carried on; or

(c) a partnership, where the property is used in a business carried on in the year by the partnership if at least 2/3 of the income or loss, as the case may be, of the partnership for the year is included in the determination of the income of

(i) members of the partnership who are individuals that are personally active in the business of the partnership on a continuous basis throughout that portion of the year during which the business is ordinarily carried on, and

(ii) members of the partnership that are corporations.

History [Reg. 1100(14.1), (14.2)]: Subsecs. 1100(14.1), (14.2) added by P.C. 1986-2770, subsec. 1(1), December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, applicable by subsec. 14(1) to 1986 *et seq.* in respect of property acquired by a taxpayer or a partnership, other than property acquired by the taxpayer or partnership that is

(a) property acquired by the taxpayer or partnership before May 23, 1985;

(b) new and unused property, other than a building, acquired by the taxpayer or partnership before 1986;

(c) property, other than a building, acquired by the taxpayer or partnership before 1986 pursuant to an agreement in writing to acquire the property entered into before May 23, 1985 by or on behalf of the taxpayer or partnership or as part of a lawful distribution to the public in accordance with a prospectus, preliminary prospectus or registration statement filed before May 24, 1985 with a public authority in Canada pursuant to and in accordance with the applicable securities legislation of Canada or of any province and, where required by law, accepted for filing by that public authority;

(d) a building in existence on May 22, 1985, or an interest in that building, acquired by the taxpayer or partnership before 1987 pursuant to an agreement in writing to acquire the property entered into before May 23, 1985 by or on behalf of the taxpayer or partnership or as part of a lawful distribution to the public in accordance with a prospectus, preliminary prospectus or registration statement filed before May 24, 1985 with a public authority in Canada pursuant to and in accordance with the applicable securities legislation of Canada or of any province and, where required by law, accepted for filing by that public authority;

(e) a building, the construction, renovation or alteration of which was not completed, within the meaning of subsection 18(3.3) of the Act, on May 22, 1985, or an interest in that building, acquired by the taxpayer or partnership, pursuant to an agreement in writing to acquire the property entered into before May 23, 1985 by or on behalf of the taxpayer or partnership or as part of a lawful distribution to the public in accordance with a prospectus, preliminary prospectus or registration statement filed before May 24, 1985 with a public authority in Canada pursuant to and in accordance with the applicable securities legislation of Canada or of any province and, where required by law, accepted for filing by that public authority, if the construction, renovation or alteration of the building, as the case may be, proceeds without undue delay after May 22;

(f) acquired by the taxpayer or partnership before 1986 and that is a building in existence in Canada on May 23, 1985, or an interest in that building, where arrangements in writing for a sale or syndication of the building were substantially advanced on May 22, 1985;

(g) a building in Canada the construction, renovation or alteration of which was not completed, within the meaning of subsection 18(3.3) of the Act, on May 22, 1985, or an interest in that building, where arrangements made by or on behalf of the taxpayer or partnership for the construction, renovation or alteration thereof were substantially advanced on May 22, 1985, and where the construction, renovation or alteration thereof commenced before 1986 and proceeds thereafter without undue delay; or

(h) property that is ancillary to the use of a property described in any of paragraphs (a) to (g).

Interpretation Bulletins: IT-195R4: Rental property — CCA restrictions.

(15) Leasing properties — Notwithstanding subsection (1), in no case shall the aggregate of deductions, each of which is a deduction in respect of property of a prescribed class that is leasing property owned by a taxpayer, otherwise allowed to the taxpayer under subsection (1) in computing his income for a taxation year, exceed the amount, if any, by which

(a) the aggregate of amounts each of which is

(i) his income for the year from renting, leasing, or earning royalties from, a leasing property or a property that would be a leasing property but for subsection (18), (19) or (20) where such property is owned by him, computed without regard to paragraph 20(1)(a) of the Act, or

(ii) the income of a partnership for the year from renting, leasing or earning royalties from, a leasing property or a property that would be a leasing property but for subsection (18), (19) or (20) where such property is owned by the partnership, to the extent of the taxpayer's share of such income,

exceeds

(b) the aggregate of amounts each of which is

(i) his loss for the year from renting, leasing or earning royalties from, a property referred to in subparagraph (a)(i), computed without regard to paragraph 20(1)(a) of the Act, or

(ii) the loss of a partnership for the year from renting, leasing or earning royalties from, a property referred to in subparagraph (a)(ii), to the extent of the taxpayer's share of such loss.

Related Provisions: Reg. 1100(16) — Exception; Reg. 1100(17), (18) — Meaning of "leasing property".

Selected Cases [Reg. 1100(15)]: *Burstow v. R.*, [1997] 3 C.T.C. 2540 (TCC) (Leasing property rules not applicable to yacht where taxpayer personally active in the business).

Interpretation Bulletins: IT-147R3: CCA — Accelerated write-off of manufacturing and processing machinery and equipment; IT-195R4: Rental property — CCA restrictions; IT-283R2: CCA — Video tapes, videotape cassettes, films, computer software and master recording media (archived); IT-434R: Rental of real property by individual; IT-443: Leasing property — CCA restrictions.

(16) [Leasing property — exception] — Subsection (15) does not apply in respect of a taxation year of a taxpayer that was, throughout the year,

(a) a corporation whose principal business was

(i) renting or leasing of leasing property or property that would be leasing property but for subsection (18), (19) or (20), or

(ii) renting or leasing of property referred to in subparagraph (i) combined with selling and servicing of property of the same general type and description,

if the gross revenue of the corporation for the year from such principal business was not less than 90 per cent of the gross revenue of the corporation for the year from all sources; or

(b) a partnership each member of which was a corporation described in paragraph (a).

Related Provisions: Reg. 1100(1.14) — Election; Reg. 1100(2)(a)(v) — Half-year rule inapplicable to specified leasing property.

Interpretation Bulletins: IT-267R2: CCA — vessels.

(17) ["Leasing property"] — Subject to subsection (18), in this section and section 1101, "leasing property"

of a taxpayer or a partnership means depreciable property other than

(a) rental property,

(b) computer software tax shelter property, or

(c) property referred to in paragraph (w) of Class 10 or in paragraph (n) of Class 12 in Schedule II,

where such property is owned by the taxpayer or the partnership, whether jointly with another person or otherwise, if, in the taxation year in respect of which the expression is being applied, the property was used by the taxpayer or the partnership principally for the purpose of gaining or producing gross revenue that is rent, royalty or leasing revenue, but for greater certainty, does not include a property leased by the taxpayer or the partnership to a lessee, in the ordinary course of the taxpayer's or partnership's business of selling goods or rendering services, under an agreement by which the lessee undertakes to use the property to carry on the business of selling, or promoting the sale of, the taxpayer's or partnership's goods or services.

Related Provisions: Reg. 1100(14) — Meaning of "rental property"; Reg. 1100(17.1), (17.2), (18), (19), (20) — Interpretation; Reg. 1100(20.1) — limitation on CCA claims for computer software tax shelter property; Reg. 1101(5c) — Separate class; Reg. 2411(4)B(e) — Insurers.

History: Para. 1100(17)(b) added by P.C. 2000-1000, subsec. 2(3), June 21, 2000, *Canada Gazette*, Part II, July 5, 2000, applicable generally to fiscal periods and taxation years of a taxpayer or partnership that end after August 5, 1997, but see the full application reproduced in the History to subsecs. 1100(20.1) and (20.2).

Para. 1100(17)(b) revoked by P.C. 1989-2464, subsec. 1(12), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable to 1994 *et seq.*

Para. 1100(17)(c) substituted by P.C. 1988-2795, subsec. 1(3), December 22, 1988, *Canada Gazette*, Part II, January 18, 1989, applicable in respect of property acquired after 1987.

Interpretation Bulletins: IT-195R4: Rental property — CCA restrictions; IT-283R2: CCA — Videotapes, videotape cassettes, films, computer software and master recording media (archived).

(17.1) [Deemed use of property] — For the purposes of subsection (17), where, in a taxation year, a taxpayer or a partnership has acquired a property

(a) that was not used for any purpose in that year, and

(b) the first use of the property by the taxpayer or the partnership was principally for the purpose of gaining or producing gross revenue that is rent, royalty or leasing revenue,

the property shall be deemed to have been used in the taxation year in which it was acquired principally for the purpose of gaining or producing gross revenue that is rent, royalty or leasing revenue.

History: Subsec. 1100(17.1) added by P.C. 1982-599, subsec. 1(5), February 25, 1982, *Canada Gazette*, Part II, March 10, 1982.

(17.2) [Deemed rent] — For the purposes of subsections (1.11) and (17), gross revenue derived in a taxation year from

(a) the right of a person or partnership, other than the owner of a property, to use or occupy the property or a part thereof, and

(b) services offered to a person or partnership that are ancillary to the use or occupation by the person or partnership of the property or the part thereof

shall be considered to be rent derived in the year from the property.

Related Provisions: Reg. 1100(17.3) — Exception.

Selected Cases [Reg. 1100(17.2)]: *Burstow v. R.*, [1997] 3 C.T.C. 2540 (TCC) (Leasing property rules not applicable to yacht where taxpayer personally active in the business).

(17.3) [Deemed rent — exception] — Subsection (17.2) does not apply in any particular taxation year to property owned by

(a) a corporation, where the property is used in a business carried on in the year by the corporation;

(b) an individual, where the property is used in a business carried on in the year by the individual in which he is personally active on a continuous basis throughout that portion of the year during which the business is ordinarily carried on;

(c) a partnership, where the property is used in a business carried on in the year by the partnership if at least 2/3 of the income or loss, as the case may be, of the partnership for the year is included in the determination of the income of

(i) members of the partnership who are individuals that are personally active in the business of the partnership on a continuous basis throughout that portion of the year during which the business is ordinarily carried on, and

(ii) members of the partnership that are corporations.

History: Subsec. 1100(17.2) amended by P.C. 1991-465, subsec. 1(8), March 14, 1991, *Canada Gazette*, Part II, March 27, 1991, applicable in respect of leases entered into after 10:00 p.m. Eastern Daylight Saving Time, April 26, 1989, other than leases entered into pursuant to an agreement in writing entered into before that time under which the lessee thereunder has the right to require the lease of the property (and for these purposes a lease in respect of which a material change has been agreed to by the parties thereto effective at any particular time that is after 10:00 p.m. Eastern Daylight Saving Time, April 26, 1989 shall be deemed to have been entered into at that particular time).

Subsecs. 1100(17.2), (17.3) added by P.C. 1986-2770, subsec. 1(2), December 11, 1986, *Canada Gazette*, Part II, December 24, 1986. For application provided by subsec. 14(1) of P.C. 1986-2770, see History to subsecs. 1100(14.1) and (14.2).

(18) [Leasing property — exclusions] — Leasing property of a taxpayer or a partnership referred to in subsection (17) does not include

(a) property that the taxpayer or the partnership acquired before May 26, 1976 or was obligated to acquire under the terms of an agreement in writing entered into before May 26, 1976;

(b) property the construction, manufacture or production of which was commenced by the taxpayer or the partnership before May 26, 1976 or was commenced under an agreement in writing entered into by the taxpayer or the partnership before May 26, 1976; or

(c) property that the taxpayer or the partnership acquired on or before December 31, 1976 or was obligated to acquire under the terms of an agreement in writing entered into on or before December 31, 1976, if

(i) arrangements, evidenced by writing, respecting the acquisition, construction, manufacture or production of the property had been substantially advanced before May 26, 1976, and

(ii) the taxpayer or the partnership had before May 26, 1976 demonstrated a *bona fide* intention to acquire the property for the purpose of gaining or producing gross revenue that is rent, royalty or leasing revenue.

(19) [Leasing property — exclusions] — Notwithstanding subsection (17), a property acquired by a taxpayer

(a) in the course of a reorganization in respect of which, if a dividend were received by a corporation in the course of the reorganization, subsection 55(2) of the Act would not be applicable to the dividend by reason of the application of paragraph 55(3)(b) of the Act, or

(b) from a person with whom the taxpayer was not dealing at arm's length (otherwise than by virtue of a right referred to in paragraph 251(5)(b) of the Act) at the time the property was acquired,

that would otherwise be leasing property of the taxpayer, shall be deemed not to be leasing property of the taxpayer if immediately before it was so acquired by the taxpayer, it was, by virtue of subsection (18) or (20) or this subsection, not a leasing property of the person from whom the property was so acquired.

Related Provisions: Reg. 1100(2.21)(a); Reg. 1100(17), (18) — Meaning of "leasing property"; Reg. 1102(20) — Non-arm's length exception.

History: Paras. 1100(19)(a), (b) substituted for (a) to (c) by P.C. 1989-2464, subsec. 1(13), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired by a taxpayer after June 17, 1987 other than property acquired after that date and before 1990 pursuant to an agreement in writing entered into by the taxpayer before June 18, 1987.

Para. 1100(19)(a) substituted by P.C. 1988-1473, subsec. 1(2), July 21, 1988, *Canada Gazette*, Part II, August 3, 1988, applicable to taxation years commencing after 1984.

Para. 1100(19)(a.1) added by P.C. 1984-3789, s. 5, November 29, 1984, *Canada Gazette*, Part II, December 12, 1984, applicable with respect to property acquired after November 12, 1981.

All that portion of subsec. 1100(19) following para. (c) substituted by P.C. 1982-599, subsec. 1(6), February 25, 1982, *Canada Gazette*, Part II, March 10, 1982.

Interpretation Bulletins: IT-443: Leasing property — CCA restrictions.

(20) [Leasing property — replacement property] — Notwithstanding subsection (17), a property acquired by a taxpayer or partnership that is a replacement property (within the meaning assigned by subsection 13(4) of the Act), that would otherwise be a leasing property of the taxpayer or partnership, shall be deemed not to be a leasing property of the taxpayer or partnership if the property replaced, referred to in paragraph 13(4)(a) or (b) of the Act, was, by reason of subsection (18) or (19) or this subsection, not a leasing property of the taxpayer or partnership immediately before it was disposed of by the taxpayer or partnership.

Related Provisions: Reg. 1100(17), (18) — Meaning of "leasing property".

History: Subsec. 1100(20) substituted by P.C. 1994-139, subsec. 2(13), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1986 *et seq.*

Subsec. 1100(20) substituted by P.C. 1981-1556, s. 1, June 11, 1981, *Canada Gazette*, Part II, June 24, 1981, applicable in respect of a property acquired to replace a property disposed of after March 31, 1977.

(20.1) Computer software tax shelter property — The total of all amounts each of which is a deduction in respect of computer software tax shelter property allowed to the taxpayer under subsection (1) in computing a taxpayer's income for a taxation year shall not exceed the amount, if any, by which

(a) the total of all amounts each of which is

(i) the taxpayer's income for the year from a business in which computer software tax shelter property owned by the taxpayer is used, computed without reference to any deduction under subsection (1) in respect of such property, or

(ii) the income of a partnership from a business in which computer software tax shelter property owned by the partnership is used, to the extent of the taxpayer's share of such income that is included in computing the taxpayer's income for the year,

exceeds

(b) the total of all amounts each of which is

(i) a loss of the taxpayer from a business in which computer software tax shelter property is used, computed without reference to any deduction under subsection (1) in respect of such property, or

(ii) a loss of a partnership from a business in which computer software tax shelter property is used, to the extent of the taxpayer's share of such loss that is included in computing the taxpayer's income for the year.

Related Provisions: Reg. 1100(20.2) — Definition of "computer software tax shelter property"; Reg. 1101(5r) — Separate class for all computer software tax shelter property.

(20.2) ["Computer software tax shelter property"] — For the purpose of this Part, computer software tax shelter property is computer software that is depreciable property of a prescribed class of a person or partnership where

(a) the person's or partnership's interest in the property is a tax shelter investment (as defined by subsection 143.2(1) of the Act) determined without reference to subsection (20.1); or

(b) an interest in the person or partnership is a tax shelter investment (as defined by subsection 143.2(1) of the Act) determined without reference to subsection (20.1).

Related Provisions: Reg. 1100(20.1) — Limitation on CCA claim; Reg. 1101(5r) — Separate class for all computer software tax shelter property; Reg. 1104(2) — Definition of "computer software".

History: Subsecs. 1100(20.1) and (20.2) added by P.C. 2000-1000, subsec. 2(4), June 21, 2000, *Canada Gazette*, Part II, July 5, 2000, applicable to taxation years and fiscal periods that end after August 5, 1997, except that those subsecs. do not apply in respect of computer software for taxation years and fiscal periods of a taxpayer or partnership that end in 1997 or 1998 where

(a) the taxpayer's or partnership's interest in the computer software

(i) is acquired before August 6, 1997,

(ii) is acquired before 1998 pursuant to an agreement in writing made by the taxpayer or partnership before August 6, 1997, or

(iii) is, or is associated with, a tax shelter investment (as defined by subsec. 143.2(1) of the Act) that is acquired by a taxpayer or partnership before 1998 pursuant to

(A) the terms of a document that is a prospectus, preliminary prospectus or registration statement where

(I) the document was filed before August 6, 1997 with a public authority in Canada pursuant to and in accordance with the securities legislation of Canada or of any province and, where required by law, accepted for filing by the public authority before August 6, 1997,

(II) the particular computer software is

1. identified in the document, or

2. acquired before November 29, 1997 from a person that is resident in Canada and that developed the software, and

(III) all the funds raised pursuant to the document are raised before 1998 and all or substantially all of the tax shelter investments that can reasonably be considered to

be associated with the computer software are acquired before 1998 by a person who is not

1. a promoter, or an agent of a promoter, of the securities,

2. a vendor of the property,

3. a broker or dealer in securities, or

4. a person who does not deal at arm's length with a person referred to in sub-subclause 1 or 2, or

(B) the terms of an offering memorandum distributed as part of an offering of securities where

(I) the memorandum contained a complete or substantially complete description of the securities contemplated in the offering as well as the terms and conditions of the offering,

(II) the memorandum was distributed before August 6, 1997,

(III) solicitations in respect of the sale of the securities contemplated by the memorandum were made before August 6, 1997,

(IV) the sale of the securities was substantially in accordance with the memorandum,

(V) the particular computer software is

1. identified in the memorandum, or

2. acquired before November 29, 1997 from a person that is resident in Canada and that developed the software, and

(VI) all the funds raised pursuant to the memorandum were raised before 1998 and all or substantially all of the tax shelter investments that can reasonably be considered to be associated with the computer software are acquired before 1998 by a person who is not

1. a promoter, or an agent of a promoter, of the securities,

2. a vendor of the property,

3. a broker or dealer in securities, or

4. a person who does not deal at arm's length with a person referred to in sub-subclause 1 or 2;

(b) there is no agreement or other arrangement under which any of the following obligations can be changed, reduced or waived if there is a change to the Act or if there is an adverse assessment under the Act:

(i) the obligation of the taxpayer or the partnership, with respect to the computer software, or

(ii) the obligation of another taxpayer or partnership that acquires a tax shelter investment (as defined by subsec. 143.2(1) of the Act) that is associated with computer software, with respect to the tax shelter investment;

(c) the computer software is, or is associated with, one or more tax shelters sold or offered for sale at a time and in circumstances in which s. 237.1 of the Act requires an identification number to have been obtained and the identification number was obtained before that time; and

(d) the computer software (including computer software to which subparagraph (a)(i) or (ii) applies) is, or is associated with, a tax shelter investment (as defined by subsec. 143.2(1) of the Act) sold or offered for sale pursuant to a document or offering memorandum described in subparagraph (a)(iii) and either

(i) the total amount of securities sold in 1997 pursuant to the document or offering memorandum does not exceed $100,000,000, or

(ii) at least 10% of the securities authorized to be sold in 1997 pursuant to the document or offering memorandum were in 1997 and before August 6, 1997 sold to, or subscribed for by, a person who is not

(A) a promoter, or an agent of a promoter, of the securities,

(B) a vendor of the computer software,

(C) a broker or dealer in securities, or

(D) a person who does not deal at arm's length with any person referred to in clause (A) or (B).

For the purpose of this application, computer software is deemed to be acquired by a taxpayer or partnership no earlier than the time and only to the extent that its cost is considered to be an expenditure made or incurred by the taxpayer or partnership for the purposes of the *Income Tax Act*, determined without reference to subsec. 1100(20.1) of the Regulations.

(21) Certified films and video tapes — Notwithstanding subsection (1), where a taxpayer (in this subsection and subsection (22) referred to as the "investor") has acquired property of Class 10 or 12 in Schedule II that is a certified feature film or certified production (in this subsection and subsection (22) referred to as the "film or tape"), in no case shall the deduction in respect of property of that class otherwise allowed to the investor by virtue of subsection (1) in computing the investor's income for a particular taxation year exceed the amount that it would be if the capital cost to the investor of the film or tape were reduced by the aggregate of amounts, each of which is

(a) where the principal photography or taping of the film or tape is not completed before the end of the particular taxation year, the amount, if any, by which

(i) the capital cost to the investor of the film or tape as of the end of the year

exceeds the aggregate of

(ii) where the principal photography or taping of the film or tape is completed within 60 days after the end of the year, the amount that may reasonably be considered to be the investor's proportionate share of the production costs incurred in respect of the film or tape before the end of the year,

(iii) where the principal photography or taping of the film or tape is not completed within 60 days after the end of the year, the amount that may reasonably be considered to be the investor's proportionate share of the lesser of

(A) the production costs incurred in respect of the film or tape before the end of the year, and

(B) the proportion of the production costs incurred to the date the principal photography or taping is completed that the percentage of the principal photography or taping completed as of the end of the year, as certified by the Minister of Communications, is of 100 per cent, and

(iv) the total of amounts determined under paragraphs (b) to (e) in respect of the film or tape as of the end of the year;

(b) where, at any time before the later of

(i) the date the principal photography or taping of the film or tape is completed, and

(ii) the date the investor acquired the film or tape,

a revenue guarantee (other than a revenue guarantee that is certified by the Minister of Communications to be a guarantee under which the person who agrees to provide the revenue is a licensed broadcaster or *bona fide* film or tape distributor) is entered into in respect of the film or tape whereby it may reasonably be considered certain, having regard to all the circumstances, that the investor will receive revenue under the terms of the revenue guarantee, the amount, if any, that may reasonably be considered to be the portion of the revenue that has not been included in the investor's income in the particular taxation year or a previous taxation year;

(c) where, at any time, a revenue guarantee, other than

(i) a revenue guarantee in respect of which paragraph (b) applies, or

(ii) a revenue guarantee under which the person (in this subsection referred to as the "guarantor") who agrees to provide the revenue under the terms of the guarantee is a person who does not deal at arm's length with either the investor or the person from whom the investor acquired the film or tape (in this subsection referred to as the "vendor") and in respect of which the Minister of Communications certifies that

(A) the guarantor is a licensed broadcaster or *bona fide* film or tape distributor, and

(B) the cost of the film or tape does not include any amount for or in respect of the guarantee,

is entered into in respect of the film or tape, the amount, if any, that may reasonably be considered to be the portion of the revenue that is to be received by the investor under the terms of the revenue guarantee that has not been included in the investor's income in the particular taxation year or a preceding taxation year, if

(iii) the guarantor and the investor are not dealing at arm's length,

(iv) the vendor and the guarantor are not dealing at arm's length, or

(v) the vendor or a person not dealing at arm's length with the vendor undertakes in any way, directly or indirectly, to fulfil all or any part of the guarantor's obligations under the terms of the revenue guarantee;

(d) where, at any time, a revenue guarantee, other than a revenue guarantee in respect of which paragraph (b) or (c) applies, is entered into in respect of the film or tape, the amount, if any, that may reasonably be considered to be the portion of the revenue that is to be received by the investor under the terms of the revenue guarantee that

(i) is not due to the investor until a time that is more than four years after the first day on which the guarantor has the right to the use of the film or tape, and

(ii) has not been included in the investor's income in the particular taxation year or a previous taxation year; and

(e) the portion of any debt obligation of the investor outstanding at the end of the particular year that is convertible into an interest in the film or tape or in the investor.

Related Provisions: ITA 125.4(4) — No Canadian film/video production credit to corporation if investor can claim deduction; Reg. 225(1) — Information return; Reg. 1100(21.1) — Depreciable cost reduced by outstanding debt obligation; Reg. 1100(23); Reg. 1104(2) — "certified feature film", "certified production"; Reg. 1104(10) — Interpretation.

History: Subpara. 1100(21)(a)(iv) amended, para. (21)(e) added, by P.C. 2005-698, subsecs. 1(4), (5), May 3, 2005, *Canada Gazette*, Part II, May 18, 2005, applicable to property acquired by a taxpayer or partnership after February 21, 1994, other than property so acquired before 1995

(a) by a taxpayer or a partnership pursuant to the terms of a written agreement entered into by the taxpayer or partnership before February 22, 1994;

(b) by a partnership pursuant to the terms of a prospectus, preliminary prospectus or registration statement filed before February 22, 1994 with a public authority in Canada pursuant to and in accordance with the securities legislation of Canada or of a province, and, where required by law, accepted for filing by such public authority; or

(c) by a partnership pursuant to the terms of an offering memorandum distributed as part of an offering of securities where

(i) the memorandum contained a complete or substantially complete description of the securities contemplated in the offering as well as the terms and conditions of the offering,

(ii) the memorandum was distributed before February 22, 1994,

(iii) solicitations in respect of the sale of the securities contemplated by the memorandum were made before February 22, 1994,

(iv) the sale of securities was substantially in accordance with the memorandum, and

(v) the funds raised pursuant to the terms of the memorandum were so raised before 1995.

Notwithstanding the above,

- subpara. 1100(21)(a)(iv), para. 1100(21)(e) and subsec. 1100(21.1) apply after 1994 to property acquired at any time by a partnership where ITA subsec. 40(3.1) does not apply to a member of the partnership before the end of the partnership's fifth fiscal period ending after 1994 solely because of the application of Bill C-59, subsec. 12(6) (the coming-into-force of subsec. 40(3.1)), and
- subpara. 1100(21)(a)(iv), para. 1100(21)(e) and subsec. 1100(21.1) apply after 1994 to property acquired after February 21, 1994 and before 1995 by a partnership pursuant to an agreement in writing entered into by the partnership after February 21, 1994 and before 1995, where

(i) paras. (b) and (c), above, do not otherwise apply,

(ii) the primary portion of the partnership interests is acquired before 1995,

(iii) all or substantially all of the property (other than money) of the partnership is a film production or an interest in one or more partnerships all or substantially all of the property of which is film productions,

(iv) the principal photography of the production (or, in the case of a production that is a television series, an episode of the series) commenced before 1995,

(v) the funds used to produce the film production are raised before 1995 and the principal photography of the production is completed, and the funds are expended, before 1995 (or, in the case of a certified production (as defined in subsec. 1104(2)), the principal photography of the production is completed, and the funds are expended, before March 2, 1995), and

(vi) either

(A) the producer of the production has

(I) before February 22, 1994, entered into a written agreement for the pre-production, distribution, broadcasting, financing or acquisition of the production or the acquisition of the screenplay for the production (or has entered into a written contract before February 22, 1994 with a screenwriter to write the screenplay for the production), or

(II) received before 1995 a commitment for funding or other government assistance (or an advance ruling or active status letter in respect of eligibility for such funding or other government assistance) for the production from a federal or provincial government agency whose mandate is related to the provision of assistance to film productions in Canada, or

(B) the production is a continuation of a television series in respect of an episode of which the producer has, before February 22, 1994, entered into an agreement or contract described in subcl. (A)(I).

That portion of subsec. 1100(21) preceding para. (a), and para. (c), substituted by P.C. 1988-2795, subsecs. 1(4) and (5), December 22, 1988, *Canada Gazette*, Part II, January 18, 1989, applicable in respect of property acquired after 1987.

That portion of subsec. 1100(21) preceding para. (a) substituted by P.C. 1986-477, subsec. 1(1), February 27, 1986, *Canada Gazette*, Part II, March 19, 1986, applicable in respect of a motion picture film or video tape, the principal photography or taping of which commenced after 1985.

Para. 1100(21)(b) substituted by P.C. 1986-477, subsec. 1(2), February 27, 1986, *Canada Gazette*, Part II, March 19, 1986, applicable in respect of a motion picture film or video tape, the principal photography or taping of which commenced after 1984.

Cl. 1100(21)(a)(iii)(B) substituted by P.C. 1980-3374, s. 1, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980.

Subsec. 1100(21) added by P.C. 1978-3731, December 14, 1978, *Canada Gazette*, Part II, December 27, 1978, applicable in respect of property acquired after 1978.

Minister of Communications: S. 46 of 1995, c. 11, in force July 12, 1996, provides as follows:

> 46. Other references — Every reference made to the Minister of Communications, the Minister of Multiculturalism and Citizenship and the Secretary of State of Canada in relation to any matter to which the powers, duties and functions of the Minister of Canadian Heritage extend by virtue of this Act, in any other Act of Parliament or in any order, regulation or other instrument made under any Act of Parliament shall, unless the context otherwise requires, be read as a reference to the Minister of Canadian Heritage.

Forms: T1-CP Summ: Summary of certified productions.

(21.1) [Film or videotape — deemed cost reduction] — Notwithstanding subsection (1), where a taxpayer has acquired property described in paragraph (s) of Class 10 in Schedule II, or in paragraph (m) of Class 12 of Schedule II, the deduction in respect of the property otherwise allowed to the taxpayer under subsection (1) in computing the taxpayer's income for a taxation year shall not exceed the amount that it would be if the capital cost to the taxpayer of the property were reduced by the portion of any debt obligation of the taxpayer outstanding at the end of the year that is convertible into an interest in the property or in the taxpayer.

History: Subsec. 1100(21.1) added by P.C. 2005-698, subsec. 1(6), May 3, 2005, *Canada Gazette*, Part II, May 18, 2005, applicable on the same basis as the addition of Reg. 1100(21)(e) above.

(22) [Film or tape acquired before 1979] — Notwithstanding subsection (1), where an investor has acquired a film or tape after his 1977 taxation year and before 1979 and the principal photography or taping in respect of the film or tape is completed after a particular taxation year and not later than March 1, 1979, in no case shall the deduction in respect of property of Class 12 in Schedule II otherwise allowed to the investor by virtue of subsection (1) in computing his income for the particular taxation year exceed the amount, otherwise determined, if the capital cost to the investor of the film or tape were reduced by the amount, if any, by which

(a) the capital cost to the investor of the film or tape as of the end of the year

exceeds

(b) the amount that may reasonably be considered to be the investor's proportionate share of the production costs incurred in respect of the film or tape to March 1, 1979.

Related Provisions: Reg. 1100(21) — Meaning of "investor" and "film or tape".

History: Subsec. 1100(22) added by P.C. 1978-3731, s. 1, December 14, 1978, *Canada Gazette*, Part II, December 27, 1978.

Interpretation Bulletins: IT-441: CCA — Certified feature film productions and certified short productions (archived).

Forms: T1-CP Summ: Summary of certified productions.

(23) [Film or tape acquired in 1987 or 1988] — For the purposes of paragraph (21)(a),

(a) in respect of a film or tape acquired in 1987, other than a film or tape in respect of which paragraph (b) applies, the references in paragraph (21)(a) to "within 60 days after the end of the year" shall be read as references to "before July, 1988"; and

(b) in respect of a film or tape acquired in 1987 or 1988 that is included in paragraph (n) of Class 12 in Schedule II and that is part of a series of films or tapes that includes another property included in that paragraph, the references in paragraph (21)(a) to "within 60 days after the end of the year" shall be read as references to "before 1989".

History: Subsec. 1100(23) added by P.C. 1988-2795, subsec. 1(6), December 22, 1988, *Canada Gazette*, Part II, January 18, 1989, applicable after 1986.

(24) Specified energy property — Notwithstanding subsection (1), in no case shall the total of deductions, each of which is a deduction in respect of property of Class 34 or Class 43.1 in Schedule II that is specified energy property owned by a taxpayer, otherwise allowed to the taxpayer under subsection (1) in computing the taxpayer's income for a taxation year, exceed the amount, if any, by which

(a) the total of all amounts each of which is

(i) the total of

(A) the amount that would be the income of the taxpayer for the year from property described in Class 34 or 43.1 in Schedule II (other than specified energy property), or from the business of selling the product of that property, if that income were calculated after deducting the maximum amount allowable in respect of the property for the year under paragraph 20(1)(a) of the Act, and

(B) the taxpayer's income for the year from specified energy property or from the business of selling the product of that property, computed without regard to paragraph 20(1)(a) of the Act, or

(ii) the total of

(A) the taxpayer's share of the amount that would be the income of a partnership for the year from property described in Class 34 or 43.1 in Schedule II (other than specified energy property), or from the business of selling the product of that property, if that income were calculated after deducting the maximum amount allowable in respect of the property for the year under paragraph 20(1)(a) of the Act, and

(B) the income of a partnership for the year from specified energy property or from the business of selling the product of that property of the partnership, to the extent of the taxpayer's share of that income,

exceeds

(b) the total of all amounts each of which is

(i) the taxpayer's loss for the year from specified energy property or from the business of selling the product of that property, computed without regard to paragraph 20(1)(a) of the Act, or

(ii) the loss of a partnership for the year from specified energy property or from the business of selling the product of that property of the partnership, to the extent of the taxpayer's share of that loss.

Related Provisions: Reg. 1100(25) — Meaning of "specified energy property"; Reg. 1100(26) — Exception.

History: Subsec. 1100(24) amended by P.C. 1997-1033, subsec. 1(2), July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable after February 21, 1994.

(25) ["Specified energy property"] — Subject to subsections (27) to (29), in this section and section 1101, "specified energy property" of a taxpayer or partnership (in this subsection referred to as "the owner") for a taxation year means property of Class 34 or Class 43.1 in Schedule II that was acquired by the owner after February 9, 1988 other than a particular property

(a) acquired to be used by the owner primarily for the purpose of gaining or producing income from a business carried on in Canada (other than the business of selling the product of the particular property) or from another property situated in Canada, or

(b) leased in the year, in the ordinary course of carrying on a business of the owner in Canada, to

(i) a person who can reasonably be expected to use the property primarily for the purpose of gaining or producing income from a business carried on in Canada (other than the business of selling the product of the particular property) or from another property situated in Canada, or

(ii) a corporation or partnership described in subsection (26),

where the owner was

(iii) a corporation whose principal business was, throughout the year,

(A) the renting or leasing of leasing property or property that would be leasing property but for subsection (18), (19) or (20),

(B) the renting or leasing of property referred to in clause (A) combined with the selling and servicing of property of the same general type and description, or

(C) the manufacturing of property described in Class 34 or Class 43.1 in Schedule II that it sells or leases,

and the gross revenue of the corporation for the year from that principal business was not less than 90 per cent of the gross revenue of the corporation for the year from all sources, or

(iv) a partnership each member of which was a corporation described in subparagraph (iii) or paragraph (26)(a).

Proposed Amendment — "specified energy property"

Federal budget, Supplementary Information, February 23, 2005:

Specified Energy Property Rules

In addition to setting the appropriate CCA rate, rules are needed to protect the integrity of the CCA system. These include the specified energy property rules, which limit the amount of CCA deductions that may be used by passive investors in respect of specified energy property — generally property for which an incentive CCA rate is allowed under Class 34 or 43.1 — to the amount of income from such property. This prevents CCA deductions from being used by passive investors to shelter other sources of income.

This budget proposes that the specified energy property rules be extended to combustion turbines and electricity transmission and distribution assets that are eligible for the higher CCA rates proposed in this budget [see under Class 17(a.1) and Class 1 respectively — ed.]

...

High-Efficiency and Renewable Energy Generation Equipment

The budget proposes to include certain highly fossil-fuel-efficient and renewable energy generation equipment — which is currently eligible for the 30% CCA rate under Class 43.1 — in a new class eligible for a 50% CCA rate. The increased rate will apply to such equipment acquired on or after February 23, 2005 and before 2012. As is currently the case with Class 43.1, the specified energy property rules will be extended to apply to this new Class.

Related Provisions: Reg. 1101(5m) — Separate class.

History: The opening words of subsec. 1100(25) and cl. 1100(25)(b)(iii)(C) amended by P.C. 1997-1033, subsecs. 1(3) and (4), July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable after February 21, 1994.

(26) [Specified energy property — exception] — Subsection (24) does not apply to a taxation year of a taxpayer that was, throughout the year,

(a) a corporation whose principal business throughout the year was

(i) manufacturing or processing,

(ii) mining operations, or

(iii) the sale, distribution or production of electricity, natural gas, oil, steam, heat or any other form of energy or potential energy; or

(b) a partnership each member of which was a corporation described in paragraph (a).

Related Provisions: Reg. 1104(9) — Meaning of "manufacturing and processing".

History: Para. 1100(26)(a) amended by P.C. 1997-1033, subsec. 1(5), July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable to taxation years ending after March 6, 1996.

(27) [Specified energy property — acquisition before 1990] — Specified energy property of a person or partnership does not include property acquired by the person or partnership after February 9, 1988 and before 1990

(a) pursuant to an obligation in writing entered into by the person or partnership before February 10, 1988;

(b) pursuant to the terms of a prospectus, preliminary prospectus, registration statement or offering memorandum filed before February 10, 1988 with a public authority in Canada pursuant to and in accordance with the securities legislation of any province;

(c) pursuant to the terms of an offering memorandum distributed as part of an offering of securities where

(i) the offering memorandum contained a complete or substantially complete description of the securities contemplated in the offering as well as the terms and conditions of the offering of the securities,

(ii) the offering memorandum was distributed before February 10, 1988,

(iii) solicitations in respect of the sale of the securities contemplated by the offering memorandum were made before February 10, 1988, and,

(iv) the sale of the securities was substantially in accordance with the offering memorandum; or

(d) as part of a project where, before February 10, 1988,

(i) some of the machinery or equipment to be used in the project had been acquired, or agreements in writing for the acquisition of that machinery or equipment had been entered into, by or on behalf of the person or partnership, and

(ii) an approval had been received by or on behalf of the person or partnership from a government environmental authority in respect of the location of the project.

Related Provisions: Reg. 1100(17) — Meaning of "leasing property".

(28) [Specified energy property — exclusion] — A property acquired by a taxpayer

(a) in the course of a reorganization in respect of which, if a dividend were received by a corporation in the course of the reorganization, subsection 55(2) of the Act would not be applicable to the dividend by reason of the application of paragraph 55(3)(b) of the Act, or

(b) from a person with whom the taxpayer was not dealing at arm's length (otherwise than by virtue of a right referred to in paragraph 251(5)(b) of the Act) at the time the property was acquired

that would otherwise be specified energy property of the taxpayer shall be deemed not to be specified energy property of the taxpayer if, immediately before it was so acquired by the taxpayer, it was not, by virtue of subsection (27), this subsection or subsection (29), specified energy property of the person from whom the property was so acquired.

(29) [Specified energy property — replacement property] — A property acquired by a taxpayer or partnership that is a replacement property (within the meaning assigned by subsection 13(4) of the Act), that would otherwise be specified energy property of the taxpayer or partnership, shall be deemed not to be specified energy property of the taxpayer or partnership if the property replaced, referred to in paragraph 13(4)(a) or (b) of the Act, was, by virtue of subsection (27), (28) or this subsection, not specified energy property of the taxpayer or partnership immediately before it was disposed of by the taxpayer or partnership.

History [Reg. 1100(24)–(29)]: Subsecs. 1100(24) to (29) added by P.C. 1990-753, April 26, 1990, *Canada Gazette*, Part II, May 9, 1990, applicable in respect of taxation years ending after February 9, 1988.

Selected Cases [Reg. 1100]: *Brydges v. Canada*, [1996] 1 C.T.C. 2851 (TCC) (Certification cannot be subsequently revoked).

Definitions [Reg. 1100]: "additional property" — Reg. 1100(1.19)(a); "amount" — ITA 248(1); "arm's length" — ITA 251(1), Reg. 1102(20); "associated" — ITA 256; "broadcasting" — *Interpretation Act* 35(1); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian" — Reg. 1104(10)(a), (c.2); "capital cost" — Reg. 1100(1)(b), 1100(1.13), 1102(4), (7); "certified feature film", "certified production" — Reg. 1104(2); "class" — Reg. 1101(6), 1102(1)–(3), (14), (14.1); "commencement" — *Interpretation Act* 35(1); "computer software" — Reg. 1104(2); "computer software tax shelter property" — Reg. 1100(20.2); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "depreciable property" — ITA 13(21), 248(1); "designated property" — Reg. 1100(1)(ta), (zc); "disposed" — ITA 248(1)"disposition"; "disposes" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "dividend" — ITA 248(1); "end of the taxation year" — Reg. 1104(1); "exempt property" — Reg. 1100(1.13)(a); "film or tape" — Reg. 1100(21); "fiscal period" — ITA 249.1; "gross revenue" — ITA 248(1); "guarantor" — Reg. 1100(21)(c)(ii); "income from a mine" — Reg. 1104(5), (6.1)(a); "individual" — ITA 248(1); "industrial mineral mine" — Reg. 1104(3); "investor" — Reg. 1100(21); "leasing property" — Reg. 1100(17)–(20); "life insurance corporation" — ITA 248(1); "manufacturing or processing" — Reg. 1104(9); "mine" — Reg. 1104(7); "mineral", "mining" — Reg. 1104(3); "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "motor vehicle", "office" — ITA 248(1); "original lease" — Reg. 1100(1.2)(a); "original property" — Reg. 1100(1.17), (1.19)(a); "owner" — Reg. 1100(25); "Parliament" — *Interpretation Act* 35(1); "particular time", "particular year" — Reg. 1100(1.1)(a)(ii); "person" — ITA 248(1), Reg. 1100(1.16); "prescribed" — ITA 248(1); "prescribed rate" — Reg. 4301, 4302; "principal amount", "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "radio" — *Interpretation Act* 35(1); "railway system" — Reg. 1104(2); "received or receivable" — Reg. 1100(1.18); "related" — ITA 251(2)–(6); "remuneration" — Reg. 1104(10)(c); "rent" — Reg. 1100(14.1), (17.2); "rental property" — Reg. 1100(14); "replacement property" — Reg. 1100(1.17); "resident in Canada" — ITA 250; "revenue guarantee" — Reg. 1104(10)(c.1); "series" — ITA 248(10); "share" — ITA 248(1); "specified energy property" — Reg. 1100(25), (27)–(29); "specified leasing property" — Reg. 1100(1.11); "systems software" — Reg. 1104(2); "tax shelter" — ITA 237.1(1), 248(1); "taxation year" — ITA 249, Reg. 1104(1); "taxpayer" — ITA 248(1); "undepreciated capital cost" — ITA 13(21), 248(1); "unit of production" — Reg. 1104(10)(d); "vendor" — Reg. 1100(21)(c)(ii); "within 60 days after the end of the year" — Reg. 1100(23)(a), (b); "writing", "written" — *Interpretation Act* 35(1)"writing".

Interpretation Bulletins [Reg. 1100]: IT-474R: Amalgamations of Canadian corporations.

1100A. Exempt mining income — (1) [Revoked]

(2) Any election under subparagraph 13(21)(f)(vi) [13(21)"undepreciated capital cost"H] of the Act in respect of property of a prescribed class acquired by a corporation for the purpose of gaining or producing income from a mine shall be made by filing with the Minister, not later than the day on or before which the corporation is required to file a return of income pursuant to section 150 of the Act for its taxation year in which the exempt period in respect of the mine ended, one of the following documents in duplicate:

(a) where the directors of the corporation are legally entitled to administer the affairs of the corporation, a certified copy of their resolution authorizing the election to be made in respect of that class; and

(b) where the directors of the corporation are not legally entitled to administer the affairs of the corporation, a certified copy of the authorization of the making of the election in respect of that class by the person or persons legally entitled to administer the affairs of the corporation.

Related Provisions: Reg. 1100(1)(w), (x).

History: Subsec. 1100A(1) revoked by P.C. 1988-390, s. 6, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, effective October 29, 1985.

Subsec. 1100A(1) substituted by P.C. 1979-1487, s. 1, May 17, 1979, *Canada Gazette*, Part II, June 13, 1979.

Subsec. 1100A(1) and that portion of subsec. 1100A(2) preceding para. (a) substituted by P.C. 1978-1315, subsecs. 7(1), (2), April 20, 1978, *Canada Gazette*, Part II, May 10, 1978, effective on and after May 26, 1978.

Definitions [Reg. 1100A]: "class" — Reg. 1101(6), 1102(1)–(3), (14), (14.1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "Minister", "person", "prescribed", "property" — ITA 248(1); "taxation year" — ITA 249, Reg. 1104(1).

DIVISION II — SEPARATE CLASSES

1101. (1) Businesses and properties — Where more than one property of a taxpayer is described in the same class in Schedule II and where

(a) one of the properties was acquired for the purpose of gaining or producing income from a business, and

(b) one of the properties was acquired for the purpose of gaining or producing income from another business or from the property,

a separate class is hereby prescribed for the properties that

(c) were acquired for the purpose of gaining or producing income from each business, and

(d) would otherwise be included in the class.

Related Provisions: Reg. 1101(1a) — Insurance businesses.

History: Paras. 1101(1)(c), (d) renumbered by P.C. 1980-2081, s. 1, July 31, 1980, *Canada Gazette*, Part II, August 13, 1980.

Selected Cases [Reg. 1101(1)]: *Dupont Canada Inc. v. R.*, [2001] 2 C.T.C. 315 (FCA) (Sale of certain assets not sale of separate business).

Interpretation Bulletins: IT-206R: Separate businesses; IT-218R: Profit, capital gains and losses from the sale of real estate, including farm-

land and inherited land and conversion of real estate from capital property to inventory and vice versa.

(1a) [Life insurance business deemed corporate business] — For the purposes of subsection (1),

(a) a life insurance business, and

(b) an insurance business other than a life insurance business,

shall each be regarded as a separate business.

(1ab) [Partnership property separate] — Where, at the end of 1971, more than one property of a taxpayer who was a member of a partnership at that time is described in the same class in Schedule II and where

(a) one of the properties can reasonably be regarded to be the interest of the taxpayer in a depreciable property that is partnership property of the partnership, and

(b) one of the properties is property other than property referred to in paragraph (a),

a separate class is hereby prescribed for all properties each of which

(c) is a property referred to in paragraph (a); and

(d) would otherwise be included in the class.

(1ac) [Rental property over $50,000] — Subject to subsection (5h), where more than one property of a taxpayer is described in the same class in Schedule II, and one or more of the properties is a rental property of the taxpayer the capital cost of which to the taxpayer was not less than $50,000[1], a separate class is hereby prescribed for each such rental property of the taxpayer that would otherwise be included in the same class, other than a rental property that was acquired by the taxpayer before 1972 or that is

(a) a building or an interest therein, or

(b) a leasehold interest acquired by the taxpayer by reason of the fact that the taxpayer erected a building on leased land,

erection of which building was commenced by the taxpayer before 1972 or pursuant to an agreement in writing entered into by the taxpayer before 1972.

Related Provisions: Reg. 1100(14) — Meaning of "rental property"; Reg. 1101(1ad) — Exceptions.

History: All that portion of subsec. 1101(1ac) preceding para. (a) substituted by P.C. 1982-599, subsec. 2(1), February 25, 1982, *Canada Gazette*, Part II, March 10, 1982.

Interpretation Bulletins: IT-274R: Rental property — Capital cost of $50,000 or more; IT-304R2: Condominiums.

(1ad) [Rental property over $50,000 — exception] — Notwithstanding subsection (1ac), a rental property acquired by a taxpayer

(a) in the course of a reorganization in respect of which, if a dividend were received by a corporation in the course of the reorganization, subsection 55(2) of the Act would not be applicable to the dividend by reason of the application of paragraph 55(3)(b) of the Act, or

(b) from a person with whom the taxpayer was not dealing at arm's length (otherwise than by virtue of a right referred to in paragraph 251(5)(b) of the Act) at the time the property was acquired,

that would otherwise be rental property of the taxpayer of a separate class prescribed under subsection (1ac), shall be deemed not to be property of a separate class prescribed under that subsection if, immediately before it was so acquired by the taxpayer, it was a rental property of the person from whom the property was so acquired of a prescribed class other than a separate class prescribed under that subsection.

Related Provisions: Reg. 1100(2.21)(a); Reg. 1100(14) — Meaning of "rental property"; Reg. 1102(20) — Non-arm's length exception.

History: Paras. 1101(1ad)(a), (b) substituted for (a) to (c) by P.C. 1989-2464, subsec. 2(1), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired by a taxpayer after June 17, 1987 other than property acquired after that date and before 1990 pursuant to an agreement in writing entered into by the taxpayer before June 18, 1987.

Para. 1101(1ad)(a.1) added by P.C. 1984-3789, s. 6, November 29, 1984, *Canada Gazette*, Part II, December 12, 1984, applicable with respect to property acquired after November 12, 1981.

Interpretation Bulletins: IT-274R: Rental properties — Capital cost of $50,000 or more.

(1ae) [Rental property separate] — Except in the case of a corporation or partnership described in subsection 1100(12), where more than one property of a taxpayer is described in the same class in Schedule II and where

(a) one of the properties is a rental property other than a property of a separate class prescribed under subsection (1ac), and

(b) one of the properties is a property other than rental property,

a separate class is hereby prescribed for properties that

(c) are described in paragraph (a); and

(d) would otherwise be included in the class.

Related Provisions: Reg. 1100(14) — Meaning of "rental property".

Interpretation Bulletins: IT-195R4: Rental property — CCA restrictions; IT-304R2: Condominiums.

(1af) [Expensive automobiles] — A separate class is hereby prescribed for each property included in Class 10.1 in Schedule II.

History: Subsec. 1101(1af) added by P.C. 1991-2272, s. 2, November 21, 1991, *Canada Gazette*, Part II, December 4, 1991, applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

Subsecs. 1101(1b), (1c) revoked by P.C. 1979-2483, September 13, 1979, *Canada Gazette*, Part II, September 26, 1979, effective in respect of 1978 *et seq.*

Interpretation Bulletins: IT-521R: Motor vehicle expenses claimed by self-employed individuals; IT-522R: Vehicle, travel and sales expenses of employees.

Proposed Addition — Reg. 1101(1ag)

(1ag) [Franchise, concession or license] — If more than one property of a taxpayer is described in the same class in Schedule II, and one or more of the properties is a property in respect of which the taxpayer is a transferee that has elected under subsection 13(4.2) of the Act, a separate class is prescribed for each such property of the taxpayer that would otherwise be included in the same class.

Application: The July 18, 2005 Technical Notes to ITA 13(4.2), (4.3) propose to add Reg. 1101(1ag), applicable after December 20, 2002.

Technical Notes: See proposed ITA 13(4.2), (4.3).

[1]Not indexed for inflation — ed.

(2) Fishing vessels — Where a property of a taxpayer that would otherwise be included in Class 7 in Schedule II is a property in respect of which a depreciation allowance could have been taken under Order in Council

(a) P.C. 2798 of April 10, 1942,

(b) P.C. 7580 of August 26, 1942, as amended by P.C. 3297 of April 22, 1943, or

(c) P.C. 3979 of June 1, 1944,

if those Orders in Council were applicable to the taxation year, a separate class is hereby prescribed for each property, including the furniture, fittings and equipment attached thereto.

Related Provisions: Reg. 1100(1)(i).

(2a) Canadian vessels — A separate class is hereby prescribed for each vessel of a taxpayer, including the furniture, fittings, radiocommunication equipment and other equipment attached thereto, that

(a) was constructed in Canada;

(b) is registered in Canada; and

(c) had not been used for any purpose whatever before it was acquired by the taxpayer.

Related Provisions: Reg. 1100(1)(v) — additional allowance; Reg. 1101(2c) — No application if structured financing facility in place; Reg. 4601(e)(iii) — Investment tax credit — qualified transportation equipment.

History: Subsec. 1101(2a) substituted by P.C. 1994-139, subsecs. 3(1) and (2), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired after July 13, 1990.

Interpretation Bulletins: IT-267R2: CCA — vessels.

Advance Tax Rulings: ATR-52: Accelerated rate of CCA for vessels.

(2b) Offshore drilling vessels — A separate class is hereby prescribed for all vessels described in Class 7 in Schedule II, including the furniture, fittings, radiocommunication equipment and other equipment attached thereto, acquired by a taxpayer

(a) after May 25, 1976 and designed principally for the purpose of

(i) determining the existence, location, extent or quality of accumulations of petroleum or natural gas (other than mineral resources); or

(ii) drilling oil or gas wells; or

(b) after May 22, 1979 and designed principally for the purpose of determining the existence, location, extent or quality of mineral resources.

Related Provisions: Reg. 1100(1)(va) — Additional allowance; Reg. 1101(2c) — No application if structured financing facility in place.

History: Subsec. 1101(2b) substituted by P.C. 1979-1487, s. 52, May 17, 1979, *Canada Gazette*, Part II, June 13, 1979.

Interpretation Bulletins: IT-267R2: CCA — Vessels; IT-317R: Radio and television equipment (archived).

Proposed Addition — Reg. 1101(2c)

(2c) Vessels and a structured financing facility — Subsections (2a) and (2b) do not apply to a vessel, nor to the furniture, fittings, radio communications equipment and other equipment attached to the vessel, if a structured financing facility relating to any such property has been agreed to by the Minister of Industry under the *Department of Industry Act*.

Application: The December 20, 2002 draft regulations (Appendix C, CCA — vessels), s. 1, will add subsec. 1101(2c), deemed to have come into force on November 7, 2001.

Technical Notes: In general, capital cost allowance Class 7 in Schedule II to the Regulations applies to vessels and attachments thereto (15% rate, declining balance method). However, an additional allowance is available under Regulations 1100(1)(v) and (va) in respect of certain vessels and their attachments. In particular, this is the case where a vessel and its attachments are included in a separate class because of subsection 1101(2a) or (2b) of the Regulations. As well, Class 41 (25% rate, plus an additional allowance) applies to vessels and attachments thereto if paragraph (b) of Class 41 applies.

Proposed new subsection 1101(2c) of the Regulations provides that the separate classes in subsections 1101(2a) and (2b) for vessels and attachments do not apply in cases where the Minister of Industry has agreed to a structured financing facility. This change is consequential to the creation of the Structured Financing Facility Program, which is administered by Industry Canada. In cases where a vessel or its attachments are financed with a benefit under the Structured Financing Facility Program, the maximum capital cost allowance rate applicable to the vessel and its attachments is 15% under Class 7.

For additional information, see the commentary to the amendment to Class 41.

Related Provisions: Reg. Sch. II:Cl. 41(b) — Exclusion from Class 41.

(3) Timber limits and cutting rights — For the purposes of this Part and Schedules IV and VI, each property of a taxpayer that is

(a) a timber limit other than a timber resource property, or

(b) a right to cut timber from a limit other than a right that is a timber resource property,

is hereby prescribed to be a separate class of property.

Related Provisions: Reg. 1100(1)(e) — Capital cost allowance.

Interpretation Bulletins: IT-469R: CCA — Earth-moving equipment; IT-481: Timber resource property and timber limits.

(4) Industrial mineral mines — For the purposes of this Part and Schedule V, where a taxpayer has

(a) more than one industrial mineral mine in respect of which he may claim an allowance under paragraph 1100(1)(g),

(b) more than one right to remove industrial minerals from an industrial mineral mine in respect of which he may claim an allowance under that paragraph, or

(c) both such a mine and a right,

each such industrial mineral mine and each such right to remove industrial minerals from an industrial mineral mine is hereby prescribed to be a separate class of property.

Related Provisions: Reg. 1104(3) — Meaning of "industrial mineral mine".

(4a) New or expanded mines properties — Where more than one property of a taxpayer is described in Class 28 in Schedule II and

(a) one of the properties was acquired for the purpose of gaining or producing income from only one mine, and

(b) one of the properties was acquired for the purpose of gaining or producing income from another mine,

a separate class is hereby prescribed for the properties that

(c) were acquired for the purpose of gaining or producing income from each mine;

(d) would otherwise be included in the class; and

(e) are not included in a separate class by virtue of subsection (4b).

Related Provisions: Reg. 1100(1)(w), 1104(5), 1104(7); Reg. 1104(5), (6.1) — Income from a mine; Reg. 1104(7) — Interpretation.

(4b) New or expanded mines properties — Where more than one property of a taxpayer is described in Class 28 in Schedule II and

(a) one of the properties was acquired for the purpose of gaining or producing income from particular mines, and

(b) one of the properties was acquired for the purpose of gaining or producing income from only one mine or more than one mine other than any of the particular mines,

a separate class is hereby prescribed for the properties that

(c) were acquired for the purpose of gaining or producing income from the particular mines; and

(d) would otherwise be included in the class.

Related Provisions: Reg. 1100(1)(x), 1104(5), 1104(7); Reg. 1104(5), (6.1) — Income from a mine; Reg. 1104(7) — Interpretation.

(4c) New or expanded mines properties — Where one or more properties of a taxpayer are described in paragraph (a), (a.1), or (a.2) of Class 41 of Schedule II and

(a) where all of the properties were acquired for the purposes of gaining or producing income from only one mine, or

(b) where

(i) one or more of the properties were acquired for the purpose of gaining or producing income from a particular mine, and

(ii) one or more of the properties were acquired for the purpose of gaining or producing income from another mine,

a separate class is hereby prescribed for the properties that

(c) were acquired for the purpose of gaining or producing income from each mine,

(d) would otherwise be included in the class, and

(e) are not included in a separate class by reason of subsection (4d).

Related Provisions: Reg. 1100(1)(y), 1104(5), 1104(7); Reg. 1104(5), (6.1) — Income from a mine; Reg. 1104(7) — Interpretation.

(4d) New or expanded mines properties — Where more than one property of a taxpayer is described in paragraph (a), (a.1), or (a.2) of Class 41 of Schedule II and

(a) one of the properties was acquired for the purpose of gaining or producing income from particular mines, and

(b) one of the properties was acquired for the purpose of gaining or producing income from only one mine or more than one mine other than any of the particular mines,

a separate class is hereby prescribed for the properties that

(c) were acquired for the purpose of gaining or producing income from the particular mines, and

(d) would otherwise be included in the class.

Related Provisions: Reg. 1100(1)(ya), 1104(5), 1104(7); Reg. 1104(5), (6.1) — Income from a mine; Reg. 1104(7) — Interpretation.

History: The opening words of subsecs. 1101(4c), (4d) amended by P.C. 1998-49, s. 8, January 26, 1998, *Canada Gazette*, Part II, February 4, 1998, applicable after March 6, 1996.

Subsecs. 1101(4c), (4d) added by P.C. 1989-2464, subsec. 2(2), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

(5) Lease option agreements — Where, by virtue of an agreement, contract or arrangement entered into on or after May 31, 1954, a taxpayer is deemed by section 18 of the *Income Tax Act*, as enacted by the Statutes of Canada, 1958, Chapter 32, subsection 8(1), to have acquired a property, a separate class is hereby prescribed for each such property and if the taxpayer subsequently actually acquires the property it shall be included in the same class.

(5a) Telecommunication spacecraft — For the purposes of this Part, each property of a taxpayer that is an unmanned telecommunication spacecraft described in paragraph (f.2) of Class 10 or in Class 30 in Schedule II is hereby prescribed to be a separate class of property.

History: Subsec. 1101(5a) substituted by P.C. 1989-2464, subsec. 2(3), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

(5b) Multiple-unit residential buildings — For the purposes of this Part, when any property of a taxpayer is a property of Class 31 or 32 in Schedule II and the capital cost of that property to the taxpayer was not less than $50,000, a separate class is hereby prescribed for each such property of the taxpayer that would otherwise be included in the same class.

Interpretation Bulletins: IT-274R: Rental properties — Capital cost of $50,000 or more; IT-367R3: Capital cost allowance — multiple-unit residential buildings (archived).

Forms: TX87: Application for a copy of a MURB certificate.

(5c) Leasing properties — For the purposes of this Part, except in the case of a corporation or partnership described in subsection 1100(16), where more than one property of a taxpayer is described in the same class in Schedule II and where

(a) one of the properties is a leasing property, and

(b) one of the properties is a property other than a leasing property,

a separate class is hereby prescribed for properties that

(c) are described in paragraph (a); and

(d) would otherwise be included in the class.

Related Provisions: Reg. 1100(17), (18) — Meaning of "leasing property".

Interpretation Bulletins: IT-443: Leasing property — CCA restrictions.

(5d) Railway cars — Where more than one property of a taxpayer is a railway car included in Class 35 in Schedule II that was rented, leased or used by the taxpayer in Canada in the taxation year, other than a railway car owned by a corporation, or a partnership any member of which is a corporation, that

(a) was at any time in that taxation year a common carrier that owned or operated a railway, or

(b) rented or leased the railway cars at any time in that taxation year, by one or more transactions between persons not dealing at arm's length, to an associated corporation that was, at that time, a common carrier that owned or operated a railway,

a separate class is prescribed

(c) for all such properties acquired by the taxpayer before February 3, 1990 (other than such properties acquired for rent or lease to another person),

(d) for all such properties acquired by the taxpayer after February 2, 1990 (other than such properties acquired for rent or lease to another person),

(e) for all such properties acquired by the taxpayer before April 27, 1989 for rent or lease to another person, and

(f) for all such properties acquired by the taxpayer after April 26, 1989 for rent or lease to another person.

Related Provisions: Reg. 1100(1)(z), (z.1a); Reg. 1103(2i) — Election to include Class 7(h) property in Class 35.

History: Subsec. 1101(5d) substituted by P.C. 1991-465, subsec. 2(1), March 14, 1991, *Canada Gazette*, Part II, March 27, 1991, applicable after April 26, 1989 except that in respect of property of a taxpayer

(a) acquired by the taxpayer after April 26, 1989 and before February 3, 1990,

(b) acquired by the taxpayer after February 2, 1990 pursuant to an agreement in writing entered into by the taxpayer before February 3, 1990, or

(c) under construction by or on behalf of the taxpayer before February 3, 1990,

the subsec. shall be read without reference to para. (d) thereof and to the words "before February 3, 1990" in para. (c) thereof.

(5d.1) [Railway property] — A separate class is hereby prescribed for all property included in Class 35 in Schedule II acquired at a time after December 6, 1991 by a taxpayer that was at that time a common carrier that owned and operated a railway.

Proposed Amendment — Reg. 1101(5d.1), (5d.2)

(5d.1) [Railway property] — A separate class is hereby prescribed for all property included in Class 35 in Schedule II acquired at a time after December 6, 1991 and before February 28, 2000 by a taxpayer that was at that time a common carrier that owned and operated a railway.

(5d.2) [Railway property] — A separate class is hereby prescribed for all property included in Class 35 in Schedule II acquired at a time after February 27, 2000 by a taxpayer that was at that time a common carrier that owned and operated a railway.

Related Provisions: Reg. 1100(1)(z.1c) — Additional 6% CCA for property in this class; Reg. 1103(2i) — Election to include Class 7(h) property in Class 35.

Application: The March 16, 2001 draft regulations (CCA), subsec. 2(1), will amend subsec. (5d.1) to read as above and add subsec. (5d.2), applicable to property acquired after February 27, 2000.

Technical Notes: Subsection 1101(5d.1) is replaced by new subsection 1101(5d.2), which prescribes a separate class for all property included in Class 35 (7% CCA rate) acquired after February 27, 2000 by a taxpayer that was at that time a common carrier that owned and operated a railway. The replacement of subsection 1101(5d.1) with subsection 1101(5d.2) is consequential to changes to the CCA rate applicable to certain railway assets more fully described below in the commentary to new subsection 1103(2i) and amended Class 7 (15% CCA rate).

Related Provisions: Reg. 1100(1)(z.1b) — Additional allowance.

History: Subsec. 1101(5d.1) added by P.C. 1994-139, subsec. 3(3), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired after December 6, 1991.

(5e) Railway track and related property — A separate class is hereby prescribed for all property included in Class 1 in Schedule II acquired by a taxpayer after March 31, 1977 and before 1988 that is

(a) railway track and grading, including components such as rails, ballast, ties and other track material;

(b) railway traffic control or signalling equipment, including switching, block signalling, interlocking, crossing protection, detection, speed control or retarding equipment, but not including property that is principally electronic equipment or systems software therefor; or

(c) a bridge, culvert, subway or tunnel that is ancillary to railway track and grading.

Related Provisions: Reg. 1100(1)(za), (za.1) — Additional allowance.

(5e.1) [Railway property] — A separate class is hereby prescribed for all property included in Class 1 in Schedule II acquired at a time after December 6, 1991 by a taxpayer that was at that time a common carrier that owned and operated a railway, where the property is

(a) railway track and grading, including components such as rails, ballast, ties and other track material;

(b) railway traffic control or signalling equipment, including switching, block signalling, interlocking, crossing protection, detection, speed control or retarding equipment, but not including property that is principally electronic equipment or systems software therefor; or

(c) a bridge, culvert, subway or tunnel that is ancillary to railway track and grading.

Related Provisions: Reg. 1100(1)(za.1) — Additional allowance.

History: Subsec. 1101(5e.1) added by P.C. 1994-139, subsec. 3(5), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired after December 6, 1991.

(5e.2) [Trestles] — A separate class is hereby prescribed for all trestles included in Class 3 in Schedule II acquired at a time after December 6, 1991 by a taxpayer that was at that time a common carrier that owned and operated a railway, where the trestles are ancillary to railway track and grading.

Related Provisions: Reg. 1100(1)(za.2) — Additional allowance.

History: Subsec. 1101(5e.2) added by P.C. 1994-139, subsec. 3(5), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired after December 6, 1991.

(5f) [Trestles] — A separate class is hereby prescribed for all trestles included in Class 3 in Schedule II acquired by a taxpayer after March 31, 1977 and before 1988 that are ancillary to railway track and grading.

Related Provisions: Reg. 1100(1)(zb).

History: All that portion of subsec. 1101(5e) preceding para. (a) and subsec. 1101(5f) substituted by P.C. 1984-2044, subsecs. 2(1), (2), June 14, 1984, *Canada Gazette*, Part II, June 27, 1984.

All that portion of subsec. 1101(5e) preceding para. (a) and subsec. (5f) substituted by P.C. 1981-733, s. 1, March 19, 1981, *Canada Gazette*, Part II, April 8, 1981, effective April 1, 1980.

Subsecs. 1101(5e), (5f) added by P.C. 1978-344, s. 2, February 9, 1978, *Canada Gazette*, Part II, February 22, 1978, effective after March 31, 1977.

(5g) Deemed depreciable property — A separate class is hereby prescribed for each property of a taxpayer described in Class 36 in Schedule II.

(5h) Leasehold interest in real properties — For the purposes of this Part, where more than one property of a taxpayer is described in the same class in Schedule II and where

(a) one of the properties is a leasehold interest in real property described in subsection 1100(13), and

(b) one of the properties is a property other than a leasehold interest in real property described in subsection 1100(13),

a separate class is hereby prescribed for properties that

(c) are described in paragraph (a); and

(d) would otherwise be included in the class.

History: Subsecs. 1101(5g), (5h) added by P.C. 1982-599, subsec. 2(2), February 25, 1982, *Canada Gazette*, Part II, March 10, 1982, subsec. 1101(5g) applicable in respect of property acquired after December 11, 1979.

(5i) Pipelines — A separate class is hereby prescribed for each property of a taxpayer described in Class 2 in Schedule II that is

(a) a pipeline the construction of which was commenced after 1984 and completed after September 1, 1985 and the capital cost of which to the taxpayer is not less than $10,000,000,

(b) a pipeline that has been extended or converted where the extension or conversion was completed after September 1, 1985 and the capital cost to the taxpayer of the extension or the cost to him of the conversion, as the case may be, is not less than $10,000,000, or

(c) a pipeline that has been extended and converted as part of a single program of extension and conversion of the pipeline where the program was completed after September 1, 1985 and the aggregate of the capital cost to the taxpayer of the extension and the cost to him of the conversion is not less than $10,000,000,

and in respect of which the taxpayer has, by letter attached to the return of his income filed with the Minister in accordance with section 150 of the Act for the taxation year in which the construction, extension, conversion or program, as the case may be, was completed, elected that this subsection apply.

Related Provisions: Reg. 1101(5j) — Effect of election.

(5j) [Election effective forever] — An election under subsection (5i), (5l) or (5o) shall be effective from the first day of the taxation year in respect of which the election is made and shall continue to be effective for all subsequent taxation years.

History: Subsec. 1101(5j) amended by P.C. 1991-465, subsec. 2(2), March 14, 1991, *Canada Gazette*, Part II, March 27, 1991, applicable in respect of taxation years ending after April 26, 1989.

Subsec. 1101(5j) substituted by P.C. 1989-2464, subsec. 2(4), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

Subsecs. 1101(5i), (5j) added by P.C. 1986-193, January 23, 1986, *Canada Gazette*, Part II, February 5, 1986.

(5k) Certified productions — A separate class is hereby prescribed for all property of a taxpayer included in Class 10 in Schedule II by reason of paragraph (w) thereof.

Related Provisions: Reg. 1100(1)(l).

History: Subsec. 1101(5k) added by P.C. 1988-2795, s. 2, December 22, 1988, *Canada Gazette*, Part II, January 18, 1989, applicable in respect of property acquired after 1987.

Interpretation Bulletins: IT-283R2: CCA — Videotapes, videotape cassettes, films, computer software and master recording media (archived).

(5k.1) Canadian film or video production — A separate class is hereby prescribed for all property of a corporation included in Class 10 in Schedule II because of paragraph (x) of that Class that is property

(a) in respect of which the corporation is deemed under subsection 125.4(3) of the Act to have paid an amount on account of its tax payable under Part I of the Act for a taxation year; or

(b) acquired by the corporation from another corporation where

(i) the other corporation is deemed under subsection 125.4(3) of the Act to have paid an amount on account of its tax payable under Part I of the Act for a taxation year in respect of the property, and

(ii) the corporations were related to each other throughout the period that began when the other corporation first incurred a qualified labour expenditure (as defined in subsection 125.4(1) of the Act) in respect of the property and ended when the other corporation disposed of the property to the corporation.

Related Provisions: Reg. 1100(1)(m) — Additional allowance.

History: Subsec. 1101(5k.1) added by P.C. 2005-698, s. 2, May 3, 2005, *Canada Gazette*, Part II, May 18, 2005, applicable to 1995 *et seq.*

(5l) Class 38 property and outdoor advertising signs — A separate class is hereby prescribed for each property of a taxpayer described in Class 38 in Schedule II or in paragraph (l) of Class 8 in Schedule II in respect of which the taxpayer has, by letter attached to the return of income of the taxpayer filed with the Minister in accordance with section 150 of the Act for the taxation year in which the property was acquired, elected that this subsection apply.

Related Provisions: Reg. 1101(5j) — Effect of election.

History: Subsec. 1101(5l) added by P.C. 1989-2464, subsec. 2(5), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987, except that any election under the subsec. made before July 3, 1990 shall be deemed to be a valid election.

Interpretation Bulletins: IT-469R: CCA — Earth-moving equipment.

(5m) Specified energy property — Where, for any taxation year, a property of a taxpayer or partnership is a specified energy property, a separate class is prescribed in respect of that property for that and subsequent taxation years.

Related Provisions: Reg. 1100(25) — Meaning of "specified energy property".

History: Subsec. 1101(5m) added by P.C. 1990-753, April 26, 1990, *Canada Gazette*, Part II, May 9, 1990, applicable in respect of taxation years ending after February 9, 1988.

(5n) [Specified leasing property] — Notwithstanding subsection (5c), where at the end of any taxation year a property of a taxpayer is specified leasing property, a separate class is prescribed in respect of that property (including any additions or alterations to that property included in the same class in Schedule II) for that year and all subsequent taxation years.

Related Provisions: Reg. 1100(1.1), (1.11) — Specified leasing property.

(5o) [Exempt leasing properties] — A separate class is prescribed for one or more properties of a class in Schedule II that are exempt properties, as defined in paragraph 1100(1.13)(a), of a taxpayer referred to in subsection 1100(16) in respect of which the taxpayer has, by letter attached to the return of income of the taxpayer filed with the Minister in accordance with section 150 of the Act for the taxation year in which the property or properties were acquired, elected that this subsection apply.

Related Provisions: Reg. 1101(5j) — Effect of election.

History: Subsecs. 1101(5n), (5o) added by P.C. 1991-465, subsec. 2(3), (5n) applicable in respect of taxation years ending after April 26, 1989; and (5o) in respect of property acquired after that date, and any election made under that subsec. before September 24, 1991 shall be deemed to be a valid election.

(5p) Rapidly depreciating electronic equipment [optional] — Subject to subsection (5q), a separate class is prescribed for one or more properties of a taxpayer acquired in a taxation year and included in the year in Class 8 in Schedule II, or for one or more properties of a taxpayer acquired in a taxation year and included in the year in Class 10 in Schedule II, where each of the properties has a capital cost to the taxpayer of at least $1,000 and is

(a) general-purpose electronic data processing equipment and systems software therefor, including ancillary data processing equipment, included in paragraph (f) of Class 10 in Schedule II;

(b) computer software;

(c) a photocopier; or

(d) office equipment that is electronic communications equipment, such as a facsimile transmission device or telephone equipment.

Proposed Amendment — Reg. 1101(5p)

(5p) Rapidly depreciating electronic equipment [optional] — Subject to subsection (5q), a separate class is hereby prescribed for one or more properties of a taxpayer acquired in a taxation year and included in Class 8 in Schedule II, where each of the properties has a capital cost to the taxpayer of at least $1,000 and is

(a) computer software;

(b) a photocopier; or

(c) office equipment that is electronic communications equipment, such as a facsimile transmission device or telephone equipment.

Application: The June 27, 2005 draft regulations (CCA — introduction of cls. 45 & 46), s. 2, (pre-published in the *Canada Gazette*, Part I, July 9, 2005), will amend subsec. 1101(5p) to read as above, applicable to property acquired after 2004.

Regulatory Impact Analysis Statement: See under Reg. 1100(1)(a)(xxxi) (Computers) above.

Technical Notes (September 16, 2004): Section 1101 provides separate classes in respect of certain property described in Schedule II to the Regulations.

The combined effect of subsection 1101(5p) and (5q) is that a taxpayer may elect to include one or more properties, included in Class 8 or 10, each of which has a capital cost of at least $1,000 and that is of a certain type and the same class, in a separate class. The types of property to which this separate class election can be applied include certain general-purpose electronic data processing equipment and systems software for that equipment.

Subsection 1101(5p) is amended to preclude any such separate class election in respect of general-purpose data processing equipment and systems software for that equipment, consequential to new Class 45, which increases the CCA rate applicable to such property to 45% from 30%.

To accommodate taxpayers who may have planned purchases in 2004 based on the availability of the separate class election applicable to certain computer property included in Class 10, this amendment applies to property acquired after 2004. If a taxpayer makes a separate class election in respect of general-purpose electronic data processing equipment and systems software for that equipment acquired after March 22, 2004 and before 2005, the equipment will be included in Class 10 (30% CCA rate) rather than in new Class 45 (45% CCA rate).

Federal budget, Supplementary Information, March 23, 2004: *Capital Cost Allowance Rates for Computers and Data Network Infrastructure Equipment*

...

Separate Class Election

Currently, certain equipment, including computer equipment, is eligible for a separate class election. The separate class election, which must be made for the taxation year in which a property is acquired, allows taxpayers to place eligible property in a separate class for CCA purposes. Although the separate class election does not change the CCA rate specified for the class, it does provide that upon the disposition of the property of that class, any remaining undepreciated balance can be fully deducted as a terminal loss, instead of remaining in a pool with other assets and being depreciated over time. With the proposed higher rate for computer equipment [see Classes 45 and 46 — ed.], the separate class election is no longer required. Accordingly, it is proposed that the separate class election provisions not be available to computer equipment eligible for the higher rate.

To accommodate taxpayers who may have already planned purchases based on the availability of the separate class election, it is further proposed that, for computer equipment acquired before 2005, taxpayers may elect to have the property included in Class 10 and therefore eligible for the separate class election. The proposed election must be filed with the income tax return for the taxation year in which the property is acquired.

Related Provisions: Reg. 1101(5q) — Election required for Reg. 1101(5p) to apply; Reg. 1103(2g) — Property transferred back to pool if still owned after 5 years.

History: Subsec. 1101(5p) added by P.C. 1994-231, s. 2, February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to property acquired after April 26, 1993.

(5q) [Election required] — Subsection (5p) applies only in respect of a property or properties of a taxpayer in respect of which the taxpayer has (by letter attached to the return of income of the taxpayer filed with the Minister in accordance with section 150 of the Act for the taxation year in which the property or properties were acquired) elected that the subsection apply.

Proposed Amendment — Reg. 1101(5q)

(5q) [Election required] — Each of subsections (5p) and (5s) applies to a property or properties of a taxpayer only if the taxpayer has (by letter attached to the taxpayer's return of income filed with the Minister in accordance with section 150 of the Act for the taxation year in which the property or properties were acquired) elected that the subsection apply to the property or properties, as the case may be.

Application: The March 16, 2001 draft regulations (CCA), subsec. 2(2), will amend subsec. (5q) to read as above, applicable to property acquired after February 27, 2000.

Technical Notes: See under Reg. 1101(5s), (5t).

Related Provisions: Reg. 1101(5t) — Similar election permitted for combustion turbines.

History: Subsec. 1101(5q) added by P.C. 1994-231, s. 2, February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to property acquired after April 26, 1993; an election referred to in subsec. 1101(5q) shall be deemed to have been made in accordance with if it is made by notifying the Minister of National Revenue in writing before the end of August 1994.

(5r) Computer software tax shelter property — For the purpose of this Part, where

(a) more than one property of a taxpayer is described in the same class in Schedule II,

(b) one of the properties is computer software tax shelter property, and

(c) one of the properties is a property other than computer software tax shelter property,

for properties that are described in paragraph (b) and that would otherwise be included in the class, a separate class is prescribed.

Related Provisions: Reg. 1100(20.1) — Limitation on CCA claim for computer software tax shelter property; Reg. 1100(20.2) — Definition of "computer software tax shelter property".

History: Subsec. 1101(5r) added by P.C. 2000-1000, s. 3, June 21, 2000, *Canada Gazette*, Part II, July 5, 2000, applicable generally to fiscal periods and taxation years of a taxpayer or partnership that end after August 5, 1997, but see the full application reproduced in the History to new subsecs. 1100(20.1) and (20.2).

Proposed Addition — Reg. 1101(5s), (5t)

(5s) Manufacturing or processing property [optional] — Subject to subsection (5q), a separate class is prescribed for one or more properties of a taxpayer

(a) that were acquired in a taxation year and included in the year in Class 43 in Schedule II because of paragraph (a) of that Class; and

(b) that had a capital cost to the taxpayer of at least $1,000.

Related Provisions: Reg. 1101(5q) — Election required for Reg. 1101(5s) to apply.

(5t) Combustion turbines [optional] — A separate class is prescribed for one or more properties of a taxpayer that is a combustion turbine (including associated burners and compressors) included in Class 17 in Schedule II because of subparagraph (a.1)(i) of that Class if the taxpayer has (by letter attached to the taxpayer's return of income filed with the Minister in accordance with section 150 of the Act for the taxation year in which the property or properties were acquired) elected that this subsection apply to the property or properties.

Application: The March 16, 2001 draft regulations (CCA), subsec. 2(3), will add subsecs. (5s) and (5t), applicable to property acquired after February 27, 2000.

For the purpose of subsec. 1103(2g), an election that is in respect of property described in subsec. 1101(5s) and that is made under para. 11(1)(b) of the [March 16, 2001 draft regulations] is deemed to have been made in accordance with subsec. 1101(5q).

Technical Notes: Subsection 1101(5q) allows a taxpayer to elect to have a separate class for rapidly depreciating electronic equipment. Subsection 1101(5q) is amended consequential to new subsection 1101(5s), which is described below.

New subsection 1101(5s) prescribes a separate class for one or more properties acquired by a taxpayer in a taxation year where the property is described in paragraph (a) of Class 43, the property is acquired after February 27, 2000, the property has a cost of at least $1,000 and the taxpayer has elected under subsection (5q) that the separate class apply. It should also be noted that subsection 1103(2g) provides that the undepreciated capital cost ("UCC") in respect of each such separate class election that is remaining after five years is to be transferred to the general Class 43 UCC pool.

New subsection 1101(5t) prescribes a separate class election for one or more properties acquired by a taxpayer in a taxation year that is a new combustion turbine (including associated burners and compressors) that generates electricity and to which Class 17 (8% CCA rate) applies.

(6) Reference — A reference in this Part to a class in Schedule II includes a reference to the corresponding separate classes prescribed by this section.

Interpretation Bulletins: IT-474R: Amalgamations of Canadian corporations.

Definitions [Reg. 1101]: "amount" — ITA 248(1); "arm's length" — ITA 251(1), Reg. 1102(20); "business" — Reg. 1101(1a); "Canada" — ITA 255, *Interpretation Act* 35(1); "class" — Reg. 1101(6), 1102(1)–(3), (14), (14.1); "computer software" — Reg. 1104(2); "computer software tax shelter property" — Reg. 1100(20.2); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "depreciable property" — ITA 13(21), 248(1); "disposed" — ITA 248(1)"disposition"; "dividend" — ITA 248(1); "general-purpose electronic data processing equipment" — Reg. 1104(2); "income from a mine" — Reg. 1104(5), (6.1)(a); "industrial mineral mine" — Reg. 1104(3); "leasing property" — Reg. 1100(17-20); "life insurance business" — ITA 248(1); "mine" — Reg. 1104(7); "mineral" — Reg. 1104(3); "mineral resource", "Minister", "office" — ITA 248(1); "person" — ITA 248(1); "pipeline" — Reg. 1104(2); "prescribed", "property" — ITA 248(1); "related" — ITA 251(2)–(6); "rental property" — Reg. 1100(14); "specified energy property" — Reg. 1100(25), (27)–(29); "specified leasing property" — Reg. 1100(1.11); "systems software" — Reg. 1104(2); "taxation year" — ITA 249, Reg. 1104(1); "taxpayer" — ITA 248(1); "timber resource property" — ITA 13(21), 248(1); "writing" — *Interpretation Act* 35(1).

Division III — Property Rules

1102. (1) Property not included — The classes of property described in this Part and in Schedule II shall be deemed not to include property

(a) **[otherwise deductible]** — the cost of which would be deductible in computing the taxpayer's income if the Act were read without reference to sections 66 to 66.4 of the Act;

History: Para. 1102(1)(a) amended by P.C. 1999-629, subsec. 2(1), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to taxation years that end after December 5, 1996.

(a.1) **[CRCE]** — the cost of which is included in the taxpayer's Canadian renewable and conservation expense (within the meaning assigned by section 1219);

History: Para. 1102(1)(a.1) added by P.C. 2000-1331, subsec. 1(1), August 23, 2000, *Canada Gazette*, Part II, September 13, 2000, applicable to expenses incurred after December 5, 1996.

(b) **[inventory]** — that is described in the taxpayer's inventory;

(c) **[no income purpose]** — that was not acquired by the taxpayer for the purpose of gaining or producing income;

Selected Cases: *Hickman Motors Ltd. v. Canada*, [1995] 2 C.T.C. 320 (FCA) (Depreciable property in subsidiary not necessarily depreciable in hands of parent upon winding-up).

I.T. Technical News: 3 (loss utilization within a corporate group; use of a partner's assets by a partnership.

(d) **[R&D expense]** — that was acquired by an expenditure in respect of which the taxpayer is allowed a deduction in computing income under section 37 of the Act;

Related Provisions: Reg. 5202"cost of capital"(a), 5204"cost of capital"(a) — Manufacturing and processing credit.

Interpretation Bulletins: IT-151R5: Scientific research and experimental development expenditures. See also list at end of Reg. 1102(1).

(e) **[non-Canadian art]** — that was acquired by the taxpayer after November 12, 1981, other than property acquired from a person with whom the taxpayer was not dealing at arm's length (otherwise than by virtue of a right referred to in paragraph 251(5)(b) of the Act) at the time the property was acquired if the property was acquired in the circumstances where subsection (14) applies, and is

(i) a print, etching, drawing, painting, sculpture, or other similar work of art, the cost of which to the taxpayer was not less than $200,

(ii) a hand-woven tapestry or carpet or a handmade appliqué, the cost of which to the taxpayer was not less than $215 per square metre,

(iii) an engraving, etching, lithograph, woodcut, map or chart, made before 1900, or

(iv) antique furniture, or any other antique object, produced more than 100 years before the date it was acquired, the cost of which to the taxpayer was not less than $1,000,

other than any property described in subparagraph (i) or (ii) where the individual who created the property was a Canadian (within the meaning assigned by paragraph 1104(10)(a)) at the time the property was created;

History: Para. 1102(1)(e) added by P.C. 1983-1083, s. 2, April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, applicable in respect of property (other than property described in Class 31 of Schedule II or paragraph (n) of Class 12 of that schedule) acquired or disposed of after November 12, 1981, property described in the said Class 31 acquired or disposed of after

1981 and property described in paragraph (n) of the said Class 12 acquired or disposed of after 1982.

Para. 1102(1)(e) revoked by P.C. 1978-1315, s. 8, April 20, 1978, *Canada Gazette*, Part II, May 10, 1978.

(f) that is property referred to in paragraph 18(1)(l) of the Act acquired after December 31, 1974, an outlay or expense for the use or maintenance of which is not deductible by virtue of that paragraph;

Related Provisions: Reg. 1102(17) — Grandfathering to November 13, 1974.

(g) **[pre-1972 farming/fishing property]** — in respect of which an allowance is claimed and permitted under Part XVII;

Related Provisions: Reg. 5202"cost of capital"(a), 5204"cost of capital"(a) — Manufacturing and processing credit.

(h) **[pre-1966 automobile]** — that is a passenger automobile acquired after June 13, 1963 and before January 1, 1966, the cost to the taxpayer of which, minus the initial transportation charges and retail sales tax in respect thereof, exceeded $5,000, unless the automobile was acquired by a person before June 14, 1963 and has by one or more transactions between persons not dealing at arm's length become vested in the taxpayer;

Related Provisions: Reg. 1102(11)–(13) — Interpretation.

(i) **[pre-1963 property]** — that was deemed by section 18 of the *Income Tax Act*, as enacted by the Statutes of Canada, 1958, Chapter 32, subsection 8(1), to have been acquired by the taxpayer and that did not vest in the taxpayer before the 1963 taxation year;

(j) **[life insurer]** — of a life insurer, that is property used by it in, or held by it in the course of, carrying on an insurance business outside Canada; or

History: Para. 1102(1)(j) substituted by P.C. 1979-2483, s. 2, September 13, 1979, *Canada Gazette*, Part II, September 26, 1979, applicable to 1978 *et seq.*

(k) **[linefill]** — that is linefill in a pipeline.

History: Para. 1102(1)(k) added by P.C. 1994-139, subsec. 4(1), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired after December 23, 1991, other than property acquired by a taxpayer before 1993

(a) pursuant to an agreement in writing entered into by the taxpayer before December 24, 1991, or

(b) that was under construction by or on behalf of the taxpayer on December 23, 1991.

Interpretation Bulletins [Reg. 1102(1)(k)]: IT-482R: Pipelines.

Interpretation Bulletins [Reg. 1102(1)]: IT-128R: CCA — Depreciable property; IT-148R3: Recreational properties and club dues; IT-218R: Profit, capital gains and losses from the sale of real estate, including farmland and inherited land and conversion of real estate from capital property to inventory and vice versa; IT-220R2: CCA — Proceeds of disposition of depreciable property; IT-350R: Investigation of site.

(1a) Partnership property — Where the taxpayer is a member of a partnership, the classes of property described in this Part and in Schedule II shall be deemed not to include any property that is an interest of the taxpayer in depreciable property that is partnership property of the partnership.

(2) Land — The classes of property described in Schedule II shall be deemed not to include the land upon which a property described therein was constructed or is situated.

(3) Non-residents — Where the taxpayer is a non-resident person, the classes of property described in this Part and in Schedule II shall, except for the purpose of determining the foreign accrual property income of the taxpayer for the purposes of subdivision i of Division B of Part I of the Act, be deemed not to include property that is situated outside Canada.

(4) Improvements or alterations to leased properties — Subject to subsection (5), "capital cost" for the purposes of paragraph 1100(1)(b) includes any amount expended by a taxpayer for or in respect of an improvement or alteration to a leased property.

Selected Cases [Reg. 1102(4)]: *Hickman Motors Ltd. v. R.*, [1998] 1 C.T.C. 213 (SCC) (Property retains depreciable character in hands of transferee on winding-up, if not used for other purposes).

(5) Buildings on leased properties — Where the taxpayer has a leasehold interest in a property, a reference in Schedule II to a property that is a building or other structure shall include a reference to that leasehold interest to the extent that that interest

(a) was acquired by reason of the fact that the taxpayer

(i) erected a building or structure on leased land,

(ii) made an addition to a leased building or structure, or

(iii) made alterations to a leased building or structure that substantially changed the nature of the property; or

(b) was acquired after 1975 or, in the case of any property of Class 31 or 32, after November 18, 1974, from a former lessee who had acquired it by reason of the fact that he or a lessee before him

(i) erected a building or structure on leased land,

(ii) made an addition to a leased building or structure, or

(iii) made alterations to a leased building or structure that substantially changed the nature of the property.

Related Provisions: Reg. 1102(4) — Improvements or alterations to leased property; Reg. 1102(5.1) — References to "building".

Interpretation Bulletins: IT-79R3: CCA — Buildings or other structures; IT-195R4: Rental property — CCA restrictions; IT-324: CCA — Emphyteutic lease (archived); IT-367R3: Capital cost allowance — multiple-unit residential buildings (archived); IT-464R: Leasehold interests.

(5.1) [Buildings on leased properties] — Where a taxpayer has acquired a property that would, if the property had been acquired by a person with whom the taxpayer was not dealing at arm's length at the time the property was acquired by the taxpayer, be described in paragraph (5)(a) or (b) in respect of that person, a reference in Schedule II to a property that is a building or other structure shall, in respect of the taxpayer, include a reference to that property.

History: Subsec. 1102(5.1) added by P.C. 1994-139, subsec. 4(2), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired after December 23, 1991, other than property acquired by a taxpayer before 1993

(a) pursuant to an agreement in writing entered into by the taxpayer before December 24, 1991, or

(b) that was under construction by or on behalf of the taxpayer on December 23, 1991.

(6) Leasehold interests acquired before 1949 — For the purposes of paragraphs 2(a) and (b) of Schedule III, where an item of capital cost has been incurred before the commencement of the taxpayer's 1949 taxation year, there shall be added to the capital cost of each item the amount that has been allowed in respect thereof as depreciation under the *Income War Tax Act* and has been deducted from the original cost to arrive at the capital cost of the item.

(7) River improvements — For the purposes of paragraph 1100(1)(f), capital cost includes an amount expended on river improvements by the taxpayer for the purpose of facilitating the removal of timber from a timber limit.

(8) Electrical plant used for mining — Where the generating or distributing equipment and plant (including structures) of a producer or distributor of electrical energy were acquired for the purpose of providing power to a consumer for use by the consumer in the operation in Canada of a mine, ore mill, smelter, metal refinery or any combination thereof and at least 80 per cent of the producer's or distributor's output of electrical energy

(a) for his 1948 and 1949 taxation years, or

(b) for his first two taxation years in which he sold power,

whichever period is later, was sold to the consumer for that purpose, the property shall be included in

(c) Class 10 in Schedule II if it is property acquired

(i) before 1988, or

(ii) before 1990

(A) pursuant to an obligation in writing entered into by the taxpayer before June 18, 1987,

(B) that was under construction by or on behalf of the taxpayer on June 18, 1987, or

(C) that is machinery or equipment that is a fixed and integral part of the building, structure, plant facility or other property that was under construction by or on behalf of the taxpayer on June 18, 1987, or

(d) Class 41 in Schedule II in any other case, except where the property would otherwise be included in Class 43.1 in Schedule II and the taxpayer has, by letter filed with the return of income of the taxpayer filed with the Minister in accordance with section 150 of the Act for the taxation year in which the property was acquired, elected to include the property in Class 43.1.

Related Provisions: Reg. 1102(9.1) — Acquisition before November 8, 1969; Reg. 1102(9.2) — Acquisition not at arm's length; Reg. 1103(4) — When election under para. (d) effective; Reg. 1104(7) — Interpretation.

History: That portion of subsec. 1102(8) following para. (b) and para. (d) amended by P.C. 1997-1033, subsecs. 2(1) and (2), July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable to property acquired after February 21, 1994 except that, where a taxpayer acquires the property after February 21, 1994 and before August 21, 1997, the taxpayer may file the election referred to in para. (d) by notifying the Minister of National Revenue in writing as required in those paragraphs or before February 1998.

That portion of subsec. 1102(8) following para. (b) substituted by P.C. 1989-2464, subsec. 3(1), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

(9) [Generating or distributing equipment] — Where a taxpayer has acquired generating or distributing equipment and plant (including structures) for the purpose of providing power for his own consumption in operating a mine, ore mill, smelter, metal refinery or any combination thereof and at least 80 per cent of the output of electrical energy was so used

(a) in his 1948 and 1949 taxation years, or

(b) in the first two taxation years in which he so produced power,

whichever period is the later, the property shall be included in

(c) Class 10 in Schedule II if it is property acquired

(i) before 1988, or

(ii) before 1990

(A) pursuant to an obligation in writing entered into by the taxpayer before June 18, 1987,

(B) that was under construction by or on behalf of the taxpayer on June 18, 1987, or

(C) that is machinery or equipment that is a fixed and integral part of a building, structure, plant facility or other property that was under construction by or on behalf of the taxpayer on June 18, 1987, or

(d) Class 41 in Schedule II in any other case, except where the property would otherwise be included in Class 43.1 in Schedule II and the taxpayer has, by a letter filed with the return of income of the taxpayer filed with the Minister in accordance with section 150 of the Act for the taxation year in which the property was acquired, elected to include the property in Class 43.1.

Related Provisions: Reg. 1102(9.1) — Acquisition before November 8, 1969; Reg. 1102(9.2) — Acquisition not at arm's length; Reg. 1103(4) — When election under para. (d) effective; Reg. 1104(7) — Interpretation.

History: Para. 1102(9)(d) amended by P.C. 1997-1033, subsec. 2(3), July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable to property acquired after February 21, 1994 except that, where a taxpayer acquires the property after February 21, 1994 and before August 21, 1997, the taxpayer may file the election referred to in para. (d) by notifying the Minister of National Revenue in writing as required in those paragraphs or before February 1998.

That portion of subsec. 1102(9) following para. (b) substituted by P.C. 1989, subsec. 3(2), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

(9.1) [pre-1970 acquisition] — In their application to generating or distributing equipment and plant (including structures) that were acquired by the taxpayer before November 8, 1969, subsections (8) and (9) shall be read without reference to a "metal refinery".

(9.2) [Property under Reg. 1102(8) or (9)] — Where a taxpayer acquires property after November 7, 1969 from a person with whom he was not dealing at arm's length that is property referred to in subsection (8) or (9), notwithstanding those subsections, that property shall not be included in Class 10 in Schedule II by the taxpayer unless the property had been included in that class by the person from whom it was acquired, by virtue of subsection (8) or (9) as it read in its application before November 8, 1969.

(10) Railway companies — For the purposes of section 36 of the Act, where a taxpayer is deemed to have acquired depreciable property of a prescribed class at the time a repair, replacement, alteration or renovation expenditure described therein was incurred,

(a) if the expenditure was incurred by the taxpayer before May 26, 1976, the class hereby prescribed is Class 4 in Schedule II; and

(b) if the expenditure was incurred by the taxpayer after May 25, 1976, the class hereby prescribed is the class in Schedule II in which the depreciable property that was repaired, replaced, altered or renovated would be included if such property had been acquired at the time the expenditure was incurred.

(11) Passenger automobiles — In paragraph (1)(h),

"cost to the taxpayer" of an automobile means, except as provided in subsections (12) and (13),

(a) except in any case coming under paragraph (b) or (c), the capital cost to the taxpayer of the automobile,

(b) except in any case coming under paragraph (c), where the automobile was acquired by a person (in this section referred to as the "original owner") after June 13, 1963, and has, by one or more transactions between persons not dealing at arm's length, become vested in the taxpayer, the greater of

(i) the actual cost to the taxpayer, and

(ii) the actual cost to the original owner, and

(c) where the automobile was acquired by the taxpayer outside Canada for use in connection with a permanent establishment, as defined for the purposes of Part IV or Part XXVI, outside Canada, the lesser of

(i) the actual cost to the taxpayer, and

(ii) the amount that such an automobile would ordinarily cost the taxpayer if he purchased it from a dealer in automobiles in Canada for use in Canada;

"initial transportation charges" in respect of an automobile means the costs incurred by a dealer in automobiles for transporting the automobile (before it had been used for any purpose whatever) from,

(a) in the case of an automobile manufactured in Canada, the manufacturer's plant, and

(b) in any other case, to the place in Canada, if any, at which the automobile was received or stored by a wholesale distributor,

to the dealer's place of business;

"passenger automobile" means a vehicle, other than an ambulance or hearse, that was designed to carry not more than nine persons, and that is

(a) an automobile designed primarily for carrying persons on highways and streets except an automobile that

(i) is designed to accommodate and is equipped with auxiliary folding seats installed between the front and the rear seats,

(ii) was acquired by a person carrying on the business of operating a taxi or automobile rental service, or arranging and managing funerals, for use in such business, and

(iii) is not a vehicle described in paragraph (b), or

(b) a station wagon or substantially similar vehicle;

"retail sales tax" in respect of an automobile means the aggregate of municipal and provincial retail sales taxes payable in respect of the purchase of the automobile by the taxpayer.

(12) [Pre-1966 automobile] — For the purposes of paragraph (1)(h), where an automobile is owned by two or more persons or by partners, a reference to "cost to the taxpayer" shall be deemed to be a reference to the aggregate of the cost, as defined in subsection (11), to each such person or partner.

(13) [Pre-1966 automobile] — In determining cost to a taxpayer for the purposes of paragraph (1)(h), subsection 13(7) of the Act shall not apply unless the automobile was acquired by gift.

(14) Property acquired by transfer, amalgamation or winding-up — For the purposes of this Part and Schedule II, where a property is acquired by a taxpayer

(a) in the course of a reorganization in respect of which, if a dividend were received by a corporation in the course of the reorganization, subsection 55(2) of the Act would not be applicable to the dividend by reason of the application of paragraph 55(3)(b) of the Act, or

(b), (c) [Revoked]

(d) from a person with whom the taxpayer was not dealing at arm's length (otherwise than by virtue of a right referred to in paragraph 251(5)(b) of the Act) at the time the property was acquired, and

(e) [Revoked]

the property, immediately before it was so acquired by the taxpayer, was property of a prescribed class or a separate prescribed class of the person from whom it was so acquired, the property shall be deemed to be property of that same prescribed class or separate prescribed class, as the case may be, of the taxpayer.

Related Provisions: Reg. 1100(2.21)(a); Reg. 1102(20) — Non-arm's length exception.

History: Para. 1102(14)(a) substituted for paras. (a) to (c) by P.C. 1989-2464, subsec. 3(3), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired by a taxpayer after June 17, 1987 other than property acquired after that date and before 1990 pursuant to an agreement in writing entered into by the taxpayer before June 18, 1987.

Para. 1102(14)(d) substituted by subsec. 3(4) of the said P.C. 1989-2464, applicable in respect of property acquired by a taxpayer after December 15, 1987 other than property acquired after that date and before 1990 pursuant to an obligation in writing entered into by the taxpayer before December 16, 1987.

Para. 1102(14)(e) revoked by subsec. 3(5) of the said P.C. 1989-2464, applicable in respect of property acquired by a taxpayer after August 31, 1987 other than property acquired after that date and before 1990 pursuant to an obligation in writing entered into by the taxpayer before September 1, 1987.

Para. 1102(14)(a) substituted by P.C. 1988-1473, s. 3, July 21, 1988, *Canada Gazette*, Part II, August 3, 1988, applicable to taxation years commencing after 1984.

Para. 1102(14)(a.1) added by P.C. 1984-3789, s. 7, November 29, 1984, *Canada Gazette*, Part II, December 12, 1984, applicable with respect to property acquired after November 12, 1981.

Interpretation Bulletins: IT-147R3: CCA — Accelerated write-off of manufacturing and processing machinery and equipment; IT-267R2: CCA — vessels; IT-481: Timber resource property and timber limits; IT-488R2: Winding-up of 90%-owned taxable Canadian corporations (archived).

(14.1) [Change in class] — For the purposes of this Part and Schedule II, where a taxpayer has acquired, after May 25, 1976, property of a class in Schedule II (in this subsection referred to as the "present class") that had been previously owned before May 26, 1976 by the taxpayer or by a person with whom the taxpayer was not dealing at arm's length (otherwise than by virtue of a right referred to in paragraph 251(5)(b) of the Act) at the time the property was acquired, and at the time the property was previously so owned it was a property of a different class in Schedule II (in this subsection referred to as the "former class"), the property shall be deemed to be property of the former class and not property of the present class.

Related Provisions: Reg. 1100(2.21)(a).

History: Subsec. 1102(14.1) substituted by P.C. 1989-2464, subsec. 3(6), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired by a taxpayer after December 15, 1987 other than property acquired after that date and before 1990 pursuant to an

obligation in writing entered into by the taxpayer before December 16, 1987.

Interpretation Bulletins: IT-147R3: CCA — Accelerated write-off of manufacturing and processing machinery and equipment; IT-267R2: CCA — vessels.

(14.2) Townsite costs — For the purpose of paragraph 13(7.5)(a) of the Act, a property is prescribed in respect of a taxpayer where the property would, if it had been acquired by the taxpayer, be property included in Class 10 in Schedule II because of paragraph (l) of that Class.

History: Subsec. 1102(14.2) added by P.C. 1999-629, subsec. 2(2), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable after March 6, 1996.

(14.3) Surface construction and bridges — For the purpose of paragraph 13(7.5)(b) of the Act, prescribed property is any of

(a) a road (other than a specified temporary access road), sidewalk, airplane runway, parking area, storage area or similar surface construction;

(b) a bridge; and

(c) a property that is ancillary to any property described in paragraph (a) or (b).

Related Provisions: Reg. 1104(2) — Definition of "specified temporary access road".

History: Subsec. 1102(14.3) added by P.C. 1999-629, subsec. 2(2), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable after March 6, 1996.

(15) Manufacturing and processing enterprises — For the purposes of subsection 13(10) of the Act,

(a) property is hereby prescribed that is

(i) a building included in Class 3 or 6 in Schedule II, or

(ii) machinery or equipment included in Class 8 in Schedule II,

except

(iii) property that may reasonably be regarded as having been acquired for the purpose of producing coal from a coal mine or oil, gas, metals or industrial minerals from a resource referred to in section 1201 as it read immediately before it was repealed by section 2 of Order in Council P.C. 1975-1323 of June 12, 1975, or

(iv) property acquired for use outside Canada; and

(b) a business carried on by the taxpayer is hereby prescribed as a manufacturing or processing business if,

(i) for the fiscal period in which the property was acquired, or

(ii) for the fiscal period in which a reasonable volume of business was first carried on,

whichever was later, the revenue received by the taxpayer, in the course of carrying on the business from

(iii) the sale of goods processed or manufactured by the taxpayer in Canada,

(iv) the leasing or renting of goods that were processed or manufactured by the taxpayer in Canada,

(v) advertisements in a newspaper or magazine that was produced by the taxpayer in Canada, and

(vi) construction carried on by the taxpayer in Canada,

was not less than 2/3 of the revenue of the business for the period.

Related Provisions: Reg. 1102(16) — Meaning of "revenue".

(16) For the purposes of paragraph (15)(b), "revenue" means gross revenue minus the aggregate of

(a) amounts that were paid or credited in the period, to customers of the business, in relation to such revenue as a bonus, rebate or discount or for returned or damaged goods; and

(b) amounts included therein by virtue of section 13 or subsection 23(1) of the Act.

(17) Recreational property — Property referred to in paragraph (1)(f) does not include

(a) any property that the taxpayer was obligated to acquire under the terms of an agreement in writing entered into before November 13, 1974; or

(b) any property the construction of which was

(i) commenced by the taxpayer before November 13, 1974 or commenced under an agreement in writing entered into by the taxpayer before November 13, 1974, and

(ii) completed substantially according to plans and specifications agreed to by the taxpayer before November 13, 1974.

Interpretation Bulletins: IT-148R3: Recreational properties and club dues.

(18) [Repealed]

History: Subsec. 1102(18) repealed by P.C. 1999-629, subsec. 2(3), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to payments required to be made under the terms of contracts made after March 6, 1996.

Subsec. 1102(18) added by P.C. 1978-1849, s. 1, June 8, 1978, *Canada Gazette*, Part II, June 28, 1978, applicable in respect of amounts paid after 1976 to Her Majesty in right of Canada, to a province or to a Canadian municipality.

(19) Additions and alterations — For the purposes of this Part and Schedule II, where

(a) a taxpayer acquired a property that is included in a class in Schedule II (in this subsection referred to as the "actual class"),

(b) the taxpayer acquires property that is an addition or alteration to the property referred to in paragraph (a),

(c) the property that is the addition or alteration referred to in paragraph (b) would have been property of the actual class if it had been acquired by the taxpayer at the time he acquired the property referred to in paragraph (a), and

(d) the property referred to in paragraph (a) would have been property of a class in Schedule II (in this subsection referred to as the "present class") that is different from the actual class if it had been acquired by the taxpayer at the time he acquired the addition or alteration referred to in paragraph (b),

the addition or alteration referred to in paragraph (b) shall, except as otherwise provided in this Part or in Schedule II, be deemed to be an acquisition by the taxpayer of property of the present class.

History: Subsec. 1102(19) added by P.C. 1978-3768, s. 1, December 14, 1978, *Canada Gazette*, Part II, December 27, 1978.

Interpretation Bulletins: IT-79R3: CCA — Buildings or other structures.

(20) Non-arm's length exception — For the purposes of subsections 1100(2.2) and (19), 1101(1ad) and 1102(14) (in this subsection referred to as the "relevant

subsections"), where, but for this subsection, a taxpayer would be considered to be dealing not at arm's length with another person as a result of a transaction or series of transactions the principal purpose of which may reasonably be considered to have been to cause one or more of the relevant subsections to apply in respect of the acquisition of a property, the taxpayer shall be considered to be dealing at arm's length with the other person in respect of the acquisition of that property.

Related Provisions: ITA 248(10) — Series of transactions.

History: Subsec. 1102(20) added by P.C. 1989-2464, subsec. 3(7), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired by a taxpayer after December 15, 1987 other than property acquired after that date and before 1990 pursuant to an obligation in writing entered into by the taxpayer before December 16, 1987.

Interpretation Bulletins: IT-267R2: CCA — vessels; IT-474R: Amalgamations of Canadian corporations; IT-488R2: Winding-up of 90%-owned taxable Canadian corporations (archived).

(21) [Class 43.1 property] — Where a taxpayer has acquired a property described in Class 43.1 of Schedule II in circumstances in which clauses (b)(iii)(A) and (B) or (e)(iii)(A) and (B) of that class apply,

(a) the portion of the property, determined by reference to capital cost, that is equal to or less than the capital cost of the property to the person from whom the property was acquired, is included in that class; and

(b) the portion of the property, if any, determined by reference to capital cost, that is in excess of the capital cost of the property to the person from whom it was acquired, shall not be included in that class.

History: Subsec. 1102(21) added by P.C. 2000-1331, subsec. 1(2), August 23, 2000, *Canada Gazette*, Part II, September 13, 2000, applicable to property acquired after June 26, 1996.

Definitions [Reg. 1102]: "actual class" — Reg. 1102(19)(a); "amount" — ITA 248(1); "arm's length" — ITA 251(1), Reg. 1102(20); "automobile", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "class" — Reg. 1101(6), 1102(1)–(3), (14), (14.1); "commencement" — *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "cost to the taxpayer" — Reg. 1102(11), (12); "depreciable property" — ITA 13(21), 248(1); "disposed" — ITA 248(1)"disposition"; "dividend" — ITA 248(1); "fiscal period" — ITA 249.1; "foreign accrual property income" — ITA 95(1), (2), 248(1); "former class" — Reg. 1102(14.1); "gross revenue" — ITA 248(1); "Her Majesty" — *Interpretation Act* 35(1); "individual" — ITA 248(1); "initial transportation charges" — Reg. 1102(11); "inventory" — ITA 248(1); "mine" — Reg. 1104(7); "mineral" — Reg. 1104(3); "Minister", "non-resident" — ITA 248(1); "ore" — Reg. 1104(2); "original owner" — Reg. 1102(11)(c); "passenger automobile" — Reg. 1102(11); "person" — ITA 248(1); "pipeline" — Reg. 1104(2); "prescribed" — ITA 248(1); "present class" — Reg. 1102(14.1), (19)(d); "property" — ITA 248(1); "relevant subsections" — Reg. 1102(20); "retail sales tax" — Reg. 1102(11); "revenue" — Reg. 1102(16); "series" — ITA 248(10); "specified temporary access road" — Reg. 1104(2); "taxation year" — ITA 249, Reg. 1104(1); "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Division IV — Inclusions In and Transfers Between Classes

1103. (1) Elections to include properties in Class 1 — In respect of properties otherwise included in any of Classes 2 to 10, 11 and 12 in Schedule II, a taxpayer may elect to include in Class 1 in Schedule II all such properties acquired for the purpose of gaining or producing income from the same business.

Related Provisions: ITA 220(3.2), Reg. 600(d) — Late filing or revocation of election; Reg. 1103(3)–(5) — How election made and when effective.

History: Subsec. 1103(1) amended by P.C. 1991-2272, s. 3, November 21, 1991, *Canada Gazette*, Part II, December 4, 1991, applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

Interpretation Bulletins: IT-274R: Rental properties — capital cost of $50,000 or more.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

(2) Elections to include properties in Class 2, 4 or 17 — Where the chief depreciable properties of a taxpayer are included in Class 2, 4 or 17 in Schedule II, the taxpayer may elect to include in Class 2, 4 or 17 in Schedule II, as the case may be, a property that would otherwise be included in another class in Schedule II and that was acquired by him before May 26, 1976 for the purpose of gaining or producing income from the same business as that for which those properties otherwise included in the said Class 2, 4 or 17 were acquired.

Related Provisions: ITA 220(3.2), Reg. 600(d) — Late filing or revocation of election; Reg. 1103(3)–(5) — How election made and when effective.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

(2a) Elections to include properties in Class 8 — In respect of properties otherwise included in Class 19 or 21 in Schedule II, a taxpayer may, by letter attached to the return of his income for a taxation year filed with the Minister in accordance with section 150 of the Act, elect to include in Class 8 in Schedule II all properties of the said Class 19 or all properties of the said Class 21, as the case may be, owned by him at the commencement of the year.

Related Provisions: Reg. 1103(3)–(5) — How election made and when effective.

(2b) Elections to include properties in Class 37 — In respect of properties that would have been included in Class 37 in Schedule II had they been acquired after the date on which Class 37 became effective, a taxpayer may, by letter attached to the return of his income for a taxation year filed with the Minister in accordance with section 150 of the Act, elect to include in Class 37 all such properties acquired by the taxpayer before that date.

Related Provisions: Reg. 1103(3)–(5) — How election made and when effective.

History: Subsec. 1103(2b) added by P.C. 1982-599, s. 3, February 25, 1982, *Canada Gazette*, Part II, March 10, 1982.

(2c) Elections to make certain transfers — Where a taxpayer has acquired, after May 25, 1976, all or any part of a property of a class in Schedule II (in this subsection referred to as the "present class") and the property or part thereof, if it had been acquired before May 26, 1976, would have been property of a different class in Schedule II (in this subsection referred to as the "former class") and

(a) he was obligated to acquire the property under the terms of an agreement in writing entered into before May 26, 1976,

(b) he commenced the construction, manufacture or production of the property before May 26, 1976 or the construction, manufacture or production of the property was commenced under an agreement in writing entered into by him before May 26, 1976, or

(c) he acquired the property on or before December 31, 1976 or he was obligated to acquire the property under the terms of an agreement in writing entered into on or before December 31, 1976, if

(i) arrangements, evidenced by writing, respecting the acquisition, construction, manufacture or pro-

duction of the property had been substantially advanced before May 26, 1976, and

(ii) he had, before May 26, 1976, demonstrated a *bona fide* intention to acquire the property,

the taxpayer may, by letter attached to the return of his income filed with the Minister in accordance with section 150 of the Act, for the taxation year in which the property was acquired or for the immediately following taxation year, elect to transfer in the year of acquisition

(d) the property or the part thereof, acquired after May 25, 1976, from the present class to the former class; or

(e) the part of the property acquired before May 26, 1976, from the former class to the present class.

Related Provisions: Reg. 1103(3)–(5) — How election made and when effective.

(2d) Where a taxpayer has

(a) disposed of a property (in this subsection referred to as the "former property") of a class in Schedule II (in this subsection referred to as the "former class"), and

(b) before the end of the taxation year in which the former property was disposed of, acquired property (in this subsection referred to as the "new property") of a class in Schedule II (in this subsection referred to as the "present class") and the present class is neither

(i) the former class, nor

(ii) a separate class described in section 1101, other than subsection 1101(5d),

such that

(c) if the former property had been acquired at the time that the new property was acquired and from the person from whom the new property was acquired, the former property would have been included in the present class, and

(d) if the new property had been acquired at the time that the former property was acquired and from the person from whom the former property was acquired, the new property would have been included in the former class,

the taxpayer may, by letter attached to the return of income of the taxpayer filed with the Minister in accordance with section 150 of the Act in respect of the taxation year in which the former property was disposed of, elect to transfer the former property from the former class to the present class in the year of its disposition and, for greater certainty, the transfer shall be considered to have been made before the disposition of the property.

Related Provisions: ITA 220(3.2), Reg. 600(d) — Late filing or revocation of election; Reg. 1103(3)–(5) — How election made and when effective.

Interpretation Bulletins: IT-147R3: CCA — Accelerated write-off of manufacturing and processing machinery and equipment; IT-469R: CCA — Earth-moving equipment.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

(2e) Transfers from Class 40 to Class 10 — For the purposes of this Part and Schedule II, where property of a taxpayer would otherwise be included in Class 40 in Schedule II, all such properties owned by the taxpayer shall be transferred from Class 40 to Class 10 immediately after the commencement of the first taxation year of the taxpayer commencing after 1989.

Related Provisions: Reg. 1103(3)–(5) — How election made and when effective.

Interpretation Bulletins: IT-147R3: CCA — Accelerated write-off of manufacturing and processing machinery and equipment; IT-283R2: CCA — Videotapes, videotape cassettes, films, computer software and master recording media (archived).

(2f) Elections to include properties in Class 1, 3 or 6 — In respect of properties otherwise included in Class 20 in Schedule II, a taxpayer may, by letter attached to the return of income of the taxpayer for a taxation year filed with the Minister in accordance with section 150 of the Act, elect to include in Class 1, 3 or 6 in Schedule II, as specified in the letter, all properties of Class 20 in Schedule II owned by the taxpayer at the commencement of the year.

Related Provisions: ITA 220(3.2) — Late, amended or revoked elections; Reg. 1103(3)–(5) — How election made and when effective.

(2g) Transfers to Class 8 or Class 10 [or Class 43] — For the purposes of this Part and Schedule II, where one or more properties of a taxpayer are included in a separate class pursuant to an election filed by the taxpayer in accordance with subsection 1101(5q), all the properties included in that class immediately after the beginning of the taxpayer's fifth taxation year beginning after the end of the first taxation year in which a property of the class became available for use by the taxpayer for the purposes of subsection 13(26) of the Act shall be transferred immediately after the beginning of that fifth taxation year from the separate class to the class in which the property would, but for the election, have been included.

Proposed Amendment — Reg. 1103(2g) heading

Application: The March 16, 2001 draft regulations (CCA), subsec. 3(1), will add a reference to Class 43 to the heading before subsec. 1103(2g), applicable to property acquired after February 27, 2000.

Related Provisions: Reg. 1103(3)–(5) — How election made and when effective.

(2h) Elections not to include properties in Class 44 — A taxpayer may, by letter attached to the taxpayer's return of income filed with the Minister in accordance with section 150 of the Act for the taxation year in which a property was acquired, elect not to include the property in Class 44 in Schedule II.

Related Provisions: Reg. 1103(3)–(5) — How election made and when effective.

History: Subsecs. 1103(2g), (2h) added by P.C. 1994-231, s. 3, February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to property acquired after April 26, 1993; an election referred to in subsec. 1103(2h) is deemed to have been made in accordance with the subsec. if it is made by notifying the Minister of National Revenue in writing before the end of August 1994.

Subpara. 1103(2d)(b)(ii) amended by P.C. 1991-465, s. 3, March 14, 1991, *Canada Gazette*, Part II, March 27, 1991, applicable after April 26, 1989.

Subsec. 1103(2d) substituted, (2e), (2f) added, by P.C. 1989-2464, s. 4, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, (2d) applicable in respect of dispositions of property occurring after 1987, except that any election under the subsec. made before July 3, 1990, shall be deemed to be a valid election; (2e) applicable to 1990 *et seq.*; (2f) applicable to 1988 *et seq.*

Paras. 1103(2d)(b), (c) and (d) substituted by P.C. 1983-1083, s. 3, April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, applicable in respect of property (other than property described in Class 31 of Schedule II or paragraph (n) of Class 12 of that schedule) acquired or disposed of after November 12, 1981, property described in the said Class 31 acquired or disposed of after 1981 and property described in paragraph (n) of the said Class 12 acquired or disposed of after 1982.

Proposed Addition — Reg. 1103(2i)

(2i) Election to include properties in Class 35 — In respect of any property otherwise included in Class 7

in Schedule II because of paragraph (h) of that Class and to which paragraph 1100(1)(z.1a) and subsection 1101(5d), or paragraph 1100(1)(z.1c) and subsection 1101(5d.2), would apply if Class 35 of that Schedule applied to the property, the taxpayer may (by letter attached to the taxpayer's return of income filed with the Minister in accordance with section 150 of the Act for the taxation year in which the property is acquired) elect to include the property in Class 35 rather than in Class 7.

Application: The March 16, 2001 draft regulations (CCA), subsec. 3(2), will add subsec. (2i), applicable to property acquired after February 27, 2000.

Technical Notes: New subsection 1103(2i) is consequential to new paragraph (h) of Class 7 (15% CCA rate) and provides an election under which a taxpayer may include certain railway assets in Class 35 (7% CCA rate) rather than in Class 7. This election may be made only in respect of railway cars and railway suspension devices described in paragraph (h) of Class 7 that are acquired after February 27, 2000. Further, such property only qualifies to be placed in Class 35 under this election if the property would have been eligible for an additional 6% CCA allowance under paragraph 1100(1)(z.1a) and subsection 1101(5d), or paragraph 1100(1)(z.1c) and subsection 1101(5d.2), if Class 35 had applied to the property. While property to which subsection 1103(2i) applies is eligible for a combined CCA rate of 13% (7% + 6%) rather than the 15% CCA rate available to Class 7 property, such property is "exempt property" for the purposes of the specified leasing property rules in subsection 1100(1.13) of the Regulations.

(3) Election rules — To be effective in respect of a taxation year, an election under this section must be made not later than the last day on which the taxpayer may file a return of his income for the taxation year in accordance with section 150 of the Act.

(4) [Timing of election] — An election under paragraph 1102(8)(d) or (9)(d) or this section shall be effective from the first day of the taxation year in respect of which the election is made and shall continue to be effective for all subsequent taxation years.

History: Subsec. 1103(4) amended by P.C. 1997-1033, s. 3, July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable after February 21, 1994.

(5) [How election made] — An election under subsection (1) or (2) shall be made by registered letter addressed to the District Office at which the taxpayer customarily files the returns required by section 150 of the Act.

Definitions [Reg. 1103]: "business" — ITA 248(1); "class" — Reg. 1101(6), 1102(1)–(3), (14), (14.1); "commencement" — *Interpretation Act* 35(1); "disposed" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "end of the taxation year" — Reg. 1104(1); "former class" — Reg. 1103(2c), (2d)(a); "former property" — Reg. 1103(2d)(a); "Minister" — ITA 248(1); "new property" — Reg. 1103(2d)(b); "person" — ITA 248(1); "present class" — Reg. 1103(2c), (2d)(b); "property" — ITA 248(1); "taxation year" — ITA 249, Reg. 1104(1); "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [Reg. 1103]: IT-190R2: CCA — transferred and misclassified property; IT-327: Elections under Regulation 1103 (archived); IT-478R2: CCA — Recapture and terminal loss.

DIVISION V — INTERPRETATION

1104. (1) Definitions — Where the taxpayer is an individual and his income for the taxation year includes income from a business the fiscal period of which does not coincide with the calendar year, in respect of the depreciable properties acquired for the purpose of gaining or producing income from the business, a reference in this Part to

"end of the taxation year" shall be deemed to be a reference to the end of the fiscal period of the business; and

"taxation year" shall be deemed to be a reference to the fiscal period of the business.

(2) In this Part and Schedule II,

"certified feature film" means a motion picture film certified by the Minister of Communications to be a film of not less than 75 minutes running time in respect of which all photography or art work specifically required for the production thereof and all film editing therefor were commenced after November 18, 1974, and either the film was completed before May 26, 1976, or the photography or art work was commenced before May 26, 1976, and certified by him to be

(a) a film the production of which is contemplated in a coproduction agreement entered into between Canada and another country, or

(b) a film in respect of which

(i) the person who performed the duties of producer was a Canadian,

(ii) no fewer than ⅔ in number of all the persons each of whom

(A) was a person who performed the duties of director, screenwriter, music composer, art director, picture editor or director of photography, or

(B) was the individual in respect of whose services as an actor or actress in respect of the film the highest remuneration or the second highest remuneration was paid or payable,

were Canadians,

(iii) not less than 75 per cent of the aggregate of the remuneration paid or payable to persons for services provided in respect of the film (other than remuneration paid or payable to or in respect of the persons referred to in subparagraphs (i) and (ii) or remuneration paid or payable for processing and final preparation of the film) was paid or payable to Canadians,

(iv) not less than 75 per cent of the aggregate of costs incurred for processing and final preparation of the film including laboratory work, sound recording, sound editing and picture editing (other than remuneration paid or payable to or in respect of persons referred to in subparagraphs (i), (ii) and (iii)), was incurred in respect of services rendered in Canada, and

(v) the copyright protecting its use in Canada is beneficially owned

(A) by a person who is either a Canadian or a corporation incorporated under the laws of Canada or a province, or

(B) jointly or otherwise by two or more persons described in clause (A),

other than a film

(c) acquired after the day that is the earlier of

(i) the day of its first commercial use, and

(ii) 12 months after the day the principal photography thereof is completed, or

(d) in respect of which certification under this definition has been revoked by the Minister of Communications as provided in paragraph (10)(b);

Related Provisions: ITA 127.52(1)(c) — Add-back of CCA on film properties for minimum tax purposes; Reg. 1104(10) — Interpretation.

History: All that portion of the definition of "certified feature film" in subsec. 1104(2) preceding para. (a), and para. (d) substituted by P.C. 1980-3374, s. 2, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980.

All that portion of the definition of "certified feature film" in subsec. 1104(2) following cl. (v)(B) substituted by P.C. 1978-3731, subsec. 2(1), December 14, 1978, *Canada Gazette*, Part II, December 27, 1978, applicable in respect of property acquired after 1978.

Minister of Communications: S. 46 of 1995, c. 11, in force July 12, 1996, provides as follows:

> 46. Other references — Every reference made to the Minister of Communications, the Minister of Multiculturalism and Citizenship and the Secretary of State of Canada in relation to any matter to which the powers, duties and functions of the Minister of Canadian Heritage extend by virtue of this Act, in any other Act of Parliament or in any order, regulation or other instrument made under any Act of Parliament shall, unless the context otherwise requires, be read as a reference to the Minister of Canadian Heritage.

"certified production", in respect of a particular taxation year, means a motion picture film or video tape certified by the Minister of Communications to be a film or tape in respect of which all photography, taping or art work required specifically for the production thereof and all film or tape editing therefor were commenced after May 25, 1976, certified by him to be a film or tape in respect of which the principal photography or taping thereof was commenced before the end of the particular taxation year or was completed no later than 60 days after the end of that year and certified by him to be

(a) a film or tape the production of which is contemplated in a coproduction agreement entered into between Canada and another country, or

(b) a film or tape in respect of which

(i) the individual who performed the duties of producer was a Canadian,

(ii) the Minister of Communications has allotted not less than an aggregate of six units of production, not less than two of which were allotted by virtue of clause (A) or (B) and not less than one of which was allotted by virtue of clause (C) or (D), for individuals who provided services in respect of the film or tape, in the following manner:

(A) for the director, two units of production,

(B) for the screenwriter, two units of production,

(C) for the actor or actress in respect of whose services for the film or tape the highest remuneration was paid or payable (unless in the opinion of the Minister of Communications the individual did not perform a major role in the film or tape), one unit of production,

(D) for the actor or actress in respect of whose services for the film or tape the second highest remuneration was paid or payable (unless in the opinion of the Minister of Communications the individual did not perform a major role in the film or tape), one unit of production,

(E) for the art director, one unit of production,

(F) for the director of photography, one unit of production,

(G) for the music composer, one unit of production, and

(H) for the picture editor, one unit of production,

shall be allotted, provided the individual in respect of such allotment was a Canadian,

(iii) not less than 75 per cent of the aggregate of all costs (other than costs determined by reference to the amount of income from the film or tape) paid or payable to persons for services provided in respect of producing the film or tape (other than remuneration paid or payable to, or in respect of, individuals referred to in subparagraph (i) or (ii), costs referred to in subparagraph (iv) incurred for processing and final preparation of the film or tape, and amounts paid or payable in respect of insurance, financing, brokerage, legal and accounting fees and similar amounts) was paid or payable to, or in respect of services provided by, Canadians, and

(iv) not less than 75 per cent of the aggregate of all costs (other than costs determined by reference to the amount of income from the film or tape) incurred for processing and final preparation of the film or tape, including laboratory work, sound re-recording, sound editing and picture editing (other than remuneration paid or payable to, or in respect of, individuals referred to in subparagraph (i) or (ii)) was incurred in respect of services provided in Canada,

other than a film or tape

(c) acquired after the day that is the earlier of

(i) the day of its first commercial use, and

(ii) 12 months after the day the principal photography or taping thereof is completed,

(d) acquired by a taxpayer who has not paid in cash, as of the end of the particular taxation year, to the person from whom he acquired the film or tape, at least 5 per cent of the capital cost to the taxpayer of the film or tape as of the end of the year,

(e) acquired by a taxpayer who has issued in payment or part payment thereof, a bond, debenture, bill, note, mortgage or similar obligation in respect of which an amount is not due until a time that is more than four years after the end of the taxation year in which the taxpayer acquired the film or tape,

(f) acquired from a non-resident, or

(g) in respect of which certification under this definition has been revoked by the Minister of Communications as provided in paragraph (10)(b),

and, for the purposes of the application of this definition,

(h) in respect of a film or tape acquired in 1987, other than a film or tape in respect of which paragraph (i) applies, the reference in this definition to "commenced before the end of the particular taxation year or was completed no later than 60 days after the end of that year" shall be read as a reference to "commenced before the end of 1987 or was completed before July, 1988", and

(i) in respect of a film or tape acquired in 1987 or 1988 that is included in paragraph (n) of Class 12 in Schedule II and that is part of a series of films or tapes that includes another property included in that paragraph, the reference in this definition to "commenced before the end of the particular taxation year or was completed no later than 60 days after the end of that year" shall be read as a reference to "completed before 1989";

Related Provisions: ITA 127.52(1)(c) — Add-back of CCA on film properties for minimum tax purposes; Reg. 1104(10) — Interpretation; Reg. 7500 — "prescribed film production".

History: Para. (e) of "certified production" in subsec. 1104(2) amended by P.C. 1994-1817, para. 62(b), November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

That portion between paras. (g) and (h), and paras. (h) and (i), of "certified production" added by P.C. 1988-2795, s. 3, December 22, 1988, *Canada Gazette*, Part II, January 18, 1989, applicable after 1986.

Cls. (b)(ii)(C) and (D) of the definition "certified production" and subparas. (b)(iii) and (iv) substituted by P.C. 1986-477, subsecs. 2(3), (4), February 27, 1986, *Canada Gazette*, Part II, March 19, 1986, applicable in respect of a motion picture film or video tape, the principal photography or taping of which commenced after 1985.

That portion of the definition "certified feature production" preceding para. (a) substituted by P.C. 1986-477, subsec. 2(2), February 27, 1986, *Canada Gazette*, Part II, March 19, 1986, to *inter alia* change the definition from "certified feature production" to "certified production", applicable in respect of a motion picture film or video tape, the principal photography of which commenced after 1985.

Para. (d) of the definition "certified feature production" substituted by P.C. 1984-1062, subsec. 1(1), March 29, 1984, *Canada Gazette*, Part II, April 18, 1984, applicable in respect of property acquired after 1982.

All that portion of subpara. (b)(ii) of the definition "certified feature production" preceding cl. (A) substituted by P.C. 1981-3478, December 10, 1981, *Canada Gazette*, Part II, December 23, 1981, applicable in respect of a motion picture film or video tape, the principal photography or taping of which commenced after 1981.

All that portion of the definition "certified feature production" preceding para. (a), subpara. (b)(ii) preceding cl. (A), and para. (g) substituted by P.C. 1980-3374, s. 2, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980.

All those portions of the definition "certified feature production" preceding para. (a) and following subpara. (b)(iv) substituted by P.C. 1978-3731, subsecs. 2(2), (3), December 14, 1978, *Canada Gazette*, Part II, December 27, 1978, subsec. 2(2) effective in respect of 1978 *et seq.*, subsec. 2(3) applicable in respect of property acquired after 1978.

Minister of Communications: S. 46 of 1995, c. 11, in force July 12, 1996, provides as follows:

> 46. Other references — Every reference made to the Minister of Communications, the Minister of Multiculturalism and Citizenship and the Secretary of State of Canada in relation to any matter to which the powers, duties and functions of the Minister of Canadian Heritage extend by virtue of this Act, in any other Act of Parliament or in any order, regulation or other instrument made under any Act of Parliament shall, unless the context otherwise requires, be read as a reference to the Minister of Canadian Heritage.

Interpretation Bulletins: IT-283R2: CCA — Video tapes, videotape cassettes, films, computer software and master recording tapes (archived); IT-441: CCA — Certified feature productions and certified short productions (archived).

"certified short production" — [Revoked]

History: Definition "certified short production" revoked by P.C. 1986-477, subsec. 2(1), February 27, 1986, *Canada Gazette*, Part II, March 19, 1986, applicable in respect of a motion picture film or video tape, the principal photography or taping of which commenced after 1985.

Para. (d) of the definition "certified short production" in subsec. 1104(2) substituted by P.C. 1984-1062, subsec. 1(2), March 29, 1984, *Canada Gazette*, Part II, April 18, 1984, applicable in respect of property acquired after 1982.

All that portion of the definition "certified short production" in subsec. 1104(2) preceding para. (a), and para. (g) substituted by P.C. 1980-3374, s. 2, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980.

All those portions of the definition "certified short production" preceding para. (a) and following subpara. (b)(ii) substituted by P.C. 1978-3731, subsecs. 2(4), (5), December 14, 1978, *Canada Gazette*, Part II, December 27, 1978, subsec. 2(4) effective in respect of 1978 *et seq.*, subsec. 2(5) applicable in respect of property acquired after 1978.

"computer software" includes systems software and a right or licence to use computer software;

Related Provisions: Reg. 1100(20.1), (20.2) — Limitation on CCA claim for computer software tax shelter property.

History: "Computer software" added by P.C. 1983-3411, subsec. 1(1), November 3, 1983, *Canada Gazette*, Part II, November 23, 1983, effective May 26, 1976.

Interpretation Bulletins: IT-283R2: CCA — Videotapes, videotape cassettes, films, computer software and master recording media (archived).

Proposed Addition — Reg. 1104(2)"data network infrastructure equipment"

"data network infrastructure equipment" means network infrastructure equipment that controls, transfers, modulates or directs data, and that operates in support of telecommunications applications such as e-mail, instant messaging, audio- and video-over-Internet Protocol or Web browsing, Web searching and Web hosting, including data switches, multiplexers, routers, remote access servers, hubs, domain name servers, and modems, but does not include:

(a) network equipment (other than radio network equipment) that operates in support of telecommunications applications, if the bandwidth made available by that equipment to a single end-user of the network is 64 kilobits per second or less in either direction,

(b) radio network equipment that operates in support of wireless telecommunications applications unless the equipment supports digital transmission on a radio channel,

(c) network equipment that operates in support of broadcast telecommunications applications and that is unidirectional,

(d) network equipment that is end-user equipment, including telephone sets, personal digital assistants and facsimile transmission devices,

(e) equipment that is described in paragraph (f.2) or (v) of Class 10 or in Class 45,

(f) wires or cables, or similar property, and

(g) structures;

Application: The June 27, 2005 draft regulations (CCA — introduction of cls. 45 & 46), s. 3, (pre-published in the *Canada Gazette*, Part I, July 9, 2005), will add the definition "data network infrastructure equipment" to subsec. 1104(2), deemed in force on March 23, 2004.

Regulatory Impact Analysis Statement: See under Reg. 1100(1)(a)(xxxi) (Computers) above.

Technical Notes (September 16, 2004): Subsection 1104(2) is amended to add the definition "data network infrastructure equipment".

Generally, "data network infrastructure equipment" means network infrastructure equipment that controls, transfers, modulates or directs data, and that operates in support of telecommunications applications such as e-mail, instant messaging, audio- and video-over- Internet Protocol or Web browsing, Web searching and Web hosting, including data switches, multiplexers, routers, remote access servers, hubs, domain name servers, and modems, but not including:

- network equipment (other than radio network equipment) that operates in support of telecommunications applications, if the bandwidth made available by that equipment to a single end-user of the network is 64 kilobits per second or less in either direction; which is equivalent to the amount of bandwidth made available by a single voice channel of the Public Switched Telephone Network (PSTN);
- radio network equipment that operates in support of wireless telecommunications applications unless the equipment supports digital transmission over a radio channel; for example, Advanced Mobile Phone Service (AMPS) radio network equipment which provides analog speech modulation is excluded from data network infrastructure equipment;
- network equipment that operates in support of broadcast telecommunications applications and that is unidirectional;
- network equipment that is end-user equipment, including telephone sets, personal digital assistants and facsimile transmission devices;

- equipment that is described in paragraph (f.2) or (v) of Class 10 or in Class 45;
- wires or cables, or similar property; and
- structures.

Property that is data network infrastructure equipment (acquired after March 22, 2004) is included in new Class 46 (30% CCA rate).

Federal budget, Supplementary Information, March 23, 2004: See under Schedule II, Class 46.

"designated overburden removal cost" of a taxpayer means any cost incurred by him in respect of clearing or removing overburden from a mine in Canada owned or operated by him where the cost

(a) was incurred after November 16, 1978 and before 1988,

(b) was incurred after the mine came into production in reasonable commercial quantities,

(c) as of the end of the taxation year in which the cost was incurred, has not been deducted by the taxpayer in computing his income, and

(d) is not deductible, in whole or in part, by the taxpayer in computing his income for a taxation year subsequent to the taxation year in which the cost was incurred, other than by virtue of paragraph 20(1)(a) of the Act;

History: Para. (a) substituted by P.C. 1990-2780, subsec. 1(1), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to 1988 *et seq.*

"Designated overburden removal cost" added by P.C. 1979-1487, s. 3, May 17, 1979, *Canada Gazette*, Part II, June 13, 1979, effective commencing November 17, 1978.

"designated underground storage cost" of a taxpayer means any cost incurred by him after December 11, 1979 in respect of developing a well, mine or other similar underground property for the storage in Canada of petroleum, natural gas or other related hydrocarbons;

History: "Designated underground storage cost" added by P.C. 1980-3279, s. 1, December 4, 1980, *Canada Gazette*, Part II, December 24, 1980.

"gas or oil well equipment" includes

(a) equipment, structures and pipelines, other than a well casing, acquired to be used in a gas or oil field in the production therefrom of natural gas or crude oil, and

(b) a pipeline acquired to be used solely for transmitting gas to a natural gas processing plant,

but does not include

(c) equipment or structures acquired for the refining of oil or the processing of natural gas including the separation therefrom of liquid hydrocarbons, sulphur or other joint products or by-products, or

(d) a pipeline for removal or for collection for immediate removal of natural gas or crude oil from a gas or oil field except a pipeline referred to in paragraph (b);

Interpretation Bulletins: IT-476: CCA — Gas and oil exploration and production equipment.

"general-purpose electronic data processing equipment" means electronic equipment that, in its operation, requires an internally stored computer program that

(a) is executed by the equipment,

(b) can be altered by the user of the equipment,

(c) instructs the equipment to read and select, alter or store data from an external medium such as a card, disk or tape, and

(d) depends upon the characteristics of the data being processed to determine the sequence of its execution;

"ore" includes ore from a mineral resource that has been processed to any stage that is prior to the prime metal stage or its equivalent;

"railway system" includes a railway owned or operated by a common carrier, together with all buildings, rolling stock, equipment and other properties pertaining thereto, but does not include a tramway;

"specified temporary access road" means

(a) a temporary access road to an oil or gas well in Canada, and

(b) a temporary access road the cost of which would, if the definition "Canadian exploration expense" in subsection 66.1(6) of the Act were read without reference to paragraph (l) of that definition, be a Canadian exploration expense because of paragraph (f) or (g) of that definition;

Related Provisions: Reg. 1102(14.3)(a) — Exclusion from prescribed property; Reg. Sch. II:Cl. 8(i)(vi), 17(c) — Specified temporary access road excluded from other classes.

History: The definition "specified temporary access road" added to subsec. 1104(2) by P.C. 1999-629, subsec. 3(1), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable after March 6, 1996.

"systems software" means a combination of computer programs and associated procedures, related technical documentation and data that

(a) performs compilation, assembly, mapping, management or processing of other programs,

(b) facilitates the functioning of a computer system by other programs,

(c) provides service or utility functions such as media conversion, sorting, merging, system accounting, performance measurement, system diagnostics or programming aids,

(d) provides general support functions such as data management, report generation or security control, or

(e) provides general capability to meet wide-spread categories of problem solving or processing requirements where the specific attributes of the work to be performed are introduced mainly in the form of parameters, constants or descriptors rather than in program logic,

and includes a right or licence to use such a combination of computer programs and associated procedures, related technical documentation and data;

History: All that portion of the definition "systems software" in subsec. 1104(2) following para. (d) substituted by P.C. 1983-3411, subsec. 1(2), November 3, 1983, *Canada Gazette*, Part II, November 23, 1983, effective May 26, 1976.

Interpretation Bulletins: IT-283R2: CCA — Video tapes, videotape cassettes, films, computer software and master recording tapes (archived).

"tar sands ore" means ore extracted from a deposit of bituminous sands or oil shales;

History: "Tar sands ore" amended by P.C. 1998-49, subsec. 2(1), January 26, 1998, *Canada Gazette*, Part II, February 4, 1998, applicable after March 6, 1996.

"Tar sands ore" added by P.C. 1985-465, February 14, 1985, subsec. 2(1), *Canada Gazette*, Part II, March 6, 1985, applicable to taxation years commencing after November 12, 1981, except that for the purpose of that part of para. 1100(1)(w) preceding subpara. (i) thereof and that part of para. 1100(1)(x) preceding subpara. (i) thereof and for the purposes of determining the prescribed class in which depreciable property is to be included, the definition is not applicable with respect to depreciable property acquired in taxation years commencing before November 13, 1981.

"telegraph system" includes the buildings, structures, general plant and communication and other equipment pertaining thereto;

"telephone system" includes the buildings, structures, general plant and communication and other equipment pertaining thereto;

"television commercial message" means a commercial message as defined in the *Television Broadcasting Regulations, 1987* made under the *Broadcasting Act*;

History: The definition "television commercial message" amended by P.C. 1995-775, subsec. 2(2), May 16, 1995, *Canada Gazette*, Part II, May 31, 1995, applicable after January 8, 1987.

"tramway or trolley bus system" includes the buildings, structures, rolling stock, general plant and equipment pertaining thereto and where buses other than trolley buses are operated in connection therewith includes the properties pertaining to those bus operations.

(3) Except as otherwise provided in subsection (6), in this Part and Schedules II and V,

"industrial mineral mine" includes a peat bog or deposit of peat but does not include a mineral resource;

"mineral" includes peat;

"mining" includes the harvesting of peat.

(4) [Revoked]

History: Subsec. 1104(4) revoked by P.C. 1979-2483, s. 3, September 13, 1979, *Canada Gazette*, Part II, September 26, 1979, applicable to 1978 *et seq.*

(5) Mining — For the purposes of paragraphs 1100(1)(w) to (ya), subsections 1101(4a) to (4d) and Classes 10, 28 and 41 of Schedule II, a taxpayer's "income from a mine", or any expression referring to a taxpayer's income from a mine, includes income reasonably attributable to

(a) the processing by the taxpayer of

(i) ore (other than iron ore or tar sands ore) all or substantially all of which is from a mineral resource owned by the taxpayer to any stage that is not beyond the prime metal stage or its equivalent,

(ii) iron ore all or substantially all of which is from a mineral resource owned by the taxpayer to any stage that is not beyond the pellet stage or its equivalent,

(iii) tar sands ore all or substantially all of which is from a mineral resource owned by the taxpayer to any stage that is not beyond the crude oil stage or its equivalent, or

(iv) material extracted by a well, all or substantially all of which is from a deposit of bituminous sands or oil shales owned by the taxpayer, to any stage that is not beyond the crude oil stage or its equivalent;

(b) the production by the taxpayer of material from a deposit of bituminous sands or oil shales; and

(c) the transportation by the taxpayer of

(i) output, other than iron ore or tar sands ore, from a mineral resource owned by the taxpayer that has been processed by him to any stage that is not beyond the prime metal stage or its equivalent,

(ii) iron ore from a mineral resource owned by the taxpayer that has been processed by him to any stage that is not beyond the pellet stage or its equivalent, or

(iii) tar sands ore from a mineral resource owned by the taxpayer that has been processed by him to any stage that is not beyond the crude oil stage or its equivalent,

to the extent that such transportation is effected through the use of property of the taxpayer that is included in Class 10 in Schedule II because of paragraph (m) thereof or that would be so included if that paragraph were read without reference to subparagraph (v) thereof and if Class 41 in Schedule II were read without the reference therein to that paragraph.

Related Provisions: Reg. 1104(2) — "Ore"; Reg. 1104(3) — "Mineral", "mining"; Reg. 1104(6.1) — Income from a mine excludes income from services.

History: That portion of subsec. 1104(5) preceding subpara. (c)(i) amended by P.C. 1998-49, subsec. 2(2), January 26, 1998, *Canada Gazette*, Part II, February 4, 1998, applicable after March 6, 1996.

That portion of subsec. 1104(5) preceding para. (a) and that portion of para. 1104(5)(c) following subpara. (iii) substituted by P.C. 1994-230, subsecs. 2(1) and (2), February 10, 1994, *Canada Gazette*, Part II, February 23, 1994; that portion preceding para. (a) applicable to property acquired after February 25, 1992, and that portion of para. (c) following subpara. (iii) applicable to 1988 *et seq.*

That portion of subsec. 1104(5) preceding para. (a) substituted by P.C. 1989-2464, subsec. 5(1), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable to 1988 *et seq.*

Paras. 1104(5)(a) and (c) substituted by P.C. 1985- 465, February 14, 1985, subsecs. 2(2) and (3), *Canada Gazette*, Part II, March 6, 1985, applicable to taxation years commencing after November 12, 1981, except that for the purpose of that part of para. 1100(1)(w) preceding subpara. (i) thereof and that part of para. 1100(1)(x) preceding subpara. (i) thereof and for the purposes of determining the prescribed class in which depreciable property is to be included, paras. 1104(5)(a) and (c) are not applicable with respect to depreciable property acquired in taxation years commencing before November 13, 1981.

Para. 1104(5)(b) substituted by P.C. 1980-1483, subsec. 1(1), June 5, 1980, *Canada Gazette*, Part II, June 25, 1980, effective April 11, 1978.

Para. 1104(5)(c) added by P.C. 1978-344, s. 3, February 9, 1978, *Canada Gazette*, Part II, February 22, 1978, effective after March 31, 1977.

Interpretation Bulletins: IT-469R: CCA — Earth-moving equipment; IT-492: CCA — Industrial mineral mines.

(5.1) ["Gross revenue from a mine"] — For the purpose of Class 41 of Schedule II, a taxpayer's "gross revenue from a mine" includes

(a) revenue reasonably attributable to the processing by the taxpayer of

(i) ore (other than iron ore or tar sands ore) from a mineral resource owned by the taxpayer to any stage that is not beyond the prime metal stage or its equivalent,

(ii) iron ore from a mineral resource owned by the taxpayer to any stage that is not beyond the pellet stage or its equivalent,

(iii) tar sands ore from a mineral resource owned by the taxpayer to any stage that is not beyond the crude oil stage or its equivalent, and

(iv) material extracted by a well from a mineral resource owned by the taxpayer that is a deposit of bituminous sands or oil shales to any stage that is not beyond the crude oil stage or its equivalent;

(b) the amount, if any, by which any revenue reasonably attributable to the processing by the taxpayer of

(i) ore (other than iron ore or tar sands ore) from a mineral resource not owned by the taxpayer, to any stage that is not beyond the prime metal stage or its equivalent,

(ii) iron ore from a mineral resource not owned by the taxpayer to any stage that is not beyond the pellet stage or its equivalent,

(iii) tar sands ore from a mineral resource not owned by the taxpayer to any stage that is not beyond the crude oil stage or its equivalent, and

(iv) material extracted by a well from a mineral resource not owned by the taxpayer that is a deposit of bituminous sands or oil shales to any stage that is not beyond the crude oil stage or its equivalent

exceeds the cost to the taxpayer of the ore or material processed; and

(c) revenue reasonably attributable to the production by the taxpayer of material from a deposit of bituminous sands or oil shales.

Related Provisions: Reg. 1104(5.2) — Interpretation.

History: Subsec. 1104(5.1) added by P.C. 1998-49, subsec. 2(3), January 26, 1998, *Canada Gazette*, Part II, February 4, 1998, applicable after March 6, 1996.

(5.2) ["Gross revenue from a mine"] — For the purpose of subsection (5.1), "gross revenue from a mine" does not include revenue reasonably attributable to the addition of diluent, for the purpose of transportation, to material extracted from a deposit of bituminous sands or oil shales.

History: Subsec. 1104(5.2) added by P.C. 1998-49, subsec. 2(3), January 26, 1998, *Canada Gazette*, Part II, February 4, 1998, applicable after March 6, 1996.

(6) For the purposes of Class 10 in Schedule II,

(a) **["income from a mine"]** — "income from a mine" includes income reasonably attributable to the processing of

(i) ore, other than iron ore or tar sands ore, from a mineral resource not owned by the taxpayer to any stage that is not beyond the prime metal stage or its equivalent,

(ii) iron ore from a mineral resource not owned by the taxpayer to any stage that is not beyond the pellet stage or its equivalent, or

(iii) tar sands ore from a mineral resource not owned by the taxpayer to any stage that is not beyond the crude oil stage or its equivalent; and

(iv) material extracted by a well from a mineral resource not owned by the taxpayer that is a deposit of bituminous sands or oil shales to any stage that is not beyond the crude oil stage or its equivalent; and

(b) **["mine"]** — "mine" includes a well for the extraction of material from a deposit of bituminous sands or oil shales or from a deposit of calcium chloride, halite or sylvite.

Related Provisions: Reg. 1104(6.1) — Income from a mine excludes income from services.

History: Subpara. 1104(6)(iv) added, para. (6)(b) amended by P.C. 1998-49, subsecs. 2(4), (5), January 26, 1998, *Canada Gazette*, Part II, February 4, 1998, applicable after March 6, 1996.

Para. 1104(6)(b) amended by P.C. 1996-495, subsec. 1(1), April 16, 1996, *Canada Gazette*, Part II, May 1, 1996, applicable to property acquired in taxation years that begin after 1984.

That portion of subsec. 1104(6) preceding para. (a) substituted by P.C. 1994-230, subsec. 2(3), February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to property acquired after February 25, 1992.

That portion of subsec. 1104(6) preceding para. (a) substituted by P.C. 1989-2464, subsec. 5(2), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable to 1988 *et seq.*

Para. 1104(6)(a) substituted by P.C. 1985-465, February 14, 1985, subsec. 2(4), *Canada Gazette*, Part II, March 6, 1985, applicable to taxation years commencing after November 12, 1981, except that for the purpose of that part of para. 1100(1)(w) preceding subpara. (i) thereof and that part of para. 1100(1)(x) preceding subpara. (i) thereof and for the purposes of determining the prescribed class in which depreciable property is to be included, para. 1104(6)(a) is not applicable with respect to depreciable property acquired in taxation years commencing before November 13, 1981.

Para. 1104(6)(b) substituted by P.C. 1980-1483, subsec. 1(2), June 5, 1980, *Canada Gazette*, Part II, June 25, 1980, effective April 11, 1978.

Interpretation Bulletins: IT-469R: CCA — Earth-moving equipment.

(6.1) [Repealed]

History: Subsec. 1104(6.1) repealed by P.C. 1999-629, subsec. 3(2), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to taxation years that begin after March 6, 1996.

Subsec. 1104(6.1) added by P.C. 1996-1488, s. 1, September 24, 1996, *Canada Gazette*, Part II, October 16, 1996, applicable to taxation years that begin after March 6, 1996.

(7) ["Mine"] — For the purposes of paragraphs 1100(1)(w) to (ya), subsections 1101(4a) to (4d) and 1102(8) and (9), section 1107 and Classes 12, 28 and 41 of Schedule II,

(a) "mine" includes

(i) a well for the extraction of material from a deposit of bituminous sands or oil shales or from a deposit of calcium chloride, halite or sylvite, and

(ii) a pit for the extraction of kaolin or tar sands ore,

but does not include

(iii) an oil or gas well, or

(iv) a sand pit, gravel pit, clay pit, shale pit, peat bog, deposit of peat or a stone quarry (other than a kaolin pit or a deposit of bituminous sands or oil shales);

(b) all wells of a taxpayer for the extraction of material from one or more deposits of calcium chloride, halite or sylvite, the material produced from which is sent to the same plant for processing, are deemed to be one mine of the taxpayer; and

(c) all wells of a taxpayer for the extraction of material from a deposit of bituminous sands or oil shales that the Minister, in consultation with the Minister of Natural Resources, determines constitute one project, are deemed to be one mine of the taxpayer.

Related Provisions: Reg. 1104(8) — "Stone quarry".

History: Subsec. 1104(7) amended by P.C. 1998-49, subsec. 2(6), January 26, 1998, *Canada Gazette*, Part II, February 4, 1998, applicable after March 6, 1996.

Paras. 1104(7)(a) and (b) amended by P.C. 1996-494, subsec. 1(2), April 16, 1996, *Canada Gazette*, Part II, May 1, 1996, applicable to property acquired in taxation years that begin after 1984 except that para. 1104(7)(a) shall be read without reference to the expression "or a kaolin pit" in respect of taxation years that end before 1988.

That portion of subsec. 1104(7) preceding para. (a) substituted by P.C. 1994-230, subsec. 2(4), February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to 1988 *et seq.*

Para. 1104(7)(a) substituted by P.C. 1990-2780, subsec. 1(2), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to 1988 *et seq.*

That portion of subsec. 1104(7) preceding para. (a) substituted by P.C. 1989-2464, subsec. 5(3), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable to 1988 *et seq.*

Paras. 1104(7)(a), (b) substituted by P.C. 1980-1483, subsec. 1(3), June 5, 1980, *Canada Gazette*, Part II, June 25, 1980, effective April 11, 1978.

(8) ["Stone quarry"] — For the purposes of subsection (7), "stone quarry" includes a mine producing dimension

stone or crushed rock for use as aggregates or for other construction purposes.

Proposed Addition — Reg. 1104(8.1)

(8.1) ["Production"] — For greater certainty, for the purposes of paragraphs (c) and (e) of Class 28 and paragraph (a) of Class 41 in Schedule II, production means production in reasonable commercial quantities.

Application: The June 9, 2003 draft regulations (natural resources), s. 2, will add subsec. 1104(8.1), applicable to property acquired after 1987.

Technical Notes: New subsection 1104(8.1) is added to confirm, for greater certainty, for property acquired after 1987, that the references to production from a mine in paragraphs (c) and (e) of Class 28 and paragraph (a) of Class 41, each of which deal with mining assets, are a reference back to production in reasonable commercial quantities in paragraph (b) of Class 28.

(9) Manufacturing or processing — For the purposes of subsection 1100(26) and Class 29 in Schedule II, "manufacturing or processing" does not include

(a) farming or fishing;

(b) logging;

(c) construction;

(d) operating an oil or gas well or extracting petroleum or natural gas from a natural accumulation thereof;

(e) extracting minerals from a mineral resource;

(f) processing of

(i) ore, other than iron ore or tar sands ore, from a mineral resource to any stage that is not beyond the prime metal stage or its equivalent,

(ii) iron ore from a mineral resource to any stage that is not beyond the pellet stage or its equivalent, or

(iii) tar sands ore from a mineral resource to any stage that is not beyond the crude oil stage or its equivalent;

(g) producing industrial minerals;

(h) producing or processing electrical energy or steam, for sale;

(i) processing natural gas as part of the business of selling or distributing gas in the course of operating a public utility;

(j) processing heavy crude oil recovered from a natural reservoir in Canada to a stage that is not beyond the crude oil stage or its equivalent; or

(k) Canadian field processing.

Related Provisions: ITA 125.1(2)(a) — Credit for generating electrical energy for sale; ITA 125.1(3) — Definition of "manufacturing or processing" for M&P credit purposes.

History: Paras. 1104(9)(g), (i) and (j) amended and para. (k) added by P.C. 1999-629, subsecs. 3(3) and (4), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to taxation years that begin after 1996.

The opening words of subsec. 1104(9) amended by P.C. 1997-1033, subsec. 4(1), July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable to taxation years ending after March 6, 1996.

That portion of subsec. 1104(9) preceding para. (a) substituted by P.C. 1994-230, subsec. 2(5), February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to property acquired after February 25, 1992.

Para. 1104(9)(d) substituted by P.C. 1990-2780, subsec. 1(3), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years ending after March 1985.

That portion of subsec. 1104(9) preceding para. (a) substituted by P.C. 1989-2464, subsec. 5(4), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable to 1988 *et seq.*

Para. 1104(9)(f) substituted by P.C. 1985-465, February 14, 1985, subsec. 2(5), *Canada Gazette*, Part II, March 6, 1985, applicable to taxation years commencing after November 12, 1981, except that for the purpose of that part of para. 1100(1)(w) preceding subpara. (i) thereof and that part of para. 1100(1)(x) preceding subpara. (i) thereof and for the purposes of determining the prescribed class in which depreciable property is to be included, para. 1104(9)(f) is not applicable with respect to depreciable property acquired in taxation years commencing before November 13, 1981.

Para. 1104(9)(j) added by P.C. 1981-3329, s. 1, November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, applicable in respect of 1981 *et seq.*

Para. 1104(9)(g) substituted by P.C. 1978-1849, s. 2, June 8, 1978, *Canada Gazette*, Part II, June 28, 1978, applicable after March 31, 1977 with respect to property acquired by a taxpayer after that date or property completed by a taxpayer after that date, where the property was manufactured by the taxpayer.

Interpretation Bulletins: IT-147R3: CCA — Accelerated write-off of manufacturing and processing machinery and equipment; IT-411R: Meaning of "construction".

(10) Certified films and video tapes — For the purposes of subsection 1100(21) and the definitions "certified feature film" and "certified production" in subsection (2),

(a) "Canadian" means an individual who was, at all relevant times,

(i) a Canadian citizen as defined in the *Citizenship Act*, or

(ii) a permanent resident within the meaning of the *Immigration Act, 1976*;

(b) a motion picture film or video tape that has been certified by

(i) the Secretary of State, or

(ii) the Minister of Communications

as a certified feature film or certified production, as the case may be, may have its certification revoked by the Minister of Communications where an incorrect statement was made in the furnishing of information for the purpose of obtaining that certification and a certification that has been so revoked is void from the time of its issue;

(c) "remuneration" does not include an amount determined by reference to the amount of income from a motion picture film or video tape;

(c.1) "revenue guarantee" means a contract or other arrangement under the terms of which a taxpayer has a right to receive a minimum rental revenue or other fixed revenue in respect of a right to the use, in any manner whatever, of a certified feature film or certified production;

(c.2) a screenwriter shall be deemed to be an individual who is a Canadian where

(i) each individual involved in the preparation of the screenplay is a Canadian, or

(ii) the principal screenwriter is an individual who is a Canadian and

(A) the screenplay for the motion picture film or video tape is based upon a work authored by a Canadian,

(B) copyright in the work subsists in Canada, and

(C) the work is published in Canada;

(d) "unit of production" means a measure used by the Minister of Communications in determining the weight to be given for each individual Canadian referred to in subparagraph (b)(ii) of the definition "certified production" in subsection (2) who provides ser-

vices in respect of a motion picture film or video tape; and

(e) where each individual who performed a service in respect of a motion picture film or video tape as the

(i) director,

(ii) screenwriter,

(iii) actor or actress in respect of whose services for the film or tape the highest remuneration was paid or payable,

(iv) actor or actress in respect of whose services for the film or tape the second highest remuneration was paid or payable,

(v) art director,

(vi) director of photography,

(vii) music composer, or

(viii) picture editor

was a Canadian, the Minister of Communications shall be deemed to have allotted six units of production in respect of the film or tape for the purposes of the definition "certified production" in subsection (2).

History: Subpara. 1104(10)(a)(ii) substituted by P.C. 1986-477, subsec. 2(6), February 27, 1986, *Canada Gazette*, Part II, March 19, 1986, applicable to 1982 *et seq.*

Subsec. 1104(10) amended by P.C. 1986-477, subsec. 2(5), February 27, 1986, *Canada Gazette*, Part II, March 19, 1986, to substitute "certified production" for "certified feature production" and to delete "certified short production", with such grammatical modifications as the circumstances required, applicable in respect of a motion picture film or video tape, the principal photography or taping of which commenced after 1985.

Paras. 1104(10)(a) substituted, (c.2), (e) added by P.C. 1981-3478, December 10, 1981, *Canada Gazette*, December 23, 1981, applicable in respect of a motion picture film or video tape, the principal photography or taping of which commenced after 1981.

Paras. 1104(10)(b) and (d) substituted by P.C. 1980-3374, s. 2, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980.

That portion of subsec. 1104(10) preceding para. (a) substituted, para. (c.1) added by P.C. 1978-3731, s. 3, December 14, 1978, *Canada Gazette*, Part II, December 27, 1978, applicable in respect of property acquired after 1978.

Minister of Communications: S. 46 of 1995, c. 11, in force July 12, 1996, provides as follows:

> 46. Other references — Every reference made to the Minister of Communications, the Minister of Multiculturalism and Citizenship and the Secretary of State of Canada in relation to any matter to which the powers, duties and functions of the Minister of Canadian Heritage extend by virtue of this Act, in any other Act of Parliament or in any order, regulation or other instrument made under any Act of Parliament shall, unless the context otherwise requires, be read as a reference to the Minister of Canadian Heritage.

(11) Certified Class 34 properties — For the purposes of paragraph (h) of Class 34 in Schedule II, a certificate issued under

(a) subparagraph (d)(i) of that class may be revoked by the Minister of Industry, Trade and Commerce, or

(b) subparagraph (d)(ii) or paragraph (g) of that class, as the case may be, may be revoked by the Minister of Energy, Mines and Resources

where

(c) an incorrect statement was made in the furnishing of information for the purpose of obtaining the certificate, or

(d) the taxpayer does not conform to the plan described in subparagraph (d)(i) or (d)(ii) of that class, as the case may be,

and a certificate that has been so revoked shall be void from the time of its issue.

History: Subsec. 1104(11) substituted by P.C. 1980-3323, s. 1, December 9, 1980, *Canada Gazette*, Part II, December 24, 1980, effective December 11, 1979.

(12) Amusement parks — For the purposes of Class 37 in Schedule II, "amusement park" means a park open to the public where amusements, rides and audio-visual attractions are permanently situated.

History: Subsec. 1104(12) added by P.C. 1982-599, s. 4, February 25, 1982, *Canada Gazette*, Part II, March 10, 1982.

(13) Class 43.1 — Energy conservation property — The definitions in this subsection apply for the purposes of this subsection and subsection (14) and Class 43.1 in Schedule II.

Proposed Addition — Reg. 1104(13)"basic oxygen furnace gas"

"basic oxygen furnace gas" means the gas that is produced intermittently in a basic oxygen furnace of a steel mill by the chemical reaction of carbon in molten steel and pure oxygen.

Application: The December 13, 2004 draft regulations (pre-published in *Canada Gazette* Part I, December 18, 2004), subsec. 1(2), will add the definition "basic oxygen furnace gas" to subsec. 1104(13), applicable in respect of property acquired after 2000.

Letter from Dept. of Finance, July 30, 2003: See under Reg. 1104(13)"fossil fuel".

Proposed Addition — Reg. 1104(13)"bio-oil"

"bio-oil" means liquid fuel that is created from wood waste or plant residues using a thermo-chemical conversion process that takes place in the absence of oxygen.

Application: The December 13, 2004 draft regulations (pre-published in *Canada Gazette* Part I, December 18, 2004), subsec. 1(2), will add the definition "bio-oil" to subsec. 1104(13), applicable in respect of property acquired after February 18, 2003.

Federal budget, Supplementary Information, February 18, 2003: See under Cl. 43.1(a)(ii), (ii.1).

Proposed Addition — Reg. 1104(13)"blast furnace gas"

"blast furnace gas" means the gas produced in a blast furnace of a steel mill, by the chemical reaction of carbon (in the form of coke, coal or natural gas), the oxygen in air and iron ore.

Application: The December 13, 2004 draft regulations (pre-published in *Canada Gazette* Part I, December 18, 2004), subsec. 1(2), will add the definition "blast furnace gas" to subsec. 1104(13), applicable in respect of property acquired after 2000.

Regulatory Impact Analysis Statement: See under Cl. 43.1(a)(ii), (ii.1).

Technical Notes (February 5, 2002): Subsection 1104(13) of the *Income Tax Regulations* defines a number of terms used in that subsection and paragraphs (c) to (g) of capital cost allowance (CCA) Class 43.1 in Schedule II to the Regulations.

Subsection 1104(13) is amended in two respects. First, it is amended to add the definition "blast furnace gas", which is defined to be the gas produced in a blast furnace of a steel mill by the chemical reaction of carbon (in the form of coke, coal or natural gas), oxygen and iron ore. Second, the definition "fossil fuel" is amended to include "blast furnace gas". These changes apply for the purpose of determining whether certain property is included in Class 43.1 because it is part of a system that generates electrical energy with a heat rate attributable to "fossil fuel" of not more than 6,000 BTU per kilowatt-hour of electrical energy generated by the system.

Letters from Dept. of Finance, Aug. 8, 2001, May 31, 2001: See under Reg. 1104(13)"fossil fuel".

"digester gas" means a mixture of gases that are produced from the decomposition of organic waste in a digester and that are extracted from an eligible sewage treatment facility for that organic waste.

"distribution equipment" means equipment (other than transmission equipment) used to distribute electrical energy generated by electrical generating equipment.

"eligible landfill site" means a landfill site that is situated in Canada, or a former landfill site that is situated in Canada, and, if a permit or license in respect of the site is or was required under any law of Canada or of a province, for which the permit or license has been issued.

"eligible sewage treatment facility" means a sewage treatment facility that is situated in Canada and for which a permit or license is issued under any law of Canada or of a province.

"eligible waste management facility" means a waste management facility that is situated in Canada and for which a permit or license is issued under any law of Canada or of a province.

"enhanced combined cycle system" means an electrical generating system in which thermal waste from one or more natural gas compressor systems is recovered and used to contribute at least 20 per cent of the energy input of a combined cycle process in order to enhance the generation of electricity, but does not include the natural gas compressor systems.

"fossil fuel" means a fuel that is petroleum, natural gas or related hydrocarbons, coal, coal gas, coke, lignite or peat.

Proposed Amendment — Reg. 1104(13)"fossil fuel"

"fossil fuel" means a fuel that is petroleum, natural gas or related hydrocarbons, basic oxygen furnace gas, blast furnace gas, coal, coke gas, coke, lignite or peat.

Application: The December 13, 2004 draft regulations (pre-published in *Canada Gazette* Part I, December 18, 2004), subsec. 1(1), will amend the definition "fossil fuel" in subsec. 1104(13) to read as above, applicable in respect of property acquired after 2000.

Regulatory Impact Analysis Statement: See under Cl. 43.1(a)(ii), (ii.1).

Technical Notes (February 5, 2002): See under Reg. 1104(13)"blast furnace gas".

Federal budget, Supplementary Information, December 10, 2001: See under Cl. 43.1(d)(iii), (iii.1).

Letter from Dept. of Finance, July 30, 2003:

Dear [xxx]

I am writing in response to your letter of March 21, 2003 and further to your telephone conversation with officials of the Tax Legislation Division regarding the use of Blast Oxygen Furnace Gas (BOFG) in co-generation equipment. In particular, you request that Class 43.1 of the *Income Tax Regulations* (the Regulations) be amended to include BOFG in the list of eligible fuels referred to in clause (c)(i)(A) of that class.

The portion of Class 43.1 that applies to co-generation equipment provides a list of eligible fuels such as fossil fuel and waste fuels: For the purpose of class 43.1, the heat rate attributable to fossil fuel cannot exceed 6,000 British Thermal Unit (BTU) per kilowatt-hour of electrical energy generated by the system.

In this regard, it was proposed in 2001 that the definition of fossil fuel be extended to include blast furnace gas (BFG). After consulting Natural Resources Canada (NRCan), it has been determined that BOFG is similar to BFG from a scientific perspective. Given this, and the 2001 proposal, it would be appropriate to treat BFG and BOFG similarly for income tax purposes.

Consequently, we are prepared to recommend to the Minister of Finance that BOFG be added to the definition of fossil fuel in Regulation 1104(13) for the purposes of Class 43.1 of the Regulations, for property acquired after 2002. In the context of these recommendations, your proposed definition of BOFG will be considered in consultation with officials of NRCan. If the recommendations are acted upon, I would anticipate that they would be included in a future package of amendments to the *Income Tax Regulations*.

If you have any questions relating to the proposed recommendation, please contact Kerry Harnish (992-4385) of this office.

Yours sincerely,

Len Farber
General Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, August 8, 2001:

Dear [xxx]

I am writing to follow up on a recent initiative with respect to blast furnace gas and the proposal to include this gas in the definition of fossil fuel for Class 43.1. I append a copy of a recent "comfort" letter to [xxx].

I would like to begin by thanking both your department and Mr. [xxx] in particular for the assistance which he provided to us on this matter.

As you know, it took several months from the initial request by [xxx] to both your department and Finance to the issuance of this comfort letter. Indeed, although the provision of a comfort letter, with back dating to December 31, 2000, provides the association's members with some assurances, we are still many months away from the official promulgation of changes to the *Income Tax Act* (ITA) Regulations.

Our experience with this file has only served to confirm the need to seriously consider developing more flexibility in the Class 43.1 eligibility criteria and/or processes by which we deal with these types of requests. As you know, technology is changing very rapidly in this area and the prospect of waiting up to 2 years for a regulation to wind its way through the process to inform tax payers of eligibility is difficult to support both from a process perspective as well as service to the public.

[xxx]

If you would like to further pursue this idea, could you please have your staff contact Paul Berg-Dick at 992-1008 to arrange a meeting. Once we have had an opportunity to discuss this directly, we will be in a better position to know if we should take a proposal to our respective Deputies and CCRA as a joint initiative.

Yours sincerely,

Munir A. Sheikh
Senior Assistant Deputy Minister

Letter from Dept. of Finance, May 31, 2001:

Dear [xxx]

I am writing further to your letter of November 15, 2000 regarding your request that "blast furnace gas" be included in the definition of fossil fuel for the purpose of Class 43.1 of the *Income Tax Regulations*.

We are sympathetic to your request. After consulting specialists from Natural Resources Canada, we are of the view that "blast furnace gas" is similar to coke oven gas and therefore should be added to the definition of fossil fuel in Regulation 1104(13). In this regard, a new definition would also be added to Regulation 1104(13) defining "blast furnace gas" to be, in general, *the gas produced in a blast furnace of a steel mill, by the chemical reaction of carbon (in the form of coke, coal or natural gas), the oxygen in air, and iron ore.*

We are prepared therefore to recommend to the Minister of Finance that blast furnace gas be referred to in the definition of fossil fuel and defined similar to that described above for the purpose of Class 43.1. We would also recommend that these changes be effective for properties acquired after December 31, 2000. If the recommendation is acted upon, we anticipate that these changes would be included in a future package of amendments to the *Income Tax Regulations*.

Yours sincerely,

Len Farber
General Director, Tax Legislation Division, Tax Policy Branch
c.c.: Mr. Ric Cameron, Assistant Deputy Minister, Natural Resources Canada; Mr. Bill McCloskey, Assistant Commissioner, Policy and Legislation, CCRA

"landfill gas" means a mixture of gases that are produced from the decomposition of organic waste and that are extracted from an eligible landfill site.

"municipal waste" means the combustible portion of waste material (other than waste material that is consid-

ered to be toxic or hazardous waste pursuant to any law of Canada or of a province) that is generated in Canada and that is accepted at an eligible landfill site or an eligible waste management facility and that, when burned to generate energy, emits only those fluids or other emissions that are in compliance with the law of Canada or of a province.

Proposed Addition — Reg. 1104(13)"plant residue"

"plant residue" means the residue of plants that would, but for its use in a system to convert biomass into bio-oil, be waste material, but does not include wood waste or waste that no longer has the chemical properties of the plants of which it is a residue.

Application: The December 13, 2004 draft regulations (pre-published in the *Canada Gazette*, Part I on December 18, 2004), subsec. 1(2), will add the definition "plant residue" to subsec. 1104(13), applicable in respect of property acquired after February 18, 2003.

Regulatory Impact Analysis Statement: See under Cl. 43.1(a)(ii), (ii.1).

"solution gas" means a fossil fuel that is gas that would otherwise be flared and has been extracted from a solution of gas and produced oil.

History: "Solution gas" added by P.C. 2000-1331, s. 2, August 23, 2000, *Canada Gazette*, Part II, September 13, 2000, applicable after February 16, 1999.

"thermal waste" means heat energy extracted from a distinct point of rejection in an industrial process.

"transmission equipment" means equipment used to transmit more than 75 per cent of the annual electrical energy generated by electrical generating equipment, but does not include a building.

"wood waste" includes scrap wood, sawdust, wood chips, bark, limbs, saw-ends and hog fuel, but does not include residuals (known as "black liquor") from wood pulp operations and any waste that no longer has the physical or chemical properties of wood.

History: Subsec. 1104(13) added by P.C. 1997-1033, subsec. 4(2), July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable after February 21, 1994.

(14) [Class 43.1(c) compliance] — Where property of a taxpayer is not operating in the manner required by paragraph (c) of Class 43.1 in Schedule II solely because of a deficiency, failing or shutdown — that is beyond the control of the taxpayer — of the system of which it is part and that previously operated in the manner required by that paragraph, that property is deemed, for the purpose of that paragraph, to be operating in the manner required under that paragraph during the period of the deficiency, failing or shutdown, if the taxpayer makes all reasonable efforts to rectify the circumstances within a reasonable time.

Related Provisions: Reg. 1104(15) — Interpretation of "system".

History: Subsec. 1104(14) added by P.C. 1997-1033, subsec. 4(2), July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable after February 21, 1994.

Proposed Addition — Reg. 1104(15)

(15) [Interpretation of "system" for subsec. (14)] — For the purpose of subsection (14), a taxpayer's system referred to in that subsection that has at any particular time operated in the manner required by paragraph (c) of Class 43.1 in Schedule II includes at any time after the particular time a property of another person or partnership if

(a) the property, if it were owned by the taxpayer, would reasonably be considered to be part of the taxpayer's system;

(b) the property utilizes steam obtained from the taxpayer's system primarily in an industrial process (other than the generation of electrical energy);

(c) the operation of the property is necessary for the taxpayer's system to operate in the manner required by paragraph (c) of Class 43.1; and

(d) at the time that the taxpayer's system first became operational, the deficiency, failing or shutdown in the operation of the property could not reasonably have been anticipated by the taxpayer to occur within five years after that time.

Application: The March 16, 2001 draft regulations (CCA), s. 4, will add subsec. 1104(15), applicable to property acquired after February 21, 1994

Technical Notes: Generally, subsection 1104(14) provides that certain property (which is part of a system that was operated at a time within the parameters set out in paragraph (c) of Class 43.1 (30% CCA rate)) will continue to be considered to so operate during a period of a deficiency, failing or shutdown of the system that is beyond the control of the taxpayer. In such circumstances, the taxpayer is required to make all reasonable efforts to rectify the difficulty causing the deficiency, failing or shutdown within a reasonable period of time.

Concern has been expressed that the reference in subsection 1104(14) to a taxpayer's "system" does not include property of another taxpayer that provides a steam host, which is necessary for the taxpayer's system to operate in the manner required by Class 43.1. Thus, in cases where a taxpayer's system is not operating in the manner required under Class 43.1 because of a deficiency, failing or shutdown of the steam host's operation, subsection 1104(14) does not apply even if the taxpayer makes all reasonable efforts to have the deficiency rectified within a reasonable time.

New subsection 1104(15) provides that the reference in subsection 1104(14) to a taxpayer's system that was previously operated in the manner required by paragraph (c) of Class 43.1 includes the related property of another person or partnership if

- the property, if it were owned by the taxpayer, would reasonably be considered to be part of the taxpayer's system,
- the property utilizes steam obtained from the taxpayer's system primarily in an industrial process (other than the generation of electrical energy),
- the operation of the property is necessary for the taxpayer's system to operate in the manner required by paragraph (c) of Class 43.1, and
- at the time that the taxpayer's system first became operational, the deficiency, failing or shutdown in the operation of the property could not reasonably have been anticipated by the taxpayer to occur within five years after that time.

Related Provisions [Reg. 1104]: ITA 20(1.1) — Definitions in ITA 13(21) apply to regulations.

Selected Cases [Reg. 1104]: *Brydges v. Canada*, [1996] 1 C.T.C. 2851 (TCC) (Certification cannot be subsequently revoked).

Definitions [Reg. 1104]: "amount" — ITA 248(1); "associated" — ITA 256; "basic oxygen furnace gas", "bio-oil" — Reg. 1104(13); "bituminous sands" — ITA 248(1); "blast furnace gas" — Reg. 1104(13); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian" — Reg. 1104(10)(a), (c.2); "Canadian exploration expense" — ITA 66.1(6), 248(1); "Canadian field processing" — ITA 248(1); "certified feature film", "certified production" — Reg. 1104(2); "class" — Reg. 1101(6), 1102(1)–(3), (14), (14.1); "coal mine operator", "computer software" — Reg. 1104(2); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "digester gas", "distribution equipment", "eligible landfill site", "eligible sewage treatment facility", "eligible waste management facility" — Reg. 1104(13); "end of the taxation year" — Reg. 1104(1); "enhanced combined cycle system" — Reg. 1104(13); "farming" — ITA 248(1); "fiscal period" — ITA 249.1; "fishing" — ITA 248(1); "fossil fuel" — Reg. 1104(13); "individual" — ITA 248(1); "land-

fill gas" — Reg. 1104(13); "mineral" — Reg. 1104(3); "mineral resource", "Minister" — ITA 248(1); "Minister of Natural Resources" — *Department of Natural Resources Act* s. 3; "month" — *Interpretation Act* 35(1); "municipal waste" — Reg. 1104(13); "non-resident", "oil or gas well" — ITA 248(1); "ore" — Reg. 1104(2); "Parliament" — *Interpretation Act* 35(1); "person" — ITA 248(1); "pipeline" — Reg. 1104(2); "plant residue" — Reg. 1104(13); "property" — ITA 248(1); "province", "radio" — *Interpretation Act* 35(1); "related" — ITA 251(2)–(6); "remuneration" — Reg. 1104(10)(c); "resident" — ITA 250; "revenue guarantee" — Reg. 1104(10)(c.1); "security" — *Interpretation Act* 35(1); "stone quarry" — Reg. 1104(8); "system" — Reg. 1104(15); "systems software", "tar sands ore" — Reg. 1104(2); "taxation year" — ITA 249, Reg. 1104(1); "taxpayer" — ITA 248(1); "telecommunications" — *Interpretation Act* 35(1); "thermal waste", "transmission equipment" — Reg. 1104(13); "unit of production" — Reg. 1104(10)(d); "wood waste" — Reg. 1104(13).

Division VI — Classes Prescribed

1105. The classes of property provided in this Part and in Schedule II are hereby prescribed for the purposes of the Act.

History: S. 1105 amended by P.C. 1996-571, s. 1, April 23, 1996, *Canada Gazette*, Part II, May 1, 1996, applicable to taxation years that end after February 21, 1994.

S. 1105 substituted by P.C. 1982-599, s. 5, February 25, 1982, *Canada Gazette*, Part II, applicable to taxation years ending after December 11, 1979.

Definitions [Reg. 1105]: "class" — Reg. 1101(6), 1102(1)–(3), (14), (14.1); "prescribed", "property" — ITA 248(1).

Division VII — Certificates Issued by the Minister of Canadian Heritage

1106. (1) Interpretation — The following definitions apply in this Division and in paragraph (x) of Class 10 in Schedule II.

"application for a certificate of completion", in respect of a film or video production, means an application by a prescribed taxable Canadian corporation in respect of the production, filed with the Minister of Canadian Heritage before the day (in this Division referred to as "the production's application deadline") that is the later of

(a) the day that is 24 months after the end of the corporation's taxation year in which the production's principal photography began, or

(b) the day that is 18 months after the day referred to in paragraph (a), if the corporation has filed, with the Canada Customs and Revenue Agency, and provided to the Minister of Canadian Heritage a copy of, a waiver described in subparagraph 152(4)(a)(ii) of the Act, within the normal reassessment period for the corporation in respect of the first and second taxation years ending after the production's principal photography began.

"Canadian" means a person that is

(a) an individual who is

(i) a citizen, as defined in subsection 2(1) of the *Citizenship Act*, of Canada, or

(ii) a permanent resident, as defined in subsection 2(1) of the *Immigration and Refugee Protection Act*, or

(b) a corporation that is a Canadian-controlled entity, as determined under sections 26 to 28 of the *Investment Canada Act*.

Related Provisions: Reg. 1106(8)(c) — Principal screenwriter deemed not Canadian.

"Canadian government film agency" means a federal or provincial government agency whose mandate is related to the provision of assistance to film productions in Canada.

Related Provisions: ITA 241(4)(d)(xv) — Disclosure of information to government agency providing assistance.

"certificate of completion", in respect of a film or video production of a corporation, means a certificate certifying that the production has been completed, issued by the Minister of Canadian Heritage before the day (in this Division referred to as "the production's certification deadline") that is six months after the production's application deadline.

"excluded production" means a film or video production, of a particular corporation that is a prescribed taxable Canadian corporation,

(a) in respect of which

(i) the particular corporation has not filed an application for a certificate of completion before the production's application deadline,

(ii) a certificate of completion has not been issued before the production's certification deadline,

(iii) where the production is not a treaty co-production, neither the particular corporation nor another prescribed taxable Canadian corporation related to the particular corporation

(A) is, except to the extent of an interest in the production held by a prescribed taxable Canadian corporation as a co-producer of the production or by a prescribed person, the exclusive worldwide copyright owner in the production for all commercial exploitation purposes for the 25-year period that begins at the earliest time after the production was completed that it is commercially exploitable, and

(B) controls the initial licensing of commercial exploitation,

(iv) there is not an agreement in writing, for consideration at fair market value, to have the production shown in Canada within the 2-year period that begins at the earliest time after the production was completed that it is commercially exploitable,

(A) with a corporation that is a Canadian and is a distributor of film or video productions, or

(B) with a corporation that holds a broadcasting license issued by the Canadian Radio-television and Telecommunications Commission for television markets, or

(v) distribution is made in Canada within the 2-year period that begins at the earliest time after the production was completed that it is commercially exploitable by a person that is not a Canadian, or

(b) that is

(i) news, current events or public affairs programming, or a programme that includes weather or market reports,

(ii) a talk show,

(iii) a production in respect of a game, questionnaire or contest (other than a production directed primarily at minors),

(iv) a sports event or activity,

(v) a gala presentation or an awards show,

(vi) a production that solicits funds,

(vii) reality television,

(viii) pornography,

(ix) advertising,

(x) a production produced primarily for industrial, corporate or institutional purposes, or

(xi) a production, other than a documentary, all or substantially all of which consists of stock footage.

Related Provisions: Reg. 1106(2) — Prescribed taxable Canadian corporation; Reg. 1106(10) — Prescribed person.

"producer" means a producer of a film or video production, except that it does not include a person unless the person is the individual who

(a) controls and is the central decision maker in respect of the production;

(b) is directly responsible for the acquisition of the production story or screenplay and the development, creative and financial control and exploitation of the production; and

(c) is identified in the production as being the producer of the production.

"remuneration" means remuneration other than an amount determined by reference to profits or revenues.

"twinning arrangement" means the pairing of two distinct film or video productions, one of which is a Canadian film or video production and the other of which is a foreign film or video production.

(2) Prescribed taxable Canadian corporation — For the purposes of section 125.4 of the Act and this Division, "prescribed taxable Canadian corporation" means a taxable Canadian corporation that is a Canadian, other than a corporation that is

(a) controlled directly or indirectly in any manner whatever by one or more persons all or part of whose taxable income is exempt from tax under Part I of the Act; or

(b) a prescribed labour-sponsored venture capital corporation, as defined in section 6701.

Related Provisions: ITA 256(5.1), (6.2) — Meaning of "controlled directly or indirectly"; Reg. 6701 — Prescribed labour-sponsored venture capital corporation.

(3) Treaty co-production — For the purpose of this Division, "treaty co-production" means a film or video production whose production is contemplated under any of the following instruments, and to which the instrument applies:

(a) a co-production treaty entered into between Canada and another State;

(b) the Memorandum of Understanding between the Government of Canada and the Government of the Hong Kong Special Administrative Region of the People's Republic of China on Film and Television Co-Production;

(c) the Common Statement of Policy on Film, Television and Video Co-Productions between Japan and Canada;

(d) the Memorandum of Understanding between the Government of Canada and the Government of the Republic of Korea on Television Co-Production; and

(e) the Memorandum of Understanding between the Government of Canada and the Government of the Republic of Malta on Audio-Visual Relations.

(4) Canadian film or video production — Subject to subsections (6) to (9), for the purposes of section 125.4 of the Act, this Part and Schedule II, "Canadian film or video production" means a film or video production, other than an excluded production, of a prescribed taxable Canadian corporation in respect of which the Minister of Canadian Heritage has issued a certificate (other than a certificate that has been revoked under subsection 125.4(6) of the Act) and that is

(a) a treaty co-production; or

(b) a film or video production

(i) whose producer is a Canadian at all times during its production,

(ii) in respect of which the Minister of Canadian Heritage has allotted not less than six points in accordance with subsection (5),

(iii) in respect of which not less than 75% of the total of all costs for services provided in respect of producing the production (other than excluded costs) was payable in respect of services provided to or by individuals who are Canadians, and for the purpose of this subparagraph, excluded costs are

(A) costs determined by reference to the amount of income from the production,

(B) remuneration payable to, or in respect of, the producer or individuals described in any of subparagraphs (5)(a)(i) to (viii) and (b)(i) to (vi) and paragraph (5)(c) (including any individuals that would be described in paragraph (5)(c) if they were Canadians),

(C) amounts payable in respect of insurance, financing, brokerage, legal and accounting fees, and similar amounts, and

(D) costs described in subparagraph (iv), and

(iv) in respect of which not less than 75% of the total of all costs incurred for the post-production of the production, including laboratory work, sound re-recording, sound editing and picture editing, (other than costs that are determined by reference to the amount of income from the production and remuneration that is payable to, or in respect of, the producer or individuals described in any of subparagraphs (5)(a)(i) to (viii) and (b)(i) to (vi) and paragraph (5)(c), including any individuals that would be described in paragraph (5)(c) if they were Canadians) was incurred in respect of services provided in Canada.

Related Provisions: ITA 241(9) — Disclosure to public of information on production certificate; Reg. 1101(5k.1) — Separate class for certain property under Class 10(x); Reg. 1106(1) — Definitions; Reg. 1106(5) — Points for creative services; Reg. Sch. II:Cl. 10(x) — CCA class for Canadian film or video production.

(5) [Creative services] — For the purposes of this Division, the Minister of Canadian Heritage shall allot, in respect of a film or video production

(a) that is not an animation production, in respect of each of the following persons if that person is an individual who is a Canadian,

(i) for the director, two points,

(ii) for the screenwriter, two points,

(iii) for the lead performer for whose services the highest remuneration was payable, one point,

(iv) for the lead performer for whose services the second highest remuneration was payable, one point,

(v) for the art director, one point,

(vi) for the director of photography, one point,

(vii) for the music composer, one point, and

(viii) for the picture editor, one point;

(b) that is an animation production, in respect of each of the following persons if that person is an individual who is a Canadian,

(i) for the director, one point,

(ii) for the lead voice for which the highest or second highest remuneration was payable, one point,

(iii) for the design supervisor, one point,

(iv) for the camera operator where the camera operation is done in Canada, one point,

(v) for the music composer, one point, and

(vi) for the picture editor, one point;

(c) that is an animation production, one point if both the principal screenwriter and the storyboard supervisor are individuals who are Canadians; and

(d) that is an animation production, in respect of each of the following places if that place is in Canada,

(i) for the place where the layout and background work is done, one point,

(ii) for the place where the key animation is done, one point, and

(iii) for the place where the assistant animation and in-betweening is done, one point.

Related Provisions: Reg. 1106(1) — Definitions; Reg. 1106(7) — Special rule for animation production; Reg. 1106(8) — Lead performer/screenwriter; Reg. 1106(9) — Special rule for documentary production.

(6) [Specific points required] — A production (other than a production that is an animation production or a treaty co-production) is a Canadian film or video production only if there is allotted in respect of the production two points under subparagraph (5)(a)(i) or (ii) and one point under subparagraph (5)(a)(iii) or (iv).

(7) [Specific points required] — An animation production (other than a production that is a treaty co-production) is a Canadian film or video production only if there is allotted, in respect of the production,

(a) one point under subparagraph (5)(b)(i) or paragraph (5)(c);

(b) one point under subparagraph (5)(b)(ii); and

(c) one point under subparagraph (5)(d)(ii).

(8) Lead performer/screenwriter — For the purposes of this Division,

(a) a lead performer in respect of a production is an actor or actress who has a leading role in the production having regard to the performer's remuneration, billing and time on screen;

(b) a lead voice in respect of an animation production is the voice of the individual who has a leading role in the production having regard to the length of time that the individual's voice is heard in the production and the individual's remuneration; and

(c) where a person who is not a Canadian participates in the writing and preparation of the screenplay for a production, the screenwriter is not a Canadian unless the principal screenwriter is an individual who is otherwise a Canadian, the screenplay for the production is based upon a work authored by a Canadian, and the work is published in Canada.

(9) Documentary production — A documentary production that is not an excluded production, and that is allotted less than six points because one or more of the positions referred to in paragraph (5)(a) is unoccupied, is a Canadian film or video production if all of the positions described in that paragraph that are occupied in respect of the production are occupied by individuals who are Canadians.

(10) Prescribed person — For the purpose of section 125.4 of the Act and this Division, "prescribed person" means any of the following:

(a) a corporation that holds a television, speciality or pay-television broadcasting licence issued by the Canadian Radio-television and Telecommunications Commission;

(b) a corporation that holds a broadcast undertaking licence and that provides production funding as a result of a "significant benefits" commitment given to the Canadian Radio-television and Telecommunications Commission;

(c) a person to which paragraph 149(1)(l) of the Act applies and that has a fund that is used to finance Canadian film or video productions;

(d) a Canadian government film agency;

(e) in respect of a film or video production, a non-resident person that does not carry on a business in Canada through a permanent establishment in Canada where the person's interest in the production is acquired to comply with the certification requirements of a treaty co-production twinning arrangement; and

(f) a person

(i) to which paragraph 149(1)(f) of the Act applies,

(ii) that has a fund that is used to finance Canadian film or video productions, all or substantially all of which financing is provided by way of a direct ownership interest in those productions, and

(iii) that, after 1996, has received donations only from persons described in paragraphs (a) to (e).

Related Provisions: ITA 253 — Extended meaning of "carry on business in Canada".

Regulations: No provision defining "permanent establishment" as yet (though Reg. 8201 would be the logical choice).

(11) Prescribed amount — For the purpose of the definition "assistance" in subsection 125.4(1) of the Act, "prescribed amount" means an amount paid or payable to a taxpayer under the License Fee Program of the Canada Television and Cable Production Fund or the Canada Television Fund/Fonds canadien de télévision.

History [Reg. 1106]: S. 1106 (Div. VII) added by P.C. 2005-698, s. 3, May 3, 2005, *Canada Gazette*, Part II, May 18, 2005, applicable to 1995 *et seq.* except that,

(a) in the case of a film or video production for which a Canadian film or video production certificate (within the meaning assigned by ITA 125.4(1) is obtained before 1997, cl. (a)(iii)(A) of the definition "excluded production" in subsec. 1106(1) is to be read as follows:

(A) is, except to the extent of an interest in the production held by a prescribed taxable Canadian corporation as a co-producer of the production or by a prescribed person, the exclusive

worldwide copyright owner in the production for all commercial exploitation purposes for the 5-year period that begins at the earliest time after the production was completed that it is commercially exploitable, and

(b) in the case of a film or video production for which a Canadian film or video production certificate (within the meaning assigned by ITA 125.4(1) is obtained before November 2001, subpara. (a)(ii) of the definition "Canadian" in subsec. 1106(1) is to be read as follows:

(ii) a permanent resident within the meaning assigned by the *Immigration Act*, or

(c) in the case of a film or video production of a corporation for which the first taxation year, which ended after principal photography of the production began, ended before 2000,

(i) subsec. 1106(1) is to be read without reference to the definition "application for a certificate of completion",

(ii) the definition "excluded production" in subsec. 1106(1) is to be read without reference to subpara. (a)(i), and

(iii) the definition "certificate of completion" in subsec. 1106(1) is to be read as follows:

"certificate of completion", in respect of a film or video production of a corporation, means a certificate issued by the Minister of Canadian Heritage before the day that is 30 months after the end of the corporation's taxation year in which the production's principal photography began, certifying that the production has been completed within two years after the end of that taxation year.; and

(d) in the case of a film or video production of a corporation for which the first taxation year, which ended after principal photography of the production began, ended after 1999 and before 2004,

(i) subsec. 1106(1) is to be read without reference to the definition "application for a certificate of completion",

(ii) the definition "excluded production" in subsec. 1106(1) is to be read without reference to subpara. (a)(i), and

(iii) the definition "certificate of completion" in subsec. 1106(1) is to be read as follows:

"certificate of completion", in respect of a film or video production of a corporation, means a certificate certifying that the production has been completed, issued by the Minister of Canadian Heritage before the day (in this Division referred to as "the production's certification deadline") that is the later of

(a) the day that is 30 months after the end of the corporation's taxation year in which the production's principal photography began, or

(b) the day that is 18 months after the day referred to in paragraph (a), if the corporation has filed, with the Canada Customs and Revenue Agency, a waiver described in subparagraph 152(4)(a)(ii) of the Act, within the normal reassessment period for the corporation in respect of the first and second taxation years ending after the production's principal photography began.

Former Division VII (s. 1106) repealed by P.C. 1995-775, s. 3, May 16, 1995, *Canada Gazette*, Part II, May 31, 1995, applicable to property acquired on or after May 31, 1995.

Definitions [Reg. 1106]: "amount" — ITA 248(1); "animation production" — Reg. 1106(6); "application deadline" — Reg. 1106(1)"application for a certificate of completion"; "application for a certificate of completion" — Reg. 1106(1); "broadcasting" — *Interpretation Act* 35(1); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian" — Reg. 1106(1); "Canadian film or video production" — Reg. 1106(4); "Canadian government film agency" — Reg. 1106(1); "carry on a business in Canada" — ITA 253; "certificate of completion" — Reg. 1106(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "excluded production" — Reg. 1106(1); "individual" — ITA 248(1); "lead performer" — Reg. 1106(8)(a); "lead voice" — Reg. 1106(8)(b); "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "non-resident", "person", "prescribed" — ITA 248(1); "producer" — Reg. 1106(1); "related" — ITA 251(2)-(6); "remuneration" — Reg. 1106(1); "resident" — ITA 250; "taxable Canadian corporation" — ITA 89(1), 248(1); "taxable income" — ITA 248(1); "taxation year" — ITA 249, Reg. 1104(1); "taxpayer" — ITA 248(1); "the production's application deadline" — Reg. 1106(1)"application for a certificate of completion"; "the production's certification deadline" — Reg. 1106(1)"certificate of completion"; "twinning arrangement" — Reg. 1106(1); "writing" — *Interpretation Act* 35(1).

Division VIII — Determination of Viscosity and Density

1107. (1) For the purpose of the definition "bituminous sands" in section 248(1) of the Act, viscosity or density of hydrocarbons shall be determined using a number of individual samples (constituting a representative sampling of that deposit or those deposits, as the case may be, from which the taxpayer is committed to produce by means of one mine) tested

(a) at atmospheric pressure;

(b) at a temperature of 15.6 degrees Celsius; and

(c) free of solution gas.

History: S. 1107 added by P.C. 1998-49, s. 3, January 26, 1998, *Canada Gazette*, Part II, February 4, 1998, applicable after March 6, 1996.

Definitions [Reg. 1107]: "individual" — ITA 248(1); "solution gas" — Reg. 1104(13); "taxpayer" — ITA 248(1).

Part XII — Resource and Processing Allowances

History: Part XII amended by P.C. 1985-2277, s. 2, July 24, 1985, *Canada Gazette*, Part II, to substitute "predecessor" wherever "predecessor corporation" appeared, applicable to taxation years ending after April 19, 1983.

Part XII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

1200. For the purposes of section 65 of the Act, there may be deducted in computing the income of a taxpayer for a taxation year such of the amounts determined in accordance with sections 1201 to 1209 and 1212 as are applicable.

History: S. 1200 substituted by P.C. 1979-649, s. 1, March 8, 1979, *Canada Gazette*, Part II, March 28, 1979, effective for taxation years ending after April 10, 1978.

Definitions [Reg. 1200]: "amount" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

1201. Earned depletion allowances — In computing a taxpayer's income for a taxation year there may be deducted such amount as he may claim not exceeding the lesser of

(a) the aggregate of

(i) 25 per cent of the amount, if any, by which the taxpayer's resource profits for the year exceed four times the total of amounts, if any, deducted under subsection 1202(2) in computing the taxpayer's income for the year, and

(ii) the amount, if any, by which the aggregate of amounts included in computing the taxpayer's income for the year under paragraphs 59(3.3)(a) and (b) of the Act exceeds the aggregate of amounts, if any, that may reasonably be considered to have been deducted under subsection 1202(2) by reason of subparagraph (b)(ii) thereof in computing the taxpayer's income for the year; and

(b) the aggregate of

(i) the taxpayer's earned depletion base as of the end of the year, and

(ii) the amount, if any, by which

(A) the aggregate determined under paragraph 1202(4)(a) in respect of the taxpayer for the year

exceeds

(B) the amount, if any, by which

(I) the aggregate of all amounts that would be determined under paragraphs 1205(1)(e) to (k)

exceeds

(II) 33 1/3 per cent of the aggregate of all amounts that would be determined under paragraphs 1205(1)(a) to (d.2)

in computing the taxpayer's earned depletion base as of the end of the year.

History: Subpara. 1201(a)(i) amended by P.C. 1999-629, s. 4, April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to 1999 *et seq.*

Paras. 1201(a), (b) substituted by P.C. 1990-2780, s. 2, December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years ending after February 17, 1987.

Para. 1201(a) substituted by P.C. 1981-3329, s. 2, November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, applicable in respect of taxation years ending after December 11, 1979.

All that portion of s. 1201 preceding para. (b) substituted by P.C. 1978-1849, s. 3, June 8, 1978, *Canada Gazette*, Part II, June 28, 1978, applicable to taxation years ending after May 6, 1974.

Definitions [Reg. 1201]: "amount" — ITA 248(1); "earned depletion base" — Reg. 1202(1), 1205(1); "resource profits" — Reg. 1204(1.1); "successor" — Reg. 1202(7); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

1202. (1) For the purposes of computing the earned depletion base of a corporation, control of which has been acquired under circumstances described in subsection 66(11) of the Act, the amount by which the earned depletion base of the corporation at the time referred to in that subsection exceeds the aggregate of amounts otherwise deducted under section 1201 in computing its income for taxation years ending after that time and before control was so acquired shall be deemed to have been deducted under section 1201 by the corporation in computing its income for taxation years ending before such acquisition of control.

(2) Subject to subsections (5) and (6), where after November 7, 1969 a corporation (in this subsection referred to as the "successor") acquired a particular property (whether by way of a purchase, amalgamation, merger, winding-up or otherwise), there may be deducted by the successor in computing its income for a taxation year an amount not exceeding the aggregate of all amounts each of which is an amount determined in respect of an original owner of the particular property that is the lesser of

(a) the earned depletion base of the original owner immediately after the original owner disposed of the particular property (determined as if, in the case of a disposition after April 28, 1978 as a result of an amalgamation described in section 87 of the Act, the original owner existed after the time of disposition and no property was acquired or disposed of in the course of the amalgamation) to the extent of the amount thereof that was not

(i) deducted by the original owner or any predecessor owner of the particular property in computing income for any taxation year,

(ii) deducted by the successor in computing income for a preceding taxation year, or

(iii) otherwise deducted by the successor in computing income for the taxation year, and

(b) 25 per cent of the amount, if any, by which

(i) the part of the successor's income for the year that can reasonably be regarded as attributable to

(A) the part of any amount included under paragraph 59(3.2)(c) of the Act in computing its income for the year that can reasonably be regarded as attributable to the disposition by it in the year or a preceding taxation year of any interest in or right to the particular property, to the extent that the proceeds of the disposition have not been included in determining an amount under this clause, paragraph (7)(g), clause 29(25)(d)(i)(A) of the *Income Tax Application Rules* or clause 66.7(1)(b)(i)(A) or (3)(b)(i)(A) or paragraph 66.7(10)(g) of the Act for a preceding taxation year,

(B) its reserve amount for the year in respect of the original owner and each predecessor owner, if any, of the particular property,

(C) production from the particular property, or

(D) processing described in subparagraph 1204(1)(b)(iii), (iv) or (v) with the particular property

computed as if no deduction were allowed under section 29 of the *Income Tax Application Rules* or under any of sections 65 to 66.7 of the Act and as if that income did not include any amount designated under clause 66.7(2)(b)(ii)(A) of the Act,

exceeds

(ii) the total of

(A) four times the total of all other amounts deducted under this subsection for the year that can reasonably be regarded as attributable to the part of the successor's income for the year described in subparagraph (i), and

(B) the total of all amounts each of which is an amount deducted under subsection 66.7(1), (3), (4) or (5) of the Act or subsection 29(25) of the *Income Tax Application Rules* for the year that can reasonably be regarded as attributable to the part of the successor's income for the year described in subparagraph (i).

(3) Where in a taxation year ending after February 17, 1987 an original owner of a property disposes of the property in circumstances in which subsection (2) applies,

(a) the amount of the earned depletion base of the original owner determined immediately after the time of that disposition shall be deducted in determining the earned depletion base of the original owner at any time after the time that is immediately after the disposition;

(b) for the purposes of paragraph (2)(a), the earned depletion base of the original owner determined immediately after the original owner disposed of the property that was deducted in computing the original owner's income for the year shall be deemed to be equal to the lesser of

(i) the amount deducted in respect of the disposition under paragraph (a), and

(ii) the amount, if any, by which

(A) the specified amount determined under subsection (4) in respect of the original owner for the year

exceeds

(B) the aggregate of all amounts each of which is an amount determined under this paragraph in respect of any disposition made by the original owner before the disposition and in the year; and

(c) for greater certainty, any amount (other than the amount determined under paragraph (b)) that was deducted under section 1201 by the original owner for the year or a subsequent taxation year shall, for the purposes of paragraph (2)(a), be deemed not to be in respect of the earned depletion base of the original owner determined immediately after the original owner disposed of the particular property.

(4) Where in a taxation year ending after February 17, 1987 an original owner of a property disposes of the property in circumstances in which subsection (2) applies, the lesser of

(a) the total of all amounts each of which is the amount, if any, by which

(i) an amount deducted under paragraph (3)(a) in respect of such a disposition in the year by the original owner

exceeds

(ii) the amount, if any, designated by the original owner in a prescribed form filed with the Minister within six months after the end of the year in respect of the amount determined under subparagraph (i), and

(b) the amount, if any, deducted under section 1201 in computing the income of the original owner for the taxation year

is the specified amount in respect of the original owner for the year for the purposes of paragraphs (3)(b) and 1205(1)(d.2).

Advance Tax Rulings: ATR-19: Earned depletion base and cumulative Canadian development expense.

(5) Subsections (2), 1203(3), 1207(7) and 1212(4) do not apply

(a) in respect of a property acquired by way of an amalgamation or winding-up to which section 1214 applies;

(b) to permit, in respect of the acquisition by a corporation before February 18, 1987 of a property, a deduction by the corporation of an amount that the corporation would not have been entitled to deduct under this Part, if this Part, as it read in its application to taxation years ending before February 18, 1987, applied to taxation years ending after February 17, 1987; or

(c) in respect of a property acquired by purchase, amalgamation, merger, winding-up or otherwise, from a person who is exempt from tax under Part I of the Act on that person's taxable income.

(6) Subsections (2), 1203(3), 1207(7) and 1212(4) apply only to a corporation that has acquired a particular property

(a) where it acquired the particular property in a taxation year commencing before 1985 and, at the time it acquired the particular property, the corporation acquired the specified property of the person from whom it acquired the particular property;

(b) where it acquired the particular property from a person in a taxation year commencing after 1984 and, at the time it acquired the particular property, the corporation acquired

(i) all or substantially all of the Canadian resource properties of that person, or

(ii) where subparagraph (i) does not apply, the specified property of the person;

(c) where it acquired (other than in circumstances in which subparagraph (b)(ii) applies) the particular property after November 16, 1978 and in a taxation year ending before February 18, 1987 by any means other than by way of an amalgamation or winding-up and it and the person from whom it acquired the particular property have filed with the Minister a joint election under and in accordance with any of subsections 66(6), 66.1(4), 66.1(5), 66.2(3), 66.2(4), 66.4(3), and 66.4(4) of the Act as those subsections read in their application to that year;

(d) where it acquired the particular property after June 5, 1987 by way of an amalgamation or winding-up (other than in circumstances in which subparagraph (b)(ii) applies) and it has filed an election in the form prescribed for the purposes of paragraph 66.7(7)(c) of the Act with the Minister on or before the day on or before which the corporation is required to file a return of income pursuant to section 150 of the Act for its taxation year in which it acquired the particular property;

(e) where it acquired the particular property (other than by means of an amalgamation or winding-up or in circumstances in which subparagraph (b)(ii) applies) in a taxation year ending after February 17, 1987 and it and the person from whom it acquired the particular property have filed a joint election in the form prescribed for the purposes of paragraph 66.7(7)(e) of the Act with the Minister on or before the earlier of the days on or before which either of them is required to file a return of income pursuant to section 150 of the Act in respect of their respective taxation years that include the time of acquisition of the particular property; and

(f) where it acquired (other than by way of an amalgamation or winding-up) the particular property in circumstances in which subparagraph (b)(ii) applies and it and the person from whom it acquired the particular property agree to have subsection (2), 1203(3), 1207(7) or 1212(4), as the case may be, apply to them and notify the Minister in writing of the agreement in their returns of income under Part I of the Act for their respective taxation years that include the time of acquisition of the particular property.

(7) Where at any time after November 12, 1981

(a) control of a corporation is considered for the purposes of subsection 66.7(10) of the Act to have been acquired by a person or group of persons, or

(b) a corporation ceases to be exempt from tax under Part I of the Act on its taxable income,

for the purposes of section 1201, this section and section 1205,

(c) the corporation shall be deemed after that time to be a successor (within the meaning assigned by sub-

section (2)) that had, at that time, acquired all the properties owned by the corporation immediately before that time from an original owner thereof;

(d) a joint election shall be deemed to have been filed in accordance with subsection (6) in respect of the acquisition;

(e) the earned depletion base of the corporation immediately before that time shall be deemed not to be the earned depletion base of the corporation immediately after that time but to be the earned depletion base of the original owner immediately after that time;

(f) [Revoked]

(g) where the corporation (in this paragraph referred to as the "transferee") was, immediately before and at that time,

(i) a parent corporation (within the meaning assigned by subsection 87(1.4) of the Act), or

(ii) a subsidiary wholly-owned corporation (within the meaning assigned by subsection 87(1.4) of the Act)

of a particular corporation (in this paragraph referred to as the "transferor"), if both corporations agree to have this paragraph apply to them in respect of a taxation year of the transferor ending after that time and notify the Minister in writing of the agreement in the return of income under Part I of the Act of the transferor for that year, the transferor may, if throughout that year the transferee was such a parent corporation or subsidiary wholly-owned corporation of the transferor, designate in favour of the transferee, in respect of that year, for the purpose of making a deduction under subsection (2) in respect of expenditures incurred by the transferee before that time and when it was such a parent corporation or subsidiary wholly-owned corporation of the transferor, an amount not exceeding such portion of the amount that would be its income for the year, if no deductions were allowed under any of section 29 of the *Income Tax Application Rules* and sections 65 to 66.7 of the Act, [as] may reasonably be regarded as being attributable to

(iii) the production from Canadian resource properties owned by the transferor immediately before that time,

(iv) the disposition in the year of any Canadian resource properties owned by the transferor immediately before that time, and

(v) such processing as is described in subparagraph 1204(1)(b)(iii), (iv), or (v) with property owned by the transferor immediately before that time

to the extent that such portion of the amount so designated is not designated under this paragraph in favour of any other taxpayer or under paragraph 66.7(10)(g) of the Act in favour of any taxpayer, and the amount so designated shall be deemed, for the purposes of determining the amount under subsection (2),

(vi) to be income from the sources described in subparagraph (iii), (iv) or (v), as the case may be, of the transferee for its taxation year in which that taxation year of the transferor ends, and

(vii) not to be income from the sources described in subparagraph (iii), (iv) or (v), as the case may be, of the transferor for that year;

(h) where, immediately before and at that time, the corporation (in this paragraph referred to as the "transferee") and another corporation (in this paragraph referred to as the "transferor") were both subsidiary wholly-owned corporations (within the meaning assigned by subsection 87(1.4) of the Act) of a particular parent corporation (within the meaning assigned by subsection 87(1.4) of the Act), if the transferee and the transferor agree to have this paragraph apply to them in respect of a taxation year of the transferor ending after that time and notify the Minister in writing of the agreement in the return of income under Part I of the Act of the transferor for that year, paragraph (g) shall apply for that year to the transferee and transferor as though one were the parent corporation (within the meaning assigned by subsection 87(1.4) of the Act) of the other; and

(i) where that time is after January 15, 1987 and at that time the corporation was a member of a partnership that owned a property at that time,

(i) for the purposes of paragraph (c), the corporation shall be deemed to have owned immediately before that time that portion of the property owned by the partnership at that time that is equal to its percentage share of the aggregate of amounts that would be paid to all members of the partnership if it were wound up at that time, and

(ii) for the purposes of clauses (2)(b)(i)(C) and (D) for a taxation year ending after that time, the lesser of

(A) its share of the part of the income of the partnership for the fiscal period of the partnership ending in the year that may reasonably be regarded as being attributable to the production from the property or to such processing as is described in subparagraph 1204(1)(b)(iii), (iv) or (v) with the property, and

(B) an amount that would be determined under clause (A) for the year if its share of the income of the partnership for the fiscal year of the partnership were determined on the basis of the percentage share referred to in subparagraph (i)

shall be deemed to be income of the corporation for the year that may reasonably be attributable to production from the property or to such processing as is described in subparagraph 1204(1)(b)(iii), (iv) or (v) with the property.

(8) For the purposes of subsections (1) and (7), where a corporation acquired control of another corporation after November 12, 1981 and before 1983 by reason of the acquisition of shares of the other corporation pursuant to an agreement in writing concluded on or before November 12, 1981, the corporation shall be deemed to have acquired such control on or before November 12, 1981.

(9) Where, at any time,

(a) control of a taxpayer that is a corporation has been acquired by a person or group of persons,

(b) a taxpayer has disposed of all or substantially all of the taxpayer's Canadian resource properties, or

(c) a taxpayer has disposed of the specified property of the taxpayer,

and, before that time, the taxpayer or a partnership of which the taxpayer was a member acquired a property and it may reasonably be considered that one of the main purposes of the acquisition was to avoid any limitation provided in subsection (2) on the deduction in respect of

the earned depletion base of the taxpayer or of a corporation referred to as a transferee in paragraph (7)(g) or (h), the taxpayer or the partnership, as the case may be, shall be deemed, for the purposes of applying subsection (2) to or in respect of the taxpayer, not to have acquired the property.

Related Provisions: ITA 256(6)–(9) — Whether control acquired.

(10) Where in a particular taxation year a predecessor owner of a property disposes of it to a corporation in circumstances in which subsection (2) applies, for the purposes of applying subsection (2) to the predecessor owner for a taxation year ending after February 17, 1987 in respect of its acquisition of the property, the predecessor owner shall be deemed, after the disposition, never to have acquired the property except for the purposes of making a deduction under subsection (2) for the particular year.

(11) Where at any time a property is acquired by a person in circumstances in which subsection (2) does not apply, every person who was an original owner or predecessor owner of the property by reason of having disposed of the property before that time shall, for the purposes of applying this Part to or in respect of the person or any other person who after that time acquires the property, be deemed after that time not to be an original owner or predecessor owner of the property by reason of having disposed of the property before that time.

History: Para. 1202(5)(c) amended by P.C. 2001-954, s. 1, May 31, 2001, *Canada Gazette*, Part II, June 20, 2001, applicable to acquisitions that take place after April 26, 1995, other than an acquisition that takes place before 1996 and that was required by an agreement in writing entered into before April 26, 1995.

Para. 1202(2)(b) amended by P.C. 1999-629, s. 5, April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to 1999 *et seq.*

Cl. 1202(2)(b)(i)(A) amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

That portion of subpara. 1202(2)(b)(i) following cl. (D) substituted, and para. 1202(7)(f) revoked, by P.C. 1993-415, subsecs. 1(1) and (3) March 9, 1993, *Canada Gazette*, Part II, March 24, 1993, applicable to taxation years ending after February 17, 1987.

Para. 1202(4)(a) substituted by subsec. 1(2) of the said P.C. 1993-415, applicable with respect to dispositions occurring in taxation years commencing after March 23, 1993; and with respect to a disposition of a property made by a taxpayer in a taxation year commencing before March 24, 1993 and ending after February 17, 1987 where

(a) the taxpayer, and

(b) each corporation that, before the end of the taxpayer's taxation year that includes the date of publication, acquired the property or any other property that was disposed of by the taxpayer in a taxation year ending after February 17, 1987 as part of a transaction or an event as a consequence of which that corporation was or, but for that subsection, would be entitled to deduct an amount under subsec. 1202(2) in respect of an expenditure of the taxpayer,

so elect by notice in writing filed with the Minister of National Revenue on or before the day that is 180 days after the end of the taxpayer's taxation year that included March 24, 1993, and file waivers in the form and within the time referred to in subpara. 152(4)(a)(ii) of the Act in respect of taxation years commencing before March 24, 1993 with respect to the consequences of the election. And where a taxpayer has so elected in respect of a disposition, a form containing a designation under subpara. 1202(4)(a)(ii) shall be deemed to have been filed within the time required in that subparagraph if it is filed with the Minister of National Revenue on or before the day that is 180 days after the end of the taxpayer's taxation year that includes March 24, 1993.

Subsecs. 1202(2) to (11) substituted for subsecs. (2) to (6) by P.C. 1990-2780, s. 3, December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable (except for cl. (2)(b)(i)(C) and subsec. (9)) to taxation years ending after February 17, 1987 except that the Minister of National Revenue shall be deemed to have been notified in circumstances satisfying the condition in para. 1202(7)(g)or (h) if the Minister is notified in writing of the agreement referred to therein before July 16, 1991.

Cl. 1202(2)(b)(i)(C) and subsec. 1202(9) are applicable to taxation years ending after February 17, 1987 except that with respect to property acquired before January 15, 1987, or acquired before 1988, where the person acquiring the property is considered for the purposes of section 66.7 of the Act to have been obliged on that date to acquire the property pursuant to the terms of an agreement in writing entered into on or before that date,

(a) cl. (2)(b)(i)(C) shall be read as follows:

"(C) where the particular property was an interest in or a right to take or remove petroleum or natural gas or a right to take or remove minerals from a property, the production from that property,"; and

(b) subsec. (9) is not applicable.

That portion of subsec. 1202(2) preceding para. (a) substituted by P.C. 1990-2256, subsec. 1(1), October 18, 1990, *Canada Gazette*, Part II, November 7, 1990, applicable in respect of taxation years commencing after 1984.

Subsec. 1202(2.1) added by the said P.C. 1990-2256, subsec. 1(2), applicable in respect of taxation years commencing after 1984 except that the Minister of National Revenue shall be deemed to have been notified in circumstances satisfying the condition set out in para. (c) if the Minister is notified in writing of the agreement referred to therein before May 7, 1991.

That portion of subsec. 1202(3) preceding para. (a) substituted by the said P.C. 1990-2256, subsec. 1(3), applicable in respect of taxation years commencing after 1984.

Subsec. 1202(3.1) added by the said P.C. 1990-2256, subsec. 1(4), applicable in respect of taxation years commencing after 1984 except that the Minister of National Revenue shall be deemed to have been notified in circumstances satisfying the condition set out in para. (c) if the Minister is notified in writing of the agreement referred to therein before May 7, 1991.

Subsec. 1202(3.2) added by P.C. 1990-2256, subsec. 1(4), applicable to taxation years ending after July 19, 1985.

Para. 1202(4)(e.1) added by the said P.C. 1990-2256, subsec. 1(5), applicable to 1985 *et seq.* except that where the Minister of National Revenue is notified in writing of the agreement referred to in the para. before May 7, 1991 the requirement in the para. with regard to notifying the Minister shall be deemed to have been satisfied.

That portion of subsec. 1202(2) preceding para. (a) substituted by P.C. 1990-162, subsec. 1(1), February 1, 1990, *Canada Gazette*, Part II, February 14, 1990, applicable with respect to acquisitions occurring after 1982 except that with respect to acquisitions occurring after 1982 and in taxation years commencing before 1985, the reference to "Canadian resource properties of the predecessor" shall be read as a reference to "property of the predecessor used by the predecessor in carrying on in Canada any of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) of the Act as were carried on by the predecessor".

That portion of subsec. 1202(3) preceding para. (a) substituted by the said P.C. 1990-162, subsec. 1(2), applicable with respect to acquisitions occurring after 1982 except that with respect to acquisitions occurring after 1982 and in taxation years commencing before 1985, the reference to "Canadian resource properties of the first successor corporation" shall be read as a reference to "property of the first successor corporation used by it in carrying on in Canada such of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) of the Act as were carried on by it".

Para. 1202(4)(d) was substituted by the said P.C. 1990-162, subsec. 1(3), applicable with respect to transactions occurring in taxation years commencing after 1984.

Para. 1202(4)(f) substituted by subsec. 1(4) of the said P.C. 1990-162, applicable to taxation years ending after March 1985.

That portion of subsec. 1202(5) preceding para. (a) substituted by the said P.C. 1990-162, subsec. 1(5), applicable with respect to acquisitions occurring after 1982 except that with respect to acquisitions occurring after 1982 and in taxation years commencing before 1985, the reference to "Canadian resource properties of the predecessor" shall be read as a reference to "property of the predecessor used by the predecessor in carrying on in Canada any of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) of the Act as were carried on by the predecessor".

Cl. 1202(2)(a)(i)(A) substituted by P.C. 1986-2590, subsec. 7(1), November 20, 1986, *Canada Gazette*, Part II, December 10, 1986, applicable after April 19, 1983.

Subpara. 1202(3)(a)(i) substituted by the said P.C. 1986-2590, subsec. 7(2), applicable after April 19, 1983.

That portion of subsec. 1202(2) preceding para. (a) substituted by P.C. 1985-2277, subsec. 3(1), July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable with respect to acquisitions of property occurring after April 19, 1983.

Para. 1202(4)(d) substituted by the said P.C. 1985-2277, subsec. 3(2), applicable with respect to acquisitions of property occurring after April 19, 1983.

That portion of subsec. 1202(5) preceding para. (a) substituted by the said P.C. 1985-2277, subsec. 3(3), applicable with respect to acquisitions of property occurring after April 19, 1983.

Subsec. 1202(1) substituted by P.C. 1985-465, subsec. 3(1), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to taxation years ending after November 12, 1981.

That portion of cl. 1202(2)(a)(i)(D) preceding subcl. (I) substituted, applicable with respect to amounts that, after March 6, 1985, become receivable; and subcls. 1202(2)(a)(i)(D)(I) and (II) substituted, applicable after January 1, 1981, by P.C. 1985-465, subsecs. 3(2) and (3), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985.

That portion of subpara. 1202(3)(a)(iv) preceding cl. (A) substituted, applicable with respect to amounts that, after March 6, 1985, become receivable; cls. 1202(3)(a)(iv)(A) and (B) substituted, effective from January 1, 1981, by the said P.C. 1985-465, subsecs. 3(4), (5).

Subsec. 1202(4) added by the said P.C. 1985-465, subsec. 3(6), applicable to taxation years ending after November 12, 1981.

Subsecs. 1202(5), (6) added by the said P.C. 1985-465, subsec. 3(6), applicable to taxation years ending after November 12, 1981.

That portion of subsec. 1202(2) preceding para. (a) and that portion of subpara. 1202(2)(a)(i) following cl. (B) substituted by P.C. 1981-3329, subsecs. 3(1), (2), November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, applicable in respect of taxation years ending after December 11, 1979 except that cls. 1202(1)(a)(C), (D) effective in respect of 1981 *et seq.*

All that portion of subsec. 1202(3) preceding para. (b) substituted by the said P.C. 1981-3329, subsec. 3(3), applicable in respect of taxation years ending after December 11, 1979 except that subparas. 1202(3)(a)(iii), (iv) effective in respect of 1981 *et seq.*

That portion of subsec. 1202(2) preceding para. (a) substituted, cl. 1202(2)(a)(i)(B) added, and former cl. 1202(2)(a)(i)(B) renumbered as (C), by P.C. 1980-1483, subsecs. 2(1), (2), June 5, 1980, *Canada Gazette*, Part II, June 25, 1980, effective November 17, 1978.

All that portion of subsec. 1202(3), preceding subpara. (a)(ii) substituted by the said P.C. 1980-1483, subsec. 2(3), effective November, 17, 1978.

All that portion of subsec. 1202(2) preceding para. (a) substituted by P.C. 1979-649, subsec. 2(1), March 8, 1979, *Canada Gazette*, Part II, March 28, 1979, effective commencing April 29, 1978.

Para. 1202(2)(b) substituted by the said P.C. 1979-649, subsec. 2(2), effective commencing April 29, 1978.

All that portion of subsec. 1202(3) preceding para. (b) substituted by the said P.C. 1979-649, subsec. 2(3), applicable to 1977 *et seq.*

Subsec. 1202(1) substituted by subsec. 4(1) of P.C. 1978-1849, June 8, 1978, *Canada Gazette*, Part II, June 28, 1978, applicable on and after April 1, 1977.

All that portion of subsec. 1202(2) preceding subpara. (a)(ii) substituted by subsec. 4(2) of P.C. 1978-1849, June 8, 1978, *Canada Gazette*, Part II, June 28, 1978, applicable to 1977 *et seq.*

Subpara. 1202(2)(a)(ii) substituted by subsec. 4(3) of the said P.C. 1978-1849, applicable to taxation years ending after May 6, 1974.

Subpara. 1202(2)(b)(ii) substituted by subsec. 4(4) of the said P.C. 1978-1849, June 8, 1978, *Canada Gazette*, Part II, June 28, 1978, applicable to taxation years ending after May 6, 1974.

All that portion of subsec. 1202(3) preceding para. (b) substituted by subsec. 4(5) of the said P.C. 1978-1849, applicable to 1977 *et seq.*

Para. 1202(3)(b) substituted by subsec. 4(6) of the said P.C. 1978-1849, applicable to taxation years ending after May 6, 1974.

Definitions [Reg. 1202]: "acquired" — Reg. 1202(8), (9); "amount" — ITA 248(1); "Canadian development expense" — ITA 66.2(5), 248(1); "Canadian exploration expense" — ITA 66.1(6), 248(1); "Canadian oil and gas exploration expense" — Reg. 1206(1); "control" — ITA 256(6)–(9); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "disposed", "disposes" — ITA 248(1)"disposition", "disposition" — ITA 248(1); "earned depletion base" — Reg. 1202(1), 1205(1); "fiscal period" — ITA 249.1; "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "original owner" — Reg. 1206(1); "parent" — Reg. 1214(3); "person" — ITA 248(1); "predecessor owner" — Reg. 1206(1); "prescribed", "property" — ITA 248(1); "related" — ITA 251(2)–(6); "resource" — Reg. 1206(1); "share" — ITA 248(1); "specified percentage", "specified property", "stated percentage" — Reg. 1206(1); "subsidiary wholly-owned corporation" — ITA 248(1); "successor" — Reg. 1202(2). 1202(7); "taxable income" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "transferee", "transferor" — Reg. 1202(7)(g), (h); "writing" — *Interpretation Act* 35(1).

1203. Mining exploration depletion — **(1)** In computing a taxpayer's income for a taxation year there may be deducted such amount as he may claim not exceeding the lesser of

(a) the amount if any, by which

(i) the aggregate of

(A) 25 per cent of his income for the year, computed in accordance with Part I of the Act without reference to paragraph 59(3.3)(f) thereof and on the assumption that no deduction were allowed under section 65 thereof, and

(B) the amount, if any, included in computing his income for the year by virtue of paragraph 59(3.3)(f) of the Act

exceeds

(ii) the aggregate of amounts deducted under sections 1201, 1202, 1207 and 1212 in computing his income for the year; and

(b) his mining exploration depletion base as of the end of the year (before making any deduction under this subsection for the year).

(2) For the purposes of this section, "mining exploration depletion base" of a taxpayer as of a particular time means the amount by which the aggregate of

(a) 33⅓ per cent of the amount by which

(i) the aggregate of all amounts each of which was the stated percentage of an expenditure that is, or but for paragraph 66(12.61)(b) of the Act would be, incurred by the taxpayer after April 19, 1983 and before the particular time and each of which was a Canadian exploration expense

(A) described in subparagraph 66.1(6)(a) (iii) of the Act, or

(B) that would have been described in subparagraph 66.1(6)(a)(iv) [66.1(6)"Canadian exploration expense"(h)] or (v) [subpara. (i)] of the Act if the references in those subparagraphs to "any of subparagraphs (i) to (iii.1)" were read as "subparagraph (iii)",

other than an expense described in clause (A) or (B) that was

(C) an expense renounced by the taxpayer under subsection 66(10.1) or (12.6) of the Act,

(D) an amount that was a Canadian exploration and development overhead expense of the taxpayer,

(E) an amount that was in respect of financing, including any cost incurred prior to the commencement of carrying on a business, or

(F) an eligible expense within the meaning of the *Canadian Exploration Incentive Program Act* in respect of which the taxpayer, a partnership of which the taxpayer was a member or a principal-business corporation of which the taxpayer was a shareholder, has received, is deemed to have received, is entitled to receive

or may reasonably be expected to receive at any time an incentive under that Act,

exceeds

(ii) the aggregate of all amounts each of which is the stated percentage of an amount of assistance (within the meaning assigned by paragraph 66(15)(a.1) [66(15)"assistance"] of the Act) that any person has received, is entitled to receive or, at any time, becomes entitled to receive in respect of an expense that would be described in subparagraph (i) if that subparagraph were read without reference to clause (C) thereof, other than such an amount in respect of an expense renounced under subsection 66(10.1) or (12.6) of the Act

(A) by a corporation in favour of the taxpayer, where the amount of that assistance is excluded from the aggregate in respect of which the expense is so renounced, or

(B) by the taxpayer, where the amount of that assistance is not excluded from the aggregate in respect of which the expense is so renounced, and

(b) where the taxpayer is a successor corporation, any amount required by paragraph (3)(a) to be added before the particular time in computing the taxpayer's mining exploration depletion base

exceeds the aggregate of

(c) all amounts each of which is an amount deducted by the taxpayer under subsection (1) in computing his income for a taxation year ending before the particular time; and

(d) where the taxpayer is a predecessor, all amounts required by paragraph (3)(b) to be deducted before the particular time in computing the taxpayer's mining exploration depletion base.

(3) Subject to subsections 1202(5) and (6), where a corporation (in this section referred to as the "successor corporation") has at any time (in this subsection referred to as the "time of acquisition") after April 19, 1983 and in a taxation year (in this subsection referred to as the "transaction year") acquired a property from another person (in this subsection referred to as the "predecessor") the following rules apply:

(a) for the purpose of computing the mining exploration depletion base of the successor corporation as of any time after the time of acquisition, there shall be added an amount equal to the amount required by paragraph (b) to be deducted in computing the mining exploration depletion base of the predecessor; and

(b) for the purpose of computing the mining exploration depletion base of the predecessor as of any time after the transaction year of the predecessor, there shall be deducted the amount, if any, by which

(i) the mining exploration depletion base of the predecessor immediately after the time of acquisition (assuming for this purpose that, in the case of an acquisition as a result of an amalgamation described in section 87 of the Act, the predecessor existed after the time of acquisition and no property was acquired or disposed of in the course of the amalgamation)

exceeds

(ii) the amount, if any, deducted under subsection (1) in computing the income of the predecessor for the transaction year of the predecessor.

(3.1) [Revoked]

(4) For greater certainty, where an expense incurred before a particular time is included in the aggregate calculated under subparagraph (2)(a)(i) in respect of a taxpayer and subsequent to the particular time any person becomes entitled to receive an amount of assistance (within the meaning assigned by paragraph 66(15)(a.1) [66(15)"assistance"] of the Act) that is included in the aggregate calculated under subparagraph (2)(a)(ii), the stated percentage of the amount of assistance shall be included in the amounts referred to in subparagraph (2)(a)(ii) in respect of the taxpayer at the time the expense was incurred.

History: That portion of subparas. 1203(2)(a)(i) and (ii) preceding cl. (A), and subsec. (4) substituted, cl. (2)(a)(i)(F) added, by P.C. 1990-2780, subsecs. 4(1), (2), (3), (6), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to 1988 *et seq.*

That portion of subsec. 1203(3) preceding para. (a) substituted, (3.1) revoked, by subsecs. 4(4), (5) of the said P.C. 1990-2780, applicable to taxation years ending after February 17, 1987.

That portion of subpara. 1203(2)(a)(i) preceding cl. (A), cl. (2)(a)(i)(C), subpara. (2)(a)(ii) and subsec. (4) were substituted by P.C. 1990-2256, subsecs. 2(1) to (3) and (6), October 18, 1990, *Canada Gazette*, Part II, November 7, 1990, applicable in respect of expenditures or expenses incurred after February 1986.

That portion of subsec. 1203(3) preceding para. (a) was substituted by subsec. 2(4) of the said P.C. 1990-2256, applicable in respect of taxation years commencing after 1984.

Subsec. 1203(3.1) was added by subsec. 2(5) of the said P.C. 1990-2256, applicable in respect of taxation years commencing after 1984 except that the Minister of National Revenue shall be deemed to have been notified in circumstances satisfying the condition set out in para. (c) if the Minister is notified in writing of the agreement referred to therein within 180 days after November 7, 1990.

That portion of subsec. 1203(3) preceding para. (a) substituted by P.C. 1990-162, s. 2, applicable with respect to acquisitions occurring after 1982 except that with respect to acquisitions occurring after 1982 and in taxation years commencing before 1985, the reference to "Canadian resource properties of the predecessor" shall be read as a reference to "property of the predecessor used by the predecessor in carrying on in Canada such of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) of the Act as were carried on by the predecessor".

Subpara. 1203(1)(a)(i) substituted, applicable to taxation years ending after April 19, 1983, all that portion of subsec. 1203(3) preceding para. (a) substituted, applicable with respect to acquisitions of property occurring after April 19, 1983, by P.C. 1985-2277, subsecs. 4(1) and (2), July 24, 1985, *Canada Gazette*, Part II, August 7, 1985.

S. 1203 added by P.C. 1985-465, s. 4, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable with respect to expenses incurred after April 19, 1983.

Former s. 1203 revoked by P.C. 1981-3329, s. 4, November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, applicable in respect of taxation years ending after December 11, 1979.

Definitions [Reg. 1203]: "amount", "business" — ITA 248(1); "Canadian development expense" — ITA 66.2(5), 248(1), Reg. 1206(4)(a); "Canadian exploration and development expenses" — ITA 66(15), 248(1), Reg. 1206(4)(a); "Canadian exploration and development overhead expense" — Reg. 1206(1), (4.1); "Canadian exploration expense" — ITA 66.1(6), 248(1), Reg. 1206(4)(a); "commencement" — *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "disposition" — ITA 248(1); "mining exploration depletion base" — Reg. 1203(2), (3); "person" — ITA 248(1); "predecessor" — Reg. 1203(3); "property", "shareholder" — ITA 248(1); "stated percentage" — Reg. 1206(1); "successor corporation" — Reg. 1203(3); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "time of acquisition", "transaction year" — Reg. 1203(3).

1204. Resource profits — (1) ["Gross resource profits"] — For the purposes of this Part, "gross resource profits" of a taxpayer for a taxation year means the amount, if any, by which the total of

(a) the amount, if any, by which the aggregate of

(i) the aggregate of amounts, if any, that would be included in computing the taxpayer's income for the year by virtue of subsection 59(2) and paragraphs 59(3.2)(b) and 59.1(b) of the Act if subsection 59(2) were read without reference to subsection 64(1) therein, and

(i.1) the amount, if any, by which the amount included in computing his income for the year by virtue of paragraph 59(3.2)(c) of the Act exceeds the proceeds of disposition of property described in clause 66(15)(c)(ii)(A) [66(15)"Canadian resource property"(b)(i)] of the Act that became receivable in the year or a preceding taxation year and after December 31, 1982 to the extent that such proceeds have not been deducted in determining the amount under this subparagraph for a preceding taxation year

exceeds

(ii) the aggregate of amounts, if any, deducted in computing his income for the year by virtue of paragraph 59.1(a) and subsections 64(1.1) and (1.2) of the Act,

(b) the amount, if any, of the aggregate of his incomes for the year from

(i) the production of petroleum, natural gas, related hydrocarbons or sulphur from

(A) oil or gas wells in Canada operated by the taxpayer, or

(B) natural accumulations (other than mineral resources) of petroleum or natural gas in Canada operated by the taxpayer,

(ii) the production and processing in Canada of

(A) ore, other than iron ore or tar sands ore, from mineral resources in Canada operated by him to any stage that is not beyond the prime metal stage or its equivalent,

(B) iron ore from mineral resources in Canada operated by him to any stage that is not beyond the pellet stage or its equivalent, and

(C) tar sands ore from mineral resources in Canada operated by him to any stage that is not beyond the crude oil stage or its equivalent,

(iii) the processing in Canada of

(A) ore, other than iron ore or tar sands ore, from mineral resources in Canada not operated by him to any stage that is not beyond the prime metal stage or its equivalent,

(B) iron ore from mineral resources in Canada not operated by him to any stage that is not beyond the pellet stage or its equivalent, and

(C) tar sands ore from mineral resources in Canada not operated by him to any stage that is not beyond the crude oil stage or its equivalent,

(iv) the processing in Canada of

(A) ore, other than iron ore or tar sands ore, from mineral resources outside Canada to any stage that is not beyond the prime metal stage or its equivalent,

(B) iron ore from mineral resources outside Canada to any stage that is not beyond the pellet stage or its equivalent, and

(C) tar sands ore from mineral resources outside Canada to any stage that is not beyond the crude oil stage or its equivalent,

(v) the processing in Canada of heavy crude oil recovered from an oil or gas well in Canada to any stage that is not beyond the crude oil stage or its equivalent, and

(vi) Canadian field processing,

(b.1) the total of all amounts (other than an amount included because of paragraph (b) in computing the taxpayer's gross resource profits for the year) each of which is an amount included in computing the taxpayer's income for the year as a rental or royalty computed by reference to the amount or value of production from a natural accumulation of petroleum or natural gas in Canada, an oil or gas well in Canada or a mineral resource in Canada, and

(c) if the taxpayer owns all the issued and outstanding shares of the capital stock of a railway company throughout the year, the amount that may reasonably be considered to be the railway company's income for its taxation year ending in the year from the transportation of such of the taxpayer's ore as is described in clause (b)(ii)(A), (B) or (C),

exceeds the aggregate of the taxpayer's losses for the year from the sources described in paragraph (b), where the taxpayer's incomes and losses are computed in accordance with the Act on the assumption that the taxpayer had during the year no incomes or losses except from those sources and was allowed no deductions in computing the taxpayer's income for the year other than

(d) amounts deductible under section 66 of the Act (other than amounts in respect of foreign exploration and development expenses) or subsection 17(2) or (6) or section 29 of the *Income Tax Application Rules*, for the year;

(e) the amounts deductible or deducted, as the case may be, under section 66.1, 66.2 (other than an amount that is in respect of a property described in clause 66(15)(c)(ii)(A) [66(15)"Canadian resource property"(b)(i)] of the Act), 66.4, 66.5 or 66.7 (other than subsection (2) thereof) of the Act for the year; and

(f) any other deductions for the year that can reasonably be regarded as applicable to the sources of income described in paragraph (b) or (b.1), other than a deduction under paragraph 20(1)(ss) or (tt) of the Act or section 1201 or subsection 1202(2), 1203(1), 1207(1) or 1212(1).

History: The opening words of subpara. 1204(1)(b)(i) amended, and subpara. 1204(1)(b)(vi) added, by P.C. 1999-629, subsecs. 6(1) and (2), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to taxation years that begin after 1996.

The opening words of subsec. 1204(1), cl. 1204(1)(b)(i)(B), and paras. 1204(1)(b.1) and (f) amended by P.C. 1996-1488, subsecs. 2(1) to (4), September 24, 1996, *Canada Gazette*, Part II, October 16, 1996; the opening words to subsec. (1) applicable to taxation years that begin after December 20, 1991; cl. (b)(i)(B) applicable to taxation years that end after March 1985; para. (b.1) applicable to taxation years that begin after 1990; para. (f) applicable to taxation years that end after February 22, 1994.

Para. 1204(1)(d) amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Subpara. 1204(1)(b)(i) substituted by P.C. 1990-2780, subsec. 5(1), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years ending after March 1985.

All that portion of subsec. 1204(1) between paras. (b.1) and (d) substituted by subsec. 5(2) of the said P.C. 1990-2780, applicable to taxation years commencing after 1987.

Paras. 1204(1)(e), (f) substituted by subsec. 5(3) of the said P.C. 1990-2780, applicable to taxation years ending after February 17, 1987.

Subpara. 1204(1)(a)(i) substituted by P.C. 1990-162, subsec. 3(1), February 1, 1990, *Canada Gazette*, Part II, February 14, 1990, applicable to taxation years commencing after 1984.

Subpara. 1204(1)(b)(i) and para. (b.1) substituted by subsecs. 3(2) and (3) of the said P.C. 1990-162, applicable to taxation years ending after March 1985.

Para. 1204(1)(e) substituted by subsec. 3(4) of the said P.C. 1990-162, applicable to 1985 *et seq.*

All that portion of para. 1204(1)(a) preceding subpara. (ii) and para. 1204(1)(e) substituted, applicable to taxation years commencing after 1982; subparas. 1204(1)(b)(ii) to (v) substituted, applicable to taxation years commencing after November 12, 1981; para. 1204(1)(f) substituted, applicable to taxation years ending after April 19, 1983; all that portion of subsec. 1204(1) following para. (b.1) and preceding para. (c), and para. (c) substituted, para. 1204(1)(c.1) added by P.C. 1985-465, subsecs. 5(1)–(5), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985.

Paras. 1204(1)(a), (b.1), (e), (f) substituted, subpara. 1204(1)(b)(v) added by P.C. 1981-3329, subsecs. 5(1)–(4), November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, applicable, as to paras. 1204(1)(a), (e), in respect of taxation years ending after December 11, 1979, as to subpara. 1204(1)(b)(v), in respect of 1981 *et seq.*

Subpara. 1204(1)(b)(v) revoked, para. 1204(1)(b.1) added by P.C. 1981-411, February 19, 1981, *Canada Gazette*, Part II, March 11, 1981, effective December 12, 1979.

Para. 1204(1)(f) substituted by P.C. 1979-649, s. 3, March 8, 1979, *Canada Gazette*, Part II, March 28, 1979, effective for taxation years ending after April 10, 1978.

Para. 1204(1)(a) substituted by P.C. 1978-1849, s. 5, June 8, 1978, *Canada Gazette*, Part II, June 28, 1978, applicable to 1977 *et seq.*

Selected Cases [Reg. 1204(1)]: *Gulf Canada Resources v. Canada*, [1995] 1 C.T.C. 334 (FCA) (Production as "business" must include disposition of material by sale or otherwise).

(1.1) ["Resource profits"] — For the purposes of this Part, "resource profits" of a taxpayer for a taxation year means the amount, if any, by which the taxpayer's gross resource profits for the year exceeds the total of

(a) all amounts deducted in computing the taxpayer's income for the year other than

(i) an amount deducted in computing the taxpayer's gross resource profits for the year,

(ii) an amount deducted under any of section 8, paragraphs 20(1)(ss) and (tt), sections 60 to 64 and subsections 66(4), 66.7(2) and 104(6) and (12) of the Act and section 1201 and subsections 1202(2), 1203(1), 1207(1) and 1212(1) in computing the taxpayer's income for the year,

(iii) an amount deducted under section 66.2 of the Act in computing the taxpayer's income for the year, to the extent that it is attributable to any right, licence or privilege to store underground petroleum, natural gas or related hydrocarbons in Canada,

(iv) an amount deducted in computing the taxpayer's income for the year from a business, or other source, that does not include any resource activity of the taxpayer, and

(v) an amount deducted in computing the taxpayer's income for the year, to the extent that the amount

(A) relates to an activity

(I) that is not a resource activity of the taxpayer, and

(II) that is

1. the production, processing, manufacturing, distribution, marketing, transportation or sale of any property,

2. carried out for the purpose of earning income from property, or

3. the rendering of a service by the taxpayer to another person for the purpose of earning income of the taxpayer, and

(B) does not relate to a resource activity of the taxpayer,

(b) all amounts each of which is the amount, if any, by which

(i) the amount that would have been charged to the taxpayer by a person or partnership with whom the taxpayer was not dealing at arm's length if the taxpayer and that person or partnership had been dealing at arm's length

(A) for the use after March 6, 1996 and in the year of a property (other than money) owned by that person or partnership, or

(B) for the provision after March 6, 1996 and in the year by that person or partnership of a service to the taxpayer

exceeds the total of

(ii) the amount charged to the taxpayer for the use of that property or the provision of that service in that period, and

(iii) the portion of the amount described in subparagraph (i) that, if it had been charged, would not have been deductible in computing the taxpayer's resource profits, and

(c) where the year ends after February 21, 1994, all amounts added under subsection 80(13) of the Act in computing the taxpayer's gross resource profits for the year.

Related Provisions: Reg. 1204(1.2) — Interpretation.

History: Subsec. 1204(1.1) added by P.C. 1996-1488, subsec. 2(5), September 24, 1996, *Canada Gazette*, Part II, October 16, 1996, applicable to taxation years that begin after December 20, 1991 except that, for each taxation year that began before July 24, 1992, the amount determined under para. 1204(1.1)(a) is deemed to be equal to the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the total that would otherwise be determined under that paragraph;

B is the number of days in the year that are after July 23, 1992; and

C is the number of days in the year.

(1.2) [Interpretation for (1.1)] — For the purposes of paragraph (1.1)(b) and this subsection,

(a) a taxpayer is considered not to deal at arm's length with a partnership where the taxpayer does not deal at arm's length with any member of the partnership;

(b) a partnership is considered not to deal at arm's length with another partnership where any member of the first partnership does not deal at arm's length with any member of the second partnership;

(c) where a taxpayer is a member, or is deemed by this paragraph to be a member, of a partnership that is a member of another partnership, the taxpayer is deemed to be a member of the other partnership; and

(d) the provision of a service to a taxpayer does not include the provision of a service by an individual in the individual's capacity as an employee of the taxpayer.

History: Subsec. 1204(1.2) added by P.C. 1996-1488, subsec. 2(5), September 24, 1996, *Canada Gazette*, Part II, October 16, 1996, applicable to taxation years that end after March 6, 1996.

(2) [Income of a trust] — For greater certainty, for the purposes of this section, in computing the income or loss of a trust for a taxation year from the sources described in paragraphs (1)(b) and (b.1), no deduction shall be made in respect of amounts deductible by the trust pursuant to subsection 104(6) or (12) of the Act.

History: Subsec. 1204(2) substituted by P.C. 1985-465, subsec. 5(6), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985.

(3) [Exclusions] — A taxpayer's income or loss from a source described in paragraph (1)(b) does not include

(a) any income or loss derived from transporting, transmitting or processing (other than processing described in clause (1)(b)(ii)(C), (iii)(C) or (iv)(C) or subparagraph (1)(b)(v) or (vi)) petroleum, natural gas or related hydrocarbons or sulphur from a natural accumulation of petroleum or natural gas;

(b) any income or loss arising because of the application of paragraph 12(1)(z.1) or (z.2) or (z.5) or section 107.3 of the Act; and

Proposed Amendment [effective 2007] — Reg. 1204(3)(b)

(b) any income or loss arising because of the application of paragraph 12(1)(z.1) or (z.2) or section 107.3 of the Act; and

Application: The June 9, 2003 draft regulations (natural resources), subsec. 3(1), will amend para. 1204(3)(b) to read as above, applicable to taxation years that begin after 2006.

Technical Notes: Subsection 1204(3) provides that any income or loss derived from transporting, transmitting or processing oil and gas, other than the processing of tar sands ore or heavy crude oil, is not taken into account in the determination of "resource profits".

Subsection 1204(3) is amended, applicable to taxation years after 2006 to remove the reference to a resource loss in paragraph 12(1)(z.5) of the Act, consequential on the repeal of that provision.

(c) any income or loss that can reasonably be attributable to a service rendered by the taxpayer (other than processing described in subparagraph (1)(b)(iii), (iv), (v) or (vi) or activities carried out by the taxpayer as a coal mine operator).

History: Paras. 1204(3)(a), (b) and (c) amended by P.C. 1999-629, subsecs. 6(3) and (4), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, paras. (a) and (b) applicable to taxation years that begin after 1996 and para. (c) applicable to taxation years that begin after March 6, 1996.

Subsec. 1204(3) amended by P.C. 1996-1488, subsec. 2(6), September 24, 1996, *Canada Gazette*, Part II, October 16, 1996, applicable to taxation years that end after February 22, 1994, except that para. 1204(3)(c) does not apply to taxation years that began before March 7, 1996.

Subsec. 1204(3) substituted by P.C. 1985-465, subsec. 5(7), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to taxation years commencing after November 12, 1981.

Subsec. 1204(3) substituted by P.C. 1981-3329, subsec. 5(5), November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, applicable in respect of 1981 *et seq.*

(4) [Syncrude project] — Notwithstanding any other provision in this Part, for the purposes of this Part, the income or loss of a taxpayer for a taxation year shall be computed on the assumption that paragraphs 12(1)(o) and 18(1)(m) and subsections 69(6) to (10) of the Act were not applicable to

(a) amounts receivable and the fair market value of any property receivable by the Crown as a royalty, tax, rental or levy with respect to the Syncrude Project, or as an amount however described, that may reasonably be regarded as being in lieu of any of the preceding amounts,

(b) dispositions of leased substances to the Crown by the participant, and

(c) acquisitions of leased substances from the Crown by the participant,

where the taxpayer has been granted a remission of tax for the year pursuant to subsection 3(1) of the *Syncrude Remission Order*.

Proposed Repeal — Reg. 1204(4)

Application: The June 9, 2003 draft regulations (natural resources), subsec. 3(2), will repeal subsec. 1204(4), applicable to taxation years that begin after 2003.

Technical Notes: Subsections 1204(4) and (5) exclude royalties which are the subject of remission under the *Syncrude Remission Order* from the computation of resource profits. These paragraphs are repealed applicable to taxation years that begin after 2003, consequential upon the expiry of the *Syncrude Remission Order* on December 31, 2003.

(5) [Syncrude project] — For the purposes of subsection (4), "Crown", "leased substances", "participant" and "Syncrude Project" have the meanings assigned by section 2 of the *Syncrude Remission Order*.

Proposed Repeal — Reg. 1204(5)

Application: The June 9, 2003 draft regulations (natural resources), subsec. 3(2), will repeal subsec. 1204(5), applicable to taxation years that begin after 2003.

Technical Notes: See under Reg. 1204(4) above.

History: Subsecs. 1204(4), (5) added by P.C. 1980-425, February 8, 1980, *Canada Gazette*, Part II, February 27, 1980, effective in respect of 1979 *et seq.*

(6) [Repealed]

History: Subsec. 1204(6) repealed by P.C. 1996-1488, subsec. 2(7), September 24, 1996, *Canada Gazette*, Part II, October 16, 1996, applicable to taxation years that begin after 1990.

That portion of subsec. 1204(6) preceding para. (a) substituted by P.C. 1990-162, subsec. 3(5), *Canada Gazette*, applicable to taxation years ending after March 1985.

Subsec. 1204(6) added by P.C. 1981-411, February 19, 1981, *Canada Gazette*, Part II, March 11, 1981, effective in respect of the period before these Regulations are published in the *Canada Gazette* commencing December 12, 1979.

Selected Cases [Reg. 1204]: *Gulf Canada Resources Ltd. v. Canada*, [1996] 1 C.T.C. 55 (TCC) (Bitumen and bituminous sands were "petroleum. . .or related hydrocarbons").

Definitions [Reg. 1204]: "amount" — ITA 248(1); "arm's length" — ITA 251(1), Reg. 1204(1.2)(a), (b); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian development expense" — ITA 66.2(5), 248(1), Reg. 1206(4)(b); "Canadian exploration and development expenses" — ITA 66(15), 248(1), Reg. 1206(4)(b); "Canadian exploration expense" — ITA 66.1(6), 248(1), Reg. 1206(4)(b); "Canadian field processing" — ITA 248(1); "coal mine operator" — Reg. 1206(1); "crown leased substances" — Reg. 1204(5); "disposition", "employee" — ITA 248(1); "foreign exploration and development expenses" — ITA 66(15), 248(1); "gross resource profits" — Reg. 1204(1);

"individual" — ITA 248(1); "member" — Reg. 1204(1.2)(c); "mineral resource", "oil or gas well" — ITA 248(1); "ore" — Reg. 1206(1); "participant" — Reg. 1204(5); "person" — ITA 248(1); "proceeds of disposition" — Reg. 1206(1); "property" — ITA 248(1); "provision of a service" — Reg. 1204(1.2)(d); "related" — ITA 251(2)–(6); "resource", "resource activity" — Reg. 1206(1); "resource profits" — Reg. 1204(1.1); "share" — ITA 248(1); "Syncrude Project" — Reg. 1204(5); "tar sands ore" — Reg. 1206(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

1205. Earned depletion base — (1) For the purposes of this Part "earned depletion base" of a taxpayer as of a particular time means the amount by which 33⅓ per cent of the aggregate of

(a) all amounts, in respect of expenditures (other than expenditures to acquire property under circumstances that entitled the taxpayer to a deduction under section 1202 or would so entitle the taxpayer if the amounts referred to in paragraphs 1202(2)(a) and (b) were sufficient for the purpose) incurred by the taxpayer after November 7, 1969 and before the particular time, each of which was

(i) a Canadian exploration and development expense or would have been such an expense if it had been incurred after 1971 and was actually incurred before May 7, 1974, other than

(A) a cost of borrowing capital, including any cost incurred prior to the commencement of carrying on a business, that was a Canadian exploration expense or an exploration, prospecting and development expense, as the case may be, of the taxpayer,

(B) the cost to the taxpayer of any Canadian resource property acquired by the taxpayer,

(C) a Canadian exploration and development expense that was incurred after a mine had come into production in reasonable commercial quantities and may reasonably be considered to be related to the mine or to a potential or actual extension thereof,

(D) an expense that would have been described in clause (C) if it had been incurred after 1971,

(E) an expense renounced by the taxpayer under subsection 66(10) of the Act or subsection 29(7) of the *Income Tax Application Rules*,

(F) an amount that, by virtue of subparagraph 66(15)(b)(iv) [66(15)"Canadian exploration and development expenses"(d)] of the Act, was a Canadian exploration and development expense or would have been such an expense if it had been incurred after 1971, if such amount was a cost or expense referred to in clause (A), (B), (C), (D) or (E) that was incurred by an association, partnership or syndicate referred to in that subparagraph, or

(G) an amount that, by virtue of subparagraph 66(15)(b)(v) [66(15)"Canadian exploration and development expenses"(e)] of the Act, was a Canadian exploration and development expense or would have been such an expense if it had been incurred after 1971, if such amount was a cost or expense referred to in clause (A), (B), (C), (D) or (E) that the taxpayer incurred pursuant to an agreement referred to in that subparagraph,

(ii) the stated percentage of a Canadian exploration expense other than

(A) a cost of borrowing capital, including any cost incurred prior to the commencement of carrying on a business, that was a Canadian exploration expense of the taxpayer,

(B) an expense renounced by the taxpayer under subsection 66(10.1) of the Act,

(C) an amount that, by virtue of subparagraph 66.1(6)(a)(iv) [66.1(6)"Canadian exploration expense"(h)] of the Act, was a Canadian exploration expense, if such amount was an expense referred to in clause (A), (B), (E), (F), (G) or (H) that was incurred by a partnership referred to in that subparagraph,

(D) an amount that, by virtue of subparagraph 66.1(6)(a)(v) [66.1(6)"Canadian exploration expense"(i)] of the Act, was a Canadian exploration expense, if such amount was an expense referred to in clause (A), (B), (E), (F), (G) or (H) that the taxpayer incurred pursuant to an agreement referred to in that subparagraph,

(E) an amount described in clause 66.1(6)(a)(ii)(B) [66.1(6)"Canadian exploration expense"(c)(ii)] or (ii.1)(B) [subpara. (d)(ii)] of the Act,

(F) an amount that was a Canadian exploration and development overhead expense of the taxpayer,

(G) an amount that was a Canadian oil and gas exploration expense of the taxpayer, or

(H) an expense described in subparagraph 66.1(6)(a)(iii) [66.1(6)"Canadian exploration expense"(f)] of the Act incurred after April 19, 1983,

(iii) a Canadian development expense incurred before 1981 other than

(A) a cost of borrowing capital, including any cost incurred prior to the commencement of carrying on a business, that was a Canadian development expense of the taxpayer,

(B) an expense renounced by the taxpayer under subsection 66(10.2) of the Act,

(C) an amount referred to in subparagraph 66.2(5)(a)(iii) [66.2(5)"Canadian development expense"(e)] of the Act,

(D) an amount that, by virtue of subparagraph 66.2(5)(a)(iv) [66.2(5)"Canadian development expense"(f)] of the Act, was a Canadian development expense, if such amount was an expense referred to in clause (A), (B) or (C) that was incurred by a partnership referred to in that subparagraph, or

(E) an amount that, by virtue of subparagraph 66.2(5)(a)(v) [66.2(5)"Canadian development expense"(g)] of the Act, was a Canadian development expense, if such amount was an expense referred to in clause (A), (B) or (C) that the taxpayer incurred pursuant to an agreement referred to in that subparagraph,

(iv) the stated percentage of the capital cost to the taxpayer of any processing property acquired by the taxpayer principally for the purpose of

(A) processing in Canada

(I) ore, other than iron ore or tar sands ore, from a qualified resource to any stage that is not beyond the prime metal stage or its equivalent,

(II) iron ore from a qualified resource to any stage that is not beyond the pellet stage or its equivalent, or

(III) tar sands ore from a qualified resource to any stage that is not beyond the crude oil stage or its equivalent, or

(B) processing in Canada

(I) ore, other than iron ore or tar sands ore, from an exporting resource beyond the furthest stage to which such ore or similar ore from that resource was ordinarily processed in Canada before such acquisition but not beyond the prime metal stage or its equivalent,

(II) iron ore from an exporting resource beyond the furthest stage to which such ore or similar ore from that resource was ordinarily processed in Canada before such acquisition but not beyond the pellet stage or its equivalent, or

(III) tar sands ore from an exporting resource beyond the furthest stage to which such ore or similar ore from that resource was ordinarily processed in Canada before such acquisition but not beyond the crude oil stage or its equivalent,

(v) where the taxpayer is a corporation that incurred a Canadian oil and gas exploration expense in respect of conventional lands in a calendar year after 1980 and before 1984, the specified percentage for that year of such expense to the extent that it is not an amount or expense referred to in clause (ii)(A), (B) or (F) or an expense that would be referred to in clause (ii)(C) or (D) if the references in those clauses to "clause (A), (B), (E), (F), (G) or (H)" were read as "clause (A), (B) or (F)", or

(vi) where the taxpayer is a corporation,

(A) the specified percentage in respect of a Canadian oil and gas exploration expense in respect of non-conventional lands incurred in a calendar year after 1980 and before 1985 to the extent that it is not an amount or expense referred to in clause (ii)(A), (B) or (F) or an expense that would be referred to in clause (ii)(C) or (E) if the references in those clauses to "clause (A), (B), (E), (F), (G) or (H)" were read as "clause (A), (B) or (F)",

(B) the stated percentage of a Canadian development expense incurred after 1980 in respect of a qualified tertiary oil recovery project of the taxpayer to the extent that such expense is not

(I) an amount or expense described in any of clauses (iii)(A) to (E),

(II) an amount that was a Canadian exploration and development overhead expense of the taxpayer, or

(III) an eligible expense within the meaning of the *Canadian Exploration and Development Incentive Program Act* in respect of which the taxpayer, a partnership of which the taxpayer was a member, a principal-business corporation of which the taxpayer was a shareholder or a joint exploration corporation of which the taxpayer was a shareholder corporation has received, is entitled to receive or may reasonably be expected to receive at any time an incentive under that Act,

(B.1) the stated percentage of a Canadian exploration expense incurred after 1981 in respect of a qualified tertiary oil recovery project of the taxpayer that

(I) would be referred to in subparagraph 66.1(6)(a)(ii) [66.1(6)"Canadian exploration expense"(c)] or (ii.1) [para. (d)] of the Act if subparagraph 66.1(6)(a)(ii) [66.1(6)"Canadian exploration expense"(c)] were read without reference to clause (B) [subpara. (ii)] thereof, or

(II) would be referred to in subparagraph 66.1(6)(a)(iv) or (v) [66.1(6)"Canadian exploration expense"(h) or (i)] of the Act if the Act were read without reference to clause 66.1(6)(a)(ii)(B) [66.1(6)"Canadian exploration expense"(c)(ii)] and subparagraphs 66.1(6)(a)(i), (i.1), (ii.2), (iii) and (iii.1) [66.1(6)"Canadian exploration expense"(a), (b), (e), (f) and (g)],

other than the portion of such expense referred to in subclause (I) or (II) that is

(III) described in any of clauses (ii)(A) to (D) and (F),

(IV) included in the amount determined under subparagraph (v) or clause (vi)(A),

(V) described in subclause (B)(III), or

(VI) an eligible expense within the meaning of the *Canadian Exploration Incentive Program Act* in respect of which the taxpayer, a partnership of which the taxpayer was a member or a principal-business corporation of which the taxpayer was a shareholder corporation, has received, is entitled to receive or may reasonably be expected to receive at any time an incentive under that Act,

(C) the stated percentage of the capital cost to it of property that is tertiary recovery equipment, and

(D) the stated percentage of the capital cost to it of property that is, or but for Class 41 of Schedule II would be, included in Class 10 in Schedule II by virtue of paragraph (u) of the description of that Class, other than the capital cost to it of property that had, before the property was acquired by it, been used for any purpose whatever by any person with whom it was not dealing at arm's length,

History: Cl. 1205(1)(a)(i)(E) amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Those portions of para. 1205(1)(a) preceding subpara, (i), subparas. (1)(a)(ii) and (1)(a)(iv) preceding cl. (A) of each, and cls. (1)(a)(vi)(B) and (B.1) preceding subcl. (I) of each, substituted by P.C. 1990-2780, subsecs.

6(1), (2), (3), (4), (6), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years ending after February 17, 1987.

Subcl. 1205(1)(a)(vi)(B)(III) added by subsec. 6(5) of the said P.C. 1990-2780, applicable in respect of expenditures incurred after March 1987.

That portion of cl. 1205(1)(a)(vi)(B.1) following subcl. (II) substituted by subsec. 6(7) of the said P.C. 1990-2780, applicable in respect of expenditures incurred after September 1988.

Cls. 1205(1)(a)(vi)(C), (D) substituted by subsec. 6(8) of the said P.C. 1990-2780, applicable to 1988 *et seq.*

Subcls. 1205(1)(a)(vi)(B.1)(I), (II) substituted by P.C. 1990-2256, s. 3, October 18, 1990, *Canada Gazette*, Part II, November 7, 1990, applicable in respect of expenses incurred after March 1987.

Cl. 1205(1)(a)(i)(B) substituted by P.C. 1990-162, s. 4, February 1, 1990, *Canada Gazette*, Part II, February 14, 1990, applicable to taxation years commencing after 1984.

Subpara. 1205(1)(a)(v) substituted; cls. 1205(1)(a)(ii)(C), (D), (E), 1205(1)(a)(iv)(A) and (B), 1205(1)(a)(vi)(A) substituted; cl. 1205(1)(a)(ii)(H), 1205(1)(a)(vi)(B.1) added; that portion of cl. 1205(1)(a)(vi)(B) preceding subcl. (I) substituted by P.C. 1985-465, subsecs. 6(1)–(9), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable, as to cls. 1205(1)(a)(ii)(C), (D), (H) and subpara. 1205(1)(a)(v) with respect to expenses incurred after April 19, 1983; as to cls. 1205(1)(a)(iv)(A) and (B) with respect to property acquired or expenditures made, as the case may be, in taxation years commencing after November 12, 1981; as to cl. 1205(1)(a)(vi)(A), the renumbering of s. 1205, and the substituted portion of cl. 1205(1)(a)(vi)(B), commencing January 1, 1981 except that for the period before April 20, 1983, the reference to "in clause (ii)(A), (B) or (F)" or an expense that would be referred to in clause (ii)(C) or (D) if the references in those clauses to "clause (A), (B), (E), (F), (G) or (H)" were read as "clause (A), (B) or (F)" in 1205(1)(a)(vi)(A) shall be read as "in any of clauses (ii)(A) to (D) and (F)"; as to cl. 1205(1)(a)(ii)(E), to 1984 *et seq.*; as to cl. 1205(1)(a)(vi)(B.1), from January 1, 1982.

All that portion of para. 1205(a) preceding subpara. (i), cls. 1205(a)(i)(A), (ii)(A), all that portion of subpara. 1205(a)(iii) preceding cl. (B) substituted, cls. 1205(a)(ii)(F), (G), subparas. 1205(a)(v), (vi) added by P.C. 1981-3329, subsecs. 6(1)–(6), November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, applicable as to that portion of para. 1205(a) preceding subpara. (i), in respect of taxation years ending after December 11, 1979, as to cls. 1205(a)(ii)(F), (G) and that portion of subpara. 1205(a)(iii) preceding cl. (A) and subparas. 1205(a)(v), (vi), effective January 1, 1981.

Cls. 1205(a)(ii)(C), (iii)(D) substituted, effective December 6, 1979, cl. 1205(a)(ii)(E) added, effective May 6, 1974, subpara. 1205(a)(iv) substituted, by P.C. 1980-1483, s. 3, June 5, 1980, *Canada Gazette*, Part II, June 25, 1980.

(b) all amounts, in respect of expenditures (other than expenditures referred to in paragraph (a) or expenditures to acquire property under circumstances that entitled the taxpayer to a deduction under section 1202 or would so entitle the taxpayer if the amounts referred to in paragraphs 1202(2)(a) and (b) were sufficient for the purpose) incurred by the taxpayer after May 8, 1972 and before the particular time, each of which was the stated percentage of the capital cost to the taxpayer of property that is or, but for Class 41, would be included in Class 10 in Schedule II because of paragraph (k) of the description of that Class and that was acquired for the purpose of processing in Canada

(i) ore (other than iron ore or tar sands ore), after its extraction from a mineral resource, to any stage that is not beyond the prime metal stage or its equivalent,

(ii) iron ore, after its extraction from a mineral resource, to any stage that is not beyond the pellet stage or its equivalent, or

(iii) tar sands ore, after its extraction from a mineral resource, to any stage that is not beyond the crude oil stage or its equivalent,

other than the capital cost to him of property that had, before the property was acquired by the taxpayer, been used for any purpose whatever by any person with whom the taxpayer was not dealing at arm's length,

History: The opening words of para. 1205(1)(b) before subpara. (i) amended by P.C. 1996-1488, subsec. 3(1), September 24, 1996, *Canada Gazette*, Part II, October 16, 1996, applicable to 1988 *et seq.*

That portion of para. 1205(1)(b) preceding subpara. (i) substituted by P.C. 1990-2780, subsec. 6(9), December 20, 1990, *Canada Gazette*, Part II, applicable to taxation years ending after February 17, 1987.

Para. 1205(1)(b) substituted by P.C. 1985-465, subsec. 6(10), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable with respect to property acquired or expenditures made, as the case may be, in taxation years commencing after November 12, 1981.

Para. 1205(b) substituted by P.C. 1981-3329, subsec. 6(7), November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, effective commencing December 12, 1979.

(c) all amounts, in respect of expenditures (other than expenditures referred to in paragraph (a) or (b) or expenditures to acquire property under circumstances that entitled the taxpayer to a deduction under section 1202 or would so entitle the taxpayer if the amounts referred to in paragraphs 1202(2)(a) and (b) were sufficient for the purpose) incurred by the taxpayer before the particular time, each of which was the stated percentage of the capital cost to the taxpayer of property (other than property that had, before it was acquired by the taxpayer, been used for any purpose whatever by any person with whom the taxpayer was not dealing at arm's length) that is included in Class 28 or paragraph (a) of Class 41, in Schedule II, other than property so included

(i) by virtue of the first reference in Class 28 to paragraph (l) of Class 10 in Schedule II, where the property was acquired by the taxpayer before November 17, 1978,

(ii) by virtue of the reference in Class 28 to paragraph (m) of Class 10 in Schedule II,

(iii) that is bituminous sands equipment acquired by an individual, or

(iv) that is bituminous sands equipment acquired by a corporation before 1981,

History: Para. 1205(1)(c) substituted by P.C. 1990-2780, subsec. 6(10), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years ending after February 17, 1987 except that in its application to a taxation year ending before 1988, the para. shall be read without reference to the words "or paragraph (a) of Class 41".

Para. 1205(c) substituted by P.C. 1981-3329, subsec. 6(7), November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, effective, as to that portion of para. 1205(c) preceding subpara. (i), commencing December 12, 1979, and, as to subparas. 1205(c)(iii), (iv), commencing January 1, 1981.

Para. 1205(c) preceding (i) substituted by P.C. 1980-1483, subsecs. 3(4), (5), June 5, 1980, *Canada Gazette*, Part II, June 25, 1980.

Para. 1205(c) substituted by P.C. 1979-649, s. 4, March 8, 1979, *Canada Gazette*, Part II, March 28, 1979, effective for the period commencing April 11, 1978.

Para. 1205(c) substituted by P.C. 1978-344, s. 4, February 9, 1978, *Canada Gazette*, Part II, February 22, 1978, effective after March 31, 1977.

(d) all expenditures (other than expenditures referred to in paragraph (a), (b) or (c)) each of which was incurred by him before November 8, 1969 relating to a mine that came into production in reasonable commercial quantities before that date and that were incurred for the purpose of

(i) exploration in respect of, or

(ii) development of the mine for the purpose of gaining or producing income from the extraction of material from,

a bituminous sands deposit, an oil sands deposit or an oil shale deposit,

(d.1) three times the total of all amounts each of which is an amount equal to the lesser of

(i) the amount that would be determined under subsection 1210(1) in computing the taxpayer's income for a taxation year that ends before the particular time, if the amount determined for C under that subsection were nil, and

(ii) the amount determined for C under subsection 1210(1) in respect of the taxpayer for that year, and

History: Para. 1205(1)(d.1) amended by P.C. 1996-1488, subsec. 3(2), September 24, 1996, *Canada Gazette* Part II, October 16, 1996, applicable to taxation years that begin after December 20, 1991.

Para. 1205(1)(d.1) added by P.C. 1985-465, subsec. 6(11), February 14, 1985, *Canada Gazette* Part II, March 6, 1985, applicable to 1984 *et seq.*

(d.2) three times the aggregate of all amounts each of which is the specified amount determined under subsection 1202(4) in respect of the taxpayer for a taxation year ending after February 17, 1987 and before the particular time,

History: Para. 1205(1)(d.2) added by P.C. 1990-2780, subsec. 6(11), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years commencing after February 17, 1987.

exceeds the aggregate of

(e) all amounts deducted by the taxpayer under section 1201 in computing his income for all taxation years ending after May 6, 1974 and before the particular time;

History: Para. 1205(e) substituted by s. 6 of P.C. 1978-1849, June 8, 1978, *Canada Gazette*, Part II, June 28, 1978, applicable to taxation years ending after May 6, 1974.

(f) 33⅓ per cent of the aggregate of all amounts, each of which is the stated percentage of a cost of borrowing capital, including any cost incurred prior to the commencement of carrying on a business, that was

(i) included in the capital cost to him of depreciable property described in subparagraph (a)(iv), clause (a)(vi)(C) or (D) or paragraph (b) or (c), or

(ii) an expenditure described in paragraph (d);

History: That portion of para. 1205(1)(f) preceding subpara. (i) substituted by P.C. 1990-2780, subsec. 6(12), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years ending after February 17, 1987.

Para. 1205(f) substituted by P.C. 1981-3329, subsec. 6(8), November 26, 1981, *Canada Gazette*, Part II, December 9, 1981.

(g) 33⅓ per cent of the aggregate of all amounts, each of which is an amount

(i) that became receivable by the taxpayer after April 28, 1978 and before the earlier of December 12, 1979 and the particular time, and

(ii) in respect of which the consideration given by the taxpayer therefor was a property (other than a share, or a property that would have been a Canadian resource property if it had been acquired by the taxpayer at the time the consideration was given) or services, the cost of which may reasonably be regarded as having been primarily an expenditure that was added in computing

(A) the taxpayer's earned depletion base by reason of subparagraph (a)(i), (ii) or (iii) or paragraph (d), or

(B) the earned depletion base of an original owner of a property by reason of subparagraph (a)(i), (ii) or (iii) or paragraph (d) as it applied to the original owner, where the taxpayer acquired the property in circumstances in which subsection 1202(2) applies,

(h) 33⅓ per cent of the aggregate of all amounts, each of which is

(i) an amount in respect of a disposition of property (other than a disposition of property that had been used by the taxpayer to any person with whom the taxpayer was not dealing at arm's length) of the taxpayer after April 28, 1978 and before the earlier of December 12, 1979 and the particular time, the capital cost of which was added in computing

(A) the taxpayer's earned depletion base by reason of subparagraph (a)(iv) or paragraph (b) or (c), or

(B) the earned depletion base of an original owner of a property by reason of subparagraph (a)(iv) or paragraph (b) or (c) as it applied to the original owner, where the taxpayer acquired the property in circumstances in which subsection 1202(2) applies, and

(ii) equal to the lesser of

(A) the proceeds of disposition of the property, and

(B) the capital cost of the property to the taxpayer, where clause (i)(A) applies, or the original owner, where clause (i)(B) applies, computed as if no amount had been included therein that is a cost of borrowing capital, including any cost incurred prior to the commencement of carrying on a business,

(i) any amount required by paragraph 1202(2)(b) (as it read in its application to taxation years ending before February 18, 1987) or paragraph 1202(3)(a) to be deducted at or before the particular time in computing the taxpayer's earned depletion base,

History [Reg. 1205(1)(g)–(i)]: Paras. 1205(1)(g) to (i) substituted by P.C. 1990-2780, subsec. 6(13), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years ending after February 17, 1987.

Paras. 1205(g), (h) substituted by P.C. 1981-3329, subsec. 6(8), November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, effective, as to para. 1205(g) and that portion of para. 1205(h) preceding subpara. (i), commencing December 12, 1979.

All that portion of para. 1205(h) preceding subpara. (i) substituted by P.C. 1980-1483, s. 3, June 5, 1980, *Canada Gazette*, Part II, June 25, 1980.

Paras. 1205(g) to (i) added by P.C. 1979-649, s. 4, March 8, 1979, *Canada Gazette*, Part II, March 28, 1979, effective for the period commencing April 29, 1978.

(j) 33⅓ per cent of the aggregate of all amounts, each of which is in respect of an amount of assistance or benefit in respect of Canadian exploration expenses or Canadian development expenses or that may reasonably be related to Canadian exploration activities or Canadian development activities, whether such amount is by way of a grant, subsidy, rebate, forgivable loan, deduction from royalty or tax, rebate of royalty or tax, investment allowance or any other form of assistance or benefit that

(i) the taxpayer before the particular time has received or was entitled to receive, or that the taxpayer at or after the particular time becomes entitled to receive, or

(ii) an original owner or predecessor owner of a property before the particular time has received or was entitled to receive, or at or after the particular

time becomes entitled to receive, where the original owner or the predecessor owner received, became entitled to receive or becomes entitled to receive that amount

(A) at or after the time at which the property was acquired by the taxpayer in circumstances in which subsection 1202(2) applies, and

(B) before the time at which the taxpayer becomes a predecessor owner of the property,

and that is equal to

(iii) where the assistance or benefit was in respect of an amount added by reason of subparagraph (a)(ii) or clause (a)(vi)(B) or (B.1) in computing

(A) the earned depletion base of the taxpayer (other than such portion thereof included in determining an amount described in paragraph 1202(2)(a) before the particular time), or

(B) the portion of the earned depletion base of the original owner included in determining an amount described in paragraph 1202(2)(a) before the particular time,

the stated percentage of the amount of the assistance or benefit, and

(iv) where the assistance or benefit was in respect of an amount of Canadian oil and gas exploration expense added by reason of subparagraph (a)(v) or clause (a)(vi)(A) in computing

(A) the earned depletion base of the taxpayer (other than such portion thereof included in determining an amount described in paragraph 1202(2)(a) before the particular time), or

(B) the portion of the earned depletion base of the original owner included in determining an amount described in paragraph 1202(2)(a) before the particular time,

the amount equal to the product obtained when the amount of the assistance or benefit is multiplied by the specified percentage in respect of the expense for the calendar year in which the taxpayer or the original owner, as the case may be, incurred the expense, and

History: Para. 1205(1)(j) substituted by P.C. 1990-2780, subsec. 6(13), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years ending after February 17, 1987.

Para. 1205(1)(j) substituted by P.C. 1985-465, subsec. 6(12), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable commencing January 1, 1981 except that in respect of amounts that on or before March 6, 1985 become receivable, that part of para. 1205(1)(j) preceding subpara. (iii) shall be read as:

(j) 33⅓ per cent of the aggregate of all amounts, each of which is an amount of assistance or benefit described in subparagraph 66.1(6)(b)(ix) or 66.2(5)(b)(xi) of the Act that

(i) the taxpayer before the particular time has received or was entitled to receive, or

(ii) a predecessor before the particular time has received or was entitled to receive where the taxpayer is a successor corporation or second successor corporation, as the case may be, to the predecessor at the time the predecessor received or became entitled to receive that amount equal to.

Para. 1205(j) added by P.C. 1981-3329, subsec. 6(9), November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, applicable in respect of 1981 *et seq.*

(k) the amount, if any, by which

(i) the aggregate of all amounts that would be determined under paragraphs 1212(3)(d) to (i)

exceeds

(ii) the aggregate of all amounts that would be determined under paragraphs 1212(3)(a) to (c)

in computing his supplementary depletion base at the particular time.

History: Para. 1205(1)(k) added by P.C. 1985-465, subsec. 6(13), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to 1984 *et seq.* except that the reference to "the amount" shall, for the 1984 taxation year, be read as "25 per cent of the amount", for the 1985 taxation year, be read as "50 per cent of the amount", and for the 1986 taxation year, be read as "75 per cent of the amount".

History [Reg. 1205(1)]: S. 1205 renumbered as subsec. 1205(1) by P.C. 1985-465, subsec. 6(1), February 14, 1985, *Canada Gazette* Part II, March 6, 1985, applicable from January 1, 1981.

(2) Where an expense is incurred before the particular time referred to in subsection (1) and a person at or after the particular time becomes entitled to receive an amount of assistance or benefit in respect of the expense, the amount of such assistance or benefit shall be included in "the amount of the assistance or benefit" referred to in subparagraphs (1)(j)(iii) and (iv) as of the particular time.

History: Subsec. 1205(2) added by P.C. 1985-465, subsec. 6(14), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to amounts that, after March 6, 1985, become receivable.

Selected Cases [Reg. 1205]: *Alcan Aluminum v. R.*, [1998] 2 C.T.C. 1 (FCA) (Calculation of earned depletion base to be made at end of year).

Definitions [Reg. 1205]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "bituminous sands" — ITA 248(1); "bituminous sands equipment" — Reg. 1206(1); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian development expense" — ITA 66.2(5), 248(1), Reg. 1206(4)(a); "Canadian exploration and development expenses" — ITA 66(15), 248(1), Reg. 1206(4)(a); "Canadian exploration and development overhead expense" — Reg. 1206(1), (4.1); "Canadian exploration expense" — ITA 66.1(6), 248(1), Reg. 1206(4)(a); "Canadian oil and gas exploration expense" — Reg. 1206(1); "Canadian resource property" — ITA 66(15), 248(1); "commencement" — *Interpretation Act* 35(1); "conventional lands" — Reg. 1206(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "depreciable property" — ITA 13(21), 248(1); "disposition" — ITA 248(1); "disposition of property" — Reg. 1206(1); "earned depletion base" — Reg. 1202(1), 1205(1); "exporting resource" — Reg. 1206(1); "individual" — ITA 248(1); "mine" — Reg. 1206(1); "mineral resource" — ITA 248(1); "non-conventional lands", "ore", "original owner" — Reg. 1206(1); "person" — ITA 248(1); "predecessor owner", "proceeds of disposition", "processing property" — Reg. 1206(1); "property" — ITA 248(1); "qualified resource", "qualified tertiary oil recovery project" — Reg. 1206(1); "related" — ITA 251(2)–(6); "resource" — Reg. 1206(1); "share", "shareholder" — ITA 248(1); "specified percentage", "stated percentage" — Reg. 1206(1); "successor" — Reg. 1202(7); "supplementary depletion base" — Reg. 1212(2)–(4); "tar sands ore" — Reg. 1206(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "tertiary recovery equipment" — Reg. 1206(1).

1206. Interpretation — (1) In this Part,

"bituminous sands equipment" means property of a taxpayer that

(a) is included in Class 28 or in paragraph (a) of Class 41 in Schedule II, other than property so included

(i) by virtue of the first reference in Class 28 to paragraph (l) of Class 10 in Schedule II, where the property was acquired by the taxpayer before November 17, 1978, or

(ii) by virtue of the reference in Class 28 to paragraph (m) of Class 10 in Schedule II, and

(b) was acquired by the taxpayer after April 10, 1978 principally for the purpose of gaining or producing income from one or more mines, each of which is a location in a bituminous sands deposit, oil sands deposit or oil shale deposit from which material is extracted;

History: Para. (a) of "bituminous sands equipment" in subsec. 1206(1) substituted by P.C. 1990-2780, subsec. 7(1), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to 1988 *et seq.*

Definition of "bituminous sands equipment" added to subsec. 1206(1) by P.C. 1979-649, s. 5, March 8, 1979, *Canada Gazette*, Part II, March 28, 1979, effective for the period commencing April 11, 1978.

"Canadian exploration and development overhead expense" of a taxpayer means a Canadian exploration expense or a Canadian development expense of the taxpayer made or incurred after 1980 that is not a Canadian renewable and conservation expense (in this definition having the meaning assigned by subsection 66.1(6) of the Act) nor a taxpayer's share of a Canadian renewable and conservation expense incurred by a partnership and

(a) that was in respect of the administration, management or financing of the taxpayer,

(b) that was in respect of the salary, wages or other remuneration or related benefits paid in respect of a person employed by the taxpayer whose duties were not all or substantially all directed towards exploration or development activities,

(c) that was in respect of the upkeep or maintenance of, taxes or insurance in respect of, or rental or leasing of, property other than property all or substantially all of the use of which by the taxpayer was for the purposes of exploration or development activities, or

(d) that may reasonably be regarded as having been in respect of

(i) the use of or the right to use any property in which any person who was connected with the taxpayer had an interest,

(ii) compensation for the performance of a service for the benefit of the taxpayer by any person who was connected with the taxpayer, or

(iii) the acquisition of any materials, parts or supplies from any person who was connected with the taxpayer

to the extent that the expense exceeds the least of amounts, each of which was the aggregate of the costs incurred by a person who was connected with the taxpayer

(iv) in respect of the property,

(v) in respect of the performance of the service, or

(vi) in respect of the materials, parts or supplies;

Related Provisions: Reg. 1206(5) — Meaning of "connected" and "costs incurred by a person".

History: The opening words of the definition "Canadian exploration and development overhead expense" in subsec. 1206(1) amended by P.C. 2000-1331, subsec. 3(1), August 23, 2000, *Canada Gazette*, Part II, September 13, 2000, applicable to expenses incurred after December 5, 1996.

Paras. (b) and (c) of "Canadian exploration and development overhead expense" substituted by P.C. 1985-465, s. 7, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective commencing January 1, 1981

"Canadian exploration and development overhead expense" added by P.C. 1981-3329, s. 7, November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, effective commencing January 1, 1981.

"Canadian oil and gas exploration expense" of a taxpayer means an outlay or expense made or incurred after 1980 that would be a Canadian exploration expense of the taxpayer within the meaning assigned by paragraph 66.1(6)(a) [66.1(6)"Canadian exploration expense"] of the Act if that paragraph were read without reference to subparagraphs (iii) and (iii.1) [paras. (f) and (g)] thereof and if the reference in subparagraphs (iv) and (v) [paras. (h) and (i)] thereof to "any of subparagraphs (i) to (iii.1) [paras. (a) to (g)]" were read as a reference to "any of subparagraphs (i) to (ii.2) [paras. (a) to (e)]", other than an outlay or expense that was a Canadian exploration expense by virtue of clause 66.1(6)(a)(ii)(B) or (ii.1)(B) [66.1(6)"Canadian exploration expense"(c)(ii) or (d)(ii)] of the Act that was in respect of a qualified tertiary oil recovery project;

History: Paras. (b) and (c) of "Canadian oil and gas exploration expense" substituted by P.C. 1985-465, s. 7, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective commencing January 1, 1981.

"Canadian oil and gas exploration expense" added by P.C. 1981-3329, s. 7, November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, effective commencing January 1, 1981.

"coal mine operator" means a person who undertakes all or substantially all of the activities involved in the production of coal from a resource;

Related Provisions: Reg. 1104(2)"coal mine operator" — Same definition for capital cost allowance.

History: The definition "coal mine operator" added to subsec. 1206(1) by P.C. 1999-629, subsec. 7(5), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable after March 6, 1996.

"conventional lands" means lands situated in Canada other than non-conventional lands;

"disposition of property" has the meaning assigned by paragraph 13(21)(c) [13(21)"disposition of property"] of the Act;

History: Definition of "disposition of property" added to subsec. 1206(1) by P.C. 1979-649, s. 5, March 8, 1979, *Canada Gazette*, Part II, March 28, 1979, effective for the period commencing April 11, 1978.

"enhanced recovery equipment" means property of a taxpayer that

(a) is included in Class 10 in Schedule II by virtue of paragraph (j) of the description of that Class, and

(b) was acquired by the taxpayer after April 10, 1978 and before 1981 for use in the production of oil, from a reservoir or a deposit of bituminous sand, oil sand or oil shale in Canada operated by the taxpayer, that is incremental to oil that would be recovered using primary recovery techniques alone,

other than property

(c) used by the taxpayer as part of a primary recovery process prior to the use described in paragraph (b),

(d) that had, before it was acquired by the taxpayer, been used for any purpose whatever by any person with whom the taxpayer was not dealing at arm's length, or

(e) that has been used by any person before April 11, 1978 in the production of oil, from a reservoir in Canada, that is incremental to oil that would be recovered using primary recovery techniques alone;

History: "Enhanced recovery equipment" substituted by P.C. 1990-2780, subsec. 7(2), deemed in force as of April 11, 1978.

Para. (b) of "enhanced recovery equipment" substituted by P.C. 1981-3329, s. 7, November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, effective commencing January 1, 1981.

Para. (c) of "enhanced recovery equipment" substituted by P.C. 1980-1483, s. 4, June 5, 1980, *Canada Gazette*, Part II, June 25, 1980, effective April 11, 1978.

Definition of "enhanced recovery equipment" added to subsec. 1206(1) by P.C. 1979-649, s. 5, March 8, 1979, *Canada Gazette*, Part II, March 28, 1979, effective for the period commencing April 11, 1978.

"exempt partnership" in respect of a taxpayer at a particular time means a partnership of which the taxpayer was a member throughout the period beginning on December 20, 1991 and ending at the particular time, where

all or substantially all of the fair market value of the property of the partnership at the particular time is attributable to property held in connection with one or more working interests that were held by the partnership on December 20, 1991 for the production of minerals, petroleum, natural gas or related hydrocarbons, unless

(a) any of the depreciable property acquired after December 20, 1991 and before the particular time by the partnership in connection with one of the working interests had, before the time of the acquisition, been owned by the taxpayer (or any other person with whom the taxpayer did not deal at arm's length) and been used by the taxpayer (or that other person) in connection with that working interest, or

(b) it is reasonable to consider that, before the particular time, amounts were charged to the partnership that would not have been so charged if section 1210 were read without reference to subsection (4) of that section;

Proposed Repeal [effective 2007] — Reg. 1206(1)"exempt partnership"

Application: The June 9, 2003 draft regulations (natural resources), subsec. 4(2), will repeal the definition "exempt partnership" in subsec. 1206(1), applicable to taxation years that begin after 2006.

Technical Notes: See under Proposed Repeal of Reg. 1206(1)"production royalty"(b) below.

History: The definition "exempt partnership" added to subsec. 1206(1) by P.C. 1996-1488, subsec. 4(3), September 24, 1996, *Canada Gazette*, Part II, October 16, 1996, applicable to fiscal periods of partnerships that begin after December 20, 1991.

"exporting resource" means, in relation to a particular processing property of a taxpayer, a resource the ore or any portion thereof produced from which during the year immediately preceding the day on which the property was acquired by the taxpayer was ordinarily processed outside Canada to any stage that is not beyond the prime metal stage or its equivalent;

"mine" means any location where material is extracted from a resource but does not include a well for the extraction of material from a deposit of bituminous sand, oil sand or oil shale;

History: "Mine" substituted by P.C. 1980-1483, s. 4, June 5, 1980, *Canada Gazette*, Part II, June 25, 1980, effective April 11, 1978.

"non-conventional lands" means lands that belong to Her Majesty in right of Canada, or in respect of which Her Majesty in right of Canada has the right to dispose of or exploit the natural resources, situated in

(a) the Yukon Territory, the Northwest Territories, or Sable Island, or

(b) those submarine areas, not within a province, adjacent to the coast of Canada and extending throughout the natural prolongation of the land territory of Canada to the outer edge of the continental margin or to a distance of two hundred nautical miles from the baselines from which the breadth of the territorial sea of Canada is measured, whichever is the greater;

History: Paras. (b) and (c) of "non-conventional lands" substituted by P.C. 1985-465, s. 7, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective commencing January 1, 1981.

"Non-conventional lands" added by P.C. 1981-3329, s. 7, November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, effective commencing January 1, 1981.

"ore" includes ore from a mineral resource that has been processed to any stage that is prior to the prime metal stage or its equivalent;

"original owner" of a property means a person

(a) who owned the property and disposed of it to a corporation that acquired it in circumstances in which subsection 1202(2) applies, or would apply if the corporation had continued to own the property, to the corporation in respect of the property, and

(b) who would, but for paragraph 1202(2)(b) (as it read in its application to taxation years ending before February 18, 1987) or paragraph 1202(3)(a), as the case may be, be entitled in computing the person's income for a taxation year ending after the person disposed of the property to a deduction under section 1201 in respect of expenditures that were incurred by the person before the person disposed of the property;

History: "Original owner" added by P.C. 1990-2780, subsec. 7(5), applicable to taxation years ending after February 17, 1987.

"predecessor owner" of a property means a corporation

(a) that acquired the property in circumstances in which subsection 1202(2) applies, or would apply if the corporation had continued to own the property, to the corporation in respect of the property,

(b) that disposed of the property to another corporation that acquired it in circumstances in which subsection 1202(2) applies, or would apply if the other corporation had continued to own the property, to the other corporation in respect of the property, and

(c) that would, but for subsection 1202(10), be entitled in computing its income for a taxation year after it disposed of the property to a deduction under subsection 1202(2) in respect of expenditures incurred by an original owner of the property;

History: "Predecessor owner" added by P.C. 1990-2780, subsec. 7(5), applicable to taxation years ending after February 17, 1987.

"primary recovery" means the recovery of oil from a reservoir as a result of utilizing the natural energy of the reservoir to move the oil toward a producing well;

History: Definition of "primary recovery" added to subsec. 1206(1) by P.C. 1979-649, s. 5, March 8, 1979, *Canada Gazette*, Part II, March 28, 1979, effective for the period commencing April 11, 1978.

"proceeds of disposition" of property has the meaning assigned by paragraph 13(21)(d) [13(21)"proceeds of disposition"] of the Act;

History: Definition of "proceeds of disposition" added to subsec. 1206(1) by P.C. 1979-649, s. 5, March 8, 1979, *Canada Gazette*, Part II, March 28, 1979, effective for the period commencing April 11, 1978.

"processing property" means property

(a) that is included in Class 10 of Schedule II because of paragraph (g) of the description of that Class or would be so included if that paragraph were read without reference to subparagraph (ii) of that paragraph and Schedule II were read without reference to Class 41, or

(b) that is included in Class 10 in Schedule II because of paragraph (k) of the description of that Class or would be so included if that paragraph were read without reference to the words following subparagraph (ii) of that paragraph and Schedule II were read without reference to Class 41,

other than property that had, before it was acquired by a taxpayer, been used for any purpose whatever by any person with whom the taxpayer was not dealing at arm's length;

History: Paras. (a) and (b) of the definition "processing property" in subsec. 1206(1) amended by P.C. 1996-1488, subsec. 4(1), September 24,

1996, *Canada Gazette*, Part II, October 16, 1996, applicable to 1988 *et seq.*

"production royalty" means an amount in respect of a particular Canadian resource property included in computing the income of a taxpayer as a rental or royalty computed by reference to the amount or value of petroleum, natural gas or related hydrocarbons produced after 1981 from a natural accumulation of petroleum or natural gas in Canada (other than a resource) or from an oil or gas well in Canada or produced after June, 1988 from a resource that is a bituminous sands deposit, oil sands deposit or oil shale deposit, if

(a) the taxpayer has a Crown royalty in respect of

(i) such production, or

(ii) the ownership of property to which such production relates where the Crown royalty is computed by reference to an amount of production from the accumulation, oil or gas well or resource,

and it is reasonable to consider that the taxpayer would have had the Crown royalty if the taxpayer's only source of income had been the rental or royalty in respect of the particular property, or

(b) the taxpayer would, but for an exemption or allowance (other than a rate of nil) that is provided, pursuant to a statute, by a person referred to in subparagraph 18(1) (m) (i), (ii) or (iii) of the Act, have a Crown royalty in respect of which paragraph (a) is applicable;

Proposed Amendment — Reg. 1206(1)"production royalty"(b) [temporary]

(b) the taxpayer would, but for an exemption or allowance (other than a rate of nil) that is provided, pursuant to a statute, by a person referred to in subparagraph 18(1)(m)(i) of the Act, have a Crown royalty in respect of which paragraph (a) is applicable;

Application: The June 9, 2003 draft regulations (natural resources), subsec. 4(1), will amend para. (b) of the definition "production royalty" in subsec. 1206(1) to read as above, applicable to royalties paid after December 20, 2002.

Technical Notes: Certain amendments are also made to the definition "production royalty" and to subsection 1206(8.1), applicable after December 20, 2002 and consequential upon amendments to paragraph 18(1)(m) of the Act as of that date.

Proposed Repeal [effective 2007] — Reg. 1206(1)"production royalty"

Application: The June 9, 2003 draft regulations (natural resources), subsec. 4(2), will repeal the definition "production royalty" in subsec. 1206(1), applicable to taxation years that begin after 2006.

Technical Notes: Subsection 1206(1) is amended, applicable to taxation years that begin after 2006 to repeal the definitions "exempt partnership", "production royalty" and "specified royalty", and subsection 1206(9), which applies to the definition "production royalty", consequential upon the repeal of section 1210 of the Regulations.

Related Provisions: Reg. 1206(9) — Crown royalty.

History: Subpara. (a)(ii) of the definition "production royalty" in subsec. 1206(1) amended by P.C. 1996-1488, subsec. 4(2), September 24, 1996, *Canada Gazette*, Part II, October 16, 1996, applicable in respect of rentals and royalties computed by reference to the amount or value of petroleum, natural gas or related hydrocarbons produced after June 30, 1988.

Para. (b) of "production royalty" in subsec. 1206(1) amended by P.C. 1992-2335, Sch. II, s. 2, November 19, 1992, *Canada Gazette*, Part II, December 2, 1992, effective December 2, 1992.

"Production royalty" substituted by P.C. 1990-2780, subsec. 7(3), applicable (by subsec. 15(13), as amended by P.C. 1992-2335, Sch. I, s. 3, November 19, 1992, *Canada Gazette* Part II, December 2, 1992) in respect of rentals and royalties computed by reference to the amount or value of petroleum, natural gas or related hydrocarbons produced after June 30, 1988, except that in its application to rentals and royalties computed by reference to the amount or value of petroleum, natural gas or related hydrocarbons produced before November 16, 1989 the definition shall be read as follows:

> "production royalty" means an amount included in computing the income of a taxpayer as a rental or royalty computed by reference to the amount or value of petroleum, natural gas or related hydrocarbons produced after 1981 from a natural accumulation of petroleum or natural gas in Canada (other than a resource) or from an oil or gas well in Canada, or produced after June, 1988 from a resource that is a bituminous sands deposit, oil sands deposit or oil shale deposit, if
>
> (a) the taxpayer has a Crown royalty in respect of
>
> (i) such production, or
>
> (ii) the ownership of property to which such production relates where the Crown royalty is computed by reference to an amount of production from the property, or
>
> (b) the taxpayer would, but for an exemption or allowance (other than a rate of nil) that is provided, pursuant to a statute, by a person referred to in subparagraph 18(1)(m)(i), (ii) or (iii) of the Act, have a Crown royalty referred to in paragraph (a);

That portion of "production royalty" preceding para. (a) substituted by P.C. 1990-162, subsec. 5(1), applicable to taxation years ending after March 1985.

The definition "production royalty" added by P.C. 1985-465, s. 7, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective January 1, 1982.

"qualified resource" means, in relation to a particular processing property of a taxpayer, a resource that, within a reasonable time after the property was acquired by him,

(a) came into production in reasonable commercial quantities, or

(b) was the subject of a major expansion whereby the greatest designed capacity, measured in weight of input of ore, of the mill that processed ore from the resource was not less than 25% greater in the year immediately following the expansion than it was in the year immediately preceding the expansion;

History: The definition "qualified resource" amended to substitute "weight" for "tons", by P.C. 2000-1331, subsec. 3(2), August 23, 2000, *Canada Gazette*, Part II, September 13, 2000, applicable to expansions commencing after September 13, 2000.

"qualified tertiary oil recovery project" in respect of an expense incurred in a taxation year means a project that uses a method (including a method that uses carbon dioxide miscible, hydrocarbon miscible, thermal or chemical processes but not including a secondary recovery method) that is designed to recover oil from an oil well in Canada that is incremental to oil that would be recovered therefrom by primary recovery and a secondary recovery method, if

(a) a specified royalty provision applies in the year or in the immediately following taxation year in respect of the production, if any, or any portion thereof from the project or in respect of the ownership of property to which such production relates,

(b) the project is on a reserve within the meaning of the *Indian Act*, or

(c) the project is located in the Province of Ontario;

Related Provisions: Reg. 1206(8) — Specified royalty provision; Reg. 1206(8.1) — Timing for para. (a).

History: "Qualified tertiary oil recovery project" was added by P.C. 1985-465, s. 7, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985. The definition "qualified tertiary oil recovery project" (corrected by *Canada Gazette*, Part II, June 26, 1985, p. 2797) is applicable with respect

to expenses incurred after 1980, except that for expenses incurred before 1982 the definition shall be read as follows:

"qualified tertiary oil recovery project" in respect of an expense incurred in a taxation year means a project that uses a method (including a method that uses carbon dioxide miscible, hydrocarbon miscible, thermal or chemical processes but not including a secondary recovery method) that is designed to recover oil from an oil well in Canada that is incremental to oil that would be recovered therefrom by primary recovery and a secondary recovery method;

"resource" means any mineral resource in Canada;

"resource activity" of a taxpayer means

(a) the production by the taxpayer of petroleum, natural gas or related hydrocarbons or sulphur from

(i) an oil or gas well in Canada, or

(ii) a natural accumulation (other than a mineral resource) of petroleum or natural gas in Canada,

(b) the production and processing in Canada by the taxpayer or the processing in Canada by the taxpayer of

(i) ore (other than iron ore or tar sands ore) from a mineral resource in Canada to any stage that is not beyond the prime metal stage or its equivalent,

(ii) iron ore from a mineral resource in Canada to any stage that is not beyond the pellet stage or its equivalent, and

(iii) tar sands ore from a mineral resource in Canada to any stage that is not beyond the crude oil stage or its equivalent,

(c) the processing in Canada by the taxpayer of heavy crude oil recovered from an oil or gas well in Canada to any stage that is not beyond the crude oil stage or its equivalent,

(c.1) Canadian field processing carried on by the taxpayer,

(d) the processing in Canada by the taxpayer of

(i) ore (other than iron ore or tar sands ore) from a mineral resource outside Canada to any stage that is not beyond the prime metal stage or its equivalent,

(ii) iron ore from a mineral resource outside Canada to any stage that is not beyond the pellet stage or its equivalent, and

(iii) tar sands ore from a mineral resource outside Canada to any stage that is not beyond the crude oil stage or its equivalent, or

(e) the ownership by the taxpayer of a right to a rental or royalty computed by reference to the amount or value of production from a natural accumulation of petroleum or natural gas in Canada, an oil or gas well in Canada or a mineral resource in Canada,

and, for the purposes of this definition,

(f) the production of a substance by a taxpayer includes exploration and development activities of the taxpayer with respect to the substance, whether or not extraction of the substance has begun or will ever begin,

(g) the production or the processing, or the production and processing, of a substance by a taxpayer includes activities performed by the taxpayer that are ancillary to, or in support of, the production or the processing, or the production and processing, of that substance by the taxpayer,

(h) the production or processing of a substance by a taxpayer includes an activity (including the ownership of property) that is undertaken before the extraction of the substance and that is undertaken for the purpose of extracting or processing the substance,

(i) the production or the processing, or the production and processing, of a substance by a taxpayer includes activities that the taxpayer undertakes as a consequence of the production or the processing, or the production and processing, of that substance, whether or not the production, the processing or the production and processing of the substance has ceased, and

(j) notwithstanding paragraphs (a) to (i), the production, the processing or the production and processing of a substance does not include any activity of a taxpayer that is part of a source described in paragraph 1204(1)(b), where

(i) the activity

(A) is the transporting, transmitting or processing (other than processing described in subparagraph 1206(1)"resource activity"(b) (iii), paragraph 1206(1)"resource activity"(c) or (c.1) or subparagraph 1206(1)"resource activity"(d) (iii)) of petroleum, natural gas or related hydrocarbons or of sulphur, or

(B) can reasonably be attributed to a service rendered by the taxpayer, and

(ii) revenues derived from the activity are not taken into account in computing the taxpayer's gross resource profits;

History: The opening words of para. (a) and cl. (j)(i)(A) amended, and para. (c.1) added to the definition "resource activity" in subsec. 1206(1) by P.C. 1999-629, subsecs. 7(1) to (3), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to taxation years that begin after 1996.

The definition "resource activity" added to subsec. 1206(1) by P.C. 1996-1488, subsec. 4(3), September 24, 1996, *Canada Gazette*, Part II, October 16, 1996, applicable to taxation years that begin after December 20, 1991.

"secondary recovery method" means a method to recover from a reservoir oil that is incremental to oil that would be recovered therefrom by primary recovery, by supplying energy to supplement or replace the natural energy of the reservoir through the use of technically proven methods, including waterflooding;

History: "secondary recovery method" added by P.C. 1985-465, s. 7, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective January 1, 1981.

"specified development well" — [Revoked]

History: The definition "specified development well" revoked by P.C. 1985-465, s. 7, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective January 1, 1981.

"Specified development well" added by P.C. 1981-3329, s. 7, November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, effective commencing January 1, 1981.

"specified percentage" for a calendar year

(a) in respect of a Canadian oil and gas exploration expense of a taxpayer for that year incurred in respect of conventional lands means,

(i) for the 1981 calendar year, 100 per cent,

(ii) for the 1982 calendar year, 60 per cent, and

(iii) for the 1983 calendar year, 30 per cent, and

(b) in respect of a Canadian oil and gas exploration expense of a taxpayer for that year incurred in respect of non-conventional lands means,

(i) for the 1981 and 1982 calendar years, 100 per cent,

(ii) for the 1983 calendar year, 60 per cent, and

(iii) for the 1984 calendar year, 30 per cent;

History: Paras. (b) and (c) of "specified percentage" substituted by P.C. 1985-465, s. 7, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective January 1, 1981.

"Specified percentage" added by P.C. 1981-3329, s. 7, November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, effective commencing January 1, 1981.

"specified property" of a person means all or substantially all of the property used by the person in carrying on in Canada such of the businesses described in subparagraphs 66(15)(h)(i) to (vii) [66(15)"principal-business corporation"(a) to (g)] of the Act as were carried on by the person;

History: "Specified property" added by P.C. 1990-2256, subsec. 4(1), October 18, 1990, *Canada Gazette*, Part II, November 7, 1990, applicable after 1984.

"specified royalty" means a royalty created after December 5, 1996 (otherwise than pursuant to an agreement in writing made before on or before that date) where

(a) the cost of the royalty was a Canadian development expense, and

(b) the royalty was created as part of a transaction or event or series of transactions or events as a consequence of which depreciable property was acquired at a capital cost that was less than its fair market value (determined without regard to the royalty);

Proposed Repeal [effective 2007] — Reg. 1206(1)"specified royalty"

Application: The June 9, 2003 draft regulations (natural resources), subsec. 4(2), will repeal the definition "specified royalty" in subsec. 1206(1), applicable to taxation years that begin after 2006.

Technical Notes: See under Proposed Repeal of Reg. 1206(1)"production royalty"(b) above.

Related Provisions: ITA 248(10) — Series of transactions.

History: The definition "specified royalty" added to subsec. 1206(1) by P.C. 1999-629, subsec. 7(5), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable after March 6, 1996 except that, with respect to a royalty created after March 6, 1996 and before December 6, 1996 (or after March 6, 1996 and before 1998 pursuant to an agreement in writing made on or before December 5, 1996) if any of the parties to the royalty so elect in writing filed with the Minister of National Revenue before July 1, 1999, the definition "specified royalty" shall be read as follows in respect of the royalty:

"specified royalty" means a royalty (other than a production royalty) created after March 6, 1996 (otherwise than pursuant to an agreement in writing made before March 7, 1996) where

(a) any amount paid or payable to the holder of the royalty because of the holder's interest in the royalty is calculated with reference to any expense, or

(b) an arrangement involving the reimbursement of, contribution to or allowance for, any expense has been made after March 6, 1996 and it is reasonable to consider that one of the reasons for the arrangement is to avoid the application of paragraph (a) in respect of the royalty;

"stated percentage" means

(a) where the taxpayer is an individual other than a trust, in respect of subparagraph 1203(2)(a)(i),

(i) 100 per cent in respect of an expenditure incurred before 1989,

(ii) 50 per cent in respect of an expenditure incurred after 1988 and before 1990, and

(iii) 0 per cent in respect of an expenditure incurred after 1989,

(b) in respect of subparagraph 1203(2)(a)(i) (where paragraph (a) is not applicable) and paragraphs 1205(1)(a), (b), (c) and (f)

(i) 100 per cent in respect of an expenditure incurred or a cost incurred in borrowing capital before July 1, 1988,

(ii) 50 per cent in respect of an expenditure incurred or a cost incurred in borrowing capital after June 30, 1988 and before 1990, and

(iii) 0 per cent in respect of an expenditure incurred or a cost incurred in borrowing capital after 1989,

(c) where the taxpayer is an individual other than a trust, in respect of subparagraph 1203(2)(a)(ii) and subsection 1203(4),

(i) 100 per cent in respect of any assistance that relates to expenditures incurred before 1989,

(ii) 50 per cent in respect of any assistance that relates to expenditures incurred after 1988 and before 1990, and

(iii) 0 per cent in respect of any assistance that relates to expenditures incurred after 1989, and

(d) in respect of subparagraph 1203(2)(a)(ii) (if paragraph (c) is not applicable), subsection 1203(4) (if paragraph (c) is not applicable) and subparagraph 1205(1)(j)(iii),

(i) 100 per cent in respect of any assistance or benefit that relates to expenditures incurred before July 1, 1988,

(ii) 50 per cent in respect of any assistance or benefit that relates to expenditures incurred after June 30, 1988 and before 1990, and

(iii) 0 per cent in respect of any assistance or benefit that relates to expenditures incurred after 1989;

History: The opening words of para. (d) amended by P.C. 1999-629, subsec. 7(4), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to 1999 *et seq.*

"Stated percentage" added by P.C. 1990-2780, subsec. 7(5), applicable to taxation years ending after February 17, 1987.

"tar sands ore" means ore extracted, other than through a well, from a mineral resource that is a deposit of bituminous sand, oil sand or oil shale;

History: "Tar sands ore" added by P.C. 1985-465, s. 7, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to taxation years commencing after November 12, 1981.

"tertiary recovery equipment" means property of a taxpayer that

(a) is, or but for Class 41 in Schedule II would be, included in Class 10 in Schedule II by virtue of paragraph (j) of the description of that Class,

(b) was acquired by the taxpayer after 1980 for use in a qualified tertiary oil recovery project,

other than property

(c) used by the taxpayer for another use prior to the use described in paragraph (b), or

(d) that had, before it was acquired by the taxpayer, been used for any purpose whatever by any person with whom the taxpayer was not dealing at arm's length.

History: "Tertiary recovery equipment" substituted by P.C. 1990-2780, subsec. 7(4), deemed in force as of January 1, 1981 except that para. (a) shall before 1988 be read without reference to the words "or but for Class 41 in Schedule II would be".

Para. (c) of "tertiary recovery equipment" substituted by P.C. 1985-465, s. 7, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective commencing January 1, 1981.

"Tertiary recovery equipment" added by P.C. 1981-3329, s. 7, November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, effective commencing January 1, 1981.

(2) In this Part, "joint exploration corporation", "principal-business corporation", "production" from a Canadian resource property, "reserve amount" and "shareholder corporation" have the meanings assigned by subsection 66(15) of the Act.

History: Subsec. 1206(2) substituted by P.C. 1990-2780, subsec. 7(6), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years ending after February 17, 1987.

Subsec. 1206(2) substituted by P.C. 1986-2590, s. 8, November 20, 1986, *Canada Gazette*, Part II, December 10, 1986, applicable after April 19, 1983.

Subsec. 1206(2) substituted by P.C. 1985-465, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective commencing January 1, 1981.

(3) For the purposes of sections 1201 to 1209 and 1212, where at the end of a fiscal period of a partnership, a taxpayer was a member thereof

(a) the resource profits of the partnership for the fiscal period, to the extent of the taxpayer's share thereof, shall be included in computing his resource profits for his taxation year in which the fiscal period ended;

(b) any property acquired or disposed of by the partnership shall be deemed to have been acquired or disposed of by the taxpayer to the extent of his share thereof;

(c) any property deemed by paragraph (b) to have been acquired or disposed of by the taxpayer shall be deemed to have been acquired or disposed of by him on the day the property was acquired or disposed of by the partnership;

(d) any amount that has become receivable by the partnership and in respect of which the consideration given by the partnership therefor was property (other than property referred to in paragraph 59(2)(a), (c) or (d) of the Act or a share or interest therein or right thereto) or services, all or part of the original cost of which to the partnership may reasonably be regarded primarily as an exploration or development expense of the taxpayer, shall be deemed to be an amount receivable by the taxpayer to the extent of his share thereof, and the consideration so given by the partnership shall, to the extent of the taxpayer's share thereof, be deemed to have been given by the taxpayer for the amount deemed to be receivable by him;

(e) any expenditure incurred or deemed to have been incurred by the partnership shall be deemed to have been incurred by the taxpayer to the extent of the taxpayer's share thereof; and

(f) any amount or expenditure deemed by paragraph (d) or (e) to have been receivable or incurred, as the case may be, by the taxpayer shall be deemed to have become receivable or been incurred, as the case may be, by the taxpayer on the day the amount became receivable or the expenditure was incurred or deemed to have been incurred by the partnership.

History: Paras. 1206(3)(e), (f) substituted by P.C. 1990-2256, subsec. 4(2), October 18, 1990, *Canada Gazette*, Part II, November 7, 1990, applicable in respect of expenditures or expenses incurred after February 1986.

Paras. 1206(3)(b), (d) and (e) substituted, para. 1206(3)(f) added, by P.C. 1985-465, subsecs. 7(12) and (13), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to fiscal periods ending after March 6, 1985.

Paras. 1206(3)(b), (c) substituted, paras. (d), (e) added by P.C. 1980-1483, subsec. 4(4), June 5, 1980, *Canada Gazette*, Part II, June 25, 1980.

All that portion of subsec. 1206(3) preceding para. (a) substituted, para. 1206(3)(c) added, by subsecs. 5(3), (4) of P.C. 1979-649, March 8, 1979, *Canada Gazette*, Part II, March 28, 1979, effective for the period commencing April 11, 1978.

(3.1) For the purposes of sections 1201 to 1203, 1205, 1217 and 1218, where a taxpayer was a member of a partnership at the end of a fiscal period of the partnership, the taxpayer shall be deemed to receive or to become entitled to receive any amount of assistance or benefit, whether such amount is by way of a grant, subsidy, rebate, forgivable loan, deduction from royalty or tax, rebate of royalty or tax, investment allowance or any other form of assistance or benefit, that the partnership at any time receives or becomes entitled to receive in respect of expenses incurred in that fiscal period of the partnership, to the extent of,

(a) where the partnership in the fiscal period receives or becomes entitled to receive the amount, the taxpayer's share thereof, or

(b) where the partnership after the fiscal period becomes entitled to receive the amount, what would have been the taxpayer's share thereof if the partnership had in the fiscal period received or become entitled to receive the amount,

and the time at which the taxpayer is deemed to receive or become entitled to receive such share of the amount shall be the time that the partnership receives or becomes entitled to receive the amount.

History: That portion of subsec. 1206(3.1) preceding para. (a) substituted by P.C. 1988-1608, subsec. 1(1), August 11, 1988, *Canada Gazette*, Part II, August 31, 1988, applicable to 1985 *et seq.*

Subsec. 1206(3.1) added by P.C. 1985-465, subsec. 7(14), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to fiscal periods ending after March 6, 1985.

(4) Where an expense incurred after November 7, 1969 that was a Canadian exploration and development expense or that would have been such an expense if it had been incurred after 1971 (other than an amount included therein that is in respect of financing or the cost of any Canadian resource property acquired by a joint exploration corporation or any property acquired by a joint exploration corporation that would have been a Canadian resource property if it had been acquired after 1971), a Canadian exploration expense (other than an amount included therein that is in respect of financing) or a Canadian development expense (other than an amount included therein that is in respect of financing or an amount referred to in subparagraph 66.2(5)(a)(iii) [66.2(5)"Canadian development expense"(e)] of the Act) has been renounced in favour of a taxpayer and was deemed to be an expense of the taxpayer for the purposes of subsection 66(10), (10.1) or (10.2) of the Act or subsection 29(7) of the *Income Tax Application Rules*, the expense shall,

(a) for the purposes of sections 1203 and 1205, be deemed to have been such an expense incurred by the taxpayer at the time the expense was incurred by the joint exploration corporation; and

(b) for the purposes of sections 1204 and 1210 and paragraphs 1217(2)(e) and 1218(2)(e), be deemed to have been such an expense incurred by the taxpayer at the time it was deemed to have been incurred by the

taxpayer for the purposes of subsection 66(10), (10.1) or (10.2) of the Act or subsection 29(7) of the *Income Tax Application Rules*, as the case may be.

History: Subsec. 1206(4) amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Para. 1206(4)(b) substituted by P.C. 1988-1608, subsec. 1(2), August 11, 1988, *Canada Gazette*, Part II, August 31, 1988, applicable to 1985 *et seq.*

Subsec. 1206(4) substituted by P.C. 1985-465, subsec. 7(15), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable with respect to expenses renounced after 1981.

(4.1) An expense that is a Canadian exploration and development overhead expense of the joint exploration corporation referred to in subsection (4), or would be such an expense if the references to "connected with the taxpayer" in paragraph (d) of the definition "Canadian exploration and development overhead expense" in subsection (1) were read as "connected with the shareholder corporation in favour of whom the expense was renounced for the purposes of subsection 66(10.1) or (10.2) of the Act", that may reasonably be considered to be included in a Canadian exploration expense or Canadian development expense that is deemed by subsection (4) to be a Canadian exploration expense or Canadian development expense of the shareholder corporation, shall be deemed to be a Canadian exploration and development overhead expense of the shareholder corporation incurred by it at the time the expense was deemed by subsection (4) to have been incurred by it and shall be deemed at and after that time not to be a Canadian exploration and development overhead expense incurred by the joint exploration corporation.

History: Subsec. 1206(4.1) added by P.C. 1985-465, subsec. 7(16), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to expenses renounced after March 6, 1985.

(4.2) For the purposes of paragraphs 66(12.6)(b), (12.601)(d) and (12.62)(b) of the Act, a prescribed Canadian exploration and development overhead expense of a corporation is

(a) a Canadian exploration and development overhead expense of the corporation;

(b) an expense that would be a Canadian exploration and development overhead expense of the corporation if the references to "connected with the taxpayer" in paragraph (d) of the definition "Canadian exploration and development overhead expense" in subsection (1) were read as "connected with the person to whom the expense is renounced under subsection 66(12.6), (12.601) or (12.62) of the Act"; and

(c) an expense that would be a Canadian exploration and development overhead expense of the corporation if the references to "person who was connected with the taxpayer" in paragraph (d) of the definition "Canadian exploration and development overhead expense" in subsection (1) were read as "person to whom the expense is renounced under subsection 66(12.6), (12.601) or (12.62) of the Act".

History: Subsec. 1206(4.2) amended by P.C. 1996-494, s. 2, April 16, 1996, *Canada Gazette*, Part II, May 1, 1996, applicable in respect of expenses incurred after December 2, 1992.

Subsecs. 1206(4.2) added by P.C. 1990-2256, subsec. 4(3), October 18, 1990, *Canada Gazette*, Part II, November 7, 1990, applicable in respect of expenditures or expenses incurred after February 1986.

(4.3) For the purposes of subsections (4.2) and (5), a partnership shall be deemed to be a person and its taxation year shall be deemed to be its fiscal period.

History: Subsecs. 1206(4.3) added by P.C. 1990-2256, subsec. 4(3), October 18, 1990, *Canada Gazette*, Part II, November 7, 1990, applicable in respect of expenditures or expenses incurred after February 1986.

(5) For the purposes of subsection (6) and the definition "Canadian exploration and development overhead expense" in subsection (1),

(a) a person and a particular corporation are connected with each other if

(i) the person and the particular corporation are not dealing at arm's length,

(ii) the person has an equity percentage in the particular corporation that is not less than 10 per cent, or

(iii) the person is a corporation in which another person has an equity percentage that is not less than 10 per cent and the other person has an equity percentage in the particular corporation that is not less than 10 per cent;

(a.1) a person and another person that is not a corporation are connected with each other if they are not dealing at arm's length; and

(b) "costs incurred by a person" shall not include

(i) an outlay or expense described in any of paragraphs (a) to (c) of that definition made or incurred by the person if the references in those paragraphs to "taxpayer" were read as references to "person",

(ii) an outlay or expense made or incurred by the person to the extent that it is not reasonably attributable to the use of a property by, the performance of a service for, or any materials, parts, or supplies acquired by, the taxpayer referred to in that definition, and

(iii) an amount in respect of the capital cost to the person of a property, other than, where the property is a depreciable property of the person, that proportion of the capital allowance of the person for his taxation year in respect of the property that may reasonably be considered attributable to the use of the property by, or in the performance of a service for, the taxpayer referred to in that definition.

Related Provisions: Reg. 1206(7) — Equity percentage.

History: Para. 1206(5)(a.1) added by P.C. 1990-2256, subsec. 4(4), October 18, 1990, *Canada Gazette*, Part II, November 7, 1990, applicable in respect of expenditures or expenses incurred after February 1986.

Subpara. 1206(5)(b)(iii) substituted by P.C. 1985-465, subsec. 7(17), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective commencing January 1, 1981.

Subsec. 1206(5) added by P.C. 1981-3329, subsec. 7(7), November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, effective commencing January 1, 1981.

(6) For the purpose of subparagraph (5)(b)(iii), the "capital allowance" of a person (in this subsection referred to as the "owner") for his taxation year in respect of a property owned by him means that proportion of an amount not exceeding 20 per cent of the amount that is

(a) in the case of a property owned by the owner on December 31, 1980, the lesser of

(i) the capital cost of the property to the owner computed as if no amount had been included therein that is a cost of borrowing capital, including any cost incurred prior to the commencement of carrying on a business, and

(ii) the fair market value of the property on December 31, 1980,

(b) in the case of a property acquired by the owner after December 31, 1980 that was previously owned by a person connected with the owner, the lesser of

(i) the capital cost of the property, computed as if no amount had been included therein that is a cost of borrowing capital, including any cost incurred prior to the commencement of carrying on a business, to the person, who was connected with the owner, who was the first person to acquire the property from a person with whom the owner was not connected, and

(ii) the fair market value of the property at the time it was acquired by the owner, and

(c) in any other case, the capital cost of the property to the owner computed as if no amount had been included therein that is a cost of borrowing capital, including any cost incurred prior to the commencement of carrying on a business,

that the number of days in the taxation year during which the property was owned by the owner is of 365.

(7) For the purposes of paragraph (5)(a), "equity percentage" has the meaning assigned by paragraph 95(4)(b) [95(4)"equity percentage"] of the Act.

History: Subsecs. 1206(6), (7) added by P.C. 1981-3329, subsec. 7(7), November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, effective commencing January 1, 1981.

(8) For the purposes of the definition "qualified tertiary oil recovery project" in subsection (1), a "specified royalty provision" means:

(a) the *Experimental Project Petroleum Royalty Regulation* of Alberta (Alta. Reg. 36/79);

(b) *The Experimental Oil Sands Royalty Regulations* of Alberta (Alta. Reg. 287/77);

(c) section 4.2 of the *Petroleum Royalty Regulations* of Alberta (Alta. Reg. 93/74);

(d) section 58A of the *Petroleum and Natural Gas Regulations, 1969* of Saskatchewan (Saskatchewan Regulation 8/69);

(e) section 204 of *The Freehold Oil and Gas Production Tax Regulations, 1983* of Saskatchewan (Saskatchewan Regulation 11/83);

(f) item 9 of section 2 of the *Petroleum and Natural Gas Royalty Regulations* of British Columbia (B.C. Reg. 549/78);

(g) the *Freehold Mineral Taxation Act* of Alberta;

(h) the *Freehold Mineral Rights Tax Act* of Alberta;

(i) Order in Council 427/84 pursuant to section 9(a) of the *Mines and Minerals Act* of Alberta;

(j) Order in Council 966/84 pursuant to section 9 of the *Mines and Minerals Act* of Alberta; or

(k) Order in Council 870/84 pursuant to section 9 of the *Mines and Minerals Act* of Alberta.

History: Para. 1206(8)(k) added by P.C. 1990-162, subsec. 5(2), applicable to 1982 *et seq.*

Subsec. 1206(8) added by P.C. 1985-465, subsec. 7(18), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective commencing January 1, 1981.

(8.1) For the purposes of paragraph (a) of the definition of "qualified tertiary oil recovery project" in subsection (1), where at a particular time unconditional approval is given by a person referred to in subparagraph 18(1)(m)(i), (ii) or (iii) of the Act for a specified royalty provision to apply at a time after the particular time, the specified royalty provision shall be deemed to apply as of the particular time.

Proposed Amendment — Reg. 1206(8.1)

(8.1) For the purpose of paragraph (a) of the definition "qualified tertiary oil recovery project" in subsection (1), a specified royalty provision is deemed to apply as of a particular time if, at the particular time, unconditional approval for the specified royalty provision to apply at a time after the particular time is given by

(a) Her Majesty in right of Canada or of a province;

(b) an agent of her Majesty in right of Canada or of a province; or

(c) a corporation, a commission or an association that is controlled by Her Majesty in right of Canada or of a province or by an agent of Her Majesty in right of Canada or of a province.

Application: The June 9, 2003 draft regulations (natural resources), subsec. 4(3), will amend subsec. 1206(8.1) to read as above, deemed to have come into force on December 20, 2002.

Technical Notes: See under Reg. 1206(1)"production royalty"(b) [temporary] above.

History: Subsec. 1206(8.1) added by P.C. 1990-2780, subsec. 7(7), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable after 1980.

(9) For the purposes of the definition "production royalty" in subsection (1), a **"Crown royalty"** of a taxpayer in respect of the production of petroleum, natural gas or related hydrocarbons from a natural accumulation of petroleum or natural gas in Canada, an oil or gas well in Canada, a resource that is a bituminous sands deposit, oil sands deposit or oil shale deposit or in respect of the ownership of a natural reservoir of gas or petroleum in Canada means an amount

(a) that would be included in computing his income for a taxation year by virtue of paragraph 12(1)(o) of the Act in respect of such production or ownership if that paragraph were read without reference to the words "or a prescribed amount",

(b) that would not be deductible in computing his income for a taxation year by virtue of paragraph 18(1)(m) of the Act in respect of such production or ownership if that paragraph were read without reference to the words "other than a prescribed amount",

(c) by which his proceeds of disposition of such production are increased by virtue of subsection 69(6) of the Act, or

(d) by which his cost of acquisition of such production is reduced by virtue of subsection 69(7) of the Act,

less, in respect of an amount described in paragraph (a) or (b), the amount of any reimbursement, contribution or allowance referred to in section 80.2 of the Act received or receivable by the taxpayer in respect of that amount.

Proposed Repeal [effective 2007] — Reg. 1206(9)

Application: The June 9, 2003 draft regulations (natural resources), subsec. 4(4), will repeal subsec. 1206(9), applicable to taxation years that begin after 2006.

Technical Notes: See under Proposed Repeal of Reg. 1206(1)"production royalty"(b) above.

History: The closing words of subsec. 1206(9) amended by P.C. 1996-1488, subsec. 4(4), September 24, 1996, *Canada Gazette*, Part II, October 16, 1996, applicable after January 1990.

That portion of subsec. 1206(9) preceding para. (a) substituted by P.C. 1990-2780, subsec. 7(8), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable after June 30, 1988.

That portion of subsec. 1206(9) preceding para. (a) substituted by P.C. 1990-162, subsec. 5(3), applicable to taxation years ending after March 1985.

Subsec. 1206(9) added by P.C. 1985-465, subsec. 7(19), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective commencing January 1, 1982.

Definitions [Reg. 1206]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "bituminous sands", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian development expense" — ITA 66.2(5), 248(1); "Canadian exploration and development overhead expense" — Reg. 1206(1), (4.1); "Canadian exploration expense" — ITA 66.1(6), 248(1); "Canadian field processing" — ITA 248(1); "Canadian oil and gas exploration expense" — Reg. 1206(1); "Canadian resource property" — ITA 66(15), 248(1); "capital allowance" — Reg. 1206(6); "commencement" — *Interpretation Act* 35(1); "connected" — Reg. 1206(5); "conventional lands" — Reg. 1206(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "cost incurred by a person" — Reg. 1206(5)(b); "Crown royalty" — Reg. 1206(9); "depreciable property" — ITA 13(21), 248(1); "disposed", "disposes" — ITA 248(1)"disposition"; "disposition", "employed" — ITA 248(1); "equity percentage" — ITA 95(4), Reg. 1206(7); "fiscal period" — ITA 249.1; "gross resource profits" — Reg. 1204(1); "Her Majesty" — *Interpretation Act* 35(1); "individual" — ITA 248(1); "mine" — Reg. 1206(1); "mineral", "mineral resource" — ITA 248(1); "non-conventional lands" — Reg. 1206(1); "oil or gas well" — ITA 248(1); "ore", "original owner" — Reg. 1206(1); "owner" — Reg. 1206(5); "person" — ITA 248(1), Reg. 1206(4.3); "prescribed" — ITA 248(1); "primary recovery", "proceeds of disposition" — Reg. 1206(1); "processing property" — Reg. 1206(1); "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "qualified tertiary oil recovery project" — Reg. 1206(1); "related" — ITA 251(2)–(6); "resource" — Reg. 1206(1); "resource profits" — Reg. 1204(1.1); "secondary recovery method" — Reg. 1206(1); "series" — ITA 248(10); "share", "shareholder" — ITA 248(1); "specified royalty" — Reg. 1206(1); "specified royalty provision" — Reg. 1206(8), (8.1); "tar sands ore" — Reg. 1206(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "territorial sea", "territory" — *Interpretation Act* 35(1); "trust" — ITA 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

1207. Frontier exploration allowances — (1) [Deduction allowed] — A taxpayer may deduct in computing his income for a taxation year such amount as he may claim not exceeding the lesser of

(a) his income for the year, computed in accordance with Part I of the Act, if no deduction were allowed under this subsection; and

(b) his frontier exploration base as of the end of the year (before making any deduction under this subsection for the year).

(2) ["Frontier exploration base"] — For the purposes of this section, the "frontier exploration base" of a taxpayer as of a particular time means the amount by which the aggregate of

(a) the aggregate of all amounts, each of which is an amount in respect of a particular oil or gas well in Canada equal to 66⅔ per cent of the amount by which

(i) expenses incurred after March, 1977 and before April, 1980 and before the particular time in respect of the well (other than expenses that may reasonably be regarded as having been incurred as consideration for services rendered to the taxpayer after March, 1980) if those expenses would be included in the Canadian exploration expense of the taxpayer within the meaning of paragraph 66.1(6)(a) [66.1(6)"Canadian exploration expense"] of the Act (if that paragraph were read without reference to subparagraphs (iii) and (iii.1) [paras. (f) and (g)] thereof and without reference to the words "within six months after the end of the year, the drilling of the well is completed and" in subparagraph (ii) [para. (c)] thereof, and if the reference in subparagraphs (iv) and (v) [paras. (h) and (i)] thereof to "any of subparagraphs (i) to (iii.1) [paras. (a) to (g)]" were read as a reference to "subparagraph (i) or (ii) [para. (a) or (c)]") other than

(A) a cost of borrowing capital, including any cost incurred prior to the commencement of carrying on a business, that was a Canadian exploration expense of the taxpayer,

(B) an expense renounced by the taxpayer under subsection 66(10.1) of the Act,

(C) an amount that, by virtue of subparagraph 66.1(6)(a)(iv) [66.1(6)"Canadian exploration expense"(h)] of the Act, was a Canadian exploration expense, if such amount was an expense referred to in clause (A) or (B) that was incurred by a partnership referred to in that subparagraph, or

(D) an amount that, by virtue of subparagraph 66.1(6)(a)(v) [66.1(6)"Canadian exploration expense"(i)] of the Act, was a Canadian exploration expense, if such amount was an expense referred to in clause (A) or (B) that the taxpayer incurred pursuant to an agreement referred to in that subparagraph,

exceeds

(ii) the taxpayer's threshold amount in respect of the well, minus the amount that would be determined under subparagraph (i) in respect of the taxpayer for the well if the reference therein to "after March, 1977 and before April, 1980" were read as "after June, 1976 and before April, 1977", and

(a.1) where the taxpayer is a successor corporation, any amount required by paragraph (7)(a) to be added before the particular time in computing the taxpayer's frontier exploration base,

exceeds the aggregate of

(b) all amounts deducted by the taxpayer under subsection (1) in computing his income for taxation years ending before the particular time,

(c) 66⅔ per cent of the aggregate of all amounts, each of which is an amount that became receivable by the taxpayer after March 28, 1979 and before the earlier of December 12, 1979 and the particular time, and in respect of which the consideration given by the taxpayer therefor was a property (other than a share, or a property that would have been a Canadian resource property if it had been acquired by the taxpayer at the time the consideration was given) or services the cost of which may reasonably be regarded as having been primarily an expenditure in respect of an oil or gas well for which an amount was added in computing the taxpayer's frontier exploration base by virtue of paragraph (a) or in computing the frontier exploration base of a predecessor by virtue of paragraph (a) as it applied to the predecessor where the taxpayer is a successor corporation to the predecessor, as the case may be; and

(d) where the taxpayer is a predecessor, any amount required by paragraph (7)(b) to be deducted before the particular time in computing the taxpayer's frontier exploration base.

History: Cl. 1207(2)(a)(i)(A), para. 1207(2)(c) substituted by P.C. 1981-3329, s. 8, November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, para. 1207(2)(c) effective commencing December 12, 1979.

All that portion of subpara. 1207(2)(a)(i) preceding cl. (A) substituted by P.C. 1980-3311, December 4, 1980, *Canada Gazette*, Part II, December 24, 1980.

All that portion of subpara. 1207(2)(a)(i) preceding cl. (A), and cl. 1207(2)(a)(i)(C) substituted by P.C. 1980-1483, subsec. 5(1), June 5, 1980, *Canada Gazette*, Part II, June 25, 1980, effective December 6, 1979.

That portion of subsec. 1207(2) preceding para. (a) and that portion following para. (a) substituted by subsecs. 6(1), (2) of P.C. 1979-649, March 8, 1979, *Canada Gazette*, Part II, March 28, 1979.

(3) ["Threshold amount"] — For the purposes of subparagraph (2)(a)(ii), a taxpayer's "threshold amount" in respect of an oil or gas well means

(a) where the taxpayer and one or more other persons have filed an agreement with the Minister in prescribed form in respect of the well and

(i) the amount allocated to each such person in the agreement does not exceed the amount that would be determined, at the time the agreement is filed, under subparagraph (2)(a)(i) in respect of that person for the well, if the reference in that subparagraph to "March, 1977" were read as "June, 1976", and

(ii) the aggregate of the amounts allocated by the agreement is $5 million,

the amount allocated to the taxpayer in the agreement, but if no amount is allocated to the taxpayer in the agreement, nil;

(b) where such an agreement has been filed in respect of the well by one or more persons other than the taxpayer, nil; or

(c) where no such agreement has been filed in respect of the well, $5 million.

(4) [Substitute well] — Where as a result of mechanical or geological difficulties the drilling of a particular oil or gas well does not achieve its stated geological objectives under the drilling authority issued by the relevant government body and a further well, including a relief well, is drilled on the same geological formation and may reasonably be regarded as a continuation of or a substitution for the particular oil or gas well, the expenses in respect of the drilling of the further well shall, for the purposes of this section, be deemed to be expenses in respect of the drilling of the particular oil or gas well.

(5) [Look-through rules] — For the purposes of this section,

(a) when a shareholder corporation is deemed to have incurred a Canadian exploration expense by virtue of an election made by a joint exploration corporation pursuant to subsection 66(10.1) of the Act, that expense shall be deemed to have been incurred by the shareholder corporation at the time when it was incurred by the joint exploration corporation; and

(b) when a member of a partnership is deemed to have incurred a Canadian exploration expense by virtue of subparagraph 66.1(6)(a)(iv) [66.1(6)"Canadian exploration expense"(h)] of the Act, that expense shall be deemed to have been incurred by the member at the time when it was incurred by the partnership.

History: Para. 1207(5)(b) substituted by P.C. 1980-1483, subsec. 5(2), June 5, 1980, *Canada Gazette*, Part II, June 25, 1980, effective December 6, 1979.

(6) ["Oil or gas well"] — For the purposes of this section, "oil or gas well" means any well drilled for the purpose of producing petroleum or natural gas or of determining the existence, location, extent or quality of an accumulation of petroleum or natural gas, other than a mineral resource.

History: Subsec. 1207(6) substituted by P.C. 1990-2780, subsec. 8(1), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years ending after March 1985.

Subsec. 1207(6) substituted by P.C. 1985-465, s. 8, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective commencing January 1, 1981.

(7) [Successor rules] — Subject to subsections 1202(5) and (6), where a corporation (in this section referred to as the "successor corporation") has at any time (in this subsection referred to as the "time of acquisition") after April 19, 1983 and in a taxation year (in this subsection referred to as the "transaction year") acquired a property from another person (in this subsection referred to as the "predecessor"), the following rules apply:

(a) for the purpose of computing the frontier exploration base of the successor corporation as of any time after the time of acquisition, there shall be added an amount equal to the amount required by paragraph (b) to be deducted in computing the frontier exploration base of the predecessor; and

(b) for the purpose of computing the frontier exploration base of the predecessor as of any time after the transaction year of the predecessor, there shall be deducted the amount, if any, by which

(i) the frontier exploration base of the predecessor immediately before the time of acquisition (assuming for this purpose that, in the case of an acquisition as a result of an amalgamation described in section 87 of the Act, the predecessor existed after the time of acquisition and no property was acquired or disposed of in the course of the amalgamation)

exceeds

(ii) the amount, if any, deducted under subsection (1) in computing the income of the predecessor for the transaction year of the predecessor.

History: That portion of subsec. 1207(7) preceding para. (a) substituted by P.C. 1990-2780, subsec. 8(2), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years ending after February 17, 1987.

That portion of subsec. 1207(7) preceding para. (a) substituted by P.C. 1990-2256, subsec. 5(1), October 18, 1990, *Canada Gazette*, Part II, November 7, 1990, applicable in respect of taxation years commencing after 1984.

That portion of subsec. 1207(7) preceding para. (a) substituted by P.C. 1990-162, s. 6, February 1, 1990, *Canada Gazette*, Part II, February 14, 1990, applicable with respect to acquisitions occurring after 1982 except that with respect to acquisitions occurring after 1982 and in taxation years commencing before 1985 the reference to "Canadian resource properties of the predecessor" shall be read as a reference to "property of the predecessor used by the predecessor in carrying on in Canada such of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) of the Act as were carried on by the predecessor".

That portion of subsec. 1207(7) preceding para. (a) substituted by P.C. 1985-2277, s. 5, July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable with respect to acquisitions of property occurring after April 19, 1983.

That portion of subsec. 1207(7) preceding para. (a) substituted by P.C. 1980-1483, subsec. 5(3), June 5, 1980, *Canada Gazette*, Part II, June 25, 1980, effective November 17, 1978.

Subsec. 1207(7) substituted by subsec. 6(3) of P.C. 1979-649, March 8, 1979, *Canada Gazette*, Part II, March 28, 1979.

Subsec. 1207(7) added by s. 7 of P.C. 1978-1849, June 8, 1978, *Canada Gazette*, Part II, June 28, 1978, applicable to taxation years ending after March 1977.

(8) [Revoked]

History: Subsec. 1207(8) revoked by P.C. 1990-2780, subsec. 8(3), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years ending after February 17, 1987.

Subsec. 1207(8) added by P.C. 1990-2256, subsec. 5(2), October 18, 1990, *Canada Gazette*, Part II, November 7, 1990, applicable in respect of taxation years commencing after 1984 except that the Minister of National Revenue shall be deemed to have been notified in circumstances satisfying the condition set out in para. (c) if the Minister is notified in writing of the agreement referred to therein within 180 days after November 7, 1990.

Definitions [Reg. 1207]: "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian exploration expense" — Reg. 1207(5); "Canadian resource property" — ITA 66(15), 248(1); "commencement" — *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "disposed" — ITA 248(1)"disposition"; "expenses" — Reg. 1207(4); "frontier exploration base" — Reg. 1207(2); "mineral resource", "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "oil or gas well" — Reg. 1207(6); "person" — ITA 248(1); "predecessor" — Reg. 1203(3); "prescribed", "property", "share", "shareholder" — ITA 248(1); "successor corporation" — Reg. 1203(3); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "threshold amount" — Reg. 1207(3); "time of acquisition", "transaction year" — Reg. 1203(3).

1208. Additional allowances in respect of certain oil or gas wells — (1) Subject to subsections (3) and (4) where a taxpayer has income for a taxation year from an oil or gas well that is outside Canada, or where an individual has income for a taxation year from an oil or gas well in Canada, in computing his income for the year he may deduct the lesser of

(a) the aggregate of drilling costs incurred by him in that year and previous taxation years in respect of the well (not including the cost of land, leases or other rights and not including indirect expenses such as general exploration, geological and geophysical expenses) minus the aggregate of all amounts deductible in respect thereof in computing his income for previous years; and

(b) that part of his income for the year that may reasonably be regarded as income from the well.

(2) Where a taxpayer has more than one oil or gas well to which subsection (1) applies, the allowance in respect of the drilling costs of each well shall be computed separately.

(3) Where an individual has income for a taxation year from an oil or gas well in Canada, no deduction may be made under this section in computing such income in respect of drilling costs of that well incurred after April 10, 1962.

(4) Where a taxpayer has income for a taxation year from an oil or gas well that is outside Canada, no deduction may be made under this section in computing such income in respect of drilling costs of that well incurred after 1971.

Definitions [Reg. 1208]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "individual", "oil or gas well" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

1209. Additional allowances in respect of certain mines — (1) Subject to subsection (3), where a taxpayer operates in Canada a mine for the production of materials from a resource he may deduct, in computing his income for a taxation year, such amount as he may claim not exceeding 25 per cent of the amount computed under subsection (2).

(2) The amount referred to in subsection (1) is the aggregate of all expenditures made or incurred by the taxpayer before 1972 that are reasonably attributable to the prospecting and exploration for and the development of the mine prior to the coming into production of the mine in reasonable commercial quantities, except to the extent that the expenditures were

(a) expenditures in respect of which a deduction from, or in computing, a taxpayer's income tax or excess profits tax was provided by section 8 of the *Income War Tax Act*;

(b) expenditures in respect of which an amount was deducted in computing a taxpayer's income under section 16 of chapter 63, S.C., 1947 or section 16 of chapter 53, S.C., 1947-48 or, if the expenditure was incurred prior to 1953, under section 53 of chapter 25, S.C., 1949 (Second Session);

(c) expenditures incurred after 1952 in respect of which a deduction was or is provided by section 53 of chapter 25, S.C., 1949, (Second Session), section 83A of the Act as it read in its application to the 1971 taxation year or section 29 of the *Income Tax Application Rules*;

(d) expenditures deducted in computing the income of the taxpayer in the year they were incurred;

(e) the cost to the taxpayer of property in respect of which an allowance is provided under paragraph 20(1)(a) of the Act; or

(f) the cost to the taxpayer of a leasehold interest.

(3) The amount deductible under subsection (1) shall not exceed the amount computed under subsection (2) minus the aggregate of

(a) amounts deducted under subsection (1) in computing the income of the taxpayer for previous taxation years; and

(b) similar amounts deducted in computing the income of the taxpayer for the purposes of the *Income War Tax Act* and *The 1948 Income Tax Act* (as defined in paragraph 12(d) of the *Income Tax Application Rules*).

History: Para. 1209(2)(c) amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Definitions [Reg. 1209]: "amount" — Reg. 1209(2); "Canada" — ITA 255, *Interpretation Act* 35(1); "mine" — Reg. 1206(1); "property" — ITA 248(1); "resource" — Reg. 1206(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

1210. Resource allowance — (1) For the purpose of paragraph 20(1)(v.1) of the Act, there may be deducted in computing the income of a taxpayer for a taxation year the amount determined by the formula

Proposed Amendment — Reg. 1210(1) opening words [temporary]

1210. (1) Resource allowance — For the purpose of paragraph 20(1)(v.1) of the Act, the amount allowed to a taxpayer for a taxation year is the amount determined by the formula

Application: The June 9, 2003 draft regulations (natural resources), subsec. 5(1), will amend the opening words of subsec. 1210(1) to read as above, applicable to taxation years that end after 2002 and begin before 2007.

Technical Notes: The opening words of subsection 1210(1) of the Regulations are amended applicable to taxation years that end after

2002, and begin before 2007, to provide that the amount of resource allowance deductible during the phase-out period from 2003 to 2006 will be as determined by the Act.

$$.25 (A - B) - C$$

where

A is the taxpayer's adjusted resource profits for the year;

B is the total of all amounts each of which is a Canadian exploration and development overhead expense made or incurred by the taxpayer in the year, other than an amount included therein because of subsection 21(2) or (4) of the Act; and

C is the amount, if any, by which

(a) the total of all amounts determined under paragraphs 1205(1)(e) to (k) in computing the taxpayer's earned depletion base at the end of the year, other than any portion of that total determined under paragraph 1205(1)(i) as a consequence of a disposition in the year of property in circumstances to which subsection 1202(2) applies

exceeds

(b) 33 1/3 per cent of the total of all amounts determined under paragraphs 1205(1)(a) to (d.2) in computing the taxpayer's earned depletion base at the end of the year.

Proposed Repeal [effective 2007] — Reg. 1210(1)

Application: See at end of Reg. 1210.

Related Provisions: ITA 257 — Negative amounts in formulas.

History: S. 1210 substituted by P.C. 1996-1488, s. 5, September 24, 1996, *Canada Gazette*, Part II, October 16, 1996; subsec. (1) applicable to taxation years that begin after December 20, 1991 except that, where the year ended before March 19, 1993, the description of B shall be read as follows:

B is the total of all amounts each of which is a Canadian exploration and development overhead expense made or incurred by the taxpayer in the year, other than each amount included therein in respect of financing, deducted in computing the taxpayer's income for the year,

That portion of subpara. 1210(1)(a)(i) preceding cl. (A) substituted by P.C. 1993-415, s. 2, March 9, 1993, *Canada Gazette*, Part II, March 24, 1993, applicable to taxation years commencing after 1987.

That portion of subpara. 1210(1)(a)(i) preceding cl. (A) substituted by P.C. 1990-2780, subsec. 9(1), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years commencing after 1987.

Cl. 1210(1)(a)(i)(A) and subpara. (1)(a)(iii) substituted by subsecs. 9(2), (3) of the said P.C. 1990-2780, applicable in respect of rentals and royalties computed by reference to the amount or value of petroleum, natural gas or related hydrocarbons produced after June 30, 1988.

Para. 1210(1)(b) substituted by subsec. 9(4) of the said P.C. 1990-2780, applicable to taxation years ending after February 17, 1987.

Cl. 1210(1)(a)(i)(A) and subpara. (1)(a)(iii) substituted by P.C. 1990-162, s. 7, February 1, 1990, *Canada Gazette*, Part II, February 14, 1990, applicable to taxation years ending after March 1985.

Subsec. 1210(1) substituted by P.C. 1985-465, s. 9, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable with respect to 1981 *et seq.* except that with respect to taxation years that end before 1984 subsec. 1210(1) shall be read as follows:

1210. (1) For the purposes of paragraph 20(1)(v.1) of the Act, there may be deducted in computing the income of a taxpayer, for a taxation year an amount equal to 25 per cent of the amount, if any, by which

(a) his resource profits for the year (within the meaning assigned by subsection 1204(1) if that subsection were read without reference to paragraph (a) or subparagraph (b)(iv) thereof) computed as if no amounts were deducted in computing those resource profits

(i) in respect of a rental or royalty paid or payable by the taxpayer (other than an incremental resource royalty, within the meaning assigned by the *Petroleum and Gas Revenue Tax Act*, an amount prescribed in section 1211 or an amount that is a production royalty) computed by reference to the amount or value of petroleum, natural gas or related hydrocarbons produced after December 31, 1981 from a property that is an oil or gas well in Canada,

(ii) in respect of financing, or

(iii) under paragraph 20(1)(v.1) of the Act or paragraph 1204(1)(d) or (e)

exceeds the aggregate of

(b) the aggregate of all amounts each of which is a Canadian exploration and development overhead expense made or incurred by the taxpayer in the year, other than an amount included therein

(i) that is in respect of financing, or

(ii) in respect of which a person has received, is entitled to receive or, at any time, becomes entitled to receive

(A) an incentive under the *Petroleum Incentives Program Act*, or

(B) a payment from the Alberta Petroleum Incentives Program Fund under the *Petroleum Incentives Program Act* of the Province of Alberta, and

(c) the aggregate of all amounts each of which is an amount included in his resource profits for the year that was a rental or royalty (other than a production royalty) computed by reference to the amount or value of petroleum, natural gas or related hydrocarbons produced after December 31, 1981 from an oil or gas well in Canada.

Subsec. 1210(1) substituted by P.C. 1981-3329, s. 9, November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, applicable in respect of 1981 *et seq.*

(2) ["Adjusted resource profits"] — For the purposes of this section, "adjusted resource profits" of a taxpayer for a taxation year is the amount, which may be positive or negative, determined by the formula

$$A + B - C$$

where

A is the amount that would be the taxpayer's resource profits for the year if the following assumptions were made:

(a) the amount determined under paragraph 1204(1)(a) were nil,

(b) subsection 1204(1) were read without reference to subparagraph 1204(1)(b)(iv) and the definition "resource activity" in subsection 1206(1) were read without reference to paragraph (d) of that definition,

(c) the following amounts were not deducted in computing the taxpayer's gross resource profits for the year and were not deducted in computing the taxpayer's resource profits for the year:

(i) each amount deducted in computing the taxpayer's income for the year in respect of a rental or royalty paid or payable by the taxpayer (other than an amount prescribed by section 1211, an amount that is a production royalty or an amount paid or payable in respect of a specified royalty) computed by reference to the amount or value of petroleum, natural gas or related hydrocarbons

(A) produced from a natural accumulation (other than a resource) of petroleum or natu-

ral gas in Canada or an oil or gas well in Canada, or

(B) produced from a resource that is a bituminous sands deposit, oil sands deposit or oil shale deposit,

(ii) each amount deducted in computing the taxpayer's income for the year

(A) under any of paragraphs 20(1)(e), (e.1), (e.2) and (f) of the Act, or

(B) as, on account of or in lieu of, interest in respect of a debt owed by the taxpayer, and

(iii) each amount deducted under any of paragraph 20(1)(v.1) and sections 65 to 66.7 of the Act and subsections 17(2) and (6) and section 29 of the *Income Tax Application Rules*,

(d) each amount that is the taxpayer's share of the income or loss of a partnership from any source were not taken into account, and

(e) subsections 1204(1) and (1.1) provided for the computation of negative amounts where the amounts subtracted in computing gross resource profits and resource profits exceed the amounts added in computing those amounts;

B is the total of all amounts each of which is the taxpayer's share of the adjusted resource profits of a partnership for the year, as determined under subsection (3) or (4); and

C is the amount, if any, by which the total of

(a) the total of all amounts each of which is an amount included in the taxpayer's gross resource profits for the year as a rental or royalty (other than a production royalty or a specified royalty) computed by reference to the amount or value of petroleum, natural gas or related hydrocarbons produced from

(i) a natural accumulation (other than a resource) of petroleum or natural gas in Canada or an oil or gas well in Canada, or

(ii) a resource that is a bituminous sands deposit or oil shale deposit, and

(b) 50 per cent of all amounts included in computing the taxpayer's gross resource profits for the year in respect of specified royalties

exceeds

(c) if the year ends after March 6, 1996, the total of all outlays and expenses that were made or incurred in respect of the total described in paragraph (a) to the extent that the outlays and expenses were deducted in computing the taxpayer's gross resource profits for the year.

Related Provisions: ITA 257 — Negative amounts in formulas.

History: The opening words of subpara. (c)(i) in the description of A, and the description of C in subsec. 1210(2) amended by P.C. 1999-629, s. 8, April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to taxation years that end after March 6, 1996.

S. 1210 substituted by P.C. 1996-1488, s. 5, September 24, 1996, *Canada Gazette*, Part II, October 16, 1996; subsec. (2) applicable to taxation years that begin after December 20, 1991 except that, where the year began before March 19, 1993, subparagraph (c)(ii) of the description of A shall be read as follows:

(ii) each amount in respect of financing deducted in computing the taxpayer's income for the year,

(3) [Partnership] — Where a taxpayer is a member of a partnership in a fiscal period of the partnership that ends in a taxation year of the taxpayer, the taxpayer's share of the partnership's adjusted resource profits for the year is

(a) nil, where the fiscal period began before December 21, 1991; and

(b) in any other case, the amount, which may be positive or negative, that could, if this subsection did not apply, reasonably be considered to represent the taxpayer's share of the partnership's adjusted resource profits for the fiscal period, determined on the assumption that each partnership is a taxpayer the fiscal period of which is a taxation year.

History: S. 1210 substituted by P.C. 1996-1488, s. 5, September 24, 1996, *Canada Gazette*, Part II, October 16, 1996; subsec. (3) applicable to taxation years that begin after December 20, 1991.

(4) [Exempt partnership] — Notwithstanding subsection (3), where a taxpayer is a member of an exempt partnership in a fiscal period of the partnership that begins before 2000 and ends in a taxation year of the taxpayer and the taxpayer's share of the partnership's adjusted resource profits for the year would, if this subsection did not apply, be a negative amount, the taxpayer's share of the partnership's adjusted resource profits for the year is the amount, which may be positive or negative, determined by the formula

$$A \times B$$

where

A is the amount that would, if this subsection did not apply, be the taxpayer's share of the partnership's adjusted resource profits for the year; and

B is

(a) nil, where

(i) the partnership is an exempt partnership in respect of the taxpayer at the end of the fiscal period, and

(ii) at the end of the fiscal period, all or substantially all of the assets of the partnership were held in connection with one or more working interests

(A) the production from which began in reasonable commercial quantities before December 21, 1991, or

(B) the production from which was to begin in reasonable commercial quantities after December 20, 1991 in accordance with an agreement in writing made before December 21, 1991, and

(b) in any other case, the lesser of one and the amount determined by the formula

$$\frac{C}{D}$$

where

C is the amount that would be the partnership's adjusted resource profits for the fiscal period if the partnership did not have any working interest described in subparagraph (a)(ii), and

D is the partnership's adjusted resource profits for the fiscal period.

History: S. 1210 substituted by P.C. 1996-1488, s. 5, September 24, 1996, *Canada Gazette*, Part II, October 16, 1996; subsec. (4) applicable to taxation years that begin after December 20, 1991.

Proposed Repeal [effective 2007] — Reg. 1210

Application: The June 9, 2003 draft regulations (natural resources), subsec. 5(2), will repeal s. 1210, applicable to taxation years that begin after 2006.

Technical Notes: Section 1210 is repealed applicable to taxation years that begin after 2006, consequential upon the repeal of paragraph 20(1)(v.1) of the Act.

Definitions [Reg. 1210]: "adjusted resource profits" — Reg. 1210(2); "amount", "bituminous sands" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian development expense" — ITA 66.2(5), 248(1), Reg. 1206(4)(b); "Canadian exploration and development expenses" — ITA 66(15), 248(1), Reg. 1206(4)(b); "Canadian exploration and development overhead expense" — Reg. 1206(1), (4.1); "Canadian exploration expense" — ITA 66.1(6), 248(1), Reg. 1206(4)(b); "disposition" — ITA 248(1); "earned depletion base" — Reg. 1202(1), 1205(1); "exempt partnership" — Reg. 1206(1); "fiscal period" — ITA 249.1; "gross resource profits" — Reg. 1204(1); "oil or gas well" — ITA 248(1); "prescribed" — ITA 248(1); "production royalty" — Reg. 1206(1); "property" — ITA 248(1); "related" — ITA 251(2)–(6); "resource" — Reg. 1206(1); "resource profits" — Reg. 1204(1.1); "share" — ITA 248(1); "specified royalty" — Reg. 1206(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Forms: T2 SCH 51: Resource allowance and depletion schedules.

1210.1 [Prescribed resource loss] — For the purpose of paragraph 12(1)(z.5) of the Act, a taxpayer's prescribed resource loss for a taxation year is the amount determined by the formula

$$A - B$$

where

A is the total of all amounts each of which is a Canadian exploration and development overhead expense made or incurred by the taxpayer in the year, other than an amount included therein because of subsection 21(2) or (4) of the Act, and

B is the taxpayer's adjusted resource profits for the year (as defined by subsection 1210(2)).

Proposed Repeal [effective 2007] — Reg. 1210.1

Application: The June 9, 2003 draft regulations (natural resources), s. 6, will repeal s. 1210.1, applicable to taxation years that begin after 2006.

Technical Notes: Section 1210.1 provides the rules for computing a taxpayer's resource loss for a taxation year for the purposes of paragraph 12(1)(z.5) of the Act. Section 1210.1 is repealed applicable to taxation years after 2006, consequential upon the repeal of paragraph 12(1)(z.5) of the Act as of that date.

Related Provisions: ITA 257 — Negative amounts in formulas.

History: S. 1210.1 added by P.C. 1999-629, s. 9, April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to taxation years that begin after 1996.

Definitions [Reg. 1210.1]: "amount" — ITA 248(1); "Canadian exploration and development overhead expense" — Reg. 1206(1), (4.1); "prescribed" — ITA 248(1); "resource" — Reg. 1206(1); "resource profits" — Reg. 1204(1.1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

1211. Prescribed amounts — The following amounts are hereby prescribed for the purposes of paragraphs 12(1)(o) and 18(1)(m) of the Act:

(a) an amount paid to, an amount that became payable to, or an amount that became receivable by

(i) Her Majesty in right of Canada for the use and benefit of a band or bands as defined in the *Indian Act*, or

(ii) Petro-Canada;

(b) an amount paid to, an amount that became payable to, or an amount that became receivable by any of the persons referred to in any of subparagraphs 18(1)(m)(i) to (iii) of the Act

(i) that is an amount that may reasonably be regarded as being in respect of a rental for any property described in clause 66(15)(c)(ii)(B) [66(15)"Canadian resource property"(b)(ii)] or subparagraph 66(15)(c)(vi) [66(15)"Canadian resource property"(f)] of the Act,

(ii) that was paid, became payable, or became receivable prior to the commencement of production of minerals from the property referred to in subparagraph (i) in reasonable commercial quantities, and

(iii) that was paid, became payable, or became receivable, after December 11, 1979, in respect of a period commencing after that date;

(c) an amount paid to, an amount that became payable to, or an amount that became receivable by any of the persons referred to in any of subparagraphs 18(1)(m)(i) to (iii) of the Act

(i) that may reasonably be regarded as being in respect of a rental for a right, licence or privilege to store underground petroleum, natural gas or other related hydrocarbons in Canada, and

(ii) that was paid, became payable, or became receivable, after December 11, 1979, in respect of a period commencing after that date;

(d) an amount equal to the lesser of

(i) an amount that

(A) became payable to or receivable by any of the persons referred to in any of subparagraphs 18(1)(m)(i) to (iii) of the Act as a rental for property described in subparagraph 66(15)(c)(i) [66(15)"Canadian resource property"(a)] of the Act or for a portion of such property, and

(B) became payable or receivable

(I) in a taxation year in which there was no taking of petroleum, natural gas or related hydrocarbons in relation to the property or portion thereof, as the case may be, to which the rental relates, if the amount became payable or receivable after 1984, or

(II) prior to the taking of petroleum, natural gas or related hydrocarbons in relation to the property or portion thereof, as the case may be, to which the rental relates, if the amount became payable or receivable after October 31, 1982 and before 1985, and

(ii) an amount equal to $2.50 per year per hectare times the number of hectares to which the amount referred to in subparagraph (i) relates; and

(e) an amount paid under section 49 of the *Canada Oil and Gas Act*.

Proposed Repeal [effective 2007] — Reg. 1211

Application: The June 9, 2003 draft regulations (natural resources), s. 7, will repeal s. 1211, applicable to taxation years that begin after 2006.

Technical Notes: Section 1211 prescribed amounts which are excluded from the application of paragraphs 12(1)(o) and 18(1)(m) of the Act. Section 1211 is repealed effective for taxation years that begin after 2006, consequential upon the repeal of paragraphs 12(1)(o) and 18(1)(m) of the Act as of that date.

History: Paras. 1211(d) and (e) added by P.C. 1985-465, s. 10, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable, as to para. 1211(d), with respect to amounts that after October 31, 1982 become pay-

able or receivable, and as to para. 1211(e), to amounts paid after October 31, 1982.

Subpara. 1211(b)(i) substituted by P.C. 1981-3329, s. 10, November 26, 1981, *Canada Gazette*, Part II, December 9, 1981.

Paras. 1211(b), (c) added by P.C. 1980-3279, s. 2, December 4, 1980, *Canada Gazette*, Part II, December 24, 1980. S. 1211 added by P.C. 1978-1849, s. 8, June 8, 1978, *Canada Gazette*, Part II, June 28, 1978, applicable to taxation years ending after May 6, 1974.

Definitions [Reg. 1211]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "commencement", "Her Majesty" — *Interpretation Act* 35(1); "mineral", "person", "prescribed", "property" — ITA 248(1); "related" — ITA 251(2)–(6); "resource" — Reg. 1206(1); "taxation year" — ITA 249.

Interpretation Bulletins: IT-438R2: Crown charges — resource properties in Canada.

1212. Supplementary depletion allowances — (1)

In computing a taxpayer's income for a taxation year there may be deducted

(a) where the taxpayer is a corporation, such amount as it may claim not exceeding the lesser of

(i) the aggregate of

(A) 50 per cent of its income for the year, computed in accordance with Part I of the Act without reference to paragraphs 59(3.3)(c) and (d) thereof, if no deduction were allowed under this subsection or subsection 1207(1), and

(B) the amount, if any, included in its income for the year by virtue of paragraphs 59(3.3)(c) and (d) of the Act, and

(ii) its supplementary depletion base as of the end of the year (before making any deduction under this subsection for the year); and

(b) where the taxpayer is not a corporation, such amount as he may claim not exceeding the lesser of

(i) the aggregate of

(A) 25 per cent of the amount, if any, by which his resource profits for the year exceed four times the amount, if any, deducted by virtue of subparagraph 1201(a)(i) in computing his income for the year, and

(B) the amount, if any, included in his income for the year by virtue of paragraphs 59(3.3)(c) and (d) of the Act, and

(ii) his supplementary depletion base as of the end of the year (before making any deduction under this subsection for the year).

History: Subparas. 1212(1)(a)(i), (b)(i) substituted by P.C. 1981-3329, subsecs. 11(1), (2), November 26, 1981, *Canada Gazette*, Part II, December 9, 1981.

(2) For the purpose of computing the supplementary depletion base of a corporation, where, after the corporation last ceased to carry on active business, control of the corporation is considered, for the purposes of subsection 66(11) of the Act, to have been acquired by a person or persons who did not control the corporation at the time when it so ceased to carry on active business, the amount by which the supplementary depletion base of the corporation at the time it last ceased to carry on active business exceeds the aggregate of amounts otherwise deducted under subsection (1) in computing its income for taxation years ending after that time and before control was so acquired, shall be deemed to have been deducted under subsection (1) by the corporation in computing its income for taxation years ending before control was so acquired.

(3) For the purposes of this section, "supplementary depletion base" of a taxpayer as of a particular time means the amount by which the aggregate of

(a) 50 per cent of the aggregate of all expenditures each of which was incurred by him before the particular time and each of which was the capital cost to him of property that is enhanced recovery equipment,

(b) 33⅓ per cent of the aggregate of all expenditures each of which was incurred by him before the particular time and each of which was the capital cost to him of property (other than property that had, before it was acquired by him, been used for any purpose whatever by any person with whom he was not dealing at arm's length) that is bituminous sands equipment acquired by him before 1981, and

(c) where the taxpayer is a successor corporation, any amount required by paragraph (4)(a) to be added before the particular time in computing the taxpayer's supplementary depletion base,

exceeds the aggregate of

(d) all amounts deducted by the taxpayer under subsection (1) in computing his income for taxation years ending before the particular time;

(e) 50 per cent of the aggregate of all amounts, each of which is a cost of borrowing capital, including any cost incurred prior to the commencement of carrying on a business, included in the capital cost to him of depreciable property described in paragraph (a);

(f) 33⅓ per cent of the aggregate of all amounts, each of which is a cost of borrowing capital, including any cost incurred prior to the commencement of carrying on a business, included in the capital cost to him of depreciable property described in paragraph (b);

(g) 50 per cent of the aggregate of all amounts, each of which is an amount in respect of a disposition of property (other than a disposition of property, that had been used by the taxpayer, to any person with whom the taxpayer was not dealing at arm's length) of the taxpayer before the earlier of December 12, 1979 and the particular time, the capital cost of which was added in computing the taxpayer's supplementary depletion base by virtue of paragraph (a) or in computing the supplementary depletion base of a predecessor by virtue of paragraph (a) as it applied to the predecessor where the taxpayer is a successor corporation to the predecessor, as the case may be, and each of which is the amount that is equal to the lesser of

(i) the proceeds of disposition of the property, and

(ii) the capital cost of the property to the taxpayer or the predecessor, as the case may be, computed as if no amount had been included therein that is a cost of borrowing capital, including a cost incurred prior to the commencement of carrying on a business;

(h) 33⅓ per cent of the aggregate of all amounts, each of which is an amount in respect of a disposition of property (other than a disposition of property, that had been used by the taxpayer, to any person with whom the taxpayer was not dealing at arm's length) of the taxpayer before the earlier of December 12, 1979 and the particular time, the capital cost of which was added in computing the taxpayer's supplementary depletion base by virtue of paragraph (b) or in computing the supplementary depletion base of a predecessor by virtue of paragraph (b) as it applied to the predecessor

where the taxpayer is a successor corporation to the predecessor, as the case may be, and each of which is the amount that is equal to the lesser of

(i) the proceeds of disposition of the property, and

(ii) the capital cost of the property to the taxpayer or the predecessor, as the case may be, computed as if no amount had been included therein that is a cost of borrowing capital, including any cost incurred prior to the commencement of carrying on a business; and

(i) where the taxpayer is a predecessor, any amount required by paragraph (4)(b) to be deducted before the particular time in computing the taxpayer's supplementary depletion base.

History: Para. 1212(3)(b) substituted by P.C. 1985-465, s. 11, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to 1984 *et seq.*

Paras. 1212(3)(b), (e)–(h) substituted by P.C. 1981-3329, subsecs. 11(3), (4), November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, effective, as to para. 1212(3)(b), commencing January 1, 1981, and, as to those portions of paras. 1212(3)(g) and (h) preceding subparas. (i) thereof, commencing December 12, 1979.

Paras. 1212(3)(a), (b), (g), (h) substituted by P.C. 1980-1483, s. 6, June 5, 1980, *Canada Gazette*, Part II, June 25, 1980.

(4) Subject to subsections 1202(5) and (6), where a corporation (in this section referred to as the "successor corporation") has at any time (in this subsection referred to as the "time of acquisition") after April 19, 1983 and in a taxation year (in this subsection referred to as the "transaction year") acquired a property from another person (in this subsection referred to as the "predecessor"), the following rules apply:

(a) for the purpose of computing the supplementary depletion base of the successor corporation as of any time after the time of acquisition, there shall be added an amount equal to the amount required by paragraph (b) to be deducted in computing the supplementary depletion base of the predecessor; and

(b) for the purpose of computing the supplementary depletion base of the predecessor as of any time after the transaction year of the predecessor, there shall be deducted the amount, if any, by which

(i) the supplementary depletion base of the predecessor immediately after the time of acquisition (assuming for this purpose that, in the case of an acquisition as a result of an amalgamation described in section 87 of the Act, the predecessor existed after the time of acquisition and no property was acquired or disposed of in the course of the amalgamation)

exceeds

(ii) the amount, if any, deducted under subsection (1) in computing the income of the predecessor for the transaction year of the predecessor.

History: That portion of subsec. 1212(4) preceding para. (a) substituted by P.C. 1990-2780, subsec. 10(1), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years ending after February 17, 1987.

That portion of subsec. 1212(4) preceding para. (a) substituted by P.C. 1990-2256, subsec. 6(1), October 18, 1990, *Canada Gazette*, Part II, November 7, 1990, applicable in respect of taxation years commencing after 1984.

That portion of subsec. 1212(4) preceding para. (a) substituted by P.C. 1990-162, s. 8, February 1, 1990, *Canada Gazette*, Part II, February 14, 1990, applicable with respect to acquisitions occurring after 1982 except that with respect to acquisitions occurring after 1982 and in taxation years commencing before 1985, the reference to "Canadian resource properties of the predecessor" shall be read as a reference to "property of the predecessor used by the predecessor in carrying on in Canada such of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) of the Act as were carried on by the predecessor".

That portion of subsec. 1212(4) preceding para. (a) substituted by P.C. 1985-2277, s. 6, July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable with respect to acquisitions of property occurring after April 19, 1983.

All that portion of subsec. 1212(4) preceding para. (a) substituted by P.C. 1980-1483, s. 6, June 5, 1980, *Canada Gazette*, Part II, June 25, 1980, effective November 17, 1978.

(5) [Revoked]

History: Subsec. 1212(5) revoked by P.C. 1990-2780, subsec. 10(2), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years ending after February 17, 1987.

Subsec. 1212(5) added by P.C. 1990-2256, subsec. 6(2), October 18, 1990, *Canada Gazette*, Part II, November 7, 1990, applicable in respect of taxation years commencing after 1984 except that the Minister of National Revenue shall be deemed to have been notified in circumstances satisfying the condition set out in para. (c) if the Minister is notified in writing of the agreement referred to therein within 180 days after November 7, 1990.

History [Reg. 1212]: S. 1212 added by s. 7 of P.C. 1979-649, March 8, 1979, *Canada Gazette*, Part II, March 28, 1979, effective for taxation years ending after April 10, 1978.

Definitions [Reg. 1212]: "active business", "amount" — ITA 248(1); "arm's length" — ITA 251(1); "business" — ITA 248(1); "commencement" — *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "deducted" — Reg. 1212(2); "depreciable property" — ITA 13(21), 248(1); "disposed" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "disposition of property", "enhanced recovery equipment" — Reg. 1206(1); "person" — ITA 248(1); "predecessor" — Reg. 1203(3); "proceeds of disposition" — Reg. 1206(1); "property" — ITA 248(1); "successor corporation" — Reg. 1203(3); "supplementary depletion base" — Reg. 1212(3); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "time of acquisition", "transaction year" — Reg. 1203(3).

1213. Prescribed deductions — For the purposes of subparagraph 66.1(2)(a)(ii) of the Act, "prescribed deduction" in respect of a corporation for a taxation year means an amount deducted under subsection 1202(2) by the corporation in computing its income for the year.

History: S. 1213 substituted by P.C. 1990-2780, s. 11, December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years ending after February 17, 1987.

S. 1213 added by P.C. 1981-3329, s. 12, November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, applicable in respect of taxation years ending after December 11, 1979.

Definitions [Reg. 1213]: "amount" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "taxation year" — ITA 249.

1214. Amalgamations and windings-up — (1) Where a particular corporation amalgamates with another corporation to form a new corporation, or the assets of a subsidiary are transferred to its parent corporation on the winding-up of the subsidiary, and subsection 87(1.2) or 88(1.5) of the Act is applicable to the new corporation or the parent corporation, as the case may be, the new corporation or the parent corporation, as the case may be, shall be deemed to be the same corporation as, and a continuation of, the particular corporation or the subsidiary, as the case may be, for the purposes of

(a) computing the mining exploration depletion base (within the meaning assigned by subsection 1203(2)), the earned depletion base, the frontier exploration base (within the meaning assigned by subsection 1207(2)) and the supplementary depletion base (within the meaning assigned by subsection 1212(3)) of the new corporation or the parent corporation, as the case may be; and

(b) determining the amounts, if any, that may be deducted under subsection 1202(2) in computing the income of the new corporation or the parent corporation, as the case may be, for a particular taxation year.

(2) Where there has been an amalgamation (within the meaning assigned by subsection 87(1) of the Act) of two or more particular corporations to form one corporate entity, that entity shall be deemed to be the same corporation as, and a continuation of, each of the particular corporations for the purposes of subsection 1202(9).

(3) Where a taxable Canadian corporation (in this subsection referred to as the "subsidiary") has been wound up in circumstances in which subsection 88(1) of the Act applies in respect of the subsidiary and another taxable Canadian corporation (in this subsection referred to as the "parent"), the parent shall be deemed to be the same corporation as, and a continuation of, the subsidiary for the purposes of subsection 1202(9).

History: The heading to s. 1214 substituted by P.C. 1990-2780, subsec. 12(1), December 20, 1990. *Canada Gazette*, Part II, January 16, 1991, applicable in respect of amalgamations or windings-up commencing after 1982.

Subsec. 1214(1) substituted for s. 1214, and subsecs. (2), (3) added, by subsec. 12(2) of the said P.C. 1990-2780, applicable in respect of amalgamations and windings-up occurring after January 15, 1987 except that, in respect of amalgamations and windings-up in taxation years ending before February 18, 1987, para. 1214(1)(b) shall be read as if the reference to "subsection 1202(2)" were a reference to "subsections 1202(2) and (3)".

S. 1214 substituted by P.C. 1990-162, s. 9, February 1, 1990, *Canada Gazette*, Part II, February 14, 1990, applicable with respect to amalgamations occurring or windings-up commencing after 1982.

All that portion of s. 1214 preceding para. (b) substituted by P.C. 1985-465, s. 12, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to amalgamations occurring after December 14, 1975.

S. 1214 added by P.C. 1981-3329, s. 12, November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, effective commencing December 15, 1975.

Definitions [Reg. 1214]: "amount" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "earned depletion base" — Reg. 1202(1), 1205(1); "parent", "subsidiary" — Reg. 1214(3); "supplementary depletion base" — Reg. 1212(2)–(4); "taxable Canadian corporation" — ITA 89(1), 248(1); "taxation year" — ITA 249.

1215. [Revoked]

History: S. 1215 revoked by P.C. 1990-2256, s. 7, October 18, 1990, *Canada Gazette*, Part II, November 7, 1990, applicable after 1985.

S. 1215 added by P.C. 1985-465, s. 13, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to 1984 *et seq.*

1216. Prescribed persons — For the purpose of subsection 208(1) of the Act, a person described in any of paragraphs 149(1)(d) to (d.6) of the Act is a **prescribed person**.

History: S. 1216 amended by P.C. 2001-1378, s. 3, August 1, 2001, *Canada Gazette*, Part II, August 15, 2001, effective August 15, 2001.

S. 1216 amended by P.C. 2001-954, s. 2, May 31, 2001, *Canada Gazette*, Part II, June 20, 2001, applicable after 1998.

S. 1216 added by P.C. 1985-465, s. 14, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to 1979 *et seq.*

Definitions [Reg. 1216]: "person" — ITA 248(1).

1217. Prescribed Canadian exploration expense — **(1)** For the purposes of subsection 66(14.1) of the Act, the prescribed Canadian exploration expense of a corporation for a taxation year is the amount, if any, by which its total specified exploration expenses for the year exceed its total exploration assistance for the year.

(2) For the purposes of subsection (1), the total specified exploration expenses of a particular corporation for a particular taxation year are the aggregate of

(a) all expenses (other than expenses referred to in paragraph (b) or (c)) that are described in any of subparagraphs 66.1(6)(a)(i) to (ii) of the Act and that were incurred by the particular corporation in the particular year and after March 1985 and before October 1986,

(b) where the particular corporation is a shareholder corporation of a joint exploration corporation, all expenses described in any of subparagraphs 66.1(6)(a)(i) to (ii) of the Act that were incurred by the joint exploration corporation after March 1985 and before October 1986 and in the taxation year of the joint exploration corporation ending in the particular year and that were deemed under paragraph 66(10.1)(c) of the Act to be Canadian exploration expenses incurred by the particular corporation in the particular year, and

(c) all expenses that would be described in subparagraph 66.1(6)(a)(iv) or (v) of the Act if the references in those subparagraphs to "any of subparagraphs (i) to (iii.1) incurred" were read as "any of subparagraphs (i) to (ii) incurred after March 1985 and before October 1986" and that were incurred by the particular corporation in the particular year or by a partnership in a fiscal period of the partnership that ended in the particular year if, at the end of that fiscal period, the particular corporation was a member of the partnership

other than

(d) expenses renounced by the corporation at any time under subsection 66(10.1) or (12.6) of the Act,

(e) Canadian exploration and development overhead expenses of the corporation or of a partnership of which the corporation was a member, or

(f) expenses incurred or deemed to have been incurred by the corporation in a period during which it was exempt from tax on its taxable income under Part I of the Act.

(3) For the purposes of subsection (1), the total exploration assistance of a corporation for a taxation year is the aggregate of all amounts each of which is an amount of assistance or benefit that the corporation has received or is entitled to receive in the year from a government, municipality or other public authority in respect of an expense that is included in its total specified exploration expenses for the year by virtue of paragraph (2)(a) or (c), whether such amount is by way of a grant, subsidy, rebate, forgivable loan, deduction from royalty or tax, rebate of royalty or tax, investment allowance or any other form of assistance or benefit.

History: S. 1217 added by P.C. 1988-1608, s. 2, August 11, 1988, *Canada Gazette*, Part II, August 31, 1988, applicable to 1985 *et seq.*

Definitions [Reg. 1217]: "amount" — ITA 248(1); "Canadian development expense" — ITA 66.2(5), 248(1), Reg. 1206(4)(b); "Canadian exploration and development expenses" — ITA 66(15), 248(1), Reg. 1206(4)(b); "Canadian exploration and development overhead expense" — Reg. 1206(1), (4.1); "Canadian exploration expense" — ITA 66.1(6), 248(1), Reg. 1206(4)(b); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "fiscal period" — ITA 249.1; "prescribed", "shareholder", "taxable income" — ITA 248(1); "taxation year" — ITA 249; "total development assistance" — Reg. 1218(3); "total exploration assistance" — Reg. 1217(3); "total specified development expenses" — Reg. 1218(2); "total specified exploration expenses" — Reg. 1217(2).

1218. Prescribed Canadian development expense — **(1)** For the purposes of subsection 66(14.2) of the Act, prescribed Canadian development expense of a

corporation for a taxation year is the amount, if any, by which its total specified development expenses for the year exceed its total development assistance for the year.

(2) For the purposes of subsection (1), the total specified development expenses of a particular corporation for a particular taxation year is the aggregate of

(a) all expenses (other than expenses referred to in paragraph (b) or (c)) that are described in subparagraph 66.2(5)(a)(i) or (i.1) [66.2(5)"Canadian development expense"(a) or (b)] of the Act and that were incurred by the corporation in the particular year and after March 1985 and before October 1986,

(b) where the particular corporation is a shareholder corporation of a joint exploration corporation, all expenses that are described in subparagraph 66.2(5)(a)(i) or (i.1) [66.2(5)"Canadian development expense"(a) or (b)] of the Act, that were incurred by the joint exploration corporation after March 1985 and before October 1986 and in the taxation year of the joint exploration corporation ending in the particular year and that were deemed under paragraph 66(10.2)(c) of the Act to be Canadian development expenses incurred by the particular corporation in the particular year, and

(c) all expenses that would be described in subparagraph 66.2(5)(a)(iv) or (v) [66.2(5)"Canadian development expense"(f) or (g)] of the Act if the references in those subparagraphs to "any of subparagraphs (i) to (iii) incurred" were read as "subparagraph (i) or (i.1) incurred after March 1985 and before October 1986" and that were incurred by the particular corporation in the particular year or by a partnership in a fiscal period of the partnership that ended in the particular year if, at the end of that fiscal period, the particular corporation was a member of the partnership,

other than

(d) expenses renounced by the corporation at any time under subsection 66(10.2), (12.601) or (12.62) of the Act,

(e) Canadian exploration and development overhead expenses of the corporation or of a partnership of which the corporation was a member, or

(f) expenses incurred or deemed to have been incurred by the corporation in a period during which it was exempt from tax on its taxable income under Part I of the Act.

(3) For the purposes of subsection (1), the total development assistance of a corporation for a taxation year is the aggregate of all amounts each of which is an amount of assistance or benefit that the corporation has received or is entitled to receive in the year from a government, municipality or other public authority in respect of an expense that is included in its total specified development expenses for the year by virtue of paragraph (2)(a) or (c), whether such amount is by way of a grant, subsidy, rebate, forgivable loan, deduction from royalty or tax, rebate of royalty or tax, investment allowance or any other form of assistance or benefit.

History: Para. 1218(2)(d) amended by P.C. 1996-494, s. 3, April 16, 1996, *Canada Gazette*, Part II, May 1, 1996, applicable after December 2, 1992.

S. 1218 added by P.C. 1988-1608, s. 2, August 11, 1988, *Canada Gazette*, Part II, August 31, 1988, applicable to 1985 *et seq.*

The September 16, 1997 draft regulations, s. 3, will add s. 1219, applicable to expenses incurred after December 5, 1996.

Definitions [Reg. 1218]: "amount" — ITA 248(1); "Canadian development expense" — ITA 66.2(5), 248(1), Reg. 1206(4)(b); "Canadian exploration and development expenses" — ITA 66(15), 248(1), Reg. 1206(4)(b); "Canadian exploration and development overhead expense" — Reg. 1206(1), (4.1); "Canadian exploration expense" — ITA 66.1(6), 248(1), Reg. 1206(4)(b); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "fiscal period" — ITA 249.1; "prescribed", "shareholder", "taxable income" — ITA 248(1); "taxation year" — ITA 249.

1219. Canadian renewable and conservation expense — (1) [Definition] — Subject to subsection (2), for the purpose of subsection 66.1(6) of the Act, "Canadian renewable and conservation expense" means an expense incurred by a taxpayer, and payable to a person or partnership with whom the taxpayer is dealing at arm's length, in respect of the development of a project for which it is reasonable to expect that at least 50% of the capital cost of the depreciable property to be used in the project would be the capital cost of any property that is described in Class 43.1 of Schedule II or that would be such property but for this subsection, and includes such an expense incurred by the taxpayer

Proposed Amendment — 1219(1) opening words

Application: The April 4, 2005 draft regulations (test wind turbines), subsec. 1(1) (pre-published in the *Canada Gazette*, Part I, April 9, 2005), will amend the opening words of subsec. 1219(1) to replace "subsection (2)" with "subsections (2) to (4)", applicable to expenses incurred on or after April 9, 2005.

Regulatory Impact Analysis Statement: These Regulations concern the definition of "test wind turbine" in subsection 1219(3) of the *Income Tax Regulations* (the "Regulations"). Section 1219 of the Regulations defines Canadian Renewable and Conservation Expenses (the "CRCEs") for the purposes of subsection 66.1(6) of the *Income Tax Act* (the "Act"). CRCEs are expenses associated with a project whose assets are expected to be primarily included in capital cost allowance Class 43.1 of Schedule II to the Regulations. Unlike depreciable property, a CRCE is included in calculating a taxpayer's Canadian Exploration Expense and is eligible to be renounced under a flow-through share agreement. Thus, a CRCE is fully deductible in the year it is incurred and a corporation that incurs such an expense can renounce it to investors under a flow-through share agreement. The cost of a test wind turbine is considered to be a CRCE.

The amendments allow for more than one test turbine to be located at a wind farm under certain conditions. These conditions include a minimum spacing of 1,500 metres between each test wind turbine and a separate point of interconnection between the taxpayer's wind farm project and an electrical energy transmission system. The primary purpose of installing the device must be to test the level of electrical energy produced by the device from wind at the place of installation. The amendments to section 1219 of the Regulations were first announced by the Minister of Finance in news release 2002-063 on July 26, 2002. That release included detailed explanatory notes concerning each proposed change to section 1219 of the Regulations.

In addition, these amendments state, for greater certainty, that wind turbines cannot receive CRCE treatment unless they are test wind turbines. This change applies to expenses incurred on or after prepublication of these Regulations in Part I of the *Canada Gazette*.

Alternatives

These amendments are necessary to extend and clarify the definition of a "test wind turbine."

Benefits and costs

These amendments will treat as a CRCE the cost of acquiring more than one test wind turbine as part of a taxpayer's wind farm project if certain conditions are met. These expenses are fully deductible by the taxpayer undertaking the project and may be transferred to investors purchasing flow-through shares.

Consultation

The criteria established for the new definition of "test wind turbine" were developed through consultations held by the Department of Finance with various parties, including the Department of Natural Resources, the Canada Revenue Agency, the Canadian Wind Energy Association and other industry stakeholders.

Strategic environmental assessment

Under the present wording of the Regulations, only one test-wind turbine per project can qualify for CRCE treatment. By allowing for more than one qualifying test wind turbine to be located at a wind farm project of a taxpayer, these amendments are expected to encourage the development of a domestic wind energy sector.

While the environmental impact of these Regulations is difficult to quantify, these Regulations are expected to have an indirect positive impact. To the extent that these amendments encourage the development of wind farms, significant environmental benefits could accrue in the form of reduced greenhouse gas emissions and reduced reliance on fossil fuels. These measures will also help Canada diversify its energy supply.

Compliance and enforcement

The *Income Tax Act* provides the necessary compliance mechanisms. These mechanisms allow the Minister of National Revenue to assess and reassess tax payable, conduct audits and seize relevant records and documents. The *Class 43.1 technical guide and technical guide to Canadian Renewable and Conservation Expense (CRCE)*, which is published by the Department of Natural Resources, sets out engineering and scientific criteria applicable in determining if an outlay is a CRCE or is included in Class 43.1.

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(a) for the purpose of making a service connection to the project for the transmission of electricity to a purchaser of the electricity, to the extent that the expense so incurred was not incurred to acquire property of the taxpayer;

(b) for the construction of a temporary access road to the project site;

(c) for a right of access to the project site before the earliest time at which a property described in Class 43.1 of Schedule II is used in the project for the purpose of earning income;

(d) for clearing land to the extent necessary to complete the project;

(e) for process engineering for the project, including

(i) collection and analysis of site data,

(ii) calculation of energy, mass, water, or air balances,

(iii) simulation and analysis of the performance and cost of process design options, and

(iv) selection of the optimum process design;

(f) for the drilling or completion of a well for the project; or

(g) for the taxpayer's test wind turbine for the project.

Proposed Amendment — Reg. 1219(1)(g)

(g) for a test wind turbine that is part of a wind farm project of the taxpayer.

Application: The April 4, 2005 draft regulations (test wind turbines), subsec. 1(2) (pre-published in the *Canada Gazette*, Part I, April 9, 2005), will amend para. 1219(1)(g) to read as above, applicable to expenses incurred after July 25, 2002.

If a taxpayer so elects in writing filed with the Minister of National Revenue within 90 days after the publication of these regulations in the *Canada Gazette*, Part II, the amendment also applies to expenditures incurred by the taxpayer after December 5, 1996 and before July 26, 2002.

Regulatory Impact Analysis Statement: See under Reg. 1219(1) opening words.

Technical Notes (July 26, 2002): See under Reg. 1219(3)(a)–(f).

Department of Finance news release, July 26, 2002: See under Reg. 1219(3)(a)–(f).

Related Provisions: Reg. 1219(4) — Whether CRCE for wind energy conversion system.

(2) [Exclusions] — A Canadian renewable and conservation expense does not include any expense that

(a) is described in paragraphs 20(1)(c), (d), (e) or (e.1) of the Act; or

(b) is incurred by a taxpayer directly or indirectly and is

(i) for the acquisition of, or the use of or the right to use, land, except as provided by paragraph (1)(b), (c) or (d),

(ii) for grading or levelling land or for landscaping, except as provided by paragraph (1)(b),

(iii) payable to a non-resident person or a partnership other than a Canadian partnership (other than an expense described in paragraph (1)(g)),

(iv) included in the capital cost of property that, but for this section, would be depreciable property, except as provided by paragraph (1)(b), (d), (e), (f) or (g),

(v) an expenditure that, but for this section, would be an eligible capital expenditure, except as provided by any of paragraphs (1)(a) to (e),

(vi) included in the cost of inventory of the taxpayer,

(vii) an expenditure on or in respect of scientific research and experimental development,

(viii) a Canadian development expense or a Canadian oil and gas property expense,

(ix) incurred, for a project, in respect of any time at or after the earliest time at which a property described in Class 43.1 of Schedule II was used in the project for the purpose of earning income,

(x) incurred in respect of the administration or management of a business of the taxpayer, or

(xi) a cost attributable to the period of the construction, renovation or alteration of depreciable property, other than property described in Class 43.1 of Schedule II, that relates to

(A) the construction, renovation or alteration of the property, except as provided by paragraph (1)(b), (f), or (g), or

(B) the ownership of land during the period, except as provided by paragraph (1)(b), (c) or (d).

(3) ["Test wind turbine"] — For the purpose of paragraph (1)(g), "test wind turbine" means a fixed location device that is a wind energy conversion system that would, but for this section, be property included in Class 43.1 of Schedule II because of subparagraph (d)(v) thereof, and in respect of which the Minister, in consultation with the Minister of Natural Resources, determines that

(a) the device will be the first such device installed at the taxpayer's site for a proposed wind energy conversion system; and

(b) the primary purpose of the device is to test the level of electrical energy production at the site.

Proposed Amendment — Reg. 1219(3)(a)–(f)

(a) the device is installed as part of a wind farm project of the taxpayer at which the electrical energy produced from wind by the device, and by all other

test wind turbines that are part of the project, does not exceed

(i) one third of the project's planned nameplate capacity if

(A) in the opinion of the Minister of Natural Resources, the project's planned nameplate capacity is limited from an engineering or scientific perspective, and

(B) the project's planned nameplate capacity does not exceed six megawatts, or

(ii) 20% of the project's planned nameplate capacity, in any other case;

(b) the project does not share with any other project a point of interconnection to an electrical energy transmission or distribution system;

(c) if the project does not have a point of interconnection to an electrical energy transmission or distribution system, the project has a point of interconnection to an electrical system

(i) of the taxpayer

(A) which system is more than 10 kilometres from any transmission system and from any distribution system, and

(B) from which system at least 90% of the electrical energy produced by the project is used in a business carried on by the taxpayer, or

(ii) of another person or partnership that deals at arm's length with the taxpayer

(A) which system is more than 10 kilometres from any transmission system and from any distribution system, and

(B) from which system at least 90% of the electrical energy produced by the project is used in a business carried on by the other person or partnership;

(d) the primary purpose for installing the device is to test the level of electrical energy produced by the device from wind at the place of installation;

(e) no other test wind turbine is installed within 1500 meters of the device; and

(f) no other wind energy conversion system is installed within 1,500 meters of the device until the level of electrical energy produced from wind by the device has been tested for at least 120 calendar days.

Application: The April 4, 2005 draft regulations (test wind turbines), subsec. 1(4) (pre-published in the *Canada Gazette*, Part I, April 9, 2005), will amend paras. 1219(3)(a) and (b) to read as above and add paras. (c) to (f), applicable to expenses incurred after July 25, 2002.

If a taxpayer so elects in writing filed with the Minister of National Revenue within 90 days after the publication of these regulations in the *Canada Gazette*, Part II, the amendment also applies to expenditures incurred by the taxpayer after December 5, 1996 and before July 26, 2002. For the purpose of applying the amendment to those expenditures, para. 1219(3)(a) is deemed to read as follows:

(a) the device is installed as part of a wind farm project of the taxpayer at which the electrical energy produced from wind by the device, and by all other test wind turbines that are part of the project, does not exceed 35% of the project's planned nameplate capacity;

Regulatory Impact Analysis Statement: See under Reg. 1219(1) opening words.

Technical Notes (July 26, 2002): Section 1219 defines "Canadian renewable and conservation expenses ("CRCE")" for the purposes of subsection 66.1(6) of the *Income Tax Act*. A CRCE is included in calculating a taxpayer's Canadian Exploration Expense and is eligible to be renounced under a flow-through share agreement.

In general terms, subsection 1219(1) provides that a "Canadian renewable and conservation expense" is an expense incurred (for certain listed purposes) by a taxpayer in respect of a project for which it is reasonable to expect at least 50% of the capital cost of the depreciable property to be used in a project would be the capital cost of any property that is described in Class 43.1 of Schedule II (or that would be such property but for subsection 1219(1)).

The listed expenses in respect of a project include expenses incurred by the taxpayer for the taxpayer's test wind turbine for the project (see paragraph 1219(1)(g)). As well, subsection 1219(3) of the Regulations provides that, for the purpose of paragraph 1219(1)(g), a wind energy conversion system is a test wind turbine only if

- the device would otherwise be included in Class 43.1(d)(v) of Schedule II to the Regulations, and
- it is determined by the Minister of National Revenue, in consultation with the Minister of Natural Resources,
  - — to be the first such device installed at the taxpayer's site for a proposed wind energy conversion system, and
  - — to be a device that has as its primary purpose the testing of the level of electrical energy production at the site.

Reference should also be made to the Department of Natural Resources' *Technical Guide to Canadian Renewable and Conservation Expenses*, as subsection 66.1(6) of the *Income Tax Act* provides that that guide applies conclusively when determining — with respect to engineering and scientific matters — whether an expense is CRCE.

Concern has been expressed to the government by representatives of the wind energy industry that the current Regulations preclude more than one fixed location device that is a wind energy conversion system from being a "test wind turbine" in respect of a taxpayer's wind farm project. As well, requests have been received that the *Technical Guide to Canadian Renewable and Conservation Expenses* be updated.

As a result of consultations between the Departments of Finance and Natural Resources, the Canada Customs and Revenue Agency and representatives of the wind energy industry, the government is:

- amending Regulation 1219;
- revising the *Technical Guide to Canadian Renewable and Conservation Expenses*; and
- clarifying the process by which a taxpayer may obtain, in advance, an opinion in respect of whether a device will be a "test wind turbine".

Subsection 1219(3) is to be amended in six respects.

First, paragraph 1219(3)(a) is to be amended to remove the requirement that a fixed location device that is a wind energy conversion system be the "first" such device installed at a taxpayer's site. Instead, new paragraph 1219(3)(a) will provide that the device be installed as part of the taxpayer's wind farm project and satisfy one of two separate conditions. In particular, the electrical energy produced from wind by the device, and all other test wind turbines that are part of the taxpayer's project, cannot exceed

- one third of the project's planned nameplate capacity, if
  - — in the opinion of the Minister of Natural Resources, the project's planned nameplate production capacity is limited from an engineering or scientific perspective, and
  - — the project's planned nameplate capacity does not exceed 6 megawatts, or
- 20% of the project's planned nameplate capacity, in any other case.

Second, new paragraph 1219(3)(b) will provide that the project cannot share with any other project a point of interconnection to an electrical energy transmission or distribution system. Currently, the *Technical Guide to Canadian Renewable and Conservation Expenses* indicates that the fixed location device (rather than the wind farm project as a whole) has to have a separate point of interconnection.

Third, if a taxpayer's project does not have a point of interconnection to an electrical transmission or distribution system, new paragraph 1219(3)(c) will provide that the project be required to have a point of interconnection to an electrical system

- of the taxpayer
  - — which system is more than 10 kilometres from any transmission system and from any distribution system, and

— from which system at least 90% of the electrical energy produced by the project is used in a business carried on by the taxpayer, or

- of another person or partnership that deals at arm's length with the taxpayer
  - — which system is more than 10 kilometres from any transmission system and from any distribution system, and
  - — from which system at least 90% of the electrical energy produced by the project is used in a business carried on by the other person or partnership.

Fourth, former paragraph 1219(3)(b) will be replaced by new paragraph 1219(3)(d), to provide that the primary purpose of installing the device must be to test the level of electrical energy produced by the device from wind at the place of installation. Paragraph 1219(3)(b) currently provides that the primary purpose of the device has to be to test the level of electrical energy production at the site.

Fifth, new paragraph 1219(3)(e) will require that there be no other test wind turbine within 1,500 metres of the device.

Sixth, new paragraph 1219(3)(f) will require that there be no other energy conversion system of any sort installed within 1,500 metres of the device until the level of electrical energy produced from wind by the device has been tested for at least 120 calendar days.

Reference should also be made to the *Technical Guide to Canadian Renewable and Conservation Expenses* for further details on engineering and scientific criteria that apply with respect to determining whether a fixed location device that is a wind energy conversion system is a "test wind turbine". The Department of Natural Resources is currently in the process of issuing a new Guide.

Taxpayers who would like to determine in advance whether any proposed installation of a fixed location device that is a wind energy conversion system would be a "test wind turbine" should direct their enquiries to:

The Canada Customs and Revenue Agency, Income Tax Rulings Directorate, Place de Ville, Tower A, 320 Queen Street, Ottawa Ontario K1A 0L5
General Enquiries (613) 957-8953

As is provided in Regulation 1219(3), the Canada Customs and Revenue Agency will make such a determination in consultation with officials of the Department of Natural Resources.

These amendments to Regulation 1219 are to apply to expenditures incurred after July 26, 2002. However, these amendments will also apply to a taxpayer's expenditures incurred after December 5, 1996 if the taxpayer elects in writing filed with the Minister of National Revenue within 90 days after the publication of these regulations in the *Canada Gazette*, Part II.

Department of Finance news release, July 26, 2002: *Federal Government enhances renewable energy tax incentives*

John Manley, Deputy Prime Minister and Minister of Finance, announced today two proposed changes to the income tax rules to enhance the tax incentives for investments in renewable energy and energy conservation projects.

Specifically, these changes would:

- treat as Canadian Renewable and Conservation Expenses (CRCE) the cost of acquiring and installing more than one test wind turbine as part of a taxpayer's wind farm; and
- allow corporations to renounce CRCE to flow-through share investors in a year, where the CRCE will be incurred in the subsequent year.

The first change, to be effected by regulations, would be generally applicable to expenditures incurred after today, and to previously incurred expenditures on an elective basis.

The second change, which would apply to both wind electricity projects and qualifying renewable energy and energy conservation projects, would provide greater flexibility in the timing of investments financed using flow-through shares. The treatment of flow-through share investments in such projects would parallel that of investments in non-renewable energy projects. This change is proposed to apply to CRCE incurred after 2002 in respect of flow-through share agreements entered into after today. The Minister indicated he intends to introduce legislation implementing this proposed change in Parliament at the earliest opportunity.

"I am confident that Canadians will support our efforts to encourage the production of more renewable energy in Canada," said Minister Manley. He added that today's announcement provides greater certainty for those taxpayers engaged in the production of wind power and ensures that renewable energy projects can raise financing in the same manner as non-renewable energy projects.

The changes will complement existing programs such as the Wind Power Production Incentive announced in December 2001 and the green power procurement commitment.

...

For further information: Harry Adams, Public Affairs and Operations Division, (613) 996-8080; Jeff Brownlee, Press Secretary, Office of the Deputy Prime Minister and Minister of Finance, (613) 952-4900; Flow-Through Shares: Daryl Boychuk, Tax Legislation Division, (613) 992-0049; Test Wind Turbines: Isabeau Morrissette, Tax Legislation Division, (613) 992-1862.

Backgrounder

Test Wind Turbines

The 1996 budget introduced a new category of expenses called Canadian Renewable and Conservation Expenses (CRCE). These expenses are fully deductible by the taxpayer or may be transferred to investors purchasing flow-through shares. The purpose of the CRCE rules is to make the tax treatment of renewable energy exploration expenses more consistent with that of non-renewable energy exploration expenses.

The 1997 budget proposed to amend the CRCE definition to include the costs of acquiring and installing "test wind turbines." The current *Income Tax Regulations* restrict eligibility for this expense treatment to the "first device at a taxpayer's site." The wind energy industry has recommended that this restriction be changed to allow for more than one test wind turbine as part of a taxpayer's wind farm project.

In August 2001 the Government announced that new criteria for test wind turbines would be developed following consultations with industry. Draft regulations released today reflect these consultations and address industry concerns. Specifically, they provide that more than one test wind turbine may qualify in respect of a taxpayer's wind farm project, if certain conditions are met. These changes are generally applicable to expenditures incurred after July 26, 2002, and to previously incurred expenditures on an elective basis.

Natural Resources Canada will update the criteria for test wind turbines in the *Technical Guide to Canadian Renewable and Conservation Expenses*.

"Look-Back" Rule for Flow-Through Share Investments

The look-back rule is currently available only for flow-through share investments in the oil and gas and mining sectors. It allows corporations one full year to incur expenses that have been renounced to flow-through share investors in a previous year. This rule was intended to facilitate a more efficient and orderly spending of exploration budgets. The look-back rule has three components:

i) expenses incurred by the issuing corporation by the end of February may be renounced at the end of the previous year without a charge being levied;

ii) the issuing corporation is required to pay a charge based on a prescribed interest rate on any amounts renounced at the end of the previous year that are expended between March 1 and December 31 of the following year; and

iii) if the full amount is not expended by December 31 of the following year, the corporation is subject to a penalty of 10% on the unexpended balance and investors are subject to reassessment to eliminate the deduction of CRCE.

The renewable energy industry has not had access to any look-back provision related to their flow-through share financings. Representatives from the industry, including the wind energy sector, have requested that the look-back rule be extended to apply to CRCE to parallel the treatment provided to investments in the non-renewable energy sector. This change will provide greater flexibility in the timing of energy conservation and renewable energy investments financed using flow-through shares. Accordingly, it is proposed that the look-back rule be extended to CRCE incurred after 2002 in respect of flow-through share agreements entered into after July 26, 2002.

Proposed Addition — 1219(4)

(4) [Wind energy conversion system] — For greater certainty, a Canadian Renewable and Conservation Expense includes an expense incurred by a taxpayer to acquire a fixed location device that is a wind energy

conversion system only if the device is described in paragraph (1)(g).

Application: The April 4, 2005 draft regulations (test wind turbines), subsec. 1(5) (pre-published in the *Canada Gazette*, Part I, April 9, 2005), will add subsec. 1219(4), applicable to expenses incurred on or after April 9, 2005.

Regulatory Impact Analysis Statement: See under 1219(1) opening words.

Related Provisions [Reg. 1219]: Reg. 1102(1)(a.1) — CRCE ineligible for capital cost allowance.

History: S. 1219 added by P.C. 2000-1331, s. 4, August 23, 2000, *Canada Gazette*, Part II, September 13, 2000, applicable to expenses incurred after December 5, 1996.

Definitions [Reg. 1219]: "arm's length" — ITA 251(1); "business" — ITA 248(1); "Canadian development expense" — ITA 66.2(5), 248(1); "Canadian oil and gas property expense" — ITA 66.4(5), 248(1); "Canadian partnership" — ITA 102, 248(1); "depreciable property" — ITA 13(21), 248(1); "eligible capital expenditure" — ITA 14(5), 248(1) ; "inventory", "Minister" — ITA 248(1); "Minister of Natural Resources" — *Department of Natural Resources Act* s. 3; "non-resident" — ITA 248(1); "person", "property", "scientific research and experimental development", "taxpayer" — ITA 248(1); "test wind turbine" — Reg. 1219(3).

PART XIII — ELECTIONS IN RESPECT OF TAXPAYERS CEASING TO BE RESIDENT IN CANADA

History: Part XIII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

1300. Elections to defer capital gains — **(1)** Any election by an individual under paragraph 48(1)(c) of the Act shall be made by filing with the Minister the prescribed form on or before the day on or before which the return of income for the year in which the taxpayer ceased to be resident in Canada is required to be filed under section 150 of the Act.

(2) Any election by a Canadian corporation under paragraph 48(1)(c) of the Act shall be made by filing with the Minister, on or before the day on or before which the return of income for the year in which the corporation ceased to be resident in Canada is required to be filed under section 150 of the Act, the following documents in duplicate:

(a) the form prescribed by the Minister;

(b) where the directors of the corporation are legally entitled to administer the affairs of the corporation, a certified copy of their resolution authorizing the election to be made; and

(c) where the directors of the corporation are not legally entitled to administer the affairs of the corporation, a certified copy of the authorization of the making of the election by the person or persons legally entitled to administer the affairs of the corporation.

Definitions [Reg. 1300]: "Canadian corporation" — ITA 89(1), 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "individual", "Minister", "person", "prescribed" — ITA 248(1); "resident in Canada" — ITA 250; "taxpayer" — ITA 248(1).

Interpretation Bulletins: IT-434R: Rental of real property by individual; IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada.

Forms: T1244: Election, under subsec. 220(4.5) of the *ITA*, to defer the payment of tax on income re deemed disposition of property.

1301. Elections to defer payment of taxes — **(1)** Any election by an individual under subsection 159(4) of the Act shall be made by filing with the Minister the prescribed form on or before the day on or before which the return of income for the year in which the taxpayer ceased to be resident in Canada is required to be filed under section 150 of the Act.

(2) Any election by a Canadian corporation under subsection 159(4) of the Act shall be made by filing with the Minister, on or before the day on or before which the return of income for the year in which the corporation ceased to be resident in Canada is required to be filed under section 150 of the Act, the following documents in duplicate:

(a) the form prescribed by the Minister;

(b) where the directors of the corporation are legally entitled to administer the affairs of the corporation, a certified copy of their resolution authorizing the election to be made; and

(c) where the directors of the corporation are not legally entitled to administer the affairs of the corporation, a certified copy of the authorization of the making of the election by the person or persons legally entitled to administer the affairs of the corporation.

Definitions [Reg. 1301]: "Canadian corporation" — ITA 89(1), 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "individual", "Minister", "person", "prescribed" — ITA 248(1); "resident in Canada" — ITA 250; "taxpayer" — ITA 248(1).

1302. Elections to realize capital gains — Any election by an individual under paragraph 48(1)(a) of the Act shall be made by filing with the Minister the prescribed form on or before the day on or before which the return of income for the year in which the taxpayer ceased to be resident in Canada is required to be filed under section 150 of the Act.

History: S. 1302 added by P.C. 1988-390, s. 7, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, applicable to 1985 *et seq*, except that for the 1985, 1986 and 1987 taxation years, the prescribed form referred to may be filed on or before the day that is 180 days after March 16, 1988.

Definitions [Reg. 1302]: "individual", "Minister", "prescribed" — ITA 248(1); "resident in Canada" — ITA 250; "taxpayer" — ITA 248(1).

PART XIV — INSURANCE BUSINESS POLICY RESERVES

DIVISION 1 — POLICY RESERVES

History: The heading to Part XIV amended by P.C. 1999-1154, subsec. 2(1), June 23, 1999, *Canada Gazette*, Part II, July 7, 1999, applicable to 1996 *et seq.*

Part XIV was substituted by P.C. 1979-1486, May 17, 1979, *Canada Gazette*, Part II, June 13, 1979, applicable, as to ss. 1400–1404 to 1978 *et seq.*

1400. Non-life insurance business — **(1) [Policy reserve]** — For the purpose of paragraph 20(7)(c) of the Act, the amount prescribed in respect of an insurer for a taxation year is

(a) the amount determined under subsection (3) in respect of the insurer for the year, where that amount is greater than nil, and

(b) nil, in any other case.

(2) [Negative reserves] — For the purpose of paragraph 12(1)(e.1) of the Act, the amount prescribed in respect of an insurer for a taxation year is

(a) the absolute value of the amount determined under subsection (3) in respect of the insurer for the year, where that amount is less than nil, and

(b) nil, in any other case.

Related Provisions: Reg. 1402.1 — Negative amounts.

(3) [Amount of reserve] — For the purposes of paragraphs (1)(a) and (2)(a), the amount determined under this subsection in respect of an insurer for a taxation year is the amount, which may be positive or negative, determined by the formula

$$A + B + C + D + E + F + G + H + I + J + K + L$$

where

A is the total of all amounts each of which is the unearned portion at the end of the year of the premium paid by the policyholder for a policy, (other than a policy that insures a risk in respect of

(a) a financial loss of a lender on a loan made on the security of real property,

(b) a home warranty,

(c) a lease guarantee, or

(d) an extended motor vehicle warranty),

which is determined by apportioning the net premium equally over the period to which that premium relates;

B is the total of all amounts each of which is an amount determined in respect of a policy referred to in paragraph (a), (b), (c) or (d) of the description of A equal to the lesser of

(a) the amount of the reported reserve of the insurer at the end of the year in respect of the unearned portion at the end of the year of the premium paid by the policyholder for the policy, and

(b) a reasonable amount as a reserve determined as at the end of the year in respect of the unearned portion at the end of the year of the premium paid by the policyholder for the policy;

C is the total of all amounts each of which is the amount in respect of a policy, where all or a portion of a risk under the policy was reinsured, equal to the unearned portion at the end of the year of a reinsurance commission in respect of the policy determined by apportioning the reinsurance commission equally over the period to which it relates;

D is the amount, in respect of policies (other than policies in respect of which an amount can be determined under the description of E) under which

(a) a claim that was incurred before the end of the year has been reported to the insurer before the end of the year and in respect of which the insurer is, or may be, required to make a payment or incur an expense after the year, or

(b) there may be a claim incurred before the end of the year that has not been reported to the insurer before the end of the year,

equal to 95% of the lesser of

(c) the total of the reported reserves of the insurer at the end of the year in respect of such claims or possible claims, and

(d) the total of the claim liabilities of the insurer at the end of the year in respect of such claims or possible claims;

E is the amount, in respect of policies under which

(a) a claim that was incurred before the end of the year has been reported to the insurer before the end of the year,

(b) the claim is in respect of damages for personal injury or death, and

(c) the insurer has agreed to a structured settlement of the claim,

equal to the lesser of

(d) the total of the reported reserves of the insurer at the end of the year in respect of such claims, and

(e) the total of the claim liabilities of the insurer at the end of the year in respect of such claims;

F is an additional amount, in respect of policies that insure a fidelity risk, a surety risk, a nuclear risk, or a risk related to a financial loss of a lender on a loan made on the security of real property, equal to the lesser of

(a) the total of the reported reserves of the insurer at the end of the year in respect of such risks (other than an amount included in determining the value of A, B, C, D, E, G, H, I, J, K or L), and

(b) a reasonable amount as a reserve determined as at the end of the year in respect of such risks (other than an amount included in determining the value of A, B, C, D, E, G, H, I, J, K or L);

G is the amount of a guarantee fund at the end of the year provided for under an agreement in writing between the insurer and Her Majesty in right of Canada under which Her Majesty has agreed to guarantee the obligations of the insurer under a policy that insures a risk related to a financial loss of a lender on a loan made on the security of real property;

H is the amount in respect of risks under pre-1996 non-cancellable or guaranteed renewable accident and sickness policies equal to

(a) where the amounts determined under subparagraphs (i) and (ii) are greater than nil, the lesser of

(i) the total of the reported reserves of the insurer at the end of the year in respect of such risks (other than an amount included in determining the value of A, B, C, D, E, F, G, I, J, K or L), and

(ii) a reasonable amount as a reserve determined as at the end of the year in respect of such risks (other than an amount included in determining the value of A, B, C, D, E, F, G, I, J, K or L), and

(b) nil, in any other case;

I is the amount in respect of risks under post-1995 non-cancellable or guaranteed renewable accident and sickness policies equal to the lesser of

(a) the total of the reported reserves of the insurer at the end of the year in respect of such risks (other than an amount included in determining the value of A, B, C, D, E, F, G, H, J, K or L), and

(b) the total of the policy liabilities of the insurer at the end of the year in respect of such risks (other than an amount included in determining the value of A, B, C, D, E, F, G, H, J, K or L);

J is the total of all amounts (other than an amount deductible under subsection 140(1) of the Act) each of which is the amount, which is the least of P, Q and R, in respect of a dividend, refund of premiums or refund of premium deposits provided for under the terms of a

group accident and sickness insurance policy that will be

(a) used by the insurer to reduce or eliminate a future adverse claims experience under the policy,

(b) paid or unconditionally credited to the policyholder by the insurer, or

(c) applied in discharge, in whole or in part, of a liability of the policyholder to pay premiums to the insurer under the policy,

where

P is a reasonable amount as a reserve determined as at the end of the year in respect of the dividend, refund of premiums or refund of premium deposits,

Q is 25% of the amount of the premium payable under the terms of the policy for the 12-month period ending

(i) if the policy is terminated in the year, on the day the policy is terminated, and

(ii) in any other case, at the end of the year, and

R is the reported reserve of the insurer at the end of the year in respect of the dividend, refund of premiums or refund of premium deposits; and

K is the total of all amounts each of which is the amount, in respect of a policy under which a portion of the particular amount paid or payable by the policyholder for the policy before the end of the year is deducted under paragraph 1408(4)(b), equal to the portion of that particular amount that the insurer has determined will, after the end of the year, be returned to, or credited to the account of the policyholder on the termination of the policy; and

L is an amount in respect of policies that insure earthquake risks in Canada equal to the lesser of

(a) the portion of the reported reserve of the insurer at the end of the year in respect of those risks that is attributable to accumulations from premiums in respect of those risks (other than an amount included in determining the value of A, B, C, D, E, F, G, H, I, J, or K), and

(b) a reasonable amount as a reserve determined as at the end of the year in respect of those risks (other than an amount included in determining the value of A, B, C, D, E, F, G, H, I, J, or K).

Related Provisions: Reg. 1400(4) — Where actuarial principles not required for element D or E; Reg. 1400(5) — Transitional — before 2001; Reg. 1402 — All amounts to be net of reinsurance ceded; Reg. 1402.1 — Amounts in Reg. 1400 may be less than zero.

(4) [Elements D and E] — Where the relevant authority does not require an insurer (other than an insurer that is required by law to report to the Superintendent of Financial Institutions) to determine its liabilities in respect of claims referred to in the description of D or E in subsection (3) in accordance with actuarial principles,

(a) the value of D is deemed to be 95% of the amount determined under paragraph (c) of the description of D; and

(b) the value of E is deemed to be the amount determined under paragraph (d) of the description of E.

Related Provisions: ITA 95(2)(j.2)(ii) — Operator deemed to be required by law to report to regulatory authority.

(5) [Transitional — Before 2001] — [Repealed]

History [Reg. 1400]: The description of A and paras. (a) and (b) of the description of B in the formula in subsec. 1400(3) amended to replace "net premium" with "premium paid by the policyholder", by P.C. 2002-346, paras. 3(a), (b), March 14, 2002, *Canada Gazette*, Part II, March 27, 2002, applicable to taxation years that begin after 1999 except that, where the taxpayer elects under ITA 18(9)(a)(ii) and 18(9.02) pursuant to S.C. 2001, c. 17 on or before the taxpayer's filing-due date for the taxation year that includes June 14, 2001, the amendment applies to taxation years that end after 1997.

Subsec. 1400(5) repealed by the said P.C. 2002-346, para. 4(a), applicable to taxation years that end after 2000.

S. 1400 substituted by P.C. 1999-1154, subsec. 2(1), June 23, 1999, *Canada Gazette*, Part II, July 7, 1999, applicable to 1996 *et seq.*

The description of L in subsec. 1400(3) amended by the said P.C. 1999-1154, subsec. 2(2), applicable to 1998 *et seq.*

History [former Reg. 1400]: Paras. 1400(e) and (e.1) amended by P.C. 1999-1154, s. 1, June 23, 1999, *Canada Gazette*, Part II, July 7, 1999, applicable to taxation years that end after February 22, 1994. For 1994 and 1995 taxation years that end after February 22, 1994, paras. (e) and (e.1) read as follows:

(e) policies (other than a policy in respect of which an amount can be determined under paragraph (e.1) under which

(i) a claim that was incurred before the end of the year has been reported to the corporation before the end of the year and in respect of which the corpporation is, or may be, required to make a payment or incur an expense after the year, or

(ii) there may be a claim incurred before the end of the year that has not been reported to the corporation before the end of the year,

such amount as the corporation may claim not exceeding 95% of the lesser of

(iii) the total of all amounts each of which is the corporation's actuarial liability at the end of the year in respect of such claims or possible claims, and

(iv) the total of all amounts each of which is the corporation's reported reserve at the end of the year in respect of such claims or possible claims;

(e.1) policies under which

(i) a claim that was incurred before the end of the year has been reported to the corporation before the end of the year,

(ii) the claim is in respect of damages for personal injury or death, and

(iii) the corporation has agreed to a structured settlement of the claim,

such amount as the corporation may claim not exceeding the lesser of

(iv) the total of all amounts each of which is the corporation's actuarial liability at the end of the year in respect of such claims, and

(v) the total of all amounts each of which is the corporation's reported reserve at the end of the year in respect of such claims;

Para. 1400(e) amended, para. 1400(e.1) added, by P.C. 1996-1452, s. 1, September 17, 1996, *Canada Gazette*, Part II, October 2, 1996, applicable to taxation years that end after February 22, 1994.

Subpara. 1400(g.1)(ii) amended by P.C. 1994-940, s. 4, June 2, 1994, *Canada Gazette*, Part II, June 15, 1994, applicable to taxation years ending after June 15, 1994.

Para. 1400(f.1) added by P.C. 1994-555, April 14, 1994, *Canada Gazette*, Part II, May 4, 1994, applicable to taxation years ending after 1990.

That portion of s. 1400 preceding para. (a) substituted by P.C. 1990-2002, subsec. 2(1), September 20, 1990, *Canada Gazette*, Part II, October 10, 1990.

Subpara. 1400(b)(i), subpara. 1400(f)(v), subpara. 1400(g)(ii), substituted by the said P.C. 1990-2002, s. 2, applicable in respect of 1987 *et seq.*

Para. 1400(e) substituted by the said P.C. 1990-2002, subsec. 2(5), applicable in respect of 1987 *et seq.*, except that, for taxation years ending before the first taxation year that begins after June 17, 1987 and ends after 1987, para. (e) shall be read as follows:

(e) a policy where an event has occurred before the end of the year that has given or is likely to give rise to a claim under the policy (in

this paragraph referred to as "the liability"), such amount as the corporation may claim, not exceeding the lesser of

(i) a reasonable amount in respect of the liability as at the end of the year, and

(ii) the amount of the reserve in respect of the liability reported by the corporation to the relevant authority in its annual report for the year or, where the corporation was throughout the year subject to the supervision of the relevant authority but was not required to file an annual report with the relevant authority for the year, in its financial statements for the year;

Para. 1400(g.1) added by the said P.C. 1990-2002, subsec. 2(6), applicable in respect of taxation years beginning after June 17, 1987 and ending after 1987.

Para. 1400(i) added by P.C. 1988-390, s. 8, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, effective January 1, 1978.

Subpara. 1400(b)(ii) substituted by P.C. 1980-1484, subsec. 1(1), June 5, 1980, *Canada Gazette*, Part II, June 25, 1980, effective for 1978 *et seq.*

Definitions [Reg. 1400]: "amount" — ITA 248(1), Reg. 1402.1; "claim liability" — Reg. 1408(1); "dividend" — ITA 248(1); "extended motor vehicle warranty" — Reg. 1408(1); "Her Majesty" — *Interpretation Act* 35(1); "insurance policy", "insurer", "life insurer" — ITA 248(1); "month" — *Interpretation Act* 35(1); "net premium" — Reg. 1408(1); "non-cancellable or guaranteed renewable accident and sickness policy" — Reg. 1408(1), (6); "policy liability", "post-1995 non-cancellable or guaranteed renewable" — Reg. 1408(1); "pre-1996 non-cancellable or guaranteed renewable" — Reg. 1408(1), (7); "premium paid by the policyholder" — Reg. 1408(4); "prescribed" — ITA 248(1); "reinsurance commission", "relevant authority", "reported reserve" — Reg. 1408(1); "security" — *Interpretation Act* 35(1); "taxation year" — ITA 249; "writing" — *Interpretation Act* 35(1).

DIVISION 2 — POLICY RESERVES FOR PRE-1996 POLICIES

1401. Life insurance businesses — (1) [Policy reserves] — For the purpose of subparagraph 138(3)(a)(i) of the Act, in computing a life insurer's income for a taxation year from carrying on its life insurance business in Canada, there may be deducted in respect of

(a) deposit administration fund policies, such amount as the insurer may claim that is a reasonable amount in respect of the aggregate of the insurer's liabilities under the policies as at the end of the year and does not exceed the aggregate of the insurer's liabilities under those policies calculated in the manner required for the purposes of the insurer's annual report to the relevant authority for the year or, where the insurer was throughout the year subject to the supervision of the relevant authority but was not required to file an annual report with the relevant authority for the year, in its financial statements for the year;

(b) a group term life insurance policy that provides coverage for a period not exceeding 12 months, such amount as the insurer may claim not exceeding the unearned portion of the premium paid by the policyholder for the policy at the end of the year determined by apportioning the premium paid by the policyholder equally over the period to which that premium pertains;

(c) a life insurance policy, other than a policy referred to in paragraph (a) or (b), such amount as the insurer may claim not exceeding the greater of

(i) the amount, if any, by which

(A) the cash surrender value of the policy at the end of the year

exceeds

(B) the aggregate of all amounts each of which is an amount payable in respect of a policy loan outstanding at the end of the year in respect of the policy or the interest thereon that has accrued to the insurer at the end of the year, and

(ii) the amount, if any, by which

(A) the present value at the end of the year of the future benefits provided by the policy

exceeds the aggregate of

(B) the present value at the end of the year of any future modified net premiums in respect of the policy, and

(C) the aggregate of all amounts each of which is an amount payable in respect of a policy loan outstanding at the end of the year in respect of the policy or the interest thereon that has accrued to the insurer at the end of the year;

(c.1) a group life insurance policy, such amount as the insurer may claim as an amount (other than an amount in respect of which a deduction may be claimed by the insurer pursuant to subsection 140(1) of the Act by reason of subparagraph 138(3)(a)(v) of the Act in computing its income for the year) in respect of a dividend, refund of premiums or refund of premium deposits provided for under the terms of the policy that will be used by the insurer to reduce or eliminate a future adverse claims experience under the policy or that will be paid or unconditionally credited to the policyholder by the insurer or applied in discharge, in whole or in part, of a liability of the policyholder to pay premiums to the insurer, not exceeding the least of

(i) a reasonable amount in respect of such a dividend, refund of premiums or refund of premium deposits,

(ii) 25 per cent of the amount of the premium payable under the terms of the policy for the 12-month period ending

(A) if the policy is terminated in the year, on the day the policy is terminated, and

(B) in any other case, at the end of the year, and

(iii) the amount of the reserve or liability in respect of such a dividend, refund of premiums or refund of premium deposits reported by the insurer in its annual report for the year to the relevant authority or, where the insurer was throughout the year subject to the supervision of the relevant authority for the year but was not required to file an annual report with the relevant authority for the year, in its financial statements for the year;

(d) a policy, other than a policy referred to in paragraph (a), such amount as the insurer may claim, in respect of a benefit, risk or guarantee that is

(i) an accidental death benefit,

(ii) a disability benefit,

(iii) an additional risk as a result of insuring a substandard life,

(iv) an additional risk in respect of the conversion of a term policy or the conversion of the benefits under a group policy into another policy after the end of the year,

(v) an additional risk under a settlement option,

(vi) an additional risk under a guaranteed insurability benefit,

(vii) a guarantee in respect of a segregated fund policy, or

(viii) any other benefit that is ancillary to the policy, subject to the prior approval of the Minister on the advice of the Superintendent of Insurance for Canada,

but is not

(ix) a benefit, risk or guarantee in respect of which an amount has been claimed under any other paragraph of this subsection, other than paragraphs (d.1) and (d.2), by the insurer as a deduction in computing its income for the year,

not exceeding the lesser of

(x) a reasonable amount in respect of the benefit, risk or guarantee, and

(xi) the reserve in respect of the benefit, risk or guarantee, reported by the insurer in its annual report to the relevant authority for the year or, where the insurer was throughout the year subject to the supervision of the relevant authority but was not required to file an annual report with the relevant authority for the year, in its financial statements for the year;

(d.1) a policy referred to in paragraph (b) where, after the end of the year, a claim under the policy is made in respect of a death that occurred before the end of the year, such amount as the insurer may claim, not exceeding the lesser of

(i) the present value, at the end of the year, of the payments to be made in respect of the claim made under the policy or such estimate of such payments to be made in respect of the claim as is reasonable in the circumstances, and

(ii) 95 per cent of the amount of the reserve in respect of the claim reported by the insurer in its annual report to the relevant authority for the year or, where the insurer was throughout the year subject to the supervision of the relevant authority for the year but was not required to file an annual report with the relevant authority for the year, in its financial statements for the year;

(d.2) a policy referred to in paragraph (c) where, after the end of the year, a claim under the policy is made in respect of a death that occurred before the end of the year, such amount as the insurer may claim, not exceeding the lesser of

(i) the amount, if any, by which

(A) the present value, at the end of the year, of the payments to be made in respect of the claim made under the policy or such estimate of such payments to be made in respect of the claim as is reasonable in the circumstances

exceeds

(B) the maximum amounts that may be claimed by the insurer for the year in respect of the policy under paragraph (c) or (d), and

(ii) 95 per cent of the amount of the reserve in respect of the claim reported by the insurer in its annual report to the relevant authority for the year or, where the insurer was throughout the year subject to the supervision of the relevant authority but was not required to file an annual report with the relevant authority for the year, in its financial statements for the year; and

(e) a qualified annuity, such amount as the insurer may claim not exceeding the amount, if any, by which

(i) the amount that would have been determined pursuant to paragraph (c) for the year if the rate of interest used (or deemed by section 1403 to have been used) by the insurer in determining the premium for the annuity were reduced by one-half of one percentage point,

exceeds

(ii) the maximum amount that may be claimed by the insurer in respect of the annuity under paragraph (c).

Related Provisions: ITA 95(2)(j.2)(ii) — Operator deemed to be under supervision of regulatory authority; ITA 211.1(3) — Effect of Reg. 1401(1) on Part XII.3 tax; Reg. 1401(1.1) — Reg. 1401 applies to pre-1996 policies only; Reg. 1402 — All amounts to be net of reinsurance ceded; Reg. 1403(1) — Rules for computation; Reg. 1408 — Definitions.

(1.1) [Pre-1996 policies only] — An amount may be deducted under subsection (1) only in respect of a life insurance policy in Canada that is a pre-1996 life insurance policy.

Related Provisions: Reg. 1404 — Policy reserves for post-1995 policies.

(2) [Segregated funds] — For the purposes of subsection (1), (except in respect of subparagraph (d)(vii) thereof), any amount claimed by an insurer for the year shall not include an amount in respect of a liability of a segregated fund (within the meaning assigned "segregated fund" by section 138.1 of the Act).

(3) [Group life insurance policies] — In computing the amount that a life insurer may deduct under subparagraph 138(3)(a)(i) of the Act in computing its taxable income for a taxation year, there shall be deducted from the aggregate of the amounts determined under subsection (1), the aggregate of all amounts each of which is the lesser of the following amounts determined in respect of a life insurance policy referred to in paragraph (1)(c):

(a) the amount, if any, by which

(i) the amount that would be determined under subclause (1)(c)(i)(B) in respect of the policy

exceeds

(ii) the amount that would be determined under subclause (1)(c)(i)(A) in respect of the policy, and

(b) the amount, if any, by which

(i) the aggregate of the amounts that would be determined under subclauses (1)(c)(ii)(B) and (C) in respect of the policy

exceeds

(ii) the amount that would be determined under subclause (1)(c)(ii)(A) in respect of the policy.

(4) [Unpaid claims reserve] — For the purpose of subparagraph 138(3)(a)(ii) of the Act, there may be deducted, in computing a life insurer's income for a taxation year, the amount it claims as a reserve in respect of unpaid claims received by it before the end of the year under life insurance policies in Canada that are pre-1996 life insurance policies, not exceeding the present value at the end of the year, computed using a rate of interest that is reasonable in the circumstances, of a reasonable amount in respect of those unpaid claims.

Related Provisions: ITA 20(26) — Deduction for unpaid claims reserve adjustment; Reg. 1401(4) — Unpaid claims reserve re post-1995 policies; Reg. 1402 — All amounts to be net of reinsurance ceded; Reg. 8100, 8101 — Unpaid claims reserve adjustment.

History [Reg. 1401]: Para. 1401(1)(b) amended to replace "net premium" with "premium paid by the policyholder", by P.C. 2002-346, s. 1, March 14, 2002, *Canada Gazette*, Part II, March 27, 2002, applicable to taxation years that begin after 1999 except that, where the taxpayer elects under ITA 18(9)(a)(ii) and 18(9.02) pursuant to S.C. 2001, c. 17 on or before the taxpayer's filing-due date for the taxation year that includes June 14, 2001, the amendment applies to taxation years that end after 1997.

Subsec. 1401(1.1) added, the opening words to s. 1401, cl. 1401(1)(c)(ii)(B), and subsec. 1401(4) amended, by P.C. 1999-1154, ss. 3 and 4, June 23, 1999, *Canada Gazette*, Part II, July 7, 1999, applicable to 1996 *et seq.*

Subpara. 1401(1)(c.1)(ii) amended by P.C. 1994-940, s. 5, June 2, 1994, *Canada Gazette*, Part II, June 15, 1994, applicable to taxation years ending after June 15, 1994.

Para. 1401(1)(a) and subpara. (1)(d)(xi) substituted by P.C. 1990-2002, subsecs. 3(1), (3), September 20, 1990, *Canada Gazette*, Part II, October 10, 1990, applicable in respect of 1987 *et seq.*

Para. 1401(1)(c.1) added, (d.1) and (d.2) substituted, and subsecs. (3), (4) added, by subsecs. 3(2), (4), (5) of the said P.C. 1990-2002, applicable in respect of taxation years beginning after June 17, 1987 and ending after 1987.

Para. 1401(1)(d)(ix) substituted and paras. 1401(1)(d.1), (d.2) added by P.C. 1986-2770, s. 2, December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, applicable to 1985 *et seq.*

Cls. 1401(1)(c)(i)(B) and (c)(ii)(C) substituted by P.C. 1984-3789, s. 8, November 29, 1984, *Canada Gazette*, Part II, December 12, 1984, applicable to taxation years commencing after November 12, 1981.

Para. 1401(1)(a) substituted by P.C. 1980-2081, s. 3, July 31, 1980, *Canada Gazette*, Part II, August 13, 1980, effective in respect of 1978 *et seq.*

Definitions [Reg. 1401]: "amount" — ITA 248(1); "amount payable" — ITA 138(12), Reg. 1408(1); "benefit" — Reg. 1408(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "cash surrender value" — ITA 148(9), Reg. 1408(1); "dividend" — ITA 248(1); "group term life insurance policy" — Reg. 1408(2); "insurer" — ITA 248(1); "interest" — ITA 138(12), Reg. 1408(1); "life insurance business" — ITA 248(1); "life insurance policy" — ITA 138(12), 248(1), Reg. 1408(5); "life insurance policy in Canada" — Reg. 1408(1); "life insurer", "Minister" — ITA 248(1); "modified net premium" — Reg. 1408(1), (3); "month" — *Interpretation Act* 35(1); "net premium" — Reg. 1408(1); "policy loan" — ITA 138(12), Reg. 1408(1); "pre-1996 life insurance policy" — Reg. 1408(1), (7); "premium paid by the policyholder" — Reg. 1408(4); "qualified annuity", "relevant authority" — Reg. 1408(1); "segregated fund", "segregated fund policy" — ITA 138.1(1), Reg. 1408(1); "taxable income" — ITA 248(1); "taxation year" — ITA 249.

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies.

DIVISION 3 — SPECIAL RULES

1402. Non-life and life insurance businesses — Any amount determined under section 1400 or 1401 shall be determined on a net of reinsurance ceded basis.

History: S. 1402 amended by P.C. 1999-1154, s. 5, June 23, 1999, *Canada Gazette*, Part II, July 7, 1999, applicable to 1996 *et seq.*

S. 1402 amended by P.C. 1997-1670, s. 1, November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the subsecs. apply to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

Definitions [Reg. 1402]: "amount" — ITA 248(1).

1402.1 [Negative amounts] — For greater certainty, any amount referred to or determined under section 1400 may be equal to, or less than, nil.

History: S. 1402.1 added by P.C. 1999-1154, s. 5, June 23, 1999, *Canada Gazette*, Part II, July 7, 1999, applicable to 1996 *et seq.*

Definitions [Reg. 1402.1]: "amount" — ITA 248(1).

1403. (1) For the purposes of paragraph 1401(1)(c) and subject to subsections (2) and (3), a modified net premium and an amount claimed by an insurer for a taxation year shall be computed

(a) in the case of a lapse-supported policy effected after 1990, based on rates of interest, mortality and policy lapse only, and

(b) in any other case, based on rates of interest and mortality only,

using

(c) in respect of the modified net premiums and benefits (other than a benefit described in paragraph (d)) of a participating life insurance policy (other than an annuity contract) under the terms of which the policyholder is entitled to receive a specified amount in respect of the policy's cash surrender value, the rates used by the insurer when the policy was issued in computing the cash surrender values of the policy;

(d) in respect of any benefit provided

(i) in lieu of a cash settlement on the termination or maturity of a policy, or

(ii) in satisfaction of a dividend on a policy,

the rates used by the insurer in determining the amount of such benefit; and

(e) in respect of all or part of any other policy, the rates used by the insurer in determining the premiums for the policy.

History: That portion of subsec. 1403(1) before para. (c) replaced by P.C. 1994-940, s. 6, June 2, 1994, *Canada Gazette*, Part II, June 15, 1994, applicable

(a) to taxation years beginning after 1990; and

(b) where an insurer so elected by notifying the Minister of National Revenue in writing before July, 1991, to the insurer's taxation years beginning after 1987, 1988 or 1989 (as specified in the election) and before 1991, and where such an election has been made

(i) if the insurer so indicated in the election, para. 1403(1)(a) shall be read without reference to the words "effected after 1990", and

(ii) in any other case, the reference in para. 1403(1)(a) to "1990" shall be read as a reference to the calendar year immediately preceding the first taxation year to which the election relates.

Para. 1403(1)(b) substituted by P.C. 1980-2089, s. 4, July 31, 1980, *Canada Gazette*, Part II, August 13, 1980, effective in respect of 1978 *et seq.*

Paras. 1403(1)(c), (d) substituted, (e) added, by P.C. 1980-1484, subsec. 2(1), June 5, 1980, *Canada Gazette*, Part II, June 25, 1980, effective for 1978 *et seq.*

(2) For the purposes of subsection (1), where a rate of mortality or other probability used by an insurer in determining the premium for a policy is not reasonable in the circumstances, the Minister on the advice of the Superintendent of Insurance for Canada may make such revision to the rate as is reasonable in the circumstances and the revised rate shall be deemed to have been used by the insurer in determining the premium.

(3) For the purposes of subsection (1), where the present value of the premiums for a policy as at the date of issue of the policy is less than the aggregate of

(a) the present value, at that date, of the benefits provided for by the policy, and

(b) the present value, at that date, of all outlays and expenses made or incurred by the insurer or outlays and expenses that the insurer reasonably estimates it will make or incur in respect of the policy (except outlays and expenses to maintain the policy after all premiums under the policy have been paid and for which explicit provision has not been made in calculating the premiums) and such part of any other outlays and expenses made or incurred by the insurer that may reasonably be regarded as applicable thereto,

an increased rate of interest shall be determined by multiplying the rate of interest used in determining the premiums by a constant factor so that when the increased rate of interest is used,

(c) the present value of the premiums at the date of issue of the policy

shall equal

(d) the aggregate of the present values of the benefits, outlays and expenses referred to in paragraphs (a) and (b),

and the increased rate of interest shall be deemed to have been used by the insurer in determining the premiums for the policy.

Related Provisions: Reg. 1403(4) — Computation of present value.

(4) For the purposes of subsection (3), a "present value" referred to in that subsection shall be computed by using the rates of mortality and other probabilities used by the insurer in determining its premiums, after making any revision required by subsection (2).

(5) For the purposes of subsection (1), where a record of the rate of interest or mortality used by an insurer in determining the premiums for a policy is not available,

(a) the insurer may, if the policy was issued before 1978, make a reasonable estimate of the rate; and

(b) the Minister, on the advice of the Superintendent of Insurance for Canada, may

(i) if the policy was issued before 1978 and the insurer has not made the estimate referred to in paragraph (a), or

(ii) if the policy was issued after 1977,

make a reasonable estimate of the rate.

(6) Notwithstanding paragraph 1401(1)(c), a life insurer in computing its income for a taxation year may, in respect of any class of life insurance policies issued before its 1988 taxation year, other than policies referred to in paragraph 1401(1)(a) or (b), use a method of approximation to convert the reserve in respect of such policies reported by the insurer in its annual report to the relevant authority for the year to an amount that is a reasonable estimate of the amount that would otherwise be determined for such policies under paragraph 1401(1)(c), provided that that method of approximation is acceptable to the Minister on the advice of the relevant authority.

(7) For the purposes of subsection (1) and notwithstanding any other provision of this section, where

(a) an individual annuity contract was issued prior to 1969 by a life insurer, or

(b) a benefit was purchased prior to 1969 under a group annuity contract issued by a life insurer, and

the contract

(c) is a policy in respect of which the provisions of paragraph 1401(1)(c) as it read in its application to the insurer's 1977 taxation year applied,

the rates of interest and mortality used by the insurer in computing its reserve for the policy under that paragraph for its 1977 taxation year shall be used by the insurer in respect of that policy.

(8) For the purposes of subsection (1), where

(a) in a taxation year of an insurer, there has been a disposition to the insurer by another person with whom the insurer was dealing at arm's length in respect of which subsection 138(11.92) of the Act applied,

(b) as a result of the disposition, the insurer assumed obligations under life insurance policies (in this subsection referred to as the "transferred policies") in respect of which an amount may be claimed by the insurer as a reserve under paragraph 1401(1)(c) for the taxation year,

(c) the amount, if any, by which

(i) the aggregate of all amounts received or receivable by the insurer from the other person in respect of the transferred policies referred to in paragraph (b)

exceeds

(ii) the aggregate of all amounts paid or payable by the insurer to the other person in respect of commissions in respect of the amounts referred to in subparagraph (i)

exceeds the total of the maximum amounts that may be claimed by the insurer as a reserve under paragraph 1401(1)(c) (determined without reference to this subsection) in respect of the transferred policies for the taxation year, and

(d) the amount determined under paragraph (c) (in this subsection referred to as "reserve deficiency") can reasonably be attributed to the fact that the rates of interest or mortality used by the issuer of the transferred policies in determining the cash surrender values or premiums under such policies are no longer reasonable in the circumstances,

the Minister, on the request of the insurer and with the advice of the relevant authority, may make such revision to the rates of interest or mortality to eliminate all or any part of that reserve deficiency, and those revised rates shall be deemed to have been used by the issuer of the transferred policies in determining the cash surrender value or premiums under the policies.

Proposed Amendment — Reg. 1403(8)

Letter from Dept. of Finance, December 1, 1999:

Dear [xxx]

This is in reply to your letter of November 8, 1999 requesting that amendments be made to the draft income tax legislation released on December 23, 1998 regarding trusts and to the *Income Tax Regulations* regarding the determination of tax reserves for life insurance policies. . . .

Regulations on Reserves

You are of the view that subsection 1403(8) of the *Income Tax Regulations* should be amended to allow an insurer that has acquired an insurance business, or a line of an insurance business, from another insurer to revise the lapse rates used by the other insurer for reserve purposes if those rates are no longer reasonable to eliminate all or part of what is referred to in

subsection 1403(8) as a reserve deficiency (the "Reserve Deficiency"). From a policy perspective, we agree. Consequently, we are prepared to recommend to the Minister of Finance that subsection 1403(8) be amended to allow for revisions to lapse rates to eliminate all or part of a Reserve Deficiency if the deficiency is attributable to the fact that the lapse rates used by the issuer of the transferred policies are no longer reasonable in the circumstances.

Your second concern in regard to subsection 1403(8) of the *Income Tax Regulations* is that it provides the Minister of National Revenue with too much discretion in determining whether, and to what extent, rates can be changed to eliminate all or part of a Reserve Deficiency. We agree that subsection 1403(8) may be too broad in this regard. Consequently, we are prepared to recommend to the Minister of Finance that subsection 1403(8) be amended to better ensure that the Ministerial discretion be limited to the approval of adjusted rates provided the adjustments are reasonable.

We would also recommend that the amendments to subsection 1403(8) of the *Income Tax Regulations* be effective for dispositions occurring after November 1999. If the recommendation is acted upon, it is anticipated that the amendments would be included in a future technical bill.

I appreciate you taking the time to bring your concerns to my attention.

Yours sincerely,
Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

History: Subsec. 1403(6) substituted by P.C. 1990-2002, subsec. 4(1), September 20, 1990, *Canada Gazette*, Part II, October 10, 1990, applicable in respect of taxation years beginning after June 17, 1987 and ending after 1987.

Subsec. 1403(8) added by subsec. 4(2) of the said P.C. 1990-2002, applicable in respect of dispositions of an insurance business or a line of business of an insurance business occurring after December 15, 1987.

Para. 1403(7)(a) corrected by *Canada Gazette*, Part II, July 23, 1980, *errata*.

Paras. 1403(7)(a), (b) substituted by P.C. 1980-1484, subsec. 2(2), June 5, 1980, *Canada Gazette*, Part II, June 25, 1980, effective for 1978 *et seq.*

Definitions [Reg. 1403]: "amount", "annuity" — ITA 248(1); "arm's length" — ITA 251(1); "benefit" — Reg. 1408(1); "cash surrender value" — ITA 148(9), Reg. 1408(1); "disposition", "dividend", "insurer" — ITA 248(1); "lapse-supported policy" — Reg. 1408(1); "life insurance policy" — ITA 138(12), 248(1), Reg. 1408(5); "life insurer", "Minister" — ITA 248(1); "modified net premium" — Reg. 1408(1), (3); "participating life insurance policy" — ITA 138(12), Reg. 1404(1); "person" — ITA 248(1); "present value" — Reg. 1403(4); "record" — ITA 248(1); "relevant authority" — Reg. 1408(1); "reserve deficiency" — Reg. 1403(8)(d); "taxation year" — ITA 249.

DIVISION 4 — POLICY RESERVES FOR POST-1995 POLICIES

1404. Life insurance business — **(1)** For the purpose of subparagraph 138(3)(a)(i) of the Act, there may be deducted, in computing a life insurer's income from carrying on its life insurance business in Canada for a taxation year in respect of its life insurance policies in Canada that are post-1995 life insurance policies, the amount the insurer claims, not exceeding

(a) the amount determined under subsection (3) in respect of the insurer for the year, where that amount is greater than nil, and

(b) nil, in any other case.

(2) For the purpose of paragraph 138(4)(b) of the Act, the amount prescribed in respect of an insurer for a taxation year, in respect of its life insurance policies in Canada that are post-1995 life insurance policies, is

(a) the absolute value of the amount determined under subsection (3) in respect of the insurer for the year, where that amount is less than nil, and

(b) nil, in any other case.

(3) For the purposes of paragraphs (1)(a) and (2)(a), the amount determined under this subsection in respect of an insurer for a taxation year, in respect of its life insurance policies in Canada that are post-1995 life insurance policies, is the amount, which may be positive or negative, determined by the formula

$$A + B + C + D - M$$

where

A is the amount (except to the extent the amount is determined in respect of a claim, premium, dividend or refund in respect of which an amount is included in determining the value of B, C or D), in respect of the insurer's life insurance policies in Canada that are post-1995 life insurance policies, equal to the lesser of

(a) the total of the reported reserves of the insurer at the end of the year in respect of those policies, and

(b) the total of the policy liabilities of the insurer at the end of the year in respect of those policies;

B is the amount, in respect of the insurer's life insurance policies in Canada that are post-1995 life insurance policies under which there may be claims incurred before the end of the year that have not been reported to the insurer before the end of the year, equal to 95% of the lesser of

(a) the total of the reported reserves of the insurer at the end of the year in respect of the possibility that there are such claims, and

(b) the total of the policy liabilities of the insurer at the end of the year in respect of the possibility that there are such claims;

C is the total of all amounts each of which is the unearned portion at the end of the year of the premium paid by the policyholder for the policy where the policy is a group term life insurance policy that

(a) provides coverage for a period that does not exceed 12 months,

(b) is a life insurance policy in Canada, and

(c) is a post-1995 life insurance policy,

determined by apportioning the premium paid by the policyholder equally over the period to which that premium relates;

D is the total of all amounts (other than an amount deductible under subparagraph 138(3)(a)(v) of the Act) each of which is the amount, which is the least of P, Q and R, in respect of a dividend, refund of premiums or refund of premium deposits provided for under the terms of a group life insurance policy that is a life insurance policy in Canada that is a post-1995 life insurance policy that will be

(a) used by the insurer to reduce or eliminate a future adverse claims experience under the policy,

(b) paid or unconditionally credited to the policyholder by the insurer, or

(c) applied in discharge, in whole or in part, of a liability of the policyholder to pay premiums to the insurer under the policy,

where

P is a reasonable amount as a reserve eetermined as at the end of the year in respect of the dividend, refund of premiums or refund of premium deposits provided for under the terms of the policy,

Q is 25% of the amount of the premium under the terms of the policy for the 12-month period ending

(i) on the day the policy is terminated, if the policy is terminated in the year, and

(ii) at the end of the year, in any other case, and

R is the amount of the reported reserve of the insurer at the end of the year in respect of the dividend, refund of premiums or refund of premium deposits provided for under the terms of the policy; and

M is the total of all amounts determined in respect of a life insurance policy in Canada that is a post-1995 life insurance policy each of which is

(a) an amount payable in respect of a policy loan under the policy, or

(b) interest that has accrued to the insurer to the end of the year in respect of a policy loan under the policy.

Related Provisions: ITA 257 — Negative amounts in formulas; Reg. 1406 — All amounts to be net of reinsurance ceded and ignoring seg funds; Reg. 1407 — Amounts in Reg. 1404 may be less than zero.

(4) [Repealed]

History [Reg. 1404]: The description of C in subsec. 1404(3) amended to replace "net premium" with "premium paid by the policyholder", by P.C. 2002-346, para. 3(c), March 14, 2002, *Canada Gazette*, Part II, March 27, 2002, applicable to taxation years that begin after 1999 except that, where the taxpayer elects under ITA 18(9)(a)(ii) and 18(9.02) pursuant to S.C. 2001, c. 17 on or before the taxpayer's filing-due date for the taxation year that includes June 14, 2001, the amendment applies to taxation years that end after 1997.

Subsec. 1404(4) repealed by the said P.C. 2002-346, para. 4(b), applicable to taxation years that end after 2000.

S. 1404 substituted by P.C. 1999-1154, s. 6, June 23, 1999, *Canada Gazette*, Part II, July 7, 1999, applicable to 1996 *et seq.*

History [former Reg. 1404]: "Reported reserve" and "actuarial liability" added to subsec. 1404(2) by P.C. 1996-1452, s. 2, September 17, 1996, *Canada Gazette*, Part II, October 2, 1996, applicable to taxation years that end after February 22, 1994.

"Lapse-supported policy" added by P.C. 1994-940, s. 7, June 2, 1994, *Canada Gazette*, Part II, June 15, 1994, applicable

(a) to taxation years beginning after 1990; and

(b) where an insurer so elected by notifying the Minister of National Revenue in writing before July, 1991, to the insurer's taxation years beginning after 1987, 1988 or 1989 (as specified in the election) and before 1991.

"Acquisition costs" and "relevant authority" amended by P.C. 1993-2025, s. 1, December 9, 1993, *Canada Gazette*, Part II, December 29, 1993, applicable to 1991 *et seq.*

"Qualified annuity" amended by P.C. 1991-2540, s. 8, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable after 1985.

"Modified net premium" and para. (a) of "relevant authority" substituted by P.C. 1990-2002, subsecs. 5(1), (2), September 20, 1990, *Canada Gazette*, Part II, October 10, 1990, applicable in respect of taxation years beginning after June 17, 1987 and ending after 1987.

Subsec. 1404(5) substituted by P.C. 1988-390, s. 9, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, effective January 1, 1978.

All that portion of the definition "qualified annuity" preceding para. (a) substituted by P.C. 1984-3789, s. 9, November 29, 1984, *Canada Gazette*, Part II, December 12, 1984.

All that portion of the definition "modified net premium" in subsec. 1404(2) preceding para. (a) substituted by P.C. 1983-3530, s. 6, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, applicable to taxation years commencing after 1982.

"Acquisition costs", "net premium for the policy", para. (c) of "qualified annuity" in 1404(2), and subsec. 1404(5) substituted, and subsec. 1404(6) added, by P.C. 1980-1484, s. 3, June 5, 1980, *Canada Gazette*, Part II, June 25, 1980, effective for 1978 *et seq.*

Definitions [Reg. 1404]: "amount" — ITA 248(1), Reg. 1406, 1407; "amount payable" — ITA 138(12), Reg. 1408(1); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "dividend" — ITA 248(1); "group term life insurance policy" — Reg. 1408(2); "insurer" — ITA 248(1); "interest" — ITA 138(12), Reg. 1408(1); "life insurance business" — ITA 248(1); "life insurance policy" — ITA 138(12), 248(1), Reg. 1408(5); "life insurance policy in Canada" — ITA 138(12), Reg. 1408(1); "life insurer" — ITA 248(1); "month" — *Interpretation Act* 35(1); "net premium for the policy" — Reg. 1408(1); "non-cancellable or guaranteed renewable accident and sickness policy" — Reg. 1408(1), (6); "policy liability" — Reg. 1408(1); "policy loan" — ITA 138(12), Reg. 1408(1); "post-1995 non-cancellable or guaranteed renewable accident and sickness policy" — Reg. 1408(1); "premium paid by the policyholder" — Reg. 1408(4); "prescribed" — ITA 248(1); "reported reserve" — Reg. 1408(1); "taxation year" — ITA 249.

1405. [Unpaid claims reserve] — For the purpose of subparagraph 138(3)(a)(ii) of the Act, there may be deducted in computing a life insurer's income for a taxation year the amount it claims as a reserve in respect of an unpaid claim received by the insurer before the end of the year under a life insurance policy in Canada that is a post-1995 life insurance policy, not exceeding the lesser of

(a) the reported reserve of the insurer at the end of the year in respect of the claim, and

(b) the policy liability of the insurer at the end of the year in respect of the claim.

Related Provisions [Reg. 1405]: ITA 20(26) — Deduction for unpaid claims reserve adjustment; Reg. 1401(4) — Unpaid claims reserve re pre-1996 policies; Reg. 1406 — All amounts to be net of reinsurance ceded and ignoring seg funds; Reg. 1407 — Amounts in Reg. 1405 may be less than zero; Reg. 8100, 8101 — Unpaid claims reserve adjustment.

History: S. 1405 substituted by P.C. 1999-1154, s. 6, June 23, 1999, *Canada Gazette*, Part II, July 7, 1999, applicable to 1996 *et seq.*

Definitions [Reg. 1405]: "amount" — ITA 248(1), Reg. 1406, 1407; "insurer" — ITA 248(1); "life insurance policy" — ITA 138(12), 248(1), Reg. 1408(5); "life insurance policy in Canada" — ITA 138(12), Reg. 1408(1); "life insurer" — ITA 248(1); "policy liability", "post-1995 life insurance policy", "reported reserve" — Reg. 1408(1); "taxation year" — ITA 249.

1406. [Interpretation] — Any amount determined under section 1404 or 1405 shall be determined

(a) on a net of reinsurance ceded basis; and

(b) without reference to any liability in respect of a segregated fund (other than a liability in respect of a guarantee in respect of a segregated fund policy).

History: S. 1406 substituted by P.C. 1999-1154, s. 6, June 23, 1999, *Canada Gazette*, Part II, July 7, 1999, applicable to 1996 *et seq.*

Definitions [Reg. 1406]: "amount" — ITA 248(1); "segregated fund", "segregated fund policy" — ITA 138.1(1), Reg. 1408(1).

1407. [Negative amounts] — For greater certainty, any amount referred to in or determined under section 1404 or 1405 may be equal to, or less than, nil.

History: S. 1407 added by P.C. 1999-1154, s. 6, June 23, 1999, *Canada Gazette*, Part II, July 7, 1999, applicable to 1996 *et seq.*

Definitions [Reg. 1407]: "amount" — ITA 248(1).

DIVISION 5 — INTERPRETATION

1408. Insurance businesses — **(1)** The definitions in this subsection apply in this Part.

"acquisition costs" — [Repealed]

"amount payable", in respect of a policy loan at a particular time, means the amount of the policy loan and the interest that is outstanding on the policy loan at that time.

"benefit", in respect of a policy, includes

(a) a policy dividend (other than a policy dividend in respect of a policy described in paragraph 1403(1)(c))

in respect of the policy to the extent that the dividend was specifically treated as a benefit by the insurer in determining a premium for the policy, and

(b) an expense of maintaining the policy after all premiums in respect of the policy have been paid to the extent that the expense was specifically provided for by the insurer in determining a premium for the policy,

but does not include

(c) a policy loan,

(d) interest on funds left on deposit with the insurer under the terms of the policy, and

(e) any other amount under the policy that was not specifically provided for by the insurer in determining a premium for the policy.

"capital tax" means a tax imposed under Part I.3 or VI of the Act or a similar tax imposed under an Act of the legislature of a province.

"cash surrender value" has the meaning assigned by subsection 148(9) of the Act.

"claim liability" of an insurer at the end of a taxation year means

(a) in respect of a claim reported to the insurer before that time under an insurance policy, the amount, if any, by which

(i) the present value at that time, computed using a rate of interest that is reasonable in the circumstances, of a reasonable estimate, determined in accordance with accepted actuarial practice, of the insurer's future payments and claim adjustment expenses in respect of the claim

exceeds

(ii) the present value at that time, computed using a rate of interest that is reasonable in the circumstances, of a reasonable estimate, determined in accordance with accepted actuarial practice, of the amounts that the insurer will recover after that time in respect of the claim because of salvage, subrogation or any other reason; and

(b) in respect of the possibility that there are claims under an insurance policy incurred before that time that have not been reported to the insurer before that time, the amount, if any, by which

(i) the present value at that time, computed using a rate of interest that is reasonable in the circumstances, of a reasonable estimate, determined in accordance with accepted actuarial practice, of the insurer's payments and claim adjustment expenses in respect of those claims

exceeds

(ii) the present value at that time, computed using a rate of interest that is reasonable in the circumstances, of a reasonable estimate, determined in accordance with accepted actuarial practice, of the amounts that the insurer will recover in respect of those claims because of salvage, subrogation or any other reason.

"extended motor vehicle warranty" means an agreement under which a person agrees to provide goods or render services in respect of the repair or maintenance of a motor vehicle manufactured by the person or a corporation related to the person where

(a) the agreement is in addition to a basic or limited warranty in respect of the vehicle;

(b) the basic or limited warranty has a term of 3 or more years, although it may expire before the end of such term on the vehicle's odometer registering a specified number of kilometres or miles;

(c) more than 50% of the expenses to be incurred under the agreement are reasonably expected to be incurred after the expiry of the basic or limited warranty; and

(d) the person's risk under the agreement is insured by an insurer that is subject to the supervision of a relevant authority.

Related Provisions: ITA 95(2)(j.2)(ii) — Operator deemed to be under supervision of regulatory authority.

"general amending provision", of an insurance policy, means a provision of the policy that allows it to be amended with the consent of the policyholder.

"interest", in relation to a policy loan, has the meaning assigned by subsection 138(12) of the Act.

"lapse-supported policy" means a life insurance policy that would require materially higher premiums if premiums were determined using policy lapse rates that are zero after the fifth policy year.

"life insurance policy in Canada" means a life insurance policy issued or effected by an insurer on the life of a person resident in Canada at the time the policy was issued or effected.

"modified net premium", in respect of a premium under a policy (other than a prepaid premium under a policy that cannot be refunded except on termination of the policy), means

(a) where all benefits (other than policy dividends) and premiums (other than the frequency of payment of premiums) in respect of the policy are determined at the date of issue of the policy, the amount determined by the formula

$$A \times [(B + C)/(D + E)]$$

where

A is the amount of the premium,

B is the present value, at the date of the issue of the policy, of the benefits to be provided under the terms of the policy after the day that is one year after the date of the issue of the policy,

C is the present value, at the date of the issue of the policy, of the benefits to be provided under the terms of the policy after the day that is two years after the date of the issue of the policy,

D is the present value, at the date of the issue of the policy, of the premiums payable under the terms of the policy on or after the day that is one year after the date of the issue of the policy, and

E is the present value, at the date of the issue of the policy, of the premiums payable under the terms of the policy on or after the day that is two years after the date of the issue of the policy,

except that the amount determined by the formula in respect of the premium for the second year of a policy is deemed to be the amount that is 50% of the total of

(i) the amount that would otherwise be determined under the formula, and

(ii) the amount of a one-year term insurance premium (determined without regard to the frequency of payment of the premium) that would be payable under the policy; and

(b) in any other case, the amount that would be determined under paragraph (a) if that paragraph applied and the amount were adjusted in a manner that is reasonable in the circumstances.

Related Provisions: Reg. 1408(3) — Interpretation.

"net premium for the policy" — [Repealed]

"non-cancellable or guaranteed renewable accident and sickness policy" includes a non-cancellable or guaranteed renewable accident and sickness benefit under a group policy.

Related Provisions: Reg. 1408(6) — Riders.

"participating life insurance policy" has the meaning assigned by subsection 138(12) of the Act.

"policy liability" of an insurer at the end of the taxation year in respect of an insurance policy or a claim, possible claim or risk under an insurance policy means the positive or negative amount of the insurer's reserve in respect of its potential liability in respect of the policy, claim, possible claim or risk at the end of the year determined in accordance with accepted actuarial practice, but without reference to projected income and capital taxes (other than the tax payable under Part XII.3 of the Act).

"policy loan" has the meaning assigned by subsection 138(12) of the Act.

"post-1995 life insurance policy" means a life insurance policy that is not a pre-1996 life insurance policy.

"post-1995 non-cancellable or guaranteed renewable accident and sickness policy" means a non-cancellable or guaranteed renewable accident and sickness policy that is not a pre-1996 non-cancellable or guaranteed renewable accident and sickness policy.

"pre-1996 life insurance policy", at any time, means a life insurance policy where

(a) the policy was issued before 1996; and

(b) before that time and after 1995 there has been no change, except in accordance with the provisions (other than a general amending provision) of the policy as they existed on December 31, 1995, to

(i) the amount of any benefit under the policy,

(ii) the amount of any premium or other amount payable under the policy, or

(iii) the number of premium or other payments under the policy.

Related Provisions: Reg. 1408(7) — Interpretation.

"pre-1996 non-cancellable or guaranteed renewable accident and sickness policy", at any time, means a non-cancellable or guaranteed renewable accident and sickness policy where

(a) the policy was issued before 1996; and

(b) before that time and after 1995 there has been no change, except in accordance with the provisions (other than a general amending provision) of the policy as they existed on December 31, 1995, to

(i) the amount of any benefit under the policy,

(ii) the amount of any premium or other amount payable under the policy, or

(iii) the number of premium or other payments under the policy.

Related Provisions: Reg. 1408(7) — Interpretation.

"qualified annuity" means an annuity contract issued before 1982, other than a deposit administration fund policy or a policy referred to in paragraph 1403(7)(c),

(a) in respect of which regular periodic annuity payments have commenced;

(b) in respect of which a contract or certificate has been issued that provides for regular periodic annuity payments to commence within one year after the date of issue of the contract or certificate;

(c) that is not issued as or under a registered retirement savings plan, registered pension plan or deferred profit sharing plan and that

(i) does not provide for a guaranteed cash surrender value at any time, and

(ii) provides for regular periodic annuity payments to commence not later than the attainment of age 71 by the annuitant; or

(d) that is issued as or under a registered retirement savings plan, registered pension plan or deferred profit sharing plan, if the interest rate is guaranteed for at least 10 years and the plan does not provide for any participation in profits, directly or indirectly.

"reinsurance commission", in respect of a policy, means

(a) where the risk under the policy is fully reinsured, the amount, if any, by which

(i) the premium paid by the policyholder for the policy

exceeds

(ii) the consideration payable by the insurer in respect of the reinsurance of the risk; and

(b) where the risk under the policy is not fully reinsured, the amount, if any, by which

(i) the portion of the premium paid by the policyholder for the policy that may reasonably be considered to be in respect of the portion of the risk that is reinsured with a particular reinsurer

exceeds

(ii) the consideration payable by the insurer to the particular reinsurer in respect of the risk assumed by the reinsurer.

"relevant authority" of an insurer means

(a) the Superintendent of Financial Institutions, if the insurer is required by law to report to the Superintendent of Financial Institutions; and

(b) in any other case, the Superintendent of Insurance or other similar officer or authority of the province under whose laws the insurer is incorporated.

Related Provisions: ITA 95(2)(j.2)(ii) — Operator deemed to be required by law to report to regulatory authority.

"reported reserve" of an insurer at the end of a taxation year in respect of an insurance policy or a claim, possible claim, risk, dividend, refund of premiums or refund of

premium deposits under an insurance policy means the amount equal to

(a) where the insurer is required to file an annual report with its relevant authority for a period ending coincidentally with the year, the positive or negative amount of the reserve that would be reported in that report in respect of the insurer's potential liability under the policy if the reserve were determined without reference to projected income and capital taxes (other than the tax payable under Part XII.3 of the Act);

(b) where the insurer is, throughout the year, subject to the supervision of its relevant authority and paragraph (a) does not apply, the positive or negative amount of the reserve that would be reported in its financial statements for the year in respect of the insurer's potential liability under the policy if

(i) those statements were prepared in accordance with generally accepted accounting principles, and

(ii) the reserve were determined without reference to projected income and capital taxes (other than the tax payable under Part XII.3 of the Act);

(c) where the insurer is the Canada Mortgage and Housing Corporation or a foreign affiliate of a taxpayer resident in Canada, the positive or negative amount of the reserve that would be reported in its financial statements for the year in respect of the insurer's potential liability under the policy if

(i) those statements were prepared in accordance with generally accepted accounting principles, and

(ii) the reserve were determined without reference to projected income and capital taxes (other than the tax payable under Part XII.3 of the Act); and

Proposed Amendment — Reg. 1408(1)"reported reserve"(c)

Technical Notes to ITA 94.3(1)"income allocation"(d), July 18, 2005: The non-resident entity is assumed to have deducted the greatest amounts permissible, for its taxation year preceding the fresh-start year, under sections 20, 138 and 140. These amounts are added in computing the non-resident entity's income for the fresh-start year, but appropriate deductions under these sections can be claimed for the fresh-start year and subsequent taxation years. In the context of the reserve for life insurers under subsection 138(3), it is intended that paragraph (c) of the definition "reported reserve" in subsection 1408(1) of the Regulations be amended so that the non-resident entity can have a "reported reserve".

(d) in any other case, nil.

Related Provisions: ITA 95(2)(j.2)(ii) — Operator deemed to be under supervision of regulatory authority.

"segregated fund" has the meaning assigned by subsection 138.1(1).

"segregated fund policy" has the meaning assigned by subsection 138.1(1).

(2) ["Group term life insurance policy"] — The definition "group term life insurance policy" in subsection 248(1) of the Act does not apply to this Part.

(3) [Interpretation — modified net premium] — For the purpose of the formula referred to in the definition "modified net premium" in subsection (1), it may be assumed that premiums are payable annually in advance.

(4) ["Premium paid by the policyholder"] — For the purposes of this Part,

(a) a reference to a "premium paid by the policyholder" shall, depending on the method regularly followed by the insurer in computing its income, be read as a reference to a "premium paid or payable by the policyholder"; and

(b) in determining the premium paid by a policyholder for a policy, there may be deducted by the insurer the portion, if any, of the premium that

(i) can reasonably be considered, at the time the policy is issued, to be a deposit that, pursuant to the terms of the policy or the by-laws of the insurer, will be returned to the policyholder, or credited to the account of the policyholder, by the insurer on the termination of the policy, and

(ii) was not otherwise deducted under section 140 of the Act.

(5) [Riders] — For the purposes of this Part, any rider that is attached to a life insurance policy and that provides for additional life insurance or for an annuity is a separate life insurance policy.

(6) [Riders] — For the purposes of this Part, any rider that is attached to a policy and that provides for additional non-cancellable or guaranteed renewable accident and sickness insurance, as the case may be, is a separate non-cancellable or guaranteed renewable accident and sickness policy.

(7) [No change in amount] — For the purposes of the definitions "pre-1996 life insurance policy" and "pre-1996 non-cancellable or guaranteed renewable accident and sickness policy" in subsection (1), a change in the amount of any benefit or in the amount or number of any premiums or other amounts payable under a policy is deemed not to have occurred where the change results from

(a) a change in underwriting class;

(b) a change in frequency of premium payments within a year that does not alter the present value, at the beginning of the year, of the total premiums to be paid under the policy in the year;

(c) the deletion of a rider;

(d) the correction of erroneous information;

(e) the reinstatement of the policy after its lapse, if the reinstatement occurs not later than 60 days after the end of the calendar year in which the lapse occurred;

(f) the redating of the policy for policy loan indebtedness; or

(g) a change in the amount of a benefit under the policy that is granted by the insurer on a class basis, where

(i) no consideration was payable by the policyholder or any other person for the change, and

(ii) the change was not made because of the terms or conditions of the policy or any other policy or contract to which the insurer is a party.

History: The definitions "acquisition costs" and "net premium for the policy" in subsec. 1408(1) repealed, by P.C. 2002-346, s. 2, March 14, 2002, *Canada Gazette*, Part II, March 27, 2002, applicable to taxation years that begin after 1999 except that, where the taxpayer elects under ITA 18(9)(a)(ii) and 18(9.02) pursuant to S.C. 2001, c. 17 on or before the taxpayer's filing-due date for the taxation year that includes June 14, 2001, the amendment applies to taxation years that end after 1997.

The definition "reinsurance commission" in subsec. 1408(1) amended to replace "net premium" with "premium paid by the policyholder", by the said P.C. 2002-346, para. 3(d), applicable as above.

S. 1408 added by P.C. 1999-1154, s. 6, June 23, 1999, *Canada Gazette*, Part II, July 7, 1999, applicable to 1996 *et seq.*

Definitions [Reg. 1408]: "acquisition costs" — Reg. 1408(1); "amount" — ITA 248(1); "amount payable" — ITA 138(12), Reg. 1408(1); "annuity" — ITA 248(1); "arm's length" — ITA 251(1); "benefit" — Reg. 1408(1); "business" — ITA 248(1); "capital tax" — Reg. 1408(1); "cash surrender value" — ITA 148(9), Reg. 1408(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "credit union" — ITA 248(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "dividend" — ITA 248(1); "foreign affiliate" — ITA 95(1), 248(1); "general amending provision" — Reg. 1408(1); "insurance policy", "insurer" — ITA 248(1); "interest" — ITA 138(12), Reg. 1408(1); "legislature" — *Interpretation Act* 35(1)"legislative assembly"; "life insurance policy" — ITA 138(12), 248(1), Reg. 1408(5); "motor vehicle" — ITA 248(1); "net premium for the policy" — Reg. 1408(1); "non-cancellable or guaranteed renewable accident and sickness policy" — Reg. 1408(1), (6); "officer", "person" — ITA 248(1); "policy loan" — ITA 138(12), Reg. 1408(1); "pre-1996 life insurance policy", "pre-1996 non-cancellable or guaranteed renewable accident and sickness policy" — Reg. 1408(1), (7); "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "premium paid by the policyholder" — Reg. 1408(4); "registered pension plan" — ITA 248(1); "registered retirement savings plan" — ITA 146(1), 248(1); "related" — ITA 251(2)–(6); "relevant authority" — Reg. 1408(1); "resident in Canada" — ITA 250; "security" — *Interpretation Act* 35(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

PART XV — PROFIT SHARING PLANS

History: Part XV was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

DIVISION I — EMPLOYEES PROFIT SHARING PLANS

1500. (1) An election under subsection 144(4.1) of the Act by the trustee of a trust governed by an employees profit sharing plan shall be made by filing with the Minister the prescribed form in duplicate.

(2) An election under subsection 144(4.2) of the Act by the trustee of a trust governed by an employees profit sharing plan shall be made by filing with the Minister the prescribed form in duplicate on or before the last day of a taxation year of the trust in respect of any capital property deemed to have been disposed of in that taxation year by virtue of the election.

(3) An election under subsection 144(10) of the Act shall be made by forwarding by registered mail to the Deputy Minister of National Revenue for Taxation at Ottawa the following documents:

(a) a letter from the employer stating that he elects to have the arrangement qualify as an employees profit sharing plan;

(b) if the employer is a corporation,

(i) where the directors of the corporation are legally entitled to administer the affairs of the corporation, a certified copy of their resolution authorizing the election to be made, and

(ii) where the directors of the corporation are not legally entitled to administer the affairs of the corporation, a certified copy of the authorization of the making of the election by the person or persons legally entitled to administer the affairs of the corporation; and

(c) a copy of the agreement and any supplementary agreement setting out the plan.

Definitions [Reg. 1500]: "capital property" — ITA 54, 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "disposed" — ITA 248(1)"disposition"; "employees profit sharing plan" — ITA 144(1), 248(1); "employer", "Minister", "person", "prescribed" — ITA 248(1); "taxation year" — ITA 249; "trust" — ITA 104(1), 248(1), (3).

Interpretation Bulletins: IT-280R: Employees profit sharing plans — payments computed by reference to profits.

Forms: T3009: Election from deemed disposition and reacquisition of any capital property of an employees profit sharing plan under subsection 144(4.2).

DIVISION II — DEFERRED PROFIT SHARING PLANS

1501. Registration of plans — For the purposes of the definition "deferred profit sharing plan" in subsection 147(1) of the Act, an application for registration of a plan shall be made by forwarding by registered mail to the Deputy Minister of National Revenue for Taxation at Ottawa the following documents:

(a) a letter from the trustee and the employer whereby the trustee and the employer apply for the registration of the plan as a deferred profit sharing plan;

(b) if the employer is a corporation, a certified copy of a resolution of the directors authorizing the application to be made; and

(c) a copy of the agreement and any supplementary agreement setting out the plan.

History: S. 1501 substituted by P.C. 1991-2540, s. 4, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable after 1990.

Definitions [Reg. 1501]: "corporation" — ITA 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "employer", "Minister" — ITA 248(1).

Information Circulars: 77-1R4: Deferred profit sharing plans.

Forms: T2214: Application for registration as a deferred profit sharing plan.

1502. [Revoked]

History: S. 1502 (Qualified Investments) revoked by P.C. 1981-2518, s. 1, September 16, 1981, *Canada Gazette*, Part II, October 14, 1981, effective January 1, 1981.

DIVISION III — ELECTIONS IN RESPECT OF CERTAIN SINGLE PAYMENTS

1503. Any election by a beneficiary under subsection 147(10.1) of the Act shall be made by filing the prescribed form in duplicate as follows:

(a) one form shall be filed by the beneficiary with the trustee of the deferred profit sharing plan not later than 60 days after the end of the taxation year in which the beneficiary received the payment referred to in subsection 147(10.1) of the Act; and

(b) the other form shall be filed by the beneficiary with the Minister on or before the day on which the beneficiary is required to file a return of income pursuant to section 150 of the Act for the taxation year in which the beneficiary received the payment referred to in subsection 147(10.1) of the Act.

Definitions [Reg. 1503]: "deferred profit sharing plan" — ITA 147(1), 248(1); "Minister", "prescribed" — ITA 248(1); "taxation year" — ITA 249.

Interpretation Bulletins: IT-281R2: Elections on single payments from a deferred profit sharing plan (archived).

Forms: T2078: Election under subsec. 147(10.1) re a single payment received from a deferred profit sharing plan.

PART XVI — PRESCRIBED COUNTRIES

History: Part XVI was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

Part XVI was substituted by P.C. 1973-107, January 16, 1973, *Canada Gazette*, Part II, February 14, 1973.

1600. For the purposes of subsection 10(4) of the *Income Tax Application Rules*, the following countries are hereby prescribed:

(a) Commonwealth of Australia;

(b) Kingdom of Denmark;

(c) Republic of Finland;

(d) French Republic;

(e) Federal Republic of Germany;

(f) Ireland;

(g) Jamaica;

(h) Japan;

(i) Kingdom of the Netherlands;

(j) New Zealand;

(k) Kingdom of Norway;

(l) Republic of South Africa;

(m) Kingdom of Sweden;

(n) Trinidad and Tobago;

(o) United Kingdom of Great Britain and Northern Ireland; and

(p) United States of America.

History: The opening words of s. 1600 amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Definitions [Reg. 1600]: "prescribed" — ITA 248(1); "United Kingdom", "United States" — *Interpretation Act* 35(1).

PART XVII — CAPITAL COST ALLOWANCES, FARMING AND FISHING

History: Part XVII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

Interpretation Bulletins [Part XVII]: IT-268R4: *Inter vivos* transfer of farm property to child; IT-349R3: Intergenerational transfers of farm property on death.

DIVISION I — DEDUCTIONS ALLOWED

1700. (1) Rates — For the purposes of paragraph 20(1)(a) of the Act, there is hereby allowed to a taxpayer, in computing his income from farming or fishing, as the case may be, a deduction for each taxation year in respect of each property that was used for the purpose of gaining or producing income from farming or fishing equal to such amount as he may claim, not exceeding in the case of

(a) a building or other structure, not described elsewhere in this subsection, including component parts such as electric wiring, plumbing, sprinkler systems, air-conditioning equipment, heating equipment, lighting fixtures, elevators and escalators, 2½%

(b) a building or other structure of

(i) frame,

(ii) log,

(iii) stucco on frame,

(iv) galvanized iron, or

(v) corrugated iron

construction, including component parts such as electric wiring, plumbing, sprinkler systems, air-conditioning equipment, heating equipment, lighting fixtures, elevators and escalators, 5%

(c) a fence, 5%

(d) a scow or a vessel, including furniture, fittings or equipment attached thereto, but not including radio communication equipment, 7½%

(e) nonautomotive equipment and machinery, 10%

(f) automotive equipment, a sleigh or a wagon, 15%

(g) radiocommunication equipment, 15%

(h) tile drainage acquired before the 1965 taxation year, 10%

(i) a water storage tank, 5%

(j) a gas well that is part of the equipment of a farm and from which the gas produced is not sold, 10%

(k) a tool costing less than $100, 100%

of the depreciable cost to the taxpayer of the property.

(2) Taxation years less than 12 months — Where the taxation year is less than 12 months, the amount allowed as a deduction under subsection (1) shall not exceed that proportion of the maximum amount otherwise allowable that the number of days in the taxation year is of 365.

(3) Property disposed of during year — Where a taxpayer has disposed of a property before the end of a taxation year, the amount allowed as a deduction under subsection (1) in respect of that property for the year shall not exceed that proportion of the maximum amount otherwise allowable that the number of months in the taxation year during which the property was owned by the taxpayer is of 12.

(4) Leasehold interests — Where a taxpayer has property that was used for the purpose of gaining or producing income from farming or fishing and that would be included in Class 13 in Schedule II if he had claimed an allowance under Part XI, he may deduct, in computing his income from farming or fishing for a taxation year, an amount not exceeding the amount he could have deducted in respect of that property for the year under paragraph 1100(1)(b).

History: Subsecs. 1700(3), (4) and (5) and headings substituted by subsecs. (3) and (4) of P.C. 1978-1315, s. 11, April 12, 1978, *Canada Gazette*, Part II, May 10, 1978.

Definitions [Reg. 1700]: "amount" — ITA 248(1); "depreciable cost" — Reg. 1703(2)–(8); "disposed" — ITA 248(1)"disposition"; "end of a taxation year" — Reg. 1703(1)(b); "farming", "fishing" — ITA 248(1); "month" — *Interpretation Act* 35(1); "property" — ITA 248(1); "radio" — *Interpretation Act* 35(1); "taxation year" — Reg. 1703(1)(a); "taxpayer" — ITA 248(1).

DIVISION II — MAXIMUM DEDUCTIONS

1701. (1) The amount allowed as a deduction under section 1700 in respect of a property shall not exceed the amount by which the capital cost of the property to the taxpayer exceeds the aggregate of the deductions from income allowed under this Part in respect of the property for previous taxation years.

(2) In respect of the 1972 and subsequent taxation years, where subsection 20(5) of the *Income Tax Application Rules* applies to a particular property, notwithstanding subsection (1), the amount allowed as a deduction under section 1700 in respect of the property shall not exceed the amount by which

(a) the amount determined to be the undepreciated capital cost of the property, under paragraph 20(5)(b) of the *Income Tax Application Rules*

exceeds

(b) the aggregate of the deductions from income allowed under this Part in respect of the property for previous taxation years ending after 1971.

History: The opening words of subsec. 1701(2) amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Definitions [Reg. 1701]: "amount", "property" — ITA 248(1); "taxation year" — ITA 249; "taxation years" — Reg. 1703(1)(a); "taxpayer" — ITA 248(1); "undepreciated capital cost" — ITA 13(21), 248(1).

DIVISION III — PROPERTY NOT INCLUDED

1702. (1) Nothing in this Part shall be construed as allowing a deduction in respect of a property

(a) the cost of which is deductible in computing the taxpayer's income;

(b) that is described in the taxpayer's inventory;

(c) that was acquired by an expenditure in respect of which the taxpayer is allowed a deduction from income under section 37 of the Act;

(d) that has been constituted a prescribed class by subsection 24(2) of chapter 91, S.C. 1966-67;

(e) that is included in a separate prescribed class established under subsection 13(14) of the Act;

(f) that was not used in the business during the year;

(g) that is

(i) an animal, or

(ii) a tree, shrub, herb or similar growing thing;

(h) that was not acquired by the taxpayer for the purpose of gaining or producing income from farming or fishing;

(i) that has been included at any time by the taxpayer in a class prescribed under Part XI;

(j) that is a passenger automobile acquired after June 13, 1963, and before January 1, 1966, the cost to the taxpayer of which, minus the initial transportation charges and retail sales tax in respect thereof, exceeded $5,000, unless the automobile was acquired by a person before June 14, 1963 and has, by one or more transactions between persons not dealing at arm's length, become vested in the taxpayer; or

(k) that was acquired by the taxpayer after 1971.

(2) Where a taxpayer is a member of a partnership, the properties referred to in this Part shall be deemed not to include any property that is an interest of the taxpayer in depreciable property that is partnership property of the partnership.

(3) The properties referred to in section 1700 shall be deemed not to include the land upon which a property described therein was constructed or is situated.

(4) Where the taxpayer is a non-resident person, the properties referred to in section 1700 shall be deemed not to include property that is situated outside Canada.

(5) The provisions of subsections 1102(11), (12) and (13) are applicable *mutatis mutandis* to paragraph (1)(j).

Definitions [Reg. 1702]: "arm's length" — ITA 251(1); "automobile", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "depreciable property" — ITA 13(21), 248(1); "farming", "fishing", "inventory", "non-resident" — ITA 248(1); "person", "prescribed", "property", "taxpayer" — ITA 248(1).

DIVISION IV — INTERPRETATION

1703. (1) Taxation years for individuals in business — Where a taxpayer is an individual and his income for the taxation year includes income from a business the fiscal period of which does not coincide with the calendar year, in respect of depreciable properties acquired for the purpose of gaining or producing income from the business, a reference in this Part to

(a) "the taxation year" shall be deemed to be a reference to the fiscal period of the business; and

(b) "the end of the taxation year" shall be deemed to be a reference to the end of the fiscal period of the business.

(2) Depreciable cost — In this Part, "depreciable cost" to a taxpayer of property means, except as otherwise provided, the actual cost of the property to the taxpayer or the amount at which he is deemed under subsection 13(7) of the Act to have acquired the property, as the case may be.

(3) Notwithstanding the other provisions of this section, in the case of property the cost of which to a partnership has been determined under paragraph 20(5)(a) of the *Income Tax Application Rules*, the depreciable cost to the taxpayer of the property for the purposes of this Part shall be deemed to be an amount equal to the cost to the partnership of the particular property as determined under that paragraph.

(4) Personal use of property — Where a taxpayer has, in a taxation year, regularly used a property in part for the purpose of gaining or producing income from farming or fishing and in part for a purpose other than gaining or producing income, the depreciable cost to the taxpayer of the property for the purposes of this Part is the proportion of the amount that would otherwise be the depreciable cost that the use regularly made of the property for the purpose of gaining or producing income from farming or fishing is of the whole use regularly made of the property.

(5) Grants, subsidies or other government assistance — Where a taxpayer has received or is entitled to receive a grant, subsidy or other assistance from a government, municipality or other public authority in respect of or for the acquisition of property, the depreciable cost to the taxpayer of the property for the purposes of this Part is the amount that would otherwise be the depreciable cost minus the amount of the grant, subsidy or other assistance.

(6) Transactions not at arm's length — Where property did belong to a person (in this subsection referred to as the "original owner") and has, by one or more transactions between persons not dealing at arm's length, become vested in a taxpayer, the depreciable cost to the tax-

payer of the property for the purposes of this Part is the lesser of

(a) the actual capital cost of the property to the taxpayer; and

(b) the amount by which the actual capital cost of the property to the original owner exceeds the aggregate of

(i) the total amount of depreciation for the property that, since the commencement of 1917, has been or should have been taken into account in accordance with the practice of the Department of National Revenue in ascertaining the income of the original owner and all intervening owners for the purposes of the *Income War Tax Act* or in ascertaining a loss for a year where there was no income under that Act,

(ii) any accumulated depreciation reserves that the original owner or an intervening owner had for the property at the commencement of 1917 and that were recognized by the Minister for the purposes of the *Income War Tax Act*, and

(iii) the aggregate of the deductions, if any, allowed under this Part in respect of the property to the original owner and all intervening owners.

(7) Property acquired from a parent — Notwithstanding subsection (6), where depreciable property has been acquired by a taxpayer under such circumstances that the provisions of section 85H of the Act as it read in its application to the 1971 and prior taxation years are applicable for the determination of the capital cost of the property, the depreciable cost to the taxpayer of the property for the purposes of this Part is the capital cost as determined under that section.

(8) Property acquired by gift — Subsection (6) does not apply in respect of property which a taxpayer has acquired by gift.

History: Subsec. 1703(3) amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Definitions [Reg. 1703]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "business" — ITA 248(1); "commencement" — *Interpretation Act* 35(1); "depreciable cost" — Reg. 1703(2)–(8); "depreciable property" — ITA 13(21), 248(1); "farming" — ITA 248(1); "fiscal period" — ITA 249.1; "fishing", "individual", "Minister" — ITA 248(1); "original owner" — Reg. 1703(6); "person", "property" — ITA 248(1); "taxation year" — Reg. 1703(1)(a); "taxpayer" — ITA 248(1).

DIVISION V — APPLICATION OF THIS PART

1704. This Part shall apply only to a taxpayer who, in computing his income, has never claimed an allowance under Part XI in respect of a property at a time when an allowance could have been claimed under this Part in respect of that property, other than an allowance claimed by the taxpayer under Part XI that may be claimed in respect of a property described in

(a) paragraph 1100(1)(r) as enacted by Order in Council P.C. 1965-1118 of June 18, 1965 and as amended by Order in Council P.C. 1965-2320 of December 29, 1965;

(b) paragraph 1100(1)(sa) as enacted by Order in Council P.C. 1968-2261 of December 10, 1968;

(c) paragraph 1100(1)(v); or

(d) Class 20 in Schedule II.

History: S. 1704 substituted by P.C. 1978-1315, s. 12, April 20, 1978, *Canada Gazette*, Part II, May 10, 1978.

Definitions [Reg. 1704]: "property", "taxpayer" — ITA 248(1).

Interpretation Bulletins: See at beginning of Part XVII.

PART XVIII — INVENTORIES

History: Part XVIII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

1800. Manner of keeping inventories — For the purposes of section 230 of the Act, an inventory shall show quantities and nature of the properties that should be included therein in such a manner and in sufficient detail that the property may be valued in accordance with this Part or section 10 of the Act.

Definitions [Reg. 1800]: "inventory", "property" — ITA 248(1).

1801. Valuation — Except as provided by section 1802, for the purpose of computing the income of a taxpayer from a business, all the property described in all the inventories of the business may be valued at its fair market value.

Related Provisions: ITA 10(1), (1.01) — Rules for valuing inventory.

History: S. 1801 substituted by P.C. 1989-1589, August 24, 1989, *Canada Gazette*, Part II, September 13, 1989, applicable after January 15, 1987.

Definitions [Reg. 1801]: "business", "inventory", "property", "taxpayer" — ITA 248(1).

Interpretation Bulletins: IT-98R2: Investment corporations (archived); IT-473R: Inventory valuation; IT-504R2: Visual artists and writers.

1802. Valuation of animals — **(1)** Except as provided in subsection (2), a taxpayer who is carrying on a business that includes the breeding and raising of animals may elect in prescribed form for a taxation year and subsequent taxation years to value each animal of a particular species (except a registered animal, an animal purchased for feedlot or similar operations, or an animal purchased by a drover or like person for resale) included in his inventory in respect of the business at a unit price determined in accordance with this section.

Forms: T2034: Election to establish inventory unit prices for animals.

(2) An election made in accordance with subsection (1) may be revoked in writing by the taxpayer, but where a taxpayer has made a revocation in accordance with this subsection a further election may not be made under subsection (1) except with the concurrence of the Minister.

(3) The unit price with respect to an animal of a particular class of animal shall be determined in accordance with the following rules:

(a) where animals of a particular class of animal were included in the inventory of a taxpayer at the end of the taxation year immediately preceding the first year in respect of which the taxpayer elected under subsection (1), the unit price of an animal of that class shall be computed by dividing the total value of all animals of the class in the inventory of the preceding year by the number of animals of the class described in that inventory, and

(b) in any other case, the unit price of an animal of a class shall be determined by the Minister, having regard, among other things, to the unit prices of animals of a comparable class of animal used in valuing the inventories of other taxpayers in the district.

(4) Notwithstanding subsection (1), where the aggregate value of the animals of a particular class determined in

accordance with that subsection exceeds the market value of those animals, the animals of that class may be valued at fair market value.

(5) In this section

"class of animal" means a group of animals of a particular species segregated on the basis of age, breed or other recognized division, as determined by the taxpayer at the time of election under this section;

"district" means the territory served by a District Office of the Taxation Division of the Department of National Revenue;

"registered animal" means an animal for which a certificate of registration has been issued by the registrar of the breed to which the animal belongs or by the registrar of the Canadian National Livestock Records;

a reference to **"taxation year"** shall be deemed to be a reference to the fiscal period of a business.

Definitions [Reg. 1802]: "business" — ITA 248(1); "class of animal", "district" — Reg. 1802(5); "fiscal period" — ITA 249.1; "inventory", "Minister", "person", "prescribed" — ITA 248(1); "registered animal", "taxation year" — Reg. 1802(5); "taxpayer" — ITA 248(1); "territory" — *Interpretation Act* 35(1); "unit price" — Reg. 1802(3); "writing" — *Interpretation Act* 35(1).

PART XIX — INVESTMENT INCOME TAX

History: Part XIX (s. 1900) enacted by P.C. 1994-619, April 21, 1994, *Canada Gazette*, Part II, May 4, 1994, applicable to taxation years commencing after June 17, 1987 and before 1990 that end after 1987.

History [former Part XIX]: Former Part XIX revoked by P.C. 1988-390, s. 10, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, effective October 29, 1985.

Former Part XIX was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

1900. (1) Interpretation — In this Part,

"benefit" under a policy includes a policy dividend, an experience rating refund, a refund of premiums and any amount deemed by paragraph 138.1(1)(g) of the Act for the purposes of Part I of the Act to be a payment under the terms and conditions of the policy, but does not include a policy loan or interest on funds left on deposit with the insurer under the terms of the policy;

"excluded arrangement" of an insurer at any time means

(a) a life insurance policy in Canada issued by the insurer (or in respect of which the insurer has assumed the obligations of the issuer of the policy to the policyholder), which is at that time a registered life insurance policy, an annuity contract (including a settlement annuity), a group term life insurance policy or an existing guaranteed life insurance policy,

(b) a registered pension fund or plan in respect of which the insurer is at that time a plan sponsor, or a retirement compensation arrangement in respect of which the insurer is the custodian,

(c) a life insurance policy (other than a life insurance policy in Canada) issued by the insurer before that time (or in respect of which the insurer has before that time assumed the obligations of the issuer of the policy to the policyholder), and

(d) a reinsurance arrangement under which the insurer has before that time assumed, directly or indirectly, risks under life insurance policies (other than policies issued by the insurer or in respect of which the insurer has assumed the obligations of the issuer of the policy to the policyholder), to the extent that the arrangement relates to those risks;

"existing guaranteed life insurance policy" at any time means a non-participating life insurance policy in Canada in respect of which the amount of every premium that became payable before that time and after March 2, 1988 was fixed and determined on or before March 2, 1988, adjusted for any specified transaction or event that occurs after March 2, 1988 in respect of the policy;

"group term life insurance policy" is a group life insurance policy under which

(a) no amount (other than a policy dividend, an experience rating refund or a refund of premiums) may become payable to any person, except in the event of the death or disability of a person whose life was insured under the policy, and

(b) no amount may become payable to a person (other than the group policyholder) in respect of a policy dividend, an experience rating refund or a refund of premiums that has been funded by contributions made to or under the policy by another person;

"guaranteed interest" in respect of a life insurance policy for a taxation year means

(a) in respect of a life insurance policy (other than a pre-funded group life insurance policy), the total of all amounts each of which is the amount in respect of a guaranteed benefit in respect of which an amount is determined under paragraph 1401(1)(a), (c) or (d) for the year, where that benefit is provided under the terms and conditions of the policy as they existed on March 2, 1988, determined by multiplying the greater of

(i) the rate of interest used by the issuer of the policy in respect of the year in determining the amount of the benefit, and

(ii) 4%

by ½ of the total of

(iii) the maximum amount that would be deductible under subparagraph 138(3)(a)(i) of the Act pursuant to paragraph 1401(1)(a), (c) or (d), as the case may be, in respect of the benefit in computing the insurer's income for the year, if that amount were determined without reference to any policy loan or reinsurance arrangement, and

(iv) the maximum amount that would have been deductible under subparagraph 138(3)(a)(i) of the Act pursuant to paragraph 1401(1)(a), (c) or (d), as the case may be, in respect of the benefit in computing the insurer's income for the immediately preceding taxation year, if that amount were determined without reference to any policy loan or reinsurance arrangement, and

(b) in respect of a pre-funded group life insurance policy, 80 per cent of the amount that would be determined under paragraph (a) in respect of the policy for the year, if that paragraph were read without reference to the words "(other than a pre-funded group life insurance policy)";

"life insurance policy" does not include

(a) that part of a policy in respect of which the policyholder is deemed by paragraph 138.1(1)(e) of the Act to have an interest in a segregated fund trust, or

(b) a reinsurance arrangement;

"life insurance policy in Canada" does not include

(a) that part of a policy in respect of which the policyholder is deemed by paragraph 138.1(1)(e) of the Act to have an interest in a segregated fund trust, or

(b) a reinsurance arrangement;

"maximum tax actuarial reserve" has the meaning assigned by subsection 138(12) of the Act;

"mortality experience" of an insurer for a taxation year means the positive or negative amount, as the case may be, determined by the formula

$$1.2 (A - B - C)$$

where

A is the total of all amounts each of which is the amount that became payable in the year by the insurer under a taxable life insurance policy of the insurer as a consequence of the receipt of a claim in respect of the death of a person whose life was insured under the policy, determined without reference to any policy loan,

B is the total of all amounts each of which is the amount of a reserve that would be determined in accordance with paragraph 1401(1)(a), (c) or (d), if that amount were determined without reference to any policy loan or reinsurance arrangement, in respect of a taxable life insurance policy of the insurer that would have been released in the year as a consequence of the receipt of a claim in respect of the death of a person whose life was insured under the policy, and

C is 90 per cent of the total of all amounts, each of which is the net cost of pure insurance determined in accordance with section 308 for the year in respect of an interest in a taxable life insurance policy of the insurer;

Related Provisions: ITA 257 — Negative amounts in formulas.

"mortality loss adjustment account" of an insurer at the end of a taxation year is the positive amount, if any, determined by the formula

$$A + B - C$$

where

A is the mortality loss adjustment account of the insurer for the immediately preceding taxation year,

B is

(a) where the mortality experience of the insurer for the year is a negative amount, the amount of the mortality experience of the insurer for the year, and

(b) in any other case, the amount, if any, by which the amount claimed by the insurer under the description of F in computing the amount determined under subsection (6) for the year exceeds the amount of the mortality loss adjustment account of the insurer for the immediately preceding taxation year, and

C is 1.2 times the amount, if any, by which

(a) the net cost of insurance of the insurer for the year

exceeds

(b) the total of all amounts each of which is the net cost of pure insurance determined in accordance with section 308 for the year in respect of an interest in a taxable life insurance policy of the insurer;

Related Provisions: ITA 257 — Negative amounts in formulas.

"net cost of insurance" of an insurer for a taxation year means the amount, if any, by which

(a) the amount determined in the description of A in the definition "mortality experience" in respect of the insurer for the year

exceeds

(b) the amount determined in the description of B in the definition "mortality experience" in respect of the insurer for the year;

"net level premium" in respect of a particular premium under a policy (other than a prepaid premium that cannot be refunded except on termination or cancellation of the policy) means

(a) where benefits (other than policy dividends) and premiums (other than the frequency of payment thereof) in respect of the policy have been determined at the date of issue of the policy, the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount of the particular premium,

B is the present value, at the date of issue of the policy, of the amount of the benefits (other than policy dividends) to be provided under the terms of the policy after the issue of the policy, and

C is the present value, at the date of issue of the policy, of the amount of the premiums payable under the terms of the policy on or after the issue of the policy, and

(b) where the amounts of the benefits or premiums in respect of the policy are not determined at the date of issue of the policy, the amount that would be determined under paragraph (a) in respect of the particular premium if the amount were adjusted in a manner that is reasonable in the circumstances and consistent with the manner of the adjustment referred to in the definition "modified net premium" in subsection 1404(2) in respect of the particular premium;

"net level premium reserve" in respect of a life insurance policy for a taxation year means the maximum amount that would be deductible under subparagraph 138(3)(a)(i) of the Act pursuant to paragraph 1401(1)(c) in respect of the policy in computing the insurer's income for the year, if any reference to "modified net premium" in sections 1401, 1403 and 1404 were a reference to "net level premium";

"non-participating life insurance policy" means a life insurance policy other than a participating life insurance policy within the meaning assigned by subsection 138(12) of the Act;

"policy loan" has the meaning assigned by subsection 138(12) of the Act;

"pre-funded group life insurance policy" means a group term life insurance policy, other than a policy under

which each premium payable is in respect of coverage for a period, including the day on which the premium becomes payable, that does not exceed twelve months;

"premium" includes

(a) consideration received for settlement annuities,

(b) amounts received by an insurer in respect of employee contributions under registered pension funds or plans in respect of which the insurer is a plan sponsor or a retirement compensation arrangement in respect of which the insurer is the custodian, and

(c) any amount deemed by paragraph 138.1(1)(h) of the Act for the purposes of Part I of the Act to be a premium received by an insurer,

but does not include amounts received in respect of the repayment of a policy loan or in respect of interest on a policy loan and, for greater certainty, the amount of a premium is not reduced by the amount of a refund of premiums;

"registered life insurance policy" has the meaning assigned by section 211 of the Act;

"reinsurance arrangement" does not include an arrangement under which an insurer has assumed the obligations of the issuer of a life insurance policy to the policyholder;

"segregated fund" has the meaning assigned by subsection 138(12) of the Act;

"specified transaction or event" in respect of a life insurance policy means

(a) a change in underwriting class,

(b) a change in premium due to a change in frequency of premium payments within a year that does not alter the present value, at the beginning of the year, of the total premiums to be paid under the policy in the year,

(c) an addition under the terms of the policy as they existed on March 2, 1988, of accidental death, dismemberment, disability or guaranteed purchase option benefits,

(d) a deletion of a rider,

(e) redating lapsed policies within 60 days after the end of the calendar year in which the lapse occurred, or redating for policy loan indebtedness,

(f) a change in premium due to a correction of erroneous information,

(g) the payment of a premium after its due date, or no more than 30 days before its due date, as established on or before March 2, 1988, or

(h) the payment of an amount of interest described in subparagraph 148(9)(e.1)(i) of the Act; [and]

"taxable life insurance policy" of an insurer at any time means a life insurance policy in Canada issued by the insurer (or in respect of which the insurer has assumed the obligations of the issuer of the policy to the policyholder), other than a policy that is at that time an excluded arrangement.

(2) For the purposes of this Part,

(a) any rider added, at any time after March 2, 1988, to a life insurance policy shall be deemed to be a separate life insurance policy issued at that time; and

(b) in respect of an insurer's first taxation year that commences after June 17, 1987 and ends after 1987, the maximum amount that would have been deductible under subparagraph 138(3)(a)(i), (ii) or (iv) of the Act, as the case may be, in computing the insurer's income for the immediately preceding year shall be determined as though the provisions that apply in determining that maximum amount for that first taxation year were applicable in respect of that immediately preceding year.

(3) Prescribed provisions — For the purposes of paragraph (b) of the description of C in subsection 211.1(3) of the Act, as it read in its application to taxation years beginning before 1990, the provisions of the Act that are prescribed are paragraphs 12(1)(i), (i.1), (n), (n.1), (n.2), (n.3), (o), (t), and (v), and subsections 13(1), 59(3.2) and (3.3), 138(4.4) and 140(2).

(4) Prescribed arrangements — For the purposes of the description of D in subsection 211.1(3) of the Act, as it read in its application to taxation years beginning before 1990, prescribed arrangements in respect of an insurer are

(a) life insurance policies in Canada issued by the insurer (or in respect of which the insurer has assumed the obligations of the issuer of the policy to the policyholder) that are group term life insurance policies or existing guaranteed life insurance policies;

(b) life insurance policies (other than life insurance policies in Canada) issued by the insurer (or in respect of which the insurer has assumed the obligations of the issuer of the policy to the policyholder);

(c) retirement compensation arrangements in respect of which the insurer is the custodian; and

(d) reinsurance arrangements under which the insurer has assumed or ceded risks insured under life insurance policies (other than policies issued by the insurer or in respect of which the insurer has assumed the obligations of the issuer of the policy to the policyholder).

(5) Prescribed rules for determining amounts — The amount in the description of D in subsection 211.1(3) of the Act, as it read in its application to taxation years beginning before 1990, in respect of a life insurer for a taxation year is determined by the formula

$$A - B + C - D - E - F$$

where

A is the total of all amounts each of which is the maximum amount that would be deductible under subparagraph 138(3)(a)(i), (ii) or (iv) of the Act in respect of an excluded arrangement of the insurer in computing the insurer's income for the year, if that amount were determined without reference to any policy loan;

B is the total of all amounts each of which is the maximum amount that would have been deductible under subparagraph 138(3)(a)(i), (ii) or (iv) of the Act in respect of an excluded arrangement of the insurer in computing the insurer's income for the immediately preceding year, if that amount were determined without reference to any policy loan;

C is the total of all amounts each of which is the amount of a benefit, determined on a net of reinsurance ceded basis, that has become payable by the insurer in the year in respect of an excluded arrangement of the insurer, to the extent that the benefit is deducted in computing the insurer's income for the year under Part I of the Act from carrying on a life insurance business in Canada;

D is the total of all amounts each of which is the amount of a premium, determined on a net of reinsurance ceded basis, that has become receivable by the insurer in the year in respect of an excluded arrangement of the insurer, to the extent that the premium is included in computing the insurer's income for the year under Part I of the Act from carrying on a life insurance business in Canada;

E is the positive or negative amount, as the case may be, in respect of the insurer for the year determined by the formula

$$(G - H) - (I - J) + (K - L) - (M - N)$$

where

G is the total of all amounts each of which is the maximum amount that would be deductible under subparagraph 138(3)(a)(i), (ii) or (iv) of the Act in respect of a taxable life insurance policy of the insurer in computing the insurer's income for the year, if that amount were determined without reference to any policy loan or reinsurance arrangement,

H is the total of all amounts each of which is the maximum amount that would be deductible under subparagraph 138(3)(a)(i), (ii) or (iv) of the Act in respect of a taxable life insurance policy of the insurer in computing the insurer's income for the year, if that amount were determined without reference to any policy loan,

I is the total of all amounts each of which is the maximum amount that would have been deductible under subparagraph 138(3)(a)(i), (ii) or (iv) of the Act in respect of a taxable life insurance policy of the insurer in computing the insurer's income for the immediately preceding taxation year, if that amount were determined without reference to any policy loan or reinsurance arrangement,

J is the total of all amounts each of which is the maximum amount that would have been deductible under subparagraph 138(3)(a)(i), (ii) or (iv) of the Act in respect of a taxable life insurance policy of the insurer in computing the insurer's income for the immediately preceding taxation year, if that amount were determined without reference to any policy loan,

K is the total of all amounts each of which is the amount of a benefit that has become payable in the year by the insurer under a taxable life insurance policy of the insurer,

L is the total of all amounts each of which is the amount of a benefit, determined on a net of reinsurance ceded basis, that has become payable by the insurer under a taxable life insurance policy of the insurer, to the extent that it is deducted in computing the insurer's income from carrying on a life insurance business in Canada for the year,

M is the total of all amounts each of which is the amount of a premium that has become receivable by the insurer in the year under a taxable life insurance policy of the insurer, and

N is the total of all amounts each of which is the amount of a premium determined on [a] net of reinsurance ceded basis, that has become receivable by the insurer in the year under a taxable life insurance policy of the insurer, to the extent that the premium is included in computing the insurer's income from carrying on a life insurance business in Canada for the year; and

F is the positive or negative amount, as the case may be, determined by the formula

$$O + P - Q - R$$

where

O is the total of all amounts each of which is an amount in respect of a group term life insurance policy equal to the lesser of

(a) the amount of interest credited by the insurer in the year on account of the policy (other than interest payable in respect of the period ending on its first anniversary date after March 2, 1988), and

(b) the amount, if any, by which the maximum amount that would be deductible under subparagraph 138(3)(a)(i) of the Act pursuant to paragraph 1401(1)(c.1) in respect of the policy in computing the insurer's income for the year, if that amount were determined without reference to any reinsurance arrangement, exceeds the maximum amount that would have been so deductible in computing the insurer's income for the immediately preceding year,

P is 80 per cent of the total of all amounts each of which is the amount in respect of a liability of the insurer, a benefit, a risk or a guarantee, in respect of which an amount is determined under paragraph 1401(1)(a), (c) or (d) for the year, in respect of a pre-funded group life insurance policy of the insurer, determined by multiplying

(a) the rate of interest used in determining the amount under paragraph 1401(1)(a), (c) or (d), as the case may be, for the year in respect of the liability, benefit, risk or guarantee, as the case may be,

by ½ of the total of

(b) the maximum amount that would be deductible under subparagraph 138(3)(a)(i) of the Act pursuant to paragraph 1401(1)(a), (c) or (d), as the case may be, in respect of the liability, benefit, risk or guarantee, as the case may be, in computing the insurer's income for the year if that amount were determined without reference to any policy loan or reinsurance arrangement, and

(c) the maximum amount that would have been deductible under subparagraph 138(3)(a)(i) of the Act pursuant to paragraph 1401(1)(a), (c) or (d), as the case may be, in respect of the liability, benefit, risk or guarantee, as the case may be, in computing the insurer's income for the immediately preceding taxation year if that amount were determined without reference to any policy loan or reinsurance arrangement,

Q is the total of all amounts each of which is the amount determined for the year in respect of a taxable life insurance policy of the insurer by multiplying

(a) the rate of interest used in determining the maximum amount deductible under subparagraph 138(3)(a)(i) of the Act pursuant to paragraph 1401(1)(c) in respect of the policy in computing the insurer's income for the year,

by ½ of the total of

(b) the maximum amount that would be deductible under subparagraph 138(3)(a)(ii) of the Act in respect of the policy in computing the insurer's income for the year, if that amount were determined without reference to any reinsurance arrangement, and

(c) the maximum amount that would have been deductible under subparagraph 138(3)(a)(ii) of the Act in respect of the policy in computing the insurer's income for the immediately preceding taxation year, if that amount were determined without reference to any reinsurance arrangement, and

R is the total of all amounts each of which is an amount in respect of a group term life insurance policy equal to the amount, if any, by which

(a) the total of all amounts determined in respect of the insurer under the description of O in respect of the policy for taxation years ending before the year

exceeds the total of

(b) the total of all amounts determined in respect of the insurer under the description of R in respect of the policy for taxation years ending before the year, and

(c) the maximum amount that would be deductible under subparagraph 138(3)(a)(i) of the Act pursuant to paragraph 1401(1)(c.1) in respect of the policy in computing the insurer's income for the year, if that amount were determined without reference to any reinsurance arrangement.

Related Provisions: ITA 257 — Negative amounts in formulas.

(6) The amount of the term insurance component in the description of E in subsection 211.1(3) of the Act, as it read in its application to taxation years beginning before 1990, in respect of a life insurer for a taxation year is determined by the formula

$$A + B + C - D + E - F + G + H$$

where

A is the amount determined by multiplying 0.0035 by the total of all amounts each of which is the amount of new insurance effected in the year (other than amounts rescinded in the year) under a taxable life insurance policy of the insurer;

B is the amount determined by multiplying 0.0002 by ½ of the total of

(a) all amounts of insurance in force at the end of the year under taxable life insurance policies of the insurer (other than paid-up policies), and

(b) all amounts of insurance in force at the end of the immediately preceding taxation year under taxable life insurance policies of the insurer (other than paid-up policies);

C is the amount determined by multiplying 0.20 by the net cost of insurance in respect of the insurer for the year;

D is the greater of

(a) the lesser of $2,500,000 and the amount, if any, by which

(i) the total of the amounts determined under the descriptions of A, B, C and E in respect of the insurer for the year

exceeds

(ii) 50 per cent of the amount that would be determined under the description of N in subsection (5) in respect of the insurer for the year, if that amount were determined without reference to any reinsurance arrangement, and

(b) the amount, if any, by which

(i) the total of the amounts determined under the descriptions of A, B, C and E in respect of the insurer for the year

exceeds

(ii) 75 per cent of the amount that would be determined under the description of N in subsection (5) in respect of the insurer for the year, if that amount were determined without reference to any reinsurance arrangement;

E is the amount determined under the description of D in respect of the insurer for the immediately preceding taxation year;

F is such amount as the insurer may claim, not exceeding the positive amount, if any, determined by adding

(a) the mortality experience of the insurer for the year, and

(b) the amount determined under the description of G in respect of the insurer for the year;

G is the mortality loss adjustment account of the insurer for the immediately preceding year; and

H is 1 per cent of the total of all amounts each of which is the amount of a premium that has become receivable by the insurer in the year under a taxable life insurance policy of the insurer in respect of which a positive amount of guaranteed interest is determined for the year under subsection (8).

Related Provisions: ITA 257 — Negative amounts in formulas.

(7) The amount of the amortization adjustment amount in the description of E in subsection 211.1(3) of the Act, as it read in its application to taxation years beginning before 1990, in respect of a life insurer for a taxation year is determined by the formula

$$(A - B) - (C - D)$$

where

A is the total of all amounts each of which is the amount that would be the net level premium reserve for the year in respect of a taxable life insurance policy of the insurer (other than a policy in respect of which a positive amount of guaranteed interest is determined for the year under subsection (8)), if that amount were determined without reference to any policy loan or reinsurance agreement;

B is the total of all amounts each of which is the amount that would be the net level premium reserve for the immediately preceding taxation year in respect of a taxable life insurance policy of the insurer (other than a policy in respect of which a positive amount of guaranteed interest is determined for the year under subsection (8)), if that amount were determined without

reference to any policy loan or reinsurance arrangement;

C is the total of all amounts each of which is the maximum amount that would be deductible under subparagraph 138(3)(a)(i) of the Act pursuant to paragraph 1401(1)(c) in computing the insurer's income for the year, in respect of a taxable life insurance policy of the insurer (other than a policy in respect of which a positive amount of guaranteed interest is determined for the year under subsection (8)), if that amount were determined without reference to any policy loan or reinsurance arrangement; and

D is the total of all amounts each of which is the maximum amount that would have been deductible under subparagraph 138(3)(a)(i) of the Act pursuant to paragraph 1401(1)(c) in computing the insurer's income for the immediately preceding taxation year, in respect of a taxable life insurance policy of the insurer (other than a policy in respect of which a positive amount of guaranteed interest is determined for the year under subsection (8)), if that amount were determined without reference to any policy loan or reinsurance arrangement.

Related Provisions: ITA 257 — Negative amounts in formulas.

(8) The amount of guaranteed interest in the description of F in subsection 211.1(3) of the Act, as it read in its application to taxation years beginning before 1990, in respect of a life insurer for a taxation year is the total of all amounts each of which is the guaranteed interest for the year in respect of

(a) a life insurance policy in Canada (other than a policy that was at any time an excluded arrangement), or

(b) a pre-funded group life insurance policy,

where the policy was issued by the insurer (or in respect of which the insurer has assumed the obligations of the issuer of the policy to the policyholder) and the terms and conditions of the policy relating to premiums and benefits were determined on or before March 2, 1988, except that where, at any time after March 2, 1988, the terms and conditions of the policy relating to premiums and benefits have been changed (other than to give effect to terms and conditions which were determined prior to March 3, 1988 or pursuant to a specified transaction or event), the amount of guaranteed interest in respect of the policy for the year in which the change is made and any subsequent taxation year is deemed to be nil.

(9) Prescribed portion — The prescribed portion of an amount referred to in the description of G in subsection 211.1(3) of the Act, as it read in its application to taxation years beginning before 1990, for a taxation year is

(a) where the amount is in respect of a life insurance policy (other than a policy in respect of which a positive amount of guaranteed interest is determined for the year under subsection (8)), 100 per cent of the amount; and

(b) in any other case, nil.

(10) Prescribed arrangements — For the purposes of the description of G in subsection 211.1(3) of the Act, as it read in its application to taxation years beginning before 1990, prescribed arrangements of an insurer are life insurance policies in Canada issued by the insurer (or in respect of which the insurer has assumed the obligations of the issuer of the policy to the policyholder) that are group term life insurance policies or policies that, at any time, were existing guaranteed life insurance policies.

Definitions [Reg. 1900]: "amount", "annuity" — ITA 248(1); "benefit" — Reg. 1900; "Canada" — ITA 255, *Interpretation Act* 35(1); "custodian" — 248(1)"retirement compensation arrangement"; "dividend", "employee" — ITA 248(1); "excluded arrangement", "existing guaranteed life insurance policy", "group term life insurance policy", "guaranteed interest" — Reg. 1900; "insurer", "life insurance business" — ITA 248(1); "life insurance policy", "life insurance policy in Canada" — Reg. 1900; "life insurer" — ITA 248(1); "maximum tax actuarial reserve" — ITA 138(12), Reg. 1900; "month" — *Interpretation Act* 35(1); "mortality experience", "mortality loss adjustment account", "net cost of insurance", "net level premium", "net level premium reserve" — Reg. 1900; "non-participating life insurance policy" — ITA 138(12), Reg. 1900; "person" — ITA 248(1); "policy dividend" — ITA 139.1(8)(a); "policy loan" — ITA 138(12), Reg. 1900; "pre-funded group life insurance policy", "premium" — Reg. 1900; "prescribed" — ITA 248(1); "registered life insurance policy" — ITA 211, Reg. 1900; "registered pension fund or plan" — ITA 248(1); "reinsurance arrangement" — Reg. 1900; "retirement compensation arrangement" — ITA 248(1); "segregated fund" — ITA 138(12), Reg. 1900; "separate life insurance policy" — Reg. 1900(2); "specified transaction or event", "taxable life insurance policy" — Reg. 1900; "taxation year" — ITA 249; "trust" — ITA 104(1), 248(1), (3).

PART XX — POLITICAL CONTRIBUTIONS

History: Part XX was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

2000. Contents of receipts — **(1)** Every official receipt issued by a registered agent of a registered party shall contain a statement that it is an official receipt for income tax purposes and shall, in a manner that cannot readily be altered, show clearly

(a) the full name of the registered party;

(b) the serial number of the receipt;

(c) the name of the registered agent as recorded in the registry maintained by the Chief Electoral Officer pursuant to subsection 13.1(1) of the *Canada Elections Act*;

(d) the day on which the receipt was issued;

(e) where the person making the contribution is

(i) a person other than an individual, the day on which the contribution was received where that day differs from the day referred to in paragraph (d), or

(ii) an individual, the calendar year during which the contribution was received;

(f) the place or locality where the receipt was issued;

(g) the name and address of the person making the contribution including, in the case of an individual, his first name or initial;

(h) the amount of the contribution; and

(i) the signature of the registered agent.

Proposed Amendment — Reg. 2000(1)

Technical Notes to ITA 127(3), July 18, 2005: It is proposed that subsections 2000(1) and (6) of the Regulations be amended to provide that every official receipt issued by a registered party in respect of a contribution contain, in addition to the information already prescribed, the eligible amount and the amount of the advantage, if any, in respect of the contribution.

(2) Subject to subsection (3), every official receipt issued by an official agent of an officially nominated candidate shall contain a statement that it is an official receipt for

income tax purposes and shall, in a manner that cannot readily be altered, show clearly

(a) the name of the officially nominated candidate;

(b) the serial number of the receipt;

(c) the name of the official agent as recorded with the Minister;

(d) the day on which the receipt was issued;

(e) the day on which the contribution was received where that day differs from the day referred to in paragraph (d);

(f) the polling day;

(g) the name and address of the person making the contribution including, in the case of an individual, his first name or initial;

(h) the amount of the contribution; and

(i) the signature of the official agent.

(3) The information required by paragraph (2)(f) may be shown by use of a code on an official receipt form issued by the Chief Electoral Officer, provided that the Minister is advised of the meaning of the code used.

(4) For the purposes of subsections (1) and (2), an official receipt issued to replace an official receipt previously issued shall show clearly that it replaces the original receipt and, in addition to its own serial number, shall show the serial number of the receipt originally issued.

(5) A spoiled official receipt form shall be marked "cancelled" and such form, together with the duplicate thereof, shall be filed by the registered agent or the official agent, as the case may be, together with the duplicates of receipts required to be filed with the Minister pursuant to subsection 230.1(2) of the Act.

(6) Every official receipt form on which

(a) the day on which the contribution was received,

(b) the year during which the contribution was received, or

(c) the amount of the contribution

was incorrectly or illegibly entered shall be regarded as spoiled.

Proposed Amendment — Reg. 2000(6)

Technical Notes to ITA 127(3), July 18, 2005: See under Reg. 2000(1).

Definitions [Reg. 2000]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "contribution" — ITA 127(4.1), Reg. 2002(1); "individual", "Minister" — ITA 248(1); "official receipt" — Reg. 2000(4), 2002; "official receipt form" — Reg. 2002(1); "officially nominated candidate" — Reg. 2002(2); "person" — ITA 248(1); "polling day" — Reg. 2002(2); "registered agent", "registered party" — Reg. 2002(1).

2001. Information returns — The return of information referred to in subsection 230.1(2) of the Act shall be filed by a registered agent on or before the last day of March in each year and shall be in respect of the preceding calendar year.

Definitions [Reg. 2001]: "registered agent" — Reg. 2002(1).

Forms: T2092: Contributions to a registered party or to a registered association — information return; T2093: Contributions to a candidate at an election — information return.

2002. Interpretation — **(1)** In this Part,

"contribution" means an amount contributed within the meaning assigned by subsection 127(4.1) of the Act;

"official receipt" means a receipt for the purposes of subsection 127(3) of the Act containing information as provided in subsection 2000(1) or (2), as the case may be;

"official receipt form" means any printed form that a registered agent or an official agent, as the case may be, has that is capable of being completed, or that originally was intended to be completed, as an official receipt of the registered agent or official agent, as the case may be.

(2) In this Part, "official agent", "polling day", "registered agent" and "registered party" have the meanings assigned to them by section 2 of the *Canada Elections Act* and "officially nominated candidate" means a person in respect of whom a nomination paper and deposit have been filed as referred to in the definition "official nomination" in that section of that Act.

Definitions [Reg. 2002]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "official agent" — Reg. 2002(2); "official receipt" — Reg. 2002(1); "person" — ITA 248(1); "registered agent" — Reg. 2002(1).

PART XXI — ELECTIONS IN RESPECT OF SURPLUSES

History: Part XXI was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

2100. Reduction of tax-paid undistributed surplus on hand or 1971 capital surplus on hand — Any election under subsection 83(1) of the Act in respect of a dividend payable before 1979 by a Canadian corporation shall be made by filing with the Minister the following documents:

(a) the form prescribed by the Minister;

(b) where the directors of the corporation are legally entitled to administer the affairs of the corporation, a certified copy of their resolution authorizing the election to be made;

(c) where the directors of the corporation are not legally entitled to administer the affairs of the corporation, a certified copy of the authorization of the making of the election by the person or persons legally entitled to administer the affairs of the corporation;

(d) where paragraph (e) is not applicable, schedules showing the computation of the amount, immediately before the election, of the corporation's

(i) tax-paid undistributed surplus on hand, if any,

(ii) 1971 capital surplus on hand, if any, and

(iii) 1971 undistributed income on hand, if any; and

(e) where subsection 83(3) of the Act is applicable, schedules showing the computation of the amount, immediately before the dividend became payable, of the corporation's

(i) tax-paid undistributed surplus on hand, if any,

(ii) 1971 capital surplus on hand, if any, and

(iii) 1971 undistributed income on hand, if any.

History: That portion of para. 2100(e) preceding subpara. (i) substituted by P.C. 1988-390, s. 11, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, effective October 29, 1985.

S. 2100 amended by P.C. 1983-867, March 25, 1983, *Canada Gazette*, Part II, April, 1983, to remove the requirement to file duplicate copies of the documents listed.

All that portion of s. 2100 preceding para. (a) substituted by P.C. 1980-502, s. 2, February 8, 1980, *Canada Gazette*, Part II, February 27, 1980, effective January 1, 1980.

Definitions [Reg. 2100]: "1971 capital surplus on hand", "amount" — ITA 248(1); "Canadian corporation" — ITA 89(1), 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "dividend", "Minister", "person", "prescribed", "tax-paid undistributed surplus on hand" — ITA 248(1).

2101. Capital dividends and life insurance capital dividends payable by private corporations — Any election under subsection 83(2) of the Act in respect of a dividend payable by a private corporation shall be made by filing with the Minister the following documents:

(a) the form prescribed by the Minister;

(b) where the directors of the corporation are legally entitled to administer the affairs of the corporation, a certified copy of their resolution authorizing the election to be made;

(c) where the directors of the corporation are not legally entitled to administer the affairs of the corporation, a certified copy of the authorization of the making of the election by the person or persons legally entitled to administer the affairs of the corporation;

(d) where the election has been made under subsection 83(2) of the Act and paragraph (e) is not applicable, schedules showing the computation of the amount, immediately before the election, of the corporation's

(i) capital dividend account, and

(ii) 1971 undistributed income on hand, if any, if the dividend was payable on or prior to March 31, 1977; and

(e) where the election has been made under subsection 83(2) of the Act and subsection 83(3) of the Act is applicable, schedules showing the computation of the amount, immediately before the dividend became payable, of the corporation's

(i) capital dividend account, and

(ii) 1971 undistributed income on hand, if any, if the dividend was payable on or prior to March 31, 1977.

History: That portion of s. 2101 preceding para. (a) substituted, and paras. (f) and (g) revoked, applicable with respect to dividends paid after May 23, 1985; that portion of para. 2101(e) preceding subpara. (i) substituted effective October 29, 1985, by P.C. 1988-390, s. 12, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988.

That portion of s. 2101 preceding para. (a), that portion of para. (d) preceding subpara. (i), and para (e) substituted and paras. (f) and (g) added by P.C. 1984-3789, s. 10, November 29, 1984, *Canada Gazette*, Part II, December 12, 1984, effective June 29, 1982.

S. 2101 amended by P.C. 1983-867, March 25, 1983, *Canada Gazette*, Part II, April, 1983, to remove the requirement to file duplicate copies of the documents listed.

Subparas. 2101(d)(ii), (e)(ii) substituted by P.C. 1978-2394, s. 1, July 26, 1978, *Canada Gazette*, Part II, August 9, 1978, effective for the period commencing April 1, 1977.

Definitions [Reg. 2101]: "amount" — ITA 248(1); "capital dividend" — ITA 83(2)–(2.4), 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "dividend", "Minister", "person", "prescribed" — ITA 248(1); "private corporation" — ITA 89(1), 248(1).

Interpretation Bulletins: IT-66R6: Capital dividends.

Forms: T2054: Election for a capital dividend under subsec. 83(2).

2102. Tax on 1971 undistributed income on hand — (1) [Revoked]

History: Subsec. 2102(1) revoked by P.C. 1980-502, subsec. 3(1), February 8, 1980, *Canada Gazette*, Part II, February 27, 1980.

(2) Any retroactive election by a corporation under subsection 196(1.1) of the Act, in respect of a dividend payable before 1979 in respect of which an election was made under section 83 of the Act, shall be made by filing with the Minister the following documents:

(a) the form prescribed by the Minister;

(b) where the directors of the corporation are legally entitled to administer the affairs of the corporation, a certified copy of their resolution authorizing the election to be made;

(c) where the directors of the corporation are not legally entitled to administer the affairs of the corporation, a certified copy of the authorization of the making of the election by the person or persons legally entitled to administer the affairs of the corporation; and

(d) a schedule showing the computation of the amount, immediately before the time immediately before the specified election referred to in subsection 196(1.1) of the Act was made, of the corporation's 1971 undistributed income on hand.

History: Subsec. 2102(2) amended by P.C. 1983-867, March 25, 1983, *Canada Gazette*, Part II, April 13, 1983, to remove the requirement to file duplicate copies of the documents listed.

All that portion of subsec. 2102(2) preceding para. (a) substituted by P.C. 1980-502, subsec. 3(2), February 8, 1980, *Canada Gazette*, Part II, February 27, 1980.

2103. [Revoked]

History: S. 2103 revoked by P.C. 1978-2394, s. 2, July 26, 1978, *Canada Gazette*, Part II, August 9, 1978, effective for the period commencing January 1, 1978.

2104. Capital gains dividends payable by mutual fund corporations and investment corporations — Any election under subsection 131(1) of the Act in respect of a dividend payable by a mutual fund corporation or an investment corporation shall be made by filing with the Minister the following documents:

(a) the form prescribed by the Minister;

(b) where the directors of the corporation are legally entitled to administer the affairs of the corporation, a certified copy of their resolution authorizing the election to be made;

(c) where the directors of the corporation are not legally entitled to administer the affairs of the corporation, a certified copy of the authorization of the making of the election by the person or persons legally entitled to administer the affairs of the corporation;

(d) where paragraph (f) is not applicable, a schedule showing the computation of the amount, immediately before the election, of the corporation's capital gains dividend account; and

(e) [Revoked]

(f) where subsection 131(1.1) of the Act is applicable, a schedule showing the computation of the amount, immediately before the earlier of

(i) the date the dividend became payable, and

(ii) the first day on which any part of the dividend was paid,

of the corporation's capital gains dividend account.

History: That portion of s. 2104 preceding para. (a) substituted applicable to 1985 *et seq.*; para. (d) substituted and para (e) revoked effective October 29, 1985, by P.C. 1988-390, s. 13, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988.

S. 2104 amended by P.C. 1983-867, March 25, 1983, *Canada Gazette*, Part II, April, 1983, to remove the requirement to file duplicate copies of the documents listed.

Paras. 2104(d) substituted, (f) added by P.C. 1981-2409, s. 1, September 3, 1981, *Canada Gazette*, Part II, September 23, 1981, applicable to elections made in respect of dividends that became payable after 1974.

Definitions [Reg. 2104]: "amount" — ITA 248(1); "capital gain" — ITA 39(1), 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "dividend" — ITA 248(1); "investment corporation" — ITA 130(3), 248(1); "Minister" — ITA 248(1); "mutual fund corporation" — ITA 131(8), 248(1); "person", "prescribed" — ITA 248(1).

Forms: T2055: Election in respect of a capital gains dividend under subsection 131

2104.1 [Capital gains dividends payable by mortgage investment corporations] — Any election under subsection 130.1(4) of the Act in respect of a dividend payable by a mortgage investment corporation shall be made by filing with the Minister the following documents:

(a) the documents referred to in paragraphs 2104(a) to (c); and

(b) a schedule showing the computation of the capital gains dividend in accordance with paragraph 130.1(4)(a) of the Act.

History: S. 2104.1 added by P.C. 1988-390, s. 14, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, applicable to 1985 *et seq.*

Definitions [Reg. 2104.1]: "capital gain" — ITA 39(1), 248(1); "dividend", "Minister" — ITA 248(1); "mortgage investment corporation" — ITA 130(8), 248(1).

Forms: T2002: Election in respect of a capital gains dividend under subsection 130.1(4); T2043: Election not to be a restricted financial institution.

2105. Capital gains dividends payable by non-resident-owned investment corporations — Any election under subsection 133(7.1) of the Act in respect of a dividend payable by a non-resident-owned investment corporation shall be made by filing with the Minister the following documents:

(a) the form prescribed by the Minister;

(b) where the directors of the corporation are legally entitled to administer the affairs of the corporation, a certified copy of their resolution authorizing the election to be made;

(c) where the directors of the corporation are not legally entitled to administer the affairs of the corporation, a certified copy of the authorization of the making of the election by the person or persons legally entitled to administer the affairs of the corporation;

(d) where paragraph (e) is not applicable, a schedule showing the computation of the amount, immediately before the election, of the corporation's capital gains dividend account; and

(e) where subsection 133(7.3) of the Act is applicable, a schedule showing the computation of the amount, immediately before the earlier of

(i) the date the dividend became payable, and

(ii) the first day on which any part of the dividend was paid,

of the corporation's capital gains dividend account.

History: S. 2105 amended by P.C. 1983-867, March 25, 1983, *Canada Gazette*, Part II, April, 1983, to remove the requirement to file duplicate copies of the documents listed.

Paras. 2105(d) substituted, (e) added by P.C. 1981-2409, s. 2, September 3, 1981, *Canada Gazette*, Part II, September 23, 1981, applicable to elections made in respect of dividends that became payable after 1974 except that in its application to dividends that became payable after 1974 and before 1979 paras. 2105(d) and (e) shall be read as follows:

(d) Where paragraph (e) is not applicable, schedules showing the computation of the amount, immediately before the election, of the corporation's

(i) capital gains dividend account, and

(ii) 1971 undistributed income on hand; and

(e) where subsection 133(7.3) of the Act is applicable, schedules showing the computation of the amount, immediately before the earlier of

(i) the date the dividend became payable, and

(ii) the first day on which any part of the dividend was paid,

of the corporation's

(iii) capital gains dividend account, and

(iv) 1971 undistributed income on hand.

Definitions [Reg. 2105]: "amount" — ITA 248(1); "capital gain" — ITA 39(1), 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "dividend", "Minister" — ITA 248(1); "non-resident-owned investment corporation" — ITA 133(8), 248(1); "person", "prescribed" — ITA 248(1).

Forms: T2054: Election for a capital dividend under subsec. 83(2); T2055: Election re a capital gains dividend under subsec. 131(1; T2063: Election in respect of a capital gains dividend under subsec. 133(7.1).

2106. Alternative to additional tax on excessive elections [for capital dividends] — Any election under subsection 184(3) of the Act in respect of a dividend that was paid or payable by a corporation shall be made by

(a) filing with the Minister the following documents:

(i) a letter stating that the corporation elects under subsection 184(3) of the Act in respect of the said dividend,

(ii) where the directors of the corporation are legally entitled to administer the affairs of the corporation, a certified copy of

(A) their resolution authorizing the election to be made, and

(B) their declaration that the election is made with the concurrence of all shareholders who received or were entitled to receive all or any portion of the said dividend and whose addresses were known to the corporation,

(iii) where the directors of the corporation are not legally entitled to administer the affairs of the corporation, a certified copy of

(A) the authorization of the making of the election, and

(B) the declaration that the election is made with the concurrence of all shareholders who received or were entitled to receive all or any portion of the said dividend and whose addresses were known to the corporation,

by the person or persons legally entitled to administer the affairs of the corporation,

(iv) a schedule showing the following information:

(A) the date of the notice of assessment of the tax that would, but for the election, have been payable under Part III of the Act,

(B) the full amount of the said dividend,

(C) the date the said dividend became payable, or the first day on which any part of the said dividend was paid if that day is earlier,

(D) the portion, if any, of the said dividend described in paragraph 184(3)(a) of the Act,

(E) the portion, if any, of the said dividend that the corporation is claiming for the purposes of an election in respect thereof under subsection 83(1) or (2), 130.1(4) or 131(1) of the Act pursuant to paragraph 184(3)(b) of the Act, and

(F) the portion, if any, of the said dividend that is deemed by paragraph 184(3)(c) of the Act to be a separate dividend that is a taxable dividend; and

(b) making an election in prescribed manner and prescribed form in respect of any amount claimed under paragraph 184(3)(b) of the Act.

History: S. 2106 amended by P.C. 1983-867, March 25, 1983, *Canada Gazette*, Part II, April 13, 1983, to remove the requirement to file duplicate copies of the documents listed.

S. 2106 added by P.C. 1978-1138, April 13, 1978, *Canada Gazette*, Part II, April 26, 1978, effective on and after January 1, 1972.

Definitions [Reg. 2106]: "amount", "assessment" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "dividend", "Minister", "person", "prescribed", "shareholder" — ITA 248(1); "taxable dividend" — ITA 89(1), 248(1).

Interpretation Bulletins: IT-66R6: Capital dividends.

2107. Tax-deferred preferred series — The following series of classes of capital stock are hereby prescribed for the purposes of subsection 83(6) of the Act to be tax-deferred preferred series:

(a) The Algoma Steel Corporation, Limited, 8% Tax Deferred Preference Shares Series A;

(b) Aluminum Company of Canada, Limited, $2.00 Tax Deferred Retractable Preferred Shares;

(c) Brascan Limited, 8½% Tax Deferred Preferred Shares Series A;

(d) Canada Permanent Mortgage Corporation, 6¾% Tax Deferred Convertible Preference Shares Series A; and

(e) Cominco Ltd., $2.00 Tax Deferred Exchangeable Preferred Shares Series A.

History: S. 2107 added by P.C. 1978-2394, s. 3, July 26, 1978, *Canada Gazette*, Part II, August 9, 1978, effective for the period commencing January 1, 1979.

Definitions [Reg. 2107]: "Canada" — ITA 255, *Interpretation Act* 35(1); "prescribed" — ITA 248(1).

PART XXII — SECURITY INTERESTS

History: The heading before s. 2200 amended by P.C. 1999-1341, s. 1, July 28, 1999, *Canada Gazette*, Part II, August 18, 1999, deemed to have come into force on June 15, 1994.

Part XXII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

2200. [Discharge of security] — Where under subsection 220(4) of the Act the Minister has accepted, as security for payment of taxes, a mortgage or other security or guarantee, he may, by a document in writing, discharge such mortgage or other security or guarantee.

History: S. 2200 amended by P.C. 1994-1817, para. 62(c), November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Definitions [Reg. 2200]: "Minister" — ITA 248(1); "security", "writing" — *Interpretation Act* 35(1).

2201. (1) For the purpose of subsection 227(4.2) of the Act, "prescribed security interest", in relation to an amount deemed by subsection 227(4) of the Act to be held in trust by a person, means that part of a mortgage securing the performance of an obligation of the person, that encumbers land or a building, where the mortgage is registered pursuant to the appropriate land registration system before the time the amount is deemed to be held in trust by the person.

(2) For the purpose of subsection (1), where, at any time after 1999, the person referred to in subsection (1) fails to pay an amount deemed by subsection 227(4) of the Act to be held in trust by the person, as required under the Act, the amount of the prescribed security interest referred to in subsection (1) is deemed not to exceed the amount by which the amount, at that time, of the obligation outstanding secured by the mortgage exceeds the total of

(a) all amounts each of which is the value determined at the time of the failure, having regard to all the circumstances including the existence of any deemed trust for the benefit of Her Majesty pursuant to subsection 227(4) of the Act, of all the rights of the secured creditor securing the obligation, whether granted by the person or not, including guarantees or rights of set-off but not including the mortgage referred to in subsection (1), and

(b) all amounts applied after the time of the failure on account of the obligation,

so long as any amount deemed under any enactment administered by the Minister, other than the *Excise Tax Act*, to be held in trust by the person, remains unpaid.

(3) For greater certainty, a prescribed security interest includes the amount of insurance or expropriation proceeds relating to land or a building that is the subject of a registered mortgage interest, adjusted after 1999 in accordance with subsection (2), but does not include a lien, a priority or any other security interest created by statute, an assignment or hypothec of rents or leases, or a mortgage interest in any equipment or fixtures that a mortgagee or any other person has the right absolutely or conditionally to remove or dispose of separately from the land or building.

History: S. 2201 added by P.C. 1999-1341, s. 2, July 28, 1999, *Canada Gazette*, Part II, August 18, 1999, deemed to have come into force on June 15, 1994.

Definitions [Reg. 2201]: "amount" — ITA 248(1); "Her Majesty" — *Interpretation Act* 35(1); "Minister", "person", "prescribed" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

PART XXIII — PRINCIPAL RESIDENCES

History: Part XXIII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

2300. Any election by a taxpayer under subparagraph 40(2)(c)(ii) of the Act shall be made by attaching to the return of income required by section 150 of the Act to be filed by him for his taxation year in which the disposition of the land, including the property that was his principal residence, occurred, a letter signed by the taxpayer

(a) stating that he is electing under that subparagraph;

(b) stating the number of taxation years ending after the acquisition date (within the meaning assigned by paragraph 40(2)(b) of the Act) for which the property was his principal residence and during which he was resident in Canada; and

(c) giving a description of the property sufficient to identify it with the property designated as his principal residence.

History: Para. 2300(b) substituted by P.C. 1980-2224, s. 1, August 27, 1980, *Canada Gazette*, Part II, September 10, 1980, effective in respect of dispositions after March 31, 1977.

Definitions [Reg. 2300]: "disposition" — ITA 248(1); "property" — ITA 248(1); "resident in Canada" — ITA 250; "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

2301. Any designation by a taxpayer under subparagraph 54(g)(iii) [54"principal residence"(c)] of the Act shall be made in the return of income required by section 150 of the Act to be filed by him for any taxation year of the taxpayer in which

(a) he has disposed of a property that is to be designated as his principal residence; or

(b) he has granted an option to acquire such property.

Definitions [Reg. 2301]: "disposed" — ITA 248(1)"disposition"; "property" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

Interpretation Bulletins: IT-120R6: Principal residence.

Forms: T1079: Designation of a property as a principal residence by a personal trust; T1079-WS: Principal residence worksheet; T1255: Designation of a property as a principal residence by the legal representative of a deceased individual; T2091: Designation of a property as a principal residence by an individual; T2091(IND)WS: Principal residence worksheet.

PART XXIV — INSURERS

History: Part XXIV (ss. 2400–2409) was substituted by P.C. 1979-2483, September 13, 1979, *Canada Gazette*, Part II, September 26, 1979.

2400. (1) Definitions — The definitions in this subsection apply in this Part.

"attributed surplus" of a non-resident insurer for a taxation year is the total of

(a) the insurer's property and casualty surplus for the year, and

(b) either,

(i) if the insurer elects for the year in prescribed form and manner, 50% of the total of

(A) the amount that would have been determined at the end of the year in respect of the insurer under subparagraph (a)(ii) of the definition "Canadian investment fund", and

(B) the amount that would have been determined at the end of the preceding taxation year in respect of the insurer under subparagraph (a)(ii) of the definition "Canadian investment fund",

each amount being calculated as if throughout the year and the preceding taxation year the insurer had been a life insurer resident in Canada and had not carried on any insurance business other than a life insurance business or an accident and sickness insurance business, or

(ii) if the insurer does not elect under subparagraph (i) for the year, 120% of the total of all amounts each of which is 50% of the amount determined in accordance with regulations or guidelines made under Part XIII of the *Insurance Companies Act* to be the margin of assets in Canada over liabilities in Canada required to be maintained by the insurer as at the end of the year or as at the end of the preceding taxation year in respect of an insurance business carried on in Canada (other than a property and casualty insurance business).

"Canadian business property" of an insurer for a taxation year in respect of an insurance business means

(a) if the insurer was resident in Canada throughout the year and did not carry on an insurance business outside Canada in the year, property used or held by it in the year in the course of carrying on the business in Canada; and

(b) in any other case, designated insurance property of the insurer for the year in respect of the business.

"Canadian equity property" of a person or partnership (in this definition referred to as the "taxpayer") at any time means property of the taxpayer that is

(a) a share of the capital stock of, or an income bond, income debenture, small business development bond or small business bond issued by, a person (other than a corporation affiliated with the taxpayer) resident in Canada or a Canadian partnership; or

(b) that proportion of property that is shares of the capital stock of an entity that is a corporation affiliated with the taxpayer or an interest in an entity that is a partnership or trust that

(i) the total value for the taxation year or fiscal period of the entity that includes that time of Canadian equity property of the entity,

is of

(ii) the total value for the year or period of all property of the entity.

Related Provisions: Reg. 2400(7) — No double counting.

"Canadian investment fund" of an insurer at the end of a taxation year means

(a) in the case of a life insurer resident in Canada, the total of

(i) the amount determined by the formula

$$A - B$$

where

A is the amount of the insurer's Canadian reserve liabilities as at the end of the year (to the extent that the amount exceeds the amount of surplus appropriations included in that amount), and

B is the amount of the insurer's Canadian outstanding premiums and policy loans as at the end of the year (to the extent that the amount of the premiums and loans are in respect of policies referred to in paragraphs (a) to (c) of the definition "Canadian reserve liabilities" and were not otherwise deducted in computing the amount of the insurer's Canadian reserve liabilities as at the end of the year), and

(ii) the greater of

(A) the amount determined by the formula

$$C + ((D - E + F) \times (G/H))$$

where

C is 8% of the amount determined under subparagraph (i),

D is the total of all amounts each of which is the amount of a deferred realized net gain or an amount expressed as a negative number of a deferred realized net loss of the insurer as at the end of the year,

E is the total of all amounts each of which is the amount of an item reported as an asset

that is owned by the insurer at the end of the year and is a share of the capital stock of, or a debt owing to the insurer by, a financial institution affiliated with the insurer,

F is the total of all amounts each of which is the amount as at the end of the year of a debt assumed or incurred by the insurer in respect of the acquisition of an asset described in E (or another property for which an asset described in E is a substituted property),

G is the amount of the insurer's weighted Canadian liabilities as at the end of the year, and

H is the amount of the insurer's weighted total liabilities as at the end of the year, and

(B) the amount determined by the formula

$$(I - J + K + L) \times (M/N)$$

where

I is the total of all amounts each of which is the amount of an item reported as an asset of the insurer as at the end of the year (other than an item that at no time in the year was used or held by the insurer in the course of carrying on an insurance business),

J is the total of all amounts each of which is the amount of an item reported as a liability of the insurer (other than a liability that was at any time in the year connected with an asset that was not used or held by the insurer in the course of carrying on an insurance business at any time in the year) as at the end of the year in respect of an insurance business carried on by the insurer in the year,

K is the total of all amounts each of which is an amount of an item reported by the insurer as at the end of the year as a general provision or allowance for impairment in respect of investment property of the insurer for the year,

L is the total of all amounts each of which is an amount of a deferred realized net gain or an amount expressed as a negative number of a deferred realized net loss of the insurer as at the end of the year,

M is the amount of the insurer's weighted Canadian liabilities as at the end of the year, and

N is the amount of the insurer's weighted total liabilities as at the end of the year; and

(b) in the case of a non-resident insurer, the total of

(i) the amount, if any, by which the amount of the insurer's Canadian reserve liabilities as at the end of the year exceeds the total of

(A) the amount of the insurer's Canadian outstanding premiums, policy loans and reinsurance recoverables as at the end of the year (to the extent that the amount of the premiums, loans or recoverables are in respect of policies referred to in paragraphs (a) to (c) of the definition "Canadian reserve liabilities" and were not otherwise deducted in computing the amount of the insurer's Canadian reserve liabilities as at the end of the year), and

(B) the amount of the insurer's deferred acquisition expenses as at the end of the year in respect of its property and casualty insurance business carried on in Canada, and

(ii) the greatest of

(A) the total of

(I) 8% of the amount determined under subparagraph (i), and

(II) the total of all amounts each of which is an amount of a deferred realized net gain or an amount expressed as a negative number of a deferred realized net loss of the insurer as at the end of the year in respect of an insurance business carried on by the insurer in Canada,

(B) the amount, if any, by which the total of

(I) the amount of the insurer's surplus funds derived from operations as at the end of its preceding taxation year,

(II) the total determined under subclause (A)(II) to the extent not included in subclause (I), and

(III) the total of all amounts in respect of which the insurer made an election under subsection 219(4) or (5.2) of the Act, each of which is an amount included in the total determined in respect of the insurer under subparagraph 219(4)(a)(i.1) of the Act as at the end of its preceding taxation year

exceeds

(IV) the total of amounts determined in respect of the insurer under subparagraphs 219(4)(a)(ii), (iii), (iv) and (v) of the Act, as at the end of the year, and

(C) the total of

(I) the amount of the insurer's attributed surplus for the year, and

(II) if the amount under subclause (I) was determined without the taxpayer electing under subparagraph (b)(i) of the definition "attributed surplus", the amount determined under subclause (A)(II).

Related Provisions: Reg. 2400(6) — Interpretation for cl. (a)(ii)(B).

"Canadian investment property" of an insurer for a taxation year means an investment property of the insurer for the year (other than, if the insurer is non-resident, property established by the insurer as not being effectively connected with its insurance businesses carried on in Canada in the year) that is, at any time in the year

(a) real property situated in Canada;

(b) depreciable property situated in Canada or leased to a person resident in Canada for use inside and outside of Canada;

(c) a mortgage, a hypothec, an agreement of sale or any other form of indebtedness in respect of property described in paragraph (a) or (b);

(d) a Canadian equity property;

(e) a Canadian resource property;

(f) a deposit balance of the insurer that is in Canadian currency;

(g) a bond, debenture or other form of indebtedness, in Canadian currency, issued by

(i) a person resident in Canada or a Canadian partnership, or

(ii) the government of Canada, a province or any of their political subdivisions; or

(h) a property that is

(i) a share of the capital stock of a corporation resident in Canada that is affiliated with the insurer, if at least 75% of the total value for the year of all property of the corporation is attributable to property that would be Canadian investment property if it were owned by an insurer, or

(ii) an interest in a Canadian partnership, or a trust resident in Canada, if at least 75% of the total value for the year of all property of the partnership or trust, as the case may be, is attributable to property that would be Canadian investment property if it were owned by an insurer; or

(i) an amount due or an amount accrued to the insurer on account of income that

(i) is from designated insurance property for the year that is Canadian investment property of the insurer for the year because of any of paragraphs (a) to (h), and

(ii) was assumed in computing the insurer's Canadian reserve liabilities for the year.

"Canadian outstanding premiums" of an insurer at any time means the total of all amounts each of which is the amount of an outstanding premium of the insurer with respect to an insurance policy at that time, to the extent that the amount of the premium has been assumed to have been paid in computing the insurer's Canadian reserve liabilities as at that time.

"Canadian reserve liabilities" of an insurer as at the end of a taxation year means the total amount of the insurer's liabilities and reserves (other than liabilities and reserves in respect of a segregated fund) in respect of

(a) life insurance policies in Canada;

(b) fire insurance policies issued or effected in respect of property situated in Canada; or

(c) insurance policies of any other class covering risks ordinarily within Canada at the time the policy was issued or effected.

"deposit balance" of an insurer means an amount standing to the insurer's credit as or on account of amounts deposited with a corporation authorized to accept deposits or to carry on the business of offering to the public its services as a trustee.

"equity limit" of an insurer for a taxation year means

(a) in respect of a life insurer resident in Canada, that proportion of the total of all amounts each of which is the value for the year of an equity property of the insurer that

(i) the insurer's weighted Canadian liabilities as at the end of the year

is of

(ii) the insurer's weighted total liabilities as at the end of the year;

(b) in respect of a non-resident insurer (other than a life insurer), 25% of the total of

(i) the amount, if any, by which the insurer's mean Canadian reserve liabilities for the year exceeds the total of

(A) 50% of the total of its premiums receivable and deferred acquisition expenses as at the end of the year and its premiums receivable and deferred acquisition expenses as at the end of its preceding taxation year to the extent that those amounts were included in the insurer's Canadian reserve liabilities for the year or the preceding taxation year, as the case may be, in respect of the insurer's business in Canada, and

(B) 50% of the total of its reinsurance recoverables as at the end of the year and its reinsurance recoverables as at the end of the preceding taxation year that are in respect of policies referred to in paragraphs (b) and (c) of the definition "Canadian reserve liabilities", and

(ii) the insurer's property and casualty surplus for the year; and

(c) in respect of a non-resident life insurer, the total of

(i) either,

(A) if the insurer makes an election referred to in subparagraph (b)(i) of the definition "attributed surplus" for the year, the greater of

(I) that proportion of the total of all amounts each of which is the value for the year of an equity property of the insurer that

1. the insurer's weighted Canadian liabilities as at the end of the year

is of

2. the insurer's weighted total liabilities as at the end of year, and

(II) 8% of the insurer's mean Canadian investment fund for the year, or

(B) if the insurer does not make this election for the year, 8% of the insurer's mean Canadian investment fund for the year,

(ii) 25% of the amount, if any, by which

(A) the insurer's mean Canadian reserve liabilities for the year (determined on the assumption that the insurer's property and casualty insurance business carried on in Canada during the year was its only insurance business carried on in Canada that year)

exceeds

(B) 50% of the total of its premiums receivable and deferred acquisition expenses as at the end of the year and its premiums receivable and deferred acquisition expenses as at the end of its preceding taxation year, to the extent that those amounts were included in the insurer's Canadian reserve liabilities as at the end of the year or the preceding taxation year, as the case may be, (determined on the assumption that the insurer's property and casualty insurance business carried on in Canada during the year was its only insurance business carried on in Canada that year), and

(iii) 25% of the insurer's property and casualty surplus for the year.

"equity property" of a person or partnership (in this definition referred to as the "taxpayer") at any time means property of the taxpayer that is

(a) a share of the capital stock of, or an income bond, income debenture, small business development bond or small business bond issued by, another person (other than a corporation affiliated with the taxpayer) or partnership; or

(b) that proportion of property that is shares of the capital stock of a corporation affiliated with the taxpayer or an interest in a partnership or trust that

(i) the total value for the taxation year or fiscal period of the corporation, partnership or trust that includes that time of equity property of the corporation, partnership or trust, as the case may be,

is of

(ii) the total value for the year or period of all property of the corporation, partnership or trust, as the case may be.

Related Provisions: Reg. 2400(7) — No double counting.

"financial institution" means a corporation that is

(a) a corporation described in any of paragraphs (a) to (e) of the definition "restricted financial institution" in subsection 248(1) of the Act; or

(b) a particular corporation all or substantially all of the value of the assets of which is attributable to shares or indebtedness of one or more corporations described in paragraph (a) to which the particular corporation is affiliated.

"foreign policy loan" means an amount advanced by an insurer to a policyholder in accordance with the terms and conditions of a life insurance policy, other than a life insurance policy in Canada.

"gross Canadian life investment income" of a life insurer for a taxation year means the amount, if any, by which

(a) the total of all amounts each of which is

(i) the insurer's gross investment revenue for the year, to the extent that the revenue is from Canadian business property of the insurer for the year in respect of the insurer's life insurance business,

(ii) the amount included in computing the insurer's income for the year under paragraph 138(9)(b) of the Act,

(iii) the portion of the amount deducted under paragraph 20(1)(l) of the Act in computing the insurer's income for its preceding taxation year that was in respect of Canadian business property of the insurer for that year in respect of the insurer's life insurance business,

(iv) the amount included under section 142.4 of the Act in computing the insurer's income for the year in respect of property disposed of by the insurer that was, in the taxation year of disposition, Canadian business property of the insurer for that year in respect of the insurer's life insurance business,

(v) the insurer's gain for the year from the disposition of a Canadian business property of the insurer for the year in respect of the insurer's life insurance business, other than a capital property or a property in respect of the disposition of which section 142.4 of the Act applies, or

(vi) the insurer's taxable capital gain for the year from the disposition of a Canadian business property of the insurer for the year in respect of the insurer's life insurance business

exceeds

(b) the total of all amounts each of which is

(i) the portion of the amount deducted under paragraph 20(1)(l) of the Act in computing the insurer's income for the year that is in respect of Canadian business property of the insurer for the year in respect of the insurer's life insurance business,

(ii) the amount deductible under section 142.4 of the Act in computing the insurer's income for the year in respect of a property disposed of by the insurer that was, in the taxation year of disposition, a Canadian business property of the insurer for that year in respect of the insurer's life insurance business,

(iii) the insurer's loss for the year from the disposition of a Canadian business property of the insurer for the year in respect of the insurer's life insurance business, other than a capital property or a property in respect of the disposition of which section 142.4 of the Act applies, or

(iv) the insurer's allowable capital loss for the year from the disposition of a Canadian business property of the insurer for the year in respect of the insurer's life insurance business.

"investment property" of an insurer for a taxation year means non-segregated property owned by the insurer, other than a policy loan payable to the insurer, at any time in the year that is

(a) property acquired by the insurer for the purpose of earning gross investment revenue in the year, other than property that is

(i) property, a proportion of which is investment property of the insurer for the year because of paragraph (b),

(ii) a share of the capital stock of, or a debt owing to the insurer by, a corporation affiliated with the insurer, or

(iii) an interest in a partnership or trust;

(b) that proportion, if any, of property of the insurer that is land, depreciable property or property that would have been depreciable property if it had been situated in Canada and used or held by the insurer in the year in the course of carrying on an insurance business in Canada that

(i) the use made of the property by the insurer in the year for the purpose of earning gross investment revenue in the year

is of

(ii) the whole use made of the property by the insurer in the year;

(c) if the insurer is a life insurer, property described in any of paragraphs 138(4.4)(a) to (d) of the Act;

(d) either

(i) a share of the capital stock of, or a debt owing to the insurer by, a corporation (other than a corporation that is a financial institution) affiliated with the insurer, if the total value for the year of all investment property of the corporation for the year is

not less than 75% of the total value for the year of all its property, or

(ii) an interest in a partnership or trust, if the total value for the year of all investment property of the partnership or trust, as the case may be, for the year is not less than 75% of the total value for the year of all its property,

and for the purpose of this paragraph (other than for the purpose of determining whether a corporation is a financial institution) every corporation, partnership and trust is deemed to be an insurer; or

(e) an amount due or an amount accrued to the insurer on account of income that

(i) is from designated insurance property for the year that is investment property of the insurer for the year because of any of paragraphs (a) to (d), and

(ii) was assumed in computing the insurer's Canadian reserve liabilities for the year.

"mean Canadian outstanding premiums" of an insurer for a taxation year means 50% of the total of

(a) its Canadian outstanding premiums as at the end of the year, and

(b) its Canadian outstanding premiums as at the end of its preceding taxation year.

"mean Canadian reserve liabilities" of an insurer for a taxation year means 50% of the total of

(a) its Canadian reserve liabilities as at the end of the year, and

(b) its Canadian reserve liabilities as at the end of its preceding taxation year.

"mean maximum tax actuarial reserve" in respect of a particular class of life insurance policies of an insurer for a taxation year means 50% of the total of

(a) its maximum tax actuarial reserve for that class of policies for the year, and

(b) its maximum tax actuarial reserve for that class of policies for its preceding taxation year.

"mean policy loans" of an insurer for a taxation year means 50% of the total of

(a) its policy loans as at the end of the year, and

(b) its policy loans as at the end of its preceding taxation year.

"outstanding premiums" of an insurer with respect to an insurance policy at any time means premiums due to the insurer under the policy at that time but unpaid.

"property and casualty surplus" of an insurer for a taxation year means the total of

(a) 7.5% of the total of

(i) its unearned premium reserve as at the end of the year (net of reinsurance recoverables in respect of the reserve) in respect of its property and casualty insurance business,

(ii) its unearned premium reserve as at the end of its preceding taxation year (net of reinsurance recoverables in respect of the reserve) in respect of its property and casualty insurance business,

(iii) its provision for unpaid claims and adjustment expenses as at the end of the year (net of reinsurance recoverables in respect of the provision) in respect of its property and casualty insurance business, and

(iv) its provision for unpaid claims and adjustment expenses as at the end of its preceding taxation year (net of reinsurance recoverables in respect of the provision) in respect of its property and casualty insurance business,

and

(b) 50% of the total of

(i) its investment valuation reserve as at the end of the year in respect of its property and casualty insurance business, and

(ii) its investment valuation reserve as at the end of its preceding taxation year in respect of its property and casualty insurance business.

"reinsurance recoverable" means

(a) in respect of an insurance business (other than a life insurance business) of a non-resident insurer, the total of all amounts each of which is an item reported as an asset of the insurer as at the end of a taxation year in respect of an amount recoverable from a reinsurer for unearned premiums or unpaid claims and adjustment expenses in respect of the reinsurance of a policy that was issued in the course of carrying on the insurance business to the extent that the amount is included in the insurer's Canadian reserve liabilities at that time and the amount is not an outstanding premium, policy loan or investment property; and

(b) in any other case, nil.

"value" for a taxation year of a property of a person or partnership (in this definition referred to as the "owner") means

(a) in the case of a property that is a mortgage, hypothec, an agreement of sale or an investment property that is a deposit balance, the amount, if any, by which

(i) the amount obtained when the gross investment revenue of the owner for the year from the property is divided by the average rate of interest earned by the owner (expressed as an annual rate) on the amortized cost of the property during the year

exceeds

(ii) the amount obtained when the interest payable by the owner, for the period in the year during which the property was held by the owner, on debt assumed or incurred by the owner in respect of the acquisition of the property (or another property for which the property is a substituted property) is divided by the average rate of interest payable by the owner (expressed as an annual rate) on the debt for the year;

(b) in the case of a property that is an amount due or an amount accrued to the owner, the total of the amounts due or accrued at the end of each day in the year divided by the number of days in the year;

(c) in the case of a property (other than a property referred to in paragraph (a) or (b)) that was not owned by the owner throughout the year, the amount, if any, by which

(i) that proportion of

(A) the carrying value of the property as at the end of the preceding taxation year, if the property was owned by the owner at that time,

(B) the carrying value of the property as at the end of the year, if the property was owned by the owner at that time and not at the end of the preceding taxation year, and

(C) in any other case, the cost of the property to the owner when it was acquired,

that the number of days that are in the year and at the end of which the owner owned the property is of the number of days in the year,

exceeds

(ii) the amount obtained when the interest payable by the owner, for the period in the year during which the property was held by the owner, on debt assumed or incurred by the owner in respect of the acquisition of the property (or another property for which the property is a substituted property) is divided by the average rate of interest payable by the owner (expressed as an annual rate) on the debt for the year; and

(d) in the case of any other property, the amount, if any, by which

(i) 50% of the total of

(A) the carrying value of the property as at the end of the year, and

(B) the carrying value of the property as at the end of the preceding taxation year

exceeds

(ii) the amount obtained when the interest payable by the owner, for the period in the year during which the property was held by the owner, on debt assumed or incurred by the owner in respect of the acquisition of the property (or another property for which the property is a substituted property) is divided by the average rate of interest payable by the owner (expressed as an annual rate) on the debt for the year.

"weighted Canadian liabilities" of an insurer as at the end of a taxation year means the total of

(a) 300% of the amount, if any, by which

(i) the total of all amounts each of which is an amount that is in respect of an insurance business carried on by the insurer in Canada and that is reported as a liability (other than a liability in respect of an amount payable out of a segregated fund) of the insurer in respect of a life insurance policy in Canada (other than an annuity) or an accident and sickness insurance policy as at the end of the year

exceeds

(ii) the total of the insurer's policy loans (other than policy loans in respect of annuities) as at the end of the year, and

(b) the amount, if any, by which

(i) the total of all amounts each of which is an amount in respect of an insurance business carried on by the insurer in Canada that is reported as a liability of the insurer as at the end of the year, except to the extent that the amount is

(A) in respect of an insurance policy (other than an annuity) described in subparagraph (a)(i),

(B) a liability in respect of an amount payable out of a segregated fund, or

(C) a debt incurred or assumed by the insurer to acquire a property of the insurer,

exceeds

(ii) the total of the insurer's policy loans in respect of annuities as at the end of the year.

"weighted total liabilities" of an insurer as at the end of a taxation year means the total of

(a) 300% of the amount, if any, by which

(i) the total of all amounts each of which is an amount that is in respect of an insurance business carried on by the insurer and that is reported as a liability (other than a liability in respect of an amount payable out of a segregated fund) of the insurer in respect of a life insurance policy (other than an annuity) or an accident and sickness insurance policy

exceeds

(ii) the total of the insurer's policy loans and foreign policy loans (other than policy loans and foreign policy loans in respect of annuities) as at the end of the year, and

(b) the amount, if any, by which

(i) the total of all amounts each of which is an amount that is in respect of an insurance business carried on by the insurer and that is reported as a liability of the insurer as at the end of the year, except to the extent that the amount is

(A) in respect of an insurance policy (other than an annuity) described in subparagraph (a)(i),

(B) a liability in respect of an amount payable out of a segregated fund, or

(C) a debt incurred or assumed by the insurer to acquire a property of the insurer,

exceeds

(ii) the total of the insurer's policy loans and foreign policy loans in respect of annuities as at the end of the year.

(2) Carrying value — For the purposes of this Part, the carrying value of a taxpayer's property for a taxation year, except as otherwise provided in this Part, means

(a) if the taxpayer is an insurer, the amounts reflected in the taxpayer's non-consolidated balance sheet as at the end of the taxation year accepted (or, if that non-consolidated balance sheet was not prepared, the taxpayer's non-consolidated balance sheet as at the end of the year that would have been accepted) by the Superintendent of Financial Institutions, in the case of an insurer that is required under the *Insurance Companies Act* to report to that Superintendent, or by the superintendent of insurance or other similar officer or authority of the province under the laws of which the insurer is incorporated or otherwise formed, in the case of an insurer that is required by law to report to that officer or authority; and

(b) in any other case, the amounts that would be reflected in the taxpayer's non-consolidated balance sheet as at the end of the taxation year if that balance sheet were prepared in accordance with generally accepted accounting principles.

(3) Amount or item reported — A reference in this Part to an amount or item reported as an asset or a liability of a taxpayer as at the end of a taxation year means an

amount or item that is reported as an asset or a liability in the taxpayer's non-consolidated balance sheet as at the end of the year accepted (or, if that non-consolidated balance sheet was not prepared, the taxpayer's non-consolidated balance sheet as at the end of the year that would have been accepted) by the Superintendent of Financial Institutions, in the case of an insurer that is required under the *Insurance Companies Act* to report to that Superintendent, or by the superintendent of insurance or other similar officer or authority of the province under the laws of which the insurer is incorporated or otherwise formed, in the case of an insurer that is required by law to report to that officer or authority.

(4) Application of certain definitions — For the purposes

(a) of subsection 138(14) of the Act, the expressions "Canadian investment fund for a taxation year", "specified Canadian assets" and "value for the taxation year" have the meanings prescribed for them by subsection 2404(1) as it read in its application to the 1977 taxation year; and

(b) of subsection 219(7) of the Act, the expressions "attributed surplus" and "Canadian investment fund" have the meaning prescribed for them by subsection (1).

(5) Deeming rules for certain assets — For the purposes of this Part, other than subsection 2401(6), an asset of an insurer is deemed not to have been used or held by the insurer in a taxation year in the course of carrying on an insurance business if the asset

(a) is owned by the insurer at the end of the year; and

(b) is a share of the capital stock of, or a debt owing to the insurer by, a financial institution affiliated with the insurer during each of the days in the year during which the insurer owned the asset.

(6) [Idem] — For the purposes of clause (a)(ii)(B) of the definition "Canadian investment fund" in subsection (1), an asset of an insurer is deemed not to have been used or held by the insurer in a taxation year in the course of carrying on an insurance business if the asset

(a) is owned by the insurer at the end of the year; and

(b) is

(i) goodwill which arose as a result of an amalgamation, a winding-up of an affiliated financial institution, or the assumption by the insurer of any obligation of another insurer with which the insurer deals at arm's length if a reserve in respect of the obligation

(A) may be claimed by the insurer under paragraph 20(7)(c) or subparagraph 138(3)(a)(i) or (ii) of the Act, or

(B) could be claimed by the insurer under paragraph 20(7)(c) or subparagraph 138(3)(a)(i) or (ii) of the Act if the obligations were insurance policies in Canada, or

(ii) real property (or the portion of real property) owned by the insurer and occupied by the insurer for the purposes of carrying on an insurance business.

(7) No double counting — For greater certainty, a particular property or a particular proportion of a property shall not, directly or indirectly, be used or included more than once in determining, for a particular taxation year, the Canadian equity property or the equity property of a person or partnership.

History [Reg. 2400]: S. 2400 substituted by P.C. 2000-1714, November 30, 2000, *Canada Gazette*, Part II, December 20, 2000, subsec. 2(2), applicable to 1999 *et seq.*

History [former Reg. 2400]: Para. 2400(3)(a) amended to add reference to s. 51.1 of the Act, by P.C. 2000-1714, November 30, 2000, *Canada Gazette*, Part II, December 20, 2000, subsec. 2(1), applicable to transactions occurring after October 1994.

Subpara. 2400(6)(b)(ii) amended by P.C. 1994-1817, para. 62(d), November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Subsecs. 2400(1) to (3) substituted and subsecs. 2400(4) to (7) substituted for (4) and (5) by P.C. 1990-2002, s. 6, September 20, 1990, *Canada Gazette*, Part II, October 10, 1990, applicable in respect of taxation years beginning after June 17, 1987 and ending after 1987 except that in applying subsecs. (5) and (6) to a taxpayer's first taxation year that begins after June 17, 1987 and that ends after 1987, they shall, where the taxpayer elects in the taxpayer's return of income under Part I of the Act for that year, be read as follows:

(5) Where a property was owned by the insurer throughout any period in a taxation year and throughout that period the property was used by the insurer in, or held by the insurer in the course of, carrying on an insurance business outside Canada, the property may not be designated by the insurer under subsection (1) for the period in respect of an insurance business in Canada of the insurer.

(6) For the purposes of subsection (1), investment property of the insurer shall, subject to subsection (5), be designated by the insurer in respect of a taxation year in respect of its insurance businesses in Canada in the following order, to the extent thereof and to the extent required:

(a) investment property owned by the insurer at any time in the year that was designated in respect of an insurance business in Canada of the insurer in the immediately preceding taxation year;

(b) investment property (other than an investment property referred to in paragraph (a)) owned by the insurer at any time in the year that was Canadian investment property, except that that investment property shall be designated in the following order, namely,

(i) land and depreciable property situated in Canada,

(ii) mortgages, hypothecs, agreements of sale and other forms of indebtedness in respect of property referred to in subparagraph (i), and

(iii) other property; and

(c) other investment property owned by the insurer at any time in the year.

Para. 2400(3)(b) substituted by P.C. 1988-1473, s. 4, July 21, 1988, *Canada Gazette*, Part II, August 3, 1988, applicable to taxation years commencing after 1984.

Paras. 2400(1)(c), (d) corrected by *Canada Gazette*, Part II, October 24, 1979, *errata*.

Definitions [Reg. 2400]: "affiliated" — ITA 251.1; "allowable capital loss" — ITA 38(b), 248(1); "amortized cost", "amount" — ITA 248(1); "amount payable" — ITA 138(12), Reg. 2405(1); "annuity" — ITA 248(1); "attributed surplus for the year" — Reg. 2405(3); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian business property", "Canadian equity property", "Canadian investment property" — Reg. 2400(1), 2405(3); "Canadian outstanding premiums" — Reg. 2400(1); "Canadian partnership" — ITA 102, 248(1); "Canadian reserve liabilities" — Reg. 2400(1), 2405(3); "Canadian resource property" — ITA 66(15), 248(1); "capital property" — ITA 54, 248(1); "carrying value" — Reg. 2400(2); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "deposit balance" — Reg. 2400(1); "depreciable property" — ITA 13(21), 248(1); "designated insurance property" — ITA 138(12), 248(1); "equity property" — Reg. 2400(1), 2405(3); "financial institution", "financial institution allowance" — Reg. 2400(1); "fiscal period" — ITA 249.1; "foreign policy loan" — Reg. 2400(1), 2405(3); "gross investment revenue" — ITA 138(12), Reg. 2405(1); "income bond", "income debenture", "insurance policy" — ITA 248(1); "insurance property" — Reg. 2400(1), 2406; "insurer" — ITA 248(1); "investment property" — Reg. 2400(1), 2405(3), 2406; "item reported" — Reg. 2400(3); "liability" — Reg. 2400(3); "life insurance business" — ITA 248(1); "life insurance policy", "life insurance policy in Canada" — ITA 138(12), Reg. 2405(1); "life insurer" — ITA 248(1); "maximum tax actuarial re-

serve" — ITA 138(12), Reg. 2405(1); "mean Canadian investment fund" — Reg. 2400(1); "mean Canadian reserve liabilities" — Reg. 2400(1), 2405(3); "non-resident" — ITA 248(1); "non-segregated property" — ITA 138(12), Reg. 2405(1); "officer" — ITA 248(1); "person" — ITA 248(1); "policy loan" — ITA 138(12), Reg. 2405(1); "prescribed", "property" — ITA 248(1); "property and casualty surplus" — Reg. 2400(1), 2405(3); "province" — *Interpretation Act* 35(1); "reinsurance recoverable" — Reg. 2400(2); "reported" — Reg. 2400(3); "resident in Canada" — ITA 250; "segregated fund" — ITA 138.1(1), 2405(1); "share" — ITA 248(1); "small business bond" — ITA 15.2(3), 248(1); "small business development bond" — ITA 15.1(3), 248(1); "surplus funds derived from operations" — ITA 138(12), Reg. 2405(1); "taxable capital gain" — ITA 38(a), 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3); "valuation" — Reg. 2405(3); "value" — Reg. 2400(1); "value for the year" — Reg. 2405(3); "weighted Canadian liabilities", "weighted total liabilities" — Reg. 2400(1).

2401. (1) Designated insurance property — For the purposes of the definition "designated insurance property" in subsection 138(12) of the Act, "designated insurance property" of an insurer for a taxation year means property that is designated in accordance with subsections (2) to (7) for the year

(a) by the insurer in its return of income under Part I of the Act for the year; or

(b) if the Minister determines that the insurer has not made a designation that is in accordance with the prescribed rules found in this section, by the Minister.

(2) Designation rules — For the purposes of subsection (1), an insurer, or the Minister if paragraph (1)(b) applies,

(a) shall designate for a taxation year investment property of the insurer for the year with a total value for the year equal to the amount, if any, by which the insurer's mean Canadian reserve liabilities for the year in respect of its life insurance business in Canada exceeds the total of the insurer's mean Canadian outstanding premiums and mean policy loans for the year in respect of that business (to the extent that the amount of the mean policy loans was not otherwise deducted in computing the insurer's mean Canadian reserve liabilities for the year);

(b) shall designate for a taxation year investment property of the insurer for the year with a total value for the year equal to the amount, if any, by which the insurer's mean Canadian reserve liabilities for the year in respect of its accident and sickness insurance business in Canada exceeds the total of

(i) the insurer's mean Canadian outstanding premiums for the year in respect of that business, and

(ii) 50% of the total of all amounts, each of which is its total reinsurance recoverables, as at the end of the year or as at the end of the preceding taxation year, that are in respect of that business;

(c) shall designate for a taxation year in respect of the insurer's insurance business in Canada (other than a life insurance business or an accident and sickness insurance business) investment property of the insurer for the year with a total value for the year equal to the amount, if any, by which the insurer's mean Canadian reserve liabilities for the year in respect of that business exceeds the total of

(i) 50% of the total of all amounts each of which is the amount, as at the end of the year or as at the end of its preceding taxation year, of a premium receivable or a deferred acquisition expense (to the extent that it is included in the insurer's Canadian reserve liabilities as at the end of the year or preceding taxation year, as the case may be) of the insurer in respect of that business, and

(ii) 50% of the total of all amounts, each of which is its total reinsurance recoverables, as at the end of the year or as at the end of the preceding taxation year, that are in respect of that business;

(d) if

(i) the insurer's mean Canadian investment fund for a taxation year

exceeds

(ii) the total value for the year of all property required to be designated under paragraph (a), (b) or (c) for the year,

shall designate for the year, in respect of a particular insurance business that the insurer carries on in Canada, investment property of the insurer for the year with a total value for the year equal to that excess;

(e) for greater certainty, under each of paragraphs (a), (b), (c) and (d), shall designate for the taxation year investment property with a total value for the year equal to the amount, if any, determined under each of those paragraphs, and no investment property, or portion of investment property, designated for the year under any of paragraphs (a) to (d) may be designated for the year under any other paragraph; and

(f) may designate for a taxation year a portion of a particular investment property if the designation of the entire property would result in a designation of property with a total value for the year exceeding that required to be designated under paragraphs (a) to (d) for the year.

(3) Order of designation of properties — For the purpose of subsection (2), investment property of an insurer for a taxation year shall be designated for the year in respect of the insurer's insurance businesses carried on by it in Canada in the following order:

(a) Canadian investment property of the insurer for the year owned by the insurer at the beginning of the year that was designated insurance property of the insurer for its preceding taxation year, except that such property shall be designated in the following order:

(i) real and depreciable property,

(ii) mortgages, hypothecs, agreements of sale and other forms of indebtedness in respect of real property situated in Canada or depreciable property situated in Canada or depreciable property leased to a person resident in Canada for use inside and outside of Canada, and

(iii) other property;

(b) investment property (other than Canadian investment property of the insurer for the year) owned by the insurer at the beginning of the year that was designated insurance property of the insurer for its preceding taxation year;

(c) Canadian investment property of the insurer for the year (other than property included in paragraph (a)) in the order set out in subparagraphs (a)(i) to (iii); and

(d) other investment property.

(4) Equity limit for the year — Notwithstanding subsections (2) and (3),

(a) the total value for the year of Canadian equity property of an insurer that may be designated in respect of

the insurer's insurance businesses for a taxation year shall not exceed the insurer's equity limit for the year; and

(b) for a taxation year a portion of a particular Canadian equity property of an insurer may be designated if the designation of the entire property would result in a designation of Canadian equity property of the insurer for the year with a total value for the year exceeding the insurer's equity limit for the year.

(5) Exchanged property — For the purposes of subsection (3), property acquired by an insurer in a particular taxation year is deemed to be designated insurance property of the insurer in respect of a particular business of the insurer for its preceding taxation year and to have been owned by the insurer at the beginning of the particular taxation year if the property was acquired

(a) by reason of

(i) a transaction to which any of sections 51, 51.1, 85.1 and 86 of the Act applies,

(ii) a transaction in respect of which an election is made under subsection 85(1) or (2) of the Act,

(iii) an amalgamation (within the meaning assigned by subsection 87(1) of the Act), or

(iv) a winding-up of a corporation to which subsection 88(1) of the Act applies, and

(b) as consideration for or in exchange for property of the insurer that was designated insurance property of the insurer in respect of the particular insurance business for its preceding taxation year.

(6) Non-investment property — Non-segregated property owned by an insurer at any time in a taxation year (other than investment property of the insurer for the year) that is used or held by the insurer in the year in the course of carrying on an insurance business in Canada is deemed to be designated insurance property of the insurer for the year in respect of the business.

(7) Policy loan excluded from designated property — Notwithstanding any other provision in this Part, a policy loan payable to an insurer is not designated insurance property of the insurer.

History: S. 2401 substituted by P.C. 2000-1714, November 30, 2000, *Canada Gazette*, Part II, December 20, 2000, subsec. 2(2), applicable to 1999 *et seq.*

Definitions [Reg. 2401]: "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian equity property", "Canadian investment property", "Canadian reserve liabilities" — Reg. 2400(1), 2405(3); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "depreciable property" — ITA 13(21), 248(1); "designated insurance property" — ITA 138(12), 248(1); "equity limit for the year" — Reg. 2405(3); "insurer" — ITA 248(1); "investment property" — Reg. 2400(1), 2405(3), 2406; "life insurance business" — ITA 248(1); "mean Canadian investment fund", "mean Canadian outstanding premiums" — Reg. 2400(1); "mean Canadian reserve liabilities", "mean policy loans" — Reg. 2400(1), 2405(3); "Minister" — ITA 248(1); "particular insurance business" — Reg. 2400(1); "person", "property" — ITA 248(1); "resident in Canada" — ITA 250; "taxation year" — ITA 249; "value for the year" — Reg. 2405(3).

2402. Income from participating life insurance businesses — For the purposes of clause 138(3)(a)(iii)(B) of the Act and subparagraph 309(1)(e)(i), in computing a life insurer's income for a taxation year from its participating life insurance business carried on in Canada,

(a) there shall be included that proportion of the insurer's gross Canadian life investment income for the year that

(i) the aggregate of the insurer's mean maximum tax actuarial reserve for the year in respect of participating life insurance policies in Canada and the mean amount on deposit with the insurer for the year in respect of those policies

is of

(ii) the aggregate of amounts, each of which is

(A) the insurer's mean maximum tax actuarial reserve for the year in respect of a class of life insurance policies in Canada, or

(B) the mean amount on deposit with the insurer for the year in respect of a class of policies described in clause (A);

Proposed Addition — Reg. 2402(a.1)

(a.1) there shall be included the amount determined by the formula

$$(A + B) \times \frac{C}{D}$$

where

A is the amount required by subsection 142.5(5) of the Act to be included in computing the insurer's income for the year,

B is the amount deemed by subsection 142.5(7) of the Act to be a taxable capital gain of the insurer for the year from the disposition of property,

C is the amount determined under subparagraph (a)(i) for the taxation year of the insurer that includes October 31, 1994, and

D is the amount determined under subparagraph (a)(ii) for the taxation year of the insurer that includes October 31, 1994;

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsec. 2(1), will add para. 2402(a.1), applicable to taxation years that end after October 30, 1994.

Technical Notes: Section 2402 contains rules for determining a life insurer's income for a year from carrying on its participating life insurance business in Canada. This income is relevant for subparagraph 138(3)(a)(iii) of the Act, which permits an insurer to deduct policy dividends to the extent that the total amount of dividends paid after its 1968 taxation year does not exceed the total amount of its participating business income after that year. Section 2402 is amended to reflect the new rules in the Act for the tax treatment of securities held by financial institutions, and to delete provisions which are no longer applicable.

New paragraph 2402(a.1) includes in an insurer's income from its participating business for a taxation year an amount in respect of the transition adjustments for the mark-to-market requirement for shares. The amount included is equal to a proportion of the transition amount for non-capital gains included in the insurer's income for the year by subsection 142.5(5) of the Act, plus the same proportion of the insurer's deemed taxable capital gain for the year under subsection 142.5(7). The ratio used for this purpose is equal to the ratio used under paragraph 2402(a) in determining the proportion of the insurer's gross Canadian life investment income for its taxation year that includes October 31, 1994 that is included in its income from its participating business. Paragraph 2402(a.1) applies to taxation years ending after October 30, 1994.

(b) there shall be included

(i) the amount deducted by the insurer under subparagraph 138(3)(a)(iv) of the Act in computing its income for the immediately preceding taxation year,

(ii) the insurer's maximum tax actuarial reserve for the immediately preceding taxation year in respect of participating life insurance policies in Canada,

(iii) the maximum amount deductible by the insurer under subparagraph 138(3)(a)(ii) of the Act in computing its income for the immediately preceding taxation year in respect of participating life insurance policies in Canada, and

(iv) that proportion of the amount included in income by the insurer for the year under section 12.3 that

(A) the amount determined under clause (f)(iii)(A) for its first taxation year that commences after June 17, 1987 and ends after 1987

is of

(B) the amount determined under clause (f)(iii)(B) for its first taxation year that commences after June 17, 1987 and ends after 1987;

Proposed Repeal — Reg. 2402(b)(iv)

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsec. 2(2), will repeal subpara. 2402(b)(iv), applicable to taxation years that begin after 1992.

Technical Notes: Subparagraph 2402(b)(iv) relates to a transitional provision introduced in conjunction with the 1987 tax reform measures. The transitional provision, and subparagraph 2402(b)(iv), last applied to taxation years that began in 1992. The subparagraph is repealed since it is no longer applicable.

(c) there shall not be included any amount in respect of the insurer's participating life insurance policies in Canada that was deducted under subparagraphs 138(3)(a)(i) or (ii) of the Act in computing its income for the immediately preceding taxation year;

(d) except as otherwise provided in paragraph (a), there shall not be included any amount as a reserve that was deducted under paragraph 20(1)(l) of the Act in computing the insurer's income for the immediately preceding taxation year;

(e) except as otherwise provided in paragraph (a), there shall not be included

(i) any amount that was included in income for the year by the insurer pursuant to 138(4)(b) or (c) of the Act, or

(ii) any amount that was included in computing the insurer's gains or taxable capital gains for the year from the disposition of property;

Proposed Amendment — Reg. 2402(e)

(e) except as provided in paragraph (a), there shall not be included any amount that was included in determining the insurer's gross Canadian life investment income for the year;

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsec. 2(3), will amend para. 2402(e) to read as above, applicable to taxation years that end after February 22, 1994.

Technical Notes: Paragraph 2402(e) provides that certain amounts are not included in computing an insurer's income from its participating life insurance business, except as provided by paragraph 2402(a). Paragraph 2402(e) is amended so that it applies with respect to all amounts included in determining an insurer's gross Canadian life investment income. This amendment is made for purposes of clarification, and because of the introduction of the new rules for the taxation of securities held by financial institutions. In this latter regard, subparagraph 2402(e)(i) refers to paragraphs 138(4)(b) and (c) of the Act, which are being repealed.

Proposed Addition — Reg. 2402(e.1), (e.2)

(e.1) except as provided in paragraph (a.1), there shall not be included the amounts referred to in the descriptions of A and B in that paragraph;

(e.2) where the year includes October 31, 1994, there shall be deducted the amount determined by the formula

$$(A + B) \times \frac{C}{D}$$

where

A is the amount deducted under subsection 142.5(4) of the Act in computing the insurer's income for the year,

B is the amount deemed by subsection 142.5(6) of the Act to be an allowable capital loss of the insurer for the year from the disposition of property,

C is the amount determined under subparagraph (a)(i) for the year, and

D is the amount determined under subparagraph (a)(ii) for the year;

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsec. 2(4), will add paras. 2402(e.1) and (e.2), applicable to taxation years that end after October 30, 1994.

Technical Notes: New paragraph 2402(e.1) provides that the transition amounts associated with the introduction of the mark-to-market requirement for shares are not to be included in an insurer's income from its participating life insurance business, except as provided by new paragraph 2402(a.1).

New paragraph 2402(e.2) provides for a deduction in computing an insurer's income from its participating business in respect of the transition deductions associated with the introduction of the mark-to-market requirement for shares. This deduction applies for the insurer's taxation year that includes October 31, 1994. The deducted amount is equal to a proportion of the transition deduction for non-capital gains claimed by the insurer under subsection 142.5(4) of the Act, plus the same proportion of the allowable capital loss claimed by the insurer under subsection 142.5(6). The ratio used for this purpose is equal to the ratio used under paragraph 2402(a) in determining the proportion of the insurer's gross Canadian life investment income for its taxation year that includes October 31, 1994 that is included in its income from its participating business.

(f) there shall be deducted

(i) the insurer's maximum tax actuarial reserve for the year in respect of participating life insurance policies in Canada,

(ii) the maximum amount deductible by the insurer under subparagraph 138(3)(a)(ii) of the Act in computing its income for the year in respect of participating life insurance policies in Canada, and

(iii) that proportion of the amount deducted from income by the insurer for the year under subsection 20(26) that

(A) the amount determined in respect of the insurer for the year under subparagraph (a)(i),

is of

(B) the amount determined in respect of the insurer for the year under subparagraph (a)(ii);

Proposed Repeal — Reg. 2402(f)(iii)

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsec. 2(5), will repeal subpara. 2402(f)(iii), applicable to taxation years that begin after 1992.

Technical Notes: Subparagraph 2402(f)(iii) relates to a transitional deduction provided in conjunction with the 1987 tax reform measures. The transitional deduction, and subparagraph 2402(f)(iii), applied to an in-

surer's first taxation year that began after June 17, 1987 and ended after 1987. The subparagraph is repealed since it is no longer applicable.

(g) no deduction shall be made in respect of any amount deductible under subparagraph 138(3)(a)(iii) or (iv) of the Act in computing the insurer's income for the year;

(h) except as as otherwise provided in paragraph (a), no deduction shall be made in respect of

(i) any amount deductible under paragraph 138(3)(b) or (d) of the Act in computing the insurer's income for the year,

(ii) any amount deductible as a reserve under paragraph 20(1)(l) of the Act in computing the insurer's income for the year, or

(iii) any amount included in computing the insurer's losses or allowable capital losses for the year from the disposition of property;

Proposed Amendment — Reg. 2402(h)

(h) except as provided in paragraph (a), no deduction shall be made in respect of

(i) any amount taken into account in determining the insurer's gross Canadian life investment income for the year, or

(ii) any amount deductible under paragraph 20(1)(l) of the Act in computing the insurer's income for the year;

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsec. 2(6), will amend para. 2402(h) to read as above, applicable to taxation years that end after February 22, 1994.

Technical Notes: Paragraph 2402(h) provides that certain amounts are not deducted in computing an insurer's income from its participating life insurance business, except as provided by paragraph 2402(a). Paragraph 2402(h) is amended so that it applies with respect to all amounts that are included in determining an insurer's gross Canadian life investment income. This amendment is made for purposes of clarification and because of the introduction of the new rules for the taxation of securities held by financial institutions. In this latter regard, subparagraph 2402(h)(i) refers to paragraphs 138(3)(b) and (d) of the Act, which are being repealed.

Proposed Addition — Reg. 2402(h.1)

(h.1) except as provided in paragraph (e.2), no deduction shall be made in respect of the amounts referred to in the descriptions of A and B in paragraph (e.2);

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsec. 2(7), will add para. 2402(h.1), applicable to taxation years that end after October 30, 1994.

Technical Notes: New paragraph 2402(h.1) provides that the transition amounts deducted by an insurer in connection with the introduction of the mark-to-market requirement for shares are not to be deducted in computing the insurer's income from its participating life insurance business, except as provided by new paragraph 2402(e.2).

(i) except as otherwise provided in paragraph (f), no deduction shall be made in respect of a reserve deductible under subparagraph 138(3)(a)(i) or (ii) of the Act in computing the insurer's income for the year; and

(j) except as otherwise provided in this section, the provisions of the Act relating to the computation of income from a source shall apply.

History: Subpara. 2402(b)(iii) added, and paras. (c) to (f), (h) and (i) substituted, by P.C. 1990-2002, s. 7, September 20, 1990, *Canada Gazette*, Part II, October 10, 1990, applicable in respect of taxation years beginning after June 17, 1987 and ending after 1987 except that in its application in respect of [an insurer's] first such taxation year,

(a) subpara. (b)(iii) shall be read as follows:

"(iii) the maximum amount of a reserve deductible by the insurer in computing its income for the immediately preceding taxation year in respect of unpaid claims under participating life insurance policies in Canada received by the insurer before the end of that year, and";

(b) para. (c) shall be read as follows:

"(c) there shall not be included any amount in respect of the insurer's participating life insurance policies in Canada that was deducted in computing its income for the immediately preceding taxation year under subparagraph 138(3)(a)(i) of the Act or as a reserve in respect of unpaid claims received before the end of that year;" and

(c) para. (d) shall read as it read for [the insurer's] last taxation year ending before 1988.

All that portion of s. 2402 preceding para. (a) substituted by P.C. 1983-3530, s. 7, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, applicable to taxation years commencing after 1982.

Definitions [Reg. 2402]: "allowable capital loss" — ITA 38(b), 248(1); "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "gross Canadian life investment income" — Reg. 2400(1), 2405(3); "immediately preceding taxation year" — Reg. 2409(1); "insurer", "life insurance business" — ITA 248(1); "life insurance policy" — ITA 138(12), Reg. 2405(1); "life insurer" — ITA 248(1); "maximum tax actuarial reserve" — ITA 138(12), Reg. 2405(1); "mean amount on deposit" — Reg. 2405(3); "mean maximum tax actuarial reserve" — Reg. 2400(1), 2405(3); "participating life insurance policy" — ITA 138(12), Reg. 2405(1); "property" — ITA 248(1); "taxable capital gain" — ITA 38(a), 248(1); "taxation year" — ITA 249.

2403. Branch tax elections — **(1)** An election referred to in subsection 219(4) of the Act shall be made by a non-resident insurer in respect of a taxation year by filing, with its return of income required by subsection 150(1) of the Act to be filed for the year, a letter in duplicate stating

(a) the insurer elects under subsection 219(4) of the Act; and

(b) the amount the insurer elects to deduct under subsection 219(4) of the Act.

(2) Where a joint election referred to in subsection 219(5.2) of the Act is made by a non-resident insurer and a qualified related corporation (within the meaning assigned by subsection 219(8) of the Act) of the non-resident insurer in respect of a taxation year of the non-resident insurer, it shall be made by filing, with the non-resident insurer's return of income required by subsection 150(1) of the Act to be filed for the year in which the event to which the election relates occurred, a letter in duplicate signed by an authorized officer of the non-resident insurer and an authorized officer of the qualified related corporation stating

(a) whether paragraphs 219(5.2)(a) and (b) of the Act apply; and

(b) the amount elected under subsection 219(5.2) of the Act.

History: Para. 2403(2)(a) substituted by P.C. 2000-1714, November 30, 2000, *Canada Gazette*, Part II, December 20, 2000, s. 3, applicable to 1999 *et seq.*

Subsec. 2403(2) added by P.C. 1981-2121, s. 1, July 29, 1981, *Canada Gazette*, Part II, August 12, 1981, effective December 12, 1979.

Definitions [Reg. 2403]: "amount" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "insurer", "non-resident", "officer" — ITA 248(1); "related" — ITA 251(2)–(6); "taxation year" — ITA 249.

2404. Currency conversions [inapplicable since 1999] — For the purposes of this Part, where any amount

is determined in a currency other than Canadian currency, that amount shall be converted to Canadian currency using the current rate of exchange, as required for the purposes of the relevant authority, on the date in respect of which the amount is determined.

Related Provisions: Reg. 2406 — Reg. 2404 does not apply as of 1999.

Definitions [Reg. 2404]: "amount" — ITA 248(1); "relevant authority" — Reg. 2405(3).

2405. Interpretation [inapplicable since 1999] —

(1) In this Part,

(a) "total depreciation" has the meaning assigned by paragraph 13(21)(e) [13(21)"total depreciation"] of the Act;

(b) "accumulated 1968 deficit", "amount payable", "gross investment revenue", "life insurance policy", "life insurance policy in Canada", "maximum tax actuarial reserve", "non-segregated property", "participating life insurance policy", "policy loan" and "surplus funds derived from operations" have the meanings assigned by subsection 138(12) of the Act; and

(c) "segregated fund" and "segregated fund policies" have the meaning assigned by subsection 138.1(1) of the Act.

Related Provisions: Reg. 2406 — Reg. 2405 does not apply as of 1999.

(2) For the purposes of subsection 138(14) of the Act, the expressions "Canadian investment fund for a taxation year", "specified Canadian assets" and "value for the taxation year" have the meanings prescribed therefor by subsection 2404(1) as it read in its application to the 1977 taxation year.

Related Provisions: Reg. 2406 — Reg. 2405 does not apply as of 1999.

(3) In this Part and for the purposes of paragraph 219(7)(a) [219(7)"attributed surplus for the year"] of the Act,

"attributed surplus for the year", for a taxation year in respect of a non-resident insurer, means the aggregate of

(a) its property and casualty surplus for the year, and

(b) an amount equal to the percentage (that is the life surplus factor for the year) of the amount for the year determined under clause (a)(i)(B) of the definition "life surplus factor" in this subsection;

Related Provisions: Reg. 2406 — Reg. 2405 does not apply as of 1999.

Proposed Addition — Reg. 2405(3)"Canadian business property" [temporary]

"Canadian business property" of an insurer for a taxation year in respect of an insurance business means

(a) where the insurer was resident in Canada throughout the year and either did not carry on a life insurance business in the year or did not carry on an insurance business outside Canada in the year, the property used by it in the year in, or held by it in the year in the course of, carrying on the business in Canada, and

(b) in any other case, the property designated under subsection 2400(1) for the year by the insurer in respect of the business;

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsec. 3(10), will add the definition "Canadian business property" to subsec. 2405(3), applicable to taxation years that end after February 22, 1994. Reg. 2405 no longer applies as of 1999; see Reg. 2406.

Technical Notes: A definition of "Canadian business property" is added to subsection 2405(3). This expression is used in the definition of "gross Canadian life investment income", which is also in subsection 2405(3).

In the case of an insurer that is required to designate property under subsection 2400(1), the "Canadian business property" of the insurer for a taxation year in respect of an insurance business is the property designated for the year in respect of the business. (The designation rules apply to non-resident insurers, and to multinational resident life insurers.)

The "Canadian business property" of any other insurer for a taxation year in respect of an insurance business is the property that is factually determined to have been used by the insurer in the year in, or held by it in the year in the course of, carrying on the business in Canada.

Related Provisions: Reg. 2406 — Reg. 2405 does not apply as of 1999.

"Canadian equity property" means

(a) a share of the capital stock of, or an income bond, income debenture, small business development bond or a small business bond issued by, a person (other than a designated corporation) or partnership, as the case may be, resident in Canada, or

(b) that proportion of shares of the capital stock of a designated corporation or an interest in a partnership or trust that

(i) the aggregate value for the year of Canadian equity property owned by the designated corporation or the partnership or trust, as the case may be,

is of

(ii) the aggregate value for the year of all property owned by the designated corporation, or partnership or trust, as the case may be;

Related Provisions: Reg. 2406 — Reg. 2405 does not apply as of 1999.

"Canadian investment fund", as at the end of a taxation year, in respect of

(a) a life insurer resident in Canada, means the positive amount determined by the formula

$$\left[\frac{A}{B} \times (C - D)\right] - E$$

where

A is the amount of the insurer's Canadian reserve liabilities as at the end of the year,

B is the amount of the insurer's total reserve liabilities as at the end of the year,

C is the total of

(i) the aggregate amount of policy loans and foreign policy loans of the insurer as at the end of the year, and

(ii) the valuation of all property of the insurer as at the end of the year each of which is

(A) an investment property,

(B) money, or

(C) a balance (other than a property included under (A) or (B)) standing to the insurer's credit as or on account of amounts deposited with a corporation authorized to accept deposits or to carry on the business of offering to the public its services as a trustee,

D is the total of

(i) the aggregate of all amounts each of which is an amount outstanding as at the end of the year in respect of a debt (other than a debt referred to in paragraph (h) of the definition "valuation" in this subsection or an amount referred to in sub-

paragraph (ii)) owing by the insurer in respect of money borrowed by the insurer (other than money used by the insurer for the purpose of earning income from a source that is not an insurance business), and

(ii) the aggregate of all amounts each of which is the amount of a cheque outstanding at the end of the year drawn on an account of the insurer maintained with a corporation authorized to accept deposits or to carry on the business of offering to the public its services as a trustee, and

E is the aggregate amount of the policy loans of the insurer as at the end of the year, and

(b) a non-resident insurer, means the amount, if any, by which the aggregate of amounts each of which is

(i) a maximum tax actuarial reserve of the insurer for the year,

(i.1) the maximum amount that the insurer is entitled to claim under subparagraph 138(3)(a)(ii) of the Act for the year,

(ii) the maximum amount that the insurer is entitled to deduct under paragraph 20(7)(c) of the Act in computing its income for the year determined on the assumption that it carried on no other than life insurance business other than an accident and sickness insurance business,

(iii) the amount of policy dividends, to the extent that such dividends were not included under subparagraph (i) or (ii), that will, according to the annual report of the insurer filed with the relevant authority for the year or, where the insurer was throughout the year subject to the supervision of the relevant authority but was not required to file an annual report with the relevant authority for the year, according to its financial statements for the year, as at the end of the year, become payable by the insurer in the immediately following year under its participating life insurance policies,

(iv) a liability (other than a debt referred to in paragraph (h) of the definition "valuation" in this subsection) or a reserve (other than the insurer's investment valuation reserve) as reported by the insurer in its annual report for the year to the relevant authority or, where the insurer was throughout the year subject to the supervision of the relevant authority but was not required to file an annual report with the relevant authority for the year, in its financial statements for the year, that was incurred or provided for in the course of carrying on the insurer's property and casualty insurance business in Canada except to the extent those amounts are already included under subparagraph (ii),

(v) a debt (other than a debt referred to in paragraph (h) of the definition "valuation" in this subsection) owing by the insurer at that time that was incurred in the course of carrying on an insurance business (other than a property and casualty insurance business) in Canada, except to the extent those amounts are already included under subparagraph (i), (i.1) or (iii), or

(vi) the amount that is the greater of

(A) the amount, if any, by which the aggregate of

(I) the insurer's surplus funds derived from operations computed as at the end of the immediately preceding taxation year, and

(II) the aggregate of amounts in respect of which the insurer has made an election under subsection 219(4) or (5.2) of the Act, each of which is an amount included in the aggregate determined in respect of the insurer under subparagraph 219(4)(a)(i.1) of the Act at the end of the immediately preceding taxation year

exceeds

(III) the aggregate of amounts determined in respect of the insurer under subparagraphs 219(4)(a)(ii), (iii), (iv) and (v) of the Act, as at the end of the taxation year, and

(B) the insurer's attributed surplus for the year,

exceeds the aggregate of

(vii) the aggregate valuation of all non-segregated property referred to in paragraph 2400(1)(e) at the end of the year in respect of all the insurer's insurance businesses carried on in Canada other than property that is

(A) money, or

(B) a balance standing to the insurer's credit as or on account of amounts deposited with a corporation authorized to accept deposits or to carry on the business of offering to the public its services as a trustee, and

(viii) the aggregate amount of the insurer's deferred acquisition expenses in respect of its property and casualty insurance business in Canada reported by the insurer in its annual report for the year to the relevant authority or, where the insurer was throughout the year subject to the supervision of the relevant authority but was not required to file an annual report with the relevant authority for the year, in its financial statements for the year;

Related Provisions: ITA 257 — Negative amounts in formulas; Reg. 2405(5) — Mark-to-market rule to be ignored; Reg. 2406 — Reg. 2405 does not apply as of 1999.

"Canadian investment fund for the year", for a taxation year in respect of a life insurer resident in Canada and a non-resident insurer, means the amount determined under section 2412;

Related Provisions: Reg. 2406 — Reg. 2405 does not apply as of 1999.

"Canadian investment property" of an insurer for a taxation year means an investment property (unless the insurer is a non-resident insurer and it is established by the insurer that the investment property is not effectively connected with its Canadian insurance businesses) that is

(a) land or depreciable property situated in Canada and, for that purpose, depreciable property of an insurer leased by a person resident in Canada for use inside and outside of Canada shall be deemed to be depreciable property situated in Canada,

(b) a Canadian equity property,

(c) a Canadian resource property,

(d) a mortgage, an agreement of sale or any other form of indebtedness in respect of property referred to in paragraph (a),

(e) an amount in Canadian currency standing to the insurer's credit as or on account of amounts deposited with a corporation resident in Canada authorized to accept deposits or to carry on the business of offering to the public its services as a trustee,

(f) a bond, debenture or other form of indebtedness (other than a property described in paragraph (d) or (e)) in Canadian currency issued by

(i) a person resident in Canada, a Canadian partnership or a partnership an interest in which is an investment property described in paragraph (g),

(ii) the Government of Canada,

(iii) the government of a province of Canada, or

(iv) any other political subdivision of Canada or of any province of Canada, or

(g) a property (to the extent it is not a property described in paragraph (b)) that is

(i) a share of a designated corporation resident in Canada,

(ii) an interest in a partnership, or

(iii) an interest in a trust resident in Canada,

where not less than 75 per cent of the aggregate value for the year of all property of the corporation, partnership or trust, as the case may be, is in respect of property each of which is property described in paragraphs (a) to (f);

Related Provisions: Reg. 2406 — Reg. 2405 does not apply as of 1999.

"Canadian reserve liabilities" of an insurer, as at the end of a taxation year, means the aggregate amount of the insurer's liabilities and reserves (other than liabilities and reserves in respect of amounts payable out of segregated funds) in respect of its insurance policies in Canada, as determined for the purposes of the relevant authority at the end of the year or as would be determined at that time if the relevant authority required such a determination;

Related Provisions: Reg. 2406 — Reg. 2405 does not apply as of 1999.

"designated corporation", in respect of an insurer, at any time in a taxation year, means a corporation in respect of which the insurer or the insurer and persons or partnerships that do not deal at arm's length with the insurer held, at any time in the year, shares that represented 30 per cent or more of the common shares of the corporation outstanding at that time;

Related Provisions: Reg. 2406 — Reg. 2405 does not apply as of 1999.

"equity limit for the year", for a taxation year, means

(a) in respect of a life insurer resident in Canada, the greater of

(i) that proportion of the aggregate value for the year of all the insurer's equity property that

(A) the amount, if any, by which the insurer's mean Canadian reserve liabilities exceed the aggregate of the insurer's mean policy loans for the year and 1/2 of the aggregate of outstanding premiums of the insurer in respect of its insurance businesses in Canada as determined for the purposes of the relevant authority at the end of the year and the immediately preceding taxation year,

is of

(B) the amount, if any, by which the insurer's mean total reserve liabilities exceed the aggregate of the insurer's mean policy loans and foreign policy loans for the year and 1/2 of the aggregate of outstanding premiums of the insurer in respect of its insurance businesses as determined for the purposes of the relevant authority at the end of the year and the immediately preceding taxation year, and

(ii) 8 per cent of the insurer's Canadian investment fund for the year,

(b) in respect of a non-resident insurer (other than a life insurer), 1/4 of the aggregate of

(i) the amount, if any, by which the insurer's mean Canadian reserve liabilities exceed 1/2 of the aggregate of the amounts of the insurer's deferred acquisition expenses and premiums receivable at the end of the year and the immediately preceding year to the extent that those amounts were included in the insurer's Canadian reserve liabilities for those years in respect of the insurer's business in Canada as determined for the purposes of the relevant authority, and

(ii) the insurer's property and casualty surplus for the year, and

(c) in respect of a non-resident life insurer, the aggregate of

(i) the insurer's life equity limit for the year, and

(ii) 1/4 of the aggregate of

(A) the amount, if any, by which the insurer's mean Canadian reserve liabilities for the year exceed 1/2 of the aggregate of the amounts of the insurer's deferred acquisition expenses and premiums receivable at the end of the year and the immediately preceding year in respect of the insurer's business in Canada as determined for the purposes of the relevant authority to the extent that those amounts were included in the insurer's Canadian reserve liabilities for those years (determined on the assumption that the only insurance business carried on in Canada by the insurer was a property and casualty insurance business), and

(B) the insurer's property and casualty surplus for the year;

Related Provisions: Reg. 2406 — Reg. 2405 does not apply as of 1999.

"equity property" means

(a) a share of the capital stock of, or an income bond, income debenture, small business development bond or small business bond issued by, a person (other than a designated corporation) or partnership, as the case may be, or

(b) that proportion of shares of the capital stock of a designated corporation or an interest in a partnership or trust that

(i) the aggregate value for the year of equity property owned by the designated corporation or the partnership or trust, as the case may be,

is of

(ii) the aggregate value for the year of all property owned by the designated corporation or the partnership or trust, as the case may be;

Related Provisions: Reg. 2406 — Reg. 2405 does not apply as of 1999.

"foreign policy loan" means an amount advanced at a particular time by an insurer to a policyholder in accordance with the terms and conditions of a life insurance policy, other than a life insurance policy in Canada;

Related Provisions: Reg. 2406 — Reg. 2405 does not apply as of 1999.

"gross Canadian life investment income" of a life insurer for a taxation year means the amount, if any, by which the aggregate of

(a) the insurer's gross investment revenue for the year to the extent that that revenue is from non-segregated property of the insurer used by it in the year in, or held by it in the year in the course of, carrying on its life insurance business in Canada,

(b) the amount included in computing the insurer's income for the year under paragraph 138(9)(b) of the Act,

(c) the amounts included in computing the insurer's income for the year under paragraphs 138(4)(b) and (c) of the Act,

(d) that portion of the amount included in computing the insurer's income for the year under paragraph 12(1)(d) of the Act in respect of amounts deducted in computing the insurer's income under paragraph 20(1)(l) of the Act in the immediately preceding taxation year in respect of a Canada security (within the meaning assigned by paragraph 138(12)(c) [138(12)"Canada security"] of the Act) owned by the insurer,

(e) the amount included in computing the insurer's gains for the year from the disposition of property (other than a Canada security or capital property),

(f) the amount included in computing the insurer's taxable capital gains for the year from the disposition of property, and

(g) the amount deducted in computing the insurer's income for the immediately preceding taxation year under paragraph 138(3)(c) of the Act (as it read in its application to taxation years commencing before June 17, 1987 or ending before 1988),

exceeds the aggregate of

(h) the amounts deducted in computing the insurer's income for the year under paragraphs 138(3)(b) and (d) of the Act,

(i) the amount deducted in computing the insurer's income for the year under paragraph 20(1)(l) of the Act in respect of a Canada security (within the meaning assigned by paragraph 138(12)(c) [138(12)"Canada security"] of the Act) owned by the insurer,

(j) the amount included in computing the insurer's losses for the year from the disposition of property (other than a Canada security or capital property), and

(k) the amount included in computing the insurer's allowable capital losses for the year from the disposition of property;

Proposed Amendment — Reg. 2405(3)"gross Canadian life investment income" [temporary]

"gross Canadian life investment income" of a life insurer for a taxation year means the amount, if any, by which the aggregate of

(a) the insurer's gross investment revenue for the year, to the extent that the revenue is from Canadian business property of the insurer for the year in respect of the insurer's life insurance business,

(b) the amount included in computing the insurer's income for the year under paragraph 138(9)(b) of the Act,

(c) [Proposed repeal]

(d) the portion of the amount deducted under paragraph 20(1)(l) of the Act in computing the insurer's income for the preceding taxation year that was in respect of Canadian business property of the insurer for that year in respect of the insurer's life insurance business,

(d.1) the total of all amounts each of which is an amount included under section 142.4 of the Act in the insurer's income for the year in respect of a property disposed of by the insurer that was, in the taxation year of disposition, a Canadian business property of the insurer for that year in respect of the insurer's life insurance business,

(e) the total of all amounts each of which is the insurer's gain for the year from the disposition of a Canadian business property of the insurer for the year in respect of the insurer's life insurance business, other than a capital property or a property in respect of which section 142.4 of the Act applies, and

(f) the total of all amounts each of which is the insurer's taxable capital gain for the year from the disposition of a Canadian business property of the insurer for the year in respect of the insurer's life insurance business,

(g) [Proposed repeal]

exceeds the aggregate of

(h) [Proposed repeal]

(i) the portion of the amount deducted under paragraph 20(1)(l) of the Act in computing the insurer's income for the year that is in respect of debt obligations that are Canadian business property of the insurer for the year in respect of the insurer's life insurance business,

(i.1) the total of all amounts each of which is an amount deductible under section 142.4 of the Act in computing the insurer's income for the year in respect of a property disposed of by the insurer that was, in the taxation year of disposition, a Canadian business property of the insurer for that year in respect of the insurer's life insurance business,

(j) the total of all amounts each of which is the insurer's loss for the year from the disposition of a Canadian business property of the insurer for the year in respect of the insurer's life insurance business, other than a capital property or a property in respect of which section 142.4 of the Act applies, and

(k) the total of all amounts each of which is the insurer's allowable capital loss for the year from the disposition of a Canadian business property of the

insurer for the year in respect of the insurer's life insurance business;

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsecs. 3(1) to (9), will amend paras. (a), (d), (e), (f), (i), (j) and (k) of the definition "gross Canadian life investment income" in subsec. 2405(3) to read as above, will add paras. (d.1) and (i.1), and will repeal paras. (c), (g) and (h); para. (a) applicable (see also Reg. 2406) to taxation years that end after June 1, 1995, paras. (c), (d), (g), (h) and (i) applicable to taxation years that begin after February 22, 1994, paras. (d.1) and (e) applicable to dispositions of property that occur after February 22, 1994 except that in its application to property disposed of in a taxation year that ends on or before June 1, 1995, para. (e) shall be read as follows:

> (e) the amount included in computing the insurer's gains for the year from the disposition of property (other than capital property or property in respect of which section 142.4 of the Act applies),

para. (f) applicable to taxation years that end after October 30, 1994 except that in its application to property disposed of in a taxation year that ends on or before June 1, 1995, para. (f) shall be read as follows:

> (f) the amount included in computing the insurer's taxable capital gains for the year from the disposition of property (other than an amount included because of subsection 142.5(7)) of the Act),

paras. (i.1) and (j) applicable to dispositions of property that occur after February 22, 1994 except that in its application to property disposed of in a taxation year that ends on or before June 1, 1995, para. (j) shall be read as follows:

> (j) the amount included in computing the insurer's losses for the year from the disposition of property (other than capital property or property in respect of which section 142.4 of the Act applies),

para. (k) applicable to taxation years that end after October 30, 1994 except that in its application to property disposed of in a taxation year that ends on or before June 1, 1995, para. (k) shall be read as follows:

> (k) the amount included in computing the insurer's allowable capital losses for the year from the disposition of property (other than an amount included because of subsection 142.5(6)) of the Act);

Technical Notes: Subsection 2405(3) defines a number of expressions used in Part XXIV.

The expression "gross Canadian life investment income" is defined for the purpose of section 2402, which contains rules for determining an insurer's income for a year from carrying on its participating life insurance business in Canada. Several amendments are made to this definition:

- Paragraph (a) is amended to use the newly-defined term "Canadian business property", which is defined in subsection 2405(3). Gross investment revenue from such property held in respect of an insurer's life insurance business is included by paragraph (a) in determining the insurer's gross Canadian life investment income. This amendment applies to taxation years that end after June 1, 1995.
- Paragraph (c) is repealed. This paragraph includes, in determining an insurer's gross Canadian life investment income, the amounts included in the insurer's income by paragraphs 138(4)(b) and (c) of the Act (profit on disposition of a Canada security, and amortization of discount on such a security). This amendment is consequential on the repeal of paragraphs 138(4)(b) and (c).
- Paragraphs (d) and (i), which deal with doubtful debt reserves, are amended as a consequence of the repeal of the definition of "Canada security" in subsection 138(12) of the Act. The amended paragraphs refer to debt obligations that are "Canadian business property" of the insurer in respect of the insurer's life insurance business.
- New paragraph (d.1) includes in an insurer's gross Canadian life investment income the amounts that are included in the insurer's income by section 142.4 of the Act in respect of property disposed of by the insurer that was "Canadian business property" of the insurer in respect of its life insurance business. New paragraph (i.1) is a corresponding rule for deductions. New section 142.4 of the Act contains rules for the measurement and the timing of recognition of gains and losses from the disposition of specified debt obligations.
- Paragraph (e), which includes certain non-capital gains in an insurer's gross Canadian life investment income, is amended to exclude from its scope property in respect of which section 142.4 of the Act applies. Gains from the disposition of this property are taken into account by new paragraph (d.1). Paragraph (e) is also amended, for dispositions of property in taxation years ending after June 1, 1995, to clarify that it applies only to the property of an insurer's Canadian life insurance business. Similar changes are made to the rule in paragraph (j) for certain non-capital losses.
- Paragraph (f), which includes an insurer's taxable capital gains in its gross Canadian life investment income, is amended so that it does not include amounts deemed by subsection 142.5(7) of the Act to be taxable capital gains of the insurer. That subsection contains a transition rule relating to the introduction of the mark-to-market requirement. Paragraph (f) is also amended, for dispositions of property in taxation years ending after June 1, 1995, to clarify that it applies only to the property of an insurer's Canadian life insurance business. Similar changes are made to the rule in paragraph (k) for allowable capital losses.
- Paragraph (g) is repealed since the provision to which it refers — paragraph 138(3)(c) of the Act (investment reserve) — was repealed in the tax reform of 1987.
- Paragraph (h) is repealed. This paragraph deducts in determining an insurer's gross Canadian life investment income the amounts deducted under paragraphs 138(3)(b) and (d) of the Act (loss on disposition of a Canada security, and amortization of premium on such a security) in computing an insurer's income. This amendment is consequential on the repeal of paragraphs 138(3)(b) and (d).

Related Provisions: Reg. 2406 — Reg. 2405 does not apply as of 1999.

"insurance policy in Canada", in respect of an insurer, means, in the case of

(a) a life insurance policy, a life insurance policy in Canada,

(b) a fire insurance policy, a policy issued or effected upon property situated in Canada, and

(c) any other class of insurance policy, a policy where the risks covered by the policy were ordinarily within Canada at the time the policy was issued or effected;

Related Provisions: Reg. 2406 — Reg. 2405 does not apply as of 1999.

"investment property" of an insurer for a taxation year means non-segregated property that is

(a) property acquired by the insurer for the purpose of earning gross investment revenue, other than property that is

(i) property, a portion of which is investment property pursuant to paragraph (b) or (c),

(ii) a share of a designated corporation,

(iii) a debt owing to the insurer by a designated corporation,

(iv) an interest in a partnership, or

(v) an interest in a trust,

(b) the portion, if any, of property of the insurer (other than property a portion of which is investment property pursuant to paragraph (c)) that is

(i) land,

(ii) depreciable property, or

(iii) property that would have been depreciable property if it had been situated in Canada and used in the year in, or held in the year in the course of, carrying on an insurance business in Canada,

that

(iv) the use made of the property in the year for the purpose of earning gross investment revenue therefrom

is of

(v) the whole use made of the property in the year,

(c) the portion, if any, of property of the insurer that is not used in the year for the purpose of earning gross investment revenue that is

(i) land,

(ii) depreciable property, or

(iii) property that would be depreciable property if it had been situated in Canada and used in the year in, or held in the year in the course of, carrying on an insurance business in Canada,

to the extent that the property is held for resale or development or is expected to be used in a subsequent taxation year for the purpose of earning gross investment revenue, or

(d) property of the insurer that is

(i) a share of, or a debt owing to the insurer by a designated corporation other than a corporation that carries on a business of insurance, banking or offering its services to the public as a trustee or whose principal business is the making of loans,

(ii) an interest in a partnership, or

(iii) an interest in a trust,

if

(iv) the aggregate value for the year of all investment property of the corporation, partnership or trust, as the case may be, is not less than 75 per cent of the aggregate value for the year of all its property, and

(v) the gross investment revenue for the year from the investment property referred to in subparagraph (iv) (other than gross investment revenue from persons with whom the corporation, partnership or trust, as the case may be, did not deal at arm's length) is not less than 90 per cent of the gross revenue for the year of the corporation, partnership or trust, as the case may be,

assuming for the purposes of subparagraphs (iv) and (v) that the definition "gross investment revenue" in paragraph 138(12)(e) [138(12)"gross investment revenue"] of the Act and this definition apply to a corporation, partnership or trust, referred to in those subparagraphs, as though the corporation, partnership or trust, as the case may be, were an insurer;

Related Provisions: Reg. 2406 — Reg. 2405 does not apply as of 1999.

"life equity limit" of a non-resident life insurer for a taxation year means

(a) where the insurer makes an election in respect of its life surplus factor for the year in the manner described in subsection 2401(1), the amount that would have been the insurer's equity limit for the year if the insurer had been a life insurer resident in Canada registered under the *Canadian and British Insurance Companies Act* to carry on an insurance business in Canada and it had carried on no other than life insurance business other than an accident and sickness insurance business,

(b) where the insurer does not make an election referred to in paragraph (a) in respect of the year, but

(i) has made such an election in respect of one of the four immediately preceding taxation years, and

(ii) the insurer's life surplus factor for the year is not determined pursuant to paragraph (c) of the definition "life surplus factor" in this subsection,

the amount that would have been the insurer's equity limit for the year if the insurer had been a life insurer resident in Canada registered under the *Canadian and British Insurance Companies Act* to carry on an insurance business in Canada and it had carried on no other than life insurance business other than an accident and sickness insurance business, using the amount, in respect of the most recent taxation year for which such an election was made, determined under subparagraph (a)(i) of the definition, in this subsection, "equity limit for the year",

(c) in any other case, 8 per cent of the amount of the insurer's Canadian investment fund for the year;

Related Provisions: Reg. 2406 — Reg. 2405 does not apply as of 1999.

"life surplus factor" of a non-resident life insurer for a taxation year means

(a) subject to subsection 2401(2), where the insurer elects in respect of the year in the manner described in subsection 2401(1), the proportion (expressed as a percentage) that

(i) the amount, if any, by which

(A) the amount that would have been the insurer's Canadian investment fund for the year if the insurer had been a life insurer resident in Canada registered under the *Canadian and British Insurance Companies Act* to carry on an insurance business in Canada and it had carried on no other than life insurance business other than an accident and sickness insurance business

exceeds

(B) the amount, if any, by which ½ of the aggregate of

(I) the aggregate of the amounts described in subparagraphs (b)(i), (i.1), (ii), (iii) and (v) of the definition "Canadian investment fund" in this subsection in respect of a non-resident insurer, as at the end of the year, and

(II) the aggregate of those amounts as at the end of the immediately preceding taxation year,

exceeds the aggregate value for the year of all the insurer's non-segregated property referred to in paragraph 2400(1)(e) in respect of all the insurer's insurance businesses (other than its property and casualty insurance business) carried on in Canada, other than property that is

(III) money, or

(IV) a balance standing to the insurer's credit as or on account of amounts deposited with a corporation authorized to accept deposits or to carry on the business of offering to the public its services as a trustee

is of

(ii) the amount determined under clause (i)(B),

(b) where the insurer does not make an election referred to in paragraph (a) in respect of the year, but

(i) has made such an election in respect of one of the four immediately preceding taxation years, and

(ii) has not, since making the most recent election referred to in subparagraph (i), selected pursuant to this paragraph the percentage referred to in paragraph (c) as its life surplus factor for a year prior to the taxation year,

the percentage, as shall be selected by the insurer, that is the percentage

(iii) determined under paragraph (a) in respect of the most recent taxation year for which the insurer made an election, or

(iv) referred to in paragraph (c), and

(c) in any other case, 10 per cent;

Related Provisions: Reg. 2406 — Reg. 2405 does not apply as of 1999.

"mean amount on deposit" with an insurer for a taxation year in respect of life insurance policies means ½ of the aggregate of

(a) all amounts on deposit with the insurer as at the end of the year in respect of those policies, and

(b) all amounts on deposit with the insurer as at the end of the immediately preceding taxation year in respect of those policies;

Related Provisions: Reg. 2406 — Reg. 2405 does not apply as of 1999.

"mean Canadian reserve liabilities" of an insurer for a taxation year means ½ of the aggregate of

(a) the insurer's Canadian reserve liabilities as at the end of the year, and

(b) the insurer's Canadian reserve liabilities as at the end of the immediately preceding taxation year;

Related Provisions: Reg. 2406 — Reg. 2405 does not apply as of 1999.

"mean maximum tax actuarial reserve", in respect of a particular class of life insurance policies of an insurer for a taxation year, means ½ of the aggregate of

(a) the insurer's maximum tax actuarial reserve for that class of policies for the year, and

(b) the insurer's maximum tax actuarial reserve for that class of policies for the immediately preceding taxation year;

Related Provisions: Reg. 2406 — Reg. 2405 does not apply as of 1999.

"mean policy loans", of an insurer for a taxation year, means ½ of the aggregate of

(a) the insurer's policy loans as at the end of the year, and

(b) the insurer's policy loans as at the end of the immediately preceding taxation year;

Related Provisions: Reg. 2406 — Reg. 2405 does not apply as of 1999.

"mean policy loans and foreign policy loans", of an insurer for a taxation year, means ½ of the aggregate of

(a) the insurer's policy loans and foreign policy loans as at the end of the year, and

(b) the insurer's policy loans and foreign policy loans as at the end of the immediately preceding taxation year;

Related Provisions: Reg. 2406 — Reg. 2405 does not apply as of 1999.

"mean total reserve liabilities" of an insurer for a taxation year means ½ of the aggregate of

(a) the insurer's total reserve liabilities as at the end of the year, and

(b) the insurer's total reserve liabilities as at the end of the immediately preceding taxation year;

Related Provisions: Reg. 2406 — Reg. 2405 does not apply as of 1999.

"property and casualty surplus" of an insurer for a taxation year means the aggregate of

(a) 15 per cent of ½ of the aggregate of

(i) the insurer's unearned premium reserve as at the end of the year, and

(ii) the insurer's unearned premium reserve as at the end of the immediately preceding taxation year,

as reported to the relevant authority in respect of its property and casualty insurance business,

(b) 15 per cent of ½ of the aggregate of

(i) the insurer's provision for unpaid claims and adjustment expenses as at the end of the year, and

(ii) the insurer's provision for unpaid claims and adjustment expenses as at the end of the immediately preceding taxation year,

as reported to the relevant authority in respect of its property and casualty insurance business, and

(c) ½ of the aggregate of

(i) the insurer's investment valuation reserve as at the end of the year, and

(ii) the insurer's investment valuation reserve as at the end of the immediately preceding taxation year,

as reported to the relevant authority in respect of its property and casualty insurance business;

Related Provisions: Reg. 2406 — Reg. 2405 does not apply as of 1999.

"property of the insurer in the course of development" — [Revoked]

"relevant authority" means

(a) the Superintendent of Financial Institutions, if the insurer is required by law to report to the Superintendent of Financial Institutions, or

(b) in any other case, the Superintendent of Insurance or other similar officer or authority of the province under whose laws the insurer is incorporated;

Related Provisions: Reg. 2406 — Reg. 2405 does not apply as of 1999.

"total reserve liabilities" of an insurer, as at the end of a taxation year, means the aggregate amount of the insurer's liabilities and reserves (other than liabilities and reserves in respect of amounts payable out of segregated funds) in respect of all its insurance policies, as determined for the purposes of the relevant authority at the end of the year;

Related Provisions: Reg. 2406 — Reg. 2405 does not apply as of 1999.

"valuation", in respect of a property of an insurer, designated corporation, partnership or trust (in this definition referred to as an "owner") at a particular time, means, in the case of

(a) land, the cost thereof to the owner,

(b) depreciable property of a prescribed class (other than a property referred to in paragraph (f)), the proportion of the owner's undepreciated capital cost at that time of property of the class that

(i) the owner's capital cost of the property

is of

(ii) the owner's capital cost of all property of the class,

(c) property that would have been depreciable property of a prescribed class if it had been situated in Canada and used in the year in, or held in the year in the course of, carrying on an insurance business in Canada, the amount, if any, by which

(i) the owner's capital cost of the property

exceeds

(ii) the amount that would have been the total depreciation allowed to the owner before the particular time in respect of the property if it had been the owner's only depreciable property of the class and the owner had claimed the maximum amount allowable under paragraph 20(1)(a) of the Act in re-

spect of property of that class for each year in which the owner owned the property,

(d) a share of a corporation (other than a designated corporation), the cost thereof to the owner,

(e) a bond, debenture, mortgage, hypothec or agreement of sale (other than a property referred to in paragraph (f)), the book value thereof in the accounts of the owner as determined for the purposes of the relevant authority or that would have been so determined if the owner had been a life insurer resident in Canada and registered under the *Canadian and British Insurance Companies Act* to carry on an insurance business in Canada,

(e.1) a balance standing to the owner's credit as or on account of amounts deposited with a corporation authorized to accept deposits or to carry on the business of offering to the public its services as a trustee, the amount thereof,

(f) a property acquired and disposed of in a taxation year, the cost thereof to the owner, and

(g) a property (other than a property referred to in any of paragraphs (a) to (f)), the maximum value of the property as determined for the purposes of the relevant authority or that would have been so determined if the owner had been a life insurer resident in Canada and registered under the *Canadian and British Insurance Companies Act* to carry on an insurance business in Canada,

minus

(h) in respect of a particular property referred to in any of paragraphs (a) to (g), the amount of any debt that was incurred or assumed by the owner to acquire that particular property and that was owing by the owner at that time;

Related Provisions: Reg. 2406 — Reg. 2405 does not apply as of 1999.

"value for the year", in respect of a property of an insurer, designated corporation, partnership or trust (in this definition referred to as an "owner") for a taxation year, means, in the case of

(a) a property that is a mortgage, a hypothec, an agreement of sale or an investment property that is a balance standing to the insurer's credit as or on account of amounts deposited with a corporation authorized to accept deposits or to carry on the business of offering to the public its services as a trustee, the amount, if any, by which

(i) the amount obtained when the gross investment revenue for the year from the property is divided by the average rate of interest earned by the owner (expressed as an annual rate) on the amortized cost of the property during the year if that rate of interest were expressed as a fraction

exceeds

(ii) the amount obtained when the interest paid or payable for the year on a debt incurred for the purposes of acquiring the property is divided by the average rate of interest paid or payable by the owner (expressed as an annual rate) on the debt for the year if that rate of interest were expressed as a fraction,

(b) a property (other than a property referred to in paragraph (a)) that was not owned by the owner throughout the year, the proportion of

(i) the valuation of the property as at the end of the immediately preceding taxation year, where the property was owned by the owner at that time, and

(ii) the valuation of the property, where it was acquired by the owner during the year,

that

(iii) the number of days that the property may reasonably be considered to have been owned by the owner during the taxation year

is of

(iv) the number of days in the taxation year, and

(c) a property (other than a property referred to in paragraph (a) or (b)), ½ of the aggregate of

(i) the valuation of the property as at the end of the year, and

(ii) the valuation of the property as at the end of the immediately preceding taxation year.

Related Provisions: Reg. 2406 — Reg. 2405 does not apply as of 1999.

Related Provisions [Reg. 2405(3)]: Reg. 2405(5) — Mark-to-market rule to be ignored.

History: Para. (d) of the definition "Canadian investment property" in subsec. 2405(3) amended by P.C. 1994-1817, para. 62(e), November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Para. (g) of "gross Canadian life investment income" amended by P.C. 1992-2335, Sch. II, s. 5, November 19, 1992, *Canada Gazette*, Part II, December 16, 1992, applicable to taxation years beginning after June 17, 1987 and ending after 1987.

"Canadian equity property", "Canadian investment fund", "Canadian investment fund for the year", "Canadian reserve liabilities", "designated corporation", "equity limit for the year", "equity property", "gross Canadian life investment income", "investment property", "life equity limit", "life surplus factor", "relevant authority", "valuation", "value for the year" amended; "Canadian investment property", "foreign policy loan", "mean policy loans", "mean policy loans and foreign policy loans" added; and "property of the insurer in the course of development" revoked, by P.C. 1990-2002, s. 8, September 20, 1990, *Canada Gazette*, Part II, October 10, 1990, applicable in respect of taxation years beginning after June 17, 1987 and ending after 1987, except that

(a) the amendments to "Canadian reserve liabilities" and to subparas. (b)(iii), (iv) and (viii) of "Canadian investment fund" are applicable in respect of 1987 *et seq.*

"Canadian investment fund" in respect of a life insurer resident in Canada and "Canadian investment fund" in respect of a non-resident insurer substituted by P.C. 1981-2121, s. 2, July 29, 1981, *Canada Gazette*, Part II, August 12, 1981, effective December 12, 1979.

That portion of "life equity limit" preceding para. (c) and following subpara. (b)(ii) substituted by P.C. 1980-2081, s. 6, July 31, 1980, *Canada Gazette*, Part II, August 13, 1980, effective in respect of 1978 *et seq.*

"Equity limit for the year", subpara. (a)(ii) corrected by *Canada Gazette*, Part II, July 23, 1980, *errata*.

"Equity limit for the year" substituted, "mean total reserve liabilities" added by P.C. 1980-1484, s. 4, June 5, 1980, *Canada Gazette*, Part II, June 25, 1980, effective for 1978 *et seq.*

"Gross Canadian life investment income", preceding para. (a) and "investment property", para. (d) and "valuation" corrected by *Canada Gazette*, Part II, October 24, 1979, *errata*.

(4) For the purposes of the definition in subsection (3), "Canadian investment fund" in respect of a life insurer resident in Canada, notwithstanding the definitions "Canadian reserve liabilities" and "total reserve liabilities" in that subsection, the insurer shall determine its liabilities and reserves in respect of its insurance policies outside Canada in a manner consistent with that used in determining its liabilities and reserves in respect of its insurance policies in Canada.

Related Provisions: Reg. 2406 — Reg. 2405 does not apply as of 1999.

Proposed Addition — Reg. 2405(5) [temporary]

(5) For the purposes of subsection (3), the cost of a property shall be determined without regard to subsection 142.5(2) of the Act.

Related Provisions: Reg. 2406 — Reg. 2405 does not apply as of 1999.

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsec. 3(11), will add subsec. 2405(5), applicable to taxation years that end after October 30, 1994. Reg. 2405 no longer applies as of 1999; see Reg. 2406.

Technical Notes: New subsection 2405(5) contains a rule for the purposes of the definitions in subsection 2405(3). It provides that the cost of property is to be determined without regard to the mark-to-market requirement in subsection 142.5(2) of the Act. Thus, the cost of mark-to-market property will not change each year for the purpose of the definitions in subsection 2405(3). This rule is relevant for determining the "valuation" of shares, and hence the "value for the year" of shares. As a consequence of this rule, the original cost of shares to an insurer will generally be used in measuring the Canadian investment fund, designating property, and determining any additional investment revenue prescribed by section 2411.

Definitions [Reg. 2405]: "allowable capital loss" — ITA 38(b), 248(1); "amortized cost", "amount" — ITA 248(1); "arm's length" — ITA 251(1); "attributed surplus for the year" — Reg. 2405(3); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canada security" — ITA 138(12); "Canadian business property", "Canadian equity property" — Reg. 2400(1), 2405(3); "Canadian investment fund for the year" — Reg. 2405(3); "Canadian partnership" — ITA 102, 248(1); "Canadian reserve liabilities" — Reg. 2400(1), 2405(3); "Canadian resource property" — ITA 66(15), 248(1); "capital property" — ITA 54, 248(1); "common share" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "depreciable property" — ITA 13(21), 248(1); "designated corporation" — Reg. 2405(3); "dividend" — ITA 248(1); "equity limit for the year" — Reg. 2405(3); "equity property", "foreign policy loan" — Reg. 2400(1), 2405(3); "gross investment revenue" — ITA 138(12), Reg. 2405(1); "gross revenue" — ITA 248(1); "immediately preceding taxation year" — Reg. 2409(1), (4); "income bond", "income debenture", "insurance policy", "insurer" — ITA 248(1); "investment property" — Reg. 2400(1), 2405(3), 2406; "life equity limit" — Reg. 2405(3); "life insurance business" — ITA 248(1); "life insurance policy", "life insurance policy in Canada" — ITA 138(12), Reg. 2405(1); "life insurer" — ITA 248(1); "life surplus factor" — Reg. 2405(3); "maximum tax actuarial reserve" — ITA 138(12), Reg. 2405(1); "mean Canadian reserve liabilities", "mean policy loans" — Reg. 2400(1), 2405(3); "mean policy loans and foreign policy loans", "mean total reserve liabilities" — Reg. 2405(3); "non-resident" — ITA 248(1); "non-segregated property" — ITA 138(12), Reg. 2405(1); "officer" — ITA 248(1); "other than life insurance business" — Reg. 2400(2); "outstanding premiums" — Reg. 2400(1); "owner" — Reg. 2405(3); "participating life insurance policy" — ITA 138(12), Reg. 2405(1); "person" — ITA 248(1); "policy loan" — ITA 138(12), Reg. 2405(1); "prescribed", "property" — ITA 248(1); "property and casualty surplus" — Reg. 2400(1), 2405(3); "province" — *Interpretation Act* 35(1); "relevant authority" — Reg. 2405(3); "resident in Canada" — ITA 250; "segregated fund" — ITA 138.1(1), Reg. 2400(1), 2405(1); "share" — ITA 248(1); "small business bond" — ITA 15.2(3), 248(1); "small business development bond" — ITA 15.1(3), 248(1); "surplus funds derived from operations" — ITA 138(12), Reg. 2405(1); "taxable capital gain" — ITA 38(a), 248(1); "taxation year" — ITA 249; "total depreciation" — ITA 13(21), Reg. 2405(1); "total reserve liabilities" — Reg. 2405(3); "trust" — ITA 104(1), 248(1), (3); "undepreciated capital cost" — ITA 13(21), 248(1); "valuation" — Reg. 2405(3); "value" — Reg. 2400(1); "value for the year" — Reg. 2405(3).

2406. [Application of Reg. 2404, 2405] — Sections 2404 and 2405 do not apply to the 1999 and subsequent taxation years.

History: S. 2406 substituted by P.C. 2000-1714, November 30, 2000, *Canada Gazette*, Part II, December 20, 2000, s. 4, applicable to 1999 *et seq.*

Definitions [Reg. 2406]: "insurance property" — Reg. 2400(1), 2406; "insurer" — ITA 248(1); "investment property" — Reg. 2400(1), 2405(3), 2406; "policy loan" — ITA 138(12), Reg. 2405(1).

2407. 1977 excess policy dividend deduction — For the purposes of paragraph 138(3.1)(b) of the Act, a life insurer's 1977 excess policy dividend is hereby prescribed to be the amount that is the lesser of

(a) the amount, if any, by which

(i) the amount determined under clause 138(3)(a)(iii)(A) of the Act for the insurer's 1977 taxation year (determined without reference to paragraph 138(3.1)(b) of the Act),

exceeds

(ii) the amount determined under clause 138(3)(a)(iii)(B) of the Act for the insurer's 1977 taxation year; and

(b) the amount, if any, by which

(i) the insurer's maximum tax actuarial reserve for its participating life insurance policies in Canada for its 1977 taxation year,

exceeds the aggregate of

(ii) the amount that would have been the insurer's maximum tax actuarial reserve for its participating life insurance policies in Canada for its 1977 taxation year if that reserve had been determined on the basis of the rules applicable to its 1978 taxation year,

(iii) the aggregate of all amounts payable to the insurer in respect of policy loans outstanding at the end of its 1977 taxation year in respect of participating life insurance policies in Canada, and

(iv) the amount, if any, by which

(A) the insurer's maximum tax actuarial reserve for its participating life insurance policies in Canada for its 1968 taxation year,

exceeds the aggregate of

(B) the amount that would have been the insurer's maximum tax actuarial reserve for its participating life insurance policies in Canada for its 1968 taxation year if that reserve had been determined on the basis of the rules applicable to its 1978 taxation year, and

(C) the aggregate of all amounts payable to the insurer in respect of policy loans outstanding at the end of its 1968 taxation year in respect of participating life insurance policies in Canada.

Definitions [Reg. 2407]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "dividend", "insurer", "life insurer" — ITA 248(1); "maximum tax actuarial reserve", "participating life insurance policy", "policy loan" — ITA 138(12), Reg. 2405(1); "prescribed" — ITA 248(1); "taxation year" — ITA 249.

2408. 1977 carryforward deduction — For the purposes of subparagraph 138(4.2)(a)(iv) of the Act, a life insurer's 1977 carryforward deduction is hereby prescribed to be the amount, if any, by which

(a) the aggregate of

(i) the aggregate of amounts, each of which is an amount determined under paragraph 13(23)(b) of the Act in respect of property of a prescribed class of the insurer,

(ii) the aggregate of amounts each of which is a non-capital loss of the insurer for a taxation year ending after 1972 and before 1978 that would have been deductible by the insurer in computing its taxable income for a taxation year ending after 1977 if

the Act were read without reference to subsection 111(7.2) thereof,

(iii) the amount prescribed by section 2407 to be the insurer's 1977 excess policy dividend deduction,

(iv) the amount determined under subparagraph 138(4.2)(b)(ii) of the Act in respect of the insurer,

(v) the amount determined under subparagraph 138(4.2)(c)(ii) of the Act in respect of the insurer,

(vi) the amount, if any, by which

(A) the aggregate of the insurer's maximum tax actuarial reserves for its 1977 taxation year,

exceeds

(B) the aggregate of the amounts deducted by the insurer for its 1977 taxation year under subparagraph 138(3)(a)(i) of the Act, and

(vii) the amount, if any, by which

(A) the maximum amount deductible by the insurer for its 1977 taxation year under subparagraph 138(3)(a)(ii) of the Act,

exceeds

(B) the amount deducted by the insurer for its 1977 taxation year under subparagraph 138(3)(a)(ii) of the Act,

exceeds

(b) the amount, if any, by which the aggregate of

(i) the lesser of

(A) the insurer's accumulated 1968 deficit, and

(B) the amount, if any, determined under subparagraph (vi),

(ii) the aggregate of the insurer's maximum tax actuarial reserves for its 1977 taxation year, other than reserves or any portions thereof in respect of segregated fund policies, and

(iii) the maximum amount deductible by the insurer for its 1977 taxation year under subparagraph 138(3)(a)(ii) of the Act,

exceeds the aggregate of

(iv) the aggregate of the amounts that would have been the insurer's maximum tax actuarial reserves for its 1977 taxation year if those reserves had been determined on the basis of the rules applicable to its 1978 taxation year,

(v) the aggregate of all amounts payable to the insurer in respect of policy loans outstanding at the end of its 1977 taxation year, and

(vi) the amount, if any, by which

(A) the aggregate of the insurer's maximum tax actuarial reserves for its 1968 taxation year, other than reserves or any portions thereof in respect of segregated fund policies,

exceeds the aggregate of

(B) the aggregate of the amounts that would have been the insurer's maximum tax actuarial reserves for its 1968 taxation year if those reserves had been determined on the basis of the rules applicable to its 1978 taxation year, and

(C) the aggregate of all amounts payable to the insurer in respect of policy loans outstanding at the end of its 1968 taxation year.

History: All that portion of s. 2408 preceding para. (a) substituted by P.C. 1980-540, February 20, 1980, *Canada Gazette*, Part II, March 12, 1980, effective in respect of 1978 *et seq.*

Definitions [Reg. 2408]: "accumulated 1968 deficit" — ITA 138(12), Reg. 2405(1); "amount", "dividend", "insurer", "life insurer" — ITA 248(1); "maximum tax actuarial reserve" — ITA 138(12), Reg. 2405(1); "non-capital loss" — ITA 111(8), 248(1); "policy loan" — ITA 138(12), Reg. 2405(1); "prescribed", "property" — ITA 248(1); "segregated fund policies" — ITA 138.1(1), Reg. 2405(1); "taxable income" — ITA 248(1); "taxation year" — ITA 249.

2409. Transitional — (1) For the purposes of this Part, except as expressly otherwise provided therein, where the expression "immediately preceding taxation year" refers to an insurer's 1977 taxation year, this Part shall be read as though the definitions therein applied to the insurer's 1977 taxation year.

(2) For the purposes of applying the provisions of paragraph 2400(1)(c) in respect of the 1978 taxation year of an insurer that was subject to the provisions of subsection 138(9) of the Act in respect of its 1977 taxation year, the following rules apply:

(a) this Part shall be read as though the definitions therein applied to the insurer's 1977 taxation year;

(b) such portion of the insurer's Canadian equity property owned by it at the end of its 1977 taxation year as is designated by the insurer in respect of a particular insurance business, in its return of income required by subsection 150(1) of the Act to be filed for the 1978 taxation year, shall be deemed to be investment property of the prior year in respect of the particular insurance business, but the aggregate valuation as at the end of the insurer's 1977 taxation year of the Canadian equity property so designated in respect of all its insurance businesses carried on in Canada shall not exceed

(i) in the case of a life insurer resident in Canada, or a non-resident life insurer that has made the election referred to in subsection 2401(1) in respect of its 1978 taxation year, that proportion of

(A) the insurer's Canadian investment fund as at the end of its 1977 taxation year (determined on the basis of the rules applicable to its 1978 taxation year),

that

(B) the aggregate valuation of the insurer's equity property as at the end of the insurer's 1977 taxation year

is of

(C) the aggregate valuation of the insurer's investment property as at the end of the insurer's 1977 taxation year,

(ii) in the case of a non-resident life insurer, other than an insurer referred to in subparagraph (i), eight per cent of its Canadian investment fund as at the end of its 1977 taxation year (determined on the basis of the rules applicable to its 1978 taxation year), and

(iii) in any other case, 25 per cent of the insurer's Canadian investment fund as at the end of its 1977 taxation year (determined on the basis of the rules applicable to its 1978 taxation year);

(c) where the insurer made an election under subsection 138(9) of the Act in respect of its 1977 taxation year, investment property (other than a Canadian equity property) owned by the insurer at the end of its

1977 taxation year that was designated in respect of a particular insurance business by the insurer in its return of income for the 1977 taxation year pursuant to paragraph 138(12)(l) of the Act as it read in its application to that year shall be deemed to be insurance property of the particular insurance business in the 1977 taxation year;

(d) where the insurer did not make the election referred to in paragraph (c) and carried on only one insurance business in Canada in its 1977 taxation year, investment property (other than a Canadian equity property) owned by the insurer at the end of its 1977 taxation year that is a specified Canadian asset of the insurer within the meaning of subsection 2405(1) as it read in its application to the 1977 taxation year shall be deemed to be insurance property of that insurance business in the 1977 taxation year; and

(e) where the insurer did not make the election referred to in paragraph (c) and carried on an other than life insurance business in Canada and a life insurance business in Canada in its 1977 taxation year, investment property (other than a Canadian equity property) owned by the insurer at the end of its 1977 taxation year each of which is a specified Canadian asset of the insurer, within the meaning of subsection 2405(1) as it read in its application to the 1977 taxation year, in respect of which the aggregate value for the year in respect of the insurer's 1978 taxation year is equal to the amount, if any, by which

(i) the insurer's mean Canadian reserve liabilities for its 1978 taxation year in respect of its other than life insurance business

exceeds

(ii) the aggregate value for the year in respect of the insurer's 1978 taxation year of its insurance property of its other than life insurance business as determined for the purposes of clause 2400(1)(c)(ii)(C),

shall be deemed to be insurance property of the other than life insurance business in the 1977 taxation year and any other such investment property that is a specified Canadian asset of the insurer shall be deemed to be insurance property of the life insurance business in the 1977 taxation year.

History: Paras. 2409(2)(c) substituted, (d), (e) added, by P.C. 1980-1484, s. 5, June 5, 1980, *Canada Gazette*, Part II, June 25, 1980, effective for 1978.

(3) For the purposes of applying the provisions of section 2402 in respect of the 1978 taxation year of a life insurer, the following rules apply:

(a) for the purposes of subparagraphs 2402(a)(i) and (b)(ii), the insurer's maximum tax actuarial reserve for its 1977 taxation year in respect of participating life insurance policies in Canada shall be deemed to be the amount referred to in subparagraph 2407(b)(ii);

(b) for the purposes of clause 2402(a)(ii)(A), the insurer's maximum tax actuarial reserve for its 1977 taxation year in respect of a class of life insurance policies in Canada shall be deemed to have been determined on the basis of the rules applicable to its 1978 taxation year; and

(c) for the purposes of subparagraph 2402(b)(i), the amount deducted by the insurer under subparagraph 138(3)(a)(iv) of the Act in computing its income for the 1977 taxation year shall be deemed to be the amount that is the aggregate determined under paragraph 138(4.2)(b) of the Act in respect of the insurer.

(4) Except as expressly otherwise provided in this Part, where the expression "immediately preceding taxation year" occurs in a provision of this Part (other than section 2402) and refers to the insurer's 1987 taxation year, the provision shall be read as though the definitions in this Part applied to the insurer's 1987 taxation year.

History: Subsec. 2409(4) added by P.C. 1990-2002, s. 9, September 20, 1990, *Canada Gazette*, Part II, October 10, 1990, applicable in respect of taxation years beginning after June 17, 1987 and ending after 1987.

Definitions [Reg. 2409]: "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian equity property" — Reg. 2400(1), 2405(3); "Canadian investment fund" — Reg. 2400(1), 2405(3), (4); "Canadian reserve liabilities", "equity property" — Reg. 2400(1), 2405(3); "insurance property" — Reg. 2400(1), 2406; "insurer" — ITA 248(1); "investment property" — Reg. 2400(1), 2405(3), 2406; "life insurance business" — ITA 248(1); "life insurance policy" — ITA 138(12), Reg. 2405(1); "life insurer" — ITA 248(1); "maximum tax actuarial reserve" — ITA 138(12), Reg. 2405(1); "mean Canadian reserve liabilities" — Reg. 2400(1), 2405(3); "non-resident" — ITA 248(1); "other than life insurance business" — Reg. 2400(2); "participating life insurance policy" — ITA 138(12), Reg. 2405(1); "particular insurance business" — Reg. 2400(1); "property" — ITA 248(1); "resident in Canada" — ITA 250; "taxation year" — ITA 249; "valuation", "value for the year" — Reg. 2405(3).

2410. Prescribed amount — For the purpose of subsection 138(4.4) of the Act, the amount prescribed in respect of an insurer's cost or capital cost, as the case may be, of a property for a period in a taxation year is the amount determined by the formula

$$[(A \times B) \times C/365] - D$$

where

A is the average annual rate of interest determined by reference to rates of interest prescribed in section 4301 for the months or portion thereof in the period;

B is the amount, if any, by which, the average cost or average capital cost, as the case may be, of the property for the period exceeds the average amount of debt relating to the acquisition of the property outstanding during the period that bears a fair market interest rate and, for this purpose,

(a) the average cost or average capital cost, as the case may be, of a property is the total of

(i) the aggregate of all amounts each of which is the cost or capital cost, as the case may be, if any, immediately before the beginning of the period in respect of the property, and

(ii) the aggregate of all amounts each of which is the proportion of any expenditure incurred on any day in the period in respect of the cost or capital cost, as the case may be, of the property that

(A) the number of days from that day to the end of the period

is of

(B) the number of days in the period, and

(b) the average amount of debt relating to the acquisition of a property is the amount, if any, by which the total of

(i) the aggregate of all amounts each of which is an indebtedness relating to the acquisition that was outstanding at the beginning of the period, and

(ii) the aggregate of all amounts each of which is the proportion of an indebtedness relating to the acquisition that was incurred on any day in the period that

(A) the number of days from that day to the end of the period

is of

(B) the number of days in the period,

exceeds

(iii) the aggregate of all amounts each of which is the proportion of an amount that was paid in respect of any indebtedness referred to in subparagraph (i) or (ii) on any day in the period (other than a payment of interest in respect thereof) that

(A) the number of days from that day to the end of the period

is of

(B) the number of days in the period;

C is the number of days in the period; and

D is the income derived from the property in the period by the person or partnership that owned the property.

Related Provisions: ITA 257 — Negative amounts in formulas.

History: The opening words of subsec. 2410(1) and the descriptions of C and D amended, the descriptions of E and F repealed, subsec. (2) repealed, and subsec. 2410(1) renumbered as s. 2410, by P.C. 2000-1714, November 30, 2000, *Canada Gazette*, Part II, December 20, 2000, s. 5, applicable to 1999 *et seq.*

Definitions [Reg. 2410]: "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian investment fund" — Reg. 2400(1), 2405(3), (4); "Canadian reserve liabilities" — Reg. 2400(1), 2405(3); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "insurance policy", "insurer" — ITA 248(1); "investment property" — Reg. 2400(1), 2405(3), 2406; "life insurer" — ITA 248(1); "month" — *Interpretation Act* 35(1); "outstanding premiums" — Reg. 2400(1); "person" — ITA 248(1); "policy loan" — ITA 138(12), Reg. 2405(1); "prescribed", "property" — ITA 248(1); "relevant authority" — Reg. 2405(3); "taxation year" — ITA 249; "valuation" — Reg. 2405(3).

2411. (1) Subject to subsection (2), the amount prescribed in respect of an insurer for a taxation year for the purposes of paragraph 138(9)(b) of the Act shall be the amount determined by the formula

$$A - (B + B.1 + C)$$

where

A is the positive or negative amount, as the case may be, determined in respect of the insurer for the year under subsection (3);

B is the positive or negative amount, as the case may be, determined in respect of the insurer for the year under subsection (4) in respect of the insurer's investment property for the year that is designated insurance property of the insurer for the year;

B.1 is the positive or negative amount, as the case may be, determined in respect of the insurer for the year under subsection (4.1) in respect of property disposed of by the insurer in a taxation year for which it was designated insurance property of the insurer; and

C is the amount claimed by the insurer for the year in respect of any balance of its cumulative excess account at the end of the year.

Related Provisions: ITA 257 — Negative amounts in formulas.

History: The formula in subsec. 2411(1) amended by P.C. 2000-1714, November 30, 2000, *Canada Gazette*, Part II, December 20, 2000, subsec. 6(1), applicable to 1995 *et seq.*

The description of B amended by the said P.C. 2000-1714, subsec. 6(2), applicable to 1999 *et seq.*

The description of B.1 added to subsec. 2411(1) by the said P.C. 2000-1714, subsec. 6(4), applicable to 1999 *et seq.* By subsec. 6(3), for the 1995 to 1998 taxation years, read B.1 as follows:

B.1 is the positive or negative amount, as the case may be, determined in respect of the insurer for the year under subsection (4.1) in respect of property disposed of by the insurer that was, in the taxation year of disposition, investment property designated by the insurer under subsection 2400(1) as property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada; and

(2) Where an amount computed under subsection (1) in respect of an insurer is a negative amount, that amount shall be deemed to be nil.

(3) The positive or negative amount, as the case may be, determined under this subsection in respect of an insurer for a taxation year shall be

(a) if the value for the year of the insurer's foreign investment property that is designated insurance property for the year is not greater than 5% of the amount of the insurer's mean Canadian investment fund for the year and the insurer so elects in its return of income under Part I of the Act for the year, the amount determined by the formula

$$\left[\frac{(A + A.1)}{B} \times (C + J)\right] + \frac{(D \times F)}{E}$$

or

(b) in any other case, the amount determined by the formula

$$\left(\frac{(A + A.1)}{B} \times C\right) + \left(\frac{D \times F}{E}\right) + \left(\frac{(G + G.1)}{H} \times J\right)$$

where

A is the positive or negative amount, as the case may be, determined in respect of the insurer for the year under subsection (4) in respect of Canadian investment property (other than Canadian equity property) owned by the insurer at any time in the year;

A.1 is the positive or negative amount, as the case may be, determined in respect of the insurer for the year under subsection (4.1) in respect of Canadian investment property (other than Canadian equity property) disposed of by the insurer in the year or preceding year;

B is the total value for the year of Canadian investment property (other than Canadian equity property) owned by the insurer at any time in the year;

Proposed Amendment — Reg. 2411(3)B

B is the total value for the year of Canadian investment property (other than Canadian equity property and any property described in paragraph (i) of the definition "Canadian investment property" in subsection 2400(1)) owned by the insurer at any time in the year;

Application: The February 27, 2004 draft regulations (insurers), subsec. 1(1), will amend the description of B in subsec. 2411(3) to read as above, applicable to taxation years that end after February 27, 2004.

Technical Notes: Subsection 138(9) of the *Income Tax Act* requires resident multinational life insurers and non-resident insurers to include in computing their income from an insurance business carried on in Canada their gross investment revenue for the year derived from their designated insurance property.

Section 2411 prescribes an amount for the purpose of subsection 138(9) of the Act, which ensures that an insurer's net investment revenue from its designated insurance property is not less than the net investment rev-

enue that would be determined from that property if the average rate of return on its designated assets of each class were equal to the average rate of return on all its investment property of that class. This prevents an insurer from understating its Canadian business income by designating assets in respect of its Canadian insurance business that produce lower investment returns than its assets not so designated.

Regulation 2411(3) sets out the computation of the minimum amount of net investment revenue that must be reported by an insurer for a taxation year. In general terms, the minimum net investment revenue is determined by multiplying the net investment revenue earned on the insurer's designated property by the ratio that the insurer's net investment revenue on all its investment property is of the value for the year of all its investment property. That ratio represents the average yield on the insurer's investment property. Multiplying the ratio by the value of the designated insurance property produces the average yield imputed to that property.

The descriptions of B and E in the formula in subsection 2411(3) of the Regulations are amended so that the total value of property described therein is determined without reference to any property described in paragraph (i) of the definition "Canadian investment property" in subsection 2400(1) of the Regulations. The description of H in that formula is similarly amended to exclude any property described in paragraph (e) of the definition "investment property" in subsection 2400(1). As a result, due or accrued income that arises from designated insurance property and that was assumed in computing the Canadian reserve liabilities will not be taken into account in determining the average yield.

C is the total value for the year of the insurer's Canadian investment property for the year (other than Canadian equity property and any property described in paragraph (i) of the definition "Canadian investment property" in subsection 2400(1)) that is designated insurance property of the insurer for the year;

D is the positive or negative amount, as the case may be, determined in respect of the insurer for the year under subsection (4) in respect of Canadian investment property that is Canadian equity property owned by the insurer at any time in the year;

E is the total value for the year of Canadian investment property that is Canadian equity property owned by the insurer at any time in the year;

Proposed Amendment — Reg. 2411(3)E

E is the total value for the year of Canadian investment property that is Canadian equity property (other than any property described in paragraph (i) of the definition "Canadian investment property" in subsection 2400(1)) owned by the insurer at any time in the year;

Application: The February 27, 2004 draft regulations (insurers), subsec. 1(2), will amend the description of E in subsec. 2411(3) to read as above, applicable to taxation years that end after February 27, 2004.

Technical Notes: See under Reg. 2411(3)B above.

F is the total value for the year of the insurer's Canadian investment property (other than any property described in paragraph (i) of the definition "Canadian investment property" in subsection 2400(1)) for the year that is Canadian equity property that is designated insurance property of the insurer for the year;

G is the positive or negative amount, as the case may be, determined in respect of the insurer for the year under subsection (4) in respect of foreign investment property owned by the insurer at any time in the year;

G.1 is the positive or negative amount, as the case may be, determined in respect of the insurer for the year under subsection (4.1) in respect of foreign investment property disposed of by the insurer in the year or a preceding taxation year;

H is the total value for the year of foreign investment property owned by the insurer at any time in the year; and

Proposed Amendment — Reg. 2411(3)H

H is the total value for the year of foreign investment property (other than any property described in paragraph (e) of the definition "investment property" in subsection 2400(1)) owned by the insurer at any time in the year; and

Application: The February 27, 2004 draft regulations (insurers), subsec. 1(3), will amend the description of H in subsec. 2411(3) to read as above, applicable to taxation years that end after February 27, 2004.

Technical Notes: See under Reg. 2411(3)B above.

J is the total value for the year of the insurer's foreign investment property (other than any property described in paragraph (e) of the definition "investment property" in subsection 2400(1)) that is designated insurance property of the insurer for the year.

History: The portion of subsec. 2411(3) before the description of A amended, the descriptions of A.1 and G.1 added, by P.C. 2000-1714, November 30, 2000, *Canada Gazette*, Part II, December 20, 2000, subsecs. 6(5), (6.1), and (8.1), applicable to 1995 *et seq.*

The portion of para. 2411(3)(a) before the formula and the descriptions of C, F and J amended by the said P.C. 2000-1714, subsecs. 6(6)–(8) and (9), applicable to 1999 *et seq.*

(4) The positive or negative amount, as the case may be, determined under this subsection in respect of an insurer for a taxation year in respect of property shall be the amount determined by the formula

$$A - B$$

where

A is the total of the following amounts determined in respect of the property for the year, or that would be determined in respect of the property for the year if the property were designated insurance property of the insurer in respect of an insurance business in Canada for each taxation year in which the property was held by the insurer:

(a) the insurer's gross investment revenue for the year (other than taxable dividends that were or would be deductible in computing the insurer's taxable income for the year under subsection 138(6) of the Act) derived from the property,

Proposed Amendment — Reg. 2411(4)A(a)

Letter from Dept. of Finance, February 11, 2003:

Dear [xxx]

This is in reply to your letter dated January 8, 2003 concerning subsection 2411(4) of the *Income Tax Regulations* (the Regulations).

Subsection 138(9) of the *Income Tax Act* (the Act) requires a resident multinational life insurer or a non-resident insurer to include in its income from an insurance business carried on in Canada its gross investment revenue for the year derived from its designated insurance property. Section 2411 of the Regulations prescribes an amount for this purpose that ensures that the insurer's net investment revenue from its designated insurance property is not less than the net investment revenue that would be determined if the average rate of return on its designated investment property of each class were equal to the average rate of return on all its investment property of that class. This prevents an insurer from understating its Canadian business income by designating investment property in respect of its Canadian insurance business that produce lower investments returns than its investment property that has not been designated.

Subsection 2411(4) of the Regulations provides a formula to determine an insurer's net investment revenue from investment property of a particular class. In determining net investment revenue, the gross investment revenue from the property is included, but taxable dividends that would be

deductible under 138(6) of the Act are excluded. Subsection 138(6) of the Act provides that, in computing the taxable income of a life insurer, taxable dividends received from taxable Canadian corporations can be deducted to the extent they are included in the insurer's income. That subsection does not apply to non-resident non-life insurers, who instead rely on section 112 of the Act to obtain a deduction from income in respect of certain taxable dividends received from taxable Canadian corporations in calculating their taxable income.

In your letter you have recommended that subsection 2411(4) of the Regulations be amended to exclude, from the insurer's gross investment revenue for the year, the taxable dividends that are deductible under section 112 of the Act as well as those taxable dividends that are deductible under subsection 138(6) of the Act from the insurer's income in computing the insurer's taxable income for the year. Without this amendment, gross investment revenue of non-resident non-life insurers would inappropriately include taxable dividends that are deductible under section 112 of the Act rather than subsection 138(6) of the Act from the insurer's income in computing the insurer's taxable income for the year.

We agree with your recommendation and, consequently, we propose to recommend to the Minister of Finance that paragraph 2411(4)[A](a) of the Regulations be amended to exclude from the insurer's gross investment revenue for the year the taxable dividends deductible under section 112 of the Act from the insurer's income in computing the insurer's taxable income for the year.

Further, we intend to recommend that the recommended amendments apply to taxation years that end after 2001.

If the recommendation is accepted we will begin the process of submitting the amendments to the *Income Tax Regulations* for approval and promulgation.

Thank you for bringing this matter to our attention.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

(b) all amounts that were or would be included in computing the insurer's income for the year under paragraph 138(4)(b) and (c) of the Act in respect of the property,

(c) all amounts that were or would be included in computing the insurer's taxable capital gains for the year from the disposition of the property,

(d) all amounts that were or would be included in computing the insurer's gains for the year from the disposition of the property (other than a Canada security or capital property),

(e) all amounts that were or would be included in computing the insurer's income for the year under subsection 13(1) of the Act in respect of the property,

(f) all amounts that were or would be included in computing the insurer's income for the year under paragraph 12(1)(d), (d.1) or (i) of the Act in respect of the property,

(g) all amounts that were or would be included in computing the insurer's income for the year under subsection 59(3.2) or (3.3) of the Act in respect of the property,

(h) all amounts that were or would be included in computing the insurer's income for the year under subsection 14(1) of the Act in respect of the property, and

(i) all other amounts that were or would be included in computing the insurer's income for the year in respect of the property; and

B is the aggregate of the following amounts determined in respect of the property for the year or that would be determined in respect of the property for the year if it were insurance property of the insurer for the year in respect of an insurance business in Canada:

(a) all amounts that were or would be included in computing the insurer's allowable capital losses for the year from the disposition of the property,

(b) all amounts that were or would be included in computing the insurer's losses for the year from the disposition of the property (other than a Canada security or capital property),

(c) all amounts that were or would be deductible in computing the insurer's income for the year under paragraph 138(3)(b) and (d) of the Act in respect of the property,

(d) all amounts that were or would be deductible in computing the insurer's income for the year under paragraph 20(1)(a) of the Act in respect of the capital cost of the property or under paragraphs 20(1)(c) and (d) of the Act in respect of interest paid or payable on borrowed money used to acquire the property,

(e) where any such property is rental property or leasing property (within the meaning assigned by subsections 1100(14) and (17), respectively), all amounts that were or would be deductible in computing the insurer's income for the year in respect of expenses directly related to the earning of rental income derived from the property,

(f) all amounts that were or would be deductible by the insurer in computing the insurer's income for the year under paragraph 20(1)(l), (l.1) or (p) of the Act as reserve or bad debt in respect of the property,

(g) all amounts that were deducted or would be deductible in computing the insurer's income for the year under section 66, 66.1, 66.2 or 66.4 of the Act in respect of the property,

(h) all amounts that were or would be deductible in computing the insurer's income for the year under paragraph 20(1)(b) of the Act in respect of the property, and

(i) all amounts that were or would be deductible in computing the insurer's income for the year in respect of other expenses directly related to the earning of gross investment revenue derived from the property.

Proposed Amendment — Reg. 2411(4)

(4) The positive or negative amount, as the case may be, determined under this subsection in respect of an insurer for a taxation year in respect of property shall be the amount determined by the formula

$$A - B$$

where

A is the total of the following amounts determined in respect of the property for the year, or that would be determined in respect of the property for the year if it were insurance property of the insurer for the year in respect of an insurance business in Canada and if it had been insurance property of the insurer in respect of an insurance business in Canada for each preceding taxation year in which it was held by the insurer:

(a) the insurer's gross investment revenue for the year (other than taxable dividends that were or would be deductible in computing the insurer's

taxable income for the year under subsection 138(6) of the Act) derived from the property,

(b) [Proposed repeal]

(c) all amounts that were or would be included in computing the insurer's taxable capital gains for the year from the disposition of the property,

(c.1) all amounts that were or would be included under paragraph 142.4(5)(e) of the Act in respect of the property in computing the insurer's income for the year,

(d) all amounts that were or would be included in computing the insurer's income for the year as gains from the disposition of such of the property as is not capital property or a specified debt obligation (as defined in subsection 142.2(1) of the Act),

(e) all amounts that were or would be included in computing the insurer's income for the year under subsection 13(1) of the Act in respect of the property,

(f) all amounts that were or would be included in computing the insurer's income for the year under paragraph 12(1)(d), (d.1) or (i) of the Act in respect of the property,

(g) all amounts that were or would be included in computing the insurer's income for the year under subsection 59(3.2) or (3.3) of the Act in respect of the property,

(h) all amounts that were or would be included in computing the insurer's income for the year under subsection 14(1) of the Act in respect of the property, and

(i) all other amounts that were or would be included in computing the insurer's income for the year in respect of the property otherwise than because of subsection 142.4(4) of the Act; and

B is the total of the following amounts determined in respect of the property for the year, or that would be determined in respect of the property for the year if it were insurance property of the insurer for the year in respect of an insurance business in Canada and if it had been insurance property of the insurer in respect of an insurance business in Canada for each preceding taxation year in which it was held by the insurer:

(a) all amounts that were or would be included in computing the insurer's allowable capital losses for the year from the disposition of the property,

(a.1) all amounts that were or would be deductible under paragraph 142.4(5)(f) of the Act in respect of the property in computing the insurer's income for the year,

(b) all amounts that were or would be deductible in computing the insurer's income for the year as losses from the disposition of such of the property as is not capital property or a specified debt obligation (as defined in subsection 142.2(1) of the Act),

(c) [Proposed repeal]

(d) all amounts that were or would be deductible in computing the insurer's income for the year under paragraph 20(1)(a) of the Act in respect of the capital cost of the property or under paragraphs 20(1)(c) and (d) of the Act in respect of interest paid or payable on borrowed money used to acquire the property,

(e) where any such property is rental property or leasing property (within the meaning assigned by subsections 1100(14) and (17), respectively), all amounts that were or would be deductible in computing the insurer's income for the year in respect of expenses directly related to the earning of rental income derived from the property,

(f) all amounts that were or would be deductible by the insurer in computing the insurer's income for the year under paragraph 20(1)(l), (l.1) or (p) of the Act as reserve or bad debt in respect of the property,

(g) all amounts that were deducted or would be deductible in computing the insurer's income for the year under section 66, 66.1, 66.2 or 66.4 of the Act in respect of the property,

(h) all amounts that were or would be deductible in computing the insurer's income for the year under paragraph 20(1)(b) of the Act in respect of the property, and

(i) all amounts that were or would be deductible in computing the insurer's income for the year in respect of other expenses directly related to the earning of gross investment revenue derived from the property.

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsecs. 4(7) to (13), will amend the opening words of the descriptions of A and B in subsec. 2411(4), will amend paras. (d) and (i) of the description of A and (b) of the description of B, will add paras. (c.1) to the description of A and (a.1) to the description of B, and will repeal paras. (b) of the description of A and (c) of the description of B; the opening words of the descriptions of A and B applicable to taxation years that end after June 1, 1995, paras. (b) and (i) of the description of A and para. (c) of the description of B applicable to taxation years that begin after February 22, 1994, paras. (d) and (c.1) to the description of A and paras. (a.1) and (b) to the description of B, applicable to dispositions of property that occur after February 22, 1994.

Technical Notes: Subsection 2411(4) provides that an insurer's net investment revenue from property of a particular class is determined by the formula "A – B", where A is the total of the gross investment revenue from the property, gains from the disposition of the property and other income inclusions in respect of the property, and B is losses from the property and other deductions in respect of the property. The amounts included in A and B in respect of property that has not been designated as property of an insurance business carried on by the insurer in Canada are determined as if the property had been so designated. Several changes are made to the determination of amounts A and B.

The descriptions of both A and B are amended to clarify that, in determining the amounts to be taken into account in respect of property that has not been designated, the property is to be treated as if it had been designated for each year from the time it was acquired.

The other changes to A are as follows:

- Paragraph (b) is repealed. This paragraph includes in A the amounts included in the insurer's income under paragraphs 138(4)(b) and (c) of the Act (profit on disposition of a Canada security, and amortization of discount on such a security). This amendment is consequential on the repeal of paragraphs 138(4)(b) and (c).
- New paragraph (c.1) includes in A the amounts that are included in the insurer's income by subsection 142.4(5) of the Act. That subsection includes in income the gain from the disposition of specified debt obligations after February 22, 1994 where the gain is not required to be amortized.
- Paragraph (d), which includes certain non-capital gains in A, is amended to replace the exclusion for gains from Canada securities by an exclusion for gains from specified debt obligations. Those gains are dealt with, in some cases, by new paragraph (c.1) and in other cases by new subsection 2411(4.1).

- Paragraph (i), which includes in A all amounts that are included in the insurer's income in respect of the property, but that are not specifically referred to in the preceding paragraphs, is amended so that it does not apply to amounts that are included in income by subsection 142.4(4) of the Act. New subsection 2411(4.1), in conjunction with amendments to subsections 2411(1) and (3), provides for subsection 142.4(4) amounts to be taken into account.

The changes to B, in addition to the change described [to A] above, are as follows:

- New paragraph (a.1) includes in B the amounts that are deductible under subsection 142.4(5) of the Act in computing the insurer's income. That subsection provides a deduction for the loss from the disposition of specified debt obligations after February 22, 1994 where the loss is not required to be amortized.
- Paragraph (b), which includes certain non-capital losses in B, is amended to replace the exclusion for losses from Canada securities by an exclusion for losses from specified debt obligations. Those losses are dealt with, in some cases, by new paragraph (a.1) and in other cases by new subsection 2411(4.1).
- Paragraph (c) is repealed. This paragraph includes in B the amounts that are deductible under paragraphs 138(3)(b) and (d) of the Act (loss on disposition of a Canada security, and amortization of premium on such a security). This amendment is consequential on the repeal of paragraphs 138(3)(b) and (d).

Related Provisions: ITA 257 — Negative amounts in formulas.

History: The opening words of the description of A in subsec. 2411(4) amended by P.C. 2000-1714, November 30, 2000, *Canada Gazette*, Part II, December 20, 2000, subsec. 6(11), applicable to 1999 *et seq.* By subsec. 6(10), for taxation years ending after June 1, 1995 to 1999, read:

> A is the total of the following amounts determined in respect of the property for the year, or that would be determined in respect of the property for the year if it were insurance property of the insurer for the year in respect of an insurance business in Canada and if it had been insurance property of the insurer in respect of an insurance business in Canada for each preceding taxation year in which it was held by the insurer:

(4.1) The positive or negative amount, as the case may be, determined under this subsection in respect of an insurer for a taxation year in respect of property disposed of by the insurer in the year or a preceding taxation year is the amount determined by the formula

A – B

where

A is the total of the amounts included under paragraphs 142.4(4)(a) and (c) of the Act in the insurer's income for the year in respect of the property, or that would be so included if the property were designated insurance property of the insurer in respect of an insurance business in Canada for each taxation year in which it was held by the insurer; and

B is the total of the amounts deductible under paragraphs 142.4(4)(b) and (d) of the Act in respect of the property in computing the insurer's income for the year, or that would be so deductible if the property were designated insurance property of the insurer in respect of an insurance business in Canada for each taxation year in which it was held by the insurer.

Related Provisions: ITA 257 — Negative amounts in formulas.

History: Subsec. 2411(4.1) added by P.C. 2000-1714, November 30, 2000, *Canada Gazette*, Part II, December 20, 2000, subsecs. 6(12), (13), the portion before the descriptions of A and B applicable to 1995 *et seq.*, and the descriptions of A and B applicable to 1999 *et seq.* For the 1995 to 1998 taxation years read A and B as:

> A is the total of the amounts included under paragraphs 142.4(4)(a) and (c) of the Act in the insurer's income for the year in respect of the property, or that would be so included if the property had been insurance property of the insurer in respect of an insurance business in Canada for each taxation year in which it was held by the insurer; and
>
> B is the total of the amounts deductible under paragraphs 142.4(4)(b) and (d) of the Act in respect of the property in computing the insurer's income for the year, or that would be so deductible if the property had been insurance property of the insurer in respect of an insurance business in Canada for each taxation year in which it was held by the insurer.

(5) For the purposes of subsection (4), a property that has not been designated by the insurer for the year pursuant to subsection 2400(1) as investment property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada shall be deemed to be a property used by it in the year in, or held by it in the year in the course of, carrying on that insurance business in respect of which the property has been reported by the insurer in its annual report for the year to the relevant authority or, where the insurer was throughout the year subject to the supervision of the relevant authority but was not required to file an annual report with the relevant authority for the year, that insurance business in respect of which the property would have been reported by the insurer in an annual report for the year if it had been so required by the relevant authority.

Proposed Repeal — Reg. 2411(5)

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsec. 4(15), will repeal subsec. 2411(5), applicable to taxation years that begin after February 22, 1994.

Technical Notes: Where property has not been designated as property used or held in a Canadian insurance business, subsection 2411(4) applies on the assumption that the property had been so designated. Subsection 2411(5) contains an additional rule for this purpose. It provides that the property is to be considered property of the business in respect of which it is reported in the insurer's annual report. This rule was required because of the special rules for the tax treatment of debt obligations (referred to as Canada securities) that are property of a life insurance business. Subsection 2411(5) is repealed, for taxation years beginning after February 22, 1994, as a consequence of the repeal of the special rules for Canada securities.

(6) For the purposes of subsection (1), the balance of an insurer's cumulative excess account at the end of a taxation year shall be determined as the amount, if any, by which

> (a) the aggregate of all amounts each of which is a positive amount, if any, determined in respect of each of such of its seven immediately preceding taxation years that began after June 17, 1987 and ended after 1987 by the formula
>
> B – A
>
> where A and B are the amounts determined under subsection (1) in respect of the insurer for such immediately preceding taxation year,

exceeds

> (b) the aggregate of all amounts each of which is an amount claimed by the insurer under subsection (1) in respect of its cumulative excess account for a preceding taxation year that can be attributed to a positive amount determined under paragraph (a) for that year and, for the purpose of this paragraph, a positive amount determined in respect of a taxation year shall be deemed to have been claimed before a positive amount determined in respect of any subsequent taxation year.

Related Provisions: ITA 257 — Negative amounts in formulas.

(7) [Repealed]

History: Subsec. 2411(7) repealed by P.C. 2000-1714, November 30, 2000, *Canada Gazette*, Part II, December 20, 2000, subsec. 6(14), applicable to 1999 *et seq.*

(8) For the purposes of this section, **"foreign investment property"** of an insurer means investment property of the insurer (unless the insurer is a non-resident insurer and it is established by the insurer that the investment property is not effectively connected with its Canadian insurance businesses) that is not Canadian investment property of the insurer.

Definitions [Reg. 2411]: "allowable capital loss" — ITA 38(b), 248(1); "amount" — ITA 248(1); "balance" — Reg. 2411(6); "borrowed money", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canada security" — ITA 138(12); "Canadian equity property" — Reg. 2400(1), 2405(3); "Canadian investment fund for the year" — Reg. 2405(3); "Canadian investment property" — Reg. 2400(1), 2405(3); "capital property" — ITA 54, 248(1); "designated insurance property" — ITA 138(12), 248(1); "disposed" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "foreign investment property" — Reg. 2411(8); "gross investment revenue" — ITA 138(12), Reg. 2405(1); "immediately preceding taxation year" — Reg. 2409(1), (4); "insurance property" — Reg. 2400(1), 2406; "insurer" — ITA 248(1); "investment property" — Reg. 2400(1), 2405(3), 2406; "mean Canadian investment fund" — Reg. 2400(1), 2411(5); "non-resident", "prescribed", "property" — ITA 248(1); "related" — ITA 251(2)–(6); "relevant authority" — Reg. 2405(3); "taxable capital gain" — ITA 38(a), 248(1); "taxable dividend" — ITA 89(1), 248(1); "taxable income" — ITA 248(1); "taxation year" — ITA 249; "value for the year" — Reg. 2405(3), 2411(7)(b).

2412. (1) Mean Canadian investment fund — For the purposes of this Part, the mean Canadian investment fund of an insurer for a particular taxation year is the total of

(a) 50% of the total of

(i) its Canadian investment fund at the end of the particular year, and

(ii) either,

(A) if the insurer is resident in Canada, its Canadian investment fund at the end of its preceding taxation year, or

(B) if the insurer is non-resident, its Canadian investment fund at the end of its preceding taxation year determined as if its attributed surplus for that preceding taxation year were its attributed surplus for the particular year, and

(b) the insurer's cash-flow adjustment for the particular year.

(2) Cash-flow adjustment — An insurer's cash-flow adjustment for a taxation year is the amount equal to

(a) if the year ended two months or more after it began, the positive or negative amount determined by the formula

$$50\% \times (A - B/C)$$

where

A is the total of all amounts each of which is the amount determined under subsection (3) in respect of a full month in the year (or in respect of the part of the month that ends after the last full month in the year, if that part is greater than 15 days),

B is the total of all amounts each of which is the amount determined in respect of a full month in the year (or in respect of the part of the month that ends after the last full month in the year, if that part is greater than 15 days) by the formula

$$D \times (1 + 2E)$$

where

D is the amount determined under subsection (3) in respect of the month or part of the month, and

E is the number of months in the year that ended before the beginning of the month or part of the month, and

C is the number of full months in the year (plus 1, if the year ends more than 15 days after the end of the last full month in the year); and

(b) if the year ended less than two months after it began, nil.

Related Provisions: ITA 257 — Negative amounts in formulas.

(3) Amounts paid and received — The amount determined in respect of an insurer for a particular month or part of a month (in this subsection referred to as a "month") in a taxation year is the positive or negative amount determined by the formula

$$G - H$$

where

G is the total of all amounts each of which is

(a) the amount of a premium or consideration received by the insurer in the month in respect of a contract of insurance (including a settlement annuity) entered into in the course of carrying on its insurance businesses in Canada,

(b) an amount received by the insurer in the month in respect of interest on or a repayment in respect of a policy loan made under a life insurance policy in Canada, or

(c) an amount received by the insurer in the month in respect of reinsurance (other than reinsurance undertaken to effect a transfer of a business in respect of which subsection 138(11.5), (11.92) or (11.94) of the Act applies) arising in the course of carrying on its insurance businesses in Canada; and

H is the total of all amounts each of which is

(a) the amount of a claim or benefit (including a payment under an annuity or settlement annuity, a payment of a policy dividend and an amount paid on a lapsed or terminated policy), a refund of premiums, a premium or a commission paid by the insurer in the month under a contract of insurance in the course of carrying on its insurance businesses in Canada,

(b) the amount of a policy loan made by the insurer in the month under a life insurance policy in Canada, or

(c) an amount paid by the insurer in the month in respect of reinsurance (other than reinsurance undertaken to effect a transfer of a business in respect of which subsection 138(11.5), (11.92) or (11.94) of the Act applies) in the course of carrying on its insurance businesses in Canada.

Related Provisions: ITA 257 — Negative amounts in formulas.

(4) [Meaning of "month"] — A reference to a "month" in this section means

(a) if an insurer's taxation year does not begin on the first day of a calendar month and the insurer elects to have this paragraph apply for the year, the period beginning on the day in a calendar month that has the

same calendar number as the particular day on which the taxation year began and ending

(i) on the day immediately before the day in the next calendar month that has the same calendar number as the particular day, or

(ii) if the next calendar month does not have a day that has the same calendar number as the particular day, the last day of that next calendar month; and

(b) in any other case, a calendar month.

Related Provisions: ITA 257 — Negative amounts in formulas.

History: S. 2412 replaced by P.C. 2000-1714, November 30, 2000, *Canada Gazette*, Part II, December 20, 2000, s. 7, applicable to 1999 *et seq.*

Ss. 2410 to 2412 added by P.C. 1990-2002, s. 10, September 20, 1990, *Canada Gazette*, Part II, October 10, 1990, applicable in respect of taxation years beginning after June 17, 1987 and ending after 1987.

Definitions [Reg. 2412]: "affiliated" — ITA 251.1; "amount", "annuity" — ITA 248(1); "attributed surplus" — Reg. 2400(1); "attributed surplus for the year" — Reg. 2405(3); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian investment fund" — Reg. 2400(1), 2405(3), (4); "Canadian investment fund for the year" — Reg. 2405(3); "dividend" — ITA 248(1); "immediately preceding taxation year" — Reg. 2409(1), (4); "insurer" — ITA 248(1); "life insurance policy in Canada" — ITA 138(12), Reg. 2405(1); "life insurer" — ITA 248(1); "mean Canadian investment fund" — Reg. 2400(1); "month" — Reg. 2412(4); "non-resident" — ITA 248(1); "person" — ITA 248(1); "policy dividend" — ITA 139.1(8)(a); "policy loan" — ITA 138(12), Reg. 2405(1); "property" — ITA 248(1); "resident in Canada" — ITA 250; "share", "shareholder" — ITA 248(1); "taxation year" — ITA 249; "weighted Canadian liabilities", "weighted total liabilities" — Reg. 2400(1).

PART XXV — SPECIAL T1 TAX TABLE FOR INDIVIDUALS

History: Part XXV (ss. 2500, 2501) was added by P.C. 1981-1501, June 4, 1981, *Canada Gazette*, Part II, June 24, 1981, applicable to 1979 *et seq.* except that in its application to the 1979 taxation year all that portion of subsection 2500(2) following subparagraph (b)(ii) thereof does not apply and shall be read as follows:

minus the aggregate of

(iii) where applicable, an amount that is the aggregate of

(A) the deduction calculated under subsection 120(2) of the Act, and

(B) the amount by which the amount referred to in clause (A) is increased by virtue of section 30 of the *Federal-Provincial Fiscal Arrangements and Established Programs Financing Act, 1977*, and

(iv) a deduction from the tax under subparagraph (i), or that tax plus the additional tax under subparagraph (ii), as the case may be, as computed under subsection 120(3.1) of the Act,

calculated as if the amount taxable is equal to the average of the highest and lowest amounts taxable in the range and, where the resulting tax payable is not a multiple of one dollar, it shall be rounded to the nearest multiple of one dollar or, if it is equidistant from two such multiples, to the higher thereof.

2500. (1) For the purposes of subsection 117(6) of the Act,

(a) $55,605, adjusted for each taxation year after 1989 in the manner set out in subsection 117.1(1) of the Act, is the prescribed amount; and

(b) an "individual of a prescribed class" for a taxation year is

(i) an estate or trust,

(ii) an individual who was a non-resident person throughout the year, other than an individual

(A) whose amount taxable for the year was from

(I) the duties of an office or employment performed in one province,

(II) the carrying on of a business in one province, or

(III) any combination of sources described in subclauses (I) and (II) if all of those sources are located in one province, and

(B) who was not subject to any other provision of this subsection,

(iii) an individual who, on the last day of the year, resided in a province and had income for the year from a business with a permanent establishment, as defined in subsection 2600(2), outside the province,

(iv) an individual whose tax otherwise payable for the year under Part I of the Act is reduced by virtue of any of the following provisions of the Act:

(A) subsection 117(7),

(B) section 121,

(C) section 122.3, or

(D) section 126,

(v) an individual who makes an election in respect of the year under subsection 119(1) of the Act,

(vi) an individual eligible to pay tax at a reduced rate pursuant to subsection 40(7) of the *Income Tax Application Rules* on a payment made to him in the year, or

(vii) an individual who makes an election in respect of the year under subsection 110.4(2) of the Act.

History: Subpara. 2500(1)(b)(vi) amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Para. 2500(1)(a) amended by P.C. 1990-760, April 26, 1990, *Canada Gazette*, Part II, May 9, 1990, applicable in respect of the 1989 and subsequent taxation years.

Para. 2500(1)(a) and subpara. (1)(b)(vii) amended by P.C. 1989-1926, September 28, 1989, *Canada Gazette*, Part II, October 11, 1989, applicable to 1988 *et seq.*

Para. 2500(1)(a) substituted by P.C. 1987-1817, subsec. 1(1), August 27, 1987, *Canada Gazette*, Part II, September 16, 1987, applicable to 1986 *et seq.*

Subpara. 2500(1)(b)(vii) added by P.C. 1986-207, January 23, 1986, *Canada Gazette*, Part II, February 5, 1986, applicable to 1985 *et seq.*

Subsec. 2500(1) substituted by P.C. 1985-908, subsec. 1(1), March 21, 1985, *Canada Gazette*, Part II, April 3, 1985, applicable to 1984 *et seq.*

All that portion of subsec. 2500(1) preceding para. (a) substituted by P.C. 1983-3016, subsec. 1, September 29, 1983, *Canada Gazette*, Part II, October 12, 1983, applicable to 1982 *et seq.*

(2) For the purposes of subsection 117(6) of the Act, a table of the tax payable for a taxation year shall be prepared in accordance with the following rules:

(a) the table shall be divided into ranges of amounts taxable not exceeding $10 each and shall specify the tax payable in respect of each range;

(b) the tax payable on an amount taxable within any range referred to in paragraph (a) shall be equal to the tax payable thereon for the year computed under subsection 117(2) of the Act and, where applicable, adjusted annually pursuant to section 117.1 of the Act; and

(c) the tax payable referred to in paragraph (b) shall be calculated as if the amount taxable is equal to the average of the highest and lowest amounts taxable in the range and, where the resulting tax payable is not a multiple of one dollar, it shall be rounded to the nearest multiple of one dollar or, if it is equidistant from two such multiples, to the higher thereof.

(3) For the purposes of subsection 117(6) of the Act, a table of the additional tax for income not earned in a province, the individual surtax and the refundable Quebec abatement for a taxation year shall be prepared in accordance with the following rules:

(a) the table shall be divided into ranges of tax payable not exceeding $2 each and shall specify, in respect of each range,

(i) the individual surtax payable,

(ii) where applicable, the additional tax for income not earned in a province, and

(iii) where applicable, the refundable Quebec abatement,

on every amount taxable within each such range;

(b) the tax payable referred to in paragraph (a) is the tax payable determined by the table prepared pursuant to subsection (2) less the allowable non-refundable credits under sections 118 to 118.9 of the Act;

(c) the individual surtax in respect of an amount of tax payable within any range referred to in paragraph (a) shall be the amount that is equal to the surtax thereon computed under subsection 180.1(1) of the Act;

(d) the additional tax for income not earned in a province in respect of an amount of tax payable within any range referred to in paragraph (a) shall be the amount that is equal to the tax determined thereon under subsection 120(1) of the Act;

(e) the refundable Quebec abatement in respect of an amount of tax payable within any range referred to in paragraph (a) shall be the amount that is equal to the abatement determined under subsection 120(2) of the Act and in accordance with section 27 of the *Federal-Provincial Fiscal Arrangements Act*;

(f) the amount referred to in paragraph (c) or (d) shall be calculated as if the tax payable is equal to the average of the highest and lowest amounts in the range and, where the resulting amount is not a multiple of one dollar, it shall be rounded to the nearest multiple of one dollar or, if it is equidistant from two such multiples, to the higher thereof; and

(g) the amount referred to in paragraph (e) shall be calculated as if the tax payable is equal to the average of the highest and lowest amounts in the range and, where the resulting amount is not a multiple of one tenth of one dollar, it shall be rounded to the nearest multiple of one tenth of one dollar or, if it is equidistant from two such multiples, to the higher thereof.

Related Provisions: "amount taxable" — ITA 117(2).

History: Para. 2500(3)(e) amended by 1995, c. 17, subsec. 45(2), to substitute "*Federal-Provincial Fiscal Arrangements Act*" for "*Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act*", in force April 1, 1996.

Subsec. 2500(2) was substituted, subsec. 2500(3) added by P.C. 1989-1926, September 28, 1989, *Canada Gazette*, Part II, October 11, 1989, applicable to 1988 *et seq.*

All that portion of para. 2500(2)(b) following subpara. (ii) revoked by P.C. 1987-1817, subsec. 1(2), August 27, 1987, *Canada Gazette*, Part II, September 16, 1987, applicable to 1986 *et seq.*

All that portion of para. 2500(2)(b) following subpara. (ii), subpara. 2500(2)(c)(ii) substituted by P.C. 1985-908, s. 1, March 21, 1985, *Canada Gazette*, Part II, April 3, 1985, applicable, as to para. 2500(2)(b) to 1984 *et seq.*, and as to subpara. 2500(2)(c)(ii), after March 31, 1983.

Para. 2500(2)(b) substituted by P.C. 1983-3016, subsec. 1(2), September 29, 1983, *Canada Gazette*, Part II, October 12, 1983, applicable to 1982 *et seq.*

2501. In this Part, "amount taxable" has the meaning assigned by subsection 117(2) of the Act.

Related Provisions: "amount taxable" — ITA 117(2).

History: S. 2501 amended by P.C. 1989-1926, September 28, 1989, *Canada Gazette*, Part II, October 11, 1989, applicable to 1988 *et seq.*

S. 2501 substituted by P.C. 1983-3016, s. 2, September 29, 1983, *Canada Gazette*, Part II, October 12, 1983, applicable to 1982 *et seq.*

History [former Part XXV]: Former Part XXV (Indebtedness of Public Employees) was revoked by P.C. 1980-541, s. 2, February 20, 1980, *Canada Gazette*, Part II, March 12, 1980.

Former Part XXV was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

PART XXVI — INCOME EARNED IN PROVINCE BY AN INDIVIDUAL

History: Part XXVI was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

2600. Interpretation — **(1)** For the purposes of paragraph 120(4)(a) [120(4)"income earned in the year in a province"] of the Act, "income earned in the year in a province" by an individual means the aggregate of his incomes earned in the taxation year in each province, as determined in accordance with this Part.

History: Subsec. 2600(1) substituted by P.C. 1981-808, subsec. 3(1), March 26, 1981, *Canada Gazette*, Part II, April 8, 1981, applicable to 1980 *et seq.*

Subsec. 2600(1) substituted by P.C. 1978-3101, subsec. 3(1), October 12, 1978, *Canada Gazette*, Part II, October 25, 1978, applicable to 1978 *et seq.*

(2) In this Part, "permanent establishment" means a fixed place of business of the individual including an office, a branch, a mine, an oil well, a farm, a timberland, a factory, a workshop or a warehouse, and

(a) where an individual carries on business through an employee or agent, established in a particular place, who has general authority to contract for his employer or principal or who has a stock of merchandise owned by his employer or principal from which he regularly fills orders which he receives, the individual shall be deemed to have a permanent establishment in that place;

(b) where an individual uses substantial machinery or equipment in a particular place at any time in a taxation year he shall be deemed to have a permanent establishment in that place; and

(c) the fact that an individual has business dealings through a commission agent, broker, or other independent agent or maintains an office solely for the purchase of merchandise, shall not of itself be held to mean that the individual has a permanent establishment.

Interpretation Bulletins: IT-242R: Retired partners.

(3) [Revoked]

History: Subsec. 2600(3) revoked by P.C. 1981-808, subsec. 3(2), March 26, 1981, *Canada Gazette*, Part II, April 8, 1981, applicable to 1980 *et seq.*

Subsec. 2600(3) substituted by P.C. 1978-3101, subsec. 3(2), October 12, 1978, *Canada Gazette*, Part II, October 25, 1978, applicable to 1978 *et seq.*

Definitions [Reg. 2600]: "business", "employee", "employer", "individual", "office" — ITA 248(1); "permanent establishment" — Reg. 2600(2); "province" — *Interpretation Act* 35(1); "taxation year" — ITA 249.

2601. Residents of Canada — **(1)** Where an individual resided in a particular province on the last day of a taxation year and had no income for the year from a business with a permanent establishment outside the province, his income earned in the taxation year in the province is his income for the year.

(2) Where an individual resided in a particular province on the last day of a taxation year and had income for the year from a business with a permanent establishment outside the province, his income earned in the taxation year in the province is the amount, if any, by which

(a) his income for the year

exceeds

(b) the aggregate of his income for the year from carrying on business earned in each other province and each country other than Canada determined as hereinafter set forth in this Part.

(3) Where an individual, who resided in Canada on the last day of a taxation year and who carried on business in a particular province at any time in the year, did not reside in the province on the last day of the year, his income earned in the taxation year in the province is his income for the year from carrying on business earned in the province, determined as hereinafter set forth in this Part.

(4) Where an individual resided in Canada on the last day of a taxation year and carried on business in another country at any time in the year, his income earned in the taxation year in that other country is his income for the year from carrying on business earned in the other country, determined as hereinafter set forth in this Part.

(5) In this section, a reference to the "last day of a taxation year" is deemed to be a reference to

(a) the "last day in the year on which the individual resided in Canada", in the case of an individual who resided in Canada at any time in the year but ceased to reside in Canada before the end of the year; and

(b) the "day in the year on which the individual would have ceased to reside in Canada, if the Act were read without reference to paragraphs 250(1)(d.1) to (f) of the Act,", in the case of a particular individual described in paragraph 250(1)(d.1) of the Act, or of another individual who is a spouse, common-law partner or child of the particular individual, who

(i) resided in Canada at any time in the year,

(ii) would have ceased to reside in Canada before the end of the year, if the Act were read without reference to paragraphs 250(1)(d.1) to (f) of the Act, and

(iii) is, pursuant to any of paragraphs 250(1)(d.1) to (f) of the Act, deemed to have been a resident of Canada throughout the year.

Related Provisions: Reg. 2607 — When person is resident in two provinces, principal place of residence applies.

History: Subsec. 2601(5) amended by P.C. 2001-957, s. 4, May 31, 2001, *Canada Gazette*, Part II, June 20, 2001, applicable to 2001 *et seq.*, except that if a taxpayer and a person have jointly elected pursuant to s. 144 of the *Modernization of Benefits and Obligations Act* (S.C. 2000, c. 12), in respect of the 1998, 1999 or 2000 taxation year, the amendment applies to the taxpayer and the person in respect of the applicable taxation year *et seq.*

Subsec. 2601(5) substituted by P.C. 1981-2730, October 8, 1981, *Canada Gazette*, Part II, October 28, 1981, applicable to 1980 *et seq.*

Definitions [Reg. 2601]: "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "child" — ITA 252(1); "individual" — ITA 248(1); "last day of a taxation year" — Reg. 2601(5); "permanent establishment" — Reg. 2600(2); "province" — *Interpretation Act* 35(1); "resident in Canada", "resident of Canada" — ITA 250; "taxation year" — ITA 249.

Remission Orders [Reg. 2601]: *Income Earned in Quebec Income Tax Remission Order*, P.C. 1989-1204, as amended by P.C. 1991-1661 and P.C. 1992-2593 (special interpretation of Reg. 2601(1) and (2) for residents of Quebec).

Interpretation Bulletins: IT-221R3: Determination of an individual's residence status; IT-447: Residence of a trust or estate.

Forms [Reg. 2601]: T691A: Minimum tax supplement — multiple jurisdictions; T1219: Provincial alternative minimum tax; T1219-ON: Ontario minimum tax carryover; T2203: Calculation of tax in respect of multiple jurisdictions.

2602. Non-residents — **(1)** Except as provided in subsection (2), where an individual did not reside in Canada at any time in a taxation year, his income earned in the taxation year in a particular province is the aggregate of

(a) that part of the amount of his income from an office or employment, that is included in computing his taxable income earned in Canada for the year by virtue of subparagraph 115(1)(a)(i) of the Act, that is reasonably attributable to the duties performed by him in the province; and

(b) his income for the year from carrying on business earned in the province, determined as hereinafter set forth in this Part.

Remission Orders: *Income Earned in Quebec Income Tax Remission Order*, P.C. 1989-1204, as amended by P.C. 1991-1661 and P.C. 1992-2593 (special interpretation of Reg. 2602(1) for Quebec).

Interpretation Bulletins: IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-434R: Rental of real property by individual.

(2) Where the aggregate of the amounts of an individual's income as determined under subsection (1) for all provinces for a taxation year exceeds the aggregate of the amounts of his income described in subparagraphs 115(1)(a)(i) and (ii) of the Act, the amount of his income earned in the taxation year in a particular province shall be that proportion of his income so described that the amount of his income earned in the taxation year in the province as determined under subsection (1) is of the aggregate of all such amounts.

Definitions [Reg. 2602]: "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "employment", "individual", "office" — ITA 248(1); "province" — *Interpretation Act* 35(1); "taxable income earned in Canada" — ITA 248(1); "taxation year" — ITA 249.

2603. Income from business — **(1)** Where, in a taxation year, an individual had a permanent establishment in a particular province or a country other than Canada and had no permanent establishment outside that province or country, the whole of his income from carrying on business for the year shall be deemed to have been earned therein.

(2) Where, in a taxation year, an individual had no permanent establishment in a particular province or country other than Canada, no part of his income for the year from

carrying on business shall be deemed to have been earned therein.

(3) Except as otherwise provided, where, in a taxation year, an individual had a permanent establishment in a particular province or country other than Canada and a permanent establishment outside that province or country, the amount of his income for the year from carrying on business that shall be deemed to have been earned in the province or country is ½ the aggregate of

(a) that proportion of his income for the year from carrying on business that the gross revenue for the fiscal period ending in the year reasonably attributable to the permanent establishment in the province or country is of his total gross revenue for that period from the business; and

(b) that proportion of his income for the year from carrying on business that the aggregate of the salaries and wages paid in the fiscal period ending in the year to employees of the permanent establishment in the province or country is of the aggregate of all salaries and wages paid in that period to employees of the business.

(4) For the purpose of determining the gross revenue for the year reasonably attributable to the permanent establishment in a particular province or country other than Canada within the meaning of paragraph (3)(a), the following rules shall apply:

(a) where the destination of a shipment of merchandise to a customer to whom the merchandise is sold is in the particular province or country, the gross revenue derived therefrom shall be attributable to the permanent establishment in the province or country;

(b) except as provided in paragraph (c), where the destination of a shipment of merchandise to a customer to whom the merchandise is sold is in a province or country other than Canada in which the taxpayer has no permanent establishment, if the person negotiating the sale may reasonably be regarded as being attached to the permanent establishment in the particular province or country, the gross revenue derived therefrom shall be attributable to that permanent establishment;

(c) where the destination of a shipment of merchandise to a customer to whom the merchandise is sold is in a country other than Canada in which the taxpayer has no permanent establishment,

(i) if the merchandise was produced or manufactured, or produced and manufactured, entirely in the particular province by the taxpayer, the gross revenue derived therefrom shall be attributable to the permanent establishment in the province, or

(ii) if the merchandise was produced or manufactured, or produced and manufactured, partly in the particular province and partly in another place by the taxpayer, the gross revenue derived therefrom attributable to the permanent establishment in the province shall be that proportion thereof that the salaries and wages paid in the year to employees of the permanent establishment in the province where the merchandise was partly produced or manufactured (or partly produced and manufactured) is of the aggregate of the salaries and wages paid in the year to employees of the permanent establishments where the merchandise was produced or manufactured (or produced and manufactured);

(d) where a customer to whom merchandise is sold instructs that shipment be made to some other person and the customer's office with which the sale was negotiated is located in the particular province or country, the gross revenue derived therefrom shall be attributable to the permanent establishment in the province or country;

(e) except as provided in paragraph (f), where a customer to whom merchandise is sold instructs that shipment be made to some other person and the customer's office with which the sale was negotiated is located in a province or country other than Canada in which the taxpayer has no permanent establishment, if the person negotiating the sale may reasonably be regarded as being attached to the permanent establishment in the particular province or country, the gross revenue derived therefrom shall be attributable to that permanent establishment;

(f) where a customer to whom merchandise is sold instructs that shipment be made to some other person and the customer's office with which the sale was negotiated is located in a country other than Canada in which the taxpayer has no permanent establishment,

(i) if the merchandise was produced or manufactured, or produced and manufactured, entirely in the particular province by the taxpayer, the gross revenue derived therefrom shall be attributable to the permanent establishment in the province, or

(ii) if the merchandise was produced or manufactured, or produced and manufactured, partly in the particular province and partly in another place by the taxpayer, the gross revenue derived therefrom attributable to the permanent establishment in the province shall be that proportion thereof that the salaries and wages paid in the year to employees of the permanent establishment in the province where the merchandise was partly produced or manufactured (or partly produced and manufactured) is of the aggregate of the salaries and wages paid in the year to employees of the permanent establishments where the merchandise was produced or manufactured (or produced and manufactured);

(g) where gross revenue is derived from services rendered in the particular province or country, the gross revenue shall be attributable to the permanent establishment in the province or country;

(h) where gross revenue is derived from services rendered in a province or country other than Canada in which the taxpayer has no permanent establishment, if the person negotiating the contract may reasonably be regarded as being attached to the permanent establishment of the taxpayer in the particular province or country, the gross revenue shall be attributable to that permanent establishment;

(i) where standing timber or the right to cut standing timber is sold and the timber limit on which the timber is standing is in the particular province or country, the gross revenue from such sale shall be attributable to the permanent establishment of the taxpayer in the province or country; and

(j) where land is a permanent establishment of the taxpayer in the particular province, the gross revenue which arises from leasing the land shall be attributable to that permanent establishment.

(5) Where an individual pays a fee to another person under an agreement pursuant to which that other person or employees of that other person perform services for the individual that would normally be performed by employees of the individual, the fee so paid shall be deemed to be salary paid by the individual and that part of the fee that may reasonably be regarded as payment in respect of services rendered at a particular permanent establishment of the individual shall be deemed to be salary paid to an employee of that permanent establishment.

(6) For the purposes of subsection (5), a fee does not include a commission paid to a person who is not an employee of the individual.

Definitions [Reg. 2603]: "amount" — ITA 248(1); "business" — Reg. 2606(3)(a); "Canada" — ITA 255, *Interpretation Act* 35(1); "employee" — ITA 248(1); "fee" — Reg. 2603(6); "fiscal period" — ITA 249.1; "gross revenue" — ITA 248(1); "income for the year from carrying on business" — Reg. 2606(1), 2606(3)(b); "individual", "office" — ITA 248(1); "permanent establishment" — Reg. 2600(2); "person" — ITA 248(1); "province" — *Interpretation Act* 35(1); "salaries and wages paid in the year" — Reg. 2606(3)(c); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "total gross revenue for the year" — Reg. 2606(3)(d).

2604. Bus and truck operators — Notwithstanding subsections 2603(3) and (4), the amount of income that shall be deemed to have been earned in a particular province or country other than Canada by an individual from carrying on the business of transportation of goods or passengers (other than by the operation of a railway, ships or an airline service) is ½ of the aggregate of

(a) that proportion of his income therefrom for the year that the number of miles travelled by his vehicles in the province or country in the fiscal period ending in the year is of the total number of miles travelled by his vehicles in that period; and

(b) that proportion of his income therefrom for the year that the aggregate of salaries and wages paid in the fiscal period ending in the year to employees of the permanent establishment in the province or country is of the aggregate of all salaries and wages paid in that period to employees of the business.

Definitions [Reg. 2604]: "amount" — ITA 248(1); "business" — Reg. 2606(3)(a); "Canada" — ITA 255, *Interpretation Act* 35(1); "employee" — ITA 248(1); "fiscal period" — ITA 249.1; "income for the year from carrying on business" — Reg. 2606(1), 2606(3)(b); "individual" — ITA 248(1); "permanent establishment" — Reg. 2600(2); "province" — *Interpretation Act* 35(1); "salaries and wages paid in the year" — Reg. 2606(3)(c); "total gross revenue for the year" — Reg. 2606(3)(d).

2605. More than one business — Where an individual operates more than one business, the provisions of sections 2603 and 2604 shall be applied in respect of each business and the amount of income for the year from carrying on business earned in a particular province or country in the year is the aggregate of the amounts so determined.

Definitions [Reg. 2605]: "amount" — ITA 248(1); "business" — Reg. 2606(3)(a); "income for the year from carrying on business" — Reg. 2606(1), 2606(3)(b); "individual" — ITA 248(1); "province" — *Interpretation Act* 35(1); "salaries and wages paid in the year" — Reg. 2606(3)(c); "total gross revenue for the year" — Reg. 2606(3)(d).

Interpretation Bulletins: IT-206R: Separate businesses.

2606. Limitations of business income — **(1)** Where, in the case of an individual to whom section 2601 applies, the aggregate of the amounts otherwise determined as his income for the taxation year from carrying on business earned in all provinces and countries other than Canada is greater than his income for the year, his income for the year from carrying on business earned in a particular province or country shall be deemed to be that proportion of his income for the year that

(a) his income for the year from carrying on business in the province or country as otherwise determined,

is of

(b) that aggregate.

(2) Where section 114 of the Act is applicable for the purpose of determining the taxable income of an individual for the taxation year, a reference in subsection (1) to "his income for the taxation year" shall be construed as a reference to the amount of his income as determined for the purposes of section 114 of the Act and, for the purpose of this Part, his income for the taxation year from carrying on a business in any place shall be computed by reference only to a business the income from which is included in computing his taxable income for the purposes of section 114 of the Act.

Proposed Amendment — Reg. 2606(1), (2)

(1) Limitations of business income — If, in the case of an individual to whom section 2601, applies, the total of the amounts otherwise determined as the individual's income for a taxation year from carrying on business earned in all provinces and countries other than Canada is greater that the individual's income for the year, the individual's income for the year from carrying on business earned in a particular province or country is deemed to be that proportion of the individual's income for the year that

(a) the individual's income for the year from carrying on business in the province or country as otherwise determined,

is of

(b) that total.

(2) [Part-year residents] — If section 114 of the Act applies in respect of an individual for a taxation year, the reference in subsection (1) to "the individual's income for a taxation year" shall be read as a reference to the amount of the individual's taxable income for the year and, for the purpose of this Part, the individual's income for the year from carrying on a business in any place shall be computed by reference only to a business the income from which is included in computing the individual's taxable income for the year.

Application: The March 16, 2001 draft regulations (taxpayer migration), s. 2, will amend the portion of Reg. 2606 before subsec. (3) to read as above, applicable to 1998 *et seq.*

Technical Notes: Part XXVI of the Income Tax Regulations sets out rules for computing an individual's income earned in a taxation year in a particular province.

Subsection 2606(1) of the Regulations provides for an adjustment to an individual's income earned in a particular province where the sum of the individual's incomes earned in each province and in countries other than Canada exceeds the individual's income for the year. Subsection 2606(2) of the Regulations provides a further adjustment for the purposes of subsection (1) where the individual is non-resident for part of a taxation year only.

Subsection 2606(2) of the Regulations is amended, with application to the 1998 and subsequent taxation years, to reflect amendments to section 114 of the Act (see the commentary on section 114 for further details). In addition, subsections 2606(1) and (2) are amended to update their language.

(3) For the purposes of sections 2603 to 2605, where an individual's taxable income for the taxation year is computed in accordance with section 115 of the Act

(a) a reference to a "business" shall be deemed to refer only to a business that was wholly or partly carried on in Canada;

(b) a reference to "income for the year from carrying on business" shall be deemed to refer only to income for the year from carrying on a business in Canada as determined for the purposes of section 115 of the Act;

(c) a reference to "salaries and wages paid in the year" shall be deemed to be a reference to salaries and wages paid to employees of his permanent establishments in Canada; and

(d) a reference to "total gross revenue for the year" from the business shall be deemed to be a reference to total gross revenue reasonably attributable to his permanent establishments in Canada.

Definitions [Reg. 2606]: "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "employee", "gross revenue" — ITA 248(1); "his income for the taxation year" — Reg. 2606(2); "individual" — ITA 248(1); "permanent establishment" — Reg. 2600(2); "province" — *Interpretation Act* 35(1); "taxable income" — ITA 248(1); "taxation year" — ITA 249.

2607. Dual residence — Where an individual was resident in more than one province on the last day of the taxation year, for the purposes of this Part, he shall be deemed to have resided on that day only in that province which may reasonably be regarded as his principal place of residence.

Definitions: "individual" — ITA 248(1); "province" — *Interpretation Act* 35(1); "resident" — ITA 250; "taxation year" — ITA 249.

Interpretation Bulletins: IT-221R3: Determination of an individual's residence status; IT-447: Residence of a trust or estate.

PART XXVII — GROUP TERM LIFE INSURANCE BENEFITS

History: Part XXVII added by P.C. 1997-1623, s. 1, November 6, 1997, *Canada Gazette*, Part II, November 26, 1997, s. 2700 applicable to 1994 *et seq.* Ss. 2701 to 2704 applicable with respect to insurance provided in respect of periods that are after June 1994 except that, in their application with respect to insurance provided in respect of periods that are in 1994 and after June 1994,

(a) the opening words of para. 2701(1)(c) shall be read as follows:

(c) the total of all sales and excise taxes payable in respect of premiums paid under the policy in 1994 and after June 1994 for insurance on the life of the taxpayer, other than

(b) the part of subpara. 2702(1)(b)(i) before the formula shall be read as follows:

(i) the total of all amounts each of which is, for a day in the year 1994 that is after June 1994 on which term insurance is in effect under the policy on the taxpayer's life, the amount determined by the formula

and

(c) subpara. 2702(1)(b)(ii) shall be read as follows:

(ii) the total amount paid by the taxpayer in respect of term insurance under the policy on the taxpayer's life in respect of the period in the year 1994 that is after June 1994.

and s. 2705 applicable with respect to insurance that is provided in respect of periods that are in 1994 and before July 1994.

Former Part XXVII revoked by P.C. 1991-2540, s. 5, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable to taxation years commencing after 1990.

The heading to former Part XXVII amended by the said P.C. 1991-2540, s. 8, applicable after 1985.

Former Part XXVII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

2700. Interpretation — (1) Definitions — The definitions in this subsection apply in this Part.

"lump-sum premium" in relation to a group term life insurance policy means a premium for insurance under the policy on the life of an individual where all or part of the premium is for insurance that is (or would be if the individual survived) in respect of a period that ends more than 13 months after the earlier of the day on which the premium becomes payable and the day on which it is paid.

"paid-up premium" in relation to a group term life insurance policy means a premium for insurance under the policy on the life of an individual where the insurance is for the remainder of the lifetime of the individual and no further premiums will be payable for the insurance.

"premium category" in relation to term insurance provided under a group term life insurance policy means,

(a) where the premium rate applicable in respect of term insurance on the life of an individual depends on the group to which the individual belongs, any of the groups for which a premium rate is established, and

(b) in any other case, all individuals on whose lives term insurance is in effect under the policy,

and, for the purpose of this definition, a single premium rate is deemed to apply for all term insurance under a policy in respect of periods in 1994, and where individuals are divided into separate groups solely on the basis of their age, sex, or both, the groups are deemed to be a single group for which a premium rate is established.

"term insurance" in relation to an individual and a group term life insurance policy means insurance under the policy on the life of the individual, other than insurance in respect of which a lump-sum premium has become payable or been paid.

(2) Accidental death insurance — For greater certainty, a premium for insurance on the life of an individual does not include an amount for accidental death insurance.

Definitions [Reg. 2700]: "amount", "group term life insurance policy", "individual" — ITA 248(1); "lump-sum premium" — Reg. 2700(1); "month" — *Interpretation Act* 35(1); "term insurance" — Reg. 2700(1).

2701. Prescribed benefit — **(1)** Subject to subsection (2), for the purpose of subsection 6(4) of the Act, the amount prescribed for a taxation year in respect of insurance under a group term life insurance policy on the life of a taxpayer is the total of

(a) the taxpayer's term insurance benefit under the policy for the calendar year in which the taxation year ends,

(b) the taxpayer's prepaid insurance benefit under the policy for that calendar year, and

(c) the total of all sales and excise taxes payable in respect of premiums paid under the policy in that calendar year for insurance on the life of the taxpayer, other than

(i) taxes paid, directly or by way of reimbursement, by the taxpayer, and

(ii) taxes in respect of premiums for term insurance that, if the taxpayer were to die, would be paid otherwise than

(A) to the taxpayer,

(B) for the benefit of the taxpayer,

(C) as a benefit that the taxpayer desired to have conferred on any person.

Related Provisions: ITA 139.1(15) — Effect of demutualization of insurance corporation.

(2) Bankrupt individual — Where a taxpayer who has become a bankrupt has two taxation years ending in a calendar year, for the purpose of subsection 6(4) of the Act, the amount prescribed for the first taxation year in respect of insurance under a group term life insurance policy on the life of the taxpayer is nil.

Definitions [Reg. 2701]: "amount", "bankrupt", "group term life insurance policy", "person" — ITA 248(1); "prepaid insurance benefit" — Reg. 2703(1); "prescribed" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "term insurance" — Reg. 2700(1); "term insurance benefit" — Reg. 2702(1).

2702. Term insurance benefit — (1) Amount of benefit — Subject to section 2704, for the purpose of paragraph 2701(1)(a), a taxpayer's term insurance benefit under a group term life insurance policy for a calendar year is

(a) where

(i) the policyholder elects to determine, under this paragraph, the term insurance benefit for the year of each individual whose life is insured under the policy,

(ii) no premium rate that applies for term insurance provided under the policy on the life of an individual in respect of the year depends on the age or sex of the individual,

(iii) no amounts are payable under the policy for term insurance on the lives of individuals in respect of the year other than premiums payable on a regular basis that are based on the amount of term insurance in force in the year for each individual, and

(iv) the year is after 1995,

the amount determined by the formula

$$A - B$$

where

A is the total of the premiums payable for term insurance provided under the policy on the taxpayer's life in respect of periods in the year, to the extent that each such premium is in respect of term insurance that, if the taxpayer died in the year, would be paid to or for the benefit of the taxpayer or as a benefit that the taxpayer desired to have conferred on any person, and

B is the total amount paid by the taxpayer in respect of term insurance under the policy on the taxpayer's life in respect of the year; and

(b) in any other case, the amount, if any, by which

(i) the total of all amounts each of which is, for a day in the year on which term insurance is in effect under the policy on the taxpayer's life, the amount determined by the formula

$$A \times B$$

where

A is the amount of term insurance in effect on that day under the policy on the taxpayer's life, except the portion, if any, of the amount that, if the taxpayer were to die on that day, would be paid otherwise than

(A) to the taxpayer,

(B) to benefit of the taxpayer, or

(C) as a benefit that the taxpayer desired to have conferred on any person, and

B is the average daily cost of insurance for the year for the premium category in which the taxpayer is included on that day

exceeds

(ii) the total amount paid by the taxpayer in respect of term insurance under the policy on the taxpayer's life in respect of the year.

Related Provisions: ITA 257 — Negative amounts in formulas.

(2) Average daily cost of insurance — The average daily cost of insurance under a group term life insurance policy for a calendar year for a premium category is

(a) subject to paragraph (b), the amount determined by the formula

$$\frac{(A + B - C)}{D}$$

where

A is the total of the premiums payable for term insurance provided under the policy on the lives of individuals in respect of periods in the year while they are in the premium category,

B is the total of the amounts paid in the year under the policy for term insurance in respect of periods in preceding years (other than amounts that have otherwise been taken into account for the purpose of subsection 6(4) of the Act), to the extent that the total can reasonably be considered to relate to term insurance provided on the lives of individuals in the premium category,

C is the total amount of policy dividends and experience rating refunds paid in the year under the policy and not distributed to individuals whose lives are insured under the policy, to the extent that the total can reasonably be considered to relate to term insurance provided on the lives of individuals in the premium category, and

D is the total of all amounts each of which is the amount of term insurance in force on a day in the year on the lives of individuals in the premium category on that day; or

(b) the amount that the policyholder determines using a reasonable method that is substantially similar to the method set out in paragraph (a).

Related Provisions: ITA 257 — Negative amounts in formulas.

(3) Survivor income benefits — For the purposes of this section, where the proceeds of term insurance on the life of an individual are payable in the form of periodic payments, and the periodic payments are not an optional form of settlement of a lump-sum amount, the amount of term insurance in effect on the individual's life on any day is the present value, on that day, of the periodic payments that would be made if the individual were to die on that day.

(4) Determination of present value — For the purpose of subsection (3), the present value on a day in a calendar year

(a) shall be determined using assumptions that are reasonable at some time in the year; and

(b) may be determined assuming that an individual on whose life the present value depends is the same age on that day as on another day in the year.

Definitions [Reg. 2702]: "amount" — ITA 248(1); "amount of term insurance" — Reg. 2702(3); "dividend", "group term life insurance policy", "individual", "person" — ITA 248(1); "premium category" — Reg. 2700(1); "present value" — Reg. 2702(4); "taxpayer" — ITA 248(1); "term insurance" — Reg. 2700(1).

2703. Prepaid insurance benefit — (1) Amount of benefit — Subject to section 2704, for the purpose of paragraph 2701(1)(b), a taxpayer's prepaid insurance benefit under a group term life insurance policy for a calendar year is

(a) where the taxpayer is alive at the end of the year, the total of all amounts each of which is

(i) a lump-sum premium (other than the taxpayer portion) paid in the year and after February 1994 in respect of insurance under the policy on the life of the taxpayer, other than a paid-up premium paid before 1997, or

(ii) 1/3 of a paid-up premium (other than the taxpayer portion) in respect of insurance under the policy on the life of the taxpayer that was paid

(A) after February 1994 and before 1997, and

(B) in the year or one of the two preceding years; and

(b) where the taxpayer died after June 1994 and in the year, the amount, if any, by which

(i) the total of all amounts each of which is a lump-sum premium (other than the taxpayer portion) paid under the policy after February 1994 in respect of insurance on the life of the taxpayer

exceeds

(ii) the portion of that total that was included in computing the taxpayer's prepaid insurance benefit under the policy for preceding years.

Related Provisions: ITA 18(9.01) — Matching deduction for employer.

(2) Taxpayer portion of premiums — For the purpose of subsection (1), the taxpayer portion of a premium is the portion, if any, of the premium that the taxpayer paid, either directly or by way of reimbursement.

Definitions [Reg. 2703]: "amount", "group term life insurance policy" — ITA 248(1); "lump-sum premium", "paid-up premium" — Reg. 2700(1); "portion" — Reg. 2703(2); "taxpayer" — ITA 248(1).

2704. Employee-paid insurance — **(1)** For the purpose of subsection 2701(1), where the full cost of insurance under a group term life insurance policy in a calendar year is borne by the individuals whose lives are insured under the policy, each individual's term insurance benefit and prepaid insurance benefit under the policy for the year is deemed to be nil.

(2) Where the premiums for part of the life insurance (in this subsection referred to as the "additional insurance") under a group term life insurance policy are determined separately from the premiums for the rest of the life insurance under the policy, and it is reasonable to consider that the individuals on whose lives the additional insurance is provided bear the full cost of the additional insurance, the additional insurance, the premiums, policy dividends and experience rating refunds in respect of that insurance, and the amounts paid in respect of that insurance by the individuals whose lives are insured, shall not be taken into account for the purposes of this Part.

Definitions [Reg. 2704]: "additional insurance" — Reg. 2704(2); "amount", "dividend", "group term life insurance policy", "individual" — ITA 248(1); "term insurance" — Reg. 2700(1).

2705. Prescribed premium and insurance — For the purpose of subsection 6(4) of the Act, as it applies to insurance provided in respect of periods that are in 1994 and before July 1994,

(a) a lump-sum premium paid under a group term life insurance policy after February 1994 in respect of an individual who is alive at the end of June 1994 is a prescribed premium; and

(b) insurance in respect of which a premium referred to in paragraph (a) is paid is prescribed insurance.

Definitions [Reg. 2705]: "group term life insurance policy", "individual" — ITA 248(1); "lump-sum premium" — Reg. 2700(1); "prescribed" — ITA 248(1).

PART XXVIII — ELECTION IN RESPECT OF ACCUMULATING INCOME OF TRUSTS

History: Part XXVIII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

2800. [Preferred beneficiary election] — **(1)** Any election under subsection 104(14) of the Act in respect of a taxation year shall be made by filing with the Minister the following documents:

(a) a statement

(i) making the election in respect of the year,

(ii) designating the part of the accumulating income in respect of which the election is being made, and

(iii) signed by the preferred beneficiary and a trustee having the authority to make the election; and

(b) a statement signed by the trustee showing the computation of the amount of the preferred beneficiary's share in the accumulating income of the trust for the year in accordance with paragraph 104(15)(a), (b) or (c) of the Act, as the case may be, together with such information concerning the provisions of the trust and its administration as is necessary for this purpose.

Interpretation Bulletins: IT-394R2: Preferred beneficiary election.

(2) The documents referred to in subsection (1) shall be filed within 90 days from the end of the trust's taxation year in respect of which the election referred to in subsection (1) is made.

Related Provisions: ITA 104(14.01) — Extension of filing deadline where capital gains election filed; Reg. 2800(2.1) — Deadline when capital gains exemption election filed for 1994.

(2.1) Notwithstanding subsection (2), if a trust elects under subsection 110.6(19) of the Act in respect of the taxation year of the trust that includes February 22, 1994, the documents referred to in subsection (1) in respect of that year shall be filed on or before the day on or before

which the election under subsection 110.6(19) of the Act is required to be filed with the Minister.

History: Subsec. 2800(2.1) added by P.C. 2001-806, s. 1, May 2, 2001, *Canada Gazette*, Part II, May 23, 2001, applicable to trust taxation years that include February 22, 1994.

(3) For the purposes of paragraph 104(15)(c) of the Act, the discretionary share of a particular preferred beneficiary under a trust of the trust's accumulating income for a taxation year shall be an amount determined as follows:

(a) where the settlor of the trust is an individual and his spouse, both of whom are alive at the end of the year and both of whom may be entitled to share in the accumulating income of the trust, the discretionary share

(i) of the individual is that proportion of the accumulating income of the trust for the year that the fair market value of the property contributed by the individual is of the aggregate of the fair market value of the property contributed by the individual and the fair market value of the property contributed by his spouse (such fair market values being determined in respect of each contribution at the time of the making of that contribution),

(ii) of the spouse is that proportion of the accumulating income of the trust for the year that the fair market value of the property contributed by the spouse is of the aggregate of the fair market value of the property contributed by the individual and the fair market value of the property contributed by his spouse (such fair market values being determined in respect of each contribution at the time of the making of that contribution), and

(iii) of any other beneficiary who is a preferred beneficiary under the trust is nil;

(b) where the settlor of the trust is an individual and his spouse, both of whom are alive at the end of the year but only one of whom may be entitled to share in the accumulating income of the trust, the discretionary share

(i) of the individual or his spouse, as the case may be, who may be entitled to share in the accumulating income of the trust is the accumulating income of the trust for the year, and

(ii) of any other beneficiary who is a preferred beneficiary under the trust is nil;

(c) where the settlor of the trust is an individual and his spouse, only one of whom is alive at the end of the year, and the one who is alive may be entitled to share in the accumulating income of the trust, the discretionary share

(i) of the individual or his spouse, as the case may be, who is alive at the end of the year is the accumulating income of the trust for the year, and

(ii) of any other beneficiary who is a preferred beneficiary under the trust is nil;

(d) where, in any case not described in paragraph (a), (b) or (c), the settlor of the trust may be entitled to share in the accumulating income of the trust and is alive at the end of the year, the discretionary share

(i) of the settlor is the accumulating income of the trust for the year, and

(ii) of any other beneficiary who is a preferred beneficiary under the trust is nil;

(e) where, in any case not described in paragraph (a), (b) or (c), the spouse of the settlor of the trust may be entitled to share in the accumulating income of the trust, but the settlor may not, and the spouse is alive at the end of the year, the discretionary share

(i) of the spouse is the accumulating income of the trust for the year, and

(ii) of any other beneficiary who is a preferred beneficiary under the trust is nil; and

(f) in any other case, the discretionary share of a preferred beneficiary alive at the end of the year is the amount obtained by dividing the accumulating income of the trust for the year by the number of preferred beneficiaries under the trust alive at the end of the year who may be entitled to share in the accumulating income of the trust.

Interpretation Bulletins: IT-394R2: Preferred beneficiary election.

Advance Tax Rulings: ATR-30: Preferred beneficiary election on accumulating income of estate; ATR-34: Preferred beneficiary's election.

(4) In paragraphs (3)(a) to (e), the phrase "entitled to share in the accumulating income of the trust" does not include any entitlement that arises by reason of the death of any individual who would otherwise be entitled to share in the accumulating income of the trust.

Definitions [Reg. 2800]: "amount" — ITA 248(1); "entitled to share in the accumulating income of the trust" — Reg. 2800(4);"individual", "Minister", "property", "share" — ITA 248(1); "taxation year" — ITA 249; "trust" — ITA 104(1), 248(1), (3).

PART XXIX — SCIENTIFIC RESEARCH AND EXPERIMENTAL DEVELOPMENT

History: The heading to Part XXIX amended by P.C. 1986-2770, para. 3(a), December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, applicable to expenditures made in taxation years ending after May 23, 1985.

Part XXIX was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

2900. (1) [Repealed]

History: Subsec. 2900(1) repealed by P.C. 2000-1095, subsec. 1(2), July 27, 2000, *Canada Gazette*, Part II, August 16, 2000, applicable to work performed after February 27, 1995 except that, for the purposes of paras. 149(1)(j) and (8)(b) of the Act, the repeal does not apply to work performed pursuant to an agreement in writing made by the taxpayer before February 28, 1995. (See now ITA 248(1)"scientific research and experimental development".)

The opening words of subsec. 2900(1) amended by P.C. 2000-1095, subsec. 1(2), July 27, 2000, *Canada Gazette*, Part II, August 16, 2000, applicable to 1995 *et seq.*

Subsec. 2900(1) amended by P.C. 1995-16, subsec. 1(1), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable to taxation years ending after December 2, 1992.

That portion of s. 2900 preceding para. (a) amended and s. 2900 renumbered as subsec. 2900(1), by P.C. 1986-2770, para. 3(a), December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, applicable to expenditures made in taxation years ending after May 23, 1985.

All that portion of s. 2900 preceding para. (a) substituted by P.C. 1978-2917, s. 1, September 27, 1978, *Canada Gazette*, Part II, October 11, 1978, effective for the period commencing with a taxation year ending after 1977.

Selected Cases [Reg. 2900(1)]: *Développements de Systèmes Spécialisés M.T.P.C. Inc. v. R.*, [2000] 2 C.T.C. 2031 (TCC) (Working on computer programs not scientific research); *Hun-Medipharma Research Inc. v. R.*, [1999] 1 C.T.C. 2800 (TCC) (Not necessary for SR&ED that there be both analysis and experimentation).

(2) For the purposes of clause 37(8)(a)(i)(B) and subclause 37(8)(a)(ii)(A)(II) of the Act, the following expenditures are directly attributable to the prosecution of scientific research and experimental development:

(a) the cost of materials consumed or transformed in such prosecution;

(b) where an employee directly undertakes, supervises or supports such prosecution, the portion of the amount incurred for salary or wages of the employee that can reasonably be considered to be in respect of such prosecution; and

(c) other expenditures, or those portions of other expenditures, that are directly related to such prosecution and that would not have been incurred if such prosecution had not occurred.

Related Provisions: ITA 127(27) — ITC recapture.

History: Para. 2900(2)(a) amended by P.C. 2000-1095, subsec. 1(3), July 27, 2000, *Canada Gazette*, Part II, August 16, 2000, applicable to costs incurred after February 23, 1998.

The opening words of subsec. 2900(2) and paras. 2900(2)(b) and (c) amended by P.C. 1995-16, subsecs. 1(2) and (3), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995. The amendment to the opening words is applicable to taxation years ending after December 2, 1992; paras. 2900(2)(b) and (c) applicable to 1990 *et seq.*

Subsec. 2900(2) added by P.C. 1986-2770, s. 4, December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, applicable to expenditures made in taxation years ending after May 23, 1985.

Selected Cases [Reg. 2900(2)]: *Consoltex Inc. v. R.*, [1997] 2 C.T.C. 2846 (TCC) (Cost of yarn used for scientific research fell within provision).

Information Circulars: See at end of Reg. 2900.

Application Policies: SR&ED 96-06: Directly undertaking, supervising or supporting "directly engaged" SR&ED salary and wages; SR&ED 2000-01: Cost of materials; SR&ED 2002-01: Expenditures incurred for administrative salaries or wages — "directly related" test; SR&ED 2002-02R2: Experimental production and commercial production with experimental development work — allowable SR&ED expenditures; SR&ED 2004-03: Filing requirements for claiming SR&ED carried out in Canada.

(3) For the purposes of subclause 37(8)(a)(ii)(A)(II) of the Act, the following expenditures are directly attributable to the provision of premises, facilities or equipment for the prosecution of scientific research and experimental development:

(a) the cost of the maintenance and upkeep of such premises, facilities or equipment; and

(b) other expenditures, or those portions of other expenditures, that are directly related to that provision and that would not have been incurred if those premises or facilities or that equipment had not existed.

History: The opening words of subsec. 2900(3) and para. 2900(3)(b) amended by P.C. 1995-16, subsecs. 1(4) and (5), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995. The amendment to the opening words is applicable to taxation years ending after December 2, 1992; para. 2900(3)(b) applicable to 1990 *et seq.*

Subsec. 2900(3) added by P.C. 1986-2770, s. 4, December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, applicable to expenditures made in taxation years ending after May 23, 1985.

(4) For the purposes of the definition "qualified expenditure" in subsection 127(9) of the Act, the prescribed proxy amount of a taxpayer for a taxation year, in respect of a business, in respect of which the taxpayer elects under clause 37(8)(a)(ii)(B) of the Act is 65% of the total of all amounts each of which is that portion of the amount incurred in the year by the taxpayer in respect of salary or wages of an employee of the taxpayer who is directly engaged in scientific research and experimental development carried on in Canada that can reasonably be considered to relate to the scientific research and experimental development having regard to the time spent by the employee on the scientific research and experimental development.

Related Provisions: ITA 37(1.3) — SR&ED within 200 nautical miles offshore is deemed done in Canada; Reg. 2900(5)–(7) — Additional rules re prescribed proxy amount; Reg. 2900(9) — Benefits and bonuses excluded from wages.

History: Subsec. 2900(4) amended by P.C. 1995-16, subsec. 1(6), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable to taxation years ending after December 2, 1992.

Subsec. 2900(4) added by P.C. 1986-2770, s. 4, December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, applicable to expenditures made in taxation years ending after May 23, 1985.

Application Policies: SR&ED 96-06: Directly undertaking, supervising or supporting "directly engaged" SR&ED salary and wages.

(5) Subject to subsections (6) to (8), where in subsection (4) the portion of an expenditure is all or substantially all of the expenditure, that portion shall be replaced by the amount of the expenditure.

History: Subsec. 2900(5) added by P.C. 1995-16, subsec. 1(6), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable to taxation years ending after December 2, 1992.

Application Policies: SR&ED 96-06: Directly undertaking, supervising or supporting "directly engaged" SR&ED salary and wages.

(6) The amount determined under subsection (4) as the prescribed proxy amount of a taxpayer for a taxation year in respect of a business shall not exceed the amount, if any, by which

(a) the total of all amounts deducted in computing the taxpayer's income for the year from the business,

exceeds the total of all amounts each of which is

(b) an amount deducted in computing the income of the taxpayer for the year from the business under any of sections 20, 24, 26, 30, 32, 37, 66 to 66.8 and 104 of the Act, or

(c) an amount incurred by the taxpayer in the year in respect of any outlay or expense made or incurred for the use of, or the right to use, a building other than a special-purpose building.

History: Subsec. 2900(6) added by P.C. 1995-16, subsec. 1(6), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable to taxation years ending after December 2, 1992.

(7) In determining the prescribed proxy amount of a taxpayer for a taxation year, the portion of the amount incurred in the year by the taxpayer in respect of salary or wages of a specified employee of the taxpayer that is included in computing the total described in subsection (4) shall not exceed the lesser of

(a) 75% of the amount incurred by the taxpayer in the year in respect of salary or wages of the employee, and

(b) the amount determined by the formula

$$2.5 \times A \times \frac{B}{365}$$

where

A is the Year's Maximum Pensionable Earnings (as determined under section 18 of the *Canada Pension Plan*) for the calendar year in which the taxation year ends, and

B is the number of days in the taxation year in which the employee is an employee of the taxpayer.

Related Provisions: Reg. 2900(9) — Benefits and bonuses excluded from wages.

History: Subsec. 2900(7) added by P.C. 1995-16, subsec. 1(6), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable to taxation years ending after December 2, 1992.

(8) Where

(a) a taxpayer is a corporation,

(b) the taxpayer employs in a taxation year ending in a calendar year an individual who is a specified employee of the taxpayer,

(c) the taxpayer is associated with another corporation (referred to as the "associated corporation") in a taxation year of the associated corporation ending in the calendar year, and

(d) the individual is an employee of the associated corporation in the taxation year of the associated corporation ending in the calendar year,

the total of all amounts that may be included in computing the total described in subsection (4) in respect of salaries or wages of the individual by the taxpayer in its taxation year ending in the calendar year and by all associated corporations in their taxation years ending in the calendar year shall not exceed the amount that is 2.5 times the Year's Maximum Pensionable Earnings (as determined under section 18 of the *Canada Pension Plan*) for the calendar year.

History: Subsec. 2900(8) added by P.C. 1995-16, subsec. 1(6), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable to taxation years ending after December 2, 1992.

(9) For the purposes of subsections (4) and (7), an amount incurred in respect of **salary or wages** of an employee in a taxation year does not include

(a) an amount described in section 6 or 7 of the Act;

(b) an amount deemed under subsection 78(4) of the Act to have been incurred;

(c) bonuses; or

(d) remuneration based on profits.

History: Subsec. 2900(9) added by P.C. 1995-16, subsec. 1(6), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable to taxation years ending after December 2, 1992.

Application Policies: SR&ED 96-06: Directly undertaking, supervising or supporting "directly engaged" SR&ED salary and wages.

(10) For the purpose of subsection (8),

(a) an individual related to a particular corporation, and

(b) a partnership any member of which is an individual related to a particular corporation or is a corporation associated with a particular corporation,

shall be deemed to be a corporation associated with the particular corporation.

History: Subsec. 2900(10) added by P.C. 1995-16, subsec. 1(6), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable to taxation years ending after December 2, 1992.

(11) The depreciable property of a taxpayer that is prescribed for the purposes of the definition "first term shared-use-equipment" in subsection 127(9) of the Act is

(a) a building of the taxpayer;

(b) a leasehold interest of the taxpayer in a building;

(c) a property of the taxpayer if, at the time it was acquired by the taxpayer, the taxpayer or a person related to the taxpayer intended that it would be used in the prosecution of scientific research and experimental development during the assembly, construction or commissioning of a facility, plant or line for commercial manufacturing, commercial processing or other commercial purposes (other than scientific research and experimental development) and intended

(i) that it would be used during its operating time in its expected useful life primarily for purposes other than scientific research and experimental development, or

(ii) that its value would be consumed primarily in activities other than scientific research and experimental development; and

(d) part of a property of the taxpayer if, at the time the part was acquired by the taxpayer, the taxpayer or a person related to the taxpayer intended that the part would be used in the prosecution of scientific research and experimental development during the assembly, construction or commissioning of a facility, plant or line for commercial manufacturing, commercial processing or other commercial purposes (other than scientific research and experimental development), and intended

(i) that it would be used during its operating time in its expected useful life primarily for purposes other than scientific research and experimental development, or

(ii) that its value would be consumed primarily in activities other than scientific research and experimental development.

History [Reg. 2900(11)]: Subsec. 2900(11) added by P.C. 1995-16, subsec. 1(6), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable to property acquired after December 2, 1992.

Application Policies: SR&ED 96-07: Prototypes, custom products/commercial assets, pilot plants and experimental production; SR&ED 2004-03: Filing requirements for claiming SR&ED carried out in Canada.

Selected Cases [Reg. 2900]: *C.W. Agencies Inc. v. R.*, [2000] 4 C.T.C. 2272 (TCC) (Computer software expenditures were not SR&ED); *RIS-Christie v. R.*, [1999] 1 C.T.C. 132 (FCA); rev'g [1996] 3 C.T.C. 2827 (TCC) (Failure to adduce documentary evidence of research not necessarily fatal); *Northwest Hydraulic Consultants Ltd. v. R.*, [1998] 3 C.T.C. 2520 (TCC) (Court approved criteria in IC 86-4R3 as indicative of SR&ED).

Definitions [Reg. 2900]: "amount" — ITA 248(1); "amount incurred" — Reg. 2900(9); "associated" — Reg. 2900(10)(b); "associated corporation" — Reg. 2900(8)(c); "business" — ITA 248(1); "Canada" — ITA 37(1.3), 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "depreciable property" — ITA 13(21), 248(1); "employee", "individual", "mineral" — ITA 248(1); "person", "prescribed", "property" — ITA 248(1); "related" — ITA 251(2)–(6); "salary or wages" — ITA 248(1), Reg. 2900(9); "scientific research and experimental development" — Reg. 2900(1); "specified employee" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "total of all amounts" — Reg. 2900(8).

Interpretation Bulletins [Reg. 2900]: IT-151R5: Scientific research and experimental development expenditures.

Information Circulars [Reg. 2900]: 86-4R3: Scientific research and experimental development; 94-2: Machinery and equipment industry application paper; 97-1: SR&ED — Administrative guidelines for software development.

2901. Prescribed expenditures — For the purposes of paragraph 37.1(5)(c) [37.1(5)"qualified expenditure"] of the Act, a prescribed expenditure is

(a) an expenditure of a current nature incurred by a corporation in respect of

(i) the general administration or management of a business, including

(A) administrative salary or wages and related benefits in respect of a person whose duties are not all or substantially all directed to the prosecution of scientific research and experimental

development, except to the extent that such expenditure is described in subsection 2900(2) or (3),

(B) a legal or accounting fee,

(C) an amount described in any of paragraphs 20(1)(c) to (g) of the Act,

(D) an entertainment expense,

(E) an advertising or selling expense,

(F) a convention expense,

(G) a due or fee in respect of membership in a scientific or technical society or organization, and

(H) a fine or penalty, or

(ii) the maintenance and upkeep of premises, facilities or equipment to the extent that such expenditure is not attributable to the prosecution of scientific research and experimental development,

except any such expenditure incurred by a corporation that derives all or substantially all of its revenue from the prosecution of scientific research and experimental development or the sale of rights in or arising out of scientific research and experimental development carried on by it;

(b) an expenditure of a capital nature incurred by a corporation in respect of

(i) the acquisition of property, except any such expenditure that was incurred for and was all or substantially all attributable to the prosecution, or to the provision of premises, facilities or equipment for the prosecution, of scientific research and experimental development, or

(ii) the acquisition of property that is qualified property within the meaning assigned by subsection 127(9) of the Act;

(c) an expenditure made to acquire rights in, or arising out of, scientific research and experimental development; or

(d) an expenditure on scientific research and experimental development in respect of which an amount is deductible under section 110 of the Act.

History: That portion of para. 2901(a) following cl. (i)(H) and paras. 2901(b), (c), (d) amended, and cl. 2901(a)(i)(A) and subparas. 2901(b)(i), (ii) substituted, by P.C. 1986-2770, paras. 3(c), (d) and s. 5, December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, applicable to expenditures made in taxation years ending after May 23, 1985.

Cl. 2901(a)(i)(C) substituted by P.C. 1986-1048, s. 2, May 1, 1986, *Canada Gazette*, Part II, May 14, 1986, applicable to bills drawn after June 1984.

S. 2901 added by P.C. 1978-2917, s. 2, September 27, 1978, *Canada Gazette*, Part II, October 11, 1978, effective for the period commencing with a taxation year ending after 1977.

Definitions [Reg. 2901]: "amount", "business" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "person", "prescribed", "property" — ITA 248(1); "related" — ITA 251(2)–(6); "salary or wages" — ITA 248(1); "scientific research and experimental development" — Reg. 2900(1).

Interpretation Bulletins: IT-151R5: Scientific research and experimental development expenditures.

2902. For the purposes of the definition "qualified expenditure" in subsection 127(9) of the Act, a prescribed expenditure is

(a) an expenditure of a current nature incurred by a taxpayer in respect of

(i) the general administration or management of a business, including

(A) administrative salary or wages and related benefits in respect of a person whose duties are not all or substantially all directed to the prosecution of scientific research and experimental development, except to the extent that such expenditure is described in subsection 2900(2) or (3),

(B) a legal or accounting fee,

(C) an amount described in any of paragraphs 20(1)(c) to (g) of the Act,

(D) an entertainment expense,

(E) an advertising or selling expense,

(F) a conference or convention expense,

(G) a due or fee in respect of membership in a scientific or technical society or organization, and

(H) a fine or penalty, or

(ii) the maintenance and upkeep of premises, facilities or equipment to the extent that such expenditure is not attributable to the prosecution of scientific research and experimental development;

(b) an expenditure of a capital nature incurred by a taxpayer in respect of

(i) the acquisition of property, except any such expenditure that at the time it was incurred

(A) was for first term shared-use-equipment or second term shared-use-equipment, or

(B) was for the provision of premises, facilities or equipment if, at the time of the acquisition of the premises, facilities or equipment, it was intended

(I) that the premises, facilities or equipment would be used during all or substantially all of the operating time of the premises, facilities or equipment in the expected useful life of the premises, facilities or equipment for the prosecution of scientific research and experimental development in Canada, or

(II) that all or substantially all of the value of the premises, facilities or equipment would be consumed in the prosecution of scientific research and experimental development in Canada,

(ii) the acquisition of property that is qualified property within the meaning assigned by subsection 127(9) of the Act, or

(iii) the acquisition of property that has been used, or acquired for use or lease, for any purpose whatever before it was acquired by the taxpayer;

(c) an expenditure made to acquire rights in, or arising out of, scientific research and experimental development; or

(d) an expenditure on scientific research and experimental development in respect of which an amount is

deductible under section 110.1 or section 118.1 of the Act; or

(e) an expenditure of a current or capital nature, to the extent that the taxpayer has received or is entitled to receive a reimbursement in respect thereof from

Proposed Amendment — Reg. 2902(e) opening words

(e) for the purpose of sections 194 and 195 of the Act, an expenditure of a current or capital nature, to the extent that the taxpayer has received or is entitled to receive a reimbursement in respect of the expenditure from

Application: The October 27, 1998 draft regulations, s. 2, will amend the opening words of para. 2902(e) to read as above, applicable to amounts that become receivable after December 20, 1991.

Technical Notes: Section 2902 defines a prescribed expenditure for the purposes of subsection 127(9) of the *Income Tax Act*. Prescribed expenditures are not eligible for investment tax credits.

Paragraph 2902(e) of the *Income Tax Regulations* is amended consequential on the amendments to the definition "contract payment" in subsection 127(9) of the Act. Those amendments provided that a contract payment included certain payments for scientific research and experimental development that is performed for or on behalf of a person entitled to a deduction in respect of the amount because of subparagraph 37(1)(a)(i) or (i.1) of the Act. Contract payments received reduce the base upon which a taxpayer's ITC in respect of SR&ED is calculated. Those amendments were effective for amounts that became payable after December 20, 1991. In view of the amended definition of "contract payment" applicable to ITCs in respect of SR&ED, the provisions of paragraph 2902(e) became redundant for ITC purposes. However, paragraph 2902(e) of the Regulations is still relevant in respect of claims for refunds of Part VIII Refundable Tax on Corporations in Respect of the Scientific Research and Experimental Development Tax Credit. Regulation 2902(e) is, therefore, amended to apply only for the purposes of the Part VIII Refundable Tax.

(i) a person resident in Canada, other than

(A) Her Majesty in right of Canada or a province,

(B) an agent of Her Majesty in right of Canada or a province,

(C) a corporation, commission or association that is controlled, directly or indirectly in any manner whatever, by Her Majesty in right of Canada or a province or by an agent of Her Majesty in right of Canada or a province, or

(D) a municipality in Canada or a municipal or public body performing a function of government in Canada, or

(ii) a person not resident in Canada to the extent that the said reimbursement is deductible by the person in computing his taxable income earned in Canada for any taxation year.

Related Provisions: ITA 37(1.3) — SR&ED within 200 nautical miles offshore is deemed done in Canada; ITA 256(5.1), (6.2) — Meaning of "controlled directly or indirectly".

History: Cl. 2902(a)(i)(F) amended by P.C. 1995-16, subsec. 2(1), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable to expenses incurred after January 25, 1995.

That portion of para. 2902(a) after subpara. (ii) repealed by P.C. 1995-16, subsec. 2(2), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable to taxation years beginning after February 22, 1994.

Subpara. 2902(b)(i) amended by P.C. 1995-16, subsec. 2(3), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable to property acquired after December 2, 1992.

Para. 2902(d) substituted by P.C. 1994-139, s. 5, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1988 *et seq.*

Subpara. 2902(b)(iii) substituted by P.C. 1988-390, s. 15, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, applicable in respect of property acquired after March 16, 1988, other than property acquired after that date pursuant to the terms of an agreement in writing to acquire the property entered into by the taxpayer on or before that date.

That portion of para. 2902(a) following cl. (i)(H) and paras. 2902(b), (c), (d) amended, and that portion of s. 2902 preceding cl. (a)(i)(B) and subparas. 2902(b)(i), (ii) substituted, by P.C. 1986-2770, paras 3(e), (f) and s. 6, December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, applicable to expenditures made in taxation years ending after May 23, 1985.

Cl. 2902(a)(i)(C) substituted by P.C. 1986-1048, s. 3, May 1, 1986, *Canada Gazette*, Part II, May 14, 1986, applicable to bills drawn after June 1984.

S. 2902 added by P.C. 1978-2917, s. 3, September 27, 1978, *Canada Gazette*, Part II, October 11, 1978, effective for the period commencing with the 1977 taxation year.

Selected Cases [Reg. 2902]: *Quantetics Corp. v. R.*, [2000] 3 C.T.C. 2397 (TCC) (Revenue test is a gross revenue test).

Definitions [Reg. 2902]: "amount", "business" — ITA 248(1); "Canada" — ITA 37(1.3), 255, *Interpretation Act* 35(1); "controlled directly or indirectly" — ITA 256(5.1), (6.2); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "Her Majesty" — *Interpretation Act* 35(1); "person", "prescribed", "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "related" — ITA 251(2)–(6); "resident in Canada" — ITA 250; "salary or wages" — ITA 248(1); "scientific research and experimental development" — Reg. 2900(1); "taxable income earned in Canada" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

Interpretation Bulletins: IT-104R2: Deductibility of fines or penalties; IT-151R5: Scientific research and experimental development expenditures.

Application Policies: SR&ED 2002-01: Expenditures incurred for administrative salaries or wages — "directly related" test ; SR&ED 2003-01: Capital property intended to be used all or substantially all for SR&ED.

2903. Special-purpose buildings — For the purposes of this Part and paragraph 37(8)(d) of the Act, a special-purpose building is a building the working areas of which are designed and constructed to have a displacement in any direction of not more than .02 micrometre and to have, per .028 cubic metre of interior airspace,

(a) not more than 350 airborne particles of a size less than or equal to .1 micrometre in diameter and no airborne particles of a size greater than .1 micrometre in diameter,

(b) not more than 75 airborne particles of a size less than or equal to .2 micrometre in diameter and no airborne particles of a size greater than .2 micrometre in diameter,

(c) not more than 30 airborne particles of a size less than or equal to .3 micrometre in diameter and no airborne particles of a size greater than .3 micrometre in diameter, or

(d) not more than 10 airborne particles of a size less than or equal to .5 micrometre in diameter and no airborne particles of a size greater than .5 micrometre in diameter.

History: The opening words of s. 2903 amended by P.C. 1995-16, s. 3, January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable to taxation years ending after December 2, 1992.

S. 2903 added by P.C. 1991-2028, October 24, 1991, *Canada Gazette*, Part II, November 6, 1991, applicable in respect of buildings that were acquired or in respect of which rental expenses were incurred after 1987.

Interpretation Bulletins: IT-151R5: Scientific research and experimental development expenditures.

PART XXX — COMMUNICATION OF INFORMATION

History: The heading preceding s. 3000 of Part XXX substituted by P.C. 1985-465, subsec. 15(1), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective commencing March 30, 1983.

Part XXX was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

3000–3002. [Revoked]

History: Ss. 3000–3002 revoked by P.C. 1993-1943, December 2, 1993, *Canada Gazette* Part II, December 15, 1993.

Para. 3000(b) substituted by P.C. 1991-1740, September 19, 1991, *Canada Gazette* Part II, October 9, 1991.

Para. 3001(a) substituted by P.C. 1990-2780, s. 13, December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable after March 1987.

S. 3002 added by P.C. 1989-1780, September 21, 1989, *Canada Gazette*, Part II, October 11, 1989.

S. 3001 added by P.C. 1985-465, subsec. 15(2), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective commencing March 30, 1983.

3003. Prescribed laws of the province of Quebec — For the purposes of paragraph 122.64(2)(a) of the Act, the following are prescribed laws of the Province of Quebec:

(a) *An Act respecting Family Benefits*, R.S.Q., c. P-19.1;

(b) *An Act respecting the Québec Pension Plan*, R.S.Q., c. R-9; and

(c) *An Act respecting Income Support, Employment Assistance and Social Solidarity*, R.S.Q., c. S-32.001, as it relates to the additional amounts for dependent children.

History: S. 3003 amended by P.C. 2002-2169, s. 14, December 12, 2002, *Canada Gazette*, Part II, January 1, 2003, effective January 1, 2003.

Subpara. 3003(a)(i) amended, and subpara. (iii) added by P.C. 1997-1688, November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to information provided after June 19, 1997.

Paras. 3003(d) and (e) added by P.C. 1994-1658, October 6, 1994, *Canada Gazette*, Part II, October 19, 1994.

Subparas. 3003(b)(ii) and (iii) added by P.C. 1994-560, April 14, 1994, *Canada Gazette*, Part II, May 4, 1994.

Subpara. 3003(a)(ii) added by P.C. 1993-538, March 23, 1993, *Canada Gazette*, Part II, April 7, 1993.

S. 3003 added by P.C. 1992-2653, December 17, 1992, *Canada Gazette*, Part II, January 13, 1993, effective commencing December 21, 1992.

Definitions [Reg. 3003]: "amount", "prescribed" — ITA 248(1); "province" — *Interpretation Act* 35(1).

3004. For the purposes of subparagraph 241(4)(j.1)(ii) of the Act, *An Act Respecting Family Benefits*, S.Q. 1997, c. 57, is, in respect of the Province of Quebec, a prescribed law of a province.

History: S. 3004 added by P.C. 1998-1121, June 18, 1998, *Canada Gazette*, Part II, July 8, 1998, in force July 1, 1998.

Definitions [Reg. 3004]: "prescribed" — ITA 248(1); "province" — *Interpretation Act* 35(1).

PART XXXI — [REVOKED]

History: Part XXXI revoked by P.C. 1984-3789, s. 11, November 29, 1984, *Canada Gazette*, Part II, December 12, 1984.

Part XXXI was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

PART XXXII — PRESCRIBED STOCK EXCHANGES AND CONTINGENCY FUNDS

History: The heading for Part XXXII amended by P.C. 1985-2277, s. 7, July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, effective November 13, 1981.

Part XXXII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs.

3200. Stock exchanges in Canada — For the purposes of the Act, the following are prescribed stock exchanges in Canada:

(a) Tiers 1 and 2 of the TSX Venture Exchange (also known as Tiers 1 and 2 of the Canadian Venture Exchange);

(b) Montreal Stock Exchange; and

(c) Toronto Stock Exchange.

(d) [Repealed]

(e) [Repealed]

Related Provisions: ITA 55(6) — Reorganization share deemed listed on prescribed stock exchange; ITA 87(10) — Share deemed listed on prescribed stock exchange following amalgamation; ITA 248(29) — Part, division or subdivision of stock exchange also qualifies; Canada-U.S. Tax Treaty:Art. XXIX-A:5(a)(ii) — Meaning of "recognized stock exchange".

History: Para. 3200(a) substituted for paras. (a) and (a.1) by P.C. 2003-1919, subsec. 1(2), December 3, 2003, *Canada Gazette*, Part II, December 17, 2003, applicable as of 5:00 p.m. EDST on September 29, 2000.

Para. 3200(a.1) added by the said P.C. 2003-1919, subsec. 1(1), effective November 26, 1999.

Paras. 3200(d) and (e) repealed by the said P.C. 2003-1919, subsec. 1(3), effective December 17, 2003.

The opening words of s. 3200 amended by P.C. 2001-954, s. 3, May 31, 2001, *Canada Gazette*, Part II, June 20, 2001, applicable after 1991.

That portion of s. 3200 preceding para. (a) substituted by P.C. 1994-139, s. 6, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable after 1985, except that the section shall be read:

(a) before 1990, without reference to para. 13(27)(f) of the Act;

(b) before 1989, without reference to cl. 19(5)(b)(v)(C) of the Act;

(c) before the 1991 taxation year, without reference to subpara. 48.1(1)(a)(ii) of the Act;

(d) before the 1986 taxation year, as if the reference to ss. 87 and 89 were a reference to ss. 70, 87 and 89 of the Act;

(e) before October 9, 1986, without reference to s. 207.5 of the Act;

(f) before April 27, 1989, without reference to the definition "qualified security" in subsec. 260(1) of the Act.

That portion of s. 3200 preceding para. (a) substituted by P.C. 1989-1565, s. 1, August 14, 1989, *Canada Gazette*, Part II, August 30, 1989, applicable after June 18, 1987.

That portion of s. 3200 preceding para. (a) substituted by P.C. 1988-390, s. 16, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, effective January 1, 1986, except that the reference to subsec. 206(1) and s. 206.1 is applicable to periods occurring after October 31, 1985.

All that portion of s. 3200 preceding para. (a) substituted by P.C. 1985-2277, s. 8, July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, effective November 13, 1981.

All that portion of s. 3200 preceding para. (a) substituted by P.C. 1984-3789, s. 12, November 29, 1984, *Canada Gazette*, Part II, December 12, 1984.

All that portion of s. 3200 preceding para. (a) substituted by P.C. 1981-2518, s. 1, September 16, 1981, *Canada Gazette*, Part II, October 14, 1981, effective January 1, 1981.

S. 3200 substituted by P.C. 1980-2225, s. 1, August 27, 1980, *Canada Gazette*, Part II, September 10, 1980, effective for 1977 *et seq.*

S. 3200 substituted by P.C. 1980-422, February 8, 1980, *Canada Gazette*, Part II, February 27, 1980, effective December 6, 1979.

Definitions [Reg. 3200]: "Canada" — ITA 255, *Interpretation Act* 35(1); "prescribed" — ITA 248(1).

Interpretation Bulletins: IT-458R2: Canadian-controlled private corporation.

3201. Stock exchanges outside Canada — For the purposes of the Act, the following are prescribed stock exchanges outside Canada:

(a) in Australia, the Australian Stock Exchange;

(b) in Belgium, the Brussels Stock Exchange;

(c) in France, the Paris Stock Exchange;

(d) in Germany, the Frankfurt Stock Exchange;

(e) in Hong Kong, the Hong Kong Stock Exchange;

(f) in Italy, the Milan Stock Exchange;

(g) in Japan, the Tokyo Stock Exchange;

(h) in Mexico, the Mexico City Stock Exchange;

(i) in the Netherlands, the Amsterdam Stock Exchange;

(j) in New Zealand, the New Zealand Stock Exchange;

(k) in Singapore, the Singapore Stock Exchange;

(l) in Spain, the Madrid Stock Exchange;

(m) in Switzerland, the Zurich Stock Exchange;

(n) in the United Kingdom, the London Stock Exchange;

(o) in the United States,

(i) the American Stock Exchange,

(ii) the Boston Stock Exchange,

(iii) the Chicago Board of Options,

(iv) the Chicago Board of Trade,

(v) the Cincinnati Stock Exchange,

(vi) the Intermountain Stock Exchange,

(vii) the Midwest Stock Exchange,

(viii) the National Association of Securities Dealers Automated Quotation System,

(ix) the New York Stock Exchange,

(x) the Pacific Stock Exchange,

(xi) the Philadelphia Stock Exchange, and

(xii) the Spokane Stock Exchange;

(p) in Ireland, the Irish Stock Exchange;

(q) in Israel, the Tel Aviv Stock Exchange;

(r) in Austria, the Vienna Stock Exchange;

(s) in Denmark, the Copenhagen Stock Exchange;

(t) in Finland, the Helsinki Stock Exchange;

(u) in Norway, the Oslo Stock Exchange;

(v) in South Africa, the Johannesburg Stock Exchange;

(w) in Sweden, the Stockholm Stock Exchange;

(x) in Luxembourg, the Luxembourg Stock Exchange; and

(y) in Poland, the main and parallel markets of the Warsaw Stock Exchange.

Related Provisions: ITA 55(6) — Reorganization share deemed listed on prescribed stock exchange; ITA 87(10) — Share deemed listed on prescribed stock exchange following amalgamation; ITA 248(29) — Part, division or subdivision of stock exchange also qualifies; Canada-U.S. Tax Treaty:Art. XXIX-A:5(a)(ii) — Meaning of "recognized stock exchange".

History: Paras. 3201(x) and (y) added by P.C. 2005-7, s. 1, January 12, 2005, *Canada Gazette*, Part II, January 26, 2005, effective June 24, 2003.

The opening words of s. 3201 amended by P.C. 2001-954, subsec. 4(1), May 31, 2001, *Canada Gazette*, Part II, June 20, 2001, applicable after 1991.

Paras. 3201(q) to (w) added by the said P.C. 2001-954, subsec. 4(2), applicable after July 22, 1998 except that, for the purposes of s. 116 of the Act, it applies to a sale of shares completed after April 1998 and before July 23, 1998, the gains from which are exempt from income tax otherwise payable in Canada under a tax treaty, unless the vendor of the shares otherwise elects in writing filed with the Minister of National Revenue on or before the balance-due day for the taxation year of the vendor in which the sale of shares was completed.

Para. 3201(p) added by P.C. 1997-1145, s. 1, August 28, 1997, *Canada Gazette*, Part II, September 17, 1997, applicable to 1995 *et seq.*

That portion of s. 3201 preceding para. (a) substituted by P.C. 1994-139, s. 7, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable after October 8, 1986, except the section shall be read:

(a) before 1990, without reference to para. 13(27)(f) of the Act, and

(b) before April 27, 1989, without reference to the definition "qualified security" in subsec. 260(1) of the Act.

S. 3201 substituted by P.C. 1994-101, January 20, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1991 *et seq.*

Para. 3201(a.1) added by P.C. 1992-2334, s. 1, November 19, 1992, *Canada Gazette*, Part II, December 2, 1992, applicable to 1991 *et seq.*

That portion of s. 3201 preceding para. (a) substituted by P.C. 1989-1565, s. 2, August 14, 1989, *Canada Gazette*, Part II, August 30, 1989, applicable after June 18, 1987.

Subpara. 3201(c)(vi.1) added by P.C. 1989-150, February 9, 1989, *Canada Gazette*, Part II, March 1, 1989, applicable after 1988.

That portion of s. 3201 preceding para. (a) substituted by P.C. 1988-390, s. 17, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, effective January 1, 1986, except that the reference to s. 206.1 is applicable to periods occurring after October 31, 1985.

That portion of s. 3201 preceding para. (a) substituted by P.C. 1986-1048, s. 4, May 1, 1986, *Canada Gazette*, Part II, May 14, 1986, applicable to taxation years commencing after 1983.

All that portion of s. 3201 preceding para. (a) substituted by P.C. 1981-2518, s. 3, September 16, 1981, *Canada Gazette*, Part II, October 14, 1981, effective January 1, 1981.

Definitions [Reg. 3201]: "Canada" — ITA 255, *Interpretation Act* 35(1); "prescribed" — ITA 248(1); "United Kingdom", "United States" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-458R2: Canadian-controlled private corporation.

3202. Contingency funds — For the purposes of subparagraph 47.1(1)(l)(i) of the Act [repealed], the National Contingency Fund is a prescribed contingency fund.

History: S. 3202 added by P.C. 1985-2277, s. 9, July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, effective November 13, 1981.

PART XXXIII — TAX TRANSFER PAYMENTS

History: Part XXXIII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

3300. For the purposes of subsection 154(2) of the Act, a rate of 40 per cent is hereby prescribed.

Definitions [Reg. 3300]: "prescribed" — ITA 248(1).

PART XXXIV — INTERNATIONAL DEVELOPMENT ASSISTANCE PROGRAMS

History: Part XXXIV was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

3400. For the purposes of paragraphs 122.3(1)(a) and 250(1)(d) of the Act, each international development assistance program of the Canadian International Development Agency that is financed with funds (other than loan assistance funds) provided under External Affairs Vote 30a, *Appropriation Act No. 3, 1977-78*, or another vote providing for such financing, is hereby prescribed as an

international development assistance program of the Government of Canada.

History: S. 3400 substituted by 1985-2277, s. 10, July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable to 1984 *et seq.*

Selected Cases [Reg. 3400]: *Bell v. Canada*, [1996] 2 C.T.C. 2191 (TCC) (Shifting onus of proving program qualified to Minister).

Definitions [Reg. 3400]: "Canada" — ITA 255, *Interpretation Act* 35(1); "prescribed" — ITA 248(1).

Interpretation Bulletins: IT-497R4: Overseas employment tax credit.

PART XXXV — RECEIPTS FOR DONATIONS AND GIFTS

History: Part XXXV was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

3500. Interpretation — In this Part,

"employees' charity trust" means a registered charity that is organized for the purpose of remitting, to other registered charities, donations that are collected from employees by an employer;

History: "Employees' charity trust" substituted by P.C. 1994-139, s. 8, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1986 *et seq.*

"official receipt" means a receipt for the purposes of subsection 110.1(2) or (3) or 118.1(2), (6) or (7) of the Act, containing information as required by section 3501 or 3502;

History: "Official receipt" substituted by P.C. 1994-139, s. 8, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1988 *et seq.*

"official receipt form" means any printed form that a registered organization or other recipient of a gift has that is capable of being completed, or that originally was intended to be completed, as an official receipt by it; and

"other recipient of a gift" means a person, to whom a gift is made by a taxpayer, referred to in any of subparagraphs 110.1(1)(a)(iii) to (vii), paragraphs 110.1(1)(b) and (c), subparagraph 110.1(3)(a)(ii), paragraphs (c) to (g) of the definition "total charitable gifts" in subsection 118.1(1), the definition "total Crown gifts" in subsection 118.1(1), paragraph (b) of the definition "total cultural gifts" in subsection 118.1(1) and paragraph 118.1(6)(b) of the Act;

History: "Other recipient of a gift" substituted by P.C. 1994-139, s. 8, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1988 *et seq.* except that in its application before December 12, 1988 the reference to "paragraph (b) of the definition "total cultural gifts" " shall be read as "paragraph (c) of the definition "total cultural gifts" ".

"registered organization" means a registered charity, a registered Canadian amateur athletic association or a registered national arts service organization.

History: "Registered organization" substituted by P.C. 1994-139, s. 8, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1988 *et seq* except that before July 14, 1990, it shall be read as follows:

> "registered organization" means a registered charity or a registered Canadian amateur athletic association.

"Official receipt" substituted by P.C. 1988-390, s. 18, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, applicable with respect to gifts made after 1984.

"Official receipt" and "other recipient of a gift" substituted by P.C. 1986-1048, s. 5, May 1, 1986, *Canada Gazette*, Part II, May 14, 1986, applicable to gifts made after February 15, 1984.

Heading to Part XXXV, "official receipt", "official receipt form", substituted, and "other recipient of a gift" added by P.C. 1981-841, s. 1, subsecs. 2(1)-(3), March 26, 1981, *Canada Gazette*, Part II, April 8, 1981, applicable with respect to gifts made after 1980.

Definitions [Reg. 3500]: "employee", "employer" — ITA 248(1); "official receipt", "other recipient of a gift" — Reg. 3500; "person", "registered Canadian amateur athletic association", "registered charity", "registered national arts service organization" — ITA 248(1); "registered organization" — Reg. 3500; "taxpayer" — ITA 248(1).

3501. Contents of receipts — (1) Every official receipt issued by a registered organization shall contain a statement that it is an official receipt for income tax purposes, and shall show clearly, in such a manner that it cannot readily be altered,

(a) the name and address in Canada of the organization as recorded with the Minister;

(b) the registration number assigned by the Minister to the organization;

(c) the serial number of the receipt;

(d) the place or locality where the receipt was issued;

(e) where the donation is a cash donation, the day on which or the year during which the donation was received;

(e.1) where the donation is a gift of property other than cash

(i) the day on which the donation was received,

(ii) a brief description of the property, and

(iii) the name and address of the appraiser of the property if an appraisal is done;

(f) the day on which the receipt was issued where that day differs from the day referred to in paragraph (e) or (e.1);

(g) the name and address of the donor including, in the case of an individual, his first name and initial;

(h) the amount that is

(i) the amount of a cash donation, or

(ii) where the donation is a gift of property other than cash, the amount that is the fair market value of the property at the time that the gift was made; and

(i) the signature, as provided in subsection (2) or (3), of a responsible individual who has been authorized by the organization to acknowledge donations.

Proposed Amendment — Reg. 3501(1)

Technical Notes to ITA 118.1(2), July 18, 2005: It is proposed that subsections 3501(1), (1.1) and (6) of the Regulations be amended to provide that every official receipt issued by a registered organization in respect of a gift contain, in addition to the information already prescribed, a description and the amount of the advantage, if any, and the eligible amount of the gift. [The Technical Notes to ITA 248(31) state that this will apply "in respect of a gift made after December 20, 2002" — ed.]

Proposed Amendment — Reg. 3501(1) — CRA name and web site on receipts

Canada Revenue Agency Q&A, January 18, 2005: *Q1. What is the new requirement for registered charities that issue official donation receipts?*

A1. Registered charities have to include the name and Web site address of the Canada Revenue Agency on official donation receipts.

Q2. What name and Web site address must appear on all receipts?

A2. The name Canada Revenue Agency and the Web site address www.cra-arc.gc.ca/charities have to appear on all receipts.

Note: The Canada Revenue Agency (CRA) was part of the former Canada Customs and Revenue Agency (CCRA) until the reorganization of the tax and customs functions into two separate organizations. If you have used

the name Canada Customs and Revenue Agency and the CCRA Web site address on your receipts, the CRA will honour them.

Q3. When will registered charities be required to include this information on their official donation receipts?

A3. Registered charities have to include the information on their receipts as of January 1, 2005.

Q4. What if your current stock of receipts does not contain this information? Do you have to throw them out and buy new ones?

A4. No. For the year 2005, it will be acceptable to include the name and Web site address of the Canada Revenue Agency by other than normally required printed means (e.g., sticker, stamp, handwritten).

Q5. Will receipts without the new information be rejected?

A5. No. The Canada Revenue Agency (CRA) will honour receipts that do not contain the new information in 2005. However, the CRA expects all registered charities to include the new information as of January 1, 2005.

Q6. Will registered charities be penalized for not including the new information?

A6. No. Registered charities will not be penalized for not including the new information in 2005. However, the Canada Revenue Agency expects that all registered charities will include the new information as of January 1, 2005.

Technical Notes to ITA 188.1(7)-(8), September 16, 2004: Concurrent with the introduction of section 188.1 of the Act, it is proposed that sections 3501 and 3502 of the *Income Tax Regulations* be amended to provide that official receipts include the name and current internet address of the Canada Revenue Agency. Unlike the introduction of section 188.1 of the Act, it is proposed that this amendment to the *Income Tax Regulations* apply for receipts issued after 2004.

Federal budget, Supplementary Information, March 23, 2004: *Additional Information on Official Tax Receipts*

The *Income Tax Regulations* currently require registered charities to include certain information on their official receipts, such as details about the charity and the donor, the eligible amount in respect of the gift and the date of the gift. The budget proposes to also require that the name and website address of the CRA appear on all official receipts. This change will take effect for receipts issued after 2004.

Related Provisions: ITA 168(1)(d) — Revocation of registration for issuing incorrect receipt; ITA 188.1(7)–(8) — Penalties for incorrect receipts; ITA 188.1(9)–(10) — Penalties for false information relating to receipts; ITA 188.2(3)(a)(iii) — Effect of suspension of charity's receipting privileges; ITA 248(35)–(37) — Value of gift limited to cost if acquired within 3 years or as tax shelter; ITA 248(40) — Donee must make inquiry re circumstances of donation over $5,000; ITA 248(41) — Donation value deemed nil if taxpayer does not inform donee of circumstances requiring reduction.

Interpretation Bulletins: IT-110R3: Gifts and official donation receipts; IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits (archived); IT-226R: Gift to a charity of a residual interest in real property or an equitable interest in a trust; IT-288R2: Gifts of tangible capital properties to a charity and others; IT-504R2: Visual artists and writers.

Forms: RC4108: Registered charities and the Income Tax Act [guide].

Registered Charities Newsletters: 10 (can charities issue electronic official donation receipts by email or on the Internet? can an organization that is applying for registration borrow a charity's BN/Registration number for tax-receipt purposes? gift certificates); 11 (audit of tax preparer lands registered charities and executive director in hot water); 13 (about auditing charities); 14 (Business Number and donation receipts); 18 (how should charitable gifts in kind be valued?; can businesses receive receipts for donations made out of their inventory?; can shares or stock options be gifts?; can a charity issue a charitable receipt for a court-ordered payment made to it?).

Charities Policies: CPC-006: Gift-in-kind; CPC-009: Official donation receipt — Newly registered charity; CPC-010: Official donation receipt — Names; CPC-015: Official donation receipt — Registered charity's address; CPC-017: Official donation receipts — Gifts of services; CPC-018: Official donation receipts — Gifts out of inventory; CPC-019: Official donation receipts — Payment for participation in a youth band or choir; CPC-026: Fundraising — Third-party fundraisers; CPS-014: Computer-generated official donation receipts.

(1.1) Every official receipt issued by another recipient of a gift shall contain a statement that it is an official receipt for income tax purposes and shall show clearly in such a manner that it cannot readily be altered,

(a) the name and address of the other recipient of the gift;

(b) the serial number of the receipt;

(c) the place or locality where the receipt was issued;

(d) where the donation is a cash donation, the day on which or the year during which the donation was received;

(e) where the donation is a gift of property other than cash,

(i) the day on which the donation was received,

(ii) a brief description of the property, and

(iii) the name and address of the appraiser of the property if an appraisal is done;

(f) the day on which the receipt was issued where that day differs from the day referred to in paragraph (d) or (e);

(g) the name and address of the donor including, in the case of an individual, his first name and initial;

(h) the amount that is

(i) the amount of a cash donation, or

(ii) where the donation is a gift of property other than cash, the amount that is the fair market value of the property at the time that the gift was made; and

(i) the signature, as provided in subsection (2) or (3.1), of a responsible individual who has been authorized by the other recipient of the gift to acknowledge donations.

Proposed Amendment — Reg. 3501(1.1)

Technical Notes to ITA 118.1(2), July 18, 2005: See under Reg. 3501(1).

Information Circulars: 84-3R5: Gifts to certain charitable organizations outside Canada.

(2) Except as provided in subsection (3) or (3.1), every official receipt shall be signed personally by an individual referred to in paragraph (1)(i) or (1.1)(i).

(3) Where all official receipt forms of a registered organization are

(a) distinctively imprinted with the name, address in Canada and registration number of the organization,

(b) serially numbered by a printing press or numbering machine, and

(c) kept at the place referred to in subsection 230(2) of the Act until completed as an official receipt,

the official receipts may bear a facsimile signature.

Charities Policies: CPS-014: Computer-generated official donation receipts.

(3.1) Where all official receipt forms of another recipient of the gift are

(a) distinctively imprinted with the name and address of the other recipient of the gift,

(b) serially numbered by a printing press or numbering machine,

(c) if applicable, kept at a place referred to in subsection 230(1) of the Act until completed as an official receipt,

the official receipts may bear a facsimile signature.

Charities Policies: CPS-014: Computer-generated official donation receipts.

(4) An official receipt issued to replace an official receipt previously issued shall show clearly that it replaces the original receipt and, in addition to its own serial number, shall show the serial number of the receipt originally issued.

(5) A spoiled official receipt form shall be marked "cancelled" and such form, together with the duplicate thereof, shall be retained by the registered organization or the other recipient of a gift as part of its records.

(6) Every official receipt form on which

(a) the day on which the donation was received,

(b) the year during which the donation was received, or

(c) the amount of the donation,

was incorrectly or illegibly entered shall be regarded as spoiled.

Proposed Amendment — Reg. 3501(6)

Technical Notes to ITA 118.1(2), July 18, 2005: See under Reg. 3501(1).

History: Paras. 3501(1)(e), (f), (h), subsecs. 3501(2), (5) substituted, subsecs. 3501(1.1), (3.1) added by P.C. 1981-841, s. 3, March 27, 1981, *Canada Gazette*, Part II, April 8, 1981, applicable with respect to gifts after 1980.

Definitions [Reg. 3501]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "individual", "Minister" — ITA 248(1); "official receipt", "official receipt form", "other recipient of a gift" — Reg. 3500; "property", "record" — ITA 248(1); "registered organization" — Reg. 3500.

Forms: RC4108: Registered charities and the *Income Tax Act* [guide].

3502. Employees' charity trusts — Where

(a) a registered organization

(i) is an employees' charity trust, or

(ii) has appointed an employer as agent for the purpose of remitting, to that registered organization, donations that are collected by the employer from the employer's employees, and

(b) each copy of the return required by section 200 to be filed for a year by an employer of employees who donated to the registered organization in that year shows

(i) the amount of each employee's donations to the registered organization for the year collected by the employer, and

(ii) the registration number assigned by the Minister to the registered organization,

section 3501 shall not apply and the copy of the portion of the return, relating to each employee who made a donation to the registered organization in that year, that is required by section 209 to be distributed to the employee for filing with the employee's income tax return shall be an official receipt.

History: S. 3502 substituted by P.C. 1994-139, s. 10, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1986 *et seq.*

Definitions [Reg. 3502]: "amount", "employee" — ITA 248(1); "employees' charity trust" — Reg. 3500; "employer", "Minister" — ITA 248(1); "official receipt", "registered organization" — Reg. 3500.

3503. Universities outside Canada — For the purposes of subparagraph 110.1(1)(a)(vi) and paragraph (f) of the definition "total charitable gifts" in subsection 118.1(1) of the Act, the universities outside Canada named in Schedule VIII are hereby prescribed to be universities the student body of which ordinarily includes students from Canada.

Related Provisions: Canada-U.S. Tax Treaty:Art. XXI:6 — Gifts to U.S. universities.

History: S. 3503 amended by P.C. 1990-1332, s. 1, June 28, 1990, *Canada Gazette*, Part II, July 18, 1990, applicable to 1988 *et seq.*

Definitions [Reg. 3503]: "Canada" — ITA 255, *Interpretation Act* 35(1); "classification society", "estimate of the expenses of survey", "inspector" — Reg. 3600(2); "prescribed" — ITA 248(1); "quadrennial survey", "survey", "surveyor" — Reg. 3600(2).

3504. Prescribed donees — For the purposes of subparagraph 110.1(3)(a)(ii) and paragraph 118.1(6)(b) of the Act, The Nature Conservancy, a charity established in the United States, is a prescribed donee.

History: S. 3504 substituted by P.C. 1994-139, s. 11, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1988 *et seq.*

S. 3504 added by P.C. 1986-1048, s. 6, May 1, 1986, *Canada Gazette*, Part II, May 14, 1986, applicable to gifts made after February 15, 1984.

Definitions [Reg. 3504]: "prescribed" — ITA 248(1); "United States" — *Interpretation Act* 35(1).

Interpretation Bulletins: Regs. 3500–3504 — See at beginning of Part XXXV.

PART XXXVI — RESERVES FOR SURVEYS

History: Part XXXVI was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

3600. (1) For the purpose of paragraph 20(1)(o) of the Act, the amount hereby prescribed is

(a) for the third taxation year preceding the taxation year during which a survey is scheduled to occur, the amount that is 1/4 of the estimate of the expenses of the survey;

(b) for the second taxation year preceding the taxation year during which a survey is scheduled to occur, the amount that is 1/2 of the estimate of the expenses of the survey;

(c) for the first taxation year preceding the taxation year during which a survey is scheduled to occur, the amount that is 3/4of the estimate of the expenses of the survey; and

(d) for the taxation year during which a survey is scheduled to occur, if the quadrennial or other special surveys have not, at the end of the year, been completed to the extent that the vessel is permitted to proceed on a voyage, the amount remaining after deducting from the estimate of the expenses of the survey the amount of expenses actually incurred in the year in carrying out the survey.

(2) In this section,

"classification society" means a society or association for the classification and registry of shipping approved by the Minister of Transport under the *Canada Shipping Act*.

"estimate of the expenses of survey" means a fair and reasonable estimate, made by a taxpayer at the time of filing his return of income for the third taxation year preceding the taxation year in which a quadrennial survey is scheduled to occur, of the costs, charges and expenses which might be expected to be necessarily incurred by him by reason of that survey and in respect of which he

does not have or possess nor is he likely to have or possess any right of reimbursement, recoupment, recovery or indemnification from any other person or source;

"inspector" means a steamship inspector appointed under Part VIII of the *Canada Shipping Act*.

"quadrennial survey" means a periodical survey, not being an annual survey nor a survey coinciding as to time with the construction of a vessel, in accordance with the rules of a classification society or, an extended inspection, not being an annual inspection nor an inspection coinciding as to time with the construction of a vessel, pursuant to the provisions of the *Canada Shipping Act*, and the regulations thereunder;

"survey" means the drydocking of a vessel, the examination and inspection of its hull, boilers, machinery, engines and equipment by an inspector or a surveyor and everything done to such vessel, its hull, boilers, machinery, engines and equipment pursuant to an order, requirement or recommendation given or made by the inspector or surveyor as the result of the examination and inspection so that a safety and inspection certificate might be issued in respect of the vessel pursuant to the provisions of the *Canada Shipping Act*, and the regulations thereunder or, as the case may be, so that the vessel might be entitled to retain the character assigned to it in the registry book of a classification society;

"surveyor" means a surveyor to a classification society.

Definitions [Reg. 3600]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "classification society", "estimate of the expenses of survey", "inspector" — Reg. 3600(2); "Minister", "person", "prescribed" — ITA 248(1); "quadrennial survey", "survey" — Reg. 3600(2); "surveyor" — Reg. 3600(2); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

PART XXXVII — CHARITABLE FOUNDATIONS

History: Part XXXVII (ss. 3700–3702) added by P.C. 1987-2236, s. 1, October 29, 1987, *Canada Gazette*, Part II, November 11, 1987, applicable with respect to taxation years commencing after 1983.

History [former Part XXXVII]: Former Part XXXVII (Social Assistance Payments) was revoked by P.C. 1984-3789, s. 13, November 29, 1984, *Canada Gazette*, Part II, December 12, 1984, applicable to 1982 *et seq.*

Former Part XXXVII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

3700. Interpretation — In this Part,

"charitable foundation" has the meaning assigned by paragraph 149.1(1)(a) [149.1(1)"charitable foundation"] of the Act;

"limited-dividend housing company" means a limited-dividend housing company described in paragraph 149(1)(n) of the Act;

"non-qualified investment" has the meaning assigned by paragraph 149.1(1)(e.1) [149.1(1)"non-qualified investment"] of the Act;

"prescribed stock exchange" means a stock exchange referred to in Part XXXII;

"taxation year" has the meaning assigned by paragraph 149.1(1)(l) [149.1(1)"taxation year"] of the Act.

3701. Disbursement quota — **(1)** For the purposes of clause 149.1(1)(e)(iv)(A) [149.1(1)"disbursement quota"D] of the Act, the prescribed amount referred to therein for a taxation year of a charitable foundation shall be determined in accordance with the following rules:

(a) choose a number, not less than two and not more than eight, of equal and consecutive periods that total twenty-four months and that end immediately before the beginning of the year;

(b) aggregate for each period chosen under paragraph (a) all amounts, each of which is the value, determined in accordance with section 3702, of property or a portion thereof owned by the foundation, and not used directly in charitable activities or administration, on the last day of the period;

(c) aggregate all amounts, each of which is the aggregate of values determined for each period under paragraph (b); and

(d) divide the aggregate amount determined under paragraph (c) by the number of periods chosen under paragraph (a).

(2) For the purposes of subsection (1) and subject to subsection (3),

(a) the number of periods chosen by a charitable foundation under paragraph (1)(a) shall, unless otherwise authorized by the Minister, be used for the taxation year and for all subsequent taxation years; and

(b) a charitable foundation shall be deemed to have existed on the last day of each of the periods chosen by it.

(3) The number of periods chosen under paragraph (1)(a) may be changed by the foundation for its first taxation year commencing after 1986 and the new number shall, unless otherwise authorized by the Minister, be used for that taxation year and all subsequent taxation years.

Definitions [Reg. 3701]: "amount" — ITA 248(1); "charitable foundation" — ITA 149.1(1), Reg. 3700; "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "prescribed", "property" — ITA 248(1); "taxation year" — ITA 149.1(1), Reg. 3700; "value" — Reg. 3702(1).

3702. Determination of value — **(1)** For the purposes of subsection 3701(1), the value of property or a portion thereof owned by a charitable foundation, and not used directly in charitable activities or administration, on the last day of a period shall be determined as of that day and shall be

(a) in the case of a non-qualified investment, the greater of its fair market value on that day and its cost amount to the foundation;

(b) subject to paragraph (c), in the case of property other than a non-qualified investment that is

(i) a share of a corporation that is listed on a prescribed stock exchange, the closing price or the average of the bid and asked prices of that share on that day or, if there is no closing price or bid and asked prices on that day, on the last preceding day for which there was a closing price or bid and asked prices,

(ii) a share of a corporation that is not listed on a prescribed stock exchange, the fair market value of that share on that day,

(iii) an interest in real property, the fair market value on that day of the interest less the amount of any debt of the foundation incurred in respect of the acquisition of the interest and secured by the

real property or the interest therein, where the debt bears a reasonable rate of interest,

(iv) a contribution that is the subject of a pledge, nil,

(v) an interest in property where the foundation does not have the present use or enjoyment of the interest, nil,

(vi) a life insurance policy, other than an annuity contract, that has not matured, nil, and

(vii) a property not described in any of subparagraphs (i) to (vi), the fair market value of the property on that day; and

(c) in the case of any property described in paragraph (b)

(i) that is owned in connection with the charitable activities of the foundation and is a share of a limited-dividend housing company or a loan,

(ii) that has ceased to be used for charitable purposes and is being held pending disposition or for use in charitable activities, or

(iii) that has been acquired for use in charitable activities,

the lesser of the fair market value of the property on that day and an amount determined by the formula

$$\frac{A}{.045} \times \frac{12}{B}$$

where

A is the income earned on the property in the period, and

B is the number of months in the period.

(2) For the purposes of subsection (1), a method that the Minister may accept for the determination of the fair market value of property or a portion thereof on the last day of a period is an independent appraisal made

(a) in the case of property described in subparagraph (1)(b)(ii) or (iii), not more than three years before that day; and

(b) in the case of property described in paragraph (1)(a), subparagraph (1)(b)(vii) or paragraph (1)(c), not more than one year before that day.

Definitions [Reg. 3702]: "amount", "annuity" — ITA 248(1); "charitable foundation" — ITA 149.1(1), Reg. 3700; "corporation" — ITA 248(1), *Interpretation Act* 35(1); "cost amount" — ITA 248(1); "disposition" — ITA 248(1); "interest in real property" — ITA 248(4); "life insurance policy" — ITA 138(12), 248(1); "limited-dividend housing company" — ITA 149(1)(n), Reg. 3700; "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "non-qualified investment" — ITA 149.1(1), Reg. 3700; "prescribed stock exchange" — ITA 248(29), Reg. 3700; "property", "share" — ITA 248(1).

PART XXXVIII — SOCIAL INSURANCE NUMBER APPLICATIONS

History: Part XXXVIII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

3800. Every individual who is required by subsection 237(1) of the Act to apply to the Minister of Human Resources Development for assignment to him of a Social Insurance Number shall do so by delivering or mailing to the local office of the Canada Employment Insurance Commission nearest to the individual's residence, a completed application in the form prescribed by the Minister for that purpose.

History: S. 3800 amended by 1996, c. 11, ss. 96 and 100, to substitute "Minister of Human Resources Development" for "Minister of National Health and Welfare", and substitute "Canada Employment Insurance Commission" for "Canada Employment and Immigration Commission", in force July 12, 1996.

Definitions [Reg. 3800]: "Canada" — ITA 255, *Interpretation Act* 35(1); "individual", "Minister", "office", "prescribed" — ITA 248(1).

Information Circulars: 82-2R2: SIN legislation that relates to the preparation of information slips.

PART XXXIX — MINING TAXES ON INCOME

History: Part XXXIX (s. 3900) added by P.C. 1978-1315, s. 13, April 20, 1978, *Canada Gazette*, Part II, May 10, 1978.

3900. (1) In computing his income for a taxation year, a taxpayer may deduct, under paragraph 20(1)(v) of the Act, an amount equal to the lesser of

(a) the aggregate of the taxes paid, in respect of his income derived from mining operations in a province for the year,

(i) to the province, and

(ii) to a municipality in the province in lieu of taxes on property or any interest in property (other than his residential property or any interest therein); and

(b) that proportion of such taxes that his income derived from mining operations in the province for the year is of his income in respect of which the taxes were so paid.

Proposed Amendment — Reg. 3900(1)

See at the end of Reg. 3900 below.

(2) In this section,

"income derived from mining operations" in a province for a taxation year by a taxpayer means,

(a) where the taxpayer has no source of income other than mining operations, the amount that would otherwise be his income for the year if no amount had been deducted in computing his income under paragraph 20(1)(v) of the Act or paragraph 1100(1)(g) of these Regulations, and

(b) in any other case, the amount that would otherwise be his income for the year if no amount had been deducted in computing his income under paragraph 20(1)(v) of the Act or paragraph 1100(1)(g) of these Regulations, minus the aggregate of

(i) his income for the year from all sources other than mining, processing and sale of mineral ores, minerals and products produced therefrom, and

(ii) an amount equal to eight per cent of the original cost to him of properties described in Schedule II used by him in the year in the processing of mineral ores, minerals or products derived therefrom or, if the amount so determined is greater than 65 per cent of the income remaining after deducting the amount determined under subparagraph (i), 65 per cent of the income so remaining or, if the amount so determined is less than 15 per cent of the income so remaining, 15 per cent of the income so remaining;

"mine" includes any work or undertaking in which mineral ore is extracted or produced, including a quarry;

"mineral ores" includes all unprocessed minerals or mineral bearing substances;

"minerals" means minerals other than minerals obtained from a mineral resource but does not include petroleum, natural gas or related hydrocarbons;

Proposed Repeal — Reg. 3900(2)"minerals"

Application: The June 9, 2003 draft regulations (natural resources), s. 8, will repeal the definition "minerals" in subsec. 3900(2), applicable to taxation years that end after 2002.

Technical Notes: Section 3900 applies to mining taxes on the mining of minerals, as defined. A restrictive definition of minerals is contained in subsection 3900(2). The definition "minerals" in subsection 3900 is repealed effective for taxation years that end after 2002, with the result that the broader definition "mineral" in the subsection 248(1) of the Act will apply for the purpose of section 3900 of the Regulations from that time. This amendment is relieving and consistent with the phase-out and repeal of paragraph 18(1)(m) of the Act.

"mining operations" means the extraction or production of mineral ore from or in any mine or its transportation to or over any part of the distance to the point of egress from the mine, including processing thereof prior to or in the course of such transportation but not including any processing thereof after removal from the mine;

"processing" as applied to mineral ores includes all forms of beneficiation, smelting and refining, transportation and distributing but does not include any of these operations that are performed with respect to mineral ore before it is removed from the mine.

(3) Nothing in this section shall be construed as allowing a taxpayer to deduct an amount in respect of taxes imposed under a statute or bylaw that is not restricted to the taxation of persons engaged in mining operations.

Definitions [Reg. 3900]: "amount" — ITA 248(1); "income derived from mining operations", "mine" — Reg. 3900(2); "mineral" — ITA 248(1), Reg. 3900(2); "mineral ores" — Reg. 3900(2); "mineral resource" — ITA 248(1); "mining operations" — Reg. 3900(2); "person" — ITA 248(1); "processing" — Reg. 3900(2); "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "related" — ITA 251(2)–(6); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

Proposed Amendment — Reg. 3900

3900. (1) For the purpose of paragraph 20(1)(v) of the Act, the amount allowed in respect of taxes on income from mining operations of a taxpayer for a taxation year is the total of all amounts each of which is an eligible tax paid or payable by the taxpayer on the taxpayer's income, for the taxation year, from mining operations or on a non-Crown royalty included in the taxpayer's income for the taxation year.

Technical Notes: Paragraph 20(1)(v) of the Act provides that, notwithstanding paragraphs 18(1)(a), (b) and (h), a taxpayer may deduct in computing income such amount as is allowed by regulation in respect of taxes on income from mining operations. Section 3900 of the regulations ("Regulation 3900") defines the amount allowed in respect of taxes on income from mining operations for the purpose of paragraph 20(1)(v).

Since 1974, Regulation 3900 has been limited to taxes paid on income from the mining of industrial minerals, such as gravel, sand and asbestos. As part of its plan to provide a deduction for all mining-specific taxes imposed by the provinces, the Government is proposing to expand the scope of Regulation 3900. In furtherance of this objective, draft regulations dated June 9, 2003 contained a proposal to repeal the definition "minerals" in Regulation 3900 effective for taxation years that end after 2002, with the result that the broader definition "mineral" in subsection 248(1) of the Act would apply for the purpose of Regulation 3900. The proposed amendments to Regulation 3900 released today encompass the June 2003 proposal and include new proposals intended to simplify the application of this provision.

Proposed subsection 3900(1) provides that the amount allowed as a deduction in respect of taxes on income from mining operations of a taxpayer is the total of all amounts each of which is an eligible tax paid or payable by the taxpayer on the taxpayer's income from mining operations or on a non-Crown royalty included in the taxpayer's income. Unlike existing subsection 3900(1), new subsection 3900(1) does not require an eligible tax to be reduced if the provincial mining tax base exceeds the mining tax base as computed under the *Income Tax Act*.

(2) An eligible tax referred to in subsection (1) is

(a) a tax, on the income of a taxpayer for a taxation year from mining operations in a province, that is

(i) levied under a law of the province,

(ii) imposed only on persons engaged in mining operations in the province, and

(iii) paid or payable to

(A) the province,

(B) an agent of Her Majesty in right of the province, or

(C) a municipality in the province, in lieu of taxes on property or on any interest in property (other than residential property or any interest therein); and

(b) a tax, on an amount received or receivable by a person as a non-Crown royalty, that is

(i) levied under a law of a province,

(ii) imposed only on persons who hold a non-Crown royalty on mining operations in the province, and

(iii) paid or payable to the province or to an agent of Her Majesty in right of the province.

Technical Notes: Proposed subsection 3900(2) defines an eligible tax as either a tax on the income of a taxpayer from mining operations or a tax on an amount received or receivable by a taxpayer as a non-Crown royalty. To qualify as an eligible tax, the tax must be imposed only on persons engaged in "mining operations" or on persons who hold "non-Crown royalties" as those terms are defined in new subsection 3900(3).

(3) The following definitions apply in this section.

"income", of a taxpayer for a taxation year from mining operations in a province, means the income, as computed under the laws of the province, of the taxpayer for the taxation year that is derived from mining operations in the province.

"mine" includes any work or undertaking in which a mineral ore is extracted or produced and includes a quarry.

"mineral ore" includes an unprocessed mineral or mineral bearing substance.

"mining operations" means the extraction or production of mineral ore from or in a mine, and the transportation of the mineral ore to the point of egress from the mine, and includes any processing of

(a) the mineral ore (other than iron ore) to the prime metal stage or its equivalent, if the mineral ore is not iron ore; and

(b) iron ore to a stage that is not beyond the pellet stage or its equivalent.

"non-Crown royalty" means a royalty contingent upon production of a mine or computed by reference to the amount or value of production from a mining operation in a province does not include a royalty that is payable to the Crown in right of Canada or a province.

"processing" includes all forms of beneficiation, smelting and refining.

Technical Notes: Proposed subsection 3900(3) contains the definitions that are relevant for the purpose of Regulation 3900 and includes revised definitions of "income" from mining operations and "mining operations" as well as a new definition "non-Crown royalty."

The revised definition "income" from mining operations expressly provides that it is the income derived from mining operations as computed under the law of the province imposing the tax. In this respect, it is important to note that a tax would not be an eligible tax and, therefore, would not be deductible under paragraph 20(1)(v) if the tax were imposed on income derived from sources other than mining operations.

"Mining operations" are currently defined as the extraction and production of mineral ore from the mine and on-site processing of the mineral ore. This definition will be expanded to include any processing that occurs to the prime metal stage or, in the case of iron ore, to the pellet stage. This amendment is being proposed in recognition that the income calculations for existing provincial mining taxes may include earnings from processing, although in some provinces, a proxy for these earnings, in the form of an allowance, is fully or partially deducted in computing the mining tax base.

The proposed amendments to Regulation 3900 apply to taxation years that end after 2002. The deduction for eligible taxes on income from mining operations and non-Crown royalties is being phased-in over a five-year period consistent with the treatment of Crown charges described in paragraph 18(1)(m) of the Act. However, the phase-in requirement only applies to eligible taxes paid or payable in respect of minerals obtained from a mineral resource and, therefore, does not affect the deductibility of taxes that were previously fully deductible under Regulation 3900.

Application: The December 21, 2004 draft regulations, s. 1, will amend s. 3900 to read as above, applicable to taxation years that end after 2002, except that, for those taxation years that begin before 2007, the amount allowed for the purpose of para. 20(1)(v) of the Act under Reg. 3900(1) as amended, in respect of an eligible tax paid or payable in respect of which no amount would be deductible but for the amendment, may not exceed the amount that provides the taxpayer with a deduction, in computing the taxpayer's income under the Act for the taxation year, that is equal to the total of

(a) 10% of the amount of the eligible tax paid or payable by the taxpayer on the taxpayer's income, for the taxation year, from mining operations multiplied by the proportion that the number of days in the taxation year that are in 2003 is of the number of days in the taxation year;

(b) 25% of the amount of the eligible tax paid or payable by the taxpayer on the taxpayer's income, for the taxation year, from mining operations multiplied by the proportion that the number of days in the taxation year that are in 2004 is of the number of days in the taxation year;

(c) 35% of the amount of the eligible tax paid or payable by the taxpayer on the taxpayer's income, for the taxation year, from mining operations multiplied by the proportion that the number of days in the taxation year that are in 2005 is of the number of days in the taxation year;

(d) 65% of the amount of the eligible tax paid or payable by the taxpayer on the taxpayer's income, for the taxation year, from mining operations multiplied by the proportion that the number of days in the taxation year that are in 2006 is of the number of days in the taxation year; and

(e) 100% of the amount of the eligible tax paid or payable by the taxpayer on the taxpayer's income, for the taxation year, from mining operations multiplied by the proportion that the number of days in the taxation year that are in 2007 is of the number of days in the taxation year.

Definitions [Reg. 3900]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "eligible tax" — Reg. 3900(2); "Her Majesty" — *Interpretation Act* 35(1); "income", "mine" — Reg. 3900(3); "mineral" — ITA 248(1); "mineral ore", "mining operations", "non-Crown royalty" — Reg. 3900(3); "person" — ITA 248(1); "processing" — Reg. 3900(3); "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

PART XL — BORROWED MONEY COSTS

History: Part XL was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

4000. [Revoked]

History: S. 4000 and heading revoked by P.C. 1981-744, March 19, 1981, *Canada Gazette*, Part II, April 8, 1981, effective in respect of taxation years ending after December 11, 1979.

Heading to s. 4000 added by P.C. 1979-236, s. 1, February 1, 1979, *Canada Gazette*, Part II, February 28, 1979.

4001. Interest on insurance policy loans — For the purposes of subsection 20(2.1) of the Act, the amount of interest to be verified by the insurer in respect of a taxpayer shall be verified in prescribed form no later than the last day on which the taxpayer is required to file his return of income under section 150 of the Act for the taxation year in respect of which the interest was paid.

History: S. 4001 substituted by P.C. 1984-776, March 8, 1984, *Canada Gazette*, Part II, March 21, 1984, applicable to taxation years ending after 1983.

S. 4001 substituted by P.C. 1979-1726, June 21, 1979, *Canada Gazette*, Part II, July 11, 1979, effective in respect of 1978 *et seq.*

S. 4001 added by P.C. 1979-236, February 1, 1979, *Canada Gazette*, Part II, February 28, 1979, substituted by P.C. 1979-1726, June 21, 1979, *Canada Gazette*, Part II, July 11, 1979, effective in respect of 1978 *et seq.*

Definitions [Reg. 4001]: "amount", "insurer", "prescribed" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

Forms: T2210: Verification of policy loan interest by the insurer.

PART XLI — REPRESENTATION EXPENSES

History: Part XLI was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

4100. For the purposes of subsection 20(9) of the Act, an election shall be made by filing with the Minister the following documents in duplicate:

(a) a letter from the taxpayer specifying the amount in respect of which the election is being made; and

(b) where the taxpayer is a corporation, a certified copy of the resolution of the directors authorizing the election to be made.

Definitions [Reg. 4100]: "amount" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "Minister", "taxpayer" — ITA 248(1).

PART XLII — VALUATION OF ANNUITIES AND OTHER INTERESTS

History: Part XLII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

4200. For the purposes of subparagraph 115E(f)(i) of the former Act (within the meaning assigned by paragraph 8(b) of the *Income Tax Application Rules*), the value of any income right, annuity, term of years, life or other similar estate or interest in expectancy shall be determined in accordance with the rules and standards, including standards as to mortality and interest, as are prescribed by the *Estate Tax Regulations* pursuant to the provisions of subparagraph 58(1)(s)(i) of the *Estate Tax Act*.

History: S. 4200 amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Definitions [Reg. 4200]: "annuity" — ITA 248(1); "estate" — ITA 104(1), 248(1); "prescribed" — ITA 248(1).

PART XLIII — INTEREST RATES

History: Part XLIII (ss. 4300, 4301) substituted by P.C. 1987-2251, s. 1, November 6, 1987, *Canada Gazette*, Part II, November 25, 1987, applicable with respect to any interest to be calculated in respect of a period after 1983.

Part XLIII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

4300. Interpretation — For the purposes of this Part, "quarter" means any of the following periods in a calendar year:

(a) the period beginning on January 1 and ending on March 31;

(b) the period beginning on April 1 and ending on June 30;

(c) the period beginning on July 1 and ending on September 30; and

(d) the period beginning on October 1 and ending on December 31.

Interpretation Bulletins: IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt.

4301. Prescribed rate of interest — Subject to section 4302, for the purposes of

(a) every provision of the Act that requires interest at a prescribed rate to be paid to the Receiver General, the prescribed rate in effect during any particular quarter is the total of

(i) the rate that is the simple arithmetic mean, expressed as a percentage per year and rounded to the next higher whole percentage where the mean is not a whole percentage, of all amounts each of which is the average equivalent yield, expressed as a percentage per year, of Government of Canada Treasury Bills that mature approximately three months after their date of issue and that are sold at auctions of Government of Canada Treasury Bills during the first month of the quarter preceding the particular quarter, and

(ii) 4 per cent;

(b) every provision of the Act that requires interest at a prescribed rate to be paid or applied on an amount payable by the Minister to a taxpayer, the prescribed rate in effect during any particular quarter is the total of

(i) the rate determined under subparagraph (a)(i) in respect of the particular quarter, and

(ii) 2 per cent; and

(c) every other provision of the Act in which reference is made to a prescribed rate of interest or to interest at a prescribed rate, the prescribed rate in effect during any particular quarter is the rate determined under subparagraph (a)(i) in respect of the particular quarter.

History: Subpara. 4301(a)(i) amended by P.C. 1997-1819, December 9, 1997, s. 4, *Canada Gazette*, Part II, December 24, 1997, in force on December 31, 1997.

S. 4301 substituted by P.C. 1995-926, June 13, 1995, s. 1, *Canada Gazette*, Part II, June 28, 1995, applicable to interest that is calculated in respect of periods after June 1995. For periods before July 1995, s. 4301 should be read as follows:

4301. Prescribed rate of interest — For the purposes of every provision of the Act that requires interest at a prescribed rate to be paid to the Receiver General or to be paid or applied on an amount payable by the Minister to a taxpayer, the prescribed rate in effect during any particular quarter is the aggregate of

(a) the rate that is the simple arithmetic mean, expressed as a percentage per year and rounded to the next highest whole percentage where the mean is not a whole percentage, of all amounts each of which is the weekly average equivalent yield, expressed as a percentage per year, of Government of Canada Treasury Bills that mature approximately three months after their date of issue and that are sold at a weekly auction of Government of Canada Treasury Bills during the first month of the quarter immediately preceding the particular quarter, and

(b) 2 per cent,

and for the purposes of every other provision of the Act in which reference is made to a prescribed rate of interest or to interest at a prescribed rate, the prescribed rate in effect during any quarter is the rate determined under paragraph (a) in respect of that quarter.

S. 4301 substituted by P.C. 1989-1792, September 21, 1989, *Canada Gazette*, Part II, October 11, 1989, applicable in respect of interest that is calculated in respect of periods after September 1989.

Prescribed Interest Rates Per Annum

Year	Quarter	Reg. 4301(c) Benefits	Reg. 4301(b) Refunds	Reg. 4301(a) Late Tax
		%	%	%
1984	1st, 2nd	10	10	10
	3rd	11	11	11
	4th	13	13	13
1985	1st	12	12	12
	2nd, 3rd, 4th	10	10	10
1986	1st	9	9	9
	2nd	11	11	11
	3rd	10	10	10
	4th	9	9	9
[Compounding under 248(11) applies effective Jan. 1/87]				
1987	1st	9	9	9
	2nd, 3rd	8	8	8
	4th	9	9	9
1988	1st, 2nd, 3rd	9	9	9
	4th	10	10	10
1989	1st	11	11	11
	2nd	12	12	12
	3rd	13	13	13
	4th	13	15	15
1990	1st, 2nd	13	15	15
	3rd, 4th	14	16	16
1991	1st	13	15	15
	2nd	11	13	13
	3rd	10	12	12
	4th	9	11	11
1992	1st	9	11	11
	2nd	8	10	10
	3rd	7	9	9
	4th	6	8	8
1993	1st	8	10	10
	2nd	7	9	9
	3rd	6	8	8
	4th	5	7	7
1994	1st	5	7	7
	2nd	4	6	6
	3rd	6	8	8
	4th	7	9	9
1995	1st	6	8	8

Year	Quarter	Reg. 4301(c) Benefits	Reg. 4301(b) Refunds	Reg. 4301(a) Late Tax
		%	%	%
	2nd	8	10	10
	3rd	9	11	13
	4th	7	9	11
1996	1st	7	9	11
	2nd	6	8	10
	3rd, 4th	5	7	9
1997	1st	4	6	8
	2nd	3	5	7
	3rd, 4th	4	6	8
1998	1st	4	6	8
	2nd, 3rd, 4th	5	7	9
1999	1st–4th	5	7	9
2000	1st	5	7	9
	2nd, 3rd, 4th	6	8	10
2001	1st, 2nd	6	8	10
	3rd, 4th	5	7	9
2002	1st	3	5	7
	2nd	2	4	6
	3rd, 4th	3	5	7
2003	1st, 2nd	3	5	7
	3rd	4	6	8
	4th	3	5	7
2004	1st, 2nd	3	5	7
	3rd	2	4	6
	4th	3	5	7
2005	1st, 2nd, 3rd	3	5	7

Interpretation Bulletins: IT-153R3: Land developers — Subdivision and development costs and carrying charges on land; IT-243R4: Dividend refund to private corporations; IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt.

Definitions [Reg. 4301]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "prescribed" — ITA 248(1); "quarter" — Reg. 4300; "taxpayer" — ITA 248(1).

4302. Notwithstanding section 4301, for the purposes of paragraph 16.1(1)(d) of the Act and subsection 1100(1.1), the interest rate in effect during any month is the rate that is one percentage point greater than the rate that was, during the month before the immediately preceding month, the average yield, expressed as a percentage per year rounded to two decimal points, prevailing on all outstanding domestic Canadian-dollar Government of Canada bonds on the last Wednesday of that month with a remaining term to maturity of over 10 years, as first published by the Bank of Canada.

History: S. 4302 added by P.C. 1991-465, s. 4, March 14, 1991, *Canada Gazette*, Part II, March 27, 1991, applicable in respect of leases entered into after 10:00 p.m. Eastern Daylight Saving Time, April 26, 1989, other than leases entered into pursuant to an agreement in writing entered into before that time under which the lessee thereunder has the right to require the lease of the property (and for these purposes a lease in respect of which a material change has been agreed to by the parties thereto effective at any particular time that is after 10:00 p.m. EDST, April 26, 1989 shall be deemed to have been entered into at that particular time).

Prescribed Interest Rates for Leasing Rules

For leases entered into before July 1989, the prescribed rate is 11.2%. The rates applicable for leases entered into after that date are as follows:

	1989	1990	1991	1992	1993	1994
Jan.	—	10.80	11.70	10.18	9.66	8.45
Feb.	—	10.69	11.51	9.97	9.54	8.12
March	—	11.04	11.22	9.92	9.67	7.86
April	11.20	11.64	10.89	9.97	9.19	8.33
May	11.20	11.91	10.88	10.28	9.27	9.25
June	11.20	12.54	10.91	10.51	9.27	9.18
July	10.85	11.86	10.91	10.17	9.12	9.55
Aug.	10.60	11.72	11.36	9.87	8.96	10.29
Sept.	10.62	11.78	11.17	9.21	8.79	10.50
Oct.	10.62	11.83	10.97	9.19	8.40	9.89
Nov.	10.91	12.54	10.59	9.53	8.55	10.04
Dec.	10.54	12.15	10.12	9.33	8.35	10.29
	1995	1996	1997	1998	1999	2000
Jan.	10.24	8.44	7.42	6.78	6.35	7.12
Feb.	10.16	8.43	7.77	6.84	6.08	7.25
March	10.41	8.35	8.07	6.63	6.08	7.36
April	9.86	8.84	7.78	6.64	6.37	6.98
May	9.70	8.94	7.97	6.54	6.23	6.96
June	9.44	9.07	7.97	6.64	6.34	7.03
July	9.11	8.92	7.95	6.49	6.54	6.94
Aug.	9.02	8.98	7.49	6.45	6.63	6.90
Sept.	9.50	8.86	7.11	6.56	6.74	6.83
Oct.	9.24	8.60	7.38	6.78	6.69	6.79
Nov.	9.11	8.48	6.99	6.15	6.92	6.83
Dec.	9.11	7.81	6.80	6.27	7.38	6.79
	2001	2002	2003	2004	2005	
Jan.	6.63	6.66	6.55	6.24	5.87	
Feb.	6.59	6.75	6.37	6.14	5.86	
March	6.71	6.72	6.45	6.15	5.69	
April	6.63	6.68	6.39	5.98	5.71	
May	6.74	7.00	6.52	5.94	5.75	
June	6.94	6.89	6.34	6.23	5.55	
July	7.08	6.76	6.01	6.23	5.41	
Aug.	6.97	6.73	5.98	6.30	5.27	
Sept.	7.01	6.70	6.35	6.29	5.31	
Oct.	6.72	6.55	6.40	6.14		
Nov.	6.86	6.38	6.19	6.02		
Dec.	6.32	6.61	6.33	5.96		

For prescribed rates for leasing rules that are not listed above, contact Rick Owen, (613) 954-2504. Current rates are available from cra.gc.ca/tax/individuals/faq/lease-e.html.

Definitions [Reg. 4302]: "Canada" — ITA 255, *Interpretation Act* 35(1); "month" — *Interpretation Act* 35(1).

PART XLIV — PUBLICLY-TRADED SHARES OR SECURITIES

History: Part XLIV was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

4400. (1) For the purpose of section 24 and subsection 26(11) of the *Income Tax Application Rules*,

(a) a share or security named in Schedule VII is hereby prescribed to be a publicly-traded share or security; and

(b) for each such share or security, the amount set out in Column II of Schedule VII opposite that share or security is hereby prescribed as the amount, if any, prescribed in respect of that property.

(2) In Schedule VII, the abbreviation

(a) "Cl" means "Class";

(b) "Com" means "Common";

(c) "Cv" means "Convertible";

(d) "Cu" means "Cumulative";

(e) "Pc" means "Per Cent";

(f) "Pr" means "Preferred" or "Preference" as the case may be;

(g) "Pt" means "Participating";

(h) "Rt" means "Right"; and

(i) "Wt" means "Warrant".

History: The opening words of subsec. 4400(2) amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Definitions [Reg. 4400]: "amount", "prescribed", "property" — ITA 248(1); "share" — ITA 248(1).

PART XLV — ELECTIONS IN RESPECT OF EXPROPRIATION ASSETS

History: Part XLV was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

4500. Any election by a taxpayer under subsection 80.1(1), (2), (4), (5), (6) or (9) of the Act shall be made on or before the day on or before which the return of income is required to be filed pursuant to section 150 of the Act for the taxation year in which the assets referred to in the particular election were acquired by him.

Definitions [Reg. 4500]: "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

Forms: T2079: Election re expropriation assets acquired as compensation for or a consideration for sale of foreign property taken by or sold to foreign issuer.

PART XLVI — INVESTMENT TAX CREDIT

History: Part XLVI was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

Forms: T2038 (Ind.): Investment tax credit (Individuals); T2038 (Corp): Investment tax credit (Corporations).

4600. Qualified property — **(1)** Property is a prescribed building for the purposes of the definition "qualified property" in subsection 127(9) of the Act if it is depreciable property of the taxpayer that is a building or grain elevator and it is erected on land owned or leased by the taxpayer,

(a) that is included in Class 1, 3, 6, 20, 24 or 27 or paragraph (c), (d) or (e) of Class 8 in Schedule II; or

(b) that is included or would, but for Class 28 or 41 in Schedule II, be included in paragraph (g) of Class 10 in Schedule II.

(2) Property is prescribed machinery and equipment for the purposes of the definition "qualified property" in subsection 127(9) of the Act if it is depreciable property of the taxpayer (other than property referred to in subsection (1)) that is

(a) a property included in paragraph (k) of Class 1 or paragraph (a) of Class 2 in Schedule II;

(b) an oil or water storage tank;

(c) a property included in Class 8 in Schedule II (other than railway rolling stock);

(d) a vessel, including the furniture, fittings and equipment attached thereto;

(e) a property included in paragraph (a) of Class 10 or Class 22 or 38 in Schedule II (other than a car or truck designed for use on highways or streets);

(f) notwithstanding paragraph (e), a logging truck acquired after March 31, 1977 to be used in the activity of logging and having a weight, including the weight of property the capital cost of which is included in the capital cost of the truck at the time of its acquisition (but for greater certainty not including the weight of fuel), in excess of 16,000 pounds;

(g) a property included in any of paragraphs (b) to (f), (h), (j), (k), (o), (r), (t) or (u) of Class 10 in Schedule II, or property included in paragraph (b) of Class 41 in Schedule II and that would otherwise be included in paragraph (j), (k), (r), (t) or (u) of Class 10 in Schedule II;

(h) a property included in paragraph (n) of Class 10, or Class 15, in Schedule II (other than a roadway);

Selected Cases [Reg. 4600(2)(h)]: *Donohue St-Félicien Inc. v. R.*, [1998] 4 C.T.C. 2704 (TCC) (Roadway was not qualified equipment).

(i) a property included in any of paragraphs (a) to (f) of Class 9 in Schedule II;

(j) a property included in Class 28 or paragraph (a), (a.1), (a.2) or (a.3) of Class 41 in Schedule II that would, but for Class 28 or 41, as the case may be, be included in paragraph (k) or (r) of Class 10 of Schedule II;

(k) a property included in any of Classes 21, 24, 27, 29, 34, 39, 40 and 43 in Schedule II; or

Proposed Amendment — Reg. 4600(2)(k) [temporary]

(k) property included in Class 21, 24, 27, 29, 34, 39, 40, 43, 45 or 46 in Schedule II;

Application: The June 27, 2005 draft regulations (CCA — introduction of cls. 45 & 46), s. 4, (pre-published in the *Canada Gazette*, Part I, July 9, 2005), will amend para. 4600(2)(k) to read as above, deemed to have come into force March 23, 2004.

Regulatory Impact Analysis Statement: See under Reg. 1100(1)(a)(xxxi) (Computers) above.

Proposed Amendment — Reg. 4600(2)(k)

(k) property included in any of Class 21, 24, 27, 29, 34, 39, 40 or 43 [45 or 46] in Schedule II or in Class 43.1 in that Schedule because of paragraph (c) of that Class; or

Application: The March 16, 2001 draft regulations (CCA), s. 5, will amend para. 4600(2)(k) to read as above, applicable to property acquired after February 21, 1994.

Technical Notes: Subsection 4600(2) of the Regulations indicates which type of property is "prescribed machinery and equipment" for the purposes in the definition "qualified property" in subsection 127(9) of the *Income Tax Act*, which concerns the investment tax credit regime. Paragraph 4600(2)(k) is amended to apply to property included in Class 43.1 because of paragraph (c) of that Class. Property included in Class 43.1 because of paragraph (c) of that Class could be eligible for investment tax credit treatment if certain conditions described in paragraph (c.1) of the definition "qualified property" in subsection 127(9) of the *Income Tax Act* are met.

This relieving change is consequential to the 1994 Budget measures that concerned electrical generating equipment referred to in paragraph (c) of Class 43.1.

(l) a property included in paragraph (c) or (d) of Class 41 in Schedule II.

History: Para. 4600(2)(l) added by P.C. 1999-629, s. 10, April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to taxation years that begin after 1996.

Para. 4600(2)(j) amended by P.C. 1998-49, s. 4, January 26, 1998, *Canada Gazette*, Part II, February 4, 1998, applicable in respect of property acquired after March 6, 1996.

Para. 4600(2)(k) substituted by P.C. 1994-230, s. 3, February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to property acquired after February 25, 1992.

Paras. 4600(1)(a), (b), (2)(a), (e), (g), (j), (k) substituted by P.C. 1989-2464, s. 6, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

That portion of subsec. 4600(1) and of 4600(2) preceding para. (a) of each substituted by P.C. 1988-390, s. 19, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, applicable to 1985 *et seq.*

Para. 4600(2)(g) substituted by P.C. 1981-3329, s. 13, November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, effective from January 1, 1981.

Para. 4600(1)(b) substituted by P.C. 1980-2081, s. 7, July 31, 1980, *Canada Gazette*, Part II, August 13, 1980, effective August 15, 1979.

Heading to Part XLVI, para. 4600(2)(f) substituted by P.C. 1980-424, ss. 1, 2, February 8, 1980, *Canada Gazette*, Part II, February 27, 1980, effective November 17, 1978.

Para. 4600(2)(g) substituted by P.C. 1980-168, January 11, 1980, *Canada Gazette*, Part II, January 23, 1980, effective commencing June 13, 1979.

Para. 4600(2)(f) added by P.C. 1978-344, s. 5, February 9, 1978, *Canada Gazette*, Part II, February 22, 1978, effective after March 31, 1977.

Interpretation Bulletins: IT-411R: Meaning of "construction".

Definitions [Reg. 4600]: "depreciable property" — ITA 13(21), 248(1); "prescribed", "property", "taxpayer" — ITA 248(1).

4601. Qualified transportation equipment — For the purposes of the definition "qualified transportation equipment" in subsection 127(9) of the Act, the following depreciable property of a taxpayer (other than qualified property as defined by subsection 127(9) of the Act) is prescribed equipment:

(a) property that is

(i) included in Class 1 in Schedule II by virtue of paragraph (h) or (i) of that Class,

(ii) a bridge, culvert, subway or tunnel included in Class 1 in Schedule II that is ancillary to railway track and grading,

(iii) a trestle included in Class 3 in Schedule II that is ancillary to railway track and grading,

(iv) machinery or equipment included in Class 8 in Schedule II that is ancillary to

(A) railway track and grading, or

(B) railway traffic control or signalling equipment, including switching, block signalling, interlocking, crossing protection, detection, speed control or retarding equipment, but not including property that is principally electronic equipment or systems software therefor,

(v) included in Class 10 in Schedule II by virtue of subparagraph (m)(i), (ii) or (iii) of that Class, or

(vi) property described in paragraph (m) of Class 10 in Schedule II (other than property described in subparagraph (iv) thereof) that is included in Class 28 or 41 in Schedule II;

(b) property that is

(i) included in Class 6 in Schedule II by virtue of paragraph (j) of that Class,

(ii) machinery or equipment included in Class 8 in Schedule II that

(A) was acquired principally for the purpose of maintaining or servicing, or

(B) is ancillary to and used as part of,

a railway locomotive or railway car, or

(iii) included in Class 35 in Schedule II;

(c) property that is

(i) a truck, tractor or trailer that

(A) is included in Class 10 in Schedule II because of paragraph (e) of that Class or in Class 16 in Schedule II because of paragraph (g) of that Class,

(B) is designed for the purpose of carrying freight, or hauling a trailer that carries freight, on highways, and

(C) [Revoked]

(D) in the case of a truck or tractor, has a "gross vehicle weight rating" (within the meaning assigned that expression by the *Motor Vehicle Safety Regulations*) of 26,001 pounds or more, and in the case of a trailer, is of a type designed to be hauled under normal operating conditions by a truck or tractor described in this subparagraph,

but for greater certainty,

(E) was not acquired principally for the purpose of carrying or hauling freight locally or making local pickups or deliveries, or

(ii) machinery or equipment included in Class 8 or 10 in Schedule II that is ancillary to and used as part of any property described in subparagraph (i) that is qualified transportation equipment within the meaning of subsection 127(9) of the Act;

(d) property included in Class 10 in Schedule II by virtue of paragraph (a) of that Class that is a bus designed for the purpose of seating 20 or more passengers and carrying their luggage, but not including

(i) a bus acquired principally for the purpose of transportation within any metropolitan area, city, town, village, municipality or other similar community or area, or

(ii) a school bus;

(e) property that is

(i) a vessel included in Class 7 in Schedule II (other than a vessel under construction),

(ii) machinery or equipment included in Class 7 or 8 in Schedule II that is ancillary to and used as part of any property described in subparagraph (i) that is qualified transportation equipment within the meaning of subsection 127(9) of the Act, or

(iii) a vessel included in a separate class prescribed by subsection 1101(2a);

(f) property that is

(i) included in Class 9 in Schedule II by virtue of paragraph (g) of that Class, or

(ii) machinery or equipment included in Class 9 in Schedule II by virtue of paragraph (h) or (i) of that Class that is ancillary to and used as part of any property described in subparagraph (i) that is qualified transportation equipment within the meaning of subsection 127(9) of the Act; and

(g) property included in Class 8 in Schedule II that is a reusable cargo container designed with external fittings for the purpose of handling, securing or stacking and having a carrying capacity of 500 cubic feet or more.

History: Cl. 4601(c)(i)(A) amended by P.C. 1995-775, s. 4, May 16, 1995, *Canada Gazette*, Part II, May 31, 1995, applicable to property acquired after December 2, 1992.

Subpara. 4601(a)(vi) substituted by P.C. 1989-2464, s. 7, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

That portion of s. 4601 preceding para. (a), and subparas. (c)(ii), (e)(ii), (f)(ii) substituted by P.C. 1988-390, s. 20, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, applicable to 1985 *et seq.*

All that portion of s. 4601 preceding para. (a) substituted and cl. 4601(c)(i)(C) revoked by P.C. 1985-2277, s. 12, July 24, 1985, *Canada Gazette*, Part II, August 7, 1985.

S. 4601 added by P.C. 1980-424, s. 3, February 8, 1980, *Canada Gazette*, Part II, February 27, 1980, effective November 17, 1978.

Definitions [Reg. 4601]: "depreciable property" — ITA 13(21), 248(1); "prescribed", "property", "taxpayer" — ITA 248(1).

4602. Certified property — **(1)** For the purposes of the definition "certified property" in subsection 127(9) of the Act, each of the following areas is a prescribed area:

(a) that portion of the Province of Newfoundland comprising the census divisions 2 to 4 and 7 to 10;

(b) that portion of the Province of Prince Edward Island comprising the Kings census division;

(c) that portion of the Province of Nova Scotia comprising the census divisions of

(i) Cape Breton,

(ii) Guysborough,

(iii) Inverness,

(iv) Richmond, and

(v) Victoria;

(d) that portion of the Province of New Brunswick comprising the census divisions of

(i) Gloucester,

(ii) Kent,

(iii) Madawaska,

(iv) Northumberland, and

(v) Restigouche;

(e) that portion of the Province of Quebec comprising

(i) all of the area north of the 50th parallel of latitude, other than the area within the limits of the city of Sept-Iles,

(ii) the Magdalen Islands, and

(iii) the census divisions of

(A) Bonaventure,

(B) Gaspé-Est,

(C) Gaspé-Ouest,

(D) Matane,

(E) Matapédia,

(F) Rimouski, other than the area within the limits of the city of Rimouski,

(G) Rivière-du-Loup, and

(H) Témiscouata;

(f) that portion of the Province of Ontario that is north of the 50th parallel of latitude;

(g) that portion of the Province of Manitoba comprising the census divisions 19 and 21 to 23, other than the area within the limits of the city of Thompson;

(h) that portion of the Province of Saskatchewan comprising the census division of Northern Saskatchewan;

(i) that portion of the Province of Alberta comprising the census division of Peace River, other than the area within the limits of the city of Grande Prairie;

(j) that portion of the Province of British Columbia comprising the Peace River-Liard census division; and

(k) all of the Yukon Territory and the Northwest Territories.

(2) ["Census divisions"] — For the purposes of subsection (1), the expression "census divisions" has the same meaning as in the *Dictionary of 1971 Census Terms*, Statistics Canada Catalogue Number 12-540, and the *Census Divisions and Subdivisions*, Statistics Canada Catalogues Numbered 92-704, 92-705, 92-706 and 92-707.

History: That portion of subsec. 4602(1) preceding para. (a) substituted by P.C. 1988-390, s. 21, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, applicable to 1985 *et seq.*

S. 4602 added by P.C. 1981-3029, October 29, 1981, *Canada Gazette*, Part II, November 11, 1981, effective in respect of certified property acquired after October 28, 1980.

Definitions [Reg. 4602]: "Canada" — ITA 255, *Interpretation Act* 35(1); "census divisions" — Reg. 4602(2); "prescribed" — ITA 248(1).

4603. Qualified construction equipment — For the purposes of the definition "qualified construction equipment" in subsection 127(9) of the Act, "prescribed equipment" means depreciable property of a taxpayer, other than qualified property as defined by subsection 127(9) of the Act or qualified transportation equipment as defined by subsection 127(9) of the Act, that is

(a) a property included in Class 22 or 38 in Schedule II;

(b) a crane;

(c) a pile driver; or

(d) a dredge.

History: Para. 4603(a) substituted by P.C. 1989-2464, s. 8, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

That portion of s. 4603 preceding para. (a) substituted by P.C. 1988-390, s. 22, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, applicable to 1985 *et seq.*

S. 4603 added by P.C. 1985-2277, s. 13, July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable with respect to acquisitions of property occurring after April 19, 1983.

Definitions [Reg. 4603]: "depreciable property" — ITA 13(21), 248(1); "property", "taxpayer" — ITA 248(1).

4604. Approved project property — **(1)** For the purposes of paragraphs (a) and (c) of the definition "approved project property" in subsection 127(9) of the Act, property is a prescribed building if it is depreciable property of the taxpayer that is a building or grain elevator, erected on land owned or leased by the taxpayer,

(a) that is included in Class 1, 3, 6, 24, 27 or 37 or paragraph (c), (d) or (e) of Class 8 in Schedule II; or

(b) that is included or would, but for Class 28 or Class 41 in Schedule II, be included in paragraph (g) of Class 10 in Schedule II.

(2) For the purposes of paragraphs (b) and (d) of the definition "approved project property" in subsection 127(9) of the Act, property is prescribed machinery and equipment if it is depreciable property of the taxpayer (other than property referred to in subsection (1)) that is

(a) a property included in paragraph (k) of Class 1 or paragraph (a) of Class 2 in Schedule II;

(b) an oil or water storage tank;

(c) a property included in Class 8 in Schedule II (other than railway rolling stock);

(d) subject to paragraph (e), a property included in paragraph (a) of Class 10 or Class 22 or 38 in Schedule II (other than a car or truck designed for use on highways or streets);

(e) a logging truck acquired to be used in the activity of logging and having a weight, including the weight of property the capital cost of which is included in the capital cost of the truck at the time of its acquisition (but for greater certainty not including the weight of fuel), in excess of 16,000 pounds;

(f) a property included in any of paragraphs (b) to (f), (h) to (k), (o), (q), (r), (t) or (u) of Class 10 in Schedule II;

(g) a property included in paragraph (n) of Class 10, or Class 15, in Schedule II (other than a roadway);

(h) a property included in any of paragraphs (a) to (f) of Class 9 in Schedule II;

(i) a property included in Class 28 or 41 in Schedule II that would, but for those classes, be included in paragraph (k) or (r) of Class 10 in Schedule II;

(j) a property included in any of Classes 21, 24, 27, 29, 34, 39, 40 and 43 in Schedule II;

(k) a property included in Class 37 in Schedule II; or

(l) a vessel (other than a supply boat, workboat, drilling rig, workover rig or shuttle tanker), including the furniture, fittings and equipment attached thereto, that is used primarily for

(i) heavy-lifting or pipe-laying in the construction of, or

(ii) the provision of lodging services in the servicing of,

an installation, structure, apparatus or artificial island that is used for offshore hydrocarbon exploration or exploitation.

History: Para. 4604(2)(j) substituted by P.C. 1994-230, s. 4, February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to property acquired after February 25, 1992.

Paras. 4604(1)(a), (b), (2)(a), (d), (i), (j) substituted by P.C. 1989-2464, s. 9, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

S. 4604 added by P.C. 1986-2770, s. 7, December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, applicable from May 24, 1985.

Definitions [Reg. 4604]: "depreciable property" — ITA 13(21), 248(1); "prescribed", "property", "taxpayer" — ITA 248(1).

4605. Prescribed activities — For the purposes of the definition "for an approved purpose" in paragraph (e) of the definition "approved project property" in subsection 127(9) of the Act, a prescribed activity of a taxpayer is

(a) operating a hotel, motel, camping ground, travel trailer park or any similar lodging facility;

(b) providing facilities that are ancillary to a lodging facility referred to in paragraph (a) that is owned by the taxpayer and that are intended for the use and enjoyment of the occupants of the lodging facility;

(c) providing facilities that are primarily for the receiving, storage and distribution of goods owned by persons with whom the taxpayer deals at arm's length;

(d) providing to a business owned by a person with whom the taxpayer deals at arm's length

(i) engineering or architectural services,

(ii) computer services, or

(iii) other technical or scientific services,

but not including financial, legal, accounting, medical or dental services;

(e) providing to a business owned by a person with whom the taxpayer deals at arm's length

(i) the services of an employment agency, or

(ii) advertising services, other than advertising services in a medium owned by the taxpayer; or

(f) operating a vessel described in paragraph 4604(2)(l).

History: S. 4605 added by P.C. 1986-2770, s. 7, December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, applicable from May 24, 1985.

Definitions [Reg. 4605]: "arm's length" — ITA 251(1); "business", "employment", "person", "prescribed", "taxpayer" — ITA 248(1).

4606. Prescribed amount — For the purposes of paragraph (b) of the definition "contract payment" in subsection 127(9) of the Act, a prescribed amount is an amount received from the Canadian Commercial Corporation in respect of an amount received by that Corporation from a government, municipality or other public authority other than the government of Canada or of a province, a Canadian municipality or other Canadian public authority.

History: S. 4606 added by P.C. 1986-2770, s. 7, December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, effective November 22, 1985.

Definitions [Reg. 4606]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "prescribed" — ITA 248(1); "province" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-151R5: Scientific research and experimental development expenditures.

4607. Prescribed designated regions — For the purposes of the definition "specified percentage" in subsection 127(9) of the Act, "prescribed designated region" means a region of Canada, other than the Gaspé peninsula and the provinces of Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland, including Labrador, that was a designated region on December 31, 1984, under the *Regional Development Incentives Designated Region Order, 1974*.

History: S. 4607 added by P.C. 1988-390, s. 23, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, applicable to 1985 *et seq.*

Definitions [Reg. 4607]: "Canada" — ITA 255, *Interpretation Act* 35(1); "province" — *Interpretation Act* 35(1).

4608. Prescribed expenditure for qualified Canadian exploration expenditure — **(1)** In this section,

"joint exploration corporation" has the meaning assigned by paragraph 66(15)(g) [66(15)"joint exploration corporation"] of the Act;

"principal-business corporation" has the meaning assigned by paragraph 66(15)(h) [66(15)"principal-business corporation"] of the Act;

"shareholder corporation" has the meaning assigned by paragraph 66(15)(i) [66(15)"shareholder corporation"] of the Act;

"well" means an exploratory probe or an oil or gas well.

(2) For the purposes of the definition "qualified Canadian exploration expenditure" in subsection 127(9) of the Act, the prescribed expenditure of a taxpayer for a taxation

year is the aggregate of all amounts each of which is the amount, if any, by which

(a) the specified expenses of the taxpayer for the year in respect of the well

exceed

(b) the base amount of the taxpayer at the end of the year in respect of the well.

(3) For the purposes of this section, the specified expenses of a taxpayer for a taxation year in respect of a well that is an exploratory probe is the aggregate of all expenses that

(a) would be Canadian exploration expenses of the taxpayer by reason of any of subparagraphs 66.1(6)(a)(i), (iv) and (v) [66.1(6)"Canadian exploration expense"(a), (h) and (i)] of the Act if the references in subparagraphs 66.1(6)(a)(iv) and (v) [66.1(6)"Canadian exploration expense"(h) and (i)] of the Act (as those subparagraphs read on November 30, 1985) to "any of subparagraphs (i) to (iii.1)" were read as references to "subparagraph (i)";

(b) were incurred

(i) in the year, and

(ii) after November 1985 and before 1991;

(c) were incurred in the drilling or completing of the exploratory probe or in building a temporary access road to, or preparing the site in respect of, the probe; and

(d) are not non-qualifying expenses of the taxpayer.

(4) For the purposes of this section, the specified expenses of a taxpayer for a taxation year in respect of a well that is an oil or gas well is the aggregate of all expenses that

(a) would be Canadian exploration expenses of the taxpayer by virtue of any of subparagraphs 66.1(6)(a)(ii) to (ii.2), (iv) and (v) [66.1(6)"Canadian exploration expense"(c) to (e), (h) and (i)] of the Act if the references in subparagraphs 66.1(6)(iv) and (v) [66.1(6)"Canadian exploration expense"(h) and (i)] of the Act (as those subparagraphs read on November 30, 1985) to "subparagraphs (i) to (iii.1)" were read as references to "subparagraphs (ii) to (ii.2)";

(b) were incurred in respect of the well

(i) in the year, and

(ii) after November 1985 and before 1991; and

(c) are not non-qualifying expenses of the taxpayer.

(5) For the purposes of subsections (3) and (4), a non-qualifying expense of a taxpayer is an expense that

(a) may reasonably be regarded as having been incurred as consideration for services to be rendered after 1990 or for property that cannot reasonably be considered to be for use by the taxpayer before 1991;

(b) was or is to be renounced by the taxpayer at any time under subsection 66(10.1) or (12.6) of the Act;

(c) is or was a Canadian exploration and development overhead expense, within the meaning of section 1206, of the taxpayer, of a partnership of which the taxpayer was a member or of a joint exploration corporation of which the taxpayer was a shareholder corporation;

(d) is an eligible cost or expense within the meaning of the *Petroleum Incentives Program Act* or the *Petroleum Incentives Program Act*, Chapter P-4.1 of the Statutes of Alberta, 1981, in respect of which, or in respect of part of which, the taxpayer, a partnership of which the taxpayer was a member, a joint exploration corporation of which the taxpayer was a shareholder corporation or a principal-business corporation of which the taxpayer was a shareholder, has received, is deemed to have received, is entitled to receive or may reasonably be expected to receive an incentive under either of those Acts; or

(e) was included in determining the specified expenses of any other taxpayer for a taxation year.

(6) For the purposes of this section, the base amount of a taxpayer at the end of a particular taxation year in respect of a well is the amount, if any, by which the taxpayer's threshold amount in respect of the well exceeds the aggregate of

(a) all amounts that would have been the taxpayer's specified expenses for any taxation year in respect of the well if

(i) the references in subparagraphs (3)(b)(ii) and (4)(b)(ii) to "after November 1985 and before 1991" were read as "after March 1985 and before December 1985", and

(ii) subsection (5) were read without reference to paragraph (d) thereof;

(b) all amounts referred to in paragraph (5)(d) for the particular taxation year or a preceding taxation year in respect of the well that would have been included in determining the taxpayer's specified expenses for the particular taxation year or the preceding taxation year but for that paragraph; and

(c) all amounts that are the taxpayer's specified expenses for any preceding taxation year in respect of the well.

(7) For the purposes of this section, the threshold amount of a taxpayer in respect of a well is

(a) where no agreement has been filed with the Minister under subsection (8) in respect of the well, $5,000,000; and

(b) where an agreement has been filed with the Minister under subsection (8) in respect of the well, the amount, if any, allocated to the taxpayer under the agreement.

(8) For the purposes of this section, where the aggregate of all expenses in respect of a well, each of which

(a) would be included in determining the specified expenses of a taxpayer for a taxation year in respect of the well if subsection (5) were read without reference to paragraph (d) thereof, or

(b) would be included in determining the specified expenses of a taxpayer for a taxation year in respect of the well if

(i) the references in subparagraphs (3)(b)(ii) and (4)(b)(ii) to "after November 1985 and before 1991" were read as "after March 1985 and before December 1985", and

(ii) subsection (5) were read without reference to paragraph (d) thereof

exceeds $5,000,000, all taxpayers who have incurred those expenses or in whose favour or to whom any of those expenses have been renounced under subsection 66(10.1) or (12.6) of the Act may file with the Minister an agreement in writing in the prescribed form in respect of

the well allocating amounts to some or all of those taxpayers if

(c) the amount allocated to each taxpayer does not exceed the total of such expenses that were incurred by the taxpayer in respect of the well, and that are not to be renounced by the taxpayer under subsection 66(10.1) or (12.6) of the Act in favour of or to any other person, and

(d) the aggregate of all amounts so allocated is not less than $5,000,000.

(9) For the purposes of this section, where

(a) the drilling of a well (in this subsection referred to as the "abandoned well") is abandoned not because of the results obtained but because of geological or mechanical difficulties and the drilling of a new well (in this subsection referred to as the "new well") is commenced, and

(b) having regard to all the circumstances, including the lapse of time between the abandonment of the abandoned well and the commencement of the new well and the proximity of the sites of the wells, it is reasonable to regard the new well as a replacement for the abandoned well,

the abandoned well and the new well shall be deemed to be one well.

(10) For the purposes of this section, where an expense of a joint exploration corporation is deemed by subsection 66(10.1) or (10.2) of the Act to be an expense of a shareholder corporation of the joint exploration corporation, the shareholder corporation shall be deemed to have incurred the expense at the time it was incurred by the joint exploration corporation.

(11) For the purpose of this section, where an expense of a principal-business corporation is deemed by subsection 66(12.61) or (12.63) of the Act to be an expense of a shareholder of the corporation, the shareholder shall be deemed to have incurred the expense at the time it was incurred by the principal-business corporation.

(12) For the purposes of this section, where an expense incurred by a partnership is, under subparagraph 66.1(6)(a)(iv) [66.1(6)"Canadian exploration expense"(h)] of the Act, a Canadian exploration expense of a taxpayer who was a member of the partnership, the taxpayer shall be deemed to have incurred the Canadian exploration expense at the time the expense was incurred by the partnership.

(13) For the purposes of this section, where an expense is a Canadian development expense of a taxpayer that is, under subsection 66.1(9) of the Act, deemed to be a Canadian exploration expense of the taxpayer, the taxpayer shall be deemed to have incurred the Canadian exploration expense at the time the Canadian development expense was incurred.

History: Paras. 4608(3)(a), (4)(a) amended by P.C. 1992-2335, Sch. II, s. 8, November 19, 1992, *Canada Gazette* Part II, December 2, 1992, applicable after November 30, 1985.

S. 4608 added by P.C. 1989-1793, September 21, 1989, *Canada Gazette*, Part II, October 11, 1989, effective after November 30, 1985.

Definitions [Reg. 4608]: "abandoned well" — Reg. 4608(9)(a); "amount" — ITA 248(1); "base amount" — Reg. 4608(6); "Canadian development expense" — ITA 66.2(5), 248(1); "Canadian exploration expense" — ITA 66.1(6), 248(1); "commencement" — *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "joint exploration corporation" — ITA 66(15), Reg. 4608(1); "Minister" — ITA 248(1); "new well" — Reg. 4608(9)(a); "non-qualifying expenses" — Reg. 4608(5); "oil or gas well" — ITA 248(1); "person", "prescribed" — ITA 248(1); "principal-business corporation" — ITA 66(15), Reg. 4608(1); "property", "shareholder" — ITA 248(1); "shareholder corporation" — ITA 66(15), Reg. 4608(1); "specified expenses" — Reg. 4608(4); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "threshold amount" — Reg. 4608(7); "well" — Reg. 4608(1), (9); "writing" — *Interpretation Act* 35(1).

4609. Prescribed offshore region — For the purposes of the definition "specified percentage" in subsection 127(9) of the Act, the following region is a prescribed offshore region:

(a) that submarine area, not within a province, adjacent to the coast of Canada and extending throughout the natural prolongation of that portion of the land territory of Canada comprising the Gaspé Peninsula and the provinces of Newfoundland, Prince Edward Island, Nova Scotia and New Brunswick to the outer edge of the continental margin or to a distance of two hundred nautical miles from the baselines from which the territorial sea of Canada is measured, whichever is the greater; and

(b) the waters above the submarine area referred to in paragraph (a).

History: S. 4609 added by P.C. 1989-1793, September 21, 1989, *Canada Gazette*, Part II, October 11, 1989, and s. 4609 after November 16, 1978.

Definitions [Reg. 4609]: "Canada" — ITA 255, *Interpretation Act* 35(1); "prescribed" — ITA 248(1); "province", "territorial sea", "territory" — *Interpretation Act* 35(1).

4610. Prescribed area — For the purpose of paragraph (c.1) of the definition "qualified property" in subsection 127(9) of the Act, the area prescribed is the area comprising the Provinces of Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and the Gaspé Peninsula.

History: S. 4610 added by P.C. 1995-775, May 16, 1995, *Canada Gazette*, Part II, s. 5, May 31, 1995, applicable to property acquired after 1991.

Definitions [Reg. 4610]: "prescribed" — ITA 248(1).

PART XLVII — ELECTION IN RESPECT OF CERTAIN PROPERTY OWNED ON DECEMBER 31, 1971

History: Part XLVII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

4700. Any election by an individual under subsection 26(7) of the *Income Tax Application Rules* shall be made by filing with the Minister the form prescribed.

History: S. 4700 amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Selected Cases [Reg. 4700]: *R. v. Adelman*, [1998] 1 C.T.C. 133 (FCA) (Requirement to elect is mandatory, not directory).

Definitions [Reg. 4700]: "individual", "Minister", "prescribed" — ITA 248(1).

Interpretation Bulletins: IT-139R: Capital property owned on December 31, 1971 — Fair market value (archived).

Forms: T1105: Supplementary schedule for dispositions of capital property acquired before 1972; T2076: Valuation day value election for capital properties owned on December 31, 1971.

PART XLVIII — STATUS OF CORPORATIONS AND TRUSTS

History: Part XLVIII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

4800. (1) [Public corporation — prescribed conditions] — For the purposes of subparagraph (b)(i) of the definition "public corporation" in subsection 89(1) of the Act, the following conditions are prescribed in respect of a corporation other than a cooperative corporation (within the meaning assigned by section 136 of the Act) or a credit union:

(a) a class of shares of the capital stock of the corporation designated by the corporation in its election or by the Minister in his notice to the corporation, as the case may be, shall be qualified for distribution to the public;

(b) there shall be no fewer than

(i) where the shares of that class are equity shares, 150, and

(ii) in any other case, 300

persons, other than insiders of the corporation, each of whom holds

(iii) not less than one block of shares of that class, and

(iv) shares of that class having an aggregate fair market value of not less than $500; and

(c) insiders of the corporation shall not hold more than 80 per cent of the issued and outstanding shares of that class.

Forms: T2073: Election to be a public corporation.

(2) [Public corporation — prescribed conditions] — For the purposes of subparagraph (c)(i) of the definition "public corporation" in subsection 89(1) of the Act, the following conditions are prescribed in respect of a corporation:

(a) insiders of the corporation shall hold more than 90 per cent of the issued and outstanding shares of each class of shares of the capital stock of the corporation that

(i) was, at any time after the corporation last became a public corporation, listed on a stock exchange in Canada prescribed for the purposes of section 89 of the Act, or

(ii) was a class, designated as described in paragraph (1)(a), by virtue of which the corporation last became a public corporation;

(b) in respect of each class of shares described in subparagraph (a)(i) or (ii), there shall be fewer than

(i) where the shares of that class are equity shares, 50, and

(ii) in any other case, 100

persons, other than insiders of the corporation, each of whom holds

(iii) not less than one block of shares of that class, and

(iv) shares of that class having an aggregate fair market value of not less than $500; and

(c) there shall be no class of shares of the capital stock of the corporation that is qualified for distribution to the public and complies with the conditions described in paragraphs (1)(b) and (c).

Forms: T2067: Election not to be a public corporation.

(3) [Public corporation — amalgamation] — Where, by virtue of an amalgamation (within the meaning assigned by section 87 of the Act) of predecessor corporations any one or more of which was, immediately before the amalgamation, a public corporation, shares of any class of the capital stock of any such public corporation that was

(a) at any time after the corporation last became a public corporation, listed on a stock exchange in Canada prescribed for the purposes of section 89 of the Act, or

(b) the class, designated as described in paragraph (1)(a), by virtue of which the corporation last became a public corporation,

are converted into shares of any class (in this subsection referred to as the "new class") of the capital stock of the new corporation, the new class shall, for the purposes of subsection (2), be deemed to be a class, designated as described in paragraph (1)(a), by virtue of which the new corporation last became a public corporation.

(4) [Public corporation — election requirements] — Any election under subparagraphs (b)(i) or (c)(i) of the definition "public corporation" in subsection 89(1) of the Act shall be made by filing with the Minister the following documents:

(a) the form prescribed by the Minister;

(b) where the directors of the corporation are legally entitled to administer the affairs of the corporation, a certified copy of their resolution authorizing the election to be made;

(c) where the directors of the corporation are not legally entitled to administer the affairs of the corporation, a certified copy of the authorization of the making of the election by the person or persons legally entitled to administer the affairs of the corporation; and

(d) a statutory declaration made by a director of the corporation stating that, after reasonable inquiry for the purpose of informing himself in that regard, to the best of his knowledge the corporation complies with all the prescribed conditions that must be complied with at the time the election is made.

History: The opening words of subsecs. 4800(1), (2) and (4), amended by P.C. 2001-1106, s. 3, June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, effective from April 1, 2001.

S. 4800 amended by P.C. 1983-867, March 25, 1983, *Canada Gazette*, Part II, April, 1983.

Definitions [Reg. 4800]: "block of shares" — Reg. 4803(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "class" — ITA 248(6); "class of shares" — Reg. 4803(2); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "credit union" — ITA 248(1); "equity share" — ITA 204, Reg. 4803(1); "Minister" — ITA 248(1); "new class" — Reg. 4800(3); "person" — Reg. 4803(3); "prescribed" — ITA 248(1); "public corporation" — ITA 89(1), 248(1); "share" — ITA 248(1); "statutory declaration" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs; IT-391R: Status of corporations.

Forms: T2067: Election not to be a public corporation; T2073: Election to be a public corporation.

4800.1 [Prescribed trusts] — For the purposes of paragraph 107(1)(a), subsections 107(2) and (4.1) and paragraph 108(1)(c) [108(1)"capital interest"] of the Act, the following are prescribed trusts;

Proposed Amendment — Reg. 4800.1 opening words

4800.1 [Prescribed trusts] — For the purposes of paragraph 107(1)(a) and subsections 107(1.1), (2) and (4.1) of the Act, the following are prescribed trusts;

Application: The July 18, 2005 draft regulations, s. 2, will amend the opening words of s. 4800.1 to read as above, applicable after 1999.

Technical Notes: Section 4800.1 provides a list of trusts that are prescribed for a number of identified provisions in the Act. Section 4800.1 is amended to update the list of provisions in the Act for which it applies. As a result, a reference to subsection 107(1.1) of the Act is added and a reference to paragraph 108(1)(c) of the Act is removed. The amendments to the Act that give rise to the need for these changed references have generally had effect since the start of 2000.

(a) a trust maintained primarily for the benefit of employees of a corporation or two or more corporations which do not deal at arm's length with each other, where one of the main purposes of the trust is to hold interests in shares of the capital stock of the corporation or corporations, as the case may be, or any corporation not dealing at arm's length therewith;

(b) a trust established exclusively for the benefit of one or more persons each of whom was, at the time the trust was created, either a person from whom the trust received property or a creditor of that person, where one of the main purposes of the trust is to secure the payments required to be made by or on behalf of that person to such creditor; and

(c) a trust all or substantially all of the properties of which consist of shares of the capital stock of a corporation, where the trust was established pursuant to an agreement between two or more shareholders of the corporation and one of the main purposes of the trust is to provide for the exercise of voting rights in respect of those shares pursuant to that agreement.

Related Provisions: ITA 107.4(3)(i) — Trust deemed not to be prescribed trust.

History: That portion of s. 4800.1 preceding para. (a) amended by P.C. 1992-2338, s.1, November 19, 1992, *Canada Gazette* Part II, December 2, 1992, applicable after 1987.

S. 4800.1 added by P.C. 1990-853, May 10, 1990, *Canada Gazette*, Part II, May 23, 1990, applicable after 1987.

Definitions [Reg. 4800.1]: "arm's length" — ITA 251(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "employee", "person", "prescribed", "property", "share", "shareholder" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

4801. [Mutual fund trust — prescribed conditions] — For the purposes of paragraph 132(6)(c) of the Act, the following conditions are hereby prescribed in respect of a trust:

(a) either

(i) a class of the units of the trust shall be qualified for distribution to the public, or

(ii) there has been a lawful distribution in a province to the public of units of the trust and a prospectus, registration statement or similar document was not required under the laws of the province to be filed in respect of the distribution; and

(b) in respect of any one class of units described in paragraph (a), there shall be no fewer than 150 beneficiaries of the trust, each of whom holds

(i) not less than one block of units of the class, and

(ii) units of the class having an aggregate fair market value of not less than $500.

Proposed Amendment — Reg. 4801

4801. [Mutual fund trust — prescribed conditions] — In applying at any time paragraph 132(6)(c) of the Act, the following are prescribed conditions in respect of a trust:

(a) either

(i) both

(A) there has been at or before that time a lawful distribution in a province to the public of units of the trust and a prospectus, registration statement or similar document was not, under the laws of the province, required to be filed in respect of the distribution, and

(B) the trust

(I) was created after 1999 and on or before that time, or

(II) is a trust that satisfies, at that time, the conditions prescribed in section 4801.001, or

(ii) a class of the units of the trust is, at that time, qualified for distribution to the public; and

(b) in respect of a class of the trust's units that meets at that time the conditions described in paragraph (a), there are at that time no fewer than 150 beneficiaries of the trust, each of whom holds

(i) not less than one block of units of the class, and

(ii) units of the class having an aggregate fair market value of not less than $500.

Application: The July 18, 2005 draft regulations, s. 3, will amend s. 4801 to read as above, applicable to 2000 *et seq.*

Technical Notes: Section 4801 contains a number of prescribed conditions that apply for the purposes of paragraph 132(6)(c) of the Act. These conditions must be met in order for a trust to qualify for income tax purposes as a mutual fund trust. The expression "mutual fund trust" is defined in subsection 132(6) of the Act.

Part XLVIII of the Regulations is amended — by adding subclause 4801(a)(i)(B)(II) and section 4800.001 — so that a trust created before 2000 that is a widely-held unit trust may qualify as a mutual fund trust where it makes a lawful distribution in a province to the public of its units and a number of other conditions are met. This amendment — which extends to trusts created before 2000 a similar existing rule that applies only to trusts created after 1999 — applies only for the 2004 and subsequent taxation years and only to trusts that elect for section 4801.001 to apply.

Section 4801 is also amended to update the language of the provision — these changes do not represent a change in tax policy.

Technical Notes to ITA 132(6)(c), July 18, 2005: It is intended that proposed amendments to Part XLVIII of the Regulations would include the following: [Amendment to French version omitted] ... Paragraph 4801(a) of the Regulations would be amended so that subparagraph 4801(a)(ii) applies to a trust created before 2000, for its 2004 and subsequent taxation years, if the trust elects by notifying the Minister of National Revenue in writing in its return of income for the taxation year of the trust that ends in the calendar year in which the amending regulations are published in Part II of the *Canada Gazette*. As a result of the proposed change, if there has been a lawful distribution in a province to the public of units of a class of units of a trust created before 2000 and a prospectus, registration statement or similar document was not required under the laws of the province to be filed in respect of the distribution, the trust could rely upon subparagraph 4801(a)(ii) to meet, in its 2004 and later taxation years, the condition prescribed under paragraph 4801(a).

These amendments to the Regulations would, except as described above, be proposed to apply to the 2000 and subsequent taxation years of trusts.

Letter from Dept. of Finance, March 12, 2003:

Dear [xxx]

Thank you for your letter of November 6, 2002, concerning the application of section 4801 of the *Income Tax Regulations* to a trust seeking to qualify as a mutual fund trust for income tax purposes.

The meaning for income tax purposes of the expression "mutual fund trust" is found in subsection 132(6) of the *Income Tax Act*. Paragraph 132(6)(c) of the Act requires that a trust meet at a particular time prescribed conditions in order to qualify at that time as a mutual fund trust.

The first prescribed condition is found in paragraph 4801(a): it requires either that a class of units of a trust be qualified for distribution to the public, as defined in subsection 4803(2) of the Regulations, or for trusts established after 1999, that there be a lawful distribution in a province to the public of units off the trust where a prospectus, registration statement or similar document was not required under the laws of the province to be filed in respect of the distribution.

You are seeking an amendment to paragraph 4801(a) of the Regulations so that a trust created before 2000 would be able to elect to rely upon the condition in subparagraph 4801(a)(ii) in order to satisfy the requirements of that paragraph.

Subparagraph 4801(a)(ii) of the Regulations is generally intended to ensure that the requirements under the Act for a securities distribution are generally no more onerous than those imposed under provincial securities requirements for mutual fund trusts. From a tax policy perspective, it would not be inconsistent with this goal to permit a trust created before 2000 to be able to rely upon that subparagraph in satisfying the prescribed conditions for mutual fund trusts.

We are, therefore, prepared to recommend an amendment to the Regulations so that, for the 2004 and subsequent taxation years of trusts created before 2000, the condition prescribed under paragraph 4801(a) would be met, under subparagraph 4801(a)(ii), if there has been a lawful distribution in a province to the public of units of a class of units of the trust and a prospectus, registration statement or similar document was not required under the laws of the province to be filed in respect of the distribution. However, to prevent such a trust from being re-characterized, contrary to the intention of its trustee or investors, as a mutual fund trust under the Act, such a revised subparagraph 4801(a)(ii) would apply to trusts created before 2000 only if the trust were to so elect and only for taxation years that end after the time at which the election was made.

Of course, we cannot offer any assurance that either the Minister of Finance or Parliament will agree with the recommendation that we intend to make in this regard. Nonetheless, we trust that this statement of our position is helpful.

Thank you for writing.

Yours sincerely,
Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Related Provisions: Reg. 221(1)(f) — Reporting requirements.

History: Subpara. 4801(a)(ii) added by P.C. 2001-1106, s. 4, June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to trusts established after 1999.

Proposed Amendment — Reg. 4801(a)(ii) Application

Letter from Department of Finance, March 12, 2003:

Dear [xxx]

Thank you for your letter of November 6, 2002, concerning the application of section 4801 of the *Income Tax Regulations* to a trust seeking to qualify as a mutual fund trust for income tax purposes.

The meaning for income tax purposes of the expression "mutual fund trust" is found in subsection 132(6) of the *Income Tax Act*. Paragraph 132(6)(c) of the Act requires that a trust meet at a particular time prescribed conditions in order to qualify at that time as a mutual fund trust.

The first prescribed condition is found in paragraph 4801(a): it requires either that a class of units of a trust be qualified for distribution to the public, as defined in subsection 4803(2) of the Regulations, or for trusts established after 1999, that there be a lawful distribution in a province to the public of units off the trust where a prospectus, registration statement or similar document was not required under the laws of the province to be filed in respect of the distribution.

You are seeking an amendment to paragraph 4801(a) of the Regulations so that a trust created before 2000 would be able to elect to rely upon the condition in subparagraph 4801(a)(ii) in order to satisfy the requirements of that paragraph.

Subparagraph 4801(a)(ii) of the Regulations is generally intended to ensure that the requirements under the Act for a securities distribution are generally no more onerous than those imposed under provincial securities requirements for mutual fund trusts. From a tax policy perspective, it would not be inconsistent with this goal to permit a trust created before 2000 to be able to rely upon that subparagraph in satisfying the prescribed conditions for mutual fund trusts.

We are, therefore, prepared to recommend an amendment to the Regulations so that, for the 2004 and subsequent taxation years of trusts created before 2000, the condition prescribed under paragraph 4801(a) would be met, under subparagraph 4801(a)(ii), if there has been a lawful distribution in a province to the public of units of a class of units of the trust and a prospectus, registration statement or similar document was not required under the laws of the province to be filed in respect of the distribution. However, to prevent such a trust from being re-characterized, contrary to the intention of its trustee or investors, as a mutual fund trust under the Act, such a revised subparagraph 4801(a)(ii) would apply to trusts created before 2000 only if the trust were to so elect and only for taxation years that end after the time at which the election was made.

Of course, we cannot offer any assurance that either the Minister of Finance or Parliament will agree with the recommendation that we intend to make in this regard. Nonetheless, we trust that this statement of our position is helpful.

Thank you for writing.

Yours sincerely,
Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Definitions [Reg. 4801]: "block of units" — Reg. 4803(1); "class of units" — Reg. 4803(2); "person" — Reg. 4803(3); "prescribed" — ITA 248(1); "province" — *Interpretation Act* 35(1); "trust" — ITA 104(1), 248(1), (3).

Proposed Addition — Reg. 4801.001

4801.001 [Mutual fund trust — prescribed conditions] — For the purpose of applying at any particular time subclause 4801(a)(i)(B)(II), the following are the prescribed conditions:

(a) the trust was created before 2000;

(b) the trust was on July 18, 2005 a unit trust;

(c) the particular time is after 2003; and

(d) the trust elects by notifying the Minister, in writing, no later than on the trust's filing-due date for its 2005 taxation year, that this section applies to it.

Application: The July 18, 2005 draft regulations, s. 4, will add s. 4801.001, applicable to 2004 *et seq.*, and a trust's election referred to in para. 4801.001(d) is deemed to have been filed by the trust on its filing-due date for its 2005 taxation year if the election is filed by the trust in writing with the Minister of National Revenue within 60 days after the day on which these Regulations are published in Part II of the *Canada Gazette*.

Technical Notes: See under Reg. 4801.

Technical Notes to ITA 132(6)(c), July 18, 2005 and Letter from Dept. of Finance, March 12, 2003: See under Reg. 4801.

Definitions [Reg. 4801.001]: "filing-due date", "Minister", "prescribed" — ITA 248(1); "taxation year" — ITA 249; "trust" — ITA 104(1), 248(1), (3); "unit trust" — ITA 108(2), 248(1); "writing" — *Interpretation Act* 35(1).

4801.01 [Mutual fund trust — exclusion from December 15 year-end] — For the purpose of subsection 132.11(1) of the Act, a trust that is a money market fund as defined in *National Instrument 81-102 Mutual Funds*, as amended from time to time, of the Canadian Securities Administrators is a prescribed trust.

History: S. 4801.01 added by P.C. 2001-1106, s. 5, June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable in respect of any filing, after March 10, 1999, for an election under subsec. 132.11(1) of the Act.

Definitions [Reg. 4801.01]: "prescribed" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

4801.02 [LSVCC — prescribed corporation] — For the purposes of the definition "eligible business entity" in

subsection 204.8(1), clause 204.82(2.2)(d)(i)(B) and paragraph 204.82(6)(a) of the Act, a corporation registered under Part III.1 of the *Community Small Business Investment Funds Act*, chapter 18 of the Statutes of Ontario, 1992, is a prescribed corporation.

History: S. 4801.02 added by P.C. 2001-1106, s. 5, June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to 1999 *et seq.*

Definitions [Reg. 4801.02]: "corporation" — ITA 248(1), *Interpretation Act* 35(1); "prescribed" — ITA 248(1).

4801.1 [Foreign trust reporting exemption] — For the purpose of paragraph (c) of the definition "exempt trust" in subsection 233.2(1) of the Act, the following conditions are hereby prescribed in respect of a trust:

(a) at least 150 beneficiaries of the trust are beneficiaries in respect of the same class of units of the trust; and

(b) at least 150 of the beneficiaries in respect of that class each hold

(i) at least one block of units of that class, and

(ii) units of that class having a total fair market value of at least $500.

History: S. 4801.1 added by P.C. 1998-1573, s. 1, September 15, 1998, *Canada Gazette*, Part II, September 30, 1998, applicable to returns in respect of taxation years that begin after 1995.

4802. (1) [Pension investment corporation — prescribed investors] — For the purposes of clause 149(1)(o.2)(iv)(D) of the Act, the following are prescribed persons:

(a) a trust all the beneficiaries of which are trusts described in clause 149(1)(o.2)(iv)(B) of the Act;

(b) a corporation incorporated before November 17, 1978 solely in connection with, or for the administration of, a registered pension plan;

(c) a trust or corporation established by or arising by virtue of an act of a province the principal activities of which are to administer, manage or invest the monies of a pension fund or plan that is established pursuant to an act of the province or an order or regulation made thereunder;

(c.1) the Canada Pension Plan Investment Board;

Proposed Addition — Reg. 4802(1)(c.2)

Letter from Dept. of Finance, October 30, 2002:

Dear [xxx]

This is in reply to your fax of October 16, 2002 in which you request an amendment to the *Income Tax Regulations* that would permit the [xxx] and its subsidiaries to acquire shares of pension investment corporations that are exempt from tax under paragraph 149(1)(o.2) of the *Income Tax Act*.

We agree that the [xxx] should not be precluded from investing in such corporations. Accordingly, we will recommend to the Minister of Finance that the list of prescribed shareholders under subsection 4802(1) of the Regulations be expanded to include the [xxx] effective after October 2002.

I trust this is satisfactory.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, October 16, 2003:

Dear [xxx]

This is in reply to your letter of September 9, 2003 in which you request a change to the income tax rules that would permit the [xxx] and its wholly-owned subsidiaries to invest in corporations that are exempt from tax under paragraph 149(1)(o.2) of the *Income Tax Act* (the "Act"). I also wish to acknowledge discussions between Tax Legislation officials and your external tax counsel.

Based on our understanding that the [xxx] activities are limited to the investment of the assets held in connection with the registered pension plans established under the *Canadian Forces Superannuation Act*, the *Public Service Superannuation Act*, and the *Royal Canadian Mounted Police Superannuation Act*, we have no tax policy concerns with the [xxx] investing in such corporations. Accordingly, we will recommend to the Minister of Finance that the income tax rules be amended to clarify that the [xxx] and its wholly-owned subsidiaries are permissible shareholders for corporations described in paragraph 149(1)(o.2) of the Act, effective after September 2003.

I trust this is satisfactory.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

(d) a trust or corporation established by or arising by virtue of an act of a province in connection with a scheme or program for the compensation of workers injured in an accident arising out of or in the course of their employment;

(e) Her Majesty in right of a province;

(f) a trust all of the beneficiaries of which are any combination of

(i) registered pension plans,

(ii) trusts described in clause 149(1)(o.2)(iv)(B) or (C) of the Act, and

(iii) persons described in this subsection; and

(g) a corporation all of the shares of the capital stock of which are owned by one or more of the following:

(i) registered pension plans,

(ii) trusts described in clause 149(1)(o.2)(iv)(B) or (C) of the Act, and

(iii) persons described in this subsection.

History: Para. 4802(1)(c.1) added by P.C. 2003-1497, s. 2, October 2, 2003, *Canada Gazette*, Part II, October 22, 2003, applicable after October 2002.

Subpara. 4802(1)(f)(iii) amended and para. 4802(1)(g) added by P.C. 1996-569, s. 1, April 23, 1996, *Canada Gazette*, Part II, May 1, 1996, applicable to 1994 *et seq.*

S. 4802 renumbered as subsec. 4802(1) by P.C. 1994-785, May 12, 1994, *Canada Gazette*, Part II, June 1, 1994, applicable to 1989 *et seq.*

Para. 4802(e) amended, (f) added, by P.C. 1992-2338, s. 2, November 19, 1992, *Canada Gazette* Part II, December 2, 1992, applicable to taxation years commencing after 1991.

Para. 4802(b) amended by P.C. 1991-2540, s. 8, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable after 1985.

Para. 4802(c) substituted and para. (e) added by P.C. 1987-1881, s. 1, September 10, 1987, *Canada Gazette*, Part II, September 30, 1987, applicable with respect to taxation years commencing after 1978.

New s. 4802 added and former s. 4802 renumbered s. 4803 by P.C. 1985-2277, s. 14, July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable to taxation years commencing after 1978.

Proposed Addition — Reg. 4802(1.1)

(1.1) [Master trust] — For the purposes of paragraph 149(1)(o.4) of the Act, a trust is a master trust at any time if, at all times after it was created and before that time,

(a) it was resident in Canada;

(b) its only undertaking was the investing of its funds;

(c) it never borrowed money except where the borrowing was for a term not exceeding 90 days and it is established that the borrowing was not part of a series of loans or other transactions and repayments;

(d) it never accepted deposits; and

(e) each of the beneficiaries of the trust was a trust governed by a registered pension plan or a deferred profit sharing plan.

Application: The May 16, 2005 draft regulations (deferred income plans), s. 5, (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will add subsec. 4802(1.1), deemed to have come into force June 29, 2005.

Regulatory Impact Analysis Statement: Part L is also being amended, prior to its repeal, to renumber section 5001 (which prescribes a master trust for the purpose of paragraph 149(1)(o.4) of the Act) as subsection 4802(3) [actually 4802(1.1) — ed.].

[See also under Reg. 214(5).]

Related Provisions: ITA 248(10) — Series of transactions; ITA 253.1 — Limited partner not considered to carry on business of partnership.

(2) [Prescribed insurers] — For the purposes of paragraph 149(1)(t) of the Act, the following are prescribed insurers:

(a) Union Québécoise, compagnie d'assurances générales inc.;

(b) Les Clairvoyants Compagnie d'Assurance Générale Inc.; and

(c) Laurentian Farm Insurance Company Inc.

History: Subsec. 4802(2) added by P.C. 1994-785, May 12, 1994, *Canada Gazette*, Part II, June 1, 1994, applicable to 1989 *et seq.*

Definitions [Reg. 4802]: "borrowed money" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "employment" — ITA 248(1); "Her Majesty" — *Interpretation Act* 35(1); "insurer", "person", "prescribed" — ITA 248(1); "province" — *Interpretation Act* 35(1); "registered pension plan" — ITA 248(1); "resident in Canada" — ITA 250; "share" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

4803. (1) In this Part,

"block of shares" means, with respect to any class of the capital stock of a corporation,

(a) 100 shares, if the fair market value of one share of the class is less than $25,

(b) 25 shares, if the fair market value of one share of the class is $25 or more but less than $100, and

(c) 10 shares, if the fair market value of one share of the class is $100 or more;

"block of units" means, with respect to any class of units of a trust,

(a) 100 units, if the fair market value of one unit of the class is less than $25,

(b) 25 units, if the fair market value of one unit of the class is $25 or more but less than $100, and

(c) 10 units, if the fair market value of one unit of the class is $100 or more;

"equity share" has the meaning assigned by section 204 of the Act;

"insider of a corporation" has the meaning that would be assigned by section 100 of the *Canada Corporations Act* if the references therein to "public company" and to "equity shares" were read as references to "corporation" and "shares" respectively, except that a person who is an employee of the corporation, or of a person who does not deal at arm's length with the corporation, and whose right to sell or transfer any share of the capital stock of the corporation, or to exercise the voting rights, if any, attaching to the share, is restricted by

(a) the terms and conditions attaching to the share, or

(b) any obligation of the person, under a contract, in equity or otherwise, to the corporation or to any person with whom the corporation does not deal at arm's length,

shall be deemed to hold the share as an insider of the corporation.

History: Subsec. 4803(1) is the former subsec. 4802(1) renumbered by P.C. 1985-2277, subsec. 14(1), July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable to taxation years commencing after 1978.

The definition of "equity share" in former subsec. 4802(1) substituted by P.C. 1984-339, s. 1, February 2, 1984, *Canada Gazette*, Part II, February 22, 1984, effective November 13, 1981.

(2) [Meaning of "qualified for distribution to the public"] — For the purposes of this Part, a class of shares of the capital stock of a corporation or a class of units of a trust is qualified for distribution to the public only if

(a) a prospectus, registration statement or similar document has been filed with, and, where required by law, accepted for filing by, a public authority in Canada pursuant to and in accordance with the law of Canada or of any province and there has been a lawful distribution to the public of shares or units of that class in accordance with that document;

(b) the class is a class of shares, any of which were issued by the corporation at any time after 1971 while it was a public corporation in exchange for shares of any other class of the capital stock of the corporation that was, immediately before the exchange, qualified for distribution to the public;

(c) in the case of any class of shares, any of which were issued and outstanding on January 1, 1972, the class complied on that date with the conditions described in paragraphs 4800(1)(b) and (c); or

(d) in the case of any class of units, any of which were issued and outstanding on January 1, 1972, the class complied on that date with the condition described in paragraph 4801(b).

History: Subsec. 4803(2) is the former subsec. 4802(2), renumbered by P.C. 1985-2277, subsec. 14(1), July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable to taxation years commencing after 1978.

(3) [Group holdings] — For the purposes of paragraphs 4800(1)(b), 4800(2)(b) and 4801(b), where a group of persons holds

(a) not less than one block of shares of any class of shares of the capital stock of a corporation or one block of units of any class of a trust, as the case may be, and

(b) shares or units, as the case may be, of that class having an aggregate fair market value of not less than $500,

that group shall, subject to subsection (4), be deemed to be one person for the purposes of determining the number of persons who hold shares or units, as the case may be, of that class.

History: Subsec. 4803(3) is the former subsec. 4802(3), renumbered by P.C. 1985-2277, subsec. 14(1), July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable to taxation years commencing after 1978.

(4) [Determination of group] — In determining under subsection (3) the persons who belong to a group for the purposes of determining the number of persons who hold shares or units, as the case may be, of a particular class, the following rules apply:

(a) no person shall be included in more than one group;

(b) no person shall be included in a group if he holds

(i) not less than one block of shares or one block of units, as the case may be, of that class, and

(ii) shares or units, as the case may be, of that class having an aggregate fair market value of not less than $500; and

(c) the membership of each group shall be determined in the manner that results in the greatest possible number of groups.

History: Subsec. 4803(4) is the former subsec. 4802(4), renumbered by P.C. 1985-2277, subsec. 14(1), July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable to taxation years commencing after 1978.

Subparas. 4802(4)(b)(i), (ii) substituted by P.C. 1981-1556, s. 2, June 11, 1981, *Canada Gazette*, Part II, June 24, 1981, effective 1972 *et seq.*

Interpretation Bulletins: IT-391R: Status of corporations.

Definitions [Reg. 4803]: "arm's length" — ITA 251(1); "block of shares", "block of units" — Reg. 4803(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "class of shares", "class of units" — Reg. 4803(2); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "employee" — ITA 248(1); "group" — Reg. 4803(4); "person" — ITA 248(1); "province" — *Interpretation Act* 35(1); "public corporation" — ITA 89(1), 248(1); "share" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

PART XLIX — DEFERRED INCOME PLANS, QUALIFIED INVESTMENTS

History: Part XLIX (ss. 4900, 4901) substituted by P.C. 1981-2578, s. 4, September 16, 1981, *Canada Gazette*, Part II, October 14, 1981, effective commencing January 1, 1981.

Part XLIX was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

4900. (1) [Qualified investment for RRSP, RESP, RRIF, DPSP] — Subject to subsection (2), for the purposes of paragraph (d) of the definition "qualified investment" in subsection 146(1) of the Act, paragraph (e) of the definition "qualified investment" in subsection 146.1(1) of the Act, paragraph (c) of the definition "qualified investment" in subsection 146.3(1) of the Act and paragraph (i) of the definition "qualified investment" in section 204 of the Act, each of the following investments is prescribed as a qualified investment for a plan trust at a particular time if at that time it is

History: The opening words of subsec. 4900(1) amended by P.C. 2001-1106, subsec. 6(1), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to property acquired after October 27, 1998.

(a) **[registered investment]** — an interest in a trust or a share of the capital stock of a corporation that was a registered investment for the plan trust during the calendar year in which the particular time occurs or the immediately preceding year;

(b) **[share of public corporation]** — a share of the capital stock of a public corporation other than a mortgage investment corporation;

History: Para. 4900(1)(b) amended by P.C. 1994-1074, subsec. 1(1), June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable after 1992.

(c) **[share of mortgage investment corporation]** — a share of the capital stock of a mortgage investment corporation that does not hold as part of its property at any time during the calendar year in which the particular time occurs any indebtedness, whether by way of mortgage or otherwise, of a person who is an annuitant, a beneficiary, an employer or a subscriber under the governing plan of the plan trust or of any other person who does not deal at arm's length with that person;

History: Para. 4900(1)(c) amended by P.C. 2001-1106, subsec. 6(2), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to property acquired after October 27, 1998.

(c.1) **[bond of public corporation]** — a bond, debenture, note or similar obligation of a public corporation other than a mortgage investment corporation;

History: Para. 4900(1)(c.1) added by P.C. 1994-1074, subsec. 1(2), June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable after 1992.

(d) **[unit of mutual fund trust]** — a unit of a mutual fund trust;

(d.1) **[bond of mutual fund trust]** — a bond, debenture, note or similar obligation issued by a mutual fund trust the units of which are listed on a stock exchange referred to in section 3200;

History: Para. 4900(1)(d.1) added by P.C. 1998-629, subsec. 1(1), April 23, 1998, *Canada Gazette*, Part II, May 13, 1998, applicable to property acquired after 1996.

(d.2) **[unit of a trust]** — a unit of a trust if

(i) the trust would be a mutual fund trust if Part XLVIII were read without reference to paragraph 4801(a), and

(ii) there has been a lawful distribution in a province to the public of units of the trust and a prospectus, registration statement or similar document was not required under the laws of the province to be filed in respect of the distribution;

History: Para. 4900(1)(d.2) added by P.C. 2001-1106, subsec. 6(3), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to property acquired after 1993.

(e) **[warrant or option]** — a warrant or right giving the owner thereof the right to acquire either immediately or in the future property all of which is a qualified investment for the plan trust;

Proposed Amendment — Reg. 4900(1)(e)

(e) **[warrant or option]** — an option, a warrant or a similar right (each of which is, in this paragraph, referred to as the "security") issued by a person or partnership (in this paragraph referred to as the "issuer") that gives the holder the right to acquire, either immediately or in the future, property all of which is a qualified investment for the plan trust or to receive a cash settlement in lieu of delivery of that property, where

(i) the property is

(A) a share of the capital stock of, a unit of, or a debt issued by, the issuer or another person or partnership that does not, when the security is issued, deal at arm's length with the issuer, or

(B) a warrant issued by the issuer or another person or partnership that does not, when the security is issued, deal at arm's length with the issuer, that gives the holder the right to acquire a share or unit described in clause (A), and

(ii) the issuer deals at arm's length with each person who is an annuitant, a beneficiary, an employer or a subscriber under the governing plan of the plan trust;

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 6(1), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend para. 4900(1)(e) to read as above, applicable to property acquired after February 27, 2004.

Regulatory Impact Analysis Statement: Part XLIX is amended to add a number of new types of investments to the list of qualified invest-

ments for RRSPs, RRIFs, RESPs and DPSPs and to introduce additional qualification conditions for certain existing qualified investments. Most of these amendments were previously announced by the Department of Finance on February 27, 2004.

Paragraph 4900(1)(e) provides that a warrant or right that gives the holder thereof the right to acquire property is a qualified investment, provided that the underlying property is a qualified investment. This paragraph is amended in several ways. First, it is amended to refer to a warrant, option or similar right. Second, it is amended to add an arm's length test whereby the issuer of the right will be required, on an ongoing basis, to deal at arm's length with each person who is an annuitant, a beneficiary, an employer or a subscriber under the registered plan that holds the right. Third, the underlying property will be required to be a share or unit of (or a warrant on a share or unit of), or a debt issued by, the issuer or a person or partnership with which the issuer does not deal at arm's length. Settlement may be made either by delivery of the underlying property or by cash payment. This amendment applies in respect of property acquired after February 27, 2004.

[See also under Reg. 214(5).]

Letter from Dept. of Finance, December 6, 2004:

Dear [xxx]

This is in reply to your letter of November 9, 2004, concerning the proposed amendment to paragraph 4900(1)(e) of the *Income Tax Regulations*, contained in the Legislative Proposals and Draft Regulations released by the Minister of Finance on February 27, 2004.

The proposed amendment provides, in general terms, that a warrant or right to acquire a share or unit of the issuer is a qualified investment for registered retirement savings plans (RRSPs) and other deferred income plans, provided that the share or unit is a qualified investment and the issuer is at arm's length.

You express concern that, under this draft regulation, subscription receipts will no longer be a qualified investment for RRSPs because the underlying property into which the right is convertible is not just a share of the issuing corporation, but also includes a warrant on the shares of the corporation.

We appreciate the concerns that you have raised, and agree that there is no reason in policy terms to exclude a right to acquire a warrant on a security that is itself a qualified investment under proposed paragraph 4900(1)(e) from being a qualified investment. We are prepared, therefore, to recommend to the Minister of Finance that the draft regulation be amended to accommodate such investments.

Of course, we cannot offer any assurance that the recommendation that we intend to make in this regard will be adopted. Nonetheless, we trust that this statement of our position is helpful.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, January 14, 2005:

Dear [xxx]

This is in reply to your letter of December 28, 2004 concerning proposed amendments to paragraphs 4900(1)(e) and (e.01) of the *Income Tax Regulations*, which were included in the February 27, 2004 technical amendments package.

You express concern that, under the proposed amendments, debenture receipts that are listed on a Canadian stock exchange that entitle the holder to acquire a debenture issued by a public corporation will no longer be a qualified investment for deferred income plan investors. Your concern is that the debenture receipts fail to qualify because they may grant to the holder "a right to acquire" but not "an option to purchase". You state that the debenture receipts would have been a qualified investment under paragraph 4900(1)(e) as it read prior to the February 27, 2004 proposed amendment.

We appreciate the concerns that you have raised and agree that there is no reason in policy terms to exclude a publicly-listed right to acquire a security that is itself a qualified investment from being a qualified investment. We are prepared, therefore, to recommend to the Minister of Finance that proposed paragraph 4900(1)(e.01) be revised to accommodate such investments.

Of course, we cannot offer any assurance that the recommendation we intend to make in this regard will be adopted. Nonetheless, we trust that this statement of our position is helpful.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

History: Para. 4900(1)(e) amended by P.C. 1994-1074, subsec. 1(3), June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable after 1992.

Para. 4900(1)(e) substituted by P.C. 1985-587, February 28, 1985, *Canada Gazette*, Part II, March 20, 1985, effective after February 25, 1985.

Proposed Addition — Reg. 4900(1)(e.01)

(e.01) **[option or warrant listed on stock exchange]** — an option, a warrant or a similar right that is listed on a stock exchange referred to in section 3200 or 3201 and that is in respect of property all of which is a qualified investment for the plan trust;

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 6(1), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will add para. 4900(1)(e.01), applicable after February 27, 2004.

Regulatory Impact Analysis Statement: New paragraph 4900(1)(e.01) provides that an option, warrant or similar right listed on a stock exchange referred to in section 3200 or 3201 is a qualified investment, provided that the underlying property is a qualified investment. The effect of this change is to enable RRSPs, RRIFs, RESPs and DPSPs to acquire publicly-listed put options and cash-settled index options, in addition to call options and warrants [which were already qualified investments under former paragraph 4900(1)(e)].

[See also under Reg. 214(5).]

Letter from Dept. of Finance, January 14, 2005: See under Reg. 4900(1)(e).

(e.1) **[société d'entraide économique]** — a share of, or deposit with, a société d'entraide économique;

History: Para. 4900(1)(e.1) added by P.C. 1983-3319, s. 1, October 20, 1983, *Canada Gazette*, Part II, November 9, 1983, applicable to 1982 *et seq.*

(f) **[share of credit union]** — a share of, or similar interest in a credit union;

(g) **[bond of credit union]** — a bond, debenture, note or similar obligation (in this paragraph referred to as the "obligation") issued by, or a deposit with, a credit union that, except where the plan trust is governed by a registered education savings plan, has not at any time during the calendar year in which the particular time occurs granted any benefit or privilege to a person who is an annuitant, a beneficiary or an employer under the governing plan of the plan trust, or to any other person who does not deal at arm's length with that person, as a result of the ownership by

(i) the plan trust of a share or obligation of, or a deposit with, the credit union, or

(ii) a registered investment of a share or obligation of, or a deposit with, the credit union if the plan trust has invested in that registered investment,

and a credit union shall be deemed to have granted a benefit or privilege to a person in a year if at any time in that year that person continues to enjoy a benefit or privilege that was granted in a prior year;

History: The opening words of para. 4900(1)(g) amended by P.C. 2001-1106, subsec. 6(4), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to property acquired after October 27, 1998.

(h) **[bond of cooperative corporation]** — a bond, debenture, note or similar obligation (in this paragraph referred to as the "obligation") issued by a cooperative corporation (within the meaning assigned by subsection 136(2) of the Act)

(i) that throughout the taxation year of the cooperative corporation immediately preceding the year in which the obligation was acquired by the plan trust had not less than 100 shareholders or, if all its

shareholders were corporations, not less than 50 shareholders,

(ii) whose obligations were, at the end of each month of

(A) the last taxation year, if any, of the cooperative corporation prior to the date of acquisition of the obligation by the plan trust, or

(B) the period commencing three months after the date an obligation was first acquired by any plan trust and ending on the last day of the taxation year of the cooperative corporation in which that period commenced,

whichever of the periods referred to in clause (A) or (B) commences later, held by plan trusts the average number of which is not less than 100 computed on the basis that no two plan trusts shall have the same individual as an annuitant or a beneficiary, as the case may be, and

(iii) that, except where the plan trust is governed by a registered education savings plan, has not at any time during the calendar year in which the particular time occurs granted any benefit or privilege to a person who is an annuitant, a beneficiary or an employer under the governing plan of the plan trust, or to any other person who does not deal at arm's length with that person, as a result of the ownership by

(A) the plan trust of a share or obligation of the cooperative corporation, or

(B) a registered investment of a share or obligation of the cooperative corporation if the plan trust has invested in that registered investment,

and a cooperative corporation shall be deemed to have granted a benefit or privilege to a person in a year if at any time in that year that person continues to enjoy a benefit or privilege that was granted in a prior year;

History: The opening words of subpara. 4900(1)(h)(iii) amended by P.C. 2001-1106, subsec. 6(5), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to property acquired after October 27, 1998.

(i) **[bonds of certain corporations]** — a bond, debenture, note or similar obligation (in this paragraph referred to as the "obligation") of a Canadian corporation

(i) if payment of the principal amount of the obligation and the interest on the principal amount is guaranteed by a corporation or a mutual fund trust whose shares or units, as the case may be, are listed on a stock exchange referred to in section 3200,

(ii) if the corporation is controlled directly or indirectly by

(A) one or more corporations,

(B) one or more mutual fund trusts, or

(C) one or more corporations and mutual fund trusts

whose shares or units, as the case may be, are listed on a stock exchange referred to in section 3200, or

(iii) if, at the time the obligation is acquired by the plan trust, the corporation that issued the obligation is

(A) a corporation that, in respect of its capital stock, has issued and outstanding share capital carried in its books at not less than $25 million, or

(B) a corporation that is controlled by a corporation described in clause (A),

and has issued and outstanding bonds, debentures, notes or similar obligations having in the aggregate a principal amount of at least $10 million that are held by at least 300 different persons and were issued by the corporation by means of one or more offerings, provided that in respect of each such offering a prospectus, registration statement or similar document was filed with and, where required by law, accepted for filing by a public authority in Canada pursuant to and in accordance with the laws of Canada or a province and there was a lawful distribution to the public of those bonds, debentures, notes or similar obligations in accordance with that document;

History: Subpara. 4900(1)(i)(i) and the closing words of subpara. (ii) amended by P.C. 2001-1106, subsecs. 6(6) and (7), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, effective from April 1, 2001.

(i.1) **[community bond guaranteed by province]** — a security of a Canadian corporation

(i) that was issued pursuant to *The Community Bonds Act*, chapter C-16.1 of the Statutes of Saskatchewan, 1990, *The Rural Development Bonds Act*, chapter 47 of the Statutes of Manitoba, 1991-92, the *Community Economic Development Act, 1993*, chapter 26 of the Statutes of Ontario, 1993, or the New Brunswick Community Development Bond Program through which financial assistance is provided under the *Economic Development Act*, chapter E-1.11 of the Acts of New Brunswick, 1975, and

(ii) the payment of the principal amount of which is guaranteed by Her Majesty in right of a province;

History: Para. 4900(1)(i.1) amended by P.C. 1994-1075, subsec. 1(1), June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable to property acquired after August 1993.

Para. 4900(1)(i.1) added by P.C. 1992-2334, s. 2, November 19, 1992, *Canada Gazette* Part II, December 2, 1992, applicable in respect of property acquired after June 30, 1991.

(i.11) **[Nova Scotia *Equity Tax Credit Act*]** — a share of the capital stock of a Canadian corporation that is registered under section 11 of the *Equity Tax Credit Act*, chapter 3 of the Statutes of Nova Scotia, 1993, the registration of which has not been revoked under that Act;

History: Para. 4900(1)(i.11) added by P.C. 1996-1487, subsec. 1(1), September 24, 1996, *Canada Gazette*, Part II, October 16, 1996, applicable to property acquired after 1995.

(i.12) **[NWT risk capital investment]** — a share of the capital stock of a Canadian corporation that is registered under section 39 of the *Risk Capital Investment Tax Credits Act*, chapter 22 of the Statutes of the Northwest Territories, 1998, the registration of which has not been revoked under that Act;

History: Para. 4900(1)(i.12) added by P.C. 1999-249, subsec. 1(1), February 18, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable to property acquired after August 1998.

(i.2) **[banker's acceptance]** — indebtedness of a Canadian corporation (other than a corporation that does not deal at arm's length with a person who is an annuitant, a beneficiary, an employer or a subscriber under the governing plan of the plan trust) represented by a bankers' acceptance;

History: Para. 4900(1)(i.2) amended by P.C. 2001-1106, subsec. 6(8), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to property acquired after October 27, 1998.

Para. 4900(1)(i.2) added by P.C. 1994-1074, subsec. 1(4), June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable after 1992.

Proposed Addition — Reg. 4900(1)(i.3)

(i.3) **[investment-grade corporate debt]** — a debt obligation issued by a Canadian corporation or a trust resident in Canada, where

(i) the principal purpose of the corporation or trust is to derive income from the holding of property that is

(A) a debt obligation, or a lease obligation, that arose in the ordinary course of business between parties dealing with each other at arm's length,

(B) a property described by this paragraph, or

(C) an interest, or for civil law a right, in property described in clause (A) or (B),

(ii) the debt obligation has, at the time of its acquisition by the plan trust, an investment grade rating with a bond rating agency that rates debt in the ordinary course of its business, and

(iii) either

(A) the debt obligation is issued as part of a single issue of debt by the corporation or trust for a total amount of at least $25 million, or

(B) at the time the debt obligation is issued, the corporation or trust has issued and outstanding debt of at least $25 million;

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 6(2), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will add para. 4900(1)(i.3), applicable after February 27, 2004.

Regulatory Impact Analysis Statement: New paragraph 4900(1)(i.3) provides that a debt obligation issued by a Canadian corporation or a trust resident in Canada is a qualified investment, subject to the following requirements:

- the principal purpose of the issuer is to derive income from the holding of (i) debt and lease obligations, which arose in the normal course of business between arm's length parties, (ii) debt obligations that are qualified investments by virtue of this paragraph, and (iii) interests in such property;
- the debt obligation has an investment grade rating with a recognized rating agency when it is acquired by the plan trust; and
- the debt obligation is issued as part of a single debt issue of at least $25 million or the issuer has issued an outstanding debt of at least $25 million.

Paragraph 4900(1)(i.3) is intended, in particular, to accommodate investments in debt obligations (commonly referred to as asset-backed securities) that are backed by cash flows from pools of loans, leases and other receivables.

[See also under Reg. 214(5).]

(j) **[mortgage]** — a mortgage

(i) that is in respect of real property situated in Canada (or an interest in that mortgage), and

(ii) that is, if any mortgagor of that mortgage is a person who is an annuitant, a beneficiary, an employer or a subscriber under the governing plan of the plan trust or is any other person who does not deal at arm's length with that person,

(A) administered by an approved lender under the *National Housing Act*, and

(B) insured

(I) under the *National Housing Act*, or

(II) by a corporation that offers its services to the public in Canada as an insurer of mortgages and that is approved as a private insurer of mortgages by the Superintendent of Financial Institutions pursuant to the powers assigned to the Superintendent under subsection 6(1) of the *Office of the Superintendent of Financial Institutions Act*;

Proposed Amendment — Reg. 4900(1)(j)–(j.2)

(j) **[mortgage]** — a debt obligation of a debtor, or an interest, or for civil law a right, in that debt obligation, where

(i) the debt obligation is fully secured by a mortgage, charge, hypothec or similar instrument in respect of real or immovable property situated in Canada, or would be fully secured were it not for a decline in the fair market value of the property after the debt obligation was issued, and

(ii) the debtor (and any person or partnership who does not deal at arm's length with the debtor) is not an annuitant, a beneficiary, an employer or a subscriber under the governing plan of the plan trust;

Regulatory Impact Analysis Statement: Paragraph 4900(1)(j) provides that a mortgage obligation in respect of real property situated in Canada is a qualified investment. If the mortgagor does not deal at arm's length with the annuitant, beneficiary, employer or subscriber under the registered plan, the mortgage obligation qualifies only if it is insured under the *National Housing Act* or by an approved private insurer of mortgages.

Paragraph 4900(1)(j) is amended to reflect the fact that insured mortgage obligations are now dealt with separately under new paragraph 4900(1)(j.1). It is further amended to provide that a mortgage obligation is a qualified investment under this paragraph only if it is fully secured by the real property. If a mortgage obligation ceases to be fully secured after its issuance, it will not lose its status as a qualified investment if the fact that it is no longer so secured is due to a decline in the fair market value of the real property. This requirement applies as of January 1, 2007, for mortgage obligations acquired before February 28, 2004, and as of the date of acquisition in all other cases.

[See also under Reg. 214(5).]

Letter from Dept. of Finance, June 30, 2004:

Dear [xxx]

This is in reply to your letter of May 21, 2004 in which you raise concerns with the proposed amendment to the definition "foreign property" in subsection 206(1) of the *Income Tax Act*, and the similar proposed amendment to paragraph 4900(1)(j) of the *Income Tax Regulations*. The proposed amendments were included in the February 27, 2004 technical amendments package. I also acknowledge your subsequent correspondence and telephone conversations with Tax Legislation officials.

The proposed amendment to the foreign property definition in subsection 206(1) of the Act would exclude from foreign property characterization for a taxpayer any mortgage loan that is secured by real property situated in Canada, provided that the cost amount to the taxpayer of the loan (together with the cost amount to a taxpayer of any other indebtedness in respect of the property that is of equal or superior rank) does not exceed the fair market value of the property, ignoring any subsequent decline in the fair market value of the real property. Proposed subparagraph 4900(1)(j)(i) of the Regulations contains a similar fair market value test as a condition for qualified investment status for mortgage loans. You raise two concerns with the application of these proposed amendments to mortgage-backed securities (MBS) issued using an undivided co-ownership structure.

The first concern relates to the use of cost as the basis for the test. You indicate that this would be difficult to administer in public transactions as it would require a cost/value determination to be made following each subsequent acquisition of an MBS certificate. We agree that this could lead to administrative difficulties. It would be appropriate, from a tax policy perspective, to use the amount of the mortgage loan at issuance as the basis for the test rather than cost.

The second concern relates to a proposed offering of residential MBS that includes some high-ratio mortgage loans where the principal will exceed the fair market value of the property by as much as 10%. The amount lent is intended to cover the appraised value of the property as well as closing costs. As interests in these mortgage loans would not satisfy the proposed fair market value test, the MBS certificates would not be a qualified investment. However, the certificates would have been a qualified investment under paragraph 4900(1)(j) of the Regulations as it read prior to the February 27, 2004 proposed amendment.

Based on the information presented in your letter, we understand that the MBS certificates have the following characteristics:

- the certificates will represent an undivided co-ownership interest in a pool of mortgage loans secured by real property situated in Canada;
- the mortgage loans were originated in the ordinary course of business between arm's length parties;
- substantially all of the mortgagors are resident of Canada;
- the certificates will be offered to the public by prospectus as part of a minimum offering of at least $25 million;
- the certificates will have an investment grade rating;
- the loan to value ratio of the entire pool will not be more than 100%; and
- no single loan in the pool will represent more than 10% of the fair market value of all of the loans in the pool.

The MBS certificates would appear to satisfy the main policy criteria underlying the qualified investment rules, notably, the presence of an arm's length relationship between the investor and the issuer of the investment, liquidity, and quality. Accordingly, we agree, from a tax policy perspective, that these MBS certificates should not fail to be a qualified investment simply because the proposed fair market value test cannot be satisfied. We are reviewing the qualified investment rules with a view to identifying those amendments that would be necessary to ensure that qualification of MBS certificates is not denied in appropriate circumstances.

I trust that this letter is informative of our general position regarding your submission.

Yours sincerely,

Brian Ernewein
Director
Tax Legislation Division
Tax Policy Branch

(j.1) **[insured mortgage]** — a debt obligation secured by a mortgage, charge, hypothec or similar instrument in respect of real or immovable property situated in Canada, or an interest, or for civil law a right, in that debt obligation, where the debt obligation is

(i) administered by an approved lender under the *National Housing Act*, and

(ii) insured

(A) under the *National Housing Act*, or

(B) by a corporation that offers its services to the public in Canada as an insurer of mortgages or hypothecs and that is approved as a private insurer of mortgages or hypothecs by the Superintendent of Financial Institutions under subsection 6(1) of the *Office of the Superintendent of Financial Institutions Act*;

Regulatory Impact Analysis Statement: As noted above [under 4900(1)(j)], new paragraph 4900(1)(j.1) provides that a mortgage obligation secured by real property situated in Canada, and insured either under the *National Housing Act* or by an approved private insurer of mortgages, is a qualified investment. This amendment, which applies after February 27, 2004, does not represent a change in policy.

(j.2) **[mortgage certificate]** — a certificate evidencing an undivided interest, or for civil law an undivided right, in one or more properties, where

(i) all or substantially all of the fair market value of the certificate is attributable to property that is, or is incidental to, a debt obligation secured by a mortgage, charge, hypothec or similar instrument in respect of real or immovable property situated in Canada,

(ii) the certificate has, at the time of its acquisition by the plan trust, an investment grade rating with a bond rating agency that rates debt in the ordinary course of its business, and

(iii) the certificate is issued as part of an issue of certificates by the issuer for a total amount of at least $25 million;

Regulatory Impact Analysis Statement: New paragraph 4900(1)(j.2), which applies after 2000, provides that a certificate representing an undivided interest in one or more mortgage obligations is a qualified investment if

- all or substantially all of the fair market value of the certificate is attributable to property that is, or is incidental to, a mortgage obligation secured by real property situated in Canada;
- the certificate has an investment grade rating with a recognized rating agency when it is acquired by the plan trust; and
- the certificate is issued as part of an issue of certificates of at least $25 million.

[See also under Reg. 214(5).]

Letter from Dept. of Finance, July 2, 2002:

Dear [xxx]

This is in reply to your letters of September 28, 2001 and June 13, 2002 in which you seek an amendment to the *Income Tax Regulations* to ensure the continuing eligibility for deferred income plans to invest in certain mortgage certificates.

Based on the information set out in your letters and provided by telephone, we understand that the mortgage certificates in question represent undivided co-ownership interests in a pool of commercial mortgages. The certificates had been offered to the public by prospectus as part of a minimum offering of at least [xxx]. At the time of the offering, the certificates had an investment grade rating by a recognized rating agency and all of the interests in the mortgages in the pool were qualified investments under existing paragraph 4900(1)(j) of the Regulations.

In general, the mortgages contain a clause that provides the mortgagor with the right to substitute a pledge of high quality security in exchange for the release of the real property security. The substitute security, which is limited to certain properties described in paragraphs (a) and (b) of the definition "qualified investment" in section 204 of the *Income Tax Act*, is required to provide for payments that reflect, as closely as possible, the mortgagor's remaining payment obligations.

You are concerned that, since a substitution of security under a particular mortgage would result in the interest in the mortgage ceasing to qualify under paragraph 4900(1)(j), the exercise of such a right may have adverse income tax effects on deferred income plan investors. This would be the case where the interest was not a qualified investment under any other provision of the Act or Regulations. The purpose of the requested amendment would be to ensure that the interest would continue to be a qualified investment without having to rely on other provisions of the Act and Regulations.

In these circumstances, we agree that such an interest should retain its status as a qualified investment. Consequently, we will recommend to the Minister of Finance that the Regulations be amended to ensure that such an interest will not become a non-qualified investment solely because of the substitution of the security under the terms of the mortgage. We will further recommend that the amendment apply to substitutions of security that occur after 2000.

I trust this is satisfactory.

Yours sincerely,
Brian Ernewein
Director, Tax Legislation Division

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 6(3), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend para. 4900(1)(j) to read as above, and add paras. 4900(1)(j.1) and (j.2), para. (j) applicable

(a) in respect of property acquired after February 27, 2004, after February 27, 2004; and

(b) in respect of property acquired before February 28, 2004, after 2006;

para. (j.1) applicable after February 27, 2004; and (j.2) applicable after 2000.

History: Para. 4900(1)(j) amended by P.C. 2001-1106, subsec. 6(9), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to property acquired after October 27, 1998, except that it shall not apply to property acquired before March 31, 2001 by a trust governed by a deferred profit sharing plan.

(k) **[pre-1981 qualified investment]** — an investment, other than a qualified investment described in paragraphs (a) to (j), that

(i) was, at the end of 1980, a qualified investment for a trust pursuant to subparagraph 204(e)(v) of the Act or section 1502, this Part or section 5800, as the case may be, as those provisions read at that time,

(ii) was held on December 31, 1980 and continuously thereafter by the trust until the particular time,

(iii) would have continued to be a qualified investment of the trust from December 31, 1980 until the particular time had the provisions referred to in subparagraph (i) been in force throughout that period of time, and

(iv) was not, at any time before the particular time, an interest in a registered investment;

(l) **[bond of international organization]** — a bond, debenture, note or similar obligation issued or guaranteed by

(i) the International Bank for Reconstruction and Development,

(i.1) the International Finance Corporation,

(ii) the Inter-American Development Bank,

(iii) the Asian Development Bank,

(iv) the Caribbean Development Bank,

(v) the European Bank for Reconstruction and Development, or

(vi) the African Development Bank;

History: Subpara. 4900(1)(l)(vi) added by P.C. 1999-133, subsec. 1(1), February 4, 1999, *Canada Gazette*, Part II, February 17, 1999, applicable after 1996.

Subpara. 4900(1)(l)(v) added by P.C. 1994-1075, subsec. 1(2), June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable to months beginning after March 1991.

Subpara. 4900(1)(l)(i.1) added by P.C. 1994-1074, subsec. 1(5), June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable after July 13, 1990.

Para. 4900(1)(l) added by P.C. 1986-772, subsec. 2(1), March 26, 1986, *Canada Gazette*, Part II, April 16, 1986, effective after October 31, 1985.

(m) **[listed royalty unit]** — a royalty unit that is listed on a stock exchange referred to in section 3200 and the value of which is derived solely from Canadian resource properties;

History: Para. 4900(1)(m) amended by P.C. 2001-1106, subsec. 6(10), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, effective from April 1, 2001.

Para. 4900(1)(m) added by P.C. 1992-2334, s. 2, November 19, 1992, *Canada Gazette* Part II, December 2, 1992, applicable in respect of property acquired after July 16, 1992 respectively.

(n) **[listed limited partnership unit]** — a limited partnership unit listed on a stock exchange referred to in section 3200;

History: Para. 4900(1)(n) added by P.C. 1994-1074, subsec. 1(6), June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable after 1992.

Proposed Addition — Reg. 4900(1)(n.01)

(n.01) **[listed limited partnership debt]** — a debt issued by a limited partnership whose units are listed on a stock exchange referred to in section 3200;

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 6(4), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will add para. 4900(1)(n.01), applicable after February 27, 2004.

Regulatory Impact Analysis Statement: New paragraph 4900(1)(n.01) provides that debt of a limited partnership whose units are listed on a Canadian stock exchange referred to in section 3200 of the Regulations is a qualified investment.

[See also under Reg. 214(5).]

(n.1) **[foreign stock exchange index units]** — a unit of a particular trust if

(i) at the particular time, the unit is listed on a stock exchange referred to in section 3201,

(ii) the primary purpose of the particular trust is

(A) to hold the securities included in a stock exchange index (including a stock exchange index reflecting securities issued by corporations or other entities carrying on a particular type of business activity) in substantially the same portion as those securities are reflected in that index, or

(B) to invest in a manner that causes the investment performance of the particular trust to replicate the investment performance of that index, and

(iii) at the particular time or the time of the last acquisition of the unit before the particular time by the plan trust, the total of all amounts each of which is the cost amount to the particular trust of a share of the capital stock of a corporation listed on a single stock exchange referred to in section 3200 or 3201 is not less than 80% of the total of all amounts each of which is the cost amount to the particular trust of a property of the particular trust;

History: Para. 4900(1)(n.1) added by P.C. 2001-1106, subsec. 6(11), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to property acquired after 1993.

(o) **[bond of foreign government]** — a bond, a debenture, note or similar obligation issued by the government of a country other than Canada and that had, at the time of purchase, an investment grade rating with a bond rating agency that in the ordinary course of its business rates the debt obligations issued by that government;

History: Para. 4900(1)(o) added by P.C. 1994-1075, subsec. 1(3), June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable to property acquired after June 21, 1993.

(p) **[bond of corporation listed outside Canada]** — a bond, debenture, note or similar obligation of a corporation the shares of which are listed on a stock exchange referred to in section 3201;

History: Para. 4900(1)(p) added by P.C. 1994-1075, subsec. 1(3), June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable to property acquired after June 21, 1993.

(p.1) **[listed depository receipt]** — a right to a share of the capital stock of a corporation where the right is evidenced by a depository receipt that is listed on a stock exchange referred to in section 3200 or 3201;

History: Para. 4900(1)(p.1) added by P.C. 1998-629, subsec. 1(2), April 23, 1998, *Canada Gazette*, Part II, May 13, 1998, applicable to 1997 *et seq.*

(q) **[debt of privatized Crown corporation]** — a debt issued by a Canadian corporation (other than a corporation with share capital or a corporation that does not deal at arm's length with a person who is an annuitant, a beneficiary, an employer or a subscriber under the governing plan of the plan trust) where

(i) the taxable income of the corporation is exempt from tax under Part I of the Act because of paragraph 149(1)(l) of the Act, and

(ii) either

(A) before the particular time and after 1995, the corporation

(I) acquired, for a total consideration of not less than $25 million, property from Her Majesty in right of Canada or a province, and

(II) put that property to a use that is the same as or similar to the use to which the property was put before the acquisition described in subclause (I), or

(B) at the time of the acquisition of the debt by the plan trust, it was reasonable to expect that clause (A) would apply in respect of the debt no later than one year after the time of the acquisition;

History: The opening words of para. 4900(1)(q) amended by P.C. 2001-1106, subsec. 6(12), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to property acquired after October 27, 1998.

Para. 4900(1)(q) added by P.C. 1996-1487, subsec. 1(2), September 24, 1996, *Canada Gazette*, Part II, October 16, 1996, applicable to property acquired after 1995.

(r) **[debt of large non-profit organization]** — a debt issued by a Canadian corporation (other than a corporation with share capital or a corporation that does not deal at arm's length with a person who is an annuitant, a beneficiary or an employer under the governing plan of the plan trust) if

(i) the taxable income of the corporation is exempt from tax under Part I of the Act because of paragraph 149(1)(l) of the Act, and

(ii) either

(A) the debt is issued by the corporation as part of an issue of debt by the corporation for an amount of at least $25 million,

or

(B) at the time of the acquisition of the debt by the plan trust, the corporation had issued debt as part of a single issue for an amount of at least $25 million; or

History: Para. 4900(1)(r) added by P.C. 1999-133, subsec. 1(2), February 4, 1999, *Canada Gazette*, Part II, February 17, 1999, applicable after February 1998.

(s) **[over-the-counter securities — before 2002]** — where the particular time is before 2002, a security of a corporation (other than a corporation that does not deal at arm's length with a person who is an annuitant, a beneficiary, an employer or a subscriber under the governing plan of the plan trust)

(i) that

(A) was last acquired by the plan trust before September 2000, and

(B) either

(I) at the time of that acquisition was quoted on the OTC Bulletin Board quotation service operated by Nasdaq Stock Market, Inc. or on the OTC quotation service operated by Pink Sheets LLC, or

(II) at the time of that acquisition was a qualified investment for the plan trust and at any time in the period that began at the time of that acquisition and ended before September 2000 was quoted on the OTC Bulletin Board quotation service operated by Nasdaq Stock Market, Inc. or on the OTC quotation service operated by Pink Sheets LLC, or

(ii) that

(A) was acquired by the plan trust after August 2000 from another plan trust under which the annuitant or beneficiary is also the annuitant or beneficiary under the plan trust,

(B) immediately before its acquisition by the plan trust was a qualified investment for the other plan trust, and

(C) would be a qualified investment for the plan trust because of this paragraph if this paragraph were read without reference to this subparagraph and the plan trust had acquired the security before September 2000.

History: Para. 4900(1)(s) added by P.C. 2001-1106, subsec. 6(13), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to property acquired before September 2000.

Proposed Addition — Reg. 4900(1)(t)–(v)

(t) **[gold or silver coin]** — a gold or silver legal tender bullion coin

(i) that is of a minimum fineness of 995 parts per 1000 in the case of gold and 999 parts per 1000 in the case of silver,

(ii) that was produced by the Royal Canadian Mint,

(iii) that has a fair market value at the particular time not exceeding 110 per cent of the fair market value of the coin's gold or silver content, and

(iv) that is acquired by the plan trust directly from the Royal Canadian Mint or from a corporation (in paragraphs (u) and (v) referred to as a "specified corporation")

(A) that is a bank, a trust company, a credit union, an insurance corporation or a registered securities dealer,

(B) that is resident in Canada, and

(C) that is a corporation whose business activities are subject by law to the supervision of a regulating authority that is the Superintendent of Financial Institutions or a similar authority of a province;

Regulatory Impact Analysis Statement: New paragraphs 4900(1)(t) to (v), which implement an announcement made in the 2005 budget and apply after February 22, 2005, provide that certain investments in gold and silver bullion coins, bars and certificates are qualified investments.

New paragraph 4900(1)(t) provides that a legal tender gold or silver bullion coin is a qualified investment if it has been produced by the Royal Canadian Mint, has a minimum purity of 99.5% for gold and 99.9% for silver and is acquired either directly from the Mint or from a specified corporation. In addition, the coin's fair market value must not exceed 110% of the fair market value of its precious metal content. This last

condition applies at all times that the coin is held by the plan trust, ensuring that the coin is not held for its numismatic value.

Paragraph 4900(1)(t) defines "specified corporation" [for the purposes of paragraphs 4900(1)(t) to (v)] as a Canadian-resident corporation that is a bank, trust company, credit union, insurance corporation or registered securities dealer whose business activities are regulated by the Superintendent of Financial Institutions or a similar provincial authority.

[See also under Reg. 214(5).]

Related Provisions: Reg. 4900(1)(u) — Gold or silver bar, ingot or wafer; Reg. 4900(1)(v) — Gold or silver certificate.

(u) **[gold or silver]** — a gold or silver bullion bar, ingot or wafer

(i) that is of a minimum fineness of 995 parts per 1000 in the case of gold and 999 parts per 1000 in the case of silver,

(ii) that was produced by a metal refiner included in the London Bullion Market Association's good delivery list of acceptable refiners for gold or silver, as the case may be,

(iii) that bears the hallmark of the metal refiner that produced it and a stamp indicating its fineness and its weight, and

(iv) that is acquired by the plan trust either directly from the metal refiner that produced it or from a specified corporation; or

Regulatory Impact Analysis Statement: New paragraph 4900(1)(u) provides that a gold or silver bullion bar, ingot or wafer is a qualified investment if it has a minimum purity of 99.5% for gold and 99.9% for silver, is produced by a metal refiner accredited by the London Bullion Market Association, bears the refiner's hallmark, as well as an indication of its weight and purity, and is acquired either directly from the refiner or from a specified corporation.

[See also under Reg. 214(5).]

Related Provisions: Reg. 4900(1)(t) — Gold or silver coin; Reg. 4900(1)(v) — Gold or silver certificate.

(v) **[gold or silver certificate]** — a certificate issued by a specified corporation or the Royal Canadian Mint representing a claim of the holder of the certificate to property held by the issuer of the certificate, where

(i) the property would be property described in paragraph (t) or (u) if those paragraphs were read without reference to subparagraphs (t)(iv) and (u)(iv), respectively, and

(ii) the certificate is acquired by the plan trust directly from the issuer of the certificate or from a specified corporation.

Regulatory Impact Analysis Statement: New paragraph 4900(1)(v) provides that a certificate issued by a specified corporation, or by the Royal Canadian Mint, representing a claim of the certificate-holder on gold or silver held by the issuer is a qualified investment if it is acquired directly from the issuer, or from another specified corporation, and the underlying gold or silver would otherwise be a qualified investment for the plan trust under paragraph 4900(1)(t) or (u).

[See also under Reg. 214(5).]

Related Provisions: Reg. 4900(1)(t) — Gold or silver coin; Reg. 4900(1)(u) — Gold or silver bar, ingot or wafer.

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 6(5), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will add paras. 4900(1)(t) to (v), applicable after February 22, 2005.

Federal budget, Supplementary Information, February 23, 2005: *Qualified RRSP Investments*

The rules governing Registered Retirement Savings Plans and certain other tax-deferred income plans provide that these plans must invest only in "qualified investments" prescribed by the *Income Tax Regulations*. The budget proposes to add to the list of qualified investments, investment-grade gold and silver bullion coins and bars, and certificates on such investments. Investment-grade gold must have a purity of at least 99.5%, while investment-grade silver must have a purity of at least 99.9%.

Legal tender bullion coins will qualify if they are produced by the Royal Canadian Mint and all or substantially all of their fair market value is attributable to their precious metal content. Bullion bars will qualify if they are produced by a metal refinery accredited by the London Bullion Market Association, as evidenced by a hallmark identifying the refiner, purity and weight. Certificates will qualify if they are issued by a federally or provincially regulated financial institution and represent a claim on precious metal holdings of the issuing institution. For all such investments — that is, coins, bars and certificates — the investment must be acquired either from the producer of the investment or from a regulated financial institution.

Related Provisions: Reg. 221 — Information return where entity claims that its shares or units are qualified investments.

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs.

(2) [DPSP exception — bonds of employer] — Notes, bonds, debentures, bankers' acceptances or similar obligations of

(a) an employer by whom payments are made in trust to a trustee under a deferred profit sharing plan or a revoked plan for the benefit of beneficiaries under the plan, or

(b) a corporation with whom that employer does not deal at arm's length

are not qualified investments for the trust.

History: Subsec. 4900(2) amended by P.C. 1994-1074, subsec. 1(7), June 23, 1994, *Canada Gazette* Part II, July 13, 1994, applicable after 1992.

(3) [Annuity contract] — For the purpose of paragraph (i) of the definition "qualified investment" in section 204 of the Act, a contract with a licensed annuities provider for an annuity payable to an employee who is a beneficiary under a deferred profit sharing plan beginning not later than the end of the year in which the employee attains 69 years of age, the guaranteed term of which, if any, does not exceed 15 years, is prescribed as a qualified investment for a trust governed by such a plan or revoked plan.

History: Subsec. 4900(3) amended by P.C. 1998-2256, s. 1, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to annuity contracts acquired after 1996, except that

(a) the amendment does not apply to a contract where the annuitant attained 70 years of age before 1997; and

(b) in applying the subsec. to a contract where the annuitant attained 69 years of age in 1996, the reference to "69 years of age" shall be read as a reference to "70 years of age".

(4) [Repealed]

History: Subsec. 4900(4) repealed by P.C. 2001-1106, subsec. 6(14), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to property acquired after October 27, 1998.

(5) [Qualified investment for RESP] — For the purposes of paragraph (e) of the definition "qualified investment" in subsection 146.1(1) of the Act, a property is prescribed as a qualified investment for a trust governed by a registered education savings plan at any time if at that time the property is an interest in a trust or a share of the capital stock of a corporation that was a registered investment for a trust governed by a registered retirement savings plan during the calendar year in which that time occurs or during the preceding year.

History: Subsec. 4900(5) amended by P.C. 2001-1106, subsec. 6(15), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to property acquired after October 27, 1998.

(6) [Small business investment] — Subject to subsections (8) and (9), for the purposes of paragraph (d) of

the definition "qualified investment" in subsection 146(1) of the Act, paragraph (e) of the definition "qualified investment" in subsection 146.1(1) of the Act and paragraph (c) of the definition "qualified investment" in subsection 146.3(1) of the Act, a property is prescribed as a qualified investment for a trust governed by a registered retirement savings plan, a registered education savings plan and a registered retirement income fund at any time if at that time the property is

(a) a share of the capital stock of an eligible corporation (within the meaning assigned by subsection 5100(1)), unless a person who is an annuitant, a beneficiary or a subscriber under the plan or fund is a designated shareholder of the corporation;

(b) an interest of a limited partner in a small business investment limited partnership; or

(c) an interest in a small business investment trust.

Related Provisions: Reg. 4900(12) — Alternative definition of qualified investment; Reg. 4901(2) — Meaning of "designated shareholder", "small business investment limited partnership"; "small business investment trust".

History: The opening words and para. (a) of subsec. 4900(6) amended by P.C. 2001-1106, subsec. 6(16), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to property acquired after October 27, 1998.

Subsec. 4900(6) added by P.C. 1986-772, subsec. 2(2), March 26, 1986, *Canada Gazette*, Part II, April 16, 1986, effective after October 31, 1985.

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs.

(7) [Small business investment for DPSP] — Subject to subsection (11), for the purposes of paragraph (i) of the definition "qualified investment" in section 204 of the Act, a property is prescribed as a qualified investment for a trust governed by a deferred profit sharing plan or revoked plan at any time if at that time the property is an interest

(a) of a limited partner in a small business investment limited partnership; or

(b) in a small business investment trust.

History: The opening words of subsec. 4900(7) amended by P.C. 2001-1106, subsec. 6(17), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, effective after April 1, 2001.

Subsec. 4900(7) added by P.C. 1986-772, subsec. 2(2), March 26, 1986, *Canada Gazette*, Part II, April 16, 1986, effective after October 31, 1985.

(8) [Small business investment — payment for services] — For the purposes of subsection (6), where

(a) a trust governed by a registered retirement savings plan, a registered education savings plan or a registered retirement income fund holds

(i) a share of the capital stock of an eligible corporation (within the meaning assigned by subsection 5100(1)),

(ii) an interest in a small business investment limited partnership that holds a small business security, or

(iii) an interest in a small business investment trust that holds a small business security, and

(b) a person who is an annuitant, a beneficiary or a subscriber under the plan or fund provides services to or for the issuer of the share or small business security, or to or for a person related to that issuer, and it can reasonably be considered, having regard to all the circumstances (including the terms and conditions of the share or small business security or of any related agreement, and the rate of interest or the dividend provided on the share or small business security), that any amount received in respect of the share or small business security is on account, in lieu or in satisfaction of payment for the services,

the property referred to in subparagraph (a)(i), (ii) or (iii) held by the plan or fund shall, immediately before that amount is received, cease to be and shall not thereafter be a qualified investment for the trust governed by the plan or fund.

History: The opening words of para. 4900(8)(a), and para. (b), amended by P.C. 2001-1106, subsecs. 6(18), (19), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to property acquired after October 27, 1998.

Subsec. 4900(8) added by P.C. 1986-772, subsec. 2(2), March 26, 1986, *Canada Gazette*, Part II, April 16, 1986, effective after October 31, 1985.

(9) [Small business investment — conditions] — For the purposes of subsection (6), where

(a) a trust governed by a registered retirement savings plan, a registered education savings plan or a registered retirement income fund holds

(i) an interest in a small business investment limited partnership, or

(ii) an interest in a small business investment trust

that holds a small business security (referred to in this subsection as the **"designated security"**) of a corporation, and

(b) a person who is an annuitant, a beneficiary or a subscriber under the plan or fund is a designated shareholder of the corporation,

the interest shall not be a qualified investment for the trust governed by the plan or fund unless

(c) the designated security is a share of the capital stock of an eligible corporation,

(d) the partnership or trust, as the case may be, has no right to set off, assign or otherwise apply, directly or indirectly, the designated security against the interest,

(e) no person is obligated in any way, either absolutely or contingently, under any undertaking the intent or effect of which is

(i) to limit any loss that the plan or fund may sustain by virtue of the ownership, holding or disposition of the interest, or

(ii) to ensure that the plan or fund will derive earnings by virtue of the ownership, holding or disposition of the interest,

(f) in the case of the partnership, there are more than 10 limited partners and no limited partner or group of limited partners who do not deal with each other at arm's length holds more than 10 per cent of the units of the partnership, and

(g) in the case of the trust, there are more than 10 beneficiaries and no beneficiary or group of beneficiaries who do not deal with each other at arm's length holds more than 10 per cent of the units of the trust.

History: The opening words of para. 4900(9)(a), and para. (b), amended by P.C. 2001-1106, subsecs. 6(20), (21), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to property acquired after October 27, 1998.

Subsec. 4900(9) added by P.C. 1986-772, subsec. 2(2), March 26, 1986, *Canada Gazette*, Part II, April 16, 1986, effective after October 31, 1985.

(10) [Arm's length] — For the purposes of paragraphs (9)(f) and (g), a trust governed by a plan or fund shall be deemed not to deal at arm's length with a trust governed by another plan or fund if a person who is an annuitant, a beneficiary or a subscriber under the plan or fund is the

same person as, or does not deal at arm's length with, the annuitant, beneficiary or subscriber under the other plan or fund.

History: Subsec. 4900(10) amended by P.C. 2001-1106, subsec. 6(22), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to property acquired after October 27, 1998.

Subsec. 4900(10) added by P.C. 1986-772, subsec. 2(2), March 26, 1986, *Canada Gazette*, Part II, April 16, 1986, effective after October 31, 1985.

(11) [Small business investment for DPSP] — For the purposes of subsection (7), where

(a) a trust governed by a deferred profit sharing plan or revoked plan holds

(i) an interest in a small business investment limited partnership, or

(ii) an interest in a small business investment trust

that holds a small business security of a corporation,

(b) payments have been made in trust to a trustee under the deferred profit sharing plan or revoked plan for the benefit of beneficiaries thereunder by the corporation or a corporation related thereto, and

(c) the small business security is not an equity share described in paragraph (e) of the definition "qualified investment" in section 204 of the Act,

the interest referred to in subparagraphs (a)(i) and (ii) shall not be a qualified investment for the trust referred to in paragraph (a).

History: Para. 4900(11)(c) amended by P.C. 2001-1106, subsec. 6(23), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, effective after April 1, 2001.

Subsec. 4900(11) added by P.C. 1986-772, subsec. 2(2), March 26, 1986, *Canada Gazette*, Part II, April 16, 1986, effective after October 31, 1985.

(12) [Small business corporation] — For the purposes of paragraph (d) of the definition "qualified investment" in subsection 146(1) of the Act, paragraph (e) of the definition "qualified investment" in subsection 146.1(1) of the Act and paragraph (c) of the definition "qualified investment" in subsection 146.3(1) of the Act, a property is prescribed as a qualified investment for a trust governed by a registered retirement savings plan, a registered education savings plan or a registered retirement income fund at any time if, at the time the property was acquired by the trust,

(a) the property was a share of the capital stock of a corporation (other than a cooperative corporation) that would, at that time or at the end of the last taxation year of the corporation ending before that time, be a small business corporation if the expression "Canadian-controlled private corporation" in the definition "small business corporation" in subsection 248(1) of the Act were read as "Canadian corporation (other than a corporation controlled at that time, directly or indirectly in any manner whatever, by one or more non-resident persons)",

(b) the property was a share of the capital stock of a venture capital corporation described in any of sections 6700, 6700.1 or 6700.2, or

(c) the property was a qualifying share in respect of a specified cooperative corporation and the plan or fund

and, immediately after the time the property was acquired by the trust, each person who is an annuitant, a beneficiary or a subscriber under the plan or fund at that time was not a connected shareholder of the corporation.

Related Provisions: ITA 256(5.1), (6.2) — Meaning of "controlled directly or indirectly"; Reg. 4900(6) — Alternative definition of qualified investment; Reg. 4901(2) — Meaning of "connected shareholder", "qualifying share" and "specified cooperative corporation".

History: Para. 4900(12)(b) amended to replace "prescribed venture capital corporation" with "venture capital corporation" by P.C. 2001-1370, para. 8(a), August 1, 2001, *Canada Gazette*, Part II, August 15, 2001, applicable after June 9, 2001.

The opening and closing words of subsec. 4900(12) amended by P.C. 2001-1106, subsecs. 6(24), (25), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to property acquired after October 27, 1998.

Para. 4900(12)(b) amended by P.C. 1999-249, subsec. 1(2), February 18, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable to property acquired after August 1998.

Para. 4900(12)(c) amended by P.C. 1995-1820, subsec. 1(3), October 31, 1995, *Canada Gazette*, Part II, November 15, 1995, applicable after December 2, 1992.

Subsec. 4900(12) added by P.C. 1994-1074, subsec. 1(8), June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable after December 2, 1992.

I.T. Technical News: 9 (qualified investments — whether shareholders deal at arm's length).

(13) Notwithstanding subsection (12), where

(a) a share that is otherwise a qualified investment for the purposes of paragraph (d) of the definition "qualified investment" in subsection 146(1) of the Act, paragraph (e) of the definition "qualified investment" in subsection 146.1(1) of the Act and paragraph (c) of the definition "qualified investment" in subsection 146.3(1) of the Act solely because of subsection (12) is held by a trust governed by a registered retirement savings plan, registered education savings plan or registered retirement income fund,

(b) an individual

(i) provides services to or for,

(ii) acquires goods from, or

(iii) is provided services by

the issuer of the share or a person related to that issuer,

(c) an amount is received in respect of the share by the trust, and

(d) the amount can reasonably be considered, having regard to all the circumstances, including the terms and conditions of the share, or any agreement relating thereto and any dividend provided on the share to be

(i) on account of, or in lieu or in satisfaction of, payment for the services to or for the issuer or the person related to the issuer, or

(ii) in respect of the acquisition of the goods from, or the services provided by, the issuer or the person related to the issuer,

the share shall, immediately before the amount is received, cease to be and shall not thereafter be a qualified investment for the trust.

History: Para. 4900(13)(a) amended by P.C. 2001-1106, subsecs. 6(26), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to property acquired after October 27, 1998.

Subsec. 4900(13) added by P.C. 1994-1074, subsec. 1(8), June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable after December 2, 1992.

Definitions [Reg. 4900]: "amount", "annuity" — ITA 248(1); "arm's length" — ITA 251(1), Reg. 4900(10); "bank", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian corporation" — ITA 89(1), 248(1); "Canadian resource property" — ITA 66(15), 248(1); "connected shareholder" — Reg. 4901(2), (2.1), (2.2); "controlled" — ITA 256(6), (6.1); "controlled directly or indirectly" — ITA 256(5.1), (6.2); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "cost amount", "credit union" — ITA 248(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "designated shareholder" — Reg. 4901(2), (2.3); "disposition", "dividend", "employee", "employer" — ITA 248(1); "governing plan" — Reg. 4901(2); "Her Majesty" — *Interpretation Act* 35(1); "individual", "insurance corporation", "insurer" — ITA 248(1); "li-

censed annuities provider" — ITA 147(1), 248(1); "month" — *Interpretation Act* 35(1); "mortgage" — Reg. 4901(3)(a); "mortgage investment corporation" — ITA 130.1(6), 248(1); "mortgagor" — Reg. 4901(3)(b); "mutual fund trust" — ITA 132(6)–(7), 132.2(1)(q) [to be repealed], 132.2(3)(n) [draft], 248(1); "non-resident" — ITA 248(1); "obligation" — Reg. 4900(1)(g), (h), (i); "person" — ITA 248(1); "plan trust" — Reg. 4901(2); "prescribed" — ITA 248(1); "prescribed stock exchange" — ITA 248(29), Reg. 3200; "prescribed stock exchange in Canada" — Reg. 3200; "prescribed venture capital corporation" — Reg. 6700; "principal amount", "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "public corporation" — ITA 89(1), 248(1); "qualifying share" — Reg. 4901(2); "registered home ownership savings plan" — ITA 248(1); "registered investment" — ITA 204.4(1), 248(1); "registered retirement income fund" — ITA 146.3(1), 248(1); "registered retirement savings plan" — ITA 146(1), 248(1); "registered securities dealer" — ITA 248(1); "related" — ITA 251(2)–(6); "resident in Canada" — ITA 250; "revoked plan" — ITA 204, Reg. 4901(2); "share", "shareholder", "small business corporation" — ITA 248(1); "small business investment limited partnership" — Reg. 4901(2), 5102(1); "small business investment trust" — Reg. 4901(2), 5103(1); "small business security" — Reg. 4901(2), 5100(2); "specified cooperative corporation" — ITA 136(2), Reg. 4901(2); "specified corporation" — Reg. 4900(1)(t)(iv); "taxable income" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

Interpretation Bulletins [Reg. 4900]: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs.

4901. Interpretation — **(1)** For the purposes of paragraphs 204.4(2)(b), (d) and (f) and of subsection 204.6(1) of the Act, a property is a prescribed investment for a corporation or trust, as the case may be, if it is a qualified investment for a plan or fund described in paragraphs 204.4(1)(a) to (d) of the Act in respect of which the corporation or trust is seeking registration or has been registered, as the case may be.

History: Subsec. 4901(1) amended by P.C. 2001-1106, subsec. 7(1), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, effective after April 1, 2001.

(1.1) [Revoked]

History: Subsec. 4901(1.1) revoked by P.C. 1994-1074, subsec. 2(1), June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable after October 31, 1985.

Para. 4901(1.1)(b) substituted by P.C. 1986-2590, s. 13, November 20, 1986, *Canada Gazette*, Part II, December 10, 1986, applicable after October 31, 1985.

Subsec. 4901(1.1) added by P.C. 1986-772, subsec. 3(1), March 26, 1986, *Canada Gazette*, Part II, April 16, 1986, effective after October 31, 1985.

(2) In this Part,

"allocation in proportion to patronage" has the meaning assigned by subsection 135(4) of the Act;

"connected shareholder" of a corporation at any time is a person (other than an exempt person in respect of the corporation) who owns, directly or indirectly, at that time, not less than 10% of the issued shares of any class of the capital stock of the corporation or of any other corporation that is related to the corporation and, for the purposes of this definition,

(a) paragraphs (a) to (e) of the definition "specified shareholder" in subsection 248(1) of the Act apply, and

(b) an exempt person in respect of a corporation is a person who deals at arm's length with the corporation where the total of all amounts, each of which is the cost amount of any share of the capital stock of the corporation, or of any other corporation that is related to it, that the person owns or is deemed to own for the purposes of the definition "specified shareholder" in subsection 248(1) of the Act, is less than $25,000;

Related Provisions: Reg. 4901(2.1), (2.2) — Additional rules.

"consumer goods or services" has the meaning assigned by subsection 135(4) of the Act;

"designated shareholder" of a corporation at any time means a taxpayer who at that time

(a) is, or is related to, a person (other than an exempt person) who owns, directly or indirectly, not less than 10% of the issued shares of any class of the capital stock of the corporation or of any other corporation that is related to the corporation and, for the purposes of this definition,

(i) paragraphs (a) to (e) of the definition "specified shareholder" in subsection 248(1) of the Act apply, and

(ii) an exempt person in respect of a corporation is a person who deals at arm's length with the corporation where the total of all amounts, each of which is the cost amount of any share of the capital stock of the corporation, or of any other corporation that is related to it, that the person owns or is deemed to own for the purposes of the definition "specified shareholder" in subsection 248(1) of the Act, is less than $25,000;

(b) is or is related to a member of a partnership that controls the corporation,

(c) is or is related to a beneficiary under a trust that controls the corporation,

(d) is or is related to an employee of the corporation or a corporation related thereto, where any group of employees of the corporation or of the corporation related thereto, as the case may be, controls the corporation, except where the group of employees includes a person or a related group that controls the corporation, or

(e) does not deal at arm's length with the corporation;

Related Provisions: Reg. 4901(2.3) — Deemed designated shareholder.

"governing plan" means a registered retirement savings plan, a registered education savings plan, a registered retirement income fund, a deferred profit sharing plan or a revoked plan;

"plan trust" means a trust governed by a governing plan;

"qualifying share", in respect of a specified cooperative corporation and a registered retirement savings plan, registered education savings plan or registered retirement income fund, means a share of the capital or capital stock of the corporation where

(a) ownership of the share or a share identical to the share is not a condition of membership in the corporation, or

(b) a person who is an annuitant, a beneficiary or a subscriber under the plan or fund (or any other person related to that person)

(i) has not received a payment from the corporation after November 29, 1994 pursuant to an allocation in proportion to patronage in respect of consumer goods or services, and

(ii) can reasonably be expected not to receive a payment, after the acquisition of the share by the trust governed by the plan or fund, from the corporation pursuant to an allocation in proportion to patronage in respect of consumer goods or services;

"revoked plan" has the meaning assigned by section 204 of the Act;

"small business investment limited partnership" has the meaning assigned by subsection 5102(1);

"small business investment trust" has the meaning assigned by subsection 5103(1); and

"small business security" has the meaning assigned by subsection 5100(2).

"specified cooperative corporation" means

(a) a cooperative corporation within the meaning assigned by subsection 136(2) of the Act, or

(b) a corporation that would be a cooperative corporation within the meaning assigned by subsection 136(2) of the Act if the purpose described in that subsection were the purpose of providing employment to the corporation's members or customers.

History: The definition "governing plan" and the portion of the definition "qualifying share" before subpara. (b)(i) amended by P.C. 2001-1106, subsecs. 7(5), (7), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to property acquired after October 27, 1998.

The definition "revoked plan" amended by the said P.C. 2001-1106, subsec. 7(6), effective after April 1, 2001.

The definitions "allocation in proportion to patronage", "consumer goods or services", and "qualifying share" added, the definition "connected shareholder" and para. (a) of "designated shareholder" amended, by P.C. 1995-1820, subsecs. 2(3), (4), (6), October 31, 1995, *Canada Gazette*, Part II, November 15, 1995; "connected shareholder" amendment and "allocation in proportion to patronage", "consumer goods or services", and "qualifying share" additions applicable after December 2, 1992,

- except that where a property was acquired by a trust governed by an RRSP or RRIF before November 30, 1994 and the annuitant under the fund or plan would, if the amended definition of "connected shareholder" applied, be a connected shareholder of the corporation immediately after that time, the amended definition of "connected shareholder" would not apply in respect of that acquisition; and
- with respect to property acquired before November 30, 1994, para. (a) of "qualifying share" shall be read as follows:

  (a) the share is not required to be purchased as a condition of membership in the corporation, or;

para. (a) of "designated shareholder" applicable to property acquired after November 29, 1994.

The definitions "connected shareholder", "specified cooperative corporation" added by P.C. 1994-1074, subsec. 2(2), June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable after December 2, 1992.

Paras. (b) to (d) of the definition "designated shareholder" substituted by P.C. 1990-1837, s. 1, August 28, 1990, *Canada Gazette*, Part II, September 12, 1990, applicable after 1988.

"Designated shareholder", "small business investment limited partnership", "small business investment trust" and "small business security" added by P.C. 1986-772, subsec. 3(2), March 26, 1986, *Canada Gazette*, Part II, April 16, 1986, effective after October 31, 1985.

(2.1) For the purposes of the definition "connected shareholder" in subsection (2) and of subsection (2.2), each share of the capital of a specified cooperative corporation and all other shares of the capital of the corporation that have attributes identical to the attributes of that share shall be deemed to be shares of a class of the capital stock of the corporation.

History: Subsec. 4901(2.1) added by P.C. 1995-1820, subsec. 2(8), October 31, 1995, *Canada Gazette*, Part II, November 15, 1995, applicable after December 2, 1992, except that it does not apply where a property was acquired by a trust governed by an RRSP or RRIF before November 30, 1994 and the annuitant under the fund or plan would, if Reg. 4901(2.1)–(2.3) and the amended version of 4901(2)"connected shareholder" applied, be a connected shareholder of the corporation immediately after that time.

(2.2) For the purpose of this Part, a person is deemed to be a connected shareholder of a corporation at any time where the person would be a connected shareholder of the corporation at that time if, at that time,

(a) the person had each right that the person would be deemed to own at that time for the purposes of the definition "specified shareholder" in subsection 248(1) of the Act if that right were a share of the capital stock of a corporation;

(b) the person owned each share of a class of the capital stock of a corporation that the person had a right at that time under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently, to acquire; and

(c) the cost amount to the person of a share referred to in paragraph (b) were the cost amount to the person of the right to which the share relates.

History: Subsec. 4901(2.2) added by P.C. 1995-1820, subsec. 2(8), October 31, 1995, *Canada Gazette*, Part II, November 15, 1995, applicable after December 2, 1992, except that it does not apply where a property was acquired by a trust governed by an RRSP or RRIF before November 30, 1994 and the annuitant under the fund or plan would, if Reg. 4901(2.1)–(2.3) and the amended version of 4901(2)"connected shareholder" applied, be a connected shareholder of the corporation immediately after that time.

(2.3) For the purpose of this Part, a person is deemed to be a designated shareholder of a corporation at any time if the person would be a designated shareholder of the corporation at that time if, at that time, paragraphs (2.2)(a) to (c) applied in respect of that person.

History: Subsec. 4901(2.3) added by P.C. 1995-1820, subsec. 2(8), October 31, 1995, *Canada Gazette*, Part II, November 15, 1995, applicable to property acquired after November 29, 1994.

(3) For greater certainty, a reference in this Part to

(a) a mortgage includes a reference to a charge, hypothec or similar instrument pertaining to real property, or to an interest therein; and

(b) a mortgagor includes a reference to a hypothecator or a debtor under any instrument referred to in paragraph (a).

Proposed Repeal — Reg. 4901(3)

Application: The May 16, 2005 draft regulations (deferred income plans), s. 7, (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will repeal subsec. 4901(3), to come into force on the day on which these Regulations are published in Part II of the *Canada Gazette*.

Regulatory Impact Analysis Statement: Subsection 4901(3) contains rules regarding the interpretation, for the purpose of Part XLIX, of the expressions "mortgage" and "mortgagor." The issues dealt with in this subsection are now dealt with directly in the relevant provisions. Consequently, this subsection is repealed.

[See also under Reg. 214(5).]

Definitions [Reg. 4901]: "allocation in proportion to patronage" — ITA 135(4), Reg. 4901(2); "amount" — ITA 248(1); "arm's length" — ITA 251(1); "connected shareholder" — Reg. 4901(2), (2.1), (2.2); "consumer goods or services" — ITA 135(4), Reg. 4901(2); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "cost amount" — ITA 248(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "designated shareholder" — Reg. 4901(2), (2.3); "employee", "employment" — ITA 248(1); "governing plan" — Reg. 4901(2); "mortgage" — Reg. 4901(3)(a); "mortgagor" — Reg. 4901(3)(b); "person", "property", "registered home ownership savings plan" — ITA 248(1); "registered retirement income fund" — ITA 146.3(1), 248(1); "registered retirement savings plan" — ITA 146(1), 248(1); "related" — ITA 251(2)–(6); "revoked plan" — ITA 204, Reg. 4901(2); "share" — Reg. 4901(2.1); "specified cooperative corporation" — ITA 136(2), Reg. 4901(2); "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

PART L — DEFERRED INCOME PLANS, FOREIGN PROPERTY

History: Part L was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

5000. (1) Where a taxpayer holds a share of the capital stock of a mutual fund corporation (other than an investment corporation) or an interest in, or a right to acquire an interest in,

(a) a mutual fund trust,

(b) a pooled fund trust,

(c) a trust that would be a mutual fund trust if Part XLVIII were read without reference to paragraph 4801(b) thereof,

(c.1) a resource property trust, or

(c.2) a trust if

(i) the trust would be a mutual fund trust if Part XLVIII were read without reference to section 4801, and

(ii) there has been a lawful distribution in a province to the public of units of the trust and a prospectus, registration statement or similar document was not required under the laws of the province to be filed in respect of the distribution,

that share, interest or right, as the case may be, shall not be foreign property for the purpose of computing the tax payable by the taxpayer under Part XI of the Act in respect of any particular month, if

(d) the corporation or trust, as the case may be, has not acquired any foreign property after June 30, 1971; or

(e) at no time during the relevant period for the particular month did the cost amount to the corporation or to the trust, as the case may be, of all foreign property held by it exceed 30% of the cost amount to it of all property held by it.

Proposed Repeal — Reg. 5000

See at end of Reg. 5002 for repeal of all of Part L.

History: Para. 5000(1)(c.2) added by P.C. 2001-1106, subsec. 8(2), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to months that end after 1993.

Para. 5000(1)(e) amended by the said P.C. 2001-1106, subsec. 8(3), applicable to months that end after 1999, except that in applying the para. where the relevant period for a particular month ends in 2000, the reference to "30%" shall be read as "25%".

Para. 5000(1)(e) substituted by P.C. 1992-258, subsec. 1(1), February 13, 1992, *Canada Gazette*, Part II, February 26, 1992, applicable to months ending after 1989 except that for months in 1990, 1991, 1992 and 1993 the reference to "20 per cent" shall be read as "12 per cent", "14 per cent", "16 per cent" and "18 per cent" respectively.

Para. 5000(1)(e) substituted by P.C. 1990-1837, subsec. 2(1), August 28, 1990, *Canada Gazette*, Part II, September 12, 1990.

Para. 5000(1)(c.1) added by P.C. 1985-2351, subsec. 1(1), July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable with respect to trusts created after November 12, 1981.

(1.1) For the purposes of paragraph (i) of the definition "foreign property" in subsection 206(1) of the Act, the following interests are hereby prescribed not to be foreign property;

(a) an interest of a limited partner in a small business investment limited partnership (within the meaning assigned by subsection 5102(1));

(b) an interest in a small business investment trust (within the meaning assigned by subsection 5103(1));

(c) [Repealed]

(d) an interest in a specified international finance trust; and

(e) an interest of a limited partner in a designated limited partnership.

Related Provisions: Reg. 5000(7) — Definitions of "specified international finance trust" and "designated limited partnership".

History: Para. 5000(1.1)(c) repealed by P.C. 2003-1497, subsec. 3(1), October 2, 2003, *Canada Gazette*, Part II, October 22, 2003, applicable after 2001.

Paras. 5000(1.1)(d) and (e) added by P.C. 2000-275, subsec. 1(1), May 18, 2000, *Canada Gazette*, Part II, June 7, 2000, para. (d) applicable to months that end after 1998, and para. (e) applicable to months that end after 1997.

Subsec. 5000(1.1) added by P.C. 1986-772, subsec. 4(1), March 26, 1986, *Canada Gazette*, Part II, April 16, 1986, effective after October 31, 1985.

(1.2) For the purposes of paragraph (i) of the definition "foreign property" in subsection 206(1) of the Act, a property of a beneficiary that is an interest under a trust described in paragraph 149(1)(o.4) of the Act is prescribed not to be foreign property of the beneficiary at a time where

(a) no other property of the beneficiary is foreign property at that time; or

(b) the trust does not own any foreign property at that time.

History: Subsec. 5000(1.2) added by P.C. 1990-1837, subsec. 2(2), August 28, 1990, *Canada Gazette*, Part II, September 12, 1990, applicable to 1987 *et seq*.

(1.3) For the purpose of paragraph (i) of the definition "foreign property" in subsection 206(1) of the Act, the specified portion of a limited unit in a qualified limited partnership that is held at any time by a specified partner of the partnership is, at that time, not foreign property of the specified partner.

Related Provisions: Reg. 5000(1.4) — Specified portion; Reg. 5000(1.5) — Specified partner.

History: Subsec. 5000(1.3) added by P.C. 2003-1497, subsec. 3(2), October 2, 2003, *Canada Gazette*, Part II, October 22, 2003, applicable after 2001.

(1.4) For the purpose of subsection (1.3), the specified portion of a limited unit in a qualified limited partnership held at any time by a specified partner is

(a) if the number of limited units in the partnership, each of which is held at that time by the specified partner or by any other specified partner with whom the specified partner does not deal at arm's length, is less than or equal to 30 per cent of the number of limited units in the partnership held at that time by specified partners, the limited unit; and

Proposed Amendment — Reg. 5000(1.4)(a) [temporary]

(a) the whole of the limited unit if, at that time,

(i) the cost amount to the partnership of all foreign property held by it does not exceed 30 per cent of the cost amount to it of all property held by it,

(ii) the number of limited units in the partnership, each of which is held by the specified partner or by any other specified partner with whom the specified partner does not deal at arm's length, does not exceed 30 per cent of the number of limited units in the partnership held by specified partners, and

(iii) the specified partner is not a qualified limited partnership; and

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 8(1), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend para. 5000(1.4)(a) to read as above, applicable after 2002.

Regulatory Impact Analysis Statement: Part L is being amended to reflect changes to the QLP rules that were announced in the 2003 budget and which are relevant for determining whether a partnership is, at any time after 2002 and before the repeal of Part L, a QLP.

[See also under Reg. 5002 and Reg. 214(5).]

Technical Notes, February 27, 2004: Subsection 5000(1.3), which deals with qualified limited partnerships (QLPs), states that the specified portion of a limited unit in a QLP that is held at any time by a specified partner of the QLP is non-foreign property. "Limited unit" and "qualified limited partnership" are defined in subsection 5000(7), and "specified partner" has the meaning assigned by subsection 5000(1.5).

Pursuant to subsection 5000(1.4) of the Regulations, the specified portion of a limited unit of a QLP held at any time by a specified partner is the whole of the unit if the specified partner does not hold more than 30% of the limited units of the partnership (either alone or with other partners with whom the specified partner is not dealing at arm's length). Otherwise, the specified portion of the unit corresponds to the proportion of property held by the QLP that is non-foreign property. In other words, when the 30% ownership limit is exceeded, the specified portion of a limited unit of a QLP is that portion of the unit that the total cost amount to the QLP, at that time, of all its non-foreign property is of the total cost amount to it, at that time, of all its property.

According to the definition in subsection 5000(7) of the Regulations, a QLP is a limited partnership that has met the following conditions, among others, at all times since its formation:

- The QLP's general partner's share in each income and loss of the partnership, for any particular period, is identical, regardless of the source of the income or the loss. An exception is possible for the general partner's share of the income or loss generated from specified property (within the meaning of subsection 5100(1) of the Regulations), which may vary from the general partner's share from any other source (paragraph (b)).

- The general partner's share in income and losses of the partnership for any particular period is not less than the general partner's share for any previous period (paragraph (c)).

- The interests of the limited partners are described by reference to units in the partnership, which are identical in all regards (paragraph (d)).

- The partnership's investments are limited to those described in paragraph (f).

- The cost amount of foreign property held by the partnership does not exceed the allowed percentage (currently 30%) of the cost amount to it of all property held by it (paragraph (i)).

Non-compliance with any of these conditions, at any time, results in the permanent loss of QLP status and, consequently, the whole of the units held in the partnership are deemed to be foreign property pursuant to subsection 206(1) of the Act.

A number of amendments to the QLP definition and to the definition of the specified portion of a limited unit in a QLP will provide greater flexibility. In particular, holding more than 30% foreign property will no longer affect the designation of a partnership as a QLP. As a result, exceeding the 30% foreign property limit will no longer have the effect of deeming all of the partnership's units to be entirely foreign property on a permanent basis. However, when the foreign property limit is exceeded, limited units held by specified partners will qualify as non-foreign property only in proportion to the non-foreign property held by the QLP. Furthermore, at any time in the future that the QLP satisfies the foreign property limit, the whole of the limited units held by specified partners (except those exceeding the 30% ownership threshold) will qualify as non-foreign property.

The new consequences set out in the preceding paragraph are the result of the repeal of paragraph (i) of the QLP definition, which contains the condition limiting the foreign property that can be held by a QLP, and the addition of the foreign property rule to the definition of "specified portion" in subsection 5000(1.4).

In short, the modifications to the way in which a QLP is affected if the foreign property limit is exceeded result in less severe consequences by:

- allowing the non-foreign property portion of the units of the QLP to be determined on a proportional basis, rather than completely disqualifying the units from non-foreign property treatment; and

- allowing the whole of the units of the QLP to be treated as non-foreign property at any subsequent time that the QLP complies with the foreign property limit.

In addition to the modifications to the foreign property rule, the QLP definition is amended to accommodate a number of commercial practices. Specifically, the conditions in paragraphs (b) and (c), relating to the general partner's share in income and losses, are replaced by the condition in amended paragraph (b). As amended, paragraph (b) requires that the general partner's share in all income and losses of the partnership be determined on the basis of a single fixed percentage that is specified in the agreement governing the partnership and has not changed since the formation of the partnership. Nevertheless, as amended, paragraph (b) permits the general partner's share to vary from this fixed percentage in the following circumstances:

- Subparagraph (b)(i) allows the share to be less than the fixed percentage for income and losses from investments in specified properties. This replicates the exception set out in the existing paragraph (b).

- Pursuant to subparagraphs (b)(ii) and (iii), the share may be less than the fixed percentage to allow the limited partners to receive, in priority to other distributions, amounts not exceeding their contributed capital and a reasonable rate of return on that contributed capital, determined in accordance with the agreement governing the partnership.

- Pursuant to subparagraph (b)(iv), the share may be more than the fixed percentage to allow the general partner to receive amounts, in priority to other distributions, to compensate for previous reductions in the general partner's share resulting from priority distributions to limited partners as a return on their contributed capital as permitted under subparagraph (b)(ii).

The QLP definition is also amended so that the condition relating to the interests of the limited partners, currently set out in paragraph (d), will henceforth be in amended paragraph (c). As amended, this paragraph gives more flexibility by limiting the requirement that the units determining the interests of the limited partners be identical to the following characteristics: (i) the terms governing the obligations of the limited partners to contribute capital to the partnership; and (ii) the terms governing the rights of the limited partners to receive distributions from the partnership.

Paragraph (d) of the QLP definition is also amended to require that the share of the limited partners in any income or loss of the partnership be determined in accordance with rules stipulated in the agreement governing the QLP, and that the share allocated in respect of any particular income or loss be identical for all units held by limited partners. However, this paragraph allows an exception when, at any particular time, the amount of capital contributed by a particular limited partner exceeds the amount of capital required by the general partner to be contributed by all limited partners. In these circumstances, any income or loss from a particular specified property (as newly defined in subsection 5000(7)) that is attributable to the investment of the excess contributed by the particular partner may be allocated entirely to the particular partner.

Lastly, the QLP definition is amended to allow a QLP to invest, after 2002, in another QLP (referred to as "investment partnership" for the purposes of this paragraph) as a limited partner. However, under amended subsection 5000(1.4), such an investment will qualify as non-foreign property for the investing QLP only in proportion to the non-foreign property held by the investment partnership. This investment is permitted by virtue of new subparagraph (f)(iv.1) of the QLP definition. This subparagraph also provides for a grace period for situations in which a QLP has invested in an investment partnership that, subsequently, ceases to be a QLP. In such instances, the investing partnership does not lose its status as a QLP if it disposes of the investment by the end of the third month following the month in which the investment partnership ceased to be a QLP.

Section 5000 is also amended by adding a definition "specified property" to subsection (7), which replicates the properties described in the definition "specified property" in subsection 5100(1). Consequential changes are made, where the expression "specified property" is used in section 5000, to eliminate references to subsection 5100(1). Finally, the definition "limited unit" in subsection 5000(7) is amended to refer to

paragraph (c), rather than paragraph (d), of the QLP definition. This amendment is purely consequential to the amendments to the QLP definition.

Most of the amendments to section 5000 apply after 2002. The amendments to the definition "qualified limited partnership" in subsection 5000(7) apply in determining if a partnership is, at any time after 2002, a QLP. This is particularly relevant for a partnership that was established before 2003, since it establishes that it is the conditions in the modified QLP definition (rather than in the existing definition) that must be satisfied at all times since the formation of the partnership, in order for the partnership to be a QLP at any time after 2002. This will enable, for example, existing partnership that did not have QLP status to qualify as a QLP provided it meets the revised definition.

Federal budget, Supplementary Information, February 18, 2003: *Qualified Limited Partnerships*

Limited partnerships have a number of potential advantages as an investment vehicle: they facilitate the pooling of investment funds; they limit investors' liability; and, for income tax purposes, they allow any income or loss of the partnership to be flowed through to investors. For these and other reasons, limited partnerships are often chosen for venture capital investments.

However, an interest in a limited partnership is generally treated as "foreign property" for the purposes of the income tax rules that limit the amount of foreign property that a deferred income plan may hold. This can reduce the attractiveness of limited partnership investments for Canadian pension funds, which represent a significant potential source of venture capital.

The characterization of limited partnership investments as foreign property does not apply to a qualified limited partnership (QLP). Accordingly, a QLP can be an effective vehicle for pension funds wishing to make venture capital investments.

The *Income Tax Regulations* set out several conditions that must be met for qualification as a QLP. One of these conditions was relaxed in the 2001 budget, following industry consultations. Since then, other technical aspects of the QLP rules have been identified as restricting the ability of a typical Canadian venture capital fund to structure itself as a QLP. In response to these concerns, the budget proposes the following changes to the QLP rules:

The requirement that QLP units be identical will be relaxed to accommodate differences in units that do not impact on the share or nature of the partnership's income or loss allocated among limited partners. With this change, matters such as variations in voting rights, the right to participate in investment advisory committees, and co-investment rights will not be taken into account in determining whether the units of a QLP are identical.

The manner in which the foreign property limit is applied to QLPs will be changed to more closely reflect the manner in which the limit is applied to mutual fund trusts. This means that a QLP unit will generally not be treated as foreign property during a calendar year, provided the QLP satisfied the foreign property limit throughout the previous calendar year. This change will prevent a QLP from permanently losing its status as a QLP solely because its foreign property holdings had exceeded the 30% limit at some point in the past.

The QLP rules will be modified to provide that a partnership does not lose its QLP status solely because of a temporary fluctuation in the general partner's share of the partnership's income as a result of the limited partners having priority in the ordering of distributions.

The investment limitations on a QLP will be relaxed to allow a QLP to invest, as a limited partner, in units of other QLPs. However, for the purpose of applying the foreign property limit to the investing QLP, the units of the other QLP will be treated as foreign property of the investing QLP in the same proportion as the foreign property held by the other QLP.

These measures will apply for the 2003 and subsequent taxation years.

[Table A9.1 shows the federal revenue impact of this proposal as zero or insignificant for 2002-03 through 2004-05 — ed.].

(b) in any other case, that proportion of the limited unit that the cost amount to the partnership of all property (other than foreign property) held by the partnership at that time is of the cost amount to the partnership of all property held by the partnership at that time.

Related Provisions: Reg. 5000(1.5) — Specified partner; Reg. 5000(1.6) — Look-through rule.

History: Subsec. 5000(1.4) added by P.C. 2003-1497, subsec. 3(2), October 2, 2003, *Canada Gazette*, Part II, October 22, 2003, applicable after 2001.

(1.5) For the purposes of subsections (1.3) and (1.4), a specified partner of a qualified limited partnership at any time means a person or partnership that holds at that time a limited unit in the partnership and that is at that time neither

(a) the general partner of the partnership; nor

(b) a qualified trust or qualified corporation (as those expressions are defined in subsection 259(5) of the Act) to which subsection 259(1) of the Act applies.

Related Provisions: Reg. 5000(1.6) — Look-through rule; Reg. 5000(7)"limited unit" — Definition.

History: Subsec. 5000(1.5) added by P.C. 2003-1497, subsec. 3(2), October 2, 2003, *Canada Gazette*, Part II, October 22, 2003, applicable after 2001.

(1.6) For the purposes of subsections (1.4) and (1.5), if a person or partnership (other than a taxpayer described in section 205 of the Act) holds at any time a unit or share in a "qualified trust" or "qualified corporation" (as those expressions are defined in subsection 259(5) of the Act), the person or partnership is deemed to hold at that time any property of the trust or corporation that it would be deemed, by paragraph 259(1)(b) of the Act, to hold at that time if that person or partnership were a taxpayer described in section 205 of the Act.

History: Subsec. 5000(1.6) added by P.C. 2003-1497, subsec. 3(2), October 2, 2003, *Canada Gazette*, Part II, October 22, 2003, applicable after 2001.

(2) Where

(a) a share of the capital stock of a corporation referred to in subsection (1) or an interest in, or a right to acquire an interest in, a trust referred to in that subsection would, but for this subsection, be foreign property for the purpose of computing the tax payable by a taxpayer under Part XI of the Act in respect of a particular month,

(b) the relevant period for the particular month in relation to property held by the trust or corporation is its taxation year that includes the end of the particular month, and

(c) at the end of the relevant period for the particular month, the cost amount to the corporation or to the trust, as the case may be, of all foreign property held by it did not exceed 30% of the cost amount to it of all property held by it,

that share, interest or right shall not be foreign property for the purpose of computing the tax payable by the taxpayer under Part XI of the Act in respect of the particular month.

History: Para. 5000(2)(c) amended by P.C. 2001-1106, subsec. 8(4), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to months that end after 1999, except that in applying the para. where the relevant period for a particular month ends in 2000, the reference to "30%" shall be read as "25%".

Subsec. 5000(2) substituted by P.C. 1992-258, subsec. 1(2), February 13, 1992, *Canada Gazette*, Part II, February 26, 1992, applicable to months ending after 1989 except that for months in 1990, 1991, 1992 and 1993 the reference in para. (2)(c) to "20 per cent" shall be read as "12 per cent", "14 per cent", "16 per cent" and "18 per cent" respectively.

Paras. 5000(2)(a), (b) substituted by P.C. 1990-1837, subsec. 2(3), August 28, 1990, *Canada Gazette*, Part II, September 12, 1990.

(3) Where a taxpayer holds a share of the capital stock of an investment corporation, subsections (1), (2) and (7) apply in respect of that share as if

(a) the reference in subsection (1) to "mutual fund corporation (other than an investment corporation)" were read as a reference to an "investment corporation"; and

(b) the reference in subsection (1) to "June 30, 1971" were read as a reference to "October 13, 1971".

(4) Where a taxpayer holds a share of the capital stock of an investment corporation, that share shall not be foreign property for the purpose of computing the tax payable by the taxpayer under Part XI of the Act in respect of a particular month if the share would otherwise be foreign property solely by reason of the acquisition by the corporation of foreign property before October 16, 1971.

(5) Where a mutual fund corporation or a mutual fund trust holds a share of the capital stock of a mutual fund corporation (other than an investment corporation) or an interest in, or a right to acquire an interest in, a mutual fund trust, the share or the interest, as the case may be, shall not be foreign property for the purpose of computing the tax payable by a taxpayer under Part XI of the Act in respect of a particular month if the last-mentioned corporation or trust, as the case may be, complies with

(a) paragraph (1)(d);

(b) paragraph (1)(e) in respect of the particular month; or

(c) paragraphs (2)(b) and (c) in respect of the particular month.

(6) Where a mutual fund corporation or a mutual fund trust holds a share of the capital stock of an investment corporation, the share shall not be foreign property for the purpose of computing the tax payable by a taxpayer under Part XI of the Act in respect of a particular month if the investment corporation

(a) would comply with paragraph (1)(d) if the reference therein to "June 30, 1971" were read as a reference to "October 16, 1971";

(b) complies with paragraph (1)(e) in respect of the particular month; or

(c) complies with paragraphs (2)(b) and (c) in respect of the particular month.

History: Subsecs. 5000(3) to (6) substituted by P.C. 1992-258, subsec. 1(2), February 13, 1992, *Canada Gazette*, Part II, February 26, 1992, applicable to months ending after 1989.

(7) In this Part,

History: The opening words of subsec. 5000(7) amended by P.C. 2000-183, subsec. 2(1), February 17, 2000, *Canada Gazette*, Part II, March 1, 2000, applicable after 1992.

"designated limited partnership" means a limited partnership that complies with the following conditions:

(a) the interests of the limited partners are described by reference to a single class of units of the partnership listed on a stock exchange prescribed under section 3200,

(b) that class was listed before 1999 on a stock exchange prescribed under section 3200,

(c) at least 80% of the full-time employees employed by the partnership are employed in Canada,

(d) the total of all amounts each of which is the cost amount to the partnership of a property used in its activities carried on in Canada is not less that 80% of the total of all amounts each of which is the cost amount to the partnership of a property of the partnership,

(e) the principal activity of the partnership is

(i) the production of goods in Canada,

(ii) the sale of goods in Canada,

(iii) the provision of services in Canada, or

(iv) any combination of the activities described in subparagraphs (i) to (iii), and

(f) the revenue from that principal activity is regulated by a public authority governed by the laws of Canada or a province;

Related Provisions: Reg. 5000(8)–(11) — Interpretation rules.

History: "Designated limited partnership" added by P.C. 2000-725, subsec. 1(2), May 18, 2000, *Canada Gazette*, Part II, June 7, 2000, applicable to months that end after 1997.

"foreign property" has the meaning assigned by section 206 of the Act;

"limited unit" in a qualified limited partnership means a unit described in paragraph (d) of the definition "qualified limited partnership";

Proposed Amendment — Reg. 5000(7)"limited unit" [temporary]

"limited unit", in a qualified limited partnership, means a unit described in paragraph (c) of the definition "qualified limited partnership";

Application: The February 27, 2004 draft regulations (pensions and QLPs), subsec. 4(2), will amend the definition "limited unit" in subsec. 5000(7) to read as above, applicable after 2002.

Technical Notes: See under 5000(1.4)(a) above.

History: "Limited unit" added by P.C. 2003-1497, subsec. 3(3), October 2, 2003, *Canada Gazette*, Part II, October 22, 2003, applicable after 2001.

"pooled fund trust" means, with respect to a particular taxpayer who owns an interest in the trust, a trust the trustee of which is a trust company incorporated under the laws of Canada or a province and that complies with the following conditions:

(a) throughout the taxation year of the trust (in this subsection referred to as the "first relevant year") in which the taxpayer acquired the interest or the first taxation year of the trust (in this subsection referred to as the "second relevant year") commencing more than one year after the taxpayer acquired the interest, the total, at any time, of

(i) the cost amount to the trust of

(A) shares,

(B) any property that, under its terms or conditions or any agreement relating to it, is convertible into, is exchangeable for or confers a right to acquire, shares,

(C) bonds, debentures, mortgages, notes and other similar obligations,

(D) marketable securities,

(E) cash,

(F) life insurance policies in Canada (other than annuity contracts), and

(G) annuity contracts issued by persons licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an annuities business, and

(ii) the amount by which the cost amount to the trust of real property that can reasonably be regarded as being held for the purpose of producing income from property exceeds the total of amounts each of which was owing by the trust at that time on account of its acquisition of the real property and was included at that time in the cost amount to the trust of the real property,

was not less than 80 per cent of the amount by which the cost amount to the trust of all property at that time exceeds the total of amounts each of which was owing by it at that time on account of its acquisition of real property and was included at that time in the cost amount to it of real property,

(b) throughout the first relevant year or the second relevant year, the cost amount to the trust at any time of shares, bonds, mortgages and other securities of any one corporation or debtor, other than bonds, mortgages and other securities of or guaranteed by Her Majesty in right of Canada, a province or a Canadian municipality, was not more than 10 per cent of the amount by which the cost amount to the trust of all property at that time exceeds the total of all amounts each of which was owing by the trust at that time on account of the trust's acquisition of real property and was included at that time in the cost amount to the trust of real property,

(c) throughout the first relevant year or the second relevant year, the amount by which

(i) the cost amount to the trust of any one real property at any time

exceeds

(ii) the total of amounts each of which was owing by the trust at that time on account of its acquisition of the real property and was included at that time in the cost amount to it of the real property

was not more than 10 per cent of the amount by which the cost amount to the trust of all property at that time exceeds the total of amounts each of which was owing by the trust at that time on account of its acquisition of real property and was included at that time in the cost amount to the trust of real property, and

(d) not less than 95 per cent of the income of the trust (determined without reference to subsections 49(2.1) and 104(6) of the Act) for the first relevant year or the second relevant year was derived from, or from the dispositions of, investments described in paragraph (a);

History: Cl. (C) substituted for cls. (a)(i)(C) and (D) of "pooled fund trust", and cls. (a)(i)(E) to (H) renumbered as cls. (a)(i)(D) to (G), respectively, by P.C. 2000-183, subsecs. 2(2), (3), February 17, 2000, *Canada Gazette*, Part II, March 1, 2000, applicable after 1995.

Subpara. (a)(i) of "pooled fund trust" in subsec. 5000(7) substituted by P.C. 1997-100, s. 1, January 28, 1997, *Canada Gazette*, Part II, February 5, 1997, applicable after 1995.

Definition of "pooled fund trust" in subsec. 5000(7) amended by P.C. 1994-1074, s. 3, June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable after 1989.

Cl. (a)(i)(A) of "pooled fund trust" in subsec. 5000(7) substituted by P.C. 1990-1837, subsec. 2(4), August 28, 1990, *Canada Gazette*, Part II, September 12, 1990, applicable after October 31, 1985.

Cl. (a)(i)(A) and subpara. (a)(ii) of definition "pooled fund trust" substituted by P.C. 1981-2518, s. 5, September 16, 1981, *Canada Gazette*, Part II, October 14, 1981, effective January 1, 1981.

"qualified limited partnership", at a particular time after 1985, means a limited partnership that at all times after it was formed and before the particular time complied with the following conditions:

(a) it had only one general partner,

(b) the share of the general partner, as general partner, in any income of the partnership from any source in any place, for any period, was the same as his share, as general partner, in

(i) the income of the partnership from that source in any other place,

(ii) the income of the partnership from any other source,

(iii) the loss of the partnership from any source,

(iv) any capital gain of the partnership, and

(v) any capital loss of the partnership

for that period, except that the share of the general partner, as general partner, in the income or loss of the partnership from specified properties (within the meaning assigned by subsection 5100(1)) may differ from his share, as general partner, in the income or loss of the partnership from other sources,

(c) the share of the general partner, as general partner, in any income or loss of the partnership for any period was not less than his share, as general partner, in the income or loss of the partnership for any preceding period,

(d) the interests of the limited partners were described by reference to units of the partnership that were identical in all respects,

(e) [Repealed]

Proposed Amendment — Reg. 5000(7)"qualified limited partnership"(b)–(e.1) [temporary]

(b) the share of the general partner as general partner, and of the limited partners as limited partners, in any income or loss of the partnership from any source or from sources in any particular place, for any period, was determined in accordance with the written agreement governing the partnership,

(c) neither subsection 103(1) nor (1.1) of the Act has applied, and it is reasonable to consider that neither of those subsections will apply, to redetermine the share of any partner of the partnership in any income or loss of the partnership from any source or from sources in any particular place, for any period, or in any other amount in respect of any activity of the partnership that is relevant to the computation of the income or taxable income of any partner of the partnership,

(d) the interests of the limited partners were described by reference to units (in this definition referred to as "limited units") in the partnership,

(e) the amount of capital that limited partners were required to contribute to the partnership was determined by reference to the partners' limited units in the partnership, and for no such unit did the amount that was required to be contributed differ from the amount that was required to be contributed in respect of any other limited unit in the partnership, except that a limited partner may have been required to contribute an amount in excess of amounts that other limited partners were required to contribute

(i) if that excess was invested on behalf of the limited partner in specified properties, or

(ii) if that excess was contributed, either in respect of a limited unit that was acquired by the limited partner after the initial issuance of limited units by the partnership or in respect of a capital contribution made by the limited partner after a deadline for the making of the capital contribution, and it can reasonably be considered that the principal reason for the requirement to contribute the excess was to adjust for the fact that the capital contribution to which the excess relates was not previously available to the partnership including, without limiting the generality of the foregoing, adjustments for

(A) a reasonable rate of return to the partnership for the period during which the capital contribution to which the excess relates was not available to the partnership,

(B) costs incurred by the partnership before the excess was contributed,

(C) income earned by the partnership before the excess was contributed, and

(D) changes in the value of the property acquired by the partnership before the excess was contributed,

(e.1) the share of limited partners, as limited partners, in any income or loss of the partnership from any source or from sources in any particular place, for any period, was determined by reference to the partners' limited units in the partnership, and for no such income or loss did the share allocated in respect of any one limited unit in the partnership differ from the share allocated in respect of any other limited unit in the partnership, except that this requirement does not apply to the determination of a share of a limited partner in any particular income or loss from a specified property to the extent that the determination is reasonable in the circumstances,

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 8(2), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend paras. (b) to (d) of the definition "qualified limited partnership" in subsec. 5000(7) to read as above, and add paras. (e) and (e.1), applicable for the purpose of determining if a partnership is, at any time after 2002, a qualified limited partnership.

Regulatory Impact Analysis Statement, Technical Notes, February 27, 2004, and Federal budget, Supplementary Information, February 18, 2003: See under Reg. 5000(1.4)(a) [temporary] above. Also see under Reg. 5002 and Reg. 214(5).

(f) its only undertaking was the investing of its funds and its investments consisted solely of

(i) shares of the capital stock of corporations (other than shares that were issued to the partnership and that are shares described in section 66.3 of the Act or shares in respect of which amounts have been designated under subsection 192(4) of the Act),

(ii) rights, or warrants that grant the owner thereof rights, to acquire shares of the capital stock of corporations,

(iii) put or call options in respect of shares of the capital stock of corporations,

(iv) debt obligations of corporations,

Proposed Addition — Reg. 5000(7)"qualified limited partnership"(f)(iv.1), (iv.2) [temporary]

(iv.1) limited units that the partnership acquired after 2002 in a qualified limited partnership (referred to in this subparagraph as an "investment partnership") and, if the investment partnership ceased, after that acquisition, to be a qualified limited partnership, those units are deemed to be limited units in a qualified limited partnership until the end of the third month following the month in which the cessation occurred,

(iv.2) units of a particular mutual fund trust that were

(A) acquired by the partnership after 2002 as consideration for the disposition of property (other than specified property or units of a mutual fund trust) by the partnership to the particular mutual fund trust or to an entity controlled by the particular mutual fund trust, and

(B) held by the partnership for a period not exceeding one year following the day on which the units were so acquired,

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 8(3), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will add subparas. (f)(iv.1) and (iv.2) to subsec. 5000(7), applicable for the purpose of determining if a partnership is, at any time after 2002, a qualified limited partnership.

Regulatory Impact Analysis Statement, Technical Notes, February 27, 2004, and Federal budget, Supplementary Information, February 18, 2003: See under Reg. 5000(1.4)(a) [temporary] above. Also see under Reg. 5002 and Reg. 214(5).

(v) specified properties (within the meaning assigned by subsection 5100(1)), or

Proposed Amendment — Reg. 5000(7)"qualified limited partnership"(f)(v) [temporary]

(v) specified properties, or

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 8(3), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend subpara. (f)(v) of the definition "qualified limited partnership" in subsec. 5000(7) to read as above, applicable for the purpose of determining if a partnership is, at any time after 2002, a qualified limited partnership.

Regulatory Impact Analysis Statement, Technical Notes, February 27, 2004, and Federal budget, Supplementary Information, February 18, 2003: See under Reg. 5000(1.4)(a) [temporary] above. Also see under Reg. 5002 and Reg. 214(5).

(vi) any combination of the properties described in subparagraphs (i) to (v),

(g) no election has been made under subsection 97(2) of the Act on the acquisition of any property by it,

(h) it has not borrowed money except for the purpose of earning income from its investments and the amount of any such borrowings at any time did not exceed 20 per cent of the partnership capital at that time, and

(i) the cost amount to it of all foreign property held by it

(i) before 1990 and the particular time did not exceed 10 per cent,

(ii) before 1991 and the particular time did not exceed 12 per cent,

(iii) before 1992 and the particular time did not exceed 14 per cent,

(iv) before 1993 and the particular time did not exceed 16 per cent,

(v) before 1994 and the particular time did not exceed 18 per cent,

(vi) before 2000 and the particular time did not exceed 20 per cent,

(vii) before 2001 and the particular time did not exceed 25 per cent, and

(viii) before the particular time did not exceed 30 per cent

of the cost amount to it of all property held by it.

Proposed Repeal — Reg. 5000(7)"qualified limited partnership"(i) [temporary]

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 8(4), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will repeal para. (i) of the definition "qualified limited partnership" in subsec. 5000(7), applicable for the purpose of determining if a partnership is, at any time after 2002, a qualified limited partnership.

Regulatory Impact Analysis Statement, Technical Notes, February 27, 2004: See under Reg. 5000(1.4)(a) [temporary] above. Also see under Reg. 5002 and Reg. 214(5).

History: Para. (e) of the definition "qualified limited partnership" repealed by P.C. 2003-1497, subsec. 3(5), October 2, 2003, *Canada Gazette*, Part II, October 22, 2003, applicable for the purpose of determining if a partnership is, at any time after 2001, a "qualified limited partnership".

Subpara. (e)(ii) of the definition "qualified limited partnership" amended by P.C. 2001-1106, subsec. 8(5), June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to periods that occur after 1985.

Subpara. (i)(vi) of "qualified limited partnership" amended, and subparas. (i)(vii) and (viii) added, by the said P.C. 2001-1106, subsec. 8(6), applicable after 1999.

That portion of "qualified limited partnership" preceding para. (a), and para. (i) thereof, substituted by P.C. 1992-258, subsecs. 1(4), (5), February 13, 1992, *Canada Gazette*, Part II, February 26, 1992, applicable after 1989.

Para. (e) of "qualified limited partnership" substituted by P.C. 1990-1837, subsec. 2(5), August 28, 1990, *Canada Gazette*, Part II, September 12, 1990, applicable after October 31, 1985.

"Qualified limited partnership" added by P.C. 1986-772, subsec. 4(2), March 26, 1986, *Canada Gazette*, Part II, April 16, 1986, effective after October 31, 1985.

"relevant period for the particular month" means, in relation to property held by a particular corporation or particular trust,

(a) its most recent taxation year ending before the end of the particular month, and

(b) its taxation year that includes the end of the particular month, where paragraph (a) does not apply.

"resource property trust" means a trust the trustee of which is a trust company that is incorporated under the laws of Canada or a province and that complies with the following conditions:

(a) the trust, at all times after the later of November 12, 1981 and the time at which it was created,

(i) has limited its activities to

(A) acquiring Canadian resource properties by purchase or by incurring Canadian exploration expense or Canadian development expense, or

(B) holding, exploring, developing, maintaining, improving, managing, operating or disposing of its Canadian resource properties,

(ii) has made no investments other than

(A) in Canadian resource properties,

(B) in property to be used in connection with Canadian resource properties described in clause (i)(A),

(C) in loans secured by Canadian resource properties for the purpose of carrying out any activity described in subparagraph (i) with respect to Canadian resource properties,

(D) in corporations described in subparagraph 149(1)(o.2)(ii.1) of the Act, or

(E) investments that a pension fund or plan is permitted to make under the *Pension Benefits Standards Act* or a similar law of a province, and

(iii) has not borrowed money except for the purpose of earning income from Canadian resource properties, and

(b) the beneficiaries of the trust, at all times after the later of November 12, 1981 and the time at which it was created, were

(i) registered pension plans, or

(ii) trusts all the beneficiaries of which were registered pension plans.

History: "Resource property trust" amended by P.C. 1991-2540, s. 8, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable after 1985.

Definition of "resource property trust" added by P.C. 1985-2351, subsec. 1(2), July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable with respect to trusts created after November 12, 1981.

"specified international finance trust" at a particular time means a trust that complies with the following conditions:

(a) the trust was created principally for the purpose of investing in property described in subparagraph (c)(i),

(b) throughout the period that began at the time the trust was created and ends at the particular time, the trust was resident in Canada, and

(c) throughout the period that began 30 days after the time the trust was created and ends at the particular time, the total of all amounts each of which is the cost amount to the trust of the following property was not less that 90% of the total of all amounts each of which is the cost amount to the trust of a property of the trust:

(i) debt issued to

(A) the African Development Bank,

(B) the Asian Development Bank,

(C) the Caribbean Development Bank,

(D) the European Bank for Reconstruction and Development,

(E) Export Development Canada,

(F) the Inter-American Development Bank,

(G) the International Bank for Reconstruction and Development, or

(H) the International Finance Corporation, and

(ii) shares and debt that are not foreign property of the trust.

History: The opening words of subpara. (c)(i) of the definition "specified international finance trust" amended to replace "to and acquired from" with "to" by P.C. 2003-1497, subsec. 3(5), October 2, 2003, *Canada Gazette*, Part II, October 22, 2003, applicable to months that end after 1998.

Cl. (c)(i)(E) of the definition "specified international finance trust" amended to replace "the Export Development Corporation" with "Export Development Canada" by 2001, c. 33, para. 30(a), in force December 21, 2001.

"Specified international finance trust" added by P.C. 2000-725, subsec. 1(2), May 18, 2000, *Canada Gazette*, Part II, June 7, 2000, applicable to months that end after 1998.

Proposed Addition — Reg. 5000(7)"specified property" [temporary]

"specified property" means property described in any of paragraphs (a), (b), (c), (f) and (g) of the definition "qualified investment" in section 204 of the Act.

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 8(5), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will add the definition "specified property" to subsec. 5000(7), applicable after 2002.

Regulatory Impact Analysis Statement, Technical Notes, February 27, 2004, and Federal budget, Supplementary Information, February 18, 2003: See under Reg. 5000(1.4)(a) [temporary] above. Also see under Reg. 5002 and Reg. 214(5).

(8) For the purposes of the definition "designated limited partnership" in subsection (7) and for the purposes of this subsection, if a particular partnership is a member of another partnership at the end of a fiscal period of the other partnership (in this subsection referred to as the **"relevant time"**), throughout the period that begins at the relevant time and ends at the earlier of the time that is immediately before the end of the following fiscal period of the other partnership and the time that the other partnership ceases to exist

(a) the particular partnership is deemed to employ an additional number of full-time employees, or full-time employees employed in Canada, as the case may be, equal to the product of

(i) the specified fraction of the particular partnership at the relevant time in respect of the other partnership, and

(ii) the number of full-time employees employed, or employed in Canada, as the case may be, at the relevant time by the other partnership,

(b) each property used, or used in activities carried on in Canada, as the case may be, at the relevant time by the other partnership is deemed to be used, or to be used in activities carried on in Canada, as the case may be, by the particular partnership and is deemed to have a cost amount to the particular partnership equal to the product of

(i) the specified fraction of the particular partnership at the relevant time in respect of the other partnership, and

(ii) the cost amount of the property at the relevant time to the other partnership, and

(c) the particular partnership is, to the degree that can reasonably be considered to reflect the specified fraction of the particular partnership at the relevant time in respect of the other partnership, deemed to carry on each of the activities carried on by the other partnership.

Related Provisions: Reg. 5000(9) — Meaning of "specified fraction"; Reg. 5000(11) — Application of ITA 96(1)(a)–(g).

(9) For the purposes of subsection (8), the specified fraction of the particular partnership in respect of the other partnership at the end of a fiscal period of the other partnership is the quotient obtained by dividing the particular partnership's share of the income or loss of the other partnership for the fiscal period by the income or loss of the other partnership for the fiscal period.

Related Provisions: Reg. 5000(10) — Where income and loss are nil; Reg. 5000(11) — Application of ITA 96(1)(a)–(g).

(10) For the purposes of subsection (9), if the income and loss of the other partnership for the fiscal period are nil, the quotient referred to in that subsection shall be calculated as if the other partnership had income for the fiscal period in the amount of $1,000,000.

Related Provisions: Reg. 5000(11) — Application of ITA 96(1)(a)–(g).

(11) The definition "designated limited partnership" in subsection (7) and subsections (8) to (10) shall be read and construed as if each of the assumptions set out in paragraphs 96(1)(a) to (g) of the Act were made.

History [Reg. 5000(8)–(11)]: Subsecs. 5000(8) to (11) added by P.C. 2000-725, subsec. 1(3), May 18, 2000, *Canada Gazette*, Part II, June 7, 2000, applicable to months that end after 1997.

Proposed Repeal — Reg. 5000

See at end of Reg. 5002 for repeal of all of Part L.

Definitions [Reg. 5000]: "amount", "annuity" — ITA 248(1); "arm's length" — ITA 251(1); "borrowed money", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian development expense" — ITA 66.2(5), 248(1); "Canadian exploration expense" — ITA 66.1(6), 248(1); "Canadian resource property" — ITA 66(15), 248(1); "capital gain" — ITA 39(1), 248(1); "capital loss" — ITA 39(1)(b), 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "cost amount" — ITA 206(1), 248(1), Reg. 5000(7); "designated limited partnership" — Reg. 5000(7), (8)–(11); "disposition" — ITA 248(1); "employed", "employee" — ITA 248(1); "first relevant year" — Reg. 5000(7)(a); "fiscal period" — ITA 249.1; "foreign property" — ITA 206, Reg. 5000(7); "Her Majesty" — *Interpretation Act* 35(1); "investment corporation" — ITA 130(3), 248(1); "life insurance policy" — ITA 138(12), 248(1); "limited unit" — Reg. 5000(7); "month" — *Interpretation Act* 35(1); "mutual fund corporation" — ITA 131(8), 248(1); "mutual fund trust" — ITA 132(6)–(7), 132.2(1)(q) [to be repealed], 132.2(3)(n) [draft], 248(1); "person" — ITA 248(1); "pooled fund trust" — Reg. 5000(7); "prescribed", "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "qualified corporation" — ITA 259(5); "qualified limited partnership" — Reg. 5000(7); "qualified trust" — ITA 259(5); "registered pension plan" — ITA 248(1); "relevant period for the particular month" — Reg. 5000(7); "resident in Canada" — ITA 250; "resource property trust" — Reg. 5000(7); "second relevant year" — Reg. 5000(7)(a); "share" — ITA 248(1); "specified fraction" — Reg. 5000(9); "specified international finance trust" — Reg. 5000(7); "specified partner" — Reg. 5000(1.5); "specified portion" — Reg. 5000(1.4); "specified property" — Reg. 5000(7); "taxable income" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3); "written" — *Interpretation Act* 35(1)"writing".

Interpretation Bulletins: IT-412R2: Foreign property of registered plans.

5001. [Master trust] — For the purposes of paragraph 149(1)(o.4) of the Act, a trust is a master trust at any time if, at all times after it was created and before that time,

(a) it was resident in Canada;

(b) its only undertaking was the investing of its funds;

(c) it never borrowed money except where the borrowing was for a term not exceeding 90 days and it is established that the borrowing was not part of a series of loans or other transactions and repayments;

(d) it never accepted deposits; and

(e) each of the beneficiaries of the trust was a trust governed by a registered pension fund or plan or a deferred profit sharing plan.

Proposed Repeal — Reg. 5001

To be moved to Reg. 4802(1.1). See at end of Reg. 5002 for repeal of all of Part L.

Related Provisions: ITA 248(10) — Series of transactions; ITA 253.1 — Limited partner not considered to carry on business of partnership.

History: S. 5001 added by P.C. 1990-1837, s. 3, August 28, 1990, *Canada Gazette*, Part II, September 12, 1990, applicable to 1987 *et seq.*

Definitions [Reg. 5001]: "borrowed money" — ITA 248(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "registered pension fund or

plan" — ITA 248(1); "resident in Canada" — ITA 250; "series" — ITA 248(10); "trust" — ITA 104(1), 248(1), (3); "undertaking" — ITA 253.1(a).

5002. [Registered investment] — For the purpose of subparagraph 206(2.01)(b)(ii) of the Act,

(a) a prescribed trust is,

(i) a pooled fund trust,

(ii) a trust that would be a mutual fund trust if Part XLVIII were read without reference to paragraph 4801(b),

(iii) a resource property trust,

(iv) a master trust, as described in section 5001, or

(v) a trust if

(A) the trust would be a mutual fund trust if Part XLVIII were read without reference to section 4801, and

(B) there has been a lawful distribution in a province to the public of units of the trust and a prospectus, registration statement or similar document was not required under the laws of the province to be filed in respect of the distribution; and

(b) a prescribed partnership is a qualified limited partnership.

Proposed Repeal — Reg. 5002 and all of Part L

Application: The May 16, 2005 draft regulations (deferred income plans), s. 9, (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will repeal Part L, deemed to have come into force June 29, 2005.

Regulatory Impact Analysis Statement: Part XI of the Act imposes a penalty tax on excess foreign property held by certain trusts and other tax-exempt entities governed by registered pension plans (RPPs) and other deferred income plans. "Foreign property" is defined in subsection 206(1) of the Act to include, except as otherwise prescribed by regulation, an interest in a partnership or trust and a share of a mutual fund corporation. Part L of the Regulations prescribes the exceptions for this purpose and includes, among other things, the specified portion of an interest in a qualified limited partnership (QLP) and an interest in a mutual fund trust or corporation that itself complies with the foreign property limit.

Part L is being repealed as a consequence of the repeal of the foreign property rules in Part XI of the Act.

Part L is also being amended, prior to its repeal, to renumber section 5001 (which prescribes a master trust for the purpose of paragraph 149(1)(o.4) of the Act) as subsection 4802(3) [actually 4802(1.1) — ed.].

Finally, Part L is being amended to reflect changes to the QLP rules that were announced in the 2003 budget and which are relevant for determining whether a partnership is, at any time after 2002 and before the repeal of Part L, a QLP.

[See also under Reg. 214(5).]

History: Subpara. 5002(a)(iv) amended, and subpara. (a)(v) added, by P.C. 2001-1106, s. 9, June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to months that end after 1993.

S. 5002 added by P.C. 2000-183, s. 3, February 17, 2000, *Canada Gazette*, Part II, March 1, 2000, applicable to months that end after 1992.

Definitions [Reg. 5002]: "master trust" — Reg. 5001; "mutual fund trust" — ITA 132(6), 248(1); "pooled fund trust" — Reg. 5000(7); "prescribed", "property" — ITA 248(1); "qualified limited partnership", "resource property trust" — Reg. 5000(7); "trust" — ITA 104(1), 248(1), (3).

PART LI — DEFERRED INCOME PLANS, INVESTMENTS IN SMALL BUSINESS

History: Part LI (ss. 5100–5104) substituted by P.C. 1986-772, s. 5, March 26, 1986, *Canada Gazette*, Part II, April 16, 1986, effective after October 31, 1985.

Former Part LI, which defined "permanent establishment", was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

5100. (1) In this Part,

"designated rate", at any time, means 150 per cent of the highest of the prime rates generally quoted at that time by the banks to which Schedule A to the *Bank Act* applies;

"eligible corporation", at any time, means

(a) a particular corporation that is a taxable Canadian corporation all or substantially all of the property of which is at that time

(i) used in a qualifying active business carried on by the particular corporation or by a corporation controlled by it,

(ii) shares of the capital stock of one or more eligible corporations that are related to the particular corporation, or debt obligations issued by those eligible corporations,

(iii) any combination of the properties described in subparagraph (i) and (ii),

(a.1) a specified holding corporation, or

(b) a venture capital corporation described in section 6700,

but does not include

(c) a corporation (other than a mutual fund corporation) that is

(i) a trader or dealer in securities,

(ii) a bank,

(iii) a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as a trustee,

(iv) a credit union,

(v) an insurance corporation, or

(vi) a corporation the principal business of which is the lending of money or the purchasing of debt obligations or a combination of them,

(d) a corporation controlled by one or more non-resident persons,

(e) a venture capital corporation, other than a venture capital corporation described in section 6700, or

(f) a corporation that has made an election in respect of a particular taxation year under subparagraph (iv) of the description of B in paragraph 204.82(2.2)(c.1) of the Act, if that time is in the 12-month period that begins on the day that is six months after the day on which the particular taxation year ends;

Related Provisions: ITA 256(6), (6.1) — Meaning of "controlled".

History: Paras. (b) and (e) of the definition "eligible corporation" in subsec. 5100(1) amended to replace "prescribed venture capital corporation described in section 6700" with "venture capital corporation described in section 6700" by P.C. 2001-1370, para. 8(b), August 1, 2001, *Canada Gazette*, Part II, August 15, 2001, applicable after June 9, 2001.

Para. (f) of "eligible corporation" added by the said P.C. 2001-1370, subsec. 1(2), applicable to taxation years that begin after 1997.

Para. (c) of "eligible corporation" amended by P.C. 1999-249, subsec. 2(2), February 18, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable to taxation years that end after February 22, 1994. Para. (c) also was amended by P.C. 1999-249, subsec. 2(1), applicable to 1991 *et seq.* to read as follows:

(c) a corporation (other than a mutual fund corporation) that is a taxpayer described in subsection 39(5) of the Act,

Subpara. (a)(ii) of "eligible corporation" substituted, and para. (a.1) added, by P.C. 1990-1837, subsecs. 4(1), (2), August 28, 1990, *Canada Gazette*, Part II, September 12, 1990, applicable after October 31, 1985.

Para. (d) of "eligible corporation" substituted by subsec. 4(3) of the said P.C. 1990-1837, applicable after 1988.

I.T. Technical News: 25 (*Silicon Graphics* case — dispersed control is not control).

"qualifying active business", at any time, means any business carried on primarily in Canada by a corporation, but does not include

(a) a business (other than a business of leasing property other than real property) the principal purpose of which is to derive income from property (including interest, dividends, rent and royalties), or

(b) a business of deriving gains from the disposition of property (other than property in the inventory of the business),

and, for the purposes of this definition, a business carried on primarily in Canada by a corporation, at any time, includes a business carried on by the corporation if, at that time,

(c) at least 50 per cent of the full time employees of the corporation and all corporations related thereto employed in respect of the business are employed in Canada, or

(d) at least 50 per cent of the salaries and wages paid to employees of the corporation and all corporations related thereto employed in respect of the business are reasonably attributable to services rendered in Canada;

"qualifying obligation", at any time, means a bond, debenture, mortgage, note or other similar obligation of a corporation described in paragraph 149(1)(o.2) or (o.3) of the Act, if

(a) the obligation was issued by the corporation after October 31, 1985,

(b) the corporation used all or substantially all of the proceeds of the issue of the obligation within 90 days after the receipt thereof to acquire

(i) small business securities,

(ii) interests of a limited partner in small business investment limited partnerships,

(iii) interests in small business investment trusts, or

(iv) any combination of the properties described in subparagraphs (i) to (iii)

and, except as provided in subsection 5104(1), the corporation was the first person (other than a broker or dealer in securities) to have acquired the properties and the corporation has owned the properties continuously since they were so acquired,

(c) the corporation does not hold, and no group of persons who do not deal with each other at arm's length and of which it is a member holds, more than 30 per cent of the outstanding shares of any class of voting stock of another corporation, except where all or any part of those shares were acquired in specified circumstances, within the meaning of subsection 5104(2),

(d) the recourse of the holder of the obligation against the corporation with respect to the obligation is limited to the properties acquired with the proceeds of the issue of the obligation and any properties substituted therefor, and

(e) the properties acquired with the proceeds of the issue of the obligation have not been disposed of, unless the disposition occurred within the 90 day period immediately preceding that time;

History: The opening words of the definition "qualifying obligation" in subsec. 5100(1) amended by P.C. 1994-1817, para. 62(f), November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

"specified holding corporation", at any time, means a taxable Canadian corporation where

(a) all or substantially all of the collective property of the corporation and of all other corporations controlled by it (each of which other corporations is referred to in this definition as a "controlled corporation"), other than shares in the capital stock of the corporation or of a corporation related to it and debt obligations issued by it or by a corporation related to it, is at that time used in a qualifying active business carried on by the corporation, and

(b) all or substantially all of the property of the corporation is at that time

(i) property used in a qualifying active business carried on by the corporation or a controlled corporation,

(ii) shares of the capital stock of one or more controlled corporations or eligible corporations related to the corporation,

(iii) debt obligations issued by one or more controlled corporations or eligible corporations related to the corporation, or

(iv) any combination of the properties described in subparagraphs (i), (ii) and (iii),

and in a determination of whether property is used in a qualifying active business for the purposes of paragraph (a),

(c) where a business is carried on by a controlled corporation,

(i) the business shall be deemed to be a business carried on only by the corporation, and

(ii) the controlled corporation shall be deemed to be the corporation in the application of paragraphs (c) and (d) of the definition "qualifying active business", and

(d) if a business of the corporation is substantially similar to one or more other businesses of the corporation, all those businesses shall be deemed collectively to be one business of the corporation.

Related Provisions: ITA 256(6), (6.1) — Meaning of "controlled".

History: "Specified holding corporation" added by P.C. 1990-1837, subsec. 4(4), August 28, 1990, *Canada Gazette*, Part II, September 12, 1990, applicable after October 31, 1985.

"specified property" means property described in any of subparagraphs 204(e)(i), (ii), (iii), (vii) and (viii) [204"qualified investment"(a), (b), (c), (f) and (g)] of the Act.

Proposed Amendment — Reg. 5100(1)"specified property"

"specified property" means property described in any of (a), (b), (c), (f) and (g) of the definition "qualified investment" in section 204 of the Act.

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 10(1), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend the definition "specified property" in subsec. 5100(1) to read as above, deemed to have come into force June 29, 2005.

Regulatory Impact Analysis Statement: Part LI contains rules to allow investments in small business by RRSPs, RRIFs, RESPs and

DPSPs and to permit pension funds and other deferred income plans to increase their foreign property limit by $3 for every $1 invested in qualifying small business property.

Part LI is amended to reflect the repeal of the foreign property rules in Part XI of the Act.

[See also under Reg. 214(5).]

(2) [Small business security] — For the purposes of this Part and paragraph (a) of the definition "small business property" in subsection 206(1) of the Act, a small business security of a person, at any time, is the property of that person that is, at that time,

Proposed Amendment — Reg. 5100(2) opening words

(2) [Small business security] — For the purposes of this Part and clause (b)(iii)(A) of the definition "eligible investment" in subsection 204.8(1) of the Act, a small business security of a person, at any time, is property of that person that is, at that time,

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 10(2), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend the opening words of subsec. 5100(2) to read as above, applicable to taxation years that begin after 2004.

Regulatory Impact Analysis Statement: See under Reg. 5100(1)"specified property". See also under Reg. 214(5).

(a) a share of the capital stock of an eligible corporation,

(b) a debt obligation of an eligible corporation (other than a venture capital corporation described in section 6700) that does not by its terms or any agreement related to the obligation restrict the corporation from incurring other debts and that is

(i) secured solely by a floating charge on the assets of the corporation and that by its terms or any agreement related thereto is subordinate to all other debt obligations of the corporation (other than a small business security issued by the corporation, or a debt obligation that is owing by the corporation to a shareholder of the corporation or a person related to a shareholder of the corporation and that is not secured in any manner whatever), or

(ii) not secured in any manner whatever,

other than a debt obligation that

(iii) where the debt obligation specifies an invariant rate of interest, has an effective annual rate of return that exceeds the designated rate for the day on which the obligation was issued, and

(iv) in any other case, may have an effective annual rate of return at a particular time that exceeds the designated rate at the particular time,

(c) an option or right granted by an eligible corporation in conjunction with the issue of a share or debt obligation that qualifies as a small business security to acquire a share of the capital stock of the corporation, or

(d) an option or right granted for no consideration by an eligible corporation to a holder of a share that qualifies as a small business securities to acquire a share of the capital stock of the corporation

if, immediately after the time of acquisition thereof,

(e) the aggregate of the cost amounts to the person of all shares, options, rights and debt obligations of the eligible corporation and all corporations associated therewith held by the person does not exceed $10,000,000, and

(f) the total assets (determined in accordance with generally accepted accounting principles, on a consolidated or combined basis, where applicable) of the eligible corporation and all corporations associated with it do not exceed $50,000,000

and includes

(g) property of the person that is, at that time,

(i) a qualifying obligation,

(ii) the proportion of the interest of the person as a limited partner in a qualified limited partnership (within the meaning assigned by subsection 5000(7)) at that time that

(A) the aggregate of the cost amounts to the partnership of all properties held by the partnership at that time that would be small business properties (within the meaning assigned by subsection 206(1) of the Act) if the partnership were a person,

is of

(B) the aggregate of the cost amounts to the partnership of all properties held by the partnership at that time, or

Proposed Repeal — Reg. 5100(2)(g)(ii)

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 10(3), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will repeal subpara. 5100(2)(g)(ii), deemed to have come into force June 29, 2005.

Regulatory Impact Analysis Statement: See under Reg. 5100(1)"specified property" above. See also under Reg. 214(5).

(iii) a security (in this subparagraph referred to as the "new security") described in any of paragraphs (a) to (d), where the new security was issued at a particular time

(A) in exchange for, on the conversion of, or in respect of rights pertaining to a security (in this paragraph referred to as the "former security") that would, if this subsection were read without reference to this subparagraph and paragraph (h), be a small business security of the person immediately before the particular time, and

(B) pursuant to an agreement entered into before the particular time and at or before the time that the former security was last acquired by the person, or

(h) where the person is a small business investment corporation, small business investment limited partnership or small business investment trust, property of the person that is, at that time, a security (in this paragraph referred to as the "new security") described in any of paragraphs (a) to (d), where the new security was issued at a particular time not more than 5 years before that time in exchange for, on the conversion of, or in respect of rights pertaining to a security that would, if this subsection were read without reference to this paragraph, be a small business security of the person immediately before the particular time.

Related Provisions: ITA 204.8(1)"eligible investment"(f).

History: The opening words of para. 5100(2)(b) amended by P.C. 2001-1370, para. 8(c), August 1, 2001, *Canada Gazette*, Part II, August 15, 2001, applicable after June 9, 2001.

The opening words of para. 5100(2)(b) amended by P.C. 1998-782, s. 1, May 7, 1998, *Canada Gazette*, Part II, May 27, 1998, applicable to debt obligations issued after December 5, 1996, other than debt obligations that were required to be issued pursuant to agreements in writing made on or before that date.

The opening words of para. 5100(2)(f) substituted by P.C. 1994-1074, subsec. 4(1), June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable after 1991.

All that portion of subsec. 5100(2) following para. (f) substituted by P.C. 1992-258, subsec. 2(1), February 13, 1992, *Canada Gazette*, Part II, February 26, 1992, applicable to property acquired after 1989.

That portion of para. 5100(2)(b) preceding subpara. (ii) substituted by P.C. 1990-1837, subsec. 4(5), August 28, 1990, *Canada Gazette*, Part II, September 12, 1990, applicable in respect of debt obligations issued after September 12, 1990 other than debt obligations that were required to be issued pursuant to agreements in writing entered into on or before that date.

That portion of subsec. 5100(2) following para. (f) substituted by P.C. 1987-371, subsec. 1(1), March 5, 1987, *Canada Gazette*, Part II, March 18, 1987, effective after October 31, 1985.

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs.

(2.1) [Prescribed venture capital corporation] — Where all or part of the property of a person consists of the shares of the capital stock of a venture capital corporation described in section 6700, options or rights granted by the corporation, or debt obligations of the corporation,

(a) the aggregate of the cost amounts to the person of all such property shall be deemed for the purposes of paragraph (2)(e) not to exceed $10,000,000; and

(b) the total assets (determined in accordance with generally accepted accounting principles, on a consolidated or combined basis, where applicable) of the corporation and all corporations associated with it shall be deemed for the purposes of paragraph (2)(f) not to exceed $50,000,000.

History: Subsec. 5100(2.1) amended to replace "prescribed venture capital corporation within the meaning assigned by" with "venture capital corporation described in" by P.C. 2001-1370, para. 7(a), August 1, 2001, *Canada Gazette*, Part II, August 15, 2001, applicable after June 9, 2001.

Para. 5100(2.1)(b) amended by P.C. 1994-1074, subsec. 4(2), June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable after 1991.

Subsec. 5100(2.1) added by P.C. 1990-1837, subsec. 4(6), August 28, 1990, *Canada Gazette*, Part II, September 12, 1990, applicable after October 31, 1985.

(3) [Interpretation for subsec. (2)] — For the purposes of subsection (2),

(a) in determining the effective annual rate of return in respect of a debt obligation of an eligible corporation, the value of any right to convert the debt obligation or any part thereof into, or to exchange the debt obligation or any part thereof for, shares of the capital stock of the corporation or an option or right to acquire such shares shall not be considered; and

(b) a corporation shall be deemed not to be associated with another at any time where the corporation would not be associated with the other if

(i) the references to "controlled, directly or indirectly, in any manner whatever" in section 256 of the Act (other than subsection (5.1) thereof) were read as references to "controlled", and

(ii) such rights described in subsection 256(1.4) of the Act and shares, as were held at that time by a small business investment corporation, small business investment limited partnership or small business investment trust, were disregarded.

History: Subsec. 5100(3) substituted by P.C. 1990-1837, subsec. 4(7), August 28, 1990, *Canada Gazette*, Part II, September 12, 1990, applicable after 1988.

(4) [Prescribed person] — For the purposes of paragraph (e) of the definition "small business property" in subsection 206(1) of the Act, a taxpayer is a prescribed person in respect of a property at any time where

(a) the following conditions are met:

(i) the taxpayer is a beneficiary of a trust that has elected pursuant to subsection 259(1) of the Act for a period that includes that time,

(ii) the property is deemed to be held by the taxpayer at that time by virtue of subsection 259(1) of the Act, and

(iii) the trust referred to in subparagraph (i) is the first person (other than a broker or dealer in securities) to have acquired the property and has owned the property continuously since it was so acquired, except where the property is a small business security acquired in cases described in subsection 5104(1);

(b) the taxpayer is a limited partner in a qualified limited partnership (within the meaning assigned by subsection 5000(7)) and the property is that proportion of the taxpayer's interest in the partnership that, pursuant to subparagraph (2)(g)(ii), is a small business security of the taxpayer at that time;

(c) the taxpayer is a holder of property that at that time is a small business security acquired in cases described in subsection 5104(1);

(d) the taxpayer is a limited partner in a small business investment limited partnership the units of which are listed on a stock exchange prescribed under section 3200 and the property consists of the taxpayer's units in that partnership; or

(e) the taxpayer is a beneficiary under a small business investment trust the units of which are listed on a stock exchange prescribed under section 3200 and the property consists of the taxpayer's units in that trust.

History: Para. 5100(4)(b) substituted by P.C. 1992-258, subsec. 2(2), February 13, 1992, *Canada Gazette*, Part II, February 26, 1992, applicable to property acquired after 1989.

Paras. 5100(4)(d), (e) added by P.C. 1990-1837, subsec. 4(8), August 28, 1990, *Canada Gazette*, Part II, September 12, 1990, applicable after 1989.

Subsec. 5100(4) added by P.C. 1987-371, subsec. 1(2), March 5, 1987, *Canada Gazette*, Part II, March 18, 1987, effective after October 31, 1985.

Proposed Repeal — Reg. 5100(4)

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 10(4), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will repeal subsec. 5100(4), deemed to have come into force June 29, 2005.

Regulatory Impact Analysis Statement: See under Reg. 5100(1)"specified property" above. See also under Reg. 214(5).

Definitions [Reg. 5100]: "arm's length" — ITA 251(1); "associated" — Reg. 5100(3)(b); "bank" — ITA 248(1), *Interpretation Act* 35(1); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "controlled" — ITA 256(6), (6.1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "cost amount", "credit union" — ITA 248(1); "designated rate" — Reg. 5100(1); "disposed" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "dividend" — ITA 248(1); "eligible corporation" — Reg. 5100(1); "employed", "employee" — ITA 248(1); "former security" — Reg. 5100(2)(g)(iii)(A); "insurance corporation", "inventory" — ITA 248(1); "new security" — Reg. 5100(2)(g)(iii), 5100(2)(h); "non-resident" — ITA 248(1); "person" — ITA 248(1), Reg. 5104(6); "prescribed" — ITA 248(1); "prescribed venture capital corporation" — Reg. 6700; "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "qualifying active business" — Reg. 5100(1); "qualifying obligation" — ITA 149(1)(o.2), (o.3), Reg. 5100(1); "related" — ITA 251(2)–(6); "share", "shareholder" — ITA 248(1); "small business investment corporation" — Reg. 5101(1); "small business investment limited partnership" — Reg. 5102(1); "small business security" — Reg. 5100(2), 5104(3), (5); "specified circumstances" — Reg. 5104(2); "specified holding corporation" — Reg. 5100(1); "substituted" — ITA 248(5); "taxable

Canadian corporation" — ITA 89(1), 248(1); "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

5101. [Small business investment corporation] — (1) Subject to subsection (4), for the purposes of this Part and paragraph 149(1)(o.3) and paragraph (b) of the definition "small business property" in subsection 206(1) of the Act, a corporation is a small business investment corporation at any time if it is a Canadian corporation incorporated after May 22, 1985 and at all times after it was incorporated and before that time

(a) all of the shares, and rights to acquire shares, of the capital stock of the corporation were owned by

(i) one or more registered pension plans,

(ii) one or more trusts all the beneficiaries of which were registered pension plans,

(iii) one or more related segregated fund trusts (within the meaning assigned by paragraph 138.1(1)(a) of the Act) all the beneficiaries of which were registered pension plans, or

(iv) one or more persons prescribed by section 4802 for the purposes of clause 149(1)(o.2)(iv)(D) of the Act;

(b) its only undertaking was the investing of its funds and its investments consisted solely of

(i) small business securities,

(ii) interests of a limited partner in small business investment limited partnerships,

(iii) interests in small business investment trusts,

(iv) property (other than small business securities) described in any of subparagraphs (f)(i) to (iv) of the definition "qualified limited partnership" in subsection 5000(7),

Proposed Amendment — Reg. 5101(1)(b)(iv)

(iv) property (other than a small business security) that is

(A) a share of the capital stock of a corporation (other than a share that is issued to the corporation and that is either a share described in section 66.3 of the Act or a share in respect of which an amount has been designated under subsection 192(4) of the Act), or

(B) a put, call, warrant or other right to acquire or sell a share described by clause (A),

Application: The May 16, 2005 draft regulations (deferred income plans), s. 11, (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend subpara. 5101(1)(b)(iv) to read as above, deemed to have come into force June 29, 2005.

Regulatory Impact Analysis Statement: See under Reg. 5100(1)"specified property". See also under Reg. 214(5).

(v) specified properties, or

(vi) any combination of properties described in any of subparagraphs (i) to (v)

and, except as provided in subsection 5104(1), with respect to properties referred to in any of subparagraphs (i) to (iii), the corporation was the first person (other than a broker or dealer in securities) to have acquired the properties and the corporation has owned the properties continuously since they were so acquired;

(c) it has complied with subsection (2);

(d) it did not hold, and no group of persons who did not deal with each other at arm's length and of which it was a member held, more than 30 per cent of the outstanding shares of any class of voting stock of a corporation, except where

(i) all or any part of those shares were acquired in specified circumstances within the meaning of subsection 5104(2), or

(ii) those shares were of any class of voting stock of a venture capital corporation described in section 6700;

(e) it has not borrowed money except from its shareholders; and

(f) it has not accepted deposits.

Related Provisions: ITA 253.1 — Limited partner not considered to carry on business of partnership.

History: Subpara. 5101(1)(d)(ii) amended to replace "prescribed venture capital corporation within the meaning assigned by" with "venture capital corporation described in" by P.C. 2001-1370, para. 7(b), August 1, 2001, *Canada Gazette*, Part II, August 15, 2001, applicable after June 9, 2001.

Para. 5101(1)(b)(iv) added, paras. (iv), (v) renumbered as (v) and (vi), by P.C. 1994-1074, s. 5, June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable after 1990.

Para. 5101(1)(a) amended by P.C. 1991-2540, s. 8, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable after 1985.

Para. 5101(1)(d) substituted by P.C. 1990-1837, s. 5, August 28, 1990, *Canada Gazette*, Part II, September 12, 1990, applicable after October 31, 1985.

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs.

(2) Every small business investment corporation shall at all times hold properties referred to in subparagraphs (1)(b)(i) to (iii), the aggregate of the cost amounts of which is not less than 75 per cent of the amount, if any, by which

(a) the aggregate of all amounts each of which is the amount of consideration for the issue of shares of its capital stock or debt to its shareholders or the amount of a contribution of capital by its shareholders received by it more than 90 days before that time

exceeds

(b) the aggregate of

(i) all amounts paid by it before that time to its shareholders as a return of capital or a repayment of debt, and

(ii) the amount, if any, by which the aggregate of its losses from the disposition of properties disposed of before that time exceeds the aggregate of its gains from the disposition of properties disposed of before that time.

(3) For the purposes of subsection (2), where a small business investment corporation disposes of a property referred to in subparagraphs (1)(b)(i) to (iii), it shall be deemed to continue to hold the investment for a period of 90 days following the date of the disposition.

(4) For the purposes of paragraph 149(1)(o.3) of the Act, where a small business investment corporation holds an interest in a partnership or trust that qualified as a small business investment limited partnership or small business investment trust, as the case may be, when the interest was acquired and that, but for this subsection, would cease at a subsequent time to so qualify, the interest in the partnership or trust shall be deemed to be an interest in a small business investment limited partnership or small business investment trust, as the case may be, for the 24 months immediately following the subsequent time.

Definitions [Reg. 5101]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "borrowed money", "business" — ITA 248(1); "Canadian corporation" — ITA 89(1), 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "cost amount" — ITA 248(1); "disposed", "disposes" — ITA 248(1)"disposition", "disposition" — ITA 248(1); "month" — *Interpretation Act* 35(1); "person" — ITA 248(1), Reg. 5104(6); "prescribed" — ITA 248(1); "prescribed venture capital corporation" — Reg. 6700; "property", "registered pension plan" — ITA 248(1); "related" — ITA 251(2)-(6); "share", "shareholder" — ITA 248(1); "small business investment corporation" — Reg. 5101(1); "small business investment limited partnership" — Reg. 5102(1); "small business security" — Reg. 5100(2), 5104(3), (5); "specified circumstances" — Reg. 5104(2); "specified property" — ITA 204(a), (b), (c), (f), (g), Reg. 5100(1); "trust" — ITA 104(1), 248(1), (3); "undertaking" — ITA 253.1(a).

5102. [Small business investment limited partnership] — **(1)** For the purposes of this Part and paragraph (c) of the definition "small business property" in subsection 206(1) of the Act, a partnership is a small business investment limited partnership at any time if at all times after it was formed and before that time

Proposed Amendment — Reg. 5102(1) opening words

5102. [Small business investment limited partnership] — For the purpose of this Part, a partnership is a small business investment limited partnership at any particular time if at all times after it was formed and before the particular time

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 12(1), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend the opening words of subsec. 5102(1) to read as above, deemed to have come into force June 29, 2005.

Regulatory Impact Analysis Statement: See under Reg. 5100(1)"specified property". See also under Reg. 214(5).

(a) it had only one general partner,

(b) the share of the general partner, as general partner, in any income of the partnership from any source in any place, for any period, was the same as his share, as general partner, in

(i) the income of the partnership from that source in any other place,

(ii) the income of the partnership from any other source,

(iii) the loss of the partnership from any source,

(iv) any capital gain of the partnership, and

(v) any capital loss of the partnership

for that period, except that the share of the general partner, as general partner, in the income or loss of the partnership from specified properties may differ from his share, as general partner, in the income or loss of the partnership from other sources,

(c) the share of the general partner, as general partner, in any income or loss of the partnership for any period was not less than his share, as general partner, in the income or loss of the partnership for any preceding period;

(d) the interests of the limited partners were described by reference to units of the partnership that were identical in all respects,

(e) no limited partner or group of limited partners who did not deal with each other at arm's length held more than 30 per cent of the units of the partnership and, for the purposes of this paragraph,

(i) a small business investment corporation that has not borrowed money and in which no shareholder or group of shareholders who did not deal with each other at arm's length held more than 30 per cent of the outstanding shares of any class of voting stock shall be deemed not to be a limited partner, and

(ii) the general partner shall be deemed not to hold any unit of the partnership as a limited partner, and

(f) its only undertaking was the investing of its funds and its investments consisted solely of

(i) small business securities where, except as provided in subsection 5104(1), the partnership was the first person (other than a broker or dealer in securities) to have acquired the securities and it has owned the securities continuously since they were so acquired,

(ii) property (other than small business securities) described in any of subparagraphs (f)(i) to (iv) of the definition "qualified limited partnership" in subsection 5000(7),

Proposed Amendment — Reg. 5102(1)(f)(ii)

(ii) property (other than a small business security) that is

(A) a share of the capital stock of a corporation (other than a share that is issued to the partnership and that is either a share described in section 66.3 of the Act or a share in respect of which an amount has been designated under subsection 192(4) of the Act), or

(B) a put, call, warrant or other right to acquire or sell a share described by clause (A),

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 12(2), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend subpara. 5101(2)(1)(f)(ii) to read as above, deemed to have come into force June 29, 2005.

Regulatory Impact Analysis Statement: See under Reg. 5100(1)"specified property". See also under Reg. 214(5).

(iii) specified properties, or

(iv) any combination of properties described in any of subparagraphs (i) to (iii),

(g) it has complied with subsection (2),

(h) it has not borrowed money except for the purpose of earning income from its investments and the amount of any such borrowings at any time did not exceed 20 per cent of the partnership capital at that time, and

(i) it has not accepted deposits.

History: Subpara. 5102(1)(f)(ii) added, subparas. 5102(1)(f)(ii) and (iii) renumbered as (iii) and (iv), by P.C. 1994-1074, s. 6, June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable after 1990.

Para. 5102(1)(e) substituted by P.C. 1990-1837, s. 6, August 28, 1990, *Canada Gazette*, Part II, September 12, 1990, applicable after October 31, 1985.

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs.

(2) The aggregate of the cost amounts to a small business investment limited partnership of small business securities held by it at any time shall not be less than the amount, if any, by which the aggregate of

(a) 25 per cent of the amount, if any, by which

(i) the aggregate of all amounts received by it more than 12 months before that time and not more than 24 months before that time as consideration for the issue of its units or in respect of its units

exceeds

(ii) the aggregate of all amounts paid by it before that time to its members and designated by the partnership as a return of the consideration referred to in subparagraph (i),

(b) 50 per cent of the amount, if any, by which

(i) the aggregate of all amounts received by it more than 24 months before that time and not more than 36 months before that time as consideration for the issue of its units or in respect of its units

exceeds

(ii) the aggregate of all amounts paid by it before that time to its members and designated by the partnership as a return of the consideration referred to in subparagraph (i), and

(c) 75 per cent of the amount, if any, by which

(i) the aggregate of all amounts received by it more than 36 months before that time as consideration for the issue of its units or in respect of its units

exceeds

(ii) the aggregate of all amounts paid by it before that time to its members and designated by the partnership as a return of the consideration referred to in subparagraph (i),

exceeds 75 per cent of the amount, if any, by which the aggregate of its losses from the disposition of properties disposed of before that time exceeds the aggregate of its gains from the disposition of properties disposed of before that time.

(3) For the purposes of subsection (2), where a small business investment limited partnership disposes of a small business security it shall be deemed to continue to hold the investment for a period of 90 days following the date of the disposition.

Definitions [Reg. 5102]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "borrowed money", "business" — ITA 248(1); "capital gain" — ITA 39(1), 248(1); "capital loss" — ITA 39(1)(b), 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "cost amount" — ITA 248(1); "disposed", "disposes" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "month" — *Interpretation Act* 35(1); "person" — ITA 248(1), Reg. 5104(6); "property" — ITA 248(1); "share", "shareholder" — ITA 248(1); "small business investment corporation" — Reg. 5101(1); "small business investment limited partnership" — Reg. 5102(1); "small business security" — Reg. 5100(2), 5104(3), (5); "specified property" — ITA 204(a), (b), (c), (f), (g), Reg. 5100(1).

5103. [Small business investment trust] — **(1)** For the purposes of this Part, paragraph (d) of the definition "small business property" in subsection 206(1) of the Act and subsection 259(3) of the Act, a trust is a small business investment trust at any time if at all times after it was created and before that time

Proposed Amendment — Reg. 5103(1) opening words

5103. [Small business investment trust] — For the purposes of this Part and subsection 259(3) of the Act, a trust is a small business investment trust at any particular time if at all times after it was created and before the particular time

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 13(1), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend the opening words of subsec. 5103(1) to read as above, deemed to have come into force June 29, 2005.

Regulatory Impact Analysis Statement: See under Reg. 5100(1)"specified property". See also under Reg. 214(5).

(a) it was resident in Canada;

(b) the interests of the beneficiaries under the trust were described by reference to units of the trust that were identical in all respects; and

(c) no beneficiary or group of beneficiaries who did not deal with each other at arm's length held more than 30% of the units of the trust and, for the purposes of this paragraph, a small business investment corporation that has not borrowed money and in which no shareholder or group of shareholders who did not deal with each other at arm's length held more than 30 per cent of the outstanding shares of any class of voting stock shall be deemed not to be a beneficiary;

(d) its only undertaking was the investing of its funds and its investments consisted solely of

(i) small business securities where, except as provided in subsection 5104(1), the trust was the first person (other than a broker or dealer in securities) to have acquired the securities and it has owned the securities continuously since they were so acquired,

(ii) property (other than small business securities) described in any of subparagraphs (f)(i) to (iv) of the definition "qualified limited partnership" in subsection 5000(7),

Proposed Amendment — Reg. 5103(1)(d)(ii)

(ii) property (other than a small business security) that is

(A) a share of the capital stock of a corporation (other than a share that is issued to the trust and that is either a share described in section 66.3 of the Act or a share in respect of which an amount has been designated under subsection 192(4) of the Act), or

(B) a put, call, warrant or other right to acquire or sell a share described by clause (A),

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 13(2), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend subpara. 5103(1)(d)(ii) to read as above, deemed to have come into force June 29, 2005.

Regulatory Impact Analysis Statement: See under Reg. 5100(1)"specified property". See also under Reg. 214(5).

(iii) specified properties, or

(iv) any combination of properties described in subparagraphs (i) to (iii);

(e) it has complied with subsection (2);

(f) it has not borrowed money except for the purpose of earning income from its investments and the amount of any such borrowings at any time did not exceed 20 per cent of the trust capital at that time; and

(g) it has not accepted deposits.

History: Subpara. 5103(1)(d)(ii) added, subparas. 5103(1)(d)(ii) and (iii) renumbered as (iii) and (iv), by P.C. 1994-1074, s. 7, June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable after 1990.

Interpretation Bulletins: IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs.

(2) The aggregate of the cost amounts to a small business investment trust of small business securities held by it at

any time shall not be less than the amount, if any, by which the aggregate of

(a) 25 per cent of the amount, if any, by which

(i) the aggregate of all amounts received by it more than 12 months before that time and not more than 24 months before that time as consideration for the issue of its units or in respect of its units

exceeds

(ii) the aggregate of all amounts paid by it before that time to its beneficiaries and designated by the trust as a return of the consideration referred to in subparagraph (i),

(b) 50 per cent of the amount, if any, by which

(i) the aggregate of all amounts received by it more than 24 months before that time and not more than 36 months before that time as consideration for the issue of its units or in respect of its units

exceeds

(ii) the aggregate of all amounts paid by it before that time to its beneficiaries and designated by the trust as a return of the consideration referred to in subparagraph (i), and

(c) 75 per cent of the amount, if any, by which

(i) the aggregate of all amounts received by it more than 36 months before that time as consideration for the issue of its units or in respect of its units

exceeds

(ii) the aggregate of all amounts paid by it before that time to its beneficiaries and designated by the trust as a return of the consideration referred to in subparagraph (i)

exceeds 75 per cent of the amount, if any, by which the aggregate of its losses from the disposition of properties disposed of before that time exceeds the aggregate of its gains from the disposition of properties disposed of before that time.

(3) For the purposes of subsection (2), where a small business investment trust disposes of a small business security it shall be deemed to continue to hold the investment for a period of 90 days following the date of disposition.

Definitions [Reg. 5103]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "borrowed money", "business" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "cost amount" — ITA 248(1); "disposed", "disposes" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "month" — *Interpretation Act* 35(1); "person" — ITA 248(1), Reg. 5104(6); "property" — ITA 248(1); "resident in Canada" — ITA 250; "share", "shareholder" — ITA 248(1); "small business investment corporation" — Reg. 5101(1); "small business security" — Reg. 5100(2), 5104(3), (5); "specified property" — ITA 204(a), (b), (c), (f), (g), Reg. 5100(1); "trust" — ITA 104(1), 248(1), (3).

5104. (1) Notwithstanding paragraph (b) of the definition "qualifying obligation" in subsection 5100(1) and paragraphs 5101(1)(b), 5102(1)(f) and 5103(1)(d), the corporation, partnership or trust, as the case may be, may acquire a small business security that another person (other than a broker or dealer in securities) had previously acquired if

(a) the small business security is a share of the capital stock of an eligible corporation having full voting rights under all circumstances; and

(b) except where the share was acquired in specified circumstances within the meaning of subsection (2), the share was acquired from an officer or employee of the eligible corporation or a person related to the officer or employee.

(2) For the purposes of this Part,

(a) where a person acquires a share of a corporation

(i) as part of a proposal to, or an arrangement with, the corporation's creditors that has been approved by a court under the *Bankruptcy [and Insolvency] Act* or the *Companies' Creditors Arrangement Act,*

(ii) at a time when all or substantially all of the corporation's assets were under the control of a receiver, receiver-manager, sequestrator or trustee in bankruptcy, or

(iii) at a time when, by reason of financial difficulty, the corporation was in default, or could reasonably be expected to default, on a debt obligation held by a person with whom the corporation was dealing at arm's length,

the person shall be deemed, at any time within 36 months after he acquired the share, to have acquired it in specified circumstances;

(b) where a person acquires a share of a corporation for the purposes of facilitating the disposition of the entire investment of the person in the corporation, the person shall be deemed, at any time within 12 months after he acquired the share, to have acquired it in specified circumstances; and

(c) a qualified trust (within the meaning assigned by subsection 259(3) of the Act) is deemed not to hold any property for any period in respect of which subsection 259(1) of the Act is applicable.

History: Para. 5104(2)(c) added by P.C. 1990-1837, s. 7, August 28, 1990, *Canada Gazette*, Part II, September 12, 1990, applicable after October 31, 1985.

Paras. 5104(2)(a) and (b) substituted by P.C. 1986-2590, s. 14, November 20, 1986, *Canada Gazette*, Part II, December 10, 1986, applicable after October 31, 1985.

(3) Where the purchaser of a property that, but for this subsection, would at the time of its acquisition be a small business security (or, where the purchaser is a partnership, a member thereof) knew at the time of acquisition that the issuer of the security would, within the immediately following 12 months, cease to qualify as an eligible corporation, the property shall be deemed never to have been a small business security of the purchaser.

(4) Where a person who holds a share of or an interest in a corporation, partnership or trust that, but for this subsection, would be a small business investment corporation, small business investment limited partnership or small business investment trust knew at the time of issue of the share or interest, as the case may be, or at the time of making any contribution in respect of the share or interest, that

(a) a substantial portion of

(i) the consideration for the issue of the share or interest, or

(ii) the contribution in respect of the share or interest

would not be invested by the corporation, partnership or trust, as the case may be, directly or indirectly in small business securities, and

(b) all or substantially all of

(i) the consideration for the issue of the share or interest, or

(ii) the contribution in respect of the share or interest

would be returned to the purchaser within the immediately following 24 months,

the corporation, partnership or trust shall be deemed to have ceased at that time to be a small business investment corporation, small business investment limited partnership or small business investment trust.

(5) Where, but for this subsection, a property that qualified as a small business security when it was acquired would cease at a subsequent time to so qualify, the property shall be deemed to be a small business security for the 24 months immediately following the subsequent time.

(6) For the purposes of this Part, a partnership shall be deemed to be a person.

Definitions [Reg. 5104]: "arm's length" — ITA 251(1); "business" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "disposition" — ITA 248(1); "eligible corporation" — Reg. 5100(1); "employee" — ITA 248(1); "month" — *Interpretation Act* 35(1); "officer" — ITA 248(1); "person" — ITA 248(1), Reg. 5104(6); "property" — ITA 248(1); "related" — ITA 251(2)-(6); "share" — ITA 248(1); "small business investment corporation" — Reg. 5101(1); "small business investment limited partnership" — Reg. 5102(1); "small business security" — Reg. 5100(2), 5104(3), (5); "specified circumstances" — Reg. 5104(2), (2)(b); "trust" — ITA 104(1), 248(1), (3).

PART LII — CANADIAN MANUFACTURING AND PROCESSING PROFITS

History: Part LII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

5200. Basic formula — Subject to section 5201, for the purposes of paragraph 125.1(3)(a) [125.1(3)"Canadian manufacturing and processing profits"] of the Act, "Canadian manufacturing and processing profits" of a corporation for a taxation year are hereby prescribed to be that proportion of the corporation's adjusted business income for the year that

(a) the aggregate of its cost of manufacturing and processing capital for the year and its cost of manufacturing and processing labour for the year,

is of

(b) the aggregate of its cost of capital for the year and its cost of labour for the year.

Definitions [Reg. 5200]: "adjusted business income" — Reg. 5202, 5203(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "cost of capital", "cost of labour" — Reg. 5202, 5203(1), 5204; "cost of manufacturing and processing capital", "cost of manufacturing and processing labour" — Reg. 5202, 5204; "prescribed" — ITA 248(1); "taxation year" — ITA 249.

Interpretation Bulletins: IT-145R: Canadian manufacturing and processing profits — reduced rate of corporate tax.

5201. Small manufacturers' rule — For the purposes of paragraph 125.1(3)(a) [125.1(3)"Canadian manufacturing and processing profits"] of the Act, "Canadian manufacturing and processing profits" of a corporation for a taxation year are hereby prescribed to be equal to the corporation's adjusted business income for the year where

(a) the activities of the corporation during the year were primarily manufacturing or processing in Canada of goods for sale or lease;

(b) the aggregate of

(i) the aggregate of all amounts each of which is the income of the corporation for the year from an active business minus the aggregate of all amounts each of which is the loss of the corporation for the year from an active business, and

(ii) if the corporation is associated in the year with a Canadian corporation, the aggregate of all amounts each of which is the income of the latter corporation from an active business for its taxation year coinciding with or ending in the year,

did not exceed $200,000;

(c) the corporation was not engaged in any of the activities listed in subparagraphs 125.1(3)(b)(i) to (ix) [125.1(3)"manufacturing or processing"(a) to (k)] of the Act at any time during the year;

(c.1) the corporation was not engaged in the processing of ore (other than iron ore or tar sands) from a mineral resource located outside Canada to any stage that is not beyond the prime metal stage or its equivalent;

(c.2) the corporation was not engaged in the processing of iron ore from a mineral resource located outside Canada to any stage that is not beyond the pellet stage or its equivalent;

(c.3) the corporation was not engaged in the processing of tar sands located outside Canada to any stage that is not beyond the crude oil stage or its equivalent; and

(d) the corporation did not carry on any active business outside Canada at any time during the year.

History: Paras. 5201(c.1) to (c.3) added by P.C. 1994-230, s. 5, February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to 1990 *et seq.*

All that portion of para. 5201(b) following subpara. (ii) substituted by P.C. 1982-3198, October 21, 1982, *Canada Gazette*, Part II, November 10, 1982, applicable to 1982 *et seq.*

Definitions [Reg. 5201]: "active business" — ITA 248(1); "adjusted business income" — Reg. 5202, 5203(1); "amount" — ITA 248(1); "associated" — ITA 256; "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian corporation" — ITA 89(1), 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "mineral resource", "prescribed", "tar sands" — ITA 248(1); "taxation year" — ITA 249.

5202. Interpretation — In this Part, except as otherwise provided in section 5203 or 5204,

"adjusted business income" of a corporation for a taxation year means the amount, if any, by which

(a) the aggregate of all amounts each of which is the income of the corporation for the year from an active business carried on in Canada

exceeds

(b) the aggregate of all amounts each of which is the loss of the corporation for the year from an active business carried on in Canada;

"Canadian resource profits" has the meaning that would be assigned to the expression "resource profits" by section 1204 if

(a) section 1204 were read without reference to subparagraph 1204(1)(b)(iv), and

(b) the definition "resource activity" in subsection 1206(1) were read without reference to paragraph (d) of that definition;

History: The definition "Canadian resource profits" in s. 5202 amended by P.C. 1996-1488, s. 6, September 24, 1996, *Canada Gazette*, Part II, October 16, 1996, applicable to taxation years that begin after December 20, 1991.

"Canadian resource profits" added by P.C. 1994-230, s. 6, February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to 1990 *et seq.*

"cost of capital" of a corporation for a taxation year means an amount equal to the aggregate of

(a) 10 per cent of the aggregate of all amounts each of which is the gross cost to the corporation of a property referred to in paragraph 1100(1)(e), (f), (g) or (h), paragraph 1102(1)(d) or (g) or Schedule II that

(i) was owned by the corporation at the end of the year, and

(ii) was used by the corporation at any time during the year, and

(b) the aggregate of all amounts each of which is the rental cost incurred by the corporation during the year for the use of any property a portion of the gross cost of which would be included by virtue of paragraph (a) if the property were owned by the corporation at the end of the year,

but for the purposes of this definition, the gross cost of a property or rental cost for the use of any property does not include that portion of those costs that reflects the extent to which the property was used by the corporation during the year

(c) in an active business carried on outside Canada, or

(d) to earn Canadian investment income or foreign investment income as defined in subsection 129(4) of the Act;

"cost of labour" of a corporation for a taxation year means an amount equal to the aggregate of

(a) the salaries and wages paid or payable during the year to all employees of the corporation for services performed during the year, and

(b) all other amounts each of which is an amount paid or payable during the year for the performance during the year, by any person other than an employee of the corporation, of functions relating to

(i) the management or administration of the corporation,

(ii) scientific research and experimental development, or

(iii) a service or function that would normally be performed by an employee of the corporation,

but for the purposes of this definition, the salaries and wages referred to in paragraph (a) or other amounts referred to in paragraph (b) do not include that portion of those amounts that

(c) was included in the gross cost to the corporation of a property (other than a property that was manufactured by the corporation and leased during the year by the corporation to another person) that was included in computing the cost of capital of the corporation for the year, or

(d) was related to an active business carried on outside Canada by the corporation;

History: Subpara. (b)(ii) of the definition 5202"cost of labour" amended by P.C. 2000-1095, s. 2, July 27, 2000, *Canada Gazette*, Part II, August 16, 2000, applicable to costs incurred after Feburary 27, 1995.

"cost of manufacturing and processing capital" of a corporation for a taxation year means 100/85 of that portion of the cost of capital of the corporation for that year that reflects the extent to which each property included in the calculation thereof was used directly in qualified activities of the corporation during the year, but the amount so calculated shall not exceed the cost of capital of the corporation for the year;

"cost of manufacturing and processing labour" of a corporation for a taxation year means 100/75 of that portion of the cost of labour of the corporation for that year that reflects the extent to which

(a) the salaries and wages included in the calculation thereof were paid or payable to persons for the portion of their time that they were directly engaged in qualified activities of the corporation during the year, and

(b) the other amounts included in the calculation thereof were paid or payable to persons for the performance of functions that would be directly related to qualified activities of the corporation during the year if those persons were employees of the corporation,

but the amount so calculated shall not exceed the cost of labour of the corporation for the year;

"gross cost" to a particular person of a property at any time means, in respect of property that has become available for use by the particular person for the purposes of subsection 13(26) of the Act, the capital cost to the particular person of the property computed without reference to subsections 13(7.1), (7.4) and (10), sections 21 and 80 and paragraph 111(4)(e) of the Act and, in respect of any other property, nil, and where the particular person acquired the property

(a) in the course of a reorganization in respect of which, if a dividend were received by the particular person in the course of the reorganization, subsection 55(2) of the Act would not apply to the dividend by reason of the application of paragraph 55(3)(b) of the Act, or

(b) from another person with whom the particular person was not dealing at arm's length (otherwise than by reason of a right referred to in paragraph 251(5)(b) of the Act) immediately after the property was acquired,

the capital cost to the particular person of the property for the purposes of this definition shall be computed as if the property had been acquired at a capital cost equal to the gross cost of the property to the person from whom the property was acquired by the particular person;

History: "Gross cost" amended by P.C. 1994-139, subsec. 12(1), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1985 *et seq.*, except that

(a) where the taxpayer so elects by notifying the Minister of National Revenue in writing on or before the day on or before which the taxpayer is, or would be if a tax under Part I of the *Income Tax Act* were payable by the taxpayer, required by s. 150 to file a return of income for the taxpayer's first taxation year ending after February 9, 1994,

(i) for taxation years ending before January 16, 1987, "gross cost" shall be read without reference to the words "and paragraph 111(4)(e)", and

(ii) for taxation years ending before February 9, 1994, all that portion of "gross cost" preceding para. (a) shall be read as follows:

"gross cost" to a particular person of a property at any time means the capital cost to the particular person of the property computed without reference to subsections 13(7.1), (7.4) and (10), sections 21 and 80 and paragraph 111(4)(e) of the Act and, where the particular person acquired the property

(b) for taxation years ending before January 16, 1987, where the taxpayer has not elected under paragraph (a), the definition shall be read as follows:

"gross cost" of a property means the capital cost of the property computed without reference to subsections 13(7.1), (7.4) and (10) and sections 21 and 80 of the Act;

(c) for taxation years ending after January 15, 1987 and before February 9, 1994, where the taxpayer has not elected under paragraph (a), the definition shall be read as follows:

"gross cost" of a property means the capital cost of the property computed without reference to subsections 13(7.1), (7.4) and (10), sections 21 and 80 and paragraph 111(4)(e) of the Act;

"qualified activities" means

(a) any of the following activities, when they are performed in Canada in connection with manufacturing or processing (not including the activities listed in subparagraphs 125.1(3)(b)(i) to (ix) [125.1(3)"manufacturing or processing"(a) to (k)] of the Act) in Canada of goods for sale or lease:

(i) engineering design of products and production facilities,

(ii) receiving and storing of raw materials,

(iii) producing, assembling and handling of goods in process,

(iv) inspecting and packaging of finished goods,

(v) line supervision,

(vi) production support activities including security, cleaning, heating and factory maintenance,

(vii) quality and production control,

(viii) repair of production facilities, and

(ix) pollution control,

(b) all other activities that are performed in Canada directly in connection with manufacturing or processing (not including the activities listed in subparagraphs 125.1(3)(b)(i) to (ix) [125.1(3)"manufacturing or processing"(a) to (k)] of the Act) in Canada of goods for sale or lease, and

(c) scientific research and experimental development, as defined in section 2900, carried on in Canada,

but does not include any of

(d) storing, shipping, selling and leasing of finished goods,

(e) purchasing of raw materials,

(f) administration, including clerical and personnel activities,

(g) purchase and resale operations,

(h) data processing, and

(i) providing facilities for employees, including cafeterias, clinics and recreational facilities;

History: "Qualified activities" amended by P.C. 1994-139, subsec. 12(2), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to scientific research and experimental development done or carried on after December 23, 1991, other than scientific research and experimental development done or carried on by or on behalf of a taxpayer pursuant to an agreement in writing entered into by the taxpayer before December 24, 1991.

"rental cost" of a property means the rents incurred for the use of that property;

"resource profits" has the meaning assigned by section 1204;

History: The definition "resource profits" amended by P.C. 1996-1488, s. 6, September 24, 1996, *Canada Gazette*, Part II, October 16, 1996, applicable to taxation years that begin after December 20, 1991.

"Resource profits" added by P.C. 1994-230, s. 6, February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to 1990 *et seq.*

"salaries and wages" means salaries, wages and commissions, but does not include any other type of remuneration, any superannuation or pension benefits, any retiring allowances or any amount referred to in section 6 or 7 of the Act;

"specified percentage" for a taxation year means

(a) where the year commences after 1998, 100%, and

(b) in any other case, the total of

(i) that proportion of 10% that the number of days in the year that are in 1990 is of the number of days in the year,

(ii) that proportion of 20% that the number of days in the year that are in 1991 is of the number of days in the year,

(iii) that proportion of 30% that the number of days in the year that are in 1992 is of the number of days in the year,

(iv) that proportion of 50% that the number of days in the year that are in 1993 is of the number of days in the year,

(v) that proportion of 64.3% that the number of days in the year that are in 1994 is of the number of days in the year,

(vi) that proportion of 71.4% that the number of days in the year that are in 1995 is of the number of days in the year,

(vii) that proportion of 78.6% that the number of days in the year that are in 1996 is of the number of days in the year,

(viii) that proportion of 85.7% that the number of days in the year that are in 1997 is of the number of days in the year,

(ix) that proportion of 92.9% that the number of days in the year that are in 1998 is of the number of days in the year, and

(x) that proportion of 100% that the number of days in the year that are in 1999 is of the number of days in the year.

History: "Specified percentage" added by P.C. 1994-230, s. 6, February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to 1990 *et seq.*

Selected Cases [Reg. 5202]: *Range Grain Co. v. R.*, [1997] 2 C.T.C. 227 (FCTD) (Maintaining grain in condition not "processing" but incidental to transportation).

Definitions [Reg. 5202]: "active business", "amount" — ITA 248(1); "arm's length" — ITA 251(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "cost of capital", "cost of labour" — Reg. 5202, 5203(1), 5204; "dividend", "employee" — ITA 248(1); "gross cost" — Reg. 5202, 5204; "person", "property" — ITA 248(1); "qualified activities" — Reg. 5202; "related" — ITA 251(2)–(6); "rental cost" — Reg. 5202; "retiring allowance" — ITA 248(1); "salaries and wages" — ITA 248(1), Reg. 5202; "scientific research and experimental development" — ITA 248(1); "superannuation or pension benefit" — ITA 248(1); "taxation year" — ITA 249.

5203. Resource income — (1) Where a corporation has resource activities for a taxation year the following rules apply, except as otherwise provided in section 5204

"adjusted business income" of the corporation for the year means the amount, if any, by which

(a) the amount otherwise determined under section 5202 to be the adjusted business income of the corporation for the year

exceeds the total of

(b) the amount, if any, by which the corporation's net resource income for the year exceeds the corporation's net resource adjustment for the year,

(c) all amounts each of which is an amount in respect of refund interest included in computing the taxpayer's income for the year, to the extent that the amount is included in the amount otherwise determined to be the adjusted business income, within the meaning of section 5202, of the corporation for the year, and

(d) all amounts each of which is included under paragraph 12(1)(z.5) in computing the taxpayer's income for the year;

Proposed Repeal [effective 2007] — Reg. 5203(1)"adjusted business income"(d)

Application: The June 9, 2003 draft regulations (natural resources), subsec. 9(1), will repeal para. (d) of the definition "adjusted business income" in subsec. 5203(1), applicable to taxation years that begin after 2006.

Technical Notes: The definition of "adjusted business income" in subsection 5203(1) and paragraph 5203(2)(a) are amended consequential upon the repeal of paragraphs 12(1)(z.5) and 20(1)(v.1) of the Act for taxation years that being after 2006. Paragraphs 5203(4)(b) and (c) are repealed applicable to taxation years that begin after 2006, consequential upon the repeal of paragraphs 12(1)(o) and 18(1)(m) of the Act as of that date.

Related Provisions: Reg. 5203(3.1) — Net resource adjustment.

History: Para. (b) of the definition "adjusted business income" in subsec. 5203(1) amended by P.C. 1999-629, subsec. 11(1), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to taxation years that begin after December 20, 1991.

Para. (d) added to the definition "adjusted business income" in subsec. 5203(1) by the said P.C. 1999-629, subsec. 11(2), applicable to taxation years that begin after 1996.

That portion of the definition of "adjusted business income" in subsec. 5203(1) after para. (a) amended, and para. (c) added, by P.C. 1996-1488, subsec. 7(1), September 24, 1996, *Canada Gazette*, Part II, October 16, 1996, applicable to taxation years that end after March 6, 1996.

"cost of capital" of the corporation for the year means the amount, if any, by which

(a) the amount otherwise determined under section 5202 to be the cost of capital of the corporation for the year

exceeds

(b) that portion of the gross cost of property or rental cost for the use of property included in computing the cost of capital of the corporation for the year that reflects the extent to which the property was used by the corporation during the year,

(i) in activities engaged in for the purpose of earning Canadian resource profits of the corporation, or

(ii) in activities referred to in subparagraph 66(15)(b)(i), (ii) or (v) [66(15)"Canadian exploration and development expenses"(a), (b) or (e)], subparagraph 66(15)(e)(i) or (ii) [66(15)"foreign exploration and development expenses"(a) or (b)], subparagraph 66.1(6)(a)(i), (ii), (iii) or (v) [66.1(6)"Canadian exploration expense"(a), (c), (f) or (i)] or subparagraph 66.2(5)(a)(i), (ii) or (v) [66.2(5)"Canadian development expense"(a), (c) or (g)] of the Act;

History: Subpara. (b)(i) of "cost of capital" amended by P.C. 1994-230, subsec. 7(1), February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to 1990 *et seq.*

Subpara. (b)(ii) of the definition "cost of capital" substituted by P.C. 1978-1315, s. 14, April 20, 1978, *Canada Gazette*, Part II, May 10, 1978, effective on and after May 7, 1974.

"cost of labour" of the corporation for the year means the amount, if any, by which

(a) the amount otherwise determined under section 5202 to be the cost of labour of the corporation for the year

exceeds

(b) that portion of the salaries and wages and other amounts included in computing the cost of labour of the corporation for the year that,

(i) was related to the activities engaged in for the purpose of earning Canadian resource profits of the corporation, or

(ii) was included in the Canadian exploration and development expenses, foreign exploration and development expenses, Canadian exploration expense or Canadian development expense, within the meanings assigned by paragraphs 66(15)(b) and (e) [66(15)"Canadian exploration and development expenses" and "foreign exploration and development expenses"], paragraph 66.1(6)(a) [66.1(6)"Canadian exploration expense"] and 66.2(5)(a) [66.2(5)"Canadian development expense"] of the Act respectively, of the corporation.

History: Subpara. (b)(i) of "cost of labour" amended by P.C. 1994-230, subsec. 7(2), February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to 1990 *et seq.*

(2) ["Resource activities"] — For the purposes of subsection (1), a corporation has "resource activities" for a taxation year if

(a) in computing its income for the year, an amount is deductible pursuant to paragraph 20(1)(v.1) or section 65, 66, 66.1 or 66.2 of the Act;

Proposed Amendment [effective 2007] — Reg. 5203(2)(a)

(a) in computing its income for the year, an amount is deductible pursuant to any of sections 65 to 66.2 of the Act;

Application: The June 9, 2003 draft regulations (natural resources), subsec. 9(2), will amend para. 5203(2)(a) to read as above, applicable to taxation years that begin after 2006.

Technical Notes: See under Reg. 5203(1)"adjusted business income"(d) above.

(b) the corporation was at any time during the year engaged in activities for the purpose of earning resource profits of the corporation; or

(c) in computing the corporation's income for the year, an amount was included pursuant to section 59 of the Act.

History: Para. 5203(2)(b) amended by P.C. 1994-230, subsec. 7(3), February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to 1990 *et seq.*

(3) ["Net resource income"] — In subsection (1), "net resource income" of a corporation for a taxation year means the amount, if any, by which the total of

(a) the resource profits of the corporation for the year, and

(b) the amount, if any, by which

(i) the total of amounts included in computing the income of the corporation for the year, from an active business carried on in Canada, pursuant to section 59 of the Act (other than amounts that may reasonably be regarded as having been included in computing the resource profits of the corporation for the year),

exceeds

(ii) the total of amounts deducted in computing the income of the corporation for the year under section 64 of the Act, as that section applies with respect to dispositions occurring before November 13, 1981 and to dispositions occurring after November 12, 1981 pursuant to the terms in existence on that date of an offer or agreement in writing made or entered into on or before that date, except those amounts that may reasonably be regarded as having been deducted in computing the resource profits of the corporation for the year,

exceeds the total of

(c) the total of amounts deducted in computing the income of the corporation for the year under section 65 of the Act (other than amounts that may reasonably be regarded as having been deducted in computing the resource profits of the corporation for the year), and

(d) the specified percentage for the year of the amount, if any, by which

(i) the corporation's resource profits for the year

exceeds the total of

(ii) the corporation's Canadian resource profits for the year, and

(iii) the earned depletion base (within the meaning assigned by subsection 1205(1)) of the corporation at the beginning of its immediately following taxation year.

History: Subsec. 5203(3) substituted by P.C. 1994-230, subsec. 7(4), February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to 1990 *et seq.*

(3.1) ["Net resource adjustment"] — In subsection (1), the net resource adjustment of a corporation for a taxation year is the amount determined by the formula

$$A - B$$

where

A is the amount of Canadian resource profits of the corporation for the year, and

B is the amount that would be the Canadian resource profits of the corporation for the year if

(a) subsections 1204(1) and (1.1) provided for the computation of negative amounts where the amounts subtracted in computing gross resource profits (as defined by subsection 1204(1)) and resource profits exceed the amounts added in computing those amounts, and

(b) paragraph 1206(3)(a) applied so that a negative amount of resource profits of a partnership for a fiscal period that ended in the year were, to the extent of the corporation's share thereof, deducted in computing the corporation's resource profits for the year.

Related Provisions: ITA 257 — Negative amounts in formulas.

History: Subsec. 5203(3.1) added by P.C. 1999-629, subsec. 11(3), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to taxation years that begin after December 20, 1991.

(4) ["Refund interest"] — For the purpose of subsection 5203(1), "refund interest" means an amount that is received, or that becomes receivable, after March 6, 1996

(a) from an authority (including a government or municipality) situated in Canada as a consequence of the overpayment of a tax that was not deductible under the Act in computing any taxpayer's income and that was imposed by an Act of Canada or a province or a bylaw of a municipality;

(b) from a person described in subparagraph 18(1)(m)(i), (ii) or (iii) of the Act as a consequence of the overpayment of an amount that, because of paragraph 18(1)(m) of the Act, was not deductible under the Act in computing any taxpayer's income; or

(c) from a person described in subparagraph 18(1)(m)(i), (ii) or (iii) of the Act as a consequence of the receipt of an amount that was in excess of the amount to which the person was entitled and in respect of an amount that was required to be included in computing any taxpayer's income because of paragraph 12(1)(o) of the Act.

Proposed Amendment [effective 2007] — Reg. 5203(4)

(4) ["Refund interest"] — For the purpose of subsection (1), "refund interest" means an amount that is received, or that becomes receivable, after March 6, 1996 from an authority (including a government or municipality) situated in Canada as a consequence of the overpayment of a tax that was not deductible under the Act in computing any taxpayer's income and that was imposed by an Act of Canada or a province or a bylaw of a municipality.

Application: The June 9, 2003 draft regulations (natural resources), subsec. 9(3), will amend subsec. 5203(4) to read as above, applicable to taxation years that begin after 2006.

Technical Notes: See under Reg. 5203(1)"adjusted business income"(d) above.

History: Subsec. 5203(4) added by P.C. 1996-1488, subsec. 7(2), September 24, 1996, *Canada Gazette*, Part II, October 16, 1996, applicable to taxation years that end after March 6, 1996.

Definitions [Reg. 5203]: "active business" — ITA 248(1); "adjusted business income" — Reg. 5202, 5203(1); "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian development expense" — ITA 66.2(5), 248(1); "Canadian exploration and development expenses" — ITA 66(15), 248(1); "Canadian exploration expense" — ITA 66.1(6), 248(1); "Canadian resource profits" — Reg. 5202; "corporation" — ITA 248(1), *Interpretation Act* 35(1); "cost of capital", "cost of labour" — Reg. 5202, 5203(1), 5204; "disposition" — ITA 248(1); "foreign exploration and development expenses" — ITA 66(15), 248(1); "gross cost" — Reg. 5202, 5204; "net resource adjustment" — Reg. 5203(3.1); "net resource income — Reg. 5203(3); "person", "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "refund interest" — Reg. 5203(4); "related" — ITA 251(2)-(6); "rental cost" — Reg. 5202; "resource activities — Reg. 5203(2); "resource profits" — Reg. 5202; "salaries and wages" — ITA 248(1), Reg. 5202; "specified percentage" — Reg. 5202; "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

5204. Partnerships — Where a corporation is a member of a partnership at any time in a taxation year of the corporation, the following rules apply:

"cost of capital" of the corporation for the year means an amount equal to the aggregate of

(a) 10 per cent of the aggregate of all amounts each of which is the gross cost to the corporation of a property referred to in paragraph 1100(1)(e), (f), (g) or (h), paragraph 1102(1)(d) or (g) or Schedule II that

(i) was owned by the corporation at the end of the year, and

(ii) was used by the corporation at any time during the year,

(b) the aggregate of all amounts each of which is the rental cost incurred by the corporation during the year for the use of any property a portion of the gross cost of which would be included by virtue of paragraph (a) if the property were owned by the corporation at the end of the year, and

(c) that proportion of the aggregate of the amounts that would be determined under paragraphs (a) and (b) in respect of the partnership for its fiscal period coinciding with or ending in the taxation year of the corporation if the references in those paragraphs to "the corporation" were read as references to "the partnership" and the references in those paragraphs to "the year" were read as references to "the fiscal period of the partnership coinciding with or ending in the year", that

(i) the corporation's share of the income or loss of the partnership for that fiscal period

is of

(ii) the income or loss of the partnership for that fiscal period, as the case may be,

but for the purposes of this definition, the gross cost of a property or rental cost for the use of any property does not include that portion of those costs that reflects the extent to which the property was used by the corporation during the year or by the partnership during its fiscal period coinciding with or ending in the year

(d) in an active business carried on outside Canada,

(e) to earn Canadian investment income or foreign investment income as defined in subsection 129(4) of the Act on the assumption that subsection 129(4) of the Act applied to a partnership as well as to a corporation,

(f) in activities engaged in for the purpose of earning Canadian resource profits of the corporation or the partnership, as the case may be, or

(g) in activities referred to in subparagraph 66(15)(b)(i), (ii) or (v) [66(15)"Canadian exploration and development expenses"(a), (b) or (e)], subparagraph 66(15)(e)(i) or (ii) [66(15)"foreign exploration and development expenses"(a) or (b)], subparagraph 66.1(6)(a)(i), (ii), (iii) or (v) [66.1(6)"Canadian exploration expense"(a), (c), (f) or (i)] or subparagraph 66.2(5)(a)(i), (ii) or (v) [66.2(5)"Canadian development expense"(a), (c) or (g)] of the Act;

History: Para. (f) of "cost of capital" substituted by P.C. 1994-230, subsec. 8(1), February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to 1990 *et seq.*

Para. (g) of the definition "cost of capital" substituted by P.C. 1978-1315, s. 14, April 20, 1978, *Canada Gazette*, Part II, May 10, 1978, effective on and after May 7, 1974.

"cost of labour" of the corporation for the year means an amount equal to the aggregate of

(a) the salaries and wages paid or payable during the year to all employees of the corporation for services performed during the year,

(b) all other amounts each of which is an amount paid or payable during the year for the performance during the year, by any person other than an employee of the corporation, of functions relating to

(i) the management or administration of the corporation,

(ii) scientific research as defined in section 2900, or

(iii) a service or function that would normally be performed by an employee of the corporation, and

(c) that proportion of the aggregate of the amounts that would be determined under paragraphs (a) and (b) in respect of the partnership for its fiscal period coinciding with or ending in the taxation year of the corporation if the references in those paragraphs to the "corporation" were read as references to "the partnership" and the references in those paragraphs to "the year" were read as references to "the fiscal period of the partnership coinciding with or ending in the year", that

(i) the corporation's share of the income or loss of the partnership for that fiscal period

is of

(ii) the income or loss of the partnership for that fiscal period, as the case may be,

but for the purposes of this definition, the salaries and wages referred to in paragraph (a) or other amounts referred to in paragraph (b), of the corporation or the partnership, as the case may be, do not include that portion of those amounts that

(d) was included in the gross cost to the corporation or partnership of a property (other than a property that was manufactured by the corporation or partnership and leased during the year by the corporation or the partnership to another person) that was included in computing the cost of capital of the corporation for the year,

(e) was related to an active business carried on outside Canada by the corporation or the partnership,

(f) was related to the activities engaged in for the purpose of earning Canadian resource profits of the corporation or the partnership, as the case may be, or

History: Para. (f) of "cost of labour" substituted by P.C. 1994-230, subsec. 8(2), February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to 1990 *et seq.*

(g) was included in the Canadian exploration and development expenses, foreign exploration and development expenses, Canadian exploration expense or Canadian development expense, within the meanings assigned by paragraphs 66(15)(b) and (e) [66(15)"Canadian exploration and development expenses" and "foreign exploration and development expenses"], 66.1(6)(a) [66.1(6)"Canadian exploration expense"] and 66.2(5)(a) [66.2(5)"Canadian development expense"] of the Act respectively, of the corporation;

"cost of manufacturing and processing capital" of the corporation for the year means 100/85 of that portion of the cost of capital of the corporation for that year that reflects the extent to which each property included in the

calculation thereof was used directly in qualified activities

(a) of the corporation during the year, or

(b) of the partnership during its fiscal period coinciding with or ending in the year, as the case may be,

but the amount so calculated shall not exceed the cost of capital of the corporation for the year;

"cost of manufacturing and processing labour" of the corporation for the year means 100/75 of that portion of the cost of labour of the corporation for that year that reflects the extent to which

(a) the salaries and wages included in the calculation thereof were paid or payable to persons for the portion of their time that they were directly engaged in qualified activities

(i) of the corporation during the year, or

(ii) of the partnership during its fiscal period coinciding with or ending in the year, and

(b) the other amounts included in the calculation thereof were paid or payable to persons for the performance of functions that would be directly related to qualified activities

(i) of the corporation during the year, or

(ii) of the partnership during its fiscal period coinciding with or ending in the year,

if those persons were employees of the corporation or the partnership, as the case may be,

but the amount so calculated shall not exceed the cost of labour of the corporation for the year;

"gross cost" of a property at any time means

(a) in respect of a property that has become available for use by the partnership for the purposes of subsection 13(26) of the Act, the capital cost to the partnership of the property computed without reference to subsections 13(7.1), (7.4) and (10) and sections 21 and 80 of the Act, and

(b) in respect of any other property of the partnership, nil

and, for the purposes of paragraph (a), where the partnership acquired the property from a person who was a majority interest partner of the partnership (within the meaning assigned by subsection 97(3.1) of the Act) immediately after the property was acquired, the capital cost to the partnership of the property shall be computed as if the property had been acquired at a capital cost equal to the gross cost to the person of the property, except that where the property was partnership property on December 31, 1971, its gross cost shall be its capital cost to the partnership as determined under subsection 20(3) or (5) of the *Income Tax Application Rules*.

History: "Gross cost" amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

"Gross cost" substituted by P.C. 1994-139, s. 13, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1985 *et seq.*, except that

(a) where the taxpayer so elects by notifying the Minister of National Revenue in writing on or before the day on or before which the taxpayer is, or would be if a tax under Part I of the *Income Tax Act* were payable by the taxpayer, required by s. 150 to file a return of income for the taxpayer's first taxation year ending after February 9, 1994, it shall be read as follows for taxation years ending before February 9, 1994:

"gross cost" of a property at any time means in respect of a property of the partnership, the capital cost to the partnership of the property computed without reference to subsections 13(7.1), (7.4) and (10) and sections 21 and 80 of the Act, and, where the partnership acquired the property from a person who was a majority interest partner of the partnership (within the meaning assigned by subsection 97(3.1) of the Act) immediately after the property was acquired, the capital cost to the partnership of the property shall be computed as if the property had been acquired at a capital cost equal to the gross cost to the person of the property, except that where the property was partnership property on December 31, 1971 its gross cost shall be its capital cost to the partnership as determined under subsection 20(3) or (5) of the *Income Tax Application Rules,1971*.

(b) for taxation years ending before January 16, 1987 where the taxpayer has not elected under para. (a), it shall be read as follows:

"gross cost" of a property means the capital cost of the property computed without reference to subsections 13(7.1), (7.4) and (10) and sections 21 and 80 of the Act, except that where a property was partnership property on December 31, 1971, its gross cost shall be its capital cost to the partnership as determined under subsection 20(3) or (5) of the *Income Tax Application Rules, 1971*;

(c) for taxation years ending after January 15, 1987 and before February 9, 1994, where the taxpayer has not elected under para. (a), it shall be read as follows:

"gross cost" of a property means the capital cost of the property computed without reference to subsections 13(7.1), (7.4) and (10), sections 21 and 80 and paragraph 111(4)(e) of the Act, except that where a property was partnership property on December 31, 1971, its gross cost shall be its capital cost to the partnership as determined under subsection 20(3) or (5) of the *Income Tax Application Rules, 1971*.

Definitions [Reg. 5204]: "active business", "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian development expense" — ITA 66.2(5), 248(1); "Canadian exploration and development expenses" — ITA 66(15), 248(1); "Canadian exploration expense" — ITA 66.1(6), 248(1); "Canadian resource profits" — Reg. 5202; "corporation" — ITA 248(1), *Interpretation Act* 35(1); "cost of capital", "cost of labour" — Reg. 5202, 5203(1), 5204; "employee" — ITA 248(1); "fiscal period" — ITA 249.1; "foreign exploration and development expenses" — ITA 66(15), 248(1); "gross cost" — Reg. 5202, 5204; "majority interest partner" — ITA 248(1); "person", "property" — ITA 248(1); "qualified activities" — Reg. 5202; "related" — ITA 251(2)–(6); "rental cost" — Reg. 5202; "salaries and wages" — ITA 248(1), Reg. 5202; "share" — ITA 248(1); "taxation year" — ITA 249.

PART LIII — INSTALMENT BASE

History: Part LIII (ss. 5300, 5301) substituted by P.C. 1981-2931, s. 1, October 22, 1981, *Canada Gazette*, Part II, November 11, 1981, applicable by s. 2 as follows:

(1) Para. 5300(1)(d) applicable to 1980 *et seq.*

(2) Subsecs. 5301(1)–(5) effective in respect of instalments of tax required to be paid for taxation years commencing after October 28, 1980.

(3) Subsecs. 5301(6)–(9) effective in respect of taxation years commencing after February 26, 1981 in respect of instalments of tax required to be paid after the particular time referred to in those subsections where such particular time was after November 11, 1981.

Part LIII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

5300. [Individuals] — For the purposes of subsections 155(2), 156(3) and 161(9) of the Act, the instalment base of an individual for a taxation year is the amount by which

(a) the individual's tax payable under Part I of the Act for the year, determined before taking into consideration the specified future tax consequences for the year

exceeds

(b) the amount deemed by subsection 120(2) of the Act to have been paid on account of the individual's tax under Part I of the Act for the year, determined

before taking into consideration the specified future tax consequences for the year.

Related Provisions: ITA 248(1) — Definition of "specified future tax consequence".

History: S. 5300 substituted for subsecs. 5300(1), (2) by P.C. 1999-196, s. 1, February 11, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable for the purpose of computing instalments of tax payable for 1997 *et seq.*

Subsec. 5300(2) substituted by P.C. 1986-2590, s. 15, November 20, 1986, *Canada Gazette*, Part II, December 10, 1986.

Para. 5300(1)(a) substituted by P.C. 1985-2277, s. 15, July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable with respect to amounts deducted under ss. 127.2 and 127.3 of the Act in respect of shares, debt obligations and rights acquired after February 15, 1984, other than shares, debt obligations or rights acquired before March 1, 1984 where arrangements, evidenced in writing, for the issue of the shares or debt obligations or granting of the rights were substantially advanced before February 16, 1984; and with respect to amounts referred to in subparas. 161(7)(a)(i) to (vii) of the Act for subsequent taxation years ending after August 7, 1985.

Definitions [Reg. 5300]: "amount", "individual", "prescribed", "specified future tax consequence" — ITA 248(1); "taxation year" — ITA 249.

5301. Corporations under Part I of the Act — **(1)** Subject to subsections 5301 (6) and (8), for the purposes of subsections 157(4) and 161(9) of the Act, the first instalment base of a corporation for a particular taxation year means the product obtained when the aggregate of

(a) the tax payable under Part I of the Act by the corporation for its taxation year preceding the particular year, and

(b) the total of the taxes payable by the corporation under Parts I.3, VI and VI.1 of the Act for its taxation year preceding the particular year

Proposed Amendment — Reg. 5301(1)(b)

(b) the total of the taxes payable by the corporation under Parts I.3, VI, VI.1 and XIII.1 of the Act for its taxation year preceding the particular year

Application: The February 13, 2003 draft regulations (foreign bank branches), subsec. 9(1), (pre-published in the *Canada Gazette*, Part I, February 15, 2003), will amend para. 5301(1)(b) to read as above, applicable to 2001 *et seq.*

Regulatory Impact Analysis Statement: *Instalment Base*

Section 157 of the Act requires taxpayers to make regular instalment payment of taxes. The amount of the instalment is determined by reference to an "instalment base", which in broad terms reflects the amount of the taxpayer's expected tax liability. Section 5301 computes the instalment base of a corporation, and paragraph 5301(1)(b), clause 5301(4)(a)(i)(B) and subsection 5301(10) describe the taxes payable to be included in such computation.

An authorized foreign bank is subject to the new Branch Interest Tax imposed under Part XIII.1 of the Act. Paragraph 5301(1)(b), clause 5301(4)(a)(i)(B) and subsection 5301(10) are amended to include the Part XIII.1 tax in the computation of an instalment base.

is multiplied by the ratio that 365 is of the number of days in that preceding year.

Related Provisions: Reg. 5301(10) — Tax payable under Part I.

History: Para. 5301(1)(a) amended by P.C. 1999-196, subsec. 2(1), February 11, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable to 1996 *et seq.*

Paras. 5301(1)(a) and (b) substituted by P.C. 1994-556, subsec. 1(1), April 14, 1994, *Canada Gazette*, Part II, May 4, 1994, applicable in computing the "first instalment base" and "second instalment base", within the meanings assigned by Part LIII, for taxation years ending after June 1989, except that in its application to any of those taxation years ending before 1992, the reference to "Parts I.3, VI and VI.1" in para. 5301(1)(b) shall be read as a reference to "Part VI.1".

Subsec. 5301(1) substituted by P.C. 1989-1565, subsec. 3(1), August 14, 1989, *Canada Gazette*, Part II, August 30, 1989, applicable in respect of 1988 *et seq.*

Subsec. 5301(1) substituted by P.C. 1988-390, subsec. 27(1), March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, applicable to 1985 *et seq.*

Subsec. 5301(1) substituted by P.C. 1985-2277, subsec. 16(1), July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable with respect to amounts deducted under ss. 127.2 and 127.3 of the Act in respect of shares, debt obligations and rights acquired after February 15, 1984, other than shares, debt obligations or rights acquired before March 1, 1984 where arrangements, evidenced in writing, for the issue of the shares or debt obligations or granting of the rights were substantially advanced before February 16, 1984; and with respect to amounts referred to in subparas. 161(7)(a)(i) to (vii) of the Act for subsequent taxation years ending after August 7, 1985.

Subsec. 5301(1) substituted by P.C. 1984-3789, subsec. 14(1), November 29, 1984, *Canada Gazette*, Part II, December 12, 1984, applicable to 1982 *et seq.*

(2) Subject to subsections (6) and (8), for the purposes of subsections 157(4) and 161(9) of the Act, the "second instalment base" of a corporation for a particular taxation year means the amount of the first instalment base of the corporation for the taxation year immediately preceding the particular year.

(3) For the purposes of subsection (1), where the number of days in the taxation year of a corporation immediately preceding the particular taxation year referred to therein is less than 183, the amount determined for the corporation under that subsection shall be the greater of

(a) the amount otherwise determined for it under subsection (1); and

(b) the amount that would be determined for it under subsection (1) if the reference in that subsection to "its taxation year preceding the particular year" were read as a reference to "its last taxation year, preceding the particular year, in which the number of days exceeds 182".

History: Para. 5301(3)(b) amended by P.C. 1999-196, subsec. 2(2), February 11, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable to taxation years ending after June 30, 1989.

(4) Notwithstanding subsections (1) and (2), for the purposes of subsections 157(4) and 161(9) of the Act,

(a) where a particular taxation year of a new corporation that was formed as a result of an amalgamation (within the meaning assigned by section 87 of the Act) is its first taxation year,

(i) its "first instalment base" for the particular year means the total of all amounts each of which is equal to the product obtained when the total of

(A) the tax payable under Part I of the Act, and

(B) the total of the taxes payable under Parts I.3, VI and VI.1 of the Act

Proposed Amendment — Reg. 5301(4)(a)(i)(B)

(B) the total of the taxes payable under Parts I.3, VI, VI.1 and XIII.1 of the Act

Application: The February 13, 2003 draft regulations (foreign bank branches), subsec. 9(2), (pre-published in the *Canada Gazette*, Part I, February 15, 2003), will amend cl. 5301(4)(a)(i)(B) to read as above, applicable to 2001 *et seq.*

Regulatory Impact Analysis Statement: See under Reg. 5301(1)(b) above.

by a predecessor corporation (as defined in section 87 of the Act) for its last taxation year is multiplied by the ratio that 365 is of the number of days in that year, and

(ii) its "second instalment base" for the particular year means the aggregate of all amounts each of

which is an amount equal to the amount of the first instalment base of a predecessor corporation for its last taxation year; and

(b) where a particular taxation year of a new corporation referred to in paragraph (a) is its second taxation year,

(i) its "first instalment base" for the particular year means

(A) where the number of days in its first taxation year is greater than 182, the amount that would, but for this subsection, be determined under subsection (1) for the year, and

(B) in any other case, the greater of the amount that would, but for this subsection, be determined under subsection (1) for the year and its first instalment base for its first taxation year, and

(ii) its "second instalment base" for the particular year means the amount of the first instalment base of the new corporation for its first taxation year.

History: Cl. 5301(4)(a)(i)(A) amended by P.C. 1999-196, subsec. 2(3), February 11, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable to 1996 *et seq.*

Subpara. 5301(4)(a)(i) substituted by P.C. 1994-556, subsec. 1(2), April 14, 1994, *Canada Gazette*, Part II, May 4, 1994, applicable in computing the "first instalment base" and "second instalment base", within the meanings assigned by Part LIII, for taxation years ending after June 1989, except that in its application to any of those taxation years ending before 1992, the reference to "Parts I.3, VI and VI.1" in cl. 5301(4)(a)(i)(B) shall be read as a reference to "Part VI.1".

Subpara. 5301(4)(a)(i) substituted by P.C. 1989-1565, subsec. 3(2), August 14, 1989, *Canada Gazette*, Part II, August 30, 1989, applicable in respect of 1988 *et seq.*

Subpara. 5301(4)(a)(i) substituted by P.C. 1988-390, subsec. 27(3), March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, applicable to 1985 *et seq.*

Subpara. 5301(4)(a)(i) substituted by P.C. 1985-2277, subsec. 16(2), July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable with respect to amounts deducted under ss. 127.2 and 127.3 of the Act in respect of shares, debt obligations and rights acquired after February 15, 1984, other than shares, debt obligations or rights acquired before March 1, 1984 where arrangements, evidenced in writing, for the issue of the shares or debt obligations or granting of the rights were substantially advanced before February 16, 1984; and with respect to amounts referred to in subparas. 161(7)(a)(i) to (vii) of the Act for subsequent taxation years ending after August 7, 1985.

Subpara. 5301(4)(a)(i) substituted by P.C. 1984-3789, subsec. 14(2), November 29, 1984, *Canada Gazette*, Part II, December 12, 1984, applicable to 1982 *et seq.*

(5) For the purposes of subsection (4), where the number of days in the last taxation year of a predecessor corporation is less than 183, the amount determined under subparagraph (4)(a)(i) in respect of the predecessor corporation shall be the greater of

(a) the amount otherwise determined under subparagraph (4)(a)(i) in respect of the predecessor corporation; and

(b) the amount of the first instalment base of the predecessor corporation for its last taxation year.

(6) Subject to subsection (7), where a subsidiary within the meaning of subsection 88(1) of the Act is winding up, and, at a particular time in the course of the winding up, all or substantially all of the property of the subsidiary has been distributed to a parent within the meaning of subsection 88(1) of the Act, the following rules apply:

(a) there shall be added to the amount of the parent's first instalment base for its taxation year that includes the particular time the amount of the subsidiary's first instalment base for its taxation year that includes the particular time;

(b) there shall be added to the amount of the parent's second instalment base for its taxation year that includes the particular time the amount of the subsidiary's second instalment base for its taxation year that includes the particular time;

(c) there shall be added to the amount of the parent's first instalment base for its taxation year immediately following its taxation year referred to in paragraph (a) the amount that is the proportion of the subsidiary's first instalment base for its taxation year referred to in paragraph (a) that

(i) the number of complete months that ended at or before the particular time in the taxation year of the parent that includes the particular time

is of

(ii) 12; and

(d) there shall be added to the amount of the parent's second instalment base for its taxation year immediately following its taxation year referred to in paragraph (a) the amount of the subsidiary's first instalment base for its taxation year that includes the particular time.

(7) The amount of an instalment of tax for the taxation year referred to in paragraphs (6)(a) and (b) that a parent is deemed under subsection 161(4.1) of the Act to have been liable to pay before the particular time referred to in subsection (6) shall be determined as if subsection (6) were not applicable in respect of a distribution of property described in that subsection occurring after the day on or before which the instalment was required to be paid.

(8) Subject to subsection (9), where at a particular time a corporation (in this subsection referred to as the "transferor") has disposed of all or substantially all of its property to another corporation with which it was not dealing at arm's length (in this subsection and subsection (9) referred to as the "transferee") and subsection 85(1) or (2) of the Act applied in respect of the disposition of any of the property, the following rules apply:

Proposed Amendment — Reg. 5301(8) opening words

(8) Subject to subsection (9), if at a particular time a corporation (in this subsection referred to as the "transferor") has disposed of all or substantially all of its property to another corporation with which it was not dealing at arm's length (in this subsection and subsection (9) referred to as the "transferee") and subsection 85(1) or (2) or 142.7(3) of the Act applied in respect of the disposition of any of the property, the following rules apply:

Application: The February 13, 2003 draft regulations (foreign bank branches), subsec. 9(3), (pre-published in the *Canada Gazette*, Part I, February 15, 2003), will amend the opening words of subsec. 5301(8) to read as above, applicable after June 27, 1999.

Regulatory Impact Analysis Statement: Subsection 5301(8) describes the additional rules applicable in the computation of an instalment base when a property is disposed of in a transaction governed by subsection 85(1) or (2) of the Act. Subsection 142.7(3) of the Act allows a Canadian affiliate of an authorized foreign bank to dispose of its property in the manner similar to an election under subsection 85(1) of the Act. Subsection 5301(8) is amended to include the property disposed of by virtue of an election under subsection 142.7(3) of the Act.

(a) there shall be added to the amount of the transferee's first instalment base for its taxation year that includes the particular time the amount of the transferor's first instalment base for its taxation year that includes the particular time;

(b) there shall be added to the amount of the transferee's second instalment base for its taxation year that includes the particular time the amount of the transferor's second instalment base for its taxation year that includes the particular time;

(c) there shall be added to the amount of the transferee's first instalment base for its taxation year immediately following its taxation year referred to in paragraph (a) the amount that is the proportion of the transferor's first instalment base for its taxation year referred to in paragraph (a) that

(i) the number of complete months that ended at or before the particular time in the taxation year of the transferee that includes the particular time

is of

(ii) 12; and

(d) there shall be added to the amount of the transferee's second instalment base for its taxation year immediately following its taxation year referred to in paragraph (a) the amount of the transferor's first instalment base for its taxation year that includes the particular time.

(9) The amount of an instalment of tax for the taxation year referred to in paragraphs (8)(a) and (b) that a transferee is deemed under subsection 161(4.1) of the Act to have been liable to pay before the particular time referred to in subsection (8) shall be determined as if subsection (8) were not applicable in respect of a disposition of property described in that subsection occurring after the day on or before which the instalment was required to be paid.

(10) For the purpose of this section, tax payable under Part I, I.3 or VI of the Act by a corporation for a taxation year means the corporation's tax payable for the year under the relevant Part, determined before taking into consideration the specified future tax consequences for the year.

Proposed Amendment — Reg. 5301(10)

(10) For the purpose of this section, tax payable under Part I, I.3, VI or XIII.1 of the Act by a corporation for a taxation year means the corporation's tax payable for the year under the relevant Part, determined before taking into consideration the specified future tax consequences for the year.

Application: The February 13, 2003 draft regulations (foreign bank branches), subsec. 9(4), (pre-published in the *Canada Gazette*, Part I, February 15, 2003), will amend subsec. 5301(10) to read as above, applicable to 2001 *et seq.*

Regulatory Impact Analysis Statement: See under Reg. 5301(1)(b) above.

Related Provisions: ITA 248(1) — Definition of "specified future tax consequence".

History: Subsec. 5301(10) amended by P.C. 1999-196, subsec. 2(4), February 11, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable to 1996 *et seq.*

Subsec. 5301(10) added by P.C. 1994-556, subsec. 1(3), April 14, 1994, *Canada Gazette*, Part II, May 4, 1994, applicable in computing the "first instalment base" and "second instalment base", within the meanings assigned by Part LIII, for taxation years ending after June 1989 except that, in making such computations in respect of such taxation years commencing before March 1992, subsec. 5301(10) shall be read as follows:

(10) For the purposes of this section, "tax payable under Part I of the Act" by a corporation for a taxation year means the amount, if any, by which the tax payable under Part I of the Act by the corporation for the year, computed without reference to sections 123.1, 127.2 and 127.3 of the Act (and, where the year commenced before July 1, 1989, without reference to section 125.3 of the Act) and before taking into consideration any amount referred to in any of subparagraphs 161(7)(a)(ii) to (vii) of the Act that is excluded or deducted, as the case may be, for the year, exceeds

(a) where the year commenced before July 1, 1989, the lesser of

(i) where the year ended

(A) before July 1, 1989, the amount that would be the corporation's tax payable under Part I.3 of the Act for the year if that Part (as it read in its application to the corporation's first taxation year commencing after June 30, 1989) applied in respect of the year and its capital deduction under that Part for the year were its capital deduction under that Part for its first taxation year ending after June 30, 1989, or

(B) after June 30, 1989, the product obtained when the corporation's tax payable under Part I.3 of the Act for the year is multiplied by the ratio that the number of days in the year is of the number of days in the year after June 30, 1989, and

(ii) the amount that would be the corporation's Canadian surtax payable for the year, as defined in subsection 125.3(4) of the Act if that subsection and any regulations made under that subsection (as they read in their application to the corporation's first taxation year commencing after June 30, 1989) were applicable to the year;

(b) where the year commenced before February 21, 1990 and the corporation is a corporation described in paragraph (d) or (e) of the definition "financial institution" in subsection 190(1) of the Act (or that would be so described if those paragraphs applied with respect to the year),

(i) where the year ended before February 21, 1990, the amount that would be the corporation's tax payable under Part VI of the Act for the year if that Part (as it read in its application to the corporation's first taxation year commencing after February 20, 1990) applied in respect of the year and its capital deduction under that Part for the year were its capital deduction under that Part for its first taxation year ending after February 20, 1990, and

(ii) where the year ended after February 20, 1990, the amount, if any, by which

(A) the product obtained when the corporation's tax payable under Part VI of the Act for the year is multiplied by the ratio that the number of days in the year is to the number of days in the year after February 20, 1990

exceeds

(B) the amount deducted under subsection 125.2(1) of the Act in computing the corporation's tax payable under Part I of the Act for the year in respect of its tax payable under Part VI of the Act for the year; and

(c) in any other case, nil.

In making those computations in respect of any of those taxation years ending before 1991, the reference in subsec. 5301(10) to "subparagraphs 161(7)(a)(ii) to (x)" shall be read as a reference to "subparagraphs 161(7)(a)(ii) to (vii)"; and in making those computations in respect of any of those taxation years ending in 1991, the reference in subsec. 5301(10) to "subparagraphs 161(7)(a)(ii) to (x)" shall be read as a reference to "subparagraphs 161(7)(a)(ii) to (vii) and (x)".

Definitions [Reg. 5301]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "disposed" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "first instalment base" — Reg. 5301(4)(a)(i); "month" — *Interpretation Act* 35(1); "property" — ITA 248(1); "second instalment base" — Reg. 5301(4)(a)(ii); "specified future tax consequence" — ITA 248(1); "taxation year" — ITA 249.

PART LIV — DEBTOR'S GAINS ON SETTLEMENT OF DEBTS

Proposed Repeal — Part LIV

Technical Notes to ITA 80–80.04, 1994 tax amendment bill (Bill C-70), February 16, 1995: The new rules for debt forgiveness are entirely contained in the Act [in subsecs. 80(5) and (6) — ed.]. As a consequence, Part LIV of the Regulations is no longer relevant, except in the cases where grandfathering [former s. 80 — ed.] applies.

History: Part LIV was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

5400. (1) Subject to section 5401, the excess referred to in paragraph 80(1)(b) of the Act, after deducting the portion thereof required to be applied as provided in paragraph 80(1)(a) of the Act, shall be applied at the time the debt or obligation is settled or extinguished, in the following order to reduce to the maximum extent possible

(a) the capital cost of depreciable property of a prescribed class or prescribed classes, as the case may be;

(b) the capital cost of depreciable property other than depreciable property of a prescribed class;

(c) the adjusted cost base at that time of capital property, other than depreciable property and personal-use property;

(d) the adjusted cost base at that time of capital property that is listed personal property; and

(e) the adjusted cost base at that time of capital property that is personal-use property, other than listed personal property.

History: All that portion of subsec. 5400(1) preceding para. (a) substituted by P.C. 1984-3789, s. 15, November 29, 1984, *Canada Gazette*, Part II, December 12, 1984, effective commencing November 13, 1981.

(2) Where an amount is to be applied pursuant to subsection (1), the taxpayer may choose any particular property to make the reduction in the order specified therein.

Definitions [Reg. 5400]: "adjusted cost base" — ITA 54, 248(1); "amount" — ITA 248(1); "capital property" — ITA 54, 248(1); "depreciable property" — ITA 13(21), 248(1); "listed personal property", "personal-use property" — ITA 54, 248(1); "prescribed", "property", "taxpayer" — ITA 248(1).

5401. (1) For the purposes of paragraph 5400(1)(a), the amount to be applied to reduce the capital cost of a property shall not exceed the lesser of

(a) the amount by which

(i) the capital cost of the property

exceeds

(ii) all amounts that would have been allowed to the taxpayer in respect of the property, if it had been the only property that was included in a prescribed class, at the rate that was allowed to him in respect of property of the class in which it was included under regulations made under paragraph 20(1)(a) of the Act for the taxation years prior to the year in which the debt or obligation was settled or extinguished; and

(b) the amount by which

(i) the undepreciated capital cost of the class at the time the debt or obligation was settled or extinguished

exceeds

(ii) the amount or the aggregate of amounts, if any, that has already been determined under this subsection in respect of another property of the class at the time referred to in subparagraph (i).

(2) For the purposes of paragraph 5400(1)(b), the amount to be applied to reduce the capital cost of a property shall not exceed

(a) the amount by which the capital cost of the property

exceeds

(b) the amount that was allowed to the taxpayer by virtue of Part XVII in respect of the property before the debt or the obligation was settled or extinguished.

(3) For the purposes of paragraphs 5400(1)(c), (d) and (e), the amount to be applied to reduce the adjusted cost base of a property shall not exceed the amount by which

(a) the aggregate of the cost to the taxpayer of the property and all amounts required by subsection 53(1) of the Act to be included in computing the adjusted cost base to him of that property

exceeds

(b) the aggregate of all amounts required by subsection 53(2) of the Act (except paragraph (c) thereof) to be deducted in computing the adjusted cost base to him of that property,

at the time the debt or obligation was settled or extinguished.

Definitions [Reg. 5401]: "adjusted cost base" — ITA 54, 248(1); "amount", "prescribed", "property" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "undepreciated capital cost" — ITA 13(21), 248(1).

PART LV — PRESCRIBED PROGRAMS AND BENEFITS

History: Part LV (ss. 5500, 5501) substituted by P.C. 1981-3209, s. 5, November 12, 1981, *Canada Gazette*, Part II, November 25, 1981, effective in respect of 1981 *et seq.* except that with respect to the references to para. 212(1)(s) of the Act s. 5 is effective in respect of grants paid or credited after 1980.

Part LV added by P.C. 1978-1139, s. 2, April 13, 1978, *Canada Gazette*, Part II, April 26, 1978, applicable to 1977 *et seq.*

5500. Canadian Home Insulation Program — For the purposes of paragraphs 12(1)(u), 56(1)(s) and 212(1)(s) of the Act, the Canadian Home Insulation Program, as authorized and described in Vote 11a of *Appropriation Act No. 3, 1977–78*, as amended, Energy, Mines and Resources Vote 35, Main Estimates, 1981-82 as authorized by *Appropriation Act No. 1, 1981–82*, as amended, or the *Canadian Home Insulation Program Act*, is hereby prescribed to be a program of the Government of Canada relating to home insulation.

Definitions [Reg. 5500]: "Canada" — ITA 255, *Interpretation Act* 35(1); "prescribed" — ITA 248(1).

5501. Canada Oil Substitution Program — For the purposes of paragraphs 12(1)(u), 56(1)(s) and 212(1)(s) of the Act, the Canada Oil Substitution Program, as authorized and described in paragraph (a) or (b) of Energy, Mines and Resources Vote 45, Main Estimates, 1981–82 as authorized by *Appropriation Act No. 1, 1981–82*, as amended, or the *Oil Substitution and Conservation Act* is hereby prescribed to be a program of the Government of Canada relating to energy conversion.

Definitions [Reg. 5501]: "Canada" — ITA 255, *Interpretation Act* 35(1); "prescribed" — ITA 248(1).

5502. Benefits under government assistance programs — For the purposes of subparagraph 56(1)(a)(vi) and paragraph 153(1)(m) of the Act, the following benefits are prescribed:

(a) benefits under the *Labour Adjustment Benefits Act*;

(b) benefits under programs to provide income assistance payments, established pursuant to agreements under section 5 of the *Department of Labour Act*; and

(c) benefits under programs to provide income assistance payments, administered pursuant to agreements under section 5 of the *Department of Fisheries and Oceans Act*.

History: S. 5502 added by P.C. 1995-1023, s. 4, June 23, 1995, *Canada Gazette*, Part II, July 12, 1995, applicable

(a) for the purposes of subpara. 56(1)(a)(vi) of the Act, to benefits received after October 1991; and

(b) for the purposes of para. 153(1)(m) of the Act, to benefits paid after October 1991.

Definitions [Reg. 5502]: "prescribed" — ITA 248(1).

PART LVI — PRESCRIBED DISTRIBUTIONS

History: Part LVI was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

5600. For the purpose of section 86.1 of the Act, the following distributions of shares are prescribed:

(a) the distribution by Active Biotech AB, on May 10, 1999, of shares of Wilhelm Sonesson AB; and

(b) the distribution by Orckit Communications Ltd., on June 30, 2000, of shares of Tioga Technologies Ltd.

History: S. 5600 and its heading replaced by P.C. 2004-425, ss. 1, 2, April 22, 2004, *Canada Gazette*, Part II, May 5, 2004, deemed to have come into force on January 1, 1998.

S. 5600 amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Definitions [Reg. 5600]: "prescribed", "share" — ITA 248(1).

PART LVII — MEDICAL DEVICES AND EQUIPMENT

History: Part LVII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

5700. For the purposes of paragraph 118.2(2)(m) of the Act, a device or equipment is prescribed if it is a

(a) wig made to order for individuals who have suffered abnormal hair loss owing to disease, medical treatment or accident;

(b) needle or syringe designed to be used for the purpose of giving an injection;

(c) device or equipment, including a replacement part, designed exclusively for use by an individual suffering from a severe chronic respiratory ailment or a severe chronic immune system disregulation, but not including an air conditioner, humidifier, dehumidifier, heat pump or heat or air exchanger;

(c.1) air or water filter or purifier for use by an individual who is suffering from a severe chronic respiratory ailment or a severe chronic immune system disregulation to cope with or overcome that ailment or disregulation;

(c.2) electric or sealed combustion furnace acquired to replace a furnace that is neither an electric furnace nor a sealed combustion furnace, where the replacement is necessary solely because of a severe chronic respiratory ailment or a severe chronic immune system disregulation;

(c.3) air conditioner acquired for use by an individual to cope with the individual's severe chronic ailment, disease or disorder, to the extent of the lesser of $1,000 and 50% of the amount paid for the air conditioner;

(d) device or equipment designed to pace or monitor the heart of an individual who suffers from heart disease;

(e) orthopaedic shoe or boot and an insert for a shoe or boot made to order for an individual in accordance with a prescription to overcome a physical disability of the individual;

(f) power-operated guided chair installation, for an individual, that is designed to be used solely in a stairway;

(g) mechanical device or equipment designed to be used to assist an individual to enter or leave a bathtub or shower or to get on or off a toilet;

(h) hospital bed including such attachments thereto as may have been included in a prescription therefor;

(i) device that is designed to assist an individual in walking where the individual has a mobility impairment;

Selected Cases [Reg. 5700(i)]: *Brown v. MNR*, [1995] 1 C.T.C. 208 (FCTD) ("Designed" can be read as meaning "intended". Air conditioner deductible as medical expense).

(j) external breast prosthesis that is required because of a mastectomy;

(k) teletypewriter or similar device, including a telephone ringing indicator, that enables a deaf or mute individual to make and receive telephone calls;

(l) optical scanner or similar device designed to be used by a blind individual to enable him to read print;

(m) power-operated lift or transportation equipment designed exclusively for use by, or for, a disabled individual to allow the individual access to different areas of a building or to assist the individual to gain access to a vehicle or to place the individual's wheelchair in or on a vehicle;

(n) device designed exclusively to enable an individual with a mobility impairment to operate a vehicle;

(o) device or equipment, including a synthetic speech system, braille printer and large print-on-screen device, designed exclusively to be used by a blind individual in the operation of a computer;

(p) electronic speech synthesizer that enables a mute individual to communicate by use of a portable keyboard;

(q) device to decode special television signals to permit the script of a program to be visually displayed;

(q.1) a visual or vibratory signalling device, including a visual fire alarm indicator, for an individual with a hearing impairment;

(r) device designed to be attached to infants diagnosed as being prone to sudden infant death syndrome in order to sound an alarm if the infant ceases to breathe;

(s) infusion pump, including disposable peripherals, used in the treatment of diabetes or a device designed to enable a diabetic to measure the diabetic's blood sugar level;

(t) electronic or computerized environmental control system designed exclusively for the use of an individual with a severe and prolonged mobility restriction;

(u) extremity pump or elastic support hose designed exclusively to relieve swelling caused by chronic lymphedema;

(v) inductive coupling osteogenesis stimulator for treating non-union of fractures or aiding in bone fusion; and

(w) talking textbook prescribed by a medical practitioner for use by an individual with a perceptual disability, in connection with the individual's enrolment at an educational institution in Canada.

Proposed Amendment — Reg. 5700(w)

(w) talking textbook prescribed by a medical practitioner for use by an individual with a perceptual disability in connection with the individual's enrolment at an educational institution in Canada, or a designated educational institution.

Application: The September 16, 2004 draft regulations (medical devices and equipment), s. 1, will amend para. 5700(w) to read as above, applicable to 2004 *et seq.*

Technical Notes: The [above] amendment to the *Income Tax Regulations* is consequential to amended section 64 of the *Income Tax Act*. This amendment ensures that a taxpayer may claim the cost of a talking textbook either as a disability supports deduction under amended section 64 of the Act or as a medical expense under section 118.2 of the Act. For further information, see the commentary to section 64.

Federal budget, Supplementary Information, March 23, 2004: In addition, consequential amendments to the *Income Tax Regulations* will be made regarding the eligibility of talking textbooks for the METC [medical expenses tax credit — i.e., Reg. 5700] to ensure that the eligibility requirements for that expense are consistent for both the proposed [Disability Supports] deduction [see under ITA 64 — ed.] and the METC.

Related Provisions: ITA 64 — Disability supports deduction for various expenses.

History: Para. 5700(c.3) added by P.C. 1999-1767, s. 1, October 6, 1999, *Canada Gazette*, Part II, October 27, 1999, applicable to 1997 *et seq.*

Paras. 5700(c.1), (c.2) and (q.1) added by P.C. 1994-271, s. 1, February 16, 1994, *Canada Gazette*, Part II, March 9, 1994; paras. (c.1), (c.2) applicable after December 16, 1991, para. (q.1) applicable to 1992 *et seq.*

That portion of s. 5700 preceding para. (a), and paras. (c), (i), (m) and (s) substituted, and (t) to (v) added, by P.C. 1990-2491, subsecs. 1(1) to (4) and (6), November 22, 1990, *Canada Gazette*, Part II, December 5, 1990, applicable to 1988 *et seq.*; and para. (q) substituted by subsec. 1(5), applicable to 1987 *et seq.*

Paras. 5700(n) to (s) added by P.C. 1987-2474, December 10, 1987, *Canada Gazette*, Part II, December 23, 1987, applicable to 1987 *et seq.*

Para. 5700(m) substituted by P.C. 1985-2277, s. 17, July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable to 1984 *et seq.*

Paras. 5700(l), (m) added by P.C. 1980-3345, s. 1, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, in force January 1, 1980.

Definitions [Reg. 5700]: "Canada" — ITA 255, *Interpretation Act* 35(1); "designated educational institution" — 118.6(1); "individual" — ITA 248(1); "medical practitioner" — ITA 118.4(2); "prescribed" — ITA 248(1).

Interpretation Bulletins: IT-519R2: Medical expense and disability tax credits.

PART LVIII — RETENTION OF BOOKS AND RECORDS

History: Part LVIII (s. 5800) added by P.C. 1982-2895, s. 2, September 22, 1982, *Canada Gazette*, Part II, October 13, 1982, effective commencing September 20, 1982.

5800. (1) For the purposes of paragraph 230(4)(a) of the Act, the required retention periods for records and books of account of a person are prescribed as follows:

(a) in respect of

(i) any record of the minutes of meetings of the directors of a corporation,

(ii) any record of the minutes of meetings of the shareholders of a corporation,

(iii) any record of a corporation containing details with respect to the ownership of the shares of the capital stock of the corporation and any transfers thereof,

(iv) the general ledger or other book of final entry containing the summaries of the year-to-year transactions of a corporation, and

(v) any special contracts or agreements necessary to an understanding of the entries in the general ledger or other book of final entry referred to in subparagraph (iv),

the period ending on the day that is two years after the day that the corporation is dissolved;

(b) in respect of all records and books of account that are not described in paragraph (a) of a corporation that is dissolved and in respect of the vouchers and accounts necessary to verify the information in such records and books of account, the period ending on the day that is two years after the day that the corporation is dissolved;

(c) in respect of

(i) the general ledger or other book of final entry containing the summaries of the year-to-year transactions of a business of a person (other than a corporation), and

(ii) any special contracts or agreements necessary to an understanding of the entries in the general ledger or other book of final entry referred to in subparagraph (i),

the period ending on the day that is six years after the last day of the taxation year of the person in which the business ceased;

(d) in respect of

(i) any record of the minutes of meetings of the executive of a registered charity or registered Canadian amateur athletic association,

(ii) any record of the minutes of meetings of the members of a registered charity or registered Canadian amateur athletic association,

(iii) all documents and by-laws governing a registered charity or registered Canadian amateur athletic association, and

(iv) all records of any donations received by a registered charity that were subject to a direction by the donor that the property given be held by the charity for a period of not less than 10 years,

the period ending on the day that is two years after the date on which the registration of the registered charity

or the registered Canadian amateur athletic association under the Act is revoked;

(e) in respect of all records and books of account that are not described in paragraph (d) and that relate to a registered charity or registered Canadian amateur athletic association whose registration under the Act is revoked, and in respect of the vouchers and accounts necessary to verify the information in such records and books of account, the period ending on the day that is two years after the date on which the registration of the registered charity or the registered Canadian amateur athletic association under the Act is revoked;

(f) in respect of duplicates of receipts for donations (other than donations referred to in subparagraph (d)(iv)) that are received by a registered charity or registered Canadian amateur athletic association and are required to be kept by that charity or association pursuant to subsection 230(2) of the Act, the period ending on the day that is two years from the end of the last calendar year to which the receipts relate; and

(g) notwithstanding paragraphs (c) to (f), in respect of all records, books of account, vouchers and accounts of a deceased taxpayer or a trust in respect of which a clearance certificate is issued pursuant to subsection 159(2) of the Act with respect to the distribution of all the property of such deceased taxpayer or trust, the period ending on the day that the clearance certificate is issued.

(2) For the purposes of subsection 230.1(3) of the Act, with respect to the application of paragraph 230(4)(a) of the Act, the required retention period for records and books of account that are required to be kept pursuant to section 230.1 of the Act is prescribed to be the period ending on the day that is two years after the end of the last calendar year to which the records or books of account relate.

Definitions [Reg. 5800]: "business" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "person", "prescribed", "property", "record", "registered Canadian amateur athletic association", "registered charity", "share", "shareholder" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

Information Circulars [Reg. 5800]: 78-10R4: Books and records retention/destruction; 05-1: Electronic record keeping.

PART LIX — FOREIGN AFFILIATES

History: Part LIX was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

5900. Dividends out of exempt, taxable and pre-acquisition surplus — **(1)** Where at any time a corporation resident in Canada or a foreign affiliate of the corporation receives a dividend on a share of any class of the capital stock of a foreign affiliate of the corporation,

(a) for the purposes of this Part and paragraph 113(1)(a) of the Act, the portion of the dividend paid out of the exempt surplus of the affiliate is prescribed to be that proportion of the dividend received that

(i) such portion of the whole dividend paid by the affiliate on the shares of that class at that time as was deemed by section 5901 to have been paid out of the affiliate's exempt surplus in respect of the corporation

is of

(ii) the whole dividend paid by the affiliate on the shares of that class at that time;

(b) for the purposes of this Part and subsection 91(5) and paragraphs 113(1)(b) and (c) of the Act, the portion of the dividend paid out of the taxable surplus of the affiliate is prescribed to be that portion of the dividend received that

(i) such portion of the whole dividend paid by the affiliate on the shares of that class at that time as was deemed by section 5901 to have been paid out of the affiliate's taxable surplus in respect of the corporation

is of

(ii) the whole dividend paid by the affiliate on the shares of that class at that time;

(c) for the purposes of this Part and paragraph 113(1)(d) of the Act, the portion of the dividend paid out of the pre-acquisition surplus of the affiliate is prescribed to be that proportion of the dividend received that

(i) such portion of the whole dividend paid by the affiliate on the shares of that class at that time as was deemed by section 5901 to have been paid out of the affiliate's pre-acquisition surplus in respect of the corporation

is of

(ii) the whole dividend paid by the affiliate on the shares of that class at that time; and

(d) for the purposes of this Part and paragraph 113(1)(b) of the Act, the foreign tax applicable to the portion of the dividend prescribed to have been paid out of the taxable surplus of the affiliate is prescribed to be that proportion of the underlying foreign tax applicable, in respect of the corporation, to the whole dividend paid by the affiliate on the shares of that class at that time that

(i) the amount of the dividend received by the corporation or the affiliate, as the case may be, on that share at that time

is of

(ii) the whole dividend paid by the affiliate on the shares of that class at that time.

(2) Notwithstanding paragraphs (1)(a) and (b), where at any time a foreign affiliate of a corporation resident in Canada pays a dividend on a share of a class of its capital stock (other than a share in respect of which an election is made under subsection 93(1) of the Act) to the corporation, the corporation may, in its return of income under Part I of the Act for its taxation year in which the dividend was received by it, designate an amount not exceeding the portion of the dividend received that would, but for this subsection, be prescribed to have been paid out of the affiliate's exempt surplus in respect of the corporation and that amount

Proposed Amendment — Reg. 5900(2) opening words

(2) Notwithstanding paragraphs (1)(a) and (b), where at any time a foreign affiliate of a corporation resident in Canada pays a dividend on a share of a class of its capital stock (other than a dividend referred to in subsection 93(1) or (1.2) of the Act) to the corporation, the corporation may, in its return of income under Part I of the Act for its taxation year in which the dividend was received by it, designate an amount not exceeding the portion of the dividend received that would, but for this

subsection, be prescribed to have been paid out of the affiliate's exempt surplus in respect of the corporation and that amount

Application: The March 16, 2001 draft regulations (foreign affiliates — partnerships), subsec. 1(1), will amend the opening words of subsec. 5900(2) to read as above, applicable to dividends received after November 1999.

Technical Notes: Subsection 5900(2) allows a corporation resident in Canada to elect to have a dividend paid by a foreign affiliate of the corporation to be treated as having been paid out of the taxable surplus rather than out of the exempt surplus of the affiliate. This election is not available where the corporation has elected under subsection 93(1) of the Act to treat proceeds of disposition of a share of a foreign affiliate as a dividend. The amendment ensures that the election in subsection 5900(2) will not apply where the corporation has elected under new subsection 93(1.2) of the Act to treat all or a portion of its gain from a partnership arising on the disposition of a share of a foreign affiliate by the partnership as a dividend.

(a) is prescribed to have been paid out of the affiliate's taxable surplus in respect of the corporation and not to have been paid out of that exempt surplus; and

(b) for the purposes of paragraph (1)(d) and the definitions "underlying foreign tax" and "underlying foreign tax applicable" in subsection 5907(1) is deemed to have been paid by the affiliate to the corporation as a separate whole dividend on the shares of that class of the capital stock immediately after that time, and that whole dividend is deemed to have been paid out of the affiliate's taxable surplus in respect of the corporation.

History: Paras. 5900(2)(a), (b) amended by P.C. 1997-1670, s. 2, November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the amendments apply to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

(3) For the purposes of subsection 91(5) of the Act, where at any time an individual resident in Canada receives a dividend on a share of any class of the capital stock of a foreign affiliate of that individual, the affiliate shall be deemed to have an amount of taxable surplus in respect of the individual and the portion of the dividend paid out of the taxable surplus of the affiliate in respect of the individual is prescribed to be an amount equal to the dividend received.

Proposed Amendment — Reg. 5900(3)

(3) For the purpose of subsection 91(5) of the Act, where at any time a person (other than a corporation) resident in Canada receives a dividend on a share of any class of the capital stock of a foreign affiliate of that person, the affiliate is deemed to have an amount of taxable surplus in respect of the person and the portion of the dividend paid out of the taxable surplus of the affiliate in respect of the person is prescribed to be an amount equal to the dividend received.

Application: The March 16, 2001 draft regulations (foreign affiliates — partnerships), subsec. 1(2), will amend subsec. 5900(3) to read as above, applicable to dividends received after November 1999.

Technical Notes: Subsection 5900(3) applies where an individual resident in Canada receives a dividend from a foreign affiliate. For the purpose of subsection 91(5) of the Act, subsection 5900(3) deems the individual to have received all dividends out of the taxable surplus of the affiliate. Subsection 91(5) of the Act permits deductions in respect of dividends paid out of the taxable surplus of an affiliate to the extent that that surplus is represented by foreign accrual property income of the affiliate that has been taxed in the hands of the dividend recipient.

The amendment to subsection 5900(3) replaces the word "individual" with the phrase "person (other than a corporation)". This amendment clarifies that, for the purpose of subsection 91(5), where a partnership is deemed to be a person under section 96 of the Act the partnership is deemed to have received all dividends out of taxable surplus.

Definitions [Reg. 5900]: "amount" — ITA 248(1), Reg. 5907(7); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "dividend" — ITA 248(1); "exempt surplus" — Reg. 5902(1)–(3), (7), 5905(7)(d), 5907(1); "foreign affiliate" — ITA 95(1), 248(1), Reg. 5907(3); "foreign tax applicable" — Reg. 5900(1)(d); "individual", "prescribed" — ITA 248(1); "pre-acquisition surplus" — Reg. 5900(1)(c); "resident in Canada" — ITA 250; "share" — ITA 248(1); "taxable surplus" — Reg. 5902(1)–(3), (7), 5905(7)(e), 5907(1); "taxation year" — ITA 249; "underlying foreign tax applicable", "whole dividend" — Reg. 5907(1).

Interpretation Bulletins: IT-392: Meaning of term "share".

5901. Order of surplus distributions — (1) Where at any time in its taxation year a foreign affiliate of a corporation resident in Canada has paid a whole dividend on the shares of any class of its capital stock, for the purposes of this Part

(a) the portion of the whole dividend deemed to have been paid out of the affiliate's exempt surplus in respect of the corporation at that time is an amount equal to the lesser of

(i) the amount of the whole dividend, and

(ii) the amount by which that exempt surplus exceeds the affiliate's taxable deficit in respect of the corporation at that time;

(b) the portion of the whole dividend deemed to have been paid out of the affiliate's taxable surplus in respect of the corporation at that time is an amount equal to the lesser of

(i) the amount, if any, by which the amount of the whole dividend exceeds the portion determined under paragraph (a), and

(ii) the amount by which that taxable surplus exceeds the affiliate's exempt deficit in respect of the corporation at that time; and

(c) the portion of the whole dividend deemed to have been paid out of the affiliate's pre-acquisition surplus in respect of the corporation at that time is the amount by which the whole dividend exceeds the aggregate of the portions determined under paragraphs (a) and (b).

(2) Notwithstanding subsection (1), where a foreign affiliate of a corporation resident in Canada pays a whole dividend (other than a whole dividend referred to in subsection 5902(1)) at any particular time in its taxation year that is more than 90 days after the commencement of that year or at any particular time in its 1972 taxation year that is before January 1, 1972, the portion of the whole dividend that would, but for this subsection, be deemed to have been paid out of the affiliate's pre-acquisition surplus in respect of the corporation is deemed to have been paid out of the exempt surplus and taxable surplus of the affiliate in respect of the corporation to the extent that it would have been deemed to have been so paid if, immediately after the end of that year, that portion were paid as a separate whole dividend before any whole dividend paid after the particular time and after any whole dividend paid

before the particular time by the affiliate, and for the purposes of determining the exempt deficit, exempt surplus, taxable deficit, taxable surplus and underlying foreign tax of the affiliate in respect of the corporation at any time, that portion is deemed to have been paid as a separate whole dividend immediately following the end of the year and not to have been paid at the particular time.

History: Subsec. 5901(2) amended by P.C. 1997-1670, s. 3, November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the subsec. as amended applies to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

(3) Notwithstanding subsections (1) and (2), for the purposes of the definitions "exempt deficit", "exempt surplus", "taxable deficit" and "taxable surplus" in subsection 5907(1), any amount designated pursuant to subsection 5900(2) in respect of a dividend paid by a foreign affiliate of a corporation resident in Canada increases the portion of the whole dividend deemed to have been paid out of the affiliate's taxable surplus in respect of the corporation and decrease the portion of the whole dividend deemed to have been paid out of the affiliate's exempt surplus in respect of the corporation.

History: Subsec. 5901(3) amended by P.C. 1997-1670, s. 3, November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the subsec. as amended applies to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

Definitions [Reg. 5901]: "amount" — ITA 248(1), Reg. 5907(7); "commencement" — *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "dividend" — ITA 248(1); "exempt deficit" — Reg. 5902(1)–(3), (7), 5905(7)(b), 5907(1); "exempt surplus" — Reg. 5902(1)–(3), (7), 5905(7)(d), 5907(1); "foreign affiliate" — ITA 95(1), 248(1), Reg. 5907(3); "pre-acquisition surplus" — Reg. 5900(1)(c); "resident in Canada" — ITA 250; "share" — ITA 248(1); "taxable deficit" — Reg. 5902(1)–(3), (7), 5905(7)(c), 5907(1); "taxable surplus" — Reg. 5902(1)–(3), (7), 5905(7)(e), 5907(1); "taxation year" — ITA 249; "underlying foreign tax" — Reg. 5902(1)–(3), (7), 5907(1); "whole dividend" — Reg. 5907(1).

5902. Election in respect of capital gains — (1) Where at any time a dividend is, by virtue of an election made under subsection 93(1) of the Act in respect of a disposition, deemed to have been received on one or more shares of a class of the capital stock of a particular foreign affiliate of a corporation resident in Canada, the following rules apply:

(a) determine the amounts that would be the particular affiliate's exempt surplus or exempt deficit, taxable surplus or taxable deficit, underlying foreign tax and net surplus in respect of the corporation at that time if

(i) each other foreign affiliate of the corporation in which the affiliate had an equity percentage had immediately before that time paid a dividend equal to its net surplus in respect of the corporation immediately before the dividend was paid, and

(ii) any dividend referred to in subparagraph (i) that any other foreign affiliate would have received had been received by it immediately before any such dividend that it would have paid;

(b) determine the amount that would have been received on the shares (of that class) in respect of which an election is made, if the particular affiliate had at that time paid dividends the aggregate of which on all shares of its capital stock was equal to the amount of its net surplus referred to in paragraph (a); and

(c) for the purposes only of subsection 5900(1), in applying the provisions of subsection 5901(1)

(i) the particular affiliate's exempt surplus or exempt deficit, taxable surplus or taxable deficit and underlying foreign tax in respect of the corporation shall be deemed to be the respective amounts thereof referred to in paragraph (a), and

(ii) the particular affiliate shall be deemed to have paid a whole dividend at that time on the shares of that class of its capital stock in an amount equal to the product obtained when the aggregate of amounts so deemed by subsection 93(1) of the Act to have been received as dividends on shares of that class is multiplied by the greater of

(A) one, and

(B) the proportion that the amount of the particular affiliate's net surplus determined under paragraph (a) is of the amount determined under paragraph (b), except that where the amount determined under paragraph (b) is less than one, the amount determined under paragraph (b) is deemed for the purpose of this clause to be one.

Proposed Amendment — Reg. 5902(1)

(1) If, at a particular time, one or more shares (each of which is referred to in this subsection as a "disposed share") of a class (referred to in this subsection as the "specified class") of the capital stock of a particular foreign affiliate of a corporation resident in Canada are disposed of by a particular shareholder of the particular foreign affiliate and, because of an election made under subsection 93(1) or (1.2), as the case may be, of the Act in respect of that disposition, a dividend is deemed under subsection 93(1) or (1.2) of the Act to have been received on a disposed share at the time (referred to in this subsection and section 5905 as the "dividend time") that is immediately before the particular time, the following rules apply:

(a) the amount of the particular foreign affiliate's exempt surplus, in respect of the corporation resident in Canada, (in this subsection referred to as the "consolidated exempt surplus" in respect of the corporation resident in Canada) at the time (in this section and in section 5905 referred to as the "calculation time") that is immediately before the dividend time, is deemed to be the amount that would be its exempt

surplus, in respect of the corporation resident in Canada, at the calculation time if

(i) the particular foreign affiliate and each other foreign affiliate of the corporation resident in Canada in which the particular foreign affiliate had, at the calculation time, an equity percentage (each of which other foreign affiliates is referred to in this section as a "subsidiary affiliate") had (except for the purpose of determining consolidated net surplus in respect of the corporation resident in Canada in subparagraph (iii)), at the calculation time, no amount of exempt deficit, taxable surplus or taxable deficit, in respect of the corporation resident in Canada,

(ii) the amount of the exempt surplus, in respect of the corporation resident in Canada, of the particular foreign affiliate were, immediately before the calculation time, increased by the total of all amounts each of which is an amount equal to the particular foreign affiliate's proportionate share of the amount that would be the exempt surplus, in respect of the corporation resident in Canada, of a subsidiary affiliate in which it has, immediately before the calculation time, a direct equity percentage if that exempt surplus were, immediately before the calculation time, determined in the following manner:

(A) the exempt surplus, in respect of the corporation resident in Canada, of the subsidiary affiliate, were increased by the subsidiary affiliate's proportionate share of the exempt surplus of a foreign affiliate of the corporation resident in Canada in which the subsidiary affiliate has, immediately before the time that is immediately before the calculation time, a direct equity percentage, and

(B) the exempt surplus, in respect of the corporation resident in Canada, of a subsidiary affiliate in which another subsidiary affiliate has a direct equity percentage, were increased because of this subparagraph before the increase in that other subsidiary affiliate's exempt surplus in respect of the corporation resident in Canada,

(iii) for the purpose of subparagraph (ii), the proportionate share, at any time, of a foreign affiliate (referred to in this subparagraph as the "calculating foreign affiliate") of the corporation resident in Canada, of the exempt surplus, in respect of the corporation resident in Canada, of another foreign affiliate (referred to in this subparagraph as the "providing foreign affiliate") of the corporation resident in Canada in which the calculating foreign affiliate has a direct equity percentage were equal to the proportion determined by the following formula:

A/B

where

A is the amount of dividends that would be received, at that time, by the calculating foreign affiliate from the providing foreign affiliate if, at that time, the providing foreign affiliate had paid dividends on all of its shares and the total of those dividends were equal to its consolidated net surplus (determined using the provisions of this subsection on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, or, where it does not have such a consolidated net surplus, in respect of the corporation resident in Canada, its consolidated exempt surplus (determined in accordance with this paragraph on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, at that time, and

B is the amount of the providing foreign affiliate's consolidated net surplus (determined using the provisions of this subsection on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, or, where it does not have such consolidated net surplus, its consolidated exempt surplus (determined in accordance with this paragraph on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, at that time, and

(iv) in determining, under this paragraph, the particular foreign affiliate's consolidated exempt surplus, in respect of the corporation resident in Canada,

(A) no amount were included, directly or indirectly, in respect of the exempt surplus, in respect of the corporation resident in Canada, of the particular shareholder, of the particular foreign affiliate, that disposed of the disposed share, and

(B) no amount were included, directly or indirectly, in respect of the exempt surplus, in respect of the corporation resident in Canada, of the particular foreign affiliate or any subsidiary affiliate more than once;

(b) the amount of the particular foreign affiliate's exempt deficit, in respect of the corporation resident in Canada, (in this subsection referred to as the "consolidated exempt deficit" in respect of the corporation resident in Canada) at the calculation time, is deemed to be the amount that would be its exempt deficit, in respect of the corporation resident in Canada, at that time if

(i) the particular foreign affiliate and each subsidiary affiliate had (except for the purpose of determining consolidated net surplus, in respect of the corporation resident in Canada, in subparagraph (iii)), at the calculation time, no amount of exempt surplus, taxable surplus or taxable deficit, in respect of the corporation resident in Canada,

(ii) the amount of the exempt deficit, in respect of the corporation resident in Canada, of the particular foreign affiliate, were, immediately before the calculation time, increased by the total of all amounts each of which is an amount equal to the particular foreign affiliate's proportionate share of the exempt deficit, in respect of the corporation resident in Canada, of a subsidiary affiliate in which the particular foreign affiliate has, immediately before the calculation time, a direct equity percentage if that exempt deficit were, im-

mediately before the calculation time, determined in the following manner:

(A) the exempt deficit, in respect of the corporation resident in Canada, of the subsidiary affiliate, were increased by the subsidiary affiliate's proportionate share of the exempt deficit of a foreign affiliate of the corporation resident in Canada in which the subsidiary affiliate has, immediately before the time that is immediately before the calculation time, a direct equity percentage, and

(B) the exempt deficit, in respect of the corporation resident in Canada, of a subsidiary affiliate in which another subsidiary affiliate has a direct equity percentage, were increased because of this subparagraph before the increase in that other subsidiary affiliate's exempt deficit in respect of the corporation resident in Canada,

(iii) for the purpose of subparagraph (ii), the proportionate share, at any time, of a foreign affiliate (referred to in this subparagraph as the "calculating foreign affiliate") of the corporation resident in Canada, of the exempt deficit, in respect of the corporation resident in Canada, of another foreign affiliate (referred to in this subparagraph as the "providing foreign affiliate") of the corporation resident in Canada in which the calculating foreign affiliate has a direct equity percentage were equal to the proportion determined by the following formula:

A/B

where

A is the amount of dividends that would be received by the calculating foreign affiliate from the providing foreign affiliate if, at that time, the providing foreign affiliate had paid dividends on all of its shares and the total of those dividends were equal to its consolidated net surplus (determined using the provisions of this subsection on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, or, where it does not have such consolidated net surplus, its exempt deficit (determined in accordance with this paragraph on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, at that time, and

B is the amount of the providing foreign affiliate's consolidated net surplus (determined using the provisions of this subsection on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, or, where it does not have such consolidated net surplus, its consolidated exempt deficit (determined in accordance with this paragraph on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, at that time, and

(iv) in determining, under this paragraph, the particular foreign affiliate's consolidated exempt deficit, in respect of the corporation resident in Canada,

(A) no amount were included, directly or indirectly, in respect of the exempt deficit, in respect of the corporation resident in Canada, of the particular shareholder, of the particular foreign affiliate, that disposed of the disposed share, and

(B) no amount were included, directly or indirectly, in respect of the exempt deficit, in respect of the corporation resident in Canada, of the particular foreign affiliate or any subsidiary affiliate more than once;

(c) the amount of the particular foreign affiliate's taxable surplus and underlying foreign tax, in respect of the corporation resident in Canada, (referred to, respectively, in this subsection as the "consolidated taxable surplus", and "consolidated underlying foreign tax", in respect of the corporation resident in Canada) at the calculation time, is deemed to be the amount that would be its taxable surplus, and underlying foreign tax, in respect of the corporation resident in Canada, at that time, if

(i) the particular foreign affiliate and each subsidiary affiliate had (except for the purpose of determining consolidated net surplus, in respect of the corporation resident in Canada, in subparagraph (iii)), at the calculation time, no amount of exempt surplus, exempt deficit or taxable deficit, in respect of the corporation resident in Canada,

(ii) the amount of the taxable surplus, and underlying foreign tax, in respect of the corporation resident in Canada, of the particular foreign affiliate, were, immediately before the calculation time, increased by an amount equal to the total of all amounts each of which is the particular foreign affiliate's proportionate share of the taxable surplus, or underlying foreign tax, as the case may be, in respect of the corporation resident in Canada, of a subsidiary affiliate in which the particular foreign affiliate has, immediately before the calculation time, a direct equity percentage if that taxable surplus and underlying foreign tax were, immediately before the calculation time, determined in the following manner:

(A) the taxable surplus, and underlying foreign tax, in respect of the corporation resident in Canada, of the subsidiary affiliate, were increased by the subsidiary affiliate's proportionate share of the taxable surplus, or underlying foreign tax, respectively, of a foreign affiliate of the corporation resident in Canada in which the subsidiary affiliate had, immediately before the time that is immediately before the calculation time, a direct equity percentage, and

(B) the taxable surplus, and underlying foreign tax, in respect of the corporation resident in Canada, of a subsidiary affiliate in which another subsidiary affiliate has a direct equity percentage, were increased because of this subparagraph before the increase in that other subsidiary affiliate's taxable surplus, and underlying foreign tax, respectively, in respect of the corporation resident in Canada,

(iii) for the purpose of subparagraph (ii), the proportionate share, at any time, of a foreign affiliate (referred to in this subparagraph as the "calculating foreign affiliate") of the corporation resident in Canada, of the taxable surplus, or underlying foreign tax, as the case may be, in respect of the corporation resident in Canada, of another foreign affiliate (referred to in this subparagraph as the "providing foreign affiliate") of the corporation resident in Canada in which the particular foreign affiliate has a direct equity percentage were equal to the proportion determined by the following formula:

A/B

where

A is the amount of dividends that would be received, at that time, by the calculating foreign affiliate from the providing foreign affiliate if, at that time, the providing foreign affiliate had paid dividends on all of its shares and the total of those dividends were equal to its consolidated net surplus (determined using the provisions of this subsection on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, or, where it does not have such consolidated net surplus, its consolidated taxable surplus (determined in accordance with this paragraph on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, at that time, and

B is the amount of the providing foreign affiliate's consolidated net surplus (determined using the provisions of this subsection on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, or, where it does not have such consolidated net surplus, its consolidated taxable surplus (determined in accordance with this paragraph on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, at that time, and

(iv) in determining, under this paragraph, the particular foreign affiliate's consolidated taxable surplus, and consolidated underlying foreign tax, in respect of the corporation resident in Canada,

(A) no amount were included, directly or indirectly, in respect of the taxable surplus, and underlying foreign tax, in respect of the corporation resident in Canada, of the particular shareholder, of the particular foreign affiliate, that disposed of the disposed share, and

(B) no amount were included, directly or indirectly, in respect of the taxable surplus, and underlying foreign tax, in respect of the corporation resident in Canada, of the particular foreign affiliate or any subsidiary affiliate more than once;

(d) the amount of the particular foreign affiliate's taxable deficit, in respect of the corporation resident in Canada, (in this subsection referred to as the "consolidated taxable deficit" in respect of the corporation resident in Canada) at the calculation time is deemed to be the amount that would be its taxable deficit, in respect of the corporation resident in Canada, at that time if

(i) the particular foreign affiliate and each subsidiary affiliate had (except for the purpose of determining consolidated net surplus, in respect of the corporation resident in Canada, in subparagraph (iii)), at the calculation time, no amount of exempt surplus, exempt deficit or taxable surplus, in respect of the corporation resident in Canada,

(ii) the amount of the taxable deficit, in respect of the corporation resident in Canada, of the particular foreign affiliate, were, immediately before the calculation time, increased by the total of all amounts each of which is an amount equal to the particular foreign affiliate's proportionate share of the taxable deficit, in respect of the corporation resident in Canada, of a subsidiary affiliate in which the particular foreign affiliate has, immediately before the calculation time, a direct equity percentage if that taxable deficit were, immediately before the calculation time, determined in the following manner:

(A) the taxable deficit, in respect of the corporation resident in Canada, of the subsidiary affiliate, were increased by the subsidiary affiliate's proportionate share of the taxable deficit of a foreign affiliate of the corporation resident in Canada in which the subsidiary affiliate had, immediately before the time that is immediately before the calculation time, a direct equity percentage, and

(B) the taxable deficit, in respect of the corporation resident in Canada, of a subsidiary affiliate in which another subsidiary affiliate has a direct equity percentage, were increased because of this subparagraph before the increase in that other subsidiary affiliate's taxable deficit in respect of the corporation resident in Canada,

(iii) for the purpose of subparagraph (ii), the proportionate share, at any time, of a foreign affiliate (referred to in this subparagraph as the "calculating foreign affiliate") of the corporation resident in Canada, of the taxable deficit, in respect of the corporation resident in Canada, of another foreign affiliate (referred to in this subparagraph as the "providing foreign affiliate") of the corporation resident in Canada in which the calculating foreign affiliate has a direct equity percentage were equal to the proportion determined by the following formula:

A/B

where

A is the amount of dividends that would be received, at that time, by the calculating foreign affiliate from the providing foreign affiliate if, at that time, the providing foreign affiliate had paid dividends on all of its shares and the total of those dividends were equal to its consolidated net surplus (determined using the provisions of this subsection on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, or, where it does

not have such consolidated net surplus, its consolidated taxable deficit (determined in accordance with this paragraph on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, at that time, and

B is the amount of the providing foreign affiliate's consolidated net surplus (determined using the provisions of this subsection on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, or, where it does not have such consolidated net surplus, its consolidated taxable deficit (determined in accordance with this paragraph on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, at that time, and

(iv) in determining, under this paragraph, the particular foreign affiliate's consolidated taxable deficit, in respect of the corporation resident in Canada,

(A) no amount were included, directly or indirectly, in respect of taxable deficit, in respect of the corporation resident in Canada, of the particular shareholder, of the particular foreign affiliate, that disposed of the disposed share, and

(B) no amount were included, directly or indirectly, in respect of the taxable deficit, in respect of the corporation resident in Canada, of the particular foreign affiliate or any subsidiary affiliate more than once;

(e) for the purpose of applying subsection 5901(1) to subsection 5900(1), and for the purpose of paragraph (f),

(i) the particular foreign affiliate's exempt surplus, in respect of the corporation resident in Canada, immediately before the dividend time, is deemed to be equal to the amount, if any, by which the particular foreign affiliate's consolidated exempt surplus, in respect of the corporation resident in Canada, exceeds the amount of the particular foreign affiliate's consolidated exempt deficit, in respect of the corporation resident in Canada, at that time (or, if there is no such excess, nil),

(ii) the particular foreign affiliate's exempt deficit in respect of the corporation resident in Canada, immediately before the dividend time, is deemed to be equal to the amount, if any, by which the particular foreign affiliate's consolidated exempt deficit, in respect of the corporation resident in Canada, exceeds the amount of the particular foreign affiliate's consolidated exempt surplus, in respect of the corporation resident in Canada, at that time (or, if there is no such excess, nil),

(iii) the particular foreign affiliate's taxable surplus, in respect of the corporation resident in Canada, immediately before the dividend time, is deemed to be equal to the amount, if any, by which the particular foreign affiliate's consolidated taxable surplus, in respect of the corporation resident in Canada, exceeds the amount of the particular foreign affiliate's consolidated taxable deficit, in respect of the corporation resident in Canada, at that time (or, if there is no such excess, nil),

(iv) the particular foreign affiliate's taxable deficit, in respect of the corporation resident in Canada, immediately before the dividend time, is deemed to be equal to the amount, if any, by which the particular foreign affiliate's consolidated taxable deficit, in respect of the corporation resident in Canada, exceeds the amount of the particular foreign affiliate's consolidated taxable surplus, in respect of the corporation resident in Canada, at that time (or, if there is no such excess, nil),

(v) the particular foreign affiliate's underlying foreign tax, in respect of the corporation resident in Canada, immediately before the dividend time, is deemed to be equal to the amount of the particular foreign affiliate's consolidated underlying foreign tax, in respect of the corporation resident in Canada, at that time, and

(vi) the particular foreign affiliate's consolidated net surplus, in respect of the corporation resident in Canada, immediately before the dividend time, is deemed to be equal to the amount, if any, by which

(A) the total of the particular foreign affiliate's consolidated exempt surplus, in respect of the corporation resident in Canada, at that time, and the particular foreign affiliate's consolidated taxable surplus, in respect of the corporation resident in Canada, at that time,

exceeds

(B) the total of the particular foreign affiliate's consolidated exempt deficit, in respect of the corporation resident in Canada, at that time, and the particular foreign affiliate's consolidated taxable deficit, in respect of the corporation resident in Canada, at that time;

(f) the attributed net surplus in respect of a disposed share of the specified class in respect of the particular foreign affiliate's consolidated net surplus, in respect of the corporation resident in Canada, immediately before the dividend time, is deemed to be equal to the amount that would be received by the holder of the disposed share, in respect of the disposed share, at the dividend time, if the particular foreign affiliate paid a dividend, at that time, on all of its shares, the total of which was equal to the amount of its consolidated net surplus, in respect of the corporation resident in Canada, immediately before the dividend time;

(g) for the purpose of applying subsection 5901(1) to subsection 5900(1), the amount of the whole dividend paid by the particular foreign affiliate, at the dividend time, on the shares of the specified class is deemed to be equal to the amount obtained when the total of all amounts each of which is an amount deemed by subsection 93(1) or (1.2) of the Act to have been received as a dividend on a disposed share of the specified class is multiplied by the greater of

(i) one, and

(ii) the amount determined by the formula

A/B

where

A is the amount determined, under subparagraph (e)(vi), to be the amount of the particular foreign affiliate's consolidated net surplus in respect of the corporation, immediately before the dividend time, and

B is the greater of

(A) one, and

(B) the total of all amounts each of which is the amount determined, under paragraph (f), to be the amount of the attributed net surplus, in respect of a disposed share of the specified class, in respect of the particular foreign affiliate's consolidated net surplus, in respect of the corporation resident in Canada, immediately before the dividend time;

(h) the amount prescribed, for the purpose of subsection 93(1) or (1.2) of the Act, as the case may be, in respect of a disposition of a disposed share of the specified class is not to exceed the amount determined, under paragraph (f), to be the amount of the attributed net surplus in respect of the disposed share in respect of the particular foreign affiliate's consolidated net surplus, in respect of the corporation resident in Canada, immediately before the dividend time; and

(i) for the purposes of paragraphs (a) to (d), the consolidated net surplus, at any time, in respect of a corporation resident in Canada, of a particular foreign affiliate of the corporation resident in Canada, is the amount that would be determined in subparagraph (e) in respect of the particular foreign affiliate if the reference in that paragraph to the expression "immediately before the dividend time" were read as a reference to the expression "at any time".

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 1(1), will amend subsec. 5902(1) to read as above, applicable in respect of elections made under ITA 93(1) or (1.2) in respect of dispositions that occur after December 20, 2002 other than elections made pursuant to dispositions required to be made under an agreement in writing made by a vendor before December 21, 2002, except that

(a) if an election has been made by a taxpayer under ITA 93(1) or (1.2) in respect of a disposition that occurs after December 20, 2002 and before February 28, 2004 (other than a disposition required to be made under an agreement in writing made by a vendor before December 21, 2002) and the taxpayer has made a valid election under subsec. 133(40) of the amending legislation (see the Application to the Proposed Amendment to ITA 95(2)(d)–(e.1)),

(i) this amendment does not apply in respect of the taxpayer in respect of the disposition, and

(ii) the Regulations are, in respect of the taxpayer in respect of that election, to be read as though s. 5902 contained a subsec. (6.1) that read as follows:

"(6.1) If an election under subsection 93(1) or (1.2) of the Act is made at any time by a particular corporation resident in Canada in respect of a share of the capital stock of a foreign affiliate (in this subsection referred to as the "particular affiliate") of the particular corporation that is disposed of to the particular corporation, to another corporation resident in Canada with which the particular corporation does not deal at arm's length or to another foreign affiliate of the particular corporation, the amount of the particular affiliate's exempt surplus or exempt deficit, taxable surplus or taxable deficit, underlying foreign tax and net surplus in respect of the particular corporation at that time is to be determined under paragraph (1)(a) as if the amount of any dividend referred to in subparagraph (1)(a)(i) or (ii) were nil.";

(b) this amendment does not apply in respect of a taxpayer in respect of an election made by the taxpayer under ITA 93(1) or (1.2) in respect of a disposition (other than a disposition required to be made under an agreement in writing made by a vendor before December 21, 2002) that occurs after December 20, 2002 and before February 28, 2004, if

(i) the taxpayer has not made a valid election under subsection 133(40) of the amending legislation (see the Application to the Proposed Amendment to ITA 95(2)(d)–(e.1)), and

(ii) none of ITA 88(3)(a), 95(2)(c.2) and 95(2)(d) to (e.5), as amended applies to the disposition; and

(c) this amendment does not apply in respect of a taxpayer in respect of an election made by the taxpayer under ITA 93(1) or (1.2) in respect of a disposition that occurs after February 27, 2004, if

(i) the disposition is made under an agreement in writing made by a vendor before February 28, 2004, and

(ii) none of ITA 88(3)(a), 95(2)(c.2) and 95(2)(d) to (e.5), as amended, applies to the disposition.

Technical Notes: Section 5902 applies where a corporation elects to treat proceeds of disposition of a share of a foreign affiliate as a dividend under subsection 93(1) of the Act. Subsection 5902(1) computes a foreign affiliate's surplus accounts and the amount of a whole dividend used in applying subsection 5901(1) for the purposes of subsection 5900(1).

Subsection 5902(1) is replaced with a new subsection that changes how the exempt surplus or exempt deficit, taxable surplus or taxable deficit, underlying foreign tax and net surplus is determined for the foreign affiliate of a corporation resident in Canada whose shares are disposed of and in respect of which disposition an election under subsection 93(1) or (1.2) of the Act is made by the corporation resident in Canada.

Under proposed subsection 5902(1), the surplus balances of the foreign affiliate of the corporation resident in Canada (the "disposed foreign affiliate") are to be computed using a new consolidation approach, which will take into account the surpluses and deficits of foreign affiliates, for the disposed foreign affiliate and any other foreign affiliate of the corporation resident in Canada in which the disposed foreign affiliate has an equity percentage.

As well, under proposed subsection 5902(1), the amount of an election in respect of a disposed share will be capped at the amount of the attributed net surplus in respect of the share determined under the rules in that new subsection.

New subsection 5902(1) provides that, in respect of a corporation resident in Canada, the following rules apply if, at a particular time, one or more shares (a "disposed share") of a class (the "specified class") of a particular foreign affiliate of the corporation resident in Canada is disposed of by a particular shareholder of the particular foreign affiliate and, because of an election made under subsection 93(1) or (1.2) of the Act in respect of that disposition, a dividend is deemed under subsection 93(1) or (1.2) of the Act to have been received on a disposed share at the time (the "dividend time") that is immediately before the particular time.

- New paragraph (a) deems the amount of the particular foreign affiliate's exempt surplus (the "consolidated exempt surplus"), at the time (in this subsection and also in section 5905, the "calculation time") that is immediately before the dividend time, to be the amount that would be its exempt surplus, at the calculation time, if:
  - the particular foreign affiliate and each other foreign affiliate of the corporation resident in Canada in which the particular foreign affiliate had, at the calculation time, an equity percentage (a "subsidiary affiliate"), had (except in determining under subparagraph 5902(1)(a)(iii) the consolidated net surplus in respect of the corporation resident in Canada), at the calculation time, no amount of exempt deficit, taxable surplus or taxable deficit,
  - the amount of the exempt surplus of the particular foreign affiliate were, immediately before the calculation time, increased by the particular foreign affiliate's proportionate share (determined below) of the exempt surplus of each subsidiary affiliate in which it has, immediately before the time that is immediately before the calculation time, a direct equity percentage if that exempt surplus in respect of the corporation resident in Canada were computed in the following manner:
    - the exempt surplus in respect of the corporation resident in Canada of the subsidiary affiliate were increased by the subsidiary affiliate's proportionate share of the exempt surplus of a foreign affiliate of the corporation resident in Canada in which the subsidiary affiliate has, immediately

before the time that is immediately before the calculation time, a direct equity percentage; and

- the exempt surplus in respect of the corporation resident in Canada of a subsidiary affiliate in which another subsidiary affiliate has a direct equity percentage, were increased before the increase in that other subsidiary affiliate's exempt surplus in respect of the corporation resident in Canada;

— the proportionate share, at any time, of a foreign affiliate (the "calculating foreign affiliate") of the corporation resident in Canada, of the exempt surplus of another foreign affiliate (the "providing foreign affiliate") of the corporation resident in Canada in which the calculating foreign affiliate has a direct equity percentage were equal to the proportion determined by the formula:

A/B

where

A is the amount of dividends that would be received, at that time, by the calculating foreign affiliate from the providing foreign affiliate if, at that time, the providing foreign affiliate had paid dividends on all of its shares and the total of those dividends were equal to its consolidated net surplus (determined assuming that the providing foreign affiliate were the particular foreign affiliate), or, where it does not have such a consolidated net surplus, its consolidated exempt surplus (determined assuming that the providing foreign affiliate were the particular foreign affiliate), at that time; and

B is the amount of the providing foreign affiliate's consolidated net surplus (determined assuming that the providing foreign affiliate were the particular foreign affiliate), or, where it does not have such a consolidated net surplus, its consolidated exempt surplus (determined assuming that the providing foreign affiliate were the particular foreign affiliate), at that time; and

— in determining the particular foreign affiliate's consolidated exempt surplus in respect of the corporation resident in Canada,

- no amount were included, directly or indirectly, in respect of exempt surplus in respect of the corporation resident in Canada of the particular shareholder of the particular foreign affiliate that disposed of the disposed share, and

- no amount were included, directly or indirectly, in respect of exempt surplus in respect of the corporation resident in Canada of the particular foreign affiliate or any subsidiary affiliate more than once.

• New paragraph (b) deems the amount of the particular foreign affiliate's exempt deficit (the "consolidated exempt deficit") in respect of the corporation resident in Canada, at the calculation time, to be the amount that would be its exempt deficit in respect of the corporation resident in Canada, at that time, if:

— the particular foreign affiliate and each subsidiary affiliate had (except for the purpose of determining consolidated net surplus), at the calculation time, no amount of exempt surplus, taxable surplus or taxable deficit, in respect of the corporation resident in Canada,

— the amount of the exempt deficit in respect of the corporation resident in Canada of the particular foreign affiliate, were, immediately before the calculation time, increased by the particular foreign affiliate's proportionate share (determined below) of the exempt deficit in respect of the corporation resident in Canada of each subsidiary affiliate in which it has, immediately before the calculation time, a direct equity percentage, if that exempt deficit in respect of the corporation resident in Canada were, immediately before the calculation time, determined in the following manner:

- the exempt deficit, in respect of the corporation resident in Canada, of the subsidiary affiliate, were increased by the subsidiary affiliate's proportionate share (determined below) of the exempt deficit in respect of the corporation resident in Canada of a foreign affiliate of the corporation resident in Canada in which the subsidiary affiliate has, immediately before the time that is immediately before the calculation time, a direct equity percentage; and

- the exempt deficit in respect of the corporation resident in Canada, of a subsidiary affiliate in which another subsidiary affiliate has a direct equity percentage, were increased before the increase in that other subsidiary affiliate's deficit in respect of the corporation resident in Canada;

— the proportionate share (referred to above), at any time, of a calculating foreign affiliate of the exempt deficit in respect of the corporation resident in Canada of a providing foreign affiliate is equal to the proportion determined by the following formula:

A/B

where

A is the amount of dividends that would be received by the calculating foreign affiliate from the providing foreign affiliate if, at that time, the providing foreign affiliate had paid dividends on all of its shares and the total amount of those dividends were equal to its consolidated net surplus (determined assuming that the providing foreign affiliate were the particular foreign affiliate) in respect of the corporation resident in Canada, or, where it does not have such a consolidated net surplus, its exempt deficit (determined assuming that the providing foreign affiliate were the particular foreign affiliate) in respect of the corporation resident in Canada, at that time; and

B is the amount of the providing foreign affiliate's consolidated net surplus (determined assuming that the providing foreign affiliate were the particular foreign affiliate) in respect of the corporation resident in Canada, or, where it does not have such a consolidated net surplus, its consolidated exempt deficit (determined assuming that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, at that time; and

— in determining the particular foreign affiliate's consolidated exempt deficit in respect of the corporation resident in Canada,

- no amount were included, directly or indirectly, in respect of the exempt deficit in respect of the corporation resident in Canada of the particular shareholder of the particular foreign affiliate that disposed of the disposed share, and

- no amount were included, directly or indirectly, in respect of the exempt deficit in respect of the corporation resident in Canada of the particular foreign affiliate or any subsidiary affiliate more than once.

• New paragraph (c) deems the amount of the particular foreign affiliate's taxable surplus and underlying foreign tax, in respect of the corporation resident in Canada (the "consolidated taxable surplus", and "consolidated underlying foreign tax", respectively), at the calculation time, to be the amount that would be its taxable surplus, and underlying foreign tax, in respect of the corporation resident in Canada, at that time, if:

— the particular foreign affiliate and each subsidiary affiliate had, at the calculation time, no amount of exempt surplus, exempt deficit or taxable deficit, in respect of the corporation resident in Canada,

— the amount of the taxable surplus and underlying foreign tax in respect of the corporation resident in Canada of the particular foreign affiliate, were, immediately before the calculation time, increased by the particular foreign affiliate's proportionate share (described below) of the taxable surplus or underlying foreign tax in respect of the corporation resident in Canada of each subsidiary affiliate in which the particular foreign affiliate has, immediately before the calculation time, a direct equity percentage if that taxable surplus, and underlying foreign tax, in respect of the corporation resident in Canada were, immediately before the calculation time, determined in the following manner:

- the taxable surplus and underlying foreign tax, in respect of the corporation resident in Canada, of the subsidiary affiliate were increased by the subsidiary affiliate's proportionate share of the taxable surplus or underlying foreign tax, in

respect of the corporation resident in Canada, of a foreign affiliate of the corporation resident in Canada in which the subsidiary affiliate had, immediately before the time that is immediately before the calculation time, a direct equity percentage; and

- the taxable surplus, and underlying foreign tax in respect of the corporation resident in Canada, of a subsidiary affiliate in which another subsidiary affiliate has a direct equity percentage, were increased before the increase in that other subsidiary affiliate's taxable surplus and underlying foreign tax, in respect of the corporation resident in Canada;

— the proportionate share, at any time, of a calculating foreign affiliate of the taxable surplus or underlying foreign tax of a providing foreign affiliate were equal to the proportion determined by the following formula:

A/B

where

A is the amount of dividends that would be received, at that time, by the calculating foreign affiliate from the providing foreign affiliate if, at that time, the providing foreign affiliate had paid dividends on all of its shares and the total of those dividends were equal to its consolidated net surplus (determined assuming that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, or, where it does not have such a consolidated net surplus, its consolidated taxable surplus (determined assuming that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, at that time, and

B is the amount of the providing foreign affiliate's consolidated net surplus (determined assuming that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, or, where it does not have such a consolidated net surplus, its consolidated taxable surplus (determined assuming that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, at that time, and

— in determining the particular foreign affiliate's consolidated taxable surplus, and consolidated underlying foreign tax,

- no amount were included, directly or indirectly, in respect of the taxable surplus and underlying foreign tax in respect of the corporation resident in Canada, of the particular shareholder of the particular foreign affiliate that disposed of the disposed share, and

- no amount were included, directly or indirectly, in respect of the taxable surplus and underlying foreign tax in respect of the corporation resident in Canada of the particular foreign affiliate or any subsidiary affiliate more than once.

• New paragraph (d) deems the amount of the particular foreign affiliate's taxable deficit (the "consolidated taxable deficit"), in respect of the corporation resident in Canada, at the calculation time, to be the amount that would be its taxable deficit, at that time if

— the particular foreign affiliate and each subsidiary affiliate had (except in determining consolidated net surplus), at the calculation time, no amount of exempt surplus, exempt deficit or taxable surplus, in respect of the corporation resident in Canada,

— the amount of the taxable deficit in respect of the corporation resident in Canada of the particular foreign affiliate were, immediately before the time that is immediately before the calculation time, increased by an amount equal to the particular foreign affiliate's proportionate share (described below) of the taxable deficit in respect of the corporation resident in Canada of each subsidiary affiliate in which it has, immediately before the calculation time, a direct equity percentage, if that taxable deficit in respect of the corporation resident in Canada were, at the particular time, determined in the following manner

- the taxable deficit of the subsidiary affiliate were increased by the subsidiary affiliate's proportionate share of the taxable deficit of a foreign affiliate of the corporation resident in Canada in which the subsidiary affiliate had, immediately before the particular time, a direct equity percentage, and

- the taxable deficit of a subsidiary affiliate in which another subsidiary affiliate has a direct equity percentage were increased before the increase in that other subsidiary affiliate's taxable deficit,

— the proportionate share, at any time, of a calculating foreign affiliate of the corporation resident in Canada, of the taxable deficit of a providing foreign affiliate were equal to the proportion determined by the following formula:

A/B

where

A is the amount of dividends that would be received, at that time, by the calculating foreign affiliate from the providing foreign affiliate if, at that time, the providing foreign affiliate had paid dividends on all of its shares and the total amount of those dividends were equal to its consolidated net surplus (determined assuming that the providing foreign affiliate were the particular foreign affiliate) in respect of the corporation resident in Canada, or, where it does not have such a consolidated net surplus, its consolidated taxable deficit (determined assuming that the providing foreign affiliate were the particular foreign affiliate), at that time, and

B is the amount of the providing foreign affiliate's consolidated net surplus (determined assuming that the providing foreign affiliate were the particular foreign affiliate) in respect of the corporation resident in Canada, or, where it does not have such a consolidated net surplus, its consolidated taxable deficit (determined assuming that the providing foreign affiliate were the particular foreign affiliate) in respect of the corporation resident in Canada, at that time, and

— in determining the particular foreign affiliate's consolidated taxable deficit in respect of the corporation resident in Canada,

- no amount were included, directly or indirectly, in respect of taxable deficit, in respect of the corporation resident in Canada, of the particular shareholder of the particular foreign affiliate that disposed of the disposed share, and

- no amount were included, directly or indirectly, in respect of the taxable deficit, in respect of the corporation resident in Canada, of the particular foreign affiliate or any subsidiary affiliate more than once.

• New paragraph (e) provides, in applying subsection 5901(1) to subsection 5900(1), and for the purpose of paragraph (f), that,

— the particular foreign affiliate's exempt surplus in respect of the corporation resident in Canada, immediately before the dividend time, is deemed to be the amount, if any, by which the particular foreign affiliate's consolidated exempt surplus exceeds the amount of the particular foreign affiliate's consolidated exempt deficit, in respect of the corporation resident in Canada, at that time (or, if there is no such excess, nil),

— the particular foreign affiliate's exempt deficit in respect of the corporation resident in Canada, immediately before the dividend time, is deemed to be the amount, if any, by which the particular foreign affiliate's consolidated exempt deficit exceeds the amount of the particular foreign affiliate's consolidated exempt surplus, in respect of the corporation resident in Canada, at that time (or, if there is no such excess, nil),

— the particular foreign affiliate's taxable surplus in respect of the corporation resident in Canada, immediately before the dividend time, is deemed to be the amount, if any, by which the particular foreign affiliate's consolidated taxable surplus exceeds the amount of the particular foreign affiliate's consolidated taxable deficit, in respect of the corporation resident in Canada, at that time (or, if there is no such excess, nil),

— the particular foreign affiliate's taxable deficit in respect of the corporation resident in Canada, immediately before the dividend time, is deemed to be the amount, if any, by which the particular foreign affiliate's consolidated taxable deficit exceeds the amount of the particular foreign affiliate's consolidated tax-

able surplus, in respect of the corporation resident in Canada, at that time (or, if there is no such excess, nil),

— the particular foreign affiliate's underlying foreign tax in respect of the corporation resident in Canada, immediately before the dividend time, is deemed to be the amount of the particular foreign affiliate's consolidated underlying foreign tax in respect of the corporation resident in Canada, at that time, and

— the particular foreign affiliate's consolidated net surplus in respect of the corporation resident in Canada, immediately before the dividend time, is deemed to be the amount, if any, by which

- the total of the particular foreign affiliate's consolidated exempt surplus in respect of the corporation resident in Canada, at that time, and the particular foreign affiliate's consolidated taxable surplus in respect of the corporation resident in Canada, at that time,

exceeds

- the total of the particular foreign affiliate's consolidated exempt deficit in respect of the corporation resident in Canada, at that time, and the particular foreign affiliate's consolidated taxable deficit in respect of the corporation resident in Canada, at that time.

- New paragraph (f) provides that the amount of the attributed net surplus in respect of a disposed share of the specified class in respect of the particular foreign affiliate's consolidated net surplus in respect of the corporation resident in Canada, immediately before the dividend time, is deemed to be the amount that would be received by the holder of the disposed share, in respect of the disposed share, at the dividend time, if the particular foreign affiliate paid a dividend, at that time, on all of its shares, the total of which was equal to the amount of its consolidated net surplus in respect of the corporation resident in Canada, immediately before the dividend time.

- New paragraph (g) provides, for the purposes of applying subsection 5901(1) to subsection 5900(1), that the amount of the whole dividend paid by the particular foreign affiliate, at the dividend time, on the shares of the specified class is deemed to be the amount obtained when the total of all amounts deemed by subsection 93(1) or 93(1.2) of the Act to have been received as a dividend on a disposed share of the specified class is multiplied by the greater of

— one, and

— the amount determined by the formula

A/B

where

A is the amount determined, under subparagraph (e)(vi), to be the particular foreign affiliate's consolidated net surplus in respect of the corporation resident in Canada, immediately before the dividend time, and

B is the greater of

- one, and

- the aggregate of all amounts each of which is the amount determined, under paragraph (f), to be the amount of the attributed net surplus, in respect of a disposed share of the specified class, in respect of the particular foreign affiliate's consolidated net surplus, in respect of the corporation resident in Canada, immediately before the dividend time.

- New paragraph (h) provides that the amount prescribed, for the purposes of subsection 93(1) or (1.2) of the Act, in respect of a disposition of a disposed share of the specified class may not exceed the amount of the attributed net surplus in respect of the disposed share in respect of the particular foreign affiliate's consolidated net surplus (determined under paragraph (f)), in respect of the corporation resident in Canada, immediately before the dividend time.

- New paragraph (i) provides, for the purposes of paragraphs (a) to (d), that the consolidated net surplus in respect of a corporation resident in Canada, at any time, of a particular foreign affiliate of the corporation resident in Canada, is the amount that would be determined in paragraph (e) in respect of the particular foreign affiliate if the reference in that paragraph to "immediately before the dividend time" were read as a reference to "at any time".

[See Technical Notes under Reg. 5902(7) below for Examples — ed.]

Related Provisions: Reg. 5902(2) — Interpretation; Reg. 5902(7) — Elected amount restricted to net surplus of affiliate where shares are disposed of.

Forms: T2107: Election for a share disposition in a foreign affiliate.

(2) For the purposes of paragraphs (1)(a) and (b),

(a) in determining the exempt surplus or exempt deficit, the taxable surplus or taxable deficit, the underlying foreign tax and the net surplus of a particular foreign affiliate of a taxpayer resident in Canada in which any other foreign affiliate of the taxpayer has an equity percentage, no amount shall be included in respect of any distribution that would be received by the particular affiliate from such other affiliate; and

(b) if any foreign affiliate of a corporation resident in Canada has issued shares of more than one class of its capital stock, the amount that would be paid as a dividend on the shares of any class is such portion of its exempt surplus or exempt deficit and its taxable surplus (including underlying foreign tax applicable) or taxable deficit (and thus net surplus) as, in the circumstances, it might reasonably be expected to have paid on all the shares of that class.

Proposed Repeal — Reg. 5902(2)

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 1(2), will repeal subsec. 5902(2), applicable on the same basis as 5902(1) above.

(3) Where an election under subsection 93(1) of the Act is made by a corporation resident in Canada in respect of the disposition of a share of the capital stock of a foreign affiliate of the corporation, no adjustment shall be made to the affiliate's exempt surplus, exempt deficit, taxable surplus, taxable deficit or underlying foreign tax in respect of the corporation as a consequence of the election except as provided in subsections 5905(2), (5) and (8).

Proposed Amendment — Reg. 5902(3)

(3) If a corporation resident in Canada elects, under subsection 93(1) or (1.2) of the Act, in respect of the disposition of a share of the capital stock of a foreign affiliate of the corporation, no adjustment, other than an adjustment referred to in subsection 5905(2), (4), (5) or (8), may be made to the foreign affiliate's

(a) exempt surplus in respect of the corporation;

(b) exempt deficit in respect of the corporation;

(c) taxable surplus in respect of the corporation;

(d) taxable deficit in respect of the corporation; or

(e) underlying foreign tax in respect of the corporation.

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 1(3), will amend subsec. 5902(3) to read as above, applicable on the same basis as 5902(1) above.

Technical Notes: Subsection 5902(3) provides that, where an election is made under subsection 93(1) of the Act, no adjustment is to made to the foreign affiliate's exempt surplus, exempt deficit, taxable surplus, taxable deficit or underlying foreign tax in respect of the corporation as a consequence of the election except as provided in subsections 5905(2), (5) and (8). The amendment to subsection 5902(3) extends the application of the provision to elections made under new subsection 93(1.2) of the Act, and also includes subsection 5905(4) in the list of provisions that may affect these amounts.

(4) [Revoked]

(5) Any election under subsection 93(1) of the Act by a corporation resident in Canada in respect of any share of

the capital stock of a foreign affiliate of the corporation disposed of by it or by another foreign affiliate of the corporation shall be made by filing the prescribed form with the Minister on or before the day that is the later of

(a) December 31, 1989; and

(b) where the election is made

(i) in respect of a share disposed of by the corporation, the day on or before which the corporation's return of income for its taxation year in which the disposition was made is required to be filed pursuant to subsection 150(1) of the Act, or

(ii) in respect of a share disposed of by another foreign affiliate of the corporation, the day on or before which the corporation's return of income for its taxation year, in which the taxation year of the foreign affiliate in which the disposition was made ends, is required to be filed pursuant to subsection 150(1) of the Act,

as the case may be.

Proposed Amendment — Reg. 5902(5)

(5) Any election under subsection 93(1) or (1.2) of the Act by a corporation resident in Canada in respect of any share of the capital stock of a foreign affiliate of the corporation disposed of by it, by a foreign affiliate of the corporation or by a partnership shall be made by filing the prescribed form with the Minister on or before the day that is,

(a) where the election is made in respect of a share disposed of by the corporation, the corporation's filing-due date for its taxation year in which the disposition was made;

(b) where the election is made in respect of a share disposed of by a foreign affiliate of the corporation, the corporation's filing-due date for its taxation year in which the taxation year of the foreign affiliate in which the disposition was made ends; and

(c) where the election is made in respect of a share disposed of by a partnership, and

(i) the disposing corporation referred to in subsection 93(1.2) of the Act is the corporation, the corporation's filing-due date for its taxation year in which the fiscal period of the partnership in which the disposition was made ends, or

(ii) the disposing corporation referred to in subsection 93(1.2) of the Act is a foreign affiliate of the corporation, the corporation's filing-due date for its taxation year in which the taxation year of the foreign affiliate which includes the last day of the fiscal period of the partnership in which the disposition was made ends.

Application: The March 16, 2001 draft regulations (foreign affiliates — partnerships), subsec. 2(4), will amend subsec. 5902(5) to read as above, applicable to dispositions that occur after November 1999.

Technical Notes: Subsection 5902(5) provides that any election under subsection 93(1) of the Act must be made by filing the prescribed form by the corporation's filing-due date for the relevant year. Where the disposition is made by the corporation, the relevant year is the taxation year of the corporation in which the disposition was made. Where the disposition is made by a foreign affiliate of the corporation, the relevant year is the taxation year of the corporation in which the taxation year of the foreign affiliate in which the disposition was made ends.

The amendments to subsection 5902(5) extend its application to include elections made under new subsection 93(1.2) of the Act. Where the disposition is made by a partnership, the relevant year depends on whether the "disposing corporation" in subsection 93(1.2) of the Act is the corporation or a foreign affiliate of the corporation. Where the disposing corporation is the corporation, the relevant year is the taxation year of the corporation in which the fiscal period of the partnership in which the disposition was made ends. Where the disposing corporation is a foreign affiliate of the corporation, the relevant year is the taxation year of the corporation in which the taxation year of the affiliate which includes the last day of the fiscal period of the partnership in which the disposition was made ends.

Forms: T2107: Election for a share disposition in a foreign affiliate.

(6) Where at any time a corporation resident in Canada is deemed by virtue of subsection 93(1.1) of the Act to have made an election under subsection 93(1) of the Act in respect of a share of the capital stock of a particular foreign affiliate of the corporation disposed of by another foreign affiliate of the corporation, the amount deemed to have been designated in the election is hereby prescribed to be the lesser of

(a) the capital gain, if any, otherwise determined in respect of the disposition of the share; and

(b) the amount that could reasonably be expected to have been received in respect of the share if the particular affiliate had at that time paid dividends the aggregate of which on all shares of its capital stock was equal to the amount determined under paragraph 5902(1)(a) to be its net surplus in respect of the corporation for the purposes of the election.

Proposed Amendment — Reg. 5902(6)

(6) The amount designated in an election deemed by subsection 93(1.1) of the Act to have been made under subsection 93(1) of the Act is prescribed to be the amount that is the lesser of

(a) the capital gain, if any, otherwise determined in respect of the disposition of the share, and

(b) the amount of attributed net surplus (as determined under paragraph (1)(f)) in respect of the share.

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 1(4), will amend subsec. 5902(6) to read as above, applicable on the same basis as 5902(1) above.

Technical Notes: Subsection 5902(6) applies where subsection 93(1.1) of the Act deems a corporation to have made an election under subsection 93(1) to treat proceeds of disposition of a share of a foreign affiliate as a dividend. Subsection 5902(6) deems the amount designated in the deemed election to be the lesser of the capital gain otherwise determined in respect of the disposition of the share and the amount that could reasonably be expected to have been received on the share if the affiliate had paid its net surplus in respect of the corporation as a dividend.

As announced in 2001, subsection 5902(6) is amended to ensure that the subsection will apply where subsection 93(1.3) of the Act deems a corporation resident in Canada to have made an election under proposed subsection 93(1.2) of the Act in respect of a taxable capital gain from a deemed disposition of a share of a foreign affiliate of the corporation disposed of by a partnership of which another foreign affiliate of the corporation is a member.

Subsection 5902(6) is further amended to refer, in paragraph (b), to the amount of the "attributed net surplus" (defined in new paragraph 5902(1)(f)) in respect of the share being disposed of.

Proposed Addition — Reg. 5902(7)

(7) The amount designated in an election deemed by subsection 93(1.3) of the Act to have been made under subsection 93(1.2) of the Act is prescribed to be the amount that is the lesser of

(a) the taxable capital gain, if any, otherwise determined in respect of the disposition of the share, and

(b) the amount that is one-half of the amount referred to in paragraph (6)(b).

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 1(4), will add subsec. 5902(7), applicable on the same basis as 5902(1) above.

Technical Notes: New subsection 5902(7) provides that the amount designated in an election deemed by subsection 93(1.3) of the Act to have been made under subsection 93(1.2) of the Act is prescribed to be the lesser of

- the taxable capital gain, if any, otherwise determined in respect of the disposition of the share; and
- the amount that is ½ of the amount referred to in paragraph 5902(6)(b).

Example -- Subsection 5902(1)

A. Facts

1. Canco is a corporation resident in Canada.

2. Canco owns 100% of FA1 and 50% of FA6, and both FA1 and FA6 are foreign affiliates of Canco.

3. FA1 owns 80 shares (80%) of FA2 and FA6 owns 20 shares (20%) of FA2.

4. FA2 owns 70% of FA3, FA3 owns 100% of FA4 and FA4 owns 100% of FA5.

5. FA1 transfers 30 of its shares in FA2 to FA6, and subsection 93(1) of the Act applies to the transfer, regarding which Canco designates $123 as the dividend received by FA1 in respect of the disposed shares.

6. At the time of the transfer, FA2 has an exempt surplus of $200, a taxable surplus of $0, an exempt deficit of $0 and an underlying foreign tax ("UFT") of $0.

7. At the time of the transfer, FA3 has an exempt surplus of $100, a taxable surplus of $75, an exempt deficit of $0 and an UFT of $10.

8. At the time of the transfer, FA4 has an exempt surplus of $0, a taxable surplus of $0, an exempt deficit of $200 and an UFT of $0.

9. At the time of the transfer, FA5 has an exempt surplus of $0, a taxable surplus of $325, an exempt deficit of $0 and an UFT of $200.

10. All the corporations have only issued 100 shares of one class.

B. Application of Subsection 5902(1)

1. Consolidated Exempt Surplus (Paragraph 5902(1)(a))

The consolidated exempt surplus of FA2 is $270.

Step 1. Exempt surplus of FA5 is determined as the exempt surplus of FA5 ($0), otherwise determined.

Step 2. Exempt surplus of FA4 is determined as the exempt surplus of FA4 ($0), otherwise determined, plus proportionate share of exempt surplus of FA5

where $0 + A/B × C = $0

A *is the amount that would be received by FA4 if FA5 paid its entire consolidated net surplus as a dividend ($325)*

B *is the amount of consolidated net surplus of FA5 ($325)*

C *is the exempt surplus of FA5 ($0).*

Step 3. Exempt surplus of FA3 is determined as the exempt surplus of FA3 ($100), otherwise determined, plus proportionate share of exempt surplus of FA4

where $100 + A/B × C = $100

A *is the amount that would be received by FA3 if FA4 paid its entire consolidated net surplus as a dividend ($125)*

B *is the amount of consolidated net surplus of FA4 ($125)*

C *is the exempt surplus of FA4 ($0).*

Step 4. Exempt surplus of FA2 is determined as the exempt surplus of FA2 ($200), otherwise determined, plus proportionate share of exempt surplus of FA3

where $200 + A/B × C = $270

A *is the amount that would be received by FA2 if FA3 paid its entire consolidated net surplus as a dividend ($210)*

B *is the amount of consolidated net surplus of FA3 ($300)*

C *is the exempt surplus of FA3 ($100).*

2. Consolidated Exempt Deficit (Paragraph 5902(1)(b))

The consolidated exempt deficit of FA2 is $140.

Step 1 Exempt deficit of FA5 is determined as the exempt deficit of FA5 ($0), otherwise determined.

Step 2. Exempt deficit of FA4 is determined as the exempt surplus of FA4 ($200), otherwise determined, plus proportionate share of exempt surplus of FA5

where $200 + A/B × C = $200

A *is the amount that would be received by FA4 if FA5 paid its entire consolidated net surplus as a dividend ($325)*

B *is the amount of consolidated net surplus of FA5 ($325)*

C *is the exempt deficit of FA5 ($0).*

Step 3. Exempt deficit of FA3 is determined as the exempt surplus of FA3 ($0), otherwise determined, plus proportionate share of exempt surplus of FA4

where $0 + A/B × C = $200

A *is the amount that would be received by FA3 if FA4 paid its entire consolidated net surplus as a dividend ($125)*

B *is the amount of consolidated net surplus of FA4 ($125)*

C *is the exempt deficit of FA4 ($200).*

Step 4. Exempt deficit of FA2 is determined as the exempt surplus of FA2 ($0), otherwise determined, plus proportionate share of exempt surplus of FA3

where $0 + A/B × C = $140

A *is the amount that would be received by FA2 if FA3 paid its entire consolidated net surplus as a dividend ($210)*

B *is the amount of consolidated net surplus of FA3 ($300)*

C *is the exempt deficit of FA3 ($200).*

3. Consolidated Taxable Surplus and Underlying Foreign Tax (Paragraph 5902(1)(c))

The consolidated taxable surplus of FA2 is $280 and the UFT of FA2 is $147.

Step 1. The taxable surplus and UFT of FA5 is determined as the taxable surplus ($320) and UFT ($200), otherwise determined.

Step 2. The taxable surplus and UFT of FA4 is determined as the taxable surplus ($0) and UFT ($0), of FA4, otherwise determined, plus the proportionate share of the taxable surplus and UFT of FA5

where $0 + A/B × C = taxable surplus ($320)
and $0 + A/B × C = UFT ($200)

A *is the amount that would be received by FA4 if FA5 paid its entire consolidated net surplus as a dividend ($325)*

B *is the amount of consolidated net surplus of FA5 ($325)*

C *is the taxable surplus ($325) and UFT ($200) of FA5.*

Step 3. The taxable surplus and UFT of FA3 is determined as the taxable surplus ($75) and UFT ($10), of FA3, otherwise determined, plus proportionate share the taxable surplus and UFT of FA4

where $75 + A/B × C = taxable surplus ($400)
and $10 + A/B × C = UFT ($210)

A *is the amount that would be received by FA3 if FA4 paid its entire consolidated net surplus as a dividend ($125)*

B *is the amount of consolidated net surplus of FA4 ($125)*

C *is the taxable surplus ($325) and underlying foreign tax ($200) of FA4.*

Step 4. The taxable surplus and UFT of FA2 is determined as the taxable surplus ($0) and UFT ($0), of FA2, otherwise deter-

mined, plus the proportionate share of the taxable surplus and UFT of FA3

$$\$0 + A/B \times C = \text{taxable surplus } (\$280)$$
$$\text{and } \$0 + (A/B) \times C = \text{UFT } (\$147)$$

where

A *is the amount that would be received by FA2 if FA3 paid its entire consolidated net surplus as a dividend ($210)*

B *is the amount of consolidated net surplus of FA3 ($300)*

C *is the taxable surplus ($400) and underlying foreign tax ($210) of FA3.*

4. Consolidated Net Surplus (Paragraph 5902(1)(e))

The consolidated net surplus of FA2 is $410 and is determined as follows:

$$(A + B) - (C + D) = \$410$$

where

A *is the consolidated exempt surplus of FA2 ($270)*

B *is the consolidated taxable surplus of FA2 ($280)*

C *is the consolidated exempt deficit of FA2 ($140)*

D *is the consolidated taxable deficit of FA2 ($0).*

5. Attributed Surplus (Paragraph 5902(1)(f))

The attributed net surplus in respect of each of the disposed shares is determined as follows:

$$A/B = \$\,4.10$$

where

A *is the consolidated net surplus ($410)*

B *is the total number of shares issued by FA3 (100).*

6. The Whole Dividend (Paragraph 5902(1)(g))

Assuming that the corporation resident in Canada elected, with respect to each share disposed of, under subsection 93(1) of the Act an amount equal to the attributed net surplus in respect of the share, the amount of the whole dividend paid by the foreign affiliate on the shares of the class would be determined as

$$(A \times B) \times C = \$410$$

where

A *is the amount elected with respect to a disposed share ($4.10)*

B *is the number of shares disposed of (30)*

C *is 410/123 = 3.33.*

Effective Dates

The amendments to section 5902 apply in respect of elections made under subsection 93(1) or (1.2) of the Act in respect of dispositions that occur after December 20, 2002 other than dispositions made under agreements in writing made by the vendor on or before December 20, 2002.

If the taxpayer makes an election under subsection 93(1) or (1.2) of the Act in respect of a disposition that occurs after December 20, 2002 and before February 27, 2004 and the taxpayer makes a valid election under subsection 133(40) of the legislative proposals relating to the the Act released contemporaneously with these draft Regulations, the amendments to section 5902 do not apply and section 5902 is to be read as if it contained a subsection (6.1) that read as set out in subparagraph 5(a)(ii) of the enacting legislation for these proposed amendments to section 5902.

The amendments to section 5902 of the Regulations do not apply to an election by the taxpayer under subsection 93(1) or (1.2) of the Act in respect of a disposition that occurs after December 20, 2002 (other than a disposition made under an agreement in writing made by the vendor on or before December 20, 2002) and before February 27, 2004 if the taxpayer does not elect under subsection 133(40) of the legislative proposals relating to the Act and none of paragraphs 88(3)(a), 95(2)(c.2), and (d) to (e.5) of the Act applies to the disposition.

The amendments to section 5902 of the Regulations do not apply to an election by the taxpayer under subsection 93(1) or (1.2) of the Act in respect of a disposition that occurs after February 27, 2004 if the disposition is made under an agreement in writing made by the vendor on or before February 27, 2004 and none of paragraphs 88(3)(a) and 95(2)(c.2), and (d) to (e.5) of the Act applies to the disposition.

History: Cl. 5902(1)(c)(ii)(B) substituted by P.C. 1997-1670, s. 4, November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to 1996 *et seq.*

Para. 5902(5)(a) substituted by P.C. 1989-321, s. 1, March 2, 1989, *Canada Gazette*, Part II, March 15, 1989, applicable in respect of 1972 *et seq.*

Subsec. 5902(3) substituted, subsec. 5902(4) revoked, subsec. 5902(6) added by P.C. 1985-467, s. 1, *Canada Gazette*, Part II, March 6, 1985, applicable in respect of dispositions of shares made after November 12, 1981.

Para. 5902(5)(a) substituted by P.C. 1982-3084, October 7, 1982, *Canada Gazette*, Part II, October 27, 1982, applicable to 1972 *et seq.*

Subsec. 5902(5) substituted by P.C. 1980-503, s. 1, February 8, 1980, *Canada Gazette*, Part II, February 27, 1980, effective in respect of 1972 *et seq.*

Definitions [Reg. 5902]: "amount" — ITA 248(1), Reg. 5907(7); "arm's length" — ITA 251(1); "capital gain" — ITA 39(1), 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "direct equity percentage" — ITA 95(4); "disposed" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "dividend" — ITA 248(1); "equity percentage" — ITA 95(4), Reg. 5905(15); "exempt deficit" — Reg. 5902(1)–(3), (7), 5905(7)(b), 5907(1); "exempt surplus" — Reg. 5902(1)–(3), (7), 5905(7)(c), 5907(1); "foreign affiliate" — ITA 95(1), 248(1), Reg. 5907(3); "Minister" — ITA 248(1); "net surplus" — Reg. 5902(1)–(3), (7), 5907(1); "prescribed" — ITA 248(1); "resident in Canada" — ITA 250; "share", "shareholder" — ITA 248(1); "taxable capital gain" — ITA 38(a), 248(1); "taxable deficit" — Reg. 5902(1)–(3), (7), 5905(7)(c), 5907(1); "taxable surplus" — Reg. 5902(1)–(3), (7), 5905(7)(e), 5907(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "underlying foreign tax" — Reg. 5902(1)–(3), (7), 5907(1); "underlying foreign tax applicable", "whole dividend" — Reg. 5907(1).

5903. Deductible loss — (1) For the purpose of the description of F in the definition "foreign accrual property income" in subsection 95(1) of the Act, the amount prescribed to be the deductible loss of a particular foreign affiliate of a taxpayer for a taxation year and the five immediately preceding taxation years (each of which preceding taxation years is referred to in this subsection as a "preceding year") is the amount, if any, by which

(a) the total of all amounts each of which is the amount, if any, determined in respect of the particular affiliate in respect of a preceding year during which it was a controlled foreign affiliate of the taxpayer or of a person described in any of subparagraphs 95(2)(f)(iv) to (vii) of the Act, by which

(i) the total of the amounts determined for D and E in the definition "foreign accrual property income" in subsection 95(1) of the Act in respect of the particular affiliate for the preceding year

exceeds

(ii) the total of the amounts determined for A, B and C in the definition "foreign accrual property income" in subsection 95(1) of the Act in respect of the particular affiliate for the preceding year

exceeds the total of

(b) the total of all amounts each of which is an amount determined in respect of the particular affiliate in respect of a preceding year during which it was a controlled foreign affiliate of the taxpayer or of a person described in any of subparagraphs 95(2)(f)(iv) to (vii) of the Act and equal to the lesser of

(i) the amount that would be determined for F in the definition "foreign accrual property income" in subsection 95(1) of the Act in respect of the particular affiliate for the preceding year if that amount did not take into account any amount determined for any of A, B, C, D or E in the definition "foreign accrual property income" in subsection 95(1) of the Act in respect of the particular affiliate for any taxation year that is not a preceding taxation year, and

(ii) the amount that would be the foreign accrual property income of the particular affiliate for the preceding year if the formula in the definition "foreign accrual property income" in subsection 95(1) of the Act were read without reference to the variable F; and

(c) where a payment has been received by the particular foreign affiliate and the payment can reasonably be considered to relate to a payment described in subsection 5907(1.3) made by another foreign affiliate of the taxpayer in respect of a loss, or any portion of a loss, of the particular affiliate described in the description of D or E of the definition "foreign accrual property income" in subsection 95(1) of the Act in respect of any preceding year of the particular affiliate, the amount of that loss or portion.

Proposed Amendment — Reg. 5903(1)

See at end of Reg. 5903.

Related Provisions: ITA 152(6.1) — Reassessment to apply FAPI loss carryback; Reg. 5903(2)–(6) — Interpretation.

(2) For the purpose of subsection 5903(1), each amount referred to in paragraph 5903(1)(c) in respect of a controlled foreign affiliate of a taxpayer resident in Canada that is not otherwise determined in Canadian currency shall be converted to Canadian currency at the rate of exchange prevailing on the last day of the affiliate's taxation year in respect of which the amount determined under subsection 5903(1) is being used to determine the foreign affiliate's foreign accrual property income as defined in subsection 95(1) of the Act.

Proposed Amendment — Reg. 5903(2)

See at end of Reg. 5903.

Interpretation Bulletins: IT-95R: Foreign exchange gains and losses.

Information Circulars: 77-9R: Books, records and other requirements for taxpayers having foreign affiliates.

(3) Where

(a) there has been a foreign merger (within the meaning assigned by subsection 87(8.1) of the Act) of two or more foreign affiliates of a taxpayer resident in Canada in respect of each of which the taxpayer's surplus entitlement percentage was not less than 90 per cent immediately before the merger (in this subsection referred to as "predecessor affiliates") to form a new foreign affiliate in respect of which the taxpayer's surplus entitlement percentage immediately after the merger was not less than 90 per cent (in this subsection referred to as the "successor affiliate"), or

(b) there has been a dissolution of a foreign affiliate (in this subsection referred to as the "predecessor affiliate") of a taxpayer resident in Canada and on the dissolution property of the predecessor affiliate, the fair market value of which was not less than 90 per cent of the fair market value of all property of the predecessor affiliate immediately before the dissolution, was distributed to another foreign affiliate (in this subsection referred to as the "successor affiliate") of the taxpayer,

the successor affiliate shall, in respect of such part of the amount determined under subsection 5903(1) to be the deductible loss of a predecessor affiliate at the time of the foreign merger or dissolution as may reasonably be considered to have arisen while the taxpayer, a person or persons referred to in any of subparagraphs 95(2)(f)(iv) to (vii) of the Act, or the taxpayer together with such a person or persons, had a surplus entitlement percentage in respect of such predecessor affiliate that was not less than 90 per cent, be considered to be the same corporation as, and a continuation of, such predecessor affiliate.

Proposed Amendment — Reg. 5903

5903. (1) For the purpose of the description of F in the definition "foreign accrual property income" in subsection 95(1) of the Act, the deductible loss of a foreign affiliate of a taxpayer for a particular taxation year of the affiliate is the amount claimed by the taxpayer not exceeding the foreign accrual property loss of the affiliate for the seven taxation years of the affiliate preceding and the three taxation years of the affiliate following the particular year.

(2) In determining the deductible loss of a foreign affiliate of a taxpayer for a particular taxation year of the affiliate

(a) the amount claimed under subsection (1) in respect of a foreign accrual property loss of the affiliate for a taxation year of the affiliate shall not exceed the amount by which that loss exceeds the total of all amounts each of which was an amount claimed by any taxpayer in respect of that loss in computing the deductible loss of the affiliate for taxation years of the affiliate before the particular year; and

(b) no amount may be claimed in respect of a foreign accrual property loss of a foreign affiliate for a taxation year of the affiliate until the foreign accrual property losses of the affiliate for preceding taxation years have been fully claimed.

(3) For the purpose of this section, and subject to subsection (4), "foreign accrual property loss" of a foreign affiliate of a taxpayer for a taxation year means

(a) where at the end of the year the foreign affiliate was a controlled foreign affiliate of the taxpayer, the amount, if any, by which

(i) the total of the amounts determined for D and E in the definition "foreign accrual property income" in subsection 95(1) of the Act in respect of the affiliate for the year

exceeds

(ii) the total of the amounts determined for A, B, and C in the definition "foreign accrual property income" in subsection 95(1) of the Act in respect of the affiliate for the year, or

(b) where, at the end of the year, the foreign affiliate was not a controlled foreign affiliate of the taxpayer but was a controlled foreign affiliate of a person described in any of subparagraphs 95(2)(f)(iv) to (vii) of the Act, the amount determined under paragraph (a) for the year.

(4) In computing the foreign accrual property loss of a particular foreign affiliate of a taxpayer for a taxation year of the affiliate, where the particular affiliate or another corporation has received a payment described in subsection 5907(1.3) from another foreign affiliate of the taxpayer which payment can reasonably be considered to relate to a loss or portion of a loss of the particular affiliate for the year described in the description of D or E of the definition "foreign accrual property income" in subsection 95(1) of the Act, the amount of the loss or portion of the loss for the year is deemed to be nil.

(5) For the purpose of this section, where there has been a foreign merger (within the meaning assigned by subsection 87(8.1) of the Act) of two or more foreign affiliates of a taxpayer resident in Canada in respect of each of which the taxpayer's surplus entitlement percentage immediately before the merger was not less than 90 percent (each of which is in this subsection referred to as a "predecessor affiliate") to form a new foreign affiliate in respect of which the taxpayer's surplus entitlement percentage immediately after the merger was not less than 90 percent (in this section referred to as the "successor affiliate"), the successor is deemed to be the same corporation as, and a continuation of, each predecessor affiliate.

(6) For the purpose of this section, where there has been a winding-up of one or more foreign affiliates of a taxpayer resident in Canada in respect of which the taxpayer's surplus entitlement percentage immediately before the winding-up was not less than 90 percent (each of which is in this subsection referred to as a "predecessor affiliate") into another foreign affiliate of the taxpayer in respect of which the taxpayer's surplus entitlement percentage immediately before and after the winding-up was not less than 90 percent (in this subsection referred to as the "successor affiliate"), the successor affiliate is deemed to be the same corporation as, and a continuation of, each predecessor affiliate.

Application: The March 16, 2001 draft regulations (foreign affiliates — FAPI), subsec. 1(1), will amend s. 5903 to read as above, applicable to taxation years of foreign affiliates that begin after 1998, except that para. 5903(2)(b) applies to foreign affiliate taxation years that begin after 2000.

Technical Notes: The description of F in the definition "foreign accrual property income" in subsection 95(1) of the Act allows foreign accrual property income of an affiliate for a year to be reduced by the amount prescribed by section 5903 of the *Income Tax Regulations* to be the deductible loss of the affiliate for the year and the five immediately preceding taxation years. The amendments to section 5903 and the description of F in the definition "foreign accrual property income" in subsection 95(1) of the Act provide that deductible losses may include foreign accrual property losses for the three taxation years following and the seven taxation years preceding the year.

Amended subsection 5903(1) allows a taxpayer to include in the deductible loss of a foreign affiliate an amount not exceeding the foreign accrual property loss of the affiliate for the seven taxation years immediately preceding and the three taxation years immediately following the particular year. Losses for other taxation years will not be included in the deductible loss of the foreign affiliate.

Amended subsection 5903(2) of the Regulations provides that, in determining the deductible loss of a foreign affiliate of a taxpayer for a particular taxation year, the amount claimed under subsection 5903(1) in respect of a foreign accrual property loss of the affiliate for a taxation year of the affiliate cannot exceed the total of amounts previously claimed by any taxpayer in respect of that loss. Also, no amount may be claimed in respect of a foreign accrual property loss until the foreign accrual property loss for preceding taxation years has been fully claimed.

Amended subsection 5903(3) of the Regulations defines foreign accrual property loss of a foreign affiliate of a taxpayer for a taxation year. Where, at the end of a taxation year, a foreign affiliate is a controlled foreign affiliate of the taxpayer or a person related to the taxpayer, the foreign accrual property loss of the affiliate is the amount, if any, by which (D + E) exceeds (A + B + C) in the definition "foreign accrual property income" in subsection 95(1) of the Act.

New subsection 5903(4) of the Regulations provides that, where a foreign affiliate of a taxpayer received a payment described in subsection 5907(1.3) of the Regulations from another affiliate or another corporation, which payment was related to a loss or portion of a loss of the affiliate, the amount of the loss or portion of the loss for the year shall be deemed to be nil.

New subsections 5903(5) and (6) of the Regulations provides that a predecessor affiliate's deductible loss may flow through to a successor affiliate following a foreign merger or a winding-up of one or more affiliates of a taxpayer provided the taxpayer's surplus entitlement percentage exceeds 90 percent in each predecessor affiliate and in the successor affiliate.

History: Subsecs. 5903(1), (3) amended by P.C. 1997-1670, s. 5, November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the subsecs. as amended apply to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

That portion of subsec. 5903(3) following para. (b) amended by P.C. 1989-321, s. 2, March 2, 1989, *Canada Gazette*, Part II, March 15, 1989, applicable in respect of amalgamations and mergers occurring after November 12, 1981.

Subsecs. 5903(1) and (2) substituted, subsec. 5903(3) added, by P.C. 1985-467, s. 2, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, subsecs. 5903(1) and (2) applicable in computing the foreign accrual property income of a foreign affiliate for taxation years of the affiliate ending after November 12, 1981, and subsec. 5903(3) applicable in respect of mergers and dissolutions occurring after November 12, 1981.

Para. 5903(1)(b) substituted by P.C. 1980-503, s. 2, February 8, 1980, *Canada Gazette*, Part II, February 27, 1980, effective in respect of 1976 *et seq.*

Definitions [Reg. 5903]: "amount" — ITA 248(1), Reg. 5907(7); "controlled foreign affiliate" — ITA 94.1(2)(h), 95(1), 248(1), Reg. 5907(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "foreign accrual property income" — ITA 95(1), (2), 248(1); "foreign accrual property income" — ITA 95(1), (2), 248(1); "foreign accrual property loss" — Reg. 5903(3), (4); "foreign merger" — ITA 87(8.1); "loss" — Reg. 5907(1); "person", "prescribed", "property" — ITA 248(1); "resident in Canada" — ITA 250; "surplus entitlement percentage" — Reg. 5905(13); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

5904. Participating percentage — **(1)** For the purpose of subparagraph (b)(ii) of the definition "participating percentage" in subsection 95(1) of the Act, the participating percentage of a particular share owned by a taxpayer of the capital stock of a corporation in respect of any foreign affiliate of the taxpayer that was, at the end of its taxation year, a controlled foreign affiliate of the taxpayer is prescribed to be the percentage that would be the taxpayer's equity percentage in the affiliate at that time on the assumption that

(a) the taxpayer owned no shares other than the particular share;

(b) the direct equity percentage of a person in any foreign affiliate of the taxpayer, for which the total of the distribution entitlements of all the shares of all classes of the capital stock of the affiliate was greater than nil, was determined by the following rules and not by the rules contained in the definition "direct equity percentage" in subsection 95(4) of the Act:

(i) for each class of the capital stock of the affiliate, determine that amount that is the proportion of the distribution entitlement of all the shares of that class that the number of shares of that class owned by that person is of all the issued shares of that class, and

(ii) determine the proportion that

(A) the aggregate of the amounts determined under subparagraph 5904(1)(b) (i) for each class of the capital stock of the affiliate

is of

(B) the aggregate of the distribution entitlements of all the issued shares of all classes of the capital stock of the affiliate

and the proportion determined under subparagraph 5904(1)(b)(ii) when expressed as a percentage is that person's direct equity percentage in the affiliate; and

(c) the direct equity percentage of a person in any foreign affiliate of the taxpayer, for which the total of the distribution entitlements of all the shares of all classes of the capital stock of the affiliate was not greater than nil, was determined by the rules contained in the definition "direct equity percentage" in subsection 95(4) of the Act.

Related Provisions: Reg. 5904(2) — Distribution entitlement.

History: That portion of subsec. 5904(1) before subpara (b)(i), and para. (c), amended by P.C. 1997-1670, subsecs. 6(1), (2), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the amended portions apply to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

All that portion of para. 5904(1)(b) preceding subpara. (i), and para. 5904(1)(c) substituted by P.C. 1980-503, s. 3, February 8, 1980, *Canada Gazette*, Part II, February 27, 1980, effective in respect of 1976 *et seq.*

(2) For the purposes of this section, the distribution entitlement of all the shares of a class of the capital stock of a foreign affiliate of the taxpayer at the end of its taxation year is the aggregate of

(a) the distributions made during the year by the affiliate to holders of shares of that class; and

(b) the amount that the affiliate might reasonably be expected to distribute to holders of shares of that class immediately after the end of the year if at that time it had distributed to its shareholders an amount equal to the aggregate of

(i) the amount, if any, by which the net surplus of the affiliate in respect of the taxpayer at the end of the year, computed as though any adjustments resulting from the provisions of sections 5902 and 5905 and subsections 5907(2.1) and (2.2) and any references thereto during the year were ignored, exceeds the net surplus of the affiliate in respect of the taxpayer at the end of its immediately preceding taxation year, and

(ii) the amount that the affiliate would receive if at that time each controlled foreign affiliate of the taxpayer in which the affiliate had an equity percentage had distributed to its shareholders an amount equal to the aggregate of

(A) the amount that would be determined under subparagraph 5904(2)(b)(i) for the controlled foreign affiliate if the controlled foreign affiliate were the foreign affiliate referred to in subparagraph 5904(2)(b)(i), for each of the taxation years of the controlled foreign affiliate ending in the taxation year of the affiliate, and

(B) each such amount that the controlled foreign affiliate would receive from any other controlled foreign affiliate of the taxpayer in which it had an equity percentage.

Related Provisions: Reg. 5904(3) — Interpretation.

History: Subpara. 5904(2)(b)(i) substituted by P.C. 1978-3599, s. 1, November 30, 1978, *Canada Gazette*, Part II, December 13, 1978, effective for 1978 *et seq.*

(3) For the purposes of subsection 5904(2),

(a) the net surplus of a foreign affiliate of a taxpayer who is an individual, in respect of that individual, shall be computed as if that individual were a corporation resident in Canada;

(b) in computing the net surplus of a particular foreign affiliate of a taxpayer resident in Canada in which any other foreign affiliate of the taxpayer has an equity percentage, no amount shall be included in respect of any distribution that would be received by the particular affiliate from such other affiliate;

(c) if any controlled foreign affiliate of a taxpayer resident in Canada has issued shares of more than one class of its capital stock, the amount that would be distributed to the holders of shares of any class is such portion of the amount determined under subparagraph 5904(2)(b)(ii) as, in the circumstances, it might reasonably be expected to distribute to the holders of those shares; and

(d) in determining the distribution entitlement

(i) of a class of shares of the capital stock of a foreign affiliate that is entitled to cumulative dividends, the amount of any distribution referred to in paragraph (2)(a) shall be deemed not to include any distribution in respect of such class that is, or would, if it were made, be referable to profits of a preceding taxation year, and

(ii) of any other class of shares of the capital stock of the affiliate, the net surplus of the affiliate at the end of the year referred to in subparagraph (2)(b)(i) shall be deemed not to have been reduced by any distribution described in subparagraph (i) with respect to a class of shares that is entitled to cumulative dividends to the extent that the distribution was referable to profits of a preceding taxation year.

Definitions [Reg. 5904]: "amount" — ITA 248(1), Reg. 5907(7); "class" — ITA 248(6); "controlled foreign affiliate" — ITA 94.1(2)(h), 95(1), 248(1), Reg. 5907(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "direct equity percentage" — Reg. 5904(1)(b); "distribution entitlement" — Reg. 5904(2); "dividend" — ITA 248(1); "equity percentage" — ITA 95(4), Reg. 5905(15); "foreign affiliate" — ITA 95(1), 248(1), Reg. 5907(3); "individual" — ITA 248(1); "net surplus" — Reg. 5902(1)–(3), (7), 5904(3)(a), (b), 5907(1); "person", "prescribed" — ITA 248(1); "resident in Canada" — ITA 250; "share", "shareholder" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

5905. Special rules — (1) [Corporation or FA acquiring shares of another FA] — Where at any time, other than in the course of a transaction to which subsection (2) or (5) applies, a corporation resident in Canada or a foreign affiliate of such a corporation acquires in any manner whatever shares of the capital stock of another corporation that was a foreign affiliate of the corporation immediately before that time (in this subsec-

tion referred to as the "acquired affiliate") and as a result thereof the surplus entitlement percentage of the corporation in respect of the acquired affiliate increases, for the purposes of this Part, the exempt surplus or exempt deficit, the taxable surplus or taxable deficit and the underlying foreign tax, in respect of the corporation, of the acquired affiliate and of each other foreign affiliate of the corporation in which the acquired affiliate has an equity percentage (in this subsection referred to as the "other affiliate"), other than an acquired affiliate or other affiliate in respect of which subsection (8) applies, shall at that time be reduced to the proportion of the amount thereof otherwise determined that

(a) the surplus entitlement percentage immediately before that time of the corporation in respect of the acquired affiliate or the other affiliate, as the case may be, determined on the assumption that the taxation year of the acquired affiliate or the other affiliate, as the case may be, that otherwise would have included that time had ended immediately before that time,

is of

(b) the surplus entitlement percentage immediately after that time of the corporation in respect of the acquired affiliate or the other affiliate, as the case may be, determined on the assumption that the taxation year of the acquired affiliate or the other affiliate, as the case may be, that otherwise would have included that time had ended immediately after that time,

and, for the purposes of the definitions "exempt deficit", "exempt surplus", "taxable deficit", "taxable surplus" and "underlying foreign tax" in subsection 5907(1), those reduced amounts are referred to as the opening exempt deficit, opening exempt surplus, opening taxable deficit, opening taxable surplus and opening underlying foreign tax, as the case may be, of each of those affiliates in respect of the corporation.

Proposed Amendment — Reg. 5905(1)

(1) If, at any time, other than in the course of a transaction to which subsection (2) or (5) applies, a corporation resident in Canada or a foreign affiliate of such a corporation acquires in any manner whatever shares of the capital stock of another corporation that was, immediately after that time, a foreign affiliate of the corporation (in this subsection referred to as the "acquired affiliate") and as a result of that acquisition the surplus entitlement percentage of the corporation in respect of the acquired affiliate and in respect of any other foreign affiliate of the corporation resident in Canada (the acquired affiliate and each such other foreign affiliate each being referred to in this subsection as the "particular relevant foreign affiliate"), increases, the following rules apply:

(a) for the purposes of this Part, the amount of the exempt surplus or exempt deficit, the taxable surplus or taxable deficit, and the underlying foreign tax, in respect of the corporation, of the particular relevant foreign affiliate is (unless subsection (8) applies to the particular relevant foreign affiliate because of the acquisition of the shares) to be, at that time, adjusted to become the proportion of that amount, determined without making this adjustment, that

(i) the surplus entitlement percentage, immediately before that time, of the corporation in respect of the particular relevant foreign affiliate, determined on the assumption that the taxation year of the particular relevant foreign affiliate that otherwise would have included that time had ended immediately before that time,

is of

(ii) the surplus entitlement percentage, immediately after that time, of the corporation in respect of the particular relevant foreign affiliate, determined on the assumption that the taxation year of the particular relevant foreign affiliate that otherwise would have included that time had ended immediately after that time, and

(b) for the purposes of applying the definitions "exempt deficit", "exempt surplus", "taxable deficit", "taxable surplus" and "underlying foreign tax" in subsection 5907(1), the adjusted amounts determined under paragraph (a) are deemed to be the opening exempt deficit, opening exempt surplus, opening taxable deficit, opening taxable surplus and opening underlying foreign tax, as the case may be, of the particular relevant foreign affiliate, in respect of the corporation.

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 2(1), will amend subsec. 5905(1) to read as above, applicable in respect of acquisitions that occur after February 27, 2004.

Technical Notes: Subsection 5905(1) provides rules for computing the amount of the exempt surplus or exempt deficit, the taxable surplus or taxable deficit and the underlying foreign tax, in respect of the corporation resident in Canada, of a foreign affiliate of the corporation resident in Canada when the surplus entitlement percentage of the corporation resident in Canada in respect of a foreign affiliate of that corporation increases because of the acquisition of shares of a non-resident corporation. Subsection 5905(1) is being repealed and replaced by proposed new subsection 5905(1) that clarifies the operation of the rule.

Proposed new subsection 5905(1) provides that if, at any time, other than in the course of a transaction to which subsection 5905(2) or (5) applies, a corporation resident in Canada or a foreign affiliate of such a corporation acquires shares of the capital stock of another corporation that was, immediately after that time, a foreign affiliate of a corporation resident in Canada (the "acquired affiliate") and as a result of the acquisition the surplus entitlement percentage of the corporation resident in Canada in respect of the acquired affiliate or any other affiliate (the acquired affiliate and each such other affiliate referred to as a "relevant foreign affiliate") increases, the following rules apply.

- The amount of the exempt surplus or exempt deficit, the taxable surplus or taxable deficit and the underlying foreign tax, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, is to be adjusted to become the proportion of the amount determined without making this adjustment, that

  — the surplus entitlement percentage immediately before that time of the corporation resident in Canada in respect of the particular relevant foreign affiliate determined on the assumption that the taxation year of the particular relevant foreign affiliate that otherwise would have included that time had ended immediately before that time,

  is of

  — the surplus entitlement percentage immediately after that time of the corporation resident in Canada in respect of the particular relevant foreign affiliate determined on the assumption that the taxation year of the particular relevant foreign affiliate that otherwise would have included that time had ended immediately after that time.

- For the purposes of applying the definitions "exempt deficit", "exempt surplus", "taxable deficit", "taxable surplus" and "underlying foreign tax", in subsection 5907(1), the adjusted amounts determined above are deemed to be, in respect of the particular relevant foreign affiliate, the opening exempt deficit, opening exempt surplus, opening taxable deficit, opening taxable surplus and opening underlying foreign tax, of the particular relevant foreign affiliate in respect of the corporation.

History: The closing words of subsec. 5905(1) amended by P.C. 1997-1670, subsec. 7(1), November 20, 1997, *Canada Gazette*, Part II, Decem-

ber 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the amendment applies to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

For earlier history, see at end of s. 5905.

(2) [FA redeeming shares] — Where at any time a foreign affiliate of a corporation resident in Canada redeems, acquires or cancels in any manner whatever (otherwise than by way of a winding-up) any of the shares of any class of its capital stock (other than shares redeemed or cancelled that the affiliate had previously purchased or acquired and that were held by it until that time and in respect of which an adjustment has previously been made under this subsection or subsection (1) as it read prior to November 13, 1981), the following rules apply:

(a) where, by virtue of an election made by the corporation under subsection 93(1) of the Act, a dividend is deemed to have been received on one or more of the shares of the foreign affiliate that were disposed of by the corporation or another foreign affiliate of the corporation (in this paragraph referred to as the "transferor") by virtue of the redemption, acquisition or cancellation of such share or shares by the foreign affiliate, for the purposes of the adjustment required by paragraph (b),

(i) immediately before that time there is included under subparagraph (v) of the description of B in the definition "exempt surplus" in subsection 5907(1) in computing the affiliate's exempt surplus or exempt deficit, as the case may be, in respect of the corporation an amount equal to the product obtained when the specified adjustment factor in respect of the disposition is multiplied by the total of all amounts each of which is the portion of any such dividend that is prescribed by paragraph 5900(1)(a) to have been paid out of the exempt surplus of the affiliate,

(ii) immediately before that time there is included under subparagraph (v) of the description of B in the definition "taxable surplus" in subsection 5907(1) in computing the affiliate's taxable surplus or taxable deficit, as the case may be, in respect of the corporation an amount equal to the product obtained when the specified adjustment factor in respect of the disposition is multiplied by the total of all amounts each of which is the portion of any such dividend that is prescribed by paragraph 5900(1)(b) to have been paid out of the taxable surplus of the affiliate, and

(iii) immediately before that time there shall be deducted from the amount, if any, otherwise determined to be the underlying foreign tax of the affiliate in respect of the corporation an amount equal to the product obtained when the specified adjustment factor in respect of the disposition is multiplied by the aggregate of all amounts each of which is the amount prescribed by paragraph 5900(1)(d) to be the foreign tax applicable to such portion of any such dividend as is prescribed by paragraph 5900(1)(b) to have been paid out of the taxable surplus of the affiliate,

and, for the purposes of subparagraphs (i) to (iii), the specified adjustment factor in respect of the disposition is the amount equal to the quotient obtained when,

(iv) where the transferor is the corporation, 100 per cent, and

(v) where the transferor is another foreign affiliate of the corporation, the surplus entitlement percentage of the corporation in respect of the transferor immediately before the disposition,

is divided by

(vi) the surplus entitlement percentage of the corporation in respect of the foreign affiliate immediately before the disposition;

(b) the exempt surplus or exempt deficit, the taxable surplus or taxable deficit and the underlying foreign tax, in respect of the corporation, of the affiliate and of each other foreign affiliate of the corporation in which the affiliate has an equity percentage (in this subsection referred to as the "other affiliate") shall at that time be adjusted to the proportion of the amount thereof otherwise determined that

(i) the surplus entitlement percentage immediately before that time of the corporation in respect of the affiliate or the other affiliate, as the case may be, determined on the assumption that the taxation year of the affiliate or the other affiliate, as the case may be, that otherwise would have included that time had ended immediately before that time,

is of

(ii) the surplus entitlement percentage immediately after that time of the corporation in respect of the affiliate or the other affiliate, as the case may be, determined on the assumption that the taxation year of the affiliate or the other affiliate, as the case may be, that otherwise would have included that time had ended immediately after that time; and

(c) for the purposes of the definitions "exempt deficit", "exempt surplus", "taxable deficit", "taxable surplus" and "underlying foreign tax" in subsection 5907(1), the amounts determined under paragraph (b) are referred to as the opening exempt deficit, opening exempt surplus, opening taxable deficit, opening taxable surplus and opening underlying foreign tax, as the case may be, of the affiliate and each other affiliate in respect of the corporation resident in Canada.

Proposed Amendment — Reg. 5905(2)

(2) [FA redeeming shares] — If at any time (referred to in this subsection as the "disposition time") a particular foreign affiliate of a corporation resident in Canada redeems, acquires or cancels (other than a redemption, an acquisition or a cancellation in respect of which an adjustment has previously been made under this subsection or subsection (1) as it read prior to November 13, 1981) in any manner whatever (otherwise than by way of a winding-up) one or more shares (referred to in this subsection and subsections (16) to (23) as "disposed shares") of any class of its capital stock, the following rules apply:

(a) if, because of an election made by the corporation under subsection 93(1) or (1.2) of the Act in respect of the disposition of the disposed shares, a dividend

(referred to in this subsection and subsections (18) and (21) as the "disposition dividend") is deemed to have been received on the disposed shares, by the corporation or by another foreign affiliate of the corporation, for the purpose of the adjustment required by paragraph (b),

(i) in computing the exempt surplus, in respect of the corporation resident in Canada, of the particular foreign affiliate or of another foreign affiliate (the particular foreign affiliate and each such other foreign affiliate being referred to in this subsection and subsections (16) to (23) as the "particular relevant foreign affiliate") of the corporation resident in Canada in which the particular foreign affiliate has an equity percentage at the time (referred to in this subsection and subsections (16) to (22) as the "balance adjustment time") that is immediately before the disposition time, there is to be included, under subparagraph (v) of the description of B in the definition "exempt surplus" in subsection 5907(1), the total of

(A) the amount of the exempt surplus reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(B) the amount of the exempt deficit reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares, and

(C) the amount of the taxable deficit allocation, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(ii) in computing the particular relevant foreign affiliate's taxable surplus, in respect of the corporation resident in Canada, at the balance adjustment time, there is to be included, under subparagraph (v) of the description of B in the definition "taxable surplus" in subsection 5907(1), the total of

(A) an amount equal to the taxable surplus reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(B) an amount equal to the taxable deficit reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares, and

(C) an amount equal to the exempt deficit allocation, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(iii) in computing the particular relevant foreign affiliate's underlying foreign tax, in respect of the corporation resident in Canada, at the balance adjustment time, there is to be included, under subparagraph (iii) of the description of B in the definition "underlying foreign tax" in subsection 5907(1), the total of

(A) the amount determined by the formula (which is deemed to be nil, if, in respect of the particular relevant foreign affiliate, the value determined for B in the formula is nil)

$$A/B \times C \times D$$

where

A is the portion of the particular relevant foreign affiliate's underlying foreign tax, in respect of the corporation resident in Canada, at the balance adjustment time, that may reasonably be considered to have been included in computing the particular foreign affiliate's consolidated underlying foreign tax (as determined under subparagraph 5902(1)(c)), in respect of the corporation resident in Canada, in respect of the disposition,

B is the particular foreign affiliate's consolidated underlying foreign tax (as determined under paragraph 5902(1)(c)), in respect of the corporation resident in Canada, in respect of the disposition,

C is the portion, of the particular foreign affiliate's consolidated underlying foreign tax (as determined under paragraph 5902(1)(c)), in respect of the corporation resident in Canada, in respect of the disposition), that is prescribed, by paragraph 5900(1)(d), to be applicable to the portion of the whole dividend (as determined, under paragraph 5902(1)(g), in respect of the disposition dividend in respect of the disposed shares) paid on shares of the specified class that is prescribed, by paragraph 5900(1)(c), to have been paid out of the particular foreign affiliate's consolidated taxable surplus, in respect of the corporation resident in Canada, and

D is the specified adjustment factor in respect of the particular relevant foreign affiliate, and

(B) the amount of the underlying foreign tax reduction in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposition of the disposed shares,

(iv) in computing the particular relevant foreign affiliate's exempt deficit, in respect of the corporation resident in Canada, at the balance adjustment time, there is to be included, under subparagraph (viii) of the description of A in the definition "exempt surplus" in subsection 5907(1), an amount equal to the exempt deficit, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, immediately before that time, and

(v) in computing the particular relevant foreign affiliate's taxable deficit, in respect of the corporation resident in Canada, at the balance adjustment time, there is to be included, under subparagraph (vi) of the description of A in the definition "taxable surplus" in subsection 5907(1), an amount equal to the taxable deficit, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, immediately before that time;

(b) the amount, at the balance adjustment time, of exempt surplus, exempt deficit, taxable surplus, taxable deficit and underlying foreign tax, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate is to be adjusted to become

the proportion of that amount, determined without making this adjustment, that

(i) the surplus entitlement percentage, at the balance adjustment time, of the corporation resident in Canada, in respect of the particular relevant foreign affiliate, determined on the assumption that the taxation year, of the particular relevant foreign affiliate, that otherwise would have included that time, had ended immediately before that time,

is of

(ii) the surplus entitlement percentage, immediately after the time of the disposition, of the corporation resident in Canada, in respect of the particular relevant foreign affiliate, determined on the assumption that the taxation year, of the particular relevant foreign affiliate, that otherwise would have included the balance adjustment time, had ended at the time of the disposition; and

(c) for the purposes of applying the definitions "exempt deficit", "exempt surplus", "taxable deficit", "taxable surplus" and "underlying foreign tax", in subsection 5907(1), the amounts determined under paragraph (b), in respect of the particular relevant foreign affiliate, in respect of the corporation resident in Canada, are deemed to be the opening exempt deficit, opening exempt surplus, opening taxable deficit, opening taxable surplus and opening underlying foreign tax, as the case may be, of the particular relevant foreign affiliate, in respect of the corporation resident in Canada.

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 2(1), will amend subsec. 5905(2) to read as above, applicable in respect of dispositions in respect of which an election was made in respect of which the amendments to s. 5902 apply.

Technical Notes: Subsection 5905(2) applies where shares of a foreign affiliate of a corporation resident in Canada are redeemed, acquired or cancelled (otherwise than by way of a winding-up). If the corporation has made an election under subsection 93(1) of the Act or if the corporation's surplus entitlement percentage in the affiliate changes, then the affiliate's surplus balances are adjusted to offset the change in the surplus entitlement percentage. Subsection 5905(2) is being repealed and replaced by proposed new subsection 5905(2) which adjusts surplus balances of the foreign affiliate in respect of an election under subsection 93(1) or (1.2) of the Act.

Proposed new subsection 5905(2) applies in respect of dispositions in respect of which an election was made in respect of which proposed new subsection 5902(1) applies.

Proposed new subsection 5905(2) provides that, if, at any time (in this subsection, the "disposition time") a particular foreign affiliate of the corporation resident in Canada redeems, acquires or cancels (other than a redemption, an acquisition or a cancellation in respect of which an adjustment has previously been made under this subsection or subsection (1) as it read prior to November 13, 1981) in any manner whatever (otherwise than by way of a winding-up) one or more shares (referred to in this subsection and subsections 5902(16) to (23) as "disposed shares") of any class of its capital stock, the following rules apply.

- If, because of an election made by the corporation resident in Canada under subsection 93(1) or (1.2) of the Act in respect of the disposition of the disposed shares, a dividend (in this subsection and subsections 5905(18) and (21), the "disposition dividend") is deemed to have been received on the disposed shares, by the corporation or by another foreign affiliate, for the purposes of the adjustment required by paragraph (b) of the subsection,

  — in computing the exempt surplus in respect of the corporation resident in Canada of the particular foreign affiliate or of another foreign affiliate (the particular foreign affiliate and each other foreign affiliate being referred to in this subsection and subsections 5905(16) to (23) as the "particular relevant foreign affiliate") in which the particular foreign affiliate has an equity percentage at the time (in this subsection and subsections 5905(16) to (22), the "balance adjustment time") that is immediately before the disposition time, there is included, under subparagraph (v) of the description of B in the definition "exempt surplus" in subsection 5907(1), the total of

  - the amount of the exempt surplus reduction of the particular relevant foreign affiliate in respect of the disposed shares,
  - the amount of the exempt deficit reduction of the particular relevant foreign affiliate in respect of the disposed shares, and
  - the amount of the taxable deficit allocation of the particular relevant foreign affiliate in respect of the disposed shares,

  — in computing the particular relevant foreign affiliate's taxable surplus in respect of the corporation resident in Canada at the balance adjustment time there is to be included, under subparagraph (v) of the description of B in the definition "taxable surplus" in subsection 5907(1), the total of

  - an amount equal to the taxable surplus reduction of the particular relevant foreign affiliate in respect of the disposed shares,
  - an amount equal to the taxable deficit reduction of the particular relevant foreign affiliate in respect of the disposed shares, and
  - an amount equal to the exempt deficit allocation of the particular relevant foreign affiliate in respect of the disposed shares,

  — in computing the particular relevant foreign affiliate's underlying foreign tax, in respect of the corporation resident in Canada, at the balance adjustment time, there is included, under subparagraph (iii) of the description of B in the definition "underlying foreign tax" in subsection 5907(1), the total of

  - the amount determined by the formula

    $$A/B \times C \times D$$

    where

    A is the portion of the particular relevant foreign affiliate's underlying foreign tax in respect of the corporation resident in Canada, at the balance adjustment time, that can reasonably be considered to have been included in computing the particular foreign affiliate's consolidated underlying foreign tax (as determined under paragraph 5902(1)(c)), in respect of the disposition,

    B is the particular foreign affiliate's consolidated underlying foreign tax in respect of the corporation resident in Canada (as determined under paragraph 5902(1)(c)), in respect of the disposition,

    C is the portion of the particular foreign affiliate's consolidated underlying foreign tax in respect of the corporation resident in Canada (as determined under paragraph 5902(1)(c)), in respect of the disposition), that is prescribed, by paragraph 5900(1)(d), to be applicable to the portion of the whole dividend (as determined, under paragraph 5902(1)(g), in respect of the disposition dividend in respect of the disposed shares) paid on shares of the specified class that is prescribed, by paragraph 5900(1)(c), to have been paid out of the particular foreign affiliate's consolidated taxable surplus, and

    D is the specified adjustment factor in respect of the particular relevant foreign affiliate,

    — however, if, in respect of the particular relevant foreign affiliate, the value determined for B in the formula is nil, the amount determined by the formula, in respect of the relevant foreign affiliate, is deemed to be nil, and

  - an amount equal to the underlying foreign tax reduction in respect of the corporation resident in Canada, of the particular relevant foreign affiliate of the corporation resident in Canada, in respect of the disposition of the disposed shares,

  — in computing the particular relevant foreign affiliate's exempt deficit, at the balance adjustment time, there is included, under

subparagraph (viii) of the description of A in the definition "exempt surplus" in subsection 5907(1), an amount equal to the exempt deficit, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, immediately before that time, and

— in computing the particular relevant foreign affiliate's taxable deficit, in respect of the corporation resident in Canada, at the balance adjustment time, there is included, under subparagraph (vi) of the description of A in the definition "taxable surplus" in subsection 5907(1), an amount equal to the taxable deficit, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, immediately before that time.

- The amount, at the balance adjustment time, of exempt surplus, exempt deficit, taxable surplus, taxable deficit and underlying foreign tax in respect of the corporation resident in Canada of the particular relevant foreign affiliate is adjusted to become the proportion of that amount, determined without making this adjustment, that

— the surplus entitlement percentage, at the balance adjustment time, of the corporation resident in Canada, in respect of the particular relevant foreign affiliate, determined on the assumption that the taxation year, of the particular relevant foreign affiliate, that otherwise would have included that time, had ended immediately before that time,

is of

— the surplus entitlement percentage, immediately after the time of the disposition, of the corporation resident in Canada, in respect of the particular relevant foreign affiliate, determined assuming that the taxation year of the particular relevant foreign affiliate, that otherwise would have included the balance adjustment time, had ended at the time of the disposition.

- For the purposes of applying the definitions "exempt deficit", "exempt surplus", "taxable deficit", "taxable surplus" and "underlying foreign tax", in subsection 5907(1), the amounts determined under paragraph 5905(2)(b), in respect of the particular relevant foreign affiliate, are deemed to be the opening exempt deficit, opening exempt surplus, opening taxable deficit, opening taxable surplus and opening underlying foreign tax, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate.

Example — Subsection 5905(2)

Facts

1. Canco, a corporation resident in Canada, owns 100% of FA1, which owns 100 shares (100%) of FA2.

2. FA2 owns 100% of FA3.

4. Each of FA1, FA2 and FA3 are foreign affiliates of Canco.

5. FA2 redeems 10 (10%) of its shares owned by FA1.

6. Canco elects under subsection 93(1) of the Act at a designated amount of $30.

7. At the time of the redemption, FA2 has exempt surplus of $0, exempt deficit of $150, taxable surplus of $0, taxable deficit of $200 and underlying foreign tax ("UFT") of $0.

8. At the time of the redemption, FA3 has exempt surplus of $500, exempt deficit of $0, taxable surplus of $150, taxable deficit of $0 and UFT of $0.

9. All the corporations have only issued 100 shares of one class.

Application of subsection 5905(2) to FA3

Subsection 5905(2) applies to adjust the exempt surplus, exempt deficit, taxable surplus, taxable deficit and UFT of each of FA2 and FA3.

For the calculation of consolidated exempt surplus, consolidated exempt deficit, consolidated taxable surplus, consolidated taxable deficit and consolidated underlying foreign tax, see the example in the commentary to subsection 5902(1) of the Regulations.

FA3

Since FA3 has only exempt surplus and taxable surplus, it is only those amounts that must be adjusted.

A. Exempt surplus — FA3

The exempt surplus (otherwise determined) of FA3 is reduced by each of the exempt surplus reduction, exempt deficit reduction and taxable deficit allocation, in respect of the corporation resident in Canada, of FA3 in respect of the disposed shares (see subsections 5905(16) to (22)).

The adjusted amount of the exempt surplus, in respect of the corporation resident in Canada, of FA3 that is determined under paragraph 5905(2)(a) is $500 - ($30 + $150 + $50) = $270. No adjustments are required to be made under paragraph 5905(2)(b) because there is no change in the surplus entitlement percentage of the corporation resident in Canada in respect of FA3.

1. Exempt surplus reduction — FA3

The exempt surplus reduction, in respect of the corporation resident in Canada, of FA3 in respect of the disposed shares is determined as follows

$$A/B \times C \times D = \$500 / \$500 \times \$30 \times 1 = \$30$$

where

A is the exempt surplus in respect of the corporation resident in Canada of FA3 that was included in consolidated exempt surplus in respect of the corporation resident in Canada of FA2 determined under subsection 5902(1) ($500)

B is the consolidated exempt surplus, in respect of the corporation resident in Canada, of FA2 determined under subsection 5902(1) ($500)

C is the portion of the dividend received on the disposed shares because of the election under subsection 93(1) that is, pursuant to paragraph 5900(1)(a), prescribed to be paid out of the consolidated exempt surplus of FA2 ($300 / $300 × $30 = $30)

D is the specified adjustment factor (see subsection 5905(23)), in respect of the corporation resident in Canada, in respect of FA3, of FA1 (1).

2. Exempt deficit reduction — FA3

The exempt deficit reduction in respect of the corporation resident in Canada of FA3 in respect of the disposed shares is determined as follows

$$A/B \times C/ D = \$500 / \$500 \times \$150 / 1 = \$150$$

where

A is the exempt surplus, in respect of the corporation resident in Canada, of FA2 that was included in the consolidated exempt surplus, in respect of the corporation resident in Canada, of FA2 determined under subsection 5902(1) ($500)

B is the consolidated exempt surplus, in respect of the corporation resident in Canada, of FA2 determined under subsection 5902(1) ($500)

C is the consolidated exempt deficit, in respect of the corporation resident in Canada, of FA2 determined under subsection 5902(1) ($150)

D is the amount that would be the surplus entitlement percentage of FA2 in FA3 if FA2 were the corporation resident in Canada (1).

3. Taxable deficit allocation — FA3

The taxable deficit allocation is determined as follows

$$1/E \times (A - B) \times C/D$$

$$1 / 100\% \times (\$200 - \$150) \times (\$500 / \$500)) = \$50$$

where

A is the amount of the consolidated taxable deficit, in respect of the corporation resident in Canada, of FA2 (determined under subsection 5902(1)) in respect of the disposition of the disposed shares ($200)

B is the amount of the consolidated taxable surplus, in respect of the corporation resident in Canada, of FA2 (determined under subsection 5902(1)) in respect of the disposition of the disposed shares ($150)

C is the exempt surplus, in respect of the corporation resident in Canada, of FA3 that was included in consolidated exempt surplus, in respect of the corporation resident in Canada, of FA2 determined under subsection 5902(1) ($500)

D is the consolidated exempt surplus, in respect of the corporation resident in Canada, of FA2 determined under subsection 5902(1) ($500)

E is the amount that would be the surplus entitlement percentage of FA2 in FA3 if FA2 were the corporation resident in Canada (100%).

B. Taxable surplus — FA3

In this example, taxable surplus is only reduced by the taxable deficit reduction.

The adjusted amount of taxable surplus in respect of the corporation resident in Canada of FA3 that is determined under paragraph 5905(2)(a) is $150 - $150 = $0. No adjustments are required to be made under paragraph 5905(2)(b) because there is no change in the surplus entitlement percentage of the corporation resident in Canada in respect of FA3.

1. Taxable deficit reduction — FA3

The taxable deficit reduction is determined as $150 since the consolidated taxable deficit of FA2 exceeds the consolidated taxable surplus of FA2 in respect of the disposition of the FA2 shares (see paragraph (b) of the definition "taxable deficit reduction" in subsection 5905(20).

Note that with respect to FA2, the amounts that have to be adjusted are its taxable deficit and exempt deficit, which are both reduced to $0. As all accounts of FA2 are $0, no paragraph 5905(2)(b) adjustment is necessary.

Related Provisions: Reg. 5905(16) — Exempt deficit allocation; Reg. 5905(19) — Taxable deficit allocation.

History: Subparas. 5905(2)(a)(i), (ii) and para. (2)(c) amended by P.C. 1997-1670, subsecs. 7(2), (3), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the amendments apply to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

For earlier history, see at end of s. 5905.

(3) [FA formed by foreign merger] — Where at any time a foreign affiliate of a corporation resident in Canada has been formed as a result of a foreign merger (within the meaning assigned by subsection 87(8.1) of the Act) of two or more corporations (each of which in this subsection and subsection (4) is referred to as a "predecessor corporation"), for the purposes of this Part, the following rules apply:

(a) in respect of the foreign affiliate,

(i) its opening exempt surplus in respect of the corporation shall be the amount, if any, by which the aggregate of all amounts each of which is the exempt surplus of a predecessor corporation that was a foreign affiliate of the corporation immediately before the merger exceeds the aggregate of all amounts each of which is the exempt deficit of a predecessor corporation that was a foreign affiliate of the corporation immediately before the merger,

(ii) its opening exempt deficit in respect of the corporation shall be the amount, if any, by which the aggregate of all amounts each of which is the exempt deficit of a predecessor corporation that was a foreign affiliate of the corporation immediately before the merger exceeds the aggregate of all amounts each of which is the exempt surplus of a predecessor corporation that was a foreign affiliate of the corporation immediately before the merger,

(iii) its opening taxable surplus in respect of the corporation shall be the amount, if any, by which the aggregate of all amounts each of which is the taxable surplus of a predecessor corporation that was a foreign affiliate of the corporation immediately before the merger exceeds the aggregate of all amounts each of which is the taxable deficit of a predecessor corporation that was a foreign affiliate of the corporation immediately before the merger,

(iv) its opening taxable deficit in respect of the corporation shall be the amount, if any, by which the aggregate of all amounts each of which is the taxable deficit of a predecessor corporation that was a foreign affiliate of the corporation immediately before the merger exceeds the aggregate of all amounts each of which is the taxable surplus of a predecessor corporation that was a foreign affiliate of the corporation immediately before the merger, and

(v) its opening underlying foreign tax in respect of the corporation shall be the aggregate of all amounts each of which is the underlying foreign tax of a predecessor corporation that was a foreign affiliate of the corporation immediately before the merger; and

(b) in respect of any other foreign affiliate of the corporation, other than a predecessor corporation, in which a predecessor corporation had an equity percentage immediately before the merger, the exempt surplus or exempt deficit, the taxable surplus or taxable deficit and the underlying foreign tax of the other affiliate in respect of the corporation shall at that time be adjusted to the proportion of the amount thereof otherwise determined that

(i) the surplus entitlement percentage immediately before that time of the corporation in respect of the other affiliate, determined on the assumption that the taxation year of the other affiliate that otherwise would have included that time had ended immediately before that time,

is of

(ii) the surplus entitlement percentage immediately after that time of the corporation in respect of the other affiliate, determined on the assumption that the taxation year of the other affiliate that otherwise would have included that time had ended immediately after that time,

and, for the purposes of the definitions "exempt deficit", "exempt surplus", "taxable deficit", "taxable surplus" and "underlying foreign tax" in subsection 5907(1), the adjusted amounts are referred to as the opening exempt deficit, opening exempt surplus, opening taxable deficit, opening taxable surplus and opening underlying foreign tax, as the case may be, of the other affiliate in respect of the corporation resident in Canada.

Related Provisions: Reg. 5905(4) — Interpretation; Reg. 5905(6) — Interpretation; Reg. 5907(8) — Deemed new taxation year.

History: The closing words of para. 5905(3)(b) amended by P.C. 1997-1670, subsecs. 7(2), (3), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the amendments apply to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the

taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

For earlier history, see at end of s. 5905.

(4) [Application rules for Reg. 5905(3)] — For the purposes of paragraph (3)(a), the exempt surplus, exempt deficit, taxable surplus, taxable deficit and underlying foreign tax of each predecessor corporation immediately before the foreign merger shall be deemed to be the proportion of the amount thereof otherwise determined that

(a) the surplus entitlement percentage of the corporation resident in Canada immediately before the merger in respect of the predecessor corporation, determined on the assumption that the taxation year of the predecessor corporation that otherwise would have included the time of the merger had ended immediately before that time,

is of

(b) the percentage that would be the surplus entitlement percentage of the corporation resident in Canada immediately after the merger in respect of the foreign affiliate of the corporation formed as a result of the merger if the net surplus of such foreign affiliate were the aggregate of all amounts, each of which is the net surplus of a predecessor corporation immediately before the merger.

Proposed Amendment — Reg. 5905(4)

(4) For the purpose of subsection (3),

(a) if, at any time, a foreign affiliate of a corporation resident in Canada disposes of one or more shares (referred to in this subsection and subsections (16) to (23) as the "disposed shares") of a class of the capital stock of a predecessor corporation and the foreign affiliate is, because of an election made under subsection 93(1) or (1.2) of the Act, deemed to have received a dividend (referred to in this subsection and subsections (18) and (21) as the "disposition dividend") on the disposed shares, for the purposes of the adjustments required by paragraphs (b) and (3)(b),

(i) in computing the exempt surplus, in respect of the corporation resident in Canada, of each predecessor corporation and of each other foreign affiliate of the corporation resident in Canada in which a predecessor foreign affiliate has an equity percentage (the particular predecessor corporation and each such other foreign affiliate being referred to in this subsection and subsections (16) to (23) as the "particular relevant foreign affiliate") at the time (referred to in this subsection and subsections (16) to (22) as the "balance adjustment time") that is immediately before the foreign merger, there is to be included under subparagraph (v) of the description of B in the definition "exempt surplus" in subsection 5907(1), the total of

(A) an amount equal to the exempt surplus reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(B) an amount equal to the exempt deficit reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares, and

(C) an amount equal to the taxable deficit allocation, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(ii) in computing the particular relevant foreign affiliate's taxable surplus, in respect of the corporation resident in Canada, at the balance adjustment time, there is to be included, under subparagraph (v) of the description of B in the definition "taxable surplus" in subsection 5907(1), the total of

(A) an amount equal to the taxable surplus reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(B) an amount equal to the taxable deficit reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares, and

(C) an amount equal to the exempt deficit allocation, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(iii) in computing the particular relevant foreign affiliate's underlying foreign tax, in respect of the corporation resident in Canada, at the balance adjustment time, there is to be included, under subparagraph (iii) of the description of B in the definition "underlying foreign tax" in subsection 5907(1), the total of

(A) the amount determined by the formula (which is deemed to be nil, if, in respect of the particular relevant foreign affiliate, the value determined for B in the formula is nil)

$$A/B \times C \times D$$

where

A is the portion of the amount of the particular relevant foreign affiliate's underlying foreign tax, in respect of the corporation resident in Canada, at the balance adjustment time, that may reasonably be considered to have been included in computing the amount of the consolidated underlying foreign tax (as determined under subparagraph 5902(1)(c)), in respect of the corporation resident in Canada, of the particular predecessor corporation that issued the disposed shares, in respect of the disposition,

B is the amount of the consolidated underlying foreign tax (as determined under subparagraph 5902(1)(c)), in respect of the corporation resident in Canada, of the particular predecessor corporation that issued the disposed shares, in respect of the disposition,

C is the total of all amounts each of which is the amount, determined by paragraph 5900(1)(d), to be the amount of foreign tax

applicable to the portion of the disposition dividend prescribed to have been paid out of the taxable surplus of the issuing foreign affiliate, that relates to a disposed share, in respect of the disposition, and

D is the specified adjustment factor, in respect of the corporation resident in Canada, in respect of the particular relevant foreign affiliate of the corporation resident in Canada, of the foreign affiliate of the corporation resident in Canada that disposed of the disposed shares, in respect of the disposition of the disposed shares, and

(B) the amount of the underlying foreign tax reduction in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposition of the disposed shares,

(iv) in computing the exempt deficit, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, at the balance adjustment time, there is to be included, under subparagraph (viii) of the description of A in the definition "exempt surplus" in subsection 5907(1), an amount equal to the exempt deficit, in respect of the corporation resident in Canada, immediately before that time, of the particular relevant foreign affiliate, and

(v) in computing the particular relevant foreign affiliate's taxable deficit, in respect of the corporation resident in Canada, at the balance adjustment time, there is to be included, under subparagraph (vi) of the description of A in the definition "taxable surplus" in subsection 5907(1), an amount equal to the taxable deficit, in respect of the corporation resident in Canada, immediately before that time, of the particular relevant foreign affiliate; and

(b) the amount, at the balance adjustment time, of exempt surplus, exempt deficit, taxable surplus, taxable deficit and underlying foreign tax, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate is to be adjusted to become the proportion of that amount, determined without making that adjustment, that

(i) the surplus entitlement percentage, at the balance adjustment time, of the corporation resident in Canada, in respect of the particular relevant foreign affiliate, determined on the assumption that the taxation year, of the particular relevant foreign affiliate that otherwise would have included that time, had ended immediately before that time,

is of

(ii) the surplus entitlement percentage, immediately after the time of the disposition, of the corporation resident in Canada, in respect of the particular relevant foreign affiliate, determined on the assumption that the taxation year, of the particular relevant foreign affiliate, that otherwise would have included the balance adjustment time, had ended at the time of the disposition.

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 2(2), will amend subsec. 5905(4) to read as above, applicable in respect of dispositions in respect of which an election was made in respect of which the amendments to s. 5902 apply.

Technical Notes: Subsection 5905(4) provides rules for the operation of subsection 5905(3), concerning foreign mergers.

Subsection 5905(4) is replaced by new subsection 5905(4) and adjusts surplus accounts in respect of a corporation resident in Canada of a foreign affiliate of the corporation resident in Canada in respect of elections made by the corporation resident in Canada under subsections 93(1) and (1.2) of the Act in respect of shares of the foreign affiliate that are disposed of.

Proposed new subsection 5905(4) applies in respect of dispositions in respect of which an election was made in respect of which proposed new subsection 5902(1) applies.

Proposed new subsection 5905(4) provides, for the purposes of subsection 5905(3), the following rules:

- if, at any time, a foreign affiliate of a corporation resident in Canada disposes of one or more shares (in this subsection and subsections 5905(16) to (23), the "disposed shares") of a class of the capital stock of a predecessor corporation and the foreign affiliate of the corporation resident in Canada is, because of an election made under subsection 93(1) or (1.2) of the Act, deemed to have received a dividend (in this subsection and subsections (18) and (21), the "disposition dividend") on the disposed shares, for the purposes of the adjustments required by paragraphs (b) and 5905(3)(b),
  - in computing the exempt surplus in respect of the corporation resident in Canada of each predecessor corporation and each other foreign affiliate of the corporation resident in Canada in which a predecessor foreign affiliate has an equity percentage (the particular predecessor corporation and each such other foreign affiliate being referred to in this subsection and subsections 5905(16) to (23) as the "particular relevant foreign affiliate") at the time (referred to in this subsection and subsections 5905(16) to (22) as the "balance adjustment time") that is immediately before the foreign merger, there is to be included under subparagraph (v) of the description of B in the definition "exempt surplus" in subsection 5907(1), the total of
    - an amount equal to the exempt surplus reduction in respect of the corporation resident in Canada of the particular relevant foreign affiliate in respect of the disposed shares,
    - an amount equal to the exempt deficit reduction in respect of the corporation resident in Canada of the particular relevant foreign affiliate in respect of the disposed shares, and
    - an amount equal to the taxable deficit allocation in respect of the corporation resident in Canada of the particular relevant foreign affiliate in respect of the disposed shares,
  - in computing the particular relevant foreign affiliate's taxable surplus in respect of the corporation resident in Canada, at the balance adjustment time, there is included, under subparagraph (v) of the description of B in the definition "taxable surplus" in subsection 5907(1), the total of
    - the taxable surplus reduction in respect of the corporation resident in Canada of the particular relevant foreign affiliate, in respect of the disposed shares,
    - the taxable deficit reduction in respect of the corporation resident in Canada of the particular relevant foreign affiliate, in respect of the disposed shares, and
    - the exempt deficit allocation in respect of the corporation resident in Canada of the particular relevant foreign affiliate, in respect of the disposed shares,
  - in computing the particular relevant foreign affiliate's underlying foreign tax at the balance adjustment time, there is included, under subparagraph (iii) of the description of B in the definition "underlying foreign tax" in subsection 5907(1), the total of
    - the amount determined by the formula

$$A/B \times C \times D$$

where

A is that portion of the amount of the particular relevant foreign affiliate's underlying foreign tax in respect of the corporation resident in Canada, at the balance adjustment time, that can reasonably be considered to have been included in computing the amount of the consolidated underlying foreign tax (as determined under paragraph 5902(1)(c)), of the particular prede-

cessor corporation that issued the disposed shares, in respect of the disposition,

B is the amount of the consolidated underlying foreign tax in respect of the corporation resident in Canada (as determined under paragraph 5902(1)(c)), of the particular predecessor corporation that issued the disposed shares, in respect of the disposition,

C is the total of all the amounts determined by paragraph 5900(1)(d), to be the amount of foreign tax in respect of the corporation resident in Canada applicable to the portion of the disposition dividend prescribed to have been paid out of the taxable surplus of the issuing foreign affiliate, that relates to a disposed share, in respect of the disposition, and

D is the specified adjustment factor, in respect of the corporation resident in Canada, in respect of the particular relevant foreign affiliate, of the foreign affiliate that disposed of the disposed shares, in respect of the disposition of the disposed shares,

— however, if the amount determined, in respect of the particular relevant foreign affiliate, for B in the formula is nil, the amount determined, in respect of the particular relevant foreign affiliate, by the formula is deemed to be nil,

- an amount equal to the underlying foreign tax reduction in respect of the corporation resident in Canada, of the particular relevant foreign affiliate of the corporation resident in Canada, in respect of the disposition of the disposed shares,

— in computing the exempt deficit in respect of the corporation resident in Canada of the particular relevant foreign affiliate, at the balance adjustment time, there is included, under subparagraph (viii) of the description of A in the definition "exempt surplus" in subsection 5907(1), an amount equal to the exempt deficit, immediately before that time, of the particular relevant foreign affiliate, and

— in computing the particular relevant foreign affiliate's taxable deficit in respect of the corporation resident in Canada, at the balance adjustment time, there is included, under subparagraph (vi) of the description of A in the definition "taxable surplus" in subsection 5907(1), an amount equal to the taxable deficit, immediately before that time, of the particular relevant foreign affiliate.

- The amount, at the balance adjustment time, of exempt surplus, exempt deficit, taxable surplus, taxable deficit and underlying foreign tax, of the particular relevant foreign affiliate is adjusted to become the proportion of that amount, determined without making this adjustment, that

— the surplus entitlement percentage, at the balance adjustment time, of the corporation resident in Canada, in respect of the particular relevant foreign affiliate, determined on the assumption that the taxation year of the particular relevant foreign affiliate, that otherwise would have included that time, had ended immediately before that time,

is of

— the surplus entitlement percentage, immediately after the time of the disposition, of the corporation resident in Canada, in respect of the particular relevant foreign affiliate determined on the assumption that the taxation year, of the particular relevant foreign affiliate, that otherwise would have included the balance adjustment time, had ended at the time of the disposition.

Related Provisions: Reg. 5905(16) — Exempt deficit allocation; Reg. 5905(19) — Taxable deficit allocation.

(5) [Shares of FA of predecessor acquired by acquiring corporation] — Where at any time

(a) there is a disposition by a corporation resident in Canada (in this subsection referred to as the "predecessor corporation") of any of the shares owned by it of the capital stock of a particular foreign affiliate of it to a taxable Canadian corporation with which the predecessor corporation was not dealing at arm's length (in this subsection referred to as the "acquiring corporation"),

(b) there is an amalgamation, to which section 87 of the Act applies, of two or more corporations (each of which in this subsection is referred to as a "predecessor corporation") to form a new corporation (in this subsection referred to as the "acquiring corporation") as a result of which shares of the capital stock of a particular foreign affiliate of a predecessor corporation become the property of the acquiring corporation, or

(c) there is a winding-up, to which subsection 88(1) of the Act applies, of a corporation (in this subsection referred to as the "predecessor corporation") into another corporation (in this subsection referred to as the "acquiring corporation") as a result of which shares of the capital stock of a particular foreign affiliate of the predecessor corporation become the property of the acquiring corporation,

the following rules apply for the purposes of this Part in respect of the particular affiliate and each other foreign affiliate of the predecessor corporation in which the particular affiliate has an equity percentage:

Proposed Amendment — Reg. 5905(5) between (c) and (d)

the following rules apply for the purposes of this Part in respect of the particular affiliate and each other foreign affiliate of the predecessor corporation in which the particular affiliate has an equity percentage (the particular affiliate and each such other foreign affiliate each being referred to in subsections (16) to (23) as the "particular relevant foreign affiliate"):

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 2(3), will amend the portion of subsec. 5905(5) between paras. (c) and (d) to read as above, applicable in respect of dispositions in respect of which an election was made in respect of which the amendments to s. 5902 apply.

Technical Notes: Subsections 5905(5) and (6) apply where, as a result of specified types of transactions, all or any of the shares, of the capital stock of a particular foreign affiliate of a corporation resident in Canada, owned by a "predecessor corporation" are acquired by, or otherwise become the property of, an "acquiring corporation". These transactions are described in detail in paragraphs 5905(5)(a), (b) and (c) and can be generally described as follows:

- a transfer of shares of the capital stock of the particular affiliate by a corporation (the "predecessor corporation") resident in Canada to a taxable corporation resident in Canada (the "acquiring corporation") with which the predecessor corporation does not deal at arm's length;

- an amalgamation of two or more corporations (each corporation being referred to as a "predecessor corporation") to form a new corporation (the "acquiring corporation") if

— section 87 of the Act applies to the amalgamation, and

— as a result of the amalgamation, shares of the capital stock of the particular affiliate become the property of the acquiring corporation; or

- a winding-up of a corporation (the "predecessor corporation") into another corporation (the "acquiring corporation") if

— subsection 88(1) of the Act applies to the winding-up, and

— as a result of the winding-up, shares of the capital stock of the particular affiliate become the property of the acquiring corporation.

Subsections 5905(5) and (6) provide rules for computing the "opening exempt surplus", "opening exempt deficit", "opening taxable surplus", "opening taxable deficit" and "opening underlying foreign tax" of the particular affiliate (and of each other foreign affiliate of the predecessor corporation in which the particular affiliate has an equity percentage) in respect of the acquiring corporation. These rules ensure that the appropriate amounts of surplus, deficit and underlying foreign tax balances of

the particular affiliate (and of the relevant subsidiaries of the particular affiliate) in respect of the predecessor corporation are assumed by the acquiring corporation as a result of the reorganization.

Subsection 5905(5) (i.e., the portion between paragraph (c) and (d)) is amended to define the term "particular relevant foreign affiliate" as a particular foreign affiliate and each other foreign affiliate of the predecessor corporation in which the particular affiliate has an equity percentage for the purposes of the subsection and subsections 5905(16) to (23). This amendment applies in respect of dispositions in respect of which an election was made in respect of which proposed new subsection 5902(1) applies.

(d) its opening exempt surplus in respect of the acquiring corporation shall be the amount, if any, by which the aggregate of its exempt surplus in respect of each predecessor corporation and in respect of the acquiring corporation immediately before any of the transactions referred to in paragraph (a), (b) or (c) exceeds the aggregate of its exempt deficit in respect of each predecessor corporation and in respect of the acquiring corporation immediately before any of the transactions referred to in paragraph (a), (b) or (c);

(e) its opening exempt deficit in respect of the acquiring corporation shall be the amount, if any, by which the aggregate of its exempt deficit in respect of each predecessor corporation and in respect of the acquiring corporation immediately before any of the transactions referred to in paragraph (a), (b) or (c) exceeds the aggregate of its exempt surplus in respect of each predecessor corporation and in respect of the acquiring corporation immediately before any of the transactions referred to in paragraph (a), (b) or (c);

(f) its opening taxable surplus in respect of the acquiring corporation shall be the amount, if any, by which the aggregate of its taxable surplus in respect of each predecessor corporation and in respect of the acquiring corporation immediately before any of the transactions referred to in paragraph (a), (b) or (c) exceeds the aggregate of its taxable deficit in respect of each predecessor corporation and in respect of the acquiring corporation immediately before any of the transactions referred to in paragraph (a), (b) or (c);

(g) its opening taxable deficit in respect of the acquiring corporation shall be the amount, if any, by which the aggregate of its taxable deficit in respect of each predecessor corporation and in respect of the acquiring corporation immediately before any of the transactions referred to in paragraph (a), (b) or (c) exceeds the aggregate of its taxable surplus in respect of each predecessor corporation and in respect of the acquiring corporation immediately before any of the transactions referred to in paragraph (a), (b) or (c); and

(h) its opening underlying foreign tax in respect of the acquiring corporation shall be the aggregate of its underlying foreign tax in respect of each predecessor corporation and in respect of the acquiring corporation immediately before any of the transactions referred to in paragraph (a), (b) or (c).

Related Provisions: Reg. 5905(5.1) — Amalgamation; Reg. 5905(5.2) — Winding-up; Reg. 5905(6) — Rules.

Proposed Addition — Reg. 5905(5.1), (5.2)

(5.1) Amalgamations — Where there has been an amalgamation described in paragraph (5)(b) to which subsection 87(11) of the Act applies and in respect of that amalgamation an amount has been — under paragraph 88(1)(d) of the Act by the corporation (referred to in this subsection as the "parent corporation") described in subsection 87(11) of the Act as the parent — designated in respect of shares of a corporation (referred to in this subsection as the "particular foreign affiliate") that is, immediately before the amalgamation, a foreign affiliate of the corporation (referred to in this subsection as the "subsidiary corporation") resident in Canada that is described in subsection 87(11) of the Act as the subsidiary, or designated in respect of an interest in a partnership that holds such shares, the following rules apply for the purposes of paragraphs (5)(d) to (h):

(a) subject to paragraph (c), the amount of the exempt surplus or exempt deficit, taxable surplus or taxable deficit and underlying foreign tax, as the case may be, of the particular foreign affiliate, in respect of the subsidiary corporation and the parent corporation is deemed to be nil, immediately before the amalgamation;

(b) subject to paragraph (c), the amount of the exempt surplus or exempt deficit, taxable surplus or taxable deficit and underlying foreign tax, as the case may be, in respect of the subsidiary corporation, of each other foreign affiliate (referred to in this subsection as a "lower-tier foreign affiliate") of the subsidiary corporation (other than the particular foreign affiliate) in which the particular foreign affiliate has, immediately before the amalgamation, an equity percentage, is deemed to be nil, immediately before the amalgamation; and

(c) the amount of the exempt surplus or exempt deficit, taxable surplus or taxable deficit and underlying foreign tax, as the case may be, of the particular foreign affiliate and of each lower-tier foreign affiliate, in respect of the parent corporation, is deemed to be the amount that would be determined if

(i) in addition to the shares or partnership interests held by the parent corporation, if any, that are relevant in computing the exempt surplus or exempt deficit, taxable surplus or taxable deficit, or underlying foreign tax, of any foreign affiliate of the parent corporation, in respect of the parent corporation, the shares or partnership interests that were held by the subsidiary corporation at any time in the period (in this subsection referred to as the "control period") that begins at the time the parent corporation last acquired control of the subsidiary corporation and ends immediately before the amalgamation, that are relevant in computing the exempt surplus or exempt deficit, taxable surplus or taxable deficit, or underlying foreign tax, of any foreign affiliate of the subsidiary corporation, in respect of the subsidiary corporation, were held by the parent corporation at the same times in the control period that they were held by the subsidiary corporation,

(ii) the parent corporation had acquired, at the time the parent corporation last acquired control of the subsidiary corporation, all the shares and partnership interests held, at that time, by the subsidiary corporation that are relevant in computing the exempt surplus or exempt deficit, taxable surplus or taxable deficit, or underlying foreign tax, of any foreign affiliate of the subsidiary corporation, in respect of the subsidiary corporation and

(iii) where the subsidiary corporation acquired or disposed of, as the case may be, any shares or partnership interests in the control period that are relevant in computing the exempt surplus or ex-

empt deficit, taxable surplus or taxable deficit, or underlying foreign tax, of any foreign affiliate of the subsidiary corporation, in respect of the subsidiary corporation, the parent corporation had acquired or disposed of, as the case may be, the shares or partnership interests at the same time they were acquired or disposed of, as the case may be, by the subsidiary corporation.

Technical Notes: New subsection 5905(5.1) concerns vertical amalgamations of corporations resident in Canada in respect of which an amount has been designated under paragraph 88(1)(d) of the Act in respect of a share of a foreign affiliate of the parent corporation resident in Canada. This new subsection applies in respect of dispositions in respect of which an election was made in respect of which proposed new subsection 5902(1) applies.

Proposed new subsection 5905(5.1) provides that, where there has been an amalgamation described in paragraph 5905(5)(b) to which subsection 87(11) of the Act applies and, in respect of that amalgamation, an amount has been — under paragraph 88(1)(d) of the Act by the corporation (the "parent corporation") described in subsection 87(11) of the Act as the parent — designated in respect of shares of a corporation (the "particular foreign affiliate") that is, immediately before the amalgamation, a foreign affiliate of the corporation (the "subsidiary corporation") resident in Canada that is described in subsection 87(11) of the Act as the subsidiary, or designated in respect of an interest in a partnership that holds such shares, certain rules apply for the purposes of paragraphs 5905(5)(d) to (h).

- Subject to paragraph 5905(5.1)(c), the amount of the exempt surplus or exempt deficit, taxable surplus or taxable deficit and underlying foreign tax, as the case may be, of the particular foreign affiliate, in respect of the subsidiary corporation and the parent corporation is deemed to be nil, immediately before the amalgamation.

- Subject to paragraph 5905(5.1)(c), the amount of the exempt surplus or exempt deficit, taxable surplus or taxable deficit and underlying foreign tax, as the case may be, in respect of the subsidiary corporation, of each other foreign affiliate (a "lower-tier foreign affiliate") of the subsidiary corporation (other than the particular foreign affiliate) in which the particular foreign affiliate has, immediately before the amalgamation, an equity percentage, is deemed to be nil, immediately before the amalgamation.

- Proposed new paragraph 5905(5.1)(c) provides that the amount of the exempt surplus or exempt deficit, taxable surplus or taxable deficit and underlying foreign tax, as the case may be, of the particular foreign affiliate and each lower-tier foreign affiliate, in respect of the parent corporation, is deemed to be the amount that would have been determined, if

  — in addition to the shares or partnership interests held by the parent corporation, if any, that are relevant in computing the exempt surplus or exempt deficit, taxable surplus or taxable deficit, and underlying foreign tax, of any foreign affiliate of the parent corporation, in respect of the parent corporation, the shares or partnership interests that were held by the subsidiary corporation at any time in the period (the "control period") that begins at the time the parent corporation last acquired control of the subsidiary corporation and ends immediately before the amalgamation, that are relevant in computing the exempt surplus or exempt deficit, taxable surplus or taxable deficit, and underlying foreign tax, of any foreign affiliate of the subsidiary corporation, in respect of the subsidiary corporation, were held by the parent corporation at the same time in the control period that they were held by the subsidiary corporation,

  — the parent corporation acquired, at the time the parent corporation last acquired control of the subsidiary corporation, all the shares and partnership interests held, at that time, by the subsidiary corporation that are relevant in computing the exempt surplus or exempt deficit, taxable surplus or taxable deficit, and underlying foreign tax, of any foreign affiliate of the subsidiary corporation, in respect of the subsidiary corporation, and

  — where the subsidiary corporation acquired or disposed of any shares or partnership interests in the control period that are relevant in computing the exempt surplus or exempt deficit, taxable surplus or taxable deficit, and underlying foreign tax, of any foreign affiliate of the subsidiary corporation, in respect of the subsidiary corporation, the parent corporation is deemed to have acquired or disposed of, as the case may be, the shares or partnership interests at the same time they were acquired or disposed of, as the case may be, by the subsidiary corporation.

(5.2) Windings-up — Where there has been a winding-up described in paragraph (5)(c) and in respect of that winding-up an amount has been — under paragraph 88(1)(d) of the Act by the corporation (referred to in this subsection as the "parent corporation") described in subsection 88(1) of the Act as the parent — designated in respect of shares of a corporation (referred to in this subsection as the "particular foreign affiliate") that is, immediately before the winding-up, a foreign affiliate of the corporation (referred to in this subsection as the "subsidiary corporation") resident in Canada that is described in subsection 88(1) of the Act as the subsidiary, or designated in respect of an interest in a partnership that holds such shares, the following rules apply for the purposes of paragraphs (5)(d) to (h):

(a) subject to paragraph (c), the amount of the exempt surplus or exempt deficit, taxable surplus or taxable deficit and underlying foreign tax, as the case may be, of the particular foreign affiliate, in respect of the subsidiary corporation and the parent corporation is deemed to be nil, immediately before the winding-up;

(b) subject to paragraph (c), the amount of the exempt surplus or exempt deficit, taxable surplus or taxable deficit and underlying foreign tax, as the case may be, in respect of the subsidiary corporation, of each other foreign affiliate (referred to in this subsection as a "lower-tier foreign affiliate") of the subsidiary corporation (other than the particular foreign affiliate) in which the particular foreign affiliate has, immediately before the winding-up, an equity percentage, is deemed to be nil, immediately before the winding-up; and

(c) the amount of the exempt surplus or exempt deficit, taxable surplus or taxable deficit and underlying foreign tax, as the case may be, of the particular foreign affiliate and each lower-tier foreign affiliate, in respect of the parent corporation, is deemed to be the amount that would be determined if

(i) in addition to the shares or partnership interests held by the parent corporation, if any, that are relevant in computing the exempt surplus or exempt deficit, taxable surplus or taxable deficit, or underlying foreign tax, of any foreign affiliate of the parent corporation, in respect of the parent corporation, the shares or partnership interests that were held by the subsidiary corporation at any time in the period (in this subsection referred to as the "control period") that begins at the time the parent corporation last acquired control of the subsidiary corporation and ends immediately before the winding-up, that are relevant in computing the exempt surplus or exempt deficit, taxable surplus or taxable deficit, or underlying foreign tax, of any foreign affiliate of the subsidiary corporation, in respect of the subsidiary corporation, were held by the parent corporation at the same time in the control period that they were held by the subsidiary corporation,

(ii) the parent corporation acquired, at the time the parent corporation last acquired control of the subsidiary corporation, all the shares and partnership interests held, at that time, by the subsidiary corporation that are relevant in computing the ex-

empt surplus or exempt deficit, taxable surplus or taxable deficit, or underlying foreign tax, of any foreign affiliate of the subsidiary corporation, in respect of the subsidiary corporation, and

(iii) where the subsidiary corporation acquired or disposed of, as the case may be, any shares or partnership interests in the control period that are relevant in computing the exempt surplus or exempt deficit, taxable surplus or taxable deficit, or underlying foreign tax, of any foreign affiliate of the subsidiary corporation, in respect of the subsidiary corporation, the parent corporation is deemed to have acquired or disposed of, as the case may be, the shares or partnership interests at the same time they were acquired or disposed of, as the case may be, by the subsidiary corporation.

Technical Notes: New subsection 5905(5.2) concerns vertical amalgamations of corporations resident in Canada in respect of which an amount has been designated under paragraph 88(1)(d) of the Act in respect of a share of a foreign affiliate of the parent corporation resident in Canada. This new subsection applies in respect of dispositions in respect of which an election was made in respect of which proposed new subsection 5902(1) applies.

New subsection 5905(5.2) provides that, where there has been a winding-up described in paragraph 5905(5)(c) and, in respect of that winding-up, an amount has been — under paragraph 88(1)(d) of the Act by the corporation (the "parent corporation") described in subsection 88(1) of the Act as the parent — designated in respect of shares of a corporation (the "particular foreign affiliate") that is, immediately before the winding-up, a foreign affiliate of the corporation (the "subsidiary corporation") resident in Canada that is described in subsection 88(1) of the Act as the subsidiary or designated in respect of an interest in a partnership that holds such shares, the following rules apply for the purposes of paragraphs 5905(5)(d) to (h):

- Subject to paragraph 5905(5.2)(c), the amount of the exempt surplus or exempt deficit, taxable surplus or taxable deficit and underlying foreign tax of the particular foreign affiliate, in respect of the subsidiary corporation and the parent corporation is deemed to be nil, immediately before the winding-up.

- Subject to paragraph 5905(5.2)(c), the amount of the exempt surplus or exempt deficit, taxable surplus or taxable deficit and underlying foreign tax, as the case may be, in respect of the subsidiary corporation, of each other foreign affiliate (a "lower-tier foreign affiliate") of the subsidiary corporation (other than the particular foreign affiliate) in which the particular foreign affiliate has, immediately before the winding-up, an equity percentage, is deemed to be nil, immediately before the winding-up.

- New paragraph 5905(5.2)(c) provides that the amount of the exempt surplus or exempt deficit, taxable surplus or taxable deficit and underlying foreign tax of the particular foreign affiliate and each lower-tier foreign affiliate, in respect of the parent corporation, is deemed to be the amount that would have been determined, if

  — in addition to the shares or partnership interests held by the parent corporation, if any, that are relevant in computing the exempt surplus or exempt deficit, taxable surplus or taxable deficit, and underlying foreign tax, of any foreign affiliate of the parent corporation, in respect of the parent corporation, the shares or partnership interests that were held by the subsidiary corporation at any time in the period (the "control period") that begins at the time the parent corporation last acquired control of the subsidiary corporation and ends immediately before the winding-up, that are relevant in computing the exempt surplus or exempt deficit, taxable surplus or taxable deficit, and underlying foreign tax, of any foreign affiliate of the subsidiary corporation, in respect of the subsidiary corporation, were held by the parent corporation at the same time in the control period that they were held by the subsidiary corporation,

  — the parent corporation acquired, at the time the parent corporation last acquired control of the subsidiary corporation, all the shares and partnership interests held, at that time, by the subsidiary corporation that are relevant in computing the exempt surplus or exempt deficit, taxable surplus or taxable deficit, and underlying foreign tax, of any foreign affiliate of the subsidiary corporation, in respect of the subsidiary corporation, and

  — where the subsidiary corporation acquired or disposed of any shares or partnership interests in the control period that are relevant in computing the exempt surplus or exempt deficit, taxable surplus or taxable deficit, and underlying foreign tax, of any foreign affiliate of the subsidiary corporation, in respect of the subsidiary corporation, the parent corporation shall be deemed to have acquired or disposed of the shares or partnership interests at the same time they were acquired or disposed of by the subsidiary corporation.

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 2(4), will add subsecs. 5905(5.1) and (5.2), applicable in respect of amalgamations that occur, and windings-up that begin, after December 20, 2002.

(6) [Rules for Reg. 5905(5)] — For the purposes of subsection (5), the following rules apply:

(a) where paragraph (5)(a) is applicable and the predecessor corporation is, by virtue of an election made under subsection 93(1) of the Act, deemed to have received a dividend on one or more of the shares of the particular affiliate disposed of in the transaction, for the purposes of the adjustment required by paragraph (b),

(i) immediately before the time of the transaction there shall be included under subparagraph (v) of the description of B in the definition "exempt surplus" in subsection 5907(1) in computing the particular affiliate's exempt surplus or exempt deficit, as the case may be, in respect of the predecessor corporation an amount equal to the quotient obtained when

(A) such portion of the dividend as is prescribed by paragraph 5900(1)(a) to have been paid out of the exempt surplus of the particular affiliate

is divided by

(B) the surplus entitlement percentage of the predecessor corporation in respect of the particular affiliate immediately before the disposition, determined on the assumption that the shares disposed of by the predecessor corporation were the only shares owned by it immediately before the time of the transaction,

(ii) immediately before the time of the transaction there shall be included under subparagraph (v) of the description of B in the definition "taxable surplus" in subsection 5907(1) in computing the particular affiliate's taxable surplus or taxable deficit, as the case may be, in respect of the predecessor corporation an amount equal to the quotient obtained when

(A) such portion of the dividend as is prescribed by paragraph 5900(1)(b) to have been paid out of the taxable surplus of the particular affiliate

is divided by

(B) the surplus entitlement percentage referred to in clause (i)(B), and

(iii) immediately before the time of the transaction there shall be deducted from the amount, if any, otherwise determined to be the underlying foreign tax of the particular affiliate in respect of the predecessor corporation an amount equal to the quotient obtained when

(A) the amount prescribed by paragraph 5900(1)(d) to be the foreign tax applicable to such portion of the dividend as is prescribed by

paragraph 5900(1)(b) to have been paid out of the taxable surplus of the particular affiliate

is divided by

(B) the surplus entitlement percentage referred to in clause (i)(B); and

(b) the exempt surplus, exempt deficit, taxable surplus, taxable deficit and underlying foreign tax of an affiliate in respect of a predecessor corporation (within the meaning assigned by subsection (5)) and the acquiring corporation (within the meaning assigned by subsection (5)) shall be deemed to be the proportion of the amount thereof otherwise determined that

(i) the surplus entitlement percentage immediately before the time of the latest of the transactions referred to in paragraph (5)(a), (b) or (c) of the predecessor corporation or the acquiring corporation, as the case may be, in respect of the affiliate, determined on the assumption

(A) that the taxation year of the affiliate that otherwise would have included that time had ended immediately before that time, and

(B) where the transaction is one referred to in paragraph (5)(a), that the shares referred to therein were the only shares owned by the predecessor corporation immediately before that time,

is of

(ii) the surplus entitlement percentage immediately after the time of the latest of the transactions referred to in paragraph (5)(a), (b) or (c) of the acquiring corporation in respect of the affiliate, determined on the assumption that the taxation year of the affiliate that otherwise would have included that time had ended immediately after that time.

Proposed Amendment — Reg. 5905(6)

(6) For the purpose of subsection (5), the following rules apply:

(a) if paragraph (5)(a) applies and the predecessor corporation is, because of an election made under subsection 93(1) or (1.2) of the Act, deemed to have received a dividend (referred to in this subsection and subsections (18) and (21) as the "disposition dividend") on one or more of the shares (each of which is referred to in this subsection and subsections (16) to (23) as a "disposed share") of the particular foreign affiliate (referred to in this subsection as the "issuing foreign affiliate") disposed of, at that time, for the purpose of the adjustment required by paragraph (b),

(i) in computing the exempt surplus, in respect of the predecessor corporation, of a particular relevant foreign affiliate at the time (referred to in this subsection and subsections (16) to (22) as the "balance adjustment time") that is immediately before the disposition time, the following rules apply:

(A) if the particular relevant foreign affiliate has, at the balance adjustment time, an amount of exempt surplus, in respect of the corporation resident in Canada, and the issuing foreign affiliate has, at that time, an amount of consolidated exempt surplus (as determined under paragraph 5902(1)(a)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed share that is equal to or greater than the amount of its consolidated exempt deficit (as determined under paragraph 5902(1)(b)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, there is to be included under subparagraph (v) of the description of B in the definition "exempt surplus" in subsection 5907(1), the amount determined by the formula

$$A/B \times C/D$$

where

A is the portion of the amount of the particular relevant foreign affiliate's exempt surplus, in respect of the predecessor corporation, at the balance adjustment time, that may reasonably be considered to have been included in computing the amount of the issuing foreign affiliate's consolidated exempt surplus (as determined under subparagraph 5902(1)(a)), in respect of the predecessor corporation, in respect of the disposition of the disposed shares,

B is the amount of the issuing foreign affiliate's consolidated exempt surplus (as determined under subparagraph 5902(1)(a)), in respect of the predecessor corporation, in respect of the disposition of the disposed shares,

C is the portion, of the disposition dividend that is, because of an election made under subsection 93(1) or (1.2) of the Act in respect of the disposition of the disposed shares, deemed to be received on the disposed shares by the person that disposed of the disposed shares, that is prescribed by paragraph 5900(1)(a) to have been paid out of the issuing foreign affiliate's exempt surplus, in respect of the predecessor corporation, and

D is the surplus entitlement percentage of the predecessor corporation in respect of the particular relevant foreign affiliate at the balance adjustment time, determined on the assumption that the disposed shares were the only shares owned by the predecessor corporation at that time,

(B) if the amount determined, in respect of the particular relevant foreign affiliate, for either B or D in the formula in clause (A) is nil, the amount determined, in respect of the particular relevant foreign affiliate, by that formula is deemed to be nil,

(C) there is to be included under subparagraph (v) of the description of B in the definition "exempt surplus" in subsection 5907(1), the amount of the particular relevant foreign affiliate's exempt surplus, in respect of the corporation resident in Canada, at the balance adjustment time if

(I) the particular relevant foreign affiliate has, at the balance adjustment time, an amount of exempt surplus, in respect of the corporation resident in Canada, and

(II) the issuing foreign affiliate has, at that time, an amount of consolidated exempt deficit (as determined under paragraph 5902(1)(b)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed share that is equal to or greater than the amount of its consolidated exempt surplus (as determined under paragraph 5902(1)(a)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, and

(D) there is to be included under subparagraph (v) of the description of B in the definition "exempt surplus" in subsection 5907(1), an amount equal to the particular relevant foreign affiliate's taxable deficit allocation in respect of the disposed shares,

(ii) in computing the taxable surplus, in respect of a predecessor corporation, of the particular relevant foreign affiliate, at the balance adjustment time, the following rules apply:

(A) if the particular relevant foreign affiliate has, at the balance adjustment time, an amount of taxable surplus in respect of the corporation resident in Canada, and the issuing foreign affiliate has, at that time, an amount of consolidated taxable surplus (as determined under paragraph 5902(1)(c)), in respect of the corporation resident in Canada, in respect of the disposition that is equal to or greater than the amount of the issuing foreign affiliate's consolidated taxable deficit (as determined under paragraph 5902(1)(d)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, there is to be included under subparagraph (v) of the description of B in the definition "taxable surplus" in subsection 5907(1), the amount determined by the formula

$$A/B \times C/D$$

where

A is the portion of the amount of the particular relevant foreign affiliate's taxable surplus, in respect of the predecessor corporation, at the balance adjustment time, that may reasonably be considered to have been included in computing the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under subparagraph 5902(1)(c)), in respect of the predecessor corporation, in respect of the disposition of the disposed shares,

B is the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under subparagraph 5902(1)(c)), in respect of the predecessor corporation, in respect of the disposition of the disposed shares,

C is the portion, of the disposition dividend that is, because of an election made under subsection 93(1) or (1.2) of the Act in respect of the disposition of the disposed shares, deemed to be received on the disposed shares by the person that disposed of the disposed shares, that is prescribed by paragraph 5900(1)(b) to have been paid out of the issuing foreign affiliate's taxable surplus, in respect of the predecessor corporation, and

D is the surplus entitlement percentage of the predecessor corporation in respect of the particular relevant foreign affiliate at the balance adjustment time, determined on the assumption that the disposed shares were the only shares owned by the predecessor corporation at that time,

(B) if the amount determined, in respect of the particular relevant foreign affiliate for either B or D in the formula in clause (A) is nil, the amount determined, in respect of the particular relevant foreign affiliate, by that formula is deemed to be nil,

(C) there is to be included, under subparagraph (v) of the description of B in the definition "taxable surplus" in subsection 5907(1), the amount of particular relevant foreign affiliate's taxable surplus, in respect of the corporation resident in Canada, at the balance adjustment time, if

(i) the particular relevant foreign affiliate has, at the balance adjustment time, an amount of taxable surplus in respect of the corporation resident in Canada, and

(ii) the issuing foreign affiliate has, at that time, an amount of consolidated taxable deficit (as determined under paragraph 5902(1)(d)), in respect of the corporation resident in Canada, in respect of the disposition that is equal to or greater than the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under paragraph 5902(1)(c)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, and

(D) there is to be included in subparagraph (v) of the description of B in the definition "taxable surplus" in subsection 5907(1), an amount equal to the particular relevant foreign affiliate's exempt deficit allocation in respect of the disposed shares,

(iii) in computing the underlying foreign tax, in respect of the predecessor corporation, of the particular relevant foreign affiliate, at the balance adjustment time, there is to be included under subparagraph (iii) of the description of B in the definition "underlying foreign tax" in subsection 5907(1), the total of

(A) an amount determined by the formula (which is deemed to be nil, if, in respect of the particular relevant foreign affiliate, the value determined for either B or D in the formula is nil)

$$A/B \times C/D$$

where

A is the portion of the amount of the particular relevant foreign affiliate's underlying foreign tax, in respect of the predecessor corporation, at the balance adjustment time, that may reasonably be considered to

have been included in computing the amount of the issuing foreign affiliate's consolidated underlying foreign tax (as determined under paragraph 5902(1)(c)), in respect of the predecessor corporation, in respect of the disposition,

B is the amount of the issuing foreign affiliate's consolidated underlying foreign tax (as determined under paragraph 5902(1)(c)), in respect of the predecessor corporation, in respect of the disposition,

C is the total of all amounts each of which is the amount, determined by paragraph 5900(1)(d), to be the amount of foreign tax applicable to the portion of the disposition dividend prescribed to have been paid out of the taxable surplus of the issuing foreign affiliate, that relates to a disposed share, in respect of the disposition, and

D is the surplus entitlement percentage of the predecessor corporation in respect of the particular relevant foreign affiliate at the balance adjustment time, determined on the assumption that the disposed shares were the only shares owned by the predecessor corporation at that time, and

(B) an amount determined by the formula

$$A \times (B+C)/D$$

where

A is the underlying foreign tax, in respect of the particular predecessor corporation, at the balance adjustment time, of the particular relevant foreign affiliate in respect of the disposition of the disposed shares.

B is the amount determined under clause (ii)(C) in respect of the particular relevant foreign affiliate, in respect of the predecessor corporation, in respect of the disposition of the disposed shares,

C is the exempt deficit allocation, in respect of the predecessor corporation, of the particular relevant foreign affiliate, in respect of the disposition of the disposed shares, and

D is the taxable surplus in respect of the predecessor corporation, at the balance adjustment time, of the particular relevant foreign affiliate,

(iv) in computing the exempt deficit, in respect of the predecessor corporation, of the particular relevant foreign affiliate, at the balance adjustment time, there is to be included under subparagraph (viii) of the description of A in the definition "exempt surplus" in subsection 5907(1), an amount equal to the exempt deficit, in respect of the predecessor corporation, of the particular relevant foreign affiliate, immediately before that time, and

(v) in computing the taxable deficit, in respect of the predecessor corporation, of the particular relevant foreign affiliate, at the balance adjustment time, there is to be included under subparagraph (vi) of the description of A in the definition "taxable surplus" in subsection 5907(1), an amount equal to the taxable deficit, in respect of the predecessor corporation, of the particular relevant foreign affiliate, immediately before that time; and

(b) the exempt surplus or the exempt deficit, the taxable surplus or the taxable deficit and the underlying foreign tax in respect of a predecessor corporation (within the meaning assigned by subsection (5)) and in respect of the acquiring corporation (within the meaning assigned by subsection (5)) of a particular relevant foreign affiliate is, at the balance adjustment time, to be adjusted to become the proportion of the amount of the surplus, deficit or underlying foreign tax determined without reference to this paragraph that

(i) the surplus entitlement percentage, immediately before the time of the latest of the transactions referred to in paragraphs (5)(a), (b) and (c), of the predecessor corporation or the acquiring corporation, as the case may be, in respect of the particular relevant foreign affiliate, determined on the assumptions

(A) that the taxation year of the particular relevant foreign affiliate that otherwise would have included the balance adjustment time had ended immediately before that time, and

(B) if the transaction is a disposition referred to in paragraph (5)(a), that the shares referred to in that paragraph were the only shares owned by the predecessor corporation at the balance adjustment time,

is of

(ii) the surplus entitlement percentage, immediately after the time of the latest of the transactions referred to in paragraphs (5)(a), (b) and (c), of the predecessor corporation or the acquiring corporation, as the case may be, in respect of the particular relevant foreign affiliate, determined on the assumption that the taxation year of the particular relevant foreign affiliate that otherwise would have included that time had ended immediately after that time.

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 2(5), will amend subsec. 5905(6) to read as above, applicable in respect of dispositions in respect of which an election was made in respect of which the amendments to s. 5902 apply.

Technical Notes: Subsection 5905(6) applies when there has been a non-arm's length disposition of shares of a foreign affiliate of a corporation resident in Canada to another corporation resident in Canada. Subsection 5905(6) is being replaced with proposed subsection 5905(6) that requires adjustments of surplus accounts of the foreign affiliate in respect of elections, under subsection 93(1) of the Act, made by the corporation resident in Canada with respect to the disposition of shares of a foreign affiliate of the corporation.

Proposed new subsection 5905(6) provides that, for the purpose of subsection 5905(5), certain rules apply.

- Where paragraph 5905(5)(a) applies and the predecessor corporation referred to in that paragraph is, because of an election made under subsection 93(1) or (1.2) of the Act, deemed to have received a dividend (in this subsection and subsections 5905(18) and (21), the "disposition dividend") on one or more of the shares (each of which is referred to in this subsection and in subsections 5905(16) to (23) as a "disposed share") of the particular foreign affiliate (the "issuing foreign affiliate") disposed of, at that time, in the transaction for the purposes of the adjustment required by paragraph 5905(6)(b),

— in computing the exempt surplus, in respect of the predecessor corporation, of a particular relevant foreign affiliate at the time (in this subsection and subsections 5905(16) to (22), the "bal-

ance adjustment time") that is immediately before the disposition time, the following rules apply:

- if certain conditions set out in clause 5905(6)(a)(i)(A) are met, there is included under subparagraph (v) of the description of B in the definition "exempt surplus" in subsection 5907(1), the amount determined by the formula

$$A/B \times C/D$$

where

A is the portion of the particular relevant foreign affiliate's exempt surplus, in respect of the predecessor corporation, at the balance adjustment time, that can reasonably be considered to have been included in computing the amount of the issuing foreign affiliate's consolidated exempt surplus (as determined under paragraph 5902(1)(a)), in respect of the predecessor corporation, in respect of the disposition of the disposed shares,

B is the issuing foreign affiliate's consolidated exempt surplus (as determined under paragraph 5902(1)(a)), in respect of the predecessor corporation, in respect of the disposition of the disposed shares,

C is the portion of the disposition dividend that is, because of an election made under subsection 93(1) or (1.2) of the Act in respect of the disposition of the disposed shares, received on the disposed shares by the person that disposed of those shares, that is prescribed by paragraph 5900(1)(a) to have been paid out of the issuing foreign affiliate's exempt surplus, in respect of the predecessor corporation, and

D is the surplus entitlement percentage of the predecessor corporation in respect of the particular relevant foreign affiliate at the balance adjustment time, determined on the assumption that the disposed shares were the only shares owned by the predecessor corporation at that time,

- if the amount determined, in respect of the particular relevant foreign affiliate, for either B or D in the formula is nil, the amount determined, in respect of the particular relevant foreign affiliate, by the formula is deemed to be nil,

- there is included under subparagraph (v) of the description of B in the definition "exempt surplus" in subsection 5907(1), the amount of the particular foreign affiliate's exempt surplus in respect of the corporation resident in Canada if the particular foreign affiliate has an amount of exempt surplus in respect of the corporation resident in Canada and the issuing foreign affiliate's (see subsection 5902(1)) consolidated exempt deficit equals or exceeds its consolidated exempt surplus in respect of the corporation resident in Canada, in respect of the disposition of the shares,

- there is included under subparagraph (v) of the description of B in the definition "exempt surplus" in subsection 5907(1), the relevant foreign affiliate's taxable deficit allocation in respect of the disposed shares,

— in computing the taxable surplus, in respect of a predecessor corporation, of the particular relevant foreign affiliate, at the balance adjustment time, the following rules apply:

- there is included under subparagraph (v) of the description of B in the definition "taxable surplus" in subsection 5907(1), the amount determined by the formula

$$A/B \times C/D$$

where

A is the portion of the amount of the particular relevant foreign affiliate's taxable surplus, in respect of the predecessor corporation, at the balance adjustment time, that can reasonably be considered to have been included in computing the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under paragraph 5902(1)(c)), in respect of the predecessor corporation, in respect of the disposition of the disposed shares,

B is the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under paragraph 5902(1)(c)), in respect of the predecessor corporation, in respect of the disposition of the disposed shares,

C is the portion, of the disposition dividend that is, because of an election made under subsection 93(1) or (1.2) of the Act in respect of the disposition of the disposed shares, received on the disposed shares by the person that disposed of those shares, that is prescribed by paragraph 5900(1)(b) to have been paid out of the issuing foreign affiliate's taxable surplus, in respect of the predecessor corporation, and

D is the surplus entitlement percentage of the predecessor corporation in respect of the relevant foreign affiliate at the balance adjustment time, determined on the assumption that the disposed shares were the only shares owned by the predecessor corporation at that time,

- if the amount determined, in respect of the particular relevant foreign affiliate for either B or D in the formula is nil, the amount determined, in respect of the particular relevant foreign affiliate, by the formula is deemed to be nil,

- there is included under subparagraph (v) of the description of B in the definition "taxable surplus" in subsection 5907(1), the amount of the particular foreign affiliate's taxable surplus in respect of the corporation resident in Canada if the particular foreign affiliate has an amount of taxable surplus in respect of the corporation resident and the issuing corporation's (see subsection 5902(1)) consolidated taxable deficit equals or exceeds its consolidated taxable surplus in respect of the corporation resident in Canada in respect of the disposition of the shares,

- there is included in subparagraph (v) of the description of B in the definition "taxable surplus" in subsection 5907(1), an amount equal to the particular relevant foreign affiliate's exempt deficit allocation in respect of the disposed shares,

— in computing the underlying foreign tax, in respect of the predecessor corporation, of the particular relevant foreign affiliate, at the balance adjustment time, the following rules apply:

- there is included under subparagraph (iii) of the description of B in the definition "underlying foreign tax" in subsection 5907(1), an amount determined by the formula

$$A/B \times C/D$$

where

A is the portion of the amount of the particular relevant foreign affiliate's underlying foreign tax, in respect of the predecessor corporation, at the balance adjustment time, that can reasonably be considered to have been included in computing the amount of the issuing foreign affiliate's consolidated underlying foreign tax (as determined under paragraph 5902(1)(c)), in respect of the predecessor corporation, in respect of the disposition,

B is the amount of the particular relevant foreign affiliate's consolidated underlying foreign tax (as determined under paragraph 5902(1)(c)), in respect of the predecessor corporation, in respect of the disposition,

C is the total of all amounts each of which is the amount, determined by paragraph 5900(1)(d), to be the amount of foreign tax applicable to the portion of the disposition dividend prescribed to have been paid out of the taxable surplus of the issuing foreign affiliate, that relates to a disposed share, in respect of the disposition, and

D is the surplus entitlement percentage of the predecessor corporation in respect of the relevant foreign affiliate at the balance adjustment time, determined on the assumption that the disposed shares were the only shares owned by the predecessor corporation at that time,

- if the amount determined above, in respect of the particular relevant foreign affiliate, for either B or D in the formula is

nil, the amount determined, in respect of the particular relevant foreign affiliate by the formula is deemed to be nil,

- there is to be included under subparagraph (iii) of the description of B in the definition "underlying foreign tax" in subsection 5907(1), an amount determined by the formula

$$A \times (B + C)/D$$

where

A is the underlying foreign tax in respect of the predecessor corporation of the particular relevant foreign affiliate, at the balance adjustment time,

B is the amount determined under clause 5905(6)(a)(ii)(C) in respect of the particular relevant foreign affiliate, in respect of the corporation resident in Canada, in respect of the disposition of disposed shares,

C is the exempt deficit allocation, in respect of the predecessor corporation, of the particular relevant foreign affiliate, in respect of the disposition of the disposed shares, and

D is the taxable surplus in respect of the predecessor corporation of the particular relevant foreign affiliate, at the balance adjustment time,

— in computing the exempt deficit, in respect of the predecessor corporation, of the particular relevant foreign affiliate, at the balance adjustment time, there is included under subparagraph (viii) of the description of A in the definition "exempt surplus" in subsection 5907(1), an amount equal to the exempt deficit, in respect of the predecessor corporation, of the particular relevant foreign affiliate, immediately before that time, and

— in computing the taxable deficit, in respect of the predecessor corporation, of the particular relevant foreign affiliate, at the balance adjustment time, there shall be included under subparagraph (vi) of the description of A in the definition "taxable surplus" in subsection 5907(1), an amount equal to the taxable deficit, in respect of the predecessor corporation, of the particular relevant foreign affiliate, immediately before that time.

- New paragraph 5905(6)(b) provides that the exempt surplus or the exempt deficit, the taxable surplus or the taxable deficit and the underlying foreign tax in respect of a predecessor corporation (within the meaning assigned by subsection 5905(5)) and in respect of the acquiring corporation (within the meaning assigned by subsection 5905(5)) of a particular relevant foreign affiliate is, at the balance adjustment time, to be adjusted to the proportion of the amount of the surplus, deficit or underlying foreign tax determined without reference to this paragraph that

— the surplus entitlement percentage at the balance adjustment time of the corporation immediately before the time of the latest of the transactions referred to in paragraphs 5905(5)(a), (b) and (c) of the predecessor corporation or the acquiring corporation, as the case may be, in respect of the relevant foreign affiliate, determined on the assumptions

- that the taxation year of the relevant foreign affiliate that otherwise would have included the balance adjustment time had ended immediately before that time, and
- where the transaction is a disposition referred to in paragraph 5905(5)(a), that the shares referred to therein were the only shares owned by the predecessor corporation at the balance adjustment time,

is of

— the surplus entitlement percentage immediately after the time of the latest of the transactions referred to in paragraphs 5905(5)(a), (b) and (c) of the acquiring corporation in respect of the relevant foreign affiliate, determined on the assumption that the taxation year of the affiliate that otherwise would have included that time had ended immediately after that time.

Example — Subsection 5905(6)

Facts

1. Canco, a corporation resident in Canada, owns 100% of Cansub, another corporation resident in Canada.

2. Canco owns 90% of FA1.

3. Cansub owns 10% of FA1.

4. FA1 owns 100% of FA2.

5. Both FA1 and FA2 are foreign affiliates of Canco and Subco.

6. Canco transfers 10% of the shares of FA1 to Cansub under section 85(1) of the Act, electing under section 93(1) of the Act at a designated amount of $10 in respect of the disposed shares.

7. At the time of the transfer, FA1 has exempt surplus of $0, exempt deficit of $400, taxable surplus of $0, taxable deficit of $0 and underlying foreign tax ("UFT") of $0.

8. At the time of the transfer, FA2 has exempt surplus of $0, exempt deficit of $0, taxable surplus of $500, taxable deficit of $0 and UFT of $300.

9. All the corporations have only issued 100 shares of one class.

Application of paragraph 5905(6)(a)

Paragraph 5905(6)(a) applies to adjust the exempt surplus, exempt deficit, taxable surplus, taxable deficit and UFT of each of FA2 and FA3.

For an illustration of the calculation of consolidated exempt surplus, consolidated exempt deficit, consolidated taxable surplus, consolidated taxable deficit and consolidated UFT, see the example in the commentary to subsection 5902(1) of the Regulations.

This example focuses on FA2.

Application of paragraph 5905(6)(a) to FA2

FA2 has amounts of taxable surplus and UFT and those amounts must be adjusted.

The taxable surplus, in respect of Canco, of FA2 is $500 - $100 - $400 = $0.

The UFT, in respect of Canco, of FA2 is $300-($60 + $240) = $0.

1. Taxable Surplus Reduction — 5905(6)(a)(ii)(A)

The taxable surplus reduction is the amount determined by the formula

$$A/B \times C/D = \$500 / \$500 \times \$10 / 10\% = \$100$$

where

A *is the taxable surplus, in respect of Canco, of FA2 that was included in consolidated taxable surplus, in respect of Canco, of FA1 determined under subsection 5902(1) ($500)*

B *is the consolidated taxable surplus, in respect Canco, of FA1 determined under subsection 5902(1) ($500)*

C *is the portion of the subsection 93(1) dividend in respect of the disposition of the disposed shares that is prescribed by paragraph 5900(1)(b) of the regulations to have been paid out of taxable surplus in respect of Canco ($10)*

D *is the surplus entitlement percentage of Canco determined on the assumption that the disposed shares were the only shares owned by Canco (10%).*

2. Exempt deficit allocation — 5905(6)(a)(ii)(D)

The amount of FA2's exempt deficit allocation is determined by the formula

$$1/E \times (A-B) \times C/D$$

$$1 / 100\% \times (\$400 - 0) \times \$500 / \$300 = \$400$$

where

A *is the consolidated exempt deficit, in respect of Canco, of FA1 determined under subsection 5902(1) ($400)*

B *is the consolidated exempt surplus, in respect of Canco, of FA1 determined under subsection 5902(1) ($0)*

C *is the taxable surplus, in respect of Canco, of FA2 that was included in consolidated taxable surplus, in respect of Canco, of FA1 determined under subsection 5902(1) ($500)*

D is the consolidated taxable surplus in respect of Canco of FA1 determined under subsection 5902(1) ($500)

E is the surplus entitlement percentage of FA1 in FA2 (100%).

UFT – FA2

1. UFT Reduction — 5905(6)(a)(iii)(A)

The UFT is to be reduced by the amount determined by the formula

A/B × C/D = $300 / $300 × $6 / 10% = $60

where

A is the UFT, in respect of Canco, of FA2 that was included in consolidated UFT, in respect of Canco, of FA1 determined under subsection 5902(1) ($300)

B is the consolidated UFT, in respect of Canco, of FA1 determined under subsection 5902(1) ($300)

C is the amount prescribed by paragraph 5900(1)(d) to be the UFT, in respect of Canco, applicable to the subsection 93(1) dividend on the disposed shares paid out of the taxable surplus of FA1 ($6)

D is the surplus entitlement percentage of Canco in FA2 on the assumption that only the disposed shares were owned by Canco (10%).

2. UFT Reduction — 5905(6)(a)(iii)(C) and (D)

The UFT is to be reduced by the amount determined by the formula

A × B + C/D = $300 × $ 400/$500 = $240

where

A is the UFT, in respect of Canco, of FA2 that was included in consolidated UFT, in respect of Canco, of FA1 determined under subsection 5902(1) ($300)

B is the amount determined under clause 5905(6)(a)(ii)(C) in respect of FA2 in respect of the disposition of the disposed shares ($0)

C is the exempt deficit allocation of FA2 in respect of the disposed shares ($400)

D is the amount of taxable surplus of FA2 that was included in computing the consolidated UFT, in respect of Canco, of FA1 determined under subsection 5902(1) ($500).

Related Provisions: Reg. 5905(16) — Exempt deficit allocation; Reg. 5905(19) — Taxable deficit allocation.

History: The opening words of subparas. 5905(6)(a)(i), (ii) amended by P.C. 1997-1670, subsecs. 7(5), (6), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the subparas. as amended apply to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

For earlier history, see at end of s. 5905.

(7) [Liquidation or dissolution of FA] — Where at any time there has been a dissolution of a foreign affiliate (in this subsection referred to as the "dissolved affiliate") of a corporation resident in Canada and paragraph 95(2)(e.1) of the Act is applicable in respect of the dissolution, each other foreign affiliate of the corporation that had a direct equity percentage in the dissolved affiliate immediately before that time shall, for the purposes of computing its exempt surplus or exempt deficit, taxable surplus or taxable deficit and underlying foreign tax in respect of the corporation, be deemed to have received dividends immediately before that time the aggregate of which is equal to the amount it might reasonably have expected to receive if the dissolved affiliate had, immediately before that time, paid dividends the aggregate of which on all shares of its capital stock was equal to the amount of its net surplus in respect of the corporation immediately before that time, determined on the assumption that the taxation year of the dissolved affiliate that otherwise would have included that time had ended immediately before that time.

Proposed Amendment — Reg. 5905(7)–(7.4)

(7) [Liquidation or dissolution of FA] — If paragraph 95(2)(e) or (e.1) of the Act applies to a liquidation and a dissolution of a foreign affiliate (in this subsection and subsections (7.1) to (7.4) referred to as the "disposing foreign affiliate") of a corporation resident in Canada,

(a) where paragraph 95(2)(e.1) of the Act so applies, for the purpose of computing the exempt surplus, exempt deficit, taxable surplus, taxable deficit and underlying foreign tax, in respect of the corporation, of each other foreign affiliate of the corporation that has a direct equity percentage in the disposing foreign affiliate immediately before the specified time, it is deemed

(i) to have received, immediately before that time, dividends the total of which is equal to the amount that it could reasonably have expected to receive if the disposing foreign affiliate had, immediately before the specified time, paid dividends on all shares of its capital stock the total of which was equal to the sum of its exempt surplus, if any, and its taxable surplus, if any, in respect of the corporation immediately before that time,

(ii) to have received, immediately before that time, dividends prescribed by paragraph 5900(1)(a) to have been paid out of the exempt surplus of the disposing foreign affiliate the total of which is equal to that proportion of the total of the dividends deemed, under subparagraph (i), to have been received by it that the amount, immediately before that time, of the exempt surplus in respect of the corporation of the disposing foreign affiliate, referred to in subparagraph (i), is of the total of the amount, immediately before that time, of exempt surplus and the taxable surplus in respect of the corporation of the disposing foreign affiliate, referred to in subparagraph (i), and

(iii) to have received dividends prescribed by paragraph 5900(1)(b) to have been paid out of the taxable surplus of the disposing foreign affiliate the total of which is equal to the amount, if any, by which the total of the dividends deemed to be received by it under subparagraph (i) exceeds the total of the dividends deemed by subparagraph (ii) to be dividends that have been prescribed to have been paid out of the exempt surplus, in respect of the corporation, of the disposing foreign affiliate;

(b) where paragraph 95(2)(e) or (e.1) of the Act so applies, the amount, in respect of the corporation, of the exempt deficit of each other foreign affiliate of the corporation that had a direct equity percentage in the disposing foreign affiliate immediately before the

specified time is to be, immediately before that time, increased by the total of

(i) its proportionate share of the exempt deficit, if any, of the disposing foreign affiliate in respect of the corporation immediately before that time, and

(ii) the amount, if any, by which

(A) its proportionate share of the exempt deficit, if any, of the disposing foreign affiliate in respect of the corporation immediately before that time,

exceeds

(B) the amount of the decrease, determined under paragraph (d), to the amount of its exempt surplus in respect of the corporation immediately before that time;

(c) the amount, in respect of the corporation, of the taxable deficit of each other foreign affiliate of the corporation that had a direct equity percentage in the disposing foreign affiliate immediately before the specified time is to be, immediately before that time, increased by the total of

(i) its proportionate share of the taxable deficit, if any, of the disposing foreign affiliate in respect of the corporation immediately before that time, and

(ii) the amount, if any, by which

(A) its proportionate share of the taxable deficit, if any, of the disposing foreign affiliate in respect of the corporation immediately before that time,

exceeds

(B) the amount of the decrease, determined under paragraph (e), to the amount of its taxable surplus in respect of the corporation;

(d) the amount, in respect of the corporation, of the exempt surplus of each other foreign affiliate of the corporation that had a direct equity percentage in the disposing foreign affiliate immediately before the specified time is to be, immediately before that time, decreased by the lesser of

(i) its proportionate share of the exempt deficit, if any, of the disposing foreign affiliate in respect of the corporation immediately before that time, and

(ii) the amount of its exempt surplus in respect of the corporation as otherwise determined under the definition "exempt surplus" in subsection 5907(1); and

(e) the amount, in respect of the corporation, of the taxable surplus of each other foreign affiliate of the corporation that had a direct equity percentage in the disposing foreign affiliate immediately before the specified time is to be, immediately before that time, decreased by the lesser of

(i) its proportionate share of the taxable deficit, if any, of the disposing foreign affiliate in respect of the corporation immediately before that time, and

(ii) the amount of its taxable surplus in respect of the corporation as otherwise determined under the definition "taxable surplus" in subsection 5907(1).

Technical Notes: Subsection 5905(7) applies where a foreign affiliate (the "disposing foreign affiliate") of a corporation resident in Canada dissolves in circumstances where paragraph 95(2)(e.1) of the Act applies in respect of the dissolution.

Paragraph 95(2)(e.1) of the Act provides for the rollover of capital property, of a disposing foreign affiliate, to another foreign affiliate of the corporation resident in Canada on a liquidation and a dissolution of the disposing foreign affiliate where certain conditions have been met. One of the conditions is that, immediately before the liquidation, the corporation resident in Canada's surplus entitlement percentage in respect of the disposing foreign affiliate was not less than 90%. Another is that the liquidation is not taxable in the country where the disposing foreign affiliate resides.

Subsection 5905(7) provides that each other foreign affiliate of the corporation resident in Canada that has a direct equity percentage in the disposing foreign affiliate immediately before the time of the dissolution is, for the purposes of computing its exempt surplus, taxable surplus, exempt deficit, taxable deficit and underlying foreign tax balances in respect of the corporation, deemed to have received, immediately before that time, dividends from the disposing affiliate of the amount that that other affiliate could reasonably be expected to have received if the disposing foreign affiliate had paid dividends equal to the amount of its net surplus in respect of the corporation immediately before that time.

Subsection 5905(7) is to be amended in the following ways.

First, it is proposed that subsection 5905(7) be amended to include liquidations and dissolutions to which paragraph 95(2)(e) of the Act apply, in addition to liquidations and dissolutions subject to paragraph 95(2)(e.1). This amendment applies for all portions of the amended subsection, save for the deeming of the dividend, which is not necessary in the case of a foreign affiliate holding shares in a liquidating or dissolving affiliate to which paragraph 95(2)(e) does not apply.

Second, the conditions under which subsection 5905(7) applies are proposed to be amended to refer to a "liquidation and a dissolution" to better track the language in paragraph 95(2)(e.1) of the Act.

Third, the subsection is to be amended so that, where paragraph 95(2)(e) applies to a liquidation and dissolution, the dividend deemed by that subsection to have been received is considered to have been received immediately before the "specified time". The expression "specified time" is defined in new subsection 5905(7.1) to mean the time that is the earlier of

- the time at which the disposing foreign affiliate was dissolved, and
- the time of the earliest distribution of property as part of the liquidation and the dissolution of the disposing foreign affiliate.

Fourth, the subsection is to be amended to deal with the case where the disposing foreign affiliate has an exempt deficit or taxable deficit in respect of the corporation immediately before the specified time. These amendments ensure that, where paragraph 95(2)(e) or (e.1) applies to the liquidation and dissolution, of the disposing foreign affiliate

- the exempt deficit in respect of the corporation of each other foreign affiliate of the corporation that held a direct equity percentage in the disposing foreign affiliate is, immediately before the specified time, increased by the sum of that other affiliate's proportionate share of the disposing foreign affiliate's exempt deficit in respect of the corporation, immediately before that time, and the amount by which its proportionate share of the exempt deficit of the disposing foreign affiliate immediately before that time exceeds the amount of the decrease (determined under paragraph 5905(7)(d)) to the amount of its exempt surplus in respect of the corporation,
- the taxable deficit in respect of the corporation of each other foreign affiliate of the corporation that held a direct equity percentage in the disposing foreign affiliate is, immediately before the specified time, increased by the sum of that other affiliate's proportionate share of the disposing foreign affiliate's taxable deficit in respect of the corporation and the amount by which its proportionate share of the taxable deficit of the disposing foreign affiliate immediately before that time, exceeds the amount of the decrease (determined under paragraph 5905(7)(e)) to the amount of its taxable surplus in respect of the corporation,
- the exempt surplus in respect of the corporation of each other foreign affiliate of the corporation that held a direct equity percentage in the disposing foreign affiliate is, immediately before the specified time, decreased by the least of that other affiliate's proportionate share of the disposing foreign affiliate's exempt deficit in respect of the corporation and the amount of its exempt surplus in respect of

the corporation, as determined under the definition "exempt surplus" in subsection 5907(1), and

- the taxable surplus in respect of the corporation of each other foreign affiliate of the corporation that held a direct equity percentage in the disposing foreign affiliate is, immediately before the specified time, decreased by the least of that other affiliate's proportionate share of the disposing foreign affiliate's taxable deficit in respect of the corporation and the amount of its taxable surplus in respect of the corporation, as determined under the definition "taxable surplus" in subsection 5907(1).

Related Provisions: Reg. 5905(7.1) — Specified time; Reg. 5905(7.2)–(7.4) — Interpretation rules.

(7.1) ["Specified time"] — The specified time in relation to a liquidation and a dissolution of a foreign affiliate mentioned in subsection (7) is the time that is the earlier of

(a) the time of dissolution of the disposing foreign affiliate, and

(b) the time of the earliest distribution of property as part of the liquidation and the dissolution of the disposing foreign affiliate.

Technical Notes: New subsection 5905(7.1) provides, for the purpose of subsection 5905(5), a definition of the expression "specified time". For more detail, see the commentary to subsection 5905(7) above.

(7.2) [Interpretation for Reg. 5905(7)] — For the purpose of subsection (7), the exempt surplus, exempt deficit, taxable surplus, taxable deficit and underlying foreign tax of the disposing foreign affiliate in respect of the corporation at any time is to be determined on the assumption that the taxation year of the disposing foreign affiliate that otherwise would have included that time had ended immediately before that time.

(7.3) [Interpretation for Reg. 5905(7)(b), (d)] — For the purpose of paragraphs (7)(b) and (d), a foreign affiliate's proportionate share of the exempt deficit, if any, of the disposing affiliate in respect of the corporation at any time is equal to the amount it could reasonably have expected to receive if the disposing foreign affiliate had, immediately before that time, paid a dividend equal to the amount of its exempt deficit, if any, in respect of the corporation.

(7.4) [Interpretation for Reg. 5905(7)(c), (e)] — For the purposes of paragraphs (7)(c) and (e), a foreign affiliate's proportionate share of the taxable deficit, if any, of the disposing foreign affiliate in respect of the corporation at any time is equal to the amount it could reasonably have expected to receive if the disposing foreign affiliate had, immediately before that time, paid a dividend equal to the amount of its taxable deficit, if any, in respect of the corporation.

Technical Notes: New subsections 5905(7.2) to (7.4) provide for the following rules in relation to section 5905(7):

- For the purposes of subsection 5905(7), the exempt surplus, exempt deficit, taxable surplus, taxable deficit and underlying foreign tax of the disposing foreign affiliate in respect of the corporation at any time is to be determined on the assumption that the taxation year of the disposing foreign affiliate that would otherwise have included that time had ended immediately before that time (subsection 5905(7.2));

- For the purposes of paragraphs 5905(7)(a) and (b), a foreign affiliate's proportionate share of the exempt deficit, if any, of the disposing foreign affiliate in respect of the corporation at any time is equal to the amount it could reasonably have expected to receive if the disposing foreign affiliate had, immediately before that time, paid a dividend equal to the amount of its exempt deficit, if any, in respect of the corporation (subsection 5905(7.3)); and

- For the purposes of paragraphs 5905(7)(c) and (d), a foreign affiliate's proportionate share of the taxable deficit, if any, of the disposing foreign affiliate in respect of the corporation at any time is equal to the amount it could reasonably have expected to receive if the disposing foreign affiliate had, immediately before that time, paid a dividend equal to the amount of its taxable deficit, if any, in respect of the corporation (subsection 5905(7.4)).

New subsections 5905(7) to (7.4) ensure that the exempt deficit and the taxable deficit of the disposing foreign affiliate of a group of affiliates in respect of a taxpayer are absorbed by the other foreign affiliates in the group.

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 2(6), will amend subsec. 5905(7) to read as above and add subsecs. (7.1) to (7.4), applicable in respect of dissolutions that occur after December 20, 2002.

(8) [Where dividend due to election under ITA 93(1) or (1.2)] — Where at any time a dividend is, by virtue of an election made by a corporation under subsection 93(1) of the Act, deemed to have been received on one or more shares of a class of the capital stock of a particular foreign affiliate of the corporation disposed of to the corporation or another foreign affiliate of the corporation, the following rules apply:

(a) for the purposes of the adjustment required by paragraph (b),

(i) immediately before that time there shall be included under subparagraph (v) of the description of B in the definition "exempt surplus" in subsection 5907(1 in computing the particular affiliate's exempt surplus or exempt deficit, as the case may be, in respect of the corporation an amount equal to the product obtained when the specified adjustment factor in respect of the disposition is multiplied by the total of all amounts each of which is the portion of any such dividend that is prescribed by paragraph 5900(1)(a) to have been paid out of the exempt surplus of the particular affiliate,

(ii) immediately before that time there shall be included under subparagraph (v) of the description of B in the definition "taxable surplus" in subsection 5907(1) in computing the particular affiliate's taxable surplus or taxable deficit, as the case may be, in respect of the corporation an amount equal to the product obtained when the specified adjustment factor in respect of the disposition is multiplied by the total of all amounts each of which is the portion of any such dividend that is prescribed by paragraph 5900(1)(b) to have been paid out of the taxable surplus of the particular affiliate, and

(iii) immediately before that time there shall be deducted from the amount, if any, otherwise determined to be the underlying foreign tax of the particular affiliate in respect of the corporation an amount equal to the product obtained when the specified adjustment factor in respect of the disposition is multiplied by the aggregate of all amounts each of which is the amount prescribed by paragraph 5900(1)(d) to be the foreign tax applicable to such portion of any such dividend as is prescribed by paragraph 5900(1)(b) to have been paid out of the taxable surplus of the particular affiliate,

and, for the purposes of subparagraphs (i) to (iii), the specified adjustment factor in respect of the disposition is the amount equal to the quotient obtained when

(iv) where the person disposing of the shares is the corporation, 100 per cent, and

(v) where the person disposing of the shares is another foreign affiliate of the corporation, the surplus entitlement percentage of the corporation in respect of that affiliate immediately before the disposition,

is divided by

(vi) the surplus entitlement percentage of the corporation in respect of the particular foreign affiliate immediately before that disposition;

(b) the exempt surplus or exempt deficit, the taxable surplus or taxable deficit and the underlying foreign tax in respect of the corporation of the particular affiliate and of each other foreign affiliate of the corporation in which the particular affiliate has an equity percentage (in this subsection referred to as the "other affiliate") shall at that time be adjusted to the proportion of the amount thereof otherwise determined that

(i) the surplus entitlement percentage immediately before that time of the corporation in respect of the particular affiliate or the other affiliate, as the case may be, determined on the assumption that the taxation year of the particular affiliate or the other affiliate, as the case may be, that otherwise would have included that time had ended immediately before that time,

is of

(ii) the surplus entitlement percentage immediately after that time of the corporation in respect of the particular affiliate or the other affiliate, as the case may be, determined on the assumption that the taxation year of the particular affiliate or the other affiliate, as the case may be, that otherwise would have included that time had ended immediately after that time; and

(c) for the purposes of the definitions "exempt deficit", "exempt surplus", "taxable deficit", "taxable surplus" and "underlying foreign tax" in subsection 5907(1), the amounts determined under paragraph (b) are referred to as the opening exempt deficit, opening exempt surplus, opening taxable deficit, opening taxable surplus and opening underlying foreign tax, as the case may be, of the particular affiliate and each other affiliate in respect of the corporation resident in Canada.

Proposed Amendment — Reg. 5905(8)

(8) If, at any time, a dividend (referred to in this subsection and subsections (18) and (21) as the "disposition dividend") is, because of an election made by a corporation resident in Canada under subsection 93(1) or (1.2) of the Act, deemed to have been received on one or more shares (each of which is referred to in this subsection and subsections (16) to (23) as a "disposed share") of a class of the capital stock of a particular foreign affiliate (referred to in this subsection as the "issuing foreign affiliate") of the corporation resident in Canada that were disposed (which disposition is referred in this subsection and subsections (16) to (23) as the "disposition") to the corporation resident in Canada or to another corporation that was, immediately after the disposition, a foreign affiliate of the corporation resident in Canada, the following rules apply:

(a) for the purpose of the adjustment required by paragraph (b),

(i) in computing the exempt surplus, in respect of the corporation resident in Canada, of the issuing foreign affiliate or another foreign affiliate of the corporation resident in Canada in which the issuing foreign affiliate has an equity percentage (the issuing foreign affiliate and each such other foreign affiliate each being referred to in this subsection and subsections (16) to (23) as the "particular relevant foreign affiliate") at the time (referred to in this subsection and subsections (16) to (22) as the "balance adjustment time") that is immediately before the time of the disposition, there is to be included under subparagraph (v) of the description of B in the definition "exempt surplus" in subsection 5907(1), the total of

(A) an amount equal to the exempt surplus reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(B) an amount equal to the exempt deficit reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares, and

(C) an amount equal to the taxable deficit allocation, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(ii) in computing the taxable surplus, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, at the balance adjustment time, there is to be included under subparagraph (v) of the description of B in the definition "taxable surplus" in subsection 5907(1), the total of

(A) an amount equal to the taxable surplus reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(B) an amount equal to the taxable deficit reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares, and

(C) an amount equal to the exempt deficit allocation, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(iii) in computing the underlying foreign tax, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, at the balance adjustment time, there is to be included under subparagraph (iii) of the description of B in the definition "underlying foreign tax" in subsection 5907(1), the total of

(A) the amount determined by the formula (which is deemed to be nil, if, in respect of the particular relevant foreign affiliate, the value determined for B in the formula is nil)

$$A/B \times C \times D$$

where

A is the portion of the amount of the particular relevant foreign affiliate's underlying foreign tax, in respect of the corporation resident in Canada, at the balance adjustment time, that may reasonably be considered to have been included in computing the amount of the issuing foreign affiliate's consolidated underlying foreign tax (as de-

termined under paragraph 5902(1)(c)), in respect of the corporation resident in Canada, in respect of the disposition,

B is the amount of the issuing foreign affiliate's consolidated underlying foreign tax (as determined under paragraph 5902(1)(c)), in respect of the corporation resident in Canada, in respect of the disposition,

C is the total of all amounts each of which is the amount, determined by paragraph 5900(1)(d), to be the amount of foreign tax applicable to the portion of the disposition dividend prescribed to have been paid out of the taxable surplus of the issuing foreign affiliate, that relates to a disposed share, in respect of the disposition, and

D is the specified adjustment factor, in respect of the corporation resident in Canada, in respect of the particular relevant foreign affiliate of the corporation resident in Canada, of the foreign affiliate of the corporation resident in Canada that disposed of the disposed shares, in respect of the disposition of the disposed shares, and

(B) the amount of the underlying foreign tax reduction in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposition of the disposed shares,

(iv) in computing the exempt deficit, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, at the balance adjustment time, there is to be included under subparagraph (viii) of the description of A in the definition "exempt surplus" in subsection 5907(1), an amount equal to the exempt deficit, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, immediately before that time, and

(v) in computing the taxable deficit, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, at the balance adjustment time, there is to be included under subparagraph (vi) of the description of A in the definition "taxable surplus" in subsection 5907(1), an amount equal to the taxable deficit, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, immediately before that time;

(b) the amount, at the balance adjustment time, of exempt surplus, exempt deficit, taxable surplus, taxable deficit and underlying foreign tax, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate is to be adjusted to become the proportion of that amount, determined without making this adjustment, that

(i) the surplus entitlement percentage, at the balance adjustment time, of the corporation resident in Canada, in respect of the particular relevant foreign affiliate, determined on the assumption that the taxation year, of the particular relevant foreign affiliate that otherwise would have included that time, had ended immediately before that time,

is of

(ii) the surplus entitlement percentage, immediately after the time of the disposition, of the corporation resident in Canada, in respect of the particular relevant foreign affiliate, determined on the assumption that the taxation year, of the particular relevant foreign affiliate, that otherwise would have included the balance adjustment time, had ended at the time of the disposition; and

(c) for the purposes of applying the definitions "exempt deficit", "exempt surplus", "taxable deficit", "taxable surplus" and "underlying foreign tax", in subsection 5907(1), the amounts determined under paragraph (b) are deemed to be the opening exempt deficit, opening exempt surplus, opening taxable deficit, opening taxable surplus, and opening underlying foreign tax, as the case may be, of the particular relevant foreign affiliate, in respect of the corporation resident in Canada.

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 2(7), will amend subsec. 5905(8) to read as above, applicable in respect of dispositions in respect of which an election was made in respect of which the amendments to s. 5902 apply.

Technical Notes: Subsection 5905(8) provides rules for determining surplus balances that apply when a corporation resident in Canada elects under subsection 93(1) or (1.2) of the Act in respect of a disposition of shares of a foreign affiliate (the issuing affiliate) of the corporation to the corporation or to another corporation that was, immediately after the disposition, a foreign affiliate of the corporation and a dividend is, because of the election, deemed to be received. This subsection is replaced with new subsection 5905(8), to provide for adjustments to surplus accounts in respect of the dividends arising because of the elections under subsection 93(1) or (1.2) of the Act.

Proposed new subsection 5905(8) applies if, at any time, a dividend (referred to in this subsection and subsections 5905(18) and (21) as the "disposition dividend") is, because of an election made by a corporation resident in Canada under subsection 93(1) or (1.2) of the Act, deemed to have been received on disposed shares of a particular foreign affiliate of the corporation resident in Canada that were disposed of to the corporation resident in Canada or another corporation that was, immediately after the disposition, a foreign affiliate of the corporation resident in Canada. It provides the following rules.

- Paragraph 5905(8)(a) sets out a number of adjustments, in respect of the corporation resident in Canada, to different surplus accounts, immediately before the disposition of the shares (the "balance adjustment time"), that must be taken into account in determining the adjustment in paragraph 5905(8)(b).

  — In computing the exempt surplus, in respect of the corporation resident in Canada, of the issuing foreign affiliate and each other foreign affiliate of the corporation resident in Canada in which the issuing affiliate has an equity percentage (the issuing foreign affiliate and each such other foreign affiliate referred to as the "particular relevant foreign affiliate"), immediately before the disposition (the "balance adjustment time"), there is to be included under subparagraph (v) of the description of B in the definition "exempt surplus" in subsection 5907(1), the aggregate of the exempt surplus reduction, the exempt deficit reduction, and the taxable deficit allocation of that particular relevant foreign affiliate, in respect of the disposed shares. "Exempt deficit reduction", "exempt surplus reduction" and "taxable deficit allocation" are terms defined in subsections 5905(17), (18), and (19), respectively, and are further described in the commentary to those respective subsections.

  — In computing the taxable surplus in respect of the corporation resident in Canada of each particular relevant foreign affiliate, at the balance adjustment time, there is to be included under subparagraph (v) of the description of B in the definition "taxable surplus" in subsection 5907(1), the aggregate of the taxable surplus reduction, the taxable deficit reduction, and the exempt deficit allocation of that particular relevant foreign affiliate, in respect of the disposed shares. "Exempt deficit allocation", "taxable deficit reduction" and "taxable surplus reduction" are

terms defined in subsections 5905(16), (20) and (21), respectively.

— In computing the underlying foreign tax of each particular relevant foreign affiliate there is to be included under subparagraph (iii) of the description of B in the definition "underlying foreign tax" in subsection 5907(1), the total of

- the amount determined by the formula

$$A/B \times C \times D$$

where

A is the portion of the particular relevant foreign affiliate's underlying foreign tax, in respect of the corporation resident in Canada, that can reasonably be considered to have been included in determining the issuing foreign affiliate's consolidated underlying foreign tax (determined in paragraph 5902(1)(c)) as a result of the disposition,

B is the issuing foreign affiliate's consolidated underlying foreign tax (determined in paragraph 5902(1)(c)) as a result of the disposition,

C is the amount determined under paragraph 5900(1)(c) to be the amount of foreign tax applicable to the portion of the disposition dividend prescribed to have been paid out of the taxable surplus of the issuing foreign affiliate that relates to a disposed share, as a result of the disposition,

D is the specified adjustment factor (defined in subsection 5905(23)), in respect of the particular relevant foreign affiliate of the corporation resident in Canada, of the foreign affiliate of the corporation resident in Canada that disposed of the disposed shares, as a result of the disposition of the disposed shares,

- however, where the amount determined by the B in the formula is nil, the amount determined by the formula is determined to be nil, and

- an amount equal to the underlying foreign tax reduction in respect of the corporation resident in Canada, of the particular relevant foreign affiliate of the corporation resident in Canada, in respect of the disposition of the disposed shares.

— In computing the exempt deficit in respect of the corporation resident in Canada at the balance adjustment time of each particular relevant foreign affiliate, there must be added under subparagraph (viii) of the description of A in the definition "exempt surplus" in subsection 5907(1) the amount of the exempt deficit (in respect of the corporation resident in Canada) of that particular relevant foreign affiliate, immediately before the balance adjustment time.

— In computing the taxable deficit in respect of the corporation resident in Canada at the balance adjustment time of each particular relevant foreign affiliate there must be added under subparagraph (vi) of the description of A in the definition "taxable surplus" in subsection 5907(1) the taxable deficit of that particular relevant foreign affiliate, immediately before the balance adjustment time.

- The amount, at the balance adjustment time, of the exempt surplus, exempt deficit, taxable surplus, taxable deficit and underlying foreign tax in respect of the corporation resident in Canada of each particular relevant foreign affiliate is to be adjusted to the proportion of the amount determined, without making this adjustment, that

— the surplus entitlement percentage, at the balance adjustment time, of the corporation resident in Canada in respect of the particular relevant foreign affiliate, if it were determined on the assumption that the taxation year, of the particular relevant foreign affiliate that otherwise would have included that time, had ended immediately before the balance adjustment time,

is of

— the surplus entitlement percentage of the corporation resident in Canada, immediately after the disposition, in respect of the particular relevant foreign affiliate determined on the assumption that the taxation year of the particular relevant foreign affiliate, that otherwise would have included the balance adjustment time, had ended at the time of disposition.

- For the purposes of applying the definitions "exempt deficit", "exempt surplus", "taxable surplus", "taxable deficit" and "underlying foreign tax" in subsection 5907(1), the amounts determined under paragraph 5905(8)(b) are deemed to be the opening exempt deficit, opening exempt surplus, opening taxable surplus, opening taxable deficit and opening underlying foreign tax, respectively of the particular relevant foreign affiliate, in respect of the corporation resident in Canada.

Example — Subsection 5905(8)

Facts

1. Canco is a corporation resident in Canada.

2. Canco owns 100% of FA1 and 50% of FA6, and both FA1 and FA6 are foreign affiliates of Canco.

3. FA1 owns 80 shares (80%) of FA2 and FA6 owns 20 shares (20%) of FA2.

4. FA2 owns 70 shares (70%) of FA3, FA3 owns 100% of FA4 and FA4 owns 100% of FA5.

5. FA1 transfers 30 of its shares in FA2 to FA6, and subsection 93(1) of the Act applies to the transfer, regarding which Canco designates $123 as the dividend received by FA1 in respect of the disposed shares.

6. At the time of the transfer, FA2 has an exempt surplus of $200, a taxable surplus of $0, an exempt deficit of $0 and an underlying foreign tax ("UFT") of $0.

7. At the time of the transfer, FA3 has an exempt surplus of $100, a taxable surplus of $75, an exempt deficit of $0 and an UFT of $10.

8. At the time of the transfer, FA4 has an exempt surplus of $0, a taxable surplus of $0, an exempt deficit of $200 and an UFT of $0.

9. At the time of the transfer, FA5 has an exempt surplus of $0, a taxable surplus of $325, an exempt deficit of $0 and an UFT of $200.

10. All the corporations have only issued 100 shares of one class.

Application of subsection 5905(8) — FA5

I. Paragraph 5905(8)(a) — FA5

Paragraph 5905(8)(a) acts to adjust the exempt surplus, exempt deficit, taxable surplus, taxable deficit and UFT in respect of Canco of each of FA2, FA3, FA4 and FA5. This example will focus on FA5.

A. Exempt Surplus – FA5

First, the adjustment to exempt surplus, in respect of Canco, must be determined by subparagraph 5905(8)(a)(i). However, in this example, FA5 has no exempt surplus, so no calculation is necessary.

B. Taxable Surplus – FA5

Second, the adjustment to taxable surplus, in respect of Canco, of FA5 must be determined by subparagraph 5905(8)(a)(ii). The taxable surplus of FA5 will be reduced by the total of the taxable surplus reduction, taxable deficit reduction and exempt deficit allocation.

The taxable surplus of FA5 is determined as $325 - $108.3 = $216.7.

For the calculation of consolidated exempt surplus, consolidated exempt deficit, consolidated taxable surplus, consolidated taxable deficit and consolidated UFT, see the example in the commentary to subsection 5902(1) of the Regulations.

1. Taxable surplus reduction — FA5

The taxable surplus reduction, in respect of Canco, of FA5 in respect of the disposed shares is the amount determined by the formula:

$$A/B \times C \times D$$

$$\$227.5 / \$280 \times \$83.99 \times 1.587 = \$108.3$$

where

A *is the portion of FA5's taxable surplus, in respect of Canco, that can reasonably be considered to have been included in the consolidated taxable surplus of FA2 ($325 x .7 = $227.5)*

B *is the consolidated taxable surplus, in respect of Canco, of FA2 in respect of the disposition of the FA2 shares ($280)*

C *is the portion of the disposition dividend received by FA1 on the disposed shares, because of the election under section 93(1) of the Act, in respect of the disposition of the disposed shares, that is prescribed by paragraph 5900(1)(b) to have been paid out of the consolidated taxable surplus of FA2 ($280 / $410 x $123 = $83.99)*

D *is the specified adjustment factor, in respect of Canco, in respect of FA2, of FA1 (100% / 63% = 1.587).*

2.Taxable deficit reduction — FA5

There is no consolidated taxable deficit, in respect of Canco, of FA2. Consequently, there is no taxable deficit reduction, in respect of Canco, in respect of FA5.

3. Exempt deficit allocation — FA5

There is no consolidated exempt deficit in excess of consolidated exempt surplus, in respect of Canco, of FA2. Consequently, there is no exempt deficit allocation, in respect of Canco, in respect of FA5.

C. Underlying foreign tax — FA5

The adjustment to the UFT, in respect of Canco, must be determined by subparagraph 5905(8)(a)(iii). The UFT of FA5 will be reduced by the total of the UFT of FA5 related to any of the taxable surplus reduction, taxable deficit reduction and exempt deficit allocation in respect of Canco of FA5.

The underlying foreign tax in respect of Canco of FA5 is determined to be $133.35 ($200 - $66.65 = 133.35).

1. Underlying foreign tax applicable to subsection 93(1) dividend

The reduction of the underlying foreign tax of FA5 related to the taxable surplus reduction is determined by the formula:

$$A/B \times C \times D = \$140 / \$147 \times \$44.1 \times 1.587 = \$66.65$$

where

A *is the portion of the UFT in respect of Canco of FA5 that is included in computing the consolidated UFT in respect of Canco of FA2 ($200 x .7 = $140)*

B *is the consolidated UFT in respect of Canco of FA2 (($200 + $10) x .7 = $147)*

C *is the amount, determined pursuant to paragraph 5900(1)(d), of the consolidated underlying foreign tax applicable to the disposition dividend that relates to disposed shares that is prescribed to have been paid out of taxable surplus ($147 x $84 / $280 = $44.1)*

D *is the specified adjustment factor in respect of Canco in respect of FA5 of FA1 (100% / 63% = 1.587).*

D. Exempt deficit reduction

The adjustment to the exempt deficit, in respect of Canco, of FA5 would be determined by subparagraph 5905(8)(a)(iv). However, as FA5 has no exempt deficit, no adjustment is necessary.

E. Taxable deficit reduction

The adjustment to the taxable deficit, in respect of Canco, of FA5 would be determined by subparagraph 5905(8)(a)(v). However, as FA5 has no taxable deficit, no adjustment is necessary.

II. Paragraph 5905(8)(b) adjustment — FA5

Paragraph 5905(8)(b) acts to adjust the exempt surplus, exempt deficit, taxable surplus, taxable deficit and UFT in respect of Canco of each of FA2, FA3, FA4 and FA5. This example will focus on FA5.

As FA5 has only taxable surplus and UFT, it is only those accounts that will be adjusted.

The taxable surplus and UFT of FA5 is adjusted to be the proportion of the amounts determined above that the surplus entitlement percentage of Canco in respect of FA5, at the balance adjustment time, (determined on the assumption that FA5 had a taxation year ending immediately before that time) is of the surplus entitlement percentage of Canco in respect of FA5, immediately after the disposition, (determined on the assumption that FA5 had a taxation year ending immediately at the time of disposition).

Thus, FA5's opening balances after the transaction are as follows:

- *taxable surplus in respect of Canco is $260.04*
- *UFT in respect of Canco is $160.02*

A.Taxable surplus

$$\$216.7 \times 63 / 52.5 = \$260.04$$

B. Underlying foreign tax

$$\$133.35 \times 63 / 52.5 = \$160.02$$

Related Provisions: Reg. 5905(16) — Exempt deficit allocation; Reg. 5905(19) — Taxable deficit allocation.

History: Subparas. 5905(8)(a)(i), (ii) and para. (8)(c), amended by P.C. 1997-1670, subsecs. 7(7), (8), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the subparas. and para. as amended apply to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

For earlier history, see at end of s. 5905.

(9) [Where surplus entitlement percentage decreases] — Where at any time a foreign affiliate of a corporation resident in Canada (in this subsection referred to as the "issuing affiliate") issues shares of a class of its capital stock to a person other than the corporation or another foreign affiliate of the corporation and as a result thereof the surplus entitlement percentage of the corporation in respect of the issuing affiliate decreases, for the purposes of this Part, the exempt surplus or exempt deficit, the taxable surplus or taxable deficit and the underlying foreign tax, in respect of the corporation, of the issuing affiliate and of each other foreign affiliate of the corporation in which the issuing affiliate has an equity percentage (in this subsection referred to as the "other affiliate") shall at that time be increased to the proportion of the amount thereof otherwise determined that

(a) the surplus entitlement percentage immediately before that time of the corporation in respect of the issuing affiliate or the other affiliate, as the case may be, determined on the assumption that the taxation year of the issuing affiliate or the other affiliate, as the case may be, that otherwise would have included that time had ended immediately before that time,

is of

(b) the surplus entitlement percentage immediately after that time of the corporation in respect of the issuing affiliate or other affiliate, as the case may be, determined on the assumption that the taxation year of the issuing affiliate or the other affiliate, as the case may be, that otherwise would have included that time had ended immediately after that time,

and, for the purposes of the definitions "exempt deficit", "exempt surplus", "taxable deficit", "taxable surplus" and "underlying foreign tax" in subsection 5907(1), those increased amounts are referred to as the opening exempt deficit, opening exempt surplus, opening taxable deficit,

opening taxable surplus and opening underlying foreign tax, as the case may be, of each of those affiliates in respect of the corporation resident in Canada.

History: The closing words of 5905(9) amended by P.C. 1997-1670, subsec. 7(9), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the portion as amended applies to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

For earlier history, see at end of s. 5905.

(10) ["Surplus entitlement"] — For the purposes of this section, the surplus entitlement at any time of a share owned by a corporation resident in Canada of the capital stock of a foreign affiliate of the corporation in respect of a particular foreign affiliate of the corporation is the portion of

(a) the amount that would have been received on the share if the foreign affiliate had at that time paid dividends the aggregate of which on all shares of its capital stock was equal to the amount that would be its net surplus in respect of the corporation at that time assuming that

(i) each other foreign affiliate of the corporation in which the foreign affiliate had an equity percentage had immediately before that time paid a dividend equal to its net surplus in respect of the corporation immediately before the dividend was paid, and

(ii) any dividend referred to in subparagraph (i) that would be received by another foreign affiliate was received by such other foreign affiliate immediately before any such dividend that it would have paid,

that may reasonably be considered to relate to

(b) the amount that would be the net surplus of the particular affiliate in respect of the corporation at that time assuming that

(i) each other foreign affiliate of the corporation in which the particular affiliate had an equity percentage had immediately before that time paid a dividend equal to its net surplus in respect of the corporation immediately before the dividend was paid, and

(ii) any dividend referred to in subparagraph (i) that would be received by another foreign affiliate was received by such other foreign affiliate immediately before any such dividend that it would have paid.

Related Provisions: Reg. 5905(11), (12) — Interpretation.

(11) [Interpretation for Reg. 5905(10)] — For the purposes of subsection (10),

(a) in determining the net surplus of, or the amount of a dividend received by, a particular foreign affiliate of a taxpayer resident in Canada in which any other foreign affiliate of the taxpayer has an equity percentage, no amount shall be included in respect of any distribution that would be received by the particular affiliate from such other affiliate; and

(b) if any foreign affiliate of a corporation resident in Canada has issued shares of more than one class of its capital stock, the amount that would be paid as a dividend on the shares of any class is such portion of its net surplus as, in the circumstances, it might reasonably be expected to have paid on all the shares of that class.

(12) [Interpretation for Reg. 5905(10)] — Notwithstanding any other provision of this Part, for the purposes of determining under subsection (10) the net surplus of a foreign affiliate of a corporation resident in Canada in respect of the corporation at any time in a taxation year of the affiliate that would otherwise have included that time (in this subsection referred to as the "normal year"), the exempt earnings or loss and the taxable earnings or loss required to be included in computing the net surplus in respect of any taxation year of the affiliate that is assumed for the purposes of a provision of this section to have ended at that time shall be deemed to be that proportion of such amounts determined for the normal year that the number of days in the taxation year assumed to have ended at that time is of the number of days in the normal year.

(13) ["Surplus entitlement percentage"] — For the purposes of the definition "surplus entitlement percentage" in subsection 95(1) of the Act and of this Part, the surplus entitlement percentage at any time of a corporation resident in Canada in respect of a particular foreign affiliate of the corporation is,

(a) where the particular affiliate and each corporation that is relevant to the determination of the corporation's equity percentage in the particular affiliate have only one class of issued shares at that time, the percentage that is the corporation's equity percentage in the particular affiliate at that time, and

(b) in any other case, the proportion of 100 that

(i) the aggregate of all amounts, each of which is the surplus entitlement at that time of a share owned by the corporation of the capital stock of a foreign affiliate of the corporation in respect of the particular foreign affiliate of the corporation

is of

(ii) the amount determined under paragraph (10)(b) to be the net surplus of the particular affiliate in respect of the corporation at that time,

except that where the amount determined under subparagraph (ii) is nil, the percentage determined under this paragraph shall be the corporation's equity percentage in the particular affiliate at that time,

and, for the purposes of this subsection, "equity percentage" has the meaning that would be assigned by subsection 95(4) of the Act if the reference in paragraph (b) of the definition "equity percentage" in that subsection to any corporation" were read as a reference to "any corporation other than a corporation resident in Canada".

History: The opening and closing words of 5905(13) amended by P.C. 1997-1670, subsecs. 7(10), (11), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the portions as amended apply to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in

the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

Proposed Addition — Reg. 5905(14), (15)

(14) [Where ITA 93.1(1) applies] — For the purpose of this section, where the number of shares of a class of the capital of the capital stock of a foreign affiliate of a corporation resident in Canada deemed by subsection 93.1(1) of the Act to be owned by a person at a particular time is different from the number so deemed immediately before the particular time

(a) if the number of shares of that class deemed to be owned by the person has decreased, the person is deemed to have disposed of, at the particular time, the number of shares of that class equal to the amount of the decrease;

(b) if the number of shares of that class deemed to be owned by the person has increased, the person is deemed to have acquired, at the particular time, the number of shares of that class equal to the amount of the increase;

(c) a person (in this paragraph referred to as the "seller") that is deemed by paragraph (a) to have disposed of, at a particular time, shares of a class is deemed to have disposed of those shares to the persons (in this paragraph referred to as the "acquirers") deemed in paragraph (b) to have acquired shares of that class at that time and the number of shares of that class deemed to have been acquired at that time by a particular acquirer from the seller shall be determined by the formula

A(B/C)

where

A is the number of shares of that class acquired by the particular acquirer at that time,

B is the number of shares of that class disposed of by the seller at that time, and

C is the number of shares of that class acquired by all acquirers at that time; and

(d) persons (in this paragraph referred to as the "acquirers") that are deemed by paragraph (b) to have acquired, at a particular time, shares of a class are deemed to have acquired those shares from a person (in this paragraph referred to as the "seller") deemed in paragraph (a) to have disposed of shares of that class at that time and the number of shares of that class deemed to have been disposed of by the seller to a particular acquirer at that time shall be determined by the formula

A(B/C)

where

A is the number of shares of that class disposed of by the seller,

B is the number of shares of that class acquired by the particular acquirer at that time, and

C is the number of shares of that class time disposed of by all sellers at that time.

Technical Notes: New subsection 93.1(1) of the Act deems, for certain purposes, a member of a partnership to own its proportionate number of shares of a non-resident corporation held by a partnership. New subsection 5905(14) of the Regulations applies where the number of shares of a foreign affiliate of a corporation resident in Canada deemed to be owned by a person under subsection 93.1(1) increases or decreases.

Where the number of shares deemed to be held by the person has decreased, the person is deemed to have disposed of shares to the extent of the decrease. Where the number of shares deemed to be held by the person has increased, the person is deemed to have acquired shares to the extent of the increase. Persons that are treated as having acquired shares of class are treated as having acquired those shares proportionately from persons that are treated as having disposed of shares of that class and vice versa.

(15) [Equity percentage, surplus entitlement and surplus entitlement percentage — shares owned by partnership] — In determining,

(a) for the purpose of this Part (other than section 5904), the equity percentage at any time of a person in a corporation,

(b) for the purpose of this section, the surplus entitlement at any time of a share owned by a corporation resident in Canada of the capital stock of a foreign affiliate of the corporation in respect of a particular foreign affiliate of the corporation, and

(c) for the purposes of this Part and of the definition "surplus entitlement percentage" in subsection 95(1) of the Act, the surplus entitlement percentage at any time of a corporation resident in Canada in respect of a particular foreign affiliate of the corporation,

where at any time shares of a class of the capital stock of a corporation are owned by a partnership or are deemed under this subsection to be owned by a partnership, those shares are deemed to be owned at that time by each member of the partnership in a proportion equal to the proportion of all such shares that

(d) the fair market value of the member's interests in the partnership at that time

is of

(e) the fair market value of all members' interest in the partnership at that time.

Technical Notes: New subsection 5905(15) applies to determine the equity percentage (other than for section 5904), surplus entitlement of a share and the surplus entitlement percentage at any time of a corporation resident in Canada in respect of a particular foreign affiliate of the corporation where the shares of the foreign affiliate are property of a partnership. Each member of the partnership is deemed to own that proportion of the number of the shares held by the partnership that the fair market value of the member's interest in the partnership is of the fair market value of all the members' interests in the partnership.

Application: The March 16, 2001 draft regulations (foreign affiliates — partnerships), subsec. 3(4), will add subsecs. 5905(14) and (15), applicable after November 1999.

Proposed Addition — Reg. 5905(16)–(23)

(16) ["Exempt deficit allocation"] — The exempt deficit allocation, of a particular relevant foreign affiliate in respect of a corporation resident in Canada, in respect of disposed shares of the particular foreign affiliate of the corporation resident in Canada, that issued the disposed shares (in this subsection referred to as the "issuing foreign affiliate") is, if the particular relevant foreign affiliate has, at the balance adjustment time, an amount of taxable surplus in respect of the corporation

resident in Canada and the issuing foreign affiliate has, at that time, an amount of consolidated exempt deficit (as determined under paragraph 5902(1)(b)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, that exceeds the amount of its consolidated exempt surplus (as determined under paragraph 5902(1)(a)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

(a) the amount determined by the formula

$$1/E \times [(A–B) \times C/D]$$

where

A is the amount of the issuing foreign affiliate's consolidated exempt deficit (as determined under paragraph 5902(1)(b)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

B is the amount of the issuing foreign affiliate's consolidated exempt surplus (as determined under paragraph 5902(1)(a)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

C is the portion of the amount of the particular relevant foreign affiliate's taxable surplus, in respect of the corporation resident in Canada, immediately before the disposition of the disposed shares, that can reasonably be considered to have been included in computing the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under paragraph 5902(1)(c)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

D is the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under paragraph 5902(1)(c)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, and

E is

(i) subject to subparagraph (ii), the surplus entitlement percentage, of the issuing foreign affiliate, in respect of the particular relevant foreign affiliate, that would be determined under subsections 5905(10) to (13) at the balance adjustment time if the issuing foreign affiliate were the "corporation resident in Canada" referred to in those subsections and the particular relevant foreign affiliate were the "particular foreign affiliate" referred to in those subsections, and

(ii) if the particular relevant foreign affiliate is the issuing foreign affiliate, 1; and

(b) if the amount determined, in respect of the particular relevant foreign affiliate, for the description of D or E in the formula in paragraph (a) is nil, nil.

Technical Notes: New subsection 5906(16) defines the expression "exempt deficit allocation", which sets out adjustments to a foreign affiliate's taxable surplus, in respect of the corporation resident in Canada, in respect of consolidated exempt deficit where consolidated exempt deficit exceeds consolidated exempt surplus, in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares. The subsection adopts, from subsection 5905(8) of the Regulations, the terms "particular relevant foreign affiliate", "balance adjustment time", and "disposed shares".

The exempt deficit allocation in respect of the corporation resident in Canada of the particular relevant foreign affiliate in respect of disposed shares of the foreign affiliate of the corporation resident in Canada that issued the disposed shares (the "issuing foreign affiliate") is, if the particular relevant foreign affiliate has, at the balance adjustment time, an amount of taxable surplus in respect of the corporation resident in Canada and the issuing foreign affiliate has, at that time, an amount of consolidated exempt deficit (as this amount is determined under paragraph 5902(1)(b)), in respect of the corporation resident in Canada, as a result of the disposition of the disposed shares, that exceeds the amount of its consolidated exempt surplus (as this amount is determined under paragraph 5902(1)(a)), in respect of the corporation resident in Canada, as a result of the disposition of the disposed shares,

- the amount determined by the formula:

$$1/E \times [(A-B) \times C/D]$$

where

A is the amount of the issuing foreign affiliate's consolidated exempt deficit (as this amount is determined under paragraph 5902(1)(b)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

B is the amount of the issuing foreign affiliate's consolidated exempt surplus (as this amount is determined under paragraph 5902(1)(a)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

C is the portion of the amount of the particular relevant foreign affiliate's taxable surplus, in respect of the corporation resident in Canada, immediately before the disposition of the disposed shares, that can reasonably be considered to have been included in computing the amount of the issuing foreign affiliate's consolidated taxable surplus (as this amount is determined under paragraph 5902(1)(c)), in respect of the corporation resident in Canada, as a result of the disposition of the disposed shares,

D is the amount, if any, by which the issuing foreign affiliate's consolidated taxable surplus (as this amount is determined under paragraph 5902(1)(a)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, and

E is, if the particular relevant foreign affiliate is the issuing foreign affiliate, 1, or, if the particular relevant foreign affiliate is not the issuing foreign affiliate, the surplus entitlement percentage of the issuing foreign affiliate, in respect of the particular relevant foreign affiliate, that, under subsections 5905(10) to (13), would be determined, at the balance adjustment time, if the issuing foreign affiliate were the "corporation resident in Canada" referred to in those subsections and the particular relevant foreign affiliate were the "particular foreign affiliate" referred to in those subsections; and

- if the amount determined, in respect of the particular relevant foreign affiliate, for the description of either D or E in the formula above is nil, the amount determined by the formula is deemed to be nil.

Related Provisions: ITA 257 — Negative amounts in formulas.

(17) ["Exempt deficit reduction"] — The exempt deficit reduction, in respect of a corporation resident in Canada, of a particular relevant foreign affiliate of the corporation resident in Canada, in respect of disposed shares, is

(a) if the particular relevant foreign affiliate has, at the balance adjustment time, an amount of exempt surplus, in respect of the corporation resident in Canada, and the particular foreign affiliate, of the corporation resident in Canada, that issued the disposed shares (in this subsection referred to as the "issuing foreign affiliate") has, at the balance adjustment time, consolidated exempt surplus (as determined under subparagraph 5902(1)(a)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, that exceeds the amount of its consolidated exempt deficit (as determined under paragraph 5902(1)(b)), in respect of the

corporation resident in Canada, in respect of the disposition of the disposed shares,

(i) the amount determined by the formula

$$A/B \times C/D$$

where

A is the portion of the amount of the particular relevant foreign affiliate's exempt surplus, in respect of the corporation resident in Canada, at the balance adjustment time, that can reasonably be considered to have been included in computing the amount of the issuing foreign affiliate's consolidated exempt surplus (as determined under paragraph 5902(1)(a)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

B is the amount of the issuing foreign affiliate's consolidated exempt surplus (as determined under paragraph 5902(1)(a)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

C is the amount of the issuing foreign affiliate's consolidated exempt deficit (as determined under paragraph 5902(1)(b)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, and

D is

(A) subject to clause (B), the surplus entitlement percentage, of the issuing foreign affiliate, in respect of the particular relevant foreign affiliate, that, under subsections 5905(10) to (13), would be determined, at the balance adjustment time, where the issuing foreign affiliate were the "corporation resident in Canada" referred to in those subsections and the particular relevant foreign affiliate were the "particular foreign affiliate" referred to in those subsections, and

(B) where the particular relevant foreign affiliate is the issuing foreign affiliate, 1, and

(ii) if the value determined, in respect of the particular relevant foreign affiliate, for the description of any of A, B or D in the formula in subparagraph (i) is nil, nil; and

(b) the amount of the particular relevant foreign affiliate's exempt surplus, in respect of the corporation resident in Canada, at the balance adjustment time, if

(i) the particular relevant foreign affiliate has, at the balance adjustment time, an amount of exempt surplus, in respect of the corporation resident in Canada, and

(ii) the issuing foreign affiliate has, at that time, an amount of consolidated exempt deficit (as determined under paragraph 5902(1)(b)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares that is equal to or greater than the amount of its consolidated exempt surplus (as determined under paragraph 5902(1)(a)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares.

Technical Notes: New subsection 5905(17) defines the expression "exempt deficit reduction", which determines the reduction of the exempt surplus of a particular relevant foreign affiliate in respect of the consolidated exempt deficit of the issuing foreign affiliate where the issuing foreign affiliate has consolidated exempt surplus in excess of consolidated exempt deficit, in respect of the corporation resident in Canada. The subsection adopts, from subsection 5905(8) of the Regulations, the terms "particular relevant foreign affiliate", "balance adjustment time", and "disposed shares".

The exempt deficit reduction, in respect of the corporation resident in Canada, of a particular relevant foreign affiliate in respect of disposed shares is

- if the particular relevant foreign affiliate has, at the balance adjustment time, an amount of exempt surplus, in respect of the corporation resident in Canada, and the foreign affiliate of the corporation resident in Canada that issued the disposed shares (the "issuing foreign affiliate") has, at the balance adjustment time, consolidated exempt surplus (as this amount is determined under paragraph 5902(1)(a)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, that exceeds the amount of its consolidated exempt deficit (as this amount is determined under paragraph 5902(1)(b)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,
  - the amount determined by the following formula

$$A/B \times C/D$$

where

A is the portion of the amount of the particular relevant foreign affiliate's exempt surplus, in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, at the balance adjustment time, that can reasonably be considered to have been included in computing the amount of the issuing foreign affiliate's consolidated exempt surplus (as that amount is determined under paragraph 5902(1)(a)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

B is the amount of the particular foreign affiliate's consolidated exempt surplus (as determined under paragraph 5902(1)(a)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

C is the amount of the issuing foreign affiliate's consolidated exempt deficit (as this amount is determined under paragraph 5902(1)(b)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, and

D is, if the particular relevant foreign affiliate is the issuing foreign affiliate, 1, or, in the case where the particular relevant foreign affiliate is not the issuing foreign affiliate, the surplus entitlement percentage of the issuing foreign affiliate, in respect of the particular relevant foreign affiliate, that, under subsections 5905(10) to (13), would be determined, at the balance adjustment time, if the issuing foreign affiliate were the "corporation resident in Canada" referred to in those subsections and the particular relevant foreign affiliate were the "particular foreign affiliate" referred to in those subsections;

- where the amount determined, in respect of a particular relevant foreign affiliate, for the description of any of A, B or D in the formula is nil, the amount determined by the formula is deemed to be nil; and
- if the particular relevant foreign affiliate has, at the balance adjustment time, an amount of exempt surplus in respect of the corporation resident in Canada and the issuing foreign affiliate has an amount of consolidated exempt deficit (as this amount is determined under paragraph 5902(1)(b)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares that is equal to or greater than the amount of its consolidated exempt surplus (as this amount is determined under paragraph 5902(1)(a)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, the amount of that particular relevant foreign affiliate's exempt surplus.

(18) ["Exempt surplus reduction"] — The exempt surplus reduction in respect of a corporation resident in

Canada, of a particular relevant foreign affiliate in respect of disposed shares is

(a) the amount determined by the formula

$$A/B \times C \times D$$

where

A is the portion of the amount of the particular relevant foreign affiliate's exempt surplus, in respect of the corporation resident in Canada, at the balance adjustment time, that can reasonably be considered to have been included in computing the amount of the consolidated exempt surplus, in respect of the corporation resident in Canada, (as determined under paragraph 5902(1)(a)) of the particular foreign affiliate, of the corporation resident in Canada, that issued the disposed shares (referred to in this subsection as the "issuing foreign affiliate"), in respect of the disposition of the disposed shares,

B is the amount of the issuing foreign affiliate's consolidated exempt surplus (as determined under paragraph 5902(1)(a)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

C is the portion of the disposition dividend that is, because of an election made under subsection 93(1) or (1.2) of the Act in respect of the disposition of the disposed shares, received on the disposed shares by the person that disposed of those shares and that is prescribed by paragraph 5900(1)(a) to have been paid out of the issuing foreign affiliate's exempt surplus, in respect of the corporation resident in Canada, and

D is the specified adjustment factor, in respect of the corporation resident in Canada, in respect of the particular relevant foreign affiliate, of the person that disposed of the disposed shares;

(b) if the amount determined, in respect of the particular relevant foreign affiliate, for either of A or B, in the formula in paragraph (a) is nil, nil; and

(c) if an amount is determined, in respect of the particular relevant foreign affiliate, under paragraph (17)(b), nil.

Technical Notes: New subsection 5905(18) defines the expression "exempt surplus reduction", which determines the reduction of the exempt surplus, in respect of the corporation resident in Canada, of a particular relevant foreign affiliate in respect of the disposition dividend of the issuing foreign affiliate where the issuing foreign affiliate has consolidated exempt surplus in excess of consolidated exempt deficit in respect of the corporation resident in Canada. The subsection adopts, from subsection 5905(8) of the Regulations, the terms "particular relevant foreign affiliate", "balance adjustment time", "disposed shares" and "disposition dividend".

The exempt surplus reduction in respect of the corporation resident in Canada of a particular relevant foreign affiliate, in respect of the disposition of the disposed shares is

- the amount determined by the formula

$$A/B \times C \times D$$

where

A is the portion of the amount of the particular relevant foreign affiliate's exempt surplus, in respect of the corporation resident in Canada, at the balance adjustment time, that can reasonably be considered to have been included in computing the amount of the consolidated exempt surplus, in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, (as this amount is determined under paragraph 5902(1)(a)) of the particular foreign affiliate of the corporation resident in Canada that issued the disposed shares (the "issuing foreign affiliate"),

B is the amount of the issuing foreign affiliate's consolidated exempt surplus (as this amount is determined under paragraph 5902(1)(a)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, as a result of the disposition of the disposed shares,

C is the portion of the disposition dividend that, because of an election made under subsection 93(1) or (1.2) of the Act as a result of the disposition of the disposed shares, was received on the disposed shares by the person disposing of them, that is prescribed by paragraph 5900(1)(a) to have been paid out of the issuing foreign affiliate's exempt surplus, in respect of the corporation resident in Canada, and

D is the specified adjustment factor (a term also defined in subsection 5905(23)), in respect of the corporation resident in Canada, in respect of the particular relevant foreign affiliate, of the person that disposed of the disposed shares;

- if either A or B of the formula is determined to be nil in respect of the particular foreign affiliate, the amount determined by the formula is deemed to be nil; and

- if an amount is determined respect of the particular relevant foreign affiliate, under paragraph (b) of subsection 5905(17) (which subsection defines the expression "exempt deficit reduction"), the amount determined by the formula is deemed to be nil.

(19) ["Taxable deficit allocation"] — The taxable deficit allocation, of a particular relevant foreign affiliate of a corporation resident in Canada, in respect of disposed shares of the particular foreign affiliate, of the corporation resident in Canada, that issued the disposed shares (in this subsection referred to as the "issuing foreign affiliate") is, if the particular relevant foreign affiliate has, at the balance adjustment time, an amount of exempt surplus in respect of the corporation resident in Canada and the issuing foreign affiliate has, at that time, an amount of consolidated taxable deficit (as determined under paragraph 5902(1)(d)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, that exceeds the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under paragraph 5902(1)(c)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

(a) the amount determined by the formula

$$1/E \times [(A - B) \times C/D]$$

where

A is the amount of the issuing foreign affiliate's consolidated taxable deficit (as determined under subparagraph 5902(1)(d)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

B is the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under subparagraph 5902(1)(c)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

C is the portion of the amount of the particular relevant foreign affiliate's exempt surplus, in respect of the corporation resident in Canada, immediately before the disposition of the disposed shares, that may reasonably be considered to have been included in computing the amount of the issuing foreign affiliate's consolidated exempt surplus (as determined under paragraph 5902(1)(a)), in respect of the corporation resident in Canada,

in respect of the disposition of the disposed shares,

D is the amount of the issuing foreign affiliate's consolidated exempt surplus (as determined under paragraph 5902(1)(a)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, and

E is

(i) subject to subparagraph (ii), the surplus entitlement percentage, of the issuing foreign affiliate, in respect of the particular relevant foreign affiliate, that would be determined under subsections 5905(10) to (13) at the balance adjustment time, where the issuing foreign affiliate were the "corporation resident in Canada" referred to in those subsections and the particular relevant foreign affiliate were the "particular foreign affiliate" referred to in those subsections; and

(ii) where the particular relevant foreign affiliate is the issuing foreign affiliate, 1, and

(b) where the amount determined, in respect of the particular relevant foreign affiliate, for the description of D or E in the formula in paragraph (a) is nil, nil.

Technical Notes: New subsection 5905(19) defines the expression "taxable deficit allocation", which determines adjustments to a foreign affiliate's exempt surplus in respect of the corporation resident in Canada, in respect of consolidated taxable deficit, where consolidated taxable deficit exceeds consolidated taxable surplus, in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares. The subsection adopts, from subsection 5905(8) of the Regulations, the terms "particular relevant foreign affiliate", "balance adjustment time", and "disposed shares".

The taxable deficit allocation of a particular relevant foreign affiliate, in respect of disposed shares of the foreign affiliate of the corporation resident in Canada that issued the disposed shares (the "issuing foreign affiliate") is, if the particular relevant foreign affiliate has, at the balance adjustment time, an amount of exempt surplus in respect of the corporation resident in Canada and the issuing foreign affiliate has, at that time, an amount of consolidated taxable deficit (as determined under paragraph 5902(1)(d)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, that is equal to or greater than the amount of the issuing foreign affiliate's consolidated taxable surplus (as this amount is determined under paragraph 5902(1)(c)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

- the amount determined by the formula

$$I/E \times (A-B) \times C/D$$

where

A is the amount of the issuing foreign affiliate's consolidated taxable deficit (as this amount is determined under paragraph 5902(1)(d)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

B is the amount of the issuing foreign affiliate's consolidated taxable surplus (as this amount is determined under paragraph 5902(1)(c)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

C is the portion of the amount of the particular relevant foreign affiliate's exempt surplus, in respect of the corporation resident in Canada, immediately before the disposition of the disposed shares, that can reasonably be considered to have been included in computing the amount of the issuing foreign affiliate's consolidated exempt surplus (as this amount is determined under paragraph 5902(1)(a)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

D is the amount of the issuing foreign affiliate's consolidated exempt surplus (as this amount is determined under paragraph 5902(1)(a)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, and

E is, if the particular relevant foreign affiliate is the issuing foreign affiliate, equal to 1, and, if the particular relevant foreign affiliate is not the issuing foreign affiliate, equal to the surplus entitlement percentage of the issuing foreign affiliate, in respect of the particular relevant foreign affiliate, that, under subsections 5905(10) to (13), would be determined, at the balance adjustment time, if the issuing foreign affiliate were the "corporation resident in Canada" referred to in those subsections and the particular relevant foreign affiliate were the "particular foreign affiliate" referred to in those subsections; and

- if the amount determined, in respect of a particular relevant foreign affiliate, for the description of any of D or E in the formula is nil, the amount determined by the formula is deemed to be nil.

Related Provisions: ITA 257 — Negative amounts in formulas.

(20) ["Taxable deficit reduction"] — The taxable deficit reduction, in respect of a corporation resident in Canada, of a particular relevant foreign affiliate of the corporation resident in Canada, in respect of disposed shares, is

(a) if the particular relevant foreign affiliate has, at the balance adjustment time, an amount of taxable surplus, in respect of the corporation resident in Canada, and the particular foreign affiliate, of the corporation resident in Canada, that issued the disposed shares (in this subsection referred to as the "issuing foreign affiliate") has, at the balance adjustment time, consolidated taxable surplus (as determined under paragraph 5902(1)(c)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, that exceeds the amount of the issuing foreign affiliate's consolidated taxable deficit (as determined under paragraph 5902(1)(d)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

(i) the amount determined by the formula

$$A/B \times C/D$$

where

A is the portion of the amount of the particular relevant foreign affiliate's taxable surplus, in respect of the corporation, at the balance adjustment time, that can reasonably be considered to have been included in computing the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under paragraph 5902(1)(c)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

B is the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under paragraph 5902(1)(c)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

C is the amount of the issuing foreign affiliate's consolidated taxable deficit (as determined under paragraph 5902(1)(d)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

D is

(A) subject to clause (B), the surplus entitlement percentage, of the issuing foreign affiliate, in respect of the particular relevant foreign affiliate, that would be determined under subsections 5905(10) to (13) at the balance adjustment time where the

issuing foreign affiliate were the "corporation resident in Canada" referred to in those subsections and the particular relevant foreign affiliate were the "particular foreign affiliate" referred to in those subsections, and

(B) where the particular relevant foreign affiliate is the issuing foreign affiliate, 1, and

(ii) where the amount determined, in respect of the particular relevant foreign affiliate, for the description of A, B or D in the formula in subparagraph (i) is nil, nil; and

(b) the amount of the particular relevant foreign affiliate's taxable surplus, in respect of the corporation resident in Canada, at the balance adjustment time, if

(i) the particular relevant foreign affiliate has, at the balance adjustment time, an amount of taxable surplus in respect of the corporation resident in Canada, and

(ii) the issuing foreign affiliate has, at that time, an amount of consolidated taxable deficit (as determined under paragraph 5902(1)(d)), in respect of the corporation resident in Canada, in respect of the disposition that is equal to or greater than the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under paragraph 5902(1)(c)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares.

Technical Notes: New subsection 5905(20) defines the expression taxable deficit reduction, which determines adjustments to a foreign affiliate's taxable surplus, in respect of the corporation resident in Canada, where consolidated taxable surplus exceeds consolidated taxable deficit, in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares. The subsection adopts, from subsection 5905(8) of the Regulations, the terms "particular relevant foreign affiliate", "balance adjustment time", and "disposed shares".

The taxable deficit reduction, in respect of the corporation resident in Canada, of a particular relevant foreign affiliate of the corporation resident in Canada, in respect of disposed shares, is

- if the particular relevant foreign affiliate has, at the balance adjustment time, an amount of taxable surplus, in respect of the corporation resident in Canada, and the particular foreign affiliate of the corporation resident in Canada that issued the disposed shares (the "issuing foreign affiliate") has, at the balance adjustment time, consolidated taxable surplus (as this amount is determined under paragraph 5902(1)(c)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares that exceeds the amount of the issuing foreign affiliate's consolidated taxable deficit (as this amount is determined under paragraph 5902(1)(d)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, the amount determined by the formula

$$A/B \times C/D$$

where

A is the portion of the amount of the particular relevant foreign affiliate's taxable surplus, in respect of the corporation resident in Canada, at the balance adjustment time, that can reasonably be considered to have been included in computing the amount of the issuing foreign affiliate's consolidated taxable surplus (as this amount is determined under paragraph 5902(1)(c)), in respect of the corporation resident in Canada, as a result of the disposition of the disposed shares,

B is calculated as the amount of the particular foreign affiliate's consolidated taxable surplus (as this amount is determined under paragraph 5902(1)(c)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

C is calculated as the amount of the particular foreign affiliate's consolidated taxable deficit (as this amount is determined under paragraph 5902(1)(d)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, and

D is, where the particular relevant foreign affiliate is the issuing foreign affiliate, 1, and, where the particular relevant foreign affiliate is not the issuing foreign affiliate, the surplus entitlement percentage of the issuing foreign affiliate, in respect of the particular relevant foreign affiliate, that, under subsections 5905(10) to (13), would be determined, at the balance adjustment time, if the issuing foreign affiliate were the "corporation resident in Canada" referred to in those subsections and the particular relevant foreign affiliate were the "particular foreign affiliate" referred to in those subsections;

- if the amount determined, in respect of the particular relevant foreign affiliate, for the description of any of A, B or D in the formula is nil, the amount determined by the formula is deemed to be nil; and

- if the particular relevant foreign affiliate has, at the balance adjustment time, an amount of taxable surplus in respect of the corporation resident in Canada and the issuing foreign affiliate has, at that time, an amount of consolidated taxable deficit (as this amount is determined under paragraph 5902(1)(d)), in respect of the corporation resident in Canada, as a result of the disposition that is equal to or greater than the amount of the issuing foreign affiliate's consolidated taxable surplus (as this amount is determined under paragraph 5902(1)(d)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, the amount of that taxable surplus.

(21) ["Taxable surplus reduction"] — The taxable surplus reduction, in respect of a corporation resident in Canada, of a particular relevant foreign affiliate, in respect of disposed shares, is

(a) the amount determined by the formula

$$A/B \times C \times D$$

where

A is the portion of the amount of the particular relevant foreign affiliate's taxable surplus, in respect of the corporation resident in Canada, at the balance adjustment time, that can reasonably be considered to have been included in computing the amount of the consolidated taxable surplus (as determined under paragraph 5902(1)(c)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, of the particular foreign affiliate, of the corporation resident in Canada, that issued the disposed shares (in this subsection referred to as the "issuing foreign affiliate"),

B is the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under paragraph 5902(1)(c)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

C is the portion, of the disposition dividend that is, because of an election made under subsection 93(1) or (1.2) of the Act, in respect of the disposition of the disposed shares, received on the disposed shares by the person that disposed of those shares and that is prescribed by paragraph 5900(1)(b) to have been paid out of the issuing foreign affiliate's taxable surplus, in respect of the corporation resident in Canada, and

D is the specified adjustment factor, in respect of the corporation resident in Canada, in respect of the particular relevant foreign affiliate, of the person that disposed of the disposed shares;

(b) if the amount determined, in respect of the particular relevant foreign affiliate, for the description of A or B in the formula in paragraph (a) is nil, nil; and

(c) if an amount is determined, in respect of the particular relevant foreign affiliate, under paragraph (20)(b), nil.

Technical Notes: New subsection 5905(21) defines the expression "taxable surplus reduction", which determines the reduction of the taxable surplus, in respect of the corporation resident in Canada, of a particular relevant foreign affiliate in respect of the disposition dividend of the issuing foreign affiliate where the issuing foreign affiliate has consolidated taxable surplus in excess of consolidated taxable deficit in respect of the corporation resident in Canada. The subsection adopts, from subsection 5905(8) of the Regulations, the terms "particular relevant foreign affiliate", "balance adjustment time", "disposed shares" and "disposition dividend".

The taxable surplus reduction, in respect of the corporation resident in Canada, of a particular relevant foreign affiliate of the corporation resident in Canada, in respect of disposed shares, is

- the amount determined by the formula

$$A/B \times C \times D$$

where

A is the portion of the amount of the particular relevant foreign affiliate's taxable surplus, in respect of the corporation resident in Canada, at the balance adjustment time, that can reasonably be considered to have been included in computing the amount of the consolidated taxable surplus (as this amount is determined under paragraph 5902(1)(c)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, of the foreign affiliate of the corporation resident in Canada that issued the disposed shares (the "issuing foreign affiliate"),

B the amount of the particular foreign affiliate's consolidated taxable surplus (as this amount is determined under paragraph 5902(1)(c)), in respect of the corporation resident in Canada resident, as a result of the disposition of the disposed shares,

C is the portion of the disposition dividend that is, because of an election made under subsection 93(1) or (1.2) of the Act, in respect of the disposition of the disposed shares, received on the disposed shares by the person disposing of those shares, that is prescribed by paragraph 5900(1)(b) to have been paid out of the issuing foreign affiliate's taxable surplus, in respect of the corporation resident in Canada, and

D is the specified adjustment factor, in respect of the corporation resident in Canada, in respect of the particular relevant foreign affiliate, of the person disposing of the disposed shares;

- if the amount determined for either A or B of the formula is nil, the amount of determined by the formula is nil; and

- if an amount is determined in respect of the particular relevant foreign affiliate under paragraph (b) of subsection 5905(20) (which subsection defines the expression "taxable deficit reduction"), the amount determined by the formula is deemed to be nil.

(22) ["Underlying foreign tax reduction"] — The underlying foreign tax reduction in respect of the corporation resident in Canada, of a particular relevant foreign affiliate of the corporation resident in Canada, in respect of the disposition of the disposed shares, is the amount determined by the following formula

$$A \times (B + C)/D$$

where

A is the underlying foreign tax in respect of the corporation resident in Canada, at the balance adjustment time, of the particular relevant foreign affiliate,

B is the taxable deficit reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate of the corporation resident in Canada, in respect of the disposition of the disposed shares,

C is the exempt deficit allocation, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate of the corporation resident in Canada, in respect of the disposition of the disposed shares, and

D is the taxable surplus in respect of the corporation resident in Canada of the particular relevant foreign affiliate, at the balance adjustment time.

Technical Notes: New subsection 5905(22) defines the expression "underlying foreign tax reduction", which determines the reduction of underlying foreign tax, in respect of the corporation resident in Canada, of a particular relevant foreign affiliate that is attributable to total deductions from the taxable surplus of the particular relevant foreign affiliate as a result of a taxable deficit reduction and an exempt deficit allocation. The subsection adopts, from subsection 5905(8) of the Regulations, the terms "particular relevant foreign affiliate", "balance adjustment time", "disposed shares" and "disposition dividend".

Underlying foreign tax reduction in respect of the corporation resident in Canada, of a particular relevant foreign affiliate of the corporation resident in Canada, in respect of the disposition of the disposed shares, is the amount determined by the formula

$$A \times (B + C)/D$$

where

A is the underlying foreign tax in respect of the corporation resident in Canada of the particular relevant foreign affiliate, at the balance adjustment time,

B is the taxable deficit reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate of the corporation resident in Canada, in respect of the disposition of the disposed shares,

C is the exempt deficit allocation, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate of the corporation resident in Canada, in respect of the disposition of the disposed shares, and

D is the taxable surplus in respect of the corporation resident in Canada of the particular relevant foreign affiliate, at the balance adjustment time.

(23) The specified adjustment factor, in respect of a corporation resident in Canada, in respect of a particular relevant foreign affiliate of the corporation resident in Canada, of the person that disposed of disposed shares, in respect of the disposition of the disposed shares, is the amount determined by the formula

$$A/B$$

where

A is

(a) where the corporation resident in Canada disposed of the disposed shares, 100 per cent, and

(b) where another foreign affiliate of the corporation resident in Canada disposed of the disposed shares, the surplus entitlement percentage of the corporation resident in Canada in respect of that other foreign affiliate, immediately before the disposition of the disposed shares, and

B is the surplus entitlement percentage of the corporation resident in Canada in respect of the particular relevant foreign affiliate, immediately before the disposition of the disposed shares.

Technical Notes: New subsection 5905(23) defines the expression "specified adjustment factor", which is used in subsection 5905(8) of the Regulations and the definitions "exempt surplus reduction" and "taxable surplus reduction" in subsections 5905(18) and (21), respectively. The subsection adopts, from subsection 5905(8) of the Regulations, the terms "particular relevant foreign affiliate" and "disposed shares".

Specified adjustment factor in respect of a corporation resident in Canada of a particular relevant foreign affiliate of that corporation resident in Canada in respect of disposed shares is the amount determined by the formula

A/B

where

A is, where the corporation resident in Canada disposed of the disposed shares, 100 per cent, and, where another foreign affiliate of the corporation resident in Canada disposed of the disposed shares, the surplus entitlement percentage of the corporation resident in Canada in respect of that other foreign affiliate, immediately before the disposition of the disposed shares, and

B is the surplus entitlement percentage of the corporation resident in Canada in respect of the particular relevant foreign affiliate, immediately before the disposition of the disposed shares.

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 2(8), will add subsecs. 5905(16)– (23), applicable in respect of dispositions in respect of which an election was made in respect of which the amendments to s. 5902 apply.

History [S. 5905]: S. 5905 substituted by P.C. 1985-467, February 14, 1985, s. 3, *Canada Gazette*, Part II, March 6, 1985 as corrected by *Canada Gazette*, Part II, June 26, 1985, applicable as to subsec. 5905(1), in respect of acquisitions of shares made after November 12, 1981; as to subsec. 5905(2), in respect of redemptions, acquisitions or cancellations of shares occurring after November 12, 1981; as to subsecs. 5905(3) and (4), in respect of mergers occurring after November 12, 1981; as to subsecs. 5905(5) and (6), in respect of dispositions of shares made after November 12, 1981 and amalgamations and windings-up occurring after November 12, 1981; as to subsec. 5905(7), in respect of dissolutions occurring after November 12, 1981; as to subsec. 5905(8), in respect of dispositions of shares made after November 12, 1981; as to subsec. 5905(9), in respect of issuances of shares occurring after November 12, 1981; and as to subsecs. 5905(10) to (13), for the purposes of computations required to be made under any of subsecs. 5905(1) to (9), in respect of transactions occurring after November 12, 1981.

All that portion of subsec. 5905(1) following para. (d) and all that portion of subsec. 5905(2) preceding para. (a) substituted; subsec. 5905(7.1) added by P.C. 1980-503, s. 4, February 8, 1980, *Canada Gazette*, Part II, February 27, 1980, as corrected by *Canada Gazette*, Part II, March 12, 1980, effective in respect of 1976 *et seq.*

Definitions [Reg. 5905]: "amount" — ITA 248(1), Reg. 5907(7); "arm's length" — ITA 251(1); "balance adjustment time" — Reg. 5905(2)(a)(i), (4)(a)(i), (6)(a)(i); "class" — ITA 248(6); "consolidated exempt surplus" — Reg. 5902(1)(a); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "direct equity percentage" — ITA 95(4); "disposed" — ITA 248(1)"disposition"; "disposed share" — Reg. 5905(2), (4)(a), (8); "disposes" — ITA 248(1)"disposition"; "disposing foreign affiliate" — Reg. 5905(7); "disposition" — ITA 248(1); "disposition dividend" — Reg. 5905(2)(a), (4)(a), (6)(a), (8); "dividend" — ITA 248(1); "equity percentage" — ITA 95(4), Reg. 5905(15); "exempt deficit" — Reg. 5902(1)–(3), (7), 5905(7)(b), 5907(1); "exempt deficit allocation" — Reg. 5905(16); "exempt deficit reduction" — Reg. 5905(17); "exempt earnings" — Reg. 5907(1), (10); "exempt surplus" — ITA 113(1)(a), Reg. 5902(1)–(3), (7), 5905(7)(d), 5907(1); "exempt surplus reduction" — Reg. 5905(18); "foreign affiliate" — ITA 95(1), 248(1), Reg. 5907(3); "foreign merger" — ITA 87(8.1); "foreign tax applicable" — Reg. 5900(1)(d); "loss" — Reg. 5907(1); "net surplus" — Reg. 5902(1)–(3), (7), 5907(1); "opening exempt deficit" — Reg. 5905(5)(e), (5.3); "opening exempt surplus" — Reg. 5905(5)(d), Reg. 5905(5.1); "opening taxable deficit" — Reg. 5905(5)(g); "opening taxable surplus" — Reg. 5905(5)(f), (5.2); "opening underlying foreign tax" — Reg. 5905(5)(h), (5.4); "particular relevant foreign affiliate" — Reg. 5905(2)(a)(i), (4)(a)(i), (8)(a); "person", "prescribed", "property" — ITA 248(1); "resident" — ITA 250, Reg. 5907(11.2); "resident in Canada" — ITA 250; "share" — ITA 248(1); "specified adjustment factor" — Reg. 5905(23); "specified time" — Reg. 5905(7.1); "surplus entitlement" — Reg. 5905(10); "surplus entitlement percentage" — Reg. 5905(13); "taxable Canadian corporation" — ITA 89(1), 248(1); "taxable deficit" — Reg. 5902(1)–(3), (7), 5905(7)(c), 5907(1); "taxable deficit allocation" — Reg. 5905(19); "taxable deficit reduction" — Reg. 5905(20); "taxable earnings" — Reg. 5907(1), (10); "taxable surplus" — Reg. 5902(1)–(3), (7), 5905(7)(e), 5907(1); "taxable surplus reduction" — Reg. 5905(21); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "underlying foreign tax" — Reg. 5902(1)–(3), (7), 5907(1); "underlying foreign tax reduction" — Reg. 5905(22).

5906. Carrying on business in a country — (1) For the purposes of this Part, where a foreign affiliate of a corporation resident in Canada carries on an active business, it shall be deemed to carry on that business

(a) in a country other than Canada only to the extent that such business is carried on through a permanent establishment situated therein; and

(b) in Canada only to the extent that its income therefrom is subject to tax under Part I of the Act.

(2) Where the Government of Canada has concluded an agreement or convention with the government of another country for the avoidance of double taxation that has the force of law in Canada and in which the expression "permanent establishment" is given a particular meaning, for the purposes of subsection (1), that expression has that meaning with respect to a business carried on in that country and, in any other case, has the meaning assigned by subsection 400(2).

Definitions [Reg. 5906]: "active business" — ITA 95(1), Reg. 5907(1); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "foreign affiliate" — ITA 95(1), 248(1), Reg. 5907(3); "permanent establishment" — Reg. 5906(2); "resident in Canada" — ITA 250.

5907. Interpretation — **(1) [Definitions]** — For the purposes of this Part,

"active business" has the meaning assigned by subsection 95(1) of the Act;

"controlled foreign affiliate" has the meaning assigned by subsection 95(1) of the Act;

"earnings" of a foreign affiliate of a taxpayer resident in Canada for a taxation year of the affiliate from an active business means

(a) in the case of an active business carried on by it in a country,

(i) the income or profit from the active business for the year computed in accordance with the income tax law of the country in which the affiliate is resident, in any case where the affiliate is required by that law to compute that income or profit,

(ii) the income or profit from the active business for the year computed in accordance with the income tax law of the country in which the business is carried on, in any case not described in subparagraph (i) where the affiliate is required by that law to compute that income or profit, and

(iii) in any other case, the amount that would be the income from the active business for the year under Part I of the Act if the business were carried on in Canada, the affiliate were resident in Canada and the Act were read without reference to subsections 80(3) to (12), (15) and (17) and 80.01(5) to (11) and sections 80.02 to 80.04,

Proposed Amendment — Reg. 5907(1)"earnings"(a)(iii)

Letter from Department of Finance, May 16, 2005:

Dear [xxx]

I am writing in response to your correspondence dated January 13, 2005 to Mr. Wallace Conway in connection with the definition "earnings", of a foreign affiliate of a taxpayer resident in Canada, in subsection 5907(1) of the *Income Tax Regulations*.

As you note in your correspondence, subparagraph (a)(iii) of the earnings definition provides that "earnings" of a foreign affiliate of a taxpayer resident in Canada for a taxation year from an active business means the

amount that would be the income from the active business for the year under Part I of the *Income Tax Act* if the business were carried on in Canada, the foreign affiliate were resident in Canada and the Act were read without reference to certain specified provisions of the Act. That subparagraph applies only where the foreign affiliate is not required by the income tax law of the country in which the foreign affiliate is resident or carries on the business to compute the income or profit from the active business.

You also note that, in the draft technical amendments released by the Minister of Finance on February 27, 2004 relating to foreign affiliates, proposed new paragraph 95(2)(f.1) of the Act provides in part that, for the purposes of subdivision i of the Act, the income or loss of a foreign affiliate of a taxpayer from property or from a business other than an active business is to be computed as if the business were carried on in Canada, the foreign affiliate were resident in Canada and the Act were read without reference to certain specified provisions of the Act (including subsection 18(4) of the Act).

You express your concern that subsection 18(4) is one of those specified provisions in proposed paragraph 95(2)(f.1) but not in subparagraph (a)(iii) of the earnings definition in subsection 5907(1) of the Regulations.

It would seem appropriate to amend Part LIX of the Regulations so that, in applying subparagraph (a)(iii) of the definition "earnings" in subsection 5907(1) of the Regulations to determine the amount that would be the foreign affiliate's income from an active business, the Act would be read without reference to subsection 18(4). We are prepared to recommend such a change and, consistent with the coming-into-force provision proposed in the February 2004 foreign affiliate proposals for new paragraph 95(2)(f.1), that it apply to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002.

Thank you for writing.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

adjusted in each case in accordance with subsections (2), (2.1), (2.2) and (2.9) and, for the purposes of this Part, to the extent that the earnings of an affiliate from an active business carried on by it cannot be attributed to a permanent establishment in any particular country, they shall be attributed to the permanent establishment in the country in which the affiliate is resident and, if the affiliate is resident in more than one country, to the permanent establishment in the country that may reasonably be regarded as the affiliate's principal place of residence, and

(b) in any other case, the total of the amounts by which the income for the year from an active business of an affiliate is increased because of paragraph 95(2)(a) of the Act;

Proposed Amendment — Reg. 5907(1)"earnings"(b)

(b) in any other case, the total of all the amounts required by paragraph 95(2)(a) of the Act to be included in computing the affiliate's income for the year from an active business;

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 3(2), will amend para. (b) of the definition "earnings" in subsec. 5907(1) to read as above, applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002.

S. 9 of the draft regulations provides that if a foreign affiliate of a taxpayer referred to in the above amendment makes a valid "Global Section 95 Election" under subsec. 133(68) of the February 27, 2004 draft legislation (see Application and Technical Notes to Proposed Amendment to ITA 95(2)(a)), then the amendment is applicable to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994.

Technical Notes: The definition "earnings" of a foreign affiliate of a taxpayer resident in Canada for a taxation year in subsection 5907(1) of the Regulations is relevant for the purposes of computing the surpluses and deficits of the affiliate. Paragraph (b) of the definition "earnings" in subsection 5907(1) ensures that "earnings" will reflect the total of all amounts by which the affiliate's income for the year from an active business is increased because of paragraph 95(2)(a) of the Act.

Consequential to the amendments made to paragraph 95(2)(a) of the Act to provide for amounts by which such income of the affiliate could be decreased, paragraph (b) of the definition "earnings" in subsection 5907(1) of the Regulations is proposed to be amended to ensure that "earnings" will reflect the total of all amounts required by paragraph 95(2)(a) to be included (either as a plus or as a minus) in computing the affiliate's income for the year from an active business. For more detail, refer to the commentary to paragraph 95(2)(a).

The amendment to paragraph (b) of the definition "earnings" in subsection 5907(1) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. Note that this amendment is included in the Global Section 95 Election package described at the beginning of the commentary to section 95 of the Act.

"exempt deficit" of a foreign affiliate of a corporation in respect of the corporation at any time means the amount, if any, by which

(a) the total of all amounts each of which is an amount determined at that time under any of subparagraphs (i) to (vi) of the description of B in the definition "exempt surplus" in this subsection

exceeds

(b) the total of all amounts each of which is an amount determined at that time under any of subparagraphs (i) to (vii) of the description of A in that definition;

Proposed Amendment — Reg. 5907(1)"exempt deficit"(b)

(b) the total of all amounts each of which is an amount determined at that time under any of subparagraphs (i) to (viii) of the description of A in that definition;

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 3(5), will amend para. (b) of the definition "exempt deficit" in subsec. 5907(1), applicable on the same basis as the amendment to Reg. 5907(1)"earnings"(b).

Technical Notes: The definition "exempt deficit" of a foreign affiliate of a taxpayer resident in Canada for a taxation year in subsection 5907(1) of the Regulations is relevant for the purposes of computing the surpluses of the foreign affiliate.

The amendment to the definition "exempt deficit" of a foreign affiliate of a taxpayer resident in Canada for a taxation year in subsection 5907(1) inserts a reference to new subparagraph (viii) of the description of A in the definition "exempt surplus" in subsection 5907(1) of the Regulations.

The proposed amendment to the definition "exempt deficit" in subsection 5907(1) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. Note that this amendment is included in the Global Section 95 Election package described at the beginning of the commentary to section 95 of the Act.

Related Provisions: Reg. 5905(2)(a)(iv), (2)(b) — Inclusion in exempt deficit on acquisition or cancellation of share; Reg. 5905(4)(a)(iv) — Inclusion in exempt deficit on disposition of share; Reg. 5905(5.1) — Exempt deficit after amalgamation of corporation holding foreign affiliate; Reg. 5905(5.2) — Exempt deficit after windup of corporation holding foreign affiliate; Reg. 5905(6)(a)(iv) — Computation of exempt deficit.

"exempt earnings" of a particular foreign affiliate of a particular corporation for a taxation year of the particular affiliate is the total of all amounts each of which is

(a) the amount by which the capital gains of the particular affiliate for the year exceed the total of

(i) the amount of the taxable capital gains for the year referred to in the description of B in the definition "foreign accrual property income" in subsection 95(1) of the Act,

(ii) the amount of the taxable capital gains for the year referred to in subparagraphs (c)(i) and (d)(iii) of the definition "net earnings" in this subsection, and

(iii) the portion of any income or profits tax paid to the government of a country for the year by the particular affiliate that can reasonably be regarded as tax in respect of the amount by which the capital gains of the particular affiliate for the year exceed the total of the amounts referred to in subparagraphs (i) and (ii),

and for the purpose of this paragraph, where the particular affiliate has disposed of capital property that was shares of the capital stock of another foreign affiliate of the particular corporation to any corporation that was, immediately after the disposition, a foreign affiliate of the particular corporation, the capital gains of the particular affiliate for the year shall not include the portion of those gains that is the total of all amounts each of which is an amount equal to the excess of the fair market value at the end of the particular affiliate's 1975 taxation year of one of those shares disposed of over the adjusted cost base of that share,

Proposed Addition — Reg. 5907(1)"exempt earnings"(a.1)

(a.1) the total of all amounts each of which is an amount determined by the formula

A – B

where

A is the amount that would be included by paragraph (c), (c.1) or (c.2) of the definition "capital dividend account" in subsection 89(1) of the Act in determining the capital dividend account of the affiliate at the end of the taxation year if

(i) the affiliate were the corporation referred to in that definition, and

(ii) the references in paragraphs (c.1) and (c.2) of that definition, and in paragraph (c) of that definition as that paragraph read in its application to taxation years that ended before February 28, 2000, to the expression "a business" were read as references to the expression "a business that is not an active business within the meaning assigned by subsection 95(1)", and

(iii) section 14 of the Act were modified, in its application to the affiliate, in accordance with paragraphs 95(2)(f.91) and (f.92) of the Act, and

B is the amount determined for A at the end of the affiliate's taxation year that immediately precedes the taxation year,

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 3(6), will add para. (a.1) to the definition "exempt earnings" in subsec. 5907(1), applicable on the same basis as the amendment to Reg. 5907(1)"earnings"(b).

Technical Notes: First, new paragraph (a.1) is added to the definition "exempt earnings" in subsection 5907(1) to include the untaxed portion of the gain from the sale of excluded property that is eligible capital property.

See also under 5907(1)"exempt earnings"(d)(ii).

For more detail, see the commentary to subsection 95(2) of the Act.

The amendments to paragraph (a.1), and subparagraph (d)(ii), of the definition "exempt earnings" in subsection 5907(1) apply to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. Note that these amendments are included in the Global Section 95 Election package described in the beginning of the commentary to section 95 of the Act and that, in the event of a Global Section 95 Election, the Qualifying Member Amendments apply to taxation years, of a foreign affiliate of a taxpayer, that end after 1999.

(b) where the year is the 1975 or any preceding taxation year of the particular affiliate, the total of all amounts each of which is the particular affiliate's net earnings for the year,

(c) where the year is the 1975 or any preceding taxation year of the particular affiliate, the earnings as determined in paragraph (b) of the definition "earnings" in this subsection to the extent that those earnings have not been included because of paragraph (b) or deducted in determining an amount included in subparagraph (b)(i) of the definition "exempt loss" in this subsection,

(d) where the year is the 1976 or any subsequent taxation year of the particular affiliate and the particular affiliate is resident in a designated treaty country, each amount that is

(i) the particular affiliate's net earnings for the year from an active business carried on by it in Canada or a designated treaty country, or

(ii) the earnings of the particular affiliate for the year from an active business to the extent that they derive from

(A) amounts by which the income of the particular affiliate from an active business for the year is increased because of subparagraph 95(2)(a)(i) of the Act that are derived by the particular affiliate from activities that could reasonably be considered to be directly related to business activities carried on by a non-resident corporation, to which the particular affiliate and the particular corporation are related throughout the year, in the course of an active business carried on by the non-resident corporation the income from which would, if the non-resident corporation were a foreign affiliate of a corporation, be included in computing the non-resident corporation's exempt earnings or exempt loss,

(B) where the particular corporation is a life insurance corporation resident in Canada throughout the year and the particular affiliate is a foreign affiliate in respect of which the particular corporation has a qualifying interest throughout the year, amounts by which the income of the particular affiliate from an active business for the year is increased because of subparagraph 95(2)(a)(i) of the Act that are derived by the particular affiliate from activities that could reasonably be considered to be directly related to business activities carried on by the particular corporation in the course of an active business carried on by the particular corporation in a country other than Canada, the income from which would, if the particular corporation were a foreign affiliate of another corporation and were resident in the country other than Canada in which that active business of the particular corporation is carried on, be included in computing the particular corporation's exempt earnings or exempt loss,

(C) amounts by which the income of the particular affiliate from an active business for the year is increased because of clause 95(2)(a)(ii)(A) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or a partnership of which it is a member by

a non-resident corporation to which the particular affiliate and the particular corporation are related throughout the year, to the extent that, if the non-resident corporation were a foreign affiliate of a corporation, the amounts paid or payable by the non-resident corporation would be deductible in the year or a subsequent taxation year in computing its exempt earnings or exempt loss,

(D) where a non-resident corporation to which the particular affiliate and the particular corporation are related throughout the year is a member of a particular partnership (other than where the non-resident corporation is a specified member of the particular partnership at any time in a fiscal period of the particular partnership ending in the year), amounts by which the income of the particular affiliate from an active business for the year is increased because of clause 95(2)(a)(ii)(A) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or another partnership of which it is a member by the particular partnership to the extent that, if the particular partnership were a foreign affiliate of a corporation and were resident in the country in which the non-resident corporation is resident and subject to income taxation, the amounts paid or payable by the particular partnership would be deductible in the year or a subsequent taxation year in computing its exempt earnings or exempt loss,

(E) amounts by which the income of the particular affiliate from an active business for the year is increased because of clause 95(2)(a)(ii)(B) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or a partnership of which it is a member by another foreign affiliate of the particular corporation in respect of which the particular corporation has a qualifying interest throughout the year, to the extent that the amounts paid or payable by the other foreign affiliate are deductible in the year or a subsequent taxation year in computing its exempt earnings or exempt loss,

(F) where another foreign affiliate of the particular corporation in respect of which the particular corporation has a qualifying interest throughout the year is a member of a particular partnership (other than where the other foreign affiliate is a specified member of the particular partnership at any time in a fiscal period of the particular partnership ending in the year), amounts by which the income of the particular affiliate from an active business for the year is increased because of clause 95(2)(a)(ii)(B) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or another partnership of which it is a member by the particular partnership, to the extent that, if the particular partnership were a foreign affiliate of a corporation and were resident in the country in which the other foreign affiliate is resident and subject to income taxation, the amounts paid or payable by the particular partnership would be deductible in the year or a subsequent taxation year in computing its exempt earnings or exempt loss,

(G) where the particular affiliate is a member of a particular partnership (other than where the particular affiliate is a specified member of the particular partnership at any time in a fiscal period of the particular partnership ending in the year), amounts by which the income of the particular affiliate from an active business for the year is increased because of clause 95(2)(a)(ii)(C) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or another partnership of which it is a member by the particular partnership, to the extent that, if the particular partnership were a foreign affiliate of a corporation and were resident in the country in which the particular affiliate is resident and subject to income taxation, the amounts paid or payable by the particular partnership would be deductible in the year or a subsequent taxation year in computing its exempt loss,

(H) amounts by which the income of the particular affiliate from an active business for the year is increased because of clause 95(2)(a)(ii)(D) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or a partnership of which it is a member by another foreign affiliate (in this clause referred to as the "second affiliate") of the particular corporation to which the particular affiliate and the particular corporation are related throughout the year, to the extent that the amounts paid or payable

(I) are on account of interest on borrowed money used for the purpose of earning income from property or interest on an amount payable for property, where

1. the property is shares of a foreign affiliate (in this clause referred to as the "third affiliate") of the particular corporation in respect of which the particular corporation has a qualifying interest throughout the year and that are excluded property, and

2. the second affiliate, the third affiliate and each other affiliate relevant for the purpose of determining whether the shares of the third affiliate are excluded property are resident and subject to income taxation in a designated treaty country, and

(II) are relevant in computing the liability for income taxes, in the designated treaty country in which the second and third affiliates are resident, of the members of a group of corporations composed of the second affiliate and one or more other foreign affiliates (the shares of which are excluded property) of the particular corporation that are resident in that country and in respect of which the particular corporation has a qualifying interest throughout the year,

and, for the purposes of this clause, "excluded property" has the meaning assigned by subsec-

tion 95(1) of the Act, except that for that purpose,

(III) the definition "excluded property" in subsection 95(1) of the Act shall be read without reference to amounts receivable referred to in paragraph (c) of that definition where the interest on the amounts is not, or would not if interest were payable on the amounts, be deductible in computing the debtor's exempt earnings or exempt loss, and

(IV) the shares of a foreign affiliate (in this subclause referred to as the "non-qualifying affiliate") that is not resident and subject to income taxation in a designated treaty country are not considered relevant for the purpose of determining whether shares of the third affiliate are excluded property unless the shares of the third affiliate would not have been excluded property if the shares of all such non-qualifying affiliates were not excluded property,

(I) where the particular corporation is a life insurance corporation resident in Canada and the particular affiliate is a foreign affiliate in respect of which the particular corporation has a qualifying interest throughout the year, amounts by which the income of the particular affiliate from an active business for the year is increased because of clause 95(2)(a)(ii)(E) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or a partnership of which it is a member by the particular corporation in the course of the particular corporation carrying on its life insurance business outside Canada, to the extent that, if the particular corporation were a foreign affiliate of another corporation and were resident in the country in which the particular corporation carried on its life insurance business outside Canada, the amounts paid or payable by the particular corporation would be deductible in the year or in a subsequent taxation year in computing its exempt earnings or exempt loss,

(J) amounts by which the income of the particular affiliate from an active business for the year is increased because of subparagraph 95(2)(a)(iii) of the Act that are derived from the factoring of trade accounts receivable acquired by the particular affiliate, or by a partnership of which the particular affiliate was a member, from a non-resident corporation to which the particular affiliate and the particular corporation are related throughout the year, to the extent that the trade accounts receivable arose in the course of an active business carried on by the non-resident corporation any income from which would be included in the exempt earnings of the non-resident corporation if it were a foreign affiliate of a corporation, or

(K) amounts by which the income of the particular affiliate from an active business for the year is increased because of subparagraph 95(2)(a)(iv) of the Act that are derived from loans or lending assets acquired by the particular affiliate, or a partnership of which the particular affiliate was a member from a non-resident corporation to which the particular affiliate and the particular corporation are related throughout the year, to the extent that the loans or lending assets arose in the course of an active business carried on by the non-resident corporation any income from which would be included in the exempt earnings of the non-resident corporation if it were a foreign affiliate of a corporation, or

Proposed Amendment — Reg. 5907(1)"exempt earnings"(d)(ii)

(ii) the earnings of the particular affiliate for the year from an active business to the extent that they derive from

(A) amounts required to be included in computing the income of the particular affiliate from an active business for the year because of subparagraph 95(2)(a)(i) of the Act that are derived by the particular affiliate from activities that can reasonably be considered to be directly related to business activities carried on by a non-resident corporation, to which the particular affiliate and the particular corporation are related throughout the year, in the course of an active business carried on by the non-resident corporation the income or loss from which would, if the non-resident corporation were a foreign affiliate of a corporation, be included in computing the non-resident corporation's exempt earnings or exempt loss,

(B) if the particular corporation is a life insurance corporation resident in Canada throughout the year and the particular affiliate is a foreign affiliate in respect of which the particular corporation has a qualifying interest throughout the year, amounts required to be included in computing the income of the particular affiliate from an active business for the year because of subparagraph 95(2)(a)(i) of the Act that are derived by the particular affiliate from activities that can reasonably be considered to be directly related to business activities carried on by the particular corporation in the course of an active business carried on by the particular corporation in a country other than Canada, the income or loss from which would, if the particular corporation were a foreign affiliate of another corporation and were resident in the country other than Canada in which that active business of the particular corporation is carried on, be included in computing the particular corporation's exempt earnings or exempt loss,

(C) amounts required to be included in computing the income of the particular affiliate from an active business for the year because of clause 95(2)(a)(ii)(A) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to a partnership of which it is a member by a non-resident corporation to which the particular affiliate and the particular corporation are related throughout the year, to the extent that, if the non-resident corporation were a foreign affiliate of a corporation, the amounts paid or payable by the non-resident corporation would be deductible in computing its exempt earnings or exempt

loss for the year or for a subsequent taxation year,

(D) if a non-resident corporation to which the particular affiliate and the particular corporation are related throughout the year is a qualifying member of a particular partnership at any time in a fiscal period of the particular partnership that ends in the year, amounts required to be included in computing the income of the particular affiliate from an active business for the year because of clause 95(2)(a)(ii)(A) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to another partnership of which it is a member by the particular partnership to the extent that, if the particular partnership were a foreign affiliate of a corporation and were resident in the country in which the non-resident corporation is resident and subject to income taxation, the amounts paid or payable by the particular partnership would be deductible in computing its exempt earnings or exempt loss for the year or for a subsequent taxation year,

(E) amounts required to be included in computing the income of the particular affiliate from an active business for the year because of clause 95(2)(a)(ii)(B) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to a partnership of which it is a member by another foreign affiliate of the particular corporation in respect of which the particular corporation has a qualifying interest throughout the year, to the extent that the amounts paid or payable by the other foreign affiliate are deductible in computing its exempt earnings or exempt loss for the year or for a subsequent taxation year,

(F) if another foreign affiliate of the particular corporation in respect of which the particular corporation has a qualifying interest throughout the year is a qualifying member of a particular partnership at any time in a fiscal period of the particular partnership that ends in the year, amounts required to be included in computing the income of the particular affiliate from an active business for the year because of clause 95(2)(a)(ii)(B) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to another partnership of which it is a member by the particular partnership, to the extent that, if the particular partnership were a foreign affiliate of a corporation and were resident in the country in which the other foreign affiliate is resident and subject to income taxation, the amounts paid or payable by the particular partnership would be deductible in computing its exempt earnings or exempt loss for the year or for a subsequent taxation year,

(G) if the particular affiliate is a qualifying member of a particular partnership at any time in a fiscal period of the particular partnership that ends in the year, amounts required to be included in computing the income of the particular affiliate from an active business for the year because of clause 95(2)(a)(ii)(C) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to another partnership of which it is a member by the particular partnership, to the extent that, if the particular partnership were a foreign affiliate of a corporation and were resident in the country in which the particular affiliate is resident and subject to income taxation, the amounts paid or payable by the particular partnership would be deductible in computing its exempt earnings or exempt loss for the year or a subsequent taxation year,

(H) amounts required to be included in computing the income of the particular affiliate from an active business for the year because of clause 95(2)(a)(ii)(D) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to a partnership of which it is a member by another foreign affiliate (in this clause referred to as the "second affiliate") of the particular corporation to which the particular affiliate and the particular corporation are related throughout the year, to the extent that the amounts paid or payable are on account of interest on borrowed money used for the purpose of earning income from property or interest on an amount payable for property, in respect of a particular period in the year, if

(I) the property is, throughout the particular period, excluded property of the second affiliate that is shares of a corporation (in this clause referred to as the "third affiliate") which is, throughout the particular period, a foreign affiliate (other than the particular foreign affiliate) of the particular corporation in respect of which the particular corporation has a qualifying interest or to which the particular corporation is related, and

(II) the second affiliate and the third affiliate are resident in the same designated treaty country for each of their taxation years (each of which is referred to in this subclause as a "relevant taxation year") that end in the year and, in respect of each of the second affiliate and the third affiliate for each relevant taxation year, either

1. the affiliate is subject to income taxation in that country in the relevant taxation year, or

2. the members or shareholders of the affiliate at the end of the relevant taxation year are subject to income taxation in that country on, in aggregate, all or substantially all of the income of the affiliate for the relevant taxation year in their taxation years in which the relevant taxation year ends or would be so subject to income taxation in that country if the affiliate had income for the relevant taxation year and the income of those members or shareholders for their taxation years in which the relevant taxation year ends consisted only

of their share of the income of the affiliate for the relevant taxation year,

where, for the purpose of this clause,

(III) "excluded property" has the meaning that would be assigned by subsection 95(1) of the Act if paragraph (c) of the definition "excluded property" in that subsection were read as follows:

"(c) property all or substantially all of the income from which is, or would be, if there was income from the property,

(i) income from an active business by reason of paragraph (2)(a) if that paragraph were read without reference to its subparagraph (v), and

(ii) income derived from amounts payable by payers who are entitled to deduct the amounts in computing their exempt earnings or exempt loss (as those expressions are defined in Regulations made for the purpose of section 113)," and

(IV) the particular corporation has a qualifying interest in respect of another corporation if the particular corporation has, because of paragraph 95(2)(m) or (m.1) of the Act, a qualifying interest in respect of that other corporation for the purpose of subdivision i of Division B of Part I of the Act,

(I) if the particular corporation is a life insurance corporation resident in Canada (in this clause referred to as the "insurer"), a corporation controlled by the insurer or a corporation that controls the insurer and the particular affiliate is a foreign affiliate of the particular corporation in respect of which the particular corporation has a qualifying interest throughout the year, amounts required to be included in computing the particular affiliate's income from an active business for the year because of clause 95(2)(a)(ii)(E) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to a partnership of which it is a member by the insurer in the course of carrying on its life insurance business outside Canada, to the extent that, if the insurer were a foreign affiliate of another corporation resident in Canada and were resident in the country in which the insurer carried on its life insurance business outside Canada, the amounts paid or payable by the insurer would be deductible in computing its exempt earnings or exempt loss for the year or for a subsequent taxation year,

(J) amounts required to be included in computing the particular affiliate's income from an active business for the year because of subparagraph 95(2)(a)(iii) of the Act that are derived from the factoring of trade accounts receivable acquired by the particular affiliate, or by a partnership of which the particular affiliate was a member, from a non-resident corporation to which the particular affiliate and the particular corporation are related throughout the year, to the extent that the trade accounts receivable arose in the course of an active business carried on by the non-resident corporation any income from which would be included in computing the exempt earnings of the non-resident corporation if it were a foreign affiliate of a corporation,

(K) amounts required to be included in computing the particular affiliate's income from an active business for the year because of subparagraph 95(2)(a)(iv) of the Act that are derived from loans or lending assets acquired by the particular affiliate, or by a partnership of which the particular affiliate was a member, from a non-resident corporation to which the particular affiliate and the particular corporation are related throughout the year, to the extent that the loans or lending assets arose in the course of an active business carried on by the non-resident corporation any income from which would be included in the exempt earnings of the non-resident corporation if it were a foreign affiliate of a corporation,

(L) amounts that would be required, because of subparagraph 95(2)(a)(v) of the Act, to be included in computing the particular affiliate's income for the year from an active business if that subparagraph were read as follows:

"(v) the income or loss is derived from the disposition of excluded property that is not capital property if

(A) that property is used or held by the particular foreign affiliate for the purpose of gaining or producing income from property that would, because of this paragraph, be included in computing the particular foreign affiliate's income from an active business if this paragraph were read without reference to this subparagraph, and

(B) that income or loss is derived, directly or indirectly, from amounts paid or payable to the particular foreign affiliate by another foreign affiliate of the taxpayer, or by a non-resident corporation related to the particular foreign affiliate and to the taxpayer, that are in respect of an active business carried on in a designated treaty country (as defined for the purpose of Part LIX of the Regulations), or",

(M) amounts that would be required, because of subparagraph 95(2)(a)(vi) of the Act, to be included in computing the particular affiliate's income for the year from an active business if that subparagraph were read as follows:

"(vi) the income or loss is derived by the particular foreign affiliate under or as a result of an agreement that provides for the purchase, sale or exchange of currency and that can reasonably be considered to have been made by the particular foreign affiliate to reduce its risk, of fluc-

tuations in the value of the denominated currency, with respect to

(A) income or loss, from property, that

(I) would, because of this paragraph, be included in computing the particular foreign affiliate's income or loss from an active business if this paragraph were read without reference to this subparagraph, and

(II) is derived, directly or indirectly, from amounts paid or payable to the particular foreign affiliate by another foreign affiliate of the taxpayer, or by a non-resident corporation related to the particular foreign affiliate and to the taxpayer, that is in respect of an active business carried on in a designated treaty country (as defined for the purpose of Part LIX of the Regulations), or

(B) excluded property the income or loss from which would, if there were income or a loss, be described in clause (A);", or

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 3(7), will amend subpara. (d)(ii) of the definition "exempt earnings" in subsec. 5907(1), applicable to taxation years of a foreign affiliate that begin after December 20, 2002, except that cl. (d)(ii)(H) applies to taxation years, of a foreign affiliate of a taxapayer, to which ITA 95(2)(a)(ii)(D)(III) to (V), as proposed by the amending legislation, apply.

S. 9 of the draft regulations provides that if a foreign affiliate of a taxpayer referred to in the above amendment makes a valid "Global Section 95 Election" under subsec. 133(68) of the February 27, 2004 draft legislation (see Application and Technical Notes to Proposed Amendment to ITA 95(2)(a)), then the amendment is applicable to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994, except that

(a) cl. (d)(ii)(D) is, for the taxation years, of all foreign affiliates of the taxpayer, that end before 2000, to be read as follows:

"(D) if a non-resident corporation to which the particular affiliate and the particular corporation are related throughout the year is a member of a particular partnership (other than where the non-resident corporation would be a specified member of the particular partnership at any time in a fiscal period of the particular partnership that ends in the year if the definition "specified member" of a partnership in subsection 248(1) of the Act were read without reference to paragraph (a) of that definition), amounts required to be included in computing the income of the particular affiliate from an active business for the year because of clause 95(2)(a)(ii)(A) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to another partnership of which it is a member by the particular partnership to the extent that, if the particular partnership were a foreign affiliate of a corporation and were resident in the country in which the non-resident corporation is resident and subject to income taxation, the amounts paid or payable by the particular partnership would be deductible in computing its exempt earnings or exempt loss for the year or for a subsequent taxation year,";

(b) cls. (d)(ii)(F) and (G) are, for the taxation years, of all foreign affiliates of the taxpayer, that end before 2000, to be read as follows:

"(F) if another foreign affiliate of the particular corporation in respect of which the particular corporation has a qualifying interest throughout the year is a member of a particular partnership (other than where the other foreign affiliate would be a specified member of the particular partnership at any time in a fiscal period of the particular partnership that ends in the year if the definition "specified member" of a partnership in subsection 248(1) of the Act were read without reference to paragraph (a) of that definition), amounts required to be included in computing the income of the particular affiliate from an active business for the year because of clause 95(2)(a)(ii)(B) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to another partnership of which it is a member by the particular partnership, to the extent that, if the particular partnership were a foreign affiliate of a corporation and were resident in the country in which the other foreign affiliate is resident and subject to income taxation, the amounts paid or payable by the particular partnership would be deductible in computing its exempt earnings or exempt loss for the year or for a subsequent taxation year,

(G) if the particular affiliate is a member of a particular partnership (other than where the particular affiliate would be a specified member of the particular partnership at any time in a fiscal period of the particular partnership that ends in the year if the definition "specified member" in subsection 248(1) of the Act were read without reference to paragraph (a) of that definition), amounts required to be included in computing the income of the particular affiliate from an active business for the year because of clause 95(2)(a)(ii)(C) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to another partnership of which it is a member by the particular partnership, to the extent that, if the particular partnership were a foreign affiliate of a corporation and were resident in the country in which the particular affiliate is resident and subject to income taxation, the amounts paid or payable by the particular partnership would be deductible in computing its exempt earnings or exempt loss for the year or for a subsequent taxation year,";

(c) where the taxpayer has not made a valid election under subsec. 133(37) of the February 27, 2004 draft amendments, subcl. (d)(ii)(H)(I) is to be read as follows:

"(I) the property is shares of a foreign affiliate (in this clause referred to as the "third affiliate") of the particular corporation in respect of which the particular corporation has a qualifying interest and those shares are excluded property, and"

Technical Notes: The definition "exempt earnings", of a foreign affiliate of a particular corporation for a taxation year, in subsection 5907(1) is relevant for the purposes of computing the surpluses and deficits of the affiliate.

The definition contains a number of provisions. Subparagraphs (d)(i) and (ii) of the definition "exempt earnings" are relevant to the understanding of the commentary below. Those particular provisions provide as follows:

- Subparagraphs (d)(i) and (ii) of the definition "exempt earnings" provide that, where a foreign affiliate of a particular corporation is resident in a designated treaty country, the affiliate's earnings for the year from an active business carried on by it in a designated treaty country and the amounts included in its income from an active business for the year under paragraph 95(2)(a) of the Act, respectively, are included in computing its "exempt earnings" for the year.

- Clause (d)(ii)(D) of the definition "exempt earnings" includes, in the exempt earnings of a foreign affiliate of a particular corporation, income derived from amounts paid or payable to the affiliate by a partnership of which a non-resident corporation to which the affiliate and the particular corporation are related throughout the year was a member (other than a "specified member" at any time in a fiscal period of a partnership that ends in the year) if that income is deemed by clause 95(2)(a)(ii)(A) of the Act to be income from an active business of the affiliate. This will be the case to the extent that the amounts paid or payable would be deductible in computing the exempt earnings or the exempt loss of the partnership if it were a foreign affiliate of a corporation.

- Clause (d)(ii)(F) of the definition "exempt earnings" includes, in the exempt earnings of a foreign affiliate of a particular corporation, income derived from amounts paid or payable to the affiliate by a partnership of which another foreign affiliate of the particular corporation in respect of which the particular corporation has a qualifying interest throughout the year was a member (other than a "specified member" at any time in a fiscal period of a partnership that ends in the year) if that income is deemed by clause 95(2)(a)(ii)(B) of the Act to be income from an active business of the affiliate. This will be the case to the extent that the amounts paid or payable would

be deductible in computing the exempt earnings or the exempt loss of the partnership if it were a foreign affiliate of a corporation.

- Clause (d)(ii)(G) of the definition "exempt earnings" includes, in the exempt earnings of a foreign affiliate of a corporation, income derived from amounts paid or payable to the affiliate by a partnership of which the affiliate was a member (other than a specified member at any time in a fiscal period of a partnership that ends in the year) if that income is deemed by clause 95(2)(a)(ii)(C) of the Act to be income from an active business of the affiliate. This will be the case to the extent that the amounts paid or payable would be deductible in computing the exempt earnings or the exempt loss of the partnership if it were a foreign affiliate of a corporation.

- Clause (d)(ii)(H) of the definition "exempt earnings" includes, in the exempt earnings of a foreign affiliate of a particular corporation, income derived from amounts paid or payable to it (or to a partnership of which it is a member) by another foreign affiliate (the "second affiliate") of the particular corporation related to it and to the particular corporation throughout the year if that income is deemed by clause 95(2)(a)(ii)(D) of the Act to be the income from an active business of the affiliate. The income must be derived from amounts paid or payable in respect of interest on borrowed money used to earn income from property or on an amount payable for property. That property must consist of shares of another foreign affiliate (the "third affiliate") of the particular corporation in respect of which the particular corporation has a qualifying interest throughout the year that are excluded property of the second affiliate. The second affiliate, the third affiliate and "each other affiliate relevant for the purpose of determining whether the shares of the third affiliate are excluded property" must all be resident in, and subject to income taxation in, the same designated treaty country. (The expression "designated treaty country" is defined in subsection 5907(11).) As well, the amounts paid or payable must be relevant in determining the liability for income taxes in the designated treaty country of a group of corporations composed of the second affiliate and one or more other foreign affiliates (the shares of which are excluded property), of the particular corporation, resident in that country and in respect of which the particular corporation has a qualifying interest throughout the year. For the purposes of making these determinations, two assumptions are made. First, the definition "excluded property" in subsection 95(1) of the Act is to be read without reference to amounts receivable referred to in paragraph (e) of that definition where, if interest were payable on the amounts, the interest would not be deductible by the debtor in calculating its exempt earnings or loss. Second, shares of a foreign affiliate (a "non-qualifying affiliate") that is non-resident and subject to income taxation in a designated treaty country are to be ignored in determining whether the shares of the third affiliate are excluded property, unless the shares of the third affiliate would not be excluded property if all shares of all non-qualifying affiliates were not excluded property. For convenience of reference, this second assumption is referred to in the remainder of this commentary to the definition "exempt earnings" as the "Shares Assumption".

As noted in the commentary to new clauses 95(2)(a)(ii)(A), (B) and (C) of the Act, those clauses are amended so that the condition requiring the partnership to have a relevant person as a member of the partnership (otherwise than as a specified member of the partnership) is replaced by a requirement that the relevant person to be a "qualifying member" of the partnership throughout each period, in the fiscal period of the partnership, that ends in the year. The expression "qualifying member" is newly defined in subsection 248(1) of the Act as being a person that would at the relevant time be determined to be a qualifying member of the partnership under paragraph 95(2)(o) of the Act. For more detail, see the commentary to paragraph 95(2)(o) and subsection 248(1) of the Act.

The amendments to clauses 95(2)(a)(ii)(A), (B) and (C) of the Act, in conjunction with the new definition "qualifying member", ensure that, in applying those clauses, limited partners and limited partnerships are treated in the same manner as general partners and general partnerships. These amendments also ensure that, even if the activities of the relevant person do not meet the business activity requirements in new subparagraph 95(2)(o)(i), a partnership may qualify under clauses 95(2)(a)(ii)(A), (B) or (C) if the relevant person has an equity interest in the partnership that meets the criteria set out in new subparagraph 95(2)(o)(ii). For more detail, see the commentary to new paragraph 95(2)(o) of the Act.

The definition "exempt earnings" is to be amended in the following ways.

First, new paragraph (a.1) is added to the definition "exempt earnings" in subsection 5907(1) to include the untaxed portion of the gain from the sale of excluded property that is eligible capital property. [See 5907(1)"exempt earnings"(a.1) above.]

Second, subparagraph (d)(ii) of the definition "exempt earnings" in subsection 5907(1) is amended in the following ways:

- Consequential to the amendments made to paragraph 95(2)(a) of the Act, subparagraph (d)(ii) of the definition "exempt earnings" in subsection 5907(1) is amended to provide that, in computing the affiliate's "exempt earnings" for the year, there will be included the earnings derived from "amounts required to be included in computing" income from an active business under amended paragraph 95(2)(a) of the Act.

- Clauses (d)(ii)(D), (F) and (G) of the definition "exempt surplus" in subsection 5907(1) are proposed to be amended consistent with similar amendments made to clauses 95(2)(a)(ii)(A), (B) and (C) of the Act. Accordingly, amendments (referred to in this commentary as the "Qualifying Member Amendments") are made to clauses (d)(ii)(D), (F) and (G) of the definition "exempt surplus" in subsection 5907(1) of the Regulations so that the condition requiring the partnership to have a relevant person as a member of the partnership (otherwise than as a specified member of the partnership) is replaced by a requirement that the relevant person be a "qualifying member" of the partnership throughout each period, in the fiscal period of the partnership, that ends in the year. The expression "qualifying member" is newly defined in subsection 248(1) of the Act as being a person that would at the relevant time be determined to be a qualifying member of the partnership under paragraph 95(2)(o) of the Act. For more detail, see the commentary to paragraphs 95(2)(o) and (q) and subsection 248(1) of the Act.

- Consistent with the amendments to clause 95(2)(a)(ii)(D) of the Act, clause (d)(ii)(H) of the definition "exempt earnings" in subsection 5907(1) of the Regulations is proposed to be amended to modify the requirement that the second affiliate, the third affiliate and "each other affiliate relevant for the purpose of determining whether the shares of the third affiliate are excluded property" must each be resident in, and subject to income taxation in, the same designated treaty country (sub-subclause (d)(ii)(H)(I)2. of the definition). That requirement is replaced with a requirement that

  — the second affiliate and the third affiliate must be resident in the same designated treaty country for each of their taxation years (each of which taxation years is referred to as a "relevant taxation year" of the second affiliate or of the third affiliate, as the case may be) that end in the year, and

  — in respect of each of the second affiliate and the third affiliate for each relevant taxation year of that affiliate, either that affiliate must be subject to income taxation in that country in that relevant taxation year, or, alternatively, the members or shareholders of that affiliate at the end of that relevant taxation year must be subject to income taxation in that country on, in aggregate, all or substantially all of the income of that affiliate for that relevant taxation year in their taxation years in which that relevant taxation year ends, or would be so subject to income taxation in that country if that affiliate had income for that relevant taxation year and the income of those members or shareholders for their taxation years in which that relevant taxation year ends consisted only of their share of income of that affiliate for that relevant taxation year.

- Further, clause (d)(ii)(H) of the definition "exempt earnings" in subsection 5907(1) is proposed to be amended to delete the Shares Assumption. The Shares Assumption is no longer relevant as that clause no longer contains a reference to "each other affiliate relevant for the purpose of determining whether the shares of the third affiliate are excluded property".

- Consequential to the introduction of new subparagraph 95(2)(a)(v) of the Act, new clause (d)(ii)(L) of the definition "exempt earnings" in subsection 5907(1) is proposed to be added. New clause (d)(ii)(L) ensures that income of a foreign affiliate, of a corporation, for a year that, because of new subparagraph 95(2)(a)(v) of the Act, is included in computing the affiliate's active business income for the year, is included in computing the "exempt earnings" of the affiliate. In making the determination of this income, new subparagraph 95(2)(a)(v) is to be read as if it applies to the income or loss derived

from the disposition of excluded property that is not capital property if

— that property is used or held by the particular foreign affiliate for the purpose of gaining or producing income from property that would, because of this paragraph, be included in computing the particular foreign affiliate's income from an active business if this paragraph were read without reference to this subparagraph, and

— that income or loss is derived, directly or indirectly, from amounts paid or payable to the particular foreign affiliate by another foreign affiliate of the taxpayer, or by a non-resident corporation related to the particular foreign affiliate and the taxpayer, that is in respect of an active business carried on in a designated treaty country (as defined for the purpose of Part LIX of the Regulations).

• Consequential to the introduction of new subparagraph 95(2)(a)(vi) of the Act, new clause (d)(ii)(M) of the definition "exempt earnings" in subsection 5907(1) is proposed to be added. New clause (d)(ii)(M) ensures that income of a foreign affiliate, of a corporation, for a year that, because of new subparagraph 95(2)(a)(vi) of the Act, is included in computing the affiliate's active business income for the year, is included in computing the "exempt earnings" of the affiliate. This is determined by reading new subparagraph 95(2)(a)(vi) as the income or loss derived from the disposition of excluded property that is not capital property if derived by the particular foreign affiliate under or as a result of an agreement that provides for the purchase, sale or exchange of currency and that can reasonably be considered to have been made by the particular foreign affiliate to reduce its risk, of fluctuations in the value of the denominated currency, with respect to

— income or loss from property that is

• because of this paragraph included in computing the particular foreign affiliate's income or loss from an active business if this paragraph were read without reference to this subparagraph, and

• derived, directly or indirectly, from amounts paid or payable to the particular foreign affiliate by another foreign affiliate of the taxpayer, or by a non-resident corporation related to the particular foreign affiliate and the taxpayer, that is in respect of an active business carried on in a designated treaty country (as defined for the purpose of Part LIX of the Regulations), or

— excluded property the income or loss from which, if there were income or a loss, described in subparagraph 95(2)(a)(i).

For more detail, see the commentary to subsection 95(2) of the Act.

The amendments to paragraph (a.1), and subparagraph (d)(ii), of the definition "exempt earnings" in subsection 5907(1) apply to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. Note that these amendments are included in the Global Section 95 Election package described in the beginning of the commentary to section 95 of the Act and that, in the event of a Global Section 95 Election, the Qualifying Member Amendments apply to taxation years, of a foreign affiliate of a taxpayer, that end after 1999.

(e) where the year is the 1976 or any subsequent taxation year of the particular affiliate, each amount that is included in the particular affiliate's exempt earnings for the year because of subsection (10),

minus the portion of any income or profits tax paid to the government of a country for the year by the particular affiliate that can reasonably be regarded as tax in respect of the earnings referred to in paragraph (c) or in subparagraph (d)(ii);

Related Provisions: ITA 95(2)(n) — Deemed FA and deemed qualifying interest for para. (d); ITA 257 — Negative amounts in formulas; Reg. 5910(1) — FA carrying on foreign oil & gas business deemed to have paid income or profits tax; Reg. 5907(1.02) — "Qualifying interest" and "related".

"exempt loss" of a foreign affiliate of a corporation for a taxation year of the affiliate is the total of all amounts each of which is

Proposed Amendment — Reg. 5907(1)"exempt loss" opening words

"exempt loss", of a foreign affiliate of a particular corporation for a taxation year of the affiliate, is the total of all amounts each of which is

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 3(8), will amend the opening words of the definition "exempt loss" in subsec. 5907(1) to read as above, applicable on the same basis as the amendment to Reg. 5907(1)"earnings"(b).

Technical Notes: The definition "exempt loss" of a foreign affiliate of a corporation for a taxation year in subsection 5907(1) is relevant for the purposes of computing the surpluses and deficits of the affiliate.

The definition "exempt loss" in subsection 5907(1) is proposed to be amended in the following ways.

First, consequential to the proposed amendments to paragraph (c) of that definition, the "preamble" of that definition is proposed to be amended to refer to the foreign affiliate as the "particular" foreign affiliate.

The amendments to the definition "exempt loss" in subsection 5907(1) apply to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. Note that these amendments are included in the Global Section 95 Election package described at the beginning of the commentary to section 95 of the Act, and that, in the event of a Global Section 95 Election, in its application to taxation years, of a foreign affiliate of a taxpayer, that end before 2000, the Member Criteria Condition will, instead of containing the Qualifying Member Requirement, contain the requirement that the partnership have a relevant person as a member of the partnership (otherwise than as a specified member of the partnership).

The expression "specified member" is defined in existing subsection 248(1) of the Act. For more detail, see the commentary to the definition "exempt earnings" in subsection 5907(1).

(a) the amount by which the capital losses of the affiliate for the year exceed the total of

(i) the amount of the allowable capital losses for the year referred to in the description of E in the definition "foreign accrual property income" in subsection 95(1) of the Act,

(ii) the amount of the allowable capital losses for the year referred to in subparagraphs (c)(i) and (d)(iii) of the definition "net loss" in this subsection, and

(iii) the portion of any income or profits tax refunded by the government of a country for the year to the affiliate that can reasonably be regarded as tax refunded in respect of the amount by which the capital losses of the affiliate for the year exceed the total of the amounts referred to in subparagraphs (i) and (ii),

(b) where the year is the 1975 or any preceding taxation year of the affiliate, the total of all amounts each of which is

(i) the affiliate's net loss for the year from an active business carried on by it in a country, or

(ii) the amount, if any, for the year by which

(A) the amount determined under the description of D in the definition "foreign accrual property income" in subsection 95(1) of the Act for the year

exceeds

(B) the amount determined under the description of A in the definition "foreign accrual property income" in subsection 95(1) of the Act for the year,

(c) where the year is the 1976 or any subsequent taxation year of the affiliate and the affiliate is resident in a designated treaty country, each amount that is the af-

filiate's net loss for the year from an active business carried on by it in Canada or in a designated treaty country, or

Proposed Amendment — Reg. 5907(1)"exempt loss"(c)

(c) where the year is the 1976 or any subsequent taxation year of the affiliate (referred to in this paragraph as the "particular affiliate") and the particular affiliate is resident in a designated treaty country, each amount that is

(i) the particular affiliate's net loss for the year from an active business carried on by it in Canada or in a designated treaty country, or

(ii) the losses of the particular affiliate for the year from an active business to the extent that they derive from

(A) amounts required to be included in computing the loss of the particular affiliate from an active business for the year because of subparagraph 95(2)(a)(i) of the Act that are derived by the particular affiliate from activities that can reasonably be considered to be directly related to business activities carried on by a non-resident corporation, to which the particular affiliate and the particular corporation are related throughout the year, in the course of an active business carried on by the non-resident corporation the income or loss from which would, if the non-resident corporation were a foreign affiliate of a corporation, be included in computing the non-resident corporation's exempt earnings or exempt loss,

(B) if the particular corporation is a life insurance corporation resident in Canada throughout the year and the particular affiliate is a foreign affiliate in respect of which the particular corporation has a qualifying interest throughout the year, amounts required to be included in computing the loss of the particular affiliate from an active business for the year because of subparagraph 95(2)(a)(i) of the Act that are derived by the particular affiliate from activities that can reasonably be considered to be directly related to business activities carried on by the particular corporation in the course of an active business carried on by the particular corporation in a country other than Canada, the income or loss from which would, if the particular corporation were a foreign affiliate of another corporation and were resident in the country other than Canada in which that active business of the particular corporation is carried on, be included in computing the particular corporation's exempt earnings or exempt loss,

(C) amounts required to be included in computing the loss of the particular affiliate from an active business for the year because of clause 95(2)(a)(ii)(A) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to a partnership of which it is a member by a non-resident corporation to which the particular affiliate and the particular corporation are related throughout the year, to the extent that, if the non-resident corporation were a foreign affiliate of a corporation, the amounts paid or payable by the non-resident corporation would be deductible in computing its exempt earnings or exempt loss for the year or for a subsequent taxation year,

(D) if a non-resident corporation to which the particular affiliate and the particular corporation are related throughout the year is a qualifying member of a particular partnership at any time in a fiscal period of the particular partnership that ends in the year, amounts required to be included in computing the loss of the particular affiliate from an active business for the year because of clause 95(2)(a)(ii)(A) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to another partnership of which it is a member by the particular partnership to the extent that, if the particular partnership were a foreign affiliate of a corporation and were resident in the country in which the non-resident corporation is resident and subject to income taxation, the amounts paid or payable by the particular partnership would be deductible in computing its exempt earnings or exempt loss for the year or for a subsequent taxation year,

(E) amounts required to be included in computing the loss of the particular affiliate from an active business for the year because of clause 95(2)(a)(ii)(B) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to a partnership of which it is a member by another foreign affiliate of the particular corporation in respect of which the particular corporation has a qualifying interest throughout the year, to the extent that the amounts paid or payable by the other foreign affiliate are deductible in computing its exempt earnings or exempt loss for the year or for a subsequent taxation year,

(F) if another foreign affiliate of the particular corporation in respect of which the particular corporation has a qualifying interest throughout the year is a qualifying member of a particular partnership at any time in a fiscal period of the particular partnership that ends in the year, amounts required to be included in computing the loss of the particular affiliate from an active business for the year because of clause 95(2)(a)(ii)(B) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to another partnership of which it is a member by the particular partnership, to the extent that, if the particular partnership were a foreign affiliate of a corporation and were resident in the country in which the other foreign affiliate is resident and subject to income taxation, the amounts paid or payable by the particular partnership would be deductible in computing its exempt earnings or exempt loss for the year or for a subsequent taxation year,

(G) if the particular affiliate is a qualifying member of a particular partnership at any time in a fiscal period of the particular partnership that ends in the year, amounts required to be included in computing the loss of the particular affiliate from an active business for the

year because of clause 95(2)(a)(ii)(C) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to another partnership of which it is a member by the particular partnership, to the extent that, if the particular partnership were a foreign affiliate of a corporation and were resident in the country in which the particular affiliate is resident and subject to income taxation, the amounts paid or payable by the particular partnership would be deductible in computing its exempt earnings or exempt loss for the year or for a subsequent taxation year,

(H) amounts required to be included in computing the loss of the particular affiliate from an active business for the year because of clause 95(2)(a)(ii)(D) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to a partnership of which it is a member by another foreign affiliate (in this clause referred to as the "second affiliate") of the particular corporation to which the particular affiliate and the particular corporation are related throughout the year, to the extent that the amounts paid or payable, in respect of a particular period in the year, are on account of interest on borrowed money used for the purpose of earning income from property or interest on an amount payable for property, if

(I) the property is, throughout the particular period, excluded property of the second affiliate that is shares of a corporation (in this clause referred to as the "third affiliate") and the third affiliate is, throughout the particular period, a foreign affiliate (other than the particular foreign affiliate) of the particular corporation in respect of which the particular corporation has a qualifying interest or to which the taxpayer is related, and

(II) the second affiliate and the third affiliate are resident in the same designated treaty country for each of their taxation years (each of which is referred to in this subclause as a "relevant taxation year") that end in the year and, in respect of each of the second affiliate and the third affiliate for each relevant taxation year of that affiliate, either

1. the affiliate is subject to income taxation in that country in the relevant taxation year, or

2. the members or shareholders of the affiliate at the end of the relevant taxation year are subject to income taxation in that country on, in aggregate, all or substantially all of the income of the affiliate for the relevant taxation year in their taxation years in which that relevant taxation year ends or would be so subject to income taxation in that country if the affiliate had income for the relevant taxation year and the income of those members or shareholders for their taxation years in which the relevant taxation year ends consisted only of their share of income of the affiliate for the relevant taxation year

where, for the purpose of this clause,

(III) "excluded property" has the meaning assigned to that expression for the purpose of clause (d)(ii)(H) of the definition "exempt earnings", and

(IV) the particular corporation has a qualifying interest in respect of another corporation if the particular corporation has, because of paragraph 95(2)(m) or (m.1) of the Act, a qualifying interest in respect of that other corporation for the purpose of subdivision i of Division B of Part I of the Act,

(I) if the particular corporation is a life insurance corporation resident in Canada (in this clause referred to as the "insurer"), a corporation controlled by the insurer or a corporation that controls the insurer and the particular affiliate is a foreign affiliate in respect of which the particular corporation has a qualifying interest throughout the year, amounts required to be included in computing the particular affiliate's loss from an active business for the year because of clause 95(2)(a)(ii)(E) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to a partnership of which it is a member by the insurer in the course of carrying on its life insurance business outside Canada, to the extent that, if the insurer were a foreign affiliate of another corporation resident in Canada and were resident in the country in which the insurer carried on its life insurance business outside Canada, the amounts paid or payable by the insurer would be deductible in computing its exempt earnings or exempt loss for the year or for a subsequent taxation year,

(J) amounts required to be included in computing the particular affiliate's loss from an active business for the year because of subparagraph 95(2)(a)(iii) of the Act that are derived from the factoring of trade accounts receivable acquired by the particular affiliate, or by a partnership of which the particular affiliate was a member, from a non-resident corporation to which the particular affiliate and the particular corporation are related throughout the year, to the extent that the trade accounts receivable arose in the course of an active business carried on by the non-resident corporation any income from which would be included in computing the exempt earnings of the non-resident corporation if it were a foreign affiliate of a corporation,

(K) amounts required to be included in computing the particular affiliate's loss from an active business for the year because of subparagraph 95(2)(a)(iv) of the Act that are derived from loans or lending assets acquired by the particular affiliate, or by a partnership of which the particular affiliate was a member, from a non-resident corporation to which the particular affiliate and the particular corporation are related throughout the year, to the ex-

tent that the loans or lending assets arose in the course of an active business carried on by the non-resident corporation any income from which would be included in the exempt earnings of the non-resident corporation if it were a foreign affiliate of a corporation,

(L) amounts that would be required, because of subparagraph 95(2)(a)(v) of the Act, to be included in computing the particular affiliate's loss for the year from an active business if that subparagraph were read as follows:

"(v) the income or loss is derived from the disposition of excluded property that is not capital property if

(A) that property is used or held by the particular foreign affiliate for the purpose of gaining or producing income from property that would, because of this paragraph, be included in computing the particular foreign affiliate's income from an active business if this paragraph were read without reference to this subparagraph, and

(B) that income or loss is derived, directly or indirectly, from amounts paid or payable to the particular foreign affiliate by another foreign affiliate of the taxpayer, or by a non-resident corporation related to the particular foreign affiliate and to the taxpayer, that is in respect of an active business carried on in a designated treaty country (as defined for the purpose of Part LIX of the Regulations), or",

(M) amounts that would be required, because of subparagraph 95(2)(a)(vi) of the Act, to be included in computing the particular affiliate's loss for the year from an active business if that subparagraph were read as follows:

"(vi) the income or loss is derived by the particular foreign affiliate under or as a result of an agreement that provides for the purchase, sale or exchange of currency and that can reasonably be considered to have been made by the particular foreign affiliate to reduce its risk, of fluctuations in the value of the denominated currency, with respect to

(A) income or loss from property that

(I) would, because of this paragraph, be included in computing the particular foreign affiliate's income or loss from an active business if this paragraph were read without reference to this subparagraph, and

(II) is derived, directly or indirectly, from amounts paid or payable to the particular foreign affiliate by another foreign affiliate of the taxpayer, or by a non-resident corporation related to the particular foreign affiliate and to the taxpayer, that is in respect of an active business carried on in a designated treaty country (as defined for the purpose of Part LIX of the Regulations), or

(B) excluded property the income or loss from which would, if there were income or a loss, be described in clause (A);", or

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 3(9), will amend para. (c) of the definition "exempt loss" in subsec. 5907(1) to read as above, applicable to taxation years, of a foreign affiliate of a taxpayer, to which ITA 95(2)(a)(ii)(D)(III) to (V), as proposed by subcl. 133(8) of the February 27, 2004 draft amendments, apply

S. 9 of the draft regulations provides if that a foreign affiliate of a taxpayer referred to in the above amendment makes a valid "Global Section 95 Election" under subsec. 133(68) of the February 27, 2004 draft legislation (see Application and Technical Notes to Proposed Amendment to ITA 95(2)(a)), then the amendment is applicable to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994, except that

(a) cl. (c)(ii)(D) is, for the taxation years, of all foreign affiliates of the taxpayer, that end before 2000, to be read as follows:

"(D) if a non-resident corporation to which the particular affiliate and the particular corporation are related throughout the year is a member of a particular partnership (other than where the non-resident corporation would be a specified member of the particular partnership at any time in a fiscal period of the particular partnership that ends in the year if the definition "specified member" of a partnership in subsection 248(1) of the Act were read without reference to paragraph (a) of that definition), amounts required to be included in computing the loss of the particular affiliate from an active business for the year because of clause 95(2)(a)(ii)(A) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to another partnership of which it is a member by the particular partnership to the extent that, if the particular partnership were a foreign affiliate of a corporation and were resident in the country in which the non-resident corporation is resident and subject to income taxation, the amounts paid or payable by the particular partnership would be deductible in computing its exempt earnings or exempt loss for the year or for a subsequent taxation year,"

(b) where the taxpayer has not made a valid election under subsec. 133(37) of the February 27, 2004 draft amendments, subcl. (c)(ii)(H)(I) is to be read as follows:

"(I) the property is shares of a foreign affiliate (in this clause referred to as the "third affiliate") of the particular corporation in respect of which the particular corporation has a qualifying interest and those shares are excluded property, and"

(c) cls. (c)(ii)(F) and (G) are for the taxation years, of all foreign affiliates of the taxpayer, that end before 2000, to be read as follows:

"(F) if another foreign affiliate of the particular corporation in respect of which the particular corporation has a qualifying interest throughout the year is a member of a particular partnership (other than where the other foreign affiliate would be a specified member of the particular partnership at any time in a fiscal period of the particular partnership that ends in the year if the definition "specified member" of a partnership in subsection 248(1) of the Act were read without reference to paragraph (a) of that definition), amounts required to be included in computing the loss of the particular affiliate from an active business for the year because of clause 95(2)(a)(ii)(B) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to another partnership of which it is a member by the particular partnership, to the extent that, if the particular partnership were a foreign affiliate of a corporation and were resident in the country in which the other foreign affiliate is resident and subject to income taxation, the amounts paid or payable by the particular partnership would be deductible in computing its exempt earnings or exempt loss for the year or for a subsequent taxation year,

(G) if the particular affiliate is a member of a particular partnership (other than where the particular affiliate would be a specified member of the particular partnership at any time in

a fiscal period of the particular partnership that ends in the year if the definition "specified member" of a partnership in subsection 248(1) of the Act were read without reference to paragraph (a) of that definition), amounts required to be included in computing the loss of the particular affiliate from an active business for the year because of clause 95(2)(a)(ii)(C) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to another partnership of which it is a member by the particular partnership, to the extent that, if the particular partnership were a foreign affiliate of a corporation and were resident in the country in which the particular affiliate is resident and subject to income taxation, the amounts paid or payable by the particular partnership would be deductible in computing its exempt earnings or exempt loss for the year or for a subsequent taxation year,".

Technical Notes: Second, amendments are proposed to be made to paragraph (c) of the definition "exempt loss" in subsection 5907(1). Under existing paragraph (c) of the definition, where a particular foreign affiliate of a particular corporation is resident in a designated treaty country, the affiliate's losses for a year from an active business carried on by it in Canada or in a designated treaty country are included in computing its "exempt loss" for the year. Consequential to the amendments made to paragraph 95(2)(a) of the Act, paragraph (c) of the definition is proposed to be amended to ensure that losses from sources in a country, other than Canada, that would otherwise be property losses but are re-characterized by paragraph 95(2)(a) to be losses from an active business, are included in computing the "exempt loss" of the affiliate. The provisions to deal with these re-characterized losses are set out in new subparagraph (c)(ii) of the definition "exempt loss" and are modelled after the analogous provisions in proposed amended subparagraph (d)(ii) of the definition "exempt income" in subsection 5907(1) of the Regulations.

The amendments to the definition "exempt loss" in subsection 5907(1) apply to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. Note that these amendments are included in the Global Section 95 Election package described at the beginning of the commentary to section 95 of the Act, and that, in the event of a Global Section 95 Election, in its application to taxation years, of a foreign affiliate of a taxpayer, that end before 2000, the Member Criteria Condition will, instead of containing the Qualifying Member Requirement, contain the requirement that the partnership have a relevant person as a member of the partnership (otherwise than as a specified member of the partnership).

The expression "specified member" is defined in existing subsection 248(1) of the Act. For more detail, see the commentary to the definition "exempt earnings" in subsection 5907(1).

(d) where the year is the 1976 or any subsequent taxation year of the affiliate, each amount that is included in the affiliate's exempt loss for the year because of subsection (10);

Proposed Addition — Reg. 5907(1)"exempt loss" closing words

minus the portion of any income or profits tax refunded by the government of a country for the year to the affiliate that can reasonably be regarded as tax refunded in respect of amounts of losses referred to in subparagraph (c)(ii);

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 3(10), will add the above after para. (d) of the definition "exempt loss" in subsec. 5907(1), applicable on the same basis as the amendment to Reg. 5907(1)"earnings"(b).

Technical Notes: Third, a "postamble" to the definition "exempt loss" in subsection 5907(1) is proposed to be added to ensure that the amount that would otherwise be the "exempt loss" of a foreign affiliate of a particular corporation is reduced by the portion of any income or profits tax refunded by the government of a country for the year to the affiliate that can reasonably be regarded as tax refunded in respect of losses referred to in new subparagraph (c)(ii) of the definition "exempt loss" in subsection 5907(1).

The amendments to the definition "exempt loss" in subsection 5907(1) apply to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. Note that these amendments are included in the Global Section 95 Election package described at the beginning of the commentary to section 95 of the Act, and that, in the event of a Global Section 95 Election, in its application to taxation years, of a foreign affiliate of a taxpayer, that end before 2000, the Member Criteria Condition will, instead of containing the Qualifying Member Requirement, contain the requirement that the partnership have a relevant person as a member of the partnership (otherwise than as a specified member of the partnership).

The expression "specified member" is defined in existing subsection 248(1) of the Act. For more detail, see the commentary to the definition "exempt earnings" in subsection 5907(1).

Related Provisions: ITA 95(2)(n) — Deemed FA and deemed qualifying interest for para. (c); Reg. 5910(1) — FA carrying on foreign oil & gas business deemed to have paid income or profits tax.

"exempt surplus" of a foreign affiliate (in this definition referred to as the "subject affiliate") of a corporation in respect of the corporation is, at any particular time, the amount determined by the formula

A – B

in respect of the period beginning with the time that is the latest of

(a) the first day of the taxation year of the subject affiliate in which it last became a foreign affiliate of the corporation,

(b) where the corporation is an acquiring corporation referred to in subsection 5905(5) and the subject affiliate is a particular affiliate referred to in that subsection or another foreign affiliate in which such a particular affiliate had an equity percentage at the time referred to in that subsection, the last time at which that subsection was applicable in respect of the affiliate, and

(c) where the subject affiliate is a foreign affiliate referred to in subsection 5905(1), (2), (8) or (9) or paragraph 5905(3)(b), the last time at which any of those subsections or that paragraph was applicable in respect of the subject affiliate

and ending with the particular time, where

A is the total of all amounts, in respect of the period, each of which is

(i) the opening exempt surplus of the subject affiliate as determined under subsection 5905(1), (2), (3), (5), (8) or (9), at the time established in paragraph (a), (b) or (c),

(ii) the exempt earnings of the subject affiliate for any of its taxation years ending in the period,

(iii) the portion of any dividend received in the period and before the particular time by the subject affiliate from another foreign affiliate of the corporation (including, for greater certainty, any dividend deemed by subsection 5905(7) to have been received by the subject affiliate) that was prescribed by paragraph 5900(1)(a) to have been paid out of the payer affiliate's exempt surplus in respect of the corporation,

Proposed Amendment — Reg. 5907(1)"exempt surplus"A(iii)

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 3(1), will amend subpara. (iii) of the description of A in the definition "exempt surplus" in subsec. 5907(1) by replacing the reference to "subsection 5905(7)" with "subsections 5905(7) to (7.4)", applicable to dissolutions that occur after December 20, 2002.

Technical Notes: The definition "exempt surplus" of a foreign affiliate of a taxpayer resident in Canada for a taxation year in subsection 5907(1) of the Regulations is relevant for the purposes of computing the surpluses and deficits of the affiliate. The definition is amended in three ways.

Firstly, the Regulations are proposed to be amended by replacing, with any grammatical changes that the circumstances require, every reference

to "subsection 5905(7)" with a reference to "subsections 5905(7) to (7.4)" in the following subparagraphs of the description of A in the following definitions in subsection 5907(1) of the Regulations:

- subparagraph (iii) of the description of A in the definition "exempt surplus";
- subparagraph (iii) of the description of A in the definition "taxable surplus"; and
- subparagraph (iv) of the description of A in the definition "underlying foreign tax".

This amendment to the Regulations is to be effected by way of a global provision in the amending Regulation rather than by having the amending Regulation amend, provision by provision, each specific provision in the Regulations where a reference to subsection 5905(7) appears. This amendment to the Regulations is consequential to the division of subsection 5905(7) of the Regulations into subsections 5905(7) to (7.4). For more detail, refer to the commentary to subsections 5905(7), (7.1) and (7.2) to (7.4).

Secondly, the definition "exempt surplus" of a foreign affiliate of a taxpayer resident in Canada for a taxation year in subsection 5907(1) is amended to include each amount determined under subparagraph 5905(2)(a)(iv), (4)(a)(iv), (6)(a)(iv) or (8)(a)(iv) in the period and before the particular time in the description of A of the definition.

Thirdly, the definition "exempt surplus" of a foreign affiliate of a taxpayer resident in Canada for a taxation year in subsection 5907(1) of the Regulations is amended to include each amount determined under subparagraph 5905(2)(a)(i), (4)(a)(i), (6)(a)(i) or (8)(a)(i) in the period and before the particular time, in the description of B of the definition.

(iv) the portion of any income or profits tax refunded by or the amount of a tax credit paid by the government of a country to the subject affiliate that can reasonably be regarded as having been refunded or paid in respect of any amount referred to in subparagraph (iii) and that was not deducted in determining any amount referred to in subparagraph (iii) of the description of B,

(v) the portion of any taxable dividend received in the period and before the particular time by the subject affiliate that would, if the dividend were received by the corporation, be deductible by it under section 112 of the Act,

(vi) an amount added to the exempt surplus of the subject affiliate or deducted from its exempt deficit in the period and before the particular time under any provision of subsection (1.1) or (1.2), or

(vii) an amount added, in the period and before the particular time, to the exempt surplus of the subject affiliate under paragraph (7.1)(d), and

Proposed Addition — Reg. 5907(1)"exempt surplus"A(viii)

(viii) an amount that is determined under subparagraph 5905(2)(a)(iv), (4)(a)(iv), (6)(a)(iv) or (8)(a)(iv) in the period and before the particular time, and

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 3(11), will add subpara. (viii) to the description of A in the definition "exempt loss" in subsec. 5907(1), applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002.

Technical Notes: See under "exempt surplus"(A)(iii) above.

B is the total of those of the following amounts that apply in respect of the period:

(i) the opening exempt deficit of the subject affiliate as determined under subsection 5905(1), (2), (3), (5), (8) or (9), at the time established in paragraph (a), (b) or (c),

(ii) the exempt loss of the subject affiliate for any of its taxation years ending in the period,

(iii) the portion of any income or profits tax paid to the government of a country by the subject affiliate that may reasonably be regarded as having been paid in respect of any amount referred to in subparagraph (iii), (iv) or (v) of the description of A,

(iv) the portion of any whole dividend paid by the subject affiliate in the period and before the particular time deemed by paragraph 5901(1)(a) to have been paid out of the subject affiliate's exempt surplus in respect of the corporation,

(v) each amount that is determined under paragraph 5902(4)(a) or subparagraph 5905(2)(a)(i), (6)(a)(i) or (8)(a)(i) in the period and before the particular time, or

Proposed Amendment — Reg. 5907(1)"exempt surplus"B(v)

(v) each amount that is determined under subparagraph 5905(2)(a)(i), (4)(a)(i), (6)(a)(i) or (8)(a)(i) in the period and before the particular time, or

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 3(12), will amend subpara. (v) of the description of B in the definition "exempt surplus" in subsec. 5907(1), applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002.

Technical Notes: See under "exempt surplus"(A)(iii) above.

(vi) an amount, in the period and before the particular time, deducted from the exempt surplus of the subject affiliate or added to its exempt deficit under any provision of subsection (1.1) or (1.2);

Related Provisions: ITA 257 — Negative amounts in formulas; Reg. 5905(2)(a)(i), (iv), (2)(b) — Inclusion in exempt surplus on acquisition or cancellation of share; Reg. 5905(4)(a)(i), (4)(b) — Inclusion in exempt surplus on disposition of share; Reg. 5905(5.1) — Exempt surplus after amalgamation of corporation holding foreign affiliate; Reg. 5905(5.2) — Exempt surplus after windup of corporation holding foreign affiliate; Reg. 5905(6)(a)(i) — Computation of exempt surplus; Reg. 5910(1) — FA carrying on foreign oil & gas business deemed to have paid income or profits tax.

"loss" of a foreign affiliate of a taxpayer resident in Canada for a taxation year of the affiliate from an active business carried on by it in a country is the amount of its loss for the year from that active business carried on in that country computed by applying the provisions of paragraph (a) of the definition "earnings" in this subsection respecting the computation of earnings from that active business carried on in that country, with any modifications that the cricumstances require;

Proposed Amendment — Reg. 5907(1)"loss"

"loss", of a foreign affiliate of a taxpayer resident in Canada for a taxation year of the affiliate from an active business, means

(a) in the case of an active business carried on by it in a country, the amount of its loss for the year from the active business carried on in the country computed by applying the provisions of paragraph (a) of the definition "earnings" in this subsection respecting the computation of earnings from that active business carried on in that country, with any modifications that the circumstances require, and

(b) in any other case, the total of the amounts required by paragraph 95(2)(a) of the Act to be included in computing the affiliate's loss from an active business for the year;

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 3(13), will amend the definition "loss" in subsec. 5907(1) to read as above, applicable on the same basis as the amendment to Reg. 5907(1)"earnings"(b).

Technical Notes: The definition "loss" of a foreign affiliate of a taxpayer resident in Canada for a taxation year in subsection 5907(1) of the Regulations is relevant for the purposes of computing the surpluses and deficits of the foreign affiliate.

Consequential to the amendments to paragraph 95(2)(a) of the Act, the definition "loss" in subsection 5907(1) is proposed to be amended to add new paragraph (b) to ensure that losses from sources in a country other than Canada, that would otherwise be property losses but are re-characterized by paragraph 95(2)(a) of the Act to be losses from an active business, are included in computing the "loss" of the affiliate.

The amendment to the definition "loss" in subsection 5907(1) is proposed to apply to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. Note that these amendments are included in the Global Section 95 Election package described at the beginning of the commentary to section 95 of the Act.

"net earnings" of a foreign affiliate of a corporation for a taxation year of the affiliate

(a) from an active business carried on by it in a country is the amount of its earnings for the year from that active business carried on in that country minus the portion of any income or profits tax paid to the government of a country for the year by the affiliate that can reasonably be regarded as tax in respect of those earnings,

(b) in respect of foreign accrual property income is the amount that would be its foreign accrual property income for the year, if the formula in the definition "foreign accrual property income" in subsection 95(1) of the Act were read without reference to the variable F in that formula, minus the portion of any income or profits tax paid to the government of a country for the year by the affiliate that can reasonably be regarded as tax in respect of that income,

(c) from dispositions of property used or held by it principally for the purpose of gaining or producing income from an active business carried on by it in a country that is not a designated treaty country (other than Canada) is the amount, if any, by which

(i) the portion of the affiliate's taxable capital gains for the year from those dispositions that can reasonably be considered to have accrued after November 12, 1981

exceeds

(ii) the portion of any income or profits tax paid to the government of a country for the year by the affiliate that can reasonably be regarded as tax in respect of the amount determined under subparagraph (i), and

(d) from dispositions of

(i) shares of the capital stock of another foreign affiliate of the corporation that were excluded property of the affiliate (other than dispositions to which paragraph 95(2)(c), (d) or (e) of the Act was applicable), or

(ii) partnership interests that were excluded property of the affiliate

is the amount, if any, by which

(iii) the portion of the affiliate's taxable capital gains for the year from such dispositions that can reasonably be considered to have accrued after its 1975 taxation year

exceeds

(iv) the portion of any income or profits tax paid to the government of a country for the year by the affiliate that can reasonably be regarded as tax in respect of the amount determined under subparagraph (iii);

Proposed Amendment — Reg. 5907(1)"net earnings"(d)

(d) from dispositions of

(i) shares of the capital stock of another foreign affiliate of the corporation that were excluded property of the affiliate (other than dispositions to which any of subsection 8(3) or paragraphs 95(2)(c), (c.2), (d), (d.1), (e), (e.1), (e.3) to (e.5) and (f.4) of the Act applied), or

(ii) partnership interests that were excluded property of the affiliate

is the amount, if any, by which

(iii) the portion of the affiliate's taxable capital gains for the year from those dispositions that can reasonably be considered to have accrued after its 1975 taxation year

exceeds

(iv) the portion of any income or profits tax paid to the government of a country for the year by the affiliate that can reasonably be regarded as tax in respect of the amount determined under subparagraph (iii);

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 3(14), will amend para. (d) of the definition "net earnings" in subsec. 5907(1) to read as above, applicable on the same basis as the amendment to Reg. 5907(1)"earnings"(b).

Technical Notes: The definition "net earnings" of a foreign affiliate of a taxpayer resident in Canada for a taxation year in subsection 5907(1) of the Regulations is relevant for the purposes of computing the surpluses and deficits of the foreign affiliate.

It is proposed to amend paragraph (d) of the definition "net earnings". The amendment is to subparagraph (d)(i) and is consequential to the amendments to the definition "foreign accrual property income" in subsection 95(1) of the Act. Those amendments to the definition "foreign accrual property income" ensure that capital gains and losses from dispositions of "excluded property" to which subsection 88(3) of the Act applies are included in computing foreign accrual property income. This amendment to the definition "net earnings" ensures that, in computing net earnings, those capital gains are not double-counted.

The proposed amendment to the definition "net earnings" in subsection 5907(1) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. Note that this amendment is included in the Global Section 95 Election package described at the beginning of the commentary to section 95 of the Act.

Related Provisions: Reg. 5910(1) — FA carrying on foreign oil & gas business deemed to have paid income or profits tax.

"net loss" of a foreign affiliate of a corporation for a taxation year of the affiliate

" (a) from an active business carried on by it in a country is the amount of its loss for the year from that active business carried on in that country minus the portion of any income or profits tax refunded by the government of a country for the year to the affiliate that can reasonably be regarded as tax refunded in respect of that loss,

(b) in respect of foreign accrual property income is the amount, if any, by which

(i) the amount, if any, by which

(A) the total of the amounts determined under the descriptions of D, E and G in the definition "foreign accrual property income" in subsection 95(1) of the Act for the year

exceeds

(B) the total of the amounts determined under the descriptions of A, A.1, A.2, B and C in the definition "foreign accrual property income" in subsection 95(1) of the Act for the year

exceeds

(ii) the portion of any income or profits tax refunded by the government of a country for the year to the affiliate that can reasonably be regarded as tax refunded in respect of the amount determined under subparagraph (i),

(c) from dispositions of property used or held by it principally for the purpose of gaining or producing income from an active business carried on by it in a country that is not a designated treaty country (other than Canada) is the amount, if any, by which

(i) the portion of the affiliate's allowable capital losses for the year from those dispositions that can reasonably be considered to have accrued after November 12, 1981

exceeds

(ii) the portion of any income or profits tax refunded by the government of a country for the year to the affiliate that can reasonably be regarded as tax refunded in respect of the amount determined under subparagraph (i), and

(d) from dispositions of

(i) shares of the capital stock of another foreign affiliate of the corporation that were excluded property of the affiliate (other than dispositions to which paragraph 95(2)(c), (d) or (e) of the Act was applicable), or

(ii) partnership interests that were excluded property of the affiliate

is the amount, if any, by which

(iii) the portion of the affiliate's allowable capital losses for the year from those dispositions that can reasonably be considered to have accrued after its 1975 taxation year

exceeds

(iv) the portion of any income or profits tax refunded by the government of a country for the year to the affiliate that can reasonably be regarded as tax refunded in respect of the amount determined under subparagraph (iii);

Proposed Amendment — Reg. 5907(1)"net loss"(d)

(d) from dispositions of

(i) shares of the capital stock of another foreign affiliate of the corporation that were excluded property of the affiliate, or

(ii) partnership interests that were excluded property of the affiliate

is the amount, if any, by which

(iii) the portion of the affiliate's allowable capital losses for the year from those dispositions that can reasonably be considered to have accrued after its 1975 taxation year

exceeds

(iv) the portion of any income or profits tax refunded by the government of a country for the year to the affiliate that can reasonably be regarded as tax refunded in respect of the amount determined under subparagraph (iii);

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 3(15), will amend para. (d) of the definition "net loss" in subsec. 5907(1) to read as above, applicable on the same basis as the amendment to Reg. 5907(1)"earnings"(b).

Technical Notes: The definition "net loss" of a foreign affiliate of a taxpayer resident in Canada for a taxation year in subsection 5907(1) of the Regulations is relevant for the purposes of computing the surpluses and deficits of the foreign affiliate.

It is proposed to amend paragraph (d) of the definition "net loss". The amendment is to subparagraph (d)(i) of the definition "net loss". The amendment removes the reference to the words in parentheses that were previously contained in that subparagraph. They were not necessary and caused confusion.

The proposed amendment to the definition "net loss" in subsection 5907(1) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. Note that this amendment is included in the Global Section 95 Election package described at the beginning of the commentary to section 95 of the Act.

Related Provisions: Reg. 5910(1) — FA carrying on foreign oil & gas business deemed to have paid income or profits tax.

"net surplus" of a foreign affiliate of a corporation resident in Canada in respect of the corporation is, at any particular time,

(a) if the affiliate has no exempt deficit and no taxable deficit, the amount that is the total of its exempt surplus and taxable surplus in respect of the corporation,

(b) if the affiliate has no taxable surplus, the amount, if any, by which its exempt surplus exceeds its taxable deficit in respect of the corporation, or

(c) if the affiliate has no exempt surplus, the amount, if any, by which its taxable surplus exceeds its exempt deficit in respect of the corporation,

as the case may be, at that time;

"taxable deficit" of a foreign affiliate of a corporation in respect of the corporation at any time is the amount, if any, by which

(a) the total of all amounts each of which is an amount determined at that time under any of subparagraphs (i) to (vi) of the description of B in the definition "taxable surplus" in this subsection

exceeds

(b) the total of all amounts each of which is an amount determined at that time under any of subparagraphs (i) to (v) of the description of A in that definition;

Proposed Amendment — Reg. 5907(1)"taxable deficit"(b)

(b) the total of all amounts each of which is an amount determined at that time under any of subparagraphs (i) to (vi) of the description of A in that definition;

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 3(16), will amend para. (b) of the definition "taxable deficit" in subsec. 5907(1) to read as above, applicable on the same basis as the amendment to Reg. 5907(1)"earnings"(b).

Technical Notes: The definition "taxable deficit" of a foreign affiliate of a taxpayer resident in Canada for a taxation year in subsection 5907(1) of the Regulations is relevant for the purposes of computing the surpluses of the foreign affiliate.

The amendment to the definition "taxable deficit" of a foreign affiliate of a taxpayer resident in Canada for a taxation year in subsection 5907(1) is to insert a reference to new subparagraph (vi) of the description of A in the definition "taxable surplus" in subsection 5907(1) of the Regulations.

The proposed amendment to the definition "taxable deficit" in subsection 5907(1) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. Note that this amendment is included in the Global Section 95 Election package described at the beginning of the commentary to section 95 of the Act.

Related Provisions: Reg. 5905(2)(a)(v), (2)(b) — Inclusion in exempt deficit on acquisition or cancellation of share; Reg. 5905(4)(a)(v), (4)(b) — Inclusion in taxable deficit on disposition of share; Reg. 5905(5.1) — Taxable deficit after amalgamation of corporation holding foreign affiliate; Reg. 5905(5.2) — Taxable deficit after windup of corporation holding foreign affiliate; Reg. 5905(6)(a)(v) — Computation of exempt deficit.

"taxable earnings" of a foreign affiliate of a corporation for a taxation year of the affiliate is

(a) where the year is the 1975 or any preceding taxation year of the affiliate, nil, and

(b) in any other case, the total of all amounts each of which is

(i) the affiliate's net earnings for the year from an active business carried on by it in a country,

(ii) the affiliate's net earnings for the year in respect of its foreign accrual property income,

(iii) to the extent that they have not been included under subparagraph (i) or deducted in determining an amount included under subparagraph (b)(i) of the definition "taxable loss" in this subsection, the earnings for the year as determined under paragraph (b) of the definition "earnings" in this subsection minus the portion of any income or profits tax paid to the government of a country for the year by the affiliate that can reasonably be regarded as tax in respect of those earnings,

(iv) the affiliate's net earnings for the year from dispositions of property used or held by it principally for the purpose of gaining or producing income from an active business carried on by it in a country that is not a designated treaty country (other than Canada), or

(v) the affiliate's net earnings for the year from dispositions of shares of the capital stock of another foreign affiliate of the corporation that were excluded property of the affiliate (other than dispositions to which paragraph 95(2)(c), (d) or (e) of the Act was applicable) or dispositions of partnership interests that were excluded property of the affiliate,

Proposed Amendment — Reg. 5907(1)"taxable earnings"(b)(v)

(v) the affiliate's net earnings for the year from dispositions of shares of the capital stock of another foreign affiliate of the corporation that were excluded property of the affiliate (other than dispositions to which any of subsection 88(3) or paragraphs 95(2)(c), (c.2), (d), (d.1), (e), (e.1), (e.3) to (e.5) and (f.4) of the Act applied) or dispositions of partnership interests that were excluded property of the affiliate,

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 3(17), will amend subpara. (b)(v) of the definition "taxable earnings" in subsec. 5907(1) to read as above, applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002.

Technical Notes: The definition "taxable earnings" of a foreign affiliate of a taxpayer resident in Canada for a taxation year in subsection 5907(1) of the Regulations is relevant for the purposes of computing the surpluses of the foreign affiliate.

The proposed amendment of the definition "taxable earnings" in subsection 5907(1) is to subparagraph (b)(v) and is consequential to the amendments to the definition "foreign accrual property income" in subsection 95(1) of the Act. The amendments to the definition "foreign accrual property income" ensure that capital gains and losses from dispositions of "excluded property" to which subsection 88(3) of the Act applies are included in computing foreign accrual property income. This amendment to the definition "taxable earnings" ensures that, in computing taxable earnings, those capital gains are not double-counted.

This amendment to the definition "taxable earnings" in subsection 5907(1) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. Note that this amendment is included in the Global Section 95 Election package described at the beginning of the commentary to section 95 of the Act.

but does not include any amount included in the affiliate's exempt earnings for the year;

Related Provisions: Reg. 5910(1) — FA carrying on foreign oil & gas business deemed to have paid income or profits tax.

"taxable loss" of a foreign affiliate of a corporation for a taxation year of the affiliate is

(a) where the year is the 1975 or any preceding taxation year of the affiliate, nil, and

(b) in any other case, the total of all amounts each of which is

(i) the affiliate's net loss for the year from an active business carried on by it in a country,

Proposed Addition — Reg. 5907(1)"taxable loss"(b)(i.1)

(i.1) the affiliate's net loss for the year in respect of losses included in computing income from an active business because of subparagraphs 95(2)(a)(v) and (vi) of the Act,

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 3(18), will add subpara. (b)(i.1) to the definition "taxable loss" in subsec. 5907(1), applicable on the same basis as the amendment to Reg. 5907(1)"earnings"(b).

Technical Notes: See under 5907(1)"taxable loss"(b)(iv), (v) below.

(ii) the affiliate's net loss for the year in respect of foreign accrual property income,

(iii) the affiliate's net loss for the year from dispositions of property used or held by it principally for the purpose of gaining or producing income from an active business carried on by it in a country that is not a designated treaty country (other than Canada), or

(iv) the affiliate's net loss for the year from dispositions of shares of the capital stock of another foreign affiliate of the corporation that were excluded property of the affiliate (other than dispositions to which paragraph 95(2)(c), (d) or (e) of the Act was applicable) or dispositions of partnership interests that were excluded property of the affiliate,

Proposed Amendment — Reg. 5907(1)"taxable loss"(b)(iv), (v)

(iv) the affiliate's net loss for the year from the disposition of shares of the capital stock of another foreign affiliate of the corporation that were

excluded property of the affiliate or from the disposition of partnership interests that were excluded property of the affiliate, or

(v) to the extent that they have not otherwise been included under subparagraph (i) or deducted in computing an amount under subparagraph (b)(i) of the definition "taxable earnings", the loss for the year as determined under paragraph (b) of the definition "loss" minus the portion of any income or profits tax refunded by the government of a country for the year that can reasonably be regarded as tax refunded in respect of that loss,

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 3(19), will amend subpara. (b)(iv) of "taxable loss" in subsec. 5907(1) to read as above and add subpara (b)(v), applicable on the same basis as the amendment to Reg. 5907(1)"earnings"(b).

Technical Notes: The definition "taxable loss" of a foreign affiliate of a taxpayer resident in Canada for a taxation year in subsection 5907(1) of the Regulations is relevant for the purposes of computing the surpluses and deficits of the foreign affiliate.

As noted in the commentary to the proposed amendments to the definition "loss" in subsection 5907(1), a property loss re-characterized by paragraph 95(2)(a) of the Act as loss from an active business is described in new paragraph (b) of the definition "loss" and is included in computing "loss".

The amendment to the definition "taxable loss" in subsection 5907(1) proposes to add new subparagraph (b)(v). That subparagraph ensures that, to the extent that the loss for the year determined under paragraph (b) of the definition "loss" has not been included under existing subparagraph (b)(i) of the definition "taxable loss" or deducted in computing an amount under existing subparagraph (b)(i) of the definition "taxable earnings", that loss (minus the portion of any income or profits tax refunded by the government of a country for the year that can reasonably be regarded as tax refunded in respect of that loss) is to be included in computing "taxable loss" for the year. Note, also, that the existing "postamble" to the definition "taxable loss" ensures that "taxable loss" does not include any amount included in the affiliate's "exempt loss" for the year.

This proposed amendment to the definition "taxable loss" in subsection 5907(1) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. Note that this amendment is included in the Global Section 95 Election package described at the beginning of the commentary to section 95 of the Act.

but does not include any amount included in the affiliate's exempt loss for the year;

"taxable surplus" of a foreign affiliate (in this definition referred to as the "subject affiliate") of a corporation in respect of the corporation is, at any particular time, the amount determined by the formula

A – B

in respect of the period beginning with the time that is the latest of

(a) the first day of the taxation year of the affiliate in which it last became a foreign affiliate of the corporation,

(b) where the corporation is an acquiring corporation referred to in subsection 5905(5) and the subject affiliate is a particular affiliate referred to in that subsection or another foreign affiliate in which such a particular affiliate had an equity percentage at the time referred to in that subsection, the last time at which that subsection was applicable in respect of the subject affiliate, and

(c) where the subject affiliate is a foreign affiliate referred to in subsection 5905(1), (2), (8) or (9) or paragraph 5905(3)(b), the last time at which any of those subsections or that paragraph was applicable in respect of the subject affiliate

and ending with the particular time, where

A is the total of all amounts, in respect of the period, each of which is

(i) the opening taxable surplus of the subject affiliate as determined under subsection 5905(1), (2), (3), (5), (8) or (9) at the time established in paragraph (a), (b) or (c),

(ii) the taxable earnings of the subject affiliate for any of its taxation years ending in the period,

(iii) the portion of any dividend received in the period and before the particular time by the subject affiliate from another foreign affiliate of the corporation (including, for greater certainty, any dividend deemed by subsection 5905(7) to have been received by the subject affiliate) that was prescribed by paragraph 5900(1)(b) to have been paid out of the payer affiliate's taxable surplus in respect of the corporation,

Proposed Amendment — Reg. 5907(1)"taxable surplus"A(iii)

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 3(1), will amend subpara. (iii) of the description of A in the definition "taxable surplus" in subsec. 5907(1) by replacing the reference to "subsection 5905(7)" with "subsections 5905(7) to (7.4)", applicable to dissolutions that occur after December 20, 2002.

Technical Notes: See 5907(1)"exempt surplus"A(iii) above.

(iv) an amount added to the taxable surplus of the subject affiliate or deducted from its taxable deficit in the period and before the particular time under any provision of subsection (1.1) or (1.2),

(v) an amount added, in the period and before the particular time, to the subject affiliate's taxable surplus under paragraph (7.1)(e), and

Proposed Addition — Reg. 5907(1)"taxable surplus"A(vi)

(vi) each amount that is determined under subparagraph 5905(2)(a)(v), (4)(a)(v), (6)(a)(v) or (8)(a)(v) in the period and before that particular time, and

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 3(20), will add subpara. (vi) to the description of A in the definition "taxable surplus" in subsec. 5907(1), applicable in respect of dispositions in respect of which an election was made in respect of which proposed subsec. 5902(1) applies.

Technical Notes: The definition "taxable surplus" of a foreign affiliate of a taxpayer resident in Canada for a taxation year in subsection 5907(1) is relevant for the purposes of computing the surpluses and deficits of the foreign affiliate.

The definition "taxable surplus" of a foreign affiliate of a taxpayer resident in Canada for a taxation year in subsection 5907(1) is proposed to be amended in three ways.

Firstly, in the description of A in the definition of "taxable surplus" of a foreign affiliate of a taxpayer resident in Canada for a taxation year in subsection 5907(1), there is to be included a new subparagraph (vi) which will include in the description of A of the definition each amount determined under subparagraph 5905(2)(a)(v), (4)(a)(v), (6)(a)(v) or (8)(a)(v) in the period and before that particular time.

Secondly, in subparagraph (v) of the description of B in the definition "taxable surplus" of a foreign affiliate of a taxpayer resident in Canada for a taxation year in subsection 5907(1), the reference to "paragraph 5902(4)(b) or subparagraph 5905(2)(a)(ii), (6)(a)(ii) or (8)(a)(ii)" is replaced by a reference to "subparagraph 5905(2)(a)(ii), (4)(a)(ii), (6)(a)(ii) or (8)(a)(ii)".

For details on the third amendment, refer to the commentary to the definition "exempt surplus" in subsection 5907(1).

B is the total of those of the following amounts that apply in respect of the period:

(i) the opening taxable deficit of the subject affiliate as determined under subsection 5905(1), (2), (3), (5), (8) or (9), at the time established in paragraph (a), (b) or (c),

(ii) the taxable loss of the subject affiliate for any of its taxation years ending in the period,

(iii) the portion of any income or profits tax paid to the government of a country by the subject affiliate that can reasonably be regarded as having been paid in respect of that portion of a dividend referred to in subparagraph (iii) of the description of A,

(iv) the portion of any whole dividend paid by the subject affiliate in the period and before the particular time deemed by paragraph 5901(1)(b) to have been paid out of the subject affiliate's taxable surplus in respect of the corporation,

(v) each amount that is determined under paragraph 5902(4)(b) or subparagraph 5905(2)(a)(ii), (6)(a)(ii) or (8)(a)(ii) in the period and before the particular time, or

Proposed Amendment — Reg. 5907(1)"taxable surplus"B(v)

(v) each amount that is determined under subparagraph 5905(2)(a)(ii), (4)(a)(ii), (6)(a)(ii) or (8)(a)(ii) in the period and before the particular time, or

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 3(21), will add subpara. (v) to the description of B in the definition "taxable surplus" in subsec. 5907(1), applicable in respect of dispositions in respect of which an election was made in respect of which proposed subsec. 5902(1) applies.

Technical Notes: See 5907(1)"taxable surplus"A(vi) above.

(vi) an amount, in the period and before the particular time, deducted from the taxable surplus of the subject affiliate or added to its taxable deficit under any provision of subsection (1.1) or (1.2);

Related Provisions: ITA 257 — Negative amounts in formulas; Reg. 5905(2)(a)(ii), (v), 5905(2)(b) — Inclusion in taxable surplus on acquisition or cancellation of share; Reg. 5905(4)(a)(ii), 5905(4)(b) — Inclusion in taxable surplus on disposition of share; Reg. 5905(5.1) — Taxable surplus after amalgamation of corporation holding foreign affiliate; Reg. 5905(5.2) — Taxable surplus after windup of corporation holding foreign affiliate\; Reg. 5905(6)(a)(ii) — Computation of taxable surplus; Reg. 5910(1) — FA carrying on foreign oil & gas business deemed to have paid income or profits tax.

"underlying foreign tax" of a foreign affiliate (in this definition referred to as the "subject affiliate") of a corporation in respect of the corporation is, at any particular time, the amount, determined by the formula

A – B

in respect of the period beginning with the time that is the latest of

(a) the first day of the taxation year of the subject affiliate in which it last became a foreign affiliate of the corporation,

(b) where the corporation is an acquiring corporation referred to in subsection 5905(5) and the subject affiliate is a particular affiliate referred to in that subsection or another foreign affiliate in which such a particular affiliate had an equity percentage at the time referred to in that subsection, the last time at which that subsection was applicable in respect of the subject affiliate, and

(c) where the subject affiliate is a foreign affiliate referred to in subsection 5905(1), (2), (8) or (9) or paragraph 5905(3)(b), the last time at which any of those subsections or that paragraph was applicable in respect of the subject affiliate

and ending with the particular time, where

A is the total of all amounts, in respect of the period, each of which is

(i) the opening underlying foreign tax of the subject affiliate as determined under subsection 5905(1), (2), (3), (5), (8) or (9), at the time established in paragraph (a), (b) or (c),

(ii) the portion of any income or profits tax paid to the government of a country by the subject affiliate that can reasonably be regarded as having been paid in respect of the taxable earnings of the affiliate for a taxation year ending in the period,

(iii) the portion of any income or profits tax referred to in subparagraph (iii) of the description of B in the definition "taxable surplus" in this subsection paid by the subject affiliate in respect of a dividend received from any other foreign affiliate of the corporation,

(iv) each amount that was prescribed by paragraph 5900(1)(d) to have been the foreign tax applicable to the portion of any dividend received in the period and before the particular time by the subject affiliate from another foreign affiliate of the corporation (including, for greater certainty, any dividend deemed by subsection 5905(7) to have been received by the subject affiliate) that was prescribed by paragraph 5900(1)(b) to have been paid out of the payer affiliate's taxable surplus in respect of the corporation, or

Proposed Amendment — Reg. 5907(1)"underlying foreign tax"A(iv)

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 3(1), will amend subpara. (iv) of the description of A in the definition "underlying foreign tax" in subsec. 5907(1) by replacing the reference to "subsection 5905(7)" with "subsections 5905(7) to (7.4)", applicable to dissolutions that occur after December 20, 2002.

Technical Notes: See "exempt surplus"A(iii) above.

(v) the amount by which the subject affiliate's underlying foreign tax is required to be increased by any provision of subsection (1.1) or (1.2),

B is the total of those of the following amounts that apply in respect of the period:

(i) the portion of any income or profits tax refunded by the government of a country to the affiliate that can reasonably be regarded as having been refunded in respect of the taxable loss of the subject affiliate for a taxation year ending in the period,

(ii) the underlying foreign tax applicable to any whole dividend paid by the subject affiliate in the period and before the particular time deemed by paragraph 5901(1)(b) to have been paid out of the subject affiliate's taxable surplus in respect of the corporation before that time,

(iii) each amount that is required by paragraph 5902(4)(c) or subparagraph 5905(2)(a)(iii), (6)(a)(iii) or (8)(a)(iii) to be deducted in the period

and before the particular time in computing the subject affiliate's underlying foreign tax, or

Proposed Amendment — Reg. 5907(1)"underlying foreign tax"B(iii)

(iii) each amount that is required by subparagraph 5905(2)(a)(iii), (4)(a)(iii), (6)(a)(iii) or (8)(a)(iii) to be deducted in the period and before the particular time in computing the subject affiliate's underlying foreign tax, or

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 3(22), will amend subpara. (iii) of the description of B in the definition "underlying foreign tax" in subsec. 5907(1) to read as above, applicable in respect of dispositions in respect of which an election was made in respect of which proposed subsec. 5902(1) applies.

Technical Notes: The definition "underlying foreign tax" of a foreign affiliate of a corporation resident in Canada, in respect of a corporation, in subsection 5907(1) is relevant for the purposes of computing the surpluses and deficits of the foreign affiliate.

Subparagraph (iii) of the description of B of the definition "underlying foreign tax" has been amended to remove the reference to paragraph 5902(4)(c), and to add a reference to subparagraph 5905(4)(a)(iii).

(iv) the amount by which the subject affiliate's underlying foreign tax is required to be decreased in the period and before the particular time by any provision of subsection (1.1) or (1.2);

Related Provisions: ITA 257 — Negative amounts in formulas; Reg. 5905(2)(a)(iii), (2)(b) — Inclusion in underlying foreign tax on acquisition or cancellation of share; Reg. 5905(4)(a)(iii), (b) — Inclusion in UFT on disposition of share; Reg. 5905(5.1) — UFT after amalgamation of corporation holding foreign affiliate; Reg. 5905(5.2) — UFT after windup of corporation holding foreign affiliate; Reg. 5905(6)(a)(iii) — Computation of UFT; Reg. 5910(1) — FA carrying on foreign oil & gas business deemed to have paid income or profits tax.

"underlying foreign tax applicable" in respect of a corporation to a whole dividend paid at any time on the shares of any class of the capital stock of a foreign affiliate of the corporation by the affiliate is the total of

(a) the proportion of the underlying foreign tax of the affiliate at that time in respect of the corporation that

(i) the portion of the whole dividend deemed to have been paid out of the affiliate's taxable surplus in respect of the corporation

is of

(ii) the affiliate's taxable surplus at that time in respect of the corporation, and

(b) except with respect to any whole dividend referred to in section 5902, in any case where throughout the taxation year of the affiliate in which the whole dividend was paid

(i) there is no more than one class of shares of the capital stock of the affiliate issued and outstanding,

(ii) the surplus entitlement percentage of the corporation in respect of the affiliate is 100 per cent, or

(iii) there is not more than one shareholder who owns shares of the capital stock of the affiliate,

any additional amount in respect of the whole dividend that the corporation claims in its return of income under Part I of the Act in respect of the whole dividend, not exceeding the amount that is the lesser of

(iv) the amount by which the portion of the whole dividend deemed to have been paid out of the affiliate's taxable surplus in respect of the corporation exceeds the amount determined under paragraph (a), and

(v) the amount by which the underlying foreign tax of the affiliate in respect of the corporation immediately before the whole dividend was paid exceeds the amount determined under paragraph (a);

"whole dividend" paid at any time on the shares of a class of the capital stock of a foreign affiliate of a taxpayer resident in Canada is the total of all amounts each of which is the dividend paid at that time on a share of that class except that

(a) where a dividend is paid at the same time on shares of more than one class of the capital stock of an affiliate, for the purpose only of section 5900, the whole dividend referred to in section 5901 paid at that time on the shares of a class of the capital stock of the affiliate is deemed to be the total of all amounts each of which is the dividend paid at that time on a share of the capital stock of the affiliate,

(b) where a whole dividend is deemed by paragraph 5902(1)(c) to have been paid at the same time on shares of more than one class of the capital stock of an affiliate, for the purpose only of that paragraph, the whole dividend deemed to have been paid at that time on the shares of a class of the capital stock of the affiliate is deemed to be the total of all amounts each of which is a whole dividend deemed to have been paid at that time on the shares of a class of the capital stock of the affiliate, and

Proposed Amendment — Reg. 5907(1)"whole dividend"(b)

(b) where a whole dividend is deemed by paragraph 5902(1)(g) to have been paid at the same time on shares of more than one class of the capital stock of an affiliate, for the purpose only of that paragraph, the whole dividend deemed to have been paid at that time on the shares of a class of the capital stock of the affiliate is deemed to be the total of all amounts each of which is a whole dividend deemed to have been paid at that time on the shares of a class of the capital stock of the affiliate, and

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 3(23), will amend para. (b) of the definition "whole dividend" in subsec. 5907(1) to read as above, applicable in respect of dispositions in respect of which an election was made in respect of which proposed subsec. 5902(1) applies.

Technical Notes: The definition "whole dividend" paid at any time on the shares of a class of the capital stock of a foreign affiliate of a taxpayer resident in Canada in subsection 5907(1) is relevant for the purposes of computing the surpluses and deficits of the foreign affiliate.

The proposed amendment to paragraph (b) of the definition "whole dividend" in subsection 5907(1) replaces a reference to "5902(1)(c)" with a reference to "5902(1)(g)".

This proposed amendment to the definition "underlying foreign tax" in subsection 5907(1) applies in respect of dispositions in respect of which an election was made in respect of which proposed new subsection 5902(1) applies.

(c) where more than one whole dividend is deemed by paragraph 5900(2)(b) to have been paid at the same time on shares of a class of the capital stock of an affiliate, for the purposes only of paragraph 5900(1)(d) and the definitions "underlying foreign tax" and "underlying foreign tax applicable" in this subsection, the whole dividend deemed to have been paid at that time on the shares of a class of the capital stock of the affiliate is deemed to be the total of all amounts each of which is a whole dividend deemed to have been paid at that time on the shares of a class of the capital stock of the affiliate and all of that whole dividend shall be

deemed to have been paid out of the affiliate's taxable surplus in respect of the corporation.

History: Subsec. 5907(1) definitions amended and rearranged by P.C. 1997-1670, subsec. 8(1), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the definitions apply to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate; and

(b) in applying the definitions for taxation years of a foreign affiliate of a taxpayer that begin before 1996 and in respect of which subsecs. 5907(11)–(11.2) (as amended) do not apply, the references to "designated treaty country" shall be read as "country listed in subsection (11)".

Cl. 5907(1)(a)(i)(C) amended by P.C. 1996-571, s. 2, April 23, 1996, *Canada Gazette*, Part II, May 1, 1996, applicable to taxation years that end after February 21, 1994.

Subpara. 5907(1)(d)(vi.1) substituted, applicable in respect of 1976 *et seq.*; subparas. (1)(d)(vii.2) and (1)(k)(vi.2) added and (1)(d)(xiv) and (1)(k)(xiii) substituted, applicable for purposes of making computations under Part LIX after March 15, 1989; subparas. (1)(d)(xii.1) and (1)(k)(xi.1) substituted, effective from November 13, 1981; that portion of subpara. (1)(m)(ii) preceding cl. (A) substituted, applicable (by subsec. 5(6) as amended by P.C. 1994-1129, July 4, 1994, *Canada Gazette*, Part II, July 27, 1994, applicable after March 15, 1989) in respect of whole dividends paid after 1987; by P.C. 1989-321, subsecs. 3(1) to (8), March 2, 1989, *Canada Gazette*, Part II, March 15, 1989.

Cl. 5907(1)(b)(i)(B) substituted, cl. 5907(1)(b)(i)(C) added, applicable in respect of capital gains from dispositions of property made after November 12, 1981; cl. 5907(1)(c)(i)(B) substituted, cl. 5907(1)(c)(i)(C) added, applicable in respect of capital losses from dispositions of property made after November 12, 1981; subparas. 5907(1)(d)(ii), (iii), (iv), (vi), (viii), para. 5907(1)(g), all that portion of para. 5907(1)(d) following subpara. (xi) substituted and subparas. 5907(1)(d)(vii.1), (f)(iii), (f)(iv) added, applicable commencing November 13, 1981; cls. 5907(1)(i)(ii)(D), (E), and (j)(ii)(C), (D) added, applicable in respect of dispositions made after November 12, 1981; cl. 5907(1)(j)(ii)(B), subparas. 5907(1)(k)(ii), (iii), (iv), (vi), (vii), 5907(1)(l)(ii), (iii), (iv), (vii), (x), all that portion of para. 5907(1)(k) following subpara. (x), all that portion of subpara. 5907(1)(m)(ii) preceding cl. (A) substituted and subparas. 5907(1)(i)(vi.1), 5907(1)(l)(vii.1), (xi) added applicable commencing November 13, 1981 by P.C. 1985-467, subsecs. 4(1)–(22), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985.

Subparas. 5907(1)(d)(vi.1) added, 5907(1)(d)(x), (xiv) substituted by P.C. 1980-503, subsecs. 5(1)–(3), February 8, 1980, *Canada Gazette*, Part II, February 27, 1980, effective in respect of 1976 *et seq.*

(1.01) [Interpretation for ITA 113] — For the purpose of section 113 of the Act, "exempt surplus" and "taxable surplus" have the meanings assigned by subsection (1).

History: Subsec. 5907(1.01) added by P.C. 1997-1670, subsec. 8(1), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the subsec. applies to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

(1.02) ["Qualifying interest", "related"] — In paragraph (d) of the definition "exempt earnings" in subsection (1), the determination of whether a corporation

(a) has a "qualifying interest" in respect of a foreign affiliate throughout a taxation year, or

(b) is related to another corporation throughout a taxation year

shall be made as it would for the purpose of paragraph 95(2)(a) of the Act.

History: Subsec. 5907(1.02) added by P.C. 1997-1670, subsec. 8(2), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the subsec. applies to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

(1.1) [Where FA is member of consolidated group] — For the purposes of this Part, where, pursuant to the income tax law of a country other than Canada, a group of two or more foreign affiliates (in this subsection referred to as the "consolidated group") of a corporation resident in Canada that are resident in that country determine their liabilities for income or profits tax payable to the government of that country for a taxation year on a consolidated or combined basis and one of the affiliates (in this subsection referred to as the "primary affiliate") is responsible for paying, or claiming a refund of, such tax on behalf of itself and the other members of the consolidated group (hereinafter referred to as the "secondary affiliates"), the following rules apply:

(a) in respect of the primary affiliate,

(i) any such income or profits tax paid by the primary affiliate for the year shall be deemed not to have been paid and any refund to the primary affiliate of income or profits tax otherwise payable by it for the year shall be deemed not to have been made,

(ii) any such income or profits tax that would have been payable by the primary affiliate for the year if the primary affiliate had no other taxation year and had not been a member of the consolidated group shall be deemed to have been paid for the year,

(iii) to the extent that

(A) the income or profits tax that would otherwise have been payable by the primary affiliate for the year on behalf of the consolidated group is reduced by virtue of any loss of the primary affiliate for the year or any previous taxation year, or

(B) the primary affiliate receives, in respect of a loss of the primary affiliate for the year or a subsequent taxation year, a refund of income or profits tax otherwise payable for the year by the primary affiliate on behalf of the consolidated group,

the amount of such reduction or refund, as the case may be, shall be deemed to have been received by

the primary affiliate as a refund for the year of the loss of income or profits tax in respect of the loss,

(iv) any such income or profits tax that would have been payable by a secondary affiliate for the year if the secondary affiliate had no other taxation year and had not been a member of the consolidated group shall at the end of the year,

(A) to the extent that such income or profits tax would otherwise have reduced the net earnings included in the exempt earnings of the secondary affiliate, be deducted from the exempt surplus or added to the exempt deficit, as the case may be, of the primary affiliate, and

(B) to the extent that such income or profits tax would otherwise have reduced the net earnings included in the taxable earnings of the secondary affiliate,

(I) be deducted from the taxable surplus or added to the taxable deficit, as the case may be, of the primary affiliate, and

(II) be added to the underlying foreign tax of the primary affiliate,

(v) to the extent that

(A) the income or profits tax that would otherwise have been payable by the primary affiliate for the year on behalf of the consolidated group is reduced by virtue of a loss of a secondary affiliate for the year or a previous taxation year, or

(B) the primary affiliate receives, in respect of a loss of a secondary affiliate for the year or a subsequent taxation year, a refund of income or profits tax otherwise payable for the year by the primary affiliate on behalf of the consolidated group,

the amount of such reduction or refund, as the case may be, shall at the end of the year of the loss,

(C) where such loss reduces the exempt surplus or increases the exempt deficit, as the case may be, of the secondary affiliate, be added to the exempt surplus or deducted from the exempt deficit, as the case may be, of the primary affiliate, and

(D) where such loss reduces the taxable surplus or increases the taxable deficit, as the case may be, of the secondary affiliate,

(I) be added to the taxable surplus or deducted from the taxable deficit, as the case may be, of the primary affiliate, and

(II) be deducted from the underlying foreign tax of the primary affiliate; and

(b) where by virtue of the primary affiliate being responsible for paying, or claiming a refund of, income or profits tax for the year on behalf of the consolidated group,

(i) an amount is paid to the primary affiliate by a secondary affiliate in respect of the income or profits tax that would have been payable by the secondary affiliate for the year had it not been a member of the group,

(A) in respect of the secondary affiliate, the amount so paid shall be deemed to be a payment of such income or profits tax for the year, and

(B) in respect of the primary affiliate,

(I) such portion of the amount so paid as may reasonably be regarded as relating to an amount included in the exempt surplus or deducted from the exempt deficit, as the case may be, of the secondary affiliate shall at the end of the year be added to the exempt surplus or deducted from the exempt deficit, as the case may be, of the primary affiliate, and

(II) such portion of the amount so paid as may reasonably be regarded as relating to an amount included in the taxable surplus or deducted from the taxable deficit, as the case may be, of the secondary affiliate shall at the end of the year be added to the taxable surplus or deducted from the taxable deficit, as the case may be, of the primary affiliate and be deducted from the underlying foreign tax of the primary affiliate, or

(ii) an amount is paid by the primary affiliate to a secondary affiliate in respect of a reduction or refund by virtue of a loss of the secondary affiliate for a taxation year of the income or profits tax that would otherwise have been payable by the primary affiliate for the year on behalf of the consolidated group,

(A) in respect of the primary affiliate,

(I) such portion of the amount so paid as may reasonably be regarded as relating to an amount deducted from the exempt surplus or included in the exempt deficit, as the case may be, of the secondary affiliate shall at the end of the year of the loss be deducted from the exempt surplus or added to the exempt deficit, as the case may be, of the primary affiliate, and

(II) such portion of the amount so paid as may reasonably be regarded as relating to an amount deducted from the taxable surplus or included in the taxable deficit, as the case may be, of the secondary affiliate shall at the end of the year of the loss be deducted from the taxable surplus or added to the taxable deficit, as the case may be, of the primary affiliate and be added to the underlying foreign tax of the primary affiliate, and

(B) in respect of the secondary affiliate, the amount shall be deemed to be a refund to the secondary affiliate for the year of the loss of income or profits tax in respect of the loss,

Proposed Amendment — Reg. 5907(1.1)(b)(ii)

(ii) an amount is paid by the primary affiliate to a secondary affiliate in respect of a reduction or refund because of a loss or a tax credit of the secondary affiliate for a taxation year of the income or profits tax that would otherwise have been payable by the primary affiliate for the year on behalf of the consolidated group,

(A) in respect of the primary affiliate,

(I) the portion of the amount so paid that can reasonably be regarded as relating to an amount deducted from the exempt surplus or included in the exempt deficit, as

the case may be, of the secondary affiliate shall at the end of the year to which the loss or the tax credit relates be deducted from the exempt surplus or added to the exempt deficit, as the case may be, of the primary affiliate, and

(II) the portion of the amount so paid that can reasonably be regarded as relating to an amount deducted from the taxable surplus or included in the taxable deficit, as the case may be, of the secondary affiliate shall at the end of the year to which the loss or the tax credit relates be deducted from the taxable surplus or added to the taxable deficit, as the case may be, of the primary affiliate and be added to the underlying foreign tax of the primary affiliate, and

(B) in respect of the secondary affiliate, the amount is deemed to be a refund to the secondary affiliate for the year to which the loss or the tax credit relates of income or profits tax in respect of the loss or the tax credit,

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 3(24), will amend subpara. 5907(1.1)(b)(ii) to read as above, applicable to payments made after December 20, 2002.

Technical Notes: Subsection 5907(1.1) contains rules for the calculation of the surpluses and deficits of a foreign affiliate of a corporation resident in Canada where the affiliate is a member of a group (the "consolidated group") of foreign affiliates of the corporation that files a consolidated or combined return in a foreign country such as the United States and one of the affiliates (the "primary affiliate") in the group is responsible, on behalf of the group, for paying, or claiming a refund of, the tax payable in that country by the primary affiliate and the other members of the group (those other members being referred to as the "secondary affiliates").

Subparagraph 5907(1.1)(b)(ii) applies where a secondary affiliate has a loss and the primary affiliate pays an amount to a secondary affiliate in respect of a reduction or refund, by virtue of the loss of the secondary affiliate, of the tax that would otherwise have been payable in the country by the primary affiliate for the year on behalf of the consolidated group. In general terms, that subparagraph results in a reduction of the primary affiliate's surplus balances, and an increase of the secondary affiliate's surplus balances, by the amount of the payment.

The proposed amendments to subparagraph 5907(1.1)(b)(ii) deal with the case where a secondary affiliate has a tax credit and the primary affiliate pays an amount to the secondary affiliate in respect of a reduction or refund, by virtue of the tax credit of the secondary affiliate, of the tax that would otherwise have been payable in the country by the primary affiliate for the year on behalf of the consolidated group. In general terms, the amendments ensure that the primary affiliate's surplus balances are reduced, and the secondary affiliate's surplus balances are increased, by the amount of the payment.

and, for the purposes of this paragraph, any amount paid by a particular secondary affiliate to another secondary affiliate in respect of any income or profits tax that would have been payable by the particular secondary affiliate for the year had it not been a member of the consolidated group shall be deemed to have been paid in respect of such tax by the particular secondary affiliate to the primary affiliate and to have been paid in respect of such tax by the primary affiliate to the other secondary affiliate.

History: Subsec. 5907(1.1) added by P.C. 1985-467, subsec. 4(23), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to the 1982 and subsequent taxation years of foreign affiliates.

(1.2) [Where FA deducts loss of loss affiliate] — For the purposes of this Part, where, pursuant to the income tax law of a country other than Canada, a corporation resident in that country that is a foreign affiliate of a corporation resident in Canada (in this subsection referred to as the "taxpaying affiliate") deducts, in computing its income or profits tax payable for a taxation year to a government of that country, a loss of another corporation resident in that country that is a foreign affiliate of the corporation resident in Canada (in this subsection referred to as the "loss affiliate"), the following rules apply:

(a) any such income or profits tax paid by the taxpaying affiliate for the year shall be deemed not to have been paid;

(b) any such income or profits tax that would have been payable by the taxpaying affiliate for the year if the taxpaying affiliate had not been allowed to deduct such loss shall be deemed to have been paid for the year;

(c) to the extent that the income or profits tax that would otherwise have been payable by the taxpaying affiliate for the year is reduced by virtue of such loss, the amount of such reduction shall at the end of the year,

(i) where such loss reduces the exempt surplus or increases the exempt deficit, as the case may be, of the loss affiliate, be added to the exempt surplus or deducted from the exempt deficit, as the case may be, of the taxpaying affiliate, and

(ii) where such loss reduces the taxable surplus or increases the taxable deficit, as the case may be, of the loss affiliate,

(A) be added to the taxable surplus or deducted from the taxable deficit, as the case may be, of the taxpaying affiliate, and

(B) be deducted from the underlying foreign tax of the taxpaying affiliate; and

(d) where an amount is paid by the taxpaying affiliate to the loss affiliate in respect of the reduction, by virtue of such loss, of the income or profits tax that would otherwise have been payable by the taxpaying affiliate for the year,

(i) in respect of the taxpaying affiliate,

(A) such portion of the amount as may reasonably be regarded as relating to an amount deducted from the exempt surplus or included in the exempt deficit, as the case may be, of the loss affiliate shall at the end of the year be deducted from the exempt surplus or added to the exempt deficit, as the case may be, of the taxpaying affiliate, and

(B) such portion of the amount as may reasonably be regarded as relating to an amount deducted from the taxable surplus or included in the taxable deficit, as the case may be, of the loss affiliate shall at the end of the year be deducted from the taxable surplus or added to the taxable deficit, as the case may be, of the taxpaying affiliate and be added to the underlying foreign tax of the taxpaying affiliate, and

(ii) in respect of the loss affiliate, the amount shall be deemed to be a refund to the loss affiliate of income or profits tax in respect of the loss for the taxation year of the loss.

History: Subsec. 5907(1.2) added by P.C. 1985-467, subsec. 4(23), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to the 1982 and subsequent taxation years of foreign affiliates.

(1.3) [Prescribed foreign accrual tax] — For the purposes of paragraph (b) of the definition "foreign accrual tax" in subsection 95(1) of the Act,

Proposed Amendment — Reg. 5907(1.3) opening words

(1.3) For the purpose of paragraph (b) of the definition "foreign accrual tax" in subsection 95(1) of the Act and subject to subsection (1.4),

Application: The March 16, 2001 draft regulations (foreign affiliates — FAPI), subsec. 2(1), will amend the opening words of subsec. 5907(1.3) to read as above, applicable to taxation years that begin after November 1999.

Technical Notes: Subsection 91(4) of the Act provides for a deduction in the computation of a taxpayer's income in respect of foreign accrual tax that is attributable to an amount of foreign accrual property income included in the computation of the taxpayer's income. Subsection 95(1) of the Act defines foreign accrual tax to include amounts prescribed to be foreign accrual tax.

In circumstances where the loss of another corporation in a particular group of foreign affiliates of a taxpayer is relevant in the computation of the tax liability of the group to a foreign government, paragraphs 5907(1.3)(a) and (b) of the Regulations provides that an amount paid by the particular corporation to the other corporation in the group in respect of the use of a loss of any other corporation in the computation of the group's tax liability to the foreign government is foreign accrual tax. These provisions apply where the loss of the other corporation is an active business loss or a capital loss resulting from the disposition of excluded property as well as where the loss is a foreign accrual loss as defined in subsection 5903(3) of the Regulations. Subsection 5907(1.3), which applies to taxation years that begin after November 1999, is amended as a consequence of the introduction of subsection 5907(1.4) of the Regulations.

(a) where, pursuant to the income tax law of the country in which a particular foreign affiliate is resident, the particular affiliate and one or more other corporations, each of which is resident in that country, determine their liabilities for income or profits tax payable to the government of that country for a taxation year on a consolidated or combined basis, any amount paid by the particular affiliate to any of the other corporations to the extent that it may reasonably be regarded as being in respect of income or profits tax that would otherwise have been payable by the particular affiliate in respect of a particular amount included in computing the taxpayer's income by virtue of subsection 91(1) of the Act for a taxation year in respect of the particular affiliate, had the tax liability of the particular affiliate and the other corporations not been determined on a consolidated or combined basis, is hereby prescribed to be foreign accrual tax applicable to the particular amount; and

(b) where, pursuant to the income tax law of the country in which a particular foreign affiliate of a taxpayer is resident, the particular affiliate, in computing its income or profits subject to tax in that country for a taxation year, deducts an amount in respect of a loss of another corporation resident in that country, any amount paid by the particular affiliate to the other corporation to the extent that it may reasonably be regarded as being in respect of income or profits tax that would otherwise have been payable by the particular affiliate in respect of a particular amount included in computing the taxpayer's income by virtue of subsection 91(1) of the Act for a taxation year in respect of the particular affiliate, had the tax liability of the particular affiliate been determined without deducting the loss of the other corporation, is hereby prescribed to be foreign accrual tax applicable to the particular amount.

History: Subsec. 5907(1.3) amended by P.C. 1997-1670, subsec. 8(3), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the subsec. as amended applies to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

Subsec. 5907(1.3) added by P.C. 1985-467, subsec. 4(23), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to the 1982 and subsequent taxation years of foreign affiliates.

Proposed Addition — Reg. 5907(1.4)

(1.4) [Prescribed foreign accrual tax] — Any amount paid by a particular affiliate described in paragraph (1.3)(a) or (b) does not include any amount paid by the particular affiliate to any other corporation where the amount paid can reasonably be considered to be in respect of a loss of any other corporation and such loss would not be a foreign accrual property loss of the other corporation (as defined in subsection 5903(3)) without taking into account the particular payment.

Application: The March 16, 2001 draft regulations (foreign affiliates — FAPI), subsec. 2(2), will add subsec. 5907(1.4), applicable to taxation years that begin after November 1999.

Technical Notes: New subsection 5907(1.4) ensures that in such circumstances the amount paid by the particular affiliate to the other corporation will only be foreign accrual tax to the extent that the amount paid is in respect of a foreign accrual property loss of any other corporation. This is consistent with the fact that, under section 5903 of the Regulations, active business losses and capital losses resulting from the disposition of excluded property of a foreign affiliate of a taxpayer are not included in the computation of a deductible loss which may be used to reduce foreign accrual property income of that affiliate in a particular taxation year.

(2) [FA carrying on active business] — In computing the earnings of a foreign affiliate of a taxpayer resident in Canada for a taxation year of the affiliate from an active business carried on by it in a country, there shall be added to the amount thereof determined under subparagraph (a)(i) or (ii) of the definition "earnings" in subsection (1) (in this subsection referred to as the "earnings amount") such portion of the following amounts as was deducted or was not included, as the case may be, in computing the earnings amount,

(a) any income or profits tax paid to the government of a country by the affiliate so deducted,

(b) if established by the taxpayer, the amount by which any amount so deducted in respect of an expenditure made by the affiliate exceeds the amount, if any, by which

(i) the amount of the expenditure

exceeds

(ii) the aggregate of all other deductions in respect of that expenditure made by the affiliate in computing the earnings amounts for preceding taxation years,

(c) any loss of the affiliate referred to in the description of D in the definition "foreign accrual property income" in subsection 95(1) of the Act so deducted,

(d) any capital loss of the affiliate in respect of the disposition of capital property so deducted (for greater certainty, capital property of the affiliate for the purposes of this paragraph includes all the property of the affiliate other than property referred to in subparagraph 39(1)(b)(i) or (ii) of the Act on the assumption for this purpose that the affiliate is a corporation resident in Canada),

(e) any loss of the affiliate for a preceding or a subsequent taxation year so deducted,

(f) any revenue, income or profit (other than an amount referred to in paragraph (f.1), (h) or (i)) of the affiliate derived in the year from such business carried on in that country to the extent that such revenue, income or profit

(i) is not otherwise required to be included in computing the earnings amount of the affiliate for any taxation year by the income tax law that is relevant in computing that amount, and

(ii) does not arise with respect to a disposition (other than a disposition to which subsection (9) applies) by the affiliate of property to another foreign affiliate of the taxpayer or to a person with whom the taxpayer does not deal at arm's length, to which a tax deferral, rollover or similar tax postponement provision of the income tax law that is relevant in computing the earnings amount of the affiliate applied, and

Proposed Amendment — Reg. 5907(2)(f)

(f) any revenue, income or profit (other than an amount referred to in paragraph (f.1), (h), or (i)) of the affiliate derived in the year from such business carried on in that country to the extent that such revenue, income or profit is not otherwise required to be included in computing the earnings amount of the affiliate for any taxation year by the income tax law that is relevant in computing the earnings amount, and

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 3(25), will amend para. 5907(2)(f) to read as above, applicable in respect of a disposition made after December 20, 2002, other than dispositions made under a written agreement made by the foreign affiliate before December 20, 2002.

Technical Notes: Subsection 5907(2) provides special rules for computing earnings of a foreign affiliate from an active business carried on by it in a country. It is proposed to amend paragraph 5907(2)(f) to delete subparagraph (ii) consequential to the introduction of the rules in paragraphs 95(2)(c.2) to (c.6), and 95(2) (f.3) to (f.8) of the Act.

The amendment to paragraph 5907(2)(f) applies in respect of dispositions by a foreign affiliate after December 20, 2002, other than a disposition made after December 20, 2002 under a written agreement made by the foreign affiliate before December 20, 2002.

(f.1) any assistance from a government, municipality or other public authority (other than any such assistance that reduced the amount of an expenditure for purposes of computing the earnings amount for any taxation year) that the affiliate received or became entitled to receive in the year in connection with such business carried on in that country that is not otherwise required to be included in computing the earnings amount for the year or for any other taxation year,

and there shall be deducted such portion of the following amounts as were included or were not deducted, as the case may be, in computing the earnings amount,

(g) any income or profits tax refunded by the government of a country to the affiliate so included;

(h) any capital gain of the affiliate in respect of the disposition of capital property so included (for greater certainty, capital property of the affiliate for the purposes of this paragraph includes all the property of the affiliate other than property referred to in any of subparagraphs 39(1)(a)(i) to (iv) of the Act on the assumption for this purpose that the affiliate is a corporation resident in Canada);

(i) any amount that is included in the foreign accrual property income of the affiliate so included;

(j) any loss, outlay or expense made or incurred in the year by the affiliate for the purpose of gaining or producing such earnings amount to the extent that

(i) such loss, outlay or expense is not otherwise permitted to be deducted in computing the earnings amount of the affiliate for any taxation year by the income tax law that is relevant in computing that amount, or

(ii) such outlay or expense can reasonably be regarded as applicable to any revenue added to the earnings amount of the affiliate under paragraph (f),

where such loss, outlay or expense

(iii) does not arise with respect to a disposition (other than a disposition to which subsection (9) applies) by the affiliate of property to another foreign affiliate of the taxpayer or to a person with whom the taxpayer does not deal at arm's length, to which a loss deferral or similar loss postponement provision of the income tax law that is relevant in computing the earnings amount of the affiliate applied, and

(iv) is not

(A) a loss referred to in paragraph (c) or (d),

(B) a capital expenditure other than interest, or

(C) income or profits tax paid to the government of a country;

(k) any outlay made in the year in repayment of an amount referred to in paragraph (f.1); and

(l) where any property of the affiliate acquired from another foreign affiliate of the taxpayer or from any foreign affiliate of a person resident in Canada with whom the taxpayer does not deal at arm's length has been disposed of, such amount in respect of that property as may reasonably be considered as having been included by virtue of paragraph (f) in computing the earnings amount of any foreign affiliate of the taxpayer or of a person resident in Canada with whom the taxpayer does not deal at arm's length.

History: Subsec. 5907(2) amended by P.C. 1997-1670, subsecs. 8(4), (5), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the subsec. applies to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

Para. 5907(2)(h) substituted by P.C. 1989-321, subsec. 3(9), March 2, 1989, *Canada Gazette*, Part II, March 15, 1989, applicable in respect of taxation years commencing after 1984.

Paras. 5907(2)(f) and (j) substituted, para. 5907(2)(l) added by P.C. 1985-467, subsecs. 4(24)–(26), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to 1976 *et seq.*

Paras. 5907(2)(f.1), (k) added, 5907(2)(f), (j) substituted by P.C. 1980-503, subsecs. 5(4), (5), February 8, 1980, *Canada Gazette*, Part II, February 27, 1980, effective in respect of 1976 *et seq.*

Proposed Addition — Reg. 5907(2.01)

(2.01) [Determining earnings of FA] — Notwithstanding any other provision of the Regulations, in determining the earnings of a foreign affiliate of a corporation resident in Canada

(a) that are derived from a disposition to which any of subsection 88(3) and paragraphs 95(2)(c.2), (d), (d.1), (e), (e.1), (e.3) to (e.5) and (f.4) of the Act applies, those earnings are to be determined using the rules in those paragraphs; and

(b) from a disposition of property acquired in a transaction to which any of subsection 88(3) and paragraphs 95(2)(c.2), (d), (d.1), (e), (e.1), (e.3) to (e.5) and (f.4) of the Act applies, the cost to the foreign affiliate of the property is to be determined using the rules in those paragraphs.

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 3(26), will add subsec. 5907(2.01), applicable on the same basis as 5907(2)(f) above.

Technical Notes: New subsection 5907(2,01) provides that, notwithstanding any other provision of the Regulations, in determining the earnings of a foreign affiliate of a corporation resident in Canada, the cost of a property that was acquired by a particular person or partnership from another person or partnership (the "vendor") in respect of which any of paragraphs 5907(2)(c.2), (d), (e), (e.3) to (e.5) and (f.4) of the Regulations applied to the vendor in respect of the disposition of the property to the particular person or partnership, is to be determined using the rules in those paragraphs.

New subsection 5907(2.01) applies in respect of dispositions made by a foreign affiliate after December 20, 2002, other than a disposition made after December 20, 2002 under a written agreement made by the foreign affiliate before December 20, 2002.

(2.1) [FA carrying on active business in Canada or treaty country] — In computing the earnings of a foreign affiliate of a corporation resident in Canada for a taxation year of the affiliate from an active business carried on by it in Canada or in a designated treaty country, where the affiliate is resident in a designated treaty country and the corporation, together with all other corporations resident in Canada with which the corporation does not deal at arm's length and in respect of which the affiliate is a foreign affiliate, have so elected in respect of the business for the taxation year or any preceding taxation year of the affiliate, the following rules apply:

(a) there shall be added to the amount determined under subparagraph (a)(i) of the definition "earnings" in subsection (1) after adjustment in accordance with the provisions of subsection (2) (in this subsection and in subsection (2.2) referred to as the "adjusted earnings amount") the total of all amounts each of which is the amount, if any, by which

(i) the amount that can reasonably be regarded as having been deducted in respect of the cost of a capital property or foreign resource property of the affiliate in computing the adjusted earnings amount

exceeds

(ii) the amount that may reasonably be regarded as having been deducted in respect of the cost of that capital property or foreign resource property in computing income or profit of the affiliate for the year from that business in its financial statements prepared in accordance with the laws of the country in which the affiliate is resident;

(b) there shall be deducted from the adjusted earnings amount the aggregate of all amounts each of which is the amount, if any, by which

(i) the amount determined under subparagraph (a)(ii) in respect of that capital property or foreign resource property

exceeds

(ii) the amount determined under subparagraph (a)(i) in respect of that capital property or foreign resource property;

(c) where any capital property or foreign resource property of the affiliate has been disposed of in the taxation year,

(i) there shall be added to the adjusted earnings amount the aggregate of the amounts deducted pursuant to paragraphs (b) and (2.2)(b) for preceding taxation years of the affiliate in respect of that capital property or foreign resource property, and

(ii) there shall be deducted from the adjusted earnings amount the aggregate of the amounts added pursuant to paragraphs (a) and (2.2)(a) for the preceding taxation years of the affiliate in respect of that capital property or foreign resource property; and

(d) for the purposes of paragraph (c), where the affiliate has merged with one or more corporations to form a new corporation, any capital property or foreign resource property of the affiliate that becomes a property of the new corporation shall be deemed to have been disposed of by the affiliate in its last taxation year before the merger.

Related Provisions: ITA 220(3.2), Reg. 600(d) — Late filing or revocation of election; Reg. 5907(2.2), (2.4) — Application rules; Reg. 5907(2.6) — Corporation deemed to have elected.

History: The opening words of subsec. 5907(2.1) amended by P.C. 1997-1670, subsec. 8(6), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a corporation that begin after 1995, except that, where the corporation notifies the Minister of National Revenue in its return of income for its first taxation year that begins after 1994 or for a taxation year in which a dividend was paid by the foreign affiliate of its election to have subsections 5907(11) (as amended), (11.1) and (11.2) apply to a taxation year of the foreign affiliate of the corporation that begins before 1996,

(a) subsection 8(6) of the amending Regulations applies to that taxation year and each subsequent taxation year of the foreign affiliate of the corporation; and

(b) any reference in s. 5907 to "country listed in subsection (11)" shall be read as "designated treaty country" and any reference to "country not listed in subsection (11)" shall be read as "country that is not a designated treaty country" for that taxation year and those subsequent taxation years of the foreign affiliate of the corporation.

The portion of para. 5907(2.1)(a) before subpara. (ii), paras. (c), (d), amended by P.C. 1997-1670, subsecs. 8(7) to (9), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) those provisions apply to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

Paras. 5907(2.1)(a) to (d) substituted by P.C. 1985-467, subsec. 4(27), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable in respect of elections made after 1983.

Subsec. 5907(2.1) added by P.C. 1978-3599, s. 2, November 30, 1978, *Canada Gazette*, Part II, December 13, 1978, effective for 1978 *et seq.*

Information Circulars: 77-9R: Books, records and other requirements for taxpayers having foreign affiliates.

(2.2) [Where election made under Reg. 5907(2.1)] — Where the taxation year of a foreign affiliate of a particular corporation resident in Canada for which the particular corporation has made an election under subsection (2.1) in respect of an active business carried on by the affiliate is not the first taxation year of the affiliate in which it carried on the business and in which it was a foreign affiliate of the particular corporation or of another corporation resident in Canada with which the particular corporation was not dealing at arm's length at any time (hereinafter referred to as the "non-arm's length corporation"), in computing the earnings of the affiliate from the business for the taxation year for which the election is made, the following rules, in addition to those set out in subsection (2.1), apply:

(a) there shall be added to the adjusted earnings amount the aggregate of all amounts each of which is an amount that would have been determined under paragraph (2.1)(a) or subparagraph (2.1)(c)(i)

(i) for any preceding taxation year of the affiliate in which it was a foreign affiliate of the particular corporation if the particular corporation had made an election under subsection (2.1) for the first taxation year of the affiliate in which it was a foreign affiliate of the particular corporation and carried on the business, and

(ii) for any preceding taxation year of the affiliate (other than a taxation year referred to in subparagraph (i)) in which it was a foreign affiliate of the non-arm's length corporation if the non-arm's length corporation had made an election under subsection (2.1) for the first taxation year of the affiliate in which it was a foreign affiliate of the non-arm's length corporation and carried on the business; and

(b) there shall be deducted from the adjusted earnings amount the aggregate of all amounts each of which is an amount that would have been determined under paragraph (2.1)(b) or subparagraph (2.1)(c)(ii)

(i) for any preceding taxation year of the affiliate in which it was a foreign affiliate of the particular corporation if the particular corporation had made an election under subsection (2.1) for the first taxation year of the affiliate in which it was a foreign affiliate of the particular corporation and carried on the business, and

(ii) for any preceding taxation year of the affiliate (other than a taxation year referred to in subparagraph (i)) in which it was a foreign affiliate of the non-arm's length corporation if the non-arm's length corporation had made an election under subsection (2.1) for the first taxation year of the affiliate in which it was a foreign affiliate of the non-arm's length corporation and carried on the business.

History: Subsec. 5907(2.2) substituted by P.C. 1985-467, subsec. 4(28), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable in respect of elections made after November 4, 1982.

Subsec. 5907(2.2) added by P.C. 1978-3599, s. 2, November 30, 1978, *Canada Gazette*, Part II, December 13, 1978, effective for 1978 *et seq.*

(2.3) [Where election made under Reg. 5907(2.1)] — For the purposes of this subsection and subsections (2.1) and (2.2), where an election under subsection (2.1) has been made by a corporation resident in Canada (in this subsection and in subsection (2.4) referred to as the "electing corporation") in respect of an active business of a foreign affiliate of the electing corporation and the affiliate subsequently becomes a foreign affiliate of another corporation resident in Canada (in this subsection and in subsection (2.4) referred to as the "subsequent corporation") that does not deal at arm's length with the electing corporation, in computing the earnings of the affiliate from such business in respect of the subsequent corporation for any taxation year of the affiliate ending after the affiliate so became a foreign affiliate of the subsequent corporation, the subsequent corporation shall be deemed to have made an election under subsection (2.1) in respect of the business of the affiliate for the first such taxation year and for the purposes of paragraph (2.1)(d), the earnings of the affiliate for all of the preceding taxation years shall be deemed to have been adjusted in accordance with subsections (2.1) and (2.2) in the same manner as if the subsequent corporation had been the electing corporation.

History: Subsec. 5907(2.3) amended by P.C. 1997-1670, subsec. 8(10), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the amendment applies to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

Subsecs. 5907(2.3)–(2.6) added by P.C. 1978-3599, s. 2, November 30, 1978, *Canada Gazette*, Part II, December 13, 1978, effective for 1978 *et seq.*

(2.4) ["Subsequent corporation" for Reg. 5907(2.3)] — For the purposes of subsection (2.3)

(a) a corporation formed as a result of a merger, to which section 87 of the Act applies, of the electing corporation and one or more other corporations, or

(b) a corporation that has acquired shares of the capital stock of a foreign affiliate, in respect of which an election under subsection (2.1) has been made, from the electing corporation in a transaction in respect of which an election under section 85 of the Act was made

shall be deemed to be a subsequent corporation that does not deal at arm's length with the electing corporation.

(2.5) [Repealed]

History: Subsec. 5907(2.5) repealed by P.C. 1997-1670, subsec. 8(11), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the repeal applies to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxa-

tion year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

(2.6) [Corporations deemed to have elected under Reg. 5907(2.1)] — A corporation resident in Canada, and all other corporations resident in Canada with which the corporation does not deal at arm's length, shall each be considered to have elected under subsection (2.1) in respect of an active business carried on by a non-resident corporation that is a foreign affiliate of each such corporation for a taxation year if there is filed with the Minister on or before the day that is the later of

(a) June 30, 1986, and

(b) the earliest of the days on or before which any one of the said corporations is required to file a return of income pursuant to section 150 of the Act for its taxation year following the taxation year in which the taxation year of the affiliate in respect of which the election is made ends,

the following information:

(c) a description of the active business sufficient to identify the business, and

(d) a statement on behalf of each such corporation, signed by an authorized official of the corporation on behalf of which the statement is made, that the corporation is electing under subsection (2.1) in respect of the business.

History: Subsec. 5907(2.6) substituted by P.C. 1989-321, subsec. 3(10), applicable in respect of elections made under subsec. 5907(2.1) for 1982 *et seq.*

(2.7) [Where ITA 95(2)(a)(i) or (ii) applies] — Notwithstanding any other provision of this Part, where

(a) an amount is included in computing the income or loss from an active business of a particular foreign affiliate of a taxpayer for a particular taxation year under subparagraph 95(2)(a)(i) or (ii) of the Act, and

(b) the amount included is in respect of an amount paid or payable (other than an amount paid or payable that is described in clause 95(2)(a)(ii)(D) of the Act) by another non-resident corporation described in subparagraph 95(2)(a)(i) or (ii) of the Act or by a partnership of which such a corporation is a member,

the amount (in respect of which an amount was included in the income or loss from an active business of the particular affiliate for the paticular year) paid or payable by the non-resident corporation or the partnership shall, except where it has been deducted under paragraph (2)(j) in computing the non-resident corporation's earnings or loss from an active business, be deducted in computing the earnings or loss of the non-resident corporation or the partnership, as the case may be, from the active business for its earliest taxation year in which the amount was paid or paybable and shall not be deducted in computing its earnings or loss from the active business for any other taxation year.

Proposed Amendment — Reg. 5907(2.7)

(2.7) Notwithstanding any other provision of this Part, if an amount is included in computing the income or loss from an active business of a particular foreign affiliate of a taxpayer for a particular taxation year under paragraph 95(2)(a) of the Act and is in respect of a particular amount paid or payable (other than an amount paid or payable described in clause 95(2)(a)(ii)(D) of the Act) by another non-resident corporation described in paragraph 95(2)(a) of the Act or by a partnership of which such a corporation is a member, the particular amount is to, except where it has been deducted under paragraph (2)(j) in computing the other non-resident corporation's earnings or loss from an active business, be deducted in computing the earnings or loss of the other non-resident corporation or the partnership, as the case may be, from the active business for its earliest taxation year in which the particular amount was paid or payable. The particular amount may not be deducted in computing its earnings or loss from the active business for any other taxation year.

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 3(27), will amend subsec. 5907(2.7) to read as above, applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after December 19, 2002.

S. 9 of the draft regulations provides that if a foreign affiliate of a taxpayer referred to in the above amendment makes a valid "Global Section 95 Election" under subsec. 133(68) of the February 27, 2004 draft legislation (see Application and Technical Notes to Proposed Amendment to ITA 95(2)(a)), then the amendment is applicable to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994.

Technical Notes: In general terms, subsection 5907(2.7) provides that, where amounts are included by subparagraph 95(2)(a)(i) or (ii) of the Act in computing the income or loss from an active business of a particular foreign affiliate of a taxpayer and these amounts are in respect of amounts paid or payable to the particular affiliate by another non-resident corporation or partnership in the group, the amounts paid or payable to the particular affiliate by the other non-resident corporation or partnership are required to be deducted in computing the other non-resident corporation's or partnership's earnings or loss from an active business (unless they have already been deducted under paragraph 5907(2)(j) of the Regulations) for the earliest taxation year in which the amounts were paid or payable.

Subsection 5907(2.7) is proposed to be amended so that it applies to amounts included in computing the income or loss from an active business of the particular affiliate under paragraph 95(2)(a) of the Act, rather than just under subparagraph 95(2)(a)(i) or (ii).

The proposed amendments to subsection 5907(2.7) apply to taxation years, of a foreign affiliate of a taxpayer, that begin on or after December 20, 2002. Note that these amendments are included in the Global Section 95 Election package described at the beginning of the commentary to section 95 of the Act.

History: Subsec. 5907(2.7) added by P.C. 1997-1670, subsec. 8(12), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the subsec. applies to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

(2.8) [Where ITA 95(2)(a)(ii)(D) applies] — Notwithstanding any other provision of this Part, where

(a) an amount is included in computing the income from an active business of a particular foreign affiliate of a taxpayer or a person related to the taxpayer for a

particular taxation year under clause 95(2)(a)(ii)(D) of the Act, and

(b) the amount included is in respect of an amount of interest paid or payable by another non-resident corporation (in this subsection referred to as the "second affiliate") to which the particular affiliate and the taxpayer are related

the following rules apply:

(c) that amount of interest shall be deducted in computing the second affiliate's income or loss, from an active business carried on by it in a country in which it is resident and subject to income taxation, for its earliest taxation year in which the amount was paid or payable,

(d) the second affiliate is deemed to have carried on an active business in a country in which it was resident and subject to income taxation for each taxation year referred to in paragraph (c) in which such an active business was not otherwise carried on by it, and

(e) in computing the second affiliate's income for a taxation year from any source, no amount shall be deducted in respect of an amount paid or payable by it that is referred to in paragraph (c) except as is required under that paragraph.

Proposed Amendment — Reg. 5907(2.8)–(2.83)

Technical Notes: Under clause 95(2)(a)(ii)(D) of the Act, the income of a foreign affiliate of a corporation resident in Canada (the "first affiliate") that is derived from amounts paid or payable to it by another foreign affiliate of the corporation or a non-resident corporation to which the first affiliate and the corporation resident in Canada are related (referred to in subsections 5907(2.8) to (2.83) as the "second affiliate") is included in the active business income of the first affiliate.

The amounts paid or payable by the second affiliate must be in respect of interest on borrowed money used for the purpose of earning income from property or on an amount payable for property where the property consists of shares of another foreign affiliate of the corporation in respect of which the corporation has a qualifying interest throughout the year (in subsections 5907(2.8) to (2.83), the "third affiliate") that are excluded property of the second affiliate within the meaning assigned by section 95 of the Act in the country in which the second affiliate is resident and subject to income taxation.

It is proposed that existing subsection 5907(2.8) be replaced by proposed new subsections 5907(2.8) to (2.83) because of the proposed amendments to clause 95(2)(a)(ii)(D) of the Act. These are essentially rules for reducing exempt surplus of foreign affiliates of a taxpayer resident in Canada in respect of interest referred to in 95(2)(a)(ii)(D) of the Act. The proposed new subsections apply to taxation year, of foreign affiliate of a taxpayer, to which proposed new clauses 95(2)(a)(ii)(D)(III) to (V) of the Act apply.

(2.8) [Where ITA 95(2)(a)(ii)(D) applies] — Subsection (2.81) applies, in respect of a particular amount of interest, to the specified foreign affiliates of a corporation resident in Canada, if

(a) an amount in respect of the particular amount of interest is included, because of clause 95(2)(a)(ii)(D) of the Act, in computing the income or loss for a particular taxation year from an active business of a particular foreign affiliate of the corporation resident in Canada or a particular foreign affiliate of a person related to that corporation; and

(b) the particular amount of interest is an amount of interest paid or payable to the particular foreign affiliate, by another foreign affiliate (in this subsection and in subsections (2.81) to (2.83) referred to as the "second affiliate") of the corporation resident in Canada to which the particular foreign affiliate and the corporation resident in Canada are related, under a legal obligation to pay interest on borrowed money used for the purpose of earning income from property, or on an amount payable for property acquired for the purpose of gaining or producing income from property, and

(i) the property is excluded property of the second affiliate that is shares of the third affiliate referred to in subclause 95(2)(a)(ii)(D)(III) of the Act (which third affiliate is referred to in this subsection and in subsections (2.81) to (2.83) as the "third affiliate"), and

(ii) the requirements set out in subclauses 95(2)(a)(ii)(D)(IV) and (V) of the Act are satisfied in respect of the second and third affiliates for their respective applicable taxation years.

Technical Notes: Proposed subsection 5907(2.8) sets out, in respect of a particular amount of interest referred to in 95(2)(a)(ii)(D) of the Act, the requirements for new subsection 5907(2.81) to apply.

Proposed subsection 5907(2.8) provides that subsection 5907(2.81) applies to the specified foreign affiliates of a corporation resident in Canada, if

- an amount in respect of the particular amount of interest is included, under clause 95(2)(a)(ii)(D) of the Act, in computing the income or loss for a particular taxation year from an active business of a particular foreign affiliate of the corporation resident in Canada or a person related to the corporation resident in Canada, and
- the particular amount of interest is an amount of interest paid or payable to the particular foreign affiliate, by the second affiliate, under a legal obligation to pay interest on borrowed money used for the purpose of earning income from property, or on an amount payable for property acquired for the purpose of gaining or producing income from property, if
  - the property is excluded property of the second affiliate that is shares of the third affiliate, and
  - the requirements set out in clauses 95(2)(a)(ii)(D)(IV) and (V) of the Act are satisfied in respect of the second and third affiliates for their respective applicable taxation years.

(2.81) [Where ITA 95(2)(a)(ii)(D) applies] — If this subsection applies, in respect of the particular amount of interest, to the specified foreign affiliates of the corporation resident in Canada, the following rules apply:

(a) where the specified foreign affiliate is the second affiliate, the particular amount is to be deducted in computing the second affiliate's exempt surplus in respect of the corporation resident in Canada at the end of the applicable taxation year of the second affiliate, to the extent of the second affiliate's available exempt surplus amount in respect of the applicable taxation year of the second affiliate;

(b) where the specified foreign affiliate is the third affiliate, there is to be deducted in computing the third affiliate's exempt surplus in respect of the corporation resident in Canada at the end of the applicable taxation year of the third affiliate, the lesser of the third affiliate's available exempt surplus amount in respect of its applicable taxation year and the amount determined by the formula

$$(A - B) \times C$$

where

A is the particular amount of interest,

B is the amount deducted because of paragraph (a) in computing the second affiliate's exempt surplus in respect of the corporation resident in Canada at the end of the applicable taxation year of the second affiliate, and

C is the specified adjustment factor, in respect of the corporation resident in Canada, in respect of the third affiliate, in respect of the applicable taxation year of the second affiliate;

(c) where the specified foreign affiliate is a group foreign affiliate, there is to be deducted, in computing the group foreign affiliate's exempt surplus in respect of the corporation resident in Canada at the end of the applicable taxation year of the group foreign affiliate, the lesser of the group foreign affiliate's available exempt surplus in respect of its applicable taxation year and the amount determined by the formula

$$(A - B - C) \times D$$

where

A is the particular amount of interest,

B is the amount deducted because of paragraph (a) in computing the second affiliate's exempt surplus in respect of the corporation resident in Canada at the end of the applicable taxation year of the second affiliate,

C is the amount determined when the amount deducted because of paragraph (b) in computing the third affiliate's exempt surplus in respect of the corporation resident in Canada at the end of the applicable taxation year of the third affiliate is divided by the amount determined for C in the formula in paragraph (b) in respect of the third affiliate, and

D is the specified adjustment factor, in respect of the corporation resident in Canada, in respect of the specified foreign affiliate of the corporation resident in Canada, in respect of the applicable taxation year of the second affiliate;

(d) amounts in respect of the particular amount of interest must be deducted under paragraphs (a) to (c) in computing the exempt surplus in respect of the corporation resident in Canada of the specified foreign affiliates of the corporation resident in Canada at the end of each of their applicable taxation years to the extent of the total of all amounts each of which is the available exempt surplus amount of a specified foreign affiliate of the corporation resident in Canada in respect of that specified foreign affiliate's applicable taxation year;

(e) paragraph (a) is to be applied to the second affiliate before paragraph (b) is applied to the third affiliate and paragraph (b) is to be applied to the third affiliate before paragraph (c) is applied to a group foreign affiliate of the corporation resident in Canada; and

(f) there is to be added in computing the exempt deficit in respect of the corporation resident in Canada of the second affiliate the amount determined by the formula:

$$K - (L + M + N)$$

where

K is the particular amount of interest,

L is the amount determined under paragraph (a) in respect of the particular amount of interest in respect of the second affiliate,

M is the amount determined when the amount determined under paragraph (b) in respect of the particular amount of interest in respect of the third affiliate is divided by the amount determined for C in the formula in that paragraph, and

N is the amount determined when the amount determined under paragraph (c) in respect of the particular amount of interest in respect of the group foreign affiliate is divided by the amount determined for D in the formula in that paragraph.

Technical Notes: If subsection 5907(2.81) applies, in respect of the particular amount of interest referred to in subsection 5907(2.8), to the specified foreign affiliates of the corporation resident in Canada, the following rules apply:

- Where the specified foreign affiliate is the second affiliate referred to in subsection 5907(2.8), the particular amount of interest is to be deducted in computing the specified foreign affiliate's exempt surplus at the end of the applicable taxation year of the specified foreign affiliate, to the extent of the specified foreign affiliate's available exempt surplus amount in respect of the applicable taxation year of the specified foreign affiliate.

- Where the specified foreign affiliate is the third affiliate referred to in subsection 5907(2.8), there shall be deducted in computing the specified foreign affiliate's exempt surplus at the end of the applicable taxation year of the specified foreign affiliate, the lesser of the specified foreign affiliate's available exempt surplus amount in respect of the applicable taxation year of the specified foreign affiliate and the amount determined by the formula

  $$(A - B) \times C$$

  where

  A is the particular amount of interest,

  B is the amount deducted because of paragraph 5907(2.81)(a) in computing the second affiliate's exempt surplus at the end of the applicable taxation year of the second affiliate, and

  C is the specified adjustment factor, in respect of the corporation resident in Canada, in respect of the specified foreign affiliate, in respect of the applicable taxation year of the second affiliate.

- Where the specified foreign affiliate is a group foreign affiliate (defined in subsection referred to in subsection 5907(2.84)), there shall be deducted in computing the specified foreign affiliate's exempt surplus in respect of the corporation resident in Canada at the end of the applicable taxation year of the specified foreign affiliate, the lesser of the specified foreign affiliate's available exempt surplus (defined in subsection referred to in subsection 5907(2.83)) in respect of its applicable taxation year and the amount determined by the formula

  $$(A - B - C) \times D$$

  where

  A is the particular amount of interest,

  B is the amount deducted because of paragraph 5907(2.81)(a) in computing the second affiliate's exempt surplus at the end of the applicable taxation year of the second affiliate,

  C is the amount determined when the amount deducted because of paragraph 5907(2.81)(b) in computing the third affiliate's exempt surplus at the end of the applicable taxation year of the third affiliate is divided by the amount determined for C in the formula in paragraph 5907(2.81)(b) in respect of the third affiliate, and

  D is the specified adjustment factor, in respect of the corporation resident in Canada, in respect of the specified foreign affiliate, in respect of the applicable taxation year of the second affiliate.

- Amounts in respect of the particular amount of interest must be deducted under paragraph 5907(2.81)(a) to (c) that subsection in computing the exempt surplus in respect of the corporation resident in Canada of the specified foreign affiliates of the corporation resident in Canada at the end of each of their applicable taxation years to the extent of the total of all amounts each of which is the available exempt surplus amount of a specified foreign affiliate of the corporation resident in Canada in respect of the applicable taxation year of that specified foreign affiliate.

- An exempt surplus reduction is to be applied against the second affiliate before it is applied against the third affiliate and is to be applied against the third affiliate before it is applied against a group foreign affiliate of the corporation resident in Canada.
- There is to be added in computing the exempt deficit in respect of the corporation resident in Canada of the second affiliate the amount determined by the formula:

$$K - (L + M + N)$$

where

K is the particular amount of interest,

L is the amount determined under paragraph 5907(2.81)(a) in respect of the particular amount of interest in respect of the second affiliate,

M is the amount determined when the amount determined under paragraph 5907(2.81)(b) in respect of the particular amount of interest in respect of the third affiliate is divided by the amount determined for C in the formula in that paragraph, and

N is the amount determined when the amount determined under paragraph 5907(2.81)(c) in respect of the particular amount of interest in respect of the group foreign affiliate is divided by the amount determined for D in the formula in that paragraph.

Related Provisions: ITA 257 — Negative amounts in formulas; Reg. 5907(2.8) — Conditions for subsec. (2.81) to apply; Reg. 5907(2.82) — No deduction for amount under (2.81)(a); Reg. 5907(2.83) — Definitions.

(2.82) [Application rule for Reg. 5907(2.81)] — In computing the second affiliate's income or loss for a taxation year from any source, no amount may be deducted in respect of an amount paid or payable by it that is referred to in paragraph (2.81)(a).

Technical Notes: Proposed subsection 5907(2.82) provides that, in computing the second affiliate's income or loss for a taxation year from any source, no amount is to be deducted in respect of an amount paid or payable by it that is referred to in paragraph 5907(2.81)(a).

Related Provisions: Reg. 5907(2.83) — Definitions.

(2.83) [Definitions for Reg. 5907(2.8)–(2.92)] — The following definitions apply in this subsection and subsections (2.8) to (2.82).

"applicable taxation year", of a specified foreign affiliate of the corporation resident in Canada, means the last taxation year of the specified foreign affiliate that ends in the particular taxation year of the particular foreign affiliate referred to in paragraph (2.8)(a).

Technical Notes: Proposed subsection 5907(2.83) sets out certain definitions used in subsections 5907(2.8) to (2.83).

"Applicable taxation year" of a specified foreign affiliate of the corporation resident in Canada, in subsection 5907(2.83) of the Regulations, is the last taxation year of the specified foreign affiliate that ends in the particular taxation year of the particular foreign affiliate referred to in paragraph 5907(2.8)(a).

"available exempt surplus amount", of a specified foreign affiliate of the corporation resident in Canada in respect of the applicable taxation year of the specified foreign affiliate, means the amount determined by the formula

$$(A + B + C) - (D + E + F + G)$$

where

A is the total of all amounts each of which is the portion of the specified foreign affiliate's income, for its applicable taxation year, from an active business that is included in computing the exempt earnings of the specified foreign affiliate in respect of the corporation resident in Canada,

B is the specified foreign affiliate's exempt surplus in respect of the corporation resident in Canada at the end of the specified foreign affiliate's taxation year that immediately precedes its applicable taxation year,

C is the total of all amounts each of which is the portion of any dividend received in the applicable taxation year, by the specified foreign affiliate from another foreign affiliate of the corporation resident in Canada, that is prescribed by paragraph 5900(1)(a) to have been paid out of that other affiliate's exempt surplus in respect of the corporation resident in Canada,

D is the total of all amounts each of which is the portion of the specified foreign affiliate's loss, for its applicable taxation year, from an active business that is included in computing the exempt loss of the specified foreign affiliate in respect of the corporation resident in Canada,

E is the specified foreign affiliate's exempt deficit in respect of the corporation resident in Canada at the end of the specified foreign affiliate's taxation year that immediately precedes its applicable taxation year,

F is the specified foreign affiliate's taxable deficit in respect of the corporation resident in Canada at the end of the specified foreign affiliate's taxation year that immediately precedes its applicable taxation year, and

G is the total of all amounts each of which is the portion of any dividend paid in the applicable taxation year by the specified foreign affiliate that is prescribed by paragraph 5900(1)(a) to have been paid out of its exempt surplus in respect of the corporation resident in Canada.

Technical Notes: "Available exempt surplus amount" of a specified foreign affiliate of the corporation resident in Canada, in subsection 5907(2.83) of the Regulations in respect of the applicable taxation year of the specified foreign affiliate is the amount determined by the formula

$$(A + B + C) - (D + E + F + G)$$

where

A is the total of all amounts of which is this portion the specified foreign affiliate's income, for its applicable taxation year, from an active business that is included in computing the exempt earnings in respect of the corporation resident in Canada of the specified foreign affiliate,

B is the specified foreign affiliate's exempt surplus in respect of the corporation resident in Canada at the end of the specified foreign affiliate's taxation year that immediately precedes its applicable taxation year,

C is the total of all amounts each of which is the portion of any dividend received in the applicable taxation year, by the specified foreign affiliate from another foreign affiliate of the corporation resident in Canada, that is prescribed by paragraph 5900(1)(a) to have been paid out of that other affiliate's exempt surplus,

D is the total of all amounts each of which is the portion of the specified foreign affiliate's loss, for its applicable taxation year, from an active business that is included in computing the exempt loss in respect of the corporation resident in Canada of the specified foreign affiliate,

E is the specified foreign affiliate's exempt deficit in respect of the corporation resident in Canada at the end of the specified foreign affiliate's taxation year that immediately precedes its applicable taxation year,

F is the specified foreign affiliate's taxable deficit in respect of the corporation resident in Canada at the end of the specified foreign affiliate's taxation year that immediately precedes its applicable taxation year, and

G is the total of all amounts each of which is the portion of any dividend paid in the applicable taxation year by the specified foreign affiliate that is prescribed by paragraph 5900(1)(a) to have been paid out of its exempt surplus.

Related Provisions: ITA 257 — Negative amounts in formulas.

"group foreign affiliate", at any time of a corporation resident in Canada, means any of its foreign affiliates (other than the second affiliate and the third affiliate) in which the second affiliate has, at that time, an equity percentage.

Technical Notes: "Group foreign affiliate", at any time, of a corporation resident in Canada, in subsection 5907(2.83) of the Regulations, is any of its foreign affiliates (other than the second affiliate and the third affiliate) in which the second affiliate has, at that time, an equity percentage.

"specified adjustment factor", in respect of the corporation resident in Canada, in respect of a specified foreign affiliate of the corporation resident in Canada, in respect of the applicable taxation year of the second affiliate, means the amount determined by the formula

A/B

where

A is the surplus entitlement percentage of the corporation resident in Canada in respect of the second affiliate, immediately before the end of the applicable taxation year of the second affiliate, and

B is the surplus entitlement percentage of the corporation resident in Canada in respect of the specified foreign affiliate, immediately before the end of the applicable taxation year of the second affiliate.

Technical Notes: "Specified adjustment factor", in respect of the corporation resident in Canada, in subsection 5907(2.83) of the Regulations, in respect of a specified foreign affiliate of the corporation resident in Canada, in respect of the applicable taxation year of the second affiliate, is the amount determined by the formula

A/B

where

A is the surplus entitlement percentage of the corporation resident in Canada in respect of the second affiliate, immediately before the end of the applicable taxation year of the second affiliate, and

B is the surplus entitlement percentage of the corporation resident in Canada in respect of the specified foreign affiliate, immediately before the end of the applicable taxation year of the second affiliate.

"specified foreign affiliate", of a corporation resident in Canada, means any foreign affiliate of the corporation that, at the end of the particular taxation year referred to in paragraph (2.8)(a), is

(a) the second affiliate;

(b) the third affiliate; or

(c) another corporation that is

(i) if there is only one group foreign affiliate of the corporation resident in Canada at the end of that particular taxation year, that group foreign affiliate, or

(ii) if there is more than one group foreign affiliate of the corporation resident in Canada at the end of that particular taxation year, the group foreign affiliate of the corporation resident in Canada with the greatest available exempt surplus amount for the applicable taxation year of that group foreign affiliate.

Technical Notes: "Specified foreign affiliate" of the corporation resident in Canada, in subsection 5907(2.83), is any foreign affiliate of the corporation resident in Canada that, at the end of the particular taxation year referred to in paragraph 5907(2.8)(a) of the Regulations, is

- the second affiliate,
- the third affiliate, or
- another corporation that is
  - if there is only one group foreign affiliate of the corporation resident in Canada at the end of that particular taxation year, that group foreign affiliate, or
  - if there is more than one group foreign affiliate of the corporation resident in Canada at the end of that particular taxation year, the group foreign affiliate of the corporation resident in Canada with the greatest available exempt surplus amount for the applicable taxation year of that group foreign affiliate.

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 3(28), will replace subsec. 5907(2.8) with subsecs. (2.8) to (2.83), applicable to taxation years, of a foreign affiliate of a taxpayer, to which ITA 95(2)(a)(ii)(D)(III) to (V), as proposed by subdl. 133(8) of the February 27, 2004 draft amendments, apply.

Related Provisions: Reg. 5907(2.83) — Definitions.

History: Subsec. 5907(2.8) added by P.C. 1997-1670, subsec. 8(12), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the subsec. applies to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

(2.9) [Where fresh start rules apply] — In computing the earnings from an active business of a foreign affiliate of a corporation resident in Canada for the affiliate's taxation year immediately before the particular taxation year of the affiliate referred to in paragraph 95(2)(k) of the Act,

(a) there shall be added to the amount determined under subparagraph (a)(i) or (ii) of the definition "earnings" in subsection (1) after adjustment in accordance with subsections (2), (2.1) and (2.2) the total of

(i) the amount, if any, by which the total determined in respect of the affiliate in clause (b)(i)(B) for the year exceeds the total determined in respect of the affiliate in clause (b)(i)(A) for the year,

(ii) where, at the end of the year, the affiliate was deemed because of paragraphs 95(2)(k) and 138(11.91)(e) of the Act to have disposed of property owned by it that was used or held by it in the course of a carrying on the active business in the year, the amount that is the total of all amounts each of which is the amount, if any, by which

(A) the lesser of the fair market value and the cost to the affiliate at the end of the year of a capital property (referred to in this subparagraph and subparagraph (b)(ii) as a particular "depreciable asset") owned by it that

(I) was used or held by it in the course of carrying on the active business in the year,

(II) was deemed because of paragraphs 95(2)(k) and 138(11.91)(e) of the Act to have been disposed of at the end of the year, and

(III) was property in respect of the cost of which amounts were, at any time, deductible in computing the earnings from the active business under subparagraph (a)(i) or (ii) of the definition "earnings" in subsection (1)

exceeds

(B) the amount, if any, by which the cost to the affiliate of the particular depreciable asset exceeds the total of all amounts each of which is an amount that can reasonably be regarded as having been deducted in respect of the cost of the particular depreciable asset in computing the earnings (as would be defined in subsection (1) if that definition were read as if the reference in that definition to this subsection did not exist) of the affiliate from the active business in the year or in any preceding taxation year of the affiliate in which it was a foreign affiliate of the corporation or of another corporation resident in Canada which the corporation was not dealing with at arm's length at any time, and

(iii) where, at the end of the year, the affiliate was deemed because of paragraphs 95(2)(k) and 138(11.91)(e) of the Act to have disposed of property (other than capital property) owned by it that was used or held by it in the course of carrying on the active business in the year, the amount that is the total of all amounts each of which is an amount, if any, by which the fair market value of such a property exceeds the cost to the affiliate of the property at the time that is immediately before the end of the year; and

(b) there shall be deducted from the amount determined under subparagraph (a)(i) or (ii) of the definition "earnings" in subsection (1) after adjustment in accordance with subsections (2), (2.1) and (2.2) the total of

(i) the amount, if any, by which

(A) the total of all amounts each of which is a maximum amount deemed because of paragraphs 95(2)(k) and 138(11.91)(d) of the Act to have been claimed under subparagraphs 138(3)(a)(i), (ii) and (iv) and paragraphs 20(1)(l) and (l.1) and 20(7)(c) of the Act (each of which provisions is referred to in this subparagraph as a "reserve provision") in the year

exceeds

(B) the total of all amounts each of which is an amount actually claimed by the affiliate as a reserve in the year that can reasonably be considered to be in respect of amounts in respect of which a reserve could have been claimed under a reserve provision on the assumption that the affiliate could have claimed amounts in respect of the reserve provisions in the year,

(ii) the amount that is the total of all amounts each of which is the amount, if any, by which the amount determined under clause (a)(ii)(B) in respect of a particular depreciable asset described in clause (a)(ii)(A) exceeds the fair market value of the particular depreciable asset at the end of the year, and

(iii) where, at the end of the year, the affiliate was deemed because of paragraphs 95(2)(k) and 138(11.91)(e) of the Act to have disposed of propety (other than capital property) owned by it that was used or held by it in the course of carrying on the active business in the year, the amount that is the total of all amounts each of which is an amount, if any, by which the cost to the affiliate of such a property at the time that is immediately before the end of the year exceeds the fair market value of the property at the end of the year.

Proposed Amendment — Reg. 5907(2.9), (2.91)

(2.9) [Where fresh start rules apply] — If paragraph 95(2)(k.1) of the Act applies in respect of a particular taxation year of a foreign affiliate of a taxpayer or in respect of a particular fiscal period of a partnership at the end of which a foreign affiliate of a taxpayer is a member of the partnership (which foreign affiliate or partnership is referred to in this subsection as the "operator" and which particular taxation year or particular fiscal period is referred to in this subsection as the "specified taxation year"), in computing the affiliate's earnings or loss from the foreign business referred to in that paragraph or from the disposition of property used or held in the course of carrying on the foreign business referred to in that paragraph (which foreign business is referred to in this subsection as the "foreign business") for the affiliate's taxation year (which taxation year is referred to in paragraphs (a) and (b) as the "preceding taxation year") that is the affiliate's preceding taxation year referred to in paragraph 95(2)(k) of the Act or that is the affiliate's taxation year in which the preceding fiscal period referred to in paragraph 95(2)(k) of the Act ended, as the case may be,

(a) there shall be added to the amount determined under paragraph (a) of the definition "earnings" in subsection (1), after adjustment in accordance with subsections (2) to (2.2),

(i) where the operator is the affiliate, the total of

(A) the amount, if any, by which the total determined under subclause (b)(i)(A)(II) in respect of the operator for the preceding taxation year exceeds the total determined under subclause (b)(i)(A)(I) in respect of the operator for that year,

(B) if the operator was deemed because of paragraphs 95(2)(k.1) and 138(11.91)(e) of the Act to have, at the end of the preceding taxation year, disposed of property owned by it that was used or held by it in the course of carrying on the foreign business in that year, the total of all amounts each of which is the amount, if any, by which

(I) the lesser of the fair market value and the cost to the operator immediately before the end of that year of a capital property (referred to in this subclause and in subclause (II) as a "particular depreciable asset") owned by it that

1. was used or held by it in the course of carrying on the foreign business in that year,

2. was deemed because of paragraphs 95(2)(k.1) and 138(11.91)(e) of the Act to have been disposed of at the end of that year, and

3. was property in respect of the cost of which amounts were, at any time, deductible in computing the operator's income or loss for the purpose of computing the affiliate's earnings or loss from the foreign business under paragraph (a) of the definition "earnings", or under paragraph (a) of the definition "loss", in subsection (1)

exceed

(II) the amount, if any, by which the cost to the operator immediately before the end of that year of the particular depreciable asset exceeds the total of all amounts each of which is an amount that can reasonably be regarded as having been deducted in respect of the cost of the particular depreciable asset in computing the operator's income or loss for the purpose of computing the earnings or loss (determined without reference to this subsection) of the affiliate from the foreign business in any taxation year preceding the specified taxation year of the affiliate in which it was a foreign affiliate of the corporation or of another corporation resident in Canada with which the corporation was not dealing at arm's length at any time, and

(C) if the operator was deemed because of paragraphs 95(2)(k.1) and 138(11.91)(e) of the Act to have, at the end of the preceding taxation year, disposed of property owned by it that was used or held by it in the course of carrying on the foreign business in that year, the total of all amounts each of which is the amount, if any, by which the fair market value, immediately before the end of that year, of each property (other than capital property, eligible capital property or resource property) deemed because of those paragraphs to have been disposed of exceeds the cost to the operator of the property at that time,

(D) if the operator was deemed because of paragraphs 95(2)(k.1) and 138(11.91)(e) of the Act to have, at the end of the preceding taxation year, disposed of eligible capital property, the amount, if any, required by subsection 14(1) of the Act to be included in computing the operator's income for that year from the foreign business, and

(E) if the operator was deemed because of paragraphs 95(2)(k.1) and 138(11.91)(e) of the Act to have, at the end of the preceding taxation year, disposed of resource property, the amount, if any, by which

(I) the total of all amounts included by subsection 59(1) or paragraph 59(3.2)(c) or (c.1) of the Act in computing the operator's income for that year from the foreign business

exceeds

(II) the total of all amounts that were deductible under section 66, 66.1, 66.2, 66.21 or 66.4 of the Act in computing the operator's income for that year from the foreign business, and

(ii) where the operator is the partnership, the proportion of the total determined under subparagraph (i) that the affiliate's share of the partnership's income or loss for the preceding taxation year is of the partnership's income or loss for that year but, for the purpose of this subparagraph, if both the income and loss of the partnership for the preceding taxation year are nil, that proportion is to be determined as if the partnership had income for that year in the amount of $1,000,000; and

(b) there shall be added to the amount determined under paragraph (a) of the definition "loss" in subsection (1)

(i) where the operator is the affiliate, the total of

(A) the amount, if any, by which

(I) the total of all amounts each of which is an amount deemed because of paragraphs 95(2)(k.1) and 138(11.91)(d) of the Act to have been claimed under paragraph 20(1)(l), 20(1)(l.1) or 20(7)(c), or subparagraph 138(3)(a)(i), (ii) or (iv), of the Act (each of which provisions is referred to in this subparagraph as a "reserve provision") in computing the income from the foreign business for the preceding taxation year

exceeds

(II) the total of all amounts each of which is an amount actually claimed by the operator as a reserve in computing its income from the foreign business for that year that can reasonably be considered to be in respect of amounts in respect of which a reserve could have been claimed under a reserve provision on the assumption that the operator could have claimed amounts in respect of the reserve provisions for that year,

(B) the total of all amounts each of which is the amount, if any, by which the amount determined under subclause (a)(i)(B)(II) in respect of a particular depreciable asset described in subclause (a)(i)(B)(I) exceeds the fair market value, at the end of the preceding taxation year, of the particular depreciable asset,

(C) if the operator was deemed because of paragraphs 95(2)(k.1) and 138(11.91)(e) of the Act to have, at the end of the preceding taxation year, disposed of property owned by it that was used or held by it in the course of carrying on the foreign business in that year, the total of all amounts each of which is the amount, if any, by which the cost to the operator, immediately before the end of that year, of each property (other than capital property, eligible capital property or resource property) deemed because of those paragraphs to have been disposed of exceeds the fair market value of the property at the end of that year,

(D) if the operator was, because of paragraphs 95(2)(k.1) and 138(11.91)(e) of the Act, deemed to have, at the end of the preceding taxation year, disposed of eligible capital property, the amount, if any, that would be permitted by paragraph 24(1)(a) of the Act to be

deducted in computing the operator's income for that year from the foreign business if the operator had, immediately before the end of that year, ceased to carry on the foreign business, and

(F) the amount, if any, by which the total determined in respect of the operator in subclause (a)(i)(E)(II) for the preceding taxation year exceeds the total determined in respect of the operator in subclause (a)(i)(E)(I) for that year, and

(ii) where the operator is the partnership, the proportion of the total determined under subparagraph (i) that the affiliate's share of the income or loss of the partnership for the preceding taxation year is of the income or loss of the partnership for that year but, for the purpose of this subparagraph, if both the income and loss of the partnership for the preceding taxation year are nil, that proportion is determined as if the partnership had income for that year in the amount of $1,000,000.

Technical Notes Subsection 5907(2.9) applies where the fresh start rules in paragraph 95(2)(k) of the Act apply to a foreign affiliate of a corporation resident in Canada in respect of a "foreign business".

Subsection 5907(2.9) ensures that appropriate adjustments are made to the surplus accounts of the affiliate.

In general terms, subsection 5907(2.9) provides that there is to be added to the affiliate's "earnings" (as defined in subsection 5907(1) of the Regulations) for the last taxation year of the affiliate before the fresh start year the total of the following amounts:

- the amount by which the actual reserves claimed exceed the maximum reserve allowed under paragraph 95(2)(k) of the Act for that last taxation year;
- where, because of paragraphs 95(2)(k) and 138(11.91)(e) of the Act, there is a deemed disposition of depreciable property that was used or held by the affiliate in the course of carrying on the foreign business, the amount by which the lesser of the fair market value and the cost to the affiliate of the property exceeds the undepreciated capital cost (or an analogous concept under the relevant foreign tax law) of the property at the end of that last taxation year; and
- where, because of paragraphs 95(2)(k) and 138(11.91)(e) of the Act, there is a deemed disposition of property (other than capital property) that was used or held by the affiliate in the course of carrying on the foreign business, the amount by which the fair market value of the property exceeds the cost of the property to the affiliate at the end of that last taxation year.

These additions to "earnings" result in corresponding increases in the balance of the affiliate's relevant surplus account.

In general terms, subsection 5907(2.9) provides that there is to be deducted from "earnings" for the last taxation year of the affiliate before the fresh start year the total of the following amounts:

- the maximum reserve allowed under paragraph 95(2)(k) of the Act minus the actual reserve claimed at the end of that last taxation year;
- where, because of paragraphs 95(2)(k) and 138(11.91)(e) of the Act, there is a deemed disposition of depreciable property that was used or held by the affiliate in the course of carrying on the foreign business, the amount by which the undepreciated capital cost of the property exceeds the lesser of fair market value and cost to the affiliate of the property at the end of that last taxation year; and
- where, because of paragraphs 95(2)(k) and 138(11.91)(e) of the Act, there is a deemed disposition of property (other than capital property) that was used or held by the affiliate in the course of carrying on the foreign business, the amount by which the cost of the property to the affiliate exceeds the fair market value of the property at the end of that last taxation year.

These decreases to "earnings" result in corresponding decreases in the balance of the affiliate's relevant surplus account.

Subsection 5907(2.9) as proposed to be amended to reflect the amendments to the Act which are set out in amended paragraph 95(2)(k), new paragraph 95(2)(k.1) and amended subsection 138(11.91) of the Act. In particular, subsection 5907(2.9) is proposed to be amended in the following ways.

First, subsection 5907(2.9) is proposed to be amended to reflect the proposed splitting of paragraph 95(2)(k) of the Act into paragraphs 95(2)(k) and (k.1).

Second, consistent with paragraphs 95(2)(k) and (k.1) of the Act, the proposed amendments to subsection 5907(2.9) ensure that the fresh start rules will apply where the foreign business is carried on by a partnership of which a foreign affiliate of a taxpayer is a member. These amendments to subsection 5907(2.9) ensure, in the case of partnerships, that the fresh start rules will work on the basis of fiscal periods of the partnership and that those rules will therefore be relevant in the computation of the affiliate's foreign accrual property income for the affiliate's taxation year that includes the end of a fiscal period to which the fresh start rules apply. The expression "operator" refers to the affiliate (in the case where the affiliate directly carries on the foreign business) or to the partnership (in the case where the partnership carries on the foreign business). The amounts added by subsection 5907(2.9) to "earnings" or "loss" are used in computing the earnings or loss from the foreign business (when it was an active business) of the affiliate in the preceding taxation year or fiscal period referred to in paragraph 95(2)(k), as the case may be, (which preceding taxation year or preceding fiscal period is referred to as the "preceding taxation year") in which the affiliate is deemed to have disposed of property.

Third, the proposed amendments to subsection 5907(2.9) modify the manner in which any necessary decreases are made to the affiliate's relevant surplus account. As noted above, existing subsection 5907(2.9) provides for the decreases to surplus to be made by way of decreases to "earnings". Amended subsection 5907(2.9) provides, instead, for those amounts to be placed in the "loss" (as defined in subsection 5907(1)) of the affiliate, which result in corresponding decreases in the balance of the surplus account.

Fourth, amended subsection 5907(2.9) contains new rules in respect of eligible capital property and resource property to deal more appropriately with these types of property. As mentioned above, existing subsection 5907(2.9) ensures that where, because of paragraphs 95(2)(k) and 138(11.91)(e) of the Act, there is a deemed disposition of property that was used or held by the affiliate in the course of carrying on the foreign business, the affiliate's "earnings" are increased by the total of all amounts each of which is the amount by which the fair market value of the property (other than capital property) to the affiliate exceeds the cost of the property. (There is a corresponding rule in existing subsection 5907(2.9) that provides for a decrease of "earnings" if the cost of the property to the affiliate exceeds the fair market value of the property.)

As proposed to be amended, subsection 5907(2.9) ensures that where, because of paragraphs 95(2)(k) and 138(11.91)(e) of the Act, there is a deemed disposition of eligible capital property, the affiliate's "earnings" are increased by the amount, if any, required by subsection 14(1) of the Act to be included in computing the operator's income for that preceding taxation year from the foreign business. Conversely, amended subsection 5907(2.9) also ensures that, if the operator was, because of paragraphs 95(2)(k.1) and 138(11.91)(e) of the Act, deemed to have, at the end of that preceding taxation year, disposed of eligible capital property, the affiliate's "loss" is increased by the amount, if any, that would be permitted by paragraph 24(1)(a) of the Act to be deducted in computing the operator's income for that year from the foreign business if the operator had, immediately before the end of that year, ceased to carry on the foreign business.

For more detail about the treatment of the untaxed portion of the gain or loss from the sale of excluded property that is eligible capital property, refer to the commentaries on new paragraph (a.1) of the definition "exempt earnings", and new paragraph (a.1) of the definition "exempt loss", respectively, in subsection 5907(1) of the Regulations.

Amended subsection 5907(2.9) ensures that where, because of paragraphs 95(2)(k) and 138(11.91)(e) of the Act, there is a deemed disposition of resource property, the affiliate's "earnings" are increased by the amount, if any, by which

- the total of all amounts included by subsection 59(1) or paragraph 59(3.2)(c) or (c.1) of the Act in computing the operator's income for that preceding taxation year from the active business

exceeds

- the total of all amounts that were deductible under section 66, 66.1, 66.2, 66.21 or 66.4 of the Act in computing the operator's income for that year from the active business.

Note that there is a corresponding rule in amended subsection 5907(2.9) for an inclusion in "loss" in the converse situation.

Fifth, proposed amendments to subsection 5907(2.9) provide a rule for the determination, where the operator is the partnership, of the amounts required by that subsection to be added to the affiliate's "earnings" or "loss", as the case may be, for the preceding taxation year. The amount of the increase to the affiliate's "earnings" or "loss" is essentially the amount of the increase to the "earnings" or "loss" for the partnership multiplied by the fraction the numerator of which is the affiliate's share of the income or loss of the partnership for that year and the denominator of which is the income or loss of the partnership for that year. For the purpose of this calculation, where both the income and the loss of the partnership for that preceding year are nil, the partnership is assumed to have an income of $1 million for that year.

The amendments to subsection 5907(2.9) are proposed to apply to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. Note that these amendments are included in the Fresh Start Section 95 Election package described at the beginning of the commentary to section 95 of the Act.

Related Provisions: Reg. 5907(2.91) — Property deemed to have been disposed of and reacquired.

(2.91) [Deemed disposition and reacquisition] — Any property of a foreign affiliate of a corporation resident in Canada, or of a partnership of which a foreign affiliate of a corporation resident in Canada is a member, that is, for the purposes of subdivision i of Division B of Part I of the Act, deemed because of either paragraph 95(2)(k.1) or (k.3), and paragraph 138(11.91)(e), of the Act to have been disposed of and reacquired by the affiliate or the partnership, as the case may be, is, for the purpose of this section, deemed to have been disposed of and reacquired by the affiliate or the partnership, as the case may be, in the same manner and for the same amounts as if those provisions applied for the purpose of this section.

Technical Notes: Proposed new subsection 5907(2.91) is consequential to the introduction of new paragraphs 95(2)(k.1) and (k.3) of the Act. New subsection 5907(2.91) provides that, for the purposes of section 5907 of the Regulations, any property of a foreign affiliate of a corporation resident in Canada, or of a partnership of which a foreign affiliate of a corporation resident in Canada is a member, that is, for the purposes of subdivision i of Division B of Part I of the Act, deemed because of either paragraph 95(2)(k.1) or (k.3), and paragraph 138(11.91)(e), of the Act to have been disposed of and reacquired by the affiliate or the partnership, as the case may be, is, for the purpose of section 5907 of the Regulations, deemed to have been disposed of and reacquired by the affiliate or the partnership, as the case may be, in the same manner and for the same amounts as if those provisions applied for the purpose of section 5907 of the Regulations.

Subsection 5907(2.91) ensures that the deemed disposition and reacquisition are taken into account when calculating a foreign affiliate's surplus accounts.

New subsection 5907(2.91) is proposed to apply to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. Note that this amendment is included in the Fresh Start Section 95 Election package described at the beginning of the commentary to section 95 of the Act.

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 3(28), will replace subsec. (2.9) with subsecs. (2.9) and (2.91) applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. However, if a taxpayer referred to in subsection 5907(2.9) makes a valid election under subsec. 133(69) of the February 27, 2004 draft amendments, new subsecs. 5907(2.9) and (2.91) apply to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994.

History: Subsec. 5907(2.9) added by P.C. 1997-1670, subsec. 8(12), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the subsec. applies to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

(3) [Pre-1972 foreign affiliate] — For the purposes of this Part, any corporation that was, on January 1, 1972, a foreign affiliate of a taxpayer shall be deemed to have become a foreign affiliate of the taxpayer on that day.

(4) ["Government of a country"] — For the purposes of this Part, "government of a country" includes the government of a state, province or other political subdivision of that country.

(5) [Capital gains and losses] — For the purposes of this section, each capital gain and each capital loss of a foreign affiliate of a taxpayer from the disposition of property shall be computed in accordance with the rules set out in subsection 95(2) of the Act and, for the purposes of subsection (6), where any such gain or loss is required to be computed in Canadian currency, the amount of such gain or loss shall be converted from Canadian currency into the currency referred to in subsection (6) at the rate of exchange prevailing on the date of disposition of the property.

Related Provisions: Reg. 5907(5.1) — Exception.

History: Subsec. 5907(5) substituted by P.C. 1985-467, subsec. 4(29), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable in respect of dispositions made after November 12, 1981.

(5.1) [Where no gain or loss recognized by other country] — Notwithstanding subsection (5) and except as provided in subsection (9), where, under the income tax law of a country other than Canada that is relevant in computing the earnings of a foreign affiliate of a taxpayer resident in Canada from an active business carried on by it in a country, no gain or loss is recognized in respect of a disposition by the affiliate of a capital property used or held principally for the purpose of gaining or producing income from an active business to a person (in this subsection referred to as the "transferee") that is another foreign affiliate of the taxpayer or that is a foreign affiliate of another person with whom the taxpayer does not deal at arm's length, for the purposes of this section,

(a) the affiliate's proceeds of disposition of the property shall be deemed to be an amount equal to the aggregate of the adjusted cost base to the affiliate of the property immediately before the disposition and any outlays and expenses to the extent they were made or incurred by the affiliate for the purpose of making the disposition;

(b) the cost to the transferee of the property acquired from the affiliate shall be deemed to be an amount equal to the affiliate's proceeds of disposition, as determined under paragraph (a); and

(c) the transferee shall be deemed to have acquired the property on the date that it was acquired by the affiliate.

Proposed Repeal — Reg. 5907(5.1)

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 3(29), will repeal subsec. 5907(5.1), applicable to dispositions to which ITA 95(2)(f.3) to (f.9), as amended by the February 27, 2004 draft amendments, apply.

Technical Notes: Subsection 5907(5.1) of the Regulations is repealed because of the introduction of the rules in paragraphs 95(2)(c.2) to (c.6) and paragraphs 95(2)(f.3) to (f.8) of the Act. See the commentary for those proposed new paragraphs.

History: Subsec. 5907(5.1) substituted by P.C. 1985-467, subsec. 4(30), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to 1976 *et seq.*

Subsec. 5907(5.1) added by P.C. 1980-503, subsec. 5(6), February 8, 1980, *Canada Gazette*, Part II, February 27, 1980, effective in respect of 1976 *et seq.*

(6) [Selection of currency] — All amounts referred to in subsections (1) and (2) shall be maintained on a consistent basis from year to year in the currency of the country in which the foreign affiliate of the corporation resident in Canada is itself resident or such currency, other than Canadian currency, as is reasonable in the circumstances.

Information Circulars: 77-9R: Books, records and other requirements for taxpayers having foreign affiliates.

(7) [Stock dividend] — For the purposes of this Part, the amount of any stock dividend paid by a foreign affiliate of a corporation resident in Canada on a share of a class of its capital stock shall be deemed to be nil.

(7.1) [Dividend giving rise to credit in other country] — Where, at any time in a taxation year of a corporation resident in Canada, a foreign affiliate of the corporation (in this subsection referred to as the "payor affiliate") pays a dividend on the shares of any class of its capital stock to the corporation (in this subsection referred to as the "particular dividend") and as a result of the payment the corporation is entitled to a tax credit from the government of the country in which the payor affiliate is resident,

(a) if the particular dividend was paid on or after the day on which this subsection comes into force, or

(b) if the particular dividend was paid before the day on which this subsection comes into force and in a taxation year commencing after 1978 and the corporation elects in respect of the tax credit in its return of income for the 1985, 1986, 1987, 1988 or 1989 taxation year required to be filed pursuant to subsection 150(1) of the Act,

for the purpose of this Part, the following rules apply:

(c) the tax credit shall be deemed to be a dividend paid at that time by the payor affiliate on the shares of that class of its capital stock to the corporation,

(d) immediately before that time there shall be added to the exempt surplus of the payor affiliate an amount equal to the proportion of the tax credit that

(i) the portion of the particular dividend that would, were the corporation not entitled to the tax credit, be deemed by subsection 5900(1) to have been paid out of the payor affiliate's exempt surplus in respect of the corporation

is of

(ii) the particular dividend,

(e) immediately before that time, there shall be added to the taxable surplus of the payor affiliate an amount equal to the proportion of the tax credit that

(i) the portion of the particular dividend that would, were the corporation not entitled to the tax credit, be deemed by subsection 5900(1) to have been paid out of the payor affiliate's taxable surplus in respect of the corporation

is of

(ii) the particular dividend, and

(f) the foreign tax applicable to the aggregate of

(i) the portion of the particular dividend determined under subparagraph (e)(i), and

(ii) the portion of any amount deemed to be a dividend by virtue of paragraph (c) that is deemed by subsection 5900(1) to have been paid out of the payor affiliate's taxable surplus in respect of the corporation

shall, notwithstanding paragraph 5900(1)(d), be equal to the amount determined under paragraph 5900(1)(d) in respect of the amount referred to in subparagraph (i), less the amount determined under paragraph (e).

History: Subsec. 5907(7.1) added by P.C. 1989-321, subsec. 3(11), March 2, 1989, *Canada Gazette*, Part II, March 15, 1989, applicable for purposes of making computations under Part LIX after March 15, 1989 and, where the taxpayer so elects in accordance with para. 5907(7.1)(b), with respect to computations under Part LIX at any time commencing after the time immediately prior to the receipt of the tax credit specified in the election.

(8) [Deemed new taxation year on merger] — For the purposes of computing the various amounts referred to in this section, the first taxation year of a foreign affiliate formed as a result of a merger in the manner described in subsection 5905(3) shall be deemed to have commenced at the time of the merger, and a taxation year of a predecessor corporation (within the meaning assigned by subsection 5905(3)) that would otherwise have ended after the merger shall be deemed to have ended immediately before the merger.

(9) [Where FA dissolved] — Where a foreign affiliate of a taxpayer resident in Canada has been dissolved and paragraph 95(2)(e.1) of the Act does not apply, for the purpose of computing the various amounts referred to in this section, the following rules apply:

(a) where, at a particular time in the course of the dissolution, all or substantially all of the property owned by the affiliate immediately before that time was distributed to the shareholders of the affiliate, the taxation year of the affiliate that otherwise would have included the particular time shall be deemed to have ended immediately before the particular time;

(b) except as provided in paragraph 88(3)(a) and subparagraph 95(2)(e)(i) of the Act,

(i) each property of the affiliate that was distributed to the shareholders in the course of the dissolution shall be deemed to have been disposed of immediately before the end of the affiliate's taxation year deemed to have ended by paragraph (a) for proceeds of disposition equal to the fair market value thereof immediately before the particular time, and

(ii) each property of the affiliate that was otherwise disposed of in the course of the dissolution shall be deemed to have been disposed of by the affiliate for proceeds of disposition equal to the fair market value thereof at the time of disposition; and

(c) except as provided in subparagraph 95(2)(e)(i) of the Act, each property of the dissolved affiliate that was disposed of or distributed in the course of the dissolution to another foreign affiliate of the taxpayer resident in Canada shall be deemed to have been acquired by that other foreign affiliate at a cost equal to the proceeds of disposition of that property to the dissolved affiliate, as determined in paragraph (b).

Proposed Amendment — Reg. 5907(9), (9.1)

(9) [Where FA liquidated and dissolved] — If a foreign affiliate of the taxpayer resident in Canada has been liquidated and dissolved (otherwise than as a result of a foreign merger within the meaning assigned by subsection 87(8.1) of the Act), subject to subsection 88(3) and to paragraphs 95(2)(e) and (e.1) of the Act

(a) where at a particular time in the course of the liquidation and dissolution, the fair market value of the property that has been disposed of by the affiliate in the course of the liquidation and dissolution equals or is more than 90% of the fair market value of the property that was owned by the affiliate, immediately before the commencement of the liquidation and the dissolution, the taxation year of the affiliate that would have included the particular time is deemed to have ended immediately before that time; and

(b) each property of the affiliate that was distributed or disposed of by the affiliate in the course of the liquidation and the dissolution is deemed

(i) to have been disposed of by the affiliate for proceeds of disposition equal to the fair market value of the property, immediately before it was distributed or disposed of, and

(ii) to have been acquired by the person or partnership to whom the affiliate distributed or disposed of the property at a cost equal to the affiliate's proceeds of disposition of the property.

Technical Notes: Where a foreign affiliate of a taxpayer resident in Canada has been dissolved, subject to the rules in paragraph 95(2)(e.1) of the Act, subsection 5907(9) provides that certain rules apply for the purposes of computing the various amounts referred to in section 5907 of the Regulations.

It is proposed that subsection 5907(9) be amended so that the rules will be subject to the rules in proposed new paragraphs 95(2)(e) and (e.1) and subsection 88(3). See the commentary for the proposed new paragraphs and subsection.

It is also proposed that subsection 5907(9) be amended so that the rules do not apply to dissolutions of a foreign affiliate because of a foreign merger within the meaning assigned by subsection 87(8.1) of the Act.

(9.1) [Where FA liquidated and dissolved] — Subject to subsection (9) and to subsection 88(3) of the Act and paragraphs 95(2)(d) to (e.6) of the Act, if a foreign affiliate of a taxpayer resident in Canada has, as a payment of a dividend or as a distribution of a property, transferred a property to a shareholder of the affiliate (or to a person with whom the shareholder was not dealing at arm's length),

(a) the property of the affiliate that was so transferred is deemed

(i) to have been disposed of by the affiliate for proceeds of disposition equal to the fair market value of the property, immediately before it was so transferred, and

(ii) to have been acquired by the person or partnership to whom the affiliate transferred the property at a cost equal to the affiliate's proceeds of disposition of the property; and

(b) the amount, in respect of the property, of the dividend or distribution made by the affiliate to the person to whom the property was transferred is deemed to be equal to the affiliate's proceeds of disposition of the property.

Technical Notes: Proposed new subsection 5907(9.1) provides rules similar to those contained in proposed amended subsection 5907(9) of the Regulations that apply on transfers of property by a foreign affiliate of a taxpayer resident in Canada as a payment of a dividend or as a distribution of property to a shareholder of the foreign affiliate.

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 3(30), will amend subsec. 5907(9) to read as above and add (9.1), applicable to dissolutions that begin after December 20, 2002 and payments of dividends and distributions of property made after December 20, 2002.

History: Subsec. 5907(9) substituted by P.C. 1985-467, subsec. 4(31), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to 1976 *et seq.*

Subsec. 5907(9) substituted by P.C. 1980-503, subsec. 5(7), February 8, 1980, *Canada Gazette*, Part II, February 27, 1980, effective in respect of 1976 *et seq.*

(10) [Tax sparing] — Where

(a) the net earnings or net loss for a taxation year of a foreign affiliate of a corporation resident in Canada from an active business carried on in a country other than Canada would otherwise be included in the affiliate's taxable earnings or taxable loss, as the case may be, for the year,

(b) the rate of the income or profits tax to which any earnings of that active business of the affiliate are subjected by the government of that country is, by virtue of a special exemption from or reduction of tax (other than an export incentive) that is provided under a law of such country to promote investments or projects in pursuance of a program of economic development, less than the rate of such tax that would, but for such exemption or reduction, be paid by the affiliate, and

(c) the affiliate qualified for such exemption from or reduction of tax in respect of an investment made by it in that country before January 1, 1976 or in respect of an investment made by it or a project undertaken by it in that country pursuant to an agreement in writing entered into before January 1, 1976,

for the purposes of this Part, such net earnings or net loss shall be included in the affiliate's exempt earnings or exempt loss, as the case may be, for the year and not in the affiliate's taxable earnings or taxable loss, as the case may be, for the year.

(11) ["Designated treaty country"] — For the purposes of this Part, a country is a "designated treaty country" for a taxation year of a foreign affiliate of a corporation where Canada and that country have entered into a comprehensive agreement or convention for the elimination of double taxation on income that has entered into force and has effect for that taxation year of the affiliate but, any territory, possession, department, dependency or area of that country to which that agreement or convention does not apply is not included in that designated treaty country.

Related Provisions: Reg. 5907(11.1) — Effective date of treaty.

(11.1) [Effective date of treaty for Reg. 5907(11)] — For the purpose of subsection (11), where a comprehensive agreement or convention between Canada and another country for the elimination of double taxation on income has entered into force, that convention or agreement is deemed to have entered into force and have effect in respect of a taxation year of a foreign affiliate of a corporation any day of which is in the period that begins on the day on which the agreement or convention was signed and that ends on the last day of the last taxation year of the affiliate for which the agreement or convention is effective.

(11.2) [Whether FA resident in treaty country] — For the purposes of this Part, a foreign affiliate of a corporation is, at any time, deemed not to be resident in a country with which Canada has entered into a comprehensive agreement or convention for the elimination of double taxation on income unless

(a) the affiliate is, at that time, a resident of that country for the purpose of the agreement or convention;

(b) the affiliate would, at that time, be a resident of that country for the purpose of the agreement or convention if the affiliate were treated, for the purpose of income taxation in that country, as a body corporate;

(c) where the agreement or convention entered into force before 1995, the affiliate would, at that time, be a resident of that country for the purpose of the agreement or convention but for a provision in the agreement or convention that has not been amended after 1994 and that provides that the agreement or convention does not apply to the affiliate; or

(d) the affiliate would, at that time, be a resident of that country, as provided by paragraph (a), (b) or (c) if the agreement or convention had entered into force.

History: Subsec. 5907(11) amended, subsecs. (11.1) and (11.2) added, by P.C. 1997-1670, subsec. 8(13), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a corporation that begin after 1995, except that, where the corporation notifies the Minister of National Revenue in its return of income for its first taxation year that begins after 1994 or for a taxation year in which a dividend was paid by the foreign affiliate of its election to have subsections 5907(11) (as amended), (11.1) and (11.2) apply to a taxation year of the foreign affiliate of the corporation that begins before 1996,

(a) the amendment applies to that taxation year and each subsequent taxation year of the foreign affiliate of the corporation; and

(b) any reference in s. 5907 to "country listed in subsection (11)" shall be read as "designated treaty country" and any reference to "country not listed in subsection (11)" shall be read as "country that is not a designated treaty country" for that taxation year and those subsequent taxation years of the foreign affiliate of the corporation.

Subsec. 5907(11) substituted by P.C. 1989-321, subsec. 3(12), March 2, 1989, *Canada Gazette*, Part II, March 15, 1989, applicable to 1982 *et seq.*, except as otherwise noted in the above list. Those exceptions comprise additions and deletions made by subsecs. 3(13) to (18) of the said P.C. 1989-321.

Subsec. 5907(11) amended by P.C. 1980-503, subsecs. 5(8)–(10), February 8, 1980, *Canada Gazette*, Part II, February 27, 1980, effective as to paras. (a.1) and (d.1), in respect of 1978 *et seq.*, and as to paras. (v) and (w), in respect of 1980 *et seq.*

Subsec. 5907(11) amended by P.C. 1978-589, March 2, 1978, *Canada Gazette*, Part II, March 22, 1978, applicable, as to paras. (a), (b.1), (b.2), (c.1), (e.1), (f.1), (h), (s.1), (aa.1), (aa.2), (aa.3) and (ee.1), to 1976 *et seq.*, and as to paras. (u) and (kk), to taxation years commencing on or after January 1, 1978.

I.T. Technical News: 16 (U.S. S-Corps and LLCs).

(12) [ACB of partnership interest] — For the purposes of paragraph 95(2)(j) of the Act, the adjusted cost base to a foreign affiliate of a taxpayer of an interest in a partnership at any time is prescribed to be the cost thereof otherwise determined at that time except that

(a) there shall be added to that cost such of the following amounts as are applicable, namely,

(i) any amount included in the earnings of the affiliate for a taxation year ending after 1971 and before that time that may reasonably be considered to relate to profits of the partnership,

(ii) the affiliate's incomes as described by the description of "A" in the definition "foreign accrual property income" in subsection 95(1) of the Act for a taxation year ending after 1971 and before that time that can reasonably be considered to relate to profits of the partnership,

(iii) any amount included in computing the exempt earnings or taxable earnings, as the case may be, of the affiliate for a taxation year ending after 1971 and before that time that may reasonably be considered to relate to a capital gain of the partnership,

(iv) where the affiliate has, at any time before that time and in a taxation year ending after 1971, made a contribution of capital to the partnership otherwise than by way of a loan, such part of the amount of the contribution as cannot reasonably be regarded as a gift made to or for the benefit of any other member of the partnership who was related to the affiliate, and

(v) such portion of any income or profits tax refunded before that time by the government of a country to the partnership as may reasonably be regarded as tax refunded in respect of an amount described in any of subparagraphs (b)(i) to (iii), and

(b) there shall be deducted from that cost such of the following amounts as are applicable, namely,

(i) any amount included in the loss of the affiliate for a taxation year ending after 1971 that may reasonably be considered to relate to a loss of the partnership,

(ii) the affiliate's losses as described by the description of D in the definition "foreign accrual property income" in subsection 95(1) of the Act for a taxation year ending after 1971 and before that time that can reasonably be considered to relate to the losses of the partnership,

(iii) any amount included in computing the exempt loss or taxable loss, as the case may be, of the affiliate for a taxation year ending after 1971 and before that time that may reasonably be considered to relate to a capital loss of the partnership,

(iv) any amount received by the affiliate before that time and in a taxation year ending after 1971 as, on account or in lieu of payment of, or in satisfaction of, a distribution of his share of the partnership profits or partnership capital, and

(v) such portion of any income or profits tax paid before that time to the government of a country by the partnership as may reasonably be regarded as tax paid in respect of an amount described in any of subparagraphs (a)(i) to (iii),

and, for greater certainty, where any interest of a foreign affiliate in a partnership was reacquired by the affiliate after having been previously disposed of, no adjustment that was required to be made under this subsection before such reacquisition shall be made under this subsection to the cost to the affiliate of the interest as reacquired property of the affiliate.

History: Subparas. 5907(12)(a)(ii), (b)(ii) amended by P.C. 1997-1670, subsecs. 8(14), (16), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the subsec. applies to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

The opening words of subpara. (b) amended by P.C. 1997-1670, subsec. 8(15), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable after November 12, 1981.

Subsec. 5907(12) added by P.C. 1985-467, subsec. 4(32), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective commencing November 13, 1981.

(13) [Immigration of FA to Canada] — For the purpose of subparagraph 128.1(1)(d)(ii) of the Act, the amount prescribed to be included in the foreign accrual property income of a foreign affiliate of a taxpayer for a taxation year is the amount, if any, by which

(a) the taxable surplus of the affiliate in respect of the taxpayer at the end of the year other than the affiliate's net earnings for the year in respect of the affiliate's foreign accrual property income

Proposed Amendment — Reg. 5907(13)(a)

(a) the taxable surplus of the affiliate in respect of the taxpayer at the end of the year (other than the affiliate's net earnings for the year in respect of the affiliate's foreign accrual property income), minus the amount, if any, that would have been added to the underlying foreign tax of the affiliate in respect of the taxpayer, if each disposition deemed by paragraph 128.1(1)(b) of the Act had been an actual disposition, and that is not otherwise included in the underlying foreign tax of the affiliate,

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 3(31), will amend para. 5907(13)(a) to read as above, applicable after 1992, except that if the corporation elected in accordance with para. 111(4)(a) of S.C. 1994, c. 21 [see History to ITA 250(5.1)][see Notes to ITA 250(5.1)], the amendment applies to the corporation from the corporation's time of continuation (within the meaning assigned by the said para. 111(4)(a)).

Technical Notes: Subsection 5907(13) adds a prescribed amount to the foreign accrual property income (FAPI) of a foreign affiliate that immigrates to Canada. The starting-point for the determination of this amount is paragraph 5907(13)(a), which refers to the affiliate's taxable surplus for the taxation year that is deemed under section 128.1 of the Act to have ended before immigration (excluding net earnings in respect of FAPI).

Under section 128.1 of the Act, one of the tax consequences of immigration to Canada is a deemed disposition of most kinds of property. That deemed disposition will often cause an increase in the taxable surplus of an immigrating foreign affiliate. To ensure the appropriate measurement of such an increase, paragraph 5907(13)(a) is amended to exclude, from the taxable surplus amount it describes, any amount that would have been added to the affiliate's underlying foreign tax if the deemed disposition had been an actual disposition. This amendment generally applies after 1992. The sole exception is that if the affiliate continued into Canada before 1993 and elected, under paragraph 111(4)(a) of S.C. 1994, c. 21, to have subsection 250(5.1) of the Act apply in respect of the continuation, this amendment will apply to the affiliate from the time of that continuation.

exceeds the total of

(b) the amount determined by the formula

$$(A - B) \times (C - 1)$$

where

A is the total of the underlying foreign tax of the affiliate in respect of the taxpayer at the end of the year and the amount, to the extent that it is not otherwise included in that underlying foreign tax, that would have been added to that underlying foreign tax if each disposition deemed by paragraph 128.1(1)(b) of the Act had been an actual disposition,

B is the part of the value of A that can reasonably be considered to relate to the affiliate's net earnings for the year in respect of the affiliate's foreign accrual property income, and

C is the relevant tax factor, as defined in subsection 95(1) of the Act, and

(c) the amount, if any, by which

(i) the total of all amounts required by paragraph 92(1)(a) of the Act to be added at any time in a preceding taxation year in computing the adjusted cost base to the taxpayer of the shares of the affiliate owned by the taxpayer at the end of the year

exceeds

(ii) the total of all amounts required by paragraph 92(1)(b) of the Act to be deducted at any time in a preceding taxation year in computing the adjusted cost base to the taxpayer of the shares of the affiliate owned by the taxpayer at the end of the year.

Related Provisions: Reg. 5907(14) — Interpretation.

History: Subsec. 5907(13) amended by P.C. 1997-1670, subsec. 8(17), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable after 1992, except that where a corporation elects in accordance with paragraph 111(4)(a) of Statutes of Canada, 1994, chapter 21, the amendment applies to the corporation from the corporation's time of continuation (within the meaning assigned by that paragraph).

Subsec. 5907(13) added by P.C. 1985-467, subsec. 4(32), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective commencing November 13, 1981.

Interpretation Bulletins: IT-451R: Deemed disposition and acquisition on ceasing to be or become a registrant in Canada.

Proposed Addition — Reg. 5907(14)

(14) [Immigration of FA to Canada] — For the purpose of subsection (13), the amount that would have been added to the underlying foreign tax of the affiliate in respect of the taxpayer at the end of the year if each disposition deemed by paragraph 128.1(1)(b) of the Act had been an actual disposition is deemed to be nil if, had the taxpayer realized a gain from such an actual disposition, that gain would not have been taxable in any country other than Canada.

Application: The February 27, 2004 draft regulations (foreign affiliates), subsec. 3(32), will add subsec. 5907(14), applicable after 1992, except that, in its application in respect of dispositions that occur before February 28, 2004, the reference in the subsec. to "subsection (13)" is to be read as "paragraph 13(a)".

Technical Notes: In some instances, the gains that an immigrating affiliate would realize if it had actually disposed of its property would not in fact be subject to any foreign tax. New subsection 5907(14) ensures that in such a case, subsection 5907(13) does not recognize any addition to the affiliate's underlying foreign tax. This new subsection applies after 1992, except that its application is confined to paragraph 5907(13)(a) in respect of dispositions that occur on or before .

Definitions [Reg. 5907]: "active business" — ITA 95(1), Reg. 5907(1); "adjusted cost base" — ITA 54, 248(1); "adjusted earnings amount" — Reg. 5907(2.1)(a); "allowable capital loss" — ITA 38(b), 248(1); "amount" — ITA 248(1), Reg. 5907(7); "applicable taxation year" — Reg. 5907(2.83); "arm's length" — ITA 251(1); "available exempt surplus amount" — Reg. 5907(2.83); "borrowed money", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "capital dividend account" — ITA 89(1); "capital gain" — ITA 39(1), 248(1); "capital loss" — ITA 39(1)(b), 248(1); "capital property" — ITA 54, 248(1); "class of shares" — ITA 248(6); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "cost amount" — ITA 248(1); "designated treaty country" — Reg. 5907(11); "disposed" — ITA 248(1)"disposition"; "disposition", "dividend" — ITA 248(1); "earnings" — Reg. 5907(1); "eligible capital property" — ITA 54, 248(1); "equity percentage" — ITA 95(4), Reg. 5905(15); "exempt deficit" — Reg. 5902(1)–(3), (7), 5905(7)(b),

5907(1); "exempt earnings", "exempt loss" — Reg. 5907(1), (10); "exempt loss" — Reg. 5907(1), (10); "exempt surplus" — Reg. 5902(1)–(3), (7), 5905(7)(d), 5907(1); "fiscal period" — ITA 249.1; "foreign accrual property income" — ITA 95(1), (2), 248(1); "foreign affiliate" — ITA 95(1), 248(1), Reg. 5907(3); "foreign merger" — ITA 87(8.1); "foreign resource property" — ITA 66(15), 248(1); "foreign tax applicable" — Reg. 5900(1)(d); "government of a country" — Reg. 5907(4); "group foreign affiliate" — Reg. 5907(2.83); "insurer", "lending asset", "life insurance business", "life insurance corporation" — ITA 248(1); "loss" — Reg. 5907(1); "Minister" — ITA 248(1); "net earnings", "net loss" — Reg. 5907(1); "non-resident" — ITA 248(1); "opening exempt deficit" — Reg. 5905(5)(e); "opening exempt surplus" — Reg. 5905(5)(d); "opening taxable deficit" — Reg. 5905(5)(g); "opening taxable surplus" — Reg. 5905(5)(f); "opening underlying foreign tax" — Reg. 5905(5)(h); "particular dividend" — Reg. 5907(7.1); "payor affiliate" — Reg. 5907(7.1); "person", "prescribed", "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "qualifying interest" — Reg. 5907(1.02); "qualifying member" — ITA 95(2)(o)–(r), 248(1); "related" — ITA 251(2)–(6), 5907(15); "relevant tax factor" — ITA 95(1); "resident" — ITA 250, Reg. 5907(11.2); "resident in Canada" — ITA 250; "share", "shareholder" — ITA 248(1); "specified adjustment factor", "specified foreign affiliate" — Reg. 5907(2.83); "specified member", "stock dividend" — ITA 248(1); "subsequent corporation" — Reg. 5907(2.3), (2.4); "surplus entitlement percentage" — Reg. 5905(13); "taxable capital gain" — ITA 38(a), 248(1); "taxable deficit" — Reg. 5902(1)–(3), (7), 5905(7)(c), 5907(1); "taxable dividend" — ITA 89(1), 248(1); "taxable earnings", "taxable loss" — Reg. 5907(1), (10); "taxable surplus" — Reg. 5902(1)–(3), (7), 5905(7)(e), 5907(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "territory" — *Interpretation Act* 35(1); "trust" — ITA 104(1), 248(1), (3); "underlying foreign tax" — Reg. 5902(1)–(3), (7), 5907(1); "underlying foreign tax applicable", "whole dividend" — Reg. 5907(1); "writing" — *Interpretation Act* 35(1).

5908. (1), (2) [Repealed]

History: S. 5908 repealed by P.C. 1997-1670, s. 9, November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable December 10, 1997.

S. 5908 added by P.C. 1985-467, s. 5, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985.

5909. Prescribed circumstances — For the purposes of subparagraph 94(1)(b)(i) of the Act, property shall be considered to have been acquired in prescribed circumstances where it is acquired by virtue of the repayment of a loan.

History: S. 5909 added by P.C. 1989-321, s. 4, March 2, 1989, *Canada Gazette*, Part II, March 15, 1989, applicable after October 29, 1985.

Definitions [Reg. 5909]: "prescribed", "property" — ITA 248(1).

Proposed Addition — Reg. 5910

5910. Foreign oil and gas business — **(1)** If a foreign affiliate of a corporation carries on a foreign oil and gas business in a taxing country in a taxation year of the affiliate, the affiliate is deemed for the purposes of this Part to have paid for the year as an income or profits tax to the government of the taxing country an amount equal to the lesser of

(a) the amount, if any, by which

(i) 40% of the amount that would, if the definition "earnings" in subsection 5907(1) were read without reference to its subparagraphs (a)(i) and (ii), be the affiliate's earnings from the business in the taxing country for the year

exceeds

(ii) the total of all amounts that would, but for this subsection, be income or profits taxes paid by the affiliate for the year in respect of the business to the government of the taxing country, and

(b) the affiliate's production tax amount for the business in the taxing country for the year.

(2) In subsection 1[2], "foreign oil and gas business," "production tax amount" and "taxing country" have the meanings assigned by subsection 126(7) of the Act.

Application: The December 20, 2002 draft regulations (Appendix E, foreign oil and gas business), s.1, will add s. 5910, applicable in respect of production tax amounts that become receivable by the government of a taxing country in taxation years, of a taxpayer's foreign affiliate, that begin after the earlier of December 31, 2002 and the designated date. The designated date is the later of

(a) December 31, 1994; and

(b) any date that the taxpayer designates in writing for the purpose of this section, if the designation is filed with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's first taxation year that ends after 2002.

Technical Notes: Announced in the 2000 Budget and enacted in 2001, subsection 126(5) of the *Income Tax Act* deems certain foreign oil and gas levies to be income or profits taxes for purposes of the foreign tax credit rules. Proposed section 5910 of the *Income Tax Regulations* extends this treatment to the foreign affiliate rules. As a result, the levies can, in certain cases, be included in computing the foreign tax paid by a foreign affiliate.

More specifically, where a foreign affiliate of a corporation carries on a "foreign oil and gas business" in a "taxing country" in the year, subsection 5910(1) of the Regulations will deem the affiliate to have paid for the year as an income or profits tax, the lesser of two amounts. The first amount (paragraph 5910(1)(a)) is the amount by which 40% of the affiliate's "earnings" from the business, read without reference to subparagraphs (a)(i) and (ii) of that definition, exceeds the amounts that would otherwise have been income or profits taxes that were paid by the affiliate to the country in respect of the business for the year. The second amount (paragraph 5910(1)(b)) is the affiliate's "production tax amount" for the business for the year. Subsection 5910(2) provides that for the purpose of section 5910, "foreign oil and gas business," "production tax amount" and "taxing country" have the meanings assigned by subsection 126(7) of the Act.

Letter from Dept. of Finance, October 23, 2001:

Dear [xxx]:

I am writing in response to your letter of August 15, 2001 to Lawrence Purdy of this Division and subsequent telephone conversations, regarding the recently enacted *Income Tax Act* provisions relating to foreign oil and gas production sharing contracts.

I understand that your client anticipates acquiring a non-resident corporation that will pay, under one or more such contracts, amounts that the new provisions would treat as foreign taxes if they were paid by a resident of Canada. You have asked whether it would be appropriate to recognize these amounts as foreign tax for purposes of the rules relating to foreign affiliates as well.

I can confirm that, as a policy matter, we consider that such recognition would be appropriate. We are therefore prepared in principle to recommend an amendment, the effect of which would be to import into the foreign affiliate context, with appropriate modifications, the rules that deem certain payments under production sharing contracts to be foreign income or profits taxes for foreign tax credit purposes.

Having said that, I should make clear that the timing of such a recommendation — both in terms of the release of any draft legislation and in terms of its effective date — remains to be determined. While I would not rule out the possibility of including such a measure in the next package of draft technical amendments to the Act, I am not currently in a position to confirm that that will be possible.

Despite these uncertainties, I trust that this expression of our policy views is helpful.

Yours sincerely,

Brian Ernewein,
Director, Tax Legislation Division, Tax Policy Branch

Definitions [Reg. 5910]: "amount" — ITA 248(1), Reg. 5907(7); "business" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "earnings" — Reg. 5907(1); "foreign affiliate" — ITA 95(1), 248(1), Reg. 5907(3); "foreign oil and gas business", "production tax

[2] *Sic*. Should be (1) — ed.

amount" — ITA 126(7), Reg. 5910(2); "taxation year" — ITA 249; "taxing country" — ITA 126(7), Reg. 5910(2).

Proposed Addition — Reg. 5911–5919

5911. (1) The amount prescribed for the purpose of paragraph 92(1.3)(a) of the Act, in respect of a relevant share referred to in that paragraph, in respect of a specified section 93 election related to the relevant share, is the lesser of

(a) the amount, if any, by which the fair market value of the relevant share, at the election time, exceeds the adjusted cost base, at the time of the disposition, of the relevant share to the holder, and

(b) the amount determined by the following formula

$$A/C \times (C - B)$$

where

A is the amount that would, if the relevant share was the disposed share and the relevant affiliate was the disposed affiliate in respect of the specified section 93 election, be determined under paragraph 5902(1)(f) to be the attributed net surplus in respect of the relevant share in respect of the specified section 93 election,

B is the amount that would be determined under subparagraph 5907(1)(e)(vi) to be the consolidated net surplus in respect of the relevant affiliate, if

(i) the relevant foreign affiliate was the disposed affiliate referred to in subsection 5902(1),

(ii) the relevant share was the disposed share referred to in subsection 5902(1) that was disposed of, immediately following the disposition of the disposed shares to which the specified section 93 election applied, and

(iii) before that determination, in respect of the relevant foreign affiliate and each foreign affiliate of the particular corporation resident in Canada in which the relevant foreign affiliate had an equity percentage, the adjustments that are required by section 5905 to be made, in respect of the whole dividend referred to in paragraph 5902(1)(g) in respect of the specified section 93 election were made, and

C is the amount that would be determined under subparagraph 5902(1)(e)(vi) to be the consolidated net surplus in respect of the relevant affiliate in respect of the specified section 93 election, if the relevant foreign affiliate was the disposed foreign affiliate referred to in subsection 5902(1) and the relevant share was the disposed share referred to in subsection 5902(1).

Related Provisions: ITA 257 — Negative amounts in formulas; Reg. 5911(3) — If amount in formula is nil.

(2) The amount prescribed for the purpose of paragraph 92(1.3)(b) of the Act, in respect of a relevant share referred to in that paragraph, in respect of a relevant specified section 93 election related to the relevant share, is the lesser of

(a) the amount, if any, by which the adjusted cost base, at the time of the disposition, of the relevant share to the holder exceeds the fair market value of the relevant share, at the election time, and

(b) the amount determined by the following formula

$$A/C \times (C - B)$$

where

A is the amount that would be determined to be the attributed net surplus in respect of the relevant share under paragraph 5902(1)(f) in respect of the specified section 93 election, if

(i) the relevant share was the disposed share, and the relevant foreign affiliate was the disposed foreign affiliate, in respect of the specified section 93 election, and

(ii) the consolidated net surplus in respect of the relevant foreign affiliate was the amount, if any, determined, in respect of the relevant foreign affiliate, under the description of C,

B is the amount, if any, by which the total that would be determined under clause 5902(1)(c)(vi)(B) exceeds the total that would be determined under clause 5902(1)(e)(vi)(A), in respect of the relevant foreign affiliate, if

(i) the relevant foreign affiliate was the disposed affiliate referred to in subsection 5902(1),

(ii) the relevant share was the disposed share referred to in subsection 5902(1) that was disposed of immediately following the disposition of the disposed shares to which the specified section 93 election applied, and

(iii) before that determination, in respect of the relevant foreign affiliate and each foreign affiliate of the particular corporation resident in Canada in which the relevant foreign affiliate had an equity percentage, the adjustments that are required by section 5905 to be made, in respect the whole dividend referred to in paragraph 5902(1)(g) in respect of the specified section 93 election, were made, and

C is the amount, if any, by which the total that would be determined under clause 5902(1)(c)(vi)(B) exceeds the total that would be determined under clause 5902(1)(e)(vi)(A), in respect of the relevant affiliate in respect of the specified section 93 election, if the relevant foreign affiliate was the disposed foreign affiliate referred to in subsection 5902(1) and the relevant share was the disposed share referred to in subsection 5902(1).

Technical Notes: Proposed new subsections 5911(1) and (2) set out the rules for determining the additions to and the deductions from the adjusted cost base of a share of a foreign affiliate of a corporation resident in Canada required under paragraphs 92(1.3)(a) and (b) of the Act when there has been a specified section 93 election in respect of a relevant share. Refer to the commentary for proposed new subsections 92(1.1) to (1.4) of the Act for the definitions "election time", "relevant share", "relevant foreign affiliate" and "specified section 93 election", the adjusted cost base adjustment requirements and the purposes for which the adjustments to the cost base of shares are to be made.

Proposed new subsections 5911(1) and (2) apply after December 20, 2002.

New subsection 5911(1) determines the required addition to the adjusted cost base of a relevant share in respect of a specified section 93 election.

The amount prescribed, for the purpose of paragraph 92(1.3)(a) of the Act, in respect of the relevant share referred to in that paragraph, in re-

spect of a specified section 93 election related to the relevant share, is the lesser of

- the amount, if any, by which the fair market value exceeds the adjusted cost base to the holder, at the election time, of the relevant share, and
- the amount determined by the formula

$$A/C \times (C - B)$$

where

A is the amount that would be determined to be the attributed net surplus in respect of the relevant share, in respect of the specified section 93 election, under proposed new paragraph 5902(1)(f) if the relevant share were the disposed share referred to in subsection 5902(1) and the relevant affiliate were the disposed affiliate referred to in subsection 5902(1),

B is the amount that would be determined to be the consolidated net surplus in respect of the relevant affiliate under proposed new subparagraph 5902(1)(e)(vi) if the relevant foreign affiliate was the disposed affiliate referred to in subsection 5902(1), the relevant share was the disposed share referred to in subsection 5902(1) that was disposed of immediately after the disposition of the disposed share to which the specified section 93 election applied and, before that determination, the surplus accounts of the relevant foreign affiliate and each foreign affiliate in which the relevant foreign affiliate had an equity percentage were adjusted in accordance with section 5905, and

C is the amount that would be determined to be the consolidated net surplus in respect of the relevant affiliate, in respect of the specified section 93 election, under proposed new subparagraph 5902(1)(e)(vi) if the relevant foreign affiliate was the disposed affiliate referred to in subsection 5902(1) and the relevant share was the disposed share referred to in subsection 5902(1).

Proposed subsection 5911(2) determines the required deduction to the adjusted cost base of a relevant share in respect of a specified section 93 election.

The amount prescribed, for the purpose of paragraph 92(1.3)(b) of the Act, in respect of the relevant share referred to in that paragraph, in respect of a specified section 93 election related to the relevant share, is the lesser of

- the amount, if any, by which the adjusted cost base to the holder exceeds the fair market value, at the election time, of the relevant share, and
- the amount determined by the formula

$$A/C \times (C - B)$$

where

A is the amount that would be determined to be the attributed net surplus in respect of the relevant share, in respect of the specified section 93 election, under proposed new paragraph 5902(1)(f) if the relevant share was the disposed share referred to in subsection 5902(1), the relevant affiliate was the disposed affiliate referred to in subsection 5902(1) and the consolidated net surplus was the amount determined for C,

B is the amount, if any, by which the amount that would be determined under clause 5902(1)(e)(vi)(B) in respect of the relevant affiliate exceeds the amount that would be determined under clause 5902(1)(e)(vi)(A) in respect of the relevant affiliate if the relevant foreign affiliate was the disposed affiliate referred to in subsection 5902(1), the relevant share was the disposed share referred to in subsection 5902(1) that was disposed of immediately after the disposition of the disposed share to which the specified section 93 election applied and, before the determination, the surplus accounts of the relevant foreign affiliate and each foreign affiliate in which the relevant foreign affiliate had an equity percentage were adjusted in accordance with section 5905, and

C is the amount, if any, by which the amount that would be determined under clause 5902(1)(e)(vi)(B) in respect of the relevant affiliate in respect of the specified section 93 election exceeds the total that would be determined under clause 5902(1)(e)(vi)(A) in respect of the relevant affiliate in respect of the specified section 93 election if the relevant share was the disposed share referred to in subsection 5902(1) and the relevant affiliate was the disposed affiliate referred to in subsection 5902(1).

Proposed new subsection 5911(3) determines the required addition to the adjusted cost base of a relevant share in respect of a specified section 93 election amount determined in the formulas in subsections 5911(1) and (2) in respect of the relevant share referred to in paragraph 92(1.3)(a) is nil.

If the amount determined in each of the formulas in paragraphs 5911(1)(b) and 5911(2)(b) in respect of the relevant share referred to in paragraph 92(1.3)(a) of the Act is nil, the amount determined for B in the formula in paragraph 5911(1)(b) in respect of the relevant affiliate is greater than nil and the amount determined for C in the formula in paragraph 5911(2)(b) in respect of the relevant affiliate is greater than nil, the amount prescribed for the purpose of paragraph 92(1.3)(a) of the Act, in respect of the relevant share referred to in that paragraph, in respect of a specified section 93 election related to the relevant share, is the lesser of

- the amount, if any, by which the fair market value of the relevant share, at the election time, exceeds the adjusted cost base, at the time of the disposition, of the relevant share to the holder, and
- the amount that would, if the relevant share was the disposed share and the relevant affiliate was the disposed affiliate in respect of the specified section 93 election, be determined under paragraph 5902(1)(f) to be the attributed net surplus in respect of the relevant share if the consolidated net surplus of the relevant foreign affiliate were the amount determined for B in the formula in paragraph 5911(1)(b).

Example

Facts

1. Canco, a corporation resident in Canada, owns 100% of the issued shares of FA1 (which owns 80% of the issued shares of FA2) and 50% of the issued shares of FA6 (which owns 20% of the issued shares of FA2).

2. FA2 owns 70% of the issued shares of FA3, which owns 100% of the issued shares of FA4 (which owns 100% of the issued shares of FA5).

3. FA1 sells 30 issued shares of FA2 to FA6 and Canco elects under subsection 93(1) of the Act ($123 of sale proceeds to be treated as dividends on the 30 disposed shares of FA2).

4. At the time of the sale, FA2 has an exempt surplus of $200, a taxable surplus of $0, an exempt deficit of $0 and an underlying foreign tax of $0.

5. At the time of the sale, FA3 has an exempt surplus of $100, a taxable surplus of $75, an exempt deficit of $0 and an underlying foreign tax of $10.

6. At the time of the sale, FA4 has an exempt surplus of $0, a taxable surplus of $0, an exempt deficit of $200 and an underlying foreign tax of $0.

7. At the time of the sale, FA5 has an exempt surplus of $0, a taxable surplus of $325, an exempt deficit of $0 and an underlying foreign tax of $200.

8. All the corporations have 100 issued shares of one class of shares.

Application of Sections 5902, 5905 and 5911

For the application of subsection 5902(1) — see the example in the commentary for that subsection.

For the application of subsection 5905(8) — see the example in the commentary for that subsection.

For the application of subsections 5911(1) and (3) — see the calculation below.

Application of Section 5911 of the Regulations

Subsection 5911 provides for adjustments to the cost base to the holder of the share of the relevant foreign affiliate in respect of the adjustments to the surplus balances under section 5905 of the Regulations in respect of a specified section 93 election related to the relevant share.

The calculation is being performed only for the shares of FA4 and FA5 in this example.

Subsection 5911(1) – Additions to the ACB of Shares

For the purposes of the calculations below, it is assumed that the fair market value exceeded the adjusted cost base to the holder of shares of the relevant foreign affiliates.

Calculation — FA5

Under subsection 5911(1), the required addition to the adjusted cost base of a share of FA5, for example, is $0.65 determined by the formula

$$A \times (C-B)/C) = (3.25 \times (325-260)/325) = \$0.65$$

where

A *is the amount that would be determined to be the attributed surplus in respect of a share of FA5 if the share of FA5 and FA5 were the "disposed share" and the "disposed foreign affiliate" referred to in subsection 5902(1) in respect of the specified section 93 election ($325/100 = $3.25),*

B *is the amount that would be determined to be the consolidated net surplus (after the application, in respect of the specified section 93 election, of subsection 5905(8) to FA5) under 5902(1) in respect of FA5 if the share of FA5 and FA5 were the disposed share and the disposed foreign affiliate referred to in subsection 5902(1) in respect of a disposition, immediately after the disposition to which the specified section 93 election applies, of the FA5 share in respect of which an election was made by Canco under subsection 93(1) ($260), and*

C *is the amount that would be determined to be consolidated net surplus of FA5, in respect of the specified section 93 election, under 5902(1) in respect of FA5 if the share of FA5 and FA5 were the disposed share and the disposed foreign affiliate referred to in subsection 5902(1) ($325).*

Calculation — FA4

Under subsection 5911(3), the required addition to the adjusted cost base of a share of FA4, for example, is $2.60. This amount is determined as the amount that would, if the share of FA4 was the disposed share and FA4 was the disposed affiliate, be determined under paragraph 5902(1)(f) to be the attributed net surplus in respect of the FA4 share ($260/100 shares) if the consolidated net surplus of the FA4 were the amount determined in respect of FA4 for B in the formula in subsection 5911(1) ($260).

The amount determined for B in the formula in subsection 5911(1) is the amount that would be determined to be the consolidated net surplus (after the application, in respect of the specified section 93 election, of subsection 5905(8) to FA4) under subsection 5902(1) in respect of FA4 if the share of FA4 and FA4 were the disposed share and the disposed foreign affiliate referred to in subsection 5902(1) in respect of a disposition, immediately after the disposition to which the specified section 93 election applies, of the FA4 share in respect of which an election was made by Canco under subsection 93(1) ($260).

Related Provisions: ITA 257 — Negative amounts in formulas; Reg. 5911(3) — If amount in formula is nil.

(3) If the amount determined in each of the formulae in paragraphs (1)(b) and (2)(b) in respect of the relevant share referred to in paragraph 92(1.3)(a) of the Act is nil, the amount determined for B in the formula in paragraph (1)(b) in respect of the relevant affiliate is greater than nil and the amount determined for C in the formula in paragraph (2)(b) in respect of the relevant affiliate is greater than nil, the amount prescribed for the purpose of paragraph 92(1.3)(a) of the Act, in respect of the relevant share referred to in that paragraph, in respect of a specified section 93 election related to the relevant share, is the lesser of

(a) the amount, if any, by which the fair market value of the relevant share, at the election time, exceeds the adjusted cost base, at the time of the disposition, of the relevant share to the holder, and

(b) the amount that would, if the relevant share was the disposed share and the relevant affiliate was the disposed affiliate in respect of the specified section 93 election, be determined under paragraph 5902(1)(f) to be the attributed net surplus in respect of the relevant share if the consolidated net surplus of the relevant foreign affiliate were the amount determined for B in the formula in paragraph (1)(b).

Definitions [Reg. 5911]: "adjusted cost base" — ITA 54, 248(1); "amount" — ITA 248(1), Reg. 5907(7); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "disposition" — ITA 248(1); "equity percentage" — ITA 95(4), Reg. 5905(15); "foreign affiliate" — ITA 95(1), 248(1), Reg. 5907(3); "net surplus" — Reg. 5902(1)-(3), (7), 5907(1); "prescribed" — ITA 248(1); "related" — ITA 251(2)-(6); "resident in Canada" — ITA 250; "share" — ITA 248(1); "whole dividend" — Reg. 5907(1).

5912. (1) The amount prescribed, for the purpose of paragraph 95(2)(c.3) of the Act, to be the adjusted suspended gain in respect of the specified share, of the relevant foreign affiliate referred to in that paragraph, at the earlier of the first times (referred to in this section as the "recognition time"), after the original disposition time, that is described by that paragraph, is the amount determined by the formula

$$A \times B/C$$

where

A is the amount of the unadjusted suspended gain in respect of a specified share of the relevant foreign affiliate at the original disposition time,

B is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the original disposition time determined on the assumption that the taxation year of the relevant foreign affiliate that would otherwise have included that time had ended immediately before that time, and

C is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the recognition time determined on the assumption that the taxation year of the relevant foreign affiliate that would otherwise have included that time had ended immediately before that time.

(2) The amount prescribed, for the purpose of paragraph 95(2)(c.3) of the Act, to be the adjusted allocable tax in respect of the adjusted suspended gain in subsection (1) in respect of the specified share, of the relevant foreign affiliate referred to in that paragraph, at the recognition time, is the amount determined by the formula

$$A \times B/C$$

where

A is any income or profits tax paid to the government of a country by the relevant foreign affiliate that can reasonably be regarded as tax in respect of the unadjusted suspended gain in respect of the specified share,

B is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the original disposition time determined on the assumption that the taxation year of the relevant foreign affiliate that would otherwise have included that time had ended immediately before that time, and

C is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the recognition time determined on the assumption that the taxation year of the relevant foreign affiliate that would otherwise have included that time had ended immediately before that time.

Technical Notes: Proposed new subsection 5912 determines the amount to be included as the adjusted suspended gain and the adjusted

allocable tax in respect of the specified share, of the relevant foreign affiliate (referred to in new paragraph 95(2)(e.3) of the Act), at the earlier of the first times (which earlier time is referred to as the "recognition time"), after the original disposition time, that is described by new paragraph 95(2)(e.3) of the Act.

Proposed new subsection 5912 applies after December 20, 2002.

New subsection 5912(1) provides the rules for the calculation of the adjusted suspended gain in respect of the specified share, of the relevant foreign affiliate (referred to in new paragraph 95(2)(e.3) of the Act), at the recognition time. This amount is determined by the formula

A × B/C

where

A is the amount of the unadjusted suspended gain in respect of a specified share of the relevant foreign affiliate at the original disposition time,

B is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the original disposition time determined assuming that the taxation year of the relevant foreign affiliate that otherwise would have included that time had ended immediately before that time, and

C is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the recognition time determined assuming that the taxation year of the relevant foreign affiliate that otherwise would have included that time had ended immediately before that time.

New subsection 5912(2) provides for the calculation of the adjusted allocable tax in respect of the adjusted suspended gain, in respect of the specified share, of the relevant foreign affiliate (referred to in new paragraph 95(2)(e.3)) at the recognition time. This amount is determined by the formula

A × B/C

where

A is any income or profits tax paid to the government of a country by the relevant foreign affiliate that can reasonably be regarded as tax in respect of the unadjusted suspended gain in respect of the specified share,

B is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the original disposition time determined on the assumption that the taxation year of the relevant foreign affiliate that otherwise would have included that time had ended immediately before that time, and

C is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the recognition time determined on the assumption that the taxation year of the relevant foreign affiliate that otherwise would have included that time had ended immediately before that time.

Definitions [Reg. 5912]: "amount" — ITA 248(1), Reg. 5907(7); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "disposition" — ITA 248(1); "foreign affiliate" — ITA 95(1), 248(1), Reg. 5907(3); "government of a country" — Reg. 5907(4); "prescribed" — ITA 248(1); "recognition time" — Reg. 5912(1); "resident", "resident in Canada" — ITA 250; "share" — ITA 248(1); "surplus entitlement percentage" — Reg. 5905(13); "taxation year" — ITA 249.

5913. (1) The amount prescribed, for the purpose of paragraph 95(2)(f.5) of the Act, to be the adjusted suspended income or gain in respect of the specified property, of the relevant foreign affiliate referred to in that paragraph, at the earlier of the first times (referred to in this section as the "recognition time"), after the original disposition time, that is described by that paragraph, is the amount determined by the formula

A × B/C

where

A is the amount of the unadjusted suspended income or gain in respect of a specified property of the relevant foreign affiliate at the original disposition time,

B is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the original disposition time determined on the assumption that the taxation year of the relevant foreign affiliate that would otherwise have included that time had ended immediately before that time, and

C is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the recognition time determined on the assumption that the taxation year of the relevant foreign affiliate that would otherwise have included that time had ended immediately before that time.

(2) The amount prescribed, for the purpose of paragraph 95(2)(f.5) of the Act, to be the adjusted allocable tax in respect of the adjusted suspended income or gain in subsection (1) in respect of the specified property, of the relevant foreign affiliate referred to in that paragraph, at the recognition time, is the amount determined by the formula

A × B/C

where

A is any income or profits tax paid to the government of a country by the relevant foreign affiliate that can reasonably be regarded as tax in respect of the unadjusted suspended income or gain in respect of the specified property,

B is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the original disposition time determined on the assumption that the taxation year of the relevant foreign affiliate that would otherwise have included that time had ended immediately before that time, and

C is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the recognition time determined on the assumption that the taxation year of the relevant foreign affiliate that would otherwise have included that time had ended immediately before that time.

Technical Notes: New section 5913 determines the amount to be included as the adjusted suspended income or gain in respect of the specified property, of the relevant foreign affiliate (referred to in new paragraph 95(2)(f.5) of the Act), at the earlier of the first times (which earlier time is referred to as the "recognition time"), after the original disposition time (referred to in new paragraph 95(2)(f.5) of the Act), that is described by new paragraph 95(2)(f.5) of the Act.

Proposed new subsection 5913 applies after December 20, 2002.

New subsection 5913(1) provides rules for the calculation of the adjusted suspended income or gain in respect of the specified property, of the relevant foreign affiliate (referred to in new paragraph 95(2)(f.5)), at the recognition time. This amount is determined by the formula

A × B/C

where

A is the amount of the unadjusted suspended income or gain in respect of a specified property of the relevant foreign affiliate at the original disposition time,

B is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the original disposition time determined assuming that the taxation year of the relevant foreign affiliate that otherwise would

have included that time had ended immediately before that time, and

C is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the recognition time determined assuming that the taxation year of the relevant foreign affiliate that otherwise would have included that time had ended immediately before that time.

New subsection 5913(2) provides for the calculation of the adjusted allocable tax in respect of the adjusted suspended income or gain, in respect of the specified property, of the relevant foreign affiliate (referred to in new paragraph 95(2)(f.5)) at the recognition time. This amount is determined by the formula

$$A \times B/C$$

where

A is any income or profits tax paid to the government of a country by the relevant foreign affiliate that can reasonably be regarded as tax in respect of the unadjusted suspended income or gain in respect of the specified property,

B is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the original disposition time determined on the assumption that the taxation year of the relevant foreign affiliate that otherwise would have included that time had ended immediately before that time, and

C is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the recognition time determined on the assumption that the taxation year of the relevant foreign affiliate that otherwise would have included that time had ended immediately before that time.

Definitions [Reg. 5913]: "amount" — ITA 248(1), Reg. 5907(7); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "disposition" — ITA 248(1); "foreign affiliate" — ITA 95(1), 248(1), Reg. 5907(3); "government of a country" — Reg. 5907(4); "prescribed", "property" — ITA 248(1); "recognition time" — Reg. 5913(1); "resident in Canada" — ITA 250; "surplus entitlement percentage" — Reg. 5905(13); "taxation year" — ITA 249.

5914. (1) The amount prescribed, for the purpose of paragraph 95(2)(h.2) of the Act, to be the adjusted suspended loss or capital loss in respect of the specified property, of the relevant foreign affiliate referred to in that paragraph, at the earlier of the first times (referred to in this section as the "recognition time"), after the original disposition time, that is described by that paragraph, is the amount determined by the formula

$$A \times B/C$$

where

A is the amount of the unadjusted suspended loss or capital loss in respect of a specified property of the relevant foreign affiliate at the original disposition time,

B is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the original disposition time determined on the assumption that the taxation year of the relevant foreign affiliate that would otherwise have included that time had ended immediately before that time, and

C is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the recognition time determined on the assumption that the taxation year of the relevant foreign affiliate that would otherwise have included that time had ended immediately before that time.

(2) The amount prescribed, for the purpose of paragraph 95(2)(h.2) of the Act, to be the adjusted allocable tax refund in respect of the adjusted suspended loss or capital loss in subsection (1) in respect of the specified property, of the relevant foreign affiliate referred to in that paragraph, at the recognition time, is the amount determined by the formula

$$A \times B/C$$

where

A is any income or profits tax refunded by the government of a country to the relevant foreign affiliate that can reasonably be regarded as tax refunded in respect of the unadjusted suspended loss or capital loss in respect of the specified property,

B is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the original disposition time determined on the assumption that the taxation year of the relevant foreign affiliate that would otherwise have included that time had ended immediately before that time, and

C is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the recognition time determined on the assumption that the taxation year of the relevant foreign affiliate that would otherwise have included that time had ended immediately before that time.

Technical Notes: New section 5914 determines the amount to be included as the adjusted suspended loss or capital loss in respect of the specified property, of the relevant foreign affiliate (referred to in new paragraph 95(2)(h.3) of the Act), at the earlier of the first times (which earlier time is referred to as the "recognition time"), after the original disposition time (referred to in new paragraph 95(2)(h.3) of the Act), that is described by new paragraph 95(2)(h.3) of the Act.

Proposed new subsection 5914 applies after December 20, 2002.

New subsection 5914(1) provides for the calculation of the adjusted suspended loss or capital loss in respect of the specified property, of the relevant foreign affiliate (referred to in new paragraph 95(2)(h.2)), at the recognition time. This amount is determined by the formula

$$A \times B/C$$

where

A is the amount of the unadjusted suspended loss or capital loss in respect of a specified property of the relevant foreign affiliate at the original disposition time,

B is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the original disposition time determined assuming that the taxation year of the relevant foreign affiliate that otherwise would have included that time had ended immediately before that time, and

C is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the recognition time determined on the assumption that the taxation year of the relevant foreign affiliate that would otherwise have included that time had ended immediately before that time.

New subsection 5914(2) provides for the calculation of the adjusted allocable tax refund in respect of the adjusted suspended loss or capital loss, in respect of the specified property, of the relevant foreign affiliate (referred to in new paragraph 95(2)(h.2)) at the recognition time. This amount is determined by the formula

$$A \times B/C$$

where

A is any income or profits tax refunded by the government of a country to the relevant foreign affiliate that can reasonably be regarded as tax refunded in respect of the unadjusted suspended loss or capital loss in respect of the specified property,

B is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately

before the original disposition time determined on the assumption that the taxation year of the relevant foreign affiliate that otherwise would have included that time had ended immediately before that time, and

C is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the recognition time determined on the assumption that the taxation year of the relevant foreign affiliate that otherwise would have included that time had ended immediately before that time.

Definitions [Reg. 5914]: "amount" — ITA 248(1), Reg. 5907(7); "capital loss" — ITA 39(1)(b), 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "disposition" — ITA 248(1); "foreign affiliate" — ITA 95(1), 248(1), Reg. 5907(3); "government of a country" — Reg. 5907(4); "loss" — Reg. 5907(1); "prescribed", "property" — ITA 248(1); "recognition time" — Reg. 5914(1); "resident in Canada" — ITA 250; "surplus entitlement percentage" — Reg. 5905(13); "taxation year" — ITA 249.

5915. An election under paragraph 95(2)(c.2) of the Act in respect of the disposition of a specified share is to be made by filing the prescribed form with the Minister, on or before

(a) if a foreign affiliate of the particular corporation resident in Canada was the vendor that disposed of the specified share, the particular corporation's filing-due date for its taxation year that includes the last day of the foreign affiliate's taxation year in which the disposition was made; and

(b) if a foreign affiliate of the particular corporation resident in Canada is a member of a partnership that was the vendor that disposed of the specified share, the particular corporation's filing-due date for its taxation year that includes the last day of the taxation year of the foreign affiliate that includes the last day of the partnership's fiscal period in which the disposition was made.

Technical Notes: Proposed section 5915 sets out the requirements for an election by a corporation resident in Canada under proposed paragraph 95(2)(c.2) of the Act.

Proposed new subsection 5915 applies after December 20, 2002.

Generally, the new section requires the election to be made by filing the prescribed form with the Minister of National Revenue on or before

- if a foreign affiliate of the corporation resident in Canada was the vendor that disposed of the specified share, the filing-due date of the corporation resident in Canada for its taxation year that includes the last day of the foreign affiliate's taxation year in which the disposition was made; and
- if a foreign affiliate of the corporation resident in Canada is a member of a partnership that was the vendor that disposed of the specified share, the filing-due date of the corporation resident in Canada for its taxation year that includes the last day of the taxation year of the foreign affiliate that includes the last day of the partnership's fiscal period in which the disposition was made by the partnership.

Definitions [Reg. 5915]: "corporation" — ITA 248(1), *Interpretation Act* 35(1); "disposition", "filing-due date" — ITA 248(1); "fiscal period" — ITA 249.1; "foreign affiliate" — ITA 95(1), 248(1), Reg. 5907(3); "Minister" — ITA 248(1); "prescribed" — ITA 248(1); "resident in Canada" — ITA 250; "share" — ITA 248(1); "specified share" — ITA 95(2)(c.1)(i); "taxation year" — ITA 249.

5916. An election under clause 95(2)(d)(iii)(A), (e)(v)(B), (e.3)(iv)(B), (e.4)(v)(B) or (e.5)(v)(B) of the Act in respect of the disposition of one or more shares of the capital stock of a foreign affiliate of a corporation resident in Canada is to be made by filing the prescribed form with the Minister, on or before

(a) if a foreign affiliate of the corporation resident in Canada made the disposition, the filing-due date of the corporation resident in Canada for its taxation year that includes the last day of the foreign affiliate's taxation year in which the disposition was made; and

(b) if a foreign affiliate of the corporation resident in Canada is a member of a partnership that made the disposition, the filing-due date of the corporation resident in Canada for its taxation year that includes the last day of the taxation year of the foreign affiliate that includes the last day of the partnership's fiscal period in which the disposition was made.

Technical Notes: Proposed section 5916 sets out the requirements for an election by a corporation resident in Canada under subsection 88(3) or clause 95(2)(d)(iii)(A), (e)(v)(B), (e.3)(iv)(B), (e.4)(v)(B) or (e.5)(v)(B) of the Act.

Proposed new subsection 5916 applies after December 20, 2002.

Generally, the section requires the election to be made by filing the prescribed form with the Minister of National Revenue on or before

- if a foreign affiliate of the corporation resident in Canada made the disposition, the filing-due date of the corporation resident in Canada for its taxation year that includes the last day of the foreign affiliate's taxation year in which the disposition was made; and
- if a foreign affiliate of the corporation resident in Canada is a member of a partnership and that partnership made the disposition, the filing-due date of the corporation resident in Canada for its taxation year that includes the last day of the taxation year of the foreign affiliate that includes the last day of the partnership's fiscal period in which the disposition was made by the partnership.

Definitions [Reg. 5916]: "corporation" — ITA 248(1), *Interpretation Act* 35(1); "disposition", "filing-due date" — ITA 248(1); "fiscal period" — ITA 249.1; "foreign affiliate" — ITA 95(1), 248(1), Reg. 5907(3); "Minister" — ITA 248(1); "prescribed" — ITA 248(1); "resident in Canada" — ITA 250; "share" — ITA 248(1); "taxation year" — ITA 249.

5917. An election under paragraph 95(2)(f.4) of the Act is to be made by filing the prescribed form with the Minister, on or before

(a) if a foreign affiliate of the particular corporation resident in Canada was the vendor that disposed of the specified property, the particular corporation's filing-due date for its taxation year that includes the last day of the foreign affiliate's taxation year in which the disposition was made; and

(b) if a foreign affiliate of the particular corporation resident in Canada is a member of a partnership that was the vendor that disposed of the specified property, the particular corporation's filing-due date for its taxation year that includes the last day of the foreign affiliate's taxation year that includes the last day of the partnership's fiscal period in which the disposition was made.

Technical Notes: Proposed section 5917 sets out the requirements for an election by a corporation resident in Canada under paragraph 95(2)(f.4) of the Act.

Proposed subsection 5917 applies after December 20, 2002.

Generally, the section requires the election to be made by filing the prescribed form with the Minister of National Revenue on or before

- if a foreign affiliate of the corporation resident in Canada was the vendor that disposed of the specified property, the filing-due date of the corporation resident in Canada for its taxation year that includes the last day of the foreign affiliate's taxation year in which the disposition was made; and
- if a foreign affiliate of the corporation resident in Canada is a member of a partnership that was the vendor that disposed of the specified property, the filing-due date of the corporation resident in Canada for its taxation year that includes the last day of the taxation year of the foreign affiliate that includes the last day of the partnership's fiscal period in which the disposition was made by the partnership.

Definitions [Reg. 5917]: "corporation" — ITA 248(1), *Interpretation Act* 35(1); "disposition", "filing-due date" — ITA 248(1); "fiscal period" — ITA 249.1; "foreign affiliate" — ITA 95(1), 248(1), Reg. 5907(3); "Minister" — ITA 248(1); "prescribed", "property" — ITA 248(1); "resident in Canada" — ITA 250; "taxation year" — ITA 249.

5918. An election under subparagraph 95(2)(k.3)(iii) of the Act in respect of the dispositions of all properties deemed, by subparagraph 95(2)(k.3)(ii) of the Act and paragraph 138(11.91)(e) of the Act, to have been disposed of by the operator referred to in subparagraph 95(2)(k.3)(iii) of the Act in the operator's specified taxation year referred to in that subparagraph, is to be made by filing the prescribed form with the Minister on or before

(a) if a foreign affiliate of the taxpayer was the operator, the taxpayer's filing-due date for its taxation year that includes the last day of the foreign affiliate's taxation year that is the specified taxation year; and

(b) if a partnership — of which a foreign affiliate of the taxpayer was, or was deemed by paragraph 95(2)(k.7) of the Act to be, a member — was the operator, the taxpayer's filing-due date for its taxation year that includes the last day of the foreign affiliate's taxation year that includes the last day of the partnership's fiscal period that is the specified taxation year.

Technical Notes: Proposed section 5918 sets out the requirements for an election by a corporation resident in Canada under new subparagraph 95(2)(k.3)(iii) of the Act. For further detail, see the commentary to paragraph 95(2)(k.3) of the Act.

Proposed new subsection 5918 applies after December 20, 2002.

Generally, the section requires the election to be made by filing the prescribed form with the Minister of National Revenue on or before

- if a foreign affiliate of the taxpayer was the operator, the taxpayer's filing-due date for its taxation year that includes the last day of the foreign affiliate's taxation year that is the specified taxation year; and
- if a partnership — of which a foreign affiliate of the taxpayer was, or was deemed by new paragraph 95(2)(k.7) of the Act to be, a member — was the operator, the taxpayer's filing-due date for its taxation year that includes the last day of the taxation year of the foreign affiliate that includes the last day of the partnership's fiscal period that is the specified taxation year.

Definitions [Reg. 5918]: "disposition", "filing-due date" — ITA 248(1); "fiscal period" — ITA 249.1; "foreign affiliate" — ITA 95(1), 248(1), Reg. 5907(3); "Minister" — ITA 248(1); "prescribed", "property" — ITA 248(1); "resident in Canada" — ITA 250; "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

5919. An election under paragraph 88(3)(a) of the Act in respect of the disposition of one or more shares of the capital stock of the foreign affiliate of a corporation resident in Canada by another foreign affiliate of the corporation resident in Canada is to be made by filing the prescribed form with the Minister on or before the filing-due date of the corporation resident in Canada for its taxation year that includes the last day of the other foreign affiliate's taxation year in which the other foreign affiliate made the disposition.

Technical Notes: New section 5919 sets out the requirements for an election, under paragraph 88(3)(a) of the Act, by a corporation resident in Canada in respect of the disposition of shares in the capital of one of the foreign affiliates of the corporation resident in Canada by another of the foreign affiliates of the corporation resident in Canada. The proposed section states that an election under paragraph 88(3)(a) of the Act shall be made by filing the prescribed form with the Minister of National Revenue, on or before the filingdue date of the taxation year of the corporation resident in Canada that includes the last day of the other foreign affiliate's taxation year in which the other foreign affiliate made the disposition.

Application: The February 27, 2004 draft regulations (foreign affiliates), s. 4, will add ss. 5911–5919, applicable after December 20, 2002.

Definitions [Reg. 5919]: "corporation" — ITA 248(1), *Interpretation Act* 35(1); "disposition", "filing-due date" — ITA 248(1); "foreign affiliate" — ITA 95(1), 248(1), Reg. 5907(3); "Minister", "prescribed" — ITA 248(1); "resident in Canada" — ITA 250; "share" — ITA 248(1); "taxpayer" — ITA 248(1).

PART LX — PRESCRIBED ACTIVITIES

History: Part LX (s. 6000) replaced by P.C. 1995-1723, s. 1, October 17, 1995, *Canada Gazette*, Part II, November 1, 1995, applicable to 1994 *et seq.*

Part LX (s. 6000) added by P.C. 1978-1003, s. 5, April 6, 1978, *Canada Gazette*, Part II, April 26, 1978.

6000. For the purpose of clause 122.3(1)(b)(i)(C) of the Act, a prescribed activity is an activity performed under contract with the United Nations.

Definitions [Reg. 6000]: "prescribed" — ITA 248(1).

Interpretation Bulletins: IT-497R4: Overseas employment tax credit.

PART LXI — RELATED SEGREGATED FUND TRUSTS

History: Part LXI (s. 6100) added by P.C. 1978-2671, August 23, 1978, *Canada Gazette*, Part II, September 13, 1978.

6100. An election under subsection 138.1(4) of the Act by the trustee of a related segregated fund trust shall be made by filing with the Minister the prescribed form within 90 days from the end of the taxation year of the trust in respect of any capital property deemed to have been disposed of in that taxation year by virtue of the election.

Definitions [Reg. 6100]: "capital property" — ITA 54, 248(1); "disposed" — ITA 248(1)"disposition"; "Minister", "prescribed" — ITA 248(1); "related" — ITA 251(2)–(6); "taxation year" — ITA 249; "trust" — ITA 104(1), 248(1), (3).

Forms: T3018: Election for deemed disposition and reacquisition of capital property of a life insurance segregated fund under subsection 138.1(4).

PART LXII — PRESCRIBED SECURITIES, SHARES AND DEBT OBLIGATIONS

History: Heading of Part LXII amended by P.C. 2001-954, s. 5, May 31, 2001, *Canada Gazette*, Part II, June 20, 2001, applicable after February 18, 1997.

Heading of Part LXII amended by P.C. 1980-423, s. 1, February 8, 1980, *Canada Gazette*, Part II, February 27, 1980, effective December 6, 1979.

Part LXII (s. 6200) added by P.C. 1978-3729, December 14, 1978, *Canada Gazette*, Part II, December 27, 1978, applicable in respect of dispositions of property in the 1977 and subsequent taxation years.

6200. Prescribed securities [for election re Canadian securities] — For the purposes of subsection 39(6) of the Act, a prescribed security is, with respect to the taxpayer referred to in subsection 39(4) of the Act,

(a) a share of the capital stock of a corporation, other than a public corporation, the value of which is, at the time it is disposed of by that taxpayer, a value that is or may reasonably be considered to be wholly or primarily attributable to

(i) real property, an interest therein or an option in respect thereof,

(ii) Canadian resource property or a property that would have been a Canadian resource property if it had been acquired after 1971,

(iii) foreign resource property or a property that would have been a foreign resource property if it had been acquired after 1971, or

(iv) any combination of properties described in subparagraphs (i) to (iii)

owned by

(v) the corporation,

(vi) a person other than the corporation, or

(vii) a partnership;

(b) a bond, debenture, bill, note, mortgage or similar obligation, issued by a corporation, other than a public corporation, if at any time before that taxpayer disposes of the security he does not deal at arm's length with the corporation;

(c) a security that is

(i) a share, or

(ii) a bond, debenture, bill, note, mortgage or similar obligation

that was acquired by the taxpayer from a person with whom the taxpayer does not deal at arm's length (other than from a person subject to subsection 39(4) of the Act for the person's taxation year that includes the time of the acquisition);

(c.1) a security described in subparagraph (c)(i) or (ii) that was acquired by the taxpayer from a person (other than from a person subject to subsection 39(4) of the Act for the person's taxation year that includes the time of the acquisition) in circumstances to which subsection 85(1) or (2) of the Act applied;

(d) a share acquired by that taxpayer under circumstances referred to in section 66.3 of the Act; or

(e) a security described in subparagraph (c)(i) or (ii) that was acquired by the taxpayer

(i) as proceeds of disposition for a security of the taxpayer to which paragraph (a), (b), (c) or (d) applied in respect of the taxpayer, or

(ii) as a result of one or more transactions that can reasonably be considered to have been an exchange or substitution of a security of the taxpayer to which paragraph (a), (b), (c) or (d) applied in respect of the taxpayer.

History: Paras. 6200(c) and (e) amended and (c.1) added by P.C. 1998-1449, s. 1, August 26, 1998, *Canada Gazette*, Part II, September 16, 1998, applicable to 1993 *et seq.*

Para. 6200(b), subpara. 6200(c)(ii), subpara. 6200(e)(ii), amended by P.C. 1994-1817, paras. 62(g) to (i), November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

That portion of s. 6200 preceding para. (b) substituted by P.C. 1981-2517, September 16, 1981, *Canada Gazette*, Part II, October 14, 1981.

Definitions [Reg. 6200]: "arm's length" — ITA 251(1); "Canadian resource property" — ITA 66(15), 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "disposed", "disposes" — ITA 248(1)"disposition"; "foreign resource property" — ITA 66(15), 248(1); "person", "prescribed", "property" — ITA 248(1); "public corporation" — ITA 89(1), 248(1); "share" — ITA 248(1); "substitution" — ITA 248(5); "taxpayer" — ITA 248(1).

Interpretation Bulletins: IT-479R: Transactions in securities.

6201. Prescribed shares — (1) [Term preferred share] — For the purposes of paragraph (f) of the definition "term preferred share" in subsection 248(1) of the Act, a share last acquired before June 29, 1982 and of a class of the capital stock of a corporation that is listed on a stock exchange referred to in section 3200 is a prescribed share unless more than 10 per cent of the issued and outstanding shares of that class are owned by

(a) the owner of that share; or

(b) the owner of that share and persons related to him.

(2) [Term preferred share] — For the purposes of paragraph (f) of the definition "term preferred share" in subsection 248(1) of the Act, a share acquired after June 28, 1982 and of a class of the capital stock of a corporation that is listed on a stock exchange referred to in section 3200 is a prescribed share at any particular time with respect to another corporation that receives a dividend at the particular time in respect of the share unless

(a) where the other corporation is a restricted financial institution,

(i) the share is not a taxable preferred share,

(ii) dividends (other than dividends received on shares prescribed under subsection (5)) are received at the particular time by the other corporation or by the other corporation and restricted financial institutions with which the other corporation does not deal at arm's length, in respect of more than 5 per cent of the issued and outstanding shares of that class, and

(iii) a dividend is received at the particular time by the other corporation or a restricted financial institution with which the other corporation does not deal at arm's length, in respect of a share (other than a share prescribed under subsection (5)) of that class acquired after December 15, 1987 and before the particular time;

(b) where the other corporation is a restricted financial institution, the share

(i) is not a taxable preferred share,

(ii) was acquired after December 15, 1987 and before the particular time, and

(iii) was, by reason of subparagraph (h)(i), (ii), (iii) or (v) of the definition "term preferred share" in subsection 248(1) of the Act, deemed to have been issued after December 15, 1987 and before the particular time; or

(c) in any case, dividends (other than dividends received on shares prescribed under subsection (5)) are received at the particular time by the other corporation or by the other corporation and persons with whom the other corporation does not deal at arm's length in respect of more than 10 per cent of the issued and outstanding shares of that class.

(3) [Term preferred share] — For the purposes of paragraph 112(2.2)(g) of the Act and paragraph (f) of the definition "term preferred share" in subsection 248(1) of the Act, a share of any of the following series of preferred shares of the capital stock of Massey-Ferguson Limited issued after July 15, 1981 and before March 23, 1982 is a prescribed share:

(a) $25 Cumulative Redeemable Retractable Convertible Preferred Shares, Series C;

(b) $25 Cumulative Redeemable Retractable Preferred Shares, Series D; or

(c) $25 Cumulative Redeemable Retractable Convertible Preferred Shares, Series E.

(4) [Taxable RFI share] — For the purposes of the definition "taxable RFI share" in subsection 248(1) of the Act, a share of a class of the capital stock of a corporation that is listed on a stock exchange referred to in section 3200 is a prescribed share at any particular time with respect to another corporation that is a restricted financial institution that receives a dividend at the particular time in respect of the share unless dividends (other than dividends received on shares prescribed under subsection (5.1)) are received at that time by the other corporation, or by the other corporation and restricted financial institutions with which the other corporation does not deal at arm's length, in respect of more than

(a) 10 per cent of the shares of that class that were issued and outstanding at the last time, before the particular time, at which the other corporation or a restricted financial institution with which the other corporation does not deal at arm's length acquired a share of that class, where no dividend is received at the particular time by any such corporation in respect of a share (other than a share prescribed under subsection (5.1)) of that class acquired after December 15, 1987 and before the particular time; or

(b) 5 per cent of the shares of that class that were issued and outstanding at the last time, before the particular time, at which the other corporation or a restricted financial institution with which the other corporation does not deal at arm's length acquired a share of that class, where a dividend is received at the particular time by any such corporation in respect of a share (other than a share prescribed under subsection (5.1)) of that class acquired after December 15, 1987 and before the particular time.

(5) [Term preferred share] — For the purposes of paragraph (f) of the definition "term preferred share" in subsection 248(1) of the Act, a share of a class of the capital stock of a corporation that is listed on a stock exchange referred to in section 3200 is a prescribed share at any particular time with respect to another corporation that is registered or licensed under the laws of a province to trade in securities and that holds the share as inventory of the business ordinarily carried on by it unless

Proposed Amendment — Reg. 6201(5) opening words

(5) [Term preferred share] — For the purpose of paragraph (f) of the definition "term preferred share" in subsection 248(1) of the Act, a share of a class of the capital stock of a corporation that is listed on a stock exchange referred to in section 3200 is a prescribed share at any particular time with respect to another corporation that is registered or licensed under the laws of a province to trade in securities and that holds the share for the purpose of sale in the course of the business ordinarily carried on by it unless

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsec. 6(1), will amend the opening words of subsec. 6201(5) to read as above, applicable to dividends received in taxation years that begin after October 1994.

Technical Notes: Subsections 6201(5) and (5.1) prescribe certain shares held by securities dealers as shares that are excluded from being "term preferred shares" and "taxable RFI shares". One of the requirements for the exclusion to apply to a share is that it be held as inventory of the business ordinarily carried on by the securities dealer. This requirement is replaced by a requirement that the share be held for the purpose of sale in the course of the business ordinarily carried on by the securities dealer. This amendment is made as a consequence of the introduction of subsection 142.6(3) of the Act, which provides that certain property held by a financial institution is considered not to be inventory. The new requirement is intended to be the same, in substance, as the former requirement.

The amendments to subsections 6201(5) and (5.1) apply to dividends received in taxation years that begin after October 1994.

(a) it may reasonably be considered that the share was acquired as part of a series of transactions or events one of the main purposes of which was to avoid or limit the application of subsection 112(2.1) of the Act; or

(b) the share was not acquired by the other corporation in the course of an underwriting of shares of that class to be distributed to the public and

(i) dividends are received at the particular time by the other corporation or by the other corporation and corporations controlled by the other corporation in respect of more than 10 per cent of the issued and outstanding shares of that class,

(ii) the other corporation is a restricted financial institution and

(A) the share is not a taxable preferred share,

(B) dividends are received at the particular time by the other corporation or by the other corporation and corporations controlled by the other corporation in respect of more than 5 per cent of the issued and outstanding shares of that class, and

(C) a dividend is received at the particular time by the other corporation or a corporation controlled by the other corporation in respect of a share of that class acquired after December 15, 1987 and before the particular time, or

(iii) the other corporation is a restricted financial institution and the share

(A) is not a taxable preferred share,

(B) was acquired after December 15, 1987 and before the particular time, and

(C) was, by reason of subparagraph (h)(i), (ii), (iii) or (v) of the definition "term preferred share" in subsection 248(1) of the Act, deemed to have been issued after December 15, 1987 and before the particular time.

Related Provisions: ITA 248(10) — Series of transactions; ITA 256(6), (6.1) — Meaning of "controlled".

(5.1) [Taxable RFI share — prescribed share] — For the purposes of the definition "taxable RFI share" in subsection 248(1) of the Act, a share of a class of the capital stock of a corporation that is listed on a stock exchange referred to in section 3200 is a prescribed share at any particular time with respect to another corporation that is registered or licensed under the laws of a province to trade in securities and that holds the share as inventory of the business ordinarily carried on by it unless

Proposed Amendment — Reg. 6201(5.1) opening words

(5.1) For the purpose of the definition "taxable RFI share" in subsection 248(1) of the Act, a share of a class of the capital stock of a corporation that is listed on a stock exchange referred to in section 3200 is a prescribed share at any particular time with respect to another corporation that is registered or licensed under the laws of a province to trade in securities and that holds the share for the purpose of sale in the course of the business ordinarily carried on by it unless

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsec. 6(2), will amend the opening words of subsec. 6201(5.1) to read as above, applicable to dividends received in taxation years that begin after October 1994.

Technical Notes: See under Reg. 6201(5) opening words.

(a) it may reasonably be considered that the share was acquired as part of a series of transactions or events one of the main purposes of which was to avoid or limit the application of section 187.3 of the Act; or

(b) the share was not acquired by the other corporation in the course of an underwriting of shares of that class to be distributed to the public and

(i) dividends are received at the particular time by the other corporation, or by the other corporation and corporations controlled by the other corporation, in respect of more than 10 per cent of the shares of that class issued and outstanding at the last time before the particular time at which any such corporation acquired a share of that class,

(ii) the other corporation is a restricted financial institution and

(A) dividends are received at the particular time by the other corporation, or by the other corporation and corporations controlled by the other corporation, in respect of more than 5 per cent of the shares of that class issued and outstanding at the last time before the particular time at which any such corporation acquired a share of that class, and

(B) a dividend is received at the particular time by the other corporation, or a corporation controlled by the other corporation, in respect of a share of that class acquired after December 15, 1987 and before the particular time, or

(iii) the other corporation is a restricted financial institution and the share

(A) was acquired after December 15, 1987 and before the particular time, and

(B) was, because of subparagraph (h)(i), (ii), (iii) or (v) of the definition "term preferred share" in subsection 248(1) of the Act, deemed to have been issued after December 15, 1987 and before the particular time.

Related Provisions: ITA 248(10) — Series of transactions; ITA 256(6), (6.1) — Meaning of "controlled".

(6) [Term preferred share — prescribed share] — For the purposes of paragraph (f) of the definition "term preferred share" in subsection 248(1) of the Act, a share of the capital stock of a corporation that is a member institution of a deposit insurance corporation, within the meaning assigned by section 137.1 of the Act, is a prescribed share with respect to the deposit insurance corporation and any subsidiary wholly-owned corporation of the deposit insurance corporation deemed by subsection 137.1(5.1) of the Act to be a deposit insurance corporation.

(7) [Taxable preferred share — prescribed share] — For the purposes of the definition "taxable preferred share" in subsection 248(1) of the Act, the following shares are prescribed shares at any particular time:

(a) the 8.5 per cent Cumulative Redeemable Convertible Class A Preferred Shares of St. Marys Paper Inc. issued on July 7, 1987, where such shares are not deemed, by reason of paragraph (e) of the definition "taxable preferred share" in subsection 248(1) of the Act, to have been issued after that date and before the particular time; and

(b) the Cumulative Redeemable Preferred Shares of CanUtilities Holdings Ltd. issued before July 1, 1991, unless the amount of the consideration for which all such shares were issued exceeds $300,000,000 or the particular time is after July 1, 2001.

(8) [Canada Cement Lafarge] — For the purposes of paragraph 112(2.2)(d) of the Act, paragraph (i) of the definition "short-term preferred share", the definition "taxable preferred share" and paragraph (f) of the definition "term preferred share" in subsection 248(1) of the Act, the Exchangeable Preference Shares of Canada Cement Lafarge Ltd. (in this subsection referred to as the "subject shares"), the Exchangeable Preference Shares of Lafarge Canada Inc. and the shares of any corporation formed as a result of an amalgamation or merger of Lafarge Canada Inc. with one or more other corporations are prescribed shares at any particular time where the terms and conditions of such shares at the particular time are the same as, or substantially the same as, the terms and conditions of the subject shares as of June 18, 1987 and, for the purposes of this subsection, the amalgamation or merger of one or more corporations with another corporation formed as a result of an amalgamation or merger of Lafarge Canada Inc. with one or more other corporations shall be deemed to be an amalgamation of Lafarge Canada Inc. with another corporation.

(9) [Time when share acquired] — For the purposes of determining under subsections (2), (4), (5) and (5.1) the time at which a share of a class of the capital stock of a corporation was acquired by a taxpayer, shares of that class acquired by the taxpayer at any particular time before a disposition by the taxpayer of shares of that class shall be deemed to have been disposed of before shares of that class acquired by the taxpayer before that particular time.

(10) [Trusts and partnerships] — For the purposes of subsections (2), (4), (5) and (5.1) and this subsection,

(a) where a taxpayer is a beneficiary of a trust and an amount in respect of the beneficiary has been designated by the trust in a taxation year pursuant to subsection 104(19) of the Act, the taxpayer shall be deemed to have received the amount so designated at the time it was received by the trust; and

(b) where a taxpayer is a member of a partnership and a dividend has been received by the partnership, the taxpayer's share of the dividend shall be deemed to have been received by the taxpayer at the time the dividend was received by the partnership.

(11) [Grandfathering] — For the purposes of subsections (2), (4), (5) and (5.1),

(a) a share of the capital stock of a corporation acquired by a person after December 15, 1987 pursuant to an agreement in writing entered into before December 16, 1987 shall be deemed to have been acquired by that person before December 16, 1987;

" (b) a share of the capital stock of a corporation acquired by a person after December 15, 1987 and before July, 1988 as part of a distribution to the public made in accordance with the terms of a prospectus, preliminary prospectus, registration statement, offering memorandum or notice filed before December 16, 1987 with a public authority pursuant to and in accor-

dance with the securities legislation of the jurisdiction in which the shares were distributed shall be deemed to have been acquired by that person before December 16, 1987;

(c) where a share that was owned by a particular restricted financial institution on December 15, 1987 has, by one or more transactions between related restricted financial institutions, been transferred to another restricted financial institution, the share shall be deemed to have been acquired by the other restricted financial institution before that date and after June 28, 1982 unless at any particular time after December 15, 1987 and before the share was transferred to the other restricted financial institution the share was owned by a shareholder who, at that particular time, was a person other than a restricted financial institution related to the other restricted financial institution; and

(d) where at any particular time there has been an amalgamation (within the meaning assigned by section 87 of the Act) and

(i) each of the predecessor corporations (within the meaning assigned by section 87 of the Act) was a restricted financial institution throughout the period beginning December 16, 1987 and ending at the particular time and the predecessor corporations were related to each other throughout that period, or

(ii) each of the predecessor corporations and the new corporation (within the meaning assigned by section 87 of the Act) is a corporation described in any of paragraphs (a) to (d) of the definition "restricted financial institution" in subsection 248(1) of the Act,

a share acquired by the new corporation from a predecessor corporation on the amalgamation shall be deemed to have been acquired by the new corporation at the time it was acquired by the predecessor corporation.

History: Subsec. 6201(4), the portion of subsec. 6201(5) before para. (b), subsec. 6201(9), the opening words of subsecs. 6201(10) and (11) amended, subsec. 6201(5.1) added, by P.C. 1995-1198, s. 1, July 26, 1995, *Canada Gazette*, Part II, August 9, 1995, applicable to dividends received after December 20, 1991.

Subsec. 6201(2) was substituted, and subsecs. 6201(4) to (11) substituted for former subsec. (4), by P.C. 1989-1565, s. 4, August 14, 1989, *Canada Gazette*, Part II, August 30, 1989, applicable after June 18, 1987.

That portion of subsec. 6201(2) following para. (b) substituted by 1986-2590, s. 16, November 20, 1986, *Canada Gazette*, Part II, December 10, 1986, effective June 29, 1982.

That portion of subsec. 6201(3) preceding para. (a) substituted by P.C. 1985-2860, s. 1, September 26, 1985, *Canada Gazette*, Part II, October 16, 1985, effective July 16, 1981.

S. 6201 substituted by P.C. 1984-3789, s. 16, November 29, 1984, *Canada Gazette*, December 12, 1984, applicable as follows: subsecs. (1) and (2) effective commencing June 29, 1982; subsec. (3) effective commencing July 16, 1981; subsec. (4) effective commencing November 13, 1981.

S. 6201 added by P.C. 1980-423, s. 2, February 8, 1980, *Canada Gazette*, Part II, February 27, 1980, effective December 6, 1979.

Definitions [Reg. 6201]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "controlled" — ITA 256(6), (6.1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "disposed" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "dividend", "insurance corporation", "inventory" — ITA 248(1); "person", "preferred share", "prescribed" — ITA 248(1); "province" — *Interpretation Act* 35(1); "related" — ITA 251(2)–(6); "restricted financial institution" — ITA 248(1); "series" — ITA 248(10); "share", "shareholder", "subsidiary wholly-owned corporation", "taxable preferred share" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

6202. [Resource expenditures — prescribed share] — (1) For the purposes of paragraph 66(15)(d.1) [66(15)"flow-through share"] and subparagraphs 66.1(6)(a)(v) [66.1(6)"Canadian exploration expense"(i)], 66.2(5)(a)(v) [66.2(5)"Canadian development expense"(g)] and 66.4(5)(a)(iii) [66.4(5)"Canadian oil and gas property expense"(c)] of the Act, a share of a class of the capital stock of a corporation (in this section referred to as the "issuing corporation") is a prescribed share if it was issued after December 31, 1982 and

(a) the issuing corporation, any person related to the issuing corporation or of whom the issuing corporation has effective management or control or any partnership or trust of which the issuing corporation or a person related thereto is a member or beneficiary (each of which is referred to in this section as a "member of the related issuing group") is or may be required to redeem, acquire or cancel, in whole or in part, the share or to reduce its paid-up capital at any time within five years from the date of its issue,

(b) a member of the related issuing group provides or may be required to provide any form of guarantee, security or similar indemnity with respect to the share (other than a guarantee, security or similar indemnity with respect to any amount of assistance or benefit from a government, municipality or other public authority in Canada or with respect to eligibility for such assistance or benefit) that could take effect within five years from the date of its issue,

(c) the share (referred to in this section as the "convertible share") is convertible under its terms or conditions at any time within five years from the date of its issue directly or indirectly into debt, or into a share (referred to in this section as the "acquired share") that is, or if issued would be, a prescribed share,

(d) immediately after the share was issued, the person to whom the share was issued or a person related to the person to whom the share was issued (either alone or together with a related person, a related group of persons of which he is a member or a partnership or trust of which he is a member or beneficiary) controls directly or indirectly, or has an absolute or contingent right to control directly or indirectly or to acquire direct or indirect control of, the issuing corporation and the issuing corporation has the right under the terms and conditions in respect of which the share was issued to redeem, purchase or otherwise acquire the share within five years from the date of its issue,

(e) at the time the share was issued, the existence of the issuing corporation was, or there was an arrangement (other than an amalgamation within the meaning assigned by subsection 87(1) of the Act) under which the existence of the issuing corporation could be, limited to a period that ends within five years from the date of its issue, or

(f) the terms or conditions of the share (referred to in this paragraph as the "first share") or of an agreement in existence at the time of its issue provide that a share (referred to in this section as the "substituted share") that is, or if issued would be, a prescribed share may be substituted or exchanged for the first share within five years from the date of issue of the first share,

but does not include a share of the capital stock of a corporation

(g) that was issued after December 31, 1982 pursuant to an agreement or offering in writing made on or before December 31, 1982 or in accordance with a prospectus, registration statement or similar document that was filed with and, where required by law, accepted for filing by, a public authority in Canada pursuant to and in accordance with the laws of Canada or of any province on or before December 31, 1982,

(h) that would be a prescribed share solely by virtue of one or more of the terms or conditions of an agreement if such terms or conditions are not effective or exercisable until the death, disability or bankruptcy of the person to whom the share is issued,

(i) that is

(i) convertible under its terms into one or more shares of a class of the capital stock of the corporation for no consideration other than the share or shares,

(ii) described in paragraph (a) solely because

(A) it is to be cancelled on the conversion within five years from the date of its issue,

(B) its paid-up capital is to be reduced on the conversion within five years from the date of its issue, or

(C) both clauses (A) and (B) apply, and

(iii) not described in paragraph (c), or

(j) that

(i) may have a share substituted or exchanged for it pursuant to its terms or the terms or conditions of an agreement in existence at the time of its issue and no consideration is to be received or receivable for it in respect of the substitution or exchange other than the share substituted or exchanged for it,

(ii) is described in paragraph (a) solely because it is to be redeemed, acquired or cancelled on the substitution or exchange within five years from the date of its issue, and

(iii) is not a share to which paragraph (f) applies,

and for the purposes of this section,

(k) where a person has an interest in a trust, whether directly or indirectly, through an interest in any other trust or in any other manner whatever, the person shall be deemed to be a beneficiary of the trust;

(l) in determining whether an acquired share would be a prescribed share if issued,

(i) the references in paragraphs (a), (b), (d) and (e) to "date of its issue" shall be read as "date of the issue of the convertible share",

(ii) the reference in paragraph (f) to "issue of the first share" shall be read as "issue of the convertible share", and

(iii) this section shall be read without reference to paragraph (g) and to the words "after December 31, 1982";

(m) in determining whether a substituted share would be a prescribed share if issued,

(i) the references in paragraphs (a) to (e) to "date of its issue" shall be read as "date of the issue of the first share", and

(ii) this section shall be read without reference to paragraph (g) and to the words "after December 31, 1982";

(m.1) an excluded obligation in relation to a share of a class of the capital stock of the issuing corporation and an obligation that would be an excluded obligation in relation to the share if the share had been issued after June 17, 1987, shall be deemed not to be a guarantee, security or similar indemnity with respect to the share for the purposes of paragraph (b);

(n) a guarantee, security or similar indemnity referred to in paragraph (b) shall, for greater certainty, not be considered to take effect within five years from the date of issue of a share if the effect of the guarantee, security or indemnity is to provide that a member of the related issuing group will be able to redeem, acquire or cancel the share at a time that is not within five years from the date of issue of the share; and

(o) where an expense is incurred partly in consideration for shares (referred to in this section as "first corporation shares") of the capital stock of one corporation and partly in consideration for an interest in, or right to, shares (referred to in this paragraph as "second corporation shares") of the capital stock of another corporation, in determining whether the second corporation shares are prescribed shares, the references in paragraphs (a), (d) and (e) to "date of its issue" shall be read as "date of the issue of the first corporation shares".

(2) For the purposes of paragraph 66(15)(d.1) [66(15)"flow-through share"] of the Act, subsection (1) does not apply in respect of a share of the capital stock of an issuing corporation that is a new share.

History: That portion of subsec. 6202(1) preceding para. (a) amended by P.C. 1990-51, subsec. 1(1), January 18, 1990, *Canada Gazette*, Part II, January 31, 1990, applicable in respect of shares issued after February 1986.

Para. 6202(1)(m.1) added by subsec. 1(2) of the said P.C. 1990-51, applicable in respect of shares issued after December 31, 1982.

Subsec. 6202(2) added by subsec. 1(3) of the said P.C. 1990-51, applicable in respect of shares issued after June 17, 1987.

S. 6202 added by P.C. 1985-465, s. 16, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable with respect to shares issued after December 31, 1982.

Definitions [Reg. 6202]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "excluded obligation", "new share" — Reg. 6202.1(5); "paid-up capital" — ITA 89(1), 248(1); "person", "prescribed", "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "related" — ITA 251(2)–(6); "security" — *Interpretation Act* 35(1); "share" — ITA 248(1); "specified person" — Reg. 6202.1(5); "substituted", "substitution" — ITA 248(5); "trust" — ITA 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

6202.1 (1) [Flow-through shares — prescribed share] — For the purposes of the definition "flow-through share" in subsection 66(15) of the Act, a new share of the capital stock of a corporation is a prescribed share if, at the time it is issued,

(a) under the terms or conditions of the share or any agreement in respect of the share or its issue,

(i) the amount of the dividends that may be declared or paid on the share (in this section referred to as the "dividend entitlement") may reasonably be considered to be, by way of a formula or otherwise,

(A) fixed,

(B) limited to a maximum, or

(C) established to be not less than a minimum (including any amount determined on a cumulative basis), where with respect to the dividends that may be declared or paid on the share there is a preference over any other dividends that may be declared or paid on any other share of the capital stock of the corporation,

(ii) the amount that the holder of the share is entitled to receive in respect of the share on the dissolution, liquidation or winding-up of the corporation, on a reduction of the paid-up capital of the share or on the redemption, acquisition or cancellation of the share by the corporation or by specified persons in relation to the corporation (in this section referred to as the "liquidation entitlement") may reasonably be considered to be, by way of a formula or otherwise, fixed, limited to a maximum or established to be not less than a minimum,

(iii) the share is convertible or exchangeable into another security issued by the corporation unless

(A) it is convertible or exchangeable only into

(I) another share of the corporation that, if issued, would not be a prescribed share,

(II) a right, including a right conferred by a warrant that, if exercised, would allow the person exercising it to acquire only a share of the corporation that, if issued, would not be a prescribed share, or

(III) both a share described in subclause (I) and a right or warrant described in subclause (II), and

(B) all the consideration receivable by the holder on the conversion or exchange of the share is the share described in subclause (A)(I) or the right or warrant described in subclause (A)(II), or both, as the case may be, or

Proposed Amendment — Reg. 6202.1(1)(a)(iii)(A), (B)

(II) a right (including a right conferred by a warrant) that

1. if it were issued, would not be a prescribed right, and

2. if it were exercised, would allow the person exercising it to acquire only a share of the corporation that, if the share were issued, would not be a prescribed share, or

(III) both a share described in subclause (I) and a right described in subclause (II), and

(B) all the consideration receivable by the holder on the conversion or exchange of the share is the share described in subclause (A)(I) or the right described in subclause (A)(II), or both, as the case may be, or

Application: The December 20, 2002 draft regulations (Appendix F, flow-through shares — prescribed right), subsec. 1(1), will amend the portion of subpara. 6202.1(1)(a)(iii) after subcl. (A)(I) to read as above, applicable to shares and rights issued under an agreement made after December 20, 2002.

Technical Notes: Section 6202.1 of the *Income Tax Regulations* defines certain shares ("prescribed shares") for the purpose of the definition "flow-through share" in subsection 66(15) of the Act. A prescribed share does not qualify as a flow-through share. The purpose of these rules is to ensure that flow-through shares represent genuine risk capital.

Generally speaking, a share will be a prescribed share if the share has fixed or limited rights to dividends or an obligation exists to reduce the paid-up capital of the share or to confer a benefit or guarantee in respect of the share. The restrictions imposed on shares do not apply to rights to acquire shares.

Section 6202.1 is amended, applicable to shares and rights issued under an agreement made after December 20, 2002, to include a definition of a prescribed right. A "prescribed right" is defined in new subsections 6202.1(1.1) and (2.1). This amendment ensures that restrictions on the type of shares that may qualify as flow-through shares currently found in subsections 6202.1(1) and (2) also apply to rights to acquire shares.

(iv) the corporation has, either absolutely or contingently, an obligation to reduce, or any person or partnership has, either absolutely or contingently, an obligation to cause the corporation to reduce, the paid-up capital in respect of the share (other than pursuant to a conversion or exchange of the share, where the right to so convert or exchange does not cause the share to be a prescribed share under subparagraph (iii));

(b) any person or partnership has, either absolutely or contingently, an obligation (other than an excluded obligation in relation to the share)

(i) to provide assistance,

(ii) to make a loan or payment,

(iii) to transfer property, or

(iv) otherwise to confer a benefit by any means whatever, including the payment of a dividend,

either immediately or in the future, that may reasonably be considered to be, directly or indirectly, a repayment or return by the corporation or a specified person in relation to the corporation of all or part of the consideration for which the share was issued or for which a partnership interest was issued in a partnership that acquires the share;

(c) any person or partnership has, either absolutely or contingently, an obligation (other than an excluded obligation in relation to the share) to effect any undertaking, either immediately or in the future, with respect to the share or the agreement under which the share is issued (including any guarantee, security, indemnity, covenant or agreement and including the lending of funds to or the placing of amounts on deposit with, or on behalf of, the holder of the share or, where the holder is a partnership, the members thereof or specified persons in relation to the holder or the members of the partnership, as the case may be) that may reasonably be considered to have been given to ensure, directly or indirectly, that

(i) any loss that the holder of the share and, where the holder is a partnership, the members thereof or specified persons in relation to the holder or the members of the partnership, as the case may be, may sustain by reason of the holding, ownership or disposition of the share or any other property is limited in any respect, or

(ii) the holder of the share and, where the holder is a partnership, the members thereof or specified persons in relation to the holder or the members of the partnership, as the case may be, will derive earnings, by reason of the holding, ownership or disposition of the share or any other property;

(d) the corporation or a specified person in relation to the corporation may reasonably be expected

(i) to acquire or cancel the share in whole or in part otherwise than on a conversion or exchange of the

share that meets the conditions set out in clauses (a)(iii)(A) and (B),

(ii) to reduce the paid-up capital of the corporation in respect of the share otherwise than on a conversion or exchange of the share that meets the conditions set out in clauses (a)(iii)(A) and (B), or

(iii) to make a payment, transfer or other provision (otherwise than pursuant to an excluded obligation in relation to the share), directly or indirectly, by way of a dividend, loan, purchase of shares, financial assistance to any purchaser of the share or, where the purchaser is a partnership, the members thereof or in any other manner whatever, that may reasonably be considered to be a repayment or return of all or part of the consideration for which the share was issued or for which a partnership interest was issued in a partnership that acquires the share,

within 5 years after the date the share is issued, otherwise than as a consequence of an amalgamation of a subsidiary wholly-owned corporation, a winding-up of a subsidiary wholly-owned corporation to which subsection 88(1) of the Act applies or the payment of a dividend by a subsidiary wholly-owned corporation to its parent;

(e) any person or partnership can reasonably be expected to effect, within 5 years after the date the share is issued, any undertaking which, if it were in effect at the time the share was issued, would result in the share being a prescribed share by reason of paragraph (c); or

(f) it may reasonably be expected that, within 5 years after the date the share is issued,

(i) any of the terms or conditions of the share or any existing agreement relating to the share or its issue will thereafter be modified, or

(ii) any new agreement relating to the share or its issue will be entered into,

in such a manner that the share would be a prescribed share if it had been issued at the time of the modification or at the time when the new agreement is entered into.

Related Provisions: Reg. 6202.1(1.1), (2.1) — Prescribed right; Reg. 6202.1(3) — Dividend entitlement and liquidation entitlement; Reg. 6202.1(4) — Agreement deemed not to be undertaking.

Selected Cases [Reg. 6202.1(1)]: *Furukawa v. R.*, [1999] 2 C.T.C. 2095 (TCC) (For share to be prescribed, must be obligation to repay directly or indirectly consideration for share).

Proposed Addition — Reg. 6202.1(1.1)

(1.1) [Flow-through shares — prescribed right] — For the purpose of the definition "flow-through share" in subsection 66(15) of the Act, a new right to acquire a share of the capital stock of a corporation is a prescribed right if, at the time the right is issued,

(a) the amount that the holder of the right is entitled to receive in respect of the right on the dissolution, liquidation or winding-up of the corporation or on the redemption, acquisition or cancellation of the right by the corporation or by specified persons in relation to the corporation (referred to in this section as the "liquidation entitlement" of the right) can reasonably be considered to be, by way of a formula or otherwise, fixed, limited to a maximum or established to be not less than a minimum;

(b) the right is convertible or exchangeable into another security issued by the corporation unless

(i) the right is convertible or exchangeable only into

(A) a share of the corporation that, if issued, would not be a prescribed share,

(B) another right (including a right conferred by a warrant) that

(I) if it were issued, would not be a prescribed right, and

(II) if it were exercised, would allow the person exercising it to acquire only a share of the corporation that, if the share were issued, would not be a prescribed share, or

(C) both a share described in clause (A) and a right described in clause (B), and

(ii) all the consideration receivable by the holder on the conversion or exchange of the right is the share described in clause (A) or the right described in clause (B), or both, as the case may be;

(c) any person or partnership has, either absolutely or contingently, an obligation (other than an excluded obligation in relation to the right)

(i) to provide assistance,

(ii) to make a loan or payment,

(iii) to transfer property, or

(iv) to otherwise confer a benefit by any means whatever, including the payment of a dividend,

either immediately or in the future, that can reasonably be considered to be, directly or indirectly, a repayment or return by the corporation or a specified person in relation to the corporation of all or part of the consideration for which the right was issued or for which a partnership interest was issued in a partnership that acquires the right;

(d) any person or partnership has, either absolutely or contingently, an obligation (other than an excluded obligation in relation to the right) to effect any undertaking, either immediately or in the future, with respect to the right or the agreement under which the right is issued (including any guarantee, security, indemnity, covenant or agreement and) including the lending of funds to or the placing of amounts on deposit with, or on behalf of, the holder of the right or where the holder is a partnership, the members of the partnership or specified persons in relation to the holder or the members of the partnership, as the case may be) that can reasonably be considered to have been given to ensure, directly or indirectly, that

(i) any loss that the holder of the right and, where the holder is a partnership, the members of the partnership or specified persons in relation to the holder or the members of the partnership, as the case may be, may sustain because of the holding, ownership or disposition of the right or any other property is limited in any respect, or

(ii) the holder of the right and, where the holder is a partnership, the members of the partnership or specified persons in relation to the holder or the members of the partnership, as the case may be, will derive earnings, because of the holding, ownership or disposition of the right or any other property;

(e) the corporation or a specified person in relation to the corporation can reasonably be expected

(i) to acquire or cancel the right in whole or in part otherwise than on a conversion or exchange of the right that meets the conditions set out in subparagraphs (b)(i) and (ii), or

(ii) to make a payment, transfer or other provision (otherwise than pursuant to an excluded obligation in relation to the right), directly or indirectly, by way of a dividend, loan, purchase of shares, financial assistance to any purchaser of the right or, where the purchaser is a partnership, the members of the partnership or in any other manner whatever, that can reasonably be considered to be a repayment or return of all or part of the consideration for which the right was issued or for which a partnership interest was issued in a partnership that acquires the right,

within 5 years after the day the right is issued, otherwise than as a consequence of an amalgamation of a subsidiary wholly-owned corporation, a winding-up of a subsidiary wholly-owned corporation to which subsection 88(1) of the Act applies or the payment of a dividend by a subsidiary wholly-owned corporation to its parent;

(f) any person or partnership can reasonably be expected to effect, within 5 years after the day the right is issued, any undertaking which, if it were in effect at the time the right was issued, would result in the right being a prescribed right because of paragraph (d);

(g) it can reasonably be expected that, within 5 years after the day the right is issued,

(i) any of the terms or conditions of the right or any existing agreement relating to the right or its issue will be modified, or

(ii) any new agreement relating to the right or its issue will be entered into,

in such a manner that the right would be a prescribed right if it had been issued at the time of the modification or at the time the new agreement is entered into; or

(h) it can reasonably be expected that the right, if exercised, would allow the person exercising the right to acquire a share in a corporation that, if that share were issued, would become a prescribed share within 5 years after the day the right was issued.

Application: The December 20, 2002 draft regulations (Appendix F, flow-through shares — prescribed right), subsec. 1(2), will add subsec. 6202.1(1.1), applicable to shares and rights issued under an agreement made after December 20, 2002.

Technical Notes: See under Reg. 6202.1(1)(a)(iii).

Related Provisions: Reg. 6202.1(3) — Dividend entitlement and liquidation entitlement; Reg. 6202.1(4) — Agreement deemed not to be undertaking.

(2) [Flow-through shares — prescribed share] — For the purposes of the definition "flow-through share" in subsection 66(15) of the Act, a new share of the capital stock of a corporation is a prescribed share if

(a) the consideration for which the share is to be issued is to be determined more than 60 days after entering into the agreement pursuant to which the share is to be issued;

(b) the corporation or a specified person in relation to the corporation, directly or indirectly,

(i) provided assistance,

(ii) made or arranged for a loan or payment,

(iii) transferred property, or

(iv) otherwise conferred a benefit by any means whatever, including the payment of a dividend,

for the purpose of assisting any person or partnership in acquiring the share or any person or partnership in acquiring an interest in a partnership acquiring the share (otherwise than by reason of an excluded obligation in relation to the share); or

(c) the holder of the share or, where the holder is a partnership, a member thereof, has a right under any agreement or arrangement entered into under circumstances where it is reasonable to consider that the agreement or arrangement was contemplated at or before the time when the agreement to issue the share was entered into,

(i) to dispose of the share, and

(ii) through a transaction or event or a series of transactions or events contemplated by the agreement or arrangement, to acquire a share (referred to in this paragraph as the "acquired share") of the capital stock of another corporation that would be a prescribed share under subsection (1) if the acquired share were issued at the time the share was issued, other than a share that would not be a prescribed share if subsection (1) were read without reference to subparagraphs (a)(iv) and (d)(i) and (ii) thereof where the acquired share is a share

(A) of a mutual fund corporation, or

(B) of a corporation that becomes a mutual fund corporation within 90 days after the acquisition of the acquired share.

Related Provisions: ITA 248(10) — Series of transactions.

Proposed Addition — Reg. 6202.1(2.1)

(2.1) [Prescribed right] — For the purpose of the definition "flow-through share" in subsection 66(15) of the Act, a new right is a prescribed right if

(a) the consideration for which the new right is to be issued is to be determined more than 60 days after entering into the agreement pursuant to which the new right is to be issued;

(b) the corporation or a specified person in relation to the corporation, directly or indirectly,

(i) provided assistance,

(ii) made or arranged for a loan or payment,

(iii) transferred property, or

(iv) otherwise conferred a benefit by any means whatever, including the payment of a dividend,

for the purpose of assisting any person or partnership to acquire the new right or any person or partnership to acquire an interest in a partnership acquiring the new right (otherwise than because of an excluded obligation in relation to the new right); or

(c) the holder of the new right or, where the holder is a partnership, a member of the partnership, has a right under any agreement or arrangement entered into under circumstances where it is reasonable to consider that the agreement or arrangement was con-

templated at or before the time the agreement to issue the new right was entered into,

(i) to dispose of the new right, and

(ii) through a transaction or event or a series of transactions or events contemplated by the agreement or arrangement, to acquire

(A) a share (referred to in this paragraph as the "acquired share") of the capital stock of another corporation that would be a prescribed share under subsection (1) if the acquired share were issued at the time the new right was issued, other than a share that would not be a prescribed share if subsection (1) were read without reference to subparagraphs (1)(a)(iv) and (1)(d)(i) and (ii) where the acquired share is a share

(I) of a mutual fund corporation, or

(II) of a corporation that becomes a mutual fund corporation within 90 days after the acquisition of the acquired share, or

(B) a right (referred to in this paragraph as the "acquired right") to acquire a share of the capital stock of another corporation that would, if it were issued at the time the new right was issued, be a prescribed right, other than a right that would not be a prescribed right if subsection (1.1) were read without reference to subparagraphs (1.1)(e)(i) and (ii) where the acquired right is a right to acquire a share of the capital stock

(I) of a mutual fund corporation, or

(II) of a corporation that becomes a mutual fund corporation within 90 days after the acquisition of the acquired right.

Application: The December 20, 2002 draft regulations (Appendix F, flow-through shares — prescribed right), subsec. 1(3), will add subsec. 6202.1(2.1), applicable to shares and rights issued under an agreement made after December 20, 2002.

Technical Notes: See under Reg. 6202.1(1)(a)(iii).

Related Provisions: ITA 248(10) — Series of transactions.

(3) [Dividend entitlement and liquidation entitlement] — For the purposes of subsection (1),

(a) the dividend entitlement of a share of the capital stock of a corporation shall be deemed not to be fixed, limited to a maximum or established to be not less than a minimum where all dividends on the share are determined solely by reference to a multiple or fraction of the dividend entitlement of another share of the capital stock of the corporation, or of another corporation that controls the corporation, where the dividend entitlement of that other share is not described in subparagraph (1)(a)(i); and

(b) the liquidation entitlement of a share of the capital stock of a corporation shall be deemed not to be fixed, limited to a maximum or established to be not less than a minimum where all the liquidation entitlement is determinable solely by reference to the liquidation entitlement of another share of the capital stock of the corporation, or of another corporation that controls the corporation, where the liquidation entitlement of that other share is not described in subparagraph (1)(a)(ii).

Proposed Amendment — Reg. 6202.1(3)

(3) [Dividend entitlement and liquidation entitlement] — For the purposes of subsections (1) and (1.1),

(a) the dividend entitlement of a share of the capital stock of a corporation is deemed not to be fixed, limited to a maximum or established to be not less than a minimum where all dividends on the share are determined solely by reference to a multiple or fraction of the dividend entitlement of another share of the capital stock of the corporation, or of another corporation that controls the corporation, where the dividend entitlement of that other share is not described in subparagraph (1)(a)(i); and

(b) the liquidation entitlement of a share of the capital stock of a corporation, or of a right to acquire a share of the capital stock of the corporation, as the case may be, is deemed not to be fixed, limited to a maximum or established to be not less than a minimum where

(i) all the liquidation entitlement is determinable solely by reference to

(A) the liquidation entitlement of another share of the capital stock of the corporation (or a share of the capital stock of another corporation that controls the corporation), or

(B) the liquidation entitlement of a right to acquire the capital stock of the corporation (or another corporation that controls the corporation),

(ii) the liquidation entitlement described in clause (i)(A), if any, is not described in subparagraph (1)(a)(ii), and

(iii) the liquidation entitlement described in clause (i)(B), if any, is not described in subparagraph (1.1)(a)(i).

Application: The December 20, 2002 draft regulations (Appendix F, flow-through shares — prescribed right), subsec. 1(4), will amend subsec. 6202.1(3) to read as above, applicable to shares and rights issued under an agreement made after December 20, 2002.

Technical Notes: See under Reg. 6202.1(1)(a)(iii).

(4) [Agreement deemed not to be undertaking] — For the purposes of paragraphs (1)(c) and (e), an agreement entered into between the first holder of a share and another person or partnership for the sale of the share to that other person or partnership for its fair market value at the time the share is acquired by the other person or partnership (determined without regard to the agreement) shall be deemed not to be an undertaking with respect to the share.

Proposed Amendment — Reg. 6202.1(4)

(4) For the purposes of paragraphs (1)(c) and (e) and (1.1)(d) and (f), an agreement entered into between the first holder of a share or right and another person or partnership for the sale of the share or right to that other person or partnership for its fair market value at the time the share or right is acquired by the other person or partnership (determined without regard to the agreement) is deemed not to be an undertaking with respect to the share or right, as the case may be.

Application: The December 20, 2002 draft regulations (Appendix F, flow-through shares — prescribed right), subsec. 1(4), will amend subsec. 6202.1(4) to read as above, applicable to shares and rights issued under an agreement made after December 20, 2002.

Technical Notes: See under Reg. 6202.1(1)(a)(iii).

(5) [Definitions] — For the purposes of section 6202 and this section,

"excluded obligation", in relation to a share issued by a corporation, means

(a) an obligation of the corporation

(i) with respect to eligibility for, or the amount of, any assistance under the *Canadian Exploration and Development Incentive Program Act*, the *Canadian Exploration Incentive Program Act*, the *Ontario Mineral Exploration Program Act, 1989*, Statutes of Ontario 1989, c. 40, or the *Mineral Exploration Incentive Program Act (Manitoba)*, Statutes of Manitoba 1990-91, c. 45, or

(ii) with respect to the making of an election respecting such assistance and the flowing out of such assistance to the holder of the share in accordance with any of those Acts,

(a.1) an obligation of the corporation, in respect of the share, to distribute an amount that represents a payment out of assistance to which the corporation is entitled

(i) under section 25.1 of the *Income Tax Act*, Revised Statutes of British Columbia, 1996, c. 215, and

(ii) as a consequence of the corporation making expenditures funded by consideration received for shares issued by the corporation in respect of which the corporation purports to renounce an amount under subsection 66(12.6) of the Act, and

(b) an obligation of any person or partnership to effect an undertaking to indemnify a holder of the share or, where the holder is a partnership, a member thereof, for an amount not exceeding the amount of any tax payable under the Act or the laws of a province by the holder or the member of the partnership, as the case may be, as a consequence of

(i) the failure of the corporation to renounce an amount to the holder in respect of the share, or

(ii) a reduction, under subsection 66(12.73) of the Act, of an amount purported to be renounced to the holder in respect of the share;

Proposed Amendment — Reg. 6202.1(5)"excluded obligation"

"excluded obligation" in relation to a share or new right issued by a corporation, means

(a) an obligation of the corporation

(i) with respect to eligibility for, or the amount of, any assistance under the *Canadian Exploration and Development Incentive Program Act*, the *Canadian Exploration Incentive Program Act*, the *Ontario Mineral Exploration Program Act, 1989*, Statutes of Ontario 1989, c. 40, or the *Mineral Exploration Incentive Program Act (Manitoba)*, Statutes of Manitoba 1990-91, c. 45, or

(ii) with respect to the making of an election respecting such assistance and the flowing out of such assistance to the holder of the share or the new right in accordance with any of those Acts,

(b) an obligation of the corporation, in respect of the share or the new right, to distribute an amount that represents a payment out of assistance to which the corporation is entitled

(i) as a consequence of the corporation making expenditures funded by consideration received for shares or new rights issued by the corporation in respect of which the corporation purports to renounce an amount under subsection 66(12.6) of the Act, and

(ii) under section 25.1 of the *Income Tax Act*, Revised Statutes of British Columbia, 1996, c. 215, or

(c) an obligation of any person or partnership to effect an undertaking to indemnify a holder of the share or the new right or, where the holder is a partnership, a member of the partnership, for an amount not exceeding the amount of any tax payable under the Act or the laws of a province by the holder or the member of the partnership, as the case may be, as a consequence of

(i) the failure of the corporation to renounce an amount to the holder in respect of the share or the new right, or

(ii) a reduction, under subsection 66(12.73) of the Act, of an amount purported to be renounced to the holder in respect of the share or the new right;

Application: The December 20, 2002 draft regulations (Appendix F, flow-through shares — prescribed right), subsec. 1(5), will amend the definition "excluded obligation" in subsec. 6202.1(5) to read as above, applicable to shares and rights issued under an agreement made after December 20, 2002.

Technical Notes: See under Reg. 6202.1(1)(a)(iii).

Proposed Addition — Reg. 6202.1(5)"new right"

"new right" means a right that is issued after December 20, 2002 to acquire a share of the capital stock of a corporation, other than a right that is issued at a particular time before 2003,

(a) pursuant to an agreement in writing made on or before December 20, 2002,

(b) as part of a distribution of rights to the public made in accordance with the terms of a prospectus, preliminary prospectus, registration statement, offering memorandum or notice, required by law to be filed before distribution of the rights begins, filed on or before December 20, 2002 with a public authority in Canada in accordance with the securities legislation of the province in which the rights are distributed, or

(c) to a partnership interests in which were issued as part of a distribution to the public made in accordance with the terms of a prospectus, preliminary prospectus, registration statement, offering memorandum or notice, required by law to be filed before distribution of the interests begins, filed on or before December 20, 2002 with a public authority in Canada in accordance with the securities legislation of the province in which the interests are distributed, where all interests in the partnership issued at or before the particular time were issued

(i) as part of the distribution, or

(ii) before the beginning of the distribution;

Application: The December 20, 2002 draft regulations (Appendix F, flow-through shares — prescribed right), subsec. 1(6), will add the definition "new right" to subsec. 6202.1(5), applicable to shares and rights issued under an agreement made after December 20, 2002.

Technical Notes: See under Reg. 6202.1(1)(a)(iii).

"new share" means a share of the capital stock of a corporation issued after June 17, 1987, other than a share issued at a particular time before 1989

(a) pursuant to an agreement in writing entered into before June 18, 1987,

(b) as part of a distribution of shares to the public made in accordance with the terms of a prospectus, preliminary prospectus, registration statement, offering memorandum or notice, required by law to be filed before distribution of the shares begins, filed before June 18, 1987 with a public authority in Canada in accordance with the securities legislation of the province in which the shares were distributed, or

(c) to a partnership in which interests were issued as part of a distribution to the public made in accordance with the terms of a prospectus, preliminary prospectus, registration statement, offering memorandum or notice, required by law to be filed before distribution of the interests begins, filed before June 18, 1987 with a public authority in Canada in accordance with the securities legislation of the province in which the interests were distributed, where all interests in the partnership issued at or before the particular time were issued as part of the distribution or prior to the beginning of the distribution;

"specified person", in relation to any particular person, means another person with whom the particular person does not deal at arm's length or any partnership or trust of which the particular person or the other person is a member or beneficiary, respectively.

Related Provisions: ITA 96(2.2)(d)(vii) — Exclusion from limited partnership at-risk rules; ITA 143.2(3)(b)(iv) — Exclusion from tax shelter at-risk adjustments.

History: The opening words of subsec. 6202.1(1) amended by P.C. 2000-1096, subsec. 1(1), July 27, 2000, *Canada Gazette*, Part II, August 16, 2000, applicable after July 31, 1998.

The opening words of subsec. 6202.1(2) amended by P.C. 2000-1096, subsec. 1(2), July 27, 2000, *Canada Gazette*, Part II, August 16, 2000, applicable after July 31, 1998.

Para. (a.1) of the definition "excluded obligation" in subsec. 6202.1(5) added by P.C. 2000-1096, subsec. 1(4), July 27, 2000, *Canada Gazette*, Part II, August 16, 2000, applicable after July 31, 1998.

Subpara. (b)(ii) of the definition "excluded obligation" amended by P.C. 1999-196, s. 3, February 11, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable to renunciations purported to be made after 1996.

Subpara. (a)(i) of "excluded obligation" substituted by P.C. 1994-618, s. 1, April 21, 1994, *Canada Gazette*, Part II, May 4, 1994, applicable to shares issued after February 1992.

Subparas. (a)(i), (ii) of "excluded obligation" amended by P.C. 1991-2475, s. 1, December 12, 1991, *Canada Gazette*, Part II, January 1, 1992, applicable in respect of shares issued after May 3, 1990.

S. 6202.1 added by P.C. 1990-51, s. 2, January 18, 1990, *Canada Gazette*, Part II, January 31, 1990. Paras. 6202.1(2)(a) and (b) are applicable in respect of shares issued after December 15, 1987, other than a share issued at a particular time

(a) pursuant to an agreement in writing entered into before December 16, 1987;

(b) as part of a distribution of shares to the public made in accordance with the terms of a prospectus, preliminary prospectus, registration statement, offering memorandum or notice, required by law to be filed before distribution of the shares begins, filed before December 16, 1987 with a public authority in Canada in accordance with the securities legislation of the province in which the shares were distributed; or

(c) to a partnership in which interests were issued as part of a distribution to the public made in accordance with the terms of a prospectus, preliminary prospectus, registration statement, offering memorandum or notice, required by law to be filed before distribution of the interests begins, filed before December 16, 1987 with a public authority in Canada in accordance with the securities legislation of the province in which the interests were distributed, where all interests in the partnership issued at or before the particular time were issued as part of the distribution or prior to the beginning of the distribution.

The remainder of s. 6202.1 is applicable in respect of shares issued after June 17, 1987.

Definitions [Reg. 6202.1]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "disposition" — ITA 248(1); "dividend" — ITA 248(1); "excluded obligation" — Reg. 6202.1(5); "mutual fund corporation" — ITA 131(8), 248(1); "new right", "new share" — Reg. 6202.1(5); "paid-up capital" — ITA 89(1), 248(1); "person", "prescribed" — ITA 248(1); "prescribed right" — Reg. 6202.1(1.1), (2.1); "property" — ITA 248(1); "province", "security" — *Interpretation Act* 35(1); "series" — ITA 248(10); "share", "subsidiary wholly-owned corporation" — ITA 248(1); "specified person" — Reg. 6202.1(5); "trust" — ITA 104(1), 248(1), (3); "undertaking" — Reg. 6202.1(4); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-503: Exploration and development shares (archived).

6203. (1) [Share-purchase tax credit] — For the purposes of subsection 192(6) of the Act, a prescribed share of the capital stock of a taxable Canadian corporation is a share (other than a share acquired by a taxpayer under circumstances referred to in section 66.3 of the Act, a share acquired as consideration for a disposition of property in respect of which an election was made under subsection 85(1) or (2) of the Act and a share that can be considered to have been issued, directly or indirectly, for consideration that includes other shares of the capital stock of the corporation) where, at the time it is issued,

(a) under the terms or conditions of the share or any agreement in respect of the share or its issue,

(i) the amount of the dividends (in this section referred to as the "dividend entitlement") that the corporation may declare or pay on the share is not limited to a maximum amount or fixed at a minimum amount at that time or any time thereafter by way of a formula or otherwise,

(ii) the amount (in this section referred to as the "liquidation entitlement") that the holder of the share is entitled to receive on the share on the dissolution, liquidation or winding-up of the corporation is not limited to a maximum amount or fixed at a minimum amount by way of a formula or otherwise,

(iii) the share cannot be converted into any other security, other than into another security of the corporation that would, if it were issued for consideration that does not include other shares of the capital stock of the corporation, be a prescribed share,

(iv) the holder of the share cannot at that time or at any time thereafter cause the share to be redeemed, acquired or cancelled by the corporation or any specified person in relation to the corporation, except where the redemption, acquisition or cancellation is required pursuant to a conversion that is not prohibited by subparagraph (iii),

(v) no person or partnership has, either absolutely or contingently, an obligation to reduce, or to cause the corporation to reduce, at that time or at any time thereafter, the paid-up capital in respect of the share, except where the reduction is required pursuant to a conversion that is not prohibited by subparagraph (iii),

(vi) no person or partnership has, either absolutely or contingently, an obligation at that time or at any time thereafter to

(A) provide assistance to acquire the share,

(B) make a loan or payment,

(C) transfer property, or

(D) otherwise confer a benefit by any means whatever, including the payment of a dividend,

that may reasonably be considered to be, directly or indirectly, a repayment or return by the corporation or a specified person in relation to the corporation of all or part of the consideration for which the share was issued,

(vii) neither the corporation nor any specified person in relation to the corporation has, either absolutely or contingently, the right or obligation to redeem, acquire or cancel, at that time or at any time thereafter, the share in whole or in part other than for an amount that approximates the fair market value of the share (determined without reference to any such right or obligation), and

(viii) no person or partnership has, either absolutely or contingently, an obligation to provide, at that time or at any time thereafter, any form of undertaking with respect to the share (including any guarantee, security, indemnity, covenant or agreement and including the lending of funds to or the placing of amounts on deposit with, or on behalf of, the holder of the share or any specified person in relation to holder) that may reasonably be considered to have been given to ensure that

(A) any loss that the holder of the share may sustain by virtue of the holding, ownership or disposition of the share is limited in any respect, or

(B) the holder of the share will derive earnings by virtue of the holding, ownership or disposition of the share;

(b) the corporation or a specified person in relation to the corporation cannot reasonably be expected to, within two years after the time the share is issued,

(i) acquire or cancel the share in whole or in part,

(ii) reduce the paid-up capital of the corporation in respect of the share, or

(iii) make a payment, transfer or other provision, directly or indirectly, by way of a dividend, loan, purchase of shares, financial assistance to any purchaser of the share or in any other manner whatever, that may reasonably be considered to be a repayment or return of all or part of the consideration for which the share was issued

otherwise than as a consequence of the payment of a dividend paid by a subsidiary wholly-owned corporation to its parent, of an amalgamation of a subsidiary wholly-owned corporation or of a winding-up to which subsection 88(1) of the Act applies;

(c) no person or partnership can reasonably be expected to provide, within two years after the time the share is issued, any form of undertaking with respect to the share (including any guarantee, security, indemnity, covenant or agreement and including the lending of funds to, or the placing of amounts on deposit with, or on behalf of, the holder of the share or any specified person in relation to the holder); and

(d) it cannot reasonably be expected that any of the terms or conditions of the share or any existing agreement in respect of the share or its issue will thereafter be modified or amended, or that any new agreement in respect of the share or its issue will be entered into, within two years after the time the share is issued, in such a manner that the share would not be a prescribed share if it had been issued at the time of such modification or amendment or at the time the new agreement is entered into.

(2) [Interpretation] — For the purposes of subsection (1),

(a) the dividend entitlement of a share of the capital stock of a corporation shall be deemed not to be limited to a maximum amount or fixed at a minimum amount where it may reasonably be considered that all or substantially all of the dividend entitlement is determinable by reference to the dividend entitlement of another share of the capital stock of the corporation that meets the requirements of subparagraph (1)(a)(i);

(b) the liquidation entitlement of a share of the capital stock of a corporation shall be deemed not to be limited to a maximum amount or fixed at a minimum amount where it may reasonably be considered that all or substantially all of the liquidation entitlement is determinable by reference to the liquidation entitlement of another share of the capital stock of the corporation that meets the requirements of subparagraph (1)(a)(ii);

(c) where a corporation has merged or amalgamated with one or more other corporations, the corporation formed as a result of the merger or amalgamation shall be deemed to be the same corporation as, and a continuation of, each of its predecessor corporations and a share issued on the merger or amalgamation as consideration for another share shall be deemed to be the same share as the share for which it was issued but this paragraph does not apply if the share issued on the merger or amalgamation is not a prescribed share at the time of its issue; and

(d) an agreement entered into between the first purchaser of a share and another person or partnership, other than a specified person in relation to the corporation issuing the share, for the sale of the share to that other person or partnership shall be deemed not to be an undertaking with respect to the share.

(3) ["Specified person"] — For the purposes of subsections (1) and (2), "specified person", in relation to a corporation or a holder of a share, as the case may be (in this subsection referred to as the "taxpayer"), means any person or partnership with whom the taxpayer does not deal at arm's length or any partnership or trust of which the taxpayer (or a person or partnership with whom the taxpayer does not deal at arm's length) is a member or beneficiary, respectively.

History: S. 6203 added by P.C. 1986-2770, s. 8, December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, effective from May 23, 1985.

Definitions [Reg. 6203]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "disposition" — ITA 248(1); "dividend" — ITA 248(1); "dividend entitlement" — Reg. 6203(1)(a)(i), 6203(2)(a); "liquidation entitlement" — Reg. 6203(1)(a)(ii), 6203(2)(b); "paid-up capital" — ITA 89(1), 248(1); "person", "prescribed", "property" — ITA 248(1); "security" — *Interpretation Act* 35(1); "share" — ITA 248(1); "specified person" — Reg. 6203(3); "subsidiary wholly-owned corporation" — ITA 248(1); "taxable Canadian corporation" — ITA 89(1), 248(1); "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

6204. (1) [Employee stock option deduction — prescribed share] — For the purposes of paragraph 110(1)(d) of the Act, a share is a prescribed share of the capital stock of a corporation at the time of its sale or issue, as the case may be, where, at that time,

Proposed Amendment — Reg. 6204(1) opening words

(1) For the purposes of paragraph 110(1)(d) and section 44.1 of the Act, a share is a prescribed share of the capital stock of a corporation at the time of its sale or issue, as the case may be, where, at that time,

Application: The March 16, 2001 draft regulations (capital gains deferral — eligible small business investments), subsec. 1(1), will amend the opening words of subsec. 6204(1) to read as above, applicable in respect of dispositions that occur after February 27, 2000.

Technical Notes: Subsection 6204(1) prescribes a common share for the purposes of paragraph 110(1)(d) of the Act. The subsection is amended to have it also apply for the purposes of section 44.1 of the Act [small business share rollover — ed.].

(a) under the terms or conditions of the share or any agreement in respect of the share or its issue,

(i) the amount of the dividends (in this section referred to as the "dividend entitlement") that the corporation may declare or pay on the share is not limited to a maximum amount or fixed at a minimum amount at that time or at any time thereafter by way of a formula or otherwise,

(ii) the amount (in this section referred to as the "liquidation entitlement") that the holder of the share is entitled to receive on the share on the dissolution, liquidation or winding-up of the corporation is not limited to a maximum amount or fixed at a minimum amount by way of a formula or otherwise,

(iii) the share cannot be converted into any other security, other than into another security of the corporation or of another corporation with which it does not deal at arm's length that is, or would be at the date of conversion, a prescribed share,

(iv) the holder of the share cannot at that time or at any time thereafter cause the share to be redeemed, acquired or cancelled by the corporation or any specified person in relation to the corporation, except where the redemption, acquisition or cancellation is required pursuant to a conversion that is not prohibited by subparagraph (iii),

(v) no person or partnership has, either absolutely or contingently, an obligation to reduce, or to cause the corporation to reduce, at that time or at any time thereafter, the paid-up capital in respect of the share, except where the reduction is required pursuant to a conversion that is not prohibited by subparagraph (iii), and

(vi) neither the corporation nor any specified person in relation to the corporation has, either absolutely or contingently, the right or obligation to redeem, acquire or cancel, at that time or any later time, the share in whole or in part other than for an amount that approximates the fair market value of the share (determined without reference to any such right or obligation) or a lesser amount;

(b) the corporation or a specified person in relation to the corporation cannot reasonably be expected to, within two years after the time the share is sold or issued, as the case may be, redeem, acquire or cancel the share in whole or in part, or reduce the paid-up capital of the corporation in respect of the share, otherwise than as a consequence of

(i) an amalgamation of a subsidiary wholly-owned corporation,

(ii) a winding-up to which subsection 88(1) of the Act applies, or

(iii) a distribution or appropriation to which subsection 84(2) of the Act applies; and

(c) it cannot reasonably be expected that any of the terms or conditions of the share or any existing agreement in respect of the share or its sale or issue will be modified or amended, or that any new agreement in respect of the share, its sale or issue will be entered into, within two years after the time the share is sold or issued, in such a manner that the share would not be a prescribed share if it had been sold or issued at the time of such modification or amendment or at the time the new agreement is entered into.

Related Provisions: Reg. 6204(2) — Rules.

(2) [Rules] — For the purposes of subsection (1),

(a) the dividend entitlement of a share of the capital stock of a corporation shall be deemed not to be limited to a maximum amount or fixed at a minimum amount where it may reasonably be considered that all or substantially all of the dividend entitlement is determinable by reference to the dividend entitlement of another share of the capital stock of the corporation that meets the requirements of subparagraph (1)(a)(i);

(b) the liquidation entitlement of a share of the capital stock of a corporation shall be deemed not to be limited to a maximum amount or fixed at a minimum amount where it may reasonably be considered that all or substantially all of the liquidation entitlement is determinable by reference to the liquidation entitlement of another share of the capital stock of the corporation that meets the requirements of subparagraph (1)(a)(ii); and

(c) the determination of whether a share of the capital stock of a corporation is a prescribed share shall be made without reference to a right or obligation to redeem, acquire or cancel the share or to cause the share to be redeemed, acquired or cancelled where

(i) the share was issued or sold pursuant to an employee share purchase agreement (in this paragraph referred to as "the agreement") to an employee (in this paragraph referred to as "the holder") of the corporation or of another corporation with which the corporation was not dealing at arm's length,

(ii) the holder was dealing at arm's length with each corporation referred to in subparagraph (i) at the time the share was issued or sold, and

(iii) having regard to all the circumstances, including the terms of the agreement, it can reasonably be considered that

(A) the amount payable on the redemption, acquisition or cancellation (in this clause and in clause (B) referred to as the "acquisition") of the share will not exceed

(I) the adjusted cost base to the holder of the share immediately before the acquisition, where the acquisition was provided for in the agreement and the principal purpose for

its provision was to protect the holder against any loss in respect of the share, or

(II) the fair market value of the share immediately before the acquisition, where the acquisition was provided for in the agreement and the principal purpose for its provision was to provide the holder with a market for the share, and

(B) no portion of the amount payable on the acquisition of the share is directly determinable by reference to the profits of the corporation, or of another corporation with which the corporation does not deal at arm's length, for all or any part of the period during which the holder owned the share or had a right to acquire the share, unless the reference to the profits of the corporation or the other corporation is only for the purpose of determining the fair market value of the share pursuant to a formula set out in the agreement.

Proposed Amendment — Reg. 6204(2)

Letter from Dept. of Finance, March 30, 2005:

Dear [xxx]

This is in reply to your letter of October 15, 2004, requesting a change to section 6204 of the *Income Tax Regulations*, which sets out eligibility requirements for an employee stock option share to be a prescribed share as required to qualify for the stock option deduction under paragraph 110(1)(d) of the *Income Tax Act*. I apologize for the delay in my response.

As you have noted, for a stock option share to be a prescribed share, subparagraph 6204(1)(a)(iv) requires that the employee not have the right to cause the share to be redeemed, acquired or cancelled. However, subsection 6204(2) allows such a right to be ignored if certain conditions are met. One such condition is that the right be provided for in the employee share purchase agreement under which the share is acquired.

You describe a situation in which employees exercising options to acquire shares of a large taxable Canadian-controlled private corporation are required to be parties to a shareholders' agreement which provides for mandatory redemption and retraction rights in certain situations, including death and termination of employment. Since these rights are provided for in the shareholders' agreement, rather than in the employee share purchase agreement, the share is precluded from being a prescribed share and the employee is denied the stock option deduction.

You note that share liquidity rights are generally contained in a shareholders' agreement, or in the rights and restrictions of the shares being acquired. You suggest that it is inappropriate to deny prescribed share treatment, and thus access to the stock option deduction, simply because liquidity rights are provided in this way. We agree and are prepared to recommend an amendment to the Regulations to address this situation.

While I cannot offer any assurance that the recommendation we intend to make in this regard will be adopted, I trust that this statement of our position is helpful to you.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

(3) ["Specified person"] — For the purposes of subsection (1), "specified person", in relation to a corporation, means

(a) any person or partnership with whom the corporation does not deal at arm's length otherwise than because of a right referred to in paragraph 251(5)(b) of the Act that arises as a result of an offer by the person or partnership to acquire all or substantially all of the shares of the capital stock of the corporation, or

(b) any partnership or trust of which the corporation (or a person or partnership with whom the corporation does not deal at arm's length) is a member or beneficiary, respectively.

Related Provisions: Reg. 6204(4) — Interpretation.

(4) [Interpretation] — For the purposes of subsection (3), the Act shall be read without reference to subsection 256(9) of the Act.

History: Para. 6204(1)(b) amended by P.C. 2003-1497, s. 4, October 2, 2003, *Canada Gazette*, Part II, October 22, 2003, applicable to options exercised after 1998.

Subparas. 6204(1)(a)(vi), (2)(c)(i) and (ii), para. 6204(1)(b), subsec. 6204(3) amended, subsec. 6204(4) added, by P.C. 1997-1146, subsecs. 1(1), (3), (2), and (4) respectively, August 28, 1997, *Canada Gazette*, Part II, September 17, 1997. Subpara. 6204(1)(a)(vi) applicable to shares isssued or sold after 1994; para. 6204(1)(b), subsecs. (3) and (4) applicable to 1996 *et seq.*, and subparas. 6204(2)(c)(i) and (ii) applicable to 1985 *et seq.*

Subpara. 6204(1)(b)(i), subsec. 6204(3) amended, para. 6204(2)(c) added, by P.C. 1994-618, subsecs. 2(1), (3), and (2) respectively, April 21, 1994, *Canada Gazette*, Part II, May 4, 1994, applicable to 1985 *et seq.*

S. 6204 added by P.C. 1986-2770, s. 8, December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, effective from May 23, 1985.

Definitions [Reg. 6204]: "adjusted cost base" — ITA 54, 248(1); "amount" — ITA 248(1); "arm's length" — ITA 251(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "dividend" — ITA 248(1); "dividend entitlement" — Reg. 6204(1)(a)(i), 6204(2)(a); "employee" — ITA 248(1); "liquidation entitlement" — Reg. 6204(1)(a)(ii), 6204(2)(b); "paid-up capital" — ITA 89(1), 248(1); "person", "prescribed" — ITA 248(1); "share", "subsidiary wholly-owned corporation" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

Interpretation Bulletins: IT-113R4: Benefits to employees — stock options; IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits (archived).

6205. (1) [Capital gains deduction — prescribed share] — For the purposes of subsections 110.6(8) and (9) of the Act and subject to subsection (3), a prescribed share is a share of the capital stock of a corporation where

(a) under the terms or conditions of the share or any agreement in respect of the share or its issue,

(i) at the time the share is issued,

(A) the amount of the dividends (in this section referred to as the "dividend entitlement") that the corporation may declare or pay on the share is not limited to a maximum amount or fixed at a minimum amount at that time or at any time thereafter by way of a formula or otherwise,

(B) the amount (in this section referred to as the "liquidation entitlement") that the holder of the share is entitled to receive on the share on the dissolution, liquidation or winding-up of the corporation is not limited to a maximum amount or fixed at a minimum amount by way of a formula or otherwise,

(C) the share cannot be converted into any other security, other than into another security of the corporation that is, or would be at the date of conversion, a prescribed share,

(D) the holder of the share does not, at that time or at any time thereafter, have the right or obligation to cause the share to be redeemed, acquired or cancelled by the corporation or a specified person in relation to the corporation, except where the redemption, acquisition or cancellation is required pursuant to a conversion that is not prohibited by clause (C),

(E) no person or partnership has, either absolutely or contingently, an obligation to reduce, or to cause the corporation to reduce, at that time or at any time thereafter, the paid-up capital in respect of the share, otherwise than by way of a redemption, acquisition or cancellation

of the share that is not prohibited by this section,

(F) no person or partnership has, either absolutely or contingently, an obligation (other than an excluded obligation in relation to the share, as defined in subsection 6202.1(5)) at that time or any time thereafter to

(I) provide assistance to acquire the share,

(II) make a loan or payment,

(III) transfer property, or

(IV) otherwise confer a benefit by any means whatever, including the payment of a dividend,

that may reasonably be considered to be, directly or indirectly, a repayment or return by the corporation or a specified person in relation to the corporation of all or part of the consideration for which the share was issued, and

(G) neither the corporation nor any specified person in relation to the corporation has, either absolutely or contingently, the right or obligation to redeem, acquire or cancel, at that time or at any time thereafter, the share in whole or in part, except where the redemption, acquisition or cancellation is required pursuant to a conversion that is not prohibited by clause (C),

(ii) no person or partnership has, either absolutely or contingently, an obligation (other than an excluded obligation in relation to the share, as defined in subsection 6202.1(5)) to provide, at any time, any form of undertaking with respect to the share (including any guarantee, security, indemnity, covenant or agreement and including the lending of funds to or the placing of amounts on deposit with, or on behalf of, the holder of the share or any specified person in relation to that holder) that may reasonably be considered to have been given to ensure that

(A) any loss that the holder of the share may sustain by virtue of the holding, ownership or disposition of the share is limited in any respect, or

(B) the holder of the share will derive earnings by virtue of the holding, ownership or disposition of the share; and

(b) at the time the share is issued, it cannot reasonably be expected, having regard to all the circumstances, that any of the terms or conditions of the share or any existing agreement in respect of the share or its issue will thereafter be modified or amended or that any new agreement in respect of the share or its issue will be entered into, in such a manner that the share would not be a prescribed share if it had been issued at the time of such modification or amendment or at the time the new agreement is entered into.

Related Provisions: Reg. 6205(4) — Interpretation.

(2) [Capital gains deduction — prescribed share] — For the purposes of subsections 110.6(8) and (9) of the Act and subject to subsection (3), a prescribed share is a share of the capital stock of a particular corporation where

(a) it is a particular share that is owned by a person and that was issued by the particular corporation as part of an arrangement to that person, to a spouse, common-law partner or parent of that person or, if the person is a trust described in paragraph 104(4)(a) of the Act, to the person who created the trust or by whose will the trust was created or, if the person is a corporation, to another person owning all of the issued and out-standing shares of the capital stock of the corporation or to a spouse, common-law partner or parent of that other person, and

(i) the main purpose of the arrangement was to permit any increase in the value of the property of the particular corporation to accrue to other shares that would, at the time of their issue, be prescribed shares if this section were read without reference to this subsection, and

(ii) at the time of the issue of the particular share or at the end of the arrangement,

(A) the other shares were owned by

(I) the person to whom the particular share was issued (in this paragraph referred to as the "original holder"),

(II) a person who did not deal at arm's length with the original holder,

(III) a trust none of the beneficiaries of which were persons other than the original holder or a person who did not deal at arm's length with the original holder, or

(IV) any combination of persons described in subclause (I), (II) or (III),

(B) the other shares were owned by employees of the particular corporation or of a corporation controlled by the particular corporation, or

(C) the other shares were owned by any combination of persons each of whom is described in clause (A) or (B); or

(b) it is a share that was issued by a mutual fund corporation.

Related Provisions: ITA 256(6), (6.1) — Meaning of "controlled"; Reg. 6205(4) — Interpretation.

(3) [Capital gains deduction — prescribed share] — For the purposes of subsections 110.6(8) and (9) of the Act, a prescribed share does not include a share of the capital stock issued by a mutual fund corporation (other than an investment corporation) the value of which can reasonably be considered to be, directly or indirectly, derived primarily from investments made by the mutual fund corporation in one or more corporations (in this subsection referred to as an "investee corporation") connected with it (within the meaning of subsection 186(4) of the Act on the assumption that the references in that subsection to "payer corporation" and "particular corporation" were read as references to "investee corporation" and "mutual fund corporation", respectively).

Related Provisions: ITA 186(7) — Interpretation of "connected".

(4) [Rules] — For the purposes of this section,

(a) the dividend entitlement of a share of the capital stock of a corporation shall be deemed not to be limited to a maximum amount or fixed at a minimum amount where it may reasonably be considered that

(i) all or substantially all of the dividend entitlement is determinable by reference to the dividend entitlement of another share of the capital stock of the corporation that meets the requirements of clause (1)(a)(i)(A), or

(ii) the dividend entitlement cannot be such as to impair the ability of the corporation to redeem another share of the capital stock of the corporation that meets the requirements of paragraph (2)(a);

(b) the liquidation entitlement of a share of the capital stock of a corporation shall be deemed not to be limited to a maximum amount or fixed at a minimum amount where it may reasonably be considered that all or substantially all of the liquidation entitlement is determinable by reference to the liquidation entitlement of another share of the capital stock of the corporation that meets the requirements of clause (1)(a)(i)(B);

(c) where two or more corporations (each of which is referred to in this paragraph as a "predecessor corporation") have merged or amalgamated, the corporation formed as a result of the merger or amalgamation (in this paragraph referred to as the "new corporation") shall be deemed to be the same corporation as, and a continuation of, each of the predecessor corporations and a share of the capital stock of the new corporation issued on the merger or amalgamation as consideration for a share of the capital stock of a predecessor corporation shall be deemed to be the same share as the share of the predecessor corporation for which it was issued, but this paragraph does not apply if the share issued on the merger or amalgamation is not a prescribed share at the time of its issue and either

(i) the terms and conditions of that share are not identical to those of the share of the predecessor corporation for which it was issued, or

(ii) at the time of its issue the fair market value of that share is not the same as that of the share of the predecessor corporation for which it was issued;

(d) a reference in clauses (1)(a)(i)(D) and (G) and subparagraph (1)(a)(ii) to a right or obligation of the corporation or a person or partnership does not include a right or obligation provided in a written agreement among shareholders of a private corporation owning more than 50% of its issued and outstanding share capital having full voting rights under all circumstances to which the corporation, person or partnership is a party unless it may reasonably be considered, having regard to all the circumstances, including the terms of the agreement and the number and relationship of the shareholders, that one of the main reasons for the existence of the agreement is to avoid or limit the application of subsection 110.6(8) or (9) of the Act;

(e) where at any particular time after November 21, 1985, the terms or conditions of a share are changed or any existing agreement in respect thereof is changed or a new agreement in respect of the share is entered into, the share shall, for the purpose of determining whether it is a prescribed share, be deemed to have been issued at that particular time; and

(f) the determination of whether a share of the capital stock of a corporation is a prescribed share for the purposes of subsection (1) shall be made without reference to a right or obligation to redeem, acquire or cancel the share or to cause the share to be redeemed, acquired or cancelled where

(i) the share was issued pursuant to an employee share purchase agreement (in this paragraph referred to as "the agreement") to an employee (in this paragraph referred to as "the holder") of the corporation or of a corporation with which it did not deal at arm's length,

(ii) the holder was dealing at arm's length with each corporation referred to in subparagraph (i) at the time the share was issued, and

(iii) having regard to all the circumstances including the terms of the agreement, it may reasonably be considered that

(A) the amount payable on the redemption, acquisition or cancellation (in this clause and in clause (B) referred to as the "acquisition") of the share will not exceed

(I) the adjusted cost base of the share to the holder immediately before the acquisition, where the acquisition was provided for in the agreement and the principal purpose for its provision was to protect the holder against any loss in respect of the share, or

(II) the fair market value of the share immediately before the acquisition, where the acquisition was provided for in the agreement and the principal purpose for its provision was to provide the holder with a market for the share, and

(B) no portion of the amount payable on the acquisition of the share is directly determinable by reference to the profits of the corporation, or of another corporation with which it does not deal at arm's length, for all or any part of the period during which the holder owned the share or had a right to acquire the share, unless the reference to the profits of the corporation or the other corporation is only for the purpose of determining the fair market value of the share pursuant to a formula set out in the agreement.

(5) ["Specified person"] — For the purposes of this section, "specified person", in relation to a corporation or a holder of a share, as the case may be (in this subsection referred to as the "taxpayer"), means any person or partnership with whom the taxpayer does not deal at arm's length or any partnership or trust of which the taxpayer (or a person or partnership with whom the taxpayer does not deal at arm's length) is a member or beneficiary, respectively.

History: The opening words of para. 6205(2)(a) amended by P.C. 2001-957, s. 5, May 31, 2001, *Canada Gazette*, Part II, June 20, 2001, applicable to 2001 *et seq.*, except that if a taxpayer and a person have jointly elected pursuant to s. 144 of the *Modernization of Benefits and Obligations Act* (S.C. 2000, c. 12), in respect of the 1998, 1999 or 2000 taxation year, the amendment applies to the taxpayer and the person in respect of the applicable taxation year *et seq.*

All that portion of subsec. 6205(2) preceding subpara. (a)(ii) amended by P.C. 1994-618, subsec. 3(1), April 21, 1994, *Canada Gazette*, Part II, May 4, 1994, applicable to 1985 *et seq.*, except that for taxation years ending before May 5, 1994, the reference in subpara. 6205(2)(a)(i) to "without reference to this subsection" shall be read as "without reference to this paragraph".

Cl. 6205(2)(a)(ii)(B) amended, and cl. (C) added, by P.C. 1994-618, subsec. 3(3), April 21, 1994, *Canada Gazette*, Part II, May 4, 1994, applicable to 1985 *et seq.*

Para. 6205(4)(c) amended by the said P.C. 1994-618, subsec. 3(4), applicable to mergers and amalgamations occurring after 1984.

Cl. 6205(1)(a)(i)(F) and subpara. (1)(a)(ii) amended by P.C. 1991-2475, s. 2, December 12, 1991, *Canada Gazette*, Part II, January 1, 1992, applicable after June 17, 1987.

Paras. 6205(2)(a), (b) substituted for (a) to (c), and subpara. 6205(4)(a)(ii) amended, by P.C. 1990-1838, subsecs. 1(1), (2), August 28, 1990, *Canada Gazette*, Part II, September 12, 1990, applicable to 1985 *et seq.*

Para. 6205(4)(f) added by subsec. 1(3) of the said P.C. 1990-1838, applicable after November 27, 1986.

S. 6205 added by P.C. 1986-2770, s. 8, December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, applicable to 1985 *et seq.*

Definitions [Reg. 6205]: "adjusted cost base" — ITA 54, 248(1); "amount" — ITA 248(1); "arm's length" — ITA 251(1); "connected" — ITA 186(4), (7); "controlled" — ITA 256(6), (6.1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "disposition" — ITA 248(1); "dividend" — ITA 248(1); "dividend entitlement" — Reg. 6205(1)(a)(i)(A), 6205(4)(a); "employee" — ITA 248(1); "investment corporation" — ITA 130(3), 248(1); "liquidation entitlement" — Reg. 6205(1)(a)(i)(B), 6205(4)(b); "mutual fund corporation" — ITA 131(8), 248(1); "paid-up capital" — ITA 89(1), 248(1); "person", "prescribed" — ITA 248(1); "private corporation" — ITA 89(1), 248(1); "property" — ITA 248(1); "security" — *Interpretation Act* 35(1); "share", "shareholder" — ITA 248(1); "specified person" — Reg. 6205(5); "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3); "written" — *Interpretation Act* 35(1)"writing".

6206. [Prescribed share for ITA 84(8)] — The Class I Special Shares of Reed Stenhouse Companies Limited, issued before January 1, 1986, are prescribed for the purposes of subsection 84(8) of the Act.

History: S. 6206 added by P.C. 1986-2770, s. 8, December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, effective from May 23, 1985.

6207. (1) For the purposes of paragraph 183.1(4)(c) of the Act (as it read in its application to transactions entered into before September 13, 1988), a share is a prescribed share of the capital stock of an acquiring corporation where, at the time the share is issued

(a) under the terms or conditions of the share or any agreement in respect of the share or its issue,

(i) the amount of the dividends (in this section referred to as the "dividend entitlement") that the corporation may declare or pay on the share is not limited to a maximum amount or fixed at a minimum amount at that time or at any time thereafter by way of a formula or otherwise,

(ii) the amount (in this section referred to as the "liquidation entitlement") that the holder of the share is entitled to receive on the share on the dissolution, liquidation or winding-up of the corporation is not limited to a maximum amount or fixed at a minimum amount by way of a formula or otherwise,

(iii) the share cannot be converted into any other security, other than into another security of the corporation or of another corporation with which it does not deal at arm's length that is, or would be at the date of conversion, a prescribed share,

(iv) the holder of the share does not, at that time or at any time thereafter, have the right or obligation to cause the share to be redeemed, acquired or cancelled by the corporation or any specified person in relation to the corporation, except where the redemption, acquisition or cancellation is required pursuant to a conversion that is not prohibited by subparagraph (iii),

(v) no person or partnership has, either absolutely or contingently, an obligation to reduce, or to cause the corporation to reduce, at that time or at any time thereafter, the paid-up capital in respect of the share, otherwise than by way of a redemption, acquisition or cancellation of the share that is not prohibited by this section, and

(vi) neither the corporation nor any specified person in relation to the corporation has, either absolutely or contingently, the right or obligation to redeem, acquire or cancel, at that time or at any time thereafter, the share in whole or in part, except where the redemption, acquisition or cancellation is required pursuant to a conversion that is not prohibited by subparagraph (iii); and

(b) it cannot reasonably be expected, having regard to all the circumstances, that any of the terms or conditions of the share or any existing agreement in respect of the share or its issue will be modified or amended, or that any new agreement in respect of the share or its issue will be entered into, in such a manner that the share would not be a prescribed share if it had been issued at the time of such modification or amendment or at the time the new agreement is entered into.

(2) For the purposes of this section,

(a) the dividend entitlement of a share of the capital stock of a corporation shall be deemed not to be limited to a maximum amount or fixed at a minimum amount where it may reasonably be considered that all or substantially all the dividend entitlement is determinable by reference to the dividend entitlement of another share of the capital stock of the corporation that meets the requirements of subparagraph (1)(a)(i);

(b) the liquidation entitlement of a share of the capital stock of a corporation shall be deemed not to be limited to a maximum amount or fixed at a minimum amount where it may reasonably be considered that all or substantially all of the liquidation entitlement is determinable by reference to the liquidation entitlement of another share of the capital stock of the corporation that meets the requirements of subparagraph (1)(a)(ii);

(c) where at any particular time after June 3, 1987, the terms or conditions of a share are changed or any existing agreement in respect of the share is changed or a new agreement in respect of the share is entered into, the share shall, for the purpose of determining whether it is a prescribed share, be deemed to have been issued at that particular time;

(d) the determination of whether a share of the capital stock of a corporation owned by an employee of the corporation or another corporation with which it does not deal at arms' length is a prescribed share shall be made without reference to a right or obligation with respect to an acquisition of the share, the consideration for which is described in subparagraph 183.1(4)(c)(i) or (ii) of the Act (as those subparagraphs read in their application to transactions entered into before September 13, 1988) where no portion of the amount payable on the acquisition of the share is directly determinable by reference to the profits of the corporation or the other corporation for all or any part of the period during which the employee owned the share or had a right to acquire the share, unless the reference to the profits of the corporation or the other corporation is only for the purpose of determining the fair market value of the share pursuant to a formula set out in the employee share purchase agreement under which the employee acquired the share; and

(e) a reference in subparagraphs (1)(a)(iv) and (vi) to a right or obligation of the corporation or a person or partnership does not include a right or obligation provided in a written agreement among shareholders of a private corporation owning more than 50% of its issued and outstanding share capital having full voting rights under all circumstances to which the corporation, person or partnership is a party unless it may reasonably be considered, having regard to all the cir-

cumstances including the terms of the agreement and the number and relationship of the shareholders, that one of the main reasons for the existence of the agreement is to avoid or limit the application of subsection 183.1(1) of the Act.

(3) For the purposes of subsection (1), "specified person" in relation to a corporation means any person or partnership with whom the corporation does not deal at arm's length or any partnership or trust of which the corporation (or a person or partnership with whom the corporation does not deal at arm's length) is a member or beneficiary, respectively.

History: That portion of s. 6207 preceding para. (a) amended by P.C. 1992-2335, Sch. II, s. 14, November 19, 1992, *Canada Gazette*, Part II, December 2, 1992, applicable after November 27, 1986.

S. 6207 added by P.C. 1990-1838, s. 2, August 28, 1990, *Canada Gazette*, Part II, September 12, 1990, applicable after November 27, 1986, except that it does not apply with respect to transactions entered into on or after September 13, 1988, other than transactions that are part of a series of transactions, determined without reference to subsection 248(10) of the *Income Tax Act*, commencing before September 13, 1988 and completed before 1989.

Definitions [Reg. 6207]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "dividend", "employee" — ITA 248(1); "paid-up capital" — ITA 89(1), 248(1); "person", "prescribed" — ITA 248(1); "private corporation" — ITA 89(1), 248(1); "share", "shareholder" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3); "written" — *Interpretation Act* 35(1)"writing".

6208. (1) [Non-resident withholding tax — prescribed security] — For the purposes of clause 212(1)(b)(vii)(E) of the Act, a prescribed security with respect to an obligation of a corporation is

(a) a share of the capital stock of the corporation unless

(i) under the terms and conditions of the share, any agreement relating to the share or any modification of such terms, conditions or agreement, the corporation or a specified person in relation to the corporation is or may, at any time within 5 years after the date of the issue of the obligation, be required to redeem, acquire or cancel, in whole or in part, the share (unless the share is or may be required to be redeemed, acquired or cancelled by reason only of a right to convert the share into, or exchange the share for, another share of the corporation that, if issued, would be a prescribed security) or to reduce its paid-up capital,

(ii) as a result of the modification or establishment of the terms or conditions of the share or the changing or entering into of any agreement in respect of the share, the corporation or a specified person in relation to the corporation may, within 5 years after the date of the issue of the obligation, reasonably be expected to redeem, acquire or cancel, in whole or in part, the share (unless the share is or may be required to be redeemed, acquired or cancelled by reason only of a right to convert the share into, or exchange the share for, another share of the corporation that, if issued, would be a prescribed security) or to reduce its paid-up capital, or

(iii) as a result of the terms or conditions of the share or any agreement entered into by the corporation or a specified person in relation to the corporation or any modification of such terms, conditions or agreement, any person is required, either absolutely or contingently, within 5 years after the date of the issue of the obligation, to effect any undertaking, including any guarantee, covenant or agreement to purchase or repurchase the share, and including a loan of funds to or the placing of amounts on deposit with, or on behalf of, the shareholder or a specified person in relation to the shareholder given

(A) to ensure that any loss that the shareholder or a specified person in relation to the shareholder may sustain, by reason of the ownership, holding or disposition of the share or any other property, is limited in any respect, and

(B) as part of a transaction or event or series of transactions or events that included the issuance or acquisition of the obligation,

and for the purposes of this subparagraph, where such an undertaking in respect of a share is given at any particular time after the date of the issue of the obligation, the obligation shall be deemed to have been issued at the particular time and the undertaking shall be deemed to have been given as part of a series of transactions that included the issuance or acquisition of the obligation, and

(b) a right or warrant to acquire a share of the capital stock of the corporation that would, if issued, be a prescribed security with respect to the obligation,

where all the consideration receivable upon a conversion or exchange of the obligation or the prescribed security, as the case may be, is a share of the capital stock of the corporation described in paragraph (a) or a right or warrant described in paragraph (b), or both, as the case may be.

Related Provisions: ITA 248(10) — Series of transactions; Reg. 6208(2) — Consideration for fractional share.

Interpretation Bulletins: IT-361R3: Exemption from Part XIII tax on interest payments to non-residents.

(2) [Consideration for fraction of a share] — For the purposes of this section, where a taxpayer may become entitled upon the conversion or exchange of an obligation or a prescribed security to receive consideration in lieu of a fraction of a share, that consideration shall be deemed not to be consideration unless it may reasonably be considered to be receivable as part of a series of transactions or events one of the main purposes of which is to avoid or limit the application of Part XIII of the Act.

Related Provisions: ITA 248(10) — Series of transactions.

(3) ["Specified person"] — In this section, "specified person", in relation to a corporation or a shareholder, means any person with whom the corporation or the shareholder, as the case may be, does not deal at arm's length or any partnership or trust of which the corporation or the shareholder, as the case may be, or the person is a member or beneficiary, respectively.

History: S. 6208 added by P.C. 1990-854, s. 1, May 10, 1990, *Canada Gazette*, Part II, May 23, 1990, applicable after December 19, 1986.

Definitions [Reg. 6208]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "disposition" — ITA 248(1); "paid-up capital" — ITA 89(1), 248(1); "person", "prescribed", "property" — ITA 248(1); "series" — ITA 248(10); "share", "shareholder" — ITA 248(1); "specified person" — Reg. 6208(3); "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

6209. [Lending assets — prescribed shares and property] — For the purposes of the definition "lending asset" in subsection 248(1) of the Act,

(a) a share owned by a bank is a prescribed share for a taxation year where it is a preferred share of the capi-

tal stock of a corporation that is dealing at arm's length with the bank that may reasonably be considered to be, and is reported as, a substitute or alternative for a loan to the corporation, or another corporation with whom the corporation does not deal at arm's length, in the bank's annual report for the year to the relevant authority or, where the bank was throughout the year subject to the supervision of the relevant authority but was not required to file an annual report for the year with the relevant authority, in its financial statements for the year; and

(b) a property is a prescribed property for a taxation year where

(i) in the case of a security held by a bank, the security is reported as part of the bank's trading account in its annual report for the year to the relevant authority or, where the bank was throughout the year subject to the supervision of the relevant authority but was not required to file an annual report for the year with the relevant authority, in its financial statements for the year,

(ii) in the case of a security held by a taxpayer other than a bank, the security is at any time in the year a property described in an inventory of the taxpayer, or

Proposed Amendment — Reg. 6209(b)(i), (ii)

(i) the security is a mark-to-market property (as defined in subsection 142.2(1) of the Act) for the year of a financial institution (as defined in that subsection), or

(ii) the security is at any time in the year a property described in an inventory of a taxpayer.

Application: The June 1, 1995 draft regulations (securities held by financial institutions), s. 7, will amend subparas. 6209(b)(i) and (ii) to read as above, applicable to taxation years that end after February 22, 1994.

Technical Notes: Section 6209 prescribes certain shares and other securities for the purpose of the definition of "lending asset" in subsection 248(1) of the Act. Securities prescribed by paragraph 6209(b) are excluded from being lending assets. Paragraph 6209(b) prescribes a security if it is included in the trading account of a bank or in the inventory of a taxpayer other than a bank.

Paragraph 6209(b) is amended to provide that a security is prescribed if it is a mark-to-market property or is included in a taxpayer's inventory. "Mark-to-market property", which is defined in new subsection 142.2(1) of the Act, includes most shares and some debt obligations.

As a consequence of this amendment, a specified debt obligation (as defined in subsection 142.2(1) of the Act) held by a bank in its trading account will be treated as a lending asset if it is not a mark-to-market property. This observation applies, in particular, to the debt obligations of a country that has been designated by the Office of the Superintendent of Financial Institutions and to the United Mexican States Collateralized Par or Discount Bonds Due 2019.

(iii) the property is a direct financing lease, or is any other financing arrangement, of a taxpayer that is reported as a loan in the taxpayer's financial statement for the year prepared in accordance with generally accepted accounting principles and an amount is deductible under paragraph 20(1)(a) of the Act in respect of the property that is the subject of the lease or arrangement in computing the taxpayer's income for the year.

History: The opening words of para. 6209(b) amended and subpara. (iii) added by P.C. 1999-195, s. 1, February 11, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable

(a) to taxation years that end after September 1997; and

(b) to taxation years that end after 1995 and before October 1997 where the taxpayer elects in writing to have para. 20(1)(l) of the Act, as amended, apply to the year and files the election with the Minister of National Revenue before October 1998.

S. 6209 added by P.C. 1990-2779, s. 3, December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

Definitions [Reg. 6209]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "bank" — ITA 248(1), *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "inventory" — ITA 248(1); "mark-to-market property" — ITA 142.2(1); "preferred share", "prescribed", "property" — ITA 248(1); "share" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

6210. [Prescribed debt obligation — donation of listed shares] — For the purposes of paragraph 38(a.1) of the Act, a prescribed debt obligation is a bond, debenture, note, mortgage or similar obligation

(a) of or guaranteed by the Government of Canada; or

(b) of the government of a province or an agent of that government.

History: S. 6210 added by P.C. 2001-954, s. 6, May 31, 2001, *Canada Gazette*, Part II, June 20, 2001, applicable after February 18, 1997.

PART LXIII — CHILD TAX BENEFITS

History: Part LXIII (ss. 6300–6302) enacted by P.C. 1992-2714, December 29, 1992, *Canada Gazette*, Part II, January 13, 1993, applicable after 1992.

6300. Interpretation — In this Part, "qualified dependant" has the meaning assigned by section 122.6 of the Act.

6301. Non-application of presumption — **(1)** For the purposes of paragraph (g) of the definition "eligible individual" in section 122.6 of the Act, the presumption referred to in paragraph (f) of that definition does not apply in the circumstances where

(a) the female parent of the qualified dependant declares in writing to the Minister that the male parent, with whom she resides, is the parent of the qualified dependant who primarily fulfils the responsibility for the care and upbringing of each of the qualified dependants who reside with both parents;

(b) the female parent is a qualified dependant of an eligible individual and each of them files a notice with the Minister under subsection 122.62 (1) of the Act in respect of the same qualified dependant;

(c) there is more than one female parent of the qualified dependant who resides with the qualified dependant and each female parent files a notice with the Minister under subsection 122.62 (1) of the Act in respect of the qualified dependant; or

(d) more than one notice is filed with the Minister under subsection 122.62 (1) of the Act in respect of the same qualified dependant who resides with each of the persons filing the notices if such persons live at different locations.

History: Paras. 6301(1)(a) to (d) amended by 1998-2270, subsec. 9(1), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after August 27, 1995.

Subsec. 6301(1) amended by 1996, c. 11, s. 96, to substitute "Minister of Human Resources Development" for "Minister of National Health and Welfare", in force July 12, 1996.

(2) For greater certainty, a person who files a notice referred to in paragraph (1)(b), (c) or (d) includes a person

who is not required under subsection 122.62(3) of the Act to file such a notice.

History: Subsec. 6301(2) amended by 1998-2270, subsec. 9(2), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after August 27, 1995.

Subsec. 6301(2) amended by 1996, c. 11, s. 96, to substitute "Minister of Human Resources Development" for "Minister of National Health and Welfare", in force July 12, 1996.

Definitions [Reg. 6301]: "individual", "Minister" — ITA 248(1); "parent" — ITA 252(2); "person" — ITA 248(1); "qualified dependant" — Reg. 6300; "writing" — *Interpretation Act* 35(1).

6302. Factors — For the purposes of paragraph (h) of the definition "eligible individual" in section 122.6 of the Act, the following factors are to be considered in determining what constitutes care and upbringing of a qualified dependant:

(a) the supervision of the daily activities and needs of the qualified dependant;

(b) the maintenance of a secure environment in which the qualified dependant resides;

(c) the arrangement of, and transportation to, medical care at regular intervals and as required for the qualified dependant;

(d) the arrangement of, participation in, and transportation to, educational, recreational, athletic or similar activities in respect of the qualified dependant;

(e) the attendance to the needs of the qualified dependant when the qualified dependant is ill or otherwise in need of the attendance of another person;

(f) the attendance to the hygienic needs of the qualified dependant on a regular basis;

(g) the provision, generally, of guidance and companionship to the qualified dependant; and

(h) the existence of a court order in respect of the qualified dependant that is valid in the jurisdiction in which the qualified dependant resides.

Definitions [Reg. 6302]: "person" — ITA 248(1); "qualified dependant" — Reg. 6300.

Part LXIV — Prescribed Dates

History: Part LXIV (s. 6400) added by P.C. 1979-484, February 20, 1979, *Canada Gazette*, Part II, March 14, 1979.

6400. (1) Child tax credits — For the purposes of subsection 122.2(1) of the Act, the prescribed date for each of the 1978 and subsequent taxation years is December 31 of that year.

History: S. 6400 substituted by P.C. 1981-911, April 2, 1981, *Canada Gazette*, Part II, April 22, 1981.

S. 6400 substituted, heading added by P.C. 1980-3278, December 4, 1980, *Canada Gazette*, Part II, December 24, 1980.

S. 6400 substituted by P.C. 1980-501, February 8, 1980, *Canada Gazette*, Part II, February 27, 1980.

Definitions [Reg. 6400]: "prescribed" — ITA 248(1); "taxation year" — ITA 249.

6401. Quebec tax abatement — For the purposes of subsection 120(2) of the Act, the prescribed date for each of the 1980 and subsequent taxation years is December 31 of that year.

History: S. 6401 added by P.C. 1981-911, April 2, 1981, *Canada Gazette*, Part II, April 22, 1981.

Definitions [Reg. 6401]: "prescribed" — ITA 248(1); "taxation year" — ITA 249.

Part LXV — Prescribed Laws

History: The heading to Part LXV amended by P.C. 1994-738, s. 1, May 5, 1994, *Canada Gazette*, Part II, May 18, 1994, applicable to 1990 *et seq.*

Part LXV (s. 6500) added by P.C. 1980-876, April 3, 1980, *Canada Gazette*, Part II, April 23, 1980, effective commencing, as to subsec. 6500(1), March 31, 1978, and as to subsec. 6500(2) as follows:

(a) January 1, 1979, in respect of para. 6500(2)(a);

(b) March 31, 1979, in respect of para. 6500(2)(b);

(c) October 15, 1978, in respect of para. 6500(2)(c);

(d) March 31, 1978, in respect of para. 6500(2)(d); and

(e) December 31, 1978, in respect of para. 6500(2)(e).

6500. (1) [Definitions] — For the purposes of paragraph 73(1)(d) and subparagraph 148(8)(a)(iii) of the Act,

"prescribed class of persons" means persons referred to in subparagraph 14(b)(i) of *The Family Law Reform Act, 1978*, S.O. 1978, c. 2, of the Province of Ontario; and

"prescribed provisions of the law of a province" means paragraph 19(1)(c) and section 52 of *The Family Law Reform Act, 1978*, S.O. 1978, c. 2, of the Province of Ontario.

(2) [Prescribed provisions — spousal transfers] — For the purposes of subsection 73(1.1) of the Act, "prescribed provisions of the law of a province" means

(a) sections 7 and 9 of *The Matrimonial Property Act*, S.A. 1978, c. 22, of the Province of Alberta;

(b) sections 43, 51 and 52 of the *Family Relations Act*, R.S.B.C. 1979, c. 121, of the Province of British Columbia;

(c) sections 13, 16 and 17 of *The Marital Property Act*, S.M. 1978, C. 24-Cap. M45 of the Province of Manitoba;

(d) sections 4, 6, 7 and 8 and paragraph 19(1)(c) of *The Family Law Reform Act, 1978*, S.O. 1978, c. 2, of the Province of Ontario;

(e) sections 5, 7, 8 and 9 of the *Family Law Reform Act*, S.P.E.I. 1978, c. 6, of the Province of Prince Edward Island; and

(f) sections 5, 8, 21 and 22, subsection 23(4) and sections 26 and 42 of *The Matrimonial Property Act*, S.S. 1979, c. M-6.1, of the Province of Saskatchewan.

History: That portion of subsec. 6500(1) preceding "prescribed class of persons" substituted by P.C. 1986-1048, s. 8, May 1, 1986, *Canada Gazette*, Part II, May 14, 1986, applicable to taxation years commencing after 1982.

Para. 6500(2)(f) added by P.C. 1982-339, February 4, 1982, *Canada Gazette*, Part II, February 24, 1982, effective in respect of 1980 *et seq.*

Para. 6500(2)(b) substituted by P.C. 1981-277, s. 1, February 5, 1981, *Canada Gazette*, Part II, February 25, 1981, effective March 31, 1979.

Definitions [Reg. 6500]: "person" — ITA 248(1).

Interpretation Bulletins: IT-325R2: Property transfers after separation, divorce and annulment.

6501. [Prescribed provisions — non-taxable indemnities] — For the purposes of paragraph 81(1)(q) of the Act, "prescribed provision of the law of a province" means

(a) in respect of the Province of Alberta

(i) subsections 7(1) and 14(1) of *The Criminal Injuries Compensation Act*, R.S.A. 1970, c. 75, and

(ii) subsections 8(3), 10(2) and 13(8) of *The Motor Vehicle Accident Claims Act*, R.S.A. 1970, c. 243;

(b) in respect of the Province of British Columbia

(i) paragraphs 3(1)(a) and (b) and section 9 of the *Criminal Injury Compensation Act*, R.S.B.C. 1979, c. 83, and

(ii) subsection 106(1) of the *Motor-vehicle Act*, R.S.B.C. 1960, c. 253, as amended by S.B.C. 1965, c. 27;

(c) in respect of the Province of Manitoba

(i) subsection 6(1) of *The Criminal Injuries Compensation Act*, S.M. 1970, c. 56, and

(ii) subsections 7(9) and 12(11) of *The Unsatisfied Judgement Fund Act*, R.S.M. 1970, c. U70;

(d) in respect of the Province of New Brunswick

(i) subsections 3(1) and (2) of the *Compensation for Victims of Crime Act*, R.S.N.B. 1973, c. C-14, and

(ii) subsections 319(3), (10) and 321(1) of the *Motor Vehicle Act*, R.S.N.B. 1973, c. M-17;

(e) in respect of the Province of Newfoundland

(i) subsection 27(1) of the *Criminal Injuries Compensation Act*, R.S.N. 1970, c. 68, and

(ii) subsection 106(2) of *The Highway Traffic Act*, R.S.N. 1970, c. 152;

(f) in respect of the Northwest Territories, subsections 3(1) and 5(2) and section 13 of the *Criminal Injuries Compensation Ordinance*, R.O.N.W.T. 1974, c. C-23;

(g) in respect of the Province of Nova Scotia, subsections 190(5) and 191(2) of the *Motor Vehicle Act*, R.S.N.S. 1967, c. 191;

(h) in respect of the Province of Ontario

(i) section 5, subsection 7(2) and section 14 of *The Compensation for Victims of Crime Act, 1971*, S.O. 1971, c. 51, and

(ii) subsections 5(3) and 6(1) and section 18 of *The Motor Vehicle Accident Claims Act*, R.S.O. 1970, c. 281;

(i) in respect of the Province of Prince Edward Island, subsection 351(3) of the *Highway Traffic Act*, R.S.P.E.I. 1974, c. H-6;

(j) in respect of the Province of Quebec

(i) sections 5, 5b and 14 of the *Crime Victims Compensation Act*, S.Q. 1971, c. 18, and

(ii) sections 13 and 26, subsection 37(1) and sections 44 and 54 of the *Automobile Insurance Act*, S.Q. 1977, c. 68;

(k) in respect of the Province of Saskatchewan

(i) subsection 10(1) of *The Criminal Injuries Compensation Act*, R.S.S. 1978, c. C-47, and

(ii) subsections 23(1) to (4) and (7), 24(2) to (7) and (9), 25(1), 26(1), 27(1) and (2), 27(5), 51(8) and (9), 54(3) and 55(1) of *The Automobile Accident Insurance Act*, R.S.S. 1978, c. A-35; and

(l) in respect of the Yukon Territory, subsection 3(1) of the *Compensation for the Victims of Crime Ordinance*, O.Y.T. 1975 (1st), c. 2 as amended by O.Y.T. 1976 (1st), c. 5.

History: S. 6501 added by P.C. 1981-277, s. 2, February 5, 1981, *Canada Gazette*, Part II, February 25, 1981, effective January 1, 1978.

6502. [Prescribed provisions — Ontario family law] — For the purposes of paragraph 56(1)(c.1), section 56.1, paragraph 60(c.1) and section 60.1 of the Act, the class of individuals

(a) who were parties, whether in a personal capacity or by representation, to proceedings giving rise to an order made in accordance with the laws of the Province of Ontario, and

(b) who, at the time the application for the order was made, were persons described in subclause 14(b)(i) of the *Family Law Reform Act*, Revised Statutes of Ontario 1980, c. 152,

is prescribed as a class of persons described in the laws of a province.

History: S. 6502 added by P.C. 1985-177, January 24, 1985, *Canada Gazette*, Part II, February 6, 1985, effective commencing December 12, 1979.

Definitions [Reg. 6502]: "individual", "person", "prescribed" — ITA 248(1); "province" — *Interpretation Act* 35(1).

6503. [Prescribed provisions — pensions] — For the purposes of paragraphs 60(j.02) to (j.04) of the Act, subsections 39(7) and 42(8) of the *Public Service Superannuation Act* and subsection 24(6) of the *Royal Canadian Mounted Police Superannuation Act* are prescribed.

History: S. 6503 added by P.C. 1994-738, s. 2, May 5, 1994, *Canada Gazette*, Part II, May 18, 1994, applicable to 1990 *et seq.*, except that, for the 1990 taxation year, the reference to "paragraphs 60(j.02) to (j.04)" shall be read as "paragraphs 60(j.02) and (j.04)".

Definitions [Reg. 6503]: "prescribed" — ITA 248(1).

PART LXVI — PRESCRIBED ORDER

History: Part LXVI (s. 6600) added by P.C. 1981-910, April 2, 1981, *Canada Gazette*, Part II, April 22, 1981, effective for 1980 *et seq.*

6600. For the purposes of the definition "overseas Canadian Forces school staff" in subsection 248(1) of the Act, the prescribed order is the "Canadian Forces Overseas Schools Order" made by Order in Council P.C. 1975-3/1054 of 6 May, 1975.

History: S. 6600 substituted by P.C. 1981-2410, September 3, 1981, *Canada Gazette*, Part II, September 23, 1981, effective in respect of 1980 *et seq.*

Definitions [Reg. 6600]: "prescribed" — ITA 248(1).

PART LXVII — PRESCRIBED VENTURE CAPITAL CORPORATIONS, LABOUR-SPONSORED VENTURE CAPITAL CORPORATIONS, INVESTMENT CONTRACT CORPORATIONS, QUALIFYING CORPORATIONS AND PRESCRIBED STOCK SAVINGS PLAN

History: The heading to Part LXVII substituted by P.C. 1989-2306, s. 1, November 23, 1989, *Canada Gazette*, Part II, December 6, 1989, applicable to 1986 *et seq.*

The heading to Part LXVII substituted by P.C. 1986-2770, s. 9, December 11, 1986, *Canada Gazette*, Part II, December 24, 1986.

The heading to Part LXVII substituted by P.C. 1984-3789, subsec. 17(1), November 29, 1984, *Canada Gazette*, Part II, December 12, 1984, applicable to taxation years commencing after November 12, 1981.

Part LXVII (ss. 6700, 6701) added by P.C. 1981-1788, July 2, 1981, *Canada Gazette*, Part II, July 22, 1981, applicable to 1977 *et seq.*

Interpretation Bulletins [Part LXVII]: IT-73R6: The small business deduction; IT-269R3: Part IV tax on taxable dividends received by a private corporation or a subject corporation; IT-320R3: Qualified investments — Trusts governed by RRSPs, RESPs and RRIFs.

6700. [Prescribed venture capital corporation] — For the purposes of paragraph 40(2)(i), clause 53(2)(k)(i)(C), the definition "private corporation" in subsection 89(1), subsection 125(6.2), the definition "Canadian-controlled private corporation" in subsection 125(7), section 186.2 and the definition "financial intermediary corporation" in subsection 191(1) of the Act, the following are prescribed venture capital corporations:

(a) a corporation that is registered under the provisions of

(i) *An Act Respecting Corporations for the Development of Quebec Business Firms*, Statutes of Quebec 1976, c. 33,

(ii) the *Small Business Development Corporations Act, 1979*, Statutes of Ontario 1979, c. 22,

(iii) *Manitoba Regulation 194/84*, being a regulation made under *The Loans Act, 1983(2)*, Statutes of Manitoba 1982-83-84, c. 36,

(iv) *The Venture Capital Tax Credit Act*, Statutes of Saskatchewan 1983-84, c. V-4.1,

(v) the *Small Business Equity Corporations Act*, Statutes of Alberta 1984, c. S-13.5,

(vi) the *Small Business Venture Capital Act*, Statutes of British Columbia 1985, c. 56,

(vii) *An Act respecting Quebec business investment companies*, Statutes of Quebec 1985, c. 9,

(viii) *The Venture Capital Act*, Statutes of Newfoundland 1988, c. 15,

(ix) *The Labour-sponsored Venture Capital Corporations Act*, Statutes of Saskatchewan 1986, c. L-0.2,

(x) Part 2 of the *Employee Investment Act*, Revised Statutes of British Columbia, 1996, c. 112,

(xi) Part III of the *Community Small Business Investment Funds Act*, chapter 18 of the Statutes of Ontario, 1992,

(xii) *The Labour-Sponsored Venture Capital Corporations Act*, Continuing Consolidation of the Statutes of Manitoba c. L12;

(xiii) Part II of the *Risk Capital Investment Tax Credits Act*, chapter 22 of the Statutes of the Northwest Territories, 1998; or

(xiv) section 11 or Part II of the *Equity Tax Credit Act*, Statutes of Nova Scotia, 1993, c. 3;

(b) the corporation established by *An Act to Establish the Fonds de solidarité des travailleurs du Québec (F.T.Q.)*, Revised Statutes of Quebec, F-3.2.1;

(c) a corporation that is registered with the Department of Economic Development and Tourism of the Government of the Northwest Territories pursuant to the Venture Capital Policy and Directive issued by the Government of the Northwest Territories on June 27, 1985;

(d) a corporation that is a registered labour-sponsored venture capital corporation;

(e) the corporation established by *The Manitoba Employee Ownership Fund Corporation Act*, Continuing Consolidation of the Statutes of Manitoba, c. E95; or

Proposed Addition — Reg. 6700(e.1)

(e.1) the corporation established by *An Act constituting Capital régional et coopératif Desjardins*, R.S.Q., c. C-6.1.

Application: The December 20, 2002 draft regulations (Appendix H, prescribed venture capital corporations), s. 1, will add para. 6700(e.1), applicable to 2001 *et seq.*

Technical Notes: Section 6700 is to be amended to include in the list of corporations that are prescribed venture capital corporations a corporation established by *An Act constituting Capital régional et coopératif Desjardins*, R.S.Q., c. C-6.1.

(f) the corporation established by *An Act to establish Fondaction, le Fonds de développement de la Confédération des syndicats nationaux pour la coopération et l'emploi*, Statutes of Québec 1995, c. 48;

(g) [Repealed]

History: The opening words of subsec. 6700, subpara. 6700(a)(x) amended, and paras. 6700(c) and (d) amended by P.C. 2001-1370, subsecs. 2(1), (2), and (4), August 1, 2001, *Canada Gazette*, Part II, August 15, 2001, applicable after June 9, 2001.

Subpara. 6700(a)(xiv) added, para. 6700(g) repealed, by the said P.C. 2001-1370, subsecs. 2(3), (5), applicable to 1997 *et seq.*

Subpara. 6700(a)(xi) amended by P.C. 1999-249, subsec. 3(1), February 18, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable to 1997 *et seq.* except that before May 8, 1997, the reference to the "*Community Small Business Investment Funds Act*" shall be read as a reference to the "*Labour Sponsored Venture Capital Corporations Act, 1992*".

Subpara. 6700(a)(xiii) added by P.C. 1999-249, subsec. 3(2), February 18, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable to 1998 *et seq.*

Para. 6700(d) amended by P.C. 1998-782, s. 2, May 7, 1998, *Canada Gazette*, Part II, May 27, 1998, applicable after 1995.

Subpara. 6700(a)(xii) added by P.C. 1997-1943, s. 1, December 17, 1997, *Canada Gazette*, Part II, January 7, 1998, applicable to 1997 *et seq.*

Para. 6700(g) added by P.C. 1997-1669, s. 1, November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to 1997 *et seq.*

Para. 6700(f) added by P.C. 1996-436, s. 1, March 26, 1996, *Canada Gazette*, Part II, April 17, 1996, applicable to 1995 *et seq.*

Subpara. 6700(a)(xi) added applicable to 1991 *et seq.*, para. (b) amended effective June 20, 1986, and para. (e) added applicable to 1992 *et seq.*, by P.C. 1993-1549, subsecs. 1(2) to (4), July 21, 1993, *Canada Gazette*, Part II, August 11, 1993.

That portion of s. 6700 preceding para. (a) amended applicable to taxation years ending after July 13, 1990, and para. (d) added applicable after 1988, by P.C. 1992-1307, subsecs. 1(1), (2), June 18, 1992, *Canada Gazette*, Part II, July 1, 1992.

Subpara. (a)(x) added by P.C. 1992-1306, s. 1, June 18, 1992, *Canada Gazette*, Part II, July 1, 1992, applicable in respect of taxation years ending after September 26, 1989.

That portion of s. 6700 preceding para. (a) substituted by P.C. 1989-2306, subsec. 2(1), November 23, 1989, *Canada Gazette*, Part II, December 6, 1989, applicable to taxation years ending after February 18, 1987.

That portion of s. 6700 preceding para. (a) substituted by P.C. 1986-1048, s. 9, May 1, 1986, *Canada Gazette*, Part II, May 14, 1986, applicable to 1985 *et seq.*

Subpara. 6700(a)(vi) added by P.C. 1986-739, March 26, 1986, *Canada Gazette*, Part II, April 16, 1986, applicable to 1985 *et seq.*

S. 6700 substituted by P.C. 1985-71, January 17, 1985, *Canada Gazette*, Part II, February 6, 1985, applicable to 1983 *et seq.*

S. 6700 substituted by P.C. 1984-3789, subsec. 17(1), November 29, 1984, *Canada Gazette*, Part II, December 12, 1984, applicable to taxation years commencing after November 12, 1981.

Definitions [Reg. 6700]: "business" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "registered labour-sponsored venture capital corporation" — ITA 248(1).

Interpretation Bulletins: IT-458R2; Canadian-controlled private corporation.

6700.1 [Prescribed venture capital corporation] — For the purposes of paragraph 40(2)(i) and clause 53(2)(k)(i)(C) of the Act, a corporation that has an employee share ownership plan registered under Part 1 of the *Employee Investment Act*, R.S.B.C. 1996, c. 112, is also a prescribed venture capital corporation.

History: S. 6700.1 amended by P.C. 2001-1370, s. 3, August 1, 2001, *Canada Gazette*, Part II, August 15, 2001, applicable after June 9, 2001.

S. 6700.1 added by P.C. 1992-1306, s. 2, June 18, 1992, *Canada Gazette*, Part II, July 1, 1992, applicable in respect of taxation years ending after September 26, 1989.

Definitions [Reg. 6700.1]: "corporation" — ITA 248(1), *Interpretation Act* 35(1).

6700.2 [Prescribed venture capital corporation] — For the purposes of paragraph 40(2)(i) and clause 53(2)(k)(i)(C) of the Act, "prescribed venture capital corporation" at any time includes a corporation that at that time is a corporation registered under the provisions of Part II of the *Community Small Business Investment Funds Act*, chapter 18 of the Statutes of Ontario, 1992, or of Part II of the *Risk Capital Investment Tax Credits Act*, chapter 22 of the Statutes of the Northwest Territories, 1998.

History: S. 6700.2 amended by P.C. 1999-249, s. 4, February 18, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable to 1997 *et seq.* except that

(a) before May 8, 1997, the reference to the "*Community Small Business Investment Funds Act*" shall be read as a reference to the "*Labour Sponsored Venture Capital Corporations Act, 1992*",

(b) for the 1997 taxation year, the section shall be read without reference to the *Risk Capital Investment Tax Credits Act*, chapter 22 of the Statutes of the Northwest Territories, 1998.

S. 6700.2 added by P.C. 1993-1549, s. 2, July 21, 1993, *Canada Gazette*, Part II, August 11, 1993, applicable to 1991 *et seq.*

Definitions [Reg. 6700.2]: "corporation" — ITA 248(1), *Interpretation Act* 35(1).

6701. [Prescribed labour-sponsored venture capital corporation] — For the purposes of paragraph 40(2)(i), clause 53(2)(k)(i)(C), the definition "public corporation" in subsection 89(1), the definition "specified investment business" in subsection 125(7), the definition "approved share" in subsection 127.4(1), subsections 131(8) and (11), section 186.1, the definition "financial intermediary corporation" in subsection 191(1) and the definition "eligible investment" in subsection 204.8(1), of the Act, "prescribed labour-sponsored venture capital corporation" means, at any particular time,

(a) the corporation established by the *Act to establish the Fonds de solidarité des travailleurs du Québec 1983*, c. 58,

(b) a corporation that is registered under the provisions of *The Labour-sponsored Venture Capital Corporations Act*, Statutes of Saskatchewan 1986, c. L-0.2,

(c) a corporation that is registered under Part 2 of the *Employee Investment Act*, Revised Statutes of British Columbia, 1996, c. 112;

(d) a registered labour-sponsored venture capital corporation,

(e) a corporation that is registered under Part III of the *Community Small Business Investment Funds Act*, chapter 18 of the Statutes of Ontario, 1992;

(f) the corporation established by *The Manitoba Employee Ownership Fund Corporation Act*, Continuing Consolidation of the Statutes of Manitoba, c. E95,

(f.1) a corporation that is registered under *The Labour-Sponsored Venture Capital Corporations Act*, Continuing Consolidation of the Statutes of Manitoba c. L12, or

(g) the corporation established by *An Act to establish Fondaction, le Fonds de développement de la Confédération des syndicats nationaux pour la coopération et l'emploi*, Statutes of Québec 1995, c. 48,

(h) a corporation that is registered under Part II of the *Equity Tax Credit Act*, Statutes of Nova Scotia 1993, c. 3, or

(i) a corporation that is registered under Part II of the *Risk Capital Investment Tax Credits Act*, chapter 22 of the Statutes of Northwest Territories, 1998.

History: The opening words of s. 6701 amended by P.C. 2005-698, s. 4, May 3, 2005, *Canada Gazette*, Part II, May 18, 2005, applicable to 1995 *et seq.*, except that that portion, in its application to property acquired before February 19, 1997, is to be read without reference to the definition "eligible investment" in subsection 204.8(1).

The opening words of subsec. 6701 amended by P.C. 2001-1370, subsec. 4(1), August 1, 2001, *Canada Gazette*, Part II, August 15, 2001, applicable to 1995 *et seq.*, except that that portion of s. 6701 shall, in its application to property acquired before February 19, 1997, be read without reference to the words "and the definition "eligible investment" in subsection 204.8(1)".

Para. 6701(c) amended by the said P.C. 2001-1370, subsec. 4(2), applicable after June 9, 2001.

Para. 6701(i) added by P.C. 1999-249, subsec. 5(2), February 18, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable to 1998 *et seq.*

Para. 6701(e) amended by P.C. 1999-249, subsec. 5(1), February 18, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable to 1997 *et seq.* except that before May 8, 1997, the reference to the "*Community Small Business Investment Funds Act*" shall be read as a reference to "*Labour Sponsored Venture Capital Corporations Act, 1992*".

Para. 6701(d) amended by P.C. 1998-782, s. 3, May 7, 1998, *Canada Gazette*, Part II, May 27, 1998, applicable after 1995.

Para. 6701(f.1) added by P.C. 1997-1943, s. 2, December 17, 1997, *Canada Gazette*, Part II, January 7, 1998, applicable to 1997 *et seq.*

Para. 6701(h) added by P.C. 1997-1669, s. 2, November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to 1997 *et seq.*

Para. 6701(g) added by P.C. 1996-436, s. 2, March 26, 1996, *Canada Gazette*, Part II, April 17, 1996, applicable to 1995 *et seq.*

Para. 6701(e) added applicable to 1991 *et seq.*, and para. (f) added applicable to 1992 *et seq.*, by P.C. 1993-1549, s. 3, July 21, 1993, *Canada Gazette*, Part II, August 11, 1993.

Definitions [Reg. 6701]: "corporation" — ITA 248(1), *Interpretation Act* 35(1); "registered labour-sponsored venture capital corporation" — ITA 248(1).

Interpretation Bulletins: IT-73R6: The small business deduction.

6702. [Prescribed assistance] — For the purposes of subparagraph 40(2)(i)(ii) and clause 53(2)(k)(i)(C) of the Act, each of the following is prescribed assistance:

(a) the assistance received from a province that has been provided in respect of, or for the acquisition of, a share of the capital stock of a venture capital corporation described in section 6700;

(a.1) the assistance provided under the *Employee Investment Act*, R.S.B.C. 1996, c. 112, in respect of, or for the acquisition of, a share of the capital stock of a venture capital corporation described in section 6700.1;

(a.2) the assistance provided under the *Community Small Business Investment Funds Act*, S.O. 1992, c. 18, the *Risk Capital Investment Tax Credits Act*, S.N.W.T. 1998, c. 22, or the *Risk Capital Investment Tax Credits Act*, S.N.W.T. 1998, c. 22, as duplicated for Nunavut, in respect of, or for the acquisition of, a share of the capital stock of a venture capital corporation described in section 6700.2;

(b) a tax credit provided in respect of, or for the acquisition of, a share of a labour-sponsored venture capital corporation described in section 6701; and

(c) a tax credit provided by a province in respect of, or for the acquisition of, a share of the capital stock of a taxable Canadian corporation (other than a share of the capital stock of a corporation in respect of which an amount has been renounced by the corporation under subsection 66(12.6), (12.601), (12.62) or (12.64) of the Act) that is held in a stock savings plan described in section 6705.

Related Provisions: Reg. 7300(b) — Prescribed assistance under Reg. 6702 is a prescribed amount for ITA 12(1)(x).

History: S. 6702 amended by P.C. 2001-1370, s. 5, August 1, 2001, *Canada Gazette*, Part II, August 15, 2001, applicable after June 9, 2001.

Para. 6702(a.2) amended by P.C. 1999-249, s. 6, February 18, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable to 1997 *et seq.* except that before May 8, 1997, the reference to the "*Community Small Business Investment Funds Act*" shall be read as a reference to the "*Labour Sponsored Venture Capital Corporations Act, 1992*". P.C. 1999-249 does not specifically indicate it, but presumably for the 1997 taxation year, it should also be read without reference to the *Risk Capital Investment Tax Credits Act*.

Para. 6702(c) amended by P.C. 1996-494, s. 4, April 16, 1996, *Canada Gazette*, Part II, May 1, 1996, applicable after December 2, 1992.

Para. 6702(a.2) added by P.C. 1993-1549, s. 4, July 21, 1993, *Canada Gazette*, Part II, August 11, 1993, applicable to 1991 *et seq.*

Definitions [Reg. 6702]: "amount" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "prescribed labour-sponsored venture capital corporation" — Reg. 6701; "prescribed stock savings plan" — Reg. 6705; "prescribed venture capital corporation" — Reg. 6700; "province" — *Interpretation Act* 35(1); "share" — ITA 248(1); "taxable Canadian corporation" — ITA 89(1), 248(1).

6703. [Prescribed investment contract corporation] — For the purposes of section 186.1 of the Act, a "prescribed investment contract corporation" means a corporation described in clause 146(1)(j)(ii)(B) [146(1)"retirement savings plan"(b)(ii)] of the Act.

History: That portion of s. 6701 preceding para. (a) was amended applicable to 1990 *et seq.* and para. (d) was added applicable after 1988, by P.C. 1992-1307, subsecs. 2(1), (2), June 18, 1992, *Canada Gazette*, Part II, July 1, 1992.

Paras. 6701(c), 6702(a.1) added by P.C. 1992-1306, ss. 3, 4, June 18, 1992, *Canada Gazette*, Part II, July 1, 1992, applicable in respect of taxation years ending after September 26, 1989.

S. 6701 substituted, and paras. 6702(a) to (c) substituted for (a) and (b) by P.C. 1989-2306, ss. 3 and 4, November 23, 1989, *Canada Gazette*, Part II, December 6, 1989, applicable to 1986 *et seq.*

S. 6701 substituted, new s. 6702 added and former s. 6702 renumbered as s. 6703 by P.C. 1986-2770, ss. 10, 11, December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, effective from May 23, 1985.

S. 6702 added by P.C. 1984-3789, subsec. 17(2), November 29, 1984, *Canada Gazette*, Part II, December 12, 1984, applicable to taxation years commencing after November 12, 1981.

Definitions [Reg. 6703]: "corporation" — ITA 248(1), *Interpretation Act* 35(1).

6704. [Prescribed qualifying corporation] — For the purposes of section 186.2 of the Act, a corporation is a prescribed qualifying corporation in respect of dividends received by a shareholder on shares of its capital stock if, when the shares were acquired by the shareholder, they constituted

(a) an investment described in sections 33 and 34 of the Act referred to in subparagraph 6700(a)(i);

(b) an eligible investment under the provisions of an Act referred to in subparagraph 6700(a)(ii), (iv), (v), (vi) or (viii) or the regulation referred to in subparagraph 6700(a)(iii);

(c) a qualified investment under the provisions of the Act referred to in subparagraph 6700(a)(vii); or

(d) an investment in an eligible business under the Venture Capital Policy and Directive referred to in paragraph 6700(c).

Proposed Addition — Reg. 6704(e)

(e) an investment in an eligible entity described in sections 17 and 18 of *An Act constituting Capital régional et coopératif Desjardins*, R.S.Q., c. C-6.1.

Application: The December 20, 2002 draft regulations (Appendix H, prescribed venture capital corporations), s. 2, will add para. 6704(e), applicable to 2001 *et seq.*

Technical Notes: Section 6704 sets out the criteria for determining if a corporation is a "prescribed qualifying corporation" in respect of dividends received by a shareholder on shares of its capital stock for the purposes of section 186.2 of the Act. Section 6704 is to be amended to include a corporation whose shares, at the time that they are acquired by a shareholder, are an investment in an eligible entity described in *An Act constituting Capital régional et coopératif Desjardins*, R.S.Q., c. C-6.1 as a "qualifying corporation".

History: Para. 6704(b) amended applicable to dividends received after February 18, 1987, and para. (d) substituted for paras. (d) and (e) applicable to dividends received after September 26, 1989, by P.C. 1993-1549, s. 5, July 21, 1993, *Canada Gazette*, Part II, August 11, 1993.

Para. 6704(d) added and former para. (d) redesignated as (e) by P.C. 1992-1306, s. 5, June 18, 1992, *Canada Gazette*, Part II, July 1, 1992, applicable in respect of dividends received after September 26, 1989.

S. 6704 added by P.C. 1989-2306, s. 5, November 23, 1989, *Canada Gazette*, Part II, December 6, 1989, applicable in respect of dividends received after February 18, 1987.

Definitions [Reg. 6704]: "business" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "dividend", "prescribed", "share", "shareholder" — ITA 248(1).

6705. [Prescribed stock savings plan] — For the purposes of paragraph 40(2)(i) and clause 53(2)(k)(i)(C) of the Act, a stock savings plan governed by any of the following is a prescribed stock savings plan:

(a) the *Alberta Stock Savings Plan Act*, Statutes of Alberta 1986, c. A-37.7;

(b) *The Stock Savings Tax Credit Act*, Statutes of Saskatchewan 1986, c. S-59.1;

(c) the *Stock Savings Plan Act*, Revised Statutes of Nova Scotia, 1989, c. 445;

(d) the *Stock Savings Tax Credit Act*, Revised Statutes of Newfoundland, 1990, c. S-28; or

(e) section 11.6 of the *Income Tax Act*, Continuing Consolidation of the Statutes of Manitoba c. I10.

History: The opening words of subsec. 6705, paras. 6705(c), (d) amended, and para. (e) added, by P.C. 2001-1370, s. 6, August 1, 2001, *Canada Gazette*, Part II, August 15, 2001, applicable to 1999 *et seq.*

S. 6705 added by P.C. 1989-2306, s. 5, November 23, 1989, *Canada Gazette*, Part II, December 6, 1989, applicable to 1986 *et seq.*

6706. [Prescribed condition] — For the purpose of clause 204.81(1)(c)(v)(F) of the Act, a prescribed condition is that, in respect of a redemption of a Class A share of a corporation's capital stock, the shareholder requires the corporation to withhold an amount in respect of the redemption in accordance with Part XII.5 of the Act.

Related Provisions: ITA 204.81 — Conditions for registration; ITA 211.7 — Recovery of credit from provincial LSVCCs; ITA 211.8(1) — Disposition of approved share.

History: S. 6706 amended by P.C. 1998-782, s. 4, May 7, 1998, *Canada Gazette*, Part II, May 27, 1998, applicable to redemptions that occur after 1997.

The definition "qualifying Class A share" in subsec. 6706(1) and the opening words of subsec. 6706(3) amended, para. 6706(2)(c) added, by P.C. 1996-437, s. 1, March 26, 1996, *Canada Gazette*, Part II, April 17, 1996, applicable after December 2, 1992.

S. 6706 added by P.C. 1992-1307, s. 3, June 18, 1992, *Canada Gazette*, Part II, July 1, 1992, applicable in respect of shares redeemed after 1991.

Definitions [Reg. 6706]: "amount" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "prescribed", "share", "shareholder" — ITA 248(1).

Forms: T1149: Remittance form for labour-sponsored funds tax credits withheld on redeemed shares; T2152: Part X.3 tax return for a labour-sponsored venture capital corporation; T5006: Statement of registered labour-sponsored venture capital corporation Class A shares; T5006 Summ: Summary of registered LSVCC Class A shares.

6707. [Provincially registered LSVCCs] — For the purpose of subsection 204.82(5) of the Act, a "prescribed provision of a law of a province" means section 25.1 of the *Community Small Business Investment Funds Act*, chapter 18 of the Statutes of Ontario, 1992.

History: S. 6707 added by P.C. 1999-249, s. 7, February 18, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable after May 7, 1997.

PART LXVIII — PRESCRIBED PLANS, ARRANGEMENTS AND CONTRIBUTIONS

History: The heading to Part LXVIII amended by P.C. 1996-911, s. 1, June 20, 1996, *Canada Gazette*, Part II, July 10, 1996, applicable after October 8, 1986. The heading formerly read: *Prescribed Funds or Plans*.

Part LXVIII (s. 6800) added by P.C. 1981-1789, July 2, 1981, *Canada Gazette*, Part II, July 22, 1981, effective from January 1, 1980.

6800. [Prescribed arrangement — employee benefit plan] — For the purpose of paragraph (e) of the definition "employee benefit plan" in subsection 248(1) of the Act, each of the following is a prescribed arrangement:

(a) the Major League Baseball Players Benefit Plan;

(b) an arrangement under which all contributions are made pursuant to a law of Canada or a province, where one of the main purposes of the law is to enforce minimum standards with respect to wages, vacation entitlement or severance pay; and

(c) an arrangement under which all contributions are made in connection with a dispute regarding the entitlement of one or more persons to benefits to be received or enjoyed by the person or persons.

History: S. 6800 amended by P.C. 1996-911, s. 2, June 20, 1996, *Canada Gazette*, Part II, July 10, 1996, applicable after 1979.

Definitions [Reg. 6800]: "Canada" — ITA 255, *Interpretation Act* 35(1); "person", "prescribed" — ITA 248(1); "province" — *Interpretation Act* 35(1).

6801. [Prescribed plan or arrangement — salary deferral arrangement] — For the purposes of paragraph (l) of the definition "salary deferral arrangement" in subsection 248(1) of the Act, a prescribed plan or arrangement is an arrangement in writing

(a) between an employer and an employee that is established on or after July 28, 1986 where

(i) it is reasonable to conclude, having regard to all the circumstances, including the terms and conditions of the arrangement and any agreement relating thereto, that the arrangement is not established to provide benefits to the employee on or after retirement but is established for the main purpose of permitting the employee to fund, through salary or wage deferrals, a leave of absence from the employee's employment of not less than

(A) where the leave of absence is to be taken by the employee for the purpose of permitting the full-time attendance of the employee at a designated educational institution (within the meaning assigned by subsection 118.6(1) of the Act, three consecutive months, or

(B) in any other case, six consecutive months

that is to commence immediately after a period (in this section referred to as the "deferral period") not exceeding six years after the date on which the deferrals for the leave of absence commence,

(ii) the amount of salary or wages deferred by the employee under all such arrangements for the services rendered by the employee to the employer in a taxation year does not exceed 33 1/3 per cent of the amount of the salary or wages that the employee would, but for the arrangements, reasonably be expected to have received in the year in respect of the services,

(iii) the arrangement provides that throughout the period of the leave of absence the employee does not receive any salary or wages from the employer, or from any other person or partnership with whom the employer does not deal at arm's length, other than

(A) the amount by which the employee's salary or wages under the arrangement was deferred or is to be reduced or, amounts that are based on a percentage of the salary or wage scale of employees of the employer, which percentage is fixed in respect of the employee for the deferral period and the leave of absence, and

(B) the reasonable fringe benefits that the employer usually pays to or on behalf of employees,

(iv) the arrangement provides that the amounts deferred in respect of the employee under the arrangement

(A) are held by or for the account of a trust governed by a plan or arrangement that is an employee benefit plan within the meaning of the definition thereof in subsection 248(1) of the Act, and provides that the amount that may reasonably be considered to be the income of the trust for a taxation year that has been earned by it for the benefit of the employee shall be paid in the year to the employee, or

(B) are held by or for the account of any person other than a trust referred to in clause (A), and provides that the amount in respect of interest or other additional amounts that may reasonably be considered to have accrued to or for the benefit of the employee to the end of a taxation year shall be paid in the year to the employee,

(v) the arrangement provides that the employee is to return to his regular employment with the employer or an employer that participates in the same or a similar arrangement after the leave of absence for a period that is not less than the period of the leave of absence, and

(vi) subject to subparagraph (iv), the arrangement provides that all amounts held for the employee's benefit under the arrangement shall be paid to the

employee out of or under the arrangement no later than the end of the first taxation year that commences after the end of the deferral period;

Proposed Amendment — Recontribution of income from employees' leave of absence plan

Letter from Dept. of Finance, June 30, 2000: See under ITA 81(1).

(b) between an employer and an employee that is established before July 28, 1986 where it is reasonable to conclude, having regard to all the circumstances, including the terms and conditions of the arrangement and any agreement relating thereto, that the arrangement is not established to provide benefits on or after retirement but is established for the main purpose of permitting the employee to fund, through salary or wage deferrals, a leave of absence from the employment and under which the deferrals in respect of the leave of absence commenced before 1987;

(c) that is established for the purpose of deferring the salary or wages of a professional on-ice official for his services as such with the National Hockey League if, in the case of an official resident in Canada, the trust or other person who has custody and control of any funds, investments or other property under the arrangement is resident in Canada; or

(d) between a corporation and an employee of the corporation or a corporation related thereto under which the employee (or, after the employee's death, a dependant or relation of the employee or the legal representative of the employee) may or shall receive an amount that may reasonably be attributable to duties of an office or employment performed by the employee on behalf of the corporation or a corporation related thereto where

(i) all amounts that may be received under the arrangement shall be received after the time of the employee's death or retirement from, or loss of, the office or employment and no later than the end of the first calendar year commencing thereafter, and

(ii) the aggregate of all amounts each of which may be received under the arrangement depends on the fair market value of shares of the capital stock of the corporation or a corporation related thereto at a time within the period that commences one year before the time of the employee's death or retirement from, or loss of, the office or employment and ends at the time the amount is received,

unless, by reason of the arrangement or a series of transactions that includes the arrangement, the employee or a person with whom the employee does not deal at arm's length is entitled, either immediately or in the future, either absolutely or contingently, to receive or obtain any amount or benefit granted or to be granted for the purpose of reducing the impact, in whole or in part, of any reduction in the fair market value of the shares of the corporation or a corporation related thereto.

Related Provisions: ITA 248(10) — Series of transactions; Reg. 8508 — Effect of salary deferral leave plan on registered pension plan.

History: Subpara. 6801(a)(i) substituted applicable to 1989 *et seq.*, and para. (d) added applicable to 1986 *et seq.*, by P.C. 1990-301, subsecs. 1(1), (4), February 21, 1991, *Canada Gazette*, Part II, March 13, 1991.

S. 6801 added by P.C. 1988-191, February 4, 1988, *Canada Gazette*, Part II, February 17, 1988, applicable to 1986 *et seq.*

Definitions [Reg. 6801]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "deferral period" — Reg. 6801(a)(i); "employee", "employee benefit plan", "employer", "employment", "legal representative" — ITA 248(1); "month" — *Interpretation Act* 35(1); "office" — ITA 248(1); "person", "prescribed", "property" — ITA 248(1); "related" — ITA 251(2)–(6); "resident in Canada" — ITA 250; "salary or wages" — ITA 248(1); "series" — ITA 248(10); "share" — ITA 248(1); "taxation year" — ITA 249; "trust" — ITA 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

I.T. Technical News: 11 (reporting of amounts paid out of an employee benefit plan.

Advance Tax Rulings: ATR-39: Self-funded leave of absence.

6802. [Prescribed plan or arrangement — retirement compensation arrangement] — For the purposes of paragraph (n) of the definition "retirement compensation arrangement" in subsection 248(1) of the Act, a prescribed plan or arrangement is

(a) the plan instituted by the *Canada Pension Plan*;

(b) a provincial pension plan as defined in section 3 of the *Canada Pension Plan*;

(c) a plan instituted by the *Unemployment Insurance Act*;

(d) a plan pursuant to an agreement in writing that is established for the purpose of deferring the salary or wages of a professional on-ice official for the official's services as such with the National Hockey League if, in the case of an official resident in Canada, the trust or other person who has custody and control of any funds, investments or other property under the plan is resident in Canada;

(e) an arrangement under which all contributions are made pursuant to a law of Canada or a province, where one of the main purposes of the law is to enforce minimum standards with respect to wages, vacation entitlement or severance pay;

(f) an arrangement under which all contributions are made in connection with a dispute regarding the entitlement of one or more persons to benefits to be received or enjoyed by the person or persons; or

(g) a plan or arrangement instituted by the social security legislation of a country other than Canada or of a state, province or other political subdivision of such a country.

Related Provisions: ITA 207.6(6) — Rules applicable to a prescribed plan or arrangement.

History: Para. 6802(e) amended, paras. (f) and (g) added, by P.C. 1996-911, s. 3, June 20, 1996, *Canada Gazette*, Part II, July 10, 1996, applicable after October 8, 1986.

S. 6802 added by P.C. 1991-2540, s. 6, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable after October 8, 1986, except that before December 12, 1988, para. 6802(c) shall be read as follows: "(c) a plan instituted by the *Unemployment Insurance Act, 1971*;".

Definitions [Reg. 6802]: "Canada" — ITA 255, *Interpretation Act* 35(1); "person", "prescribed", "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "resident in Canada" — ITA 250; "salary or wages" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

6802.1 [Prescribed pension plan] — **(1)** For the purpose of paragraph 8(1)(m.2) of the Act, each of the following is a prescribed plan:

(a) the pension plan established as a consequence of the establishment, by section 27 of the *Members of Parliament Retiring Allowances Act*, of the Members of Parliament Retirement Compensation Arrangements Account; and

(b) the pension plan established by the *Retirement Compensation Arrangements Regulations, No. 1*.

(2) For the purpose of subsection 207.6(6) of the Act, each of the following is a prescribed plan or arrangement:

(a) the pension plan established as a consequence of the establishment, by section 27 of the *Members of Parliament Retiring Allowances Act*, of the Members of Parliament Retirement Compensation Arrangements Account;

(b) the pension plan established by the *Retirement Compensation Arrangements Regulations, No. 1*; and

(c) the pension plan established by the *Retirement Compensation Arrangements Regulations, No. 2*.

History: S. 6802.1 added by P.C. 1999-2211, s. 2, December 16, 1999, *Canada Gazette*, Part II, January 5, 2000, applicable after 1991 except that

(a) in their application before December 15, 1994, each of subsecs. 6802.1(1) and (2) shall be read without reference to paras. 6802.1(1)(b) and (2)(b); and

(b) in its application before April 1995, subsec. 6802.1(2) shall be read without reference to para. 6802.1(2)(c).

Definitions [Reg. 6802.1]: "Parliament" — *Interpretation Act* 35(1); "prescribed" — ITA 248(1).

6803. [Prescribed plan or arrangement — foreign retirement arrangement] — For the purposes of the definition "foreign retirement arrangement" in subsection 248(1) of the Act, a prescribed plan or arrangement is a plan or arrangement to which subsection 408(a), (b) or (h) of the United States *Internal Revenue Code of 1986*, as amended from time to time, applies.

History: S. 6803 added by P.C. 1992-2416, November 26, 1992, *Canada Gazette*, Part II, December 16, 1992, applicable to 1990 *et seq.*

Definitions [Reg. 6803]: "prescribed" — ITA 248(1); "United States" — *Interpretation Act* 35(1).

6804. Contributions to foreign plans — (1) Definitions — The definitions in this subsection apply in this section.

"foreign non-profit organization" means,

(a) at any time before 1995, an organization

(i) that at that time meets the conditions in subparagraphs (b)(i) to (iii), or

(ii) that at that time is not operated for the purpose of profit, and whose assets are situated primarily outside Canada throughout the calendar year that includes that time, and

(b) at any time after 1994, an organization that at that time

(i) is not operated for the purpose of profit,

(ii) has its main place of management outside Canada, and

(iii) carries on its activities primarily outside Canada.

"foreign plan" means a plan or arrangement (determined without regard to subsection 207.6(5) of the Act) that would, but for paragraph (l) of the definition "retirement compensation arrangement" in subsection 248(1) of the Act, be a retirement compensation arrangement.

"qualifying entity" means a non-resident entity that holds all or part of the assets of a foreign plan where the following conditions are satisfied:

(a) the entity is resident in a country under the laws of which an income tax is imposed, and

(b) where those laws provide an exemption from tax, a reduced rate of tax or other favourable tax treatment for entities that hold assets of pension or other retirement plans, the entity qualifies for the favourable treatment.

(2) Electing employer — For the purposes of this section, an employer is an electing employer for a calendar year with respect to a foreign plan where

(a) the employer has sent or delivered to the Minister a letter stating that the employer elects to have this section apply with respect to contributions to the foreign plan, and

(b) the letter was sent or delivered on or before

(i) the last day of February in the year following the first calendar year after 1991 in which a contribution that is or would be if subsection 207.6(5.1) of the Act were read without reference to paragraph (a) of that subsection, a resident's contribution (as defined in that subsection) was made under the foreign plan in respect of services rendered by an individual to the employer, or

(ii) any later date that is acceptable to the Minister,

except that an employer is not an electing employer for a year with respect to a foreign plan if the Minister has granted written permission for the employer to revoke, for the year or a preceding calendar year, the election made under paragraph (a) in respect of the foreign plan.

(3) Election by union — Except as otherwise permitted in writing by the Minister, an election made by a trade union for the purpose of subsection (2) is valid only if it is made by the highest-level structural unit of the union.

(4) Contributions made before 1992 — For the purpose of paragraph 207.6(5.1)(a) of the Act, a contribution made under a foreign plan by a person or body of persons in a calendar year before 1992 is a prescribed contribution where

(a) the contribution is paid to a qualifying entity;

(b) each employer (in this subsection referred to as a "contributor") that makes a contribution under the foreign plan in the year is

(i) a non-resident corporation throughout the year,

(ii) a partnership that makes contributions under the foreign plan primarily in respect of services rendered outside Canada to the partnership by non-resident employees, or

(iii) a foreign non-profit organization throughout the year;

(c) if a corporation or partnership (other than a corporation or partnership that is a foreign non-profit organization throughout the year) is a contributor, no individual who is entitled (either absolutely or contingently) to benefits under the foreign plan is a member of a registered pension plan, or a beneficiary under a deferred profit sharing plan, to which a contributor, or a person or body of persons not dealing at arm's length with a contributor, makes, or is required to make, contributions in relation to the year;

(d) contributions made in the year under the foreign plan for the benefit of individuals resident in Canada are reasonable in relation to contributions made under the plan for the benefit of non-resident individuals; and

(e) the foreign plan is not a pension plan the registration of which under the Act has been revoked.

(5) Contributions made in 1992, 1993 or 1994 — For the purpose of paragraph 207.6(5.1)(a) of the Act, a contribution made under a foreign plan by a person or body of persons at any time in 1992, 1993 or 1994 in respect of services rendered by an individual to an employer is a prescribed contribution where

(a) the contribution is paid to a qualifying entity;

(b) the employer is an electing employer for the year with respect to the foreign plan;

(c) if the employer is not at that time a foreign non-profit organization, the individual is not a member of a registered pension plan (other than a specified multi-employer plan, as defined in subsection 147.1(1) of the Act), or a deferred profit sharing plan, in which the employer, or a person or body of persons that does not deal at arm's length with the employer, participates; and

(d) either

(i) the employer is

(A) a corporation that is not resident in Canada at that time,

(B) a partnership that makes contributions under the foreign plan primarily in respect of services rendered outside Canada to the partnership by non-resident employees, or

(C) a foreign non-profit organization at that time, or

(ii) the individual was non-resident at any time before the contribution is made and became a member of the foreign plan before the end of the month after the month in which the individual became resident in Canada.

(6) Contributions made after 1994 — For the purposes of paragraph 207.6(5.1)(a) of the Act, a contribution made under a foreign plan by a person or body of persons at any time in a calendar year after 1994 in respect of services rendered by an individual to an employer is a prescribed contribution where

(a) the contribution is paid to a qualifying entity;

(b) the employer is an electing employer for the year with respect to the foreign plan;

(c) if the employer is at that time a foreign non-profit organization,

(i) the amount that, if subsection 8301(1) were read without reference to paragraph (b) of that subsection, would be the individual's pension adjustment for the year in respect of the employer is nil, or

(ii) the amount that would be the individual's pension adjustment for the year in respect of the employer if

(A) all contributions made under the foreign plan in the year in respect of the individual were prescribed by this subsection,

(B) where the year is 1996, section 8308.1 were read without reference to subsection (4.1), and

(C) where the year is 1997, subparagraph 8308.1(2)(b)(v) were read as:

"(v) the amount, if any, by which 18% of the individual's resident compensation from the employer for the year exceeds $1,000, and"

does not exceed the lesser of

(D) the money purchase limit for the year, and

(E) 18% of the individual's compensation (as defined in subsection 147.1(1) of the Act) for the year from the employer;

(d) if

(i) the employer is at that time a foreign non-profit organization, and

(ii) a period in the year throughout which the individual rendered services to the employer would be, under paragraph 8507(3)(a), a qualifying period of the individual with respect to another employer if that paragraph were read without reference to subparagraph (iv) of that paragraph,

subsection 8308(7) applies with respect to the determination of the individual's pension adjustment for the year with respect to each employer; and

(e) if the employer is not at that time a foreign non-profit organization,

(i) the individual was non-resident at any time before the contribution is made,

(ii) the individual became a member of the foreign plan before the end of the month after the month in which the individual became resident in Canada, and

(iii) the individual is not a member of a registered pension plan, or a deferred profit sharing plan, in which the employer, or a person or body of persons that does not deal at arm's length with the employer, participates.

(7) Replacement plan — For the purposes of subparagraphs (5)(d)(ii) and (6)(e)(ii), where benefits provided to an individual under a particular plan or arrangement are replaced by benefits under another plan or arrangement, the other plan or arrangement is deemed, in respect of the individual, to be the same plan or arrangement as the particular plan or arrangement.

History: Subpara. 6804(6)(c)(ii) amended by P.C. 1998-2256, s. 2, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1995.

S. 6804 added by P.C. 1996-911, s. 4, June 20, 1996, *Canada Gazette*, Part II, July 10, 1996, applicable after October 8, 1986.

Definitions [Reg. 6804]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "contributor" — Reg. 6804(4); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "electing employer" — Reg. 6804(2); "employee", "employer" — ITA 248(1); "foreign non-profit organization", "foreign plan" — Reg. 6804(1); "individual", "Minister" — ITA 248(1); "money purchase limit" — ITA 147.1(1), 248(1); "month" — *Interpretation Act* 35(1); "non-resident" — ITA 248(1); "pension adjustment", "person", "prescribed" — ITA 248(1); "qualifying entity" — Reg. 6804(1); "registered pension plan" — ITA 248(1); "resident in Canada" — ITA 250; "retirement compensation arrangement" — ITA 248(1); "specified multi-employer plan" — ITA 147.1(1), Reg. 8510(2), (3); "written" — *Interpretation Act* 35(1)"writing".

PART LXIX — PRESCRIBED OFFSHORE INVESTMENT FUND PROPERTIES

History: Part LXIX (s. 6900) added by P.C. 1986-1048, s. 10, May 1, 1986, *Canada Gazette*, Part II, May 14, 1986, applicable after 1984.

History [former Part LXIX]: Former Part LXIX, "Aviation Turbine Fuel", revoked by P.C. 1985-2277, s. 18, July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable with respect to purchases and dispositions of aviation turbine fuel occurring after April 30, 1983.

Former Part LXIX added by P.C. 1983-1531, May 26, 1983, *Canada Gazette*, Part II, June 8, 1983, applicable with respect to dispositions occurring and purchases made, with respect to aviation turbine fuel, after January 31, 1982.

6900. [Prescribed offshore investment fund property] — For the purpose of paragraph 94.1(2)(a) [94.1(2)"designated cost"] of the Act, an offshore investment fund property (within the meaning assigned by subsection 94.1(1) of the Act) of a taxpayer that

(a) was acquired by him by way of bequest or inheritance from a deceased person who, throughout the five years immediately preceding his death, was not resident in Canada,

(b) had not been acquired by the deceased from a person resident in Canada, and

(c) is not property substituted for property acquired by the deceased from a person resident in Canada

is a prescribed offshore investment fund property of the taxpayer.

Definitions [Reg. 6900]: "person", "prescribed", "property" — ITA 248(1); "resident in Canada" — ITA 250; "substituted" — ITA 248(5); "taxpayer" — ITA 248(1).

PART LXX — ACCRUED INTEREST ON DEBT OBLIGATIONS

History: Part LXX (s. 7000) added by P.C. 1983-3529, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, effective for taxation years commencing after 1981.

7000. (1) Prescribed debt obligations — For the purpose of subsection 12(9) of the Act, each of the following debt obligations (other than a debt obligation that is an indexed debt obligation) in respect of which a taxpayer has at any time acquired an interest is a prescribed debt obligation:

(a) a particular debt obligation in respect of which no interest is stipulated to be payable in respect of its principal amount;

(b) a particular debt obligation in respect of which the proportion of the payments of principal to which the taxpayer is entitled is not equal to the proportion of the payments of interest to which he is entitled;

(c) a particular debt obligation, other than one described in paragraph (a) or (b), in respect of which it can be determined, at the time the taxpayer acquired the interest therein, that the maximum amount of interest payable thereon in a year ending after that time is less than the maximum amount of interest payable thereon in a subsequent year; and

(d) a particular debt obligation, other than one described in paragraph (a), (b) or (c), in respect of which the amount of interest to be paid in respect of any taxation year is, under the terms and conditions of the obligation, dependent on a contingency existing after the year,

and, for the purposes of this subsection, a debt obligation includes, for greater certainty, all of the issuer's obligations to pay principal and interest under that obligation.

Related Provisions: ITA 18.1(14) — Right to receive production deemed to be debt obligation.

History: The opening words of subsec. 7000(1) amended by P.C. 1996-1419, subsec. 3(1), September 11, 1996, *Canada Gazette*, Part II, October 2, 1996, applicable to debt obligations issued after October 16, 1991.

Advance Tax Rulings: ATR-61: Interest accrual rules.

(2) [Deemed interest on prescribed debt obligation] — For the purposes of subsection 12(9) of the Act, the amount determined in prescribed manner that is deemed to accrue to a taxpayer as interest on a prescribed debt obligation in each taxation year during which he holds an interest in the obligation is,

(a) in the case of a prescribed debt obligation described in paragraph (1)(a), the amount of interest that would be determined in respect thereof if interest thereon for that year were computed on a compound interest basis using the maximum of all rates each of which is a rate computed

(i) in respect of each possible circumstance under which an interest of the taxpayer in the obligation could mature or be surrendered or retracted, and

(ii) using assumptions concerning the interest rate and compounding period that will result in a present value, at the date of purchase of the interest, of all the maximum payments thereunder, equal to the cost thereof to the taxpayer;

(b) in the case of a prescribed debt obligation described in paragraph (1)(b), the aggregate of all amounts each of which is the amount of interest that would be determined in respect of his interest in a payment under the obligation if interest thereon for that year were computed on a compound interest basis using the specified cost of his interest therein and the specified interest rate in respect of his total interest in the obligation, and for the purposes of this paragraph,

(i) the **"specified cost"** of his interest in a payment under the obligation is its present value at the date of purchase computed using the specified interest rate, and

(ii) the **"specified interest rate"** is the maximum of all rates each of which is a rate computed

(A) in respect of each possible circumstance under which an interest of the taxpayer in the obligation could mature or be surrendered or retracted, and

(B) using assumptions concerning the interest rate and compounding period that will result in a present value, at the date of purchase of the interest, of all the maximum payments to the taxpayer in respect of his total interest in the obligation, equal to the cost of that interest to the taxpayer;

(c) in the case of a prescribed debt obligation described in paragraph (1)(c), other than an obligation in respect of which paragraph (c.1) applies, the greater of

(i) the maximum amount of interest thereon in respect of the year, and

(ii) the maximum amount of interest that would be determined in respect thereof if interest thereon for that year were computed on a compound interest basis using the maximum of all rates each of which is a rate computed

(A) in respect of each possible circumstance under which an interest of the taxpayer in the obligation could mature or be surrendered or retracted, and

(B) using assumptions concerning the interest rate and compounding period that will result in a present value, at the date of issue of the obligation, of all the maximum payments thereunder, equal to its principal amount;

(c.1) in the case of a prescribed debt obligation described in paragraph (1)(c) for which

(i) the rate of interest stipulated to be payable in respect of each period throughout which the obligation is outstanding is fixed at the date of issue of the obligation, and

(ii) the stipulated rate of interest applicable at each time is not less than each stipulated rate of interest applicable before that time,

the amount of interest that would be determined in respect of the year if interest on the obligation for that year were computed on a compound interest basis using the maximum of all rates each of which is the compound interest rate that, for a particular assumption with respect to when the taxpayer's interest in the obligation will mature or be surrendered or retracted, results in a present value (at the date the taxpayer acquires the interest in the obligation) of all payments under the obligation after the acquisition by the taxpayer of the taxpayer's interest in the obligation equal to the principal amount of the obligation at the date of acquisition; and

(d) in the case of a prescribed debt obligation described in paragraph (1)(d), the maximum amount of interest thereon that could be payable thereunder in respect of that year.

Related Provisions: ITA 18.1(14) — Right to receive production deemed to be debt obligation.

History: Para. 7000(2)(c) amended, para. (c.1) added, by P.C. 1996-570, subsecs. 1(1), (2), April 23, 1996, *Canada Gazette*, Part II, May 1, 1996, applicable to 1993 *et seq.*

Advance Tax Rulings: ATR-61: Interest accrual rules.

(3) [Bonus or premium] — For the purpose of this section, any bonus or premium payable under a debt obligation is considered to be an amount of interest payable under the obligation.

History: Subsec. 7000(3) amended by P.C. 1996-1419, subsec. 3(2), September 11, 1996, *Canada Gazette*, Part II, October 2, 1996, applicable to debt obligations issued after October 16, 1991.

Advance Tax Rulings: ATR-61: Interest accrual rules.

(4) [Conversion privilege or option to extend] — For the purposes of this section, where

(a) a taxpayer has an interest in a debt obligation (in this subsection referred to as the "first interest") under which there is a conversion privilege or an option to extend its term upon maturity, and

(b) at the time the obligation was issued (or, if later, at the time the conversion privilege or option was added or modified), circumstances could reasonably be foreseen under which the holder of the obligation would, by exercising the conversion privilege or option, acquire an interest in a debt obligation with a principal amount less than its fair market value at the time of acquisition,

the subsequent interest in any debt obligation acquired by the taxpayer by exercising the conversion privilege or option shall be considered to be a continuation of the first interest.

History: Subsec. 7000(4) amended by P.C. 1996-570, subsec. 1(3), April 23, 1996, *Canada Gazette*, Part II, May 1, 1996, applicable with respect to debt obligations acquired by reason of the exercise after August 11, 1993 of a conversion privilege or an option to extend the term of another debt obligation.

(5) [Interest computations] — For the purposes of making the computations referred to in paragraphs (2)(a), (b), (c) and (c.1), the compounding period shall not exceed one year and any interest rate used shall be constant from the date of acquisition or issue, as the case may be, until the time of maturity, surrender or retraction.

History: Subsec. 7000(5) amended by P.C. 1996-570, subsec. 1(4), April 23, 1996, *Canada Gazette*, Part II, May 1, 1996, applicable to 1993 *et seq.*

(6) [Prescribed contract] — For the purpose of the definition "investment contract" in subsection 12(11) of the Act, a registered retirement savings plan or a registered retirement income fund, other than a plan or fund to which a trust is a party, is a prescribed contract throughout a calendar year where an annuitant (as defined in subsection 146(1) or 146.3(1) of the Act, as the case may be) under the plan or fund is alive at any time in the year or was alive at any time in the preceding calendar year.

Related Provisions: ITA 142.3(1)(c) — No income accrual from specified debt obligation.

History: Subsec. 7000(6) amended by P.C. 1996-568, s. 1, April 23, 1996, *Canada Gazette*, Part II, May 1, 1996, applicable to 1993 *et seq.*

Subsec. 7000(6) added by P.C. 1985-2277, s. 19, July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable to taxation years commencing after 1981.

Definitions [Reg. 7000]: "amount" — ITA 248(1); "debt obligation" — Reg. 7000(1); "first interest" — Reg. 7000(4)(a); "indexed debt obligation", "prescribed", "principal amount" — ITA 248(1); "registered retirement income fund" — ITA 146.3(1), 248(1); "registered retirement savings plan" — ITA 146(1), 248(1); "specified cost" — Reg. 7000(2)(b)(i); "specified interest rate" — Reg. 7000(2)(b)(ii); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

7001. Indexed debt obligations — **(1)** For the purpose of subparagraph 16(6)(a)(i) of the Act, where at any time in a taxation year a taxpayer holds an interest in an indexed debt obligation, there is prescribed as interest receivable and received by the taxpayer in the year in respect of the obligation the total of

(a) the amount, if any, by which

(i) the total of all amounts each of which is the amount by which the amount payable in respect of the taxpayer's interest in an indexed payment under the obligation (other than a payment that is an excluded payment with respect to the taxpayer for the year) has, because of a change in the purchasing power of money, increased over an inflation adjustment period of the obligation that ends in the year

exceeds the total of

(ii) that portion of the total, if any, determined under subparagraph (i) that is required, otherwise than by subsection 16(6) of the Act, to be included in computing the taxpayer's income for the year or a preceding taxation year, and

(iii) the total of all amounts each of which is the amount by which the amount payable in respect of the taxpayer's interest in an indexed payment under the obligation (other than a payment that is an excluded payment with respect to the taxpayer for the year) has, by reason of a change in the purchasing power of money, decreased over an inflation adjustment period of the obligation that ends in the year, and

(b) where the non-indexed debt obligation associated with the indexed debt obligation is an obligation that is described in any of paragraphs 7000(1)(a) to (d), the amount of interest that would be determined under subsection 7000(2) to accrue to the taxpayer in respect

of the non-indexed debt obligation in the particular period that

(i) begins at the beginning of the first inflation adjustment period of the indexed debt obligation in respect of the taxpayer that ends in the year, and

(ii) ends at the end of the last inflation adjustment period of the indexed debt obligation in respect of the taxpayer that ends in the year

if the particular period were a taxation year of the taxpayer and the taxpayer's interest in the indexed debt obligation were an interest in the non-indexed debt obligation.

(2) For the purposes of subparagraph 16(6)(a)(ii) of the Act, where at any time in a taxation year a taxpayer holds an interest in an indexed debt obligation, there is prescribed as interest payable and paid by the taxpayer in the year in respect of the obligation the amount, if any, by which

(a) the total of the amounts, if any, determined under subparagraphs (1)(a)(ii) and (iii) for the year in respect of the taxpayer's interest in the obligation

exceeds

(b) the amount, if any, determined under subparagraph (1)(a)(i) for the year in respect of the taxpayer's interest in the obligation.

(3) For the purposes of subparagraph 16(6)(b)(i) of the Act, where at any time in a taxation year an indexed debt obligation is an obligation of a taxpayer, there is prescribed as interest payable in respect of the year by the taxpayer in respect of the obligation the amount, if any, that would be determined under paragraph (1)(a) in respect of the taxpayer for the year if, at each time at which the obligation is an obligation of the taxpayer, the taxpayer were the holder of the obligation and not the debtor under the obligation.

(4) For the purposes of subparagraph 16(6)(b)(ii) of the Act, where at any time in a taxation year an indexed debt obligation is an obligation of a taxpayer, there is prescribed as interest receivable and received by the taxpayer in the year in respect of the obligation the amount, if any, that would be determined under subsection (2) in respect of the taxpayer for the year if, at each time at which the obligation is an obligation of the taxpayer, the taxpayer were the holder of the obligation and not the debtor under the obligation.

(5) For the purpose of determining the amount by which an indexed payment under an indexed debt obligation has increased or decreased over a period because of a change in the purchasing power of money, the amount of the indexed payment at any time shall be determined using the method for computing the amount of the payment at the time it is to be made, adjusted in a reasonable manner to take into account the earlier date of computation.

(6) For the purposes of this section, the non-indexed debt obligation associated with an indexed debt obligation is the debt obligation that would result if the indexed debt obligation were amended to eliminate all adjustments determined by reference to changes in the purchasing power of money.

(7) In this section,

"excluded payment" with respect to a taxpayer for a taxation year means an indexed payment under an indexed debt obligation where

(a) the non-indexed debt obligation associated with the indexed debt obligation provides for the payment, at least annually, of interest at a single fixed rate, and

(b) the indexed payment corresponds to one of the interest payments referred to in paragraph (a),

but does not include payments under an indexed debt obligation where, at any time in the year, the taxpayer's proportionate interest in a payment to be made under the obligation after that time differs from the taxpayer's proportionate interest in any other payment to be made under the obligation after that time;

"indexed payment" means, in relation to an indexed debt obligation, an amount payable under the obligation that is determined by reference to the purchasing power of money;

"inflation adjustment period" of an indexed debt obligation means, in relation to a taxpayer,

(a) where the taxpayer acquires and disposes of the taxpayer's interest in the obligation in the same regular adjustment period of the obligation, the period that begins when the taxpayer acquires the interest in the obligation and ends when the taxpayer disposes of the interest, and

(b) in any other case, each of the following consecutive periods:

(i) the period that begins when the taxpayer acquires the taxpayer's interest in the obligation and ends at the end of the regular adjustment period of the obligation in which the taxpayer acquires the interest in the obligation,

(ii) each succeeding regular adjustment period of the obligation throughout which the taxpayer holds the interest in the obligation, and

(iii) where the taxpayer does not dispose of the interest in the obligation at the end of a regular adjustment period of the obligation, the period that begins immediately after the last period referred to in subparagraphs (i) and (ii) and that ends when the taxpayer disposes of the interest in the obligation;

"regular adjustment period" of an indexed debt obligation means

(a) where the terms or conditions of the obligation provide that, while the obligation is outstanding, indexed payments are to be made at regular intervals not exceeding 12 months in length, each of the following periods:

(i) the period that begins when the obligation is issued and ends when the first indexed payment is required to be made, and

(ii) each succeeding period beginning when an indexed payment is required to be made and ending when the next indexed payment is required to be made,

(b) where paragraph (a) does not apply and the obligation is outstanding for less than 12 months, the period that begins when the obligation is issued and ends when the obligation ceases to be outstanding, and

(c) in any other case, each of the following periods:

(i) the 12-month period that begins when the obligation is issued,

(ii) each succeeding 12-month period throughout which the obligation is outstanding, and

(iii) where the obligation ceases to be outstanding at a time other than the end of a 12-month period referred to in subparagraph (i) or (ii), the period that commences immediately after the last period referred to in those subparagraphs and that ends when the obligation ceases to be outstanding.

History: S. 7001 added by P.C. 1996-1419, s. 4, September 11, 1996, *Canada Gazette*, Part II, October 2, 1996, applicable to debt obligations issued after October 16, 1991.

Definitions [Reg. 7001]: "amount" — ITA 248(1); "associated" — ITA 256; "debt obligation" — Reg. 7001(6); "disposes" — ITA 248(1)"disposition"; "excluded payment" — Reg. 7001(7); "indexed debt obligation" — ITA 248(1); "indexed payment", "inflation adjustment period" — Reg. 7001(7); "month" — *Interpretation Act* 35(1); "prescribed" — ITA 248(1); "regular adjustment period" — Reg. 7001(7); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

PART LXXI — PRESCRIBED FEDERAL CROWN CORPORATIONS

History: Part LXXI (s. 7100) added by P.C. 1984-3095, August 31, 1984, *Canada Gazette*, Part II, September 19, 1984, effective September 1, 1984.

7100. For the purposes of subsections 27(2) and (3), the definition "private corporation" in subsection 89(1) and subsection 124(3) of the Act, the following are prescribed federal Crown corporations:

(a) Canada Deposit Insurance Corporation;

(b) Canada Hibernia Holding Corporation;

(c) Canada Lands Company Limited;

(d) Canada Mortgage and Housing Corporation;

(e) Canada Post Corporation;

(f) Canadian Broadcasting Corporation;

(g) Cape Breton Development Corporation;

(h) Freshwater Fish Marketing Corporation;

(i) Royal Canadian Mint; and

(j) VIA Rail Canada Inc.

Proposed Amendment — Reg. 7100(j)

Application: Bill C-44 (First Reading March 24, 2005), para. 85(b), will replace "VIA Rail Canada Inc." in para. 7100(j) with "VIA Rail Canada", in force on a day to be fixed by order of the Governor in Council.

History: The opening words of s. 7100 amended, the list alphabetized, and "Farm Credit Canada" removed, by P.C. 2003-1921, subsec. 1(5), December 3, 2003, *Canada Gazette*, Part II, December 17, 2003, applicable to taxation years that begin after December 10, 2001.

"Theratronics International Limited" in s. 7100 deleted by the said P.C. 2003-1921, subsec. 1(4), applicable after May 20, 1998.

"Canada Hibernia Holding Corporation" and "Theratronics International Limited" added, and "Canada Development Investment Corporation" deleted, by the said P.C. 2003-1921, subsecs. 1(2), (3), applicable after January 2, 1995.

The opening words of s. 7100 amended by the said P.C. 2003-1921, subsec. 1(1), applicable after July 13, 1990.

The reference to "Farm Credit Corporation" in s. 7100 replaced with a reference to "Farm Credit Canada", by 2001, c. 22, para. 22(a), applicable June 14, 2001.

S. 7100 amended by P.C. 1996-1927, s. 1, December 19, 1996, *Canada Gazette*, Part II, January 8, 1997; the deletion of "Air Canada" and the addition of "Canada Lands Company Limited" applicable November 1, 1995; the deletion of the reference to National Railways applicable January 1, 1996.

S. 7100 amended by P.C. 1994-930, June 2, 1994, *Canada Gazette*, Part II, June 15, 1994, applicable after March 26, 1994.

S. 7100 amended by P.C. 1991-2029, October 24, 1991, *Canada Gazette*, Part II, November 6, 1991, effective commencing July 3, 1991.

S. 7100 amended by P.C. 1991-1822, September 26, 1991, *Canada Gazette*, Part II, October 9, 1991, applicable commencing January 1, 1991.

S. 7100 amended by P.C. 1991-350, February 28, 1991, *Canada Gazette*, Part II, March 13, 1991, applicable after January 1991.

S. 7100 amended by P.C. 1986-2590, s. 18, November 20, 1986, *Canada Gazette*, Part II, December 10, 1986, effective July 15, 1985.

S. 7100 amended by P.C. 1985-466, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective commencing September 1, 1984.

Definitions [Reg. 7100]: "prescribed" — ITA 248(1).

Interpretation Bulletins: IT-347R2: Crown corporations (archived).

PART LXXII — [REPEALED]

History: Part LXXII repealed by P.C. 2001-1378, s. 5, August 1, 2001, *Canada Gazette*, Part II, August 15, 2001, effective August 15, 2001.

Part LXXII (s. 7200) added by P.C. 1984-3789, s. 18, November 29, 1984, *Canada Gazette*, Part II, December 12, 1984, applicable in respect of the first taxation year of a corporation ending after 1982.

Definitions [Reg. 7200]: "amount" — ITA 248(1); "commencement" — *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "taxation year" — ITA 249.

PART LXXIII — PRESCRIBED AMOUNTS AND AREAS [AND PENALTIES]

History: Heading to Part LXXIII substituted by P.C. 1988-1105, s. 2, June 6, 1988, *Canada Gazette*, Part II, June 22, 1988, applicable to 1987 *et seq.*

Part LXXIII (s. 7300) added by P.C. 1986-2770, s. 12, December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, effective commencing May 23, 1985.

7300. [Prescribed amounts] — For the purposes of paragraph 12(1)(x) of the Act, "prescribed amount" means

(a) any amount paid to a corporation by the Native Economic Development Board created under Order in Council P.C. 1983-3394 of October 31, 1983 pursuant to the Native Economic Development Program or paid to a corporation under the Aboriginal Capital Corporation Program of the Canadian Aboriginal Economic Development Strategy, where all of the shares of the capital stock of the corporation are

(i) owned by aboriginal individuals,

(ii) held in trust for the exclusive benefit of aboriginal individuals,

(iii) owned by a corporation, all the shares of which are owned by aboriginal individuals, or

(iv) owned or held in a combination of ownership structures described in subparagraph (i), (ii) or (iii)

and the purpose of the corporation is to provide loans, loan guarantees, bridge financing, venture capital, lease financing, surety bonding or other similar financing services to aboriginal enterprises; or

(b) prescribed assistance within the meaning assigned by section 6702.

Related Provisions: ITA 80(1)"excluded obligation"(a)(i) — Debt forgiveness rules do not apply to prescribed amount.

History: Para. 7300(a) amended by P.C. 1991-729, April 18, 1991, *Canada Gazette*, Part II, May 8, 1991, to substitute subparas. (i) to (iv) for "owned by aboriginal individuals".

S. 7300 amended by P.C. 1990-213, February 8, 1990, *Canada Gazette*, Part II, February 28, 1990, to add para. (a), applicable to amounts received after May 22, 1985.

Definitions [Reg. 7300]: "amount" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "individual", "prescribed", "share" — ITA 248(1); "taxation year" — ITA 249; "trust" — ITA 104(1), 248(1), (3).

Forms: T2124: Statement of business activities.

7301. [Repealed]

History: S. 7301 repealed by P.C. 2001-1378, s. 6, August 1, 2001, *Canada Gazette*, Part II, August 15, 2001, effective August 15, 2001.

S. 7301 added by P.C. 1987-2168, October 22, 1987, *Canada Gazette*, Part II, November 11, 1987.

7302, 7303. [Revoked]

History: Ss. 7302, 7303 revoked by P.C. 1993-1688, s. 1, August 26, 1993, *Canada Gazette*, Part II, September 8, 1993, applicable to 1993 *et seq.*

Ss. 7302, 7303 added by P.C. 1988-1105, June 6, 1988, *Canada Gazette*, Part II, June 22, 1988, applicable to 1987 *et seq.*

7303.1 (1) [Prescribed northern zone] — An area is a prescribed northern zone for a taxation year for the purposes of section 110.7 of the Act where it is

(a) the Yukon Territory or the Northwest Territories;

(b) those parts of British Columbia, Alberta and Saskatchewan that lie north of 57°30'N latitude;

(c) that part of Manitoba that lies

(i) north of 56°20'N latitude, or

(ii) north of 52°30'N latitude and east of 95°25'W longitude;

(d) that part of Ontario that lies

(i) north of 52°30'N latitude, or

(ii) north of 51°05'N latitude and east of 89°10'W longitude;

(e) that part of Quebec that lies

(i) north of 51°05'N latitude, or

(ii) north of the Gulf of St. Lawrence and east of 63°00'W longitude; or

(f) Labrador, including Belle Isle.

(2) [Prescribed intermediate zone] — An area is a prescribed intermediate zone for a taxation year for the purposes of section 110.7 of the Act where it is the Queen Charlotte Islands, Anticosti Island, the Magdalen Islands or Sable Island, or where it is not part of a prescribed northern zone referred to in subsection (1) for the year and is

(a) that part of British Columbia that lies

(i) north of 55°35'N latitude, or

(ii) north of 55°00'N latitude and east of 122°00'W longitude;

(b) that part of Alberta that lies north of 55°00'N latitude;

(c) that part of Saskatchewan that lies

(i) north of 55°00'N latitude,

(ii) north of 54°15'N latitude and east of 107°00'W longitude, or

(iii) north of 53°20'N latitude and east of 103°00'W longitude;

(d) that part of Manitoba that lies

(i) north of 53°20'N latitude,

(ii) north of 52°10'N latitude and east of 97°40'W longitude, or

(iii) north of 51°30'N latitude and east of 96°00'W longitude;

(e) that part of Ontario that lies north of 50°35'N latitude; or

(f) that part of Quebec that lies

(i) north of 50°35'N latitude and west of 79°00'W longitude,

(ii) north of 49°00'N latitude, east of 79°00'W longitude and west of 74°00'W longitude,

(iii) north of 50°00'N latitude, east of 74°00'W longitude and west of 70°00'W longitude,

(iv) north of 50°45'N latitude, east of 70°00'W longitude and west of 65°30'W longitude, or

(v) north of the Gulf of St. Lawrence, east of 65°30'W longitude and west of 63°00'W longitude.

History [Reg. 7303.1]: S. 7303.1 enacted by P.C. 1993-1688, s. 2, August 26, 1993, *Canada Gazette*, Part II, September 8, 1993, applicable to 1988 *et seq.*

Definitions [Reg. 7303.1]: "prescribed" — ITA 248(1); "taxation year" — ITA 249.

Remission Orders [Reg. 7303.1]: *Prescribed Areas Forward Averaging Remission Order*, P.C. 1994-109 (remission for certain residents of prescribed areas who filed forward averaging elections for 1987).

Interpretation Bulletins [Reg. 7303.1]: IT-91R4: Employment at special work sites or remote work locations.

Forms [Reg. 7303.1]: T4039: Northern residents deductions — places in prescribed zones.

7304. (1) In this section,

"member of the taxpayer's household" includes the taxpayer;

"designated city" means St. John's, Halifax, Moncton, Quebec City, Montreal, Ottawa, Toronto, North Bay, Winnipeg, Saskatoon, Calgary, Edmonton and Vancouver.

(2) [Trip cost] — For the purposes of this section, the trip cost to a taxpayer in respect of a trip made by an individual who, at the time the trip was made, was a member of the taxpayer's household is the least of

(a) the aggregate of

(i) the value of travel assistance, if any, provided by the taxpayer's employer in respect of travelling expenses for the trip, and

(ii) the amount, if any, received by the taxpayer from his employer in respect of travelling expenses for the trip,

(b) the aggregate of

(i) the value of travel assistance, if any, provided by the taxpayer's employer in respect of travelling expenses for the trip, and

(ii) travelling expenses incurred by the taxpayer for the trip, and

(c) the lowest return airfare ordinarily available, at the time the trip was made, to the individual for flights between the place in which the individual resided immediately before the trip, or the airport nearest thereto, and the designated city that is nearest to that place.

(3) [Period travel cost] — For the purposes of subsection (4), the "period travel cost" to a taxpayer for a period in a taxation year, in respect of an individual who was a member of the taxpayer's household at any time during the period, is the total of the trip costs to the taxpayer in

respect of all trips that were made by the individual at a time when the individual was a member of the taxpayer's household where the trips may reasonably be considered to relate to the period.

(4) [Travel assistance — prescribed amount] — For the purposes of clause 110.7(1)(a)(i)(A) of the Act, the prescribed amount in respect of a taxpayer for a period in a taxation year is the lesser of

(a) the total of

(i) the value of travel assistance, if any, provided in the period by the taxpayer's employer in respect of travelling expenses for trips, each of which was made by an individual who, at the time the trip was made, was a member of the taxpayer's household, where the trips may reasonably be considered to relate to the period, and

(ii) the amount, if any, received in the period by the taxpayer from the taxpayer's employer in respect of travelling expenses for trips, each of which was made by an individual who, at the time the trip was made, was a member of the taxpayer's household, where the trips may reasonably be considered to relate to the period; and

(b) the total of all the period travel costs to the taxpayer for the period in respect of all individuals who were members of the taxpayer's household at any time in the period.

History: Para. 7304(2)(c), subsecs. 7304(3), (4) amended by P.C. 1993-1688, s. 3, August 26, 1993, *Canada Gazette*, Part II, September 8, 1993, applicable to 1988 *et seq.*

S. 7304 added by P.C. 1988-1105, s. 3, June 6, 1988, *Canada Gazette*, Part II, June 22, 1988, applicable to 1987 *et seq.*

Definitions [Reg. 7304]: "amount" — ITA 248(1); "designated city" — Reg. 7304(1); "employer", "individual" — ITA 248(1); "member of the taxpayer's household" — Reg. 7304(1); "period travel cost" — Reg. 7304(3); "prescribed" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "trip cost" — Reg. 7304(2).

7305. [Prescribed drought regions] — For the purposes of subsection 80.3(4) of the Act, prescribed drought regions in respect of

(a) the 1995 calendar year are

(i) in Manitoba, the Local Government Districts of Alonsa, Fisher, Grahamdale, Grand Rapids and Mountain (South), the areas designated under The Northern Affairs Act (Manitoba) as the communities of Camperville, Crane River, Duck Bay, Homebrook, Mallard, Meadow Portage, Rock Ridge, Spence Lake and Waterhen, the Rural Municipalities of Eriksdale, Lawrence, Mossey River, Ste. Rose and Siglunes, and Skownan,

(ii) in Saskatchewan, the Rural Municipalities of Antelope Park, Battle River, Beaver River, Biggar, Blaine Lake, Britannia, Buffalo, Cut Knife, Douglas, Eagle Creek, Eldon, Eye Hill, Frenchman Butte, Glenside, Grandview, Grass Lake, Great Bend, Heart's Hill, Hillsdale, Kindersley, Loon Lake, Manitou Lake, Mariposa, Mayfield, Meadow Lake, Medstead, Meeting Lake, Meota, Mervin, Milton, Mountain View, North Battleford, Oakdale, Paynton, Parkdale, Perdue, Pleasant Valley, Prairie, Prairiedale, Progress, Redberry, Reford, Round Hill, Round Valley, Rosemont, Senlac, Spiritwood, Tramping Lake, Turtle River, Wilton and Winslow, and

(iii) in Alberta, the Counties of Beaver, Camrose, Flagstaff, Lamont, Minburn, Paintearth, Smoky Lake, St. Paul, Strathcona, Thorhild, Two Hills and Vermilion River, the Municipal Districts of Bonnyville, MacKenzie, Northern Lights, Provost and Wainwright, and Special Areas 2, 3 and 4;

(b) the 1997 calendar year are

(i) in Ontario, the Counties of Hastings and Renfrew,

(ii) Nova Scotia,

(iii) in Manitoba, the Rural Municipalities of Albert, Alonsa, Archie, Arthur, Birtle, Boulton, Brenda, Cameron, Clanwilliam, Dauphin, Edward, Ellice, Glenella, Grahamdale, Harrison, Lakeview, Langford, Lansdowne, Lawrence, McCreary, Miniota, Minto, Morton, Ochre River, Park (South), Pipestone, Rosedale, Rossburn, Russell, Ste. Rose, Shellmouth, Shoal Lake, Sifton, Siglunes, Silver Creek, Strathclair, Turtle Mountain, Wallace, Westbourne, Whitewater and Winchester,

(iv) in Saskatchewan, the Rural Municipalities of Abernethy, Antelope Park, Antler, Argyle, Baildon, Bengough, Benson, Big Stick, Biggar, Bratt's Lake, Brock, Brokenshell, Browning, Buchanan, Calder, Caledonia, Cambria, Cana, Chester, Chesterfield, Churchbridge, Clinworth, Coalfields, Cote, Cymri, Deer Forks, Elcapo, Elmsthorpe, Emerald, Enniskillen, Enterprise, Estevan, Excel, Eye Hill, Fertile Belt, Fillmore, Foam Lake, Francis, Fox Valley, Garry, Glenside, Golden West, Good Lake, Grandview, Grass Lake, Grayson, Griffin, Happyland, Happy Valley, Hart Butte, Hazelwood, Heart's Hill, Indian Head, Insinger, Ituna Bon Accord, Invermay, Kellross, Key West, Keys, Kingsley, Lajord, Lake Alma, Lake Johnston, Lake of The Rivers, Langenburg, Laurier, Lipton, Livingston, Lomond, Maple Creek, Mariposa, Martin, Maryfield, McLeod, Milton, Montmartre, Moose Creek, Moose Jaw, Moose Mountain, Moosomin, Mountain View, Mount Pleasant, North Qu'Appelle, Norton, Oakdale, Orkney, Old Post, Poplar Valley, Prairie, Prairiedale, Progress, Reciprocity, Redburn, Reford, Rocanville, Rosemount, St. Philips, Saltcoats, Scott, Silverwood, Sliding Hills, Souris Valley, South Qu'Appelle, Spy Kill, Stanley, Stonehenge, Storthoaks, Surprise Valley, Tecumseh, Terrell, The Gap, Tramping Lake, Tullymet, Wallace, Walpole, Waverley, Wawken, Wellington, Weyburn, Willow Bunch, Willowdale, Winslow and Wolseley, and

(v) in Alberta, the County of Forty Mile, the Municipal Districts of Acadia Valley, Cypress, Pincher Creek, Provost and Willow Creek, and Special Areas 2, 3 and 4;

(c) the 1998 calendar year are

(i) in Ontario, the Counties of Bruce, Grey, Huron and Oxford, and the Districts of Nipissing, Parry Sound, Sudbury and Thunder Bay,

(ii) in Nova Scotia, the Counties of Annapolis, Colchester, Cumberland, Digby, Hants and Kings,

(iii) in Saskatchewan, the Rural Municipalities of Aberdeen, Antelope Park, Arlington, Auvergne, Battle River, Bayne, Beaver River, Biggar, Blaine Lake, Blucher, Bone Creek, Britannia, Buffalo, Ca-

naan, Chaplin, Chesterfield, Clinworth, Corman Park, Coteau, Coulee, Cut Knife, Douglas, Dundurn, Eagle Creek, Eldon, Enfield, Excelsior, Eye Hill, Fertile Valley, Frenchman Butte, Frontier, Glen Bain, Glen McPherson, Glenside, Grandview, Grant, Grass Lake, Grassy Creek, Gravelbourg, Great Bend, Harris, Hart Butte, Heart's Hill, Hillsdale, Kindersley, King George, Lac Pelletier, Lacadena, Laird, Lake of The Rivers, Lawtonia, Lone Tree, Loon Lake, Loreburn, Mankota, Manitou Lake, Maple Bush, Mariposa, Marriott, Mayfield, Meadow Lake, Medstead, Meeting Lake, Meota, Mervin, Milden, Milton, Miry Creek, Monet, Montrose, Morse, Mountain View, Newcombe, North Battleford, Oakdale, Old Post, Parkdale, Paynton, Perdue, Pinto Creek, Pleasant Valley, Poplar Valley, Prairie, Prairiedale, Progress, Redberry, Reford, Reno, Riverside, Rosedale, Rosemount, Round Hill, Round Valley, Rosthern, Rudy, St. Andrews, Saskatchewan Landing, Senlac, Shamrock, Snipe Lake, Stonehenge, Swift Current, Tramping Lake, Turtle River, Val Marie, Vanscoy, Victory, Waverly, Webb, Whiska Creek, White Valley, Willow Bunch, Wilton, Winslow, Wise Creek, and Wood River, and

(iv) in Alberta, the Counties of Beaver, Camrose, Flagstaff, Grande Prairie, Lamont, Minburn, Paintearth, St. Paul, Smoky Lake, Stettler, Two Hills and Vermilion River, the Municipal Districts of Acadia, Big Lakes, Birch Hills, Bonnyville, Clear Hills, East Peace, Fairview, Greenview, Northern Lights, Peace, Provost, Saddle Hills, Smoky River, Spirit River, Starland, Wainwright and Yellowhead, and Special Areas 2, 3 and 4;

(d) the 1999 calendar year are

(i) in Nova Scotia, the Counties of Annapolis, Colchester, Cumberland, Digby, Hants, Kings and Yarmouth,

(ii) in British Columbia, the Peace River Regional District,

(iii) in Saskatchewan, the Rural Municipalities of Beaver River and Loon Lake, and

(iv) in Alberta, the Counties of Athabaska, Barrhead, Birch Hills, Grande Prairie, Lac Ste. Anne, Lakeland, Lamont, Saddle Hills, Smoky Lake, St. Paul, Thorhild, Two Hills, Westlock and Woodlands, and the Municipal Districts of Big Lakes, Bonnyville, Clear Hills, East Peace, Fairview, Greenview, Lesser Slave Lake, MacKenzie, Northern Lights, Peace, Smoky River and Spirit River;

(e) the 2000 calendar year are

(i) in British Columbia, the Regional District of East Kootenay,

(ii) in Saskatchewan, the Rural Municipalities of Antelope Park, Battle River, Big Stick, Biggar, Blaine Lake, Buffalo, Chesterfield, Clinworth, Cut Knife, Deer Forks, Douglas, Duck Lake, Eagle Creek, Enterprise, Eye Hill, Fox Valley, Glenside, Grandview, Grass Lake, Great Bend, Happyland, Hearth's Hill, Kindersley, Laird, Leask, Maple Creek, Mariposa, Marriott, Mayfield, Meeting Lake, Milton, Mountain View, Newcombe, North Battleford, Oakdale, Paynton, Piapot, Pleasant Valley, Prairiedale, Progress, Redberry, Reford, Reno, Rosemount, Rosthern, Round Valley, Senlac, St. Louis, Tramping Lake and Winslow, and

(iii) in Alberta, the Counties of Barrhead, Birch Hills, Cardston, Cypress, Flagstaff, Forty Mile, Grande Prairie, Kneehill, Lac Ste. Anne, Lethbridge, Newell, Paintearth, Saddle Hills, Starland, Stettler, Vulcan, Warner, Wheatland and Woodlands, the Improvement Districts of Kananaskis and Waterton, the Municipal Districts of Acadia, Fairview, Foothills, Greenview, Peace, Pincher Creek, Provost, Ranchland, Smoky River, Spirit River, Taber and Willow Creek, and the Municipality of Crowsnest Pass and Special Areas 2, 3, and 4;

(f) the 2001 calendar year are

(i) in Ontario, the Counties of Elgin, Essex, Haldimand, Hastings, Huron, Lambton, Lanark, Lennox and Addington, Middlesex, Norfolk, Northumberland, Oxford and Renfrew, the United Counties of Leeds and Grenville, the Frontenac Management Board, the Regional Municipality of Niagara, the Cities of Brant County, Brantford, Hamilton, Ottawa and Prince Edward County and the Municipality of Chatham-Kent,

(ii) in Quebec, the Magdalen Islands,

(iii) in Nova Scotia, the Counties of Annapolis, Antigonish, Cape Breton, Colchester, Cumberland, Digby, Hants, Inverness, Kings, Pictou, Richmond and Victoria,

(iv) in New Brunswick, the Counties of Albert, Kent and Westmorland,

(v) in Manitoba, the Rural Municipality of Kelsey,

(vi) in British Columbia, the Regional Districts of Central Kootenay, East Kootenay, Kootenay Boundary and Okanagan-Similkameen,

(vii) Prince Edward Island,

(viii) in Saskatchewan, the Rural Municipalities of Aberdeen, Abernethy, Antelope Park, Arborfield, Arlington, Arm River, Auvergne, Baildon, Barrier Valley, Battle River, Bayne, Beaver River, Bengough, Big Arm, Big Quill, Big River, Big Stick, Biggar, Birch Hills, Bjorkdale, Blaine Lake, Blucher, Bone Creek, Bratt's Lake, Britannia, Brokenshell, Buchanan, Buckland, Buffalo, Calder, Caledonia, Cana, Canaan, Canwood, Carmichael, Caron, Chaplin, Chester, Chesterfield, Churchbridge, Clayton, Clinworth, Colonsay, Connaught, Corman Park, Cote, Coteau, Coulee, Craik, Cupar, Cut Knife, Deer Forks, Douglas, Duck Lake, Dufferin, Dundurn, Eagle Creek, Edenwold, Elcapo, Eldon, Elfros, Elmsthorpe, Emerald, Enfield, Enterprise, Excel, Excelsior, Eye Hill, Eyebrow, Fertile Valley, Fish Creek, Flett's Springs, Foam Lake, Fox Valley, Francis, Frenchman Butte, Frontier, Garden River, Garry, Glen Bain, Glen Mcpherson, Glenside, Good Lake, Grandview, Grant, Grass Lake, Grassy Creek, Gravelbourg, Grayson, Great Bend, Gull Lake, Happy Valley, Happyland, Harris, Hart Butte, Hazel Dell, Heart's Hill, Hillsborough, Hillsdale, Hoodoo, Hudson Bay, Humboldt, Huron, Indian Head, Insinger, Invergordon, Invermay, Ituna Bon Accord, Kellross, Kelvington, Key West, Keys, Kindersley, King George, Kingsley, Kinistino, Kutawa, Lac Pelletier, Lacadena, Laird, Lajord, Lake Johnston, Lake Lenore, Lake of The Rivers, Lakeland, Lakeside, Lakeview, Last Mountain Valley, Lawtonia, Leask, Leroy, Lipton, Livingston, Lone Tree, Longlaketon, Loon Lake,

Loreburn, Lost River, Lumsden, Manitou Lake, Mankota, Maple Bush, Maple Creek, Mariposa, Marquis, Marriott, Mayfield, Mccraney, Mckillop, McLeod, Meadow Lake, Medstead, Meeting Lake, Meota, Mervin, Milden, Milton, Miry Creek, Monet, Montmartre, Montrose, Moose Jaw, Moose Range, Morris, Morse, Mount Hope, Mountain View, Newcombe, Nipawin, North Battleford, North Qu'Appelle, Norton, Oakdale, Old Post, Orkney, Paddockwood, Parkdale, Paynton, Pense, Perdue, Piapot, Pinto Creek, Pittville, Pleasant Valley, Pleasantdale, Ponass Lake, Poplar Valley, Porcupine, Prairie Rose, Prairiedale, Preeceville, Prince Albert, Progress, Redberry, Redburn, Reford, Reno, Riverside, Rodgers, Rosedale, Rosemount, Rosthern, Round Hill, Round Valley, Rudy, Saltcoats, Sarnia, Saskatchewan Landing, Sasman, Scott, Senlac, Shamrock, Shellbrook, Sherwood, Sliding Hills, Snipe Lake, South Qu'Appelle, Spalding, Spiritwood, St. Andrews, St. Louis, St. Peter, St. Philips, Stanley, Star City, Stonehenge, Surprise Valley, Sutton, Swift Current, Terrell, The Gap, Three Lakes, Tisdale, Torch River, Touchwood, Tramping Lake, Tullymet, Turtle River, Usborne, Val Marie, Vanscoy, Victory, Viscount, Wallace, Waverley, Webb, Wheatlands, Whiska Creek, White Valley, Willner, Willow Bunch, Willow Creek, Wilton, Winslow, Wise Creek, Wolseley, Wolverine, Wood Creek, Wood River and Wreford,

(ix) Alberta, and

(x) in Newfoundland and Labrador, the island of Newfoundland;

(g) the 2002 calendar year are

(i) in Ontario, the Counties of Bruce, Elgin, Lambton and Middlesex, the Municipality of Chatham-Kent, the District of Cochrane and the Regional Municipalities of Halton and Peel,

(ii) in Manitoba, the Rural Municipalities of Albert, Alonsa, Archie, Argyle, Arthur, Birtle, Blanshard, Brenda, Cameron, Clanwilliam, Coldwell, Cornwallis, Daly, Dauphin, Edward, Ellice, Elton, Eriksdale, Ethelbert, Gilbert Plains, Glenella, Glenwood, Grahamdale, Grandview, Hamiota, Harrison, Hillsburg, Kelsey, Langford, Lansdowne, Lawrence, McCreary, Miniota, Minitonas, Minto, Morton, Mossey River, Mountain, North Cypress, Oakland, Ochre River, Odanah, Park, Pipestone, Riverside, Roblin, Rosedale, Rossburn, Russell, Saskatchewan, Shell River, Shellmouth-Boulton, Shoal Lake, Sifton, Siglunes, Silver Creek, South Cypress, St. Laurent, Ste. Rose, Strathclair, Strathcona, Swan River, Turtle Mountain, Wallace, Whitehead, Whitewater, Winchester and Woodworth, and the unorganized territory that is north of the Rural Municipality of Alonsa, between that rural municipality and the south shore of Lake Manitoba,

(iii) in British Columbia, the Peace River Regional District,

(iv) in Saskatchewan, the Rural Municipalities of Aberdeen, Abernethy, Antelope Park, Antler, Arborfield, Argyle, Arlington, Arm River, Auvergne, Baildon, Barrier Valley, Battle River, Bayne, Beaver River, Big Arm, Big Quill, Big River, Big Stick, Biggar, Birch Hills, Bjorkdale, Blaine Lake, Blucher, Bone Creek, Britannia, Buchanan, Buckland, Buffalo, Calder, Cana, Canaan, Canwood, Carmichael, Caron, Chaplin, Chesterfield, Churchbridge, Clayton, Clinworth, Colonsay, Connaught, Corman Park, Cote, Coteau, Coulee, Craik, Cupar, Cut Knife, Deer Forks, Douglas, Duck Lake, Dufferin, Dundurn, Eagle Creek, Edenwold, Elcapo, Eldon, Elfros, Emerald, Enfield, Enniskillen, Enterprise, Excelsior, Eye Hill, Eyebrow, Fertile Belt, Fertile Valley, Fish Creek, Flett's Springs, Foam Lake, Fox Valley, Frenchman Butte, Frontier, Garden River, Garry, Glen Bain, Glen McPherson, Glenside, Good Lake, Grandview, Grant, Grass Lake, Grassy Creek, Gravelbourg, Grayson, Great Bend, Gull Lake, Happyland, Harris, Hazel Dell, Hazelwood, Heart's Hill, Hillsborough, Hillsdale, Hoodoo, Hudson Bay, Humboldt, Huron, Insinger, Invergordon, Invermay, Ituna Bon Accord, Kellross, Kelvington, Keys, Kindersley, King George, Kingsley, Kinistino, Kutawa, Lac Pelletier, Lacadena, Laird, Lake Johnston, Lake Lenore, Lakeland, Lakeside, Lakeview, Langenburg, Last Mountain Valley, Lawtonia, Leask, Leroy, Lipton, Livingston, Lone Tree, Longlaketon, Loon Lake, Loreburn, Lost River, Lumsden, Manitou Lake, Mankota, Maple Bush, Maple Creek, Mariposa, Marquis, Marriott, Martin, Maryfield, Mayfield, McCraney, McKillop, McLeod, Meadow Lake, Medstead, Meeting Lake, Meota, Mervin, Milden, Milton, Miry Creek, Monet, Montrose, Moose Creek, Moose Jaw, Moose Mountain, Moose Range, Moosomin, Morris, Morse, Mount Hope, Mount Pleasant, Mountain View, Newcombe, Nipawin, North Battleford, North Qu'appelle, Oakdale, Orkney, Paddockwood, Parkdale, Paynton, Pense, Perdue, Piapot, Pinto Creek, Pittville, Pleasant Valley, Pleasantdale, Ponass Lake, Porcupine, Prairie Rose, Prairiedale, Preeceville, Prince Albert, Progress, Reciprocity, Redberry, Redburn, Reford, Reno, Riverside, Rocanville, Rodgers, Rosedale, Rosemount, Rosthern, Round Hill, Round Valley, Rudy, Saltcoats, Sarnia, Saskatchewan Landing, Sasman, Senlac, Shamrock, Shellbrook, Sherwood, Silverwood, Sliding Hills, Snipe Lake, Spalding, Spiritwood, Spy Hill, St. Andrews, St. Louis, St. Peter, St. Philips, Stanley, Star City, Storthoaks, Sutton, Swift Current, Three Lakes, Tisdale, Torch River, Touchwood, Tramping Lake, Tullymet, Turtle River, Usborne, Val Marie, Vanscoy, Victory, Viscount, Wallace, Walpole, Waverley, Wawken, Webb, Wheatlands, Whiska Creek, White Valley, Willner, Willow Creek, Willowdale, Wilton, Winslow, Wise Creek, Wolverine, Wood Creek, Wood River and Wreford, and

(v) Alberta; and

(h) the 2003 calendar year are

(i) in Manitoba, the Regional Municipalities of Albert, Alonsa, Archie, Argyle, Armstrong, Arthur, Bifrost, Birtle, Blanshard, Brenda, Cameron, Clanwilliam, Coldwell, Cornwallis, Daly, Dauphin, Edward, Ellice, Elton, Eriksdale, Ethelbert, Fisher, Gilbert Plains, Gimli, Glenella, Glenwood, Grahamdale, Grandview, Hamiota, Harrison, Hillsburg, Kelsey, Lakeview, Langford, Lansdowne, Lawrence, Louise, McCreary, Miniota, Minitonas, Minto, Morton, Mossey River, Mountain, North

Cypress, Oakland, Ochre River, Odanah, Park, Pipestone, Riverside, Roblin, Rockwood, Rosedale, Rossburn, Russell, Saskatchewan, Shellmouth-Boulton, Shell River, Shoal Lake, Sifton, Siglunes, Silver Creek, South Cypress, St. Laurent, Ste. Rose, Strathclair, Strathcona, Swan River, Turtle Mountain, Wallace, Westbourne, Whitehead, Whitewater, Winchester, Woodlands and Woodworth, the town of Grand Rapids and the Manitoba Census Consolidated Subdivision no. 19 (unorganized), as that subdivision was developed by Statistics Canada for the 2001 Census,

Proposed Amendment — 7305(h)(i)

Application: The June 6, 2005 draft regulations (2004 drought regions), subsec. 1(1), (pre-published in the *Canada Gazette*, Part I, June 18, 2005), will amend subpara. 7305(h)(i) by replacing "Regional Municipalities" with "Rural Municipalities", effective as of the date of its publication in Part II of the *Canada Gazette*.

Regulatory Impact Analysis Statement: The Regulations also correct an error in the English version of the 2003 drought regions designation for Manitoba, by replacing a reference to "regional" municipalities with a reference to "rural" municipalities.

. . . . .

The technical deficiency in the English version of subparagraph 7305(h)(i) of the regulations relating to the 2003 drought regions in the province of Manitoba was brought to the attention of the Department of Finance by the Standing Joint Committee for the Scrutiny of Regulations.

[See also under proposed Reg. 7305(i).]

(ii) in British Columbia, the Regional Districts of Bulkley-Nechako, Cariboo, Central Kootenay, Central Okanagan, Columbia-Shuswap, East Kootenay, Fort Nelson-Liard, Fraser-Fort George, Kootenay Boundary, North Okanagan, Okanagan-Similkameen, Peace River, Spallumcheen, Squamish-Lillooet and Thompson-Nicola,

(iii) in Saskatchewan, the Rural Municipalities of Aberdeen, Abernethy, Antelope Park, Antler, Arborfield, Argyle, Barrier Valley, Battle River, Bayne, Beaver River, Benson, Big Quill, Big River, Biggar, Birch Hills, Bjorkdale, Blaine Lake, Blucher, Britannia, Brock, Brokenshell, Browning, Buchanan, Buckland, Buffalo, Calder, Cana, Canaan, Canwood, Chesterfield, Churchbridge, Clayton, Clinworth, Coalfields, Colonsay, Connaught, Corman Park, Cote, Coteau, Coulee, Cupar, Cut Knife, Cymri, Deer Forks, Douglas, Duck Lake, Dufferin, Dundurn, Eagle Creek, Edenwold, Elcapo, Eldon, Elfros, Emerald, Enniskillen, Excelsior, Fertile Belt, Fertile Valley, Fish Creek, Flett's Springs, Foam Lake, Frenchman Butte, Garden River, Garry, Glenside, Good Lake, Grandview, Grant, Grayson, Great Bend, Griffin, Happyland, Harris, Hazel Dell, Hazelwood, Hillsdale, Hoodoo, Hudson Bay, Humboldt, Insinger, Invergordon, Invermay, Ituna Bon Accord, Kellross, Kelvington, Keys, Kindersley, King George, Kingsley, Kinistino, Kutawa, Lacadena, Laird, Lake Lenore, Lakeland, Lakeside, Lakeview, Langenburg, Last Mountain Valley, Leask, Leroy, Lipton, Livingston, Longlaketon, Loon Lake, Lumsden, Marriott, Martin, Maryfield, Mayfield, McKillop, McLeod, Meadow Lake, Medstead, Meeting Lake, Meota, Mervin, Milden, Milton, Miry Creek, Monet, Montrose, Moose Creek, Moose Mountain, Moose Range, Moosomin, Morse, Mount Hope, Mount Pleasant, Mountain View, Newcombe, Nipawin, North Battleford, North Qu'appelle, Oakdale, Orkney, Paddockwood, Parkdale, Paynton, Pense, Perdue, Pittville, Pleasant Valley, Pleasantdale, Ponass Lake, Porcupine, Prairie Rose, Prairiedale, Preeceville, Prince Albert, Reciprocity, Redberry, Redburn, Reford, Riverside, Rocanville, Rosemount, Rosthern, Round Hill, Rudy, Saltcoats, Sarnia, Saskatchewan Landing, Sasman, Shellbrook, Sherwood, Silverwood, Sliding Hills, Snipe Lake, Spalding, Spiritwood, Spy Hill, St. Andrews, St. Louis, St. Peter, St. Philips, Stanley, Star City, Storthoaks, Swift Current, Tecumseh, Three Lakes, Tisdale, Torch River, Touchwood, Tullymet, Turtle River, Usborne, Vanscoy, Victory, Viscount, Wallace, Walpole, Wawken, Webb, Weyburn, Willow Creek, Willowdale, Winslow and Wolverine, and

(iv) in Alberta, the Counties of Athabasca, Barrhead, Birch Hills, Brazeau, Cardston, Clearwater, Grande Prairie, Kneehill, Lac Ste. Anne, Lacombe, Lakeland, Leduc, Mountain View, Northern Sunrise, Parkland, Ponoka, Red Deer, Saddle Hills, Starland, Thorhild, Wetaskiwin, Woodlands and Yellowhead, the improvement districts of Banff, Jasper Park, Kananaskis, Waterton and Wilmore Wilderness, the municipal districts of Acadia, Big Lakes, Bighorn, Bonnyville, Clear Hills, Fairview, Greenview, MacKenzie, Northern Lights, Peace, Pincher Creek, Ranchland, Smoky River, Spirit River and Willow Creek, the municipalities of Crowsnest Pass and Jasper, and special areas 3 and 4.

Proposed Addition — Reg. 7305(i)

(i) in[3] the 2004 calendar year are

(i) in British Columbia, the Regional District of Fort Nelson-Liard, and

(ii) in Alberta, the Counties of Beaver, Camrose, Flagstaff, Paintearth, Starland and Stettler, the Municipal Districts of Acadia, Clear Hills, Fairview, Mackenzie and Northern Lights, and Special Areas 2, 3 and 4.

Application: The June 6, 2005 draft regulations (2004 drought regions), subsec. 1(2), (pre-published in the *Canada Gazette*, Part I, June 18, 2005), will add para. 7305(i), effective as of the date of its publication in Part II of the *Canada Gazette*.

Regulatory Impact Analysis Statement: Section 80.3 of the *Income Tax Act* permits farmers who dispose of breeding livestock because of drought conditions existing in a prescribed drought region in a year to exclude a portion of the sale proceeds from their taxable income until the following year, or the year following a consecutive series of drought years, as the case may be. As a result, the full amount of the proceeds eligible for the deferral will be available to replenish their breeding livestock at that time.

Prescribed drought regions are those regions of Canada that are designated, on the advice of the Minister of Agriculture and Agri-Food, as suffering from drought conditions during a year. The *Regulations Amending the Income Tax Regulations (2004 Drought Regions)* [the Regulations], which amend section 7305 of the *Income Tax Regulations*, read together with section 7305.01 of the *Income Tax Regulations*, describe the prescribed regions that are eligible drought regions in 2004. These additions to the list of prescribed drought regions in section 7305 of the *Income Tax Regulations* are relieving in nature.

Alternatives

[3] *Sic*. The word "in" should be deleted — ed.

These Regulations are necessary to prescribe drought regions for 2004. These regions were determined by the Minister of Agriculture and Agri-Food to have suffered from drought conditions in that year.

Benefits and costs

These Regulations will allow farmers in the prescribed drought regions to defer income from sales of breeding livestock in 2004 until a subsequent year. The portion of the sale proceeds, which can be deferred by a farmer, increases with the percentage of the farmer's breeding livestock sold. In this manner, the tax deferral program is targeted at those farmers most severely disadvantaged by drought conditions.

Strategic environmental assessment

The policy rationale for designating drought regions is to mitigate the financial impact of drought conditions on farmer's income. As a result, farmers who live in drought regions do not have to include certain portions of their proceeds obtained from sale of their breeding herd. These amendments remove the disincentive the farmers may otherwise have, for not selling their breeding herd for fear of having to pay tax on the sale of that herd.

These amendments may have a minimal impact on the environment in the sense that they indirectly result in better recovery of the pastureland during post drought conditions. To the extent that the selling of breeding herd during drought conditions help reduce grazing activity, these amendments help in preserving the longevity of the grazing pasture.

Consultation

The list of prescribed regions was developed through consultations held by Agriculture and Agri-Food Canada with various parties, including provincial agriculture and municipal affairs departments, municipalities, farmers' associations, and crop insurers.

In addition, Canadians were given an opportunity to comment on the regions to be prescribed for 2004 following the publication, by Agriculture and Agri-Food Canada, of related news releases on November 25, 2004, and February 18, 2005. These releases are available through the Department of Agriculture and Agri-Food's Web site at www.agr.gc.ca.

Contact: Gurinder Grewal, Tax Legislation Division, Department of Finance, L'Esplanade Laurier, 140 O'Connor Street, Ottawa, Ontario K1A 0G5, (613) 992-1862.

Agriculture and Agri-Food Canada news release, November 25, 2004: *Tax Deferral to Benefit Farmers in Northern Alberta*

Deputy Prime Minister and Edmonton Centre MP, Anne McLellan today announced on behalf of Agriculture and Agri-Food Minister Andy Mitchell, that owners of breeding livestock in designated areas of northern Alberta who had to sell all or part of their herd this year due to drought conditions, will be eligible for a one-year tax deferral on 2004 income from these sales.

The initial deferral was made after reviewing precipitation levels, soil moisture and forage yield for the 2004 growing season, and provides a management option to breeding livestock owners who were forced to sell all or part of their herd due to drought conditions affecting feed or water supplies.

"This deferral offers affected producers a real tax saving on the income received, allowing them to use these savings when restocking their herds in the spring," said Minister McLellan. "As such, it's a very valuable tool for producers recovering from the impacts of drought."

"Each year, Agriculture and Agri-Food Canada consults with the provinces and industry representatives to identify the areas eligible for tax deferral," said Minister Mitchell. "This program is yet another way the Government of Canada is assisting producers address some the challenges they have faced over the past several years."

To defer income, the breeding herd must have been reduced by at least 15%. 30% of income from net sales can be deferred if the breeding herd has been reduced by at least 15%, but less than 30%. Where the herd has been reduced by 30% or more, 90% of income from net sales can be deferred.

Eligibility for deferral was made on the advice of Minister Mitchell to Ralph Goodale, Minister of Finance.

The deferral allows eligible producers in designated areas to defer income tax on the sale of breeding livestock for one year to help replenish breeding stock in the following year. In the case of consecutive years of drought designation, producers may defer sales income to the first year in which the area is no longer designated.

Eligible producers will be able to request this deferral when filing their 2004 income tax returns. Livestock producers are advised to contact their local Canada Customs and Revenue Agency Tax Services Office for details on the income tax provisions.

The Fort Nelson-Liard Regional District of British Columbia has also been designated to be eligible for this deferral.

Please see the attached list of designated areas in northern Alberta that are eligible for 2004. [not reproduced; now reflected in draft regulation above — ed.]

For more information, media may contact: Ted O'Brien, Agriculture and Agri-Food Canada, Regina, (306) 780-6000; Media Relations, Agriculture and Agri-Food Canada, Ottawa, (613) 759-7972.

Agriculture and Agri-Food Canada News Release, February 18, 2005: *Tax Deferral to Benefit Additional Areas of Alberta*

Owners of breeding livestock in additional areas of northern and central Alberta who had to sell all or part of their herd this year due to drought conditions will be eligible for a one-year tax deferral on 2004 income from these sales.

The announcement of the additional designations was made today by Deputy Prime Minister and Edmonton Centre MP Anne McLellan, on behalf of Agriculture and Agri-Food Minister Andy Mitchell. These areas are in addition to the designations announced on November 25, 2004.

The deferral was made after reviewing precipitation levels, soil moisture and forage yield for the 2004 growing season, and provides a management option to breeding livestock owners who were forced to sell all or part of their herd due to drought conditions affecting feed or water supplies.

"Tax deferral offers producers an effective way to restock their herds each spring and, at the same time, provides a real tax saving on the income received through the sale of their cattle," said Minister McLellan. "The program is designed to help producers who need assistance to recover from the impacts of drought."

"The Government of Canada is focused on working with producers to address environmental factors that may impede the prosperity of the agricultural sector," said Minister Mitchell. "As such, the federal government consults with our partners in the provinces and industry on an annual basis to determine the areas where tax deferral designation is most essential."

Under the program, eligible producers can defer income from net sales if their breeding herd has been reduced by at least 15%. If the breeding herd has been reduced by at least 15% but less than 30%, producers can defer 30% of income from net sales. In cases where the herd has been reduced by 30% or more, producers may defer 90% of the income from net sales.

Eligibility for the deferral was made on the advice of Minister Mitchell to Ralph Goodale, Minister of Finance.

The deferral allows eligible producers in designated areas to defer income tax on the sale of breeding livestock for one year to help replenish breeding stock in the following year. In the case of consecutive years of drought designation, producers may defer sales income to the first year in which the area is no longer designated.

Eligible producers will be able to request this deferral when filing their 2004 income tax returns. Livestock producers are advised to contact their local Canada Customs and Revenue Agency Tax Services Office for details on the income tax provisions.

The Fort Nelson-Liard Regional District of British Columbia has also been designated to be eligible for this deferral.

Please see the attached list of designated areas in Alberta that are eligible for 2004. [not reproduced; now reflected in draft regulation above — ed.]

For more information, media may contact: Ted O'Brien, Agriculture and Agri-Food Canada, Regina, (306) 780-6000; Media Relations, Agriculture and Agri-Food Canada, (613) 759-7972.

Agriculture and Agri-Food Canada news release, November 25, 2004: *Tax Deferral to Benefit Farmers in Northern British Columbia*

David L. Emerson, Minister of Industry and MP for Vancouver-Kingsway, on behalf of Agriculture and Agri-Food Minister Andy Mitchell, today announced that owners of breeding livestock in the Fort Nelson-Liard Regional District of British Columbia who had to sell all or part of their herd this year due to drought conditions will be eligible for a one-year tax deferral on 2004 income from these sales.

The initial deferral was made after reviewing precipitation levels, soil moisture and forage yield for the 2004 growing season, and provides a management option to breeding livestock owners who were forced to sell all or part of their herd due to drought conditions affecting feed or water supplies.

"This deferral offers affected producers a real tax saving on the income received, allowing them to use these savings when restocking their herds in the spring," said Minister Emerson. "As such, it's a very valuable tool for producers recovering from the impacts of drought."

"Each year, Agriculture and Agri-Food Canada consults with the provinces and industry representatives to identify the areas eligible for tax deferral," said Minister Mitchell. "This program is yet another way the Government of Canada is assisting producers address some of the challenges they have faced over the past several years."

To defer income, the breeding herd must have been reduced by at least 15%. Thirty% of income from net sales can be deferred if the breeding herd has been reduced by at least 15%, but less than 30%. Where the herd has been reduced by 30% or more, 90% of income from net sales can be deferred.

Eligibility for deferral was made on the advice of Minister Mitchell to Ralph Goodale, Minister of Finance.

The deferral allows eligible producers in designated areas to defer income tax on the sale of breeding livestock for one year to help replenish breeding stock in the following year. In the case of consecutive years of drought designation, producers may defer sales income to the first year in which the area is no longer designated.

Eligible producers will be able to request this deferral when filing their 2004 income tax returns. Livestock producers are advised to contact their local Canada Customs and Revenue Agency Tax Services Office for details on the income tax provisions.

Areas of northern Alberta have also been designated to be eligible for this deferral.

For more information, media may contact: Ted O'Brien, Agriculture and Agri-Food Canada, Regina, (306) 780-6000; Media Relations, Agriculture and Agri-Food Canada, Ottawa, (613) 759-7972.

Related Provisions: Reg. 7305.01 — Surrounded areas.

History: Para. 7305(h) added by P.C. 2004-1386, November 23, 2004, *Canada Gazette*, Part II, December 15, 2004, applicable after 2002.

Para. 7305(g) added by P.C. 2004-246, March 23, 2004, *Canada Gazette*, Part II, April 7, 2004, applicable after 2001.

Para. 7305(f) added by P.C. 2002-1412, August 8, 2002, *Canada Gazette*, Part II, August 28, 2002, applicable after 2000.

Subpara. 7305(d)(ii) amended and para. 7305(e) added by P.C. 2001-1369, August 1, 2001, *Canada Gazette*, Part II, August 15, 2001, subpara. (d)(ii) applicable after 1998 and para. (e) applicable after 1999.

Para. 7305(d) added by P.C. 2000-1769, s. 1, December 13, 2000, *Canada Gazette*, Part II, January 3, 2001, applicable after 1998.

Paras. 7305(a) to (c) substituted for paras. (a) to (e), by P.C. 1999-1057, June 10, 1999, *Canada Gazette*, Part II, June 23, 1999, applicable after 1994.

Para. 7305(e) added by P.C. 1993-1210, June 8, 1993, *Canada Gazette*, Part II, June 30, 1993, applicable after 1991.

Former para. 7305(d) added by P.C. 1992-2542, December 10, 1992, *Canada Gazette*, Part II, December 30, 1992, applicable after 1990.

S. 7305 added by P.C. 1991-464, March 14, 1991, *Canada Gazette*, Part II, March 27, 1991, applicable after 1987.

Definitions [Reg. 7305]: "prescribed" — ITA 248(1).

7305.01 [Prescribed drought regions — surrounded areas] — For the purposes of subsection 80.3(4) of the Act, the prescribed drought regions in respect of a year include any particular area that is surrounded by a region or regions prescribed under section 7305 in respect of the year.

History: S. 7305.01 added by P.C. 2000-1769, s. 2, December 13, 2000, *Canada Gazette*, Part II, January 3, 2001, applicable after 1987.

7305.1 [Automobile operating expenses] — For the purpose of subparagraph (v) of the description of A in paragraph 6(1)(k) of the Act, the amount prescribed for a taxation year is

(a) if a taxpayer is employed in a taxation year by a particular person principally in selling or leasing automobiles and an automobile is made available in the year to the taxpayer or a person related to the taxpayer by the particular person or a person related to the particular person, 14 cents; and

(b) in any other case, 17 cents.

Proposed Amendment — Reg. 7305.1(a), (b)

Application: The May 2, 2005 draft regulations (motor vehicle expenses and benefits), s. 1, will amend para. 7305.1(a) to replace "14" with "17" and amend para. 7305.1(b) to replace "17" with "20", applicable to taxation years that end after 2004.

Regulatory Impact Analysis Statement: These amendments to the *Income Tax Regulations* (the Regulations) prescribe the automobile deduction limits and benefit rates applicable as of 2005. Proposed changes to these limits and rates are announced each year by news release. News Release 2004-081 issued by the Department of Finance on December 17, 2004, contained the announcement of the rates and limits for 2005.

Section 7305.1 of the Regulations applies for the purpose of subparagraph (v) in the description of A in paragraph 6(1)(k) of the *Income Tax Act* (the Act). These provisions determine the per-kilometre value of the personal benefit that an employee must recognize in computing income if the employee's automobile operating expenses are paid for by the employer. For taxation years ending after 2004, the prescribed rate for employees other than automobile sales and leasing employees is changed from 17 to 20 cents per kilometre. For taxpayers employed principally in selling or leasing automobiles, the prescribed rate is changed from 14 to 17 cents per kilometre, for taxation years ending after 2004.

Section 7306 of the Regulations applies for the purpose of paragraph 18(1)(r) of the Act to determine the maximum amount deductible by an employer in respect of non-taxable automobile allowances paid by the employer to an employee. The maximum amount is determined by reference to the number of kilometres driven in the year for the purpose of earning income. The amendment to that section increases the per-kilometre limits for kilometres driven after 2004 by 3 cents.

Alternatives

These sections are necessary for the administration of the statutory requirements of the income tax system. Therefore, there is no alternative to amending them when these rates are changed.

Benefits and costs

The amendment to section 7305.1 of the Regulations increases the per-kilometre rate for determining the personal benefit component for an employee whose automobile operating expenses are paid for by the employer. The amendment to section 7306 of the Regulations increases the amount that may be deducted by an employer in respect of a non-taxable automobile allowance.

The amendment to section 7306 of the Regulations is expected to cause a decrease in federal tax revenues, which is expected to be partially offset by a small increase in federal tax revenues caused by the amendment to section 7305.1 of the Regulations. The net impact of all the changes is expected to reduce the Government of Canada's revenues by approximately $21 million annually.

Consultation

These amendments related to automobile expenses were announced in the Department of Finance News Release 2004-081 issued on December 17, 2004. This news release can be found [below].

Strategic environmental assessment

These amendments are not intended to have any significant environmental impact. In particular, they reflect actual increases in vehicle operating costs, including insurance and gasoline, as measured by Consumer Price Index subindices. It is not anticipated that these changes will have any impact on motor vehicle utilization levels, and subsequently on the environment, relative to impacts encompassed in the original policy, which remains to compensate fairly drivers who use their own vehicles for business purposes and to assess a reasonable taxable benefit to those who use a company car for personal use.

Contact: Gurinder Grewal, Tax Policy Officer, Tax Legislation Division, Department of Finance, L'Esplanade Laurier, 140 O'Connor Street, Ottawa, Ontario K1A 0G5, (613) 992-1862.

Department of Finance news release, December 23, 2003: *2004 Automobile Deduction Limits and Expense Benefit Rates for Business*

...

The general prescribed rate used to determine the taxable benefit relating to the personal portion of automobile operating expenses paid by employers will remain at 17¢ per kilometre. For taxpayers employed principally

in selling or leasing automobiles, the prescribed rate will remain at 14¢ per kilometre. The amount of the benefit reflects the costs of operating an automobile. The additional benefit of having an employer-provided vehicle available for personal use (i.e., the automobile standby charge) is calculated separately and is also included in the employee's income.

Department of Finance news release, December 17, 2004: *2005 Automobile Deduction Limits and Expense Benefit Rates for Business*

...

The general prescribed rate used to determine the taxable benefit relating to the personal portion of automobile operating expenses paid by employers will increase by 3 cents to 20 cents per kilometre. For taxpayers employed principally in selling or leasing automobiles, the prescribed rate will be increased by 3 cents to 17 cents per kilometre. The amount of the benefit reflects the costs of operating an automobile. The additional benefit of having an employer-provided vehicle available for personal use (i.e., the automobile standby charge) is calculated separately and is also included in the employee's income.

History: Para. 7305.1(a) amended to add the words "or a person related to the taxpayer" and replace "13 cents" with "14 cents" by P.C. 2003-1110, s. 1, July 24, 2003, *Canada Gazette*, Part II, August 13, 2003, applicable to taxation years ending after 2002.

Para. 7305.1(b) amended by the said P.C. 2003-1110, s. 1, to replace "16 cents" with "17 cents", applicable to taxation years ending after 2002.

Para. 7305.1(a) amended to replace "12 cents" with "13 cents", and para. 7305.1(b) amended to replace "15 cents" with "16 cents", by P.C. 2001-1235, s. 1, July 12, 2001, *Canada Gazette*, Part II, August 1, 2001, applicable to taxation years ending after 2000.

Para. 7305.1(a) amended to replace "11 cents" with "12 cents", and para. 7305.1(b) amended to replace "14 cents" with "15 cents", by P.C. 2000-1330, s. 1, August 23, 2000, *Canada Gazette*, Part II, September 13, 2000, applicable to taxation years ending after 1999.

S. 7305.1 amended by P.C. 1999-1056, s. 1, June 10, 1999 *Canada Gazette*, Part II, June 23, 1999, applicable to taxation years that end after 1996. For taxation years that end after 1995 and before 1997, paras. (a) and (b) read as follows:

> (a) if a taxpayer is employed in a taxation year by a particular person principally in selling or leasing automobiles and an automobile is made available in the year to the taxpayer or a person related to the taxpayer by the particular person or a person related to the particular person, 10 cents; and
>
> (b) in any other case, 13 cents.

S. 7305.1 added by P.C. 1995-775, s. 6, May 16, 1995, *Canada Gazette*, Part II, May 31, 1995; subsec. (1) applicable to 1993 *et seq.*, subsec. (2) applicable to 1994 *et seq.*

Definitions [Reg. 7305.1]: "amount", "automobile", "employed", "person", "prescribed" — ITA 248(1); "related" — ITA 251(2)–(6); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

I.T. Technical News: 10 (1997 deduction limits and benefit rates for automobiles); 12 (1998 deduction limits and benefit rates for automobiles).

7306. [Tax-free car allowances] — For the purposes of paragraph 18(1)(r) of the Act, the amount in respect of the use of one or more automobiles in a taxation year by an individual for kilometres driven in the year for the purpose of earning income of the individual is the total of

> (a) the product of 36 cents multiplied by the number of those kilometres;

Proposed Amendment — Reg. 7306(a)

Application: The May 2, 2005 draft regulations (motor vehicle expenses and benefits), s. 2, will amend para. 7306(a) to replace "36" with "39", applicable to kilometres driven after 2004.

Regulatory Impact Analysis Statement: See under Reg. 7305.1(a), (b) above.

Department of Finance news release, December 23, 2003: *2004 Automobile Deduction Limits and Expense Benefit Rates for Business*

...

The limit on the deduction of tax-exempt allowances paid by employers to employees will remain at 42¢ per kilometre for the first 5,000 kilometres driven and 36¢ for each additional kilometre. For the Yukon Territory, Northwest Territories and Nunavut, the tax-exempt allowance will remain at 46¢ for the first 5,000 kilometres driven and 40¢ for each additional kilometre. The allowance amounts reflect the key cost components of owning and operating an automobile, such as depreciation, financing, insurance, maintenance and fuel costs.

Department of Finance news release, December 17, 2004: *2005 Automobile Deduction Limits and Expense Benefit Rates for Business*

...

The limit on the deduction of tax-exempt allowances paid by employers to employees using their personal vehicle for business purposes will increase by 3 cents to 45 cents per kilometre for the first 5,000 kilometres driven and 39 cents for each additional kilometre. For the Yukon Territory, Northwest Territories and Nunavut, the tax-exempt allowance will rise by 3 cents to 49 cents for the first 5,000 kilometres driven and 43 cents for each additional kilometre. The allowance amounts reflect the key cost components of owning and operating an automobile, such as depreciation, financing, insurance, maintenance and fuel costs.

> (b) the product of 6 cents multiplied by the lesser of 5,000 and the number of those kilometres; and
>
> (c) the product of 4 cents multiplied by the number of those kilometres driven in the Yukon Territory, the Northwest Territories or Nunavut.

History: Para. 7306(a) amended to replace "35 cents" with "36 cents" by P.C. 2003-1110, s. 2, July 24, 2003, *Canada Gazette*, Part II, August 13, 2003, applicable to kilometres driven after 2002.

Para. 7306(a) amended to replace "31 cents" with "35 cents", by P.C. 2001-1235, s. 2, July 12, 2001, *Canada Gazette*, Part II, August 1, 2001, applicable to kilometres driven after 2000.

Para. 7306(a) amended to replace "29 cents" with "31 cents", by P.C. 2000-1330, s. 2, August 23, 2000, *Canada Gazette*, Part II, September 13, 2000, applicable to kilometres driven after 1999.

S. 7306 amended by P.C. 1999-1056, s. 2, June 10, 1999 *Canada Gazette*, Part II, June 23, 1999, applicable to kilometres driven after 1996, except that before March 1999, para. (c) shall be read without reference to "Nunavut". For kilometres driven after 1994 and before 1996, para. (a) shall be read as follows:

> (a) the product of 25 cents multiplied by the number of those kilometres;

For kilometres driven after 1995 and before 1997, para. (a) shall be read as follows:

> (a) the product of 27 cents multiplied by the number of those kilometres;

S. 7306 added by P.C. 1991-2272, s. 4, November 21, 1991, *Canada Gazette*, Part II, December 4, 1991, applicable re allowances paid for use after 1987 of automobiles.

Definitions [Reg. 7306]: "amount", "automobile", "individual" — ITA 248(1); "taxation year" — ITA 249.

I.T. Technical News: 10 (1997 deduction limits and benefit rates for automobiles); 12 (1998 deduction limits and benefit rates for automobiles).

7307. (1) [Automobiles — CCA cost limit] — For the purposes of subsection 13(2), paragraph 13(7)(g), subparagraph 13(7)(h)(iii), subsections 20(4) and (16.1), the description of B in paragraph 67.3(d) and subparagraph 85(1)(e.4)(i) of the Act, the amount prescribed is

> (a) with respect to an automobile acquired, or leased under a lease entered into, after August 1989 and before 1991, $24,000; and
>
> (b) with respect to an automobile acquired, or leased under a lease entered into, after 1990, the amount determined by the formula
>
> A + B
>
> where
>
> A is, with respect to an automobile acquired, or leased under a lease entered into,
>
> (i) before 1997, $24,000,
>
> (ii) in 1997, $25,000,

(iii) in 1998 or 1999, $26,000,

(iv) in 2000, $27,000, or

(v) after 2000, $30,000, and

B is the sum that would have been payable in respect of federal and provincial sales taxes on the acquisition of the automobile if it had been acquired, at a cost equal to A before the application of the federal and provincial sales taxes, if the automobile

(i) was acquired, at the time of the acquisition, or

(ii) was leased, at the time the lease was entered into.

Proposed Amendment — Reg. 7307(1)

Department of Finance news release, December 23, 2003: *2004 Automobile Deduction Limits and Expense Benefit Rates for Business*

Ralph Goodale, Minister of Finance, confirmed today that the automobile expense deduction limits and the prescribed rates for the automobile operating expense benefit will remain at the current levels for 2004. Specifically:

The ceiling on the capital cost of passenger vehicles for capital cost allowance (CCA) purposes will remain at $30,000 (plus applicable federal and provincial sales taxes) for purchases after 2003. This ceiling restricts the cost of a vehicle on which CCA may be claimed for business purposes.

...

The Government reviews these rates and limits annually and announces any planned changes prior to the end of the calendar year. This practice ensures that businesses are aware of the new rates before the beginning of the year in which they apply.

For further information: Andrée Houde, Public Affairs and Operations Division, (613) 996-8080; Pat Breton, Press Secretary, Office of the Minister of Finance, (613) 996-7861; Karen Hall, Business Income Tax Division, (613) 995-5817.

Department of Finance news release, December 17, 2004: *2005 Automobile Deduction Limits and Expense Benefit Rates for Business*

Minister of Finance Ralph Goodale announced today the automobile expense deduction limits and the prescribed rates for the automobile operating expense benefit that will apply in 2005. Specifically:

- The ceiling on the capital cost of passenger vehicles for capital cost allowance (CCA) purposes will remain at $30,000 (plus applicable federal and provincial sales taxes) for purchases after 2004. This ceiling restricts the cost of a vehicle on which CCA may be claimed for business purposes.

...

The Government reviews these rates and limits annually, and announces any planned changes prior to the end of the calendar year. This practice ensures that businesses are aware of the new rates before the beginning of the year in which they apply.

For further information: David Gamble, Public Affairs and Operations Division, (613) 996-8080; Pat Breton, Press Secretary, Office of the Minister of Finance, (613) 996-7861.

Related Provisions: Reg. 1100(2.5) — 50% CCA in year of disposition; Reg. Sch. II:Cl. 10.1.

Interpretation Bulletins: IT-291R3: Transfer of property to a corporation under subsection 85(1); IT-478R2: CCA — recapture and terminal loss; IT-522R: Vehicle, travel and sales expenses of employees.

I.T. Technical News: 10 (1997 deduction limits and benefit rates for automobiles); 12 (1998 deduction limits and benefit rates for automobiles).

(2) [Automobiles — interest expense limit] — For the purpose of the description of A in section 67.2 of the Act, the amount prescribed in respect of an automobile that is acquired either after August 1989 and before 1997 or after 2000 is $300.

Proposed Amendment — Reg. 7307(2)

Department of Finance news release, December 23, 2003: *2004 Automobile Deduction Limits and Expense Benefit Rates for Business*

...

The maximum allowable interest deduction for amounts borrowed to purchase an automobile will remain at $300 per month for loans related to vehicles acquired after 2003. This limit reflects the reasonable cost of financing a vehicle for business purposes.

Department of Finance news release, December 17, 2004: *2005 Automobile Deduction Limits and Expense Benefit Rates for Business*

...

The maximum allowable interest deduction for amounts borrowed to purchase an automobile will remain at $300 per month for loans related to vehicles acquired after 2004. This limit reflects the reasonable cost of financing a vehicle for business purposes.

I.T. Technical News: 10 (1997 deduction limits and benefit rates for automobiles); 12 (1998 deduction limits and benefit rates for automobiles).

(3) [Automobiles — leasing limit] — For the purpose of the description of A in paragraph 67.3(c) of the Act, the amount prescribed in respect of a taxation year of a lessee is, with respect to an automobile leased under a lease entered into

(a) after August 1989 and before 1991, $650; and

(b) after 1990, the amount determined by the formula

$$A + B$$

where

A is

(i) for leases entered into after 1990 but before 1997, $650,

(ii) for leases entered into in 1997, $550,

(iii) for leases entered into in 1998 or 1999, $650,

(iv) for leases entered into in 2000, $700, and

(v) for leases entered into after 2000, $800, and

B is the sum of the federal and provincial sales taxes that would have been payable on a monthly payment under the lease in the taxation year of the lessee if, before those taxes, the lease had required monthly payments equal to A.

Proposed Amendment — Reg. 7307(3)

Department of Finance news release, December 23, 2003: *2004 Automobile Deduction Limits and Expense Benefit Rates for Business*

...

The limit on deductible leasing costs will remain at $800 per month (plus applicable federal and provincial sales taxes) for leases entered into after 2003. This limit, which ensures that the level of deductions for leased and purchased vehicles is consistent, is one of two restrictions on the deduction of automobile lease payments. A separate restriction prorates deductible lease costs where the value of the vehicle exceeds the capital cost ceiling.

Department of Finance news release, December 17, 2004: *2005 Automobile Deduction Limits and Expense Benefit Rates for Business*

...

The limit on deductible leasing costs will remain at $800 per month (plus applicable federal and provincial sales taxes) for leases entered into after 2004. This limit, which ensures that the level of deductions for leased and purchased vehicles is consistent, is one of two restrictions on the deduction of automobile lease payments. A separate restriction prorates deductible lease costs where the value of the vehicle exceeds the capital cost ceiling.

I.T. Technical News: 10 (1997 deduction limits and benefit rates for automobiles); 12 (1998 deduction limits and benefit rates for automobiles).

(4) For the purpose of the description of C in paragraph 67.3(d) of the Act, the amount prescribed in respect of an automobile leased under a lease entered into after August 1989 is the amount equal to 100/85 of the amount deter-

mined in accordance with subsection (1) in respect of the automobile.

History: Subpara. (iv) of the description of A in para. 7307(1)(b) amended and subpara. (v) added, subsec. 7307(2) added, and subpara. (iv) of the description of A in para. 7307(3)(b) amended and subpara. (v) added by P.C. 2001-1235, s. 3, July 12, 2001, *Canada Gazette*, Part II, August 1, 2001, applicable after 2000.

Subpara. (iii) of the description of A in para. 7307(1)(b) amended, subpara. (iv) added, subparas. (i) and (ii) of the description of A in para. 7307(3)(b) amended, subparas. (iii) and (iv) added, by P.C. 2000-1330, s. 3, August 23, 2000, *Canada Gazette*, Part II, September 13, 2000, applicable after 1999.

Paras. 7307(1)(b) and (3)(b) amended and subsec. (2) repealed by P.C. 1999-1056, s. 3, June 10, 1999, *Canada Gazette*, Part II, June 23, 1999, paras. (1)(b) and (3)(b) applicable after 1996 and the repeal of subsec. (2) applicable in respect of automobiles acquired after 1996.

Subsec. 7307(1) amended by P.C. 1995-775, s. 7, May 16, 1995, *Canada Gazette*, Part II, May 31, 1995, applicable with respect to automobiles acquired, or leased under leases entered into, after August 31, 1989.

Subsec. 7307(1) amended by P.C. 1994-103, s. 2, January 20, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to automobiles acquired or leased under leases entered into after August 31, 1989.

S. 7307 added by P.C. 1991-2272, s. 4, November 21, 1991, *Canada Gazette*, Part II, December 4, 1991.

Definitions [Reg. 7307]: "amount", "automobile", "prescribed" — ITA 248(1); "taxation year" — ITA 249.

Interpretation Bulletins: IT-521R: Motor vehicle expenses claimed by self-employed individuals.

7308. (1) In this section, "carrier" has the meaning assigned by subsection 146.3(1) of the Act.

(2) For the purposes of this section, a retirement income fund is a qualifying retirement income fund at a particular time if

(a) the fund was entered into before 1993 and the carrier has not accepted any property as consideration under the fund after 1992 and at or before the particular time, or

(b) the carrier has not accepted any property as consideration under the fund after 1992 and at or before the particular time, other than property transferred from a retirement income fund that, immediately before the time of the transfer, was a qualifying retirement income fund.

(3) For the purposes of the definition "minimum amount" in subsection 146.3(1) of the Act, the prescribed factor in respect of an individual for a year in connection with a retirement income fund that was a qualifying retirement income fund at the beginning of the year is the factor, determined pursuant to the following table, that corresponds to the age in whole years (in the table referred to as "X") attained by the individual at the beginning of that year or that would have been so attained by the individual if the individual had been alive at the beginning of that year.

X	Factor
under 79	1/(90 - X)
79	.0853
80	.0875
81	.0899
82	.0927
83	.0958
84	.0993
85	.1033
86	.1079
87	.1133
88	.1196
89	.1271
90	.1362
91	.1473
92	.1612
93	.1792
94 or older	.2000

(4) For the purposes of the definition "minimum amount" in subsection 146.3(1) of the Act, the prescribed factor in respect of an individual for a year in connection with a retirement income fund other than a fund that was a qualifying retirement income fund at the beginning of the year is the factor, determined pursuant to the following table, that corresponds to the age in whole years (in the table referred to as "Y") attained by the individual at the beginning of that year or that would have been so attained by the individual if the individual had been alive at the beginning of that year.

Proposed Amendment — 7308(4) opening words

(4) For the purposes of the definition "minimum amount" in subsection 146.3(1) of the Act and subsection 8506(5), the prescribed factor in respect of an individual for a year in connection with a retirement income fund (other than a fund that was a qualifying retirement income fund at the beginning of the year) or the designated factor in respect of an individual for a year in connection with an account under a money purchase provision of a registered pension plan, as the case may be, is the factor, determined in accordance with the following table, that corresponds to the age in whole years (in the table referred to as "Y") attained by the individual at the beginning of the year or that would have been so attained by the individual if the individual was alive at the beginning of the year.

Application: The May 16, 2005 draft regulations (deferred income plans), s. 14, (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend the opening words of subsec. 7308(4) to read as above, applicable after 2003.

Regulatory Impact Analysis Statement: Subsection 7308(4) sets out the prescribed factors that apply for the purposes of determining the minimum amount that an annuitant under a RRIF is required to withdraw each year from the fund. Subsection 7308(4) is amended so that the factors also apply for the purpose of determining the minimum amount in connection with variable benefits under a money purchase RPP. For more details, refer to the description [under Reg. 8506] below.

[See also under Reg. 214(5).]

Y	Factor
under 71	1/(90 - Y)
71	.0738
72	.0748
73	.0759
74	.0771
75	.0785
76	.0799
77	.0815
78	.0833
79	.0853
80	.0875
81	.0899
82	.0927
83	.0958
84	.0993

Y	Factor
85	.1033
86	.1079
87	.1133
88	.1196
89	.1271
90	.1362
91	.1473
92	.1612
93	.1792
94 or older	.2000

Related Provisions: Reg. 8506(4)–(6) — Minimum amount for RPP.

History: The portion of subsecs. 7308(3) and (4) before the table amended to substitute "the prescribed factor" for "the prescribed amount", by P.C. 2000-184, s. 2, February 17, 2000, *Canada Gazette*, Part II, March 1, 2000, applicable to 1998 *et seq.*

S. 7308 enacted by P.C. 1994-102, January 20, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1992 *et seq.*

Definitions [Reg. 7308]: "amount" — ITA 248(1); "carrier" — ITA 146.3(1), Reg. 7308(1); "individual" — ITA 248(1); "minimum amount" — ITA 146.3(1); "money purchase provision" — ITA 147.1(1); "prescribed", "property" — ITA 248(1); "qualifying retirement income fund" — Reg. 7308(2); "registered pension plan" — ITA 248(1); "retirement income fund" — ITA 146.3(1), 248(1).

Proposed Addition — Reg. 7309

7309. For the purpose of section 67.6 of the Act, each of the following is a prescribed fine or penalty

(a) an amount paid or payable under any of paragraphs 280(1)(a), 280(1.1)(a) and 280(2)(a) of the *Excise Tax Act*;

(b) an amount paid or payable under paragraph 110.1(a) [should be 110.1(1)(a) — ed.] of the *Excise Act*; and

(c) an amount paid or payable under subsection 53(1) of the *Air Travellers Security Charge Act*.

Application: The September 16, 2004 draft regulations (prescribed amounts), s. 1, will add s. 7309, applicable to fines and penalties imposed after March 22, 2004.

Technical Notes: The [above] amendments to the *Income Tax Regulations* are consequential to new section 67.6 of the *Income Tax Act*.

Definitions [Reg. 7309]: "amount", "prescribed" — ITA 248(1).

PART LXXIV — [REPEALED]

History: Part LXXIV repealed by P.C. 2001-1378, s. 7, August 1, 2001, *Canada Gazette*, Part II, August 15, 2001, effective August 15, 2001.

Part LXXIV (s. 7400) added by P.C. 1988-1473, s. 5, July 21, 1988, *Canada Gazette*, Part II, August 3, 1988, applicable to taxation years commencing after 1984.

Proposed Addition — Part LXXIV

PART LXXIV — PRESCRIBED MISSIONS

7400. For the purposes of subclause 110(1)(f)(v)(A)(II) of the Act, the following missions are hereby prescribed:

(a) Operation Palladium (Bosnia-Herzegovina);

(b) Operation Halo (Haiti);

(c) Operation Danaca (Middle East — Golan Heights);

(d) Operation Calumet (Middle East — Sinai)

(e) Operation Jade (Middle East — Jerusalem and Damascus);

(f) Operation Iraqi Freedom (Kuwait); and

(g) Operation Solitude (Senegal).

Definitions [Reg. 7400]: "prescribed" — ITA 248(1).

Application: The September 16, 2004 draft regulations (prescribed missions), s. 1, will add Part LXXIV (s. 7400), applicable to 2004 *et seq.*

Technical Notes: The [above] amendments to the *Income Tax Regulations* are consequential to new paragraph 110(1)(f)(v) of the *Income Tax Act*.

PART LXXV — [REPEALED]

History: Part LXXV repealed by P.C. 2001-1378, s. 7, August 1, 2001, *Canada Gazette*, Part II, August 15, 2001, effective August 15, 2001.

Part LXXV (s. 7500) added by P.C. 1988-1474, July 21, 1988, *Canada Gazette*, Part II, August 3, 1988, applicable after February 25, 1986.

Minister of Communications: S. 46 of 1995, c. 11, in force July 12, 1996, provides as follows:

> 46. **Other references** — Every reference made to the Minister of Communications, the Minister of Multiculturalism and Citizenship and the Secretary of State of Canada in relation to any matter to which the powers, duties and functions of the Minister of Canadian Heritage extend by virtue of this Act, in any other Act of Parliament or in any order, regulation or other instrument made under any Act of Parliament shall, unless the context otherwise requires, be read as a reference to the Minister of Canadian Heritage.

PART LXXVI — CARVED-OUT PROPERTY EXCLUSION

History: Part LXXVI (s. 7600) added by P.C. 1989-1793, s. 2, September 21, 1989, *Canada Gazette*, Part II, October 11, 1989, applicable to property acquired after July 19, 1985.

7600. [Prescribed property] — For the purposes of paragraph (g) of the definition "carved-out property" in subsection 209(1) of the Act, a prescribed property at any time is

(a) any right, licence or privilege to prospect, explore, drill or mine for minerals in a mineral resource (other than a bituminous sands deposit, oil sands deposit or oil shale deposit) in Canada;

(b) any rental or royalty computed by reference to the amount or value of production of minerals from a mineral resource (other than a bituminous sands deposit, oil sands deposit or oil shale deposit) in Canada;

(c) any real property in Canada the principal value of which depends on its mineral resource content (other than a bituminous sands deposit, oil sands deposit or oil shale deposit);

(d) any right to or interest in any property described in any of paragraphs (a) to (c); or

(e) a property acquired before that time by a taxpayer in the circumstances described in paragraph (c) of the definition "carved-out property" in subsection 209(1) of the Act, except where it is reasonable to consider that one of the main reasons for the acquisition of the property, or any series of transactions or events in which the property was acquired, by the taxpayer was to reduce or postpone tax that would, but for this paragraph, be payable by another taxpayer under Part XII.1 of the Act.

Related Provisions: ITA 248(10) — Series of transactions.

Definitions [Reg. 7600]: "amount", "bituminous sands" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "mineral", "mineral re-

source", "prescribed", "property" — ITA 248(1); "series" — ITA 248(10); "taxpayer" — ITA 248(1).

PART LXXVII — PRESCRIBED PRIZES

History: Part LXXVII (s. 7700) added by P.C. 1989-1923, s. 2, September 28, 1989, *Canada Gazette*, Part II, October 11, 1989, applicable in respect of 1983 *et seq.*

7700. [Prescribed prize] — For the purposes of subparagraph 56(1)(n)(i) of the Act, a prescribed prize is any prize that is recognized by the general public and that is awarded for meritorious achievement in the arts, the sciences or service to the public but does not include any amount that can reasonably be regarded as having been received as compensation for services rendered or to be rendered.

Definitions [Reg. 7700]: "amount", "prescribed" — ITA 248(1).

Interpretation Bulletins: IT-75R4: Scholarships, fellowships, bursaries, prizes, research grants and financial assistance; IT-257R: Canada Council grants.

PART LXXVIII — PRESCRIBED PROVINCIAL PENSION PLANS

History: Part LXXVIII (s. 7800) added by P.C. 1989-1924, September 28, 1989, *Canada Gazette*, Part II, October 11, 1989, applicable to 1987 *et seq.* except that, for the 1987 taxation year, the reference to "paragraph 118(8)(e)" in subsection 7800(1) shall be read as a reference to "paragraph 110.2(4)(h)".

7800. (1) For the purposes of clause 56(1)(a)(i)(C), subsection 56(2), paragraph 60(v), subsection 74.1(1) and paragraph 118(8)(e) of the Act, the Saskatchewan Pension Plan is a prescribed provincial pension plan.

History: Subsec. 7800(1) amended to delete reference to subsec. 56(4), by P.C. 2001-1378, s. 8, August 1, 2001, *Canada Gazette*, Part II, August 15, 2001, effective August 15, 2001.

(2) For the purpose of subparagraph 60(v)(ii) of the Act, the prescribed amount for a taxation year in respect of the Saskatchewan Pension Plan is, for the 1987 taxation year, $1,200, and for the 1988 and subsequent taxation years, $600.

Definitions [Reg. 7800]: "amount", "prescribed" — ITA 248(1); "taxation year" — ITA 249.

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-499R: Superannuation or pension benefits; IT-517R: Pension tax credit.

PART LXXIX — PRESCRIBED FINANCIAL INSTITUTIONS

History: Part LXXIX (s. 7900) added by P.C. 1990-854, s. 2, May 10, 1990, *Canada Gazette*, Part II, May 23, 1990, applicable after December 19, 1986.

7900. For the purposes of section 33.1, paragraph 95(2)(a.3), clause 212(1)(b)(iii)(D) and subparagraph 212(1)(b)(xi) of the Act, "prescribed financial institution" means

(a) a corporation that is a member of the Canadian Payments Association; or

(b) a credit union that is a shareholder or member of a body corporate or organization that is a central for the purposes of the *Canadian Payments Association Act*.

Proposed Amendment — Reg. 7900

7900. (1) For the purposes of section 33.1, the definitions "excluded income" and "excluded revenue" and "specified deposit" in subsection 95(2.5), clause 212(1)(b)(iii)(D) and subparagraph 212(1)(b)(xi) of the Act, each of the following is a prescribed financial institution:

(a) a corporation that is a member of the Canadian Payments Association, other than an authorized foreign bank; and

(b) a credit union that is a shareholder or member of a body corporate or organization that is a central for the purposes of the *Canadian Payments Association Act*.

(2) For the purposes of the definitions "excluded income" and "excluded revenue" and "specified deposit" in subsection 95(2.5) and clause 212(1)(b)(iii)(D) of the Act, an authorized foreign bank is a prescribed financial institution.

Application: The February 13, 2003 draft regulations (foreign bank branches), s. 10, (pre-published in the *Canada Gazette*, Part I, February 15, 2003), will amend s. 7900 to read as above, applicable after June 27, 1999, except that in applying the section to taxation years that began before 2000, the reference to the phrase "the definitions "excluded income" and "excluded revenue" and "specified deposit" in subsection 95(2.5)" is to be read as a reference to the phrase "paragraph 95(2)(a.3), the definition "specified deposit" in subsection 95(2.5)".

Regulatory Impact Analysis Statement: *Prescribed Financial Institutions*

Section 7900 defines the meaning of "prescribed financial institution" for the purposes of various provisions in the Act. Section 7900 is renumbered to be new subsection 7900(1), and new subsection 7900(2) describes that an authorized foreign bank is a prescribed financial institution for the purposes of the definitions "excluded income" and "excluded revenue" and "specified deposit" in subsection 95(2.5) and clause 212(1)(b)(iii)(D) of the Act.

History: The opening words of s. 7900 amended by P.C. 1997-1670, s. 10, November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the sec. applies to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

Definitions [Reg. 7900]: "authorized foreign bank" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "credit union", "shareholder" — ITA 248(1).

PART LXXX — PRESCRIBED RESERVE AMOUNT AND RECOVERY RATE

History: Part LXXX (ss. 8000–8005) added by P.C. 1990-2779, s. 4, December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

8000. [Prescribed reserve amount] — For the purpose of clause 20(1)(l)(ii)(C) of the Act, the prescribed reserve amount for a taxation year means the aggregate of

(a) where the taxpayer is a bank, an amount equal to the lesser of

(i) the amount of the reserve reported in its annual report for the year that is filed with and accepted by the relevant authority or, where the taxpayer was throughout the year subject to the supervision of the relevant authority but was not required to file an annual report for the year with the relevant authority, in its financial statements for the year, as general provisions or as specific provisions, in respect of exposures to designated countries in respect of loans or lending assets of the taxpayer made or acquired by it in the ordinary course of its business, and

(ii) an amount in respect of the loans or lending assets of the taxpayer at the end of the year that were made or acquired by the taxpayer in the ordinary course of its business and reported for the year by the taxpayer to the relevant authority, in accordance with the guidelines established by the relevant authority, as part of the taxpayer's total exposure to designated countries for the purpose of determining the taxpayer's general provisions or specific provisions referred to in subparagraph (i) or that were acquired by the taxpayer after August 16, 1990 and reported for the year by the taxpayer to the relevant authority, in accordance with the guidelines established by the relevant authority, as an exposure to a designated country (in this subparagraph referred to as the "loans") equal to the positive or negative amount, as the case may be, determined by the formula

$$45\% (A + B) - (B + C)$$

where

A is the aggregate of all amounts each of which is the amount that would be the amortized cost of a loan to the taxpayer at the end of the year if the definition "amortized cost" in section 248 of the Act were read without reference to paragraphs (e) and (i) thereof,

B is the aggregate of all amounts each of which is the amount, if any, by which the principal amount of a loan outstanding at the time it was acquired by the taxpayer exceeds the amortized cost of the loan to the taxpayer immediately after the time it was acquired by the taxpayer, and

C is the aggregate of all amounts each of which is

(A) an amount deducted in respect of a loan under clause 20(1)(l)(ii)(B) of the Act in computing the taxpayer's income for the year, or

(B) an amount in respect of a loan determined as the amount, if any, by which

(I) the aggregate of all amounts in respect of the loan deducted under paragraph 20(1)(p) of the Act in computing the taxpayer's income for the year or a preceding taxation year

exceeds

(II) the aggregate of all amounts in respect of the loan included under paragraph 12(1)(i) of the Act in computing the taxpayer's income for the year or a preceding taxation year, and

(a.1) where the taxpayer is a bank, the positive or negative amount that would be determined under the formula in subparagraph (a)(ii) in respect of the specified loans owned by the taxpayer at the end of the year if that subparagraph applied to those loans.

(b) [Repealed]

Related Provisions: ITA 257 — Negative amounts in formulas.

History: The opening words of s. 8000 amended and para. (b) repealed by P.C. 1999-195, subsecs. 2(1) and (3), February 11, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable

(a) to taxation years that end after September 1997; and

(b) to taxation years that end after 1995 and before October 1997 where the taxpayer elects in writing to have para. 20(1)(l) of the Act, as amended, apply to the year and files the election with the Minister of National Revenue before October 1998.

Para. 8000(a.1) added by P.C. 1999-195, subsec. 2(2), February 11, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable

(a) to 1997 *et seq.*; and

(b) to taxation years that end after 1991 and before 1997 where the taxpayer elects in writing to have para. 8000(a.1) apply to those years and files the election with the Minister of National Revenue before July 1999.

Definitions [Reg. 8000]: "amortized cost", "amount" — ITA 248(1); "bank" — ITA 248(1), *Interpretation Act* 35(1); "business" — ITA 248(1); "designated country", "exposure to a designated country", "general provisions" — Reg. 8006; "lending asset" — ITA 248(1); "loans" — Reg. 8000(a)(ii); "loans or lending assets" — Reg. 8003; "prescribed", "principal amount" — ITA 248(1); "principal amount outstanding" — Reg. 8002(a); "relevant authority", "specific provisions", "specified loan" — Reg. 8006; "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

8001. [Repealed]

History: S. 8001 repealed by P.C. 1999-195, s. 3, February 11, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable

(a) to taxation years that end after September 1997; and

(b) to taxation years that end after 1995 and before October 1997 where the taxpayer elects in writing to have para. 20(1)(l) of the Act, as amended, to apply to the year and files the election with the Minister of National Revenue before October 1998.

8002. [Principal amount, amortized cost] — For the purposes of paragraph 8000(a),

(a) the principal amount outstanding at any time of a lending asset of a taxpayer that is a share of the capital stock of a corporation is the part of the consideration received by the corporation for the issue of the share that is outstanding at that time;

(b) where

(i) a taxpayer realizes a loss from the disposition of a loan or lending asset described in subparagraph 8000(a)(ii) or a specified loan described in paragraph 8000(a.1) (in this paragraph referred to as the "former loan") for consideration that included another loan or lending asset that was a loan or lending asset described in subparagraph 8000(a)(ii) or paragraph 8000(a.1) (in this paragraph referred to as the "new loan"), and

(ii) in the case of a former loan that is not a specified loan, the loss is included in computing the taxpayer's provisionable assets as reported for the year to the relevant authority, in accordance with the guidelines established by the relevant authority, for the purpose of determining the taxpayer's gen-

eral provisions or specific provisions in respect of exposures to designated countries,

the principal amount of the new loan outstanding at the time it was acquired by the taxpayer is deemed to be equal to the principal amount of the former loan outstanding immediately before that time; and

(c) where at the end of a particular taxation year a taxpayer owns a specified loan that, at the end of the preceding taxation year, was described in an inventory of the taxpayer, the amortized cost of the specified loan to the taxpayer at the end of the particular year is its value determined under section 10 of the Act at the end of the preceding year for the purpose of computing the taxpayer's income for the preceding year.

History: Para. 8002(b) amended and para. (c) added by P.C. 1999-195, s. 4, February 11, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable

(a) to 1997 *et seq.*; and

(b) to taxation years that end after 1991 and before 1997 where the taxpayer elects in writing to have para. 8000(a.1) apply to those years and files the election with the Minister of National Revenue before July 1999.

Definitions [Reg. 8002]: "amortized cost" — Reg. 8002(c), ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "designated country" — Reg. 8006; "disposition" — ITA 248(1); "exposure to a designated country" — Reg. 8006; "former loan" — Reg. 8002(b)(i); "general provisions" — Reg. 8006; "inventory", "lending asset" — ITA 248(1); "new loan" — Reg. 8002(b)(i); "principal amount" — Reg. 8002, ITA 248(1); "provisionable assets", "relevant authority" — Reg. 8006; "share" — ITA 248(1); "specific provisions", "specified loan" — Reg. 8006; "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

8003. [Election] — Where a taxpayer elects to have this section apply by notifying the Minister in writing within 90 days after the day on which this section is published in the *Canada Gazette*, the loans or lending assets of the taxpayer that are described in subparagraph 8000(a)(ii) shall not include any loan or lending asset acquired by the taxpayer before November 1988 from a person with whom the taxpayer was dealing at arm's length.

Definitions [Reg. 8003]: "arm's length" — ITA 251(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "lending asset", "Minister", "person", "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

8004. [Repealed]

History: S. 8004 repealed by P.C. 1999-195, s. 5, February 11, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable

(a) to taxation years that end after September 1997; and

(b) to taxation years that end after 1995 and before October 1997 where the taxpayer elects in writing to have para. 20(1)(l) of the Act, as amended, to apply to the year and files the election with the Minister of National Revenue before October 1998.

8005. [Rules — loans and lending assets] — For the purposes of subparagraph 8000(a)(ii), where a loan or lending asset of a person (in this section referred to as the "holder") related to a taxpayer

(a) was reported for the year by the taxpayer to the relevant authority, in accordance with the guidelines established by the relevant authority, as an exposure to a designated country,

(b) was acquired by the holder or another person related to the taxpayer after August 16, 1990 as part of a series of transactions or events in which the taxpayer or a person related to the taxpayer disposed of a loan or lending asset that

(i) for the taxation year immediately preceding the particular year in which it was disposed of, was a loan or lending asset that was reported by the taxpayer to the relevant authority, in accordance with the guidelines established by the relevant authority, as an exposure to a designated country, and

(ii) was a loan or lending asset a loss arising on the disposition of which would be a loss in respect of which a deduction is permitted under Part I of the Act to the taxpayer or a person related to the taxpayer, and

(c) had an amortized cost to the holder, immediately after the time it was acquired by the holder, that was less than 55 per cent of its principal amount,

the following rules apply:

(d) the loan or lending asset shall be deemed

(i) to be a loan or lending asset of the taxpayer at the end of the year,

(ii) to be a loan or lending asset of the taxpayer that was acquired by the taxpayer at the time it was acquired by the holder, and

(iii) to have an amortized cost to the taxpayer, at any time, that is equal to its amortized cost to the holder at that time, and

(e) any amount in respect of the loan or lending asset deducted under paragraph 20(1)(p) of the Act or included under paragraph 12(1)(i) of the Act in computing the holder's income for a particular year shall be deemed to have been so deducted or included, as the case may be, in computing the income of the taxpayer for the year in which the particular year ends.

Related Provisions: ITA 248(10) — Series of transactions.

Definitions [Reg. 8005]: "amortized cost", "amount" — ITA 248(1); "disposed" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "exposure to a designated country" — Reg. 8006; "holder" — Reg. 8005; "lending asset", "person", "principal amount" — ITA 248(1); "related" — ITA 251(2)–(6); "relevant authority" — Reg. 8006; "series" — ITA 248(10); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

8006. For the purposes of this Part,

"designated country" has the same meaning as in the Guidelines for banks established pursuant to section 175 of the *Bank Act*, as that section read on May 31, 1992, and issued by the Office of the Superintendent of Financial Institutions, as amended from time to time;

"exposure to a designated country" has the same meaning as in the Guidelines for banks established pursuant to section 175 of the *Bank Act*, as that section read on May 31, 1992, and issued by the Office of the Superintendent of Financial Institutions, as amended from time to time;

"general provisions" has the same meaning as the expression "general country risk provisions" in the Guidelines for banks established pursuant to section 175 of the *Bank Act*, as that section read on May 31, 1992, and issued by the Office of the Superintendent of Financial Institutions, as amended from time to time;

"provisionable assets" has the same meaning as in the Guidelines for banks established pursuant to section 175 of the *Bank Act*, as that section read on May 31, 1992, and issued by the Office of the Superintendent of Financial Institutions, as amended from time to time;

"relevant authority" means the Superintendent of Financial Institutions;

"specific provisions" has the same meaning as in the Guidelines for banks established pursuant to section 175 of the *Bank Act*, as that section read on May 31, 1992,

and issued by the Office of the Superintendent of Financial Institutions, as amended from time to time.

"specified loan" means

(a) a United Mexican States Collateralized Par Bond due in 2019, or

(b) a United Mexican States Collateralized Discount Bond due in 2019;

History: The definition "specified loan" added to s. 8006 by P.C. 1999-195, s. 6, February 11, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable

(a) to 1997 *et seq.*; and

(b) to taxation years that end after 1991 and before 1997 where the taxpayer elects in writing to have para. 8000(a.1) apply to those years and files the election with the Minister of National Revenue before July 1999.

S. 8006 added by P.C. 1992-2335, Sch. II, s. 16, November 19, 1992, *Canada Gazette*, Part II, December 2, 1992, applicable to taxation years and fiscal periods beginning after June 17, 1987 and ending after 1987.

Definitions [Reg. 8006]: "bank" — ITA 248(1), *Interpretation Act* 35(1).

8007. [Repealed]

History: S. 8007 repealed by P.C. 1999-195, subsec. 7(2), February 11, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable to taxation years ending after September 1997.

S. 8007 added by P.C. 1999-195, subsec. 7(1), February 11, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable to taxation years that end after 1991 and before October 1997 where the taxpayer elects in writing to have para. 8000(a.1) apply to those years and files the election with the Minister of National Revenue before July 1999.

PART LXXXI — TRANSITION FOR FINANCIAL INSTITUTIONS

History: Part LXXXI (ss. 8100–8105) added by P.C. 1990-2779, s. 4, December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

8100. Transition deduction in respect of unpaid claims reserve — For the purpose of subsection 20(26) of the Act, an insurer's unpaid claims reserve adjustment for its taxation year that includes February 23, 1994 is the amount, if any, by which

(a) the total of all amounts each of which is the maximum amount that, because of paragraph 1400(e), was deductible under paragraph 20(7)(c) of the Act in respect of an insurance policy in computing the insurer's income for its last taxation year that ended before February 23, 1994

exceeds

(b) where the insurer elects, by notifying the Minister in writing, to have this paragraph apply, the total of all amounts each of which is the maximum amount that would, because of paragraph 1400(e), have been deductible under paragraph 20(7)(c) of the Act in respect of an insurance policy in computing the insurer's income for its last taxation year that ended before February 23, 1994 if the amount "1/3" in the formula in subparagraph 1400(e)(ii), as it read for that year, were replaced by the amount "1", and

(c) in any other case, the total of all amounts each of which is the maximum amount that would, because of paragraph 1400(e) or (e.1), have been deductible under paragraph 20(7)(c) of the Act in respect of an insurance policy in computing the insurer's income for its last taxation year that ended before February 23, 1994 if paragraph 1400(e.1) had applied to that year and paragraphs 1400(e) and (e.1) were read in their application to that year as they read in their application to the insurer's taxation year that includes February 23, 1994.

History: Ss. 8100 and 8101 substituted for ss. 8100 to 8105 by P.C. 1996-1452, s. 3, September 17, 1996, *Canada Gazette*, Part II, October 2, 1996, applicable to taxation years that end after February 22, 1994.

Definitions [Reg. 8100]: "amount", "insurance policy", "insurer", "Minister" — ITA 248(1); "taxation year" — ITA 249; "writing" — *Interpretation Act* 35(1).

8101. Inclusion of transition amount in respect of unpaid claims reserve — **(1)** In this section, "transition deduction" of an insurer means the amount deducted under subsection 20(26) of the Act in computing the insurer's income for its taxation year that includes February 23, 1994.

(2) Subject to subsection (3), there is prescribed for the purpose of section 12.3 of the Act in respect of an insurer for a taxation year that ends after February 22, 1994 the amount determined by the formula

$$\left(\frac{(0.05A + 0.10B + 0.15C)}{365}\right) \times D$$

where

A is the total of

(a) the number of days in the taxation year that are in 1994 or 1995, and

(b) where the taxation year includes February 23, 1994, the number of days in 1994 that are before the first day of the taxation year,

B is the number of days in the taxation year (other than February 29) that are in any of 1996 to 2001,

C is the number of days in the taxation year that are in 2002 or 2003, and

D is the insurer's transition deduction minus the amount, if any, required by subsection (4) or paragraph (5)(b) to be subtracted.

(3) Where subsection 88(1) of the Act has applied to the winding-up of an insurer (in this subsection referred to as the "subsidiary"),

(a) the values of A, B, and C in subsection (2) shall be determined in respect of the subsidiary without including any days that are after the day on which the subsidiary's assets were distributed to its parent on the winding-up; and

(b) there is prescribed for the purpose of section 12.3 of the Act in respect of the parent for its taxation year that includes the day referred to in paragraph (a) the total of

(i) the amount that would be determined under subsection (2) in respect of the parent for the year if the parent's transition deduction did not include the subsidiary's transition deduction, and

(ii) the amount that would be determined under subsection (2) in respect of the parent for the year if

(A) the values of A, B, and C in that subsection were determined without including the day referred to in paragraph (a) and any days before that day, and

(B) the value of D in that subsection were equal to the subsidiary's transition deduction.

(4) Where subsection 138(11.5) or (11.94) of the Act has applied to the transfer of an insurance business by an insurer, there shall be subtracted, in determining the value of D in subsection (2) in respect of the insurer for a taxation year ending after the insurer ceased to carry on all or substantially all of the business, the part of the insurer's transition deduction that can reasonably be attributed to the business.

(5) Where an insurer ceases to carry on all or substantially all of an insurance business, otherwise than as a result of a merger to which subsection 87(2) of the Act applies, a winding-up to which subsection 88(1) of the Act applies or a transfer of the business to which subsection 138(11.5) or (11.94) of the Act applies,

(a) there is prescribed for the purpose of section 12.3 of the Act in respect of the insurer for its taxation year in which the cessation of business occurs, in addition to the amount prescribed by subsection (2), the amount, if any, by which

(i) the part of the insurer's transition deduction that can reasonably be attributed to the business

exceeds

(ii) that part of the total of the amounts included under section 12.3 of the Act in computing the income of the insurer for preceding taxation years that can reasonably be considered to be in respect of the amount determined under subparagraph (i); and

(b) there shall be subtracted, in determining the value of D in subsection (2) in respect of the insurer for the year or a subsequent taxation year, the amount determined under subparagraph (a)(i).

History: Ss. 8100 and 8101 substituted for ss. 8100 to 8105 by P.C. 1996-1452, s. 3, September 17, 1996, *Canada Gazette*, Part II, October 2, 1996, applicable to taxation years that end after February 22, 1994.

Definitions [Reg. 8101]: "amount", "business", "insurer", "prescribed" — ITA 248(1); "subsidiary" — Reg. 8101(3); "taxation year" — ITA 249; "transition deduction" — Reg. 8101(1).

8102–8105. [Repealed]

History: Ss. 8100 and 8101 substituted for ss. 8100 to 8105 by P.C. 1996-1452, s. 3, September 17, 1996, *Canada Gazette*, Part II, October 2, 1996, applicable to taxation years that end after February 22, 1994.

S. 8102, subparas. 8103(a)(i), (ii), amended by P.C. 1992-2335, Sched. II, ss. 17, 18, November 19, 1992, *Canada Gazette*, Part II, December 2, 1992, applicable to taxation years and fiscal periods beginning after June 17, 1987 and ending after 1987.

Proposed Addition — Reg. 8102–8105

Technical Notes: Part LXXXI contains transition rules for the 1987 tax reform changes to the reserves available to financial institutions. On December 8, 1994, draft amendments were announced that would repeal these rules and introduce (in sections 8100 and 8101) new transition rules relating to unpaid claims reserves for non-life insurance policies.

New transition rules are added in sections 8102 to 8105 in connection with the introduction of the mark-to-market requirement for shares and certain debt obligations held by financial institutions. These new rules apply to taxation years ending after October 30, 1994.

Section 8102 prescribes the maximum transition deduction that may be claimed under subsection 142.5(4) of the Act in respect of non-capital properties.

8102. Mark-to-market — transition deduction —

(1) In this section,

"excluded property" of a taxpayer means a mark-to-market property used in a business of the taxpayer in its taxation year that includes October 31, 1994 where it is reasonable to expect that the property would have been valued at its fair market value for the purpose of computing the taxpayer's income from the business for the year if

(a) the Act were read without reference to subsection 142.5(2), and

(b) the property were held at the end of the year;

Technical Notes: "Excluded property" of a taxpayer is property that it is reasonable to consider would have been marked to market for tax purposes in the taxpayer's taxation year that includes October 31, 1994, even if a requirement to do so had not been introduced. The determination of whether property that has been sold during the year is excluded property is to be made assuming that the taxpayer continued to hold the property throughout the year.

"mark-to-market property" has the meaning assigned by subsection 142.2(1) of the Act.

Technical Notes: "Mark-to-market property" of a taxpayer has the meaning given by subsection 142.2(1) of the Act. In general terms, it comprises most shares held by the taxpayer and debt obligations that are marked to market for financial statement purposes.

(2) For the purpose of subsection 142.5(4) of the Act, the prescribed amount for a taxpayer's taxation year that includes October 31, 1994 is the amount, if any, by which

(a) the total of all amounts each of which is the taxpayer's profit from the disposition in the year, because of subsection 142.5(2) of the Act, of a property other than a capital property or an excluded property

exceeds the total of

(b) the total of all amounts each of which is the taxpayer's loss from the disposition in the year, because of subsection 142.5(2) of the Act, of a property other than a capital property or an excluded property, and

(c) the amount, if any, by which

(i) the total of all amounts each of which is the taxpayer's loss from the disposition in the year of a mark-to-market property (other than a capital property, an excluded property or a property disposed of because of subsection 142.5(2) of the Act)

exceeds

(ii) the total of all amounts each of which is the taxpayer's profit from the disposition in the year of a mark-to-market property (other than a capital property, an excluded property or a property disposed of because of subsection 142.5(2) of the Act).

Technical Notes: Subsection 142.5(4) of the Act contains a transition deduction in respect of the introduction of the requirement that certain property be marked to market for tax purposes. It permits a taxpayer to deduct an amount not exceeding a prescribed amount in its taxation year that includes October 31, 1994. Subsection 8102(2) prescribes the following maximum amount for this purpose:

- the taxpayer's total profits from the disposition of non-capital mark-to-market properties (other than excluded properties, as defined in subsection 8102(1)) that the mark-to-market rules deem the taxpayer to have disposed of in the year

minus

- the taxpayer's total losses from the disposition of non-capital mark-to-market properties (other than excluded properties) that the mark-to-market rules deem the taxpayer to have disposed of in the year, and
- the taxpayer's net losses (i.e., losses minus profits) from actual dispositions in the year of non-capital mark-to-market properties (other than excluded properties) and from deemed dispositions of such properties otherwise than because of the mark-to-market rules.

Definitions: "amount", "business" — ITA 248(1); "capital property" — ITA 54, 248(1); "disposed" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "excluded property" — Reg. 8102(1); "mark-to-market property" — ITA 142.2(1), Reg. 8102(1); "prescribed", "property" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

8103. Mark-to-market — transition inclusion — **(1)** In this section, "transition deduction" of a taxpayer means the amount deducted under subsection 142.5(4) of the Act in computing the taxpayer's income for its taxation year that includes October 31, 1994.

Technical Notes: Section 8103 applies where a taxpayer has claimed a deduction under subsection 142.5(4) of the Act in respect of the introduction of the mark-to-market requirement. It prescribes the amount to be included in income each year under subsection 142.5(5) of the Act in respect of the deducted amount. Generally, the deducted amount is required to be included in income over a 5-year period. Section 8103 also contains rules for the income inclusion after certain corporate reorganizations have occurred or where a taxpayer ceases to carry on a business or to be a financial institution.

Subsection 8103(1) defines the "transition deduction" of a taxpayer to be the amount deducted under subsection 142.5(4) of the Act in computing the taxpayer's income for its taxation year that includes October 31, 1994.

Where a taxpayer has been formed by amalgamation, the continuity rule in paragraph 87(2)(g.2) of the Act ensures that any amount deducted by a predecessor corporation under subsection 142.5(4) of the Act is considered to have been deducted by the taxpayer. Therefore, the taxpayer's transition deduction is the sum of the transition deductions of its predecessors.

Similarly, the transition deduction of a taxpayer to which a business has been transferred in a transaction to which subsection 88(1) (winding-up), 138(11.5) (transfer of insurance business by a non-resident insurer) or 138(11.94) (transfer of insurance business by a resident insurer) of the Act applies will include the amount deducted by the transferor under subsection 142.5(4) in respect of the business. The relevant continuity rules are in paragraph 87(2)(g.2) (which applies to a winding-up by reason of paragraph 88(1)(e.2)) and paragraph 138(11.5)(k).

(2) Subject to subsections (3), (5) and (7), there is prescribed for the purpose of subsection 142.5(5) of the Act in respect of a taxpayer for a taxation year that ends after October 30, 1994 the amount determined by the formula

$$\frac{A}{1825} \times B$$

where

A is the number of days (other than February 29) in the year that are before the day that is 5 years after the first day of the taxation year of the taxpayer that includes October 31, 1994, and

B is the taxpayer's transition deduction minus the amount, if any, required by subsection (4) or paragraph (6)(b) to be subtracted.

Technical Notes: Subsection 8103(2) prescribes the amount to be included in income each year under subsection 142.5(5) of the Act by a taxpayer that has claimed a transition deduction under subsection 142.5(4). The first taxation year for which an amount is prescribed is the taxation year that includes October 31, 1994. The prescribed amount for a taxation year is given by the formula:

$$\frac{A}{1825} \times B$$

where

A = the number of days in the year that are not more than 5 years after the start of the taxpayer's taxation year that includes October 31, 1994 — February 29th is disregarded for this purpose, and

B = the taxpayer's transition deduction minus the amounts specified by subsection 8103(4) and paragraph 8103(6)(b).

Subsections 8103(3), (5) and (7) contain rules that override the determination of the prescribed amount under subsection 8103(2) when a taxpayer undergoes a reorganization, ceases to be a financial institution or ceases to carry on a business.

(3) Where subsection 88(1) of the Act has applied to the winding-up of a taxpayer (in this subsection referred to as the "subsidiary"),

(a) the value of A in subsection (2) shall be determined in respect of the subsidiary without including any days that are after the day on which the subsidiary's assets were distributed to its parent on the winding-up; and

(b) there is prescribed for the purpose of subsection 142.5(5) of the Act in respect of the parent for its taxation year that includes the day referred to in paragraph (a) the total of

(i) the amount that would be determined under subsection (2) in respect of the parent for the year if the parent's transition deduction did not include the subsidiary's transition deduction, and

(ii) the amount that would be determined under subsection (2) in respect of the parent for the year if

(A) the value of A in that subsection were determined without including the day referred to in paragraph (a) and any days before that day, and

(B) the value of B in that subsection were equal to the subsidiary's transition deduction.

Technical Notes: As noted in the commentary on subsection 8103(1), where a subsidiary is wound up into its parent corporation and subsection 88(1) of the Act applies to the winding-up, the parent will be considered to have deducted the amount deducted by the subsidiary under subsection 142.5(4) of the Act. Thus, this amount will be taken into account in determining the amounts prescribed by subsection 8103(2) in respect of the parent.

Subsection 8103(3) contains additional rules relating to the winding-up of a subsidiary. These rules ensure that no part of the subsidiary's transition deduction is required to be included in both the parent's and the subsidiary's income.

Paragraph 8103(3)(a) provides that the amounts prescribed by subsection 8103(1) for the subsidiary are to be determined ignoring any days after the day on which the subsidiary's assets are distributed to its parent. This rule is relevant only if the subsidiary has a taxation year that ends after the day on which the distribution occurs.

Paragraph 8103(3)(b) prescribes the amount to be included in the parent's income under subsection 142.5(5) of the Act for the taxation year in which it receives the subsidiary's assets. The prescribed amount is equal to the sum of

- the amount that would otherwise be prescribed by subsection 8103(2) if the parent's transition deduction did not include any amount in respect of the subsidiary's transition deduction, and
- the part of the subsidiary's transition deduction that must be recognized in respect of the days in the taxation year after the parent receives the subsidiary's assets.

(4) Where subsection 138(11.5) or (11.94) of the Act has applied to the transfer of an insurance business by an insurer, there shall be subtracted, in determining the value of B in subsection (2) in respect of the insurer for a taxation year that ends after the insurer ceased to carry on all or substantially all of the business, the part of the insurer's transition deduction that is included, because of paragraph 138(11.5)(k) of the Act, in the transition deduction of the person to whom the business was transferred.

Technical Notes: Subsection 8103(4) applies where an insurer has transferred an insurance business to another corporation on a rollover basis pursuant to subsection 138(11.5) or (11.94) of the Act. It provides

that after the transfer of the business, the portion of the transferor's transition deduction that is considered a transition deduction of the transferee because of paragraph 138(11.5)(k) of the Act is to be disregarded in determining the amount prescribed by subsection 8103(2) in respect of the transferor. Paragraph 138(11.5)(k) contains a continuity rule for the portion of the transition amount that is reasonably attributable to the transferred business. Since paragraph 138(11.5)(h) of the Act deems the transferor and transferee to have taxation year ends immediately before the business is transferred, special rules are not required for the taxation year of transfer.

(5) Where subsection 98(6) of the Act deems a partnership (in this subsection referred to as the "new partnership") to be a continuation of another partnership (in this subsection referred to as the "predecessor partnership"),

(a) the value of A in subsection (2) shall be determined in respect of the predecessor partnership without including any days that are after the day on which the predecessor partnership's property was transferred to the new partnership; and

(b) there is prescribed for the purpose of subsection 142.5(5) of the Act in respect of the new partnership for its taxation year that includes the day referred to in paragraph (a) the total of

(i) the amount that would be determined under subsection (2) in respect of the new partnership for the year if its transition deduction did not include the predecessor partnership's transition deduction, and

(ii) the amount that would be determined under subsection (2) in respect of the new partnership for the year if

(A) the value of A in that subsection were determined without including the day referred to in paragraph (a) and any days before that day, and

(B) the value of B in that subsection were equal to the predecessor partnership's transition deduction.

Technical Notes: Subsection 8103(5) contains rules that apply where a partnership ceases to exist and another partnership replaces it, in circumstances such that the continuity rule in subsection 98(6) of the Act applies. The rules are similar to those in subsection 8103(3) for the winding-up of a taxpayer into its parent corporation.

(6) Where a taxpayer ceases to carry on all or substantially all of a business, otherwise than as a result of a merger to which subsection 87(2) of the Act applies, a winding-up to which subsection 88(1) of the Act applies or a transfer of the business to which subsection 98(6) or 138(11.5) or (11.94) of the Act applies,

(a) there is prescribed for the purpose of subsection 142.5(5) of the Act in respect of the taxpayer for its taxation year in which the cessation of business occurs, in addition to the amount prescribed by subsection (2), the amount, if any, by which

(i) the part of the taxpayer's transition deduction that can reasonably be attributed to the business

exceeds

(ii) that part of the total of the amounts included under subsection 142.5(5) of the Act in computing the income of the taxpayer for preceding taxation years that can reasonably be considered to be in respect of the amount determined under subparagraph (i); and

(b) there shall be subtracted, in determining the value of B in subsection (2) in respect of the taxpayer for the year or a subsequent taxation year, the amount determined under subparagraph (a)(i).

Technical Notes: Subsection 8103(6) applies where a taxpayer ceases to carry on all or substantially all of a business otherwise than because of a merger, winding-up or transfer of the business to which the rollover rules in subsection 87(2), 88(1), 98(6) or 138(11.5) or (11.94) of the Act apply. In general terms, it accelerates the inclusion in income of the portion of the taxpayer's transition deduction that relates to the business.

Subsection 8103(6) prescribes an amount for inclusion, under subsection 142.5(5) of the Act, in the taxpayer's income for its taxation year in which it ceases to carry on the business. The prescribed amount, which is in addition to the amount prescribed for the year by subsection 8103(2), is equal to the portion of the taxpayer's transition deduction that is attributable to the business minus the amount of that portion that has already been included in the taxpayer's income. Subsection 8103(6) also provides that the portion of the taxpayer's transition deduction that is attributable to the business is to be disregarded in determining the amount prescribed by subsection 8103(2) in respect of the taxpayer for the taxation year in which it ceases to carry on the business and for subsequent taxation years.

(7) Where a taxpayer ceases at any time to be a financial institution otherwise than because it ceases to carry on a business,

(a) there is prescribed for the purpose of subsection 142.5(5) of the Act in respect of the taxpayer for its taxation year that ended immediately before that time, the amount, if any, by which

(i) the taxpayer's transition deduction

exceeds

(ii) the total of the amounts included under subsection 142.5(5) of the Act in computing the taxpayer's income for preceding taxation years; and

(b) the amount prescribed for the purpose of subsection 142.5(5) of the Act in respect of the taxpayer for taxation years after the taxation year referred to in paragraph (a) is nil.

Technical Notes: Subsection 8103(7) applies where a taxpayer ceases to be a financial institution (as defined in subsection 142.2(1) of the Act) otherwise than because it has ceased to carry on a business. This subsection would apply, for example, where a taxpayer ceases to be a financial institution because of a change in control. Subsection 8103(7) requires the taxpayer to include the remaining amount of its transition deduction in income in the taxation year that ends immediately before it ceases to be a financial institution. (There will always be such a taxation year because of paragraph 142.6(1)(a) of the Act.)

8104. Mark-to-market — transition capital loss — (1) In this section,

"excluded property" of a taxpayer means a mark-to-market property of the taxpayer for its taxation year that includes October 31, 1994 where

(a) the taxpayer had a taxable capital gain or an allowable capital loss for the year from the disposition of the property to which section 142 of the Act applied, or

(b) in the case of a taxpayer that was non-resident in the year, the property was a capital property other than a taxable Canadian property;

Technical Notes: Section 8104 prescribes the maximum amount that a taxpayer may claim under subsection 142.5(6) of the Act as an allowable capital loss in respect of the introduction of the mark-to-market requirement.

"Excluded property" of a taxpayer is certain mark-to-market property held by the taxpayer in its taxation year that includes October 31, 1994. This definition is relevant for a taxpayer that is a resident multinational life insurer or a non-resident insurer. In the case of a resident multina-

tional life insurer, excluded property is capital property disposed of by the insurer in the year that was used by the insurer in a foreign insurance business. Excluded property of a non-resident insurer is capital property that is not taxable Canadian property (as defined in subsection 115(1) of the Act). Taxable capital gains and allowable capital losses from excluded property are disregarded in determining the insurer's income.

"mark-to-market property" has the meaning assigned by subsection 142.2(1) of the Act.

Technical Notes: "Mark-to-market property" of a taxpayer has the meaning given by subsection 142.2(1) of the Act. In general terms, it comprises most shares held by the taxpayer and debt obligations that are marked to market for financial statement purposes.

(2) For the purpose of subsection 142.5(6) of the Act, the prescribed amount for a taxpayer's taxation year that includes October 31, 1994 is the amount, if any, by which

(a) the total of all amounts each of which is the taxable capital gain of the taxpayer for the year from the disposition, because of subsection 142.5(2) of the Act, of a property other than an excluded property

exceeds the total of

(b) the total of all amounts each of which is the allowable capital loss of the taxpayer for the year from the disposition, because of subsection 142.5(2) of the Act, of a property other than an excluded property, and

(c) the amount, if any, by which

(i) the total of all amounts each of which is the allowable capital loss of the taxpayer for the year from the disposition of a mark-to-market property (other than an excluded property or a property disposed of because of subsection 142.5(2) of the Act)

exceeds

(ii) the total of all amounts each of which is the taxable capital gain of the taxpayer for the year from the disposition of a mark-to-market property (other than an excluded property or a property disposed of because of subsection 142.5(2) of the Act).

Technical Notes: Subsection 142.5(6) of the Act contains a transition rule in respect of the introduction of the requirement that certain property be marked to market for tax purposes. It permits a taxpayer to claim, for its taxation year that includes October 31, 1994, an allowable capital loss not exceeding a prescribed amount. Subsection 8104(2) prescribes the following maximum amount for this purpose:

- the taxpayer's total taxable capital gains from the disposition of mark-to-market properties (other than excluded properties, as defined in subsection 8101(1)) that the mark-to-market rules deem the taxpayer to have disposed of in the year

minus

- the taxpayer's total allowable capital losses from the disposition of mark-to-market properties (other than excluded properties) that the mark-to-market rules deem the taxpayer to have disposed of in the year, and
- the taxpayer's net allowable capital losses (i.e., allowable capital losses minus taxable capital gains) from actual dispositions in the year of mark-to-market properties (other than excluded properties) and from deemed dispositions of such properties otherwise than because of the mark-to-market rules.

8105. Mark-to-market — transition capital gains — (1) In this section, **"transition loss"** of a taxpayer means the amount elected by the taxpayer under subsection 142.5(6) of the Act to be an allowable capital loss of the taxpayer for its taxation year that includes October 31, 1994.

Technical Notes: Section 8105 applies where a taxpayer has elected to claim an allowable capital loss under subsection 142.5(6) of the Act in respect of the introduction of the mark-to-market requirement. It prescribes the amount that is deemed by subsection 142.5(7) of the Act to be a taxable capital gain for each year. Generally, the prescribed amount for a year is a proportionate amount of the allowable capital loss that was claimed, based on a 5-year transition period.

Subsection 8105(1) defines the "transition loss" of a taxpayer to be the amount claimed by the taxpayer under subsection 142.5(6) of the Act as an allowable capital loss for the taxation year that includes October 31, 1994. The commentary on subsection 8103(1) regarding the effect of various restructurings on the "transition deduction" also applies to the transition loss.

(2) There is prescribed for the purpose of subsection 142.5(7) of the Act in respect of a taxpayer for a taxation year that ends after October 30, 1994 the amounts that would be prescribed in respect of the taxpayer for the year by section 8103 if the references in subsections 8103(2) to (7) to

(a) "subsection 142.5(5)" were read as "subsection 142.5(7)", and

(b) "transition deduction" were read as "transition loss (as defined in subsection 8105(1))".

Technical Notes: Subsection 8105(2) provides that prescribed amounts are determined using the rules in section 8103. For this purpose, the references in that section to "transition deduction" are replaced by "transition loss" and to "142.5(5)" are replaced by "142.5(7)". For information on section 8103, see the commentary on that provision.

Application: The June 1, 1995 draft regulations (securities held by financial institutions), s. 8, will add ss. 8102 to 8105, applicable to taxation years that end after October 30, 1994.

PART LXXXII — PRESCRIBED PROPERTIES AND PERMANENT ESTABLISHMENTS

History: The heading of Part LXXXII amended by P.C. 1994-139, s. 14, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable after 10:00 p.m. EDST, April 26, 1989.

8200. Prescribed properties [for leasing rules] — For the purposes of subsection 16.1(1) of the Act, "prescribed property" means

(a) exempt property, within the meaning assigned by paragraph 1100(1.13)(a), other than property leased on or before February 2, 1990 that is

(i) a truck or tractor that is designed for use on highways and has a "gross vehicle weight rating" (within the meaning assigned that expression by the *Motor Vehicle Safety Regulations*) of 11,778 kilograms or more,

(ii) a trailer that is designed for use on highways and is of a type designed to be hauled under normal operating conditions by a truck or tractor described in subparagraph (i), or

(iii) a railway car,

(b) property that is the subject of a lease where the tangible property, other than exempt property (within the meaning assigned by paragraph 1100(1.13)(a)), that was the subject of the lease had, at the time the lease was entered into, an aggregate fair market value not in excess of $25,000, and

(c) intangible property.

History: S. 8200 added by P.C. 1991-465, s. 5, March 14, 1991, *Canada Gazette*, Part II, March 27, 1991, applicable in respect of leases entered into after 10:00 p.m. Eastern Daylight Saving Time, April 26, 1989, other than leases entered into pursuant to an agreement in writing entered into before that time under which the lessee thereunder has the right to require

the lease of the property (and for these purposes a lease in respect of which a material change has been agreed to by the parties thereto effective at any particular time that is after 10:00 p.m. Eastern Daylight Saving Time, April 26, 1989 shall be deemed to have been entered into at that particular time).

Definitions [Reg. 8200]: "property" — ITA 248(1).

8200.1 [Prescribed energy conservation property] — For the purposes of subsection 13(18.1) and subparagraph 241(4)(d)(vi.1) of the Act, prescribed energy conservation property means property described in Class 43.1 in Schedule II.

Related Provisions: ITA 13(18.1) — Dept. of Natural Resources "Technical Guide to Class 43.1" to be determinative.

History: S. 8200.1 added by P.C. 1997-1033, s. 5, July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable after February 21, 1994.

Definitions [Reg. 8200.1]: "prescribed", "property" — ITA 248(1).

8201. [Permanent establishment] — For the purposes of subsection 16.1(1), the definition "outstanding debts to specified non residents" in subsection 18(5), subsections 34.2(6), 112(2), 125.4(1) and 125.5(1), the definition "taxable supplier" in subsection 127(9), subsection 206(1.3) and paragraph 260(5)(a) of the Act, a "permanent establishment" of a person or partnership (referred to in this section as the "person") means a fixed place of business of the person, including an office, a branch, a mine, an oil well, a farm, a timberland, a factory, a workshop or a warehouse and, where the person does not have any fixed place of business, the principal place at which the person's business is conducted, and

Proposed Amendment — Reg. 8201 opening words

8201. ["Permanent establishment"] — For the purposes of subsection 16.1(1), the definition "outstanding debts to specified non residents" in subsection 18(5), subsection 34.2(6), the definition "excluded income" and "excluded revenue" in subsection 95(2.5), subsections 112(2), 125.4(1) and 125.5(1), the definition "taxable supplier" in subsection 127(9), subparagraph 128.1(4)(b)(ii), paragraphs 181.3(5)(a) and 190.14(2)(b), the definition "Canadian banking business" in subsection 248(1) and paragraph 260(5)(a) of the Act, a "permanent establishment" of a person or partnership (either of whom referred to in this section as the "person") means a fixed place of business of the person, including an office, a branch, a mine, an oil well, a farm, a timberland, a factory, a workshop or a warehouse if the person has a fixed place of business and, where the person does not have any fixed place of business, the principal place at which the person's business is conducted, and

Application: The May 16, 2005 draft regulations (deferred income plans), s. 15, (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend the opening words of s. 8201 to read as above, deemed to have come into force on October 2, 1996, except that in applying the section,

(a) to the 1996 taxation year, it is to be read without the reference to the phrase "the definition "outstanding debts to specified non-residents" in subsection 18(5),";

(b) to taxation years that ended before November 1997, it is to be read without reference to ITA subsec. 125.5(1);

(c) to taxation years that began before 1996, it is to be read without the reference to the phrase "the definition "taxable supplier" in subsection 127(9),";

(d) to taxation years that ended before June 28, 1999, it is to be read without reference to the phrases "paragraph 181.3(5)(a) and 190.14(2)(b)," and "the definition "Canadian banking business" in subsection 248(1)";

(e) to taxation years that began before 2000, it is to be read without the reference to the phrase "the definition "excluded income" and "excluded revenue" in subsection 95(2.5)"; and

(f) to taxation years that end before the day on which the amending Act is assented to, it is to be read as though it also applies for the purpose of ITA subsec. 206(1.3).

Regulatory Impact Analysis Statement: Section 8201 defines the meaning of "permanent establishment" for the purposes of various provisions in the Act. This section is amended to remove the reference to subsection 206(1.3) of the Act, as a consequence of the repeal of Part XI of the Act. It is also amended to incorporate an amendment that was previously published in the February 15, 2003 issue of Part I of the *Canada Gazette* adding references to various other provisions of the Act relating primarily to the taxation regime of foreign bank branches.

[See also under Reg. 214(5).]

(a) where the person carries on business through an employee or agent, established in a particular place, who has general authority to contract for the person or who has a stock of merchandise owned by the person from which the employee or agent regularly fills orders, the person shall be deemed to have a permanent establishment at that place,

(b) where the person is an insurance corporation, the person is deemed to have a permanent establishment in each country in which the person is registered or licensed to do business,

(c) where the person uses substantial machinery or equipment at a particular place at any time in a taxation year, the person shall be deemed to have a permanent establishment at that place,

(d) the fact that the person has business dealings through a commission agent, broker or other independent agent or maintains an office solely for the purchase of merchandise shall not of itself be held to mean that the person has a permanent establishment, and

(e) where the person is a corporation, the fact that the person has a subsidiary controlled corporation at a place or a subsidiary controlled corporation engaged in trade or business at a place shall not of itself be held to mean that the person is operating a permanent establishment at that place,

except that, where the person is resident in a country with which the Government of Canada has concluded an agreement or convention for the avoidance of double taxation that has the force of law in Canada and in which the expression "permanent establishment" is given a particular meaning, that meaning shall apply.

Related Provisions: Reg. 8202 — Definition of PE for other purposes.

History: The opening words of s. 8201 amended by P.C. 2000-183, s. 4, February 17, 2000, *Canada Gazette*, Part II, March 1, 2000, applicable to 1995 *et seq.*, except that in applying the amended s. 8201

(a) to the 1995 and 1996 taxation years, it shall be read without the reference to the phrase "the definition "outstanding debts to specified non residents" in subsection 18(5),";

(b) to the portion of the 1995 taxation year that was in 1994, it shall be read without reference to subsec. 34.2(6) of the Act;

(c) to taxation years that ended before November 1997, it shall be read without the reference to subsec 125.5(1) of the Act; and

(d) to taxation years that began before 1996, it shall be read without the reference to phrase "the definition "taxable supplier" in subsection 127(9),".

S. 8201 added by P.C. 1994-139, s. 15, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable after 10:00 p.m. EDST, April 26, 1989.

Definitions [Reg. 8201]: "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "employee", "insurance corporation", "office" — ITA 248(1); "person" — ITA 248(1); "resident" — ITA 250; "subsidiary controlled corporation" — ITA 248(1); "taxation year" — ITA 249.

Application Policies: SR&ED 2002-02R2: Experimental production and commercial production with experimental development work — allowable SR&ED expenditures.

8201.1 [Repealed]

History: S. 8201.1 repealed by P.C. 2000-183, subsec. 5(2), February 17, 2000, *Canada Gazette*, Part II, March 1, 2000, applicable to 1995 *et seq.* For the period from December 5, 1985 through the 1994 taxation year, read:

> 8201.1 For the purpose of subsection 206(1.3) of the Act, "permanent establishment" of a corporation means a fixed place of business of the corporation, including an office, a branch, a mine, an oil well, a farm, a timberland, a factory, a workshop or a warehouse and, where the corporation does not have any fixed place of business, the principal place at which the corporation's business is conducted, and
>
> (a) where the corporation carries on business through an employee or agent, established in a particular place, who has general authority to contract for the corporation or who has a stock of merchandise owned by the corporation from which the employee or agent regularly fills orders, the corporation shall be deemed to have a permanent establishment at that place,
>
> (b) where the corporation is an insurance corporation, the corporation is deemed to have a permanent establishment in each country in which the corporation is registered or licensed to do business,
>
> (c) where the corporation uses substantial machinery or equipment at a particular place at any time in a taxation year, the corporation shall be deemed to have a permanent establishment at that place,
>
> (d) the fact that the corporation has business dealings through a commission agent, broker or other independent agent or maintains an office solely for the purchase of merchandise shall not of itself be held to mean that the corporation has a permanent establishment, and
>
> (e) the fact that the corporation has a subsidiary controlled corporation at a place or a subsidiary controlled corporation engaged in trade or business at a place shall not of itself be held to mean that the corporation is operating a permanent establishment at that place,
>
> except that, where the corporation is resident in a country with which the Government of Canada has concluded an agreement or convention for the avoidance of double taxation that has the force of law in Canada and in which the expression "permanent establishment" is given a particular meaning, that meaning shall apply.

S. 8201.1 added by P.C. 2000-183, subsec. 5(1), February 17, 2000, *Canada Gazette*, Part II, March 1, 2000, applicable after December 4, 1985.

Proposed Addition — Reg. 8202

8202. (1) ["Permanent establishment"] — For the purposes of the definition "investment business" in subsection 95(1), and of subparagraph 95(2)(l)(iii) and paragraphs 95(2.3)(b) and (2.4)(a), of the Act, a "permanent establishment" of a person or partnership (which person or partnership is referred to in this subsection and subsection (3) as the "person") means

(a) a fixed place of business of the person, including an office, a branch, a mine, an oil well, a farm, a timberland, a factory, a workshop or a warehouse; or

(b) if the person does not have any fixed place of business, the principal place at which the person's business is conducted.

Related Provisions: Reg. 8201 — Definition of PE for other purposes; Reg. 8202(2) — Tax treaty definition takes priority; Reg. 8202(3) — Interpretation.

(2) [Tax treaty definition overrides] — Notwithstanding subsection (1), for the purposes of the definition "investment business" in subsection 95(1), and of subparagraph 95(2)(l)(iii) and paragraphs 95(2.3)(b) and (2.4)(a), of the Act, a "permanent establishment" of a person or partnership (which person or partnership is referred to in this subsection as the "person") has the meaning given to the expression "permanent establishment" in an agreement or a convention for the avoidance of double taxation that the Government of Canada has concluded with a country and that has the force of law in Canada if the person is a resident of that country for the purpose of the agreement or convention.

(3) [Permanent establishment — interpretation] — For the purpose of subsection (1),

(a) if a person carries on business through an employee or agent, established in a particular place, who has general authority to contract for the person or who has a stock of merchandise owned by the person from which the employee or agent regularly fills orders, the person is deemed to have a fixed place of business at that place,

(b) if a person is an insurance corporation, the person is deemed to have a fixed place of business in each country in which the person is registered or licensed to do business,

(c) if a person uses substantial machinery or equipment at a particular place at any time in a taxation year, the person is deemed to have a fixed place of business at that place,

(d) the fact that a person has business dealings through a commission agent, broker or other independent agent or maintains an office solely for the purchase of merchandise at a particular place does not of itself mean that the person has a fixed place of business at that place, and

(e) the fact that a corporation has a subsidiary controlled corporation at a place or a subsidiary controlled corporation engaged in trade or business at a place does not of itself mean that the corporation is operating a fixed place of business at that place.

Application: The February 27, 2004 draft regulations (prescribed properties and permanent establishments), s. 1, will add s. 8202, applicable to 1999 *et seq.* However, if the taxpayer has made a valid "Global Section 95 Election" under subsec. 133(68) of the amending legislation [see the Application and Technical Notes to ITA 95(2)(a)], to 1994 *et seq.*

Technical Notes: Part LXXXII of the Regulations prescribes property, and defines the expression "permanent establishment", for various purposes of the Act.

The Regulations are being amended to add new section 8202.

New subsection 8202(1) defines the term "permanent establishment" of a person or partnership for the purposes of the definition "investment business" in subsection 95(1) of the Act, paragraph 95(2)(l)(iii) of the Act, and paragraphs 95(2.3)(b) and (2.4)(a) of the Act to mean

- a fixed place of business of a person or partnership, including an office, a branch, a mine, an oil well, a farm, a timberland, a factory, a workshop or a warehouse, or
- where the person or partnership does not have any fixed place of business, the principal place at which the business of the person or partnership is conducted.

New subsection 8202(2) provides that the definition of permanent establishment in a tax treaty that Canada has with a foreign country takes precedence over subsection 8202(1) if the person or partnership is resident in that foreign country.

New subsection 8202(3) provides other rules for the purposes of determining if a fixed place of business exists for the purposes of subsection 8202(1).

New section 8202 applies to the 1999 and subsequent taxation years. However, where the taxpayer has made a valid Global Section 95 Election, new subsection 8202 applies to 1994 and subsequent taxation years. For information about the Global Section 95 Election, see the beginning of the commentary to section 95 of the Act.

Definitions [Reg. 8202]: "amount", "annuity", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "carries on business" — Reg. 8202(1); "contribution" — Reg. 8300(8), 8302(11), (12); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "employee", "employer", "employment" — ITA 248(1); "fixed place of business" — Reg. 8202(3); "flat benefit provision" — Reg. 8300(1); "individual", "insurance corporation" — ITA 248(1); "lifetime retirement benefits" — Reg. 8304(5)(c); "Minister" — ITA 248(1); "money purchase provision" — ITA 147.1(1); "office", "officer" — ITA 248(1); "offset provision" — Reg. 8300(11)(b); "past service event" — Reg. 8300(1), (2); "pension credit" — Reg. 8301, 8308.1(2)–(4), 8308.3(2), (3); "period of reduced services" — Reg. 8300(1); "person", "property", "registered pension plan" — ITA 248(1); "related" — ITA 251(2)–(6); "related provision" — Reg. 8300(12); "render services" — Reg. 8300(4); "resident" — ITA 250; "specified distribution" — Reg. 8304.1(8); "subsidiary controlled corporation" — ITA 248(1); "taxation year" — ITA 249.

Proposed Amendment — Reg. 8202 — Application to ITA 94.1(1)"exempt business"

Technical Notes to ITA 94.1(1)"exempt business", July 18, 2005: The reference in this definition to a "permanent establishment" is intended to carry the meaning of that expression assigned by proposed section 8202 of the *Income Tax Regulations*. Proposed section 8202 of the Regulations was released in draft form as part of the February 27, 2004 release of draft technical amendments.

PART LXXXIII — PENSION ADJUSTMENTS, PAST SERVICE PENSION ADJUSTMENTS, PENSION ADJUSTMENT REVERSALS AND PRESCRIBED AMOUNTS

History: The heading to Part LXXXIII amended by P.C. 1998-2256, s. 3, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1996.

The heading to Part LXXXIII amended by P.C. 1996-911, s. 5, June 20, 1996, *Canada Gazette*, Part II, July 10, 1996, applicable after 1991. The heading formerly read: *Pension Adjustments and Past Service Pension Adjustments*.

Part LXXXIII (ss. 8300–8311) added by P.C. 1991-2540, s. 7, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable after 1989, except that

(a) in its application in respect of amounts paid to pension plans before 1991, the definition "excluded contribution" in subsec. 8300(1) shall be read as follows:

"excluded contribution" to a registered pension plan means an amount paid to the plan that is

(a) transferred to the plan in accordance with any of subsections 146(16), 147(19) and 147.3(1) to (7) of the Act, or

(b) deductible, as a consequence of the payment, under paragraph 60(j) or (j.1) of the Act in computing the income of a taxpayer for a taxation year;

(b) before 1991, subsecs. 8301(2) and (3) shall be read without reference to the expression "and subsection 147(5.1) of the Act";

(c) subsec. 8307(6) is applicable after 1990; and

(d) subsec. 8307(7) is applicable to 1991 *et seq.*

8300. Interpretation — (1) In this Part,

"certifiable past service event", with respect to an individual means a past service event that is required, by reason of subsection 147.1(10) of the Act, to be disregarded, in whole or in part, in determining the benefits to be paid under a registered pension plan with respect to the individual until a certification of the Minister in respect of the event has been obtained;

"complete period of reduced services" of an individual means a period of reduced services of the individual that is not part of a longer period of reduced services of the individual;

"excluded contribution" to a registered pension plan means an amount that is transferred to the plan in accordance with any of subsections 146(16), 147(19), 147.3(1) to (4) and 147.3(5) to (7) of the Act;

Proposed Amendment — Reg. 8300(1)"excluded contribution"

"excluded contribution" to a registered pension plan means an amount that is transferred to the plan in accordance with any of subsections 146(16), 146.3(14.1), 147(19), 147.3(1) to (4) and 147.3(5) to (7) of the Act;

Application: The May 16, 2005 draft regulations (deferred income plans), s. 16, (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend the definition "excluded contribution" in subsec. 8300(1) to read as above, applicable after 2003.

Regulatory Impact Analysis Statement: See under Reg. 214(5).

Technical Notes, February 27, 2004: Certain amounts transferred to an RPP are defined in subsection 8300(1) to be "excluded contributions". An excluded contribution is disregarded in determining pension credits under a money purchase provision or under a defined benefit provision of a specified multi-employer plan.

The definition is amended to add to the list of excluded contributions an amount that was transferred to an RPP in accordance with new subsection 146.3(14.1) of the Act. Subsection 146.3(14.1) permits the direct transfer of an amount from an annuitant's RRIF to a money purchase provision of an RPP for the benefit of the annuitant, provided the annuitant was previously a member of the RPP.

History: "Excluded contribution" amended by P.C. 1995-17, subsec. 1(1), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable with respect to transfers occurring after 1990.

Definition "excluded contribution" added by P.C. 1991-2540, s. 7, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable after 1989, except that in its application in respect of amounts paid to pension plans before 1991, the definition shall be read as follows:

"excluded contribution" to a registered pension plan means an amount paid to the plan that is

(a) transferred to the plan in accordance with any of subsections 146(16), 147(19) and 147.3(1) to (7) of the Act, or

(b) deductible, as a consequence of the payment, under paragraph 60(j) or (j.1) of the Act in computing the income of a taxpayer for a taxation year;

"flat benefit provision" of a pension plan means a defined benefit provision of the plan under which the amount of lifetime retirement benefits provided to each member is based on the aggregate of all amounts each of which is the product of a fixed rate and either the duration of service of the member or the number of units of output of the member, and, for the purposes of this definition, where

(a) the amount of lifetime retirement benefits provided under a defined benefit provision to each member is subject to a limit based on the remuneration received by the member, and

(b) the limit may reasonably be considered to be included to ensure that the amount of lifetime retirement benefits provided to each member does not exceed the maximum amount of such benefits that may be provided by a registered pension plan,

the limit shall be disregarded for the purpose of determining whether the provision is a flat benefit provision;

"member", in relation to a deferred profit sharing plan or a benefit provision of a registered pension plan, means an individual who has a right (either immediate or in the future and either absolute or contingent) to receive benefits under the plan or the provision, as the case may be, other than an individual who has such a right only because of the participation of another individual in the plan or under the provision, as the case may be;

History: The definition "member" added to subsec. 8300(1) by P.C.1998-2256, subsec. 4(1), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1989.

"PA offset" for a calendar year means

(a) for years before 1997, $1,000, and

(b) for years after 1996, $600;

History: The definition "PA offset" added to subsec. 8300(1) by P.C.1998-2256, subsec. 4(1), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1989.

"past service event" means any transaction, event or circumstance that occurs after 1989 and as a consequence of which

(a) retirement benefits become provided to an individual under a defined benefit provision of a pension plan in respect of a period before the time that the transaction, event or circumstance occurs,

(b) there is a change to the way in which retirement benefits provided to an individual under a defined benefit provision of a pension plan in respect of a period before the time that the transaction, event or circumstance occurs are determined, including a change that is applicable only in specified circumstances, or

(c) there is a change in the value of an indexing or other automatic adjustment that enters into the determination of the amount of an individual's retirement benefits under a defined benefit provision of a pension plan in respect of a period before the time that the value of the adjustment changes;

Related Provisions: Reg. 8300(2) — Definition applies to ITA 147.1(1).

"period of reduced services" of an individual means, in connection with a defined benefit or money purchase provision of a registered pension plan, a period that consists of one or more periods each of which is

(a) an eligible period of reduced pay or temporary absence of the individual with respect to an employer who participates under the provision, or

(b) a period of disability of the individual;

"refund benefit" means

(a) with respect to an individual and a money purchase or defined benefit provision of a pension plan, a return of contributions made by the individual under the provision, and

(b) with respect to an individual and a deferred profit sharing plan, a return of contributions made by the individual to the plan,

and includes any interest (computed at a rate not exceeding a reasonable rate) payable in respect of those contributions;

"resident compensation" of an individual from an employer for a calendar year means the amount that would be the individual's compensation from the employer for the year if the definition "compensation" in subsection 147.1(1) of the Act were read without reference to paragraphs (b) and (c) of that definition.

History: The definition "resident compensation" added to subsec. 8300(1) by P.C.1998-2256, subsec. 4(1), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1989.

(2) The definition "past service event" in subsection (1) is applicable for the purposes of subsection 147.1(1) of the Act.

(3) All words and expressions used in this Part that are defined in sections 147 or 147.1 of the Act or in Part LXXXV have the meanings assigned in those provisions unless a definition in this Part is applicable.

(4) For the purposes of this Part, an officer who receives remuneration for holding an office shall, for any period that the officer holds the office, be deemed to render services to, and to be in the service of, the person from whom the officer receives the remuneration.

(5) For the purposes of this Part (other than the definition "member" in subsection (1)), where an individual has received an interest in an annuity contract in full or partial satisfaction of the individual's entitlement to benefits under a defined benefit provision of a pension plan, any rights of the individual under the contract are deemed to be rights under the defined benefit provision.

History: Subsec. 8300(5) amended by P.C.1998-2256, subsec. 4(2), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1989.

(6) For the purposes of this Part and subsection 147.1(10) of the Act, and subject to subsection 8308(1), the following rules apply in respect of the determination of the benefits that are provided to an individual under a defined benefit provision of a pension plan at a particular time:

(a) where a term of the defined benefit provision, or an amendment to a term of the provision, is not applicable with respect to the individual before a specified date, the term shall be considered to have been added to the provision, or the amendment shall be considered to have been made to the term, on the specified date;

(b) where an alteration to the benefits provided to the individual is conditional on the requirements of subsection 147.1(10) of the Act being met, those requirements shall be assumed to have been met;

(c) benefits that will be reinstated if the individual returns to employment with an employer who participates in the plan shall be considered not to be provided until the individual returns to employment; and

(d) where benefits under the provision depend on the individual's job category or other circumstances, the only benefits provided to the individual are the benefits that are relevant to the individual's circumstances at the particular time.

(7) For the purposes of subsections 8301(3) and (8), paragraph 8302(3)(c), subsections 8302(5) and 8304(5) and (5.1), paragraphs 8304.1(10)(c) and (11)(c), subparagraph 8306(4)(a)(ii) and subsection 8308(3), the benefits to which an individual is entitled at any time under a deferred profit sharing plan or pension plan include benefits to which the individual has only a contingent right because a condition for the vesting of the benefits has not been satisfied.

History: Subsec. 8300(7) amended by P.C.1998-2256, subsec. 4(3), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1989.

Selected Cases [Reg. 8300(7)]: *Osborn v. Canada*, [1995] 2 C.T.C. 2215 (TCC) (Non-vested pension amounts treated as if vested for purposes of RRSP contribution limit).

(8) For the purposes of this Part, such portion of an amount allocated to an individual at any time under a money purchase provision of a registered pension plan as

(a) is attributable to

(i) forfeited amounts under the provision or earnings of the plan that are reasonably attributable to those amounts,

(ii) a surplus under the provision,

(iii) property transferred to the provision in respect of the actuarial surplus under a defined benefit provision of the plan or another registered pension plan, or

(iv) property transferred to the provision in respect of the surplus under another money purchase provision of the plan or under a money purchase provision of another registered pension plan, and

(b) can reasonably be considered to be allocated in lieu of a contribution that would otherwise have been made under the provision by an employer in respect of the individual

shall be deemed to be a contribution made under the provision by the employer with respect to the individual at that time and not to be an amount attributable to anything referred to in paragraph (a).

History: Subpara. 8300(8)(a)(iv) added by P.C. 2003-1497, s. 5, October 2, 2003, *Canada Gazette*, Part II, October 22, 2003, applicable to allocations that occur after 1998.

Subsec. 8300(8) added by P.C. 1995-17, subsec. 1(2), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable with respect to amounts allocated after April 5, 1994.

(9) For the purposes of this Part and Part LXXXV, where property held in connection with a particular benefit provision of a pension plan is made available at any time to pay benefits under another benefit provision of the plan, the property is deemed to be transferred at that time from the particular benefit provision to the other benefit provision.

History: Subsec. 8300(9) added by P.C.1998-2256, subsec. 4(4), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1989.

(10) For the purposes of this Part and Parts LXXXIV and LXXXV, and subject to subsection (11), an individual is considered to have terminated from a deferred profit sharing plan or a benefit provision of a registered pension plan when the individual has ceased to be a member in relation to the plan or the provision, as the case may be.

History: Subsec. 8300(10) added by P.C.1998-2256, subsec. 4(4), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1989.

(11) Where the benefits provided with respect to an individual under a particular defined benefit provision of a registered pension plan depend on benefits provided with respect to the individual under one or more other defined benefit provisions of registered pension plans (each of the particular provision and the other provisions being referred to in this subsection as a "related provision"), for the purposes of this Part and Parts LXXXIV and LXXXV,

(a) if the individual ceases, at any particular time after 1996, to be a member in relation to a specific related provision and is, at the particular time, a member in relation to another related provision, the individual is deemed

(i) not to terminate from the specific provision at the particular time, and

(ii) to terminate from the specific provision at the earliest subsequent time when the individual is no longer a member in relation to any of the related provisions;

(b) if the conditions in subsection 8304.1(14) (read without reference to the words "after 1996 and") are not satisfied with respect to the individual's termination from a related provision, the conditions in that subsection are deemed not to be satisfied with respect to the individual's termination from each of the other related provisions; and

(c) a specified distribution (as defined in subsection 8304.1(8)) made at any particular time in respect of the individual and a related provision is deemed, for the purpose of subsection 8304.1(5), also to be a specified distribution made at the particular time in respect of the individual and each of the other related provisions, except to the extent that the Minister has waived the application of this paragraph with respect to the distribution.

History: Subsec. 8300(11) added by P.C.1998-2256, subsec. 4(4), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1989.

(12) For the purposes of this Part, where

(a) all or any part of the amounts payable to an individual under a deferred profit sharing plan are paid by a trustee under the plan to a licensed annuities provider to purchase for the individual an annuity described in subparagraph 147(2)(k)(vi) of the Act, or

(b) an individual has acquired, in full or partial satisfaction of the individual's entitlement to benefits under a benefit provision of a registered pension plan (other than benefits to which the individual was entitled only because of the participation of another individual under the provision), an interest in an annuity contract (other than as a consequence of a transfer of property from the provision to a registered retirement savings plan or a registered retirement income fund under which the individual is the annuitant),

the individual is deemed to continue, from the time of the payment or acquisition, as the case may be, until the individual's death, to be a member in relation to the plan or provision, as the case may be.

History: Subsec. 8300(12) added by P.C.1998-2256, subsec. 4(4), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1989.

(13) For the purposes of this Part and Part LXXXV, where a benefit is to be provided, or may be provided, to an individual under a defined benefit provision of a registered pension plan as a consequence of an allocation that is to be made, or may be made, to the individual of all or part of an actuarial surplus under the provision, the individual is considered not to have any right to receive the benefit under the provision until the time at which the benefit becomes provided under the provision.

History [Reg. 8300(13)]: Subsec. 8300(13) added by P.C.1998-2256, subsec. 4(4), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1989.

Definitions [Reg. 8300]: "amount", "annuity" — ITA 248(1); "contribution" — Reg. 8300(8), 8302(11), (12); "deferred profit sharing plan" — ITA 147(1), 248(1); "employer", "employment" — ITA 248(1); "flat benefit provision" — Reg. 8300(1); "individual" — ITA 248(1); "lifetime retirement benefits" — Reg. 8304(5)(c); "Minister" — ITA 248(1); "money purchase provision" — ITA 147.1(1); "office", "officer" — ITA 248(1); "offset provision" — Reg. 8300(11)(b); "past service event" — Reg. 8300(1), (2); "pension credit" — Reg. 8301, 8308.1(2)–(4), 8308.3(2), (3); "period of reduced services" — Reg. 8300(1); "person", "property", "reg-

istered pension plan" — ITA 248(1); "related" — ITA 251(2)-(6); "related provision" — Reg. 8300(12); "render services" — Reg. 8300(4); "specified distribution" — Reg. 8304.1(8).

8301. Pension adjustment — (1) Pension adjustment with respect to employer — For the purpose of subsection 248(1) of the Act, "pension adjustment" of an individual for a calendar year with respect to an employer means, subject to paragraphs 8308(4)(d) and (5)(c), the total of all amounts each of which is

(a) the individual's pension credit for the year with respect to the employer under a deferred profit sharing plan or under a benefit provision of a registered pension plan;

(b) the individual's pension credit for the year with respect to the employer under a foreign plan, determined under section 8308.1; or

(c) the individual's pension credit for the year with respect to the employer under a specified retirement arrangement, determined under section 8308.3.

Related Provisions: Reg. 8301(2) — Pension credit — deferred profit sharing plan; Reg. 8301(3) — Non-vested termination from DPSP; Reg. 8301(4) — Pension credit — money purchase provision; Reg. 8500(8)(c) — Non-member benefits ignored in determining pension adjustment.

History: Subsec. 8301(1) amended by P.C. 1996-911, s. 6, June 20, 1996, *Canada Gazette*, Part II, July 10, 1996, applicable with respect to the determination of pension adjustments for 1992 *et seq.*

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-307R4: Spousal or common-law partner registered retirement savings plans; IT-363R2: Deferred profit sharing plans — deductibility of employer contributions and taxation of amounts received by a beneficiary (archived).

Forms: T4084: Pension adjustment guide.

(2) Pension credit — deferred profit sharing plan — For the purposes of subsection (1) and Part LXXXV and subsection 147(5.1) of the Act, and subject to subsections (3) and 8304(2), an individual's pension credit for a calendar year with respect to an employer under a deferred profit sharing plan is the aggregate of all amounts each of which is

(a) a contribution made to the plan in the year by the employer with respect to the individual, or

(b) such portion of an amount allocated in the year to the individual as is attributable to forfeited amounts under the plan and earnings of the plan in respect thereof, except to the extent that such portion is

(i) included in determining the individual's pension credit for the year with respect to any other employer who participates in the plan,

(ii) paid to the individual in the year, or

(iii) where the year is 1990, attributable to amounts forfeited before 1990 or earnings of the plan in respect thereof,

except that, where the year is before 1990, the individual's pension credit is nil.

Proposed Amendment — Reg. 8301(2), (2.1)

(2) Pension credit — deferred profit sharing plan — For the purposes of subsection (1) and Part LXXXV and subsection 147(5.1) of the Act, and subject to subsection 8304(2), an individual's pension credit for a calendar year with respect to an employer under a deferred profit sharing plan is the amount determined by the formula

A – B

where

A is the total of all amounts each of which is

(a) a contribution made to the plan in the year by the employer with respect to the individual, or

(b) the portion of an amount allocated in the year to the individual that is attributable to forfeited amounts under the plan or to earnings of the plan in respect of forfeited amounts, except to the extent that the portion

(i) is included in determining the individual's pension credit for the year with respect to any other employer who participates in the plan, or

(ii) is paid to the individual in the year; and

B is nil, unless the conditions in subsection (2.1) are satisfied, in which case it is the total referred to in paragraph (2.1)(b).

Related Provisions: ITA 257 — Negative amounts in formulas.

(2.1) Conditions re — description of B in subsec. (2) — The following are conditions for the purpose of the description of B in subsection (2):

(a) the total of all amounts, each of which would be the individual's pension credit for the calendar year with respect to the employer under a deferred profit sharing plan if the description of B in subsection (2) were read as "is nil.", is

(i) equal to, or less than, 50% of the money purchase limit for the year,

(ii) greater than 18% of the amount that would be the individual's compensation from the employer for the year if the definition "compensation" in subsection 147.1(1) of the Act were read without reference to paragraph (b) of that definition, and

(iii) equal to, or less than, 18% of the amount that would be the individual's compensation from the employer for the preceding year if the definition "compensation" in subsection 147.1(1) of the Act were read without reference to paragraph (b) of that definition; and

(b) the total of all amounts, each of which is an amount that is paid from the plan to the individual or the employer in the calendar year or in the first two months of the following year that can reasonably be considered to derive from an amount included in the value of A in subsection (2) with respect to the individual and the employer for the year, is greater than nil.

Related Provisions: Reg. 8301(15) — Transferred amounts deemed not paid.

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 17(1), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend subsec. 8301(2) to read as above and add subsec. (2.1), applicable to the determination of pension credits for the 2002 and subsequent calendar years.

Regulatory Impact Analysis Statement: Amended section 8301 provides a mechanism to deal with excess contributions to DPSPs that can arise in certain situations. It generally allows excess contributions to be ignored for purposes of determining an individual's DPSP pension credit, for 2002 and subsequent years, provided the excess is refunded from the plan. This relieving amendment was previously announced by the Department of Finance on December 20, 2002 (News Release 2002-107). For further details refer to . . . the explanatory notes to the draft income tax proposals [reproduced below. See also under Reg. 214(5).]

Technical Notes, December 20, 2002: Subsection 147(5.1) of the Act sets out various limits for deferred profit sharing plans (DPSPs). The most significant limit, in terms of this amendment to subsection

8301(2) is the one in paragraph 147(5.1)(a). In general terms, that paragraph requires that an individual's total DPSP pension credits for a year in respect of an employer not exceed the lesser of: (i) 18% of the individual's compensation from the employer for the year; and (ii) 1/2 of the money purchase limit for the year. For this purpose, "compensation" and "money purchase limit" are generally as defined in subsection 147.1(1) of the Act. If these limits are exceeded, the registration of the plan can be revoked and the employer is denied a deduction for all contributions made in the year, except as expressly permitted in writing by the Minister of National Revenue.

Subsection 8301(2) defines the pension credit of an individual for a calendar year in respect of an employer under a DPSP to be the total of:

- all contributions made to the plan by the employer in the year in respect of the individual; and
- forfeited amounts under the plan, and investment earnings attributable to those amounts, that are reallocated in the year to the individual (and not paid out of the plan to the individual in the year).

It is common practice for an employer to make contributions to a DPSP only after its fiscal year-end, since this is when profits are determined. This can often result in employer contributions being made based (in whole or in part) on employees' earnings in the previous calendar year, but being included in the employees' pension credits for the current calendar year. This will in turn give rise to excess DPSP contributions if an employee's compensation for the current year is for some reason insufficient to support the pension credit. This could occur, for example, where the contributions are made early in the year and the employee goes on leave without pay later in the year.

The proposed amendment to subsection 8301(2) provides a mechanism to deal with over- contributions that arise in these situations. It allows the over-contributions to be ignored for purposes of determining an individual's DPSP pension credit, provided the excess is refunded from the plan in the year or before the end of February of the following year. The amendment also applies to provide relief in similar over-contribution situations, involving employees who terminate employment, that were previously dealt with by repealed subsection 147(5.11) of the Act.

More specifically, amended subsection 8301(2) provides that an individual's pension credit for a calendar year in respect of an employer under a DPSP is the amount determined by the following formula

$$A - B$$

Variable A in the formula is the total employer contributions and forfeited amounts made or reallocated in the year in respect of the individual. This amount corresponds to the pension credit determined under former subsection 8301(2).

Variable B is relevant only where the total employer contributions and forfeited amounts made or reallocated in the year with respect to the individual would not otherwise satisfy the DPSP contribution limit in paragraph 147(5.1)(a), but would have satisfied that limit if it had been based on the individual's compensation for the previous calendar year. (These conditions are set out in new subsection 8301(2.1).) In this case, variable B is equal to the total of all payments made from the plan to the individual or the employer in the year or in the first two months of the following year, to the extent that the payments can be considered to derive from amounts included in determining the value of A.

Example

An employer makes a DPSP contribution for its employees in March 2003 based on profits for its fiscal period that ended on January 31, 2003. $5,000 of the contribution is allocated to Isaac, who earned $60,000 in 2002. Isaac takes a one-year unpaid leave of absence starting in April 2003, after having earned $15,000 in the first three months of 2003. To avoid exceeding the DPSP contribution limits in subsection 147(5.1), the DPSP trustee refunds the $2,300 excess amount ($5,000 – 18% of $15,000) to the employer in February 2004.

Isaac's pension credit for 2003 is $2,700 ($5,000 contribution – $2,300 refund).

Subsection 8301(15) of the Regulations provides that an amount is not considered to be paid to an individual if it is transferred directly to a DPSP, registered pension plan (RPP), registered retirement savings plan (RRSP) or registered retirement income fund (RRIF). Thus, such a transfer from a DPSP will not be included in determining the value of B and consequently will not reduce the individual's pension credit under the DPSP.

[See also Technical Notes to Proposed Repeal of ITA 147(5.11).]

Related Provisions: ITA 257 — Negative amounts in formulas.

History: Subsec. 8301(2) added by P.C. 1991-2540, s. 7, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable after 1989, except that before 1991, the subsec. shall be read without reference to the expression "and subsection 147(5.1) of the Act".

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-363R2: Deferred profit sharing plans — deductibility of employer contributions and taxation of amounts received by a beneficiary (archived).

(3) Non-vested termination from DPSP — For the purposes of subsection (1) and Part LXXXV and subsection 147(5.1) of the Act, where

(a) an individual ceased in a calendar year after 1989 and before 1997 to be employed by an employer who participated in a deferred profit sharing plan for the benefit of the individual,

(b) as a consequence of the termination of employment, the individual ceased in the year to have any rights to benefits (other than a right to a refund benefit) under the plan,

(c) the individual was not entitled to benefits under the plan at the end of the year, or was entitled only to a refund benefit, and

(d) no benefit has been paid under the plan with respect to the individual, other than a refund benefit,

the individual's pension credit under the plan for the year with respect to the employer is nil.

Related Provisions: Reg. 8300(7) — Benefits include contingent benefits.

History: Para. 8301(3)(a) amended by P.C. 1998-2256, subsec. 5(1), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1989.

Subsec. 8301(3) added by P.C. 1991-2540, s. 7, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable after 1989, except that before 1991, the subsec. shall be read without reference to the expression "and subsection 147(5.1) of the Act".

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans.

(4) Pension credit — money purchase provision — For the purposes of subsection (1) and Part LXXXV and subsection 147.1(9) of the Act, and subject to subsections (4.1) and (8) and 8304(2), an individual's pension credit for a calendar year with respect to an employer under a money purchase provision of a registered pension plan is the total of all amounts each of which is

(a) a contribution (other than an additional voluntary contribution made by the individual in 1990, an excluded contribution or a contribution described in paragraph 8308(6)(e) or (g)) made under the provision in the year by

(i) the individual, except to the extent that the contribution was not made in connection with the individual's employment with the employer and is included in determining the individual's pension credit for the year with respect to any other employer who participates in the plan, or

(ii) the employer with respect to the individual, or

(b) such portion of an amount allocated in the year to the individual as is attributable to

(i) forfeited amounts under the provision or earnings of the plan in respect thereof,

(ii) a surplus under the provision,

(ii.1) property transferred to the provision in respect of the actuarial surplus under a defined benefit provision of the plan or another registered pension plan, or

(ii.2) property transferred to the provision in respect of the surplus under another money purchase provision of the plan or under a money purchase provision of another registered pension plan,

except to the extent that that portion is

(iii) included in determining the individual's pension credit for the year with respect to any other employer who participates in the plan,

(iv) paid to the individual in the year, or

(v) where the year is 1990, attributable to amounts forfeited before 1990 or earnings of the plan in respect thereof,

except that the individual's pension credit is nil where the year is before 1990, and, for the purposes of this subsection, the plan administrator shall determine the portion of a contribution made by an individual or an amount allocated to the individual that is to be included in determining the individual's pension credit with respect to each employer.

Related Provisions: Reg. 8301(15) — Transferred amounts deemed not paid.

History: Subpara. 8301(4)(b)(ii.2) added by P.C. 2003-1497, s. 6, October 2, 2003, *Canada Gazette*, Part II, October 22, 2003, applicable to the determination of pension credits for 1999 *et seq.*

That portion of subsec. 8301(4) before subpara. (a)(i) amended and subpara. (b)(ii.1) added by P.C. 1995-17, subsecs. 2(1) and (2), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995. That portion of subsec. 8301(4) before subpara. (a)(i) is applicable with respect to the determination of pension credits for 1990 *et seq.*, except that for years before 1993, it shall be read without reference to subsection 8301(4.1). Subpara. 8301(4)(b)(ii.1) is applicable with respect to the determination of pension credits for 1991 *et seq.*

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans.

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions).

(4.1) Money purchase pension credits based on amounts allocated — Where,

(a) under the terms of a money purchase provision of a pension plan, the method for allocating contributions is such that contributions made by an employer with respect to a particular individual may be allocated to another individual, and

(b) the Minister has, on the written application of the administrator of the plan, approved in writing a method for determining pension credits under the provision that, for each individual, takes into account amounts allocated to the individual,

each pension credit under the provision is the amount determined in accordance with the method approved by the Minister.

History: Subsec. 8301(4.1) added by P.C. 1995-17, subsec. 2(3), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable with respect to the determination of pension credits for 1993 *et seq.*

(5) Pension credit — defined benefit provision of a specified multi-employer plan — For the purposes of this Part and Part LXXXV and subsection 147.1(9) of the Act, an individual's pension credit for a calendar year with respect to an employer under a defined benefit provision of a registered pension plan that is, in the year, a specified multi-employer plan is the aggregate of

(a) the aggregate of all amounts each of which is a contribution (other than an excluded contribution) made under the provision by the individual

(i) in the year, in respect of

(A) the year, or

(B) a plan year ending in the year (other than in respect of such portion of a plan year as is before 1990), or

(ii) in January of the year (other than in January 1990) in respect of the immediately preceding calendar year,

except to the extent that the contribution was not made in connection with the individual's employment with the employer and is included in determining the individual's pension credit for the year with respect to any other employer who participates in the plan,

(b) the aggregate of all amounts each of which is a contribution made in the year by the employer in respect of the provision, to the extent that the contribution may reasonably be considered to be determined by reference to the number of hours worked by the individual or some other measure that is specific to the individual, and

(c) the amount determined by the formula

$$\frac{A}{B} \times (C - B)$$

where

A is the amount determined under paragraph (b) for the purpose of computing the individual's pension credit,

B is the aggregate of all amounts each of which is the amount determined under paragraph (b) for the purpose of computing the pension credit of an individual for the year with respect to the employer under the provision, and

C is the aggregate of all amounts each of which is a contribution made in the year by the employer in respect of the provision,

except that, where the year is before 1990, the individual's pension credit is nil.

Related Provisions: ITA 257 — Negative amounts in formulas.

(6) Pension credit — defined benefit provision — Subject to subsections (7), (8) and (10) and sections 8304 and 8308, for the purposes of this Part and Part LXXXV and subsection 147.1(9) of the Act, an individual's pension credit for a calendar year with respect to an employer under a defined benefit provision of a particular registered pension plan (other than a plan that is, in the year, a specified multi-employer plan) is

(a) if the year is after 1989, the amount determined by the formula

$$A - B$$

where

A is 9 times the individual's benefit entitlement under the provision with respect to the employer and the year, and

B is the amount, if any, by which the PA offset for the year exceeds the total of all amounts each of which is the value of B determined under this para-

graph for the purpose of computing the individual's pension credit for the year

(i) with respect to the employer under any other defined benefit provision of a registered pension plan,

(ii) with respect to any other employer who at any time in the year does not deal at arm's length with the employer, under a defined benefit provision of a registered pension plan, or

(iii) with respect to any other employer under a defined benefit provision of the particular plan; and

(b) if the year is before 1990, nil.

Related Provisions: ITA 257 — Negative amounts in formulas; Reg. 8302(1) — Benefit entitlement is portion attributable to employer.

History: Subsec. 8301(6) amended by P.C. 1998-2256, subsec. 5(2), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1989.

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans.

(7) Pension credit — defined benefit provision of a multi-employer plan — Where a registered pension plan is a multi-employer plan (other than a specified multi-employer plan) in a calendar year, the following rules apply, except to the extent that the Minister has waived in writing their application in respect of the plan, for the purpose of determining the pension credit of an individual for the year under a defined benefit provision of the plan:

(a) where the individual is employed in the year by more than one participating employer, the pension credit of the individual for the year under the provision with respect to a particular employer shall be determined as if the individual were not employed by any other participating employer;

(b) the description of B in paragraph (6)(a) shall be read as

"B is the amount determined by the formula

$$(C \times D) - E$$

where

C is the PA offset for the year,

D is

(i) where the member rendered services on a full-time basis throughout the year to the employer, one, and

(ii) in any other case, the fraction (not greater than one) that measures the services that, for the purpose of determining the member's lifetime retirement benefits under the provision, the member is treated as having rendered in the year to the employer, expressed as a proportion of the services that would have been rendered by the member in the year to the employer if the member had rendered services to the employer on a full-time basis throughout the year, and

E is the total of all amounts each of which is the value of B determined under this paragraph for the purpose of computing the individual's pension credit for the year with respect to the employer under any other defined benefit provision of the plan; and";

(c) where a period in the year is a period of reduced services of the individual, the pension credit of the individual for the year under the provision with respect to each participating employer shall be determined as the aggregate of

(i) the pension credit that would be determined if no benefits (other than benefits attributable to services rendered by the individual) had accrued to the individual in respect of periods of reduced services, and

(ii) the pension credit that would be determined if the only benefits that had accrued to the individual were benefits in respect of periods of reduced services, other than benefits attributable to services rendered by the individual during such periods; and

(d) subsection (10) shall not apply.

Related Provisions: ITA 257 — Negative amounts in formulas.

History: Para. 8301(7)(b) amended by P.C. 1998-2256, subsec. 5(3), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1989.

(8) Non-vested termination from RPP — For the purposes of this Part and Part LXXXV and subsection 147.1(9) of the Act, and subject to subsection (9), where

(a) an individual ceased in a calendar year after 1989 and before 1997 to be employed by an employer who participated in a registered pension plan for the benefit of the individual,

(b) as a consequence of the termination of employment, the individual ceased in the year to have any rights to benefits (other than a right to a refund benefit) under a money purchase or defined benefit provision of the plan,

(c) the individual was not entitled to benefits under the provision at the end of the year, or was entitled only to a refund benefit, and

(d) no benefit has been paid under the provision with respect to the individual, other than a refund benefit,

the individual's pension credit under the provision for the year with respect to the employer is

(e) where the provision is a money purchase provision, the total of all amounts each of which is a contribution (other than an additional voluntary contribution made by the individual in 1990, an excluded contribution or a contribution described in paragraph 8308(6)(e)) made under the provision in the year by the individual, except to the extent that the contribution was not made in connection with the individual's employment with the employer and is included in determining the individual's pension credit for the year with respect to any other employer who participates in the plan, and

(f) where the provision is a defined benefit provision, the lesser of

(i) the pension credit that would be determined if this subsection were not applicable, and

(ii) the aggregate of all amounts each of which is a contribution (other than an excluded contribution) made under the provision by the individual in, and in respect of, the year, except to the extent that the contribution was not made in connection with the individual's employment with the employer and is included in determining the individual's pension credit for the year with respect to any other employer who participates in the plan.

Related Provisions: Reg. 8300(7) — Benefits include contingent benefits.

History: Para. 8301(8)(a) amended by P.C. 1998-2256, subsec. 5(4), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1989.

Para. 8301(8)(e) amended by P.C. 1995-17, subsec. 2(4), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable with respect to the determination of pension credits for 1990 *et seq.*

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans.

(9) Multi-employer plans — Subsection (8) is not applicable in respect of a registered pension plan that is a multi-employer plan in a calendar year except, where

(a) the plan is not a specified multi-employer plan in the year;

(b) if the plan contains a defined benefit provision, the Minister has waived in writing the application of paragraph (7)(b) in respect of the plan for the year; and

(c) the Minister has approved in writing the application of subsection (8) in respect of the plan for the year.

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans.

(10) Transition rule — money purchase offsets — Where,

(a) throughout the period beginning on January 1, 1981 and ending on December 31 of a particular calendar year after 1989 and before 2000, there has been subtracted, in determining the amount of lifetime retirement benefits under a defined benefit provision of a registered pension plan (other than a specified multi-employer plan), the amount of lifetime retirement benefits under a money purchase provision of the plan or of another registered pension plan,

(b) lifetime retirement benefits under the defined benefit provision are determined, at the end of the particular year, in substantially the same manner as they were determined at the end of 1989, and

(c) for each individual and each calendar year before 1990, the amount of employer contributions made under the money purchase provision for the year with respect to the individual did not exceed $3,500,

the pension credit of an individual for the particular year with respect to an employer under the defined benefit provision is equal to the amount, if any, by which

(d) the amount that would, but for this subsection, be the individual's pension credit

exceeds

(e) the lesser of

(i) $2,500, and

(ii) the amount determined by the formula

$$\frac{1}{10} \times [\, A - (B \times C)\,]$$

where

A is the balance in the individual's account under the money purchase provision at the end of 1989,

B is the aggregate of all amounts each of which is the duration (measured in years, including any fraction of a year) of a period ending before 1990 that is pensionable service of the individual under the defined benefit provision and that is not part of a longer period ending before 1990 that is pensionable service of the individual under the provision, and

C is the amount that would be the individual's pension credit for 1989 with respect to the employer under the defined benefit provision if subsection (6) were read without reference to the words "if the year is after 1989" in paragraph (6)(a) and without reference to paragraph (6)(b).

Related Provisions: ITA 257 — Negative amounts in formulas; Reg. 8301(7)(d) — Provisions inapplicable in determining pension credit in multi-employer plan.

History: The description of C in subpara. 8301(10)(e)(ii) amended by P.C. 1998-2256, subsec. 5(5), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1989.

(11) Timing of contributions — Subject to paragraph (12)(b), for the purposes of this Part, a contribution made by an employer in the first two months of a calendar year to a deferred profit sharing plan, in respect of a money purchase provision of a registered pension plan, or in respect of a defined benefit provision of a registered pension plan that was, in the immediately preceding calendar year, a specified multi-employer plan, shall be deemed to have been made by the employer at the end of the immediately preceding calendar year and not to have been made in the year, to the extent that the contribution can reasonably be considered to relate to a preceding calendar year.

Information Circulars: 98-2: Prescribed compensation for RPPs, para. 25.

(12) Indirect contributions — For the purposes of this Part and Part LXXXIV, where a trade union or association of employers (in this subsection and subsections (13) and (14) referred to as the "contributing entity") makes contributions to a registered pension plan,

(a) such portion of a payment made to the contributing entity by an employer or an individual as may reasonably be considered to relate to the plan (determined in accordance with subsection (13), where that subsection is applicable) shall be deemed to be a contribution made to the plan by the employer or individual, as the case may be, at the time the payment was made to the contributing entity; and

(b) subsection (11) shall not apply in respect of a contribution deemed by paragraph (a) to have been made to the plan.

(13) Apportionment of payments — For the purposes of subsection (12), where employers or individuals make payments in a calendar year to a contributing entity to enable the contributing entity to make contributions to a registered pension plan and the payments are not made solely for the purpose of being contributed to the plan, the contributing entity shall

(a) determine, in a manner that is reasonable in the circumstances, the portion of each payment that relates to the plan;

(b) make the determination in such a manner that all contributions made by the contributing entity to the plan, other than contributions made by the contributing entity as an employer or former employer of members of the plan, are considered to be funded by payments made to the contributing entity by employers or individuals;

(c) in the case of payments remitted to the contributing entity by an employer, notify the employer in writing,

by January 31 of the immediately following calendar year, of the portion, or of the method for determining the portion, of each such payment that relates to the plan; and

(d) in the case of payments remitted to the contributing entity by an individual, notify the administrator of the plan in writing, by January 31 of the immediately following calendar year, of the total amount of payments made in the year by the individual that relate to the plan.

(14) Non-compliance by contributing entity — Where a contributing entity does not comply with the requirements of subsection (13) as they apply in respect of payments made to the contributing entity in a calendar year to enable the contributing entity to make contributions to a registered pension plan,

(a) the plan becomes, on February 1 of the immediately following calendar year, a revocable plan; and

(b) the Minister may make any determinations referred to in subsection (13) that the contributing entity failed to make, or failed to make in accordance with that subsection.

Related Provisions: Reg. 8301(12) — Meaning of contributing entity.

(15) Transferred amounts — For the purposes of subparagraphs (2)(b)(ii) and (4)(b)(iv), an amount transferred for the benefit of an individual from a registered pension plan or a deferred profit sharing plan directly to a registered pension plan, a registered retirement savings plan, a registered retirement income fund or a deferred profit sharing plan shall be deemed to be an amount that was not paid to the individual.

Proposed Amendment — Reg. 8301(15)

(15) Transferred amounts — For the purposes of subparagraph (b)(ii) of the description of A in subsection (2), paragraph (2.1)(b) and subparagraph (4)(b)(iv), an amount transferred for the benefit of an individual from a registered pension plan or a deferred profit sharing plan directly to a registered pension plan, a registered retirement savings plan, a registered retirement income fund or a deferred profit sharing plan is deemed to be an amount that was not paid to the individual.

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 17(2), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend subsec. 8301(15) to read as above, applicable to the determination of pension credits for the 2002 and subsequent calendar years.

Regulatory Impact Analysis Statement: [See under Reg. 8301(2), (2.1) above.] For further details refer to . . . the explanatory notes to the draft income tax proposals [reproduced below. See also under Reg. 214(5).]

Technical Notes, December 20, 2002: Paragraphs 8301(2)(b) and (4)(b) provide that certain amounts allocated to an individual under a DPSP or under a money purchase provision of an RPP are not included in the individual's pension credit if paid to the individual in the year in which they are allocated. For this purpose, subsection 8301(15) of the Regulations deems an amount not to be paid to an individual if it is transferred directly to a DPSP, RPP, RRSP or RRIF. As a consequence, such amounts are included in the individual's pension credit.

Subsection 8301(15) is to be amended to replace the reference to paragraph 8301(2)(b) with a reference to subparagraph (b)(ii) of the description of A in subsection 8301(2) and to add a reference to new paragraph 8301(2.1)(b). This amendment is consequential to a restructuring of subsection 8301(2). For further details, see the commentary to [8301(2)].

History: Subsec. 8301(15) amended by P.C. 1995-17, subsec. 2(5), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable with respect to transfers occurring after August 29, 1990.

(16) Subsequent events — Except as otherwise expressly provided in this Part, each pension credit of an individual for a calendar year shall be determined without regard to transactions, events and circumstances that occur subsequent to the year.

Definitions [Reg. 8301]: "additional voluntary contribution", "amount" — ITA 248(1); "arm's length" — ITA 251(1); "benefits" — Reg. 8300(7); "contributing entity" — Reg. 8301(12); "contribution" — Reg. 8300(8), 8302(11), (12); "deferred profit sharing plan" — ITA 147(1), 248(1); "employed", "employer", "employment" — ITA 248(1); "excluded contribution" — Reg. 8300(1); "individual" — ITA 248(1); "lifetime retirement benefits" — Reg. 8304(5)(c); "Minister" — ITA 248(1); "money purchase limit" — ITA 147.1(1), 248(1); "month" — *Interpretation Act* 35(1); "PA offset" — Reg. 8300(1); "pension credit" — Reg. 8301, 8308.1(2)–(4), 8308.3(2), (3); "period of reduced services" — Reg. 8300(1); "property" — ITA 248(1); "refund benefit" — Reg. 8300(1); "registered pension plan" — ITA 248(1); "registered retirement income fund" — ITA 146.3(1), 248(1); "registered retirement savings plan" — ITA 146(1), 248(1); "specified multi-employer plan" — ITA 147.1(1), Reg. 8510(2), (3); "written" — *Interpretation Act* 35(1)"writing".

8302. Benefit entitlement — **(1)** For the purposes of subsection 8301(6), the benefit entitlement of an individual under a defined benefit provision of a registered pension plan in respect of a calendar year and an employer is the portion of the individual's benefit accrual under the provision in respect of the year that can reasonably be considered to be attributable to the individual's employment with the employer.

Related Provisions: Reg. 8302(2) — Meaning of benefit accrual.

(2) Benefit accrual for year — For the purposes of subsection (1), and subject to subsections (6), (8) and (9), the benefit accrual of an individual under a defined benefit provision of a registered pension plan in respect of a calendar year is the amount computed in accordance with the following rules:

(a) determine the portion of the individual's normalized pension under the provision at the end of the year that can reasonably be considered to have accrued in respect of the year;

(b) where the year is after 1989 and before 1995, determine the lesser of the amount determined under paragraph (a) and

(i) for 1990, $1,277.78,

(ii) for 1991 and 1992, $1,388.89,

(iii) for 1993, $1,500.00, and

(iv) for 1994, $1,611.11; and

(c) where, in determining the amount of lifetime retirement benefits payable to the individual under the provision, there is deducted from the amount of those benefits that would otherwise be payable the amount of lifetime retirement benefits payable to the individual under a money purchase provision of a registered pension plan or the amount of a lifetime annuity payable to the individual under a deferred profit sharing plan, reduce the amount that would otherwise be determined under this subsection by 1/9 of the total of all amounts each of which is the pension credit of the individual for the year under such a money purchase provision or deferred profit sharing plan.

Related Provisions: Reg. 8302(3) — Meaning of normalized pension.

History: Paras. 8302(2)(b) and (c) amended by P.C. 1995-17, subsec. 3(1), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1991.

(3) Normalized pensions — For the purposes of paragraph (2)(a), and subject to subsection (11), the normal-

ized pension of an individual under a defined benefit provision of a registered pension plan at the end of a particular calendar year is the amount (expressed on an annualized basis) of lifetime retirement benefits that would be payable under the provision to the individual immediately after the end of the particular year if

(a) where lifetime retirement benefits have not commenced to be paid under the provision to the individual before the end of the particular year, they commenced to be paid immediately after the end of the year;

(b) where the individual had not attained 65 years of age before the time at which lifetime retirement benefits commenced to be paid (or are assumed by reason of paragraph (a) to have commenced to be paid) to the individual, the individual attained that age at that time;

(c) all benefits to which the individual is entitled under the provision were fully vested;

Selected Cases [Reg. 8302(3)(c)]: *Osborn v. Canada*, [1995] 2 C.T.C. 2215 (TCC) (Non-vested pension amounts treated as if vested for purposes of RRSP contribution limit).

(d) where the amount of the individual's lifetime retirement benefits would otherwise be determined with a reduction computed by reference to the individual's age, duration of service or both, or with any other similar reduction, no such reduction were applied;

(d.1) no reduction in the amount of the individual's lifetime retirement benefits were applied in respect of benefits described in any of clauses 8503(2)(a)(vi)(A) to (C);

(d.2) no adjustment that is permissible under subparagraph 8503(2)(a)(ix) were made to the amount of the individual's lifetime retirement benefits;

(e) where the amount of the individual's lifetime retirement benefits depends on the remuneration received by the individual in a calendar year (in this paragraph referred to as the "other year") other than the particular year, the remuneration received by the individual in the other year were determined in accordance with the following rules:

(i) where the individual was remunerated for both the particular year and the other year as a person who rendered services on a full-time basis throughout each of the years, the remuneration received by the individual in the other year is identical to the remuneration received by the individual in the particular year,

(ii) where subparagraph (i) is not applicable and the individual rendered services in the particular year, the remuneration received by the individual in the other year is the remuneration that the individual would have received in the other year (or a reasonable estimate thereof determined by a method acceptable to the Minister) had the individual's rate of remuneration in the other year been the same as the individual's rate of remuneration in the particular year, and

(iii) where subparagraph (i) is not applicable and the individual did not render services in the particular year, the remuneration received by the individual in the other year is the remuneration that the individual would have received in the other year (or a reasonable estimate thereof determined by a method acceptable to the Minister) had the individual's rate of remuneration in the other year been the amount that it is reasonable to consider would have been the individual's rate of remuneration in the particular year had the individual rendered services in the particular year;

(f) where the amount of the individual's lifetime retirement benefits depends on the individual's remuneration and all or a portion of the remuneration received by the individual in the particular year is treated under the provision as if it were remuneration received in a calendar year preceding the particular year for services rendered in that preceding year, that remuneration were remuneration for services rendered in the particular year;

(g) where the amount of the individual's lifetime retirement benefits depends on the individual's remuneration and the particular year is after 1989 and before 1995, benefits, to the extent that they can reasonably be considered to be in respect of the following range of annual remuneration, were excluded:

(i) where the particular year is 1990, the range from $63,889 to $86,111,

(ii) where the particular year is 1991 or 1992, the range from $69,444 to $86,111,

(iii) where the particular year is 1993, the range from $75,000 to $86,111, and

(iv) where the particular year is 1994, the range from $80,556 to $86,111;

(h) where

(i) the amount of the individual's lifetime retirement benefits depends on the individual's remuneration,

(ii) the formula for determining the amount of the individual's lifetime retirement benefits includes an adjustment to the individual's remuneration for one or more calendar years,

(iii) the adjustment to the individual's remuneration for a year (in this paragraph referred to as the "specified year") consists of multiplying the individual's remuneration for the specified year by a factor that does not exceed the ratio of the average wage for the year in which the amount of the individual's lifetime retirement benefits is required to be determined to the average wage for the specified year (or a substantially similar measure of the change in the wage measure), and

(iv) the adjustment may reasonably be considered to be made to increase the individual's remuneration for the specified year to reflect, in whole or in part, increases in average wages and salaries from that year to the year in which the amount of the individual's lifetime retirement benefits is required to be determined,

the formula did not include the adjustment to the individual's remuneration for the specified year;

(i) where the amount of the individual's lifetime retirement benefits depends on the Year's Maximum Pensionable Earnings for calendar years other than the particular year, the Year's Maximum Pensionable Earnings for each such year were equal to the Year's Maximum Pensionable Earnings for the particular year;

(j) where the amount of the individual's lifetime retirement benefits depends on the actual amount of pension (in this paragraph referred to as the "statutory pension") payable to the individual under the *Canada*

Pension Plan or a provincial plan (as defined in section 3 of that Act), the amount of statutory pension (expressed on an annualized basis) were equal to

(i) 25 per cent of the lesser of the Year's Maximum Pensionable Earnings for the particular year and,

(A) in the case of an individual who renders services throughout the particular year on a full-time basis to employers who participate in the plan, the aggregate of all amounts each of which is the individual's remuneration for the particular year from such an employer, and

(B) in any other case, the amount that it is reasonable to consider would be determined under clause (A) if the individual had rendered services throughout the particular year on a full-time basis to employers who participate in the plan, or

(ii) at the option of the plan administrator, any other amount determined in accordance with a method for estimating the statutory pension that can be expected to result in amounts substantially similar to amounts determined under subparagraph (i);

(k) where the amount of the individual's lifetime retirement benefits depends on a pension (in this paragraph referred to as the "statutory pension") payable to the individual under Part I of the *Old Age Security Act*, the amount of statutory pension payable for each calendar year were equal to the aggregate of all amounts each of which is the the full monthly pension payable under Part I of the *Old Age Security Act* for a month in the particular year;

(l) except as otherwise expressly permitted in writing by the Minister, where the amount of the individual's lifetime retirement benefits depends on the amount of benefits (other than public pension benefits or similar benefits of a country other than Canada) payable under another benefit provision of a pension plan or under a deferred profit sharing plan, the amounts of the other benefits were such as to maximize the amount of the individual's lifetime retirement benefits;

(m) where the individual's lifetime retirement benefits would otherwise include benefits that the plan is required to provide by reason of a designated provision of the law of Canada or a province (within the meaning assigned by section 8513), or that the plan would be required to provide if each such provision were applicable to the plan with respect to all its members, such benefits were not included;

(n) where

(i) the individual attained 65 years of age before lifetime retirement benefits commenced to be paid (or are to be assumed by reason of paragraph (a) to have commenced to be paid) to the individual, and

(ii) an adjustment is made in determining the amount of those benefits for the purpose of offsetting, in whole or in part, the decrease in the value of lifetime retirement benefits that would otherwise result by reason of the deferral of those benefits after the individual attained 65 years of age,

that adjustment were not made, except to the extent that the adjustment exceeds the adjustment that would be made on an actuarially equivalent basis;

(o) except as otherwise provided by subsection (4), where the amount of the individual's lifetime retirement benefits depends on

(i) the form of benefits provided with respect to the individual under the provision (whether or not at the option of the individual), including

(A) the benefits to be provided after the death of the individual,

(B) the amount of retirement benefits, other than lifetime retirement benefits, provided to the individual, or

(C) the extent to which the lifetime retirement benefits will be adjusted to reflect changes in the cost of living, or

(ii) circumstances that are relevant in determining the form of benefits,

the form of benefits and the circumstances were such as to maximize the amount of the individual's lifetime retirement benefits on commencement of payment;

(p) where the amount of the individual's lifetime retirement benefits depends on whether the individual is totally and permanently disabled at the time at which retirement benefits commence to be paid to the individual, the individual were not so disabled at that time; and

(q) where lifetime retirement benefits have commenced to be paid under the provision to the individual before the end of the particular year, benefits payable as a consequence of cost-of-living adjustments described in paragraph 8303(5)(k) were disregarded.

Related Provisions: Reg. 8300(4) — Officer deemed to render services to employer; Reg. 8300(7) — Benefits include contingent benefits; Reg. 8302(5) — Benefit entitlement terminated — normalized pension calculations; Reg. 8503(2) — Permissible benefits; Reg. 8513 — Designate provision of the law of Canada or a province.

History: Paras. 8302(3)(d.1) and (d.2) added by P.C. 2001-153, s. 1, January 30, 2001, *Canada Gazette*, Part II, February 14, 2001, applicable to the determination of pension credits for 1990 *et seq.*

Para. 8302(3)(g) amended by P.C. 1995-17, subsec. 3(2), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1991.

(4) Optional forms — Where the terms of a defined benefit provision of a registered pension plan permit a member to elect to receive additional lifetime retirement benefits in lieu of benefits that would, in the absence of the election, be payable after the death of the member if the member dies after retirement benefits under the provision commence to be paid to the member, paragraph (3)(o) applies as if the following elections were not available to the member:

(a) an election to receive additional lifetime retirement benefits, not exceeding additional benefits determined on an actuarially equivalent basis, in lieu of all or any portion of a guarantee that retirement benefits will be paid for a minimum period of 10 years or less, and

(b) an election to receive additional lifetime retirement benefits in lieu of retirement benefits that would otherwise be payable to an individual who is a spouse or common-law partner or former spouse or common-law partner of the member for a period beginning after the death of the member and ending with the death of the individual, where

(i) the election may be made only if the life expectancy of the individual is significantly shorter than normal and has been so certified in writing by a medical doctor licensed to practise under the laws

of a province or of the place where the individual resides, and

(ii) the additional benefits do not exceed additional benefits determined on an actuarially equivalent basis and on the assumption that the individual has a normal life expectancy.

History: Para. 8302(4)(b) amended by P.C. 2001-957, s. 6, May 31, 2001, *Canada Gazette*, Part II, June 20, 2001, applicable to 2001 *et seq.*, except that if a taxpayer and a person have jointly elected pursuant to s. 144 of the *Modernization of Benefits and Obligations Act* (S.C. 2000, c. 12), in respect of the 1998, 1999 or 2000 taxation year, the amendment applies to the taxpayer and the person in respect of the applicable taxation year *et seq.*

(5) Termination of entitlement to benefits — For the purposes of subsection (3), where an individual ceased in a calendar year to be entitled to all or part of the lifetime retirement benefits provided to the individual under a defined benefit provision of a registered pension plan, the normalized pension of the individual under the provision at the end of the year shall be determined on the assumption that the individual continued to be entitled to those benefits immediately after the end of the year.

Related Provisions: Reg. 8300(7) — Benefits include contingent benefits.

(6) Defined benefit offset — Where the amount of lifetime retirement benefits provided under a particular defined benefit provision of a registered pension plan to a member of the plan depends on the amount of lifetime retirement benefits provided to the member under one or more other defined benefit provisions of registered pension plans, the benefit accrual of the member under the particular provision in respect of a calendar year is the amount, if any, by which

(a) the amount that would, but for this subsection, be the benefit accrual of the member under the particular provision in respect of the year if the benefits provided under the other provisions were provided under the particular provision

exceeds

(b) the amount that would be the benefit accrual of the member under the other provisions in respect of the year if the other provisions were a single provision.

(7) Offset of specified multi-employer plan benefits — Where the amount of an individual's lifetime retirement benefits under a defined benefit provision (in this subsection referred to as the "supplemental provision") of a registered pension plan depends on the amount of benefits payable under a defined benefit provision of a specified multi-employer plan, the defined benefit provision of the specified multi-employer plan shall be deemed to be a money purchase provision for the purpose of determining the benefit accruals of the individual under the supplemental provision.

(8) Transition rule — career average benefits — Where

(a) on March 27, 1988 lifetime retirement benefits under a defined benefit provision of a pension plan were determined as the greater of benefits computed on a career average basis and benefits computed on a final or best average earnings basis,

(b) the method for determining lifetime retirement benefits under the provision has not been amended after March 27, 1988 and before the end of a particular calendar year, and

(c) it was reasonable to expect, on January 1, 1990, that the lifetime retirement benefits to be paid under the provision to at least 75 per cent of the members of the plan on that date (other than members to whom benefits do not accrue under the provision after that date) will be determined on a final or best average earnings basis,

at the option of the plan administrator, benefit accruals under the provision in respect of the particular year may, where the particular year is before 1992, be determined without regard to the career average formula.

(9) Transition rule — benefit rate greater than 2 per cent — Subject to subsection (6), where

(a) the amount of lifetime retirement benefits provided under a defined benefit provision of a registered pension plan to a member of the plan is determined, in part, by multiplying the member's remuneration (or a function of the member's remuneration) by one or more benefit accrual rates, and

(b) the largest benefit accrual rate that may be applicable is greater than 2 per cent,

the member's benefit accrual under the provision in respect of 1990 or 1991 is the lesser of

(c) the member's benefit accrual otherwise determined, and

(d) 2 per cent of the aggregate of all amounts each of which is the amount that would, if the definition "compensation" in subsection 147.1(1) of the Act were read without reference to subparagraphs (a)(iii) and (iv) and paragraphs (b) and (c) thereof, be the member's compensation for the year from an employer who participated in the plan in the year for the benefit of the member.

Related Provisions: Reg. 8302(10) — Period of reduced remuneration.

(10) Period of reduced remuneration — For the purposes of paragraph (9)(d), where a member of a registered pension plan is provided with benefits under a defined benefit provision of the plan in respect of a period in 1990 or 1991

(a) throughout which, by reason of disability, leave of absence, lay-off or other circumstance, the member rendered no services, or rendered a reduced level of services, to employers who participate in the plan, and

(b) throughout which the member received no remuneration, or a reduced rate of remuneration,

the member's compensation shall be determined on the assumption that the member received remuneration for the period equal to the amount of remuneration that it is reasonable to consider the member would have received if the member had rendered services throughout the period on a regular basis (having regard to the services rendered by the member before the period) and the member's rate of remuneration had been commensurate with the member's rate of remuneration when the member did render services on a regular basis.

(11) Anti-avoidance — Where the terms of a defined benefit provision of a registered pension plan can reasonably be considered to have been established or modified so that a pension credit of an individual for a calendar year under the provision would, but for this subsection, be reduced as a consequence of the application of paragraph (3)(g), that paragraph shall not apply in determining the individual's normalized pension under the provision in respect of the year.

Definitions [Reg. 8302]: "amount", "annuity" — ITA 248(1); "benefit accrual" — Reg. 8302(2); "benefit entitlement" — Reg. 8302(1); "benefits" — Reg. 8300(7); "Canada" — ITA 255, *Interpretation Act* 35(1); "commencement" — *Interpretation Act* 35(1); "contributing entity" — Reg. 8302(12); "deferred profit sharing plan" — ITA 147(1), 248(1); "designated provision of the law of Canada or a province" — Reg. 8513; "employer", "employment", "individual" — ITA 248(1); "lifetime retirement benefits" — Reg. 8304(5)(c); "member's compensation" — Reg. 8302(10); "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "normalized pension" — Reg. 8302(3), (5); "other year" — Reg. 8302(3)(e); "pension credit" — Reg. 8301, 8308.1(2)–(4), 8308.3(2), (3); "person" — ITA 248(1); "province" — *Interpretation Act* 35(1); "registered pension plan" — ITA 248(1); "render services" — Reg. 8300(4); "specified multi-employer plan" — ITA 147.1(1), Reg. 8510(2), (3); "specified year" — Reg. 8302(3)(h)(3); "spouse" — Reg. 8302(4)(b); "statutory pension" — Reg. 8302(3)(j), (k); "supplemental provision" — Reg. 8302(7); "writing" — *Interpretation Act* 35(1).

8303. Past service pension adjustment — (1) PSPA with respect to employer — For the purpose of subsection 248(1) of the Act, "past service pension adjustment" of an individual for a calendar year in respect of an employer means the total of

(a) the accumulated past service pension adjustment (in this Part referred to as "accumulated PSPA") of the individual for the year with respect to the employer, determined as of the end of the year,

(b) the total of all amounts each of which is the foreign plan PSPA (determined under subsection 8308.1(5) or (6)) of the individual with respect to the employer associated with a modification of benefits in the year under a foreign plan (as defined in subsection 8308.1(1)), and

(c) the total of all amounts each of which is the specified retirement arrangement PSPA (determined under subsection 8308.3(4) or (5)) of the individual with respect to the employer associated with a modification of benefits in the year under a specified retirement arrangement (as defined in subsection 8308.3(1)).

History: Subsec. 8303(1) amended by P.C. 1996-911, s. 7, June 20, 1996, *Canada Gazette*, Part II, July 10, 1996, applicable with respect to the determination of past service pension adjustments for 1993 *et seq.*

Forms: T4104: Past service pension adjustment guide.

(2) Accumulated PSPA for year — For the purposes of this Part, the accumulated PSPA of an individual for a calendar year with respect to an employer, determined as of any time, is the total of all amounts each of which is the individual's provisional past service pension adjustment (in this Part referred to as "provisional PSPA") with respect to the employer that is associated with

(a) a past service event (other than a certifiable past service event with respect to the individual) that occurred in the preceding year; or

(b) a certifiable past service event with respect to the individual where the Minister has, in the year and before that time, issued a certification for the purposes of subsection 147.1(10) of the Act in respect of the event and the individual.

Related Provisions: Reg. 8303(2.1) — 1991 past service events and certifications.

History: Para. 8303(2)(a) amended by P.C. 2001-153, subsec. 2(1), January 30, 2001, *Canada Gazette*, Part II, February 14, 2001, applicable to past service events that occur after 2000.

The opening words of subsec. 8303(2) amended by P.C. 1998-2256, subsec. 6(1), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1995.

(2.1) 1991 past service events and certifications — For the purposes of subsection (2),

(a) a past service event that occurred in 1991 (including, for greater certainty, a past service event that is deemed by paragraph 8304(3)(b) to have occurred immediately after the end of 1990) shall be deemed to have occurred on January 1, 1992 and not to have occurred in 1991; and

(b) a certification issued by the Minister in 1991 shall be deemed to have been issued on January 1, 1992 and not to have been issued in 1991.

History: Subsec. 8303(2.1) added by P.C. 1995-17, s. 4, January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1990.

(3) Provisional PSPA — Subject to subsections (8) and (10) and sections 8304 and 8308, for the purposes of this Part, the provisional PSPA of an individual with respect to an employer that is associated with a past service event that occurs at a particular time in a particular calendar year is the amount determined by the formula

$$A - B - C + D$$

where

A is the aggregate of all amounts each of which is, in respect of a calendar year after 1989 and before the particular year, the amount that would have been the individual's pension credit for the year with respect to the employer under a defined benefit provision of a registered pension plan (other than a plan that is, at the particular time, a specified multi-employer plan) had the individual's benefit entitlement under the provision in respect of the year and the employer been equal to the individual's redetermined benefit entitlement (determined as of the particular time) under the provision in respect of the year and the employer,

B is the aggregate that would be determined for A if the reference in the description of A to "determined as of the particular time" were read as a reference to "determined as of the time immediately before the particular time",

C is such portion of the amount of the individual's qualifying transfers made in connection with the past service event as is not deducted in computing the provisional PSPA of the individual with respect to any other employer, and

D is the total of all amounts each of which is an excess money purchase transfer in relation to the individual and the past service event that is not included in determining any other provisional PSPA of the individual that is associated with the past service event.

Related Provisions: ITA 257 — Negative amounts in formulas; Reg. 8303(4) — Meaning of redetermined benefit entitlement; Reg. 8303(6) — Meaning of qualifying transfers; Reg. 8303(7.1) — Excess money purchase transfer amount; Reg. 8500(8)(c) — Non-member benefits ignored in determining pension adjustment.

History: The formula in subsec. 8303(3) amended, and the description of D added, by P.C. 1998-2256, subsecs. 6(2) and (3), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable with respect to past service events that occur after 1997.

Forms: T1004: Applying for the certification of a provisional PSPA.

(4) Redetermined benefit entitlement — For the purposes of the description of A in subsection (3), an individual's redetermined benefit entitlement under a defined benefit provision of a registered pension plan in respect of a calendar year and an employer, determined as of a particular time, is the amount that would be determined under section 8302 to be the individual's benefit

entitlement under the provision in respect of the year and the employer if, for the purpose of computing the benefit accrual of the individual in respect of the year under the provision and, where subsection 8302(6) is applicable, under any other defined benefit provision, the amount determined under paragraph 8302(2)(a) in respect of a specific provision were equal to such portion of the individual's normalized pension (computed in accordance with subsection (5)) under the specific provision at the particular time, determined with reference to the year, as may reasonably be considered to have accrued in respect of the year.

(5) Normalized pension — For the purposes of subsection (4), the normalized pension of an individual under a defined benefit provision of a registered pension plan at a particular time, determined with reference to a calendar year (in this subsection referred to as the "pension credit year"), is the amount (expressed on an annualized basis) of lifetime retirement benefits, other than excluded benefits, that would be payable to the individual under the provision immediately after the particular time if

(a) where lifetime retirement benefits have not commenced to be paid under the provision to the individual before the particular time, they commenced to be paid immediately after the particular time,

(b) where the individual had not attained 65 years of age before the time at which lifetime retirement benefits commenced to be paid (or are assumed by reason of paragraph (a) to have commenced to be paid) to the individual, the individual attained that age at that time,

(c) the amount of the individual's lifetime retirement benefits were determined with regard to all past service events occurring at or before the particular time and without regard to past service events occurring after the particular time,

(d) paragraphs 8302(3)(c) to (p) (other than paragraph 8302(3)(g), where subsection 8302(11) was applicable in respect of the pension credit year and the provision or would have been applicable had all benefits provided as a consequence of past service events become provided in the pension credit year) were applied for the purpose of determining the amount of the individual's lifetime retirement benefits and, for the purpose of those paragraphs, the pension credit year were the particular year referred to in those paragraphs, and

(e) where

(i) the amount of the individual's lifetime retirement benefits under the provision depends on the individual's remuneration, and

(ii) all or any part of the individual's lifetime retirement benefits in respect of the pension credit year became provided as a consequence of a past service event, pursuant to terms of the provision that enable benefits to be provided to members of the plan in respect of periods of employment with employers who have not participated under the provision,

the remuneration received by the individual from each such employer in respect of a period of employment in respect of which the individual is provided with benefits under the provision were remuneration received from an employer who has participated under the provision for the benefit of the individual,

and, for the purposes of this subsection, the following benefits are excluded benefits:

(f) where the formula for determining the amount of lifetime retirement benefits payable under the provision to the individual requires the calculation of an amount that is the product of a fixed rate and the duration of all or part of the individual's pensionable service, benefits payable as a direct consequence of an increase in the value of the fixed rate at any time (in this paragraph referred to as the "time of increase") after the pension credit year, other than benefits

(i) provided as a consequence of a second or subsequent increase in the value of the fixed rate after the time that retirement benefits under the provision commenced to be paid to the individual, or

(ii) that would not have become provided had the value of the fixed rate been increased to the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the value of the fixed rate immediately before the time of the increase,

B is the average wage for the calendar year that includes the time of the increase, and

C is

(A) if the value of the fixed rate has previously been increased in the calendar year that includes the time of increase, the average wage for that year, or

(B) otherwise, the average wage for the year immediately preceding the calendar year that includes the time of increase,

Proposed Addition — Reg. 8303(5)(f.1), (f.2)

(f.1) where the formula for determining the amount of lifetime retirement benefits payable under the provision to the individual includes a limit that is the product of the duration of the individual's pensionable service and the lesser of a percentage of the individual's remuneration and a fixed rate, and the value of the fixed rate is increased after the pension credit year to an amount equal to the defined benefit limit for the earlier of the year in which the increase occurs and the year in which retirement benefits under the provision commenced to be paid to the individual, the portion of the benefits payable as a direct consequence of the increase that would not have become provided had the value of the fixed rate been set at the defined benefit limit for the pension credit year, if

(i) the value of the fixed rate was, immediately before the increase, equal to the defined benefit limit for the year in which the value of the fixed rate was last established, and

(ii) where the year in which the value of the fixed rate was last established precedes the year immediately preceding the year in which the increase occurs,

(A) the Minister has approved in writing the application of this paragraph in respect of the past service event,

(B) there are more than nine active members (within the meaning assigned by paragraph 8306(4)(a)) under the provision, and

(C) the plan is not a designated plan under section 8515,

Regulatory Impact Analysis Statement: Section 8303 provides rules for determining the PSPA of an individual for a year. A PSPA arises when benefits are provided on a past service basis to an individual under a defined benefit provision of an RPP, either by upgrading existing benefits for prior years of pensionable service or by crediting additional years of pensionable service.

An individual's PSPA reduces the individual's RRSP deduction room. In some cases, past service benefits cannot be provided until the plan administrator obtains certification from the Canada Revenue Agency (CRA) that the individual has enough RRSP deduction room to support the corresponding PSPA.

In general terms, an individual's PSPA is the total of the additional pension credits that would have been determined for each past service year, if the past service benefits had been provided to the individual on a current service basis in the past service year. (Pension credits are relevant in determining PAs which, in turn, reduce RRSP deduction room.) This requires that the individual's pension credits under the defined benefit provision for each year of past service (referred to as the "pension credit year") be recalculated, taking into account the additional benefits. Subsection 8303(5) provides that, in doing these recalculations, certain benefit increases are to be excluded, thus reducing the PSPA that would otherwise be determined.

One such exclusion is that provided for in paragraph 8303(5)(f). Where the benefit formula in the RPP includes a flat benefit component, paragraph 8303(5)(f) excludes benefits arising from an increase in the flat benefit rate to the extent of the percentage increase in the average wage from the preceding year to the current year. The most common application of this exclusion would be to exclude annual benefit increases that are due to wage indexing of the defined benefit limit.

The defined benefit limit is defined in subsection 8500(1) of the Regulations as the greater of $1,722 and 1/9 of the "money purchase limit" (as defined in subsection 147.1(1) of the Act). As a result of increases to the money purchase limit announced in the 2003 and 2005 budgets, the defined benefit limit is $1,833 for 2004 and $2,000 for 2005, and is scheduled to be increased to $2,111 for 2006, $2,222 for 2007, $2,333 for 2008, $2,444 for 2009 and indexed to average wage growth thereafter.

To the extent that the increases in the average wage for the years 2004 to 2009 are less than the percentage increases in the defined benefit limit, paragraph 8303(5)(f) will not serve to fully exclude benefit increases resulting from corresponding increases in a plan's maximum pension limit. To avoid this result, new paragraph 8303(5)(f.1) is introduced to exclude these benefit increases from PSPA. This will ensure that no PSPA will be required to be reported for members whose benefits are increased simply as a result of the increases to the defined benefit limit.

New paragraph 8303(5)(f.1) also provides relief in cases where a plan sponsor delays increasing the plan's maximum pension limit to reflect increases in the defined benefit limit (including increases to the defined benefit limit for years after 2009). PSPAs, in these circumstances, will reflect only the portion of the increase in the fixed rate that is required to bring it up to the defined benefit limit for the pension credit year.

Paragraph 8303(5)(f.1) applies where the benefit formula under the defined benefit provision contains a benefit limit that is the product of (i) the individual's pensionable service and (ii) the lesser of a percentage of the individual's remuneration and a fixed rate, and the rate is increased to the defined benefit limit for the current year (or, if earlier, the year of pension commencement).

For increases after 2005, the PSPA exclusion is available only if the previous fixed rate was equal to the defined benefit limit for the year in which the rate was established. Where the fixed rate has not been adjusted annually to reflect increases in the defined benefit limit, three additional conditions apply. First, there must be more than nine active members under the provision. Second, the plan must not be a designated plan under section 8515. Finally, written approval of the application of the paragraph must be obtained from the Minister of National Revenue. Generally speaking, the Minister would give approval where, for example, the plan sponsor delayed increasing the fixed rate due to financial or collective bargaining considerations. However, the Minister would not give approval if it is reasonable to conclude that one of the reasons for the delay was to enable members to obtain RRSP deduction room that would not otherwise have been available.

Example

A defined benefit pension plan with a 2 per cent benefit accrual rate is amended in 2007 to increase the plan limit from $1,722 to the current defined benefit limit of $2,222.

Assuming that all of the conditions for the benefit exclusion in paragraph 8303(5)(f.1) to apply are met, the resulting PSPA for a high-income earner with current service accruals since the beginning of 2000 would be $7,000, determined as follows:

- *For the 2000 to 2003 pension credit years, nil [= 9 × ($1,722 historical defined benefit limit − $1,722 plan limit)].*
- *For the 2004 pension credit year, $1,000 [= 9 × ($1,833 historical defined benefit limit − $1,722 plan limit)].*
- *For the 2005 pension credit year, $2,500 [= 9 × ($2,000 historical defined benefit limit − $1,722 plan limit)].*
- *For the 2006 pension credit year, $3,500 [= 9 × ($2,111 historical defined benefit limit − $1,722 plan limit)].*

New paragraph 8306(1)(c.1) provides an exemption from the requirement to obtain a certification whenever the benefit exclusion in paragraph 8303(5)(f.1) is applicable in determining an individual's PSPA. Consequently, a certification is not required for the residual PSPA arising in the situation described in the example. There is no exemption from certification for past service events that occur in 2004 or 2005 if the previous fixed rate was less than $1,715.

(f.2) where the formula for determining the amount of lifetime retirement benefits payable under the provision to the individual includes a limit that is the product of the duration of the individual's pensionable service and the lesser of a percentage of the individual's remuneration and a fixed rate the value of which can reasonably be considered to be fixed each year as a portion of the defined benefit limit for that year, benefits payable as a direct consequence of an increase, after the pension credit year, in the value of the fixed rate to reflect the defined benefit limit for the year in which the increase occurs, if

(i) except as otherwise expressly permitted by the Minister, it is reasonable to consider that, for years after 1989, the ratio of the fixed rate to the defined benefit limit has been, and will remain, constant,

(ii) the benefits are not provided as a consequence of a second or subsequent increase in the value of the fixed rate after the time that retirement benefits under the provision commenced to be paid to the individual,

(iii) the Minister has approved in writing the application of this paragraph in respect of the past service event, and

(iv) the plan is not a designated plan under section 8515,

Regulatory Impact Analysis Statement: New paragraph 8303(5)(f.2) provides a PSPA exclusion with respect to combination defined benefit/money purchase arrangements where, in order to provide room for contributions under the money purchase provision, the maximum pension limit under the defined benefit provision is set (directly or indirectly) as a fixed ratio of the current year's defined benefit limit.

Paragraph 8303(5)(f.2) is relevant in those years in which the annual increase in the defined benefit limit exceeds average wage growth (as in years 2004 to 2009) and, as a result, paragraph 8303(5)(f) would not serve to fully exclude, from PSPA, the benefit increases arising from the increase in the plan's maximum pension limit.

Paragraph 8303(5)(f.2) addresses this situation by excluding the full amount of the benefit increase from the PSPA calculation. Specifically, it excludes benefits provided as a direct consequence of an increase in the fixed rate under a defined benefit provision, if it is reasonable to conclude (i) that the value of the fixed rate is set each year as a portion of the defined benefit limit for that year, and (ii) that the ratio of the fixed rate to the defined benefit limit for years after 1989 has been, and

will remain, constant. It should be noted that there does not necessarily have to be a money purchase provision established in conjunction with the defined benefit provision for this exclusion to apply. It will suffice for there to be a defined benefit provision under which the fixed rate is determined each year as a proportion of the current defined benefit limit.

The application of paragraph 8303(5)(f.2) requires the written approval of the Minister. It does not apply to plans that are designated plans under section 8515, and it generally does not apply after pension commencement.

[See also under Reg. 214(5).]

Application: The May 16, 2005 draft regulations (deferred income plans), s. 18, (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will add paras. 8303(5)(f.1) and (f.2), applicable in respect of past service events that occur after 2003, except that in its application in respect of past service events that occur before 2006, para. (f.1) is to be read without reference to its subparas. (i) and (ii).

Letter from Dept. of Finance, October 28, 2004:

Dear [xxx]:

This is in reply to your letter of June 30, 2004, addressed to Dave Wurtele and written on behalf of the [xxx] providing comments on proposed paragraph 8303(5)(f.1) of the *Income Tax Regulations*. The draft Regulation was included in the February 27, 2004 technical amendments package. I also acknowledge your telephone conversations with Dave Wurtele.

The draft Regulation provides a time-limited exclusion from a past service pension adjustment (PSPA) for members of defined benefit pension plans whose accrued pension benefits are increased to reflect the increases to the defined benefit limit announced in the 2003 federal budget.

You express concern that the proposed PSPA relief is too narrow for plans with a frozen maximum pension limit that does not automatically recognize annual increases to the defined benefit limit. Due to financial or collective bargaining constraints, we understand that some plan sponsors are not currently in a position to amend their plan to reflect the increased defined benefit limit. If the plan sponsor waits until after 2005 to amend, the PSPA exclusion will no longer be available and the resulting PSPA will be based on the current defined benefit limit, rather than the historical defined benefit limit. The effect of this is that affected members will be charged RRSP room in excess of any additional RRSP room that they would have enjoyed in the relevant past service years.

We appreciate the concerns that you have raised and are prepared to recommend to the Minister of Finance that the PSPA exclusion provided by draft Regulation 8303(5)(f.1) be extended to amendments made after 2005 to recognize increases to the defined benefit limit. We are also prepared to recommend to the Minister that Regulation 8306 be amended so that any residual PSPA determined in this situation be exempt from the requirement for certification.

As you know, it is our intention to propose certain eligibility requirements to prevent these provisions from being exploited. In its application to benefit increases that occur after 2005, we anticipate that Regulation 8303(5)(f.1) will apply only where the following conditions are satisfied:

- the past service event consists of an amendment to the plan's maximum pension limit to reflect increases in the defined benefit limit from the year in which the limit was last established to the current year;
- the benefit formula applicable to active members whose benefits were increased as a result of the increase in the plan limit is the same or substantially similar to the benefit formula applicable to other active members;
- all or substantially all of the lifetime retirement benefits accrued to members whose benefits are increased as a result of the increase in the plan limit were initially provided on a current service basis;
- benefits provided, as a result of the increase in the plan limit, to inactive members are not more advantageous than those provided to active members;
- there are at least 10 active members under the provision;
- the plan is not a designated plan; and
- the Minister of National Revenue approves the application of the provision.

The effect of this proposal would be to ensure that PSPAs reflect only the portion of the increase in the plan limit that is required to bring the limit up to the historical defined benefit limit for each past service year.

Assume, for example, that the defined benefit limit is $2,100 for 2006 and $2,200 for 2007, and that a defined benefit pension plan with a 2% benefit accrual rate is amended in 2007 to increase the plan limit from $1,722 to the current defined benefit limit. The resulting PSPA for a high-income member with current service accruals since the beginning of 2000 would be approximately $6,900, determined as follows:

- for the 2000 to 2003 pension credit years, nil (= 9 × ($1,722 historical defined benefit limit – $1,722 plan limit));
- for the 2004 pension credit year, $1,000 (= 9 × ($1,833 – $1,722));
- for the 2005 pension credit year, $2,500 (= 9 × ($2,000 – $1,722)); and
- for the 2006 pension credit year, $3,400 (= 9 × ($2,100 – $1,722)).

You have also expressed concern with respect to combination defined benefit/money purchase plans where, in order to leave contribution room for the money purchase component, the plan limit for the defined benefit component is set (directly or indirectly) as a fixed ratio of the current year's defined benefit limit. Although the plan limit for the defined benefit component of such plans is increased each year by the annual percentage increase in the defined benefit limit, only that portion of the increase that is supported by the annual increase in the average wage is excluded (by virtue of existing Regulation 8303(5)(f)) from PSPA. Thus, even though the plan limit increases in 2004 and 2005 are limited to the proportional increase in the defined benefit limit for those years, PSPAs will arise for the portion of the increases that are not supported by increases in the average wage. You have suggested that a pro-rata PSPA exclusion be made available in this situation, with the approval of the Minister of National Revenue. We agree with this suggestion, and will recommend an amendment to that effect.

Of course, we cannot offer any assurance that the recommendations that we intend to make in this regard will be adopted. Nonetheless, we trust that this statement of our position is helpful.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

c.c. Annelisa Gillespie

(g) where

(i) the provision is a flat benefit provision,

(ii) at the particular time, the amount (expressed on an annual basis) of lifetime retirement benefits provided under the provision to each member in respect of pensionable service in each calendar year does not exceed 40 per cent of the defined benefit limit for the year that includes the particular time,

(iii) the conditions in subsection 8306(2) are satisfied in respect of the provision and the past service event in connection with which the normalized pension is being calculated, and

(iv) only one fixed rate is applicable in determining the amount of the individual's lifetime retirement benefits,

benefits provided as a direct consequence of an increase in the value of the fixed rate at any time (in this paragraph referred to as the "time of increase") after the pension credit year, other than benefits

(v) provided as a consequence of a second or subsequent increase in the value of the fixed rate after the time that retirement benefits under the provision commenced to be paid to the individual, or

(vi) that would not have become provided had the value of the fixed rate been increased to the greater of,

(A) the greatest of all amounts each of which is an amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is a value of the fixed rate in the period beginning on January 1, 1984 and ending immediately before the time of increase,

B is the average wage for the calendar year that includes the time of increase, and

C is the average wage for the later of 1984 and the calendar year in which the value of the fixed rate used for A was first effective, and

(B) the amount determined by the formula

$$D + (E \times F)$$

where

D is the value of the fixed rate immediately before the time of increase,

E is the amount by which the value of the fixed rate used for D would have to be increased to provide an increase in the individual's annual lifetime retirement benefits equal to $18 for each year of pensionable service, and

F is the duration (measured in years, including any fraction of a year) of the period beginning on the later of January 1, 1984 and the day on which the value of the fixed rate used for D was first effective and ending on the day that includes the time of increase;

(h) where the provision is a flat benefit provision, benefits provided as a direct consequence of an increase at any time (in this paragraph referred to as the "time of increase") after the pension credit year in the value of a fixed rate under the provision where

(i) the value of the fixed rate was increased pursuant to an agreement made before 1992, and

(ii) at the time the agreement was made, it was reasonable to expect that the percentage increase in the value of the fixed rate would approximate or be less than the percentage increase in the average wage from the calendar year in which the value of the fixed rate was last increased before the time of increase (or, if the increase is the first increase, the calendar year in which the initial value of the fixed rate was first applicable) to the calendar year that includes the time of increase,

(i) where the provision is a flat benefit provision under which the amount of each member's retirement benefits depends on the member's job category or rate of pay in such a manner that the ratio of the amount of lifetime retirement benefits to remuneration does not significantly increase as remuneration increases, benefits provided as a direct consequence of a change, after the pension credit year, in the individual's job category or rate of pay,

(j) where

(i) the individual's pensionable service under the provision ends before the particular time,

(ii) the individual's lifetime retirement benefits under the provision have been adjusted by a cost-of-living or similar adjustment in respect of the period (in this paragraph referred to as the "deferral period") beginning at the latest of

(A) the time at which the individual's pensionable service under the provision ends,

(B) if the amount of the individual's lifetime retirement benefits depends on the individual's remuneration, the end of the most recent period for which the individual received remuneration that is taken into account in determining the individual's lifetime retirement benefits,

(C) if the amount of the individual's lifetime retirement benefits depends on the individual's remuneration and the remuneration is adjusted as described in paragraph 8302(3)(h), the end of the period in respect of which the adjustment is made, and

(D) if the formula for determining the amount of the individual's lifetime retirement benefits requires the calculation of an amount that is the product of a fixed rate and the duration of all or part of the individual's pensionable service (or other measure of services rendered by the individual), the time as of which the value of the fixed rate applicable with respect to the individual was established,

and ending at the earlier of the particular time and the time, if any, at which lifetime retirement benefits commenced to be paid under the provision to the individual, and

(iii) the adjustment is warranted, having regard to all prior such adjustments, by the increase in the Consumer Price Index or in the wage measure from the commencement of the deferral period to the time the adjustment was made,

benefits payable as a consequence of the adjustment,

(k) benefits payable as a consequence of a cost-of-living adjustment made after the time lifetime retirement benefits commenced to be paid under the provision to the individual, where the adjustment

(i) is warranted, having regard to all prior such adjustments, by the increase in the Consumer Price Index from that time to the time at which the adjustment was made, or

(ii) is a periodic adjustment described in subparagraph 8503(2)(a)(ii), and

(l) such portion of the individual's lifetime retirement benefits as

(i) would not otherwise be excluded in determining the individual's normalized pension,

(ii) may reasonably be considered to be attributable to cost-of-living adjustments or to adjustments made by reason of increases in a general measure of salaries and wages (other than increases in such a measure after the time at which lifetime retirement benefits commenced to be paid under the provision to the individual), and

(iii) is acceptable to the Minister.

Related Provisions: ITA 257 — Negative amounts in formulas.

(6) Qualifying transfers — For the purposes of subsections (3) and 8304(5) and (7), and subject to subsection (6.1) and paragraph 8304(2)(h), the amount of an individual's qualifying transfers made in connection with a past service event is the total of all amounts each of which is

(a) the portion of an amount transferred to a registered pension plan

(i) in accordance with any of subsections 146(16), 147(19) and 147.3(2), (5) and (7) of the Act, or

(ii) from a specified multi-employer plan in accordance with subsection 147.3(3) of the Act

that is transferred to fund benefits provided to the individual as a consequence of the past service event; or

(b) the amount of any property held in connection with a benefit provision of a registered pension plan that is made available to fund benefits provided to the individual under another benefit provision of the plan as a consequence of the past service event, where the transaction by which the property is made so available is such that, if the benefit provisions were in separate registered pension plans, the transaction would constitute a transfer of property from one plan to the other in accordance with any of subsections 147.3(2), (5) and (7) of the Act.

History: The opening words of para. 8303(6) amended by P.C. 2001-153, subsec. 2(2), January 30, 2001, *Canada Gazette*, Part II, February 14, 2001, applicable to the determination of an individual's qualifying transfers that occur after April 18, 2000.

Subsec. 8303(6) amended by P.C. 1998-2256, subsec. 6(4), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable

(a) to the determination of an individual's qualifying transfers that occur after June 25, 1998, and

(b) where approved by the Minister of National Revenue, to the determination of an individual's qualifying transfers that occurred before June 26, 1998.

(6.1) Exclusion for pre-1990 benefits — The amount of an individual's qualifying transfers made in connection with a past service event shall be determined under subsection (6) without regard to the portion, if any, of amounts transferred or property made available, as the case may be, that can reasonably be considered to have been transferred or made available to fund benefits provided in respect of periods before 1990.

History: Subsec. 8303(6.1) added by P.C. 1998-2256, subsec. 6(4), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to the determination of an individual's qualifying transfers that occur after June 25, 1998.

(7) Deemed payment — Where

(a) an individual has given an irrevocable direction that

(i) an amount be paid to a registered pension plan, or

(ii) property held in connection with a benefit provision of a registered pension plan be made available to fund benefits provided to the individual under another benefit provision of the plan

in the event that the Minister issues a certification for the purposes of subsection 147.1(10) of the Act with respect to the individual and to benefits provided under a defined benefit provision of the plan as a consequence of a past service event, and

(b) the amount is to be paid or the property is to be made available, as the case may be,

(i) where subparagraph (ii) does not apply, on or before the day that is 90 days after the day on which the certification is received by the administrator of the plan, and

(ii) where the plan was deemed by paragraph 147.1(3)(a) of the Act to be a registered pension plan at the time the direction was given, on or before the day that is 90 days after the later of

(A) the day on which the certification is received by the administrator of the plan, and

(B) the day on which the administrator of the plan receives written notice from the Minister of the registration of the plan for the purposes of the Act,

the amount or property, as the case may be, is deemed, for the purpose of subsection (6), to have been paid or made available, as the case may be, at the time the direction was given.

History: Subsec. 8303(7) amended by P.C. 1998-2256, subsec. 6(4), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable

(a) to the determination of an individual's qualifying transfers that occur after June 25, 1998, and

(b) where approved by the Minister of National Revenue, to the determination of an individual's qualifying transfers that occurred before June 26, 1998.

(7.1) Excess money purchase transfer — Where lifetime retirement benefits have, as a consequence of a past service event, become provided to an individual under a defined benefit provision of a registered pension plan (other than a specified multi-employer plan) in respect of a period (in this subsection referred to as the "past service period") that

(a) was previously pensionable service of the individual under a particular defined benefit provision of a registered pension plan (other than a specified multi-employer plan),

(b) ceased to be pensionable service of the individual under the particular provision as a result of the payment of a single amount, all or part of which was transferred on behalf of the individual from the particular provision to a registered retirement savings plan, a registered retirement income fund, a money purchase provision of a registered pension plan or a defined benefit provision of a registered pension plan that was, at the time of the transfer, a specified multi-employer plan,

(c) has not, at any time after the payment of the single amount and before the past service event, been pensionable service of the individual under any defined benefit provision of a registered pension plan (other than a specified multi-employer plan), and

(d) is not, for the purpose of subsection 8304(5), a qualifying past service period in relation to the individual and the past service event,

the amount determined by the formula

$$A - B$$

is, for the purpose of the description of D in subsection (3), an excess money purchase transfer in relation to the individual and the past service event, where

A is the portion of the amount transferred, as described in paragraph (b), that can reasonably be considered to be attributable to benefits in respect of the portion of the past service period that is after 1989, and

B is the total of all amounts each of which is the portion of a pension credit, or the grossed-up amount of a provisional PSPA, of the individual that can reasonably be considered to be attributable to benefits previously provided under the particular provision in respect of the past service period.

Related Provisions: ITA 257 — Negative amounts in formulas; Reg. 8304.1(7) — Meaning of grossed-up amount of provisional PSPA.

History: Subsec. 8303(7.1) added by P.C. 1998-2256, subsec. 6(4), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable with respect to past service events that occur after 1997.

(8) Specified multi-employer plan — Where, in a calendar year, an individual makes a contribution (other

than an excluded contribution) in respect of a defined benefit provision of a registered pension plan that is, in the year, a specified multi-employer plan, and the contribution

(a) is made in respect of a period after 1989 and before the year, and

(b) is not included in determining the individual's pension credit for the year with respect to any employer under the provision,

the individual's provisional PSPA with respect to an employer who participates in the plan, associated with the payment of the contribution, is the portion of the contribution that is not included in the individual's provisional PSPA with respect to any other employer who participates in the plan, and, for the purpose of this subsection, the plan administrator shall determine the portion of the contribution to be included in the provisional PSPA of the individual with respect to each employer.

Related Provisions: Reg. 8303(9) — Contributions include conditional contributions.

(9) Conditional contributions — For the purpose of subsection (8), a contribution includes an amount paid to a registered pension plan where the right of any person to retain the amount on behalf of the plan is conditional on the Minister issuing a certification for the purposes of subsection 147.1(10) of the Act as it applies with respect to the individual and to benefits provided as a consequence of the payment.

(10) Benefits in respect of foreign service — Where as a consequence of a past service event, benefits become provided to an individual under a defined benefit provision of a registered pension plan in respect of a period throughout which the individual was employed outside Canada, and the Minister has consented in writing to the application of this subsection, each provisional PSPA of the individual associated with the past service event shall be determined on the assumption that no benefits were provided in respect of the period.

Related Provisions: Reg. 8503(3)(a)(vii) — Eligible service outside Canada.

Registered Plans Directorate Newsletters: 93-2 (foreign service newsletter); 2000-1 (foreign service newsletter update).

Definitions [Reg. 8303]: "accumulated PSPA" — Reg. 8303(1)(a), 8303(2); "amount" — ITA 248(1); "associated" — ITA 256; "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — ITA 255, *Interpretation Act* 35(1); "certifiable past service event" — Reg. 8300(1); "certification" — Reg. 8303(2.1)(b); "commencement" — *Interpretation Act* 35(1); "contribution" — Reg. 8303(9); "deferral period" — Reg. 8303(5)(j)(ii); "employed", "employer", "employment" — ITA 248(1); "excluded contribution", "flat benefit provision" — Reg. 8300(1); "grossed-up amount" — Reg. 8304(7); "individual" — ITA 248(1); "lifetime retirement benefits" — Reg. 8304(5)(c); "Minister" — ITA 248(1); "normalized pension" — Reg. 8303(5); "past service event" — Reg. 8300(1), 8303(2.1)(a); "past service pension adjustment" — ITA 248(1), Reg. 8303(1); "past service period" — Reg. 8303(7.1); "pension credit" — Reg. 8301, 8308.1(2)-(4), 8308.3(2), (3); "pension credit year" — Reg. 8303(5); "person", "property" — ITA 248(1); "provisional PSPA" — Reg. 8303(2), (3), 8308(4)(e); "qualifying transfers" — Reg. 8303(6); "redetermined benefit entitlement" — Reg. 8303(4); "registered pension plan" — ITA 248(1); "registered retirement income fund" — ITA 146.3(1), 248(1); "registered retirement savings plan" — ITA 146(1), 248(1); "specified multi-employer plan" — ITA 147.1(1), Reg. 8510(2), (3); "time of increase" — Reg. 8303(5)(g), (h); "written", "writing" — *Interpretation Act* 35(1)"writing".

Interpretation Bulletins [Reg. 8303]: IT-124R6: Contributions to registered retirement savings plans.

8304. Past service benefits — Additional rules — (1) Replacement of defined benefits — Where

(a) an individual ceased, at any time in a calendar year, to have any rights to benefits under a defined benefit provision of a registered pension plan (in this subsection referred to as the "former provision"),

(b) benefits became provided at that time to the individual under another defined benefit provision of a registered pension plan (in this subsection referred to as the "current provision") in lieu of the benefits under the former provision,

(c) the benefits that became provided at that time to the individual under the current provision in respect of the period in the year before that time are attributable to employment with the same employers as were the individual's benefits in respect of that period under the former provision,

(d) no amount was transferred in the year on behalf of the individual from the former provision to a registered retirement savings plan, a registered retirement income fund or a money purchase provision of a registered pension plan, and

(e) no benefits became provided under the former provision to the individual in the year and after that time,

each pension credit of the individual under the former provision for the year is nil.

History: Para. 8304(1)(d) amended by P.C. 1995-17, subsec. 5(1), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable with respect to the determination of pension credits for 1990 *et seq.*

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-528: Transfers of funds between registered plans.

Forms: T4104: Past service pension adjustment guide.

(2) Replacement of money purchase benefits — Where

(a) an individual ceased, at any time in a calendar year, to have any rights to benefits under a money purchase provision of a registered pension plan or under a deferred profit sharing plan (in this subsection referred to as the "former provision"),

(b) benefits became provided at that time to the individual under a defined benefit provision of a registered pension plan (in this subsection referred to as the "current provision") in lieu of benefits under the former provision,

(c) the benefits that became provided at that time to the individual under the current provision in respect of the period in the year before that time are attributable to employment with the same employers who made contributions under the former provision in respect of that period on behalf of the individual,

(d) no amount was transferred in the year on behalf of the individual from the former provision to a registered retirement savings plan, a registered retirement income fund, a money purchase provision of a registered pension plan or a deferred profit sharing plan,

(e) no contributions were made under the former provision by or on behalf of the individual, and no other amounts were allocated under the former provision to the individual, in the year and after that time, and

(f) it is reasonable to consider that no excess would, if this subsection did not apply and if the year ended at that time, be determined under any of paragraphs 147(5.1)(a) to (c), 147.1(8)(a) and (b) and (9)(a) and

(b) of the Act with respect to the individual for the year,

the following rules apply:

(g) each pension credit of the individual under the former provision for the year is nil, and

(h) the amount, if any, of the individual's qualifying transfers made in connection with the replacement of the individual's benefits shall be determined under subsection 8303(6) without regard to the portion, if any, of amounts transferred from the former provision to the current provision that can reasonably be considered to relate to an amount that, but for paragraph (g), would have been included in determining the individual's pension credit under the former provision for the year.

Related Provisions: Reg. 8301(2) — Pension credit — DPSP; Reg. 8301(4) — Pension credit — money purchase RPP.

History: Paras. (f) to (h) substituted for the closing words of subsec. 8304(2) by P.C. 2001-153, subsec. 3(3), January 30, 2001, *Canada Gazette*, Part II, February 14, 2001, applicable to the determination of pension credits for 2000 *et seq.* and to the determination of an individual's qualifying transfers that occur after April 18, 2000.

Paras. 8304(2)(d) and (e) amended by P.C. 1995-17, subsec. 5(2), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995. Para. 8304(2)(d) is applicable with respect to the determination of pension credits for 1990 *et seq.* Para. 8304(2)(e) is applicable with respect to the determination of pension credits for 1993 *et seq.*, except that amended para. (e) does not apply with respect to the determination of an individual's pension credits for 1993 under a money purchase provision of a registered pension plan, or under a deferred profit sharing plan, where the individual ceased, on or before April 5, 1994, to have any rights to benefits under the provision or the plan, as the case may be, and no amounts were allocated to the individual under the provision or the plan, as the case may be, after April 5, 1994.

(3) Past service benefits in year of past service event — Subject to subsection (4), where, as a consequence of a past service event that occurs at a particular time in a calendar year, benefits (in this subsection and subsection (4) referred to as "past service benefits") become provided to an individual under a defined benefit provision of a registered pension plan in respect of a period in the year and before the particular time that, immediately before the past service event, was not pensionable service of the individual under the provision, the following rules apply, except to the extent that the Minister has waived in writing their application in respect of the plan:

(a) each pension credit of the individual under the provision for the year shall be determined as if the past service benefits had not become provided to the individual;

(b) where the year is 1990, the past service event shall be deemed, for the purposes of this Part, to have occurred immediately after the end of the year;

(c) where the year is after 1990, each provisional PSPA of the individual associated with the past service event as a consequence of which the past service benefits became provided shall be determined as if the past service event had occurred immediately after the end of the year;

(d) where information that is required for the computation of a provisional PSPA referred to in paragraph (c) is not determinable until after the time at which the provisional PSPA is computed, reasonable assumptions shall be made in respect of such information; and

(e) subsection 147.1(10) of the Act shall apply in respect of the past service benefits to the extent that that subsection would apply if the past service event had occurred immediately after the end of the year.

(4) Exceptions — Subsection (3) does not apply where

(a) the past service benefits become provided in circumstances where subsection (1) or (2) is applicable; or

(b) the period in respect of which the past service benefits are provided was not, at any time before the past service event,

(i) pensionable service of the individual under a defined benefit provision of a registered pension plan, or

(ii) a period in respect of which a contribution was made on behalf of, or an amount (other than an amount in respect of earnings of a plan) was allocated to, the individual under a money purchase provision of a registered pension plan or under a deferred profit sharing plan.

(c) [Repealed]

History: Para. 8304(4)(c) repealed, and para. 8304(4)(b) amended by striking out the reference to "(in this subsection referred to as the "past service period")", by P.C. 1998-2256, subsec. 7(1), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable with respect to past service events that occur after 1996.

Subpara. 8304(4)(b)(ii) and para. 8304(4)(c) amended by P.C. 1995-17, subsecs. 5(3) and (4), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995. Subpara. 8304(4)(b)(ii) is applicable with respect to past service benefits that become provided after April 5, 1994 and para. 8304(4)(c) is applicable with respect to past service benefits that become provided after August 29, 1990.

(5) Modified PSPA calculation — Where

(a) lifetime retirement benefits have, as a consequence of a past service event, become provided to an individual under a defined benefit provision of a registered pension plan in respect of one or more qualifying past service periods in relation to the individual and the past service event, and

(b) the benefits are considered to be attributable to employment of the individual with a single employer,

the provisional PSPA of the individual with respect to the employer that is associated with the past service event is the amount determined by the formula

$$A + B + C - D$$

where

A is the provisional PSPA that would be determined if

(a) this subsection did not apply,

(b) all former benefits in relation to the individual and the past service event had ceased to be provided at the time the past service event occurred,

(c) all former benefits in relation to the individual and the past service event were considered to be attributable to employment of the individual with the employer, and

(d) the value of C in subsection 8303(3) were nil;

B is the total of all amounts each of which is a non-vested PA amount in respect of the individual and the past service event;

C is the total of all amounts each of which is a money purchase transfer in relation to the individual and the past service event; and

D is the amount of the individual's qualifying transfers made in connection with the past service event.

Related Provisions: ITA 257 — Negative amounts in formulas; Reg. 8300(7) — Benefits include contingent benefits; Reg. 8303(6) — Meaning of qualifying transfers.

History: Subsec. 8304(5) amended by P.C. 1998-2256, subsec. 7(2), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to the determination of provisional PSPAs that are associated with past service events that occur after 1997.

The description of C in subsec. 8304(5) is amended by P.C. 1995-17, subsec. 5(5), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable with respect to past service events occurring after August 29, 1990.

(5.1) Definitions for subsection (5) — For the purpose of subsection (5), where

(a) lifetime retirement benefits (in this subsection referred to as "past service benefits") have, as a consequence of a past service event occurring at a particular time, become provided to an individual under a defined benefit provision of a registered pension plan in respect of a period that

(i) immediately before the particular time, was not pensionable service of the individual under the provision, and

(ii) is, or was, pensionable service of the individual under another defined benefit provision (in this subsection referred to as the "former provision") of a registered pension plan,

(b) either

(i) the individual has not, at any time after 1996 and before the particular time, been a member in relation to the former provision,

(ii) the individual ceased, at the particular time, to be a member in relation to the former provision, or

(iii) the past service event is a certifiable past service event and the individual is to cease being a member in relation to the former provision no later than 90 days after the day on which a certification of the Minister is issued for the purposes of subsection 147.1(10) of the Act in respect of the past service benefits, and

(c) lifetime retirement benefits to which the individual is or was entitled under the former provision in respect of the period have not been taken into account under subsection (5) as former benefits in determining a provisional PSPA of the individual that is associated with any other past service event,

the following rules apply:

(d) the period is a qualifying past service period in relation to the individual and the past service event,

(e) lifetime retirement benefits to which the individual is or was entitled under the former provision in respect of the period are former benefits in relation to the individual and the past service event,

(f) where subsection 8301(8) has applied in respect of the determination of a pension credit of the individual under the former provision with respect to an employer for a year that includes any part of the period, the amount determined by the formula

A – B

is a non-vested PA amount in respect of the individual and the past service event, where

A is the amount that would have been the individual's pension credit under the former provision for the year with respect to the employer if subsection 8301(8) had not applied, and

B is the individual's pension credit under the former provision for the year with respect to the employer, and

(g) the amount determined by the formula

A – B

is a money purchase transfer in relation to the individual and the past service event, where

A is the total of all amounts each of which is

(i) an amount that was transferred, at or before the particular time, on behalf of the individual from the former provision to a registered retirement savings plan, a registered retirement income fund, a money purchase provision of a registered pension plan or a defined benefit provision of a registered pension plan that was, at the time of the transfer, a specified multi-employer plan, or

(ii) an amount that is to be paid or otherwise made available under the former provision with respect to the individual after the particular time, other than an amount that is to be transferred to fund the past service benefits or paid directly to the individual,

to the extent that the amount can reasonably be considered to be attributable to benefits in respect of the portion of the period that is after 1989, and

B is the total of all amounts each of which is, in respect of an employer with respect to which a provisional PSPA of the individual that is associated with the past service event is determined under subsection (5), the amount, if any, by which

(i) the portion of the value determined for B in subsection 8303(3), for the purpose of determining the individual's provisional PSPA with respect to the employer, that can reasonably be considered to be attributable to benefits provided in respect of the period

exceeds

(ii) the portion of the value determined for A in subsection 8303(3), for the purpose of determining the individual's provisional PSPA with respect to the employer, that can reasonably be considered to be attributable to benefits provided in respect of the period.

Related Provisions: ITA 257 — Negative amounts in formulas; Reg. 8300(7) — Benefits include contingent benefits.

History: Subsec. 8304(5.1) added by P.C. 1998-2256, subsec. 7(2), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to the determination of provisional PSPAs that are associated with past service events that occur after 1997.

(6) Reinstatement of pre-1997 benefits — Where lifetime retirement benefits have, as a consequence of a past service event, become provided to an individual under a defined benefit provision of a registered pension plan in respect of a period that

(a) was previously pensionable service of the individual under the provision,

(b) ceased to be pensionable service of the individual under the provision as a consequence of the individual ceasing before 1997 to be a member in relation to the provision, and

(c) has not, at any time after 1996 and before the past service event, been pensionable service of the indivi-

dual under a defined benefit provision of a registered pension plan,

each provisional PSPA of the individual that is associated with the past service event shall be determined as if all benefits provided to the individual under the provision before 1997 in respect of the period had been provided to the individual under another defined benefit provision of a registered pension plan in relation to which the individual has not, at any time after 1996, been a member.

History: Subsec. 8304(6) amended by P.C. 1998-2256, subsec. 7(2), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to the determination of provisional PSPAs that are associated with past service events that occur after 1997.

(7) Two or more employers — Where

(a) lifetime retirement benefits (in this subsection referred to as "past service benefits") provided to an individual under a defined benefit provision of a registered pension plan as a consequence of a past service event are attributable to employment of the individual with two or more employers (each of which is, in this subsection, referred to as a "current employer"), and

(b) subsection (5) would, but for paragraph (5)(b), apply in respect of the determination of each provisional PSPA of the individual that is associated with the past service event,

each such provisional PSPA shall be determined in accordance with the formula set out in subsection (5), except that

(c) in determining the amount A,

(i) the former benefits of the individual shall be considered to be attributable to employment of the individual with the individual's current employers, and

(ii) the portion of the former benefits attributable to employment with each current employer shall be determined by the administrator of the pension plan under which the past service benefits are provided in a manner that is consistent with the association of the past service benefits with each current employer,

(d) the amounts B and C shall be included in computing only one provisional PSPA of the individual, as determined by the administrator of the pension plan under which the past service benefits are provided, and

(e) the amount D that is deducted in computing the individual's provisional PSPA with respect to a particular employer shall equal such portion of the individual's qualifying transfers made in connection with the past service event as is not deducted in computing the provisional PSPA of the individual with respect to any other employer.

Related Provisions: Reg. 8303(6) — Meaning of qualifying transfers.

History: Para. 8304(7)(b) amended by P.C. 1998-2256, subsec. 7(3), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to the determination of provisional PSPAs that are associated with past service events that occur after 1997.

(8) [Repealed]

History: Subsec. 8304(8) repealed by P.C. 1998-2256, subsec. 7(4), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to the determination of provisional PSPAs that are associated with past service events that occur after 1997.

(9) Specified multi-employer plans — Except in subparagraph (4)(b)(i), a reference in this section to a defined benefit provision of a registered pension plan at any time does not, unless expressly provided, include a defined benefit provision of a plan that is, at that time, a specified multi-employer plan.

Definitions [Reg. 8304]: "amount" — ITA 248(1); "associated" — ITA 256; "benefits" — Reg. 8300(7); "certifiable past service event" — Reg. 8300(1); "contribution" — Reg. 8300(8), 8302(11), (12); "current employer" — Reg. 8304(5)(c), (7)(a); "current provision" — Reg. 8304(1)(b), (2)(b), (5)(a); "deferred profit sharing plan" — ITA 147(1), 248(1); "defined benefit provision" — Reg. 8304(9); "employer", "employment" — ITA 248(1); "former benefits" — Reg. 8304(5)(d), (5.1)(e); "former provision" — Reg. 8304(1)(a), (2)(a), (5)(a)(ii), (5.1)(a)(ii); "individual" — ITA 248(1); "lifetime retirement benefits" — Reg. 8304(5)(c), (5.1)(a); "Minister" — ITA 248(1); "past service benefits" — Reg. 8304(3), (5.1)(a), (7)(a); "past service event" — Reg. 8300(1); "pension credit" — Reg. 8301, 8308.1(2)–(4), 8308.3(2), (3); "provision" — Reg. 8300(12)(c); "provisional PSPA" — Reg. 8303(2), (3), 8308(4)(e); "qualifying transfers" — Reg. 8303(6); "registered pension plan" — ITA 248(1); "registered retirement income fund" — ITA 146.3(1), 248(1); "registered retirement savings plan" — ITA 146(1), 248(1); "specified multi-employer plan" — ITA 147.1(1), Reg. 8510(2), (3); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [Reg. 8304]: IT-124R6: Contributions to registered retirement savings plans.

8304.1 Pension adjustment reversal — (1) Total pension adjustment reversal — For the purpose of subsection 248(1) of the Act, an individual's "total pension adjustment reversal" for a calendar year means the total of all amounts each of which is the pension adjustment reversal (in this Part and Part LXXXIV referred to as "PAR") determined in connection with the individual's termination in the year from a deferred profit sharing plan or from a benefit provision of a registered pension plan.

Related Provisions: Reg. 8304.1(2) — Termination during 1997 deemed to be in 1998.

Forms: RC4137: Pension adjustment reversal guide; T4104: Past service pension adjustment guide.

(2) Termination in 1997 — For the purpose of subsection (1) and the description of R in paragraph 8307(2)(b), where an individual terminates in 1997 from a deferred profit sharing plan or from a benefit provision of a registered pension plan, the termination is deemed to have occurred in 1998.

(3) PAR — deferred profit sharing plan — For the purposes of this Part and Part LXXXIV and subject to subsection (12), an individual's PAR determined in connection with the individual's termination from a deferred profit sharing plan is

(a) if the conditions in subsection (13) are satisfied with respect to the termination, the total of all amounts each of which is an amount

(i) included in determining a pension credit of the individual under the plan, and

(ii) to which the individual has ceased, at or before the time of the termination, to have any rights,

but does not include any amount to which a spouse or common-law partner or former spouse or common-law partner of the individual has acquired rights as a consequence of a breakdown of their marriage or common-law partnership; and

(b) in any other case, nil.

(4) PAR — money purchase provision — For the purposes of this Part and Part LXXXIV and subject to subsection (12), an individual's PAR determined in con-

nection with the individual's termination from a money purchase provision of a registered pension plan is

(a) if the conditions in subsection (14) are satisfied with respect to the termination, the total of all amounts each of which is an amount

(i) included in determining a pension credit of the individual under the provision, and

(ii) to which the individual has ceased, at or before the time of the termination, to have any rights,

but does not include any amount to which a spouse or common-law partner or former spouse or common-law partner of the individual has acquired rights as a consequence of a breakdown of their marriage or common-law partnership; and

(b) in any other case, nil.

Related Provisions: Reg. 8500(8)(c) — Non-member benefits ignored in determining pension adjustment.

(5) PAR — defined benefit provision — For the purposes of this Part and Part LXXXIV and subject to subsections (6) and (12), an individual's PAR determined in connection with the individual's termination from a defined benefit provision of a registered pension plan is

(a) where the conditions in subsection (14) are satisfied with respect to the termination, the amount determined by the formula

$$A + B - C - D$$

where

A is the total of all amounts each of which is, in respect of a particular year that is the year in which the termination occurs or that is a preceding year, the lesser of

(i) the total of all amounts each of which is the pension credit of the individual under the provision for the particular year with respect to an employer, and

(ii) the RRSP dollar limit for the year following the particular year,

B is the total of all amounts each of which is the portion of the grossed-up amount of a provisional PSPA (other than a provisional PSPA determined in accordance with subsection 8303(8)) of the individual that is associated with a past service event occurring before the time of the termination that can reasonably be considered to be attributable to benefits provided under the provision,

C is the total of all amounts each of which is a specified distribution made in respect of the individual and the provision at or before the time of the termination, and

D is the total of all amounts each of which is a PA transfer amount in relation to the individual's termination from the provision; and

(b) in any other case, nil.

Related Provisions: ITA 257 — Negative amounts in formulas; Reg. 8300(11)(c) — Deemed specified distribution; Reg. 8304.1(6) — Defined benefit pension credits; Reg. 8304.1(7) — Meaning of grossed-up amount of provisional PSPA; Reg. 8304.1(8) — Meaning of specified distribution; Reg. 8304.1(10) — PA transfer amount; Reg. 8304.1(11) — Special 1997 PA transfer amount; Reg. 8304.1(14) — Terminations conditions; Reg. 8500(8)(c) — Non-member benefits ignored in determining pension adjustment.

(6) Defined benefit pension credits — For the purpose of subparagraph (i) of the description of A in paragraph (5)(a), in determining an individual's PAR in connection with the individual's termination from a defined benefit provision of a registered pension plan,

(a) the individual's pension credits under the provision for the year in which the termination occurs shall be determined without regard to benefits provided after the time of the termination; and

(b) the individual's pension credits under the provision for each year in which the plan was a specified multi-employer plan are deemed to be nil.

(7) Grossed-up PSPA amount — For the purposes of the descriptions of B in subsection 8303(7.1) and paragraph (5)(a), the grossed-up amount of an individual's provisional PSPA with respect to an employer that is associated with a past service event is the amount that would be the provisional PSPA if

(a) the values of C and D in subsections 8303(3) and 8304(5) were nil; and

(b) the words "at the time the past service event occurred" in paragraph (b) of the description of A in subsection 8304(5) were read as "immediately before the time the past service event occurred".

(8) Specified distribution — For the purpose of the description of C in paragraph (5)(a), an amount paid under a defined benefit provision of a registered pension plan with respect to an individual is a specified distribution made in respect of the individual and the provision at the time it is paid, except to the extent that

(a) it can reasonably be considered to be a payment of benefits in respect of any period before 1990;

(b) it is transferred to another registered pension plan (other than a plan that is, at the time of the transfer, a specified multi-employer plan) in accordance with subsection 147.3(3) of the Act;

(c) it is transferred to another defined benefit provision of the plan where the transfer would, if the provision and the other provision were in separate registered pension plans, constitute a transfer in accordance with subsection 147.3(3) of the Act;

(d) it is a payment in respect of an actuarial surplus;

(e) it is

(i) a return of contributions made by the individual under the provision, where the contributions are returned pursuant to an amendment to the plan that also reduces the future contributions that would otherwise be required to be made under the provision by members of the plan and that does not reduce benefits provided under the provision, or

(ii) a payment of interest in respect of contributions that are returned as described in subparagraph (i);

(f) it can reasonably be considered to be a payment of benefits provided in respect of a period throughout which the plan was a specified multi-employer plan; or

(g) it can reasonably be considered to be a payment of benefits provided in respect of a period throughout which the individual was employed outside Canada, where the benefits became provided as a consequence of a past service event in respect of which the Minister had consented to the application of subsection 8303(10) for the purpose of determining the individual's provisional PSPAs.

Related Provisions: Reg. 8304.1(9) — Property made available deemed to be paid; Reg. 8304.1(15) — Marriage breakdown — benefits acquired by spouse.

(9) Property made available — Where property held in connection with a particular defined benefit provision of a pension plan is made available at any time to provide benefits with respect to an individual under another benefit provision of a pension plan, subsection (8) applies as if the amount of the property had been paid under the particular provision at that time with respect to the individual.

(10) PA transfer amount — Where

(a) an individual has terminated, at a particular time after 1996, from a defined benefit provision (in this subsection referred to as the "former provision") of a registered pension plan,

(b) lifetime retirement benefits (in this subsection referred to as the "past service benefits") have, as a consequence of a past service event occurring at or before the particular time, become provided to the individual under another defined benefit provision of a registered pension plan in respect of a period that is or was pensionable service of the individual under the former provision, and

(c) lifetime retirement benefits to which the individual is or was entitled under the former provision in respect of the period have, under subsection 8304(5), been taken into account as former benefits in determining a provisional PSPA of the individual that is associated with the past service event,

for the purposes of subsection 8406(5) and the description of D in paragraph (5)(a), the lesser of

(d) the portion of the value determined for A in subsection 8303(3), for the purpose of determining the provisional PSPA, that can reasonably be considered to be attributable to the past service benefits, and

(e) the portion of the value determined for B in subsection 8303(3), for the purpose of determining the provisional PSPA, that can reasonably be considered to be attributable to the former benefits

is a PA transfer amount in relation to the individual's termination from the former provision.

Related Provisions: Reg. 8300(7) — Benefits include contingent benefits; Reg. 8304.1(11) — Special 1997 PA transfer amount.

(11) Special 1997 PA transfer amount — Where

(a) an individual has terminated, at a particular time in 1997, from a particular defined benefit provision of a registered pension plan,

(b) lifetime retirement benefits (in this subsection referred to as the "past service benefits") have, as a consequence of a past service event that occurred after the particular time and before 1998, become provided to the individual under the particular provision, or under another defined benefit provision of a registered pension plan, in respect of a period that was previously pensionable service of the individual under the particular provision, and

(c) lifetime retirement benefits to which the individual was previously entitled under the particular provision in respect of the period have, under subsection 8304(5), been taken into account as former benefits in determining a provisional PSPA of the individual that is associated with the past service event,

for the purposes of subsection 8406(5) and the description of D in paragraph (5)(a), the lesser of

(d) the portion of the value determined for A in subsection 8303(3), for the purpose of determining the provisional PSPA, that can reasonably be considered to be attributable to the past service benefits, and

(e) the portion of the value determined for B in subsection 8303(3), for the purpose of determining the provisional PSPA, that can reasonably be considered to be attributable to the former benefits

is a PA transfer amount in relation to the individual's termination from the particular provision at the particular time.

Related Provisions: Reg. 8300(7) — Benefits include contingent benefits.

(12) Subsequent membership — Where an individual has ceased at a particular time to be a member in relation to a deferred profit sharing plan or a benefit provision of a registered pension plan and subsequently becomes a member in relation to the plan or the provision, as the case may be, the following rules apply in determining the individual's PAR in connection with any subsequent termination from the plan or the provision, as the case may be:

(a) in the case of a deferred profit sharing plan or money purchase provision, any amounts included in a pension credit of the individual under the plan or provision because of an allocation to the individual before the particular time shall be disregarded; and

(b) in the case of a defined benefit provision,

(i) the value of A in paragraph (5)(a) shall be determined without regard to any pension credit, or portion of a pension credit, that is attributable to benefits provided under the provision before the particular time,

(ii) the value of B in paragraph (5)(a) shall be determined without regard to any provisional PSPA that is associated with a past service event that occurred before the particular time, and

(iii) the value of C in paragraph (5)(a) shall be determined without regard to any specified distribution (as defined in subsection (8)) made at or before the particular time.

(13) Termination conditions — deferred profit sharing plan — For the purpose of paragraph (3)(a), the conditions with respect to an individual's termination from a deferred profit sharing plan are the following

(a) the termination occurs after 1996 and otherwise than because of death; and

(b) no payments described in subparagraph 147(2)(k)(v) of the Act have been made out of or under the plan with respect to the individual.

(14) Termination conditions — registered pension plan — For the purposes of paragraphs (4)(a) and (5)(a), the conditions with respect to an individual's termination from a benefit provision of a registered pension plan are the following:

(a) the termination occurs after 1996 and otherwise than because of death; and

(b) no retirement benefits have been paid under the provision with respect to the individual (other than retirement benefits paid with respect to the individual's spouse or common-law partner or former spouse or

common-law partner as a consequence of a breakdown of their marriage or common-law partnership).

Related Provisions: Reg. 8300(11)(b) — Termination conditions deemed not satisfied.

(15) Breakdown of marriage or common-law partnership — Where

(a) before a member terminates from a defined benefit provision of a registered pension plan, there has been a breakdown of the member's marriage or common-law partnership, and

(b) as a consequence of the breakdown,

(i) the member has ceased to have rights to all or a portion of the benefits provided under the provision with respect to the member, and

(ii) an individual who is the member's spouse or common-law partner or former spouse or common-law partner has acquired rights under the provision in respect of those benefits,

for the purpose of subsection (8),

(c) any amount paid under the provision with respect to the rights acquired by the individual (other than a single amount paid under the provision at or before the time of the member's termination in full satisfaction of the rights acquired by the individual) is deemed not to have been paid with respect to the member, and

(d) unless a single amount has been paid under the provision at or before the time of the member's termination in full satisfaction of the rights acquired by the individual, a single amount equal to the present value (at the time the member terminates from the provision) of the benefits to which the member has ceased to have rights as a consequence of the breakdown is deemed to have been paid to the member at that time under the provision in full satisfaction of those benefits.

History: Paras. 8304.1(3)(a), (4)(a), the heading before subsec. (15), and subpara. (15)(b)(ii) amended by P.C. 2001-957, s. 7, May 31, 2001, *Canada Gazette*, Part II, June 20, 2001, applicable to 2001 *et seq.*, except that if a taxpayer and a person have jointly elected pursuant to s. 144 of the *Modernization of Benefits and Obligations Act* (S.C. 2000, c. 12), in respect of the 1998, 1999 or 2000 taxation year, the amendment applies to the taxpayer and the person in respect of the applicable taxation year *et seq.*

The word "marriage" replaced with "marriage or common-law partnership" in paras. 8304.1(14)(b) and (15)(a), and the words "the spouse" with "the individual" in paras. (15)(c) and (d), by the said P.C. 2001-957, s. 13, applicable as above.

The words "spouse or former spouse" replaced with "spouse or common-law partner or former spouse or common-law partner" in para. 8304.1(14)(b), by the said P.C. 2001-957, para. 15(b), applicable as above.

S. 8304.1 added by P.C. 1998-2256, s. 8, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1996.

Definitions [Reg. 8304.1]: "amount" — Reg. 8304(16)(c), (d); "annuity" — ITA 248(1); "associated" — ITA 256; "Canada" — ITA 255, *Interpretation Act* 35(1); "common-law partnership" — ITA 248(1); "contribution" — Reg. 8300(8), 8302(11), (12); "deferred profit sharing plan" — ITA 147(1), 248(1); "employed", "employer" — ITA 248(1); "excess money purchase offset" — Reg. 8304.1(12); "former provision" — Reg. 8304.1(10)(a); "grossed-up amount" — Reg. 8304.1(7); "individual" — ITA 248(1); "lifetime retirement benefits" — Reg. 8304(5)(c); "Minister" — ITA 248(1); "offset provision" — Reg. 8304.1(12)(b); "PA transfer amount" — Reg. 8304.1(10), (11); "PAR" — Reg. 8304.1(1), (3)–(6); "past service benefits" — Reg. 8304.1(10)(b), (11)(b); "past service event" — Reg. 8300(1); "pension adjustment" — Reg. 8308(5)(c), 8308(8); "pension credit" — Reg. 8301, 8308.1(2)–(4), 8308.3(2), (3); "property" — ITA 248(1); "provisional PSPA" — Reg. 8303(2), (3), 8308(4)(e); "registered pension plan" — ITA 248(1); "registered retirement income fund" — ITA 146.3(1), 248(1); "registered retirement savings plan", "RRSP dollar limit" — ITA 146(1), 248(1); "specified distribution" — Reg. 8304.1(8); "specified multi-employer plan" — ITA 147.1(1), Reg. 8510(2), (3); "spouse" — Reg. 8304.1(16)(b)(ii); "termination" — Reg. 8304.1(2), (15).

Forms [Reg. 8304.1]: RC4137: Pension adjustment reversal guide.

8305. Association of benefits with employers — **(1)** Where, for the purposes of this Part, it is necessary to determine the portion of an amount of benefits provided with respect to a member of a registered pension plan under a defined benefit provision of the plan that is attributable to the member's employment with a particular employer, the following rules apply, subject to subsection 8308(7):

(a) the determination shall be made by the plan administrator;

(b) benefits provided as a consequence of services rendered by the member to an employer who participates in the plan shall be regarded as attributable to employment with that employer, whether the benefits become provided at the time the services are rendered or at a subsequent time; and

(c) the determination shall be made in a manner that

(i) is reasonable in the circumstances,

(ii) is not inconsistent with such determinations made previously, and

(iii) results in the full amount of benefits being attributed to employment with one or more employers who participate in the plan.

(2) Where the administrator of a registered pension plan does not comply with the requirements of subsection (1) in connection with the determination of an amount under this Part at any time,

(a) the plan becomes, at that time, a revocable plan; and

(b) the Minister shall make any determinations referred to in subsection (1) that the administrator fails to make, or fails to make in accordance with that subsection.

Definitions [Reg. 8305]: "amount", "employer", "employment", "Minister", "registered pension plan" — ITA 248(1).

8306. Exemption from certification — **(1)** For the purposes of subsection 147.1(10) of the Act as it applies in respect of a past service event and the benefits provided under a defined benefit provision of a registered pension plan with respect to a particular member of the plan, a certification of the Minister is not required where

(a) each provisional PSPA of the member that is associated with the past service event is nil;

(b) the conditions in subsection (2) or (3) are satisfied;

(c) the conditions in subsection (2) or (3) are substantially satisfied and the Minister waives in writing the requirement for certification; or

Proposed Addition — Reg. 8306(1)(c.1)

(c.1) paragraph 8303(5)(f.1) was applicable in determining the provisional PSPA of the member that is associated with the past service event; or

Application: The May 16, 2005 draft regulations (deferred income plans), s. 19, (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will add para. 8306(1)(c.1), applicable in respect of past service events that occur after 2005. It also applies in respect of past service events that occur after 2003 and before 2006 if the value of the fixed rate immediately before the past service event was equal to or greater than $1,715.

Regulatory Impact Analysis Statement: New paragraph 8306(1)(c.1) provides an exemption from the requirement to obtain a certification whenever the benefit exclusion in paragraph 8303(5)(f.1) is applicable in determining an individual's PSPA. Consequently, a certification is not required for the residual PSPA arising in the situation described in the example. There is no exemption from certification for past service events that occur in 2004 or 2005 if the previous fixed rate was less than $1,715.

[See also under Reg. 214(5).]

Letter from Dept. of Finance, October 28, 2004: See under Reg. 8303(5)(f.1), (f.2).

(d) the past service event is deemed by paragraph 8304(3)(b) to have occurred immediately after the end of 1990.

(2) The following are conditions for the purposes of paragraphs (1)(b) and (c) and 8303(5)(g):

(a) there are more than 9 active members under the provision,

(b) no more than 25 per cent of the active members under the provision are specified active members under the provision;

(c) for all or substantially all of the active members under the provision, the amount of lifetime retirement benefits accrued under the provision has increased as a consequence of the past service event;

(d) where there is a specified active member under the provision;

(i) the amounts C and D in subparagraph (ii) are greater than nil, and

(ii) the amount determined by the formula A/C does not exceed the amount determined by the formula B/D

where

A is the aggregate of all amounts each of which is the amount of lifetime retirement benefits accrued under the provision, immediately after the past service event, to a specified active member under the provision,

B is the aggregate of all amounts each of which is the amount of lifetime retirement benefits accrued under the provision, immediately after the past service event, to an active member (other than a specified active member) under the provision,

C is the aggregate of all amounts each of which is the amount of lifetime retirement benefits accrued under the provision, immediately before the past service event, to a specified active member under the provision, and

D is the aggregate of all amounts each of which is the amount of lifetime retirement benefits accrued under the provision, immediately before the past service event, to an active member (other than a specified active member) under the provision; and

(e) the benefits provided under the provision as a consequence of the past service event to members of the plan who are not active members under the provision are not more advantageous than such benefits provided to active members under the provision.

Related Provisions: Reg. 8306(4) — Meaning of active member and specified active member.

(3) The following are conditions for the purposes of paragraphs (1)(b) and (c):

(a) the past service event consists of the establishment of the provision;

(b) there are more than 9 active members under the provision;

(c) no more than 25 per cent of the active members under the provision are specified active members under the provision;

(d) the member is not a specified active member under the provision;

(e) if the member is not an active member under the provision, for each of the 5 years immediately preceding the calendar year in which the past service event occurs,

(i) the member was not connected at any time in the year with an employer who participates in the plan, and

(ii) the aggregate of all amounts each of which is the remuneration of the member for the year from an employer who participates in the plan did not exceed 2½ times the Year's Maximum Pensionable Earnings for the year; and

(f) the aggregate of all amounts each of which is a provisional PSPA of the member associated with the past service event does not exceed 7/2 of the money purchase limit for the year in which the past service event occurs.

Related Provisions: Reg. 8306(4) — Meaning of active member and specified active member.

(4) For the purposes of this section as it applies in respect of a past service event,

(a) a member of a pension plan is an active member under a defined benefit provision of the plan if

(i) lifetime retirement benefits accrue under the provision to the member in respect of a period that immediately follows the time the past service event occurs, or

(ii) the member is entitled, immediately after the time the past service event occurs, to lifetime retirement benefits under the provision in respect of a period before that time and it is reasonable to expect, at that time, that lifetime retirement benefits will accrue under the provision to the member in respect of a period after that time; and

(b) an active member under a defined benefit provision of a pension plan is a specified active member under the provision if

(i) the member is connected, at the time of the past service event, with an employer who participates in the plan, or

(ii) it is reasonable to expect, at the time of the past service event, that the aggregate of all amounts each of which is the remuneration of the member for the calendar year in which the past service event occurs from an employer who participates in the plan will exceed 2½ times the Year's Maximum Pensionable Earnings for the year.

Related Provisions: Reg. 8300(7) — Benefits include contingent benefits.

Definitions [Reg. 8306]: "active member" — Reg. 8306(4)(a); "amount" — ITA 248(1); "associated" — ITA 256; "benefits" — Reg. 8300(7); "employer" — ITA 248(1); "lifetime retirement benefits" — Reg. 8304(5)(c); "Minister" — ITA 248(1); "money purchase limit" —

ITA 147.1(1), 248(1); "past service event" — Reg. 8300(1); "provisional PSPA" — Reg. 8303(2), (3), 8308(4)(e); "registered pension plan" — ITA 248(1); "specified active member" — Reg. 8306(4)(b); "writing" — *Interpretation Act* 35(1).

Forms: T215: Past service pension adjustment exempt from certification; T215 Segment; T215 Summ: Summary of past service pension adjustments exempt from certification.

8307. Certification in respect of past service events — (1) Application for certification — Application for a certification of the Minister for the purposes of subsection 147.1(10) of the Act shall be made in prescribed form by the administrator of the registered pension plan to which the certification relates.

Forms: T1004: Applying for the certification of a provisional PSPA.

(2) Prescribed condition — For the purposes of subsection 147.1(10) of the Act in respect of a past service event and benefits with respect to a particular member of a registered pension plan, the prescribed condition is that, at the particular time the Minister issues the certification,

(a) the aggregate of all amounts each of which is the member's provisional PSPA with respect to an employer associated with the past service event

does not exceed

(b) the amount determined by the formula

$$\$8{,}000 + A + B + C - D + R$$

where

A is the member's unused RRSP deduction room at the end of the year immediately preceding the calendar year (in this paragraph referred to as the "particular year") that includes the particular time,

B is the amount of the member's qualifying withdrawals made for the purposes of the certification, determined as of the particular time,

C is the amount of the member's PSPA withdrawals for the particular year, determined as of the particular time, and

D is the aggregate of all amounts each of which is the accumulated PSPA of the member for the particular year with respect to an employer, determined as of the particular time.

R is the total of all amounts each of which is a PAR determined in connection with the individual's termination in the particular year from a deferred profit sharing plan, or from a benefit provision of a registered pension plan, and in respect of which an information return has been filed under section 8402.01 with the Minister before the particular time.

Related Provisions: ITA 257 — Negative amounts in formulas; Reg. 8304.1(2) — Termination during 1997 deemed to be in 1998; Reg. 8307(3) — Meaning of qualifying withdrawals; Reg. 8307(5) — PSPA withdrawals.

History: The formula amended, and the description of R added, in para. 8307(2)(b) by P.C. 1998-2256, subsecs. 9(1), (2), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to the 1998 and subsequent calendar years.

(3) Qualifying withdrawals — For the purposes of paragraph (5)(a) and the description of B in paragraph (2)(b), the amount of an individual's qualifying withdrawals made for the purposes of a certification in respect of a past service event, determined as of a particular time, is the lesser of

(a) the aggregate of all amounts each of which is such portion of an amount withdrawn by the individual from a registered retirement savings plan under which the individual was the annuitant (within the meaning assigned by subsection 146(1) of the Act) at the time of the withdrawal as

(i) is eligible, pursuant to subsection (4), to be designated for the purposes of the certification, and

(ii) is designated by the individual for the purposes of the certification by filing a prescribed form containing prescribed information with the Minister before the particular time, and

(b) the amount, if any, by which

(i) the aggregate of all amounts each of which is the provisional PSPA of the individual with respect to an employer associated with the past service event

exceeds

(ii) the amount, positive or negative, determined by the formula

$$A + C - D + R$$

where A, C, D and R have the same values as they have at the particular time for the purposes of the formula in paragraph (2)(b).

Related Provisions: ITA 257 — Negative amounts in formulas.

History: Subpara. 8307(3)(b)(ii) amended to add formula element R by P.C. 1998-2256, subsec. 9(3), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to the 1998 and subsequent calendar years.

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans.

Forms: T1006: Designating an RRSP withdrawal as a qualifying withdrawal.

(4) Eligibility of withdrawn amount for designation — An amount withdrawn by an individual from a registered retirement savings plan is eligible to be designated for the purposes of a certification, except to the extent that the following rules provide otherwise:

(a) the amount is not eligible to be designated if the amount was

(i) withdrawn from a registered retirement savings plan in a calendar year other than the year in which the designation would be filed with the Minister or either of the 2 immediately preceding calendar years, or

(ii) withdrawn in circumstances that entitle the individual to a deduction under paragraph 60(l) of the Act; and

(b) the amount is not eligible to be designated to the extent that the amount was

(i) designated by the individual for the purposes of any other certification, or

(ii) deducted under section 60.2 or subsection 146(8.2) or 147.3(13.1) of the Act in computing the individual's income for any taxation year.

History: Subpara. 8307(4)(b)(ii) amended by P.C. 2001-153, subsec. 4(1), January 30, 2001, *Canada Gazette*, Part II, February 14, 2001, applicable to 1992 *et seq.*

(5) PSPA withdrawals — For the purposes of the description of C in paragraph (2)(b) and the description of G in the definition "net past service pension adjustment" in subsection 146(1) of the Act, the amount of an individual's PSPA withdrawals for a calendar year, determined as of a particular time, is

(a) if the Minister has issued, in the year and before the particular time, a certification for the purposes of

subsection 147.1(10) of the Act with respect to the individual, the aggregate of all amounts each of which is the amount of the individual's qualifying withdrawals made for the purposes of a certification that the Minister has issued in the year and before the particular time; and

(b) in any other case, nil.

Related Provisions: Reg. 8307(3) — Meaning of qualifying withdrawals.

History: The opening words of subsec. 8307(5) amended by P.C. 1998-2256, subsec. 9(4), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1995.

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans.

(6) Prescribed withdrawal — For the purposes of subsection (7) and subsections 146(8.2) and 147.3(13.1) of the Act, a prescribed withdrawal is the portion of an amount withdrawn by an individual from a registered retirement savings plan under which the individual is the annuitant (within the meaning assigned by subsection 146(1) of the Act) that is designated in accordance with subparagraph (3)(a)(ii) for the purposes of a certification in respect of the individual.

History: Subsec. 8307(6) amended by P.C. 2001-153, subsec. 4(2), January 30, 2001, *Canada Gazette*, Part II, February 14, 2001, applicable to 1992 *et seq.*

Subsec. 8307(6) added by P.C. 1991-2540, s. 7, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable after 1990.

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-528: Transfers of funds between registered plans.

(7) Prescribed premium — For the purpose of subsection 146(6.1) of the Act, a premium paid by a taxpayer under a registered retirement savings plan under which the taxpayer is the annuitant (within the meaning assigned by subsection 146(1) of the Act) at the time the premium is paid is a prescribed premium for a particular taxation year of the taxpayer where the following conditions are satisfied:

(a) the taxpayer withdrew an amount (in this subsection referred to as the "withdrawn amount") in the particular year from a registered retirement savings plan for the purposes of a certification in respect of a past service event;

(b) all or part of the withdrawn amount is a prescribed withdrawal pursuant to subsection (6);

(c) it is subsequently determined that

(i) as a consequence of reasonable error, the taxpayer withdrew a greater amount than necessary for the purposes of the certification, or

(ii) as a consequence of the application of paragraph 147.1(3)(b) of the Act, it was not necessary for the taxpayer to withdraw any amount;

(d) the premium is paid by the taxpayer in the 12-month period immediately following the time at which the determination referred to in paragraph (c) is made;

(e) the amount of the premium does not exceed such portion of the withdrawn amount as is a prescribed withdrawal pursuant to subsection (6) and is determined to have been an unnecessary withdrawal;

(f) the taxpayer files with the Minister, on or before the day on or before which the taxpayer is required (or would be required if tax under Part I of the Act were payable by the taxpayer for the taxation year in which the taxpayer pays the premium) by section 150 of the Act to file a return of income for the taxation year in which the taxpayer pays the premium, a written notice in which the taxpayer designates the premium as a recontribution of all or any portion of the withdrawn amount; and

(g) the taxpayer has not designated, pursuant to paragraph (f), any other premium as a recontribution of all or any portion of the withdrawn amount.

History: Subsec. 8307(7) added by P.C. 1991-2540, s. 7, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable to 1991 *et seq.*

Definitions [Reg. 8307]: "accumulated PSPA" — Reg. 8303(1)(a), 8303(2); "amount" — ITA 248(1); "associated" — ITA 256; "employer", "individual", "Minister" — ITA 248(1); "PAR" — Reg. 8304.1(1), (3)–(6); "particular year" — Reg. 8307(2)(b)(A); "past service event" — Reg. 8300(1); "prescribed" — ITA 248(1); "prescribed withdrawal" — Reg. 8307(6), "PSPA withdrawal" — Reg. 8307(5); "provisional PSPA" — Reg. 8303(2), (3), 8308(4)(e); "qualifying withdrawal" — Reg. 8307(3); "registered pension plan" — ITA 248(1); "registered retirement savings plan" — ITA 146(1), 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "unused RRSP deduction room" — ITA 146(1), 248(1); "withdrawn amount" — Reg. 8307(7)(a); "written" — *Interpretation Act* 35(1)"writing".

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans.

8308. Special rules — (1) Benefits provided before registration — For the purposes of this Part and subsection 147.1(10) of the Act, benefits that became provided under a defined benefit provision of a pension plan before the day as of which the plan becomes a registered pension plan shall be deemed to have become provided as a consequence of an event occurring on that day and not to have been provided before that day.

(2) Prescribed amount for connected persons — Where

(a) at any particular time in a calendar year after 1990,

(i) an individual becomes a member of a registered pension plan, or

(ii) lifetime retirement benefits commence to accrue to the individual under a defined benefit provision of a registered pension plan following a period in which lifetime retirement benefits did not accrue to the individual,

(b) the individual is connected at the particular time, or was connected at any time after 1989, with an employer who participates in the plan for the benefit of the individual,

(c) the individual did not have a pension adjustment for 1990 that was greater than nil, and

(d) this subsection did not apply before the particular time to prescribe an amount with respect to the individual,

an amount equal to the lesser of $11,500 and 18 per cent of the individual's earned income (within the meaning assigned by paragraph 146(1)(c) [146(1)"earned income"] of the Act) for 1990 is prescribed with respect to the individual for the year for the purpose of the descriptions of B in paragraphs 146(1)(g.1) and (l) [146(1)"RRSP deduction limit" and "unused RRSP deduction room"] and section 204.2(1.1) of the Act.

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans.

(3) Remuneration for prior years — Where an individual who is entitled to benefits under a defined benefit provision of a registered pension plan receives remuneration at a particular time in a particular calendar year no

part of which is pensionable service of the individual under the provision and the remuneration is treated for the purpose of determining benefits under the provision as if it were remuneration received in one or more calendar years preceding the particular calendar year for services rendered in those preceding years, the following rules apply:

(a) such portion of the remuneration as is treated under the provision as if it were remuneration received in a preceding calendar year for services rendered in that preceding year shall be deemed, for the purpose of determining, as of the particular time and any subsequent time, a redetermined benefit entitlement of the individual under the provision, to have been received in that preceding year for services rendered in that preceding year; and

(b) the pension credit of the individual for the particular year under the provision with respect to an employer is the aggregate of

(i) the amount that would otherwise be the individual's pension credit for the particular year, and

(ii) the amount that would, if the payment of the remuneration were a past service event, be the provisional PSPA (or a reasonable estimate thereof determined in a manner acceptable to the Minister) of the individual with respect to the employer that is associated with the payment of the remuneration.

Related Provisions: Reg. 8300(7)) — Benefits include contingent benefits.

(4) Period of reduced services — retroactive benefits — Where,

(a) as a consequence of a past service event, retirement benefits (in this subsection referred to as "retroactive benefits") become provided under a defined benefit provision of a registered pension plan (other than a plan that is a specified multi-employer plan) to an individual in respect of a period of reduced services of the individual,

(b) the period of reduced services was not, before the past service event, pensionable service of the individual under the provision, and

(c) the past service event occurs on or before April 30 of the year immediately following the calendar year in which ends the complete period of reduced services of the individual that includes the period of reduced services,

the following rules apply:

(d) each pension adjustment of the individual with respect to an employer for a year before the calendar year in which the past service event occurs shall be deemed to be, and to always have been, the aggregate of

(i) the amount that would otherwise be the individual's pension adjustment with respect to the employer for the year, and

(ii) such portion of the provisional PSPA of the individual with respect to the employer that is associated with the past service event as may reasonably be considered to be attributable to the provision of retroactive benefits in respect of the year, and

(e) each provisional PSPA of the individual with respect to an employer that is associated with the past service event shall be deemed (except for the purposes of this subsection) to be such portion of the amount that would otherwise be the individual's provisional PSPA as may reasonably be considered not to be attributable to the provision of retroactive benefits.

Interpretation Bulletins: IT-363R2: Deferred profit sharing plans — deductibility of employer contributions and taxation of amounts received by a beneficiary (archived).

Information Circulars: 98-2: Prescribed compensation for RPPs, paras. 23–25.

(5) Period of reduced services — retroactive contributions — Where

(a) a contribution (in this subsection referred to as a "retroactive contribution") is made by an individual, or by an employer with respect to the individual, under a money purchase provision of a registered pension plan in respect of a period in a particular calendar year that is a period of reduced services of the individual, and

(b) the retroactive contribution is made after the particular year and on or before April 30 of the year immediately following the calendar year in which ends the complete period of reduced services of the individual that includes the period of reduced services,

the following rules apply:

(c) each pension adjustment of the individual for the particular year with respect to an employer shall be deemed to be, and to always have been, the amount that it would have been had the retroactive contribution been made at the end of the particular year, and

(d) the retroactive contribution shall be deemed, for the purpose of determining pension adjustments of the individual for any year after the particular year, to have been made at the end of the particular year and not to have been made at any subsequent time.

Interpretation Bulletins: IT-363R2: Deferred profit sharing plans — deductibility of employer contributions and taxation of amounts received by a beneficiary (archived).

Information Circulars: 98-2: Prescribed compensation for RPPs, paras. 23–25.

(6) Commitment to make retroactive contributions — Where

(a) an individual enters into a written commitment to make a contribution under a money purchase provision of a registered pension plan,

(b) the commitment is made to the administrator of the plan or to an employer who participates in the plan, and

(c) the rules in subsection (5) would apply in respect of the contribution if the contribution were made at the time at which the individual enters into the commitment,

the following rules apply for the purposes of this Part:

(d) the individual shall be deemed to have made the contribution to the plan at the time at which the individual enters into the commitment,

(e) if the individual subsequently pays all or a part of the contribution to the plan pursuant to the commitment, the amount paid to the plan is, for the purposes of paragraphs 8301(4)(a) and (8)(e), a contribution described in this paragraph,

(f) any contribution that an employer is required to make under the money purchase provision conditional on the individual making the contribution that the individual has committed to pay and in respect of which subsection (5) would apply if the contribution were

made by the employer at the time the individual enters into the commitment shall be deemed to have been made by the employer at that time, and

(g) if an employer subsequently pays to the plan all or a part of a contribution in respect of which paragraph (f) applies, the amount paid to the plan is, for the purposes of paragraph 8301(4)(a), a contribution described in this paragraph.

History: Paras. 8308(6)(e) and (g) amended by P.C. 1995-17, s. 6, January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable with respect to amounts paid to registered pension plans after 1989.

Information Circulars: 98-2: Prescribed compensation for RPPs, paras. 23–25.

(7) Loaned employees — Where, pursuant to an arrangement between an employer (in this subsection referred to as the "lending employer") who is a participating employer in relation to a pension plan and an employer (in this subsection referred to as the "borrowing employer") who, but for this subsection, would not be a participating employer in relation to the plan,

(a) an employee of the lending employer renders services to the borrowing employer for which the employee receives remuneration from the borrowing employer, and

(b) while the employee renders services to the borrowing employer, benefits continue to accrue under a defined benefit provision of the plan to the employee, or the lending employer continues to make contributions under a money purchase provision of the plan with respect to the employee,

the following rules apply:

(c) for the purpose of the definition "participating employer" in subsection 147.1(1) of the Act as it applies in respect of the plan, the borrowing employer is a prescribed employer,

(d) the determination, for the purposes of this Part, of the portion of the employee's benefit accrual under a defined benefit provision of the plan in respect of a year that can reasonably be considered to be attributable to the employee's employment with each of the lending and borrowing employers shall be made with regard to the remuneration received by the employee for the year from each employer, and

(e) such portion of the contributions made under a money purchase provision of the plan by the lending employer as may reasonably be considered to be in respect of the employee's remuneration from the borrowing employer shall be deemed, for the purposes of this Part, to be contributions made by the borrowing employer.

Related Provisions: Reg. 8507(5)E(a) — Additional compensation fraction.

(8) Successor plans — Notwithstanding any other provisions of this Part, other than section 8310, where

(a) all benefits with respect to an individual under a defined benefit provision (in this subsection referred to as the "former provision") of a registered pension plan are replaced in a calendar year by identical benefits under a defined benefit provision of another registered pension plan,

(b) the replacement of benefits is consequent on a transfer of the individual's employment from one employer (in this subsection referred to as the "former employer") to another employer (in this subsection referred to as the "successor employer"), and

(c) the Minister consents in writing to the application of this subsection in respect of that replacement of benefits,

the individual's pension adjustments for the year with respect to the former employer and the successor employer shall be the amounts that they would be if all benefits with respect to the individual under the former provision had been attributable to employment with the successor employer and not to employment with the former employer.

(9) Special downsizing benefits — Where

(a) lifetime retirement benefits that do not comply with the condition in paragraph 8503(3)(a) are provided to an individual under a defined benefit provision of a registered pension plan, and

(b) the benefits are permissible only by reason of subsection 8505(3),

each pension credit of the individual under the provision and each provisional PSPA of the individual shall be determined without regard to the lifetime retirement benefits.

Definitions [Reg. 8308]: "amount" — ITA 248(1); "associated" — ITA 256; "benefits" — Reg. 8300(7); "borrowing employer" — Reg. 8308(7); "complete period of reduced services" — Reg. 8300(1); "contribution" — Reg. 8300(8), 8302(11), (12); "employee", "employer", "employment" — ITA 248(1); "former employer" — Reg. 8308(8)(b); "former provision" — Reg. 8308(8)(a); "individual" — ITA 248(1); "lending employer" — Reg. 8308(7); "lifetime retirement benefits" — Reg. 8304(5)(c); "Minister" — ITA 248(1); "past service event" — Reg. 8300(1); "pension adjustment" — Reg. 8308(5)(c), 8308(8); "pension credit" — Reg. 8301, 8308.1(2)–(4), 8308.3(2), (3); "period of reduced services" — Reg. 8300(1); "prescribed" — ITA 248(1); "provisional PSPA" — Reg. 8303(2), (3), 8308(4)(e); "registered pension plan" — ITA 248(1); "retroactive benefits" — Reg. 8308(4)(a); "retroactive contribution" — Reg. 8308(5)(a); "specified multi-employer plan" — ITA 147.1(1), Reg. 8510(2), (3); "successor employer" — Reg. 8308(8)(b); "written" — *Interpretation Act* 35(1)"writing".

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

8308.1 Foreign plans — (1) Definitions — In this section, **"foreign plan"** means a plan or arrangement (determined without regard to subsection 207.6(5) of the Act) that would, but for paragraph (l) of the definition "retirement compensation arrangement" in subsection 248(1) of the Act, be a retirement compensation arrangement.

(2) Pension credit — Subject to subsections (3) to (4.1), the pension credit of an individual for a calendar year with respect to an employer under a foreign plan is

(a) where paragraph (b) does not apply, nil; and

(b) where

(i) the year is 1992 or a subsequent year,

(ii) the individual became entitled in the year, either absolutely or contingently, to benefits under the foreign plan in respect of services rendered to the employer in a period throughout which the individual was resident in Canada and rendered services to the employer that were primarily services rendered in Canada or services rendered in connection with a business carried on by the employer in Canada, or a combination of those services,

(iii) the individual continued to be entitled at the end of the year, either absolutely or contingently, to all or part of the benefits, and

(iv) either

(A) no contribution was made under the foreign plan in the year in respect of the individual, except where

(I) no contribution was made because the foreign plan had an actuarial surplus, and

(II) had a contribution been made in respect of the benefits referred to in subparagraph (ii), it would have been a resident's contribution (as defined in subsection 207.6(5.1) of the Act), or

(B) a contribution that is not a resident's contribution was made under the foreign plan in the year in respect of the individual,

the lesser of

(v) the amount, if any, by which 18% of the individual's resident compensation from the employer for the year exceeds the PA offset for the year, and

(vi) the amount by which the money purchase limit for the year exceeds the PA offset for the year.

History: The opening words of subsec. 8308.1(2) and the portion of para. 8308.1(2)(b) after subpara. (iv) amended by P.C. 1998-2256, subsecs. 10(1), (2), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable applicable after 1991.

(3) Pension credit — alternative determination — Subject to subsection (4), where the Minister has, on the written application of an employer, approved in writing a method for determining pension credits for a year with respect to the employer under a foreign plan, the pension credits shall be determined in accordance with that method.

(4) Pension credits for 1992, 1993 and 1994 — The pension credit of an individual for 1992, 1993 or 1994 with respect to an employer under a foreign plan is the lesser of

(a) the amount that would, but for this subsection, be determined as the pension credit for the year, and

(b) the amount, if any, by which the lesser of

(i) 18% of the amount that would be the individual's compensation from the employer for the year if the definition "compensation" in subsection 147.1(1) of the Act were read without reference to paragraphs (b) and (c) of that definition, and

(ii) the money purchase limit for the year

exceeds the total of

(iii) $1,000, and

(iv) the amount that would be the pension adjustment of the individual for the year with respect to the employer if subsection 8301(1) were read without reference to paragraph (b) of that subsection.

(4.1) Pension credits — 1996 to 2003 — For the purpose of determining the pension credit of an individual for a calendar year after 1995 and before 2004 with respect to an employer under a foreign plan, subparagraph (2)(b)(vi) shall be read as

"(vi) the money purchase limit for the year.".

Proposed Amendment — Reg. 8308.1(4.1)

Application: The May 16, 2005 draft regulations (deferred income plans), s. 20, (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend subsec. 8308.1(4.1) by replacing "2004" with "2003" and the heading before it is amended by replacing "2003" with "2002", applicable after 2002.

Regulatory Impact Analysis Statement: Sections 8308.1 to 8309 set out rules for determining pension credits and prescribed amounts for individuals who participate in foreign pension plans and other unregistered retirement arrangements. The special transitional rules in these sections are being amended so that they cease to apply one year earlier than previously scheduled. These amendments are consequential to amendments to the Act announced in the 2003 budget, which provided for increases to the RRSP dollar limit earlier than previously scheduled. For further details, refer to . . . the explanatory notes to the draft income tax proposals that were released by the Department of Finance on February 27, 2004 (News Release 2004-014) [reproduced below. See also under Reg. 214(5).]

Technical Notes, February 27, 2004: These sections provide special transitional rules for determining pension credits from 1996 to 2003 and for determining prescribed amounts from 1997 to 2004. The intent of these rules is that, during those years in which the RRSP dollar limit was scheduled to be less than $15,500, high-income participants would lose all or part of the new RRSP deduction room that would otherwise have become available to them in those years by virtue of the $600 PA offset.

These sections are being amended so that the special rules cease to apply one year earlier than previously scheduled (that is, the rules will not apply in determining 2003 pension credits and 2004 prescribed amounts). These amendments are consequential to amendments to the Act, which provided for increases to the RRSP dollar limit earlier than previously scheduled.

History: Subsec. 8308.1(4.1) added by P.C. 1998-2256, subsec. 10(3), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1991.

(5) Foreign plan PSPA — Subject to subsection (6), where the benefits to which an individual is entitled, either absolutely or contingently, under a foreign plan are modified, the foreign plan PSPA of the individual with respect to an employer associated with the modification of benefits is the amount, if any, by which

(a) the total of all amounts each of which is the amount that, if this section were read without reference to subsection (3), would be the pension credit of the individual with respect to the employer under the foreign plan for a calendar year before the year in which the individual's benefits are modified

exceeds the total of all amounts each of which is

(b) the pension credit of the individual with respect to the employer under the foreign plan for a calendar year before the year in which the individual's benefits are modified, or

(c) the foreign plan PSPA of the individual with respect to the employer associated with a previous modification of the individual's benefits under the foreign plan.

(6) Foreign plan PSPA — alternative determination — Where the Minister has, on the written application of an employer, approved in writing a method for determining the foreign plan PSPA of an individual with respect to the employer associated with a modification of the individual's benefits under a foreign plan, the individual's foreign plan PSPA shall be determined in accordance with that method.

History: S. 8308.1 added by P.C. 1996-911, s. 8, June 20, 1996, *Canada Gazette*, Part II, July 10, 1996, applicable after 1991.

Definitions [Reg. 8308.1]: "amount" — ITA 248(1); "associated" — ITA 256; "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "contribution" — Reg. 8300(8), 8302(11), (12); "employer" — ITA 248(1); "foreign plan" — Reg. 8308.1(1); "individual", "Minister" — ITA 248(1); "money purchase limit" — ITA 147.1(1), 248(1); "PA offset" — Reg. 8300(1); "pension adjustment" — Reg. 8308(5)(c), 8308(8); "pension credit" — Reg. 8308.1(2); "resident compensation" — Reg. 8300(1); "resident in Canada" — ITA 250; "retirement compensation arrangement" — ITA 248(1); "written" — *Interpretation Act* 35(1)"writing".

8308.2 Prescribed amount for member of foreign plan — (1) Prescribed amount — Where

(a) throughout a period in a particular calendar year after 1992 an individual resident in Canada rendered services to an employer, other than services that were primarily services rendered in Canada or services rendered in connection with a business carried on by the employer in Canada, or a combination of those services,

(b) the individual became entitled in the particular year, either absolutely or contingently, to benefits under a pension plan that is a foreign plan (as defined in subsection 8308.1(1)) in respect of the services, and

(c) the individual continued to be entitled at the end of the particular year, either absolutely or contingently, to all or part of the benefits,

subject to subsection (2), there is prescribed in respect of the individual for the year following the particular year, for the purposes of the descriptions of B in the definitions "RRSP deduction limit" and "unused RRSP deduction room" in subsection 146(1) of the Act and the description of B in paragraph 204.2(1.1)(b) of the Act, the lesser of

(d) the amount by which the money purchase limit for the particular year exceeds the PA offset for the particular year, and

(e) 10% of the portion of the individual's resident compensation from the employer for the particular year that is attributable to services rendered by the individual to the employer in periods throughout which the individual rendered services described in paragraph (a).

(2) Prescribed amounts — 1997 to 2004 — For the purpose of determining the amount prescribed under subsection (1) in respect of an individual for a calendar year after 1996 and before 2005, paragraph (d) of that subsection shall be read as:

"(d) the money purchase limit for the particular year, and".

Proposed Amendment — Reg. 8308.2(2)

Application: The May 16, 2005 draft regulations (deferred income plans), s. 21, (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend subsec. 8308.2(2) by replacing "2005" with "2004"; and will amend the heading by replacing "2004" with "2003", applicable after 2002.

Regulatory Impact Analysis Statement and Technical Notes, February 27, 2004: See under Reg. 8308.1(4.1) and Reg. 214(5).

History [Reg. 8308.2]: S. 8308.2 amended and renumbered as subsec. (1), and subsec. (2) added, by P.C. 1998-2256, s. 11, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1991.

S. 8308.2 added by P.C. 1996-911, s. 8, June 20, 1996, *Canada Gazette*, Part II, July 10, 1996, applicable after 1991.

Definitions [Reg. 8308.2]: "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "employer", "individual" — ITA 248(1); "money purchase limit" — ITA 147.1(1), 248(1); "PA offset" — Reg. 8300(1); "prescribed" — ITA 248(1); "resident compensation" — Reg. 8300(1); "resident in Canada" — ITA 250.

8308.3 Specified retirement arrangements — (1) Definition — In this section, "specified retirement arrangement" means, in respect of an individual and an employer, a plan or arrangement under which payments that are attributable to the individual's employment with the employer are to be, or may be, made to or for the benefit of the individual after the termination of the individual's employment with the employer, but does not include

(a) a plan or arrangement referred to in any of paragraphs (a) to (k), (m) and (n) of the definition "retirement compensation arrangement" in subsection 248(1) of the Act;

(b) [Repealed]

(c) a plan or arrangement that does not provide in any circumstances for payments to be made to or for the benefit of the individual after the later of the last day of the calendar year in which the individual attains 69 years of age and the day that is 5 years after the day of termination of the individual's employment with the employer;

(d) a plan or arrangement (in this paragraph referred to as the "arrangement") that is, or would be, but for paragraph (l) of the definition "retirement compensation arrangement" in subsection 248(1) of the Act, a retirement compensation arrangement where

(i) the funding of the arrangement is subject to the *Pension Benefits Standards Act, 1985* or a similar law of a province, or

(ii) the arrangement is funded substantially in accordance with the funding requirements that would apply if the arrangement were subject to the *Pension Benefits Standards Act, 1985*;

(e) a plan or arrangement that is deemed by subsection 207.6(6) of the Act to be a retirement compensation arrangement; or

(f) an arrangement established by the *Judges Act* or the *Lieutenant Governors Superannuation Act*.

History: Paras. 8308.3(1)(a) and (c) amended, para. 8308.3(1)(b) repealed, by P.C. 1998-2256, subsecs. 12(1)–(3), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, para. (a) and the repeal applicable after 1991; para. (c) applicable after 1997, except that the amendment does not apply in respect of an individual who attained 69 years of age before 1998.

(2) Pension credit — Subject to subsections (3) and (3.1), the pension credit of an individual for a calendar year with respect to an employer under a specified retirement arrangement is

(a) where paragraph (b) does not apply, nil; and

(b) where

(i) the year is 1993 or a subsequent year,

(ii) the employer is, at any time in the year,

(A) a person who is exempt, because of section 149 of the Act, from tax under Part I of the Act on all or part of the person's taxable income, or

(B) the Government of Canada or the government of a province,

(iii) the individual became entitled in the year, either absolutely or contingently, to benefits under the arrangement in respect of employment with the employer,

(iv) at the end of the year, the individual is entitled, either absolutely or contingently, to benefits under the arrangement, and

(v) the amount determined by the formula

$$0.85A - B$$

is greater than nil where

A is the lesser of

(A) the amount, if any, by which 18% of the individual's resident compensation from the employer for the year exceeds the PA offset for the year, and

(B) the amount by which the money purchase limit for the year exceeds the PA offset for the year, and

B is the amount that would be the pension adjustment of the individual for the year with respect to the employer if subsection 8301(1) were read without reference to paragraph (c) of that subsection,

the amount that would be determined by the formula in subparagraph (v) if the reference to "0.85" in the formula were replaced by a reference to "1".

Related Provisions: ITA 257 — Negative amounts in formulas.

History: The opening words of subsec. 8308.3(2) and the portion of subpara. 8308.3(2)(b)(v) before the description of B amended by P.C. 1998-2256, subsecs. 12(4), (5), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1991.

(3) Pension credit — alternative determination — Where the Minister has, on the written application of an employer, approved in writing a method for determining pension credits for a year with respect to the employer under a specified retirement arrangement, the pension credits shall be determined in accordance with that method.

(3.1) Pension credits — 1996 to 2003 — For the purpose of determining the pension credit of an individual for a calendar year after 1995 and before 2004 with respect to an employer under a specified retirement arrangement, the portion of paragraph (2)(b) after subparagraph (iv) shall be read as

"(v) the amount determined by the formula

$$0.85A - B$$

is greater than nil where

A is the lesser of

(A) the amount, if any, by which 18% of the individual's resident compensation from the employer for the year exceeds the PA offset for the year, and

(B) the amount by which $15,500 exceeds the PA offset for the year, and

B is the amount that would be the pension adjustment of the individual for the year with respect to the employer if subsection 8301(1) were read without reference to paragraph (c),

the amount that would be determined by the formula in subparagraph (v) if

(vi) the reference to "0.85A" in that formula were read as a reference to "A", and

(vii) clause (B) of the description of A in that subparagraph were read as

"(B) the money purchase limit for the year, and".".

Proposed Amendment — Reg. 8308.3(3.1)

Application: The May 16, 2005 draft regulations (deferred income plans), s. 22, (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend subsec. 8308.3(3.1) by replacing "2004" with "2003"; and will amend the heading by replacing "2003" with "2002", applicable after 2002.

Regulatory Impact Analysis Statement and Technical Notes, February 27, 2004: See under Reg. 8308.1(4.1) and Reg. 214(5).

Related Provisions: ITA 257 — Negative amounts in formulas.

History: Subsec. 8308.3(3.1) added by P.C. 1998-2256, subsec. 12(6), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1991.

(4) Specified retirement arrangement PSPA — Subject to subsection (5), where the benefits to which an individual is entitled, either absolutely or contingently, under a specified retirement arrangement are modified, the specified retirement arrangement PSPA of the individual with respect to an employer associated with the modification of benefits is the amount, if any, by which

(a) the total of all amounts each of which is the amount that, if this section were read without reference to subsection (3), would be the pension credit of the individual with respect to the employer under the arrangement for a calendar year before the year in which the individual's benefits are modified

exceeds the total of all amounts each of which is

(b) the pension credit of the individual with respect to the employer under the arrangement for a calendar year before the year in which the individual's benefits are modified, or

(c) the specified retirement arrangement PSPA of the individual with respect to the employer associated with a previous modification of the individual's benefits under the arrangement.

(5) Specified retirement arrangement PSPA — alternative determination — Where the Minister has, on the written application of an employer, approved in writing a method for determining the specified retirement arrangement PSPA of an individual with respect to the employer associated with a modification of the individual's benefits under a specified retirement arrangement, the individual's specified retirement arrangement PSPA shall be determined in accordance with that method.

History: S. 8308.3 added by P.C. 1996-911, s. 8, June 20, 1996, *Canada Gazette*, Part II, July 10, 1996, applicable after 1991, except that, for the purpose of applying, before 1996, the definition "specified retirement arrangement" in subsec. (1), the definition shall be read with the following para. added after para. (a):

(a.1) an unfunded plan or arrangement that is maintained primarily for the benefit of non-residents in respect of services rendered outside Canada,

Definitions [Reg. 8308.3]: "amount" — ITA 248(1); "arrangement" — Reg. 8308.3(1)(d); "associated" — ITA 256; "Canada" — ITA 255, *Interpretation Act* 35(1); "employer", "employment" — ITA 248(1); "Governor" — *Interpretation Act* 35(1); "individual", "Minister" — ITA 248(1); "money purchase limit" — ITA 147.1(1), 248(1); "PA offset" — Reg. 8300(1); "pension adjustment" — Reg. 8308(5)(c), 8308(8); "pension credit" — Reg. 8301, 8308.1(2)–(4), 8308.3(2), (3); "person" — ITA 248(1); "province" — *Interpretation Act* 35(1); "resident compensation" — Reg. 8300(1); "retirement compensation arrangement", "taxable income" — ITA 248(1); "written" — *Interpretation Act* 35(1)"writing".

8308.4 Government-sponsored retirement arrangements — (1) Definitions — The definitions in this subsection apply in this section.

"administrator" means, in respect of a government-sponsored retirement arrangement, the government or other entity that has ultimate responsibility for the administration of the arrangement.

"government-sponsored retirement arrangement" means a plan or arrangement established to provide pensions directly or indirectly from the public money of Can-

ada or a province to one or more individuals each of whom renders services in respect of which amounts that are included in computing the income from a business of any person or partnership are paid directly or indirectly from the public money of Canada or a province.

(2) Prescribed amount — Where

(a) in a particular calendar year after 1992 an individual renders services in respect of which an amount that is included in computing the income from a business of any person was payable directly or indirectly by the Government of Canada or of a province, and

(b) at the end of the particular year, the individual is entitled, either absolutely or contingently, to benefits under a government-sponsored retirement arrangement that provides benefits in connection with such services,

there is prescribed in respect of the individual for the year following the particular year, for the purposes of the descriptions of B in the definitions "RRSP deduction limit" and "unused RRSP deduction room" in subsection 146(1) of the Act and the description of B in paragraph 204.2(1.1)(b) of the Act,

(c) where the particular year is before 1996, the amount by which the RRSP dollar limit for that following year exceeds $1,000, and

(d) in any other case, the RRSP dollar limit for that following year.

History: Subsec. 8308.4(2) amended by P.C. 1998-2256, s. 13, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1992.

S. 8308.4 added by P.C. 1996-911, s. 8, June 20, 1996, *Canada Gazette*, Part II, July 10, 1996, applicable after 1992.

Definitions [Reg. 8308.4]: "administrator" — Reg. 8308.4(1); "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "government-sponsored retirement arrangement" — Reg. 8308.4(1); "individual" — ITA 248(1); "person", "prescribed" — ITA 248(1); "province" — *Interpretation Act* 35(1); "RRSP dollar limit" — ITA 146(1), 248(1).

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions).

8309. Prescribed amount for lieutenant governors and judges — (1) Subject to subsection (3), where an individual is, at any time in a particular calendar year after 1989, a lieutenant governor of a province (other than a lieutenant governor who is not a contributor as defined in section 2 of the *Lieutenant Governors Superannuation Act*), there is prescribed in respect of the individual for the year following the particular year, for the purposes of the descriptions of B in the definitions "RRSP deduction limit" and "unused RRSP deduction room" in subsection 146(1) of the Act and the description of B in paragraph 204.2(1.1)(b) of the Act, the lesser of

(a) the amount, if any, by which 18% of the salary received by the individual for the particular year as a lieutenant governor exceeds the PA offset for the particular year, and

(b) the amount by which the money purchase limit for the particular year exceeds the PA offset for the particular year.

(2) Subject to subsection (3), where an individual is, at any time in a particular calendar year after 1990, a judge in receipt of a salary under the *Judges Act*, there is prescribed in respect of the individual for the year following the particular year, for the purposes of the descriptions of B in the definitions "RRSP deduction limit" and "unused RRSP deduction room" in subsection 146(1) of the Act and the description of B in paragraph 204.2(1.1)(b) of the Act, the lesser of

(a) the amount, if any, by which 18% of the portion of the salary received by the individual for the particular year under the *Judges Act* in respect of which contributions are required under subsection 50(1) or (2) of that Act exceeds the PA offset for the particular year; and

(b) the amount determined by the formula

$$A \times \frac{B}{12}$$

where

A is the amount by which the money purchase limit for the particular year exceeds the PA offset for the particular year, and

B is the number of months, in the particular year, for which the individual received salary in respect of which contributions were required under subsection 50(1) or (2) of the *Judges Act*.

(3) For the purpose of determining the amount prescribed under subsection (1) or (2) in respect of an individual for a calendar year after 2000 and before 2005,

(a) paragraph (1)(b) shall be read as follows:

"(b) the money purchase limit for the particular year.", and

(b) the description of A in paragraph (2)(b) shall be read as follows:

"A is the money purchase limit for the particular year, and".

Proposed Amendment — Reg. 8309(3)

Application: The May 16, 2005 draft regulations (deferred income plans), s. 23, (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend subsec. 8309(3) by replacing "2005" with "2004", applicable after 2002.

Regulatory Impact Analysis Statement and Technical Notes, February 27, 2004: See under Reg. 8308.1(4.1) and Reg. 214(5).

History: Paras. 8309(2)(a) and (b) and subsec. 8309(3) amended by P.C. 2001-1634, s. 1, September 20, 2001, *Canada Gazette*, Part II, October 10, 2001, applicable to the determination of prescribed amounts for 2001 and subsequent calendar years.

S. 8309 amended by P.C. 1998-2256, s. 14, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1989.

Definitions [Reg. 8309]: "amount" — ITA 248(1); "Governor" — *Interpretation Act* 35(1); "individual" — ITA 248(1); "lieutenant governor" — *Interpretation Act* 35(1); "money purchase limit" — ITA 147.1(1), 248(1); "PA offset" — Reg. 8300(1); "prescribed" — ITA 248(1); "province" — *Interpretation Act* 35(1).

8310. Minister's powers — (1) Where more than one method for determining an amount under this Part complies with the rules in this Part, only such of those methods as are acceptable to the Minister shall be used.

(2) Where, in a particular case, the rules in this Part require the determination of an amount in a manner that is not appropriate having regard to the provisions of this Part read as a whole and the purposes for which the amount is determined, the Minister may permit or require the amount to be determined in a manner that, in the Minister's opinion, is appropriate.

(3) Where, pursuant to subsection (2), the Minister gives permission or imposes a requirement, the permission or requirement is not effective unless it is given or imposed in writing.

Definitions [Reg. 8310]: "amount", "Minister" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

8311. Rounding of amounts — Where a pension credit, provisional PSPA or PAR of an individual is not a multiple of one dollar, it shall be rounded to the nearest multiple of one dollar or, if it is equidistant from 2 such consecutive multiples, to the higher of the two multiples.

History: S. 8311 amended by P.C. 1998-2256, s. 15, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1996.

Definitions [Reg. 8311]: "individual" — ITA 248(1); "PAR" — Reg. 8304.1(1), (3)–(5); "pension credit" — Reg. 8301, 8308.1(2)–(4), 8308.3(2), (3); "provisional PSPA" — Reg. 8303(2), (3), 8308(4)(e).

PART LXXXIV — RETIREMENT AND PROFIT SHARING PLANS — REPORTING AND PROVISION OF INFORMATION

History: The heading to Part LXXXIV amended by P.C. 1996-911, s. 9, June 20, 1996, *Canada Gazette*, Part II, July 10, 1996, applicable after 1992. The heading formerly read: *Registered Plans — Reporting and Provision of Information.*

Part LXXXIV (ss. 8400–8410) added by P.C. 1991-2540, s. 7, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, ss. 8400 to 8405, 8409 and 8410 applicable after 1989 except that

(a) any return otherwise required to be filed under s. 8402 or 8403 or subsec. 8409(1) before the particular day that is 60 days after January 15, 1992 shall be deemed to have been filed as required if it is filed on or before the particular day;

(b) any copy of a return or form otherwise required under subsec. 8404(2) or (3) to be forwarded to an individual before the particular day that is 60 days after January 15, 1992 shall be deemed to have been forwarded as required if it is forwarded on or before the particular day;

(c) any return otherwise required by reason of s. 8405 to be filed before February 28, 1991 shall be deemed to have been filed as required if it is filed on or before February 28, 1991; and

(d) subsec. 8409(3) is applicable in respect of final distributions of property held in connection with registered pension plans where the distribution is made after 1989 and any return otherwise required to be filed under subsec. 8409(3) before the particular day that is 60 days after January 15, 1992 shall be deemed to have been filed as required if it is filed on or before the particular day.

8400. Definitions — **(1)** All words and expressions used in this Part that are defined in subsection 8300(1), 8308.4(1) or 8500(1) or in subsection 147.1(1) of the Act have the meanings assigned in those provisions.

History: Subsec. 8400(1) amended by P.C. 1996-911, s. 10, June 20, 1996, *Canada Gazette*, Part II, July 10, 1996, applicable after 1992.

(2) A reference in this Part to a pension credit of an individual means a pension credit of the individual as determined under Part LXXXIII.

(3) For the purposes of this Part, where the administrator of a pension plan is not otherwise a person, the administrator shall be deemed to be a person.

Definitions [Reg. 8400]: "administrator" — ITA 147.1(1), Reg. 8308.4(1); "individual" — ITA 248(1); "pension credit" — Reg. 8301, 8308.1(2)–(4), 8308.3(2), (3), Reg. 8400(2); "person" — ITA 248(1), Reg. 8400(3).

8401. Pension adjustment — **(1)** Where the pension adjustment of an individual for a calendar year with respect to an employer is greater than nil, the employer shall, on or before the last day of February in the immediately following calendar year, file with the Minister an information return in prescribed form reporting the pension adjustment, other than the portion, if any, required by subsection (2) or (3) to be reported by the administrator of a registered pension plan.

(2) Where an individual makes a contribution in a particular calendar year to a registered pension plan that is a specified multi-employer plan in the year and the contribution is not remitted to the plan by any participating employer on behalf of the individual, the plan administrator shall, on or before the last day of February in the immediately following calendar year, file with the Minister an information return in prescribed form reporting the aggregate of all amounts each of which is the portion, if any, of the individual's pension adjustment for the particular year with respect to an employer that may reasonably be considered to result from the contribution.

(3) Where the portion of a pension credit of an individual for a calendar year that, pursuant to subsection (4), is reportable by the administrator of a registered pension plan is greater than nil, the administrator shall, on or before the last day of February in the immediately following calendar year, file with the Minister an information return in prescribed form reporting that portion of the pension credit.

(4) For the purpose of subsection (3), where, on application by the administrator of a registered pension plan that is, in a calendar year, a multi-employer plan (other than a specified multi-employer plan), the Minister consents in writing to the application of this subsection with respect to the plan in the year, such portion of each pension credit for the year under a defined benefit provision of the plan as may reasonably be considered to be attributable to benefits provided in respect of a period of reduced services or disability of an individual is, to the extent permitted by the Minister, reportable by the administrator.

(5) Subsections (1) to (3) do not apply to require the reporting of amounts with respect to an individual for the calendar year in which the individual dies.

(6) Where the pension adjustment of an individual for a calendar year with respect to an employer is altered by reason of the application of paragraph 8308(4)(d) or (5)(c) and the amount (in this subsection referred to as the "redetermined amount") that a person would have been required to report based on the pension adjustment as altered exceeds

(a) if the person has not previously reported an amount in respect of the individual's pension adjustment, nil, and

(b) otherwise, the amount reported by the person in respect of the individual's pension adjustment,

the person shall, within 60 days after the day on which paragraph 8308(3)(c) or (5)(c), as the case may be, applies to alter the pension adjustment, file with the Minister an information return in prescribed form reporting the redetermined amount.

Definitions [Reg. 8401]: "administrator" — ITA 147.1(1), Reg. 8308.4(1); "amount" — ITA 248(1); "contribution" — Reg. 8302(12); "defined benefit provision" — ITA 147.1(1); "employer", "individual", "Minister" — ITA 248(1); "multi-employer plan", "participating employer" — ITA 147.1(1); "pension adjustment" — ITA 248(1); "pension credit" — Reg. 8301, 8308.1(2)–(4), 8308.3(2), (3), Reg. 8400(2); "person" — ITA 248(1), Reg. 8400(3); "prescribed" — ITA 248(1); "redetermined amount" — Reg. 8401(6); "registered pension plan" — ITA 248(1); "specified multi-employer plan" — ITA 147.1(1), Reg. 8510(2), (3); "writing" — *Interpretation Act* 35(1).

8402. Past service pension adjustment — **(1)** Where a provisional PSPA (computed under section

8303, 8304 or 8308) of an individual with respect to an employer that is associated with a past service event (other than a certifiable past service event) is greater than nil, the administrator of each registered pension plan to which the past service event relates shall, within 120 days after the day on which the past service event occurs, file with the Minister an information return in prescribed form reporting such portion of the aggregate of all amounts each of which is the individual's PSPA with respect to an employer that is associated with the past service event as may reasonably be considered to be attributable to benefits provided under the plan, except that a return is not required to be filed by an administrator if the amount that would otherwise be reported by the administrator is nil.

(2) Where a foreign plan PSPA (computed under subsection 8308.1(5) or (6)) of an individual with respect to an employer associated with a modification of benefits under a foreign plan (as defined by subsection 8308.1(1)) is greater than nil, the employer shall, on or before the last day of February in the year following the calendar year in which the individual's benefits were modified, file with the Minister an information return in prescribed form reporting the foreign plan PSPA.

(3) Where a specified retirement arrangement PSPA (computed under subsection 8308.3(4) or (5)) of an individual with respect to an employer associated with a modification of benefits under a specified retirement arrangement (as defined by subsection 8308.3(1)) is greater than nil, the employer shall, on or before the last day of February in the calendar year following the calendar year in which the individual's benefits were modified, file with the Minister an information return in prescribed form reporting the specified retirement arrangement PSPA.

History: Subsec. 8402(1) amended by P.C. 2005-694, s. 5, May 3, 2005, *Canada Gazette*, Part II, May 18, 2005, in force May 18, 2005.

S. 8402 renumbered as subsec. 8402(1) and subsecs. (2) and (3) added, by P.C. 1996-911, s. 11, June 20, 1996, *Canada Gazette*, Part II, July 10, 1996, applicable after 1991.

Definitions [Reg. 8402]: "administrator" — ITA 147.1(1), Reg. 8308.4(1); "amount" — ITA 248(1); "associated" — ITA 256; "certifiable past service event" — Reg. 8300(1); "employer", "individual", "Minister" — ITA 248(1); "past service event" — ITA 147.1(1), Reg. 8300(1); "prescribed", "registered pension plan" — ITA 248(1).

8402.01 Pension adjustment reversal — (1) Deferred profit sharing plan — Where the PAR determined in connection with an individual's termination from a deferred profit sharing plan is greater than nil, each trustee under the plan shall file with the Minister an information return in prescribed form reporting the PAR

(a) where the termination occurs in the first, second or third quarter of a calendar year, on or before the day that is 60 days after the last day of the quarter in which the termination occurs, and

(b) where the termination occurs in the fourth quarter of a calendar year, before February of the following calendar year,

and, for this purpose, an information return filed by a trustee under a deferred profit sharing plan is deemed to have been filed by each trustee under the plan.

Related Provisions: Reg. 8404(2) — Copy of return must be provided to taxpayer.

Forms: T10: Pension adjustment reversal; T10 Segment; T10 Summ: Summary of PARs.

(2) Deferred profit sharing plan — employer reporting — Where an amount included in an individual's pension credit in respect of an employer under a deferred profit sharing plan is included in determining a PAR in connection with the individual's termination from the plan, the employer is deemed to be a trustee under the plan for the purpose of reporting the PAR.

Related Provisions: Reg. 8404(2) — Copy of return must be provided to taxpayer.

(3) Benefit provision of a registered pension plan — Subject to subsection (4), where the PAR determined in connection with an individual's termination from a benefit provision of a registered pension plan is greater than nil, the administrator of the plan shall file with the Minister an information return in prescribed form reporting the PAR

(a) where the termination occurs in the first, second or third quarter of a calendar year, on or before the day that is 60 days after the last day of the quarter in which the termination occurs; and

(b) where the termination occurs in the fourth quarter of a calendar year, before February of the following calendar year.

Related Provisions: Reg. 8404(2) — Copy of return must be provided to taxpayer.

(4) Extended deadline — PA transfer amount — Where, in determining an individual's PAR in connection with the individual's termination from a defined benefit provision of a registered pension plan, it is reasonable for the administrator of the plan to conclude, on the basis of information provided to the administrator by the administrator of another pension plan or by the individual, that the value of D in paragraph 8304.1(5)(a) in respect of the termination may be greater than nil, the administrator shall file with the Minister an information return in prescribed form reporting the PAR, if it is greater than nil, on or before the later of

(a) the day on or before which it would otherwise be required to be filed; and

(b) the day that is 60 days after the earliest day on which the administrator has all the information required to determine that value.

(5) Calendar year quarter — For the purposes of this section,

(a) the first quarter of a calendar year is the period beginning on January 1 and ending on March 31 of the calendar year;

(b) the second quarter of a calendar year is the period beginning on April 1 and ending on June 30 of the calendar year;

(c) the third quarter of a calendar year is the period beginning on July 1 and ending on September 30 of the calendar year; and

(d) the fourth quarter of a calendar year is the period beginning on October 1 and ending on December 31 of the calendar year.

History [Reg. 8402.01]: S. 8402.01 added by P.C. 1998-2256, s. 16, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1996, except that any return otherwise required by s. 8402.01 to be filed before the particular day that is

(a) March 31, 1999, if the return is in connection with a termination in 1997 or 1998, or

(b) September 30, 1999, if the return is in connection with a termination in 1999,

is required to be filed on or before the particular day.

Definitions [Reg. 8402.01]: "administrator" — ITA 147.1(1), Reg. 8308.4(1); "benefit provision" — ITA 147.1(1); "deferred profit sharing

plan" — ITA 147(1), 248(1); "defined benefit provision" — ITA 147.1(1); "individual", "Minister" — ITA 248(1); "PAR" — Reg. 8304.1(1), (3)–(5); "prescribed" — ITA 248(1); "quarter" — Reg. 4300; "registered pension plan" — ITA 248(1).

8402.1 Where an amount is prescribed by subsection 8308.4(2) in respect of an individual for a calendar year because of the individual's entitlement (either absolute or contingent) to benefits under a government-sponsored retirement arrangement (as defined in subsection 8308.4(1)), the administrator of the arrangement shall, on or before the last day of February in the year, file with the Minister an information return in prescribed form reporting the prescribed amount.

History: S. 8402.1 added by P.C. 1996-911, s. 12, June 20, 1996, *Canada Gazette*, Part II, July 10, 1996, applicable after 1992.

Definitions [Reg. 8402.1]: "administrator" — ITA 147.1(1), Reg. 8308.4(1); "amount", "individual", "Minister", "prescribed" — ITA 248(1).

8403. Connected persons — Where, at any particular time after 1990,

(a) an individual becomes a member of a registered pension plan, or

(b) lifetime retirement benefits commence to accrue to the individual under a defined benefit provision of a registered pension plan following a period in which lifetime retirement benefits did not accrue to the individual,

each employer who participates in the plan for the benefit of the individual and with whom the individual is connected (within the meaning assigned by subsection 8500(3)) at the particular time, or was connected at any time after 1989, shall, within 60 days after the particular time, file with the Minister an information return in prescribed form containing prescribed information with respect to the individual unless the employer has previously filed an information return under this section with respect to the individual.

Definitions [Reg. 8403]: "defined benefit provision" — ITA 147.1(1); "employer", "individual" — ITA 248(1); "lifetime retirement benefits" — Reg. 8500(1); "Minister", "prescribed", "registered pension plan" — ITA 248(1).

Registered Plans Directorate Newsletters: 98-1 (simplified pension plans).

Forms: T1007: Connected person information return.

8404. Reporting to individuals — **(1)** Every person who is required by section 8401 or 8402.1 to file an information return with the Minister shall, on or before the day on or before which the return is required to be filed with the Minister, send to each individual to whom the return relates, two copies of the portion of the return that relates to the individual.

(2) Every person who is required by section 8402, 8402.01 or 8403 to file an information return with the Minister shall, on or before the day on or before which the return is required to be filed with the Minister, send to each individual to whom the return relates, one copy of the portion of the return that relates to the individual.

(3) Every person who obtains a certification from the Minister for the purposes of subsection 147.1(10) of the Act in respect of a past service event and an individual shall, within 60 days after receiving from the Minister the form submitted to the Minister pursuant to subsection 8307(1) in respect of the past service event and the individual, forward to the individual one copy of the form as returned by the Minister.

(4) Every person required by subsection (1), (2) or (3) to forward a copy of an information return or a form to an individual shall send the copy to the individual at the individual's last known address or shall deliver the copy to the individual in person.

History [Reg. 8404]: Subsecs. 8404(1) and (2) amended by P.C. 1998-2256, s. 17, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, subsec. 8404(1) applicable after 1992, and subsec. 8404(2) applicable after 1996.

Subsecs. 8404(1) and (2) amended by P.C. 1996-911, s. 13, June 20, 1996, *Canada Gazette*, Part II, July 10, 1996, applicable after 1992.

Definitions [Reg. 8404]: "individual", "Minister" — ITA 248(1); "past service event" — ITA 147.1(1), Reg. 8300(1); "person" — ITA 248(1), Reg. 8400(3).

8405. Discontinuance of business — Subsection 205(2) and section 206 are applicable, with such modifications as the circumstances require, in respect of returns required to be filed under this Part.

8406. Provision of information — **(1)** Where a person who is required to file an information return under section 8401 requires information from another person in order to determine an amount that is to be reported or to otherwise complete the return and makes a written request to the other person for the information, the other person shall provide the person with the information that is available to that other person,

(a) where the information return is required to be filed in the calendar year in which the request is received, within 30 days after receipt of the request; or

(b) in any other case, by January 31 of the year immediately following the calendar year in which the request is received.

(2) Where the administrator of a registered pension plan requires information from a person in order to determine a provisional PSPA of an individual under section 8303, 8304 or 8308 and makes a written request to the person for the information, the person shall, within 30 days after receipt of the request, provide the administrator with the information that is available to the person.

(3) Where the administrator of a registered pension plan requires information from a person in order to complete an information return required to be filed under section 8409 and makes a written request to the person for the information, the person shall, within 30 days after receipt of the request, provide the administrator with the information that is available to that person.

(4) Where a person requires information from another person in order to determine a PAR under section 8304.1 in connection with an individual's termination in a calendar year from a deferred profit sharing plan or from a benefit provision of a registered pension plan (other than information that the other person is required to provide to the person under subsection (5)) and makes a written request to the other person for the information, the other person shall provide the person with the information that is available to the other person on or before

(a) if the request is received before December 17 of the year, the day that is 30 days after the day on which the request is received; and

(b) in any other case, the later of the day that is 15 days after the day on which the request is received and January 15 of the year following the year.

History: Reg. 8406(4) added by P.C. 1998-2256, s. 18, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1996, except that any information otherwise required by subsec. 8406(4) to be provided before March 7, 1999 is required to be provided on or before that day.

(5) Where benefits provided to an individual under a registered pension plan (in this subsection referred to as the "importing plan") as a consequence of a past service event result in a PA transfer amount in relation to the individual's termination from a defined benefit provision of another registered pension plan (in this subsection referred to as the "exporting plan"),

(a) the administrator of the importing plan shall, in writing on or before the day that is 30 days after the day on which the past service event occurred, notify the administrator of the exporting plan of the occurrence of the past service event and of its relevance in determining the individual's PAR in connection with the individual's termination from the defined benefit provision; and

(b) the administrator of the importing plan shall notify the administrator of the exporting plan of the PA transfer amount in writing on or before the day that is 60 days after

(i) in the case of a certifiable past service event, the day on which the Minister issues a certification for the purposes of subsection 147.1(10) of the Act in respect of the past service event and the individual, and

(ii) in any other case, the day on which the past service event occurred.

Related Provisions: Reg. 8304.1(10) — PA transfer amount; Reg. 8304.1(11) — Special 1997 PA transfer amount.

History: Reg. 8406(5) added by P.C. 1998-2256, s. 18, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1996, except that

(a) any notification otherwise required by para. 8406(5)(a) to be provided before September 30, 1998 is required to be provided on or before that date; and

(b) any notification otherwise required by para. 8406(5)(b) to be provided is required to be provided on or before March 7, 1999 (60 days after publication in the *Canada Gazette*).

Definitions [Reg. 8406]: "administrator" — ITA 147.1(1), Reg. 8308.4(1); "amount" — ITA 248(1); "certifiable past service event" — Reg. 8300(1); "defined benefit provision" — ITA 147.1(1); "exporting plan", "importing plan" — Reg. 8406(4); "individual", "Minister" — ITA 248(1); "PA transfer amount" — Reg. 8304.1(10), (11); "PAR" — Reg. 8304.1(1), (3)–(5); "past service event" — ITA 147.1(1), Reg. 8300(1); "person" — ITA 248(1), Reg. 8400(3); "registered pension plan" — ITA 248(1); "written" — *Interpretation Act* 35(1)"writing".

8407. Qualifying withdrawals — Where

(a) an individual who has withdrawn an amount from a registered retirement savings plan under which the individual was the annuitant (within the meaning assigned by paragraph 146(1)(a) [146(1)"annuitant"] of the Act) at the time of the withdrawal provides the issuer (within the meaning assigned by paragraph 146(1)(c.1) [146(1)"issuer"] of the Act) of the plan, in the calendar year in which the amount was withdrawn or in either of the 2 immediately following calendar years, with the prescribed form referred to in subparagraph 8307(3)(a)(ii) accompanied by a request that the issuer complete the form in respect of the withdrawal, and

(b) the issuer has not, at the time of receipt of the request, forwarded to the individual 2 copies of the information return required by subsection 214(1) to be made by the issuer in respect of the withdrawal, and does not, within 30 days after receipt of the request, forward to the individual 2 copies of that return,

the issuer shall, within 30 days after receipt of the request, complete those portions of the form that the form indicates are required to be completed by the issuer in respect of the withdrawal and return the form to the individual.

Definitions [Reg. 8407]: "amount", "individual", "prescribed" — ITA 248(1); "registered retirement savings plan" — ITA 146(1), 248(1).

Forms: T1006: Designating an RRSP withdrawal as a qualifying withdrawal.

8408. Requirement to provide Minister with information — (1)

The Minister may, by notice served personally or by registered or certified mail, require that a person provide the Minister, within such reasonable time as is stipulated in the notice, with

(a) information relating to the determination of amounts under Part LXXXIII;

(b) where the person claims that paragraph 147.1(10)(a) of the Act is not applicable with respect to an individual and a past service event by reason of an exemption provided by regulation, information relevant to the claim; or

(c) information for the purpose of determining whether the registration of a pension plan may be revoked.

(2) Where a person fails to provide the Minister with information pursuant to a requirement under subsection (1), each registered pension plan and deferred profit sharing plan to which the information relates becomes a revocable plan as of the day on or before which the information was required to be provided.

Definitions [Reg. 8408]: "amount" — ITA 248(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "individual", "Minister" — ITA 248(1); "past service event" — ITA 147.1(1), Reg. 8300(1); "person" — ITA 248(1), Reg. 8400(3); "registered pension plan" — ITA 248(1).

8409. Annual information returns — (1)

The administrator of a registered pension plan that is administered under the supervision of a government regulator shall file an information return for a fiscal period of the plan in prescribed form and containing prescribed information

(a) where an agreement concerning annual information returns has been entered into by the Minister and the regulator, as identified in subsection (2),

(i) in the case of the agreement with the Pension Commission of Ontario, with the Taxation Data Centre of the Ministry of Finance of Ontario, and

(ii) in any other case, with that regulator,

on or before the day that an information return required by that regulator is to be filed for the fiscal period; and

(b) in any other case, with the Minister on or before the day that is 180 days after the end of the fiscal period.

History: Subsec. 8409(1) amended by P.C. 1996-213, s. 1, February 20, 1996, *Canada Gazette*, Part II, March 6, 1996, applicable to fiscal periods that end after December 30, 1994. Former s. 8409 does not apply for the 1994 calendar year to a registered pension plan with a fiscal period ending in 1994 before December 31, 1994.

Subsec. 8409(1) amended by P.C. 1995-17, s. 7, January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1989.

Forms: RC154: Schedule of required information for the CCRA (for Quebec); T244: Registered pension plan annual information return.

(2) For the purposes of paragraph (1)(a), the following government regulators have entered into an agreement concerning annual information returns with the Minister:

(a) the Pension Commission of Ontario, Province of Ontario;

(b) the Superintendent of Pensions, Province of Nova Scotia;

(c) the Superintendent of Pensions, Province of New Brunswick;

(d) the Superintendent of Pensions, Province of Manitoba; and

(e) the Superintendent of Pensions, Province of British Columbia.

Proposed Amendment — Reg. 8409(2)

CCRA, Registered Plans Directorate Newsletter No. 03-1 (June 27, 2003): *Joint Annual Information Return — New Participating Pension Supervisory Authority*

Further to our Newsletter No. 95-4, *New Filing Requirements for the Registered Pension Plan Annual Information Return*, and our Newsletter No. 01-2, *Joint Annual Information Return — New Participating Pension Supervisory Authorities*, the CCRA has developed a new joint annual information return with the Régie des rentes du Québec....

In creating the joint annual information return with the Régie des rentes du Québec, we created a new schedule to include with Quebec's annual information return. The new schedule, called RC154, *Schedule of Required Information for the Canada Customs and Revenue Agency*, is to be filed with Quebec's annual information return....

Subsection 8409(2) of the *Income Tax Regulations* will be amended to reflect the agreement reached with the province of Quebec concerning the annual information return.

If you need a copy of Quebec's annual information return, or if you have questions concerning the return, contact the Régie des rentes du Québec at (418) 643-8282 or visit their Web site at www.rrq.gouv.qc.ca.

If you have question concerning the RC154 schedule, contact the Registered Plans Directorate [English 613-954-0419; French 613-954-0930; Fax: (613) 952-0199]...

You can get a copy of the RC154 schedule on our Web site at www.ccra.gc.ca or call 1 800 959-3376.

History: Subsec. 8409(2) amended by P.C. 1996-213, s. 1, February 20, 1996, *Canada Gazette*, Part II, March 6, 1996, applicable to fiscal periods that end after December 30, 1994. Former s. 8409 does not apply for the 1994 calendar year to a registered pension plan with a fiscal period ending in 1994 before December 31, 1994.

Registered Plans Directorate Newsletters: 03-1 (joint annual information return — new participating pension supervisory authority).

(3) The administrator of a registered pension plan shall, within 60 days after the final distribution of property held in connection with the plan, notify the Minister in writing of the date of the distribution and the method of settlement.

History: Subsec. 8409(3) amended by P.C. 1996-213, s. 1, February 20, 1996, *Canada Gazette*, Part II, March 6, 1996, applicable to fiscal periods that end after December 30, 1994. Former s. 8409 does not apply for the 1994 calendar year to a registered pension plan with a fiscal period ending in 1994 before December 31, 1994.

Definitions [Reg. 8409]: "administrator" — ITA 147.1(1), Reg. 8308.4(1); "fiscal period" — ITA 249.1; "Minister", "prescribed", "property", "registered pension plan" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Registered Plans Directorate Newsletters: 95-4 (new filing requirements for the registered pension plan annual information return); 95-7 (Quebec simplified pension plans); 96-2 (waiving the requirement to file a registered pension plan annual information return for an inactive plan); 01-2 (joint annual information return — new participating pension supervisory authorities).

8410. Actuarial reports — The administrator of a registered pension plan that contains a defined benefit provision shall, on demand from the Minister served personally or by registered or certified mail and within such reasonable time as is stipulated in the demand, file with the Minister a report prepared by an actuary on the basis of reasonable assumptions and in accordance with generally accepted actuarial principles and containing such information as is required by the Minister in respect of the defined benefit provisions of the plan.

Definitions [Reg. 8410]: "actuary" — ITA 147.1(1); "administrator" — ITA 147.1(1), Reg. 8308.4(1); "defined benefit provision" — ITA 147.1(1); "Minister", "registered pension plan" — ITA 248(1).

Registered Plans Directorate Newsletters: 95-3 (actuarial report content); 95-5 (conversion of a defined benefit provision to a money purchase provision).

PART LXXXV — REGISTERED PENSION PLANS

History: Part LXXXV (ss. 8500–8520) added by P.C. 1991-2540, s. 7, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable after 1988 except that:

(a) subsec. 8512(1) is applicable as of January 15, 1992;

(b) any form or document otherwise required by subsec. 8512(2) to be forwarded to the Deputy Minister of National Revenue for Taxation before the particular day that is 60 days after January 15, 1992 shall be deemed to have been forwarded as required if it is forwarded on or before the particular day; and

(c) subsec. 8515(5) is applicable

(i) in respect of contributions made after 1991 to a pension plan that was registered by the Minister on or before July 31, 1991 for the purposes of the *Income Tax Act*, and

(ii) in respect of contributions made after 1990 to a pension plan that is registered by the Minister after July 31, 1991 for the purposes of that Act.

8500. Interpretation — (1) [Definitions] — In this Part,

"active member" of a pension plan in a calendar year means a member of the plan to whom benefits accrue under a defined benefit provision of the plan in respect of all or any portion of the year or who makes contributions, or on whose behalf contributions are made, in relation to the year under a money purchase provision of the plan;

Related Provisions: Reg. 8500(7) — Amount allocated under money purchase provision deemed to be contribution.

"average Consumer Price Index" for a calendar year means the amount that is obtained by dividing by 12 the aggregate of all amounts each of which is the Consumer Price Index for a month in the 12-month period ending on September 30 of the immediately preceding calendar year;

"beneficiary" of an individual means a person who has a right, by virtue of the participation of the individual in a pension plan, to receive benefits under the plan after the death of the individual;

"benefit provision" of a pension plan means a money purchase or defined benefit provision of the plan;

"bridging benefits" provided to a member under a benefit provision of a pension plan means retirement benefits payable to the member under the provision for a period ending no later than a date determinable at the time the benefits commence to be paid;

"Consumer Price Index" for a month means the Consumer Price Index for the month as published by Statistics Canada under the authority of the *Statistics Act*;

"defined benefit limit" for a calendar year means the greater of

(a) $1,722.22, and

(b) 1/9 of the money purchase limit for the year;

Related Provisions: Reg. 8509(13), 8516(9) — Grandfathering provisions.

History: "Defined benefit limit" in subsec. 8500(1) amended by P.C. 1998-2256, s. 19, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1995, except that paragraph (b) of the definition applies

(a) before March 6, 1996 as though the money purchase limit for each year after 1995 were the amount that it would be if the definition "money purchase limit" in subsec. 147.1(1) of the Act applied as it read on December 31, 1995; and

(b) after March 5, 1996 and before 1997 as though the money purchase limit for each year after 1995 were the amount that it would be if the definition "money purchase limit" in subsec. 147.1(1) of the Act applied as it read on January 1, 1997.

"Defined benefit limit" in subsec. 8500(1) amended by P.C. 1995-17, subsec. 8(1), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1991.

"dependant" of an individual at the time of the individual's death means a parent, grandparent, brother, sister, child or grandchild of the individual who, at that time, is both dependent on the individual for support and

(a) under 19 years of age and will not attain 19 years of age in the calendar year that includes that time,

(b) in full-time attendance at an educational institution, or

(c) dependent on the individual by reason of mental or physical infirmity;

"disabled" means, in relation to an individual, suffering from a physical or mental impairment that prevents the individual from performing the duties of the employment in which the individual was engaged before the commencement of the impairment;

"eligible period of reduced pay" of an employee with respect to an employer means a period (other than a period in which the employee is, at any time after 1990, connected with the employer or a period any part of which is a period of disability of the employee)

(a) that begins after the employee has been employed by the employer or predecessor employers to the employer for not less than 36 months,

(b) throughout which the employee renders services to the employer, and

(c) throughout which the remuneration received by the employee from the employer is less than the remuneration that it is reasonable to expect the employee would have received from the employer had the employee rendered services throughout the period on a regular basis (having regard to the services rendered by the employee to the employer before the period) and had the employee's rate of remuneration been commensurate with the employee's rate of remuneration before the period;

Information Circulars: 98-2: Prescribed compensation for RPPs, para. 10.

"eligible period of temporary absence" of an individual with respect to an employer means a period throughout which the individual does not render services to the employer by reason of leave of absence, layoff, strike, lockout or any other circumstance acceptable to the Minister, other than a period

(a) a part of which is a period of disability of the individual, or

(b) in which the individual is, at any time after 1990, connected with the employer;

"eligible survivor benefit period" in relation to a person who is a dependant of an individual at the time of the individual's death, means the period beginning on the day of death of the individual and ending on the latest of

(a) where the dependant is under 19 years of age throughout the calendar year that includes the day of death of the individual, the earlier of

(i) December 31 of the calendar year in which the dependant attains 18 years of age, and

(ii) the day of death of the dependant,

(b) where the dependant is in full-time attendance at an educational institution on the later of the day of death of the individual and December 31 of the calendar year in which the dependant attains 18 years of age, the day on which the dependant ceases to be in full-time attendance at an educational institution, and

(c) where the dependant is dependent on the individual at the time of the individual's death by reason of mental or physical infirmity, the day on which the dependant ceases to be infirm or, if there is no such day, the day of death of the dependant;

"existing plan" means a pension plan that was a registered pension plan on March 27, 1988 or in respect of which an application for registration was made to the Minister before March 28, 1988, and includes a pension plan that was established before March 28, 1988 pursuant to an Act of Parliament that deems member contributions to be contributions to a registered pension plan;

"forfeited amount" under a money purchase provision of a pension plan means an amount to which a member of the plan has ceased to have any rights, other than the portion thereof, if any, that is payable

(a) to a beneficiary of the member as a consequence of the member's death, or

(b) to a spouse or common-law partner or former spouse or common-law partner of the member as a consequence of the breakdown of their marriage or common-law partnership;

History: Para. (b) of the definition "forfeited amount" in subsec. 8500(1) amended by P.C. 2001-957, subsec. 8(1), May 31, 2001, *Canada Gazette*, Part II, June 20, 2001, applicable to 2001 *et seq.*, except that if a taxpayer and a person have jointly elected pursuant to s. 144 of the *Modernization of Benefits and Obligations Act* (S.C. 2000, c. 12), in respect of the 1998, 1999 or 2000 taxation year, the amendment applies to the taxpayer and the person in respect of the applicable taxation year *et seq.*

"grandfathered plan" means

(a) an existing plan that, on March 27, 1988, contained a defined benefit provision, or

(b) a pension plan that was established to provide benefits under a defined benefit provision to one or more individuals in lieu of benefits to which the individuals were entitled under a defined benefit provision of another pension plan that is a grandfathered plan, whether or not benefits are also provided to other individuals;

Related Provisions: Reg. 8509(13) — Grandfathering where plan complied before March 1996 budget date.

"lifetime retirement benefits" provided to a member under a benefit provision of a pension plan means retirement benefits provided to the member under the provision that, after they commence to be paid, are payable to the member until the member's death, unless the benefits are commuted or payment of the benefits is suspended;

Proposed Amendment — Reg. 8500(1)"lifetime retirement benefits"

"lifetime retirement benefits" provided to a member under a benefit provision of a pension plan means

(a) retirement benefits provided to the member under the provision that, after they commence to be paid, are payable to the member until the member's death, unless the benefits are commuted or payment of the benefits is suspended, and

(b) for greater certainty, retirement benefits provided to the member under the provision in accordance with paragraph 8506(1)(e.1);

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 24(1), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend the definition "lifetime retirement benefits" in subsec. 8500(1) to read as above, applicable after 2003.

Regulatory Impact Analysis Statement: See under Reg. 8506(1)(a)(ii) below. See also under Reg. 214(5).

"multi-employer plan" in a calendar year means

(a) a pension plan in respect of which it is reasonable to expect, at the beginning of the year (or at the time in the year when the plan is established, if later), that at no time in the year will more than 95 per cent of the active members of the plan be employed by a single participating employer or by a related group of participating employers, other than a plan where it is reasonable to consider that one of the main reasons there is more than one employer participating in the plan is to obtain the benefit of any of the provisions of the Act or these Regulations that are applicable only with respect to multi-employer plans, or

(b) a pension plan that is, in the year, a specified multi-employer plan,

and, for the purposes of this definition, 2 corporations that are related to each other solely by reason that they are both controlled by Her Majesty in right of Canada or a province shall be deemed not to be related persons;

Related Provisions: ITA 252.1 — Trade union locals and branches deemed to be a single employer; ITA 256(6), (6.1) — Meaning of "controlled".

Regulations: 8510(2), (3) (meaning of "specified multi-employer plan").

"pensionable service" of a member of a pension plan under a defined benefit provision of the plan means the periods in respect of which lifetime retirement benefits are provided to the member under the provision;

"period of disability" of an individual means a period throughout which the individual is disabled;

"predecessor employer" means, in relation to a particular employer, an employer (in this definition referred to as the "vendor") who has sold, assigned or otherwise disposed of all or part of the vendor's business or undertaking or all or part of the assets of the vendor's business or undertaking to the particular employer or to another employer who, at any time after the sale, assignment or other disposition, becomes a predecessor employer in relation to the particular employer, where one or more employees of the vendor have, in conjunction with the sale, assignment or disposition, become employees of the employer acquiring the business, undertaking or assets;

"public pension benefits" means amounts payable on a periodic basis under the *Canada Pension Plan*, a provincial pension plan as defined in section 3 of the *Canada Pension Plan*, or Part I of the *Old Age Security Act*, but does not include disability, death or survivor benefits provided under those Acts;

"public safety occupation" means the occupation of

(a) firefighter,

(b) police officer,

(c) corrections officer,

(d) air traffic controller, or

(e) commercial airline pilot;

Proposed Addition — 8500(1)"public safety occupation"(f)

(f) paramedic;

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 24(2), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will add para. (f) to the definition "public safety occupation" in subsec. 8500(1), applicable after 2004.

Regulatory Impact Analysis Statement: See under Reg. 8503(3)(g)(i) below. See also under Reg. 214(5).

Federal budget, Supplementary Information, February 23, 2005: *Public Safety Occupations*

Special rules governing pension benefits apply to those in public safety occupations. Public safety occupations are defined in the Income Tax Regulations as fire fighters, police officers, corrections officers, commercial airline pilots, and air traffic controllers. These rules allow those in public safety occupations to retire with an unreduced pension five years earlier than other RPP members, recognizing that earlier retirement in these occupations is the norm and is aimed at ensuring public safety. The budget proposes two changes in relation to public safety occupations.

Paramedics

Like fire fighters and police officers, paramedics require particular physical and perceptual capabilities to perform their work and effectively protect the safety of the public. The budget therefore proposes to add paramedics to the list of public safety occupations — effective January 1, 2005 — to provide them with the same opportunity to retire earlier with an unreduced pension as is available to those already included in the definition of public safety occupations.

Maximum Pension Accrual Rate

[See under Reg. 8503(3)(g)(i) — ed.]

Both the extension of the maximum pension accrual rate and the addition of paramedics to the list of public safety occupations do not in themselves require employers to amend their pension plans. Any change in pension plan provisions resulting from these measures would be a matter for negotiation between employers and employees.

[Table A8.1 in the Budget Supplementary Information estimates that these two proposals will cost $10 million per year beginning in 2006-07 — ed.]

"retirement benefits" provided to an individual under a benefit provision of a pension plan means benefits provided to the individual under the provision that are payable on a periodic basis;

"surplus" under a money purchase provision of a pension plan at any time means such portion, if any, of the amount held at that time in respect of the provision as has not been allocated to members and is not reasonably attributable to

(a) forfeited amounts under the provision or earnings of the plan that are reasonably attributable to those amounts,

(b) contributions made under the provision by an employer that will be allocated to members as part of the regular allocation of such contributions, or

(c) earnings of the plan (other than earnings that are reasonably attributable to the surplus under the provision before that time) that will be allocated to members as part of the regular allocation of such earnings;

Related Provisions: Reg. 8500(1.1) — Definition applies to ITA 147.3(7.1).

History: Paras. (a) and (b) of the definition of "surplus" in subsec. 8500(1) amended by P.C. 1995-17, subsec. 8(2), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

"totally and permanently disabled" means, in relation to an individual, suffering from a physical or mental impairment that prevents the individual from engaging in any employment for which the individual is reasonably suited by virtue of the individual's education, training or experience and that can reasonably be expected to last for the remainder of the individual's lifetime;

"Year's Maximum Pensionable Earnings" for a calendar year has the meaning assigned by section 18 of the *Canada Pension Plan*.

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans.

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions); 96-1 (changes to retirement savings limits).

(1.1) [Application of "surplus"] — The definition "surplus" in subsection (1) applies for the purpose of subsection 147.3(7.1) of the Act.

History: Subsec. 8500(1.1) added by P.C. 2003-1497, subsec. 7(1), October 2, 2003, *Canada Gazette*, Part II, October 22, 2003, applicable after 1998.

(2) [Definitions in ITA 147.1(1)] — All words and expressions used in this Part that are defined in subsection 147.1(1) of the Act have the meanings assigned in that subsection.

(3) ["Connected"] — For the purposes of this Part, a person is connected with an employer at any time where, at that time, the person

(a) owns, directly or indirectly, not less than 10 per cent of the issued shares of any class of the capital stock of the employer or of any other corporation that is related to the employer,

(b) does not deal at arm's length with the employer, or

(c) is a specified shareholder of the employer by reason of paragraph (d) of the definition "specified shareholder" in subsection 248(1) of the Act,

and, for the purposes of this subsection,

(d) a person shall be deemed to own, at any time, each share of the capital stock of a corporation owned, at that time, by a person with whom the person does not deal at arm's length,

(e) where shares of the capital stock of a corporation are owned at any time by a trust,

(i) if the share of any beneficiary in the income or capital of the trust depends on the exercise by any person of, or the failure by any person to exercise, any discretionary power, each beneficiary of the trust shall be deemed to own, at that time, all the shares owned by the trust, and

(ii) in any other case, each beneficiary of a trust shall be deemed to own, at that time, that proportion of the shares owned by the trust that the fair market value at that time of the beneficiary's beneficial interest in the trust is of the fair market value at that time of all beneficial interests in the trust,

(f) each member of a partnership shall be deemed to own, at any time, that proportion of all shares of the capital stock of a corporation that are property of the partnership at that time that the fair market value at that time of the member's interest in the partnership is of the fair market value at that time of the interests of all members in the partnership, and

(g) a person who, at any time, has a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently, to, or to acquire, shares of the capital stock of a corporation shall be deemed to own, at that time, those shares if one of the main reasons for the existence of the right may reasonably be considered to be that the person not be connected with an employer.

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans.

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions).

(4) [Offices] — For the purposes of this Part, an officer who receives remuneration for holding an office shall, for any period that the officer holds the office, be deemed to render services to, and to be in the service of, the person from whom the officer receives the remuneration.

Interpretation Bulletins: IT-167R6: Registered pension plans — employee's contributions.

(5) ["Spouse"] — For the purposes of this Part, a spouse of a particular individual includes another individual of the opposite sex who is a party to a void or voidable marriage with the particular individual.

History: Subsec. 8500(5) amended by P.C. 2001-957, subsec. 8(2), May 31, 2001, *Canada Gazette*, Part II, June 20, 2001, applicable to 2001 *et seq.*, except that if a taxpayer and a person have jointly elected pursuant to s. 144 of the *Modernization of Benefits and Obligations Act* (S.C. 2000, c. 12), in respect of the 1998, 1999 or 2000 taxation year, the amendment applies to the taxpayer and the person in respect of the applicable taxation year *et seq.*

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions).

(6) [Combining periods] — Where this Part provides that an amount is to be determined by aggregating the durations of periods that satisfy specified conditions, a period shall be included in determining the aggregate only if it is not part of a longer period that satisfies the conditions.

(7) [Deemed contributions] — For the purposes of the definition "active member" in subsection (1), subparagraph 8503(3)(a)(v) and paragraphs 8504(7)(d) and 8507(3)(a), such portion of an amount allocated to an individual at any time under a money purchase provision of a registered pension plan as is attributable to

Proposed Amendment — Reg. 8500(7) opening words

(7) [Deemed contributions] — For the purposes of the definition "active member" in subsection (1), subparagraph 8503(3)(a)(v) and paragraphs 8504(7)(d), 8506(2)(c.1) and 8507(3)(a), the portion of an amount allocated to an individual at any time under a money purchase provision of a registered pension plan that is attributable to

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 24(3), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend the opening words of subsec. 8500(7) to read as above, applicable after 2003.

Regulatory Impact Analysis Statement: Various other provisions in Part LXXXV are also amended to take into account variable benefits.

These relieving changes were announced in the 2003 budget and generally apply after 2003. For further details, refer to . . . the explanatory notes to the draft income tax proposals that were released by the Department of Finance on February 27, 2004 [below. See also under Reg. 214(5).]

Technical Notes, February 27, 2004: Subsection 8500(7) deems the allocation of surplus and forfeited amounts to an individual under a money purchase provision of an RPP to be a contribution made on behalf of the individual for the purposes of a number of provisions in Part LXXXV that depend on whether money purchase contributions are made on behalf of an individual.

Subsection 8500(7) is amended so that the deeming provision also applies for the purpose of new paragraph 8506(2)(c.1), which prohibits money purchase contributions from being made on behalf of a member at any time after the calendar year in which the member turns 69 years of age.

(a) forfeited amounts under the provision or earnings of the plan that are reasonably attributable to those amounts,

(b) a surplus under the provision,

(c) property transferred to the provision in respect of the actuarial surplus under a defined benefit provision of the plan or another registered pension plan, or

(d) property transferred to the provision in respect of the surplus under another money purchase provision of the plan or under a money purchase provision of another registered pension plan

shall be deemed to be a contribution made under the provision on behalf of the individual at that time.

History: Para. 8500(7)(d) added by P.C. 2003-1497, subsec. 7(2), October 2, 2003, *Canada Gazette*, Part II, October 22, 2003, applicable to allocations that occur after 1998.

Subsec. 8500(7) added by P.C. 1995-17, subsec. 8(3), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988, except that with respect to amounts allocated on or before April 5, 1994, subsec. (7) shall be read without reference to the expression "[of] the definition 'active member' in subsection (1)", and for the purposes of subparagraph 8507(3)(a)(vi), without reference to paragraph (c) thereof.

(8) [Member and non-member benefits] — Where an individual who is entitled to receive benefits (in this subsection referred to as "member benefits") under a pension plan because of the individual's membership in the plan is also entitled to receive other benefits (in this subsection referred to as "non-member benefits") under the plan or under any other pension plan solely because of the participation of another individual in the plan or in the other plan, the following rules apply:

(a) for the purpose of determining whether the member benefits are permissible under this Part, the non-member benefits shall be disregarded;

(b) for the purpose of determining whether the non-member benefits are permissible under this Part, the member benefits shall be disregarded; and

(c) for the purpose of determining a pension adjustment, pension adjustment reversal or provisional past service pension adjustment of the individual under Part LXXXIII, the non-member benefits shall be disregarded.

History: Subsec. 8500(8) added by P.C. 2001-153, s. 5, January 30, 2001, *Canada Gazette*, Part II, February 14, 2001, applicable after 1988, except that before 1997, para. (c) shall be read without reference to the words "pension adjustment reversal".

Definitions [Reg. 8500]: "active member" — Reg. 8500(1); "amount" — ITA 248(1); "arm's length" — ITA 251(1); "beneficiary", "benefit provision" — Reg. 8500(1); "benefits" — Reg. 8501(5)(c); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "child" — ITA 252(1); "commencement" — *Interpretation Act* 35(1); "common-law partnership" — ITA 248(1); "connected" — Reg. 8500(3); "consequence of the member's death" — 248(8); "Consumer Price Index" — Reg. 8500(1); "contribution" — Reg. 8500(7), 8501(6); "controlled" — ITA 256(6), (6.1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "defined benefit provision" — ITA 147.1(1); "dependant", "disabled" — Reg. 8500(1); "disposed" — ITA 248(1)"disposition"; "employed", "employee", "employer", "employment" — ITA 248(1); "existing plan", "forfeited amount", "grandfathered plan" — Reg. 8500(1); "Her Majesty" — *Interpretation Act* 35(1); "individual" — ITA 248(1); "lifetime retirement benefits" — Reg. 8500(1); "member" — ITA 147.1(1); "Minister" — ITA 248(1); "money purchase limit", "money purchase provision" — ITA 147.1(1); "month" — *Interpretation Act* 35(1); "office" — ITA 248(1); "officer" — Reg. 8500(4); "own" — Reg. 8500(3)(d)–(g); "Parliament" — *Interpretation Act* 35(1); "participating employer" — ITA 147.1(1); "past service pension adjustment" — ITA 248(1), Reg. 8303(1); "pension adjustment" — ITA 248(1); "period of disability" — Reg. 8500(1); "person" — ITA 248(1); "predecessor employer" — Reg. 8500(1); "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "provisional past service pension adjustment" — Reg. 8303(2); "registered pension plan" — ITA 248(1); "related" — ITA 251(2)–(6), Reg. 8500(1)"multi-employer plan"; "retirement benefits" — Reg. 8500(1); "share" — ITA 248(1); "specified multi-employer plan" — ITA 147.1(1), Reg. 8510(2), (3); "specified shareholder" — ITA 248(1); "spouse" — Reg. 8500(5); "surplus" — Reg. 8500(1); "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

Forms [Reg. 8500]: T920: Application to amend an RPP.

8501. Prescribed conditions for registration and other conditions applicable to registered pension plans — (1) Conditions for registration — For the purposes of section 147.1 of the Act, and subject to sections 8509 and 8510, the prescribed conditions for the registration of a pension plan are

(a) the conditions in paragraphs 8502(a), (c), (e), (f) and (l),

(b) if the plan contains a defined benefit provision, the conditions in paragraphs 8503(4)(a) and (c), and

(c) if the plan contains a money purchase provision, the conditions in paragraphs 8506(2)(a) and (d),

and the following conditions:

(d) there is no reason to expect, on the basis of the documents that constitute the plan and establish the funding arrangements, that

(i) the plan may become a revocable plan pursuant to subsection (2), or

(ii) the conditions in subsection 147.1(10) of the Act may not be complied with, and

(e) there is no reason to expect that the plan may become a revocable plan pursuant to subsection 147.1(8) or (9) of the Act or subsection 8503(15).

Proposed Amendment — Reg. 8501(1)(e)

(e) there is no reason to expect that the plan may become a revocable plan pursuant to subsection 147.1(8) or (9) of the Act or subsection 8503(15) or 8506(4).

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 25(1), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend para. 8501(1)(e) to read as above, applicable after 2003.

Regulatory Impact Analysis Statement: [See under Reg. 8500(7) opening words above.] For further details, refer to . . . the explanatory notes to the draft income tax proposals that were released by the Department of Finance on February 27, 2004 [below. See also under Reg. 214(5).]

Technical Notes, February 27, 2004: Subsection 8501(1) lists the prescribed conditions for the registration of a pension plan. The prescribed conditions include, in paragraph 8501(1)(e), a condition that enables the Minister to refuse to register a plan where it is apparent that there may, immediately or at a future date, be non-compliance with certain specified conditions that are not prescribed conditions for registration.

Paragraph 8501(1)(e) is amended to add a reference to new subsection 8506(4), which provides a minimum payment rule applicable to money purchase RPPs that offer the new RRIF-like benefit option to its members. To comply with this prescribed condition as it relates to subsection 8506(4), such a plan would have to include a term requiring that the amount of variable benefits to be paid each year in respect of a member's account not be less than the minimum amount specified for the purpose of that subsection. For more details, refer to the commentary on subsections 8506(4) to (6).

Related Provisions: Reg. 8501(3) — Conditions inapplicable where inconsistent with 8503(6) and (8) and 8505(3) and (4); Reg. 8501(6) — Rule where contributions made through employer association or trade union from employer or individual.

Information Circulars: 98-2: Prescribed compensation for RPPs, paras. 19, 30.

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions).

(2) Conditions applicable to registered pension plans — For the purposes of paragraph 147.1(11)(c) of the Act, and subject to sections 8509 and 8510, a registered pension plan becomes a revocable plan at any time that it fails to comply with

(a) a condition set out in any of paragraphs 8502(b), (d), (g) to (k) and (m);

(b) where the plan contains a defined benefit provision, a condition set out in paragraph 8503(3)(a), (b), (d), (j), (k) or (l) or (4)(b), (d), (e) or (f); or

(c) where the plan contains a money purchase provision, a condition set out in any of paragraphs 8506(2)(b) to (c) and (e) to (h).

Proposed Amendment — Reg. 8501(2)(c)

(c) where the plan contains a money purchase provision, a condition set out in any of paragraphs 8506(2)(b) to (c.1) and (e) to (i).

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 25(2), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend para. 8501(2)(c) to read as above, applicable after 2003.

Regulatory Impact Analysis Statement: [See under Reg. 8500(7) opening words above.] For further details, refer to . . . the explanatory notes to the draft income tax proposals that were released by the Department of Finance on February 27, 2004 [below. See also under Reg. 214(5).]

Technical Notes, February 27, 2004: Subsection 8501(2) lists conditions that apply to a pension plan that has been registered. If an RPP fails to comply with any of these conditions, it becomes a revocable plan and, pursuant to subsections 147.1(11) to (13) of the Act, its registration may be revoked.

Paragraph 8501(2)(c) is amended, effective after 2003, to add a reference to the conditions in new paragraphs 8506(2)(c.1) and (i) relating to money purchase provisions. For details, refer to the commentary on those paragraphs.

Related Provisions: Reg. 8501(3) — Conditions inapplicable where inconsistent with 8503(6) and (8) and 8505(3) and (4); Reg. 8501(6) — Rule where contributions made through employer association or trade union from employer or individual.

History: Para. 8501(2)(a) amended by P.C. 1996-911, s. 14, June 20, 1996, *Canada Gazette*, Part II, July 10, 1996, applicable after 1993.

Para. 8501(2)(c) amended by P.C. 1995-17, subsec. 9(1), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after April 5, 1994.

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions).

(3) Permissive rules — The conditions in this Part do not apply in respect of a pension plan to the extent that they are inconsistent with the provisions of subsections 8503(6) and (8) and 8505(3) and (4).

History: Subsec. 8501(3) amended by P.C. 1995-17, subsec. 9(2), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

(4) Supplemental plans — Where

(a) the benefits provided under a pension plan (in this subsection referred to as the **"supplemental plan"**) that contains one defined benefit provision and no money purchase provisions may reasonably be considered to be supplemental to the benefits provided under a defined benefit provision (in this subsection referred to as the **"base provision"**) of another pension plan,

(b) the supplemental plan does not otherwise comply with the condition set out in paragraph 8502(a) or the condition in paragraph 8502(c), and

(c) the Minister has approved the application of this subsection, which approval has not been withdrawn,

for the purpose of determining whether the supplemental plan complies with the conditions in paragraphs 8502(a) and (c), the benefits provided under the base provision shall be considered to be provided under the supplemental plan.

(5) Benefits payable after the breakdown of the marriage or common-law partnership — Where

(a) an individual who is a spouse or common-law partner or former spouse or common-law partner of a member of a registered pension plan is entitled to receive all or a portion of the benefits that would otherwise be payable under the plan to the member, and

(b) the entitlement was created

(i) by assignment of benefits by the member, on or after the breakdown of their marriage or common-law partnership, in settlement of rights arising out of their marriage or common-law partnership, or

(ii) by a provision of the law of Canada or a province applicable in respect of the division of property between the member and the individual, on or after the breakdown of their marriage or common-law partnership, in settlement of rights arising out of their marriage or common-law partnership,

the following rules apply:

(c) except where paragraph (d) applies, the benefits to which the individual is entitled are, for the purposes of this Part, deemed to be benefits provided and payable to the member, and

(d) the benefits to which the individual is entitled are, for the purposes of this Part, deemed to be benefits provided and payable to the individual and not provided or payable to the member where

(i) the entitlement of the individual was created by a provision of the law of Canada or a province described in subparagraph (b)(ii), and

(ii) that provision

(A) requires that benefits commence to be paid to the individual at a time that may be different from the time benefits commence to be paid to the member, or

(B) gives the individual any rights in respect of the benefits to which the individual is entitled in addition to the rights that the individual would have as a consequence of an assignment by the member, in whole or in part, of the member's right to benefits under the plan.

History: Subsec. 8501(5) amended by P.C. 2001-957, s. 9, May 31, 2001, *Canada Gazette*, Part II, June 20, 2001, applicable to 2001 *et seq.*, except that if a taxpayer and a person have jointly elected pursuant to s. 144 of the *Modernization of Benefits and Obligations Act* (S.C. 2000, c. 12), in respect of the 1998, 1999 or 2000 taxation year, the amendment applies to the taxpayer and the person in respect of the applicable taxation year *et seq.*

(6) Indirect contributions — Where an employer or an individual makes payments to a trade union or an association of employers (in this subsection referred to as the **"contributing entity"**) to enable the contributing entity to make contributions to a pension plan, such portion of a contribution made by the contributing entity to the plan as is reasonably attributable to a payment made to the contributing entity by an employer or individual shall, for the purposes of the conditions in this Part, be considered to be a contribution made by the employer or individual, as the case may be, and not by the contributing entity.

(6.1) Member contributions for unfunded liability — For the purposes of the conditions in this Part, a contribution made by a member of a pension plan in respect of a defined benefit provision of the plan is deemed to be a current service contribution made by the member in respect of the member's benefits under the provision if

(a) the contribution cannot, but for this subsection, reasonably be considered to be made in respect of the member's benefits under the provision;

(b) the contribution is determined by reference to the actuarial liabilities under the provision in respect of periods before the time of the contribution; and

(c) the contribution is made pursuant to an arrangement

(i) under which all, or a significant number, of the active members of the plan are required to make similar contributions,

(ii) the main purpose of which is to ensure that the plan has sufficient assets to pay benefits under the provision, and

(iii) that is approved by the Minister.

Related Provisions: Reg. 8501(6.2) — Contribution is a prescribed eligible contribution.

History: Subsec. 8501(6.1) added by P.C. 2003-1497, s. 8, October 2, 2003, *Canada Gazette*, Part II, October 22, 2003, applicable to contributions made after 1990.

(6.2) Prescribed eligible contributions — For the purpose of paragraph 147.2(4)(a) of the Act, a contribution described in subsection (6.1) is a prescribed eligible contribution.

History: Subsec. 8501(6.2) added by P.C. 2003-1497, s. 8, October 2, 2003, *Canada Gazette*, Part II, October 22, 2003, applicable to contributions made after 1990.

(7) Benefits provided with surplus on plan wind-up — Where

(a) a single amount is paid in full or partial satisfaction of an individual's entitlement to retirement benefits (in this subsection referred to as the **"commuted benefits"**) under a defined benefit provision of a registered pension plan,

(b) other benefits are subsequently provided to the individual under the provision as a consequence of an allocation, on full or partial wind-up of the plan, of an actuarial surplus under the provision,

(c) the other benefits include benefits (in this subsection referred to as "ancillary benefits") that, but for this subsection, would not be permissible under this Part,

(d) if the individual had previously terminated from the provision and the conditions in subsection 8304.1(14) were satisfied with respect to the termination, it is reasonable to consider that all of the ancillary benefits are in respect of periods before 1990, and

(e) the Minister has approved the application of this subsection in respect of the ancillary benefits,

for the purpose of determining whether the ancillary benefits are permissible under this Part, the individual is considered to have an entitlement under the provision to the commuted benefits.

History: Subsec. 8501(7) added by P.C. 1998-2256, s. 20, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to benefits provided after 1996.

Definitions [Reg. 8501]: "active member" — Reg. 8500(1); "benefits" — Reg. 8501(5)(c); "Canada" — ITA 255, *Interpretation Act* 35(1); "common-law partnership" — ITA 248(1); "contributing entity" — Reg. 8501(6); "contribution" — Reg. 8501(6), (7); "defined benefit provision" — ITA 147.1(1); "employer", "individual" — ITA 248(1); "member" — ITA 147.1(1); "Minister" — ITA 248(1); "money purchase provision" — ITA 147.1(1); "prescribed", "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "registered pension plan" — ITA 248(1); "retirement benefits" — Reg. 8500(1); "single amount" — ITA 147.1(1); "spouse" — Reg. 8500(5); "supplemental plan" — Reg. 8501(4)(a); "surplus" — Reg. 8500(1).

8502. Conditions applicable to all plans — For the purposes of section 8501, the following conditions are applicable in respect of a pension plan:

(a) **primary purpose** — the primary purpose of the plan is to provide periodic payments to individuals after retirement and until death in respect of their service as employees;

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions); 94-2 (q.2 — money purchase provision — bridging benefit); 04-1 (transfer from a defined benefit provision).

(b) **permissible contributions** — each contribution made to the plan after 1990 is an amount that

(i) is paid by a member of the plan in accordance with the plan as registered, where the amount is credited to the member's account under a money purchase provision of the plan, or is paid in respect of the member's benefits under a defined benefit provision of the plan,

(ii) is paid in accordance with a money purchase provision of the plan as registered, by an employer with respect to the employer's employees or former employees,

(iii) is an eligible contribution that is paid in respect of a defined benefit provision of the plan by an employer with respect to the employer's employees or former employees,

(iv) is transferred to the plan in accordance with any of subsections 146(16), 147(19) and 147.3(1) to (8) of the Act, or

Proposed Amendment — Reg. 8502(b)(iv)

(iv) is transferred to the plan in accordance with any of subsections 146(16), 146.3(14.1), 147(19) and 147.3(1) to (8) of the Act, or

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 26(1), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend subpara. 8502(b)(iv) to read as above, applicable after 2003.

Regulatory Impact Analysis Statement: [See under Reg. 8500(7) opening words above.] For further details, refer to . . . the explanatory notes to the draft income tax proposals that were released by the Department of Finance on February 27, 2004 [below. See also under Reg. 214(5).]

Technical Notes, February 27, 2004: Section 8502 lists conditions that apply for the registration of a pension plan. Paragraph 8502(b) lists the contributions that are permitted to be made to an RPP. The list includes transfers from other registered plans in accordance with any of subsections 146(16) (transfer from an RRSP), 147(19) (transfer from a DPSP) and 147.3(1) to (8) of the Act (transfer from an RPP).

Paragraph 8502(b) is amended to expand the list of permissible contributions to include transfers from a RRIF in accordance with new subsection 146.3(14.1) of the Act. Subsection 146,3(14.1) permits the direct transfer of an amount from an annuitant's RRIF to a money purchase provision of an RPP for the benefit of the annuitant, provided the annuitant was previously a member of the RPP.

(v) is acceptable to the Minister and that is transferred to the plan from a pension plan that is maintained primarily for the benefit of non-residents in respect of services rendered outside Canada,

and, for the purposes of this paragraph,

(vi) an eligible contribution is a contribution that is paid by an employer in respect of a defined benefit provision of a pension plan is where it is an eligible contribution under subsection 147.2(2) of the Act or, in the case of a plan in which Her Majesty in right of Canada or a province is a participating employer, would be an eligible contribution under subsection 147.2(2) of the Act if all amounts held to the credit of the plan in the accounts of Canada or the province were excluded from the assets of the plan, and

(vii) such portion of the contributions that are made by Her Majesty in right of Canada or a province in respect of a defined benefit provision of the plan as can reasonably be considered to be made with respect to the employees or former employees of another person shall be deemed to be contributions that are made by that other person;

Related Provisions: Reg. 8501(2)(a) — Revocation of plan for failure to comply with conditions; Reg. 8510(6) — Special rules — specified multi-employer plan.

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions); 93-2 (foreign service).

(c) **permissible benefits** — the plan does not provide for, and its terms are such that it will not under any circumstances provide for, any benefits other than benefits

(i) that are provided under one or more defined benefit provisions and are in accordance with subsection 8503(2), paragraphs 8503(3)(c) and (e) to (i) and section 8504,

(ii) that are provided under one or more money purchase provisions and are in accordance with subsection 8506(1),

(iii) that the plan is required to provide by reason of a designated provision of the law of Canada or a province, or that the plan would be required to provide if each such provision were applicable to the plan with respect to all its members, and

(iv) that the plan is required to provide to an individual who is a spouse or common-law partner or former spouse or common-law partner of a member of the plan by reason of a provision of the law of Canada or a province applicable in respect of the division of property between the member and the individual, on or after the breakdown of their marriage or common-law partnership, in settlement of rights arising out of their marriage or common-law partnership;

Related Provisions: Reg. 8503(9)(f) — Re-employed member; Reg. 8509(2) — Conditions applicable after 1991 to benefits under grandfathered plan; Reg. 8509(4) — Grandfathered plan — Minister may exempt certain benefits; Reg. 8510(6) — Special rules — specified multi-employer plan; Reg. 8513 — Designated provision of the law of Canada or a province.

History: Subpara. 8502(c)(iv) amended by P.C. 2001-957, subsec. 10(1), May 31, 2001, *Canada Gazette*, Part II, June 20, 2001, applicable to 2001 *et seq.*, except that if a taxpayer and a person have jointly elected pursuant to s. 144 of the *Modernization of Benefits and Obligations Act* (S.C. 2000, c. 12), in respect of the 1998, 1999 or 2000 taxation year, the amendment applies to the taxpayer and the person in respect of the applicable taxation year *et seq.*

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions); 98-2 (treating excess member contributions under a registered pension plan); 04-1 (transfer from a defined benefit provision).

(d) **permissible distributions** — each distribution that is made from the plan is

(i) a payment of benefits in accordance with the plan as registered,

(ii) a transfer of property held in connection with the plan where the transfer is made in accordance with subsection 147.3(3), (4.1), (7.1) or (8) of the Act,

(iii) a return of all or a portion of the contributions made by a member of the plan or an employer who participates in the plan, where the payment is made to avoid the revocation of the registration of the plan,

(iv) a return of all or a portion of the contributions made by a member of the plan under a defined benefit provision of the plan, where the return of contributions is pursuant to an amendment to the plan that also reduces the future contributions that would otherwise be required to be made under the provision by members,

(v) a payment of interest (computed at a rate not exceeding a reasonable rate) in respect of contributions that are returned as described in subparagraph (iv),

(vi) a payment in full or partial satisfaction of the interests of a person in an actuarial surplus that relates to a defined benefit provision of the plan,

(vii) a payment to an employer of property held in connection with a money purchase provision of the plan, or

(viii) where the Minister has, under subsection 8506(2.1), waived the application of the condition in paragraph 8506(2)(b.1) in respect of a money purchase provision of the plan, a payment under the provision of an amount acceptable to the Minister;

Proposed Amendment — Reg. 8502(d) — Lump sum benefit under Quebec *Supplemental Pension Plans Act*

Canada Revenue Agency, Registered Plans — What's new — Questions from the Industry, RPP Consultation Session, Dec. 3, 2003: *Question 5 — Quebec's Indexing Benefit Where Plan Benefit at Maximum*

This question again relates to the Quebec indexing benefit mentioned above [an additional benefit required by the *Supplemental Pension Plans Act* of Quebec]. Where the Quebec member's lifetime retirement benefit

according to the terms of the pension plan before adding the indexing benefit is at the maximum benefit limit in Reg. 8504, the SPPA requires the additional benefit to be paid in a cash lump sum. RPD has advised that this lump sum payment is neither a permissible benefit under Reg. 8502(c)(iii) nor a permissible distribution under Reg. 8502(d). The result is unworkable. Could RPD comment on the status of any ongoing discussions between RPD and the Quebec government concerning this matter and any resolutions that may have been identified.

Answer 5

We had found that the lump sum payment caused a conflict with the Regulations. Since the lump sum amount did not represent the value of a specific benefit under the plan, it was not a permissible distribution under subsection 8502(d) of the Regulations. We asked the Department of Finance to look at the matter and they decided they would propose a change to the Regulations. We have received a letter of comfort in this regard, allowing the lump sum payments to be a permissible distribution under 8502(d), and have been accepting plans that provide for such lump sum payments. Any amounts in excess of section 8504 of the Regulations must be paid in a lump sum and cannot be transferred.

Related Provisions: Reg. 8501(2)(a) — Revocation of plan for failure to comply with conditions.

History: Subpara. 8502(d)(ii) amended by P.C. 2003-1497, subsec. 9(1), October 2, 2003, *Canada Gazette*, Part II, October 22, 2003, applicable to transactions that occur after 1998.

Subpara. 8502(d)(ii) amended and subpara. 8502(d)(viii) added by P.C. 1995-17, subsecs. 10(1) and (2), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995. Subpara. 8502(d)(ii) is applicable with respect to distributions made from a pension plan after 1990 and subpara. 8502(d)(viii) is applicable after April 5, 1994.

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions); 96-3 (flexible pension plans).

(e) **payment of pension** — the plan

(i) requires that the retirement benefits of a member under each benefit provision of the plan commence to be paid not later than

(A) the end of the calendar year in which the member attains 69 years of age, or

(B) in the case of benefits provided under a defined benefit provision, such later time as is acceptable to the Minister, but only if the amount of benefits (expressed on an annualized basis) payable does not exceed the amount of benefits that would be payable if payment of the benefits commenced at the time referred to in clause (A), and

Proposed Amendment — Reg. 8502(e)(i)

(i) requires that the retirement benefits of a member under each benefit provision of the plan begin to be paid not later than the end of the calendar year in which the member attains 69 years of age except that,

(A) in the case of benefits provided under a defined benefit provision, the benefits may begin to be paid at any later time that is acceptable to the Minister, if the amount of benefits (expressed on an annualized basis) payable does not exceed the amount of benefits that would be payable if payment of the benefits began at the end of the calendar year in which the member attains 69 years of age, and

(B) in the case of benefits provided under a money purchase provision in accordance with paragraph 8506(1)(e.1), the benefits may begin to be paid not later than the end of the calendar year in which the member attains 70 years of age, and

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 26(2), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend subpara. 8502(e)(i) to read as above, applicable after 2003.

Regulatory Impact Analysis Statement: [See under Reg. 8500(7) opening words above.] For further details, refer to . . . the explanatory notes to the draft income tax proposals that were released by the Department of Finance on February 27, 2004 [below. See also under Reg. 214(5).]

Technical Notes, February 27, 2004: Paragraph 8502(e) requires an RPP to provide that retirement benefits will begin to be paid to each member no later than the end of the year in which the member turns 69 years of age.

Paragraph 8502(e) is amended to extend the pension commencement date by one year in the case of retirement benefits provided under a money purchase provision in accordance with new paragraph 8506(1)(e.1). That paragraph allows money purchase RPPs to provide retirement benefits to members in a manner similar to that permitted under a RRIF. This amendment is intended to provide consistency with the maximum deferral permitted under the RRSP/RRIF rules. Specifically, since RRSP annuitants have until the year in which they turn 69 years of age to convert their RRSP into a RRIF and minimum withdrawals under a RRIF are required to begin only in the year following the year in which the RRIF is set up, an RRSP annuitant can effectively defer receipt of retirement income to the year in which they turn 70 years of age. Paragraph 8502(e) is also amended for greater clarity.

(ii) provides that retirement benefits under each benefit provision are payable not less frequently than annually;

History: Cl. 8502(e)(i)(A) amended by P.C. 1998-2256, s. 21, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1996, except that

(a) subject to paragraph (b), cl. 8502(e)(i)(A), as amended, applies in respect of benefits provided to an individual who attained 70 years of age before 1997 or 69 years of age in 1996 as though the reference in that clause to "69 years of age" were a reference to "71 years of age" and "70 years of age" respectively; and

(b) where retirement benefits under a pension plan are provided to an individual by means of an annuity contract issued before March 6, 1996 and, under the terms and conditions of the contract as they read immediately before that day,

(i) the day on which annuity payments are to begin under the contract is fixed and determined and is after the year in which the individual attains

(A) 69 years of age, where the individual had not attained that age before 1997, or

(B) 70 years of age, where the individual attained 69 years of age in 1996, and

(ii) the amount and timing of each annuity payment are fixed and determined,

cl. 8502(e)(i)(A), as amended, applies in respect of the benefits as though the reference in that clause to "69 years of age" were a reference to "71 years of age".

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions).

(f) **assignment of rights** — the plan includes a stipulation that no right of a person under the plan is capable of being assigned, charged, anticipated, given as security or surrendered, and, for the purposes of this condition,

(i) assignment does not include

(A) assignment pursuant to a decree, order or judgment of a competent tribunal or a written agreement in settlement of rights arising out of a marriage or common-law partnership between an individual and the individual's spouse or common-law partner or former spouse or common-law partner, on or after the breakdown of their marriage or common-law partnership, or

(B) assignment by the legal representative of a deceased individual on the distribution of the individual's estate, and

(ii) surrender does not include a reduction in benefits to avoid the revocation of the registration of the plan;

Related Provisions: ITA 147(2)(e) — Parallel rules for DPSPs.

History: Cl. 8502(f)(i)(A) amended by P.C. 2001-957, subsec. 10(2), May 31, 2001, *Canada Gazette*, Part II, June 20, 2001, applicable to 2001 *et seq.*, except that if a taxpayer and a person have jointly elected pursuant to s. 144 of the *Modernization of Benefits and Obligations Act* (S.C. 2000, c. 12), in respect of the 1998, 1999 or 2000 taxation year, the amendment applies to the taxpayer and the person in respect of the applicable taxation year *et seq.*

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions).

(g) **funding media** — the arrangement under which property is held in connection with the plan is acceptable to the Minister;

Related Provisions: Reg. 8501(2)(a) — Revocation of plan for failure to comply with conditions.

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions); 98-1 (simplified pension plans).

(h) **investments** — the property that is held in connection with the plan does not include

(i) a prohibited investment under subsection 8514(1),

(ii) at any time that the plan is subject to the *Pension Benefits Standards Act, 1985* or a similar law of a province, an investment that is not permitted at that time under such laws as apply to the plan, or

(iii) at any time other than a time referred to in subparagraph (ii), an investment that would not be permitted were the plan subject to the *Pension Benefits Standards Act, 1985*;

Related Provisions: Reg. 8501(2)(a) — Revocation of plan for failure to comply with conditions.

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions).

(i) **borrowing** — a trustee or other person who holds property in connection with the plan does not borrow money for the purposes of the plan, except where

(i) the borrowing is for a term not exceeding 90 days,

(ii) the borrowing is not part of a series of loans or other transactions and repayments, and

(iii) none of the property that is held in connection with the plan is used as security for the borrowed money (except where the borrowing is necessary to provide funds for the current payment of benefits or the purchase of annuities under the plan without resort to a distressed sale of the property that is held in connection with the plan),

or where

(iv) the money is borrowed for the purpose of acquiring real property that may reasonably be considered to be acquired for the purpose of producing income from property,

(v) the aggregate of all amounts borrowed for the purpose of acquiring the property and any indebtedness incurred as a consequence of the acquisition of the property does not exceed the cost to the person of the property, and

(vi) none of the property that is held in connection with the plan, other than the real property, is used as security for the borrowed money;

Related Provisions: ITA 248(10) — Series of transactions; Reg. 8501(2)(a) — Revocation of plan for failure to comply with conditions.

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions).

(j) **determination of amounts** — except as otherwise provided in this Part, each amount that is determined in connection with the plan is determined, where the amount is based on assumptions, using such reasonable assumptions as are acceptable to the Minister, and, where actuarial principles are applicable to the determination, in accordance with generally accepted actuarial principles;

Related Provisions: Reg. 8501(2)(a) — Revocation of plan for failure to comply with conditions.

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions); 94-3 (using assumptions to compute the present value of benefits); 95-5 (conversion of a defined benefit provision to a money purchase provision); 96-3 (flexible pension plans).

(k) **transfer of property between provisions** — property that is held in connection with a benefit provision of the plan is not made available to pay benefits under another benefit provision of the plan (including another benefit provision that replaces the first benefit provision), except where the transaction by which the property is made so available is such that if the benefit provisions were in separate registered pension plans, the transaction would constitute a transfer of property from one plan to the other in accordance with any of subsections 147.3(1) to (4.1), (6), (7.1) and (8) of the Act;

Related Provisions: Reg. 8501(2)(a) — Revocation of plan for failure to comply with conditions.

History: Para. 8502(k) amended to add reference to "(7.1)" by P.C. 2003-1497, subsec. 9(2), October 2, 2003, *Canada Gazette*, Part II, October 22, 2003, applicable to transactions that occur after 1998.

Para. 8502(k) amended by P.C. 1995-17, subsec. 10(3), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable with respect to transactions occurring after 1990.

Registered Plans Directorate Newsletters: 95-5 (conversion of a defined benefit provision to a money purchase provision); 04-1 (transfer from a defined benefit provision).

(l) **appropriate pension adjustments** — the plan terms are not such that an amount that is determined under Part LXXXIII in respect of the plan would be inappropriate having regard to the provisions of that Part read as a whole and the purposes for which the amount is determined; and

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions); 01-3 (tailored individual pension plan).

(m) **participants in GSRAs** — no individual who, at any time after 1993, is entitled, either absolutely or contingently, to benefits under the plan by reason of employment with an employer with whom the individual is connected is entitled at that time, either absolutely or contingently, to benefits under a government-sponsored retirement arrangement (as defined in subsection 8308.4(1)).

Related Provisions: Reg. 8501(2)(a) — Revocation of plan for failure to comply with conditions.

History: Para. 8502(m) added by P.C. 1996-911, s. 15, June 20, 1996 *Canada Gazette*, Part II, July 10, 1996, applicable after 1993.

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions).

Definitions [Reg. 8502]: "amount", "annuity" — ITA 248(1); "benefit provision" — Reg. 8500(1); "benefits" — Reg. 8501(5)(c); "borrowed money" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "common-law partnership" — ITA 248(1); "connected" — Reg. 8500(3); "contribution" — Reg. 8501(6); "defined benefit provision" — ITA 147.1(1); "designated provision of the law of Canada or a province" — Reg. 8513; "eligible contribution" — Reg. 8502(b)(vi), 8510(6)(a); "employee", "employer", "employment" — ITA 248(1); "Her Majesty" — *In-*

terpretation Act 35(1); "individual" — ITA 248(1); "member" — ITA 147.1(1); "Minister" — ITA 248(1); "money purchase provision" — ITA 147.1(1); "non-resident" — ITA 248(1); "participating employer" — ITA 147.1(1); "person" — ITA 248(1); "prohibited investment" — Reg. 8514(1); "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "registered pension plan" — ITA 248(1); "retirement benefits" — Reg. 8500(1); "security" — *Interpretation Act* 35(1); "series" — ITA 248(10); "spouse" — Reg. 8500(5); "surplus" — Reg. 8500(1); "written" — *Interpretation Act* 35(1)"writing".

8503. Defined benefit provisions — (1) Net contribution accounts — In this section and subsection 8517(2), the net contribution account of a member of a pension plan in relation to a defined benefit provision of the plan is an account that is

(a) credited with

(i) the amount of each contribution that is made by the member to the plan in respect of the provision,

(ii) each amount that is transferred on behalf of the member to the plan in respect of the provision in accordance with any of subsections 146(16), 147(19) and 147.3(2) and (5) to (7) of the Act,

(iii) such portion of each amount that is transferred to the plan in respect of the provision in accordance with subsection 147.3(3) of the Act as may reasonably be considered to derive from contributions that are made by the member to a registered pension plan or interest (computed at a reasonable rate) in respect of such contributions,

(iv) the amount of any property that was held in connection with another benefit provision of the plan and that has been made available to provide benefits under the provision, to the extent that if the provisions were in separate registered pension plans, the amount would be included in the member's net contribution account by reason of subparagraph (ii) or (iii), and

(v) interest (computed at a reasonable rate determined by the plan administrator) in respect of each period throughout which the account has a positive balance; and

(b) charged with

(i) each amount that is paid under the provision with respect to the member, otherwise than in respect of an actuarial surplus under the provision,

(ii) the amount of any property that is held in connection with the provision (other than property that is in respect of an actuarial surplus under the provision) and that is made available to provide benefits with respect to the member under another benefit provision of the plan, and

(iii) interest (computed at a reasonable rate determined by the plan administrator) in respect of each period throughout which the account has a negative balance.

History: Subparas. 8503(1)(b)(i) and (ii) amended by P.C. 1995-17, subsec. 11(1), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

Registered Plans Directorate Newsletters: 04-1 (transfer from a defined benefit provision).

(2) Permissible benefits — For the purposes of paragraph 8502(c), the following benefits may, subject to the conditions set out in respect of each benefit, be provided under a defined benefit provision of a pension plan:

Proposed Amendment — Pension benefits

Federal budget, Supplementary Information, February 23, 2005: Generally, an RPP can reflect increases in the defined benefit limit without reducing the plan member's RRSP contribution room, provided that the increase does not exceed the increase in the average wage for the relevant years. The increases proposed in this budget, however, are intended to increase the defined benefit limit beyond average wage growth for years 2006–2009. Amendments to the *Income Tax Regulations* will be made public before 2006 in order to provide guidance with respect to those situations where pension benefits can be improved to reflect increases in the defined benefit limit without reducing the plan member's RRSP contribution room.

(a) **lifetime retirement benefits** — lifetime retirement benefits provided to a member where the benefits are payable in equal periodic amounts, or are not so payable only by reason that

(i) the benefits payable to a member after the death of the member's spouse or common-law partner are less than the benefits that would be payable to the member were the member's spouse or common-law partner alive,

(ii) the plan provides for periodic cost-of-living adjustments to be made to the benefits, where the adjustments

(A) are determined in such a manner that they do not exceed cost-of-living adjustments warranted by increases in the Consumer Price Index after the benefits commence to be paid,

(B) consist of periodic increases at a rate not exceeding 4 per cent per annum after the time the benefits commence to be paid,

(C) are based on the rates of return on a specified pool of assets after the benefits commence to be paid, or

(D) consist of any combination of adjustments described in clauses (A) to (C),

and, in the case of adjustments described in clauses (C) and (D), the present value (at the time the member's benefits commence to be paid) of additional benefits that can reasonably be expected to be paid as a consequence of the adjustments does not exceed the greater of

(E) the present value (at the time the member's benefits commence to be paid) of additional benefits that could reasonably be expected to be paid as a consequence of adjustments warranted by increases in the Consumer Price Index after the member's benefits commence to be paid, and

(F) the present value (at the time the member's benefits commence to be paid) of additional benefits that would be paid as a consequence of adjustments at a fixed rate of 4 per cent per annum after the time the member's benefits commence to be paid,

(iii) where the plan does not provide for periodic cost-of-living adjustments to be made to the benefits, or provides only for such adjustments as are described in clause (ii)(A) or (B), the plan provides for cost-of-living adjustments to be made to the benefits from time to time at the discretion of any person, where the adjustments, together with periodic cost-of-living adjustments, if any, are warranted by increases in the Consumer Price Index after the benefits commence to be paid,

(iv) the amount of the benefits is increased as a consequence of additional lifetime retirement benefits becoming provided to the member under the provision,

(v) the amount of the benefits is determined with a reduction computed by reference to the member's age, duration of service, or both (or with any other similar reduction), and the amount is subsequently adjusted to reduce or eliminate the portion, if any, of the reduction that is not required for the benefits to comply with the conditions in paragraph (3)(c),

(vi) the amount of the benefits is determined with a reduction computed by reference to the following benefits and the amount is subsequently adjusted to reduce or eliminate the reduction:

(A) disability benefits to which the member is entitled under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act,

(B) benefits to which the member is entitled under an employees' or workers' compensation law of Canada or a province in respect of an injury or disability, or

(C) benefits to which the member is entitled pursuant to a sickness or accident insurance plan or a disability insurance plan,

(vii) the amount of the benefits is determined with a reduction computed by reference to other benefits provided under the provision in respect of the member that are permissible under paragraph (c), (d), (k) or (n), and the amount is subsequently adjusted to reduce or eliminate the reduction,

(viii) the amount of the benefits is reduced as a consequence of benefits that are permissible under paragraph (c), (d), (k) or (n) becoming provided under the provision in respect of the member,

(ix) the amount of the benefits payable to the member while the member is in receipt of remuneration from a participating employer is less than the amount of the benefits that would otherwise be payable to the member if the member were not in receipt of the remuneration, or

(x) the amount of the benefits is adjusted in accordance with plan terms that were submitted to the Minister before April 19, 2000, where the benefits have commenced to be paid before 2003 and the adjustment is approved by the Minister;

(b) **bridging benefits** — bridging benefits provided to a member where

(i) the bridging benefits are payable for a period beginning no earlier than the time lifetime retirement benefits commence to be paid under the provision to the member and ending no later than the end of the month immediately following the month in which the member attains 65 years of age, and

(ii) the amount of the bridging benefits payable for a particular month does not exceed the amount that is determined for that month by the formula

$$A \times (1 - .0025 \times B) \times C \times \frac{D}{10}$$

where

A is the amount (or a reasonable estimate thereof) of public pension benefits that would be payable to the member for the month in which the bridging benefits commence to be paid to the member if

(A) the member were 65 years of age throughout that month,

(B) that month were the first month for which public pension benefits were payable to the member,

(C) the member were entitled to the maximum amount of benefits payable under the *Old Age Security Act*, and

(D) the member were entitled to that proportion, not exceeding 1, of the maximum benefits payable under the *Canada Pension Plan* (or a provincial plan as defined in section 3 of the *Canada Pension Plan*) that the total of the member's remuneration for the 3 calendar years in which the remuneration is the highest is of the total of the Year's Maximum Pensionable Earnings for those 3 years (or such other proportion of remuneration to Year's Maximum Pensionable Earnings as is acceptable to the Minister),

B is

(A) except where clause (B) is applicable, the number of months, if any, from the date on which the bridging benefits commence to be paid to the member to the date on which the member attains 60 years of age, and

(B) where the member is totally and permanently disabled at the time the bridging benefits commence to be paid to the member and the member was not, at any time after 1990, connected with an employer who has participated in the plan, nil,

C is the greatest of all amounts each of which is the ratio of the Consumer Price Index for a month not before the month in which the bridging benefits commence to be paid to the member and not after the particular month, to the Consumer Price Index for the month in which the bridging benefits commence to be paid to the member, and

D is

(A) except where clause (B) is applicable, the lesser of 10 and

(I) where the member was not, at any time after 1990, connected with an employer who has participated in the plan, the aggregate of all amounts each of which is the duration (measured in years, including any fraction of a year) of a period that is pensionable service of the member under the provision, and

(II) in any other case, the aggregate that would be determined under subclause (I) if the duration of each period were multiplied by a fraction (not greater than 1) that measures the services rendered by the member throughout the period to employers who participate in the plan as a proportion of the services that would have been rendered by the member throughout the period to such employers

had the member rendered services on a full-time basis, and

(B) where the member is totally and permanently disabled at the time at which the bridging benefits commence to be paid to the member and the member was not, at any time after 1990, connected with an employer who has participated in the plan, 10;

(c) **guarantee period** — retirement benefits (in this paragraph referred to as "continued retirement benefits") provided to one or more beneficiaries of a member who dies after retirement benefits under the provision commence to be paid to the member where

(i) the continued retirement benefits are payable for a period beginning after the death of the member and ending

(A) if retirement benefits permissible under paragraph (d) are provided under the provision to a spouse or common-law partner or former spouse or common-law partner of the member, no later than five years, and

(B) in any other case, no later than 15 years

after the day on which retirement benefits commence to be paid under the provision to the member, and

(ii) the aggregate amount of continued retirement benefits payable under the provision for each month does not exceed the amount of retirement benefits that would have been payable under the provision for the month to the member if the member were alive;

(d) **post-retirement survivor benefits** — retirement benefits (in this paragraph referred to as "survivor retirement benefits") provided to one or more beneficiaries of a member who dies after retirement benefits under the provision commence to be paid to the member where

(i) each beneficiary is, at the time of the member's death, a spouse, a common-law partner, a former spouse, a former common-law partner or a dependant, of the member,

(ii) the survivor retirement benefits provided to a spouse or common-law partner or former spouse or common-law partner are payable for a period beginning after the death of the member and ending with the death of the spouse or common-law partner or former spouse or common-law partner,

(iii) the survivor retirement benefits provided to a dependant are payable for a period beginning after the death of the member and ending no later than at the end of the dependant's eligible survivor benefit period,

(iv) the amount of survivor retirement benefits payable for each month to a beneficiary does not exceed 66⅔ per cent of the amount of retirement benefits that would have been payable under the provision for the month to the member if the member were alive, and

(v) the aggregate amount of survivor retirement benefits and other retirement benefits payable under the provision for each month to beneficiaries of the member does not exceed the amount of retirement benefits that would have been payable under the provision for the month to the member if the member were alive;

(e) **pre-retirement survivor benefits** — retirement benefits (in this paragraph referred to as "survivor retirement benefits") provided to one or more beneficiaries of a member who dies before retirement benefits under the provision commence to be paid to the member where

(i) no other benefits (other than benefits permissible under paragraph (g), (j), (l.1) or (n)) are payable as a consequence of the member's death,

(ii) each beneficiary is, at the time of the member's death, a spouse, a common-law partner, a former spouse, a former common-law partner or a dependant, of the member,

(iii) the survivor retirement benefits provided to a spouse or common-law partner are payable for a period beginning after the death of the member and ending with the death of the spouse or common-law partner or former spouse or common-law partner,

(iv) the survivor retirement benefits provided to a dependant are payable for a period beginning after the death of the member and ending no later than at the end of the dependant's eligible survivor benefit period,

(v) the amount of survivor retirement benefits payable for a month to a beneficiary does not exceed 66⅔ per cent of the amount that is determined in respect of the month by the formula set out in subparagraph (vi), and

(vi) the aggregate amount of survivor retirement benefits payable under the provision for a particular month to beneficiaries of the member does not exceed the amount that is determined for the particular month by the formula

$$\frac{(A + B)}{12} \times C$$

where

A is the amount (expressed on an annualized basis) of lifetime retirement benefits that accrued under the provision to the member as of the member's day of death, determined without any reduction computed by reference to the member's age, duration of service, or both, and without any other similar reduction,

B is, in the case of a member who attains 65 years of age before the member's death or who was, at any time after 1990, connected with an employer who has participated in the plan, nil, and, otherwise, the amount, if any, by which the lesser of

(A) the amount (expressed on an annualized basis) of lifetime retirement benefits that could reasonably be expected to have accrued to the member to the day on which the member would have attained 65 years of age if the member had survived to that day and continued in employment and if the member's rate of remuneration had not increased after the member's day of death, and

(B) the amount, if any, by which 3/2 of the Year's Maximum Pensionable Earnings for the calendar year in which the member dies exceeds such amount as is required by the Minister to be determined in respect of be-

nefits provided, as a consequence of the death of the member, under other benefit provisions of the plan and under benefit provisions of other registered pension plans

exceeds the amount determined for A, and

C is the greatest of all amounts each of which is the ratio of the Consumer Price Index for a month not before the month in which the member dies and not after the particular month, to the Consumer Price Index for the month in which the member dies;

(f) **pre-retirement survivor benefits — alternative rule** — retirement benefits (in this paragraph referred to as "survivor benefits") provided to a beneficiary of a member who dies before retirement benefits under the defined benefit provision commence to be paid to the member where

(i) no other benefits (other than benefits permissible under paragraph (g), (j), (l.1) or (n)) are payable as a consequence of the member's death,

(ii) the beneficiary is a spouse or common-law partner or former spouse or common-law partner of the member,

(iii) the survivor benefits are payable for a period beginning not later than the later of

(A) the day that is one year after the day of death of the member, and

(B) the end of the calendar year in which the beneficiary attains 69 years of age,

and ending with the death of the beneficiary,

(iv) the survivor benefits would be in accordance with paragraph (a) if the beneficiary were a member of the plan, and

(v) the present value (at the time of the member's death) of all benefits provided as a consequence of the member's death does not exceed the present value (immediately before the member's death) of all benefits that have accrued under the provision with respect to the member to the day of the member's death;

(g) **pre-retirement survivor benefits — guarantee period** — retirement benefits provided to one or more individuals as a consequence of the death of a person who

(i) is a beneficiary of a member who died before retirement benefits under the provision commenced to be paid to the member,

(ii) was, at the time of the member's death, a spouse or common-law partner or former spouse or common-law partner of the member, and

(iii) dies after the member's death,

where the benefits would be in accordance with paragraph (c) if the person were a member of the plan;

(h) **lump-sum payments on termination** — the payment, with respect to a member in connection with the member's termination from the plan (otherwise than by reason of death), of one or more single amounts where

(i) the payments are the last payments to be made under the provision with respect to the member,

(ii) if subparagraph (iii) is not applicable, each single amount does not exceed the balance in the member's net contribution account immediately before the time of payment of the single amount, and

(iii) if

(A) the Minister has, pursuant to subsection (5), waived the application of the conditions in paragraph (4)(a) in respect of the provision, or

(B) the member's contributions under the provision for each calendar year after 1990 would have been in accordance with paragraph (4)(a) if the reference in clause (i)(B) thereof to "70 per cent" were read as a reference to "50 per cent",

each single amount does not exceed the amount that would be the balance in the member's net contribution account immediately before the time of the payment of the single amount if, for each current service contribution made by the member under the provision, the account were credited at the time of the contribution with an additional amount equal to the amount of the contribution (other than the portion of the contribution, if any, paid in respect of one or more periods that were not periods of regular employment and that would not have been required to be paid by the member if the periods were periods of regular employment);

(i) **payment of commuted value of benefits on death before retirement** — the payment of one or more single amounts to one or more beneficiaries of a member who dies before retirement benefits under the provision commence to be paid to the member where

(i) no retirement benefits are payable as a consequence of the member's death, and

(ii) the aggregate of all amounts, each of which is such a single amount (other than the portion thereof, if any, that can reasonably be considered to be interest, computed at a rate not exceeding a reasonable rate, in respect of the period from the day of death of the member to the day the single amount is paid), does not exceed the present value, immediately before the death of the member, of all benefits that have accrued under the provision with respect to the member to the day of the member's death;

(j) **lump sum payments on death** — the payment of one or more single amounts after the death of a member where

(i) the payments are the last payments to be made under the provision with respect to the member,

(ii) if the member dies before retirement benefits under the provision commence to be paid to the member and no retirement benefits are payable as a consequence of the member's death, the aggregate amount to be paid at any time complies with whichever of the conditions in subparagraphs (h)(ii) and (iii) would be applicable if the single amounts were paid in connection with the member's termination from the plan otherwise than by reason of death, and

(iii) if subparagraph (ii) is not applicable, the aggregate amount to be paid at any time does not exceed the balance, immediately before that time, in the member's net contribution account in relation to the provision;

(k) **additional post-retirement death benefits** — retirement benefits (in this paragraph referred to as

"additional death benefits") payable after the death of a member who dies after retirement benefits under the provision commence to be paid to the member where the additional death benefits are

(i) retirement benefits provided to a spouse or common-law partner or former spouse or common-law partner of the member that are in excess of the benefits that are permissible under paragraph (d), but that would be permissible under that paragraph if the reference in subparagraph (d)(iv) to "66⅔ per cent" were read as a reference to "100 per cent",

(ii) retirement benefits provided to one or more beneficiaries of the member that are in excess of the benefits that are permissible under paragraph (c), but that would be permissible under that paragraph if it were read without reference to clause (i)(A) thereof, or

(iii) a combination of retirement benefits described in subparagraphs (i) and (ii),

and where

(iv) the additional death benefits are provided in lieu of a proportion of the lifetime retirement benefits that would otherwise be payable under the provision to the member, and

(v) the present value of all benefits provided under the provision with respect to the member does not exceed the present value of the benefits that would be provided if

(A) the amount of the member's lifetime retirement benefits were determined without any reduction dependent on the benefits payable after the death of the member or on circumstances that are relevant in determining such death benefits,

(B) the maximum amount of retirement benefits that are permissible under paragraph (d) were payable to the member's spouse or common-law partner or former spouse or common-law partner after the death of the member, and

(C) those present values were determined as of

(I) except where subclause (II) applies, the particular time at which retirement benefits under the provision commence to be paid to the member, and

(II) where the additional death benefits become provided after the particular time, the time at which the additional death benefits become provided;

(l) **additional bridging benefits** — bridging benefits in excess of bridging benefits that are permissible under paragraph (b) (referred to in this paragraph as "additional bridging benefits") provided to a member where

(i) the additional bridging benefits would be permissible under paragraph (b) if

(A) the formula in subparagraph (b)(ii) were replaced by the formula "A/12 × C", and

(B) the description of A in subparagraph (b)(ii) were read as follows:

"A is 40% of the Year's Maximum Pensionable Earnings for the year in which the bridging benefits commence to be paid to the member,"

(ii) the additional bridging benefits are provided in lieu of all or a proportion of the benefits that would otherwise be payable under the provision with respect to the member, and

(iii) the present value (at the time retirement benefits under the provision commence to be paid to the member) of all benefits provided under the provision with respect to the member does not exceed the present value (at that time) of the benefits that would be so provided if the additional bridging benefits were not provided;

(l.1) **survivor bridging benefits** — retirement benefits (in this paragraph referred to as "survivor bridging benefits") provided to a beneficiary of a member after the death of the member where

(i) the beneficiary is a spouse or common-law partner or former spouse or common-law partner of the member,

(ii) the survivor bridging benefits are payable at the election of the beneficiary, and

(iii) the survivor bridging benefits would be in accordance with paragraph (l) if the beneficiary were a member of the plan;

(m) **commutation of benefits** — the payment with respect to a member of a single amount in full or partial satisfaction of the member's entitlement to other benefits under the provision, where the single amount does not exceed the total of

(i) the present value (at the particular time determined in accordance with subsection (2.1)) of

(A) the other benefits that, as a consequence of the payment, cease to be provided, and

(B) benefits, other than benefits referred to in clause (A), that it is reasonable to consider would cease to be provided as a consequence of the payment if

(I) where retirement benefits have not commenced to be paid under the provision to the member at the particular time, the plan provided for the retirement benefits that accrued to the member under the provision to be adjusted to reflect the increase in a general measure of wages and salaries from the particular time to the day on which the benefits commence to be paid, and

(II) the plan provided for periodic cost-of-living adjustments to be made to the retirement benefits payable under the provision to the member to reflect increases in the Consumer Price Index after the retirement benefits commence to be paid (other than increases before the particular time), and

(ii) interest (computed at a reasonable rate) from the particular time to the time the single amount is paid; and

(n) **[commutation of benefits]** — the payment, with respect to an individual after the death of a member, of a single amount in full or partial satisfaction of the individual's entitlement to other benefits under the provision, where

(i) the individual is a beneficiary of the member,

(ii) the single amount does not exceed the total of

(A) the present value (at the particular time determined in accordance with subsection (2.1))

of the other benefits that, as a consequence of the payment, cease to be provided, and

(B) interest (computed at a reasonable rate) from the particular time to the time the single amount is paid, and

(iii) if the other benefits in respect of which the single amount is paid include benefits described in paragraph (e) and the beneficiary was a spouse or common-law partner or former spouse or common-law partner of the member at the time of the member's death, the single amount is not transferred from the plan directly to another registered pension plan, a registered retirement savings plan or a registered retirement income fund except with the approval of the Minister.

Related Provisions: Reg. 8302(3) — Normalized pensions; Reg. 8503(2.1) — Rule for commutation of benefits under (2)(m) or (n); Reg. 8503(7.1) — Bridging benefits election.

History: Cl. 8503(2)(c)(i)(A), subparas. (2)(d)(i) and (ii), (e)(ii) and (iii), (f)(iv), (k)(i) and cl. (2)(k)(v)(B) amended by P.C. 2001-957, subsecs. 11(1)–(6), May 31, 2001, *Canada Gazette*, Part II, June 20, 2001, applicable to 2001 *et seq.*, except that if a taxpayer and a person have jointly elected pursuant to s. 144 of the *Modernization of Benefits and Obligations Act* (S.C. 2000, c. 12), in respect of the 1998, 1999 or 2000 taxation year, the amendment applies to the taxpayer and the person in respect of the applicable taxation year *et seq.*

The word "spouse" replaced with "spouse or common-law partner" in subpara. 8503(2)(a)(i), by the said P.C. 2001-957, para. 14(d), applicable as above.

The words "surviving spouse" replaced with "survivor" in the opening words of para. 8503(2)(f) and subpara. (2)(f)(iii), by the said P.C. 2001-957, s. 16, applicable as above.

The words "spouse or former spouse" replaced with "spouse or common-law partner or former spouse or common-law partner" in subparas. 8503(2)(f)(ii), (g)(ii), (l.1)(i) and (n)(iii), by the said P.C. 2001-957, para. 15(b), applicable as above.

Subparas. 8503(2)(a)(iv) to (x) and para. (2)(l.1) added, subparas. (2)(e)(i), (2)(f)(i), the closing words of subpara. (2)(h)(iii), subparas. (2)(k)(v), (2)(l)(i) and (ii), para. (2)(m) and subpara. (2)(n)(ii) amended, by P.C. 2001-153, subsecs. 6(1)–(9), January 30, 2001, *Canada Gazette*, Part II, February 14, 2001, subparas. (2)(a)(iv) to (x), the closing words of subpara. (2)(h)(iii), subpara. (2)(k)(v), para. (2)(m), and subpara. (2)(n)(ii) applicable after 1988; subparas. (2)(e)(i), (2)(f)(i), (2)(l)(i) and (ii), and para. (2)(l.1) applicable after June 4, 1997.

Cl. 8503(2)(f)(iii)(B) amended by P.C. 1998-2256, s. 22, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1996, except that

(a) subject to paragraph (b), cl. 8503(2)(f)(iii)(B), as amended, applies in respect of benefits provided to an individual who attained 70 years of age before 1997 or 69 years of age in 1996 as though the reference in that clause to "69 years of age" were a reference to "71 years of age" and "70 years of age" respectively; and

(b) where retirement benefits under a pension plan are provided to an individual by means of an annuity contract issued before March 6, 1996 and, under the terms and conditions of the contract as they read immediately before that day,

(i) the day on which annuity payments are to begin under the contract is fixed and determined and is after the year in which the individual attains

(A) 69 years of age, where the individual had not attained that age before 1997, or

(B) 70 years of age, where the individual attained 69 years of age in 1996, and

(ii) the amount and timing of each annuity payment are fixed and determined,

cl. 8503(2)(f)(iii)(B), as amended, applies in respect of the benefits as though the reference in that clause to "69 years of age" were a reference to "71 years of age".

Subpara. 8503(2)(n)(iii) amended by P.C. 1995-17, subsec. 11(2), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable with respect to payments made after April 5, 1994.

Registered Plans Directorate Newsletters: 96-3 (flexible pension plans); 98-2 (treating excess member contributions under a registered pension plan); 04-1 (transfer from a defined benefit provision).

(2.1) Rule for commutation of benefits — For the purpose of determining the limit on a single amount that can be paid with respect to an individual under paragraph (2)(m) or (n), the particular time referred to in that paragraph is

(a) except where paragraph (b) applies, the time the single amount is paid; and

(b) an earlier time than the time the single amount is paid, where

(i) the amount is based on a determination of the actuarial value (at the earlier time) of the individual's benefits,

(ii) the use of the earlier time in determining the actuarial value

(A) is required by the *Pension Benefits Standards Act, 1985* or a similar law of a province, or

(B) is reasonable having regard to accepted actuarial practice and the circumstances in which the individual acquires the right to the payment, and

(iii) except where clause (ii)(A) applies, the earlier time is no more than two years before the time the single amount is paid.

History: Subsec. 8503(2.1) added by P.C. 2001-153, subsec. 6(10), January 30, 2001, *Canada Gazette*, Part II, February 14, 2001, applicable after 1988.

(3) Conditions applicable to benefits — For the purposes of subsection 8501(2) and subparagraph 8502(c)(i), the following conditions are applicable with respect to the benefits provided under each defined benefit provision of a pension plan:

(a) **eligible service** — the only lifetime retirement benefits provided under the provision to a member (other than additional lifetime retirement benefits provided to a member because the member is totally and permanently disabled at the time the member's retirement benefits commence to be paid) are lifetime retirement benefits provided in respect of one or more of the following periods, namely,

(i) a period throughout which the member is employed in Canada by, and receives remuneration from, an employer who participates in the plan,

(ii) a period throughout which the member was employed in Canada by, and received remuneration from, a predecessor employer to an employer who participates in the plan,

(iii) an eligible period of temporary absence of the member with respect to an employer who participates in the plan or a predecessor employer to such an employer,

(iv) a period of disability of the member subsequent to a period described in subparagraph (i) where, throughout such part of the period of disability as is after 1990, the member is not connected with an employer who participates in the plan,

(v) a period in respect of which

(A) benefits that are attributable to employment of the member with a former employer accrued to the member under a defined benefit provision of another registered pension plan, or

(B) contributions were made by or on behalf of the member under a money purchase provision of another registered pension plan,

where the member has ceased to be a member of that other plan,

(vi) a period throughout which the member was employed in Canada by a former employer where the period was an eligibility period for the participation of the member in another registered pension plan, and

(vii) a period acceptable to the Minister throughout which the member is employed outside Canada;

(b) **benefit accruals after pension commencement** — benefits are not provided under the provision (in this paragraph referred to as the "particular provision") to a member in respect of a period that is after the day on which retirement benefits commence to be paid to the member under a defined benefit provision of

(i) the plan, or

(ii) any other registered pension plan if

(A) an employer who participated under the particular provision for the benefit of the member, or

(B) an employer who does not deal at arm's length with an employer referred to in clause (A)

has participated under the defined benefit provision of the other plan for the benefit of the member;

(c) **early retirement** — where lifetime retirement benefits commence to be paid under the provision to a member at any time before

(i) in the case of a member whose benefits are provided in respect of employment in a public safety occupation, the earliest of

(A) the day on which the member attains 55 years of age,

(B) the day on which the member has 25 years of early retirement eligibility service in relation to the provision,

(C) the day on which the aggregate of the member's age (measured in years, including any fraction of a year) and years of early retirement eligibility service in relation to the provision is equal to 75, and

(D) if the member was not, at any time after 1990, connected with any employer who has participated in the plan, the day on which the member becomes totally and permanently disabled, and

(ii) in any other case, the earliest of

(A) the day on which the member attains 60 years of age,

(B) the day on which the member has 30 years of early retirement eligibility service in relation to the provision,

(C) the day on which the aggregate of the member's age (measured in years, including any fraction of a year) and years of early retirement eligibility service in relation to the provision is equal to 80, and

(D) if the member was not, at any time after 1990, connected with any employer who has participated in the plan, the day on which the member becomes totally and permanently disabled,

the amount (expressed on an annualized basis) of lifetime retirement benefits payable to the member for each calendar year does not exceed the amount determined for the year by the formula

$$X \times (1 - .0025 \times Y)$$

where

X is the amount (expressed on an annualized basis) of lifetime retirement benefits that would be payable to the member for the year if the benefits were determined without a reduction computed by reference to the member's age, duration of service, or both, and without any other similar reduction, and

Y is the number of months in the period from the day on which lifetime retirement benefits commence to be paid to the member to the earliest of the days that would be determined under clauses (i)(A) to (C) or (ii)(A) to (C), as the case may be, if the member continued in employment with an employer who participates in the plan,

and, for the purposes of this paragraph,

(iii) "early retirement eligibility service" of a member in relation to a defined benefit provision of a pension plan means one or more periods each of which is

(A) a period that is pensionable service of the member under the provision, or

(B) a period throughout which the member was employed by an employer who has participated in the plan or by a predecessor employer to such an employer, and

(iv) "years of early retirement eligibility service" of a member in relation to a defined benefit provision of a pension plan means the aggregate of all amounts each of which is the duration (measured in years, including any fraction of a year) of a period that is early retirement eligibility service of the member in relation to the provision;

(d) **increased benefits for disabled member** — where the amount of lifetime retirement benefits provided under the provision to a member depends on whether the member is physically or mentally impaired at the time (in this paragraph referred to as the "time of commencement") at which retirement benefits under the provision commence to be paid to the member,

(i) the amount of lifetime retirement benefits payable if the member

(A) is not totally and permanently disabled at the time of commencement, or

(B) is totally and permanently disabled at the time of commencement and was, at any time after 1990, connected with an employer who has participated in the plan

satisfies the limit that would be determined by the formula set out in paragraph (c) if the member were not impaired at the time of commencement, and

(ii) the amount of lifetime retirement benefits payable for a particular month to the member if subparagraph (i) is not applicable does not exceed the

amount that is determined for the particular month by the formula

$$\frac{(A + B)}{12} \times C$$

where

A is the amount (expressed on an annualized basis) of lifetime retirement benefits that have accrued under the provision to the member to the time of commencement, determined as if the member were not impaired at the time of commencement and without any reduction computed by reference to the member's age, duration of service, or both, and without any other similar reduction,

B is, in the case of a member who attains 65 years of age before the time of commencement, nil, and, otherwise, the amount, if any, by which the lesser of

(A) the amount (expressed on an annualized basis) of lifetime retirement benefits that could reasonably be expected to have accrued to the member to the day on which the member would have attained 65 years of age if the member had survived to that day and continued in employment and if the member's rate of remuneration had not increased after the time of commencement, and

(B) the amount, if any, by which the Year's Maximum Pensionable Earnings for the calendar year that includes the time of commencement exceeds such amount as is required by the Minister to be determined in respect of benefits provided to the member under other benefit provisions of the plan and under benefit provisions of other registered pension plans

exceeds the amount determined for A, and

C is the greatest of all amounts each of which is the ratio of the Consumer Price Index for a month not before the month that includes the time of commencement and not after the particular month, to the Consumer Price Index for the month that includes the time of commencement;

(e) **pre-1991 benefits** — all benefits provided under the provision in respect of periods before 1991 are acceptable to the Minister and, for the purposes of this condition, any benefits in respect of periods before 1991 that become provided after 1988 with respect to a member who is connected with an employer who participates in the plan or was so connected at any time before the benefits become provided shall, unless the Minister is notified in writing that the benefits are provided with respect to the member, be deemed to be unacceptable to the Minister;

(f) **determination of retirement benefits** — the amount of retirement benefits provided under the provision to a member is determined in such a manner that the member's pension credit (as determined under Part LXXXIII) under the provision for a calendar year with respect to an employer is determinable at the end of the year;

(g) **benefit accrual rate** — if the amount of lifetime retirement benefits provided under the provision to a member is determined, in part, by multiplying the member's remuneration (or a function of the member's remuneration) by an annual benefit accrual rate, or in a manner that is equivalent to that calculation, the annual benefit accrual rate or the equivalent annual benefit accrual rate does not exceed

(i) in the case of a member whose benefits are provided in respect of employment as a firefighter and for whom the formula for determining the amount of the lifetime retirement benefits can reasonably be considered to take into account public pension benefits, 2.33 per cent, and

Proposed Amendment — Reg. 8503(3)(g)(i)

(i) in the case of a member whose benefits are provided in respect of employment in a public safety occupation and for whom the formula for determining the amount of the lifetime retirement benefits can reasonably be considered to take into account public pension benefits, 2.33 per cent, and

Application: The May 16, 2005 draft regulations (deferred income plans), s. 27, (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend subpara. 8503(3)(g)(i) to read as above, applicable after 2004.

Regulatory Impact Analysis Statement: Section 8503 describes the benefits that may be provided under a defined benefit provision of an RPP and contains conditions that apply to a plan that has a defined benefit provision. Special rules apply to members who are employed in a public safety occupation [defined in subsection 8500(1) as the occupation of firefighter, police officer, corrections officer, commercial airline pilot and air traffic controller]. These rules generally allow those in public safety occupations to retire with an unreduced pension five years earlier than other RPP members.

Two relieving changes are being made in relation to public safety occupations. First, the occupation of paramedic is being added to the list of public safety occupations [in Reg. 8500(1) — ed.] Second, the 2.33% maximum pension accrual rate in paragraph 8503(3)(g) that applies for firefighters participating in RPPs that are integrated with the Canada or Quebec Pension Plan is being extended to the other public safety occupations. These changes implement measures announced in the 2005 budget and apply after 2004.

[See also under Reg. 214(5).]

Federal budget, Supplementary Information, February 23, 2005: *Public Safety Occupations*

[For the first part of this proposal, see under Reg. 8500(1)"public safety occupation".]

Maximum Pension Accrual Rate

The *Income Tax Regulations* provide that, under a defined benefit RPP, the maximum annual pension accrual rate applicable to any particular range of earnings cannot exceed 2%. This maximum was increased in the 2003 budget to 2.33% for fire fighters participating in RPPs that provide benefits that are integrated with the Canada or Quebec Pension Plan. This allows greater flexibility for fire fighters' pension benefits to be enhanced within an integrated plan structure, but subject to the existing overall limits on tax-deferred pension benefits. This means that the maximum annual accrual rate applied to any income range for fire fighters is 2.33%. However, the maximum overall pension limit — 2% of best average earnings multiplied by years of pensionable service, which applies to the benefits that an RPP may provide (not taking into account CPP or QPP) — continues to apply.

This budget proposes to extend this measure to the other public safety occupations [see Reg. 8500(1)"public safety occupation" — ed.], thus ensuring that all public safety occupations are treated the same under the pension tax rules. The measure will apply beginning January 1, 2005.

Both the extension of the maximum pension accrual rate and the addition of paramedics to the list of public safety occupations do not in themselves require employers to amend their pension plans. Any change in pension plan provisions resulting from these measures would be a matter for negotiation between employers and employees.

(ii) in any other case, 2 per cent;

(h) **increase in accrued benefits** — where the amount of lifetime retirement benefits provided to a member in respect of a calendar year depends on

(i) the member's remuneration in subsequent years, or

(ii) the average wage (or other general measure of wages and salaries) for subsequent years,

and this condition has not been waived by the Minister, the formula for determining the amount of lifetime retirement benefits is such that

(iii) the percentage increase from year to year in the amount of lifetime retirement benefits that accrued to the member in respect of the year can reasonably be expected to approximate or be less than the percentage increase from year to year in the member's remuneration or in the average wage (or other general measure of wages and salaries), as the case may be, or

(iv) the condition in subparagraph (iii) is not satisfied only by reason that the formula can reasonably be considered to have been designed taking into account the public pension benefits payable to members,

and, for the purposes of this condition, where in determining the amount of lifetime retirement benefits provided under the provision to a member there is deducted an amount described in subparagraph (j)(i), it shall be assumed that the amount so deducted is nil;

(i) where the amount of lifetime retirement benefits provided to a member in respect of a calendar year depends on the member's remuneration in other years, the formula for determining the amount of the lifetime retirement benefits is such that any increase in the amount of lifetime retirement benefits that accrued to the member in respect of the year that is attributable to increased remuneration is primarily attributable to an increase in the rate of the member's remuneration;

(j) **offset benefits** — where

(i) in determining the amount of lifetime retirement benefits provided under the provision to a member there is deducted

(A) the amount of lifetime retirement benefits provided to the member under a benefit provision of a registered pension plan, or

(B) the amount of a lifetime annuity that is provided to the member under a deferred profit sharing plan, and

(ii) a single amount is paid in full or partial satisfaction of the member's entitlement to benefits under the benefit provision referred to in clause (i)(A) or the deferred profit sharing plan referred to in clause (i)(B),

the amount that is so deducted in determining the amount of the member's lifetime retirement benefits under the defined benefit provision includes the amount of lifetime retirement benefits or lifetime annuity that may reasonably be considered to have been forgone as a consequence of the payment of the single amount;

(k) **bridging benefits — cross-plan restriction** — bridging benefits are not paid under the provision to a member who receives bridging benefits under another defined benefit provision of the plan (in this paragraph referred to as the "particular plan") or under a defined benefit provision of another registered pension plan, except that this condition is not applicable where it is waived by the Minister or where

(i) bridging benefits are paid to the member under only one defined benefit provision of the particular plan,

(ii) the decision to provide bridging benefits under the particular plan to the member was not made by the member, by persons with whom the member does not deal at arm's length or by the member and such persons, and

(iii) each employer who has participated in any registered pension plan (other than the particular plan) under a defined benefit provision of which the member receives bridging benefits

(A) has not participated in the particular plan, and

(B) has always dealt at arm's length with each employer who has participated in the particular plan,

and, for the purposes of this paragraph, bridging benefits provided under a defined benefit provision of a registered pension plan to the member do not include benefits that are provided on a basis no more favourable than an actuarially equivalent basis in lieu of all or a proportion of the benefits that would otherwise be payable under the provision with respect to the member; and

(l) **division of benefits on breakdown of the marriage or common-law partnership** — if, by reason of a provision of a law described in subparagraph 8501(5)(b)(ii), an individual who is a spouse or common-law partner or former spouse or common-law partner of a member becomes entitled to receive all or a portion of the benefits that would otherwise be payable under the defined benefit provision to the member, and paragraph 8501(5)(d) applies with respect to the benefits,

(i) the present value of benefits provided under the provision with respect to the member (including, for greater certainty, benefits provided with respect to the individual) is not increased as a consequence of the individual becoming so entitled to benefits, and

(ii) the benefits provided under the provision to the member are not, at any time, adjusted to replace, in whole or in part, the portion of the member's benefits to which the individual has become entitled.

Related Provisions: Reg. 8500(7) — Amounts allocated under money purchase provision deemed to be contribution; Reg. 8501(2)(b) — Revocation of plan for failure to comply with conditions; Reg. 8503(13) — Statutory pension plans — special rules; Reg. 8510(5) — Special rules — multi-employer plan; Reg. 8510(6) — Special rules — specified multi-employer plan; Reg. 8510(8) — Purchase of additional benefits — specified multi-employer plan.

History: Para. 8503(3)(g) amended by P.C. 2003-1920, s. 1, December 3, 2003, *Canada Gazette*, Part II, December 17, 2003, applicable after 2002.

Para. 8503(3)(l) amended by P.C. 2001-957, subsec. 11(7), May 31, 2001, *Canada Gazette*, Part II, June 20, 2001, applicable to 2001 *et seq.*, except that if a taxpayer and a person have jointly elected pursuant to s. 144 of the *Modernization of Benefits and Obligations Act* (S.C. 2000, c. 12), in respect of the 1998, 1999 or 2000 taxation year, the amendment applies to the taxpayer and the person in respect of the applicable taxation year *et seq.*

The closing words of para. 8503(3)(k) amended by P.C. 2001-153, subsec. 6(11), January 30, 2001, *Canada Gazette*, Part II, February 14, 2001, applicable after June 4, 1997.

Information Circulars: 98-2: Prescribed compensation for RPPs, paras. 8, 32.

Registered Plans Directorate Newsletters: 93-2 (foreign service newsletter); 99-1 (proportionality condition for pre-1990 pension benefits); 2000-1 (foreign service newsletter update).

(4) Additional conditions — For the purposes of section 8501, the following conditions are applicable in respect of each defined benefit provision of a pension plan:

(a) **member contributions** — where members are required or permitted to make contributions under the provision,

(i) the aggregate amount of current service contributions to be made by a member in respect of a calendar year after 1990, no part of which is a period of disability or an eligible period of reduced pay or temporary absence of the member, does not exceed the lesser of

(A) 9 per cent of the aggregate of all amounts each of which is the member's compensation for the year from an employer who participates in the plan in the year for the benefit of the member, and

(B) the aggregate of $1,000 and 70 per cent of the aggregate of all amounts each of which is the amount that would be the member's pension credit (as determined under Part LXXXIII) for the year under the provision with respect to an employer if section 8302 were read without reference to paragraphs (2)(b) and (3)(g) thereof,

(ii) the method for determining current service contributions to be made by a member in respect of a calendar year that includes a period of disability or an eligible period of reduced pay or temporary absence of the member (referred to in this subparagraph as a "period of reduced services") is consistent with that used for determining contributions in respect of years described in subparagraph (i), except that the member may be permitted or required to make, in respect of a period of reduced services, current service contributions not exceeding the amount reasonably necessary to fund the member's benefits in respect of the period of reduced services, and

(iii) the aggregate amount of contributions to be made by a member in connection with benefits that, as a consequence of a transaction, event or circumstance occurring at a particular time, become provided under the provision in respect of periods before that time does not exceed the amount reasonably necessary to fund such benefits;

(b) **pre-payment of member contributions** — the contributions that are made under the provision by a member in respect of a calendar year are not paid before the year;

(c) **reduction in benefits and return of contributions** — where the plan is not established by an enactment of Canada or a province, it includes a stipulation that permits, for the purpose of avoiding revocation of the registration of the plan,

(i) the plan to be amended at any time to reduce the benefits provided under the provision with respect to a member, and

(ii) a contribution that is made under the provision by a member or an employer to be returned to the person who made the contribution

which stipulation may provide that an amendment to the plan, or a return of contributions, is subject to the approval of the authority administering the *Pension Benefits Standards Act, 1985* or a similar law of a province;

(d) **undue deferral of payment** — each single amount that is payable after the death of a member is paid as soon as is practicable after the member's death (or, in the case of a single amount permitted by reason of paragraph (2)(j), after all other benefits have been paid);

(e) **evidence of disability** — where additional lifetime retirement benefits are provided under the provision to a member because the member is totally and permanently disabled, the additional benefits are not paid before the plan administrator has received from a medical doctor who is licensed to practise under the laws of a province or of the place where the member resides a written report providing the information on the medical condition of the member taken into account by the administrator in determining that the member is totally and permanently disabled; and

(f) where lifetime retirement benefits are provided under the provision to a member in respect of a period of disability of the member, the benefits, to the extent that they would not be in accordance with paragraph (3)(a) if that paragraph were read without reference to subparagraph (iv) thereof, are not paid before the plan administrator has received from a medical doctor who is licensed to practise under the laws of a province or of the place where the member resides a written report providing the information on the medical condition of the member taken into account by the administrator in determining that the period is a period of disability.

Related Provisions: Reg. 8501(2)(b) — Revocation of plan for failure to comply with conditions; Reg. 8503(5) — Minister may waive member contribution conditions; Reg. 8509(10.1) — Conditions inapplicable for pre-1992 plans; Reg. 8510(6) — Special rules — specified multi-employer plan.

History: Para. 8503(4)(c) amended by P.C. 1995-17, subsec. 11(3), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

Paras. 8503(4)(e) and (f) repealed and substituted by P.C. 1995-17, subsecs. 11(4) and (5), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995. The repeal of former paras. (e) and (f) is applicable after 1988 and new paras. (e) and (f) are applicable with respect to benefits that commence to be paid after April 5, 1994.

Registered Plans Directorate Newsletters: 96-3 (flexible pension plans); 04-1 (transfer from a defined benefit provision).

(5) Waiver of member contribution conditions — The Minister may waive the conditions in paragraph (4)(a) where member contributions under a defined benefit provision of a pension plan are determined in a manner acceptable to the Minister and it is reasonable to expect that, on a long-term basis, the aggregate of the regular current service contributions made under the provision by all members will not exceed ½ of the amount that is required to fund the aggregate benefits in respect of which those contributions are made.

(6) Pre-retirement death benefits — A pension plan may provide, in the case of a member who dies before retirement benefits under a defined benefit provision of the plan commence to be paid to the member but after becoming eligible to have retirement benefits commence

to be paid, benefits under the provision to the beneficiaries of the member where the benefits would be in accordance with subsection (2) if retirement benefits under the provision had commenced to be paid to the member immediately before the member's death.

Related Provisions: Reg. 8501(3) — Conditions inapplicable where inconsistent with 8503(6).

(7) Commutation of lifetime retirement benefits — Where a pension plan permits a member to receive a single amount in full or partial satisfaction of the member's entitlement to lifetime retirement benefits under a defined benefit provision of the plan, the following rules apply:

(a) the condition in subparagraph (2)(b)(i) that the payment of bridging benefits under the provision not commence before lifetime retirement benefits commence to be paid under the provision to the member is not applicable where, before the member's lifetime retirement benefits commence to be paid, a single amount is paid in full satisfaction of the member's entitlement to the lifetime retirement benefits; and

(b) such part of the member's lifetime retirement benefits as remains payable after a single amount is paid in full satisfaction of the member's entitlement to lifetime retirement benefits that would otherwise be payable after the member attains a particular age shall be deemed, for the purposes of the conditions in this section, to be lifetime retirement benefits and not to be bridging benefits.

(7.1) Bridging benefits and election — Where a pension plan permits a member, or a spouse or common-law partner or former spouse or common-law partner of the member, to elect to receive benefits described in any of paragraphs (2)(b), (l) or (l.1) under a defined benefit provision of the plan on a basis no more favourable than an actuarially equivalent basis in lieu of all or a proportion of the benefits that would otherwise be payable under the provision with respect to the member, the following rules apply:

(a) the condition in subparagraph (2)(b)(i) that the payment of bridging benefits under the provision not commence before lifetime retirement benefits commence to be paid under the provision to the member does not apply if, as a consequence of the election, no lifetime retirement benefits remain payable under the provision to the member; and

(b) for the purpose of determining whether retirement benefits provided under the provision to beneficiaries of the member are in accordance with paragraphs (2)(c), (d) and (k), the election may be disregarded.

History: The words "spouse or former spouse" replaced with "spouse or common-law partner or former spouse or common-law partner" in the opening words of subsec. 8503(7.1), by P.C. 2001-957, para. 15(c), May 31, 2001, *Canada Gazette*, Part II, June 20, 2001, applicable to 2001 *et seq.*, except that if a taxpayer and a person have jointly elected pursuant to s. 144 of the *Modernization of Benefits and Obligations Act* (S.C. 2000, c. 12), in respect of the 1998, 1999 or 2000 taxation year, the amendment applies to the taxpayer and the person in respect of the applicable taxation year *et seq.*

Subsec. 8503(7.1) added by P.C. 2001-153, subsec. 6(12), January 30, 2001, *Canada Gazette*, Part II, February 14, 2001, applicable after June 4, 1997.

(8) Suspension or cessation of pension — A pension plan may provide for

(a) the suspension of payment of a member's retirement benefits under a defined benefit provision of the plan where

(i) the retirement benefits payable to the member after the suspension are not altered by reason of the suspension, or

(ii) subsection (9) is applicable in respect of the member's retirement benefits; and

(b) the cessation of payment of any additional benefits that are payable to a member under a defined benefit provision of the plan because of a physical or mental impairment of the member or the termination of the member's employment under a downsizing program (within the meaning assigned by subsection 8505(1)).

Related Provisions: Reg. 8501(3) — Conditions inapplicable where inconsistent with 8503(8).

History: Para. 8503(8)(b) amended by P.C. 1995-17, subsec. 11(6), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

(9) Re-employed member — Subject to subsection (10), where a pension plan provides, in the case of a member who becomes an employee of a participating employer after the member's retirement benefits under a defined benefit provision of the plan have commenced to be paid, that

(a) payment of the member's retirement benefits under the provision is suspended while the member is employed by a participating employer, and

(b) the amount of retirement benefits payable to the member after the suspension is redetermined

(i) to include benefits in respect of all or any part of the period throughout which payment of the member's benefits was suspended,

(i.1) where the retirement benefits payable under the provision to the member after the suspension are not adjusted by any cost-of-living or similar adjustments in respect of the period throughout which payment of the member's benefits was suspended, to take into account the member's remuneration from the employer for the period throughout which payment of the benefits was suspended,

(ii) where the member was totally and permanently disabled at the time the member's retirement benefits commenced to be paid, to include benefits in respect of all or a part of the period of disability of the member,

(iii) where the amount of the member's retirement benefits was previously determined with a reduction computed by reference to the member's age, duration of service, or both, or with any other similar reduction, by redetermining the amount of the reduction, or

(iv) where payment of the member's retirement benefits resumes after the member attains 65 years of age, by applying an adjustment for the purpose of compensating, in whole or in part, for the payments forgone by the member after attaining 65 years of age,

the following rules apply:

(c) the condition in paragraph (3)(b) is not applicable in respect of benefits provided under the provision to

the member in respect of a period throughout which payment of the member's benefits is suspended,

(d) where the member was totally and permanently disabled at the time the member's retirement benefits commenced to be paid, the condition in paragraph (3)(b) is not applicable in respect of benefits provided under the provision to the member in respect of a period of disability of the member,

(e) the conditions in paragraphs (2)(b) and (3)(c) and (d) and section 8504 are applicable in respect of benefits payable under the provision to the member after a suspension of the member's retirement benefits as if the member's retirement benefits had not previously commenced to be paid, and

(f) for the purpose of paragraph 8502(c) as it applies in respect of benefits provided under the provision on the death of the member during or after a period throughout which payment of the member's benefits is suspended, subsections (2) and (6) are applicable as if the member's retirement benefits had not commenced to be paid before the period.

History: Subpara. 8503(9)(b)(i.1) added by P.C. 1995-17, subsec. 11(7), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

(10) Re-employed member — special rules not applicable — Subsection (9) does not apply in respect of benefits provided under a defined benefit provision of a pension plan to a member unless the terms of the plan that provide for the redetermination of the amount of the member's retirement benefits do not apply where retirement benefits have, at any time, been paid under the provision to the member while the member was an employee of a participating employer.

(11) Re-employed member — anti-avoidance — Where a member of a registered pension plan has become an employee of a participating employer after the member's retirement benefits under a defined benefit provision of the plan have commenced to be paid and it is reasonable to consider that one of the main reasons for the employment of the member is to enable the member to benefit from terms of the plan that provide for a redetermination of the amount of the member's retirement benefits provided in respect of a period before the benefits commenced to be paid, the plan becomes a revocable plan at the time the payment of the member's benefits resumes.

(12) Limits dependent on Consumer Price Index — Benefits provided under a defined benefit provision of a pension plan that are benefits to which a condition in any of subparagraphs (2)(b)(ii) and (e)(v) and (vi) and (3)(d)(ii) is applicable shall be deemed to comply with the condition where they would so comply if the Consumer Price Index ratio computed as part of the formula that applies for the purpose of the condition were replaced by a substantially similar measure of the change in the Consumer Price Index.

(13) Statutory plans — special rules — Notwithstanding subsection (3),

(a) for the purposes of the condition in paragraph (3)(b) as it applies in respect of benefits provided under the pension plan established by the *Public Service Superannuation Act*, the reference to "any other registered pension plan" in subparagraph (3)(b)(ii) does not include the pension plans established by the *Canadian Forces Superannuation Act* and the *Royal Canadian Mounted Police Superannuation Act*; and

(b) the condition in paragraph (3)(c) does not apply in respect of benefits provided under the pension plan established by the *Canadian Forces Superannuation Act*.

(14) Artificially reduced pension adjustment — Where

(a) the amount of lifetime retirement benefits provided under a defined benefit provision of a registered pension plan to a member depends on the member's remuneration,

(b) remuneration (in this subsection referred to as "excluded remuneration") of certain types is disregarded for the purpose of determining the amount of the member's lifetime retirement benefits, and

(c) it can reasonably be considered that one of the main reasons that remuneration in the form of excluded remuneration was paid to the member by an employer at any time was to artificially reduce a pension credit of the member under the provision with respect to the employer,

the following rules apply for the purposes of the conditions in subsection 8504(1):

(d) the member shall be deemed to have been connected with the employer while the member was employed by the employer, and

(e) the member shall be deemed not to have received such remuneration as is excluded remuneration.

(15) Past service employer contributions — Where

(a) a contribution that is made by an employer to a registered pension plan is made, in whole or in part, in respect of benefits (in this subsection referred to as "past service benefits") provided under the plan to a member in respect of a period before 1990 and before the calendar year in which the contribution is made,

(b) the contribution is made

(i) after December 10, 1989, or

(ii) before December 10, 1989 where the contribution has not, before that date, been approved by the Minister under paragraph 20(1)(s) of the Act, and

(c) it is reasonable to consider that all or substantially all of such portion of the contribution as is in respect of past service benefits was paid by the employer, with the consent of the member, in lieu of a payment or other benefit to which the member would otherwise be entitled,

the plan becomes, for the purposes of paragraph 147.1(11)(c) of the Act, a revocable plan on the later of December 11, 1989 and the day immediately before the day on which the contribution is made.

Related Provisions: Reg. 8505(8) — Exemption from past service contribution rule.

Definitions [Reg. 8503]: "additional bridging benefits" — Reg. 8503(2)(l); "additional death benefits" — Reg. 8503(2)(k); "administrator" — ITA 147.1(1); "aggregate" — Reg. 8509(2)(c)(i); "amount" — Reg. 8509(2)(c)(ii); "annuity" — ITA 248(1); "any other registered pension plan" — Reg. 8503(13)(a); "arm's length" — ITA 251(1); "average wage" — ITA 147.1(1); "beneficiary", "benefit provision" — Reg. 8500(1); "benefit year" — Reg. 8504(6); "benefits" — Reg. 8501(5)(c); "bridging benefits" — Reg. 8500(1), 8503(7)(b); "bridging period" — Reg. 8504(5); "Canada" — ITA 255, *Interpretation Act* 35(1); "commencement" — *Interpretation Act* 35(1); "compensation" — ITA 147.1(1); "compensation year" — Reg. 8504(2)(b)J; "connected" — Reg. 8500(3); "consequence of the death", "consequence of the member's

death" — ITA 248(8); "Consumer Price Index" — Reg. 8500(1); "continued retirement benefits" — Reg. 8503(2)(c); "contribution" — Reg. 8501(6), (7); "death benefit" — ITA 248(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "defined benefit provision" — ITA 147.1(1), Reg 8504(9); "dependant" — Reg. 8500(1); "early retirement eligibility service" — Reg. 8503(3)(c)(iii); "eligible period of reduced pay", "eligible period of temporary absence", "eligible survivor benefit period" — Reg. 8500(1); "employed", "employee", "employer", "employment" — ITA 248(1); "excluded remuneration" — Reg. 8503(14)(b); "highest average compensation" — Reg. 8504(2); "individual" — ITA 248(1); "lifetime retirement benefits" — Reg. 8500(1), 8503(7)(b), 8504(6); "member" — ITA 147.1(1); "member's total indexed compensation" — Reg. 8504(2); "Minister" — ITA 248(1); "money purchase provision" — ITA 147.1(1); "month" — *Interpretation Act* 35(1); "net contribution account" — Reg. 8503(1); "participating employer" — ITA 147.1(1); "particular plan" — Reg. 8503(3)(k); "particular provision" — Reg. 8503(3)(b); "past service benefits" — Reg. 8503(15)(a); "payment year" — Reg. 8504(6)(a); "pension credit" — Reg. 8301, 8308.1(2)–(4), 8308.3(2), (3); "pensionable service", "period of disability" — Reg. 8500(1); "period of reduced services" — Reg. 8503(4)(a)(ii); "person" — ITA 248(1); "predecessor employer" — Reg. 8500(1); "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "public pension benefits", "public safety occupation" — Reg. 8500(1); "registered pension plan" — ITA 248(1); "registered retirement income fund" — ITA 146.3(1), 248(1); "registered retirement savings plan" — ITA 146(1), 248(1); "related" — ITA 251(2)–(6); "retirement benefits" — Reg. 8500(1); "single amount" — ITA 147.1(1); "specified year" — Reg. 8504(1)(a)(i); "spouse" — Reg. 8500(5); "surplus" — Reg. 8500(1); "surviving spouse benefits" — Reg. 8503(2)(f); "survivor retirement benefits" — Reg. 8503(2)(d), (e); "time of commencement" — Reg. 8503(3)(d); "totally and permanently disabled" — Reg. 8500(1); "writing" — *Interpretation Act* 35(1); "written" — *Interpretation Act* 35(1)"writing"; "year of commencement" — Reg. 8504(1)(a), 8504(2); "Year's Maximum Pensionable Earnings" — Reg. 8500(1); "years of early retirement eligibility service" — Reg. 8503(3)(c)(iv).

8504. Maximum benefits — (1) Lifetime retirement benefits — For the purposes of subparagraph 8502(c)(i), the following conditions are applicable in respect of the lifetime retirement benefits provided to a member under a defined benefit provision of a pension plan:

(a) the amount (expressed on an annualized basis) of lifetime retirement benefits payable to the member for the calendar year (in this paragraph referred to as the "year of commencement") in which the lifetime retirement benefits commence to be paid does not exceed the aggregate of

(i) the aggregate of all amounts each of which is, in respect of a calendar year after 1990 (in this paragraph referred to as a "specified year") in which the member was, at any time, connected with an employer who participated in the plan in the year for the benefit of the member, the lesser of

(A) the amount determined by the formula

$$.02 \times A \times \frac{B}{C}$$

where

A is the aggregate of all amounts each of which is the member's compensation for the specified year from an employer who participated under the provision in the year for the benefit of the member,

B is the greatest of all amounts each of which is the average wage for a calendar year not before the specified year and not after the year of commencement, and

C is the average wage for the specified year, and

(B) the amount determined by the formula

$$D \times E$$

where

D is the defined benefit limit for the year of commencement, and

E is the fraction of the specified year that is pensionable service of the member under the provision, and

(ii) the amount determined by the formula

$$F \times G$$

where

F is the lesser of

(A) 2 per cent of the member's highest average compensation (computed under subsection (2)) for the purpose of the provision, indexed to the year of commencement, and

(B) the defined benefit limit for the year of commencement, and;

G is the aggregate of all amounts each of which is the duration (measured in years, including any fraction of a year) of a period that is pensionable service of the member under the provision and no part of which is in a specified year; and

(b) the amount of lifetime retirement benefits payable to the member for a particular calendar year after the year in which the lifetime retirement benefits commence to be paid does not exceed the product of

(i) the aggregate of the amounts determined under subparagraphs (a)(i) and (ii), and

(ii) the greatest of all amounts each of which is the ratio of

(A) the average Consumer Price Index for a calendar year not earlier than the calendar year in which the lifetime retirement benefits commence to be paid and not later than the particular year

to

(B) the average Consumer Price Index for the calendar year in which the lifetime retirement benefits commence to be paid.

Related Provisions: Reg. 8503(14) — Rules applicable where pension credit artificially reduced; Reg. 8504(2) — Meaning of highest average compensation; Reg. 8504(3) — Alternative compensation rules; Reg. 8504(4) — Part-time employees; Reg. 8504(10) — Excluded benefits; Reg. 8504(13) — Alternative CPI indexing; Reg. 8505(7) — Exclusion from maximum pension rules; Reg. 8510(5) — Special rules — multi-employer plan.

Information Circulars: 98-2: Prescribed compensation for RPPs.

(2) Highest average compensation — For the purposes of subsection (1) and paragraph 8505(3)(d), the highest average compensation of a member of a pension plan for the purpose of a defined benefit provision of the plan, indexed to the calendar year (in this subsection referred to as the "year of commencement") in which the member's retirement benefits under the provision commence to be paid, is,

(a) in the case of a member who has been employed for 3 non-overlapping periods of 12 consecutive months each by employers who participated under the provision for the benefit of the member, 1/3 of the greatest of all amounts each of which is the aggregate of the member's total indexed compensation for the purpose of the provision for each of the 36 months in

3 such periods throughout which the member was so employed, and

(b) in any other case, the amount determined by the formula

$$12 \times \frac{H}{I}$$

where

H is the aggregate of all amounts each of which is the member's total indexed compensation for the purpose of the provision for a month throughout which the member was employed by an employer who participated under the provision for the benefit of the member, and

I is the number of months for which total indexed compensation is included in the amount determined for H,

and, for the purposes of this subsection, the member's total indexed compensation for a month for the purpose of the provision is the amount determined by the formula

$$J \times \frac{K}{L}$$

where

J is the aggregate of all amounts each of which is such portion of the member's compensation for the calendar year (in this subsection referred to as the "compensation year") that includes the month from an employer who participated under the provision for the benefit of the member as may reasonably be considered to have been received in the month or to otherwise relate to the month,

K is the greatest of all amounts each of which is the average wage for a calendar year not before the later of the compensation year and 1986 and not after the year of commencement, and

L is the average wage for the later of the compensation year and 1986.

Related Provisions: Reg. 8504(3) — Alternative compensation rules; Reg. 8504(4) — Part-time employees.

(3) Alternative compensation rules — Lifetime retirement benefits provided to a member under a defined benefit provision of a pension plan shall be deemed to comply with the conditions in subsection (1) where they would so comply if either or both of the following rules were applicable:

(a) determine, for the purpose of subsection (2), the member's compensation from an employer for a calendar year by adding to the compensation otherwise determined such portion of the amount of each bonus and retroactive increase in remuneration paid by the employer to the member after the year as may reasonably be considered to be in respect of the year and by deducting therefrom such portion of the amount of each bonus and retroactive increase in remuneration paid by the employer to the member in the year as may reasonably be considered to be in respect of a preceding year; and

(b) determine, for the purpose of computing the amount J in subsection (2), the portion of the member's compensation from an employer for a calendar year that may reasonably be considered to relate to a month in the year by apportioning the compensation uniformly over the period in the year in respect of which it was paid.

(4) Part-time employees — Where the pensionable service of a member under a defined benefit provision of a pension plan includes a period throughout which the member rendered services on a part-time basis to an employer who participates in the plan, the lifetime retirement benefits provided under the provision to the member shall be deemed to comply with the conditions in subsection (1) where they would so comply or be deemed by subsection (3) to so comply if

(a) for the purpose of determining the amount J in subsection (2), the member's compensation from an employer for a calendar year in which the member rendered services on a part-time basis to the employer were the amount that it is reasonable to expect would have been the member's compensation for the year from the employer if the member had rendered services to the employer on a full-time basis throughout the period or periods in the year throughout which the member rendered services to the employer, and

(b) in determining the amount G in subparagraph (1)(a)(ii), the duration of each period were multiplied by a fraction (not greater than 1) that measures the services rendered by the member throughout the period to employers who participate in the plan as a proportion of the services that would have been rendered by the member throughout the period to such employers had the member rendered services on a full-time basis,

and, for the purposes of this subsection,

(c) where a member of a pension plan has rendered services throughout a period to 2 or more employers who participate in the plan, the employers shall be deemed to be, throughout the period, the same employer, and

(d) where a period is

(i) an eligible period of reduced pay or temporary absence of a member of a pension plan with respect to an employer, or

(ii) a period of disability of the member,

the member shall be deemed to have

(iii) rendered services throughout the period on a regular basis (having regard to the services rendered by the employee before the period) to the employer or employers by whom the member was employed before the period, and

(iv) received remuneration throughout the period at a rate commensurate with the member's rate of remuneration before the period.

(5) Retirement benefits before age 65 — For the purposes of subparagraph 8502(c)(i), the following conditions are applicable in respect of retirement benefits payable under a defined benefit provision of a pension plan to a member of the plan for the period (in this subsection referred to as the "bridging period") from the time the benefits commence to be paid to the time the member attains 65 years of age:

(a) the amount (expressed on an annualized basis) of retirement benefits payable to the member for that part of the bridging period that is in the calendar year in which the benefits commence to be paid does not exceed the amount determined by the formula

$$(A \times B) + \left(0.25 \times C \times \frac{D}{35}\right)$$

where

A is the defined benefit limit for the calendar year in which the benefits commence to be paid,

B is the aggregate of all amounts each of which is the duration (measured in years, including any fraction of a year) of a period that is pensionable service of the member under the provision,

C is the average of the Year's Maximum Pensionable Earnings for the year in which the benefits commence to be paid and for each of the 2 immediately preceding years, and

D is the lesser of 35 and the amount determined for B; and

(b) the amount of retirement benefits (expressed on an annualized basis) payable to the member for that part of the bridging period that is in a particular calendar year after the year in which the retirement benefits commence to be paid does not exceed the product of

(i) the amount determined by the formula set out in paragraph (a), and

(ii) the greatest of all amounts each of which is the ratio of

(A) the average Consumer Price Index for a calendar year not earlier than the calendar year in which the retirement benefits commence to be paid and not later than the particular year

to

(B) the average Consumer Price Index for the calendar year in which the retirement benefits commence to be paid.

Related Provisions: Reg. 8504(8) — Rule where benefits provided under multiple plans; Reg. 8504(11) — Excluded benefits; Reg. 8504(14) — Alternative CPI indexing; Reg. 8505(7) — Exclusion from maximum pension rules.

(6) Pre-1990 benefits — For the purposes of subparagraph 8502(c)(i), and subject to subsection (7), the lifetime retirement benefits provided under a defined benefit provision of a pension plan to a member of the plan in respect of pensionable service in a particular calendar year before 1990 (in this subsection referred to as the "benefit year") are subject to the condition that

(a) the amount (expressed on an annualized basis) of such lifetime retirement benefits payable to the member for a particular calendar year (in this subsection referred to as the "payment year")

does not exceed

(b) the amount determined by the formula

$$\frac{2}{3} \times A \times B \times C$$

where

A is the greater of $1,725 and the defined benefit limit for the year in which the benefits commence to be paid,

B is the aggregate of all amounts each of which is the duration (measured as a fraction of a year) of a period in the benefit year that is pensionable service of the member under the provision, and

C is the greatest of all amounts each of which is the ratio of

(i) the average Consumer Price Index for a calendar year not earlier than the calendar year in which the lifetime retirement benefits commence to be paid and not later than the payment year

to

(ii) the average Consumer Price Index for the calendar year in which the lifetime retirement benefits commence to be paid.

Related Provisions: Reg. 8504(8) — Rule where benefits provided under multiple plans; Reg. 8504(12) — Excluded benefits; Reg. 8504(15) — Alternative CPI indexing.

Registered Plans Directorate Newsletters: 95-3 (actuarial report content).

(7) Limit not applicable — The condition in subsection (6) is not applicable with respect to lifetime retirement benefits provided to an individual in respect of periods of pensionable service in a particular calendar year if

(a) at any time before June 8, 1990, a period in the particular year was pensionable service of the individual under a defined benefit provision of a registered pension plan;

(b) on June 7, 1990, the individual was entitled, pursuant to an arrangement in writing, to be provided with lifetime retirement benefits under a defined benefit provision of a registered pension plan in respect of a period in the particular year, whether or not the individual's entitlement was conditional upon the individual making contributions under the provision;

(c) at the commencement of the particular year, a period in a preceding year was pensionable service of the individual under a defined benefit provision of a registered pension plan, and the individual did not, by reason of disability or leave of absence, render services in the particular year to an employer who participated in the plan with respect to the individual;

(d) contributions were made before June 8, 1990 by or on behalf of the individual under a money purchase provision of a registered pension plan in respect of the year; or

(e) contributions were made in the year by or on behalf of the individual to a deferred profit sharing plan.

Related Provisions: Reg. 8500(7) — Amounts allocated under money purchase provision deemed to be contribution.

(8) Cross-plan restrictions — Where an individual is provided with benefits under more than one defined benefit provision, the determination of whether the benefits provided to the individual under a particular defined benefit provision comply with the conditions in subsections (5) and (6) shall be made on the assumption that benefits provided to the individual under each other defined benefit provision (other than a provision that is not included in a registered pension plan) associated with the particular provision were provided under the particular provision.

Related Provisions: Reg. 8504(9) — Associated defined benefit provisions; Reg. 8510(5) — Special rules — multi-employer plan.

(9) Associated defined benefit provisions — For the purposes of subsection (8), a defined benefit provision is associated with a particular defined benefit provision if

(a) the provisions are in the same pension plan, or

(b) the provisions are in separate pension plans and

(i) there is an employer who participates in both plans,

(ii) an employer who participates in one of the plans does not deal at arm's length with an employer who participates in the other plan, or

(iii) there is an individual who is provided with benefits under both provisions and the individual, or a person with whom the individual does not deal at

arm's length, has the power to determine the benefits that are provided under the particular provision,

unless it is unreasonable to expect the benefits under the particular provision to be coordinated with the benefits under the other provision and the Minister has agreed not to treat the other provision as being associated with the particular provision.

(10) Excluded benefits — For the purpose of determining whether lifetime retirement benefits provided under a defined benefit provision of a pension plan comply with the conditions in subsection (1), the following benefits shall be disregarded:

(a) additional lifetime retirement benefits payable to a member because the member is totally and permanently disabled at the time the member's retirement benefits commence to be paid; and

(b) additional lifetime retirement benefits payable to a member whose retirement benefits commence to be paid after the member attains 65 years of age, where the additional benefits result from an adjustment that is made to offset, in whole or in part, the decrease in the value of lifetime retirement benefits that would otherwise result by reason of the deferral of such benefits after the member attains 65 years of age and the adjustment is not more favourable than such an adjustment made on an actuarially equivalent basis.

(11) [Excluded benefits] — For the purpose of determining whether retirement benefits provided under a defined benefit provision of a pension plan comply with the conditions in subsection (5), the following benefits shall be disregarded:

(a) additional lifetime retirement benefits described in paragraph (10)(a); and

(b) bridging benefits payable at the election of a member, where the benefits are provided on a basis that is not more favourable than an actuarially equivalent basis in lieu of all or a proportion of the benefits that would otherwise be payable under the provision with respect to the member.

History: Para. 8504(11)(b) amended by P.C. 2001-153, s. 7, January 30, 2001, *Canada Gazette*, Part II, February 14, 2001, applicable after June 4, 1997.

(12) [Excluded benefits] — For the purpose of determining whether lifetime retirement benefits provided under a defined benefit provision of a pension plan comply with the condition in subsection (6), additional lifetime retirement benefits that are described in paragraph (10)(b) shall be disregarded.

(13) Alternative CPI indexing — The lifetime retirement benefits provided to a member under a defined benefit provision of a pension plan shall be deemed to comply with the condition in paragraph (1)(b) where they would so comply, or would be deemed by subsection (3) or (4) to so comply, if the ratio that is determined under subparagraph (1)(b)(ii) were replaced by a substantially similar measure of the change in the Consumer Price Index.

(14) [Idem] — The retirement benefits provided to a member under a defined benefit provision of a pension plan shall be deemed to comply with the condition in paragraph (5)(b) where they would so comply if the ratio that is determined under subparagraph (5)(b)(ii) were replaced by a substantially similar measure of the change in the Consumer Price Index.

(15) [Idem] — The lifetime retirement benefits provided to a member under a defined benefit provision of a pension plan shall be deemed to comply with the condition in subsection (6) where they would so comply if the amount C in the formula set out in paragraph (6)(b) were replaced by a substantially similar measure of the change in the Consumer Price Index.

Definitions [Reg. 8504]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "associated" — Reg. 8504(9); "average Consumer Price Index" — Reg. 8500(1); "average wage" — ITA 147.1(1); "benefits" — Reg. 8501(5)(c); "bridging benefits" — Reg. 8500(1); "commencement" — *Interpretation Act* 35(1); "compensation" — ITA 147.1(1); "connected" — Reg. 8500(3); "Consumer Price Index" — Reg. 8500(1); "contribution" — Reg. 8501(6), (7); "deferred profit sharing plan" — ITA 147(1), 248(1); "defined benefit limit" — Reg. 8500(1); "defined benefit provision" — ITA 147.1(1); "eligible period of reduced pay" — Reg. 8500(1); "employed", "employee" — ITA 248(1); "employer" — ITA 248(1), Reg. 8504(4)(c); "highest average compensation" — Reg. 8504(2); "individual" — ITA 248(1); "lifetime retirement benefits" — Reg. 8500(1); "member" — ITA 147.1(1); "Minister" — ITA 248(1); "money purchase provision" — ITA 147.1(1); "month" — *Interpretation Act* 35(1); "pensionable service", "period of disability" — Reg. 8500(1); "person", "registered pension plan" — ITA 248(1); "related" — ITA 251(2)-(6); "retirement benefits", "totally and permanently disabled" — Reg. 8500(1); "writing" — *Interpretation Act* 35(1); "Year's Maximum Pensionable Earnings" — Reg. 8500(1).

Registered Plans Directorate Newsletters: 96-1 (changes to retirement savings limits).

8505. Additional benefits on downsizing — (1) Downsizing program — For the purposes of this section, "downsizing program" means the actions that are taken by an employer to bring about a reduction in the employer's workforce, including

(a) the termination of the employment of employees; and

(b) the payment of amounts and the provision of special benefits to employees who elect to or are required to terminate their employment.

(2) Applicability of downsizing rules — For the purposes of this section,

(a) a downsizing program is an approved downsizing program if the Minister has approved in writing the application of this section in respect of the program;

(b) subject to subsection (2.1), an individual is a qualifying individual in relation to an approved downsizing program if

(i) the employment of the individual is terminated while the downsizing program is in effect,

(ii) the individual was not, at any time before the termination of employment, connected with the employer from whom the individual terminated employment, and

(iii) the Minister has approved in writing the application of this section to the individual; and

(c) the specified day is, in respect of an approved downsizing program,

(i) the day that is designated by the Minister in writing for the purpose of subparagraph (3)(c)(ii), and

(ii) if no such day has been designated, the day that is 2 years after the day on which the Minister approves the application of this section in respect of the downsizing program.

History: The portion of para. 8505(2)(b) before subpara. (i) amended by P.C. 1995-17, subsec. 12(1), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable with respect to an individual whose employ-

ment is terminated after February 14, 1992, other than an individual who, on or before that date,

(a) was notified that the individual's employment would be terminated after that date; or

(b) elected to terminate employment after that date.

(2.1) Qualifying individual — exclusion — An individual whose employment is terminated under an approved downsizing program is not a qualifying individual in relation to the program if, at the time the individual's employment is terminated, it is reasonable to expect that

(a) the individual will become employed by, or provide services to,

(i) a person or body of persons from whom the individual terminated employment under the downsizing program, or

(ii) a person or body of persons that does not deal at arm's length with a person or body of persons referred to in subparagraph (i), or

(b) a corporation with which the individual is connected will provide services to a person or body of persons referred to in paragraph (a) and the individual will be directly involved in the provision of the services,

except that this subsection does not apply with respect to an individual where

(c) it is reasonable to expect that

(i) the individual will not be employed or provide services, or

(ii) if paragraph (b) is applicable, the corporation will not provide services,

for a period exceeding 12 months, and

(d) the Minister has waived the application of this subsection with respect to the individual.

History: Subsec. 8505(2.1) added by P.C. 1995-17, subsec. 12(2), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable with respect to an individual whose employment is terminated after February 14, 1992, other than an individual who, on or before that date,

(a) was notified that the individual's employment would be terminated after that date; or

(b) elected to terminate employment after that date.

(3) Additional lifetime retirement benefits — Lifetime retirement benefits (in this section referred to as "special retirement benefits") that do not comply with the condition in paragraph 8503(3)(a) may be provided under a defined benefit provision of a pension plan to a member of the plan who terminates employment after attaining 55 years of age where the following conditions are satisfied:

(a) the special retirement benefits are provided pursuant to an approved downsizing program;

(b) the member is a qualifying individual in relation to the downsizing program;

(c) under the terms of the provision,

(i) retirement benefits will not commence to be paid to the member until the member ceases to be employed by all employers who participate in the plan, and

(ii) retirement benefits will commence to be paid to the member no later than on the specified day;

(d) the amount (expressed on an annualized basis) of special retirement benefits payable to the member for a particular calendar year does not exceed the amount that is determined by the formula

$$A \times B \times C$$

where

A is the lesser of

(i) 2 per cent of the member's highest average compensation (computed under subsection 8504(2)) for the purpose of the provision, indexed to the calendar year (in this paragraph referred to as the "year of commencement") in which retirement benefits commence to be paid under the provision to the member, and

(ii) the defined benefit limit for the year of commencement,

B is the lesser of 7 and the amount, if any, by which 65 exceeds the member's age (expressed in years, including any fraction of a year) at termination of employment, and

C is the greatest of all amounts each of which is the ratio of

(i) the average Consumer Price Index for a calendar year not earlier than the year of commencement and not later than the particular year

to

(ii) the average Consumer Price Index for the year of commencement;

(e) [Repealed]

(f) the plan

(i) does not permit the commutation of retirement benefits payable to the member, or

(ii) permits the commutation of retirement benefits payable to the member only if the life expectancy of the member is significantly shorter than normal; and

(g) lifetime retirement benefits that are permissible only by reason of this subsection are not provided to the member under any other defined benefit provision, unless this condition has been waived by the Minister.

Related Provisions: Reg. 8501(3) — Conditions inapplicable where inconsistent with 8505(3); Reg. 8505(6) — Alternative CPI indexing.

History: Para. 8505(3)(e) repealed by P.C. 1995-17, subsec. 12(3), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

Information Circulars: 98-2: Prescribed compensation for RPPs, para. 29.

(3.1) Re-employed members — Where

(a) a member of a pension plan becomes an employee of a participating employer after lifetime retirement benefits that are permissible only by reason of subsection (3) have commenced to be paid under a defined benefit provision of the plan to the member, and

(b) payment of the member's retirement benefits under the provision is suspended while the member is so employed,

the condition in paragraph (3)(d) is applicable in respect of benefits payable under the provision to the member after the suspension as if

(c) the member had not become so employed, and

(d) payment of the member's retirement benefits had not been suspended.

History: Subsec. 8505(3.1) added by P.C. 1995-17, subsec. 12(4), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

(4) **Early retirement reduction** — Where a member of a pension plan is a qualifying individual in relation to an approved downsizing program, the terms of a defined benefit provision of the plan that determine the amount by which the member's lifetime retirement benefits under the provision are reduced because of the early commencement of the benefits may, under the downsizing program, be modified in such a way that the benefits do not comply with the condition in paragraph 8503(3)(c) but would so comply if the member's benefits were provided in respect of employment in a public safety occupation.

Related Provisions: Reg. 8501(3) — Conditions inapplicable where inconsistent with 8505(4); Reg. 8505(5) — Exception for future benefits.

History: Subsec. 8505(4) amended by P.C. 1995-17, subsec. 12(5), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

(5) **Exception for future benefits** — Subsection (4) does not apply with respect to benefits that are provided to an individual in respect of a period that is after the day on which the individual's employment was terminated under an approved downsizing program.

History: Subsec. 8505(5) amended by P.C. 1995-17, subsec. 12(5), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

(6) **Alternative CPI indexing** — Special retirement benefits provided to a member under a defined benefit provision of a pension plan shall be deemed to comply with the condition in paragraph (3)(d) where they would so comply if the amount C in that paragraph were replaced by a substantially similar measure of the change in the Consumer Price Index.

(7) **Exclusion from maximum pension rules** — For the purpose of determining whether retirement benefits provided under a defined benefit provision of a pension plan comply with the conditions in subsections 8504(1) and (5), lifetime retirement benefits that are permissible only by reason of subsection (3) shall be disregarded.

(8) **Exemption from past service contribution rule** — Subsection 8503(15) does not apply in respect of a contribution that is made in respect of benefits provided to a qualifying individual pursuant to an approved downsizing program.

Definitions [Reg. 8505]: "amount" — ITA 248(1); "approved downsizing program" — Reg. 8505(2)(a); "arm's length" — ITA 251(1); "average Consumer Price Index" — Reg. 8500(1); "benefits" — Reg. 8501(5)(c); "commencement" — *Interpretation Act* 35(1); "compensation" — ITA 147.1(1); "connected" — Reg. 8500(3); "Consumer Price Index" — Reg. 8500(1); "contribution" — Reg. 8501(6); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "defined benefit limit" — Reg. 8500(1); "defined benefit provision" — ITA 147.1(1); "downsizing program" — Reg. 8505(1); "employed", "employee", "employer", "employment" — ITA 248(1); "highest average compensation" — Reg. 8504(2); "individual" — ITA 248(1); "lifetime retirement benefits" — Reg. 8500(1); "member" — ITA 147.1(1); "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "participating employer" — ITA 147.1(1); "person" — ITA 248(1); "public safety occupation" — Reg. 8500(1); "qualifying individual" — Reg. 8505(2)(b), 8505(2.1); "retirement benefits" — Reg. 8500(1); "special retirement benefits" — Reg. 8505(3); "specified day" — Reg. 8505(2)(c); "writing" — *Interpretation Act* 35(1); "year of commencement" — Reg. 8505(3)(d)(i).

8506. Money purchase provisions — (1) Permissible benefits — For the purposes of paragraph 8502(c), the following benefits may, subject to the conditions specified in respect of each benefit, be provided under a money purchase provision of a pension plan:

(a) **lifetime retirement benefits** — lifetime retirement benefits provided to a member where the benefits are payable in equal periodic amounts or are not so payable only by reason that

(i) the benefits payable to a member after the death of the member's spouse or common-law partner are less than the benefits that would be payable to the member were the member's spouse or common-law partner alive, or

(ii) the benefits are adjusted, after they commence to be paid, where

(A) in the case of retirement benefits provided in accordance with subparagraph (2)(g)(i), the adjustments would be in accordance with any of subparagraphs 146(3)(b)(iii) to (v) of the Act if the annuity by means of which the lifetime retirement benefits are provided were an annuity under a retirement savings plan, and

(B) in any other case, the adjustments are acceptable to the Minister and are similar in nature to the adjustments permissible under clause (A);

Proposed Amendment — Reg. 8506(1)(a)(ii)

(ii) the benefits are adjusted, after they commence to be paid, where those adjustments would be in accordance with any of subparagraphs 146(3)(b)(iii) to (v) of the Act if the annuity by means of which the lifetime retirement benefits are provided were an annuity under a retirement savings plan;

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 28(1), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend subpara. 8506(1)(a)(ii) to read as above, applicable after 2003, except that, in respect of retirement benefits provided under a money purchase provision under an arrangement that was accepted for the purpose of para. 8506(2)(g) before February 27, 2004, subpara. 8506(1)(a)(ii) is to be read as follows:

(ii) the benefits are adjusted, after they commence to be paid, where those adjustments are acceptable to the Minister and are similar in nature to the adjustments described in any of subparagraphs 146(3)(b)(iii) to (v) of the Act;

Regulatory Impact Analysis Statement: Section 8506 describes the benefits that may be provided under a money purchase provision of an RPP and contains conditions that apply to a plan that has a money purchase provision.

Section 8506 is amended to permit an RPP to provide retirement benefits (referred to as "variable benefits") to a member under a money purchase provision, and to beneficiaries of the member after the member's death, by means of periodic payments from the member's account. Generally, retirement benefits were previously required to be provided by means of an annuity purchased from a licensed annuities provider. These amendments are intended to allow money purchase benefits to be provided in the same manner as is permitted under a RRIF (as an alternative to the acquisition of an annuity).

The amount of variable benefits payable each year from the member's account is subject to minimum withdrawal rules, similar to those that apply to RRIFs. In general, the minimum amount for a year is the balance in the member's account at the beginning of the year, multiplied by a factor corresponding to the attained age of the member (or, on election, the member's spouse or common-law partner). The factors are set out in the table contained in amended subsection 7308(4). Variable benefits must begin to be paid no later than the year in which the member attains age 70.

[See also under Reg. 214(5).]

(b) **bridging benefits** — bridging benefits provided to a member where the bridging benefits are payable for a period ending no later than the end of the month following the month in which the member attains 65 years of age;

(c) **guarantee period** — retirement benefits (in this paragraph referred to as "continued retirement benefits") provided to one or more beneficiaries of a member who dies after retirement benefits under the provision commence to be paid to the member where

(i) the continued retirement benefits are payable for a period beginning after the death of the member and ending no later than 15 years after the day on which retirement benefits commence to be paid under the provision to the member, and

(ii) the aggregate amount of continued retirement benefits payable under the provision for each month does not exceed the amount of retirement benefits that would have been payable under the provision for the month to the member if the member were alive;

Proposed Amendment — Reg. 8506(1)(c)(ii)

(ii) the total amount of continued retirement benefits payable under the provision for each month does not exceed the amount of retirement benefits (other than benefits permissible under paragraph (e.1)) that would have been payable under the provision for the month to the member if the member were alive;

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 28(2), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend subpara. 8506(1)(c)(ii) to read as above, applicable after 2003.

Regulatory Impact Analysis Statement: See under Reg. 8506(1)(a)(ii) above. See also under Reg. 214(5).

Technical Notes, February 27, 2004: Paragraph 8506(1)(c) allows retirement benefits payable under a money purchase provision of an RPP to be guaranteed for up to 15 years. The guarantee benefits must not exceed the retirement benefits that would have been payable to the member if the member were alive.

Paragraph 8506(1)(c) is amended so that any variable benefits (retirement benefits permissible under new paragraph 8506(1)(e.1)) that were payable to the member are ignored in determining the limit on the amount of guarantee benefits that may be provided. This will be relevant where a member's retirement benefits were provided partially by means of an annuity held by the plan and partially by means of the payment of variable benefits from the member's account.

(d) **post-retirement survivor benefits** — retirement benefits (in this paragraph referred to as "survivor retirement benefits") provided to a beneficiary of a member who dies after retirement benefits under the provision commence to be paid to the member where

(i) the beneficiary is a spouse or common-law partner or former spouse or common-law partner of the member at the time the member's retirement benefits commence to be paid,

(ii) the survivor retirement benefits are payable for a period beginning after the death of the member and ending with the death of the beneficiary, and

(iii) the aggregate amount of survivor retirement benefits and other retirement benefits payable under the provision for each month to beneficiaries of the member does not exceed the amount of retirement benefits that would have been payable under the provision for the month to the member if the member were alive;

Proposed Amendment — Reg. 8506(1)(d)(iii)

(iii) the total amount of survivor retirement benefits and other retirement benefits (other than benefits permissible under paragraph (e.1)) payable under the provision for each month to beneficiaries of the member does not exceed the amount of retirement benefits (other than benefits permissible under paragraph (e.1)) that would have been payable under the provision for the month to the member if the member were alive;

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 28(3), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend subpara. 8506(1)(d)(iii) to read as above, applicable after 2003.

Regulatory Impact Analysis Statement: See under Reg. 8506(1)(a)(ii) above. See also under Reg. 214(5).

Technical Notes, February 27, 2004: Paragraph 8506(1)(d) permits an RPP to provide for the payment of survivor benefits under a money purchase provision to a spouse or common-law partner or former spouse or common-law partner of a member who dies after beginning to receive retirement benefits. The survivor benefits, together with any benefits payable under a guarantee, must not exceed the retirement benefits that would have been payable to the member if the member were alive.

Paragraph 8506(1)(d) is amended so that any variable benefits that were payable to the member are ignored in determining the limit on the amount of survivor benefits that may be provided. This amendment is consistent with the amendment to paragraph 8506(1)(c).

(e) **pre-retirement survivor benefits** — retirement benefits provided to a beneficiary of a member who dies before retirement benefits under the provision commence to be paid to the member, and benefits provided to other individuals after the death of the beneficiary, where

(i) the beneficiary is a spouse or common-law partner or former spouse or common-law partner of the member at the time of the member's death,

(ii) the benefits would be permissible under paragraphs (a) to (c) if the beneficiary were a member of the plan, and

(iii) the retirement benefits are payable to the beneficiary beginning no later than on the later of one year after the day of death of the member and the end of the calendar year in which the beneficiary attains 69 years of age;

Proposed Addition — Reg. 8506(1)(e.1)

(e.1) **variable benefits** — retirement benefits (in this paragraph referred to as "variable benefits"), other than benefits permissible under any of paragraphs (a) to (e), provided to a member and, after the death of the member, to one or more beneficiaries of the member if

(i) the variable benefits are paid from the member's account,

(ii) the variable benefits provided to the member or a beneficiary (other than a beneficiary who is the specified beneficiary of the member in relation to the provision) are payable for a period ending no later than the end of the calendar year following the calendar year in which the member dies,

(iii) the variable benefits provided to a beneficiary who is the specified beneficiary of the member in relation to the provision are payable for a period ending no later than the end of the calendar year in which the specified beneficiary dies, and

(iv) the amount of variable benefits payable to the member and beneficiaries of the member for each calendar year is not less than the minimum

amount for the member's account under the provision for the calendar year;

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 28(4), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will add para. 8506(1)(e.1), applicable after 2003.

Regulatory Impact Analysis Statement: See under Reg. 8506(1)(a)(ii) above. See also under Reg. 214(5).

Technical Notes, February 27, 2004: New paragraph 8506(1)(e.1) permits an RPP to provide retirement benefits (referred to as "variable benefits") to a member under a money purchase provision, and to beneficiaries of the member after the member's death, by means of payments from the member's account. This is in contrast to retirement benefits described in paragraphs 8506(1)(a) to (e), which by virtue of paragraph 8506(2)(g) must generally be provided by means of an annuity purchased from a licensed annuities provider. Paragraph 8506(1)(e.1) is intended to allow money purchase benefits to be provided in the same manner as is permitted under a RRIF.

The amount of variable benefits payable each year from the member's account must not be less than the minimum amount determined in accordance with rules set out in subsections 8506(5) and (6). The minimum amount is determined on the basis of the balance in the member's account at the beginning of each year and the attained age of either the member or the member's spouse or common-law partner. These rules are similar to the minimum withdrawal rules that apply to RRIFs. The calculation of the minimum amount is illustrated in the examples following the commentary on subsection 8506(7).

As noted, variable benefits can be provided to beneficiaries of a member after the death of the member. Where the beneficiary is a specified beneficiary of the member, the payment of variable benefits can continue until the end of the calendar year in which the specified beneficiary dies. The expression "specified beneficiary" of a member, which is defined in new subsection 8506(7), is restricted to the surviving spouse or common-law partner of the member and requires that there be a written designation of the individual as specified beneficiary. The payment of variable benefits to other beneficiaries (which can include a spouse or common-law partner who has not been designated as a specified beneficiary) must cease no later than the end of the calendar year following the year in which the member dies. Paragraphs 8506(2)(h) and (i) require that the balance in the member's account remaining after variable benefits cease to be payable be paid as soon as is practicable.

The characterization of payments from a member's money purchase account as periodic payments (and, thus, retirement benefits as defined in subsection 8500(1)) for the purposes of paragraph 8506(1)(e.1) may not always be straightforward. However, where a money purchase plan contemplates post-retirement benefits being paid from a member's account as permitted under paragraph 8506(1)(e.1) and, as such, contains terms setting out minimum amounts which must be withdrawn at least annually, payments made in accordance with those terms would be considered to be periodic in nature. Although all other payments made from a member's account would generally be considered to be lump sum, rather than periodic, there may be exceptions. For example, if a member establishes a pattern of payments in excess of the minimum required under the plan terms (by electing to receive, for example, annual payments equal to the maximum permitted under governing pension benefits legislation), any excess payments fitting this pattern would also be considered to be periodic payments.

The characterization of payments as periodic or lump sum is relevant, in particular, for purposes of the transfer provisions in section 147.3 of the Act. These provisions allow the tax-free transfer of funds between registered plans only where the amount transferred constitutes a lump sum. This is illustrated in example 3 following the commentary on subsection 8506(7). The characterization is also relevant for purposes of determining withholding tax on pension payments to non-residents. Many of Canada's income tax treaties provide for a reduced rate of withholding tax for periodic pension payments.

Notice of Ways and Means Motion, federal budget, February 18, 2003: (7) That, effective after 2003, the provisions of the Act relating to money purchase provisions of registered pension plans (RPPs) and registered retirement income funds (RRIFs) be modified to allow

(a) the payment of retirement income under a money purchase provision of an RPP in the same manner as is permitted under a RRIF; and

(b) the transfer of an amount from the RRIF of a former member of an RPP to a money purchase provision of the RPP for the member's benefit [see 147.3(1) — ed.].

Federal budget, Supplementary Information, February 18, 2003: *RRIF-Type Payouts From Money Purchase RPPs*

Members of money purchase RPPs generally have two options on retirement. They can purchase a life annuity with their money purchase account or they can transfer the account to an RRSP or a registered retirement income fund (RRIF).

To provide increased flexibility on retirement, the budget proposes to allow money purchase RPPs to pay pension benefits in the form of the same income stream currently permitted under a RRIF. This measure will allow money purchase plan members to choose to benefit from the flexibility a RRIF offers without having to assume greater responsibility for investment decisions or to pay the higher investment fees typically charged on individual plans.

A member will be required to withdraw from their money purchase account a minimum amount each year beginning no later than the year in which they attain age 70. The minimum amount will be determined in accordance with the existing rules that apply to RRIFs.

This measure will also permit the transfer of funds back into a pension plan by former members who had previously transferred their money purchase account to an RRSP or RRIF, subject to the new RRIF-type payout requirement.

The proposed changes will apply after 2003.

(f) **payment from account** — the payment with respect to a member of a single amount from the member's account under the provision;

(g) **lump-sum payments on death before retirement** — the payment of one or more single amounts to one or more beneficiaries of a member who dies before retirement benefits under the provision commence to be paid to the member;

Proposed Amendment — Reg. 8506(1)(g)

(g) **payment from account after death** — the payment, with respect to one or more beneficiaries of a member, of one or more single amounts from the member's account under the provision;

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 28(5), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend para. 8506(1)(g) to read as above, applicable after 2003.

Regulatory Impact Analysis Statement: See under Reg. 8506(1)(a)(ii) above. See also under Reg. 214(5).

Technical Notes, February 27, 2004: Paragraph 8506(1)(g) permits an RPP to provide for the payment of lump sum amounts under a money purchase provision to beneficiaries of a member where the member dies before beginning to receive retirement benefits. These payments cannot exceed the balance in the member's account.

Paragraph 8506(1)(g) is amended to allow lump sum payments to be made from the member's account to beneficiaries of the member regardless of whether the member had begun to receive retirement benefits. This ensures the balance in the money purchase account of a deceased member who had been receiving variable benefits may be paid to the member's beneficiaries.

(h) **commutation of benefits** — the payment with respect to a member of a single amount in full or partial satisfaction of the member's entitlement to other benefits under the provision, where the single amount does not exceed the present value (at the time the single amount is paid) of the other benefits that, as a consequence of the payment, cease to be provided; and

(i) the payment, with respect to an individual after the death of a member, of a single amount in full or partial satisfaction of the individual's entitlement to other benefits under the provision, where the individual is a beneficiary of the member and the single amount does not exceed the present value (at the time the single amount is paid) of the other benefits that, as a consequence of the payment, cease to be provided.

Related Provisions: Reg. 8506(5) — Minimum amount for (e.1); Reg. 8506(8) — Specified beneficiary for (e.1).

History: The word "spouse" replaced with "spouse or common-law partner" in subpara. 8506(1)(a)(i), the words "surviving spouse benefits" replaced with "survivor benefits" in the headings before para. (1)(d) and (1)(e), the words "spouse or former spouse" replaced with "spouse or common-law partner or former spouse or common-law partner" in subpara. (1)(d)(i) and (e)(i), by P.C. 2001-957, paras. 14(e), 17(a), (b), and 15(d), May 31, 2001, *Canada Gazette*, Part II, June 20, 2001, applicable to 2001 *et seq.*, except that if a taxpayer and a person have jointly elected pursuant to s. 144 of the *Modernization of Benefits and Obligations Act* (S.C. 2000, c. 12), in respect of the 1998, 1999 or 2000 taxation year, the amendment applies to the taxpayer and the person in respect of the applicable taxation year *et seq.*

Subpara. 8506(1)(e)(iii) amended by P.C. 1998-2256, s. 23, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable on the same basis as the amendment to Reg. 8502(e)(i)(A).

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions).

(2) Additional conditions — For the purposes of section 8501, the following conditions are applicable with respect to each money purchase provision of a pension plan:

(a) **employer contributions acceptable to minister** — the amount of contributions that are to be made under the provision by each employer who participates in the plan is determined in a manner acceptable to the Minister;

(b) **employer contributions with respect to particular members** — each contribution that is made under the provision by an employer consists only of amounts each of which is an amount that is paid by the employer with respect to a particular member;

(b.1) **allocation of employer contributions** — each contribution that is made under the provision by an employer is allocated to the member with respect to whom it is made;

(c) **employer contributions not permitted** — contributions are not made under the provision by an employer, and property is not transferred to the provision in respect of the actuarial surplus under a defined benefit provision of the plan or another registered pension plan,

(i) at a time when there is a surplus under the provision, or

(ii) at a time after 1991 when an amount that became a forfeited amount under the provision before 1990, or any earnings of the plan that are reasonably attributable to that amount, is being held in respect of the provision and has not been reallocated to members of the plan;

Proposed Addition — Reg. 8506(2)(c.1)

(c.1) **contributions not permitted** — no contribution is made under the provision with respect to a member, and no amount is transferred for the benefit of a member to the provision from another benefit provision of the plan, at any time after the calendar year in which the member attains 69 years of age, other than an amount that is transferred for the benefit of the member to the provision

(i) in accordance with subsection 146.3(14.1) or 147.3(1) or (4) of the Act, or

(ii) from another benefit provision of the plan, where the amount so transferred would, if the benefit provisions were in separate registered pension plans, be in accordance with subsection 147.3(1) or (4) of the Act;

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 28(6), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will add para. 8506(2)(c.1), applicable after 2003.

Regulatory Impact Analysis Statement: See under Reg. 8506(1)(a)(ii) above. See also under Reg. 214(5).

Technical Notes, February 27, 2004: New paragraph 8506(2)(c.1) generally prohibits a contribution or transfer to a money purchase provision of an RPP on behalf of a member at any time after the calendar year in which the member turned 69 years of age. This prohibition also applies to the allocation of amounts to a member that are attributable to forfeited amounts or surplus, since such amounts are deemed by subsection 8500(7) to be contributions for the purpose of this rule.

Exceptions to this prohibition are provided for post-age 69 transfers that are made in accordance with subsection 146.3(14.1) of the Act (transfers from a RRIF), subsection 147.3(1) of the Act (lump sum transfers from a money purchase provision) and subsection 147.3(4) of the Act (lump sum transfers from a defined benefit provision) and similar intra-plan transfers.

Paragraph 8506(2)(c.1), which applies after 2003, is added for greater certainty and does not reflect a change in policy.

(d) **return of contributions** — where the plan is not established by an enactment of Canada or a province, it includes a stipulation that permits, for the purpose of avoiding revocation of the registration of the plan, a contribution made under the provision by a member or by an employer to be returned to the person who made the contribution, which stipulation may provide that a return of contributions is subject to the approval of the authority administering the *Pension Benefits Standards Act, 1985* or a similar law of a province;

(e) **allocation of earnings** — the earnings of the plan, to the extent that they relate to the provision and are not reasonably attributable to forfeited amounts or a surplus under the provision, are allocated to plan members on a reasonable basis and no less frequently than annually;

(f) **payment or reallocation of forfeited amounts** — each forfeited amount under the provision (other than an amount forfeited before 1990) and all earnings of the plan that are reasonably attributable to the forfeited amount are

(i) paid to participating employers,

(ii) reallocated to members of the plan, or

(iii) paid as or on account of administrative, investment or similar expenses incurred in connection with the plan

on or before December 31 of the year immediately following the calendar year in which the amount is forfeited, or such later time as is permitted by the Minister under subsection (3);

(g) **retirement benefits** — retirement benefits under the provision are provided

(i) by means of annuities that are purchased from a person who is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an annuities business, or

(ii) under an arrangement acceptable to the Minister; and

Proposed Amendment — Reg. 8506(2)(g)

(g) **retirement benefits** — retirement benefits (other than benefits permissible under paragraph (1)(e.1)) under the provision are provided by means of annuities that are purchased from a licensed annuities provider;

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 28(7), (pre-published in the *Canada Gazette*, Part I, May

21, 2005), will amend para. 8506(2)(g) to read as above, applicable after 2003, except that, in respect of retirement benefits provided under a money purchase provision under an arrangement that was accepted for the purpose of para. 8506(2)(g) before February 27, 2004, the para. is to be read as follows:

(g) retirement benefits (other than benefits permissible under paragraph (1)(e.1)) under the provision are provided by means of annuities that are purchased from a licensed annuities provider or under an arrangement acceptable to the Minister;

Regulatory Impact Analysis Statement: See under Reg. 8506(1)(a)(ii) above. See also under Reg. 214(5).

Technical Notes, February 27, 2004: Paragraph 8506(2)(g) requires that retirement benefits payable under a money purchase provision of an RPP be provided either by means of annuities purchased from a licensed issuer of annuities or under an arrangement acceptable to the Minister.

Paragraph 8506(2)(g) is amended in three ways. First, it is amended so that it does not apply to variable benefits permissible under new paragraph 8506(1)(e.1). Variable benefits are simply provided by means of payments from a member 's account based on the account balance and the attained age of the member or the member's spouse or common-law partner.

The second amendment to paragraph 8506(2)(g) removes the discretionary authority for the Minister to accept other arrangements. However, grandfathering is provided for plans that do not provide retirement benefits by means of annuities purchased from a licensed annuities provider, if the arrangement under which retirement benefits are provided was accepted by the Minister before February 27, 2004 and the arrangement continues to remain acceptable.

Finally, paragraph 8506(2)(g) is amended by replacing some of the existing words in the paragraph with the expression "licensed annuities provider", which is defined in subsection 248(1) of the Act. This amendment does not represent a change in policy.

(h) **undue deferral of payment** — each single amount that is payable after the death of a member is paid as soon as is practicable after the member's death.

Proposed Amendment — Reg. 8506(2)(h)

(h) **undue deferral of payment — death of member** — each single amount that is payable after the death of a member (other than a single amount that is payable after the death of the specified beneficiary of the member in relation to the provision) is paid as soon as is practicable after the member's death; and

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 28(7), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend para. 8506(2)(h) to read as above, applicable after 2003.

Regulatory Impact Analysis Statement: See under Reg. 8506(1)(a)(ii) above. See also under Reg. 214(5).

Technical Notes, February 27, 2004: Paragraph 8506(2)(h) requires that lump sums payable under a money purchase provision of an RPP after the death of a member be paid as soon as practicable after the death of the member.

Paragraph 8506(2)(h) is amended to provide an exception for lump sum payments that are payable after the death of the member's specified beneficiary, as defined in subsection 8506(7). In general, the specified beneficiary of a member is the surviving spouse or common-law partner of a deceased member to whom variable benefits (as permitted under new paragraph 8506(1)(e.1)) continue to be paid from the member's account. This amendment ensures that, after the death of the specified beneficiary, the balance in the member's account may be paid out of the plan without contravening the condition in paragraph 8506(2)(h).

Proposed Addition — Reg. 8506(2)(i)

(i) **undue deferral of payment — death of specified beneficiary** — each single amount that is payable after the death of the specified beneficiary of a member in relation to the provision is paid as soon as is practicable after the specified beneficiary's death.

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 28(7), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will add para. 8506(2)(i), applicable after 2003.

Regulatory Impact Analysis Statement: See under Reg. 8506(1)(a)(ii) above. See also under Reg. 214(5).

Technical Notes, February 27, 2004: New paragraph 8506(2)(i) is similar to paragraph 8506(2)(h). It requires that lump sums payable under a money purchase provision of an RPP after the death of a specified beneficiary of a member be paid as soon as practicable after the death of the specified beneficiary.

Related Provisions: Reg. 8500(7) — Amount allocated under money purchase provision deemed to be contribution; Reg. 8501(2)(c) — Revocation of plan for failure to comply with conditions; Reg. 8506(8) — Specified beneficiary; Reg. 8509(10.1) — Conditions inapplicable to pre-1992 plans.

History: Para. 8506(2)(b.1) added by P.C. 1995-17, subsec. 13(1), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable with respect to contributions made under a money purchase provision of a pension plan after April 5, 1994.

Para. 8506(2)(c) amended by P.C. 1995-17, subsec. 13(2), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988, except that para. (c) does not apply with respect to property transferred on or before April 5, 1994 to a money purchase provision of a pension plan in respect of an actuarial surplus under a defined benefit provision of a registered pension plan.

Para. 8506(2)(d) amended by P.C. 1995-17, subsec. 13(3), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

Para. 8506(2)(f) amended by P.C. 1995-17, subsec. 13(4), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after April 5, 1994 with respect to

(a) forfeited amounts under a money purchase provision of a pension plan that arise after April 5, 1994;

(b) earnings of a pension plan after April 5, 1994; and

(c) forfeited amounts under a money purchase provision of a pension plan that arose on or before April 5, 1994, to the extent that, on April 5, 1994, those amounts were being held in respect of the provision and have not been reallocated to members of the plan.

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions).

(2.1) Alternative method for allocating employer contributions — The Minister may, on the written application of the administrator of a pension plan, waive the application of the condition in paragraph (2)(b.1) in respect of a money purchase provision of the plan where contributions made under the provision by an employer are allocated to members of the plan in a manner acceptable to the Minister.

History: Subsec. 8506(2.1) added by P.C. 1995-17, subsec. 13(5), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after April 5, 1994.

(3) Reallocation of forfeitures — The Minister may, on the written application of the administrator of a registered pension plan, extend the time for satisfying the requirements of paragraph (2)(f) where

(a) the aggregate of the forfeited amounts that arise in a calendar year is greater than normal because of unusual circumstances; and

(b) the forfeited amounts are to be reallocated on a reasonable basis to a majority of plan members or paid as or on account of administrative, investment or similar expenses incurred in connection with the plan.

History: Para. 8506(3)(b) amended by P.C. 1995-17, subsec. 13(6), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after April 5, 1994 with respect to

(a) forfeited amounts under a money purchase provision of a pension plan that arise after April 5, 1994;

(b) earnings of a pension plan after April 5, 1994; and

(c) forfeited amounts under a money purchase provision of a pension plan that arose on or before April 5, 1994, to the extent that, on April 5, 1994, those amounts were being held in respect of the provision and have not been reallocated to members of the plan.

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions).

Proposed Addition — Reg. 8506(4)–(8)

(4) Non-payment of minimum amount — plan revocable — A registered pension plan that contains a money purchase provision becomes, for the purposes of paragraph 147.1(11)(c) of the Act, a revocable plan at the beginning of a calendar year if the total amount of retirement benefits (other than retirement benefits permissible under any of paragraphs (1)(a) to (e)) paid from the plan in the calendar year in respect of a member's account under the provision is less than the minimum amount for the account for the calendar year.

Technical Notes, February 27, 2004: New subsection 8506(4) applies to RPPs containing a money purchase provision that provides for the payment of variable benefits to members and beneficiaries of members. Variable benefits are retirement benefits permissible under new paragraph 8506(1)(e.1).

Subsection 8506(4) provides that an RPP becomes a revocable plan at the beginning of a calendar year if the total amount of variable benefits paid from a member's account in the year is less than the minimum amount for the account for the year. The minimum amount is determined in accordance with rules set out in subsections 8506(5) and (6). For details, refer to the commentary on those subsections.

Related Provisions: Reg. 8506(5) — Minimum amount.

(5) Minimum amount — For the purposes of paragraph (1)(e.1) and subsection (4), but subject to subsection (7), the minimum amount for a member's account under a money purchase provision of a registered pension plan for a calendar year is the amount determined by the formula

$$A \times B$$

where

A is the balance in the account at the beginning of the year; and

B is

(a) if there is a specified beneficiary of the member for the year in relation to the provision, the factor designated under subsection 7308(4) for the year in respect of the specified beneficiary,

(b) if paragraph (a) does not apply for the year, the factor designated under subsection 7308(4) for the year in respect of an individual where

(i) the individual was, at the time the designation referred to in subparagraph (ii) was made, the member's spouse or common-law partner,

(ii) the member had, before the beginning of the year, provided the administrator of the plan with a written designation of the individual for the purpose of this paragraph in relation to the provision, and

(iii) the member had not, before the beginning of the year, revoked the designation, and

(c) in any other case, the factor designated under subsection 7308(4) for the year in respect of the member.

Technical Notes, February 27, 2004: Subsection 8506(5) defines the minimum amount for a member's account under a money purchase provision of an RPP with reference to a calendar year. In general, the minimum amount for a calendar year is determined on the basis of the balance in the member's account at the beginning of the year and the attained age of the member (or the member's spouse or common-law partner). Examples 1 to 3 following the commentary on subsection [8506(8)] illustrate the operation of the minimum amount rules.

The definition applies for the purposes of subsection 8506(4) and paragraph 8506(1)(e.1) in determining the minimum payout schedule for variable benefits under a member's money purchase account. This definition generally corresponds to the definition "minimum amount" in subsection 146.3(1) of the Act that applies in determining minimum withdrawals under a RRIF.

More specifically, except as noted below, the minimum amount for a member's account for a calendar year is determined by multiplying the balance in the member's account at the beginning of the year by a designated factor corresponding to the attained age of the member or, in certain circumstances, the member's spouse or common-law partner. The designated factors are set out in the table in amended subsection 7308(4) of the Regulations.

The account balance must be determined in a manner that reasonably reflects the fair market value of the property of the plan held in connection with the account. Where, in addition to variable benefits, the plan also provides for a portion of the member's retirement benefits to be provided by means of an annuity purchased from a licensed annuities provider, the value of the annuity is to be disregarded in determining the account balance. Similarly, where a portion of the member's retirement benefits are provided under a grandfathered arrangement as described in the commentary to paragraph 8506(2)(g), the property held in connection with those retirement benefits is also disregarded. In both cases, the disregard applies only to the extent that retirement benefits had begun to be paid before the beginning of the year and remain payable in the year.

For years in which the member is alive, the minimum amount can be based on the age of either the member or the member's spouse or common-law partner. In order to use the age of the member's spouse or common-law partner for a given year, the member must advise the plan administrator in writing before the beginning of the year.

Changes to the payout schedule may be made to reflect changes in family circumstances. For example, a member who marries a younger spouse after having begun to receive variable benefits may wish to change the payout schedule so that the minimum amount is based on the age of his or her spouse. Assuming the pension plan permits, the member can effect such a change simply by making a written request to the plan administrator. The revised payout schedule would apply beginning in the year following the year in which the request was made.

The payout schedule that applied while the member was alive continues to apply after the member's death with respect to any variable benefits that remain payable to a beneficiary (other than the specified beneficiary) of the member for the year of death and the following year. Where the member's surviving spouse or common-law partner is entitled to receive variable benefits as the member's specified beneficiary, the payout schedule must be revised so that the minimum amount is based on the age of the spouse or common-law partner. For further details, refer to the commentary on subsection [8506(8)] and examples 1 and 2 following that subsection.

The determination of the minimum amount under new subsection 8506(5) is subject to new subsection 8506(6) [now 8506(7) — ed.]. Under that subsection, the minimum amount for years prior to the year in which the member (or, after the death of the member, the specified beneficiary) turns 70 years of age is defined to be nil. This is intended to provide consistency with the maximum deferral permitted under the RRSP/RRIF rules.

Related Provisions: Reg. 8506(6) — Determination of account balance; Reg. 8506(7) — Minimum amount deemed nil; Reg. 8506(8) — Specified beneficiary.

(6) Determination of account balance — For the purpose of the description of A in subsection (5), the balance in a member's account at the beginning of a calendar year (in this subsection referred to as the "current year") is to be determined in accordance with the following rules:

(a) the determination is to be made in a manner that reasonably reflects the fair market value of the property held in connection with the account at the beginning of the current year, including an estimate of the portion of any unallocated earnings of the plan that arose in the preceding calendar year and that can

reasonably be expected to be allocated to the account in the current year; and

(b) if retirement benefits (other than benefits permissible under paragraph (1)(c.1)) provided under the provision with respect to the member had commenced to be paid before the current year and continue to be payable in the current year, the determination is to be made without regard to the value of any property held in connection with those benefits.

Regulatory Impact Analysis Statement: See under Reg. 8506(1)(a)(ii) above.

(7) When minimum amount is nil — The minimum amount for a member's account under a money purchase provision of a registered pension plan for a calendar year is nil if

(a) an individual, who is either the member or the specified beneficiary of the member for the year in relation to the provision, is alive at the beginning of the year; and

(b) that individual had not attained 69 years of age at the end of the preceding calendar year.

Technical Notes, February 27, 2004: To provide consistency with the maximum deferral permitted under the RRSP/RRIF rules, new subsection 8506(6) [now 8506(7) — ed.] (in conjunction with amended subparagraph 8502(e)(i)) ensures that a member is not required to begin receiving variable benefits from their money purchase account until the year in which the member turns age 70. It does so by defining the minimum amount for a member's money purchase account for calendar years before the calendar year in which the member turns 70 years of age to be nil. Similar treatment is provided with respect to the specified beneficiary of a deceased member. The application of this subsection is illustrated in example 1 following the commentary on subsection [8506(8)].

(8) Specified beneficiary — In this section, an individual is the specified beneficiary of a member for a calendar year in relation to a money purchase provision of a registered pension plan if

(a) the member died before the beginning of the year;

(b) the individual is a beneficiary of the member and was, immediately before the member's death, the member's spouse or common-law partner; and

(c) the member or the member's legal representative had, before the beginning of the year, provided the administrator of the plan with a written designation of the individual (and of no other individual) as the specified beneficiary of the member for the calendar year in relation to the provision.

Technical Notes, February 27, 2004: New subsection 8506(7) [now 8506(8) — ed.] defines the "specified beneficiary" of a member in relation to a money purchase provision and with reference to a calendar year as the surviving spouse or common-law partner of the member. The specified beneficiary of a member is entitled to receive variable benefits from the member's account after the member's death and throughout their lifetime in accordance with paragraph 8506(1)(c.1).

To qualify as the specified beneficiary for a given year, the member or the member's legal representative must provide a written designation of the individual as the specified beneficiary to the plan administrator before the beginning of the year. Further, an individual cannot be a specified beneficiary any earlier than the year following the year in which the member dies. This condition, which applies primarily for mechanical reasons, ensures that the minimum amount for the year of the member's death is determinable at the beginning the year and does not change as a result of the member's death. It is important to note that the surviving spouse or common-law partner of a member may receive variable benefits for the remainder of the year in which the member dies and for the following year without having to qualify as the member's specified beneficiary. This is by virtue of the fact that paragraph 8506(1)(c.1) allows variable benefits to continue to be paid after the death of the member to any beneficiary of the member until the end of the year following the year of death.

The operation of the minimum amount rules is illustrated in the following examples.

Example 1

Galen turns 69 years of age in 2005 and must begin receiving variable benefits starting in 2006. When Galen retired in 2004, he advised the plan administrator to use the age of his younger spouse, Carole, in determining the minimum payout schedule for his account. He also designated Carole as his specified beneficiary for years after his death so that she could continue to receive payments from the account throughout her lifetime in the event that he dies before her.

At the beginning of 2006, Carole is 66 years of age and the account balance is $320,000. The minimum amount for 2006 for Galen's account is $13,333 (= $320,000 × (1/(90 - 66))). In accordance with the plan terms, the minimum amount is payable in equal monthly instalments over the course of the year.

Galen dies in October 2006. The remaining two instalments are paid to Carole. The minimum amount for 2007 is determined on the basis of Carole's age, as specified beneficiary for that year. Since Carole is less than 70 years of age, the minimum amount for 2007 is nil in accordance with subsection 8506(6).

Example 2

Anita dies in 2007 after having received variable benefits for two years. The minimum amount was based on Anita's age. When commencing to receive retirement benefits from the plan, Anita designated her spouse, Daniel (who is two years older), as her specified beneficiary, but only for years after the year following the year of her death. Thus, for the remainder of 2007 and for all of 2008, the retirement benefits payable to Daniel as beneficiary are based on the minimum payout schedule established for Anita. However, when Daniel starts receiving retirement benefits as specified beneficiary in 2009, the payout schedule is revised so that the minimum amount is based on his age.

Example 3

In September 2005, Clarke decides to transfer his money purchase funds to a RRIF. The balance at that time in Clarke's account is $180,000. The minimum amount for Clarke's account for 2005 is $15,000. Clarke has already received $10,000 from his account during the year. The maximum amount eligible for tax-free transfer under subsection 147.3(1) of the Act is $175,000 (= $180,000 - ($15,000 - $10,000)). The remaining $5,000 must be paid directly to Clarke.

Application: The May 16, 2005 draft regulations (deferred income plans), subsec. 28(8), (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will add subsecs. 8506(4)–(8), applicable after 2003.

Regulatory Impact Analysis Statement: See under Reg. 8506(1)(a)(ii) above. See also under Reg. 214(5).

Definitions [Reg. 8506]: "administrator" — ITA 147.1(1); "amount", "annuity" — ITA 248(1); "beneficiary", "benefit provision" — Reg. 8500(1); "benefits" — Reg. 8501(5)(c); "bridging benefits" — Reg. 8500(1); "business" — ITA 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — ITA 255, *Interpretation Act* 35(1); "common-law partner" — ITA 248(1); "continued retirement benefits" — Reg. 8506(1)(c); "contribution" — Reg. 8501(6); "defined benefit provision" — ITA 147.1(1); "employer" — ITA 248(1); "forfeited amount" — Reg. 8500(1); "individual", "legal representative" — ITA 248(1); "licensed annuities provider" — ITA 147(1), 248(1); "lifetime retirement benefits" — Reg. 8500(1); "member" — ITA 147.1(1); "minimum amount" — Reg. 8506(5), (7); "Minister" — ITA 248(1); "money purchase provision" — ITA 147.1(1); "month" — *Interpretation Act* 35(1); "participating employer" — ITA 147.1(1); "person", "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "registered pension plan" — ITA 248(1); "retirement benefits" — Reg. 8500(1); "retirement savings plan" — ITA 146(1), 248(1); "single amount" — ITA 147.1(1); "specified beneficiary" — Reg. 8506(8); "spouse" — Reg. 8500(5); "surplus" — Reg. 8500(1); "survivor retirement benefits" — Reg. 8506(1)(d); "written" — *Interpretation Act* 35(1)"writing".

8507. Periods of reduced pay — (1) Prescribed compensation — For the purposes of paragraph (b) of the definition "compensation" in subsection 147.1(1) of the Act, there is prescribed for inclusion in the compensa-

tion of an individual from an employer for a calendar year after 1990

(a) where the individual has a qualifying period in the year with respect to the employer, the amount that is determined under subsection (2) in respect of the period; and

(b) where the individual has a period of disability in the year, the amount that would be determined under paragraph (2)(a) in respect of the period if the period were a qualifying period of the individual with respect to the employer.

Related Provisions: Reg. 8508 — Salary deferral leave plan.

Interpretation Bulletins: IT-363R2: Deferred profit sharing plans — deductibility of employer contributions and taxation of amounts received by a beneficiary (archived).

Information Circulars: 98-2: Prescribed compensation for RPPs.

(2) Additional compensation in respect of qualifying period — For the purposes of paragraph (1)(a) and subsection (5), the amount that is determined in respect of a period in a calendar year that is a qualifying period of an individual with respect to an employer is the lesser of

(a) the amount, if any, by which

(i) the amount that it is reasonable to consider would have been the remuneration of the individual for the period from the employer if the individual had rendered services to the employer throughout the period on a regular basis (having regard to the services rendered by the individual to the employer before the complete period of reduced pay of which the period is a part) and the individual's rate of remuneration had been commensurate with the individual's rate of remuneration before the beginning of the complete period of reduced pay

exceeds

(ii) the remuneration of the individual for the period from the employer, and

(b) the amount determined by the formula

$$(5 + A + B - C) \times D$$

where

A is the lesser of 3 and the amount that would be the cumulative additional compensation fraction of the individual with respect to the employer, determined to the time that is immediately before the end of the period, if the individual's only qualifying periods had been periods that are also periods of parenting,

B is

(i) if no part of the period is a period of parenting, nil, and

(ii) otherwise, the lesser of

(A) the amount, if any, by which 3 exceeds the amount determined for A, and

(B) the ratio of

(I) the amount that would be determined under paragraph (a) if the remuneration referred to in subparagraphs (a)(i) and (ii) were the remuneration for such part of the period as is a period of parenting

to

(II) the amount determined for D,

C is the cumulative additional compensation fraction of the individual with respect to the employer, determined to the time that is immediately before the end of the period, and

D is the amount that it is reasonable to consider would have been the individual's remuneration for the year from the employer if the individual had rendered services to the employer on a full-time basis throughout the year and the individual's rate of remuneration had been commensurate with the individual's rate of remuneration before the beginning of the complete period of reduced pay of which the period is a part.

Related Provisions: ITA 257 — Negative amounts in formulas; Reg. 8507(7) — Complete period of reduced pay.

Information Circulars: 98-2: Prescribed compensation for RPPs.

(3) Qualifying periods and periods of parenting — For the purposes of this section,

(a) a period in a calendar year is a qualifying period of an individual in the year with respect to an employer if

(i) the period is an eligible period of reduced pay or temporary absence of the individual in the year with respect to the employer,

(ii) either

(A) lifetime retirement benefits are provided to the individual under a defined benefit provision of a registered pension plan (other than a plan that is, in the year, a specified multi-employer plan) in respect of the period, or

(B) contributions are made by or on behalf of the individual under a money purchase provision of a registered pension plan (other than a plan that is, in the year, a specified multi-employer plan) in respect of the period,

pursuant to terms of the plan that apply in respect of periods that are not regular periods of employment,

(iii) the lifetime retirement benefits or the contributions, as the case may be, exceed the benefits that would otherwise be provided or the contributions that would otherwise be made if the benefits or contributions were based on the services actually rendered by the individual and the remuneration actually received by the individual,

(iv) the individual's pension adjustment for the year with respect to the employer includes an amount in respect of the lifetime retirement benefits or the contributions, as the case may be,

(v) no benefits are provided in respect of the period to the individual under a defined benefit provision of any registered pension plan in which the employer does not participate, and

(vi) no contributions are made by or on behalf of the individual in respect of the period under a money purchase provision of a registered pension plan or a deferred profit sharing plan in which the employer does not participate; and

(b) a period of parenting of an individual is all or a part of a period that begins

(i) at the time of the birth of a child of whom the individual is a natural parent, or

(ii) at the time the individual adopts a child,

and ends 12 months after that time.

Related Provisions: Reg. 8500(7) — Amounts allocated under money purchase provision deemed to be contribution.

History: The portion of para. 8507(3)(a) after subpara. (vi) repealed by P.C. 1995-17, s. 14, January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

Information Circulars: 98-2: Prescribed compensation for RPPs.

(4) Cumulative additional compensation fraction — For the purposes of this section, the cumulative additional compensation fraction of an individual with respect to an employer, determined to any time, is the aggregate of all amounts each of which is the additional compensation fraction that is associated with a period that ends at or before that time and that is a qualifying period of the individual in a calendar year after 1990 with respect to

(a) the employer;

(b) any other employer who does not deal at arm's length with the employer; or

(c) any other employer who participates in a registered pension plan in which the employer participates for the benefit of the individual.

Related Provisions: Reg. 8507(5) — Additional compensation fraction.

(5) Additional compensation fraction — For the purposes of subsection (4), the additional compensation fraction associated with a qualifying period of an individual in a calendar year with respect to a particular employer is the amount determined by the formula

$$\frac{E}{D}$$

where

D is the amount determined for D under paragraph (2)(b) in respect of the qualifying period, and

E is

(a) if

(i) all or a part of the qualifying period is a period throughout which the individual renders services to another employer pursuant to an arrangement in respect of which subsection 8308(7) is applicable,

(ii) the particular employer is a lending employer for the purposes of subsection 8308(7) as it applies in respect of the arrangement, and

(iii) the particular employer and the other employer deal with each other at arm's length,

the amount that would be determined under subsection (2) in respect of the qualifying period if, in the determination of the amount under paragraph (2)(a), no remuneration were included in respect of the portion of the qualifying period referred to in subparagraph (a)(i), and

(b) otherwise, the amount that is determined under subsection (2) in respect of the qualifying period.

Information Circulars: 98-2: Prescribed compensation for RPPs, para. 21.

(6) Exclusion of subperiods — A reference in this section to a qualifying period of an individual in a calendar year with respect to an employer or to a period of disability of an individual in a calendar year does not include a period that is part of a longer such period.

(7) Complete period of reduced pay — In subsection (2), "complete period of reduced pay" of an individual with respect to an employer means a period that consists of one or more periods each of which is

(a) a period of disability of the individual, or

(b) an eligible period of reduced pay or temporary absence of the individual with respect to the employer,

and that is not part of a longer such period.

Definitions [Reg. 8507]: "additional compensation fraction" — Reg. 8507(5); "amount" — ITA 248(1); "arm's length" — ITA 251(1); "associated" — ITA 256; "benefits" — Reg. 8501(5)(c); "child" — ITA 252(1); "compensation" — ITA 147.1(1); "complete period of reduced pay" — Reg. 8507(7); "contribution" — Reg. 8501(6), (7); "cumulative additional compensation fraction" — Reg. 8507(4); "deferred profit sharing plan" — ITA 147(1), 248(1); "defined benefit provision" — ITA 147.1(1); "eligible period of reduced pay" — Reg. 8500(1); "employer", "employment", "individual" — ITA 248(1); "lifetime retirement benefits" — Reg. 8500(1); "money purchase provision" — ITA 147.1(1); "month" — *Interpretation Act* 35(1); "pension adjustment" — ITA 248(1); "period of disability" — Reg. 8500(1); "prescribed" — ITA 248(1); "qualifying period" — Reg. 8507(3)(a), 8507(6); "registered pension plan" — ITA 248(1); "specified multi-employer plan" — ITA 147.1(1), Reg. 8510(2), (3).

Interpretation Bulletins [Reg. 8507]: IT-363R2: Deferred profit sharing plans — deductibility of employer contributions and taxation of amounts received by a beneficiary (archived).

Registered Plans Directorate Newsletters [Reg. 8507]: 91-4R (registration rules for money purchase provisions).

8508. Salary deferral leave plan — Where an employee and an employer enter into an arrangement in writing described in paragraph 6801(a) or (b),

(a) the period throughout which the employee defers salary or wages pursuant to the arrangement shall be deemed to be an eligible period of reduced pay of the employee with respect to the employer; and

(b) for the purposes of section 8507, the amount that it is reasonable to consider would have been the remuneration of the employee for any period from the employer shall be determined on the basis that the employee's rate of remuneration was the amount that it is reasonable to consider would, but for the arrangement, have been the employee's rate of remuneration.

Definitions [Reg. 8508]: "amount" — ITA 248(1); "eligible period of reduced pay" — Reg. 8500(1); "employee", "employer", "salary or wages" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Information Circulars: 98-2: Prescribed compensation for RPPs, para. 22.

8509. Transition rules — (1) Prescribed conditions applicable before 1992 to grandfathered plan — The prescribed conditions for the registration of a grandfathered plan are, before 1992,

(a) the condition set out in paragraph 8502(a),

(b) the condition set out in paragraph 8502(c), but only in respect of benefits provided under a money purchase provision of the plan, and

(c) if the plan contains a money purchase provision, the condition set out in paragraph 8506(2)(a),

and the following conditions:

(d) the benefits provided under each defined benefit provision of the plan are acceptable to the Minister and, for the purposes of this condition, any benefits in respect of periods before 1991 that become provided after 1988 with respect to a member who is connected with an employer who participates in the plan, or was so connected at any time before the benefits become provided, shall, unless the Minister is notified in writing that the benefits are provided with respect to the

member, be deemed to be unacceptable to the Minister, and

(e) the plan contains such terms as may be required by the Minister.

(2) Conditions applicable after 1991 to benefits under grandfathered plan — For the purpose of the condition in paragraph 8502(c) as it applies after 1991 in respect of a grandfathered plan,

(a) the condition in subparagraph 8503(2)(b)(ii) is replaced by the condition that the amount of bridging benefits payable to a member for a particular month does not exceed the amount that is determined in respect of the month by the formula

$$\left(A \times C \times \frac{E}{F}\right) + \left[G \times \left(1 - \frac{E}{F}\right)\right]$$

where

A is the amount determined for A under subparagraph 8503(2)(b)(ii) with respect to the member for the month,

C is the amount determined for C under subparagraph 8503(2)(b)(ii) with respect to the member for the month,

E is the aggregate of all amounts each of which is the duration (measured in years, including any fraction of a year) of a period ending before 1992 that is pensionable service of the member under the provision,

F is the aggregate of all amounts each of which is the duration (measured in years, including any fraction of a year) of a period that is pensionable service of the member under the provision, and

G is the amount determined with respect to the member for the month by the formula in subparagraph 8503(2)(b)(ii);

(b) the conditions in paragraphs 8503(3)(c), (h) and (i) and 8504(1)(a) and (b) apply only in respect of lifetime retirement benefits provided in respect of periods after 1991; and

(c) for the purposes of the conditions in paragraphs 8504(1)(a) and (b),

(i) the aggregate that is determined under subparagraph 8504(1)(a)(i) does not include an amount in respect of 1991, and

(ii) the amount that is determined for G under subparagraph 8504(1)(a)(ii) is based only on periods of pensionable service after 1991.

(3) Additional prescribed condition for grandfathered plan after 1991 — The prescribed conditions for the registration of a grandfathered plan include, after 1991, the condition that all benefits provided under each defined benefit provision of the plan in respect of periods before 1992 are acceptable to the Minister.

(4) Defined benefits under grandfathered plan exempt from conditions — The Minister may, after 1991, exempt from the condition in paragraph 8502(c) the following benefits provided under a defined benefit provision of a grandfathered plan:

(a) benefits that are payable after the death of a member, to the extent that the benefits can reasonably be considered to relate to lifetime retirement benefits provided to the member in respect of periods before 1992; and

(b) bridging benefits in excess of bridging benefits that are permissible under paragraph 8503(2)(b), to the extent that the excess bridging benefits are vested in a member on December 31, 1991.

(4.1) Benefits under grandfathered plan — pre-1992 disability — Where benefits are provided under a defined benefit provision of a grandfathered plan to a member of the plan as a consequence of the member having become, before 1992, physically or mentally impaired, the following rules apply:

(a) the conditions in this Part (other than the condition in paragraph (b)) do not apply in respect of the benefits;

(b) the prescribed conditions for the registration of the plan include the condition that the benefits are acceptable to the Minister; and

(c) subsections 147.1(8) and (9) of the Act do not apply to render the plan a revocable plan where those subsections would not so apply if the member's pension credits under the provision were determined without regard to the benefits.

History: Subsec. 8509(4.1) added by P.C. 1995-17, subsec. 15(1), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

(5) Conditions not applicable to grandfathered plan — Where a pension plan is a grandfathered plan,

(a) the conditions referred to in paragraph 8501(2)(b) do not apply before 1992 in respect of the plan;

(b) the condition in paragraph 8502(d) does not apply in respect of distributions that are made before 1992 under a defined benefit provision of the plan; and

(c) the conditions in paragraphs 8503(3)(a) and (b) do not apply in respect of benefits provided under a defined benefit provision of the plan in respect of periods before 1992.

(6) PA limits for grandfathered plan for 1991 — Subsections 147.1(8) and (9) of the Act do not apply in respect of a grandfathered plan for a calendar year before 1992 if

(a) the plan does not contain a money purchase provision in that year; or

(b) no contributions are made in respect of that year under the money purchase provisions of the plan.

(7) Limit on pre-age 65 benefits — Where a pension plan is a grandfathered plan or would be a grandfathered plan if the references to "March 27, 1988" in the definitions "existing plan" and "grandfathered plan" in subsection 8500(1) were read as references to "June 7, 1990" and the references to "March 28, 1988" in the definition "existing plan" in that subsection were read as references to "June 8, 1990",

(a) the conditions in paragraphs 8504(5)(a) and (b) apply only in respect of retirement benefits provided in respect of periods after 1991; and

(b) the amounts that are determined for B and D under paragraph 8504(5)(a) are based only on periods of pensionable service after 1991.

(8) Benefit accrual rate greater than 2 per cent — Where a pension plan is a grandfathered plan or would be a grandfathered plan if the references to "March 27, 1988" in the definitions "existing plan" and "grandfathered plan" in subsection 8500(1) were read as references to "July 31, 1991" and the references to

"March 28, 1988" in the definition "existing plan" in that subsection were read as references to "August 1, 1991",

(a) the condition in paragraph 8503(3)(g) applies only in respect of lifetime retirement benefits provided under a defined benefit provision of the plan in respect of periods after 1994; and

(b) subparagraph 8503(3)(h)(iv) is not applicable in respect of lifetime retirement benefits provided under a defined benefit provision of the plan to a member unless the formula for determining the amount of the member's lifetime retirement benefits complies with the condition in paragraph 8503(3)(g) as that condition would, but for this subsection, apply.

(9) Benefits under plan other than grandfathered plan — The following rules apply in respect of the benefits provided under a defined benefit provision of a pension plan that is not a grandfathered plan:

(a) the condition in paragraph 8502(c) does not apply in respect of benefits provided with respect to an individual

(i) to whom retirement benefits have commenced to be paid under the provision before 1992, or

(ii) who has died before 1992; and

(b) the prescribed conditions for the registration of the plan include the condition that all benefits referred to in paragraph (a) are acceptable to the Minister.

(10) Money purchase benefits exempt from conditions — The Minister may exempt from the condition in paragraph 8502(c) all or a portion of the benefits provided under a money purchase provision of a pension plan with respect to a member that may reasonably be considered to derive from contributions made before 1992 under a money purchase provision of a registered pension plan.

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions).

(10.1) Stipulation not required for pre-1992 plans — The conditions in paragraphs 8503(4)(c) and 8506(2)(d) do not apply in respect of a pension plan

(a) that was a registered pension plan on December 31, 1991,

(b) in respect of which an application for registration was made to the Minister before 1992, or

(c) that was established to provide benefits to one or more individuals in lieu of benefits to which the individuals were entitled under another pension plan that is a plan described in paragraph (a) or (b) or this paragraph, whether or not benefits are also provided to other individuals.

History: Subsec. 8509(10.1) added by P.C. 1995-17, subsec. 15(2), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions).

(11) Benefits acceptable to Minister — For greater certainty, where benefits under a defined benefit provision of a pension plan are, by reason of paragraph 8503(3)(e) or subsection (3), subject to the condition that they be acceptable to the Minister, the provisions of this section shall not be considered to limit in any way the requirements that may be imposed by the Minister in respect of the benefits.

(12) PA limits — 1996 to 2003 — Neither subsection 147.1(8) nor (9) of the Act applies to render a registered pension plan a revocable plan at the end of any calendar year after 1995 and before 2004 solely because a pension adjustment, a total of pension adjustments or a total of pension credits of an individual for the year (each of which is, in this subsection, referred to as a "test amount") is excessive where the subsection would not apply to render the plan a revocable plan at the end of the year if each test amount were decreased by the lesser of

(a) the amount, if any, by which the lesser of

(i) the total of all amounts each of which is

(A) a pension credit under a defined benefit provision of a registered pension plan that is included in determining the test amount, or

(B) a pension credit under a money purchase provision of a registered pension plan or under a deferred profit sharing plan that is included in determining the test amount and that is taken into account, under paragraph 8302(2)(c), in determining a pension credit referred to in clause (A), and

(ii) $15,500

exceeds the money purchase limit for the year, and

(b) the total of all amounts each of which is a pension credit referred to in clause (a)(i)(A).

Proposed Amendment — Reg. 8509(12)

Application: The May 16, 2005 draft regulations (deferred income plans), s. 29, (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will amend subsec. 8509(12) by replacing "2004" with "2003" and the heading before it is amended by replacing "2003" with "2002", applicable after 2002.

Regulatory Impact Analysis Statement: [See under Reg. 8500(7) opening words above.] For further details, refer to ... the explanatory notes to the draft income tax proposals that were released by the Department of Finance on February 27, 2004 [below. See also under Reg. 214(5).]

Technical Notes, February 27, 2004: Subsection 8509(12) contains a special transitional rule that ensures that a defined benefit RPP providing maximum benefits to higher-income members does not become revocable only because of the fact that pension adjustments are greater than the money purchase limit. The rules apply for those calendar years (1996 to 2003) in which the money purchase limit was scheduled to be less than $15,500.

Subsection 8509(12) is amended so that it does not apply for the 2003 calendar year. This amendment is consequential to an amendment to the Act, which provided for increases to the money purchase limit earlier than previously scheduled.

History: Subsec. 8509(12) added by P.C. 1998-2256, subsec. 24(1), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1995.

Registered Plans Directorate Newsletters: 96-1 (changes to retirement savings limits).

(13) Maximum benefits indexed before 2005 — Where

(a) a pension plan is a grandfathered plan or would be a grandfathered plan if the references to "March 27, 1988" in the definitions "existing plan" and "grandfathered plan" in subsection 8500(1) were read as references to "March 5, 1996" and the references to "March 28, 1988" in the definition "existing plan" in that subsection were read as references to "March 6, 1996",

(b) under the terms of the plan as they read immediately before March 6, 1996, the plan provided for benefits that are benefits to which a condition in any of

subsections 8504(1), (5) and (6) and paragraph 8505(3)(d) applies and, at that time, the benefits complied with the condition, and

(c) as a consequence of the change in the defined benefit limit effective March 6, 1996, the benefits would, if this Part were read without reference to this subsection, cease to comply with the condition,

the following rules apply:

(d) for the purpose of determining at any time after March 5, 1996 and before 1998 whether the benefits comply with the condition, the defined benefit limit for each year after 1995 is deemed to be the amount that it would be if the definition "money purchase limit" in subsection 147.1(1) of the Act were applied as it read on December 31, 1995, and

(e) for the purpose of determining at any time after 1997 whether the benefits comply with the condition, the defined benefit limit for 1996 and 1997 is deemed to be the amount that it would be if it were determined in accordance with paragraph (d).

History: Subsec. 8509(13) added by P.C. 1998-2256, subsec. 24(3), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after March 5, 1996, except that where

(a) the retirement benefits provided to an individual under a pension plan are provided by means of an annuity contract issued before March 6, 1996, and

(b) under the terms and conditions of the contract as they read immediately before March 6, 1996,

(i) the day on which annuity payments are to begin under the contract is fixed and determined and is after 1997, and

(ii) the amount and timing of each annuity payment are fixed and determined,

subsec. 8509(13) shall, in its application to those benefits, be read without reference to the words "and before 1998" in para. (d) and without reference to para. (e).

Definitions [Reg. 8509]: "amount" — ITA 248(1); "benefits" — Reg. 8501(5)(c); "bridging benefits" — Reg. 8500(1); "connected" — Reg. 8500(3); "contribution" — Reg. 8501(6); "deferred profit sharing plan" — ITA 147(1), 248(1); "defined benefit limit" — Reg. 8500(1); "defined benefit provision" — ITA 147.1(1); "employer" — ITA 248(1); "grandfathered plan" — Reg. 8500(1); "individual" — ITA 248(1); "lifetime retirement benefits" — Reg. 8500(1); "member" — ITA 147.1(1); "Minister" — ITA 248(1); "money purchase limit", "money purchase provision" — ITA 147.1(1); "month" — *Interpretation Act* 35(1); "pension adjustment" — ITA 248(1); "pension credit" — Reg. 8301, 8308.1(2)–(4), 8308.3(2), (3); "pensionable service" — Reg. 8500(1); "prescribed", "registered pension plan" — ITA 248(1); "retirement benefits" — Reg. 8500(1); "test amount" — Reg. 8509(12); "writing" — *Interpretation Act* 35(1).

8510. Multi-employer plans and specified multi-employer plans — (1) Definition of "multi-employer plan" — The definition "multi-employer plan" in subsection 8500(1) is applicable for the purposes of subsection 147.1(1) of the Act.

(2) Definition of "specified multi-employer plan" — For the purposes of this Part and subsection 147.1(1) of the Act, "specified multi-employer plan" in a calendar year means a pension plan

(a) in respect of which the conditions in subsection (3) are satisfied at the beginning of the year (or at the time in the year when the plan is established, if later),

(b) that has, on application by the plan administrator, been designated in writing by the Minister to be a specified multi-employer plan in the year, or

(c) that was, by reason of paragraph (a), a specified multi-employer plan in the immediately preceding calendar year (where that year is after 1989),

but does not include a pension plan where the Minister has, before the beginning of the year, given notice by registered mail to the plan administrator that the plan is not a specified multi-employer plan.

Related Provisions: Reg. 8510(4) — Minister's notice concerning specified multi-employer plans.

(3) Qualification as a specified multi-employer plan — The conditions referred to in paragraph (2)(a) are the following:

(a) it is reasonable to expect that at no time in the year will more than 95 per cent of the active members of the plan be employed by a single participating employer or by a related group of participating employers;

(b) where the year is 1991 or a subsequent year, it is reasonable to expect that

(i) at least 15 employers will contribute to the plan in respect of the year, or

(ii) at least 10 per cent of the active members of the plan will be employed in the year by more than one participating employer,

and, for the purposes of this condition, all employers who are related to each other shall be deemed to be a single employer;

(c) employers participate in the plan pursuant to a collective bargaining agreement;

(d) all or substantially all of the employers who participate in the plan are persons who are not exempt from tax under Part I of the Act;

(e) contributions are made by employers in accordance with a negotiated contribution formula that does not provide for any variation in contributions determined by reference to the financial experience of the plan;

(f) the contributions that are to be made by each employer in the year are determined, in whole or in part, by reference to the number of hours worked by individual employees of the employer or some other measure that is specific to each employee with respect to whom contributions are made to the plan;

(g) the administrator is a board of trustees or similar body that is not controlled by representatives of employers; and

(h) the administrator has the power to determine the benefits to be provided under the plan, whether or not that power is subject to the terms of a collective bargaining agreement.

(4) Minister's notice — For the purpose of subsection (2), the Minister may give notice that a plan is not a specified multi-employer plan only if the Minister is satisfied that participating employers will be able to comply with all reporting obligations imposed by Part LXXXIV in respect of the plan if it is not a specified multi-employer plan, and

(a) the notice is given at or after a time when the conditions in subsection (3) are not satisfied in respect of the plan; or

(b) the plan administrator has applied to the Minister for the notice.

(5) Special rules — multi-employer plan — Where a pension plan is a multi-employer plan in a calendar year,

(a) each member of the plan who is connected at any time in the year with an employer who participates in

the plan shall be deemed, for the purposes of applying the conditions in sections 8503 and 8504 in respect of the plan in the year and in each subsequent year, not to be so connected in the year;

(b) paragraph 8503(3)(b) shall, in its application in respect of benefits provided under a defined benefit provision of the plan in respect of a period in the year, be read without reference to subparagraph (ii) thereof; and

(c) the condition in paragraph 8503(3)(k) and the rule in subsection 8504(8) shall apply in the year in respect of the plan without regard to benefits provided under any other pension plan.

(6) Special rules — specified multi-employer plan — Where a pension plan is a specified multi-employer plan in a calendar year,

(a) a contribution that is made in the year in respect of a defined benefit provision of the plan by an employer with respect to the employer's employees or former employees in accordance with the plan as registered shall be deemed, for the purpose of paragraph 8502(b), to be an eligible contribution;

(b) subparagraph 8502(c)(i) shall, in its application in the year in respect of the plan, be read as follows:

"(i) benefits that are in accordance with subsection 8503(2), paragraphs 8503(3)(c), (e) and (g) and subsections 8504(5) and (6)";

(c) the conditions in paragraphs 8503(3)(j) and (4)(a) do not apply in the year in respect of the plan; and

(d) a payment made in the year under a defined benefit provision of the plan with respect to a member is deemed to comply with the conditions in paragraph 8503(2)(h) (in the case of a payment made in connection with the member's termination from the plan otherwise than by reason of death) or (j) (in the case of a payment made after the death of the member) where it would comply if paragraph 8503(2)(h) were read as follows:

"(h) the payment, with respect to a member in connection with the member's termination from the plan (otherwise than by reason of death), of one or more single amounts where

(i) the payments are the last payments to be made under the provision with respect to the member, and

(ii) each single amount does not exceed the amount that would be the balance in the member's net contribution account immediately before the time of payment of the single amount if, for each contribution that is a specified contribution, the account were credited at the time of the specified contribution with an additional amount equal to the amount of the specified contribution and, for this purpose, a specified contribution is

(A) a contribution included in determining a pension credit of the member under the provision because of paragraph 8301(5)(b), or

(B) a contribution made before 1990 in respect of the provision by a participating employer, to the extent that the contribution can reasonably be considered to have been determined by reference to the number of hours worked by the member or some other measure specific to the member;".

History: Para. 8510(6)(d) added by P.C. 2001-153, s. 8, January 30, 2001, *Canada Gazette*, Part II, February 14, 2001, applicable after 1988.

(7) Additional prescribed conditions — Where a pension plan is a specified multi-employer plan in a calendar year, the prescribed conditions for the registration of the plan include, in that year, the following conditions:

(a) when employer and member contribution rates under the plan were last established, it was reasonable to expect that, for each calendar year beginning with the year in which the contribution rates were last established,

(i) the aggregate of all amounts each of which is the pension credit of an individual for the year with respect to an employer under a benefit provision of the plan

would not exceed

(ii) 18 per cent of the aggregate of all amounts each of which is, for an individual and an employer where the pension credit of the individual for the year with respect to the employer under a benefit provision of the plan is greater than nil, the compensation of the individual from the employer for the year,

except that this condition does not apply for years before 1992 in the case of a pension plan that is a grandfathered plan; and

(b) where the plan contains a money purchase provision,

(i) the plan terms are such that, if subsection 147.1(9) of the Act were applicable in respect of the plan, the plan would not under any circumstances become a revocable plan at the end of the year pursuant to that subsection, or

(ii) if the plan terms do not comply with the condition in subparagraph (i), the only circumstances that would result in the plan becoming a revocable plan at the end of the year pursuant to subsection 147.1(9) of the Act, if that subsection were applicable in respect of the plan, are circumstances acceptable to the Minister.

Information Circulars: 98-2: Prescribed compensation for RPPs, para. 6.

(8) Purchase of additional benefits — Where, in the case of a pension plan that is a specified multi-employer plan in a calendar year,

(a) the amount of lifetime retirement benefits provided under a defined benefit provision of the plan to each member is determined by reference to the hours of employment of the member with participating employers,

(b) the plan permits a member whose actual hours of employment in a period are fewer than a specified number of hours for the period to make contributions to the plan in order to increase, to an amount not exceeding the specified number of hours for the period, the number of hours that are treated under the provision as hours of employment of the member in the period, and

(c) the specified number of hours for a period does not exceed a reasonable measure of the actual hours of

employment of members who render services throughout the period on a full-time basis,

the condition in paragraph 8503(3)(a) does not apply in respect of such portion of the lifetime retirement benefits provided under the provision to a member as is determined by reference to hours acquired by the member as a consequence of contributions made to the plan in the year by the member, as described in paragraph (b).

Definitions [Reg. 8510]: "active member" — Reg. 8500(1); "administrator" — ITA 147.1(1); "amount" — ITA 248(1); "benefit provision" — Reg. 8500(1); "benefits" — Reg. 8501(5)(c); "compensation" — ITA 147.1(1); "connected" — Reg. 8500(3); "contribution" — Reg. 8501(6); "defined benefit provision" — ITA 147.1(1); "employed", "employee", "employer", "employment" — ITA 248(1); "grandfathered plan" — Reg. 8500(1); "individual" — ITA 248(1); "lifetime retirement benefits" — Reg. 8500(1); "member" — ITA 147.1(1); "Minister" — ITA 248(1); "money purchase provision" — ITA 147.1(1); "multi-employer plan" — ITA 147.1(1), Reg. 8500(1); "participating employer" — ITA 147.1(1); "pension credit" — Reg. 8301, 8308.1(2)–(4), 8308.3(2), (3); "person", "prescribed" — ITA 248(1); "related" — ITA 251(2)–(6); "single amount" — ITA 147.1(1); "specified multi-employer plan" — ITA 147.1(1), Reg. 8510(2), (3); "writing" — *Interpretation Act* 35(1).

8511. Conditions applicable to amendments — (1) For the purposes of paragraph 147.1(4)(c) of the Act, the following conditions are prescribed in respect of an amendment to a registered pension plan:

(a) where the amendment increases the accrued lifetime retirement benefits provided to a member under a defined benefit provision of the plan, the increase is not, in the opinion of the Minister, inconsistent with the conditions in paragraphs 8503(3)(h) and (i); and

(b) where the plan is a grandfathered plan and the amendment increases the bridging benefits provided to a member under a defined benefit provision of the plan, the member's bridging benefits, as amended, comply with the condition in subparagraph 8503(2)(b)(ii) that would apply if the plan were not a grandfathered plan.

(2) Where an amendment to a registered pension plan provides for the return to a member of all or a part of the contributions made by the member under a defined benefit provision of the plan, the plan becomes a revocable plan at any time that an amount (other than an amount that may be transferred from the plan in accordance with subsection 147.3(6) of the Act) that is payable to the member as a consequence of the amendment is not paid to the member as soon after the amendment as is practicable.

History: Subsec. 8511(2) amended by P.C. 1995-17, s. 16, January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

Definitions [Reg. 8511]: "amount" — ITA 248(1); "bridging benefits" — Reg. 8500(1); "contribution" — Reg. 8501(6); "defined benefit provision" — ITA 147.1(1); "grandfathered plan", "lifetime retirement benefits" — Reg. 8500(1); "member" — ITA 147.1(1); "Minister", "prescribed", "registered pension plan" — ITA 248(1).

8512. Registration and amendment — (1) For the purposes of subsection 147.1(2) of the Act, an application for registration of a pension plan shall be made by forwarding by registered mail to the Deputy Minister of National Revenue for Taxation at Ottawa the following documents:

(a) an application in prescribed form containing prescribed information;

(b) certified copies of the plan text and any other documents that contain terms of the plan;

(c) certified copies of all trust deeds, insurance contracts and other documents that relate to the funding of benefits under the plan;

(d) certified copies of all agreements that relate to the plan; and

(e) certified copies of all resolutions and by-laws that relate to the documents referred to in paragraphs (b) to (d).

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions); 04-2 (RPP applications — processing an incomplete application).

(2) Where, after 1988, an amendment is made to a registered pension plan, to the arrangement for funding benefits under the plan or to a document that has been filed with the Minister in respect of the plan, the plan administrator shall, within 60 days after the day on which the amendment is made, forward to the Deputy Minister of National Revenue for Taxation at Ottawa

(a) a prescribed form containing prescribed information; and

(b) certified copies of all documents that relate to the amendment.

Registered Plans Directorate Newsletters: 96-1 (changes to retirement savings limits).

Forms: T920: Application to amend an RPP.

(3) For the purposes of subsection 147.1(4) of the Act, an application for the acceptance of an amendment to a registered pension plan is made in prescribed manner where the documents that are required by subsection (2) are forwarded by registered mail to the Deputy Minister of National Revenue for Taxation at Ottawa.

Definitions [Reg. 8512]: "administrator" — ITA 147.1(1); "benefits" — Reg. 8501(5)(c); "Minister", "prescribed", "registered pension plan" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

8513. Designated laws — For the purposes of paragraph 8302(3)(m), subparagraph 8502(c)(iii) and paragraph 8517(5)(f), "designated provision of the law of Canada or a province" means subsection 21(2) of the *Pension Benefits Standards Act, 1985* and any provision of a law of a province that is similar to that subsection.

Definitions [Reg. 8513]: "province" — *Interpretation Act* 35(1).

Registered Plans Directorate Newsletters: 91-4R (registration rules for money purchase provisions).

8514. Prohibited investments — (1) For the purposes of subparagraph 8502(h)(i) and subject to subsections (2), (2.1) and (3), a prohibited investment in respect of a registered pension plan is a share of the capital stock of, an interest in, or a debt of

(a) an employer who participates in the plan,

(b) a person who is connected with an employer who participates in the plan,

(c) a member of the plan,

(d) a person or partnership that controls, directly or indirectly, in any manner whatever, a person or partnership referred to in paragraph (a) or (b), or

(e) a person or partnership that does not deal at arm's length with a person or partnership referred to in paragraph (a), (b), (c) or (d),

or an interest in, or a right to acquire, such a share, interest or debt.

(2) A prohibited investment does not include

(a) a bond, debenture, note, mortgage or similar obligation described in clause 212(1)(b)(ii)(C) of the Act;

(b) a share listed on a stock exchange referred to in section 3200 or 3201;

(c) a bond, debenture, note or similar obligation of a corporation any shares of which are listed on a stock exchange referred to in section 3200 or 3201;

(d) an interest in, or a right to acquire, property referred to in paragraph (b) or (c); or

(e) a mortgage in respect of real property situated in Canada that

(i) where this condition has not been waived by the Minister and the amount paid for the mortgage, together with the amount of any indebtedness outstanding at the time the mortgage was acquired under any mortgage or hypothec that ranks equally with or superior to the mortgage, exceeds 75 per cent of the fair market value, at that time, of the real property that is subject to the mortgage, is insured under the *National Housing Act* or by a corporation that offers its services to the public in Canada as an insurer of mortgages,

(ii) where the registered pension plan in connection with which the mortgage is held would be a designated plan for the purposes of subsection 8515(5) if subsection 8515(4) were read without reference to paragraph (b) thereof, is administered by an approved lender under the *National Housing Act*, and

(iii) bears a rate of interest that would be reasonable in the circumstances if the mortgagor dealt with the mortgagee at arm's length.

(2.1) [Multi-employer plan] — Where a share of the capital stock of, an interest in or a debt of, a person who is connected with a particular employer who participates in a registered pension plan that is a multi-employer plan would, but for this subsection, be a prohibited investment in respect of the plan, the property is not a prohibited investment in respect of the plan if

(a) the plan does not contain a money purchase provision;

(b) at the time the property is acquired by the plan, there are at least 15 employers who participate in the plan, and, for this purpose,

(i) all employers who are related to each other are deemed to be a single employer, and

(ii) all the structural units of a trade union, including each local, branch, national and international unit, are deemed to be a single employer;

(c) at the time the property is acquired by the plan, no more than 10% of the active members of the plan are employed by the particular employer or by any person related to the particular employer;

(d) the property would not be a prohibited investment in respect of the plan if subsection (1) were read without reference to paragraph (1)(b); and

(e) immediately after the time the property is acquired by the plan, the total of all amounts each of which is the cost amount to a person of a property held in connection with the plan that would, but for this subsection, be a prohibited investment in respect of the plan does not exceed 10% of the total of all amounts each of which is the cost amount to a person of a property held in connection with the plan.

Related Provisions: Reg. 8514(2.2) — Whether Crown corporations "related" to each other.

(2.2) [Crown corporations — whether related] — For the purposes of the conditions in paragraphs (2.1)(b) and (c), two corporations that are related to each other solely because they are both controlled by Her Majesty in right of Canada or a province are deemed not to be related to each other.

(3) A prohibited investment in respect of a registered pension plan does not include an investment that was acquired by the plan before March 28, 1988.

Related Provisions: Reg. 8514(4) — When debt obligation deemed to be issued.

(4) For the purposes of subsection (3), where at any time after March 27, 1988, the principal amount of a bond, debenture, note, mortgage or similar obligation increases as a consequence of the advancement or lending of additional amounts, or the maturity date of such an obligation is extended, the obligation shall, after that time, be deemed to have been issued at that time.

History: The opening words of subsec. 8514(1) amended, subsecs. 8514(2.1) and (2.2) added, by P.C. 2001-153, s. 9, January 30, 2001, *Canada Gazette*, Part II, February 14, 2001, applicable to property acquired after September 1999.

Para. 8514(2)(a) and subsec. 8514(4) amended by P.C. 1994-1817, paras. 62(j) and (k), November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Definitions [Reg. 8514]: "active member" — Reg. 8500(1); "amount" — ITA 248(1); "arm's length" — ITA 251(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "connected" — Reg. 8500(3); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "cost amount", "employed", "employer" — ITA 248(1); "Her Majesty" — *Interpretation Act* 35(1); "insurer" — ITA 248(1); "member" — ITA 147.1(1); "Minister" — ITA 248(1); "money purchase provision" — ITA 147.1(1); "multi-employer plan" — ITA 147.1(1), Reg. 8500(1); "person", "principal amount", "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "registered pension plan" — ITA 248(1); "related" — ITA 251(2)–(6), Reg. 8514(2.2); "share" — ITA 248(1).

8515. Special rules for designated plans [IPPs] — **(1) Designated plans** — For the purposes of subsections (5) and (9), and subject to subsection (3), a registered pension plan that contains a defined benefit provision is a designated plan throughout a calendar year if the plan is not maintained pursuant to a collective bargaining agreement and

(a) the aggregate of all amounts each of which is a pension credit (as determined under Part LXXXIII) for the year of a specified individual under a defined benefit provision of the plan

exceeds

(b) 50 per cent of the aggregate of all amounts each of which is a pension credit (as determined under Part LXXXIII) for the year of an individual under a defined benefit provision of the plan.

Related Provisions: Reg. 8515(3) — Exceptions; Reg. 8515(4) — Specified individual.

Registered Plans Directorate Newsletters: 01-3 (tailored individual pension plan); 04-1 (pitfalls to avoid).

(2) Designated plan in previous year — For the purposes of subsections (5) and (9), a registered pension plan is a designated plan throughout a particular calendar year after 1990 if the plan was a designated plan at any time in the immediately preceding year, except where the Minister has waived in writing the application of this subsection in respect of the plan.

(3) Exceptions — A registered pension plan is not a designated plan in a calendar year pursuant to subsection (1) if

(a) the plan would not be a designated plan in the year pursuant to that subsection if the reference in paragraph (1)(b) to "50 per cent" were read as a reference to "60 per cent",

(b) the plan was established before the year, and

(c) the amount determined under paragraph (1)(a) in respect of the plan for the immediately preceding year did not exceed the amount determined under paragraph (1)(b),

or if

(d) there are more than 9 active members of the plan in the year, and

(e) the Minister has given written notice to the administrator of the plan that the plan is not a designated plan in the year.

(4) Specified individuals — An individual is a specified individual for the purposes of paragraph (1)(a) in respect of a pension plan and a particular calendar year if

(a) the individual was connected at any time in the year with an employer who participates in the plan; or

(b) the aggregate of all amounts each of which is the remuneration of the individual for the year from an employer who participates in the plan, or from an employer who does not deal at arm's length with a participating employer, exceeds 2½ times the Year's Maximum Pensionable Earnings for the year.

(5) Eligible contributions — For the purpose of determining whether a contribution made by an employer to a registered pension plan at a time when the plan is a designated plan is an eligible contribution under subsection 147.2(2) of the Act, a prescribed condition is that

(a) the contribution satisfies the condition in subsection (6), or

(b) the contribution would satisfy the condition in subsection (6) if

(i) paragraph (6)(b) and subparagraph (7)(e)(i) were applicable only in respect of retirement benefits that became provided under the plan after 1990,

(ii) paragraph (6)(c) were applicable only in respect of those benefits payable after the death of a member that relate to retirement benefits that became provided under the plan to the member after 1990, and

(iii) the assumption as to the time retirement benefits (other than retirement benefits that became provided after 1990) will commence to be paid is the same for the purposes of the maximum funding valuation as for the purposes of the actuarial valuation that forms the basis for the recommendation referred to in subsection 147.2(2) of the Act pursuant to which the contribution is made.

Related Provisions: Reg. 8515(1)–(3) — Designated plans.

(6) Funding restriction — The condition referred to in subsection (5) is that the contribution would be required to be made for the plan to have sufficient assets to pay benefits under the defined benefit provisions of the plan, as registered, with respect to the employees and former employees of the employer if

(a) required contributions were determined on the basis of a maximum funding valuation prepared as of the same effective date as the actuarial valuation that forms the basis for the recommendation referred to in subsection 147.2(2) of the Act pursuant to which the contribution is made;

(a.1) each defined benefit provision of the plan provided that, with respect to restricted-funding members, retirement benefits are payable monthly in advance;

(b) each defined benefit provision of the plan provided that, after retirement benefits commence to be paid with respect to a restricted-funding member, the benefits are adjusted annually by a percentage increase for each year that is 1 percentage point less than the percentage increase in the Consumer Price Index for the year, in lieu of any cost-of-living adjustments actually provided;

(c) each defined benefit provision of the plan provided the following benefits after the death of a restricted-funding member who dies after retirement benefits under the provision have commenced to be paid to the member, in lieu of the benefits actually provided:

(i) where the member dies within 5 years after retirement benefits commence to be paid under the provision, the continuation of the retirement benefits for the remainder of the 5 years as if the member were alive, and

(ii) where an individual who is a spouse or common-law partner of the member when retirement benefits commence to be paid under the provision to the member is alive on the later of the day of death of the member and the day that is 5 years after the day on which the member's retirement benefits commence to be paid, retirement benefits payable to the individual for the duration of the individual's life, with the amount of the benefits payable for each month equal to 66⅔ per cent of the amount of retirement benefits that would have been payable under the provision for the month to the member if the member were alive;

(d) where more than one employer participates in the plan, assets and actuarial liabilities were apportioned in a reasonable manner among participating employers with respect to their employees and former employees; and

(e) the rule in paragraph 147.2(2)(d) of the Act that provides for the disregard of a portion of the assets of the plan apportioned to the employer with respect to the employer's employees and former employees were applicable for the purpose of determining required contributions pursuant to this subsection.

Related Provisions: Reg. 8515(7) — Maximum funding valuation; Reg. 8515(8) — Restricted-funding member.

History: The word "spouse" replaced with "spouse or common-law partner" in subpara. 8515(6)(c)(ii), by P.C. 2001-957, para. 14(f), May 31, 2001, *Canada Gazette*, Part II, June 20, 2001, applicable to 2001 *et seq.*, except that if a taxpayer and a person have jointly elected pursuant to s. 144 of the *Modernization of Benefits and Obligations Act* (S.C. 2000, c. 12), in respect of the 1998, 1999 or 2000 taxation year, the amendment applies to the taxpayer and the person in respect of the applicable taxation year *et seq.*

Para. 8515(6)(a.1) added by P.C. 1995-17, subsec. 17(1), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable with respect to a contribution made after June 4, 1994, except where the contribution is

made pursuant to a valuation report filed with the Minister in accordance with subsec. 147.2(3) of the *Income Tax Act* on or before June 4, 1994.

(7) Maximum funding valuation — For the purposes of subsection (6), a maximum funding valuation is a valuation prepared by an actuary in accordance with the following rules:

(a) the projected accrued benefit method is used for the purpose of determining actuarial liabilities and current service costs;

(b) the valuation rate of interest is 7.5 per cent per annum;

(c) it is assumed that

(i) the rate of increase in general wages and salaries and in each member's rate of remuneration will be 5.5 per cent per annum, and

(ii) the rate of increase in the Consumer Price Index will be 4 per cent per annum;

(d) each assumption made in respect of economic factors other than those referred to in paragraph (c) is consistent with the assumptions in that paragraph;

(e) in the case of a restricted-funding member, it is assumed that

(i) retirement benefits will commence to be paid to the member no earlier than the day on which the member attains 65 years of age,

(ii) the member will survive to the time the member's retirement benefits commence to be paid,

(iii) where the member is employed by a participating employer as of the effective date of the valuation, the member will continue in employment until the time when the member's retirement benefits commence to be paid, and

(iv) when the member's retirement benefits commence to be paid, the member will be married to a person who is the same age as the member;

(f) the rate of mortality at each age is equal to

(i) in the case of a restricted-funding member, 80 per cent of the average of the rates at that age for males and females in the *1983 Group Annuity Mortality Table*, as published in Volume XXXV of the *Transactions of the Society of Actuaries*, and

(ii) in the case of any other member, 80 per cent of the rate at that age in the mortality table referred to in subparagraph (i) for individuals of the same sex as the member;

(g) it is assumed that where a member has a choice between receiving retirement benefits or a lump sum payment, retirement benefits will be paid to the member; and

(h) the plan's assets are valued at an amount equal to their fair market value as of the effective date of the valuation.

Related Provisions: Reg. 8515(8) — Restricted-funding member.

History: Subpara. 8515(7)(e)(i) and para. 8515(7)(f) amended by P.C. 1995-17, subsecs. 17(2) and (3), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988, except that with respect to a contribution that is made

(i) on or before June 4, 1994, or

(ii) pursuant to a valuation report filed with the Minister in accordance with subsec. 147.2(3) of the *Income Tax Act* on or before June 4, 1994,

subpara. 8515(7)(f)(i) shall be read as follows:

(i) in the case of a restricted-funding member, or a male member who is not a restricted-funding member, 80 per cent of the average of the rates at that age for males and females in the *1983 Group Annuity Mortality Table*, as published in Volume XXXV of the *Transactions of the Society of Actuaries*, and

(8) Restricted-funding members — For the purposes of subsections (6) and (7) as they apply in respect of a contribution made to a registered pension plan, a member of the plan is a restricted-funding member if, at the time the maximum funding valuation is prepared,

(a) the member has a right, whether absolute or contingent, to receive retirement benefits under a defined benefit provision of the plan and the benefits have not commenced to be paid; or

(b) the payment of retirement benefits under a defined benefit provision of the plan to the member has been suspended.

(9) Member contributions — Where

(a) a member of a registered pension plan makes a contribution to the plan to fund benefits that have become provided at a particular time under a defined benefit provision of the plan in respect of periods before that time,

(b) the contribution is made at a time when the plan is a designated plan, and

(c) the contribution would not be an eligible contribution under subsection 147.2(2) of the Act if it were made by an employer who participates in the plan on behalf of the member,

the plan becomes, for the purposes of paragraph 147.1(11)(c) of the Act, a revocable plan immediately before the time the contribution is made.

Related Provisions: Reg. 8515(1)–(3) — Designated plans.

Definitions [Reg. 8515]: "active member" — Reg. 8500(1); "actuary", "administrator" — ITA 147.1(1); "amount" — ITA 248(1); "arm's length" — ITA 251(1); "benefits" — Reg. 8501(5)(c); "connected" — Reg. 8500(3); "Consumer Price Index" — Reg. 8500(1); "contribution" — Reg. 8501(6); "defined benefit provision" — ITA 147.1(1); "designated plan" — Reg. 8515(1)–(3); "employed", "employee", "employer", "employment", "individual" — ITA 248(1); "maximum funding valuation" — Reg. 8515(7); "member" — ITA 147.1(1); "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "participating employer" — ITA 147.1(1); "pension credit" — Reg. 8301, 8308.1(2)–(4), 8308.3(2), (3); "person", "prescribed" — ITA 248(1); "registered pension plan" — Reg. 8515(1), (2); "restricted-funding member" — Reg. 8515(8); "retirement benefits" — Reg. 8500(1); "specified individual" — Reg. 8515(4); "spouse" — Reg. 8500(5); "writing" — *Interpretation Act* 35(1); "written" — *Interpretation Act* 35(1)"writing"; "Year's Maximum Pensionable Earnings" — Reg. 8500(1).

8516. Eligible contributions — (1) Prescribed contribution — For the purposes of subsection 147.2(2) of the Act, a contribution described in any of subsections (2) to (4) is a prescribed contribution.

(2) Funding on termination basis — A contribution that is made by an employer to a registered pension plan is described in this subsection if

(a) the contribution is made pursuant to a recommendation by an actuary in whose opinion the contribution is required to be made so that, if the plan is terminated immediately after the contribution is made, it will have sufficient assets to pay benefits accrued under the defined benefit provisions of the plan, as registered, to the time the contribution is made;

(b) the recommendation is based on an actuarial valuation that complies with the following conditions:

(i) the effective date of the valuation is not more than four years before the day on which the contribution is made,

(ii) all assumptions made for the purposes of the valuation are reasonable at the time the valuation is prepared and at the time the contribution is made,

(iii) the valuation is prepared in accordance with generally accepted actuarial principles applicable with respect to a valuation prepared on the basis that a plan will be terminated, and

(iv) where more than one employer participates in the plan, assets and actuarial liabilities are apportioned in a reasonable manner among participating employers;

(c) the recommendation is approved by the Minister; and

(d) at the time the contribution is made, the plan is not a designated plan under section 8515.

(3) Contributions required by pension benefits legislation — A contribution that is made by an employer to a registered pension plan is described in this subsection if

(a) the contribution

(i) is required to be made to comply with the *Pension Benefits Standards Act, 1985* or a similar law of a province,

(ii) is made in respect of benefits under the defined benefit provisions of the plan as registered, and

(iii) is made pursuant to a recommendation by an actuary;

(b) the recommendation is based on an actuarial valuation that complies with the following conditions:

(i) the effective date of the valuation is not more than four years before the day on which the contribution is made,

(ii) all assumptions made for the purposes of the valuation are reasonable at the time the valuation is prepared and at the time the contribution is made, and

(iii) where more than one employer participates in the plan, assets and actuarial liabilities are apportioned in a reasonable manner among participating employers;

(c) the recommendation is approved by the Minister; and

(d) at the time the contribution is made, the plan is not a designated plan under section 8515.

(4) Shared funding arrangement — A contribution that is made by an employer to a registered pension plan is described in this subsection if

(a) responsibility for the governance of the plan is shared between the participating employers and the members of the plan;

(b) the contribution is made pursuant to an arrangement approved by the Minister under which it is reasonable to expect that, on a long-term basis, the members' entitlement to benefit from actuarial surplus, the members' obligation to fund actuarial deficiencies and the members' obligation to make regular current service contributions, under the defined benefit provisions of the plan, will not be less than 66 $^{2}/_{3}$% or more than 100% of each such entitlement or obligation of the participating employers;

(c) the contribution is a current service contribution that would be an eligible contribution under subsection 147.2(2) of the Act if no contributions were prescribed for the purposes of that subsection and if that subsection were read without reference to subparagraphs (d)(ii) and (iii);

(d) the recommendation pursuant to which the contribution is made is such that the current service contributions to be made by the employer and the employer's employees in respect of the provisions do not exceed,

(i) where the amount of actuarial surplus in respect of the employer is not more than 10% of the amount of actuarial liabilities apportioned to the employer in respect of the employer's employees and former employees, the current service contributions that would be required if there were no actuarial surplus under the provisions,

(ii) where the amount of actuarial surplus in respect of the employer is greater than 10%, but not more than 15%, of the amount of actuarial liabilities apportioned to the employer in respect of the employer's employees and former employees, 75% of the current service contributions that would be required if there were no actuarial surplus under the provisions,

(iii) where the amount of actuarial surplus in respect of the employer is greater than 15%, but not more than 20%, of the amount of actuarial liabilities apportioned to the employer in respect of the employer's employees and former employees, 50% of the current service contributions that would be required if there were no actuarial surplus under the provisions,

(iv) where the amount of actuarial surplus in respect of the employer is greater than 20%, but not more than 25%, of the amount of actuarial liabilities apportioned to the employer in respect of the employer's employees and former employees, 25% of the current service contributions that would be required if there were no actuarial surplus under the provisions, and

(v) where the amount of actuarial surplus in respect of the employer is greater than 25% of the amount of actuarial liabilities apportioned to the employer in respect of the employer's employees and former employees, nil; and

(e) at the time the contribution is made, the plan is not a designated plan under section 8515.

History [8516]: S. 8516 amended by P.C. 2003-1497, s. 10, October 2, 2003, *Canada Gazette*, Part II, October 22, 2003, applicable to contributions made after 2002.

Subsec. 8516(1) amended by P.C. 1998-2256, subsec. 25(1), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1995.

Subsec. 8516(1) amended by P.C. 1995-17, subsec. 18(1), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

Subsecs. 8516(7), (8) added by P.C. 1995-17, subsec. 18(2), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

Subsec. 8516(9) added by P.C. 1998-2256, subsec. 25(2), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1995.

Definitions [Reg. 8516]: "actuary" — ITA 147.1(1); "amount" — ITA 248(1); "benefits" — Reg. 8501(5)(c); "contribution" — Reg. 8501(6); "defined benefit provision" — ITA 147.1(1); "employee", "employer" —

ITA 248(1); "member" — ITA 147.1(1); "Minister" — ITA 248(1); "participating employer" — ITA 147.1(1); "prescribed" — ITA 248(1); "province" — *Interpretation Act* 35(1); "registered pension plan" — ITA 248(1); "surplus" — Reg. 8500(1).

8517. Transfer — defined benefit to money purchase — (1) Prescribed amount — Subject to subsections (2) to (3.1), for the purpose of applying paragraph 147.3(4)(c) of the Act to the transfer of an amount on behalf of an individual in full or partial satisfaction of the individual's entitlement to benefits under a defined benefit provision of a registered pension plan, the prescribed amount is the amount that is determined by the formula

$$A \times B$$

where

A is the amount of the individual's lifetime retirement benefits under the provision commuted in connection with the transfer, as determined under subsection (4), and

B is

(a) the present value factor that corresponds to the age attained by the individual at the time of the transfer, determined pursuant to the table to this subsection, or

(b) where the present value factor referred to in paragraph (a) is less than the present value factor that corresponds to the next higher age, the present value factor determined by interpolation between those two factors on the basis of the age (expressed in years, including any fraction of a year) of the individual.

Attained Age	Present Value Factor	Attained Age	Present Value Factor
Under 50	9.0	73	9.8
50	9.4	74	9.4
51	9.6	75	9.1
52	9.8	76	8.7
53	10.0	77	8.4
54	10.2	78	8.0
55	10.4	79	7.7
56	10.6	80	7.3
57	10.8	81	7.0
58	11.0	82	6.7
59	11.3	83	6.4
60	11.5	84	6.1
61	11.7	85	5.8
62	12.0	86	5.5
63	12.2	87	5.2
64	12.4	88	4.9
65	12.4	89	4.7
66	12.0	90	4.4
67	11.7	91	4.2
68	11.3	92	3.9
69	11.0	93	3.7
70	10.6	94	3.5
71	10.3	95	3.2
72	10.1	96 or over	3.0

History: The portion of subsec. 8517(1) before the formula amended by P.C. 1998-2256, subsec. 26(1), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to amounts transferred in respect of benefits provided after 1996.

The table in subsec. 8517(1) amended by the said P.C. 1998-2256, subsec. 26(2), applicable to transfers that occur after 1995.

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Registered Plans Directorate Newsletters: 04-1 (transfer from a defined benefit provision).

Forms: T2151: Direct transfer of a "single amount" under subsec. 147(19) or s. 147.3.

(2) Minimum prescribed amount — Where an amount is transferred in full satisfaction of an individual's entitlement to benefits under a defined benefit provision of a registered pension plan, the prescribed amount for the purposes of paragraph 147.3(4)(c) of the Act in respect of the transfer is the greater of the amount that would, but for this subsection, be the prescribed amount, and the balance, at the time of the transfer, in the individual's net contribution account (within the meaning assigned by subsection 8503(1)) in relation to the provision.

Registered Plans Directorate Newsletters: 04-1 (transfer from a defined benefit provision).

(3) Plan wind-up or replacement — Where an amount is transferred before January 1, 1993, or such later date as is acceptable to the Minister, on behalf of an individual as a consequence of the winding-up of a registered pension plan or as a consequence of the replacement of a defined benefit provision of a registered pension plan by a money purchase provision of another registered pension plan and either

(a) the winding-up of the plan or the replacement of the provision commenced at a time (in this subsection referred to as the "time of termination") before 1989,

(b) at the time of termination, the plan had at least 50 members, and

(c) the plan was established at least 5 years before the time of termination,

or the condition in paragraph (a) is satisfied and the Minister waives the conditions in paragraphs (b) and (c), the prescribed amount for the purposes of paragraph 147.3(4)(c) of the Act in respect of the transfer is the amount so transferred.

(3.1) Benefits provided with surplus on plan wind-up — Where an amount is transferred in full or partial satisfaction of an individual's entitlement to benefits under a defined benefit provision of a registered pension plan and the benefits include benefits (in this subsection referred to as "ancillary benefits") that are permissible solely because of subsection 8501(7), the prescribed amount for the purpose of paragraph 147.3(4)(c) of the Act in respect of the transfer is the total of

(a) the amount that would, but for this subsection, be the prescribed amount, and

(b) an amount approved by the Minister not exceeding the lesser of

(i) the present value (at the time of the transfer) of the ancillary benefits that, as a consequence of the transfer, cease to be provided, and

(ii) the total of all amounts each of which is, in respect of a previous transfer from the provision to a money purchase provision of a registered pension plan, a registered retirement savings plan or a registered retirement income fund in full or partial satisfaction of the individual's entitlement to other be-

nefits under the defined benefit provision, the amount, if any, by which

(A) the prescribed amount for the purpose of paragraph 147.3(4)(c) of the Act in respect of the previous transfer

exceeds

(B) the amount of the previous transfer.

History: Subsec. 8517(3.1) added by P.C. 1998-2256, subsec. 26(3), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to amounts transferred in respect of benefits provided after 1996.

Registered Plans Directorate Newsletters: 04-1 (transfer from a defined benefit provision).

(4) Amount of lifetime retirement benefits commuted — For the purposes of subsection (1), and subject to subsection (7), the amount of an individual's lifetime retirement benefits under a defined benefit provision of a registered pension plan commuted in connection with the transfer of an amount on behalf of the individual in full or partial satisfaction of the individual's entitlement to benefits under the provision is the aggregate of

(a) where retirement benefits have commenced to be paid under the provision to the individual, the amount (expressed on an annualized basis) by which the individual's lifetime retirement benefits under the provision are reduced as a result of the transfer,

(b) where retirement benefits have not commenced to be paid under the provision to the individual, the amount (expressed on an annualized basis) by which the individual's normalized pension (computed in accordance with subsection (5)) under the provision at the time of the transfer is reduced as a result of the transfer, and

(c) where, in conjunction with the transfer, any other payment (other than an amount that is transferred in accordance with subsection 147.3(5) of the Act or that is transferred after 1991 in accordance with subsection 147.3(3) of the Act) is made from the plan in partial satisfaction of the individual's entitlement to benefits under the provision, the amount (expressed on an annualized basis) by which

(i) if paragraph (a) is applicable, the individual's lifetime retirement benefits under the provision are reduced, and

(ii) if paragraph (b) is applicable, the individual's normalized pension (computed in accordance with subsection (5)) under the provision at the time of the payment is reduced,

as a result of the payment, except to the extent that such reduction is included in determining, for the purposes of subsection (1), the amount of the individual's lifetime retirement benefits under the provision commuted in connection with the transfer of another amount on behalf of the individual.

(5) Normalized pensions — For the purposes of subsection (4), the normalized pension of an individual under a defined benefit provision of a registered pension plan at a particular time is the amount (expressed on an annualized basis) of lifetime retirement benefits that would be payable under the provision at the particular time if

(a) lifetime retirement benefits commenced to be paid to the individual at the particular time;

(b) where the individual has not attained 65 years of age before the particular time, the individual attained that age at the particular time;

(c) all benefits to which the individual is entitled under the provision were fully vested;

(d) where the amount of the individual's lifetime retirement benefits would otherwise be determined with a reduction computed by reference to the individual's age, duration of service, or both, or with any other similar reduction, no such reduction were applied;

(e) where the amount of the individual's lifetime retirement benefits depends on the amount of benefits provided under another benefit provision of the plan or under another plan or arrangement, a reasonable estimate were made of those other benefits;

(f) where the individual's lifetime retirement benefits would otherwise include benefits that the plan is required to provide by reason of a designated provision of the law of Canada or a province, or that the plan would be required to provide if each such provision were applicable to the plan with respect to all its members, such benefits were not included; and

(g) except as otherwise provided by subsection (6), where the amount of the individual's lifetime retirement benefits depends on

(i) the form of benefits provided with respect to the individual under the provision (whether or not at the option of the individual), including

(A) the benefits to be provided after the death of the individual,

(B) the amount of retirement benefits, other than lifetime retirement benefits, provided to the individual, or

(C) the extent to which the lifetime retirement benefits will be adjusted to reflect changes in the cost of living, or

(ii) circumstances that are relevant in determining the form of benefits,

the form of benefits and the circumstances were such as to maximize the amount of the individual's lifetime retirement benefits on commencement of payment.

Related Provisions: Reg. 8513 — Designated provision of the law of Canada or a province.

Registered Plans Directorate Newsletters: 98-2 (treating excess member contributions under a registered pension plan); 04-1 (transfer from a defined benefit provision).

(6) Optional forms — Where

(a) the terms of a defined benefit provision of a registered pension plan permit an individual to elect to receive additional lifetime retirement benefits in lieu of benefits that would, in the absence of the election, be payable after the death of the individual if the individual dies after retirement benefits under the provision commence to be paid to the individual, and

(b) the elections available to the individual include an election

(i) to receive additional lifetime retirement benefits, not exceeding additional benefits determined on an actuarially equivalent basis, in lieu of all or a portion of a guarantee that retirement benefits will be paid for a minimum period of 10 years or less, or

(ii) to receive additional lifetime retirement benefits in lieu of retirement benefits that would otherwise be payable to a person who is a spouse or common-law partner or former spouse or common-law partner of the individual for a period beginning

after the death of the individual and ending with the death of the person, where

(A) the election may be made only if the life expectancy of the person is significantly shorter than normal and has been so certified in writing by a medical doctor licensed to practise under the laws of a province or of the place where the person resides, and

(B) the additional benefits do not exceed additional benefits determined on an actuarially equivalent basis and on the assumption that the person has a normal life expectancy,

paragraph (5)(g) applies as if

(c) the election described in subparagraph (b)(i) were not available to the individual, and

(d) where the particular time the normalized pension of the individual is determined under subsection (5) is after 1991, the election described in subparagraph (b)(ii) were not available to the individual.

History: Subpara. 8517(6)(b)(ii) amended by P.C. 2001-957, s. 12, May 31, 2001, *Canada Gazette*, Part II, June 20, 2001, applicable to 2001 *et seq.*, except that if a taxpayer and a person have jointly elected pursuant to s. 144 of the *Modernization of Benefits and Obligations Act* (S.C. 2000, c. 12), in respect of the 1998, 1999 or 2000 taxation year, the amendment applies to the taxpayer and the person in respect of the applicable taxation year *et seq.*

(7) **Replacement benefits** — Where

(a) an amount is transferred on behalf of an individual in full or partial satisfaction of the individual's entitlement to benefits under a defined benefit provision (in this subsection referred to as the "particular provision") of a registered pension plan,

(b) in conjunction with the transfer, benefits become provided to the individual under another defined benefit provision of the plan or under a defined benefit provision of another registered pension plan, and

(c) an employer who participated under the particular provision for the benefit of the individual also participates under the other provision for the individual's benefit,

the amount of the individual's lifetime retirement benefits under the particular provision commuted in connection with the transfer is the amount that would be determined under subsection (4) if the benefits provided under the other provision were provided under the particular provision.

Definitions [Reg. 8517]: "amount" — ITA 248(1); "ancillary benefits" — Reg. 8517(3.1); "benefit provision" — Reg. 8500(1); "benefits" — Reg. 8501(5)(c); "Canada" — ITA 255, *Interpretation Act* 35(1); "commencement" — *Interpretation Act* 35(1); "contribution" — Reg. 8501(6); "defined benefit provision" — ITA 147.1(1); "designated provision of the law of Canada or a province" — Reg. 8513; "employer", "individual" — ITA 248(1); "lifetime retirement benefits" — Reg. 8500(1), 8517(4); "member" — ITA 147.1(1); "Minister" — ITA 248(1); "money purchase provision" — ITA 147.1(1); "net contribution account" — Reg. 8503(1); "normalized pension" — Reg. 8517(5); "particular provision" — Reg. 8517(7)(a); "prescribed" — ITA 248(1); "province" — *Interpretation Act* 35(1); "registered pension plan" — ITA 248(1); "registered retirement income fund" — ITA 146.3(1), 248(1); "registered retirement savings plan" — ITA 146(1), 248(1); "retirement benefits" — Reg. 8500(1); "spouse" — Reg. 8500(5); "time of termination" — Reg. 8517(3)(a); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Registered Plans Directorate Newsletters: 95-5 (conversion of a defined benefit provision to a money purchase provision).

8518. Pension adjustment limits — (1) Subsection 147.1(8) of the Act does not apply to render a registered pension plan a revocable plan at the end of a calendar year by reason that a pension adjustment, or an aggregate of pension adjustments, of an individual for the year is excessive where the subsection would not so apply if the individual's pension adjustments for the year were determined without the inclusion of those pension credits, if any, of the individual for the year under deferred profit sharing plans that are described in subsection (2).

(2) For the purposes of subsection (1), a pension credit (as determined under Part LXXXIII) of an individual for a year under a deferred profit sharing plan is described in this subsection if

(a) it is a pension credit with respect to an employer by whom the individual ceased to be employed in the year; and

(b) it includes the amount of a contribution made to the plan in the year by the employer with respect to the individual that was based, in whole or in part, on the individual's remuneration for the preceding year.

Proposed Repeal — Reg. 8518

Application: The May 16, 2005 draft regulations (deferred income plans), s. 30, (pre-published in the *Canada Gazette*, Part I, May 21, 2005), will repeal s. 8518, to come into force on the day on which these Regulations are published in Part II of the *Canada Gazette*.

Regulatory Impact Analysis Statement: See under Reg. 8500(7) opening words above. See also under Reg. 214(5).

Definitions [Reg. 8518]: "amount" — ITA 248(1); "contribution" — Reg. 8501(6); "deferred profit sharing plan" — ITA 147(1), 248(1); "employed", "employer", "individual", "pension adjustment" — ITA 248(1); "pension credit" — Reg. 8301, 8308.1(2)–(4), 8308.3(2), (3), 8518(2); "registered pension plan" — ITA 248(1).

8519. Association of benefits with time periods — Where, for the purposes of Part LXXXIII or this Part or subsection 147.1(10) of the Act, it is necessary to associate benefits provided under a defined benefit provision of a pension plan with periods of time, the association shall be made in a manner acceptable to the Minister.

Definitions [Reg. 8519]: "benefits" — Reg. 8501(5)(c); "defined benefit provision" — ITA 147.1(1); "Minister" — ITA 248(1).

8520. Minister's actions — For the purposes of this Part, a waiver, extension of time or other modification of the requirements of this Part granted by the Minister or an approval by the Minister in respect of any matter is not effective unless it is in writing and expressly refers to the requirement that is modified or the matter in respect of which the approval is given.

Definitions [Reg. 8520]: "Minister" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

PART LXXXVI — TAXABLE CAPITAL EMPLOYED IN CANADA

History: Part LXXXVI (ss. 8600–8604) enacted by P.C. 1994-556, s. 2, April 14, 1994, *Canada Gazette*, Part II, May 4, 1994. See sections for application.

8600. [Definitions] — For the purposes of this Part and Part I.3 of the Act,

"attributed surplus" of a non-resident insurer for a taxation year has the meaning assigned by subsection 2400(1);

"Canadian assets" of a corporation that is a financial institution (as defined in subsection 181(1) of the Act) at any time in a taxation year means, in respect of the year, the amount, if any, by which

(a) the total of all amounts each of which is the amount at which an asset of the corporation (which asset is required, or, if the corporation were a bank to which the *Bank Act* applied, would be required, to be reflected in a return under subsection 223(1) of the *Bank Act*, as that Act read on May 31, 1992, if that return were prepared on a non-consolidated basis) would be shown on the corporation's balance sheet at the end of the year if its balance sheet were prepared on a non-consolidated basis

exceeds the total of

(b) the investment allowance of the corporation for the year determined under subsection 181.3(4) of the Act, and

(c) the total of all amounts each of which is the amount outstanding at the end of the year on account of a deposit made by the corporation that is described in paragraph (c) of the definition "eligible loan" in subsection 33.1(1) of the Act;

"Canadian premiums" for a taxation year, in respect of an insurance corporation that was resident in Canada at any time in the year and throughout the year did not carry on a life insurance business, means the total of the insurance corporation's net premiums for the year

(a) in respect of insurance on property situated in Canada, and

(b) in respect of insurance, other than on property, from contracts with persons resident in Canada,

and, for the purposes of this definition, "net premiums" has the same meaning as in subsection 403(2), and subsection 403(3) applies as if the references therein to "province" were read as references to "country";

"Canadian reserve liabilities" of an insurer as at the end of a taxation year has the meaning assigned by subsection 2400(1);

"permanent establishment" has the same meaning as in subsection 400(2);

"total assets" of a corporation that is a financial institution (as defined in subsection 181(1) of the Act) at any time in a taxation year means, in respect of that year, the amount, if any, by which

(a) the total of all amounts each of which is the amount at which an asset of the corporation would be shown on the corporation's balance sheet at the end of the year if its balance sheet were prepared on a non-consolidated basis

exceeds

(b) the investment allowance of the corporation for the year determined under subsection 181.3(4) of the Act;

"total premiums" for a taxation year, in respect of an insurance corporation that was resident in Canada at any time in the year and throughout the year did not carry on a life insurance business, means the total of the corporation's net premiums for the year (as defined in subsection 403(2)) that are included in computing its income under Part I of the Act;

"total reserve liabilities" of an insurer as at the end of a taxation year means the total amount as at the end of the year of the insurer's liabilities and reserves (other than liabilities and reserves in respect of a segregated fund) in respect of all its insurance policies, as determined for the purposes of the Superintendent of Financial Institutions, if the insurer is required by law to report to the Superintendent of Financial Institutions, or, in any other case, the superintendent of insurance or other similar officer or authority of the province under the laws of which the insurer is incorporated.

Related Provisions: ITA 248(1) — "Insurance policy" includes "life insurance policy".

History: The definitions "attributed surplus", "Canadian reserve liabilities", and "total reserve liabilities" in s. 8600 amended by P.C. 2000-1714, November 30, 2000, *Canada Gazette*, Part II, December 20, 2000, s. 8, applicable to 1999 *et seq.*

S. 8600 enacted by P.C. 1994-556, s. 2, April 14, 1994, *Canada Gazette*, Part II, May 4, 1994, applicable with respect to taxation years ending after June 30, 1989.

Definitions [Reg. 8600]: "amount" — ITA 248(1); "attributed surplus" — Reg. 2400(1), 8600; "bank" — ITA 248(1), *Interpretation Act* 35(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "insurance corporation", "insurance policy", "insurer", "life insurance business" — ITA 248(1); "net premiums" — Reg. 403(2), (3), Reg. 8600"Canadian premiums"; "non-resident", "officer", "person", "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "resident in Canada" — ITA 250; "taxation year" — ITA 249.

8601. [Prescribed proportion of taxable capital] — For the purpose of determining the taxable capital employed in Canada of a corporation for a taxation year under subsection 181.2(1) of the Act, the prescribed proportion of the corporation's taxable capital (as determined under Part I.3 of the Act) for the year is the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the taxable capital (as determined under Part I.3 of the Act) of the corporation for the year,

B is the total of all amounts each of which is the amount, determined in accordance with Part IV (or, in the case of an airline corporation, that would be so determined if the corporation had a permanent establishment in every province and if paragraphs 407(1)(a) and (b) were read without reference to the words "in Canada"), of the corporation's taxable income earned in the year in a particular province or the amount of its taxable income that would, pursuant to that Part, be earned in the year in a province if all permanent establishments of the corporation in Canada were in a province, and

C is the corporation's taxable income for the year,

except that, where the corporation's taxable income for the year is nil, the corporation shall, for the purposes of this section, be deemed to have a taxable income for the year of $1,000.

History: S. 8601 enacted by P.C. 1994-556, s. 2, April 14, 1994, *Canada Gazette*, Part II, May 4, 1994, applicable with respect to taxation years ending after June 30, 1989.

Definitions [Reg. 8601]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "employed" — ITA 248(1); "permanent establishment" — Reg. 400(2), 8600; "prescribed" — ITA 248(1); "province" — *Interpretation Act* 35(1); "taxable income" — ITA 248(1); "taxation year" — ITA 249.

8602. [Prescribed proportion of amount under s. 123.2] — For the purposes of paragraph (b) of the defini-

tion "Canadian surtax payable" in subsection 125.3(4) of the Act, the prescribed proportion of the amount determined under section 123.2 of the Act in respect of a corporation for a taxation year is the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount determined under section 123.2 of the Act in respect of the corporation for the year;

B is

(a) where the corporation carried on a life insurance business at any time in the year, the corporation's taxable capital (as determined under Part I.3 of the Act) for the year, and

(b) in any other case, the corporation's taxable capital employed in Canada (as would be determined under Part I.3 of the Act if that Part were read without reference to paragraphs 181.3(1)(a) and (b) thereof) for the year; and

C is the corporation's taxable capital (as determined under Part I.3 of the Act) for the year.

History: S. 8602 enacted by P.C. 1994-556, s. 2, April 14, 1994, *Canada Gazette*, Part II, May 4, 1994, applicable with respect to taxation years ending after June 30, 1989.

Definitions [Reg. 8602]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "employed", "life insurance business", "prescribed" — ITA 248(1); "taxation year" — ITA 249.

8603. [Definitions] — For the purposes of Part VI of the Act,

(a) "Canadian assets" of a corporation that is a financial institution (as defined in subsection 190(1) of the Act) at any time in a taxation year means, in respect of that year, the amount that would be determined under the definition "Canadian assets" in section 8600 in respect of the corporation for the year if the reference in that definition to "subsection 181(1)" were read as a reference to "subsection 190(1)" and paragraph (b) of that definition were read as follows:

"(b) the total determined under section 190.14 of the Act in respect of the corporation's investments for the year in financial institutions related to it, and";

(b) "total assets" of a corporation that is a financial institution (as defined in subsection 190(1) of the Act) at any time in a taxation year means, in respect of that year, the amount that would be determined under the definition "total assets" in section 8600 in respect of the corporation for the year if the reference in that definition to "subsection 181(1)" were read as a reference to "subsection 190(1)" and paragraph (b) of that definition were read as follows:

"(b) the total determined under section 190.14 of the Act in respect of the corporation's investments for the year in financial institutions related to it;"; and

(c) "attributed surplus", "Canadian reserve liabilities" and "total reserve liabilities" have the same respective meanings as in section 8600.

History: S. 8603 enacted by P.C. 1994-556, s. 2, April 14, 1994, *Canada Gazette*, Part II, May 4, 1994, applicable to 1990 *et seq.*

Definitions [Reg. 8603]: "amount" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "related" — ITA 251(2)–(6); "taxation year" — ITA 249.

8604. [Prescribed corporations] — For the purposes of paragraph (g) of the definition "financial institution" in subsection 181(1) of the Act, each of the following corporations is a prescribed corporation:

(a) a corporation of which all or substantially all of the assets are shares or indebtedness of financial institutions (as defined in that subsection) to which the corporation is related;

(b) AVCO Financial Services Canada Limited;

(c) AVCO Financial Services Realty Limited;

(d) AVCO Financial Services Quebec Limited;

(e) General Motors Acceptance Corporation of Canada, Limited;

(f) Household Financial Corporation Limited;

(g) Household Finance Corporation of Canada;

(h) Household Realty Corporation Limited;

(i) Merchant Retail Services Limited;

(j) Superior Acceptance Corporation Limited;

(k) Superior Credit Corporation Limited;

(l) Crédit Industriel Desjardins;

(m) Beneficial Canada Inc.;

(n) Beneficial Realty Ltd.;

(o) RT Mortgage-Backed Securities Limited;

(p) RT Mortgage-Backed Securities II Limited;

(q) T. Eaton Acceptance Co. Limited;

(r) National Retail Credit Services Limited;

(s) Ford Credit Canada Limited;

(t) Principal Fund Incorporated;

(u) Farm Credit Canada;

(v) Canadian Cooperative Agricultural Financial Services;

(w) CU Credit Inc.;

(x) Household Commercial Canada Inc.;

(y) Canadian Home Income Plan Corporation;

(z) Hudson's Bay Company Acceptance Limited;

(z.1) Bombardier Capital Ltd.;

(z.2) Trans Canada Credit Corporation;

(z.3) Norwest Financial Canada, Inc.;

(z.4) Norwest Financial Capital Canada, Inc.;

(z.5) GE Capital Canada Limited; and

(z.6) GE Capital Canada Retailer Financial Services Company.

Proposed Repeal — Reg. 8604

Application: The December 20, 2002 draft regulations (Appendix J, tax on large corporations), s. 1, will repeal s. 8604, applicable after December 19, 2002. See instead the Schedule after ITA 260.

Technical Notes: Existing section 8604 prescribes corporations for the purposes of paragraph (g) of the definition "financial institution" in subsection 181(1) of the Act. In its paragraph (a), section 8604 also provides that a corporation of which all or substantially all of the assets are shares or indebtedness of a financial institution (as defined in subsection 181(1)) to which the corporation is related also falls within the definition.

Section 8604 is proposed to be repealed as a consequence of amendments to paragraph (g) of the definition, and readers may consult the notes for the amendments to that paragraph for additional information.

History: The reference to "Farm Credit Corporation" in s. 8604(u) replaced with a reference to "Farm Credit Canada", by 2001, c. 22, para. 22(b), applicable June 14, 2001.

Paras. (w)–(z.6) added to s. 8604 by P.C. 1998-2046, s. 1, November 19, 1998, *Canada Gazette*, Part II, December 9, 1998, applicable as follows:

- para. 8604(w) applicable

  (a) to taxation years beginning after May 1998; and

  (b) if CU Credit Inc. so elects by notifying the Minister of National Revenue in writing before 1999, to 1995 *et seq.* of CU Credit Inc. and of all corporations related to CU Credit Inc.;

- para. 8604(x) applicable

  (a) to taxation years beginning after May 1998; and

  (b) if Household Commercial Canada Inc. so elects by notifying the Minister of National Revenue in writing before 1999, to 1994 *et seq.* of Household Commercial Canada Inc. and of all corporations related to Household Commercial Canada Inc.;

- para. 8604(y) applicable

  (a) to taxation years beginning after May 1998; and

  (b) if Canadian Home Income Plan Corporation so elects by notifying the Minister of National Revenue in writing before 1999, to 1996 *et seq.* of Canadian Home Income Plan Corporation and of all corporations related to Canadian Home Income Plan Corporation;

- para. 8604(z) applicable

  (a) to taxation years beginning after May 1998; and

  (b) if Hudson's Bay Company Acceptance Limited so elects by notifying the Minister of National Revenue in writing before 1999, to taxation years beginning after 1994 of Hudson's Bay Company Acceptance Limited and of all corporations related to Hudson's Bay Company Acceptance Limited;

- para. 8604(z.1) applicable

  (a) to taxation years beginning after May 1998; and

  (b) if Bombardier Capital Ltd. so elects by notifying the Minister of National Revenue in writing before 1999, to 1997 *et seq.* of Bombardier Capital Ltd. and of all corporations related to Bombardier Capital Ltd.;

- paras. 8604(z.2), (z.3) and (z.4) applicable

  (a) to taxation years beginning after May 1998; and

  (b) to 1997 *et seq.* of the particular corporation referred to in para. 8604(z.2), (z.3) or (z.4), and of all corporations related to the particular corporation;

- paras. 8604(z.5) and (z.6) applicable to taxation years ending after September 1998.

S. 8604 enacted by P.C. 1994-556, s. 2, April 14, 1994, *Canada Gazette*, Part II, May 4, 1994, applicable as follows: that portion of s. 8604 preceding para. (b) applicable to 1989 *et seq.*; paras. 8604(b)–(k) applicable to 1991 *et seq.*, and, where a particular corporation prescribed therein so elects by notifying the Minister of National Revenue in writing before 1995, to taxation years ending after June 30, 1989 and before 1991 of the particular corporation and all corporations related to the particular corporation; paras. 8604(l)–(n) applicable (as amended by P.C. 1998-2046, s. 4, November 19, 1998, *Canada Gazette*, Part II, December 9, 1998, deemed to have come into force on April 14, 1994)

(a) to taxation years ending after April 1994; and

(b) to the 1994 and subsequent taxation years of the particular corporation referred to in any of those paragraphs and of all corporations related to the particular corporation, and if the particular corporation has so elected by notifying the Minister of National Revenue in writing before 1995, to the taxation years ending after June 1989 of the particular corporation and of all corporations related to the particular corporation;

paras. 8604(o) and (p) applicable to 1992 *et seq.*; paras. (q) to (u) applicable (as amended by P.C. 1998-2046, s. 4, November 19, 1998, *Canada Gazette*, Part II, December 9, 1998, deemed to have come into force on April 14, 1994)

(a) to taxation years ending after April 1994;

(b) to the 1994 and subsequent taxation years of the particular corporation referred to in any of paragraphs 8604(q), (r), (t) or (u), and of all corporations related to the particular corporation, and if the particular corporation has so elected by notifying the Minister of National Revenue in writing before 1995, to the 1993 taxation year of the particular corporation and of all corporations related to the particular corporation; and

(c) if the particular corporation referred to in paragraph 8604(s) so elects by notifying the Minister of National Revenue in writing before 1999, to taxation years ending after 1989 of the particular corporation and of all corporations related to the particular corporation;

and para. 8604(v) applicable to taxation years commencing after 1993.

Definitions [Reg. 8604]: "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "prescribed" — ITA 248(1); "related" — ITA 251(2)–(6); "share" — ITA 248(1).

8605. (1) For the purposes of subclause 181.3(1)(c)(ii)(A)(II) and clause 190.11(b)(i)(B) of the Act, the amount prescribed in respect of a particular corporation for a taxation year ending at a particular time is the total of all amounts each of which is the amount determined in respect of a corporation that is, at the particular time, a foreign insurance subsidiary of the particular corporation, equal to the amount, if any, by which

(a) the amount by which the total, at the end of the subsidiary's last taxation year ending at or before the particular time, of

(i) the amount of the subsidiary's long-term debt, and

(ii) the amount of the subsidiary's capital stock (or, in the case of an insurance corporation incorporated without share capital, the amount of its member's contributions), retained earnings, contributed surplus and any other surpluses

exceeds the total of

(iii) the amount of the subsidiary's deferred tax debit balance at the end of the year, and

(iv) the amount of any deficit deducted in computing the subsidiary's shareholders' equity at the end of the year

exceeds the total of all amounts each of which is

(b) the carrying value to its owner at the particular time for the taxation year that includes the particular time of a share of the subsidiary's capital stock or its long term debt that is owned at the particular time by

(i) the particular corporation,

(ii) a subsidiary of the particular corporation,

(iii) a corporation

(A) that is resident in Canada,

(B) that carried on a life insurance business in Canada at any time in its taxation year ending at or before the particular time, and

(C) that is

(I) a corporation of which the particular corporation is a subsidiary, or

(II) a subsidiary of a corporation described in subclause (I), or

(iv) a subsidiary of a corporation described in subparagraph (iii), or

(c) an amount included under paragraph (a) in respect of any surplus of the subsidiary contributed by a corporation described in any of subparagraphs (b)(i) to (iv), other than an amount included under paragraph (b).

(d) [Repealed]

(2) For the purposes of subclause 181.3(1)(c)(ii)(A)(III) and clause 190.11(b)(i)(C) of the Act, the amount pre-

scribed in respect of a particular corporation for a taxation year ending at a particular time is the total of all amounts each of which is the amount determined in respect of a corporation that is, at the particular time, a foreign insurance subsidiary of the particular corporation, equal to the amount, if any, by which

(a) the total of the amounts determined under paragraphs (1)(b) and (c) in respect of the subsidiary for the year

exceeds

(b) the amount determined under paragraph (1)(a) in respect of the subsidiary for the year.

(3) For the purposes of subclause 181.3(1)(c)(ii)(A)(V) and clause 190.11(b)(i)(E) of the Act, the amount prescribed in respect of a particular corporation for a taxation year ending at a particular time means the total of all amounts each of which would be the total reserve liabilities of a foreign insurance subsidiary of the particular corporation as at the end of the subsidiary's last taxation year ending at or before the particular time if the subsidiary were required by law to report to the Superintendent of Financial Institutions for that year.

(4) The definitions in this subsection apply in this section.

"foreign insurance subsidiary" of a particular corporation at any time means a non-resident corporation that

(a) carried on a life insurance business throughout its last taxation year ending at or before that time,

(b) did not carry on a life insurance business in Canada at any time in its last taxation year ending at or before that time, and

(c) is at that time

(i) a subsidiary of the particular corporation, and

(ii) not a subsidiary of any corporation that

(A) is resident in Canada,

(B) carried on a life insurance business in Canada at any time in its last taxation year ending at or before that time, and

(C) is a subsidiary of the particular corporation.

"subsidiary" of a corporation (in this definition referred to as the "parent corporation") means a corporation controlled by the parent corporation where shares of each class of the capital stock of the corporation having a fair market value of not less than 75% of the fair market value of all of the issued and outstanding shares of that class belong to

(a) the parent corporation,

(b) a corporation that is a subsidiary of the parent corporation, or

(c) any combination of corporations each of which is a corporation referred to in paragraph (a) or described in paragraph (b).

Related Provisions: Reg. 8500(1.1) — Definition applies to ITA 147.3(7.1).

History: Subsec 8605(3) amended by P.C. 2000-1714, November 30, 2000, *Canada Gazette*, Part II, December 20, 2000, s. 9, applicable to 1999 *et seq.*

Para. 8605(1)(c) renumbered (from para. (d)) and amended and former (c) repealed by P.C. 1998-2046, s. 2, November 19, 1998, *Canada Gazette*, Part II, December 9, 1998, applicable to 1991 *et seq.*

S. 8605 added by P.C. 1996-1597, s. 1, October 24, 1996, *Canada Gazette*, Part II, November 13, 1996, applicable to 1991 *et seq.*

Definitions [Reg. 8605]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "carrying value" — ITA 181(3), 190(2); "controlled" — ITA 256(6), (6.1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "foreign insurance subsidiary" — Reg. 8605(4); "insurance corporation", "life insurance business", "non-resident" — ITA 248(1); "parent corporation" — Reg. 8605(4)"subsidiary"; "prescribed" — ITA 248(1); "resident in Canada" — ITA 250; "share" — ITA 248(1); "subsidiary" — Reg. 8605(4); "taxation year" — ITA 249; "total reserve liabilities" — Reg. 8600.

PART LXXXVII — NATIONAL ARTS SERVICE ORGANIZATIONS

History: Part LXXXVII (s. 8700) added by P.C. 1994-139, s. 16, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable after July 13, 1990.

8700. [Prescribed conditions] — For the purposes of paragraph 149.1(6.4)(d) of the Act, the following conditions are prescribed for a national arts service organization:

(a) the organization is an organization

(i) that is, because of paragraph 149(1)(l) of the Act, exempt from tax under Part I of the Act,

(ii) that represents, in an official language of Canada, the community of artists from one or more of the following sectors of activity in the arts community, that is, theatre, opera, music, dance, painting, sculpture, drawing, crafts, design, photography, the literary arts, film, sound recording and other audio-visual arts, and such other sectors of artistic activity related to the creation or performance of works of art as the Minister of Communications may recognize,

(iii) no part of the income of which may be payable to, or otherwise available for the personal benefit of, any proprietor, member, shareholder, trustee, or settlor of the organization, except where the payment is for services rendered or is an amount to which paragraph 56(1)(n) of the Act applies in respect of the recipient,

(iv) all of the resources of which are devoted to the activities and objects described in its application for its last designation by the Minister of Communications pursuant to paragraph 1491.1(6.4)(a) of the Act,

(v) more than 50 per cent of the directors, trustees, officers or other officials of which deal with each other at arm's length, and

(vi) no more than 50 per cent of the property of which at any time has been contributed or otherwise paid into the organization by one person or by members of a group of persons who do not deal with each other at arm's length and, for the purposes of this subparagraph, a reference to any person or to members of a group does not include a reference to Her Majesty in right of Canada or a province, a municipality, or a registered charity (other than a club, society or association described in paragraph 149(1)(l) of the Act or a private foundation as that term is defined in paragraph 149.1(1)(f) [149.1(1)"private foundation"] of the Act); and

(b) the activities of the organization are confined to one or more of

(i) promoting one or more art forms,

(ii) conducting research into one or more art forms,

(iii) sponsoring arts exhibitions or performances,

(iv) representing interests of the arts community or a sector thereof (but not of individuals) before governmental, judicial, quasi-judicial or other public bodies,

(v) conducting workshops, seminars, training programs and similar development programs relating to the arts for members of the organization, in respect of which the value of benefits received or enjoyed by members of the organization is required by paragraph 56(1)(aa) of the Act to be included in computing the incomes of those members,

(vi) educating the public about the arts community or the sector represented by the organization,

(vii) organizing and sponsoring conventions, conferences, competitions and special events relating to the arts community or the sector represented by the organization,

(viii) conducting arts studies and surveys of interest to members of the organization relating to the arts community or the sector represented by the organization,

(ix) acting as an information centre by maintaining resource libraries and data bases relating to the arts community or the sector represented by the organization,

(x) disseminating information relating to the arts community or the sector represented by the organization, and

(xi) paying amounts to which paragraph 56(1)(n) of the Act applies in respect of the recipient and which relate to the arts community or the sector represented by the organization.

Minister of Communications: S. 46 of 1995, c. 11, in force July 12, 1996, provides as follows:

> 46. Other references — Every reference made to the Minister of Communications, the Minister of Multiculturalism and Citizenship and the Secretary of State of Canada in relation to any matter to which the powers, duties and functions of the Minister of Canadian Heritage extend by virtue of this Act, in any other Act of Parliament or in any order, regulation or other instrument made under any Act of Parliament shall, unless the context otherwise requires, be read as a reference to the Minister of Canadian Heritage.

Definitions [Reg. 8700]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Her Majesty" — *Interpretation Act* 35(1); "individual", "Minister", "officer", "person", "prescribed" — ITA 248(1); "private foundation" — ITA 149.1(1), 248(1); "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "registered charity" — ITA 248(1); "related" — ITA 251(2)–(6); "shareholder" — ITA 248(1).

Part LXXXVIII — Disability-related Modifications and Apparatus

History: Part LXXXVIII (s. 8800) added by P.C. 1993-2026, December 9, 1993, *Canada Gazette*, Part II, December 29, 1993, applicable with respect to renovations and alterations made after 1990.

8800. [Prescribed renovations and alterations] — The renovations and alterations that are prescribed for the purposes of paragraph 20(1)(qq) of the Act are

(a) the installation of

(i) an interior or exterior ramp; or

(ii) a hand-activated electric door opener; and

(b) a modification to a bathroom, elevator or doorway to accommodate its use by a person in a wheelchair.

Definitions [Reg. 8800]: "person", "prescribed" — ITA 248(1).

8801. [Prescribed devices and equipment] — The devices and equipment that are prescribed for the purposes of paragraph 20(1)(rr) of the Act are

(a) an elevator car position indicator, such as a braille panel or an audio signal, for individuals having a sight impairment;

(b) a visual fire alarm indicator, a listening device for group meetings or a telephone device, for individuals having a hearing impairment; and

(c) a disability-specific computer software or hardware attachment.

History: Para. 8801(c) added by P.C. 1995-579, April 4, 1995, *Canada Gazette*, Part II, April 19, 1995, applicable to computer attachments for which amounts are paid by the taxpayer after February 25, 1992.

S. 8801 added by P.C. 1993-2026, December 9, 1993, *Canada Gazette*, Part II, December 29, 1993, applicable with respect to devices or equipment for which amounts are paid by the taxpayer after February 25, 1992.

Definitions [Reg. 8801]: "individual", "prescribed" — ITA 248(1).

Part LXXXIX — Entities Prescribed With Respect to Certain Rules

8900. (1) International organizations — For the purpose of subparagraph 110(1)(f)(iii) of the Act, the following international organizations are prescribed:

(a) the United Nations; and

(b) each international organization that is a specialized agency brought into relationship with the United Nations in accordance with Article 63 of the Charter of the United Nations.

(2) International non-governmental organizations — For the purpose of subparagraph 110(1)(f)(iv) of the Act, the following international non-governmental organizations are prescribed:

(a) the International Air Transport Association;

(b) the Société internationale de télécommunications aéronautiques; and

(c) the World Anti-Doping Agency.

History: S. 8900 and the preceding heading amended by P.C. 2003-266, s. 1, February 27, 2003, *Canada Gazette*, Part II, March 12, 2003, applicable to 2001 *et seq.*

S. 8900 added by P.C. 1995-663, s. 1, April 26, 1995, *Canada Gazette*, Part II, May 17, 1995, applicable to 1991 *et seq.*, except that para. 8900(b) applies only to 1993 *et seq.*

Definitions [Reg. 8900]: "prescribed" — ITA 248(1).

8901. Partnership — For the purpose of paragraph 249.1(1)(b) of the Act, Gaz Métropolitain and Company, Limited Partnership is a prescribed partnership.

History: S. 8901 added by P.C. 2003-266, s. 2, February 27, 2003, *Canada Gazette*, Part II, March 12, 2003, applicable to fiscal periods that begin after 1994.

PART XC — FINANCIAL INSTITUTIONS — PRESCRIBED ENTITIES

Proposed Addition — Reg. 9000–9002

Technical Notes: New Parts XC to XCII contain provisions relating to the tax treatment of securities held by financial institutions. The purpose of each Part is as follows:

- Part XC prescribes various entities and properties for the purposes of the definitions in subsection 142.2(1) of the Act. It also prescribes properties for certain other rules.
- Part XCI contains the rules for determining income from specified debt obligations.
- Part XCII sets out rules relating to the disposition of specified debt obligations. These include rules for amortizing gains and losses from the disposition of such obligations.

These new Parts apply to taxation years that end after February 22, 1994.

9000. For the purpose of paragraph (e) of the definition "financial institution" in subsection 142.2(1) of the Act, a trust that is deemed to exist by paragraph 138.1(1)(a) of the Act is prescribed at a particular time where

(a) the trust was created not more than two years before that time; and

(b) the cost at that time of the trustee's interest in the trust does not exceed $5,000,000.

Technical Notes: The definition of "financial institution" in subsection 142.2(1) of the Act excludes a prescribed person or partnership. Section 9000 prescribes for this purpose certain segregated funds maintained by life insurers. A segregated fund is prescribed at a particular time if it was created not more than two years before that time and the insurer's interest in the fund does not exceed $5 million. This exclusion enables an insurer to hold more than 50% of a segregated fund during its start-up phase without having the rules for securities held by financial institutions apply to the fund.

Definitions [Reg. 9000]: "prescribed" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

9001. (1) In this section, "qualified small business corporation", at any time, means a corporation that, at that time, is

(a) a Canadian-controlled private corporation, and

(b) an eligible corporation (as defined in subsection 5100(1)) or a corporation that would be an eligible corporation if the definition "eligible corporation" in subsection 5100(1) were read without reference to paragraph (e),

where, at that time,

(c) the carrying value of the total assets of the corporation and all corporations related to it (determined in accordance with generally accepted accounting principles on a consolidated or combined basis, where applicable) does not exceed $50,000,000, and

(d) the number of employees of the corporation and all corporations related to it does not exceed 500.

Technical Notes: The definition of "mark-to-market property" in subsection 142.2(1) of the Act excludes a prescribed property. Section 9001 prescribes certain shares of qualified small business corporations for this purpose.

Subsection 9001(1) provides that a corporation is a "qualified small business corporation" at any time at which:

- the corporation is a Canadian-controlled private corporation;
- the corporation is an eligible corporation (as defined in subsection 5100(1) for the purposes of the deferred income plan rules) or would be an eligible corporation if the exclusion for certain venture capital corporations were disregarded;
- the carrying value of the total assets of the corporation and all related corporations does not exceed $50 million; and
- the corporation and all related corporations have no more than 500 employees.

(2) For the purpose of paragraph (e) of the definition "mark-to-market property" in subsection 142.2(1) of the Act, a share of the capital stock of a corporation is a prescribed property in respect of a taxpayer where

(a) immediately after the time at which the taxpayer acquired the share, the corporation was a qualified small business corporation, and

(i) the corporation continued to be a qualified small business corporation for one year after that time, or

(ii) the taxpayer could not reasonably expect at that time that the corporation would cease to be a qualified small business corporation within one year after that time; or

(b) the share was issued to the taxpayer in exchange for one or more shares of the capital stock of the corporation that were prescribed by this subsection in respect of the taxpayer.

Technical Notes: Subsection 9001(2) prescribes a share of a corporation where, immediately after the taxpayer acquired the share, the corporation was a qualified small business corporation. However, a share is not prescribed if the corporation ceases to be a qualified small business corporation within a year, unless the change of status was not reasonably foreseeable.

Subsection 9001(2) also prescribes a share if it was issued to a taxpayer in exchange for one or more shares that were prescribed in respect of the taxpayer. Since the definition of "share" in subsection 248(1) of the Act includes a fraction of a share, subsection 9001(2) applies even if a taxpayer receives less than one share for each share exchanged.

Definitions [Reg. 9001]: "business" — ITA 248(1); "Canadian-controlled private corporation" — ITA 125(7), 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "employee", "prescribed", "property" — ITA 248(1); "qualified small business corporation" — Reg. 9001(1); "related" — ITA 251(2)–(6); "share", "small business corporation", "taxpayer" — ITA 248(1).

9002. (1) For the purposes of

(a) paragraph (e) of the definition "mark-to-market property" in subsection 142.2(1) of the Act, and

(b) subparagraph 142.6(4)(a)(ii) of the Act,

a debt obligation held by a bank is a prescribed property of the bank where the obligation is

(c) an exposure to a designated country (as defined in section 8006), or

(d) a United Mexican States Collateralized Par or Discount Bond Due 2019.

Technical Notes: Section 9002 prescribes various properties for exclusion from the definition of "mark-to-market property" in subsection 142.2(1) of the Act.

Subsection 9002(1) prescribes as property excluded from the definition of "mark-to-market property" in subsection 142.2(1) of the Act certain debt obligations held by a bank. A debt obligation is prescribed if it is an exposure to a country that has been designated by the Office of the Superintendent of Financial Institutions or is a United Mexican States Collateralized Par or Discount Bond Due 2019 (a "Brady bond").

Subsection 9002(1) also prescribes such debt obligations for the purpose of subparagraph 142.6(4)(a)(ii) of the Act. This provision contains a rule relating to prescribed debt obligations held by a bank on February 23, 1994 that were inventory of the bank in its last taxation year ending before February 23, 1994. For further information, see the commentary on subsection 142.6(4) of the Act.

(2) For the purpose of paragraph (e) of the definition "mark-to-market property" in subsection 142.2(1) of the

Act, a share is a prescribed property of a taxpayer for a taxation year where

(a) the share is a lending asset of the taxpayer in the year; or

(b) immediately after its issuance, the share was a share described in paragraph (e) of the definition "term preferred share" in subsection 248(1) of the Act and, at any time in the year, the share would be a term preferred share if

(i) that definition were read without reference to the portion following paragraph (b), and

(ii) where the share was issued or acquired on or before June 28, 1982, it were issued or acquired after that day.

Technical Notes: Subsection 9002(2) prescribes certain preferred shares for exclusion from the definition of "mark-to-market property" in subsection 142.2(1) of the Act.

Paragraph 9002(2)(a) provides for a share to be prescribed if it is a lending asset. By virtue of the definition of a lending asset in subsection 248(1) of the Act and paragraph 6209(a) of the Regulations, a share is a lending asset if it is a preferred share held by a bank that is reported as a loan substitute.

Paragraph 9002(2)(b) provides for a share to be prescribed if it meets two tests. The first is that, immediately after it was issued, it was a share described in paragraph (e) of the definition of "term preferred share" in subsection 248(1) of the Act, i.e., a financial difficulty share. In this regard, it should be noted that the 5- or 10-year period referred to in paragraph (e) is not part of the description of the share. The second test is that the share would be a term preferred share if the portion of the definition of "term preferred share" following paragraph (b) were disregarded and, where the share was issued or acquired on or before June 28, 1982, it had been issued or acquired after that date.

(3) For the purpose of paragraph (e) of the definition "mark-to-market property" in subsection 142.2(1) of the Act, a share of the capital stock of a corporation held by a credit union is a prescribed property of the credit union for a taxation year where, throughout the year,

(a) the corporation is a credit union; or

(b) credit unions hold

(i) shares of the corporation that give the credit unions more than 50% of the votes that could be cast under all circumstances at an annual meeting of shareholders of the corporation, and

(ii) shares of the corporation having a fair market value of more than 50% of the fair market value of all the issued shares of the corporation.

Letter from Dept. of Finance, July 30, 2003:

Dear [xxx]

Subject: Mark-to-Market Property Rules

I am writing in response to your letter dated July 16, 2003 in which you requested a revision to proposed paragraph 9002(3)(b) of the *Income Tax Regulations* that is part of the draft amendments to the Regulations that were announced in a Department of Finance press release on June 1, 1995.

The mark-to-market property rules in the *Income Tax Act* apply to financial institutions. The definition "mark-to-market property" in subsection 142.2(1) of the *Income Tax Act* excludes a share of a corporation held by a financial institution where the financial institution has a "significant interest" in the corporation. A taxpayer has a significant interest in a corporation if it holds 10% or more of the votes and value in the corporation. In addition to the significant interest exemption available to all financial institutions (including credit unions), proposed subsection 9002(3) of the Regulations provides relieving rules in the context of credit unions. Under paragraph (b) of that subsection, shares held by a credit union in a corporation are prescribed property (and therefore are not mark-to-market property) if credit unions hold more than 50% of the votes and value of the corporation.

Your request is in relation to a [xxx]. You have informed us that, at this time, the [xxx] in aggregate hold 100% of the votes and value in a corporation [xxx]. You have mentioned that the [xxx] are currently not required to mark-to-market their shares of the [xxx] because of the exemption under proposed paragraph 9002(3)(b) of the Regulations.

You have also informed us that [xxx] is planning to issue treasury shares to an unrelated third party that is a financial institution but is not a credit union, such that [xxx] would in aggregate hold only 50% of the votes and value in [xxx] while the third party would hold the other 50%.

Further, you have informed us that the transaction will result in a true 50:50 ownership structure, with neither [xxx] nor the third party controlling the brokerage corporation; and that there will be no voting entitlements or option rights that would provide the third party with either de jure or de facto control of [xxx] (under either ordinary or special circumstances).

You have mentioned that, because credit unions will hold 50% of the votes and value in [xxx] but not "more than 50%" as required by proposed paragraph 9002(3)(b) of the Regulations, the shares held in [xxx] by each of [xxx] would not be "prescribed property", with the result that all of those [xxx] that hold a "significant interest" in [xxx], would be required to mark-to-market their shares of [xxx].

We have reviewed the particular circumstances surrounding this transaction and conclude that the policy rationale for an exemption from the mark-to-market property rules in a 50:50 ownership structure as described in your letter would be maintained. Accordingly, we are prepared to recommend to the Minister of Finance that proposed paragraph 9002(3)(b) of the Regulations be revised so that, for the purpose of the paragraph (e) of the definition "mark-to-market property" in subsection 142.2(1) of the Act, a share of a corporation held by a credit union is prescribed property for a taxation year where, throughout the taxation year,

- credit unions hold shares of the corporation having a fair market value of at least 50% of the fair market value of all the issued shares of the corporation and hold shares of the corporation that give the credit unions at least 50% of the votes that could be cast under all circumstances at an annual general meeting of shareholders of the corporation, and
- the corporation would, if each share of the corporation that is not owned by a credit union were owned by a particular person, not be controlled, directly or indirectly in any manner whatever, by the particular person.

For this purpose, the expression "controlled, directly or indirectly in any manner whatever" would have the meaning given by subsection 256(5.1) of the Act.

If this recommendation is acted upon, I would anticipate that it would be included in the next draft of subsection 9002(3) of the Regulations that would be published.

We will recommend that this revision to proposed paragraph 9002(3)(b) of the Regulations be applicable to taxation years that end on or after the date on which draft Regulations that include this revision are published. However, where the taxpayer so elects, this revision will apply to taxation years that end after 2002.

I trust that this addresses your concerns.

Yours sincerely,

Stephen R. Richardson
Senior Assistant Deputy Minister

Technical Notes: Subsection 9002(3) prescribes certain shares held by credit unions for exclusion from the definition of "mark-to-market property" in subsection 142.2(1) of the Act. A share is prescribed if it is

- a share of a credit union, or
- a share of a corporation in which credit unions hold shares carrying more than 50% of the votes and shares representing more than 50% of the fair market value of all issued shares.

Application: The June 1, 1995 draft regulations (securities held by financial institutions), s. 9, will add ss. 9001 and 9002 (as well as 9003, below), applicable to taxation years that end after February 22, 1994.

Definitions [Reg. 9002]: "bank" — ITA 248(1), *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "credit union", "lending asset", "prescribed", "property", "share", "shareholder" — ITA 248(1); "taxation year" — ITA 249; "taxpayer", "term preferred share" — ITA 248(1).

Proposed Amendment — Prescribed Property

Letter from Dept. of Finance, July 29, 2002:

Dear [xxx]

I am writing in reply to your letter dated June 24, 2002 to Mr. Wally Conway. In that letter, you refer to a proposed transaction by [xxx] that, if carried out, will result in the [xxx] and you seek comfort that such an acquisition will not disqualify the treatment of shares in [xxx] held by registered investment dealers as a prescribed property for the purposes of the definition "mark-to-market property" in subsection 142.2(1) of the *Income Tax Act*.

I am also writing in reference to the letters dated April 11, 2002 and May 31, 2002 to Mr. Conway from [xxx]. In those letters, [xxx] refers to [xxx] plans to have the shares in [xxx] exchanged for shares in another corporation that is a public corporation. From our discussions, we understood that alternatively [xxx] could itself make a public offering. [xxx] question is whether [xxx] conversion from a private to a public corporation (by a public offering by [xxx]), or the exchange of its shares for shares of a public holding corporation, will disqualify the [xxx] shares, or the exchanged shares in the public holding corporation, held by registered investment dealers from being treated as a prescribed property for the purposes of the definition "mark-to-market property" in subsection 142.2(1) of the Act.

We have previously received representations in connection with [xxx] and have, as a result, agreed to recommend to the Minister of Finance that the *Income Tax Regulations* be amended to prescribe a share in the capital stock of [xxx] that is held by an investment dealer to be a prescribed property for the purposes of the definition "mark-to-market property" in subsection 142.2(1) of the Act. This would have the effect of exempting such shares from the application of the mark-to-market property rules. However, in order to prevent the exemption from being used to circumvent the mark-to-market property rules, we have suggested that the exemption should apply only if the [xxx] limits its activities to the [xxx] and restricts its investments in other entities to investments in wholly-owned subsidiaries the only businesses of which relate to [xxx]

Based on our discussions, we understand that the interest to be acquired by [xxx] would represent [xxx] of both votes and value of all ownership interests in [xxx]. We also understand that the only operation to be conducted by the [xxx]. Given the nature of [xxx] proposed activities and the size of [xxx] ownership interest, the proposed acquisition should not, from a tax policy point of view, result in the shares in [xxx] losing the status of prescribed property for the purposes of the definition "mark-to-market property" in subsection 142.2(1) of the Act. Therefore, we will recommend to the Minister of Finance that the proposed regulatory amendments that would prescribe a share of a corporation which [xxx] in Canada to be a prescribed property for the purposes of the mark-to-market property definition be drafted so that shares of the capital stock of [xxx] would not, because of the acquisition by [xxx] of the [xxx], lose their prescribed property status.

However, with respect to [xxx] becoming a public corporation or the [xxx] shares being exchanged for shares in another corporation that is a public corporation, it is not clear that it would be appropriate to continue to prescribe the shares in [xxx], or the exchanged shares in the other corporation, as a prescribed property for the purposes of the mark-to-market property definition.

The various other issues raised in our discussions, such as the tax consequences arising upon the shares of the capital stock of [xxx] held by investment dealers ceasing, because of [xxx] becoming a public corporation or the shares in [xxx] being exchanged for shares in a public corporation, to be a prescribed property for the purposes of the mark-to-market property definition, still need to be reviewed by us and, in that regard, we will be writing to you in a subsequent letter in due course.

Thank you for writing.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Proposed Addition — Shares of Stock Exchanges

Letter from Dept. of Finance, March 21, 2001:

Dear [xxx]

We are responding to your letter of February 21, 2001 addressed to Mr. Jay Hershfield of this Division. You have requested confirmation that the Department of Finance intends to recommend changes to ensure that the mark-to-market rules do not apply to a registered securities dealer in respect of shares of a Canadian stock exchange owned by it.

We are able to confirm that a recommendation will be made to the Minister of Finance that the *Income Tax Regulations* be amended to treat shares of certain stock exchanges held by investment dealers (as defined in subsection 142.2(1) of the *Income Tax Act* (the "Act")) as prescribed properties for the purposes of the definition of "mark-to-market property" in subsection 142.2(1) of the Act. As prescribed properties, the mark-to-market rules will not apply to an investment dealer in respect of such shares.

This prescription will apply to shares of the *Toronto Stock Exchange Inc.*, the *Montreal Stock Exchange Inc.*, and the *Canadian Venture Exchange Inc.* as long as the particular stock exchange corporation limits its activities to the running of a stock exchange and restricts its investments in other entities to investments in wholly owned subsidiaries the only businesses of which are those that at all times relate to the operation of the stock exchange.

We trust this will address your concerns.

Yours sincerely,
Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, October 30, 2000:

Dear [xxx]

Further to your letter of August 11th and our subsequent telephone discussions, we are responding to your request for a change to the comfort letter issued by the Department of Finance dated December 23, 1999 respecting the application of the mark-to-market provisions of the *Income Tax Act* (Act) to shares of Canadian Ventures Exchange Inc. (CDNX).

In our letter of December 23, 1999, we stated that we would be prepared to recommend that a change be made to the proposed regulations for the mark-to-market provisions which would deem a share of CDNX held by an investment dealer to be a prescribed property for the purpose of the definition "mark-to-market property" in subsection 142.2(1) of the Act. To prevent the exemption from being used to circumvent the mark-to-market rules, the amendment was to apply only if CDNX restricted its activities to running the combined Alberta and Vancouver stock exchanges and the only other investment was its shares of the Canadian Dealers Network (in which it must hold 100% of its issued shares).

We understand that CDNX was formed as a result of the merger of the Alberta Stock Exchange and the Vancouver Stock Exchange. We also now understand, as a result of your subsequent correspondence, that CDNX may own one or more subsidiary corporations, however, each such subsidiary will carry on only those businesses that relate to the operation of the securities exchanges or a trade reporting system, or the provision of other services relating to the trading of securities in the securities industry. For this reason, you are requesting the removal of the restriction that the only investment in shares that can be made by CDNX be its investment in the shares of Canadian Dealers Network. You are requesting the replacement of that restriction with the restriction that any investment in a corporation made by CDNX be an investment in a corporation the only businesses of which are businesses that relate to the operation of the securities exchanges or a trade reporting system, or the provision of other services that relate to the trading of securities in the securities industry. You have suggested that the restriction apply only where the investment made by CDNX is an investment in a corporation of which CDNX is a specified shareholder.

Based on this new information, we are prepared to recommend to the Minister of Finance that a change be made to the proposed regulations for the mark-to-market provisions which would deem a share of CDNX held by an investment dealer to be a prescribed property for the purpose of the definition "mark-to-market property" in subsection 142.2(1) of the Act. To prevent the exemption from being used to circumvent the mark-to-market rules, the prescription would apply only if CDNX restricts its activities to the running of a stock exchange or a trade reporting system and restricts its investments in other entities to investments in wholly owned subsidiaries the only businesses and property of which are those that at all times relate to the operation of the securities exchange or the trade reporting system.

We trust that such an amendment would both address your operational concerns and protect against an abuse of the rules. Thank you for bringing this matter to our attention.

Yours sincerely,
Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, September 14, 2000:

Dear [xxx]

Thank you for your letter of August 23, 2000 regarding the demutualization of the Montreal Exchange (the "Exchange") and the application of the mark-to-market property rules that apply to investment dealers and other financial institutions.

In your letter, you asked the Department of Finance to amend the *Income Tax Act Regulations* in order to include a share of the corporation that carries on the business of operating the Exchange, ME Inc., as a prescribed property for the purpose of the definition "mark-to-market property" in subsection 142.2(1) of the *Income Tax Act* (the "Act") when held by an investment dealer. This would have the effect of exempting such shares, while held by an investment dealer, from the application of the mark-to-market property rules.

We have previously received representations on a similar issue and have, as a result, recommended to the Minister that the *Income Tax Regulations* be amended to prescribe a share of ME Inc., that is held by an investment dealer, to be a prescribed property for the purpose of the definition "mark-to-market property" in subsection 142.2(1) of the Act. However, in order to prevent the exemption from being used to circumvent the mark-to-market rules, we will suggest that the exemption apply only if ME Inc. restricts its activities (including the ownership of any investment) to running the Exchange.

Based on the information we have received as to the effective date of the demutualization of the Exchange and consequent issuance of ME Inc. shares, we would propose that the recommended amendment apply to the 2000 and subsequent taxation years.

Thank you for bringing this matter to our attention.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Letter from Dept. of Finance, August 21, 2000:

Dear [xxx]

Thank you for your letter of July 4, 2000 regarding the demutualization of the Toronto Stock Exchange (the "TSE") and the application of the mark-to-market property rules that apply to investment dealers and other financial institutions.

In your letter, you asked the Department of Finance to confirm that a share of the corporation that carries on the business of operating the TSE, the TSE Inc., will be prescribed as a prescribed property for the purpose of the definition "mark-to-market property" in subsection 142.2(1) of the *Income Tax Act* (the "Act") when held by an investment dealer. This would have the effect of exempting such shares, while held by an investment dealer, from the application of the mark-to-market property rules.

We have previously received representation on this issue and have, as a result, agreed to recommend to the Minister that the *Income Tax Regulations* be amended to prescribe a share of TSE Inc., that is held by an investment dealer, to be a prescribed property for the purpose of the definition "mark-to-market property" in subsection 142.2(1) of the Act. However, in order to prevent the exemption from being used to circumvent the mark-to-market rules, we have suggested that the exemption apply only if TSE Inc. restricts its activities (including the ownership of any investment) to running the TSE.

Based on the information you have provided in your letter to the effect that the demutualization of the TSE and consequent issuance of TSE Inc. shares took place in April of this year, we would propose that the recommended amendment apply to the 2000 and subsequent taxation years.

Thank you for bringing this matter to our attention.

Your sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Proposed Addition — Reg. 9003

9003. For the purpose of paragraph 142.2(3)(c) of the Act, a share described in paragraph 9002(2)(b) is prescribed in respect of all taxpayers.

Technical Notes: Paragraph 142.2(3)(c) of the Act provides that shares that are prescribed are to be ignored in determining whether a taxpayer has a significant interest in a corporation pursuant to subsection 142.2(2). Section 9003 prescribes for this purpose shares that are described in paragraph 9002(2)(b). These are certain preferred shares issued by a corporation in financial difficulty. More specifically, a share is prescribed if it is a share described in paragraph (e) of the definition of "term preferred share" in subsection 248(1) of the Act and it would be a term preferred share if the portion of the definition following paragraph (b) were disregarded (and, in the case of a share that was issued or acquired on or before June 28, 1982, it had been issued or acquired after that date).

Definitions [Reg. 9003]: "prescribed", "share", "taxpayer" — ITA 248(1).

Application: The June 1, 1995 draft regulations (securities held by financial institutions), s. 9, will add s. 9003, applicable to taxation years that end after February 22, 1994.

9004. For the purpose of the definition "specified debt obligation" in subsection 142.2(1) of the Act, a property is a prescribed property throughout a taxation year if the property is a direct financing lease, or any other financing arrangement, of a taxpayer that is reported as a loan in the taxpayer's financial statement for the year prepared in accordance with generally accepted accounting principles and an amount is deductible under paragraph 20(1)(a) of the Act in respect of the property that is the subject of the lease or arrangement in computing the taxpayer's income for the year.

History: S. 9004 added by P.C. 1999-195, s. 8, February 11, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable

(a) to taxation years that end after September 1997; and

(b) to taxation years that end after 1995 and before October 1997 where the taxpayer elects in writing to have para. 20(1)(l) of the Act, as amended, to apply to the year and files the election with the Minister of National Revenue before October 1998.

Definitions [Reg. 9004]: "amount", "prescribed", "property" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

PART XCI — FINANCIAL INSTITUTIONS — INCOME FROM SPECIFIED DEBT OBLIGATIONS [PROPOSED]

Proposed Addition — Part XCI (Reg. 9100–9104)

Technical Notes: Part XCI contains rules for determining the amounts that a financial institution is required to include and deduct each year in respect of a specified debt obligation in computing its income. These rules apply for the purpose of subsection 142.3(1) of the Act.

9100. Interpretation — In this Part,

"fixed payment obligation" of a taxpayer means a specified debt obligation under which

(a) the amount and timing of each payment (other than a fee or similar payment or an amount payable because of a default by the debtor) to be made by the debtor were fixed when the taxpayer acquired the obligation and have not been changed, and

(b) all payments are to be made in the same currency;

Technical Notes: A "fixed payment obligation" of a taxpayer is a specified debt obligation held by the taxpayer under which the payments to be made by the debtor are all fixed in timing and amount, and are all denominated in the same currency. Fees and similar payments are to be disregarded for the purpose of this definition, as are any additional payments that the debtor will be required to make if the debtor fails to make a payment as required under the obligation.

"primary currency" of a specified debt obligation means

(a) the currency with which the obligation is primarily connected, and

(b) where there is no such currency, Canadian currency;

Technical Notes: The "primary currency" of a specified debt obligation is the currency with which the obligation is primarily connected. Where there is no such currency, the primary currency is the Canadian dollar.

"specified debt obligation" of a taxpayer has the meaning assigned by subsection 142.2(1) of the Act;

Technical Notes: "Specified debt obligation" has the meaning given to that term by subsection 142.2(1) of the Act. It should be noted that this term is defined from the perspective of the holder. For example, where a taxpayer holds a coupon that has been stripped from a debt obligation and holds no other interest in the obligation, the specified debt obligation of the taxpayer is just the coupon. It should also be noted that, if a taxpayer disposes of part of a specified debt obligation, subsection 142.4(9) of the Act applies to deem the part disposed of and the retained part to be separate specified debt obligations.

"tax basis" of a specified debt obligation at any time to a taxpayer has the meaning assigned by subsection 142.4(1) of the Act;

Technical Notes: The "tax basis" of a specified debt obligation to a taxpayer is the amount defined by subsection 142.4(1) of the Act. The tax basis is analogous to the adjusted cost base of capital property.

"total return" of a taxpayer from a fixed payment obligation means the amount (measured in the primary currency of the obligation) by which

(a) the total of all amounts each of which is the amount of a payment (other than a fee or similar payment) required to be made by the debtor under the obligation after its acquisition by the taxpayer

exceeds

(b) the cost to the taxpayer of the obligation.

Technical Notes: A taxpayer's "total return" from a fixed payment obligation is equal to (i) the total amount of payments required to be made under the obligation by the debtor after the acquisition of the obligation by the taxpayer minus (ii) the cost of the obligation to the taxpayer. Fees and similar payments (such as insurance premiums) are excluded in determining the total return. The total return is to be measured in the primary currency of the obligation. Where the taxpayer's cost was determined in another currency, it should be translated to the primary currency using the spot rate of exchange at the time of acquisition.

Definitions [Reg. 9100]: "amount" — ITA 248(1); "fixed payment obligation", "primary currency" — Reg. 9100; "specified debt obligation" — ITA 142.2(1), Reg. 9100; "taxpayer" — ITA 248(1).

9101. Prescribed inclusions and deductions — (1) For the purpose of paragraph 142.3(1)(a) of the Act, where a taxpayer holds a specified debt obligation at any time in a taxation year, the amount prescribed in respect of the obligation for the year is the total of

(a) the taxpayer's accrued return from the obligation for the year;

(b) where the taxpayer's accrual adjustment determined under section 9102 in respect of the obligation for the year is greater than nil, the amount of the adjustment; and

(c) where a foreign exchange adjustment is determined under section 9104 in respect of the obligation for the year and is greater than nil, the amount of the adjustment.

Technical Notes: Paragraph 142.3(1)(a) of the Act requires a financial institution that holds a specified debt obligation in a taxation year to include a prescribed amount in income in respect of the obligation. Subsection 9101(1) prescribes an amount for this purpose equal to the sum of:

- the accrued return from the obligation for the year;
- the accrual adjustment in respect of the obligation for the year (if this amount is positive); and
- in the case of a foreign-currency obligation, the foreign exchange adjustment in respect of the obligation for the year (if this amount is positive).

(2) For the purpose of paragraph 142.3(1)(b) of the Act, where a taxpayer holds a specified debt obligation at any time in a taxation year, the amount prescribed in respect of the obligation is the total of

(a) where the taxpayer's accrual adjustment determined under section 9102 in respect of the obligation for the year is less than nil, the absolute value of the amount of the adjustment; and

(b) where a foreign exchange adjustment is determined under section 9104 in respect of the obligation for the year and is less than nil, the absolute value of the amount of the adjustment.

Technical Notes: Paragraph 142.3(1)(b) of the Act provides that a financial institution that holds a specified debt obligation in a taxation year must deduct a prescribed amount in respect of the obligation. Subsection 9101(2) prescribes an amount for this purpose equal to the absolute value of the sum of:

- the accrual adjustment in respect of the obligation for the year (if this amount is negative); and
- in the case of a foreign-currency obligation, the foreign exchange adjustment in respect of the obligation for the year (if this amount is negative).

In general terms, the accrued return for a year is the total expected economic return to the taxpayer (assuming the taxayer holds the obligation to maturity) that is allocated to the year under accrual principles of income recognition. Sections 9102 and 9103 contain rules relating to the determination of accrued returns.

The accrual adjustment is the amount by which prior years' accrued returns have to be adjusted to reflect subsequent events. For example, the accrued return for a year may have been based on an estimate of the amount of a future payment under the obligation. When the actual amount becomes known, or the estimate needs to be revised, an adjustment would be determined. Subsections 9102(4) and (5) contain rules relating to the determination of accrual adjustments.

The foreign exchange adjustment in respect of a foreign-currency obligation is the amount determined under section 9104. In general terms, this is the amount by which the tax value of the obligation has changed because of a change in the value of the foreign currency relative to the Canadian dollar.

Definitions [Reg. 9101]: "accrual adjustment" — Reg. 9102(4), (5); "accrued return" — Reg. 9102(3); "amount" — ITA 248(1); "foreign exchange adjustment" — Reg. 9104(1); "prescribed" — ITA 248(1); "specified debt obligation" — ITA 142.2(1), Reg. 9100; "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

9102. General accrual rules — **(1) Fixed payment obligations not in default** — For the purpose of paragraph 9101(1)(a), a taxpayer's accrued return for a taxation year from a fixed payment obligation, under which each payment required to be made before the end of the year was made by the debtor when it was required to be made, shall be determined in accordance with the following rules:

(a) determine, in the primary currency of the obligation, the portion of the taxpayer's total return from the obligation that is allocated to each day in the year using

(i) the level-yield method described in subsection (2), or

(ii) any other reasonable method that is substantially similar to the level-yield method;

(b) where the primary currency of the obligation is not Canadian currency, translate to Canadian currency the amount allocated to each day in the year, using a reasonable method of translation; and

(c) determine the total of all amounts each of which is the Canadian currency amount allocated to a day, in the year, at the beginning of which the taxpayer holds the obligation.

Technical Notes: Section 9102 contains the general rules for determining a financial institution's accrued returns and accrual adjustments

in respect of a specified debt obligation. These amounts are included in the amounts prescribed by section 9101. Transition rules and rules for special situations are contained in section 9103. Examples are provided at the end of the commentary on this section.

Section 9102 is organized as follows:

- Subsection 9102(1) provides for the determination of accrued returns from specified debt obligations under which all payments are fixed in timing and amount. Subsection 9102(2) describes the level-yield method that is referred to in subsection 9102(1).
- Subsection 9102(3) provides for the determination of accrued returns from obligations other than those to which subsection 9102(1) applies.
- Subsections 9102(4) and (5) provide for the determination of accrual adjustments.
- Subsection 9102(6) provides that the rules in section 9102 are subject to the rules in section 9103.

Subsection 9102(1) sets out, for the purpose of paragraph 9101(1)(a), the method for determining a taxpayer's accrued return for each taxation year from a specified debt obligation that is a fixed payment obligation under which the debtor has made all required payments. A "fixed payment obligation" is defined in section 9100 as a specified debt obligation under which the payments to be made by the debtor are all fixed in timing and amount, and are all denominated in the same currency.

(2) Level-yield method — For the purpose of subsection (1), the level-yield method for allocating a taxpayer's total return from a fixed payment obligation is the method that allocates, to each particular day in the period that begins on the day following the day on which the taxpayer acquired the obligation and that ends on the day on which the obligation matures, the amount determined by the formula

$$(A + B - C) \times D$$

where

A is the cost of the obligation to the taxpayer (measured in the primary currency of the obligation),

B is the total of all amounts each of which is the portion of the taxpayer's total return from the obligation that is allocated to a day before the particular day,

C is the total of all payments required to be made under the obligation after it was acquired by the taxpayer and before the particular day, and

D is the rate of interest per day that, if used in computing the present value (as of the end of the day on which the taxpayer acquired the obligation and based on daily compounding) of all payments to be made under the obligation after it was acquired by the taxpayer, produces a present value equal to the cost to the taxpayer of the obligation (measured in the primary currency of the obligation).

Technical Notes: In the case of a Canadian-dollar obligation that a taxpayer holds throughout a taxation year, the accrued return for the year is the total of the amounts allocated to each day in the year in respect of the taxpayer's total return from the obligation. Where the taxpayer does not hold the obligation throughout the year, the accrued return is the total of the amounts allocated to the days in the year at the beginning of which the taxpayer holds the obligation. The amount allocated to each day is to be determined using the level-yield method described in subsection 9102(2), or any other reasonable method that is substantially similar. Generally, a method would be considered reasonable only if it is in accordance with generally accepted accounting practice.

Under the level-yield method described in subsection 9102(2), the internal rate of return of an obligation is used to determine the amount of the taxpayer's total return from the obligation that is allocated to each day. The internal rate of return is the interest rate that produces a present value of payments under the obligation equal to the cost of the obligation to the taxpayer. For this purpose, compounding is on a daily basis. The amount of the total return allocated to a particular day is determined by the formula:

$$(A + B - C) \times D$$

where

A = the cost of the obligation to the taxpayer;

B = the portion of the total return allocated to preceding days;

C = the total payments required to be made under the obligation to the taxpayer before the particular day; and

D = the internal rate of return of the obligation, expressed as a daily rate of interest.

It is recognized that few, if any, taxpayers use precisely this method for financial statement purposes. As noted above, subsection 9102(1) allows the use of any other reasonable method that is substantially similar. For example, a taxpayer could use a method based on semi-annual compounding, in which case a suitable approach to proration between compounding dates would be necessary (where the taxation year end falls between compounding dates).

It is intended that straight-line proration be an acceptable method where it can be used for financial statement purposes and the obligation provides for a level rate of interest. Under this method, any premium or discount on the acquisition of an obligation is recognized on a uniform basis from the acquisition date to the maturity date of the obligation. Similarly, each interest payment is spread over the period to which it relates. An amount paid in respect of accrued interest on the acquisition of the obligation would normally be taken into account by offsetting it against the interest, and then spreading the remainder of the interest over the period from acquisition to the interest payment date.

In the case of a foreign-currency obligation, the first step is to determine, in the currency of the obligation, the total return and the amount of that return allocated to each day. For this purpose, the level-yield method (or any similar method that is permissible) is applied using the foreign currency as the currency in which all computations are done. Next, the amounts allocated to each day in a taxation year are translated to Canadian dollars using a reasonable method of translation. Finally, the Canadian dollar amounts for the days at the beginning of which the taxpayer holds the obligation are totalled. One translation method that would generally be acceptable is to use the average exchange rate for the year. Where this approach is used, it will make no difference whether the amount allocated to each day is totalled before or after being translated to Canadian dollars. Thus, the accrued return for the year could be determined in the foreign currency, and then translated to Canadian dollars.

Subsection 9102(1) is restricted to specified debt obligations under which the debtor has made all required payments. If a debtor is in default, subsection 9102(3) will apply. In general, under subsection 9102(3) the accrued return for a taxation year will equal the amount that would be determined under subsection 9102(1) plus any additional interest that accrues in the year because of the default.

Related Provisions: ITA 257 — Negative amounts in formulas.

(3) Other obligations — For the purpose of paragraph 9101(1)(a), a taxpayer's accrued return for a taxation year from a specified debt obligation, other than an obligation to which subsection (1) applies, shall be determined

(a) using a reasonable method that,

(i) taking into account the extent to which the obligation differs from fixed payment obligations, is consistent with the principles implicit in the methods that can be used under subsection (1) for fixed payment obligations, and

(ii) is in accordance with generally accepted accounting practice for the measurement of profit from debt obligations; and

(b) on the basis of reasonable assumptions with respect to the timing and amount of any payments to be made by the debtor under the obligation that are not fixed in their timing or amount (measured in the primary currency of the obligation).

Technical Notes: Subsection 9102(3) contains rules regarding the determination of accrued returns from specified debt obligations for the purpose of paragraph 9101(1)(a). It applies to obligations other than those to which subsection 9102(1) applies. Generally, subsection 9102(3) should allow a taxpayer to recognize income from an obligation

using the same method for tax purposes as it uses for financial statement purposes.

Subsection 9102(3) requires that a taxpayer's accrued return from an obligation for each taxation year be determined using a reasonable method that is consistent with the principles implicit in the methods that subsection 9102(1) allows to be used for fixed payment obligations. The degree of consistency that is required depends on the extent to which the obligation is similar to fixed payment obligations. Subsection 9102(3) also requires that the method for determining the accrued return be in accordance with generally accepted accounting practice. Finally, it provides that reasonable assumptions are to be made with respect to the amount and timing of payments that are not fixed. Each of these requirements is discussed below.

Consistency with methods for fixed payment obligations

The following paragaphs describe the main consequences of the requirement that an accrual method used for a particular specified debt obligation be consistent with the principles that are implicit in the methods that can be used for fixed payment obligations.

The first consequence is that the accrued return for each year must be based on the total return that the taxpayer would realize if the obligation were held to maturity. Whether or not particular payments under the obligation are characterized as interest is irrelevant in determining the total return, and thus the amount to be accrued each year. Also, each year's return must include an amount in respect of any discount on the acquisition of the obligation. Conversely, an acquisition premium is to be applied to reduce the amount that would otherwise accrue each year.

Second, to the extent that the total return derives from fixed payments, it must generally accrue at a uniform (or approximately uniform) rate. For example, if the rate of interest for each period is the sum of a fixed rate and a variable rate, and the fixed rate is not the same for all periods, there would have to be a "levelling" of the fixed rates. This requirement to "level the interest rate" is not new. A similar requirement is contained in the accrual rules under subsection 7000(2).

It is not intended that interest be levelled where this would be inappropriate, such as where additional interest is payable because of the default of the debtor. For example, assume that a debt obligation that was acquired at its face amount provides for interest at the rate of 8%, and also provides that where the debtor fails to make a payment as required, interest on the overdue payment accrues at the rate of 11%. In this case, the accrued return for a year would equal the sum of the regular interest that accrues at the rate of 8% and any interest that accrues at 11% on overdue payments.

As indicated above, the consistency requirement is to be applied taking into account the extent to which an obligation differs from fixed payment obligations. This is relevant, in particular, for the levelling principle. For many variable rate debt obligations, it is appropriate to accrue the variable rate interest on the basis of the actual rates for each year. This would apply for example, if a debt obligation provides for interest that is set annually at a rate equal to the 1-year London Interbank Offered Rate (LIBOR) plus ½%. Another example is a debt obligation that provides for interest at a bank's prime rate plus 1%. Of course, any acquisition premium or discount would have to be taken into account in determining the accrued return for each year.

The third consequence of the consistency requirement is that payments of interest in a year are not directly included in the accrued return for the year. In other words, the accrued return is determined on the basis of accrual principles only. (In some circumstances, interest payments may be included in accrual adjustments determined under subsection 9102(5).) However, interest payments, like other payments, would be subtracted from the base on which the return is considered to accrue. Thus, if a debtor prepays interest, the payment has the same tax consequences as a payment of principal (assuming the payment of principal does not constitute a partial disposition of the obligation). In particular, accrued returns continue to be determined throughout the period for which the interest was prepaid.

Fourth, interest that has accrued before a taxpayer acquires an obligation is included in determining the taxpayer's accrued returns only to the extent that the accrued interest exceeds the portion of the cost of the obligation to the taxpayer that is attributable to the interest. This follows from the fact that the amount included in respect of the interest in the taxpayer's total projected return from the obligation is equal to the difference between the amount of the interest and the amount the taxpayer has paid for it.

Finally, in the case of a foreign-currency obligation, the amount that accrues each day is to be determined in the primary currency of the obligation and then translated to Canadian dollars. However, where amounts are translated using the average exchange rate for each year, the same result is obtained by totalling the daily accruals to give the accrued return for the year (measured in the primary currency) before translating to Canadian dollars.

Generally accepted accounting practice

One of the requirements imposed by subsection 9102(3) is that a method for determining accrued returns be in accordance with generally accepted accounting practice. The term "practice" is used rather than "principles" to indicate that the Handbook of The Canadian Institute of Chartered Accountants would not be the only source of information for determining what is acceptable.

Assumptions

The requirement that assumptions be made with respect to the timing and amount of payments that are not fixed is intended to ensure that a taxpayer reports reasonable accrued returns from an obligation that provides for contingent payments. For example, assume that a taxpayer holds an obligation that provides for interest payments at the rate of 3% per year, and an amount payable at maturity equal to $1,000 adjusted by the change in a stock index from the date of issue to the maturity date. In determining its accrued returns, the taxpayer would have to make a reasonable assumption about the amount that will be paid at maturity. This assumption may change from year to year, depending on the performance of the stock index. (The performance of the stock index may also give rise to accrual adjustments under subsection 9102(5).)

Whether it is actually necessary to make assumptions with respect to contingent payments depends on the method used to determine accrued returns. For example, assume that a 5-year obligation provides for interest that, at issue date and at each anniversary of that date, is set equal to the 1-year LIBOR rate plus 1%. A taxpayer that acquires the obligation at a discount may choose to accrue the discount on a straight-line basis over a reasonable period, and in addition to recognize the actual amount of interest that accrues each year. In this case, there would be no need to make any assumptions about future interest payments.

(4) Accrual adjustment — For the purposes of paragraphs 9101(1)(b) and (2)(a), where a taxation year of a taxpayer is the first taxation year for which subsection 142.3(1) of the Act applies to the taxpayer in respect of a specified debt obligation, the taxpayer's accrual adjustment in respect of the obligation for the year is nil.

Technical Notes: Subsections 9102(4) and (5) provide for the determination of accrual adjustments in respect of specified debt obligations. Where an accrual adjustment for a taxation year is positive, it is included in the amount prescribed by subsection 9101(1) in respect of the obligation for the year. A negative accrual adjustment is included in determining the amount prescribed by subsection 9101(2).

In general terms, an accrual adjustment in respect of an obligation for a taxation year is the amount by which prior years' accrued returns have to be adjusted to recognize payments under the obligation in the year that differ from those assumed for the purpose of determining the accrued returns. The adjustment also takes into account changes in assumptions regarding anticipated future payments under the obligation, to the extent that the changed assumptions will not be fully reflected in the determination of accrued returns for the current and future taxation years.

Subsection 9102(4) provides that a taxpayer's accrual adjustment in respect of a specified debt obligation is nil where the adjustment is being determined for the first taxation year for which subsection 142.3(1) of the Act applies with respect to the obligation. In this case, there are no accrued returns to be adjusted.

(5) For the purposes of paragraphs 9101(1)(b) and (2)(a), where subsection (4) does not apply to determine a taxpayer's accrual adjustment in respect of a specified debt obligation for a particular taxation year, the taxpayer's accrual adjustment is the positive or negative amount determined by the formula

$$A - B$$

where

A is the total of all amounts each of which is the amount that would be the taxpayer's accrued return from the obligation for a taxation year, before the

particular year, for which subsection 142.3(1) of the Act applied to the taxpayer in respect of the obligation if the accrued return were redetermined on the basis of

(a) the information available at the end of the particular year, and

(b) the assumptions, if any, with respect to the timing and amount of payments to be made under the obligation after the particular year that were used for the purpose of determining the taxpayer's accrued return from the obligation for the particular year; and

B is the total of

(a) the amount included under paragraph 9101(1)(a) as the taxpayer's accrued return from the obligation for the taxation year immediately preceding the particular year, and

(b) where the taxpayer's accrual adjustment in respect of the obligation for that immediately preceding taxation year was determined under this subsection, the value of A for the purpose of determining that accrual adjustment.

Technical Notes: Subsection 9102(5), which applies where subsection 9102(4) is not applicable, provides that a taxpayer's accrual adjustment in respect of a specified debt obligation for a particular taxation year is equal to

- the total of the taxpayer's accrued returns from the obligation for previous taxation years, redetermined to take into account all information available at the end of the particular year and to use the same assumptions regarding the timing and amount of payments as are used for the purpose of determining the accrued return for the particular year

minus

- the taxpayer's accrued return for the taxation year preceding the particular year, and
- if subsection 9102(5) applied to that preceding year, the redetermined amounts of the accrued returns that were used in determining the accrual adjustment for that year.

Related Provisions: ITA 257 — Negative amounts in formulas.

(6) Special cases and transition — The rules in this section for determining accrued returns and accrual adjustments are subject to section 9103.

Technical Notes: Subsection 9102(6) provides that the rules in section 9102 for determining accrued returns and accrual adjustments are subject to section 9103. Section 9103 contains rules for convertible obligations, impaired obligations and amended obligations, and also transition rules.

The following examples illustrate acceptable methods for determining accrued returns under subsection 9102(3), and show the calculation of accrual adjustments under subsection 9102(5). It should be noted that other methods may also be acceptable. It has been assumed that all methods are in accordance with generally acceptable accounting practice.

Example 1

A debt obligation is issued on January 1, 1996 and matures on January 1, 2001. The obligation has a face amount of $1,000 and provides for an interest payment each January 1st based on the value of 1-year LIBOR on the preceding January 1st minus 2%. The taxpayer acquires the obligation when it is issued, at a cost of $877. The taxpayer's taxation year is the calendar year.

The value of 1-year LIBOR on January 1, 1996 is 6% and on January 1, 1997 is 8%.

The taxpayer has chosen to recognize the discount using a level-yield approach.

Accrued returns and accrual adjustments:

1. Using the value of 1-year LIBOR on January 1, 1996 to project the future values produces interest payments of $40 each January 1st. On this basis, the internal rate of return for the obligation is 7%.

2. The taxpayer's accrued return for 1996 is equal to $61.39 (= $877 × .07).

3. The taxpayer's accrued return for 1997 consists of two components. The first is the amount that would be the accrued return if the value of 1-year LIBOR had remained at 6%. This amount is equal to $62.89 (= ($877 + $61.39 - $40) × .07). The second component is equal to the additional interest because of the difference between the assumed and the actual value of LIBOR. This additional interest is $20. Thus, the accrued return for 1997 is $82.89.

4. Accrued returns for 1998 to 2000 would be determined in a similar manner.

5. There are no accrual adjustments.

Example 2

The facts are the same as in example 1, except that the taxpayer has chosen to accrue the discount using a straight-line approach.

Accrued returns and accrual adjustments:

1. The amount of the discount to be accrued each year is $24.60 (= ($1,000 - $877) / 5).

2. The taxpayer's accrued return for 1996 is equal to $64.60 (= $40 + $24.60).

3. The taxpayer's accrued return for 1997 is equal to $84.60 (= $60 + $24.60).

4. Accrued returns for 1998 to 2000 would be determined in a similar manner.

5. There are no accrual adjustments.

Example 3

A debt obligation is issued on January 1, 1996 and matures on January 1, 1999. The obligation has a face amount of $1,000 and provides for quarterly interest payments. The interest payment for a quarter is based on a 90-day commercial paper rate at the beginning of the quarter, increased or decreased by a specified amount. For the first 4 interest payments, an amount of 1% is subtracted from the commercial paper rate (expressed on an annualized basis). For the next 4 payments, there is an increase of 1%. For the last 4 payments, the commercial paper rate is increased by 3%. The taxpayer acquires the obligation when it is issued, at a cost of $1,000. The taxpayer's taxation year is the calendar year.

The rates for 90-day commercial paper (on an annualized basis) are 6% throughout 1996, 5% throughout 1997 and 7% throughout 1998.

Accrued returns and accrual adjustments:

1. The adjustments to the commercial paper rate must be levelled. The average adjustment is an increase of 1% per year (= (-1% + 1% + 3%) / 3).

2. The accrued return for 1996 is $70 (= $1,000 × (.06 + .01)). The accrued returns for 1997 and 1998 are $60 and $80 respectively.

3. There are no accrual adjustments.

Example 4

A debt obligation is issued on January 1, 1996 and matures on January 1, 2001. The obligation has a face amount of $1,000 and provides for annual interest payments equal to 5% of the face amount. In addition, a bonus is payable on maturity, based on the debtor's cumulative profits over the 5 years. The taxpayer acquires the obligation when it is issued, at a cost of $1,000. The taxpayer's taxation year is the calendar year.

If the debtor had issued a fixed interest rate obligation for the same price, the interest rate would have been 9%.

The amount of the bonus payment is $151.32, and this amount is known before the end of 2000.

Accrued returns and accrual adjustments:

1. The taxpayer's accrued return for 1996 is equal to $90 (= $1,000 × .09).

2. For 1997, the amount to which the 9% rate of return is applied is equal to the face amount plus the difference between the accrued return for 1996 and the amount of interest that was paid, i.e. compounding applies to the unpaid portion of the accrued return. Thus, the taxpayer's accrued return for 1997 is equal to $93.60 (= ($1,000 + $90 - $50) × .09).

3. The taxpayer's accrued returns for 1998 and 1999 are $97.52 and $101.80 respectively.

4. Based on the actual bonus payment, the internal rate of return of the obligation to the taxpayer is 7.6%. Computing the taxpayer's accrued return for 2000 on the basis that all accrued returns were determined using this rate gives an accrued return for 2000 equal to $84.85.

5. Redetermining the taxpayer's accrued returns for 1996 to 1999 on the basis of the rate of return of 7.6% gives total accrued returns for those years equal to $316.47. Since the accrued returns that were reported by the taxpayer totalled $382.92, the taxpayer has an accrual adjustment for 2000 equal to -$66.45. Thus, in computing its income for the year 2000, the taxpayer can claim a deduction of $66.45 under paragraph 142.3(1)(b) of the Act.

6. The net amount included in the taxpayer's income for the year 2000 in respect of the obligation is $18.40 (= $84.85 - $66.45). This is equal to the total return of $401.32 minus $382.92 which was included in computing income for previous years.

Example 5

A debt obligation is issued on January 1, 1996 and matures on January 1, 2001. The amount payable at maturity is equal to $1,000 multiplied by the ratio of the value of a stock index on December 31, 2000 to the value of the index on December 31, 1995. In addition, the obligation provides for interest payments each January 1st equal to $30 multiplied by the ratio of the value of the stock index on the preceding December 31st to the value of the index on December 31, 1995. The taxpayer acquires the obligation when it is issued, at a cost of $1,050. The taxpayer's taxation year is the calendar year.

Accrued returns and accrual adjustments:

1. The taxpayer's accrued return from the obligation for each year is equal to

- the increase, if any, in the adjusted face amount from the end of the preceding year to the end of the current year — the adjusted face amount at any time is equal to $1,000 multiplied by the ratio of the value of the stock index at that time to the value of the stock index on December 31, 1995

plus

- the actual interest for the year

minus

- $10 in respect of the $50 premium over the initial face amount.

2. There would be an accrual adjustment for any year in which the stock index declines. The adjustment would be a negative amount equal to the decrease in the adjusted face amount of the obligation.

Definitions [Reg. 9102]: "amount" — ITA 248(1); "fixed payment obligation" — Reg. 9100; "level-yield method" — Reg. 9102(2); "primary currency" — Reg. 9100; "specified debt obligation" — ITA 142.2(1), Reg. 9100; "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "total return" — Reg. 9100.

9103. Accrual rules — special cases and transition — (1) Convertible obligation — For the purposes of section 9102, where the terms of a specified debt obligation of a taxpayer give the taxpayer the right to exchange the obligation for shares of the debtor or of a corporation related to the debtor,

(a) subject to paragraph (b), the right shall be disregarded (whether or not it has been exercised); and

(b) unless less than 5% of the cost of the obligation to the taxpayer is attributable to the right, the cost shall be deemed to equal the amount by which the cost exceeds the portion of the cost attributable to the right.

Technical Notes: Section 9103 contains rules that apply with respect to the determination of accrued returns and accrual adjustments under section 9102. There are rules for convertible obligations, impaired obligations and amended obligations, and also transition rules.

Subsection 9103(1) contains two rules that apply with respect to a specified debt obligation that is convertible into shares of the debtor or of a corporation related to the debtor. Paragraph 9103(1)(a) provides that the conversion right is to be disregarded in determining accrued returns and accrual adjustments. Thus, the possibility that the obligation will be settled by way of shares does not enter into the determination of these amounts. In addition, the actual exercise of the conversion right is ignored for the purpose of determining the accrued return and accrual adjustment for the year of exercise. However, any gain from converting to shares is recognized under the rules in section 142.4 of the Act for the disposition of obligations.

Paragraph 9103(1)(b) provides that if 5% or more of the cost of a convertible obligation is attributable to the conversion right, the taxpayer's cost is to be considered to be the actual cost minus the amount that is attributable to the conversion right. This rule has the effect of preventing a taxpayer from deducting the cost of a conversion right, where this cost is a significant amount. The cost attributable to a conversion right can be determined as the difference between the actual cost of the obligation and the estimated fair market value of the obligation without the conversion right.

It should be noted that subsection 9103(1) does not apply where a debt obligation is convertible into shares of a corporation not related to the debtor. In this case, the possibility of conversion must be taken into account in determining accrued returns. Where the value of the conversion right is material, a method for determining accrued returns will generally not be considered reasonable unless it is based on an assumption that the right will be exercised and a reasonable value is assumed for the shares.

(2) Default by debtor [temporary — see below] — For the purposes of section 9102, in determining amounts in respect of a specified debt obligation, no reduction shall be made on account of the possible or actual failure of the debtor to make any payments under the obligation.

Technical Notes: Subsection 9103(2) provides that accrued returns and accrual adjustments are to be determined in respect of a specified debt obligation without any reduction for the possible or actual failure of the debtor to make any payments under the obligation. Deductions in respect of impaired debts can be claimed under paragraphs 20(1)(l) (doubtful debt reserve) and 20(1)(p) (bad debt deduction) of the Act.

(3) Amendment of obligation — For the purposes of determining accrued returns and accrual adjustments under section 9102, where the terms of a specified debt obligation of a taxpayer have been amended to change the timing or amount of any payment to be made under the obligation, the amendment shall be taken into account as if the obligation had been acquired at the time the amendment was made.

Technical Notes: Subsection 9103(3) applies where a specified debt obligation has been amended to change the timing or amount of a payment to be made under the obligation. It provides that the amendment is to be taken into account as if the obligation had been acquired when the amendment was made. This means that the amendment affects future accrued returns only. For example, if accrued returns are being determined for a debt obligation using the level-yield method, the rate of return would be redetermined for the period after the amendment, and there would be no accrual adjustment in respect of the amendment.

It should be noted that subsection 9103(3) applies with respect to payments that are not required to be made until after the amendment. If overdue payments are forgiven, a bad debt deduction would generally be available under paragraph 20(1)(p) of the Act.

(4) Obligations acquired before financial institution rules apply — Where a taxpayer held a specified debt obligation at the beginning of the taxpayer's first taxation year (in this subsection referred to as the "initial year") for which subsection 142.3(1) of the Act applied to the taxpayer in respect of the obligation, the following rules apply:

(a) the taxpayer's accrued return from the obligation for the initial year or a subsequent taxation year shall not include an amount to the extent that the amount was included in computing the taxpayer's income for a taxation year preceding the initial year; and

(b) where

(i) interest on the obligation in respect of a period before the initial year becomes receivable or is received by the taxpayer in a particular taxation year that is the initial year or a subsequent taxation year, and

(ii) all or part of the interest would not, but for this paragraph, be included in computing the taxpayer's income for any taxation year,

there shall be included in determining the taxpayer's accrued return from the obligation for the particular year the amount, if any, by which

(iii) the portion of the interest that would not otherwise be included in computing the taxpayer's income for any taxation year

exceeds

(iv) the portion of the cost of the obligation to the taxpayer that is reasonably attributable to that portion of the interest.

Technical Notes: Subsection 9103(4) applies with respect to a specified debt obligation held by a taxpayer at the beginning of its first taxation year to which subsection 142.3(1) of the Act applies. Subsection 9103(4) ensures a proper transition from subsection 12(3) of the Act to subsection 142.3(1). It is expected that there will be few obligations for which subsection 9103(4) is relevant.

Paragraph 9103(4)(a) provides that a taxpayer's accrued return for a taxation year does not include an amount to the extent that the amount was included in computing the taxpayer's income for a taxation year before subsection 142.3(1) commenced to apply. This rule would apply, for example, where prepaid interest has been included in income under subsection 12(3). A reasonable adjustment would be made to the accrued returns that are otherwise determined to allow for the return that has already been recognized. Paragraph 9103(4)(a) would also apply where subsection 16(3) of the Act has required a discount on the issue of a debt obligation to be included in the taxpayer's income.

Paragraph 9103(4)(b) applies with respect to interest that is received or becomes receivable in a taxation year in which subsection 142.3(1) of the Act is applicable, where the interest is in respect of a period before that subsection applied. Paragraph 9103(4)(b) provides that the taxpayer's accrued return for the year from the obligation includes the amount by which (i) the portion of the interest that would not otherwise be taken into account in computing the taxpayer's income for any taxation year exceeds (ii) the portion of the taxpayer's cost of the obligation that is reasonably attributable to that portion of the interest. This paragraph might apply, for example, where a taxpayer receives a contingent interest payment in the first year in which subsection 142.3(1) applies, and part or all of the payment is in respect of a previous taxation year. If the portion of the interest payment that is in respect of the previous year has not been included in computing the taxpayer's income for that year, and would not otherwise be included in the taxpayer's accrued return for the current year, paragraph 9103(4)(b) will include it in the accrued return.

(5) Prepaid interest — transition rule — Where, before November 1994 and in a taxation year that ended after February 22, 1994, a taxpayer received an amount under a specified debt obligation in satisfaction, in whole or in part, of the debtor's obligation to pay interest in respect of a period after the year,

(a) the amount may, at the election of the taxpayer, be included in determining the taxpayer's accrued return for the year from the obligation; and

(b) where the amount is so included, the taxpayer's accrued returns for subsequent taxation years from the obligation shall not include any amount in respect of interest that, because of the payment of the amount, the debtor is no longer required to pay.

Technical Notes: Subsection 9103(5) applies where a taxpayer received a prepayment of interest on a debt obligation before November 1994 and in a taxation year that ended after February 22, 1994. Subsection 9103(5) allows the taxpayer to include the full amount of the prepaid interest in its accrued return for the year in which it received the prepayment, in which case the taxpayer's accrued returns for subsequent years are to be determined without including any amount in respect of the prepaid interest.

Definitions [Reg. 9103]: "amount" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "initial year" — Reg. 9103(4); "related" — ITA 251(2)-(6); "share" — ITA 248(1); "specified debt obligation" — ITA 142.2(1), Reg. 9100; "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

9104. Foreign exchange adjustment — (1) For the purposes of paragraphs 9101(1)(c) and (2)(b), where, at the end of a taxation year, a taxpayer holds a specified debt obligation the primary currency of which is not Canadian currency, the taxpayer's foreign exchange adjustment in respect of the obligation for the year is the positive or negative amount determined by the formula

$$(A \times B) - C$$

where

A is the amount that would be the tax basis of the obligation to the taxpayer at the end of the year if

(a) the tax basis were determined using the primary currency of the obligation as the currency in which all amounts are expressed,

(b) the definition "tax basis" in subsection 142.4(1) of the Act were read without reference to paragraphs (f), (h), (o) and (q), and

(c) the taxpayer's foreign exchange adjustment in respect of the obligation for each year were nil,

B is the rate of exchange at the end of the year of the primary currency of the obligation into Canadian currency, and

C is the amount that would be the tax basis of the obligation to the taxpayer at the end of the year if

(a) the definition "tax basis" were read without reference to paragraphs (h) and (q), and

(b) the taxpayer's foreign exchange adjustment in respect of the obligation for the year were nil.

Technical Notes: Section 9104 provides for the determination of foreign exchange adjustments in respect of specified debt obligations. Foreign exchange adjustments are determined if the primary currency of an obligation is not the Canadian dollar. As defined in section 9100, the primary currency of an obligation is the currency with which the obligation is primarily connected. Where a foreign exchange adjustment for a taxation year is positive, it is included in the amount prescribed by subsection 9101(1) in respect of the obligation for the year. A negative adjustment is included in determining the amount prescribed by subsection 9101(2).

Subsection 9104(1) applies where a taxpayer holds a foreign currency obligation at the end of a taxation year. It provides that the foreign exchange adjustment in respect of the obligation for the year is to be computed as follows:

1. Determine the tax basis of the obligation to the taxpayer at the end of the year, using the primary currency of the obligation as the currency in which all amounts are expressed. For this purpose, the definition of "tax basis" in subsection 142.4(1) of the Act is modified so that it does not include (i) any amounts in respect of the change in value of a foreign currency relative to the Canadian dollar, and (ii) the amounts referred to in paragraphs (f) and (q) of the definition (adjustments in determining the adjusted cost base on February 22, 1994 of an obligation that was a capital property).
2. Translate the tax basis to Canadian dollars using the spot rate of exchange at the end of the year.
3. Subtract the Canadian dollar tax basis at the end of the year, determined on the assumption that the foreign exchange adjustment in respect of the obligation for the year is nil, and without taking into account the amounts referred to in paragraphs (f) and (q) of the definition of "tax basis".

The following example illustrates the operation of subsection 9104(1):

Example

A U.S. dollar debt obligation is issued on December 31, 1995 and matures on December 31, 2000. The obligation has a face amount of US$1,000 and provides for interest at the rate of 6%, payable annually. The taxpayer acquires the obligation when it is issued, at a cost of US$900. The taxpayer's taxation year is the calendar year.

The exchange rates (C$/US$) to the end of 1998 are:

	Year-end	Average
1995	$1.36	—

1996	1.30	$1.34
1997	1.35	1.32
1998	1.32	1.34

Results for first 3 years:

	1996	1997	1998
US Dollar Tax Basis	**(US$)**	**(US$)**	**(US$)**
Tax basis (beginning of year)	900.00	916.86	935.17
Add: accrued return	76.86	78.30	79.87
Deduct: interest received	60.00	60.00	60.00
Tax basis (end of year)	916.86	935.17	955.03
Foreign Exchange Adjustment	**(C$)**	**(C$)**	**(C$)**
Tax basis (beginning of year)	1224.00	1191.92	1262.48
Add: accrued return[1]	103.00	103.36	107.02
Deduct: interest received	78.00	81.00	79.20
Tax basis (before current year foreign exchange adjustment)	1249.00	1214.28	1290.30
US$ tax basis - translated	1191.92	1262.48	1260.65
Foreign exchange adjustment	(57.07)	48.19	(29.65)

Table Notes:

1. Translated using the average exchange rate for the year.

Related Provisions: ITA 257 — Negative amounts in formulas.

I.T. Technical News: 15 (tax consequences of the adoption of the "euro" currency).

(2) Where a taxpayer disposes of a specified debt obligation the primary currency of which is not Canadian currency, the taxpayer's foreign exchange adjustment in respect of the obligation for the taxation year in which the disposition occurs is the amount that would be the foreign exchange adjustment if the year had ended immediately before the disposition.

Technical Notes: Subsection 9104(2) provides for the determination of a foreign exchange adjustment for the taxation year in which a taxpayer disposes of a foreign currency debt obligation. The foreign exchange adjustment is the amount that would be determined under subsection 9104(1) if the taxation year had ended immediately before the disposition.

(3) At the election of a taxpayer, subsection (2) does not apply to specified debt obligations disposed of by the taxpayer before 1996.

Technical Notes: Subsection 9104(3) provides that, at the election of a taxpayer, subsection 9104(2) does not apply to dispositions of debt obligations before 1996. Where a taxpayer makes this election, any foreign-exchange-related change in value of an obligation that arises in the year of disposition will be an element in the determination of the total gain or loss from the disposition of the obligation.

Definitions [Reg. 9104]: "amount" — ITA 248(1); "disposed", "disposes" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "primary currency" — Reg. 9100; "specified debt obligation" — ITA 142.2(1), Reg. 9100; "tax basis" — ITA 142.4(1), Reg. 9100; "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

Application: The June 1, 1995 draft regulations (securities held by financial institutions), s. 9, will add Part XCI (ss. 9100 to 9104), applicable to taxation years that end after February 22, 1994.

Proposed Repeal — Reg. 9103(2)

Application: The November 14, 1997 draft regulations (impaired loans), s. 9, will repeal subsec. 9103(2), applicable

(a) to taxation years that end after September 1997; and

(b) to taxation years that end after 1995 and before October 1997 where the taxpayer elects under subparagraph 3(5)(b) of the attached draft amendments to the *Income Tax Act*.

Technical Notes: Part XCI contains rules for determining the amounts that a financial institution is required to include or deduct each year in respect of a specified debt obligation in computing its income.

Subsection 9103(2) provides that accrued returns and accrual adjustments are to be determined in respect of a specified debt obligation without any reduction for the possible or actual failure of the debtor to make any payments under the obligation. Subsection 9103(2) is repealed as a consequence of the introduction of new subsection 142.3(4) of the *Income Tax Act*. The repeal of subsection 9103(2) applies to taxation years that end after September 1997, and also to taxation years that end after 1995 and before October 1997 where the taxpayer elects to have the reserve provisions in new paragraph 20(1)(l) of the Act apply to those years.

PART XCII — FINANCIAL INSTITUTIONS — DISPOSITION OF SPECIFIED DEBT OBLIGATIONS [PROPOSED]

Proposed Addition — Part XCII (Reg. 9200–9204)

Technical Notes: Part XCII contains provisions relating to the disposition of specified debt obligations by financial institutions. These include:

- a definition of "transition amount";
- provisions that prescribe certain specified debt obligations for exclusion from the amortization requirement; and
- rules for amortizing gains and losses from the disposition of specified debt obligations.

9200. Interpretation — (1) Definitions — In this Part,

"financial institution" has the meaning assigned by subsection 142.2(1) of the Act;

Technical Notes: "Financial institution" has the meaning given to that term by subsection 142.2(1) of the Act.

"gain" of a taxpayer from the disposition of a specified debt obligation means the gain from the disposition determined under paragraph 142.4(6)(a) of the Act;

Technical Notes: A taxpayer's "gain" from the disposition of a specified debt obligation is the gain determined under paragraph 142.4(6)(a) of the Act.

"loss" of a taxpayer from the disposition of a specified debt obligation means the loss from the disposition determined under paragraph 142.4(6)(b) of the Act;

Technical Notes: A taxpayer's "loss" from the disposition of a specified debt obligation is the loss determined under paragraph 142.4(6)(b) of the Act.

"residual portion" of a taxpayer's gain or loss from the disposition of a specified debt obligation means the amount determined under subsection 142.4(8) of the Act in respect of the disposition;

Technical Notes: The "residual portion" of a taxpayer's gain or loss from the disposition of a specified debt obligation is the amount determined under subsection 142.4(8) of the Act in respect of the disposition. The residual portion is the amount of the gain or loss that is required to be amortized (if the amortization requirement applies to the obligation).

"specified debt obligation" of a taxpayer has the meaning assigned by subsection 142.2(1) of the Act;

Technical Notes: "Specified debt obligation" has the meaning given to that term by subsection 142.2(1) of the Act. It should be noted that this term is defined from the perspective of the holder. For example, where a taxpayer holds a coupon that has been stripped from a debt obligation and holds no other interest in the obligation, the specified debt obligation of the taxpayer is just the coupon. It should also be noted that, if a taxpayer disposes of part of a specified debt obligation, subsection 142.4(9) applies to deem the part disposed of and the retained part to be separate specified debt obligations.

"tax basis" of a specified debt obligation to a taxpayer has the meaning assigned by subsection 142.4(1) of the Act.

Technical Notes: The "tax basis" of a specified debt obligation to a taxpayer is the amount defined by subsection 142.4(1) of the Act. The tax basis is analogous to the adjusted cost base of capital property.

(2) Amortization date — For the purposes of this Part, the amortization date for a specified debt obligation disposed of by a taxpayer is the day determined as follows:

(a) subject to paragraphs (b) to (d), the amortization date is the later of the day of disposition and the day on which the debtor is required to make the final payment under the obligation, determined without regard to any option respecting the timing of payments under the obligation (other than an option that was exercised before the disposition);

(b) subject to paragraphs (c) and (d), where the day on which the debtor is required to make the final payment under the obligation is not determinable for the purpose of paragraph (a), the amortization date is the day of disposition;

(c) subject to paragraph (d), where

(i) the obligation provides for stipulated interest payments,

(ii) the rate of interest for one or more periods after the issuance of the obligation was not fixed on the day of issue, and

(iii) when the obligation was issued, it was reasonable to expect that the interest rate for each period would equal or approximate a reasonable market rate of interest for that period,

the amortization date is the first day, if any, after the disposition on which the interest rate could change; and

(d) where, for purposes of its financial statements, the taxpayer had a gain or loss from the disposition that is being amortized to profit, the amortization date is the last day of the amortization period.

Technical Notes: Subsection 9200(2) contains rules for determining the amortization date for a specified debt obligation disposed of by a taxpayer. This date is used in subsections 9203(2) and (4) to determine the end of the amortization period for an obligation or group of obligations. It is also used in subsection 9202(2) for determining whether an obligation is excluded from the amortization requirement.

Paragraph 9200(2)(a) provides that the amortization date is the day on which the debtor is required to make the final payment under the specified debt obligation or, if later, the day of disposition. The day of disposition would be later where, for example, the debtor has failed to repay borrowed money on the maturity date of the obligation. In determining when the final payment is required to be made, an option to redeem or retract an obligation, or to extend its maturity date, is to be disregarded unless it has been exercised. Paragraph 9200(2)(a) applies only if none of paragraphs 9200(2)(b) to (d) applies.

It should be noted that a specified debt obligation is a taxpayer's interest in a debt obligation issued by the debtor. The amortization date is determined with respect to the taxpayer's interest. Where, for example, the taxpayer holds a coupon stripped from a debt obligation, the amortization date is the payment date for the coupon.

Paragraph 9200(2)(b) applies where the date for the last payment is not determinable, and so paragraph 9200(2)(a) cannot be applied. This would be the case, for example, where the maturity date is based on a contingency. Paragraph 9200(2)(b) provides that, subject to paragraphs 9200(2)(c) and (d), the amortization date is the day of disposition.

Paragraph 9200(2)(c) applies if the obligation is a variable interest rate debt obligation and, at the time the obligation was issued, the interest rate for each period was expected to equal or approximate a reasonable market rate. In this case, the amortization date is the day before the next interest reset date. Paragraph 9200(2)(c) does not apply if there are no interest reset dates after the disposition, or if paragraph 9200(2)(d) is applicable. An example of a debt obligation to which paragraph 9200(2)(c) would apply is an obligation with a 10-year term that provides for the interest rate to be reset every two years to LIBOR plus 1%.

Paragraph 9200(2)(d) applies where, for the purposes of its financial statements, the taxpayer has a gain or loss from the disposition that is being amortized. In this case, the amortization date is the last day of the financial statement amortization period.

Definitions [Reg. 9200]: "amortization date" — Reg. 9200(2); "amount" — ITA 248(1); "disposed" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "gain", "loss" — Reg. 9200(1); "specified debt obligation" — ITA 142.2(1), Reg. 9200(1); "taxpayer" — ITA 248(1).

9201. Transition amount — For the purpose of subsection 142.4(1) of the Act, "transition amount" of a taxpayer in respect of the disposition of a specified debt obligation means,

(a) where neither paragraph (b) nor (c) applies, nil;

(b) where

(i) the taxpayer acquired the obligation before its taxation year that includes February 23, 1994,

(ii) neither paragraph 7000(2)(a) nor (b) has applied to the obligation, and

(iii) the principal amount of the obligation exceeds the cost of the obligation to the taxpayer (which excess is referred to in this paragraph as the "discount"),

the amount determined by the formula

$$A - B$$

where

A is the total of all amounts each of which is the amount included in respect of the discount in computing the taxpayer's profit for a taxation year that ended before February 23, 1994, and

B is the total of all amounts each of which is the amount included in respect of the discount in computing the taxpayer's income for a taxation year that ended before February 23, 1994; and

(c) where

(i) the conditions in subparagraphs (b)(i) and (ii) are satisfied, and

(ii) the cost of the obligation to the taxpayer exceeds the principal amount of the obligation (which excess is referred to in this paragraph as the "premium"),

the negative of the amount determined by the formula

$$A - B$$

where

A is the total of all amounts each of which is the amount deducted in respect of the premium in computing the taxpayer's profit for a taxation year that ended before February 23, 1994, and

B is the total of all amounts each of which is the amount deducted in respect of the premium in computing the taxpayer's income for a taxation year that ended before February 23, 1994.

Technical Notes: Subsection 142.4(1) of the Act provides that the transition amount of a taxpayer in respect of the disposition of a specified debt obligation is the amount defined by regulation. This amount is relevant if subsection 142.4(4) of the Act applies in respect of the disposition. The transition amount is required to be recognized in the year of disposition.

Section 9201 defines "transition amount" for the purpose of subsection 142.4(1). In general terms, the transition amount is the amount of any premium or discount that has been recognized for financial statement purposes, but not for tax purposes, to the beginning of the taxation year that includes February 23, 1994.

Paragraphs 9201(b) and (c) provide for the determination of the transition amount in respect of the disposition of a specified debt obligation by a taxpayer where the following conditions are satisfied:

- the taxpayer acquired the obligation before its taxation year that includes February 23, 1994,
- the accrual rules in paragraphs 7000(2)(a) and (b) have not applied to the obligation, and
- the principal amount of the obligation differs from its cost to the taxpayer, i.e. the obligation was purchased at a discount or premium.

Paragraph 9201(b), which applies in the case of a discount, provides that the transition amount is equal to the amount of the discount that has been included in determining the taxpayer's financial statement profit for taxation years ending before February 23, 1994 minus the amount of the discount included in determining its income for those years for tax purposes. Thus, the transition amount will be nil if, for tax purposes, the taxpayer has been following its financial statement reporting.

Paragraph 9201(c) contains a similar rule for premiums, except that the transition amount will be negative if it is not nil.

Paragraph 9201(a) provides that if neither of paragraphs 9201(b) and (c) applies, the transition amount is nil.

Related Provisions: ITA 257 — Negative amounts in formulas.

Definitions [Reg. 9201]: "amount" — ITA 248(1); "discount" — Reg. 9201(b)(iii); "disposition" — ITA 248(1); "premium" — Reg. 9201(c)(ii); "principal amount" — ITA 248(1); "specified debt obligation" — ITA 142.2(1), Reg. 9200(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

9202. Prescribed debt obligations — (1) The following rules apply with respect to an election made under subsection (3) or (4) by a taxpayer:

(a) the election applies only if

(i) it is in writing,

(ii) it specifies the first taxation year (in this subsection referred to as the "initial year") of the taxpayer to which it is to apply, and

(iii) either it is received by the Minister within 6 months after the end of the initial year, or the Minister has expressly accepted the later filing of the election;

(b) subject to paragraph (c), the election applies to dispositions of specified debt obligations in the initial year and subsequent taxation years; and

(c) where the Minister has approved, on written application by the taxpayer, the revocation of the election, the election does not apply to dispositions of specified debt obligations in the taxation year specified in the application and in subsequent taxation years.

Technical Notes: Subsection 142.4(5) of the Act provides that the full gain or loss from the disposition of certain specified debt obligations is required to be taken into account in the taxation year of disposition. In other words, the amortization rules do not apply to these gains and losses. Obligations to which this subsection applies include obligations prescribed under subparagraph 142.4(5)(a)(ii). Section 9202 prescribes certain debt obligations for this purpose.

Subsections 9202(3) and (4) provide for elections to be made by a taxpayer. An election is made under subsection 9202(3) if a taxpayer does not want subsection 9202(2) to apply. An election is made under subsection 9202(4) if a taxpayer wants that subsection to apply. Subsection 9202(1) sets out the rules that apply with respect to these elections.

An election must (i) be in writing, (ii) specify the first taxation year to which it applies, and (iii) be received by the Minister of National Revenue within 6 months after the end of that first year (unless the Minister accepts a later filing). An election continues to apply until the taxpayer revokes it. A revocation requires the Minister's approval, and written application must be made for that approval.

(2) Subject to subsection (3), for the purpose of subparagraph 142.4(5)(a)(ii) of the Act, a specified debt obligation disposed of by a taxpayer in a taxation year is prescribed in respect of the taxpayer where the amortization date for the obligation is not more than two years after the end of the year.

Technical Notes: Subsection 9202(2) prescribes certain specified debt obligations for the purpose of subparagraph 142.4(5)(a)(ii) of the Act. Prescribed obligations are excluded from the amortization rules for gains and losses. An obligation is prescribed by subsection 9202(2) if its amortization date (as determined under subsection 9200(2)) is within two years of the end of the taxation year in which the taxpayer disposed of the obligation. However, subsection 9202(2) does not apply to a taxpayer if the conditions in subsection 9202(3) are satisfied.

(3) Subsection (2) does not apply in respect of a taxpayer for a taxation year where

(a) generally accepted accounting principles require that the taxpayer's gains and losses arising on the disposition of a class of debt obligations be amortized to profit for the purpose of the taxpayer's financial statements;

(b) the taxpayer has elected not to have subsection (2) apply; and

(c) the election applies to dispositions in the year.

Technical Notes: Subsection 9202(3) provides that subsection 9202(2) does not apply to a taxpayer if (i) the taxpayer is required by generally accepted accounting principles (GAAP) to amortize gains and losses from a class of debt obligations, and (ii) the taxpayer has elected not to have subsection 9202(2) apply. This exclusion enables a taxpayer that is required to amortize some or all of its gains and losses for financial statement purposes to choose to also amortize them for tax purposes even if the amortization period is short. It should be noted that the exclusion applies to all obligations, not just those for which GAAP requires amortization. See subsection 9202(1) for rules regarding elections under subsection 9202(3).

(4) For the purpose of subparagraph 142.4(5)(a)(ii) of the Act, a specified debt obligation disposed of by a taxpayer in a taxation year is prescribed in respect of the taxpayer where

(a) the taxpayer has elected to have this subsection apply;

(b) the election applies to dispositions in the year; and

(c) the absolute value of the positive or negative amount determined by the formula

$$A - B$$

does not exceed the lesser of $5,000 and the amount, if any, specified in the election, where

A is the total of all amounts each of which is the residual portion of the taxpayer's gain from the disposition of the obligation or any other specified debt obligation disposed of in the same transaction, and

B is the total of all amounts each of which is the residual portion of the taxpayer's loss from the disposition of the obligation or any other specified debt obligation disposed of in the same transaction.

Technical Notes: Subsection 9202(4) prescribes certain specified debt obligations for the purpose of subparagraph 142.4(5)(a)(ii) of the Act. Prescribed obligations are excluded from the amortization rules that apply to gains and losses. Subsection 9202(4) is an elective provision — see subsection 9202(1) for rules relating to elections.

Where subsection 9202(4) applies, a specified debt obligation is prescribed if the taxpayer's net gain or loss from the disposition of the obligation and from other obligations disposed of in the same transaction does not exceed $5,000. A taxpayer may elect to have a lower threshhold for this purpose. Such an election might be made where, for example, the taxpayer is required to amortize gains and losses for financial

statement purposes, but does not amortize if the gain or loss is less than $1,000.

Related Provisions: ITA 257 — Negative amounts in formulas.

(5) For the purpose of subparagraph 142.4(5)(a)(ii) of the Act, a specified debt obligation disposed of by a taxpayer in a taxation year is prescribed in respect of the taxpayer where

(a) the disposition resulted in an extinguishment of the obligation, other than an extinguishment that occurred because of a purchase of the obligation by the debtor in the open market;

(b) the taxpayer had the right to require the obligation to be settled at any time; or

(c) the debtor had the right to settle the obligation at any time.

Technical Notes: Subsection 9202(5) prescribes certain specified debt obligations for the purpose of subparagraph 142.4(5)(a)(ii) of the Act. Prescribed obligations are excluded from the amortization rules for gains and losses. A specified debt obligation is prescribed by subsection 9202(5) if the disposition of the obligation results in its extinguishment. An obligation would be prescribed, for example, where the disposition occurs because the debtor settles it, whether at the scheduled maturity date or as a result of the exercise of an option to redeem or retract before that date. As another example, a specified debt obligation would be prescribed where the holder exercises an option to convert it into shares. As an exception, an obligation is not prescribed where the extinguishment occurs because of an open market purchase of the obligation by the debtor.

Subsection 9202(5) also prescribes a specified debt obligation if the obligation is an obligation that was payable on demand or that could be redeemed at any time by the debtor.

Definitions [Reg. 9202]: "amortization date" — Reg. 9200(2); "amount" — ITA 248(1); "disposed" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "election" — Reg. 9202(1); "gain" — Reg. 9200(1); "initial year" — Reg. 9202(1)(a)(ii); "loss" — Reg. 9200(1); "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "prescribed" — ITA 248(1); "residual portion" — Reg. 9200(1); "specified debt obligation" — ITA 142.2(1), Reg. 9200(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1); "written" — *Interpretation Act* 35(1)"writing".

9203. Residual portion of gain or loss — (1) Allocation of residual portion — Subject to section 9204, where subsection 142.4(4) of the Act applies to the disposition of a specified debt obligation by a taxpayer, the amount allocated to each taxation year in respect of the residual portion of the gain or loss from the disposition shall be determined, for the purpose of that subsection,

(a) by a method that complies with, or is substantially similar to a method that complies with, subsection (2); or

(b) where gains and losses from the disposition of debt obligations are amortized to profit for the purpose of the taxpayer's financial statements, by the method used for the purpose of the taxpayer's financial statements.

Technical Notes: Section 9203 contains rules for determining the amount of the residual portion of a gain or loss from the disposition of a specified debt obligation that must be recognized each year under subparagraph 142.4(4)(c)(ii) or (d)(ii) of the Act. These rules are subject to section 9204, which applies after certain reorganizations and other events.

Subsection 9203(1) specifies the methods that are permitted for amortizing the residual portion of a gain or loss from the disposition of a specified debt obligation. Any method may be used if it complies with subsection 9203(2), or is substantially similar to a method that so complies. Subsection 9203(2) provides for the amount allocated to each year to be determined on a straight-line proration basis. It is intended that the reference to substantially similar methods generally include the method that provides for the amount allocated to each year to equal to the difference between (i) the amount that would have accrued in the year in respect of the obligation if the taxpayer had retained it, and (ii) the amount that would have accrued in the year in respect of the obligation if the taxpayer had reacquired the obligation immediately after disposing of it.

Where a taxpayer amortizes gains and losses for the purpose of its financial statements, the taxpayer is permitted to use the same method of amortization for tax purposes. This rule allows the financial statement method to be used for all obligations, including obligations that are not subject to amortization for financial statement purposes.

(2) Proration method — For the purpose of subsection (1), a method for allocating to taxation years the residual portion of a taxpayer's gain or loss from the disposition of a specified debt obligation complies with this subsection where the amount allocated to each taxation year is determined by the formula

$$A \times \frac{B}{C}$$

where

A is the residual portion of the taxpayer's gain or loss;

B is the number of days in the year that are in the period referred to in the description of C; and

C is the number of days in the period that,

(a) where subsection (3) applies in respect of the obligation, is determined under that subsection, and

(b) in any other case,

(i) begins on the day on which the taxpayer disposed of the obligation, and

(ii) ends on the earlier of

(A) the amortization date for the obligation, and

(B) the day that is 20 years after the day on which the taxpayer disposed of the obligation.

Technical Notes: Subsection 9203(2) sets out, for the purpose of subsection 9203(1), a method for amortizing the residual portion of the gain or loss from the disposition of a specified debt obligation. The method involves prorating the residual portion on a straight-line basis over the amortization period. More specifically, the amount allocated to a particular taxation year is equal to the residual portion of the gain or loss times the proportion of days in the amortization period that are in the year. Generally, the amortization period for an obligation is the period that begins on the day of disposition of the obligation and ends on the earlier of the amortization date determined under subsection 9200(2) and the day that is 20 years after the day of disposition. However, where subsection 9203(3) applies, the amortization period is determined pursuant to that subsection and subsection 9203(4).

(3) Single proration period — Where

(a) a taxpayer has elected in its return of income for a taxation year to have this subsection apply in respect of the specified debt obligations disposed of in a transaction in the year,

(b) all the obligations were disposed of at the same time, and

(c) the number of the obligations to which subsection 142.4(4) of the Act applies is at least 50,

the period determined under this subsection in respect of the obligations is the period that begins on the day of disposition of the obligations and ends on the weighted average amortization date for those obligations to which subsection 142.4(4) applies.

Technical Notes: Under the amortization method set out in subsection 9203(2), the residual portion of the gain or loss from the disposition of a specified debt obligation is spread on a straight-line basis over the amortization period for the obligation. Subsection 9203(3) allows a taxpayer

to use the same amortization period for a group of specified debt obligations that were disposed of at the same time in the same transaction, if there are at least 50 obligations to which subsection 142.4(4) of the Act applies. This enables the net residual gain or loss to be spread as if it were from the disposition of a single obligation.

Where subsection 9203(3) applies, the amortization period starts on the day of disposition of the obligations, and ends on the weighted average amortization date determined under subsection 9203(4) for those obligations to which subsection 142.4(4) applies. In this regard, obligations that are prescribed by section 9202 (obligations excluded from amortization requirement) are not taken into account in determining the weighted average amortization date. In particular, obligations that are prescribed because their amortization dates are not more than two years after the end of the year of disposition are disregarded.

Subsection 9203(3) applies on an elective basis. An election must be made in the tax return for the year in which the obligations were disposed of. No special form is required for the election — it could be made, for example, by including a page with the return that identifies the transaction to which the election applies.

(4) Weighted average amortization date — For the purpose of subsection (3), the weighted average amortization date for a group of specified debt obligations disposed of on the same day by a taxpayer is,

(a) where paragraph (b) does not apply, the day that is the number of days after the day of disposition equal to the total of the number of days determined in respect of each obligation by the formula

$$A \times \frac{B}{C}$$

where

A is the number of days from the day of disposition to the amortization date for the obligation,

B is the residual portion of the gain or loss from the disposition of the obligation, and

C is the total of all amounts each of which is the residual portion of the gain or loss from the disposition of an obligation in the group; and

(b) the day that the taxpayer determines using a reasonable method for estimating the day determined under paragraph (a).

Technical Notes: Subsection 9203(3) allows a taxpayer to use a single amortization period for a group of specified debt obligations. The period ends on the weighted average amortization date for the obligations. Subsection 9203(4) specifies how the weighted average amortization date is to be determined for this purpose. A taxpayer is given a choice between using a precisely determined date and a reasonable estimate of that date.

Under paragraph 9203(4)(a), the weighted average amortization date for a group of obligations disposed of on the same day is obtained as follows:

1. For each obligation, determine the number of days from the day of disposition to the amortization date for the obligation — the amortization date is determined under subsection 9200(2).
2. Multiply the number of days by the ratio of the residual portion of the gain or loss from the disposition of the obligation to the total of the residual portions for all the obligations.
3. Compute the total of the amounts determined under step 2 for all the obligations.
4. Determine the day that follows the day of disposition by that total amount.

Paragraph 9203(4)(b) allows a taxpayer to determine the weighted average amortization date for a group of obligations using a reasonable method for estimating the exact date determined under paragraph 9203(4)(a). An example of an approach that would generally be reasonable is to select a random sample of the debt obligations and determine the exact date for that sample.

Definitions [Reg. 9203]: "amortization date" — Reg. 9200(2); "amount" — ITA 248(1); "disposed" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "gain", "loss" — Reg. 9200(1); "residual portion" — Reg. 9200(1), 9203(2); "specified debt obligation" — ITA 142.2(1), Reg. 9200(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "weighted average amortization date" — Reg. 9203(4).

9204. Special rules for residual portion of gain or loss — (1) Application of section — This section applies for the purposes of subparagraphs 142.4(4)(c)(ii) and (d)(ii) of the Act.

Technical Notes: Section 9204 contains rules relating to the amortization of the residual portion of the gain or loss from the disposition of a specified debt obligation. These rules, which modify the normal rules in section 9203, apply where

- a subsidiary corporation has been wound up into its parent corporation on a rollover basis pursuant to subsection 88(1) of the Act;
- an insurer has transferred an insurance business on a rollover basis pursuant to subsection 138(11.5) or (11.94) of the Act;
- a new partnership is a continuation of another partnership pursuant to subsection 98(6) of the Act;
- a taxpayer ceases to carry on a business; or
- a taxpayer ceases to be a financial institution.

Subsection 9204(1) provides that section 9204 applies for the purpose of subparagraphs 142.4(4)(c)(ii) and (d)(ii) of the Act. Subparagraph 142.4(4)(c)(ii) requires the residual portion of the gain from the disposition of a specified debt obligation to be amortized in accordance with prescribed rules. Subparagraph 142.4(4)(d)(ii) contains a similar requirement with respect to the residual portion of a loss.

(2) Winding-up — Where subsection 88(1) of the Act has applied to the winding-up of a taxpayer (in this subsection referred to as the "subsidiary"), the following rules apply in respect of the residual portion of a gain or loss of the subsidiary from the disposition of a specified debt obligation to which subsection 142.4(4) of the Act applies:

(a) the amount of that residual portion allocated to the taxation year of the subsidiary in which its assets were distributed to its parent on the winding-up shall be determined on the assumption that the taxation year ended when the assets were distributed to its parent;

(b) no amount shall be allocated in respect of that residual portion to any taxation year of the subsidiary after its taxation year in which its assets were distributed to its parent; and

(c) the amount of that residual portion allocated to the taxation year of the parent in which the subsidiary's assets were distributed to it shall be determined on the assumption that the taxation year began when the assets were distributed to it.

Technical Notes: Where a subsidiary is wound up into its parent corporation and subsection 88(1) of the Act applies to the winding-up, the parent is considered to be a continuation of the subsidiary for the purpose of paragraphs 142.4(4)(c) and (d) of the Act. The relevant continuity provision is paragraph 87(2)(g.2) of the Act, which applies to a winding-up by reason of paragraph 88(1)(e.2). Consequently, amounts may be allocated to the parent in respect of the residual portion of the subsidiary's gains and losses from the disposition of specified debt obligations.

Subsection 9204(2) contains the following rules that ensure that no part of the residual portion of a gain or loss is taken into account in determining the income of both a parent and a subsidiary:

- The amount of the residual portion of a gain or loss allocated to the taxation year of the subsidiary in which its assets were distributed to its parent is to be determined on the assumption that the taxation year ended when the assets were distributed.
- No amount is to be allocated to any subsequent taxation year of the subsidiary.
- The amount of the residual portion of a gain or loss allocated to the taxation year of the parent in which it received the subsidiary's as-

sets is to be determined on the assumption that the taxation year began when the assets were received.

Related Provisions: Reg. 9204(2.1) — Winding-up into authorized foreign bank.

(3) Transfer of insurance business — Where

(a) subsection 138(11.5) or (11.94) of the Act has applied to the transfer of an insurance business by an insurer, and

(b) the person to whom the business was transferred is considered, because of paragraph 138(11.5)(k) of the Act, to be the same person as the insurer in respect of the residual portion of a gain or loss of the insurer from the disposition of a specified debt obligation to which subsection 142.4(4) of the Act applies,

no amount in respect of that residual portion shall be allocated to any taxation year of the insurer that ends after the insurer ceased to carry on all or substantially all of the business.

Technical Notes: Where an insurer has transferred an insurance business to another corporation on a rollover basis pursuant to subsection 138(11.5) or (11.94) of the Act, paragraph 138(11.5)(k) provides that, for the purpose of paragraphs 142.4(4)(c) and (d) of the Act, the transferee is considered to be a continuation of the transferor in respect of the transferred business. Consequently, amounts may be allocated to the transferee in respect of the residual portion of the transferor's gains and losses from the disposition of specified debt obligations in the course of the business. Subsection 9204(3) provides that, after the transfer of the business, amounts that are allocated to the transferee are not also to be allocated to the transferor. Since paragraph 138(11.5)(h) of the Act deems the transferor and transferee to have taxation year ends immediately before the business is transferred, special rules are not required for the taxation year of transfer.

(4) Transfer to new partnership — Where subsection 98(6) of the Act deems a partnership (in this subsection referred to as the "new partnership") to be a continuation of another partnership (in this subsection referred to as the "predecessor partnership"), the following rules apply in respect of the residual portion of a gain or loss of the predecessor partnership from the disposition of a specified debt obligation to which subsection 142.4(4) of the Act applies:

(a) the amount of that residual portion allocated to the taxation year of the predecessor partnership in which its property was transferred to the new partnership shall be determined on the assumption that the taxation year ended when the property was transferred;

(b) no amount shall be allocated in respect of that residual portion to any taxation year of the predecessor partnership after its taxation year in which its property was transferred to the new partnership; and

(c) the amount of that residual portion allocated to the taxation year of the new partnership in which the predecessor partnership's property was transferred to it shall be determined on the assumption that the taxation year began when the property was transferred to it.

Technical Notes: Subsection 9204(4) contains rules that apply where a partnership has ceased to exist and another partnership has replaced it, in circumstances such that the continuity rule in subsection 98(6) of the Act applies. The rules are similar to those in subsection 9204(2) for the winding-up of a taxpayer into its parent corporation.

(5) Ceasing to carry on business — Where

(a) at any time a taxpayer ceases to carry on all or substantially all of a business, otherwise than as a result of a merger to which subsection 87(2) of the Act applies, a winding-up to which subsection 88(1) of the Act applies or a transfer of the business to which subsection 98(6) or 138(11.5) or (11.94) of the Act applies,

(b) before that time, the taxpayer disposed of a specified debt obligation that was property used in the business, and

(c) subsection 142.4(4) of the Act applies to the disposition of the obligation,

there shall be allocated to the taxpayer's taxation year that includes that time the part, if any, of the residual portion of the taxpayer's gain or loss from the disposition that was not allocated to a preceding taxation year.

Technical Notes: Subsection 9204(5) applies where a taxpayer ceases to carry on all or substantially all of a business otherwise than because of a merger, winding-up or transfer of the business to which the rollover rules in subsection 87(2), 88(1), 98(6) or 138(11.5) or (11.94) of the Act apply. It requires the residual portion of the gain or loss from each specified debt obligation disposed of in the course of the business to be recognized in the taxation year in which the cessation occurs, except to the extent that the residual portion has been recognized in a previous year.

Related Provisions: Reg. 9204(5.1) — When non-resident taxpayer deemed to cease carrying on business.

(6) Ceasing to be a financial institution — Where

(a) at any time a taxpayer ceases to be a financial institution otherwise than because it has ceased to carry on a business,

(b) before that time, the taxpayer disposed of a specified debt obligation, and

(c) subsection 142.4(4) of the Act applies to the disposition of the obligation,

there shall be allocated to the taxpayer's taxation year that ends immediately before that time the part, if any, of the residual portion of the taxpayer's gain or loss from the disposition that was not allocated to a preceding taxation year.

Technical Notes: Subsection 9204(6) applies where a taxpayer ceases to be a financial institution, as defined in subsection 142.2(1) of the Act, otherwise than because it has ceased to carry on a business. This subsection would apply, for example, where a taxpayer ceases to be a financial institution because of a change in control. Subsection 9204(6) requires the residual portion of the gain or loss from each specified debt obligation that the taxpayer disposed of before it ceased to be a financial institution to be recognized in the taxation year ending immediately before it ceased to be a financial institution, except to the extent that the residual portion has been recognized in a previous year.

Definitions [Reg. 9204]: "amount", "business" — ITA 248(1); "disposed" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "financial institution" — ITA 142.2(1), Reg. 9200(1); "gain" — Reg. 9200(1); "insurer" — ITA 248(1); "loss" — Reg. 9200(1); "new partnership" — Reg. 9204(4); "person" — ITA 248(1); "predecessor partnership" — Reg. 9204(4); "property" — ITA 248(1); "residual portion" — Reg. 9200(1); "specified debt obligation" — ITA 142.2(1), Reg. 9200(1); "subsidiary" — Reg. 9204(2); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

Application: The June 1, 1995 draft regulations (securities held by financial institutions), s. 9, will add Part XCII (ss. 9200 to 9204), applicable to taxation years that end after February 22, 1994.

Proposed Addition — Reg. 9204(2.1)

(2.1) Winding-up into authorized foreign bank — If subsection 142.7(13) of the Act applies in respect of the winding-up of a Canadian affiliate of an entrant bank, subsection (2) applies with respect to the winding-up and, for this purpose, the references in subsection (2) to "subsection 88(1)", "taxpayer" and "parent" shall be read as references to "subsection 142.7(13)", "Canadian affiliate" and "entrant bank", respectively.

Application: The August 8, 2000 draft regulations, subsec. 7(1), will add subsec. 9204(2.1), applicable after June 27, 1999 in respect of an authorized foreign bank, and after August 8, 2000 in any other case.

Proposed Amendment — Reg. 9204(5)(a)

(a) any time a taxpayer ceases to carry on all or substantially all of a business, otherwise than as a result of a merger to which subsection 87(2) of the Act applies, a winding-up to which subsection 88(1) or 142.7(13) of the Act applies or a transfer of the business to which subsection 98(6), 138(11.5) or (11.94) of the Act applies,

Application: The August 8, 2000 draft regulations, subsec. 7(2), will amend para. 9204(5)(a) to read as above, applicable after June 27, 1999 in respect of an authorized foreign bank, and after August 8, 2000 in any other case.

Proposed Addition — Reg. 9204(5.1)

(5.1) Non-resident taxpayer — For the purpose of subsection (5), a non-resident taxpayer is considered to cease to carry on all or substantially all of a business if the taxpayer ceases to carry on, or ceases to carry on in Canada, all or substantially all of the part of the business that was carried on in Canada.

Application: The August 8, 2000 draft regulations, subsec. 7(3), will add subsec. 9204(5.1), applicable after June 27, 1999 in respect of an authorized foreign bank, and after August 8, 2000 in any other case.

PART XCIII — FILM OR VIDEO PRODUCTION SERVICES TAX CREDIT

9300. Accredited production — **(1)** Subject to subsection (2), for the purpose of section 125.5 of the Act, accredited production means

(a) a film or video production in respect of which the aggregate expenditures, included in the cost of the production, in the period that ends 24 months after the time that the principal filming or taping of the production began, exceeds $1,000,000; and

(b) a film or video production that is part of a series of television productions that has two or more episodes, or is a pilot program for such a series of episodes, in respect of which the aggregate expenditures included in the cost of each episode in the period that ends 24 months after the time that the principal filming or taping of the production began exceeds

(i) in the case of an episode whose running time is less than 30 minutes, $100,000, and

(ii) in any other case, $200,000.

(2) An accredited production does not include a production that is any of the following:

(a) news, current events or public affairs programming, or a programme that includes weather or market reports;

(b) a talk show;

(c) a production in respect of a game, questionnaire or contest;

(d) a sports event or activity;

(e) a gala presentation or awards show;

(f) a production that solicits funds;

(g) reality television;

(h) pornography;

(i) advertising; and

(j) a production produced primarily for industrial, corporate or institutional purposes.

History: S. 9300 (Part XCIII) added by P.C. 2005-698, s. 5, May 3, 2005, *Canada Gazette*, Part II, May 18, 2005, applicable to taxation years that end after October 1997.

Forms [Reg. 9300]: T1177: Claiming a film or video production service tax credit.

Definitions [Reg. 9300]: "month" — *Interpretation Act* 35(1).

SCHEDULE I — (SECS. 100, 102 AND 106) RANGES OF REMUNERATION AND OF TOTAL REMUNERATION

1. For the purposes of paragraph 102(1)(c), the ranges of remuneration for each pay period in a taxation year shall be determined as follows:

(a) in respect of a daily pay period, the ranges of remuneration shall commence at $36 and increase in increments of $2 for each range up to and including $143.99;

(b) in respect of a weekly pay period, the ranges of remuneration shall commence at $165 and increase in increments of

(i) $2 for each range up to and including $272.99,

(ii) $4 for each range from $273 to $492.99,

(iii) $8 for each range from $493 to $932.99,

(iv) $12 for each range from $933 to $1,592.99,

(v) $16 for each range from $1,593 to $2,472.99, and

(vi) $20 for each range from $2,473 to $3,572.99;

(c) in respect of a bi-weekly pay period, the ranges of remuneration shall commence at $330 and increase in increments of

(i) $4 for each range up to and including $545.99,

(ii) $8 for each range from $546 to $985.99,

(iii) $16 for each range from $986 to $1,865.99,

(iv) $24 for each range from $1,866 to $3,185.99,

(v) $32 for each range from $3,186 to $4,945.99, and

(vi) $40 for each range from $4,946 to $7,145.99;

(d) in respect of a semi-monthly pay period, the ranges of remuneration shall commence at $358 and increase in increments of

(i) $4 for each range up to and including $573.99,

(ii) $8 for each range from $574 to $1,013.99,

(iii) $18 for each range from $1,014 to $2,003.99,

(iv) $26 for each range from $2,004 to $3,433.99,

(v) $34 for each range from $3,434 to $5,303.99, and

(vi) $44 for each range from $5,304 to $7,723.99;

(e) in respect of 12 monthly pay periods, the ranges of remuneration shall commence at $715 and increase in increments of

(i) $8 for each range up to and including $1,146.99,

(ii) $18 for each range from $1,147 to $2,136.99,

(iii) $34 for each range from $2,137 to $4,006.99,

(iv) $52 for each range from $4,007 to $6,866.99,

(v) $70 for each range from $6,867 to $10,716.99, and

(vi) $86 for each range from $10,717 to $15,446.99;

(f) in respect of 10 monthly pay periods, the ranges of remuneration shall commence at $857 and increase in increments of

(i) $10 for each range up to and including $1,396.99,

(ii) $20 for each range from $1,397 to $2,496.99,

(iii) $42 for each range from $2,497 to $4,806.99,

(iv) $62 for each range from $4,807 to $8,216.99,

(v) $84 for each range from $8,217 to $12,836.99, and

(vi) $104 for each range from $12,837 to $18,556.99;

(g) in respect of four-week pay periods, the ranges of remuneration shall commence at $660 and increase in increments of

(i) $8 for each range up to and including $1,091.99,

(ii) $16 for each range from $1,092 to $1,971.99,

(iii) $32 for each range from $1,972 to $3,731.99,

(iv) $48 for each range from $3,732 to $6,371.99,

(v) $64 for each range from $6,372 to $9,891.99, and

(vi) $80 for each range from $9,892 to $14,291.99; and

(h) in respect of 22 pay periods per annum, the ranges of remuneration shall commence at $390 and increase in increments of

(i) $6 for each range up to and including $713.99,

(ii) $10 for each range from $714 to $1,263.99,

(iii) $18 for each range from $1,264 to $2,253.99,

(iv) $28 for each range from $2,254 to $3,793.99,

(v) $38 for each range from $3,794 to $5,883.99, and

(vi) $48 for each range from $5,884 to $8,523.99.

Definitions: "pay period", "remuneration" — Reg. 100(1); "taxation year" — ITA 249.

2. For the purposes of paragraph 102(1)(d), the mid-point of the range of amount of personal credits for a taxation year shall be as follows:

(a) from $0 to $8,148, $8,148;

(b) from $8,148.01 to $9,955, $9,051.50;

(c) from $9,955.01 to $11,762, $10,858.50;

(d) from $11,762.01 to $13,569, $12,665.50;

(e) from $13,569.01 to $15,376, $14,472.50;

(f) from $15,376.01 to $17,183, $16,279.50;

(g) from $17,183.01 to $18,990, $18,086.50;

(h) from $18,990.01 to $20,797, $19,893.50;

(i) from $20,797.01 to $22,604, $21,700.50;

(j) from $22,604.01 to $24,411, $23,507.50; and

(k) for amounts in excess of $24,411, the amount of the personal credits.

Definitions: "remuneration" — Reg. 100(1); "taxation year" — ITA 249.

3. [Repealed]

History: Sch. I replaced by P.C. 2005-1133, s. 4, June 7, 2005, *Canada Gazette*, Part II, June 29, 2005, applicable to 2004 *et seq.*

Ss. 1, 2 of Sch. I amended by P.C. 2005-694, subsecs. 6(1) to (3), May 3, 2005, *Canada Gazette*, Part II, May 18, 2005, subsec. 6(3) deemed in force on January 1, 2004, subsec. 6(2) deemed in force on January 1, 2003, and subsec. 6(1) deemed in force on January 1, 2002.

Paras. 1(b) to (h) and s. 2 of Sch. I amended, and s. 3 repealed, by P.C. 2001-1115, ss. 7 and 8, June 14, 2001, *Canada Gazette*, Part II, July 4, 2001, applicable to 2001 *et seq.*

Paras. 1(a) to (h) and s. 2 of Sch. I amended by P.C. 2000-1334, ss. 2, 3, August 23, 2000, *Canada Gazette*, Part II, September 13, 2000, deemed to have come into force July 1, 2000.

Paras. 1(a) to (h) and s. 2 of Sch. I amended by P.C. 1999-2205, ss. 2, 3, December 16, 1999, *Canada Gazette*, Part II, January 5, 2000, effective July 1, 1999.

Paras. 1(a) to (h) and s. 2 of Sch. I amended by P.C. 1998-2271, ss. 2, 3, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, effective July 1, 1998.

Para. 1(d) of Sch. I amended by P.C. 1996-501, s. 1, April 16, 1996, *Canada Gazette*, Part II, May 1, 1996, effective from January 1, 1996.

Para. 1(d) of Sch. I amended by P.C. 1994-1370, s. 3, August 16, 1994, *Canada Gazette*, Part II, September 7, 1994, effective from January 1, 1994.

Ss. 1, 2 amended, 3 added, by P.C. 1992-2347, ss. 4, 5, November 19, 1992, *Canada Gazette*, Part II, December 2, 1992, effective January 1, 1992.

Para. 1(b) to (h) of Sch. I amended by P.C. 1992-291, s. 3, February 20, 1992, *Canada Gazette*, Part II, March 11, 1992, effective July 1, 1991.

Paras. 1(b) to (h) of Sch. I amended by P.C. 1991-1643, s. 4, September 5, 1991, *Canada Gazette*, Part II, September 25, 1991, effective January 1, 1991.

Paras. 1(a) to (h) of Schedule I amended by P.C. 1991-732, ss. 3, 4, April 18, 1991, *Canada Gazette*, Part II, May 8, 1991, effective January 1, 1990.

Paras. 1(e) to (g) substituted by P.C. 1990-432, s. 3, March 8, 1990, *Canada Gazette*, Part II, March 28, 1990, effective January 1, 1989.

Schedule I substituted by P.C. 1989-2105, s. 7, October 19, 1989, *Canada Gazette*, Part II, November 8, 1989, effective July 1, 1988.

S. 1 substituted by P.C. 1988-1041, s. 3, June 2, 1988, *Canada Gazette*, Part II, June 22, 1988, effective January 1, 1988.

S. 1 substituted by P.C. 1987-1478, s. 4, July 30, 1987, *Canada Gazette*, Part II, August 19, 1987, effective January 1, 1987.

Schedule I substituted by P.C. 1986-1345, s. 4, June 5, 1986, *Canada Gazette*, Part II, June 25, 1986, effective January 1, 1986. (This effective date was confirmed by P.C. 1986-2070, September 11, 1986, *Canada Gazette*, Part II, October 1, 1986.)

Schedule I substituted by P.C. 1985-1645, s. 4, May 16, 1985, *Canada Gazette*, Part II, May 29, 1985, effective January 1, 1985.

Paras. 1(a) to (h) substituted by P.C. 1984-3918, December 6, 1984, *Canada Gazette*, Part II, December 26, 1984, effective July 1, 1984.

Ss. 1 and 2 substituted by P.C. 1984-3684, November 15, 1984, *Canada Gazette*, Part II, November 28, 1984, effective January 1, 1984.

Paras. 1(a) to (h) substituted by P.C. 1984-775, s. 2, March 8, 1984, *Canada Gazette*, Part II, March 21, 1984, effective July 1, 1983.

Schedule I substituted by P.C. 1983-2717, s. 8, September 1, 1983, *Canada Gazette*, Part II, September 14, 1983, effective January 1, 1983.

All that portion of subparas. 1(a)(i), (iii), 1(b)(i), (iii), 1(c)(i), (iii), 1(d)(i), (iii), 1(e)(i), (iii), 1(f)(i), (iii), 1(g)(i), (iii), 1(h)(i), (iii) preceding clause (A) substituted by P.C. 1983-1195, subsecs. 2(1) to 2(16), April 21, 1983, *Canada Gazette*, Part II, May 11, 1983, effective July 1, 1982.

All that portion of paras. 2(a) and 2(b) preceding subpara. (i) substituted by P.C. 1983-1195, subsecs. 2(17) and 2(18), April 21, 1983, *Canada Gazette*, Part II, May 11, 1983, effective July 1, 1982.

Schedule I substituted by P.C. 1983-1137, s. 5, April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, effective January 1, 1982.

Paras. 2(b), (c) substituted by P.C. 1981-1968, July 16, 1981, *Canada Gazette*, Part II, August 12, 1981, effective July 1, 1981.

SCHEDULE II — CAPITAL COST ALLOWANCES

History: Schedule B was consolidated and retitled Schedule II, as of December 31, 1977, by the Consolidated Regulations of Canada, chapter 945,

proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

Class 1 — (4 per cent)

[Reg. 1100(1)(a)(i), 1100(1)(za.1), (zc)(i)(A), (B)]

Property not included in any other class that is

(a) a bridge;

(b) a canal;

(c) a culvert;

(d) a dam;

(e) a jetty acquired before May 26, 1976;

(f) a mole acquired before May 26, 1976;

(g) a road, sidewalk, airplane runway, parking area, storage area or similar surface construction, acquired before May 26, 1976;

(h) railway track and grading, including components such as rails, ballast, ties and other track material,

(i) that is not part of a railway system, or

(ii) that was acquired after May 25, 1976;

(i) railway traffic control or signalling equipment, acquired after May 25, 1976, including switching, block signalling, interlocking, crossing protection, detection, speed control or retarding equipment, but not including property that is principally electronic equipment or systems software therefor;

(j) a subway or tunnel, acquired after May 25, 1976.

(k) electrical generating equipment (except as specified elsewhere in this Schedule);

(l) a pipeline, other than gas or oil well equipment, unless, in the case of a pipeline for oil or natural gas, the Minister, in consultation with the Minister of Energy, Mines and Resources, is or has been satisfied that the main source of supply for the pipeline is or was likely to be exhausted within 15 years after the date on which operation of the pipeline commenced;

(m) the generating or distributing equipment and plant (including structures) of a producer or distributor of electrical energy;

(n) manufacturing and distributing equipment and plant (including structures) acquired primarily for the production or distribution of gas, except

(i) a property acquired for the purpose of producing or distributing gas that is normally distributed in portable containers,

(ii) a property acquired for the purpose of processing natural gas, before the delivery of such gas to a distribution system, or

(iii) a property acquired for the purpose of producing oxygen or nitrogen;

(o) the distributing equipment and plant (including structures) of a distributor of water;

(p) the production and distributing equipment and plant (including structures) of a distributor of heat; or

(q) a building or other structure, or part thereof, including component parts such as electric wiring, plumbing, sprinkler systems, air-conditioning equipment, heating equipment, lighting fixtures, elevators and escalators.

Proposed Amendment — Cl. 1(q)

(q) a building or other structure, or a part of it, including any component parts such as electric wiring, plumbing, sprinkler systems, air-conditioning equipment, heating equipment, lighting fixtures, elevators and escalators (except property described in any of paragraphs (k) and (m) to (p) or in any of paragraphs (a) to (e) of Class 8).

Application: The March 16, 2001 draft regulations (CCA), s. 6, will amend para. (q) of Class 1 to read as above, applicable to property acquired after 1987.

Technical Notes: Paragraph (q) of Class 1 in Schedule II to the Regulations (4% CCA rate) applies to a building or structure, or component parts thereof.

Concern has been expressed that Class 8 (20% CCA rate) may not apply to certain buildings, structures, or component parts — described in paragraphs (a) to (e) of Class 8 — if Class 1 applies to such property because of paragraph (q) of that Class. To clarify that paragraph (q) of Class 1 does not apply to a property if any of paragraphs (a) to (e) of Class 8 apply to the property, paragraph (q) of Class 1 is amended to exclude structures, buildings or equipment referred to in paragraphs (a) to (e) of Class 8. Consequential to this change, paragraph (q) of Class 1 is also amended to exclude from its application property described in certain other paragraphs of Class 1. This relieving amendment is applicable to property acquired after 1987.

Related Provisions: Reg. 1101(5e), (5e.1) — Separate classes; 4600(1)(a), 4600(2)(a) — Qualified property; 4601(a)(i), (ii) — Qualified transportation equipment; 4604(1)(a), 4604(2)(a) — Approved project property.

History: Para. (k) amended by P.C. 1997-1033, s. 6, July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable to property acquired after 1987.

Paras. (k) to (q) added by P.C. 1989-2464, s. 10, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

Definitions [Cl. 1]: "building" — Reg 1102(5), (5.1); "class" — Reg. 1102 (1)–(3), (14), (14.1); "gas or oil well equipment" — Reg. 1104(2); "Minister", "property" — ITA 248(1); "railway system" — Reg. 1104(2); "structure" — Reg 1102(5), (5.1); "systems software" — Reg. 1104(2).

Interpretation Bulletins: IT-79R3: CCA — Buildings or other structures; IT-195R4: Rental property — CCA restrictions; IT-304R2: Condominiums; IT-367R3: CCA — multiple-unit residential buildings (archived); IT-482R: Pipelines.

Proposed Amendment — Cl. 1 — Transmission pipelines and related equipment

Federal budget, Supplementary Information, February 23, 2005:

Transmission Pipelines and Related Equipment

Currently, hydrocarbon transmission pipelines are generally eligible for a 4% capital cost allowance (CCA) rate under Class 1 of Schedule II to the *Income Tax Regulations*. Because petroleum pumping equipment and natural gas compression equipment on such pipelines is not specifically included in any of the CCA classes, the sector has generally included such assets in Class 8 (20% CCA rate), the default class for property not included in any other class. However, court cases have called into question the classification of natural gas compression equipment, on such pipelines, that default into Class 8. [See *Northern & Central Gas Corp.*, [1987] 2 C.T.C. 241 (FCA), *Nova*, [1988] 2 C.T.C. 167 (FCA), and *Pacific Northern Gas Ltd.*, [1991] 1 C.T.C. 469 (FCA), which create uncertainty as to whether Class 1 or Class 8 applies — ed.]

Current CCA Treatment

Class 1 of Schedule II to the Income Tax Regulations includes hydrocarbon transmission pipelines described as "a pipeline, other than gas or oil well equipment, unless, in the case of a pipeline for oil or natural gas, the Minister, in consultation with the Minister of Energy, Mines and Resources [now the Minister of Natural Resources], is or has been satisfied that the main source of supply for the pipeline is or was likely to be exhausted within 15 years after the date on which operation of the pipeline commenced," generally provided it was acquired after 1987. In this latter case, the equipment is typically treated as falling under Class 8 (20% CCA rate), which includes tangible capital property that is not included in another class.

The budget proposes that the CCA rate for transmission pipelines (as contrasted with distribution lines) for petroleum, natural gas or related hydrocarbons be increased to 8% from 4% to better reflect the typical useful life of these assets. Included will be control and monitoring devices, valves

and other ancillary equipment (other than pumping and compression equipment, discussed below). The proposed changes will not affect the existing treatment of gas or oil well equipment and pipelines for which the Minister of National Revenue, in consultation with the Minister of Natural Resources, is satisfied that the main source of supply is likely to be exhausted within 15 years of commencement of operation. Distribution pipelines that distribute gas to the ultimate consumers typically have a longer useful life than transmission pipelines. Accordingly, these properties will continue to be included in Class 1, eligible for a 4% CCA rate.

The budget also proposes changes to the treatment for pumping and compression equipment, and equipment ancillary to it, related to a transmission pipeline for petroleum, natural gas or related hydrocarbons. The tax treatment of such equipment is to be rationalized by establishing a uniform 15% CCA rate that better reflects the typical useful life of these assets. However, this change will not apply to gas or oil well equipment (which is already eligible for a 25% CCA rate) and buildings or other structures.

The useful life of a pipeline can, however, be shortened in cases where production from the associated resource ceases. Accordingly, the budget also proposes that a separate class election be introduced for transmission pipelines and related pumping and compression equipment. The separate class election, which must be made for the taxation year in which a property is acquired, allows taxpayers to place eligible property in a separate class for CCA purposes. Although the separate class election does not change the CCA rate specified for the class, it does provide that any remaining undepreciated balance in the class after the disposition of the property, can, for the year of disposition, be fully deducted as a terminal loss.

The new CCA rates for transmission pipelines will apply to equipment acquired on or after February 23, 2005 that has not been used or acquired for use before that date. The new CCA rates for pumping and compression equipment will apply to all such equipment acquired on or after February 23, 2005.

Proposed Amendment — Cl. 1 — Electricity transmission and distribution assets

Federal budget, Supplementary Information, February 23, 2005: *Electricity Transmission and Distribution Assets*

Currently, electricity transmission and distribution assets (e.g., power lines, transformers and substation equipment) are eligible for a 4% CCA rate.

Current CCA Treatment

Class 1 of Schedule II to the *Income Tax Regulations* includes electricity transmission and distribution assets described as "the generating or distributing equipment and plant (including structures) of a producer or distributor of electrical energy."

Available evidence associated with transmission and distribution equipment suggests that the current provisions do not reflect the useful life of these assets. The budget therefore proposes that the CCA rate for transmission and distribution equipment and structures (but not including buildings) of a distributor of electrical energy be increased to 8%. This rate will better reflect the estimated useful life of these assets.

The 8% rate will apply to assets acquired on or after February 23, 2005 that have not been used or acquired for use before February 23, 2005.

Class 2 — (6 per cent)

[Reg. 1100(1)(a)(ii)]

Property that is

(a) electrical generating equipment (except as specified elsewhere in this Schedule);

(b) a pipeline, other than gas or oil well equipment, unless, in the case of a pipeline for oil or natural gas, the Minister in consultation with the Minister of Energy, Mines and Resources, is or has been satisfied that the main source of supply for the pipeline is or was likely to be exhausted within 15 years from the date on which operation of the pipeline commenced;

(c) the generating or distributing equipment and plant (including structures) of a producer or distributor of electrical energy, except a property included in Class 10, 13, 14, 26 or 28;

(d) manufacturing and distributing equipment and plant (including structures) acquired primarily for the production or distribution of gas, except

(i) a property included in Class 10, 13 or 14

(ii) a property acquired for the purpose of producing or distributing gas that is normally distributed in portable containers,

(iii) a property acquired for the purpose of processing natural gas, before delivery of such gas to a distribution system, or

(iv) a property acquired for the purpose of producing oxygen or nitrogen;

(e) the distributing equipment and plant (including structures) of a distributor of water, except a property included in Class 10, 13 or 14; or

(f) the production and distributing equipment and plant (including structures) of a distributor of heat, except a property included in Class 10, 13 or 14

acquired by the taxpayer

(g) before 1988, or

(h) before 1990

(i) pursuant to an obligation in writing entered into by the taxpayer before June 18, 1987,

(ii) that was under construction by or on behalf of the taxpayer on June 18, 1987, or

(iii) that is machinery or equipment that is a fixed and integral part of a building, structure, plant facility or other property that was under construction by or on behalf of the taxpayer on June 18, 1987.

Related Provisions: Reg. 1101(5i) — Separate class for certain pipelines; 1103(2), 4600(2)(a) — Qualified property; 4604(2)(a) — Approved project property.

History: All that portion following para. (f) added by P.C. 1989-2464, s. 11, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

Subpara. (d)(iii) substituted and (d)(iv) added by P.C. 1986-2590, s. 20, November 20, 1986, *Canada Gazette*, Part II, December 10, 1986, applicable to property acquired after April 3, 1985.

Subpara. (d)(iii) substituted by P.C. 1985-890, s. 1, March 21, 1985, *Canada Gazette*, Part II, April 3, 1985, applicable to property acquired after April 3, 1985.

Para. (c) substituted by P.C. 1979-1488, s. 2, May 17, 1979, *Canada Gazette*, Part II, June 13, 1979.

Definitions [Cl. 2]: "building" — Reg 1102(5), (5.1); "gas or oil well equipment" — Reg. 1104(2); "Minister", "property" — ITA 248(1); "structure" — Reg 1102(5), (5.1); "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Class 3 — (5 per cent)

[Reg. 1100(1)(a)(iii), 1100(1)(sb), (za.2), (zc)(i)(C)]

Property not included in any other class that is

(a) a building or other structure, or part thereof, including component parts such as electric wiring, plumbing, sprinkler systems, air-conditioning equipment, heating equipment, lighting fixtures, elevators and escalators, acquired by the taxpayer

(i) before 1988, or

(ii) before 1990

(A) pursuant to an obligation in writing entered into by the taxpayer before June 18, 1987,

(B) that was under construction by or on behalf of the taxpayer on June 18, 1987, or

(C) that is a component part of a building that was under construction by or on behalf of the taxpayer on June 18, 1987;

(b) a breakwater;

(c) a dock;

(d) a trestle;

(e) a windmill;

(f) a wharf;

(g) an addition or alteration, made during the period that is after March 31, 1967 and before 1988, to a building that would have been included in this class during that period but for the fact that it was included in Class 20;

(h) a jetty acquired after May 25, 1976;

(i) a mole acquired after May 25, 1976;

(j) telephone, telegraph or data communication equipment, acquired after May 25, 1976, that is a wire or cable;

Proposed Amendment — Cl. 3 — Telecommunications cable

Federal budget, Supplementary Information, February 23, 2005:
Cable for Telecommunications Infrastructure

Currently, wire and cable used for telephone, telegraph or data communication, other than fibre-optic cable, is eligible for a 5% CCA rate. Fibre-optic cable is eligible for a 12% CCA rate [see Class 42 — ed.]

Current CCA Treatment

Class 3 (5% CCA rate) of Schedule II to the Income Tax Regulations includes wire and cable described as "Property not included in any other class that is . . . telephone, telegraph or data communication equipment, acquired after May 25, 1976, that is a wire or cable."

A review of the CCA rate for wire and cable used for telephone, telegraph or data communication that is not fibre-optic cable indicates that a higher CCA rate would better reflect the useful life of these assets. The budget proposes that the CCA rate for wire or cable used for telephone, telegraph or data communication not included in any other class be increased to 12% [presumably by being put into Class 42 — ed.]. This rate will better reflect the estimated useful life of these assets.

The 12% CCA rate will apply to assets acquired on or after February 23, 2005 that have not been used or acquired for use before February 23, 2005.

(k) an addition or alteration, other than an addition or alteration described in paragraph (k) of Class 6, made after 1987, to a building included, in whole or in part,

(i) in this class,

(ii) in Class 6 by virtue of subparagraph (a)(viii) thereof, or

(iii) in Class 20,

to the extent that the aggregate cost of all such additions or alterations to the building does not exceed the lesser of

(iv) $500,000, and

(v) 25 per cent of the aggregate of the amounts that would, but for this paragraph, be the capital cost of the building and any additions or alterations thereto included in this class or Class 6 or 20; or

(l) ancillary to a wire or cable referred to in paragraph (j) or Class 42 and that is supporting equipment such as a pole, mast, tower, conduit, brace, crossarm, guy or insulator.

Related Provisions: Reg. 1101(5e.2), (5f) — Railway trestles — separate classes; Reg. 1102(15)(a), 1103(2f); Reg. 4600(1)(a) — Qualified property; Reg. 4601(a)(iii) — Qualified transportation equipment; Reg. 4604(1)(a) — Approved project property; Reg. Sch. II:Cl. 42 — Fibre optic cable.

History: Para. (j) substituted, (l) added, by P.C. 1994-139, s. 17, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired by a taxpayer after December 23, 1991, other than property acquired pursuant to an agreement in writing entered into by the taxpayer before December 24, 1991, except that

(a) where the taxpayer so elects in a letter that is filed with the Minister of National Revenue on or before August 8, 1994 or in a letter that is attached to the taxpayer's return of income filed in accordance with s. 150 of the *Income Tax Act* for the taxpayer's first taxation year ending after December 23, 1991, those provisions apply to property acquired by the taxpayer after the beginning of that year;

(b) with respect to property acquired before December 24, 1991 in respect of which an election referred to in para. (a) applies, para. (l) shall be read without reference to the words "or Class 42" and Schedule II shall be read without reference to Class 42; and

(c) with respect to property acquired after December 23, 1991 and before February 9, 1994, para. (l) shall be read without reference to the words "or Class 42".

Para. (a) substituted, (k) added, by P.C. 1989-2464, subsecs. 12(1), (3), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

Para. (g) substituted by subsec. 12(2) of the said P.C. 1989-2464, applicable in respect of property acquired after 1978.

Para. (g) substituted by P.C. 1978-3768, s. 2, December 14, 1978, *Canada Gazette*, Part II, December 27, 1978, effective January 1, 1979.

Definitions [Cl. 3]: "amount" — ITA 248(1); "building" — Reg 1102(5), (5.1); "class" — Reg. 1102 (1)–(3), (14), (14.1); "property" — ITA 248(1); "structure" — Reg 1102(5), (5.1); "taxpayer" — ITA 248(1); "telegraph" — *Interpretation Act* 36; "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-79R3: CCA — buildings or other structures; IT-195R4: Rental property — CCA restrictions; IT-367R3: CCA — multiple-unit residential buildings (archived).

Class 4 — (6 per cent)
[Reg. 1100(1)(a)(iv)]

Property that would otherwise be included in another class in this Schedule that is

(a) a railway system or a part thereof, except automotive equipment not designed to run on rails or tracks, that was acquired after the end of the taxpayer's 1958 taxation year and before May 26, 1976; or

(b) a tramway or trolley bus system or a part thereof, except property included in class 10, 13 or 14.

Related Provisions: Reg. 1102(10)(a), 1103(2), 1104(2)"tramway or trolley bus system".

Definitions [Cl. 4]: "class" — Reg. 1102 (1)–(3), (14), (14.1); "property" — ITA 248(1); "railway system" — Reg. 1104(2); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "tramway or trolley bus system" — Reg. 1104(2).

Class 5 — (10 per cent)
[Reg. 1100(1)(a)(v)]

Property that is

(a) a chemical pulp mill or ground wood pulp mill including buildings, machinery and equipment, but not including hydro-electric power plants and their equipment, or

(b) an integrated mill producing chemical pulp or ground wood pulp and manufacturing therefrom paper, paper board or pulp board, including buildings, machinery and equipment, but not including hydro-electric power plants and their equipment,

but not including any property that was acquired after the end of the taxpayer's 1962 taxation year.

Definitions [Cl. 5]: "building" — Reg 1102(5), (5.1); "property" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

Class 6 — (10 per cent)

[Reg. 1100(1)(a)(vi), 1100(1)(sb), (zc)(i)(D)]

Property not included in any other class that is

(a) a building of

(i) frame,

(ii) log,

(iii) stucco on frame,

(iv) galvanized iron, or

(v) corrugated metal,

construction, including component parts such as electric wiring, plumbing, sprinkler systems, air-conditioning equipment, heating equipment, lighting fixtures, elevators and escalators, if the building

(vi) is used by the taxpayer for the purpose of gaining or producing income from farming or fishing,

(vii) has no footings or any other base support below ground level,

(viii) was acquired by the taxpayer before 1979 and is not a building described in subparagraph (vi) or (vii),

(ix) was acquired by the taxpayer after 1978 under circumstances such that

(A) he was obligated to acquire the building under the terms of an agreement in writing entered into before 1979, and

(B) the installation of footings or any other base support of the building was commenced before 1979, or

(x) was acquired by the taxpayer after 1978 under circumstances such that

(A) he commenced construction of the building before 1979, or

(B) the construction of the building was commenced under the terms of an agreement in writing entered into by him before 1979, and

the installation of footings or any other base support of the building was commenced before 1979;

(b) a wooden breakwater;

(c) a fence;

(d) a greenhouse;

(e) an oil or water storage tank;

(f) a railway tank car acquired before May 26, 1976;

(g) a wooden wharf;

(h) an aeroplane hangar acquired after the end of the taxpayer's 1958 taxation year;

(i) an addition or alteration, made

(A) during the period that is after March 31, 1967 and before 1979, or

(B) after 1978 if the taxpayer was obligated to have it made under the terms of an agreement in writing entered into before 1979,

to a building that would have been included in this class during that period but for the fact that it was included in Class 20;

(j) a railway locomotive acquired after May 25, 1976, but not including an automotive railway car; or

(k) an addition or alteration, made after 1978 to a building included in this class by virtue of subparagraph (a)(viii), to the extent that the aggregate cost of all such additions and alterations to the building does not exceed $100,000.

Related Provisions: Reg. 1102(15)(a), 1103(2f); 4600(1)(a) — Qualified property; 4601(b)(i) — Qualified transportation equipment; 4604(1)(a) — Approved project property.

History: Subpara. (a)(v) substituted by P.C. 1994-139, s. 18, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1989 *et seq.* with respect to property acquired after 1987.

All that portion of para. (a) following subpara. (v) substituted by P.C. 1978-3768, subsec. 3(1), December 14, 1978, *Canada Gazette*, Part II, December 27, 1978, effective January 1, 1979.

Para. (i) substituted by P.C. 1978-3768, subsec. 3(2), December 14, 1978, *Canada Gazette*, Part II, December 27, 1978, effective January 1, 1979.

Para. (k) added by P.C. 1978-3768, subsec. 3(3), December 14, 1978, *Canada Gazette*, Part II, December 14, 1978, effective January 1, 1979.

Definitions [Cl. 6]: "building" — Reg 1102(5), (5.1); "class" — Reg. 1102 (1)–(3), (14), (14.1); "farming", "fishing", "property" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-79R3: CCA — buildings or other structures; IT-195R4: Rental property — CCA restrictions; IT-367R3: CCA — multiple-unit residential buildings (archived).

Class 7 — (15 per cent)

[Reg. 1100(1)(a)(vii)]

Property that is

(a) a canoe or rowboat;

(b) a scow;

(c) a vessel, but not including a vessel

(i) of a separate class prescribed by subsection 1101(2a), or

(ii) included in Class 41;

(d) furniture, fittings and equipment attached to a property included in this class, but not including radiocommunication equipment;

(e) a spare engine for a property included in this class;

(f) a marine railway; or

(g) a vessel under construction, other than a vessel included in Class 41.

Proposed Addition — Cl. 7(h), (i)

(h) subject to an election made under subsection 1103(2i), property acquired after February 27, 2000 that is

(i) a rail suspension device designed to carry trailers that are designed to be hauled on both highways and railway tracks, or

(ii) a railway car; or

(i) property acquired after February 27, 2000 that is a railway locomotive, but not including an automotive railway car.

Application: The March 16, 2001 draft regulations (CCA), s. 7, will add paras. (h) and (i) to Class 7, applicable to property acquired after February 27, 2000.

Technical Notes: Class 7 (15% CCA rate) is amended to apply to certain railway property acquired after February 27, 2000. Generally, Class 7 will apply to property that is a railway car, a railway locomotive (other than an automotive railway car) or a railway suspension device designed to carry trailers that are designed to be hauled on both highways and railway tracks. In certain cases, a taxpayer may be eligible to elect under new subsection 1103(2i) to include certain leased railway cars and railway suspension devices in Class 35 (7% CCA rate). Such taxpayers may be eligible to deduct an additional allowance of 6% in respect of such railway property and not have the specified leasing property rules apply to the railway property. New subsection 1103(2i) is more fully described in the commentary accompanying that change.

Related Provisions: ITA 13(13), Reg. 1101(2)–(2b) — Separate class for certain Class 7 property; ITA 13(16) — Election on disposition of vessel; Reg. 1103(2i) — Election to include Class 7(h) property in Class 35.

History: Paras. (c), (g) substituted by P.C. 1989-2464, s. 13, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

Definitions [Cl. 7]: "class" — Reg. 1102(1)–(3), (14), (14.1); "prescribed", "property" — ITA 248(1).

Interpretation Bulletins: IT-267R2: CCA — vessels; IT-317R: Radio and television equipment.

Class 8 — (20 per cent)

[Reg. 1100(1)(a)(viii), 1100(1)(sb), (zc)(i)(E), (F)]

Property not included in Class 1, 2, 7, 9, 11 or 30 that is

Proposed Amendment — Cl. 8 opening words

Property not included in Class 1, 2, 7, 9, 11, 17 or 30 that is

Application: The March 16, 2001 draft regulations (CCA), s. 8, will amend the opening words of Class 8 to read as above, applicable to property acquired after February 27, 2000.

Technical Notes: Class 8 (20% CCA rate) is amended to exclude from its application Class 17 property. This amendment is consequential to the inclusion in Class 17 of certain property more fully described below in the commentary accompanying that change.

(a) a structure that is manufacturing or processing machinery or equipment;

(b) tangible property attached to a building and acquired solely for the purpose of

(i) servicing, supporting, or providing access to or egress from, machinery or equipment,

(ii) manufacturing or processing, or

(iii) any combination of the functions described in subparagraphs (i) and (ii);

(c) a building that is a kiln, tank or vat, acquired for the purpose of manufacturing or processing;

(d) a building or other structure, acquired after February 19, 1973, that is designed for the purpose of preserving ensilage on a farm;

(e) a building or other structure, acquired after February 19, 1973, that is

(i) designed to store fresh fruits or fresh vegetables at a controlled level of temperature and humidity, and

(ii) to be used principally for the purpose of storing fresh fruits or fresh vegetables by or for the person or persons by whom they were grown;

(f) electrical generating equipment acquired after May 25, 1976, if

(i) the taxpayer is not a person whose business is the production for the use of or distribution to others of electrical energy,

(ii) the equipment is auxiliary to the taxpayer's main power supply, and

(iii) the equipment is not used regularly as a source of supply;

(g) electrical generating equipment, acquired after May 25, 1976, that has a maximum load capacity of not more than 15 kilowatts;

(h) portable electrical generating equipment acquired after May 25, 1976;

(i) a tangible capital property that is not included in another class in this Schedule except

(i) land or any part thereof or any interest therein,

(ii) an animal,

(iii) a tree, shrub, herb or similar growing thing,

(iv) an oil or gas well,

(v) a mine,

(vi) a specified temporary access road of the taxpayer,

(vii) radium,

(viii) a right of way,

(ix) a timber limit,

(x) a tramway track, or

(xi) property of a separate class prescribed by subsection 1101(2a);

(j) property not included in any other class that is radiocommunication equipment acquired after May 25, 1976;

(k) a rapid transit car that is used for the purpose of public transportation within a metropolitan area and is not part of a railway system;

(l) an outdoor advertising poster panel or bulletin board; or

(m) a greenhouse constructed of a rigid frame and a replaceable, flexible plastic cover.

Related Provisions: Reg. 1101(5l), (5p), 1103(2g) — Separate class for certain equipment; Reg. 1102(15)(b), 1103(2a) — Election to include property in Class 8; 1104(2) — Definition of "specified temporary access road"; 4600(2)(c) — Qualified property; 4601(a)(iv), 4601(b)(ii), 4601(c)(ii), 4601(e)(ii), 4601(g) — Qualified transportation equipment; 4604(1)(a), 4604(2)(c) — Approved project property; Reg. Sch. II Cl. 1(q) — Class 8(a)–(e) takes priority over Class 1(q); Reg. Sch. II:Cl. 46 — Data network infrastructure equipment; *Interpretation Act* 35(1) — Definition of "radiocommunication".

History: Subparas. (i)(iv) and (i)(vi) of Class 8 amended by P.C. 1999-629, s. 12, April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to property acquired after March 6, 1996.

The portion before para. (a) amended by P.C. 1997-1033, s. 7, July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable to property acquired after 1987.

Para. (m) added by P.C. 1994-139, s. 19, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1989 *et seq.* with respect to property acquired after 1987.

That portion preceding para. (a) substituted, para. (l) added, by P.C. 1989-2464, s. 14, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

Para. (k) added by P.C. 1985-2673, s. 1, August 28, 1985, *Canada Gazette*, Part II, September 18, 1985.

Subpara. (i)(iv) substituted by P.C. 1980-3120, s. 1, November 13, 1980, *Canada Gazette*, Part II, November 26, 1980.

Definitions [Cl. 8]: "building" — Reg 1102(5), (5.1); "business" — ITA 248(1); "capital property" — ITA 54, 248(1); "class" — Reg. 1102(1)–(3), (14), (14.1); "oil or gas well", "person", "prescribed", "property" — ITA 248(1); "railway system" — Reg. 1104(2); "specified temporary access road" — Reg. 1104(2); "structure" — Reg 1102(5), (5.1); "taxpayer" — ITA 248(1).

Interpretation Bulletins: IT-79R3: CCA — buildings and other structures; IT-283R2: CCA — Videotapes, videotape cassettes, films, computer software and master recording media (archived); IT-317R: Radio and television equipment; IT-472: Class 8 property; IT-482R: Pipelines.

Proposed Amendment — Transmission pipelines and related equipment

Federal budget, Supplementary Information, February 23, 2005: See under Class 1.

Class 9 — (25 per cent)

[Reg. 1100(1)(a)(ix)]

Property acquired before May 26, 1976, other than property included in Class 30, that is

(a) electrical generating equipment, if

(i) the taxpayer is not a person whose business is the production for the use of or distribution to others of electrical energy,

(ii) the equipment is auxiliary to the taxpayer's main power supply, and

(iii) the equipment is not used regularly as a source of supply,

(b) radar equipment,

(c) radio transmission equipment,

(d) radio receiving equipment,

(e) electrical generating equipment that has a maximum load capacity of not more than 15 kilowatts, or

(f) portable electrical generating equipment,

and property acquired after May 25, 1976 that is

(g) an aircraft;

(h) furniture, fittings or equipment attached to an aircraft; or

(i) a spare part for an aircraft, or for furniture, fittings or equipment attached to an aircraft.

Related Provisions: Reg. 4600(2)(i) — Qualified property; 4601(f) — Qualified transportation equipment; 4604(2)(h) — Approved project; *Interpretation Act* 35(1) — Definition of "radio".

Definitions [Cl. 9]: "business", "person", "property" — ITA 248(1); "radio" — *Interpretation Act* 35(1); "taxpayer" — ITA 248(1).

Interpretation Bulletins: IT-317R: Radio and television equipment.

Class 10 — (30 per cent)

[Reg. 1100(1)(a)(x), 1100(1)(zc)(i)(G)]

Property not included in any other class that is

(a) automotive equipment, including a trolley bus, but not including

(i) an automotive railway car acquired after May 25, 1976,

(ii) a railway locomotive, or

(iii) a tramcar,

(b) a portable tool acquired after May 25, 1976, for the purpose of earning rental income for short terms, such as hourly, daily, weekly or monthly, except a property described in Class 12,

(c) harness or stable equipment,

(d) a sleigh or wagon,

(e) a trailer, including a trailer designed to be hauled on both highways and railway tracks,

(f) general-purpose electronic data processing equipment and systems software therefor, including ancillary data processing equipment, acquired after May 25, 1976, but not including property that is principally or is used principally as

Proposed Amendment — Cl. 10(f) opening words

(f) general-purpose electronic data processing equipment and systems software for that equipment, including ancillary data processing equipment, acquired after May 25, 1976 and before March 23, 2004 (or after March 22, 2004 and before 2005 if an election in respect of the property is made under subsection 1101(5q)), but not including property that is principally or is used principally as

Application: The June 27, 2005 draft regulations (CCA — introduction of cls. 45 & 46), s. 5, (pre-published in the *Canada Gazette*, Part I, July 9, 2005), will amend the opening words of para. (f) of Class 10 to read as above, deemed in force on March 23, 2004.

Regulatory Impact Analysis Statement: See under Reg. 1100(1)(a)(xxxi) (Computers) above.

Technical Notes (September 16, 2004): Paragraph (f) of Class 10 (30% CCA rate) applies to "general-purpose electronic data processing equipment" and certain ancillary property. Paragraph (f) of Class 10 is amended consequential to the introduction of new Class 45 (45% CCA rate), which applies to such property acquired after March 22, 2004 unless the property is acquired before 2005 and the taxpayer elects under subsection 1101(5q) to have the property included in a separate Class 10.

(i) electronic process control or monitor equipment,

(ii) electronic communications control equipment,

(iii) systems software for a property referred to in subparagraph (i) or (ii), or

(iv) data handling equipment unless it is ancillary to general-purpose electronic data processing equipment,

(f.1) a designated underground storage cost, or

(f.2) an unmanned telecommunication spacecraft designed to orbit above the earth,

and property (other than property included in Class 41 or property included in Class 43 that is described in paragraph (b) of that Class) that would otherwise be included in another Class in this Schedule, that is

(g) a building or other structure (other than property described in paragraph (l) or (m)) that would otherwise be included in Class 1, 3 or 6 and that was acquired for the purpose of gaining or producing income from a mine, except

(i) a property included in Class 28,

(ii) a property acquired principally for the purpose of gaining or producing income from the processing of ore from a mineral resource that is not owned by the taxpayer,

(iii) an office building not situated on the mine property, or

(iv) a refinery that was acquired by the taxpayer

(A) before November 8, 1969, or

(B) after November 7, 1969 and that had been used before November 8, 1969 by any person with whom the taxpayer was not dealing at arm's length;

(h) contractor's movable equipment, including portable camp buildings, acquired for use in a construction business or for lease to another taxpayer for use in that other taxpayer's construction business, except a property included in

(i) this Class by virtue of paragraph (t),

(ii) a separate class prescribed by subsection 1101(2b), or

(iii) Class 22 or 38;

(i) a floor of a roller skating rink;

(j) gas or oil well equipment;

(k) property (other than a property included in Class 28 or property described in paragraph (l) or (m)) that

was acquired for the purpose of gaining or producing income from a mine and that is

(i) a structure that would otherwise be included in Class 8, or

(ii) machinery or equipment,

except a property acquired before May 9, 1972 for the purpose of gaining or producing income from the processing of ore after extraction from a mineral resource that is not owned by the taxpayer;

(l) property acquired after the 1971 taxation year for the purpose of gaining or producing income from a mine and providing services to the mine or to a community where a substantial proportion of the persons who ordinarily work at the mine reside, if such property is

(i) an airport, dam, dock, fire hall, hospital, house, natural gas pipeline, power line, recreational facility, school, sewage disposal plant, sewer, street lighting system, town hall, water pipeline, water pumping station, water system, wharf or similar property,

(ii) a road, sidewalk, aeroplane runway, parking area, storage area or similar surface construction, or

(iii) machinery or equipment ancillary to any of the property described in subparagraph (i) or (ii),

but is not

(iv) a property included in Class 28, or

(v) a railway not situated on the mine property;

(m) property acquired after March 31, 1977, principally for the purpose of gaining or producing income from a mine, if such property is

(i) railway track and grading including components such as rails, ballast, ties and other track material,

(ii) property ancillary to the track referred to in subparagraph (i) that is

(A) railway traffic control or signalling equipment, including switching, block signalling, interlocking, crossing protection, detection, speed control or retarding equipment, or

(B) a bridge, culvert, subway, trestle or tunnel,

(iii) machinery or equipment ancillary to any of the property referred to in subparagraph (i) or (ii), or

(iv) conveying, loading, unloading or storing machinery or equipment, including a structure, acquired for the purpose of shipping output from the mine by means of the track referred to in subparagraph (i),

but is not

(v) property included in Class 28, or

(vi) for greater certainty, rolling stock;

(n) property that was acquired for the purpose of cutting and removing merchantable timber from a timber limit and that will be of no further use to the taxpayer after all merchantable timber that the taxpayer is entitled to cut and remove from the limit has been cut and removed, unless the taxpayer has elected to include another property of this kind in another class in this Schedule;

(o) mechanical equipment acquired for logging operations, except a property included in Class 7;

(p) an access road or trail for the protection of standing timber against fire, insects or disease;

(q) property acquired for a motion picture drive-in theatre;

(r) property included in this class by virtue of subsection 1102(8) or (9), except a property included in Class 28;

(s) a motion picture film or video tape acquired after May 25, 1976, except a property included in paragraph (w) or (x) or in Class 12;

(t) a property acquired after May 22, 1979 that is designed principally for the purpose of

(i) determining the existence, location, extent or quality of accumulations of petroleum or natural gas,

(ii) drilling oil or gas wells, or

(iii) determining the existence, location, extent or quality of mineral resources,

except a property included in a separate class prescribed by subsection 1101(2b);

(u) property acquired after 1980 to be used primarily in the processing in Canada of heavy crude oil recovered from a natural reservoir in Canada to a stage that is not beyond the crude oil stage or its equivalent that is

(i) property that would otherwise be included in Class 8 except railway rolling stock or a property described in paragraph (j) of Class 8,

(ii) an oil or water storage tank,

(iii) a powered industrial lift truck that would otherwise be included in paragraph (a), or

(iv) property that would otherwise be included in paragraph (f);

(v) property acquired after August 31, 1984 that is equipment used for the purpose of effecting an interface between a cable distribution system and electronic products used by consumers of that system and that is designed primarily

(i) to augment the channel capacity of a television receiver or radio,

(ii) to decode pay television or other signals provided on a discretionary basis, or

(iii) to achieve any combination of functions described in subparagraphs (i) and (ii);

(w) a certified production acquired after 1987 and before March 1996; or

(x) a Canadian film or video production.

Related Provisions: ITA 127.52(1)(c) — Add-back of CCA on film properties for minimum tax purposes; Reg. 1100(1)(m) — Additional allowance — Canadian film or video production; Reg. 1100(1)(zg) — accelerated CCA for year 2000 compliant hardware; Reg. 1100(2)(a)(iii) — Half-year rule inapplicable to property in para. 10(w); Reg. 1100(21), (21.1) — Certified films and video tapes; Reg. 1101(5a) — Separate class for spacecraft under Class 10(f.2); Reg. 1101(5k) — Separate class for property under Class 10(w); Reg. 1101(5k.1) — Separate class for certain property under Class 10(x); Reg. 1101(5p), 1103(2g) — Separate class for certain equipment under Class 10(f); Reg. 1102(8)(c), 1102(9)(c) — Generating equipment; Reg. 1102(18) — Townsite costs; Reg. 1102(18), 1103(2e); Reg. 1104(2) — Definitions; Reg. 1104(5), (6), (6.1) — Income from a mine; Reg. 1106 — Certificate for Class 10(x); Reg. 1205(1)(a)(vi)(D), 1205(1)(b) — Earned depletion base; Reg. 1206(1)"enhanced recovery equipment"(a), 1206(1)"processing property", 1206(1)"tertiary recovery equipment"; Reg. 4600(1)(b), 4600(2)(e), (g), (h) — Qualified property; Reg. 4601(a)(v), 4601(c)(i), (ii), 4601(d) — Qualified transportation equipment; Reg. 4604(1)(b), 4604(2)(d), (f),

(g) — Approved project property; Reg. Sch. II Cl. 16(g) — Large trucks and tractors; Reg. Sch. II Cl. 41.

History: Paras. (s) and (w) amended, para. (x) added, by P.C. 2005-698, s. 6, May 3, 2005, *Canada Gazette*, Part II, May 18, 2005, applicable to 1995 *et seq.*

That portion of Class 10 following para. (f.2) and preceding para. (g) substituted by P.C. 1994-230, s. 9, February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable with respect to property acquired after February 25, 1992.

Para. (e) substituted by P.C. 1994-139, subsec. 20(1), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable with respect to property acquired after December 23, 1991.

That portion of para. (h) preceding subpara. (i) substituted by the said P.C. 1994-139, subsec. 20(2), applicable to property acquired after December 23, 1991, other than property acquired by a taxpayer before 1993

(a) pursuant to an agreement in writing entered into by the taxpayer before December 24, 1991; or

(b) that was under construction by or on behalf of the taxpayer on December 23, 1991.

Para. (n) substituted by the said P.C. 1994-139, subsec. 20(3), applicable to 1986 *et seq.*

That portion between para. (f.1) and subpara. (g)(i) substituted (para. (f.2) being added), and subpara. (h)(iii) substituted, by P.C. 1989-2464, s. 15, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

Para. (s) substituted and para. (w) added, by P.C. 1988-2795, subsecs. 4(1) and (2), December 22, 1988, *Canada Gazette*, Part II, January 18, 1989. Para. (s) is applicable in respect of property acquired after 1987 and para. (w), in respect of property acquired after 1987 other than property

(a) acquired after 1987 pursuant to an agreement in writing entered into by the taxpayer before June 18, 1987 or pursuant to a prospectus, preliminary prospectus, registration statement or offering memorandum filed before June 18, 1987 with a public authority in Canada where the document was required to be filed before any trade in securities may commence; or

(b) that is a film or tape acquired in 1988 that is part of a series of films or tapes where the series includes films or tapes that are included in Class 12 in Schedule II otherwise than by reason of this paragraph and the film or tape is produced at a fixed price or by reference to a formula under a production option agreement entered into by a licensed broadcaster or *bona fide* film or tape distributor before 1988.

Para. (v) added by P.C. 1986-2770, s. 13, December 11, 1986, *Canada Gazette*, Part II, effective commencing May 23, 1985.

Para. (u) added by P.C. 1981-3329, s. 14, November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, effective January 1, 1981.

Para. (f.1) added by P.C. 1980-3279, s. 4, December 4, 1980, *Canada Gazette*, Part II, December 24, 1980, effective December 12, 1979.

Subpara. (g)(v) revoked, all that portion of para. (k) following subpara. (ii) substituted by P.C. 1980-288, January 25, 1980, *Canada Gazette*, Part II, February 13, 1980.

Paras. (h) substituted, (t) added by P.C. 1979-1487, May 17, 1979, *Canada Gazette*, Part II, June 13, 1979.

All that portion of para. (g) preceding subpara. (i) and all that portion of para. (k) preceding subpara. (i) substituted, para. (m) added by P.C. 1978-344, subsecs. 6(1)–(3), February 9, 1978, *Canada Gazette*, Part II, February 22, 1978, effective after March 31, 1977.

Selected Cases [Cl. 10]: *Cargill Ltd. v. Canada*, [1996] 3 C.T.C. 2023 (TCC) (Other uses of equipment did not derogate from hauling or transporting function).

Definitions [Cl. 10]: "arm's length" — ITA 251(1); "building" — Reg 1102(5), (5.1); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian film or video production" — Reg. 1106(4); "certified production" — Reg. 1104(2); "class" — Reg. 1102 (1)–(3), (14), (14.1); "designated underground storage cost", "gas or oil well equipment", "general-purpose electronic data processing equipment" — Reg. 1104(2); "income from a mine" — Reg. 1104(5), (6), (6.1)(a), (b); "mine" — Reg. 1104(6)(b); "mineral resource", "office", "oil or gas well", "person", "prescribed", "property" — ITA 248(1); "radio" — *Interpretation Act* 35(1); "structure" — Reg 1102(5), (5.1); "systems software" — Reg. 1104(2); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

Interpretation Bulletins: IT-283R2: CCA — Videotapes, videotape cassettes, films, computer software and master recording media (archived); IT-306R2: Contractor's movable equipment; IT-476: Gas and oil exploration and production equipment; IT-501: Logging assets.

I.T. Technical News: 14 (millennium bug expenditures).

Class 10.1 — (30 per cent)

[Reg. 1100(1)(a)(x.1)]

Property that would otherwise be included in Class 10 that is a passenger vehicle, the cost of which to the taxpayer exceeds $20,000 or such other amount as may be prescribed for the purposes of subsection 13(2) of the Act.

Related Provisions: Reg. 1101(1af) — Separate class; Reg. 1100(2.5) — 50% CCA in year of disposition; Reg. 7307 — Prescribed amount.

History: Class 10.1 added by P.C. 1991-2272, s. 5, November 21, 1991, *Canada Gazette*, Part II, December 4, 1991, applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

Definitions [Cl. 10.1]: "amount", "passenger vehicle", "prescribed", "property", "taxpayer" — ITA 248(1).

Interpretation Bulletins: IT-521R: Motor vehicle expenses claimed by self-employed individuals; IT-522R: Vehicle, travel and sales expenses of employees.

I.T. Technical News: 10 (1997 deduction limits and benefit rates for automobiles).

Class 11 — (35 per cent)

[Reg. 1100(1)(a)(xi)]

Property not included in any other class that is used to earn rental income and that is

(a) an electrical advertising sign owned by the manufacturer thereof, acquired before May 26, 1976; or

(b) an outdoor advertising poster panel or bulletin board acquired by the taxpayer

(i) before 1988, or

(ii) before 1990

(A) pursuant to an obligation in writing entered into by the taxpayer before June 18, 1987, or

(B) that was under construction by or on behalf of the taxpayer on June 18, 1987.

History: Para. (b) substituted by P.C. 1989-2464, s. 16, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

Definitions [Cl. 11]: "class" — Reg. 1102 (1)–(3), (14), (14.1); "property", "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Class 12 — (100 per cent)

[Reg. 1100(1)(a)(xii), 1100(1)(l)]

Property not included in any other class that is

(a) a book that is part of a lending library;

(b) chinaware, cutlery or other tableware;

(c) a kitchen utensil costing less than

(i) $100, if acquired before May 26, 1976, or

(ii) $200, if acquired after May 25, 1976;

(d) a die, jig, pattern, mould or last;

(e) a medical or dental instrument costing less than

(i) $100, if acquired before May 26, 1976, or

(ii) $200, if acquired after May 25, 1976;

(f) a mine shaft, main haulage way or similar underground work designed for continuing use, or any extension thereof, sunk or constructed after the mine came into production, to the extent that the property was acquired before 1988;

(g) linen;

(h) a tool costing less than

(i) $100, if acquired before May 26, 1976, or

(ii) $200, if acquired after May 25, 1976;

(i) a uniform;

(j) the cutting or shaping part in a machine;

(k) apparel or costume, including accessories used therewith, used for the purpose of earning rental income;

(l) a video tape acquired before May 26, 1976;

(m) a motion picture film or video tape that is a television commercial message;

(n) a certified feature film or certified production;

(o) computer software acquired after May 25, 1976, but not including systems software or property acquired after August 8, 1989 and before 1993 that is described in paragraph (s);

(p) a metric scale or a scale designed for ready conversion to metric weighing, acquired after March 31, 1977 and before 1984 for use in a retail business and having a maximum weighing capacity of 100 kilograms;

(q) a designated overburden removal cost; or

(r) a video-cassette, a video-laser disk or a digital video disk, that is acquired for the purpose of renting and that is not expected to be rented to any one person for more than 7 days in any 30-day period;

and property that would otherwise be included in another class in this Schedule that is

(s) acquired by the taxpayer after August 8, 1989 and before 1993, for use in a business of selling goods or providing services to consumers that is carried on in Canada, or for lease to another taxpayer for use by that other taxpayer in such a business, and that is

(i) electronic bar code scanning equipment designed to read bar codes applied to goods held for sale in the ordinary course of the business,

(ii) a cash register or similar sales recording device designed with the capability of calculating and recording sales tax imposed by more than one jurisdiction in respect of the same sale,

(iii) equipment or computer software that is designed to convert a cash register or similar sales recording device to one having the capability of calculating and recording sales tax imposed by more than one jurisdiction in respect of the same sale, or

(iv) electronic equipment or computer software that is ancillary to property described in subparagraph (i), (ii) or (iii) and all or substantially all the use of which is in conjunction with that property.

Related Provisions: ITA 127.52(1)(c) — Add-back of CCA on film properties for minimum tax purposes; ITA 237.1 — Tax shelters; Reg. 1100(1)(zg), (zh) — accelerated CCA for year 2000 compliant software; Reg. 1100(2)(a)(iii) — Half-year rule applies to some Class 12 property; Reg. 1100(20.1) — Limitation on CCA claim for computer software tax shelter property; Reg. 1100(21), (21.1) — Certified films and video tapes; Reg. 1101(5r) — Separate class for all computer software tax shelter property; Reg. 1104(2), (7) — Definitions.

History: Para. (r) amended by P.C. 2005-698, s. 7, May 3, 2005, *Canada Gazette*, Part II, May 18, 2005, applicable to property acquired after December 12, 1995.

Para. (f) substituted by P.C. 1990-2780, s. 14, December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to 1988 *et seq.*

Para. (o) amended, and all that portion of Cl. 12 following para. (r) added, by P.C. 1990-2067, s. 2, September 27, 1990, *Canada Gazette*, Part II, October 10, 1990.

Para. (n) substituted by P.C. 1986-477, s. 3, February 27, 1986, *Canada Gazette*, Part II, March 19, 1986, applicable in respect of a motion picture film or video tape, the principal photography or taping of which commenced after 1985.

Para. (r) added by P.C. 1985-2277, s. 20, July 24, 1985, *Canada Gazette*, Part II, August 7, 1985.

Para. (p) substituted by P.C. 1981-733, s. 2, March 19, 1981, *Canada Gazette*, Part II, April 8, 1981.

Para. (q) added by P.C. 1979-1487, s. 5, May 17, 1979, *Canada Gazette*, Part II, June 13, 1979, effective for the period commencing November 17, 1978.

Para. (p) added by P.C. 1978-344, s. 7, February 9, 1978, *Canada Gazette*, Part II, February 22, 1978, effective after March 31, 1977.

Selected Cases [Cl. 12]: *Campbell's Concrete Ltd. v. R.*, [2001] 1 C.T.C. 2013 (TCC) (Relative permanency of moulds did not affect classification).

Definitions [Cl. 12]: "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "certified feature film", "certified production" — Reg. 1104(2); "class" — Reg. 1102 (1)–(3), (14), (14.1); "computer software", "designated overburden removal cost" — Reg. 1104(2); "mine" — Reg. 1104(7)(a); "person", "property" — ITA 248(1); "systems software" — Reg. 1104(2); "taxpayer" — ITA 248(1); "television commercial message" — Reg. 1104(2).

Interpretation Bulletins: IT-283R2: CCA — Videotapes, videotape cassettes, films, computer software and master recording media (archived); IT-422: Definition of tools; IT-441: Certified feature productions (archived).

I.T. Technical News: 12 (millennium bug expenditures); 14 (millennium bug expenditures).

Class 13

[Reg. 1100(1)(b), Schedule III]

Property that is a leasehold interest and property acquired by a taxpayer that would, if that property had been acquired by a person with whom the taxpayer was not dealing at arm's length at the time the property was acquired by the taxpayer, be a leasehold interest of that person, except

(a) an interest in minerals, petroleum, natural gas, other related hydrocarbons or timber and property relating thereto or in respect of a right to explore for, drill for, take or remove minerals, petroleum, natural gas, other related hydrocarbons or timber;

(b) that part of the leasehold interest that is included in another class in this Schedule by reason of subsection 1102(5) or (5.1); or

(c) a property that is included in Class 23.

Related Provisions: Reg. 1100(2)(a)(iv) — Half-year rule inapplicable to Class 13 property; Reg. 1700(4) — CCA — Farming/fishing property owned since before 1972: leasehold interests.

History: That portion of Class 13 preceding para. (a), and para. (b), substituted by P.C. 1994-139, s. 21, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired after December 23, 1991, other than property acquired by a taxpayer before 1993

(a) pursuant to an agreement in writing entered into by the taxpayer before December 24, 1991, or

(b) that was under construction by or on behalf of the taxpayer on December 23, 1991.

Definitions [Cl. 13]: "arm's length" — ITA 251(1); "class" — Reg. 1102 (1)–(3), (14), (14.1); "mineral" — Reg. 1104(3); "person", "property" — ITA 248(1); "related" — ITA 251(2)–(6); "taxpayer" — ITA 248(1).

Interpretation Bulletins: IT-195R4: Rental property — CCA restrictions; IT-324: Emphyteutic lease (archived).

Class 14

[Reg. 1100(1)(c) — apportioned over the life of the property (see also Class 44)]

Property that is a patent, franchise, concession or licence for a limited period in respect of property, except

(a) a franchise, concession or licence in respect of minerals, petroleum, natural gas, other related hydrocarbons or timber and property relating thereto (except a franchise for distributing gas to consumers or a licence to export gas from Canada or from a province) or in respect of a right to explore for, drill for, take or remove minerals, petroleum, natural gas, other related hydrocarbons or timber;

(b) a leasehold interest;

(c) a property that is included in Class 23;

(d) a licence to use computer software; or

(e) a property that is included in Class 44.

Related Provisions: Reg. 1100(2)(a)(iv) — Half-year rule inapplicable to Class 14 property; Reg. 1103(2h) — Election for patent to be in Class 14 instead of Class 44; Reg. Sch. II Cl. 44 — Patent or right to use patented information.

History: Para. (e) added by P.C. 1994-231, s. 4, February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to property acquired after April 26, 1993.

Para. (d) added by P.C. 1983-3411, s. 2, November 3, 1983, *Canada Gazette*, Part II, November 23, 1983, applicable in respect of property acquired after May 25, 1976.

Definitions [Cl. 14]: "Canada" — ITA 255, *Interpretation Act* 35(1); "computer software" — Reg. 1104(2); "mineral" — Reg. 1104(3); "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "related" — ITA 251(2)–(6).

Interpretation Bulletins: IT-143R3: Meaning of eligible capital expenditure; IT-283R2: CCA — Videotapes, videotape cassettes, films, computer software and master recording media (archived); IT-477: Patents, franchises, concessions and licences.

Class 15

[Reg. 1100(1)(f)]

Property that would otherwise be included in another class in this Schedule and that

(a) was acquired for the purpose of cutting and removing merchantable timber from a timber limit, and

(b) will be of no further use to the taxpayer after all merchantable timber that the taxpayer is entitled to cut and remove from the limit has been cut and removed,

except

(c) property that the taxpayer has, in the taxation year or a preceding taxation year, elected not to include in this class, or

(d) a timber resource property.

Related Provisions: Reg. 1100(2)(a)(iv) — Half-year rule inapplicable to Class 15 property; Reg. 4604(2)(g) — Approved project property; Reg. Sch. IV — Class 15 CCA.

History: Class 15 substituted by P.C. 1994-139, s. 22, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1986 *et seq.*

Definitions [Cl. 15]: "class" — Reg. 1102 (1)–(3), (14), (14.1); "property" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "timber resource property" — ITA 13(21), 248(1).

Interpretation Bulletins: IT-501: Logging assets.

Class 16 — (40 per cent)

[Reg. 1100(1)(a)(xiii)]

Property acquired before May 26, 1976 that is

(a) an aircraft,

(b) furniture, fittings or equipment attached to an aircraft, or

(c) a spare part for a property included in this class,

property acquired after May 25, 1976 that is

(d) a taxicab,

property acquired after November 12, 1981 that is

(e) a motor vehicle that

(i) would be an automobile as that term is defined in subsection 248(1) of the Act, if that definition were read without reference to paragraph (d) thereof,

(ii) was acquired for the purpose of renting or leasing, and

(iii) is not expected to be rented or leased to any person for more than 30 days in any 12 month period,

property acquired after February 15, 1984 that is

(f) a coin-operated video game or pinball machine,

and property acquired after December 6, 1991 that is

(g) a truck or tractor designed for hauling freight, and that is primarily so used by the taxpayer or a person with whom the taxpayer does not deal at arm's length in a business that includes hauling freight, and that has a "gross vehicle weight rating" (as that term is defined in subsection 2(1) of the *Motor Vehicle Safety Regulations*) in excess of 11,788 kg.

Related Provisions: Reg. 4601(c)(i)(A) — Qualified transportation equipment.

History: All that portion of Class 16 following para. (d) substituted, para. (g) added, by P.C. 1994-139, s. 23, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after December 31, 1987, except that all that portion following para. (e), in its application before December 7, 1991, shall be read as follows:

and property acquired after February 15, 1984 that is

(f) a coin-operated video game or pinball machine.

Para. (e) substituted by P.C. 1991-2272, s. 6, November 21, 1991, *Canada Gazette*, Part II, December 4, 1991, applicable to taxation years and fiscal periods commencing after June 7, 1987 that end after 1987.

All that portion following para. (d) substituted by P.C. 1985-2277, s. 21, July 24, 1985, *Canada Gazette*, Part II, August 7, 1985.

All that portion of Class 16 of Schedule II following para. (c) substituted by P.C. 1983-1083, s. 4, April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, applicable in respect of property (other than property described in Class 31 of Schedule II or paragraph (n) of Class 12 of that schedule) acquired or disposed of after November 12, 1981, property described in the said Class 31 acquired or disposed of after 1981 and property described in paragraph (n) of the said Class 12 acquired or disposed of after 1982.

Definitions [Cl. 16]: "arm's length" — ITA 251(1); "automobile", "business" — ITA 248(1); "class" — Reg. 1102 (1)–(3), (14), (14.1); "month" — *Interpretation Act* 35(1); "motor vehicle", "person", "property", "taxpayer" — ITA 248(1).

Interpretation Bulletins: IT-317R: Radio and television equipment.

Class 17 — (8 per cent)

[Reg. 1100(1)(a)(xiv)]

Property that would otherwise be included in another class in this Schedule that is

(a) a telephone system, telegraph system, or a part thereof, acquired before May 26, 1976, except

(i) radiocommunication equipment, or

(ii) a property included in Class 10, 13, 14 or 28,

Proposed Addition — Cl. 17(a.1)

(a.1) property (other than a building or other structure) acquired after February 27, 2000 that has not been used for any purpose whatever before it was acquired by the taxpayer and that is

(i) electrical generating equipment (other than electrical generating equipment described in any of paragraphs (f) to (h) of Class 8), or

(ii) production and distribution equipment of a distributor of water or steam used for heating or cooling (including, for this purpose, pipe used to collect or distribute an energy transfer medium but not including equipment or pipe used to distribute water that is for consumption, disposal or treatment),

Application: The March 16, 2001 draft regulations (CCA), s. 9, will add para. (a.1) to Class 17, applicable to property acquired after February 27, 2000.

Technical Notes: Class 17 (8% CCA rate) is amended to apply to property (other than a building or other structure) acquired after February 27, 2000 that has not been used for any purpose whatever before it was acquired by the taxpayer and that is

- electrical generating equipment (other than electrical generating equipment described in any of paragraphs (f) to (h) of Class 8), or
- production and distribution equipment of a distributor of water or steam used for heating or cooling (including, for this purpose, pipe used to collect or distribute an energy transfer medium but not including equipment or pipe used to distribute water that is for consumption, disposal or treatment).

Letter from Dept. of Finance, October 17, 2003:

Dear [xxx]

I am replying to your letter of October 6, 2003, addressed to Mr. Kerry Harnish of this Division, in which you raised a concern relating to the inclusion of electrical generating equipment in either Class 17 or Class 43.1 of Schedule II to the *Income Tax Regulations* (the "Regulations").

In particular, you are concerned that there is a potentially unintended consequence in the Draft Capital Cost Allowance (CCA) Regulations Package released on March 16, 2001. Consistent with the Budget of 2000, the draft regulations moved electrical generating equipment from Class I of Schedule II to the Regulations (4% CCA rate) to Class 17 of that Schedule (8% CCA rate) applicable to property acquired after February 27, 2000. However, no exception was provided in amended Class 17 for electrical generators to which Class 43.1 of that Schedule (30% CCA rate) could apply. Consequently, the concern is that the amendment to Class 17 inadvertently denies Class 43.1 treatment to otherwise eligible electrical generating equipment.

We are aware of this matter and intend to recommend to the Minister of Finance that the proposed CCA regulations concerning Classes 17 and 43.1 be clarified to ensure that Class 43.1 can apply to property described in subparagraph (a.1)(i) of Class 17.

I trust that this information is of assistance to you. Thank you for bringing your concerns to our attention.

Yours sincerely,

Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch

Proposed Amendment — Cl. 17(a.1)

Federal budget, Supplementary Information, February 23, 2005:
Combustion Turbines Generating Electricity

As a result of measures announced in the 2000 budget, combustion turbines that generate electricity are eligible for an 8% CCA rate.

Current CCA Treatment

Proposed amendments to Class 17 of Schedule II to the *Income Tax Regulations* would include in the class combustion turbines described as "property (other than a building or other structure) acquired after February 27, 2000 that has not been used for any purpose before February 28, 2000 and that is . . . electrical generating equipment (other than electrical generating equipment described in any of paragraphs (f) to (h) of Class 8)."

Available evidence associated with newer combustion turbines suggests that the current provisions do not reflect the useful life of these assets. The budget therefore proposes that the CCA rate for combustion turbines that generate electricity (including associated burners and compressors) be increased to 15%. The 15% rate will apply to such property acquired on or after February 23, 2005, that has not been used or acquired for use before February 23, 2005.

Combustion turbines that generate electricity are currently eligible for a separate class election. The separate class election was provided in response to concerns that combustion turbines can have shorter useful lives than other electrical generating equipment.

Because the higher CCA rate proposed in this budget will better reflect the useful life of combustion turbines, it is proposed that the separate class election not be extended to combustion turbines eligible for the higher rate. To accommodate taxpayers who may have already planned purchases based on the availability of the separate class election, it is further proposed that taxpayers may elect to have combustion turbines acquired before 2006 that would otherwise be eligible for the 15% rate included in Class 17 and therefore eligible for the separate class election. The proposed election must be filed with the income tax return for the taxation year in which the property is acquired.

and property not included in any other class, acquired after May 25, 1976, that is

(b) telephone, telegraph or data communication switching equipment, except

(i) equipment installed on customers' premises, or

(ii) property that is principally electronic equipment or systems software therefor; or

(c) a road (other than a specified temporary access road of the taxpayer), sidewalk, airplane runway, parking area, storage area or similar surface construction.

Related Provisions: Reg. 1101(5t) — Separate class for combustion turbine included in 17(a.1)(i); Reg. 1103(2), 1104(2)"specified temporary access road", "telegraph system", "telephone system"; Reg. Sch. II Cl. 29; Reg. Sch. II Cl. 43.1 — Property that would otherwise be in 17(a.1)(i).

History: Para. (c) of Class 17 amended by P.C. 1999-629, s. 13, April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to property acquired after March 6, 1996.

Definitions [Cl. 17]: "class" — Reg. 1102 (1)–(3), (14), (14.1); "property" — ITA 248(1); "specified temporary access road" — Reg. 1104(2); "systems software" — Reg. 1104(2); "taxpayer" — ITA 248(1); "telegraph system" — Reg. 1104(2), *Interpretation Act* 36; "telephone system" — Reg. 1104(2).

Interpretation Bulletins: IT-482R: Pipelines; IT-485: Cost of clearing or levelling land [to be amended re golf courses, per I.T. Technical News No. 20] .

I.T. Technical News: No. 20 (tax treatment of golf courses).

Class 18 — (60 per cent)

[Reg. 1100(1)(a)(xv)]

Property that is a motion picture film acquired before May 26, 1976, except

(a) a television commercial message; or

(b) a certified feature film.

Definitions [Cl. 18]: "certified feature film" — Reg. 1104(2); "property" — ITA 248(1); "television commercial message" — Reg. 1104(2).

Interpretation Bulletins: IT-283R2: CCA — Videotapes, videotape cassettes, films, computer software and master recording media (archived).

Class 19 — (50 per cent or 20 per cent)

[Reg. 1100(1)(n), (o)]

Property acquired by the taxpayer after June 13, 1963 and before January 1, 1967 that would otherwise be included in Class 8 if,

(a) in the taxation year in which the property was acquired,

(i) the taxpayer was an individual who was resident in Canada for not less than 183 days, or

(ii) the taxpayer was a corporation that had a degree of Canadian ownership;

(b) the property was acquired for use in Canada in a business carried on by the taxpayer that,

(i) for the fiscal period in which the property was acquired, or

(ii) for the fiscal period in which the business first commenced selling goods in reasonable commercial quantities,

whichever was later, was a business in which the aggregate of

(iii) its net sales, as they would be determined under paragraphs 71A(2)(d) and (f) of the former Act (within the meaning assigned by paragraph 8(b) of the *Income Tax Application Rules*), from the sale of goods processed or manufactured in Canada by the business,

(iv) an amount equal to that part of its gross revenue that is rent from goods processed or manufactured in Canada in the course of the business, and

(v) its gross revenue from advertisements in a newspaper or magazine produced by the business,

was not less than 2/3 of the amount by which the gross revenue from the business for the period exceeded the aggregate of each amount paid or credited in the period to a customer of the business as a bonus, rebate or discount or for returned or damaged goods, and was not a business that was principally

(vi) operating a gas or oil well,

(vii) logging,

(viii) mining,

(ix) construction, or

(x) a combination of two or more of the activities referred to in subparagraphs (vi) to (ix); and

(c) the property had not been used for any purpose whatever before it was acquired by the taxpayer.

Related Provisions: Reg. 1103(2a) — Election to include property in Class 8.

History: Class 19 amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Definitions [Cl. 19]: "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "fiscal period" — ITA 249.1; "gross revenue", "individual" — ITA 248(1); "mining" — Reg. 1104(3); "property" — ITA 248(1); "resident in Canada" — ITA 250; "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

Class 20 — (20 per cent)

[Reg. 1100(1)(p)]

Property that would otherwise be included in Class 3 or 6

(a) that was acquired after December 5, 1963 and before April 1, 1967 that is

(i) a building,

(ii) an extension to a building, outside the previously existing walls or roof of the building, if the aggregate cost of the extensions added in the aforementioned period exceeded the lesser of

(A) $100,000, and

(B) 25 per cent of the capital cost to the taxpayer of the building on December 5, 1963, or

(iii) an addition or alteration to a property described in subparagraph (i) or (ii),

and that has been certified by the Minister of Industry, upon application by the taxpayer in such form as may be prescribed by the Minister of Industry,

(iv) to be situated in an area that was a designated area, as determined for the purposes of section 71A of the former Act (within the meaning assigned by paragraph 8(b) of the *Income Tax Application Rules*),

(A) at the time the property was acquired,

(B) in a case where the property was built by the taxpayer, at the time construction was commenced, or

(C) in a case where the property was built for the taxpayer pursuant to a contract entered into by the taxpayer, at the time the contract was entered into, and

(v) to have not been used for any purpose whatever before it was acquired by the taxpayer; or

(b) the capital cost of which was included in the approved capital costs as defined in the *Area Development Incentives Act* upon which approved capital cost the Minister of Industry has based the amount of a development grant authorized under that Act.

Related Provisions: Reg. 1103(2f) — Election to include property in Class 1, 3 or 6; Reg. 1704(d) — CCA — Farming and fishing: leasehold interests; Reg. 4600(1)(a) — Qualified property.

History: Class 20 amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Definitions [Cl. 20]: "amount" — ITA 248(1); "building" — Reg 1102(5), (5.1); "Minister", "prescribed", "property", "taxpayer" — ITA 248(1).

Class 21 — (50 per cent)

[Reg. 1100(1)(q)]

Property that would otherwise be included in Class 8 or 19

(a) that was acquired after December 5, 1963 and before April 1, 1967 and that

(i) was acquired for use in a business carried on by the taxpayer that has been certified by the Minister of Industry, for the purposes of section 71A of the former Act (within the meaning assigned by paragraph 8(b) of the *Income Tax Application Rules*), to be a new manufacturing or processing business in a designated area for the fiscal period in which the property was acquired or for a subsequent fiscal period, and

(ii) had not been used for any purpose whatever before it was acquired by the taxpayer; or

(b) the capital cost of which was included in the approved capital costs as defined in the *Area Development Incentives Act* upon which approved capital cost the Minister of Industry has based the amount of a development grant authorized under that Act.

Related Provisions: Reg. 1103(2a) — Election to include property in Class 8; Reg. 4600(2)(k) — Qualified property; 4604(2)(j) — Approved project property.

History: Class 21 amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Definitions [Cl. 21]: "amount", "business" — ITA 248(1); "fiscal period" — ITA 249.1; "Minister", "property", "taxpayer" — ITA 248(1).

Class 22

[Reg. 1100(1)(a)(xvi)]

Property acquired by the taxpayer after March 16, 1964 and

(a) before 1988, or

(b) before 1990

(i) pursuant to an obligation in writing entered into by the taxpayer before June 18, 1987, or

(ii) that was under construction by or on behalf of the taxpayer on June 18, 1987

that is power-operated movable equipment designed for the purpose of excavating, moving, placing or compacting earth, rock, concrete or asphalt, except a property included in Class 7.

Related Provisions: Reg. 4600(2)(e) — Qualified property; 4603(a) — Qualified construction equipment; 4604(2)(d) — Approved project property; Reg. Sch. II:Cl. 38 — Earth-moving equipment acquired after 1987.

History: Class 22 substituted by P.C. 1989-2464, s. 17, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

Class 22 substituted by P.C. 1979-1487, s. 6, May 17, 1979, *Canada Gazette*, Part II, June 13, 1979.

Definitions [Cl. 22]: "property", "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-411R: Meaning of "construction"; IT-469R: CCA — earth-moving equipment.

Class 23 — (100 per cent)

[Reg. 1100(1)(a)(xvii)]

Property that is

(a) a leasehold interest or a concession in respect of land granted under or pursuant to an agreement in writing with the Canadian Corporation for the 1967 World Exhibition where such leasehold interest or concession is to expire not later than June 15, 1968;

(b) a building or other structure, including component parts, erected on land that is the subject matter of a leasehold interest or concession described in paragraph (a) where such building or other structure, including component parts, is of a temporary nature and is required by the agreement to be removed not later than June 15, 1968;

(c) a leasehold interest or licence in respect of land granted under or pursuant to an agreement in writing with the Expo 86 Corporation where such leasehold interest or licence is to expire not later than January 31, 1987; or

(d) a building or other structure, including component parts, erected on land that is the subject matter of a leasehold interest or licence described in paragraph (c) where such building or other structure, including component parts, is of a temporary nature and is required by the agreement to be removed not later than January 31, 1987.

Related Provisions: Reg. 1100(2)(a)(iv) — Half-year rule inapplicable to Class 23 property.

History: Paras. (c) and (d) added by P.C. 1984-3995, s. 2, December 13, 1984, *Canada Gazette*, Part II, January 9, 1985, applicable in respect of property acquired after 1983.

Definitions [Cl. 23]: "building" — Reg 1102(5), (5.1); "property" — ITA 248(1); "structure" — Reg 1102(5), (5.1); "writing" — *Interpretation Act* 35(1).

Class 24 — (50 per cent)

[Reg. 1100(1)(t), (ta)]

Property acquired after April 26, 1965 and before 1971

(a) that would otherwise be included in Class 2, 3, 6 or 8 and that

(i) was acquired primarily for the purpose of preventing, reducing or eliminating pollution of

(A) any of the inland, coastal or boundary waters of Canada, or

(B) any lake, river, stream, watercourse, pond, swamp or well in Canada,

by industrial waste, refuse or sewage created by operations in the course of carrying on a business by the taxpayer or that would be created by such operations if the property had not been acquired and used, and

(ii) had not been used for any purpose whatever before it was acquired by the taxpayer,

but not including property acquired for use in the production of by-products or the recovery of materials unless the by-products are produced from, or the materials are recovered from, materials that after April 26, 1965,

(iii) were being discarded as waste by the taxpayer, or

(iv) were commonly being discarded as waste by other taxpayers who carried on operations of a type similar to the operations carried on by the taxpayer,

and property acquired before 1999

(b) that would otherwise be included in another class in this Schedule

(i) that has not been included by the taxpayer in any other class,

(ii) that had not been used for any purpose whatever before it was acquired by the taxpayer,

(iii) that was acquired by the taxpayer after 1970 primarily for the purpose of preventing, reducing or eliminating pollution of

(A) any of the inland, coastal or boundary waters of Canada, or

(B) any lake, river, stream, watercourse, pond, swamp or well in Canada,

that is caused, or that, if the property had not been acquired and used, would be caused by

(C) operations carried on by the taxpayer at a site in Canada at which operations have been carried on by him from a time that is before 1974,

(D) the operation in Canada of a building or plant by the taxpayer, the construction of which was either commenced before 1974 or commenced under an agreement in writing entered into by him before 1974, or

(E) the operation of transportation or other movable equipment that has been operated by the taxpayer in Canada (including any of the inland, coastal or boundary waters of Canada) from a time that is before 1974,

or that was acquired by him after May 8, 1972, that would otherwise have been property referred to in this subparagraph except that

(F) it was acquired

(I) for the purpose of gaining or producing income from a business by a taxpayer whose

business includes the preventing, reducing or eliminating of pollution of a kind referred to in this subparagraph that is caused or that otherwise would be caused primarily by operations referred to in clause (C), (D) or (E) carried on by other taxpayers (not including persons referred to in section 149 of the Act), and

(II) to be used in a business referred to in subclause (I) in the preventing, reducing or eliminating of pollution of a kind referred to in this subparagraph, or

(G) it was acquired

(I) for the purpose of gaining or producing income from a property by a corporation whose principal business is the purchasing of conditional sales contracts, accounts receivable, bills of sale, chattel mortgages, bills of exchange or other obligations representing part or all of the sale price of merchandise or services, the lending of money, or the leasing of property, or any combination thereof, and

(II) to be leased to a taxpayer (other than a person referred to in section 149 of the Act) to be used by him, in an operation referred to in clause (C), (D), (E) or (F), in the preventing, reducing or eliminating of pollution of a kind referred to in this subparagraph, and

(iv) that has, upon application by the taxpayer to the Minister of the Environment, been accepted by that Minister as property the primary use of which is to be the preventing, reducing or eliminating of pollution of a kind referred to in subparagraph (iii),

and for the purposes of paragraphs (a) and (b)

(c) where a corporation (in this paragraph referred to as the "predecessor corporation") has, as a result of an amalgamation within the meaning assigned by subsection 87(1) of the Act, merged at any time after 1973 with one or more other corporations to form one corporate entity (in this paragraph referred to as the "new corporation"), the new corporation shall be deemed to be the same corporation as, and a continuation of, the predecessor corporation;

(d) where a corporation (in this paragraph referred to as the "subsidiary") has been wound up at any time after 1973 in circumstances to which subsection 88(1) of the Act applies, the parent (within the meaning assigned by that subsection) shall be deemed to be the same corporation as, and a continuation of, the subsidiary; and

(e) this class shall be read without reference to subparagraph (b)(i) where paragraph (c) or (d) applies to the taxpayer and the property was acquired before 1992.

Related Provisions: Reg. 1100(2)(a)(iv) — Half-year rule inapplicable to Class 24 property; Reg. 4600(1)(a), 4600(2)(k) — Qualified property; 4604(1)(a), 4604(2)(j) — Approved project property.

History: The portion of Class 24 between paras. (a) and (b) amended by P.C. 1997-1033, s. 8, July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable after February 21, 1994.

All that portion of Class 24 following subpara. (b)(iv) added by P.C. 1994-139, s. 24, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1974 *et seq.*

Those portions of Class 24 preceding subpara. (a)(i) and following subpara. (a)(iii) and preceding subpara. (b)(i) substituted by P.C. 1979-1487, s. 7, May 17, 1979, *Canada Gazette*, Part II, June 13, 1979.

All that portion of para. (b) preceding subpara. (i) and subpara. (b)(iv) substituted by P.C. 1978-345, s. 1, February 9, 1978, *Canada Gazette*, Part II, February 22, 1978, effective on and after January 1, 1978.

Definitions [Cl. 24]: "building" — Reg 1102(5), (5.1); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "class" — Reg. 1102 (1)–(3), (14), (14.1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "Minister" — ITA 248(1); "new corporation" — Reg. Sch. II Cl. 24(c); "person" — ITA 248(1); "predecessor corporation" — Reg. Sch. II Cl. 24(c); "property" — ITA 248(1); "subsidiary" — Reg. Sch. II Cl. 24(d); "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-336R: Pollution control property (archived).

Class 25 — (100 per cent)

[Reg. 1100(1)(a)(xviii)]

Property that would otherwise be included in another class in this Schedule that is property acquired by the taxpayer

(a) before October 23, 1968, or

(b) after October 22, 1968 and before 1974, where the acquisition of the property may reasonably be regarded as having been in fulfilment of an obligation undertaken in an agreement made in writing before October 23, 1968 and ratified, confirmed or adopted by the legislature of a province by a statute that came into force before that date,

if the taxpayer was, on October 22, 1968, a corporation, commission or association to which, on the assumption that October 22, 1968 was in its 1969 taxation year, paragraph 62(1)(c) of the former Act (within the meaning assigned by paragraph 8(b) of the *Income Tax Application Rules*),

(c) would not apply; and

(d) would have applied but for subparagraph (i) or (ii) of that paragraph.

Definitions [Cl. 25]: "class" — Reg. 1102 (1)–(3), (14), (14.1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "legislature" — *Interpretation Act* 35(1)"legislative assembly"; "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Class 26 — (5 per cent)

[Reg. 1100(1)(a)(xix)]

Property that is

(a) a catalyst; or

(b) deuterium enriched water (commonly known as "heavy water") acquired after May 22, 1979.

History: Class 26 amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Class 26 and rate substituted by P.C. 1979-1488, s. 3, May 17, 1979, *Canada Gazette*, Part II, June 13, 1979.

Definitions [Cl. 26]: "property" — ITA 248(1).

Class 27 — (50 per cent)

[Reg. 1100(1)(t), (ta)]

Property acquired before 1999 that would otherwise be included in another Class in this Schedule

(a) that has not been included by the taxpayer in any other class;

(b) that had not been used for any purpose whatever before it was acquired by the taxpayer;

(c) that was acquired by the taxpayer after March 12, 1970 primarily for the purpose of preventing, reducing or eliminating air pollution by

(i) removing particulate, toxic or injurious materials from smoke or gas, or

(ii) preventing the discharge of part or all of the smoke, gas or other air pollutant,

that is discharged or that, if the property had not been acquired and used, would be discharged into the atmosphere as a result of

(iii) operations carried on by the taxpayer at a site in Canada at which operations have been carried on by him from a time that is before 1974,

(iv) the operation in Canada of a building or plant by the taxpayer, the construction of which was either commenced before 1974 or commenced under an agreement in writing entered into by him before 1974, or

(v) the operation of transportation or other movable equipment that has been operated by the taxpayer in Canada (including any of the inland, coastal or boundary waters of Canada) from a time that is before 1974,

or that was acquired by him after May 8, 1972, that would otherwise have been property referred to in this paragraph except that

(vi) it was acquired

(A) for the purpose of gaining or producing income from a business by a taxpayer whose business includes the preventing, reducing or eliminating of air pollution that is caused or that otherwise would be caused primarily by operations referred to in subparagraphs (iii), (iv) or (v) carried on by other taxpayers (not including persons referred to in section 149 of the Act), and

(B) to be used in a business referred to in clause (A) in the preventing, reducing or eliminating of air pollution in a manner referred to in this paragraph, or

(vii) it was acquired

(A) for the purpose of gaining or producing income from a property by a corporation whose principal business is the purchasing of conditional sales contracts, accounts receivable, bills of sale, chattel mortgages, bills of exchange or other obligations representing part or all of the sale price of merchandise or services, the lending of money, or the leasing of property, or any combination thereof, and

(B) to be leased to a taxpayer (other than a person referred to in section 149 of the Act) to be used by him, in an operation referred to in subparagraph (iii), (iv), (v) or (vi), in the preventing, reducing or eliminating of air pollution in a manner referred to in this paragraph; and

(d) that has, upon application by the taxpayer to the Minister of the Environment, been accepted by that Minister as property the primary use of which is to be the preventing, reducing or eliminating of air pollution in a manner referred to in paragraph (c);

and for the purposes of paragraphs (a) to (d),

(e) where a corporation (in this paragraph referred to as the "predecessor corporation") has, as a result of an amalgamation within the meaning assigned by subsection 87(1) of the Act, merged at any time after 1973 with one or more other corporations to form one corporate entity (in this paragraph referred to as the "new corporation"), the new corporation shall be deemed to be the same corporation as, and a continuation of, the predecessor corporation;

(f) where a corporation (in this paragraph referred to as the "subsidiary") has been wound up at any time after 1973 in circumstances to which subsection 88(1) of the Act applies, the parent (within the meaning assigned by that subsection) shall be deemed to be the same corporation as, and a continuation of, the subsidiary; and

(g) this class shall be read without reference to paragraph (a) where paragraph (e) or (f) applies to the taxpayer and the property was acquired before 1992.

Related Provisions: Reg. 1100(2)(a)(iv) — Half-year rule inapplicable to Class 27 property; Reg. 4600(1)(a), 4600(2)(k) — Qualified property; 4604(1)(a), 4604(2)(j) — Approved project property.

History: The opening words of Class 27 amended by P.C. 1997-1033, s. 9, July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable after February 21, 1994.

That portion of Class 27 following para. (d) added by P.C. 1994-139, s. 25, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1974 *et seq.*

That portion of Class 27 preceding para. (a) substituted by P.C. 1979-1487, s. 8, May 17, 1979, *Canada Gazette*, Part II, June 13, 1979.

All that portion of Class 27 preceding para. (a) and para (d) substituted by P.C. 1978-345, s. 2, February 9, 1978, *Canada Gazette*, Part II, February 22, 1978, effective on and after January 1, 1978.

Definitions [Cl. 27]: "building" — Reg 1102(5), (5.1); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "class" — Reg. 1102 (1)–(3), (14), (14.1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "Minister" — ITA 248(1); "new corporation" — Reg. Sch. II Cl. 27(e); "person" — ITA 248(1); "predecessor corporation" — Reg. Sch. II Cl. 27(e); "property" — ITA 248(1); "subsidiary" — Reg. Sch. II Cl. 27(f); "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-336R: Pollution control property (archived).

Class 28 — (30 per cent)

[Reg. 1100(1)(a)(xx), 1100(1)(w), (zc)(i)(H)]

Property situated in Canada that would otherwise be included in another class in this Schedule that

(a) was acquired by the taxpayer

(i) before 1988, or

(ii) before 1990

(A) pursuant to an obligation in writing entered into by the taxpayer before June 18, 1987,

(B) that was under construction by or on behalf of the taxpayer on June 18, 1987, or

(C) that is machinery or equipment that is a fixed and integral part of a building, structure, plant facility or other property that was under construction by or on behalf of the taxpayer on June 18, 1987,

and that

(b) was acquired by the taxpayer principally for the purpose of gaining or producing income from one or more mines operated by the taxpayer and situated in Canada and each of which

(i) came into production in reasonable commercial quantities after November 7, 1969, or

(ii) was the subject of a major expansion after November 7, 1969

(A) whereby the greatest designed capacity, measured in weight of input of ore, of the mill that processed the ore from the mine was not less than 25% greater in the year following the expansion than it was in the year preceding the expansion, or

(B) where in the one-year period preceding the expansion,

(I) the Minister, in consultation with the Minister of Natural Resources, determines that the greatest designed capacity of the mine, measured in weight of output of ore, immediately after the expansion was not less than 25% greater than the greatest designed capacity of the mine immediately before the expansion, and

(II) either

1. no mill processed the ore from the mine at any time, or

2. the mill that processed the ore from the mine processed other ore,

(c) was acquired by the taxpayer

(i) after November 7, 1969,

(ii) before the coming into production of the mine or the completion of the expansion of the mine referred to in subparagraph (b)(i) or (ii), as the case may be, and

(iii) in the case of a mine that was the subject of a major expansion described in subparagraph (b)(ii), in the course of and principally for the purposes of the expansion,

(d) had not, before it was acquired by the taxpayer, been used for any purpose whatever by any person with whom the taxpayer was not dealing at arm's length, and

(e) is any of the following, namely,

(i) property that was acquired before the mine came into production and that would, but for this class, be included in Class 10 by virtue of paragraph (g), (k), (l) or (r) of that class or would have been so included in that class if it had been acquired after the 1971 taxation year,

(ii) property that was acquired before the mine came into production and that would, but for this class, be included in Class 10 by virtue of paragraph (m) of that class, or

(iii) property that was acquired after the mine came into production and that would, but for this class, be included in Class 10 by virtue of paragraph (g), (k), (l) or (r) of that class,

or that would be described in paragraphs (b) to (e) if in those paragraphs each reference to a "mine" were read as a reference to a "mine that is a location in a bituminous sands deposit, oil sands deposit or oil shale deposit from which material is extracted", and each reference to "after November 7, 1969" were read as "before November 8, 1969".

Related Provisions: Reg. 1101(4a), (4b) — Separate class for certain property under Class 20; Reg. 1104(5), (6.1) — Income from a mine; Reg. 1104(7) — Extended meaning of "mine"; Reg. 1104(8.1) — Production in paras. (c) and (e) means production in reasonable commercial quantities; Reg. 1205(1)(c) — Earned depletion base — 1206(1)"bituminous sands equipment"; Reg. 4600(1)(b), 4600(2)(j) — Qualified property; Reg. 4601(a)(vi) — Qualified transportation equipment; Reg. 4604(2)(i) — Approved project property.

History: Cls. (b(ii)(A) and (B) amended by P.C. 2000-1331, subsec. 5(2), August 23, 2000, *Canada Gazette*, Part II, September 13, 2000, applicable to expansions commencing after September 13, 2000.

Subpara. (b)(ii) substituted by P.C. 1994-139, s. 26, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to expansions of mines commencing after June 18, 1987.

Class 28 substituted by P.C. 1989-2464, s. 18, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

Subpara. (d)(iii) substituted by P.C. 1980-3279, s. 5, December 4, 1980, *Canada Gazette*, Part II, December 24, 1980, effective in respect of property acquired after December 11, 1979.

Subparas. (d)(ii), (iii) substituted for subpara. (ii) by P.C. 1978-344, s. 8, February 9, 1978, *Canada Gazette*, Part II, February 22, 1978, effective after March 31, 1977.

Definitions [Cl. 28]: "arm's length" — ITA 251(1); "bituminous sands" — ITA 248(1); "building" — Reg 1102(5), (5.1); "Canada" — ITA 255, *Interpretation Act* 35(1); "class" — Reg. 1102 (1)–(3), (14), (14.1); "income from a mine" — Reg. 1104(5), (6.1)(a); "mine" — Reg. 1104(7)(a); "Minister", "person" — ITA 248(1); "production" — Reg. 1104(8.1); "property" — ITA 248(1); "structure" — Reg 1102(5), (5.1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Class 29 — (50 per cent)

[Reg. 1100(1)(t), (ta)]

Property not included in Class 41 because of paragraph (c) or (d) of that Class that would otherwise be included in another class in this Schedule

(a) that is property manufactured by the taxpayer, the manufacture of which was completed by him after May 8, 1972, or other property acquired by the taxpayer after May 8, 1972,

(i) to be used directly or indirectly by him in Canada primarily in the manufacturing or processing of goods for sale or lease, or

(ii) to be leased, in the ordinary course of carrying on a business in Canada of the taxpayer, to a lessee who can reasonably be expected to use, directly or indirectly, the property in Canada primarily in Canadian field processing carried on by the lessee or in the manufacturing or processing by the lessee of goods for sale or lease, if the taxpayer is a corporation whose principal business is

(A) leasing property,

(B) manufacturing property that it sells or leases,

(C) the lending of money,

(D) the purchasing of conditional sales contracts, accounts receivable, bills of sale, chattel mortgages, bills of exchange or other obligations representing part or all of the sale price of merchandise or services, or

(E) selling or servicing a type of property that it also leases,

or any combination thereof, unless use of the property by the lessee commenced before May 9, 1972;

(b) that is

(i) property that, but for this class, would be included in Class 8, except railway rolling stock or a property described in paragraph (j) of Class 8,

(ii) an oil or water storage tank,

(iii) a powered industrial lift truck,

(iv) electrical generating equipment described in Class 9, or

(v) property described in paragraph (b) or (f) of Class 10; and

(c) that is property acquired by the taxpayer

(i) before 1988, or

(ii) before 1990

(A) pursuant to an obligation in writing entered into by the taxpayer before June 18, 1987,

(B) that was under construction by or on behalf of the taxpayer on June 18, 1987, or

(C) that is machinery or equipment that is a fixed and integral part of a building, structure, plant facility or other property that was under construction by or on behalf of the taxpayer on June 18, 1987.

Related Provisions: Reg. 1100(2)(a)(iv) — Half-year rule inapplicable to Class 29 property; Reg. 1104(9), 4600(2)(k) — Definition of manufacturing or processing; 4604(2)(j) — Approved project property; Reg. Sch. II Cl. 39.

History: The opening words of Class 29 of Schedule II, and the portion of subpara. (a)(ii) before cl. (A), amended by P.C. 1999-629, s. 14, April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to taxation years that begin after 1996.

Para. (c) added by P.C. 1989-2464, s. 19, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

Selected Cases [Cl. 29]: *Donohue Normick Inc. v. Canada*, [1995] E.T.C. 2158; 96 DTC 6061 (FCA) (Classification depends on expectation of use of item).

Definitions [Cl. 29]: "building" — Reg 1102(5), (5.1); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian field processing" — ITA 248(1); "carrying on a business in Canada" — ITA 253; "class" — Reg. 1102 (1)–(3), (14), (14.1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "manufacturing or processing" — Reg. 1104(9); "property" — ITA 248(1); "structure" — Reg 1102(5), (5.1); "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-147R3: CCA — Accelerated write-off of manufacturing and processing machinery and equipment; IT-283R2: CCA — Videotapes, videotape cassettes, films, computer software and master recording media (archived); IT-411R: Meaning of "construction".

Class 30 — (40 per cent)

[Reg. 1100(1)(a)(xxi)]

Property that is an unmanned telecommunication spacecraft designed to orbit above the earth and acquired by the taxpayer

(a) before 1988, or

(b) before 1990

(i) pursuant to an obligation in writing entered into by the taxpayer before June 18, 1987, or

(ii) that was under construction by or on behalf of the taxpayer before June 18, 1987.

Related Provisions: Reg. 1101(5a) — Separate class.

History: Class 30 substituted by P.C. 1989-2464, s. 20, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

Definitions [Cl. 30]: "property", "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Class 31 — (5 per cent)

[Reg. 1100(1)(a)(xxii)]

Property that is a multiple-unit residential building in Canada that would otherwise be included in Class 3 or Class 6 and in respect of which

(a) a certificate has been issued by Canada Mortgage and Housing Corporation certifying

(i) in respect of a building that would otherwise be included in Class 3, that the installation of footings or any other base support of the building was commenced

(A) after November 18, 1974 and before 1980, or

(B) after October 28, 1980 and before 1982,

as the case may be, and

(ii) in respect of a building that would otherwise be included in Class 6, that the installation of footings or any other base support of the building was commenced after December 31, 1977 and before 1979,

and that, according to plans and specifications for the building, not less than 80 per cent of the floor space will be used in providing self-contained domestic establishments and related parking, recreation, service and storage areas;

(b) not more than 20 per cent of the floor space is used for any purpose other than the purposes referred to in paragraph (a);

(c) the certificate referred to in paragraph (a) was issued on or before the later of

(i) December 31, 1981, and

(ii) the day that is 18 months after the day on which the installation of footings or other base support of the building was commenced; and

(d) the construction of the building proceeds, after 1982, without undue delay, taking into consideration acts of God, labour disputes, fire, accidents or unusual delay by common carriers or suppliers of materials or equipment;

and that was acquired by the taxpayer

(e) before June 18, 1987, or

(f) after June 17, 1987 pursuant to

(i) an obligation in writing entered into by the taxpayer before June 18, 1987, or

(ii) the terms of a prospectus, preliminary prospectus, registration statement, offering memorandum or notice required to be filed with a public authority in Canada and filed before June 18, 1987 with that public authority.

Related Provisions: Reg. 1101(5b) — Separate class where property cost $50,000 or more.

History: All that portion of Class 31 following para. (d) added by P.C. 1989-2464, s. 21, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after June 18, 1987.

Para. (d) substituted by P.C. 1982-3667, December 2, 1982, *Canada Gazette*, Part II, December 22, 1982.

All that portion of para. (a) preceding subpara. (ii) substituted, paras. (c), (d) added by P.C. 1981-733, s. 3, March 19, 1981, *Canada Gazette*, Part II, April 8, 1981, effective commencing October 29, 1980.

Subpara. (a)(i) substituted by P.C. 1979-1487, s. 9, May 17, 1979, *Canada Gazette*, Part II, June 13, 1979, effective January 1, 1979.

Class 31 substituted by P.C. 1978-345, s. 3, February 9, 1978, *Canada Gazette*, Part II, February 22, 1978, effective on and after January 1, 1978.

Selected Cases [Cl. 31]: *Blouin v. Canada*, [1995] 2 C.T.C. 412 (FCTD) (Even certificate obtained by fraud is binding upon Minister).

Definitions [Cl. 31]: "building" — Reg 1102(5), (5.1); "Canada" — ITA 255, *Interpretation Act* 35(1); "month" — *Interpretation Act* 35(1); "pro-

perty" — ITA 248(1); "related" — ITA 251(2)–(6); "self-contained domestic establishment", "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-195R4: Rental property — CCA restrictions; IT-367R3: CCA — multiple-unit residential buildings (archived).

Forms: TX87: Application for a copy of a MURB certificate.

Class 32 — (10 per cent)

[Reg. 1100(1)(a)(xxiii)]

Property that is a multiple-unit residential building in Canada that would otherwise be included in Class 6 if the reference to "1979" in subparagraph (a)(viii) of that Class were read as a reference to "1980", and in respect of which

(a) a certificate has been issued by Canada Mortgage and Housing Corporation certifying

(i) that the installation of footings or any other base support of the building was commenced after November 18, 1974 and before 1978, and

(ii) that, according to plans and specifications for the building, not less than 80% of the floor space will be used in providing self-contained domestic establishments and related parking, recreation, service and storage areas; and

(b) not more than 20 per cent of the floor space is used for any purpose other than the purposes referred to in subparagraph (a)(ii).

History: All that portion of Class 32 preceding para. (a) substituted by P.C. 1978-3768, s. 4, December 14, *Canada Gazette*, Part II, December 27, 1978, effective January 1, 1979.

Definitions [Cl. 32]: "building" — Reg 1102(5), (5.1); "Canada" — ITA 255, *Interpretation Act* 35(1); "property" — ITA 248(1); "related" — ITA 251(2)–(6); "self-contained domestic establishment" — ITA 248(1).

Interpretation Bulletins: IT-195R4: Rental property — CCA restrictions; IT-367R3: CCA — multiple-unit residential buildings (archived); .

Forms: TX87: Application for a copy of a MURB certificate.

Class 33 — (15 per cent)

[Reg. 1100(1)(a)(xxiv)]

Property that is a timber resource property.

Definitions [Cl. 33]: "property" — ITA 248(1); "timber resource property" — ITA 13(21), 248(1).

Interpretation Bulletins: IT-481: Timber resource property and timber limits.

Class 34 — (50 per cent)

[Reg. 1100(1)(t), (ta)]

Property that would otherwise be included in Class 1, 2 or 8

(a) that is

(i) electrical generating equipment,

(ii) production equipment and pipelines of a distributor of heat,

(iii) steam generating equipment that was acquired by the taxpayer primarily for the purpose of producing steam to operate property described in subparagraph (i), or

(iv) an addition to a property described in subparagraph (i), (ii) or (iii),

but not including buildings or other structures,

(b) that was acquired by the taxpayer after May 25, 1976,

(c) that

(i) was acquired by the taxpayer for use by him in a business carried on in Canada, or

(ii) is to be leased by the taxpayer to a lessee for use by the lessee in Canada, and

(d) that is property in respect of which a certificate has been issued

(i) before December 11, 1979 by the Minister of Industry, Trade and Commerce certifying that the property is part of a plan designed to

(A) produce heat derived primarily from the consumption of wood wastes or municipal wastes,

(B) produce electrical energy by the utilization of fuel that is petroleum, natural gas or related hydrocarbons, coal, coal gas, coke, lignite or peat (in this clause referred to as "fossil fuel"), wood wastes or municipal wastes, or any combination thereof, if the consumption of fossil fuel (expressed as the high heat value of the fossil fuel), if any, chargeable to electrical energy on an annual basis in respect of the property is no greater than 7,000 British Thermal Units per kilowatt-hour of electrical energy produced, or

(C) recover heat that is a by-product of an industrial process, or

(ii) after December 10, 1979 by the Minister of Energy, Mines and Resources certifying that the property is part of a plan designed to

(A) produce heat derived primarily from the consumption of natural gas, coal, coal gas, lignite, peat, wood wastes or municipal wastes, or any combination thereof,

(B) produce electrical energy by the utilization of fuel that is petroleum, natural gas or related hydrocarbons, coal, coal gas, coke, lignite or peat (in this clause referred to as "fossil fuel"), wood wastes or municipal wastes, or any combination thereof, if the consumption of fossil fuel (expressed as the high heat value of the fossil fuel), if any, chargeable to electrical energy on an annual basis in respect of the property is no greater than 7,000 British Thermal Units per kilowatt-hour of electrical energy produced, or

(C) recover heat that is a by-product of an industrial process,

and property that was acquired by the taxpayer after December 10, 1979 (other than property described in paragraph (a)) and would otherwise be included in another Class in this Schedule

(e) that is

(i) active solar heating equipment including solar collectors, solar energy conversion equipment, storage equipment, control equipment, equipment designed to interface solar heating equipment with other heating equipment, and solar water heaters, used to

(A) heat a liquid or air to be used directly in the course of manufacturing or processing,

(B) provide space heating when installed in a new building or other new structure at the time

of its original construction where that construction commenced after December 10, 1979, or

(C) heat water for a use other than a use described in clause (A) or (B),

(ii) a hydro electric installation of a producer of hydro electric energy with a planned maximum generating capacity not exceeding 15 megawatts upon completion of site development that is the generating equipment and plant (including structures) of that producer including a canal, a dam, a dyke, an overflow spillway, a penstock, a powerhouse complete with generating equipment and other equipment ancillary thereto, control equipment, fishways or fish bypasses and transmission equipment, except distribution equipment and a property included in Class 10 or 17,

(iii) heat recovery equipment that is designed to conserve energy or reduce the requirement to acquire energy by extracting and reusing heat from thermal waste including condensers, heat exchange equipment, steam compressors used to upgrade low pressure steam, waste heat boilers and ancillary equipment such as control panels, fans, instruments or pumps,

(iv) an addition or alteration to a hydro electric installation described in subparagraph (ii) that results in a change in generating capacity if the new maximum generating capacity at the hydro electric installation does not exceed 15 megawatts, or

(v) a fixed location device acquired after February 25, 1986, that is a wind energy conversion system designed to produce electrical energy, consisting of a wind-driven turbine, generating equipment and related equipment, including control and conditioning equipment, support structures, a powerhouse complete with equipment ancillary thereto, and transmission equipment, but not including distribution equipment, equipment designed to store electrical energy or property included in Class 10 or 17,

(f) that

(i) was acquired by the taxpayer for use by him for the purpose of gaining or producing income from a business carried on in Canada or from property situated in Canada, or

(ii) is to be leased by the taxpayer to a lessee for use by the lessee in Canada, and

(g) that is property in respect of which a certificate has been issued by the Minister of Energy, Mines and Resources,

but not including

(h) property in respect of which a certificate issued under paragraph (d), (g) has been revoked pursuant to subsection 1104(11),

(i) property that had been used before it was acquired by the taxpayer unless the property had previously been included in Class 34 for the purpose of computing the income of the person from whom it was acquired,

(j) property acquired by the taxpayer after February 21, 1994 other than

(i) property acquired by the taxpayer

(A) pursuant to an agreement of purchase and sale in writing entered into by the taxpayer before February 22, 1994,

(B) in order to satisfy a legally binding obligation entered into by the taxpayer in writing before February 22, 1994 to sell electricity to a public power utility in Canada,

(C) that was under construction by or on behalf of the taxpayer on February 22, 1994, or

(D) that is machinery or equipment that is a fixed and integral part of a building, structure or other property that was under construction by or on behalf of the taxpayer on February 22, 1994, and

(ii) property acquired by the taxpayer before 1996

(A) pursuant to an agreement of purchase and sale in writing entered into before 1995 to acquire the property from a person or partnership in circumstances where

(I) the property was part of a project that was under construction by the person or partnership on February 22, 1994, and

(II) it is reasonable to conclude, having regard to all of the circumstances, that the person or partnership constructed the project with the intention of transferring all or part of the project to another taxpayer after completion, or

(B) pursuant to an agreement in writing entered into before 1995 by the taxpayer with a person or partnership where the taxpayer agrees to assume a legally binding obligation entered into by the person or partnership before February 22, 1994 to sell electricity to a public power utility in Canada, or

(k) property in respect of which a certificate has not been issued under paragraph (d) or (g) before the time that is the later of

(i) the end of 1995, and

(ii) 2 years after the property is acquired by the taxpayer or, where the property is property acquired in circumstances to which paragraph (j) applies, 2 years after substantial completion of the property.

Related Provisions: Reg. 1100(2)(a)(iv) — Half-year rule inapplicable to Class 34 property; Reg. 1100(24), (25) — Limitation on deduction for specified energy property; Reg. 1104(11) — Revocation of certificate; Reg. 4600(2)(k) — Qualified property; Reg. 4604(2)(j) — Approved project property.

History: Paras. (j) and (k) added to Class 34 by P.C. 1997-1033, s. 10, July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable after February 21, 1994.

That portion of Class 34 preceding para. (a) substituted by P.C. 1989-2464, s. 22, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

Subpara. (e)(v) added by P.C. 1987-2354, November 26, 1987, *Canada Gazette*, Part II, December 9, 1987.

Para. (b), subparas. (c)(ii), (f)(ii), cl. (e)(i)(B), and that portion following para. (d) and preceding para. (e) substituted by P.C. 1985-2673, s. 2, August 28, 1985, *Canada Gazette*, Part II, September 18, 1985.

Cls. (d)(i)(C), (ii)(C) substituted by P.C. 1984-2044, subsecs. 3(2), (4), June 14, 1984, *Canada Gazette*, Part II, June 27, 1984.

Subpara. (a)(iv) added, paras. (b)–(f) substituted, paras. (g)–(i) added by P.C. 1980-3323, s. 2, December 4, 1980, *Canada Gazette*, Part II, December 24, 1980; paras. (b)–(i) effective December 11, 1979.

Para. (b) and subpara. (c)(ii) substituted by P.C. 1980-327, February 1, 1980, *Canada Gazette*, Part II, February 13, 1980, effective January 1, 1980.

Definitions [Cl. 34]: "building" — Reg 1102(5), (5.1); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "fossil fuel" — Reg. Sch. II Cl. 34(d)(i)(B), (ii)(B); "Minister" — ITA 248(1); "person", "property" — ITA 248(1); "related" — ITA 251(2)–(6); "structure" — Reg 1102(5), (5.1); "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Class 35 — (7 per cent)

[Reg. 1100(1)(a)(xxv), 1100(1)(z.1b), 1100(1)(z.1c), 1100(1)(zc)(i)(I)]

Property not included in any other class that is

(a) a railway car acquired after May 25, 1976; or

(b) a rail suspension device designed to carry trailers that are designed to be hauled on both highways and railway tracks.

Related Provisions: Reg. 1100(1)(z.1c) — Additional CCA for railway common carriers; Reg. 1100(1.13)(a)(viii) — Exclusion from specified leasing property rules; Reg. 1101(5d)–(5d.2) — Separate classes; Reg. 1103(2i) — Election to include Class 7(h) property in Class 35.

History: Class 35 substituted by P.C. 1994-139, s. 27, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired after December 23, 1991, other than property acquired by a taxpayer before 1993

(a) pursuant to an agreement in writing entered into before December 24, 1991; or

(b) that was under construction by or on behalf of the taxpayer on December 23, 1991.

Definitions [Cl. 35]: "class" — Reg. 1102 (1)–(3), (14), (14.1); "property" — ITA 248(1).

Class 36

Property acquired after December 11, 1979 that is deemed to be depreciable property by virtue of paragraph 13(5.2)(c) of the Act.

Related Provisions: Reg. 1101(5g) — Separate class.

History: Class 36 added by P.C. 1982-599, subsec. 6(2), February 25, 1982, *Canada Gazette*, Part II, March 10, 1982, applicable in respect of property acquired after December 11, 1979.

Definitions [Cl. 36]: "depreciable property" — ITA 13(21), 248(1); "property" — ITA 248(1).

Class 37 — (15 per cent)

[Reg. 1100(1)(a)(xxvi)]

Property that would otherwise be included in another class in this Schedule that is property used in connection with an amusement park, including

(a) land improvements (other than landscaping) for or in support of park activities, including

(i) roads, sidewalks, parking areas, storage areas, or similar surface constructions, and

(ii) canals,

(b) buildings (other than warehouses, administration buildings, hotels or motels), structures and equipment (other than automotive equipment), including

(i) rides, attractions and appurtenances associated with a ride or attraction, ticket booths and facades,

(ii) equipment, furniture and fixtures, in or attached to a building included in this class,

(iii) bridges, and

(iv) fences or similar perimeter structures, and

(c) automotive equipment (other than automotive equipment designed for use on highways or streets),

and property not included in another class in this Schedule that is a waterway or a land improvement (other than landscaping, clearing or levelling land) used in connection with an amusement park.

Related Provisions: Reg. 1103(2b) — Election to include earlier property in Class 37; Reg. 1104(12) — Meaning of "amusement park"; Reg. 1104(12); 4604(1)(a), 4604(2)(k) — Approved project property.

History: Class 37 added by P.C. 1982-599, subsec. 6(2), February 25, 1982, *Canada Gazette*, Part II, March 10, 1982.

Definitions [Cl. 37]: "amusement park" — Reg. 1104(12); "associated" — ITA 256; "building" — Reg 1102(5), (5.1); "class" — Reg. 1102 (1)–(3), (14), (14.1); "property" — ITA 248(1); "structure" — Reg 1102(5), (5.1).

Class 38

[Reg. 1100(1)(zd)]

Property not included in Class 22 but that would otherwise be included in that class if that class were read without reference to paragraphs (a) and (b) thereof.

Related Provisions: Reg. 1101(5l) — Election for separate class; Reg. 4600(2)(e) — Qualified property; 4603(a) — Qualified construction equipment; 4604(2)(d) — Approved project property.

History: Class 38 added by P.C. 1989-2464, s. 23, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

Definitions [Cl. 38]: "class" — Reg. 1102 (1)–(3), (14), (14.1); "property" — ITA 248(1).

Interpretation Bulletins: IT-411R: Meaning of "contruction"; IT-469R: CCA — Earth-moving equipment.

Class 39

[Reg. 1100(1)(ze)]

Property acquired after 1987 and before February 26, 1992 that is not included in Class 29, but that would otherwise be included in that Class if that Class were read without reference to subparagraphs (b)(iii) and (v) and paragraph (c) thereof.

Related Provisions: Reg. 1104(9); 4600(2)(k) — Qualified property; 4604(2)(j) — Approved project property; Sch. II:Cl. 43.

History: Class 39 substituted by P.C. 1994-230, s. 10, February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to property acquired after February 25, 1992.

Class 39 added by P.C. 1989-2464, s. 23, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

Selected Cases [Cl. 39]: *Will-Kare Paving & Contracting Ltd. v. Canada*, [2000] 3 C.T.C. 463 (SCC); aff'g [2000] 3 C.T.C. 463 (FCA); aff'g [1996] 2 C.T.C. 2426 (TCC) ("Primary" means the most important, not just one of many purposes or reasons).

Definitions [Cl. 39]: "property" — ITA 248(1).

Interpretation Bulletins: IT-147R3: CCA — Accelerated write-off of manufacturing and processing machinery and equipment; IT-283R2: CCA — Videotapes, videotape cassettes, films, computer software and master recording media (archived); IT-411R: Meaning of "construction".

Class 40

[Reg. 1100(1)(zf)]

Property acquired after 1987 and before 1990 that is a powered industrial lift truck or property described in paragraph (b) or (f) of Class 10 and that is property not included in Class 29 but that would otherwise be included in that class if that class were read without reference to paragraph (c) thereof.

Related Provisions: Reg. 1103(2e) — Transfer from Class 40 to Class 10; 4600(2)(k) — Qualified property; 4604(2)(j) — Approved project property.

History: Class 40 added by P.C. 1989-2464, s. 23, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

Definitions [Cl. 40]: "class" — Reg. 1102 (1)–(3), (14), (14.1); "property" — ITA 248(1).

Interpretation Bulletins: IT-147R3: CCA — Accelerated write-off of manufacturing and processing machinery and equipment; IT-283R2: CCA — Videotapes, videotape cassettes, films, computer software and master recording media (archived).

Class 41 — (25 per cent)

[Reg. 1100(1)(a)(xxvii), 1100(1)(y)]

Property

(a) not included in Class 28 that would otherwise be included in that class if that Class were read without reference to paragraph (a) of that Class, and if subparagraphs (e)(i) to (iii) of that Class were read as follows:

"(i) property that was acquired before the mine came into production and that would, but for this Class, be included in Class 10 because of paragraph (g), (k), (l) or (r) of that class or would have been so included in that class if it had been acquired after the 1971 taxation year, and property that would, but for this class, be included in Class 41 because of subsection 1102(8) or (9),

(ii) property that was acquired before the mine came into production and that would, but for this Class, be included in Class 10 because of paragraph (m) of that Class, or

(iii) property that was acquired after the mine came into production and that would, but for this Class, be included in Class 10 because of paragraph (g), (k), (l) or (r) of that Class, and property that would, but for this Class, be included in Class 41 because of subsection 1102(8) or (9);"

(a.1) that is the portion, expressed as a percentage determined by reference to capital cost, of property that

(i) would, but for this Class, be included in Class 10 because of paragraph (g), (k), or (l) of that Class, or that is included in this Class because of subsection 1102(8) or (9),

(ii) is not described in paragraph (a) or (a.2),

(iii) was acquired by the taxpayer principally for the purpose of gaining or producing income from one or more mines that are operated by the taxpayer and situated in Canada, and that became available for use for the purpose of subsection 13(26) of the Act in a taxation year, and

(iv) had not, before it was acquired by the taxpayer, been used for any purpose by any person or partnership with whom the taxpayer was not dealing at arm's length,

where that percentage is determined by the formula

$$100 \times \frac{[A - (B \times 365/C)]}{A}$$

where

A is the total of all amounts each of which is the capital cost of a property of the taxpayer that became available for use for the purpose of subsection 13(26) of the Act in the year and that is described in subparagraphs (i) to (iv) in respect of the mine or mines, as the case may be,

B is 5% of the taxpayer's gross revenue from the mine or mines, as the case may be, for the year, and

C is the number of days in the year;

(a.2) that

(i) is property that would, but for this Class, be included in Class 10 because of paragraph (g), (k), or (l) of that Class or that is included in this Class because of subsection 1102(8) or (9),

(ii) was acquired by the taxpayer in a taxation year principally for the purpose of gaining or producing income from one or more mines each of which

(A) is one or more wells operated by the taxpayer for the extraction of material from a deposit of bituminous sands or oil shales, operated by the taxpayer and situated in Canada,

(B) was the subject of a major expansion after March 6, 1996, and

(C) is a mine in respect of which the Minister, in consultation with the Minister of Natural Resources, determines that the greatest designed capacity of the mine, measured in volume of oil that is not beyond the crude oil stage or its equivalent, immediately after the expansion was not less than 25% greater than the greatest designed capacity of the mine immediately before the expansion,

(iii) was acquired by the taxpayer

(A) after March 6, 1996,

(B) before the completion of the expansion, and

(C) in the course of and principally for the purposes of the expansion, and

(iv) had not, before it was acquired by the taxpayer, been used for any purpose by any person or partnership with whom the taxpayer was not dealing at arm's length;

(a.3) that is property included in this Class because of subsection 1102(8) or (9), other than property described in paragraph (a) or (a.2) or the portion of property described in paragraph (a.1);

(b) that is property

Proposed Amendment — Cl. 41(b) opening words

(b) that is property, other than property described in subsection 1101(2c),

Application: The December 20, 2002 draft regulations (Appendix C, CCA — vessels), s. 2, will amend the opening words of para. (b) of Class 41 to read as above, deemed to have come into force on November 7, 2001.

Technical Notes: Capital cost allowance Class 41is amended to exclude from paragraph (b) property described in subsection 1101(2c) of the Regulations. This amendment is consequential to new subsection 1101(2c), and the Structured Financing Facility Program for new Canadian built vessels administered by Industry Canada.

(i) described in paragraph (f.1), (g), (j), (k), (l), (m), (r), (t) or (u) of Class 10 that would be included in that Class if this Schedule were read without reference to this paragraph; or

(ii) that is a vessel, including the furniture, fittings, radio communication equipment and other equip-

ment attached thereto, that is designed principally for the purpose of

(A) determining the existence, location, extent or quality of accumulations of petroleum, natural gas or mineral resources, or

(B) drilling oil or gas wells,

and that was acquired by the taxpayer after 1987 other than property that was acquired before 1990

(iii) pursuant to an obligation in writing entered into by the taxpayer before June 18, 1987,

(iv) that was under construction by or on behalf of the taxpayer on June 18, 1987, or

(v) that is machinery and equipment that is a fixed and integral part of property that was under construction by or on behalf of the taxpayer on June 18, 1987;

(c) acquired by the taxpayer after May 8, 1972, to be used directly or indirectly by the taxpayer in Canada primarily in Canadian field processing, where the property would be included in Class 29 if

(i) Class 29 were read without reference to subparagraphs (b)(iii) and (v) and paragraph (c) of that Class,

(ii) subsection 1104(9) were read without reference to paragraph (k) of that subsection, and

(iii) this Schedule were read without reference to this Class, Class 39 and Class 43; or

(d) acquired by the taxpayer after December 5, 1996 (otherwise than pursuant to an agreement in writing made before December 6, 1996) to be leased, in the ordinary course of carrying on a business in Canada of the taxpayer, to a lessee who can reasonably be expected to use, directly or indirectly, the property in Canada primarily in Canadian field processing carried on by the lessee, where the property would be included in Class 29 if

(i) Class 29 were read without reference to subparagraphs (b)(iii) and (v) and paragraph (c) of that Class, and

(ii) this Schedule were read without reference to this Class, Class 39 and Class 43.

Related Provisions: ITA 13(5) — Reclassification of property as a result of change in regulations; ITA 257 — Negative amounts in formulas; Reg. 1101(4c), (4d) — Separate class for certain property under paras. (a)–(a.2); Reg. 1102(8)(d), 1102(9)(d) — Generating equipment; Reg. 1102(18) — Townsite costs; Reg. 1104(5) — Income from a mine; Reg. 1104(5.1), (5.2) — Gross revenue from a mine; Reg. 1104(7) — Meaning of "mine"; Reg. 1104(5), (6), (7), 1205(1)(a)(vi)(D), 1205(1)(c) — Earned depletion base; Reg. 1104(8.1) — Production in para. (a) means production in reasonable commercial quantities; Reg. 1206(1)"bituminous sands equipment", "tertiary recovery equipment"; Reg. 4600(1)(b), 4600(2)(g), (j) — Qualified property; Reg. 4601(a)(vi) — Qualified transportation equipment; Reg. 4604(2)(i) — Approved project property; Reg. Sch. II:Cl. 43.

History: Para. (a) amended to replace the portion of the text that is between subparas. (i) and (iii) in the text that is within quotation marks, by P.C. 2001-1378, s. 9, August 1, 2001, *Canada Gazette*, Part II, August 15, 2001, effective August 15, 2001.

Cl. (a.2)(ii)(C) amended by P.C. 2000-1331, s. 6, August 23, 2000, *Canada Gazette*, Part II, September 13, 2000, applicable to expansions commencing after September 13, 2000.

Paras. (c) and (d) added to Class 41 of Schedule II by P.C. 1999-629, s. 15, April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to taxation years that begin after 1996.

The portion of Class 41 before para. (b) amended by P.C. 1998-49, s. 5, January 26, 1998, *Canada Gazette*, Part II, February 4, 1998, applicable in respect of property acquired after March 6, 1996, except that paras. (a) and (a.3) apply in respect of property acquired after 1987.

Subpara. (b)(i) amended by P.C. 1997-1033, s. 11, July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable to property acquired after February 25, 1992.

Subpara. (b)(i) substituted by P.C. 1994-230, s. 11, February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to property acquired after February 25, 1992.

Class 41 added by P.C. 1989-2464, s. 23, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

Definitions [Cl. 41]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "bituminous sands", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian field processing" — ITA 248(1); "carrying on a business in Canada" — ITA 253; "class" — Reg. 1102(1)–(3), (14), (14.1); "gross revenue" — ITA 248(1); "gross revenue from a mine" — Reg. 1104(5.1); "income from one or more mines" — Reg. 1104(5), (6.1)(a); "mine" — Reg. 1104(7)(a); "mineral resource", "Minister", "oil or gas well" — ITA 248(1); "person" — ITA 248(1) ; "production" — Reg. 1104(8.1); "property" — ITA 248(1) ; "radio" — *Interpretation Act* 35(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-267R2: CCA — vessels; IT-482R: Pipelines.

Class 42 — (12 per cent)

[Reg. 1100(1)(a)(xxviii)]

Property that is fibre optic cable.

Proposed Amendment — Telecommunications cable

Federal budget, Supplementary Information, February 23, 2005: See under Class 3(j).

Related Provisions: Reg. Sch. II Cl. 3(l)–Supporting equipment.

History: Class 42 added by P.C. 1994-139, s. 28, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired by a taxpayer after December 23, 1991, other than property acquired pursuant to an agreement in writing entered into by the taxpayer before December 24, 1991, except that

(a) where the taxpayer so elects in a letter that is filed with the Minister before August 9, 1994, or in a letter attached to the taxpayer's return filed with the Minister in accordance with s. 150 of the *Income Tax Act* for the taxpayer's first taxation year ending after December 23, 1991, those provisions apply with respect to property acquired by the taxpayer after the beginning of that year.

(b) with respect to property acquired before December 24, 1991 in respect of which an election referred to in para. (a) applies, Schedule II shall be read without reference to Class 42.

Definitions [Cl. 42]: "property" — ITA 248(1).

Class 43 — (30 per cent)

[Reg. 1100(1)(a)(xxix)]

Property acquired after February 25, 1992 that

(a) is not included in Class 29, but that would otherwise be included in that Class if that Class were read without reference to subparagraphs (b)(iii) and (v) and paragraph (c) thereof; or

(b) is property

(i) that is described in paragraph (k) of Class 10 and that would be included in that Class if this Schedule were read without reference to this paragraph and paragraph (b) of Class 41, and

(ii) that, at the time of its acquisition, can reasonably be expected to be used entirely in Canada and primarily for the purpose of processing ore extracted from a mineral resource located in a country other than Canada.

Related Provisions: Reg. 1101(5s) — Separate class for each property costing at least $1,000; Reg. 4600(2)(k), 4604(2)(j) — Investment tax credit.

History: Para. (b) amended by P.C. 1997-1033, s. 12, July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable to property acquired after February 25, 1992.

Class 43 added by P.C. 1994-230, s. 12, February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to property acquired after February 25, 1992, except that an election referred to therein shall be deemed to be filed on a timely basis if it is filed with the Minister of National Revenue before August 23, 1994.

Selected Cases [Cl. 43]: *Scierie St-Elzéar Inc. v. R.*, [2003] 2 C.T.C. 2648 (TCC) (Not necessary that equipment have been in continuous use).

Definitions [Cl. 43]: "Canada" — ITA 255, *Interpretation Act* 35(1); "mineral resource", "property" — ITA 248(1).

Interpretation Bulletins: IT-411R: Meaning of "construction"; IT-482R: Pipelines.

Class 43.1 — (30 per cent)

[Reg. 1100(1)(a)(xxix.1)]

Property, other than reconditioned or remanufactured equipment, that would otherwise be included in Class 1, 2 or 8

Proposed Amendment — Cl. 43.1 opening words

Property, other than reconditioned or remanufactured equipment, that would otherwise be included in Class 1, 2 or 8 or in Class 17 [other than subparagraph 17(a.1)(i) — ed.] because of subparagraph (a.1)(i) of that Class

Application: The March 16, 2001 draft regulations (CCA), s. 10, will amend the opening words of Class 43.1, applicable to property acquired after February 27, 2000.

Technical Notes: Class 43.1 (30% CCA rate) is amended to allow it to apply to qualifying electrical generating equipment that would otherwise be Class 17 property because of subparagraph (a.1)(i) of Class 17. This amendment is consequential to the inclusion in Class 17 of certain property more fully described in the commentary accompanying that change.

Letter from Dept. of Finance, October 17, 2003: See under Cl. 17(a.1).

(a) that is

(i) electrical generating equipment, including any heat generating equipment used primarily for the purpose of producing heat energy to operate the electrical generating equipment,

(ii) equipment that generates both electrical and heat energy,

Proposed Amendment — Cl. 43.1(a)(ii), (ii.1)

(ii) equipment that generates both electrical and heat energy other than, for greater certainty, fuel cell equipment,

(ii.1) fixed location fuel cell equipment that has a peak capacity of not less than 3 kilowatts of electrical output and uses hydrogen generated only from ancillary fuel reformation equipment,

Application: The December 13, 2004 draft regulations (pre-published in *Canada Gazette* Part I, December 18, 2004), subsec. 2(1), will amend subpara. (a)(ii) of Cl. 43.1 to read as above and add subpara. (a)(ii.1), applicable to property acquired after February 18, 2003.

Regulatory Impact Analysis Statement: These amendments implement measures proposed in the 2001 and 2003 Budgets to broaden the application of Class 43.1 in Schedule II to the *Income Tax Regulations* (the "Regulations"). Class 43.1 provides taxpayers with an accelerated capital cost allowance to encourage more efficient use of fossil fuels and the use of renewable or alternative energy sources. By virtue of Class 43.1, qualifying assets of a taxpayer are eligible for a capital cost allowance rate of 30 percent, computed on a declining balance basis. Included in the class are wind energy equipment, small hydro equipment, geothermal electricity equipment, certain types of efficient cogeneration equipment, photovoltaic equipment and other types of renewable or alternative energy production equipment.

These amendments

- add "basic oxygen furnace gas" and "blast furnace gas" to the definition of "fossil fuel" in subsection 1104(13) of the Regulations. Only certain types of fuel (including fossil fuel) may be used by certain properties described in Class 43.1. These changes apply to property acquired after 2000 that uses such fuel.
- increase the upper limit on the size of a small hydroelectric project that qualifies for Class 43.1 treatment to a maximum rated capacity of 50 megawatts (MW), from the current limit of an annual average generating capacity of 15 MW. This change applies to property acquired after December 10, 2001.
- add "bio-oil" to the list of fuels one or more of which must be the only type of fuel used by certain property described in Class 43.1 and, subject to certain conditions, provide that equipment used to generate electricity using bio-oil is also eligible for Class 43.1 treatment. This change applies to any property acquired after February 18, 2003, that uses such fuel.
- extend Class 43.1 treatment to certain fixed-location fuel cells that use hydrogen generated from either fuel reformation equipment or ancillary electrolysis equipment, if acquired after February 18, 2003.
- extend Class 43.1 treatment to certain active solar heating equipment that is used for the purpose of heating a liquid or gas used directly in a greenhouse, as well as to certain equipment that generates heat energy from the consumption of certain waste fuels, if the heat energy is used directly in a greenhouse. These changes apply to equipment acquired after February 18, 2003.

The measures concerning "blast furnace gas" and small hydroelectric projects are discussed in detail at page 223 of Annex 7 to *The Budget Plan of 2001*. As well, these proposals were first released in draft form by the Department of Finance on February 5, 2002 (Finance News Release 2002-013). Subsequent to that release, the Department of Finance agreed to recommend to the Minister of Finance that "basic oxygen furnace gas" be treated in the same manner as blast furnace gas.

The measures concerning bio-oil, fixed location fuel cells and certain equipment used in greenhouses are discussed in detail at pages 338 and 339 of Annex 9 to *The Budget Plan of 2003*. No draft of the amendments to the Regulations concerning these measures have been previously released for consultation.

Alternatives

These amendments are necessary to add the above-mentioned fuels to the list of eligible fuels in Class 43.1 and to extend the eligibility of Class 43.1 to the above-described assets.

Benefits and costs

The benefits of Class 43.1 treatment are difficult to quantify. To the extent that these measures encourage the development of a successful domestic renewable energy and energy conservation sector, significant environmental benefits will accrue in the form of reduced greenhouse gas emissions and reduced reliance on fossil fuels. These measures will also help Canada diversify its energy supply. However, tangible economic benefits of renewable energy are difficult to measure, given that much of the industry is still in the early stages of development.

The 2001 and 2003 Budgets estimated that the annual cost of broadening the Class 43.1 in the manner proposed in the Budgets would be $5 million.

Environmental assessments

These amendments to Class 43.1 provide tax incentives to encourage a more efficient use of fossil fuel and the use of renewable and alternative energy sources. In that sense, these amendments are intended and expected to have a positive impact on the environment.

In particular, small hydroelectric projects are generally considered to be a "clean" way in which to produce electrical energy and encouraging such production is intended to have a positive impact. In the case of basic oxygen furnace gas and blast furnace gas, which are considered greenhouse gases, such gases would otherwise escape into the atmosphere. The change with respect to the eligibility of fuel cell equipment is expected to help make fuel cells more cost-competitive with both conventional power sources and other new technologies that are already in Class 43.1. Also, bio-oil is considered to be a neutral energy source with

respect to greenhouse gases because, unlike fossil fuels, the carbon released into the atmosphere as a by-product of combustion was already part of the natural carbon cycle. Finally, the measure with respect to greenhouses is intended to help promote the use of certain renewable and alternative energy assets in the Canadian greenhouse industry.

Consultation

The criteria established for assets under Class 43.1 were developed through consultations held by the Department of Finance and various parties, including Natural Resources Canada and industry stakeholders.

The December 2001 Budget announced formal consultations on Class 43.1. Numerous submissions were received and reviewed. A draft of the amendments related to the 2001 Budget was released for consultation on February 5, 2002 (Finance news release 2002-013). As a result of these consultations, the 2003 Budget included proposals to further broaden Class 43.1. These 2003 Budget changes are made public for the first time, for consultation, in this edition of Part I of the *Canada Gazette*.

Compliance and enforcement

The *Income Tax Act* provides the necessary compliance mechanisms. These mechanisms allow the Minister of National Revenue to assess and reassess tax payable, conduct audits and seize relevant records and documents. The *Class 43.1 Technical Guide and Technical Guide to Canadian Renewable and Conservation Expense (CRCE)* published by Natural Resources Canada sets out engineering and scientific criteria applicable in determining if property is included in Class 43.1.

Contact: Gurinder Grewal, Tax Legislation Division, Department of Finance, L'Esplanade Laurier, 140 O'Connor Street, Ottawa, Ontario K1A 0G5, (613) 992-1862.

Federal budget, Supplementary Information, February 18, 2003: *Capital Cost Allowance Class 43.1 (Renewable and Alternative Energy)*

Under the capital cost allowance (CCA) regime in the income tax system, Class 43.1 provides tax incentives in defined circumstances to encourage a more efficient use of fossil fuels and the use of renewable and alternative energy sources. Eligible assets qualify for an accelerated CCA rate of 30%. Since the introduction of Class 43.1 in the 1994 budget, the Government has expanded eligibility for this class.

The 2001 budget announced consultations with industry to determine whether additional improvements were required for Class 43.1. As a result of the consultations and submissions received, this budget proposes to further broaden eligibility for Class 43.1. These changes will apply to property acquired after February 18, 2003.

Fuel cells use hydrogen to generate electricity, or electricity and heat. This budget proposes that certain fixed-location fuel cells and ancillary fuel reformation and electrolysis equipment will now be eligible for Class 43.1 treatment. In order to qualify:

- the fuel cells must have a peak capacity of not less than 3 kilowatts of electrical output;
- the fuel cells must be part of a system that includes fuel reformation equipment or electrolysis equipment;
- where the fuel cells use hydrogen generated from ancillary fuel reformation equipment that uses fossil fuel, the fuel cell system will be required to satisfy the existing 6000-BTU-per-Kwh heat rate calculation; and
- where the fuel cells of a taxpayer use hydrogen generated by ancillary electrolysis equipment, the electrolysis equipment must use solar energy, wind energy conversion or hydroelectric energy equipment of the taxpayer.

This change will help make fuel cells more cost-competitive with both conventional power sources and other new technologies already in Class 43.1.

This budget also proposes changes to provide incentives for the use of bio-oil. Bio-oil is created through a thermo-chemical conversion process that uses biomass that is wood waste or other plant residues. Equipment of a taxpayer that is used in a system to convert biomass into bio-oil will now be eligible for Class 43.1 if this bio-oil is used by the taxpayer (or a lessee) primarily to generate electricity or electricity and heat. Bio-oil is considered to be a neutral energy source with respect to greenhouse gases. This change will provide other environmental benefits and further encourage the efficient use of forestry and agricultural residues.

The budget also proposes changes to extend eligibility for Class 43.1 to certain equipment used primarily to generate heat energy for use in a taxpayer's greenhouse operation. Qualifying equipment will include active solar heating equipment and equipment used to generate heat energy from the consumption of wood waste, municipal waste, landfill gas or digester gas. This measure will help promote the use of renewable and alternative energy in the Canadian greenhouse industry.

[Table A9.1 shows the federal cost of this proposal as $0 for 2002-03, $5 million for 2003-04 and $5 million for 2004-05 — ed.]

(iii) heat recovery equipment used primarily for the purpose of conserving energy, or reducing the requirement to acquire energy, by

(A) extracting thermal waste that is generated by equipment referred to in subparagraph (i) or (ii), and

(B) reusing the thermal waste to generate electrical energy from equipment referred to in subparagraph (i) or (ii),

(iv) control, feedwater and condensate systems and other equipment, where that property is ancillary to equipment described in subparagraph (i), (ii) or (iii), or

Proposed Amendment — Cl. 43.1(a)(iv)

(iv) control, feedwater and condensate systems and other equipment, if that property is ancillary to equipment described in any of subparagraphs (i) to (iii), or

Application: The December 13, 2004 draft regulations (pre-published in *Canada Gazette* Part I, December 18, 2004), subsec. 2(2), will amend subpara. (a)(iv) of Cl. 43.1 to read as above, applicable to property acquired after February 18, 2003.

Regulatory Impact Analysis Statement: See under Cl. 43.1(a)(ii), (ii.1).

(v) an addition to a property described in any of subparagraphs (i) to (iv),

other than buildings or other structures, heat rejection equipment (such as condensers and cooling water systems), transmission equipment, distribution equipment, fuel storage facilities and fuel handling equipment,

Proposed Amendment — High-Efficiency and Renewable Energy Generation Equipment

Federal budget, Supplementary Information, February 23, 2005: See at end of Class 43.1.

(b) that

(i) is situated in Canada,

(ii) is

(A) acquired by the taxpayer for use by the taxpayer for the purpose of gaining or producing income from a business carried on in Canada or from property situated in Canada, or

(B) leased by the taxpayer to a lessee for the use by the lessee for the purpose of gaining or producing income from a business carried on in Canada or from property situated in Canada, and

(iii) has not been used for any purpose before it was acquired by the taxpayer unless

(A) the property was depreciable property that

(I) was included in Class 34 or 43.1 of the person from whom it was acquired, or

(II) that would have been included in Class 34 or 43.1 of the person from whom it was acquired had the person made a valid election to include the property in Class 43.1

pursuant ot paragraph 1102(8)(d) or 1102(9)(d), and

(B) the property was acquired by the taxpayer not more than five years after the time it is considered to have become available for use, for the purpose of subsection 13(26) of the Act, by the person from whom it was acquired and remains at the same site in Canada as that at which that person used the property, and

(c) that is

(i) part of a system (other than an enhanced combined cycle system) that

(A) is used by the taxpayer, or by a lessee of the taxpayer, to generate electrical energy, or both electrical and heat energy, using only fuel that is fossil fuel, wood waste, municipal waste, landfill gas or digester gas, or any combination of those fuels, and

Proposed Amendment — Cl. 43.1(c)(i)(A)

Application: The December 13, 2004 draft regulations (pre-published in *Canada Gazette* Part I, December 18, 2004), subsec. 2(3), will amend cl. (c)(i)(A) of Cl. 43.1 to replace "landfill gas or digester gas" with "landfill gas, digester gas or bio-oil", applicable to property acquired after February 18, 2003.

Regulatory Impact Analysis Statement: See under Cl. 43.1(a)(ii), (ii.1).

Federal budget, Supplementary Information, February 18, 2003: See under Cl. 43.1(a)(ii), (ii.1).

(B) has a heat rate attributable to fossil fuel (other than solution gas) not exceeding 6,000 BTU per kilowatt-hour of electrical energy generated by the system, which heat rate is calculated as the fossil fuel (expressed as the high heat value of the fossil fuel) used by the system that is chargeable to gross electrical energy output on an annual basis, or

(ii) part of an enhanced combined cycle system that

(A) is used by the taxpayer, or by a lessee of the taxpayer, to generate electrical energy using only a combination of natural gas and waste heat from one or more natural gas compressor systems located on a natural gas pipeline,

(B) has an incremental heat rate not exceeding 6,700 BTU per kilowatt-hour of electricity generated by the system, which heat rate is calculated as the natural gas (expressed as its high heat value) used by the system that is chargeable to gross electrical energy output on an annual basis, and

(C) does not have economically viable access to a steam host,

Proposed Amendment — High-Efficiency and Renewable Energy Generation Equipment

Federal budget, Supplementary Information, February 23, 2005: See at end of Class 43.1.

and property (other than property described in paragraph (a)) that would otherwise be included in another Class in this Schedule

(d) that is

(i) active solar heating equipment used by the taxpayer, or by a lessee of the taxpayer, primarily for the purpose of heating a liquid or gas used directly in an industrial process, including such equipment that consists of solar collectors, solar energy conversion equipment, solar water heaters, energy storage equipment, control equipment and equipment designed to interface solar heating equipment with other heating equipment, but not including buildings,

Proposed Amendment — Cl. 43.1(d)(i)

Application: The December 13, 2004 draft regulations (pre-published in *Canada Gazette* Part I, December 18, 2004), subsec. 2(4), will amend subpara. (d)(i) of Cl. 43.1 to replace "industrial process" with "industrial process or in a greenhouse", applicable to property acquired after February 18, 2003.

Regulatory Impact Analysis Statement: See under Cl. 43.1(a)(ii), (ii.1).

Federal budget, Supplementary Information, February 18, 2003: See under Cl. 43.1(a)(ii), (ii.1).

(ii) a hydro-electric installation of a producer of hydro-electric energy, where that installation

(A) has an annual average generating capacity not exceeding 15 megawatts upon completion of site development, and

Proposed Amendment — Cl. 43.1(d)(ii)(A)

(A) has, if acquired after February 21, 1994 and before December 11, 2001, an annual average generating capacity not exceeding 15 megawatts upon completion of the site development, or, if acquired after December 10, 2001, a rated capacity at the hydro-electric installation site that does not exceed 50 megawatts, and

Application: The December 13, 2004 draft regulations (pre-published in *Canada Gazette* Part I, December 18, 2004), subsec. 2(5), will amend cl. (d)(ii)(A) of Class 43.1 to read as above, applicable after December 10, 2001.

Regulatory Impact Analysis Statement: See under Cl. 43.1(a)(ii), (ii.1).

Technical Notes (February 5, 2002): CCA Class 43.1 applies to certain types of renewable energy and energy conservation equipment. The CCA rate is 30% per year calculated on a declining balance basis.

Changes are made in respect of the types of hydro-electric projects that qualify for Class 43.1 treatment. In particular, the upper limit on the size of small hydro-electric projects that qualify for Class 43.1 is increased to a *rated* capacity at the installation site of 50 megawatts, from the current limit of an annual *average* generating capacity of 15 megawatts. Consequently, the new generating capacity test is based on "plated capacity" at the installation site rather than average capacity.

Federal budget, supplementary information, December 10, 2001: See under Cl. 43.1(d)(iii), (iii.1).

(B) is the electrical generating equipment and plant (including structures) of that producer including a canal, a dam, a dyke, an overflow spillway, a penstock, a powerhouse (complete with electrical generating equipment and other ancillary equipment), control equipment, fishways or fish bypasses, and transmission equipment,

other than distribution equipment and property otherwise included in Class 10 or 17,

(iii) an addition or alteration to a hydro-electric installation described in subparagraph (ii) that results in an increase in generating capacity, if the resulting annual average generating capacity of the hydro-electric installation does not exceed 15 megawatts,

Proposed Amendment — Cl. 43.1(d)(iii), (iii.1)

(iii) an addition or alteration, which is acquired after February 21, 1994 and before December 11, 2001, to a hydro-electric installation that is described in subparagraph (ii) or that would be so described if that installation were acquired by the taxpayer after February 21, 1994, and which results in an increase in generating capacity, if the resulting annual average generating capacity of the hydro-electric installation does not exceed 15 megawatts,

(iii.1) an addition or alteration, which is acquired after December 10, 2001, to a hydro-electric installation that is described in subparagraph (ii) or that would be so described if that installation were acquired by the taxpayer after February 21, 1994, and which results in an increase in generating capacity, if the resulting rated capacity at the hydro-electric installation site does not exceed 50 megawatts,

Application: The December 13, 2004 draft regulations (pre-published in *Canada Gazette* Part I, December 18, 2004), subsec. 2(6), will amend subpara. (d)(iii) of Class 43.1 to read as above and add subpara. (d)(iii.1), applicable after December 10, 2001.

Regulatory Impact Analysis Statement: See under Cl. 43.1(a)(ii), (ii.1).

Technical Notes (February 5, 2002): See under Cl. 43.1(d)(ii)(A).

Federal budget, supplementary information, December 10, 2001: *Improvements to the Tax Incentives for Renewable Energy and Energy Efficiency*

Under the capital cost allowance (CCA) regime, Class 43.1 describes certain renewable energy and energy efficiency equipment that qualifies for an accelerated CCA rate of 30%. This class provides an incentive for new investments that will help Canada meet its environmental objectives.

Since Class 43.1 was introduced in the 1994 budget, the Government has expanded eligibility for this class on several occasions to further encourage investments in renewable energy and energy conservation projects.

The budget proposes to increase the upper limit on the size of small hydro-electric projects that qualify for Class 43.1 to a maximum annual rated capacity of 50 megawatts (MW), from the current limit of an annual average generating capacity of 15MW. This change will encourage investment in small hydro-electric projects, including new run-of-the-river projects, and complement provincial initiatives that have provided further opportunities for power producers to invest in small hydro-electric projects. The change will apply to property acquired after December 10, 2001.

Class 43.1 also includes property that is part of a system that generates electrical energy and that has a heat rate attributable to fossil fuel of less than 6000 BTU per kilowatt-hour of electrical energy generated by the system. It is proposed that "blast furnace gas", which is a by-product of the steel manufacturing process, be included in the definition of fossil fuel. This change will encourage an energy efficient use of blast furnace gas by steel mills, and will be effective for property acquired after 2000.

Finally, because of rapid changes in technology in this area, the Government intends to consult with industry to determine whether additional improvements are required for this CCA class. In this context, the Government will also explore whether a more streamlined process could be implemented to determine new types of projects that would be eligible for Class 43.1.

[Budget Plan, chapter 6:] The estimated cost of this measure is $5 million a year.

(iv) heat recovery equipment used by the taxpayer, or by a lessee of the taxpayer, primarily for the purpose of conserving energy, or reducing the requirement to acquire energy, by

(A) extracting thermal waste that is generated directly in an industrial process (other than in an industrial process that generates or processes electrical energy), and

(B) reusing the thermal waste directly in an industrial process (other than in an industrial process that generates or processes electrical energy),

including such equipment that consists of heat exchange equipment, compressors used to upgrade low pressure steam, vapour or gas, waste heat boilers and other ancillary equipment such as control panels, fans, instruments or pumps, but not including buildings,

(v) a fixed location device that is a wind energy conversion system that

(A) is used by the taxpayer, or by a lessee of the taxpayer, primarily for the purpose of generating electrical energy, and

(B) consists of a wind-driven turbine, electrical generating equipment and related equipment, including

(I) control, conditioning and battery storage equipment,

(II) support structures,

(III) a powerhouse complete with other ancillary equipment, and

(IV) transmission equipment,

other than distribution equipment, auxiliary electrical generating equipment or property otherwise included in Class 10 or 17,

(vi) fixed location photovoltaic equipment that

(A) is used by the taxpayer, or by a lessee of the taxpayer, primarily for the purpose of generating electrical energy from solar energy,

(B) has a peak capacity of not less than 3 kilowatts of electrical output, and

(C) consists of solar cells or modules and related equipment including

(I) control, conditioning and battery storage equipment,

(II) support structures, and

(III) transmission equipment,

other than buildings, distribution equipment, auxiliary electrical generating equipment and property otherwise included in Class 10 or 17,

(vii) above-ground equipment used by the taxpayer, or by a lessee of the taxpayer, primarily for the purpose of generating electrical energy solely from geothermal energy, including such equipment that consists of pumps, heat exchangers, steam separators, electrical generating equipment and ancillary equipment used to collect the geothermal heat, but not including buildings, transmission equipment, distribution equipment, equipment designed to store electrical energy and property otherwise included in Class 10 or 17,

(viii) above-ground equipment used by the taxpayer, or by a lessee of the taxpayer, primarily for the purpose of collecting landfill gas or digester gas, including such equipment that consists of fans, compressors, storage tanks, heat exchangers and other ancillary equipment used to collect the gas, to remove non-combustibles and contaminants from the gas or to store the gas, but not including build-

ings or property otherwise included in Class 10 or 17,

(ix) equipment used by the taxpayer, or by a lessee of the taxpayer, primarily for the purpose of generating heat energy from the consumption of wood waste, municipal waste, landfill gas or digester gas, if the heat energy is used directly in an industrial process carried on by the taxpayer or lessee, including such equipment that consists of fuel handling equipment used to upgrade the combustible portion of the fuel and control, feedwater and condensate systems, and other ancillary equipment, but not including buildings or other structures, property otherwise included in Class 10 or 17, heat rejection equipment (such as condensers and cooling water systems), fuel storage facilities, fuel handling equipment and electrical generating equipment, or

Proposed Amendment — Cl. 43.1(d)(ix)

(ix) equipment used by the taxpayer, or by a lessee of the taxpayer, primarily for the purpose of generating heat energy from the consumption of wood waste, municipal waste, landfill gas, digester gas or bio-oil, if the heat energy is used directly in an industrial process, or in a greenhouse, of the taxpayer or lessee, including such equipment that consists of fuel handling equipment used to upgrade the combustible portion of the fuel and control, feedwater and condensate systems, and other ancillary equipment, but not including buildings or other structures, heat rejection equipment (such as condensers and cooling water systems), fuel storage facilities, other fuel handling equipment and electrical generating equipment, and property otherwise included in Class 10 or 17,

Application: The December 13, 2004 draft regulations (pre-published in *Canada Gazette* Part I, December 18, 2004), subsec. 2(7), will amend subpara. (d)(ix) of Cl. 43.1 to read as above, applicable to property acquired after February 18, 2003.

Regulatory Impact Analysis Statement: See under Cl. 43.1(a)(ii), (ii.1).

Federal budget, Supplementary Information, February 18, 2003: See under Cl. 43.1(a)(ii), (ii.1).

(x) an expansion engine with one or more turbines, or cylinders, that convert the compression energy in pressurized natural gas into shaft power that generates electricity, including the related electrical generating equipment and ancillary controls, where the expansion engine

(A) is part of a system that is installed

(I) on a distribution line of a distributor of natural gas, or

(II) on a branch distribution line of a taxpayer primarily engaged in the manufacturing or processing of goods for sale or lease if the branch line is used to deliver natural gas directly to the taxpayer's manufacturing or processing facility, and

(B) is used instead of a pressure reducing valve, and

Proposed Addition — Cl. 43.1(d)(xi), (xii)

(xi) equipment used in a system of the taxpayer that converts wood waste or plant residue into bio-oil, if that bio-oil is used by the taxpayer, or by a lessee of the taxpayer, primarily for the purpose of generating electricity, or electricity and heat, other than equipment used for the collection, storage or transportation of wood waste or plant residue, buildings or other structures and property otherwise included in Class 10 or 17, or

(xii) fixed location fuel cell equipment used by the taxpayer, or by a lessee of the taxpayer, that has a peak capacity of not less than 3 kilowatts of electrical output and uses hydrogen generated only from ancillary electrolysis equipment that uses electricity generated by photovoltaic, wind energy conversion or hydro-electric equipment, of the taxpayer or the lessee, and equipment ancillary to the fuel cell equipment other than buildings or other structures, transmission equipment, distribution equipment, auxiliary electrical generating equipment and property otherwise included in Class 10 or 17, and

Application: The December 13, 2004 draft regulations (pre-published in *Canada Gazette* Part I, December 18, 2004), subsec. 2(8), will add subparas. (d)(xi) and (xii) to Cl. 43.1, applicable to property acquired after February 18, 2003.

Regulatory Impact Analysis Statement: See under Cl. 43.1(a)(ii), (ii.1).

Federal budget, Supplementary Information, February 18, 2003: See under Cl. 43.1(a)(ii), (ii.1).

(e) that

(i) is situated in Canada,

(ii) is

(A) acquired by the taxpayer for use by the taxpayer for the purpose of gaining or producing income from a business carried on in Canada or from property situated in Canada, or

(B) leased by the taxpayer to a lessee for the use by the lessee for the purpose of gaining or producing income from a business carried on in Canada or from property situated in Canada, and

(iii) has not been used for any purpose before it was acquired by the taxpayer unless

(A) the property was depreciable property that was

(I) described in Class 34 or 43.1 of the person from whom it was acquired, or

(II) would have been included in Class 34 or 43.1 or the person from whom it was acquired had the person made a valid election to include the property in Class 43.1 pursuant to paragraph 1102(8)(d) or 1102(9)(d), and

(B) the property was acquired by the taxpayer not more than five years after the time it is considered to have become available for use, for the purpose of subsection 13(26) of the Act, by the person from whom it was acquired and remains at the same site in Canada as that at which that person used the property.

Proposed Amendment — Cl. 43.1 — High-Efficiency and Renewable Energy Generation Equipment

Federal budget, Supplementary Information, February 23, 2005: *Efficient and Renewable Energy Generation Equipment*

An accelerated capital cost allowance (CCA) rate of 30% is provided under Class 43.1 in Schedule II to the *Income Tax Regulations* for investments in equipment that, in general, produces heat for an industrial pro-

cess, or electricity, by using fossil fuel efficiently or renewable energy sources. This accelerated rate is an explicit exception to the practice of setting CCA rates to reflect the useful life of assets.

Where the majority of the tangible property acquired for use in a project is included in Class 43.1, certain start-up expenses (mostly intangible) for the project are treated as Canadian Renewable and Conservation Expenses. These expenses may be deducted in full in the year incurred, carried forward indefinitely for use in future years, or transferred to investors under flow-through share agreements.

Efficient and Renewable Energy Generation

Class 43.1 currently provides an accelerated capital cost allowance (CCA) rate of 30% per year for investments in equipment that produces heat for an industrial process or electricity by using fossil fuel efficiently or by using renewable energy sources.

The two general categories of included equipment are cogeneration and renewable energy technologies.

Cogeneration — also called combined heat and power (CHP) — is the simultaneous generation of electricity and heat from the same fuel to achieve greater energy efficiency. To qualify for Class 43.1 treatment, cogeneration equipment must meet a minimum level of energy efficiency in the use of fossil fuel.

A variety of renewable energy generation assets are also included in Class 43.1, including:

- Wind turbines.
- Electrical generating equipment that uses only geothermal energy.
- Small hydroelectric facilities.
- Stationary fuel cells.
- Photovoltaics and "active" solar equipment used to heat a liquid or gas.
- Equipment powered by certain waste fuels (e.g. wood waste, municipal waste, biogas from a sewage treatment facility).
- Equipment that recovers biogas from a landfill.
- Equipment used to convert biomass into bio-oil.

In addition, where the majority of the tangible property in a project is eligible for Class 43.1, certain project start-up expenses (mostly relating to intangibles) are treated as Canadian Renewable and Conservation Expenses (CRCE). These expenses may be deducted in full in the year incurred, carried forward indefinitely for use in future years, or transferred to investors using flow-through shares. Flow-through shares are particularly beneficial to start-up firms that do not have enough taxable income to benefit from tax deductions themselves.

Eligible expenses typically include engineering and design, site clearing, feasibility studies, contract negotiations, and regulatory approvals. In the wind industry, CRCE also includes the capital cost of "test wind turbines," which can constitute up to 20% of the generating capacity in a wind farm.

High-Efficiency and Renewable Energy Generation Equipment

The budget proposes to include certain highly fossil-fuel-efficient and renewable energy generation equipment — which is currently eligible for the 30% CCA rate under Class 43.1 — in a new class eligible for a 50% CCA rate. The increased rate will apply to such equipment acquired on or after February 23, 2005 and before 2012. As is currently the case with Class 43.1, the specified energy property rules will be extended to apply to this new Class.

High-Efficiency Cogeneration Systems

Cogeneration systems (also called combined heat and power or CHP systems) produce heat and power simultaneously by capturing the waste heat from the electrical generation process and using it for another purpose, such as manufacturing or space heating.

Cogeneration equipment is currently eligible for Class 43.1 treatment if it converts approximately 57% or more of the energy value of the input fossil fuel into electricity and usable heat. In formal terms, this requires a system to use no more than 6000 British Thermal Units (BTUs) of fossil fuel per kilowatt-hour of electricity produced on an annual basis. The energy content of specified waste fuels, such as wood waste, municipal waste, bio-oil and biogas, is not counted for the purposes of this "heat rate" calculation.

The budget proposes that cogeneration equipment that would otherwise be included in Class 43.1 will be included in the new class entitled to a 50% CCA rate if the equipment is part of a high-efficiency cogeneration system with an annual heat rate from fossil fuel that does not exceed 4750 BTUs per kilowatt-hour of electricity production. This corresponds to a total system efficiency of approximately 72%. To be eligible for the new class, the equipment must be acquired on or after February 23, 2005 and before 2012. Systems eligible for Class 43.1 treatment that exceed the 4750 BTU threshold will still qualify for the current 30% CCA rate.

Renewable Energy Generation Systems

Class 43.1 also includes a range of renewable energy generation equipment, including wind turbines, small hydroelectric facilities, active solar heating equipment, fixed location photovoltaic equipment and geothermal energy equipment.

The budget proposes that such equipment that would otherwise be included in Class 43.1 will be eligible for the new 50% CCA rate class. To be eligible for the new Class, the equipment must be acquired on or after February 23, 2005 and before 2012.

[Table A8.1 in the Budget Supplementary Information estimates that the Class 43.1 measures, including those described below, will cost $20 million in 2005-06, $45m in 2006-07, $65m in 2007-08, $80m in 2008-09 and $85m in 2009-10 — ed.]

Proposed Addition — Cl. 43.1 — Distribution equipment used in district energy systems; Biogas Production equipment

Federal budget, Supplementary Information, February 23, 2005:

Extending Incentives for Investment in Efficient and Renewable Energy Generation

The Government continues to review Class 43.1 on an ongoing basis to ensure inclusion of appropriate energy generation technologies that have the potential to contribute to energy efficiency and the use of alternative energy sources. Frequent additions have been made to the class since its inception in 1994. The budget proposes two further additions to Class 43.1: distribution equipment used in district energy systems that rely on efficient cogeneration; and biogas production equipment.

Distribution Equipment of a District Energy System

District or community energy systems transfer heat between a central generation plant and a group or district of buildings by continuously circulating steam, hot water or cold water through a system of underground pipes. As noted, Class 43.1 currently includes fossil-fuel efficient cogeneration equipment. District energy is an ideal application for cogeneration, since it provides a productive use for low-grade heat created in the process of generating electricity, thereby enabling the system to achieve a high level of energy efficiency.

The budget proposes to extend eligibility for Class 43.1 to specified distribution equipment of a taxpayer that is part of a district energy system used by the taxpayer (or a lessee) primarily to provide district heating or cooling through the use of heat produced by electrical cogeneration equipment that meets the requirements of Class 43.1, including the heat rate requirements. Eligible components of a taxpayer's system will be pipes, pumps, chillers, meters and control equipment and heat exchangers attached to the main distribution line of the district energy system. Assets forming part of the internal heat and cooling system of the host building will not be eligible.

This change will apply to eligible equipment acquired on or after February 23, 2005. Where the distribution assets are acquired on or after February 23, 2005 and before 2012, and they carry heat produced by cogeneration equipment acquired during that period that qualifies for the new 50% CCA rate Class, the distribution assets will also qualify for the new Class.

Biogas Production Equipment

Class 43.1 currently includes above-ground equipment used primarily to collect landfill gas and digester gas from a licensed sewage treatment facility. Capture and use of these greenhouse gases contributes to climate change objectives, utilizes energy that would otherwise be wasted, and diversifies Canada's energy supply mix.

To encourage further capture and use of biogas, the budget proposes to extend eligibility for Class 43.1 to equipment used to produce biogas (which is primarily methane) from the anaerobic digestion of manure. Eligible equipment will be property of a taxpayer that is part of a system that is used by the taxpayer (or a lessee) primarily to produce, store and use biogas primarily for the production by the taxpayer (or the lessee) of heat for use in an industrial process, or electricity, and that is an anaerobic digester reactor, a buffer tank, biogas piping, a biogas storage tank, biogas scrubbing equipment, or generation equipment. Collection equipment, buildings and other structures, and equipment used to process the residue after digestion or to treat recovered liquids, will not be included.

This change will apply to eligible equipment acquired on or after February 23, 2005. Further, such eligible equipment acquired before 2012 will be included in the new 50% CCA rate Class.

Related Provisions: ITA 13(18.1) — Energy, Mines and Resources "Technical Guide to Class 43.1" to be determinative; ITA 66(15)"principal-business corporation"(h), (i) — Corporation whose business uses property in Class 43.1; Reg. 1100(24), (25) — Limitation on deduction for specified energy property; Reg. 1102(8)(d), 1102(9)(d) — Generating equipment — election for Class 43.1; Reg. 1102(21) — Limitation where Cl. 43.1(b)(iii)(A) or (B) or 43.1(e)(iii)(A) or (B) applies; Reg. 1104(13) — Definitions; Reg. 1104(14), (15) — Where Cl. 43.1(c) not operating due to deficiency, failing or shutdown; Reg. 1219 — Canadian renewable and conservation expense; Reg. 8200.1 — Cl. 43.1 property is prescribed energy conservation property.

History: Cls. (b)(iii)(B) and (e)(iii)(B) amended by P.C. 2001-1378, s. 10, August 1, 2001, *Canada Gazette*, Part II, August 15, 2001, effective August 15, 2001.

Paras. (b), (e), and cls. (c)(i)(B), (d)(vi)(B) amended by P.C. 2000-1331, s. 7, August 23, 2000, *Canada Gazette*, Part II, September 13, 2000, paras. (b) and (e) applicable to property acquired after June 26, 1996 except that, in respect of property acquired before 1998 pursuant to an agreement in writing made by the taxpayer before June 27, 1996

(a) para. (b) shall be read without reference to subparas. (i) and (iii) thereof; and

(b) para. (e) shall be read without reference to subparas. (i) and (iii) thereof;

cl. (c)(i)(B) applicable to property acquired after February 16, 1999, and cl. (d)(vi)(B) applicable to property acquired after February 18, 1997.

Class 43.1 added by P.C. 1997-1033, s. 13, July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable to property acquired by a taxpayer after February 21, 1994 except that

(a) in respect of property

(i) acquired by the taxpayer pursuant to an agreement of purchase and sale in writing made before September 27, 1994, or

(ii) under construction by or on behalf of the taxpayer before September 27, 1994,

cl. (c)(ii)(B) shall be read as follows:

(B) has a an incremental heat rate not exceeding 7,000 BTU per kilowatt-hour of electricity generated by the system, which heat rate is calculated as the natural gas (expressed as its high heat value) used by the system that is chargeable to the gross electrical energy output on an annual basis, and

and

(b) in respect of property acquired by a taxpayer before June 27, 1996, or acquired before 1998 pursuant to an agreement in writing made by a taxpayer before June 27, 1996,

(i) the opening words of Class 43.1 shall be read without reference to ", other than reconditioned or remanufactured equipment,",

(ii) the opening words of para. (b) shall be read as follows:

(b) that is

and

(iii) the opening words of para. (e) shall be read as follows:

(e) that is

Definitions [Cl. 43.1]: "bio-oil" — Reg. 1104(13); "building" — Reg 1102(5), (5.1); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "depreciable property" — ITA 13(21), 248(1); "digester gas", "distribution equipment", "enhanced combined cycle system", "fossil fuel", "landfill gas", "municipal waste" — Reg. 1104(13); "person" — ITA 248(1); "plant residue" — Reg. 1104(13); "property" — ITA 248(1); "related" — ITA 251(2)–(6); "solution gas" — Reg. 1104(13); "structure" — Reg. 1102(5), (5.1); "taxpayer" — ITA 248(1); "thermal waste", "transmission equipment", "wood waste" — Reg. 1104(13).

Interpretation Bulletins: IT-482R: Pipelines.

Class 44 — (25 per cent)

[Reg. 1100(1)(a)(xxx), 1100(9.1), 1103(2h)]

Property that is a patent, or a right to use patented information for a limited or unlimited period.

Related Provisions: Reg. 1103(2h) — Election not to include property in Class 44; Reg. Sch. II:Cl. 14 — Patent for a limited period.

History: Class 44 added by P.C. 1994-231, s. 5, February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to property acquired after April 26, 1993.

Definitions [Cl. 44]: "property" — ITA 248(1).

Proposed Addition — Computers

Class 45 — (45 per cent)

[Reg. 1100(1)(a)(xxxi)]

Property acquired after March 22, 2004 (other than property acquired before 2005 in respect of which an election is made under subsection 1101(5q)) that is general-purpose electronic data processing equipment and systems software for that equipment, including ancillary data processing equipment, but not including property that is principally or is used principally as

(a) electronic process control or monitor equipment,

(b) electronic communications control equipment,

(c) systems software for equipment referred to in paragraph (a) or (b), or

(d) data handling equipment (other than data handling equipment that is ancillary to general-purpose electronic data processing equipment).

Application: The June 27, 2005 draft regulations (CCA — introduction of cls. 45 & 46), s. 6, (pre-published in the *Canada Gazette*, Part I, July 9, 2005), will add Class 45, deemed in force on March 23, 2004.

Regulatory Impact Analysis Statement: See under Reg. 1100(1)(a)(xxxi) (Computers) above.

Technical Notes (September 16, 2004): New Class 45 (45% CCA rate) applies to "general-purpose electronic data processing equipment" and certain ancillary property acquired after March 22, 2004, other than property that is acquired before 2005 in respect of which a taxpayer elects under subsection 1101(5q) to have the property included in a separate Class 10.

Federal budget, Supplementary Information, March 23, 2004: *Capital Cost Allowance Rates for Computers and Data Network Infrastructure Equipment*

Budget 2003 stated that the Government would review aspects of the tax structure to improve the efficiency of the tax system and strengthen the Canadian tax advantage for investment. One area in which the tax system has an important impact on investment is the treatment of capital property. A portion of the capital cost of depreciable property is deductible as capital cost allowance (CCA) each year, with the maximum CCA rate for each type of property set out in the *Income Tax Regulations*. Improving the CCA rate structure can enhance productivity through an increase in total investment and a more efficient allocation of investment across asset classes.

Economic analysis shows that taxes on savings and investment have the largest impact on efficiency and living standards. Adjustments to capital cost allowances to better reflect the useful life of assets can have a particularly large impact on investment and income because they can be designed to affect the after-tax return on new investment only.

Capital Cost Allowance

Capital cost allowance (CCA) is a deduction for tax purposes that recognizes the depreciation of capital property. The CCA rate for an asset determines the portion of the cost of the asset that can be deducted each year (generally on a declining balance basis).

CCA rates are generally intended to reflect the economic consumption over time of capital property. The deduction for CCA is based on the principle that depreciable capital assets are not consumed in the period in which they are acquired, but instead contribute to earnings over several years. Therefore, the cost of depreciable assets should be allocated over the entire period that the asset contributes to earnings — that is, the asset's useful life.

The CCA rate for an asset should, as a general principle, reflect the useful life of that asset and thus provide adequate recognition of capital costs. In this way, CCA rates do not distort investment choices — they will instead lead to a more efficient allocation of resources in the economy.

The useful life of assets can change over time for several reasons, including technological change. The Government's assessment of CCA

rates is therefore an on-going process. As part of this continuing review, the budget proposes adjustments to CCA rates for computer equipment and data network infrastructure equipment.

The Government will continue to assess the appropriateness of capital cost allowance rates which, as a general principle, should reflect the useful life of assets.

Computer Equipment

Currently, computer equipment is generally eligible for a 30% CCA rate.

Current CCA Treatment

Computer equipment is described in Class 10 of Schedule II to the Income Tax Regulations as general-purpose electronic data processing equipment and systems software therefor, including ancillary data processing equipment but not including property that is principally or is used principally as:

(i) Electronic process control or monitor equipment.

(ii) Electronic communications control equipment.

(iii) Systems software for a property referred to in subparagraph (i) or (ii).

(iv) Data handling equipment unless it is ancillary to general-purpose electronic data processing equipment.

A review of the CCA rate for computers indicates that a higher CCA rate would better reflect the useful life of these assets. The budget, therefore, proposes to increase the CCA rate for computer equipment acquired after March 22, 2004, to 45% from 30%. The current exemption for computers from the specified leasing property rules will be extended to computer equipment eligible for this higher CCA rate, other than any individual item with a capital cost in excess of $1 million.

Separate Class Election

Currently, certain equipment, including computer equipment, is eligible for a separate class election. The separate class election, which must be made for the taxation year in which a property is acquired, allows taxpayers to place eligible property in a separate class for CCA purposes. Although the separate class election does not change the CCA rate specified for the class, it does provide that upon the disposition of the property of that class, any remaining undepreciated balance can be fully deducted as a terminal loss, instead of remaining in a pool with other assets and being depreciated over time. With the proposed higher rate for computer equipment, the separate class election is no longer required. Accordingly, it is proposed that the separate class election provisions not be available to computer equipment eligible for the higher rate.

To accommodate taxpayers who may have already planned purchases based on the availability of the separate class election, it is further proposed that, for computer equipment acquired before 2005, taxpayers may elect to have the property included in Class 10 and therefore eligible for the separate class election. The proposed election must be filed with the income tax return for the taxation year in which the property is acquired.

Data Network Infrastructure Equipment

[See under Class 46 for this Budget proposal — ed.]

[Table A9.1 in the Budget Supplementary Information estimates that these two proposals will cost $110 million in 2004-05 and $255 million in 2005-06 — ed.]

Definitions [Cl. 45]: "general-purpose electronic data processing equipment" — Reg. 1104(2); "property" — ITA 248(1); "systems software" — Reg. 1104(2).

Proposed Addition — Data Network Equipment

Class 46 — (30 per cent)

[Reg. 1100(1)(a)(xxxii)]

Property acquired after March 22, 2004 that is data network infrastructure equipment, and systems software for that equipment, that would, but for this Class, be included in Class 8 because of paragraph (i) of that Class.

Application: The June 27, 2005 draft regulations (CCA — introduction of cls. 45 & 46), s. 6, (pre-published in the *Canada Gazette*, Part I, July 9, 2005), will add Class 46, deemed in force on March 23, 2004.

Regulatory Impact Analysis Statement: See under Reg. 1100(1)(a)(xxxi) (Computers) above.

Technical Notes (September 16, 2004): New Class 46 (30% CCA rate) applies to "data network infrastructure equipment" and systems software for that equipment acquired after March 22, 2004 that would otherwise be included in Class 8 because of the default provision in paragraph (i) of that Class. For details on the definition "data network infrastructure equipment", see the note accompanying that new definition in amended subsection 1104(2) of the Regulations.

Federal budget, Supplementary Information, March 23, 2004:

Capital Cost Allowance Rates for Computers and Data Network Infrastructure Equipment

[See excerpt under Class 45 for general background information, and for increase in computer equipment rate from 30% to 45% — ed.]

Data Network Infrastructure Equipment

Currently, data network infrastructure equipment is generally depreciated at a 20% CCA rate.

Current CCA Treatment

Class 8 (20% CCA rate) of Schedule II to the *Income Tax Regulations* includes tangible capital property that is not included in another class. Because most broadband, Internet and other networking technology did not exist until recent years, data network infrastructure equipment is not expressly identified in Schedule II. As a result, it falls under Class 8.

Data network infrastructure equipment is infrastructure equipment that supports advanced telecommunications applications such as e-mail, Web searching and hosting, instant messaging and audio- and video-over-IP (Internet Protocol). It includes assets such as switches, multiplexers, routers, hubs, modems and domain name servers that are used to control, transfer, modulate and direct data, but does not include office equipment such as telephones, cell phones or fax machines, equipment such as web servers that are currently considered to be computer equipment, or property such as wires, cables or structures.

A review of the CCA rate for data network infrastructure equipment indicates that a higher CCA rate would better reflect the useful life of these assets. Budget 2004 proposes that data network infrastructure equipment acquired after March 22, 2004 be included in a new class, with a 30% CCA rate.

Equipment eligible for this higher rate will include only data network infrastructure equipment that is currently included in Class 8 because it is not included in any other CCA class.

[Table A9.1 in the Budget Supplementary Information estimates that this proposal, combined with a change for computers (see under Class 45) will cost $110 million in 2004-05 and $255 million in 2005-06 — ed.]

Definitions [Cl. 46]: "data network infrastructure equipment" — Reg. 1104(2); "property" — ITA 248(1); "systems software" — Reg. 1104(2).

Schedule III — Capital Cost Allowances, Class 13

History: Schedule H was consolidated and retitled Schedule III, by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

1. For the purposes of paragraph 1100(1)(b), the amount that may be deducted in computing the income of a taxpayer for a taxation year in respect of the capital cost to him of a property of Class 13 in Schedule II is the lesser of

(a) the aggregate of each amount determined in accordance with section 2 of this Schedule that is a prorated portion of the part of the capital cost to him, incurred in a particular taxation year, of a particular leasehold interest; and

(b) the undepreciated capital cost to the taxpayer as of the end of the taxation year (before making any deduction under section 1100) of property of the class.

Definitions: "amount" — ITA 248(1); "capital cost" — Reg. 1100(1)(b); "property" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "undepreciated capital cost" — ITA 13(21), 248(1).

2. Subject to section 3 of this Schedule, the prorated portion for the year of the part of the capital cost, incurred in a particular taxation year, of a particular leasehold interest is the lesser of

(a) 1/5 of that part of the capital cost; and

(b) the amount determined by dividing that part of the capital cost by the number of 12-month periods (not exceeding 40 such periods) falling within the period commencing with the beginning of the particular taxation year in which the capital cost was incurred and ending with the day the lease is to terminate.

Definitions: "amount" — ITA 248(1); "capital cost" — Reg. 1100(1)(b); "taxation year" — ITA 249.

3. For the purpose of determining, under section 2 of this Schedule, the prorated portion for the year of the part of the capital cost, incurred in a particular taxation year, of a particular leasehold interest, the following rules apply:

(a) where an item of the capital cost of a leasehold interest was incurred before the taxation year in which the interest was acquired, it shall be deemed to have been incurred in the taxation year in which the interest was acquired;

(b) where, under a lease, a tenant has a right to renew the lease for an additional term, or for more than one additional term, after the term that includes the end of the particular taxation year in which the capital cost was incurred, the lease shall be deemed to terminate on the day on which the term next succeeding the term in which the capital cost was incurred is to terminate;

(c) the prorated portion for the year of the part of the capital cost, incurred in a particular taxation year, of a particular leasehold interest shall not exceed the amount, if any, remaining after deducting from that part of the capital cost the aggregate of the amounts claimed and deductible in previous years in respect thereof;

(d) where, at the end of a taxation year, the aggregate of

(i) the amounts claimed and deductible in previous taxation years in respect of a particular leasehold interest, and

(ii) the proceeds of disposition, if any, of part or all of that interest

equals or exceeds the capital cost as of that time of the interest, the prorated portion of any part of that capital cost shall, for all subsequent years, be deemed to be nil; and

(e) where, at the end of a taxation year, the undepreciated capital cost to the taxpayer of property of Class 13 in Schedule II is nil, the prorated portion of any part of the capital cost as of that time shall, for all subsequent years, be deemed to be nil.

Definitions: "amount" — ITA 248(1); "capital cost" — Reg. 1100(1)(b); "property" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "undepreciated capital cost" — ITA 13(21), 248(1).

Interpretation Bulletins: IT-324: CCA — Emphyteutic lease (archived); IT-464R: CCA — Leasehold interests.

4. Where a taxpayer has acquired a property that would, if the property had been acquired by a person with whom the taxpayer was not dealing at arm's length at the time the property was acquired, be a leasehold interest of that person, a reference in this Schedule to a leasehold interest shall, in respect of the taxpayer, include a reference to that property, and the terms and conditions of the leasehold interest of that property in respect of the taxpayer shall be deemed to be the same as those that would have applied in respect of that person had that person acquired the property.

History: S. 4 added by P.C. 1994-139, s. 29, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired after December 23, 1991, other than property acquired by a taxpayer before 1993

(a) pursuant to an agreement in writing entered into by the taxpayer before December 24, 1991, or

(b) that was under construction by or on behalf of the taxpayer on December 23, 1991.

Definitions: "arm's length" — ITA 251(1); "person", "property", "taxpayer" — ITA 248(1).

SCHEDULE IV — CAPITAL COST ALLOWANCES, CLASS 15

History: Schedule D was consolidated and retitled Schedule IV, by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

1. For the purposes of paragraph 1100(1)(f), the amount that may be deducted in computing the income of a taxpayer for a taxation year in respect of property described in Class 15 in Schedule II is the lesser of

(a) an amount computed on the basis of a rate per cord, board foot or cubic metre cut in the taxation year; and

(b) the undepreciated capital cost to the taxpayer as of the end of the taxation year (before making any deduction under section 1100 for the taxation year) of property of that class.

History: Para. 1(a) amended by P.C. 1994-139, s. 30, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1986 *et seq.*

Definitions: "amount", "property" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "undepreciated capital cost" — ITA 13(21), 248(1).

2. Where all the property of the class is used in connection with one timber limit or section thereof, the rate per cord, board foot or cubic metre is the amount determined by dividing

(a) the undepreciated capital cost to the taxpayer as of the end of the taxation year (before making any deduction under section 1100 for the taxation year) of the property

by

(b) the number of cords, board feet or cubic metres of timber in the limit or section thereof as of the commencement of the taxation year, obtained by deducting the quantity cut up to that time from the amount shown by the latest cruise.

History: S. 2 substituted by P.C. 1994-139, s. 31, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1986 *et seq.*

Definitions: "amount" — ITA 248(1); "commencement" — *Interpretation Act* 35(1); "property" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "undepreciated capital cost" — ITA 13(21), 248(1).

3. Where a part of the property of the class is used in connection with one timber limit or a section thereof and a part is used in connection with another limit or section thereof, a separate rate shall be computed for each part of the property, in the manner provided in section 2 of this

Schedule, as though each part of the property were the taxpayer's only property of that class.

Definitions: "property", "taxpayer" — ITA 248(1).

SCHEDULE V — CAPITAL COST ALLOWANCES, INDUSTRIAL MINERAL MINES

History: Schedule E was consolidated and retitled Schedule V, by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

1. For the purposes of paragraph 1100(1)(g), the amount that may be deducted in computing the income of a taxpayer for a taxation year in respect of a property described in that paragraph that is an industrial mineral mine or a right to remove industrial minerals from an industrial mineral mine is the lesser of

(a) an amount computed on the basis of a rate (computed under section 2 or 3 of this Schedule, as the case may be) per unit of mineral mined in the taxation year; and

(b) the undepreciated capital cost to the taxpayer as of the end of the taxation year (before making any deduction under section 1100) of the mine or right.

Definitions: "amount" — ITA 248(1); "industrial mineral mine", "mineral" — Reg. 1104(3); "property" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "undepreciated capital cost" — ITA 13(21), 248(1).

2. Where the taxpayer has not been granted an allowance in respect of the mine or right for a previous taxation year, the rate for a taxation year is an amount determined by dividing the capital cost of the mine or right to the taxpayer minus the residual value, if any, by

(a) in any case where the taxpayer has acquired a right to remove only a specified number of units, the specified number of units of material that he acquired a right to remove; and

(b) in any other case, the number of units of commercially mineable material estimated as being in the mine when the mine or right was acquired.

Definitions: "amount" — ITA 248(1); "residual value" — Reg. Sch. V s. 5; "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

3. Where the taxpayer has been granted an allowance in respect of the mine or right in a previous taxation year, the rate for the taxation year is

(a) where paragraph (b) does not apply, the rate employed to determine the allowance for the most recent year for which an allowance was granted; and

(b) where it has been established that the number of units of material remaining to be mined in the previous taxation year was in fact different from the quantity that was employed in determining the rate for the previous year referred to in paragraph (a), or where it has been established that the capital cost of the mine or right is substantially different from the amount that was employed in determining the rate for that previous year, a rate determined by dividing the undepreciated capital cost to the taxpayer of the mine or right as of the commencement of the year minus the residual value, if any, by

(i) in any case where the taxpayer has acquired a right to remove only a specified number of units, the number of units of commercially mineable material that, at the commencement of the year, he had a right to remove, and

(ii) in any other case, the number of units of commercially mineable material estimated as remaining in the mine at the commencement of the year.

Definitions: "amount" — ITA 248(1); "commencement" — *Interpretation Act* 35(1); "employed" — ITA 248(1); "residual value" — Reg. Sch. V s. 5; "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "undepreciated capital cost" — ITA 13(21), 248(1).

4. In lieu of the aggregate of deductions otherwise allowable under this Schedule, a taxpayer may elect that the deduction for the taxation year be the lesser of

(a) $100; and

(b) the amount received by him in the taxation year from the sale of mineral.

Definitions: "amount" — ITA 248(1); "mineral" — Reg. 1104(3); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

5. In this Schedule, "residual value" means the estimated value of the property if all commercially mineable material were removed.

Definitions: "property" — ITA 248(1).

Interpretation Bulletins [Schedule V]: IT-423: Sale of sand, gravel or topsoil (archived); IT-492: Industrial mineral mines.

SCHEDULE VI — CAPITAL COST ALLOWANCES, TIMBER LIMITS AND CUTTING RIGHTS

History: Schedule C was consolidated and retitled Schedule VI, by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

1. For the purposes of paragraph 1100(1)(e), the amount that may be deducted in computing the income of a taxpayer for a taxation year in respect of the capital cost to him of a property, other than a timber resource property, that is a timber limit or a right to cut timber from a limit is the lesser of

(a) the aggregate of

(i) an amount computed on the basis of a rate (determined under section 2 or 3 of this Schedule) per cord, board foot or cubic metre cut in the year, and

(ii) the lesser of

(A) 1/10 of the amount expended by the taxpayer after the commencement of his 1949 taxation year that is included in the capital cost to him of the timber limit or right, for surveys, cruises or preparation of prints, maps or plans for the purpose of obtaining a licence or right to cut timber, and

(B) the amount expended as described in clause (A) minus the aggregate of amounts deducted under this subparagraph in computing the income of the taxpayer in previous years; and

(b) the undepreciated capital cost to the taxpayer as of the end of the year (before making any deduction under section 1100 for the year) of the timber limit or right.

History: Subpara. 1(a)(i) substituted by P.C. 1994-139, s. 32, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1986 *et seq.*

Definitions: "amount" — ITA 248(1); "commencement" — *Interpretation Act* 35(1); "property" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "timber resource property", "undepreciated capital cost" — ITA 13(21), 248(1).

2. If the taxpayer has not been granted an allowance in respect of the limit or right for a previous taxation year, the rate for a taxation year is an amount determined by dividing

(a) the capital cost of the limit or right to the taxpayer, minus the aggregate of the residual value of the timber limit and any amount expended by the taxpayer after the commencement of his 1949 taxation year that is included in the capital cost to him of the timber limit or right, for surveys, cruises or preparation of prints, maps or plans for the purpose of obtaining a licence or right to cut timber,

by

(b) the quantity of timber in the limit or the quantity of timber the taxpayer has obtained a right to cut, as the case may be, (expressed in cords, board feet or cubic metres) as shown by a cruise.

History: Para. 2(b) substituted by P.C. 1994-139, s. 33, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1986 *et seq.*

Definitions: "amount" — ITA 248(1); "commencement" — *Interpretation Act* 35(1); "residual value" — Reg. Sch. VI s. 5; "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

3. If the taxpayer has been granted an allowance in respect of the limit or right in a previous taxation year, the rate for a taxation year is

(a) where paragraph (b) does not apply, the rate employed to determine the allowance for the most recent year for which an allowance was granted; and

(b) where it has been established that the quantity of timber that was in the limit or that the taxpayer had a right to cut was in fact substantially different from the quantity that was employed in determining the rate for the previous year referred to in paragraph (a), or where it has been established that the capital cost of the limit or right is substantially different from the amount that was employed in determining the rate for that previous year, a rate determined by dividing

(i) the undepreciated capital cost to the taxpayer of the limit or right as of the commencement of the year, minus the residual value,

by

(ii) the estimated remaining quantity of timber that is in the limit or that the taxpayer has a right to cut, as the case may be, (expressed in cords, board feet or cubic metres) at the commencement of the year.

History: Subpara. 3(b)(ii) substituted by P.C. 1994-139, s. 34, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1986 *et seq.*

Definitions: "amount" — ITA 248(1); "commencement" — *Interpretation Act* 35(1); "employed" — ITA 248(1); "residual value" — Reg. Sch. VI s. 5; "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "undepreciated capital cost" — ITA 13(21), 248(1).

4. In lieu of the deduction otherwise determined under this Schedule, a taxpayer may elect that the deduction for a taxation year to be the lesser of

(a) $100; and

(b) the amount received by him in the taxation year from the sale of timber.

Definitions: "amount" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

5. In this Schedule, "residual value" means the estimated value of the property if the merchantable timber were removed.

Definitions: "property" — ITA 248(1).

Interpretation Bulletins: IT-481: Timber limits and cutting rights.

SCHEDULE VII — PUBLICLY-TRADED SHARES OR SECURITIES

[Reg. 4400]

History: Schedule F was consolidated and retitled Schedule VII, by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

Schedule F substituted by P.C. 1980-2081, July 31, 1980, *Canada Gazette*, Part II, August 13, 1980.

Schedule F substituted by P.C. 1980-3472, December 18, 1980, *Canada Gazette*, Part II, January 14, 1981.

Legend re Codes Used:

(1) Close price from the exchange with the largest volume — For this day (December 22, 1971) this item.

(2) Last close price available in the past 4 weeks.

(3) Mid-point between last bid and ask price in the past 4 weeks.

(4) No price available under (1), (2), (3).

All prices are in Canadian funds.

For abbreviations used, see Part XLIV.

A-1 Steel & Iron Foundry (Vancouver) Ltd. (Cl. A.) . . . . . 6.75(3)
A-1 Steel & Iron Foundry (Vancouver) Ltd. (Cl. B.) . . . . . 6.50(1)
Aabro Mining & Oils Ltd. . . . . (4)
Abbey Life Insurance Company of Canada . . . . . (4)
L'Abbaye Compagnie d'Assurance Vie du Canada . . . . . (4)
Abcourt Metals Inc. . . . . .28(2)
Aberdeen Minerals Ltd. . . . . (4)
Abeta Mining Corp. Ltd. . . . . .05(3)
Abex Mines Ltd. . . . . .01(3)
Abino Gold Mines Ltd. . . . . .03(3)
Abitibi Asbestos Mining Co. Ltd. . . . . 1.75(1)
Abitibi Copper Mines Ltd. . . . . .13(1)
Abitibi Paper Co. Ltd. . . . . 7.25(1)
Compagnie de Papier Abitibi Ltée . . . . . 7.25(1)
Abitibi Paper Co. Ltd. (7½% Cu. A. Pr.) . . . . . 49.50(1)
Compagnie de Papier Abitibi Ltée (7½% Cu. A. Priv.) . . . . . 49.50(1)
Abstainers Insurance Co. . . . . 11.00(3)
Acadia Uranium Mines Ltd. . . . . .06(2)
Accra Explorations Limited . . . . . .07(2)
Accurate Calculation Ltd. . . . . 1.13(1)
Acheron Mines Ltd. . . . . .16(1)
Acklands Limited . . . . . 7.50(1)
Acklands Limited (6% Cu. Pr.) . . . . . 15.75(2)
Acklands Limited (6% Cu. Cv. 2nd Pr.) . . . . . 11.25(1)
Acme Gas & Oil Co. Ltd. . . . . .22(1)
Aconic . . . . . .02(3)
Acres Limited . . . . . 11.63(1)
Acres Limited (7.20% A. Pr.) . . . . . 40.00(1)
Acres Limited (Wt.) . . . . . 2.40(1)
Acroll Oil & Gas Ltd. . . . . .63(1)
Adanac Mining & Exploration Ltd. . . . . .46(2)
Adera Mining Limited . . . . . .33(1)
Admiral Corporation . . . . . 18.50(3)
Admiral Mines Ltd. . . . . .15(2)
Advance Red Lake Gold Mines Ltd. . . . . .04(3)
Advocate Mines Ltd. . . . . 1.80(2)
Aetna Investment Ltd. . . . . .85(2)
Corporation de Placement Aetna . . . . . .85(2)
Afton Mines Limited . . . . . 1.21(1)
A.G.F. Management Ltd. (Cl. B. Pr.) . . . . . 5.75(1)

La Societe de Gestion A.G.F. Ltée (Cat. B. Priv.) . . . . . 5.75(1)
AGF Special Fund Ltd. . . . . 3.00(1)
Aggressive Mining Limited . . . . . .11(3)
Agnico Mines Ltd. . . . . 1.98(1)
Agra Industries Ltd. . . . . 9.63(1)
AGT Data Systems Ltd. . . . . 1.00(1)
A.G.T. Informatique Ltée . . . . . 1.00(1)
AHED Music Corp. Ltd. . . . . 4.70(1)
Aiken-Russet Red Lake Mines Ltd. . . . . .07(3)
Aimco Industries Ltd. . . . . 16.00(2)
A.I.S. Resources Ltd. . . . . 5.90(1)
Ajax Mercury Mines Ltd. . . . . .11(1)
Ajax Minerals Limited . . . . . .23(1)
Akaitcho Yellowknife Gold Mines Ltd. . . . . .45(2)
Alakon Metals Limited . . . . . .06(2)
Albany Oil & Gas Ltd. . . . . .45(1)
Albarmont Mines Corporation . . . . . .27(2)
Albatros Gold Mines Ltd. . . . . (4)
Mines d'Or Albatros Ltée . . . . . (4)
Alberta Copper Resources Ltd. . . . . .40(1)
Alberta Eastern Gas Ltd. . . . . 5.45(1)
Alberta Gas Trunk Line Co. Ltd. . . . . 49.75(1)
Alberta Gas Trunk Line Co. Ltd. (4¾% Cu. C. Pr.) . . . . . 76.00(2)
Alberta Gas Trunk Line Co. Ltd. (5⅜% Cu. Cv. D. Pr.) . . . . . 138.00(1)
Alberta Gypsum Ltd. . . . . .15(2)
Alberta Natural Gas Co. Ltd. . . . . 20.00(1)
Alcan Aluminium Ltd. . . . . 18.88(1)
Alcan Aluminium Ltee . . . . . 18.88(1)
Alcan Aluminium Ltd. (4¼% Cu. Cv. Pr.) . . . . . 26.75(1)
Alcan Aluminium Ltee (4¼% Cum. Conv. Priv.) . . . . . 26.75(1)
Alchib Development Ltd. . . . . .45(2)
Alcor Minerals Limited . . . . . .12(2)
Alexander Red Lake Mines Ltd. . . . . .03(1)
Algoma Central Railway Co. . . . . 8.25(1)
Algoma Steel Corp. Ltd., The . . . . . 13.38(1)
Algonquin Building Credits Ltd. . . . . 4.05(2)
Algonquin Building Credits Ltd. (6% Cu. Pr.) . . . . . 4.00(2)
Alice Arm Mining Ltd. . . . . .11(3)
Alice Lake Mines Limited . . . . . .23(2)
Alina Mines & Oil Ltd. . . . . .80(3)
Aljo Mines Ltd. . . . . (4)
Allarco Developments Inc. . . . . 4.80(1)
All Canadian-American Investments Limited . . . . . .55(3)
All-Can Holdings Ltd. (Cl. A.) . . . . . (4)
All-Can Holdings Ltd. (Cl. B.) . . . . . (4)
Allcop Mines Ltd. . . . . .02(3)
Alliance Building Corp. Ltd. (7% Cu. Cv. A. Prc.) . . . . . 7.00(2)
Alliance Building Corp. Ltd. . . . . 3.20(1)
Allied Mining Corp. . . . . 3.25(1)
Allied Roxana Minerals Limited . . . . . .65(1)
Allied Telemedia Ltd. . . . . .03(3)
Alminex Ltd. . . . . 5.35(1)
Alscope Consolidated Ltd. . . . . 1.25(1)
Altair Mining Corp. Limited . . . . . .10(2)
Aluminum Co. of Canada Ltd. (4% Cu. 1st Pr.) . . . . . 18.00(2)
Aluminium du Canada Limitée (4% Cum. 1ière Priv.) . . . . . 18.00(2)
Aluminum Co. of Canada Ltd. (4-1/2% Cu. 2nd Pr.) . . . . . 36.13(1)
Aluminium du Canada Limitée (4-1/2% Cum. 2ième Priv.) . . . . . 36.13(1)
Alvija Mines Ltd. . . . . .07(2)
Alwin Mining Co. Ltd. . . . . .64(1)
Amalgamated Beau Belle Mines Ltd. . . . . .04(2)
Amalgamated Kirkland Mines Ltd. . . . . (4)
Amalgamated Larder Mines Ltd. . . . . .49(1)
Amalgamated Properties Ltd. . . . . .70(1)
Amalgamated Rare Earth Mines Ltd. . . . . .07(2)
Amalgamated Resources Ltd. . . . . .03(2)
Amalta Oils & Minerals Ltd. . . . . .13(1)
Ambassador Development Corp. of Canada Ltd. . . . . .70(1)
Ambassador Mines Ltd. . . . . .09(2)
Amber Resources Ltd. . . . . .30(2)
Ameranium Mines Ltd. . . . . .06(2)
Americ Mines Ltd. . . . . .17(1)
American Chibougamau Mines Ltd. . . . . (4)
American Copper & Smelting Ltd. . . . . (4)
American Eagle Petroleums Ltd. . . . . .75(1)
American Leduc Petroleums Ltd. . . . . .09(2)
American Metropolitan Enterprises Ltd. . . . . 1.15(2)
American Quasar Petroleum Co. . . . . 4.80(2)
American Uranium Limited . . . . . (4)
Amigo Mines Ltd. . . . . .06(1)
Anaconda Petroleum Limited . . . . . (4)
Anchor Mines Limited . . . . . .23(1)
Anchor Petroleums Ltd. . . . . .04(3)
Andacollo Mining Co. Ltd. . . . . (4)
Andex Mines Ltd. . . . . .30(2)
Angelus Petroleums (1965) Ltd. . . . . .23(1)
Anglo American Nickel Mining Corp. Ltd. . . . . (4)
Anglo-Bomarc Mines Limited . . . . . .60(2)
Anglo-Canadian Pulp & Paper Mills Ltd. . . . . 4.70(1)
Anglo-Canadian Pulp & Paper Mills Ltd. (4-1/2% Cu. Cv. Pr.) . . . . . 14.00(1)
Anglo-Canadian Telephone Co. ($2.65 Cu. Pr.) . . . . . 34.00(2)
Anglo-Canadian Telephone Co. ($2.90 Cu. Pr.) . . . . . 38.00(1)
Anglo-Canadian Telephone Co. ($3.15 Cu. Pr.) . . . . . 42.63(2)
Anglo-Canadian Telephone Co. (4-1/2% Cu. Pr.) . . . . . 30.75(1)
Anglo-Permanent Corporate Holdings Limited . . . . . 13.50(2)
Anglo-Rouyn Mines Ltd. . . . . .32(1)
Anglo United Development Corp. Ltd. . . . . .71(1)
Anglo Western Minerals Ltd. . . . . .17(1)
Angot Group Limited, The . . . . . 1.00(3)
Annmar Mining Limited . . . . . .05(1)
Ansil Mines Ltd. . . . . .01(2)
Anthes Imperial Limited (5-1/2% Cu. A. 1st Pr.) . . . . . (4)
Anthes Imperial Limited (5-1/2% Cu. B. 1st Pr.) . . . . . 80.00(2)
Anthes Imperial Limited (5-1/4% Cu. C. 1st Pr.) . . . . . 80.00(2)
Anthonian Mining Corp. Ltd. . . . . .03(2)
Anthony Gas & Oil Explorations Ltd. . . . . 1.43(1)
Antoine Silver Mines Ltd. . . . . .04(3)
Anuk River Mines Ltd. . . . . .25(1)
Anuwon Uranium Mines Ltd. . . . . .02(3)
Aquablast Incorporated . . . . . 3.65(1)
Aquacare International Ltd. . . . . (4)
Aquitaine Co. of Canada Ltd. . . . . 24.50(1)
Société Aquitaine du Canada Ltée . . . . . 24.50(1)
Arcadia Explorations Ltd. . . . . .11(2)
Arctic Yellowknife Mines Ltd. . . . . .03(3)
Ardel Explorations Limited . . . . . .08(3)
Ardo Mines Ltd. . . . . .16(1)
Ardo Mines Ltd. (B. Wt.) . . . . . (4)
Argosy Mining Corp. Ltd. . . . . .45(2)
Argus Corporation Limited . . . . . 13.00(1)
Argus Corporation Limited ($2.50 Cu. A. Pr.) . . . . . 32.00(1)
Argus Corporation Limited ($2.60 Cu. A. Pr.) . . . . . 34.13(2)
Argus Corporation Limited ($2.70 Cu. B. Pr.) . . . . . 35.75(1)
Argus Corporation Limited (C. Pr.) . . . . . 9.75(1)
Arjon Gold Mines Ltd. . . . . .01(3)
Arlington Silver Mines Ltd. . . . . .17(2)
Armore Mines Ltd. . . . . .14(1)
Arno Mines Ltd. . . . . .04(1)
Arrowhead Gold Mines Ltd. . . . . .01(3)
Arctic Gold & Silver Mines Ltd. . . . . .09(1)
Asamera Oil Corporation Ltd. . . . . 18.50(1)
Asbestos Corporation Ltd. . . . . 25.50(1)
Ascopex Explorations Ltd. . . . . (4)

Ascopex Explorations Ltée . . . . . (4)
Aselo Industries Ltd. . . . . .13(2)
Ashland Oil Canada Ltd. . . . . 11.88(1)
Ashland Oil Canada Ltd. (6% Cu. Cv. Pr.) . . . . . 29.50(2)
Ashland Oil Inc. . . . . 20.38(2)
Aspen Grove Mines Ltd. . . . . .10(3)
Associated Porcupine Mines Ltd. . . . . .32(2)
Astonish Lake Uranium Mining Corp. Ltd. . . . . (4)
Astrabrun Mines Ltd. . . . . .03(3)
Astral Communications Ltd. . . . . 1.97(2)
Atco Industries Ltd. . . . . 8.13(1)
Athabasca Columbia Resources Ltd. . . . . 1.65(2)
Athena Mines Limited . . . . . .08(2)
Atlanta Mines Ltd. . . . . (4)
Atlantic Coast Copper Corp. Ltd. . . . . .46(2)
Atlantic Nickel Mines Ltd. . . . . .22(1)
Atlantic Richfield Co. . . . . 64.13(2)
Atlantic Sugar Refineries Co. Limited . . . . . 6.38(1)
Atlantic Sugar Refineries Co. Limited (A. Cu. Pr.) . . . . . 15.00(1)
Atlantic Sugar Refineries Co. Limited (5% Cu. Pr.) . . . . . 62.38(1)
Atlantic Sugar Refineries Co. Limited (Wt.) . . . . . 1.40(1)
Atlantic Trust Co. . . . . (4)
Atlantic Tungsten Corp. Ltd. . . . . .17(1)
Atlas Explorations Limited . . . . . .32(1)
Atlas Yellowknife Mines Ltd. . . . . .05(2)
Attila Resources Ltd. . . . . 1.13(1)
Augdome Corp. Ltd. . . . . .19(3)
Augmitto Explorations Ltd. . . . . (4)
August Porcupine Gold Mines Ltd. . . . . .02(3)
Aunor Gold Mines Ltd. . . . . 2.30(1)
Auscan Mining and Oil Corporation Limited . . . . . .90(1)
Austin Investment Corp. Ltd. . . . . .41(3)
Auto Electric Services Co. Ltd. . . . . 6.00(1)
Auto Marine Electric Ltd. . . . . (4)
Auto Marine Electric Ltd. (Pr.) . . . . . .40(2)
Automotive Hardware Limited . . . . . 7.25(1)
Autoletic Industries Ltd. . . . . .65(2)
Ava Gold Mining Co. Ltd. . . . . (4)
Avco Corporation . . . . . (4)
Avilla International Explorations Ltd. . . . . .28(1)
Avino Mines & Resources Limited . . . . . .33(2)
Avoca Mines Canada Ltd. . . . . .65(2)
Babine International Resources Ltd. . . . . .14(2)
Bahamas-Caribbean Development Corporation Limited . . . . . .16(1)
Baker Talc Ltd. . . . . .42(1)
Balco Forest Products Ltd. . . . . 8.25(1)
Bald Mountain Oil Co. . . . . .03(2)
Baldwin Consolidated Mines Ltd. . . . . .01(3)
Ballinderry Explorations Limited . . . . . .90(1)
Bamboo Creek Gold Mines Ltd. . . . . .80(1)
Banco Finance Limited (Cl. B.) . . . . . (4)
Bancroft Uranium Mines Ltd. . . . . (4)
Band-Ore Gold Mines Ltd. . . . . .05(2)
Bankeno Mines Ltd. . . . . 6.40(1)
Bankfield Consolidated Mines Ltd. . . . . .02(2)
Bank of British Columbia . . . . . 22.25(2)
Bank of Montreal . . . . . 18.50(1)
Bank of Nova Scotia . . . . . 31.13(1)
Banner Porcupine Mines Ltd. . . . . (4)
Banque Canadienne Nationale . . . . . 14.00(1)
Bantam Mining Ltd. . . . . .40(1)
Mines Bantam Ltée . . . . . .40(1)
Barber-Ellis of Canada Ltd. . . . . 13.50(2)
Barber Oil Corporation . . . . . 48.50(3)
Barbi Lake Copper Mines Ltd. . . . . .15(2)
Barcelona Traction Light & Power Co. . . . . .20(2)
Barclay Resources Ltd. . . . . (4)
Barex-Trust, The . . . . . .20(2)
Barima Minerals Ltd. . . . . .01(3)
Barons Oil Limited . . . . . .05(1)
Barrington Explorations Corp. Ltd. . . . . .07(3)
Bartaco Industries Limited . . . . . 4.50(1)
Barvallee Mines Ltd. . . . . (4)
Barymin Explorations Ltd. . . . . 1.20(1)
Base Metals Mining Corp. Ltd. . . . . .01(3)
Bashaw Leduc Oil & Gas Limited . . . . . .05(1)
Basic Resources International Limited . . . . . 3.30(1)
Baslen Petroleums Ltd. . . . . .07(3)
Bateman Bay Mining Co. . . . . .06(1)
Bathurst Norsemines Ltd. . . . . .85(1)
Bathurst Norsemines Ltd. (A. Wt.) . . . . . (4)
Bathurst Paper Ltd. (5-1/4% Cu. 1963 Pr.) . . . . . 6.75(2)
Les Papeteries Bathurst Ltée (5-1/4% Cum Priv.) . . . . . 6.75(2)
Baton Broadcasting Inc. . . . . 14.88(1)
Bay Mills Ltd. . . . . 1.34(3)
Bay Mills Ltd. (6% Cu. A. 1st Pr.) . . . . . 3.05(2)
B.C. Turf Limited . . . . . 4.00(1)
Beacon Mining Co. Ltd. . . . . .05(3)
Bear International Industries Ltd. . . . . .19(1)
Beattie-Duquesne Mines Ltd. . . . . .04(2)
Beauce Placer Mining Co. Ltd. . . . . .01(2)
Beaumont Resources Limited . . . . . .09(1)
Beauport Holdings Ltd. . . . . .36(1)
Beaver Engineering Ltd. . . . . 6.50(1)
Beaver Lumber Co. Ltd. . . . . 19.50(1)
Beaver Lumber Co. Ltd. (Cl. A.) . . . . . 19.38(1)
Beaver Lumber Co. Ltd. ($1.40 Cu. Pr.) . . . . . 21.00(2)
Becker Milk Co. Ltd. (Cl. B. Pr.) . . . . . 10.00(2)
Bel-Air Mining Ltd. . . . . .92(1)
Belcarra Explorations Ltd. . . . . (4)
Belding-Corticelli Limited . . . . . 10.25(1)
Belding-Corticelli Limited (7% Cu. Pr.) . . . . . 10.34(3)
Belding-Corticelli Limited (Wt.) . . . . . 2.80(1)
Belgium Standard Ltd. . . . . 15.50(1)
Belgium Standard Ltd. (5% Cu. Pr.) . . . . . (4)
Bell Canada . . . . . 46.88(1)
La Compagnie de Téléphone Bell du Canada . . . . . 46.88(1)
Bell Canada ($3.20 Cu. Cv. Pr.) . . . . . 52.38(1)
La Compagnie de Téléphone Bell du Canada ($3.20 Cum. Conv. Priv.) . . . . . 52.38(1)
Bell Canada ($3.34 Cu. Cv. Cl. B. Pr.) . . . . . 53.88(1)
La Compagnie de Téléphone Bell du Canada ($3.34 Cum. Conv. Cat. B. Priv.) . . . . . 53.88(1)
Bellechase Mining Corp. Ltd. . . . . .04(2)
Belleterre Quebec Mines Ltd. . . . . .15(2)
Bellex Mines Ltd. . . . . .02(2)
Bell Knit Industries Ltd. . . . . .88(3)
Bell Molybdenum Mines Ltd. . . . . .14(1)
Belore Mines Ltd. . . . . .16(1)
Belra Explorations Ltd. . . . . (4)
Benson Mines Limited . . . . . .14(1)
Berkley Hotel . . . . . 1.75(1)
Berncam International Industries Ltd. . . . . 6.13(1)
Bethlehem Copper Corporation Ltd. . . . . 18.00(1)
Betrust Investment Corporation Ltd. . . . . 16.50(2)
Betrust Investment Corporation Ltd. (5-3/4% Cu. A. Pr.) . . . . . (4)
Big I Mines Ltd., The . . . . . (4)
Big Jackpot Mines Ltd. . . . . .01(3)
Big Long Lac Gold Mining Co. Ltd. . . . . .01(3)
Big Nama Creek Mines Ltd. . . . . .09(2)
Big Town Copper Mines Ltd. . . . . (4)
Bilmac Gold Mines Ltd. . . . . (4)
Biltmore Hats Limited . . . . . 13.00(2)
Biltmore Hats Limited (Cl. A. Cu. Pr.) . . . . . 10.50(2)
Bio-Millet Laboratories . . . . . (4)
Laboratoire Bio-Millet . . . . . (4)
Bird Construction Co. Ltd. . . . . 57.50(2)
Bird River Mines Co. Ltd. . . . . .65(1)
Biroco Kirkland Mines Ltd. . . . . .01(3)
Biron Bay Gold Mines Ltd. . . . . .23(1)
Bison Petroleum & Minerals Ltd. . . . . 9.10(1)
Black Bay Uranium Ltd. . . . . (4)
Black Cricket Mines Ltd. . . . . .60(2)
Black Giant Mines Ltd. . . . . .30(2)
Black Hawk Mining Ltd. . . . . .50(1)
Black Photo Corporation Ltd. . . . . 4.85(1)
Blackwater Mines Ltd. . . . . .30(1)
Block Bros. Industries Ltd. . . . . 3.00(1)
Block Bros. Industries Ltd. (A. Wt.) . . . . . 5.00(2)
Block Bros. Industries Ltd. (B. Wt.) . . . . . (4)
Blue Bonnets Raceway Inc. . . . . 2.05(1)

Blue Grass Uranium Mines Ltd. .01(3)
Blue Gulch Explorations Limited .48(1)
Blue Star Mines Limited .06(1)
Bluewater Oil & Gas Ltd. .90(1)
Bochawna Copper Mines Ltd. (4)
Bock & Frère Ltée (6-3/4% Cum. Priv.) (4)
Boise Yellowknife Mines Ltd. (4)
Bombardier Limited (Cl. A.) 9.50(1)
Bombardier Limitée (Cat. A.) 9.50(1)
Bonanza Explorations Ltd. (4)
Bonnet Plume River Mines Ltd. .15(3)
Bon-Val Mines Ltd. .44(1)
Boraway Mines Ltd. .11(1)
Border Chemical Company Limited 10.38(1)
Bordun Mining (Quebec) Limited .30(1)
Les Mines Bordun (Québec) Limitée .30(1)
Borealis Exploration Ltd. .30(2)
Borealis Exploration Ltd. (Wt.) (4)
Boswell River Mines Ltd. .22(2)
Boundary Exploration Ltd. .14(1)
Bounty Exploration Ltd. .13(2)
Bourbeau Lake Mines Ltd. .02(3)
Bourlamaque Central Mines 1945 Ltd. .02(3)
Bovis Corporation Ltd. 1.90(1)
Bowater Paper Corporation Ltd. 4.65(2)
Bowaters Mersey Paper Company Ltd.
(5-1/2% Cu. Pr.) 32.00(2)
Bowes Co. Ltd. 12.50(2)
Bow Valley Industries Ltd. 28.38(1)
Bow Valley Industries Ltd.
(5-1/2% Cu. A. Pr.) 14.25(2)
BP Canada Ltd. (5% Pr.) 75.00(2)
BP Oil & Gas Limited 6.20(1)
Bracemac Mines Ltd. .03(1)
Bralorne Can-Fer Resources Ltd. 1.75(1)
Bralorne Oil & Gas Ltd. 2.25(1)
Bralsaman Petroleums Ltd. 3.25(2)
Bramalea Consolidated Development Ltd. 3.45(1)
Bramalea Consolidated Development Ltd.
(Wt.) 2.10(1)
Brameda Resources Limited .92(1)
Braminco Mines Ltd. .03(3)
Brandy Brook Mines Ltd. .10(3)
Brascan Limited 18.50(1)
Brenda Mines Limited 4.55(1)
Brenmac Mines Limited .38(1)
Brettland Mining Ltd. (4)
Brett Oils Limited .23(2)
Brewster Lake Mines Limited .60(1)
Briarcourt Mines Ltd. .11(3)
Bridge & Tank Co. of Canada Ltd. 4.50(2)
Bridge & Tank Co. of Canada Ltd.
($2.90 Cu. Pr.) 32.25(2)
Bridge Hill Mines Limited .38(3)
Bright & Co. Ltd., T.G. 16.00(1)
Bright Red Lake Mines Ltd. .01(3)
Bright Star Trio Mining Ltd. 1.10(1)
Brilund Mines Ltd. 8.00(3)
Brinco Ltd. 5.63(1)
British American Bank Note Co. Ltd. 13.00(1)
British Columbia Forest Products Ltd. 19.75(1)
British Columbia Forest Products Ltd.
(6% Cu. Pr.) 41.50(2)
British Columbia Oil Lands Limited 7.50(3)
British Columbia Packers Ltd. (Cl. A.) 20.00(2)
British Columbia Packers Ltd. (Cl. B.) 19.50(3)
British Columbia Sugar Refinery Ltd. 19.38(1)
British Columbia Sugar Refinery Ltd.
(5% Cu. Pr.) 17.00(2)
British Columbia Telephone Co. 63.75(1)
British Columbia Telephone Co.
(4-3/8% Cu. Pr.) 63.00(2)
British Columbia Telephone Co.
(4-1/2% Cu. Pr.) 63.00(2)
British Columbia Telephone Co.
(4-3/4% Cu. Pr.) 66.50(1)
British Columbia Telephone Co.
(4-3/4% 1956 Cu. D. Pr.) 66.00(2)
British Columbia Telephone Co.
(4.84% Cu. Pr.) 17.50(2)
British Columbia Telephone Co.
(5.15% Cu. Pr.) 71.50(2)
British Columbia Telephone Co.
(5-3/4% Cu. Pr.) 80.50(1)
British Columbia Telephone Co.
(6% Cu. Pr.) 84.50(3)
British Columbia Telephone Co.
(6% Cu. 2nd Pr.) 82.00(2)
British Columbia Telephone Co.
(6.80% Cu. Pr.) 26.50(2)
British Controlled Oilfields Ltd. .20(2)
British International Finance
Canada Ltd. (Cl. A.) (4)
British Matachewan Gold Mines Ltd. (4)
Broken Hill Explorations Ltd. .08(3)
Brooke Bond Foods Ltd. (4.16% Cu. Pr.) 19.50(3)
Brosnan Canadian Mines Ltd. (4)
Broulan Reef Mines Ltd. .23(2)
Brown-McDade Mines Ltd. .10(3)
Bruck Mills Ltd. (Cl. A.) 15.00(1)
Bruck Mills Ltd. (Cl. B.) 8.00(2)
Bruneau Mining Corporation 1970 .11(2)
Brunswick Mining & Smelting Corp. Ltd. 3.05(1)
Brycon Industries Ltd. .18(1)
Buchanan Mines Limited .15(1)
Buckeye Explorations Ltd. .35(1)
Budd Automotive Co. of Canada Ltd. 6.63(1)
Budd Automotive Co. of Canada Ltd. (Wt.) 2.40(1)
Buffalo Gas & Oil Corporation Limited 1.05(2)
Buffalo Lake Mines Ltd. (4)
Bullion Mountain Mining Ltd. .65(1)
Bullion Mountain Mining Ltd. (A. Wt.) (4)
Bunker Hill Extension Mines Ltd. .05(1)
Burlington Mines & Enterprises Ltd. (4)
Burns Foods Limited 12.75(1)
Burnt Hill Tungsten & Metallurgical Ltd. .18(2)
Burrard Dry Dock Co. Ltd. 7.00(1)
Burrard Mortgage Investments Ltd. 1.90(3)
Burrex Mines Limited .04(3)
Bushnell Communications Limited 6.00(1)
Buval Executive Mining Industries Ltd. .40(1)
C & C Yachts Ltd. 2.50(2)
Cable Copper Mines Limited (4)
Cabot Corporation (4)
Cadillac Development Corp. Ltd. 8.38(1)
Cadillac Development Corp. Ltd.
(6-1/2% Cu. B. Pr.) 20.25(1)
Cadillac Explorations Ltd. 1.30(1)
CAE Industries Ltd. 4.65(1)
Calcorp Resources Ltd. .14(2)
Caledon Mountain Estates Ltd. 4.50(1)
Calgary Power Ltd. 27.25(1)
Calgary Power Ltd. (4% Cu. Pr.) (4)
Calgary Power Ltd. ($5.00 Cu. Pr.) 69.00(2)
Calgary Power Ltd. ($5.40 Cu. Cv. Pr.) 91.00(2)
Calico Silver Mines Ltd. .18(2)
Caliper Developments Limited .75(2)
Calix Mines Ltd. .05(1)
Calmark Industries Ltd. (4)
Calmor Iron Bay Mines Ltd. .50(2)
Calta Mines Limited 1.02(1)
Calvert-Dale Estates Ltd. .82(2)
Calvert Gas & Oils Ltd. .14(2)
Cam Mines Ltd. .30(1)
Cambridge Leaseholds Limited 11.50(1)
Cambridge Mines Limited .38(1)
Cambridge Mining Corp. Ltd. .02(3)
Camdeck Mines Ltd. .15(3)
Camflo Mines Limited 2.51(1)
Camindex Mines Ltd. .13(1)
Camlaren Mines Ltd. .08(3)
Campbell Chibougamau Mines Ltd. 4.70(1)
Campbell Red Lake Mines Ltd. 21.50(2)
Campeau Corporation Ltd. 3.50(1)
C-A Petroleums Ltd. (4)
Canada & Dominion Sugar Co. Ltd. 32.50(1)
Canada Cement LaFarge Ltd. 46.63(1)

Ciments Canada LaFarge Ltée . . . . . 46.63(1)
Canada Cement LaFarge Ltd.
(6-1/2% Cu. Pr.) . . . . . 19.75(1)
Ciments Canada LaFarge Ltée
(6-1/2% Cum. Priv.) . . . . . 19.75(1)
Canada Forgings Ltd. . . . . 4.50(2)
Canada Geothermal Oil Ltd. . . . . .68(1)
Canada Machinery Corporation Ltd. . . . . 19.00(1)
Canada Malting Co. Limited . . . . . 26.00(2)
Canada Malting Co. Limited (B. Pr.) . . . . . .89(2)
Canada Northwest Land Limited . . . . . 1.50(2)
Canada Packers Ltd. . . . . 18.50(1)
Canada Permanent Mortgage Corporation . . . . . 18.00(1)
Canada Safeway Limited ($4.40 Cu. Pr.) . . . . . 82.50(2)
Canada Southern Petroleum Ltd. . . . . 6.20(1)
Canada Southern Petroleum Ltd. (Wt.) . . . . . 3.10(1)
Canada Steamship Lines Ltd. . . . . 40.00(2)
Canada Steamship Lines Ltd. (5% Cu. Pr.) . . . . . 5.13(1)
Canada Tungsten Mining Corp. Ltd. . . . . 1.55(1)
Canada Western Cordage Company Ltd.
(Cl. A.) . . . . . (4)
Canada Western Cordage Company Ltd.
(Cl. B.) . . . . . (4)
Canadex Mining Corp. Ltd. . . . . .13(1)
Canadian Allied Property Investments
Limited . . . . . 7.00(3)
Canadian All-Metal Explorations Ltd. . . . . (4)
Canadian Arena Co. . . . . 15.00(1)
Canadian Arrow Mines Limited . . . . . .14(1)
Canadian Barranca Corp. Ltd. . . . . .22(2)
Canadian Bonanza Petroleums Ltd. . . . . 1.30(1)
Canadian Breweries Limited . . . . . 7.50(1)
Les Brasseries Canadiennes Limitée . . . . . 7.50(1)
Canadian Breweries Limited
($2.20 Cu. A. Pr.) . . . . . 32.00(1)
Les Brasseries Canadiennes Limitée
($2.20 Cum. A. Priv.) . . . . . 32.00(1)
Canadian Breweries Limited
($2.65 Cu. B. Pr.) . . . . . 36.50(1)
Les Brasseries Canadiennes Limitee
($2.65 Cum. B. Priv.) . . . . . 36.50(1)
Canadian Cablesystems Ltd. . . . . 14.13(1)
Canadian Cablesystems Ltd. (Wt.) . . . . . 2.25(1)
Canadian Canners Ltd. (Cl. A.) . . . . . 6.50(1)
Canadian Converters Co. Ltd. (Cl. A.) . . . . . 2.00(3)
Canadian Converters Co. Ltd. (B.) . . . . . (4)
Canadian Corporate Management
Company Limited . . . . . 16.00(2)
Canadian Corporate Management
Company Limited (Cl. B.) . . . . . (4)
Canadian Curtiss-Wright Ltd. . . . . .70(1)
Canadian Delhi Oil Limited . . . . . 5.00(1)
Canadian Equity & Development
Company Limited . . . . . 12.00(1)
Canadian Export Gas & Oil Ltd. . . . . 3.60(1)
Canadian Food Products Ltd. . . . . 5.20(2)
Canadian Food Products Ltd.
(6% Cu. 1st Pr.) . . . . . 32.50(2)
Canadian Food Products Ltd.
(6% Cv. 2nd Pr.) . . . . . 32.00(2)
Canadian & Foreign Securities Co. Ltd. . . . . (4)
Canadian Fortune Oil Limited . . . . . (4)
Canadian Foundation Co. Ltd. . . . . 6.00(1)
Canadian Foundation Co. Ltd.
(6% Cu. A. Pr.) . . . . . 7.75(2)
Canadian Gas & Energy Fund Ltd.
(B. Wt.) . . . . . 7.25(1)
Canadian General Electric Company Ltd. . . . . 22.50(3)
Compagnie Générale Electrique
du Canada Ltée . . . . . 22.50(3)
Canadian General Electric Company Ltd.
(Cu. Cv. Pr.) . . . . . 26.00(2)
Compagnie Générale Electrique
du Canada Ltée (Cum. Conv. Priv.) . . . . . 26.00(2)
Canadian General Investments Ltd. . . . . 66.00(1)
Canadian General Securities Limited
(Cl. A.) . . . . . 12.75(2)
Canadian General Securities Limited
(Cl. B.) . . . . . 30.00(2)
Canadian Goldale Corp. Ltd. . . . . 3.50(1)
Canadian Hidrogas Resources Ltd. . . . . .72(1)
Canadian Homestead Oils Limited . . . . . 8.60(1)
Canadian Homestead Oils Limited
(6% Cu. Cv. Pr.) . . . . . 17.00(1)
Canadian Hydrocarbons Ltd. . . . . 13.88(1)
Canadian Hydrocarbons Ltd.
(5-1/2% Cu. A. Pr.) . . . . . 14.00(2)
Canadian Imperial Bank of Commerce . . . . . 25.75(1)
Canadian Industrial Gas & Oil Ltd. . . . . 9.13(1)
Canadian Industrial Gas & Oil Ltd.
(5-1/2% Cu. Cv. Pr.) . . . . . 21.50(1)
Canadian Industries Ltd. . . . . 13.88(1)
Canadian Industries Ltd. (7-1/2% Cu. Pr.) . . . . . 52.50(3)
Canadian International Power
Company Ltd. . . . . 22.50(1)
Canadian International Power
Company Ltd. (5.20% 1965 Cu. Pr.) . . . . . 13.50(2)
Canadian International Investment
Trust Ltd. . . . . 32.00(2)
Canadian International Investment Trust Ltd.
(5% Cu. Pr.) . . . . . (4)
Canadian Interurban Properties Limited . . . . . 2.00(2)
Canadian Interurban Properties Limited
(7% Cu. Cv. A. Pr.) . . . . . 7.75(1)
Canadian Jamieson Mines Ltd. . . . . 1.25(1)
Canadian Javelin Limited . . . . . 9.60(2)
Canadian Keeley Mines Ltd. . . . . .05(1)
Canadian Lencourt Mines Ltd. . . . . .07(2)
Canadian Leisure Industries Ltd. . . . . .06(3)
Canadian Long Island Petroleums Ltd. . . . . .65(1)
Canadian Magnesite Mines Ltd. . . . . .31(2)
Canadian Malartic Gold Mines Ltd. . . . . .27(1)
Canadian Manoir Industries Limited . . . . . 3.35(1)
Canadian Manoir Industries Limited
(6% Cu. Pr.) . . . . . (4)
Canadian Marconi Company . . . . . 3.05(1)
Canadian Merrill Ltd. . . . . 4.75(1)
Canadian Nistro Mines Ltd. . . . . .09(1)
Canadian Occidental Petroleum Ltd. . . . . 9.13(1)
Canadian Pacific Limited . . . . . 13.88(1)
Canadien Pacifique Limitée . . . . . 13.88(1)
Canadian Pacific Limited
(7-1/4 A. Pr.) . . . . . 10.75(1)
Canadien Pacifique Limitée (7-1/4 A. Priv.) . . . . . 10.75(1)
Canadian Pacific Limited
(4% Pr. Canadian Unit) . . . . . 9.63(2)
Canadien Pacifique Limitée
(4% Priv. Unitée Canadienne) . . . . . 9.63(2)
Canadian Pacific Limited
(4% Pr. United Kingdom Unit) . . . . . 7.75(2)
Canadien Pacifique Limitée
(4% Priv. Unitée Royaume Unis) . . . . . 7.75(2)
Canadian Pacific Investments Limited . . . . . 12.00(1)
Canadian Pacific Investments Limited
(4-3/4% Cv. A. Pr.) . . . . . 24.50(1)
Canadian Pacific Investments Limited
(Wt.) . . . . . 3.05(1)
Canadian Provident, The . . . . . (4)
Les Prévoyants du Canada . . . . . (4)
Canadian Refractories Ltd. . . . . (4)
Canadian Reserve Oil & Gas Ltd. . . . . 5.60(1)
Canadian Reynolds Metals Co. Limited
(Pr.) . . . . . (4)
Société Canadienne de Métaux Reynolds
Limitée (Priv.) . . . . . (4)
Canadian Salt Co. Ltd. . . . . 15.00(1)
Canadian Scenic Oils Ltd. . . . . .80(3)
Canadian Security Management Ltd.
(Cl. A.) . . . . . 1.25(1)
Canadian Southern Cross Mines
(No Liability) . . . . . (4)
Canadian Superior Oil Ltd. . . . . 43.25(1)
Canadian Tire Corp. Ltd. . . . . 40.25(1)
Canadian Tire Corp. Ltd. (Cl. A.) . . . . . 35.38(1)
Canadian Tricentrol Oils Ltd. . . . . 14.63(2)
Canadian Union Insurance Company . . . . . (4)
Union (L) Canadienne Cie d'Assurances . . . . . (4)
Canadian Utilities Limited . . . . . 37.25(1)

Canadian Utilities Limited (4-1/4% Cu. Pr.) . . . 57.25(3)
Canadian Utilities Limited (5% Cu. Pr.) . . . 66.50(2)
Canadian Utilities Limited (6% Cu. Pr.) . . . 78.75(2)
Canadian Utilities Limited (Wt.) . . . 8.50(1)
Canadian Vickers Ltd. . . . 9.25(2)
Canadian Wallpaper Manufacturers Ltd. . . . 85.50(3)
Canadian Western Natural Gas Company Limited . . . 21.00(1)
Canadian Western Natural Gas Company Limited (5-1/2% Cu. Pr.) . . . 15.00(2)
Canadian Western Natural Gas Company Limited (4% Cu. Pr.) . . . 11.50(2)
Canadore Mining & Development Corp. . . . .10(2)
Can-American Natural Resources Ltd. . . . (4)
Can-American Petroleums Ltd. . . . (4)
Canarctic Resources Ltd. . . . .27(1)
Can-Base Industries Ltd. . . . .18(1)
Canbridge Oil Explorations Ltd. . . . 1.50(2)
Can-Con Enterprises & Explorations Ltd. . . . .10(3)
Candida Holdings Naamloze Vennootschap . . . 16.75(1)
Candore Explorations Ltd. . . . .04(1)
Candy Mines & Investments Ltd. . . . .12(1)
Caneonti Mines Ltd. . . . .01(3)
Cannon Mines Limited . . . .07(2)
Canol Metal Mines Ltd. . . . .02(3)
Canol Mines Limited . . . .25(1)
Canron Ltd. . . . 19.38(1)
Canron Ltée . . . 19.38(1)
Canron Ltd. (4-1/4% Cu. Cv. Pr.) . . . 70.00(2)
Canron Ltée (4-1/4% Cum. Conv. Priv.) . . . 70.00(2)
Canterra Development Corp. Ltd. . . . 1.00(1)
Cantrend Industries Ltd. (Cl. A.) . . . (4)
Les Industries Cantrend Ltée (Cat. A.) . . . (4)
Cantrend Industries Ltd. (Cl. B.) . . . (4)
Les Industries Cantrend Ltée (Cat. B.) . . . (4)
Cantol Ltd. . . . 3.40(2)
Canuc Mines Limited . . . .30(2)
Canyon City Explorations Ltd. . . . .05(3)
Capital Diversified Industries Ltd. . . . .59(1)
Capital Diversified Industries Ltd. (A. Wt.) . . . .15(3)
Capital Dynamics Ltd. . . . 1.80(2)
Capital Dynamisme Ltée . . . 1.80(2)
Capital Dynamics Ltd. (Wt.) . . . .03(2)
Capital Dynamisme Ltée (Wt.) . . . .03(2)
Capital Estates Inc. . . . (4)
Capri Mining Corporation Ltd. . . . .14(2)
Caprive Industries & Resources Limited . . . .09(2)
Captain International Industries Limited . . . 6.00(1)
Captain Mines Limited . . . .11(1)
Cara Operations Ltd. . . . 4.60(1)
Caravelle Mines Ltd. . . . .11(3)
Card Lake Copper Mines Ltd. . . . .10(2)
Cardwell Resources Limited . . . .15(2)
Cariboo-Bell Copper Mines Limited . . . .25(2)
Cariboo Gold Quartz Mining Co. Ltd. . . . .95(1)
Carling Copper Mines Ltd. . . . .20(2)
Carlson Mines Ltd. . . . (4)
Carlton Cleaning Carousels Ltd. . . . .25(2)
Carnegie New Mining Corp. Ltd. . . . (4)
Carndesson Mines Ltd. . . . (4)
Carolin Mines Limited . . . .20(2)
Carrier Shoe Co. Ltd. J.D. . . . 6.63(1)
Carrier Shoe Co. Ltd. J.D. (Wt.) . . . 3.25(2)
Carroll & Reed Ltd. . . . (4)
Carter J.B. (Cl. A.) . . . 10.12(2)
Carter J.B. (Cl. B.) . . . 60.00(2)
Cartier Quebec Explorations Ltd. . . . .10(2)
Casavant Brothers Limited (Cl. A.) . . . 1.00(2)
Casavant Frères Limitée (Cat. A.) . . . 1.00(2)
Cascade Molybdenum Mines Ltd. . . . .23(1)
Casino Silver Mines Ltd. . . . .55(1)
Cassiar Asbestos Corporation Limited . . . 18.63(1)
Cassiar Consolidated Mines Ltd. . . . .10(2)
Cassidy's Ltd. . . . 4.35(1)
Cassidy Ltée . . . 4.35(1)
Cassidy's Ltd. (6-1/4% Cu. Cv. A. 1st Pr.) . . . 8.75(1)
Cassidy Ltée (6-1/4% Cum. Conv. A. 1ière Priv.) . . . 8.75(1)
Castlebar Silver & Cobalt Mines Ltd. . . . .06(3)
Castle Oil And Gas Limited . . . 1.40(2)
CDP Computer Data Processors Ltd. . . . 1.30(2)
CDRH Limited . . . 5.88(1)
Cedar Vale Mines Ltd. . . . .35(1)
Celtic Minerals Ltd. . . . .79(1)
Centex Mines Ltd. . . . .12(1)
Central Dynamics Limited . . . .90(2)
Central Fund of Canada Ltd. (Cl. A.) . . . 6.25(2)
Central Ontario Savings & Loan Corp. . . . 8.00(2)
Central Patricia Gold Mines Ltd. . . . 1.70(1)
Central Trust Company of Canada, The . . . 13.75(3)
Centura Mining Ltd. . . . .36(3)
Cessland Corp. Ltd. . . . .28(3)
CFTO-TV Limited . . . (4)
CGC Mines Ltd. . . . (4)
Chance Mining & Exploration Co. Ltd. . . . (4)
Chapparal Mines Limited . . . .16(2)
Charter Industries Ltd. . . . 1.30(2)
Charter Oil Company Ltd. . . . 6.00(1)
Chataway Exploration Co. Ltd. . . . .17(2)
Château-Gai Wines Ltd. . . . 16.88(1)
Chemalloy Mineral Ltd. . . . 2.06(1)
Chemcell Ltd. . . . 4.35(1)
Chemcell Ltée . . . 4.35(1)
Chemcell Ltd. ($1.00 Cu. Pr.) . . . 12.50(2)
Chemcell Ltée ($1.00 Cum. Priv.) . . . 12.50(2)
Chemcell Limited ($1.75 Cu. Pt. Pr.) . . . 19.75(1)
Chemcell Ltée ($1.75 Cum. Pt. Pr.) . . . 19.75(1)
Chesbar Iron Powder Limited . . . 2.00(2)
Chesbar Iron Powder Limited (Wt.) . . . .40(2)
Chesterville Mines Limited . . . .10(1)
Chibex Mining Corp. . . . .38(1)
Chib-Kayrand Copper Mines Ltd. . . . .05(1)
Chibougamau Mining & Smelting Co. Inc. . . . .29(2)
Chiboug Copper Corp. Ltd. . . . .18(2)
Chieftain Development Company Ltd. . . . 8.10(1)
Chimo Gold Mines Ltd. . . . 1.20(1)
Chinook Shopping Centre Limited . . . 3.00(3)
Chipman Mining & Energy Corp. Ltd. . . . .40(2)
Choiceland Iron Mines Ltd. . . . .25(3)
Chromex Nickel Mines Ltd. . . . .18(2)
Chromium Mining & Smelting Corporation Limited . . . 1.75(2)
Chrysler Corporation . . . 29.75(1)
Chukuni Gold Mines Ltd. . . . .04(3)
CHUM Limited . . . 5.50(1)
CHUM Limited (Cl. B.) . . . 8.50(1)
Churchill Copper Corporation Ltd. . . . .75(1)
Cicada Mines Ltd. . . . .03(3)
Cimco Limited (Cl. A.) . . . 12.06(3)
Cincinnati-Porcupine Mines Ltd. . . . .02(3)
Cinola Mines Ltd. . . . .08(2)
Citadel Mines Ltd. . . . .04(3)
Citex Mines Ltd. . . . .05(1)
Cities Services Company . . . (4)
City Associated Enterprises Ltd. (Cl. B.) . . . .70(2)
Clairtone Sound Corporation Limited . . . (4)
Clarepine Development Ltd. . . . .20(3)
Clark Canadian Exploration Co. . . . 3.75(1)
Clavos Porcupine Mines Ltd. . . . .02(3)
Claw Lake Molybdenum Mines Ltd. . . . .03(3)
Clearwater Mines Ltd. . . . .15(1)
Clero Mines Ltd. . . . .06(2)
Cleveland Mining & Smelting Co. . . . .05(2)
Clicker Red Lake Mines Ltd. . . . (4)
Clinger Gold Mines Ltd. . . . .02(3)
Coast Copper Company Limited . . . 3.00(2)
Coast Interior Ventures . . . .75(1)
Coast Silver Mines Ltd. . . . .14(1)
Cochenour Willans Gold Mines Ltd. . . . .21(1)
Cochrane-Dunlop Hardware Ltd. . . . 35.00(3)
Cochrane-Dunlop Hardware Ltd. (Cl. A.) . . . 30.50(3)
Cockfield Brown & Company Limited . . . 6.00(1)
Cockfield Brown & Compagnie Limitée . . . 6.00(1)
Codville Distributors Ltd. (Cl. A.) . . . 3.75(1)

Coin Canyon Mines Ltd. . . . (4)
Coin Canyon Mines Ltd. (A. Wt.) . . . (4)
Coin Lake Gold Mines Ltd. . . . .09(2)
Coleman Collieries Ltd. (Cl. A.) . . . 7.00(2)
Coleman Collieries Ltd. (Cl. B.) . . . 6.95(1)
Coleman Collieries Ltd. (6% 1st. Cv. Pr.) . . . .73(2)
Coleman Collieries Ltd. (B. Wt.) . . . 2.51(2)
Colleen Copper Mines Ltd. . . . .12(1)
College Plumbing Supplies Ltd. . . . 4.00(2)
Collingwood Terminals Ltd. . . . (4)
Collingwood Terminals Ltd. (Pr.) . . . (4)
Colonial Oil and Gas Ltd. . . . .65(2)
Columbia Cellulose Company Limited . . . 2.90(1)
Columbia Cellulose Company Limited ($1.20 Cu. Cv. Pr.) . . . 8.63(1)
Columbia Gas System Inc. . . . (4)
Columbia Metals Corporation Ltd. . . . .36(1)
Columbia Placers Ltd. . . . .08(3)
Columbia River Mines Limited . . . .28(1)
Columbiere Mines Ltd. . . . (4)
Comaplex Resources International Ltd. . . . 1.80(1)
Comaplex Resources International Ltd. (A. Wt.) . . . .64(1)
Combined Engineered Products Limited . . . 2.60(2)
Combined Engineered Products Limited ($1.10 Cu. Cv. Pr.) . . . 11.88(1)
Combined Insurance Co. of America . . . 40.00(3)
Combined Larder Mines Ltd. . . . .01(3)
Combined Metal Mines Ltd. . . . .12(1)
Comet Industries Ltd. . . . .70(3)
Les Industries Comète Ltée . . . .70(3)
Cominco Ltd. . . . 22.88(1)
Cominco Ltée . . . 22.88(1)
Cominga Compagnie Minière de l'Ungava . . . .03(2)
Commerce Nickel Mines Ltd. . . . .08(3)
Commercial Finance Corporation Limited . . . (4)
Commercial Holdings & Metals Corp. . . . 2.00(1)
Commercial Life Assurance Co. of Canada . . . (4)
Commercial Oil & Gas Limited . . . .09(2)
Commodore Business Machines (Canada) Limited . . . 8.13(1)
Commodore Business Machines (Canada) Limited (A. Wt.) . . . 4.25(3)
Commonwealth Holiday Inns of Canada Ltd. . . . 12.25(1)
Compton Exploration Ltd. . . . (4)
Computel Systems Ltd. . . . 3.00(1)
Computrex Centres Ltd. . . . .38(1)
Comstock Keno Mines Ltd. . . . .07(3)
Comtech Group International Limited . . . 1.90(2)
Comtech Group International Limited (5% Cu. Pr.) . . . (4)
Concorde Explorations Ltd. . . . (4)
Concourse Building Ltd. . . . (4)
Condor Mines Limited . . . .11(1)
Conduits National Co. Ltd. . . . 3.00(3)
Congress Mining Corporation Limited . . . .48(3)
Coniagas Mines Ltd. . . . .28(2)
Conigo Mines Ltd. . . . .13(3)
Conoco Silver Mines Ltd. . . . .25(2)
Con Quest Exploration Ltd. . . . .40(2)
Consolidated Ad Astra Minerals Ltd. . . . .11(2)
Consolidated Bathurst Limited . . . 7.88(1)
Consolidated Bathurst Limitée . . . 7.88(1)
Consolidated Bathurst Limited (6% Cu. Pr.) . . . 11.75(1)
Consolidated Bathurst Limitée (6% Cum. Priv.) . . . 11.75(1)
Consolidated Bathurst Limited (Wt.) . . . .55(2)
Consolidated Bathurst Limitée (Wt.) . . . .55(2)
Consolidated Bathurst Ltd. (1968 Wt.) . . . 3.00(1)
Consolidated Bathurst Limitée (1968 Wt.) . . . 3.00(1)
Consolidated Bellekemo Mines Ltd. . . . .01(2)
Consolidated Brewis Minerals Ltd. . . . .08(3)
Consolidated Buffalo Red Lake Mines Ltd. . . . .07(2)
Consolidated Building Corp. Ltd. . . . 1.50(1)
Consolidated Building Corp. Ltd. (6% Cu. A. Pr.) . . . (4)
Consolidated Callinan Flin-Flon Mines Limited . . . .07(1)
Consolidated Canadian Faraday Ltd. . . . .80(2)
Consolidated Canorama Exploration Ltd. . . . .15(2)
Consolidated Daering Mining Inc. . . . .09(1)
Consolidated Developments Ltd. . . . .70(1)
Consolidated Diversified Standard Securities Ltd. (Cl. A.) . . . 2.50(2)
Consolidated Diversified Standard Securities Ltd. ($2.50 1st Pr.) . . . 25.00(3)
Consolidated Dolsam Mines Ltd. . . . .12(2)
Consolidated Durham Mines & Resources Ltd. . . . .73(1)
Consolidated East Crest Oil Company Limited . . . 1.52(2)
Consolidated Fenimore Iron Mines Ltd. . . . .02(3)
Consolidated Gem Exploration Ltd. . . . .05(2)
Consolidated Harpers Malartic Gold Mines Ltd. . . . .05(3)
Consolidated Imperial Minerals Ltd. . . . .07(2)
Consolidated Manitoba Mines Ltd. . . . (4)
Consolidated Marbenor Mines Ltd. . . . 1.55(1)
Consolidated Marcus Gold Mines Ltd. . . . .05(3)
Consolidated Mogador Mines Ltd. . . . .03(2)
Consolidated Monpas Mines Ltd. . . . (4)
Consolidated Montclerg Mines Ltd. . . . .03(2)
Consolidated Morrison Explorations Ltd. . . . 1.58(1)
Consolidated Negus Mines Ltd. . . . .07(1)
Consolidated Nicholson Mines Ltd. . . . .05(1)
Consolidated Northern Exploration Ltd. . . . .29(2)
Consolidated Novell Mines Ltd. . . . .02(3)
Consolidated Oil & Gas Inc. . . . (4)
Consolidated Panther Mines Ltd. . . . .30(3)
Consolidated Pershcourt Mining Ltd. . . . (4)
Consolidated Professor Mines Ltd. . . . (4)
Consolidated Proprietary Mines Holdings Ltd. . . . .06(1)
Consolidated Prudential Mines Ltd. . . . .10(3)
Consolidated Rambler Mines Ltd. . . . 1.55(1)
Consolidated Rexspar Minerals & Chemicals Ltd. . . . .16(1)
Consolidated Ribago Mines Ltd. . . . .02(3)
Consolidated Shunsby Mines Ltd. . . . .10(1)
Consolidated Standard Mines Ltd. . . . .05(2)
Consolidated Textile Mills Ltd. . . . 4.75(1)
Consolidated Theatres Ltd. (Cl. A.) . . . (4)
Consolidated Vigor Mines Ltd. . . . .03(3)
Consolidated Virginia Mining Corp. . . . (4)
Consolidated West Petroleum Limited . . . 1.28(3)
Consumers Distributing Company Limited . . . 23.88(1)
Consumers Gas Company . . . 19.50(1)
Consumers Gas Company (5-1/2% Cu. A. Pr.) . . . 83.25(2)
Consumers Gas Company (5-1/2% Cu. B. Pr.) . . . 84.00(1)
Consumers Glass Co. Ltd. . . . 10.50(2)
Contact Ventures Ltd. . . . .55(1)
Continental Can Company Inc. . . . 32.00(3)
Continental Cinch Mines Ltd. . . . .09(2)
Continental Copper Mines Ltd. . . . .08(3)
Continental McKinney Mines Ltd. . . . .08(1)
Continental Potash Corporation Ltd. . . . .04(1)
Continental Research & Development Ltd. . . . 7.00(1)
Controlled Foods International Ltd. . . . 1.90(2)
Conuco Limited . . . .35(2)
Conwest Exploration Co. Ltd. . . . 7.75(1)
Cooper of Canada Ltd. . . . 14.50(1)
Copconda Mines Ltd. . . . (4)
Copeland Process Ltd. . . . 4.00(1)
Cop-Mac Mines Ltd. . . . .23(1)
Copp-Clark Publishing Co. Ltd. (Pr.) . . . (4)
Copper Corp. of America . . . .08(3)
Coppercorp Limited . . . .15(2)
Copperfields Mining Corp. Ltd. . . . 1.25(1)
Copper Giant Mining Corporation Ltd. . . . .10(1)
Copper Horn Mining Ltd. . . . .04(3)
Copper Lake Explorations Ltd. . . . .31(1)

Copperline Mines Limited .19(1)
Copper-Lode Mines Ltd. .09(1)
Copper-Man Mines Ltd. .04(1)
Copper Pass Mines Ltd. (4)
Copper Queen Explorations Limited .09(2)
Copper Ridge Mines Ltd. .22(1)
Copperstream-Frontenac Mines Ltd. (4)
Copperville Mining Corp. Ltd. .09(2)
Corby Distilleries Limited (Cl. A.) 23.00(1)
Les Distilleries Corby Limitée (Cat. A.) 23.00(1)
Corby Distilleries Limited (Cl. B.) 23.50(2)
Les Distilleries Corby Limitée (Cat. B.) 23.50(2)
Corgemines Limited .20(2)
Corgemines Limitée .20(2)
Cornat Industries Limited 1.65(1)
Coronation Allied Industries Ltd. .57(1)
Coronation Credit Corp. Ltd. .120(1)
Coronation Credit Corp. Ltd. (6% Cu. Cv. A. Pr.) 1.75(1)
Coronation Credit Corp. Ltd. (2 Wt.) (4)
Coronet Mines Limited .25(2)
Corporate Foods Ltd. 8.00(2)
Corporate Foods Ltd. ($2.75 A. Cu. Pr.) 28.00(2)
Corporate Properties Ltd. 3.31(1)
Corporation d'Expansion Financière 1.25(2)
Coseka Resources Limited 1.01(1)
Cosmic Nickel Mines Limited .09(2)
Cosmos Imperial Mills Limited ,85(1)
Costain Richard Canada Ltd. 7.50(1)
Coulee Lead & Zinc Mines Ltd. .13(1)
Courier Explorations Ltd. .28(2)
Courvan Mining Co. Ltd. .07(2)
Cover Uranium Mines Ltd. (4)
Cowl Limited 3.50(1)
Crackingstone Mines Ltd. .04(3)
Craibbe Fletcher Gold Mines Ltd. .01(2)
Craig Bit Co. Ltd., The 4.75(2)
Craigmont Mines Ltd. 7.00(1)
Crain Limited, R.L. 11.13(1)
Crawford Allied Industries Ltd. 1.85(1)
Cream Silver Mines Limited .24(2)
Creative Patents & Products Limited 2.25(1)
Credit Foncier Franco-Canadien 57.00(2)
Credo Mining Limited .05(2)
Cree Lake Mining .40(2)
Crest Ventures Ltd. .18(3)
Crestbrook Forest Industries Ltd. 3.90(1)
Crestland Mines Ltd. .07(2)
Crestwood Kitchens Ltd. 1.75(2)
Cresus Mining Limited .07(2)
Les Mines Cresus Limitée .07(2)
Creswell Mines Ltd. (4)
Cross Co. Ltd., W.B. 3.00(2)
Crowbank Mines Ltd. .12(2)
Crown Cork & Seal Co. Ltd. 150.00(2)
Crown Life Insurance Company 30.25(1)
Crown Trust Company 15.50(1)
Crownbridge Copper Mines Ltd. .03(2)
Crown Zellerbach Canada Ltd. (Cl. A.) 16.63(1)
Crows Nest Industries Ltd. 26.00(1)
Croydon Mines Ltd. 7.14(1)
Croydon Rouyn Mines Ltd. .03(3)
Crusade Petroleum Corp. Ltd. .65(1)
Crush International Ltd. 19.00(1)
Cultus Exploration Ltd. .20(1)
Cumex Mines Ltd. .45(1)
Cummings Properties Limited (4)
Les Immeubles Cummings Limitée (4)
Cumont Mines Ltd. .32(2)
Cunningham Drug Stores Limited (4)
Cuvier Mines Ltd. .10(1)
Cygnus Corporation Ltd. (Cl. A.) 5.75(1)
Cygnus Corporation Ltd. (Cl. B.) 625(1)
Dairy Barn Stores of Canada Limited 2.07(1)
Dairy Barn Stores of Canada Limited (Wt.) .38(1)
Dale-Ross Holdings Ltd. 7.50(2)
Dale-Ross Holdings Ltd. (6% Cu. A. Pr.) 7.50(2)
Dalex Co. Limited (7% Cu. Pr.) 80.00(2)
Dalex Mines Limited .06(3)
Dalfen's, Ltd. 12.50(3)
Dalhousie Oil Co. Ltd. .18(3)
Daniel Diversified Ltd. .30(2)
Dankoe Mines .60(2)
D'Aragon Mines Ltd. .17(2)
Darkhawk Mines Ltd. .40(2)
Darsi Mines Limited .09(1)
Dasson Copper Corp. Ltd. .19(1)
Dataline System Ltd. 1.83(1)
Datateck 1.00(1)
Datapro Ltd. 2.25(1)
Dauphin Iron Mines Ltd. .07(1)
David Minerals Ltd. .27(1)
Davis Distributing & Vending Ltd. 1.30(2)
Davis-Keays Mining Co. Ltd. .70(1)
Dawson Developments Ltd. 6.00(1)
Debenture & Securities Corp. of Canada (5 Cu. Pr.) (4)
Debhold (Canada) Limited (6-1/4% Cu. B. Pr.) 78.00(2)
Decca Resources Limited 2.20(1)
Deerhorn Mines Ltd. .03(1)
Dejour Mines Ltd. .17(1)
Delahey Consolidated Nickel Mines Limited .05(3)
D'Eldona Gold Mines Ltd. .45(1)
Delhi Pacific Mines Ltd. .07(2)
Delkirk Mining Ltd. .07(2)
Delmico Mines Ltd. .03(3)
Delta-Benco 1.65(2)
Delta Hotels Ltd. 2.30(2)
Delta Hotels Ltd. (6% Cl. A. Pr.) 1.35(2)
Delta Hotels Ltd. (Rt.) (4)
Delta Minerals Corp. (4)
Delta Petroleum Corporation Ltd. .73(1)
Deltan Corp. Ltd. 6.38(1)
Deltec Panamerica (Sociedad Anonima) 1.00(2)
Demsey Mines Ltd. .17(2)
Denison Mines Ltd. 24.50(1)
Derby Mines Ltd. (4)
Derlak Red Lake Gold Mines Ltd. .01(3)
Deseret Peak Mines Ltd. .18(3)
Desjardins Mines Ltd. .55(3)
Despina Gold Mines Ltd. (4)
Destorbelle Mines Ltd. .01(3)
Devil's Elbow Mines Ltd. .06(2)
Dickenson Mines Ltd. .85(1)
Dictator Mines Ltd. .33(1)
Discovery Mines Ltd. .75(2)
Dison International Ltd. 1.34(1)
Distillers Corporation-Seagrams Ltd. 31.25(1)
District Trust Co. 15.00(3)
Diversified Credit Corp. Ltd. (4)
Dixie-Carolina Mining Corp. Ltd. (4)
D.L.P. Diversified Ltd. (4)
Dog 'n Suds Food Services Ltd. .25(1)
Dolly Varden Mines Ltd. .35(2)
Doman Industries Ltd. 9.75(1)
Doman Industries Ltd. (6-1/2% Cu. Cv. A. Pr.) 39.00(1)
Doman Industries Ltd. (Wt.) 22.00(2)
Domco Industries Ltd. 5.00(2)
Les Industries Domco Limitée 5.00(2)
Dome Mines Ltd. 54.50(1)
Dome Petroleum Ltd. 34.00(1)
Dominion & Anglo Investment Corporation Ltd. (4)
Dominion & Anglo Investment Corporation Ltd. (5% Cu. Pr.) 74.25(3)
Dominion Bridge Co. Ltd. 23.75(1)
Dominion Citrus & Drugs Ltd. 8.50(2)
Dominion Coal Co. Ltd. (Pr.) 23.38(2)
Dominion Corset Co. Ltd. 6.00(2)
Dominion Dairies Ltd. 34.00(2)
Dominion Dairies Ltd. (5% Pr.) 25.00(3)
Dominion Explorers Ltd. 1.40(1)
Dominion Fabrics Limited (4)

Dominion Fabrics Limited
(Cl. A. Cu. Pt. Pr.) . . . . . 4.38(3)
Dominion Foundries & Steel Ltd. . . . . 25.00(1)
Dominion Foundries & Steel Ltd.
(4-3/4% Cu. A. Pr.) . . . . . 74.00(1)
Dominion Glass Company Limited . . . . . 10.25(1)
Dominion Glass Company Limited
(7% Cu. Cv. Pr.) . . . . . 12.75(2)
Dominion Jubilee Corp. Ltd. . . . . .70(1)
Dominion Leaseholds Ltd. . . . . .06(1)
Dominion Life Assurance Co. . . . . 95.00(3)
Compagnie d'Assurance sur la Vie
Dite Dominion . . . . . 95.00(3)
Dominion Lime Limited . . . . . 7.88(1)
Dominion Lime Limited (Wt.) . . . . . .50(1)
Dominion Magnesium Ltd. . . . . 6.00(2)
Dominion of Canada General
Insurance Co. . . . . (4)
Dominion-Scottish Investments Ltd. . . . . 15.68(3)
Dominion-Scottish Investments Ltd.
(5% Cu. Pr.) . . . . . 30.75(2)
Dominion Stores Ltd. . . . . 15.00(1)
Dominion Textile Limited . . . . . 21.00(1)
Dominion Textile Limitée . . . . . 21.00(1)
Dominion Textile Limited
(7% Cu. Pr.) . . . . . 101.00(2)
Dominion Textile Limitée
(7% Cum. Priv.) . . . . . 101.00(2)
Domtar Limited . . . . . 12.25(1)
Domtar Limitée . . . . . 12.25(1)
Domtar Limited ($1.00 Cu. Pr.) . . . . . 13.38(2)
Domtar Limitée ($1.00 Cum. Priv.) . . . . . 13.38(2)
Donalda Mines Ltd. . . . . .08(1)
Donlee Manufacturing Industries Limited . . . . . 4.50(2)
Donna Mines Limited . . . . . .07(2)
Donohue Company Limited . . . . . 4.00(1)
La Compagnie Donahue Limitée . . . . . 4.00(1)
Donohue Company Limited
(6-1/4% Cu. Pr.) . . . . . 15.75(1)
La Compagnie Donahue Limitée
(6-1/4% Cum. Priv.) . . . . . 15.75(1)
Donrand Mines Ltd. . . . . (4)
Don-X Mines Ltd. . . . . (4)
Doral Mining Exploration Ltd. . . . . (4)
Dorion Red Lake Mines Ltd. . . . . .01(3)
Dorita Silver Mines Ltd. . . . . .11(2)
Douglas Leaseholds Limited . . . . . 2.25(1)
Dove Lake Mines Inc. . . . . .40(3)
Dover Industries Ltd. . . . . 15.00(1)
Dover Industries Ltd. (6% Cu. Pr.) . . . . . 8.00(1)
DRG Limited . . . . . 14.00(1)
Drummond Die & Stamping Co. Ltd. . . . . .16(1)
Drummond Welding & Steel Works Ltd.
(Cl. A.) . . . . . 3.00(2)
Dubuisson Goldfields Ltd. . . . . .03(3)
Ducros Mines Ltd. . . . . .16(2)
Duke Mining Company Limited . . . . . .20(2)
Dumagami Mines Limited . . . . . .19(2)
Les Mines Dumagami Limitée . . . . . .19(2)
Dumont Nickel Corporation . . . . . .29(1)
Duncan Range Iron Mines Ltd. . . . . .10(3)
Dundee Mines Ltd. . . . . .18(1)
Dunraine Mines Ltd. . . . . .14(2)
Dunterra Mines Ltd. . . . . (4)
Dunvegan Mines Ltd. . . . . (4)
Dupont of Canada Ltd. . . . . 20.25(1)
Dupont of Canada Ltd. (7-1/2% Cu. Pr.) . . . . . 52.00(2)
Duport Mining Co. Ltd. . . . . (4)
Dupuis Frères Limited (Cl. A. Cu. Pr.) . . . . . 6.00(2)
Dupuis Frères Limitée
(Cat. A. Cum. Priv.) . . . . . 6.00(2)
Dustbane Enterprises Ltd. . . . . 6.50(1)
Dusty Mac Mines Limited . . . . . .10(2)
Duvan Copper Co. Ltd. . . . . .03(2)
Duvex Oils & Mines Ltd. . . . . .02(2)
Dylex Diversified Limited . . . . . 8.75(1)
Dylex Diversified Limited
(Cl. A. Pt. Pr.) . . . . . 8.63(1)
Dynacore Enterprises Ltd. . . . . (4)
Dynaco Resources Ltd. . . . . .25(2)
Dynalta Oil & Gas Co. Ltd. . . . . 1.25(2)
Dynamic Mining Exploration Ltd. . . . . .16(2)
Exploration Minière Dynamique Ltée . . . . . .16(2)
Dynamic Petroleum Products Ltd. . . . . 1.02(1)
Dynamo Mines Limited . . . . . .17(2)
Dynasty Exploration Ltd. . . . . 5.90(1)
Eagle Gold Mines Ltd. . . . . 3.00(1)
Eagle Industries Limited . . . . . 5.63(2)
Eagle River Mines Limited . . . . . .38(2)
Earlcrest Resources Ltd. . . . . .11(2)
Early Bird Mines Ltd. . . . . .13(1)
East Amphi Gold Mines Ltd. . . . . .01(3)
East Bay Gold Ltd. . . . . .04(3)
Eastern Bakeries Ltd. . . . . 4.00(2)
Eastern Bakeries Ltd. (4% Cu. Pr.) . . . . . (4)
Eastern Canada Savings & Loan Company . . . . . 12.50(1)
Eastern Utilities Limited (5-1/2% Cu. Pr.) . . . . . (4)
Eastgate . . . . . .73(1)
East Lun Gold Mines Ltd. . . . . .01(3)
East Malartic Mines Ltd. . . . . .95(2)
Eastmont Larder Lake Gold Mines Ltd. . . . . (4)
Eastmont Silver Mines Ltd. . . . . (4)
Eastrock Explorations Ltd. . . . . .40(3)
East Sullivan Mines Ltd. . . . . 2.70(1)
East Ventures Ltd. . . . . .04(2)
Eastview Mines Ltd. . . . . (4)
Eaton Corporation . . . . . 42.00(2)
Echo Bay Mining Ltd. . . . . .15(2)
Economic Investment Trust Ltd. . . . . 13.75(2)
Economic Investment Trust Ltd.
(5% Cu. A. Pr.) . . . . . 32.50(1)
Eddy Match Co. Ltd. . . . . 10.25(1)
Edmonton Concrete Block Co. Ltd. . . . . (4)
Edmonton International Speedway Ltd. . . . . .65(1)
EDP Industries Limited . . . . . .30(2)
EDP Industries Limited
(5% Cu. Cv. A. Pr.) . . . . . (4)
EDP Industries Limited (Wt.) . . . . . (4)
Ego Mines Ltd. . . . . .09(1)
El Bonanzo Mining Corp. Ltd. . . . . .12(3)
El Coco Explorations Ltd. . . . . .07(2)
Electrohome Limited . . . . . 41.00(1)
Electrohome Limited (5-3/4% Cu. A. Pr.) . . . . . 77.75(3)
Electro-Knit Fabrics (Canada) Ltd. . . . . 5.38(1)
Electronic Associates of Canada
Limited . . . . . 2.25(1)
E-L Financial Corporation Limited . . . . . 6.88(1)
E-L Financial Corporation Limited
(A. Cv. Pr.) . . . . . 9.75(3)
E-L Financial Corporation Limited (Wt.) . . . . . 2.45(2)
Elk Creek Waterworks Co. Ltd. . . . . (4)
Elmac Malartic Mines Ltd. . . . . .03(3)
El Paso Natural Gas Company . . . . . (4)
Embassy Petroleums Ltd. . . . . .43(1)
Embassy Petroleums Ltd. (A. Wt.) . . . . . .20(2)
Emco Limited . . . . . 6.25(1)
Emperor Mines Ltd. . . . . .10(1)
Empire Life Insurance Co., The . . . . . 8.00(2)
L'Empire Compagnie d'Assurance-Vie . . . . . 8.00(2)
Empire Metals Corporation Ltd. . . . . .10(1)
Empire Minerals Inc. . . . . .05(1)
Enamel & Heating Products Limited
(Cl. A.) . . . . . 2.25(2)
Enamel & Heating Products Limited
(Cl. B.) . . . . . 1.25(2)
Enex Mines Ltd. . . . . .21(2)
Entarea Management Ltd. . . . . 5.00(3)
Equatorial Resources Limited . . . . . .19(1)
Ericksen-Ashby Mines Ltd. . . . . (4)
ERI Explorations Inc. . . . . .77(2)
Erie Diversified Industries Ltd. . . . . 8.00(2)
Erie Diversified Industries Ltd.
(Cl. A.) . . . . . 8.00(2)
Eskimo Copper Mines Ltd. . . . . .12(2)
Essex Packers Limited . . . . . (4)
Essex Packers Limited (5% Cu. 1st. Pr.) . . . . . (4)
Ethel Copper Mines Ltd. . . . . (4)
Evangeline Savings & Loan Co. . . . . (4)

Evenlode Mines Ltd. . . . . .01(3)
Excellence Life Insurance Co. (The) . . . . . (4)
Excellence Compagnie d'Assurance-Vie . . . . . (4)
Excelsior Life Insurance Co. . . . . (4)
L'Excelsior Compagnie d'Assurance-Vie . . . . . (4)
Exeter Mines Ltd. . . . . .40(1)
Expo Iron Limited . . . . . .45(2)
Expo Ungava Mines Limited . . . . . .20(2)
Exquisite Form Brassiere (Canada) Limited . . . . . 4.10(1)
Exquisite Form Brassiere (Canada) Limited (6% Cu. Cv. Pr.) . . . . . 6.75(2)
Extendicare Canada Ltd. . . . . 8.50(3)
Extendicare Canada Ltd. (Wt.) . . . . . 3.50(3)
Fab Metal Mines Ltd. . . . . .04(2)
Fairborn Mines Ltd. . . . . .12(1)
Fairway Explorations Ltd. . . . . (4)
Falaise Lake Mines Ltd. . . . . .16(1)
Falconbridge Nickel Mines Ltd. . . . . 81.00(1)
Falcon Explorations Ltd. . . . . .55(1)
Fallinger Mining Corporation . . . . . 1.32(1)
Family Life Assurance Co. (50% Paid) . . . . . (4)
La Familiale Compagnie d'Assurance-Vie (50% payé) . . . . . (4)
Fannex Resources Ltd. . . . . .37(2)
Far East Minerals Ltd. . . . . (4)
Farmers & Merchants Trust Co. Ltd. . . . . 2.50(2)
Farwest Mining Ltd. . . . . .06(2)
Fathom Oceanology Ltd. . . . . .73(1)
Fawn Bay Development Ltd. . . . . .05(1)
Federal Diversiplex Ltd. . . . . 1.20(2)
Federal Grain Limited . . . . . 8.00(1)
Federated Mining Corp. Ltd. . . . . .45(1)
Federated Mining Corp. Ltd. (Rt.) . . . . . (4)
Fidelity Mining Investments Ltd. . . . . .06(2)
Fidelity Mortgage & Savings Corporation . . . . . (4)
Compagnie d'Hypothèque et d'Epargne Fidelité (Wt.) . . . . . (4)
Fidelity Trust Co., The . . . . . 1.55(2)
Fidelity Trust Co., The (Wt.) . . . . . .65(2)
Fields Stores Limited . . . . . 13.50(1)
Financial Collection Agencies Ltd. . . . . 16.00(1)
Agences de Collection Financières Ltée . . . . . 16.00(1)
Financial Life Assurance Co. . . . . (4)
Finlayson Ent. (A.) . . . . . 14.00(2)
Finlayson Ent. (B.) . . . . . (4)
Finning Tractor & Equipment Company Limited . . . . . 12.50(1)
First City Financial Corp. Ltd. . . . . 7.75(1)
First Maritime Mining Corp. Ltd. . . . . .60(1)
First National City Corp. . . . . (4)
First National Uranium Mines Limited . . . . . .15(2)
First Orenda Mines Ltd. . . . . .08(1)
Fiscal Investments Ltd. . . . . 9.00(2)
Fiscal Investments Ltd. (Pr.) . . . . . .20(2)
Fittings Ltd. . . . . 15.00(2)
Five Star Petroleum and Mines Ltd. . . . . .16(2)
Flagstone Mines Limited . . . . . .17(1)
Fleet Manufacturing Ltd. . . . . .86(2)
Fleetwood Corporation . . . . . 8.00(2)
Flemdon Ltd. . . . . 1.40(1)
Fleming Mines Ltd. . . . . .01(3)
Flin Flon Mines Ltd. . . . . .27(2)
Flint Rock Mines Ltd. . . . . 1.95(1)
Foley Silver Mines Ltd. . . . . .04(3)
Fontana Mines (1945) Ltd. . . . . .03(2)
Ford Motor Company . . . . . 70.00(1)
Ford Motor Co. of Canada Ltd. . . . . 82.75(1)
Forest Kerr Mines Ltd. . . . . .04(3)
Fort Norman Explorations Inc. . . . . .53(1)
Société d'Exploration Fort Norman Inc. . . . . .53(1)
Fort Reliance Minerals Ltd. . . . . .32(1)
Fort St. John Petroleums Ltd. . . . . .67(2)
Fortune Channel Mines Ltd. . . . . .14(1)
Fortune Channel Mines Ltd. (A. Wt.) . . . . . (4)
Fosco Mining Ltd. . . . . 1.18(3)
Founders Group . . . . . .45(2)
Fourbar Mines Limited . . . . . .10(1)
4-F Foods Limited . . . . . .19(2)
Four Seasons Hotels Ltd. . . . . 14.25(1)
Four Seasons Hotels Ltd. (Wt.) . . . . . 6.50(1)
Four Seasons Mining & Resources Ltd. . . . . (4)
Fox Lake Mines Ltd. . . . . .03(2)
FPE Pioneer Electric Ltd. (Cl. A.) . . . . . 17.50(2)
FPE Pioneer Electric Ltd. (5-1/2% Cu. Cv. A. Pr.) . . . . . 69.00(2)
Francana Oil & Gas Ltd. . . . . 4.55(1)
Fraser Companies Limited . . . . . 12.13(1)
Frebert Mines Ltd. . . . . .01(2)
Freehold Gas & Oil Limited . . . . . 1.76(1)
Freehold Gas & Oil Limited (A. Wt.) . . . . . (4)
Freehold Gas & Oil Limited (B. Wt.) . . . . . (4)
Freiman Ltd., A.J. . . . . 5.88(2)
Frobex Limited . . . . . .34(1)
Frontier Explorations Limited . . . . . .16(1)
Fruehauf Trailer Company of Canada Limited . . . . . 16.50(2)
Fulcrum Investments Co. Ltd. . . . . 3.65(1)
Fulcrum Investments Co. Ltd. (6% Cu. Pr.) . . . . . 7.50(2)
Fundy Chemical Corporation Ltd. . . . . 8.75(1)
Fundy Exploration Ltd. . . . . .02(3)
Futurity Oils Limited . . . . . .27(1)
Galex Mines Limited . . . . . .45(1)
Galt Malleable Iron Limited . . . . . 7.50(1)
Galt Malleable Iron Limited (6% Cu. 1st Pr.) . . . . . (4)
Gan Copper Mines Ltd. . . . . .02(3)
Ganda Silver Mines Ltd. . . . . (4)
G & B Automated Equipment Limited . . . . . 1.75(3)
Garrison Creek Consolidated Mines Ltd. . . . . .06(3)
Gary Mines Ltd. . . . . .10(2)
Gaspé Copper Mines Ltd. . . . . 49.00(3)
Gaspé Park Mines Ltd. . . . . (4)
Gaspé Quebec Mines Ltd. . . . . .64(1)
Gaspex Mines Ltd. . . . . (4)
Les Mines Gaspex Ltée . . . . . (4)
Gaspésie Mining Co. Limited . . . . . (4)
Compagnie Minière Gaspésie Limitée . . . . . (4)
Gateford Mines Ltd. . . . . .02(3)
Gateway Uranium Mines Ltd. . . . . .02(3)
Gaz Métropolitain Inc. . . . . 5.50(1)
Gaz Métropolitain Inc. (5.40% Cu. Pr.) . . . . . 66.00(2)
Gaz Métropolitain Inc. (5-1/2% Cu. Pr.) . . . . . 66.00(2)
Gaz Métropolitain Inc. (1963 Wt.) . . . . . 1.45(1)
Gaz Métropolitain Inc. (1966 Wt.) . . . . . 2.20(1)
General Bakeries Ltd. . . . . 3.35(2)
General Development Corporation . . . . . 25.50(3)
General Distributors of Canada Ltd. . . . . 15.88(1)
General Dynamics Corporation . . . . . (4)
General Investment Corporation of Quebec . . . . . 3.00(1)
Société Générale de Financement du Québec . . . . . 3.00(1)
General Motors Corporation . . . . . 80.50(1)
General Products Mfg. Corporation Limited (Cl. A.) . . . . . 82.00(1)
General Products Mfg. Corporation Limited (Cl. B.) . . . . . 81.00(1)
General Resources Ltd. . . . . .08(2)
General Trust of Canada . . . . . 23.75(1)
Genesco Inc. . . . . (4)
Genstar Limited . . . . . 13.13(1)
Genstar Limitée . . . . . 13.13(1)
Genstar Limited (Wt.) . . . . . 4.50(1)
Genstar Limitée (Wt.) . . . . . 4.50(1)
Geoquest Resources Ltd. . . . . 1.95(1)
Georgia Lake Mines Ltd. . . . . (4)
Gesco Distributing Limited . . . . . 3.50(1)
Getty Oil Company . . . . . 80.00(2)
Giant Explorations Ltd. . . . . .40(1)
Giant Mascot Mines Ltd. . . . . 5.00(1)
Giant Metallics Mines Ltd. . . . . .11(2)
Giant Reef Petroleums Limited . . . . . .21(2)
Giant Yellowknife Mines Ltd. . . . . 7.05(2)
Gibbex Mines Ltd. . . . . .35(2)
Gibraltar Mines Ltd. . . . . 4.70(1)

Gibson Mines Ltd. . . . . (4)
Glenburk Mines Ltd. . . . . .03(3)
Glen Copper Mines Ltd. . . . . .16(1)
Glendale Mobile Homes Ltd. . . . . 5.25(1)
Glengair Group Limited . . . . . 1.90(1)
Glengair Group Limited (6% Cv. B. Pr.) . . . . . 3.10(1)
Glengair Group Limited (Units) . . . . . 6.25(1)
Glengair Group Limited (Cl. A. Wt.) . . . . . .85(1)
Glengair Group Limited (Cl. B. Wt.) . . . . . .90(2)
Glenlyon Mines Limited . . . . . .12(1)
Goderich Elevator & Transit Co. Ltd. . . . . (4)
Gogama Minerals Ltd. . . . . .23(1)
Golconda Mining Exploration . . . . . 5.50(3)
Goldcrest Products Ltd. . . . . 3.50(1)
Golden Age Mines Ltd. . . . . .40(1)
Golden Gate Explorations Ltd. . . . . .25(1)
Golden Harker Explorations Ltd. . . . . .07(3)
Golden Shaft Mines Ltd. . . . . (4)
Golden Spike Western Petroleums Limited . . . . . .06(3)
Golden West Resources Limited . . . . . .11(2)
Gold Hawk Exploration Ltd. . . . . (4)
Gold Hawk Mines Ltd. . . . . .11(2)
Goldex Mines Ltd. . . . . 1.20(1)
Goldray Mines Ltd. . . . . .67(1)
Goldrim Mining Company Ltd. . . . . .10(2)
Gold River Mines Ltd. . . . . .15(2)
Goldstar Explorations & Investments Limited . . . . . (4)
Golsil Mines Ltd. . . . . .46(3)
Goodyear Tire & Rubber Co. of Canada Ltd. . . . . 153.00(2)
Goodyear Tire & Rubber Co. of Canada Ltd. (4% Cu. Pr.) . . . . . 34.50(2)
Gordon-LeBel Mines Ltd. . . . . .01(3)
Gordon Mackay & Stores Ltd. (Cl. A.) . . . . . 6.00(2)
Gordon Mackay & Stores Ltd. (Cl. B.) . . . . . 21.75(1)
Governor Gold Mines Ltd. . . . . (4)
Gowganda Silver Mines . . . . . .23(1)
Gradore Mines Ltd. . . . . (4)
Grafton Fraser Limited (6% Cu. Pr.) . . . . . 17.25(1)
Grafton Group Ltd. . . . . 20.75(1)
Gramara Mercantile Corp. Ltd. . . . . .18(3)
Grand Bahama Development Co. Ltd. . . . . (4)
Grandex Exploration and Investment Co. Ltd. . . . . (4)
Grandroy Mines Ltd. . . . . .09(2)
Granduc Mines Ltd. . . . . 4.50(1)
Grandview Mines Ltd. . . . . .12(2)
Granisle Copper Limited . . . . . 7.95(1)
Granite Club Ltd. . . . . 14.75(1)
Granite Mountain Mines Ltd. . . . . .17(1)
Grasset Lake Mines Ltd. . . . . .20(2)
Gray Industries Inc. . . . . .40(1)
Great Bear Silver Mines Ltd. . . . . (4)
Great Britain & Canada Investments Ltd. . . . . 18.75(1)
Great Britain & Canada Investments Ltd. (5-1/4% Cu. Pr.) . . . . . 30.00(2)
Great Canadian Oil Sands Limited . . . . . 5.40(1)
Great Eagle Explorations & Holdings Ltd. . . . . (4)
Great Eastern Resources Canada Ltd. . . . . .39(1)
Great Lakes Nickel Ltd. . . . . 1.37(1)
Great Lakes Paper Company Limited . . . . . 17.75(1)
Great Lakes Paper Company Limited (Wt.) . . . . . 2.30(2)
Great Lakes Power Corporation Ltd. . . . . 19.38(1)
Great Lake Silver Mines Ltd. . . . . .11(3)
Great National Land & Investment Corp. Ltd. . . . . 1.05(1)
Great Northern Capital Corp. Ltd. . . . . 8.75(1)
Great Northern Gas Utilities Ltd. (6% Cu. A. Pr.) . . . . . 19.00(2)
Great Northern Petroleums & Mines Ltd. . . . . .69(1)
Great Northern Petroleums & Mines Ltd. (A. Wt.) . . . . . (4)
Great Pacific Industries Ltd. . . . . 1.30(2)
Great Plains Development Co. of Canada Ltd. . . . . 29.75(2)
Great Slave Mines Ltd. . . . . .05(2)
Great West International Equities Ltd. . . . . (4)
Great West Life Assurance Co. . . . . 43.00(1)
La Great-West Compagnie d'Assurance-Vie . . . . . 43.00(1)
Great West Mining & Smelting Corp. Ltd. . . . . .16(2)
Great West Steel Industries Ltd. . . . . 5.13(1)
Greb Industries Limited . . . . . 4.90(1)
Green Coast Resources Limited . . . . . 4.90(1)
Green Eagle Mines Ltd. . . . . .42(1)
Greenfields Development Corporation Ltd. . . . . (4)
Green Point Mines Ltd. . . . . .18(1)
Grenache Inc. (Cl. A.) . . . . . 3.37(1)
Greyhound Computer of Canada Ltd. . . . . 1.65(1)
Greyhound Lines of Canada Ltd. . . . . 15.75(1)
Grissol Foods Ltd. . . . . 8.25(1)
Grouse Mountain Resorts Ltd. . . . . 2.40(1)
Grouse Mountain Resorts Ltd. (6% Cv. Pr.) . . . . . 1.70(2)
Growers Wine Co. Ltd. (Cl. A.) . . . . . 3.90(2)
Growers Wine Co. Ltd. (Cl. B.) . . . . . 3.75(2)
GSW Limited (Cl. A.) . . . . . 9.13(1)
GSW Limitée (Cat. A.) . . . . . 9.13(1)
GSW Limited (Cl. B.) . . . . . 9.00(2)
GSW Limitée (Cat. B.) . . . . . 9.00(2)
GSW Limited (5% Cu. Pr.) . . . . . 71.63(2)
GSW Limitée (5% Cum. Priv.) . . . . . 71.63(2)
Guarantee Co. of North America, The . . . . . (4)
La Garantie Compagnie d'Assurance de l'Amérique du Nord . . . . . (4)
Guaranty Trust Company of Canada . . . . . 14.88(1)
Guaranty Trust Company of Canada (Rt.) . . . . . .53(2)
Guardian Growth Fund Ltd. (Pr.) . . . . . 8.84(1)
Guardian Management Corporation Ltd. . . . . 7.00(2)
Gubby Mines Ltd. . . . . (4)
Gui Por Uranium Mines & Metals Ltd. . . . . .15(2)
Guichon Mines Ltd. . . . . .03(3)
Gulch Mines Ltd. . . . . .06(1)
Gulf Lead Mines Ltd. . . . . (4)
Gulf Oil Canada Limited . . . . . 25.63(1)
Gulf Oil Canada Limitée . . . . . 25.63(1)
Gulf Oil Corporation . . . . . 25.50(3)
Gulf Titanium Ltd. . . . . .25(2)
Gunn Mines Ltd. . . . . .24(2)
Hahn Brass Limited (5% 1st Pr.) . . . . . (4)
Halifax Developments Limited . . . . . 1.85(1)
Hallnor Mines Ltd. . . . . .80(2)
Halren Mines Ltd. . . . . .10(3)
Hambro Corp. of Canada Ltd. . . . . 13.00(2)
Hambro Corp. of Canada Ltd. (5-1/2% Cu. A. Pr.) . . . . . (4)
Hamilton Group Limited, The . . . . . 21.38(1)
Hamilton Group Limited, The (5% Cu. A. Pr.) . . . . . 85.00(3)
Hamilton Harvey Ltd. . . . . 8.00(1)
Hamilton Trust & Savings Corp. . . . . 10.25(1)
Hamilton Trust & Savings Corp. (Voting) . . . . . 10.50(2)
Hamilton Trust & Savings Corp. (7% Cu. A. Pr.) . . . . . 18.88(1)
Hammond Investment Corporation . . . . . 1.00(2)
Hand Chemical Industries Limited . . . . . 5.00(2)
Les Industries Chimiques Hand Limitée . . . . . 5.00(2)
Hand Chemical Industries Limited (Pt. Pr.) . . . . . 5.00(1)
Les Industries Chimiques Hand Limitée (Pt. Priv.) . . . . . 5.00(1)
Handy Andy Company . . . . . 3.63(3)
Hanna Gold Mines Ltd. . . . . .19(1)
Hansa Explorations Ltd. . . . . (4)
Hanson Mines Ltd. . . . . .14(2)
Hardee Farms International Ltd. . . . . 1.10(2)
Hardee Farms International Ltd. (6-1/2% A. Pr.) . . . . . 80.00(2)
Harding Carpets Ltd. . . . . 14.88(1)
Harding Carpets Ltd. (Cl. A.) . . . . . 14.50(1)
Hardwicke Investment Corporation Ltd. . . . . 50.00(2)
Harlequin Enterprises Ltd. . . . . 3.80(1)
Harris & Sons Ltd., J. . . . . 3.00(1)
Hart River Mines Ltd. . . . . .16(1)
Harvest Petroleums Ltd. . . . . .04(3)

Harvey's Foods Ltd. . . . . .82(1)
Harvey Woods Ltd. (Cl. A.) . . . . . 1.65(2)
Harvey Woods Ltd. (Cl. B.) . . . . . .50(2)
Hawker Industries Ltd. . . . . (4)
Hawker Siddeley Canada Ltd. . . . . 2.40(1)
Hawker Siddeley Canada Ltd. (5-3/4% Cu. Cv. Pr.) . . . . . 58.50(2)
Hayes-Dana Limited . . . . . 12.00(1)
Headvue Mines Ltd. . . . . (4)
Headway Corporation Limited . . . . . 3.45(1)
Headway Red Lake Gold Mines Ltd. . . . . .07(2)
Hearne Coppermine Explorations Ltd. . . . . .15(1)
Heath Gold Mines Ltd. . . . . .01(2)
Hedman Mines Ltd. . . . . .50(3)
Hertz Industries Ltd. . . . . .12(1)
Hewbet Mines Ltd. . . . . (4)
Hibernia Mining Co. Ltd. . . . . .11(1)
Highland-Bell Limited . . . . . (4)
Highland Chief Mines Ltd. . . . . .12(1)
Highland Lodge Mines Ltd. . . . . .08(1)
Highland Mercury Mines Ltd. . . . . .15(3)
Highland Queen Mines Ltd. . . . . .23(3)
Highland Queen Sportswear Ltd. . . . . 1.63(3)
Highland Valley Mines Limited . . . . . .09(2)
Highmont Mining Corporation Ltd. . . . . 2.10(1)
Highpoint Mines Limited . . . . . .05(2)
Hi-Lite Uranium Explorations Ltd. . . . . (4)
Hinde & Dauch Ltd. . . . . 125.00(2)
H & M Tax Savers Ltd. . . . . (4)
Hobrough Ltd. . . . . 3.00(2)
Hobrough Ltd. (6% Cu. Pr.) . . . . . 1.70(2)
Hogan Mines Ltd. . . . . .12(1)
Holberg Mines Limited . . . . . (4)
Hollinger Mines Ltd. . . . . 36.50(1)
Hollingsworth Mines Ltd. . . . . (4)
Home Oil Co. Ltd. (Cl. A.) . . . . . 33.38(1)
Home Oil Co. Ltd. (Cl. B.) . . . . . 33.00(1)
Home Smith International Ltd. . . . . .75(2)
Home Supermarket Ltd. . . . . .30(3)
Honda Mining Co. Ltd. . . . . .29(2)
Horne Fault Mines Ltd. . . . . .07(3)
Horne & Pitfield Foods Ltd. . . . . 2.50(1)
Hotstone Minerals Ltd. . . . . .01(3)
House of Braemore Furniture Ltd. . . . . 3.50(2)
Houston Oils Limited . . . . . 1.94(1)
Houston Oils Limited (Wt.) . . . . . .65(1)
Howard Smith Paper Mills Ltd. ($2.00 Cu. Pr.) . . . . . 25.38(1)
Howden & Company Limited, D. H. . . . . 3.10(2)
Hubbard Dyers Limited . . . . . 45.00(2)
Hubbard Dyers Limited (Pr.) . . . . . (4)
Hubert Lake Ungava Nickel Mines Ltd. . . . . .01(3)
Hub Mining Exploration Ltd. . . . . .16(2)
Hucamp Mines Ltd. . . . . .27(3)
Huclif Porcupine Mines Ltd. . . . . (4)
Hudson Bay Mines Ltd. . . . . .16(3)
Hudson Bay Mining & Smelting Co. Ltd. . . . . 21.00(1)
Hudson Bay Mountain Silver Mines Ltd. . . . . .08(2)
Hudson's Bay Company . . . . . 18.88(1)
Hudson's Bay Oil & Gas Co. Ltd. . . . . 46.00(1)
Hudson's Bay Oil & Gas Co. Ltd. (5% Cu. Cv. A. Pr.) . . . . . 55.50(1)
Hughes-Owens Co. Ltd. (Cl. B.) . . . . . 9.00(2)
Hughes-Owens Co. Ltd. (6.40% Cu. Pr.) . . . . . 21.13(3)
Hugh-Pam Porcupine Mines Ltd. . . . . .16(2)
Humlin Red Lake Mines Ltd. . . . . .01(3)
Hummingbird Mines Ltd . . . . . .85(2)
Hunch Mines Ltd. . . . . .03(3)
Hunter Basin Mines Ltd. . . . . .07(3)
Hunter Douglas Limited . . . . . (4)
Hunter Douglas Limitée . . . . . (4)
Huron Bruce Mines Limited . . . . . (4)
Huron & Erie Mortgage Corporation, The . . . . . 25.00(1)
Husky Oil Ltd. . . . . 16.38(1)
Husky Oil Ltd. (6% Cu. A. Pr.) . . . . . 43.00(1)
Husky Oil Ltd. (6% Cu. B. Pr.) . . . . . 44.25(2)
Husky Oil Ltd. (D. Wt.) . . . . . 6.90(2)
Husky Oil Ltd. (E. Wt.) . . . . . 5.60(1)
Hydra Explorations Ltd. . . . . .17(1)
Hy's of Canada Limited . . . . . 3.00(1)
Hytec Electronics Ltd. . . . . (4)
I.A.C. Limited . . . . . 19.75(1)
I.A.C. Limitée . . . . . 19.75(1)
I.A.C. Limited (4-1/2% Cu. Pr.) . . . . . 69.00(2)
I.A.C. Limitée (4-1/2% Cum. Priv.) . . . . . 69.00(2)
I.A.C. Limited (5-3/4% Cu. Pr.) . . . . . 23.00(1)
I.A.C. Limitée (5-3/4% Cum. Priv.) . . . . . 23.00(1)
I.A.C. Limited (Wt.) . . . . . 8.00(1)
I.A.C. Limitée (Wt.) . . . . . 8.00(1)
Ibes International Ltd. . . . . .25(2)
Ibsen Cobalt Silver Mines Ltd. . . . . (4)
Ice Station Resources Ltd. . . . . .21(1)
Ideal Bay Explorations Ltd. . . . . .11(3)
Imasco Limited . . . . . 20.00(1)
Imasco Limitée . . . . . 20.00(1)
Imasco Limited (6% Cu. Pr.) . . . . . 4.60(2)
Imasco Limitée (6% Cum. Priv.) . . . . . 4.60(2)
Imperial General Properties Limited . . . . . 4.50(1)
Imperial General Properties Limited (Wt.) . . . . . 1.00(2)
Imperial Life Assurance Co. of Canada . . . . . 137.00(2)
Compagnie Canadienne d'Assurance sur la Vie-l'Impériale . . . . . 137.00(2)
Imperial Marine Industries Ltd. . . . . 1.05(1)
Imperial Marine Industries Ltd. (A. Wt.) . . . . . .16(1)
Imperial Metals and Power Ltd. . . . . .23(1)
Imperial Metals and Power Ltd. (Wt.) . . . . . (4)
Imperial Oil Limited . . . . . 31.50(1)
Income Disability & Reinsurance Co. of Canada . . . . . 6.00(2)
Income du Canada Cie d'Invalidité et de Réassurance . . . . . 6.00(2)
Income Disability & Reinsurance Co. of Canada (Wt.) . . . . . .58(2)
Income du Canada Cie d'Invalidité et de Réassurance (Wt.) . . . . . .58(2)
Indal Canada Limited . . . . . 8.38(2)
Independent Mining Corp. Ltd. . . . . .01(3)
Index Mines Limited . . . . . 1.40(2)
Indian Mountain Metal Mines Ltd. . . . . .49(2)
Indusmin Limited . . . . . 9.75(1)
Indusmin Limitée . . . . . 9.75(1)
Industrial Adhesives Limited . . . . . 13.38(1)
Industrial Growth Management Limited . . . . . 3.75(1)
Industrial Life Insurance Company, The . . . . . (4)
L'Industrielle Compagnie d'Assurance sur la Vie . . . . . (4)
Ingersoll Machine & Tool Company Limited (4% Cu. Pr.) . . . . . (4)
Inglis Co. Ltd., John . . . . . 9.50(1)
Initiative New Exploration Ltd. . . . . 2.25(1)
Inland Chemicals Canada Ltd. . . . . 3.05(2)
Inland Copper Ltd. . . . . .23(1)
Inland Natural Gas Co. Ltd. . . . . 13.00(1)
Inland Natural Gas Co. Ltd. (5% Cu. Pr.) . . . . . 14.50(1)
In-Place Electronics Limited . . . . . .35(1)
In-Place Electronics Limited (7% Cv. Pr.) . . . . . (4)
Inqua Resources Ltd. . . . . .50(1)
Integrated Wood Products Ltd. . . . . 3.50(2)
Inter-City Gas Limited . . . . . 6.75(1)
Inter-City Gas Limited (6-1/2% Cu. A. 2nd Pr.) . . . . . 16.50(1)
Inter-City Gas Limited (B. 2nd Pr.) . . . . . 19.50(2)
Inter-City Gas Limited (Wt.) . . . . . 2.90(1)
Inter-City Gas Limited (1971 Wt.) . . . . . 3.05(1)
Inter-City Manufacturing Ltd. (Cl. A.) . . . . . (4)
Interior Breweries Limited . . . . . 3.35(2)
Intermetco Ltd. . . . . 2.30(1)
International Atlas Development & Exploration Ltd. . . . . .19(2)
International Bibis Tin Mines Ltd. . . . . .08(1)
International Bond and Equity Corporation Ltd. . . . . 1.40(2)
International Bond and Equity Corporation Ltd. (Cl. A.) . . . . . 1.22(2)

Regulations

International Bond and Equity Corporation Ltd. (Wt.) .16(3)
International Bornite Mines Ltd. .19(2)
International Business Machines Corp. 339.00(1)
International Copper Corp. Ltd. .16(3)
International Halliwell Mines Ltd. .21(1)
International Hydrodynamics Company Ltd. 1.20(1)
International Hydrodynamics Company Ltd. (B. Wt.) (4)
International Hydrodynamics Company Ltd. (Rt.) (4)
International Kenville Gold Mines Ltd. .10(2)
International Land Corporation Ltd. 5.75(1)
International Mariner Resources Ltd. .66(1)
International Mariner Resources Ltd. (C. Wt.) .19(1)
International Minerals & Chemical Corp. (Canada) Ltd. 16.88(2)
International Mogul Mines Ltd. 7.40(1)
International Nickel Co. of Canada Ltd. 32.63(1)
International Norvalie Mines Ltd. .06(2)
International Obaska Mines Ltd. .28(2)
International Paper Co. (4)
International Space Modules Ltd. (Cl. B.) .90(1)
International Systcoms Ltd. .57(1)
International Utilities Corporation 42.75(1)
International Utilities Corporation (Cl. A. Cv.) 49.75(2)
International Utilities Corporation ($1.32 Cu. Cv. Pr.) (4)
International Visual Systems Ltd. 1.25(1)
International Visual Systems Ltd. (Wt.) .40(2)
Interplex S.P.A. Industries Ltd. .60(1)
Interpool International Ltd. 20.00(1)
Interprovincial All. 1.35(1)
Inter-Provincial Diversified Holdings Limited 3.25(1)
Interprovincial Pipe Line Co. 30.63(1)
Interprovincial Pipe Line Co. (Wt.) 14.50(1)
Interprovincial Steel & Pipe Corp. Ltd. 7.63(1)
Interprovincial Steel & Pipe Corp. Ltd. ($1.20 Cu. Cv. Pr.) 23.75(2)
Inter-Rock Oil Co. of Canada Limited .15(2)
Inter-Tech Development & Resources Ltd. .80(2)
Investment Foundation Ltd. 41.50(3)
Investors Group, The 7.75(1)
Investors Group, The (Cl. A.) 7.75(1)
Investors Group, The (5% Cu. Cv. Pr.) 21.00(1)
Invicta Explorations Ltd. .08(3)
Ionarc Smelters Limited 1.40(1)
I.O.S. Limited (4)
Irish Copper Mines Ltd. .07(2)
Iron Bay Trust 3.10(1)
Iron City Mines Ltd. .15(3)
Iron Cliff Mines Ltd. .17(3)
Ironco Mining & Smelting Ltd. (4)
Iroquois Petroleum Co. Ltd. (4)
La Compagnie de Pétrole Iroquois Ltée (4)
Irwin Toy Ltd. 17.00(2)
ISEC Canada Ltd. .10(1)
Iskut Silver Mines Ltd. .16(2)
Island Telephone Co. Ltd. 10.25(1)
Iso Mines Ltd. 1.35(1)
Israel Continental Oil Co. Ltd. .21(1)
I.T.L. Industries Limited 4.25(1)
I.T.L. Industries Limited (6-1/2% Cu. Cv. Pr.) 10.50(2)
Ivaco Industries Limited 14.25(1)
Les Industries Ivaco Limitée 14.25(1)
IWC Industries Limited 1.90(1)
Jackpot Copper Mines Limited .07(2)
Jack Waite Mining Co. .03(3)
Jacobus Mining Corp. Ltd. .03(2)
Jacola Mines Ltd. .04(3)
Jagor Resources Limited .20(1)
Jahalla Lake Mines Ltd. .04(3)
Jamaica Public Service Co. Ltd. .23(2)
Jamaican Mining Ltd. (4)
Jameland Mines Ltd. .05(2)
James Bay Mining Corp. .22(1)
Jamex Explorations Limited .32(1)
Jamex Explorations Limitée .32(1)
Janus Explorations Ltd. .06(3)
Jason Explorers Ltd. .13(1)
Jason Explorers Ltd. (A. Wt.) (4)
Jaye Explorations Ltd. .06(2)
J. B. Automatik Ltd. (4)
Jean Lake Lithium Mines Ltd. .02(3)
Jelex Mines Ltd. .10(2)
Jenkins Bros. Ltd. (4)
Jericho Mines Ltd. .10(1)
Jersey Consolidated Mines Ltd. .11(2)
Jespersen-Kay Systems Ltd. 3.00(1)
Joburke Gold Mines Ltd. .02(3)
Jockey Club Ltd., The 5.25(1)
Jockey Club Ltd., The (6% Cu. A. 1st Pr.) 10.38(2)
Jockey Club Ltd., The (5-1/2% Cu. B. Pr.) 10.38(2)
Jockey Club Ltd., The (5.60% Cu. 2nd Pr.) 10.38(2)
Johnson & Johnson 97.75(2)
Joliet-Quebec Mines Ltd. .19(1)
Jolly Jumper Products of America Ltd. 1.30(1)
Jolly Jumper Products of America Ltd. (Wt.) (4)
Jonsmith Mines Ltd. .07(2)
Jorex Limited 1.36(1)
Joutel Copper Mines Ltd. .52(1)
Jowsey Denton Gold Mines Ltd. (4)
Joy Mining Ltd. .95(1)
Joy Mining Ltd. (A. Wt.) .05(2)
Juma Mining & Exploration Ltd. .02(3)
Juniper Mines Ltd. .16(2)
Kaiser Resources Ltd. 3.95(1)
Kal Resources Ltd. .64(1)
Kalco Valley Mines Ltd. .15(2)
Kallio Iron Mines Ltd. 5.00(1)
Kamad Silver Company Ltd. .35(1)
Kamco Developments Ltd. (4)
Kam-Kotia Mines Ltd. .45(1)
Kamloops Copper Consolidated Ltd. .07(1)
Kappa Explorations Ltd. .36(2)
Kaps Transport Limited 8.13(1)
Kardar Canadian Oils Ltd. 1.88(2)
KB Mining Co. Ltd. .11(3)
Keeprite Products Ltd. (Cl. A.) 11.75(1)
Kelglen Mines Ltd. .05(2)
Kellcam Explorations Ltd. (4)
Kelly-Desmond Mining Corp. Ltd. .01(1)
Kelly-DeYong Sound Corporation Ltd. .85(1)
Kelly Douglas & Co. Ltd. (Cl. A. Cu. Pr.) 5.50(2)
Kelsey-Hayes-Canada Ltd. 7.00(2)
Keltic Mining Corp. Ltd. (4)
Kelver Mines Limited .18(1)
Kelvinator of Canada Limited 5.00(2)
Kendon Copper Mines Ltd. (4)
Kenogamisis Gold Mines Ltd. .09(3)
Kenting Limited 10.25(1)
Kenwest Mines Ltd. .02(3)
Kerr Addison Mines Ltd. 7.40(1)
Kewegama Gold Mines (Que.) Ltd. .05(3)
Key-Anacon Mines Ltd. .25(2)
Key Industries Limited .22(2)
Keystone Business Forms Limited 3.00(2)
Key-Way Mining Co. Ltd. .07(2)
Kidd Copper Mines Ltd. (4)
Kiena Gold Mines Ltd. .75(1)
Kilarney Gas & Oil Development Co. Ltd. (4)
Kilembe Copper Cobalt Ltd. 2.25(1)
Kimberlite Mining Corp. Ltd. (4)
King Island Mines Ltd. .03(3)
King Kirkland Gold Mines Ltd. (4)
Kingswood Explorations Ltd. .14(1)
Kingswood Explorations Ltd. (Wt.) (4)
Kirkland Gateway Gold Mines Ltd. (4)

Kirkland Minerals Corp. Ltd. .07(2)
Kismet Mining Corporations Ltd. .37(1)
Knobby Lake Mines Limited .20(2)
Knogo Corp. Ltd. .75(3)
Koffler Stores Ltd. 15.38(1)
Koffler Stores Ltd. (7% A. 1st Pr.) 8.88(1)
Koffler Stores Ltd. (Wt.) 6.85(2)
Komo Explorations Ltd. .07(2)
Kontiki Lead & Zinc Mines Ltd. .03(2)
Kopan Developments Ltd. .06(2)
KSF Chemical Processes Ltd. 1.80(1)
KSF Chemical Processes Ltd. (1968 Wt.) .50(2)
K. T. Mining Ltd. .11(1)
Kukatush Mining Corp. (1960) Ltd. 1.75(1)
Kupfer Mines Ltd. .42(1)
La Banque Provinciale du Canada 13.75(1)
Labatt Limited, John 22.00(1)
Labatt Limitée, John 22.00(1)
Labatt Limited, John (Cv. A. Pr.) 23.88(1)
Labatt Limitée, John (Conv. A. Priv.) 23.88(1)
Labrador Mining & Exploration Co. Ltd. 35.25(1)
Lacanex Mining Company Limited .90(2)
Lacanex Mining Company Limited (Wt.) .45(2)
Laddie Gold Mines Ltd. .04(3)
Laduboro Oil Ltd. .90(2)
Laidlaw Motorways Ltd. 14.88(1)
Laidlaw Motorways Ltd. (7% Cu. Cv. A. Pr.) 15.38(1)
Laidlaw Motorways Ltd. (Wt.) 10.62(1)
Laiteries Leclerc Inc., Les (Cat. A.) 10.75(1)
Lake Beaverhouse Mines Limited .12(2)
Lake Dufault Mines Ltd. 12.13(1)
Lake Erie Gas Ltd. (4)
Lake Expanse Gold Mines Ltd. .09(3)
Lakehead Mines Ltd. .09(2)
Lake Kozak Mines Ltd. .04(3)
Lakeland Natural Gas Ltd. (Wt.) (4)
Lakelyn Mines Ltd. .10(3)
Lake Ontario Cement Ltd. 2.70(1)
Lake-Osu Mines Ltd. .09(2)
Lake Shore Mines Ltd. 2.30(1)
Lakeside Oil & Gas Ltd. (4)
La Luz Mines Ltd. 1.55(1)
Lambert Inc., Alfred (Cl. A.) 15.25(2)
Lambton Loan & Investment Co. (4)
Lancer of Canada Limited 1.85(2)
Langis Silver & Cobalt Mining Co. Ltd. .06(2)
Larandona Mines Ltd. (4)
Larchmont Mines Ltd. .08(3)
Largo Mines Ltd. .22(3)
Laroma Midlothian Mines Ltd. .04(3)
Laronge Mining Ltd. .81(1)
Larum Mines Ltd. .02(3)
Lassie Red Lake Gold Mines Ltd. .07(2)
Lassiter Petroleums Ltd. (4)
Laura Mines Limited .20(2)
Laura Secord Candy Shops Ltd. 8.88(1)
Laurentide Financial Corp. Ltd. 10.38(1)
Laurentide Financial Corp. Ltd. ($1.25 Cu. Pr.) 17.50(1)
Laurentide Financial Corp. Ltd. ($1.40 Cu. Pr.) 19.00(1)
Laurentide Financial Corp. Ltd. (6-1/4% Cu. Pr.) 17.00(2)
Laurentide Financial Corp. Ltd. ($2.00 Cu. Cv. 2nd Pr.) 25.88(2)
La Vérendrye Management Corp. 8.00(2)
Corporation de Gestion La Vérendrye 8.00(2)
Lawson & Jones Ltd. (Cl. A.) 18.00(2)
Lawson & Jones Ltd. (Cl. B.) 92.50(3)
Leamoor Minerals Ltd. 1.10(2)
Lederic Mines Ltd. .18(1)
Leeds Metals Co. Ltd. .04(3)
LeeMac Mines Ltd. .21(1)
Leigh Instruments Limited 4.45(1)
Leigh Instruments Limited ($2.60 Cu. Cv.A. Pr.) 25.00(2)
Leisure World Nursing Homes Ltd. 1.00(3)
Leitch Mines Ltd. (4)
Lemtex Developments Limited .55(2)
Lennie Red Lake Gold Mines Ltd. .03(3)
Leon's Furniture Ltd. 6.13(2)
Lequer Mines & Investments Ltd. (4)
Les Mines Belair Inc. .92(1)
Levack Mines Ltd. (4)
Levy Industries Ltd. 13.50(2)
Levy Industries Ltd. (6% Cu. A. Pr.) 6.50(1)
Lewes River Mines Ltd. .11(2)
Lewis Red Lakes Mines Ltd. .22(2)
Lexington Mines Limited .25(1)
Liberian Iron Ore Limited 10.13(1)
Life Investors Ltd. 7.50(2)
Life Investors Ltd. (Wt.) 1.25(1)
Lincoln Trust & Saving Company 12.13(1)
Lingside Copper Mining Co. Limited .03(2)
Linland Equipment Sales Ltd. 1.25(3)
Lion Mines Ltd. (4)
Lion Nickel Mines of Canada .25(3)
Lithium Corporation of Canada Ltd. .05(3)
Little Hatchet Minerals Ltd. .30(3)
Little Long Lac Mines Limited 1.80(1)
Livingston Industries Ltd. 9.00(1)
Livingston Industries Ltd. (6% Cu. A. 1st Pr.) 39.25(2)
Livingston Industries Ltd. (Wt.) 5.00(1)
Lobell Mines Ltd. (4)
Loblaw Companies Limited (Cl. A.) 5.75(1)
Loblaw Companies Limited (Cl. B.) 5.75(1)
Loblaw Companies Limited ($2.40 Cu. Pr.) 30.00(1)
Loblaw Groceterias Co. Limited 99.50(2)
Loblaw Groceterias Co. Limited ($1.50 Cu. A. Pr.) 18.50(1)
Loblaw Groceterias Co. Limited ($1.60 Cu. B. Pr.) 19.88(1)
Loblaw Groceterias Co. Limited ($6.00 2nd Pt. Pr.) 60.00(2)
Loblaw Inc. 7.00(2)
Locana Corporation Ltd. (4)
Lochaber Oil Corp. Ltd. (4)
Lochiel Explorations Ltd. 1.54(1)
Lodestar Mines Ltd. .05(3)
Loeb Ltd., M. 3.55(1)
Logistec Corp. 8.25(1)
Loisan Red Lake Gold Mines Ltd. .04(3)
London Life Insurance Co. 68.50(2)
London Life Compagnie d'Assurance-Vie 68.50(2)
London Pride Silver Mines Ltd. .09(1)
Lone Creek Mines Ltd. .50(2)
Lord Simcoe Hotel Ltd. (Cl. A.) (4)
Lori Explorations Ltd. .21(2)
Lornex Mining Corporation Ltd. 6.80(1)
Lost River Mining Corp. Ltd. 3.85(1)
Louanna Gold Mines Ltd. .05(2)
Louisbourg Mines Ltd. (4)
Louisiana Land & Exploration Co. (4)
Louvicourt Goldfield Corp. .11(2)
Lower Valley Mines Ltd. .12(2)
Lucky Strike Mines Limited .13(2)
Lundor Mines Ltd. .55(1)
Luxor Red Lake Mines Ltd. (4)
Lynbar Mining Corp. Ltd. .10(3)
Lyndhurst Mining Co. Ltd. .02(3)
Lynx-Canada Explorations Limited 1.35(2)
Lynx Yellowknife Gold Mines Ltd. .04(1)
Lytton Mineral Limited 1.30(1)
MacAndrews Red Lake Gold Mines Ltd. (4)
MacDonald Mines Ltd. .08(1)
MacLan Exploration Limited .63(1)
MacLaren Power & Paper Co. (Cl. A.) 15.00(2)
MacLaren Power & Paper Co. (Cl. B.) 16.00(2)
MacLaren Power & Paper Co. (1% Pr.) .50(2)
Maclean-Hunter Limited 8.75(1)
Maclean-Hunter Limitée 8.75(1)
Maclean-Hunter Limited (B.) 9.50(2)
Maclean-Hunter Limitée (B.) 9.50(2)
Maclean-Hunter Cable TV Limited 8.00(1)

Maclean-Hunter Cable TV Limited
(7% Cu. A. Pr.) . . . . . 18.62(1)
Macmillan Bloedel Limited . . . . . 25.50(1)
Macmillan Bloedel Limited (3% Pr.) . . . . . .47(3)
Madeleine Mines Ltd. . . . . 2.54(1)
Les Mines Madeleine Ltée . . . . . 2.54(1)
Madill Ltd., S. . . . . 6.50(2)
Madison Oils Ltd. . . . . .12(2)
Madsen Red Lake Gold Mines Ltd. . . . . .60(1)
Magadyne Industries Limited . . . . . 1.25(2)
Magna Electronics Corp. Ltd. . . . . 4.05(1)
Magna Electronics Corp. Ltd.
(6-1/2% Cu. Pr.) . . . . . (4)
Magnasonic Canada Ltd. . . . . 8.00(1)
Magnetics International Ltd. . . . . .80(1)
Magnum Fund Ltd. . . . . 23.38(3)
Magoma Mines Ltd. . . . . .04(1)
Maher Shoes Limited . . . . . 20.25(2)
Maher Shoes Limited (Pr.) . . . . . 8.00(1)
Main Oka Mining Corp. . . . . (4)
Majestic Explorations Ltd. . . . . (4)
Major Holdings & Development Ltd. . . . . 1.60(1)
Malartic Goldfields (Quebec) Ltd. . . . . .55(2)
Malartic Hygrade Gold Mines Ltd. . . . . 2.25(1)
Mandarin Mines Ltd. . . . . .16(2)
M. & M. Porcupine Gold Mines Ltd. . . . . .08(3)
Maneast Uranium Corp. Ltd. . . . . .01(3)
Manhattan Continental Development
Corporation . . . . . .31(2)
Manitou-Barvue Mines Ltd. . . . . .33(2)
Manix Mining Co. Ltd. . . . . .20(1)
Manoka Mining & Smelting Co. Ltd. . . . . (4)
Manor Mines Ltd. . . . . (4)
Manterre Gold Mines Ltd. . . . . .01(3)
Maple Leaf Gardens Ltd. . . . . 30.50(1)
Maple Leaf Mills Limited . . . . . 15.50(1)
Les Moulins Maple Leaf Limitée . . . . . 15.50(1)
Maple Leaf Mills Limited (5-1/2% B. Pr.) . . . . . 70.00(1)
Les Moulins Maple Leaf Limitée
(5-1/2% Cat. B. Priv.) . . . . . 70.00(1)
Maple Leaf Mines Ltd. . . . . .13(2)
Maracambeau Mines Ltd. . . . . .07(1)
Mara Lake Mines Ltd. . . . . .09(3)
Marchant Mining Co. Ltd. . . . . .60(1)
Marché Union Inc. . . . . 3.60(2)
Mareast Explorations Ltd. . . . . (4)
Margaret Red Lake Mines (1940) Ltd. . . . . (4)
Maria Mining Corp. Ltd. . . . . (4)
Marigot Investments Ltd. . . . . .25(2)
Mariner Mines Limited (B. Wt.) . . . . . (4)
Maritime Electric Co. Ltd. . . . . 27.00(1)
Maritime Telegraph & Telephone Co. Ltd. . . . . 22.13(1)
Maritime Telegraph & Telephone Co. Ltd.
(7% Cu. Pr.) . . . . . (4)
Markborough Properties Ltd. . . . . 5.38(1)
Markborough Properties Ltd. (Wt.) . . . . . .70(1)
Marlex Enviro-Systems & Resources Ltd. . . . . .24(2)
Marshall Boston Iron Mines Ltd. . . . . .26(1)
Marshall Creek Copper Co. Ltd. . . . . .07(1)
Martin-Bird Gold Mines Ltd. . . . . .01(3)
Martin-McNeely Mines Ltd. . . . . .07(1)
Marval Mines Ltd. . . . . .35(1)
Mines Marval Ltée . . . . . .35(1)
Marvens Ltd. (Cl. A.) . . . . . (4)
Massey-Ferguson Limited . . . . . 11.63(1)
Massval Mines Limited . . . . . .07(3)
Master Metal Corp. Mining Ltd. . . . . .55(2)
Mastermet Cobalt Mines Ltd. 15
Matachewan Consolidated Mines Ltd. . . . . .07(2)
Mate Yellowknife Gold Mines Limited . . . . . .05(3)
Matrix Exploration Limited . . . . . .23(3)
Mattagami Lake Mines Ltd. . . . . 27.88(1)
Matt Berry Mines Ltd. . . . . .09(3)
Maverick Mines & Oils Limited . . . . . .12(2)
Maverick Mountain Resources Ltd. . . . . .20(2)
Maybrun Mines Ltd. . . . . .10(2)
Maycor Mines Ltd. . . . . .05(3)
Mayfair Molly Mines Ltd. . . . . .06(3)
Mayfield Explorations Ltd. . . . . .14(1)
Maylac Gold Mines Ltd. . . . . (4)
McAdam Mining Corp. Ltd. . . . . .41(1)
McCarthy Milling Co. Ltd. (Cl. A.) . . . . . (4)
McCarthy Milling Co. Ltd. (Cl. B.) . . . . . (4)
McCoy Lake Mines Limited . . . . . (4)
Les Mines du Lac McCoy Limitée . . . . . (4)
McCuaig Red Lake Gold Mines Ltd. . . . . .02(3)
McFinley Red Lake Gold Mines Ltd. . . . . .05(3)
McIntyre-Porcupine Mines Ltd. . . . . 74.75(1)
McLaughlin Associates Ltd., S. B. . . . . 13.00(1)
McLaughlin Associates Ltd., S. B. (Wt.) . . . . . 5.30(1)
McManus Red Lake Gold Mines Ltd. . . . . .01(3)
McMarmac Red Lake Gold Mines Ltd. . . . . .01(3)
McVittie Graham Mining Co. Ltd. . . . . 1.55(2)
Medipack Corp. Ltd. . . . . 1.45(1)
Melchers Distilleries Limited . . . . . 11.00(2)
Les Distilleries Melchers Ltée . . . . . 11.00(2)
Melton Real Estate Ltd. . . . . 1.60(1)
Melton Real Estate Ltd. (A. Wt.) . . . . . .48(2)
Menorah Mines Ltd. . . . . .11(1)
Mentor Exploration & Development
Co. Ltd. . . . . .60(2)
MEPC Canadian Properties Ltd. . . . . 7.38(1)
MEPC Canadian Properties Ltd.
(6% Cu. A Pr.) . . . . . 18.88(1)
MEPC Canadian Properties Ltd. (Wt.) . . . . . 2.40(1)
MEPC Canadian Properties Ltd. (Rt.) . . . . . (4)
Mercuria Industries Limited . . . . . .80(1)
Mercury Explorations Limited . . . . . .10(2)
Merged Mining Enterprises Ltd. . . . . .15(3)
Meridian Mining & Exploration Co. Ltd. . . . . .58(3)
Merland Explorations Limited . . . . . .75(1)
Meta Uranium Mines Ltd. . . . . .11(1)
Meteor Mining Company Limited . . . . . .04(1)
Metropolitan Stores of Canada Ltd. . . . . 15.38(1)
Metropolitan Stores of Canada Ltd.
($1.30 Cu. 1967 Pr.) . . . . . 19.50(2)
Metropolitan Stores of Canada Ltd.
(6-1/2% Cu. 1961 Pr.) . . . . . 18.50(2)
Metropolitan Trust Company, The . . . . . 18.75(2)
Metropolitan Trust Company, The (Rt.) . . . . . .90(2)
Mexican Light & Power Co. Limited . . . . . 6.82(3)
Mexican Light & Power Co. Limited
($1.00 Cu. Pr.) . . . . . 11.38(2)
Mextor Minerals Ltd. . . . . .30(3)
MGF Management Ltd. (Cl. A.) . . . . . 1.95(1)
Mica Company of Canada Ltd. . . . . (4)
Microsystems International Ltd. . . . . 5.38(1)
Microsystems International Ltd. (Wt.) . . . . . 1.70(1)
Cie Internationale des Microsystèmes
Ltée (Wt.) . . . . . 1.70(1)
Midcon Oil & Gas Limited . . . . . .51(1)
Middle Bay Mines Ltd. . . . . .01(3)
Midepsa Industries Ltd. . . . . .16(1)
Mid Industries & Explorations Ltd. . . . . .40(2)
Midland Nickel Corp. Ltd. . . . . .18(2)
Midland Petroleums Limited . . . . . .06(1)
Mid Patepedia Mines Ltd. . . . . .14(2)
Midrim Mining Co. Ltd. . . . . .12(1)
Mid-West Mines Ltd. . . . . .05(2)
Mija Mines Limited . . . . . .12(2)
Miles Red Lake Mines Ltd. . . . . .02(3)
Milestone Exploration Ltd. . . . . .08(3)
Mill City Petroleums Ltd. . . . . 2.06(1)
Millerfields Silver Corp. Ltd. . . . . (4)
Milton Brick Company Ltd. . . . . 3.85(1)
Mindustrial Corporation Ltd. . . . . 7.25(1)
Minedel Mines Ltd. . . . . .04(3)
Mineral Exploration Corp. Ltd. . . . . .12(3)
Mineral Mountain Mining Co. Ltd. . . . . .18(1)
Mineral Resources International Ltd. . . . . .35(2)
Mines Iberville Ltée . . . . . (4)
Minex Development Ltd. . . . . .10(2)
Min-Ore Mines Ltd. . . . . .03(2)
Mirado Nickel Mines Ltd. . . . . .02(3)
Miro Mines Ltd. . . . . .05(2)
Miron Company Ltd. (Cl. A.) . . . . . 4.10(1)
Compagnie Miron Ltée (Cat. A.) . . . . . 4.10(1)
Mistango River Mines Ltd. . . . . .12(2)

Mistassini Uranium Mines Ltd. . . . .10(2)
Mitchell Co. Ltd., Robert (Cl. A.) . . . . . 11.50(1)
Mitchell Co. Ltd., Robert (Cl. B.) . . . . . (4)
MLW Worthington Limited . . . . . 12.75(2)
MLW Worthington Limitée . . . . . 12.75(2)
Mobilex Development Corporation Limited . . . . . .85(2)
Mobil Oil Corporation . . . . . 51.25(2)
Mogar Mines Ltd. . . . . (4)
Mohawk Industries Ltd. . . . . .90(2)
Mohawk Industries Ltd. (6% Cu. Cv. Pr.) . . . . . 1.95(2)
Mohawk Mines Ltd. . . . . .02(3)
Mollie Mac Mines Ltd. . . . . .09(2)
Molson Industries Ltd. (Cl. A.) . . . . . 19.75(1)
Les Industries Molson Ltée (Cat. A.) . . . . . 19.75(1)
Molson Industries Ltd. (Cl. B.) . . . . . 19.75(1)
Les Industries Molson Ltée (Cat. B.) . . . . . 19.75(1)
Molson Industries Ltd. (Cl. C) . . . . . (4)
Les Industries Molson Ltée (Cat.C.) . . . . . (4)
Molybdenite Corp. of Canada Limited . . . . . (4)
Molymine Exploration Ltd. . . . . .10(1)
Moly-Ore Mines Ltd. . . . . .32(2)
Monarch Gold Mines Ltd. . . . . .02(3)
Monarch Investments Ltd. . . . . 23.38(3)
Monarch Life Assurance . . . . . 28.00(2)
La Compagnie d'Assurance-Vie Monarch . . . . . 28.00(2)
Monarch Metal Mines Ltd. . . . . .07(2)
Monenco Ltd. . . . . 6.00(1)
Moneta Porcupine Mines Ltd. . . . . .60(2)
Monpre Iron Mines Ltd. . . . . (4)
Monteagle Minerals Ltd. . . . . .35(1)
Monterey Petroleum Corporation . . . . . .21(1)
Mont Laurier Uranium Mines Ltd. . . . . .86(1)
Montreal City & District Savings Bank . . . . . 14.88(1)
Banque d'Epargne de la Cité du District de Montréal . . . . . 14.88(1)
Montreal Refrigerating & Storage Ltd. . . . . (4)
Montreal Trust Co. . . . . 18.13(1)
Moore Corp. Ltd. . . . . 38.00(1)
Mooshia Gold Mines Co. Ltd. . . . . .01(3)
More Mines Limited . . . . . .17(2)
Moresby Mines Ltd. . . . . .15(2)
Morocco Mines Ltd. . . . . .08(1)
Morono Copper Mines Ltd. . . . . .21(2)
Morse Corporation Ltd., Robt. (Cl. A.) . . . . . 14.00(1)
Morse Corporation Ltd., Robt. (Cl. B.) . . . . . 30.00(1)
Morse Corporation Ltd., Robt. (5-1/2% Cu. Cv. A. Pr.) . . . . . 33.00(2)
Morse Corporation Ltd., Robt. (5-1/2% Cu. Cv. B. Pr.) . . . . . 31.50(2)
Motorcade Stores Limited . . . . . .25(2)
Mount Jamie Mines (Quebec) Limited . . . . . .15(1)
Les Mines du Mont Jamie (Québec) Limitée . . . . . .15(1)
Mount Keno Mines Ltd. . . . . .01(3)
Mount Pleasant Mines Ltd. . . . . .25(2)
Mount Royal Rice Mills Ltd. . . . . 7.50(2)
Mount Royal Rice Mills Ltd. (5.80% Cu. Pr.) . . . . . 20.00(2)
Mount Washington Copper Co. Ltd. . . . . .07(2)
Mount Wright Iron Mines Ltd. . . . . .20(1)
MPG Investment Corporation Limited . . . . . 4.20(2)
MPG Investment Corporation Limited ($1.30 Cu. Pr.) . . . . . 15.00(1)
MSN Industries Ltd. . . . . 6.13(2)
Mt. Hyland Mines Ltd. . . . . .17(3)
MTS International Services Inc. . . . . 3.00(1)
Multi-Minerals Ltd. . . . . .27(1)
Multiple Access General Computer Corporation Limited . . . . . 1.25(1)
Murgor Explorations Ltd. . . . . .09(2)
Murky Fault Metal Mines Ltd. . . . . .50(2)
Murmac Lake Athabasca Mines Ltd. . . . . .02(3)
Murphy Oil Co. Ltd. . . . . 12.00(1)
Murphy Oil Co. Ltd. (5-3/4% Cu. Cv. A. Pr.) . . . . . 31.00(1)
Murrit Photofax Ltd. . . . . 3.30(2)
Murrit Photofax Ltd. (Wt.) . . . . . .40(2)
Muscocho Exploration Ltd. . . . . .18(1)
Mustanf Mines Ltd. . . . . .29(2)
Mymar Mininf & Reduction Ltd. . . . . .26(2)
My-Ritt Red Lake Fold Mines Ltd. . . . . (4)
Myteque Mines Limited . . . . . (4)
Mytolon Chemical Inc. . . . . 2.75(1)
Mytolon Chemical Inc. (Wt.) . . . . . 1.00(3)
Nabors Drilling Limited . . . . . 10.00(2)
Na-Churs International Limited . . . . . 6.00(1)
Nadina Explorations Ltd. . . . . .91(1)
Naganta Mining & Development Co. Ltd. . . . . .21(1)
Nahanni Mines Ltd. . . . . .20(1)
Nasco Cobalt Silver Mines Ltd. . . . . .01(3)
National Drug & Chemical Co. of Canada Ltd. . . . . 6.00(1)
National Drug & Chemical Co. of Canada Ltd. (Cu. Cv. Pr.) . . . . . 8.50(2)
National Grocers Company Limited ($1.50 Cu. Pr.) . . . . . 24.44(3)
National Hees Enterprises Ltd. . . . . 2.75(1)
National Hees Industries Ltd. . . . . 2.70(2)
National Hees Industries Ltd. (6% Cv. 1st Pr.) . . . . . (4)
National Nickel Limited . . . . . .17(1)
National Nursing Homes Ltd. . . . . 1.75(1)
National Nursing Homes Ltd. (Wt.) . . . . . .35(2)
National Petroleum Corporation . . . . . 2.35(1)
National Sea Products Ltd. . . . . 9.50(1)
National Sea Products Ltd. (5-1/2% Cu. Pr.) . . . . . 3.25(2)
National Trust Co. Ltd. . . . . 32.50(1)
Nation Lake Mines Ltd. . . . . (4)
Native Minerals Ltd. . . . . .03(1)
Native Mines Ltd. . . . . .05(2)
Navco Food Services Limited . . . . . (4)
Negor Mines Ltd. . . . . (4)
Nello Mining Ltd. . . . . (4)
Nelson's Laundries Co. Ltd. (6% Cu. Pr.) . . . . . 7.25(3)
Nemrod Mining Co. Ltd. . . . . .18(2)
Neonex International Limited . . . . . 3.70(1)
Nesbitt Mining & Exploration Ltd. . . . . .25(3)
New Arntfield Mines Ltd. . . . . (4)
New Associated Developments Ltd. . . . . (4)
New Athona Mines Ltd. . . . . .10(2)
Newbaska Gold & Copper Mines Ltd. . . . . (4)
New Bedford Explorations Ltd. . . . . .09(2)
New Bidlamaque Gold Mines Ltd. . . . . (4)
New Brunswick Telephone Co. Ltd. . . . . 14.63(1)
New Brunswick Uranium Metals & Mining Ltd. . . . . 2.90(1)
New Calumet Mines Ltd. . . . . .20(1)
New Campbell Island Mines Ltd. . . . . (4)
New Cinch Uranium Ltd. . . . . .19(2)
Newconex Holdings Ltd. . . . . 4.70(2)
New Continental Oil Company of Canada Limited . . . . . .69(1)
New Cronin Babine Mines Ltd. . . . . .06(1)
New Davies Petroleums Ltd. . . . . .06(1)
New Digby Dome Mines Ltd. . . . . .04(3)
New Dimension Resources Ltd. . . . . .58(2)
New Dominion Nickel Mines Ltd. . . . . .02(3)
New Far North Exploration Ltd. . . . . .04(3)
New Formaque Mines Ltd. . . . . .04(2)
Newfoundland Light & Power Co. Ltd. . . . . 12.25(1)
Newfoundland Light & Power Co. Ltd. (5-1/2% Cu. A. Pr.) . . . . . (4)
New Forty Four Mines Ltd. . . . . (4)
New Gateway Oils & Minerals Ltd. . . . . .11(2)
New Glacier Explorers Ltd. . . . . .05(1)
New Gold Star Mines Ltd. . . . . (4)
New Goldvue Mines Ltd. . . . . .06(1)
New Harricana Mines Ltd. . . . . (4)
New Hope Porcupine Gold Mines Ltd. . . . . (4)
New Hosco Mines Ltd. . . . . .62(1)
New Indian Mines Ltd. . . . . .06(2)
New Insco Mines Ltd. . . . . .40(1)
New Jason Mines Ltd. . . . . .03(3)
New Kelore Mines Ltd. . . . . .05(2)
New Lorie Mines Ltd. . . . . .04(2)

Newlund Mines Ltd. . . . . .13(2)
New Mallen Red Lake Mines Ltd. . . . . .01(3)
New Marvel Oils Ltd. 15
New Metalore Mining Co. Ltd. . . . . .45(2)
New Miller Pipe Lines & Mining Exploration Ltd. . . . . .07(2)
New Mount Costigan Mines Ltd. . . . . .16(1)
Newnorth Gold Mines Ltd. . . . . .05(2)
New Pascalis Mines Ltd. . . . . .20(3)
New Picton Uranium Mines Ltd. . . . . (4)
New Potterdoal Mines Ltd. . . . . .04(3)
New Privateer Mines Limited . . . . . .19(2)
New Providence Development Co. . . . . .36(1)
New Quebec Raglan Mines Limited . . . . . 6.90(1)
New Redwood Gold Mines Ltd. . . . . (4)
Newrich Explorations Ltd. . . . . .06(2)
New Senator Rouyn Ltd. . . . . .08(2)
New Taku Mines Ltd. . . . . .26(1)
New Territorial Uranium Mines Ltd. . . . . .11(1)
New Unisphere Resources Limited . . . . . .42(2)
Newvan Resources Ltd. . . . . .28(2)
New Walcord Mines Ltd. . . . . .02(3)
New Wellington Mines Ltd. . . . . .21(3)
New York Oils Limited . . . . . .65(2)
Niagara Structural Steel Co. Ltd. . . . . (4)
Niagara Structural Steel Co. Ltd. (6-1/2% Cu. Cv. A. Pr.) . . . . . 18.00(2)
Niagara Wire Weaving Company Limited, The . . . . . 11.00(2)
Niagara Wire Weaving Company Limited, The (Cl. B.) . . . . . 10.00(2)
Nickel Hill Mines Limited . . . . . .14(2)
Nickel Lake Mines Ltd. . . . . .02(3)
Nickel Offsets Ltd. . . . . .14(3)
Nickel Rim Mines Limited . . . . . .10(1)
Nicoba Mines Ltd. . . . . .02(3)
Nicohal Mines Ltd. . . . . (4)
Nisson Mining & Development Limited . . . . . 1.80(1)
Nith River Petroleums Ltd. . . . . .31(2)
Nitracell Canada Ltd. . . . . .30(1)
Noble Mines & Oils Ltd. . . . . 1.15(1)
Nocana Mines Ltd. . . . . .03(2)
Noctin Investment Corporation Ltd. . . . . (4)
Noland Mines Ltd. . . . . (4)
Nor-Acme Gold Mines Ltd. . . . . .18(1)
Noradco Mines Ltd. . . . . (4)
Noranda Mines Ltd. . . . . 32.75(1)
Norbaska Mines Ltd. . . . . .19(2)
Norcan Mines Limited . . . . . .10(1)
Norco Oil Corp. . . . . 1.19(1)
Nordev Mines Ltd. . . . . .10(3)
Nordex Explosives Ltd. . . . . .50(1)
Nordic Industries Ltd. . . . . .18(2)
Norex Resources Limited . . . . . .20(2)
Norgold Mines Limited . . . . . .03(2)
Norlex Mines Ltd. . . . . .26(1)
Normont Copper Ltd. . . . . (4)
Norque Copper Mines Ltd. . . . . (4)
Norseman Mines Limited . . . . . .80(1)
Northair Mines Ltd. . . . . .15(1)
North American Asbestos Co. Ltd. . . . . .04(2)
North American Land & Leisure Ltd. . . . . (4)
North American Rare Metals Ltd. . . . . .18(1)
North American Rockwell Corp. . . . . 29.00(3)
Northcal Mines Ltd. . . . . .41(1)
North Canadian Oils Ltd. . . . . 5.50(1)
North Canadian Oils Ltd. (5-1/2% Cu. Pr.) . . . . . 38.00(2)
North Coldstream Mines Ltd. . . . . .48(1)
North Continental Oil & Gas Corporation Ltd. . . . . .02(1)
North D'Arcy Explorations Ltd. . . . . .20(2)
Northern Canada Mines Ltd. . . . . .49(1)
Northern & Central Gas Corporation Ltd. . . . . 14.00(1)
Northern & Central Gas Corporation Ltd. ($1.06 Cu. Cv. Pr.) . . . . . 22.00(2)
Northern & Central Gas Corporation Ltd. ($1.50 Cu. Cv. Pr.) . . . . . 28.75(1)
Northern & Central Gas Corporation Ltd. ($2.60 Cu. 1st Pr.) . . . . . 37.25(2)
Northern & Central Gas Corporation Ltd. ($2.70 Cu. Pr.) . . . . . 37.00(2)
Northern & Central Gas Corporation Ltd. (Wt.) . . . . . 5.50(1)
Northern Coal Mines Ltd. . . . . .12(3)
Northern Gem Mining Corp. Ltd. . . . . .02(3)
Northern Homestakes Mines Ltd. . . . . .24(1)
Northern Homestakes Mines Ltd. (Rt.) . . . . . .01(1)
Northern Metals Limited . . . . . (4)
Northern Nuclear Mines Ltd. . . . . (4)
Northern Quebec Explorers Ltd. . . . . .12(2)
Northern Tar, Chemical & Wood Ltd. . . . . 3.25(1)
Northern Tar, Chemical & Wood Ltd. (Cu. A. Pr.) . . . . . 17.00(2)
Northern Telephone Ltd. (5-1/2% Cu. A. 1st Pr.) . . . . . (4)
Northern Telephone Ltd. (5-1/2% Cu. B. 1st Pr.) . . . . . (4)
Northern Telephone Ltd. (5-1/2% Cu. C. 1st Pr.) . . . . . 14.50(3)
North Expo Mines Ltd. . . . . (4)
Northgate Exploration Ltd. . . . . 4.70(1)
North Island Mines Limited . . . . . .12(2)
Northland Oils Ltd. . . . . .82(1)
Northland Trust Co. . . . . (4)
Northlode Explorations Ltd. . . . . .16(1)
North Pacific Mines Ltd. . . . . .37(1)
North Rock Explorations Ltd. . . . . 2.25(1)
Northville Explorations Ltd. . . . . .06(3)
Northwest Canalask Nickel Mines Ltd. . . . . .06(1)
North Western Utilities Ltd. (4% Cu. Pr.) . . . . . 54.00(2)
Northwest Sports Enterprises Ltd. . . . . 6.00(1)
Northwest Trust Co. . . . . (4)
Northwest Trust Co. (Pr.) . . . . . (4)
Northwest Ventures Limited . . . . . .52(1)
North Whitney Mines Ltd. . . . . (4)
Nor-West Kim Resources Ltd. . . . . .18(2)
Nor-West Kim Resources Ltd. (B. Wt.) . . . . . (4)
Nouvelle Mining Exploration Ltd. . . . . .10(2)
Nova Beaucage Mines Ltd. . . . . .26(2)
Nova Scotia Light & Power Co. Ltd. . . . . 13.13(1)
Nova Scotia Light & Power Co. Ltd. (4% Cu. Pr.) . . . . . (4)
Nova Scotia Light & Power Co. Ltd. (4-1/2% Cu. Pr.) . . . . . (4)
Nova Scotia Light & Power Co. Ltd. (5% Cu. Pr.) . . . . . (4)
Nova Scotia Savings and Loan Co. . . . . 15.50(2)
NQN Mines Ltd. . . . . .17(1)
Les Mines N.Q.N. Limitée . . . . . .17(1)
NSI Marketing Ltd. . . . . 3.65(1)
Nudulama Mines Ltd. . . . . (4)
Numac Oil & Gas Ltd. . . . . 12.75(1)
Nu-West Development Corp. Ltd. . . . . 8.25(1)
N.W. Canalask . . . . . (4)
NWL Financial Corporation Ltd. . . . . 2.10(1)
N.W.P. Developments Ltd. . . . . (4)
N.W.T. Copper Mines Ltd. . . . . .15(3)
Oakville Wood Specialties Limited (6% Cu. Pr.) . . . . . (4)
Oakwood Petroleums Limited . . . . . 1.00(1)
O'Brien Gold Mines Limited . . . . . .14(2)
Occidental Petroleum Corporation . . . . . 12.25(1)
Ocean Cement & Supplies Ltd. . . . . 29.50(1)
Oceanic Iron Ore of Canada Ltd. . . . . .15(3)
Ogilvie Flour Mills Co. Ltd. (7% Cu. Pr.) . . . . . 25.25(2)
Oil Patch Equipment Sales & Rentals Ltd. . . . . 1.90(1)
Okanagan Helicopters Ltd. . . . . 6.25(1)
Okanagan Helicopters Ltd. (6% Cu. A. Pr.) . . . . . (4)
Okanagan Helicopters Ltd. (6% Cv. 2nd Pr.) . . . . . 11.50(3)
Okanagan Helicopters Ltd. (Wt.) . . . . . 3.00(1)
Okanagan Holdings Ltd. . . . . 5.13(2)
Okanagan Telephone Company ($.40 Cu. Pr.) . . . . . 5.25(3)

Old Canada Investment Corporation Ltd. . . . . .70(2)
Old Canada Investment Corporation Ltd. (6% A. 1st Pr.) . . . . . 1.45(2)
Old Canada Investment Corporation Ltd. (Wt.) . . . . . .50(2)
Olivet Gold Mines Ltd. . . . . (4)
Omega Hydrocarbons Ltd. . . . . .07(2)
Omega Mines Ltd. . . . . .14(2)
Onaco Petroleums Ltd. . . . . .08(3)
Onaping Mines Ltd. . . . . .08(3)
Ontex Mining Ltd. . . . . .38(1)
Opemiska Copper Mines (Quebec) Ltd. . . . . 8.10(1)
Open End Mines Limited . . . . . .31(2)
Orangeroof Canada Ltd. . . . . 5.25(1)
Orchan Mines Ltd. . . . . 3.55(1)
Ordala Mines Ltd. . . . . (4)
Orlando Realty Corporation Ltd. . . . . 4.95(2)
Orofino Mines Ltd. . . . . .13(3)
Oro Mines Ltd. . . . . .20(1)
Ortega Minerals Ltd. . . . . .05(2)
Orvalley Gold Mines Ltd. . . . . (4)
OSF Industries Limited . . . . . 4.75(1)
Oshawa Group Ltd. (Cl. A.) . . . . . 11.38(1)
Oshawa Group Ltd. (Wt.) . . . . . 1.50(1)
Osisko Lake Mines Ltd. . . . . .27(2)
Ourgold Mining Co. Ltd. . . . . (4)
Overland Express Ltd., The . . . . . 10.50(1)
Overland Express Ltd., The ($.60 Cu. Cv. Pr.) . . . . . 22.00(2)
Overland Express Ltd., The (2nd Pt. Pr.) . . . . . 4.45(2)
Pace Industries Ltd. . . . . .85(1)
Pace Industries Ltd. (Wt.) . . . . . (4)
Pacific Asbestos Ltd. . . . . 1.32(1)
Pacific Atlantic Canadian Investment Co. Ltd. . . . . 4.05(2)
Pacific Atlantic Canadian Investment Co. Ltd. (5% Cu. A. Pr.) . . . . . (4)
Pacific Copper Mines Ltd. . . . . 1.85(1)
Pacific Enterprises Ltd. . . . . 1.65(2)
Pacific Gas Transmission Co. . . . . (4)
Pacific Nickel Mines Ltd. . . . . .31(1)
Pacific Northern Gas Ltd. (Cl. A.) . . . . . 3.50(2)
Pacific Northern Gas Ltd. (6-3/4% Cu. Pr.) . . . . . 22.50(2)
Pacific Northern Oils Ltd. . . . . .07(2)
Pacific Petroleums Limited . . . . . 31.63(1)
Pacific Silver Mines & Oils Ltd. . . . . .06(2)
Pacific Sulphur Ltd. . . . . (4)
Pacific Western Airlines Ltd. . . . . 12.63(1)
Pacific Western Airlines Ltd. (6% Cu. Pr.) . . . . . 30.88(1)
Packard Pershing Mines Ltd. . . . . (4)
Paco Corporation of Canada Ltd. . . . . 1.85(3)
Page Petroleum Ltd. . . . . 1.50(1)
Palco Explorations Ltd. . . . . .15(3)
Palliser Petroleums Ltd. . . . . (4)
Palmer McLellan (United) Ltd. . . . . (4)
Palomino Explorations Ltd. . . . . .10(3)
Pamike Mines Ltd. . . . . .20(1)
Pamour Porcupine Mines Ltd. . . . . 1.75(1)
Panacan Resources Ltd. . . . . .38(1)
Panacea Mining & Exploration Ltd. . . . . (4)
Pan American Mines Ltd. . . . . (4)
Pan Canadian Petroleums Limited . . . . . 15.25(1)
Pancana Industries Ltd. . . . . 2.35(1)
Pan Eastern Corporation Ltd. . . . . .29(1)
Pango Gold Mines Ltd. . . . . (4)
Pan Ocean Oil Corporation . . . . . 11.38(1)
Panther Mines Ltd. . . . . .20(1)
Paragon Properties Limited . . . . . 3.10(2)
Paramaque Mines Ltd. . . . . .03(2)
Paramount Mining Ltd. . . . . .20(1)
Parkland Beef Industries Ltd. . . . . .30(1)
Park Lawn Cemetery Company . . . . . (4)
Parr Mines Ltd. . . . . .14(1)
Partridge River Mines Ltd. . . . . (4)
Pathfinder Resources Ltd. . . . . .92(1)
Pathfinder Resources Ltd. (B. Wt.) . . . . . .16(2)
Patino N.V. . . . . 13.75(1)
Pato Consolidated Gold Dredging Ltd. . . . . 6.50(2)
Patricia Silver Mines Ltd. . . . . .06(2)
Paulpic Gold Mines Ltd. . . . . .13(3)
Pax International Mines Ltd. . . . . .01(3)
Payco Mines Ltd. . . . . .05(1)
Payette River Mines Limited . . . . . .06(2)
Payfair Industries Ltd. . . . . (4)
PCE Explorations Limited . . . . . .52(1)
Peace River Mining & Smelting Ltd. . . . . (4)
Peace River Petroleums Ltd. . . . . .17(1)
Peel-Elder Limited . . . . . 14.13(1)
Peel Resources Ltd. . . . . .14(1)
Pelangio Larder Mines Ltd. . . . . .02(3)
Pembina Pipe Line Ltd. (Cl. A.) . . . . . 7.13(1)
Pembina Pipe Line Ltd. (Cl. B.) . . . . . 7.00(1)
Pembina Pipe Line Ltd. (5% Cu. 1st Pr.) . . . . . 48.00(2)
Pembina Pipe Line Ltd. (6% Cu. A. 2nd Pr.) . . . . . 25.50(2)
Pembroke Electric Light Co. Ltd. . . . . 27.50(2)
Pend Oreille Mines & Metals Co. . . . . .75(3)
Pennbec Mining Corp. . . . . (4)
Pennington's Stores Limited . . . . . 11.88(1)
People's Credit Jewellers Ltd. . . . . 9.38(1)
People's Credit Jewellers Ltd. (Cl. A.) . . . . . 9.00(1)
People's Credit Jewellers Ltd. (6% Cu. Pr.) . . . . . 94.75(3)
People's Department Stores Limited . . . . . 11.75(1)
PEP Professional & Engineered Patents Ltd. . . . . .35(3)
Père Marquette Petroleums Ltd. . . . . .03(2)
Permo Gas & Oil Limited . . . . . .38(1)
Pershing Manitou Gold Mines Ltd. . . . . (4)
Pershon Gold Mines Ltd. . . . . .01(3)
Peruvian Oils & Minerals Ltd. . . . . .29(1)
Peso Silver Mines Ltd. . . . . .14(1)
Peterson Red Lake Mines Ltd. . . . . (4)
Petrofina Canada Ltd. . . . . 21.50(1)
Petrofina Canada Ltée . . . . . 21.50(1)
Petrol Oil & Gas Company Ltd., The . . . . . 1.32(1)
Petromines Ltd. . . . . .26(1)
Petroquest Ltd. . . . . (4)
Peyto Oils Limited . . . . . 1.87(1)
Pharaoh Mines Ltd. . . . . (4)
Phillips Cables Limited . . . . . 9.75(1)
Phillips Petroleum Co. . . . . (4)
Phoenix Canada Oil Company Ltd. . . . . 7.45(1)
Photo Engravers & Electrotypers Ltd. . . . . 19.00(2)
Pickel Crow Explorations Limited . . . . . .23(2)
Pickering Metal Mines Ltd. . . . . .01(3)
Pick Mines Ltd. . . . . (4)
Picton Mines . . . . . (4)
Pine Bell Mines Ltd. . . . . .13(2)
Pine Lake Mining Co. Ltd. . . . . .13(2)
Pine Pacific Mines Ltd. . . . . .18(3)
Pine Point Mines Ltd. . . . . 24.00(1)
Pine Ridge Exploration Co. Ltd. . . . . .13(2)
Pine Tree Explorations Ltd. . . . . .15(1)
Pinex Mines Ltd. . . . . .69(1)
Pinnacle Mines Ltd. . . . . .12(2)
Pinnacle Petroleums Ltd. . . . . .44(2)
Pitchvein Mines Ltd. . . . . .01(3)
Pitt Gold Mining Co. Ltd. . . . . .04(2)
Pitts Engineering Construction Limited, C.A. . . . . 14.13(1)
Pizza Pan International Corp. . . . . (4)
Place Gas & Oil Company Limited . . . . . 1.00(1)
Placer Development Ltd. . . . . 25.50(2)
Plains Petroleum Ltd. . . . . .27(1)
Plateau Metals Ltd. . . . . .33(1)
Pleno Mines Ltd. . . . . (4)
Polaris Mines Ltd. . . . . .05(2)
Polcon Corp. . . . . 3.00(2)
Polypump Ltd. . . . . 2.53(1)
Ponderay Exploration Co. Ltd. . . . . 1.15(1)
Ponder Oils Ltd. . . . . .68(2)
Popular Industries Ltd. . . . . 1.50(1)
Port Arthur Iron Ore Corp. . . . . (4)
Portcomm Communications Corp. Ltd. . . . . .75(1)

Portcomm Communications Corp. Ltd. (A. Wt.) . . . . (4)
Port Dover Gas & Oil Ltd. . . . . (4)
Portfield Petroleums Limited . . . . .10(2)
Portland Yellowknife Gold Mines Limited . . . . (4)
Potter Distilleries Ltd. . . . . 3.50(1)
Power Corp. of Canada Ltd. . . . . 5.50(1)
Power Corp. of Canada Ltd. (4-3/4% 1st Pr.) . . . . 28.38(1)
Power Corp. of Canada Ltd. (5% Cv. A. 2nd Pr.) . . . . 8.88(1)
Power Corp. of Canada Ltd. (6% 2nd Pr.) . . . . (4)
Prado Exploration Ltd. . . . . 1.12(1)
Prairie Oil Royalties Company Ltd. . . . . 11.75(2)
Prairie Royalty . . . . (4)
Prefac Concrete Co. Ltd. . . . . 1.45(2)
La Cie de Béton Préfac Ltée . . . . . 1.45(2)
Premier Cablevision Limited . . . . . 10.60(1)
Premier Trust Co., The (Fully Paid) . . . . 340.00(2)
Premium Iron Ores Limited . . . . 1.75(2)
Preston Mines Limited . . . . . 6.70(1)
Price Company Limited, The . . . . 7.25(1)
La Compagnie Price Limitée . . . . 7.25(1)
Price Company Limited, The (4% Cu. Pr.) . . . . 50.00(2)
La Compagnie Price Limitée (4% Cum. Priv.) . . . . 50.00(2)
Prime Potash Corporation of Canada Ltd. . . . . .03(2)
Primer Group Minerals Ltd. . . . . .09(2)
Probe Mines Limited . . . . . .20(1)
Proflex Limited . . . . . 2.20(1)
Pronghorn Petroleum Corp. Ltd. . . . . (4)
Proto Explorations Ltd. . . . . .15(2)
Provident Assurance Company, The . . . . (4)
La Prévoyance Compagnie d'Assurance . . . . (4)
Provigo Inc. . . . . 6.75(3)
Provinces & Explorations Ltd. . . . . .22(2)
Puma Petroleums Ltd. . . . . .84(1)
Puma Petroleums Ltd. (A. Wt.) . . . . .48(2)
Purdex Minerals Ltd. . . . . .01(3)
Pure Silver Mines Ltd. . . . . 2.30(1)
Pyramid Mining Co. Ltd. . . . . .31(1)
Q Broadcasting Ltd. (Cl. A.) . . . . 5.00(1)
Quadrate Explorations Ltd. . . . . .02(3)
Quatsino Copper-Gold Mines Ltd. . . . . .11(1)
Quebec Antimony Mines Ltd. . . . . .24(1)
Les Mines d'Antimoine du Québec Ltée . . . . .24(1)
Quebec Cobalt & Exploration Ltd. . . . . .55(2)
Quebec Explorers Corp. Ltd. . . . . .15(1)
Quebec Gold Belt Mines Ltd. . . . . .08(3)
Quebec Industrial Minerals Corp. . . . . (4)
Compagnie de Minéraux Industriels du Québec . . . . (4)
Quebec Manitou Mines Ltd. . . . . .12(2)
Quebec Mattagami Minerals Ltd. . . . . .25(2)
Quebec Sturgeon River Mines Ltd. . . . . .10(2)
Quebec Telephone . . . . . 13.75(2)
La Corporation de Téléphone de Québec . . . . 13.75(2)
Quebec Telephone (6-1/5% Cu. Cv. A. Pr.) . . . . 14.00(2)
La Corporation de Téléphone de Québec (6-1/5% Cum. Conv. A. Priv.) . . . . 14.00(2)
Quebec Telephone (5% Cu. Pr. 1951 Series) . . . . 5.50(2)
La Corporation de Téléphone de Québec (5% Cum. Priv. 1951) . . . . 5.50(2)
Quebec Telephone (5% Cu. Pr. 1955 Series) . . . . 13.25(2)
La Corporation de Téléphone de Québec (5% Cum. Priv. 1955) . . . . 13.25(2)
Quebec Telephone (5% Cu. Pr. 1956 Series) . . . . (4)
La Corporation de Téléphone de Québec (5% Cum. Priv. 1956) . . . . (4)
Quebec Telephone (4-3/4% Cl. Pr. 1965 Series) . . . . 12.50(2)
La Corporation de Téléphone de Québec (4-3/4% Cum. Priv. 1965) . . . . 12.50(2)
Quebec Uranium Mining Corp. . . . . .18(2)
Queenston Gold Mines Ltd. . . . . .20(2)
Quejo Mines Ltd. . . . . .04(3)
Quest Yellowknife Mines Limited . . . . . .01(3)
Quilchena Mining & Development Co. Ltd. . . . . (4)
Quinte-Canlin Limited . . . . . 1.95(2)
Quinte-Canlin Limited (Cl. A.) . . . . 2.00(2)
Q.S.P. Ltd. . . . . 11.25(1)
Q.S.P. Ltée . . . . . 11.25(1)
Rackla River Mines Ltd. . . . . .06(2)
Rackla River Mines Ltd. (Rt.) . . . . (4)
Radex Minerals Ltd. . . . . .08(2)
Radex Minerals Ltd. (Wt.) . . . . (4)
Radiation Development Co. Ltd. . . . . 3.50(1)
Radio Hill Mines Co. Ltd. . . . . (4)
Radiore Uranium Mines Ltd. . . . . .25(1)
Ragged Chute Silver Mines Ltd. . . . . (4)
Ramada Resources Ltd. . . . . (4)
Rambler Exploration Co. Ltd. . . . . (4)
Ramid International Ltd. . . . . .24(2)
Ram Petroleums Ltd. . . . . .64(1)
Rancheria Mining Co. Ltd. . . . . .08(2)
Ranchmens Resources Ltd. . . . . .60(2)
Rand Malartic Mines Ltd. . . . . .02(3)
Rand Resources Limited . . . . . .53(1)
Ranger Oil (Canada) Limited . . . . . 13.75(1)
Rank Organization Ltd. . . . . 22.13(1)
Ranney Gold Mines Ltd. . . . . (4)
Rapid Data Systems & Equipment Ltd. . . . . 4.50(1)
Rapid Data Systems & Equipment Ltd. (6% Cu. Cv. Pr.) . . . . 5.25(1)
Rapid Grip & Batten Limited . . . . . 5.00(2)
Rapid Grip & Batten Limited (Cl. A.) . . . . 7.00(2)
Rapid River Resources Ltd. . . . . .06(2)
Rawhide U. Mines Ltd. . . . . .10(2)
Rayfield Mining Co. . . . . (4)
Raylloyd Mines & Explorations Ltd. . . . . .20(2)
Raymond Tiblemont Gold Mines Ltd. . . . . .02(3)
Rayore Mines Ltd. . . . . .40(2)
Rayrock Mines Limited . . . . . 1.15(1)
Reactor Uranium Mines Ltd. . . . . .15(2)
Reader's Digest Association (Canada) Ltd. . . . . 7.88(2)
Sélection du Reader's Digest (Canada) Ltée . . . . 7.88(2)
Readyfoods Ltd. . . . . 1.88(1)
Realm Mining Corporation Limited . . . . (4)
Realty Capital Corporation Ltd. (Cl. A.) . . . . 3.40(1)
Realty Capital Corporation Ltd. (Wt.) . . . . .85(2)
Reco Silver Mines Ltd. . . . . .10(2)
Redaurum Red Lake Gold Mines Ltd. . . . . (4)
Redcoat Mines Ltd. . . . . (4)
Redcon Gold Mines Ltd. . . . . .03(3)
Redhill Investment Corp. Ltd. . . . . 4.75(2)
Red Metal Mines Ltd. . . . . .06(2)
Redruth Gold Mines Ltd. . . . . .02(3)
Redstone Mines Ltd. . . . . .32(3)
Reed Shaw Osler Limited . . . . . 8.75(1)
Reeves MacDonald Mines Ltd. . . . . 1.00(1)
Regentbranch Holdings Limited . . . . . 2.25(3)
Reichhold Chemicals (Canada) Ltd. . . . . 9.00(2)
Reichhold Chemicals (Canada) Ltd. (Wt.) . . . . 2.75(2)
Reid Lithographing Co. Ltd. . . . . 10.13(2)
Reid Lithographing Co. Ltd. (6-1/4% Cu. A. Pr.) . . . . 41.13(3)
Reitman's (Canada) Ltd. . . . . 19.13(1)
Reitman's (Canada) Ltd. (Cl. A.) . . . . 19.25(1)
Renold Chains Canada Ltd. (Cl. A. Cu. Pr.) . . . . (4)
Renzy Mines Ltd. . . . . .43(2)
Reprox Corp. Ltd. . . . . 1.70(1)
Republic Resources Ltd. . . . . .17(2)
Revelstoke Building Materials . . . . . 14.75(1)
Revelstoke Building Materials Ltd. (6% Cu. Pr.) . . . . 15.00(1)
Revenue Properties Co. Ltd. . . . . .71(1)

Rexdale Mines Ltd. . . . . (4)
Reynolds Aluminum Co. of Canada Ltd. (4-3/4% Cu. 1st Pr.) . . . . . 64.75(2)
Société d'Aluminium Reynolds (Canada) Ltée (4-3/4% Cum. Priv.) . . . . . 64.75(2)
R.H.P. Canada Ltd. (Cu. Pt. Cl. A.) . . . . . (4)
Rhyolite-Rouyn Mines Ltd. . . . . (4)
Richan Explorations Limited . . . . . .80(2)
Richelieu Vaudreuil Farms Ltd. . . . . (4)
Richfault Explorations Ltd. . . . . (4)
Rich Group Yellowknife Mines Ltd. . . . . .21(3)
Richore Gold Mines Ltd. . . . . (4)
Richwood Silver Mines Ltd. . . . . 2.10(2)
Ridgefield Explorations Ltd. . . . . (4)
Riley's Datashare International Ltd. . . . . 1.95(1)
Rimrock Mining Corporation Ltd. . . . . .50(1)
Rio-Algom Mines Ltd. . . . . 15.25(1)
Rio-Algom Mines Ltd. ($5.80 Cu. A. 1st Pr.) . . . . . 75.50(2)
Rio Plata Silver Mines Ltd. . . . . .07(3)
Rio Rupununi Mines Ltd. . . . . .01(3)
Ripley International Ltd. . . . . 3.80(2)
Riverside Yarns Ltd. . . . . 2.25(1)
Riverside Yarns Ltd. (Cl. A. Cu. Cv. Pr.) . . . . . 2.75(3)
Riviera Industries & Resources Ltd. . . . . .22(1)
Robb Montbray Mines Ltd. . . . . .01(3)
Robert Mines Ltd. . . . . .50(2)
Robin Red Lake Mines Ltd. . . . . .50(1)
Robinson, Little & Co. Ltd. . . . . 37.25(1)
Robinson, Little & Co. Ltd. (Cl. A.) . . . . . 36.75(2)
Rocket Mines Limited . . . . . .18(1)
Rockland Mining Ltd. . . . . .23(2)
Rodstrom Yellowknife Mines Ltd. . . . . .07(1)
Rokon Mines Ltd. . . . . .29(1)
Rolland Paper Co. Limited (Cl. A.) . . . . . 3.10(1)
Compagnie de Papier Rolland Limitée (Cat. A.) . . . . . 3.10(1)
Rolland Paper Co. Limited (Cl. B.) . . . . . 2.75(2)
Compagnie de Papier Rolland Limitée (Cat. B.) . . . . . 2.75(2)
Rolland Paper Co. Limited (4-1/4% Cu. Pr.) . . . . . (4)
Compagnie de Papier Rolland Limitée (4-1/4% Cum. Priv.) . . . . . (4)
Rolling Hills Copper Mines Ltd. . . . . .34(1)
Roman Corporation Ltd. . . . . 6.10(1)
Romfield Building Corp. Ltd. . . . . (4)
Ronalds-Federated Ltd. . . . . 13.50(2)
Ronnoco Gold Mines Ltd. . . . . (4)
Ron Roy Uranium Mines Limited . . . . . .12(2)
Rose Gold Mining Co. Ltd. . . . . .11(3)
Rose Pass Mines Ltd. . . . . .25(1)
Rothmans of Pall Mall Canada Ltd. . . . . 16.63(1)
La Cie Rothmans de Pall Mall Canada Ltée . . . . . 16.63(1)
Rothmans of Pall Mall Canada Ltd. (6.85% Cu. 1st Pr.) . . . . . 82.50(1)
La Cie Rothmans de Pall Mall Canada Ltée (6.85% Cum. Priv.) . . . . . 82.50(1)
Rothmans of Pall Mall Canada Ltd. (6-5/8% Cv. 2nd Pr.) . . . . . 19.88(1)
La Cie Rothmans de Pall Mall Canada Ltée (6-5/8% Conv. Priv.) . . . . . 19.88(1)
Rothmans of Pall Mall Canada Ltd. (Wt.) . . . . . 3.50(1)
La Cie Rothmans de Pall Mall Canada Ltée (Wt.) . . . . . 3.50(1)
Rouyn Exploration Ltd. . . . . .07(1)
Rowan Consolidated Mines Ltd. . . . . .02(3)
Roxmark Mines Ltd. . . . . .04(3)
Royal Agassiz Mines Ltd. . . . . .28(1)
Royal Bank of Canada, The . . . . . 29.50(1)
Royal Canadian Ventures Ltd. . . . . 1.02(1)
Royal Oak Dairy Ltd. (Cl. A.) . . . . . 12.75(3)
Royal Oak Dairy Ltd. (Cl. B.) . . . . . (4)
Royal Trust Company, The . . . . . 37.50(1)
Compagnie Trust Royal . . . . . 37.50(1)
Royal Trust Co. Mortgage Corp., The (5% Cu. A. Pr.) . . . . . 14.25(1)
R.R.D. Limited . . . . . 5.00(1)
R.R.D. Limited (Wt.) . . . . . .50(1)
R.S.L. Limited . . . . . 3.10(1)
Rugged Red Lake Mines Ltd. . . . . .01(3)
Russel Holdings Ltd. . . . . 1.08(1)
Russell Foods . . . . . (4)
Russel Ltd., Hugh (Cl. A.) . . . . . 9.00(1)
Russel Ltd., Hugh (6-1/2% Cv. A. 1st Pr.) . . . . . 20.13(2)
Ruttan Lake Explorations Ltd. . . . . .37(1)
Ryanor Mining Co. Ltd. . . . . .14(1)
Sabina Industries Ltd. . . . . 2.35(1)
Safari Explorations Limited . . . . . .23(2)
Saint Fabien Copper Mines Ltd. . . . . .07(2)
Saint Lawrence Cement Co. Ltd. (Cl. A.) . . . . . 36.50(1)
Saint Lawrence Columbium & Metals Corp. . . . . 1.00(1)
Saint Lawrence Corp. Ltd. . . . . 21.00(1)
Saint Lawrence Corp. Ltd (5% Cu. A. Pr.) . . . . . 63.00(2)
Saint Lawrence Diversified Co. . . . . .65(2)
La Compagnie Diversifiée St-Laurent . . . . . .65(2)
Saint Luci Exploration Co. Ltd. . . . . .16(2)
Saint Maurice Capital Corp. Ltd. . . . . .70(1)
Samson Mines Ltd. . . . . .02(2)
Sandwell & Company Limited . . . . . 5.75(1)
Sanelli Pools Limited (Units) . . . . . .45(3)
Sangamo Co. Ltd. . . . . 14.38(3)
San Jacinto Explorations Ltd. . . . . .09(1)
San Judas Molybdenum Corp. Ltd. . . . . .40(1)
Santack Mines Ltd. . . . . (4)
Santa Helena Mining Ltd. . . . . .20(1)
Santa Maria Mines Ltd. . . . . .31(1)
Santa's Village Ltd. . . . . 10.00(2)
Santiago Mining & Exploration Ltd. . . . . (4)
Sapawe Gold Mines Ltd. . . . . .03(2)
Saratoga Processing Co. Ltd. . . . . 4.40(2)
Sarimco Mines Ltd. . . . . .02(3)
Sarnoil Ltd. . . . . (4)
Saskatchewan Trust & Loan Co. . . . . (4)
Saskoba Mines Inc. . . . . .34(3)
Sastex Petro-Minerals Ltd. . . . . .07(2)
Satellite Metal Mines Ltd. . . . . .06(1)
Savanna Creek Gas & Oil Ltd. . . . . (4)
Sayvette Limited . . . . . 4.70(1)
Scandia Mining & Exploration Ltd. . . . . .11(2)
Schneider Limited, J. M. . . . . 11.00(2)
Schneider Limited, J. M. (B. Cu. Cv. Pr.) . . . . . 8.25(1)
Schneider Limited, J. M. (C. Cu. Cv. Pr.) . . . . . (4)
Schott Industries Inc. . . . . 5.50(2)
Scinimex Limited . . . . . .53(2)
Scintrex Limited . . . . . 2.90(1)
Scope Resources Ltd. . . . . .13(3)
Scott Chibougamau Mines Ltd. . . . . .01(3)
Scottish & York Holdings Ltd. . . . . 9.50(1)
Scott-LaSalle Limited . . . . . 9.13(2)
Scott Misener Steamships Ltd. . . . . 2.50(3)
Scott Misener Steamships Ltd. (5-1/2% Cu. Redeemable Pr.) . . . . . 7.50(2)
Scott Paper Limited . . . . . 18.50(2)
Scott's Restaurant Ltd. . . . . 15.13(1)
SCU Industries Ltd. . . . . 1.75(2)
Scurry-Rainbow Oil Limited . . . . . 16.25(1)
Scythes and Company Limited . . . . . 16.00(1)
Seaboard Life Insurance Co. . . . . 2.00(3)
Seaway Copper Mines Ltd. . . . . .83(1)
Seaway Multi-Corp. Ltd. . . . . 8.00(2)
Seaway Multi-Corp. Ltd. (Cu. Cv. A. Pr.) . . . . . 5.88(2)
Seaway Multi-Corp. Ltd. (Wt.) . . . . . .94(2)
Seco-Cemp (7-1/4%) . . . . . 10.31(1)
Secondo Mining Ltd. . . . . .10(3)
Security Capital Corp. Ltd. (Cl. B.) . . . . . 3.90(1)
Seemar Mines Ltd. . . . . .25(3)
Seldore Mining Company Limited . . . . . .40(3)
Select Properties Ltd. . . . . 2.45(2)
Selkirk Holdings Ltd. (Cl. A.) . . . . . 17.00(1)
Senior Gas & Oil Ltd. . . . . (4)
September Mt. Copper Mines Ltd. . . . . .10(2)
Seton Lake Mines Ltd. . . . . (4)
Share Mines & Oils Ltd. . . . . .12(1)

Shasta Mines & Oils Ltd. . . . . .50(2)
Shaw Limited, L.E. . . . . 5.88(2)
Shawmin Explorations Ltd. . . . . (4)
Shawnee Petroleums Ltd. . . . . .09(3)
Shawnex Mines Limited . . . . . .15(3)
Shaw Pipe Industries Ltd. . . . . 8.00(1)
Sheba Copper Mines Ltd. . . . . .22(1)
Sheba Mines Ltd. . . . . .04(2)
Sheldon-Larder Mines Ltd. . . . . .07(3)
Shell Canada Limited (Cl. A.) . . . . . 37.25(1)
Shell Investments Ltd.
(5-1/2% Cu. Cv. Pr.) . . . . . 37.25(1)
Shell Investments Ltd. (Wt.) . . . . . 17.00(1)
Shell Oil Company . . . . . (4)
Shelter Bay Mining Corp. . . . . .21(1)
Shepherd Casters Canada Ltd. . . . . 4.00(1)
Sheritt-Lee Mines Ltd. . . . . .28(1)
Sheritt Gordon Mines Ltd. . . . . 15.13(1)
Sherwin-Williams Co. of Canada Ltd. . . . . 13.50(2)
Sherwin-Williams Co. of Canada Ltd.
(7% Cu. Pr.) . . . . . 89.00(2)
Shewan Copper Mining Corp. Ltd. . . . . (4)
Shield Development Co. Ltd., The . . . . . .80(2)
Shore-to-Shore Corporation Limited . . . . . 3.50(2)
Shully's Industries Limited . . . . . 4.75(1)
Siebens Oil & Gas Ltd. . . . . 9.00(1)
Sierra Empire Mines Ltd. . . . . 1.50(2)
Sifton Properties Ltd. . . . . 3.60(2)
Sigma Mines (Quebec) Ltd. . . . . 3.75(2)
Silbak Premier Mines Ltd. . . . . .09(1)
Sileurian Chieftain Mining Co. Ltd. . . . . .09(1)
Silknit Limited . . . . . 22.00(2)
Silknit Limited (5% Pr.) . . . . . 37.00(2)
Silmonac Mines Ltd. . . . . .27(1)
Silver Butte Mines Ltd. . . . . .07(2)
Silver Chief Minerals Ltd. . . . . .27(1)
Silver Christal Natural Gas
& Minerals Ltd. . . . . .45(2)
Silver City Mines Ltd. . . . . .12(1)
Silver-Cup Mines Ltd. . . . . .20(2)
Silver Eureka Corp. . . . . .38(1)
Silver Key Mines Ltd. . . . . .05(3)
Silverknife Mines Ltd. . . . . .05(3)
Silver Lake Mines Ltd. . . . . (4)
Silvermaque Mining Ltd. . . . . .18(2)
Silver-Men Mines Ltd. . . . . .03(3)
Silver-Miller Mines Ltd. . . . . .05(1)
Silver Monarch Mines Ltd. . . . . (4)
Silver Pack Mines Ltd. . . . . (4)
Silverquick Development Co. (B.C.) Ltd. . . . . .12(1)
Silver Ridge Mining Co. Ltd. . . . . .05(2)
Silver Shield Mines Inc. . . . . 3.10(2)
Silver Shield Mines Inc. (A. Wt.) . . . . . 2.19(2)
Silver Shield Mines Inc. (B. Wt.) . . . . . 2.02(2)
Silversides Mines Ltd. . . . . .07(2)
Silver Spring Mines Ltd. . . . . .58(2)
Silverstack Mines Ltd. . . . . .26(1)
Mine Silverstack Ltée . . . . . .26(1)
Silver Standard Mines Ltd. . . . . 1.10(1)
Silver Star Mines Ltd. . . . . .10(2)
Silver Summit Mines Ltd. . . . . .02(2)
Silverwood Industries Ltd. (Cl. A.) . . . . . 15.63(1)
Silverwood Industries Ltd. (Cl. B.) . . . . . 14.75(2)
Simpsons Limited . . . . . 22.00(1)
Simpsons-Sears Limited . . . . . 28.63(1)
Sintra Limited . . . . . 5.50(2)
Sintra Ltée . . . . . 5.50(2)
Sirmac Mines Ltd. . . . . (4)
Skelly Oil Company . . . . . 45.25(3)
Sklar Manufacturing Ltd. . . . . 2.35(1)
Sklar Manufacturing Ltd. (Wt.) . . . . . .75(2)
Skyline Hotels Limited . . . . . 9.25(1)
Sladen (Quebec) Ltd. . . . . (4)
Slate Bay Gold Mines Ltd. . . . . .02(3)
Slater Steel Industries Limited . . . . . 10.00(1)
Slater Steel Industries Limited
(5-1/2% Cu. 1st Pr.) . . . . . 13.88(2)
Slater Steel Industries Limited
(5-1/2% 2nd Pr.) . . . . . 13.75(2)
Slater Steel Industries Limited
($1.20 Cu. Pr.) . . . . . 15.00(1)
Slater Walker of Canada Ltd. . . . . 13.25(2)
Slater Walker of Canada Ltd. (Rt.) . . . . . (4)
Slater Walker Securities Ltd. . . . . 8.00(1)
Slave Point Mines Ltd. . . . . .04(3)
S.L. Diversified Corp. Ltd. . . . . 9.38(1)
Slocan Ottawa Mines Ltd. . . . . .69(1)
S.M.A. Inc. . . . . .50(2)
S-M Industries Ltd. . . . . (4)
Snowdrift Base Metal Mines Ltd. . . . . .13(3)
Sobeys Stores Limited . . . . . 6.75(2)
Soca Ltée . . . . . .50(2)
Société Générale de Financement
du Québec . . . . . (4)
Sogena Inc. . . . . 14.50(1)
Sogepet Ltd. . . . . 1.22(1)
Solar Explorations Ltd. . . . . (4)
Solidarité Compagnie d'Assurance
sur la Vie . . . . . (4)
Solomon Development Ltd. . . . . .38(1)
Solomons Pillars Mines Ltd. . . . . (4)
Somerville Industries Ltd.
($2.80 Cu. Pr.) . . . . . 40.00(2)
Somex Ltée . . . . . .83(1)
Southam Press Limited . . . . . 73.13(1)
South Dufault Mines Ltd. . . . . .05(2)
Southern Pacific Petroleum Ltd. . . . . .08(1)
Southern Union Oils Ltd. . . . . (4)
South Pacific Mines Ltd. . . . . (4)
South Seas Mining Ltd. . . . . .22(1)
South Winnipeg Limited . . . . . (4)
Spacemaster Minerals Ltd. . . . . .03(2)
Spa Mines Ltd. . . . . .05(3)
Spanish River Mines Ltd. . . . . (4)
Spar Aerospace Products Ltd. . . . . 1.65(1)
Sparling Ltd., George . . . . . 2.40(2)
Spartan Air Services Ltd. . . . . .50(1)
Spartan Explorations Ltd. . . . . .13(1)
Spartex Oil & Gas Ltd. . . . . .08(3)
Spectroair Explorations Ltd. . . . . .13(2)
Speculators Fund Ltd. . . . . .42(2)
Spenho Mines Ltd. . . . . .06(2)
Spina Porcupine Mines Ltd. . . . . (4)
Spirit Lake Mines Ltd. . . . . (4)
Spooner Mines & Oils Limited . . . . . 1.10(1)
Stability Life Insurance Co. . . . . (4)
La Stabilité Compagnie d'Assurance-Vie . . . . . (4)
Stafford Foods Ltd. . . . . 2.60(2)
Stairs Exploration & Mining Co. Ltd. . . . . .02(2)
Stall Lake Mines Ltd. . . . . .89(1)
Stampede International Resources Ltd. . . . . .68(1)
Standard Broadcasting Corp. Ltd. . . . . 13.00(1)
Standard Fuel Co. Ltd. (4-1/2% Cu. Pr.) . . . . . (4)
Standard Gold Mines Ltd. . . . . .07(2)
Standard Nickel Mines Limited . . . . . .22(1)
Standard Paving & Materials Ltd. . . . . 11.50(1)
Stanfields Ltd. (Cl. A.) . . . . . (4)
Stanfields Ltd. (Cl. B.) . . . . . (4)
Stanford Mines Ltd. . . . . .60(1)
Stannex Minerals Ltd. . . . . .14(2)
Stanrock Uranium Mines Ltd. . . . . .60(1)
St. Anthony Mines Ltd. . . . . (4)
Star Lake Gold Mines Ltd. . . . . .05(2)
Steel Co. of Canada Ltd., The . . . . . 26.75(1)
Steeltree Group Inc. . . . . .95(3)
Steeltree Group Inc. (6% Cu. Pr.) . . . . . 3.55(3)
Steep Rock Iron Mines Ltd. . . . . 2.23(1)
Steetley Industries Ltd. . . . . 7.00(1)
Steinberg's Limited (Cl. A.) . . . . . 22.88(1)
Steinberg Limitée (Cat. A.) . . . . . 22.88(1)
Steinberg's Limited (5-1/4% Cu. A. Pr.) . . . . . 77.00(2)
Steinberg Limitée (5-1/4% Cum. A. Priv.) . . . . . 77.00(2)
Steintron International Electronics Ltd. . . . . 3.35(2)
Stellako Mining Company Ltd. . . . . .11(1)
Sterisystems Ltd. . . . . 15.25(2)
Sterisystems Ltd. (Cl. A.) . . . . . 15.50(2)
Sterling Trust Corporation . . . . . 8.25(1)
Stewart Lake Iron Mines of Ontario Ltd. . . . . .15(3)

St. James Resources Ltd. . . . . 1.70(2)
St. Mary's Explorations Ltd. . . . . .04(3)
Stormy Mines Ltd. . . . . .28(3)
Stuart House International Ltd. . . . . 3.55(1)
Stuart House International Ltd. (6% Cu. Cv. A. Pr.) . . . . . 6.75(2)
Stuart Oil Company Ltd., D.A. . . . . 7.75(2)
Studer Mines Limited . . . . . .10(2)
Stump Mines Ltd. . . . . .08(2)
Sturdy Mines Ltd. . . . . .14(2)
Sturgeon Petroleums Ltd. . . . . (4)
Sturgex Mines Ltd. . . . . .21(2)
Subeo Limited . . . . . .10(1)
Sudbury Contact Mines Ltd. . . . . .25(1)
Sullivan Mining Group Ltd. . . . . 2.70(1)
Groupe Minier Sullivan Ltée . . . . . 2.70(1)
Summit Explorations & Holdings Ltd. . . . . .73(1)
Sun Bear Mines Ltd. . . . . .01(3)
Sunburst Explorations Ltd. . . . . .11(1)
Sunburst Explorations Ltd. (Rt.) . . . . . .01(1)
Sunlite Oil Company Ltd. . . . . 5.00(2)
Sunningdale Oils Ltd. . . . . 2.65(1)
Sun Publishing Co. Limited (Cl. A.) . . . . . 34.75(2)
Sun Publishing Co. Limited (Cl. B.) . . . . . 33.00(2)
Sunrise Silver Mines Ltd. . . . . .10(1)
Sunset Yellowknife Mines Ltd. . . . . (4)
Superior Acid & Iron Ltd. . . . . .12(1)
Superior Electronics Industries Ltd. . . . . 2.05(1)
Supermarché à Domicile Ltée . . . . . .30(3)
Superpack Corporation Ltd. . . . . 4.00(2)
Supersol Ltd. . . . . (4)
Supertest Petroleum Corporation Limited . . . . . 16.25(1)
Supertest Petroleum Corporation Limited (Ordinary) . . . . . 68.00(1)
Surluga Gold Mines Ltd. . . . . .07(2)
Surpass Chemicals Limited . . . . . 1.60(1)
Swim Lake Mines Ltd. . . . . .15(2)
Swiss Oils of Canada (1959) Ltd. . . . . .18(3)
Systems Air Corp. Ltd. . . . . .15(3)
Systems Dimensions Ltd. . . . . 6.88(1)
Tache Lake Mines Ltd. . . . . .03(2)
Tagami Mines Limited . . . . . .12(2)
Takla Silver Mines Ltd. . . . . .09(3)
Talisman Mines Limited . . . . . .15(2)
Taman Uranium Mines Ltd. . . . . .07(3)
Tamblyn Limited, G. . . . . 18.50(2)
Tamblyn Limited, G. (4% Cu. Pr.) . . . . . 25.00(2)
Tancord Industries Limited (A. Pr.) . . . . . 2.50(1)
Taneloy Mines Ltd. . . . . .08(2)
Tanzilla Explorations Ltd. . . . . .11(1)
Tara Exploration & Development Company Limited . . . . . 12.75(1)
Target Mines Ltd. . . . . .08(3)
Tartan Explorations Ltd. . . . . .19(1)
Taseko Mines Ltd. . . . . .22(1)
Tashóta-Nipigon Mines Ltd. . . . . .22(3)
Tasmaque Gold Mines Ltd. . . . . (4)
Taylor Windfall Gold Mining Co. Ltd. . . . . .02(3)
Tay River Mines Ltd. . . . . .15(2)
Teck Corporation Ltd. (Cl. A.) . . . . . 4.75(1)
Teck Corporation Ltd. (Cl. B.) . . . . . 4.15(1)
Teckora Mines Limited . . . . . .51(2)
Teknol Mining Co. Ltd. . . . . .34(1)
Teledyne Canada Ltd. . . . . 4.65(2)
Tenneco Inc. . . . . (4)
Terra Developers Ltd. . . . . (4)
Terra Mining & Exploration Ltd. . . . . 2.40(1)
Terrasol . . . . . 2.88(1)
Terrex Mining Co. Ltd. . . . . .15(1)
Texacal Resources Ltd. . . . . .24(1)
Texaco Canada Limited . . . . . 34.50(1)
Texaco Canada Limited (4% Cu. Pr.) . . . . . 60.00(2)
Texal Development Ltd. . . . . .30(1)
Texas East Transmission . . . . . (4)
Texas Gulf Sulphur Co. Inc. . . . . 14.38(1)
Texmont Mines Ltd. . . . . .39(1)
Texore Mines Ltd. . . . . .10(2)
Tex-Sol Explorations Ltd. . . . . .57(1)
Thermatron Corporation Ltd. . . . . (4)
Thermatron Corporation Ltd. (Wt.) . . . . . (4)
Third Canadian General Investment Trust Ltd. . . . . 11.75(2)
Third Canadian General Investment Trust Ltd. (Pr.) . . . . . 32.00(2)
Thomas Nationwide Transport Limited . . . . . 1.95(1)
Thompson Lundmark Gold Mines Ltd. . . . . .20(2)
Thompson Paper Box Co. Limited . . . . . 4.75(2)
Thompson Paper Box Co. Limited (6% Cu. Pr.) . . . . . (4)
Thomson Drilling Company Ltd. . . . . 1.50(2)
Thomson Newspapers Limited . . . . . 29.13(1)
Thomson Newspapers Limited (6-3/4% Cu. Pr.) . . . . . 51.13(1)
Thor Explorations Ltd. . . . . .68(3)
Thorncrest Explorations Ltd. . . . . (4)
Timken Roller Bearing Co. . . . . 43.00(3)
Timrod Mining Co. Ltd. . . . . .21(2)
Tinex Development Exploration Ltd. . . . . (4)
Tobe Mines Ltd. . . . . .12(3)
Tokar Limited . . . . . 1.40(1)
Tombill Mines Ltd. . . . . .55(1)
Tomrose Mines Ltd. . . . . (4)
Tonecraft Limited . . . . . 12.50(1)
Tontine Mining Limited . . . . . .60(1)
Tooke Bros. Ltd. . . . . .75(3)
Tooke Bros. Ltd. (A. Pr.) . . . . . (4)
Topley Criss Mines Limited . . . . . .09(3)
Torcan Explorations Ltd. . . . . .12(2)
Tormex Mining Developers Ltd. . . . . 1.68(1)
Toromont Industrial Holdings Ltd. . . . . 1.30(1)
Toromont Industrial Holdings Ltd. (6-1/2% Cu. Cv. A. Pr.) . . . . . (4)
Toronado Mines Ltd. . . . . .17(2)
Toronto-Dominion Bank . . . . . 30.00(1)
Toronto & London Investment Co. Ltd. . . . . 3.90(2)
Toronto Iron Works Ltd., The . . . . . 8.75(2)
Toronto Star Limited (Cl. B.) . . . . . 38.00(1)
Toronto Star Limited (Cl. C.) . . . . . 38.50(2)
Torwest Resources (1962) Ltd. . . . . .23(2)
Total Petroleum (North America) Ltd. . . . . 6.20(1)
Total Petroleum (North America) Ltd. (3-1/2% Cv. A. Pr.) . . . . . 14.25(1)
Tower Resources Ltd. . . . . .24(2)
Towmart Holdings Limited . . . . . .45(2)
Traders Bldg. . . . . (4)
Traders Group Limited (Cl. A.) . . . . . 15.75(1)
Le Groupe Traders Limitée (Cat. A.) . . . . . 15.75(1)
Traders Group Limited (Cl. B.) . . . . . 15.00(2)
Le Groupe Traders Limitée (Cat.B.) . . . . . 15.00(2)
Traders Group Limited (5% Cu. Pr.) . . . . . 25.00(2)
Le Groupe Traders Limitée (5% Cum. Priv.) . . . . . 25.00(2)
Traders Group Limited (5% Cu. Cv. A. Pr.) . . . . . 20.50(2)
Le Groupe Traders Limitée (5% Cum. Conv. A. Priv.) . . . . . 20.50(2)
Traders Group Limited (4-1/2% Cu. Pr.) . . . . . 56.25(1)
Le Groupe Traders Limitée (4-1/2% Cum. Priv.) . . . . . 56.25(1)
Traders Group Limited ($2.16 Cu. Pr.) . . . . . 26.00(1)
Le Groupe Traders Limitée ($2.16 Cum. Priv.) . . . . . 26.00(1)
Traders Group Limited (1965 Wt.) . . . . . 2.05(1)
Le Groupe Traders Limitée (1965 Wt.) . . . . . 2.05(1)
Traders Group Limited (1966 Wt.) . . . . . 4.70(1)
Le Groupe Traders Limitée (1966 Wt.) . . . . . 4.70(1)
Traders Group Limited (1969 Wt.) . . . . . 5.00(1)
Le Groupe Traders Limitée (1969 Wt.) . . . . . 5.00(1)
Transair Limited . . . . . 3.15(1)
Transair Limited (Wt.) . . . . . .89(1)
Transair Limited (Rt.) . . . . . (4)
Transair Limited (Pr.) . . . . . (4)
Trans-American Mining Corp. Ltd. . . . . (4)
Trans Canada Glass Ltd. . . . . 5.13(1)
Trans-Canada Pipe Lines Limited . . . . . 36.25(1)
Trans-Canada Pipe Lines Limited ($2.75 Cu. Cv. Pr.) . . . . . 66.75(1)

Trans-Canada Pipe Lines Limited
($2.80 Cu. Pr.) . . . . . 42.25(1)
Trans-Canada Pipe Lines Limited (Wt.) . . . . . 10.75(1)
Trans-Canada Resources Ltd. . . . . .82(1)
Trans Columbia Exploration Ltd. . . . . .11(2)
Transcontinental Resources Ltd. . . . . .27(2)
Trans Eastern Oil & Gas Ltd. . . . . (4)
Trans Global Financial Services Ltd. . . . . 1.80(1)
Trans-Mountain Oil Pipeline Company . . . . . 20.38(1)
Transocean Oil Incorporated . . . . . (4)
Trans-Prairie Pipelines Ltd. . . . . 12.75(2)
Transterre Exploration Ltd. . . . . .20(1)
Trans Yukon Exploration Ltd. . . . . .06(1)
Tresdor Larder Mines Ltd. . . . . (4)
Tribag Mining Co. Ltd. . . . . .60(1)
Tri-Bridge Mines Limited . . . . . .35(1)
Trimac Ltd. . . . . 6.50(1)
Trinity Chibougamau Mines Ltd. . . . . .10(1)
Triphope Resources Ltd. . . . . (4)
Triton Explorations Limited . . . . . .70(1)
Trizec Corporation Limited . . . . . 17.00(1)
Trizec Corporation Limited (Wt.) . . . . . .50(1)
Troilus Mines Ltd. . . . . .15(2)
Trojan Consolidated Mines Ltd. . . . . .25(1)
Tromac Mines Ltd. . . . . .03(3)
Troy Silver Mines Ltd. . . . . .08(2)
Trust Général du Canada . . . . . 23.75(1)
Tru-Wall Concrete Forming Ltd. . . . . 2.90(1)
Tundra Gold Mines Ltd. . . . . .18(2)
Turbo Resources Limited . . . . . .93(2)
Turismo Industries Ltd. . . . . .37(1)
Turner Valley Oil Company Limited . . . . . .18(3)
Twentieth Century Explorations Limited . . . . . .75(2)
Twin Peak Mines Ltd. . . . . .28(3)
Twin Richfield Oils Ltd. . . . . .21(3)
Tyee Lake Resources Limited . . . . . .14(2)
U.A.P. Inc. (Cl. A.) . . . . . 16.25(2)
Ulster Petroleums Ltd. . . . . 1.46(1)
Ultramar Company Limited . . . . . 6.13(1)
Unas Investments Ltd. . . . . 16.63(2)
Ungava Copper Corp. Ltd. . . . . .04(2)
Unican Security Systems Ltd. . . . . 4.05(1)
Unigesco Inc. . . . . (4)
Unigesco Inc. (Cl. A.) . . . . . 2.85(1)
Unigesco Inc. (Cl. B.) . . . . . 2.72(1)
Union Acceptance Corporation Ltd.
(6% Cu. C. 1st Pr.) . . . . . 40.44(3)
Union d'Acceptance Limitée
(6% Cum. C. 1ère Priv.) . . . . . 40.44(3)
Union Acceptance Corporation Ltd.
(6-1/4% Cu. A. 1st Pr.) . . . . . 40.00(2)
Union d'Acceptance Limitée
(6-1/4% Cum. A. 1ère Priv.) . . . . . 40.00(2)
Union Acceptance Corporation Ltd.
(6-1/4% Cu. B. 1st Pr.) . . . . . 42.50(2)
Union d'Acceptance Limitée
(6-1/4% Cum. B. 1ière Priv.) . . . . . 42.50(2)
Union Carbide Canada Limited . . . . . 13.50(1)
Union Carbide du Canada Limitée . . . . . 13.50(1)
Union Gas Company of Canada Limited . . . . . 14.75(1)
Union Gas Company of Canada Limited
(5-1/2% Cu. A. Pr.) . . . . . 43.00(1)
Union Gas Company of Canada Limited
(6% Cu. B. Pr.) . . . . . 44.13(1)
Union Mining Corporation . . . . . .21(2)
Union Oil Company of Canada Ltd. . . . . 44.00(2)
United Asbestos Corp. Ltd. . . . . 4.05(1)
United Canadian Shares Ltd. . . . . (4)
United Canso Oil & Gas Ltd. . . . . 4.25(1)
United Canso Oil & Gas Ltd. (Wt.) . . . . . .64(1)
United Cobalt Mines Ltd. . . . . .02(3)
United Comstock Lode Mines Ltd. . . . . (4)
United Copper Corporation Ltd. . . . . .10(1)
United Corporations Ltd. (Cl. A.) . . . . . 19.50(2)
United Corporations Ltd. (Cl. B.) . . . . . 15.00(1)
United Corporations Ltd.
($1.50 Cu. A. Pr.) . . . . . 20.00(2)
United Corporations Ltd.
(5% Cu. 63 Pr.) . . . . . 19.00(2)
United Equities Limited . . . . . 2.00(1)
United Funds Management Ltd. . . . . 8.38(1)
United Grain Growers Limited (5% Pr.) . . . . . 14.00(2)
United Investment Life Assurance Co. . . . . 5.69(2)
La Compagnie d'Assurance-Vie United
Investment . . . . . 5.69(2)
United Keno Hill Mines Ltd. . . . . 3.85(1)
United MacFie Mines Ltd. . . . . .04(3)
United Mindamar Metals Ltd. . . . . .16(2)
United New Fortune Mines Ltd. . . . . (4)
United Provincial Investment Ltd. . . . . 1.30(2)
United Reef Petroleums Ltd. . . . . .18(2)
United Siscoe Mines Ltd. . . . . 2.10(1)
United Westburne Industries Ltd. . . . . 4.00(1)
United Westburne Industries Ltd.
(6-1/4% Cu. A. 1st Pr.) . . . . . 39.00(2)
United Westburne Industries Ltd. (Wt.) . . . . . 1.00(2)
Universal Factors Corp. . . . . (4)
Universal Gas Co. Ltd. . . . . (4)
Universal Minerals Corporation . . . . . .24(2)
Universal Patent & Development Ltd. . . . . .12(2)
Universal Sections Ltd. . . . . 6.50(1)
Univex Mining Corporation Ltd. . . . . .41(2)
Upper Canada Mines Ltd. . . . . 1.66(1)
Uranium Ridge Mines Ltd. . . . . .03(3)
Uranium Valley Mines Ltd. . . . . .20(3)
Urban Quebec Mines Ltd. . . . . .04(2)
US-CA-MEX Explorations Ltd. . . . . .20(1)
Utilities & Funding Corp. Ltd. . . . . 1.60(1)
Utilities & Funding Corp. Ltd. (Cl. A.) . . . . . 1.60(2)
Valdex Mines Inc. . . . . .13(2)
Valley Copper Mines Ltd. . . . . 7.70(1)
Val Mar Swimming Pools Ltd. (Cl. A.) . . . . . 1.60(1)
Piscines Val Mar Ltée (Cat. A.) . . . . . 1.60(1)
Val Nor Exploration Ltd. . . . . (4)
Vananda Exploration Ltd. . . . . .06(1)
Van der Holt Associates Limited . . . . . 7.25(1)
Vandoo Consolidated Explorations Ltd. . . . . .04(2)
Van Ness Industries Ltd. . . . . .83(2)
Vargas Mines Limited . . . . . .53(1)
Vastlode Mining Company Ltd. . . . . .05(1)
Velcro Industries Limited . . . . . 17.63(1)
Vencap Investments Ltd. . . . . 1.80(1)
Venpower Limited . . . . . 1.30(1)
Ventures Mining Limited . . . . . .07(2)
Vermont Mines Ltd. . . . . (4)
Versafood Services Ltd. . . . . 7.50(1)
Versatile Manufacturing Ltd. . . . . 3.50(1)
Versatile Manufacturing Ltd. (Cl. A.) . . . . . 2.75(1)
Vespar Mines Ltd. . . . . .14(1)
Vestor Explorations Ltd. . . . . .33(2)
Viau Limited . . . . . (4)
Viau Limitée . . . . . (4)
Victoria Algoma Mineral Co. Ltd. . . . . .11(1)
Victoria & Grey Trust Co. . . . . 35.50(1)
Victoria & Grey Trust Co.
(5.35% Cu. A. Pr.) . . . . . 40.63(1)
Victoria Wood Development Corp. Ltd. . . . . (4)
Victoria Wood Development Corp. Ltd.
(7-1/2% Cu. A. Pr.) . . . . . 8.13(3)
Victor Mining Corp. Ltd. . . . . .08(2)
Viking Mines Ltd. . . . . .08(3)
Villacentres Ltd. . . . . 9.88(1)
Vimy Explorations Ltd. . . . . .02(3)
Visa Bella Inc. . . . . (4)
Volcanic Mines Ltd. . . . . .10(3)
Voyager Explorations Ltd. . . . . (4)
Voyager Petroleums Ltd. . . . . 4.90(1)
Vulcan Industrial Packaging Limited . . . . . 9.00(1)
Wabasso Limited . . . . . 18.50(2)
Wabasso Limitée . . . . . 18.50(2)
Waco Petroleums Ltd. . . . . .02(3)
Wadge Mines Ltd. . . . . .01(3)
Waferboard Corp. Ltd. . . . . 1.50(1)
Wainoco Oil & Chemicals Ltd. . . . . 5.63(2)
Waite Dufault Mines Ltd. . . . . .09(2)
Wajax Limited . . . . . 13.63(1)
Wajax Limitée . . . . . 13.63(1)

Walker-Gooderham & Worts Limited, Hiram . . . 42.38(1)
Wall & Redekop Corporation Ltd. . . . 2.75(1)
Wardair Canada Ltd. . . . 1.45(1)
Warner Investments Ltd., E.C. (Cl. A.) . . . (4)
Warner Investments Ltd., E.C. (Cl. B.) . . . (4)
Warner West . . . .43(3)
Warnock Hersey International Limited . . . 3.65(2)
Warnock Hersey International Limited ($1.50 Cu. A. Pr.) . . . 10.00(2)
Warrington Products Ltd. (Pr.) . . . 3.50(3)
Watson Lake Mines Ltd. . . . .04(3)
Wavecom Development Ltd. . . . .75(1)
W.C.P. Explorations Ltd. . . . 10.13(1)
W.C.P. Explorations Ltd. (5% Cu. Cv. A. Pr.) . . . 30.00(1)
Webb & Knapp (Canada) Limited . . . .40(2)
Webb & Knapp (Canada) Limitée . . . .40(2)
Webbwood Exploration Co. Ltd. . . . 1.25(3)
Webbwood Mobile Home Estates Ltd. . . . 1.00(2)
Wee-Gee Uranium Mines Ltd. . . . (4)
Weldwood of Canada Limited . . . 13.50(1)
Weldwood of Canada Limited (Rt.) . . . (4)
Welland Consolidated Mining Ltd. . . . (4)
Wellington Bank (Cl. A.) . . . .38(3)
Wentworth Investment Corporation Ltd. . . . 10.00(2)
Werner Lake Nickel Mines Ltd. . . . .01(3)
Wescorp Industries Ltd. . . . 5.40(3)
Wesley Mines Ltd. . . . (4)
Westairs Mines Ltd. . . . (4)
Westates Petroleum Company . . . 5.05(3)
Westburne International Industries Ltd. . . . 10.75(1)
Westburne International Industries Ltd. (8% Cu. Cv. Pr.) . . . 36.00(1)
Westburne International Industries Ltd. (Wt.) . . . 6.70(2)
West Canadian Mineral Holdings Ltd. . . . 1.10(1)
Westcoast Petroleum Ltd. . . . 10.13(0)
Westcoast Petroleum Ltd. (6% Cu. Pr.) . . . 30.00(2)
West Coast Resources Ltd. . . . .06(1)
Westcoast Transmission Co. Ltd. . . . 25.88(1)
Westcoast Transmission Co. Ltd. (Wt.) . . . 6.69(1)
Westcoast Transmission Co. Ltd. (Rts.) . . . .16(1)
Westeel-Rosco Limited . . . 13.88(1)
Westeel-Rosco Limitée . . . 13.88(1)
Western Allenbee Oil & Gas Company Ltd. . . . .23(3)
Western & Texas Oil Co. Ltd. . . . (4)
Western Broadcasting Co. Ltd. . . . 12.13(1)
Western Broadcasting Co. Ltd. (5-3/4% Cu. Cv. Pr.) . . . 36.00(1)
Western-Buff Mines & Oils Ltd. . . . .07(1)
Western Canadian Seed Processors Ltd. . . . 4.50(1)
Western Decalta Petroleum Ltd. . . . 6.55(1)
Western Exploration Company Ltd. . . . .12(2)
Western Mines Ltd. . . . 2.55(1)
Western Quebec Mines Co. Ltd. . . . .10(1)
Western Realty Projects Limited . . . 7.13(1)
Western Standard Silver Mines Ltd. . . . .10(1)
Western Supplies Ltd. (Cl. A. Cu. Cv.) . . . 9.00(1)
Western Tin Mines Ltd. . . . .02(2)
Western Warner Oils Limited . . . .47(1)
Westfair Foods Ltd. (Cl. A.) . . . 26.50(2)
Westfair Foods Ltd. (7% Cu. Pr.) . . . 19.00(3)
Westfield Minerals Ltd. . . . .96(1)
Westfield Minerals Ltd. (Wt.) . . . .48(2)
West Hill Enterprises & Mining Ltd. . . . .10(2)
West Indies Plantation Ltd. . . . 1.75(2)
West Indies Plantation Ltd. (Cl. A.) . . . 3.25(2)
Westinghouse Canada Limited . . . 14.50(1)
Westinghouse Canada Limitée . . . 14.50(1)
Westland Mines Ltd. . . . .08(2)
Weston Limited, George . . . 18.00(1)
Weston Limited, George (4-1/2% Cu. Pr.) . . . 66.50(1)
Weston Limited, George (6% Cu. Pr.) . . . 82.00(1)
West Red Lake Gold Mines Ltd. . . . (4)
Westview Investment Corporation Ltd. . . . 2.08(3)
Westville Mines Ltd. . . . (4)
West Wasa Mines Ltd. . . . .08(3)
Whim Creek Consolidated (No Liability) . . . (4)
Whipsaw Mines Limited . . . .10(2)
Whistler Petroleums Ltd. . . . .32(1)
White Pass & Yukon Corp. Ltd. . . . 10.00(1)
White Pass & Yukon Corp. Ltd. (6-3/4% Cu. A. Pr.) . . . 22.00(2)
White Pass & Yukon Corp. Ltd. (Wt.) . . . .76(2)
White River Mines Ltd. . . . .28(1)
White Star Copper Mines Ltd. . . . .14(2)
Whitehorse Copper Mines Ltd. . . . 1.75(1)
Whiterock Estates Development Corporation Limited . . . 14.38(1)
Whitesail Mines Ltd. . . . (4)
Whitey Wilson Oil & Gas Ltd. . . . .31(3)
Whonnock Industries Limited (Cl. A.) . . . 13.50(1)
Whonnock Industries Limited (Cl. B.) . . . 14.00(1)
Wilco Mining Co. Ltd. . . . .15(1)
Wildor Mines . . . .01(3)
Wiley Oilfield Hauling Ltd. . . . 7.00(1)
Williams Creek Gold Quartz Mining Co. Ltd. . . . .46(1)
Willow Lake Mines Ltd. . . . (4)
Willroy Mines Ltd. . . . .70(1)
Wilshire Oil Company of Texas . . . (4)
Wilson Red Lake Gold Mines Ltd. . . . (4)
Winco Steak & Burger Restaurants Limited . . . 4.60(1)
Windermere Exploration Limited . . . .20(1)
Windfall Oils & Mines Ltd. . . . .09(2)
Win-Eldrich Mines Ltd. . . . .09(1)
Winnipeg Supply & Fuel Co. Ltd. . . . 8.50(3)
Win West Oil & Mining Ltd. . . . .25(2)
Wisconsin Mining Company Ltd. . . . .10(1)
Wolf Creek Mines Ltd. . . . (4)
Wood, Alexander Ltd. . . . 2.53(3)
Wood-Croesus Gold Mines Ltd. . . . .02(3)
Woodford Investment Ltd. (Cl. A.) . . . (4)
Woodford Investment Ltd. (Cl. B.) . . . 2.00(1)
Woodward Stores Limited . . . 25.00(1)
Worldwide Energy Company Ltd. . . . 2.16(2)
Wosk's Ltd. . . . 7.75(2)
Wrightbar Mines Limited . . . .30(2)
Wright-Hargreaves Mines Ltd. . . . 1.15(1)
Xoma Ltd. . . . 4.05(1)
Xoma Ltée . . . 4.05(1)
Y. & R. Properties Ltd. . . . 6.75(1)
Yankee Canuck Oil and Mining Corp. Ltd. . . . .04(3)
Yarandry Silver Mines Ltd. . . . 50.(3)
Yellorex Mines Ltd. . . . .13(3)
Yellowknife Base Metals Ltd. . . . (4)
Yellowknife Bear Mines Ltd. . . . 4.40(1)
Yorbeau Mines Inc. . . . .05(3)
York Lambton Corporation Limited (Cl. A.) . . . .80(2)
York Lambton Corporation Limited (Cl. B.) . . . (4)
Young-Davidson Mines Ltd. . . . .16(3)
Young Mines Ltd., H. G. . . . .06(2)
Young-Shannon Gold Mines Ltd. . . . .01(3)
Yreka Mines Ltd. . . . .17(2)
Yukon Consolidated Gold Corp. Ltd. . . . 1.10(2)
Yukon Properties Limited . . . (4)
Yukon Revenue Mines Limited . . . .12(2)
Zahamy Mines Ltd. . . . 2.38(2)
Zeller's Ltd. . . . 17.00(1)
Zeller's Ltd. (4-1/2% Cu. Pr.) . . . 34.00(1)
Zenith Electric Supply Ltd. . . . 2.35(1)
Zenith Mining Corporation Ltd. . . . .27(1)
Zenmac Metal Mines Limited . . . .06(2)
Zinat Mines Limited . . . .15(2)
Zodiac Ltd. (Cl. A.) . . . 1.90(1)
Zodiac Ltée (Cat. A.) . . . 1.90(1)
Zodiac Mines Ltd. . . . (4)
Zulapa Mining Corporation Ltd. . . . .12(1)

PROCLAMATION FIXING VALUATION DAYS

Know You that We, by and with the advice of Our Privy Council for Canada, do by this Our Proclamation

(a) fix December 22, 1971 as the day in relation to any property referred to in paragraph 24(a) of the *Income Tax Application Rules* for the purposes of subdivision c of Division B of Part I of the *Income Tax Act*; and

(b) fix December 31, 1971 as the day in relation to any property referred to in paragraph 24(b) of those Rules for the purposes of that subdivision.

History: Proclamation amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

This proclamation was first issued in the *Canada Gazette*, Part I, April 29, 1972, and on consolidation was included as chapter 946 of the Consolidated Regulations of Canada, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

SCHEDULE VIII — UNIVERSITIES OUTSIDE CANADA

History: Schedule I was consolidated and retitled Schedule VIII, by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

Interpretation Bulletins: IT-516R2: Tuition tax credit.

1. The universities situated in the United States of America that are prescribed by section 3503 are the following:

Abilene Christian University, Abilene, Texas
Academy of the New Church, The, Bryn Athyn, Pennsylvania
Adams State College, Alamosa, Colorado
Alfred University, Alfred, New York
American Film Institute Center for Advanced Film and Television Studies, Los Angeles, California
American Graduate School of International Management, Glendale, Arizona
American International College, Springfield, Massachusetts
American University, The, Washington, District of Columbia
American University in Cairo, The, New York, New York
Amherst College, Amherst, Massachusetts
Anderson College, Anderson, South Carolina
Andover Newton Theological School, Newton Centre, Massachusetts
Andrews University, Berrien Springs, Michigan
Antioch College, Yellow Springs, Ohio
Arizona State University, Tempe, Arizona
Asbury Theological Seminary, Wilmore, Kentucky
Associated Mennonite Biblical Seminary, Elkhart, Indiana
Atlantic Union College, South Lancaster, Massachusetts
Augsburg College, Minneapolis, Minnesota
Aurora University, Aurora, Illinois
Azusa Pacific College, Azusa, California
Babson College, Babson Park, Massachusetts
Bard College, Annandale-on-Hudson, New York
Barnard College, New York, New York
Bates College, Lewiston, Maine
Bastyr University, Seattle, Washington
Baylor College of Medicine, Houston, Texas
Baylor University, Waco, Texas
Beloit College, Beloit, Wisconsin
Bennington College, Bennington, Vermont
Bentley College, Waltham, Massachusetts
Beth Medrash, Govoha, Lakewood, New Jersey
Bethel College, Mishawaka, Indiana
Bethel College and Seminary, St. Paul, Minnesota
Bethel College, North Newton, Kansas
Biola University, LaMirada, California
Bob Jones University, Greenville, South Carolina
Boston College, Chestnut Hill, Massachusetts
Boston University, Boston, Massachusetts
Bowdoin College, Brunswick, Maine
Bowling Green State University, Bowling Green, Ohio
Brandeis University, Waltham, Massachusetts
Brigham Young University — Hawaii Campus, Laie, Hawaii
Brigham Young University, Provo, Utah
Brown University, Providence, Rhode Island
Bryn Mawr College, Bryn Mawr, Pennsylvania
Bucknell University, Lewisburg, Pennsylvania
California Institute of Technology, Pasadena, California
California Lutheran University, Thousand Oaks, California
Calvin College, Grand Rapids, Michigan
Calvin Theological Seminary, Grand Rapids, Michigan
Canisius College, Buffalo, New York
Carleton College, Northfield, Minnesota
Carnegie-Mellon University, Pittsburgh, Pennsylvania
Carroll College, Helena, Montana
Case Western Reserve University, Cleveland, Ohio
Catholic University of America, The, Washington, District of Columbia
Cedarville College, Cedarville, Ohio
Central Michigan University, Mount Pleasant, Michigan
Central Yeshiva Tomchei Tmimim-Lubavitch, Brooklyn, New York
City University, Bellevue, Washington
Claremont McKenna College, Claremont, California
Clark University, Worcester, Massachusetts
Clarkson University, Potsdam, New York
Colby College, Waterville, Maine
Colby-Sawyer College, New London, New Hampshire
Colgate University, Hamilton, New York
Colgate-Rochester Divinity School, The, Rochester, New York
College of William and Mary, Williamsburg, Virginia
Colorado College, The, Colorado Springs, Colorado
Colorado School of Mines, Golden, Colorado
Colorado State University, Fort Collins, Colorado
Columbia International University, Columbia, South Carolina
Columbia Union College, Takoma Park, Maryland
Columbia University in the City of New York, New York, New York
Concordia College, Moorhead, Minnesota
Connecticut College, New London, Connecticut
Conway School of Landscape Design, Conway, Massachusetts
Cornell University, Ithaca, New York
Cornerstone College and Grand Rapids Baptist Seminary, Grand Rapids, Michigan
Covenant College, Lookout Mountain, Tennessee
Creighton University, Omaha, Nebraska
Curtis Institute of Music, The, Philadelphia, Pennsylvania

Dallas Theological Seminary, Dallas, Texas
Dartmouth College, Hanover, New Hampshire
Denison University, Granville, Ohio
De Paul University, Chicago, Illinois
Dordt College, Sioux Center, Iowa
Drake University, Des Moines, Iowa
Drew University, Madison, New Jersey
Drury College, Springfield, Missouri
Duke University, Durham, North Carolina
Duquesne University, Pittsburgh, Pennsylvania
Eastern College, St. Davids, Pennsylvania
Eastern Mennonite University, Harrisonburg, Virginia
Eastern Washington University, Cheney, Washington
Eckerd College, St. Petersburg, Florida
Ecumenical Theological Center, Detroit, Michigan
Elmira College, Elmira, New York
Emerson College, Boston, Massachusetts
Emmanuel School of Religion, Johnson City, Tennessee
Emmaus Bible College, Dubuque, Iowa
Emory University, Atlanta, Georgia
Emporia State University, Emporia, Kansas
Ferris State University, Big Rapids, Michigan
Florida Atlantic University, Boca Raton, Florida
Florida Gulf Coast University, Fort Myers, Florida
Florida State University, Tallahassee, Florida
Fordham University, New York, New York
Franciscan University of Steubenville, Steubenville, Ohio
Fresno Pacific College, Fresno, California
Fuller Theological Seminary, Pasadena, California
Gallaudet College, Washington, District of Columbia
Geneva College, Beaver Falls, Pennsylvania
George Washington University, The, Washington, District of Columbia
Georgia Institute of Technology, Atlanta, Georgia
Goddard College, Plainfield, Vermont
God's Bible School and College, Cincinnati, Ohio
Gonzaga University, Spokane, Washington
Gordon College, Wenham, Massachusetts
Gordon-Conwell Theological Seminary, South Hamilton, Massachusetts
Goshen College, Goshen, Indiana
Grace University, Omaha, Nebraska
Graceland College, Lamoni, Iowa
Greenville College, Greenville, Illinois
Grinnell College, Grinnell, Iowa
Hamilton College, Clinton, New York
Hampshire College, Amherst, Massachusetts
Harvard University, Cambridge, Massachusetts
Hebrew Union College — Jewish Institute of Religion, Cincinnati, Ohio
Herman M. Finch University of Health Sciences, The/The Chicago Medical School, North Chicago, Illinois
Hillsdale College, Hillsdale, Michigan
Holy Trinity Orthodox Seminary, The, Jordanville, New York
Hope College, Holland, Michigan
Houghton College, Houghton, New York
Huntington College, Huntington, Indiana
Illinois Institute of Technology, Chicago, Illinois
Indiana University, Bloomington, Indiana
Iowa State University of Science and Technology, Ames, Iowa
Ithaca College, Ithaca, New York
Jamestown College, Jamestown, North Dakota
Jewish Theological Seminary of America, The, New York, New York
Johns Hopkins University, The, Baltimore, Maryland
Juilliard School, The, New York, New York
Kansas State University, Manhattan, Kansas
Kenyon College, Gambier, Ohio
Kettering University, Flint, Michigan
Lafayette College, Easton, Pennsylvania
Lake Superior State University, Sault Ste. Marie, Michigan
Lawrence Technological University, Southfield, Michigan
Lehigh University, Bethlehem, Pennsylvania
Leland Stanford Junior University (Stanford University), Stanford, California
Le Moyne College, Syracuse, New York
Le Tourneau College, Longview, Texas
Liberty University, Lynchburg, Virginia
Life University, Marietta, Georgia
Logan College of Chiropractic, St. Louis, Missouri
Loma Linda University, Loma Linda, California
Louisiana State University and Agricultural and Mechanical College, Baton Rouge, Louisana
Loyola University, Chicago, Illinois
Macalester College, St. Paul, Minnesota
Magdalen College, Warner, New Hampshire
Maharishi University of Management, Fairfield, Iowa
Manhattanville College, Purchase, New York
Mankato State University, Mankato, Minnesota
Marantha Baptist Bible College, Watertown, Wisconsin
Marquette University, Milwaukee, Wisconsin
Massachusetts Institute of Technology, Cambridge, Massachusetts
Mayo Foundation, Rochester, Minnesota
Mayo Graduate School of Medicine, Rochester, Minnesota
Meadville-Lombard Theological School, Chicago, Illinois
Medaille College, Buffalo, New York
Medical College of Ohio, Toledo, Ohio
Medical University of South Carolina, Charleston, South Carolina
Mercyhurst College, Erie, Pennsylvania
Mesivta Yeshiva Rabbi Chaim Berlin, Brooklyn, New York
Messiah College, Grantham, Pennsylvania
Miami University, Oxford, Ohio
Michigan State University, Detroit College of Law, East Lansing, Michigan
Michigan State University, East Lansing, Michigan
Michigan Technological University, Houghton, Michigan
Middlebury College, Middlebury, Vermont
Minot State University, Minot, North Dakota
Mirrer Yeshiva Central Institute, Brooklyn, New York
Montana State University, Bozeman, Montana
Montana Tech of the University of Montana, Butte, Montana
Moody Bible Institute, Chicago, Illinois
Moravian College, Bethlehem, Pennsylvania
Mount Holyoke College, South Hadley, Massachusetts
Mount Ida College, Newton Centre, Massachusetts
Multnomah Bible College, Portland, Oregon
Naropa Institute, The, Boulder, Colorado
National College of Chiropractic, The, Lombard, Illinois

Nazarene Theological Seminary, Kansas City, Missouri
Ner Israel Rabbinical College, Baltimore, Maryland
New England College, Henniker, New Hampshire
New School University, New York, New York
New York University, New York, New York
Niagara University, Niagara, New York
North American Baptist Seminary, Sioux Falls, South Dakota
North Carolina State University at Raleigh, Raleigh, North Carolina
North Central College, Naperville, Illinois
North Dakota State University of Agriculture and Applied Science, Fargo, North Dakota
Northeastern University, Boston, Massachusetts
Northern Michigan University, Marquette, Michigan
Northwest College of the Assemblies of God, Kirkland, Washington
Northwestern College, Orange City, Iowa
Northwestern College, St. Paul, Minnesota
Northwestern University, Evanston, Illinois
Northwood University, Midland, Michigan
Nova Southeastern University, Fort Lauderdale, Florida
Nyack Missionary College, Nyack, New York
Oakland University, Rochester, Michigan
Oakwood College, Huntsville, Alabama
Oberlin College, Oberlin, Ohio
Ohio College of Podiatric Medicine, Cleveland, Ohio
Ohio State University, The, Columbus, Ohio
Ohio University, Athens, Ohio
Old Dominion University, Norfolk, Virginia
Oral Roberts University, Tulsa, Oklahoma
Oregon State University, Corvallis, Oregon
Pace University, New York, New York
Pacific Graduate School of Psychology, Menlo Park, California
Pacific Lutheran University, Tacoma, Washington
Pacific Union College, Angwin, California
Pacific University, Forest Grove, Oregon
Palm Beach Atlantic College, West Palm Beach, Florida
Palmer College of Chiropractic, Davenport, Iowa
Palmer College of Chiropractic-West, Sunnyvale, California
Park College, Kansas City, Missouri
Pennsylvania College of Podiatric Medicine, Philadelphia, Pennsylvania
Pennsylvania State University, The, University Park, Pennsylvania
Philadelphia College of Bible, Langhorne, Pennsylvania
Philadelphia University, Philadelphia, Pennsylvania
Pine Manor College, Chestnut Hill, Massachusetts
Pomona College, Claremont, California
Princeton Theological Seminary, Princeton, New Jersey
Princeton University, Princeton, New Jersey
Principia College, The, Elsah, Illinois
Providence College, Providence, Rhode Island
Purdue University, Lafayette, Indiana
Rabbinical College of America, Morristown, New Jersey
Rabbinical College of Long Island, Long Beach, New York
Rabbinical Seminary of America, Forest Hills, New York
Reed College, Portland, Oregon
Reconstructionist Rabbinical College, Wyncote, Pennsylvania
Reformed Bible College, Grand Rapids, Michigan
Reformed Theological Seminary, Jackson, Mississippi
Rensselaer Polytechnic Institute, Troy, New York
Rice University, Houston, Texas
Roberts Wesleyan College, North Chili, New York
Rochester Institute of Technology, Rochester, New York
Rockefeller University, New York, New York
Rush University, Chicago, Illinois
Rutgers — The State University, New Brunswick, New Jersey
St. Bonaventure University, St. Bonaventure, New York
St. John's College, Annapolis, Maryland
St. John's College, Santa Fe, New Mexico
Saint John's University, Collegeville, Minnesota
St. John's University, Jamaica, New York
St. Lawrence University, Canton, New York
Saint Louis University, St. Louis, Missouri
St. Mary's University of San Antonio, San Antonio, Texas
Saint Olaf College, Northfield, Minnesota
St. Vladimir's Orthodox Theological Seminary, Crestwood, New York
San Francisco State College, San Francisco, California
San José State University, San José, California
Santa Clara University, Santa Clara, California
Sarah Lawrence College, Bronxville, New York
Scripps College, Claremont, California
Scripps Research Institute, The, La Jolla, California
Seattle Pacific University, Seattle, Washington
Seattle University, Seattle, Washington
Sherman College of Straight Chiropractic, Spartanburg, South Carolina
Simmons College, Boston, Massachusetts
Simpson College, Indianola, Iowa
Simpson College, Redding, California
Skidmore College, Saratoga Springs, New York
Smith College, The, Northampton, Massachusetts
South Dakota School of Mines and Technology, Rapid City, South Dakota
Southern Adventist University, Collegedale, Tennessee
Southern Illinois University of Carbondale, Carbondale, Illinois
Southern Methodist University, Dallas, Texas
Southwestern Adventist College, Keene, Texas
Spring Arbor College, Spring Arbor, Michigan
Springfield College, Springfield, Massachusetts
State University College at Oswego, Oswego, New York
State University College at Potsdam, Potsdam, New York
State University of New York at Binghamton, Binghamton, New York
State University of New York at Buffalo, Buffalo, New York
State University of New York at Stony Brook, Stony Brook, New York
State University of New York College of Arts and Science at Plattsburgh, Plattsburgh, New York
Stephens College, Columbia, Missouri
Stevens Institute of Technology, Hoboken, New Jersey
Sunbridge College, Chestnut Ridge, New York
Swarthmore College, Swarthmore, Pennsylvania

Syracuse University, Syracuse, New York
Tabor College, Hillsboro, Kansas
Talmudic College of Florida, Miami Beach, Florida
Talmudical Yeshiva of Philadelphia, Philadelphia, Pennsylvania
Taylor University, Upland, Indiana
Teachers College, Columbia University, New York, New York
Telshe Yeshiva Rabbinical College of Telshe, Inc., Wickliffe, Ohio
Telshe Yeshiva-Chicago, Rabbinical College of Telshe-Chicago, Inc., Chicago, Illinois
Temple University, Philadelphia, Pennsylvania
Texas A&M University, College Station, Texas
Texas Chiropractic College, Pasadena, Texas
Texas Woman's University, Denton, Texas
Thomas Aquinas College, Santa Paula, California
Touro College, New York, New York
Trinity Bible College, Ellendale, North Dakota
Trinity Christian College, Palos Heights, Illinois
Trinity College, Hartford, Connecticut
Trinity Episcopal School for Ministry, Ambridge, Pennsylvania
Trinity Evangelical Divinity School, Deerfield, Illinois
Trinity Lutheran College, Issaquah, Washington
Trinity University, San Antonio, Texas
Tufts University, Medford, Massachusetts
Tulane University, New Orleans, Louisiana
Union College, Lincoln, Nebraska
Union College, Schenectady, New York
Union Institute, The, Cincinnati, Ohio
Union Theological Seminary, New York, New York
University of Akron, The, Akron, Ohio
University of Alabama at Birmingham, The, Birmingham, Alabama
University of Arizona, The, Tucson, Arizona
University of Arkansas at Little Rock, Little Rock, Arkansas
University of California, Berkeley, California
University of California, Davis, California
University of California, Irvine, California
University of California, Los Angeles, California
University of California, Riverside, California
University of California, San Diego, California
University of California, San Francisco, California
University of California, Santa Barbara, California
University of California, Santa Cruz, California
University of Central Florida, Orlando, Florida
University of Chicago The, Chicago, Illinois
University of Cincinnati, Cincinnati, Ohio
University of Colorado, Boulder, Colorado
University of Delaware, Newark, Delaware
University of Denver, Denver, Colorado
University of Detroit Mercy, Detroit, Michigan
University of Florida, Gainesville, Florida
University of Georgia, The, Athens, Georgia
University of Hawaii, Honolulu, Hawaii
University of Houston, Houston, Texas
University of Idaho, Moscow, Idaho
University of Illinois, Urbana, Illinois
University of Iowa, Iowa City, Iowa
University of Judaism, Los Angeles, California
University of Kansas, Lawrence, Kansas
University of Kentucky, Lexington, Kentucky
University of Maine, Orono, Maine
University of Maryland, College Park, Maryland
University of Massachusetts at Amherst, Amherst, Massachusetts
University of Miami, Coral Gables, Florida
University of Michigan, The, Ann Arbor, Michigan
University of Minnesota, Minneapolis, Minnesota
University of Missouri, Columbia, Missouri
University of Missouri, St. Louis, Missouri
University of Montana-Missoula, The, Missoula, Montana
University of Nebraska, The, Lincoln, Nebraska
University of Nevada-Reno, Reno, Nevada
University of North Carolina at Chapel Hill, Chapel Hill, North Carolina
University of North Dakota, Grand Forks, North Dakota
University of North Texas, Denton, Texas
University of Notre Dame du Lac, Notre Dame, Indiana
University of Oklahoma, Norman, Oklahoma
University of Oregon, Eugene, Oregon
University of Pennsylvania, Philadelphia, Pennsylvania
University of Pittsburgh, Pittsburgh, Pennsylvania
University of Portland, Portland, Oregon
University of Rhode Island, Kingston, Rhode Island
University of Rochester, Rochester, New York
University of San Diego, San Diego, California
University of Southern California, Los Angeles, California
University of Southern Mississippi, The, Hattiesburg, Mississippi
University of Texas, Austin, Texas
University of Texas Southwestern Medical Center at Dallas, The, Dallas, Texas
University of the Pacific, Stockton, California
University of Tulsa, Tulsa, Oklahoma
University of Utah, Salt Lake City, Utah
University of Vermont, Burlington, Vermont
University of Virginia, Charlottesville, Virginia
University of Washington, Seattle, Washington
University of Wisconsin, Madison, Wisconsin
University of Wyoming, The, Laramie, Wyoming
Utah State University of Agriculture and Applied Science, Logan, Utah
Valparaiso University, Valparaiso, Indiana
Vanderbilt University, Nashville, Tennessee
Vassar College, Poughkeepsie, New York
Villanova University, Villanova, Pennsylvania
Wake Forest University, Winston-Salem, North Carolina
Walla Walla College, College Place, Washington
Washington and Lee University, Lexington, Virginia
Washington Bible College, Lanham, Maryland
Washington State University, Pullman, Washington
Washington University, St. Louis, Missouri
Wayne State University, Detroit, Michigan
Wellesley College, Wellesley, Massachusetts
Wesleyan University, Middleton, Connecticut
West Virginia University, Morgantown, West Virginia
Western Baptist College, Salem, Oregon
Western Conservative Baptist Seminary, Portland, Oregon
Western Michigan University, Kalamazoo, Michigan
Western States Chiropractic College, Portland, Oregon
Western University of Health Sciences, Pomona, California
Western Washington University, Bellingham, Washington
Westfield State College, Westfield, Massachusetts

Westminster Theological Seminary, Philadelphia, Pennsylvania
Westminster Theological Seminary in California, Escondido, California
Wheaton College, Norton, Massachusetts
Wheaton College, Wheaton, Illinois
Wheelock College, Boston, Massachusetts
Whitman College, Walla Walla, Washington
Whittier College, Whittier, California
Whitworth College, Spokane, Washington
William Tyndale College, Farmington Hills, Michigan
Williams College, Williamstown, Massachusetts
Wittenberg University, Springfield, Ohio
Wright State University, Dayton, Ohio
Yale University, New Haven, Connecticut
Yeshiva Ohr Elchonon Chabad/West Coast Talmudic Seminary, Los Angeles, California
Yeshiva University, New York, New York

History: S. 1 of Sch. VIII amended by P.C. 2005-1133, s. 5, June 7, 2005, *Canada Gazette*, Part II, June 29, 2005, to substitute "Philadelphia University, Philadelphia, Pennsylvania" and "San José State University, San José, California" for "Philadelphia College of Textiles and Science, Philadelphia, Pennsylvania" and "San Jose State College, San Jose, California", deemed to have had effect as of January 1, 1999.

S. 1 of Sch. VIII amended by P.C. 2005-694, s. 7, May 3, 2005, *Canada Gazette*, Part II, May 18, 2005, to add, in alphabetical order, "Reformed Theological Seminary, Jackson, Mississippi", deemed to have taken effect on January 1, 2000; "Baylor University, Waco, Texas", "University of Akron, The, Akron, Ohio", "University of Southern Mississippi, The, Hattiesburg, Mississippi", deemed to have taken effect on January 1, 2002; and "Conway School of Landscape Design, Conway, Massachusetts", deemed to have taken effect on January 1, 2003.

S. 1 amended by P.C. 2002-2169, s. 15, December 12, 2002, *Canada Gazette*, Part II, January 1, 2003 to delete Lutheran Bible Institute of Seattle and University of Detroit, applicable as of January 1, 2003; to add Kenyon College, Medical University of South Carolina, Nova Southeastern University, Talmudic College of Florida, Trinity Lutheran College and University of Detroit Mercy, applicable as of January 1, 2001; and to add Saint John's University, applicable as of January 1, 2002.

S. 1 amended by P.C. 2001-829, s. 1, May 10, 2001, *Canada Gazette*, Part II, May 23, 2001 to delete Columbia Pacific University, Medical College of Pennsylvania and Hahnemann University, The, Ottawa University, Parsons School of Design and Radcliffe College, applicable as of May 23, 2001; to add Academy of the New Church, The, Aurora University, Baylor College of Medicine, Florida Gulf Coast University, New School University, Texas A&M University, Western University of Health Sciences and Westfield State College, applicable as of January 1, 1999; and to add Magdalen College, Medaille College, Medical College of Ohio, Northern Michigan University and St. Bonaventure University, applicable as of January 1, 2000.

Carroll College, Duquesne University, University of Texas Southwestern Medical Center at Dallas, The, University of Wyoming, The and Wright State University added by P.C. 2000-726, subsec. 1(2), May 18, 2000, *Canada Gazette*, Part II, June 7, 2000, applicable as of January 1, 1997.

Antioch College, California Lutheran University, Cornerstone College and Grand Rapids Baptist Seminary, Eastern College, Emporia State University, Juilliard School, The, Marantha Baptist Bible College, Naropa Institute, State University of New York at Stony Brook and West Virginia University added by the said P.C. 2000-726, subsec. 1(3), applicable as of January 1, 1998.

Texas Woman's University, University of Missouri and Wheelock College added by the said P.C. 2000-726, subsec. 1(4), applicable as of January 1, 1999.

Colgate-Rochester Divinity School, The, Eastern Mennonite University, Kettering University, Liberty University, Life University, Louisiana State University and Agricultural and Mechanical College, Michigan State University, Northwest College of the Assemblies of God, Northwood University, Santa Clara University, Southern Adventist University and University of Vermont added by the said P.C. 2000-726, subsec. 1(5), effective June 7, 2000.

Ambassador University (Big Sandy TX), American College, The (Bryn Mawr PA), Anna Maria College (formerly Anna Maria College for Women) (Paxton MA), Baldwin-Wallace College (Berea OH), Bluffton College (Bluffton OH), Carroll College (Waukesha WI), College of New Rochelle (NY), College of Wooster, The (OH), Dana College (Blair NB), De Pauw University (Greencastle IN), Detroit College of Law (MI), Divinity School, The (Rochester NY), Earlham College (Richmond IN), Eastern-Baptist Theological Seminary, The (Philadelphia), Eastern Mennonite College (Harrisonburg VA), Georgetown University (Washington DC), GMI Engineering & Management Institute (Flint MI), Gustavus Adolphus College (St. Peter MN), Hebrew Union College — Jewish Institute of Religion (Los Angeles), Hebrew Union College — Jewish Institute of Religion (New York), Hobe Sound Bible College (Hobe Sound FL), Hollins College (VA), Hood College (Frederick MD), Liberty Baptist College (Lynchburg VA), Life Chiropractic College (Marietta GA), Louisiana State University (Baton Rouge), Marymont College (Tarrytown NY), Mills College (Oakland CA), Mount Vernon College (Washington DC), Nasson College (Springvale ME), Nazarene Bible College (Colorado Springs), Nebraska Wesleyan University (Lincoln), Northrop Institute of Technology (Inglewood CA), Northwest College (Kirkland WA), Northwood Institute (Midland MI), Puget Sound Christian College ... A college of the Bible (Edmonds WA), Reformed Theological Seminary (Jackson MS), Ripon College (Ripon WI), Saint Mary-of-the-Woods College (IN), Saint Mary's College (Notre Dame IN), Southern College of Seventh-Day Adventists (Collegedale TN), Temple Buell College (Denver), Trinity College (Dunedin FL), University of Dubuque (IA), University of Santa Clara (CA), University of the Ozarks (Clarksville, AK), University of the South, The (Sewanee TN), University of Vermont and State Agricultural College (Burlington), Wagner College (Staten Island NY) and Yeshiva University of Los Angeles deleted by the said P.C. 2000-726, subsec. 1(1), effective June 7, 2000.

S. 1 amended by P.C. 1997-1041, subsecs. 1(1), (2), July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, to add the following (applicable to 1996 *et seq.*):

Bastyr University, Seattle, Washington
City University, Bellevue, Washington
Columbia International University, Columbia, South Carolina
Eckerd College, St. Petersburg, Florida
Grace University, Omaha, Nebraska
Herman M. Finch University of Health Sciences, The/The Chicago Medical School, North Chicago, Illinois
Montana Tech of the University of Montana, Butte, Montana
Multnomah Bible College, Portland, Oregon
Parsons School of Design, New York, New York
Union College, Lincoln, Nebraska
University of California, Davis, California
University of California, Irvine, California
University of California, Los Angeles, California
University of California, Riverside, California
University of California, San Diego, California
University of California, Santa Barbara, California
University of California, Santa Cruz, California
University of Montana-Missoula, The, Missoula, Montana
University of North Texas, Denton, Texas

and delete the following (applicable to 1996 *et seq.*):

Antioch University, New York, New York
Bastyr College, Seattle, Washington
Briarcliff College, Briarcliffe Manor, New York
Columbia Bible College & Seminary, Columbia, South Carolina
Dropsie University, The, Philadelphia, Pennsylvania
George Williams College, Downers Grove, Illinois
Grace College of the Bible, Omaha, Nebraska
Montana College of Mineral Science and Technology, Butte, Montana
Multnomah School of the Bible, Portland, Oregon
Ricker College, Houlton, Maine
Rosemead Graduate School of Psychology, Rosemead, California
University of Health Sciences/The Chicago Medical School, Chicago, Illinois
University of Montana, Missoula, Montana
Western Evangelical Seminary, Portland, Oregon
Westminster Choir College, Princeton, New Jersey.

S. 1 amended by P.C. 1996-632, subsecs. 1(1), (2), April 30, 1996, *Canada Gazette*, Part II, May 15, 1996, to add the following (applicable after 1994):

Alfred University, Alfred, New York
Colby-Sawyer College, New London, New Hampshire
College of New Rochelle, New Rochelle, New York
Florida State University, Tallahassee, Florida
Holy Trinity Orthodox Seminary, The, Jordanville, New York
Lawrence Technological University, Southfield, Michigan
Maharishi University of Management, Fairfield, Iowa

Medical College of Pennsylvania and Hehnemann University, The Philadelphia, Pennsylvania
Mercyhurst College, Erie, Pennsylvania
Rush University, Chicago, Illinois
Simpson College, Redding, California
Southern College of Seventh-Day Adventists, Collegedale, Tennessee
Westminster Theological Seminary in California, Escondido, California

and delete the following (applicable after 1994):

Maharishi International University, Fairfield, Iowa
Medical College of Pennsylvania, Philadelphia, Pennsylvania

S. 1 amended by P.C. 1995-581, s. 1, April 4, 1995, *Canada Gazette*, Part II, April 19, 1995, to add the following (applicable after 1993):

Ambassador University, Big Sandy, Texas
Columbia Union College, Takoma Park, Maryland
Detroit College of Law, Detroit, Michigan
Divinity School, The, Rochester, New York
Emmanuel School of Religion, Johnson City, Tennessee
Meadville-Lombard Theological School, Chicago, Illinois
Oakwood College, Huntsville, Alabama
Scripps Research Institute, The, La Jolla, California
University of the South, The, Sewanee, Tennessee

S. 1 amended by P.C. 1994-866, subsec. 1(1), May 26, 1994, *Canada Gazette*, Part II, June 15, 1994, to add the following (applicable after 1992):

Associated Mennonite Biblical Seminary, Elkhart, Indiana
Bluffton College, Bluffton, Ohio
Clark University, Worcester, Massachusetts
Ecumenical Theological Center, Detroit, Michigan
Nebraska Wesleyan University, Lincoln, Nebraska
Northwestern College, Orange City, Iowa
Sunbridge College, Chestnut Ridge, New York
Union Institute, The, Cincinnati, Ohio
University of Georgia, The, Athens, Georgia
University of Judaism, Los Angeles, California
Wake Forest University, Winston-Salem, North Carolina
Wheaton College, Norton, Massachusetts

S. 1 amended by the said P.C. 1994-866, subsec. 1(2), by repealing the following (applicable after 1992):

Goshen Biblical Seminary, Elkhart, Indiana
Mennonite Biblical Seminary, Elkhart, Indiana
Union for Experimenting Colleges and Universities, The, Cincinnati, Ohio

S. 1 amended by P.C. 1993-901, May 4, 1993, *Canada Gazette*, Part II, May 19, 1993, to add the following (applicable after 1991):

American Film Institute Center for Advanced Film and Television Studies, Los Angeles, California
Calvin Theological Seminary, Grand Rapids, Michigan
St. John's University, Jamaica, New York
Saint Olaf College, Northfield, Minnesota

S. 1 amended by P.C. 1992-1108, s. 1, May 21, 1992, *Canada Gazette*, Part II, June 3, 1992 to add the following (applicable after 1990):

Baldwin-Wallace College, Berea, Ohio
Bastyr College, Seattle, Washington
Earlham College, Richmond, Indiana
Lutheran Bible Institute of Seattle, Issaquah, Washington
North Central College, Naperville, Illinois
Rabbinical College of Long Island, Long Beach, New York
Scripps College, Claremont, California
Trinity Bible College, Ellendale, North Dakota
University of California, San Francisco, California

S. 1 amended by P.C. 1991-467, s. 1, March 14, 1991, *Canada Gazette*, Part II, March 27, 1991 (applicable after 1989) to add the following:

Anderson College, Anderson, South Carolina
De Pauw University, Greencastle, Indiana
Ferris State University, Big Rapids, Michigan
Hampshire College, Amherst, Massachusetts
Mayo Foundation, Rochester, Minnesota
Pennsylvania College of Podiatric Medicine, Philadelphia, Pennsylvania
Reconstructionist Rabbinical College, Wyncote, Pennsylvania
Skidmore College, Saratoga Springs, New York
Talmudical Yeshiva of Philadelphia, Philadelphia, Pennsylvania
Villanova University, Villanova, Pennsylvania
Yeshiva Ohr Elchonon Chabad/West Coast Talmudic Seminary, Los Angeles, California

S. 1 amended by P.C. 1990-1332, s. 2, June 28, 1990, *Canada Gazette*, Part II, July 18, 1990 (applicable after 1988), to substitute "Franciscan University of Steubenville" for "University of Steubenville" and "Lake Superior State University" for "Lake Superior State College" and to add the following:

Claremont McKenna College, Claremont, California
Columbia Bible College & Seminary, Columbia, South Carolina
Curtis Institute of Music, The, Philadelphia, Pennsylvania
Emory University, Atlanta, Georgia
Franciscan University of Steubenville, Steubenville, Ohio
Mankato State University, Mankato, Minnesota
Minot State University, Minot, North Dakota
New England College, Henniker, New Hampshire
Northwestern College, St. Paul, Minnesota
Palmer College of Chiropractic-West, Sunnyvale, California
Rice University, Houston, Texas
Southwestern Adventist College, Keene, Texas
University of Alabama at Birmingham, The, Birmingham, Alabama
University of Montana, Missoula, Montana
University of San Diego, San Diego, California
University of the Ozarks, Clarksville, Arkansas

S. 1 amended by P.C. 1989-723, s. 1, April 28, 1989, *Canada Gazette*, Part II, May 10, 1989, to add the following applicable after 1987:

Augsburg College, Minneapolis, Minnesota
Elmira College, Elmira, New York
God's Bible School and College, Cincinnati, Ohio
Life Chiropractic College, Marietta, Georgia
Life Chiropractic College–West, San Lorenzo, California
Montana College of Mineral Science and Technology, Butte, Montana
Nazarene Bible College, Colorado Springs, Colorado
Providence College, Providence, Rhode Island
Thomas Aquinas College, Santa Paula, California
University of Arkansas at Little Rock, Little Rock, Arkansas
University of Nevada–Reno, Reno, Nevada
Western Baptist College, Salem, Oregon

S. 1 amended by P.C. 1988-561, s. 1, March 24, 1988, *Canada Gazette*, Part II, April 13, 1988, to add the following, applicable after 1986:

Carroll College, Waukesha, Wisconsin
Dana College, Blair, Nebraska
Emerson College, Boston, Massachusetts
Hood College, Frederick, Maryland
Nazarene Theological Seminary, Kansas City, Missouri
Pacific Union College, Angwin, California [already listed]
Princeton Theological Seminary, Princeton, New Jersey
Reformed Theological Seminary, Jackson, Mississippi
State University College at Potsdam, Potsdam, New York
Taylor University, Upland, Indiana [already listed]
University of Massachusetts at Amherst, Amherst Massachusetts

S. 1 amended by P.C. 1987-1479, s. 1, July 30, 1987, *Canada Gazette*, Part II, August 19, 1987, effective after 1985, to delete "Detroit Bible College, Farmington Hills, Michigan", to substitute "Biola University" for "Biola College", "San Rafael" for "Petaluma" in "Columbia Pacific University" [which had not previously been listed], to add "(Stanford University)" to "Leland Stanford Junior University", and to add the following:

American International College, Springfield, Massachusetts
Atlantic Union College, South Lancaster, Massachusetts
Canisius College, Buffalo, New York
Central Yeshiva Tomchei Tmimim-Lubavitch, Brooklyn, New York
Concordia College, Moorhead, Minnesota
Emmaus Bible College, Dubuque, Iowa
Hobe Sound Bible College, Hobe Sound, Florida
Moravian College, Bethlehem, Pennsylvania
Pacific Graduate School of Psychology, Menlo Park, California
Philadelphia College of Bible, Langhorne, Pennsylvania
Rabbinical College of America, Morristown, New Jersey
Saint Mary-of-the-Woods College, Saint Mary-of-the-Woods, Indiana
Trinity Episcopal School for Ministry, Ambridge, Pennsylvania
University of Rhode Island, Kingston,Rhode Island
Western States Chiropractic College, Portland, Oregon
Whittier College, Whittier, California
William Tyndale College, Farmington Hills, Michigan

S. 1 amended by P.C. 1986-746, s. 1, March 26, 1986, *Canada Gazette*, Part II, April 16, 1986, effective January 1, 1985, to substitute "Seattle Pacific University, Seattle, Washington" for "Seattle Pacific College, Seattle, Washington", and to add the following:

De Paul University, Chicago, Illinois

GMI Engineering & Management Institute, Flint, Michigan
Grace College of the Bible, Omaha, Nebraska
Hollins College, Hollins College, Virginia
Mount Ida College, Newton Centre, Massachusetts
Sherman College of Straight Chiropractic, Spartanburg, South Carolina
Union for Experimenting Colleges and Universities, The, Cincinnati, Ohio
Washington and Lee University, Lexington, Virginia

S. 1 amended by P.C. 1985-1150, s. 1, April 4, 1985, *Canada Gazette*, Part II, April 17, 1985 to add "American Graduate School of International Management, Glendale, Arizona", effective commencing January 1, 1983; to substitute "Clarkson University" for Clarkson College of Technology, and "Puget Sound Christian College ... A college of the Bible" for "Puget Sound College of the Bible", effective January 1, 1984; and to add the following effective January 1, 1984:

American University in Cairo, The, New York, New York
Barnard College, New York, New York
Lafayette College, Easton, Pennsylvania
State University of New York at Binghamton, Binghamton, New York
University of Health Sciences/The Chicago Medical School, Chicago, Illinois
University of Missouri, Columbia, Missouri

S. 1 amended by P.C. 1984-774, s. 1, March 8, 1984, *Canada Gazette*, Part II, March 21, 1984 to add the following effective commencing January 1, 1983:

American College, The, Bryn Mawr, Pennsylvania
Antioch University, New York, New York
Case Western Reserve University, Cleveland, Ohio
Central Michigan University, Mount Pleasant, Michigan
College of Wooster, The, Wooster, Ohio
Hebrew Union College — Jewish Institute of Religion, Los Angeles, California
Kansas State University, Manhattan, Kansas
Maharishi International University, Fairfield, Iowa
Mirrer Yeshiva Central Institute, Brooklyn, New York
Mount Vernon College, Washington, District of Columbia
Ohio College of Podiatric Medicine, Cleveland, Ohio
Pacific University, Forest Grove, Oregon
Palm Beach Atlantic College, West Palm Beach, Florida
Puget Sound College of the Bible, Edmonds, Washington
Radcliffe College, Cambridge, Massachusetts
Ripon College, Ripon, Wisconsin
St. Vladimir's Orthodox Theological Seminary, Crestwood, New York
Southern Illinois University of Carbondale, Carbondale, Illinois
Trinity University, San Antonio, Texas
University of Central Florida, Orlando, Florida
University of Steubenville, Steubenville, Ohio
Westminster Choir College, Princeton, New Jersey

S. 1 amended by P.C. 1983-1194, s. 1, April 21, 1983, *Canada Gazette*, Part II, May 11, 1983, to add the following effective from January 1, 1982:

Adams State College, Alamosa, Colorado
Beloit College, Beloit, Wisconsin
Bowling Green State University, Bowling Green, Ohio
College of William and Mary, Williamsburg, Virginia
Fresno Pacific College, Fresno, California
Medical College of Pennsylvania, Philadelphia, Pennsylvania
Pine Manor College, Chestnut Hill, Massachusetts
Rockefeller University, New York, New York
Trinity Evangelical Divinity School, Deerfield, Illinois
Walla Walla College, College Place, Washington
Western Conservative Baptist Seminary, Portland, Oregon

S. 1 amended by P.C. 1982-1094, April 8, 1982, *Canada Gazette*, Part II, April 28, 1982, to add to the following, effective January 1, 1981:

Abilene Christian University, Abilene, Texas
Andover Newton Theological School, Newton Centre, Massachusetts
Asbury Theological Seminary, Wilmore, Kentucky
Bates College, Lewiston, Maine
Bethel College, North Newton, Kansas
Illinois Institute of Technology, Chicago, Illinois
LeTourneau College, Longview, Texas
Liberty Baptist College, Lynchburg, Virginia
Messiah College, Grantham, Pennsylvania
Oberlin College, Oberlin, Ohio
Pomona College, Claremont, California
Reformed Bible College, Grand Rapids, Michigan
St. Mary's University of San Antonio, San Antonio, Texas
Texas Chiropractic College, Pasadena, Texas

S. 1 amended by P.C. 1981-673, March 12, 1981, *Canada Gazette*, Part II, March 25, 1981, to add the following, effective January 1, 1980:

Azusa Pacific College, Azusa, California
Boston College, Chestnut Hill, Massachusetts
Le Moyne College, Syracuse, New York
Northwest College, Kirkland, Washington
Northwood Institute, Midland, Michigan
Rabbinical Seminary of America, Forest Hills, New York
South Dakota School of Mines and Technology, Rapid City, South Dakota
Whitman College, Walla Walla, Washington
Yeshiva University of Los Angeles, Los Angeles, California

S. 1 amended by P.C. 1980-1138, s. 1, May 1, 1980, *Canada Gazette*, Part II, May 14, 1980, to add the following, effective on and after January 1, 1979:

Cedarville College, Cedarville, Ohio
Detroit Bible College, Farmington Hills, Michigan
Goddard College, Plainfield, Vermont
Louisiana State University, Baton Rouge, Louisiana
Multnomah School of the Bible, Portland, Oregon
North American Baptist Seminary, Sioux Falls, South Dakota
Ottawa University, Ottawa, Kansas
Pace University, New York, New York
Park College, Kansas City, Missouri
St. John's College, Annapolis, Maryland
St. John's College, Santa Fe, New Mexico
Stephens College, Columbia, Missouri
Taylor University, Upland, Indiana
Touro College, New York, New York
Trinity College, Dunedin, Florida
Washington Bible College, Lanham, Maryland
Western Evangelical Seminary, Portland, Oregon

S. 1 amended by P.C. 1979-1181, April 4, 1979, *Canada Gazette*, Part II, April 25, 1979, to add the following, effective on and after January 1, 1978:

Brigham Young University — Hawaii Campus, Laie, Hawaii
Eastern Washington University, Cheney, Washington
Fuller Theological Seminary, Pasadena, California
Grinnell College, Grinnell, Iowa
Macalester College, St. Paul, Minnesota
National College of Chiropractic, The, Lombard, Illinois
Old Dominion University, Norfolk, Virginia
Saint Mary's College, Notre Dame, Indiana
Sarah Lawrence College, Bronxville, New York
Union College, Schenectady, New York
University of Santa Clara, Santa Clara, California

S. 1 amended by P.C. 1978-781, March 16, 1978, *Canada Gazette*, Part II, April 12, 1968, to add the following, effective on and after January 1, 1977:

Bennington College, Bennington, Vermont
Creighton University, Omaha, Nebraska
Florida Atlantic University, Boca Raton, Florida
Mesivta Yeshiva Rabbi Chaim Berlin, Brooklyn, New York
Ohio University, Athens, Ohio
Swarthmore College, Swarthmore, Pennsylvania
University of Houston, Houston, Texas
Valparaiso University, Valparaiso, Indiana
Western Washington University, Bellingham, Washington

2. The universities situated in the United Kingdom of Great Britain and Northern Ireland that are prescribed by section 3503 are the following:

Aston University, Birmingham, England
Cranfield University, Bedfordshire, England
Gateshead Talmudical College, Gateshead, England
Imperial College of Science, Technology and Medicine, London, England
King's College London, London, England
London Business School, London, England
Loughborough University, Leicestershire, England

Queen's University of Belfast, The, Belfast, Northern Ireland
University College London, London, England
University of Aberdeen, Aberdeen, Scotland
University of Bath, The, Bath, England
University of Birmingham, Birmingham, England
University of Bradford, Bradford, England
University of Bristol, Bristol, England
University of Cambridge, Cambridge, England
University of Dundee, The, Dundee, Scotland
University of Durham, Durham, England
University of Edinburgh, Edinburgh, Scotland
University of Exeter, Exeter, England
University of Glasgow, Glasgow, Scotland
University of Leeds, Leeds, England
University of Liverpool, Liverpool, England
University of London, London, England
University of Manchester, The, Manchester, England
University of Newcastle, The, Newcastle upon Tyne, England
University of North London, London, England
University of Nottingham, The, Nottingham, England
University of Oxford, Oxford, England
University of Reading, Reading, England
University of St. Andrews, St. Andrews, Scotland
University of Sheffield, Sheffield, England
University of Southampton, Southampton, England
University of Strathclyde, Glasgow, Scotland
University of Surrey, Guildford, Surrey, England
University of Sussex, Brighton, England
University of Wales, Cardiff, Wales

History: S. 2 amended by P.C. 2002-2169, s. 16, December 12, 2002, *Canada Gazette*, Part II, January 1, 2003 to add London Business School and Loughborough University, applicable as of January 1, 2001.

S. 2 amended by P.C. 2001-829, s. 2, May 10, 2001, *Canada Gazette*, Part II, May 23, 2001, to delete University of Hull, The, Hull, England, and University of Lancaster, Lancaster, England, applicable as of May 23, 2001; to add King's College London, London, England and University of North London, London, England, applicable as of January 1, 1999; and to add University College London, London, England, applicable as of January 1, 2000.

S. 2 amended by P.C. 2000-726, s. 2. May 18, 2000, *Canada Gazette*, Part II, June 7, 2000, to change Cranfield Institute of Technology to Cranfield University, and Victoria University of Manchester to University of Manchester, The, effective June 7, 2000; to add University of Newcastle, The, Newcastle upon Tyne, England and University of Surrey, Guildford, Surrey, England, applicable as of January 1, 1997; and to add Imperial College of Science, Technology and Medicine, London, England, applicable as of January 1, 1998.

S. 2 amended by P.C. 1996-632, s. 2, April 30, 1996, *Canada Gazette*, Part II, June 15, 1994, to add "Aston University, Birmingham, England" and "University of Sussex, Brighton, England", applicable after 1994.

S. 2 amended by P.C. 1994-866, s. 2, May 26, 1994, *Canada Gazette*, Part II, June 15, 1994, to add "University of Hull, The, Hull, England", applicable after 1992.

S. 2 amended by P.C. 1992-1108, s. 2, May 21, 1992, *Canada Gazette*, Part II, June 3, 1992, to add "Gateshead Talmudical College, Gateshead, England", applicable after 1990.

S. 2 amended by P.C. 1991-467, s. 2, March 14, 1991, *Canada Gazette*, Part II, March 27, 1991 (applicable after 1989) to add the following:

University of Bath, The, Bath, England

University of Dundee, The, Dundee, Scotland

University of Nottingham, The, Nottingham, England

S. 2 amended by P.C. 1990-1332, s. 3, June 28, 1990, *Canada Gazette*, Part II, July 18, 1990, to add "University of Exeter, Exeter, England" and "University of Lancaster, Lancaster, England", applicable after 1988.

S. 2 amended by P.C. 1989-723, s. 2, April 28, 1989, *Canada Gazette*, Part II, May 10, 1989, to add "University of Southampton, Southampton, England", applicable after 1987.

S. 2 amended by P.C. 1984-774, s. 2, March 8, 1984, *Canada Gazette*, Part II, March 21, 1984 to add "University of Durham, Durham, England", applicable after 1982.

3. The universities situated in France that are prescribed by section 3503 are the following:

American University in Paris, Paris
Catholic Faculties of Lyon, Lyon
Catholic Institute of Paris, Paris
Catholic University of Lille, The, Lille
École Nationale des Ponts et Chaussées, Paris
European Institute of Business Administration (INSEAD), Fontainebleau
Hautes Études Commerciales, Paris
Paris Graduate School of Management, Paris

History: S. 3 amended by P.C. 2001-829, s. 3, May 10, 2001, *Canada Gazette*, Part II, May 23, 2001, to delete University of Aix-Marseilles, Aix-en-Provence, and University of Paris, Paris, applicable as of May 23, 2001.

S. 3 amended by P.C. 2000-726, s. 3, May 28, 2000, *Canada Gazette*, Part II, June 7, 2000, to change Catholic Faculties of Lille to Catholic University of Lille, The, effective June 7, 2000.

S. 3 amended by P.C. 1994-866, s. 3, May 26, 1994, *Canada Gazette*, Part II, June 15, 1994, to add the following (applicable after 1992):

Hautes Études Commerciales, Paris
Paris Graduate School of Management, Paris

S. 3 amended by P.C. 1991-467, s. 3, March 14, 1991, *Canada Gazette*, Part II, March 27, 1991 (applicable after 1989) to add the following:

École Nationale des Ponts et Chaussées, Paris
European Institute of Business Administration (INSEAD), Fontainebleau

S. 3 amended by P.C. 1990-1332, s. 4, June 28, 1990, *Canada Gazette*, Part II, July 18, 1990, to substitute "American University" for "American College", applicable after 1988.

S. 3 amended by P.C. 1988-561, s. 2, March 24, 1988, *Canada Gazette*, Part II, April 13, 1988, to add "American College in Paris, Paris", applicable after 1986.

4. The universities situated in Austria that are prescribed by section 3503 are the following:

University of Vienna, Vienna

5. The universities situated in Belgium that are prescribed by section 3503 are the following:

Catholic University of Louvain, Louvain

History: S. 5 amended by P.C. 2000-726, s. 4, May 28, 2000, *Canada Gazette*, Part II, June 7, 2000, to delete Free University of Brussels, Brussels, effective June 7, 2000.

6. The universities situated in Switzerland that are prescribed by section 3503 are the following:

Franklin College of Switzerland, Sorengo (Lugano)
University of Geneva, Geneva
University of Lausanne, Lausanne

History: S. 6 amended by P.C. 2001-829, s. 4, May 10, 2001, *Canada Gazette*, Part II, May 23, 2001, to delete University of Fribourg, Fribourg, applicable as of May 23, 2001.

S. 6 amended by P.C. 1992-1108, s. 3, May 21, 1992, *Canada Gazette*, Part II, June 3, 1992, to add "Franklin College of Switzerland, Sorengo (Lugano)", applicable after 1990.

7. The universities situated in Vatican City that are prescribed by section 3503 are the following:

Pontifical Gregorian University

8. The universities situated in Israel that are prescribed by section 3503 are the following:

Bar-Ilan University, Ramat-Gan

Ben Gurion University of the Negev, Beersheba
École biblique et archéologique française, Jerusalem
Hebrew University of Jerusalem, The, Jerusalem
Jerusalem College for Women, Bayit-Vegan, Jerusalem
Jerusalem College of Technology, Jerusalem
Technion-Israel Institute of Technology, Haifa
Tel-Aviv University, Tel-Aviv
University of Haifa, Haifa
Weizmann Institute of Science, Rehovot
Yeshivat Aish Hatorah, Jerusalem

History: S. 8 amended by P.C. 2001-829, s. 5, May 10, 2001, *Canada Gazette*, Part II, May 23, 2001, to delete Bezalel — Academy of Arts and Design, Jerusalem, applicable as of May 23, 2001.

S. 8 amended by P.C. 1996-632, s. 3, April 30, 1996, *Canada Gazette*, Part II, May 15, 1996, to add "École biblique et archéologique française, Jerusalem", applicable after 1994.

S. 8 amended by P.C. 1994-866, s. 4, May 26, 1994, *Canada Gazette*, Part II, June 15, 1994, to add "Yeshivat Aish Hatorah, Jerusalem", applicable after 1992.

S. 8 amended by P.C. 1988-561, s. 3, March 24, 1988, *Canada Gazette*, Part II, April 13, 1988, to add "Bezalel-Academy of Arts and Design, Jerusalem", applicable after 1986.

S. 8 amended by P.C. 1986-746, s. 2, March 26, 1986, *Canada Gazette*, Part II, April 16, 1986, effective January 1, 1985, to add "Jerusalem College of Technology, Jerusalem".

S. 8 amended by P.C. 1983-1194, s. 2, April 21, 1983, *Canada Gazette*, Part II, May 11, 1983 to add the following effective from January 1, 1982:

University of Haifa, Haifa
Weizmann Institute of Science, Rehovot

S. 8 amended by P.C. 1980-1138, s. 2, May 1, 1980, *Canada Gazette*, Part II, May 14, 1980, as corrected by *Canada Gazette*, Part II, June 11, 1980, errata, to add the following, effective on and after January 1, 1979:

Ben Gurion University of the Negev, Beersheba
Jerusalem College for Women, Bayit-Vegan, Jerusalem

9. The universities situated in Lebanon that are prescribed by section 3503 are the following:

St. Joseph University, Beirut

History: S. 9 amended by P.C. 2000-726, s. 5, May 28, 2000, *Canada Gazette*, Part II, June 7, 2000, to delete American University of Beirut, The, Beirut, effective June 7, 2000.

S. 9 amended by P.C. 1980-1138, s. 3, May 1, 1980, *Canada Gazette*, Part II, May 14, 1980, effective on and after January 1, 1979, to add: St. Joseph University, Beirut.

10. The universities situated in Ireland that are prescribed by section 3503 are the following:

National University of Ireland, Dublin
Royal College of Surgeons in Ireland, Dublin
University of Dublin, Dublin

History: S. 10 amended by P.C. 1985-1150, s. 2, April 4, 1985, *Canada Gazette*, Part II, April 17, 1985, applicable commencing January 1, 1984, to add: National University of Ireland, Dublin.

S. 10 amended by P.C. 1980-1138, s. 4, May 1, 1980, *Canada Gazette*, Part II, May 14, 1980, effective on and after January 1, 1979, to add: University of Dublin, Dublin.

11. The universities situated in the Federal Republic of Germany that are prescribed by section 3503 are the following:

Ruprecht-Karls-Universität Heidenberg, Heidenberg
Ukrainian Free University, Munich

History: S. 11 amended by P.C. 1996-632, s. 4, April 30, 1996, *Canada Gazette*, Part II, May 15, 1996, to add "Ruprecht-Karls-Universität Heidenberg, Heidenberg", effective after 1994.

12. The universities situated in Poland that are prescribed by section 3503 are the following:

Catholic University of Lublin, Lublin
Jagiellonian University, Krakow

History: S. 12 amended by P.C. 2000-726, s. 6, May 28, 2000, *Canada Gazette*, Part II, June 7, 2000, to add Jagiellonian University, Krakow, applicable as of January 1, 1998.

S. 12 amended by P.C. 1986-746, s. 3, March 26, 1986, *Canada Gazette*, Part II, April 16, 1986, to substitute "Catholic University of Lublin, Lublin" for "Catholic University of Lubin, Lubin", effective January 1, 1982.

S. 12 added by P.C. 1983-1194, s. 3, April 21, 1983, *Canada Gazette*, Part II, May 11, 1983, effective from January 1, 1982.

13. The universities situated in Spain that are prescribed by section 3503 are the following:

University of Navarra, Pamplona

History: S. 13 added by P.C. 1987-1479, s. 2, July 30, 1987, *Canada Gazette*, Part II, August 19, 1987, effective after 1985.

14. The universities situated in the People's Republic of China that are prescribed by section 3503 are the following:

Nanjing University, Nanjing

History: S. 14 amended by P.C. 2001-829, s. 6, May 10, 2001, *Canada Gazette*, Part II, May 23, 2001, to delete Nanjing Institute of Technology, Nanjing, applicable as of May 23, 2001, and to add Nanjing University, Nanjing, applicable as of January 1, 1999.

S. 14 added by P.C. 1989-723, s. 3, April 28, 1989, *Canada Gazette*, Part II, May 10, 1989, applicable after 1987.

15. The universities situated in Jamaica that are prescribed for the purposes of section 3503 are the following:

University of the West Indies, Mona Campus, Kingston

History: S. 15 added by P.C. 1989-723, s. 3, April 28, 1989, *Canada Gazette*, Part II, May 10, 1989, applicable after 1987.

16. [Repealed]

History: S. 16 repealed by P.C. 2001-829, s. 7, May 10, 2001, *Canada Gazette*, Part II, May 23, 2001, applicable as of May 23, 2001.

S. 16 added by P.C. 1992-1108, s. 4, May 21, 1992, *Canada Gazette*, Part II, June 3, 1992, applicable after 1990.

17. The universities situated in Australia that are prescribed by section 3503 are the following:

Adelaide University, Adelaide
Queensland University of Technology, Brisbane
University of Melbourne, The, Parkville
University of Queensland, The, Brisbane
University of Sydney, The, Sydney
University of Tasmania, Hobart

History: S. 17 amended by P.C. 2002-2169, s. 17, December 12, 2002, *Canada Gazette*, Part II, January 1, 2003 to add Adelaide University, applicable as of January 1, 2001.

S. 17 amended by P.C. 2001-829, s. 8, May 10, 2001, *Canada Gazette*, Part II, May 23, 2001, to add Queensland University of Technology, Brisbane, applicable as of January 1, 1999.

S. 17 amended by P.C. 2000-726, s. 7, May 28, 2000, *Canada Gazette*, Part II, June 7, 2000, to delete Flinders University of South Australia, The, Adelaide and University of New South Wales, The, Sydney, effective June 7, 2000; and to add University of Melbourne, The, Parkville and University of Queensland, The, Brisbane, applicable as of January 1, 1997.

S. 17 amended by P.C. 1996-632, s. 5, April 30, 1996, *Canada Gazette*, Part II, May 15, 1996, to add "Flinders University of South Australia, The, Adelaide" and "University of New South Wales, The, Sydney" applicable after 1994.

S. 17 amended by P.C. 1994-866, s. 5, May 26, 1994, *Canada Gazette*, Part II, June 15, 1994, to add "University of Tasmania, Hobart", applicable after 1992.

S. 17 added by P.C. 1993-901, May 4, 1993, *Canada Gazette*, Part II, May 19, 1993, applicable after 1991.

18. The university situated in the Republic of Croatia that is prescribed by section 3503 is the following:

University of Zagreb, Zagreb

History: S. 18 added by P.C. 1994-866, May 26, 1994, *Canada Gazette*, Part II, June 15, 1994, applicable after 1992.

19. The universities situated in South Africa that are prescribed by section 3503 are the following:

University of Natal, Durban
University of the Witwatersrand, The, Johannesburg

History: S. 19 amended by P.C. 2001-829, s. 9, May 10, 2001, *Canada Gazette*, Part II, May 23, 2001, applicable as of January 1, 2000. The section formerly read:

> 19. The university situated in South Africa that is prescribed by section 3503 is the following:
>
> University of the Witwatersrand, The, Johannesburg

S. 19 added by P.C. 1995-581, April 4, 1995, *Canada Gazette*, Part II, April 19, 1995, applicable after 1993.

Interpretation Bulletins: See at beginning of Schedule.

20. For the purposes of section 3503 the universities situated in the Netherlands are the following:

Leiden University, Leiden
Nyenrode University, Breukelen
University of Groningen, Groningen

History: S. 20 amended by P.C. 2002-2169, s. 18, December 12, 2002, *Canada Gazette*, Part II, January 1, 2003 to add University of Groningen and amend "Nijenrode" to "Nyendrode", applicable as of January 1, 2001.

S. 20 amended by P.C. 2000-726, s. 8, May 28, 2000, *Canada Gazette*, Part II, June 7, 2000, to add Leiden University, applicable as of January 1, 1998.

S. 20 added by P.C. 1996-632, s. 6, April 30, 1996, *Canada Gazette*, Part II, May 15, 1996, applicable after 1994.

21. For the purposes of section 3503 the universities situated in Hong Kong are the following:

Hong Kong University of Science and Technology, The, Kowloon
University of Hong Kong, The, Hong Kong

History: S. 21 amended by P.C. 2002-2169, s. 19, December 12, 2002, *Canada Gazette*, Part II, January 1, 2003 to add University of Hong Kong, applicable as of January 1, 2002.

S. 21 added by P.C. 1996-632, s. 6, April 30, 1996, *Canada Gazette*, Part II, May 15, 1996, applicable after 1994.

22. The universities situated in New Zealand that are prescribed by section 3503 are the following:

University of Otago, Dunedin
Victoria University of Wellington, Wellington

History: S. 22 amended to add University of Otago, Dunedin by P.C. 2005-694, s. 8, May 3, 2005, *Canada Gazette*, Part II, May 18, 2005, deemed to have taken effect on January 1, 2003.

S. 22 added by P.C. 2000-726, s. 9, May 28, 2000, *Canada Gazette*, Part II, June 7, 2000, applicable as of January 1, 1999.

23. The university situated in Hungary that is prescribed by section 3503 is the following:

Central European University, Budapest

History: S. 23 added by P.C. 2001-829, subsec. 10(1), May 10, 2001, *Canada Gazette*, Part II, May 23, 2001, applicable as of January 1, 1999.

24. The university situated in India that is prescribed by section 3503 is the following:

Panjab University, Chandigarh

History: S. 24 added by P.C. 2001-829, subsec. 10(2), May 10, 2001, *Canada Gazette*, Part II, May 23, 2001, applicable as of January 1, 2000.

SCHEDULES IX, X

[Revoked]

History: Schedules IX, X revoked by P.C. 1993-1688, s. 4, August 26, 1993, *Canada Gazette*, Part II, September 8, 1993, applicable to 1993 *et seq.*

Schedules IX, X added by P.C. 1988-1105, s. 4, June 6, 1988, *Canada Gazette*, Part II, June 22, 1988, applicable to 1987 *et seq.*

INCOME TAX CONVENTIONS INTERPRETATION ACT

An Act respecting the interpretation of Canada's international conventions relating to income tax and the Acts implementing such conventions.

R.S.C. 1985, c. I-4, AS AMENDED

Short Title

1. Short title — This Act may be cited as the *Income Tax Conventions Interpretation Act*.

Definition

2. Definition of "convention" — In this Act, **"convention"** means any convention or agreement between Canada and another state relating to tax on income, and includes any protocol or supplementary convention or agreement relating thereto.

Interpretation

3. Meaning of undefined terms — Notwithstanding the provisions of a convention or the Act giving the convention the force of law in Canada, it is hereby declared that the law of Canada is that, to the extent that a term in the convention is

(a) not defined in the convention,

(b) not fully defined in the convention, or

(c) to be defined by reference to the laws of Canada,

that term has, except to the extent that the context otherwise requires, the meaning it has for the purposes of the *Income Tax Act*, as amended from time to time, and not the meaning it had for the purposes of the *Income Tax Act* on the date the convention was entered into or given the force of law in Canada if, after that date, its meaning for the purposes of the *Income Tax Act* has changed.

I.T. Technical News: 18 (*Cudd Pressure* case).

4. Permanent establishments in Canada — Notwithstanding the provisions of a convention or the Act giving the convention the force of law in Canada, it is hereby declared that the law of Canada is that where, for the purposes of the application of the convention, the profits from a business activity, including an industrial or commercial activity, attributable or allocable to a permanent establishment in Canada are to be determined for any period,

(a) there shall, except where the convention expressly otherwise provides, be included in the determination of those profits all amounts with respect to that activity that are attributable or allocable to the permanent establishment and that would be required to be included under the *Income Tax Act*, as amended from time to time, by a person resident in Canada carrying on the activity in Canada in the computation of his income from a business for that period; and

(b) there shall, except to the extent that an agreement between the competent authorities of the parties to the convention expressly otherwise provides, not be deducted in the determination of those profits any amount with respect to that activity that is attributable or allocable to the permanent establishment and that would not be deductible under the *Income Tax Act*, as amended from time to time, by a person resident in Canada carrying on the activity in Canada in the computation of his income from a business for that period.

4.1 Application of section 245 of the *Income Tax Act* — Notwithstanding the provisions of a convention or the Act giving the convention the force of law in Canada, it is hereby declared that the law of Canada is that section 245 of the *Income Tax Act* applies to any benefit provided under the convention.

History: S. 4.1 added by 2005, c. 19, s. 60, applicable with respect to transactions entered into after September 12, 1988.

5. Definitions — Notwithstanding the provisions of a convention or the Act giving the convention the force of law in Canada, in this section and in the convention,

"annuity" does not include any pension payment or any payment under a plan, arrangement or contract described in subparagraphs (a)(i) to (ix) of the definition "pension";

History: The definition "annuity" amended by 1999, c. 22, subsec. 84(1), applicable with respect to amounts paid after 1996. It formerly read:

> "annuity" does not include a pension payment (other than a periodic pension payment) arising in Canada;

"Annuity" added by 1993, c. 24, s. 147, applicable with respect to amounts paid after 1991.

"Canada" means the territory of Canada, and includes

(a) every area beyond the territorial seas of Canada that, in accordance with international law and the laws of Canada, is an area in respect of which Canada may exercise rights with respect to the seabed and subsoil and their natural resources, and

(b) the seas and airspace above every area described in paragraph (a);

"immovable property" and **"real property"**, with respect to such property in Canada, are hereby declared to include

(a) any right to explore for or exploit mineral deposits and sources in Canada and other natural resources in Canada, and

(b) any right to an amount computed by reference to the production, including profit, from, or to the value of production from, mineral deposits and sources in Canada and other natural resources in Canada;

Definitions: "immovable" — Quebec *Civil Code* art. 900-907.

"pension" means, in respect of payments that arise in Canada,

(a) if the convention does not include a definition "pension", a payment under any plan, arrangement or contract that is

(i) a registered pension plan,

(ii) a registered retirement savings plan,

(iii) a registered retirement income fund,

(iv) a retirement compensation arrangement,

(v) a deferred profit sharing plan,

(vi) a plan that is deemed by subsection 147(15) of the *Income Tax Act* not to be a deferred profit sharing plan,

(vii) an annuity contract purchased under a plan referred to in subparagraph (v) or (vi),

(viii) an annuity contract where the amount paid by or on behalf of an individual to acquire the contract was deductible under paragraph 60(l) of the *Income Tax Act* in computing the individual's income for any taxation year (or would have been so deductible if the individual had been resident in Canada), or

(ix) a superannuation, pension or retirement plan not otherwise referred to in this paragraph, and

(b) if the convention includes a definition "pension", a payment that is a pension for the purposes of the convention or a payment (other than a payment of social security benefits) that would be a periodic pension payment if the convention did not include a definition "pension";

Related Provisions: 5"annuity" — Annuity excludes pension payments and certain other payments.

History: The definition "pension" added by 1999, c. 22, subsec. 84(3), applicable with respect to amounts paid after 1996.

"periodic pension payment" means, in respect of payments that arise in Canada, a pension payment other than

(a) a lump sum payment, or a payment that can reasonably be considered to be an instalment of a lump sum amount, under a registered pension plan,

(b) a payment before maturity, or a payment in full or partial commutation of the retirement income, under a registered retirement savings plan,

(c) a payment at any time in a calendar year under a registered retirement income fund, where the total of all payments (other than the specified portion of each such payment) made under the fund at or before that time and in the year exceeds the total of

(i) the amount that would be the greater of

(A) twice the amount that, if the value of C in the definition "minimum amount" in subsection 146.3(1) of the *Income Tax Act* were nil, would be the minimum amount under the fund for the year, and

(B) 10% of the fair market value of the property (other than annuity contracts that, at the beginning of the year, are not described in paragraph (b.1) of the definition "qualified investment" in subsection 146.3(1) of the *Income Tax Act*) held in connection with the fund at the beginning of the year

if all property transferred in the year and before that time to the carrier of the fund as consideration for the carrier's undertaking to make payments under the fund had been so transferred immediately before the beginning of the year and if the definition "minimum amount" in subsection 146.3(1) of the *Income Tax Act* applied with respect to all registered retirement income funds, and

(ii) the total of all amounts each of which is an annual or more frequent periodic payment under an annuity contract that is a qualified investment, as defined in subsection 146.3(1) of the *Income Tax Act*, (other than an annuity contract the fair market value of which is taken into account under clause (i)(B)) held by a trust governed by the fund that was paid into the trust in the year and before that time, or

(d) a payment to a recipient at any time in a calendar year under an arrangement, other than a plan or fund referred to in paragraphs (a) to (c), where

(i) the payment is not

(A) one of a series of annual or more frequent payments to be made over the lifetime of the recipient or over a period of at least 10 years,

(B) one of a series of annual or more frequent payments each of which is contingent on the recipient continuing to suffer from a physical or mental impairment, or

(C) a payment to which the recipient is entitled as a consequence of the death of an individual who was in receipt of periodic pension payments under the arrangement, and that is made under a guarantee that a minimum number of payments will be made in respect of the individual, or

(ii) at the time the payment is made, it may reasonably be concluded that

(A) the total amount of payments (other than excluded payments) under the arrangement to the recipient in the year will exceed twice the total amount of payments (other than excluded payments) made under the arrangement to the recipient in the immediately preceding year, otherwise than because of the fact that payments commenced to be made to the recipient in the preceding year and were made for a period of less than twelve months in that year, or

(B) the total amount of payments (other than excluded payments) under the arrangement to the recipient in the year will exceed twice the total amount of payments (other than excluded payments) to be made under the arrangement to the recipient in any subsequent year, otherwise than because of the termination of the series of payments or the reduction in the amount of payments to be made after the death of any individual,

and, for the purposes of this subparagraph, "excluded payment" means a payment that is neither a periodic payment nor a payment described in any of clauses (i)(A) to (C).

History: The portion of the definition "periodic pension payment" before para. (a) amended by 1999, c. 22, subsec. 84(2), applicable with respect to amounts paid after 1996. The portion formerly read:

> "periodic pension payment" does not include a pension payment arising in Canada that is

Para. (c) of "periodic pension payment"amended by 1998, c. 19, s. 286, applicable to amounts paid after 1997. Para. (c) formerly read:

> (c) a payment at any time in a calendar year under a registered retirement income fund where the total of all payments made under the fund at or before that time and in the year, other than
>
> (i) a payment or portion thereof that is not required by section 146.3 of the *Income Tax Act* to be included in computing the

income of any person and that is not included under paragraph 212(1)(q) of that Act in respect of any person, and

(ii) a payment in respect of which a deduction is available under paragraph 60(l) of the *Income Tax Act* in computing the income of any person,

exceeds the greater of

(iii) twice the amount that would be the minimum amount under the fund for the year, and

(iv) ten per cent of the amount that would be the fair market value of the property held in connection with the fund at the beginning of the year,

if all property transferred in the year and before that time to the carrier of the fund as consideration under the fund had been transferred immediately before the beginning of the year and if the definition "minimum amount" in paragraph 146.3(1)(b.1) of the *Income Tax Act* were applicable with respect to all registered retirement income funds, or

"Periodic pension payment" added by 1993, c. 24, s. 147, applicable with respect to amounts paid after 1991.

"real property" — [see under "immovable" above — ed.]

Special note re s. 5: 1993, c. 24, subsec. 84(10) (re-enacted as 1994, c. 7, Sched. VIII, subsec. 84(10)), provides as follows:

(10) Notwithstanding subsection (9), [amended ITA 146.3(1)"minimum amount"] does not apply for the purposes of section 5 of the *Income Tax Conventions Interpretation Act*, with respect to payments made before 1993.

Definitions [s. 5]: "minimum amount" — ITA 146.3(1), 248(1).

5.1 (1) [Repealed]

History: S. 5.1 repealed by 1999, c. 22, s. 85, applicable with respect to amounts paid after 1996. It formerly read:

(1) Definition of "pension" — For the purposes of the definitions "annuity" and "periodic pension payment" in section 5, "pension" includes payments arising in Canada under

(a) a registered pension plan;

(b) a registered retirement savings plan;

(c) a registered retirement income fund;

(d) a retirement compensation arrangement;

(e) a deferred profit sharing plan;

(f) a plan that is deemed by subsection 147(15) of the *Income Tax Act* not to be a deferred profit sharing plan;

(g) an annuity contract purchased under a plan referred to in paragraph (e) or (f);

(h) an annuity contract where the amount paid by or on behalf of an individual to acquire the contract was deductible under paragraph 60(l) of the *Income Tax Act* in computing the individual's income for any taxation year (or would have been so deductible if the individual had been resident in Canada); and

(i) a superannuation, pension or retirement plan not otherwise referred to in this section.

S. 5.1 renumbered as subsec. 5.1(1) by 1998, c. 19, s. 287, applicable to amounts paid after 1997.

S. 5.1 added by 1993, c. 24, s. 148, applicable with respect to amounts paid after 1991.

(2) Definition of "specified portion" — For the purpose of the definition "periodic pension payment" in section 5, the "specified portion" of a payment means the total of

(a) the portion of the payment that is not required by section 146.3 of the *Income Tax Act* to be included in computing the income of any person and that is not included under paragraph 212(1)(q) of that Act in respect of any person; and

(b) the portion of the payment in respect of which a deduction is available under paragraph 60(l) of the *Income Tax Act* in computing the income of any person.

History: Subsec. 5.1(2) added by 1998, c. 19, s. 287, applicable to amounts paid after 1997.

6. Meaning of "interest" — Notwithstanding section 3, the meaning of the term "interest" in any convention given the force of law in Canada before November 19, 1974 does not include any amount paid or credited, pursuant to an agreement in writing entered into before June 23, 1983, as consideration for a guarantee referred to in paragraph 214(15)(a) of the *Income Tax Act*.

6.1 Transitional — Where a taxation year of a taxpayer includes June 23, 1983, the additional tax payable under the *Income Tax Act* (except Part XIII thereof) by the taxpayer for the taxation year by virtue of this Act shall be calculated in accordance with the following formula

$$A = T \times \frac{B}{C}$$

where

A is the amount of additional taxes payable under the *Income Tax Act* (except Part XIII thereof) by the taxpayer for the taxation year by virtue of this Act,

T is the amount of additional taxes payable under the *Income Tax Act* (except Part XIII thereof) by the taxpayer for the taxation year by virtue of this Act (except this section),

B is the number of days in the taxation year after June 23, 1983, and

C is the number of days in the taxation year.

History: S. 6.1 added by 1985, c. 48 (1st Supp.), s. 2, applicable to taxation years ending after June 23, 1983.

6.2 Partnerships — Notwithstanding the provisions of a convention between Canada and another state or the Act giving it the force of law in Canada, it is hereby declared that the law of Canada is that, for the purposes of the application of the convention and the *Income Tax Act* to a person who is a resident of Canada, a partnership of which that person is a member is neither a resident nor an enterprise of that other state.

History: S. 6.2 added by 1991, c. 49, s. 220, applicable to taxation years ending after June 23, 1983.

6.3 Gains arising in Canada — Except where a convention expressly otherwise provides, any amount of income, gain or loss in respect of the disposition of a property that is taxable Canadian property within the meaning assigned by the *Income Tax Act* is deemed to arise in Canada.

History: S. 6.3 added by 1999, c. 22, s. 86, applicable to dispositions that occur after February 23, 1998.

Definitions [s. 6.3]: "convention" — ITCIA 2; "taxable Canadian property" — ITA 248(1).

Proposed Amendment — International Tax Convention

Canada Revenue Agency news release, April 29, 2004: See under "Current Status of Tax Treaties", following Canada-U.K. Convention.

Application

7. Application — This Act applies

(a) in the case of tax under Part XIII of the *Income Tax Act*, to amounts paid or credited after June 23, 1983; and

(b) in all other cases, to taxation years ending after June 23, 1983.

CANADA–UNITED STATES TAX CONVENTION (1980)

Convention Between Canada and The United States of America With Respect to Taxes on Income and on Capital Signed on September 26, 1980, as Amended by the Protocols Signed on June 14, 1983, March 28, 1984, March 17, 1995 and July 29, 1997

Enacted in Canada by S.C. 1984, c. 20; 1995 Protocol enacted in Canada by S.C. 1995, c. 34, Royal Assent November 8, 1995; 1997 Protocol enacted in Canada by S.C. 1997, c. 38, Royal Assent December 10, 1997

Background

The Income Tax Convention (tax treaty) between Canada and the United States was signed on September 26, 1980, and amended before ratification by Protocols signed on June 14, 1983 and March 28, 1984. Instruments of ratification were exchanged on August 16, 1984. This Convention supersedes the former Canada-U.S. Convention, signed in 1942. A third Protocol, signed on March 17, 1995 (replacing one earlier signed on August 31, 1994), came into force with instruments of ratification exchanged on November 9, 1995. A fourth Protocol, signed on July 29, 1997, came into force with instruments of ratification exchanged on December 16, 1997.

On April 26, 1984, the United States Treasury Department released a technical explanation of the Convention. A news release issued by the Canadian Department of Finance on August 16, 1984 states that the technical explanation "accurately reflects understandings reached in the course of negotiations with respect to the interpretation and application of the various provisions in the 1980 Tax Convention as amended".

The Technical Explanation may be accepted as valid guidance by the Courts; see, e.g., *Coblentz*, [1996] 3 C.T.C. 295 (FCA). The relevant portion of the technical explanation is reproduced below after each paragraph of the relevant Article. However, the Federal Court of Appeal stated in *Kubicek Estate*, [1997] 3 C.T.C. 435: "The Technical Explanation is a domestic American document. True, it is stated to have the endorsation of the Canadian Minister of Finance, but in order to bind Canada it would have to amount to another convention, which it does not. From the Canadian viewpoint, it has about the same status as a Revenue Canada interpretation bulletin, of interest to a Court but not necessarily decisive of an issue".

On June 13, 1995, the U.S. Treasury Department released a technical explanation of the March 17, 1995 Protocol. The Canadian Minister of Finance again stated that "Canada agrees that the technical explanation accurately reflects understandings reached in the course of negotiations with respect to the interpretation and application of the various provisions in the Protocol": Department of Finance news release 95-048, June 13, 1995. Similarly, a technical explanation for the Protocol signed on July 29, 1997 was released by the U.S. Treasury Department in December, 1997. The relevant portions of these technical explanations are reproduced below with the text.

Negotiations for a further Protocol to amend the treaty are underway; see Proposed Amendment box below.

For interpretation of tax treaties see Notes to *Income Tax Conventions Interpretation Act*, preceding this treaty. For immigration/emigration issues generally, see Bart & Fragomen, *Canada-U.S. Relocation Manual: Immigration, Customs, Employment and Taxation* (Carswell, looseleaf).

For reference to the Canada-United States Social Security Agreement, see CRA Information Circular 84-6.

The North American Free Trade Agreement generally does not apply on income tax matters: VIEWS doc 2004-006448117.

For information on U.S. tax, see the Internal Revenue Services web site, irs.gov.

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Canada and the United States of America, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, have agreed as follows:

Proposed Amendment — New Negotiations

Department of Finance news release, September 18, 2000: *Canada and the United States Propose Tax Treaty Changes*

Finance Minister Paul Martin today announced that Canadian and United States negotiators have agreed in principle to recommend changes to the Canada-United States Income Tax Convention (the "tax treaty").

"If approved by the legislatures of the two countries, these changes will make the tax system fairer by limiting the potential for double taxation of individuals who move from one country to another, and by clarifying a rule that some have argued allows corporations to avoid paying tax," said the Minister.

Minister Martin added that the announced measures will, if ratified, apply as of today's date. "We expect the current negotiations to produce other important changes to the tax treaty as well," he noted. "But we and the United States have agreed that these particular initiatives are important for international mobility, and should take effect right away."

Individuals — Preventing Double Taxation

For individuals, the changes will ensure the appropriate tax treatment of an emigrant's gains. Specifically, where one country's tax rules treat an individual as having disposed of a property immediately before the individual emigrates to the other country, the individual will be able to choose to be treated under the other country's rules as also having disposed of and reacquired the property at its fair market value.

In most cases, this will mean that no tax is payable in the destination country on any pre-emigration gain. Where tax is payable in the destination country — for example, where the property in question is real estate situated in that country — the new rule will ensure appropriate tax crediting.

Corporations — Clarifying Residence

For corporations, the proposals will clarify the effects on a company's residence of "continuance" (or "continuation") from one country into the other.

Laws in both countries allow a company incorporated in one jurisdiction to subject itself to another jurisdiction's corporate law system. A company originally formed in a Canadian province, for example, could continue into a U.S. state and be treated for company law purposes as though it had been incorporated there.

The Canada-U.S. tax treaty treats a company that continues from one country into the other as thereafter being resident in its new home country. However, it has come to the attention of the Canadian and U.S. tax authorities that some have asserted inconsistent positions with respect to a U.S. corporation that has continued into Canada while retaining its status as a U.S. corporation under U.S. internal law. The argument put forward is that the corporation would, by virtue of the treaty, be a resident only of Canada but that it would, for certain other U.S. tax purposes, retain its status as a U.S. corporation under U.S. internal law.

The negotiators agree that it was not contemplated that the continuance provision in the current treaty would be used to avoid taxes in this manner. Accordingly, the revised provision will clarify that a company incorporated in one country that continues into the other will still be treated as a resident of the first country unless that country's internal law no longer treats it as such. For example, a U.S. corporation that continues into Canada but retains its status as a U.S. corporation will, under the treaty, become a Canadian resident while remaining a U.S. resident. Such a corporation will not be entitled to any benefits under the Canada-U.S. tax treaty except to the extent agreed upon by the competent authorities of the two countries.

Timing

If approved, the rule for individuals will apply to changes in residence that take place on and after today's date. Similarly, the rule for corporations will apply to continuances effected on and after today's date, although no inference is intended regarding the treatment of such a corporation under current law. These modifications will form part of a package of tax treaty changes that negotiators expect to finalize in 2001.

For further information: Jean-Michel Catta, Public Affairs and Operations Division, (613) 996-8080; Nathalie Gauthier, Press Secretary, (613) 996-7861; Lawrence Purdy, Tax Legislation Division, (613) 996-0602.

Department of Finance news release, October 2, 1998: *Canada and United States to Consult regarding Modifications to Income Tax Treaty*

Beginning on October 20, 1998, Canada and the United States will consult in Washington regarding modifications to the current Canada-U.S. Income Tax Convention. These consultations are contemplated by Article 20 of the Protocol to the Convention that was signed on March 17, 1995 and entered into force on November 9, 1995. As stipulated in that Protocol, discussions are to include consideration of reductions in the withholding tax rates provided in the Convention and the need for any modifications to the rules in Article XXIX A of the Treaty regarding Limitation on Benefits. It is possible that other issues will also be discussed.

The Department of Finance invites comments from the public regarding the upcoming negotiations. Persons are invited to send their written comments to the Department to the attention of Brian Ernewein, Director, Tax Legislation Division, 17th Floor, East Tower, 140 O'Connor Street, Ottawa, Ontario K1A 0G5.

For further information: Brian Ernewein, Tax Policy Branch, 992-3045.

Application of the 1995 Protocol: Future consultations, and the coming into force of the Protocol, are covered in Articles 20 and 21.

Article 20 provides that the appropriate authorities of each country will consult within a three year period with a view to determining whether further reductions in the withholding rates should be introduced and whether amendments to the new limitation of benefits provisions would be appropriate. The authorities will also consult after a three year period to consider giving effect to the new arbitration procedure provided for under Article XXVI (Mutual Agreement Procedure).

Article 20 reads:

> 1. The appropriate authorities of the Contracting States shall consult within a three-year period from the date on which this Protocol enters into force with respect to further reductions in withholding taxes provided in the Convention, and with respect to the rules in Article XXIX-A (Limitation on Benefits) of the Convention.
>
> 2. The appropriate authorities of the Contracting States shall consult after a three-year period from the date on which the Protocol enters into force in order to determine whether it is appropriate to make the exchange of notes referred to in Article XXVI (Mutual Agreement Procedure) of the Convention.

Article 21 sets out the mechanism for the entry into force of the Protocol and the application of its provisions. In general, the provisions of the Protocol will be effective for the withholding tax as of the first day of the second month following the entry into force of the Protocol and, for other taxes, for taxable periods beginning on and after the first day of January following the entry into force of the Protocol. However, special rules are provided for a phased reduction of the withholding tax on direct dividends and the branch profits tax and for the provisions of Article XXVI-A (Assistance in Collection). The provisions relating to the US estate tax in Article XXIX-B (Taxes Imposed by Reason of Death) are effective retroactively for deaths occurring after November 10, 1988.

Article 21 reads:

> 1. This Protocol shall be subject to ratification in accordance with the applicable procedures in Canada and the United States and instruments of ratification shall be exchanged as soon as possible.
>
> 2. The Protocol shall enter into force upon the exchange of instruments of ratification, and shall have effect:
>
> (a) For tax withheld at the source on income referred to in Articles X (Dividends), XI (Interest), XII (Royalties) and XVIII (Pensions and Annuities) of the Convention, except on income referred to in paragraph 5 of Article XVIII of the Convention

(as it read before the entry into force of this Protocol), with respect to amounts paid or credited on or after the first day of the second month next following the date on which the Protocol enters into force, except that the reference in paragraph 2(a) of Article X (Dividends) of the Convention, as amended by the Protocol, to "5 per cent" shall be read, in its application to amounts paid or credited on or after that first day:

(i) Before 1996, as "7 per cent"; and

(ii) After 1995 and before 1997, as "6 per cent"; and

(b) For other taxes, with respect to taxable years beginning on or after the first day of January next following the date on which the Protocol enters into force, except that the reference in paragraph 6 of Article X (Dividends) of the Convention, as amended by the Protocol, to "5 per cent" shall be read, in its application to taxable years beginning on or after that first day and ending before 1997, as "6 per cent".

3. Notwithstanding the provisions of paragraph 2, Article XXVI-A (Assistance in Collection) of the Convention shall have effect for revenue claims finally determined by a requesting State after the date that is 10 years before the date on which the Protocol enters into force.

4. Notwithstanding the provisions of paragraph 2, paragraphs 2 through 8 of Article XXIX-B (Taxes Imposed by Reason of Death) of the Convention (and paragraph 2 of Article II (Taxes Covered) and paragraph 3(a) of Article XXIX (Miscellaneous Rules) of the Convention, as amended by the Protocol, to the extent necessary to implement paragraphs 2 through 8 of Article XXIX-B (Taxes Imposed by Reason of Death) of the Convention) shall, notwithstanding any limitation imposed under the law of a Contracting State on the assessment, reassessment or refund with respect to a person's return, have effect with respect to deaths occurring after the date on which the Protocol enters into force and, provided that any claim for refund by reason of this sentence is filed within one year of the date on which the Protocol enters into force or within the otherwise applicable period for filing such claims under domestic law, with respect to benefits provided under any of those paragraphs with respect to deaths occurring after November 10, 1988.

5. Notwithstanding the provisions of paragraph 2, paragraph 2 of Article 3 of the Protocol shall have effect with respect to taxable years beginning on or after the first day of January next following the date on which the Protocol enters into force.

Technical Explanation [1995 Protocol]:

Article 20

Article 20 of the Protocol does not amend the text of the Convention. It states two understandings between the Contracting States regarding future action relating to matters dealt with in the Protocol. Paragraph 1 requires the appropriate authorities of the Contracting States to consult on two matters within three years from the date on which the Protocol enters into force. First, they will consult with a view to agreeing to further reductions in withholding rates on dividends, interest and royalties under Articles X, XI, and XII, respectively. This provision reflects the fact that, although the Protocol does significantly reduce withholding rates, the United States remains interested in even greater reductions, to further open the capital markets and fulfill the objectives of the North American Free Trade Agreement. Second, the appropriate authorities of the Contracting States will consult about the rules in Article XXIX A (Limitation on Benefits). By that time, both Contracting States will have had an opportunity to observe the operation of the Article, and the United States will have had greater experience with the corresponding provisions in other recent U.S. tax conventions.

Paragraph 2 of Article 20 also requires consultations between the appropriate authorities, after the three-year period from the date on which the Protocol enters into force, to determine whether to implement the arbitration procedure provided for in paragraph 6 of Article XXVI (Mutual Agreement Procedure), added by Article 14 of the Protocol. The three-year period is intended to give the authorities an opportunity to consider how arbitration has functioned in other tax conventions, such as the U.S.-Germany Convention, before implementing it under this Convention.

Article 21

Article 21 of the Protocol provides the rules for the entry into force of the Protocol provisions. The Protocol will be subject to ratification according to the normal procedures in both Contracting States and instruments of ratification will be exchanged as soon as possible. Upon the exchange of instruments, the Protocol will enter into force.

Paragraph 2(a) of Article 21 generally governs the entry into force of the provisions of the Protocol for taxes withheld at source, while paragraph 2(b) generally governs for other taxes. Paragraphs 3, 4, and 5 provide special rules for certain provisions.

Paragraph 2(a) provides that the Protocol generally will have effect for taxes withheld at source on dividends, interest, royalties, and pensions and annuities (other than social security benefits), under Articles X, XI, XII, and XVIII, respectively, with respect to amounts paid or credited on or after the first day of the second month following the date on which the Protocol enters into force (i.e., the date on which instruments of ratification are exchanged). However, with respect to direct investment dividends, the 5 percent rate specified in paragraph 2(a) of Article X will be phased in as follows: (1) for dividends paid or credited after the first day of the second month referred to above, and during 1995, the rate of withholding will be 7 percent; (2) for dividends paid or credited after the first day of the second month, and during 1996, the rate will be 6 percent; and (3) for dividends paid or credited after the first day of the second month and after 1996, the rate will be 5 percent.

For taxes other than those withheld at source and for the provisions of the Protocol relating to taxes withheld on social security benefits, the Protocol will have effect with respect to taxable years beginning on or after the first day of January following the date on which the Protocol enters into force. However, the rate of tax applicable to the branch tax under paragraph 6 of Article X (Dividends) will be phased in in a manner similar to the direct investment dividend withholding tax rate; that is, a rate of 6 percent will apply for taxable years beginning in 1996 and a rate of 5 percent will apply for taxable years beginning in 1997 and subsequent years.

Paragraph 3 of Article 21 provides a special effective date for the provisions of the new Article XXVI A (Assistance in Collection) of the Convention, introduced by Article 15 of the Protocol. Collection assistance may be granted by a Contracting State with respect to a request by the other Contracting State for a claim finally determined by the requesting State after the date that is ten years before the date of the entry into force of the Protocol. Thus, for example, if instruments of ratification are exchanged on July 1, 1995, assistance may be given by Canada under Article XXVI A for a claim that was finally determined in the United States at any time after July 1, 1985.

Paragraph 4 of Article 21 provides special effective date provisions for paragraphs 2 through 7 of the new Article XXIX B (Taxes Imposed by Reason of Death) of the Convention, introduced by Article 18 of the Protocol, and certain related provisions elsewhere in the Convention. These special effective date provisions are discussed above in connection with Article 18.

Finally, paragraph 5 of Article 21 provides a special effective date for paragraph 2 of Article 3 of the Protocol, which provides a new residence rule for certain "continued" corporations. Under paragraph 5, the new residence rule for such corporations will have effect for taxable years beginning on or after the first day of January following the date on which the Protocol enters into force.

Article I — Personal Scope

This Convention is generally applicable to persons who are residents of one or both of the Contracting States.

Technical Explanation [1984]:

Article I provides that the Convention is generally applicable to persons who are residents of either Canada or the United States or both Canada and the United States. The word "generally" is used because certain provisions of the Convention apply to persons who are residents of neither Canada nor the United States.

Selected Cases [Art. I]: *Wolf v. R.*, [2001] 1 C.T.C. 2172 (TCC); rev'd [2002] 3 C.T.C. 3 (FCA) (Tiebreaker rules applied).

Definitions: "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1); "resident" — ITCIA 3, ITA 250.

Article II — Taxes Covered

1. This Convention shall apply to taxes on income and on capital imposed on behalf of each Contracting State, irrespective of the manner in which they are levied.

Technical Explanation [1984]:

Paragraph 1 states that the Convention applies to taxes "on income and on capital" imposed on behalf of Canada and the United States, irrespective of the manner in which such taxes are levied. Neither Canada nor the

United States presently impose taxes on capital. Paragraph 1 is not intended either to broaden or to limit paragraph 2, which provides that the Convention shall apply, in the case of Canada, to the taxes imposed by the Government of Canada under Parts I, XIII, and XIV of the *Income Tax Act* and, in the case of the United States, to the Federal income taxes imposed by the *Internal Revenue Code* ("the Code").

National taxes not generally covered by the Convention include, in the case of the United States, the estate, gift, and generation-skipping transfer taxes, the Windfall Profits Tax, Federal unemployment taxes, social security taxes imposed under sections 1401, 3101, and 3111 of the Code, and the excise tax on insurance premiums imposed under Code section 4371. The Convention also does not generally cover the Canadian excise tax on net insurance premiums paid by residents of Canada for coverage of a risk situated in Canada, the Petroleum and Gas Revenue Tax (PGRT) and the Incremental Oil Revenue Tax (IORT). However, the Convention has the effect of covering the Canadian social security tax in certain respects because under Canadian domestic tax law no such tax is due if there is no income subject to tax under the *Income Tax Act* of Canada. Taxes imposed by the states of the United States, and by the provinces of Canada, are not generally covered by the Convention. However, if such taxes are imposed in accordance with the provisions of the Convention, a foreign tax credit is ensured by paragraph 7 of Article XXIV (Elimination of Double Taxation).

2. Notwithstanding paragraph 1, the taxes existing on March 17, 1995 to which the Convention shall apply are:

(a) in the case of Canada, the taxes imposed by the Government of Canada under the *Income Tax Act*; and

(b) in the case of the United States, the Federal income taxes imposed by the *Internal Revenue Code* of 1986. However, the Convention shall apply to:

(i) the United States accumulated earnings tax and personal holding company tax, to the extent, and only to the extent, necessary to implement the provisions of paragraphs 5 and 8 of Article X (Dividends);

(ii) the United States excise taxes imposed with respect to private foundations, to the extent, and only to the extent, necessary to implement the provisions of paragraph 4 of Article XXI (Exempt Organizations);

(iii) the United States social security taxes, to the extent, and only to the extent, necessary to implement the provisions of paragraph 2 of Article XXIV (Elimination of Double Taxation) and paragraph 4 of Article XXIX (Miscellaneous Rules); and

(iv) the United States estate taxes imposed by the *Internal Revenue Code* of 1986, to the extent, and only to the extent, necessary to implement the provisions of paragraph 3(g) of Article XXVI (Mutual Agreement Procedure) and Article XXIX-B (Taxes Imposed by Reason of Death).

Technical Explanation [1995 Protocol]:

Article 1 of the Protocol amends Article II (Taxes Covered) of the Convention. Article II identifies the taxes to which the Convention applies. Paragraph 1 of Article 1 replaces paragraphs 2 through 4 of Article II of the Convention with new paragraphs 2 and 3. For each Contracting State, new paragraph 2 of Article II specifies the taxes existing on the date of signature of the Protocol to which the Convention applies. New paragraph 3 provides that the Convention will also apply to taxes identical or substantially similar to those specified in paragraph 2, and to any new capital taxes, that are imposed after the date of signature of the Protocol.

New paragraph 2(a) of Article II describes the Canadian taxes covered by the Convention. As amended by the Protocol, the Convention will apply to all taxes imposed by the Government of Canada under the *Income Tax Act*.

New paragraph 2(b) of Article II amends the provisions identifying the U.S. taxes covered by the Convention in several respects. The Protocol incorporates into paragraph 2(b) the special rules found in paragraph 4 of Article II of the present Convention. New paragraph 2(b)(iii) conforms the rule previously found in paragraph 4(c) of Article II to the amended provisions of Article XXIV (Elimination of Double Taxation), under which Canada has agreed to grant a foreign tax credit for U.S. social security taxes. In addition, the Protocol adds a fourth special rule to reflect the addition to the Convention of new Article XXIX B (Taxes Imposed by Reason of Death) and related provisions in new paragraph 3(g) of Article XXVI (Mutual Agreement Procedure).

Article 1 of the Protocol also makes minor clarifying, non-substantive amendments to paragraphs 2 and 3 of the Article.

Technical Explanation [1984]:

Paragraph 2 contrasts with paragraph 1 of the Protocol to the 1942 Convention, which refers to "Dominion income taxes." In addition, unlike the 1942 Convention, the Convention does not contain a reference to "surtaxes and excess-profits taxes."

Related Provisions: Art. XXVI-A:9 — Cross-border collection assistance applies to other taxes as well.

History: Para. 2 amended by 1995 Protocol, article 1, generally effective with respect to taxable years begining on or after January 1, 1996 (see Art. 21(2) and (4) under "Application of the 1995 Protocol" above). Para. 2 formerly read:

2. The existing taxes to which the Convention shall apply are:

(a) in the case of Canada, the taxes imposed by the Government of Canada under Parts I, XIII and XIV of the *Income Tax Act*; and

(b) in the case of the United States, the Federal income taxes imposed by the *Internal Revenue Code*.

Definitions: "Canada" — Art. III:1(a), ITCIA 5; "personal holding company" — *Internal Revenue Code* s. 542(a); "United States" — Art. III:1(b).

3. The Convention shall apply also to:

(a) any taxes identical or substantially similar to those taxes to which the Convention applies under paragraph 2; and

(b) taxes on capital;

which are imposed after March 17, 1995 in addition to, or in place of, the taxes to which the Convention applies under paragraph 2.

Technical Explanation [1995 Protocol]:

See under para. 2.

Technical Explanation [1984]:

Paragraph 3 provides that the Convention also applies to any taxes identical or substantially similar to the taxes on income in existence on September 26, 1980 which are imposed in addition to or in place of the taxes existing on that date. Similarly, taxes on capital imposed after that date are to be covered.

It was agreed that Part I of the *Income Tax Act* of Canada is a covered tax even though Canada has made certain modifications in the *Income Tax Act* after the signature of the Convention and before the signature of the 1983 Protocol. In particular, Canada has enacted a low flat rate tax on petroleum production (the PGRT) which, at the time of the signature of the 1983 Protocol, is imposed generally at a statutory rate of 14.67 percent for the period June 1, 1982 to May 31, 1983, and at 16 percent thereafter, generally reduced to an effective rate of 11 percent or 12 percent after deducting a 25 percent resource allowance. The PGRT is not deductible in computing income for Canadian income tax purposes. This agreement is not intended to have implications for any other convention or for the interpretation of Code sections 901 and 903. Further, the PGRT and IORT are not taxes described in paragraphs 2 or 3.

History: Para. 3 amended by 1995 Protocol, article 1, generally effective with respect to taxable years begining on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 3 formerly read:

3. The Convention shall apply also to:

(a) any identical or substantially similar taxes on income; and

(b) taxes on capital

which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes.

4. [Repealed]

Technical Explanation [1984]:

Paragraph 4 provides that, notwithstanding paragraphs 2 and 3, the Convention applies to certain United States taxes for certain specified purposes: the accumulated earnings tax and personal holding company tax are covered only to the extent necessary to implement the provisions of paragraphs 5 and 8 of Article X (Dividends); the excise taxes imposed with respect to private foundations are covered only to the extent necessary to implement the provisions of paragraph 4 of Article XXI (Exempt Organizations); and the social security taxes imposed under sections 1401, 3101, and 3111 of the Code are covered only to the extent necessary to implement the provisions of paragraph 4 of Article XXIX (Miscellaneous Rules). The pertinent provisions of Articles X, XXI, and XXIX are described below. Canada has no national taxes similar to the United States accumulated earnings tax, personal holding company tax, or excise taxes imposed with respect to private foundations.

Article II does not specifically refer to interest, fines and penalties. Thus, each Contracting State may, in general, impose interest, fines, and penalties or pay interest pursuant to its domestic laws. Any question whether such items are being imposed or paid in connection with covered taxes in a manner consistent with provisions of the Convention, such as Article XXV (Non-Discrimination), may, however, be resolved by the competent authorities pursuant to Article XXVI (Mutual Agreement Procedure). See, however, the discussion below of the treatment of certain interest under Articles XXIX (Miscellaneous Rules) and XXX (Entry Into Force).

History: Para. 4 repealed by 1995 Protocol, article 1, generally effective with respect to taxable years begining on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 4 formerly read:

> 4. Notwithstanding the provisions of paragraphs 2(b) and 3, the Convention shall apply to:
>
> (a) the United States accumulated earnings tax and personal holding company tax, to the extent, and only to the extent, necessary to implement the provisions of paragraphs 5 and 8 of Article X (Dividends);
>
> (b) the United States excise taxes imposed with respect to private foundations, to the extent, and only to the extent, necessary to implement the provisions of paragraph 4 of Article XXI (Exempt Organizations); and
>
> (c) the United States social security taxes, to the extent, and only to the extent, necessary to implement the provisions of paragraph 4 of Article XXIX (Miscellaneous Rules).

Article III — General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:

(a) when used in a geographical sense, the term **"Canada"** means the territory of Canada, including any area beyond the territorial seas of Canada which, in accordance with international law and the laws of Canada, is an area within which Canada may exercise rights with respect to the seabed and subsoil and their natural resources;

(b) the term **"United States"** means:

(i) the United States of America, but does not include Puerto Rico, the Virgin Islands, Guam or any other United States possession or territory; and

(ii) when used in a geographical sense, such term also includes any area beyond the territorial seas of the United States which, in accordance with international law and the laws of the United States, is an area within which the United States may exercise rights with respect to the seabed and subsoil and their natural resources;

(c) the term **"Canadian tax"** means the taxes referred to in Article II (Taxes Covered) that are imposed on income by Canada;

(d) the term **"United States tax"** means the taxes referred to in Article II (Taxes Covered), other than in subparagraph (b)(i) to (iv) of paragraph 2 thereof, that are imposed on income by the United States;

(e) the term **"person"** includes an individual, an estate, a trust, a company and any other body of persons;

(f) the term **"company"** means any body corporate or any entity which is treated as a body corporate for tax purposes;

(g) the term **"competent authority"** means:

(i) in the case of Canada, the Minister of National Revenue or his authorized representative; and

(ii) in the case of the United States, the Secretary of the Treasury or his delegate;

(h) the term **"international traffic"** with reference to a resident of a Contracting State means any voyage of a ship or aircraft to transport passengers or property (whether or not operated or used by that resident) except where the principal purpose of the voyage is to transport passengers or property between places within the other Contracting State;

(i) the term **"State"** means any national State, whether or not a Contracting State; and

(j) the term **"the 1942 Convention"** means the Convention and Protocol between Canada and the United States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion in the case of Income Taxes signed at Washington on March 4, 1942, as amended by the Convention signed at Ottawa on June 12, 1950, by the Convention signed at Ottawa on August 8, 1956 and by the Supplementary Convention signed at Washington on October 25, 1966.

Technical Explanation [1995 Protocol]:

This Article of the Protocol amends paragraphs 1(c) and 1(d) of Article III (General Definitions) of the Convention. These paragraphs define the terms "Canadian tax" and "United States tax," respectively. The present Convention defines "Canadian tax" to mean the Canadian taxes specified in paragraph 2(a) or 3(a) of Article II (Taxes Covered), i.e., Canadian income taxes. It similarly defines the term "United States tax" to mean the U.S. taxes specified in paragraph 2(b) or 3(a) of Article II, i.e., U.S. income taxes.

As amended by the Protocol, paragraph 2(a) of Article II of the Convention covers all taxes imposed by Canada under its *Income Tax Act*, including certain taxes that are not income taxes. As explained below, paragraph 2(b) is similarly amended by the Protocol to include certain U.S. taxes that are not income taxes. It was, therefore, necessary to amend the terms "Canadian tax" and "United States tax" so that they would continue to refer exclusively to the income taxes imposed by each Contracting State. The amendment to the definition of the term "Canadian tax" ensures, for example, that the Protocol will not obligate the United States to give a foreign tax credit under Article XXIV (Elimination of Double Taxation) for covered taxes other than income taxes.

The definition of "United States tax," as amended, excludes certain United States taxes that are covered in Article II only for certain limited purposes under the Convention. These include the accumulated earnings tax, the personal holding company tax, foundation excise taxes, social security taxes, and estate taxes. To the extent that these are to be creditable taxes in Canada, that fact is specified elsewhere in the Convention. A Canadian income tax credit for U.S. social security taxes is provided in new paragraph 2(a)(ii) of Article XXIV (Elimination of Double Taxation). A Canadian income tax credit for the U.S. estate taxes is provided in paragraph 6 of new Article XXIX B (Taxes Imposed by Reason of Death).

Technical Explanation [1984]:

Article III provides definitions and general rules of interpretation for the Convention. Paragraph 1(a) states that the term "Canada," when used in a geographical sense, means the territory of Canada, including any area beyond the territorial seas of Canada which, under international law and the laws of Canada, is an area within which Canada may exercise rights with respect to the seabed and subsoil and their natural resources. This definition differs only in form from the definition of Canada in the 1942 Convention; paragraph 1(a) omits the reference in the 1942 Convention to "the Provinces, the Territories and Sable Island" as unnecessary.

Paragraph 1(b)(i) defines the term "United States" to mean the United States of America. The term does not include Puerto Rico, the Virgin Islands, Guam, or any other United States possession or territory.

Paragraph 1(b)(ii) states that when the term "United States" is used in a geographical sense the term also includes any area beyond the territorial seas of the United States which, under international law and the laws of the United States, is an area within which the United States may exercise rights with respect to the seabed and subsoil and their natural resources.

Paragraph 1(c) defines the term "Canadian tax" to mean the taxes imposed by the Government of Canada under Parts I, XIII, and XIV of the *Income Tax Act* as in existence on September 26, 1980 and any identical or substantially similar taxes on income imposed by the Government of Canada after that date and which are in addition to or in place of the then existing taxes. The term does not extend to capital taxes, if and when such taxes are ever imposed by Canada.

Paragraph 1(d) defines the term "United States tax" to mean the Federal income taxes imposed by the *Internal Revenue Code* as in existence on September 26, 1980 and any identical or substantially similar taxes on income imposed by the United States after that date in addition to or in place of the then existing taxes. The term does not extend to capital taxes, nor to the United States taxes identified in paragraph 4 of Article II (Taxes Covered).

Paragraph 1(e) provides that the term "person" includes an individual, an estate, a trust, a company, and any other body of persons. Although both the United States and Canada do not regard partnerships as taxable entities, the definition in the paragraph is broad enough to include partnerships where necessary.

Paragraph 1(f) defines the term "company" to mean any body corporate or any entity which is treated as a body corporate for tax purposes.

The term "competent authority" is defined in paragraph 1(g) to mean, in the case of Canada, the Minister of National Revenue or his authorized representative and, in the case of the United States, the Secretary of the Treasury or his delegate. The Secretary of the Treasury has delegated the general authority to act as competent authority to the Commissioner of the Internal Revenue Service, who has redelegated such authority to the Associate Commissioner (Operations). The Assistant Commissioner (Examination) has been delegated the authority to administer programs for simultaneous, spontaneous and industrywide exchanges of information. The Director, Foreign Operations District, has been delegated the authority to administer programs for routine and specific exchanges of information and mutual assistance in collection. The Assistant Commissioner (Criminal Investigations) has been delegated the authority to administer the simultaneous criminal investigation program with Canada.

Paragraph 1(h) defines the term "international traffic" to mean, with reference to a resident of a Contracting State, any voyage of a ship or aircraft to transport passengers or property (whether or not operated or used by that resident), except where the principal purpose of the voyage is transport between points within the other Contracting State. For example, in determining for Canadian tax purposes whether a United States resident has derived profits from the operation of ships or aircraft in international traffic, a voyage of a ship or aircraft (whether or not operated or used by that resident) that includes stops in both Contracting States will not be international traffic if the principal purpose of the voyage is to transport passengers or property from one point in Canada to another point in Canada.

Paragraph 1(i) defines the term "State" to mean any national State, whether or not a Contracting State.

Paragraph 1(j) establishes "the 1942 Convention" as the term to be used throughout the Convention for referring to the pre-existing income tax treaty relationship between the United States and Canada.

Related Provisions: ITCIA 3 — Meanings of undefined terms; 5 — Definitions of "annuity", "Canada", "immovable property", "real property", "periodic pension payment"; 6 — Definition of "interest".

History: Subparas. 1(c) and (d) amended by 1995 Protocol, article 2, generally effective with respect to taxable years begining on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Subparas. (c) and (d) formerly read:

> (c) the term "Canadian tax" means the Canadian taxes referred to in paragraphs 2(a) and 3(a) of Article II (Taxes Covered);
>
> (d) the term "United States tax" means the United States taxes referred to in paragraphs 2(b) and 3(a) of Article II (Taxes Covered);

Subpara. 1(h) amended by 1983 Protocol, article I.

Selected Cases [Art. III(1)]: *Cudd Pressure Control Inc. v. R.*, [1999] 1 C.T.C. 1 (FCA); leave to appeal to SCC refused (1999), 242 N.R. 400 (note) (Notional rent not deductible).

Definitions: "Canada" — Art.III:1(a), ITCIA 5; "estate", "individual" — ITCIA 3, ITA 248(1); "resident of a Contracting State" — Art. IV:1; "trust" — ITCIA 3, ITA 248(1); "United States" — Art. III:1(b).

2. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires and subject to the provisions of Article XXVI (Mutual Agreement Procedure), have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

Technical Explanation [1984]:

Article III provides definitions and general rules of interpretation for the Convention. Paragraph 1(a) states that the term "Canada," when used in a geographical sense, means the territory of Canada, including any area beyond the territorial seas of Canada which, under international law and the laws of Canada, is an area within which Canada may exercise rights with respect to the seabed and subsoil and their natural resources. This definition differs only in form from the definition of Canada in the 1942 Convention; paragraph 1(a) omits the reference in the 1942 Convention to "the Provinces, the Territories and Sable Island" as unnecessary.

Paragraph 1(b)(i) defines the term "United States" to mean the United States of America. The term does not include Puerto Rico, the Virgin Islands, Guam, or any other United States possession or territory.

Paragraph 1(b)(ii) states that when the term "United States" is used in a geographical sense the term also includes any area beyond the territorial seas of the United States which, under international law and the laws of the United States, is an area within which the United States may exercise rights with respect to the seabed and subsoil and their natural resources.

Paragraph 1(c) defines the term "Canadian tax" to mean the taxes imposed by the Government of Canada under Parts I, XIII, and XIV of the *Income Tax Act* as in existence on September 26, 1980 and any identical or substantially similar taxes on income imposed by the Government of Canada after that date and which are in addition to or in place of the then existing taxes. The term does not extend to capital taxes, if and when such taxes are ever imposed by Canada.

Paragraph 1(d) defines the term "United States tax" to mean the Federal income taxes imposed by the *Internal Revenue Code* as in existence on September 26, 1980 and any identical or substantially similar taxes on income imposed by the United States after that date in addition to or in place of the then existing taxes. The term does not extend to capital taxes, nor to the United States taxes identified in paragraph 4 of Article II (Taxes Covered).

Paragraph 1(e) provides that the term "person" includes an individual, an estate, a trust, a company, and any other body of persons. Although both the United States and Canada do not regard partnerships as taxable entities, the definition in the paragraph is broad enough to include partnerships where necessary.

Paragraph 1(f) defines the term "company" to mean any body corporate or any entity which is treated as a body corporate for tax purposes.

The term "competent authority" is defined in paragraph 1(g) to mean, in the case of Canada, the Minister of National Revenue or his authorized representative and, in the case of the United States, the Secretary of the Treasury or his delegate. The Secretary of the Treasury has delegated the general authority to act as competent authority to the Commissioner of the Internal Revenue Service, who has redelegated such authority to the Associate Commissioner (Operations). The Assistant Commissioner (Examination) has been delegated the authority to administer programs for simultaneous, spontaneous and industrywide exchanges of information. The Director, Foreign Operations District, has been delegated the authority to administer programs for routine and specific exchanges of information and mutual assistance in collection. The Assistant Commissioner (Criminal Investigations) has been delegated the authority to administer the simultaneous criminal investigation program with Canada.

Paragraph 1(h) defines the term "international traffic" to mean, with reference to a resident of a Contracting State, any voyage of a ship or aircraft to transport passengers or property (whether or not operated or used by that resident), except where the principal purpose of the voyage is transport between points within the other Contracting State. For example, in determining for Canadian tax purposes whether a United States resident has derived profits from the operation of ships or aircraft in international traffic, a voyage of a ship or aircraft (whether or not operated or used by that resident) that includes stops in both Contracting States will not be international traffic if the principal purpose of the voyage is to transport passengers or property from one point in Canada to another point in Canada.

Paragraph 1(i) defines the term "State" to mean any national State, whether or not a Contracting State.

Paragraph 1(j) establishes "the 1942 Convention" as the term to be used throughout the Convention for referring to the pre-existing income tax treaty relationship between the United States and Canada.

Paragraph 2 provides that, in the case of a term not defined in the Convention, the domestic tax law of the Contracting State applying to the Convention shall control, unless the context in which the term is used requires a definition independent of domestic tax law or the competent authorities reach agreement on a meaning pursuant to Article XXVI (Mutual Agreement Procedure). The term "context" refers to the purpose and background of the provision in which the term appears.

Pursuant to the provisions of Article XXVI, the competent authorities of the Contracting States may resolve any difficulties or doubts as to the interpretation or application of the Convention. An agreement by the competent authorities with respect to the meaning of a term used in the Convention would supersede conflicting meanings in the domestic laws of the Contracting States.

Definitions: "State" — Art. III:1(i).

Article IV — Residence

1. For the purposes of this Convention, the term **"resident of a Contracting State"** means any person that, under the laws of that State, is liable to tax therein by reason of that person's domicile, residence, citizenship, place of management, place of incorporation or any other criterion of a similar nature, but in the case of an estate or trust, only to the extent that income derived by the estate or trust is liable to tax in that State, either in its hands or in the hands of its beneficiaries. For the purposes of this paragraph, an individual who is not a resident of Canada under this paragraph and who is a United States citizen or an alien admitted to the United States for permanent residence (a "green card" holder) is a resident of the United States only if the individual has a substantial presence, permanent home or habitual abode in the United States, and that individual's personal and economic relations are closer to the United States than to any third State. The term "resident" of a Contracting State is understood to include:

(a) the Government of that State or a political subdivision or local authority thereof or any agency or instrumentality of any such government, subdivision or authority, and

(b)

(i) a trust, organization or other arrangement that is operated exclusively to administer or provide pension, retirement or employee benefits; and

(ii) a not-for-profit organization

that was constituted in that State and that is, by reason of its nature as such, generally exempt from income taxation in that State.

Technical Explanation [1995 Protocol]:

Article 3 of the Protocol amends Article IV (Residence) of the Convention. It clarifies the meaning of the term "resident" in certain cases and adds a special rule, found in a number of recent U.S. treaties, for determining the residence of U.S. citizens and "green-card" holders.

The first sentence of paragraph 1 of Article IV sets forth the general criteria for determining residence under the Convention. It is amended by the Protocol to state explicitly that a person will be considered a resident of a Contracting State for purposes of the Convention if he is liable to tax in that Contracting State by reason of citizenship. Although the sentence applies to both Contracting States, only the United States taxes its non-resident citizens in the same manner as its residents. Aliens admitted to the United States for permanent residence ("green card" holders) continue to qualify as U.S. residents under the first sentence of paragraph 1, because they are taxed by the United States as residents, regardless of where they physically reside.

U.S. citizens and green card holders who reside outside the United States, however, may have relatively little personal or economic nexus with the United States. The Protocol adds a second sentence to paragraph 1 that acknowledges this fact by limiting the circumstances under which such persons are to be treated, for purposes of the Convention, as U.S. residents. Under that sentence, a U.S. citizen or green card holder will be treated as a resident of the United States for purposes of the Convention, and, thereby, be entitled to treaty benefits, only if (1) the individual has a substantial presence, permanent home, or habitual abode in the United States, and (2) the individual's personal and economic relations with the United States are closer than those with any third country. If, however, such an individual is a resident of both the United States and Canada under the first sentence of the paragraph, his residence for purposes of the Convention is determined instead under the "tie-breaker" rules of paragraph 2 of the Article.

The fact that a U.S. citizen who does not have close ties to the United States may not be treated as a U.S. resident under Article IV of the Convention does not alter the application of the saving clause of paragraph 2 of Article XXIX (Miscellaneous Rules) to that citizen. However, like any other individual that is a resident alien under U.S. law, a green card holder is treated as a resident of the United States for purposes of the saving clause only if he qualifies as such under Article IV.

New paragraph 1(a) confirms that the term "resident" of a Contracting State includes the Government of that State or a political subdivision or local authority of that State, as well as any agency or instrumentality of one of these governmental entities. This is implicit in the current Convention and in other U.S. and Canadian treaties, even where not specified.

New paragraph 1 also clarifies, in subparagraph (b), that trusts, organizations, or other arrangements operated exclusively to provide retirement or employee benefits, and other not-for-profit organizations, such as organizations described in section 501(c) of the *Internal Revenue Code*, are residents of a Contracting State if they are constituted in that State and are generally exempt from income taxation in that State by reason of their nature as described above. This change clarifies that the specified entities are to be treated as residents of one of the Contracting States. This corresponds to the interpretation that had previously been adopted by the Contracting States. Such entities, therefore, will be entitled to the benefits of the Convention with respect to the other Contracting State, provided that they satisfy the requirements of new Article XXIX A (Limitation on Benefits) (discussed below).

Technical Explanation [1984]:

Article IV provides a detailed definition of the term "resident of a Contracting State." The definition begins with a person's liability to tax as a resident under the respective taxation laws of the Contracting States. A person who, under those laws, is a resident of one Contracting State and not the other need look no further. However, the Convention definition is also designed to assign residence to one State or the other for purposes of the Convention in circumstances where each of the Contracting States believes a person to be its resident. The Convention definition is, of course, exclusively for purposes of the Convention.

Paragraph 1 provides that the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature. The phrase "any other criterion of a similar nature" includes, for U.S. purposes, an election under the Code to be treated as a U.S. resident. An estate or trust is, however, considered to be a resident of a Contracting State only to the extent that income derived by such estate or trust is liable to tax in that State either in its hands or in the hands of its beneficiaries. To the extent that an estate or trust is considered a resident of a Contracting State under this provision, it can be a "beneficial owner" of items of income specified in other articles of the Convention — e.g. paragraph 2 of Article X (Dividends).

Related Provisions: ITCIA 6.2 — Residence of partnership.

History: Para. 1 amended by 1995 Protocol, article 3(1), generally effective with respect to taxable years begining on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 1 formerly read:

> 1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature, but in the case of an estate or trust, only to the extent that income derived by such estate or trust is liable to tax in that State, either in its hands or in the hands of its beneficiaries.

Definitions: "Canada" — Art. III:1(a), ITCIA 5; "estate", "individual" — ITCIA 3, ITA 248(1); "person" — Art. III:1(e), ITCIA 3, *Inter-*

pretation Act 35(1); "State" — Art. III:1(i); "trust" — ITCIA 3, ITA 248(1); "United States" — Art. III:1(b).

I.T. Technical News: 16 (*Crown Forest Industries* case; U.S. S-Corps and LLCs).

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

(a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both States or in neither State, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);

(b) if the Contracting State in which he has his centre of vital interests cannot be determined, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

(c) if he has an habitual abode in both States or in neither State, he shall be deemed to be a resident of the Contracting State of which he is a citizen; and

(d) if he is a citizen of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

Technical Explanation [1984]:

Paragraphs 2, 3, and 4 provide rules to determine a single residence for purposes of the Convention for persons resident in both Contracting States under the rules set forth in paragraph 1. Paragraph 2 deals with individuals. A "dual resident" individual is initially deemed to be a resident of the Contracting State in which he has a permanent home available to him. If the individual has a permanent home available to him in both States or in neither, he is deemed to be a resident of the Contracting State with which his personal and economic relations are closer. If the personal and economic relations of an individual are not closer to one Contracting State than to the other, the individual is deemed to be a resident of the Contracting State in which he has a habitual abode. If he has such an abode in both States or in neither State, he is deemed to be a resident of the Contracting State of which he is a citizen. If the individual is a citizen of both States or of neither, the competent authorities are to settle the status of the individual by mutual agreement.

Related Provisions: ITA 250(5) — Corporation not resident in Canada under treaty is deemed not resident under ITA.

Selected Cases [Art. IV:2]: *Allchin v. R.*, [2005] 2 C.T.C. 2701 (TCC) (Tie-breaker rules re residence and resultant factors considered).

Definitions: "competent authority" — Art. III:1(g); "individual" — ITCIA 3, ITA 248(1); "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

3. Where by reason of the provisions of paragraph 1 a company is a resident of both Contracting States, then if it was created under the laws in force in a Contracting State, it shall be deemed to be a resident of that State. Notwithstanding the preceding sentence, a company that was created in a Contracting State, that is a resident of both Contracting States and that is continued at any time in the other Contracting State in accordance with the corporate law in that other State shall be deemed while it is so continued to be a resident of that other State.

Proposed Amendment — U.S. corporations continued into Canada

Department of Finance news release, September 18, 2000: *Canada and the United States Propose Tax Treaty Changes*

[See at beginning of the convention, under heading "Corporations — Clarifying Residence" — ed.]

Technical Explanation [1995 Protocol]:

Article 3 of the Protocol adds a sentence to paragraph 3 of Article IV of the current Convention to address the residence of certain dual resident corporations. Certain jurisdictions allow local incorporation of an entity that is already organized and incorporated under the laws of another country. Under Canadian law, such an entity is referred to as having been "continued" into the other country. Although the Protocol uses the Canadian term, the provision operates reciprocally. The new sentence states that such a corporation will be considered a resident of the State into which it is continued. Paragraph 5 of Article 21 of the Protocol governs the effective date of this provision.

Technical Explanation [1984]:

Paragraph 3 provides that if, under the provisions of paragraph 1, a company is a resident of both Canada and the United States, then it shall be deemed to be a resident of the State under whose laws (including laws of political subdivisions) it was created. Paragraph 3 does not refer to the State in which a company is organized, thus making clear that the tie-breaker rule for a company is controlled by the State of the company's original creation. Various jurisdictions may allow local incorporation of an entity that is already organized and incorporated under the laws of another country. Paragraph 3 provides certainty in both the United States and Canada with respect to the treatment of such an entity for purposes of the Convention.

Related Provisions: ITA 250(5.1) — Continuation in other jurisdiction.

History: The last sentence of para. 3 added by 1995 Protocol, article 3(2), generally effective with respect to taxable years begining on or after January 1, 1996 (see Art. 21(5) under "Application of the 1995 Protocol" above).

Definitions: "company" — Art. II:1(f); "State" — Art. III:1(i).

4. Where by reason of the provisions of paragraph 1 an estate, trust or other person (other than an individual or a company) is a resident of both Contracting States, the competent authorities of the States shall by mutual agreement endeavor to settle the question and to determine the mode of application of the Convention to such person.

Technical Explanation [1984]:

Paragraph 4 provides that where, by reason of the provisions of paragraph 1, an estate, trust, or other person, other than an individual or a company, is a resident of both Contracting States, the competent authorities of the States shall by mutual agreement endeavor to settle the question and determine the mode of application of the Convention to such person. This delegation of authority to the competent authorities complements the provisions of Article XXVI (Mutual Agreement Procedure), which implicitly grant such authority.

Definitions: "company" — Art. II:1(f); "competent authority" — Art. III:1(g); "estate", "individual" — ITCIA 3, ITA 248(1); "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1); "State" — Art. III:1(i); "trust" — ITCIA 3, ITA 248(1).

5. Notwithstanding the provisions of the preceding paragraphs, an individual shall be deemed to be a resident of a Contracting State if:

(a) the individual is an employee of that State or of a political subdivision, local authority or instrumentality thereof rendering services in the discharge of functions or a governmental nature in the other Contracting State or in a third State; and

(b) the individual is subjected in the first-mentioned State to similar obligations in respect of taxes on income as are residents of the first-mentioned State.

The spouse and dependent children residing with such an individual and meeting the requirements of subparagraph (b) above shall also be deemed to be residents of the first-mentioned State.

Technical Explanation [1984]:

Paragraph 5 provides a special rule for certain government employees, their spouses, and dependent children. An individual is deemed to be a resident of a Contracting State if he is an employee of that State or of a political subdivision, local authority, or instrumentality of that State, is rendering services in the discharge of functions of a governmental nature in any State, and is subjected in the first-mentioned State to "similar obligations" in respect of taxes on income as are residents of the first-mentioned State. Paragraph 5 provides further that a spouse and dependent

children residing with a government employee and also subject to "similar obligations" in respect of income taxes as residents of the first-mentioned State are also deemed to be residents of that State. Paragraph 5 overrides the normal tie-breaker rule of paragraph 2. A U.S. citizen or resident who is an employee of the U.S. government in a foreign country or who is a spouse or dependent of such employee is considered to be subject in the United States to "similar obligations" in respect of taxes on income as those imposed on residents of the United States, notwithstanding that such person may be entitled to the benefits allowed by sections 911 or 912 of the Code.

Related Provisions: ITA 250(1)(c) — Residence of Canadian ambassador, etc., working outside Canada.

Definitions: "individual" — ITCIA 3, ITA 248(1); "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

Selected Cases [Art. IV]: *Wolf v. R.*, [2001] 1 C.T.C. 2172 (TCC); rev'd [2002] 3 C.T.C. 3 (FCA) (Tiebreaker rules applied); *Crown Forest Industries Ltd. v. Canada*, [1995] 2 C.T.C. 64 (SCC) (Residence implies taxability on world wide income).

Article V — Permanent Establishment

1. For the purposes of this Convention, the term **"permanent establishment"** means a fixed place of business through which the business of a resident of a Contracting State is wholly or partly carried on.

Technical Explanation [1984]:

Paragraph 1 provides that for the purposes of the Convention the term "permanent establishment" means a fixed place of business through which the business of a resident of a Contracting State is wholly or partly carried on. Article V does not use the term "enterprise of a Contracting State," which appears in the 1942 Convention. Thus, paragraph 1 avoids introducing an additional term into the Convention. The omission of the term is not intended to have any implications for the interpretation of the 1942 Convention.

Related Provisions: Reg. 8202(2) — Treaty definition applies for certain FAPI purposes; Art. V, ss. 2–9 — Extensions to definition of "permanent establishment".

Definitions: "business" — ITCIA 3, ITA 248(1); "resident of a Contracting State" — Art. IV:1.

I.T. Technical News: 18 (*Dudney* case); 25 (e-commerce — whether web site is permanent establishment).

2. The term "permanent establishment" shall include especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop; and

(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

Technical Explanation [1984]:

Paragraph 2 provides that the term "permanent establishment" includes especially a place of management, a branch, an office, a factory, a workshop, and a mine, oil or gas well, quarry, or any other place of extraction of natural resources.

3. A building site or construction or installation project constitutes a permanent establishment if, but only if, it lasts more than 12 months.

Technical Explanation [1984]:

Paragraph 3 adds that a building site or construction or installation project constitutes a permanent establishment if and only if it lasts for more than 12 months.

4. The use of an installation or drilling rig or ship in a Contracting State to explore for or exploit natural resources constitutes a permanent establishment if, but only if, such use is for more than three months in any twelve-month period.

Technical Explanation [1984]:

Paragraph 4 provides that a permanent establishment exists in a Contracting State if the use of an installation or drilling rig or drilling ship in that State to explore for or exploit natural resources lasts for more than 3 months in any 12 month period, but not if such activity exists for a lesser period of time. The competent authorities have entered into an agreement under the 1942 Convention setting forth guidelines as to certain aspects of Canadian taxation of drilling rigs owned by U.S. persons that constitute Canadian permanent establishments. The agreement will be renewed when this Convention enters into force.

History: Para. 4 amended by 1983 Protocol, article II.

5. A person acting in a Contracting State on behalf of a resident of the other Contracting State — other than an agent of an independent status to whom paragraph 7 applies — shall be deemed to be a permanent establishment in the first-mentioned State if such person has, and habitually exercises in that State, an authority to conclude contracts in the name of the resident.

Technical Explanation [1984]:

Paragraph 5 provides that a person acting in a Contracting State on behalf of a resident of the other Contracting State is deemed to be a permanent establishment of the resident if such person has and habitually exercises in the first-mentioned State the authority to conclude contracts in the name of the resident. This rule does not apply to an agent of independent status, covered by paragraph 7. Under the provisions of paragraph 5, a permanent establishment may exist even in the absence of a fixed place of business. If, however, the activities of a person described in paragraph 5 are limited to the ancillary activities described in paragraph 6, then a permanent establishment does not exist solely on account of the person's activities.

There are a number of minor differences between the provisions of paragraphs 1 through 5 and the analogous provisions of the 1942 Convention. One important deviation is elimination of the rule of the 1942 Convention which deems a permanent establishment to exist in any circumstance where a resident of one State uses substantial equipment in the other State for any period of time. The Convention thus generally raises the threshold for source basis taxation of activities that involve substantial equipment (and that do not otherwise constitute a permanent establishment). Another deviation of some significance is elimination of the rule of the 1942 Convention that considers a permanent establishment to exist where a resident of one State carries on business in the other State through an agent or employee who has a stock of merchandise from which he regularly fills orders that he receives. The Convention provides that a person other than an agent of independent status who is engaged solely in the maintenance of a stock of goods or merchandise belonging to a resident of the other State for the purpose of storage, display or delivery does not constitute a permanent establishment.

Definitions: "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1); "State" — Art. III:1(i).

6. Notwithstanding the provisions of paragraphs 1, 2 and 5, the term "permanent establishment" shall be deemed not to include a fixed place of business used solely for, or a person referred to in paragraph 5 engaged solely in, one or more of the following activities:

(a) the use of facilities for the purpose of storage, display or delivery of goods or merchandise belonging to the resident;

(b) the maintenance of a stock of goods or merchandise belonging to the resident for the purpose of storage, display or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the resident for the purpose of processing by another person;

(d) the purchase of goods or merchandise, or the collection of information, for the resident; and

(e) advertising, the supply of information, scientific research or similar activities which have a preparatory or auxiliary character, for the resident.

Technical Explanation [1984]:

Paragraph 6 provides that a fixed place of business used solely for, or an employee described in paragraph 5 engaged solely in, certain specified activities is not a permanent establishment, notwithstanding the provisions of paragraphs 1, 2, and 5. The specified activities are: a) the use of facilities for the purpose of storage, display, or delivery of goods or merchandise belonging to the resident whose business is being carried on; b) the maintenance of a stock of goods or merchandise belonging to the resident for the purpose of storage, display, or delivery; c) the maintenance of a stock of goods or merchandise belonging to the resident for the purpose of processing by another person; d) the purchase of goods or merchandise, or the collection of information, for the resident; and e) advertising, the supply of information, scientific research, or similar activities which have a preparatory or auxiliary character, for the resident. Combinations of the specified activities have the same status as any one of the activities. Thus, unlike the OECD Model Convention, a combination of the activities described in subparagraphs 6(a) through 6(e) need not be of a preparatory or auxiliary character (except as required by subparagraph 6(e)) in order to avoid the creation of a permanent establishment. The reference in paragraph 6(e) to specific activities does not imply that any other particular activities — for example, the servicing of a patent or a know-how contract or the inspection of the implementation of engineering plans — do not fall within the scope of paragraph 6(e) provided that, based on the facts and circumstances, such activities have a preparatory or auxiliary character.

Definitions: "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1).

7. A resident of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because such resident carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

Technical Explanation [1984]:

Paragraph 7 provides that a resident of a Contracting State is not deemed to have a permanent establishment in the other Contracting State merely because such resident carries on business in the other State through a broker, general commission agent, or any other agent of independent status, provided that such persons are acting in the ordinary course of their business.

Definitions: "business" — ITCIA 3, ITA 248(1); "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1); "resident of a Contracting State" — Art. IV:1.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not constitute either company a permanent establishment of the other.

Technical Explanation [1984]:

Paragraph 8 states that the fact that a company which is a resident of one Contracting State controls or is controlled by a company which is either a resident of the other Contracting State or which is carrying on a business in the other State, whether through a permanent establishment or otherwise, does not automatically render either company a permanent establishment of the other.

Definitions: "business" — ITCIA 3, ITA 248(1); "company" — Art. II:1(f); "resident of a Contracting State" — Art. IV:1.

9. For the purposes of the Convention, the provisions of this Article shall be applied in determining whether any person has a permanent establishment in any State.

Technical Explanation [1984]:

Paragraph 9 provides that, for purposes of the Convention, the provisions of Article V apply in determining whether any person has a permanent establishment in any State. Thus, these provisions would determine whether a person other than a resident of Canada or the United States has a permanent establishment in Canada or the United States, and whether a person resident in Canada or the United States has a permanent establishment in a third State.

Definitions: "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1); "State" — Art. III:1(i).

Related Provisions: ITCIA 4 — Permanent establishment in Canada.

Selected Cases [Art. V]: *Dudney v. R.*, [2000] 2 C.T.C. 56 (FCA); aff'g [1999] 1 C.T.C. 2267 (TCC) (Taxpayer had no "fixed base").

Interpretation Bulletins: IT-173R2: Capital gains derived in Canada by residents of the United States.

Article VI — Income from Real Property

1. Income derived by a resident of a Contracting State from real property (including income from agriculture, forestry or other natural resources) situated in the other Contracting State may be taxed in that other State.

Technical Explanation [1984]:

Paragraph 1 provides that income derived by a resident of a Contracting State from real property situated in the other Contracting State may be taxed by that other State. Income from real property includes, for purposes of Article VI, income from agriculture, forestry or other natural resources. Also, while "income derived ... from real property" includes income from rights such as an overriding royalty or a net profits interest in a natural resource, it does not include income in the form of rights to explore for or exploit natural resources which a party receives as compensation for services (e.g., exploration services); the latter income is subject to the provisions of Article VII (Business Profits), XIV (Independent Personal Services), or XV (Dependent Personal Services), as the case may be. As provided by paragraph 3, paragraph 1 applies to income derived from the direct use, letting or use in any other form of real property and to income from the alienation of such property.

Definitions: "real property" — Art. VI:2, ITCIA 5; "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

2. For the purposes of this Convention, the term **"real property"** shall have the meaning which it has under the taxation laws of the Contracting State in which the property in question is situated and shall include any option or similar right in respect thereof. The term shall in any case include usufruct of real property, rights to explore for or to exploit mineral deposits, sources and other natural resources and rights to amounts computed by reference to the amount or value of production from such resources; ships and aircraft shall not be regarded as real property.

Technical Explanation [1984]:

Generally speaking, the term "real property" has the meaning which it has under the taxation laws of the Contracting State in which the property in question is situated, in accordance with paragraph 2. In any case, the term includes any option or similar right in respect of real property, the usufruct of real property, and rights to explore for or to exploit mineral deposits, sources, and other natural resources. The reference to "rights to explore for or to exploit mineral deposits, sources and other natural resources" includes rights generating either variable (e.g., computed by reference to the amount of value or production) or fixed payments. The term "real property" does not include ships and aircraft.

Related Provisions: ITCIA 5 — Definition of "immovable property" and "real property".

Definitions: "mineral", "property" — ITCIA 3, ITA 248(1); "usufruct" — Quebec *Civil Code* art. 1120-1171.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of real property and to income from the alienation of such property.

Technical Explanation [1984]:

Unlike Article XIII A of the 1942 Convention, Article VI does not contain an election to allow a resident of a Contracting State to compute tax on income from real property situated in the other State on a net basis. Both the *Internal Revenue Code* and the *Income Tax Act* of Canada generally

allow for net basis taxation with respect to real estate rental income, although Canada does not permit such an election for natural resource royalties. Also, unlike the 1942 Convention which in Article XI imposes a 15 percent limitation on the source basis taxation of rental or royalty income from real property, Article VI of the Convention allows a Contracting State to impose tax on such income under its internal law. In Canada the rate of tax on resource royalties is 25 percent of the gross amount of the royalty, if the income is not attributable to a business carried on in Canada. In an exchange of notes to the Protocol, the United States and Canada agreed to resume negotiations, upon request by either country, to provide an appropriate limit on taxation in the State of source if either country subsequently increases its statutory tax rate now applicable to such royalties (25 percent in the case of Canada and 30 percent in the case of the United States).

Definitions: "property" — ITCIA 3, ITA 248(1); "real property" — Art. VI:2, ITCIA 5.

History: Article VI amended by 1983 Protocol, article III.

Interpretation Bulletins: IT-173R2: Capital gains derived in Canada by residents of the United States.

Article VII — Business Profits

1. The business profits of a resident of a Contracting State shall be taxable only in that State unless the resident carries on business in the other Contracting State through a permanent establishment situated therein. If the resident carries on, or has carried on, business as aforesaid, the business profits of the resident may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

Technical Explanation [1984]:

Paragraph 1 provides that business profits of a resident of a Contracting State are taxable only in that State unless the resident carries on business in the other Contracting State through a permanent establishment situated in that other State. If the resident carries on, or has carried on, business through such a permanent establishment, the other State may tax such business profits but only so much of them as are attributable to the permanent establishment. The reference to a prior permanent establishment ("or has carried on") makes clear that a Contracting State in which a permanent establishment existed has the right to tax the business profits attributable to that permanent establishment, even if there is a delay in the receipt or accrual of such profits until after the permanent establishment has been terminated.

Any business profits received or accrued in taxable years in which the Convention has effect, in accordance with Article XXX (Entry Into Force), which are attributable to a permanent establishment that was previously terminated are subject to tax in the Contracting State in which such permanent establishment existed under the provisions of Article VII.

Related Provisions: Art. V — Permanent establishment.

Definitions: "business" — ITCIA 3, ITA 248(1); "permanent establishment" — Art. V:1; "resident" — ITCIA 3, ITA 250; "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

I.T. Technical News: 18 (*Dudney* case); 25 (e-commerce).

2. Subject to the provisions of paragraph 3, where a resident of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the business profits which it might be expected to make if it were a distinct and separate person engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the resident and with any other person related to the resident (within the meaning of paragraph 2 of Article IX (Related Persons)).

Technical Explanation [1984]:

Paragraph 2 provides that where a resident of either Canada or the United States carries on business in the other Contracting State through a permanent establishment in that other State, both Canada and the United States shall attribute to that permanent establishment business profits which the permanent establishment might be expected to make if it were a distinct and separate person engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the resident and with any other person related to the resident. The term "related to the resident" is to be interpreted in accordance with paragraph 2 of Article IX (Related Persons). The reference to other related persons is intended to make clear that the test of paragraph 2 is not restricted to independence between a permanent establishment and a home office.

Definitions: "permanent establishment" — Art. V:1; "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1); "resident of a Contracting State" — Art. IV:1.

3. In determining the business profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. Nothing in this paragraph shall require a Contracting State to allow the deduction of any expenditure which, by reason of its nature, is not generally allowed as a deduction under the taxation laws of that State.

Technical Explanation [1984]:

Paragraph 3 provides that, in determining business profits of a permanent establishment, there are to be allowed as deductions those expenses which are incurred for the purposes of the permanent establishment, including executive and administrative expenses, whether incurred in the State in which the permanent establishment is situated or in any other State. However, nothing in the paragraph requires Canada or the United States to allow a deduction for any expenditure which would not generally be allowed as a deduction under its taxation laws. The language of this provision differs from that of paragraph 1 of Article III of the 1942 Convention, which states that in the determination of net industrial and commercial profits of a permanent establishment there shall be allowed as deductions "all expenses, wherever incurred" as long as such expenses are reasonably allocable to the permanent establishment. Paragraph 3 of Article VII of the Convention is not intended to have any implications for interpretation of the 1942 Convention, but is intended to assure that under the Convention deductions are allowed by a Contracting State which are generally allowable by that State.

Definitions: "permanent establishment" — Art. V:1; "State" — Art. III:1(i).

I.T. Technical News: 18 (*Cudd Pressure* case).

4. No business profits shall be attributed to a permanent establishment of a resident of a Contracting State by reason of the use thereof for either the mere purchase of goods or merchandise or the mere provision of executive, managerial or administrative facilities or services for such resident.

Technical Explanation [1984]:

Paragraph 4 provides that no business profits are to be attributed to a permanent establishment of a resident of a Contracting State by reason of the use of the permanent establishment for merely purchasing goods or merchandise or merely providing executive, managerial, or administrative facilities or services for the resident. Thus, if a company resident in a Contracting State has a permanent establishment in the other State, and uses the permanent establishment for the mere performance of stewardship or other managerial services carried on for the benefit of the resident, this activity will not result in profits being attributed to the permanent establishment.

Definitions: "permanent establishment" — Art. V:1; "resident" — ITCIA 3, ITA 250; "resident of a Contracting State" — Art. IV:1.

5. For the purposes of the preceding paragraphs, the business profits to be attributed to a permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

Technical Explanation [1984]:

Paragraph 5 provides that business profits are to be attributed to a permanent establishment by the same method in every taxable period unless there is good and sufficient reason to change such method. In the United States, such a change may be a change in accounting method requiring the approval of the Internal Revenue Service.

Definitions: "permanent establishment" — Art. V:1.

6. Where business profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Technical Explanation [1984]:

Paragraph 6 explains the relationship between the provisions of Article VII and other provisions of the Convention. Where business profits include items of income which are dealt with separately in other Articles of the Convention, those other Articles are controlling.

7. For the purposes of the Convention, the business profits attributable to a permanent establishment shall include only those profits derived from the assets or activities of the permanent establishment.

Technical Explanation [1984]:

Paragraph 7 provides a definition for the term "attributable to." Profits "attributable to" a permanent establishment are those derived from the assets or activities of the permanent establishment. Paragraph 7 does not preclude Canada or the United States from using appropriate domestic tax law rules of attribution. The "attributable to" definition does not, for example, preclude a taxpayer from using the rules of section 1.864-4(c)(5) of the Treasury Regulations to assure for U.S. tax purposes that interest arising in the United States is attributable to a permanent establishment in the United States. (Interest arising outside the United States is attributable to a permanent establishment in the United States based on the principles of Regulations sections 1.864-5 and 1.864-6 and Revenue Ruling 75-253, 1975-2 C.B. 203.) Income that would be taxable under the Code and that is "attributable to" a permanent establishment under paragraph 7 is taxable pursuant to Article VII, however, even if such income might under the Code be treated as fixed or determinable annual or periodical gains or income not effectively connected with the conduct of a trade or business within the United States. The "attributable to" definition means that the limited "force-of-attraction" rule of Code section 864(c)(3) does not apply for U.S. tax purposes under the Convention.

Definitions: "permanent establishment" — Art. V:1.

Selected Cases [Art. VII]: *Sumner v. R.*, [2000] 2 C.T.C. 2359 (TCC) (Performer's "loan-out" company subject to Canadian tax).

Article VIII — Transportation

1. Notwithstanding the provisions of Articles VII (Business Profits), XII (Royalties) and XIII (Gains), profits derived by a resident of a Contracting State from the operation of ships or aircraft in international traffic, and gains derived by a resident of a Contracting State from the alienation of ships, aircraft or containers (including trailers and related equipment for the transport of containers) used principally in international traffic, shall be exempt from tax in the other Contracting State.

Technical Explanation [1984]:

Paragraph 1 provides that profits derived by a resident of a Contracting State from the operation of ships or aircraft in international traffic are exempt from tax in the other Contracting State, even if, under Article VII (Business Profits), such profits are attributable to a permanent establishment. Paragraph 1 also provides that gains derived by a resident of a Contracting State from the alienation of ships, aircraft or containers (including trailers and related equipment for the transport of containers) used principally in international traffic are exempt from tax in the other Contracting State even if, under Article XIII (Gains), those gains would be taxable in that other State. These rules differ from Article V of the 1942 Convention, which conditions the exemption in the State of source on registration of the ship or aircraft in the other State. Paragraph 1 also applies notwithstanding the provisions of Article XII (Royalties). Thus, to the extent that profits described in paragraph 2 would also fall within Article XII (Royalties) (e.g., rent from the lease of a container), the provisions of Article VIII are controlling.

Related Provisions: Art. III:1(h) — Meaning of "international traffic"; ITA 81(1)(c) — Exemption for income from ship or aircraft in international traffic.

History: Para. 1 amended by 1983 Protocol, article IV.

Definitions: "international traffic" — Art. III:1(h); "resident of a Contracting State" — Art. IV:1.

2. For the purposes of this Convention, profits derived by a resident of a Contracting State from the operation of ships or aircraft in international traffic include profits from:

(a) the rental of ships or aircraft operated in international traffic;

(b) the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used in international traffic; and

(c) the rental of ships, aircraft or containers (including trailers and related equipment for the transport of containers) provided that such profits are incidental to profits referred to in paragraph 1, 2(a) or 2(b).

Technical Explanation [1984]:

Paragraph 2(a) provides that profits covered by paragraph 1 include profits from the rental of ships or aircraft operated in international traffic. Such rental profits are included whether the rental is on a time, voyage, or bareboat basis, and irrespective of the State of residence of the operator.

Paragraph 2(b) provides that profits covered by paragraph 1 include profits derived from the use, maintenance or rental of containers, including trailers and related equipment for the transport of containers, if such containers are used in international traffic.

Paragraph 2(c) provides that profits covered by paragraph 1 include profits derived by a resident of a Contracting State from the rental of ships, aircraft, or containers (including trailers and related equipment for the transport of containers), even if not operated in international traffic, as long as such profits are incidental to profits of such person referred to in paragraphs 1, 2(a), or 2(b).

Related Provisions: Art. III:1(h) — Meaning of "international traffic".

Definitions: "international traffic" — Art. III:1(h); "resident of a Contracting State" — Art. IV:1.

3. Notwithstanding the provisions of Article VII (Business Profits), profits derived by a resident of a Contracting State from a voyage of a ship where the principal purpose of the voyage is to transport passengers or property between places in the other Contracting State may be taxed in that other State.

Technical Explanation [1984]:

Paragraph 3 states that profits derived by a resident of a Contracting State from a voyage of a ship where the principal purpose of the voyage is to transport passengers or property between points in the other Contracting State is taxable in that other State, whether or not the resident maintains a permanent establishment there. Paragraph 3 overrides the provisions of Article VII. Profits from such a voyage do not qualify for exemption under Article VIII by virtue of the definition of "international traffic" in paragraph 1(h) of Article III (General Definitions). However, profits from a similar voyage by aircraft are taxable in the Contracting State of source only if the profits are attributable to a permanent establishment maintained in that State.

Related Provisions: Art. XV;3 — Exemption for employees' income.

Definitions: "property" — ITCIA 3, ITA 248(1); "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

4. Notwithstanding the provisions of Articles VII (Business Profits) and XII (Royalties), profits of a resident of a Contracting State engaged in the operation of motor vehicles or a railway as a common carrier or a contract carrier derived from:

(a) the transportation of passengers or property between a point outside the other Contracting State and any other point; or

(b) the rental of motor vehicles (including trailers) or railway rolling stock, or the use, maintenance or rental of containers (including trailers and related equipment

for the transport of containers) used to transport passengers or property between a point outside the other Contracting State and any other point

shall be exempt from tax in that other Contracting State.

Technical Explanation [1984]:

Paragraph 4 provides that profits derived by a resident of a Contracting State engaged in the operation of motor vehicles or a railway as a common carrier or contract carrier, and attributable to the transportation of passengers or property between a point outside the other Contracting State and any other point are exempt from tax in that other State. In addition, profits of such a person from the rental of motor vehicles (including trailers) or railway rolling stock, or from the use, maintenance, or rental of containers (including trailers and related equipment for the transport of containers) used to transport passengers or property between a point outside the other Contracting State and any other point are exempt from tax in that other State.

Related Provisions: Art. XV:3 — Exemption for employees' income.

Definitions: "motor vehicle", "property" — ITCIA 3, ITA 248(1); "resident of a Contracting State" — Art. IV:1.

5. The provisions of paragraphs 1, 3 and 4 shall also apply to profits or gains referred to in those paragraphs derived by a resident of a Contracting State from the participation in a pool, a joint business or an international operating agency.

Technical Explanation [1984]:

Paragraph 5 provides that a resident of a Contracting State that participates in a pool, a joint business, or an international operating agency is subject to the provisions of paragraphs 1, 3, and 4 with respect to the profits or gains referred to in paragraphs 1, 3, and 4.

Definitions: "resident of a Contracting State" — Art. IV:1.

6. Notwithstanding the provisions of Article XII (Royalties), profits derived by a resident of a Contracting State from the use, maintenance or rental of railway rolling stock, motor vehicles, trailers or containers (including trailers and related equipment for the transport of containers) used in the other Contracting State for a period or periods not expected to exceed in the aggregate 183 days in any twelve-month period shall be exempt from tax in the other Contracting State except to the extent that such profits are attributable to a permanent establishment in the other State and liable to tax in the other State by reason of Article VII (Business Profits).

Technical Explanation [1984]:

Paragraph 6 states that profits derived by a resident of a Contracting State from the use, maintenance, or rental of railway rolling stock, motor vehicles, trailers, or containers (including trailers and related equipment for the transport of containers) used in the other Contracting State for a period not expected to exceed 183 days in the aggregate in any 12-month period are exempt from tax in that other State except to the extent that the profits are attributable to a permanent establishment, in which case the State of source has the right to tax under Article VII. The provisions of paragraph 6, unlike the provisions of paragraph 4, apply whether or not the resident is engaged in the operation of motor vehicles or a railway as a common carrier or contract carrier. Paragraph 6 overrides the provisions of Article XII (Royalties), which would otherwise permit taxation in the State of source in the circumstances described.

Gains from the alienation of motor vehicles and railway rolling stock derived by a resident of a Contracting State are not affected by paragraph 4 or 6. Such gains would be taxable in the other Contracting State, however, only if the motor vehicles or rolling stock formed part of a permanent establishment maintained there. See paragraphs 2 and 4 of Article XIII.

Definitions: "motor vehicle" — ITCIA 3, ITA 248(1); "permanent establishment" — Art. V:1; "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

Article IX — Related Persons

1. Where a person in a Contracting State and a person in the other Contracting State are related and where the arrangements between them differ from those which would be made between unrelated persons, each State may adjust the amount of the income, loss or tax payable to reflect the income, deductions, credits or allowances which would, but for those arrangements, have been taken into account in computing such income, loss or tax.

Technical Explanation [1984]:

Paragraph 1 authorizes Canada and the United States, as the case may be, to adjust the amount of income, loss, or tax payable by a person with respect to arrangements between that person and a related person in the other Contracting State. Such adjustment may be made when arrangements between related persons differ from those that would obtain between unrelated persons. The term "person" encompasses a company resident in a third State with, for example, a permanent establishment in a Contracting State.

Related Provisions: ITA 247 — Transfer pricing adjustments.

Definitions: "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1); "State" — Art. III:1(i).

2. For the purposes of this Article, a person shall be deemed to be related to another person if either person participates directly or indirectly in the management or control of the other, or if any third person or persons participate directly or indirectly in the management or control of both.

Technical Explanation [1984]:

Paragraph 2 provides that, for the purposes of Article IX, a person is deemed to be related to another person if either participates directly or indirectly in the management or control of the other or if any third person or persons participate directly or indirectly in the management or control of both. Thus, if a resident of any State controls directly or indirectly a company resident in Canada and a company resident in the United States, such companies are considered to be related persons for purposes of Article IX. Article IX and the definition of "related person" in paragraph 2 may encompass situations that would not be covered by provisions in the domestic laws of the Contracting States. Nor is the paragraph 2 definition controlling for the definition of "related person" or similar terms appearing in other Articles of the Convention. Those terms are defined as provided in paragraph 2 of Article III (General Definitions).

Definitions: "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1).

3. Where an adjustment is made or to be made by a Contracting State in accordance with paragraph 1, the other Contracting State shall (notwithstanding any time or procedural limitations in the domestic law of that other State) make a corresponding adjustment to the income, loss or tax of the related person in that other State if:

(a) it agrees with the first-mentioned adjustment; and

(b) within six years from the end of the taxable year to which the first-mentioned adjustment relates, the competent authority of the other State has been notified of the first-mentioned adjustment. The competent authorities, however, may agree to consider cases where the corresponding adjustment would not otherwise be barred by any time or procedural limitations in the other State, even if the notification is not made within the six-year period.

Technical Explanation [1995 Protocol]:

Article 4 of the Protocol amends paragraphs 3 and 4 of Article IX (Related Persons) of the Convention. Paragraph 1 of Article IX authorizes a Contracting State to adjust the amount of income, loss, or tax payable by a person with respect to arrangements between that person and a related person in the other Contracting State, when such arrangements differ from those that would obtain between unrelated persons. Under the present Convention, if an adjustment is made or to be made by a Contracting State under paragraph 1, paragraph 3 obligates the other Contracting State to

make a corresponding adjustment if two conditions are satisfied: (1) the other Contracting State agrees with the adjustment made or to be made by the first Contracting State, and (2) the competent authority of the other Contracting State has received notice of the first adjustment within six years of the end of the taxable year to which that adjustment relates. If notice is not given within the six-year period, and if the person to whom the first adjustment relates is not notified of the adjustment at least six months prior to the end of the six-year period, paragraph 4 of Article IX of the present Convention requires that the first Contracting State withdraw its adjustment, to the extent necessary to avoid double taxation.

Article 4 of the Protocol amends paragraphs 3 and 4 of Article IX to prevent taxpayers from using the notification requirements of the present Convention to avoid adjustments. Paragraph 4, as amended, eliminates the requirement that a Contracting State withdraw an adjustment if the notification requirement of paragraph 3 has not been met. Paragraph 4 is also amended to delete the requirement that the taxpayer be notified at least six months before expiration of the six-year period specified in paragraph 3.

As amended by the Protocol, Article IX also explicitly authorizes the competent authorities to relieve double taxation in appropriate cases, even if the notification requirement is not satisfied. Paragraph 3 confirms that the competent authorities may agree to a corresponding adjustment if such an adjustment is not otherwise barred by time or procedural limitations such as the statute of limitations. Paragraph 4 provides that the competent authority of the State making the initial adjustment may grant unilateral relief from double taxation in other cases, although such relief is not obligatory.

Technical Explanation [1984]:

Paragraph 3 provides that where, pursuant to paragraph 1, an adjustment is made or to be made by a Contracting State, the other Contracting State shall make a corresponding adjustment to the income, loss, or tax of the related person in that other State, provided that the other State agrees with the adjustment and, within six years from the end of the taxable year of the person in the first State to which the adjustment relates, the competent authority of the other State has been notified in writing of the adjustment. The reference to an adjustment which "is made or to be made" does not require a Contracting State to formally propose an adjustment before paragraph 3 becomes pertinent. The notification required by paragraph 3 may be made by any of the related persons involved or by the competent authority of the State which makes or is to make the initial adjustment. The notification must give details regarding the adjustment sufficient to apprise the competent authority receiving the notification of the nature of the adjustment. If the requirements of paragraph 3 are complied with, the corresponding adjustment will be made by the other Contracting State notwithstanding any time or procedural limitations in the domestic law of that State.

History: Para. 3 amended by 1995 Protocol, article 4, generally effective with respect to taxable years begining on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 3 formerly read:

> 3. Where an adjustment is made or to be made by a Contracting State in accordance with paragraph 1, the other Contracting State shall (notwithstanding any time or procedural limitations in the domestic law of that other State) make a corresponding adjustment to the income, loss or tax of the related person in that other State if:
>
> (a) it agrees with the first-mentioned adjustment; and
>
> (b) within six years from the end of the taxable year to which the first-mentioned adjustment relates, the competent authority of the other State has been notified of the first-mentioned adjustment.

Definitions: "competent authority" — Art. III:1(g); "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1); "State" — Art. III:1(i).

4. In the event that the notification referred to in paragraph 3 is not given within the time period referred to therein, and the competent authorities have not agreed to otherwise consider the case in accordance with paragraph 3(b), the competent authority of the Contracting State which has made or is to make the first-mentioned adjustment may provide relief from double taxation where appropriate.

Technical Explanation [1995 Protocol]:

See under para. 3.

Technical Explanation [1984]:

Paragraph 4 provides that in a case where the other Contracting State has not been notified as provided in paragraph 3 and if the person whose income, loss, or tax is being adjusted has not received notification of the adjustment within five and one-half years from the end of its taxable year to which the adjustment relates, such adjustment shall not be made to the extent that the adjustment would give rise to double taxation between the United States and Canada. Again, the notification referred to in this paragraph need not be a formal adjustment, but it must be in writing and must contain sufficient details to permit the taxpayer to give the notification referred to in paragraph 3.

If, for example, the Internal Revenue Service proposes to make an adjustment to the income of a U.S. company pursuant to Code section 482, and the adjustment involves an allocation of income from a related Canadian company, the competent authority of Canada must receive written notification of the proposed IRS adjustment within six years from the end of the taxable year of the U.S. company to which the adjustment relates. If such notification is not received in a timely fashion and if the U.S. company does not receive written notification of the adjustment from the IRS within 5½ years from the end of its relevant taxable year, the IRS will unilaterally recede on the proposed section 482 adjustment to the extent that this adjustment would otherwise give rise to double taxation between the United States and Canada. The Internal Revenue Service will determine whether and to what extent the adjustment would give rise to double taxation with respect to income arising in Canada by examining the relevant facts and circumstances such as the amount of foreign tax credits attributable to Canadian taxes paid by the U.S. company, including any carryovers and credits for deemed paid taxes.

History: Para. 4 amended by 1995 Protocol, article 4, generally effective with respect to taxable years begining on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 4 formerly read:

> 4. In the event that the notification referred to in paragraph 3 is not given within the time period referred to therein, and if the person to whom the first-mentioned adjustment relates has not received, at least six months prior to the expiration of such time period, notification of such adjustment from the Contracting State which has made or is to make such adjustment that State shall, notwithstanding the provisions of paragraph 1, not make the first-mentioned adjustment to the extent that such adjustment would give rise to double taxation.

Definitions: "competent authority" — Art. III:1(g).

5. The provisions of paragraphs 3 and 4 shall not apply in the case of fraud, willful default or neglect or gross negligence.

Technical Explanation [1984]:

Paragraph 5 provides that neither a corresponding adjustment described in paragraph 3 nor the cancelling of an adjustment described in paragraph 4 will be made in any case of fraud, willful default, neglect, or gross negligence on the part of the taxpayer or any related person.

Paragraphs 3 and 4 of Article IX are exceptions to the "saving clause" contained in paragraph 2 of Article XXIX (Miscellaneous Rules), as provided in paragraph 3(a) of Article XXIX. Paragraphs 3 and 4 of Article IX apply to adjustments made or to be made with respect to taxable years for which the Convention has effect as provided in paragraphs 2 and 5 of Article XXX (Entry Into Force).

Article X — Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

Technical Explanation [1984]:

Paragraph 1 allows a Contracting State to impose tax on its residents with respect to dividends paid by a company which is a resident of the other Contracting State.

Definitions: "company" — Art. II:1(f); "dividends" — Art. X:3; "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State; but if

a resident of the other Contracting State is the beneficial owner of such dividends, the tax so charged shall not exceed:

(a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which owns at least 10 per cent of the voting stock of the company paying the dividends;

(b) 15 per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

Proposed Amendment — Withholding Tax Rates

Department of Finance news release, October 2, 1998: *Canada and United States to Consult regarding Modifications to Income Tax Treaty*

[Reproduced before Article I — ed.]

Technical Explanation [1995 Protocol]:

See under para. 7.

Technical Explanation [1984]:

Paragraph 2 limits the amount of tax that may be imposed on such dividends by the Contracting State in which the company paying the dividends is resident if the beneficial owner of the dividends is a resident of the other Contracting State. The limitation is 10 percent of the gross amount of the dividends if the beneficial owner is a company that owns 10 percent or more of the voting stock of the company paying the dividends; and 15 percent of the gross amount of the dividends in all other cases. Paragraph 2 does not impose any restrictions with respect to taxation of the profits out of which the dividends are paid.

Related Provisions: ITA 260(8.2) — Payment under securities lending arrangement.

History: Subpara. 2(a) amended by 1995 Protocol, article 5(1), effective for amounts paid or credited on or after January 1, 1997. For 1996 the rate is 6 per cent and before 1996 the rate was 10% (see Art. 21(2)(a) under "Application of the 1995 Protocol" above). Subpara. 2(a) formerly read:

> (a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which owns at least 10 per cent of the voting stock of the company paying the dividends;

Definitions: "company" — Art. II:1(f); "dividends" — Art. X:3; "resident" — ITCIA 3, ITA 250; "State" — Art. III:1(i).

3. The term **"dividends"** as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income subjected to the same taxation treatment as income from shares by the taxation laws of the State of which the company making the distribution is a resident.

Technical Explanation [1984]:

Paragraph 3 defines the term "dividends," as the term is used in this Article. Each Contracting State is permitted to apply its domestic law rules for differentiating dividends from interest and other disbursements.

Definitions: "company" — Art. II:1(f); "resident" — ITCIA 3, ITA 250; "share" — ITCIA 3, ITA 248(1); "State" — Art. III:1(i).

4. The provisions of paragraph 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article VII (Business Profits) or Article XIV (Independent Personal Services), as the case may be, shall apply.

Technical Explanation [1984]:

Paragraph 4 provides that the limitations of paragraph 2 do not apply if the beneficial owner of the dividends carries on business in the State in which the company paying the dividends is a resident through a permanent establishment or fixed base situated there, and the stockholding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the dividends are taxable pursuant to the provisions of Article VII (Business Profits) or Article XIV (Independent Personal Services), as the case may be. Thus, dividends paid in respect of holdings forming part of the assets of a permanent establishment or fixed base or which are otherwise effectively connected with such permanent establishment or fixed base (i.e., dividends attributable to the permanent establishment or fixed base) will be taxed on a net basis using the rates and rules of taxation generally applicable to residents of the State in which the permanent establishment or fixed base is situated.

Definitions: "business" — ITCIA 3, ITA 248(1); "company" — Art. II:1(f); "dividends" — Art. X:3; "permanent establishment" — Art. V:1; "resident" — ITCIA 3, ITA 250; "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

5. Where a company is a resident of a Contracting State, the other Contracting State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Technical Explanation [1984]:

Paragraph 5 imposes limitations on the right of Canada or the United States, as the case may be, to impose tax on dividends paid by a company which is a resident of the other Contracting State. The State in which the company is not resident may not tax such dividends except insofar as they are paid to a resident of that State or the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or fixed base in that State. In the case of the United States, such dividends may also be taxed in the hands of a U.S. citizen and certain former citizens, pursuant to the "saving clause" of paragraph 2 of Article XXIX (Miscellaneous Rules). In addition, the Contracting State in which the company is not resident may not subject such company's undistributed profits to any tax. See, however, paragraphs 6, 7, and 8 which, in certain circumstances, qualify the rules of paragraph 5. Neither paragraph 5 nor any other provision of the Convention restricts the ability of the United States to apply the provisions of the Code concerning foreign personal holding companies and controlled foreign corporations.

Definitions: "company" — Art. II:1(f); "dividends" — Art. X:3; "permanent establishment" — Art. V:1; "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

6. Nothing in this Convention shall be construed as preventing a Contracting State from imposing a tax on the earnings of a company attributable to permanent establishments in that State, in addition to the tax which would be chargeable on the earnings of a company which is a resident of that State, provided that any additional tax so imposed shall not exceed 5 per cent of the amount of such earnings which have not been subjected to such additional tax in previous taxation years. For the purposes of this paragraph, the term "earnings" means the amount by which the business profits attributable to permanent establishments in a Contracting State (including gains from the alienation of property forming part of the business property of such permanent establishments) in a year and previous years exceeds the sum of:

(a) business losses attributable to such permanent establishments (including losses from the alienation of property forming part of the business property of such permanent establishments) in such year and previous years;

(b) all taxes, other than the additional tax referred to in this paragraph, imposed on such profits in that State;

(c) the profits reinvested in that State, provided that where that State is Canada, such amount shall be determined in accordance with the existing provisions of the law of Canada regarding the computation of the allowance in respect of investment in property in Canada, and any subsequent modification of those provisions which shall not affect the general principle hereof; and

(d) five hundred thousand Canadian dollars ($500,000) or its equivalent in United States currency, less any amounts deducted by the company, or by an associated company with respect to the same or a similar business, under this subparagraph (d); for the purposes of this subparagraph (d) a company is associated with another company if one company directly or indirectly controls the other, or both companies are directly or indirectly controlled by the same person or persons, or if the two companies deal with each other not at arm's length.

Technical Explanation [1995 Protocol]:

See under para. 7.

Technical Explanation [1984]:

Paragraph 6 provides that, notwithstanding paragraph 5, a Contracting State in which is maintained a permanent establishment or permanent establishments of a company resident in the other Contracting State may impose tax on such company's earnings, in addition to the tax that would be charged on the earnings of a company resident in that State. The additional tax may not, however, exceed 10 percent of the amount of the earnings which have not been subjected to such additional tax in previous taxation years. Thus, Canada, which has a branch profits tax in force, may impose that tax up to the 10 percent limitation in the case of a United States company with one or more permanent establishments in Canada. This branch profits tax may be imposed notwithstanding other rules of the Convention, including paragraph 6 of Article XXV (Non-Discrimination).

For purposes of paragraph 6, the term "earnings" means the excess of business profits attributable to all permanent establishments for a year and previous years over the sum of: a) business losses attributable to such permanent establishments for such years; b) all taxes on profits, whether or not covered by the Convention (e.g., provincial taxes on profits and provincial resource royalties (which Canada considers "taxes") in excess of the mineral resource allowance provided for under the law of Canada), other than the additional tax referred to in paragraph 6; c) profits reinvested in such State; and d) $500,000 (Canadian, or its equivalent in U.S. dollars) less any amounts deducted under paragraph 6(d) with respect to the same or a similar business by the company or an associated company. The deduction under paragraph 6(d) is available as of the first year for which the Convention has effect, regardless of the prior earnings and tax expenses, if any, of the permanent establishment. The $500,000 deduction is taken into account after other deductions, and is permanent. For the purpose of paragraph 6, references to business profits and business losses include gains and losses from the alienation of property forming part of the business property of a permanent establishment. The term "associated company" includes a company which directly or indirectly controls another company or two companies directly or indirectly controlled by the same person or persons, as well as any two companies that deal with each other not at arm's length. This definition differs from the definition of "related persons" in paragraph 2 of Article IX (Related Persons).

Related Provisions: ITA 219 — Branch tax.

History: Para. 6 amended by 1995 Protocol, article 5(1), to substitute "5 per cent" for "10 per cent", effective January 1, 1997. For 1996, the rate is 6 per cent and for 1985–1995, the rate was 10 per cent (see Art. 21(2)(b) reproduced under "Application of the Provisions of the Protocol" above).

Definitions: "arm's length" — ITCIA 3, ITA 251(1); "associated" — ITCIA 3, ITA 256; "Canada" — Art. III:1(a), ITCIA 5; "company" — Art. II:1(f); "permanent establishment" — Art. V:1; "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1); "property" — ITCIA 3, ITA 248(1); "resident" — ITCIA 3, ITA 250; "State" — Art. III:1(i); "taxation year" — ITCIA 3, ITA 249; "United States" — Art. III:1(b).

7. Notwithstanding the provisions of paragraph 2,

(a) dividends paid by a company that is a resident of Canada and a non-resident-owned investment corporation to a company that is a resident of the United States, that owns at least 10 per cent of the voting stock of the company paying the dividends and that is the beneficial owner of such dividends, may be taxed in Canada at a rate not exceeding 10 per cent of the gross amount of the dividends;

(b) paragraph 2(b) and not paragraph 2(a) shall apply in the case of dividends paid by a resident of the United States that is a Regulated Investment Company; and

(c) Paragraph 2(a) shall not apply to dividends paid by a resident of the United States that is a Real Estate Investment Trust, and paragraph 2(b) shall apply only where such dividends are beneficially owned by an individual holding an interest of less than 10 per cent in the trust; otherwise the rate of tax applicable under the domestic law of the United States shall apply. Where an estate or a testamentary trust acquired its interest in a Real Estate Investment Trust as a consequence of an individual's death, for the purposes of the preceding sentence the estate or trust shall for the five-year period following the death be deemed with respect to that interest to be an individual.

Technical Explanation [1995 Protocol]:

Article 5 of the Protocol amends Article X (Dividends) of the Convention. Paragraph 1 of Article 5 amends paragraph 2(a) of Article X to reduce from 10 percent to 5 percent the maximum rate of tax that may be imposed by a Contracting State on the gross amount of dividends beneficially owned by a company resident in the other Contracting State that owns at least 10 percent of the voting stock of the company paying the dividends. The rate at which the branch profits tax may be imposed under paragraph 6 is also reduced by paragraph 1 of Article 5 from 10 percent to 5 percent. Under the entry-into-force provisions of Article 21 of the Protocol, these reductions will be phased in over a three-year period.

Paragraph 2 of Article 5 of the Protocol replaces paragraph 7 of Article X of the Convention with a new paragraph 7. Paragraph 7 of the existing Convention is no longer relevant because it applies only in the case where a Contracting State does not impose a branch profits tax. Both Contracting States now do impose such a tax.

New paragraph 7 makes the 5 percent withholding rate of new paragraph 2(a) inapplicable in certain situations. Under new paragraph 7(b), dividends paid by U.S. regulated investment companies (RICs) are denied the 5 percent withholding rate even if the Canadian shareholder is a corporation that would otherwise qualify as a direct investor by satisfying the 10-percent ownership requirement. Consequently, all RIC dividends to Canadian beneficial owners are subjected to the 15 percent rate that applies to dividends paid to portfolio investors.

Dividends paid by U.S. real estate investment trusts (REITs) to Canadian beneficial owners are also denied the 5 percent rate under the rules of paragraph 7(c). REIT dividends paid to individuals who own less than a 10 percent interest in the REIT are subject to withholding at a maximum rate of 15 percent. Paragraph 7(c) also provides that dividend distributions by a REIT to an estate or a testamentary trust acquiring the interest in the REIT as a consequence of the death of an individual will be treated as distributions to an individual, for the five-year period following the death. Thus, dividends paid to an estate or testamentary trust in respect of a holding of less than a 10 percent interest in the REIT also will be entitled to the 15 percent rate of withholding, but only for up to five years after the death. REIT dividends paid to other Canadian beneficial owners are subject to the rate of withholding tax that applies under the domestic law of the United States (i.e., 30 percent).

The denial of the 5 percent withholding rate at source to all RIC and REIT shareholders, and the denial of the 15 percent rate to most shareholders of REITs, is intended to prevent the use of these non-taxable conduit entities to gain unjustifiable benefits for certain shareholders. For example, a Canadian corporation that wishes to hold a portfolio of U.S. corporate shares may hold the portfolio directly and pay a U.S. withholding tax of 15 percent on all of the dividends that it receives. Alternatively, it may place the portfolio of U.S. stocks in a RIC, in which the Canadian corporation owns

more than 10 percent of the shares, but in which there are enough small shareholders to satisfy the RIC diversified ownership requirements. Since the RIC is a pure conduit, there are no U.S. tax costs to the Canadian corporation of interposing the RIC as an intermediary in the chain of ownership. It is unlikely that a 10 percent shareholding in a RIC will constitute a 10 percent shareholding in any company from which the dividends originate. In the absence of the special rules in paragraph 7(b), however, interposition of a RIC would transform what should be portfolio dividends into direct investment dividends taxable at source by the United States only at 5 percent. The special rules of paragraph 7 prevent this.

Similarly, a resident of Canada may hold U.S. real property directly and pay U.S. tax either at a 30 percent rate on the gross income or at the income tax rates specified in the *Internal Revenue Code* on the net income. By placing the real estate holding in a REIT, the Canadian investor could transform real estate income into dividend income and thus transform high-taxed income into much lower-taxed income. In the absence of the special rule, if the REIT shareholder were a Canadian corporation that owned at least a 10 percent interest in the REIT, the withholding rate would be 5 percent; in all other cases, it would be 15 percent. In either event, with one exception, a tax rate of 30 percent or more would be significantly reduced. The exception is the relatively small individual Canadian investor who might be subject to U.S. tax at a rate of only 15 percent on the net income even if he earned the real estate income directly. Under the rule in paragraph 7(c), such individuals, defined as those holding less than a 10 percent interest in the REIT, remain taxable at source at a 15 percent rate.

Subparagraph (a) of paragraph 7 provides a special rule for certain dividends paid by Canadian non-resident-owned investment corporations ("NROs"). The subparagraph provides for a maximum rate of 10 percent (instead of the standard rate of 5 percent) for dividends paid by NROs that are Canadian residents to a U.S. company that owns 10 percent or more of the voting stock of the NRO and that is the beneficial owner of the dividend. This rule maintains the rate available under the current Convention for dividends from NROs. Canada wanted the withholding rate for direct investment NRO dividends to be no lower than the maximum withholding rates under the Convention on interest and royalties, to make sure that a foreign investor cannot transform interest or royalty income subject to a 10 percent withholding tax into direct dividends qualifying for a 5 percent withholding tax by passing it through to an NRO.

Technical Explanation [1984]:

Paragraph 7 provides that, notwithstanding paragraph 5, a Contracting State that does not impose a branch profits tax as described in paragraph 6 (i.e., under current law, the United States) may tax a dividend paid by a company which is a resident of the other Contracting State if at least 50 percent of the company's gross income from all sources was included in the computation of business profits attributable to one or more permanent establishments which such company had in the first-mentioned State. The dividend subject to such a tax must, however, be attributable to profits earned by the company in taxable years beginning after September 26, 1980 and the 50 percent test must be met for the three-year period preceding the taxable year of the company in which the dividend is declared (including years ending on or before September 26, 1980) or such shorter period as the company had been in existence prior to that taxable year. Dividends will be deemed to be distributed, for purposes of paragraph 7, first out of profits of the taxation year of the company in which the distribution is made and then out of the profits of the preceding year or years of the company. Paragraph 7 provides further that if a resident of the other Contracting State is the beneficial owner of such dividends, any tax imposed under paragraph 7 is subject to the 10 or 15 percent limitation of paragraph 2 or the rules of paragraph 4 (providing for dividends to be taxed as business profits or income from independent personal services), as the case may be.

Related Provisions: ITA 134.1 — Transitional rule re elimination of NROs.

History: Para. 7 amended by 1995 Protocol, article 5(2), effective with respect to amounts paid or credited on or after January 1, 1996 (see Art. 21(2)(a) under "Application of the 1995 Protocol" above). Para. 7 formerly read:

> 7. Notwithstanding the provisions of paragraph 5, a Contracting State, other than a Contracting State that imposes the additional tax on earnings referred to in paragraph 6, may tax a dividend paid by a company to the extent that the dividend is attributable to profits earned in taxable years beginning after the date of signature of the Convention if, for the three-year period ending with the close of the company's taxable period preceding the declaration of the dividend (or for such part of that three-year period as the company has been in existence, or for the first taxable year if the dividend was declared in that taxable year), at least 50 per cent of such company's gross income from all sources was included in the computation of the business profits attributable to a permanent establishment which such company had in that State; provided that where a resident of the other Contracting State is the beneficial owner of such dividend any tax so imposed on the dividend shall be subject to the limitations of paragraph 2 or the rules of paragraph 4, as the case may be.

Definitions: "Canada" — Art. III:1(a), ITCIA 5; "company" — Art. II:1(f); "dividends" — Art. X:3; "estate", "individual", "non-resident-owned investment corporation" — ITCIA 3, ITA 248(1); "real estate investment trust" — *Internal Revenue Code* s. 856(a); "regulated investment company" — *Internal Revenue Code* s. 851(a); "resident" — ITCIA 3, ITA 250; "trust" — ITCIA 3, ITA 248(1); "United States" — Art. III:1(b).

8. Notwithstanding the provisions of paragraph 5, a company which is a resident of Canada and which has income subject to tax in the United States (without regard to the provisions of the Convention) may be liable to the United States accumulated earnings tax and personal holding company tax but only if 50 per cent or more in value of the outstanding voting shares of the company is owned, directly or indirectly, throughout the last half of its taxable year by citizens or residents of the United States (other than citizens of Canada who do not have immigrant status in the United States or who have not been residents in the United States for more than three taxable years) or by residents of a third state.

Technical Explanation [1984]:

Paragraph 8 provides that, notwithstanding paragraph 5, a company which is a resident of Canada and which, absent the provisions of the Convention, has income subject to tax by the United States may be liable for the United States accumulated earnings tax and personal holding company tax. These taxes can be applied, however, only if 50 percent or more in value of the outstanding voting shares of the company is owned, directly or indirectly, throughout the last half of its taxable year by residents of a third State or by citizens or residents of the United States, other than citizens of Canada who are resident in the United States but who either do not have immigrant status in the United States or who have not been resident in the United States for more than three taxable years. The accumulated earnings tax is applied to accumulated taxable income calculated without the benefits of the Convention. Similarly, the personal holding company tax is applied to undistributed personal holding company income computed as if the Convention had not come into force.

Article X does not apply to dividends paid by a company which is not a resident of either Contracting State. Such dividends, if they are income of a resident of one of the Contracting States, are subject to tax as provided in Article XXII (Other Income).

Definitions: "Canada" — Art. III:1(a), ITCIA 5; "company" — Art. II:1(f); "personal holding company" — *Internal Revenue Code* s. 542(a); "resident" — ITCIA 3, ITA 250; "share" — ITCIA 3, ITA 248(1); "United States" — Art. III:1(b).

Information Circulars: 76-12R5: Applicable rate of part XIII tax on amounts paid or credited to persons in countries with which Canada has a tax convention.

Article XI — Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

Technical Explanation [1984]:

Paragraph 1 allows interest arising in Canada or the United States and paid to a resident of the other State to be taxed in the latter State. Paragraph 2 provides that such interest may also be taxed in the Contracting State where it arises, but if a resident of the other Contracting State is the beneficial owner, the tax imposed by the State of source is limited to 15 percent of the gross amount of the interest.

Definitions: "interest" — Art. XI:4; "State" — Art. III:1(i).

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State; but if a resident of the other Contracting

State is the beneficial owner of such interest, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

Proposed Amendment — Withholding Tax Rates

Department of Finance news release, October 2, 1998: *Canada and United States to Consult regarding Modifications to Income Tax Treaty*

[Reproduced before Article I — ed.]

Technical Explanation [1995 Protocol]:

Article 6 of the Protocol amends Article XI (Interest) of the Convention. Paragraph 1 of the Article reduces the general maximum withholding rate on interest under paragraph 2 of Article XI from 15 percent to 10 percent.

Technical Explanation [1984]:

See Article XI, para. 1.

Related Provisions: ITA 260(8.2) — Payment under securities lending arrangement.

History: Para. 2 amended by 1995 Protocol, article 6(1), to substitute "10 per cent" for "15 per cent", effective with respect to amounts paid or credited on or after January 1, 1996 (see Art. 21(2)(a) under "Application of the 1995 Protocol" above).

Definitions: "interest" — Art. XI:4 "State" — Art. III:1(i).

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State if:

(a) the interest is beneficially owned by the other Contracting State, a political subdivision or local authority thereof or an instrumentality of such other State, subdivision or authority, and is not subject to tax by that other State;

(b) the interest is beneficially owned by a resident of the other Contracting State and is paid with respect to debt obligations issued at arm's length and guaranteed or insured by that other State or a political subdivision thereof or an instrumentality of such other State or subdivision which is not subject to tax by that other State;

(c) the interest is beneficially owned by a resident of the other Contracting State and is paid by the first-mentioned State, a political subdivision or local authority thereof or an instrumentality of such first-mentioned State, subdivision or authority which is not subject to tax by that first-mentioned State;

(d) the interest is beneficially owned by a resident of the other Contracting State and is paid with respect to indebtedness arising as a consequence of the sale on credit by a resident of that other State of any equipment, merchandise or services except where the sale or indebtedness was between related persons; or

(e) the interest is paid by a company created under the laws in force in the other Contracting State with respect to an obligation entered into before the date of signature of this Convention, provided that such interest would have been exempt from tax in the first-mentioned State under Article XII of the 1942 Convention.

Technical Explanation [1995 Protocol]:

Paragraph 3 of Article XI of the Convention provides that, notwithstanding the general withholding rate applicable to interest payments under paragraph 2, certain specified categories of interest are exempt from withholding at source. Paragraph 2 of Article 6 of the Protocol amends paragraph 3(d) of the Convention, which deals with interest paid on indebtedness arising in connection with a sale on credit of equipment, merchandise, or services. The exemption provided by that paragraph in the Convention is broadened under the Protocol to apply to interest that is beneficially owned either by the seller in the underlying transaction, as under the present Convention, or by any beneficial owner of interest paid with respect to an indebtedness arising as a result of the sale on credit of equipment, merchandise, or services. This exemption, however, does not apply in cases where the purchaser is related to the seller or the debtor is related to the beneficial owner of the interest. The negotiators agreed that this exemption is subject, as are the other provisions of the Convention, to any anti-avoidance rules applicable under the respective domestic law of the Contracting States.

The reference to "related persons" in paragraph 3(d) of Article XI of the Convention, as amended, is a change from the present Convention, which refers to "persons dealing at arm's length." The term "related person" as used in this Article is not defined for purposes of the Convention. Accordingly, the meaning of the term, and, therefore, the application of this Article, will be governed by the domestic law of each Contracting State (as is true with the use of the term "arm's-length" under the current Convention) under the interpretative rule of paragraph 2 of Article III (General Definitions). The United States will define the term "related person" as under section 482 of the *Internal Revenue Code*, to include organizations, trades, or businesses (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) owned or controlled directly or indirectly by the same interests. The Canadian definition of "related persons" is found in section 251 of the *Income Tax Act*.

Technical Explanation [1984]:

Paragraph 3 provides a number of exceptions to the right of the source State to impose a 15 percent tax under paragraph 2. The following types of interest beneficially owned by a resident of a Contracting State are exempt from tax in the State of source: a) interest beneficially owned by a Contracting State, a political subdivision, or a local authority thereof, or an instrumentality of such State, subdivision, or authority, which interest is not subject to tax by such State; b) interest beneficially owned by a resident of a Contracting State and paid with respect to debt obligations issued at arm's length which are guaranteed or insured by such State or a political subdivision thereof, or by an instrumentality of such State or subdivision (not by a local authority or an instrumentality thereof), but only if the guarantor or insurer is not subject to tax by that State; c) interest paid by a Contracting State, a political subdivision, or a local authority thereof, or by an instrumentality of such State, subdivision, or authority, but only if the payer is not subject to tax by such State; and d) interest beneficially owned by a seller of equipment, merchandise, or services, but only if the interest is paid in connection with a sale on credit of equipment, merchandise, or services and the sale was made at arm's length. Whether such a transaction is made at arm's length will be determined in the United States under the facts and circumstances. The relationship between the parties is a factor, but not the only factor, taken into account in making this determination. Furthermore, interest paid by a company resident in the other Contracting State with respect to an obligation entered into before September 26, 1980 is exempt from tax in the State of source (irrespective of the State of residence of the beneficial owner), provided that such interest would have been exempt from tax in the Contracting State of source under Article XII of the 1942 Convention. Thus, interest paid by a United States corporation whose business is not managed and controlled in Canada to a recipient not resident in Canada or to a corporation not managed and controlled in Canada would be exempt from Canadian tax as long as the debt obligation was entered into before September 26, 1980. The phrase "not subject to tax by that ... State" in paragraph 3(a), (b), and (c) refers to taxation at the Federal levels of Canada and the United States.

The phrase "obligation entered into before the date of signature of this Convention" means: (1) any obligation under which funds were dispersed prior to September 26, 1980; (2) any obligation under which funds are dispersed on or after September 26, 1980, pursuant to a written contract binding prior to and on such date, and at all times thereafter until the obligation is satisfied; or (3) any obligation with respect to which, prior to September 26, 1980, a lender had taken every action to signify approval under procedures ordinarily employed by such lender in similar transactions and had sent or deposited for delivery to the person to whom the loan is to be made written evidence of such approval in the form of a document setting forth, or referring to a document sent by the person to whom the loan is to be made that sets forth, the principal terms of such loan.

History: Subpara. 3(d) amended by 1995 Protocol, article 6(2), effective for amounts paid or credited on or after January 1, 1996 (see Art. 21(2)(a) under "Application of the 1995 Protocol" above). Subpara. 3(d) formerly read:

(d) the interest is beneficially owned by a seller who is a resident of the other Contracting State and is paid by a purchaser in connection with the sale on credit of any equipment, merchandise or services, except where the sale is made between persons dealing with each other not at arm's length; or

Definitions: "arm's length" — ITCIA 3, ITA 251(1); "company" — Art. II:1(f); "interest" — Art. XI:4; "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1); "related" — ITCIA 3, ITA 251(2)–(6); "State" — Art. III:1(i); "the 1942 Convention" — Art. III:1(j).

4. The term **"interest"** as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as income assimilated to income from money lent by the taxation laws of the Contracting State in which the income arises. However, the term "interest" does not include income dealt with in Article X (Dividends).

Technical Explanation [1984]:

Paragraph 4 defines the term "interest," as used in Article XI, to include, among other things, debt claims of every kind as well as income assimilated to income from money lent by the taxation laws of the Contracting State in which the income arises. In no event, however, is income dealt with in Article X (Dividends) to be considered interest.

5. The provisions of paragraphs 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article VII (Business Profits) or Article XIV (Independent Personal Services), as the case may be, shall apply.

Technical Explanation [1984]:

Paragraph 5 provides that neither the 15 percent limitation on tax in the Contracting State of source provided in paragraph 2 nor the various exemptions from tax in such State provided in paragraph 3 apply if the beneficial owner of the interest is a resident of the other Contracting State carrying on business in the State of source through a permanent establishment or fixed base, and the debt claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base (i.e., the interest is attributable to the permanent establishment or fixed base). In this case, interest income is to be taxed in the Contracting State of source as business profits — that is, on a net basis.

Definitions: "business" — ITCIA 3, ITA 248(1); "interest" — Art. XI:4; "permanent establishment" — Art. V:1; "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

6. For the purposes of this Article, interest shall be deemed to arise in a Contracting State when the payer is that State itself, or a political subdivision, local authority or resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a State other than that of which he is a resident a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated and not in the State of which the payer is a resident.

Technical Explanation [1984]:

Paragraph 6 establishes the source of interest for purposes of Article XI. Interest is considered to arise in a Contracting State if the payer is that State, or a political subdivision, local authority, or resident of that State. However, in cases where the person paying the interest, whether a resident of a Contracting State or of a third State, has in a State other than that of which he is a resident a permanent establishment or fixed base in connection with which the indebtedness on which the interest was paid was incurred, and such interest is borne by the permanent establishment or fixed base, then such interest is deemed to arise in the State in which the permanent establishment or fixed base is situated and not in the State of the payer's residence. Thus, pursuant to paragraphs 6 and 2, and Article XXII (Other Income), Canadian tax will not be imposed on interest paid to a U.S. resident by a company resident in Canada if the indebtedness is incurred in connection with, and the interest is borne by, a permanent establishment of the company situated in a third State. "Borne by" means allowable as a deduction in computing taxable income.

Definitions: "interest" — Art. XI:4; "permanent establishment" — Art. V:1; "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1); "resident" — ITCIA 3, ITA 250; "State" — Art. III:1(i).

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of the Convention.

Technical Explanation [1984]:

Paragraph 7 provides that in cases involving special relationships between persons Article XI does not apply to amounts in excess of the amount which would have been agreed upon between persons having no special relationship; any such excess amount remains taxable according to the laws of Canada and the United States, consistent with any relevant provisions of the Convention.

Definitions: "interest" — Art. XI:4; "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1).

8. Where a resident of a Contracting State pays interest to a person other than a resident of the other Contracting State, that other State may not impose any tax on such interest except insofar as it arises in that other State or insofar as the debt-claim in respect of which the interest is paid is effectively connected with a permanent establishment or a fixed base situated in that other State.

Technical Explanation [1984]:

Paragraph 8 restricts the right of a Contracting State to impose tax on interest paid by a resident of the other Contracting State. The first State may not impose any tax on such interest except insofar as the interest is paid to a resident of that State or arises in that State or the debt claim in respect of which the interest is paid is effectively connected with a permanent establishment or fixed base situated in that State. Thus, pursuant to paragraph 8 the United States has agreed not to impose tax on certain interest paid by Canadian companies to persons not resident in the United States, to the extent that such companies would pay U.S.-source interest under Code section 861(a)(1)(C) but not under the source rule of paragraph 6. It is to be noted that paragraph 8 is subject to the "saving clause" of paragraph 2 of Article XXIX (Miscellaneous Rules), so the United States may in all events impose its tax on interest received by U.S. citizens.

Definitions: "interest" — Art. XI:4; "permanent establishment" — Art. V:1; "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1); "State" — Art. III:1(i).

9. The provisions of paragraphs 2 and 3 shall not apply to an excess inclusion with respect to a residual interest in a Real Estate Mortgage Investment Conduit to which Section 860G of the United States *Internal Revenue Code*, as it may be amended from time to time without changing the general principle thereof, applies.

Technical Explanation [1995 Protocol]:

Paragraph 3 of Article 6 of the Protocol adds a new paragraph 9 to Article XI of the Convention. Although the definition of "interest" in paragraph 4 includes an excess inclusion with respect to a residual interest in a real estate mortgage investment conduit (REMIC) described in section 860G of the *Internal Revenue Code*, new paragraph 9 provides that the reduced

rates of tax at source for interest provided for in paragraphs 2 and 3 do not apply to such income. This class of interest, therefore, remains subject to the statutory 30 percent U.S. rate of tax at source. The legislation that created REMICs in 1986 provided that such excess inclusions were to be taxed at the full 30 percent statutory rate, regardless of any then-existing treaty provisions to the contrary. The 30 percent rate of tax on excess inclusions received by residents of Canada is consistent with this expression of Congressional intent.

History: Para. 9 added by 1995 Protocol, article 6(3), effective for amounts paid or credited on or after January 1, 1996 (see Art. 21(2)(a) under "Application of the Provisions of the Protocol" above).

Definitions: "real estate mortgage investment conduit" — *Internal Revenue Code* s. 860G(a); "United States" — Art. III:1(b).

Information Circulars [Article XI]: 76-12R5: Applicable rate of part XIII tax on amounts paid or credited to persons in countries with which Canada has a tax convention.

Article XII — Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

Technical Explanation [1984]:

Generally speaking, under the 1942 Convention royalties, including royalties with respect to motion picture films, which are derived by a resident of one Contracting State from sources within the other Contracting State are taxed at a maximum rate of 15 percent in the latter State; copyright royalties are exempt from tax in the State of source, if the resident does not have a permanent establishment in that State. See Articles II, III, XIII C, and paragraph 1 of Article XI of the 1942 Convention, and paragraph 6(a) of the Protocol to the 1942 Convention.

Paragraph 1 of Article XII of the Convention provides that a Contracting State may tax its residents with respect to royalties arising in the other Contracting State. Paragraph 2 provides that such royalties may also be taxed in the Contracting State in which they arise, but that if a resident of the other Contracting State is the beneficial owner of the royalties the tax in the Contracting State of source is limited to 10 percent of the gross amount of the royalties.

Definitions: "royalties" — Art. XII:4; "State" — Art. III:1(i).

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State; but if a resident of the other Contracting State is the beneficial owner of such royalties, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

Proposed Amendment — Withholding Tax Rates

Department of Finance news release, October 2, 1998: *Canada and United States to Consult regarding Modifications to Income Tax Treaty*

[Reproduced before Article I — ed.]

Technical Explanation [1984]:

See Article XII, para. 1.

Definitions: "royalties" — Art. XII:4; "State" — Art. III:1(i).

I.T. Technical News: 23 (computer software).

3. Notwithstanding the provisions of paragraph 2,

(a) copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or artistic work (other than payments in respect of motion pictures and works on film, videotape or other means of reproduction for use in connection with television);

(b) payments for the use of, or the right to use, computer software;

(c) payments for the use of, or the right to use, any patent or any information concerning industrial, commercial or scientific experience (but not including any such information provided in connection with a rental or franchise agreement); and

(d) payments with respect to broadcasting as may be agreed for the purposes of this paragraph in an exchange of notes between the Contracting States;

arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

Technical Explanation [1995 Protocol]:

Article 7 of the Protocol modifies Article XII (Royalties) of the Convention by expanding the classes of royalties exempt from withholding of tax at source. Paragraph 3, as amended by the Protocol, identifies four classes of royalty payments arising in one Contracting State and beneficially owned by a resident of the other that are exempt at source: (1) subparagraph (a) preserves the exemption in paragraph 3 of the present Convention for copyright royalties in respect of literary and other works, other than certain such payments in respect of motion pictures, videotapes, and similar payments; (2) subparagraph (b) specifies that computer software royalties are also exempt; (3) subparagraph (c) adds royalties paid for the use of, or the right to use, patents and information concerning industrial, commercial, and scientific experience, other than payments in connection with rental or franchise agreements; and (4) subparagraph (d) allows the Contracting States to reach an agreement, through an exchange of diplomatic notes, with respect to the application of paragraph 3 of Article XII to payments in respect of certain live broadcasting transmissions.

The specific reference to software in subparagraph (b) is not intended to suggest that the United States views the term "copyright" as excluding software in other U.S. treaties (including the current treaty with Canada).

The negotiators agreed that royalties paid for the use of, or the right to use, designs or models, plans, secret formulas, or processes are included under subparagraph 3(c) to the extent that they represent payments for the use of, or the right to use, information concerning industrial, commercial, or scientific experience. In addition, they agreed that royalties paid for the use of, or the right to use, "know-how," as defined in paragraph 11 of the Commentary on Article 12 of the OECD Model Income Tax Treaty, constitute payments for the use of, or the right to use, information concerning industrial, commercial, or scientific experience. The negotiators further agreed that a royalty paid under a "mixed contract," "package fee," or similar arrangement will be treated as exempt at source by virtue of paragraph 3 to the extent of any portion that is paid for the use of, or the right to use, property or information with respect to which paragraph 3 grants an exemption.

The exemption granted under subparagraph 3(c) does not, however, extend to payments made for information concerning industrial, commercial, or scientific experience that is provided in connection with a rental or franchise agreement. For this purpose, the negotiators agreed that a franchise is to be distinguished from other arrangements resulting in the transfer of intangible property. They agreed that a license to use intangibles (whether or not including a trademark) in a territory, in and of itself, would not constitute a franchise agreement for purposes of subparagraph 3(c) in the absence of other rights and obligations in the license agreement or in any other agreement that would indicate that the arrangement in its totality constituted a franchise agreement. For example, a resident of one Contracting State may acquire a right to use a secret formula to manufacture a particular product (e.g., a perfume), together with the right to use a trademark for that product and to market it at a non-retail level, in the other Contracting State. Such an arrangement would not constitute a franchise in the absence of any other rights or obligations under that arrangement or any other agreement that would indicate that the arrangement in its totality constituted a franchise agreement. Therefore, the royalty payment under that arrangement would be exempt from withholding tax in the other Contracting State to the extent made for the use of, or the right to use, the secret formula or other information concerning industrial, commercial, or scientific experience; however, it would be subject to withholding tax at a rate of 10 percent, to the extent made for the use of, or the right to use, the trademark.

The provisions of paragraph 3 do not fully reflect the U.S. treaty policy of exempting all types of royalty payments from taxation at source, but Canada was not prepared to grant a complete exemption for all types of royalties in the Protocol. Although the Protocol makes several important changes to the royalty provisions of the present Convention in the direction of bringing Article XII into conformity with U.S. policy, the United States remains concerned about the imposition of withholding tax on some classes of royalties and about the associated administrative burdens. In this

connection, the Contracting States have affirmed their intention to collaborate to resolve in good faith any administrative issues that may arise in applying the provisions of subparagraph 3(c). The United States intends to continue to pursue a zero rate of withholding for all royalties in future negotiations with Canada, including discussions under Article 20 of the Protocol, as well as in negotiations with other countries.

As noted above, new subparagraph 3(d) enables the Contracting States to provide an exemption for royalties paid with respect to broadcasting through an exchange of notes. This provision was included because Canada was not prepared at the time of the negotiations to commit to an exemption for broadcasting royalties. Subparagraph 3(d) was included to enable the Senate to give its advice and consent in advance to such an exemption, in the hope that such an exemption could be obtained without awaiting the negotiation of another full protocol. Any agreement reached under the exchange of notes authorized by subparagraph 3(d) would lower the withholding rate from 10 percent to zero and, thus, bring the Convention into greater conformity with established U.S. treaty policy.

Technical Explanation [1984]:

Paragraph 3 provides that, notwithstanding paragraph 2, copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical, or artistic work, including royalties from such works on videotape or other means of reproduction for private (home) use, if beneficially owned by a resident of the other Contracting State, may not be taxed by the Contracting State of source. This exemption at source does not apply to royalties in respect of motion pictures, and of works on film, videotape or other means of reproduction for use in connection with television broadcasting. Such royalties are subject to tax at a maximum rate of 10 percent in the Contracting State in which they arise, as provided in paragraph 2 (unless the provisions of paragraph 5, described below, apply).

History: Para. 3 amended by 1995 Protocol, article 7(1), effective for amounts paid or credited on or after January 1, 1996 (see Art. 21(2)(a) under "Application of the 1995 Protocol" above). Para. 3 formerly read:

> 3. Notwithstanding the provisions of paragraph 2, copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or artistic work (but not including royalties in respect of motion pictures and works on film, videotape or other means of reproduction for use in connection with television) arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

Para. 3 amended by 1983 Protocol, article V, para. 1.

Definitions: "royalties" — Art. XII:4.

I.T. Technical News: 23 (computer software).

4. The term **"royalties"** as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including motion pictures and works on film, videotape or other means of reproduction for use in connection with television), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, tangible personal property or for information concerning industrial, commercial or scientific experience, and, notwithstanding the provisions of Article XIII (Gains), includes gains from the alienation of any intangible property or rights described in this paragraph to the extent that such gains are contingent on the productivity, use or subsequent disposition of such property or rights.

Technical Explanation [1984]:

Paragraph 4 defines the term "royalties" for purposes of Article XII. "Royalties" means payments of any kind received as consideration for the use of or the right to use any copyright of literary, artistic, or scientific work, including motion pictures, and works on film, videotape or other means of reproduction for use in connection with television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or any payment for the use of or the right to use tangible personal property or for information concerning industrial, commercial, or scientific experience. The term "royalties" also includes gains from the alienation of any intangible property or rights described in paragraph 4 to the extent that such gains are contingent on the productivity, use, or subsequent disposition of such intangible property or rights. Thus, a guaranteed minimum payment derived from the alienation of (but not the use of) any right or property described in paragraph 4 is not a "royalty." Any amounts deemed contingent on use by reason of Code section 871(e) are, however, royalties under paragraph 2 of Article III (General Definitions), subject to Article XXVI (Mutual Agreement Procedure). The term "royalties" does not encompass management fees, which are covered by the provisions of Article VII (Business Profits) or XIV (Independent Personal Services), or payments under a bona fide cost-sharing arrangement. Technical service fees may be royalties in cases where the fees are periodic and dependent upon productivity or a similar measure.

History: Para. 4 amended by 1983 Protocol, article V, para. 2.

Definitions: "property" — ITCIA 3, ITA 248(1).

I.T. Technical News: 23 (computer software); 25 (e-commerce — payments for digital products not royalties).

5. The provisions of paragraphs 2 and 3 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article VII (Business Profits) or Article XIV (Independent Personal Services), as the case may be, shall apply.

Technical Explanation [1984]:

Paragraph 5 provides that the 10 percent limitation on tax in the Contracting State of source provided by paragraph 2, and the exemption in the Contracting State of source for certain copyright royalties provided by paragraph 3, do not apply if the beneficial owner of the royalties carries on business in the State of source through a permanent establishment or fixed base and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base (i.e., the royalties are attributable to the permanent establishment or fixed base). In that event, the royalty income would be taxable under the provisions of Article VII (Business Profits) or XIV (Independent Personal Services), as the case may be.

Definitions: "business" — ITCIA 3, ITA 248(1); "permanent establishment" — Art. V:1; "resident of a Contracting State" — Art. IV:1; "royalties" — Art. XII:4; "State" — Art. III:1(i).

6. For the purposes of this Article,

(a) royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a State a permanent establishment or a fixed base in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated and not in any other State of which the payer is a resident; and

(b) where subparagraph (a) does not operate to treat royalties as arising in either Contracting State and the royalties are for the use of, or the right to use, intangible property or tangible personal property in a Contracting State, then such royalties shall be deemed to arise in that State.

Technical Explanation [1995 Protocol]:

Paragraph 2 of Article 7 of the Protocol amends the rules in paragraph 6 of Article XII of the Convention for determining the source of royalty payments. Under the present Convention, royalties generally are deemed to arise in a Contracting State if paid by a resident of that State. However, if the obligation to pay the royalties was incurred in connection with a permanent establishment or a fixed base in one of the Contracting States that bears the expense, the royalties are deemed to arise in that State.

The Protocol continues to apply these basic rules but changes the scope of an exception provided under the present Convention. Under the present Convention, a royalty paid for the use of, or the right to use, property in a Contracting State is deemed to arise in that State. Under the Protocol, this "place of use" exception applies only if the Convention does not otherwise deem the royalties to arise in one of the Contracting States. Thus, the "place of use" exception will apply only if royalties are neither paid by a resident of one of the Contracting States nor borne by a permanent establishment or fixed base in either State. For example, if a Canadian resident were to grant franchise rights to a resident of Chile for use in the United States, the royalty paid by the Chilean resident to the Canadian resident for those rights would be U.S. source income under this Article, subject to U.S. withholding at the 10 percent rate provided in paragraph 2.

The rules of this Article differ from those provided under U.S. domestic law. Under U.S. domestic law, a royalty is considered to be from U.S. sources if it is paid for the use of, or the privilege of using, an intangible within the United States; the residence of the payor is irrelevant. If paid to a nonresident alien individual or other foreign person, a U.S. source royalty is generally subject to withholding tax at a rate of 30 percent under U.S. domestic law. By reason of paragraph 1 of Article XXIX (Miscellaneous Rules), a Canadian resident would be permitted to apply the rules of U.S. domestic law to its royalty income if those rules produced a more favorable result in its case than those of this Article. However, under a basic principle of tax treaty interpretation recognized by both Contracting States, the prohibition against so-called "cherry-picking," the Canadian resident would be precluded from claiming selected benefits under the Convention (e.g., the tax rates only) and other benefits under U.S. domestic law (e.g., the source rules only) with respect to its royalties. See, e.g., Rev. Rul. 84-17, 1984-1 C.B. 308. For example, if a Canadian company granted franchise rights to a resident of the United States for use 50 percent in the United States and 50 percent in Chile, the Convention would permit the Canadian company to treat all of its royalty income from that single transaction as U.S. source income entitled to the withholding tax reduction under paragraph 2. U.S. domestic law would permit the Canadian company to treat 50 percent of its royalty income as U.S. source income subject to a 30 percent withholding tax and the other 50 percent as foreign source income exempt from U.S. tax. The Canadian company could choose to apply either the provisions of U.S. domestic law or the provisions of the Convention to the transaction, but would not be permitted to claim both the U.S. domestic law exemption for 50 percent of the income and the Convention's reduced withholding rate for the remainder of the income.

Royalties generally are considered borne by a permanent establishment or fixed base if they are deductible in computing the taxable income of that permanent establishment or fixed base.

Since the definition of "resident" of a Contracting State in Article IV (Residence), as amended by Article 3 of the Protocol, specifies that this term includes the Contracting States and their political subdivisions and local authorities, the source rule does not include a specific reference to these governmental entities.

Technical Explanation [1984]:

Paragraph 6 establishes rules to determine the source of royalties for purposes of Article XII. The first rule is that royalties arise in a Contracting State when the payer is that State, or a political subdivision, local authority, or resident of that State. Notwithstanding that rule, royalties arise not in the State of the payer's residence but in any State, whether or not a Contracting State, in which is situated a permanent establishment or fixed base in connection with which the obligation to pay royalties was incurred, if such royalties are borne by such permanent establishment or fixed base. Thus, royalties paid to a resident of the United States by a company resident in Canada for the use of property in a third State will not be subject to tax in Canada if the obligation to pay the royalties is incurred in connection with, and the royalties are borne by, a permanent establishment of the company in a third State. "Borne by" means allowable as a deduction in computing taxable income.

A third rule, which overrides both the residence rule and the permanent establishment rule just described, provides that royalties for the use of, or the right to use, intangible property or tangible personal property in a Contracting State arise in that State. Thus, consistent with the provisions of Code section 861(a)(4), if a resident of a third State pays royalties to a resident of Canada for the use of or the right to use intangible property or tangible personal property in the United States, such royalties are considered to arise in the United States and are subject to taxation by the United States consistent with the Convention. Similarly, if a resident of Canada pays royalties to a resident of a third State, such royalties are considered to arise in the United States and are subject to U.S. taxation if they are for the use of or the right to use intangible property or tangible personal property in the United States. The term "intangible property" encompasses all the items described in paragraph 4, other than tangible personal property.

History: Para. 6 amended by 1995 Protocol, article 7(2), effective for amounts paid or credited on or after January 1, 1996 (see Art. 21(2)(a) under "Application of the 1995 Protocol" above). Para. 6 formerly read:

> 6. For the purposes of this Article, royalties shall be deemed to arise in a Contracting State when the payer is that State itself, or a political subdivision, local authority or resident of that State. However:
>
> (a) except as provided in subparagraph (b), where the person paying the royalties, whether he is a resident of a Contracting State or not, has in a State other than that of which he is a resident a permanent establishment or a fixed base in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated and not in the State of which the payer is a resident; and
>
> (b) where the royalties are for the use of, or the right to use, intangible property or tangible personal property in a Contracting State, then such royalties shall be deemed to arise in that State and not in the State of which the payer is a resident.

Subpara. 6(b) amended by 1983 Protocol, article V, para. 3.

Definitions: "permanent establishment" — Art. V:1; "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1); "resident" — ITCIA 3, ITA 250; "royalties" — Art. XII:4; "State" — Art. III:1(i).

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Technical Explanation [1984]:

Paragraph 7 provides that in cases involving special relationships between persons the benefits of Article XII do not apply to amounts in excess of the amount which would have been agreed upon between persons with no special relationship; any such excess amount remains taxable according to the laws of Canada and the United States, consistent with any relevant provisions of the Convention.

Related Provisions: ITA 247 — Transfer pricing adjustments.

Definitions: "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1); "royalties" — Art. XII:4.

8. Where a resident of a Contracting State pays royalties to a person other than a resident of the other Contracting State, that other State may not impose any tax on such royalties except insofar as they arise in that other State or insofar as the right or property in respect of which the royalties are paid is effectively connected with a permanent establishment or a fixed base situated in that other State.

Technical Explanation [1984]:

Paragraph 8 restricts the right of a Contracting State to impose tax on royalties paid by a resident of the other Contracting State. The first State may not impose any tax on such royalties except insofar as they arise in that State or they are paid to a resident of that State or the right or property in respect of which the royalties are paid is effectively connected with a permanent establishment or fixed base situated in that State. This rule parallels the rule in paragraph 8 of Article XI (Interest) and paragraph 5 of Article X (Dividends). Again, U.S. citizens remain subject to U.S. taxation on royalties received despite this rule, by virtue of paragraph 2 of Article XXIX (Miscellaneous Rules).

Definitions: "permanent establishment" — Art. V:1; "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1); "property" — ITCIA 3, ITA 248(1); "resident of a Contracting State" — Art. IV:1; "royalties" — Art. XII:4; "State" — Art. III:1(i).

Selected Cases [Art. XII]: *Angoss International Ltd. v. R.*, [1999] 2 C.T.C. 2259 (TCC) (Copyright payments for computer software exempt from withholding tax).

Information Circulars: 77-16R4: Non-resident income tax.

Article XIII — Gains

Proposed Amendment — Gains following emigration of individual from Canada

Department of Finance news release, September 18, 2000: *Canada and the United States Propose Tax Treaty Changes . . .*

For individuals, the changes will ensure the appropriate tax treatment of an emigrant's gains. Specifically, where one country's tax rules treat an individual as having disposed of a property immediately before the individual emigrates to the other country, the individual will be able to choose to be treated under the other country's rules as also having disposed of and reacquired the property at its fair market value.

In most cases, this will mean that no tax is payable in the destination country on any pre-emigration gain. Where tax is payable in the destination country — for example, where the property in question is real estate situated in that country — the new rule will ensure appropriate tax crediting. . . .

Timing

If approved, the rule for individuals will apply to changes in residence that take place on and after today's date.

[For the full text of this news release, see at the beginning of the Convention — ed.]

1. Gains derived by a resident of a Contracting State from the alienation of real property situated in the other Contracting State may be taxed in that other State.

Technical Explanation [1984]:

Paragraph 1 provides that Canada and the United States may each tax gains from the alienation of real property situated within that State which are derived by a resident of the other Contracting State. The term "real property situated in the other Contracting State" is defined for this purpose in paragraph 3 of this article. The term "alienation" used in paragraph 1 and other paragraphs of Article XIII means sales, exchanges and other dispositions or deemed dispositions (e.g., change of use, gifts, distributions, death) that are taxable events under the taxation laws of the Contracting State applying the provisions of the Article.

Related Provisions: ITA 115(1)(b) — Tax on disposition of taxable Canadian property; ITA 126(2.21), (2.22) — Foreign tax credit to emigrant for tax payable on gain accrued while resident in Canada; ITA 128.1(4)(b)(i) — Real property in Canada excluded from deemed disposition on emigration.

Definitions: "real property situated in the other Contracting State" — Art. XIII:3; "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

2. Gains from the alienation of personal property forming part of the business property of a permanent establishment which a resident of a Contracting State has or had (within the twelve-month period preceding the date of alienation) in the other Contracting State or of personal property pertaining to a fixed base which is or was available (within the twelve-month period preceding the date of alienation) to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment or of such a fixed base, may be taxed in that other State.

Technical Explanation [1984]:

Paragraph 2 of Article XIII provides that the Contracting State in which a resident of the other Contracting State "has or had" a permanent establishment or fixed base may tax gains from the alienation of personal property constituting business property if such gains are attributable to such permanent establishment or fixed base. Unlike paragraph 1 of Article VII (Business Profits), paragraph 2 limits the right of the source State to tax such gains to a twelve-month period following the termination of the permanent establishment or fixed base.

Definitions: "permanent establishment" — Art. V:1; "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

3. For the purposes of this Article the term **"real property situated in the other Contracting State"**

(a) in the case of real property situated in the United States, means a United States real property interest and real property referred to in Article VI (Income from Real Property) situated in the United States, but does not include a share of the capital stock of a company that is not a resident of the United States; and

(b) in the case of real property situated in Canada means:

(i) real property referred to in Article VI (Income from Real Property) situated in Canada;

(ii) a share of the capital stock of a company that is a resident of Canada, the value of whose shares is derived principally from real property situated in Canada; and

(iii) an interest in a partnership, trust or estate, the value of which is derived principally from real property situated in Canada.

Technical Explanation [1997]:

Article 1 of the Protocol amends paragraph 3 of Article XIII (Gains) of the Convention. Paragraph 1 of Article XIII of the Convention provides that gains derived by a resident of a Contracting State from the alienation of real property situated within the other Contracting State may be taxed in that other State. The term "real property situated in the other Contracting State" is defined for this purpose in paragraph 3 of Article XIII of the Convention.

Under paragraph 3(a) of Article XIII of the Convention, real property situated in the United States includes real property (as defined in Article VI (Income from Real Property) of the Convention) situated in the United States and a United States real property interest. Under section 897(c) of the *Internal Revenue Code* (the "Code") the term "United States real property interest" includes shares in a U.S. corporation that owns sufficient U.S. real property interests to satisfy an asset-ratio test on certain testing dates.

Under Paragraph 3(b) of Article XIII of the Convention, real property situated in Canada means real property (as defined in Article VI of the Convention) situated in Canada; shares of stock of a company, the value of whose shares consists principally of Canadian real property; and an interest in a partnership, trust or estate, the value of which consists principally of Canadian real property. The term "principally" means more than 50 percent.

Under the Code, stock of a foreign corporation is not considered a "United States real property interest." Therefore, the United States does not tax a resident of Canada on the sale of stock of a foreign corporation, regardless of the composition of the corporation's assets. Although the Convention permits Canada to tax a U.S. resident on the sale of stock of a company that is not a resident of Canada if the value of the company's shares consists principally of Canadian real property, Canada does not currently impose such a tax. However, on April 26, 1995, amendments were proposed to the Canadian Income Tax Act that would impose Canadian income tax on gains realized on stock of certain companies that are not residents of Canada if (i) more than 50 percent of the fair market value of all of the company's properties consists of any combination of taxable Canadian property, Canadian resource property, timber resource property in Canada and income interests in Canadian trusts, and (ii) more than 50 percent of the fair market value of the shares in question is derived directly or indirectly from any combination of real property located in Canada, Canadian resource property, and timber resource property in Canada. [See ITA 115(1)(b) — ed.] This amendment is proposed to be effective as of April 26, 1995 with proration for gains that accrued before that date. Although the Canadian Parliament was dissolved before these amendments were passed, they are expected to be re-introduced in the current session with the same effective date.

The Protocol amends paragraphs 3(a) and 3(b)(ii) of Article XIII of the Convention to limit each State's right to tax the gains of a resident of the other State from the sale of stock of a real property holding company to cases where the company is resident in that State. Although the United States does not impose and is not currently considering imposing a tax

under the Code on gains from the sale of stock of non-resident real property holding companies, the Protocol nevertheless amends the Convention to prohibit the imposition of such a tax on Canadian residents. Although Canada is considering imposing such a tax on gains from the sale of shares of companies that are not residents of Canada, this Protocol provision will cause the proposed amendments to the Canadian *Income Tax Act* to be inapplicable to U.S. residents who derive gains from the sale of stock of real property holding companies that are not residents of Canada. This provision will be retroactively effective to April 26, 1995, the date the previous Canadian legislation was proposed to be effective.

Technical Explanation [1984]:

Paragraph 3 provides a definition of the term "real property situated in the other Contracting State." Where the United States is the other Contracting State, the term includes real property (as defined in Article VI (Income from Real Property)) situated in the United States and a United States real property interest. Thus, the United States retains the ability to exercise its full taxing right under the *Foreign Investment in Real Property Tax Act* (Code section 897). (For a transition rule from the 1942 Convention, see paragraph 9 of this Article).

Where Canada is the other Contracting State, the term means real property (as defined in Article VI) situated in Canada; shares of stock of a company, the value of whose shares consists principally of Canadian real property; and an interest in a partnership, trust or estate, the value of which consists principally of Canadian real property. The term "principally" means more than 50 percent. Taxation in Canada is preserved through several tiers of entities if the value of the company's shares or the partnership, trust or estate is ultimately dependent principally upon real property situated in Canada.

Related Provisions: ITCIA 5 — Definition of "real property".

History: Para. 3(a) and subpara. 3(b)(ii) amended by 1997 Protocol, article 1, effective April 26, 1995 and in force December 16, 1997 (the day instruments of ratification were exchanged). The para. and subpara. formerly read:

> (a) in the case of real property situated in the United States, means a United States real property interest and real property referred to in Article VI (Income from Real Property) situated in the United States; and
>
> . . . . .
>
> (ii) a share of the capital stock of a company, the value of whose shares is derived principally from real property situated in Canada; and

Para. 3 amended by 1983 Protocol, article VI, para. 1.

Definitions: "Canada" — Art. III:1(a), ITCIA 5; "company" — Art. III:1(f); "estate" — ITCIA 3, ITA 248(1); "real property" — Art. VI:2, ITCIA 5; "resident" — ITCIA 3, ITA 250; "share", "trust" — ITCIA 3, ITA 248(1); "United States" — Art. III:1(b).

4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3 shall be taxable only in the Contracting State of which the alienator is a resident.

Technical Explanation [1984]:

Paragraph 4 reserves to the Contracting State of residence the sole right to tax gains from the alienation of any property other than property referred to in paragraphs 1, 2, and 3.

Definitions: "property" — ITCIA 3, ITA 248(1); "resident" — ITCIA 3, ITA 250.

Advance Tax Rulings: ATR-43: Utilization of a non-resident-owned investment corporation as a holding corporation. However, see para. 5 below.

5. The provisions of paragraph 4 shall not affect the right of a Contracting State to levy tax on gains from the alienation of property derived by an individual who is a resident of the other Contracting State if such individual:

(a) was a resident of the first-mentioned State for 120 months during any period of 20 consecutive years preceding the alienation of the property; and

(b) was a resident of the first-mentioned State at any time during the ten years immediately preceding the alienation of the property;

and if such property (or property for which such property was substituted in an alienation the gain on which was not recognized for the purposes of taxation in the first-mentioned State) was owned by the individual at the time he ceased to be a resident of the first-mentioned State.

Technical Explanation [1984]:

Paragraph 5 states that, despite paragraph 4, a Contracting State may impose tax on gains derived by an individual who is a resident of the other Contracting State if such individual was a resident of the first-mentioned State for 120 months (whether or not consecutive) during any period of 20 consecutive years preceding the alienation of the property, and was a resident of that State at any time during the 10-year period immediately preceding the alienation of the property. The property (or property received in substitution in a tax-free transaction in the first-mentioned State) must have been owned by the individual at the time he ceased to be a resident of the first-mentioned State.

History: Para. 5 amended by 1983 Protocol, article VI, para. 2.

Definitions: "individual", "property" — ITCIA 3, ITA 248(1); "resident" — ITCIA 3, ITA 250; "State" — Art. III:1(i).

6. Where an individual (other than a citizen of the United States) who was a resident of Canada became a resident of the United States, in determining his liability to United States taxation in respect of any gain from the alienation of a principal residence in Canada owned by him at the time he ceased to be a resident of Canada, the adjusted basis of such property shall be no less than its fair market value at that time.

Technical Explanation [1984]:

Paragraph 6 provides a rule to coordinate Canadian and United States taxation of gains from the alienation of a principal residence situated in Canada. An individual (not a citizen of the United States) who was a resident of Canada and becomes a resident of the United States may determine his liability for U.S. income tax purposes in respect of gain from the alienation of a principal residence in Canada owned by him at the time he ceased to be a resident of Canada by claiming an adjusted basis for such residence in an amount no less than the fair market value of the residence at that time. Under paragraph 2(b) of Article XXX, the rule of paragraph 6 applies to gains realized for U.S. income tax purposes in taxable years beginning on or after the first day of January next following the date when instruments of ratification are exchanged, even if a particular individual described in paragraph 6 ceased to be a resident of Canada prior to such date. Paragraph 6 supplements any benefits available to a taxpayer pursuant to the provisions of the Code, e.g., section 1034.

Definitions: "Canada" — Art. III:1(a), ITCIA 5; "individual" — ITCIA 3, ITA 248(1); "property" — ITCIA 3, ITA 248(1); "resident" — ITCIA 3, ITA 250; "United States" — Art. III:1(b).

7. Where at any time an individual is treated for the purposes of taxation by a Contracting State as having alienated a property and is taxed in that State by reason thereof and the domestic law of the other Contracting State at such time defers (but does not forgive) taxation, that individual may elect in his annual return of income for the year of such alienation to be liable to tax in the other Contracting State in that year as if he had, immediately before that time, sold and repurchased such property for an amount equal to its fair market value at that time.

Technical Explanation [1984]:

Paragraph 7 provides a rule to coordinate U.S. and Canadian taxation of gains in circumstances where an individual is subject to tax in both Contracting States and one Contracting State deems a taxable alienation of property by such person to have occurred, while the other Contracting State at that time does not find a realization or recognition of income and thus defers, but does not forgive, taxation. In such a case the individual may elect in his annual return of income for the year of such alienation to be liable to tax in the latter Contracting State as if he had sold and repurchased the property for an amount equal to its fair market value at a time immediately prior to the deemed alienation. The provision would, for example, apply in the case of a gift by a U.S. citizen or a U.S. resident individual which Canada deems to be an income producing event for its tax purposes but with respect to which the United States defers taxation while

assigning the donor's basis to the donee. The provision would also apply in the case of a U.S. citizen who, for Canadian tax purposes, is deemed to recognize income upon his departure from Canada, but not to a Canadian resident (not a U.S. citizen) who is deemed to recognize such income. The rule does not apply in the case of death, although Canada also deems that to be a taxable event, because the United States in effect forgives income taxation of economic gains at death. If in one Contracting State there are losses and gains from deemed alienations of different properties, then paragraph 7 must be applied consistently in the other Contracting State within the taxable period with respect to all such properties. Paragraph 7 only applies, however, if the deemed alienations of the properties result in a net gain.

Definitions: "individual" — ITCIA 3, ITA 248(1); "property" — ITCIA 3, ITA 248(1); "State" — Art. III:1(i).

8. Where a resident of a Contracting State alienates property in the course of a corporate or other organization, reorganization, amalgamation, division or similar transaction and profit, gain or income with respect to such alienation is not recognized for the purpose of taxation in that State, if requested to do so by the person who acquires the property, the competent authority of the other Contracting State may agree, in order to avoid double taxation and subject to terms and conditions satisfactory to such competent authority, to defer the recognition of the profit, gain or income with respect to such property for the purpose of taxation in that other State until such time and in such manner as may be stipulated in the agreement.

Technical Explanation [1995 Protocol]:

Article 8 of the Protocol broadens the scope of paragraph 8 of Article XIII (Gains) of the Convention to cover organizations, reorganizations, amalgamations, and similar transactions involving either corporations or other entities. The present Convention covers only transactions involving corporations. The amendment is intended to make the paragraph applicable to transactions involving other types of entities, such as trusts and partnerships.

As in the case of transactions covered by the present Convention, the deferral allowed under this provision shall be for such time and under such other conditions as are stipulated between the person acquiring the property and the competent authority. The agreement of the competent authority of the State of source is entirely discretionary and, when granted, will be granted only to the extent necessary to avoid double taxation.

Technical Explanation [1984]:

Paragraph 8 concerns the coordination of Canadian and U.S. rules with respect to the recognition of gain on corporate organizations, reorganizations, amalgamations, divisions, and similar transactions. Where a resident of a Contracting State alienates property in such a transaction, and profit, gain, or income with respect to such alienation is not recognized for income tax purposes in the Contracting State of residence, the competent authority of the other Contracting State may agree, pursuant to paragraph 8, if requested by the person who acquires the property, to defer recognition of the profit, gain, or income with respect to such property for income tax purposes. This deferral shall be for such time and under such other conditions as are stipulated between the person who acquires the property and the competent authority. The agreement of the competent authority of the State of source is entirely discretionary and will be granted only to the extent necessary to avoid double taxation of income. This provision means, for example, that the United States competent authority may agree to defer recognition of gain with respect to a transaction if the alienator would otherwise recognize gain for U.S. tax purposes and would not recognize gain under Canada's law. The provision only applies, however, if alienations described in paragraph 8 result in a net gain. In the absence of extraordinary circumstances the provisions of the paragraph must be applied consistently within a taxable period with respect to alienations described in the paragraph that take place within that period.

History: Para. 8 amended by 1995 Protocol, article 8, generally effective with respect to taxation years beginning on or after January 1, 1996 (see Art. 21 under "Application of the 1995 Protocol" above). Para. 8 formerly read:

> 8. Where a resident of a Contracting State alienates property in the course of a corporate organization, reorganization, amalgamation, division or similar transaction and profit, gain or income with respect to such alienation is not recognized for the purpose of taxation in that State, if requested to do so by the person who acquires the property, the competent authority of the other Contracting State may agree, in order to avoid double taxation and subject to terms and conditions satisfactory to such competent authority, to defer the recognition of the profit, gain or income with respect to such property for the purpose of taxation in that other State until such time and in such manner as may be stipulated in the agreement.

Definitions: "competent authority" — Art. III:1(g); "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1); "property" — ITCIA 3, ITA 248(1); "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i); "United States" — Art. III:1(b).

9. Where a person who is a resident of a Contracting State alienates a capital asset which may in accordance with this Article be taxed in the other Contracting State and

> (a) that person owned the asset on September 26, 1980 and was resident in the first-mentioned State on that date; or
>
> (b) the asset was acquired by that person in an alienation of property which qualified as a non-recognition transaction for the purposes of taxation in that other State;

the amount of the gain which is liable to tax in that other State in accordance with this Article shall be reduced by the proportion of the gain attributable on a monthly basis to the period ending on December 31 of the year in which the Convention enters into force, or such greater portion of the gain as is shown to the satisfaction of the competent authority of the other State to be reasonably attributable to that period. For the purposes of this paragraph the term **"non-recognition transaction"** includes a transaction to which paragraph 8 applies and, in the case of taxation in the United States, a transaction that would have been a non-recognition transaction but for Sections 897(d) and 897(e) of the *Internal Revenue Code*. The provisions of this paragraph shall not apply to

> (c) an asset that on September 26, 1980 formed part of the business property of a permanent establishment or pertained to a fixed base of a resident of a Contracting State situated in the other Contracting State;
>
> (d) an alienation by a resident of a Contracting State of an asset that was owned at any time after September 26, 1980 and before such alienation by a person who was not at all times after that date while the asset was owned by such person a resident of that State; or
>
> (e) an alienation of an asset that was acquired by a person at any time after September 26, 1980 and before such alienation in a transaction other than a non-recognition transaction.

Technical Explanation [1984]:

Paragraph 9 provides a transitional rule reflecting the fact that under Article VIII of the 1942 Convention gains from the sale or exchange of capital assets are exempt from taxation in the State of source provided the taxpayer had no permanent establishment in that State. Paragraph 9 applies to deemed, as well as actual, alienations or dispositions. In addition, paragraph 9 applies to a gain described in paragraph 1, even though such gain is also income within the meaning of paragraph 3 of Article VI. Paragraph 9 will apply to transactions notwithstanding section 1125(c) of the *Foreign Investment in Real Property Tax Act*, Public Law 96-499 ("FIRPTA").

Paragraph 9 applies to capital assets alienated by a resident of a Contracting State if (a) that person owned the asset on September 26, 1980 and was a resident of that Contracting State on September 26, 1980 (and at all times after that date until the alienation), or (b) the asset was acquired by that person in an alienation of property which qualified as a non-recognition transaction for tax purposes in the other Contracting State. For purposes of subparagraph 9(b), a non-recognition transaction is a transaction in which gain resulting therefrom is, in effect, deferred for tax purposes, but is not permanently forgiven. Thus, in the United States, certain tax-free organizations, reorganizations, liquidations and like-kind exchanges will qualify as non-recognition transactions. However, a transfer of property at death will not constitute a non-recognition transaction, since any

gain due to appreciation in the property is permanently forgiven in the United States due to the fair market value basis taken by the recipient of the property. If a transaction is a non-recognition transaction for tax purposes, the transfer of non-qualified property, or "boot," which may cause some portion of the gain on the transaction to be recognized, will not cause the transaction to lose its character as a non-recognition transaction for purposes of subparagraph 9(b). In addition, a transaction that would have been a non-recognition transaction in the United States but for the application of sections 897(d) and 897(e) of the Code will also constitute a non-recognition transaction for purposes of subparagraph 9(b). Further, a transaction which is not a non-recognition transaction under U.S. law, but to which non-recognition treatment is granted pursuant to the agreement of the competent authority under paragraph 8 of this Article, is a non-recognition transaction for purposes of subparagraph 9(b). However, a transaction which is not a non-recognition transaction under U.S. law does not become a non-recognition transaction for purposes of subparagraph 9(b) merely because the basis of the property in the hands of the transferee is reduced under section 1125(d) of FIRPTA.

The benefits of paragraph 9 are not available to the alienation or disposition by a resident of a Contracting State of an asset that (a) on September 26, 1980 formed part of the business property of a permanent establishment or pertained to a fixed base which a resident of that Contracting State had in the other Contracting State, (b) was alienated after September 26, 1980 and before the alienation in question in any transaction that was not a non-recognition transaction, as described above, or (c) was owned at any time prior to the alienation in question and after September 26, 1980 by a person who was not a resident of that same Contracting State after September 26, 1980 while such person held the asset. Thus, for example, in order for paragraph 9 to be availed of by a Canadian resident who did not own the alienated asset on September 26, 1980, the asset must have been owned by other Canadian residents continuously after September 26, 1980 and must have been transferred only in transactions which were non-recognition transactions for U.S. tax purposes.

The availability of the benefits of paragraph 9 is illustrated by the following examples. It should be noted that the examples do not purport to fully describe the U.S. and Canadian tax consequences resulting from the transactions described therein. Any condition for the application of paragraph 9 which is not discussed in an example should be assumed to be satisfied.

Example 1.

A, an individual resident of Canada, owned an appreciated U.S. real property interest on September 26, 1980. On January 1, 1982, A transferred the U.S. real property interest to X, a Canadian corporation, in exchange for 100 percent of X's voting stock. A's gain on the transfer to X is exempt from U.S. tax under Article VIII of the 1942 Convention. Since the transaction qualifies as a non-recognition transaction for U.S. tax purposes, as described above, X is entitled to the benefits of paragraph 9, pursuant to subparagraph 9(b), upon a subsequent disposition of the U.S. real property interest occurring after the entry into force of this Convention. If A's transfer to X had instead occurred after the entry into force of this Convention, A would be entitled to the benefits of paragraph 9, pursuant to subparagraph 9(a), with respect to U.S. taxation of that portion of the gain resulting from the transfer to X that is attributable on a monthly basis to the period ending on December 31 of the year in which the Convention enters into force (or a greater portion of the gain as is shown to the satisfaction of the U.S. competent authority). X would be entitled to the benefits of paragraph 9 pursuant to subparagraph 9(b), upon a subsequent disposition of the U.S. real property interest.

Example 2.

The facts are the same as in Example 1, except that A is a corporation which is resident in Canada. Assuming that the transfer of the U.S. real property interest to X is a section 351 transaction or a tax-free reorganization for U.S. tax purposes, the results are the same as in Example 1.

Example 3.

The facts are the same as in Example 1, except that X is a U.S. corporation. If the transfer to X by A took place on January 1, 1982, A's gain on the transfer to X would be exempt from tax under Article VIII of the 1942 Convention and A would be entitled to the benefits of paragraph 9, pursuant to subparagraph 9(b), upon a subsequent disposition of the stock of X occurring after the entry into force of this Convention. If the transfer to X by A took place after the entry into force of this Convention, A would be entitled to the benefits of paragraph 9, pursuant to subparagraph 9(a), with respect to U.S. taxation (if any) of the gain resulting from the transfer to X, and would also be entitled to the benefits of paragraph 9, pursuant to subparagraph 9(b), upon a subsequent disposition of the stock of X. For several reasons, including the fact that X is a U.S. corporation, paragraph 9 has no impact on the U.S. tax consequences of a subsequent disposition by X of the U.S. real property interest in either case.

Example 4.

B, a corporation resident in Canada, owns all of the stock of C, which is also a corporation resident in Canada. C owns a U.S. real property interest. After the Convention enters into force, B liquidates C in a section 332 liquidation. The transaction is treated as a non-recognition transaction for U.S. tax purposes under the definition of a non-recognition transaction described above. C is entitled to the benefits of paragraph 9, pursuant to subparagraph 9(a), with respect to gain taxed (if any) under section 897(d), and B is entitled to the benefits of paragraph 9, pursuant to subparagraph 9(b), upon a subsequent disposition of the U.S. real property interest. Generally, the United States would not subject B to tax upon the liquidation of C.

Example 5.

The facts are the same as in Example 4, except that C is a U.S. corporation. B is entitled to the benefits of paragraph 9, pursuant to subparagraph 9(a), with respect to U.S. taxation (if any) of the gain resulting from the liquidation of C. B is not entitled to the benefits of paragraph 9 upon a subsequent disposition of the U.S. real property interest since that asset was held after September 26, 1980 by a person who was not a resident of Canada. The U.S. tax consequences to C are governed by the internal law of the United States.

Example 6.

D, an individual resident of the United States, owns Canadian real estate. On January 1, 1982, D transfers the Canadian real estate to E, a corporation resident in Canada, in exchange for all of E's stock. This transfer is treated as a taxable transaction under the *Income Tax Act* of Canada. However, D's gain on the transfer is exempt from Canadian tax under Article VIII of the 1942 Convention. D is not entitled to the benefits of subparagraph 9(b) upon a subsequent disposition of the stock of E since the stock was not transferred in a transaction which was a non-recognition transaction for Canadian tax purposes. E is not entitled to Canadian benefits under this paragraph since, *inter alia*, it is a Canadian resident. (However, under Canadian law, both D and E would have a basis for tax purposes equal to the fair market value of the property at the time of D's transfer). If the transfer to E had taken place after entry into force of this Convention, D would be entitled to the benefits of paragraph 9, pursuant to subparagraph 9(a), with respect to Canadian tax resulting from the transfer to E, but would not be entitled to the benefits of subparagraph 9(b) upon a subsequent disposition of the E stock. (Note that E could seek to have the transaction treated as a non-recognition transaction under paragraph 8 of this Article, with the result that, if the competent authority agrees, D will take a carryover basis in the stock of E and be entitled to the benefits of subparagraph 9(b) upon a subsequent disposition thereof).

Example 7.

The facts are the same as in Example 6, except that E is a U.S. corporation. This transaction is also a recognition event under Canadian law at the shareholder level. The results are generally the same as in Example 6. However, if the transfer to E had been granted non-recognition treatment in Canada pursuant to paragraph 8, both D and E would be entitled to the benefits of paragraph 9 for Canadian tax purposes, pursuant to subparagraph 9(b), upon subsequent dispositions of the stock of E or the Canadian real estate, respectively.

Example 8.

F, an individual resident of the United States, owns all of the stock of G, a Canadian corporation, which in turn owns Canadian real estate. F causes G to be amalgamated in a merger with another Canadian corporation. This is a non-recognition transaction under Canadian law and F is entitled for Canadian tax purposes, to the benefits of paragraph 9, pursuant to subparagraph 9(b), upon a subsequent disposition of the stock of the other Canadian corporation.

Example 9.

H, a U.S. corporation, owns all of the stock of J, another U.S. corporation. J owns Canadian real estate. H liquidates J. For Canadian tax purposes, no tax is imposed on H as a result of the liquidation and H receives a fair market value basis in the Canadian real estate. Accordingly, since gain has been forgiven due to the fair market value basis (rather than postponed in a non-recognition transaction), H would not be entitled to the benefits of subparagraph 9(b) upon the subsequent disposition of the Canadian real estate. Canada would impose a tax on J, but J would be entitled to the benefits of paragraph 9, pursuant to subparagraph 9(a), with respect to Canadian tax imposed on the liquidation.

Example 10.

The facts are the same as in Example 9, except that J is a Canadian corporation. Paragraph 9 does not affect the Canadian taxation of J. While H is subject to Canadian tax on the liquidation of J, H is entitled to the benefits

of paragraph 9, pursuant to subparagraph 9(a), with respect to such Canadian taxation. H will take a fair market value basis (rather than have gain postponed in a non-recognition transaction) in the Canadian real estate for Canadian tax purposes and is thus not entitled to the benefits of paragraph 9 upon a subsequent disposition of the Canadian real estate (since, *inter alia*, the gain has been forgiven due to the fair market value basis).

Example 11.

K, a U.S. corporation, owns the stock of L, another U.S. corporation, which in turn owns Canadian real estate. K causes L to be merged into another U.S. corporation. For Canadian tax purposes, such a transaction is treated as a recognition event, but Canada will not impose a tax on K under its internal law. Canada would impose tax on L, but L is entitled to the benefits of paragraph 9, pursuant to subparagraph 9(a), with respect to Canadian taxation of gain resulting from the merger. The acquiring U.S. corporation would take a fair market value basis in the Canadian real estate, and would thus not be entitled to the benefits of subparagraph 9(b) upon a subsequent disposition of the real estate. (Note that the acquiring U.S. corporation could seek to obtain non-recognition treatment under paragraph 8 of this Article, with the result that, if approved by the competent authority, it would obtain a carryover basis in the property and be entitled to the benefits of subparagraph 9(b) upon a subsequent disposition of the Canadian real estate).

Paragraph 9 provides that where a resident of Canada or the United States is subject to tax pursuant to Article XIII in the other Contracting State on gains from the alienation of a capital asset, and if the other conditions of paragraph 9 are satisfied, the amount of the gain shall be reduced for tax purposes in that other State by the amount of the gain attributable to the period during which the property was held up to and including December 31 of the year in which the documents of ratification are exchanged. The gain attributable to such person[1] is normally determined by dividing the total gain by the number of full calendar months the property was held by such person, including, in the case of an alienation described in paragraph 9(b), the number of months in which a predecessor in interest held the property, and multiplying such monthly amount by the number of full calendar months ending on or before December 31 of the year in which the instruments of ratification are exchanged.

Upon a clear showing, however, a taxpayer may prove that a greater portion of the gain was attributable to the specified period. Thus, in the United States the fair market value of the alienated property at the treaty valuation date may be established under paragraph 9 in the manner and with the evidence that is generally required by U.S. Federal income, estate, and gift tax regulations. For this purpose a taxpayer may use valid appraisal techniques for valuing real estate such as the comparable sales approach (see Rev. Proc. 79-24, 1979-1 C.B. 565) and the reproduction cost approach. If more than one property is alienated in a single transaction each property will be considered individually.

A taxpayer who desires to make this alternate showing for U.S. tax purposes must so indicate on his U.S. income tax return for the year of the sale or exchange and must attach to the return a statement describing the relevant evidence. The U.S. competent authority or his authorized delegate will determine whether the taxpayer has satisfied the requirements of paragraph 9.

The amount of gain which is reduced by reason of the application of paragraph 9 is not to be treated for U.S. tax purposes as an amount of "nontaxed gain" under section 1125(d)(2)(B) of FIRPTA, where that section would otherwise apply. (Note that gain not taxed by virtue of the 1942 Convention is "nontaxed gain").

U.S. residents, citizens and former citizens remain subject to U.S. taxation on gains as provided by the Code notwithstanding the provisions of Article XIII, other than paragraphs 6 and 7. See paragraphs 2 and 3(a) of Article XXIX (Miscellaneous Rules).

History: Para. 9 amended by 1983 Protocol, article VI, para. 3.

Definitions: "competent authority" — Art. III:1(g); "permanent establishment" — Art. V:1; "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1); "property" — ITCIA 3, ITA 248(1); "resident" — ITCIA 3, ITA 250; "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

Interpretation Bulletins: IT-173R2: Capital gains derived in Canada by residents of the United States.

I.T. Technical News: 4 (article XIII:9 of the Canada–U.S. tax convention (1980).

Selected Cases [Art. XIII]: *Angoss International Ltd. v. R.*, [1999] 2 C.T.C. 2259 (TCC) (Copyright payments for computer software exempt from withholding tax).

Article XIV — Independent Personal Services

Income derived by an individual who is a resident of a Contracting State in respect of independent personal services may be taxed in that State. Such income may also be taxed in the other Contracting State if the individual has or had a fixed base regularly available to him in that other State but only to the extent that the income is attributable to the fixed base.

Technical Explanation [1984]:

Article XIV concerns the taxation of income derived by an individual in respect of the performance of independent personal services. Such income may be taxed in the Contracting State of which such individual is a resident. It may also be taxed in the other Contracting State if the individual has or had a fixed base regularly available to him in the other State for the purpose of performing his activities, but only to the extent that the income is attributable to that fixed base. The use of the term "has or had" ensures that a Contracting State in which a fixed base existed has the right to tax income attributable to that fixed base even if there is a delay between the termination of the fixed base and the receipt or accrual of such income.

Unlike Article VII of the 1942 Convention, which provides a limited exemption from tax at source on income from independent personal services, Article XIV does not restrict the exemption to persons present in the State of source for fewer than 184 days. Furthermore, Article XIV does not allow the $5,000 exemption at source of the 1942 Convention, which was available even if services were performed through a fixed base. However, Article XIV provides complete exemption at source if a fixed base does not exist.

Related Provisions: ITA 146(1)"earned income"(c) — Income exempted by tax treaty is not earned income of a non-resident for RRSP purposes.

Selected Cases [Art. XIV]: *Wolf v. R.*, [2002] 3 C.T.C. 3 (FCA); rev'g [2001] 1 C.T.C. 2172 (TCC) (Tests for independent contractor status considered); *Dudney v. R.*, [2000] 2 C.T.C. 56 (FCA); aff'g [1999] 1 C.T.C. 2267 (TCC) (Taxpayer had no "fixed base").

Definitions: "individual" — ITCIA 3, ITA 248(1); "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

I.T. Technical News: 18 (*Dudney* case); 22 (international taxation).

Article XV — Dependent Personal Services

1. Subject to the provisions of Articles XVIII (Pensions and Annuities) and XIX (Government Service), salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

Technical Explanation [1984]:

Paragraph 1 provides that, in general, salaries, wages, and other similar remuneration derived by a resident of a Contracting State in respect of an employment are taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is exercised in the other Contracting State, the entire remuneration derived therefrom may be taxed in that other State but only if, as provided by paragraph 2, the recipient is present in the other State for a period or periods exceeding 183 days in the calendar year, or the remuneration is borne by an employer who is a resident of that other State or by a permanent establishment or fixed base which the employer has in that other State. However, in all cases where the employee earns $10,000 or less in the currency of the State of source, such earnings are exempt from tax in that State. "Borne by" means allowable as a deduction in computing taxable income. Thus, if a Canadian resident individual employed at the Canadian permanent establishment of a

[1] *Sic*. Should read "period" — ed.

U.S. company performs services in the United States, the income earned by the employee from such services is not exempt from U.S. tax under paragraph 1 if such income exceeds $10,000 (U.S.) because the U.S. company is entitled to a deduction for such wages in computing its taxable income.

Definitions: "employment" — ITCIA 3, ITA 248(1); "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in a calendar year in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) such remuneration does not exceed ten thousand dollars ($10,000) in the currency of that other State; or

(b) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in that year and the remuneration is not borne by an employer who is a resident of that other State or by a permanent establishment or a fixed base which the employer has in that other State.

Technical Explanation [1984]:

See Article XV, para. 1.

Related Provisions: ITA 146(1)"earned income"(c) — Income exempted by tax treaty is not earned income of a non-resident for RRSP purposes.

Definitions: "employer", "employment" — ITCIA 3, ITA 248(1); "permanent establishment" — Art. V:1; "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

3. Notwithstanding the provisions of paragraphs 1 and 2, remuneration derived by a resident of a Contracting State in respect of an employment regularly exercised in more than one State on a ship, aircraft, motor vehicle or train operated by a resident of that Contracting State shall be taxable only in that State.

Technical Explanation [1984]:

Paragraph 3 provides that a resident of a Contracting State is exempt from tax in the other Contracting State with respect to remuneration derived in respect of an employment regularly exercised in more than one State on a ship, aircraft, motor vehicle, or train operated by a resident of the taxpayer's State of residence. The word "regularly" is intended to distinguish crew members from persons occasionally employed on a ship, aircraft, motor vehicle, or train. Only the Contracting State of which the employee and operator are resident has the right to tax such remuneration. However, this provision is subject to the "saving clause" of paragraph 2 of Article XXIX (Miscellaneous Rules), which permits the United States to tax its citizens despite paragraph 3.

Article XV states that its provisions are overridden by the more specific rules of Article XVIII (Pensions and Annuities) and Article XIX (Government Services).

Related Provisions: Art. III:1(h) — Meaning of "international traffic"; ITA 146(1)"earned income"(c) — Income exempted by tax treaty is not earned income of a non-resident for RRSP purposes.

Definitions: "employment" — ITCIA 3, ITA 248(1); "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

Article XVI — Artistes and Athletes

1. Notwithstanding the provisions of Articles XIV (Independent Personal Services) and XV (Dependent Personal Services), income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State, except where the amount of the gross receipts derived by such entertainer or athlete, including expenses reimbursed to him or borne on his behalf, from such activities do not exceed fifteen thousand dollars ($15,000) in the currency of that other State for the calendar year concerned.

Technical Explanation [1984]:

Article XVI concerns income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio, or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State. Article XVI overrides Articles XIV (Independent Personal Services) and XV (Dependent Personal Services) to allow source basis taxation of an entertainer or athlete in cases where the latter Articles would not permit such taxation. Thus, paragraph 1 provides that certain income of an entertainer or athlete may be taxed in the State of source in all cases where the amount of gross receipts derived by the entertainer or athlete, including expenses reimbursed to him or borne on his behalf, exceeds $15,000 in the currency of that other State for the calendar year concerned. For example, where a resident of Canada who is an entertainer derives income from his personal activities as an entertainer in the United States, he is taxable in the United States on all such income in any case where his gross receipts are greater than $15,000 for the calendar year. Article XVI does not restrict the right of the State of source to apply the provisions of Articles XIV and XV. Thus, an entertainer or athlete resident in a Contracting State and earning $14,000 in wages borne by a permanent establishment in the other State may be taxed in the other State as provided in Article XV.

Related Provisions: ITA 146(1)"earned income"(c) — Income exempted by tax treaty is not earned income of a non-resident for RRSP purposes.

Definitions: "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete but to another person, that income may, notwithstanding the provisions of Articles VII (Business Profits), XIV (Independent Personal Services) and XV (Dependent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised. For the purposes of the preceding sentence, income of an entertainer or athlete shall be deemed not to accrue to another person if it is established that neither the entertainer or athlete, nor persons related thereto, participate directly or indirectly in the profits of such other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions or other distributions.

Technical Explanation [1984]:

Paragraph 2 provides that where income in respect of personal activities exercised by an entertainer or an athlete accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Article VII (Business Profits), Article XIV, and Article XV, be taxed in the Contracting State in which the activities are exercised. The anti-avoidance rule of paragraph 2 does not apply if it is established by the entertainer or athlete that neither he nor persons related to him participate directly or indirectly in the profits of the other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions, or other distributions.

Thus, if an entertainer who is a resident of Canada is under contract with a company and the arrangement between the entertainer and the company provides for payments to the entertainer based on the profits of the company, all of the income of the company attributable to the performer's U.S. activities may be taxed in the United States irrespective of whether the company maintains a permanent establishment in the United States. Paragraph 2 does not affect the rule of paragraph 1 that applies to the entertainer or athlete himself.

Definitions: "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1); "related" — ITCIA 3, ITA 251(2)–(6).

3. The provisions of paragraphs 1 and 2 shall not apply to the income of:

(a) an athlete in respect of his activities as an employee of a team which participates in a league with

regularly scheduled games in both Contracting States; or

(b) a team described in subparagraph (a).

Technical Explanation [1984]:

Paragraph 3 provides that paragraphs 1 and 2 of Article XVI do not apply to the income of an athlete in respect of an employment with a team which participates in a league with regularly scheduled games in both Canada and the United States, nor do those paragraphs apply to the income of such a team. Such an athlete is subject to the rules of Article XV. Thus, the athlete's remuneration would be exempt from tax in the Contracting State of source if he is a resident of the other Contracting State and earns $10,000 or less in the currency of the State of source, or if he is present in that State for a period or periods not exceeding in the aggregate 183 days in the calendar year, and his remuneration is not borne by a resident of that State or a permanent establishment or fixed base in that State. In addition, a team described in paragraph 3 may not be taxed in a Contracting State under paragraph 2 of this Article solely by reason of the fact that a member of the team may participate in the profits of the team through the receipt of a bonus based, for example, on ticket sales. The employer may be taxable pursuant to other articles of the Convention, such as Article VII.

History: Para. 3 amended by 1983 Protocol, article VII, para. 1.

Definitions: "employee" — ITCIA 3, ITA 248(1).

4. Notwithstanding the provisions of Articles XIV (Independent Personal Services) and XV (Dependent Personal Services) an amount paid by a resident of a Contracting State to a resident of the other Contracting State as an inducement to sign an agreement relating to the performance of the services of an athlete (other than an amount referred to in paragraph 1 of Article XV (Dependent Personal Services) may be taxed in the first-mentioned State, but the tax so charged shall not exceed 15 per cent of the gross amount of such payment.

Technical Explanation [1984]:

Paragraph 4 provides that, notwithstanding Articles XIV and XV, an amount paid by a resident of a Contracting State to a resident of the other State as an inducement to sign an agreement relating to the performance of the services of an athlete may be taxed in the first-mentioned State. However, the tax imposed may not exceed 15 percent of the gross amount of the payment. The provision clarifies the taxation of signing bonuses in a manner consistent with their treatment under U.S. interpretations of the 1942 Convention. Amounts paid as salary or other remuneration for the performance of the athletic services themselves are not taxable under this provision, but are subject to the provisions of paragraphs 1 and 3 of this Article, or Articles XIV or XV, as the case may be. The paragraph covers all amounts paid (to the athlete or another person) as an inducement to sign an agreement for the services of an athlete, such as a bonus to sign a contract not to perform for other teams. An amount described in this paragraph is not to be included in determining the amount of gross receipts derived by an athlete in a calendar year for purposes of paragraph 1. Thus, if an athlete receives a $50,000 signing bonus and a $12,000 salary for a taxable year, the State of source would not be entitled to tax the salary portion of the receipt of the athlete for that year under paragraph 1 of this Article.

History: Para. 4 added by 1983 Protocol, article VII, para. 2.

Definitions: "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

Selected Cases [Art. XVI]: *Cheek v. R.*, [2002] 1 C.T.C. 2115 (TCC) (Sports journalist was not an "artiste" for purposes of Convention and not subject to tax in Canada); *Sumner v. R.*, [2000] 2 C.T.C. 2359 (TCC) (Performer's "loan-out" company subject to Canadian tax).

Article XVII — Withholding of Taxes in Respect of Personal Services

1. Deduction and withholding of tax on account of the tax liability for a taxable year on remuneration paid to an individual who is a resident of a Contracting State (including an entertainer or athlete) in respect of the performance of independent personal services in the other Contracting State may be required by that other State, but with respect to the first five thousand dollars ($5,000) in the currency of that other State, paid as remuneration in that taxable year by each payer, such deduction and withholding shall not exceed 10 per cent of the payment.

Technical Explanation [1984]:

Article XVII confirms that a Contracting State may require withholding of tax on account of tax liability with respect to remuneration paid to an individual who is a resident of the other Contracting State, including an entertainer or athlete, in respect of the performance of independent personal services in the first-mentioned State. However, withholding with respect to the first $5,000 (in the currency of the State of source) of such remuneration paid in that taxable year by each payor shall not exceed 10 percent of such payment. In the United States, the withholding described in paragraph 1 relates to withholding with respect to income tax liability and does not relate to withholding with respect to other taxes, such as social security taxes. Nor is the paragraph intended to suggest that withholding in circumstances not specifically mentioned, such as withholding with respect to dependent personal services, is precluded by the Convention.

Definitions: "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

2. Where the competent authority of a Contracting State considers that an amount that would otherwise be deducted or withheld from any amount paid or credited to an individual who is a resident of the other Contracting State in respect of the performance of personal services in the first-mentioned State is excessive in relation to the estimated tax liability for the taxable year of that individual in the first-mentioned State, it may determine that a lesser amount will be deducted or withheld.

Technical Explanation [1984]:

Paragraph 2 provides that in any case where the competent authority of Canada or the United States believes that withholding with respect to remuneration for the performance of personal services is excessive in relation to the estimated tax liability of an individual to that State for a taxable year, it may determine that a lesser amount will be deducted or withheld. In the case of independent personal services, paragraph 2 may thus result in a lesser withholding than the maximum authorized by paragraph 1.

Definitions: "individual" — ITCIA 3, ITA 248(1); "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1); "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

3. The provisions of this Article shall not affect the liability of a resident of a Contracting State referred to in paragraph 1 or 2 for tax imposed by the other Contracting State.

Technical Explanation [1984]:

Paragraph 3 states that the provisions of Article XVII do not affect the liability of a resident of a Contracting State for taxes imposed by the other Contracting State. The Article deals only with the method of collecting taxes and not with substantive tax liability.

Article XVIIIA of the 1942 Convention authorizes the issuance of regulations to specify circumstances under which residents of the United States temporarily performing personal services in Canada may be exempted from deduction and withholding of United States tax. This provision is omitted from the Convention as unnecessary. The Code and regulations provide sufficient authority to avoid excessive withholding of U.S. income tax. Further, paragraph 2 provides for adjustments in the amount of withholding where appropriate.

Definitions: "resident of a Contracting State" — Art. IV:1.

History: The title of Article XVII and para. 2 amended by 1983 Protocol, article VIII.

Article XVIII — Pensions and Annuities

1. Pensions and annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State, but the amount of any such pension that would be excluded from taxable income in the first-mentioned State if the recipient were a resident thereof shall be exempt from taxation in that other State.

Technical Explanation [1984]:

Paragraph 1 provides that a resident of a Contracting State is taxable in that State with respect to pensions and annuities arising in the other Contracting State. However, the State of residence shall exempt from taxation the amount of any such pension that would be excluded from taxable income in the State of source if the recipient were a resident thereof. Thus, if a $10,000 pension payment arising in a Contracting State is paid to a resident of the other Contracting State and $5,000 of such payment would be excluded from taxable income as a return of capital in the first-mentioned State if the recipient were a resident of the first-mentioned State, the State of residence shall exempt from tax $5,000 of the payment. Only $5,000 would be so exempt even if the first-mentioned State would also grant a personal allowance as a deduction from gross income if the recipient were a resident thereof. Paragraph 1 imposes no such restriction with respect to the amount that may be taxed in the State of residence in the case of annuities.

History: Para. 1 amended by 1983 Protocol, article IX, para. 1.

Selected Cases [Art. XVIII:1]: *Coblentz v. Canada*, [1996] 3 C.T.C. 295 (FCA) (No double taxation involved in taxation of lump-sum payment of pension).

Definitions: "annuities" — Art. XVIII:4, ITCIA 5; "pension" — Art. XVIII:3, ITCIA 5; "State" — Art. III:1(i); "taxable income" — ITCIA 3, ITA 248(1).

2. However:

(a) pensions may also be taxed in the Contracting State in which they arise and according to the laws of that State; but if a resident of the other Contracting State is the beneficial owner of a periodic pension payment, the tax so charged shall not exceed 15 per cent of the gross amount of such payment; and

(b) annuities may also be taxed in the Contracting State in which they arise and according to the laws of that State; but if a resident of the other Contracting State is the beneficial owner of an annuity payment, the tax so charged shall not exceed 15 per cent of the portion of such payment that would not be excluded from taxable income in the first-mentioned State if the beneficial owner were a resident thereof.

Technical Explanation [1984]:

Paragraph 2 provides rules with respect to the taxation of pensions and annuities in the Contracting State in which they arise. If the beneficial owner of a periodic pension payment is a resident of the other Contracting State, the tax imposed in the State of source is limited to 15 percent of the gross amount of such payment. Thus, the State of source is not required to allow a deduction or exclusion for a return of capital to the pensioner, but its tax is limited in amount in the case of a periodic payment. Other pension payments may be taxed in the State of source without limit.

In the case of annuities beneficially owned by a resident of a Contracting State, the Contracting State of source is limited to a 15 percent tax on the portion of the payment that would not be excluded from taxable income (i.e., as a return of capital) in that State if the beneficial owner were a resident thereof.

History: Subpara. 2(b) amended by 1983 Protocol, article IX, para. 2.

Definitions: "annuities", "annuity" — Art. XVIII:4, ITCIA 5; "pension" — Art. XVIII:3, ITCIA 5; "periodic pension payment" — ITCIA 5; "State" — Art. III:1(i); "taxable income" — ITCIA 3, ITA 248(1).

Information Circulars: 75-6R2: Required withholding from amounts paid to non-residents performing services in Canada.

3. For the purposes of this Convention, the term **"pensions"** includes any payment under a superannuation, pension or other retirement arrangement, Armed Forces retirement pay, war veterans pensions and allowances and amounts paid under a sickness, accident or disability plan, but does not include payments under an income-averaging annuity contract or, except for the purposes of Article XIX (Government Service), any benefit referred to in paragraph 5.

Technical Explanation [1997 Protocol]:

Paragraph 1 of Article 2 of the Protocol amends paragraph 3 of Article XVIII (Pensions and Annuities) of the Convention to clarify that social security benefits paid by one Contracting State in respect of services rendered to that State or a subdivision or authority of that State are subject to the rules set forth in paragraph 5 of Article XVIII, and are not subject to Article XIX (Government Service). Thus, all social security benefits paid by a Contracting State will be subject to the same rules, regardless of whether the services were rendered to a private sector employer, the government, or both.

Technical Explanation [1995 Protocol]:

Article 9 of the Protocol amends Article XVIII (Pensions and Annuities) of the Convention. Paragraph 3 of Article XVIII defines the term "pensions" for purposes of the Convention, including the rules for the taxation of cross-border pensions in paragraphs 1 and 2 of the Article, the rules in paragraphs 2 and 3 of Article XXI (Exempt Organizations) for certain income derived by pension funds, and the rules in paragraph 1(b)(i) of Article IV (Residence) regarding the residence of pension funds and certain other entities. The Protocol amends the present definition by substituting the phrase "other retirement arrangement" for the phrase "retirement plan." The purpose of this change is to clarify that the definition of "pensions" includes, for example, payments from Individual Retirement Accounts (IRAs) in the United States and to provide that "pensions" includes, for example, Registered Retirement Savings Plans (RRSPs) and Registered Retirement Income Funds (RRIFs) in Canada. The term "pensions" also would include amounts paid by other retirement plans or arrangements, whether or not they are qualified plans under U.S. domestic law; this would include, for example, plans and arrangements described in section 457 or 414(d) of the *Internal Revenue Code*.

Technical Explanation [1984]:

Paragraph 3 defines the term "pensions" for purposes of the Convention to include any payment under a superannuation, pension, or retirement plan, Armed Forces retirement pay, war veterans pensions and allowances, and amounts paid under a sickness, accident, or disability plan. Thus, the term "pension" includes pensions paid by private employers as well as any pension paid by a Contracting State in respect of services rendered to that State. A pension for government service is covered. The term "pensions" does not include payments under an income averaging annuity contract or benefits paid under social security legislation. The latter benefits are taxed, pursuant to paragraph 5, only in the Contracting State paying the benefit. Income derived from an income averaging annuity contract is taxable pursuant to the provisions of Article XXII (Other Income).

Related Provisions: ITCIA 5.1 — Definition of "pension".

History: Para. 3 amended by 1997 Protocol, article 2(1), in force December 16, 1997 (the day instruments of ratification were exchanged). See Article 3 of the Protocol reproduced under Art. XVIII(5) for further information on the application of the amendment. The para. formerly read:

> 3. For the purposes of this Convention, the term "pensions" includes any payment under a superannuation, pension or other retirement arrangement, Armed Forces retirement pay, war veterans pensions and allowances and amounts paid under a sickness, accident or disability plan, but does not include payments under an income-averaging annuity contract or any benefit referred to in paragraph 5.

Para. 3 amended by 1995 Protocol, article 9(1), generally effective for taxation years beginning on or after January 1, 1996 (see Art. 21(2)(a) under "Application of the 1995 Protocol" above). Para. 3 formerly read:

> 3. For the purposes of this Convention, the term "pensions" includes any payment under a superannuation, pension or retirement plan, Armed Forces retirement pay, war veterans pensions and allowances and amounts paid under a sickness, accident or disability plan, but does not include payments under an income-averaging annuity contract or any benefit referred to in paragraph 5.

Definitions: "income-averaging annuity contract" — ITCIA 3; ITA 248(1); "pension" — ITCIA 5.

4. For the purposes of the Convention, the term **"annuities"** means a stated sum paid periodically at stated times during life or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered), but does not include a payment that is not a periodic payment or any annuity the cost of which was deductible for the

purposes of taxation in the Contracting State in which it was acquired.

Technical Explanation [1984]:

Paragraph 4 provides that, for purposes of the Convention, the term "annuities" means a stated sum paid periodically at stated times during life or during a specified number of years, under an obligation to make payments in return for adequate and full consideration other than services rendered. The term does not include a payment that is not periodic or any annuity the cost of which was deductible for tax purposes in the Contracting State where the annuity was acquired. Items excluded from the definition of "annuities" are subject to the rules of Article XXII.

Related Provisions: ITCIA 5 — Definition of "annuity".

Definitions: "annuity" — ITCIA 5.

5. Benefits under the social security legislation in a Contracting State (including tier 1 railroad retirement benefits but not including unemployment benefits) paid to a resident of the other Contracting State shall be taxable only in that other State, subject to the following conditions:

(a) a benefit under the social security legislation in the United States paid to a resident of Canada shall be taxable in Canada as though it were a benefit under the *Canada Pension Plan*, except that 15 per cent of the amount of the benefit shall be exempt from Canadian tax; and

(b) a benefit under the social security legislation in Canada paid to a resident of the United States shall be taxable in the United States as though it were a benefit under the Social Security Act, except that a type of benefit that is not subject to Canadian tax when paid to residents of Canada shall be exempt from United States tax.

Application of 1997 Protocol: S.C. 1999, c. 22, s. 83, applicable to the 1996 and 1997 taxation years, provides special rules for the application of the 1997 Protocol to the Canada-U.S. Income Tax Convention. It reads as follows:

83. (1) Definitions — The definitions in this subsection apply in this Part.

"Convention" has the meaning assigned by section 2 of the *Canada-United States Tax Convention Act, 1984*.

"creditable United States tax" of an individual for a taxation year means an amount

(a) that was paid to the government of the United States by or on behalf of the individual, at a time when the individual was resident in Canada, on account of United States tax on the individual's United States social security benefits for the year;

(b) that would have been so payable to that government if the Convention had not been amended by the Protocol signed at Ottawa on July 29, 1997; and

(c) that is refundable by that government under the terms of the Convention.

"United States social security benefits" of an individual for a particular taxation year includes

(a) benefits of the United States Social Security Administration, and

(b) tier 1 railroad benefits of the United States Railroad Retirement Board

paid to or for the benefit of the individual in the particular year (but does not include unemployment benefits) and, for the purpose of this definition, a benefit paid in a taxation year for the following taxation year is deemed to have been paid in that following year.

(2) Additional Amount — Each individual who has paid creditable United States tax for a taxation year is deemed to have paid the amount of $50, on the individual's balance-due day for the year, on account of the individual's tax payable under Part I of the *Income Tax Act* for the year.

(3) Interest — For the purpose of determining interest payable under the *Income Tax Act* by or to an individual, the individual's creditable United States tax for a taxation year is deemed

(a) to have been paid, on the individual's balance-due day for the year, on account of the individual's tax payable under Part I of the Act for the year; and

(b) to have been refunded to the individual on the first day on which the Minister of National Revenue, in respect of the individual's creditable United States tax,

(i) pays an amount to or for the benefit of the individual, or

(ii) applies an amount to a liability of the individual.

Technical Explanation [1997 Protocol]:

Paragraph 2 of Article 2 of the Protocol amends paragraph 5 of Article XVIII of the Convention, which provides rules for the taxation of social security benefits (including tier 1 railroad retirement benefits but not including unemployment benefits), and reverses changes made by the third protocol to the Convention, which was signed on March 17, 1995 and generally took effect as of January 1, 1996 (the "1995 Protocol"). Under the Convention prior to amendment by the 1995 Protocol, the State of residence of the recipient of social security benefits had the exclusive right to tax social security benefits paid by the other State on a net basis but exempted 50 percent of the benefit. This was changed by the 1995 Protocol. Under the 1995 Protocol, effective January 1, 1996 benefits paid under the U.S. or Canadian social security legislation to a resident of the other Contracting State (or, in the case of Canadian benefits, paid to a U.S. citizen) are taxable exclusively in the paying State.

Canada and the United States impose different source-basis taxing regimes on social security benefits. Under Code section 871(a)(3), 85 percent of social security benefits paid to a nonresident alien are includible in gross income. The taxable portion of social security benefits is subject to the regular 30 percent withholding tax, with the result that the gross social security benefit is subject to an effective tax rate of 25.5 percent. This is a final payment of tax and Canadian recipients of U.S. social security benefits, regardless of their level of income, may not elect to be taxed in the United States on a net basis at graduated rates.

In Canada, social security benefits paid to nonresidents are subject to a general withholding tax of 25 percent. However, Canada permits U.S. recipients of Canadian benefits to file a Canadian tax return and pay tax at regular graduated rates on their net income. As a result, low-income U.S. recipients of Canadian social security typically pay little or no tax on their benefits.

The Protocol returns to a system of residence-based taxation in which social security benefits are exclusively taxable in the State where the recipient lives. Social security benefits will generally be taxed as if they were benefits paid under the social security legislation in the residence State. Therefore, social security benefits will be taxed on a net basis at graduated rates and low-income recipients will not pay any tax on these benefits. However, the Protocol modifies the residence State's taxation of cross-border benefits in order to take into account how the benefits would have been taxed in the source State if paid to a resident of that State.

In the case of Canadian recipients of U.S. social security benefits, the Protocol provides that only 85 percent of these benefits will be subject to tax in Canada. This reflects the fact that, although in Canada social security benefits are fully includible, a maximum of 85 percent of United States social security benefits are includible in income for U.S. tax purposes. See Code section 86. This is also consistent with the taxation of social security benefits under the Convention prior to the effective date of the 1995 Protocol, since at the time the pre-1996 rule was adopted the United States included a maximum of 50 percent of the social security benefits in income.

In the case of U.S. recipients of Canadian social security benefits, the Protocol provides that the benefits will be taxed as if they were payments under the *Social Security Act*. Therefore, a maximum of 85 percent of the Canadian benefits will be included in the gross income of a U.S. recipient, even though the entire benefit would have been taxed by Canada if received by a Canadian resident. However, if the Canadian benefit is of a type that is not subject to Canadian tax when paid to a resident of Canada, it will not be subject to U.S. tax when received by a resident of the United States. This provision is necessary to take into account certain proposed changes to Canada's Old Age Security benefits. At present, Old Age Security benefits paid to U.S. residents are subject to both ordinary Canadian income tax and an additional "recovery tax" that has the effect of means-testing the benefit. Canada has proposed to change the Old Age Security benefit system so that the benefit would be means-tested at source and not subject to the recovery tax. Because the amount of such future benefits will have already been reduced to take into account the recipient's income, it would not be appropriate to subject such benefits to additional U.S. tax.

[Application of the Protocol]

Article 3 of the Protocol contains the rules for bringing the Protocol into force and giving effect to its provisions.

Paragraph 1

Paragraph 1 provides for the ratification of the Protocol by both Contracting States according to their constitutional and statutory requirements and instruments of ratification will be exchanged as soon as possible.

In the United States, the process leading to ratification and entry into force is as follows: Once a protocol has been signed by authorized representatives of the two Contracting States, the Department of State sends the protocol to the President who formally transmits it to the Senate for its advice and consent to ratification, which requires approval by two-thirds of the Senators present and voting. Prior to this vote, however, it generally has been the practice for the Senate Committee on Foreign Relations to hold hearings on the protocol and make a recommendation regarding its approval to the full Senate. Both Government and private sector witnesses may testify at these hearings. After receiving the advice and consent of the Senate to ratification, the protocol is returned to the President for his signature on the ratification document. The President's signature on the document completes the process in the United States.

Paragraph 2

Paragraph 2 of Article 3 provides that the Protocol will enter into force on the date on which the instruments of ratification are exchanged. However, the date on which the Protocol enters into force will not be the date on which its provisions will take effect. Paragraph 2, therefore, also contains rules that determine when the provisions of the Protocol will have effect.

Under paragraph 2(a), Article 1 of the Protocol will have effect as of April 26, 1995. As discussed above, this is the date on which certain proposed amendments to Canadian law would be effective.

Under paragraph 2(b), Article 2 of the Protocol will have effect as of January 1, 1996, which is the date as of which the changes to the taxation of social security benefits that were implemented by the 1995 Protocol became effective. Consequently, the source-basis taxation of social security benefits that was implemented by the 1995 Protocol will be retroactively eliminated and recipients of cross-border social security benefits will be entitled to a refund of any source-State tax withheld on their benefits for 1996 and later years. This return to residence-basis taxation of social security benefits means that some high-income recipients of cross-border benefits may be required to pay additional taxes to their State of residence if their average tax rate on these benefits in their State of residence is higher than the current rate of source-State withholding tax. It is only for future years, however, that such high-income recipients of benefits will be subject to a higher rate of tax. No one will be subject to a higher rate of tax for the retroactive period. If, as a result of the change, the residence-State tax would exceed the amount of the refund otherwise due, there will be neither a refund of source-State tax nor the imposition of additional residence-State tax.

Subparagraphs (b)(i) and (ii) provide rules that determine how the retroactive effect of the Protocol will generally be implemented for the year in which the Protocol enters into effect. As discussed below, these rules are required as a result of administrative limitations on the ability of the relevant Government organizations to effect the payment of refunds. Withholding taxes imposed by the United States on cross-border social security benefits are collected and administered by the Social Security Administration (SSA), not the Internal Revenue Service (IRS). However, any refunds of withholding tax improperly collected on social security benefits are ordinarily paid by the IRS. If the Protocol enters into force prior to September 1 of a calendar year, it is possible for the SSA to pay refunds of the tax withheld for the entire year directly to the individual Canadian recipient. If the Protocol enters into force after August 31 of a calendar year, it will not be possible for SSA to pay refunds of tax withheld for that year and refunds must be paid through the IRS.

Paragraphs 3, 4 and 5 of Article 3 establish administrative procedures to govern the payment of refunds through the IRS, including rules to ensure that benefits will not be subject to a higher rate of tax in the residence State for the retroactive period. The taxes withheld on social security benefits paid for years after 1995 and prior to the calendar year in which the Protocol enters into force (referred to in the Protocol as "source-taxed benefits") will be subject to the refund procedures set forth in paragraphs 3, 4, and 5, regardless of when the Protocol enters into force. Social security benefits paid for calendar years beginning after the Protocol enters into force will not be subject to the refund procedures set forth in paragraphs 3, 4, and 5 because source State tax will not be withheld.

If the Protocol enters into force after August 31 of a calendar year, subparagraph (b)(i) provides that social security benefits paid during such calendar year will be treated as benefits paid for calendar years ending before the year in which the Protocol enters into force (and thus will be treated as "source-taxed benefits"). In this case, the taxes withheld on these benefits will be subject to the refund procedures set forth in paragraphs 3, 4, and 5 of Article 3 and these benefits will not be subject to a higher rate of residence-State tax. If the Protocol enters into force before September 1 of a calendar year, subparagraph (b)(ii) provides that social security benefits paid during such calendar year will be treated as benefits paid for calendar years beginning after the year in which the Protocol enters into force. In this case, the taxes withheld on these benefits will be directly and automatically refunded by the source State and the potentially higher rate of residence-State tax will apply.

Paragraph 3

Paragraph 3 of Article 3 of the Protocol provides rules governing the payment of refunds of source-State tax with respect to "source-taxed benefits." In general, all applications for refund must be made to the competent authority of the source State within three years of entry into force of the Protocol.

Except as set forth in subparagraph (b) of paragraph 2, the retroactive effect of the Protocol is elective and applies only if a recipient of benefits applies for a refund of the tax paid or withheld. Consequently, if a recipient of benefits does not apply for a refund of the tax paid or withheld, the Protocol will not be given retroactive effect, except as set forth in subparagraph (b) of paragraph 2. If the residence-State tax that would be imposed on such source-taxed benefits is greater than the source-State tax imposed on such benefits, it is assumed that the recipient will not apply for a refund of the source-State tax and such benefits will not be subject to the retroactive effect of the Protocol. Because the application for refund may be made on a year-by-year basis, the recipient may elect the most beneficial treatment for each year. Therefore, social security benefits will not be subject to a higher rate of tax for the retroactive period, except as set forth in subparagraph (b) of paragraph 2.

The refund procedure depends on the recipient's State of residence. In the case of U.S. residents who received Canadian social security benefits that were subject to Canadian tax, a U.S. resident who elects to have the Protocol apply retroactively will apply directly to the Canadian competent authority for the refund of any Canadian tax not previously refunded. On the receipt of such refund, the Canadian social security benefits will be includible in the U.S. resident's gross income for the years with respect to which the refund was paid. Consequently, the U.S. recipient may be required to file an amended U.S. income tax return for such years and pay U.S. tax on such benefits. Pursuant to Article XXVII (Exchange of Information) of the Convention, the Canadian competent authority will provide the U.S. competent authority with information regarding the payment of refunds.

In the case of Canadian residents who received U.S. social security benefits, the Canadian competent authority shall be the only person entitled to apply for a refund of the U.S. taxes withheld on such benefits. Individual residents of Canada will not apply directly to the IRS for refunds. However, the Canadian competent authority may base its applications on information received from individual Canadians, as well as on information to be provided by the United State competent authority. The Protocol provides that the Canadian competent authority shall apply for and receive all such refunds on behalf of individual residents of Canada and shall remit such refunds to individual residents of Canada after deducting any additional Canadian tax that may imposed as a result of such social security benefits being subject to tax in Canada. The Canadian competent authority shall make such application for refund on behalf of an individual resident of Canada only if the additional Canadian tax that would be imposed is less than the amount of the U.S. tax to be refunded. If, with respect to an individual resident of Canada, the additional Canadian tax that would be imposed on the individual's social security benefits is equal to or greater than the U.S. tax withheld, the Canadian competent authority shall not apply for a refund of the U.S. tax withheld on the individual's benefits. This provision ensures that refunds of U.S. tax will be paid only when the refund will benefit an individual resident of Canada. A refund of U.S. tax will not be paid if it would simply result in a payment from the U.S. Treasury to the Government of Canada without any portion of the refund being paid to an individual resident of Canada.

Paragraph 4

Paragraph 4 provides that all taxes refunded as a result of the Protocol will be refunded without interest. Correspondingly, any additional taxes assessed as a result of the Protocol will be assessed without interest provided that the additional taxes are paid in a timely manner. However, interest and penalties on underpayments may be assessed for periods beginning after December 31 of the year following the year in which the Protocol enters into force.

Paragraph 5

Paragraph 5 provides that the competent authorities shall establish procedures for making or revoking the application for refund provided for in paragraph 3 and such other procedures as are necessary to ensure the appropriate implementation of the Protocol. It will be necessary to establish procedures for a taxpayer to revoke his application for refund because a taxpayer may apply for a refund and then determine that the residence-State tax imposed on his social security benefits pursuant to Article 2 of the Protocol exceeds the amount of source-State tax refunded. Such a taxpayer (or, in the case of a Canadian resident, the Canadian competent authority acting on behalf of such taxpayer) will be permitted to revoke his application for refund provided that the taxpayer returns the source-State refund and the three-year period established in paragraph 3 has not expired as of the date on which the revocation is filed. The competent authorities will also establish procedures to ensure that duplicate refunds are not paid.

Technical Explanation [1995 Protocol]:

Paragraph 2 of Article 9 of the Protocol amends paragraph 5 of Article XVIII to modify the treatment of social security benefits under the Convention. Under the amended paragraph, benefits paid under the U.S. or Canadian social security legislation to a resident of the other Contracting State, or, in the case of Canadian benefits, to a U.S. citizen, are taxable exclusively in the paying State. This amendment brings the Convention into line with current U.S. treaty policy. Social security benefits are defined, for this purpose, to include tier 1 railroad retirement benefits but not unemployment benefits (which therefore fall under Article XXII (Other Income) of the Convention). Pensions in respect of government service are covered not by this rule but by the rules of paragraphs 1 and 2 of Article XVIII.

The special rule regarding U.S. citizens is intended to clarify that only Canada, and not the United States, may tax a social security payment by Canada to a U.S. citizen not resident in the United States. This is consistent with the intention of the general rule, which is to give each Contracting State exclusive taxing jurisdiction over its social security payments. Since paragraph 5 is an exception to the saving clause, Canada will retain exclusive taxing jurisdiction over Canadian social security benefits paid to U.S. residents and citizens, and vice versa. It was not necessary to provide a special rule to clarify the taxation of U.S. social security payments to Canadian citizens, because Canada does not tax on the basis of citizenship and, therefore, does not include citizens within the scope of its saving clause.

Technical Explanation [1984]:

Paragraph 5, as amended by the 1984 Protocol, provides that benefits under social security legislation in Canada or the United States paid to a resident of the other Contracting State are taxable only in the State in which the recipient is resident. However, the State of residence must exempt from taxation one-half of the total amount of such benefits paid in a taxable year. Thus, if U.S. social security benefits are paid to a resident of Canada, the United States will exempt such benefits from tax and Canada will exempt one-half of the benefits from taxation. The exemption of one-half of the benefits in the State of residence is an exception to the saving clause under subparagraph 3(a) of Article XXIX (Miscellaneous Rules). The United States will not exempt U.S. social security benefits from tax if the Canadian resident receiving such benefits is a U.S. citizen. If a U.S. citizen and resident receives Canadian social security benefits, Canada will not tax such benefits and the United States will exempt from tax one-half of the total amount of such benefits. The United States will also exempt one-half of Canadian social security benefits from tax if the recipient is a U.S. citizen who is a resident of Canada, under paragraph 7 of Article XXIX. Paragraph 5 encompasses benefits paid under social security legislation of a political subdivision, such as a province of Canada.

History: Para. 5 amended by 1997 Protocol, article 2(2), in force December 16, 1997 (the day instruments of ratification were exchanged). Article 3 of the Protocol provides the following:

> 1. This Protocol shall be subject to ratification in accordance with the applicable procedures in Canada and the United States and instruments of ratification shall be exchanged as soon as possible.
>
> 2. This Protocol shall enter into force upon the exchange of instruments of ratification, and shall have effect as follows:
>
> (a) Article 1 [amendments to Article XIII (Gains)] of this Protocol shall have effect as of April 26, 1995; and
>
> (b) Article 2 [amendments to Article XVIII (Pension and Annuities)] of this Protocol shall have effect with respect to amounts paid or credited to a resident of the other Contracting State after 1995, except that where a Contracting State has, in accordance with the Convention read without reference to this Protocol, imposed a tax on benefits paid or credited under the social security legislation in that State, and those benefits are paid or credited after 1995 and
>
> (i) before the calendar year in which this Protocol enters into force, if this Protocol enters into force before September 1 of that year, or
>
> (ii) before the end of the calendar year in which this Protocol enters into force, if this Protocol enters into force after August 31 of that year,
>
> Article 2 [amendments to Article XVIII (Pension and Annuities)] shall only have effect with respect to such benefits (referred to in this Article as "source-taxed benefits") as described in paragraphs 3, 4 and 5.
>
> 3. With respect to source-taxed benefits paid by a Contracting State to a resident of the other Contracting State, Article 2 applies only if the resident has, within three years after the date on which this Protocol enters into force, applied to the competent authority of the first-mentioned Contracting State for a refund of the tax imposed on the benefits. However, with respect to source-taxed benefits paid by the United States to a resident of Canada, the competent authority of Canada shall:
>
> (a) apply for and receive such refund on behalf of the resident;
>
> (b) remit to the resident, in accordance with the law of Canada governing refunds of income tax overpayments, such refund less any tax imposed in Canada on the benefits in accordance with Article 2 of this Protocol; and
>
> (c) make the application referred to in subparagraph (*a*) only if the additional tax that would be imposed in Canada on the benefits, on the assumption that Article 2 of this Protocol applied, would be less than the tax imposed in the United States on the benefits as a result of paragraph 5 of Article XVIII (Pensions and Annuities) of the Convention read without reference to this Protocol.
>
> 4. All taxes refunded as a result of this Protocol shall be refunded without interest and interest on any taxes of a resident of a Contracting State assessed as a result of this Protocol shall be computed as though those taxes became payable no earlier than December 31 of the year following the year in which this Protocol enters into force.
>
> 5. The competent authorities of the Contracting States shall establish procedures for making or revoking the application referred to in paragraph 3 and shall agree on such additional procedures as are necessary to ensure the appropriate implementation of this Protocol.

The para. formerly read:

> 5. Benefits under the social security legislation in a Contracting State (including tier 1 railroad benefits but not including unemployment benefits) paid to a resident of the other Contracting State (and in the case of Canadian benefits, to a citizen of the United States) shall be taxable only in the first-mentioned State.

Para. 5 amended by 1995 Protocol, article 9(2), generally effective for taxation years beginning on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 5 formerly read:

> 5. Benefits under the social security legislation in a Contracting State paid to a resident of the other Contracting State shall be taxable as follows:
>
> (a) such benefits shall be taxable only in that other State;
>
> (b) notwithstanding the provisions of subparagraph (a), one-half of the total amount of any such benefit paid in a taxable year shall be exempt from taxation in that other State.

Para. 5 amended by 1984 Protocol, article I.

Definitions: "Canada" — Art. III:1(a), ITCIA 5; "Canadian tax" — Art. III:1(c); "resident" — ITCIA 3, ITA 250; "State" — Art. III:1(i); "United States" — Art. III:1(b); "United States tax" — Art. III:1(d).

6. Alimony and other similar amounts (including child support payments) arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable as follows:

(a) such amounts shall be taxable only in that other State;

(b) notwithstanding the provisions of subparagraph (a), the amount that would be excluded from taxable income in the first-mentioned State if the recipient were a resident thereof shall be exempt from taxation in that other State.

Technical Explanation [1984]:

Paragraph 6(a) provides that only the State of which a person is resident has the right to tax alimony and other similar amounts (including child support payments) arising in the other Contracting State and paid to such person. However, under paragraph 6(b), the state of residence shall exempt from taxation the amount that would be excluded from taxable income in the State of source if the recipient were a resident thereof. Thus, if child support payments are made by a U.S. resident to a resident of Canada, Canada shall exempt from tax the amount of such payments which would be excluded from taxable income under section 71(b) of the *Internal Revenue Code*. Paragraph 6 does not define the term "alimony"; the term is defined pursuant to the provisions of paragraph 2 of Article III (General Definitions).

Article XVIII does not provide rules to determine the State in which pensions, annuities, alimony, and other similar amounts arise. The provisions of paragraph 2 of Article III are used to determine where such amounts arise for purposes of determining whether a Contracting State has the right to tax such amounts.

Paragraphs 1, 3, 4, 5(b) and 6(b) of Article XVIII are, by reason of paragraph 3(a) of Article XXIX (Miscellaneous Rules), exceptions to the "saving clause." Thus, the rules in those paragraphs change U.S. taxation of U.S. citizens and residents.

History: Para. 6 amended by 1983 Protocol, article IX, para. 3.

Definitions: "State" — Art. III:1(i); "taxable income" — ITCIA 3, ITA 248(1).

7. A natural person who is a citizen or resident of a Contracting State and a beneficiary of a trust, company, organization or other arrangement that is a resident of the other Contracting State, generally exempt from income taxation in that other State and operated exclusively to provide pension, retirement or employee benefits may elect to defer taxation in the first-mentioned State, under rules established by the competent authority of that State, with respect to any income accrued in the plan but not distributed by the plan, until such time as and to the extent that a distribution is made from the plan or any plan substituted therefor.

Technical Explanation [1995 Protocol]:

A new paragraph 7 is added to Article XVIII by Article 9 of the Protocol. This paragraph replaces paragraph 5 of Article XXIX (Miscellaneous Rules) of the present Convention. The new paragraph makes reciprocal the rule that it replaced and expands its scope, so that it no longer applies only to residents and citizens of the United States who are beneficiaries of Canadian RRSPs. As amended, paragraph 7 applies to an individual who is a citizen or resident of a Contracting State and a beneficiary of a trust, company, organization, or other arrangement that is a resident of the other Contracting State and that is both generally exempt from income taxation in its State of residence and operated exclusively to provide pension, retirement, or employee benefits. Under this rule, the beneficiary may elect to defer taxation in his State of residence on income accrued in the plan until it is distributed or rolled over into another plan. The new rule also broadens the types of arrangements covered by this paragraph in a manner consistent with other pension-related provisions of the Protocol.

History: Para. 7 added by 1995 Protocol, article 9(3), generally effective for taxation years beginning on or after January 1, 1996 (see Art. 21(2)(a) under "Application of the 1995 Protocol" above).

Definitions: "company" — Art. III:1(f); "competent authority" — Art. III:1(g); "pension" — Art. XVIII:3, ITCIA 5; "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1); "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i); "trust" — ITCIA 3, ITA 248(1).

Selected Cases [Art. XVIII]: *Watts v. R.*, [2005] 2 C.T.C. 2384 (TCC) (CPP benefits fall within definition of "pension" and are not income from office or employment).

Article XIX — Government Service

Remuneration, other than a pension, paid by a Contracting State or a political subdivision or local authority thereof to a citizen of that State in respect of services rendered in the discharge of functions of a governmental nature shall be taxable only in that State. However, the provisions of Article XIV (Independent Personal Services), XV (Dependent Personal Services) or XVI (Artistes and Athletes), as the case may be, shall apply, and the preceding sentence shall not apply, to remuneration paid in respect of services rendered in connection with a trade or business carried on by a Contracting State or a political subdivision or local authority thereof.

Technical Explanation [1984]:

Article XIX provides that remuneration, other than a pension, paid by a Contracting State or political subdivision or local authority thereof to a citizen of that State in respect of services rendered in the discharge of governmental functions shall be taxable only in that State. (Pursuant to paragraph 5 of Article IV (Residence), other income of such a citizen may also be exempt from tax, or subject to reduced rates of tax, in the State in which he is performing services, in accordance with other provisions of the Convention.) However, if the services are rendered in connection with a trade or business, then the provisions of Article XIV (Independent Personal Services), Article XV (Dependent Personal Services), or Article XVI (Artistes and Athletes), as the case may be, are controlling. Whether functions are of a governmental nature may be determined by a comparison with the concept of a governmental function in the State in which the income arises.

Pursuant to paragraph 3(a) of Article XXIX (Miscellaneous Rules), Article XIX is an exception to the "saving clause." As a result, a U.S. citizen resident in Canada and performing services in Canada in the discharge of functions of a governmental nature for the United States is taxable only in the United States on remuneration for such services.

This provision differs from the rules of Article VI of the 1942 Convention. For example, Article XIX allows the United States to impose tax on a person other than a citizen of Canada who earns remuneration paid by Canada in respect of services rendered in the discharge of governmental functions in the United States. (Such a person may, however, be entitled to an exemption from U.S. tax as provided in Code section 893.) Also, under the provisions of Article XIX Canada will not impose tax on amounts paid by the United States in respect of services rendered in the discharge of governmental functions to a U.S. citizen who is ordinarily resident in Canada for purposes other than rendering governmental services. Under paragraph 1 of Article VI of the 1942 Convention, such amounts would be taxable by Canada.

Related Provisions: Art. XXVIII — Diplomatic agents and consular officials.

Selected Cases [Art. XIX]: *Cloutier v. R.*, [2003] 3 C.T.C. 2075 (TCC) (Mere employment by government not equivalent to performance of government function).

Definitions: "business" — ITCIA 3, ITA 248(1); "pension" — Art. XVIII:3, ITCIA 5; "State" — Art. III:1(i).

Article XX — Students

Payments which a student, apprentice or business trainee, who is or was immediately before visiting a Contracting State a resident of the other Contracting State, and who is present in the first-mentioned State for the purpose of his full-time education or training, receives for the purpose of his maintenance, education or training shall not be taxed in that State provided that such payments are made to him from outside that State.

Technical Explanation [1984]: Article XX provides that a student, apprentice, or business trainee temporarily present in a Contracting State for the purpose of his full-time education or training is exempt from tax in that State with respect to amounts received from outside that State for the purpose of his maintenance, education, or training, if the individual is or was a resident of the other Contracting State immediately before visiting the first-mentioned State. There is no limitation on the number of years or the amount of income to which the exemption applies.

The Convention does not contain provisions relating specifically to professors and teachers. Teachers are treated under the Convention pursuant to

the rules established in Articles XIV (Independent Personal Services) and XV (Dependent Personal Services), in the same manner as other persons performing services. In Article VIII A of the 1942 Convention there is a 2-year exemption in the Contracting State of source in the case of a professor or teacher who is a resident of the other Contracting State.

Definitions: "State" — Art. III:1(i).

Article XXI — Exempt Organizations

1. Subject to the provisions of paragraph 3, income derived by a religious, scientific, literary, educational or charitable organization shall be exempt from tax in a Contracting State if it is resident in the other Contracting State but only to the extent that such income is exempt from tax in that other State.

Technical Explanation [1984]:

Paragraph 1 provides that a religious, scientific, literary, educational, or charitable organization resident in a Contracting State shall be exempt from tax on income arising in the other Contracting State but only to the extent that such income is exempt from taxation in the Contracting State in which the organization is resident. Since this paragraph, and the remainder of Article XXI, deal with entities that are not normally taxable, the test of "resident in" is intended to be similar — but cannot be identical — to the one outlined in paragraph 1 of Article IV (Residence). Paragraph 3 provides that paragraph 1 does not exempt from tax income of a trust, company, or other organization from carrying on a trade or business, or income from a "related person" other than a person referred to in paragraph 1 or 2.

Definitions: "State" — Art. III:1(i).

2. Subject to the provisions of paragraph 3, income referred to in Articles X (Dividends) and XI (Interest) derived by:

(a) a trust, company, organization or other arrangement that is a resident of a Contracting State, generally exempt from income taxation in a taxable year in that State and operated exclusively to administer or provide pension, retirement or employee benefits; or

(b) a trust, company, organization or other arrangement that is a resident of a Contracting State, generally exempt from income taxation in a taxable year in that State and operated exclusively to earn income for the benefit of an organization referred to in subparagraph (a);

shall be exempt from income taxation in that taxable year in the other Contracting State.

Technical Explanation [1995 Protocol]:

Article 10 of the Protocol amends Article XXI (Exempt Organizations) of the Convention. Paragraph 1 of Article 10 amends paragraphs 2 and 3 of Article XXI. The most significant changes are those that conform the language of the two paragraphs to the revised definition of the term "pension" in paragraph 3 of Article XVIII (Pensions and Annuities). The revision adds the term "arrangement" to "trust, company or organization" in describing the residents of a Contracting State that may receive dividend and interest income exempt from current income taxation by the other Contracting State. This clarifies that IRAs, for example, are eligible for the benefits of paragraph 2, subject to the exception in paragraph 3, and makes Canadian RRSPs and RRIFs, for example, similarly eligible (provided that they are operated exclusively to administer or provide pension, retirement, or employee benefits).

The other changes, all in paragraph 2, are intended to improve and clarify the language. For example, the reference to "tax" in the present Convention is changed to a reference to "income taxation." This is intended to clarify that if an otherwise exempt organization is subject to an excise tax, for example, it will not lose the benefits of this paragraph. In subparagraph 2(b), the phrase "not taxed in a taxable year" was changed to "generally exempt from income taxation in a taxable year" to ensure uniformity throughout the Convention; this change was not intended to disqualify a trust or other arrangement that qualifies for the exemption under the wording of the present Convention.

Technical Explanation [1984]:

Paragraph 2 provides that a trust, company, or other organization that is resident in a Contracting State and constituted and operated exclusively to administer or provide employee benefits or benefits for the self-employed under one or more funds or plans established to provide pension or retirement benefits or other employee benefits is exempt from taxation on dividend and interest income arising in the other Contracting State, in a taxable year, if the income of such organization is generally exempt from taxation for that year in the Contracting State in which it is resident. In addition, a trust, company, or other organization resident in a Contracting State and not taxed in a taxable year in that State shall be exempt from taxation in the other State in that year on dividend and interest income arising in that other State if it is constituted and operated exclusively to earn income for the benefit of an organization described in the preceding sentence. Pursuant to paragraph 3 the exemption at source provided by paragraph 2 does not apply to dividends or interest from carrying on a trade or business or from a "related person," other than a person referred to in paragraph 1 or 2. The term "related person" is not necessarily defined by paragraph 2 of Article IX (Related Persons).

Related Provisions: ITA 212(14)(c) — Certificate of exemption from non-resident withholding tax.

History: Para. 2 amended by 1995 Protocol, article 10(1), generally effective for taxation years beginning on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 2 formerly read:

> 2. Subject to the provisions of paragraph 3, income referred to in Articles X (Dividends) and XI (Interest) derived by:
>
> (a) a trust, company or other organization which is resident in a Contracting State, generally exempt from tax in a taxable year in that State and constituted and operated exclusively to administer or provide benefits under one or more funds or plans established to provide pension, retirement or other employee benefits; or
>
> (b) a trust, company or other organization which is resident in a Contracting State, not taxed in a taxable year in that State and constituted and operated exclusively to earn income for the benefit of an organization referred to in subparagraph (a);
>
> shall be exempt from tax in that taxable year in the other Contracting State.

Para. 2 amended by 1983 Protocol, article X.

Definitions: "company" — Art. III:1(f); "pension" — Art. XVIII:3, ITCIA 5; "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i); "trust" — ITCIA 3, ITA 248(1).

3. The provisions of paragraphs 1 and 2 shall not apply with respect to the income of a trust, company, organization or other arrangement from carrying on a trade or business or from a related person other than a person referred to in paragraph 1 or 2.

Technical Explanation [1995 Protocol]:

See under para. 2.

Technical Explanation [1984]:

See under para. 1.

History: Para. 3 amended by 1995 Protocol, article 10(1), generally effective for taxation years beginning on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 3 formerly read:

> 3. The provisions of paragraphs 1 and 2 shall not apply with respect to the income of a trust, company or other organization from carrying on a trade or business or from a related person other than a person referred to in paragraph 1 or 2.

Definitions: "business" — ITCIA 3, ITA 248(1); "company" — Art. III:1(f); "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1); "related" — ITCIA 3, ITA 251(2)–(6); "trust" — ITCIA 3, ITA 248(1).

4. A religious, scientific, literary, educational or charitable organization which is resident in Canada and which has received substantially all of its support from persons other than citizens or residents of the United States shall be exempt in the United States from the United States excise taxes imposed with respect to private foundations.

Technical Explanation [1984]:

Paragraph 4 provides an exemption from U.S. excise taxes on private foundations in the case of a religious, scientific, literary, educational, or charitable organization which is resident in Canada but only if such organization has received substantially all of its support from persons other than citizens or residents of the United States.

Definitions: "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1); "private foundation" — ITCIA 3, ITA 248(1); "resident in Canada" — ITCIA 3, ITA 250; "United States" — Art. III:1(b).

5. For the purposes of United States taxation, contributions by a citizen or resident of the United States to an organization which is resident in Canada, which is generally exempt from Canadian tax and which could qualify in the United States to receive deductible contributions if it were resident in the United States shall be treated as charitable contributions; however, such contributions (other than such contributions to a college or university at which the citizen or resident or a member of his family is or was enrolled) shall not be deductible in any taxable year to the extent that they exceed an amount determined by applying the percentage limitations of the laws of the United States in respect of the deductibility of charitable contributions to the income of such citizen or resident arising in Canada. The preceding sentence shall not be interpreted to allow in any taxable year deductions for charitable contributions in excess of the amount allowed under the percentage limitations of the laws of the United States in respect of the deductibility of charitable contributions. For the purposes of this paragraph, a company that is a resident of Canada and that is taxable in the United States as if it were a resident of the United States shall be deemed to be a resident of the United States.

Technical Explanation [1995 Protocol]:

Paragraph 2 of Article 10 adds a sentence to paragraph 5 of Article XXI of the Convention. The paragraph in the present Convention provides that a U.S. citizen or resident may deduct, for U.S. income tax purposes, contributions made to Canadian charities under certain circumstances. The added sentence makes clear that the benefits of the paragraph are available to a company that is a resident of Canada but is treated by the United States as a domestic corporation under the consolidated return rules of section 1504(d) of the *Internal Revenue Code*. Thus, such a company will be able to deduct, for U.S. income tax purposes, contributions to Canadian charities that are deductible to a U.S. resident under the provisions of the paragraph.

Technical Explanation [1984]:

Paragraph 5 provides that contributions by a citizen or resident of the United States to an organization which is resident in Canada and is generally exempt from Canadian tax are treated as charitable contributions, but only if the organization could qualify in the United States to receive deductible contributions if it were resident in (i.e., organized in) the United States. Paragraph 5 generally limits the amount of contributions made deductible by the Convention to the income of the U.S. citizen or resident arising in Canada, as determined under the Convention. In the case of contributions to a college or university at which the U.S. citizen or resident or a member of his family is or was enrolled, the special limitation to income arising in Canada is not required. The percentage limitations of Code section 170 in respect of the deductibility of charitable contributions apply after the limitations established by the Convention. Any amounts treated as charitable contributions by paragraph 5 which are in excess of amounts deductible in a taxable year pursuant to paragraph 5 may be carried over and deducted in subsequent taxable years, subject to the limitations of paragraph 5.

History: The last sentence of para. 5 added by 1995 Protocol, article 10(2), generally effective for taxation years beginning on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above).

Definitions: "Canada" — Art. III:1(a), ITCIA 5; "Canadian tax" — Art. III:1(c); "company" — Art. III:1(f); "resident" — ITCIA 3, ITA 250; "resident in Canada" — ITCIA 3, ITA 250; "United States" — Art. III:1(b).

Registered Charities Newsletters: 6a (Canadian charities and their U.S. donors).

6. For the purposes of Canadian taxation, gifts by a resident of Canada to an organization that is a resident of the United States, that is generally exempt from United States tax and that could qualify in Canada as a registered charity if it were a resident of Canada and created or established in Canada, shall be treated as gifts to a registered charity; however, no relief from taxation shall be available in any taxation year with respect to such gifts (other than such gifts to a college or university at which the resident or a member of the resident's family is or was enrolled) to the extent that such relief would exceed the amount of relief that would be available under the *Income Tax Act* if the only income of the resident for that year were the resident's income arising in the United States. The preceding sentence shall not be interpreted to allow in any taxation year relief from taxation for gifts to registered charities in excess of the amount of relief allowed under the percentage limitations of the laws of Canada in respect of relief for gifts to registered charities.

Technical Explanation [1995 Protocol]:

Paragraph 3 of Article 10 amends paragraph 6 of Article XXI of the Convention to replace references to "deductions" for Canadian tax purposes with references to "relief" from tax. These changes clarify that the provisions of paragraph 6 apply to the credit for charitable contributions allowed under current Canadian law. The Protocol also makes other non-substantive drafting changes to paragraph 6.

Technical Explanation [1984]:

Paragraph 6 provides rules for purposes of Canadian taxation with respect to the deductibility of gifts to a U.S. resident organization by a resident of Canada. The rules of paragraph 6 parallel the rules of paragraph 5. The current limitations in Canadian law provide that deductions for gifts to charitable organizations may not exceed 20 percent of income. Excess deductions may be carried forward for one year.

The term "family" used in paragraphs 5 and 6 is defined in paragraph 2 of the Exchange of Notes accompanying the Convention to mean an individual's brothers and sisters (whether by whole or half-blood, or by adoption), spouse, ancestors, lineal descendants, and adopted descendants. Paragraph 2 of the Exchange of Notes also provides that the competent authorities of Canada and the United States will review procedures and requirements for organizations to establish their exempt status under paragraph 1 of Article XXI or as an eligible recipient of charitable contributions or gifts under paragraphs 5 and 6 of Article XXI. It is contemplated that such review will lead to the avoidance of duplicative administrative efforts in determining such status and eligibility.

The provisions of paragraph 5 and 6 generally parallel the rules of Article XIII D of the 1942 Convention. However, paragraphs 5 and 6 permit greater deductions for certain contributions to colleges and universities than do the provisions of the 1942 Convention.

Related Provisions: ITA 118.1(9) — Commuter's charitable donations.

History: Para. 6 amended by 1995 Protocol, article 10(3), generally effective for taxation years beginning on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 6 formerly read:

> 6. For the purposes of Canadian taxation, gifts by a resident of Canada to an organization which is resident in the United States, which is generally exempt from United States tax and which could qualify in Canada to receive deductible gifts if it were created or established and resident in Canada shall be treated as gifts to a registered charity; however, such gifts (other than such gifts to a college or university at which the resident or a member of his family is or was enrolled) shall not be deductible in any taxable year to the extent that they exceed an amount determined by applying the percentage limitations of the laws of Canada in respect of the deductibility of gifts to registered charities to the income of such resident arising in the United States. The preceding sentence shall not be interpreted to allow in any taxable year deductions for gifts to registered charities in excess of the amount allowed under the percentage limitations of the laws of Canada in respect of the deductibility of gifts to registered charities.

Definitions: "Canada" — Art. III:1(a), ITCIA 5; "registered charity" — ITCIA 3, ITA 248(1); "resident" — ITCIA 3, ITA 250; "taxation year" — ITCIA 3, ITA 249; "United States" — Art. III:1(b); "United States tax" — Art. III:1(d).

Registered Charities Newsletters: 6a (U.S. charities and their Canadian donors).

Information Circulars [Art. XXI]: 77-16R4: Non-resident income tax.

Forms [Art. XXI]: NR602: Non-resident ownership certificate — no withholding tax.

Article XXII — Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State, except that if such income arises in the other Contracting State it may also be taxed in that other State.

Technical Explanation [1984]:

Paragraph 1 provides that a Contracting State of which a person is a resident has the sole right to tax items of income, wherever arising, if such income is not dealt with in the prior Articles of the Convention. If such income arises in the other Contracting State, however, it may also be taxed in that State. The determination of where income arises for this purpose is made under the domestic laws of the respective Contracting States unless the Convention specifies where the income arises (e.g., paragraph 6 of Article XI (Interest)) for purposes of determining the right to tax, in which case the provisions of the Convention control.

Definitions: "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

2. To the extent that income distributed by an estate or trust is subject to the provisions of paragraph 1, then, notwithstanding such provisions, income distributed by an estate or trust which is a resident of a Contracting State to a resident of the other Contracting State who is a beneficiary of the estate or trust may be taxed in the first-mentioned State and according to the laws of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the income; provided, however, that such income shall be exempt from tax in the first-mentioned State to the extent of any amount distributed out of income arising outside that State.

Technical Explanation [1984]:

Paragraph 2 provides that to the extent that income distributed by an estate or trust resident in one Contracting State is deemed under the domestic law of that State to be a separate type of income "arising" within that State, such income distributed to a beneficiary resident in the other Contracting State may be taxed in the State of source at a maximum rate of 15 percent of the gross amount of such distribution. Such a distribution will, however, be exempt from tax in the State of source to the extent that the income distributed by the estate or trust was derived by the estate or trust from sources outside that State. Thus, in a case where the law of Canada treats a distribution made by a trust resident in Canada as a separate type of income arising in Canada, Canadian tax is limited by paragraph 2 to 15 percent of the gross amount distributed to a U.S. resident beneficiary. Although the Code imposes a tax on certain domestic trusts (e.g., accumulation trusts) and such trusts are residents of the United States for purposes of Article IV (Residence) and paragraph 2 of Article XXII, paragraph 2 does not apply to distributions by such trusts because, pursuant to Code sections 667(e) and 662(b), these distributions have the same character in the hands of a non-resident beneficiary as they do in the hands of the trust. Thus, a distribution by a domestic accumulation trust is not a separate type of income for U.S. purposes. The taxation of such a distribution in the United States is governed by the distribution's character, the provisions of the Code and the provisions of the Convention other than the provision in paragraph 2 limiting the tax at source to 15 percent.

Definitions: "estate" — ITCIA 3, ITA 248(1); "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i); "trust" — ITCIA 3, ITA 248(1).

Interpretation Bulletins: IT-465R: Non-resident beneficiaries of trusts.

3. Losses incurred by a resident of a Contracting State with respect to wagering transactions the gains on which may be taxed in the other Contracting State shall, for the purpose of taxation in that other State, be deductible to the same extent that such losses would be deductible if they were incurred by a resident of that other State.

Technical Explanation [1995 Protocol]:

Article 11 of the Protocol adds a new paragraph 3 to Article XXII (Other Income) of the Convention. This Article entitles residents of one Contracting State who are taxable by the other State on gains from wagering transactions to deduct losses from wagering transactions for the purposes of taxation in that other State. However, losses are to be deductible only to the extent that they are incurred with respect to wagering transactions, the gains on which could be taxable in the other State, and only to the extent that such losses would be deductible if incurred by a resident of that other State.

This Article does not affect the collection of tax by a Contracting State. Thus, in the case of a resident of Canada, this Article does not affect, for example, the imposition of U.S. withholding taxes under section 1441 or section 1442 of the *Internal Revenue Code* on the gross amount of gains from wagering transactions. However, in computing its U.S. income tax liability on net income for the taxable year concerned, the Canadian resident may reduce its gains from wagering transactions subject to taxation in the United States by any wagering losses incurred on such transactions, to the extent that those losses are deductible under the provisions of new paragraph 3. Under U.S. domestic law, the deduction of wagering losses is governed by section 165 of the *Internal Revenue Code*. It is intended that the resident of Canada file a nonresident income tax return in order to substantiate the deduction for losses and to claim a refund of any overpayment of U.S. taxes collected by withholding.

History: Para. 3 added by 1995 Protocol, article 11, generally effective for taxation years beginning on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above).

Definitions: "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

Article XXIII — Capital

1. Capital represented by real property, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

Technical Explanation [1984]:

Although neither Canada nor the United States currently has national taxes on capital, Article XXIII provides rules for the eventuality that such taxes might be enacted in the future. Paragraph 1 provides that capital represented by real property (as defined in paragraph 2 of Article VI (Income From Real Property)) owned by a resident of a Contracting State and situated in the other Contracting State may be taxed in that other State.

Related Provisions: ITCIA 5 — Definition of "immovable property" and "real property".

Definitions: "real property" — Art. VI:2, ITCIA 5; "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

2. Capital represented by personal property forming part of the business property of a permanent establishment which a resident of a Contracting State has in the other Contracting State, or by personal property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

Technical Explanation [1984]:

Paragraph 2 provides that capital represented by either personal property forming part of the business property of a permanent establishment or personal property pertaining to a fixed base in a Contracting State may be taxed in that State.

Definitions: "permanent establishment" — Art. V:1; "resident" — ITCIA 3, ITA 250; "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

3. Capital represented by ships and aircraft operated by a resident of a Contracting State in international traffic, and by personal property pertaining to the operation of such ships and aircraft, shall be taxable only in that State.

Technical Explanation [1984]:

Paragraph 3 provides that capital represented by ships and aircraft operated by a resident of a Contracting State in international traffic and by personal property pertaining to the operation of such ships and aircraft are taxable only in the Contracting State of residence.

Related Provisions: Art. III:1(h) — Meaning of "international traffic".

Definitions: "international traffic" — Art. III:1(h); "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Technical Explanation [1984]:

Paragraph 4 provides that all elements of capital other than those covered by paragraphs 1, 2, and 3 are taxable only in the Contracting State of residence. Thus, capital represented by motor vehicles or railway cars, not pertaining to a permanent establishment or fixed base in a Contracting State, would be taxable only in the Contracting State of which the taxpayer is a resident.

Definitions: "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

Article XXIV — Elimination of Double Taxation

1. In the case of the United States, subject to the provisions of paragraphs 4, 5 and 6, double taxation shall be avoided as follows: In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a citizen or resident of the United States, or to a company electing to be treated as a domestic corporation, as a credit against the United States tax on income the appropriate amount of income tax paid or accrued to Canada; and, in the case of a company which is a resident of the United States owning at least 10 per cent of the voting stock of a company which is a resident of Canada from which it receives dividends in any taxable year, the United States shall allow as a credit against the United States tax on income the appropriate amount of income tax paid or accrued to Canada by that company with respect to the profits out of which such dividends are paid.

Technical Explanation [1984]:

Paragraph 1 provides the general rules that will apply under the Convention with respect to foreign tax credits for Canadian taxes paid or accrued. The United States undertakes to allow to a citizen or resident of the United States, or to a company electing under Code section 1504(d) to be treated as a domestic corporation, a credit against the Federal income taxes imposed by the Code for the appropriate amount of income tax paid or accrued to Canada. In the case of a company which is a resident of the United States owning 10 percent or more of the voting stock of a company which is a resident of Canada (which for this purpose does not include a company electing under Code section 1504(d) to be treated as a domestic corporation), and from which it receives dividends in a taxable year, the United States shall allow as a credit against income taxes imposed by the Code the appropriate amount of income tax paid or accrued to Canada by the Canadian company with respect to the profits out of which such company paid the dividends.

The direct and deemed-paid credits allowed by paragraph 1 are subject to the limitations of the Code as they may be amended from time to time without changing the general principle of paragraph 1. Thus, as is generally the case under U.S. income tax conventions, provisions such as Code sections 901(c), 904, 905, 907, 908, and 911 apply for purposes of computing the allowable credit under paragraph 1. In addition, the United States is not required to maintain the overall limitation currently provided by U.S. law.

The term "income tax paid or accrued" is defined in paragraph 7 of Article XXIV to include certain specified taxes which are paid or accrued. The Convention only provides a credit for amounts paid or accrued. The determination of whether an amount is paid or accrued is made under the Code.

Paragraph 1 provides a credit for these specified taxes whether or not they qualify as creditable under Code section 901 or 903. A taxpayer who claims credit under the Convention for Canadian taxes made creditable solely by paragraph 1 is not, as a result of the Protocol, subject to a per-country limitation with respect to Canadian taxes. Thus, credit for such Canadian taxes would be computed under the overall limitation currently provided by U.S. law. (However, see the discussion below of the source rules of paragraphs 3 and 9 for a restriction on the use of third country taxes to offset the U.S. tax imposed on resourced income).

A taxpayer claiming credits for Canadian taxes under the Convention must apply the source rules of the Convention, and must apply those source rules in their entirety. Similarly, a taxpayer claiming credit for Canadian taxes which are creditable under the Code and who wishes to use the source rules of the Convention in computing that credit must apply the source rules of the Convention in their entirety.

History: Para. 1 amended by 1983 Protocol, article XI, para. 1.

Definitions: "Canada" — Art. III:1(a), ITCIA 5; "company" — Art. III:1(f); "dividend" — ITCIA 3, ITA 248(1); "income tax paid or accrued" — Art. XXIV:7; "resident" — ITCIA 3, ITA 250; "United States" — Art. III:1(b); "United States tax" — Art. III:1(d).

2. In the case of Canada, subject to the provisions of paragraphs 4, 5 and 6, double taxation shall be avoided as follows:

(a) subject to the provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions (which shall not affect the general principle hereof)

(i) income tax paid or accrued to the United States on profits, income or gains arising in the United States, and

(ii) in the case of an individual, any social security taxes paid to the United States (other than taxes relating to unemployment insurance benefits) by the individual on such profits, income or gains

shall be deducted from any Canadian tax payable in respect of such profits, income or gains;

(b) subject to the existing provisions of the law of Canada regarding the taxation of income from a foreign affiliate and to any subsequent modification of those provisions — which shall not affect the general principle hereof — for the purpose of computing Canadian tax, a company which is a resident of Canada shall be allowed to deduct in computing its taxable income any dividend received by it out of the exempt surplus of a foreign affiliate which is a resident of the United States; and

(c) notwithstanding the provisions of subparagraph (a), where Canada imposes a tax on gains from the alienation of property that, but for the provisions of paragraph 5 of Article XIII (Gains), would not be taxable in Canada, income tax paid or accrued to the United States on such gains shall be deducted from any Canadian tax payable in respect of such gains.

Technical Explanation [1995 Protocol]:

Article 12 of the Protocol amends Article XXIV (Elimination of Double Taxation) of the Convention. Paragraph 1 of Article 12 amends the rules for Canadian double taxation relief in subparagraphs (a) and (b) of paragraph 2 of Article XXIV. The amendment to subparagraph (a) obligates Canada to give a foreign tax credit for U.S. social security taxes paid by individuals. The amendment to subparagraph (b) of paragraph 2 does not alter the substantive effect of the rule, but conforms the language to current Canadian law. Under the provision as amended, Canada generally continues to allow an exemption to a Canadian corporation for direct dividends paid from the exempt surplus of a U.S. affiliate.

History: Subparas. 2(a) and (b) amended by 1995 Protocol, article 12(1), generally effective for taxation years beginning on or after January 1, 1996

(see Art. 21(2) under "Application of the 1995 Protocol" above). Subparas. (a) and (b) formerly read:

(a) subject to the provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions (which shall not affect the general principle hereof), and unless a greater deduction or relief is provided under the law of Canada, income tax paid or accrued to the United States on profits, income or gains arising in the United States shall be deducted from any Canadian tax payable in respect of such profits, income or gains;

(b) subject to the provisions of the law of Canada regarding the determination of the exempt surplus of a foreign affiliate and to any subsequent modification of those provisions (which shall not affect the general principle hereof), for the purposes of computing Canadian tax, a company which is a resident of Canada shall be allowed to deduct in computing its taxable income any dividend received by it out of the exempt surplus of a foreign affiliate which is a resident of the United States; and

Para. 2 amended by 1983 Protocol, article XI, para. 2.

Definitions: "Canada" — Art. III:1(a), ITCIA 5; "Canadian tax" — Art. III:1(c); "company" — Art. III:1(f); "dividend" — ITCIA 3, ITA 248(1); "exempt surplus" — ITCIA 3, ITA 113(1)(a); "foreign affiliate" — ITCIA 3, ITA 248(1); "income tax paid or accrued" — Art. XXIV:7; "individual", "property", "taxable income" — ITCIA 3, ITA 248(1); "United States" — Art. III:1(b).

Interpretation Bulletins: IT-173R2: Capital gains derived in Canada by residents of the United States.

3. For the purposes of this Article:

(a) profits, income or gains (other than gains to which paragraph 5 of Article XIII (Gains) applies) of a resident of a Contracting State which may be taxed in the other Contracting State in accordance with the Convention (without regard to paragraph 2 of Article XXIX (Miscellaneous Rules)) shall be deemed to arise in that other State; and

(b) profits, income or gains of a resident of a Contracting State which may not be taxed in the other Contracting State in accordance with the Convention (without regard to paragraph 2 of Article XXIX (Miscellaneous Rules)) or to which paragraph 5 of Article XIII (Gains) applies shall be deemed to arise in the first-mentioned State.

Technical Explanation [1984]:

Paragraph 3 provides source rules for purposes of applying Article XXIV. Profits, income or gains of a resident of a Contracting State which may be taxed in the other Contracting State in accordance with the Convention, for reasons other than the saving clause of paragraph 2 of Article XXIX (Miscellaneous Rules) (e.g., pensions and annuities taxable where arising pursuant to Article XVIII (Pensions and Annuities)), are deemed to arise in the latter State. This rule does not, however, apply to gains taxable under paragraph 5 of Article XIII (Gains) (i.e., gains taxed by a Contracting State derived from the alienation of property by a former resident of that State). Gains from such an alienation arise, pursuant to paragraph 3(b), in the State of which the alienator is a resident. Thus, if in accordance with paragraph 5 of Article XIII, Canada imposes tax on certain gains of a U.S. resident such gains are deemed, pursuant to paragraphs 2 and 3(b) of Article XXIV, to arise in the United States for purposes of computing the deduction against Canadian tax for the U.S. tax on such gain. Under the Convention such gains arise in the United States for purposes of the United States foreign tax credit. Paragraph 3(b) also provides that profits, income, or gains arise in the Contracting State of which a person is a resident if they may not be taxed in the other Contracting State under the provisions of the Convention (e.g., alimony), other than the "saving clause" of paragraph 2 of Article XXIX.

Definitions: "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

4. Where a United States citizen is a resident of Canada, the following rules shall apply:

(a) Canada shall allow a deduction from the Canadian tax in respect of income tax paid or accrued to the United States in respect of profits, income or gains which arise (within the meaning of paragraph 3) in the United States, except that such deduction need not exceed the amount of the tax that would be paid to the United States if the resident were not a United States citizen; and

(b) for the purposes of computing the United States tax, the United States shall allow as a credit against United States tax the income tax paid or accrued to Canada after the deduction referred to in subparagraph (a). The credit so allowed shall not reduce that portion of the United States tax that is deductible from Canadian tax in accordance with subparagraph (a).

Definitions: "Canada" — Art. III:1(a), ITCIA 5; "Canadian tax" — Art. III:1(c); "income tax paid or accrued" — Art. XXIV:7; "resident" — ITCIA 3, ITA 250; "United States" — Art. III:1(b); "United States tax" — Art. III:1(d).

5. Notwithstanding the provisions of paragraph 4, where a United States citizen is a resident of Canada, the following rules shall apply in respect of the items of income referred to in Article X (Dividends), XI (Interest) or XII (Royalties) that arise (within the meaning of paragraph 3) in the United States and that would be subject to United States tax if the resident of Canada were not a citizen of the United States, as long as the law in force in Canada allows a deduction in computing income for the portion of any foreign tax paid in respect of such items which exceeds 15 per cent of the amount thereof:

(a) the deduction so allowed in Canada shall not be reduced by any credit or deduction for income tax paid or accrued to Canada allowed in computing the United States tax on such items;

(b) Canada shall allow a deduction from Canadian tax on such items in respect of income tax paid or accrued to the United States on such items, except that such deduction need not exceed the amount of the tax that would be paid on such items to the United States if the resident of Canada were not a United States citizen; and

(c) for the purposes of computing the United States tax on such items, the United States shall allow as a credit against United States tax the income tax paid or accrued to Canada after the deduction referred to in subparagraph (b). The credit so allowed shall reduce only that portion of the United States tax on such items which exceeds the amount of tax that would be paid to the United States on such items if the resident of Canada were not a United States citizen.

Technical Explanation [1995 Protocol]:

Paragraphs 4 and 5 of Article XXIV of the Convention provide double taxation relief rules, for both the United States and Canada, with respect to U.S. source income derived by a U.S. citizen who is resident in Canada. These rules address the fact that a U.S. citizen resident in Canada remains subject to U.S. tax on his worldwide income at ordinary progressive rates, and may, therefore, be subject to U.S. tax at a higher rate than a resident of Canada who is not a U.S. citizen. In essence, these paragraphs limit the foreign tax credit that Canada is obliged to allow such a U.S. citizen to the amount of tax on his U.S. source income that the United States would be allowed to collect from a Canadian resident who is not a U.S. citizen. They also oblige the United States to allow the U.S. citizen a credit for any income tax paid to Canada on the remainder of his income. Paragraph 4 deals with items of income other than dividends, interest, and royalties and is not changed by the Protocol. Paragraph 5, which deals with dividends, interest, and royalties, is amended by paragraph 2 of Article 12 of the Protocol.

The amendments to paragraph 5 of the Article make that paragraph applicable only to dividend, interest, and royalty income that would be subject to a positive rate of U.S. tax if paid to a Canadian resident who is not a

U.S. citizen. This means that the rules of paragraph 4, not paragraph 5, will apply to items of interest and royalties, such as portfolio interest, that would be exempt from U.S. tax if paid to a non-U.S. citizen resident in Canada. Under paragraph 4, Canada will not allow a credit for the U.S. tax on such income, and the United States will credit the Canadian tax to the extent necessary to avoid double taxation.

Paragraph 2 of Article 12 of the Protocol makes further technical amendments to paragraph 5 of Article XXIV of the Convention. The existing Technical Explanation of paragraphs 5 and 6 of Article XXIV of the Convention should be read as follows to reflect the amendments made by the Protocol:

> Paragraph 5 provides special rules for the elimination of double taxation in the case of dividends, interest, and royalties earned by a U.S. citizen resident in Canada. These rules apply notwithstanding the provisions of paragraph 4, but only as long as the law in Canada allows a deduction in computing income for the portion of any foreign tax paid in respect of dividends, interest, or royalties which exceeds 15 percent of the amount of such items of income, and only with respect to those items of income. The rules of paragraph 4 apply with respect to other items of income; moreover, if the law in force in Canada regarding the deduction for foreign taxes is changed so as to no longer allow such a deduction, the provisions of paragraph 5 shall not apply and the U.S. foreign tax credit for Canadian taxes and the Canadian credit for U.S. taxes will be determined solely pursuant to the provisions of paragraph 4.
>
> The calculations under paragraph 5 are as follows. First, the deduction allowed in Canada in computing income shall be made with respect to U.S. tax on the dividends, interest, and royalties before any foreign tax credit by the United States with respect to income tax paid or accrued to Canada. Second, Canada shall allow a deduction from (credit against) Canadian tax for U.S. tax paid or accrued with respect to the dividends, interest, and royalties, but such credit need not exceed the amount of income tax that would be paid or accrued to the United States on such items of income if the individual were not a U.S. citizen after taking into account any relief available under the Convention. Third, for purposes of computing the U.S. tax on such dividends, interest, and royalties, the United States shall allow as a credit against the U.S. tax the income tax paid or accrued to Canada after the credit against Canadian tax for income tax paid or accrued to the United States. The United States is in no event obliged to give a credit for Canadian income tax which will reduce the U.S. tax below the amount of income tax that would be paid or accrued to the United States on the amount of the dividends, interest, and royalties if the individual were not a U.S. citizen after taking into account any relief available under the Convention.
>
> The rules of paragraph 5 are illustrated by the following examples.
>
> *Example B*
>
> A U.S. citizen who is a resident of Canada has $100 of dividend income arising in the United States. The tentative U.S. tax before foreign tax credit is $40.
>
> Canada, under its law, allows a deduction for the U.S. tax in excess of 15 percent or, in this case, a deduction of $25 ($40 - $15). The Canadian taxable income is $75 and the Canadian tax on that amount is $35.
>
> Canada gives a credit of $15 (the maximum credit allowed is 15 percent of the gross dividend taken into Canadian income) and collects a net tax of $20.
>
> The United States allows a credit for the net Canadian tax against its tax in excess of 15 percent. Thus, the maximum credit is $25 ($40 - $15). But since the net Canadian tax paid was $20, the usable credit is $20.
>
> To be able to use a credit of $20 requires Canadian source taxable income of $50 (50% of the U.S. tentative tax of $40). Under paragraph 6, $50 of the U.S. dividend is resourced to be of Canadian source. The credit of $20 may then be offset against the U.S. tax of $40, leaving a net U.S. tax of $20.
>
> The combined tax paid to both countries is $40, $20 to Canada and $20 to the United States.
>
> *Example C*
>
> A U.S. citizen who is a resident of Canada receives $200 of income with respect to personal services performed within Canada and $100 of dividend income arising within the United States. Taxable income for U.S. purposes, taking into account the rules of Code section 911, is $220. U.S. tax (before foreign tax credits) is $92. The $100 of dividend income is deemed to bear U.S. tax (before foreign tax credits) of $41.82 ($100/$200 x $92). Under Canadian law, a deduction of $26.82 (the excess of $41.82 over 15 percent of the $100 dividend income) is allowed in computing income. The Canadian tax on $273.18 of income ($300 less the $26.82 deduction) is $130. Canada then gives a credit against the $130 for $15 (the U.S. tax paid or accrued with respect to the dividend, $41.82 but limited to 15 percent of the gross amount of such income, or $15), leaving a final Canadian tax of $115. Of the $115, $30.80 is attributable to the dividend:
>
> $$\frac{\$73.18\ (\$100\ \text{dividend less}\ \$26.82\ \text{deduction})}{\$273.18\ (\$300\ \text{income less}\ \$26.82\ \text{deduction})} \times \$115$$
>
> Of this amount, $26.82 is creditable against U.S. tax pursuant to paragraph 5. (Although the U.S. allows a credit for the Canadian tax imposed on the dividend, $30.80, the credit may not reduce the U.S. tax below 15 percent of the amount of the dividend. Thus, the maximum allowable credit is the excess of $41.82, the U.S. tax imposed on the dividend income, over $15, which is 15 percent of the $100 dividend). The remaining $3.98 (the Canadian tax of $30.80 less the credit allowed of $26.82) is a foreign tax credit carryover for U.S. purposes, subject to the limitations of paragraph 5. (An additional $50.18 of Canadian tax with respect to Canadian source services income is creditable against U.S. tax pursuant to paragraphs 3 and 4(b). The $50.18 is computed as follows: tentative U.S. tax (before foreign tax credits) is $92; the U.S. tax on Canadian source services income is $50.18 ($92 less the U.S. tax on the dividend income of $41.82); the limitation on the services income is:
>
> $$\frac{\$120\ (\text{taxable income from services})}{\$220\ (\text{total taxable income})} \times \$92$$
>
> or $50.18. The credit for Canadian tax paid on the services income is therefore $50.18; the remainder of the Canadian tax on the services income, or $34.02, is a foreign tax credit carryover for U.S. purposes, subject to the limitations of paragraph 5.)
>
> Paragraph 6 is necessary to implement the objectives of paragraphs 4(b) and 5(c). Paragraph 6 provides that where a U.S. citizen is a resident of Canada, items of income referred to in paragraph 4 or 5 are deemed for the purposes of Article XXIV to arise in Canada to the extent necessary to avoid double taxation of income by Canada and the United States consistent with the objectives of paragraphs 4(b) and 5(c). Paragraph 6 can override the source rules of paragraph 3 to permit a limited resourcing of income. The principles of paragraph 3 have effect, pursuant to paragraph 3(b) of Article XXX (Entry Into Force) of the Convention, for taxable years beginning on or after January 1, 1976. See the discussion of Article XXX below.
>
> The application of paragraph 6 is illustrated by the following example.
>
> *Example D*
>
> The facts are the same as in Example C. The United States has undertaken, pursuant to paragraph 5(c) and paragraph 6, to credit $26.82 of Canadian taxes on dividend income that has a U.S. source under both paragraph 3 and the *Internal Revenue Code*. (As illustrated in Example C, the credit, however, only reduces the U.S. tax on the dividend income which exceeds the amount of income tax that would be paid or accrued to the United States on such income if the individual were not a U.S. citizen after taking into account any relief available under the Convention. Pursuant to paragraph 6, for purposes of determining the U.S. foreign tax credit limitation under the Convention with respect to Canadian taxes,
>
> $$\$64.13\ (\frac{A}{\$220} \times \$92 = \$26.82;\ A = \$64.13)$$
>
> of taxable income with respect to the dividends is deemed to arise in Canada.

History: Para. 5 amended by 1995 Protocol, article 12(2), generally effective for taxation years beginning on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 5 formerly read:

> 5. Notwithstanding the provisions of paragraph 4, where a United States citizen is a resident of Canada, the following rules shall apply in respect of the items of income referred to in Article X (Dividends), XI (Interest) or XII (Royalties) which arise (within the meaning of paragraph 3) in the United States, as long as the law in force in Canada allows a deduction in computing income for the

portion of any foreign tax paid in respect of such items which exceeds 15 per cent of the amount thereof:

(a) the deduction so allowed in Canada shall not be reduced by any credit or deduction for income tax paid or accrued to Canada allowed in computing the United States tax on such items;

(b) Canada shall allow a deduction from the Canadian tax in respect of the income tax paid or accrued to the United States on such items, except that such deduction need not exceed 15 per cent of the gross amount of such items that has been included in computing the income of the citizen for Canadian tax purposes; and

(c) for the purposes of computing the United States tax on such items, the United States shall allow as a credit against United States tax the income tax paid or accrued to Canada after the deduction referred to in subparagraph (b). The credit so allowed shall reduce only that portion of the United States tax on such items which exceeds 15 per cent of the amount thereof included in computing United States taxable income.

Definitions: "Canada" — Art. III:1(a), ITCIA 5; "Canadian tax" — Art. III:1(c); "income tax paid or accrued" — Art. XXIV:7; "resident" — ITCIA 3, ITA 250; "United States" — Art. III:1(b); "United States tax" — Art. III:1(d).

6. Where a United States citizen is a resident of Canada, items of income referred to in paragraph 4 or 5 shall, notwithstanding the provisions of paragraph 3, be deemed to arise in Canada to the extent necessary to avoid the double taxation of such income under paragraph 4(b) or paragraph 5(c).

Definitions: "Canada" — Art. III:1(a), ITCIA 5; "resident" — ITCIA 3, ITA 250; "United States" — Art. III:1(b).

7. For the purposes of this Article, any reference to **"income tax paid or accrued"** to a Contracting State shall include Canadian tax and United States tax, as the case may be, and taxes of general application which are paid or accrued to a political subdivision or local authority of that State, which are not imposed by that political subdivision or local authority in a manner inconsistent with the provisions of the Convention and which are substantially similar to the Canadian tax or United States tax, as the case may be.

Technical Explanation [1995 Protocol]:

Paragraph 3 of Article 12 of the Protocol makes a technical amendment to paragraph 7 of Article XXIV. It conforms the reference to U.S. and Canadian taxes to the amended definitions of "United States tax" and "Canadian tax" in subparagraphs (c) and (d) of paragraph 1 of Article III (General Definitions). No substantive change in the effect of the paragraph is intended.

History: Para. 7 amended by 1995 Protocol, article 12(3), generally effective for taxation years beginning on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 7 formerly read:

7. For the purposes of this Article, any reference to "income tax paid or accrued" to a Contracting State shall include Canadian tax and United States tax, as the case may be, and taxes of general application which are paid or accrued to a political subdivision or local authority of that State, which are not imposed by that political subdivision or local authority in a manner inconsistent with the provisions of the Convention and which are substantially similar to the taxes of that State referred to in paragraphs 2 and 3(a) of Article II (Taxes Covered).

Definitions: "Canadian tax" — Art. III:1(c); "State" — Art. III:1(i); "United States tax" — Art. III:1(d).

8. Where a resident of a Contracting State owns capital which, in accordance with the provisions of the Convention, may be taxed in the other Contracting State, the first-mentioned State shall allow as a deduction from the tax on the capital of that resident an amount equal to the capital tax paid in that other State. The deduction shall not, however, exceed that part of the capital tax, as computed before the deduction is given, which is attributable to the capital which may be taxed in that other State.

Definitions: "resident" — ITCIA 3, ITA 250; "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

9. The provisions of this Article relating to the source of profits, income or gains shall not apply for the purpose of determining a credit against United States tax for any foreign taxes other than income taxes paid or accrued to Canada.

History: Para. 9 added by 1983 Protocol, article XI, para. 3.

Definitions: "Canada" — Art. III:1(a), ITCIA 5; "income tax paid or accrued" — Art. XXIV:7; "United States" — Art. III:1(b).

10. Where in accordance with any provision of the Convention income derived or capital owned by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on other income or capital, take into account the exempted income or capital.

Technical Explanation [1995 Protocol]:

Paragraph 4 of Article 12 of the Protocol adds a new paragraph 10 to Article XXIV of the Convention. This paragraph provides for the application of the rule of "exemption with progression" by a Contracting State in cases where an item of income of a resident of that State is exempt from tax in that State by virtue of a provision of the Convention. For example, where under Canadian law a tax benefit, such as the goods and services tax credit, to a Canadian resident individual is reduced as the income of that individual, or the individual's spouse or other dependent, increases, and any of these persons receives U.S. social security benefits that are exempt from tax in Canada under the Convention, Canada may, nevertheless, take the U.S. social security benefits into account in determining whether, and to what extent, the benefit should be reduced.

New Article XXIX B (Taxes Imposed by Reason of Death), added by Article 19 of the Protocol, also provides relief from double taxation in certain circumstances in connection with Canadian income tax imposed by reason of death and U.S. estate taxes. However, subparagraph 7(c) of Article XXIX B generally denies relief from U.S. estate tax under that Article to the extent that a credit or deduction has been claimed for the same amount in determining any other tax imposed by the United States. This restriction would operate to deny relief, for example, to the extent that relief from U.S. income tax is claimed under Article XXIV in respect of the same amount of Canadian tax. There is, however, no requirement that relief from U.S. tax be claimed first (or exclusively) under Article XXIV. Paragraph 6 of Article XXIX B also prevents the claiming of double relief from Canadian income taxation under both that Article and Article XXIV, by providing that the credit provided by Article XXIX B applies only after the application of the credit provided by Article XXIV.

Technical Explanation [1984]:

Paragraph 9 provides clarification that the source rules of this Article shall not be used to determine the credit available against U.S. tax for foreign taxes other than income taxes paid or accrued to Canada (i.e., taxes of third countries). Thus, creditable third country taxes may not offset the U.S. tax on income treated as arising in Canada under the source rules of the Convention. A person claiming credit for income taxes of a third country may not rely upon the rules of paragraphs 3 and 6 for purposes of treating income that would otherwise have a U.S. source as having a foreign source. Thus, if the taxpayer elects to compute the foreign tax credit for any year using the special source rules set forth in paragraphs 3 and 6, paragraph 9 requires that a separate limitation be computed for taxes not covered by paragraph 1 without regard to the source rules of paragraphs 3 and 6, and the credit for such taxes may not exceed such limitation. The credit allowed under this separate limitation may not exceed the proportion of the Federal income taxes imposed by the Code that the taxpayer's taxable income from foreign sources (under the Code) not included in taxable income arising in Canada (and not in excess of total foreign source taxable income under the Code) bears to the taxpayer's worldwide taxable income. In any case the credit for taxes covered by paragraph 1 and the credit for other foreign taxes is limited to the amount allowed under an overall limitation computed by aggregating taxable income arising in Canada and other foreign source taxable income.

If creditable Canadian taxes exceed the proportion of U.S. tax that taxable income arising in Canada bears to the entire taxable income, such taxes

may qualify to be absorbed by any excess in the separate limitation computed with respect to other taxes.

In a case where a taxpayer has different types of income subject to separate limitations under the Code (e.g., section 904(d)(1)(B) DISC dividends) the Convention rules just described apply in the context of each of the separate Code limitations.

A taxpayer may, for any year, claim a credit pursuant to the rules of the Code. In such case, the taxpayer would be subject to the limitations established in the Code, and would forego the rules of the Convention that determine where taxable income arises. In addition, any Canadian taxes covered by paragraph 1 which are not creditable under the Code would not be credited.

Thus, where a taxpayer elects to use the special source rules of this Article to compute the foreign tax credit for any year, the following computations must be made:

Step 1(a): Compute a hypothetical foreign tax credit limitation for Canadian income and taxes using the source rules of the Convention.

Step 1(b): Compute a hypothetical foreign tax credit limitation for third country income and taxes using the source rules of the Code.

Step 1(c): Compute an overall foreign tax credit limitation using the source rules of the Convention to the extent they resource Canadian source income as U.S. source income or U.S. source income as Canadian source income, and using the source rules of the Code with respect to any other income.

Step 2: Allocate the amount of creditable Canadian taxes to the amount of the limitation computed under step 1(a), and allocate the amount of creditable third country taxes to the amount of the limitation computed under step 1(b). The amount of credit to be so allocated may not exceed the amount of the respective limitation.

Step 3: (1) If the total credits allocated under step 2 exceed the amount of the limitation computed under step 1(c), the amount of allowable credits must be reduced to that limitation (see Rev. Rul. 82-215, 1982-2 Cum. Bull. 153 for the method of such reduction).

(2) If the total credits allocated under step 2 are less than the amount of the limitation computed under step 1(c), then (a) any amount of creditable Canadian taxes in excess of the amount of the step 1(a) limitation may be credited to the extent of the excess of the step 1(c) limitation over the total step 2 allocation, and (b) any amount of third country taxes in excess of the amount of the step 1(b) limitation may not be credited.

The following examples (in which the taxpayer's U.S. tax rate is presumed to be 46%) illustrate the application of the source rules of Article XXIV:

Example 1.

(a) A U.S. corporate taxpayer has for the taxable year $100 of taxable income having a U.S. source under both the Convention and the Code; $100 of taxable income having a Canadian source under both the Convention and the Code; $50 of taxable income having a Canadian source under the Convention but a U.S. source under the Code (see, for example, paragraph 1 of Article VII (Business Profits) and paragraph 3(a) of Article XXIV); and $80 of taxable income having a foreign (non-Canadian) source under the Code. The taxpayer pays $75 of Canadian income taxes and $45 of third country income taxes. All the foreign source income of the taxpayer constitutes "other" income described in Code section 904(d)(1)(C).

The source rules of the Convention are applied as follows to compute the taxpayer's foreign tax credit:

Step 1(a):

$$\frac{\$150 \text{ (Canadian source taxable income under Convention)}}{\$330 \text{ (total taxable income)}} \times \$151.80$$

= $69 limit for Canadian taxes.

Step 1(b):

$$\frac{\$80 \text{ (third country source taxable income under Code)}}{\$330 \text{ (total taxable income)}} \times \$151.80$$

= $36.80 limit for third country taxes.

Step 1(c):

$$\frac{\$230 \text{ (overall foreign taxable income under source rules described above)}}{\$330 \text{ (total taxable income)}} \times \$151.80$$

= $105.80 total limit.

Step 2: The taxpayer may tentatively credit $69 of the $75 Canadian income taxes under the step 1(a) limitation, and $36.80 of the third country income taxes under the step 1(b) limitation.

Step 3: Since the total amount of taxes credited under step 2 equals the taxpayer's total limitation of $105.80 under step 1(c), no additional taxes may be credited. The taxpayer has a $6 Canadian income tax carryover and an $8.20 third country income tax carryover for U.S. foreign tax credit purposes.

(b) If the taxpayer had paid only $30 of third country taxes, he would credit that $30 in step 2. Since the total amount of credits allowed under step 2 ($99) is less than the taxpayer's total limit of $105.80, and since the taxpayer has $6 of excess Canadian taxes not credited under step 2, he may also claim a credit for that $6 of Canadian income taxes, for a total credit of $105.

(c) If the taxpayer had paid $45 of third country income taxes and $65 of Canadian income taxes, the computation would be as follows:

Step 2: The taxpayer would credit the $65 of Canadian income taxes, and would also credit $36.80 of the $45 of third country income taxes.

Step 3: Although the total amount of credits computed under step 2 ($101.80) is less than the taxpayer's total limitation of $105.80, no additional credits can be claimed since the taxpayer has only excess third country income taxes. The excess third country income taxes are thus not permitted to offset U.S. tax on income that is Canadian source income under the Convention. The taxpayer would have $8.20 of third country income taxes as a carryover for U.S. foreign tax credit purposes.

Example 2.

A United States corporate taxpayer has for the taxable year $100 of taxable income having a Canadian source under the Convention but a U.S. source under the Code; $100 of taxable income having a U.S. source under both the Convention and the Code; $80 of taxable income having a foreign (non-Canadian) source under the Code; and $50 of loss allocated or apportioned to Canadian source income. The taxpayer pays $50 of foreign (non-Canadian) income taxes, and $20 of Canadian income taxes.

The source rules of the Convention are applied as follows to compute the taxpayer's foreign tax credit:

Step 1(a):

$$\frac{\$50 \text{ (Canadian source taxable income under Convention)}}{\$230 \text{ (total taxable income)}} \times \$105.80$$

= $23 limit for Canadian taxes.

Step 1(b):

$$\frac{\$80 \text{ (third country source taxable income under Code)}}{\$230 \text{ (total taxable income)}} \times \$105.80$$

= $36.80 limit for third country taxes.

Step 1(c):

$$\frac{\$130 \text{ (overall foreign taxable income under source rules described above)}}{\$230 \text{ (total taxable income)}} \times \$105.80$$

= $59.80 limit for Canadian taxes.

Step 2: Since the taxpayer paid $20 of Canadian income taxes, he may credit that amount in full since the step 1(a) limit is $23. Since the step 1(b) limit is $36.80, the taxpayer may credit $36.80 of the $50 foreign income taxes paid.

Step 3: Although the total taxes credited under step 2 ($56.80) is less than the taxpayer's total limit of $59.80, no additional credits may be claimed since the only excess taxes are third country income taxes, and those may not be used to offset any excess limitation in step 3. The $13.20 of foreign taxes not allowed as a credit is available as a foreign tax credit carryover.

Example 3.

The facts are the same as in Example 2, except that foreign (non-Canadian) operations result in a loss of $30 rather than taxable income of $80, and no foreign (non-Canadian) income taxes are paid. The taxpayer's credit is computed as follows:

Step 1(a):

$$\frac{\$50}{\$120} \times \$55.20 = \text{limit for Canadian taxes.}$$

Step 1(b): Since there is no third country source taxable income under the Code, the limit for third country income taxes is zero.

Step 1(c):

$$\frac{\$20}{\$120} \times \$55.20 = \$9.20 \text{ total limit.}$$

Step 2: Since the taxpayer paid $20 of Canadian income tax, he may tentatively credit that amount in full since the step 1(a) limit is $23.

Step 3: Since the total taxes credited under step 2 ($20) exceeds the taxpayer's total limit of $9.20, the taxpayer must reduce the total amount claimed as a credit to $9.20. The remaining $10.80 of Canadian income taxes are available as a foreign tax credit carryover.

Example 4.

The facts are the same as in Example 2, except that the first $100 of taxable income mentioned in Example 2 has a Canadian source under both the Convention and the Code.

Step 1(a):

$$\frac{\$50}{\$230} \times \$105.80 = \$23 \text{ limit for Canadian taxes.}$$

Step 1(b):

$$\frac{\$80}{\$230} \times \$105.80 = \$36.80 \text{ limit for third country income taxes.}$$

Step 1(c):

$$\frac{\$130}{\$230} \times \$105.80 = \$59.80 \text{ total limit.}$$

Step 2: The taxpayer credits the $20 of Canadian income tax and $36.80 of third country income tax.

Step 3: As explained in Example 2, the taxpayer's total credit is limited to $56.80. In this case, however, if the Canadian taxes covered by the Convention are creditable under the Code, the taxpayer could elect the Code limitation of $59.80 ($130/$230 × $105.80), which is more advantageous than the Convention limitation because that limitation does not permit third country income taxes to be credited against the U.S. tax on income arising in Canada under the Convention.

Example 5.

The facts are the same as in Example 2, except that the corporation pays $25 of Canadian income taxes and $12 of foreign (non-Canadian) income taxes. Under step 2, the taxpayer would credit $23 of the $25 of Canadian income taxes and the full $12 of third country income taxes. Since the total amount of income taxes credited under step 2 is $35, which is less than the taxpayer's total limit of $59.80, the taxpayer may credit an amount of Canadian income taxes up to the $24.80 excess. Here, the taxpayer may claim a credit for the additional $2 of Canadian income taxes not credited under step 2, and has a total credit of $37.

Example 6.

(a) A U.S. corporate taxpayer has for the taxable year $100 of taxable income having a Canadian source under the Convention and the Code; $50 of taxable income having a Canadian source under the Convention but a U.S. source under the Code; $80 of taxable income having a foreign (non-Canadian) source under the Code; and $50 of loss allocated or apportioned to U.S. source income. The taxpayer pays $65 of Canadian income taxes, and $45 of third country income taxes.

Step 1(a):

$$\frac{\$150}{\$230} \times \$82.80 = \$69 \text{ limit for Canadian income taxes.}$$

Step 1(b):

$$\frac{\$80}{\$180} \times \$82.80 = \$36.80 \text{ limit for third country income taxes.}$$

Step 1(c):

$$\frac{\$180}{\$180} \times \$82.80 = \$82.80 \text{ total limit.}$$

Step 2: The taxpayer tentatively credits the $65 of Canadian income taxes against the $69 limit of step 1(a), and $36.80 of the $45 of third country income taxes against the $36.80 limit of step 1(b).

Step 3: Since the total amount of credits tentatively allowed under step 2 ($101.80) exceeds the taxpayer's total limit of $82.80 under step 1(c), the taxpayer's allowable credit is reduced to $82.80 under the method provided by Rev. Rul. 82-215.

(b) If the taxpayer had paid only $40 of Canadian income taxes, the total credits tentatively allowed under step 2 is $76.80. Although that amount is less than the $82.80 total limit under step 1(c), no additional taxes may be credited since the taxpayer only has excess third country income taxes. The $8.20 of excess third country income taxes would be allowed as a foreign tax credit carryover.

The general rule for avoiding double taxation in Canada is provided in paragraph 2. Pursuant to paragraph 2(a) Canada undertakes to allow to a resident of Canada a credit against income taxes imposed under the *Income Tax Act* for the appropriate amount of income taxes paid or accrued to the United States. Paragraph 2(b) provides for the deduction by a Canadian company, in computing taxable income, of any dividend received out of the exempt surplus of a U.S. company which is an affiliate. The provisions of paragraphs 2(a) and (b) are subject to the provisions of the *Income Tax Act* as they may be amended from time to time without changing the general principle of paragraph 2. Paragraph 2(c) provides that where Canada imposes a tax on the alienation of property pursuant to the provisions of paragraph 5 of Article XIII (Gains), Canada will allow a credit for the income tax paid or accrued to the United States on such gain.

The rules of paragraph 1 are modified in certain respects by rules in paragraphs 4 and 5 for income derived by United States citizens who are residents of Canada. Paragraph 4 provides two steps for the elimination of double taxation in such a case. First, paragraph 4(a) provides that Canada shall allow a deduction from (credit against) Canadian tax in respect of income tax paid or accrued to the United States in respect of profits, income, or gains which arise in the United States (within the meaning of paragraph 3(a)); the deduction against Canadian tax need not, however, exceed the amount of income tax that would be paid or accrued to the United States if the individual were not a U.S. citizen, after taking into account any relief available under the Convention.

The second step, as provided in paragraph 4(b), is that the United States allows as a credit against United States tax, subject to the rules of paragraph 1, the income tax paid or accrued to Canada after the Canadian credit for U.S. tax provided by paragraph 4(a). The credit so allowed by the United States is not to reduce the portion of the United States tax that is creditable against Canadian tax in accordance with paragraph 4(a).

The following example illustrates the application of paragraph 4.

Example A

- A U.S. citizen who is a resident of Canada earns $175 of income from the performance of independent personal services, of which $100 is derived from services performed in Canada and $75 from services performed in the United States. That is his total world-wide income.
- If he were not a U.S. citizen, the United States could tax $75 of that amount under Article XIV (Independent Personal Services). By reason of paragraph 3(a), the $75 that may be taxed by the United States under Article XIV is deemed to arise in the United States. Assume that the U.S. tax on the $75 would be $25 if the taxpayer were not a U.S. citizen.
- However, since the individual is a U.S. citizen, he is subject to U.S. tax on his worldwide income of $175. After excluding $75 under section 911, his taxable income is $100 and his U.S. tax is $40.
- Because he is a resident of Canada, he is also subject to Canadian tax on his worldwide income. Assume that Canada taxes the $175 at $75.
- Canada will credit against its tax of $75 the U.S. tax at source of $25, leaving a net Canadian tax of $50.
- The United States will credit against its tax of $40 the Canadian tax net of credit, but without reducing its source basis tax of $25; thus, the allowable credit is $40 - $25 = $15.
- To use a credit of $15 requires Canadian source taxable income of $37.50 ($37.50/$100 - $40 = 15). Without any special treaty rule, Canadian source taxable income would be only $25 ($100 less the section 911 exclusion of $75). Paragraph 6 provides for resourcing an additional $12.50 of income to Canada, so that the credit of $15 can be fully used.

Paragraph 5 provides special rules for the elimination of double taxation in the case of dividends, interest, and royalties earned by a U.S. citizen resident in Canada. These rules apply notwithstanding the provisions of paragraph 4, but only as long as the law in Canada allows a deduction in computing income for the portion of any foreign tax paid in respect of dividends, interest, or royalties which exceeds 15 percent of the amount of such items of income, and only with respect to those items of income. The rules of paragraph 4 apply with respect to other items of income; moreover, if the law in force in Canada regarding the deduction for foreign taxes

changes, the provisions of paragraph 5 shall not apply and the U.S. foreign tax credit for Canadian taxes and the Canadian credit for U.S. taxes will be determined solely pursuant to the provisions of paragraph 4.

The calculations under paragraph 5 are as follows. First, the deduction allowed in Canada in computing income shall be made with respect to U.S. tax on the dividends, interest, and royalties before any foreign tax credit by the United States with respect to income tax paid or accrued to Canada. Second, Canada shall allow a deduction from (credit against) Canadian tax for U.S. tax paid or accrued with respect to the dividends, interest, and royalties, but such credit need not exceed 15 percent of the gross amount of such items of income that have been included in computing income for Canadian tax purposes. (The credit may, however, exceed the amount of tax that the United States would be entitled to levy under the Convention upon a Canadian resident who is not a U.S. citizen.) Third, for purposes of computing the U.S. tax on such dividends, interest, and royalties, the United States shall allow as a credit against the U.S. tax the income tax paid or accrued to Canada after the 15 percent credit against Canadian tax for income tax paid or accrued to the United States. The United States is in no event obliged to give a credit for Canadian income tax which will reduce the U.S. tax below 15 percent of the amount of the dividends, interest, and royalties.

The rules of paragraph 5 are illustrated by the following examples.

Example B

- A U.S. citizen who is a resident of Canada has $100 of royalty income arising in the United States. The tentative U.S. tax before foreign tax credit is $40.
- Canada, under its law, allows a deduction for the U.S. tax in excess of 15 percent or, in this case, a deduction of $25 ($40 - $15). The Canadian taxable income is $75 and the Canadian tax on that amount is $35.
- Canada gives a credit of $15 (the maximum credit allowed is 15 percent of the gross royalty taken into Canadian income) and collects a net tax of $20.
- The United States allows a credit for the net Canadian tax against its tax in excess of 15 percent. Thus, the maximum credit is $25 ($40 - $15). But since the net Canadian tax paid was $20, the usable credit is $20.
- To be able to use a credit of $20 requires Canadian source taxable income of $50 (50% of the U.S. tentative tax of $40). Under paragraph 6, $50 of the U.S. royalty is resourced to be of Canadian source. The credit of $20 may then be offset against the U.S. tax of $40, leaving a net U.S. tax of $20.
- The combined tax paid to both countries is $40, $20 to Canada and $20 to the United States.

Example C

A U.S. citizen who is a resident of Canada receives $200 of income with respect to personal services performed within Canada and $100 of royalty income arising within the United States. Taxable income for U.S. purposes, taking into account the rules of Code section 911, is $220. U.S. tax (before foreign tax credits) is $92. The $100 of royalty income is deemed to bear U.S. tax (before foreign tax credits) of $41.82 ($100/$220 × $92). Under Canadian law, a deduction of $26.82 (the excess of $41.82 over 15 percent of the $100 royalty income) is allowed in computing income. The Canadian tax on $273.18 of income ($300 less the $26.82 deduction) is $130. Canada then gives a credit against the $130 for $15 (the U.S. tax paid or accrued with respect to the royalty, $41.82, but limited to 15 percent of the gross amount of such income, or $15), leaving a final Canadian tax of $115. Of the $115, $30.80 is attributable to the royalty

$$\frac{\$73.18\ (\$100\ \text{royalty less}\ \$26.82\ \text{deduction})}{\$273.18\ (\$300\ \text{income less}\ \$26.82\ \text{deduction})} \times \$115.$$

Of this amount, $26.82 is creditable against U.S. tax pursuant to paragraph 5. (Although the U.S. allows a credit for the Canadian tax imposed on the royalty, $30.80, the credit may not reduce the U.S. tax below 15 percent of the amount of the royalty. Thus, the maximum allowable credit is the excess of $41.82, the U.S. tax imposed on the royalty income, over $15, which is 15 percent of the $100 royalty). The remaining $3.98 (the Canadian tax of $30.80 less the credit allowed of $26.82) is a foreign tax credit carryover for U.S. purposes, subject to the limitations of paragraph 5. (An additional $50.18 of Canadian tax with respect to Canadian source services income is creditable against U.S. tax pursuant to paragraphs 3 and 4(b). The $50.18 is computed as follows: tentative U.S. tax (before foreign tax credits) is $92; the U.S. tax on Canadian source services income is $50.18 ($92 less the U.S. tax on the royalty income of $41.82); the limitation on the services income is:

$$\frac{\$120\ (\text{taxable income from services})}{\$220\ (\text{total taxable income})} \times \$92,$$

or $50.18. The credit for Canadian tax paid on the services income is therefore $50.18; the remainder of the Canadian tax on the services income, or $34.02, is a foreign tax credit carryover for U.S. purposes, subject to the limitations of paragraph 5).

Paragraph 6 is necessary to implement the objectives of paragraphs 4(b) and 5(c). Paragraph 6 provides that where a U.S. citizen is a resident of Canada, items of income referred to in paragraph 4 or 5 are deemed for the purposes of Article XXIV to arise in Canada to the extent necessary to avoid double taxation of income by Canada and the United States consistent with the objectives of paragraphs 4(b) and 5(c). Paragraph 6 can override the source rules of paragraph 3 to permit a limited resourcing of income. The principles of paragraph 6 have effect, pursuant to paragraph 3(b) of Article XXX (Entry Into Force), for taxable years beginning on or after January 1, 1976. See the discussion of Article XXX below.

The application of paragraph 6 is illustrated by the following example.

Example D

The facts are the same as in Example C. The United States has undertaken, pursuant to paragraph 5(c) and paragraph 6, to credit $26.82 of Canadian taxes on royalty income that has a U.S. source under both paragraph 3 and the *Internal Revenue Code*. (As illustrated in Example C, the credit, however, only reduces the U.S. tax on the royalty income which exceeds 15 percent of the amount of such income included in computing U.S. taxable income.) Pursuant to paragraph 6, for purposes of determining the U.S. foreign tax credit limitation under the Convention with respect to Canadian taxes, $64.13 (A/$220 × $92 = $26.82; A = $64.13) of taxable income with respect to the royalties is deemed to arise in Canada.

Paragraph 7 provides that any reference to "income tax paid or accrued" to Canada or the United States includes Canadian tax or United States tax, as the case may be. The terms "Canadian tax" and "United States tax" are defined in paragraphs 1(c) and 1(d) of Article III (General Definitions). References to income taxes paid or accrued also include taxes of general application paid or accrued to a political subdivision or local authority of Canada or the United States which are not imposed by such political subdivision or local authority in a manner inconsistent with the provisions of the Convention and which are substantially similar to taxes of Canada or the United States referred to in paragraphs 2 and 3(a) of Article II (Taxes Covered).

In order for a tax imposed by a political subdivision or local authority to fall within the scope of paragraph 7, such tax must apply to individuals, companies, or other persons generally, and not only to a particular class of individuals or companies or a particular type of business. The tax must also be substantially similar to the national taxes referred to in paragraphs 2 and 3(a) of Article II. Finally, the political subdivision or local authority must apply its tax in a manner not inconsistent with the provisions of the Convention. For example, the political subdivision or local authority must not impose its tax on a resident of the other Contracting State earning business profits within the political subdivision or local authority but not having a permanent establishment there. It is understood that a Canadian provincial income tax that satisfied the conditions of paragraph 7 on September 26, 1980 also satisfied the conditions of that paragraph on June 14, 1983 — i.e., no significant changes have occurred in the taxes imposed by Canadian provinces.

Paragraph 8 relates to the provisions of Article XXIII (Capital). It provides that where a resident of a Contracting State owns capital which, in accordance with the provisions of Article XXIII, may be taxed in the other Contracting State, the State of residence shall allow as a deduction from (credit against) its tax on capital an amount equal to the capital tax paid in the other Contracting State. The deduction is not, however, to exceed that part of the capital tax, computed before the deduction, which is attributable to capital which may be taxed in the other State.

History: Para. 10 added by 1995 Protocol, article 12(4), generally effective for taxation years beginning on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above).

Definitions: "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

Article XXV — Non-Discrimination

1. Citizens of a Contracting State, who are residents of the other Contracting State, shall not be subjected in that

other State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which citizens of that other State in the same circumstances are or may be subjected.

Technical Explanation [1984]:

Paragraphs 1 and 2 of Article XXV protect individual citizens of a Contracting State from discrimination by the other Contracting State in taxation matters. Paragraph 1 provides that a citizen of a Contracting State who is a resident of the other Contracting State may not be subjected in that other State to any taxation or requirement connected with taxation which is other or more burdensome than the taxation and connected requirements imposed on similarly situated citizens of the other State.

Definitions: "resident" — ITCIA 3, ITA 250; "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

2. Citizens of a Contracting State, who are not residents of the other Contracting State, shall not be subjected in that other State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which citizens of any third State in the same circumstances (including State of residence) are or may be subjected.

Technical Explanation [1984]:

Paragraph 2 assures protection in a case where a citizen of a Contracting State is not a resident of the other Contracting State. Such a citizen may not be subjected in the other State to any taxation or requirement connected to taxation which is other or more burdensome than the taxation and connected requirements to which similarly situated citizens of any third State are subjected. The reference to citizens of a third State "in the same circumstances" includes consideration of the State of residence. Thus, pursuant to paragraph 2, the Canadian taxation with respect to a citizen of the United States resident in, for example, the United Kingdom may not be more burdensome than the taxation of a U.K. citizen resident in the United Kingdom. Any benefits available to the U.K. citizen by virtue of an income tax convention between the United Kingdom and Canada would be available to the U.S. citizen resident in the United Kingdom if he is otherwise in the same circumstances as the U.K. citizen.

Definitions: "resident" — ITCIA 3, ITA 250; "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

3. In determining the taxable income or tax payable of an individual who is a resident of a Contracting State, there shall be allowed as a deduction in respect of any other person who is a resident of the other Contracting State and who is dependent on the individual for support the amount that would be so allowed if that other person were a resident of the first-mentioned State.

Technical Explanation [1995 Protocol]:

Article 13 of the Protocol amends Article XXV (Non-Discrimination) of the Convention. Paragraph 1 of Article 13 amends paragraph 3 of Article XXV to conform the treaty language to a change in Canadian law. The paragraph is intended to allow the treatment of dependents under the income tax law of a Contracting State to apply with respect to dependents who are residents of the other Contracting State. As drafted in the present Convention, the rule deals specifically only with deductions; the amendments made by the Protocol clarify that it also applies to the credits now provided by Canadian law.

Technical Explanation [1984]:

Paragraph 3 assures that, in computing taxable income, an individual resident of a Contracting State will be entitled to the same deduction for dependents resident in the other Contracting State that would be allowed if the dependents were residents of the individual's State of residence. The term "dependent" is defined in accordance with the rules set forth in paragraph 2 of Article III (General Definitions). For U.S. tax purposes, paragraph 3 does not expand the benefits currently available to a resident of the United States with a dependent resident in Canada. See Code section 152(b)(3).

History: Para. 3 amended by 1995 Protocol, article 13(1), generally effective for taxation years beginning on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 3 formerly read:

> 3. In determining the taxable income of an individual who is a resident of a Contracting State there shall be allowed as a deduction in respect of any other person who is a resident of the other Contracting State and who is dependent on the individual for support the amount that would be so allowed if that other person were a resident of the first-mentioned State.

Definitions: "individual" — ITCIA 3, ITA 248(1); "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1); "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i); "taxable income" — ITCIA 3, ITA 248(1).

4. Where a married individual who is a resident of Canada and not a citizen of the United States has income that is taxable in the United States pursuant to Article XV (Dependent Personal Services), the United States tax with respect to such income shall not exceed such proportion of the total United States tax that would be payable for the taxable year if both the individual and his spouse were United States citizens as the individual's taxable income determined without regard to this paragraph bears to the amount that would be the total taxable income of the individual and his spouse. For the purposes of this paragraph,

(a) the "total United States tax" shall be determined as if all the income of the individual and his spouse arose in the United States; and

(b) a deficit of the spouse shall not be taken into account in determining taxable income.

Technical Explanation [1984]:

Paragraph 4 allows a resident of Canada (not a citizen of the United States) to file a joint return in cases where such person earns salary, wages, or other similar remuneration as an employee and such income is taxable in the United States under the Convention. Paragraph 4 does not apply where the resident of Canada earns wages which are exempt in the United States under Article XV (Dependent Personal Services) or earns only income taxable by the United States under provisions of the Convention other than Article XV.

The benefit provided by paragraph 4 is available regardless of the residence of the taxpayer's spouse. It is limited, however, by a formula designed to ensure that the benefit is available solely with respect to persons whose U.S. source income is entirely, or almost entirely, wage income. The formula limits the United States tax with respect to wage income to that portion of the total U.S. tax that would be payable for the taxable year if both the individual and his spouse were United States citizens as the individual's taxable income (determined without any of the benefits made available by paragraph 4, such as the standard deduction) bears to the total taxable income of the individual and his spouse. The term "total United States tax" used in the formula is total United States tax without regard to any foreign tax credits, as provided in subparagraph 4(a). (Foreign income taxes may, however, be claimed as deductions in computing taxable income, to the extent allowed by the Code.) In determining total taxable income of the individual and his spouse, the benefits made available by paragraph 4 are taken into account, but a deficit of the spouse is not.

The following example illustrates the application of paragraph 4.

> A, a Canadian citizen and resident, is married to B who is also a Canadian citizen and resident. A earns $12,000 of wages taxable in the U.S. under Article XV (Dependent Personal Services) and $2,000 of wages taxable only in Canada. B earns $1,000 of U.S. source dividend income, taxed by the United States at 15 percent pursuant to Article X (Dividends). B also earns $2,000 of wages taxable only in Canada. A's taxable income for U.S. purposes, determined without regard to paragraph 4, is $11,700 ($12,000 - $2,000 (Code sections 151(b) and 873(b)(3)) + $1,700 (Code section 63)). The U.S. tax (Code section 1(d)) with respect to such income is $2,084.50. The total U.S. tax payable by A and B if both were U.S. citizens and all their income arose in the United States would be $2,013 under Code section 1(a) on taxable income of $14,800 ($17,000 - $200 (Code section 116) - $2,000 (Code section 151)). Pursuant to paragraph 4, the U.S. tax imposed on A's wages from U.S. sources is limited to $1,591.36 ($11,700/$14,800 × $2,013). B's U.S. tax liability with respect to the U.S. source dividends remains $150.

The provisions of paragraph 4 may be elected on a year-by-year basis. They are purely computational and do not make either or both spouses residents of the United States for the purpose of other U.S. income tax conventions. The rules relating to the election provided by U.S. law under Code section 6013(g) (see section 1.6013–6 of the Treasury Regulations) do not apply to the election described in this paragraph.

Definitions: "Canada" — Art. III:1(a), ITCIA 5; "individual" — ITCIA 3, ITA 248(1); "resident" — ITCIA 3, ITA 250; "taxable income" — ITCIA 3, ITA 248(1); "United States" — Art. III:1(b); "United States tax" — Art. III:1(d).

5. Any company which is a resident of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar companies of the first-mentioned State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State, are or may be subjected.

Technical Explanation [1984]:

Paragraph 5 protects against discrimination in a case where the capital of a company which is a resident of one Contracting State is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State. Such a company shall not be subjected in the State of which it is a resident to any taxation or requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which are subjected other similar companies which are residents of that State but whose capital is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State.

Definitions: "company" — Art. III:1(f); "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

6. Notwithstanding the provisions of Article XXIV (Elimination of Double Taxation), the taxation on a permanent establishment which a resident of a Contracting State has in the other Contracting State shall not be less favourably levied in the other State than the taxation levied on residents of the other State carrying on the same activities. This paragraph shall not be construed as obliging a Contracting State:

(a) to grant to a resident of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents; or

(b) to grant to a company which is a resident of the other Contracting State the same tax relief that it provides to a company which is a resident of the first-mentioned State with respect to dividends received by it from a company.

Technical Explanation [1984]:

Paragraph 6 protects against discrimination in the case of a permanent establishment which a resident of one Contracting State has in the other Contracting State. The taxation of such a permanent establishment by the other Contracting State shall not be less favorable than the taxation of residents of that other State carrying on the same activities. The paragraph specifically overrides the provisions of Article XXIV (Elimination of Double Taxation), thus ensuring that permanent establishments will be entitled to relief from double taxation on a basis comparable to the relief afforded to similarly situated residents. Paragraph 6 does not oblige a Contracting State to grant to a resident of the other Contracting State any personal allowances, reliefs, and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents. In addition, paragraph 6 does not require a Contracting State to grant to a company which is a resident of the other Contracting State the same tax relief that it grants to companies which are resident in the first-mentioned State with respect to intercorporate dividends. This provision is merely clarifying in nature, since neither the United States nor Canada would interpret paragraph 6 to provide for granting the same relief in the absence of a specific denial thereof. The principles of paragraph 6 would apply with respect to a fixed base as well as a permanent establishment. Paragraph 6 does not, however, override the provisions of Code section 906.

History: Para. 6 amended by 1983 Protocol, article XII.

Definitions: "company" — Art. III:1(f); "permanent establishment" — Art. V:1; "State" — Art. III:1(i).

7. Except where the provisions of paragraph 1 of Article IX (Related Persons), paragraph 7 of Article XI (Interest) or paragraph 7 of Article XII (Royalties) apply, interest, royalties and other disbursements paid by a resident of a Contracting State to a resident of the other Contracting State shall, for the purposes of determining the taxable profits of the first-mentioned resident, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of a resident of a Contracting State to a resident of the other Contracting State shall, for the purposes of determining the taxable capital of the first-mentioned resident, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

Technical Explanation [1984]:

Paragraph 7 concerns the right of a resident of a Contracting State to claim deductions for purposes of computing taxable profits in the case of disbursements made to a resident of the other Contracting State. Such disbursements shall be deductible under the same conditions as if they had been made to a resident of the first-mentioned State. Thus, this paragraph does not require Canada to permit a deduction to a Canadian trust for disbursements made to a non-resident beneficiary out of income derived from a business in Canada or Canadian real property; granting such a deduction would result in complete exemption by Canada of such income and would put Canadian trusts with non-resident beneficiaries in a better position than if they had resident beneficiaries. These provisions do not apply to amounts to which paragraph 1 of Article IX (Related Persons), paragraph 7 of Article XI (Interest), or paragraph 7 of Article XII (Royalties) apply. Paragraph 7 of Article XXV also provides that, for purposes of determining the taxable capital of a resident of a Contracting State, any debts of such person to a resident of the other Contracting State shall be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State. This portion of paragraph 7 relates to Article XXIII (Capital).

Definitions: "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

8. The provisions of paragraph 7 shall not affect the operation of any provision of the taxation laws of a Contracting State:

(a) relating to the deductibility of interest and which is in force on the date of signature of this Convention (including any subsequent modification of such provisions that does not change the general nature thereof); or

(b) adopted after such date by a Contracting State and which is designed to ensure that a person who is not a resident of that State does not enjoy, under the laws of that State, a tax treatment that is more favorable than that enjoyed by residents of that State.

Technical Explanation [1984]:

Paragraph 8 provides that, notwithstanding the provisions of paragraph 7, a Contracting State may enforce the provisions of its taxation laws relating to the deductibility of interest, in force on September 26, 1980, or as modified subsequent to that date in a manner that does not change the general nature of the provisions in force on September 26, 1980; or which are adopted after September 26, 1980, and are designed to ensure that non-residents do not enjoy a more favorable tax treatment under the taxation laws of that State than that enjoyed by residents. Thus Canada may continue to limit the deductions for interest paid to certain non-residents as provided in section 18(4) of Part I of the *Income Tax Act*.

Related Provisions: ITA 18(4) — Thin capitalization rule.

Definitions: "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1); "resident" — ITCIA 3, ITA 250; "State" — Art. III:1(i).

9. Expenses incurred by a citizen or resident of a Contracting State with respect to any convention (including any seminar, meeting, congress or other function of a similar nature) held in the other Contracting State shall, for the purposes of taxation in the first-mentioned State, be deductible to the same extent that such expenses would be deductible if the convention were held in the first-mentioned State.

Technical Explanation [1984]:

Paragraph 9 provides that expenses incurred by citizens or residents of a Contracting State with respect to any convention, including any seminar, meeting, congress, or other function of similar nature, held in the other Contracting State, are deductible for purposes of taxation in the first-mentioned State to the same extent that such expenses would be deductible if the convention were held in that first-mentioned State. Thus, for U.S. income tax purposes an individual who is a citizen or resident of the United States and who attends a convention held in Canada may claim deductions for expenses incurred in connection with such convention without regard to the provisions of Code section 274(h). Section 274(h) imposes special restrictions on the deductibility of expenses incurred in connection with foreign conventions. A claim for a deduction for such an expense remains subject, in all events, to the provisions of U.S. law with respect to the deductibility of convention expenses generally (e.g., Code sections 162 and 212). Similarly, in the case of a citizen or resident of Canada attending a convention in the United States, paragraph 9 requires Canada to allow a deduction for expenses relating to such convention as if the convention had taken place in Canada.

Definitions: "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

Interpretation Bulletins: IT-131R2: Convention expenses.

10. Notwithstanding the provisions of Article II (Taxes Covered), this Article shall apply to all taxes imposed by a Contracting State.

Technical Explanation [1995 Protocol]:

Paragraph 2 of Article 13 of the Protocol amends paragraph 10 of Article XXV of the Convention to broaden the scope of the non-discrimination protection provided by the Convention. As amended, Article XXV will apply to all taxes imposed by a Contracting State. Under the present Convention, non-discrimination protection is limited in the case of Canadian taxes to taxes imposed under the *Income Tax Act*. As amended by the Protocol, non-discrimination protection will extend, for example, to the Canadian goods and services tax and other Canadian excise taxes.

Technical Explanation [1984]:

Paragraph 10 provides that, notwithstanding the provisions of Article II (Taxes Covered), the provisions of Article XXV apply in the case of Canada to all taxes imposed under the *Income Tax Act*; and, in the case of the United States, to all taxes imposed under the Code. Article XXV does not apply to taxes imposed by political subdivisions or local authorities of Canada or the United States.

Article XXV substantially broadens the protection against discrimination provided by the 1942 Convention, which contains only one provision dealing specifically with this subject. That provision, paragraph 11 of the Protocol to the 1942 Convention, states that citizens of one of the Contracting States residing within the other Contracting State are not to be subjected to the payment of more burdensome taxes than the citizens of the other State.

The benefits of Article XXV may affect the tax liability of a U.S. citizen or resident with respect to the United States. See paragraphs 2 and 3 of Article XXIX (Miscellaneous Rules).

History: Para. 10 amended by 1995 Protocol, article 13(2), generally effective for taxation years beginning on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 10 formerly read:

> 10. Notwithstanding the provisions of Article II (Taxes Covered), this Article shall apply:
>
> (a) in the case of Canada, to all taxes imposed under the *Income Tax Act*; and
>
> (b) in the case of the United States, to all taxes imposed under the *Internal Revenue Code*.

Article XXVI — Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case in writing to the competent authority of the Contracting State of which he is a resident or, if he is a resident of neither Contracting State, of which he is a national.

Technical Explanation [1984]:

Paragraph 1 provides that where a person considers that the actions of one or both of the Contracting States will result in taxation not in accordance with the Convention, he may present his case in writing to the competent authority of the Contracting State of which he is a resident or, if he is a resident of neither Contracting State, of which he is a national. Thus, a resident of Canada must present to the Minister of National Revenue (or his authorized representative) any claim that such resident is being subjected to taxation contrary to the Convention. A person who requests assistance from the competent authority may also avail himself of any remedies available under domestic laws.

Definitions: "competent authority" — Art. III:1(g); "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1); "State" — Art. III:1(i); "writing" — ITCIA 3, *Interpretation Act* 35(1).

2. The competent authority of the Contracting State to which the case has been presented shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Except where the provisions of Article IX (Related Persons) apply, any agreement reached shall be implemented notwithstanding any time or other procedural limitations in the domestic law of the Contracting States, provided that the competent authority of the other Contracting State has received notification that such a case exists within six years from the end of the taxable year to which the case relates.

Technical Explanation [1984]:

Paragraph 2 provides that the competent authority of the Contracting State to which the case is presented shall endeavor to resolve the case by mutual agreement with the competent authority of the other Contracting State, unless he believes that the objection is not justified or he is able to arrive at a satisfactory unilateral solution. Any agreement reached between the competent authorities of Canada and the United States shall be implemented notwithstanding any time or other procedural limitations in the domestic laws of the Contracting States, except where the special mutual agreement provisions of Article IX (Related Persons) apply, provided that the competent authority of the Contracting State asked to waive its domestic time or procedural limitations has received written notification that such a case exists within six years from the end of the taxable year in the first-mentioned State to which the case relates. The notification may be given by the competent authority of the first-mentioned State, the taxpayer who has requested the competent authority to take action, or a person related to the taxpayer. Unlike Article IX, Article XXVI does not require the competent authority of a Contracting State to grant unilateral relief to avoid double taxation in a case where timely notification is not given to the competent authority of the other Contracting State. Such unilateral relief may, however, be granted by the competent authority in its discretion pursuant to the provisions of Article XXVI and in order to achieve the purposes of the Convention. In a case where the provisions of Article IX apply, the provisions of paragraphs 3, 4, and 5 of that Article are controlling with respect to adjustments and corresponding adjustments of income, loss, or tax and the effect of the Convention upon time or procedural limitations of domestic law. Thus, if relief is not available under Article IX because of fraud, the provisions of paragraph 2 or Article XXVI do not independently authorize such relief.

Definitions: "competent authority" — Art. III:1(g).

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any diffi-

culties or doubts arising as to the interpretation or application of the Convention. In particular, the competent authorities of the Contracting States may agree:

(a) to the same attribution of profits to a resident of a Contracting State and its permanent establishment situated in the other Contracting State;

(b) to the same allocation of income, deductions, credits or allowances between persons;

(c) to the same determination of the source, and the same characterization, of particular items of income;

(d) to a common meaning of any term used in the Convention;

(e) to the elimination of double taxation with respect to income distributed by an estate or trust;

(f) to the elimination of double taxation with respect to a partnership;

(g) to provide relief from double taxation resulting from the application of the estate tax imposed by the United States or the Canadian tax as a result of a distribution or disposition of property by a trust that is a qualified domestic trust within the meaning of section 2056A of the *Internal Revenue Code*, or is described in subsection 70(6) of the *Income Tax Act* or is treated as such under paragraph 5 of Article XXIX-B (Taxes Imposed by Reason of Death), in cases where no relief is otherwise available; or

(h) to increases in any dollar amounts referred to in the Convention to reflect monetary or economic developments.

They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

Technical Explanation [1995 Protocol]:

Article 14 of the Protocol makes two changes to Article XXVI (Mutual Agreement Procedure) of the Convention. First, it adds a new subparagraph 3(g) specifically authorizing the competent authorities to provide relief from double taxation in certain cases involving the distribution or disposition of property by a U.S. qualified domestic trust or a Canadian spousal trust, where relief is not otherwise available.

Technical Explanation [1984]:

Paragraph 3 provides that the competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. In particular, the competent authorities may agree to the same attribution of profits to a resident of a Contracting State and its permanent establishment in the other Contracting State; the same allocation of income, deductions, credits, or allowances between persons; the same determination of the source of income; the same characterization of particular items of income; a common meaning of any term used in the Convention; rules, guidelines, or procedures for the elimination of double taxation with respect to income distributed by an estate or trust, or with respect to a partnership; or to increase any dollar amounts referred to in the Convention to reflect monetary or economic developments. The competent authorities may also consult and reach agreements on rules, guidelines, or procedures for the elimination of double taxation in cases not provided for in the Convention.

The list of subjects of potential mutual agreement in paragraph 3 is not exhaustive; it merely illustrates the principles set forth in the paragraph. As in the case of other U.S. tax conventions, agreement can be arrived at in the context of determining the tax liability of a specific person or in establishing rules, guidelines, and procedures that will apply generally under the Convention to resolve issues for classes of taxpayers. It is contemplated that paragraph 3 could be utilized by the competent authorities, for example, to resolve conflicts between the domestic laws of Canada and the United States with respect to the allocation and apportionment of deductions.

Related Provisions: Art. II:2(b)(iv) — Application to U.S. estate taxes.

History: Subpara. 3(g) renumbered as 3(h) and subpara. (g) added by 1995 Protocol, article 14(1), generally effective for taxation years beginning on or after January 1, 1997 (see Art. 21(2) under "Application of the 1995 Protocol" above).

Definitions: "Canadian tax" — Art. III:1(c); "competent authority" — Art. III:1(g); "estate" — ITCIA 3, ITA 248(1); "permanent establishment" — Art. V:1; "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1); "property" — ITCIA 3, ITA 248(1); "qualified domestic trust" — *Internal Revenue Code* s. 2056A(a); "resident of a Contracting State" — Art. IV:1; "trust" — ITCIA 3, ITA 248(1); "United States" — Art. III:1(b).

4. Each of the Contracting States will endeavor to collect on behalf of the other Contracting State such amounts as may be necessary to ensure that relief granted by the Convention from taxation imposed by that other State does not enure to the benefit of persons not entitled thereto. However, nothing in this paragraph shall be construed as imposing on either of the Contracting States the obligation to carry out administrative measures of a different nature from those used in the collection of its own tax or which would be contrary to its public policy (ordre public).

Technical Explanation [1984]:

Paragraph 4 provides that each Contracting State will endeavor to collect on behalf of the other State such amounts as may be necessary to ensure that relief granted by the Convention from taxation imposed by the other State does not enure to the benefit of persons not entitled to such relief. Paragraph 4 does not oblige either Contracting State to carry out administrative measures of a different nature from those that would be used by Canada or the United States in the collection of its own tax or which would be contrary to its public policy.

Definitions: "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1); "State" — Art. III:1(i).

5. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Technical Explanation [1984]:

Paragraph 5 confirms that the competent authorities of Canada and the United States may communicate with each other directly for the purpose of reaching agreement in the sense of paragraphs 1 through 4.

Definitions: "competent authority" — Art. III:1(g).

6. If any difficulty or doubt arising as to the interpretation or application of the Convention cannot be resolved by the competent authorities pursuant to the preceding paragraphs of this Article, the case may, if both competent authorities and the taxpayer agree, be submitted for arbitration, provided that the taxpayer agrees in writing to be bound by the decision of the arbitration board. The decision of the arbitration board in a particular case shall be binding on both States with respect to that case. The procedures shall be established in an exchange of notes between the Contracting States. The provisions of this paragraph shall have effect after the Contracting States have so agreed through the exchange of notes.

Technical Explanation [1995 Protocol]:

Article 14 also adds a new paragraph 6 to Article XXVI (Mutual Agreement Procedure). Paragraph 6 provides for a voluntary arbitration procedure, to be implemented only upon the exchange of diplomatic notes between the United States and Canada. Similar provisions are found in the recent U.S. treaties with the Federal Republic of Germany, the Netherlands, and Mexico. Paragraph 6 provides that where the competent authorities have been unable, pursuant to the other provisions of Article XXVI, to resolve a disagreement regarding the interpretation or application of the Convention, the disagreement may, with the consent of the taxpayer and both competent authorities, be submitted for arbitration, provided the taxpayer agrees in writing to be bound by the decision of the arbitration board. Nothing in the provision requires that any case be submitted for arbitration. However, if a case is submitted to an arbitration board, the

board's decision in that case will be binding on both Contracting States and on the taxpayer with respect to that case.

The United States was reluctant to implement an arbitration procedure until there has been an opportunity to evaluate the process in practice under other agreements that allow for arbitration, particularly the U.S.-Germany Convention. It was agreed, therefore, as specified in paragraph 6, that the provisions of the Convention calling for an arbitration procedure will not take effect until the two Contracting States have agreed through an exchange of diplomatic notes to do so. This is similar to the approach taken with the Netherlands and Mexico. Paragraph 6 also provides that the procedures to be followed in applying arbitration will be agreed through an exchange of notes by the Contracting States. It is expected that such procedures will ensure that arbitration will not generally be available where matters of either State's tax policy or domestic law are involved.

Paragraph 2 of Article 20 of the Protocol provides that the appropriate authorities of the Contracting State will consult after three years following entry into force of the Protocol to determine whether the diplomatic notes implementing the arbitration procedure should be exchanged.

Related Provisions: ITA 115.1 — Competent authority agreements.

History: Para. 6 added by 1995 Protocol, article 14(2), generally effective for taxation years beginning on or after January 1, 1996 (see article 21(2) reproduced under "Application of the Provisions of the Protocol" above).

Definitions: "competent authority" — Art. III:1(g); "State" — Art. III:1(i); "taxpayer" — ITCIA 3, ITA 248(1); "writing" — ITCIA 3, *Interpretation Act* 35(1).

Information Circulars: 71-17R5: Guidance on competent authority assistance under Canada's tax conventions.

Article XXVI-A — Assistance in Collection

1. The Contracting States undertake to lend assistance to each other in the collection of taxes referred to in paragraph 9, together with interest, costs, additions to such taxes and civil penalties, referred to in this Article as a **"revenue claim"**.

Technical Explanation [1995 Protocol]:

Article 15 of the Protocol adds to the Convention a new Article XXVI A (Assistance in Collection). Collection assistance provisions are included in several other U.S. income tax treaties, including the recent treaty with the Netherlands, and in many U.S. estate tax treaties. U.S. negotiators initially raised with Canada the possibility of including collection assistance provisions in the Protocol, because the Internal Revenue Service has claims pending against persons in Canada that would be subject to collection under these provisions. However, the ultimate decision of the U.S. and Canadian negotiators to add the collection assistance article was attributable to the confluence of several unusual factors.

Of critical importance was the similarity between the laws of the United States and Canada. The Internal Revenue Service, the Justice Department, and other U.S. negotiators were reassured by the close similarity of the legal and procedural protections afforded by the Contracting States to their citizens and residents and by the fact that these protections apply to the tax collection procedures used by each State. In addition, the U.S. negotiators were confident, given their extensive experience in working with their Canadian counterparts, that the agreed procedures could be administered appropriately, effectively, and efficiently. Finally, given the close cooperation already developed between the United States and Canada in the exchange of tax information, the U.S. and Canadian negotiators concluded that the potential benefits to both countries of obtaining such assistance would be immediate and substantial and would far outweigh any cost involved.

Under paragraph 1 of Article XXVI A, each Contracting State agrees, subject to the exercise of its discretion and to the conditions explicitly provided later in the Article, to lend assistance and support to the other in the collection of revenue claims. The term "revenue claim" is defined in paragraph 1 to include all taxes referred to in paragraph 9 of the Article, as well as interest, costs, additions to such taxes, and civil penalties. Paragraph 9 provides that, notwithstanding the provisions of Article II (Taxes Covered) of the Convention, Article XXVI A shall apply to all categories of taxes collected by or on behalf of the Government of a Contracting State.

2. An application for assistance in the collection of a revenue claim shall include a certification by the competent authority of the applicant State that, under the laws of that State, the revenue claim has been finally determined. For the purposes of this Article, a revenue claim is finally determined when the applicant State has the right under its internal law to collect the revenue claim and all administrative and judicial rights of the taxpayer to restrain collection in the applicant State have lapsed or been exhausted.

Technical Explanation [1995 Protocol]:

Paragraph 2 of the Article requires the Contracting State applying for collection assistance (the "applicant State") to certify that the revenue claim for which collection assistance is sought has been "finally determined." A revenue claim has been finally determined when the applicant State has the right under its internal law to collect the revenue claim and all administrative and judicial rights of the taxpayer to restrain collection in the applicant State have lapsed or been exhausted.

Definitions: "competent authority" — Art. III:1(g); "revenue claim" — Art. XXVI-A:1; "State" — Art. III:1(i); "taxpayer" — ITCIA 3, ITA 248(1).

3. A revenue claim of the applicant State that has been finally determined may be accepted for collection by the competent authority of the requested State and, subject to the provisions of paragraph 7, if accepted shall be collected by the requested State as though such revenue claim were the requested State's own revenue claim finally determined in accordance with the laws applicable to the collection of the requested State's own taxes.

Technical Explanation [1995 Protocol]:

Paragraph 3 of the Article clarifies that the Contracting State from which assistance was requested (the "requested State") has discretion as to whether to accept a particular application for collection assistance. However, if the application for assistance is accepted, paragraph 3 requires that the requested State grant assistance under its existing procedures as though the claim were the requested State's own revenue claim finally determined under the laws of that State. This obligation under paragraph 3 is limited by paragraph 7 of the Article, which provides that, although generally treated as a revenue claim of the requested State, a claim for which collection assistance is granted shall not have any priority accorded to the revenue claims of the requested State.

Definitions: "competent authority" — Art. III:1(g); "revenue claim" — Art. XXVI-A:1; "State" — Art. III:1(i).

4. Where an application for collection of a revenue claim in respect of a taxpayer is accepted

(a) by the United States, the revenue claim shall be treated by the United States as an assessment under United States laws against the taxpayer as of the time the application is received; and

(b) by Canada, the revenue claim shall be treated by Canada as an amount payable under the *Income Tax Act*, the collection of which is not subject to any restriction.

Technical Explanation [1995 Protocol]:

Paragraph 4 of Article XXVI A provides that, when the United States accepts a request for assistance in collection, the claim will be treated by the United States as an assessment as of the time the application was received. Similarly, when Canada accepts a request, a revenue claim shall be treated as an amount payable under the *Income Tax Act*, the collection of which is not subject to any restriction.

Definitions: "assessment" — ITCIA 3, ITA 248(1); "Canada" — Art. III:1(a), ITCIA 5; "revenue claim" — Art. XXVI-A:1; "taxpayer" — ITCIA 3, ITA 248(1); "United States" — Art. III:1(b).

5. Nothing in this Article shall be construed as creating or providing any rights of administrative or judicial review of the applicant State's finally determined revenue claim by the requested State, based on any such rights that may be available under the laws of either Contracting State. If, at any time pending execution of a request for assistance

under this Article, the applicant State loses the right under its internal law to collect the revenue claim, the competent authority of the applicant State shall promptly withdraw the request for assistance in collection.

Technical Explanation [1995 Protocol]:

Paragraph 5 of the Article provides that nothing in Article XXVI A shall be construed as creating in the requested State any rights of administrative or judicial review of the applicant State's finally determined revenue claim. Thus, when an application for collection assistance has been accepted, the substantive validity of the applicant State's revenue claim cannot be challenged in an action in the requested State. Paragraph 5 furthers provides, however, that if the applicant State's revenue claim ceases to be finally determined, the applicant State is obligated to withdraw promptly any request that had been based on that claim.

Definitions: "competent authority" — Art. III:1(g); "revenue claim" — Art. XXVI-A:1; "State" — Art. III:1(i).

6. Subject to this paragraph, amounts collected by the requested State pursuant to this Article shall be forwarded to the competent authority of the applicant State. Unless the competent authorities of the Contracting States otherwise agree, the ordinary costs incurred in providing collection assistance shall be borne by the requested State and any extraordinary costs so incurred shall be borne by the applicant State.

Technical Explanation [1995 Protocol]:

Paragraph 6 provides that, as a general rule, the requested State is to forward the entire amount collected to the competent authority of the applicant State. The ordinary costs incurred in providing collection assistance will normally be borne by the requested State and only extraordinary costs will be borne by the applicant State. The application of this paragraph, including rules specifying which collection costs are to be borne by each State and the time and manner of payment of the amounts collected, will be agreed upon by the competent authorities, as provided for in paragraph 11.

Definitions: "competent authority" — Art. III:1(g); "State" — Art. III:1(i).

7. A revenue claim of an applicant State accepted for collection shall not have in the requested State any priority accorded to the revenue claims of the requested State.

Definitions: "revenue claim" — Art. XXVI-A:1; "State" — Art. III:1(i).

8. No assistance shall be provided under this Article for a revenue claim in respect of a taxpayer to the extent that the taxpayer can demonstrate that

(a) where the taxpayer is an individual, the revenue claim relates to a taxable period in which the taxpayer was a citizen of the requested State, and

(b) where the taxpayer is an entity that is a company, estate or trust, the revenue claim relates to a taxable period in which the taxpayer derived its status as such an entity from the laws in force in the requested State.

Technical Explanation [1995 Protocol]:

Paragraph 8 provides that no assistance is to be given under this Article for a claim in respect of an individual taxpayer, to the extent that the taxpayer can demonstrate that he was a citizen of the requested State during the taxable period to which the revenue claim relates. Similarly, in the case of a company, estate, or trust, no assistance is to be given to the extent that the entity can demonstrate that it derived its status as such under the laws in force in the requested State during the taxable period to which the claim relates.

Definitions: "company" — Art. III:1(f); "estate", "individual" — ITCIA 3, ITA 248(1); "revenue claim" — Art. XXVI-A:1; "State" — Art. III:1(i); "taxpayer", "trust" — ITCIA 3, ITA 248(1).

9. Notwithstanding the provisions of Article II (Taxes Covered), the provisions of this Article shall apply to all categories of taxes collected by or on behalf of the Government of a Contracting State.

10. Nothing in this Article shall be construed as:

(a) limiting the assistance provided for in paragraph 4 of Article XXVI (Mutual Agreement Procedure); or

(b) imposing on either Contracting State the obligation to carry out administrative measures of a different nature from those used in the collection of its own taxes or that would be contrary to its public policy (ordre public).

Technical Explanation [1995 Protocol]:

Subparagraph (a) of paragraph 10 clarifies that Article XXVI A supplements the provisions of paragraph 4 of Article XXVI (Mutual Agreement Procedure). The Mutual Agreement Procedure paragraph, which is more common in U.S. tax treaties, provides for collection assistance in cases in which a Contracting State seeks assistance in reclaiming treaty benefits that have been granted to a person that is not entitled to those benefits. Subparagraph (b) of paragraph 10 makes clear that nothing in Article XXVI A can require a Contracting State to carry out administrative measures of a different nature from those used in the collection of its own taxes, or that would be contrary to its public policy (ordre public).

11. The competent authorities of the Contracting States shall agree upon the mode of application of this Article, including agreement to ensure comparable levels of assistance to each of the Contracting States.

Technical Explanation [1995 Protocol]:

Paragraph 11 requires the competent authorities to agree upon the mode of application of Article XXVI A, including agreement to ensure comparable levels of assistance to each of the Contracting States.

Paragraph 3 of Article 21 of the Protocol allows collection assistance under Article XXVI A to be sought for revenue claims that have been finally determined at any time within the 10 years preceding the date on which the Protocol enters into force.

Definitions: "competent authority" — Art. III:1(g).

History [Art. XXVI-A]: Art. XXVI-A added by 1995 Protocol, article 15, effective for revenue claims finally determined after November 9, 1985 (see Art. 21(3) under "Application of the 1995 Protocol" above).

Selected Cases [Art. XXVI-A]: *Sherman v. MNR*, [2002] 3 C.T.C. 349 (FCTD) (Access to information denied where providing government did not want disclosure and relations between governments might be jeopardized; rev'd 2003 CarswellNat 1156 (FCA)).

Article XXVII — Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is relevant for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes to which the Convention applies insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article I (Personal Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the taxation laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the administration and enforcement in respect of, or the determination of appeals in relation to the taxes to which the Convention applies or, notwithstanding paragraph 4, in relation to taxes imposed by a political subdivision or local authority of a Contracting State that are substantially similar to the taxes covered by the Convention under Article II (Taxes Covered). Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The competent authorities may release to an arbitration board established pursuant to paragraph 6 of Article XXVI (Mutual Agreement Procedure) such information as is necessary for carrying out the arbitration

procedure; the members of the arbitration board shall be subject to the limitations on disclosure described in this Article.

Technical Explanation [1995 Protocol]:

Article 16 of the Protocol amends Article XXVII (Exchange of Information) of the Convention. Paragraph 1 of Article 16 amends paragraph 1 of Article XXVII. The first change is a wording change to make it clear that information must be exchanged if it is "relevant" for carrying out the provisions of the Convention or of the domestic laws of the Contracting States, even if it is not "necessary." Neither the United States nor Canada views this as a substantive change. The second amendment merely conforms the language of the paragraph to the language of Article II (Taxes Covered), as amended, by referring to the taxes "to which the Convention applies" rather than to the taxes "covered by the Convention."

The Protocol further amends paragraph 1 to allow a Contracting State to provide information received from the other Contracting State to its states, provinces, or local authorities, if it relates to a tax imposed by that state, province, or local authority that is substantially similar to a national-level tax covered under Article II (Taxes Covered). However, this provision does not authorize a Contracting State to request information on behalf of a state, province, or local authority. The Protocol also amends paragraph 1 to authorize the competent authorities to release information to any arbitration panel that may be established under the provisions of new paragraph 6 of Article XXVI (Mutual Agreement Procedure). Any information provided to a state, province, or local authority or to an arbitration panel is subject to the same use and disclosure provisions as is information received by the national Governments and used for their purposes.

Technical Explanation [1984]:

Paragraph 1 authorizes the competent authorities to exchange the information necessary for carrying out the provisions of the Convention or the domestic laws of Canada and the United States concerning taxes covered by the Convention, insofar as the taxation under those domestic laws is not contrary to the Convention. The authority to exchange information granted by paragraph 1 is not restricted by Article I (Personal Scope), and thus need not relate solely to persons otherwise covered by the Convention. It is contemplated that Article XXVII will be utilized by the competent authorities to exchange information upon request, routinely, and spontaneously.

Any information received by a Contracting State pursuant to the Convention is to be treated as secret in the same manner as information obtained under the taxation laws of that State. Such information shall be disclosed only to persons or authorities, including courts and administrative bodies, involved in the assessment or collection of, the administration and enforcement in respect of, or the determination of appeals in relation to, the taxes covered by the Convention and the information may be used by such persons only for such purposes. (In accordance with paragraph 4, for the purposes of this Article the Convention applies to a broader range of taxes than those covered specifically by Article II (Taxes Covered).)

In specific cases a competent authority providing information may, pursuant to paragraph 3, impose such other conditions on the use of information as are necessary. Although the information received by persons described in paragraph 1 is to be treated as secret, it may be disclosed by such persons in public court proceedings or in judicial decisions.

The provisions of paragraph 1 authorize the U.S. competent authority to continue to allow the General Accounting Office to examine tax return information received from Canada when GAO is engaged in a study of the administration of U.S. tax laws pursuant to a directive of Congress. However, the secrecy requirements of paragraph 1 must be met.

Related Provisions: Reg. 203 — Information return where person in Canada receives income from source in the U.S. on behalf of a person outside Canada.

History: Para. 1 amended by 1995 Protocol, article 16(1), generally effective with respect to taxable years begining on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 1 formerly read:

> 1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article I (Personal Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the taxation laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the administration and enforcement in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

Definitions: "assessment" — ITCIA 3, ITA 248(1); "competent authority" — Art. III:1(g); "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1); "State" — Art. III:1(i).

2. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall endeavor to obtain the information to which the request relates in the same way as if its own taxation was involved notwithstanding the fact that the other State does not, at that time, need such information. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall endeavor to provide information under this Article in the form requested, such as depositions of witnesses and copies of unedited original documents (including books, papers, statements, records, accounts or writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of that other State with respect to its own taxes.

Technical Explanation [1984]:

If a Contracting State requests information in accordance with Article XXVII, the other Contracting State shall endeavor, pursuant to paragraph 2, to obtain the information to which the request relates in the same manner as if its own taxation were involved, notwithstanding the fact that such State does not need the information. In addition, the competent authority requested to obtain information shall endeavor to provide the information in the particular form requested, such as depositions of witnesses and copies of unedited original documents, to the same extent such depositions and documents can be obtained under the laws or administrative practices of that State with respect to its own taxes.

Definitions: "competent authority" — Art. III:1(g); "State" — Art. III:1(i).

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State; or

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

Technical Explanation [1984]:

Paragraph 3 provides that the provisions of paragraphs 1 and 2 do not impose on Canada or the United States the obligation to carry out administrative measures at variance with the laws and administrative practice of either State; to supply information which is not obtainable under the laws or in the normal course of the administration of either State; or to supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information the disclosure of which would be contrary to public policy. Thus, Article XXVII allows, but does not obligate, the United States and Canada to obtain and provide information that would not be available to the requesting State under its laws or administrative practice or that in different circumstances would not be available to the State requested to provide the information. Further, Article XXVII allows a Contracting State to obtain information for the other Contracting State even if there is no tax liability in the State requested to obtain the information. Thus, the United States will continue to be able to give Canada tax information even if there is no U.S. tax liability at issue.

4. For the purposes of this Article, the Convention shall apply, notwithstanding the provisions of Article II (Taxes Covered):

(a) to all taxes imposed by a Contracting State; and

(b) to other taxes to which any other provision of the Convention applies, but only to the extent that the information is relevant for the purposes of the application of that provision.

Technical Explanation [1995 Protocol]:

Paragraph 2 of Article 16 amends paragraph 4 of Article XXVII, which describes the applicable taxes for the purposes of this Article. Under the present Convention, the Article applies in Canada to taxes imposed by the Government of Canada under the *Income Tax Act* and on estates and gifts and in the United States to all taxes imposed under the *Internal Revenue Code*. The Protocol broadens the scope of the Article to apply to "all taxes imposed by a Contracting State". This change allows information to be exchanged, for example, with respect to Canadian excise taxes, as is the case with respect to U.S. excise taxes under the present Convention. Paragraph 4 is also amended to authorize the exchange of information with respect to other taxes, to the extent relevant to any other provision of the Convention.

Technical Explanation [1984]:

Paragraph 4 provides that, for the purposes of Article XXVII, the Convention applies, in the case of Canada, to all taxes imposed by the Government of Canada on estates and gifts and under the *Income Tax Act* and, in the case of the United States, to all taxes imposed under the *Internal Revenue Code*. Article XXVII does not apply to taxes imposed by political subdivisions or local authorities of the Contracting States. Paragraph 4 is designed to ensure that information exchange will extend to most national level taxes on both sides, and specifically to information gathered for purposes of Canada's taxes on estates and gifts (not effective for deaths or gifts after 1971). This provision is intended to mesh with paragraph 8 of Article XXX (Entry Into Force), which terminates the existing estate tax convention between the United States and Canada.

History: Para. 4 amended by 1995 Protocol, article 16(2), generally effective with respect to taxable years begining on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 4 formerly read:

> 4. Notwithstanding the provisions of Article II (Taxes Covered), for the purposes of this Article the Convention shall apply:
>
> (a) in the case of Canada, to all taxes imposed by the Government of Canada on estates and gifts and under the *Income Tax Act*; and
>
> (b) in the case of the United States, to all taxes imposed under the *Internal Revenue Code*.

Article XXVIII — Diplomatic Agents and Consular Officers

Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

Technical Explanation [1984]:

Article XXVIII states that nothing in the Convention affects the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements. However, various provisions of the Convention could apply to such persons, such as those concerning exchange of information, mutual agreement, and non-discrimination.

Related Provisions: Art. XIX — Government service.

Definitions: "diplomatic agents or consular officers" — ITCIA 3, *Interpretation Act* 35(1)"diplomatic or consular officer".

Article XXIX — Miscellaneous Rules

1. The provisions of this Convention shall not restrict in any manner any exclusion, exemption, deduction, credit or other allowance now or hereafter accorded by the laws of a Contracting State in the determination of the tax imposed by that State.

Technical Explanation [1984]:

Paragraph 1 states that the provisions of the Convention do not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance accorded by the laws of a Contracting State in the determination of the tax imposed by that State. Thus, if a deduction would be allowed for an item in computing the taxable income of a Canadian resident under the Code, such deduction is available to such person in computing taxable income under the Convention. Paragraph 1 does not, however, authorize a taxpayer to make inconsistent choices between rules of the Code and rules of the Convention. For example, if a resident of Canada desires to claim the benefits of the "attributable to" rule of paragraphs 1 and 7 of Article VII (Business Profits) with respect to the taxation of business profits of a permanent establishment, such person must use the "attributable to" concept consistently for all items of income and deductions and may not rely upon the "effectively connected" rules of the Code to avoid U.S. tax on other items of attributable income. In no event are the rules of the Convention to increase overall U.S. tax liability from what liability would be if there were no convention.

Definitions: "State" — Art. III:1(i).

2. Except as provided in paragraph 3, nothing in the Convention shall be construed as preventing a Contracting State from taxing its residents (as determined under Article IV (Residence)) and, in the case of the United States, its citizens (including a former citizen whose loss of citizenship had as one of its principal purposes the avoidance of tax, but only for a period of ten years following such loss) and companies electing to be treated as domestic corporations, as if there were no convention between the United States and Canada with respect to taxes on income and on capital.

Technical Explanation [1984]:

Paragraph 2 provides a "saving clause" pursuant to which Canada and the United States may each tax its residents, as determined under Article IV (Residence), and the United States may tax its citizens (including any former citizen whose loss of citizenship had as one of its principal purposes the avoidance of tax, but only for a period of 10 years following such loss) and companies electing under Code section 1504(d) to be treated as domestic corporations, as if there were no convention between the United States and Canada with respect to taxes on income and capital.

History: Para. 2 amended by 1983 Protocol, article XIII, para. 1.

Definitions: "Canada" — Art. III:1(a), ITCIA 5; "company" — Art. III:1(f); "resident" — ITCIA 3, ITA 250; "United States" — Art. III:1(b).

3. The provisions of paragraph 2 shall not affect the obligations undertaken by a Contracting State:

(a) under paragraphs 3 and 4 of Article IX (Related Persons), paragraphs 6 and 7 of Article XIII (Gains), paragraphs 1, 3, 4, 5, 6(b) and 7 of Article XVIII (Pensions and Annuities), paragraph 5 of Article XXIX (Miscellaneous Rules), paragraphs 1, 5 and 6 of Article XXIX-B (Taxes Imposed by Reason of Death), paragraphs 2, 3, 4 and 7 of Article XXIX-B (Taxes Imposed by Reason of Death) as applied to the estates of persons other than former citizens referred to in paragraph 2 of this Article, paragraphs 3 and 5 of Article XXX (Entry into Force), and Articles XIX (Government Service), XXI (Exempt Organizations), XXIV (Elimination of Double Taxation), XXV (Non-Discrimination) and XXVI (Mutual Agreement Procedure);

(b) under Article XX (Students), toward individuals who are neither citizens of, nor have immigrant status in, that State.

Technical Explanation [1995 Protocol]:

Article 17 of the Protocol amends Article XXIX (Miscellaneous Rules) of the Convention. Paragraph 1 of Article 17 modifies paragraph 3(a), the exceptions to the saving clause, to conform the cross-references in the paragraph to changes in other parts of the Convention. The paragraph also adds to the exceptions to the saving clause certain provisions of Article XXIX B (Taxes Imposed by Reason of Death). Thus, certain benefits

under that Article will be granted by a Contracting State to its residents and, in the case of the United States, to its citizens, notwithstanding the saving clause of paragraph 2 of Article XXIX.

Technical Explanation [1984]:

Paragraph 3 provides that, notwithstanding paragraph 2, the United States and Canada must respect certain specified provisions of the Convention in regard to residents, citizens, and section 1504(d) companies. Paragraph 3(a) lists certain paragraphs and Articles of the Convention that represent exceptions to the "saving clause" in all situations; paragraph 3(b) provides a limited further exception for students who have not acquired immigrant status in the State where they are temporarily present.

History: Subpara. 3(a) amended by 1995 Protocol, article 17(1), generally effective with respect to taxable years begining on or after January 1, 1996 (see Art. 21(2) and (4) under "Application of the 1995 Protocol" above). Subpara. 3(a) formerly read:

> (a) under paragraphs 3 and 4 of Article IX (Related Persons), paragraphs 6 and 7 of Article XIII (Gains), paragraphs 1, 3, 4, 5(b) and 6(b) of Article XVIII (Pensions and Annuities), paragraphs 5 and 7 of Article XXIX (Miscellaneous Rules), paragraphs 3 and 5 of Article XXX (Entry into Force), and Articles XIX (Government Service), XXI (Exempt Organizations), XXIV (Elimination of Double Taxation), XXV (Non-Discrimination) and XXVI (Mutual Agreement Procedure); and

Subpara. 3(a), as amended by 1983 Protocol, article XIII, para. 2, was replaced by 1984 Protocol, article II, para. 1.

Definitions: "individual" — ITCIA 3, ITA 248(1); "State" — Art. III:1(i).

4. With respect to taxable years not barred by the statute of limitations ending on or before December 31 of the year before the year in which the Social Security Agreement between Canada and the United States (signed in Ottawa on March 11, 1981) enters into force, income from personal services not subject to tax by the United States under this Convention or the 1942 Convention shall not be considered wages or net earnings from self-employment for purposes of social security taxes imposed under the *Internal Revenue Code*.

Technical Explanation [1984]:

Paragraph 4 provides relief with respect to social security taxes imposed on employers, employees, and self-employed persons under Code sections 1401, 3101, and 3111. Income from personal services not subject to tax by the United States under the provisions of this Convention or the 1942 Convention is not to be considered wages or net earnings from self-employment for purposes of the U.S. social security taxes with respect to taxable years of the taxpayer not barred by the statute of limitations relating to refunds (under the Code) ending on or before December 31 of the year before the year in which the Social Security Agreement between Canada and the United States (signed in Ottawa on March 11, 1981) enters into force. Thus, if that agreement enters into force in 1986, a resident of Canada earning income from personal services and such person's employer may apply for refunds of the employee's and employer's shares of U.S. social security tax paid attributable to the employee's income from personal services that is exempt from U.S. tax by virtue of this Convention or the 1942 Convention. In this example, the refunds would be available for social security taxes paid with respect to taxable years not barred by the statute of limitations of the Code ending on or before December 31, 1985. For purposes of Code section 6611, the date of overpayment with respect to refunds of U.S. tax pursuant to paragraph 4 is the later of the date on which the Social Security Agreement between Canada and the United States enters into force and the date on which instruments of ratification of the Convention are exchanged.

Under certain limited circumstances, an employee may, pursuant to paragraph 5 of Article XXX (Entry Into Force), claim an exemption from U.S. tax on wages under the 1942 Convention for one year after the Convention comes into force. The provisions of paragraph 4 would not, however, provide an exemption from U.S. social security taxes for such year.

Paragraph 4 does not modify existing U.S. statutes concerning social security benefits or funding. The *Social Security Act* requires the general funds of the Treasury to reimburse the social security trust funds on the basis of the records of wages and self-employment income maintained by the Social Security Administration. The Convention does not alter those records. Thus, any refunds of tax made pursuant to paragraph 4 would not affect claims for U.S. quarters of coverage with respect to social security benefits. And such refunds would be charged to general revenue funds, not social security trust funds.

History: Para. 4 amended by 1983 Protocol, article XIII, para. 3.

Definitions: "Canada" — Art. III:1(a), ITCIA 5; "the 1942 Convention" — Art. III:1(j); "United States" — Art. III:1(b).

5. Where a person who is a resident of Canada and a shareholder of a United States S corporation requests the competent authority of Canada to do so, the competent authority may agree, subject to terms and conditions satisfactory to such competent authority, to apply the following rules for the purposes of taxation in Canada with respect to the period during which the agreement is effective:

(a) the corporation shall be deemed to be a controlled foreign affiliate of the person;

(b) all the income of the corporation shall be deemed to be foreign accrual property income;

(c) for the purposes of subsection 20(11) of the *Income Tax Act*, the amount of the corporation's income that is included in the person's income shall be deemed not to be income from a property; and

(d) each dividend paid to the person on a share of the capital stock of the corporation shall be excluded from the person's income and shall be deducted in computing the adjusted cost base to the person of the share.

Technical Explanation [1995 Protocol]:

Paragraph 2 of Article 17 replaces paragraphs 5 through 7 of Article XXIX of the present Convention with three new paragraphs. (Paragraph 5 in the present Convention was moved to paragraph 7 of Article XVIII (Pensions and Annuities), and paragraphs 6 and 7 were deleted as unnecessary.) New paragraph 5 provides a rule for the taxation by Canada of a Canadian resident that is a shareholder in a U.S. S corporation. The application of this rule is relatively limited, because U.S. domestic law requires that S corporation shareholders be either U.S. citizens or U.S. residents. Therefore, the rule provided by paragraph 5 would apply only to an S corporation shareholder who is a resident of both the United States and Canada (i.e., a "dual resident" who meets certain requirements), determined before application of the "tie-breaker" rules of Article IV (Residence), or a U.S. citizen resident in Canada. Since the shareholder would be subject to U.S. tax on its share of the income of the S corporation as it is earned by the S corporation and, under Canadian statutory law, would be subject to tax only when the income is distributed, there could be a timing mismatch resulting in unrelieved double taxation. Under paragraph 5, the shareholder can make a request to the Canadian competent authority for relief under the special rules of the paragraph. Under these rules, the Canadian shareholder will be subject to Canadian tax on essentially the same basis as he is subject to U.S. tax, thus eliminating the timing mismatch.

Technical Explanation [1984]:

Paragraph 5 provides a method to resolve conflicts between the Canadian and U.S. treatment of individual retirement accounts. Certain Canadian retirement plans which are qualified plans for Canadian tax purposes do not meet Code requirements for qualification. As a result, the earnings of such a plan are currently included in income, for U.S. tax purposes, rather than being deferred until actual distributions are made by the plan. Canada defers current taxes on the earnings of such a plan but imposes tax on actual distributions from the plan. Paragraph 5 is designed to avoid a mismatch of U.S. taxable income and foreign tax credits attributable to the Canadian tax on such distributions. Under the paragraph a beneficiary of a Canadian registered retirement savings plan may elect to defer U.S. taxation with respect to any income accrued in the plan but not distributed by the plan, until such time as a distribution is made from the plan or any substitute plan. The election is to be made under rules established by the competent authority of the United States. The election is not available with respect to income accrued in the plan which is reasonably attributable to contributions made to the plan by the beneficiary while he was not a Canadian resident.

History: Para. 5 amended by 1995 Protocol, article 17(2), generally effective with respect to taxable years begining on or after January 1, 1996 (see

Art. 21(2) under "Application of the 1995 Protocol" above). Para. 5 formerly read:

> 5. A beneficiary of a Canadian registered retirement savings plan may elect, under rules established by the competent authority of the United States, to defer United States taxation with respect to any income accrued in the plan but not distributed by the plan, until such time as a distribution is made from such plan, or any plan substituted therefor. The provisions of the preceding sentence shall not apply to income which is reasonably attributable to contributions made to the plan by the beneficiary while he was not a resident of Canada.

Para. 5 amended by 1983 Protocol, article XIII, para. 4.

Definitions: "adjusted cost base" — ITCIA 3, ITA 248(1); "Canada" — Art. III:1(a), ITCIA 5; "corporation", "dividend", "foreign affiliate" — ITCIA 3, ITA 248(1); "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1); "share" — ITCIA 3, ITA 248(1); "United States" — Art. III:1(b).

6. For purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that:

(a) a measure falls within the scope of the Convention only if:

(i) the measure relates to a tax to which Article XXV (Non-Discrimination) of the Convention applies; or

(ii) the measure relates to a tax to which Article XXV (Non-Discrimination) of the Convention does not apply and to which any other provision of the Convention applies, but only to the extent that the measure relates to a matter dealt with in that other provision of the Convention; and

(b) notwithstanding paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, any doubt as to the interpretation of subparagraph (a) will be resolved under paragraph 3 of Article XXVI (Mutual Agreement Procedure) of the Convention or any other procedure agreed to by both Contracting States.

Technical Explanation [1995 Protocol]:

The Protocol adds to Article XXIX a new paragraph 6, which provides a coordination rule for the Convention and the General Agreement on Trade in Services ("GATS"). Paragraph 6(a) provides that, for purposes of paragraph 3 of Article XXII (Consultation) of the GATS, a measure falls within the scope of the Convention only if the measure relates to a tax (1) to which Article XXV (Non-Discrimination) of the Convention applies, or (2) to which Article XXV does not apply and to which any other provision of the Convention applies, but only to the extent that the measure relates to a matter dealt with in that other provision. Under paragraph 6(b), notwithstanding paragraph 3 of Article XXII of the GATS, any doubt as to the interpretation of subparagraph (a) will be resolved under paragraph 3 of Article XXVI (Mutual Agreement Procedure) of the Convention or any other procedure agreed to by both Contracting States.

GATS generally obliges its Members to provide national treatment and most-favored-nation treatment to services and service suppliers of other Members. A very broad exception from the national treatment obligation applies to direct taxes. An exception from the most-favored-nation obligation applies to a difference in treatment resulting from an international agreement on the avoidance of double taxation (a "tax agreement") or from provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Member is bound.

Article XXII(3) of GATS specifically provides that there will be no access to GATS procedures to settle a national treatment dispute concerning a measure that falls within the scope of a tax agreement. This provision preserves the exclusive application of nondiscrimination obligations in the tax agreement and clarifies that the competent authority mechanism provided by the tax agreement will apply, instead of GATS procedures, to resolve nondiscrimination disputes involving the taxation of services and service suppliers.

In the event of a disagreement between Members as to whether a measure falls within the scope of a tax agreement that existed at the time of the entry into force of the Agreement establishing the World Trade Organization, Article XXII(2), footnote 11, of GATS reserves the resolution of the dispute to the Contracting States under the tax agreement. In such a case, the issue of the scope of a tax agreement may be resolved under GATS procedures (rather than tax treaty procedures) only if both parties to the existing tax agreement consent. With respect to subsequent tax agreements, GATS provides that either Member may bring the jurisdictional matter before the Council for Trade In Services, which will refer the matter to arbitration for a decision that will be final and binding on the Members.

Both Canada and the United States agree that a protocol to a convention that is grandfathered under Article XXII(2), footnote 11, of GATS is also grandfathered. Nevertheless, since the Protocol extends the application of the Convention, and particularly the nondiscrimination article, to additional taxes (e.g., some non-income taxes imposed by Canada), the negotiators sought to remove any ambiguity and agreed to a provision that clarified the scope of the Convention and the relationship between the Convention and GATS.

The purpose of new paragraph 6(a) of the Convention is to provide the agreement of the Contracting States as to the measures considered to fall within the scope of the Convention in applying Article XXII(3) of GATS between the Contracting States. The purpose of new paragraph 6(b) is to reserve the resolution of the issue of the scope of the Convention for purposes of Article XXII(3) of GATS to the competent authorities under the Convention rather than to settlement under GATS procedures.

Technical Explanation [1984]:

Paragraph 6 provides rules denying the benefits of the Convention in certain situations where both countries believed that granting benefits would be inappropriate. Paragraph 6(a) provides that Articles VI (Income from Real Property) through XXIV (Elimination of Double Taxation) shall not apply to profits, income or gains derived by a trust which is treated as the income of a resident of a Contracting State (see paragraph 1 of Article IV (Residence)), if a principal purpose of the establishment, acquisition or maintenance of the trust was to obtain a benefit under the Convention or the 1942 Convention for persons who are not residents of that State. For example, the provision could be applied to a case where a non-resident of the United States created a United States trust to derive dividend income from Canada and a principal purpose of the establishment or maintenance of the trust was to obtain the reduced rate of Canadian tax under Article X (Dividends) for the non-resident. Paragraph 6(b) provides that Articles VI through XXIV shall not apply to Canadian non-resident owned investment companies, as defined in section 133 of the *Income Tax Act*, or under a similar provision that is subsequently enacted. This provision operates to deny the benefits of the Convention to a Canadian non-resident owned investment company, and does not affect the grant of benefits to other persons. Thus, for example, a dividend paid by such a company to a shareholder who is a U.S. resident is subject to the reduced rates of tax provided by Article X. The denial of the benefits of Articles VI through XXIV in such cases applies notwithstanding any other provision of the Convention. A Canadian non-resident owned investment company may, however, be entitled to claim the benefits of the 1942 Convention for an additional one-year period, pursuant to paragraph 5 of Article XXX (Entry into Force). Where the provisions of this paragraph apply, the Contracting State in which the income arises may tax such income under its domestic law.

History: Para. 6 amended by 1995 Protocol, article 17(2), generally effective with respect to taxable years begining on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 6 formerly read:

> 6. Notwithstanding any other provision of the Convention,
>
> (a) where profits, income or gains derived by a trust is to be treated for the purposes of the Convention as income of a resident of a Contracting State, and a principal purpose for the establishment, acquisition or maintenance of the trust was to obtain a benefit under the Convention or the 1942 Convention for persons who are not residents of that State, Articles VI (Income from Real Property) through XXIV (Elimination of Double Taxation) shall not apply in relation to the profits, income or gains of the trust; and
>
> (b) Articles VI (Income from Real Property) through XXIV (Elimination of Double Taxation) shall not apply to non-resident-owned investment corporations as defined under section 133 of the *Income Tax Act* of Canada, or under any similar provision enacted by Canada after the date of signature of the Protocol.

Para. 6 amended by 1983 Protocol, article XIII, para. 5.

7. The appropriate authority of a Contracting State may request consultations with the appropriate authority of the other Contracting State to determine whether change to the Convention is appropriate to respond to changes in the law or policy of that other State. Where domestic legislation enacted by a Contracting State unilaterally removes or significantly limits any material benefit otherwise provided by the Convention, the appropriate authorities shall promptly consult for the purpose of considering an appropriate change to the Convention.

Technical Explanation [1995 Protocol]:

The Protocol also adds to Article XXIX a new paragraph 7, relating to certain changes in the law or treaty policy of either of the Contracting States. Paragraph 7 provides, first, that in response to a change in the law or policy of either State, the appropriate authority of either State may request consultations with its counterpart in the other State to determine whether a change in the Convention is appropriate. If a change in domestic legislation has unilaterally removed or significantly limited a material benefit provided by the Convention, the appropriate authorities are instructed by the paragraph to consult promptly to consider an appropriate amendment to the Convention. The "appropriate authorities" may be the Contracting States themselves or the competent authorities under the Convention. The consultations may be initiated by the authority of the Contracting State making the change in law or policy or by the authority of the other State. Any change in the Convention recommended as a result of this process can be implemented only through the negotiation, signature, ratification, and entry into force of a new protocol to the Convention.

Technical Explanation [1984]:

Paragraph 7 provides rules for the U.S. taxation of Canadian social security benefits paid to a resident of Canada who is a U.S. citizen. These rules are described in the discussion of paragraph 5 of Article XVIII (Pensions and Annuities).

History: Para. 7 amended by 1995 Protocol, article 17(2), generally effective with respect to taxable years begining on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 7 formerly read:

> 7. One-half of the total amount of benefits under the social security legislation in Canada paid in a taxable year to a resident of Canada who is a citizen of the United States shall be exempt from taxation in the United States.

Para. 7 added by 1984 Protocol, article II, para. 2.

Definitions: "State" — Art. III:1(i).

Article XXIX-A — Limitation on Benefits

1. For the purposes of the application of this Convention by the United States,

(a) a qualifying person shall be entitled to all of the benefits of this Convention, and

(b) except as provided in paragraphs 3, 4 and 6, a person that is not a qualifying person shall not be entitled to any benefits of the Convention.

Proposed Amendment — Limitation on Benefits

Department of Finance news release, October 2, 1998: *Canada and United States to Consult regarding Modifications to Income Tax Treaty*

[Reproduced before Article I — ed.]

Technical Explanation [1995 Protocol]:

In general

Article 18 of the Protocol adds a new Article XXIX A (Limitation on Benefits) to the Convention. Article XXIX A addresses the problem of "treaty shopping" by requiring, in most cases, that the person seeking U.S. treaty benefits not only be a Canadian resident but also satisfy other tests. In a typical case of treaty shopping, a resident of a third State might establish an entity resident in Canada for the purpose of deriving income from the United States and claiming U.S. treaty benefits with respect to that income. Article XXIX A limits the benefits granted by the United States under the Convention to those persons whose residence in Canada is not considered to have been motivated by the existence of the Convention. Absent Article XXIX A, the entity would be entitled to U.S. benefits under the Convention as a resident of Canada, unless it were denied benefits as a result of limitations (e.g., business purpose, substance-over-form, step transaction, or conduit principles or other anti-avoidance rules) applicable to a particular transaction or arrangement. General anti-abuse provisions of this sort apply in conjunction with the Convention in both the United States and Canada. In the case of the United States, such anti-abuse provisions complement the explicit anti-treaty-shopping rules of Article XXIX A. While the anti-treaty-shopping rules determine whether a person has a sufficient nexus to Canada to be entitled to treaty benefits, general anti-abuse provisions determine whether a particular transaction should be recast in accordance with the substance of the transaction.

The present Convention deals with treaty-shopping in a very limited manner, in paragraph 6 of Article XXIX, by denying benefits to Canadian residents that benefit from specified provisions of Canadian law. The Protocol removes that paragraph 6 from Article XXIX, because it is superseded by the more general provisions of Article XXIX A.

The Article is not reciprocal, except for paragraph 7. Canada prefers to rely on general anti-avoidance rules to counter arrangements involving treaty-shopping through the United States.

The structure of the Article is as follows: Paragraph 1 states that, in determining whether a resident of Canada is entitled to U.S. benefits under the Convention, a "qualifying person" is entitled to all of the benefits of the Convention, and other persons are not entitled to benefits, except where paragraphs 3, 4, or 6 provide otherwise. Paragraph 2 lists a number of characteristics, any one of which will make a Canadian resident a qualifying person. These are essentially mechanical tests. Paragraph 3 provides an alternative rule, under which a Canadian resident that is not a qualifying person under paragraph 2 may claim U.S. benefits with respect to those items of U.S. source income that are connected with the active conduct of a trade or business in Canada. Paragraph 4 provides a limited "derivative benefits" test for entitlement to benefits with respect to U.S. source dividends, interest, and royalties beneficially owned by a resident of Canada that is not a qualifying person. Paragraph 5 defines certain terms used in the Article. Paragraph 6 requires the U.S. competent authority to grant benefits to a resident of Canada that does not qualify for benefits under any other provision of the Article, where the competent authority determines, on the basis of all factors, that benefits should be granted. Paragraph 7 clarifies the application of general anti-abuse provisions.

Definitions: "qualifying person" — Art. XXIX:2; "United States" — Art. III:1(b).

2. For the purposes of this Article, a **"qualifying person"** is a resident of Canada that is:

(a) a natural person;

(b) the Government of Canada or a political subdivision or local authority thereof, or any agency or instrumentality of any such government, subdivision or authority;

(c) a company or trust in whose principal class of shares or units there is substantial and regular trading on a recognized stock exchange;

(d) a company more than 50 per cent of the vote and value of the shares (other than debt substitute shares) of which is owned, directly or indirectly, by five or fewer persons each of which is a company or trust referred to in subparagraph (c), provided that each company or trust in the chain of ownership is a qualifying person or a resident or citizen of the United States;

(e)

(i) a company 50 per cent or more of the vote and value of the shares (other than debt substitute shares) of which is not owned, directly or indirectly, by persons other than qualifying persons or residents or citizens of the United States, or

(ii) a trust 50 per cent or more of the beneficial interest in which is not owned, directly or indirectly, by persons other than qualifying persons or residents or citizens of the United States,

where the amount of the expenses deductible from gross income that are paid or payable by the company or trust, as the case may be, for its preceding fiscal period (or, in the case of its first fiscal period, that period) to persons that are not qualifying persons or residents or citizens of the United States is less than 50 per cent of its gross income for that period;

(f) an estate;

(g) a not-for-profit organization, provided that more than half of the beneficiaries, members or participants of the organization are qualifying persons or residents or citizens of the United States; or

(h) an organization described in paragraph 2 of Article XXI (Exempt Organizations) and established for the purpose of providing benefits primarily to individuals who are qualifying persons, persons who were qualifying persons within the five preceding years, or residents or citizens of the United States.

Technical Explanation [1995 Protocol]:

Individuals and governmental entities

Under paragraph 2, the first two categories of qualifying persons are (1) individual residents of Canada, and (2) the Government of Canada, a political subdivision or local authority thereof, or an agency or instrumentality of that Government, political subdivision, or local authority. It is considered unlikely that persons falling into these two categories can be used, as the beneficial owner of income, to derive treaty benefits on behalf of a third-country person. If a person is receiving income as a nominee on behalf of a third-country resident, benefits will be denied with respect to those items of income under the articles of the Convention that grant the benefit, because of the requirements in those articles that the beneficial owner of the income be a resident of a Contracting State.

Publicly traded entities

Under subparagraph (c) of paragraph 2, a Canadian resident company or trust is a qualifying person if there is substantial and regular trading in the company's principal class of shares, or in the trust's units, on a recognized stock exchange. The term "recognized stock exchange" is defined in paragraph 5(a) of the Article to mean, in the United States, the NASDAQ System and any stock exchange registered as a national securities exchange with the Securities and Exchange Commission, and, in Canada, any Canadian stock exchanges that are "prescribed stock exchanges" under the *Income Tax Act*. These are, at the time of signature of the Protocol, the Alberta, Montreal, Toronto, Vancouver, and Winnipeg Stock Exchanges. Additional exchanges may be added to the list of recognized exchanges by exchange of notes between the Contracting States or by agreement between the competent authorities.

Certain companies owned by publicly traded corporations also may be qualifying persons. Under subparagraph (d) of paragraph 2, a Canadian resident company will be a qualifying person, even if not publicly traded, if more than 50 percent of the vote and value of its shares is owned (directly or indirectly) by five or fewer persons that would be qualifying persons under subparagraph (c). In addition, each company in the chain of ownership must be a qualifying person or a U.S. citizen or resident. Thus, for example, a Canadian company that is not publicly traded but that is owned, one-third each, by three companies, two of which are Canadian resident corporations whose principal classes of shares are substantially and regularly traded on a recognized stock exchange, will qualify under subparagraph (d).

The 50-percent test under subparagraph (d) applies only to shares other than "debt substitute shares." The term "debt substitute shares" is defined in paragraph 5 to mean shares defined in paragraph (e) of the definition in the Canadian *Income Tax Act* of "term preferred shares" (see section 248(1) of the *Income Tax Act*), which relates to certain shares received in debt-restructuring arrangements undertaken by reason of financial difficulty or insolvency. Paragraph 5 also provides that the competent authorities may agree to treat other types of shares as debt substitute shares.

Ownership/base erosion test

Subparagraph (e) of paragraph 2 provides a two-part test under which certain other entities may be qualifying persons, based on ownership and "base erosion." Under the first of these tests, benefits will be granted to a Canadian resident company if 50 percent or more of the vote and value of its shares (other than debt substitute shares), or to a Canadian resident trust if 50 percent or more of its beneficial interest, is not owned, directly or indirectly, by persons other than qualifying persons or U.S. residents or citizens. The wording of these tests is intended to make clear that, for example, if a Canadian company is more than 50 percent owned by a U.S. resident corporation that is, itself, wholly owned by a third-country resident other than a U.S. citizen, the Canadian company would not pass the ownership test. This is because more than 50 percent of its shares is owned indirectly by a person (the third-country resident) that is not a qualifying person or a citizen or resident of the United States.

For purposes of this subparagraph (e) and other provisions of this Article, the term "shares" includes, in the case of a mutual insurance company, any certificate or contract entitling the holder to voting power in the corporation. This is consistent with the interpretation of similar limitation on benefits provisions in other U.S. treaties.

The second test of subparagraph (e) is the so-called "base erosion" test. A Canadian company or trust that passes the ownership test must also pass this test to be a qualifying person. This test requires that the amount of expenses that are paid or payable by the Canadian entity in question to persons that are not qualifying persons or U.S. citizens or residents, and that are deductible from gross income, be less than 50 percent of the gross income of the company or trust. This test is applied for the fiscal period immediately preceding the period for which the qualifying person test is being applied. If it is the first fiscal period of the person, the test is applied for the current period.

The ownership/base erosion test recognizes that the benefits of the Convention can be enjoyed indirectly not only by equity holders of an entity, but also by that entity's obligees, such as lenders, licensors, service providers, insurers and reinsurers, and others. For example, a third-country resident could license technology to a Canadian-owned Canadian corporation to be sub-licensed to a U.S. resident. The U.S. source royalty income of the Canadian corporation would be exempt from U.S. withholding tax under Article XII (Royalties) of the Convention (as amended by the Protocol). While the Canadian corporation would be subject to Canadian corporation income tax, its taxable income could be reduced to near zero as a result of the deductible royalties paid to the third-country resident. If, under a Convention between Canada and the third country, those royalties were either exempt from Canadian tax or subject to tax at a low rate, the U.S. treaty benefit with respect to the U.S. source royalty income would have flowed to the third-country resident at little or no tax cost, with no reciprocal benefit to the United States from the third country. The ownership/base erosion test therefore requires both that qualifying persons or U.S. residents or citizens substantially own the entity and that the entity's deductible payments be made in substantial part to such persons.

Other qualifying persons

Under subparagraph (f) of paragraph 2, a Canadian resident estate is a qualifying person, entitled to the benefits of the Convention with respect to its U.S. source income.

Subparagraphs (g) and (h) specify the circumstances under which certain types of not-for-profit organizations will be qualifying persons. Subparagraph (g) of paragraph 2 provides that a not-for-profit organization that is a resident of Canada is a qualifying person, and thus entitled to U.S. benefits, if more than half of the beneficiaries, members, or participants in the organization are qualifying persons or citizens or residents of the United States. The term "not-for-profit organization" of a Contracting State is defined in subparagraph (b) of paragraph 5 of the Article to mean an entity created or established in that State that is generally exempt from income taxation in that State by reason of its not-for-profit status. The term includes charities, private foundations, trade unions, trade associations, and similar organizations.

Subparagraph (h) of paragraph 2 specifies that certain organizations described in paragraph 2 of Article XXI (Exempt Organizations), as amended by Article 10 of the Protocol, are qualifying persons. To be a qualifying person, such an organization must be established primarily for the purpose of providing pension, retirement, or employee benefits to individual residents of Canada who are (or were, within any of the five preceding years) qualifying persons, or to citizens or residents of the United States. An organization will be considered to be established "primarily" for this purpose if more than 50 percent of its beneficiaries, members, or participants are such persons. Thus, for example, a Canadian Registered Retirement Savings Plan ("RRSP") of a former resident of Canada who is working temporarily outside of Canada would continue to be a qualifying person during the period of the individual's absence from Canada or for five years, whichever is shorter. A Canadian pension fund established to provide benefits to persons employed by a company would be a qualifying person only if most of the beneficiaries of the fund are (or were within the five preceding years) individual residents of Canada or residents or citizens of the United States.

The provisions of paragraph 2 are self-executing, unlike the provisions of paragraph 6, discussed below. The tax authorities may, of course, on re-

view, determine that the taxpayer has improperly interpreted the paragraph and is not entitled to the benefits claimed.

Definitions: "Canada" — Art. III:1(a), ITCIA 5; "company" — Art. III:1(f); "debt substitute share" — Art. XXIX-A:5(c); "individual" — ITCIA 3, ITA 248(1); "not-for-profit organization" — Art. XXIX-A:5(b); "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1); "recognized stock exchange" — Art. XXIX-A:5(a); "share", "trust" — ITCIA 3, ITA 248(1); "United States" — Art. III:1(b).

3. Where a person that is a resident of Canada and is not a qualifying person of Canada, or a person related thereto, is engaged in the active conduct of a trade or business in Canada (other than the business of making or managing investments, unless those activities are carried on with customers in the ordinary course of business by a bank, an insurance company, a registered securities dealer or a deposit-taking financial institution), the benefits of the Convention shall apply to that resident person with respect to income derived from the United States in connection with or incidental to that trade or business, including any such income derived directly or indirectly by that resident person through one or more other persons that are residents of the United States. Income shall be deemed to be derived from the United States in connection with the active conduct of a trade or business in Canada only if that trade or business is substantial in relation to the activity carried on in the United States giving rise to the income in respect of which benefits provided under the Convention by the United States are claimed.

Technical Explanation [1995 Protocol]:

Active trade or business test

Paragraph 3 provides an eligibility test for benefits for residents of Canada that are not qualifying persons under paragraph 2. This is the so-called "active trade or business" test. Unlike the tests of paragraph 2, the active trade or business test looks not solely at the characteristics of the person deriving the income, but also at the nature of the activity engaged in by that person and the connection between the income and that activity. Under the active trade or business test, a resident of Canada deriving an item of income from the United States is entitled to benefits with respect to that income if that person (or a person related to that person under the principles of *Internal Revenue Code* section 482) is engaged in an active trade or business in Canada and the income in question is derived in connection with, or is incidental to, that trade or business.

Income that is derived in connection with, or is incidental to, the business of making or managing investments will not qualify for benefits under this provision, unless those investment activities are carried on with customers in the ordinary course of the business of a bank, insurance company, registered securities dealer, or deposit-taking financial institution.

Income is considered derived "in connection" with an active trade or business in the United States if, for example, the income-generating activity in the United States is "upstream," "downstream," or parallel to that conducted in Canada. Thus, if the U.S. activity consisted of selling the output of a Canadian manufacturer or providing inputs to the manufacturing process, or of manufacturing or selling in the United States the same sorts of products that were being sold by the Canadian trade or business in Canada, the income generated by that activity would be treated as earned in connection with the Canadian trade or business. Income is considered "incidental" to the Canadian trade or business if, for example, it arises from the short-term investment of working capital of the Canadian resident in U.S. securities.

An item of income will be considered to be earned in connection with or to be incidental to an active trade or business in Canada if the income is derived by the resident of Canada claiming the benefits directly or indirectly through one or more other persons that are residents of the United States. Thus, for example, a Canadian resident could claim benefits with respect to an item of income earned by a U.S. operating subsidiary but derived by the Canadian resident indirectly through a wholly-owned U.S. holding company interposed between it and the operating subsidiary. This language would also permit a Canadian resident to derive income from the United States through one or more U.S. residents that it does not wholly own. For example, a Canadian partnership in which three unrelated Canadian companies each hold a one-third interest could form a wholly-owned U.S. holding company with a U.S. operating subsidiary. The "directly or indirectly" language would allow otherwise available treaty benefits to be claimed with respect to income derived by the three Canadian partners through the U.S. holding company, even if the partners were not considered to be related to the U.S. holding company under the principles of *Internal Revenue Code* section 482.

Income that is derived in connection with, or is incidental to, an active trade or business in Canada, must pass an additional test to qualify for U.S. treaty benefits. The trade or business in Canada must be substantial in relation to the activity in the United States that gave rise to the income in respect of which treaty benefits are being claimed. To be considered substantial, it is not necessary that the Canadian trade or business be as large as the U.S. income-generating activity. The Canadian trade or business cannot, however, in terms of income, assets, or other similar measures, represent only a very small percentage of the size of the U.S. activity.

The substantiality requirement is intended to prevent treaty-shopping. For example, a third-country resident may want to acquire a U.S. company that manufactures television sets for worldwide markets; however, since its country of residence has no tax treaty with the United States, any dividends generated by the investment would be subject to a U.S. withholding tax of 30 percent. Absent a substantiality test, the investor could establish a Canadian corporation that would operate a small outlet in Canada to sell a few of the television sets manufactured by the U.S. company and earn a very small amount of income. That Canadian corporation could then acquire the U.S. manufacturer with capital provided by the third-country resident and produce a very large number of sets for sale in several countries, generating a much larger amount of income. It might attempt to argue that the U.S. source income is generated from business activities in the United States related to the television sales activity of the Canadian parent and that the dividend income should be subject to U.S. tax at the 5 percent rate provided by Article X of the Convention, as amended by the Protocol. However, the substantiality test would not be met in this example, so the dividends would remain subject to withholding in the United States at a rate of 30 percent.

In general, it is expected that if a person qualifies for benefits under one of the tests of paragraph 2, no inquiry will be made into qualification for benefits under paragraph 3. Upon satisfaction of any of the tests of paragraph 2, any income derived by the beneficial owner from the other Contracting State is entitled to treaty benefits. Under paragraph 3, however, the test is applied separately to each item of income.

Definitions: "bank", "business" — ITCIA 3, ITA 248(1); "Canada" — Art. III:1(a), ITCIA 5; "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1); "qualifying person" — Art. XXIX:2; "registered securities dealer" — ITCIA 3, ITA 248(1); "resident" — ITCIA 3, ITA 250; "United States" — Art. III:1(b).

4. A company that is a resident of Canada shall also be entitled to the benefits of Articles X (Dividends), XI (Interest) and XII (Royalties) if

(a) its shares that represent more than 90 per cent of the aggregate vote and value represented by all of its shares (other than debt substitute shares) are owned, directly or indirectly, by persons each of whom is a qualifying person, a resident or citizen of the United States or a person who

(i) is a resident of a country with which the United States has a comprehensive income tax convention and is entitled to all of the benefits provided by the United States under that convention;

(ii) would qualify for benefits under paragraphs 2 or 3 if that person were a resident of Canada (and, for the purposes of paragraph 3, if the business it carried on in the country of which it is a resident were carried on by it in Canada); and

(iii) would be entitled to a rate of United States tax under the convention between that person's country of residence and the United States, in respect of the particular class of income for which benefits are being claimed under this Convention, that is at least as low as the rate applicable under this Convention; and

(b) the amount of the expenses deductible from gross income that are paid or payable by the company for its preceding fiscal period (or, in the case of its first fiscal

period, that period) to persons that are not qualifying persons or residents or citizens of the United States is less than 50 per cent of the gross income of the company for that period.

Technical Explanation [1995 Protocol]:

Derivative benefits test

Paragraph 4 of Article XXIX A contains a so-called "derivative benefits" rule not generally found in U.S. treaties. This rule was included in the Protocol because of the special economic relationship between the United States and Canada and the close coordination between the tax administrations of the two countries.

Under the derivative benefits rule, a Canadian resident company may receive the benefits of Articles X (Dividends), XI (Interest), and XII (Royalties), even if the company is not a qualifying person and does not satisfy the active trade or business test of paragraph 3. To qualify under this paragraph, the Canadian company must satisfy both (i) the base erosion test under subparagraph (e) of paragraph 2, and (ii) an ownership test.

The derivative benefits ownership test requires that shares (other than debt substitute shares) representing more than 90 percent of the vote and value of the Canadian company be owned directly or indirectly by either (i) qualifying persons or U.S. citizens or residents, or (ii) other persons that satisfy each of three tests. The three tests that must be satisfied by these other persons are as follows:

First, the person must be a resident of a third State with which the United States has a comprehensive income tax convention and be entitled to all of the benefits under that convention. Thus, if the person fails to satisfy the limitation on benefits tests, if any, of that convention, no benefits would be granted under this paragraph. Qualification for benefits under an active trade or business test does not suffice for these purposes, because that test grants benefits only for certain items of income, not for all purposes of the convention.

Second, the person must be a person that would qualify for benefits with respect to the item of income for which benefits are sought under one or more of the tests of paragraph 2 or 3 of this Convention, if the person were a resident of Canada and, for purposes of paragraph 3, the business were carried on in Canada. For example, a person resident in a third country would be deemed to be a person that would qualify under the publicly-traded test of paragraph 2 of this Convention if the principal class of its shares were substantially and regularly traded on a stock exchange recognized either under the treaty between the United States and Canada or under the treaty between the United States and the third country. Similarly, a company resident in a third country would be deemed to satisfy the ownership/base erosion test of paragraph 2 under this hypothetical analysis if, for example, it were wholly owned by an individual resident in that third country and most of its deductible payments were made to individual residents of that country (i.e., it satisfied base erosion).

The third requirement is that the rate of U.S. withholding tax on the item of income in respect of which benefits are sought must be at least as low under the convention between the person's country of residence and the United States as under this Convention.

Definitions: "business" — ITCIA 3, ITA 248(1); "Canada" — Art. III:1(a), ITCIA 5; "company" — Art. III:1(f); "debt substitute share" — Art. XXIX-A:5(c); "fiscal period" — ITCIA 3, ITA 249.1; "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1); "qualifying person" — Art. XXIX:2; "resident" — ITCIA 3, ITA 250; "share" — ITCIA 3, ITA 248(1); "United States" — Art. III:1(b).

5. For the purposes of this Article,

(a) the term **"recognized stock exchange"** means:

(i) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the Securities and Exchange Commission as a national securities exchange for purposes of the *Securities Exchange Act of 1934*;

(ii) Canadian stock exchanges that are "prescribed stock exchanges" under the *Income Tax Act*; and

(iii) any other stock exchange agreed upon by the Contracting States in an exchange of notes or by the competent authorities of the Contracting States;

(b) the term **"not-for-profit organization"** of a Contracting State means an entity created or established in that State and that is, by reason of its not-for-profit status, generally exempt from income taxation in that State, and includes a private foundation, charity, trade union, trade association or similar organization; and

(c) the term **"debt substitute share"** means:

(i) a share described in paragraph (e) of the definition "term preferred share" in the *Income Tax Act*, as it may be amended from time to time without changing the general principle thereof; and

(ii) such other type of share as may be agreed upon by the competent authorities of the Contracting States.

Definitions: "competent authority" — Art. III:1(g); "prescribed stock exchange" — ITCIA 3, Reg. 3200; "private foundation" — ITCIA 3, ITA 248(1); "State" — Art. III:1(i); "term preferred share" — ITCIA 3, ITA 248(1).

6. Where a person that is a resident of Canada is not entitled under the preceding provisions of this Article to the benefits provided under the Convention by the United States, the competent authority of the United States shall, upon that person's request, determine on the basis of all factors including the history, structure, ownership and operations of that person whether

(a) its creation and existence did not have as a principal purpose the obtaining of benefits under the Convention that would not otherwise be available; or

(b) it would not be appropriate, having regard to the purpose of this Article, to deny the benefits of the Convention to that person.

The person shall be granted the benefits of the Convention by the United States where the competent authority determines that subparagraph (a) or (b) applies.

Technical Explanation [1995 Protocol]:

Competent authority discretion

Paragraph 6 provides that when a resident of Canada derives income from the United States and is not entitled to the benefits of the Convention under other provisions of the Article, benefits may, nevertheless be granted at the discretion of the U.S. competent authority. In making a determination under this paragraph, the competent authority will take into account all relevant facts and circumstances relating to the person requesting the benefits. In particular, the competent authority will consider the history, structure, ownership (including ultimate beneficial ownership), and operations of the person. In addition, the competent authority is to consider (1) whether the creation and existence of the person did not have as a principal purpose obtaining treaty benefits that would not otherwise be available to the person, and (2) whether it would not be appropriate, in view of the purpose of the Article, to deny benefits. The paragraph specifies that if the U.S. competent authority determines that either of these two standards is satisfied, benefits shall be granted.

For purposes of implementing paragraph 6, a taxpayer will be expected to present his case to the competent authority for an advance determination based on the facts. The taxpayer will not be required to wait until it has been determined that benefits are denied under one of the other provisions of the Article. It also is expected that, if and when the competent authority determines that benefits are to be allowed, they will be allowed retroactively to the time of entry into force of the relevant treaty provision or the establishment of the structure in question, whichever is later (assuming that the taxpayer also qualifies under the relevant facts for the earlier period).

Definitions: "Canada" — Art. III:1(a), ITCIA 5; "competent authority" — Art. III:1(g); "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1); "resident" — ITCIA 3, ITA 250; "United States" — Art. III:1(b).

7. It is understood that the fact that the preceding provisions of this Article apply only for the purposes of the application of the Convention by the United States shall not be construed as restricting in any manner the right of a Contracting State to deny benefits under the Convention

where it can reasonably be concluded that to do otherwise would result in an abuse of the provisions of the Convention.

Technical Explanation [1995 Protocol]:

General anti-abuse provisions

Paragraph 7 was added at Canada's request to confirm that the specific provisions of Article XXIX A and the fact that these provisions apply only for the purposes of the application of the Convention by the United States should not be construed so as to limit the right of each Contracting State to invoke applicable anti-abuse rules. Thus, for example, Canada remains free to apply such rules to counter abusive arrangements involving "treaty-shopping" through the United States, and the United States remains free to apply its substance-over-form and anti-conduit rules, for example, in relation to Canadian residents. This principle is recognized by the Organization for Economic Cooperation and Development in the Commentaries to its Model Tax Convention on Income and on Capital, and the United States and Canada agree that it is inherent in the Convention. The agreement to state this principle explicitly in the Protocol is not intended to suggest that the principle is not also inherent in other tax conventions, including the current Convention with Canada.

Definitions: "United States" — Art. III:1(b).

History [Art. XXIX-A]: Art. XXIX-A added by 1995 Protocol, article 18, generally effective for taxation years beginning on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above.)

Article XXIX-B — Taxes Imposed by Reason of Death

1. Where the property of an individual who is a resident of a Contracting State passes by reason of the individual's death to an organization referred to in paragraph 1 of Article XXI (Exempt Organizations), the tax consequences in a Contracting State arising out of the passing of the property shall apply as if the organization were a resident of that State.

Technical Explanation [1995 Protocol]:

In general

Article 19 of the Protocol adds to the Convention a new Article XXIX B (Taxes Imposed by Reason of Death). The purpose of Article XXIX B is to better coordinate the operation of the death tax regimes of the two Contracting States. Such coordination is necessary because the United States imposes an estate tax, while Canada now applies an income tax on gains deemed realized at death rather than an estate tax. Article XXIX B also contains other provisions designed to alleviate death taxes in certain situations.

For purposes of new Article XXIX B, the term "resident" has the meaning provided by Article IV (Residence) of the Convention, as amended by Article 3 of the Protocol. The meaning of the term "resident" for purposes of Article XXIX B, therefore, differs in some respects from its meaning under the estate, gift, and generation-skipping transfer tax provisions of the *Internal Revenue Code*.

Charitable bequests

Paragraph 1 of new Article XXIX B facilitates certain charitable bequests. It provides that a Contracting State shall accord the same death tax treatment to a bequest by an individual resident in one of the Contracting States to a qualifying exempt organization resident in the other Contracting State as it would have accorded if the organization had been a resident of the first Contracting State. The organizations covered by this provision are those referred to in paragraph 1 of Article XXI (Exempt Organizations) of the Convention. A bequest by a U.S. citizen or U.S. resident (as defined for estate tax purposes under the *Internal Revenue Code*) to such an exempt organization generally is deductible for U.S. estate tax purposes under section 2055 of the *Internal Revenue Code*, without regard to whether the organization is a U.S. corporation. However, if the decedent is not a U.S. citizen or U.S. resident (as defined for estate tax purposes under the *Internal Revenue Code*), such a bequest is deductible for U.S. estate tax purposes, under section 2106(a)(2) of the *Internal Revenue Code*, only if the recipient organization is a U.S. corporation. Under paragraph 1 of Article XXIX B, a U.S. estate tax deduction also will be allowed for a bequest by a Canadian resident (as defined under Article IV (Residence)) to a qualifying exempt organization that is a Canadian corporation. However, paragraph 1 does not allow a deduction for U.S. estate tax purposes with respect to any transfer of property that is not subject to U.S. estate tax.

Related Provisions: See at end of Art. XXIX-B.

Definitions: "individual", "property" — ITCIA 3, ITA 248(1); "resident of a Contracting State" — Art. IV:1; "State" — Art. III:1(i).

2. In determining the estate tax imposed by the United States, the estate of an individual (other than a citizen of the United States) who was a resident of Canada at the time of the individual's death shall be allowed a unified credit equal to the greater of

(a) the amount that bears the same ratio to the credit allowed under the law of the United States to the estate of a citizen of the United States as the value of the part of the individual's gross estate that at the time of the individual's death is situated in the United States bears to the value of the individual's entire gross estate wherever situated; and

(b) the unified credit allowed to the estate of a nonresident not a citizen of the United States under the law of the United States.

The amount of any unified credit otherwise allowable under this paragraph shall be reduced by the amount of any credit previously allowed with respect to any gift made by the individual. The credit otherwise allowable under subparagraph (a) shall be allowed only if all information necessary for the verification and computation of the credit is provided.

Technical Explanation [1995 Protocol]:

Unified credit

Paragraph 2 of Article XXIX B grants a "pro rata" unified credit to the estate of a Canadian resident decedent, for purposes of computing U.S. estate tax. Although the Congress anticipated the negotiation of such pro rata unified credits in *Internal Revenue Code* section 2102(c)(3)(A), this is the first convention in which the United States has agreed to give such a credit. However, certain exemption provisions of existing estate and gift tax conventions have been interpreted as providing a pro rata unified credit.

Under the *Internal Revenue Code*, the estate of a nonresident not a citizen of the United States is subject to U.S. estate tax only on its U.S. situs assets and is entitled to a unified credit of $13,000, while the estate of a U.S. citizen or U.S. resident is subject to U.S. estate tax on its entire worldwide assets and is entitled to a unified credit of $192,800. (For purposes of these *Internal Revenue Code* provisions, the term "resident" has the meaning provided for estate tax purposes under the *Internal Revenue Code*.) A lower unified credit is provided for the former category of estates because it is assumed that the estate of a nonresident not a citizen generally will hold fewer U.S. situs assets, as a percentage of the estate's total assets, and thus will have a lower U.S. estate tax liability. The pro rata unified credit provisions of paragraph 2 increase the credit allowed to the estate of a Canadian resident decedent to an amount between $13,000 and $192,800 in appropriate cases, to take into account the extent to which the assets of the estate are situated in the United States. Paragraph 2 provides that the amount of the unified credit allowed to the estate of a Canadian resident decedent will in no event be less than the $13,000 allowed under the *Internal Revenue Code* to the estate of a nonresident not a citizen of the United States (subject to the adjustment for prior gift tax unified credits, discussed below). Paragraph 2 does not apply to the estates of U.S. citizen decedents, whether resident in Canada or elsewhere, because such estates receive a unified credit of $192,800 under the *Internal Revenue Code*.

Subject to the adjustment for gift tax unified credits, the pro rata credit allowed under paragraph 2 is determined by multiplying $192,800 by a fraction, the numerator of which is the value of the part of the gross estate situated in the United States and the denominator of which is the value of the entire gross estate wherever situated. Thus, if half of the entire gross estate (by value) of a decedent who was a resident and citizen of Canada were situated in the United States, the estate would be entitled to a pro rata unified credit of $96,400 (provided that the U.S. estate tax due is not less than that amount). For purposes of the denominator, the entire gross estate wherever situated (i.e., the worldwide estate, determined under U.S. domestic law) is to be taken into account for purposes of the computation.

For purposes of the numerator, an estate's assets will be treated as situated in the United States if they are so treated under U.S. domestic law. However, if enacted, a technical correction now pending before the Congress will amend U.S. domestic law to clarify that assets will not be treated as U.S. situs assets for purposes of the pro rata unified credit computation if the United States is precluded from taxing them by reason of a treaty obligation. This technical correction will affect the interpretation of both this paragraph 2 and the analogous provisions in existing conventions. As currently proposed, it will take effect on the date of enactment.

Paragraph 2 restricts the availability of the pro rata unified credit in two respects. First, the amount of the unified credit otherwise allowable under paragraph 2 is reduced by the amount of any unified credit previously allowed against U.S. gift tax imposed on any gift by the decedent. This rule reflects the fact that, under U.S. domestic law, a U.S. citizen or U.S. resident individual is allowed a unified credit against the U.S. gift tax on lifetime transfers. However, as a result of the estate tax computation, the individual is entitled only to a total unified credit of $192,800, and the amount of the unified credit available for use against U.S. estate tax on the individual's estate is effectively reduced by the amount of any unified credit that has been allowed in respect of gifts by the individual. This rule is reflected by reducing the amount of the pro rata unified credit otherwise allowed to the estate of a decedent individual under paragraph 2 by the amount of any unified credit previously allowed with respect to lifetime gifts by that individual. This reduction will be relevant only in rare cases, where the decedent made gifts subject to the U.S. gift tax while a U.S. citizen or U.S. resident (as defined under the *Internal Revenue Code* for U.S. gift tax purposes).

Paragraph 2 also conditions allowance of the pro rata unified credit upon the provision of all information necessary to verify and compute the credit. Thus, for example, the estate's representatives will be required to demonstrate satisfactorily both the value of the worldwide estate and the value of the U.S. portion of the estate. Substantiation requirements also apply, of course, with respect to other provisions of the Protocol and the Convention. However, the negotiators believed it advisable to emphasize the substantiation requirements in connection with this provision, because the computation of the pro rata unified credit involves certain information not otherwise relevant for U.S. estate tax purposes.

In addition, the amount of the pro rata unified credit is limited to the amount of U.S. estate tax imposed on the estate. See section 2102(c)(4) of the *Internal Revenue Code*.

Related Provisions: See at end of Art. XXIX-B.

Definitions: "Canada" — Art. III:1(a), ITCIA 5; "estate", "individual", "non-resident" — ITCIA 3, ITA 248(1); "resident" — ITCIA 3, ITA 250; "United States" — Art. III:1(b).

3. In determining the estate tax imposed by the United States on an individual's estate with respect to property that passes to the surviving spouse of the individual (within the meaning of the law of the United States) and that would qualify for the estate tax marital deduction under the law of the United States if the surviving spouse were a citizen of the United States and all applicable elections were properly made (in this paragraph and in paragraph 4 referred to as "qualifying property"), a non-refundable credit computed in accordance with the provisions of paragraph 4 shall be allowed in addition to the unified credit allowed to the estate under paragraph 2 or under the law of the United States, provided that

(a) the individual was at the time of death a citizen of the United States or a resident of either Contracting State;

(b) the surviving spouse was at the time of the individual's death a resident of either Contracting State;

(c) if both the individual and the surviving spouse were residents of the United States at the time of the individual's death, one or both was a citizen of Canada; and

(d) the executor of the decedent's estate elects the benefits of this paragraph and waives irrevocably the benefits of any estate tax marital deduction that would be allowed under the law of the United States on a United States Federal estate tax return filed for the individual's estate by the date on which a qualified domestic trust election could be made under the law of the United States.

Technical Explanation [1995 Protocol]:

Marital credit

Paragraph 3 of Article XXIX B allows a special "marital credit" against U.S. estate tax in respect of certain transfers to a surviving spouse. The purpose of this marital credit is to alleviate, in appropriate cases, the impact of the estate tax marital deduction restrictions enacted by the Congress in the *Technical and Miscellaneous Revenue Act* of 1988 ("TAMRA"). It is the firm position of the U.S. Treasury Department that the TAMRA provisions do not violate the non-discrimination provisions of this Convention or any other convention to which the United States is a party. This is because the estate — not the surviving spouse — is the taxpayer, and the TAMRA provisions treat the estates of nonresidents not citizens of the United States in the same manner as the estates of U.S. citizen and U.S. resident decedents. However, the U.S. negotiators believed that it was not inappropriate, in the context of the Protocol, to ease the impact of those TAMRA provisions upon certain estates of limited value.

Paragraph 3 allows a non-refundable marital credit in addition to the pro rata unified credit allowed under paragraph 2 (or, in the case of a U.S. citizen or U.S. resident decedent, the unified credit allowed under U.S. domestic law). However, the marital credit is allowed only in connection with transfers satisfying each of the five conditions set forth in paragraph 3. First, the property must be "qualifying property," i.e., it must pass to the surviving spouse (within the meaning of U.S. domestic law) and be property that would have qualified for the estate tax marital deduction under U.S. domestic law if the surviving spouse had been a U.S. citizen and all applicable elections specified by U.S. domestic law had been properly made. Second, the decedent must have been, at the time of death, either a resident of Canada or the United States or a citizen of the United States. Third, the surviving spouse must have been, at the time of the decedent's death, a resident of either Canada or the United States. Fourth, if both the decedent and the surviving spouse were residents of the United States at the time of the decedent's death, at least one of them must have been a citizen of Canada. Finally, to limit the benefits of paragraph 3 to relatively small estates, the executor of the decedent's estate is required to elect the benefits of paragraph 3, and to waive irrevocably the benefits of any estate tax marital deduction that would be allowed under U.S. domestic law, on a U.S. Federal estate tax return filed by the deadline for making a qualified domestic trust election under *Internal Revenue Code* section 2056A(d). In the case of the estate of a decedent for which the U.S. Federal estate tax return is filed on or before the date on which this Protocol enters into force, this election and waiver must be made on any return filed to claim a refund pursuant to the special effective date applicable to such estates (discussed below).

Related Provisions: See at end of Art. XXIX-B.

Definitions: "Canada" — Art. III:1(a), ITCIA 5; "estate", "individual", "property" — ITCIA 3, ITA 248(1); "qualified domestic trust" — *Internal Revenue Code* s. 2056A(a); "resident" — ITCIA 3, ITA 250; "surviving spouse" — *Internal Revenue Code* s. 2(a); "United States" — Art. III:1(b).

4. The amount of the credit allowed under paragraph 3 shall equal the lesser of

(a) the unified credit allowed under paragraph 2 or under the law of the United States (determined without regard to any credit allowed previously with respect to any gift made by the individual), and

(b) the amount of estate tax that would otherwise be imposed by the United States on the transfer of qualifying property.

The amount of estate tax that would otherwise be imposed by the United States on the transfer of qualifying property shall equal the amount by which the estate tax (before allowable credits) that would be imposed by the United States if the qualifying property were included in computing the taxable estate exceeds the estate tax (before allowable credits) that would be so imposed if the qualifying property were not so included. Solely for purposes of determining other credits allowed under the law

of the United States, the credit provided under paragraph 3 shall be allowed after such other credits.

Technical Explanation [1995 Protocol]:

Paragraph 4 governs the computation of the marital credit allowed under paragraph 3. It provides that the amount of the marital credit shall equal the lesser of (i) the amount of the unified credit allowed to the estate under paragraph 2 or, where applicable, under U.S. domestic law (before reduction for any gift tax unified credit), or (ii) the amount of U.S. estate tax that would otherwise be imposed on the transfer of qualifying property to the surviving spouse. For this purpose, the amount of U.S. estate tax that would otherwise be imposed on the transfer of qualifying property equals the amount by which (i) the estate tax (before allowable credits) that would be imposed if that property were included in computing the taxable estate exceeds (ii) the estate tax (before allowable credits) that would be imposed if the property were not so included. Property that, by reason of the provisions of paragraph 8 of this Article, is not subject to U.S. estate tax is not taken into account for purposes of this hypothetical computation.

Finally, paragraph 4 provides taxpayers with an ordering rule. The rule states that, solely for purposes of determining any other credits (e.g., the credits for foreign and state death taxes) that may be allowed under U.S. domestic law to the estate, the marital credit shall be allowed after such other credits.

In certain cases, the provisions of paragraphs 3 and 4 may affect the U.S. estate taxation of a trust that would meet the requirements for a qualified terminable interest property ("QTIP") election, for example, a trust with a life income interest for the surviving spouse and a remainder interest for other family members. If, in lieu of making the QTIP election and the qualified domestic trust election, the decedent's executor makes the election described in paragraph 3(d) of this Article, the provisions of *Internal Revenue Code* sections 2044 (regarding inclusion in the estate of the second spouse of certain property for which the marital deduction was previously allowed), 2056A (regarding qualified domestic trusts), and 2519 (regarding dispositions of certain life estates) will not apply. To obtain this treatment, however, the executor is required, under paragraph 3, to irrevocably waive the benefit of any marital deduction allowable under the *Internal Revenue Code* with respect to the trust.

The following examples illustrate the operation of the marital credit and its interaction with other credits. Unless otherwise stated, assume for purposes of illustration that H, the decedent, and W, his surviving spouse, are Canadian citizens resident in Canada at the time of the decedent's death. Assume further that all conditions set forth in paragraphs 2 and 3 of this Article XXIX B are satisfied (including the condition that the executor waive the estate tax marital deduction), that no deductions are available under the *Internal Revenue Code* in computing the U.S. estate tax liability, and that there are no adjusted taxable gifts within the meaning of *Internal Revenue Code* section 2001(b) or 2101(c). Also assume that the applicable U.S. domestic estate and gift tax laws are those that were in effect on the date the Protocol was signed.

Example 1. H has a worldwide gross estate of $1,200,000. He bequeaths U.S. real property worth $600,000 to W. The remainder of H's estate consists of Canadian situs property. H's estate would be entitled to a pro rata unified credit of $96,400 (= $192,800 x (600,000/1,200,000)) and to a marital credit in the same amount (the lesser of the unified credit allowed ($96,400) and the U.S. estate tax that would otherwise be imposed on the property transferred to W ($192,800 [tax on U.S. taxable estate of $600,000])). The pro rata unified credit and the marital credit combined would eliminate all U.S. estate tax with respect to the property transferred to W.

Example 2. H has a worldwide gross estate of $1,200,000, all of which is situated in the United States. He bequeaths U.S. real property worth $600,000 to W and U.S. real property worth $600,000 to a child, C. H's estate would be entitled to a pro rata unified credit of $192,800 (= $192,800 x 1,200,000/1,200,000) and to a marital credit of $192,800 (the lesser of the unified credit ($192,800) and the U.S. estate tax that would otherwise be imposed on the property transferred to W ($235,000, i.e., $427,800 [tax on U.S. taxable estate of $1,200,000] less $192,800 [tax on U.S. taxable estate of $600,000])). This would reduce the estate's total U.S. estate tax liability of $427,800 by $385,600.

Example 3. H has a worldwide gross estate of $700,000, of which $500,000 is real property situated in the United States. H bequeaths U.S. real property valued at $100,000 to W. The remainder of H's gross estate, consisting of U.S. and Canadian situs real property, is bequeathed to H's child, C. H's estate would be entitled to a pro rata unified credit of $137,714 ($192,800 x $500,000/$700,000). In addition, H's estate would be entitled to a marital credit of $34,000, which equals the lesser of the unified credit ($137,714) and $34,000 (the U.S. estate tax that would otherwise be imposed on the property transferred to W before allowance of any credits, i.e., $155,800 [tax on U.S. taxable estate of $500,000] less $121,800 [tax on U.S. taxable estate of $400,000]).

Example 4. H has a worldwide gross estate of $5,000,000, $2,000,000 of which consists of U.S. real property situated in State X. State X imposes a state death tax equal to the federal credit allowed under *Internal Revenue Code* section 2011. H bequeaths U.S. situs real property worth $1,000,000 to W and U.S. situs real property worth $1,000,000 to his child, C. The remainder of H's estate ($3,000,000) consists of Canadian situs property passing to C. H's estate would be entitled to a pro rata unified credit of $77,120 ($192,800 x $2,000,000/$5,000,000). H's estate would be entitled to a state death tax credit under *Internal Revenue Code* section 2102 of $99,600 (determined under *Internal Revenue Code* section 2011(b) with respect to an adjusted taxable estate of $1,940,000). H's estate also would be entitled to a marital credit of $77,120, which equals the lesser of the unified credit ($77,120) and $435,000 (the U.S. estate tax that would otherwise be imposed on the property transferred to W before allowance of any credits, i.e., $780,000 [tax on U.S. taxable estate of $2,000,000] less $345,800 [tax on U.S. taxable estate of $1,000,000]).

Example 5. The facts are the same as in Example 4, except that H and W are Canadian citizens who are resident in the United States at the time of H's death. Canadian Federal and provincial income taxes totalling $500,000 are imposed by reason of H's death. H's estate would be entitled to a unified credit of $192,800 and to a state death tax credit of $300,880 under *Internal Revenue Code* sections 2010 and 2011(b), respectively. Under paragraph 6 of Article XXIX B, H's estate would be entitled to a credit for the Canadian income tax imposed by reason of death, equal to the lesser of $500,000 (the Canadian taxes paid) or $1,138,272 ($2,390,800 (tax on $5,000,000 taxable estate) less total of unified and state death tax credits ($493,680) x $3,000,000/$5,000,000). H's estate also would be entitled to a marital credit of $192,800, which equals the lesser of the unified credit ($192,800) and $550,000 (the U.S. estate tax that would otherwise be imposed on the property transferred to W before allowance of any credits, i.e., $2,390,800 [tax on U.S. taxable estate of $5,000,000] less $1,840,800 [tax on U.S. taxable estate of $4,000,000]).

Definitions: "estate", "individual" — ITCIA 3, ITA 248(1); "qualifying property" — Art. XXIX-B:3; "United States" — Art. III:1(b).

5. Where an individual was a resident of the United States immediately before the individual's death, for the purposes of subsection 70(6) of the *Income Tax Act*, both the individual and the individual's spouse shall be deemed to have been resident in Canada immediately before the individual's death. Where a trust that would be a trust described in subsection 70(6) of that Act, if its trustees that were residents or citizens of the United States or domestic corporations under the law of the United States were residents of Canada, requests the competent authority of Canada to do so, the competent authority may agree, subject to terms and conditions satisfactory to such competent authority, to treat the trust for the purposes of that Act as being resident in Canada for such time as may be stipulated in the agreement.

Technical Explanation [1995 Protocol]:

Canadian treatment of certain transfers

The provisions of paragraph 5 relate to the operation of Canadian law. They are intended to provide deferral ("rollover") of the Canadian tax at death for certain transfers to a surviving spouse and to permit the Canadian competent authority to allow such deferral for certain transfers to a trust. For example, they would enable the competent authority to treat a trust that is a qualified domestic trust for U.S. estate tax purposes as a Canadian spousal trust as well for purposes of certain provisions of Canadian tax law and of the Convention. These provisions do not affect U.S. domestic law regarding qualified domestic trusts. Nor do they affect the status of U.S. resident individuals for any other purpose.

Definitions: "Canada" — Art. III:1(a), ITCIA 5; "competent authority" — Art. III:1(g); "individual" — ITCIA 3, ITA 248(1); "resident" — ITCIA 3, ITA 250; "trust" — ITCIA 3, ITA 248(1); "United States" — Art. III:1(b).

Interpretation Bulletins: IT-305R4: Testamentary spouse trusts.

6. In determining the amount of Canadian tax payable by an individual who immediately before death was a resident of Canada, or by a trust described in subsection 70(6) of the *Income Tax Act* (or a trust which is treated as being resident in Canada under the provisions of paragraph 5), the amount of any Federal or state estate or inheritance taxes payable in the United States (not exceeding, where the individual was a citizen of the United States or a former citizen referred to in paragraph 2 of Article XXIX (Miscellaneous Rules), the amount of estate and inheritance taxes that would have been payable if the individual were not a citizen or former citizen of the United States) in respect of property situated within the United States shall,

(a) to the extent that such estate or inheritance taxes are imposed upon the individual's death, be allowed as a deduction from the amount of any Canadian tax otherwise payable by the individual for the taxation year in which the individual died on the total of

(i) any income, profits or gains of the individual arising (within the meaning of paragraph 3 of Article XXIV (Elimination of Double Taxation)) in the United States in that year, and

(ii) where the value at the time of the individual's death of the individual's entire gross estate wherever situated (determined under the law of the United States) exceeded 1.2 million U.S. dollars or its equivalent in Canadian dollars, any income, profits or gains of the individual for that year from property situated in the United States at that time, and

(b) to the extent that such estate or inheritance taxes are imposed upon the death of the individual's surviving spouse, be allowed as a deduction from the amount of any Canadian tax otherwise payable by the trust for its taxation year in which that spouse dies on any income, profits or gains of the trust for that year arising (within the meaning of paragraph 3 of Article XXIV (Elimination of Double Taxation)) in the United States or from property situated in the United States at the time of death of the spouse.

For purposes of this paragraph, property shall be treated as situated within the United States if it is so treated for estate tax purposes under the law of the United States as in effect on March 17, 1995, subject to any subsequent changes thereof that the competent authorities of the Contracting States have agreed to apply for the purposes of this paragraph. The deduction allowed under this paragraph shall take into account the deduction for any income tax paid or accrued to the United States that is provided under paragraph 2(a), 4(a) or 5(b) of Article XXIV (Elimination of Double Taxation).

Technical Explanation [1995 Protocol]:

Credit for U.S. taxes

Under paragraph 6, Canada agrees to give Canadian residents and Canadian resident spousal trusts (or trusts treated as such by virtue of paragraph 5) a deduction from tax (i.e., a credit) for U.S. Federal or state estate or inheritance taxes imposed on U.S. situs property of the decedent or the trust. This credit is allowed against the income tax imposed by Canada, in an amount computed in accordance with subparagraph 6(a) or 6(b).

Subparagraph 6(a) covers the first set of cases — where the U.S. tax is imposed upon a decedent's death. Subparagraph 6(a)(i) allows a credit for U.S. tax against the total amount of Canadian income tax payable by the decedent in the taxable year of death on any income, profits, or gains arising in the United States (within the meaning of paragraph 3 of Article XXIV (Elimination of Double Taxation)). For purposes of subparagraph 6(a)(i), income, profits, or gains arising in the United States within the meaning of paragraph 3 of Article XXIV include gains deemed realized at death on U.S. situs real property and on personal property forming part of the business property of a U.S. permanent establishment or fixed base. (As explained below, these are the only types of property on which the United States may impose its estate tax if the estate is worth $1.2 million or less.) Income, profits, or gains arising in the United States also include income and profits earned by the decedent during the taxable year of death, to the extent that the United States may tax such amounts under the Convention (e.g., dividends received from a U.S. corporation and wages from the performance of personal services in the United States).

Where the value of the decedent's entire gross estate exceeds $1.2 million, subparagraph 6(a)(ii) allows a credit against the Canadian income tax on any income, profits, or gains from any U.S. situs property, in addition to any credit allowed by subparagraph 6(a)(i). This provision is broader in scope than is the general rule under subparagraph 6(a)(i), because the United States has retained the right to impose its estate tax on all types of property in the case of larger estates.

Subparagraph 6(b) provides rules for a second category of cases — where the U.S. tax is imposed upon the death of the surviving spouse. In these cases, Canada agrees to allow a credit against the Canadian tax payable by a trust for its taxable year during which the surviving spouse dies on any income, profits, or gains (i) arising in the United States on U.S. situs real property or business property, or (ii) from property situated in the United States. These rules are intended to provide a credit for taxes imposed as a result of the death of the surviving spouse in situations involving trusts. To the extent that taxes are imposed on the estate of the surviving spouse, subparagraph 6(a) would apply as well. In addition, the competent authorities are authorized to provide relief from double taxation in certain additional circumstances involving trusts, as described above in connection with Article 14 of the Protocol.

The credit allowed under paragraph 6 is subject to certain conditions. First, where the decedent was a U.S. citizen or former citizen (described in paragraph 2 of Article XXIX (Miscellaneous Rules)), paragraph 6 does not obligate Canada to provide a credit for U.S. taxes in excess of the amount of U.S. taxes that would have been payable if the decedent had not been a U.S. citizen or former citizen. Second, the credit allowed under paragraph 6 will be computed after taking into account any deduction for U.S. income tax provided under paragraph 2(a), 4(a), or 5(b) of Article XXIV (Elimination of Double Taxation). This clarifies that no double credit will be allowed for any amount and provides an ordering rule. Finally, because Canadian domestic law does not contain a definition of U.S. situs property for death tax purposes, such a definition is provided for purposes of paragraph 6. To maximize coordination of the credit provisions, the Contracting States agreed to follow the U.S. estate tax law definition as in effect on the date of signature of the Protocol and, subject to competent authority agreement, as it may be amended in the future.

Related Provisions: See at end of Art. XXIX-B.

Definitions: "Canada" — Art. III:1(a), ITCIA 5; "Canadian tax" — Art. III:1(c); "estate", "individual", "property" — ITCIA 3, ITA 248(1); "resident" — ITCIA 3, ITA 250; "trust" — ITCIA 3, ITA 248(1); "United States" — Art. III:1(b).

7. In determining the amount of estate tax imposed by the United States on the estate of an individual who was a resident or citizen of the United States at the time of death, or upon the death of a surviving spouse with respect to a qualifed domestic trust created by such an individual or the individual's executor or surviving spouse, a credit shall be allowed against such tax imposed in respect of property situated outside the United States, for the federal and provincial income taxes payable in Canada in respect of such property by reason of the death of the individual or, in the case of a qualified domestic trust, the individual's surviving spouse. Such credit shall be computed in accordance with the following rules:

(a) a credit otherwise allowable under this paragraph shall be allowed regardless of whether the identity of the taxpayer under the law of Canada corresponds to that under the law of the United States;

(b) the amount of a credit allowed under this paragraph shall be computed in accordance with the provisions and subject to the limitations of the law of the United States regarding credit for foreign death taxes (as it may be amended from time to time without

changing the general principle hereof), as though the income tax imposed by Canada were a creditable tax under that law;

(c) a credit may be claimed under this paragraph for an amount of federal or provincial income tax payable in Canada only to the extent that no credit or deduction is claimed for such amount in determining any other tax imposed by the United States, other than the estate tax imposed on property in a qualified domestic trust upon the death of the surviving spouse.

Technical Explanation [1995 Protocol]:

Credit for Canadian taxes

Under paragraph 7, the United States agrees to allow a credit against U.S. Federal estate tax imposed on the estate of a U.S. resident or U.S. citizen decedent, or upon the death of a surviving spouse with respect to a qualified domestic trust created by such a decedent (or the decedent's executor or surviving spouse). The credit is allowed for Canadian Federal and provincial income taxes imposed at death with respect to property of the estate or trust that is situated outside of the United States. As in the case under paragraph 6, the competent authorities also are authorized to provide relief from double taxation in certain cases involving trusts (see discussion of Article 14, above).

The amount of the credit generally will be determined as though the income tax imposed by Canada were a creditable tax under the U.S. estate tax provisions regarding credit for foreign death taxes, in accordance with the provisions and subject to the limitations of *Internal Revenue Code* section 2014. However, subparagraph 7(a) clarifies that a credit otherwise allowable under paragraph 7 will not be denied merely because of inconsistencies between U.S. and Canadian law regarding the identity of the taxpayer in the case of a particular taxable event. For example, the fact that the taxpayer is the decedent's estate for purposes of U.S. estate taxation and the decedent for purposes of Canadian income taxation will not prevent the allowance of a credit under paragraph 7 for Canadian income taxes imposed by reason of the death of the decedent.

In addition, subparagraph 7(c) clarifies that the credit against the U.S. estate tax generally may be claimed only to the extent that no credit or deduction is claimed for the same amount of Canadian tax in determining any other U.S. tax. This makes clear, for example, that a credit may not be claimed for the same amount under both this provision and Article XXIV (Elimination of Double Taxation). To prevent double taxation, an exception to this restriction is provided for certain taxes imposed with respect to qualified domestic trusts. Subject to the limitations of subparagraph 7(c), the taxpayer may choose between relief under Article XXIV, relief under this paragraph 7, or some combination of the two.

Definitions: "Canada" — Art. III:1(a), ITCIA 5; "estate", "individual", "property" — ITCIA 3, ITA 248(1); "qualified domestic trust" — *Internal Revenue Code* s. 2056A(a); "surviving spouse" — *Internal Revenue Code* s. 2(a); "taxpayer" — ITCIA 3, ITA 248(1); "United States" — Art. III:1(b).

8. Provided that the value, at the time of death, of the entire gross estate wherever situated of an individual who was a resident of Canada (other than a citizen of the United States) at the time of death does not exceed 1.2 million U.S dollars or its equivalent in Canadian dollars, the United States may impose its estate tax upon property forming part of the estate of the individual only if any gain derived by the individual from the alienation of such property would have been subject to income taxation by the United States in accordance with Article XIII (Gains).

Technical Explanation [1995 Protocol]:

Relief for small estates

Under paragraph 8, the United States agrees to limit the application of its estate tax in the case of certain small estates of Canadian resident decedents. This provision is intended to eliminate the "trap for the unwary" that exists for such decedents, in the absence of an estate tax convention between the United States and Canada. In the absence of sophisticated estate tax planning, such decedents may inadvertently subject their estates to U.S. estate tax liability by holding shares of U.S. corporate stock or other U.S. situs property. U.S. resident decedents are already protected in this regard by the provisions of Article XIII (Gains) of the present Convention, which prohibit Canada from imposing its income tax on gains deemed realized at death by U.S. residents on such property.

Paragraph 8 provides relief only in the case of Canadian resident decedents whose entire gross estates wherever situated (i.e., worldwide gross estates determined under U.S. law) have a value, at the time of death, not exceeding $1.2 million. Paragraph 8 provides that the United States may impose its estate tax upon property forming part of such estates only if any gain on alienation of the property would have been subject to U.S. income taxation under Article XIII (Gains). For estates with a total value not exceeding $1.2 million, this provision has the effect of permitting the United States to impose its estate tax only on real property situated in the United States, within the meaning of Article XIII, and personal property forming part of the business property of a U.S. permanent establishment or fixed base.

Saving clause exceptions

Certain provisions of Article XXIX B are included in the list of exceptions to the general "saving clause" of Article XXIX (Miscellaneous Rules), as amended by Article 17 of the Protocol. To the extent that an exception from the saving clause is provided for a provision, each Contracting State is required to allow the benefits of that provision to its residents (and, in the case of the United States, its citizens), notwithstanding the saving clause. General saving clause exceptions are provided for paragraphs 1, 5, and 6 of Article XXIX B. Saving clause exceptions are provided for paragraphs 2, 3, 4, and 7, except for the estates of former U.S. citizens referred to in paragraph 2 of Article XXIX.

Effective dates

Article 21 of the Protocol contains special retrospective effective date provisions for paragraphs 2 through 8 of Article XXIX B and certain related provisions of the Protocol. Paragraphs 2 through 8 of Article XXIX B and the specified related provisions generally will take effect with respect to deaths occurring after the date on which the Protocol enters into force (i.e., the date on which the instruments of ratification are exchanged). However, the benefits of those provisions will also be available with respect to deaths occurring after November 10, 1988, provided that a claim for refund due as a result of these provisions is filed by the later of one year from the date on which the Protocol enters into force or the date on which the applicable period for filing such a claim expires under the domestic law of the Contracting State concerned. The general effective dates set forth in Article 21 of the Protocol otherwise apply.

It is unusual for the United States to agree to retrospective effective dates. In this case, however, the negotiators believed that retrospective application was not inappropriate, given the fact that the TAMRA provisions were the impetus for negotiation of the Protocol and that the negotiations commenced soon after the enactment of TAMRA. The United States has agreed to retrospective effective dates in certain other instances (e.g., in the case of the U.S.-Germany estate tax treaty). The retrospective effective dates apply reciprocally, so that they will benefit the estates of U.S. decedents as well as Canadian decedents.

Definitions: "Canada" — Art. III:1(a), ITCIA 5; "estate", "individual", "property" — ITCIA 3, ITA 248(1); "United States" — Art. III:1(b).

Related Provisions [Art. XXIX-B]: ITA 60(d) — Deduction for interest accruing on estate taxes; Art. II:2(b)(iv) — Application to U.S. estate taxes; Art. XXVI:3(g) — Competent authority agreement to eliminate double taxation.

History [Art. XXIX-B]: Art. XXIX-B added by 1995 Protocol, article 19, generally effective for deaths after November 10, 1988, provided refund claims that would otherwise be too late are filed by November 9, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above.)

Article XXX — Entry Into Force

1. This Convention shall be subject to ratification in accordance with the applicable procedures of each Contracting State and instruments of ratification shall be exchanged at Ottawa as soon as possible.

Technical Explanation [1984]:

Paragraph 1 provides that the Convention is subject to ratification in accordance with the procedures of Canada and the United States. The exchange of instruments of ratification is to take place at Ottawa as soon as possible.

2. The Convention shall enter into force upon the exchange of instruments of ratification and, subject to the provisions of paragraph 3, its provisions shall have effect:

(a) for tax withheld at the source on income referred to in Articles X (Dividends), XI (Interest), XII (Royalties) and XVIII (Pensions and Annuities), with respect to amounts paid or credited on or after the first day of the second month next following the date on which the Convention enters into force;

(b) for other taxes, with respect to taxable years beginning on or after the first day of January next following the date on which the Convention enters into force; and

(c) notwithstanding the provisions of subparagraph (b), for the taxes covered by paragraph 4 of Article XXIX (Miscellaneous Rules) with respect to all taxable years referred to in that paragraph.

Technical Explanation [1984]:

Paragraph 2 provides, subject to paragraph 3, that the Convention shall enter into force upon the exchange of instruments of ratification. It has effect, with respect to source State taxation of dividends, interest, royalties, pensions, annuities, alimony, and child support, for amounts paid or credited on or after the first day of the second calendar month after the date on which the instruments of ratification are exchanged. For other taxes, the Convention takes effect for taxable years beginning on or after January 1 next following the date when instruments of ratification are exchanged. In the case of relief from United States social security taxes provided by paragraph 4 of Article XXIX (Miscellaneous Rules), the Convention also has effect for taxable years before the date on which instruments of ratification are exchanged.

3. For the purposes of applying the United States foreign tax credit in relation to taxes paid or accrued to Canada:

(a) notwithstanding the provisions of paragraph 2(a) of Article II (Taxes Covered), the tax on 1971 undistributed income on hand imposed by Part IX of the *Income Tax Act* of Canada shall be considered to be an income tax for distributions made on or after the first day of January 1972 and before the first day of January 1979 and shall be considered to be imposed upon the recipient of a distribution, in the proportion that the distribution out of undistributed income with respect to which the tax has been paid bears to 85 per cent of such undistributed income;

(b) the principles of paragraph 6 of Article XXIV (Elimination of Double Taxation) shall have effect for taxable years beginning on or after the first day of January 1976; and

(c) the provisions of paragraph 1 of Article XXIV shall have effect for taxable years beginning on or after the first day of January 1981.

Any claim for refund based on the provisions of this paragraph may be filed on or before June 30 of the calendar year following that in which the Convention enters into force, notwithstanding any rule of domestic law to the contrary.

Technical Explanation [1984]:

Paragraph 3 provides special effective date rules for foreign tax credit computations with respect to taxes paid or accrued to Canada. Paragraph 3(a) provides that the tax on 1971 undistributed income on hand imposed by Part IX of the *Income Tax Act* of Canada is considered to be an "income tax" for distributions made on or after January 1, 1972 and before January 1, 1979. Any such tax which is paid or accrued under U.S. standards is considered to be imposed at the time of distribution and on the recipient of the distribution, in the proportion that the distribution out of undistributed income with respect to which the tax has been paid bears to 85 percent of such undistributed income. A person claiming a credit for tax pursuant to paragraph 3(a) is obligated to compute the amount of the credit in accordance with that paragraph.

Paragraph 3(b) provides that the principles of paragraph 6 of Article XXIV (Elimination of Double Taxation), which provides for resourcing of certain dividend, interest, and royalty income to eliminate double taxation of U.S. citizens residing in Canada, have effect for taxable years beginning on or after January 1, 1976. The paragraph is intended to grant the competent authorities sufficient flexibility to address certain practical problems that have arisen under the 1942 Convention. It is anticipated that the competent authorities will be guided by paragraphs 4 and 5 of Article XXIV in applying paragraph 3(b) of Article XXX. Paragraph 3(c) provides that the provisions of paragraph 1 of Article XXIV (and the source rules of that Article) shall have effect for taxable years beginning on or after January 1, 1981.

Any claim for refund based on the provisions of paragraph 3 may be filed on or before June 30 of the calendar year following the year in which instruments of ratification are exchanged, notwithstanding statutes of limitations or other rules of domestic law to the contrary. For purposes of Code section 6611, the date of overpayment is the date on which instruments of ratification are exchanged, with respect to any refunds of U.S. tax pursuant to paragraph 3.

History: Para. 3 amended by 1983 Protocol, article XIV.

Definitions: "Canada" — Art. III:1(a), ITCIA 5; "United States" — Art. III:1(b).

4. Subject to the provisions of paragraph 5, the 1942 Convention shall cease to have effect for taxes for which this Convention has effect in accordance with the provisions of paragraph 2.

Technical Explanation [1984]:

Paragraph 4 provides that, subject to paragraph 5, the 1942 Convention ceases to have effect for taxes for which the Convention has effect under the provisions of paragraph 2. For example, if under paragraph 2 the Convention were to have effect with respect to taxes withheld at source on dividends paid as of October 1, 1984, the 1942 Convention will not have effect with respect to such taxes.

5. Where any greater relief from tax would have been afforded by any provision of the 1942 Convention than under this Convention, any such provision shall continue to have effect for the first taxable year with respect to which the provisions of this Convention have effect under paragraph 2(b).

Technical Explanation [1984]:

Paragraph 5 modifies the rule of paragraph 4 to allow all of the provisions of the 1942 Convention to continue to have effect for the period through the first taxable year with respect to which the provisions of the Convention would otherwise have effect under paragraph 2(b), if greater relief from tax is available under the 1942 Convention than under the Convention. Paragraph 5 applies to all provisions of the 1942 Convention, not just those provisions of the Convention for which the Convention takes effect under paragraph 2(b) of this Article. Thus, for example, assume that the Convention has effect, pursuant to paragraph 2(b), for taxable years of a taxpayer beginning on or after January 1, 1985. Further assume that a U.S. resident with a taxable year beginning on April 1 and ending on March 31 receives natural resource royalties from Canada which are subject to a 25% tax under Article VI (Income from Real Property) of the Convention, as amended by the Protocol, and Canada's internal law, but which would be subject to a 15% tax under Article XI of the 1942 Convention. Pursuant to paragraph 5, the greater benefits of the 1942 Convention would continue to apply to royalties paid or credited to the U.S. resident through March 31, 1986.

Definitions: "the 1942 Convention" — Art. III:1(j).

6. The 1942 Convention shall terminate on the last date on which it has effect in accordance with the preceding provisions of this Article.

Technical Explanation [1984]:

Paragraph 6 provides that the 1942 Convention terminates on the last of the dates on which it has effect in accordance with the provisions of paragraphs 4 and 5.

Definitions: "the 1942 Convention" — Art. III:1(j).

7. The Exchange of Notes between the United States and Canada dated August 2 and September 17, 1928, providing for relief from double income taxation on shipping profits, is terminated. Its provisions shall cease to have effect with respect to taxable years beginning on or after the first day of January next following the date on which this Convention enters into force.

Technical Explanation [1984]:

Paragraph 7 terminates the Exchange of Notes between the United States and Canada of August 2 and September 17, 1928 providing for relief from double taxation of shipping profits. The provisions of the Exchange of Notes no longer have effect for taxable years beginning on or after January 1 following the exchange of instruments of ratification of the Convention. The 1942 Convention, in Article V, had suspended the effectiveness of the Exchange of Notes.

Definitions: "Canada" — Art. III:1(a), ITCIA 5; "United States" — Art. III:1(b).

8. The provisions of the Convention between the Government of Canada and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on the Estates of Deceased Persons signed at Washington on February 17, 1961 shall continue to have effect with respect to estates of persons deceased prior to the first day of January next following the date on which this Convention enters into force but shall cease to have effect with respect to estates of persons deceased on or after that date. Such Convention shall terminate on the last date on which it has effect in accordance with the preceding sentence.

Technical Explanation [1984]:

Paragraph 8 terminates the Convention between Canada and the United States for the Avoidance of Double Taxation with Respect to Taxes on the Estates of Deceased Persons signed on February 17, 1961. The provisions of that Convention cease to have effect with respect to estates of persons deceased on or after January 1 of the year following the exchange of instruments of ratification of the Convention.

Definitions: "Canada" — Art. III:1(a), ITCIA 5; "estate" — ITCIA 3, ITA 248(1); "person" — Art. III:1(e), ITCIA 3, *Interpretation Act* 35(1); "United States" — Art. III:1(b).

Interpretation Bulletins: IT-173R2: Capital gains derived in Canada by residents of the United States.

Article XXXI — Termination

1. This Convention shall remain in force until terminated by a Contracting State.

Technical Explanation [1984]:

Paragraph 1 provides that the Convention shall remain in force until terminated by Canada or the United States.

2. Either Contracting State may terminate the Convention at any time after 5 years from the date on which the Convention enters into force provided that at least 6 months' prior notice of termination has been given through diplomatic channels.

Technical Explanation [1984]:

Paragraph 2 provides that either Canada or the United States may terminate the Convention at any time after 5 years from the date on which instruments of ratification are exchanged, provided that notice of termination is given through diplomatic channels at least 6 months prior to the date on which the Convention is to terminate.

3. Where a Contracting State considers that a significant change introduced in the taxation laws of the other Contracting State should be accommodated by a modification of the Convention, the Contracting States shall consult together with a view to resolving the matter; if the matter cannot be satisfactorily resolved, the first-mentioned State may terminate the Convention in accordance with the procedures set forth in paragraph 2, but without regard to the 5 year limitation provided therein.

Technical Explanation [1984]:

Paragraph 3 provides a special termination rule in situations where Canada or the United States changes its taxation laws and the other Contracting State believes that such change is significant enough to warrant modification of the Convention. In such a circumstance, the Canadian Ministry of Finance and the United States Department of the Treasury would consult with a view to resolving the matter. If the matter cannot be satisfactorily resolved, the Contracting State requesting an accommodation because of the change in the other Contracting State's taxation laws may terminate the Convention by giving the 6 months' prior notice required by paragraph 2, without regard to whether the Convention has been in force for 5 years.

Definitions: "State" — Art. III:1(i).

4. In the event the Convention is terminated, the Convention shall cease to have effect:

(a) for tax withheld at the source on income referred to in Articles X (Dividends), XI (Interest), XII (Royalties), XVIII (Pensions and Annuities) and paragraph 2 of Article XXII (Other Income), with respect to amounts paid or credited on or after the first day of January next following the expiration of the 6 months' period referred to in paragraph 2; and

(b) for other taxes, with respect to taxable years beginning on or after the first day of January next following the expiration of the 6 months' period referred to in paragraph 2.

Technical Explanation [1984]:

Paragraph 4 provides that, in the event of termination, the Convention ceases to have effect for tax withheld at source under Articles X (Dividends), XI (Interest), XII (Royalties), and XVIII (Pensions and Annuities), and under paragraph 2 of Article XXII (Other Income), with respect to amounts paid or credited on or after the first day of January following the expiration of the 6 month period referred to in paragraph 2. In the case of other taxes, the Convention shall cease to have effect in the event of termination with respect to taxable years beginning on or after January 1 following the expiration of the 6 month period referred to in paragraph 2.

Appendix — Execution and Competent Authorities Letter

[From Canada — ed.] *September 26, 1980*

Excellency: I have the honor to refer to the Convention between the United States of America and Canada with Respect to Taxes on Income and on Capital, signed today, and to confirm certain understandings reached between the two Governments with respect to the Convention.

1. In French, the term **"société"** also means a "corporation" within the meaning of Canadian law.

2. The competent authorities of each of the Contracting States shall review the procedures and requirements for an organization of the other Contracting State to establish its status as a religious, scientific, literary, educational or charitable organization entitled to exemption under paragraph 1 of Article XXI (Exempt Organizations), or as an eligible recipient of the charitable contributions or gifts referred to in paragraphs 5 and 6 of Article XXI, with a view to avoiding duplicate application by such organizations to the administering agencies of both Contracting States. If a Contracting State determines that the other Contracting State maintains procedures to determine such status and rules for qualification that are compatible with such procedures and rules of the first-mentioned Contracting State, it is contemplated that such first-mentioned

Contracting State shall accept the certification of the administering agency of the other Contracting State as to such status for the purpose of making the necessary determinations under paragraphs 1, 5 and 6 of Article XXI.

It is further agreed that the term **"family"**, as used in paragraphs 5 and 6 of Article XXI, means an individual's brothers and sisters (whether by whole or half-blood, or by adoption), spouse, ancestors, lineal descendants and adopted descendants.

3. It is the position of Canada that the so-called "unitary apportionment" method used by certain states of the United States to allocate income to United States offices or subsidiaries of Canadian companies results in inequitable taxation and imposes excessive administrative burdens on Canadian companies doing business in those states. Under that method the profit of a Canadian company on its United States business is not determined on the basis of arm's-length relations but is derived from a formula taking account of the income of the Canadian company and its worldwide subsidiaries as well as the assets, payroll and sales of all such companies. For a Canadian multinational company with many subsidiaries in different countries to have to submit its books and records for all of these companies to a state of the United States imposes a costly burden. It is understood that the Senate of the United States has not consented to any limitation on the taxing jurisdiction of the states by a treaty and that a provision which would have restricted the use of unitary apportionment in the case of United Kingdom corporations was recently rejected by the Senate. Canada continues to be concerned about this issue as it affects Canadian multinationals. If an acceptable provision on this subject can be devised, the United States agrees to reopen discussions with Canada on this subject.

CANADA–UNITED KINGDOM TAX CONVENTION

Convention between The Government of Canada and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains, as Amended by the Protocols Signed on April 15, 1980, October 16, 1985 and May 7, 2003

Enacted in Canada by S.C. 1980-81-82-83, c. 44, Part X (1980 Protocol enacted by Part XI); 1985 Protocol enacted in Canada by SI/86-47 (April 16, 1986), in force Dec. 23, 1985; 2003 Protocol enacted in Canada by P.C. 2003-1374 (Sept. 18, 2003), in force May 4, 2004.

Background

The Canada–United Kingdom Income Tax Convention, signed on Sept. 8, 1978 [in force Dec. 17, 1980] and amended by a Protocol signed on April 15, 1980 [in force Dec. 18, 1980], a second Protocol signed on Oct. 16, 1985 [in force Dec. 23, 1985] and a third Protocol signed on May 7, 2003 [in force May 4, 2004], is reproduced below.

In accordance with Article 28 of the Convention and Article VI of the 1980 Protocol, the provisions thereof have effect in Canada as follows:

(a) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after January 1, 1976;

(b) in respect of other Canadian taxes, for the 1976 taxation year and subsequent years;

(c) the provisions of Article 27A of the Convention, as added by Article IV of the Protocol, will have effect in Canada:

(i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after January 1, 1981;

(ii) in respect of other Canadian taxes for any taxation year beginning on or after January 1, 1981.

The provisions of the 1985 Protocol have effect in Canada as follows:

(a) for tax withheld at the source on income referred to in Articles 10, 11 and 12 of the Convention, as amended by the 1985 Protocol, with respect to amounts paid or credited on or after February 1, 1986;

(b) in relation to payments referred to in Article 17 of the Convention, as amended by the 1985 Protocol, with respect to amounts paid on or after April 6, 1986;

(c) in relation to all other provisions of the 1985 Protocol, for taxation years beginning on or after January 1, 1986.

The 1985 Protocol shall cease to be effective at such time as the Convention ceases to be effective in accordance with Article 29 of the Convention.

The May 7, 2003 Protocol, Art. XIV, provides:

> The Governments of the Contracting States shall inform one another, through diplomatic channels, of the completion of the procedures required by their laws for the bringing into force of this Protocol. This Protocol shall enter into force on the date of the later of these notifications and shall thereupon have effect:
>
> (a) in Canada:
>
> (i) in respect of tax withheld at the source, on amounts paid or credited to non-residents on or after the first day of January in the calendar year [2005 — ed.] next following that in which this Protocol enters into force; and
>
> (ii) in respect of other Canadian tax, for taxation years beginning on or after the first day of January in the calendar year [2005 — ed.] next following that in which this Protocol enters into force;
>
> (b) in the United Kingdom:
>
> (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year [2005 — ed.] next following that in which this Protocol enters into force;
>
> (ii) in respect of corporation tax, for any financial year beginning on or after 1st April in the calendar year [2005 — ed.] next following that in which this Protocol enters into force.

The Protocol entered into force on May 4, 2004.

For commentary on the 2003 Protocol see Stephen Bowman, "Canada-United Kingdom Income Tax Convention — Third Protocol Signed — The Devil is in the Detail", XI(1) *Corporate Finance* (Federated Press) 1018-22 (2003).

For interpretation of tax treaties see Notes to *Income Tax Conventions Interpretation Act*, preceding the Canada-U.S. treaty.

U.K. income tax is administered by Her Majesty's Revenue & Customs since April 2005 (merging Inland Revenue with Her Majesty's Customs & Excise). For information, see www.hmrc.gov.uk.

Exchange of Letters between the Governments of the United Kingdom and Canada, May 7, 2003

[from the UK]

Excellency:

I have the honour to refer to the Protocol amending the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, signed at London on 8 September 1978, as amended by the Protocol signed at Ottawa on 15 April 1980 and as further amended by the Protocol signed at London on 16 October 1985, which has been signed today and to make on behalf of the Government of the United Kingdom of Great Britain and Northern Ireland the following proposals:

With reference to Articles IV, V and VI:

It is understood that, in the event that, pursuant to an agreement or convention concluded after the date of signature of this Protocol with a country that is a member of the Organisation for Economic Co-operation and Development, Canada agrees to a rate of tax on dividends, interest, or royalties lower than that provided for in the Convention, the appropriate authorities of the Contracting States shall consult at the earliest opportunity with respect to further reductions in the withholding taxes provided for in the Convention.

With reference to paragraph 1 of Article VII:

It is understood that an individual who becomes a resident of the United Kingdom and is treated as resident for any year of assessment from the date of arrival shall be charged to capital gains tax only in respect of chargeable gains from the alienation of property made after the date of arrival, provided that the individual has not been resident or ordinarily resident in the United Kingdom at any time during the six years immediately preceding the alienation of the property and that the gain in question is not one that is chargeable on the individual as the settlor of a settlement under sections 77-79 or section 86 and Schedule 5 of the Taxation of Chargeable Gains Act 1992.

With reference to Article XII:

It is understood that the provisions of Article 24 (Exchange of Information) of the Convention, as amended by Article XII of the Protocol signed today, shall have effect from the date of entry into force of the Protocol, without regard to the taxable or chargeable period to which the request for information relates.

If the foregoing proposals are acceptable to the Government of Canada, I have the honour to suggest that the present note and Your Excellency's reply to that effect shall be regarded as constituting an agreement between the two Governments in this matter, which shall enter into force at the same time as the Protocol.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

Dawn Primarolo

...

[from Canada]

Excellency:

I have the honour to refer to your note dated 7 May 2003 which reads as follows: [see Letter from the Government of the United Kingdom above — ed.]

The foregoing proposals being acceptable to the Government of Canada, I have the honour to confirm that your note and this reply shall be regarded as constituting an agreement between the two Governments in this matter which shall enter into force at the same time as the Protocol.

Please accept the renewed assurance of my highest consideration.

Mel Cappe

The Government of Canada and the Government of the United Kingdom of Great Britain and Northern Ireland, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains, have agreed as follows:

Article 1 — Personal Scope

This Convention shall apply to persons who are residents of one or both of the Contracting States.

Definitions: "person" — Art. 3:1(c); "resident" — ITCIA 3, ITA 250.

Article 2 — Taxes Covered

1. The taxes which are the subject of this Convention are:

(a) in Canada:

the income taxes which are imposed by the Government of Canada, (hereinafter referred to as **"Canadian tax"**);

(b) in the United Kingdom of Great Britain and Northern Ireland:

the income tax, the corporation tax, the capital gains tax, the petroleum revenue tax and the development land tax (hereinafter referred to as **"United Kingdom tax"**).

Definitions: "Canada" — Art. 3:1(a)(i), ITCIA 5; "company" — Art.3:1(d); "tax" — Art. 3:1(g); "United Kingdom" — Art. 3:1(a)(ii).

2. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes by either Contracting State or by the Government of any territory to which the present Convention is extended under Article 26. The Contracting States shall notify each other of changes which have been made in their respective taxation laws.

Definitions: "tax" — Art. 3:1(g).

Article 3 — General Definitions

1. In this Convention, unless the context otherwise requires:

(a)

(i) the term **"Canada"** used in a geographical sense, means the territory of Canada, including any area beyond the territorial waters of Canada which is an area where Canada may, in accordance with its national legislation and international law, exercise sovereign rights with respect to the sea-bed and sub-soil and their natural resources;

(ii) the term **"United Kingdom"** means Great Britain and Northern Ireland, including an area outside the territorial sea of the United Kingdom which in accordance with international law has been or may be hereafter designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the sea-bed and sub-soil and their natural resources may be exercised;

(b) the terms **"a Contracting State"** and **"the other Contracting State"** means, as the context requires, Canada or the United Kingdom;

(c) the term **"person"** includes an individual, a trust, a company, any entity treated as a unit for tax purposes and any other body of persons, but does not include a partnership;

(d) the term **"company"** means any body corporate or any other entity which is treated as a body corporate for tax purposes; in French, the term **"société"** also means a "corporation" within the meaning of Canadian law;

(e) the terms **"enterprise of a Contracting State"** and **"enterprise of the other Contracting State"** mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(f) the term **"competent authority"** means:

(i) in the case of Canada, the Minister of National Revenue or his authorised representative;

(ii) in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative;

(g) the term **"tax"** means Canadian tax or United Kingdom tax, as the context requires;

(h) the term **"national"** means:

(i) in relation to the United Kingdom, any British citizen, or any British subject not possessing the citizenship of any other Commonwealth country or territory, provided that citizen or subject has the right of abode in the United Kingdom; and any legal person, partnership, association or other entity deriving its status as such from the law in force in the United Kingdom;

(ii) in relation to Canada, all citizens of Canada and all legal persons, partnerships and associations deriving their status as such from the law in force in Canada.

History: Art. 3:1(c) amended by 2003 Protocol, effective 2005. It formerly read as follows:

(c) the term "person" comprises an individual, a company, any entity treated as a unit for tax purposes or any other body of persons;

Art. 3:1(h)(i) amended by 2003 Protocol, effective 2005. It formerly read as follows:

(i) in relation to the United Kingdom all citizens of the United Kingdom and Colonies, British Subjects under Sections 2, 13(1) or 16 of the *British Nationality Act 1948*, and British Subjects by virtue of Section 1 of the *British Nationality Act 1965*, provided they are patrial within the meaning of the *Immigration Act 1971*, so far as these provisions are in force on the date of entry into force of this Convention or have been modified only in minor respects, so as not to affect their general character; and all legal persons, partnerships, and associations deriving their status as such from the law in force in the United Kingdom;

Definitions: "Canada" — Art. 3:1(a)(i), ITCIA 5; "Canadian tax" — Art. 2:1(a); "company" — Art. 3:1(d); "corporation", "individual" — ITCIA 3, ITA 248(1); "partnership" — ITCIA 3, ITA 96(1); "person" — Art. 3:1(c); "resident of a Contracting State" — Art. 4:1; "tax" — Art. 3:1(g); "trust" — ITCIA 3, ITA 248(1), (3); "United Kingdom" — Art. 3:1(a)(ii); "United Kingdom tax" — Art. 2:1(b).

2. As regards the application of the Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of the Convention.

Definitions: "a Contracting State" — Art. 3:1(b); "tax" — Art. 3:1(g).

Article 4 — Fiscal Domicile

1. For the purposes of this Convention, the term **"resident of a Contracting State"** means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that Contracting State in respect only of income from sources therein.

Definitions: "person" — Art. 3:1(c); "tax" — Art. 3:1(g).

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

(a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);

(b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

(c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;

(d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

Definitions: "competent authority" — Art. 3:1(f); "individual" — ITCIA 3, ITA 248(1); "national" — Art. 3:1(h); "resident" — ITCIA 3, ITA 250; "resident of a Contracting State" — Art. 4:1.

3. Where by reason of the provisions of paragraph 1 of this Article a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the State of which the person shall be deemed to be a resident, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. If the competent authorities are unable to determine the matter by mutual agreement, they shall endeavour to determine by mutual agreement the mode of application of the Convention to that person.

Related Provisions: ITA 115.1 — Competent authority agreements.

History: Art. 4:3 amended by 2003 Protocol, effective 2005. It formerly read as follows:

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question and to determine the mode of application of the Convention to such person.

Definitions: "competent authority" — Art. 3:1(f); "individual" — ITCIA 3, ITA 248(1); "person" — Art. 3:1(c); "resident" — ITCIA 3, ITA 250.

Article 5 — Permanent Establishment

1. For the purposes of this Convention, the term **"permanent establishment"** means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

Related Provisions: Reg. 8202(2) — Treaty definition applies for certain FAPI purposes; Art. 5, ss. 2–6 — Extensions to definition of "permanent establishment".

Definitions: "business" — ITCIA 3, ITA 248(1).

I.T. Technical News: 25 (e-commerce — whether web site is permanent establishment).

2. The term "permanent establishment" shall include especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, quarry or other place of extraction of natural resources;

(g) a building site or construction or assembly project which exists for more than 12 months.

3. The term "permanent establishment" shall not be deemed to include:

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the enterprise.

Definitions: "business" — ITCIA 3, ITA 248(1).

4. A person — other than an agent of independent status to whom paragraph 5 applies — acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that first-mentioned State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

Definitions: "a Contracting State" — Art. 3:1(b); "enterprise of the other Contracting State" — Art. 3:1(e); "person" — Art. 3:1(c).

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

Definitions: "enterprise of a Contracting State" — Art. 3:1(e); "business" — ITCIA 3, ITA 248(1); "person" — Art. 3:1(c); "the other Contracting State" — Art. 3:1(b).

6. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Definitions: "business" — ITCIA 3, ITA 248(1); "company" — Art. 3:1(d); "resident" — ITCIA 3, ITA 250; "resident of a Contracting State" — Art. 4:1; "the other Contracting State" — Art. 3:1(b).

Article 6 — Income from Immovable Property

1. Income from immovable property, including income from agriculture or forestry, may be taxed in the Contracting State in which such property is situated.

Definitions: "immovable property" — Art. 6:2, ITCIA 5, Quebec *Civil Code* art. 900-907; "property" — ITCIA 3, ITA 248(1).

2. For the purposes of this Convention, the term **"immovable property"** shall be defined in accordance with the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

Definitions: "immovable property" — Art. 6:2, ITCIA 5, Quebec *Civil Code* art. 900-907; "mineral", "property" — ITCIA 3, ITA 248(1); "usufruct" — Quebec *Civil Code* art. 1120-1171.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property and to profits from the alienation of such property.

Definitions: "immovable property" — Art. 6:2, ITCIA 5, Quebec *Civil Code* art. 900-907; "property" — ITCIA 3, ITA 248(1).

4. The provisions of paragraphs 1 and 3 shall also apply to income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

Definitions: "immovable property" — Art. 6:2, ITCIA 5, Quebec *Civil Code* art. 900-907.

Article 7 — Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on or has carried on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

Definitions: "business" — ITCIA 3, ITA 248(1); "enterprise of a Contracting State" — Art. 3:1(e); "permanent establishment" — Art. 5:1; "the other Contracting State" — Art. 3:1(b).

I.T. Technical News: 25 (e-commerce).

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall be attributed to that permanent establishment profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

Definitions: "business" — ITCIA 3, ITA 248(1); "enterprise of a Contracting State" — Art. 3:1(e); "permanent establishment" — Art. 5:1; "the other Contracting State" — Art. 3:1(b).

3. In the determination of the profits of a permanent establishment situated in a Contracting State, there shall be allowed as deductions expenses of the enterprise (other than expenses which would not be deductible under the law of that State if the permanent establishment were a separate enterprise) which are incurred for the purposes of the permanent establishment including executive and general administrative expenses, whether incurred in the State in which the permanent establishment is situated or elsewhere.

Definitions: "a Contracting State" — Art. 3:1(b); "permanent establishment" — Art. 5:1.

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles embodied in this Article.

Definitions: "a Contracting State" — Art. 3:1(b); "permanent establishment" — Art. 5:1.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

Definitions: "permanent establishment" — Art. 5:1.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

Definitions: "permanent establishment" — Art. 5:1.

7. Where profits include items of income which are dealt with separately in other Articles of this Convention, the provisions of this Article shall not prevent the application of the provisions of those other articles with respect to the taxation of such items of income.

Article 8 — Shipping and Air Transport

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

Definitions: "enterprise of a Contracting State" — Art. 3:1(e); "international traffic" — ITCIA 3, ITA 248(1).

2. Notwithstanding the provisions of paragraph 1 and Article 7, profits derived from the operation of ships used principally to transport passengers or goods exclusively between places in a Contracting State may be taxed in that State.

Definitions: "a Contracting State" — Art. 3:1(b).

3. Notwithstanding the provisions of Article 7, profits of an enterprise of a Contracting State from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise in international traffic shall be taxable only in that State.

Definitions: "enterprise of a Contracting State" — Art. 3:1(e); "international traffic" — ITCIA 3, ITA 248(1).

4. The provisions of this Article shall also apply to profits derived by an enterprise of a Contracting State from its participation in a pool, a joint business or an international operating agency.

Definitions: "enterprise of a Contracting State" — Art. 3:1(e).

History: Art. 8 amended by 1985 Protocol to renumber former para. 3 as para. 4 and to add new para. 3. Former para. 3 read as follows:

> 3. The provisions of paragraphs 1 and 2 shall also apply to profits referred to in those paragraphs derived by an enterprise of a Contracting State from its participation in a pool, a joint business or in an international operating agency.

Article 9 — Associated Enterprises

1. Where:

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State;

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included by a Contracting State in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State — and taxes accordingly — profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then, subject to the provisions of paragraph 3 of this Article, that other State shall (notwithstanding any time limits in the domestic law of that other State) make an appropriate adjustment to the amount of tax charged therein on the profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

Definitions: "a Contracting State" — Art. 3:1(b); "enterprise of the other Contracting State" — Art. 3:1(e); "tax" — Art. 3:1(g).

3. Where a Contracting State makes or proposes to make an adjustment in accordance with the provisions of paragraph 1 of this Article, the other Contracting State shall be required to make the appropriate adjustment provided for under paragraph 2 of this Article to the profits of the associated enterprise in that other State only if within six years from the end of the taxation year (in Canada) or the chargeable period (in the United Kingdom) to which the first-mentioned adjustment relates, the competent authority of the other State has been notified that the first-mentioned adjustment has been made or proposed.

Definitions: "a Contracting State" — Art. 3:1(b); "Canada" — Art. 3:1(a)(i), ITCIA 5; "the other Contracting State" — Art. 3:1(b); "United Kingdom" — Art. 3:1(a)(ii).

4. The provisions of paragraphs 2 and 3 of this Article shall not impose any obligation on Canada in the case of

fraud, wilful default or gross negligence or on the United Kingdom in the case of fraudulent conduct.

History: Art. 9 amended by 2003 Protocol, effective 2005. It formerly read as follows:

> Where
>
> (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
>
> (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,
>
> and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any income, deductions, receipts or outgoings, which would, but for those conditions, have been attributed to one of the enterprises, but, by reason of those conditions, have not been so attributed may be taken into account in computing the profits or losses of that enterprise and taxed accordingly.

Article 10 — Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

History: Art. 10:1 amended by 2003 Protocol, effective 2005. It formerly read as follows:

> 1. Dividends paid by a company which is a resident of Canada to a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be taxed in Canada, and according to the laws of Canada, but provided that the beneficial owner of the dividends is a resident of the United Kingdom the tax so charged shall not exceed:
>
> (a) 10 per cent of the gross amount of the dividends if the recipient is a company which controls, directly or indirectly, at least 10 per cent of the voting power in the company paying the dividends;
>
> (b) 15 per cent of the gross amount of the dividends in all other cases.

Art. 10:1 amended by 1985 Protocol. It formerly read:

> 1. Dividends paid by a company which is a resident of Canada to a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be taxed in Canada, and according to the laws of Canada, but provided that the beneficial owner of the dividends is a resident of the United Kingdom the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

Definitions: "a Contracting State" — Art. 3:1(b); "dividend" — Art. 10:4; "resident" — Art. 4:1; "the other Contracting State" — Art. 3:1(b).

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State the tax so charged shall not exceed:

(a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which controls, directly or indirectly, at least 10 per cent of the voting power in the company paying the dividends;

(b) 15 per cent of the gross amount of the dividends in all other cases.

The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

History: Art. 10:2 amended by 2003 Protocol, effective 2005. It formerly read as follows:

> 2. Dividends paid by a company which is a resident of the United Kingdom to a resident of Canada may be taxed in Canada. Such dividends may also be taxed in the United Kingdom, and according to the laws of the United Kingdom, but provided that the beneficial owner of the dividends is a resident of Canada the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

Definitions: "a Contracting State" — Art. 3:1(b); "company" — Art. 3:1(d); "dividend" — Art. 10:4; "resident" — Art. 4:1.

3. [Repealed]

History: Art. 10:3 repealed by 2003 Protocol, effective 2005. It formerly read as follows:

> 3. However, as long as an individual resident in the United Kingdom is entitled to a tax credit in respect of dividends paid by a company resident in the United Kingdom, the following provisions of this paragraph shall apply instead of the provisions of paragraph 2 of this Article:
>
> (a)
>
> (i) Dividends paid by a company which is a resident of the United Kingdom to a resident of Canada may be taxed in Canada.
>
> (ii) Where a resident of Canada is entitled to a tax credit in respect of such a dividend under sub-paragraph (b) of this paragraph, tax may also be charged in the United Kingdom and according to the laws of the United Kingdom, on the aggregate of the amount or value of that dividend and the amount of that tax credit at a rate not exceeding 15 per cent.
>
> (iii) Where a resident of Canada is entitled to a tax credit in respect of such a dividend under sub-paragraph (c) of this paragraph, tax may also be charged in the United Kingdom and according to the laws of the United Kingdom, on the aggregate of the amount or value of that dividend and the amount of that tax credit at a rate not exceeding 10 per cent.
>
> (iv) Except as provided in sub-paragraphs (a)(ii) and (a)(iii) of this paragraph, dividends paid by a company which is a resident of the United Kingdom to a resident of Canada who is the beneficial owner of those dividends shall be exempt from any tax which is chargeable in the United Kingdom on dividends.
>
> (b) A resident of Canada who receives a dividend from a company which is a resident of the United Kingdom shall, subject to the provisions of sub-paragraph (c) of this paragraph and provided he is the beneficial owner of the dividend, be entitled to the tax credit in respect thereof to which an individual resident in the United Kingdom would have been entitled had he received that dividend, and to the payment of any excess of such credit over his liability to United Kingdom tax.
>
> (c) The provisions of sub-paragraph (b) of this paragraph shall not apply where the beneficial owner of the dividend is, or is associated with, a company which, either alone or together with one or more associated companies, controls, directly or indirectly, at least 10 per cent of the voting power in the company paying the dividend. In these circumstances a company which is a resident of Canada and receives a dividend from a company which is a resident of the United Kingdom shall, provided it is the beneficial owner of the dividend, be entitled to a tax credit equal to one-half of the tax credit to which an individual resident in the United Kingdom would have been entitled had he received that dividend, and to the payment of any excess of such credit over its liability to United Kingdom tax. For the purpose of this sub-paragraph, two companies shall be deemed to be associated if one controls, directly or indirectly, more than 50 per cent of the voting power in the other company, or a third company controls more than 50 per cent of the voting power in both of them.

Art. 10:3 amended by 1985 Protocol to substitute subpara. 3(c), to add new subpara. 3(a)(iii) and to renumber former subpara. 3(a)(iii) as 3(a)(iv), adding reference in (iv) to new subpara. (a)(iii). Subpara. 3(c) formerly read:

> (c) The provisions of subparagraph (b) of this paragraph shall not apply where the beneficial owner of the dividend is a company which, either alone or together with one or more associated companies, controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend. For the purposes of this subparagraph two companies shall be deemed to be associated if

one is controlled directly or indirectly by the other or both are controlled directly or indirectly by a third company.

4. The term **"dividends"** as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income assimilated to or treated in the same way as income from shares by the taxation law of the State of which the company making the payment is a resident.

Definitions: "company" — Art. 3:1(d); "resident" — ITCIA 3, ITA 250; "share" — ITCIA 3, ITA 248(1).

5. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

History: Art. 10:5 amended by 2003 Protocol, effective 2005. It formerly read as follows:

> 5. The provisions of paragraphs 1, 2 and 3 shall not apply if the recipient of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

Definitions: "business" — ITCIA 3, ITA 248(1); "dividend" — Art. 10:4; "permanent establishment" — Art. 5:1; "resident of a Contracting State" — Art. 4:1; "the other Contracting State" — Art. 3:1(b).

6. Where a company is a resident of only one Contracting State, the other Contracting State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Definitions: "a Contracting State" — Art. 3:1(b); "dividend" — Art. 10:4; "permanent establishment" — Art. 5:1; "the other Contracting State" — Art. 3:1(b); "tax" — Art. 3:1(g).

7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

History: Art. 10:7 amended by 2003 Protocol, effective 2005. It formerly read as follows:

> 7. If a resident of Canada does not bear Canadian tax on dividends derived from a company which is a resident of the United Kingdom and owns 10 per cent or more of the class of shares in respect of which the dividends are paid, then neither paragraph 2 nor 3 shall apply to the dividends to the extent that they can have been paid only out of profits which the company paying the dividends earned or other income which it received in a period ending twelve months or more before the relevant date. For the purposes of this paragraph the term "relevant date" means the date on which the beneficial owner of the dividends became the owner of 10 per cent or more of the class of shares referred to above.
>
> Provided that this paragraph shall not apply if the shares were acquired for bona fide commercial reasons and not primarily for the purpose of securing the benefit of this Article.

Definitions: "Canada" — Art. 3:1(a)(i), ITCIA 5; "Canadian tax" Art. 2:1(a); "company" — Art. 3:1(d); "dividend" — Art. 10:4; "resident" — ITCIA 3, ITA 250; "share" — ITCIA 3, ITA 248(1); "United Kingdom" — Art. 3:1(a)(ii).

Information Circulars: 76-12R5: Applicable rate of part XIII tax on amounts paid or credited to persons in countries with which Canada has a tax convention.

Article 11 — Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

Definitions: "a Contracting State" — Art. 3:1(b); "interest" — Art. 11:5; "resident" — ITCIA 3, ITA 250; "the other Contracting State" — Art. 3:1(b).

2. However, such interest may be taxed in the Contracting State in which it arises, and according to the law of that State; but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

History: Art. 11:2 amended by 1985 Protocol to substitute "10 per cent" for "15 per cent".

Definitions: "interest" — Art. 11:5; "tax" — Art. 3:1(g).

3. Notwithstanding the provisions of paragraph 2 of this Article,

(a) interest arising in the United Kingdom and paid to a resident of Canada shall be taxable only in Canada if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by Export Development Canada;

(b) interest arising in Canada and paid to a resident of the United Kingdom shall be taxable only in the United Kingdom if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by the United Kingdom Export Credits Guarantee Department; and

(c) interest arising in a Contracting State and paid with respect to indebtedness in connection with the sale on credit by a resident of the other State of any equipment, merchandise or services, except where the sale or indebtedness was between related persons, shall be taxable only in the other State.

History: Art. 11:3 amended by 2003 Protocol, effective 2005. It formerly read as follows:

> 3. Notwithstanding the provisions of paragraph 2 of this Article,
>
> (a) Interest arising in the United Kingdom and paid to a resident of Canada shall be taxable only in Canada if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by the Export Development Corporation; and
>
> (b) Interest arising in Canada and paid to a resident of the United Kingdom shall be taxable only in the United Kingdom if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by the United Kingdom Export Credits Guarantee Department.

Definitions: "Canada" — Art. 3:1(a)(i), ITCIA 5; "interest" — Art. 11:5; "resident" — ITCIA 3, ITA 250; "United Kingdom" — Art. 3:1(a)(ii).

4. (a) Notwithstanding the provisions of paragraph 2 of this Article, interest arising in Canada and paid in respect of a bond, debenture or other similar obligation of the Government of Canada or of a political subdivision or local authority thereof shall, provided that the interest is beneficially owned by a resident of the United Kingdom, be taxable only in the United Kingdom;

(b) Notwithstanding the provisions of Article 29 Canada may, on or before the thirtieth day of June in any calendar year give to the United Kingdom notice of termination of this paragraph and in such event this paragraph shall cease to have effect in respect of interest paid on obligations issued after 31 December of the calendar year in which the notice is given.

Definitions: "Canada" — Art. 3:1(a)(i), ITCIA 5; "interest" — Art. 11:5; "United Kingdom" — Art. 3:1(a)(ii).

5. The term **"interest"** as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to bonds or debentures, as well as income assimilated to income from money lent by the taxation law of the State in which the income arises. However, the term "interest" does not include income dealt with in Article 10.

6. The provisions of paragraphs 1, 2, 3 and 4 of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

History: Art. 11:6 amended by 2003 Protocol, effective 2005. It formerly read as follows:

> 6. The provisions of paragraphs 1, 2 and 4 of this Article shall not apply if the recipient of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, or performs in that other State professional services from a fixed base, situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

Definitions: "interest" — Art. 11:5; "permanent establishment" — Art. 5:1; "resident of a Contracting State" — Art. 4:1; "the other Contracting State" — Art. 3:1(b).

7. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and that interest is borne by that permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

Definitions: "a Contracting State" — Art. 3:1(b); "interest" — Art. 11:5; "permanent establishment" — Art. 5:1; "person" — Art. 3:1(c); "resident of a Contracting State" — Art. 4:1.

8. Where, owing to a special relationship between the payer and the person deriving the interest or between both of them and some other person, the amount of the interest paid exceeds for whatever reason the amount which would have been paid in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

Related Provisions: ITA 247 — Transfer pricing adjustments.

Definitions: "interest" — Art. 11:5; "person" — Art. 3:1(c).

9. Any provision in the law of a Contracting State relating only to interest paid to a non-resident company shall not operate so as to require such interest paid to a company which is a resident of the other Contracting State to be treated as a distribution of the company paying such interest. The preceding sentence shall not apply to interest paid to a company which is a resident of a Contracting State in which more than 50 per cent of the voting power is controlled, directly or indirectly, by a person or persons resident in the other Contracting State.

Definitions: "a Contracting State" — Art. 3:1(b); "company" — Art. 3:1(d); "interest" — Art. 11:5; "non-resident" — ITCIA 3, ITA 248(1); "person" — Art. 3:1(c); "resident" — ITCIA 3, ITA 250; "resident of a Contracting State" — Art. 4:1; "the other Contracting State" — Art. 3:1(b).

10. The provisions of paragraph 2 of this Article shall not apply to interest where the beneficial owner of the interest

(a) does not bear tax in respect thereof in Canada; and

(b) sells (or makes a contract to sell) the holding from which the interest is derived within three months of the date on which such beneficial owner acquired that holding.

Definitions: "Canada" — Art. 3:1(a)(i), ITCIA 5; "interest" — Art. 11:5; "tax" — Art. 3:1(g).

11. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

History: Art. 11:11 added by 2003 Protocol, effective 2005.

Information Circulars [Art. 11]: 76-12R5: Applicable rate of part XIII tax on amounts paid or credited to persons in countries with which Canada has a tax convention.

Article 12 — Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

Definitions: "a Contracting State" — Art. 3:1(b); "royalties" — Art. 12:4; "the other Contracting State" — Art. 3:1(b).

2. However, such royalties may be taxed in the Contracting State in which they arise, and according to the law of that State; but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

Definitions: "royalties" — Art. 12:4; "tax" — Art. 3:1(g).

I.T. Technical News: 23 (computer software).

3. Notwithstanding the provisions of paragraph 2 of this Article,

(a) [1]copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or artistic work (other than payments in respect of motion pictures and works on film, videotape or other means of reproduction for use in connection with television broadcasting);

a. payments for the use of, or the right to use, any patent or for information concerning industrial, commercial or scientific experience (but not including any such payment provided in connection with a rental or franchise agreement);

b. payments for the use of, or the right to use, computer software;

arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

History: Art. 12:3 amended by 2003 Protocol, effective 2005. It formerly read:

> 3. Notwithstanding the provisions of paragraph 2 of this Article, copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or artistic work (but not including royalties in respect of motion pictures and works on film, videotape or other means of reproduction for use in connection with television broadcasting) arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

Art. 12:3 amended by 1985 Protocol to substitute "Notwithstanding the provisions of paragraph 2 of this Article" for "Notwithstanding the provisions of paragraph 2" and to substitute "motion pictures and works on film, videotape or other means of reproduction for use in connection with television broadcasting" for "motion picture films and works on film or videotape for use in connection with television".

Definitions: "a Contracting State" — Art. 3:1(b); "royalties" — Art. 12:4; "the other Contracting State" — Art. 3:1(b).

4. The term **"royalties"** as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright, patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience, and includes payments of any kind in respect of motion pictures and works on film, videotape or other means of reproduction for use in connection with television broadcasting.

History: Art. 12:4 amended by 1985 Protocol to substitute "motion pictures and works on film, videotape or other means of reproduction for use in connection with television broadcasting" for "motion picture films and works on film or videotape for use in connection with television".

Definitions: "broadcasting" — ITCIA 3, *Interpretation Act* 35(1).

I.T. Technical News: 23 (computer software); 25 (e-commerce — payments for digital products not royalties).

5. The provisions of paragraphs 1, 2 and 3 of this Article shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

History: Art. 12:5 amended by 2003 Protocol to replace "recipient" with "beneficial owner", effective 2005.

Definitions: "business" — ITCIA 3, ITA 248(1); "permanent establishment" — Art. 5:1; "property" — ITCIA 3, ITA 248(1); "resident of a Contracting State" — Art. 4:1; "royalties" — Art. 12:4; "the other Contracting State" — Art. 3:1(b).

6. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the royalties was incurred, and those royalties are borne as such by that permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

Definitions: "a Contracting State" — Art. 3:1(b); "permanent establishment" — Art. 5:1; "person" — Art. 3:1(c); "resident of a Contracting State" — Art. 4:1; "royalties" — Art. 12:4.

7. Where, owing to a special relationship between the payer and the person deriving the royalties or between both of them and some other person, the amount of the royalties paid exceeds for whatever reason the amount which would have been paid in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

Definitions: "person" — Art. 3:1(c); "royalties" — Art. 12:4.

8. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.

History: Art. 12:8 added by 2003 Protocol, effective 2005.

Article 13 — Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property situated in the other Contracting State may be taxed in that other State.

Related Provisions: ITA 126(2.21), (2.22) — Foreign tax credit to emigrant for tax payable on gain accrued while resident in Canada; ITA 128.1(4)(b)(i) — Real property in Canada excluded from deemed disposition on emigration.

Definitions: "immovable property" — Art. 6:2, ITCIA 5; "resident of a Contracting State" — Art. 4:1; "the other Contracting State" — Art. 3:1(b).

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

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[1] *sic*: there is no para. (b)

Definitions: "a Contracting State" — Art. 3:1(b); "business" — ITCIA 3, ITA 248(1); "permanent establishment" — Art. 5:1; "property" — ITCIA 3, ITA 248(1); "resident of a Contracting State" — Art. 4:1; "the other Contracting State" — Art. 3:1(b).

3. Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Contracting State.

Definitions: "international traffic" — ITCIA 3, ITA 248(1); "property" — ITCIA 3, ITA 248(1); "resident of a Contracting State" — Art. 4:1.

4. Gains from the alienation of:

(a) any right, licence or privilege to explore for, drill for, or take petroleum, natural gas or other related hydrocarbons situated in a Contracting State, or

(b) any right to assets to be produced in a Contracting State by the activities referred to in sub-paragraph (a) above or to interests in or to the benefit of such assets situated in a Contracting State,

may be taxed in that State.

Definitions: "a Contracting State" — Art. 3:1(b).

5. Gains from the alienation of:

(a) shares, other than shares quoted on an approved stock exchange, deriving their value or the greater part of their value directly or indirectly from immovable property situated in a Contracting State or from any right referred to in paragraph 4 of this Article, or

(b) an interest in a partnership or trust the assets of which consist principally of immovable property situated in a Contracting State, of rights referred to in paragraph 4 of this Article, or of shares referred to in sub-paragraph (a) above,

may be taxed in that State.

Definitions: "a Contracting State" — Art. 3:1(b); "an approved stock exchange" — Art. 13:7(a); "immovable property" — Art. 6:2, 13:7(b), ITCIA 5; "partnership", "share", "trust" — ITCIA 3, ITA 248(1).

6. The provisions of paragraph 5 of this Article shall not apply:

(a) in the case of shares, where immediately before the alienation of the shares, the alienator owned, or the alienator and any persons related to or connected with him owned, less than 10 per cent of each class of the share capital of the company; or

(b) in the case of an interest in a partnership or trust, where immediately before the alienation of the interest, the alienator was entitled to, or the alienator and any persons related to or connected with him were entitled to, an interest of less than 10 per cent of the income and capital of the partnership or trust.

Definitions: "company" — Art. 3:1(d); "person" — Art. 3:1(c); "partnership", "share", "trust" — ITCIA 3, ITA 248(1).

7. For the purposes of paragraph 5 of this Article:

(a) the term **"an approved stock exchange"** means a stock exchange prescribed for the purposes of the Canadian *Income Tax Act* or a recognised stock exchange within the meaning of the United Kingdom Corporation Tax Acts; and

(b) the term **"immovable property"** does not include any property (other than rental property) in which the business of the company, partnership or trust was carried on.

Definitions: "business" — ITCIA 3, ITA 248(1); "company" — Art. 3:1(d); "partnership", "prescribed", "property", "trust" — ITCIA 3, ITA 248(1); "United Kingdom" — Art. 3:1(a)(ii).

8. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3, 4 and 5 of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

Definitions: "property" — ITCIA 3, ITA 248(1); "resident" — ITCIA 3, ITA 250.

9. The provisions of paragraph 8 of this Article shall not affect the right of a Contracting State to levy according to its law a tax on or in respect of gains from the alienation of any property on a person who is a resident of that State at any time during the fiscal year in which the property is alienated, or has been so resident at any time during the six years immediately preceding the alienation of the property.

History: Art. 13:9 amended by 2003 Protocol, effective 2005. It formerly read:

> 9. The provisions of paragraph 8 of this Article shall not affect the right of a Contracting State to tax, according to its domestic law, gains derived by an individual who is a resident of the other Contracting State from the alienation of any property, if the alienator:
>
> (a) is a national of the first-mentioned Contracting State or was a resident of that State for 15 years or more prior to the alienation of the property, and
>
> (b) was a resident of the first-mentioned Contracting State at any time during the five years immediately preceding such alienation.

Definitions: "a Contracting State" — Art. 3:1(b); "individual" — ITCIA 3, ITA 248(1); "national" — Art. 3:1(h); "property" — ITCIA 3, ITA 248(1); "the other Contracting State" — Art. 3:1(b).

10. Where an individual ceases to be a resident of a Contracting State and by reason thereof is treated under the laws of that State as having alienated property before ceasing to be a resident of that State and is taxed in that State accordingly and at any time thereafter becomes a resident of the other Contracting State, the other Contracting State may tax gains in respect of the property only to the extent that such gains had not accrued while the individual was a resident of the first-mentioned State. However, this provision shall not apply to property, any gain from which that other State could have taxed in accordance with the provisions of this Article, other than this paragraph, if the individual had realized the gain before becoming a resident of that other State. The competent authorities of the Contracting States may consult to determine the application of this paragraph.

Related Provisions: ITA 128.1(1)(c) — Same rule applies in Canada anyway.

History: Art. 13:10 added by 2003 Protocol, effective 2005.

Definitions: "a Contracting State" — Art. 3:1(b); "individual" — ITCIA 3, ITA 248(1); "property" — ITCIA 3, ITA 248(1); "resident" — ITCIA 3, ITA 250; "the other Contracting State" — Art. 3:1(b).

History [Art. 13]: Art. 13 amended by 1985 Protocol to substitute paras. 1 and 2, to add new paras. 3 and 6, to renumber former para. 3 as para. 4 and former para. 4 as para. 5, substituting "paragraph 4" for both references to "paragraph 3" in former para. 4, and to substitute paras. 7 to 9 for former paras. 5 to 7. Former paras. 1, 2, 5, 6, and 7 read as follows:

> 1. Gains from the alienation of immovable property may be taxed in the Contracting State in which such property is situated.
>
> 2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of

movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base may be taxed in the other State. However, gains derived by a resident of a Contracting State from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft, shall be taxable only in that Contracting State.

. . . . .

5. For the purposes of paragraph 4 of this Article "an approved stock exchange" means a stock exchange prescribed for the purposes of the Canadian Income Tax Act or a recognized stock exchange within the meaning of the United Kingdom Corporation Tax Acts.

6. Gains from the alienation of any property, other than those mentioned in paragraphs 1, 2, 3 and 4 shall be taxable only in the Contracting State of which the alienator is a resident.

7. The provisions of paragraph 6 of this Article shall not affect the right of a Contracting State to tax, according to its domestic law, gains derived by an individual resident in the other Contracting State from the alienation of any property, if the alienator:

(a) is a national of the first-mentioned Contracting State or was a resident of that State for 15 years or more prior to the alienation of the property and

(b) was a resident of the first-mentioned Contracting State at any time during the five years immediately preceding such alienation.

Article 14 — Professional Services

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.

Definitions: "a Contracting State" — Art. 3:1(b); "professional services" — Art. 14:2; "resident" — ITCIA 3, ITA 250; "the other Contracting State" — Art. 3:1(b).

2. The term **"professional services"** includes independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Definitions: "lawyer" — ITCIA 3, ITA 248(1).

Article 15 — Dependent Personal Services

1. Subject to the provisions of Articles 17 and 18, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

Definitions: "employment" — ITCIA 3, ITA 248(1); "resident of a Contracting State" — Art. 4:1; "the other Contracting State" — Art. 3:1(b).

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned, and

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

Definitions: "employer", "employment" — ITCIA 3, ITA 248(1); "permanent establishment" — Art. 5:1; "person" — Art. 3:1(c); "resident" — ITCIA 3, ITA 250; "resident of a Contracting State" — Art. 4:1; "the other Contracting State" — Art. 3:1(b).

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Definitions: "employment", "international traffic" — ITCIA 3, ITA 248(1).

4. In relation to remuneration of a director of a company derived from the company the preceding provisions of this Article shall apply as if the remuneration were remuneration of an employee in respect of employment, and as if reference to employer were references to the company.

Definitions: "company" — Art. 3:1(d); "employee", "employer", "employment" — ITCIA 3, ITA 248(1).

5. Where under the law of a Contracting State tax is required to be deducted and is so deducted from salaries, wages and other similar remuneration derived in respect of an employment exercised in that Contracting State, tax shall not be deducted therefrom on behalf of the other Contracting State.

History: Art. 15:5 added by 1980 Protocol.

Definitions: "a Contracting State" — Art. 3:1(b); "employment" — ITCIA 3, ITA 248(1); "tax" — Art. 3:1(g); "the other Contracting State" — Art. 3:1(b).

Article 16 — Artistes and Athletes

1. Notwithstanding the provisions of Articles 7, 14 and 15, income derived by entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

2. Where income in respect of personal activities as such of an entertainer or athlete accrues not to that entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

Definitions: "person" — Art. 3:1(c).

3. The provisions of paragraphs 1 and 2 shall not apply:

(a) to income derived from activities performed in a Contracting State by entertainers or athletes if the visit to that Contracting State is wholly or substantially supported by public funds;

(b) to a non-profit making organization no part of the income of which is payable, or is otherwise available

for the personal benefit of, any proprietor, member or shareholder thereof; or

(c) to an entertainer or athlete in respect of services provided to an organization referred to in sub-paragraph (b).

Definitions: "a Contracting State" — Art. 3:1(b); "shareholder" — ITCIA 3, ITA 248(1).

Article 17 — Pensions and Annuities

1. Periodic pension payments arising in a Contracting State and paid to a resident of the other Contracting State who is the beneficial owner thereof shall be taxable only in that other State.

History: Art. 17:1 amended by 2003 Protocol to replace "Pensions" with "Periodic pension payments", effective 2005.

Art. 17:1 substituted by 1980 Protocol.

Definitions: "a Contracting State" — Art. 3:1(b); "periodic pension payment" — ITCIA 5; "pension" — Art. 17:3, ITCIA 5; "the other Contracting State" — Art. 3:1(b).

2. Annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State. However, such annuities may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the annuities the tax so charged shall not exceed 10 per cent of the portion thereof that is subject to tax in that State.

Definitions: "a Contracting State" — Art. 3:1(b); "annuity" — Art. 17:4, ITCIA 5; "tax" — Art. 3:1(g).

3. For the purposes of this Convention, the term **"pension"** includes any payment under a superannuation, pension or retirement plan, Armed Forces retirement pay, war veterans' pensions and allowances, and any payment under a sickness, accident or disability plan, as well as any payment made under the social security legislation in a Contracting State.

History: Art. 17:3 amended by 2003 Protocol, effective 2005. It formerly read:

> 3. For the purposes of this Convention, the term "pension" includes any payment under a superannuation, pension or retirement plan, Armed Forces retirement pay, war veterans pensions and allowances, and any payment under a sickness, accident or disability plan, as well as any payment made under the social security legislation in a Contracting State, but does not include any payment under a superannuation, pension or retirement plan in settlement of all future entitlements under such a plan or any payment under an income-averaging annuity contract.

Definitions: "a Contracting State" — Art. 3:1(b); "income-averaging annuity contract" — ITCIA 3, ITA 248(1).

4. For the purposes of this Convention, the term **"annuity"** means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth, but does not include any payment under a superannuation, pension or retirement plan or any payment under an income-averaging annuity contract.

History: Art. 17:4 amended by 2003 Protocol, effective 2005. It formerly read:

> 4. For the purposes of this Convention, the term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth, but does not include a pension or any payment under a superannuation, pension or retirement plan in settlement of all future entitlements under such a plan or any payment under an income-averaging annuity contract.

Definitions: "pension" — Art. 17:3, ITCIA 5; "income-averaging annuity contract" — ITCIA 3, ITA 248(1).

5. Notwithstanding any other provision of this Convention, alimony and similar payments arising in a Contracting State and paid to a resident of the other Contracting State who is the beneficial owner thereof shall be taxable only in that other State.

Definitions: "a Contracting State" — Art. 3:1(b).

History [Art. 17]: Art. 17 amended by 1985 Protocol. It formerly read:

> 1. Pensions and annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State. However, such pensions and annuities may also be taxed in the first-mentioned Contracting State, but of the total amount thereof paid in any year of assessment or taxation year to a resident of the other Contracting State that first-mentioned Contracting State shall exempt from tax ten thousand Canadian dollars ($10,000) or five thousand pounds sterling (£5,000), whichever is the greater. For the purposes of this paragraph the term "pensions" does not include lump sum payments out of a pension plan.
>
> 2. Notwithstanding the provisions of paragraph 1 of this Article, pensions paid out of public funds of the United Kingdom or Northern Ireland or of the funds of any local authority in the United Kingdom to any individual in respect of services rendered to the Government of the United Kingdom or Northern Ireland or a local authority in the United Kingdom in the discharge of functions of a governmental nature may be taxed in the United Kingdom.
>
> 3. The term " annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth, but does not include payments of any kind under an income-averaging annuity contract.
>
> 4. Notwithstanding any other provision of this Convention, alimony and similar payments arising in a Contracting State and paid to a resident of the other Contracting State who is the beneficial owner thereof shall be taxable only in that other State.

Article 18 — Government Service

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the recipient is a resident of that State who:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of performing the services.

Definitions: "a Contracting State" — Art. 3:1(b); "national" — Art. 3:1(h); "pension" — Art. 17:3, ITCIA 5; "political subdivision" — Art. 18:3; "the other Contracting State" — Art. 3:1(b).

2. This Article shall not apply to remuneration in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or a political subdivision or a local authority thereof.

Definitions: "business" — ITCIA 3, ITA 248(1); "political subdivision" — Art. 18:3.

3. In this Article, the term **"political subdivision"** shall, in relation to the United Kingdom, include Northern Ireland.

Definitions: "United Kingdom" — Art. 3:1(a)(ii).

Article 19 — Students

Payments which a student, apprentice or business trainee who is or was immediately before visiting one of the Contracting States a resident of a Contracting State and who is present in the other Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that other State, provided that such payments are made to him from sources outside that other State.

Definitions: "resident of a Contracting State" — Art. 4:1; "the other Contracting State" — Art. 3:1(b).

Article 20 — Estates and Trusts

1. Income received from an estate or trust resident in Canada by a resident of the United Kingdom who is the beneficial owner thereof may be taxed in Canada according to its law, but the tax so charged shall not exceed 15 per cent of the gross amount of the income.

Definitions: "Canada" — Art. 3:1(a)(i), ITCIA 5; "estate" — ITCIA 3, ITA 248(1); "resident in Canada" — ITCIA 3, ITA 250; "tax" — Art. 3:1(g); "trust" — ITCIA 3, ITA 248(1); "United Kingdom" — Art. 3:1(a)(ii).

2. The provisions of paragraph 1 of this Article shall not apply if the recipient of the income, being a resident of the United Kingdom, carries on business in Canada through a permanent establishment situated therein, or performs in Canada professional services from a fixed base situated therein, and the right or interest in the estate or trust in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

Definitions: "business" — ITCIA 3, ITA 248(1); "Canada" — Art. 3:1(a)(i), ITCIA 5; "estate" — ITCIA 3, ITA 248(1); "permanent establishment" — Art. 5:1; "professional services" — Art. 14:2; "trust" — ITCIA 3, ITA 248(1); "United Kingdom" — Art. 3:1(a)(ii).

3. For the purposes of this Article, a trust does not include an arrangement whereby the contributions made to the trust are deductible for the purposes of taxation in Canada.

History: Art. 20:3 added by 1985 Protocol.

Definitions: "trust" — ITCIA 3, ITA 248(1).

Article 20A — Other Income

1. Items of income beneficially owned by a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

Definitions: "resident of a Contracting State" — Art. 4:1.

2. The provisions of paragraph 1 of this Article shall not apply to income, other than income from immovable property, if the beneficial owner of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14 of this Convention, as the case may be, shall apply.

Definitions: "business" — ITCIA 3, ITA 248(1); "immovable property" — Art. 6:2, 13:7(b), ITCIA 5; "permanent establishment" — Art. 5:1; "property" — ITCIA 3, ITA 248(1); "resident of a Contracting State" — Art. 4:1.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may also be taxed in that other State.

Definitions: "resident of a Contracting State" — Art. 4:1; "the other Contracting State" — Art. 3:1(b).

History: Art. 20A added by 2003 Protocol, effective 2005.

Article 21 — Elimination of Double Taxation

1. In the case of Canada, double taxation shall be avoided as follows:

(a) subject to the existing provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions — which shall not affect the general principle hereof — and unless a greater deduction or relief is provided under the laws of Canada, tax payable in the United Kingdom on profits, income or gains arising in the United Kingdom shall be deducted from any Canadian tax payable in respect of such profits, income or gains;

(b) subject to the existing provisions of the law of Canada regarding the allowance as a credit against Canadian tax of tax payable in a territory outside Canada and to any subsequent modification of those provisions — which shall not affect the general principle hereof — where a company that is a resident of the United Kingdom pays a dividend to a company that is a resident of Canada that controls directly or indirectly at least 10 per cent of the voting power in the first-mentioned company, the credit shall take into account the tax payable in the United Kingdom by that first-mentioned company in respect of the profits out of which such dividend is paid;

(c) where in accordance with any provision of this Convention income derived by a resident of Canada is exempt from tax in Canada, Canada may nevertheless, in calculating the amount of tax on other income take into account the exempted income.

History: Art. 21:1 amended by 2003 Protocol, effective 2005. It formerly read:

> 1. In the case of Canada, double taxation shall be avoided as follows:
>
> (a) Subject to the existing provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions — which shall not affect the general principle hereof — and unless a greater deduction or relief is provided under the laws of Canada, tax payable in the United Kingdom on profits, income or gains arising in the United Kingdom shall be deducted from any Canadian tax payable in respect of such profits, income or gains.
>
> (b) Subject to the existing provisions of the law of Canada regarding the determination of the exempt surplus of a foreign affiliate and to any subsequent modification of those provisions — which shall not affect the general principle hereof — for the purpose of computing Canadian tax, a company resident in Canada shall be allowed to deduct in computing its taxable income any dividend received by it out of the exempt surplus of a foreign affiliate resident in the United Kingdom.

The terms "foreign affiliate" and "exempt surplus" shall have the meaning which they have under the *Income Tax Act* of Canada.

Definitions: "Canada" — Art. 3:1(a)(i), ITCIA 5; "Canadian tax" — Art. 2:1(a); "company" — Art. 3:1(d); "dividend" — ITCIA 3, ITA 248(1); "resident in Canada" — ITCIA 3, ITA 250; "taxable income" — ITCIA 3, ITA 248(1); "United Kingdom" — Art. 3:1(a)(ii).

2. In the case of the United Kingdom, double taxation shall be avoided as follows: subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof):

(a) tax payable under the laws of Canada and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within Canada (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the Canadian tax is computed; and

(b) in the case of a dividend paid by a company which is a resident of Canada to a company which is resident in the United Kingdom and which controls directly or indirectly at least 10 per cent of the voting power in the Canadian company, the credit shall take into account (in addition to any tax creditable under (a)) tax payable under the laws of Canada by the company in respect of the profits out of which such dividend is paid.

Definitions: "Canada" — Art. 3:1(a)(i), ITCIA 5; "Canadian tax" — Art. 2:1(a); "company" — Art. 3:1(d); "dividend" — ITCIA 3, ITA 248(1); "United Kingdom" — Art. 3:1(a)(ii); "United Kingdom tax" — Art. 2:1(b).

3. For the purposes of paragraphs 1 and 2 of this Article, income, profits and capital gains owned by a resident of a Contracting State which are taxed in the other Contracting State in accordance with this Convention shall be deemed to arise from sources in that other Contracting State.

Definitions: "capital gain" — ITCIA 3, ITA 248(1); "resident of a Contracting State" — Art. 4:1; "the other Contracting State" — Art. 3:1(b).

4. [Repealed]

History: Art. 21:4 repealed by 2003 Protocol, effective 2005. It formerly read:

> 4. Where profits on which an enterprise of a Contracting State has been charged to tax in that State are also included in the profits of an enterprise of the other State and the profits so included are profits which would have accrued to that enterprise of the other State if the conditions made between the enterprises had been those which would have been made between independent enterprises dealing at arm's length, the amount included in the profits of both enterprises shall be treated for the purposes of this Article as income from a source in the other State of the enterprise of the first-mentioned State and relief shall be given accordingly under the provisions of paragraph 1 or paragraph 2 of this Article.

Art. 21:4 added by 1985 Protocol.

Article 22 — Non-Discrimination

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

Definitions: "a Contracting State" — Art. 3:1(b); "national" — Art. 3:1(h); "taxation" — Art. 22:5; "the other Contracting State" — Art. 3:1(b).

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging either Contracting State to grant to individuals not resident in its territory those personal allowances and reliefs for tax purposes which are by law available only to individuals who are so resident.

Definitions: "enterprise of a Contracting State" — Art. 3:1(e); "individual" — ITCIA 3, ITA 248(1); "permanent establishment" — Art. 5:1; "taxation" — Art. 22:5; "the other Contracting State" — Art. 3:1(b).

3. Nothing in this Convention shall be construed as preventing a Contracting State from imposing on the earnings attributable to permanent establishments in that State of a company which is a resident of the other Contracting State, tax in addition to the tax which would be chargeable on the earnings of a company which is a resident of the first-mentioned State, provided that the rate of any additional tax so imposed shall not exceed 5 per cent of the amount of such earnings which have not been subjected to such additional tax in previous taxation years.

Related Provisions: ITA 219 — Branch tax.

History: Art. 22:3 amended by 2003 Protocol to to replace "10 per cent" with "5 per cent", effective 2005.

Art. 22:3 amended by 1985 Protocol to substitute "10 per cent" for "15 per cent".

Art. 22:3 substituted by 1980 Protocol.

Definitions: "a Contracting State" — Art. 3:1(b); "company" — Art. 3:1(d); "earnings" — Art. 22:4; "permanent establishment" — Art. 5:1; "taxation year" — ITCIA 3, ITA 249.

4. For the purpose of paragraph 3 of this Article, the term **"earnings"** means the profits attributable to permanent establishments in a Contracting State (including gains from the alienation of property forming part of the business property of such permanent establishments) in a year and previous years after deducting therefrom:

(a) business losses attributable to such permanent establishments (including losses from the alienation of property forming part of the business property of such permanent establishments) in such year and previous years; and

(b) all taxes, other than the additional tax referred to in paragraph 3 of this Article, imposed on such profits in that State; and

(c) the profits reinvested in that State, provided that where that State is Canada, the amount of such deduction shall be determined in accordance with the existing provisions of the law of Canada regarding the computation of the allowance in respect of investment in property in Canada, and any subsequent modification of those provisions which shall not affect the general principle thereof; and

(d) five hundred thousand Canadian dollars ($500,000) or two hundred and fifty thousand pounds sterling (£250,000), whichever is the greater, less any amount deducted in that State under this subparagraph (d) by the company or a company associated therewith; for the purposes of this subparagraph (d) a company is associated with another company if one of

them directly or indirectly has control of the other or both are directly or indirectly under the control of the same person, or if the two companies deal with each other not at arm's length.

History: Art. 22:4 substituted by 1980 Protocol.

Definitions: "a Contracting State" — Art. 3:1(b); "arm's length" — ITCIA 3, ITA 251(1); "associated" — ITCIA 3, ITA 256; "business" — ITCIA 3, ITA 248(1); "Canada" — Art. 3:1(a)(i), ITCIA 5; "permanent establishment" — Art. 5:1; "property" — ITCIA 3, ITA 248(1); "tax" — Art. 3:1(g).

5. In this Article, the term **"taxation"** means taxes which are the subject of this Convention.

Definitions: "tax" — Art. 3:1(g).

Article 23 — Mutual Agreement Procedure

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, without prejudice to the remedies provided by the national laws of those States, address to the competent authority of the Contracting State of which he is a resident an application in writing stating the grounds for claiming the revision of such taxation.

Definitions: "competent authority" — Art. 3:1(f); "resident" — ITCIA 3, ITA 250; "resident of a Contracting State" — Art. 4:1; "writing" — ITCIA 3, *Interpretation Act* 35(1).

2. The competent authority referred to in paragraph 1 shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Convention.

Definitions: "competent authority" — Art. 3:1(f); "the other Contracting State" — Art. 3:1(b).

3. The competent authorities of the Contracting State shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. In particular, the competent authorities of the Contracting States may reach agreement on:

(a) the same allocation of profits to a resident of a Contracting State and its permanent establishment situated in the other Contracting State;

(b) the same allocation of income between a resident of a Contracting State and any associated person provided for in Article 9.

Related Provisions: ITA 115.1 — Competent authority agreements.

Definitions: "associated" — ITCIA 3, ITA 256; "competent authority" — Art. 3:1(f); "permanent establishment" — Art. 5:1; "person" — Art. 3:1(c); "resident of a Contracting State" — Art. 4:1; "the other Contracting State" — Art. 3:1(b).

Information Circulars: 71-17R5: Guidance on competent authority assistance under Canada's tax conventions.

Article 24 — Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to this Convention, in particular, to prevent fraud and to facilitate the administration of statutory provisions against legal avoidance. This includes information relating to the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Convention. The exchange of information is not restricted by Article 1 of this Convention. Any information received by a Contracting State shall be treated as secret and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 of this Article be construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.

Definitions: "a Contracting State" — Art. 3:1(b); "the other Contracting State" — Art. 3:1(b).

3. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain that information in the same manner and to the same extent as if the tax of the first-mentioned State were the tax of that other State and were being imposed by that other State, notwithstanding that the other State may not, at that time, need such information for the purposes of its own tax.

Definitions: "a Contracting State" — Art. 3:1(b); "the other Contracting State" — Art. 3:1(b).

History: Art. 24 amended by 2003 Protocol, effective 2005. It formerly read:

> The competent authorities of the Contracting States shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for the carrying out of the provisions of this Convention or for the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to persons other than persons (including a court or administrative tribunal) concerned with the assessment, collection or enforcement in respect of the taxes which are the subject of this Convention. No information as aforesaid shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.

Article 25 — Diplomatic and Consular Officials

1. Nothing in this Convention shall affect the fiscal privileges of members of diplomatic or consular missions under the general rules of international law or under the provisions of special agreements.

2. This Convention shall not apply to International Organizations, to organs or officials thereof and to persons who are members of a diplomatic or permanent mission or consular post of a third State, being present in a Contracting State and not treated in either Contracting State as residents in respect of taxes on income or capital gains.

Definitions: "a Contracting State" — Art. 3:1(b); "capital gain" — ITCIA 3, ITA 248(1); "person" — Art. 3:1(c); "tax" — Art. 3:1(g).

Article 26 — Extension

1. This Convention may be extended, either in its entirety or with modifications to any territory for whose international relations either of the Contracting States is responsible, and which imposes taxes substantially similar in character to those which are the subject of this Convention and any such extension shall take effect from such date and subject to such modifications and conditions (including conditions as to termination) as may be specified and agreed between the Contracting States in notes to be exchanged for this purpose.

Definitions: "tax" — Art. 3:1(g).

2. The termination of this Convention under Article 29 shall, unless otherwise expressly agreed by both Contracting States, terminate the application of this Convention to any territory to which it has been extended under this Article.

Article 27 — Miscellaneous Rules

1. The provisions of this Convention shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit or other allowance now or hereafter accorded by the law of a Contracting State in the determination of the tax imposed by that Contracting State.

Definitions: "a Contracting State" — Art. 3:1(b); "tax" — Art. 3:1(g).

2. Where under any provision of this Convention any income is relieved from tax in a Contracting State and, under the law in force in the other Contracting State a person, in respect of that income, is subject to tax by reference to the amount thereof which is remitted to or received in that other Contracting State and not by reference to the full amount thereof, then the relief to be allowed under this Convention in the first-mentioned Contracting State shall apply only to so much of the income as is taxed in the other Contracting State.

History: Art. 27:2 amended by 2003 Protocol, effective 2005. It formerly read:

> 2. Where under any provision of this Convention any person is relieved from tax in a Contracting State on certain income and, under the law in force in the other Contracting State, that person is subject to tax in that other State in respect of that income by reference to the amount thereof which is remitted to or received in that other State, the relief from tax to be allowed under this Convention in the first-mentioned State shall apply only to the amounts so remitted or received.

Definitions: "a Contracting State" — Art. 3:1(b); "person" — Art. 3:1(c); "tax" — Art. 3:1(g); "the other Contracting State" — Art. 3:1(b).

3. Nothing in this Convention shall be construed as restricting the right of Canada to tax a resident of Canada on that resident's share of any income or capital gains of a partnership, trust or controlled foreign affiliate in which that resident has an interest.

History: Art. 27:3 amended by 2003 Protocol, effective 2005. It formerly read:

> 3. Nothing in this Convention shall be construed as preventing Canada from imposing a tax on amounts included in the income of a resident of Canada by virtue of the provisions of section 91 of the Canadian *Income Tax Act*, so far as they are in force on the date of entry into force of this Convention, or have been modified only in minor respects, so as not to affect their general character.

Definitions: "Canada" — Art. 3:1(a)(i), ITCIA 5; "resident" — ITCIA 3, ITA 250; "tax" — Art. 3:1(g).

4. [Repealed]

History: Art. 27:4 repealed by 2003 Protocol, effective 2005. It formerly read:

> 4. The aggregate of the amount or value of the dividend and the amount of the tax credit referred to in paragraph 3(b) or 3(c) of Article 10 of this Convention shall be treated as a dividend for Canadian income tax purposes.

Art. 27:4 amended by 1985 Protocol to add reference to para. 3(c) of Art. 10.

5. Each of the Contracting States will endeavour to collect on behalf of the other Contracting State such amounts as may be necessary to ensure that relief granted by this Convention from taxation imposed by that other State does not enure to the benefit of persons not entitled thereto. However, nothing in this paragraph shall be construed as imposing on either of the Contracting States the obligation to carry out administrative measures of a different nature from those used in the collection of its own tax or which would be contrary to its public policy.

Definitions: "person" — Art. 3:1(c); "the other Contracting State" — Art. 3:1(b).

6. The competent authorities of the Contracting States may communicate with each other directly for the purpose of applying this Convention.

Definitions: "competent authority" — Art. 3:1(f).

7. Contributions paid in a year by, or on behalf of, an individual who exercises employment in a Contracting State in that year to a pension arrangement established in the other Contracting State (including an arrangement created under the social security legislation in that other State) and in which the individual participates in order to secure retirement benefits in respect of those services shall, during a period not exceeding in the aggregate 60 months, and if the contributions to the arrangement would qualify for tax relief if they had been made in that other State, be treated in the same way for tax purposes in the first-mentioned State as contributions paid to a pension arrangement that is recognised for tax purposes in the first-mentioned State, provided that:

(a) immediately before the individual began to exercise employment in the first-mentioned State, that individual was not a resident of that State and contributions had been paid by or on behalf of that individual to the pension arrangement; and

(b) the pension arrangement is accepted by the competent authority of the first-mentioned State as generally corresponding to a pension arrangement recognised as such for tax purposes by that State.

History: Art. 27:7 added by 2003 Protocol, effective 2005.

Definitions: "a Contracting State" — Art. 3:1(b); "employment" — ITCIA 3, ITA 248(1); "individual" — ITCIA 3, ITA 248(1); "pension" — Art. 17:3; "resident" — Art. 4:1; "the other Contracting State" — Art. 3:1(b).

Article 27A — Miscellaneous Rules Applicable to Certain Offshore Activities

1. The provisions of this Article shall apply notwithstanding any other provision of this Convention.

2. A person who is a resident of a Contracting State and carries on activities in the other Contracting State in connection with the exploration or exploitation of the sea bed and sub-soil and their natural resources situated in that other Contracting State shall, subject to paragraph 3 of this Article, be deemed to be carrying on a business in that other Contracting State through a permanent establishment situated therein.

Definitions: "business" — ITCIA 3, ITA 248(1); "permanent establishment" — Art. 5:1; "person" — Art. 3:1(c); "resident of a Contracting State" — Art. 4:1; "the other Contracting State" — Art. 3:1(b).

3. The provisions of paragraph 2 of this Article shall not apply where the activities referred to therein are carried on for a period or periods not exceeding in the aggregate 30 days in any 12 month period. For the purposes of this paragraph:

(a) where a person carrying on activities referred to in paragraph 2 of this Article is associated with an enterprise carrying on substantially similar activities, that person shall be deemed to be carrying on those substantially similar activities of the enterprise with which he is associated, in addition to his own activities;

(b) two enterprises shall be deemed to be associated if one enterprise participates directly or indirectly in the management or control of the other enterprise or if the same persons participate directly or indirectly in the management or control of both enterprises.

Definitions: "associated" — ITCIA 3, ITA 256; "person" — Art. 3:1(c).

4. Salaries, wages and similar remuneration derived by a resident of a Contracting State in respect of an employment connected with the exploration or exploitation of the sea bed and sub-soil and their natural resources situated in the other Contracting State may, to the extent that the duties are performed offshore in that other Contracting State, be taxed in that other Contracting State.

Definitions: "employment" — ITCIA 3, ITA 248(1); "resident of a Contracting State" — Art. 4:1; "the other Contracting State" — Art. 3:1(b).

History: Art. 27A substituted by 1985 Protocol. It formerly read:

1. The provisions of this Article shall apply notwithstanding any other provision of this Convention.

2. Any person who is resident of a Contracting State and carries on activities in the other Contracting State in connection with the exploration or exploitation of the sea bed and sub-soil and their natural resources situated in that other Contracting State shall, subject to paragraphs 3 and 4 of this Article, be deemed to be carrying on a business in that other Contracting State through a permanent establishment situated therein.

3. The provisions of paragraph 2 of this Article shall not apply where the activities referred to therein are carried on for a period or periods not exceeding in the aggregate 30 days in any 12 month period. For the purposes of this paragraph:

(a) where a person carrying on activities referred to in paragraph 2 of this Article is associated with an enterprise carrying on substantially similar activities, that person shall be deemed to be carrying on those substantially similar activities of the enterprise with which he is associated, in addition to his own activities;

(b) two enterprises shall be deemed to be associated if one enterprise participates directly or indirectly in the management or control of the other enterprise or if the same persons participate directly or indirectly in the management or control of both enterprises.

4. Profits derived by a resident of a Contracting State from the transportation of passengers or goods to a location where activities in connection with the exploration or exploitation of the sea bed and sub-soil and their natural resources are being carried on in a Contracting State, or from the operation of tugboats and similar vessels in connection with such activities, shall be taxable only in the Contracting State of which he is a resident.

5. (a) Subject to subparagraph (b) of this paragraph, salaries, wages and similar remuneration derived by a resident of a Contracting State in respect of an employment connected with the exploration or exploitation of the sea bed and sub-soil and their natural resources situated in the other Contracting State may, to the extent that the duties are performed offshore in that other Contracting State, be taxed in that other Contracting State.

(b) Salaries, wages and similar remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft engaged in the transportation of passengers or goods to a location where activities connected with the exploration or exploitation of the sea bed and sub-soil and their natural resources are being carried on in the other Contracting State, or in respect of an employment exercised aboard a tugboat or similar vessel in connection with such activities, may be taxed in that other Contracting State unless the person deriving the profits from the operation of the ship or aircraft is a resident of the first-mentioned Contracting State.

Art. 27A added by 1980 Protocol.

Article 28 — Entry into Force

1. The Convention shall come into force on the date when the last of all such things shall have been done in Canada and the United Kingdom as are necessary to give the Convention the force of law in Canada and the United Kingdom respectively and shall thereupon have effect:

(a) in Canada:

(i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after 1 January 1976;

(ii) in respect of other Canadian taxes, for the 1976 taxation year and subsequent years;

(b) in the United Kingdom:

(i) in relation to any dividend to which paragraph 3 of Article 10 applied in respect of income tax and payment of tax credit, for any year of assessment beginning on or after 6 April 1973. A dividend paid on or after 1 April 1973 but before 6 April 1973 shall be treated for tax credit purposes as paid on 6 April 1973;

(ii) in relation to any other provision of this Convention, in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 April 1976;

(iii) in respect of corporation tax, for any financial year beginning on or after 1 April 1976;

(iv) in respect of petroleum revenue tax for any chargeable period beginning on or after 1 January 1976;

(v) in respect of development land tax, for any realised development value accruing on or after 1 August 1976.

Definitions: "assessment" — ITCIA 3, ITA 248(1); "Canada" — Art. 3:1(a)(i), ITCIA 5; "capital gain", "dividend", "non-resident" — ITCIA 3, ITA 248(1); "taxation year" — ITCIA 3, ITA 249; "United Kingdom" — Art. 3:1(a)(ii).

2. The Governments of the Contracting States shall, as soon as possible, inform one another in writing of the date when the last of all such things have been done as are necessary to give the Convention the force of law in Canada and the United Kingdom respectively. The date specified by the last Government to fulfil this requirement, being the date on which the Convention shall come into force in accordance with paragraph 1, shall be confirmed in writing by the Government so notified.

Definitions: "Canada" — Art. 3:1(a)(i), ITCIA 5; "United Kingdom" — Art. 3:1(a)(ii); "writing" — ITCIA 3, *Interpretation Act* 35(1).

3. Subject to the provisions of paragraph 4 of this Article the existing Agreement shall cease to have effect as respects taxes to which this Convention applies in accordance with the provisions of paragraph 1 of this Article.

Definitions: "tax" — Art. 3:1(g); "the existing agreement" — Art. 28:7.

4. Where, however, any greater relief from tax would have been afforded by any provision of the existing Agreement than is due under this Convention, any such provision as aforesaid shall continue to have effect

(a) in the United Kingdom for any year of assessment, chargeable period or financial year;

(b) in Canada for any taxation year;

beginning before the entry into force of this Convention.

Definitions: "assessment" — ITCIA 3, ITA 248(1); "Canada" — Art. 3:1(a)(i), ITCIA 5; "tax" — Art. 3:1(g); "taxation year" — ITCIA 3, ITA 249; "the existing agreement" — Art. 28:7; "United Kingdom" — Art. 3:1(a)(ii).

5. The existing Agreement shall terminate on the last date on which it has effect in accordance with the foregoing provisions of this Article.

Definitions: "the existing agreement" — Art. 28:7.

6. The termination of the existing Agreement as provided in paragraph 5 of this Article shall not revive the Agreement between the Government of Canada and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation with respect to certain classes of Income signed at Ottawa on 6 December 1965. Upon the entry into force of this Convention that Agreement shall terminate.

Definitions: "Canada" — Art. 3:1(a)(i), ITCIA 5; "the existing agreement" — Art. 28:7; "United Kingdom" — Art. 3:1(a)(ii).

7. In this Article the term **"the existing Agreement"** means the Agreement between the Government of Canada and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on Income and Capital Gains signed at Ottawa on 12 December 1966.

Definitions: "Canada" — Art. 3:1(a)(i), ITCIA 5; "tax" — Art. 3:1(g); "United Kingdom" — Art. 3:1(a)(ii).

8. Notwithstanding any provisions of the respective domestic laws of the Contracting States imposing time limits for applications for relief from tax, an application for relief under the provisions of this Convention shall have effect, and any consequential refunds of tax made, if the application is made to the competent authority concerned within one year of the end of the calendar year in which this Convention enters into force.

History: Art. 28:8 added by 1980 Protocol.

Definitions: "competent authority" — Art. 3:1(f); "tax" — Art. 3:1(g).

Article 29 — Termination

This Convention shall continue in effect indefinitely but the Government of either Contracting State may, on or before 30 June in any calendar year after the year 1980 give notice of termination to the Government of the other Contracting State and, in such event, this Convention shall cease to be effective:

(a) in Canada

(i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after 1 January in the calendar year next following that in which the notice is given; and

(ii) in respect of other Canadian taxes for any taxation year ending in or after the calendar year next following that in which the notice is given;

(b) in the United Kingdom

(i) in respect of income tax and capital gains tax for any year of assessment beginning on or after 6 April in the calendar year next following that in which such notice is given;

(ii) in respect of corporation tax, for any financial year beginning on or after 1 April in the calendar year next following that in which such notice is given;

(iii) in respect of petroleum revenue tax for any chargeable period beginning on or after 1 January in the calendar year next following that in which such notice is given;

(iv) in respect of development land tax, for any realised development value accruing on or after 1 April in the calendar year next following that in which such notice is given.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Convention.

DONE in duplicate at London, this 8th day of September 1978, in the English and French languages, both texts being equally authoritative.

FOR THE GOVERNMENT OF CANADA:

Paul Martin

FOR THE GOVERNMENT OF GREAT BRITAIN AND NORTHERN IRELAND:

Frank Judd

Definitions: "assessment" — ITCIA 3, ITA 248(1); "Canada" — Art. 3:1(a)(i), ITCIA 5; "capital gain", "non-resident" — ITCIA 3, ITA 248(1); "tax" — Art. 3:1(g); "taxation year" — ITCIA 3, ITA 249; "the other Contracting State" — Art. 3:1(b); "United Kingdom" — Art. 3:1(a)(ii).

CURRENT STATUS OF TAX TREATIES

Tax treaties in force

Reciprocal income tax treaties are currently in force between Canada and the following countries. (In some cases the treaty currently in force, signed on the date noted, replaced another treaty that had been in force from an earlier time.)

Algeria (February 28, 1999)
Argentina (April 29, 1993)
Australia (May 21, 1980; and Protocol of January 23, 2002)
Austria (December 9, 1976; and Protocol of June 15, 1999)
Bangladesh (February 15, 1982)
Barbados (January 22, 1980)
Belgium (May 23, 2002)
Brazil (June 4, 1984)
Bulgaria (March 3, 1999)
Cameroon (May 26, 1982)
Chile (January 21, 1998)
China (People's Republic of) (May 12, 1986)[1]
Croatia (December 9, 1997)
Cyprus (May 2, 1984)
Czech Republic (May 25, 2001)
Denmark (September 17, 1997)
Dominican Republic (August 6, 1976)
Ecuador (June 28, 2001)
Egypt (May 30, 1983)
Estonia (June 2, 1995)
Finland (May 28, 1990)
France (May 2, 1975 and Protocols of January 16, 1987 and November 30, 1995)
Germany (April 19, 2001)
Guyana (October 15, 1985)
Hungary (April 15, 1992 and Protocol of May 3, 1994)
Iceland (June 19, 1997)
India (January 11, 1996)
Indonesia (April 1, 1998)
Ireland (October 8, 2003)
Israel (July 21, 1975)
Italy (November 17, 1977 and Protocol of March 20, 1989)[2]
Ivory Coast (June 16, 1983)
Jamaica (March 30, 1978)
Japan (May 7, 1986; amended by Protocol of February 19, 1999)
Jordan (September 6, 1999)
Kazakhstan (September 25, 1996)
Kenya (April 27, 1983)
Korea (February 10, 1978)
Kuwait (January 28, 2002)
Kyrgyzstan (Kyrgyz Republic) (June 4, 1998)
Latvia (Republic of) (April 26, 1995)
Lithuania (Republic of) (August 29, 1996)
Luxembourg (September 10, 1999; provisions effective January 1, 2001)
Malaysia (October 15, 1976)
Malta (July 25, 1986)
Mexico (March 16, 1990 and April 8, 1991)[3]
Moldova (July 4, 2002)
Mongolia (May 27, 2002)
Morocco (December 22, 1975)
Netherlands (May 27, 1986, and Protocols of same date, March 4, 1993, and August 25, 1997)
New Zealand (May 13, 1980)
Nigeria (August 4, 1992)
Norway (July 12, 2002)[4]
Pakistan (February 24, 1976)
Papua New Guinea (October 16, 1987)
Peru (July 20, 2001)
Philippines (March 11, 1976)
Poland (May 4, 1987)
Portugal (June 14, 1999)
Romania (April 8, 2004)
Russia (October 5, 1995)
Senegal (August 2, 2001)
Singapore (March 6, 1976 and Protocol of same date)
Slovak Republic (May 22, 2001)
Slovenia (September 15, 2000)
South Africa (Republic of) (November 27, 1995)
Spain (November 23, 1976)
Sri Lanka (June 23, 1982)
Sweden (August 27, 1996)
Switzerland (May 5, 1997)
Tanzania (United Republic of) (December 15, 1995)
Thailand (April 11, 1984)
Trinidad and Tobago (Republic of) (September 11, 1995)
Tunisia (February 10, 1982)
Ukraine (March 4, 1996)
United Arab Emirates (June 9, 2002)
United Kingdom of Great Britain and Northern Ireland (September 8, 1978 and Protocols of April 15, 1980, October 16, 1985 and May 7, 2003)
United States of America (September 26, 1980 and Protocols of June 14, 1983, March 28, 1984, March 17, 1995 and July 29, 1997)
Uzbekistan (Republic of) (June 17, 1999)
Venezuela (July 10, 2001)
Vietnam (November 14, 1997)
Zambia (Republic of) (February 16, 1984)
Zimbabwe (April 16, 1992)

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[1]This Convention does not apply to Hong Kong since unification in 1997: *Edwards*, [2002] 4 C.T.C. 2202 (TC); aff'd 2003 CarswellNat 3231 (FCA).

[2]To be replaced by the treaty signed on June 3, 2002.

[3]A Convention for the exchange of information is also in force.

[4]A Competent Authority Agreement regarding Professors and Teachers provides that Article 18 of the 1966 Canada-Norway treaty continues to apply in certain cases: CCRA, Nov. 28, 2003.

Tax treaties or protocols signed but not yet in force

Armenia (June 29, 2004)[5]
Azerbaijan (September 7, 2004)[5]
Gabon (November 14, 2002)[5]
Italy (June 3, 2002)[6]
Lebanon (December 29, 1998)[7]
Oman (June 30, 2004)[5]

Tax treaties or protocols under negotiation (re-negotiation)

Barbados
Bolivia
China (People's Republic of)
Colombia
Costa Rica
Cuba
Egypt[8]
Finland[8]
Greece
Korea (Republic of)
Mauritius
Mexico
Saint Lucia
Serbia and Montenegro
Singapore
Turkey
United States[9]

For current information regarding the status of treaty negotiations with any country, visit the Department of Finance web site at www.fin.gc.ca/treaties/treatystatus_e.html. For current information regarding Canada Revenue Agency administrative policy with respect to treaties, contact the International Tax Services Office at 1-800-267-5177 (fax (613) 941-2505).

Proposed Amendment — International Tax Convention

Canada Revenue Agency news release, April 29, 2004: *Canada signs International Tax Convention*

Canada signed the Convention on Mutual Administrative Assistance in Tax Matters (The Convention) yesterday in Paris. The Convention provides a stable framework for governments to combat tax evasion on a global scale by sharing tax information multilaterally. This international agreement will mainly apply to multinational businesses and covers Canadian taxes that fall under the *Income Tax Act*, *Excise Tax Act*, and the *Excise Act, 2001*. It does not apply to customs duties.

Initiated by the Council of Europe (CoE) and the Organization for Economic Co-operation and Development (OECD), the Convention has explicit provisions governing the privacy of taxpayer information. Canada will evaluate any information to be shared with other participating countries to ensure the protection of confidential Canadian taxpayer information. While the Convention helps to ensure that all Canadians will pay their fair share of federal taxes, it does not affect their rights under Canadian law.

Under the Convention, participating countries benefit from three forms of administrative assistance: the exchange of information; assistance in the collection of taxes; and delivery of documents. In signing the Convention, Canada has agreed only to exchange tax information. Canada will not deliver documents from other governments to Canadian recipients because treaty partners already have access to Canadian postal and courier services. As well, Canada will not collect taxes because we prefer to continue to negotiate assistance in collection on a bilateral basis.

The Government of Canada currently has 81 bilateral tax treaties in force that provide for the exchange of taxpayer information. The Convention is a multilateral agreement that extends information sharing to a broader range of taxes (such as GST).

The Convention will not come into force until legislative amendments are completed. It will not result in additional administrative burden for businesses.

The full text of the Convention is available on the CRA Web site by clicking on "Other Conventions" at: www.cra.gc.ca/treaties.

Proposed Administrative Change — International Tax Shelter Information Centre

Canada Revenue Agency news release, May 3, 2004: See under ITA 237.1(1)"tax shelter" — ed.

Proposed Administrative Change — International Tax Audits

Federal budget, Supplementary Information, February 23, 2005: See under ITA 231.6(2).

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[5]Part of Bill S-17, which received Royal Assent on March 23, 2005.

[6]Part of Bill S-2, which received Royal Assent on December 12, 2002. Will replace the existing treaty.

[7]Part of Bill S-3, which received Royal Assent on June 29, 2000.

[8]Will eventually replace the existing treaty.

[9]Protocol.

INTERPRETATION ACT

An Act respecting the Interpretation of Statutes and Regulations

REVISED STATUTES OF CANADA 1985, CHAPTER I-21, as am. R.S.C. 1985, c. 11 (1st Supp.), s. 2; R.S.C. 1985, c. 27 (1st Supp.), s. 203; SOR/86-532; R.S.C. 1985, c. 27 (2nd Supp.), s. 10; S.C. 1990, c. 17, s. 26; 1992, c. 1, ss. 87–91; 1992, c. 47, s. 79; 1992, c. 51, s. 56; SOR/93-140; 1993, c. 28, s. 78 (Sched. III, item 82) [Amended 1998, c. 15, s. 28; 1999, c. 3, (Sched., item 18).]; 1993, c. 34, s. 88; 1993, c. 38, s. 87; 1995, c. 39, s. 174; SOR/95-366; 1996, c. 31, ss. 86–87; 1997, c. 39, s. 4; 1998, c. 30, s. 15(i); 1999, c. 3, s. 71; 1999, c. 28, s. 168; 1999, c. 31, ss. 146, 147 (Fr.); 2001, c. 4, s. 8; 2002, c. 7, s. 188; 2002, c. 8, s. 151; 2003, c. 22, s. 224(z.43).

Short Title

1. Short title — This Act may be cited as the *Interpretation Act*.

Interpretation

2. (1) Definitions — In this Act,

"Act" means an Act of Parliament;

"enact" includes to issue, make or establish;

"enactment" means an Act or regulation or any portion of an Act or regulation;

"public officer" includes any person in the federal public administration of Canada who is authorized by or under an enactment to do or enforce the doing of an act or thing or to exercise a power, or on whom a duty is imposed by or under an enactment;

History: The definition "public officer" in subsec. 2(1) amended to replace "public service of Canada" with "federal public administration" by 2003, c. 22, para. 224(z.43), proclaimed in force April 1, 2005 (P.C. 2005-375).

"regulation" includes an order, regulation, rule, rule of court, form, tariff of costs or fees, letters patent, commission, warrant, proclamation, by-law, resolution or other instrument issued, made or established

(a) in the execution of a power conferred by or under the authority of an Act, or

(b) by or under the authority of the Governor in Council;

"repeal" includes revoke or cancel.

(2) Expired and replaced enactments — For the purposes of this Act, an enactment that has been replaced is repealed and an enactment that has expired, lapsed or otherwise ceased to have effect is deemed to have been repealed.

History: Subsec. 2(2) amended by 1999, c. 31, s. 146, in force June 17, 1999 (the date of Royal Assent). It formerly read:

(2) For the purposes of this Act, an enactment that has been replaced, has expired, lapsed or otherwise ceased to have effect is deemed to have been repealed.

Application

3. (1) Application — Every provision of this Act applies, unless a contrary intention appears, to every enactment, whether enacted before or after the commencement of this Act.

(2) Application to this Act — The provisions of this Act apply to the interpretation of this Act.

(3) Rules of construction not excluded — Nothing in this Act excludes the application to an enactment of a rule of construction applicable to that enactment and not inconsistent with this Act.

Enacting Clause of Acts

4. (1) Enacting clause — The enacting clause of an Act may be in the following form:

"Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:".

(2) Order of clauses — The enacting clause of an Act shall follow the preamble, if any, and the various provisions within the purview or body of the Act shall follow in a concise and enunciative form.

Operation

Royal Assent

5. (1) Royal Assent — The Clerk of the Parliaments shall endorse on every Act, immediately after its title, the day, month and year when the Act was assented to in Her Majesty's name and the endorsement shall be a part of the Act.

(2) Date of commencement — If no date of commencement is provided for in an Act, the date of commencement of that Act is the date of assent to the Act.

(3) Commencement provision — Where an Act contains a provision that the Act or any portion thereof is to come into force on a day later than the date of assent to the Act, that provision is deemed to have come into force on the date of assent to the Act.

(4) Commencement when no date fixed — Where an Act provides that certain provisions thereof are to come or are deemed to have come into force on a day other than the date of assent to the Act, the remaining provisions of the Act are deemed to have come into force on the date of assent to the Act.

Day Fixed for Commencement or Repeal

6. (1) Operation when date fixed for commencement or repeal — Where an enactment is expressed to come into force on a particular day, it shall

be construed as coming into force on the expiration of the previous day; and where an enactment is expressed to expire, lapse or otherwise cease to have effect on a particular day, it shall be construed as ceasing to have effect upon the commencement of the following day.

(2) When no date fixed — Every enactment that is not expressed to come into force on a particular day shall be construed as coming into force

(a) in the case of an Act, on the expiration of the day immediately before the day the Act was assented to in Her Majesty's name;

(b) in the case of a regulation, on the expiration of the day immediately before the day the regulation was registered pursuant to section 6 of the *Statutory Instruments Act* or, if the regulation is of a class that is exempted from the application of subsection 5(1) of that Act, on the expiration of the day immediately before the day the regulation was made.

(3) Judicial notice — Judicial notice shall be taken of a day for the coming into force of an enactment that is fixed by a regulation that has been published in the *Canada Gazette*.

Regulation Prior to Commencement

7. Preliminary proceedings — Where an enactment is not in force and it contains provisions conferring power to make regulations or do any other thing, that power may, for the purpose of making the enactment effective on its commencement, be exercised at any time before its commencement, but a regulation so made or a thing so done has no effect until the commencement of the enactment, except in so far as may be necessary to make the enactment effective on its commencement.

Territorial Operation

8. (1) Territorial operation — Every enactment applies to the whole of Canada, unless a contrary intention is expressed in the enactment.

(2) Amending enactment — Where an enactment that does not apply to the whole of Canada is amended, no provision in the amending enactment applies to any part of Canada to which the amended enactment does not apply, unless it is provided in the amending enactment that it applies to that part of Canada or to the whole of Canada.

(2.1) Exclusive economic zone of Canada — Every enactment that applies in respect of exploring or exploiting, conserving or managing natural resources, whether living or non-living, applies, in addition to its application to Canada, to the exclusive economic zone of Canada, unless a contrary intention is expressed in the enactment.

Related Provisions: ITA 37(1.3) — SR&ED performed in exclusive economic zone deemed done in Canada.

(2.2) Continental shelf of Canada — Every enactment that applies in respect of exploring or exploiting natural resources that are

(a) mineral or other non-living resources of the seabed or subsoil, or

(b) living organisms belonging to sedentary species, that is to say, organisms that, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or subsoil

applies, in addition to its application to Canada, to the continental shelf of Canada, unless a contrary intention is expressed in the enactment.

(3) Extra-territorial operation — Every Act now in force enacted prior to December 11, 1931 that expressly or by necessary or reasonable implication was intended, as to the whole or any part thereof, to have extra-territorial operation shall be construed as if, at the date of its enactment, the Parliament of Canada had full power to make laws having extra-territorial operation as provided by the *Statute of Westminster, 1931*.

History: Subsecs. 8(2.1) and (2.2) added by 1996, c. 31, s. 87, proclaimed in force January 31, 1997 (SI/97-21).

Rules of Construction

Property and Civil Rights

8.1 Duality of legal traditions and application of provincial law — Both the common law and the civil law are equally authoritative and recognized sources of the law of property and civil rights in Canada and, unless otherwise provided by law, if in interpreting an enactment it is necessary to refer to a province's rules, principles or concepts forming part of the law of property and civil rights, reference must be made to the rules, principles and concepts in force in the province at the time the enactment is being applied.

I.T. Technical News: No. 22 (international taxation).

History: The heading "Property and Civil Rights" and s. 8.1 added by 2001, c. 4, s. 8, proclaimed in force June 1, 2001 (P.C. 2001-956).

8.2 Terminology — Unless otherwise provided by law, when an enactment contains both civil law and common law terminology, or terminology that has a different meaning in the civil law and the common law, the civil law terminology or meaning is to be adopted in the Province of Quebec and the common law terminology or meaning is to be adopted in the other provinces.

History: S. 8.2 added by 2001, c. 4, s. 8, proclaimed in force June 1, 2001 (P.C. 2001-956).

Private Acts

9. Provisions in Private Acts — No provision in a private Act affects the rights of any person, except as therein mentioned or referred to.

Law Always Speaking

10. Law always speaking — The law shall be considered as always speaking, and where a matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise, so that effect may be given to the enactment according to its true spirit, intent and meaning.

Imperative and Permissive Construction

11. "Shall" and "may" — The expression "shall" is to be construed as imperative and the expression "may" as permissive.

Enactments Remedial

12. Enactments deemed remedial — Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

Preambles and Marginal Notes

13. Preamble — The preamble of an enactment shall be read as a part of the enactment intended to assist in explaining its purport and object.

14. Marginal Notes and historical references — Marginal notes and references to former enactments that appear after the end of a section or other division in an enactment form no part of the enactment, but are inserted for convenience of reference only.

Application of Interpretation Provisions

15. (1) Application of definitions and interpretation provisions — Definitions or rules of interpretation in an enactment apply to all the provisions of the enactment, including the provisions that contain those definitions or rules of interpretation.

(2) Interpretation sections subject to exceptions — Where an enactment contains an interpretation section or provision, it shall be read and construed

(a) as being applicable only if a contrary intention does not appear, and

(b) as being applicable to all other enactments relating to the same subject-matter unless a contrary intention appears.

16. Words in regulations — Where an enactment confers power to make regulations, expressions used in the regulations have the same respective meanings as in the enactment conferring the power.

Her Majesty

17. Her Majesty not bound or affected unless stated — No enactment is binding on Her Majesty or affects Her Majesty's rights or prerogatives in any manner, except as mentioned or referred to in the enactment.

Related Provisions: ITA 27 — Application of ITA to Crown corporations.

Proclamations

18. (1) Proclamation — Where an enactment authorizes the issue of a proclamation, the proclamation shall be understood to be a proclamation of the Governor in Council.

(2) Proclamation to be issued on advice — Where the Governor General is authorized to issue a proclamation, the proclamation shall be understood to be a proclamation issued under an order of the Governor in Council, but it is not necessary to mention in the proclamation that it is issued under such an order.

(3) Effective day of Proclamations — A proclamation that is issued under an order of the Governor in Council may purport to have been issued on the day of the order or on any subsequent day and, if so, takes effect on that day.

Oaths

19. (1) Administration of oaths — Where, by an enactment or by a rule of the Senate or House of Commons, evidence under oath is authorized or required to be taken, or an oath is authorized or directed to be made, taken or administered, the oath may be administered, and a certificate of its having been made, taken or administered may be given by

(a) any person authorized by the enactment or rule to take the evidence; or

(b) a judge of any court, a notary public, a justice of the peace or a commissioner for taking affidavits, having authority or jurisdiction within the place where the oath is administered.

(2) Where justice of peace empowered — Where power is conferred on a justice of the peace to administer an oath or solemn affirmation or to take an affidavit or declaration, the power may be exercised by a notary public or a commissioner for taking oaths.

Related Provisions: ITA 220(5) — Administration of oaths.

Reports to Parliament

20. Reports to Parliament — Where an Act requires a report or other document to be laid before Parliament and, in compliance with the Act, a particular report or document has been laid before Parliament at a session thereof, nothing in the Act shall be construed as requiring the same report or document to be laid before Parliament at any subsequent session.

Corporations

21. (1) Powers vested in Corporations — Words establishing a corporation shall be construed

(a) as vesting in the corporation power to sue and be sued, to contract and be contracted with by its corporate name, to have a common seal and to alter or change it at pleasure, to have perpetual succession, to acquire and hold personal property for the purposes for which the corporation is established and to alienate that property at pleasure;

(b) in the case of a corporation having a name consisting of an English and a French form or a combined English and French form, as vesting in the corporation power to use either the English or the French form of its name or both forms and to show on its seal both the English and French forms of its name or have two seals, one showing the English and the other showing the French form of its name;

(c) as vesting in a majority of the members of the corporation the power to bind the others by their acts; and

(d) as exempting from personal liability for its debts, obligations or acts individual members of the corporation who do not contravene the provisions of the enactment establishing the corporation.

(2) Corporate name — Where an enactment establishes a corporation and in each of the English and French versions of the enactment the name of the corporation is in the form only of the language of that version, the name

of the corporation shall consist of the form of its name in each of the versions of the enactment.

(3) **Banking business** — No corporation is deemed to be authorized to carry on the business of banking unless that power is expressly conferred on it by the enactment establishing the corporation.

Majority and Quorum

22. (1) **Majorities** — Where an enactment requires or authorizes more than two persons to do an act or thing, a majority of them may do it.

(2) **Quorum of board, court, commission, etc.** — Where an enactment establishes a board, court, commission or other body consisting of three or more members, in this section called an "association",

(a) at a meeting of the association, a number of members of the association equal to,

(i) if the number of members provided for by the enactment is a fixed number, at least one-half of the number of members, and

(ii) if the number of members provided for by the enactment is not a fixed number but is within a range having a maximum or minimum, at least one-half of the number of members in office if that number is within the range,

constitutes a quorum;

(b) an act or thing done by a majority of the members of the association present at a meeting, if the members present constitute a quorum, is deemed to have been done by the association; and

(c) a vacancy in the membership of the association does not invalidate the constitution of the association or impair the right of the members in office to act, if the number of members in office is not less than a quorum.

Appointment, Retirement and Powers of Officers

23. (1) **Public officers hold office during pleasure** — Every public officer appointed by or under the authority of an enactment or otherwise is deemed to have been appointed to hold office during pleasure only, unless it is otherwise expressed in the enactment, commission or instrument of appointment.

(2) **Effective day of appointments** — Where an appointment is made by instrument under the Great Seal, the instrument may purport to have been issued on or after the day its issue was authorized, and the day on which it so purports to have been issued is deemed to be the day on which the appointment takes effect.

(3) **Appointment or engagement otherwise than under great seal** — Where there is authority in an enactment to appoint a person to a position or to engage the services of a person, otherwise than by instrument under the Great Seal, the instrument of appointment or engagement may be expressed to be effective on or after the day on which that person commenced the performance of the duties of the position or commenced the performance of the services, and the day on which it is so expressed to be effective, unless that day is more than sixty days before the day on which the instrument is issued, is deemed to be the day on which the appointment or engagement takes effect.

(4) **Remuneration** — Where a person is appointed to an office, the appointing authority may fix, vary or terminate that person's remuneration.

(5) **Commencement of appointments or retirements** — Where a person is appointed to an office effective on a specified day, or where the appointment of a person is terminated effective on a specified day, the appointment or termination is deemed to have been effected immediately on the expiration of the previous day.

24. (1) **Implied powers respecting public officers** — Words authorizing the appointment of a public officer to hold office during pleasure include, in the discretion of the authority in whom the power of appointment is vested, the power to

(a) terminate the appointment or remove or suspend the public officer;

(b) re-appoint or reinstate the public officer; and

(c) appoint another person in the stead of, or to act in the stead of, the public officer.

(2) **Power to act for ministers** — Words directing or empowering a minister of the Crown to do an act or thing, regardless of whether the act or thing is administrative, legislative or judicial, or otherwise applying to that minister as the holder of the office, include

(a) a minister acting for that minister or, if the office is vacant, a minister designated to act in the office by or under the authority of an order in council;

(b) the successors of that minister in the office;

(c) his or their deputy; and

(d) notwithstanding paragraph (c), a person appointed to serve, in the department or ministry of state over which the minister presides, in a capacity appropriate to the doing of the act or thing, or to the words so applying.

(3) **Restriction as to public servants** — Nothing in paragraph (2)(c) or (d) shall be construed as authorizing the exercise of any authority conferred on a minister to make a regulation as defined in the *Statutory Instruments Act*.

(4) **Successors to and deputy of public officer** — Words directing or empowering any public officer, other than a minister of the Crown, to do any act or thing, or otherwise applying to the public officer by his name of office, include his successors in the office and his or their deputy.

(5) **Powers of holder of public office** — Where a power is conferred or a duty imposed on the holder of an office, the power may be exercised and the duty shall be performed by the person for the time being charged with the execution of the powers and duties of the office.

Evidence

25. (1) **Documentary evidence** — Where an enactment provides that a document is evidence of a fact without anything in the context to indicate that the document is conclusive evidence, then, in any judicial proceedings, the document is admissible in evidence and the fact is deemed to be established in the absence of any evidence to the contrary.

(2) Queen's printer — Every copy of an enactment having printed thereon what purports to be the name or title of the Queen's Printer and Controller of Stationery or the Queen's Printer is deemed to be a copy purporting to be printed by the Queen's Printer for Canada.

Computation of Time

26. Time limits and holidays — Where the time limited for the doing of a thing expires or falls on a holiday, the thing may be done on the day next following that is not a holiday.

27. (1) Clear days — Where there is a reference to a number of clear days or "at least" a number of days between two events, in calculating that number of days the days on which the events happen are excluded.

(2) Not clear days — Where there is a reference to a number of days, not expressed to be clear days, between two events, in calculating that number of days the day on which the first event happens is excluded and the day on which the second event happens is included.

(3) Beginning and ending of prescribed periods — Where a time is expressed to begin or end at, on or with a specified day, or to continue to or until a specified day, the time includes that day.

(4) After specified day — Where a time is expressed to begin after or to be from a specified day, the time does not include that day.

(5) Within a time — Where anything is to be done within a time after, from, of or before a specified day, the time does not include that day.

28. Calculation of a period of months after or before a specified day — Where there is a reference to a period of time consisting of a number of months after or before a specified day, the period is calculated by

(a) counting forward or backward from the specified day the number of months, without including the month in which that day falls;

(b) excluding the specified day; and

(c) including in the last month counted under paragraph (a) the day that has the same calendar number as the specified day or, if that month has no day with that number, the last day of that month.

29. Time of the day — Where there is a reference to time expressed as a specified time of the day, the time is taken to mean standard time.

30. Time when specified age attained — A person is deemed not to have attained a specified number of years of age until the commencement of the anniversary, of the same number, of the day of that person's birth.

Miscellaneous Rules

31. (1) Reference to magistrate, etc. — Where anything is required or authorized to be done by or before a judge, magistrate, justice of the peace, or any functionary or officer, it shall be done by or before one whose jurisdiction or powers extend to the place where the thing is to be done.

(2) Ancillary powers — Where power is given to a person, officer or functionary, to do or enforce the doing of any act or thing, all such powers as are necessary to enable the person, officer or functionary to do or enforce the doing of the act or thing are deemed to be also given.

(3) Powers to be exercised as required — Where a power is conferred or a duty imposed, the power may be exercised and the duty shall be performed from time to time as occasion requires.

(4) Power to repeal — Where a power is conferred to make regulations, the power shall be construed as including a power, exercisable in the same manner and subject to the same consent and conditions, if any, to repeal, amend or vary the regulations and make others.

32. Forms — Where a form is prescribed, deviations from that form, not affecting the substance or calculated to mislead, do not invalidate the form used.

33. (1) Gender — Words importing female persons include male persons and corporations and words importing male persons include female persons and corporations.

(2) Number — Words in the singular include the plural, and words in the plural include the singular.

(3) Parts of speech and grammatical forms — Where a word is defined, other parts of speech and grammatical forms of the same word have corresponding meanings.

Offences

34. (1) Indictable and summary conviction offences — Where an enactment creates an offence,

(a) the offence is deemed to be an indictable offence if the enactment provides that the offender may be prosecuted for the offence by indictment;

(b) the offence is deemed to be one for which the offender is punishable on summary conviction if there is nothing in the context to indicate that the offence is an indictable offence; and

(c) if the offence is one for which the offender may be prosecuted by indictment or for which the offender is punishable on summary conviction, no person shall be considered to have been convicted of an indictable offence by reason only of having been convicted of the offence on summary conviction.

(2) *Criminal Code* to apply — All the provisions of the *Criminal Code* relating to indictable offences apply to indictable offences created by an enactment, and all the provisions of that Code relating to summary conviction offences apply to all other offences created by an enactment, except to the extent that the enactment otherwise provides.

(3) Documents similarly construed — In a commission, proclamation, warrant or other document relating to criminal law or procedure in criminal matters

(a) a reference to an offence for which the offender may be prosecuted by indictment shall be construed as a reference to an indictable offence; and

(b) a reference to any other offence shall be construed as a reference to an offence for which the offender is punishable on summary conviction.

Powers to Enter Dwelling-houses to Carry out Arrests

34.1 Authorization to enter dwelling house — Any person who may issue a warrant to arrest or apprehend a person under any Act of Parliament, other than the *Criminal Code*, has the same powers, subject to the same terms and conditions, as a judge or justice has under the *Criminal Code*

(a) to authorize the entry into a dwelling-house described in the warrant for the purpose of arresting or apprehending the person, if the person issuing the warrant is satisfied by information on oath that there are reasonable grounds to believe that the person is or will be present in the dwelling-house; and

(b) to authorize the entry into the dwelling-house without prior announcement if the requirement of subsection 529.4(1) is met.

Definitions

35. (1) General definitions — In every enactment,

"Act", as meaning an Act of a legislature, includes an ordinance of the Northwest Territories and a law of the Legislature of Yukon or of the Legislature for Nunavut;

History: The definition "Act" in subsec. 35(1) amended by 2002, c. 7, subsec. 188(1), proclaimed in force April 1, 2003 (P.C. 2003-394). The definition formerly read:

> "Act", as meaning an Act of a legislature, includes an ordinance of the Yukon Territory or of the Northwest Territories and a law made by the Legislature for Nunavut or continued by section 29 of the *Nunavut Act*;

"bank" means a bank listed in Schedule I or II to the *Bank Act*;

"British Commonwealth" or **"British Commonwealth of Nations"** has the same meaning as "Commonwealth";

"broadcasting" means any radiocommunication in which the transmissions are intended for direct reception by the general public;

"Canada", for greater certainty, includes the internal waters of Canada and the territorial sea of Canada;

History: "Canada" added to subsec. 35(1) by 1996, c. 31, s. 88, proclaimed in force January 31, 1997 (SI/97-21).

"Canadian waters" includes the territorial sea of Canada and the internal waters of Canada;

History: "Canadian waters" added to subsec. 35(1) by 1996, c. 31, s. 88, proclaimed in force January 31, 1997 (SI/97-21).

"Clerk of the Privy Council" or **"Clerk of the Queen's Privy Council"** means the Clerk of the Privy Council and Secretary to the Cabinet;

"commencement", when used with reference to an enactment, means the time at which the enactment comes into force;

"Commonwealth" or **"Commonwealth of Nations"** means the association of countries named in the schedule;

"Commonwealth and Dependent Territories" means the several Commonwealth countries and their colonies, possessions, dependencies, protectorates, protected states, condominiums and trust territories;

"contiguous zone",

(a) in relation to Canada, means the contiguous zone of Canada as determined under the *Oceans Act*,

(b) in relation to any other state, means the contiguous zone of the other state as determined in accordance with international law and the domestic laws of that other state;

History: "Contiguous zone" added to subsec. 35(1) by 1996, c. 31, s. 88, proclaimed in force January 31, 1997 (SI/97-21).

"continental shelf",

(a) in relation to Canada, means the continental shelf of Canada as determined under the *Oceans Act*, and

(b) in relation to any other state, means the continental shelf of the other state as determined in accordance with international law and the domestic laws of that other state;

History: "Continental shelf" added to subsec. 35(1) by 1996, c. 31, s. 88, proclaimed in force January 31, 1997 (SI/97-21).

"contravene" includes fail to comply with;

"corporation" does not include a partnership that is considered to be a separate legal entity under provincial law;

"county" includes two or more counties united for purposes to which the enactment relates;

"diplomatic or consular officer" includes an ambassador, envoy, minister, chargé d'affaires, counsellor, secretary, attaché, consul-general, consul, vice-consul, proconsul, consular agent, acting consul-general, acting consul, acting vice-consul, acting consular agent, high commissioner, permanent delegate, adviser, acting high commissioner, and acting permanent delegate;

"exclusive economic zone",

(a) in relation to Canada, means the exclusive economic zone of Canada as determined under the *Oceans Act* and includes the seabed and subsoil below that zone, and

(b) in relation to any other state, means the exclusive economic zone of the other state as determined in accordance with international law and the domestic laws of that other state;

Related Provisions: ITA 37(1.3) — SR&ED performed in exclusive economic zone deemed done in Canada.

History: "Exclusive economic zone" added to subsec. 35(1) by 1996, c. 31, s. 88, proclaimed in force January 31, 1997 (SI/97-21).

"Federal Court" — [Repealed]

History: The definition "Federal Court" in subsec. 35(1) repealed by 2002, c. 8, subsec. 151(1), proclaimed in force July 2, 2003 (P.C. 2003-721). The definition formerly read:

> "Federal Court" means the Federal Court of Canada;

"Federal Court–Appeal Division" or **"Federal Court of Appeal"** — [Repealed]

History: The definition "Federal Court–Appeal Division" or "Federal Court of Appeal" in subsec. 35(1) repealed by 2002, c. 8, subsec. 151(1), proclaimed in force July 2, 2003 (P.C. 2003-721). "Federal Court of Appeal" is now defined in the *Federal Courts Act*. The definition formerly read:

> "Federal Court–Appeal Division" or "Federal Court of Appeal" means that division of the Federal Court of Canada called the Federal Court–Appeal Division or referred to as the Federal Court of Appeal by the *Federal Court Act*;

"Federal Court–Trial Division" — [Repealed]

History: The definition "Federal Court–Trial Division" in subsec. 35(1) repealed by 2002, c. 8, subsec. 151(1), proclaimed in force July 2, 2003

(P.C. 2003-721). "Federal Court" is now defined in the *Federal Courts Act*. The definition formerly read:

> "Federal Court–Trial Division" means that division of the Federal Court of Canada so named by the *Federal Court Act*;

"Governor", **"Governor General"**, or **"Governor of Canada"** means the Governor General of Canada or other chief executive officer or administrator carrying on the Government of Canada on behalf and in the name of the Sovereign, by whatever title that officer is designated;

"Governor General in Council" or **"Governor in Council"** means the Governor General of Canada acting by and with the advice of, or by and with the advice and consent of, or in conjunction with the Queen's Privy Council for Canada;

"Great Seal" means the Great Seal of Canada;

"Her Majesty", **"His Majesty"**, **"the Queen"**, **"the King"** or **"the Crown"** means the Sovereign of the United Kingdom, Canada and Her other Realms and Territories, and Head of the Commonwealth;

"Her Majesty's Realms and Territories" means all realms and territories under the sovereignty of Her Majesty;

"herein" used in any section shall be understood to relate to the whole enactment, and not to that section only;

"holiday" means any of the following days, namely, Sunday; New Year's Day; Good Friday; Easter Monday; Christmas Day; the birthday or the day fixed by proclamation for the celebration of the birthday of the reigning Sovereign[1]; Victoria Day; Canada Day; the first Monday in September, designated Labour Day; Remembrance Day; any day appointed by proclamation to be observed as a day of general prayer or mourning or day of public rejoicing or thanksgiving[2]; and any of the following additional days, namely:

(a) in any province, any day appointed by proclamation of the lieutenant governor of the province to be observed as a public holiday or as a day of general prayer or mourning or day of public rejoicing or thanksgiving within the province, and any day that is a non-juridical day by virtue of an Act of the legislature of the province, and

(b) in any city, town, municipality or other organized district, any day appointed to be observed as a civic holiday by resolution of the council or other authority charged with the administration of the civic or municipal affairs of the city, town, municipality or district;

"internal waters",

(a) in relation to Canada, means the internal waters of Canada as determined under the *Oceans Act* and includes the airspace above and the bed and subsoil below those waters, and

(b) in relation to any other state, means the waters on the landward side of the baselines of the territorial sea of the other state;

History: "Internal waters" added to subsec. 35(1) by 1996, c. 31, s. 88, proclaimed in force January 31, 1997 (SI/97-21).

"legislative assembly", **"legislative council"** or **"legislature"** includes the Lieutenant Governor in Council and the Legislative Assembly of the Northwest Territories, as constituted before September 1, 1905, the Legislature of Yukon, the Commissioner in Council of the Northwest Territories, and the Legislature for Nunavut;

History: The definition "legislative assembly", "legislative council", or "legislature" amended by 2002, c. 7, subsec. 188(1), proclaimed in force April 1, 2003 (P.C. 2003-394). The definition formerly read:

> "legislative assembly", "legislative council" or "legislature" includes the Lieutenant Governor in Council and the Legislative Assembly of the Northwest Territories, as constituted before September 1, 1905, the Commissioner in Council of the Yukon Territory, the Commissioner in Council of the Northwest Territories, and the Legislature for Nunavut;

"lieutenant governor" means the lieutenant governor or other chief executive officer or administrator carrying on the government of the province indicated by the enactment, by whatever title that officer is designated, and in Yukon, the Northwest Territories and Nunavut means the Commissioner;

History: The definition "lieutenant governor" amended by 2002, c. 7, subsec. 188(1), proclaimed in force April 1, 2003 (P.C. 2003-394). The definition formerly read:

> "lieutenant governor" means the lieutenant governor or other chief executive officer or administrator carrying on the government of the province indicated by the enactment, by whatever title that officer is designated, and, in relation to the Yukon Territory, the Northwest Territories or Nunavut, means the Commissioner thereof;

"lieutenant governor in council" means the lieutenant governor acting by and with the advice of, by and with the advice and consent of, or in conjunction with, the executive council of the province indicated by the enactment, and in Yukon, means the Commissioner of Yukon acting with the consent of the Executive Council of Yukon and, in the Northwest Territories and Nunavut, means the Commissioner;

History: The definition "lieutenant governor in council" amended by 2002, c. 7, subsec. 188(1), proclaimed in force April 1, 2003 (P.C. 2003-394). The definition formerly read:

> "lieutenant governor in council" means the lieutenant governor acting by and with the advice of, or by and with the advice and consent of, or in conjunction with the executive council of the province indicated by the enactment and, in relation to the Yukon Territory, the Northwest Territories or Nunavut, means the Commissioner thereof;

"local time", in relation to any place, means the time observed in that place for the regulation of business hours;

"military" shall be construed as relating to all or any part of the Canadian Forces;

"month" means a calendar month;

"oath" includes a solemn affirmation or declaration when the context applies to any person by whom and to any case in which a solemn affirmation or declaration may be made instead of an oath, and in the same cases the expression "sworn" includes the expression "affirmed" or "declared";

"Parliament" means the Parliament of Canada;

"person" or any word or expression descriptive of a person, includes a corporation;

"proclamation" means a proclamation under the Great Seal;

"province" means a province of Canada, and includes Yukon, the Northwest Territories and Nunavut;

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[1]The Monday immediately preceding May 25 (SOR/57-55, *Canada Gazette*, Part II, February 27, 1957).

[2]The second Monday in October (SOR/57-56, *Canada Gazette*, Part II, February 27, 1957).

History: The definition "province" amended by 2002, c. 7, subsec. 188(1), proclaimed in force April 1, 2003 (P.C. 2003-394). The definition formerly read:

> "province" means a province of Canada, and includes the Yukon Territory, the Northwest Territories and Nunavut;

"radio" or **"radiocommunication"** means any transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by means of electromagnetic waves of frequencies lower than 3000 GHz propagated in space without artificial guide;

"regular force" means the component of the Canadian Forces that is referred to in the *National Defence Act* as the regular force;

"reserve force" means the component of the Canadian Forces that is referred to in the *National Defence Act* as the reserve force;

"security" means sufficient security, and "sureties" means sufficient sureties, and when those words are used one person is sufficient therefor, unless otherwise expressly required;

"standard time", except as otherwise provided by any proclamation of the Governor in Council that may be issued for the purposes of this definition in relation to any province or territory or any part thereof, means

(a) in relation to the Province of Newfoundland, Newfoundland standard time, being three hours and thirty minutes behind Greenwich time,

(b) in relation to the Provinces of Nova Scotia, New Brunswick and Prince Edward Island, that part of the Province of Quebec lying east of the sixty-third meridian of west longitude, and that part of Nunavut lying east of the sixty-eighth meridian of west longitude, Atlantic standard time, being four hours behind Greenwich time,

(c) in relation to that part of the Province of Quebec lying west of the sixty-third meridian of west longitude, that part of the Province of Ontario lying between the sixty-eighth and the ninetieth meridians of west longitude, Southampton Island and the islands adjacent to Southampton Island, and that part of Nunavut lying between the sixty-eighth and the eighty-fifth meridians of west longitude, eastern standard time, being five hours behind Greenwich time,

(d) in relation to that part of the Province of Ontario lying west of the ninetieth meridian of west longitude, the Province of Manitoba, and that part of Nunavut, except Southampton Island and the islands adjacent to Southampton Island, lying between the eighty-fifth and the one hundred and second meridians of west longitude, central standard time, being six hours behind Greenwich time,

(e) in relation to the Provinces of Saskatchewan and Alberta, the Northwest Territories and that part of Nunavut lying west of the one hundred and second meridian of west longitude, mountain standard time, being seven hours behind Greenwich time,

(f) in relation to the Province of British Columbia, Pacific standard time, being eight hours behind Greenwich time, and

(g) in relation to Yukon, Yukon standard time, being nine hours behind Greenwich time;

Proclamation re Nunavut: Para. (g) of the definition "standard time" amended by 2002, c. 7, subsec. 188(2), proclaimed in force April 1, 2003 (P.C. 2003-394). Para. (g) formerly read:

> (g) in relation to the Yukon Territory, Yukon standard time, being nine hours behind Greenwich time;

Pursuant to a proclamation of the Governor in Council issued May 2, 2001, for the purpose of the definition of "standard time" in subsec. 35(1), "standard time", as applied to Nunavut, means:

> (a) in relation to that part of Nunavut that is east of the 85th meridian of west longitude, and in Southampton Island and the islands adjacent to Southampton Island, Eastern Standard Time, being five hours behind Greenwich time;
>
> (b) in relation to that part of Nunavut that is between the 85th meridian of west longitude and the 102nd meridian of west longitude, except Southampton Island and the islands adjacent to Southampton Island and all areas lying within the Kitikmeot Region, Central Standard Time, being six hours behind Greenwich time;
>
> and
>
> (c) in relation to that part of Nunavut that is west of the 102nd meridian of west longitude, and all areas lying within the Kitikmeot Region, Mountain Standard Time, being seven hours behind Greenwich time.

See SOR/2001-182, May 23, 2001, *Canada Gazette*, Part II, June 6, 2001.

"statutory declaration" means a solemn declaration made pursuant to section 41 of the *Canada Evidence Act*;

"superior court" means

(a) in the Province of Prince Edward Island or Newfoundland, the Supreme Court,

(a.1) in the Province of Ontario, the Court of Appeal for Ontario and the Superior Court of Justice,

(b) in the Province of Quebec, the Court of Appeal and the Superior Court in and for the Province,

(c) in the Province of New Brunswick, Manitoba, Saskatchewan or Alberta, the Court of Appeal for the Province and the Court of Queen's Bench for the Province,

(d) in the Provinces of Nova Scotia and British Columbia, the Court of Appeal and the Supreme Court of the Province, and

(e) the Supreme Court of Yukon, the Supreme Court of the Northwest Territories and the Nunavut Court of Justice,

and includes the Supreme Court of Canada, the Federal Court of Appeal, the Federal Court and the Tax Court of Canada;

History: The closing words of the definition "superior court" in subsec. 35(1) amended by 2002, c. 8, subsec. 151(2), proclaimed in force July 2, 2003 (P.C. 2003-721). The closing words formerly read:

> and includes the Supreme Court of Canada and the Federal Court of Canada;

Para. (e) of the definition "superior court" amended by 2002, c. 7, subsec. 188(3), proclaimed in force April 1, 2003 (P.C. 2003-394). Para. (e) formerly read:

> (e) in the Yukon Territory or the Northwest Territories, the Supreme Court of the territory, and in Nunavut, the Nunavut Court of Justice;

"telecommunications" means the emission, transmission or reception of signs, signals, writing, images, sounds or intelligence of any nature by wire, cable, radio, optical or other electromagnetic system, or by any similar technical system;

"territorial sea",

(a) in relation to Canada, means the territorial sea of Canada as determined under the *Oceans Act* and includes the airspace above and the seabed and subsoil below that sea, and

(b) in relation to any other state, means the territorial sea of the other state as determined in accordance with international law and the domestic laws of that other state;

History: "Territorial sea" added to subsec. 35(1) by 1996, c. 31, s. 88, proclaimed in force January 31, 1997 (SI/97-21).

"territory" means Yukon, the Northwest Territories and Nunavut;

History: The definition "territory" amended by 2002, c. 7, subsec. 188(1), proclaimed in force April 1, 2003 (P.C. 2003-394). The definition formerly read:

"territory" means the Yukon Territory, the Northwest Territories and, after section 3 of the *Nunavut Act* comes into force, Nunavut.

"two justices" means two or more justices of the peace, assembled or acting together;

"United Kingdom" means the United Kingdom of Great Britain and Northern Ireland;

"United States" means the United States of America;

"writing", or any term of like import, includes words printed, typewritten, painted, engraved, lithographed, photographed or represented or reproduced by any mode of representing or reproducing words in visible form.

(2) Governor in Council may amend schedule — The Governor in Council may, by order, amend the schedule by adding thereto the name of any country recognized by the order to be a member of the Commonwealth or deleting therefrom the name of any country recognized by the order to be no longer a member of the Commonwealth.

36. Construction of "telegraph" — The expression "telegraph" and its derivatives, in an enactment or in an Act of the legislature of any province enacted before that province became part of Canada on any subject that is within the legislative powers of Parliament, are deemed not to include the word "telephone" or its derivatives.

37. (1) Construction of "year" — The expression "year" means any period of twelve consecutive months, except that a reference

(a) to a "calendar year" means a period of twelve consecutive months commencing on January 1;

(b) to a "financial year" or "fiscal year" means, in relation to money provided by Parliament, or the Consolidated Revenue Fund, or the accounts, taxes or finances of Canada, the period beginning on April 1 in one calendar year and ending on March 31 in the next calendar year; and

(c) by number to a Dominical year means the period of twelve consecutive months commencing on January 1 of that Dominical year.

(2) Governor in Council may define year — Where in an enactment relating to the affairs of Parliament or the Government of Canada there is a reference to a period of a year without anything in the context to indicate beyond doubt whether a financial or fiscal year, any period of twelve consecutive months or a period of twelve consecutive months commencing on January 1 is intended, the Governor in Council may prescribe which of those periods of twelve consecutive months shall constitute a year for the purposes of the enactment.

38. Common names — The name commonly applied to any country, place, body, corporation, society, officer, functionary, person, party or thing means the country, place, body, corporation, society, officer, functionary, person, party or thing to which the name is commonly applied, although the name is not the formal or extended designation thereof.

39. (1) Affirmative and negative resolutions — In every Act

(a) the expression "subject to affirmative resolution of Parliament", when used in relation to any regulation, means that the regulation shall be laid before Parliament within fifteen days after it is made or, if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting and shall not come into force unless and until it is affirmed by a resolution of both Houses of Parliament introduced and passed in accordance with the rules of those Houses;

(b) the expression "subject to affirmative resolution of the House of Commons", when used in relation to any regulation, means that the regulation shall be laid before the House of Commons within fifteen days after it is made or, if the House is not then sitting, on any of the first fifteen days next thereafter that the House is sitting and shall not come into force unless and until it is affirmed by a resolution of the House of Commons introduced and passed in accordance with the rules of that House;

(c) the expression "subject to negative resolution of Parliament", when used in relation to any regulation, means that the regulation shall be laid before Parliament within fifteen days after it is made or, if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting and may be annulled by a resolution of both Houses of Parliament introduced and passed in accordance with the rules of those Houses; and

(d) the expression "subject to negative resolution of the House of Commons", when used in relation to any regulation, means that the regulation shall be laid before the House of Commons within fifteen days after it is made or, if the House is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting and may be annulled by a resolution of the House of Commons introduced and passed in accordance with the rules of that House.

(2) Effect of negative resolution — Where a regulation is annulled by a resolution of Parliament or of the House of Commons, it is deemed to have been revoked on the day the resolution is passed and any law that was revoked or amended by the making of that regulation is deemed to be revived on the day the resolution is passed, but the validity of any action taken or not taken in compliance with a regulation so deemed to have been revoked shall not be affected by the resolution.

References and Citations

40. (1) Citation of enactment — In an enactment or document

(a) an Act may be cited by reference to its chapter number in the Revised Statutes, by reference to its chapter number in the volume of Acts for the year or regnal year in which it was enacted or by reference to

its long title or short title, with or without reference to its chapter number; and

(b) a regulation may be cited by reference to its long title or short title, by reference to the Act under which it was made or by reference to the number or designation under which it was registered by the Clerk of the Privy Council.

(2) Citation includes amendment — A citation of or reference to an enactment is deemed to be a citation of or reference to the enactment as amended.

41. (1) Reference to two or more parts, etc. — A reference in an enactment by number or letter to two or more parts, divisions, sections, subsections, paragraphs, subparagraphs, clauses, subclauses, schedules, appendices or forms shall be read as including the number or letter first mentioned and the number or letter last mentioned.

(2) Reference in enactments to parts, etc. — A reference in an enactment to a part, division, section, schedule, appendix or form shall be read as a reference to a part, division, section, schedule, appendix or form of the enactment in which the reference occurs.

(3) Reference in enactment to subsections, etc. — A reference in an enactment to a subsection, paragraph, subparagraph, clause or subclause shall be read as a reference to a subsection, paragraph, subparagraph, clause or subclause of the section, subsection, paragraph, subparagraph or clause, as the case may be, in which the reference occurs.

(4) Reference to regulations — A reference in an enactment to regulations shall be read as a reference to regulations made under the enactment in which the reference occurs.

(5) Reference to another enactment — A reference in an enactment by number or letter to any section, subsection, paragraph, subparagraph, clause, subclause or other division or line of another enactment shall be read as a reference to the section, subsection, paragraph, subparagraph, clause, subclause or other division or line of such other enactment as printed by authority of law.

Repeal and Amendment

42. (1) Power of repeal or amendment reserved — Every Act shall be so construed as to reserve to Parliament the power of repealing or amending it, and of revoking, restricting or modifying any power, privilege or advantage thereby vested in or granted to any person.

(2) Amendment or repeal at same session — An Act may be amended or repealed by an Act passed in the same session of Parliament.

(3) Amendment part of enactment — An amending enactment, as far as consistent with the tenor thereof, shall be construed as part of the enactment that it amends.

43. Effect of repeal — Where an enactment is repealed in whole or in part, the repeal does not

(a) revive any enactment or anything not in force or existing at the time when the repeal takes effect,

(b) affect the previous operation of the enactment so repealed or anything duly done or suffered thereunder,

(c) affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred under the enactment so repealed,

(d) affect any offence committed against or contravention of the provisions of the enactment so repealed, or any punishment, penalty or forfeiture incurred under the enactment so repealed, or

(e) affect any investigation, legal proceeding or remedy in respect of any right, privilege, obligation or liability referred to in paragraph (c) or in respect of any punishment, penalty or forfeiture referred to in paragraph (d),

and an investigation, legal proceeding or remedy as described in paragraph (e) may be instituted, continued or enforced, and the punishment, penalty or forfeiture may be imposed as if the enactment had not been so repealed.

44. Repeal and substitution — Where an enactment, in this section called the "former enactment", is repealed and another enactment, in this section called the "new enactment", is substituted therefor,

(a) every person acting under the former enactment shall continue to act, as if appointed under the new enactment, until another is appointed in the stead of that person;

(b) every bond and security given by a person appointed under the former enactment remains in force, and all books, papers, forms and things made or used under the former enactment shall continue to be used as before the repeal in so far as they are consistent with the new enactment;

(c) every proceeding taken under the former enactment shall be taken up and continued under and in conformity with the new enactment in so far as it may be done consistently with the new enactment;

(d) the procedure established by the new enactment shall be followed as far as it can be adapted thereto

(i) in the recovery or enforcement of fines, penalties and forfeitures imposed under the former enactment,

(ii) in the enforcement of rights, existing or accruing under the former enactment, and

(iii) in a proceeding in relation to matters that have happened before the repeal;

(e) when any punishment, penalty or forfeiture is reduced or mitigated by the new enactment, the punishment, penalty or forfeiture if imposed or adjudged after the repeal shall be reduced or mitigated accordingly;

(f) except to the extent that the provisions of the new enactment are not in substance the same as those of the former enactment, the new enactment shall not be held to operate as new law, but shall be construed and have effect as a consolidation and as declaratory of the law as contained in the former enactment;

(g) all regulations made under the repealed enactment remain in force and are deemed to have been made under the new enactment, in so far as they are not inconsistent with the new enactment, until they are repealed or others made in their stead; and

(h) any reference in an unrepealed enactment to the former enactment shall, with respect to a subsequent transaction, matter or thing, be read and construed as a reference to the provisions of the new enactment relat-

ing to the same subject-matter as the former enactment, but where there are no provisions in the new enactment relating to the same subject-matter, the former enactment shall be read as unrepealed in so far as is necessary to maintain or give effect to the unrepealed enactment.

45. (1) Repeal does not imply enactment was in force — The repeal of an enactment in whole or in part shall not be deemed to be or to involve a declaration that the enactment was previously in force or was considered by Parliament or other body or person by whom the enactment was enacted to have been previously in force.

(2) Amendment does not imply change in law — The amendment of an enactment shall not be deemed to be or to involve a declaration that the law under that enactment was or was considered by Parliament or other body or person by whom the enactment was enacted to have been different from the law as it is under the enactment as amended.

(3) Repeal does not declare previous law — The repeal or amendment of an enactment in whole or in part shall not be deemed to be or to involve any declaration as to the previous state of the law.

(4) Judicial construction not adopted — A re-enactment, revision, consolidation or amendment of an enactment shall not be deemed to be or to involve an adoption of the construction that has by judicial decision or otherwise been placed on the language used in the enactment or on similar language.

Demise of Crown

46. (1) Effect of demise — Where there is a demise of the Crown,

(a) the demise does not affect the holding of any office under the Crown in right of Canada; and

(b) it is not necessary by reason of such demise that the holder of any such office again be appointed thereto or, having taken an oath of office or allegiance before the demise, again take that oath.

(2) Continuation of proceedings — No writ, action or other process or proceeding, civil or criminal, in or issuing out of any court established by an Act is, by reason of a demise of the Crown, determined, abated, discontinued or affected, but every such writ, action, process or proceeding remains in full force and may be enforced, carried on or otherwise proceeded with or completed as though there had been no such demise.

SCHEDULE

(section 35 "Commonwealth")

Antigua and Barbuda
Australia
The Bahamas
Bangladesh
Barbados
Belize
Botswana
Brunei Darussalam
Canada
Cyprus
Dominica
Fiji
Gambia
Ghana
Grenada
Guyana
India
Jamaica
Kenya
Kiribati
Lesotho
Malawi
Malaysia
Maldives
Malta
Mauritius
Nauru
New Zealand
Nigeria
Pakistan
Papua New Guinea
St. Christopher and Nevis
St. Lucia
St. Vincent and the Grenadines
Seychelles
Sierra Leone
Singapore
Solomon Islands
South Africa
Sri Lanka
Swaziland
Tanzania
Tonga
Trinidad and Tobago
Tuvalu
Uganda
United Kingdom
Vanuatu
Western Samoa
Zambia
Zimbabwe

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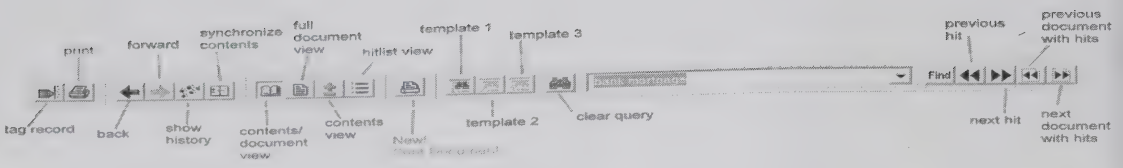
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- Click in the infobase whose table of contents you want to view. The text infobase is on the left side of your screen. The find infobase, which contains valuable cross-reference information for all the documents in the text infobase, is on the right. Click in the text infobase.
- Click on the Contents View button on the toolbar. You could also click on the Contents/Document View to get a split screen. Try both buttons now to see the difference.
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- On the toolbar is a search field where you can enter search terms. Click in the box and type: bank mortgage
- Click on the Find button or simply hit enter to initiate the search. You will note that you now have a number of hits under case law that you can review.
- Click on either the Full Document View button or the Contents/Document View to see your first hit. Use the next hit button to navigate through your hits. Is the first document clearly not relevant? Jump to the next document by hitting the Next Document with Hits button.
- Begin a new search now by clicking on the Template 1 button. Immediately you should notice something different which is the Checked Branches box. Note it has a checkmark in it. That is because you have checked branches on the table of contents. **If you leave this box checked, your template search will be restricted to just those branches of the infobase.** Leave the box checked for now. In the "Within Same Paragraph" field type: bank mortgage. Click on OK. If you haven't got the table of contents in view, click on the Contents View button. Do you notice something different? In all likelihood, the number of hits you have is much fewer. That is because you restricted the search so that bank and mortgage had to be in the same paragraph. The other search field only required them to be within the same document.
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- Click on the Next Hit button to see where your first hit is in the document. You can now tag that record for the purposes of printing or saving to a file by clicking on the Tag button on the toolbar. You could also tag the record by typing ctrl + t.
- Click on the Print button to bring up the Print dialogue box. Note that "tagged records" is selected because we have tagged records. Click on OK to print the tagged records. To save them to a file, select Export from the File menu. Let's now see some of the enhanced flexibility of the print function in Folio 4.3. If necessary, click on the Contents View button to bring up the table of contents. Go to the View menu and click on Clear all Checks to start fresh. Now find a number of documents that you would like to print and put checkmarks in their boxes. Now click on the Print button. Click on the Section radio button. Note the mini table of contents that will show the documents you have checked. Click on the OK button to batch print all the documents you selected in the table of contents.